



\$1.53/HOUR

Lawyers for Florida workers comp claimant Marvin Castellanos were awarded just \$1.53 per hour for 107.2 hours of legal work.

WORKERS COMPENSATION

Cap on attorney fees ruled unconstitutional

Workers comp rate hike considered likely

BY STEPHANIE GOLDBERG

In ruling that Florida's mandatory cap on attorney fees is unconstitutional, the state Supreme Court has opened the door to higher claims costs, a workers compensation rate increase and additional litigation.

In *Marvin Castellanos v. Next Door Co. et al.*, the Florida Supreme Court ruled 5-2 in April that the state's law on attorney fees hinders an injured worker's ability to get legal representation.

The decision will significantly affect Florida's workers comp system costs, said Peter Burton, Philadelphia-based senior division executive of state relations at the National Council on Compensation Insurance Inc.

Lawyers for Mr. Castellanos, who suffered cuts on his head, neck and right shoulder during a 2009 altercation with a co-worker

See **FLORIDA** page 21

CATASTROPHES

SEVERE STORM LOSSES ALREADY IN THE BILLIONS

Large hail, high winds, heavy rain pound Texas



AP PHOTO

Severe storms hit parts of Texas, including Deweyville northeast of Houston, in April and May.

BY ROB LENIHAN

Severe storms and flooding have already resulted in more than \$3 billion in insured losses in the United States during the first four months of the year, with Texas hit multiple times during the period.

"The last 60 days alone have been quite costly for public and private insurers across the coun-

try, as the typical severe weather season has kicked into high gear," Steve Bowen, Chicago-based director and meteorologist at Aon Benfield, said in an email. "The state of Texas has been a particular target from large hail and flooding."

A series of severe storms hit portions of Texas in April and May, dropping hail as large as

See **STORMS** page 21

P/C INSURERS

Liberty Mutual weighs unbundling

Claims, underwriting split could cut costs

BY STEPHANIE GOLDBERG

With Liberty Mutual Insurance Co. exploring unbundling its insurance underwriting and claims services to gain new business, the insurer's policyholders may enjoy cost savings and greater flexibility while other large insurers face increased competition.

The option of unbundling would be particularly attractive for larger workers compensation buyers, experts say.

Liberty Mutual was the nation's seventh-largest workers comp insurer in 2015 with a 4.3% market share, according to the National Association of Insurance Commissioners, and was the largest prior to its recent diversification strategy. Its wholly owned Helmsman Management Services L.L.C., is the 10th largest third-party administrator, according to *Business Insurance's* most recent ranking. However, Liberty Mutual is the only large insurer that has not separated underwriting from claims handling, sources said.

For large risk management accounts with a "premium or loss projection of at least \$3 million — certainly \$5 million" — unbundling is "a fact of life," said Joseph C. Peiser, executive vice president and head of casualty broking at Willis Towers Watson P.L.C. in

See **UNBUNDLING** page 19



Q&A: TYPHAINE BEAUPERIN

CEO of FERMA discusses her goals and seeks high standard for European risk managers

PAGE 9

COMMENTARY

Liability is one of many issues raised by North Carolina's transgender bathroom law

PAGE 10

IN BRIEF

Treasury Department rejects multiemployer plan proposal to cut Teamster pensions

PAGE 7



WORKERS COMP REFORM UPDATE

Despite a constitutional challenge to Oklahoma's opt-out law and similar legislation being put on hold in other states, some experts are warming to the idea of responsible alternatives to state workers compensation systems.

PAGE 12

BUSINESS INSURANCE

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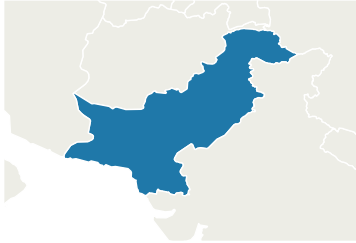
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CONTENTS

FEATURES

INTERNATIONAL



Profile: Pakistan

Pakistan has had trouble gaining solid economic footing because of limited foreign direct investment and low tax revenue.

8

PERSPECTIVES

Don't give up on CGL policies



Data breaches can leave targets casting about for insurance solutions. Richard DeNatale, Richard D. Milone

and Celia Jackson, with the law firm Jones Day L.P., discuss this development.

11

OFF BEAT



Cleveland girds for convention

Cleveland isn't taking a cavalier attitude toward its responsibilities as host of the 2016 Republican National Convention.

22

SECTIONS

INTERNATIONAL 8

PEOPLE 9

OPINIONS 10

PERSPECTIVES 11

MARKET PULSE 16

OFF BEAT 22

NEWS

EMPLOYMENT PRACTICES

EMPLOYERS URGED TO TREAD LIGHTLY ON OBESITY

Court ruling goes against updated ADA standard

BY JUDY GREENWALD

Despite an appeals court ruling that an obese job applicant is not necessarily entitled to protection under anti-discrimination laws, the legal landscape remains far from settled.

The issue is a pressing one for employers in light of statistics that indicate more than one-third of U.S. residents are considered obese, which the American Medical Association classified as a disease in 2013.

Observers say the 8th U.S. Circuit Court of Appeals' ruling in *Melvin A. Morriss III v. BNSF Railway Co.* is significant because it apparently is the first to say obesity is not necessarily a disability under the 2008 Americans with Disabilities Amendments Act.

Two other appeals courts — the 2nd Circuit in New York in 1997 and the 6th Circuit in Cincinnati in 2006 — ruled similarly to the 8th Circuit's April 5 decision, but that was before the 2008 law that broadened what is considered a disability under Americans with Disabilities Act enacted in the 1990s.

In its ruling in *Morriss*, a three-judge panel of the 8th Circuit in St. Louis ruled unanimously that the job applicant, whose obesity



apparently was not related to other conditions such as diabetes, was not protected from discrimination when the railroad withdrew a conditional job offer after Mr. Morriss' body mass index exceeded its standard.

"The employer is entitled,

according to this decision, to say, 'We don't want somebody here' because we're afraid at some point he might develop" a medical condition, said Robin E. Shea, a partner at defense law firm Constangy,

See **OBESITY** page 20

WORKERS COMPENSATION

Following the money on injuries?

Some ailments getting shifted to comp payers

BY DONNA MAHONEY

Doctors are classifying certain injuries as job-related more often in states that have higher workers compensation fee schedules, but reasons other than making more money are often at work.

The Cambridge, Massachusetts-based Workers Compensation Research Institute said in a mid-April report that when workers comp reimbursement rates increased 20% for physician office services, soft-tissue injuries that did not have a straightforward cause, such as a sore back, were classified as work-related 6% more often.

In states with higher fee schedules such as Illinois, where WCRI and other sources say group health pays \$1,000 for a knee arthroscopy while workers comp pays almost \$4,000, the study concluded that doctors may be classifying cases with a nebulous cause as work-related "to receive a higher reimbursement."

"It seems that financial incentives matter in the doctor's decision," said Olesya Fomenko, an economist at the Cambridge, Massachusetts-based WCRI and co-author of the report. "When the causation is not so clear for lower back pain and strains, where it can be work-related or not and it's up to the doctor to decide, we are seeing that the higher the fee schedule levels the higher the number of soft-tissue cases paid by workers compensation."

According to the WCRI, injuries with more obvious causes, such as broken bones or lacerations, did not show the same case-shifting from group health to comp.

Joe Paduda, principal of Madison, Connecticut-based Health Strategy Associates L.L.C., said he does not believe cases are being shifted



When workers comp reimbursement rates were increased 20% for physician office services, soft-tissue injuries that lacked a straightforward cause were classified as work-related 6% of the time.

See **FEE** page 20

40UNDER40 BROKER AWARDS

Don't miss the opportunity to nominate an outstanding young broker for the 2016 *Business Insurance* 40 Under 40 Broker Awards.

The nomination deadline is June 27.

This awards program, which is in its fourth year, recognizes retail commercial insurance brokers younger than 40 who work in four regions of the United States: Northeast, Midwest, South and West.

Nominations should highlight the broker's client service skills, leadership skills and market expertise. A panel of *Business Insurance* editors will review the nominations and select the regional honorees.

Anyone can nominate a broker — co-workers, managers, clients or insurance industry partners — but

each nomination must include client and management/co-worker references.

To be eligible, nominees must have worked in the brokerage industry for at least three years and must be under age 40 on Oct. 1, 2016.

The winners will be announced online in late summer and will be profiled in the Oct. 10 edition of *Business Insurance*. Award winners also will be recognized at regional events during the fall.

Nominations should be submitted online at www.businessinsurance.com/40under40, where an FAQ section is available. If you have further questions, contact Gavin Souter, editor of *Business Insurance*, at gsouter@businessinsurance.com.

CORRECTIONS

■ In "Cyber Exposures Top List of Emerging Risks" in the April 25 issue, Marsh L.L.C.'s Brian Elowe was misidentified. His correct title is U.S. client executive leader.

■ In "Manufacturers Feeling Aftershocks in Supply Chain" in the April 25 issue, the loss estimate from Risk Management Solutions Inc. was misstated. RMS said economic losses from earthquakes in Japan ranged from \$2.5 billion to \$3.5 billion.

ONLINE FEATURES

VIDEO

In Focus: Risk modeling trends

Experts discuss the latest developments in data analytics. www.BusinessInsurance.com/InFocus

GALLERY



World's costliest volcanoes

A look back at volcanic disasters that caused major losses. www.BusinessInsurance.com/CostliestVolcanoes

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A visual tour of recent big stories. www.BusinessInsurance.com/WeekInPictures

OPINION

Editorial cartoons



Cartoonist Roger Schillerstrom shares his sketches of the top

risk management and insurance news. www.BusinessInsurance.com/EditorialCartoon

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NEWS

RISK MANAGEMENT

EUROPEAN TERROR ATTACKS DRIVE UPTICK IN EVENT COVERAGE

Low rates raise interest in cancellation, liability policies

BY SARAH VEYSEY

The deadly terrorist attacks in Paris and Brussels have prompted some buyers to add event cancellation and related coverage to their terrorism insurance programs in addition to reassessing their security procedures.

“We have seen a definite uptick in both inquiries and orders related to terrorism coverage related to events,” said Averil Gray, a London-based director at Aon Risk Solutions, a unit of brokerage Aon P.L.C. “This interest has been primarily focused on Europe, but we are also seeing more orders out of the U.S.”

In Europe aside from buyers in France and Belgium, buyers in the Netherlands and Germany also are more interested in terrorism coverage, she said. And demand has increased for events cover in Turkey.

Since the terrorist attacks in Brussels in March and in Paris last November, buyers have shown more interest in event cancellation coverage, said Tim Davies, head of sabotage and terrorism at specialty insurer Sompno Canopus in London.

As well as transport hubs, the recent attacks included bombings and shootings at a concert at the Bataclan theater in Paris, where 89



AP PHOTO

Police secure a street in the Molenbeek neighborhood of Brussels during a terrorism-related manhunt in March.

people were killed, and a failed attack on a soccer match at France’s national stadium, the Stade de France in Paris, for example.

Cafes and restaurants also were targets.

Insurance buyers concerned about the risk of business interruption losses if a terrorist attack or political violence occurs have increased inquiries, Mr. Davies said. Relatively low rates for terrorism coverage have prompted many buyers to add liability and event cancellation, for example, to their coverage, he said.

Event cancellation cover is a

“trend that has been growing in recent years with uncertainty and unpredictability around weather patterns, political turmoil and, more recently, terrorism targeted at entertainment and sporting events,” Ms. Gray said.

After the January 2015 terrorist attack on the Paris offices of French satirical magazine Charlie Hebdo, “there was generally a nervousness in France and Europe-wide” about the terrorist threat, said Chris Rackliffe, focus group leader and underwriter of political risks and contingency at

See **TERRORISM** page 18

LEGISLATION

Flood cover bill makes progress in Congress

House slam dunk faces obstacles in Senate

BY MARK A. HOFMANN

Supporters of a greater private insurance presence in the flood insurance market may get closer to their goal — if the congressional calendar doesn’t run out.

That’s because the House of Representatives voted 419-0 in favor of the Flood Insurance Market Parity and Modernization Act in late April. The legislation clarifies that people who buy private flood insurance should receive the same treatment as those who purchase it through the National Flood Insurance Program if they’re trying to obtain federally backed mortgages that require flood insurance.

Although private insurers already provide flood insurance for commercial enterprises, insurers have shied away from underwriting homeowner and some smaller business accounts. Meanwhile, the NFIP has fallen more than \$20 billion into debt for losses dating back to Hurricane Katrina in 2005.



The bill enjoys the support of the insurance industry and outside groups. Although companion legislation had been introduced in the Senate, it hasn’t been the subject of a hearing, let alone a vote. With the legislative calendar shrinking and national elections looming, the measure could face long odds in the Senate.

Meanwhile, the NFIP itself is up for reauthorization next year, and some observers think the reform measure could hurt that effort.

But for now, supporters draw hope from the overwhelming support H.R. 2901 enjoyed in the House.

“I am optimistic, given the unanimity of the House vote,” said Jenn Fogel-Bublick, a partner in the Washington advocacy firm Capitol Counsel L.L.C., which represents SmarterSafer.org.

SmarterSafer includes insurers, environmental groups, free-market advocates and others that support reforming the NFIP.

“I think given the vote, we feel like we have a good shot of getting the Senate to consider it. I think any concerns with the bill hopeful-

See **NFIP** page 18

DISABILITY

Ruling opens debate on handling miscarriage

BY GLORIA GONZALEZ

An Ontario ruling that miscarriage is a disability may have consequences for all employers with workers in Canada.

As a result of the decision, employers’ absence management or performance target policies can be superseded by an employee’s right to accommodation.

In an interim decision in March, the Toronto-based Human Rights Tribunal of Ontario, which evaluates accusations of discrimination and harassment filed under the province’s Human Rights Code, found that a miscarriage constituted a disability entitled to anti-dis-

crimination protections under the code.

The adjudicator in *Mou v. MHPM Project Leaders* also ruled that injuries from a slip and fall the

“The case shows that the state of the law is always evolving.”

Evelyn Dormer, Fillion Wakely Thorup Angeletti L.L.P.

employee suffered that took almost three weeks to heal also constituted a disability.

The case has garnered widespread attention — and some

criticism — as it is thought to be the first case in Canada in which miscarriage itself was deemed to be a disability, although it does not automatically mean that every miscarriage constitutes a disability since such determinations would be made based on particular facts in individual cases, lawyers say.

“The case shows that the state of the law is always evolving,” said Evelyn Dormer, a Toronto-based associate with Fillion Wakely Thorup Angeletti L.L.P. “Disability is not a fixed term. There’s no set list of what the human rights tribunal

See **MISCARRIAGE** page 18

What's in your coffee?



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Ruling clarifies insurer claims under U.K. riot damages act

Profit, income losses resulting from civil unrest no longer covered

BY SARAH VEYSEY

Insurance buyers cannot rely on the United Kingdom's 130-year-old riot law to compensate them for consequential losses caused by civil unrest, according to a landmark U.K. Supreme Court ruling.

In addition, revisions to the Riot (Damages) Act 1886 that the U.K. Parliament is considering would further restrict buyers' and insurers' ability to tap police for compensation after a riot.

The April ruling by the U.K.'s highest court overturned a lower court ruling that allowed Sony Corp. subsidiary Sony DADC and its insurers to be compensated by the police for consequential losses, also known as indirect losses, for damage that a Sony-owned distribution center received during 2011 riots in London.

