



**VETO THREAT LOOMS AS SEVEN-YEAR TRIA EXTENSION HEADS TOWARD VOTE / PAGE 3**

**AVIATION LOSSES NOT EXPECTED TO PUSH RATES HIGHER / PAGE 3**

**U.S. REGULATORS INCH FORWARD ON REINSURANCE REFORMS TO EASE MARKET ACCESS / PAGE 3**

## In Brief

Storm team predicts seven hurricanes in '08

An early forecast for the 2008 Atlantic hurricane season issued Friday by the Department of Atmospheric Science at Colorado State University predicts 13 named storms with seven becoming hurricanes. The forecasters further predicted that three of those seven hurricanes will become "major" storms packing sustained winds of 111 mph or more. The report puts the odds of a major hurricane striking the U.S. East Coast at 60%, which is slightly higher than the 52% average over the past century.

Top Gen Re execs may testify at trial

General Re Corp. Chief Executive Officer Joseph Brandon and President Franklin Montross IV may be called to testify for the

See **IN BRIEF** page 22

## BENEFITS MANAGEMENT

**BENEFIT CONSULTING AND OUTSOURCING**

Employers seek help from benefits consultants as they fight increased health care costs; data mining used to ensure best use of benefits dollars; smaller consultants tout personal service, quick response time as advantage over larger rivals. **Page 11**



# Marsh taps alumnus to lead brokerage

*Background should help new CEO succeed where predecessor failed, observers say*

By **SALLY ROBERTS**

**NEW YORK**—Marsh & McLennan Cos. Inc. is banking on a former American International Group Inc. executive to do what his predecessor could not—lead the brokerage back to prosperity.

Daniel S. Glaser, who today takes over as chairman and chief executive officer of Marsh Inc., is relocating to New York from London, where he was managing director of AIG Europe (U.K.) Ltd. and regional president of American International Underwriters' U.K./Ireland division.

He began his career as a Marsh broker in New York 25 years ago (see story, page 22).

Mr. Glaser succeeds MMC Chairman and CEO Michael G. Cherkasky, who took the helm after firing Brian Storms in September for what MMC said was poor execution of Marsh's long-term strategy (*BI*, Sept. 24).

Mr. Cherkasky later



Marsh Inc. last week named Daniel S. Glaser as chairman and CEO.

said Marsh employees had lost confidence in Mr. Storms after various initiatives he implemented, including broad reorganizations, substantially increased operating expenses and added distractions (*BI*, Nov. 12).

Observers noted Mr. Storms' lack of industry experience—he joined MMC in 2004 from UBS Global Asset

Management—didn't sit well with Marsh employees.

Whether Mr. Glaser, 47, can gain that confidence and turn the broker around remains to be seen. Though analysts say they generally are not familiar with Mr. Glaser, they say it was a good move for MMC to find an outside veteran to run the firm.

They also note Mr. Glaser has many challenges ahead of him.

Marsh has struggled to fully recover from 2004 fraud and bid-rigging charges and the resulting

See **MARSH** page 22

# Employers spot link between health, profit

*Business issues drive efforts to ingrain wellness*

By **JOANNE WOJCIK**

Out of the growing realization that their future competitiveness depends on keeping health care costs under control, more employers are striving to create a "culture of wellness" in their organizations.

Rather than offering benefit plans that primarily pay to treat illness, these companies are revamping their programs to cover screenings, prevention as well as treatments that inhibit the progression of existing health conditions.

These employers also are making sizable investments in workplace wellness initiatives that emphasize good nutrition, increased physical activity, stress management and, in some cases, financial well-being.

"I'm interested in health care simply because I'm interested in the competitiveness of American busi-



**WEIGHING WELLNESS, PART THREE**  
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ness. Those topics go hand in hand," said Craig Barrett, chairman of Intel Corp.'s board of directors, during a keynote speech at the Institute for Health and Productivi-

See **WELLNESS** page 20



Walgreens Co. has withdrawn from a pharmacy network due to what it called "unreasonably low" reimbursement rates paid by CVS Caremark Corp.

# Retailer battles rival over Rx payment rate

*Fight pits Walgreens against CVS-owned PBM*

By **GLORIA GONZALEZ**

**DEERFIELD, ILL.**—A reimbursement dispute between Walgreens Co. and CVS Caremark Corp. is the first major skirmish between a pharmacy benefit manager and a retailer since the CVS Caremark merger, but it is likely not the last, observers say.

Plan sponsors need to prepare for further disputes and closely monitor their PBMs' pricing activities, formulate plans to notify employees of any prescription drug plan changes and evaluate the ability of employees to access other pharmacies, they say.

Last month, Deerfield, Ill.-based Walgreens withdrew from the pharmacy network of four benefit plans managed by Nashville, Tenn.-based CVS Caremark due to "unreasonably low and below-market payment rates," according to a statement.

The benefit plans were offered by ArcelorMittal, a Chicago-based steel company, Milwaukee-based automobile products manufacturer Johnson Controls Inc., Mayfield Village, Ohio-based Progressive Casualty Insurance Co. and the

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# Are you ready to capture the opportunities in workers' compensation?

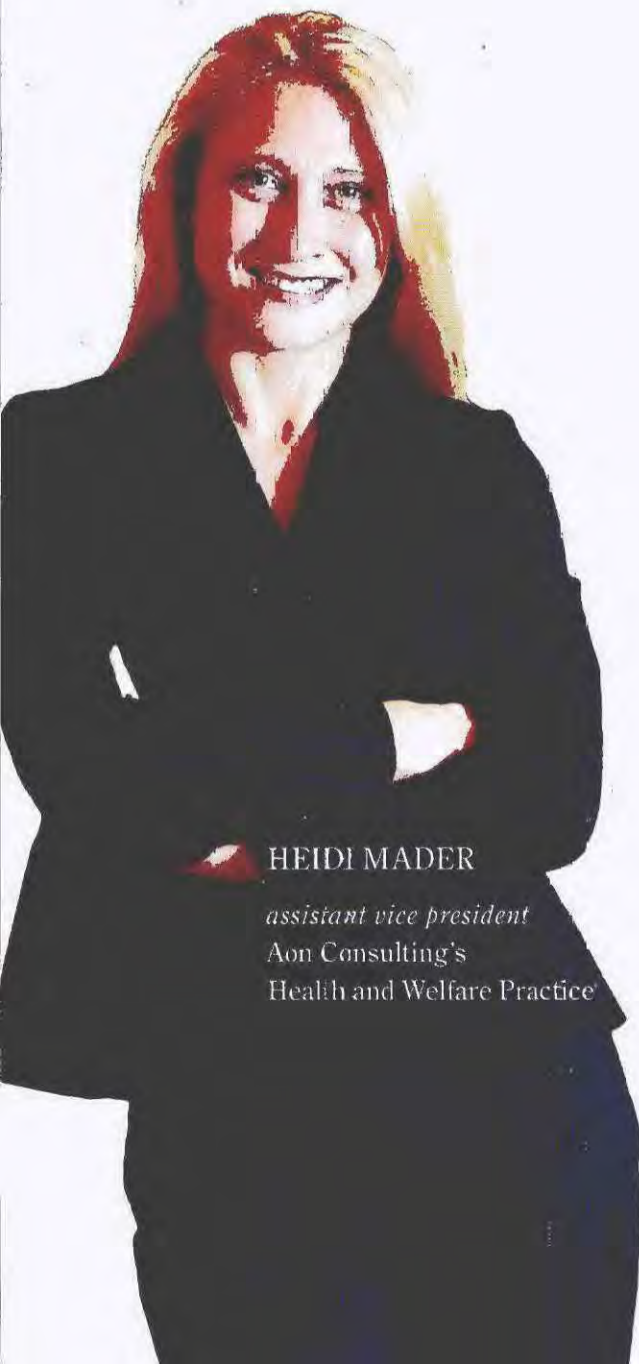
## Ask Aon.

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## On the Web



### SPECIAL SERIES

#### Entire wellness series available online

"Weighing Wellness," a special three-part series written by *Business Insurance* Senior Editor Joanne Wojcik, traces the history of the wellness movement from its initial inception through legal compliance hurdles and on to its slow adoption by companies trying to balance worker incentives with punishments. Read about these issues and check out related podcasts, court filings and webinars, at [www.BusinessInsurance.com/wellness](http://www.BusinessInsurance.com/wellness).

### CONFERENCE EXTRA

#### Expanded coverage of captive conference online

*Business Insurance* offers additional articles from the 2007 Cayman Captive Forum, packaged along with stories from this week's issue, at [www.BusinessInsurance.com/conferenceextra](http://www.BusinessInsurance.com/conferenceextra).

### ONLINE EXECUTIVE FORUM™

#### Workers comp webinar archived online

An archive of *Business Insurance's* Nov. 14 Online Executive Forum "Workers Compensation: Protecting People in the Age of Terrorism" is now available online. View this webinar, and other forums, at [www.BusinessInsurance.com/webinars](http://www.BusinessInsurance.com/webinars).

### BI DIRECTORIES

#### Benefit consultants directory updated

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

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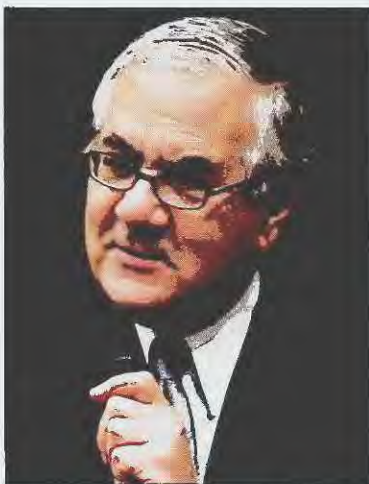
# House revises Senate's version of backstop

Chamber could vote this week on measure to extend terrorism reinsurance program for seven years

By MARK A. HOFMANN

**WASHINGTON**—The House of Representatives could vote this week on a bill that would extend the federal terrorism insurance backstop for seven years.

The measure is an amended version of the bill passed by the Senate in November. The amended House bill adopts the Senate's seven-year extension rather than the 15-year extension called for in the original House bill. It adds provisions from the original House bill that would extend the program's coverage to include group life insurance and to add a so-called "reset" provision to the program. The reset would provide lower deductibles for insurance companies that agree to write ter-



LANDOV

Rep. Barney Frank, D-Mass., was praised by an insurer group for his work on the terrorism backstop bill.

rorism coverage for areas that had previously suffered terrorist attacks. The Senate bill contained neither of these provisions.

