

**4.2  
MILLION**

The number of U.S. workers the Department of Labor estimates will be affected by its new overtime rule.



## LIABILITY & LITIGATION

### Overtime rules raise prospect of more suits

Record-keeping, clarity two areas of concern

BY JUDY GREENWALD

A new Department of Labor rule that doubles the salary threshold at which white collar workers are entitled to overtime pay looks to increase wage-and-hour litigation against employers.

The long-awaited rule, introduced last week and effective Dec. 1, raises the threshold below which white collar workers are entitled to overtime. The new threshold is \$913 per week or \$47,476 annually for a full-time employee compared with the current \$455 per week or \$23,600 annually.

The promise for much of the past century to American workers has been that they would get overtime for working above 40 hours a week, the Labor Department said in a statement. "We are taking action that will make that promise a reality again for more of America's

See **OVERTIME** page 29

## EMPLOYMENT PRACTICES

### TRANSGENDER BATHROOM LAW PROMPTS EMPLOYER ACTION

North Carolina's stance causes predicament



AP PHOTO

Protesters take their opposition to the North Carolina transgender bathroom law to the state legislature.

BY LOUISE ESOLA

North Carolina's controversial "bathroom law" has prompted litigation and spurred federal agencies to speak out about transgender rights while putting public entities and employers at risk of violating the state and federal laws.

H.B. 2, which North Carolina Gov. Pat McCrory signed into law in late March, requires that transgender individuals use the restroom that corresponds with the sex listed on their birth certifi-

cate. It applies to public restrooms in places such as schools, universities, city and state facilities, and airports.

A host of musicians and organizations responded by canceling events ranging from concerts to trade shows and other business gatherings. A study by the William's Institute at the University of California-Los Angeles' School of Law earlier this month said H.B. 2 could cost North

See **TRANSGENDER** page 28

## HEALTH CARE REFORM

### Contraceptive mandate still in play

Will Supreme Court punt be returned?

BY SHELBY LIVINGSTON

The Supreme Court's decision to send contraceptive mandate challenges back to half a dozen appeals courts will leave the parties in search of a compromise that may be difficult, if not impossible, to find.

Some say the high court's decision last week in *The Rev. David A. Zubik et al. v. Sylvia Burwell et al.*, in which it declined to rule on the Affordable Care Act mandate imposed on employers and challenged by religiously affiliated nonprofit organizations, could mean there's a 4-4 split on the merits of case.

The court has had eight members since the February death of Associate Justice Antonin Scalia, and Senate Republicans have vowed to block any nominee by President Barack Obama.

The eight-member Supreme Court unanimously told the federal government and religious nonprofits that ideas had been presented to allow them to "resolve any outstanding issues between them" on the accommodation to the health care reform law mandate that requires the nonprofits to notify their insurers, third-party administrators or the government about their objection to providing contraceptive coverage, with the

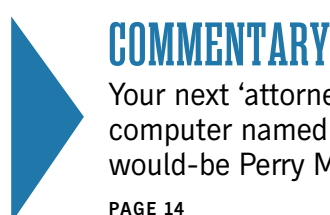
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### Q&A: DR. STEVE MILLER

Chief medical officer of Express Scripts Holding Co. discusses prescription drug pricing

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### COMMENTARY

Your next 'attorney' could be a computer named Ross. Beware, would-be Perry Masons.

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### IN BRIEF

Aspen makes changes at the top as senior insurance leaders make their exits.

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### SPECIAL REPORT



### HEALTH BENEFITS: WELLNESS

Incentives remain a key factor in the success of workplace wellness programs, but some employers are rethinking how they motivate workers to get healthy through the allure of rewards or the fear of penalties.

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## What is Craftsmanship<sup>SM</sup>?

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Navigating cyber contracts

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British rock band Radiohead is accused of copyright breach of 1960s stop-motion children's television series "Trumpton." **30**

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NEWS

CATASTROPHES

WILDFIRE LOSSES MOUNT AS ADJUSTERS STAND BY

Hot spots hinder business interruption assessments

BY ROB LENIHAN

Wildfires sweeping through parts of Alberta for weeks are likely to be Canada's costliest catastrophe for property/casualty insurers with estimates of insured losses reaching nearly \$7 billion, much of it borne by reinsurers.

