

# Business Insurance

November 12, 2007

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**SUPREME COURT TO RULE IN AGE DISCRIMINATION CASE THAT HINGES ON TIMING / PAGE 3**

**NEW YORK'S ERIC DINALLO PROPOSES REGULATORY CHANGES / PAGE 3**



**REINSURANCE RATES TO FALL AS PROFITABILITY SOARS, SAY PCI ATTENDEES / PAGE 4**

## In Brief

### House passes bill to bar sexual orientation bias

The House of Representatives has approved a measure that would ban employment discrimination on the basis of "actual or perceived" sexual orientation. Lawmakers voted 235-to-184 in favor of the Employment Non-Discrimination Act of 2007. The measure would give the Equal Employment Opportunity Commission the same power of enforcement regarding sexual orientation discrimination claims as it has for claims of race, gender and other existing unlawful types of discrimination under Title VII of the Civil Rights Act of 1964.

### Former RenRe exec settles SEC charges

Former RenaissanceRe Holdings Ltd. executive Michael W. Cash has agreed to settle civil charges

See **IN BRIEF** page 38

## SPOTLIGHT

### WORKERS COMPENSATION

Privacy issues loom for

disability benefits; employers seek to cut workers comp costs through managing Rx; helping workers

with depression can lower disability claims; new DNA test used to fight meritless claims.

Page 11

# Marsh seeks extra commissions in U.S.

## Higher compensation to be paid by insurers on midsized accounts

By **SALLY ROBERTS**

**NEW YORK**—First there were contingent commissions, then there were supplemental commissions. Now there are "enhanced commissions."

Marsh & McLennan Cos. Inc., in an effort to correct what it sees as a competitive imbalance, said last week that it is discussing with various insurers whether they will pay Marsh "enhanced commissions" as part of the brokerage's compensation for commission-based middle-market and small commercial

account business. Most brokers in those segments continue to take contingent commissions, which Marsh cannot collect under the terms of its 2005 settlement with state officials.

The enhanced commissions were announced last week as Marsh reported a drop in the operating profits of its risk and insurance business (see story, page 36). The commissions will be based on a percentage of premium and will be paid in addition to standard commissions. The new pay will be fixed and not contingent or variable on volume, profitability or any other factor, Marsh executives said, noting that the fixed level of commissions still is being negotiated.

And because the commissions

will be disclosed to clients up front at the time of placement and will be subject to clients' approval, Marsh executives say there are no steering

**UNDER FIRE:** MMC chief Michael G. Cherkasky fends off questions about his own performance after disappointing financial results. **Page 36**

concerns should the new commissions vary by insurer. In a conference call with analysts last week, MMC President and Chief Executive Officer Michael G. Cherkasky said the enhanced commissions are similar to the 2.5% brokerage fee Marsh recently introduced in the United Kingdom. That fee, which Marsh

says is for extra services it provides to underwriters, has been met with some opposition by insurers and buyers.

Philip Moyles, Marsh's chief executive officer of the Americas, said that the enhanced commissions do not reflect extra services Marsh provides to underwriters in the United States but rather address the inequity that exists in the middle and small commercial market, which it defines as commission-based accounts generating between \$10 million to \$500 million in annual revenues.

"There is a two-tiered revenue stream that currently exists where four players are not involved and

See **COMMISSIONS** page 36

# Greenberg ups ante in tussle with AIG

## Seeks shareholder talks over insurer's 'direction'

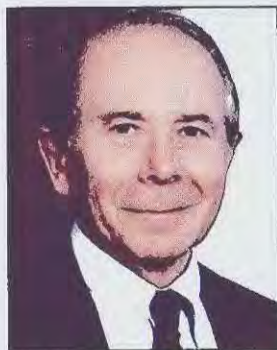
By **JUDY GREENWALD**

**NEW YORK**—Maurice R. Greenberg's proposal to discuss American International Group Inc.'s performance and strategy with fellow stockholders and others is likely motivated by concern over AIG's stock price, a desire to exert more influence over the company he once led or a combination of the two, say observers.

AIG's former long-time chief, who remains a major shareholder in the company, has had a rocky relationship with the

insurer's board and senior management since his 2005 departure.

The company's stock, which closed at \$57.06 on Nov. 9 after AIG reported a 27% drop in its third-quarter profits last week attributable to hedging losses, has not performed well. AIG shares are off from their 52-week high of \$72.97.



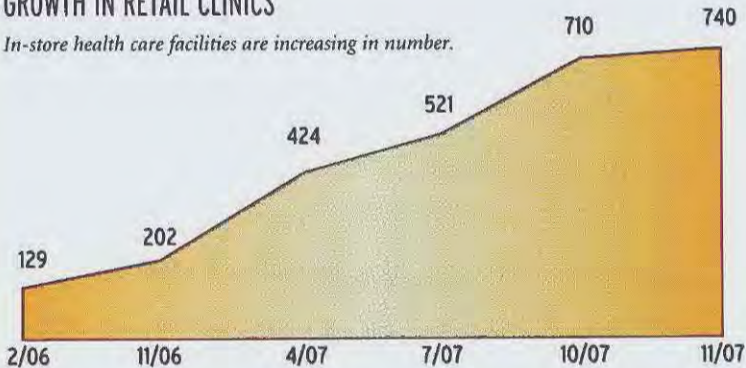
Mr. Greenberg

In a Nov. 2 filing with the Securities and Exchange Commission, Mr. Greenberg, who controls about 14% of AIG stock, said he and

See **GREENBERG** page 37

## GROWTH IN RETAIL CLINICS

In-store health care facilities are increasing in number.



Source: Merchant Medicine

# Employers sold on retail health clinics

## Some companies promote use of in-store care

By **KRISTIN GUNDERSON HUNT**

As retail health clinics expand across the country, some employers are embracing the concept and encouraging their employees to use such services to save time and money, experts say.

"It's a solution that offers consistent service with improved convenience and lower cost," said Michael Jacobs, a national clinical practice leader in Atlanta for New York-based Buck Consultants L.L.C.

Retail health care clinics, or convenient care clinics, are walk-in

health centers typically housed in retail and grocery stores such as CVS, Target and Wal-Mart. As of early November, more than 700 retail clinics were in operation, up from the 424 clinics operating in April 2007, according to Tom Charland, CEO of Merchant Medicine, a research and consulting firm in Roseville, Minn., that tracks the convenient care industry.

The clinics offer a limited menu of services and are typically staffed by nurse practitioners who mostly

See **RETAIL** page 35

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## On the Web

### RISK MANAGER OF THE YEAR®

#### RMOY award deadline extended to Nov. 30

The deadline to nominate a risk manager for the 2008 *Business Insurance* Risk Manager of the Year award has been extended to Nov. 30. The winner will be profiled in the April 28, 2008, issue of the magazine. Download a nomination form at [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY) or request a form from BI Editor Regis Coccia at [rcoccia@businessinsurance.com](mailto:rcoccia@businessinsurance.com).

### CONFERENCE EXTRA

#### See more online from PCI 2007

*Business Insurance* offers additional coverage from the 2007 Property Casualty Insurers Assn. of America conference, held last month in Boston. Among the coverage is an interview with top executives from Munich Re America. Go to [www.BusinessInsurance.com/extra](http://www.BusinessInsurance.com/extra).

### BI DIRECTORIES

#### Rehab services, safety directories updated

*Business Insurance* has updated its Rehabilitation Management Service Providers and Safety Consultants directories for 2007. Both are available online and can be purchased for download in either PDF or Excel spreadsheet format. Go to [www.BusinessInsurance.com/directories](http://www.BusinessInsurance.com/directories).

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# Dinallo lays out new approach to regulation

New York superintendent says principles, not rules, should drive insurer oversight regime

By MEG FLETCHER

**NEW YORK**—New York Insurance Superintendent Eric Dinallo's proposal to shift insurance regulation from a rules-driven approach to one based on principles generally drew support from industry observers, though they cautioned that they have many questions about the plan.

Mr. Dinallo—who recently has proposed various regulatory changes in New York, including a change in reinsurance collateral rules—last week issued a draft regulation for discussion that lists 10 basic principles that companies doing business in New York would

be expected to follow (see box, page 34). In a companion circular letter, Mr. Dinallo also outlined 10 principles for regulators, including being “accountable,” offering “easily understood guidance” and having an “appropriate” basis for any inquiry.

“The essential goal of regulation is not rote compliance with a long list of rules, but ensuring appropriate outcomes,” Mr. Dinallo said in a statement. “These princi-



Mr. Dinallo

ples focus both the regulator and the regulated on such outcomes and tell regulated companies our expectations.”

“We expect to turn regulation from periodic ‘gotcha’ exams into a continuing dialogue,” so companies can seek and receive guidance, he said.

“Companies that deal honestly with

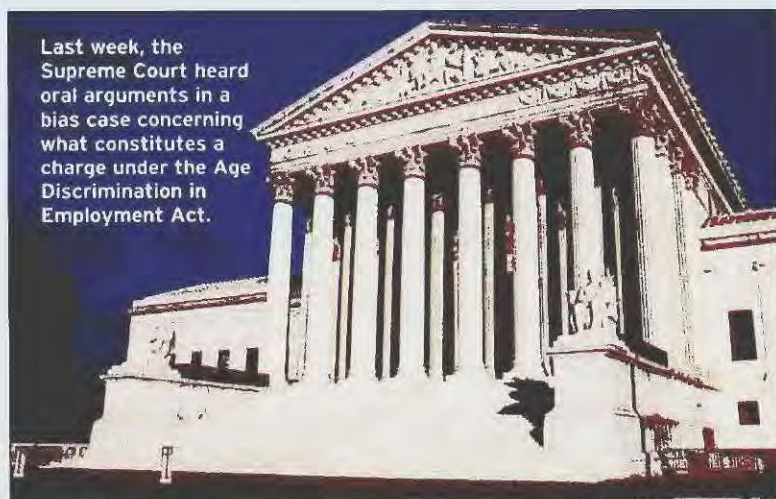
the department can expect to be treated honestly in return. But we will, if anything, be more stern with

serious violations.”

He noted, though, that the principles do not pre-empt existing requirements “in statute or in regulations,” according to the draft regulation. However, Mr. Dinallo indicated that he plans to review and eliminate some existing rules as part of the transition process, which could begin next year.

Insurance buyers are expected to benefit from principle-based regulation, because it “permits quicker development of products and more responsive regulation of markets,” Mr. Dinallo said. It will also curb companies’ ability to exploit loop-

See **DINALLO** page 34



Last week, the Supreme Court heard oral arguments in a bias case concerning what constitutes a charge under the Age Discrimination in Employment Act.

## Supreme Court to rule in dispute on bias filing

Case hinges on timing of discrimination charge

By MARK A. HOFMANN

**WASHINGTON**—A Supreme Court case involving the Age Discrimination in Employment Act could have repercussions far beyond the ADEA if the high court upholds a ruling allowing employees to file suit against their employers without filing a formal charge with federal authorities, attorneys warn.

Employers would be deprived of the ability to resolve employment practices disputes without having to go to court, they say. The Equal Employment Opportunity Commission could also be hampered in its ability to investigate age bias claims, they say.

The Supreme Court heard oral arguments in *Federal Express Corp. vs. Paul Holowecki et al.* last week. The case began in 2001, when Patricia Kennedy, a FedEx courier, submitted a so-called intake questionnaire to the EEOC, providing the agency with information about allegations of age discrimination at her employer. The EEOC did not take action on the questionnaire, which FedEx holds does not constitute a “charge” as required to pursue an ADEA claim. The ADEA says that a plaintiff must file a charge at least

60 days before filing suit. When the EEOC receives the charge, it notifies the employer, investigates the allegations and offers to mediate.

In 2002, Ms. Kennedy and a group of other current and former FedEx employees filed suit in the U.S. District Court for the Southern District of New York, alleging that FedEx had initiated policies, such as performance standards, that effectively discriminated against older workers and thus violated the ADEA. Ms. Kennedy also filed a formal charge with the EEOC after she had initiated the suit. The district court dismissed the case because it found that the plaintiffs had not met the requirements for pursuing the action. But in 2006, a three-judge panel of the 2nd U.S. Circuit Court of Appeals reversed the lower court, holding that the intake questionnaire satisfied the requirement that a charge be filed before a suit, even though the EEOC took no action on Ms. Kennedy's original questionnaire. FedEx appealed to the Supreme Court.

Although several employer groups filed amicus briefs supporting FedEx, only the U.S. govern-

See **DISCRIMINATION** page 38

## IRS offers guidance on automatic enrollment

By JERRY GEISEL

**WASHINGTON**—Employers that want to add an automatic enrollment feature to their 401(k) plans and qualify for a safe harbor that exempts them from running a basic nondiscrimination test now have new guidance on how to do this from the Internal Revenue Service.

Last week, the IRS proposed rules that largely mirror provisions in pension plan funding reform legislation passed last year that relaxed a safe harbor for employers offering automatic enrollment, but that offer more details.

Under automatic enrollment—one of the hottest trends in 401(k) plan design—employees are automatically enrolled in the plan unless they specifically opt out.

Employers, regardless of whether they use automatic enrollment, do not have to run an IRS nondiscrimination test—used to determine that average salary deferrals of higher-paid employees do not exceed average deferrals of rank-and-file employees by a legally set amount—if they qualify for one of two safe harbors.

To qualify for one safe harbor, an employer has to match 100% of employees' deferrals, up to the first 3% of pay and 50% of deferrals made on the next 2% of pay. This option is the more popular, according to benefit consultants.

To qualify for the other safe harbor, an employer has to automatically make a contribution to employees' accounts equal to 3% of pay.

Regardless of which safe harbor is selected, employees must be immediately vested in the employer contributions. For automatic enrollment programs, though, matching contributions must be vested after two years.

To encourage automatic enrollment, last year's pension reform law eased the requirements for the first safe harbor for employers offering

automatic enrollment.

To qualify for that new safe harbor, employers offering automatic enrollment have to fully match employees' salary deferrals on the first 1% of pay and then match 50% of deferrals on the next 5% of pay.

Additionally, the IRS—again mirroring requirements in last year's pension reform law—proposed rules on other design requirements that would exempt employers with 401(k) plan automatic enrollment from nondiscrimination testing.

Under those requirements, employees participating through automatic enrollment would have to defer, at a minimum, 3% of pay for up to the first two years, with the deferral contribution then rising by one percentage point annually until hitting 6%.

Finally, the rules make clear that employees enrolled in automatic enrollment plans who decide to opt out can withdraw their contributions within 90 days. They will not be entitled to collect a matching contribution. Employees will be taxed on the distributions, but the distribution will not be subject to the 10% penalty tax that generally is imposed on distributions made prior to age 59½.

The rules come at a time when employers have been rapidly adding automatic enrollment to their 401(k) plans. Just over a third of major employers now use automatic enrollment, according to a recent Hewitt Associates Inc. survey, and that percentage could cross the 50% mark within the next 12 months, said Pam Hess, Hewitt's director of retirement research in Lincolnshire, Ill.

Automatic enrollment is growing as employers, especially as many are winding down defined benefit plans, want to increase the likelihood that employees have generated sufficient savings to assure adequate retirement income, said Alec Dike, a consultant with Watson Wyatt Worldwide in Chicago.

# Reinsurance rates set to fall across most coverage lines

Strong financial results combine with low catastrophes losses to drive down prices, but depth of declines remains unclear

By JUDY GREENWALD

**BOSTON**—How far will reinsurance rates fall in 2008?

As the insurance industry prepares for January renewals, that was the main question for reinsurers and cedents gathered at the Property Casualty Insurers Assn. of America annual meeting late last month in Boston.

The two strong financial years enjoyed by both reinsurers and insurers in a period marked by no major catastrophes will likely bring increased competition in an already softening market—and reinsurance rate reductions of 5% to 20%, depending upon the line of business, according to observers who attended the annual PCI meeting in Boston last month.

Reinsurers, insurers and intermediaries use the meeting as a backdrop for negotiating January renewals.

Two years after Katrina, "I think reinsurers are going to produce very

good results," said Brian R. McGuire, senior vp at reinsurance intermediary US RE Corp. in New York. "But I think it's, where do we go from here?...That's the question most people are going to be asking themselves as they leave this conference."

Observers are divided as to whether reinsurers are likely to stay disciplined in their rate cuts as they seek to grow their revenue despite primary insurers' increased retentions (see story page 29).

The capital markets' participation is likely to continue also, observers say, though the insurance industry's strong capital position now means sidecars are likely to be less frequently used as a vehicle to shed risk, at least until the next major catastrophe (see story page 28).

"It's very relaxed, actually," said

**MORE PCI COVERAGE:** For more coverage of the Property Casualty Insurers Assn. of America annual meeting, including an interview with the incoming CEO of Munich Re America, visit [www.BusinessInsurance.com/conferenceextra](http://www.BusinessInsurance.com/conferenceextra)



It's very, very quiet," he said.

"Pricing seems to be the general theme here," said Grace Osborne, managing director and practice leader for North America insurance financial services at New York-based rating agency Standard & Poor's Corp. It is well-known that rating levels are

See **RATES** page 27

Steven K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York. "Everything's fairly casual. Obviously, it's a good year for everyone, and nobody has specific problems."

There is "no big issue apart from how far the rates are going to go down.



MICHAEL MARCOTTE

Reinsurers, brokers and cedents attending the Property Casualty Insurance Assn. of America's annual meeting in Boston discussed prospects for Jan. 1, 2008, renewals.



## Deadline extended for risk management award nominations

*Business Insurance* has extended the deadline for nominations of top risk managers for the magazine's annual Risk Manager of the Year award and Risk Management Honor Roll to Nov. 30.

Anyone involved in risk management for a corporation, financial institution, nonprofit organization or government entity can be nominated. Candidates need not practice risk management full time but must be a full-time employee of the organization for which he or she manages risk.

A simplified, two-part process for nominating candidates has been implemented for the awards.

Part I requires a summary not more than 600 words in length of a candidate's most recent accomplishments and factors that make him or her worthy of the award. An independent panel of former award winners

and risk management professionals will screen the Part I nominations.