In *The Mayor's Office for Policing and Crime v. Mitsui Sumitomo Insurance Co. (Europe) Ltd. & others*, the high court ruled that consequential losses — such as loss of profit and rental income — that

£200
MILLION

Following a controversial police shooting in 2011, riots broke out across the United Kingdom and caused about £200 million (\$292.2 million) in property damage.

ing and *Crime v. Mitsui Sumitomo Insurance Co. (Europe) Ltd. & others*, the high court ruled that consequential losses — such as loss of profit and rental income — that



AP PHOTO

Sparked by a controversial police shooting, youths broke into the Sony distribution center in the London borough of Enfield, stole goods and started a fire that destroyed the warehouse, stock and equipment.

Sony and its customers suffered are not covered by the Riot Act, which covers only physical losses.

On Aug. 8, 2011, amid U.K. riots sparked by a controversial police shooting, youths broke into the Sony distribution center in the London borough of Enfield, stole goods and started a fire that destroyed the warehouse, stock and equipment.

It is estimated the riots caused about £200 million (\$292.2 million)

in property damage across the United Kingdom.

In May 2014, the Court of Appeal in London ruled that the insurers could recover about £50 million (\$73.1 million) from the police under the law.

Because of the 2014 ruling and the large number of claims received after the 2011 riots, the U.K. government commissioned an independent review of the law, resulting in the updated Riot Com-

ensation Bill being considered by Parliament.

The proposal clarifies what constitutes a riot and includes a £1 million (\$1.46 million) cap per claim that is limited to physical damage.

In its decision, the Supreme Court said it did not believe the 1886 law was intended to extend compensation beyond physical damage to consequential damages

See **CONSEQUENCE** page 20

BENEFITS MANAGEMENT

Innovative new coalitions encourage high-quality patient care at optimal value

BY SHELBY LIVINGSTON

CHICAGO — In a bid to ensure that health care is affordable and high-quality, key stakeholders are changing the way they do business.

“The ACA and advancement in technology have allowed all of the stakeholders within an entire health care delivery system to explore and try to understand better the issues, and flaws, and concerns with the existing health care delivery system and figure out ways to evolve and develop and shape new approaches to health care delivery,” said Dr. Bruce Sherman, medical director of population health management at Xerox HR Services in Cleveland.

Health care providers, insurers and employers are moving toward a system that delivers and pays for value, Mr. Sherman said.

Specifically, “there has been a broader focus on outcomes- and value-based contracting — innovative contracting models to try to more effectively align service delivery with payment,” he said last week during the Midwest Business Group on Health’s 36th

annual conference in Chicago.

For employers, such value-based strategies may include contracting with a health plan for services at a center of excellence; implementing high-value, narrow networks; or directly contracting with medical providers, centers of excellence or accountable care organizations.

According to a November survey by the National Business Group on Health and what was then Towers Watson & Co., 37% of employers contracted with a health plan for services at a center of excellence last year while another 25% plan to do so this year or next.

Eleven percent of employers surveyed implemented high-performance or narrow networks in 2015, but 8% more were planning to this year and 42% were considering it for 2017.

Employers can focus on value-based care by changing plan design, Dr. Sherman said.

Employers can make high-value services or screening and prevention essentially free, and focus on “cost-sharing on those services that are of questionable value,” John Rother, president and CEO of the Washington-based

National Coalition on Health Care, said during an interview. “You are trying to change behavior. It’s the recognition that some elements of health care are much higher value than others and that the benefit should recognize that.”

John Neuberger, director of client partnerships at Sussex, Wisconsin-based Quad Graphics Inc., said the printing firm that has 24,000 employees has implemented a value-based design for conditions that include diabetes, asthma and hypertension.

Patients that qualify and opt into the program get generic medications and supplies free, “which is a big deal for diabetics because that’s almost \$500 to \$600 a year,” he said during a panel discussion.

“We see minimum compliance improving, and the number of diabetics in the program continues to grow,” Mr. Neuberger said.

Additionally, Illinois-based health system Advocate Health Care and health insurer Aetna Inc. are moving toward a value-based system.

“We created an incentive model that rewards our physicians based on results and

their performance. Those results are tied to clinical outcomes,” said Bill Santulli, executive vice president and chief operating officer of Advocate Health Care.

“The incentives range from complying with our orthopedic implant standards to managing chronic diseases, such as making sure that diabetic populations are within the proper range managing their hemoglobin a1c,” he said.

Hartford, Connecticut based Aetna, which has more than 800 contracts for value-based reimbursement, aims to have 75% of its medical expenses “running through a value-based contract” by 2020, said Tammie Lindquist, vice president of accountable care solutions enablement services with Aetna. Forty percent of the insurer’s medical expenses are related to value-based contracts now, she said.

“Our strategy is really focused on a continuum of value-based contracting models, meeting the provider where they are at in terms of readiness to accept risk, where they’re able to focus on quality, efficiency and the total cost of medical care, or episodic medical costs,” she said.

Treasury denies Central States' bid to cut pension benefits

■ The U.S. Treasury has denied an application by the Teamsters' Central States, Southeast and Southwest Areas Pension Fund to slash benefits for 272,600 plan participants. "I notified the Central States Pension plan that its application to reduce pension benefits to hundreds of thousands of retirees was denied because the application that was submitted did not meet the requirements of federal law, the Kline-Miller statute, that governs Treasury's evaluation and analysis of all such private multiemployer pension plans," Kenneth Feinberg, special master for the Treasury Department's implementation of the Multiemployer Pension Reform Act, said. In a statement, the Central States Pension Fund said it is disappointed with Treasury's decision and will "carefully consider the most appropriate next steps." Among them, the plan could reapply and propose larger cuts.

Alberta wildfires could become Canada's worst disaster

■ Wildfires that ravaged the area of Fort McMurray, Alberta, could be one of the costliest natural disasters in Canada's history, with insured losses of at least \$7 billion likely, analysts said. The fires forced the evacuation of 88,000 people in northern Alberta, and at least 1,600 homes and structures were damaged or destroyed. Tom MacKinnon, a Bank of Montreal analyst, said in a note that the fires are likely to result in \$7 billion in insured losses. Intact Financial Corp. and Aviva P.L.C., which are major insurers in Canada, reportedly were mobilizing claims teams. It "appears quite likely that this will end as one of the costliest natural disasters in Canada's history," Steve Bowen, Chicago-based director and meteorologist at Aon Benfield Group Ltd., said in an email. "It will almost certainly be a top 10 costliest wildfire event on record for the globe when final tallies are made in the coming weeks and months, and likely even higher."

IRS sets 2017 contribution limits for health savings accounts

■ The maximum contributions that can be made to health savings accounts in 2017 will increase \$50 for individuals but remain unchanged for families, the IRS said. The maximum contribution that can be made next year to an HSA linked to a high-deductible plan will be \$3,400, up from \$3,350, while the maximum contribution for those with family coverage will remain at \$6,750. Maximum out-of-pocket expenses, including deductibles, will remain at \$6,550 for single coverage and \$13,100 for family coverage. For 2017, a high-deductible health plan is defined as a one with an annual deductible of least \$1,300 for self-only coverage and \$2,600 for family coverage.

Passwords remain weak link in majority of cyber breaches

■ A total of 89% of cyber breaches had a financial or espionage motive, New York-based Verizon Communications Inc. said in its "2016 Data Breach Investigations Report." The report said 63% of confirmed breaches involved weak,

default or stolen passwords. "The use of stolen, weak or default credentials in breaches is not new, is not bleeding edge, is not glamorous, but boy howdy it works," says the report. Password guessing has evolved to malware "that are designed to (among other bad things) capture keystrokes from the infected device. All those efforts to use special characters, upper/lower case numbers and minimum lengths are nullified by this ubiquitous malware functionality," says the report, based on an analysis of 2,260 breaches that occurred in 82 countries across various industries.

Ron Pollack to step down from Families USA

■ Ron Pollack, the influential leader of the consumer advocacy group Families USA, will step down in March 2017. Mr. Pollack, 72, will take the role of chair emeritus. The Families USA board of directors will begin searching for a successor next month. Mr. Pollack played pivotal roles in almost every piece of health care legislation since he co-founded Families USA 33 years ago. The Affordable Care Act, the Children's Health Insurance Program and its expansion were all priorities for Families USA. In 1997, President Bill Clinton appointed Mr. Pollack to a committee that drafted the Patients' Bill of Rights. Mr. Pollack has said one of his greatest feats is bringing together "strange bedfellows," such as insurers, hospitals, physician and nurse groups, the pharmaceutical industry, and business and labor groups.

Modern Healthcare

Deadlock broken over Florida insurance regulator

■ Deputy Insurance Commissioner David Altmaier has been named to succeed Florida Insurance Commissioner Kevin M. McCarty. The decision to appoint Mr. Altmaier came after Florida Gov. Rick Scott and Chief Financial Officer Jeff Atwater — who heads the Department of Financial Services, which includes the Office of Insurance Regulation — and other cabinet members overcame a long deadlock over who should succeed Mr. McCarty. Mr. McCarty has served as the only appointed insurance commissioner for the Florida Office of Insurance Regulation since it was originally created in 2003. Mr. Altmaier's appointment is effective immediately, according to an Office of Insurance Regulation spokeswoman. Mr. McCarty will be staying "for 60 additional days to assist David," according to the spokeswoman.

Marsh & McLennan first-quarter revenue up, profit flat

■ Marsh & McLennan Cos. Inc.'s revenue for the first quarter of 2016 rose 3.8% year over year to \$3.34 billion, spurred in part by a nearly 10% jump in revenue from Marsh L.L.C.'s business in the United States and Canada. Marsh & McLennan said its net income for the period remained virtually flat at \$481 million. "I am pleased with" the first-quarter results, Marsh & McLennan President and CEO Dan Glaser said during an earnings call. Noting the brokerage had growth across all four of its operating companies, Mr. Glaser said the company expects underlying revenue growth of 3% to 5% for the year as a whole. Revenue at Marsh & McLennan's Guy Carpenter & Co. L.L.C. rein-

surance brokerage operation rose 1.6%, to \$374 million. Total income for its risk and insurance services operations rose 3.6%, to \$1.87 billion. Revenue for Marsh & McLennan's Mercer L.L.C. consulting unit increased less than 1%, to \$1.04 billion while, while that of its Oliver Wyman Group grew 14.3%, to \$439 million.

Foreign exchange rates ding Aon profit in first quarter

■ Aon P.L.C.'s first-quarter 2016 revenue fell 1.9% year over year, to \$2.79 billion, reflecting in part the negative impact of foreign exchange rates. The overall decline reflected a "3% unfavorable impact from foreign currency translation and a 2% decrease in commissions and fees related to net divestitures, partially offset by 3% organic revenue growth," according to Aon's earnings statement. Net income dropped 4.1%, to \$327 million, the company said. Aon President and CEO Greg Case noted in a conference call that there had been "growth across every major business" and called the results a "solid start of the year." Revenue for Aon's Risk Solutions segment dropped 1.2%, to \$1.87 billion, on a 4% unfavorable impact from foreign currency translation. That was partially offset by 3% organic growth in commissions and fees, the company said in its earnings release. Aon's HR Solutions operations saw revenue decrease 4.1%, to \$930 million, driven by a 4% decline in commissions and fees, Aon said in the statement.

Willis Towers Watson boosts results; merger costs 'material'

■ Willis Towers Watson P.L.C. reported its first earnings since merging with Towers Watson & Co., saying its revenue rose 11.0% during the first quarter of this year. Reporting on a pro forma basis for 2015 to reflect its merger early this year with Towers Watson, the insurance brokerage said it recorded \$2.23 billion in revenue for the first quarter of 2016. Net income increased 14.5%, to \$245 million, Willis Towers Watson said. "We'll continue to incur various merger and integration costs," Chief Financial Officer Roger Millay said during a conference call with analysts. "These costs will continue to be material as we work through the integration period, and we expect them to be approximately in the \$150 million to the \$175 million range. The level of spending will depend how quickly we move through some of the integration activities."

Technology services firm settles EEOC transgender bias charges

■ A higher education technology services firm has agreed to pay \$140,000 to settle U.S. Equal Employment Opportunity Commission charges it violated federal discrimination law when it agreed to bar from a college campus worksite an employee who had just announced plans to transition from male to female. The EEOC said in a statement that at the unidentified college's request, Fairfax, Virginia-based Ellucian Co. L.P. barred the employee from access to her workplace on its Minneapolis-area campus the day after she informed co-workers she planned to transition from male to female. Ellucian was performing contracted informational technology work for the college, the EEOC said in a statement.

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Workplace safety crackdown in Canada

■ The Canadian province of Nova Scotia plans to amend its Occupational Health and Safety Act to crack down on employers who repeatedly violate workplace safety laws. The proposed amendments would give government regulators additional tools to enforce safety requirements for employers that repeatedly put workers at risk of serious injury or death, the government of Nova Scotia said in a statement. The revisions also would allow a court to grant an injunction to stop an employer with repeat violations from working in a specific industry, require repeat violators to inform regulators of future work locations and allow shutdowns of multiple locations where the same serious risks are believed to be present, according to the release.

London Market Group names new chair

■ Nicolas Aubert has succeeded Steve Hearn as chair of the London Market Group. Mr. Aubert, head of Great Britain for Willis Towers Watson P.L.C., will serve a one-year term as chair, a spokeswoman for the London Market Group said in an email. Mr. Hearn, CEO of Cooper Gay Swett & Crawford Ltd., had served as chair for two years. “The London Market growth and modernization agenda has gathered real momentum over the last year, with each of our four workstreams making good progress against their stated aims,” Mr. Hearn said in a statement.

RSA poised to beat 2016 profit forecasts

■ RSA Insurance Group P.L.C. is on course to meet or beat analysts’ forecasts for profits this year, the firm’s chief executive said, showing its resilience after an abandoned takeover bid for the company in 2015 by Zurich Insurance Group Ltd. and stepping up cost-cutting by focusing on its core U.K. and Ireland, Canadian and Scandinavian businesses. “We are at least on track for the analysts’ consensus ... or maybe even better than that,” RSA CEO Stephen Hester told a media call, adding that the firm’s first-quarter trading results were strong and ahead of expectations. Analysts are forecasting operating profit for RSA of £548 million (\$800.7 million), according to Thomson Reuters I/B/E/S, up 5% from 2015. RSA post-

PROFILE: PAKISTAN

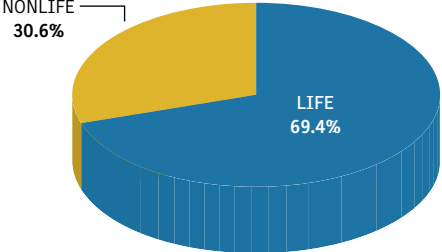
\$544.0

MILLION

◀ 2014 P/C gross premiums


Carved out of India in 1947 when it won independence from the U.K., Pakistan has had trouble gaining solid economic footing since 2008 because of limited foreign direct investment, low tax revenue exacerbated by widespread evasion and persistent power shortages. A constitutional republic marked by nepotism and corruption, even the general population is indifferent to regulations with less than 30% of vehicle owners having mandatory third-party auto liability cover. But the Pakistan China corridor, a 7,500-mile highway/rail link expected to open in 2017, is seen as a road to opportunity. Though earthquake is the major natural threat, most seismic activity takes place in largely unpopulated areas, limiting exposure.