The House measure also lowers the amount of terrorist losses required to trigger the backstop under most circumstances to \$50 million from the \$100 million level in the Senate bill. It does not, however, include any mandate that insurers must offer coverage for losses stemming from nuclear, biological, chemical and radiological attacks, a provision that appeared in the original House bill.

But even if the House passes the amended bill, the question of whether the backstop will be extended beyond its scheduled Dec. 31 expiration date remains. The

White House has threatened to veto any measure that substantially resembles the original House bill. The administration has said that it could, however, support the Senate measure.

The president of an insurer group that backs the extension greeted the amended House bill, which was pushed by House Financial Services Committee Chairman Barney Frank, D-Mass., with a degree of optimism.

The National Assn. of Mutual Insurance Cos. "is encouraged that Chairman Frank is advocating a terrorism insurance backstop program that includes both a lower trigger level and does not include manda-

See **BACKSTOP** page 18

## NAIC takes limited step toward regulatory reform

Reinsurance modernization framework adopted

By MEG FLETCHER

**HOUSTON**—The National Assn. of Insurance Commissioners last week inched closer to major reform of U.S. reinsurance regulation when the task force overseeing the reform efforts voted to adopt a framework for change.

That small development is accompanied by what observers see as a new spirit of cooperation among influential U.S. insurance regulators and two states—Florida and New York—that are working on their own plans to cut collateral requirements for non-U.S. reinsurers, while continuing to work with the NAIC.

Despite the willingness of regulators to cooperate, there are still a dozen or more significant unresolved issues that regulators are seeking to address in the years-long reform effort.

Regulators share "a sense of urgency about regulatory modernization," said outgoing NAIC President Walter Bell, Alabama's insurance commissioner, during the NAIC's winter meeting in Houston Dec. 2-4. The NAIC views Florida and New York "as laboratories of experimentation" and if they "build a better mousetrap...we'll take a look at it," he said.

"I hope we can work together very swiftly," Reinsurance Task Force Chair John Oxendine, the Georgia insurance commissioner, said at the meeting. Previously, he refused to have the task force dis-

cuss New York's proposal as a formal agenda item.

The task force and its parent committee adopted a memorandum that proposes mutual recognition of non-U.S. jurisdictions approved by a new NAIC entity to be called the

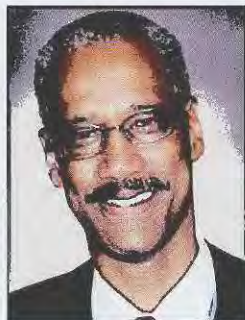
Reinsurance Supervision Review Department. The memorandum also proposes using uniform minimum standards to determine which single state regulator will oversee a U.S. reinsurer or a non-U.S. reinsurer from a RSRD-approved jurisdiction.

The focus of the ongoing reform efforts is a U.S. requirement that non-U.S. reinsurers post collateral that matches their exposures to U.S. risks. Many U.S. ceding insurers and reinsurers have opposed any relaxation, citing financial concerns; overseas organizations,

most notably those in London, have pushed for a relaxation of the regulations, arguing that many overseas reinsurers offer comparable, or better, security than many of their U.S. competitors.

Most observers saw the NAIC's memorandum as a sign of limited progress.

"The framework is better than the plans proposed in the past" because it gives more recognition to more interests, although most ceding insurers still prefer that non-U.S. reinsurers provide 100% collateral, said Bill Boyd, financial regulation



NAIC

Regulators share "a sense of urgency about regulatory modernization."

Walter Bell, Alabama insurance commissioner

## AIRLINE INSURERS FAIL TO MAKE A PROFIT IN 2007

Profitable years appear to have ended, though premiums largely apply to the following year's losses because most airlines renew in December. In billions of dollars.



## Airlines unlikely to face higher rates in 2008

Underwriters cutting rates even after first loss in five years

By DAVE LENCKUS

A fatal crash of a passenger jet in Turkey Nov. 30 does not materially hurt the remaining renewals for airline liability and hull coverage, even though the loss further deteriorates underwriters' poor 2007 results, market experts said.

Nor does the tough year for underwriters mean that airlines will necessarily face higher insurance costs in 2008, experts said.

Meanwhile, the slightly competitive market for airline products manufacturers likely will be relatively stable in 2008 but softer in subsequent years, brokers predicted.

For the remainder of 2007, airlines that still are hammering out their placements can expect high single-digit rate cuts and possibly double-digit reductions,

brokers said.

Most significantly for renewing airlines, with the market experiencing abundant capacity, underwriters do not want to lose market share, brokers said.

But because losses now have consumed underwriters' premium volume, some brokers said rate cuts would be smaller than the 14% to 20% reductions that airlines negotiated earlier this year and as recently as for Dec. 1 renewals. Up to 80% of the world's commercial airlines renew during the fourth quarter, with the heaviest concentration of renewals scheduled for Dec. 1.

Underwriters are cutting rates even though 2007 will mark the end of five consecutive profitable years, according to market experts.

Estimated losses of \$1.62 billion this year offset the market's premium volume, said Paul Hayes, director of safety at London-based air transport consultant Ascend Worldwide Ltd. (see chart).

See **AVIATION** page 21

See **NAIC** page 18

# Supreme Court hears oral arguments in pre-emption case

*Justices weigh how broadly federal statute shields medical devices*

By MARK A. HOFMANN

**WASHINGTON**—How the Supreme Court deals with a case that asks how broadly a federal statute governing medical devices pre-empts state product liability suits could have an impact on other products as well, say some legal analysts.

The high court heard oral arguments last week in *Donna S. Riegel vs. Medtronic Inc.* The question before the court is whether the express pre-emption provision of the Medical Device Amendments to the Food, Drug and Cosmetic Act

provides a blanket protection to medical device manufacturers from state liability suits if the devices received premarket approval from the federal Food and Drug Administration.

Several business groups, joined by the Bush administration, hold that the amendments pre-empt any state liability suits. Ms. Riegel, whose late husband suffered injuries from a heart catheter, has been joined by consumer groups holding that such pre-emption does not exist. Both a federal court in New York and the majority of a three-judge panel of the 2nd U.S. Circuit Court of Appeals upheld the pre-emption.

"The court of appeals determined that the imposition of tort liability based on allegedly defective charter



The Supreme Court considers a case on federal pre-emption of safety standards for medical devices.

of a device or label would subject the manufacturer to state law requirements 'different from or in addition to' the federal requirements embodied in the approved PMA application," wrote the Bush administration in its brief to the Supreme Court. "The court of appeals correctly held that petitioners' claims are pre-empted to the extent that they seek to impose liability on respondent for not departing from an FDA-approved design or labeling requirement imposed in the premarket approval process."

But Ms. Riegel's attorneys replied in one of their briefs that Medtronic and its supporters "speak as if the traditional state law civil justice system did not exist." Damages against devices that have received FDA pre-market approval "are not new reme-

dies this court is being asked to create. Damages claims pre-existed the Medical Device Amendments of 1976 and have co-existed with PMA for 30 years since then."

Glenn Lammi, chief counsel of the legal studies division at the Washington Legal Foundation—which filed an amicus brief with the Supreme Court supporting Medtronic—said that while the case is "specific to the MDA and its meaning, I think any time the court speaks on pre-emption, it sends a message to the lower courts as to how the courts should rule on these kinds of issues."

Mr. Lammi said the suit is one of three pre-emption cases before the high court. He added if other courts

See **LIABILITY** page 18

## CLAIMS QUALITY INDEX Among companies with \$10 million-\$500 million in revenues

Based on a composite of evaluations on 5-point scales, 5 (excellent) to 1 (poor). Three items—insurers' willingness to pay claims, claims coordination with brokers and claims responsiveness—are averaged and transformed to a linear scale.



Source: Greenwich Associates

## Claims service quality varies widely: Study

*Policyholders report mixed experience among P/C insurers*

By REGIS COCCIA

Companies large and small are increasingly concerned about the quality of claims service they receive from their insurers, a new study found.

Research released this month by Greenwich Associates of Greenwich, Conn., shows that boards and executives charged with risk management are looking closer at claims quality when deciding which insurers to use for their property and casualty coverage.

Greenwich's Carrier Claims Quality Index is based on more than 13,000 interviews with leaders at companies with revenues between \$10 million and \$500 million. The CQI is based on respondents' perception of insurers' willingness to pay claims, claims coordination

with brokers and claims responsiveness, on a scale of 1 to 5. Greenwich plotted the results based on insurers' market penetration as well as the percentage of respondents who considered their satisfaction "excellent" (see charts).

Some respondents, who requested anonymity, gave mixed marks to insurers on claims quality.

The risk manager of a multinational construction industry company, for example, said that insurers' slowness to respond early in construction defect and builders risk claims tends to allow costs to escalate. The buyer also said while insurers generally provide very good service in personal lines, they fall short on commercial lines and are quick to issue "reservation of rights" letters on some claims.

A treasurer and an insurance director at a pharmaceutical company both said "we know what we pay but not what we have" from our insurers until a claim is negotiated

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## N.Y. deal would bail out Executive Life

*P/C insurers, life insurance guaranty funds to offset \$2B deficit*

By DOUGLAS McLEOD

**NEW YORK**—New York insurance regulators have brokered a deal that would raise enough cash from life insurance guaranty funds and property/casualty insurers to offset a projected \$2 billion deficit at Executive Life Insurance Co. of New York.

The deal would allow ELNY to make good on structured settlement annuities issued to about 11,000 accident victims and others, New York Gov. Eliot Spitzer and Insurance Superintendent Eric Dinallo announced last week.

ELNY, a former unit of the now-defunct First Executive Corp. of Los Angeles, was ordered into rehabilitation in 1991 but was never declared insolvent. An affiliate, Executive Life Insurance Co. of Cal-



ZUMA PRESS

Gov. Eliot Spitzer announced a bailout of ELNY, a New York affiliate of a failed California insurer.

ifornia, was ordered liquidated that year and later was sold to French investors led by Altus Finance Group L.L.C.

Under the deal, ELNY would receive roughly \$650 million to \$750 million in cash contributions, said Mark G. Peters, deputy insurance superintendent in charge of the New York Liquidation Bureau, which oversees the ELNY rehabilitation.