If selected as a finalist, the more detailed Part II Risk Manager of the Year nomination form will be required and reviewed by a panel of independent judges, including executives from leading insurance companies, brokerage firms, risk management consultants, risk management educators as well as the immediate past winners of the awards.

The winners will be profiled in the April 28, 2008, issue of *Business Insurance*, and the 2008 Risk Manager of the Year will be the 31st person so honored.

To download nomination forms and instructions for completing the forms, please visit [www.BusinessInsurance.com/RMOY](http://www.BusinessInsurance.com/RMOY).

Part I nominations must be received no later than Nov. 30, 2007.

## State votes to allow higher damages

Washington ballot initiative raises award level in insurer bad faith cases

By MARK A. HOFMANN

**OLYMPIA, Wash.**—Washington state voters last week approved a ballot initiative that will allow treble damages in cases involving allegations of insurer bad faith in claims handling.

The measure—Referendum 67—was approved by a margin of 56.9% to 43.1% in the Nov. 6 election.

In addition to permitting greater damage awards, the law calls for guaranteed mandatory fees to be awarded to plaintiffs attorneys who prevail, though there is no similar provision for defense attorneys.

"We remain convinced that Referendum 67 will result in more frivolous litigation and higher costs for consumers, concerns we

expressed during the campaign," Dana Childers, executive director of the Seattle-based Consumers Against Higher Insurance Rates, said in a statement released after the results were known.

"We will work diligently on behalf of insurance consumers and with the Legislature, the governor and the insurance commissioner to ensure that Washingtonians continue to enjoy a healthy and vibrant insurance marketplace," Ms. Childers said.

"Technically, once it's gone through a referendum, there can't be legislation to directly change the current law," according to Christian Rataj, northwestern state affairs manager for the National Assn. of Mutual Insurance Cos. in Fort Collins, Colo. He noted, however,

that aspects of the damages law will likely be challenged through litigation.

Mr. Rataj said that some sections are ambiguous, such as the definition of an "unreasonable denial" of a claim.

"My suspicion is, you will see real challenges," he said, particularly where the law's provisions are inconsistent with other Washington state laws.

Meanwhile, in the sole state insurance commissioner race decided last week, Mississippi voters elected Republican Mike Chaney as their new insurance commissioner. Mr. Chaney defeated Democrat Gary Anderson, who had unseated longtime commissioner George Dale in the Aug. 7 Democratic primary election.

## Construction firms focus on safety

Avoiding worksite injuries seen as key objective for all in industry

By MARK A. HOFMANN

**ORLANDO, Fla.**—Eliminating deaths and injuries at construction sites is more than a matter of following procedures and guidelines, construction industry executives say.

In fact, "zero incidents is very much the moral thing to do," said Don Greenland, president and chief operating officer of Conway, Ark.-based Nabholz Construction Corp.

"Our business is managing risk—we just happen to build stuff," said Mr. Greenland during the Dallas-based International Risk Management Institute's 27th annual construction risk conference in Orlando, Fla., last week.



Safety measures on construction sites need to go beyond regulations, executives at construction firms say.

Craig Damos, president and chief executive officer of Weitz Co. in Des Moines, Iowa, described what his company—the oldest general contractor west of the Mississippi—did to take "safety to the next level." He noted that although the company won national recognition for its safety efforts, it suffered seven deaths—most of which involved subcontractor employees—at its worksites between late 2004 and the summer of 2006.

In September 2006, Mr. Damos convened a two-day "boot camp" for senior managers. After examining each death in detail, including

See **IRMI** page 26

**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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Commentary

DIY captive ventures go beyond insurance

Associate Publisher and Editorial Director Paul Winston is out of the office, attending the World Captive Forum, and sends this satirical commentary on captives originally published in 2002.



PAUL WINSTON

Associate Publisher and Editorial Director Paul Winston's commentary appears monthly. E-mail: pwinston@businessinsurance.com

It is a now common practice that when some buyers are dissatisfied with the quality, quantity or cost of coverage available from insurance companies, they decide to do it themselves.

In the last broad hard market, many commercial insurance buyers found coverage scarce and unaffordable. Believing that their risk didn't warrant such poor options, they decided to retain the risk and many formed their own insurance companies. Many of them remained quite satisfied with this arrangement and never looked back.

Market conditions again are driving risk managers to consider forming their own captive insurers, or creating group captives, as an alternative to rising rates and limits on coverage from traditional insurers. One of the most prominent examples of this in the news recently is the proposed risk retention group that a group of U.S. airlines is forming to cover their terrorism liability risks and access reinsurance offered by the government.

If the do-it-yourself phenomenon works so well for insurance and home plumbing, why not a push for greater self-reliance in other examples where the currently available supply of goods and service is volatile or costly? Or where quality and customer service are deplorable?

I don't know of many people, especially business travelers, who are happy with airline travel, and that was just as true before Sept. 11 as it is today. Cost structures are bizarre, quality is spotty and they don't serve those nice smoked almonds anymore. How many times have you muttered to yourself, "This is no way to run an airline?" Who needs them?

Why not have businesses get together and form their own captive airlines? I'm sure that AIG, which is in the aircraft leasing business, would be happy to set you up with a few 757s. Frequent-flier points could become institutionalized as the employee benefit they are generally regarded to be, offsetting cutbacks in other benefits, like 401(k) matching contributions and health care coverage.

Speaking of benefits, employers these days are pouring a tremendous amount of money and energy into efforts to improve the quality of health care they purchase. They are struggling to make hospitals and doctors more accountable, and to reduce such things as medical errors and administrative complexities.

Instead, how about hiring their own docs and creating their own captive hospitals? Better yet, form your own captive medical schools. Imagine the health care and workers comp savings! If these employee doctors try to charge too much, fire them! It works for most other kinds of workers.

Actually, many employers do have their own onsite medical professionals and clinics. And at one time, they had much more elaborate health care facilities. Kaiser Permanente, after all, started life as the health plan for the construction company building the Hoover Dam. So forget about all these for-profit hospitals and build your own!

How many companies rely on overburdened and inefficient transit systems to deliver employees to the workplace? Are you tired of people rolling into the office at 9:05, 9:30 or worse? Form your own captive bus system or railway. If it was fun for the railroad barons of the 19th century, imagine what an addition to the corporate mix it would be today.

How many companies are dissatisfied with their computer equipment and software choices these days? How many broken knuckles must employees get from beating on their machines before a better way is found?

Why rely on the likes of Bill Gates and Michael Dell? Consider how many dotcom workers are on the streets or serving coffee at the local Starbucks. That talent could be put to work for you, staffing your own captive technology company.

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# Business Insurance OPINIONS

## Marsh makes a bid to level playing field

MARSH INC.'S announcement last week that it will seek "enhanced commissions" from insurers for placing U.S. middle-market and small commercial accounts keeps compensation a hot topic for debate.

Marsh's proposed fixed commission is an innovative response to what it and its major competitors call the unlevel playing field. Simply put, a dual system of broker compensation has existed ever since 2004, when the three largest brokerages agreed to cease accepting contingent compensation from insurers. Largely because regulators did not insist that all brokers stop taking contingent commissions, most still do.

What Marsh proposes is a fixed commission, not contingent on profit, volume or growth targets, that would be fully disclosed and subject to client approval. A similar fixed 2.5% commission already has been implemented in the U.K. market by Marsh and its major competitors.

In a statement, the Risk & Insurance Management Society Inc. said Marsh's proposed enhanced commissions, as long as they are transparent and fully disclosed to clients, fit RIMS' criteria for broker compensation.

Many questions remain, though: Will insurers agree to pay the enhanced commissions? Will the commissions raise buyers' costs? Will transparency and disclosure become uniform?

We still believe that brokers should be paid only by their clients, not underwriters, to avoid all appearance of conflict of interest. In theory, transparent, fixed payments would avoid conflict—but only if clients hold their brokers accountable.

*Brokers should be paid by their clients, not underwriters, to avoid all appearance of conflict of interest.*

## Strip COBRA provision from trade measure

WHAT IS fair and reasonable?

That is an appropriate question to ask in the wake of the trade legislation that was passed by the House of Representatives late last month that would give certain employees who lose their jobs due to foreign competition the right to continue COBRA.

As we recently reported, if a former employee is at least age 55 or has worked at least 10 years for his or her employer as of the time that individual's COBRA coverage runs out and still is eligible for so-called trade adjustment act benefits, then that person could extend COBRA until eligible for Medicare at age 65.

For employees who lose their jobs in their 30s, that could mean they could extend COBRA coverage for decades.

We have no quarrel with COBRA itself. It is not unreasonable to require employers to extend COBRA to former employees for a limited period of time. But a mandate to extend coverage for decades, which entails such assorted requirements as keeping track of former employees and collecting premiums, goes beyond reasonable.

It also raises a real equity question of why one group of former employees should be eligible for such a long extension of COBRA coverage, while other former employees are not.

We think the answer is that sponsors view this extension as a placeholder for a bigger COBRA expansion in the future. If that were to happen, it would give employers yet one more reason to drop their health care programs. The best way for Congress to stop such a scenario from developing is to strip the COBRA extension provision from the trade bill.



## 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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## Privacy issues loom for disability benefits

*Sharing employee data among vendors can get messy if information isn't protected properly*

By **ROBERTO CENICEROS**

While many employers understand the federal Health Insurance Portability and Accountability Act's implications for health plans, far fewer realize that state privacy laws apply to disability benefits, several observers say.

Disability plans or workers compensation claims are not regulated by HIPPA rules regulating disclosure of individuals' health information, observers say. Yet each state can have numerous privacy laws, regulated by various agencies, that do apply to employers' disability and

workers compensation claims information.

And as employers continue integrating their disability benefits, they increasingly risk running afoul of those state laws if they don't take precautions to comply with the maze of state regulations that apply to the sharing of employee health information, observers add.

The risk is increasing as more employers with employees in several states seek integrated disability services, observers say. That is because the practice usually requires sharing large blocks of employee data among various vendors that

are not all up to speed on state privacy laws.

The list of vendors participating in an employer's integrated disability strategy and sharing employee data can include disease management companies, absence management consultants, employee assistance programs, disability insurers, third-party administrators, health insurers and workers comp insurers.

One concern is for the vulnerability of employee data when a vendor with strong practices for protecting the information needs to share it with other vendors, said Kimberly N. Mashburn, senior consultant for

Clarity Benefit Consulting, an Atlanta-based absence management company serving large employers.

"You may feel confident that you are working with XYZ Co. and you know they are protecting your data, but then if that entity shares their data with another company and that company then shares it with another, your level of confidence in how privacy record management is going to be kept" decreases, Ms. Mashburn said. "It could get really messy."

But data used for disease manage-

See **PRIVACY** next page

# Privacy: Sharing employee data among vendors can violate laws

CONTINUED FROM PREVIOUS PAGE

ment, for example, is usually "de-identified" and used only for predictive modeling for an entire employee population group, said a disability manager for a large, multi-state employer who asked not to be identified.

In such cases, individuals' identities are not linked to information being shared, the disability manager said, so employers are shielded from potential liability because the data is anonymous.

But some vendors conduct outreach to specific employees with certain health conditions, Ms.

Mashburn said. Such contacts could aggravate an employee if they think a vendor obtained their personal information without their consent, she said.

As employers and their vendors implement more cutting-edge strategies, such as helping individuals with specific disability drivers, the risk increases for employers, Ms. Mashburn and others said.

Although plaintiffs have yet to file notable court cases, the potential for employer liability is also increasing because the practice of integrating large amounts of absence and disability data is increasing, several sources said.

**'For every state, there is a multiplier of layers of potential source for regulatory pitfalls.'**

Paul J. Posey, Sedgwick Claims Management Services Inc.

For example, three years ago it was highly unusual for employers or their vendors to request that Unum Group share information for

disability benefit integration purposes, said Nell Walker, the disability insurer's assistant vp, senior counsel, and assistant privacy officer in Portland, Maine.

But today, more employers want a "holistic picture" of where they are spending their benefit dollars and how they can minimize disability drivers, Ms. Walker said.

That can involve analyzing data across disability and health plans to determine if employers can do more to educate their workforce about health care improvements.

"Over the past year and a half, we have seen an increasing number of requests from employers to share

information with third-party data aggregators primarily for disease management purposes, but also for overall patterns of utilization and coordination of benefits," Ms. Walker said.

Vendors within the disability industry, meanwhile, have focused more on pitching integration services than on educating employers about potential privacy pitfalls, several sources said.

"When they are out there selling the product, they want to make it seem as though it is a very smooth, a very seamless process," Ms. Walker said. "Once they get an employer to bite, then they walk them through the requirements."

Because disease management practices were applied to health plan benefits before the practice migrated to disability management, more vendors are also more aware of HIPAA privacy regulations than are familiar with state privacy laws, observers said.

Even today, employers and some vendors in the integrated disability management chain may not be as well-versed in state laws as they are in HIPAA regulations, observers say.

"We have had to (implement) a real education process with vendors as well as the customers they have been working with to get them to understand we are outside the HIPAA bubble," Ms. Walker said.

Many employers seeking integrated disability benefit services ask about compliance with HIPAA regulations, said Paul J. Posey, executive vp and group general council for Memphis, Tenn.-based Sedgwick Claims Management Services Inc.

Yet those employers often do not realize that state privacy laws are a bigger concern for disability-related plans, Mr. Posey said.

"When we negotiate with employers, they are very keen to make sure (their disability plans are) HIPAA compliant," Mr. Posey said. "But that is not where the issue is."

State privacy laws clearly present the vast majority of risk when putting together an integrated program, Mr. Posey said.

Applicable state laws focus on specific health problems such as AIDS, substance abuse and mental illness, and other state laws may address use of data such as Social Security numbers or overall health information.

"For every state, there is a multiplier of layers of potential source for regulatory pitfalls," Mr. Posey said.

Obtaining authorization forms for the release of medical information from employees filing disability claims is necessary to protect employers from state laws when an employer's vendors are sharing data that identifies specific individuals and their health issues, observers say.

And some vendors—Sedgwick for example—maintain a database of state regulations pertaining to employee privacy.

There is disagreement within the disability industry, however, over whether authorization forms that are adequate to meet HIPAA requirements will meet all state law requirements, Clarity's Ms. Mashburn said.

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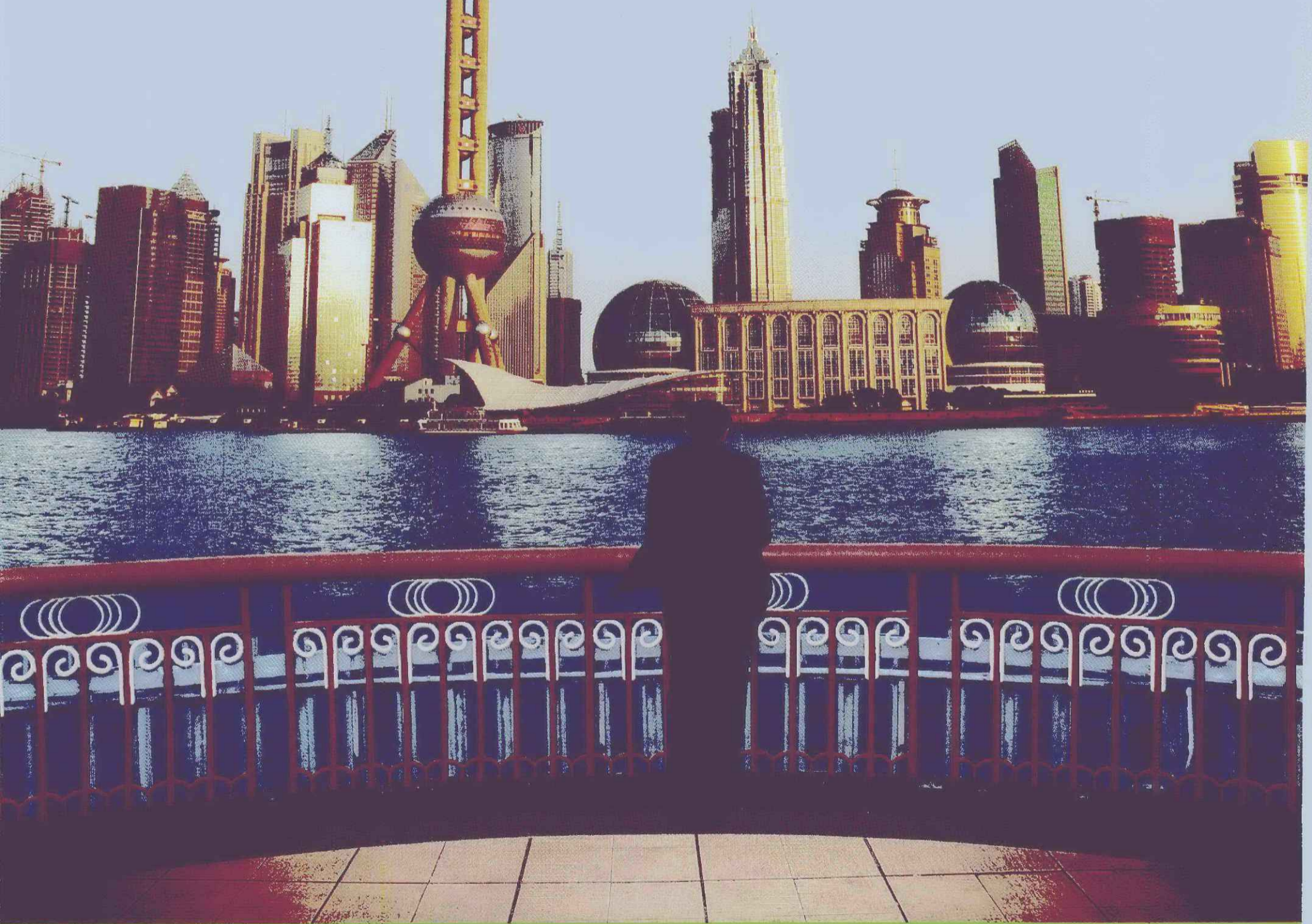
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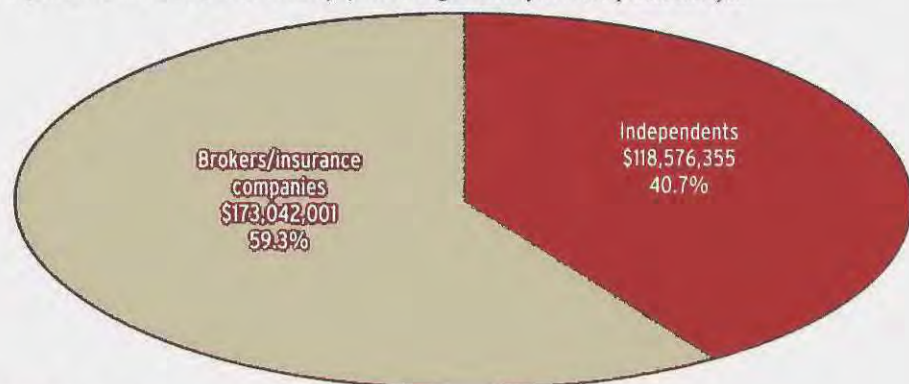
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## SHARE OF THE SAFETY CONSULTING MARKET