MARKET SHARE



Category	Percentage
NONLIFE	30.6%
LIFE	69.4%

Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



PAKISTAN

AREA

310,403

square miles

POPULATION

188.9

million

GLOBAL P/C MARKET RANKING

76

2016 GDP CHANGE (PROJECTED)

4.8%

MARKET DEVELOPMENTS

UPDATED APRIL 2016

- Issued in October, the Insurance Rules 2015 repealed the Insurance Rules and Security and Exchange Commission of Pakistan Rules 2002 and consolidated previous rules and regulations. They will take effect after the prescribed comment process.
- Bancassurance Regulations 2015, which took effect Jan. 1, 2016, deal with the nature and scope of bancassurance agreements, premium collection, marketing and claims handling, among other issues.
- A Code of Corporate Governance, issued in November 2015, sets out prerequisites and composition for boards of directors as well as principles and requirements for company strategy, code of conduct, processes and corporate governance.
- A code of conduct for the SECP board members, issued in December 2015, includes conflict of interest definition and addresses board member responsibilities, post-SECP conduct, confidentiality and independence.
- A March 2015 statutory notification established capital requirements for property/casualty insurers. The phased-in amounts increase from \$4.37 million June 30, 2016, to \$4.86 million Dec. 31, 2017.

<h4>COMPULSORY INSURANCE</h4> <ul style="list-style-type: none"> ■ Motor third-party liability ■ Professional indemnity for brokers and insurance surveyors ■ Third-party liability and passenger legal liability for airlines ■ Shipowners’ liability against marine oil pollution (financial guaranty or insurance) 	<h4>NONADMITTED</h4> <p>Unauthorized insurance is not permitted in Pakistan, unless the risk cannot be suitably insured in the country or an exemption is granted by the federal government. Other exceptions include certain marine cargo imports and exports.</p>	<h4>INTERMEDIARIES</h4> <p>Agents and brokers have to be registered with the SECP. They need not be licensed but must be included in the register of their principal, who is then liable for all agents’ errors and omissions.</p>	<h4>MARKET PRACTICE</h4> <p>Compliance with the detailed nonadmitted insurance rules is strong, though fronting through facultative reinsurance is common. Failure to meet any insurance regulations can result in fines of up to \$19,436. Just dealing with a noncompliant insurer can bring a fine of \$4,859.</p>
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Information provided by Axco Insurance Information Services.
www.axcoinfo.com

ed a 1% fall in net written premiums to £1.575 billion (\$2.30 billion), following the sale of businesses in Brazil, Colombia and Russia during the first quarter. The firm also completed the sale of its Chile and Argentina businesses in April.

Reuters

Axa selling U.K. life, savings business

■ Axa S.A. has agreed to sell its Elevate investment platform business to Standard Life P.L.C. as part of its strategy to concentrate on property/casualty and certain other lines of business. Paris-based Axa announced it was in discussions to sell all of its U.K. life and savings business, including its SunLife life insurance operation. Axa said the sale of the U.K. life and savings business is expected to generate about £650 million

(\$949.7 million). The insurer had previously announced that Axa UK had entered into an agreement to sell its Isle of Man-based offshore investment bonds business to Life Company Consolidation Group.

Hackers hit world’s No. 3 gold producer

■ Canada’s Goldcorp Inc. confirmed that its computer network had been “compromised” and the gold mining company was working to determine the scope and impact of the data breach. Vancouver-based Goldcorp’s internal security team is working with independent technology security firms to gather facts and inform affected employees, a spokeswoman said. The security teams will also work on an action plan that includes immediate preventive

modifications to computer processes and increased network security, she said. The Daily Dot website had reported that hackers had claimed to have “badly hacked” Goldcorp, the world’s third-biggest gold producer by market value, dumping private company and employee data online.

Reuters

Former FIFA official wins D&O case

■ A former FIFA official under criminal indictment in New York is entitled to defense costs from Lloyd’s of London underwriters and an Axis Capital Holdings Ltd. unit under the soccer organization’s directors and officers liability coverage, a federal court says. Eduardo Li, a Costa Rica citizen who has held several positions

within the international soccer organization, is one of 14 defendants charged with participating in an international racketeering conspiracy and related crimes, according to the ruling by the U.S. District Court in Brooklyn in *Eduardo Li v. Certain Underwriters at Lloyd’s London, Axis Specialty Europe S.E.* Mr. Li was arrested in Switzerland in May 2015 and subsequently extradited to the United States. The insurers sold FIFA a D&O liability policy that provided for “worldwide coverage” for defense costs, according to the ruling. “Li has made a clear showing that the insurers are required to pay the legal costs of his defense, investigation and extradition,” said the ruling by Judge Raymond J. Dearie. “It is equally clear that the insurers have an obligation to pay Li’s legal costs at the time they are incurred and on an ongoing basis,” said the ruling.

FERMA CEO SEEKS HIGH STANDARD FOR EUROPEAN RISK MANAGERS

Q What attracted you to the FERMA job?

A The opportunity to diversify my experience and bring my 10 years' experience in E.U. public affairs to this job. Working for a profession in the process of development — risk management is growing, with more and more expectations from stakeholders and governance bodies. Risk managers must be real professionals and recognized as such. And the potential to further develop FERMA, to support and promote the importance of the risk management profession in Europe.

Q What lessons and experience from your previous role do you think will help in your role at FERMA?

A Before joining FERMA, I worked for 10 years as a lobbyist for a multinational retail company, a global law firm and one of the leading European business organizations, Eurochambres. My understanding of how E.U. policies are made and legislation is passed will help to strengthen FERMA's advocacy role. I am familiar with

Q&A

how membership-based associations work. It is important to inject dynamism, to know the members well and unite them around a common goal and shared objectives which reflect their interests and concerns.

Q What are your aims for FERMA?

A To make FERMA an even more open and effective organization to which all member associations want to commit and participate. We cannot live without our members, and to work with them, we have to be open and inclusive. We have to be efficient and effective so

that we can increase our visibility at the E.U. level and in that way provide added value to members. Bringing the certification project — rimap — to implementation is also a top priority to achieve recognition of the critical importance of the professional standing of risk managers.

Q How can FERMA build upon the work and progress of the past few years to become even more visible at the European level?

A FERMA has been well established since 1974. My objective is to consolidate the influence of FERMA vis-à-vis the E.U. institutions and strengthen our political impact.

We will establish a policy committee to agree (on) lobbying priorities and structure the gathering of input. Improving our external communication with media, stakeholders and the European Commission, Parliament and Council is also a priority.

One of the main dossiers on the table at the moment is cyber security. Businesses have difficulties with reaching a basic level of protection often because of a lack of



TYPHAINE BEAUPERIN

FEDERATION OF EUROPEAN RISK MANAGEMENT ASSOCIATIONS

Typhaine Beauperin was appointed CEO of the Brussels-based Federation of European Risk Management Associations in October. She previously was senior adviser of European affairs at Eurochambres, the association of European chambers of commerce and industry in Brussels. In a recent interview with *Business Insurance* Senior Editor Sarah Veysey, Ms. Beauperin discussed her goals for FERMA and the risk management profession. Edited excerpts follow.

risk insights and data-driven risk mitigation. In that respect, we advocate a central role for the risk managers.

Q What are the next steps for the FERMA certification project (rimap)?

A FERMA, as the profession's representative at E.U. level, has committed itself to create the professional certification — rimap. We are developing the exam questions and seven rimap guides. The books will be ready for the summer, and the first online exams

will start in September. We will also organize a paper exam in Malta at the FERMA seminar on Oct. 3 and 4.

The first tangible and immediate benefit for certified risk managers is the right to use the rimap brand on their professional credentials. But rimap is much more. It will help the career development of the risk manager by showing that he or she has peer recognition of their professional standing, and provide every employer with the external assurance that the person meets the best standards of the profession.

COMINGS & GOINGS

UP CLOSE: LORI GOLTERMANN

CHICAGO-BASED CEO, U.S. RETAIL
Aon Risk Solutions

PREVIOUS POSITION: Chicago-based health and benefits U.S. practice leader at Aon Hewitt.

GOALS FOR NEW POSITION: Drive a one-voice delivery of Aon to our clients. Taking all of our expertise and differentiation in (areas) like cyber, liability, health care and driving it to clients in a meaningful way.

ON LEADERSHIP: The first thing that comes to mind is listening. I spend a lot of time in the field with our clients; I ask core questions: Where can we improve? If you have that face-to-face with your clients, you see where you can improve year-to-year.

CHALLENGES FACING INDUSTRY: In health care and property/casualty there are the emerging risks. The key one is cyber liability. The world is moving at such a quick pace, and the challenge is how do we use data and analytics to assess that risk?

FIRST INDUSTRY JOB: I started on the switchboard and the mailroom at Travelers (Cos. Inc.). I was a pre-med (major) in college and never expected to go into the



insurance industry.

ADVICE: Own your personal priorities and balance them with business obligations.

FAVORITE QUOTE: "In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing." — Theodore Roosevelt

OUTSIDE THE INDUSTRY, A DREAM

JOB: The thing that comes to mind most is helping underprivileged children. As a mom I am involved in several charities. The ones that tug at my heart are the ones that help children. I wish I had more time to do that.

HOBBIES: I love tennis, and I love baking with my kids. Not a weekend goes by where my 9-year-old and my 12-year-old (daughters) aren't trying some baking concoction.

THING MOST PEOPLE DON'T KNOW ABOUT ME:

My house burned down when we first moved to Chicago, the day before our house sold in St. Louis. We had to rebuild it. It was a bumpy transition to Chicago.

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AssuredPartners London	Adam Sansom
The Keating Group Inc.	Edward T. Havermann III
Willis Towers Watson P.L.C.	Vincent Lien

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Liberty Mutual Holding Co. Inc.	Robert Capicchioni
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EDITORIAL

DON'T PUT TOO MUCH WEIGHT ON WEIGHT

Think twice before rejecting job applicants just because they are obese. That's the wise advice of many experts who recommend that employers proceed cautiously despite a recent appeals court ruling that backed an employer's rejection of a job applicant because of his obesity.

In its April 5 ruling in *Melvin A. Morriss III v. BNSF Railway Co.*, the 8th U.S. Circuit Court of Appeals in St. Louis held that an obese job applicant, whose obesity apparently was not related to any physiological condition such as diabetes, was not protected from discrimination under the Americans with Disabilities Act.

According to the ruling, Mr. Morriss was offered a job as a machinist with the Fort Worth, Texas-based railroad that was contingent on a satisfactory medical review.

But the job offer was withdrawn after medical exams revealed he had a body mass index of more than 40, which was above the railway's standard for the measure of body fat based on weight and height.

Experts point out the ruling is significant because it is the first appeals court to rule on the issue since enactment of the Americans with Disabilities Amendment Act of 2008.

Two previous appeals court rulings had similar findings to the recent 8th Circuit ruling, but both were issued before the 2008 law that broadened discrimination protection for individuals under the ADA.

Experts warn, however, that the legal landscape remains unclear. Furthermore, and perhaps more significantly, the 8th Circuit ruled the employer could reject hiring Mr. Morriss because there was no indication his obesity was caused by an underlying physiological condition, and it is not clear how often that is the case. The U.S. Centers for Disease Control and Prevention, for instance, says it has no data on the subject.

Clearly, however, obesity often is related to underlying health conditions. A report issued last week by Chattanooga, Tennessee-based Unum Group, for instance, said the fact that more than one-third of U.S. residents are overweight is a major factor in the significant jump in disability claims for joint disorders and musculoskeletal issues in the past decade.

The bottom line: The safest bet for employers is to continue doing what they have been doing — hire the best person for the job, regardless of how much they may tip the scales.

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

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SCHILLERSTROM



COMMENTARY

BATHROOM GENDER BATTLES CREATE LIABILITY PROBLEM

Of the many issues raised by North Carolina's law requiring transgender individuals to use public bathrooms corresponding with their gender at birth, liability may not be the most important, but it should be a major concern for employers.

The U.S. Equal Employment Opportunity Commission has already sued several employers over their treatment of transgender workers, including bathroom assignment. In addition, the agency last week issued guidance making clear its position that forcing transgender employees to use sex-segregated bathrooms that do not correspond with the gender they identify as is a violation of civil rights law.

Specifically with regard to the North Carolina law, the U.S. Justice Department weighed in by sending a letter last week to the state's leaders saying the law violates civil rights. And at least a couple of large companies have announced that they are curbing expansion plans in the state in response to the law.

But the legal battle is rousing action on both sides of the issue. A group of parents and students last week sued a school district in Palatine, Illinois, alleging that authorities continue to "trample students' privacy and other constitutional and statutory rights" by forcing girls to share bathrooms with "biological males." And Target Corp. faces a boycott by some customers after it said it would allow workers and guests to use the bathroom of the gender they identify as.

The dispute over transgender bathroom assignment clearly is not going to be resolved easily, but employers need to establish a coherent and nondiscriminatory policy on the issue if they are to minimize their own liabilities. Hoping the controversy will not affect



**GAVIN
SOUTER**
EDITOR

them is not an option — while there are no firm figures on how many transgender people are in the United States, the most common estimate suggests that 0.3% of the population is transgender. That may not sound like a significant proportion but it amounts to about 700,000 people, ranging from school children to seniors, all of whom, of course, need to use the bathroom.

Ultimately, the issue may be resolved by introducing gender-neutral bathrooms, but that would likely necessitate major overhauls of facilities in many workplaces to give all employees the level of privacy they want and should expect.

Meanwhile, employers should work under the basic premise that they should not discriminate against any employees. In the case of transgender employees, forcing them to go through the humiliation of using a bathroom allocated to a gender they don't identify as, regardless of the feelings of other workers, is highly likely to be regarded as discriminatory.

As with many shifts in medical science and societal norms, changes in behavior and views of what's acceptable are likely to evolve. But given some fairly clear direction on the issue of liability over transgender employment practices, employers need to adjust their workplace policies now rather than wait to be forced to by the courts.

Don't give up on CGL policies when looking for cyber cover

Data breaches can leave targets casting about for the right insurance solutions, particularly when it comes to often lengthy and costly class action lawsuits. A recent appeals court decision opened the door to the use of commercial general liability coverage in such cases. Richard DeNatale, Richard D. Milone and Celia Jackson, with the law firm Jones Day L.P., discuss this development and other ways companies can protect themselves from cyber risk.

Companies that fall victim to a cyber attack often face an unpleasant aftershock: class action lawsuits by employees or customers who accuse the company of negligence and seek damages for the disclosure of their personal information. These lawsuits can be expensive to defend, even when they have little or no merit.

If the company has purchased cyber insurance, it can expect its insurer to cover the cost of defense. But the majority of U.S. businesses do not have cyber insurance, or the limits on their policies are too low to pay for lengthy class action litigation.

An April 11 decision by a federal appeals court offers a measure of relief for these companies. In *Travelers Indemnity Co. of America v. Portal Healthcare Solutions L.L.C.*, the 4th U.S. Circuit Court of Appeals ruled that an insurer that issued a commercial general liability policy had a duty to defend against class action litigation resulting from a data breach.

This issue has been the subject of substantial controversy. CGL policies have long covered claims arising from the “publication of material that violates a person’s right of privacy.” This coverage is found in the privacy clause, which is part of the Personal and Advertising Injury section of standard CGL forms.

In 2000, the Insurance Services Office, which develops standard forms for the insurance industry, revised the CGL form to adapt it to the Internet age. It broadened the language of the privacy clause to cover “publication, in any manner, of material that violates a person’s right of privacy.” At the same time, it amended the definition of “coverage territory” to provide that the policy covered “offenses that take place through the Internet or similar electronic means of communication.”

Taken together, these changes seemed to make clear that CGL policies would cover any type of disclosure of electronic data over the Internet that violated a person’s privacy rights — including the disclosure of personal data in a cyber attack.