The money will come both from state life insurance guaranty associations—with a "significant percentage" from the Life Insurance Company Guaranty Corp. of New York—and from property/casualty insurers that bought ELNY annuities to fund structured settlements

See **ELNY** page 6

## Ohio state legislators reject pregnancy discrimination rule

*State commission to fiscally analyze pregnancy leave plan*

By JUDY GREENWALD

**COLUMBUS, Ohio**—Employers in Ohio last week received at least a 90-day reprieve from implementing a proposed pregnancy discrimination regulation that business groups say could be costly and onerous to administer.

A state legislative committee has sent the regulation back to the Ohio Civil Rights Commission, which approved the proposal in October, for a more thorough fiscal analysis.

The commission's proposed pregnancy regulation calls for firms with

four or more employees to offer 12-weeks of maternity leave, when medically recommended, to their female employees. The regulation does not require any waiting period for eligibility and the leave can be paid or unpaid. Employers that offer less than 12 weeks will be presumed to have committed unlawful sex discrimination.

The federal Family and Medical Leave Act requires firms with 50 or more workers to grant 12 weeks of leave for birth or care of a newborn child to those who have been on the job for a year.

The Ohio proposal would replace the state's current rule, adopted in 1977, which requires that employers with four or more workers provide pregnancy leave "for a reasonable period of time." The proposal

also requires employers with light-duty programs to offer them to their pregnant workers.

Under Ohio law, the Joint Committee on Agency Rule Review, a group of 10 state legislators, must consider whether proposed administrative rules meet several criteria, including that a fiscal analysis has been undertaken and that the rules do not exceed the rule-making agency's statutory authority.

In its submission to JCARR, the commission indicated the regulation would have no fiscal impact on the state's school districts, counties, townships or municipalities.

But at its meeting Dec. 3, in a 9-1 decision, JCARR returned the proposal to the commission, stating it

See **OHIO** page 6

**OBJECTS IN MIRROR**  
**ARE A LOT CLOSER**  
**THAN THEY APPEAR.**



**WAUSAU COMMERCIAL AUTO AT WORK.** While looking at the claim history of a food distributor we insure, we noticed a number of issues with its fleet safety. During the previous two years there had been several accidents, including a few sideswipes, that heightened concerns about rising costs. Part of the problem was poor visibility, especially when changing lanes. This was easily remedied by installing fender-mounted **PRICE ≠ COST.** elliptical mirrors on all of the trucks. Another problem was finding the right drivers. With our help, they established new hiring methods

(including background checks and road testing) and formalized the driver selection process. As a result, even with a significant increase in annual mileage, the number of accidents dropped 30% and dollar losses dropped 60%. And thanks to fewer collisions, the delivery schedule ran smoother as well. It's all part of Wausau TotalValue<sup>SM</sup> and our commitment to lowering your total cost of risk. And it's backed by the financial strength of the Liberty Mutual Group. To learn more, visit [wausau.com](http://wausau.com) or contact your Wausau representative.



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# Business Insurance OPINIONS

## Why Massachusetts has reason to celebrate

MASSACHUSETTS OFFICIALS and others involved in last year's successful effort to move the state closer to universal health care coverage have a good reason, as they did last week, to crow about the progress that has been made.

Prior to enactment of the reform legislation, roughly 400,000 Massachusetts residents lacked coverage. Now, about 75% of the uninsured have health insurance. That's a remarkable achievement by any measure, especially since the reform legislation was signed just 20 months ago.

Where have the uninsured gotten coverage?

More of Massachusetts' very poor residents now are covered under the state's Medicaid program, which the law expanded. Even more residents get coverage through a program that subsidizes health insurance premiums for those with lower incomes. Yet others, such as part-time employees, now get coverage through their employers, which must offer plans in which employees can pay premiums on a pretax basis.

*This is a promising start, and Massachusetts' accomplishment should be closely studied by other states.*

Certainly, the Massachusetts statistics bring home the point that not only is health care reform possible, it can bring down the number of uninsured dramatically and in a very short period of time. That is a good thing for covered individuals, who are much more likely to receive care before minor medical problems mushroom into costly ones, as well as for employers, as a reduction in the number of uninsured means a reduction in the cost of uncompensated care being shifted to insured patients.

But we are not prepared to say that the Massachusetts model will work in every state. The road to reform in Massachusetts was smooth for several reasons, not the least of which is the state had a relatively low number of uninsured before passage of the law. And it will be years before there is reliable information on whether it can afford what it has promised.

Still, this is a promising start, and Massachusetts' accomplishment should be closely studied by other states before they embark on their own reform drives.

## Client expectations high for Marsh exec Glaser

WE WISH DANIEL GLASER well as he steps in to take the helm at Marsh Inc. He has quite a task ahead of him as he attempts to turn around the fortunes of the world's largest insurance brokerage.

Although it is more than three years since Eliot Spitzer rocked the commercial insurance industry with his investigation into bid-rigging and client-steering charges, Marsh is still in a financial and operational fix.

Disappointing profits and revenues are more of a concern for Wall Street than for risk managers, but the turmoil that those results both stimulate and reflect must be a concern for Marsh clients.

And continued talk of a breakup or sale of Marsh must also be a concern—there is little enough choice among large brokerages as it is.

Bringing in Mr. Glaser, who is an experienced broker and insurer executive as well as a former Marsh employee, has been welcomed by many observers as the right move for Marsh. His predecessor did not have the industry experience the brokerage needed, they say. But appointing an outsider as chief seems to have worked well enough at some other brokerages, so it seems fair to conclude that Mr. Glaser needs to bring a lot more to the table than a familiarity with the business. His clients will no doubt expect that he does.



## BI beats list

In an effort to ensure continuing timely coverage of risk management, insurance and benefit-related news, Business Insurance has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to BI readers. BI welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

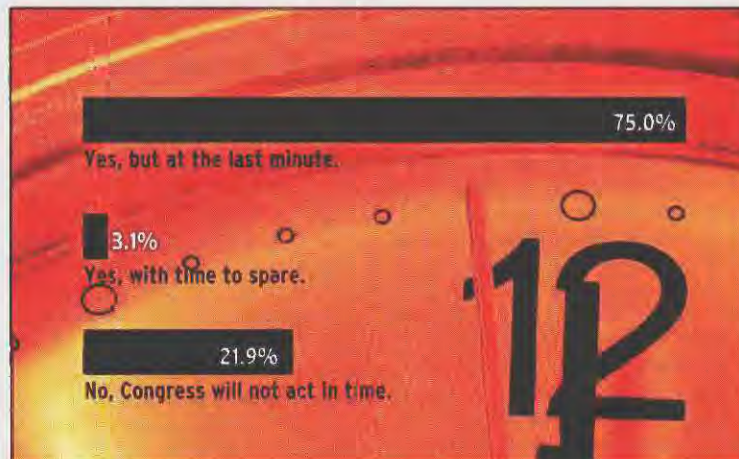
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<b>Benefits—health care and ancillary benefits:</b> Joanne Wojcik.	<b>Health care industry operations:</b> Gloria Gonzalez.	<b>Reinsurance:</b> Judy Greenwald.
<b>Benefits—retirement savings/pensions:</b> Jerry Geisel.	<b>Industry Focus:</b> Rodd Zolkos, Meg Fletcher.	<b>Risk management profession:</b> Dave Lenckus.
<b>Canada—risk management and benefits:</b> Gloria Gonzalez.	<b>Insurance coverage litigation:</b> Douglas McLeod.	<b>Runoffs/receiverships:</b> Douglas McLeod.
<b>Employment practices:</b> Judy Greenwald.	<b>Insurance fraud:</b> Douglas McLeod.	<b>Safety/ergonomics:</b> Meg Fletcher.
<b>Environmental risk management:</b> Sally Roberts.	<b>Latin American markets:</b> Roberto Cenicerros.	<b>Surplus lines/wholesalers:</b> Roberto Cenicerros.
<b>Federal regulation/legislation—benefits:</b> Jerry Geisel.	<b>Property/casualty industry operations:</b> Judy Greenwald.	<b>Tort reform:</b> Mark A. Hofmann.
<b>Federal regulation/</b>	<b>Professional liability:</b> Dave Lenckus.	<b>Work/life benefits and EAPs:</b> Sally Roberts.
	<b>Property loss control/cat risks:</b> Mark A. Hofmann.	<b>Workers compensation:</b> Roberto Cenicerros.

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## Online Poll at [www.businessinsurance.com](http://www.businessinsurance.com)

Will Congress manage to extend the terrorism insurance backstop before its Dec. 31 expiration?



**NEXT WEEK'S POLL:** Do you participate in a wellness program at your employer?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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## BENEFIT CONSULTING & OUTSOURCING

Data analysis and warehousing back employers' efforts to make the most of benefits / Page 14

Smaller consultants tout personal attention, quicker response to customers / Page 15

# BENEFITS MANAGEMENT



## Meeting of the minds

## Does pension plan comply with new law?

In response to passage of the federal Pension Protection Act, employers are looking to their consultants for help in determining whether their defined benefit plans meet the new federal funding thresholds.

Employers also are seeking assistance from their consultants in setting up automatic enrollment in 401(k) plans, another provision of the PPA.

"Retirement is becoming a bigger and bigger issue," said Gene Wickes, Denver-based global director of the benefits group for Watson Wyatt Worldwide. "We see more interest in the governance of these plans. The Pension Protection Act has changed the way companies are looking at their plans" to ensure that they are properly funded.

Prior to the PPA, it wasn't unusual for employers enjoying stock market gains to skip making contributions to their defined benefit pension funds "because they made enough off the gains from their investment" to stay within guidelines, said David Altimont, a senior vp at Lockton Cos. L.L.C. in Dallas.



"Under the PPA, there is an acceleration of the time frame that a company must get its plan into fully funded status," he said in noting that the PPA requires that any "deficits must be reported on balance sheets."

In response, employers "are taking a much closer look at their defined benefit plan funding levels," Mr. Altimont said.

"We're also getting a lot of requests for calculations" to determine whether "to freeze or terminate a defined benefit plan so they don't have to follow the new PPA rules" or whether employers should pay higher premiums to the Pension Benefit Guaranty Corp. that would be required if plans were underfunded, he said.

Employers that do decide to make such sweeping changes are taking the opportunity to review the work of companies that provide administration and/or recordkeeping services for their defined benefit plan, said Josh Trent, vp of business development at Aon Consulting in Minneapolis.

"There's no better time to see what's new in the market," Mr. Trent said.