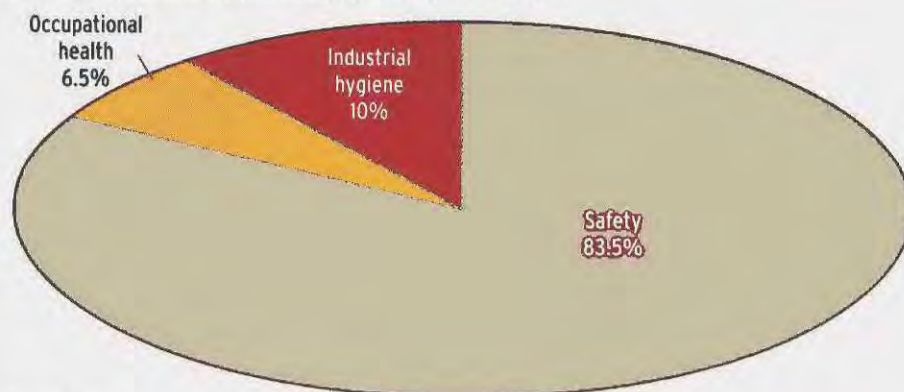
Percentage of market controlled by independent consultants vs. consultants owned by brokers/insurance companies. Based on 2006 unbundled safety consulting revenues for all companies surveyed



Source: BI survey

## BREAKDOWN OF SAFETY CONSULTANTS' STAFF

Percentage reflects total professional staff of all companies surveyed



Source: BI survey

# Largest independent safety consultants\*

Ranked by 2006 revenues from safety consulting services\*\*

Rank	Company/Address	Phone/Web site	Unbundled safety consulting revenues	Staff	Total unbundled clients	Corporate/institutional clients	Principal officer
<b>1</b>	Bureau Veritas 11860 W. State Road 84, Suite 1, Fort Lauderdale, Fla. 33325	813-630-1680 <a href="http://www.us.bureauveritas.com">www.us.bureauveritas.com</a>	\$43,452,706	445	3,596	3,416	Robert Donze, COO
<b>2</b>	Safety Resources 239 New Road, Building C, Parsippany, N.J. 07054	973-575-0900 <a href="http://www.olsi.net">www.olsi.net</a>	\$15,000,000	183	165	165	Jack Leonard, president
<b>3</b>	Safety Management Group of Indiana Inc. 6500 Technology Center Drive, Suite 200, Indianapolis, Ind. 46278	317-873-5064 <a href="http://www.smgindy.com">www.smgindy.com</a>	\$11,100,000	102	324	324	Kent Burget, president
<b>4</b>	Regional Reporting Inc. 40 Fulton St., New York, N.Y. 10038	212-964-5973 <a href="http://www.regionalreporting.com">www.regionalreporting.com</a>	\$11,000,000	400	200	10	Martin Myers, CEO
<b>5</b>	Risk Consultants Inc. 6611 Watson St., Union City, Ga. 30291	770-964-1226 <a href="http://www.riskcon.com">www.riskcon.com</a>	\$8,315,000	N/A	400	400	R. Michael Malone, president/CEO
<b>6</b>	F.A. Richard & Associates Inc. dba FARA 1625 W. Causeway Approach, Mandeville, La. 70471	800-259-8388 <a href="http://www.fara.com">www.fara.com</a>	\$7,700,000	168	84	28	M. Todd Richard, president/CEO
<b>7</b>	North American Risk Co. 5161 Lake Osprey Drive, Sarasota, Fla. 34240	941-373-1545 <a href="http://www.narco.biz">www.narco.biz</a>	\$2,820,000	68	133	77	Bud Schade, president
<b>8</b>	Strategic Safety Associates P.O. Box 80161, Portland, Ore. 97280-1161	503-977-2094 <a href="http://www.masteringsafety.com">www.masteringsafety.com</a> , <a href="http://www.movesmart.com">www.movesmart.com</a>	\$2,552,000	11	47	45	Robert Pater, managing director
<b>9</b>	PSRG Inc. 800 W. Sam Houston Parkway S., Suite 107, Houston, Texas 77042	713-532-8800 <a href="http://www.psrgroup.com">www.psrgroup.com</a>	\$2,500,000	35	220	220	Robert J. Weber, president
<b>10</b>	Bickmore Risk Services 1831 K St., Sacramento, Calif. 95814	800-541-4591 <a href="http://www.brsrisk.com">www.brsrisk.com</a>	\$2,278,325	99	44	N/A	John Chaquica, principal/CEO

\*Includes companies not owned by brokers or insurers. \*\*Reflects safety consulting revenues provided on a direct, unbundled basis. N/A=Not available.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

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# Employers search for ways to control prescription drug costs

*Drugs costs higher for workers comp than for health claims*

By JOANNE WOJCIK

Employers have been focused on curbing the costs of prescription drugs on the health care side for years, but on the workers compensation side it has been an uncontrolled market, according to experts.

A 2003 study by the Boca Raton, Fla.-based National Council on Compensation Insurance found

that drugs purchased in the workers compensation system cost 75% more, on average, than under group health plans for identical pharmaceuticals.

Moreover, the prescription drug portion of workers comp costs has grown to 13.4% of workers compensation medical costs as of 2003—the most recent year for which data is available since it takes several years for workers compensation claims to close. By contrast, these costs measured just 12.1% in 1998, NCCI reported.

Anti-inflammatories/painkillers were the most popular drugs being



prescribed, representing 52% of total prescription drugs in 2003,

and with eight out of the top 10 drugs in this group.

Numerous factors are responsible for these higher costs, experts say.

First, because workers compensation claimants are not required to contribute to the cost of their prescriptions, employers pick up 100% of the tab. In most states, employers are also precluded by law from requiring claimants to use lower-cost pharmacies. And, in some cases, the drugs are dispensed directly by doctors who may choose to mark up the price to recover any costs associated with maintaining their own supply of medications.

Whereas “the health care side has been managing drug costs and utilization aggressively for years,” in workers compensation, “it’s an uncontrolled market,” said Betsy Robinson, assistant vp for product development and management at Philadelphia-based Intracorp, the workers compensation claim management subsidiary of CIGNA Corp.

Of all the covered prescription drugs sold in the United States, 98% are dispensed to group health plan members, compared with 2% for workers comp claimants, so insurers, third-party administrators and prescription benefit managers processing group health prescriptions “have more buying power with any provider, including pharmacies, so they can drive the prices down because of their volume,” she said.

By contrast, in most states, the prices of the drugs dispensed to workers comp claimants are set by fee schedules that are usually tied to the average wholesale price, or AWP, said Mark Sidney, senior vp-national market claims, at Liberty Mutual Insurance Co. in Boston.

Fee schedule pricing in some states is as high as AWP plus 40%, or as low as AWP minus 17%, while the state of New York recently adopted the Medicaid fee schedule for drugs prescribed in the workers compensation system.

The use of so-called “third-party billers,” which operate similarly to bill collection agencies, also can contribute to the higher costs, according to Eric Michael, a principal at Mercer L.L.C. in Minneapolis.

“They buy claims for 80 or 85 cents on the dollar off the AWP and then they track down who should cover it,” oftentimes marking up the price charged, he said.

The reason many pharmacies use third-party billers is because they usually don’t know who to bill when a claimant presents their prescription. Moreover, “if the pharmacy fills the prescription and finds out the injury wasn’t compensable, they lose money,” Mr. Michael said.

“Historically, it’s been harder for a pharmacy to process work comp claims than group health claims,” said Shawn Fisher, head of business development, strategy and operations at Aetna Workers’ Comp Access, Aetna Inc.’s workers comp PBM based in Hartford, Conn.

“Since few injured workers know who their comp insurer is, they don’t know who to tell the pharmacy to send the claims to. So the pharmacy either asks for their group health card, which they are not supposed to do, or they go through a third-party biller” such as Third Party Solutions and Working Rx, both of which are owned by Fiserv Inc.

It is because of the third-party billers’ involvement that AWCA recently entered into an agreement with Working Rx to share information so that prescriptions for injured workers covered by AWCA can be processed without going through a middleman, he said.

But, according to Joe Hensley, chief executive officer of Memphis-based Fiserv’s workers comp divi-

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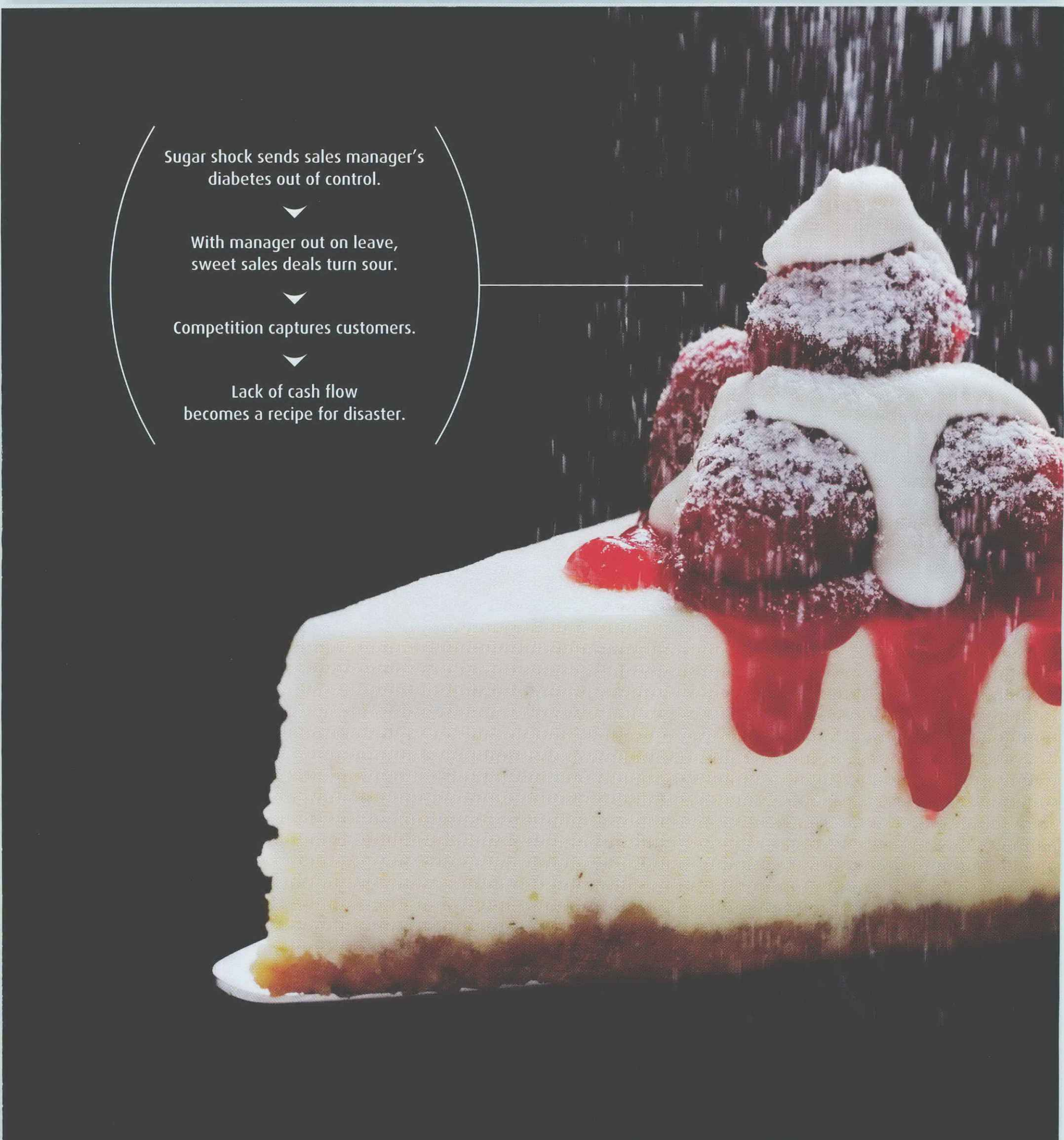
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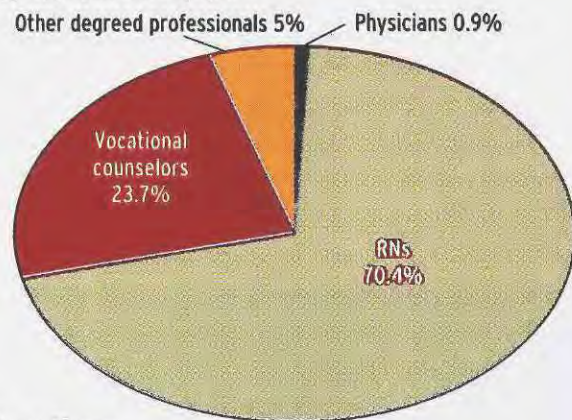
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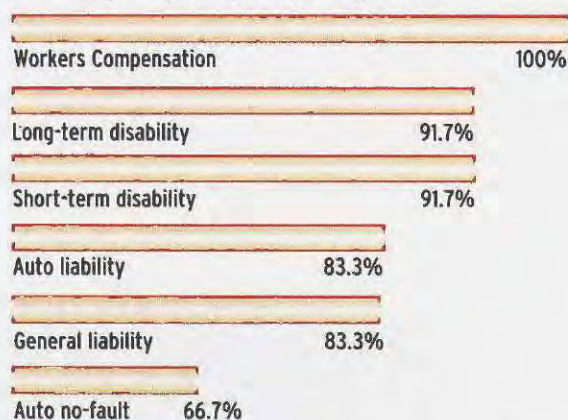
Type of professional employed



Source: BI survey

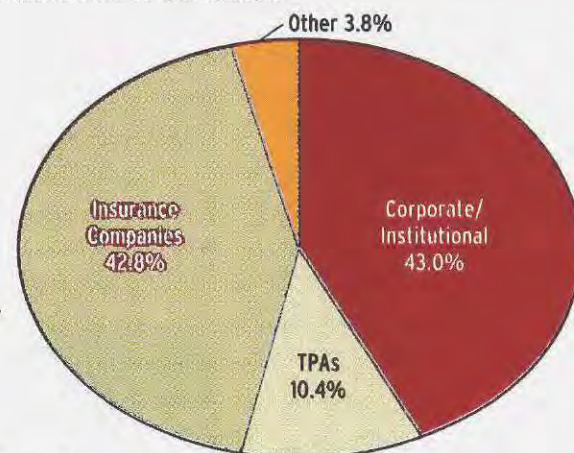
REHAB SERVICE OFFERINGS

Percentage of surveyed companies providing services



Source: BI survey

BREAKDOWN OF CUSTOMERS



Source: BI survey

# Largest rehabilitation service providers

Ranked by 2006 revenues from rehabilitation services provided directly to employers\*