But as the number of data breaches mounted, it became increasingly difficult for policyholders to obtain coverage from their CGL insurers. This trend only accelerated with the advent of cyber

insurance policies. Insurers began routinely denying claims for data breach claims under CGL policies, taking the position that these policies were “not meant to cover” such claims.

When challenged in court, insurers offered a host of arguments to avoid coverage. They said that the phrase “publication in any manner” was

limited to certain types of disclosure involving affirmative statements to the public at large. They argued that the disclosure of private data in a cyber attack was a publication by the hackers, not by the policyholder. And they argued that CGL policies implicitly exclude data breach claims, though no such exclusion is found in the policy language.

All these arguments ran counter to the legal rules that govern the interpretation of insurance policies. These rules require that coverage grants such as the privacy clause be read broadly and that any exclusions or limitations be stated in clear and express terms.

In the *Travelers* case, the 4th Circuit relied on these rules of interpretation to find that a CGL policy covers the cost of defending data breach claims that allege the disclosure of private information. The case involved a class action lawsuit against Portal Healthcare. The complaint alleged that Portal had negligently allowed confidential patient medical data to be posted on the Internet, where it could be accessed by a simple Internet search. The CGL policies at issue contained a variation of the standard language and provided coverage for “electronic publication of material that ... gives unreasonable publicity to a person’s private life (or) discloses information about a person’s private life.”

The trial court ruled that private patient information was “published” when it became accessible to unauthorized third parties via the Internet. The court held it did not matter whether the policyholder intended to make the material public or whether anyone actually viewed it. The 4th Circuit Court of Appeals endorsed the trial court’s analysis and held that *Travelers* had a duty to defend its policyholder in the class action lawsuit.

The *Travelers* case is likely to have a significant impact — though only for a limited period of time. For companies facing class action lawsuits filed in the wake of a cyber attack, the decision may open a new path for coverage. But that path may soon become more difficult to navigate, as the insurance industry makes changes to the CGL form that could potentially limit coverage for data breach claims. In 2014, ISO introduced a new data breach exclusion for the standard CGL form. This new exclusion has not been incorporated into all U.S. policies, but we expect it to become more prevalent with each passing year.

These developments make it all the more important for policyholders to purchase cyber insurance policies. The right cyber policy can cover a wide range of claims and other losses that typically result from a data security incident. Within a few years, cyber policies are likely to be the only vehicle for insuring cyber and Internet exposures. But for companies facing data breach claims who do not have cyber insurance, it may be worthwhile to take a second look at their CGL coverage in light of the *Travelers* decision.

The right cyber policy can cover a wide range of claims and other losses that typically result from a data security incident. Within a few years, cyber policies are likely to be the only vehicle for insuring cyber and Internet exposures.



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SPECIAL REPORT

Workers Comp

Reform update

Harder to prove workers hurt under influence

PAGE 13

PTSD grows as option for first responders

PAGE 14

Update on efforts in states to reform workers comp

PAGE 14

Comp insurance, benefits, payouts by the numbers

PAGE 15

Alternatives to workers comp evolve

Still, opponents fear opt-outs to state systems would create coverage abyss

BY STEPHANIE GOLDBERG

Despite a constitutional challenge to Oklahoma's opt-out law and that similar legislation has been put on hold in Tennessee and South Carolina, some experts are warming to the idea of responsible alternatives to state workers compensation systems.

The Oklahoma Workers' Compensation Commission ruled in February that provisions of the state's 2-year-old Employee Injury Benefit Act deprive injured workers of equal protection and access to the courts, and unfairly allow employers to define "injury."

The case, *Jonnie Yvonne Vasquez v. Dillard's Inc.*, has been accepted by the Oklahoma Supreme Court.

However, Oklahoma Attorney General Scott Pruitt in April asked the state high court to postpone its review while lawmakers consider amendments to the law "that would directly address the issues raised in this case."

Little Rock, Arkansas-based Dillard's did not object to the motion but said in a statement that it "does not believe that (H.B. 2205) resolves or moots all issues in this appeal."

The bill "takes a couple of steps forward," but it still allows employers "a rather devious escape hatch to leave the state oversight and be unregulated under federal law," said Trey Gillespie, Austin, Texas-based senior workers compensation director at the Property Casualty Insurers Association of America.

"There is a requirement for the alternative plans to be approved by the state and available for public inspection, so that's good," Mr. Gillespie added. "But it has no data reporting requirements ... If these plans are approved as (Employee Retirement Income Security Act) benefit plan(s), the employer doesn't have to — in any way, shape or form — cooperate in that monitoring because that state monitoring would be pre-empted by federal law."

In the case before the Oklahoma Supreme Court, Ms. Vasquez was denied benefits because Dillard's alternative plan doesn't cover pre-existing injuries.

H.B. 2205 states that employers who opt out are subject to the same definition of compensable injury as employers who participate in the state's plan under the Administrative Workers' Compensation Act.

The legislation also says that alternative benefit plans must cover the same forms of benefits included under workers comp on a "no-fault basis, with the same statute of limitations, notice of injury reporting, and with dollar, percentage and duration limits that are at least equal to or greater than the dollar, percentage and duration limits contained in such act."

The bill (H.B. 2205) "takes a couple of steps forward," but it still allows employers "a rather devious escape hatch to leave the state oversight and be unregulated under federal law."

Trey Gillespie, Property Casualty Insurers Association of America



Mr. Gillespie, who has spoken out against opt-out laws and bills, said he would be open to an "alternative workers compensation mechanism" that assures fair competition among employers, provides equal protection for employees and includes appropriate state data reporting requirements, among other things.

Eric Silverstein, Dallas-based senior vice president of the national casualty broking practice at Willis Towers Watson P.L.C., said his clients are interested in alternatives.

"If there's an alternative that can help our clients save money, be more effective, reduce the administration, then we're interested," Mr. Silverstein said.

Albert B. Randall Jr., Baltimore-based principal at law firm Franklin & Prokopik P.C., said he's not familiar with specific options to workers comp that aren't "really more akin to the opt-out system we see in Oklahoma and, to some extent, Texas." But that doesn't mean people aren't interested in an alternative, he said.

It's important to note that "comp works remarkably well in the vast majority of cases," said Steve Coonrod, a partner at McConaughay, Coonrod, Pope, Weaver, Stern & Thomas P.A. in Tallahassee, Florida. "It's a mistake to use an individual case to indict the entire system as being unfair."

One thing most workers comp professionals agree on

is that federal oversight would not benefit the comp system. Messrs. Randall and Gillespie and others said the odds of that happening are slim.

"People on both sides of the sea are just happy to leave things the way they are without rustling up too much congressional angst," Mr. Randall said.

But with "the opt-out issue, the federal government is going to be very interested in not creating avenues where employers can leave the state workers compensation system and transfer risk and losses to taxpayers through the Social Security Administration system or through higher health insurance premiums paid by taxpayers," Mr. Gillespie said.

Opt-out bills introduced last year in Tennessee and South Carolina are on hold, but amendments are anticipated, sources said.

"In 2017, there could easily be (opt-out) activity in multiple states," Mr. Gillespie said. In addition to Tennessee and South Carolina, he said there has been speculation about states such as Arkansas, Georgia, Wisconsin and even Texas, which for a century has allowed employers to opt out of workers comp without requiring that they provide alternative benefits to injured workers.

"Time will tell," Mr. Gillespie said, adding that Oklahoma likely "will continue to have opt-out issues going forward" — with or without the passage of H.B. 2205.

STATES STEPPING UP EFFORTS TO CUT BENEFITS FOR WORKERS HURT WHILE IMPAIRED

Use of medical marijuana, other legal intoxicants and burden of proof complicate issue

BY LOUISE ESOLA

New laws in two states, New Mexico and Wisconsin, reduce workers compensation benefits for employees injured while under the influence of intoxicants. But it's not a simple process, made harder by laws that have legalized marijuana in about half of the United States.

Workers comp legal experts also warn employers and their insurers that proving intoxication at the time of the accident — particularly concerning medical marijuana and doctor-prescribed opioids — makes winning a challenge of workers comp benefit no easy matter.

"I think everybody is confused" about how the intoxication laws will be implemented and play out, said Quinn Lopez, Albuquerque-based vice president and general counsel at New Mexico Mutual Casualty Co.

New Mexico and Wisconsin revamped their laws effective this year.

Specifically, Wisconsin's law eliminates comp benefits entirely if the worker tests positive for drugs or alcohol and if the accident is found to be caused by that person's intoxicated state. Prior to the changes, Wisconsin reduced workers comp payments by 15% in such circumstances.

In New Mexico, a new law reduces comp benefits by up to 90% if the injury was caused by the worker's proven intoxication. The state previously reduced payments in such cases by 10%.

"Just about every state has some kind of provision that addresses the compensability of a workers comp claim if the accident occurs in part or solely due to drugs," said Bruce Wood, Washington-based vice president and associate general counsel for the American Insurance Association.

Twenty-four states and the District of Columbia have legalized medical marijuana. At least one state, Maine, has the issue on the November ballot. Four states and District of Columbia have legalized recreational use of marijuana.

Chris Reader, Madison, Wisconsin-based health and human resources policy director at the Wisconsin Manufacturers & Commerce trade association, said Wisconsin's previous law "rewarded irresponsible workers" who essentially caused their own injuries. Medical marijuana, it should be noted, is not legal in the state.

Now, "if you are ... intoxicated as a causal part of your injury," Mr. Reader said, "you will not receive indemnity benefits. That seems to make a world of sense to us."

Still, Messrs. Reader and Wood said it will be a challenge for employers to prove intoxication.

While determining alcohol level is a straightforward bloodstream test, marijuana is tricky, experts say. Traces of the drug can stay in a person's body up to a

INTOXICATION

A sampling of workers compensation laws that affect intoxicated workers

Texas

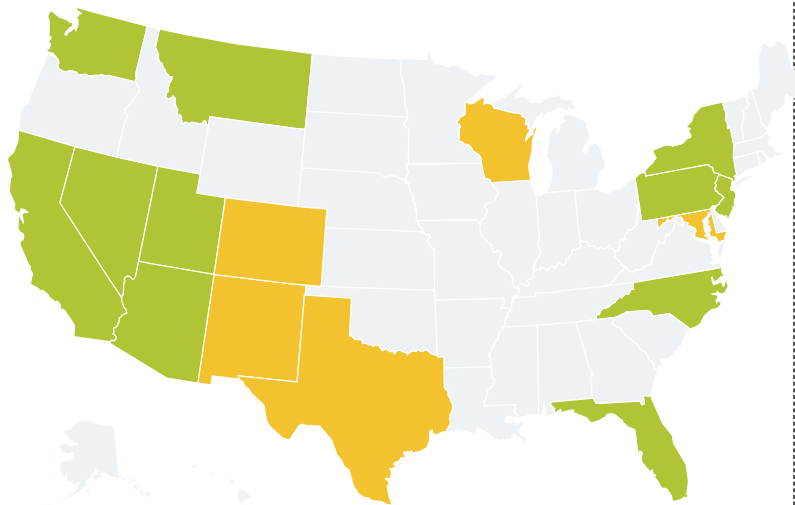
If an injured worker is found to have an intoxicant in his or her system at the time of the incident, rights to all workers compensation benefits are lost.

Wisconsin

If a worker is injured while intoxicated and tests positive for drugs or alcohol, he or she loses all comp benefits. Previously, the benefits would be cut by 15%.

New Mexico

Comp benefits are cut by up to 90%, rather than the previous 10%, if a worker's injury results from his or her proven intoxication.



Maryland

If an employer establishes that a person's intoxication was the sole cause of the accident, the employee loses workers comp benefits. If intoxication was the primary cause, the worker gets medical benefits

but no indemnity.

Colorado

Workers comp benefits can be reduced by 50% if a worker's intoxication caused his or her injury. Medical costs are covered regardless of drug and alcohol test findings.

Other states

(Arizona, California, Florida, Montana, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Utah and Washington)

Employer must prove that intoxication caused the workplace injury for all benefits to be denied.

Sources: Legislation, news reports

month, making it more difficult for employers and insurers to pinpoint when the person smoked or ingested the drug.

"Residual marijuana in the system — how do we deal with that?" said Greg McKenna, Itasca, Illinois-based vice president and counsel for governmental affairs at Gallagher Bassett Services Inc.

States "are creating a situation where we are going to try to investigate claims where there will be a wider net of intoxication," Mr. McKenna said. "As an industry, we need more refined testing techniques to make those finer decisions of intoxication."

Albert B. Randall Jr., Baltimore-based president of Franklin & Prokopik P.C., put it more bluntly: "The science and the testing need to catch up."

Messrs. McKenna and Randall said opioid usage presents similar problems in proving a worker was under the influence at the specific time of the injury, since certain painkillers also may remain in a person's system for 24 hours or longer.

"It's hard enough proving alcohol as an impairment, and I think that's probably the easiest one," Mr. Randall said.

"I always caution employers using the intoxication defense that oftentimes it's a

significant challenge," he said. The laws "look great, and it's an easy appeal to the public (who thinks), 'Why should they be entitled to benefits?' The problem is the proof."

Witness testimony may or may not help, experts say (See related story).

What employers do have in their favor is that courts have ruled that they do not have to accommodate medical marijuana. If an injured worker tests positive for the drug still banned by federal law, the worker can be terminated for violating an employer's drug-free workplace policy, Mr. Lopez said.

"The employer has the right to set their workplace standards," he said.

Meanwhile, intoxicated worker laws are in opposition to U.S. Occupational Safety and Health Administration recommendations made last year, in which OSHA recommended against post-injury drug testing that it said may discourage reporting of accidents.

Experts say that goes against the grain of drug- and alcohol-free workplace policies that have long been in place.

"There's a difference in what OSHA is trying to do and what workers comp is trying to do," Mr. Lopez said.

SEEING CAN BE DECEIVING, LEGAL EXPERTS SAY

Witnesses may or may not help an employer's case in defending against a workers compensation claim due to the employee being intoxicated at the time of an accident.

"Historically, we have to look at a whole variety of factors," said Greg McKenna, Itasca, Illinois-based vice president and counsel for governmental affairs at Gallagher Bassett Services Inc. "Depending on the nature of the intoxicant, unless you have both objective — blood serum, urine test — plus evidence of intoxication — behavior, testimony — it may be tougher to prove."

Robert Molnar, North Haven, Connecticut-based partner and vice president of private investigative agency Lemieux & Associates L.L.C., said investigating the employee's behavior often is part of an intoxication defense.

"This would be interviewing co-workers," he said. "Drinking and drugs; those are habits. If they drank (at work) once, they did it before. People are creatures of habit. Is it the first time or the first time (the worker) got caught? You can build a case around that."

Yet legal experts are skeptical that eye-witnesses will ever fill the marijuana testing gap.

"I believe there is going to be a bias toward rigorous scientific tests" in cases involving marijuana, Mr. McKenna said. "In my opinion, it seems that there would be a preference (to rely on the test) as opposed to taking someone's nonscientific view of behavior."

Albert B. Randall Jr., Baltimore-based president of Franklin & Prokopik P.C., said an employee's attorney also could question the validity of a witness reporting that a person was intoxicated.

"Without training to show what impaired looks like, I think it is highly unlikely that a court (would accept it)," he said.

By Louise Esola



Support grows for view that PTSD work-related for first responders

Trend in Canada crossing border to United States

BY GLORIA GONZALEZ

Several Canadian and U.S. jurisdictions are establishing or considering presumptions that post-traumatic stress disorder is work-related for first responders, but stakeholders have raised concerns about the potential costs and discrimination.