The fires, which began May 1 in the Fort McMurray area, reportedly spread last week toward two oil-sand mining operations and forced the evacuation of some 8,000 workers. Lost oil production averaged about 1.2 million barrels per day for 14 days, according to the Conference Board of Canada.

As of Friday, the wildfires had burned more than 1.2 million acres and spread into neighboring Saskatchewan, according to catastrophe modeler Risk Management Solutions Inc. Roughly 1,900 structures were burned in Fort McMurray, whose nearly 90,000 residents were evacuated.

AIR Worldwide said its estimates of \$3.4 billion to \$6.9 billion in insured losses make the Fort McMurray wildfire "the costliest natural disaster in Canada's history." Several other organizations agreed.



AP PHOTO

Wildfires in Canada's Fort McMurray area, near Alberta's oil fields, are expected to generate insurance losses of nearly \$7 billion.

While residential homes are the majority of the losses, several groups of oil workers were evacuated to temporary quarters, some of which also burned as the fire changed directions. Other business interruptions reportedly were common in and around Fort McMurray.

Toronto-based Intact Financial Corp., a major Canadian property/casualty insurer, estimated its insured losses on a per share basis

that would equal roughly Canadian \$130 million to \$160 million (\$100.5 million to \$123.7 million) after taking into account the effect of its reinsurance program and net of tax effects.

Toronto-based credit rating firm DBRS Ltd. said "no credit impact is expected for major insurers operating in Canada as a consequence of the Fort McMurray

See WILDFIRES page 26

SAFETY

Injury records rule may lead to more citations

OSHA measure raises concerns for employers

BY GLORIA GONZALEZ

Employer representatives are troubled by anti-retaliation provisions in the U.S. Occupational Safety and Health Administration's electronic record-keeping rule that establish a new, citation-based pathway for employee complaints.

The Improve Tracking of Workplace Injuries and Illnesses rule, which goes into effect Jan. 1, 2017, requires certain employers to electronically submit injury and illness data they already are required to record via their on-site OSHA injury and illness forms.

Establishments with 250 or more employees in industries covered by the record-keeping regulation — as well as those with 20-249 employees in high-risk industries such as agriculture, forestry, construction and manufacturing — must submit 2016 injury and illness information by July 1, 2017. 2017 data must be submitted by July 1, 2018.

However, the rule's anti-retaliation provisions go into effect in just three months. The provisions, effective Aug. 10, require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation, specifically bar employers from retaliating against employees, and mandate that employer procedures to report work-related injuries and illnesses must be reasonable and not discourage reporting.

"It simplifies OSHA's ability to take action regarding claims of whistleblowing," said Daniel Davis, special labor and employment counsel at law firm Proskauer Rose L.L.P. in Washington. "It gives OSHA another avenue, and I fully expect OSHA will use that avenue. Employers need to be aware that OSHA has additional ways to investigate and evaluate and now write citations for what it perceives to be retaliatory activity."

The anti-retaliation provisions were born from the agency's desire to ensure that injury and illness data is as accurate and complete as possible, said David Michaels, Washington-based

See RECORDS page 26

CORRECTION

A story in the May 9 issue, "States Stepping Up Efforts to Cut Benefits for Workers Hurt While Impaired," misstated recent changes in Wisconsin's law. It should have said: Wisconsin's law eliminates comp benefits entirely if an injured worker violates an employer's policy on alcohol or drug use and it can be proven the alcohol or drugs caused the injury. Prior to the changes, Wisconsin reduced workers comp payments by 15% in such circumstances.

WOMEN TO WATCH

**B**usiness Insurance has opened nominations for its 2016 Women to Watch awards program, which identifies 25 women leaders doing exceptional work in commercial insurance, reinsurance, risk management, employee benefits, and related fields such as law and consulting.

Each year's honorees are selected by a panel of senior editors at Business Insurance based on various criteria that include recent professional achievements, influence on the marketplace and contributions to the advancement of women in

business.

The nomination deadline is Aug. 5.