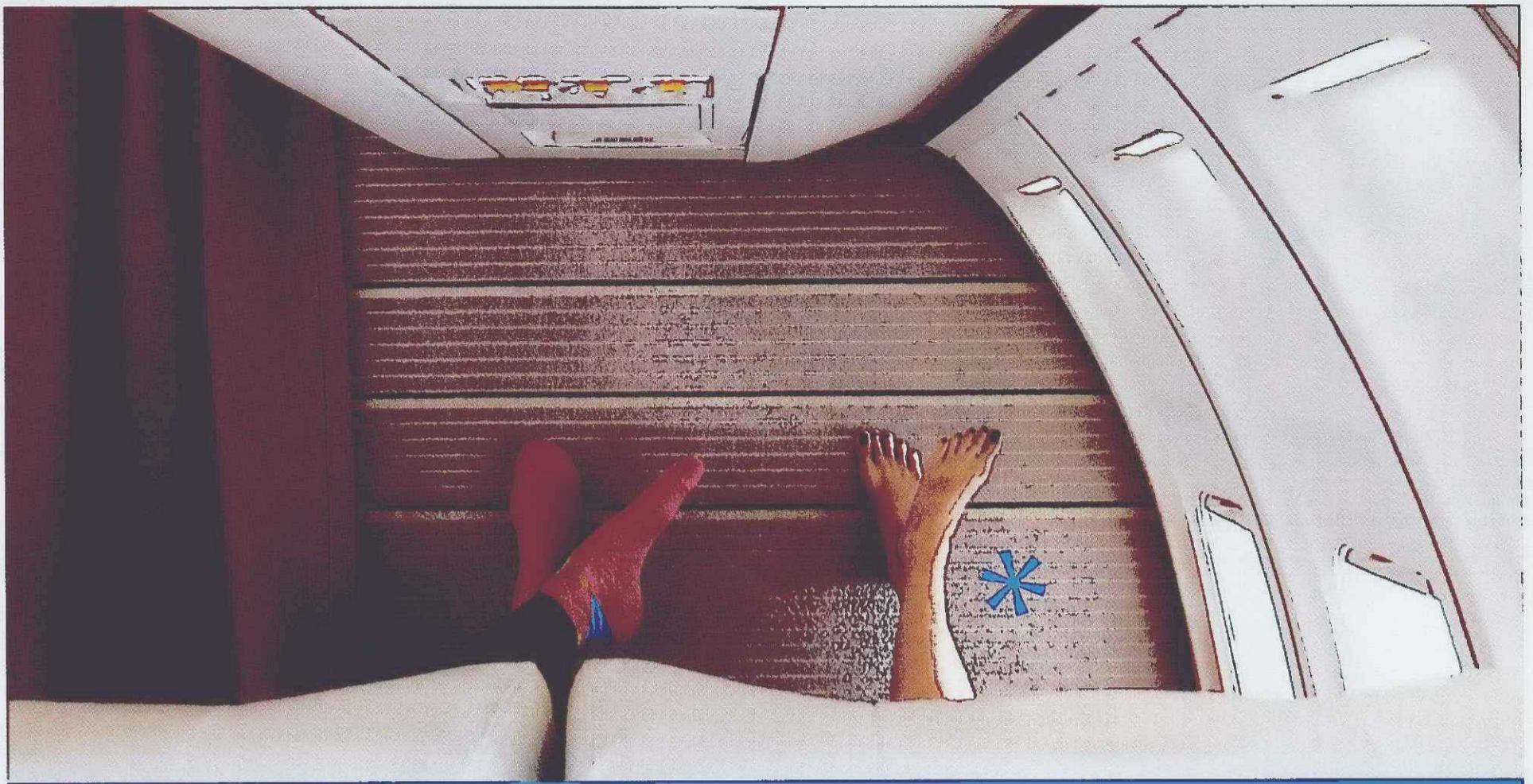
Rank	Company/Address	Phone/Web site	Revenues from rehabilitation services	Professional staff	Total clients	Closed cases in 2006	Independent medical exam cases	Expert opinion	Principal officer
1	Coventry Health Care Workers Compensation Services Inc. dba Coventry Workers' Comp Services 3200 Highland Ave., Downers Grove, Ill. 60515	630-737-7900 www.cvty.com	\$185,600,800	1,440	1,700	313,763	46,719	0	James McGarry, president
2	GENEX Services Inc. 440 E. Swedesford Road, Suite 1000, Wayne, Pa. 19087	610-964-5100 www.genexservices.com	\$142,200,000	1,042	1,217	95,400	14,200	0	Peter C. Madeja, president/CEO
3	CorVel Corp. 2010 Main St., Suite 600, Irvine, Calif. 92614	949-851-1473 www.corvel.com	\$105,000,000	400	2,000	9,000	35,000	0	Dan Starck, president/CEO
4	Intracorp 1601 Chestnut St., Philadelphia, Pa. 19192	215-761-7100 www.intracorp.com	\$44,938,618	720	587	95,000	1,744	163	Archie Anderson, president
5	Broadspire, a Crawford Co. 1601 S.W. 80th Terrace, Plantation, Fla. 33324-4036	866-830-2383 www.choosebroadspire.com	\$26,464,508	1,011	582	104,550	5,535	712	Dennis Replogle, president/CEO
6	F.A. Richard & Associates dba FARA 1625 W. Causeway Approach, Mandeville, La. 70471	800-259-8388 www.fara.com	\$9,850,000	104	295	29,000	0	0	M. Todd Richard, president/CEO
7	MCMC L.L.C. 88 Black Falcon Ave., Suite 353, Boston, Mass. 02210	800-227-1464 www.mcmcllc.com	\$9,445,420	48	103	1,000	298	514	Mike Lindberg, president/CEO
8	MedInsights Inc. 206 Gothic Court, Franklin, Tenn. 37067	615-778-5000 www.medinsights.com	\$9,398,400	55	250	4,353	0	500	Paula Woolworth, Cecilia Almon, vps
9	Total Care Management P.O. Box 6528, Greenville, S.C. 29606	800-638-6829 www.hewittcoleman.com	\$1,650,000	10	100	238	10	90	Charles R. Warne, CEO
10	Archer Consultants Inc. 1101 Stewart Ave., Suite 300, Garden City, N.Y. 11530	516-683-0100 www.archerconsultants.org	\$ 890,000	27	118	206	0	116	Doris Wisotzik, president

\*Rehabilitation management services are defined as providing all services included in the medical management or vocational rehabilitation of an injured or ill individual. They do not include the delivery of physical rehabilitation or treatment, or case management for group life and health cases. 1 Includes Concentra Inc., which was purchased in April 2007.

Source: BI survey

Researched by Kevin Edison and Karen Tucker

Visit [www.businessinsurance.com/directories](http://www.businessinsurance.com/directories) for more information and to access the full searchable Directory of Rehabilitation Service Providers. Business Insurance now offers the option to purchase the entire online directory as an Excel file or as a PDF.



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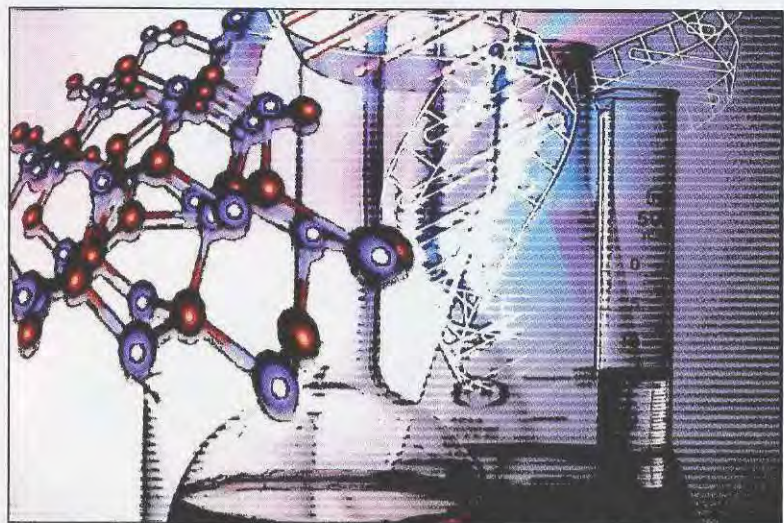
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The Los Angeles-based Cytokine Institute developed a DNA test that can determine whether a person has been exposed to a chemical substance, such as asbestos, and whether the substance caused an illness.

## Genetic test for toxic exposures tapped to fight workers comp suits

By LOUISE ESOLA

New DNA technology could help reduce baseless lawsuits aiming to collect money for alleged toxic exposure, especially in the workers compensation arena, according to one of its developers.

Los Angeles-based Cytokine Institute, a genomics consulting group, is now boasting DNA tests that can prove whether a person has been exposed to a chemical agent—anything from asbestos to mold—

and whether a chemical agent caused an illness.

The test could be beneficial for insurance companies and industries that have faced numerous lawsuits seeking huge amounts of damages for injuries that were allegedly caused by toxic exposures that for the most part haven't actually been proven, according to Dr. Bruce Gillis, chief executive officer of the Cytokine Institute.

So far the test has been peer-reviewed in two journals: *Genomics* and *Environmental and Molecular Mutagenesis*.

"It should eliminate frivolous lawsuits and for the insurance companies, that's going to be a huge savings. (Personal injury) attorneys who've made a living churning out these cases for fees won't like this (technology) because it provides a definitive answer."

Essentially, the tests can determine whether a harmful chemical substance is present in a person's DNA strands, which can act as the body's record-keeper for illnesses and exposures to substances, Dr. Gillis said. Cytokine's test works by tracking the release of cytokines, or proteins that are shed by DNA when cells are exposed to toxic substances. Dr. Gillis claims the test can determine whether a specific illness or even chronic pain has been caused by exposure to a toxic substance.

For example, if someone claims that their cancer was caused by exposure to mold, the Cytokine test can determine with 99.9% accuracy whether that person was exposed to mold and whether that mold caused injury, he said.

Cytokine's tests, which were

developed over two years at the University of Illinois College of Medicine in Chicago, cost between \$6,250 and \$12,500, depending on the test given.

Changing the platform for injury and workers comp lawsuits, however, was a byproduct of Cytokine's tests, according to Dr. Gillis. "We wanted to give people accurate diagnoses for proper treatment," he said. "We never intended to get involved in litigation."

The technology, which was made public in mid-2007, is already at work in two dozen workers comp cases, according to Dr. Gillis, who is scheduled to present his work to the American Bar Assn. in March 2008. Dr. Gillis said the tests exceed all the statute requirements for DNA evidence in court.

At least one of the cases has been dramatically affected by Cytokine's test, according to Neal Jardine, an attorney with the Los Angeles-based firm of Zurawski Jardine & Houston hired by Boston-based Liberty Mutual Group Inc. to fight a workers comp case in which an employee who worked as a tire retreader for more than 20 years claimed his cancer was caused by exposure to benzene, a colorless toxic liquid used in the manufacture of industrial chemicals, dyes and polymers.

According to Mr. Jardine, the worker's attorney dropped the suit after the Cytokine test showed the employee's cancer was not caused by benzene.

Still early in its use in the courts, Cytokine's test "has the potential to change workers comp claims forever," he said. "These tests provide a more appropriate standard of proof. They are not anecdotal; (results) are objective."

Dr. Gillis added that the test could help validate claims and furthermore, alter material safety data sheets, or information sheets designed to provide workers with the protocol for working with hazardous materials. The sheets include information on the toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill/leak procedures of various chemicals.

"If there is any new information about hazards companies are facing, this would be important data to add to those sheets," said Dr. Gillis. "If you are a legitimate, honest company, I think that (DNA testing) is something you may want to pursue to add to those sheets."

From a law perspective, the MSDS sheets have long been used in court battles, said Mr. Jardine. And the problem has long been that the health hazards and concerns listed on those sheets are often the result of animal studies, he said.

"While these sheets have always been informative, they have never served as a real causal analysis," he said. "DNA tests are a world apart from MSDS testing."

As for privacy issues that stem from collecting a worker's DNA, Dr. Gillis said Cytokine does not disclose a person's genome or DNA.

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# Disability claims screened for underlying psychological issues

Some employers use employee assistance programs to help injured workers that also show signs of depression

By LEIGH PAGE

Depression and other mental health issues, so pervasive in the workplace, can be managed even for disability and workers compensation claims.

Each year more than 11 million people suffer from depression, according to the National Mental Health Assn. in Alexandria, Va., and the National Institutes of Health predicts that almost half of all Americans will develop some form of mental illness during their lifetime.

Marcia Carruthers, chief executive officer of San Diego-based Disability Management Employer Coalition, says a growing number of employers are monitoring disability and workers comp claims more closely, looking for signs of depression and providing help to employees so that they return to work more quickly and remain in their jobs.

"When a disability claim is filed, you can find all kinds of red flags that suggest depression," she said. "Even if the claim is for physical issues, such as cardiac events, low back pain or carpal tunnel syn-

drome, there is very often a mental health component."

Most large employers offer employee assistance programs, staffed with professionals who can deal with depression, but EAPs have been underutilized. EAPs have had such a low-key presence that many employees do not think of them even when they have behavioral issues, Ms. Carruthers said.

Now, she says, some employers are putting their EAPs into more active roles, such as working closely with disability insurers and supervi-

**'EAPs have had such a low-key presence that many employees do not think of them even when they have behavioral issues.'**

Marcia Carruthers,  
Disability Management  
Employer Coalition

sors to identify depressed employees. Some companies, she says, identify employees with a disability or workers comp claim who may be depressed and offer them the EAP or even require EAP participation. This is part of a trend known as "behavioral risk management," Ms. Carruthers said.

In a one-time DMEC survey of members in 2006, 82% said they thought behavioral risk was emerging as an area of concern. One quarter of those surveyed reported that their company linked EAP

professionals with disability managers.

In addition, checking for underlying psychological issues in physical claims was performed by 31% for workers compensation, 40% for short-term disability and 49% for long-term disability claims, the survey found.

The approach seems to pay off. For example, Horizon Health, a Lewisville, Texas-based EAP provider, reported that clients using its

See **DEPRESSION** next page

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## Depression: Underlying issues in disability claims

CONTINUED FROM PREVIOUS PAGE

EAPs had a 30% reduction in overall workers comp claims.

Also, Hartford Financial Services Group Inc. in Hartford, Conn., found positive results. In a 2007 study of employees at companies who were simultaneously covered by disability insurance from Hartford and were enrolled in a ComPsych Corp. employee assistance program reported the average short-term disability leave at employers offering the EAP lasted 54.5 days,

14.5 days shorter than at companies without EAPs.

Furthermore, it showed that one-third of employees who used the EAP returned to work after their disability leave, compared with one in five for those who did not.

The Hartford study also identified a behavioral component in many short-term disability claims for physical conditions. While 52% of the employees said they used the EAP mainly for behavioral reasons, only 26% of the same employees cited behavioral issues as the main reason for their disability filing.

Despite its study results, the Hartford does not offer an automatic discount to companies that use EAPs. "You still have to show lower STD claims to get a lower premium," says Carol Harnett, vp and national practice leader for group disability and life at the Hartford.

Indeed, the Hartford study found that just offering an EAP did not lower the volume of claims, even as it lowered the length of the claim. However, the study did find that employers with high EAP utilization—more than 10% of employees using them—had disability claims decline "noticeably," but it did not cite a figure.

The lesson for employers is that they need to make sure EAP services are utilized. For example, in a program that assigned "return-to-work coaches" to employees coming back from disability leave, Southern California Edison, a Rosemead, Calif.-based utility, found that 100% of those who returned stayed on the job vs. approximately 70% of those without coaches. In the program, the coach meets with the supervisor as well as the employee and follows up with both after the employee returns to work, said Deborah L. Jacobs, disability manager for the company.

Another study reported in the Sept. 26 issue of the *Journal of the American Medical Assn.* shows that companies that take an active approach to employees' mental health can reap tangible savings.

In the study, 16 companies gave a survey to their employees to identify mental health issues. Half the workers with mental health issues were assigned a case manager from OptumHealth Behavioral Solutions, a unit of UnitedHealth Group Inc. in Golden Valley, Minn. The case manager then assigned therapy sessions to the employees and followed up with them to make sure it was effective. The other half was advised to seek therapy, but they were not appointed a case manager.

The results: Employees who were assigned case managers worked an average of 2.6 hours more a week than the control group.

While the program cost \$400 per employee, savings were estimated at \$1,800 per employee in the first 12 months an employee participated in the study, based on average salary, according to Francisca Azocar, assistant vp for research and evaluation at EAP provider OptumHealth.



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# IRMI: Companies serious about minimizing risks with safety efforts

CONTINUED FROM PAGE 4

the impact on the victim's family and other workers at the job site, the participants concluded that the company needed to bolster its safety efforts "because it was the right thing to do," he said.

The goal was to eliminate serious injuries and deaths.

The company has taken several steps to achieve that goal, he said. It has elevated the importance of pre-construction safety planning and enhanced project site supervision, in part by getting "project engineers out of the trailers and onto the job sites," said Mr. Damos.

The company also preaches that "safety is everybody's business," he said. This involves "humanizing safety," by printing posters showing workers' family members and asking what would happen if the worker died.

Coordinating with subcontractors is also critical, said Mr. Damos. The company seeks to elevate their safety performance and, in some cases, even train subcontractors, he said. Weitz also gets owners of the subcontracting firms involved in the process.

Creating accountability is key to success, he said. Weitz formed an executive committee, which has

issued three recent decisions. One has set a consistent drug and alco-

**'Our business is managing risk—we just happen to build stuff.'**

Don Greenland,  
Nabholz Construction Corp.

hol testing policy for job sites across the country. Another terminates employees—and subcontractors—

for serious safety violations involving hazards such as trenching and electricity. The third shores up supervisory oversight.

Cultural change involving safety is "one of the most difficult changes to effectively implement," said Mr. Damos. "Ultimately, get the message to the field and the field has to buy in," he said.

"When you're dealing with cultural change, there is no checklist," said Mr. Damos. Rather, accomplishing such change requires a journey of years, he said.

Like Mr. Damos, Mr. Greenland stressed accountability in his remarks to the general session.

Accountability means "safety first in everything you do," he said.

That includes truly believing that all incidents are preventable and unacceptable, including those involving subcontractors, said Mr. Greenland.

Mere compliance with rules and regulations isn't sufficient. A construction company can follow all rules issued by the Occupational Safety and Health Administration and still suffer job site fatalities, said Mr. Greenland.

He described how Nabholz launched what he called a safety "revolution" in 2000. It started focusing on safety expectations of new hires during orientation and instituted daily crew planning at worksites, he said.

To move to the next level of safety is "all about people skills," he said. Leadership teams most function as "leaders and coaches, not just bosses," he said. Instead of acting as what Mr. Greenland called "safety cops," leaders provide coaching and counseling in risk management and safety.

The company also gets involved in the safety practices of outside contractors on Nabholz worksites. They must meet minimum standards to be even considered for a job, he said. Their performance is measured, and Nabholz consults with them to improve the performance. Outside contractors that resist or refuse are not allowed to work with Nabholz.

Safety requires "continuous improvement of everything," he said.

In an interview after the general session, an insurance executive said the construction company leaders were "generally singing our song" with their emphasis on creating a culture of safety.

"It's taken a while, but now it's come across to senior management," said Jack Probolus, controlled insurance program marketing director for Liberty Mutual Insurance Co. in Boston.



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## IRMI event draws 1,700

**ORLANDO, Fla.**—Nearly 1,700 risk managers, brokers, insurers and others attended the International Risk Management Institute Inc.'s 27th annual construction risk conference in Orlando, Fla., late last month.

Founded in 1978, IRMI provides risk and insurance information to business, legal, risk management, and insurance professionals.

The next construction risk conference is scheduled to take place in Las Vegas Oct. 27-30, 2008. For more information on the IRMI conference, visit [www.irmi.com](http://www.irmi.com).

—By Mark A. Hofmann

# Rates: Reinsurance prices expected to drop across the board

CONTINUED FROM PAGE 4

down, she said. "It's just a matter of the extent of the decrease in pricing relative to the risk."

"Reinsurers are keeping their heads down," said John N. Gilbert Jr., chairman of reinsurance intermediary Holborn Corp. in New York. "Everybody knows rates will go down and nobody knows how much. But there's a ton of capacity out there, and it's got to be fed."

"The struggle for reinsurers is maintaining a flat level of income, and I just think it's going to be extremely difficult" without giving their clients very steep rate reductions, Mr. McGuire said. People talk about a flight to quality, Mr. McGuire added, "but I think pricing will be more important."