In April, Ontario became the latest jurisdiction to pass legislation that presumes a first responder diagnosed with PTSD by a psychiatrist or a psychologist is eligible for workers comp benefits without needing to prove a causal link between PTSD and a workplace event.

The presumption applies to more than 73,000 police officers; firefighters; paramedics; emergency response teams; police, fire and ambulance dispatchers; and certain jail workers.

“Employers in Ontario, and anywhere that deals with this, need to realize that this is a trend and these individuals are exposed to events that do cause PTSD,” said Brian MacDonald, an associate at Filion Wakely Thorup Angeletti L.L.P. in London, Ontario. “A growing sensitivity to that, I think, is certainly warranted.”

The PTSD legislative activity builds on efforts to pass presumptions related to other first responder conditions such as cancer and heart attacks, observers say.

“It’s a little more difficult when it comes to post-traumatic stress disorder because it’s one of those areas of occupational diseases where there’s a conflict of whether these are job-related or come from a pre-existing condition,” said Peter Burton, Philadelphia-based senior division executive of state relations at the National Council on Compensation Insurance Inc.

Alberta and Manitoba also have adopted PTSD-related presumptions, while other Canadian provinces and U.S. states such as Connecticut and South Carolina are considering legislation. Like other jurisdictions, Ontario’s legislation was driven by a desire to provide faster and easier access to workers comp benefits, resources and timely treatment for employees diagnosed with PTSD, experts say.

“A lot of places won’t recognize” PTSD, said Ron McGraw, occupational health and safety assistant at the International Association of Fire Fighters in Washington. “In workers comp, we have enough trouble with them just recognizing a broken leg, let alone something as difficult to assess as PTSD or mental health issues and

behavioral issues associated with the stresses of the job.”

A common theme is the bills specifically identifying police officers, firefighters or emergency services providers as first responders, which raises concerns because they often omit workers who also could be eligible for presumptive benefits, observers said.

“I do think that becomes a prejudicial issue,” said Bree Nowacki, an Oklahoma City-based PTSD blogger and survivor with the United States First Responders Association. “Those peo-



RECENT CHANGES

Ontario is the latest Canadian province to adopt a presumption of first-responder post-traumatic stress disorder related to traumatic workplace incidents, with other Canadian and U.S. jurisdictions considering similar bills:

Ontario adopted legislation in April that presumes first responders diagnosed with PTSD by a psychiatrist or a psychologist are eligible for workers compensation without proving a causal link between PTSD and a workplace event.

Manitoba in January began assuming all workers diagnosed with PTSD who were exposed to certain traumatic events in the workplace are eligible for presumptive coverage.

Alberta in 2012 amended its workers compensation law to allow firefighters, police officers, sheriffs police and paramedics to receive compensation for PTSD without having to prove their condition was work-related.

Arizona, British Columbia, Connecticut, New Brunswick, Nova Scotia, Ohio and South Carolina have also debated or are debating such presumptions for first responders.

Sources: State/provincial legislative websites, Ontario Ministry of Labor, Canadian workers comp boards

ple count, too. What if they were present at a mass disaster, but they don’t fit this trifecta? Shouldn’t they be covered too? I believe they should.”

For example, an Ontario emergency medical technician responding to a call about a traumatic injury would be presumed eligible for PTSD benefits, but health care workers who treat the patient at an emergency room would have to prove a connection.

“It’s only for certain classes of people, and that’s one of the areas where I think there’s likely to be challenges on a discriminatory basis, because this does allow people of a certain group to be presumed for entitlement,” said Laura Russell, a partner at Mathews Dinsdale & Clark L.L.P. in Toronto. “I’m a bit concerned that it’s actually providing some privilege to that group of people far and above what lots of other people are going to be expected to have to prove for their claims.”

On Jan. 1, Manitoba established the broadest inclusion by allowing the presumption that an employee’s PTSD is caused by his or her employment unless the contrary is proven — a recognition that PTSD-triggering events can happen in any workplace.

Another concern about the legislation is the additional cost.

In Ontario, municipal employers generally fall into the Workplace Safety and Insurance Board’s Schedule 2 category, meaning they pay claims on a dollar-for-dollar direct basis, as opposed to Schedule 1 employers, which pay annual premiums based on the board’s classification of their activities and total insurable payrolls.

“WSIB claims for Schedule 2 employers can be very, very costly, particularly these kinds of claims where people may be off work for a very long period of time,” said Jodi Gallagher Healy, a London, Ontario-based partner at Hicks Morley Hamilton Stewart Storie L.L.P. “It has a significant financial impact. I think what we’re going to see is a growth in demand for excess indemnity insurance.”

The Arizona Legislature considered a bill that would have stipulated that PTSD of a peace officer was compensable through the workers comp system, but some stakeholders objected partly because of the increased costs.

“If it goes through the workers comp system, basically it becomes a lifetime claim and has an extremely long tail, and ends up being very expensive, and may or may not have been a PTSD issue,” said Ken Strobeck, executive director of the League of Arizona Cities & Towns in Phoenix.

States consider workers comp reforms

Workers comp reforms covering a variety of issues has been passed or is under consideration in numerous states. Below is a roundup of recent laws and legislation.

California

California Gov. Jerry Brown signed into law last year an anti-discrimination bill that makes clear that a worker can’t be prohibited from receiving all workers compensation benefits solely because of his or her citizenship or immigration status. The law overrides previous legislation that was considered discriminatory and left out at least two specific benefits: the state’s Uninsured Employers Benefits Trust Fund and the Subsequent Injuries Benefit Trust Fund.

Connecticut

Lawmakers are studying the fiscal impact of three pieces of legislation. S.B. 134 would extend workers comp benefits to police and fire personnel diagnosed with post-traumatic stress disorder as a result of their jobs. S.B. 225 proposes a 15% increase in allowed radiology services. H.B. 5449 would allow an injured worker to sue his or her employer in civil court rather than Workers Compensation Court if their claim were unreasonably rejected or delayed.

Illinois

Lawmakers continue to block Gov. Bruce Rauner’s workers comp reforms to 2011 legislation. The governor has argued that the changes would put Illinois in line with other states in costs. In April, H.B. 6428 was proposed, saying injured public or nonprofit workers would bear “the burden of showing, by a preponderance of the credible evidence” that on-the-job injuries “are the major contributing cause” of a medical condition or injury to receive comp. It was referred to committee.

Georgia

Lawmakers in March passed legislation to provide workers comp for firefighters who develop work-related cancers. Under H.B. 216, a firefighter would have to demonstrate exposure to a known carcinogen while on the job.

Kansas

Lawmakers faced heat in February from labor unions and Democrats after failing to move forward on three bills changing the processing of claims, the way leaders of the state’s workers comp commission are selected and ending deductions from a retiree’s Social Security benefit from the amount paid for their comp claim.

New Mexico

Signed by Gov. Susana Martinez in March, S.B. 214 says intoxicated workers proven to have been at fault for their injury can have benefits reduced 10% to 90%. Employers cannot file a claim with their insurer if they were aware of the impairment and did not take action. Employers also must have a drug and alcohol policy. If the worker refuses post-injury testing, he or she could lose all indemnity payments. Regardless of the test results, injured workers remain entitled to covered medical costs and, in the case of death, death benefits for families.

New York

In April, Gov. Andrew Cuomo formed a temporary business-regulation council that will review the state’s business practices, including workers comp and disability insurance, and make recommendations by June for the fall legislative session. The group will recommend how the state can reduce the cost of doing business.

Ohio

Firefighters who develop certain types of cancer would be presumed to be entitled to workers comp, according to S.B. 27 that the state Senate passed in April. The legislation aims to put Ohio in line with 30 other states that presume firefighter cancers are work-related.

Pennsylvania

H.B. 1800 was introduced in 2015 to, among other changes, implement workers comp treatment guidelines to control medical costs, mitigate the frequency of surgery and reduce the use of addictive pharmaceuticals. The legislation was sent to committee.

South Dakota

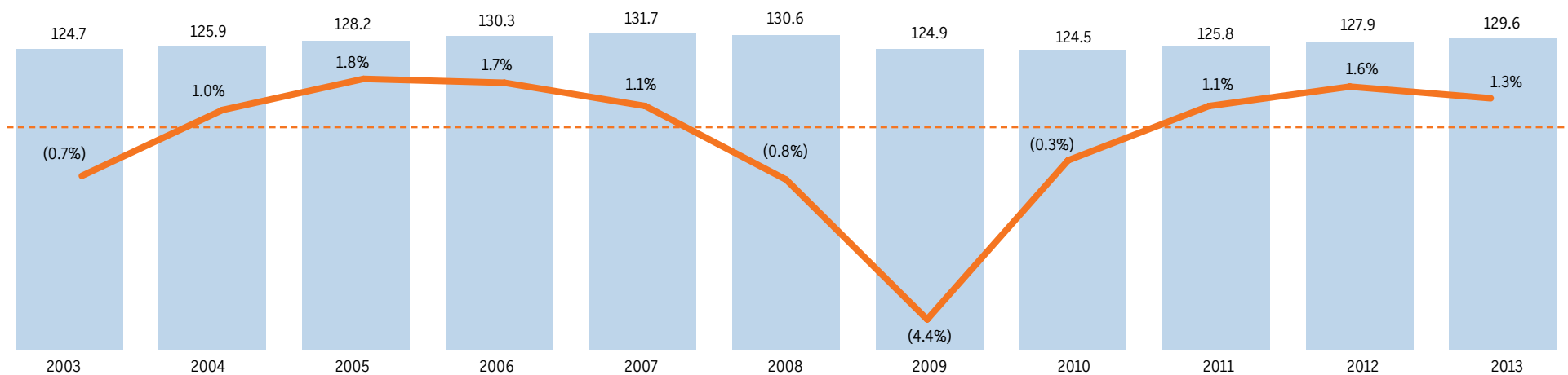
People with more than one job can collect workers comp benefits based on all the work they no longer can perform after being injured, rather than just the income lost from the job where they were injured. The bill was signed into law in February.

Wisconsin

Enacted in February, the 2015 Wisconsin Act 180 eliminates workers comp indemnity and survivor benefits for injured or dead workers proven to have caused their own injury due to intoxication. Medical costs remain unchanged. The law increases disability payments and stipulates that workers who wish to return to work part-time for retraining will not lose benefits. However, pre-existing conditions are not covered. The law also halves the statute of limitations to file a claim for workers who experience traumatic injuries to six years.

WORKERS COVERED

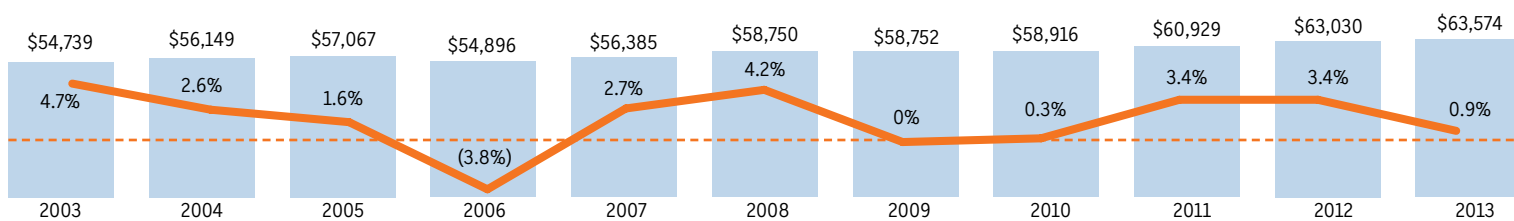
The number of employees, in millions, covered by workers compensation insurance has rebounded since the Great Recession but remains off its peak in 2007.



Source: National Academy of Social Insurance

BENEFITS PAID

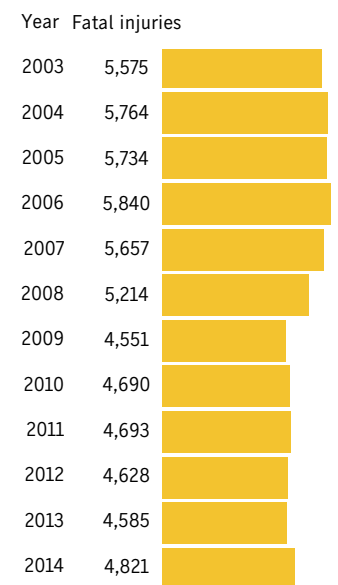
Total benefits paid for workers compensation claims, in millions of dollars, have increased since 2006, with half going to medical providers and half paid to workers in 2013.



Source: National Academy of Social Insurance

FATAL INJURIES

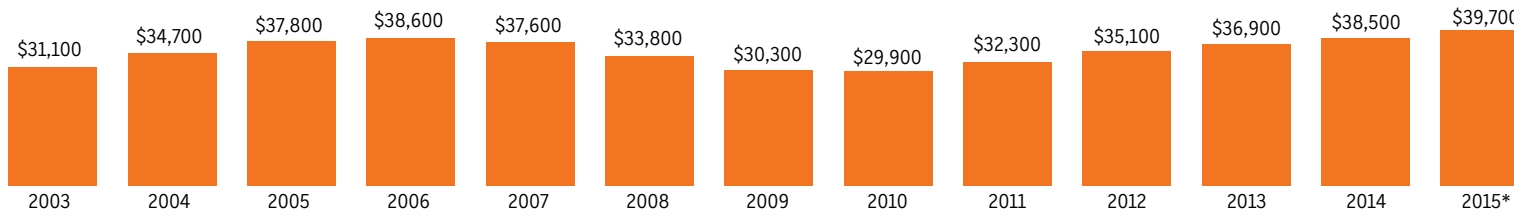
Workplace-related fatal injuries have increased in recent years but remain well below the period from 2003-2008.



Source: U.S. Bureau of Labor Statistics

PREMIUMS

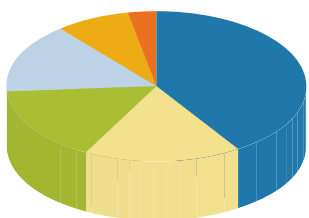
Net written workers compensation insurance premiums, in millions of dollars, were projected to increase in 2015, the fourth consecutive year, following major declines during the Great Recession.



*Preliminary
Source: National Council on Compensation Insurance Inc.

TOP CAUSES

Transportation-related incidents accounted for four of every 10 fatal workplace injuries in 2014.