This year's nominees will be profiled in the Dec. 5 issue of Business Insurance and recognized at a conference and a gala dinner Dec. 12-13 at the Grand Hyatt New York.

The conference, which is open to the public, will feature educational sessions and panel discussions on facilitating women's career advancement. It also provides a networking opportunity for past and present honorees and others who attend.

Nominations should be submitted online at [www.businessinsurance.com/women2016nominate](http://www.businessinsurance.com/women2016nominate), where an FAQ section is available.

If you have further questions, contact Gavin Souter, editor of Business Insurance, at [gsouter@businessinsurance.com](mailto:gsouter@businessinsurance.com).

ONLINE FEATURES

VIDEO

In Focus: Crisis communication management

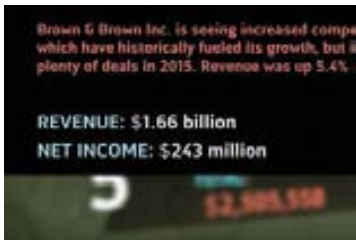


Experts discuss managing reputational risks by easing public concerns

through communication.

www.BusinessInsurance.com/ InFocus

VIDEO



Highest-paid broker CEOs

A look at compensation for broker CEOs last year.

www.BusinessInsurance.com/ Top5BrokerExecs

GALLERY

Week in pictures

A visual tour of recent big stories.

www.BusinessInsurance.com/ WeekInPictures

RESEARCH

2016 Directory & Ranking of Third-Party Administrators



Rankings of the top U.S. TPAs, including 2015 revenue in our comprehensive guide to third-party administrators.

www.BusinessInsurance.com/ TPADirectory

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NEWS

HEALTH CARE BENEFITS

CLINTON PROPOSAL WOULD EXPAND MEDICARE

Lowering age of eligibility could roil employer offerings

BY JERRY GEISEL

A proposal by Democratic presidential candidate Hillary Clinton to lower the Medicare eligibility age could be a mixed bag for employers.

Under the 1965 federal law that created Medicare, the program that covers more than 55 million U.S. residents is limited to retirees who are at least age 65, with narrow exceptions.

Earlier this month during a Virginia campaign stop, Ms. Clinton proposed reducing the Medicare eligibility age to 50 or 55.

While Ms. Clinton suggested that younger retirees would have to “buy in” to the program to some extent, they “would be buying into such a big program that the costs would be more evenly distributed.”

The Clinton campaign has not provided more information about the proposal.

“We may not see a lot of details. Right now, this is campaign rhetoric,” said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

“Who will be on the hook for the cost? The devil will be in the details,” said James Gelfand, senior vice president of health policy at the ERISA Industry Commit-



AP PHOTO

Hillary Clinton’s proposal to expand Medicare eligibility is short on details, leaving employers guessing about who would ultimately cover costs.

tee in Washington.

Ms. Clinton is not the first to propose lowering the Medicare eligibility age. Her husband and then-President Bill Clinton did so nearly twenty years ago.

“What about all those people who retire at age 55 and lose their employer-based health insurance and can’t draw Medicare until they’re 65?” he asked during a speech to the Service Employees International Union in 1997.

A year later, the Clinton admin-

istration formalized the proposal that would have allowed employees 55 and older who lost their jobs and exhausted COBRA coverage to purchase Medicare coverage for \$400 per month until they turned 65. But Congress never acted on the plan.

Benefit experts see pros and cons from an employer perspective in Ms. Clinton’s proposal, which could affect 13 million people,

See **MEDICARE** page 26

P/C REGULATION

Questioning overseas oversight

Insurance regulators in U.S. wary of IAIS trumping states

BY MARK A. HOFMANN

A new front has opened in the ongoing battle over how much say international regulators should have in the operation of U.S.-dominated insurers.

U.S. insurers have repeatedly raised questions about the ability of the International Association of Insurance Supervisors and other international regulatory groups to override state regulators.

Critics of the IAIS and other international regulators hold that global regulators don’t understand that the U.S. regulatory system puts the interests of consumers ahead of others in matters such as solvency regulation, and do not appreciate the strengths of the state-based U.S. insurance regulatory system.