With 401(k) plans becoming the dominant retirement funding vehicle, some employers are looking to their consultants to help set up automatic enrollment and determine whether to increase matching contributions or shorten vesting schedules, Mr. Altimont said.

"We're also being asked to do actuarial recalculations to determine how much greater their contributions to the defined contribution plans need to be to ensure income replacement when the pension plan is frozen or terminated," he said.

—By Joanne Wojcik

## More employers utilize outside expertise

*Education and modeling moving to the forefront in benefits strategies*

By JOANNE WOJCIK

Stepped-up employer demand for help in addressing rising health care costs coupled with new federal rules governing retirement plan administration are keeping benefit consultants on their toes.

To slow the rate of increase of health care costs, employers increasingly are asking their consultants for assistance in teaching their employees to become better health care consumers through education and communication, implementing wellness programs or starting onsite wellness clinics. Other employers are seeking help to set up data warehouses to identify cost drivers and do predictive modeling of future health care costs (see story, page 14).

On the pension side, employers are tapping consultants for assistance in determining whether their defined benefit plans meet the new federal funding thresholds set by the Pension Protection Act and, if not, whether it's time to freeze or terminate their plans. They also

are seeking assistance in setting up automatic enrollment in 401(k) plans, safe harbors that were also included in the PPA (see story, this page).

To provide the necessary expertise for these services, some consultants are adding to their staff, while others are serving as brokers to help employers examine the providers that will ultimately do the work that is needed.

In response to this growing demand for benefits and human resource consulting and outsourcing services, the market is booming, according to Kennedy Information Inc., a Peterborough, N.H.-based firm that analyzes management and information technology consulting services.

Kennedy's study, "HR Consulting Marketplace 2007-2011: Key Trends, Profiles and Forecasts," reports that the global HR consulting services market surged 9.1% in 2006 to more than \$18 billion and will continue to grow through 2011.

"Communications is in high demand—not only about benefit plan

design, but also about the relationship of benefit costs to the overall bottom line of the business," said Doug Thomas, managing director of SMART Business Advisory & Consulting L.L.C. in New York. "That is a big part of HR strategic planning," a service that most consultants provide, he said.

"We can technically come up with some of the most sophisticated plan designs. If, however, those plans are not properly communicated to employees, it can be a recipe for disaster," Mr. Thomas said.

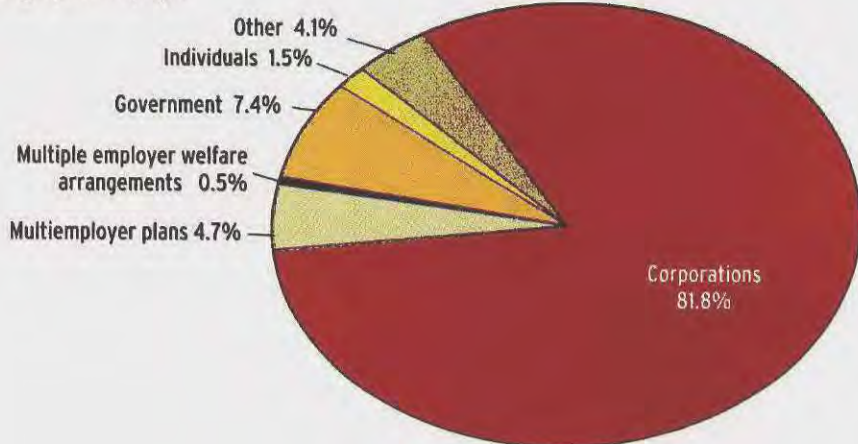
"In the last couple of years in particular...we're seeing a move away from the heavy focus of just being able to accommodate the transactional side of benefits administration toward incorporating the key elements of education and modeling" to help employees become better health care consumers, said Josh Trent, vp of business development at Aon Consulting in Minneapolis.

"As consumer-driven health plans

See **CONSULTANTS** page 14

## BENEFIT CONSULTANTS' CLIENTS

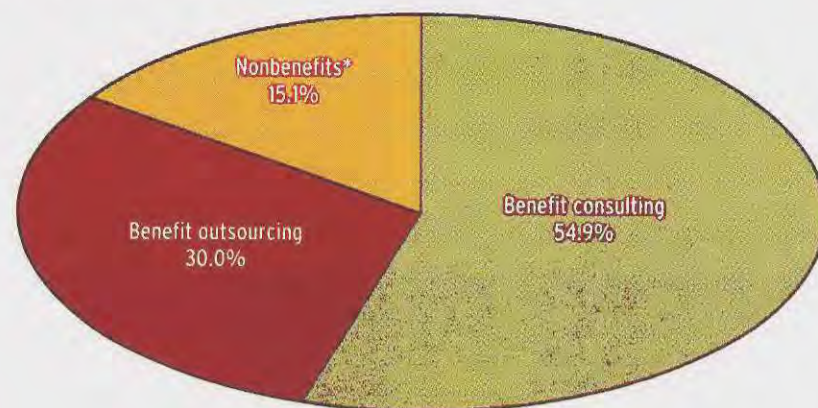
Percentage of clients by type.



Source: BI survey

## BREAKDOWN OF SERVICES

Percentage of services offered by all companies listed.



Source: BI survey

\*Includes claims administration, compensation consulting, insurance commissions and other nonbenefit consulting.

# World's largest employee benefit consultants

Ranked by worldwide benefit consulting revenues\*

Rank	Company/Address	Phone/Web site	2007 benefit consulting revenues	2006 benefit consulting revenues	% change	% of total gross revenues from benefit consulting	Principal officer
1	Mercer L.L.C. 1166 Ave. of the Americas, New York, N.Y. 10036	212-345-7000 <a href="http://www.mercer.com">www.mercer.com</a> , <a href="http://www.mercer.com/ic">www.mercer.com/ic</a>	\$1,643,188,000 <sup>1</sup>	\$1,471,907,000 <sup>2</sup>	11.6%	50.5%	M. Michele Burns, chairman/CEO
2	Watson Wyatt Worldwide 901 N. Glebe Road, Arlington, Va. 22203	703-258-8000 <a href="http://www.watsonwyatt.com">www.watsonwyatt.com</a>	\$1,382,000,000 <sup>3</sup>	\$1,124,000,000 <sup>3</sup>	23.0%	86.0%	John Haley, president/CEO
3	Hewitt Associates Inc. 100 Half Day Road, Lincolnshire, Ill. 60069	847-295-5000 <a href="http://www.hewitt.com">www.hewitt.com</a>	\$945,905,000 <sup>4</sup>	\$842,616,000 <sup>4</sup>	12.3%	32.4%	Russ Fradin, chairman/CEO
4	Aon Consulting Worldwide 200 E. Randolph St., Suite 1000, Chicago, Ill. 60601	312-381-4800 <a href="http://www.aon.com">www.aon.com</a>	\$931,000,000 <sup>1</sup>	\$913,342,000 <sup>2</sup>	1.9%	71.0%	Andrew Appel, CEO-Aon Consulting Worldwide
5	Towers Perrin 1 Stamford Plaza, 263 Tresser Blvd., Stamford, Conn. 06901	203-326-5400 <a href="http://www.towersperrin.com">www.towersperrin.com</a>	\$842,200,000	\$803,100,000	4.9%	52.0%	Mark V. Mactas, chairman/CEO
6	Deloitte Consulting L.L.P. 1633 Broadway, New York, N.Y. 10019	510-273-2371 <a href="http://www.deloitte.com">www.deloitte.com</a>	\$822,759,000 <sup>5</sup>	\$630,773,000 <sup>5</sup>	30.4%	41.2%	Sabri Challah, vice chairman-Deloitte Consulting L.L.P./global service area leader-Human Capital
7	PricewaterhouseCoopers Human Resource Services 300 Madison Ave., New York, N.Y. 10017	646-471-3000 <a href="http://www.pwc.com/us/hrs">www.pwc.com/us/hrs</a>	\$800,000,000	\$685,000,000	16.8%	71.0%	Michael Rendell, global leader-human resource services
8	Buck Consultants, An ACS Company 1 Pennsylvania Plaza, New York, N.Y. 10119-4798	212-330-1000 <a href="http://www.buckconsultants.com">www.buckconsultants.com</a>	\$430,620,000 <sup>6</sup>	\$393,766,000 <sup>6</sup>	9.4%	100.0%	Jan K. Grude, president/executive managing director
9	Alexander Forbes Ltd. Alexander Forbes Place, 61 Katherine St., Sandown, 2196 South Africa	27-11-269-0000 <a href="http://www.alexanderforbes.co.za">www.alexanderforbes.co.za</a>	\$240,320,300 <sup>7</sup>	\$233,208,106 <sup>8</sup>	3.0%	80.3%	Grant Stobart, executive director- Alexander Forbes International
10	Ernst & Young L.L.P.-Performance Reward & Human Capital 1225 Connecticut Ave. N.W., Washington, D.C. 20036	202-327-6000 <a href="http://www.ey.com">www.ey.com</a>	\$213,500,000 <sup>6</sup>	\$160,000,000 <sup>6</sup>	33.4%	N/A	James Bosserman, director-Americas Performance & Reward

\*Excludes revenues from claims administration, compensation consulting, insurance commissions and other nonbenefit consulting. 1 2007 revenues were estimated based on reported earnings for fourth-quarter 2006 and the first three quarters of 2007. 2 2006 revenues were estimated based on reported earnings for fourth-quarter 2005 and the first three quarters of 2006. 3 Revenues are reported on a calendar year basis. 4 Fiscal year ending 9/30. 5 Fiscal year ending 5/30. 6 Fiscal year ending 6/30. 7 South African rand=\$0.0140 (2007) fiscal year ending 3/31. 8 South African rand=\$0.1564 (2006) fiscal year ending 3/31. N/A=Not available.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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# Health, productivity efforts rest on quality of statistics

*Boom in demand for warehouses to hold growing amounts of benefits-related data draws diverse group of providers*

By LEIGH PAGE

Data-mining of claims and other medical data is becoming an essential tool for employers that want to improve employee health and productivity. The numbers can be sliced and diced to identify employees with the greatest health risks, assess disease management and examine physician outcomes.

But this increasing emphasis on collecting, analyzing and storing such data hasn't been an easy switch for some benefit consultants, said Michael Miele, president of Apex Management Group, a Princeton, N.J.-based actuarial consultant owned by Arthur J. Gallagher & Co. "The average consultant in our industry doesn't speak data," he said.