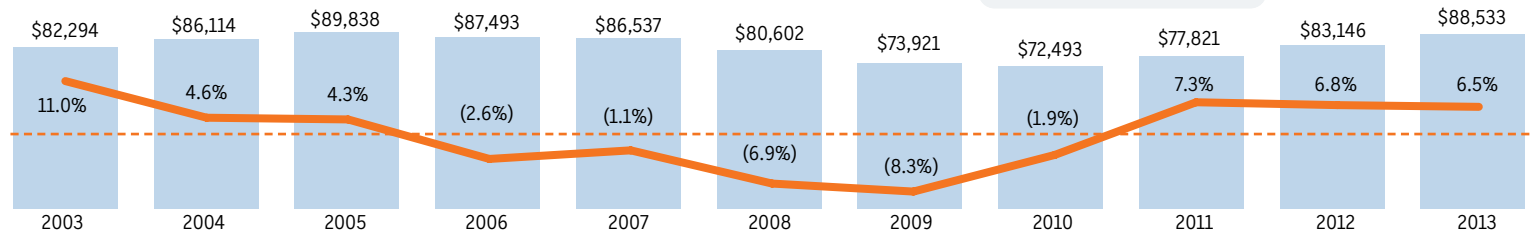


Transportation	1,984	41%
Falls, slips and trips	818	17%
Violence, injuries by persons or animals	765	16%
Contact with objects, equipment	715	15%
Harmful substances, environments	390	8%
Fires, explosions	149	3%
TOTAL	4,821	

Source: U.S. Bureau of Labor Statistics

EMPLOYER COSTS

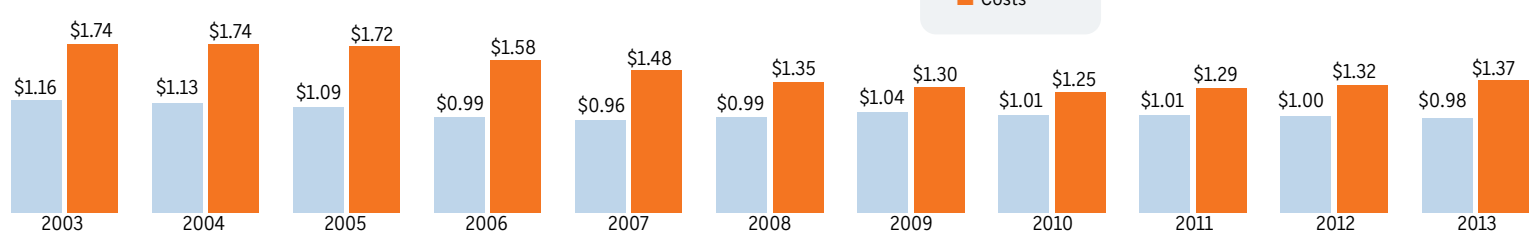
Total employer costs for workers compensation benefits, in millions of dollars, declined during the Great Recession, but increased at a greater rate than benefits paid or workers covered for three years in a row.



Source: National Academy of Social Insurance

COST PER \$100 OF COVERED WAGES

On a covered wage basis, workers compensation benefits have declined while employer costs have risen.



¹ Calendar-year payments to injured workers and medical care providers. ² Employer costs include insurance premiums and deductibles, administrative expenses and benefits paid to injured workers.
Source: National Academy of Social Insurance

Specialty underwriter adds cyber endorsement

Liberty International Underwriters has launched a cyber extortion endorsement to its product recall and contamination insurance for food and beverage companies.

This endorsement covers cyber extortion and consultant costs for cyber extortion acts against production and day-to-day operations at food and beverage firms, Liberty said in a statement.

To develop a response plan, the endorsement also gives policyholders preincident access to its crisis consultancy red24 P.L.C., according to the statement.

“With operations being mostly automated now and an increasing reliance on technology, the food and beverage industry faces a very real risk of having its systems hijacked by cyber criminals and held for ransom,” Jane McCarthy, Liberty’s senior vice president of global crisis management, said in a statement. “But what many companies don’t realize is that cyber extortion is not always covered under a typical cyber policy or by a general liability policy. We developed this to address the risks associated with new technology and ‘ransomware,’ malicious software designed to block access to a computer system until a sum of money is paid.”

The endorsement’s sublimit is \$100,000, according to a spokeswoman for Liberty.

Reinsurer to offer breakdown coverage

Maiden Reinsurance North America Inc. has introduced equipment breakdown reinsurance for commercial and personal lines underwriters, Maiden Re said in a statement.

Limits are up to \$25 million, a Maiden Re spokesman said.

Maiden Re’s equipment breakdown reinsurance offering is led by Vice President Cass Kuhlke. Prior to joining Maiden Re, Mr. Kuhlke was U.S. head of equipment breakdown insurance at Zurich Insurance Co., according to the statement.

“We are delighted to have someone of Cass’ caliber and deep industry experience join Maiden Re, where he will be joining an already highly experienced group. His specific area of expertise and background are an excellent fit,” Tom Hight, president of Maiden Re North America, said in the statement.

“We are constantly evaluating the needs of our clients and the market generally and have seen a real opportunity to provide tremendous value through the offering of equipment breakdown reinsurance,” Mr. Hight said.

Willis Towers Watson enhances analytics tools

Willis Towers Watson P.L.C. has introduced analytical tools to help firms diagnose exposures related to cyber risk, natural catastrophes and workers compensation.

Additionally, Willis Towers Watson is

PRODUCTS & SERVICES



Liability cover targets nursing home industry

Axis Capital Holdings Ltd. said its Axis Healthcare unit has entered the nursing home professional liability market with the hiring of underwriters Dave Stoner and Jason Correll.

Axis Healthcare, a division of Axis Insurance, provides professional liability insurance and associated standard casualty coverage for physician groups, hospitals and allied health care facilities.

Both executives joined Axis Healthcare from Kansas City, Missouri-based Rockhill Insurance Group and are based in Cleveland. Previously, Mr. Stoner was vice president and Mr. Correll was assistant vice president, Axis said in a statement.

“This move marks Axis Healthcare’s entry into the aging services market, which we have long identified as a promising and growing segment for specialty insurers,” Peter Wilson, president of Axis Insurance’s U.S. operations, said in the statement.

offering enhanced versions of its core analytics tools, the company said in a statement.

Cyber Quantified is a predictive tool that measures an organization’s risk due to a privacy breach and measures the impact and likelihood of network outages due to a cyber event.

The Workers’ Compensation Diagnostic allows firms to assess how well they are controlling operational risks and managing claims. The tool evaluates claim experience and benchmarks the results against a customized peer set.

The Global Peril Diagnostic helps organizations evaluate natural catastrophe exposures across their property portfolio and has been enhanced to be delivered via a web-based platform with greater interactivity, including maps that

display property locations with site-level scores for 12 natural perils.

Additionally, the tool incorporates global hazard data from Munich Reinsurance Co.’s Natural Hazards Assessment Network, according to the statement.

“Our clients demand cutting-edge analytical solutions that deliver risk insights in new and easy-to-understand ways. We have made significant enhancements to our suite of offerings, allowing for more insightful collaboration and resulting in more strategic risk management and business decisions,” Ben Fidlow, head of Willis Towers Watson Core Analytics, said in the statement.

Customized cyber cover limits up to \$100 million

Beazley Group P.L.C. and a unit of Munich Reinsurance Co. Ltd. unit have entered into a coinsurance partnership to provide buyers with cyber limits up to \$100 million or €100 million and coverage that is tailored.

Coverage can include hacking or malware attacks, distributed denial-of-service attacks, cyber extortion and property and bodily injury exposures, among other things, Beazley and Munich Re said.

London-based Beazley and Munich-based Corporate Insurance Partner said they have seen significant demand from large multinational buyers for “meaningful” cyber limits and expansion of the perils covered.

The insurers said they already have bound coverage under the partnership.

No wording is attached to the offering since it’s intended to be tailored to a specific client’s needs, said Paul Bantick, U.K. focus group leader for tech, media and business services for specialty lines at Beazley in London.

Platform consolidates safety information online

Atlas General Insurance Services L.L.C. has launched online workplace safety and risk management platform, GoSafe.

“This online platform was created by workplace safety experts and designed to help businesses reduce risk while improving employee safety,” Mike Mathews, president of workers compensation, said in a statement.

The platform is a tool for small- and medium-size businesses to create a safer work environment and prevent accidents, Atlas General Insurance Services said in a statement.

GoSafe provides policyholders access to the latest state and federal compliance information, policies, procedures and safety training.

Additionally, GoSafe provides online training videos, a risk management library, posters and checklists. It allows users to build their own risk management manual. GoSafe’s features also include an online human resources library with tools and resources such as updates regarding state labor laws, forms and policies, according to the statement.

DEALS & MOVES

Ironshore buys remaining share of surety provider

Ironshore Inc. said it has reached an agreement to acquire the remaining 80% of Lexon Surety Group L.L.C. in an all-cash deal.

Hamilton, Bermuda-based Ironshore said the purchase, the price of which was not disclosed, is expected to close this year, subject to regulatory approvals and other conditions.

Ironshore has held a 20% stake in Lexon since 2014 and made an initial investment in the Nashville, Tennessee, surety provider in 2013.

Lexon’s \$135 million in annual direct written premiums includes contract surety bonds, commercial surety bonds, court surety and probate surety bonds and U.S. customs surety bonds. It underwrites in 49 states, the District of Columbia and certain U.S. territories.

Latest Gallagher purchase adds construction specialty broker

Arthur J. Gallagher & Co. said it has acquired a Waite Park, Minnesota, retail insurance broker known for its construction expertise.

Itasca, Illinois-based Gallagher has purchased Charles Allen Agency Inc. for an undisclosed sum.

Founded in 2010, Charles Allen provides commercial surety bonding and insurance services — including property, general liability and workers compensation coverage — in the Midwest and specializes in construction industry coverage.

Charles Allen CEO Mark Gresser and his associates will continue to operate from their current location under the direction of Michael Pesch, head of Gallagher’s Midwest region retail property/casualty operation, Gallagher said in a statement.

Firms pool efforts to provide digital services to insurers

Management consultant Accenture L.L.P. and private equity firm, Apex Partners Holdings Ltd. have partnered to advance claims, billing and policy administration software for the insurance industry.

London-based Apex will acquire a 60% stake in Accenture’s Duck Creek Technologies Inc., with Accenture retaining 40%. The venture will operate as a new and independent company, Apex said in a statement.

Accenture will collaborate with Duck Creek to help insurers take advantage of the Internet of Things, Big Data analytics and other emerging technologies. Chicago-based Accenture will be consulting partner for Duck Creek Technologies, the statement said.

Prime Risk Partners to acquire independent agency

Prime Risk Partners Inc. will buy Indianapolis-based independent insurance agency Old National Insurance, a deal set to close by the end of the second quarter. Terms were not disclosed.

Old National will operate under the name ONI Risk Partners and retain all of its offices, with plans to expand. The ONI leadership team and employees will continue in their current roles. Prime Risk Partners will also acquire Old National subsidiaries JWF Specialty Co. and Employee Plans L.L.C., Prime Risk Partners said in a statement.

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 INVITATION FOR BID
 GENERAL LIABILITY/AUTOMOBILE LIABILITY/NON-OWNED &
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 EXCESS EMPLOYER'S LIABILITY**

The New York City Housing Authority ("NYCHA") requests Proposals from qualified **INSURANCE COMPANIES** for General Liability/Automobile Liability/Non-Owned & Hired Automobile Liability/ Employee Benefits Liability & Excess Employer's Liability Insurance. Insurers must be licensed in New York State, with "A.M. Best" rating of at least "A minus X".

Coverage is to become effective August 1, 2016.

Proposals shall be made in the format included in the Invitation for Bids submission packets containing instructions, coverage and limits specifications, and detailed proposal requirements. Packets may be obtained by contacting NYCHA's **Liability Insurance Broker:**

**Edgewood Partners Insurance Center
 3 Landmark Square, 4th Floor
 Stamford, CT 06901-2515
 Rebecca Oliver at (203) 658-0512.**

In order to be eligible, completed bid proposals **must be received by 3:00 P.M. EST on June 7, 2016.**

All inquiries for additional information regarding the Invitation for Bids are to be directed, in writing via e-mail, to rebecca.oliver@epicbrokers.com.

NYCHA IS NOT SOLICITING QUOTES FROM BROKERS

**Bill De Blasio, Mayor, New York City
 Shola Olatoye, Chair, NYCHA**



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 PUBLIC OFFICIALS LIABILITY &
 EMPLOYMENT PRACTICES LIABILITY INSURANCE**

The New York City Housing Authority ("NYCHA") requests Proposals from qualified **INSURANCE COMPANIES** for Public Officials Liability & Employment Practices Liability Insurance. Insurers must be licensed in New York State, preferably with a current "A.M. Best" rating of at least "A minus X".

Coverage is to become effective August 1, 2016

Proposals shall be made in the format included in the Invitation for Bids submission packets containing instructions, coverage & limits specifications, and detailed proposal requirements. Packets may be obtained by contacting NYCHA's **Public Officials Liability & Employment Practices Liability Broker:**

**Edgewood Partners Insurance Center
 3 Landmark Square, 4th Floor
 Stamford, CT 06901-2515
 Rebecca Oliver at (203) 658-0512**

In order to be eligible, completed bid proposals **must be received by 3:00 P.M. EST on June 7, 2016.**

All inquiries for additional information regarding the Invitation for Bids are to be directed, in writing via e-mail, to rebecca.oliver@epicbrokers.com.

NYCHA IS NOT SOLICITING QUOTES FROM BROKERS

**Bill De Blasio, Mayor, New York City
 Shola Olatoye, Chair, NYCHA**



PUBLIC NOTICE

NEW YORK CITY HOUSING AUTHORITY

**-PUBLIC NOTICE-
 INVITATION FOR BID
 PROPERTY & TERRORISM INSURANCE**

The New York City Housing Authority ("NYCHA") requests quotations from qualified **INSURANCE COMPANIES** for Primary/Excess Insurance coverage. **Coverage will incept on October 30, 2016.**

Proposals must be made in the format and within the timeline(s) included in the Invitation for Bids (IFB) package containing instructions, specifications and detailed submission requirements. IFB Packets may be obtained by calling NYCHA's **Property Insurance Broker:**

**Edgewood Partners Insurance Center,
 3 Landmark Square,
 Stamford, CT 06901-2515
 at (203) 658-0520**

In order to be eligible, completed bids **must be received by 3:00 P.M. EST on July 22, 2016.**

All inquiries for additional information regarding the IFB are to be directed to **Brendan Osean, Edgewood Partners Insurance Center, at the aforementioned address, telephone or e-mail to: Brendan.Osean@epicbrokers.com.**

NYCHA IS NOT SOLICITING QUOTES FROM BROKERS

**Bill De Blasio, Mayor, New York City
 Shola Olatoye, Chair, NYCHA**



MISCARRIAGE

Continued from page 4

of Ontario or a human rights tribunal in another province or even the federal tribunal will see as a disability.”

Although the employee at the center of the case, Wenying (Winnie) Mou, won on the disability ruling, she still has to establish a discriminatory connection between her termination and either her miscarriage or slip-and-fall disability. Ms. Mou’s attorney and an official with Ottawa-based building and infrastructure development adviser MHPM, now known as Colliers Project Leaders Inc., declined comment.

Ms. Mou learned she was pregnant with her first child in May 2013, but suffered a miscarriage the following month. She took two vacation days after exhausting her five-day sick leave in January 2013 to recover from her slip-and-fall injury. Because of her absences, she did not achieve her required 1,800-hour target for 2013, according to Ms. Mou. During her performance evaluations, her supervisor told her she needed to improve on her ability to meet scheduled delivery objectives, but Ms. Mou was fired in February 2014 and was told to “draw your own conclusions,” according to court documents.

The employer argued that Ms. Mou failed to establish a disability, which must have an aspect of permanence and persistence to the condition under provincial law, and that she had fully recovered from her temporary health issues, according to the decision. MHPM also stated that Ms. Mou had a “bad year” owing to the injury, miscarriage and the death of her mother-in-law, but that did not constitute a disability.

Adjudicator Jennifer Scott rejected the

employer’s arguments noting that the code does not require a disability to be permanent and that the definition of disability should be broadly interpreted, to reflect a 2000 Supreme Court of Canada decision.

“The protections under the code would have little meaning if an employer could terminate an employee because of disability-related absences provided the disability no longer exists at the time of termination,” Ms. Scott said in her decision.

But Ms. Scott’s decision has been questioned because of her conclusion that a miscarriage is not a common ailment — various government studies in the U.S. and U.K. show that 20% to 25% of early pregnancies end in miscarriage — nor a transitory event because of Ms. Mou’s ongoing “significant emotional distress.”