In response, Rep. Blaine Luetkemeyer, R-Mo., who also is chairman of the House Financial Services Committee’s Subcommittee on Housing and Insurance, recently introduced the Transparent Insurance Standards Act.

According to a description on the congressman’s website, H.R. 5143 “would reinforce that any international insurance standard agreed to at the IAIS would not be self-executing and could not be applied in the United States until it is implemented through the required domestic process and provides Congress the opportunity to reject a bad agreement.”

The measure would require the U.S. Treasury Department and Federal Reserve “to work to ensure policyholder protection, increased transparency and recognition of the state-based model of insurance regulation,” according to a statement on Rep. Luetkemeyer’s website.

The Basel, Switzerland-based IAIS declined comment on the measure. A spokesman said in an email that the IAIS does not comment on pending legislation.

In the U.S., the National Associa-



Rep. Blaine Luetkemeyer

INTERNATIONAL

U.K. insurers mandated to process claims quickly

BY SARAH VEYSEY

A new U.K. law will allow insurance buyers of all sizes to receive damages if their claims are not paid within a reasonable amount of time, but the law does not define what is considered “reasonable.”

The U.K. Enterprise Act, which goes into effect May 2017, will make insurers liable to pay compensation if their delay in settling a claim causes financial damage for the buyer, and if the buyer can prove that the handling of their claim was unreasonable and that the damages suffered were foreseeable by the insurer.

As a result of lobbying by insur-



ers, buyers must bring their claim for damages within one year after the original insurance claim is paid in full.

While an implied obligation for insurers to assess claims quickly and with diligence already exists under Scottish law, the Enterprise Act marks the first time that poli-

cyholders can seek damages for late payment of insurance claims under English law, sources said.

The Enterprise Act, which updates one element of the Insurance Act 1886 that was left out of the Insurance Act 2015, which comes into force later this year, “remedies a long-standing injustice for insurance policyholders,” said Richard Mattick, of counsel in the insurance practice at law firm Covington & Burling L.L.P. in London.

The legislation brings U.K. law “into line with most of the rest of the world,” said John Hurrell, CEO

See **ENTERPRISE** page 27

See **STANDARDS** page 26

# Who is ranked as the number one insurance brand in the world,\* yet again?

Alternative Risk  
Transfer  
Aviation  
Cargo  
Energy  
Engineering &  
Construction  
Entertainment  
Farm & Ranch  
Financial Lines  
Highly Protected Risk  
Hull & Marine  
Liabilities  
International Solutions  
Liability  
Marine  
Middle Market  
Package & Small  
Business  
Property  
Programs

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# FEDERAL COURT TO BE NEW BATTLEFIELD FOR TRADE SECRET VIOLATION DISPUTES

Bipartisan support for law that creates easier route for litigation

BY JUDY GREENWALD

The Defend Trade Secrets Act of 2016, which President Barack Obama signed into law earlier this month, establishes a smoother legal path for businesses pursuing trade secrets litigation by letting them take their case to federal court.

Until now, businesses in most states could file suit under the Uniform Trade Secrets Act of 1979 as amended in 1985, but had to do so only in state courts. The problem is states have adopted different versions of the law, which has resulted in complications for firms doing business in multiples states or where data has been moved out of state, experts say.

They also note there already are federal civil remedies available for other categories of intellectual property including patents, trademarks and copyrights.

While businesses still can file litigation in state courts, allowing them to turn to federal courts permits development of more consistent federal case law on which to adjudicate the growing number of thefts of trade secrets.

International intellectual property theft generates annual losses of more than \$300 billion annually, according to a May 2013 report by

the Commission on the Theft of American Intellectual Property.

“Trade secret violations are happening every day, and they’re becoming more and more serious,” said Paul E. Starkman, a member of law firm Clark Hill P.L.C. in Chicago. Employees, contractors and those with access to companies’ computer systems “are misappropriating data at an exponential rate that is growing every year.”

“With employees leaving and going to new jobs, they are taking with them not just their knowledge, to which they are entitled, but we’re also seeing more and more efforts to short circuit what would normally be a startup cost and time frame” as employees bring with them their former companies’ trade secrets, said Lee F. Johnston, a partner at Dorsey & Whitney L.L.P. in Denver.