In the past few years, however, consultants have been diving deeper into the numbers, and Mr. Miele sees himself as a "tactician" who helps clients use data to its fullest potential.

Melissa Miller, director of employee benefits and services at FPL Group Inc., said the Juno Beach, Fla.-based parent of Florida Power & Light partnered with Lincolnshire, Ill.-based Hewitt Associates Inc. to use claims data to identify which conditions led to significantly higher medical costs when employees failed to take their prescribed medications.

"It turned out that our employees were more compliant than the Hewitt benchmark, but we still

found significant opportunity for improvement," Ms. Miller said.

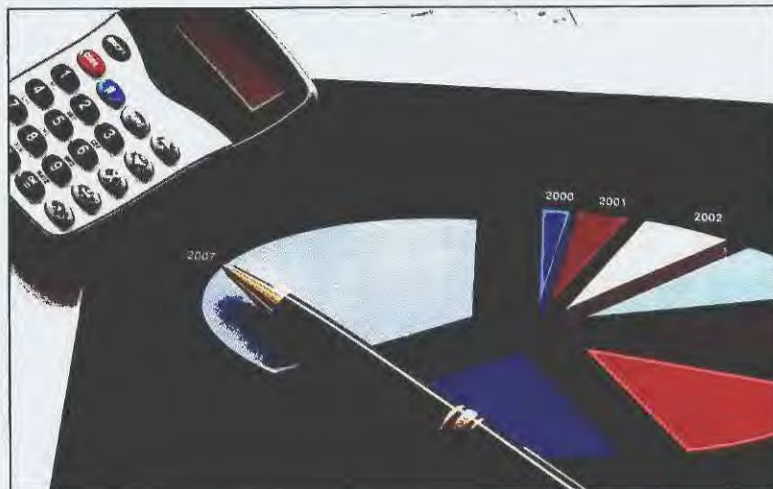
With that information, FPL starts a new program on Jan. 1, 2008, that will reduce copayments for certain drugs for employees with hypertension, high cholesterol and diabetes, with a value-based plan design that uses financial incentives to encourage employees to use preventive health care services.

Ms. Miller said the program involves several providers, including New York-based ActiveHealth Management Inc., a unit of Hartford, Conn.-based Aetna Inc., which will identify participants in the copayment program. It also will mine FPL's health care data to identify when treatment is not following evidence-based guidelines and contact the employee's physician.

Jennifer Boehm, a principal in Hewitt's health management consulting unit in Atlanta, said the value-based benefit model used in its proprietary actuarial tool helps employers predict the impact of various changes in copayments for prescription drugs.

Dr. John J. Mahoney, director of strategic health care initiatives at Stamford, Conn.-based Pitney Bowes Inc., recalled that when the office equipment maker first set up value-based benefit programs in 2002, it was so new that it was unknown to consultants and it spent \$4.5 million to customize its benefit design functions in-house.

Dr. Mahoney has shared what he learned in a new book he co-



authored, "BenefIT Design: Seven Steps to Value-Based Health Benefit Decisions."

"It is pretty easy to measure results on the medical side—trips to the ER and hospitalizations," he said. "But it is hard to measure sick leave because it can be mixed in with other kinds of days off. You can measure disability better, but then, it can't be used to track the health of family members."

Apex's Mr. Miele said employers with complex sets of data need a so-called warehouse—a physical, integrated storage place—to pull them all together. However, some employers don't use their warehousing to its full capacity or may drop the service entirely. Although warehousing can cost \$100,000 a year, Mr. Miele said the cost is small vs. the \$30 million to \$40 million that an employer with 5,000 covered lives would spend annually on health care.

Ms. Miller said FPL has been using data warehouse Ingenix Inc. of Eden Prairie, Minn., for a variety

of data-mining efforts since the early 1990s. Ingenix now crunches a wide array of FPL data, including disability information and productivity statistics. "This means we can look at the total cost of the disability—both the medical and productivity costs," she said.

Ms. Miller said Ingenix assembles the data, Hewitt helps decide which drugs to target, and ActiveHealth identifies participating employees and provides the information to pharmacy benefits manager Caremark Pharmacy Services, a Nashville, Tenn.-based division of CVS/Caremark Corp., which administers the lower copayments.

Meanwhile, many consultants have set up special relationships with data warehouses. Chicago-based Aon Consulting has a dedicated group that works with Ingenix and D2Hawkeye, a Waltham, Mass.-based data warehouse, said Michael Taggart, senior vp at the Aon Corp. unit that offers warehousing services to its clients.

A few consultants provide their

own warehousing.

Bruce Kelley, senior health care consultant based in Minneapolis at Watson Wyatt Worldwide, said his company operates a warehouse that holds claims data for 41 clients.

And Mercer recently announced it is creating its own warehouse with help from Thomson Medstat, the Ann Arbor, Mich.-based actuary and consultant that offers data warehousing services and is owned by Thomson Corp.

Peter Hayes, director of health and wellness at Hannaford Bros. Co., said the Scarborough, Maine-based grocery store chain is data-mining as part of the Maine Health Management Coalition, an employer consortium that hired the Maine Health Information Center in Manchester to build a data warehouse for them.

Hannaford Bros. has used the data to create a value-based benefit design program like FPL's drug program as well as a program evaluating specialist physician performance. Working with Aetna and using its measures, Hannaford Bros. identifies specialists who deliver cost-effective care. Employees pay a 20% copayment for high-performing specialists rather than 30% for in-network specialists not on the list. Mr. Hayes said he does not use a benefit consultant, preferring to work through the coalition and get advice from Aetna.

Health insurers are taking a bigger role in mining data as well.

Aetna acquired ActiveHealth in 2005 and Minnetonka, Minn.-based UnitedHealthcare, a unit of United-Health Group Inc., has greatly expanded Ingenix since it was founded in 1996.



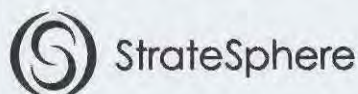
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## Consultants: Wellness clinic appeal rising

CONTINUED FROM PAGE 11

have become more and more common," he said, "employees need to be much more educated around how they're spending the dollars that they're putting aside toward their benefits," and employers are turning to consultants to help educate their employees.

Aon Consulting has built software tools in-house that employers can provide to their employees to help determine how much money they need to set aside to pay for their own and their families' health care needs, Mr. Trent said. The consultant also has established partnerships with other organizations, such as WebMD, to provide employer access to such tools.

Gene Wickes, Denver-based global director of the benefits group for Watson Wyatt Worldwide, said he is seeing more interest in wellness programs. "I think there's expansion in the market in that area," he said. "There's a lot more focus on wellness and how to control costs from that standpoint."

In some cases, employers are

turning to consultants for help in doing a cost-benefit analysis before setting up their own onsite wellness clinics.

"Most employers are trying to figure out whether it makes sense to do it, so they're looking for consulting expertise to sort out the business case," said Randy Abbott, a Watson Wyatt consultant based in Minneapolis.

Watson Wyatt conducted a survey this year in conjunction with the Washington-based National Business Group on Health that found about 21% of employers already have an onsite clinic and/or wellness center and that 27% plan to offer them by next year.

A separate Watson Wyatt study this year of 100 employers, 85 of which already had onsite clinics, found that clinics in place prior to 2000 were more likely to be staffed by the employers, while those opened after 2000 were most likely to be staffed by outside providers.

"We're being hired by a lot of organizations. It's about a quarter of what I'm doing right now, first

looking at their data to find out what business model makes sense, then whether to make it or buy it. Most are preferring to buy it, so we do vendor searches. The last piece is the measurement side," Mr. Abbott said.

Ken Grant at Lockton Cos. L.L.C. also is seeing more interest among employers in setting up wellness clinics.

"It used to be only the employers with 10,000 employees and above. But there's more and more employers with smaller populations doing this," said Mr. Grant, a Dallas-based senior vp at Lockton.

To provide the expertise necessary to meet this need, Lockton has hired wellness experts and medical directors. "We have two doctors on staff, ERISA attorneys, actuaries, wellness coordinators," Mr. Grant said.

In addition, Lockton has added expertise to help employers analyze their wellness program data, to warehouse claims data when they switch insurers and, in some cases, to do predictive modeling, Mr. Grant said.

# Bigger is not always better with benefit consulting firms

*Smaller consultants emphasize importance of strong client relationships, specialty practices and cost-effective services*

By **LOUISE KERTESZ**

Smaller benefit consulting firms say they offer employers advantages over their larger counterparts.

The smaller firms say they are cost-effective, entrepreneurial, relationship-oriented and provide principals to work with clients rather than junior consultants. Smaller benefit consultants say they offer the same breadth of resources, including strong relationships with insurers.

For employers with fewer than 100 workers, smaller, regional consultants are generally the only game in town. National and global consultants "don't have you on their radar screen," said Joe Martingale, an independent consultant based in New York.

One exception would be SMART Business Advisory & Consulting L.L.C., a Chicago-based firm with 700 employees that bought the benefits consulting practice of KPMG L.L.P. last year. This "smaller national" consultant serves companies from startups to the Fortune 500, said Judy Thorp, executive managing director.

**'Even the president of the company comes over for our renewal. You're not going to get that from a large organization.'**

Amy Guarino,  
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Employers choose a consultant based on "the nature of the employer, the nature of the project or assignment, the work they want the consultant to help with, the type of consulting firm and the services they are capable of providing, and the fees and how they charge for them," Mr. Martingale said. "There's not a straightforward answer—This is exactly when you should choose a local or a global consultant.' There are always trade-offs."

The reasons employers choose King of Prussia, Pa.-based Trion Group Inc., with 300 associates nationwide, vary by market segment, said Mark Cornish, a senior executive and leader of Trion's absence, disability and life practice.

Another segment for Trion is health and welfare consulting for multisite employers with complex needs that typically employ 1,000 workers. Its administrative outsourcing and voluntary benefits divisions are also national practices, Mr. Cornish said.

"We believe real strongly in hiring great people, aligning them with what they do best, empowering them and holding them accountable," Mr. Cornish said. "It's almost like they are running their own small businesses. They are

very responsive to customer needs. We're bigger than the small benefit shops, but decisions are being made locally. We can get it done fast. We can turn on a dime," he said.

"The entrepreneurial drive is the big differentiator," said Craig Hasday, president of Frenkel Benefits L.L.C., a New York-based consultant with 52 employees. The Frenkel & Co. Inc. arm focuses on middle-market companies with 5,000 to 10,000 employees. "We typically blur the line between our staff and a client's and we pitch in wherever

we are needed. We're very agile and can be extraordinarily reactive to a client's needs," Mr. Hasday said. The most critical component in choosing a consultant is "the person you're going to be interacting with on a daily basis."