William H. Eyre Jr., managing director and chief executive officer of Philadelphia-based Towers Perrin Reinsurance, said that while "reinsurers are willing to consider rate relief in all lines of business," it is "still subject to individual companies' experience and exposures."

While broadly speaking there has been some pressure on terms and conditions, there is "generally more price-driven softening" rather than coverage changes, said Jamie Veghte, Stamford, Conn.-based executive vp and chief executive officer of reinsurance operations for XL Capital Ltd.

"It is likely to be a relatively easy renewal season," said Mr. Bolland, with plenty of capacity from the cedents' perspective, and the major issue for reinsurers being, "how far down is down?"

"It'll be the same it's been the last couple of years," said John Berger, CEO of Hamilton, Bermuda-based Harbor Point Ltd. With ceding companies buying less reinsurance, there will be intense competition for new business, he said.

"I don't think the industry's ever been as strong," Mr. Berger said. Reinsurers used to increase their reserves every year. Now, they feel their reserves are redundant and are releasing more to boost current earnings, he said. "It's just about as good as it's ever been."

A lack of major catastrophes has helped hold prices down.

The reinsurance sector was not significantly hurt by the recent wildfires in California, the floods in Europe or the two hurricanes that hit Mexico earlier in the year, said Mr. Berger. "We got lucky. We dodged all the bullets," he said.

Albert P. Amato, senior vp at Stamford, Conn.-based C.L. Frates Reinsurance Intermediary Inc., said in addition to their own rate decreases, reinsurance prices on treaty business also reflect the ceding companies' underlying base premium. "That's the real decrease," he said.

## Most lines dropping

Property catastrophe rates will decline 15% to 20%, said Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis. "There'll be a lot of posturing, but when the ball stops," that is where

**'Reinsurers are keeping their heads down. Everybody knows rates will go down and nobody knows how much. But there's a ton of capacity out there.'**

John N. Gilbert Jr., Holborn Corp.

it will be, said Mr. Karon.

Peak catastrophe zones, including Florida and the Gulf, are the most stable in terms of rates, said Mr. Berger. "People are still worried about aggregates," he said.

Noncat property business is likely to decline 10% to 20%, said Mr. Bol-

land. Some discipline will remain on coastal business, but in the Midwest, "pricing is going to go down significantly," he said.

Casualty rates are likely to decline 10% to 20%, said Mr. Bolland. Many reinsurers that have been focusing on property cat business

"are still trying to diversify their books," he said, so for the right line of business, "people are going to be aggressive."

"We see a lot of new markets coming in" as property catastrophe reinsurers expand their business into casualty, said Ann Marie Roberts, Dallas-based CEO of BMS Intermediaries, a unit of BMS Group Ltd.

People mistakenly see the U.S. casualty market as "super stable," said Mr. Berger. "I think they're foolish," he added. We have "as many lawyers today as we did eight years ago."

Meanwhile, the subprime crisis

could affect the industry on a micro and macro basis, said Simon Gander, London-based chief executive officer of Gallagher Re. On a macro basis, the tightening of credit could lead to an economic downturn, with increased claims "almost inevitably" following, he said.

And one micro effect is that it will inevitably lead to increased directors and officers liability claims and may lead to more errors and omissions claims, he said.

It could affect the E&O and D&O markets, agreed Mr. Berger. It "just takes time to develop. The seeds of problems are out there."

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## Taming The New Frontier



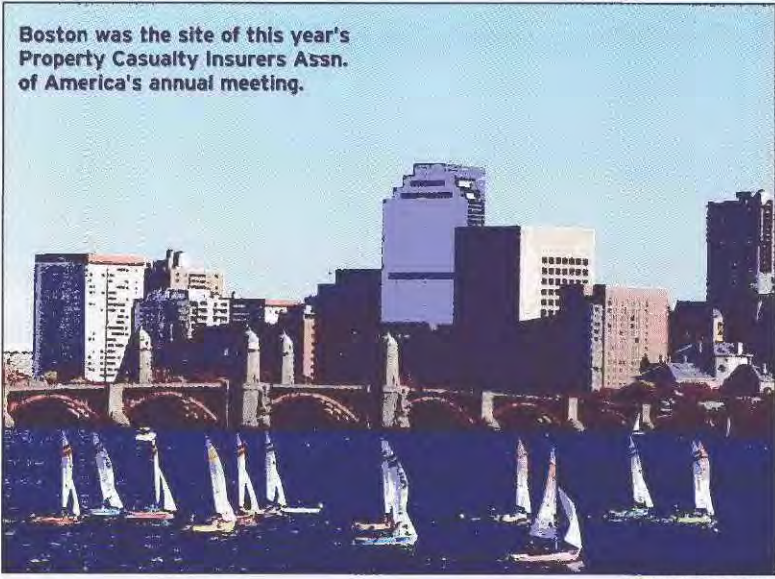
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Boston was the site of this year's Property Casualty Insurers Assn. of America's annual meeting.



MICHAEL MARCOTTE

## Capital markets involvement strong despite decline in sidecar formation

By JUDY GREENWALD

**BOSTON**—Sidecar formation may be slowing for now, but the capital markets' involvement in the reinsurance industry will continue despite reinsurers' current strong capital position, observers say.

Particularly in light of the subprime debacle, the reinsurance sector offers the capital markets a welcome diversification in their investment portfolios, say observers attending the Property Casualty

Insurers Assn. of America's annual meeting in Boston last month.

Steven K. Eolland, president of reinsurance intermediary Gill & Roeser Inc. in New York, noted that the capital markets currently are withdrawing from the reinsurance arena, with sidecars in particular disappearing.

"There's no need for capital" now in the industry, said Mr. Eolland. "Overcapacity is more of a problem at the moment."

But, he added, "you don't want

to burn your bridges, because reinsurers could need sidecars once again in 2009, so (reinsurers) are still keeping them."

Bermuda-based XL Capital Ltd. is in negotiations over whether to renew its Cyrus Reinsurance Ltd. sidecar, said Jamie Veghte, Stamford, Conn.-based executive vp and chief executive officer of reinsurance operations for XL Re, an XL Capital unit. "There's clearly less capacity needs than there were a couple of years ago."

### Investors seek diversity

But despite the slowdown in sidecar activity, capital markets still are being considered by most companies as a way to diversify their reinsurance capital sources, said Paul Schultz, president of Chicago-based Aon Capital Markets. While they have "now pulled in a bit" with respect to sidecars, the capital markets are "not going away entirely."

Investing in the insurance sector diversifies hedge funds' portfolios and lowers their overall risk, "and because of that, returns are still attractive" despite the softening market, Mr. Schultz said.

"There is still a keen interest in purchasing insurance-related risk" on the part of either hedge funds or private equity investors, said Grace Osborne, managing director and practice leader for North America insurance financial services at New York-based Standard & Poor's Corp. "It's more fluid whether they will participate or not," and depends upon whether the capital markets get an appropriate return, said Ms. Osborne.

Some capital market investors may drop out because their returns are down, but "others will stay in because it's such a diversified class," said Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis.

John N. Gilbert Jr., chairman of reinsurance intermediary Holborn Corp. in New York, said, "There may be a bit of a lull in the activity, but I think they're a force that's going to be there, and they're going to offer competition to the traditional marketplace."

John Spencer, group chief executive for London-based reinsurance intermediary BMS Associates Ltd., said the capital markets are now moving beyond catastrophe bonds and securitizing property cat risks to other areas, including auto and workers comp.

Meanwhile, the subprime crisis is likely to have only a short-term affect on the capital markets' involvement in the reinsurance sector, said Mr. Eolland. "Ultimately, liquidity's coming back," he said.

The lack of correlation between the capital market's problems in the subprime area and the insurance industry "was a test case, in a way, and (insurance) proved a good investment for the capital markets," said Brian R. McGuire, senior vp at reinsurance intermediary U.S. RE Corp. in New York.

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# Softening market will test reinsurers' pricing discipline

BY JUDY GREENWALD

**BOSTON**—A key question for cedents and reinsurers in the months to come is how disciplined the market will remain.

"If the price adequacy isn't good, we won't be looking at (the business)," said Pierre L. Ozendo, chief executive officer-Americas division, at Armonk, N.Y.-based Swiss Reinsurance America Corp.

You can be more competitive "if you don't do it stupidly," said Mr. Ozendo. Swiss Re, he said, wants to know the total return and whether it is appropriate for the coverage provided.

Mr. Ozendo was among those attending the Property Casualty Insurers Assn. of America's annual meeting in Boston late last month.

William H. Eyre Jr., managing director and chief executive officer of Philadelphia-based Towers Perrin Reinsurance, said that over the past several months reinsurers have expressed "the need to maintain their underwriting discipline, which does not necessarily mean not providing rate relief."

"I don't think reinsurance underwriters these days can sort of go off on a tangent (into market-share underwriting) the way they have in the past," said John Spencer, group chief executive for London-based BMS Associates Ltd. They "do not want to end up holding the bag when companies go out of business," he added. We have all seen the end of that process, "and it's not very pretty."

"By and large, it's an orderly market," said John N. Gilbert Jr., chairman of New York-based reinsurance intermediary Holborn Corp. "At this stage, there don't appear to be loose cannons out there. But capacity has to be fed."

As we go into 2008, even at reduced prices, "the risk-reward ratio is still attractive," said Kevin Stokes, managing director and leader of the property specialty practice at reinsurance intermediary Guy Carpenter & Co. L.L.C. He said the bigger question is, what will happen 12 to 18 months from now if there are no significant losses? At that point, "things will heat up as we've seen in the past."

"Across the board, we've never been disciplined," said John Berger, CEO of Hamilton, Bermuda-based Harbor Point Ltd. "That top-line pressure is just enormous," he said.

"Things will get very competitive, because the holding reinsurer of an account will do everything in its power to maintain its business. Therefore, new reinsurers competing for that account are going to have to offer extremely competitive

quotes" to win the business, said Brian R. McGuire, senior vp with reinsurance intermediary US RE Corp. in New York.

The situation won't be too different from 1997's soft market, although one difference will be the industry's larger capital base, which will only fuel additional competition, said Mr. McGuire.

Some observers say the use of models may be at least a restraining factor. Reinsurers are saying they will not go below the correct rates, said Steven K. Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York. But "when

**'When push comes to shove' the question is whether reinsurers will risk losing their business.**

Steven K. Bolland,  
Gill & Roeser Inc.

push comes to shove," the question is whether reinsurers will risk losing their business, he said.

However, he noted that reinsurers are using models that indicate what technical pricing should be, and so market participants will be watching to see how far below this level they will go. "I don't think the market has ever seen that kind of discipline before," said Mr. Bolland. "It will be interesting."

The rating agencies and the use of models "produce some discipline that maybe wasn't there in previous cycles," said James Kent, executive vp-reinsurance with Willis (Bermuda) Ltd. in Hamilton. But reinsurers and investors are seeking growth, "which is a major

test of discipline in a softening market," said Mr. Kent.

Discipline also is being imposed by rating agencies, investors and by corporate governance issues, said Simon Gander, chief executive officer of London-based Gallagher Re.

We will not see the swings that occurred in the soft markets of the 1980s and 1990s, where companies would "go after whatever they could" just to generate revenue, said Larry Tucker, London-based Gallagher Re managing partner.

Market participants now realize that this "comes back to haunt you," he said.

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# Business Insurance PERSPECTIVE



## Ask a Casualty Actuary

This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore.

# Measuring a risk manager's value

By Richard E. Sherman

**Q: Can the value a risk manager adds to an organization be measured?**

If an organization that previously did not have a risk manager has recently retained one, it is possible to roughly estimate the degree of improvement in its loss experi-

ence—comparing before and after. Great care would need to be exercised in making such a comparison and losses for each period must be developed to an ultimate settle-

ment basis.

Generally, there are too many things changing from one period to the next to be able to attribute whatever improvement in loss experience had occurred solely to the hiring of a risk manager or a loss control specialist.

As an actuary, one of my primary tasks is to review claim history for different organizations, and to project that loss history into the future. It is quite striking how entities of similar size and exposures can have drastically different loss experiences. What I often see is that the difference between better- and worse-than-average loss experience is the presence (or focused efforts) of a risk manager or a loss control specialist.

For a workers compensation program, it is not unusual for more than half of the total loss costs to be attributable to one or two large claims. Avoidance of one large workers comp claim in many cases will more than cover a risk manager's salary. Implementation of workplace safety procedures and evaluation of potential workers comp risks can be helpful in bringing down costs, given that insurers evaluate experience before quoting a premium.

A dedicated risk manager can set up and publicize efforts to increase workplace safety and bring down loss costs. Employee fitness programs, workplace safety contests and awards for areas that improve their days without injury are all

Continued on next page

## Workers Compensation: Protecting People in the Age of Terrorism

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- **Mark J. Noonan**, Managing Director and Workers Comp Practice Leader, Marsh Inc., Boston
- **Richard L. Thomas**, Sr. VP and Chief Underwriting Officer, Domestic Brokerage Group, American International Group Inc., New York

#### QUESTIONS TO BE ADDRESSED:

- What choices do employers have for protecting their workforces from terrorist attacks?
- Should employers avoid concentrations of workers in urban areas?
- What coverages are available to respond to catastrophic workers comp risk?
- How should employers communicate risk mitigation plans to their workers?
- What role should government play in addressing catastrophic workers comp risks?

#### WHO SHOULD ATTEND:

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CONTINUED FROM PREVIOUS PAGE

projects that could be considered.

Additionally, an experienced risk manager can assist in negotiating with excess insurers for the most advantageous rate. They can also offer insights into the relative financial strength and reputation of insurers that have provided competitive bids.

The ability to knowledgeably cite workplace safety programs and potential avoidance of large claims can make an entity much more attractive to excess underwriters. Risk management input is also valuable in the determination of the proper self-insured retention level. Information regarding both the probability and size of potential high-end loss scenarios should be factored into this decision.

Similarly, liability programs can benefit noticeably from a risk manager. Evaluation of past claims can assist in targeting likely future loss events and in putting into place measures to mitigate existing risks. Another potential project would be implementation of reward programs for excellent loss experience, or possibly deductible programs by department/cost center in the event of claims.

From a professional liability perspective, tasks would include review of high-risk procedures/activities and the quantification of the additional costs associated with such exposures. The design

of programs targeting continuing education efforts to particularly high-exposure areas, for instance, or encouraging maintenance of less frequently practiced but high-risk skills would benefit the organization as a whole.

Focused review of key proposed contracts with independent contractors can result in language that transfers significant risks to those contractors. Inclusion of hold-harmless agreements can provide some measure of risk transfer.

A further useful task is the evaluation of loss costs by department. In situations where a high-risk department is noted, it is sometimes possible to outsource the tasks that create the exposure for less than the cost of an injury. An example would be hiring an outside cleaning service for an area that tends to have a janitorial injury rate that is higher than typical. The outside service may provide the workers at a preset rate inclusive of insurance costs that is less than the costs plus benefits and allocated loss costs of an in-house employee. This type of quantitative analysis could be performed by a risk manager.

Similarly, from a property standpoint, expensive equipment with a high potential for loss/breakage can occasionally be leased for a lower cost than purchasing and self-insuring it. A risk manager could perform a cost benefit

analysis to quantify the expected costs of various scenarios, for a reasoned approach to making such decisions.

The task of identifying high-risk departments can be aided by a current cost allocation study. Comparative loss rates, on either a payroll or a full-time equivalent basis, can be observed. Departments identified as having a high experience modification factor can potentially have some of their risk mitigated

through a risk factor analysis.

The range of risks to which an organization is exposed is invariably much greater than what is evident from recent claims experience. Often, the need for disaster planning and operational recovery can be quite significant.

While the quantitative impact of all of these activities cannot be accurately gauged, their combined benefit likely exceeds the added costs by a good margin.

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# International NEWS



Portugal's pool will provide coverage for earthquake risks, but has declined to say whether the pool would offer coverage for other catastrophic risks.

## Portugal creates pool for catastrophic risks

*Structure could be formed by end of the year*

By RODRIGO AMARAL

**LISBON, Portugal**—Portugal is set to become the latest European country to create a pool to provide coverage for catastrophic risks.

The government is finalizing the details of a bill to set up such a mechanism, initially designed to cover liabilities caused by earthquakes.

Associação Portuguesa de Seguradores, the country's insurance association, which has been in negotiations with the Finance Ministry to create the pool, expects that a structure could be formulated by the end of the year.

The Finance Ministry has declined to give a date for the implementation of the pool. According to the ministry, a working group was formed last year to draft a proposal outlining several different options for the formation of the pool. The range of choices was presented to the ministry earlier this year, but the government has not yet made up its mind so far about the model to be adopted by

the country.

The decision "will depend on actuarial cost estimates that are still being carried out," a spokesman for the ministry said. The government has declined to clarify the sort of coverage to be provided by an eventual pool and whether it will contemplate other catastrophic risks in addition to earthquakes.

The ministry spokesman declined to provide details on how the pool will work, other than to say that "the fund will be based on insurance premiums, as it is the case in other European countries and in California for natural catastrophes."

Sources suggested that a model such as that used by Spain's Consorcio de Compensación de Seguros could meet Portugal's needs. The Spanish pool is funded by the buyers of insurance policies, with the payment of an extra fee, and is managed by a company linked to the Ministry of the Economy.

Portugal faces earthquake risks

See **PORTUGAL** next page

## Local authorities plan mutual

*New insurer would be third created by U.K. governmental entities*

By STUART COLLINS

**LONDON**—A group of large local government authorities in the United Kingdom has pushed ahead with plans to establish a mutual insurer in a bid to allay the fears of public sector insurance buyers of a potential supplier monopoly.

The group of 20 local authorities are forming a mutual insurer, known as the Councils Alternative Risk & Insurance Group, in coming months. The insurer is expected to begin underwriting public sector property and liability coverages by July 1 next year, according to Martin Fone, head of public sector development for the mutual development unit at Charles Taylor Consulting P.L.C. in London.

This latest mutual—two others have been established by public sector entities already this year—will be set up primarily to ease local authorities' concern over the "narrowness" of the insurance market, where only two insurers are often willing to quote for large authorities, said Robert Chamberlain, chair of the steering group behind CARIG.