The legislation the president signed won rare bipartisan congressional approval, with a 410-2 vote in the House and 87-0 in the Senate.

Previously, businesses “were required to rely on sort of a patchwork of state laws, which sometimes are consistent and sometimes aren’t,” said Clifford R. Atlas, a principal at Jackson Lewis P.C. in New York.



## THE LAW

Major provisions of the U.S. Defend Trade Secrets Act, which was signed into law May 11, are:

- Trade secret owners can file civil actions in federal court for trade secret misappropriation. Remedies include injunctions and damages.
- A trade secret owner may get a seizure order to prevent dissemination of the trade secret notifying the target. The court, however, must hold a hearing on the seizure within seven days.
- A whistleblower provision protects employees who reveal trade secrets while reporting a suspected violation of the law or for retaliation for reporting the violation.

The new law will “provide more consistency in terms of how the courts treat trade secrets, which allows companies to better model their behaviors” and provide them with “more consistent guidance,” said Steven J. Berryman, a partner at Quarles & Brady L.L.P. in Milwaukee.

A controversial part of the law is its ex parte seizure remedy, which

allows courts to enter an order permitting the seizure of stolen trade secrets without having to provide a previous warning to its target. Under this provision, which is not in state laws, the company seeking the order must first demonstrate it would suffer an “immediate and irreparable harm”

See **SECRETS** page 29

## RISK MANAGEMENT

# Practice crisis communications before an emergency hits

BY DONNA MAHONEY

CHICAGO — Crisis communications plans can help organizations effectively manage and recover from a crisis, but they are more likely to be successful if members of the crisis team know their roles and have rehearsed together before a crisis occurs, experts say.

“The challenge tends to be that the plan hasn’t been tested or practiced,” said Andrew Moyer, Chicago-based vice president of crisis and risk management at Daniel J. Edelman Holdings Inc., a communications and marketing company, “and people don’t have a fine understanding of their role and

responsibilities in a crisis. This is the whole point of front-end preparedness, which is part of crisis management; ensuring that when



bad things happen you are prepared to communicate effectively.”

Any company, even the best-managed ones, can find themselves in a crisis situation such as a data breach where “it’s not if it’s going to happen but when it’s going to happen,” said Rhonda

Barnat, managing director of Abernathy MacGregor Group in New York and co-chair of the communications firm’s crisis management practice.

Creating a team to react to a crisis is a key step in the preparation process, and building a crisis team where each member trusts the other members is critical, Ms. Barnat said, speaking along with Mr. Moyer at the Hines Symposium in Chicago earlier this month, an annual educational event sponsored by the Chicago Chapter of the Risk & Insurance Management Society Inc.

One of the ways that trust can be developed within the team is to

rehearse emergencies, Mr. Moyer said. He suggests developing table top exercises that create scenarios that can bring the core team together.

“Inject new pieces of information without them knowing what it will be and see how they interact with each other,” he said. This way you can find out how they communicate with each other and if they trust each other. This is also a way to see if there are too many people on the team or too few, he added.

A crisis communications team should at a minimum include a person from legal, a person from

See **HINES** page 28

# Comp reform efforts target old concerns

Medical marijuana, opt-out on sidelines

BY STEPHANIE GOLDBERG

BOCA RATON, Fla. — Despite the insurance industry’s focus on emerging issues such as opting out of state workers compensation systems and medical marijuana, the majority of workers comp bills introduced so far this year involve first responders, medical cost management and the definition of an employee.

Of the 660 relevant workers comp-related bills introduced during the first quarter of 2016, 84 involve first responders, 65 involve medical reimbursements and fee schedules, and 54 involve the definition of an employee, said Lori Lovgren, division executive of state relations for the National Council on Compensation Insurance Inc. in Boca Raton, Florida.

Although medical marijuana is legal in 24 jurisdictions, few insurance companies are reimbursing injured workers for it, sources said. Only in New Mexico have courts ruled that the drug should be classified as reasonable and necessary medical care for injured workers.