Frenkel client Amy Guarino, director of benefits at A|X Armani Exchange, an urban- and youth-oriented clothing maker based in New York with about 3,000 employees. "Even the president of the company comes over for our renewal. You're not going to get that from a large

organization," Ms. Guarino said. "It's a one-on-one interaction at every level."

### *Weighing the differences*

Joe Atencio, chief administrative officer of Cosmetic Essence Inc., an outsourced provider for the personal care and household products industries in Holmdel, N.J., said a big factor in the August 2006 move to Frenkel from a larger consultant was Mr. Hasday's availability. "The problem I had with the global consultant—the people were very com-

petent, but I was being serviced out of an office thousands of miles away," Mr. Atencio said.

About 1,100 people work at Cosmetic Essence manufacturing and distribution facilities, rising to about 5,000 during peak holiday seasons.

Mr. Atencio said he appreciates the fact that Mr. Hasday "speaks metrics" and successfully opened the "black box" of employee benefits for him. "They do a good job of

See **SIZE** next page

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# Size: Consultants stress importance of relationships

CONTINUED FROM PREVIOUS PAGE

teaching the unschooled about insurance," he said. "Anything Frenkel gives me a bigger firm could have—but they didn't."

SMART's Ms. Thorp added, "The No. 1 reason clients come to us is that we offer a very high value at the highest levels" of the consulting firm. SMART's managing directors, who have worked at larger firms, "have a lot more interaction, a lot more face time with the client" than do the principals at the larger firms, she said. At the same time, SMART's rates are lower because it doesn't have to support the infras-

tructure of a larger firm, she said.

Barbara Judd, vp of human resources at heavy industrial contractor TIC Holdings Inc. in Steamboat Springs, Colo., and a SMART client, said, "We use quite a few of the smaller consultants" for health and welfare benefits for 9,000 employees nationwide, she said.

Ms. Judd said TIC has engaged large consultants only on specific projects. "It's all about the relationships. It takes so much time to get a consultant up to speed with the unique qualities of our industry, and the advice we get depends on your knowing those," she said.

**'The problem I had with the global consultant—the people were very competent, but I was being serviced out of an office thousands of miles away.'**

Joe Atencio, Cosmetic Essence Inc.

"There are things evolving in Washington that (our consultants) tell us about, and they say, 'It's not for you.' I have big counterparts that are working with the big houses and they don't get that level of knowledge."

Mr. Martingale emphasized that relationships are important to all benefits consultants—large or small.

"Employers have a lot of choices and are being pursued very aggressively in many instances. That gives them the advantage of being able to select the best firm, the best people within the firm and the leverage to negotiate fees," Mr. Martingale said.



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## Market Moves

### Wortham adds Dallas brokerage to fold

**DALLAS**—Houston-based brokerage John L. Wortham & Son L.P. has merged with Texas AGA Inc., a Dallas-based brokerage specializing in explosives, oil and gas, chemical, railroad and other difficult-to-place insurance and risk services.

Texas AGA founders Fred Bangs and Ralph Hamm, both managing directors following the merger, "are experts in very unique risks," John Deal, managing director of Wortham Insurance & Risk Management in Dallas, said in a statement.

Mr. Hamm said the combined operations "would make a significant mark in the Dallas community."

The Texas AGA name will be changed to Wortham Insurance at a later date, a spokeswoman said.

### MMC weighs locations in Chicago: Report

**CHICAGO**—Marsh & McLennan Cos. Inc. reportedly was considering three Chicago locations in which to consolidate staff and operations now housed in two other Windy City sites.

The offices included a 46-story tower under construction by John Buck Co., part of the former main Chicago post office complex under a redevelopment proposed by Walton Street Capital L.L.C. and the two-building Franklin Center complex owned by Tishman Speyer Properties L.P., reported *Crain's Chicago Business*, a sister publication to *Business Insurance*.

MMC reportedly was considering leasing as much as 350,000 square feet.

An MMC spokesman declined comment; representatives of the prospective sites either declined comment or could not be reached.

### Brothers establish insurance, advisory firm

**BLOOMFIELD HILLS, Mich.**—Brothers David and Robert Colburn, following the footsteps of their father, have established ColburnColburn Insurance & Risk Services with offerings ranging from commercial property/casualty insurance to consulting on mergers and acquisitions.

The principals said ColburnColburn honors their late father, Sherwood Colburn, who established his own agency and in 1961 was named insurance commissioner of Michigan.

ColburnColburn is at 121 W. Long Lake Road, Suite 220, Bloomfield Hills, Mich. 48304. Phone:

248-594-6444; fax: 248-594-6445.

### Employee benefits specialist buys MGU

**BLUE BELL, Pa.**—Companion Life Insurance Co. has purchased Blue Bell, Pa.-based Montgomery Management Corp., the companies said.

The purchase price of the managing general underwriter from Tampa, Fla.-based HealthPlan Holdings Inc., a unit of Sun Capital Partners Inc., was not disclosed.

Montgomery Management will keep its name and operate independently, Columbia, S.C.-based Companion Life, which specializes in employee benefits, said in a statement.

### Zurich expands energy casualty efforts

**GLENDALE, Calif.**—Zurich Financial Services Group said it has increased its West Coast presence for its domestic energy casualty business and is looking to boost that segment in the Midwest and along the East Coast.

Dawn Aitcheson, who has been with Zurich five years and is underwriting team leader, has relocated to Zurich's Glendale, Calif., office overseeing nine states. Ms. Aitcheson can be reached at 818-500-4716 or [dawn.aitcheson@zurich.com](mailto:dawn.aitcheson@zurich.com).

Midwest and East Coast energy casualty efforts are being led by Renata Esposito, underwriting team

leader in New York. She can be reached at 212-553-5553 or [renata.esposito@zurich.com](mailto:renata.esposito@zurich.com).

### TO SUBMIT ITEMS

*BI's* Market Moves column reports on activities by insurance industry companies and related entities. Personnel changes appear in Comings & Goings, while new product offerings appear in Products & Services.

Please send Market Moves news to: Charmain Benton, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; [cbenton@businessinsurance.com](mailto:cbenton@businessinsurance.com).

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## Backstop: House tweaks bill

CONTINUED FROM PAGE 3

tory make-available coverage for weapons of mass destruction," said NAMIC President Charles Chamness in a statement.

"We anticipate the House and Senate will resolve their few remaining differences before the current legislation expires on Dec. 31, as we know they understand the urgency of adopting a program," he said.

Another extension backer said he was "worried about the perfect becoming the enemy of the good," said Joel Wood, senior vp at the Council of Insurance Agents & Bro-

kers in Washington.

"The Senate bill is better than good." Extending the current program by seven years "will be an astonishing accomplishment," he said.

"Had Chairman Frank not managed this legislation as he did this year, I'm not sure we would have such an excellent option in front of us," he said. "Congress has a great opportunity to pass a bill that is universally supported by the business community, a real notch on the belt. It would be horrible if this opportunity passes us by," Mr. Wood said.

## NAIC: Adopts framework

CONTINUED FROM PAGE 3

manager for the Indianapolis-based National Assn. of Mutual Insurance Cos.

The Washington-based Reinsurance Assn. of America is generally pleased with the memorandum because it focused on comprehensive reform, although many details must still be determined, said Tracey Laws, senior vp and general counsel. "I sense that everyone is trying to work towards the same end game; it's a question of how we get there."

The NAIC's willingness to change is positive, "but there is no hiding the fact that concrete progress has been missing," said Bill Marcoux, a London-based attorney with Dewey & LeBoeuf L.L.P., who represents the London-based International Underwriting Assn. and several European reinsurers.

"We don't regard the framework paper as a major step forward," said Robert Meindl, head of the insurance supervision section of Bundesanstalt fur Finanzdienstleistungsaufsicht, Germany's financial

supervisory authority.

The full NAIC membership will consider whether to formally adopt the memorandum sometime later this month.

The task force will next discuss several controversial issues affecting reinsurers, including collateral levels, treatment of affiliated transactions and reconciliation of financial reports to U.S. accounting standards. Outstanding issues affecting regulators include establishing uniform requirements for a state regulator of U.S. or non-U.S. reinsurers, preventing extraterritorial application of laws, determining the authority of a ceding insurer's domestic regulator, and determining how mutual recognition agreements should operate.

"It's a major undertaking to address the issues that are outstanding...it's going to be a huge, Herculean task," said Kevin McCarty, the Florida insurance commissioner. "We are cautiously optimistic," about the outcome.

Meanwhile, Sandy Praeger of Kansas was elected president of the NAIC at the meeting.

## Liability: Issue before court

CONTINUED FROM PAGE 4

"look at all three together, it's going to inform lower courts in how to treat pre-emption in other contexts."

"I think it's interesting that the court has reached out to take so many pre-emption cases, particularly those in the area of food and drug regulation," said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center, which filed an amicus brief supporting Medtronic on behalf of the U.S. Chamber of Commerce. "These cases are of significance generally, (and) it's clear that the court is making an effort to clarify the rules of the road in respect to federal pre-emption of state laws, including federal pre-emption of state tort law," she said.

A question remains over what Congress means by "state law" in pre-emption statutes, she said. "Positive state law" includes rules and

regulations, but does state law in such cases also include state jury verdicts? she asked. "Jury verdicts are very important because of their potential to impose significant changes in the design and labeling of goods."

An attorney from an organization that filed a brief backing Ms. Riegel's position said he does not believe Congress intended to block state tort law.

"We're interested in this case mostly in post-market surveillance to ensure safety of drugs and medical devices and also to ensure that people are adequately compensated if they are injured by a defective device," said Bruce Vignery, a senior attorney with AARP in Washington. "We don't think Congress intended to displace the traditional tort system. We see the tort system as complementary to the FDA's premarket approval process. They should not be pitted against each other, they should be complementary."

# International NEWS

## Cayman starts search for insurance regulator

**GRAND CAYMAN, Cayman Islands**—The regulatory agency overseeing captive insurance companies in the Cayman Islands is undergoing another leadership change, although regulators say that will not hamper the growth of the captive domicile.