"It only takes one major insurer to be taken out of the market to put many of the authorities (considering the mutual) in a monopoly supplier situation," he said.

A corporate action such as a merger or acquisition or a major loss event would easily impact capacity, said Mr. Chamberlain, who is also insurance manager at Middlesbrough Borough Council.

Fears over a lack of competition among insurers is shared by other local authorities, according to Brian

Shaw, U.K. public sector practice leader at London-based Marsh Ltd., which together with Charles Taylor Consulting won the contract to get CARIG up and running.

"The local authority insurance market is not very dynamic, and choices are limited for some local authority risks," Mr. Shaw said. "And that is not a healthy situation."

Secondary reasons for creating a mutual insurer include cost savings

**'The local authority insurance market is not very dynamic, and choices are limited for some local authority risks and that is not a healthy situation.'**

Brian Shaw, Marsh Ltd.

and more focused underwriting, Mr. Chamberlain said. "We do anticipate premium savings over time, and service should be more focused," he said. A mutual should be able to pass on savings from improved risk management and claims handling much faster than an insurer, he added.

CARIG will be the third public sector mutual to open its doors in just over a year, following the creation of the Fire & Rescue Authorities Mutual Ltd. in September and

the London Authorities' Mutual Ltd. in April. And authorities in Scotland have also looked at alternative risk transfer options, according to Mr. Chamberlain.

"There is a group of Scottish authorities that established a captive on the Isle of Man in 2004. It is dormant and not writing business. But if the insurance market were to turn sour for local authorities, they have that captive sitting there as a facility. It is extremely beneficial to have it there as a long-stop, because the insurance market is so narrow...there was only one insurer willing to write property risk for Scottish local authorities," Mr. Chamberlain said.

Charles Taylor Consulting's Mr. Fone said that other public sector entities are looking to establish yet more mutual insurance groups, although these are in the early development stages.

Short-term, "I see the creation of one or two smaller mutuals," Marsh's Mr. Shaw said. In the long-term, "I see the potential for them to merge."

Some 30 authorities, city and county councils have expressed an interest in CARIG during two feasibility phases, and 20 of these are backing the next stage. The implementation project, which will involve establishing the company, seeking regulatory approval and setting underwriting and claims handling protocols, began last week, Messrs. Fone and Chamberlain said.

"We anticipate that we will have a reasonable number of (participants in the mutual) to provide a critical mass," Mr. Chamberlain said.

## Germany extends terrorism backstop

*Extension beyond 2009 is likely, but at a lower level*

By RICHARD MILLER

**BERLIN**—Germany's Finance Ministry has agreed to a two-year extension of its €8 billion (\$11.6 billion) backstop of EXTREMUS A.G., the country's terrorism insurance pool.

After the end of 2009, the government will likely extend the guarantee further but at a lower amount, said a ministry spokesman. The ministry offered no details on the extent to which the government might reduce its involvement in the

future.

EXTREMUS was founded in 2002 by 16 insurance companies to cover large property and business interruption risks against acts of terrorism. The industry provides coverage through EXTREMUS of €2 billion (\$2.9 billion), and the government provides €8 billion in federal warranties, which run out at the end of 2007.

Earlier this year, the ministry signaled that it might not extend the two-year guarantee for EXTREMUS

for a fourth term from 2008 until 2010. At the time, the government suggested that insurance buyers could get coverage from local and international insurance markets instead.

"We looked at the market, and we looked whether there are private alternatives, and as a result of this investigation we came to the conclusion that, at the moment, we should not change anything in that

See **EXTREMUS** next page

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# Dinallo: Lays out new approach to regulation

CONTINUED FROM PAGE 3

holes in existing rules and will "create common expectations and reference points, which is more efficient and protective," he said.

The initiative is part of an ongoing effort by New York to modernize its regulation of all financial services, to keep it internationally competitive, he said.

Joining Mr. Dinallo in endorsing the concept of principle-based regulation were insurance industry representatives from the American Insurance Assn., the National Assn. of Mutual Insurance Cos., Standard & Poor's Rating Services Corp. and the Reinsurance Assn. of America.

John Iten, a director in the financial institutions rating group with

expect notice," is "the epitome of a gray area" that potentially creates more uncertainty than guidance, Mr. Tetrault said.

Gary Henning, the AIA's Albany, N.Y.-based regional assistant vp, said AIA staffers are looking at "how the principle-based proposal, if it becomes a regulation, would mesh with existing regulations."

"Principle-based regulation is more challenging for companies, because there is no safe harbor or bright line rule to follow," said Joseph B. Sieverling, the Washington-based RAA's senior vp-financial services.

"Regulators can't operate on principles alone," said Thomas E. Hampton, the District of Columbia's insurance commissioner, who chairs the working NAIC's Principles-based Reserving Working Group. His group is working on changing the basis for life insurers' reserving practices to one that is based more on principles than on actuarial tables.

"It has to be a mix of both—principles and rules—to operate properly," he said. For example, the U.S. judicial process requires that regulators be able to demonstrate that their enforcement action against a licensee was not arbitrary or capricious. To be able to prove that, "we have to have specific, granular rules so we can have a tight enforcement process," Mr. Hampton said.

Virginia Insurance Commissioner Alfred W. Gross said that incorporating both rules and principles will help keep the process "nimble" and able to keep up with new risks, he said during the recent conference of the International Assn. of Insurance Supervisors.

Florida Deputy Commissioner Belinda Miller said in an e-mail that "while broadly defined principles are very good to articulate, the practical effect may be limited to encouraging positive market behavior but not really expanding regulatory authority in any significant way."

Although a timetable has not been set, it appears that the regulation could become law sometime next year, because the superintendent's rule-making authority does not require approval by the state Legislature.

Illinois Insurance Director Michael McRaith said that principles have been the underpinning of the relationship between regulators and licensees in Illinois and some other states for years. While "happy" to see New York's draft proposal, he said he considers it "a natural step in the evolution of insurance regulation," rather than something new.

The comment period will continue after Mr. Dinallo presents the proposal to the New York State Commission to Modernize the Regulation of Financial Services, which he chairs, when it meets Jan. 18, 2008. The proposal then will go through a formal process that includes publication in the New York Register and a formal 45-day comment period.

## Products & Services

### ACE coverage tailored for global exposures

**PHILADELPHIA**—ACE USA has launched first-party coverage tailored for domestic and global exposures of midsize to large U.S. companies.

The ACE USA Global Property - Corporate Risk Program offers coverage to a broad range of industries including the following classes: financial institutions, food processing, logistics, manufacturing, services, higher education, construction, retailers and wholesalers, distributors, real estate, transportation, and technology/electronic equipment companies.

Offered through the ACE Global Underwriting Group, a division of ACE USA, the product will provide worldwide property coverage under a single program to qualified applicants whose global revenues are between \$50 million and \$1 billion. The minimum deductible will be \$10,000.

The program will offer all risk property coverage, combined with ocean cargo and inland transit; domestic terrorism coverage for certified and noncertified accounts; a global network of property engineering and loss control consultants; and a global network of products and services to provide comprehensive property coverage.

First-party cyber risk coverage and crime and fidelity coverage are

offered on a standalone basis.

For more information, contact Pete Detmering, vp, corporate risk property, at 215-640-2006 or [peter.detmering@ace-ina.com](mailto:peter.detmering@ace-ina.com).

### Aspen publishes guide to Labor Department audits

**NEW YORK**—Aspen Publishers has issued a guide for people involved with a private employee benefit plan subject to audit by the Employee Benefits Security Administration of the Department of Labor.

Written by three former Labor Department auditors, the "Insider's Guide to DOL Audits" provides practical advice and guidance on managing an audit. New York-based Aspen Publishers, part of the Wolters Kluwer Law & Business group, is an information provider for legal and business professionals and law students.

The publication advises how to deal with EBSA investigators before, during and after an audit; how to avoid and/or remedy prohibited transactions and remedy them when they are found; and how to avoid 502(l) penalties.

The authors also provide case studies and examples from their own experience representing the government and clients during DOL audits.

For more information or to purchase the one-volume loose-leaf guide, call 800-638-8437 or visit [www.aspenpublishers.com](http://www.aspenpublishers.com). The price is \$249. Any new edition or supplement issued within three months of purchase of the main edition will be sent free of charge.

### ABD offers online surety bond system

**REDWOOD CITY, Calif.**—ABD Insur-

ance & Financial Services, a provider of global risk management and employee benefits services, is offering an online bond service called the E-efficient Surety Bond system. Developed in collaboration with Safeco Surety, ABD's online platform allows individuals and companies to acquire certain classifications of surety bonds directly from Safeco, pay for them securely online with a credit card and instantly receive the official bond document via e-mail.

Once approved by Safeco, the E-efficient System will instantly underwrite and issue bonds, following completion of a short online questionnaire. The system provides access to several frequently requested miscellaneous surety bonds (in most states) including: notary public bonds, with or without errors and omissions coverage; contractor license bonds; various right of way and street encroachment permit bonds; public official bonds; and vehicle ownership/lost title/defective title bonds.

The available surety bonds can be purchased online via ABD's CyberSure Web site at [www.cybersure.com/cybersure/forms/affinity/default.htm](http://www.cybersure.com/cybersure/forms/affinity/default.htm).

For more information on ABD's bond service, call Kathleen Mitchell, director of surety services, at 206-892-9200.

*To Submit Items: Business Insurance wants to report on new risk management and employee benefit products and services. Please send news of your company's offerings to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; e-mail: [jwalker@businessinsurance.com](mailto:jwalker@businessinsurance.com).*

## 10 INDUSTRY PRINCIPLES

*New York Insurance Department's proposed principles for insurance industry licensees:*

- Conduct business lawfully with integrity, skill and diligence.
- Take reasonable care to control its affairs effectively and with adequate risk management.
- Maintain adequate financial resources.
- Observe proper standards of market conduct.
- Treat clients fairly.
- Communicate information to clients clearly and fairly.
- Manage all conflicts of interest, both with clients and between clients, fairly.
- Ensure the suitability of its advice to others that are entitled to rely on such advice.
- Protect client assets for which the licensee is responsible.
- Disclose appropriate information and interact cooperatively with regulators.

S&P in New York, described the effort as "a very interesting proposal" that is similar to the rating agencies' use of "holistic risk management" in rating insurers.

Also supporting the concept were regulators from other jurisdictions, including the District of Columbia, Florida, Illinois, Michigan and Pennsylvania.

But some industry representatives also expressed concerns.

"I think we have a lot of questions about it and some concerns," said Paul T. Tetrault, NAGIC's Beverly, Mass.-based regional state affairs manager.

"Does it add another layer of regulation?" he asked, noting that the new approach won't meet its objectives if some rules are not eliminated.

In addition, the last principle, which requires licensees to provide "any information...of which the superintendent would reasonably

# Portugal: Creates pool for catastrophe risks

CONTINUED FROM PREVIOUS PAGE

but is ill-prepared to deal with such a catastrophe, experts say.

APS estimates that less than 10% of the country's buildings have insurance against earthquakes. And the market has followed the international trend of being less receptive to catastrophic risks after the 2001 terrorist attacks in the United States, reducing the subscription of new earthquake policies in the past few years, according to Mário Lopes, an academic at Lisbon-based university Universidade Tecnica de Lisboa and the secretary of the Por-

tuguese Society of Earthquake Engineering.

The problem is compounded by the fact that, according to Mr. Lopes, many of the country's buildings are ill-protected against earthquake risk.

"We have moved forward lately in the scientific and regulatory side of earthquake prevention. The construction of big projects like bridges and tunnels uses the best practices and technologies," he said. "But the supervision of the application to construction requirements in new residential and office buildings remains very poor. The government

is acting in some fronts, but it is not doing everything it could do."

Mr. Lopes pointed out that the subject of earthquakes is not a very pressing one in the country because Portugal is not hit very often.

"Historical statistics show that we are hit by a big earthquake every two or three centuries. In Japan, where prevention is very advanced, the frequency is one every 70 years, more or less, so there is much more political urgency on dealing with the matter."

The project to create a cat pool in Portugal was first floated by APS in 2003.

# EXTREMUS: Germany extends backstop

CONTINUED FROM P PREVIOUS PAGE

respect," the spokesman said.

Leo Zagel, chief executive of Cologne-based EXTREMUS, said he believes the support of the insurance industry and insurance buyers were important in getting the backstop extended for another two years.

He said he also believes the German government was influenced by efforts in the United States to extend the federal backstop for ter-

rorism coverage.

Meanwhile, discussions on a reduced government role in Germany will likely start in the second half of 2008, Mr. Zagel said.

"Right now, we are happy that we have two years and then later on we will discuss the future," he said.

"We think it's the right decision," said Günter Schlicht, managing director of the Deutscher Versicherungs-Schutzverband e.V., the German commercial insurance buyers association in Bonn. The DVS

was among the groups that lobbied the government to extend the guarantee.

"We have been somewhat irritated that it took so long to make the decision," Mr. Schlicht said. "By now—the beginning of November—it would have been difficult to imagine that they would withdraw (the guarantee) by Dec. 31...I should have been very difficult to say 'no' at this stage, when companies have seven weeks left to arrange for their cover."

# Retail: Employers embracing concept

CONTINUED FROM PAGE 1

treat minor illnesses such as sore throats, pink eye, sinus and bladder infections, and coughs. Blood sugar screenings and influenza vaccinations generally are offered as well.

"They've had very rapid growth," said Bruce Kelley, a senior consultant in Minneapolis with Arlington, Va.-based Watson Wyatt Worldwide. "I do think (the model) fits in with the lifestyle of people for these common types of visits."

The convenience factor, transparent prices and cost savings attached to the clinics are the factors making them so popular. Because the clinics are typically in the same building as a merchandiser with a pharmacy on site, visitors can squeeze in a visit and fill a prescription all in the same trip. Many of the clinics are open seven days a week with extended operating hours on weekdays.

Prices for services are posted at the clinic and run about \$50 for a typical office visit and \$60 for a more complex visit, such as one requiring tests for strep throat, Mr. Kelley said. Prices at clinics are between 30% and 50% cheaper than those at physicians' offices for 10% to 15% of the visits, Mr. Jacobs said.

Time savings are another value retail health clinics have to offer. Mr. Jacobs said patients can usually get in and out of a retail clinic in under an hour. Mr. Kelley said Watson Wyatt estimates employees spend three to

four hours less of work time using retail health clinics than they would if visiting a physician's office.

These cost and time savings have caught the attention of employers, and many companies are amending their health care plans to cover visits to retail health clinics. For example, Towson, Md.-based Black & Decker Corp. has covered its employees' visits to retail health clinics since 2004.

Ray Brusca, vp of benefits for Black & Decker, said the company now saves between \$20 and \$30 on such visits. He couldn't quantify how many employees use the clinics annually, but he said employees like having the option.

"It saves a little bit of money, but it can save a lot of lost time from work," Mr. Brusca said. "It's another service vehicle for the employees. I like providing alternatives."

Black & Decker doesn't just offer coverage for convenient care clinic visits, it promotes the clinics in hopes of maximizing their use.

Beyond communicating the availability of care at the clinics to employees by e-mail and newsletters, the company offers a discounted co-pay of \$15 for visits to retail health clinics, as opposed to a \$25 co-pay for visits to a physician's office.

Insurers, too, are taking note of the demand. The largest national health plans cover convenient care clinics. Aetna Inc., Humana Inc., UnitedHealth Group Inc. and CIGNA HealthCare, among others, have

reimbursement agreements in place with one or more of the major retail clinic operators.

Mr. Jacobs said insurers like the idea of the clinics because it gives them additional clout or leverage when it comes to negotiating rates with the physician provider network.

UnitedHealth has contracts with nine convenient care companies nationwide, said a spokeswoman for the company. She said all policy holders have access to the clinics.

Convenient care clinics "offer easy access to a spectrum of services at affordable prices," she said. "We want to give clients the ability to use that option."

Still, plenty of employers are holding back from encouraging utilization. Dr. Arnold Milstein, San Francisco-based chief physician at Mercer Health & Benefits, said more large employers than small employers are covering visits and encouraging employees to use the clinics.

"It's not a land rush yet," he said. "Big employers have the stats to be proactive and pioneer in the industry. We're at the very beginning of the innovation adoption curve."

Mr. Kelley said self-insured employers who offer preferred provider organization plans are the most likely to provide coverage for convenient care clinic visits. Dr. Milstein said within the next six to 24 months it will be more evident whether convenient care clinics are as cost effective and popular among consumers as



GETTY IMAGES

Some companies are amending health plans to provide coverage at retail health clinics.

perceived, and then adoption or rejection will follow.

Mr. Kelley said some of the hesitation surrounding retail clinics relates to their perceived fragmented care and that patients' primary physicians will be out of the loop when it comes to patient history and their overall health.

Mr. Jacobs said there is concern information about a patient's health won't get back his or her primary physician.

"People have raised the concern that there might be more fragmented care in the clinics," Mr. Kelley said. "It's hard to say definitively if that is true."

Paul Marchetti, head of national networks and contracting for Aetna in Hartford, Conn., said retail health clinics are in no way supposed to

replace a patient's relationship with his or her primary physician.

"We don't review it as a replacement for primary care," Mr. Marchetti said. "We see this as an alternative access point within the delivery system. People sometimes need to be able to access health care in a convenient way that fits their schedule."

Mr. Jacobs said despite potential drawbacks, the convenience and cost effectiveness of retail health clinics will ultimately drive their expansion.

"We see it as a growth area," Mr. Jacobs said. "Health care is moving more into a retail environment. We see it as a way to help address a lot of the more common health care needs that are lower in intensity. I think it's a good step and probably a good thing overall."

# Onsite medical clinics a possible cure for high cost of health care

By KRISTIN GUNDERSON HUNT

**CHICAGO**—Employers are starting to take note of the advantages of having onsite medical clinics at their company offices, experts say.

"These have been a huge hit and success, and they are exceeding expectations," said Juliet Vestal, a principal consultant with power company Sierra Pacific Resources based in Las Vegas. Sierra Pacific has budgeted to begin opening two onsite clinics staffed by physicians at its offices in Las Vegas and Reno, Nev., in 2008.