In addition, Ms. Scott could have decided that the miscarriage was a transitory event but still reach a fair decision for the employee without deeming the miscarriage itself a disability by finding that the miscarriage was the trigger for a mental health condition protected by law, or that termination due to miscarriage was discrimination on the basis of sex, said Catherine Coulter, Ottawa-based counsel with Dentons L.L.P.

The decision has implications beyond Ontario because the provincial human rights tribunal creates law and its rulings are examined and sometimes adopted as precedent by other provincial or federal human rights tribunals or courts in Canada, lawyers say.

“While not binding, this case could be strongly suggestive in another province,” Ms. Dormer said.

Regardless of the ultimate outcome of Ms. Mou’s case, employers with employees in Canada should be on notice that a miscarriage could constitute a disability and give rise to a

legal claim.

“Being aware of that, I think they need to be mindful of giving affected employees any required physical or emotional time off after a miscarriage,” Ms. Coulter said. “The caveat I would add to that is that most employers would probably never know, unless the miscarriage was a late miscarriage.”

Employers should understand that disciplining or terminating employees to enforce absence management or performance target policies could create legal troubles when managing employees with disabilities, including an employee who suffered a disabling miscarriage, lawyers say.

If an employer has concerns either about an employee’s performance, such as absences or a failure to meet deadlines, or a general demeanor change, they should have a conversation with the employee and give the employee an opportunity to disclose information about their circumstances that might explain the absences or performance issues, said Stefanie Di Francesco, a Toronto-based associate with McMillan L.L.P.

“If so, strict adherence to your attendance policy, for example, would have to yield to your duty to accommodate the employee,” she said.

Employees are obligated to ask for accommodation and employers would generally be protected if employees fail to make such disclosures, but employers walk a fine line in these situations because employees do not have to specifically disclose personal health information and employers must be careful not to ask personal questions, lawyers said.

“Something like a miscarriage is an intimately personal thing that an employee would have no obligation to disclose to their employer otherwise,” Ms. Di Francesco said. “A general, open-ended question would be better.”

TERRORISM

Continued from page 4

insurer Beazley P.L.C. in London.

The subsequent attacks at the Stade de France and Bataclan in November “awakened event organizers” to a changing terrorist threat, which prompted event organizers to “look at their risk management and also address coverage,” he said.

There has been an increase in both inquiries and orders for coverage, he said.

While terrorism coverage rates shot up after the Sept. 11, 2001, terrorist attacks in the United States, they have been falling in recent years while the coverage available has broadened, Mr. Rackliffe said.

Lloyd’s of London and London-market insurers have responded to the changing nature of the terrorist threat while other European markets have reduced their underwriting appetite, he said.

Particularly in the wake of the Stade de France attack, sports clients have taken a closer look at event cancellation and abandonment coverage, said Richard Tolley, Birmingham, England-based practice leader of Europe, Middle East and Africa sports and events at brokerage Marsh L.L.C.

The three suicide bombers who blew themselves up outside the stadium that was hosting a soccer match between France and Germany attended by French President Francois Hollande “perhaps sharpened the focus on static security guards” who pat attendees down before they enter a stadium, Mr. Tolley said.

The first of the three suicide bombers was prevented from entering the stadium by a security guard who patted him down and noticed a bomb vest. The attack also refocuses attention on what spectators can bring to such events, he said.

The Brussels attacks have resulted in various security procedure changes, such as moving screening away from terminal buildings, he said.

Event risk managers also have focused on other ways they can reduce risks, such as changing how close vehicles can be to sporting events, Mr. Rackliffe said.

It is vital that event organizers avoid higher-threat locations or areas where political or terrorist threats may not be well-managed, Ms. Gray said.

“The ability for a city or country to recover quickly from any fallout should influence a risk manager’s choice of location,” she said. “High-level security budgeted for in the first place will reassure underwriters that the risk within the insured’s control — within the venue — is being well-managed.”

NFIP

Continued from page 4

ly will be erased given that every representative on both sides of the aisle supported the bill, Ms. Fogel-Bublick said.

“We’d certainly like to see the Senate take action” on the noncontroversial bill that enjoys bipartisan support, said Frank Nutter, president of the Washington-based Reinsurance Association of America.

Ray Lehmann, senior fellow at free-market advocacy group R Street Institute in Washington, which is a member of Smarter-Safer, called the bill a “step toward a private market.”

He noted that one potential source of opposition has not materialized.

“The lending community is where there would be objections, and the bankers and other groups have not raised any serious concerns,” Mr. Lehmann said. “It has support from the Realtors. Most of the organizations that are interested are either neutral or positive.”

“It came out of committee 53-0 and out of the House 419-0,” said Tom Santos, a vice president at the Washington-based American Insurance Association. “I think there are opportunities here.”

Despite cautioning that “there are always difficulty with calendars,” Mr. Santos said that “this is something that is eminently



AP PHOTO

The National Flood Insurance Program has fallen more than \$20 billion into debt on losses dating back to Hurricane Katrina in 2005.

doable” and that he thought the House vote created momentum.

Other supporters sounded a more cautious approach.

“Anytime you have 419 to zero, that’s a pretty good start,” said Nat Wienecke, senior vice president in the Washington office of the Property Casualty Insurers Association of America.

“We know we have a lot of support, but the trick’s going to be what could the process be for this bill to be considered.”

It’s “unlikely” that Senate Major-

ity leader Mitch McConnell, R-Ky., “would schedule valuable, precious floor time for a bill like this,” Mr. Wienecke said. “Our question is, is this something we can get the Senate to take a look at” by attaching it to other legislation “or to consider through some sort of truncated time agreement between the majority and minority?”

“The outlook is uncertain, which doesn’t portend well for the looming expiration of the program next year,” said Jimi Grande, senior

vice president in the Washington office of the National Association of Mutual Insurance Companies. “This doesn’t seem to be top priority for the Senate, but it’s certainly on the list for a few key senators to try to find a way to get done.”

“When I say it doesn’t portend well for next year, this is a simple, no-brainer, bipartisan step in the right direction, and it’s having trouble getting through Congress. So the far more controversial program reauthorization and reform is going to be a heavy lift,” he said.

UNBUNDLING

Continued from page 1

New York. He added that the majority of the brokerage's large accounts are "unbundled."

"As part of our ongoing efforts to best meet the needs of large buyers and brokers, Liberty Mutual is exploring opportunities to make our insurance paper available on an unbundled basis," a spokesman for the Boston-based insurer said in an emailed statement to *Business Insurance* last month.

American International Group Inc., Chubb Ltd., The Travelers Cos. Inc. and Zurich Insurance Group Ltd. and are among large insurers that already offer unbundled services.

Taking that step now is something Liberty Mutual likely has to do "to remain competitive" and "be a factor in the large-account space," Mr. Peiser said. "This is a very positive development and it's going to, we think, result in Liberty seeing a lot of new opportunities and writing a lot of new business."

Liberty Mutual will continue offering services for workers comp, general liability and auto liability on a bundled basis for interested policyholders, the insurer's spokesman said.

"For the most part, clients with active risk management departments prefer unbundled programs because it gives them more control over the claims process," Mr. Peiser said. "It also makes their programs more portable so, if they're dissatisfied with one aspect or another, they don't need to sever the entire relationship."

Unbundling also allows employers to work with TPAs that can "demonstrate they have the

technology from a data analytics perspective to really meet the needs of the client," said Joe Vasquez, Philadelphia-based president of ESIS Inc., Chubb's wholly owned TPA. "Understanding the nuances of various jurisdictions is critical."

While insurers evaluate unbundling periodically, some are hesitant to offer unbundled coverage because they don't want to lose control of handling claims, said Trey Gillespie, Austin, Texas-based senior workers compensation director at the Property Casualty Insurers Association of America.

Losing control of claims could have "a negative impact on their standing or reputation in the insurance community," Mr. Gillespie said. "But when you look at the workers compensation market as a whole, it's mostly price-driven as opposed to reputation-driven."

Both Mr. Peiser and Mike Vitulli, Boston-based vice president of insurance brokerage Risk Strategies Co. Inc., said they don't expect Helmsman to lose business if Liberty Mutual unbundles its services.

Rather, "I think it will simply be an avenue for Liberty to write more business that they would not have otherwise seen," Mr. Peiser said.

In most cases, an insurer will continue "to be the insurance company of record with regard to reporting data, dealing with the state, collecting certain premium fees and the like," Mr. Gillespie said. "The claims handling is most likely going to be handled by a TPA chosen by the insured, but with the permission and consent of the insurance company."

ESIS' Mr. Vasquez said "accounts that have self-insured retentions or large deductibles typically want to have that freedom of choice where they decide, one, who their carrier is and,

two, who their third-party claims administrator is, as well as which vendors handle certain parts of their loss program."

With unbundled packages, "large employers that don't have much of an appetite for assuming (the) administrative burdens" that come with self-insurance can take "more of an oversight type of position" with their insurer and TPA, Mr. Gillespie said.

For employers that frequently aren't contractually allowed to self-insure, such as construction companies, staffing companies and some municipalities, "unbundling gives them the option to use any TPA they want," said Joe Picone, Glen Allen, Virginia-based claim consulting practice leader at Willis Towers Watson.

Even employers that qualify to self-insure in some states may find unbundling packages "very attractive," Mr. Gillespie said. It could create "more competition" among TPAs and other providers to bid on their claims handling services and, "ultimately, lower the cost as a whole for their whole workers compensation package."

"You could argue that, if you're allowed to bid the service out and find the best deal at the best price with the best service, you should be able to manage that better than just having your insurer roll it over every year," Risk Strategies' Mr. Vitulli said.

But sources said buyers should focus more on the total cost of risk than the upfront fee per claim.

"Statistically, the cost of the fee per claim on average ends up being less than roughly 9% of your total claim cost," Mr. Vasquez said. "Sophisticated buyers certainly understand and appreciate that" and focus on the total cost of risk.

"For the most part, clients with active risk management departments prefer unbundled programs because it gives them more control over the claims process."

Joseph C. Peiser,
Willis Towers Watson P.L.C.

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OBESITY

Continued from page 3

Brooks, Smith & Prophete L.L.P. in Winston-Salem, North Carolina, who was not involved in the case.

As a result of the ruling, plaintiff attorneys will “be looking to attach a physiological impairment or condition as the cause of the obesity,” said Peter J. Petesch, a shareholder at Littler Mendelson P.C. in Washington. “Meanwhile, defendants will be looking to distance the characteristic from a physiological condition.”

Frank C. Morris Jr., a member of Epstein Becker & Green P.C. in Washington, said despite the ADAAA, the 8th Circuit ruling suggests that “it really does still require evidence of something beyond the mere fact of obesity” to qualify as a disability.

But in many cases, obese job applicants may have other conditions “that would qualify as an impairment as a result of obesity,” including high blood pressure, diabetes and “any number of metabolic issues,” he said.

The U.S. Centers for Disease Control and Prevention’s National Center for Health Statistics has no data on the percentage of people who are obese but have no other physiological issues, a spokesman said.

However, Chattanooga, Tennessee-based disability insurer Unum Group issued a report last week blaming the high percentage of obese individuals, along with aging baby boomers, as major factors that significantly increased disability claims for joint disorders and musculoskeletal issues over the past 10 years.

The ADAAA’s expanded definition of disability and the growing incidence of obesity mean “there needs to be a line” drawn somewhere, said Martha J. Zackin, a partner at Bello/Walsh L.L.P. in Boston. “There’s an awful lot of



A BNSF applicant’s employment offer was rescinded after exams showed his body mass index above the railroad’s standard, despite having no other health maladies.

RESCINDED JOB OFFER AT HEART OF RULING

Melvin A. Morriss III applied for a machinist job with Fort Worth, Texas-based BNSF Railway Co. in March 2011 and was offered employment contingent on a satisfactory medical review, according to the 8th U.S. Circuit Court of Appeals in St. Louis.

Mr. Morriss, who was 5 feet 10 inches and weighed 281 and 285 pounds at two physical exams, had a body mass index of more than 40, which was above the railway’s standard for the measure of body fat based on height and weight.

The railway rescinded the job offer even though Mr. Morriss reported his overall health as “good.”

He filed suit in Omaha, Nebraska, in January 2013, alleging discrimination on the basis of his obesity, which he argued was a disability.

A federal judge dismissed the case, a ruling the 8th Circuit upheld in April.

Obesity alone is not a physical impairment despite enactment of the Americans with Disabilities Act Amendment Act of 2008, which was construed in favor of broad coverage of individuals under the ADA, the court ruled.

But under both disability laws as well as Equal Employment Opportunity Commission regulations and interpretive guidance, “physical impairment” must be the result of an underlying physiological disorder and “the ADAAA’s general policy statement cannot trump this plain language,” the appeals court ruled unanimously in dismissing the case.

By Judy Greenwald

obese adults in this country, and to begin claiming every incidence of obesity as a disability is taking it a bit to an extreme.”

“Time will tell” as to the ruling’s significance, said Alexander P. Berg, an associate at Kollman & Saucier P.A. in Timonium, Maryland.

In light of the two other appeals court rulings, the latest decision is “part of a larger trend,” but employer clarity will have to wait until more appeals courts weigh in

on the issue.

“You can never eliminate the possibility” that the Equal Employment Opportunity Commission would become a plaintiff in a case involving an obese job applicant “and test whether the 8th Circuit’s decision is right under the ADAAA,” said Allen H. Weitzman, a partner at Proskauer Rose L.L.P. in Boca Raton, Florida.

An EEOC spokesman declined comment.

In appeals courts that have yet to

rule on the issue, *Morriss* will be persuasive but not decisive, said Eric B. Meyer, a partner at Dilworth Paxson L.L.P. in Philadelphia.

“I still think you’re taking a fair amount of risk if you were to simply say, ‘We believe you’re obese and therefore we’re not going to hire you.’ That would be inviting a litigation claim” where there would at least be “an open question of who would succeed,” Mr. Morris of Epstein Becker said.

pay and the doctor gets paid more, everybody wins,” Mr. Gavin said.

One physician agrees that financial incentives exist.

“I have heard feedback from patients about their having additional financial responsibilities relating to their medical care, such as the higher cost of out-of-pocket payments,” said Dr. Robert Hall, Westerville, Ohio-based medical director for the workers compensation division of Optum Inc.

“It’s not the right thing to do — switching a case to workers comp purely on the basis of financial reasons — but from the physician’s side, I would say it could happen,” Dr. Hall said.

He said nonfinancial reasons, such as a patient asking to transfer their case to workers comp to receive care from a doctor outside their group health network, could also result in the change.

In Minnesota, according to the WRCI report, prices for soft-tissue

surgeries in workers comp and group health are closely aligned and there has been no increase in moving cases to comp.

“Having fee schedules in place has played a large role in controlling these costs,” said Lisa Wichterman, St. Paul-based medical policy specialist at the Minnesota Department of Labor and Industry.

Brian Allen, Westerville-based vice president of government affairs for Optum’s workers comp division, said medical expenses in workers comp should not necessarily be compared with group health prices because the two systems are very different.

States in the study with the highest workers’ comp prices, such as Wisconsin, do not have a fee schedule.

“The business community and others continue to try to make the case for some sort of medical cost containment, as Wisconsin has the

highest medical cost and highest medical inflation in workers compensation, but right now the Legislature does not have an appetite for a government-established fee schedule,” said Andy Franken, president of the Madison, Wisconsin-based nonprofit Wisconsin Insurance Alliance.

Mr. Allen said fee schedules, which are in place in 43 states, can be incentives for good and bad behavior alike.

“If a fee schedule is too low for certain procedures, doctors may skip those and go to a more expensive procedure or they might do extra procedures,” he said.