Morag Nicol, who was appointed head of the insurance supervision division of the Cayman Islands Monetary Authority last year, is leaving her post for personal reasons. Ms. Nicol replaced Mary Lou Gallegos, who retired last year but has returned on an interim basis as the agency searches for a permanent replacement. CIMA hopes to replace Ms. Nicol quickly, Ms. Gallegos said.

The change will not affect the growth of the captive industry as the regulatory agency will conduct "business as usual," Cindy Scotland, managing director of CIMA, told

attendees of the 2007 Cayman Captive Forum in Grand Cayman, Cayman Islands.

Regulators have licensed 39 new captives this year and expect to end the year with 45 to 50 new captives, making 2007 "another very positive year for growth," said Ms. Nicol, who was at the Nov. 27-29 Cayman Captive Forum but left her post Dec. 3. The domicile has a total of 760 captives with premiums of nearly \$7.5 billion and \$32.6 billion in assets.

The domicile licensed 51 new captives at this time in 2006, Ms. Gallegos reported at last year's conference.

Health care coverage remains the main line of business for Cayman Island captives, accounting for 36.6% of all captives, followed by workers compensation at 21.3%, Ms. Nicol said.

—By Gloria Gonzalez



## Cayman captive conference attracts more than 800

**GRAND CAYMAN, Cayman Islands**—More than 820 captive owners and service providers attended the 2007 Cayman Captive Forum in Grand Cayman, Cayman Islands, on Nov. 27-29.

The conference featured sessions on the state of the captive insurance industry in the Cayman

Islands, risk management challenges for captive owners, global insurance and reinsurance market trends, and efforts to broaden the domicile's reach in the insurance industry.

Next year, the captive conference will be held Dec. 2-4, 2008, in Grand Cayman.

—By Gloria Gonzalez



## Accurate documentation crucial to limit hospital med mal risks

By GLORIA GONZALEZ

**GRAND CAYMAN, Cayman Islands**—Having proper documentation of medical events is critical for health care captive owners seeking to mitigate malpractice liability risks, experts say.

The Eastern Connecticut Health Network experienced a dispute between physicians related to documentation that increased its exposure to medical malpractice lawsuits after the hospital system revamped its obstetrics unit in 2005, Dr. David Neuhaus, president of the medical staff for ECHN, told attendees of the 2007 Cayman Captive Forum held Nov. 27-29 in Grand Cayman, Cayman Islands.

Rockville, Conn.-based ECHN—established by a merger of two small community hospitals 10 years ago—created one obstetrical unit, developed a nursery for infants requiring specialized care and hired a neonatologist service with the goal of "improving care and conceptually reducing liability," Dr. Neuhaus said.

The revamp, though, resulted in questions about proper terminology in documentation, he said. In particular, obstetricians felt the neonatology service was overly aggressive in using the term hypoxic ischemic encephalopathy, a condition in which cell damage in the central nervous system is caused by inadequate oxygen. HIE allegedly causes death in newborns or results in conditions such as mental retardation or cerebral palsy and is often a leading claim in malpractice lawsuits.

"The reality is that we created extra liability," said Dr. Neuhaus, whose organization formed a Cayman Islands captive in October 2006 due to limited insurance options in Connecticut.

Connecticut has been designated by the American Medical Assn. as being in a malpractice liability crisis with only one A-rated professional liability insurer and one physician-owned mutual company providing coverage.

When the hospital's risk management staff became aware of the problems, they contacted Kenneth Felton, senior vp of the health care industry practice of Hilb Rogal & Hobbs Co. in Hamden, Conn., to help develop a program for the physicians to have an open dia-



Incomplete and inaccurate medical documentation can create liabilities for hospital groups that might be avoided by more careful risk management.

**MORE COVERAGE ONLINE:** For stories from the 2007 Cayman Captive Forum covering workers compensation risks and the effect of the subprime mortgage crisis on insurance markets, visit [www.businessinsurance.com/conferenceextra](http://www.businessinsurance.com/conferenceextra).



logue about the issues. HRH is the hospital system's broker.

After participating in the program, the neonatologists accepted that it was not imperative for them to use the term HIE in medical records, Mr. Felton said. Rather, it was more important to document symptoms when creating a medical report, he said.

Appropriate documentation is a critical risk management initiative because inadequate, incomplete or inaccurate documentation can result in a negligence finding in malpractice cases, Mr. Felton said.

"It puts you in a very disadvantaged place in the courtroom," he said.

Documentation should be as complete and consistent as possible since gaps or inconsistencies in the medical records can create a belief that medical errors are being hidden, Mr. Felton said. "It leads a plaintiffs' attorney directly to that spot," he said.

Physicians should stick to the facts when documenting symptoms and use terminology carefully, and never should use medical records to

criticize another physician, Mr. Felton said. "This is basically indefensible," he said.

Doctors also should avoid adding comments to medical records such as "incident report completed" so they don't connect medical records and an incident report, he said. They should also not prepare a confidential narrative of any incidents, except in the context of the attorney-client privilege, he said. "There's no protection for that document" if not developed in that context, Mr. Felton said.

Hospitals are often required to disclose adverse events to patients, so meeting with the patient and family soon after an incident is important, he said. Recently, Mr. Felton encountered a situation where a hospital's insurers had concerns about the hospital disclosing an adverse event to a patient, but the hospital felt the disclosure was critical.

Expressing regret about adverse incidents could mitigate the possibility of lawsuits being filed, he said. In certain states, such as Connecticut, physicians can apologize to patients without their apologies being used against them in court.

Risk managers have to determine whether a patient or family is volatile and likely to sue, an assessment that must be done on an individual basis, Mr. Felton said. Potential "danger signs" include a failure to appear for office visits, failure to show humor and a failure to pay bills, he said.

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# News In Brief

CONTINUED FROM PAGE 1

defense in the upcoming trial of former Gen Re CEO Ronald E. Ferguson and four others, court filings show. Both were kept informed by other Gen Re executives about the 2000 loss portfolio transfer deal with American International Group Inc. that is at the heart of the prosecution's case, court filings show. The prosecution's list of potential witnesses includes Warren Buffett, chairman of Gen Re parent Berkshire Hathaway Inc.

## AIG estimates drop in value of holdings

The market value of American International Group Inc.'s book of credit default swaps dropped by about \$1.05 billion to \$1.15 billion between Sept. 30 and Nov. 30, the insurer said Friday in a filing with the Securities and Exchange

Commission. AIG's filing also noted that its residential mortgage-backed securities investments dropped by an estimated 2.1% in book value, or by about \$2.6 billion, during the same period. AIG stock closed Friday at \$61.45 per share, up from the previous Friday close of \$58.13.

## Reinsurers' ratio better, but premiums decline

U.S. reinsurers reported an improved combined ratio for the nine months ended Sept. 30 but also reported declining premium growth, according to a survey of 21 reinsurers by the Washington-based Reinsurance Assn. of America. The reinsurers reported a 94.1% combined ratio for the period, compared with 95.4% reported by a comparable group of reinsurers for the same period a year ago. Net premiums written declined 8.4% to \$17.94 billion.

## UnitedHealth ex-chief to forfeit \$468 million

William McGuire, the former chief executive officer and chairman of the board of UnitedHealth Group Inc., reached a record \$468 million settlement with the U.S. Securities and Exchange Commission related to

the alleged backdating of stock options. According to the SEC's complaint, Dr. McGuire picked grant dates for UnitedHealth options over an 11-year period that coincided with dates of historically low quarterly closing prices for the insurer's stock. The sum represents the value of options and other benefits.

## Alaska sues Mercer over pension losses

Alaska's attorney general has filed suit against Mercer L.L.C. seeking to recover more than \$1.8 billion that the suit charges was lost because of Mercer's misconduct as an actuary for its Public Employees' Retirement System and Teachers' Retirement System pension plans. The suit, filed by Attorney General Talis Colberg, charges that Mercer, which was the plans' actuary from the 1970s until 2006, "made fundamental errors in methodology and even in basic calculations, and failed to assign competent, experienced personnel to work for the plans." The plans, which cover more than 80,000 individuals, had unfunded liabilities of about \$8.4 billion as of June 30, 2006, according to Alaska Gov. Sarah Palin's office. Mercer said in a statement: "To the extent the state

has funding issues, they are caused by a number of economic factors.... Accordingly, beginning in 2002, Mercer advised the state to significantly increase its contributions to the retirement system. The state is now attempting to hold Mercer accountable for these economic trends, over which our firm has no control."

## Noted

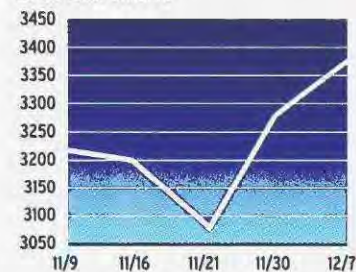
**American International Group Inc.** is asking a federal judge to expedite a trial of its dispute with Starr International Co. over ownership of a huge block of AIG stock, citing former Chairman Maurice R. Greenberg's announced plan to review AIG's "performance and strategic direction" with other shareholders. The judge scheduled a conference for Tuesday to discuss AIG's request.... **Workers compensation rates** for insured organizations in Washington will increase an average of 3.2% in 2008, the state's Department of Labor and Industries said.... **Property/casualty insurance rates** fell an average of 15% in November compared with those of a year ago, according to Dallas-based MarketScout.

## Stock Index

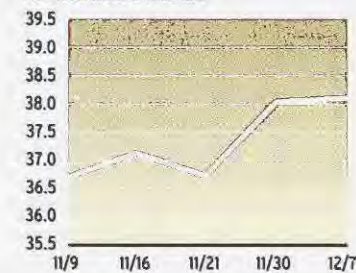
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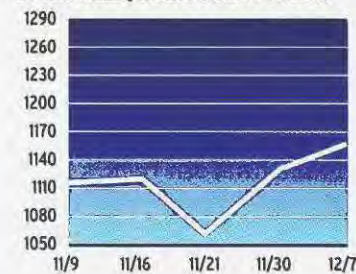
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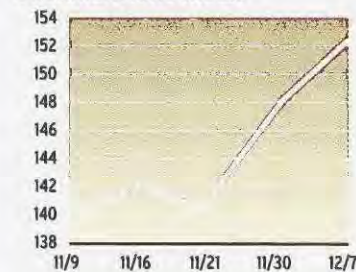
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<b>BI STOCK INDEX</b>	3374.20	↑ 2.59%
<b>DOW JONES</b>	13625.58	↑ 1.90%
<b>S&amp;P 500</b>	1504.66	↑ 1.59%

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Axis Capital Holdings	9.70%
Navigators Group Inc.	8.25%
Old Republic	6.86%
Berkshire Hathaway	5.80%
Selective Insurance	5.72%

### LARGEST LOSSES

MBIA Inc.	-17.83%
PMA Capital Corp.	-3.43%
NYMAGIC Inc.	-2.83%
Allmerica Financial Corp.	-2.32%
Willis Group Holdings Inc.	-1.98%

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# Marsh: Glaser takes over as chairman, CEO of broker

CONTINUED FROM PAGE 1

\$850 million settlement, in which it agreed to cease collecting hundreds of millions in contingent commission revenue.