While Sierra Power has yet to open an onsite clinic, Ms. Vestal said she saw positive results during her experience implementing five onsite clinics in her former position as director of health care management

for Memphis, Tenn.-based Harrah's Entertainment Inc. She said she saw savings on average of \$1 million per clinic.

Ms. Vestal was among several panelists speaking about onsite medical clinics at the 2007 Self-Insurance Institute of America Inc. national education conference and exposition held Oct. 29 to Nov. 1 in Chicago.

In 2006, 29% of a random sampling of employers responding to a National Business Group on Health and Watson Wyatt Worldwide survey indicated they had onsite clinics. About 600 companies with 1,000 to more than 10,000 employees responded to the survey.

Not all companies hosting medical clinics onsite are large, though. While Sierra Pacific insures 3,300

active employees and 1,900 retirees, Employee Benefit Management Services Inc. in Billings, Mont., insures 190 employees through its benefit plan. It opened an onsite miCare medical clinic in 2006.

However, Ms. Vestal said greater cost savings—a major reason companies decide to have onsite clinics—are more likely at larger companies. She said the busier an onsite clinic is, the more savings a company will experience in its medical plan.

She said companies save money because the operating costs of running a clinic are static, whereas the costs of incurring separate claims vary and often run higher. In general, a company might save between 4% and 5% each year, she said.

Employee Benefit Management Services opened its miCare clinic after noticing a significant increase in expenses for its employees' health care claims, said Judi Kimmell, vp of claims administration, for the company. She said EBMS wanted to avoid shifting more health care costs on to its employees.

Since opening the clinic, she said the company has seen savings, although not immediately. The clinic showed a loss of \$40,000 during its first 12 months, but the company projects a \$373,000 savings over the first three years.

An increase in use has helped the viability of the clinic, Ms. Kimmell said. Initially, few employees used the clinic. Now, 88% of employees have used the clinic. She said a company needs to invest in onsite clinics

long term.

"This is a leap of faith," Ms. Kimmell said. "You have to believe in the concept."

Panelists said the preventative care element at onsite clinics also encourages savings. The staff at the miCare clinic reaches out to the employees with the highest health risks, which could reduce or eliminate future problems, Ms. Kimmell said.

Identifying dangerous health issues early on can prevent more expensive health treatments like hospital stays or trips to the emergency room at a later date, Ms. Vestal said.

"It's always going to be cheaper at the beginning states of a disease or chronic condition," Ms. Vestal said. "We'd rather spend the money up front. Preventative care and early identification will always save you money in the long run."

Savings aside, Ms. Vestal said, employee retention and recruitment, positive public relations and access to care for employees are the other reasons companies implement onsite clinics. "It's a great employee relations piece," she said. "It's a good offering to have if you make it convenient, and it's cost effective."

EBMS' miCare clinic promotes convenience by being on the first floor of the building and appointments can be scheduled online or via the telephone, Ms. Kimmell said.

The clinic offers a customer support telephone line and an online medical management and tracking

system where a patient can view all of his or her past and current lab results.

The miCare clinic offers services such as routine medical care; physical exams; preventative screenings; health education, consultation and wellness programs; basic adolescent and child care, including back to school and sports physicals; chronic disease management; prescriptions and lab testing.

Ms. Vestal said deciding to offer an onsite medical clinic can not be taken lightly. The clinics can cost as much as \$1 million to build, not taking into account the cost of land.

She said companies should take several factors into account when determining whether to set up an onsite clinic and selecting a vendor to help implement it.

The type of clinic is one important consideration, she said. Clinic models range from "Band-Aid and aspirin stations" to primary care health centers to clinics with lab, x-ray and occupational health capabilities. Ms. Vestal said primary care clinics, which are much the same as a physician's office, are where companies can make the biggest impact on health care savings.

"We want to send the message to our employees that 'We care about you, and we want you to have good, quality health care.' We would never limit their choices," Ms. Vestal said. "This is about providing choice."

But ultimately, it's also about the bottom line, she said. "This is a good investment of resources."

## 1,600 attend SIIA conference

**CHICAGO**—The Self Insurance Institute of America Inc. hosted its 27th annual national educational conference and exposition for nearly 1,600 attendees Oct. 29-Nov. 1 in Chicago.

The participants had their choice of attending 60 educational sessions and interacting with 148 exhibitors. Educational sessions covered a variety of topics including onsite medical clinics, corporate governance

issues for risk retention groups, using captives internationally and funding trans-border risks, and preparing self-insured property programs for efficient claims adjusting.

SIIA's 2008 conference is scheduled for Oct. 5-8 at the JW Marriott Desert Ridge resort in Phoenix. For more information, call 800-851-7789 or visit [www.siiia.org](http://www.siiia.org).

—By Kristin Gunderson Hunt

# MMC's earnings fall short of mark, CEO comes under fire

By SALLY ROBERTS

**NEW YORK**—Marsh & McLennan Cos. Inc. chief Michael G. Cherkasky came under fire last week after the company reported far worse than expected financial results.

After taking some blame for what he described as “disappointing” and “unsatisfactory” third quarter results within MMC’s brokerage unit, Mr. Cherkasky, president and chief executive officer of MMC, during a conference call with analysts was asked why he thinks the board has not asked him to step down.

“My role as CEO is to look at the business and put the right leaders in place and then try to help them perform and be successful,” he responded.

“I got it wrong. I didn’t help in the critical areas of Marsh in the U.S. and U.K. to get that right. I believe that we can get that right, and I think that there is enormous upside for this company. The value creation when we get Marsh right in the U.S. and U.K. is tremendous. I think that’s what our board understands and I understand.”

Overall, MMC reported a 10.3% rise in total revenues to \$2.80 billion for the third quarter. Expenses, however, rose 13.6% to \$2.6 billion, leading to a 20.5% drop in operating income to \$194.0 million.

Marsh Inc. reported a 3.0% rise in revenues to \$1.0 billion in the quarter, although underlying revenues, which exclude acquisitions, dives-

tures and currency rate fluctuations, were down 1%, MMC said.

Operating margin in the risk and insurance services segment, which includes Marsh, reinsurance broker Guy Carpenter & Co. L.L.C. and the high-margin Risk Capital Holdings private equity investment unit, was 4.9% in the quarter, compared with 11.3% in the same quarter of 2006.

Overall, the results were substantially lower than expected, several analysts said.

In specifically addressing Marsh’s results, Mr. Cherkasky said during the call that client retention levels were down in the quarter, while expenses, including costs associated with the departure of former CEO Brian Storms and with necessary increases in employee bonuses, were up “substantially.”

Moreover, though, he said that costly initiatives launched in 2007 had backfired. Those plans, he said, were implemented by Mr. Storms, who was ousted in September (*BI*, Sept. 24). They included investments in technology, a significant marketing campaign, a comprehensive reorganization of management and offices, and leadership changes.

“In hindsight, those initiatives were too many too soon for a still fragile organization,” he said. Instead of improving performance, they proved to be a “significant disruption in the workforce” and resulted in a loss of confidence in Mr. Storms’ direction and leadership, he said.

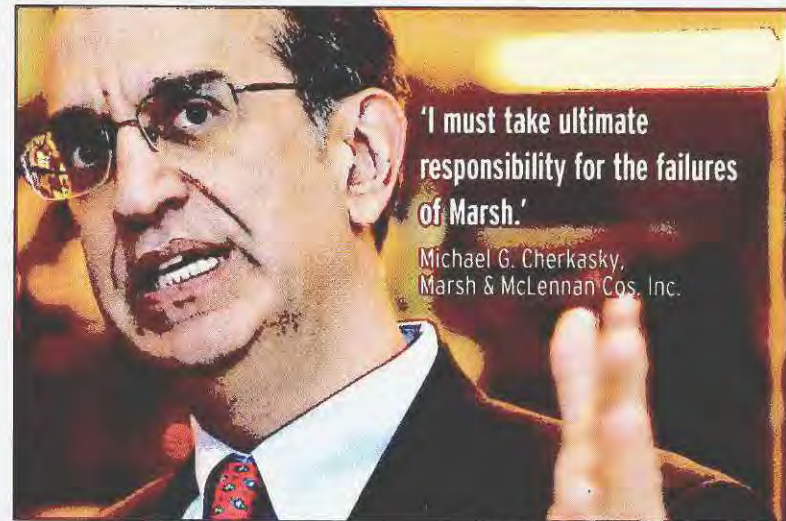
“I determined that Brian needed to be removed,” Mr. Cherkasky continued. However, “I must take ultimate responsibility for the failures of Marsh. I appointed Brian, I supported him and I assessed the initiatives,” he said.

Mr. Cherkasky said that the brokerage is working toward restoring profitability with plans to simplify how it operates and reduce costs, among other efforts.

One of those efforts is a new compensation plan Marsh has introduced into the U.S. middle and small commercial market that calls for it to be paid “enhanced commissions” by insurers on top of standard commissions (see related story). That business generates roughly \$450 million to \$500 million in annual revenues for Marsh.

Marsh analysts say they are not optimistic about the turnaround plans, and some assert the company would be better changing its leadership, which has already undergone several changes since the bid rigging and client steering scandal erupted in 2004.

The steps “mostly appear to be focused on erasing apparently misguided decisions made over the past year,” analysts at Goldman Sachs Group Inc. in New York said in a report. “Thus we find little to get excited about, as reversing the investments made over the past year would in theory bring Marsh’s business model back to 2006—maybe not the worst of times, but most certainly not the best.”



**‘I must take ultimate responsibility for the failures of Marsh.’**

Michael G. Cherkasky,  
Marsh & McLennan Cos. Inc.

DANIEL ACKER/BLOOMBERG NEWS/LANDOV

In a report, Bear Stearns’ analyst David Small called the moves “more like Band-Aids than long-term solutions.”

He noted, however, some of the plans, such as reducing its IT initiatives and cutting advertising—which should have an immediate \$35 million savings alone—make sense and should have an impact in the next few quarters. “However, it seems that much of these savings will not hit the income statement, as the company increases its bonus accrual to keep key personnel during this difficult period.”

“We believe Marsh needs a leader with a long-term vision who is willing to make some tough decisions to improve efficiently throughout the organization,” Mr. Small wrote.

“People had very low expecta-

tions for the quarter...but the results were even beyond what we could comprehend,” said Keith F. Walsh, an analyst with Citigroup Research in New York, specifically noting the margin shortfall in the risk and insurance services segment for the quarter.

Unlike its competitors that were cutting expenses faster than rates were falling in the marketplace, Marsh was spending money on various initiatives, Mr. Walsh said. “That’s just to me a pure management issue.”

“I think Mike Cherkasky did a great job in October ’04 in brokering a settlement with (then-New York Attorney General Eliot Spitzer), but he’s not the right person to lead that organization on a go-forward basis,” Mr. Walsh said.

## Commissions: Higher compensation to be paid by insurers in U.S.

CONTINUED FROM PAGE 1

everyone else is,” he said, referring to Marsh, Aon Corp., Willis Group Holdings Ltd., and Arthur J. Gallagher & Co., which ceased collecting millions of dollars in contingent commissions as part of regulatory settlements.

“The long and short of it is, Marsh deserves to get paid as much as everyone else in the marketplace,” he said.

Marsh executives say the enhanced commissions are an acceptable form of compensation under its 2005 settlement with then-New York Attorney General Eliot Spitzer, who alleged the brokerage rigged bids and steered clients to insurers paying the highest contingent commissions. Under that agreement, Marsh agreed to accept only a specific fee to be paid by the client or a specific percent commission on premium to be paid by insurers in connection with its insurance brokerage business.

Under an amendment reached in August, Marsh is allowed to accept a specific fee for services from insurers on brokerage transactions (*BI*, Aug. 13).

Mr. Moyles said the enhanced commissions are “separate and distinct” from the service fees, which will be applied to its larger fee-based business and have not yet been implemented.

He noted that Marsh won’t apply the enhanced commissions to its larger fee-based accounts.

“We do not intend in any way shape or form to have a confusion between commissions and fees in this type of compensation arrangement,” he said.

Two insurers have agreed in principle with the new compensation arrangement, and Marsh said it expects to begin collecting the new commissions in early 2008. It’s too early, however, to predict the potential revenue impact, Marsh executives noted.

And while the brokerage would like the fixed enhanced commissions to be the same for all of its middle market and small commercial insurers, Mr. Moyles said that buyers should not have any steering concerns should they ultimately vary.

“Commissions that already exist are variable anyway, and they are fully disclosed,” Mr. Moyles said. “Everything we do even before we go to market is agreed to with the client,” he said.

The Risk & Insurance Management Society Inc. last week gave its approval to Marsh’s move.

“Transparency and client disclosure are the cornerstones of RIMS’ position on broker compensation.

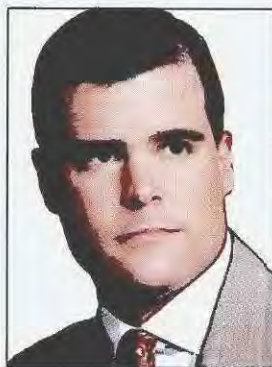
Marsh’s announcement that it will accept enhanced commissions on midsize and small commercial accounts in the United States describes a program that is in accord with RIMS position.”

Timothy J. Cunningham, a principal with agency consulting firm OPTIS Partners L.L.C. in Chicago,

costs of the new enhanced commissions to their premiums, he said. “I don’t think there is a direct cause and effect, given the soft market, and I don’t believe insurers directly decreased premiums for Marsh clients because they were not paying contingent commissions on that business.”

broker and the placing—in the aggregate—of profitable business and a certain volume of business, he said.

“At the end of the day, if that’s not achieved, the carrier is going to cancel the contract. To the extent the business is profitable...there is room in that trading relationship to



**‘We do not intend in any way shape or form to have a confusion between commissions and fees in this type of compensation arrangement.’**

Philip Moyles, Marsh Inc.



**‘It’s a silly little dance we’re in of trying to avoid the word ‘contingent’ coming out of our mouths, so we try to find other words for it.’**

John Wicher,  
John Wicher & Associates

said that given the soft pricing environment and Marsh’s relative position in the middle market, the brokerage will most likely “have some success in making this happen.”

Regarding potential steering concerns, Mr. Cunningham noted that beyond promoting transparency, Marsh likely would “follow protocol to not violate both the spirit and letter of the AG agreement, particularly given their financial results.”

Buyers also should not expect underwriters to pass on the extra

According to John Wicher, of insurance investment banking firm John Wicher & Associates in San Francisco, whether Marsh will be successful in negotiating extra commissions will really depend on the type of business placed.

“It’s a silly little dance we’re in of trying to avoid the word ‘contingent’ coming out of our mouths, so we try to find other words for it,” he said. Compensation ultimately revolves around the trading relationship between the insurer and

afford additional commissions,” he said.

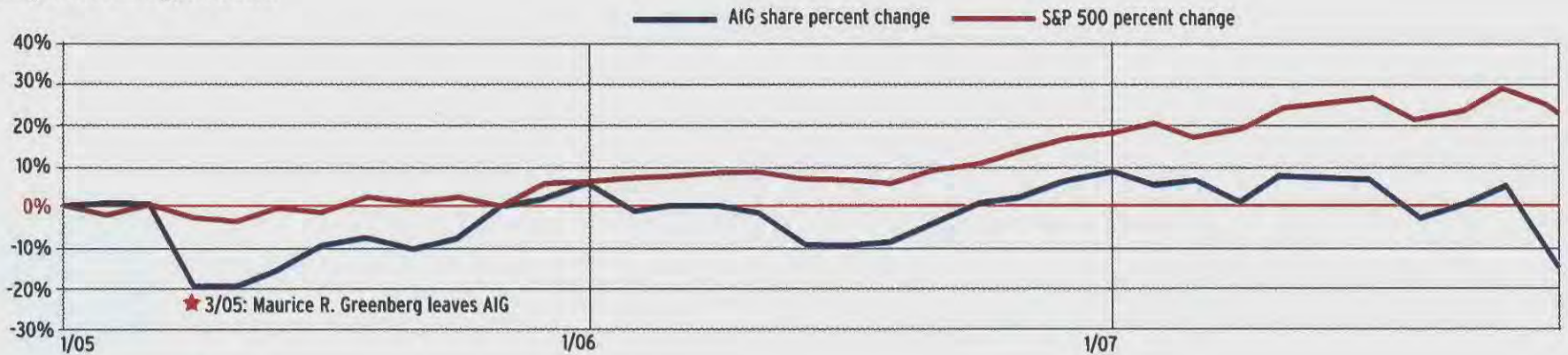
Whether other brokers that have given up contingent commissions will follow Marsh’s lead remains to be seen.

Chicago-based Aon declined to comment, while executives of Itasca, Ill.-based Gallagher could not be immediately reached.

A London-based spokeswoman for Willis was unavailable to comment specifically on the new enhanced commissions.

**AIG SHARES VS. S&P 500 INDEX**

Percentage change in value starting from 1/3/2005



Source: Financial Content

# AIG: Former CEO makes offer to discuss insurer's performance

CONTINUED FROM PAGE 1

others "anticipate holding discussions with stockholders and third parties that may address a number of issues, including without limitation, their respective views on (AIG's) business and prospects, the suggested disposition of certain of its operations, investment opportunities and concerns over the direction of (AIG) generally and other opportunities to improve or realize on the value of their investment."

The filing, which includes several organizations associated with Mr. Greenberg, among them C.V. Starr & Co., which he now heads, said he and others "reserve the right to change their plan and intentions, including the right to increase or decrease their investment in (AIG)."

Mr. Greenberg's filing could at least in part reflect animosity toward AIG, observers say, though they disagree on whether he can rally other stockholders to his cause (see related story).

Asked in an interview about the filing, Mr. Greenberg said he was concerned "as any other shareholder would be" about the recent drop in AIG's stock price. He declined to

comment on what changes he believes are needed at AIG or what options, among those described in the filing, he might pursue.

AIG responded in a statement that the company "has made tremendous progress over the past two-and-a-half years and has established a strong culture of good cor-

**The filing is a 'formal way of pushing to make some real change, and I think it's an interesting move.'**

Mark Lane, William Blair & Co.

porate governance. The company is pursuing the right strategies, and the board and management are united in their commitment to building shareholder value."