“An area to focus on that goes beyond this study is how we can more scientifically determine causation and (the injury’s) relationship to work, as opposed to categorizing the injury based on what the patient says and what the physician selects based on the provided information,” Dr. Hall said.

CONSEQUENCE

Continued from page 6

paid by insurers or captives that cover police forces.

Chris Owen, head of disputes at Bristol, England-based law firm TLT L.L.P., which represented the Mayor’s Office for Policing and Crime — the Metropolitan Police, said many claims for consequential losses depended on the outcome of the case.

“The law was unclear in this area and largely written for a different era,” he said in a statement. “The Supreme Court ruling ... has clarified that the compensation payable by the Metropolitan Police is limited to the costs of repairing the damage done to property during the 2011 London riots.”

The Supreme Court ruling “means that MSIEu will not be entitled to recover our outlay in respect of the consequential loss claim,” said a spokesman for Mitsui Sumitomo Insurance Europe. “While disappointing, given the broader context of the substantial recovery already made regarding the material damage, overall this

“The law was unclear in this area and largely written for a different era.”

Chris Owen, TLT L.L.P.

has been a successful outcome for MSIEu.”

The fact that three U.K. Court of Appeal judges believed that the Riot Act should cover consequential losses, but five Supreme Court justices did not, “demonstrates how unclear the 1886 act was,” said Chris Wilkes, a partner in the global insurance team at law firm DAC Beachcroft L.L.P., which represented Sony’s insurers Mitsui Sumitomo and Tokio Marine Holdings Inc.

The ruling clarifies that the 1886 law covers only property damage and the new law being considered by Parliament will stipulate that, Mr. Wilkes said.

Many standard property insurance policies underwritten in the United Kingdom exclude coverage for riots, Mr. Wilkes said.

In many cases, the business interruption costs caused by riots likely would significantly outweigh the physical damage costs, he said.

John Hurrell, CEO of London-based Airmic Ltd., the U.K. risk management association, said that until the 2011 riots, few insurance buyers had had cause to make claims under the Riot Act.

Most buyers, he said, self-insure such losses or buy specific riot coverage.

FEE

Continued from page 3

from group health to workers comp simply to increase revenue.

“Correlation is not causation,” Mr. Paduda said. “Just because more of the soft-tissue injuries are allocated to workers comp in the higher-fee-schedule states doesn’t mean these cases should not be workers comp cases.”

However, others said there is reason to believe monetary gain can be a deciding factor in cases where the cause is difficult to determine.

Financial incentives for the doctor and the patient point to defaulting to the workers compensation system, said Michael Gavin, Duluth, Georgia-based president of medical cost management company Prium.

“If the patient doesn’t have to

FLORIDA

Continued from page 1

at the Miami company, successfully secured workers comp benefits, but received only \$1.53 per hour for 107.2 hours of legal work, according to court records.

Noting the legislature's 2009 elimination of the requirement that attorney fees for injured workers be "reasonable" and calling the \$1.53 hourly award "patently unreasonable," the Florida Supreme Court late last month overturned a 2013 decision by Florida's 1st District Court of Appeal and remanded the case to the judge of compensation claims.

Actuaries at the workers comp ratings and research organization are evaluating "the cost impact" of the ruling, said NCCI's Mr. Burton, who said an off-cycle rate increase is likely to be filed later this month with the Florida Office of Insurance Regulation.

The impending comp rate filing "will catch a large number of employers" off-guard since they didn't plan for a rate hike "when they set budgets at the beginning of the year," said Tammy Perdue,



general counsel of Tallahassee-based Associated Industries of Florida, which supports businesses in the state.

There usually are only one or two off-cycle rate filings each year "due to the legislature enacting laws," Mr. Burton said.

Already this year, though, off-cycle comp rate changes include: Tennessee approving a 2.7% reduction because its drug formulary takes effect in August and Alaska approving a 3.7% reduction due to a medical fee schedule change, he added. In addition, NCCI has filed for off-cycle rate increase of 3.4% in Oklahoma due to that state's Supreme Court ruling that deferring permanent partial disability benefits for injured workers who

return to work is unconstitutional.

In Florida, *Castellanos* will likely lead to more litigation, hours of legal work and, as a result, higher claim costs, Ms. Perdue said.

At this point in *Castellanos*, Florida Attorney General Pam Bondi can seek a rehearing, appeal to the U.S. Supreme Court or rely on the legislature "to try to fix it," Miami attorney Mark Zientz of Law Offices of Mark L. Zientz P.A., said in an email.

"There will undoubtedly be calls for the legislature to address this decision," but there is some concern it wouldn't be addressed until next year, said Ronald Jackson, Atlanta-based vice president of state affairs for the southeast region at the American Insurance Association.

Just a week before *Castellanos*, Florida's 1st District Court of Appeal in Tallahassee issued a similar ruling in *Martha Miles v. City of Edgewater Police Department et al.*

Ms. Miles and the Fraternal Order of Police sought to pay attorneys out of pocket after the police department in Edgewater, Florida, denied both of her claims for benefits, records show. The appellate court said the state's attorney fee

statutes are unconstitutional since an injured worker should be allowed to pay attorneys with his or her own funds — or someone else's funds — subject to a judge of compensation claims finding that the fee is reasonable.

"The workers comp system has become so complex" that injured workers can't navigate it on their own, said Tampa, Florida-based attorney Michael Winer, who represented Ms. Miles and Mr. Castellanos.

Reasonable attorney fees aren't "the primary goal we're all supposed to be working toward within the system," Mr. Jackson said. "The purpose of the workers compensation system is to get these employees treated and back to work."

The Florida Supreme Court last month also discharged jurisdiction in *Daniel Stahl v. Hialeah Hospital*.

Mr. Stahl, who injured his lower back while working as a nurse in December 2003, filed a civil lawsuit alleging that his injury stemmed from Hialeah Hospital's negligence and argued that the workers comp system was an inadequate exclusive replacement remedy.

In its March ruling, which now

stands, Florida's 1st District Court of Appeal upheld the state's workers comp law — specifically the 1994 addition of a \$10 copayment for medical visits after an injured worker attains maximum medical improvement and the 2003 elimination of permanent partial disability benefits.

"The problems referenced in *Stahl* are somewhat cured by the ruling in *Castellanos*," Mr. Winer said. "There is still obviously a deficiency of benefits overall, but at least the burdens to get to those benefits have become greatly reduced by virtue of having an attorney on the case who can help you access them."

Mr. Zientz, who represented Mr. Stahl, said he expects "more injured workers with lower value claims will be able to retain lawyers" as a result of *Miles* and *Castellanos*.

"If you go back and look at workers comp appeals since 2003," when workers comp reforms took effect, "the ones that focus on constitutionalism, the bulk of those have been about attorney fees," Ms. Perdue said. "They haven't been about benefits to the injured worker. So we (could) now start seeing a shift."

STORMS

Continued from page 1

softballs in portions of North Texas along with heavy rain and high winds.

Mr. Bowen said preliminary data suggests the insurance industry has incurred more than \$7.5 billion in losses from winter storms, severe convective storms, flooding and drought so far this year. This includes payouts from National Flood Insurance Program and anticipated claims from the U.S. Department of Agriculture's Risk Management Agency program, he said.

"Most of the losses are attributed to severe convective storms, as hail has been notably costly so far this year," Mr. Bowen said. "Insured (severe convective storm) losses have topped \$10 billion in every year since 2008, and 2016 appears well on its way to topping this threshold as well."

The Insurance Council of Texas estimated insured losses from this year's hailstorms at nearly \$1.4 billion.

"I've had companies tell me that they've paid out more hail and wind claims this year than all of last year combined," said a spokesman for the council. "And we're in the middle of storm season."

In addition, April floods in Houston damaged about 40,000 vehicles and caused about \$400 million in insured losses, the council spokesman said.

Dan Rees, Boston-based senior analyst at AIR Worldwide, said Houston received about six months' worth of rain in just one



AP PHOTO

Golf ball-size hail pounded Fort Worth, Texas, in mid-March, causing extensive damage to automobiles and even killing birds at Fort Worth's zoo. Insured losses from a series of storms that hit the state during the first four months of the year are estimated at \$1.4 billion.

three-week period in April.

"Houston is particularly vulnerable to flooding," Mr. Rees said. "While this was a very intense storm, there was actually a storm last year around Memorial Day that also caused flooding in a different part of Houston."

"It's been floods, floods, more floods," said Duncan Ellis, New York-based U.S. property practice leader at Marsh L.L.C. "The No. 1 cat loss peril within the U.S. continues to be floods. We've seen significant flooding down in Louisiana and Mississippi and once again in New Orleans."

Mr. Ellis said clients need to understand what their property

insurance actually covers.

"One policy may see extreme heavy rain that inundates your factory, or inundates your building, and call that surface water," Mr. Ellis said. "It doesn't fall under the flood definition and, as such, it's treated differently, meaning it will have a different deductible and potentially different coverage from a limits standpoint. Other policies may call very, very heavy surface water a flood and, as such, it will have a different deductible."

Verisk Analytics Inc.'s Property Claim Services unit said insured losses for all U.S. wind and thunderstorm events have reached \$3.9 billion as of April 29. This does not

include multiple events in the past few weeks.

Despite the devastation, "the counts for hail and wind are almost the exact count for a typical year," said Scott Stransky, Boston-based assistant vice president in AIR Worldwide's research and modeling group. "In fact, the tornado count is a little bit below average."

"The hailstorm count was right on average," he said, "but you get a big hailstorm hitting a big city like San Antonio, and then it becomes notable, newsworthy and loss-causing, and then people start talking about it."

David Finnis, Atlanta-based executive vice president and head

of property broking at Willis Towers Watson P.L.C., said first-quarter commercial property insured losses were "relatively benign. If you look at the last two years of property claims for the U.S., the numbers have been down ... and it's just continuing the trend. It's very quiet. Obviously everybody is gearing up to see what hurricane season brings, and that starts on June 1."

Various forecasters have predicted that the Atlantic hurricane season that runs through Nov. 30 will have 12 to 14 named storms, with six to eight being hurricanes and three to four being major hurricanes.



AP PHOTO

Cleveland is looking for insurance protection for hosting the 2016 Republican National Convention.

City buys insurance against rioting GOP

Cleveland isn't taking a cavalier attitude toward its responsibilities as host of the 2016 Republican National Convention, despite the circus-like atmosphere that has emerged during the primary season.

The city is looking for insurance protection in case a war of words between Republican nominee Donald Trump's supporters and protesters spills out into a street fight with police.

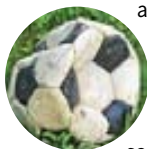
Cleveland will spend \$1.5 million to hire Aon P.L.C. to broker a law enforcement professional liability policy that covers potential lawsuits related to police conduct for the July convention — the costs of which will be paid for by a federal grant, according to Cleveland.com.

The city will host more than 50,000 visitors during the 4-day convention, which will take place primarily at Quicken Loans Arena, more commonly known as "The Q," home of the Cleveland Cavaliers basketball team. But maybe everyone will be in a good mood if King James brings Cleveland that elusive basketball championship next month.

Soccer player scores own goal via tweets

A semi-pro soccer player in northwest England who exposed his own insurance scam via Twitter has been given a suspended jail sentence, according to media reports.

Gary Burnett, who played for Northwich Victoria Football Club, said he injured his neck and back in a car accident at a fast food restaurant in October 2013, reports state.



Claiming he was unable to play soccer for four weeks as a result of the accident, he filed a claim for £2,000 (\$2,840), according to reports.

But London-based insurer Aviva P.L.C.'s investigation found that, shortly after the accident, Mr. Burnett tweeted, "Nice little trek to Kendal later for footy #mission #goals #vics." He also bragged about winning a match in a November 2013 tweet.

A Wigan County Court judge concluded last year that Mr. Burnett had made a dishonest personal injury claim and ordered him to pay Aviva's costs of more than £11,000 (\$15,622), according to reports.

FOR THOSE ABOUT TO ROCK . . . REFUNDS ARE AVAILABLE



AP PHOTOS

Axl Rose, center, has agreed to sit in for hearing-damaged AC/DC singer Brian Johnson, left, while guitarist Angus Young rides on.

It's a dirty deed done dirt cheap. AC/DC fans have been offered ticket refunds for the band's upcoming U.K. shows, where Guns N' Roses' Axl Rose will replace Brian Johnson as the band's frontman. Mr. Rose is heading down the highway to hell for the remainder of AC/DC's Rock or Bust World Tour, after Mr. Johnson was warned off performing live due to fears of suffering permanent hearing loss — an apparent workplace hazard for the famously loud quintet. Mr. Johnson had been AC/DC's frontman since 1980, having joined the group after the death of previous singer Bon Scott.

AC/DC currently have 12 European live dates booked for May and June, including two U.K. shows: London's Olympic Stadium on June 4 and Manchester's Etihad Stadium on June 9.

News reports say that AC/DC ticket holders have received an email from British ticketing services company See Tickets which offered refunds until May 6. Other ticket companies have also offered refunds.

Meanwhile guitarist Angus Young recently shook fans all night long — or at least for a couple of songs — when he joined Mr. Rose and the rest of Guns N' Roses onstage at Coachella in a preview of things to come. Welcome to the jungle.

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Caravan camping can carry catastrophe

During the summer months in Britain, the sight of caravans — or camper trailers — being pulled along highways by cars taking vacationers to picturesque destinations is a familiar one.

But while caravanning may appear as a sedate way to spend a holiday, there are risks to be taken into account, experts say.



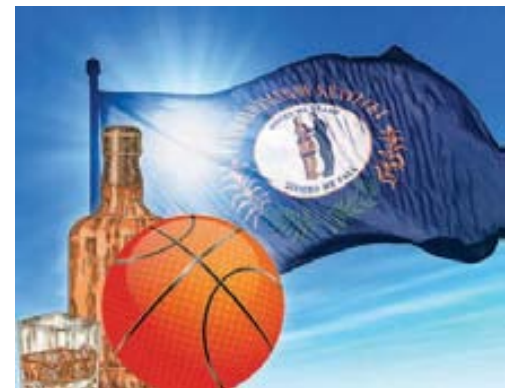
Specialist insurer Saga P.L.C. told Thisismoney.co.uk that it received several unusual claims from caravan owners last year.

According to Roger Ramsden, CEO of Saga Services, one poor owner was dismayed to find his caravan had been broken into while it was in storage during the winter months.

The owner was even more horrified to discover that the thief had made off with the caravan's toilet — which resulted in a £500 (\$710) insurance claim.

Another caravanner, who diligently moved his vehicle onto the driveway over night in order to clean it the following day, awoke to find about £4,000 (\$5,681) of damage to his caravan caused by a trash can crashing into it repeatedly.

And another caravan owner made a claim for about £2,000 (\$2,840) after a pheasant hit the caravan causing damage.



School gets misty over state name

Can a state's name be trademarked? That at least is the contention of the Lexington-based University of Kentucky which has sent a "cease and desist" order to a distiller, Whitesburg, Kentucky-based Kentucky Mist Moonshine Inc. for applying for a trademark registration under its company name that includes the name "Kentucky".

The university said it is worried Kentucky Mist's plans to use the trademark on clothing will cause "confusion."

But as John C. Greiner, a partner with Graydon Head & Ritchey L.L.P. in Cincinnati, who revealed the litigation in a recent article, says this confusion is unlikely. "One is an alcoholic drink, and the other is place where people go to play hoops for a year prior to the NBA. It's an easy distinction."

As Kentucky Mist points out, the name Kentucky has been in use since at least 1792.

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