Aside from numerous management changes, MMC has dealt with lackluster financial results, increased expenses, employee defections, client losses and a stock price about half of that before the 2004 charges.

Mr. Cherkasky said Mr. Glaser was MMC's first choice and the only person offered the job. He described Mr. Glaser as a leader who not only understands the industry but also knows how to motivate staff and execute projects.

"We've got a winner here, and I think already the people I've talked to inside our organization are really excited to have someone who represents the quality of Dan join our company. I think our shareholders and our clients and our employees will be extraordinarily well-served," Mr. Cherkasky said.

For his part, Mr. Glaser said rejoining Marsh is a bit like coming home.

"I feel like I was born at Marsh," Mr. Glaser said. "I spent my first 10 years of my career at Marsh, and ever since I've had a lot to do with Marsh both as a competitor and as a carrier. So Marsh has been a big part of my life. I know an awful lot of the senior executive team...and I do feel I've got a decent grounding in how it operates.... It's certainly not going to be starting from scratch."

While saying it is too early to detail his plans, Mr. Glaser did note that any strategy he implements will seek to reduce complexity and serve clients.

"All of our efforts and strategies

will be built around and geared toward answering...the basic fundamental questions of who's the client, what does the client value and what is it that we do that the client doesn't value?" Mr. Glaser said.

"The simpler the better, so my efforts will be in reducing complexity and giving resources and tools to the people who are working with clients on an everyday basis," he said. "Those are the most important people in the organization."

Rather than fundamental restructuring, "this is a situation of releasing these great people to be able to perform for their clients the way they have in the past," Mr. Glaser said.

Indeed, one of his initial challenges will be "to free Marsh's client-facing personnel from the distractions they've recently faced so that they can focus on winning and retaining clients," said Greg Dickerson, associate director-insurance for Fitch Ratings in New York.

He also has to "re-engage an employee base that never seemed to buy in to many of Mr. Storms' restructuring efforts" in addition to addressing continued employee defections and a "bloated cost structure," David Small, an analyst with Bear Stearns in New York, said in a note to investors.

No one should expect a quick turnaround at the brokerage, though, said Keith F. Walsh, an analyst with Citigroup Research in New York.

While Mr. Glaser should be able to enhance margins "fairly quickly" by reducing expenses, the real challenge will be taking Marsh's margins from the low to mid-teens to 20%, the acceptable industry margin, Mr. Walsh said. To do that, he

## New chief a Marsh veteran

**NEW YORK**—Although Daniel S. Glaser comes to Marsh Inc. from American International Group Inc. in London, he has firsthand knowledge of the New York-based brokerage.

Mr. Glaser, 47, began his insurance career as a Marsh broker, working for the firm in various roles in New York, London and Saudi Arabia from 1982 to 1992.

He joined Willis Group Holdings Ltd. in 1992, where he served as president and chief operating officer of Willis Risk Solutions, Willis' large accounts practice.

In 2000, he joined AIG as president of its global energy division. In 2002, he was named managing director of AIG Europe (U.K.) Ltd., American International Underwriters' largest division. He also held the post of regional president of the U.K. and Ireland division of AIU.

A native of the New York metropolitan area, Mr. Glaser graduated from Ohio Wesleyan University and Harvard Business School's advanced management program. He is married and has three daughters.

—By Sally Roberts

noted, "they will have to fix their core business," which executives acknowledged in the third-quarter analyst call is losing money. "To me that's a long-term fix."

Analysts agreed it was a good move to hire an outside insurance veteran.

Mr. Glaser will be able to provide "a fresh perspective toward some of Marsh's issues and possibly a new approach to dealing with some of the challenges they face," Mr. Dickerson said. But his industry experience "will enable him to hit the ground running instead of spending time learning the industry and forming the relationships that are critical in the insurance brokerage space."

"I think they had to" hire from within the industry, Mr. Walsh said. "After the issues with (Mr. Storms), I don't think it would have been acceptable in the employee ranks to go with a noninsurance person."

"I think Marsh's greatest strength has now become its biggest weakness, and that is its culture," said Mr. Walsh, who has been critical of MMC's board for not asking Mr. Cherkasky to step down. "It's an organization that continues to be unwilling to change, and I think you see that just from reactions people internally have had to any people coming from outside the industry" with different ideas of trying to change things, he said.

Overall, Mr. Glaser is confident that Marsh will turn itself around.

"My view is that Marsh is the premier brokerage firm in the industry and that will become even more apparent now over time," he said. "The industry loves to talk in some ways about Marsh's struggles, and I think that's way overcooked. I think there is a tremendous nucleus of dedicated and talented staff...and I'm quite confident that the business will perform well."

## State officials afire over R.J. Reynolds' 'deadly charm' magazine ad

Cartoons are supposed to make you laugh, or at least crack a smile.

But Maryland Attorney General Douglas Gansler found absolutely nothing funny about cartoons he saw in an advertisement in the 40th anniversary issue of Rolling Stone. In fact, he is suing R.J. Reynolds Tobacco Co. for running an ad that used cartoons.

In a suit filed last week in Baltimore, Mr. Gansler charged that Reynolds' use of cartoons and brand merchandise—in this case a rock music CD—violated the 1998 master settlement agreement between tobacco manufacturers and nearly four dozen states.

The agreement "contains stringent anti-youth marketing provisions and this type of advertising is a blatant violation of the MSA," said Mr. Gansler in a Dec. 4 statement announcing the filing of the suit.

Mr. Gansler accused the tobacco company of using "the deadly charm of cartoons and merchandise to entice new customers" to smoke Camel cigarettes. He said he would seek a minimum of \$2.5 million in "sanctions," and noted at least seven other states had filed similar actions.

Even for a company the size of Reynolds, such legal action could prove to be no laughing matter.

"We don't believe our Camel advertisements violate the master settlement agreement," said a spokesman for Reynolds in Winston-Salem, N.C. "Had we been aware in advance of the graphics that were prepared by Rolling Stone for this feature in their magazine, we would not have advertised adjacent to it."



R.J. Reynolds rejects state assertions that cartoons and merchandise in a recent Rolling Stone violate the 1998 master settlement agreement.

# Business Insurance END PAGE

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## MapQuest trail leads directly to suspect in fraud case

If filing a fraudulent claim, it helps not to leave a paper trail.

Craig C. Wilson found that out the hard way last week when he was sentenced to five years probation in Monroe County, N.Y., for filing a fraudulent insurance claim to obtain \$10,282.

Mr. Wilson, 36, pleaded guilty to insurance fraud on Sept. 17, admitting that he falsely reported that his 2002 Mercury Mountaineer was stolen. Mr. Wilson was arrested after authorities recovered the vehicle in the parking lot of a Jacksonville, Fla., apartment complex two months after he filed the theft claim.

Investigators were able to track down Mr. Wilson, who lives in Rochester, N.Y., through a set of MapQuest directions from his home to the Jacksonville site that he had left in the vehicle and printed just nine days before the theft claim was filed, according to the New York State Insurance Department. Mr. Wilson also left behind an airline itinerary from Jacksonville to Rochester.

According to a statement released by the state insurance department, Mr. Wilson confessed to filing the fraudulent claim when he was presented with this evidence.



## How to kiss off holiday liability at work parties

Holiday parties can be a potential liability land mine for employers. The following are suggestions from Atlanta-based law firm Fisher & Phillips L.L.P. as to how companies can throw a party and reduce their risk of getting sued:

- If possible, do not serve alcohol; if alcohol is served, do so with food and plenty of non-alcoholic beverages.
- Invite spouses and significant others to the party to help keep an eye on your employees.
- Let your managers know they are on duty and tell them to keep an eye on subordinates to ensure they do not drink too much.
- Let workers know that violating normal workplace standards of conduct can result in disciplinary action.
- Hire professional bartenders and tell them to report anyone they feel has imbibed too much.
- Arrange for free taxis for employees who feel they should not drive home.
- Forget the mistletoe because it may only encourage inappropriate conduct reported by about one-third of companies that hold holiday parties.

## 'History's Business' profiles innovations of FM Global

The role of insurance in the growth of the U.S. economy may not be the stuff of high drama. In fact, it often receives short shrift in history discussions. But on Dec. 16, that will change a bit as the History Channel will air an interview with the chairman and chief executive officer of Factory Mutual Insurance Co., which does business as FM Global.

Shivan S. Subramaniam will appear on the cable channel's "History's Business" to discuss the

Johnston, R.I.-based insurer's innovations since its beginnings in 1835.

Among other things, the company's research led to development of the standard fire sprinkler. In 2003, it opened an \$85 million research campus in West Glocester, R.I., the largest facility of its kind dedicated to developing ways to protect businesses from man-made and natural property disasters.

Previous company profiles on the History Channel have included

Domino's Inc., Hilton Hotels Corp. and United Parcel Service of America Inc.

FM Global will be the second insurer profiled by the show. Hartford Financial Group Inc. Chairman, President and CEO Ramani Ayer appeared in a 2005 segment. Another business figure who appeared on the show is quite well-known for his disputes with the insurance industry—World Trade Center leaseholder Larry Silverstein.



Shivan S. Subramaniam will be interviewed on a History Channel program about innovations since Zachariah Allen (right) in 1835 founded Manufacturers Mutual Fire Insurance Co., the oldest predecessor of Factory Mutual Insurance Co.

# NAVIGATING CHINA: WHAT'S YOUR UPSIDE?



China offers dynamic and unprecedented opportunity, but not without risk. With 25 years of experience in this emerging market, Marsh has the know-how to help you remove uncertainty by fortifying supply chains, protecting intellectual property, and retaining key talent. So much so that we were recently awarded China's first and only Wholly Owned Foreign Enterprise insurance broking license. The upside? Confidence that your investment in China is secure. To learn more, visit [findtheupside.com](http://findtheupside.com)

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