Observers pointed out, though, before last week's earnings release, that the stock had not been doing well.

Mark Lane, an analyst with

William Blair & Co. in Chicago, said, "AIG's management team has done a great job of stabilizing the company after a very difficult period," but "has not really taken the sort of aggressive action the market has wanted, so I can understand how shareholders could be upset at a lack of activity and lack of a sense of urgency by the current management."

The filing is a "formal way of pushing to make some real change, and I think it's an interesting move," he said.

Mr. Greenberg may have some specific ideas as to changes he would like to see, but observers say they do not know what those might be.

John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said the SEC filing "was written in a very open-ended fashion, so we're not able to determine exactly what he thinks, nor what his intentions are. My view is that he just wants to make his presence felt at the company and he might be satisfied going down a number of paths."

Mr. Ward said he does not believe, though, that Mr. Greenberg's filing is an attempt to put AIG into "play" as an acquisition target. "I doubt that's his objective because given the size of AIG, I just don't think that's a viable outcome," said Mr. Ward. AIG has a market capitalization of about \$140 billion.

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said Mr. Greenberg "might feel that Starr should have some representation on the board, or maybe he does have some insight on certain assets of the company that should be sold—maybe something they could buy—and as a major shareholder he wants to see AIG take advantage of those types of investments."

Robert G. Heim, an attorney with Meyers & Heim L.L.P. in New York and a former SEC New York regional director, said, "People have speculated he may be looking at a spinoff of business units or possibly influence the board of directors who forced him out in 2005."

Independent insurance consultant Myron M. Picoult said, "Hank is not the kind of person who just

does something for the fun of it. There's normally some reason, there is some modus operandi, behind what he's up to," although "I don't know what it is."

He added, "I think you have to realize there is clearly no love lost" between the AIG leadership and Mr. Greenberg at this point. "He feels he was done wrong and then some, and this may be a prelude to trying to get a material shift not only on the board, but also within the management team," Mr. Picoult said.

"It does speak to the friction between the parties, that's clear," said Joyce Sharaf, assistant vp and managing senior financial at Old- wick, N.J.-based A.M. Best Co.

In June, Mr. Greenberg sued 16 current and former AIG directors and officers after AIG filed a \$1 billion lawsuit against him. Shortly afterwards, C.V. Starr sued AIG seeking to potentially recover profits AIG realized through its previous business relationship with C.V. Starr managing general agency units.

Douglas McLeod contributed to this story.

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## Observers have mixed opinions on whether Greenberg will be able to get backing from other AIG shareholders

Will former American International Group Inc. Chairman Maurice R. Greenberg win support from other AIG shareholders for possible changes at the company?

Observers have mixed opinions. In his Nov. 2 filing with the Securities and Exchange Commission, Mr. Greenberg called for discussions with stockholders and third parties concerning the insurer's "performance and strategic direction."

Robert G. Heim, an attorney with Meyers & Heim L.L.P. in New York who is a former SEC New York regional director, said, "I think Mr. Greenberg has a very successful track record," and as the insurer's largest single shareholder, "he's going to be able to exert some influence on the future direction of the company."

"Whether Mr. Greenberg is going to be able to come in and take over AIG, or force very dramatic changes, is open to question, but certainly he'll have a seat at the table," said Mr. Heim.

Mark Lane, an analyst with William Blair & Co. in Chicago, said, "I think a lot of shareholders would support a move for change."

Cliff Gallant, an analyst with Keefe, Bruyette & Woods Inc. in New York, said, "He's a big enough shareholder and certainly very knowledgeable about the company so it'll be hard for them to ignore him."

"He's not someone to be taken lightly," said John Wicher, principal at John Wicher & Associates in San Francisco.

Independent insurance consultant Myron M. Picoult said, "I don't think he would have embarked on this if he didn't feel he had a wedge, he had some leverage." But, he added, "When you have something like this, nobody ends up winning in any way, shape or form."

Others, though, question how effective Mr. Greenberg will be in winning shareholder backing.

John Gwynn, managing director at Morgan Keegan & Co., a Memphis, Tenn.-based financial services firm, said the filing reflects the ill will between Mr. Greenberg and AIG's current president and chief executive officer, Martin J. Sullivan, and "I really doubt Greenberg is going to garner much shareholder support."

John L. Ward, CEO of Cincinnati-based Cincinnati Partners L.L.C., an advisory firm that specializes in the insurance industry, said Mr. Greenberg is likely to have some success in gaining other shareholders' support, "but not enough to impact the level of change he might like to see occur."

He added, "I think the adversarial situation and the accounting probes and the litigation that continues will be a challenge in his efforts to rally support among the shareholder base."

—By Judy Greenwald

# News In Brief

CONTINUED FROM PAGE 1

filed by the Securities and Exchange Commission that he helped arrange a sham finite reinsurance deal to smooth RenaissanceRe's earnings. Without admitting or denying the charges, Mr. Cash, a former senior vice president, agreed to pay a \$130,000 fine and be barred from serving as a director or officer of a public company for five years. In a complaint last year, the SEC charged that RenaissanceRe and three top officers, including Mr. Cash, created a pair of bogus transactions with Bermuda-based finite reinsurer InterOcean Reinsurance Co. Ltd., which is now in runoff. RenaissanceRe itself settled the charges earlier this year.

## House OKs backstop for state cat pools

The House of Representatives has approved a bill that would create a federal backstop for state catastrophe insurance pools. The Homeowners' Defense Act of 2007, which passed 258 to 155, would create a National Catastrophe Risk Consortium that would issue securities and other financial instruments linked to the catastrophe risk in the capital markets. It also would direct the secretary of the Treasury to carry out a national homeowners insurance stabilization program to make loans to state and regional reinsurance programs to ensure their solvency. Companion legislation was introduced in the Senate last week.

## Aon probing compliance with anti-bribery laws

Aon Corp. has hired an outside law firm to investigate its compliance with anti-bribery laws, the Chicago-based broker said in a filing last week with the Securities and Exchange Commission. In its 10-Q filing on third-quarter earnings, Aon said the action stemmed from industry regulator inquiries with certain U.S. and non-U.S. anti-bribery laws, including the U.S. Foreign Corrupt Practices Act. Aon is conducting an internal investigation with the law firm, whose name it did not disclose. The inquiries are not limited to Aon, a company spokesman said, who added that the company is taking the matter "very seriously."

## Wellness programs see interest grow

More employers are providing financial incentives designed to drive employee participation in wellness efforts, a survey shows. In fact, nearly half—49%—of large employers surveyed currently offer such incentives to encourage workers to monitor and improve their health, and as many as 70% are expected to do so by 2009, according to the 2007/2008 Staying@Work survey. A total of 255 large employers participated in the survey, which was conducted by benefit consultant Watson Wyatt Worldwide and the National Business Group on Health.

## Calif. Democrats revise health reform proposal

California Democrats unveiled a new health reform proposal that they believe meets the governor halfway by including both individual and employer mandates. However, the proposal still contains many of the core principles of Assembly Bill 8, the measure Gov. Arnold Schwarzenegger vetoed earlier this year. The new Democratic bill would establish an individual mandate for most California residents but exempt those who cannot afford insurance. It also would establish a sliding scale for employer contributions.

## Coalition formed to protect ERISA

The American Benefits Council has launched the National Coalition on Business in an effort to preserve and protect the standards of employee benefits. The NCB is a diverse group of companies and employer associations that will work to increase awareness of the Employee Retirement and Income Security Act of 1974 and its critical role in providing uniform benefits to workers nationwide, according to the benefits council. The NCB also will promote legislative initiatives to protect the elements of law surrounding ERISA.

## Noted

The commercial property/casualty market continued to soften in October, with rates falling an average 15% from those of a year earlier, MarketScout reported. Zurich Financial Services Group announced that former Convergium Holding Ltd. Chief Executive Inga Beale will join Zurich as head of organizational transformation management and mergers and acquisitions. Ms. Beale will succeed Franz Wipfli, who is retiring.

# Discrimination: Case hinges on timing of bias charge

CONTINUED FROM PAGE 3

ment stepped in on the side of the employees. In its brief, the EEOC played down the importance of its failure to follow up on Ms. Kennedy's filing.

"The fact that the EEOC failed to fulfill its notice and conciliation duties upon receiving respondent's charge does not transform that charge into something else, and it does not bar respondent's suit.... The ADEA's test establishes no such rule, and the background rule is that a private party's right to sue is generally not dependent on the government's faithful performance of its own duties."

**'If the court rules in favor of the employees, employers will be deprived of the opportunity to promptly correct any alleged violations of law.'**

Debra Friedman, Cozen O'Connor

The EEOC brief added that it "has failed to comply with its statutory duties, a district court may take steps to minimize any prejudice against the defendant" such as staying proceedings for "a period to provide an opportunity for conciliation" or other actions designed to level the playing field. "But when the agency regrettably drops the ball in handling a timely submitted charge, defendants are not entitled to a windfall in the form of the dismissal of a potentially meritorious age discrimination suit," according to the brief.

Attorneys who represent employers did not agree.

"I think it would be inappropriate to find that filling out an intake questionnaire constitutes a charge," said Philip M. Berkowitz, a partner at Nixon Peabody L.L.P. in New York. "It would be unfair to the employer and the employee."

"I think it's very clear that the intent of Congress was to give the EEOC and the employer opportunity to conciliate the matter prior to the employee being permitted to file a lawsuit," he said. "The

idea there is to encourage the employer and the employee to resolve the matter short of litigation. Permitting a plaintiff to commence an action without going through that conciliation process is simply contrary to the intent of Congress."

"If the court rules in favor of the employees, employers will be deprived of the opportunity to promptly correct any alleged violations of the law, and to informally resolve claims at an early stage," said Debra Friedman, a member of Cozen O'Connor in Philadelphia. She noted that "many" ADEA claims are resolved without litigation.

"I also think if the employees prevail, employers may be prejudiced in their ability to defend stale claims, especially if documents or witnesses are gone," she said. "Because somebody's filing the document with the EEOC and the EEOC doesn't advise the employer, as a result an employer is not on notice to preserve documents and to investigate any allegations of discrimination."

Ms. Friedman also said she believes a pro-employee ruling would have the potential to impact other employment claims, such as those filed under Title VII of the Civil Rights Act.

She was not alone in that assessment.

"Anytime where there's a requirement to go the EEOC first, this lenient standard would apply," said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc., which filed a brief backing FedEx.

"I think the exposure to employers would be enormous if the court goes the wrong way on this one," she said. "It would open up a whole range of potential cases. There wouldn't have to be anything except that someone has to fill out this questionnaire."

If the employer doesn't know of a problem, it cannot act to resolve the situation, said Kenya Wiley, manager of regulatory and judicial affairs for the Alexandria, Va.-based Society for Human Resource Management, which joined other groups in a brief supporting FedEx.

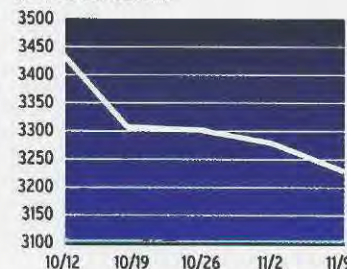
"If the employee and employer can work together early on, they can preserve the relationship between both parties," said Ms. Wiley.

## Stock Index

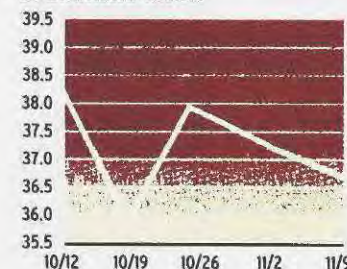
[ 11/2 - 11/9 ]

Up-to-the-minute data for all 82 companies that comprise the BI Stock Index can be found at [www.BusinessInsurance.com](http://www.BusinessInsurance.com).

### BI STOCK INDEX



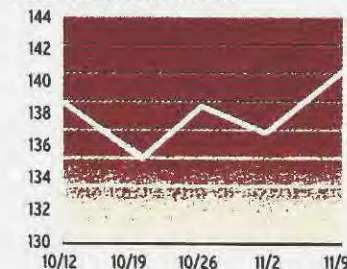
### BI BROKERS INDEX



### BI INSURER/REINSURERS INDEX



### BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

<b>BI STOCK INDEX</b>	3211.23	↓ -2.09%
<b>DOW JONES</b>	13042.74	↓ -4.06%
<b>S&amp;P 500</b>	1453.70	↓ -3.71%

### LARGEST GAINS

Ambac Financial Group	11.27%
Baldwin & Lyons Inc.	6.97%
UnitedHealth Group	5.58%
ProAssurance Corp.	5.26%
Tower Group Inc.	5.24%

### LARGEST LOSSES

NYMAGIC Inc.	-13.39%
Citigroup Inc.	-12.27%
Allmerica Financial Corp.	-10.75%
AXA	-8.57%
Ing Groep N.V.	-8.57%

Source: Financial Content Inc. <http://financialcontent.com>



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# Business Insurance

## END PAGE

Contributing: Jeff Casale,  
Mark A. Hofmann,  
Douglas McLeod

## Pizzeria owner's arson plan goes up in smoke

It seemed simple enough: burn down a business, collect the insurance money, pay off debts, and no one's the wiser.

But Sundeep Dharni wasn't wise enough and having a snitch for a friend didn't help either.

Mr. Dharni was sentenced to 15 years in prison last week after a jury in the U.S. District Court for the Eastern District of California in Sacramento found him guilty of conspiracy to commit arson and mail fraud.

Mr. Dharni enlisted his friend, Richard Duran, to burn down Pizza Pucks, a pizzeria Mr. Dharni prepared to open in North Natomas, Calif.

Mr. Duran went to Pizza Pucks in the early hours of Oct. 31, 2003—the day the restaurant was to open—and spread accelerant throughout the pizza parlor and ignited a fire on a pile of towels and aprons, according to court documents. Unfortunately for him and Mr. Dharni, the fire was started underneath a sprinkler, which activated and doused the flames before doing any major damage.

Two weeks later, court documents say Mr. Duran was pulled over by Sacramento police, who noticed that the van that he drove matched the one spotted on a surveillance tape from Pizza Pucks the night of the fire. Additionally, police found that the van was loaded with items that Mr. Dharni reported stolen from the restaurant, which were also part of a property claim he filed with Farmers Insurance Group.

In addition to being found guilty, Mr. Dharni was ordered to pay \$22,291 to Farmers Insurance, which was the amount he collected from the property claim.

Meanwhile, Mr. Duran, who cooperated with prosecutors, pleaded guilty to arson and was sentenced in January 2005 to five years in prison.



MIT is suing famed architect Frank Gehry citing flaws in his design of the institute's Strata Center.

## MIT claims architect has a crooked angle

An architecture critic wrote that it "embodies serious thinking...and at the same time shouts the joy of invention."

The shouting isn't all joyful these days.

MIT is suing renowned architect Frank O. Gehry and contractor Skanska USA Building Inc. for negligence, charging that the 720,000 square-foot building is plagued by cracks, leaks and drainage problems.

Housing research facilities, classrooms, an auditorium, a gym and dining areas, Stata Center is instantly recognizable, a Cubist cartoon of a building with sections of its façade seemingly crumpling, folding and collapsing into each other. The center cost \$300 million to build—Los Angeles-based Gehry Partners L.L.C. received a \$15 million fee—but MIT has since spent another \$1.5 million fixing cracking masonry at the center's amphitheater, according to the suit, filed in Suffolk County Superior Court in Boston.

In an interview with the New York Times, Mr. Gehry said that some problems are virtually inevitable with a building as complex as Stata Center, and that "MIT is after our insurance."

Representatives of Gehry Partners and Parsippany, N.J.-based Skanska USA Building could not be reached.

## Escorts told to hit on more than just clients

Being hit on by male clients is an occupational hazard faced by employees of escort services. But the owner of a Rochester, N.Y., escort service wanted his female associates to accept the hazards involved in doing a bit of hitting themselves. And that's got Thomas W. Boyde IV looking at five to 10 years in prison.

The hits Mr. Boyde had his employees carry out involved hitting cars in an effort to defraud insurers, according to the New York Insurance Department.

According to New York authorities, Mr. Boyde was arrested after investigators found that he had collect-



ed more than \$50,000 in insurance payments following 13 staged accidents. In some cases, Mr. Boyde himself created the accident by suddenly slamming on his brakes so that unsuspecting motorists would rear-end him.

But in other cases, he used his associates to ram into his car. In one case, the associate just happened to be his girlfriend, whose role was discovered by an insurance company after she'd driven a rental truck into Mr. Boyde's car.

Mr. Boyde entered a guilty plea on two counts of felony insurance fraud on Oct. 29, and is slated to be sentenced on Nov. 27 in Monroe County, N.Y., court. The disposition of charges against his girlfriend and two others are still pending.

## Fireman's Fund to grow business in 'green' houses

Keeping with the current movement of "going green," Fireman's Fund Insurance Cos. is offering a green alternative to its policyholders.

In response to the homeowners displaced by the wildfires that ravaged Southern California over the past two weeks, the Novato, Calif.-based insurer said it will rebuild California policyholders' damaged or destroyed homes "green" if desired.

The offer only applies to the insurer's Prestige Premier policyholders who upgrade their coverage to include green insurance.

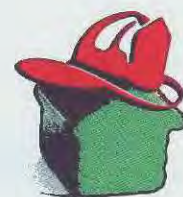
The rebuilt "green" homes will feature and meet up-to-date environmental safety and efficiency standards and landscaping using native trees, plants and shrubs.

The insurer adds that trees, shrubs and lawns can be replaced with fire-resistant landscaping.

By going green, Fireman's Fund will rebuild homes that will include Energy Star-rated appliances, lighting fixtures, heating/ventilating/air conditioning, low emission carpeting, and plumbing fixtures that feature water conservation.

Also, the homes will be built with forest stewardship certified wood for cabinets, ceilings, siding and framing.

Starting in 2008, Fireman's Fund said it will offer green coverage upgrades to homeowners in other states.



# WORKERS COMP COSTS: WHAT'S YOUR UPSIDE?



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