Likewise, Oklahoma is the only state affected by opt-out legislation, which took effect in February 2014. Similar bills were introduced in Tennessee and South Carolina last year, but they haven’t been revisited in 2016.

However, several states have enacted presumption laws this year, such as Connecticut H.B. 5262, which establishes a firefighters cancer relief program, and Arizona H.B. 2350, which outlines when post-traumatic stress disorder of a peace officer is presumed to arise out of and in the course of employment.

“Ever since 9/11, the expansion of benefits for first responders has been a very popular effort,” Ms. Lovgren said. And more states have pushed for mental health presumption laws covering conditions like post-traumatic stress disorder since the December 2012 shooting at Sandy Hook Elementary School in Newtown, Connecticut, she added.

Meanwhile, Georgia Gov. Nathan Deal this month vetoed H.B. 216, which would have created a cancer presumption for firefighters.

See **NCCI** page 28



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## Aspen revamps as Vitale retires

■ Mario Vitale is retiring as CEO of Aspen Insurance, Hamilton, Bermuda-based Aspen Insurance Holdings Ltd. announced. In addition, Robert Rheel, 53, president of Aspen U.S. Insurance, said he also plans to retire from Aspen. Aspen said it is conducting a search for his successor and that Mr. Rheel will stay until the end of June to assist with the transition. Mr. Vitale, 60, who has been CEO of Aspen Insurance since 2012, also will remain with the company until June 30 to “ensure a smooth transition,” Aspen said in a statement. Stephen Postlewhite, previously CEO of Aspen Reinsurance, will succeed Mr. Vitale as CEO of Aspen Insurance effective immediately. Thomas Lillelund, previously managing director of the Asia Pacific region for Aspen Reinsurance, succeeds Mr. Postlewhite as CEO of Aspen Reinsurance.

## XL Catlin leads insurance cover for downed EgyptAir flight

■ XL Catlin is the lead underwriter for the EgyptAir Flight 804 airliner that crashed in the Mediterranean Sea, industry sources said, and Marsh L.L.C. is the broker. The plane, an Airbus A320, was flying from Paris to Cairo when it swerved sharply upon entering Egyptian airspace and crashed into the water, media reports said. Sixty-six people were on board. Both Marsh and XL Group P.L.C. declined to comment. The Egyptian civil aviation minister, Sherif Fathi, said during a news conference in Cairo that it was too soon to draw conclusions about the cause of the crash, reports said, but also said that a terror attack is more likely than a technical failure.

## More football concussion suits filed against the NCAA

■ Houston-based law firm Raizner Slania L.L.P. said it filed six concussion claims against the NCAA and several Division I universities and athletic conferences. The law firm said in a statement that it had filed the lawsuits in various courts around the country seeking compensation on behalf of classes of former athletes from Penn State University, Auburn University, the University of Oregon, University of Georgia, University of Utah, and Vanderbilt University. Chicago attorney Jay Edelson of Edelson P.C., who is leading this latest effort to sue the NCAA, said 40 to 50 class action lawsuits will eventually be filed on behalf of tens of thousands of ex-football players, according to media reports. A complaint was filed last week in U.S. District Court in Indianapolis listing Raizner, Mr. Edelson and three other attorneys as representing lawsuit plaintiffs. It charges that the defendants breached their duties to student-athletes by concealing the dangers of concussions and failing to implement appropriate safety protocols.

## General Re names new CEO as Montross retires

■ General Re Corp., a unit of Warren Buffett’s Berkshire Hathaway Inc., named longtime reinsurance executive Kara Raiguel as its new CEO, replacing the retiring Tad Montross. Ms. Raiguel will report to Ajit Jain, who oversees

Berkshire Hathaway Reinsurance Group and has long been viewed as a potential successor to Mr. Buffett at Berkshire itself. In an internal memo, Mr. Jain said Ms. Raiguel has been a “key player” at his reinsurance division for more than 15 years, his “secret weapon” for 10 years, and a “true renaissance woman in the insurance and reinsurance industry.” Mr. Montross had been chairman and CEO of Stamford, Connecticut-based Gen Re since 2008 and reported directly to Mr. Buffett. Ms. Raiguel was not immediately available for comment.

Reuters

## AIG general counsel to step down

■ Tom Russo will retire as general counsel of American International Group Inc., according to an internal memo sent to employees by AIG President and CEO Peter Hancock. Mr. Russo, 72, joined AIG in 2010. He previously served as senior counsel at law firm Patton Boggs, now Squire Patton Boggs. Prior to that, Mr. Russo served as vice chairman of Lehman Brothers and chief legal officer of Lehman Brothers Holdings Inc. According to the internal memo, Mr. Russo will remain at AIG until a successor is chosen and through a period of transition. The memo said that the search for a new general counsel will begin immediately.

## Employers support some parts of health care reform law

■ Many employers would back inclusion of key provisions of President Barack Obama’s health care law as part of new reform legislation, according to a survey released by the International Foundation of Employee Benefit Plans. The survey found that 37.7% back the inclusion of a health care law provision that bans plans from denying coverage for pre-existing medical conditions and requires plans to offer coverage to employees’ adult children up to age 26. “Employers have seen certain ACA provisions have a positive impact on their workforce,” Julie Stich, research director at the Brookfield, Wisconsin-based IFEBP, said in a statement. On the other hand, just 8.3% of respondents back inclusion in new health reform legislation of an health care law provision that requires employers to extend coverage to employees working as little as 30 hours a week to avoid a stiff financial penalty. The survey, conducted in March, is based on the responses of 446 benefits and human resources professionals.

## Percentage of Americans with health coverage up

■ The percentage of Americans without health insurance continues to fall, dropping for the first time to below 10% in 2015, according to the National Center for Health Statistics. The uninsured rate tumbled to 9.1% last year, down from 11.5% in 2014 and a steep decline from 16% in 2010, the NCHS reported. In all, 28.6 million people were uninsured in 2015 compared with 36 million in 2014, according to the NCHS report. Enrollment in ACA exchanges hit 9.1 million during the last quarter of 2015, up from 6.7 million a year earlier. In addition, the uninsured rate in states that expanded their Medicaid programs fell to 9.8% in 2015, down sharply from 18.4% in 2013. Uninsured rates varied by state.

Just 2.2% of Massachusetts’ residents were uninsured last year, the lowest of any state, while Texas had the highest uninsured rate: 16.8%.

## Ohio names CEO for comp bureau

■ Sarah Morrison will officially replace the Ohio Bureau of Workers’ Compensation’s former administrator and CEO, Steve Buehrer, who recently stepped down from the position, Ohio Gov. John R. Kasich said. She had been acting CEO for a month. “Sarah has been an important part of the BWC leadership team that helped drive our state’s workplace injury rate below the national average and provided Ohio businesses with \$4.3 billion in rate cuts, rebates and credits,” the governor said in the release. Ms. Morrison was the bureau’s chief legal officer before being named acting CEO.

## Tardy employers to face spike in PBGC penalties

■ Employers that are late filing required forms and notices to the Pension Benefit Guaranty Corp. will face sharply higher maximum financial penalties, the agency disclosed. The maximum penalty for missing reporting deadlines on a variety of required notices, such as reporting of missed premium contributions exceeding \$1 million, will rise, effective Aug. 1, to \$2,063 for each day a notice is late, up from the current \$1,100-a-day penalty, the agency said. The higher penalties are required under legislation Congress passed in 2015 to reflect cost-of-living increases since the mid-1990s.

## SEC to make third-largest whistleblower award

■ The U.S. Securities and Exchange Commission plans to award between \$5 million and \$6 million to a former company insider whose detailed tip led the agency to uncover securities violations it said would have been “nearly impossible” to detect otherwise. The SEC said the award ranks as the third-highest it has granted to a whistleblower. It follows a recent \$3.5 million award announced by the SEC to a company employee whose tip, it said, bolstered an ongoing investigation with additional evidence of wrongdoing that strengthened the SEC’s case, the agency said in a statement. The names of whistleblowers, and the companies with which they are associated, are not revealed by the agency. The SEC said it has awarded more than \$67 million to 29 whistleblowers since the whistleblower program’s 2011 inception.

## Swiss Re names new chief for North American insurance unit

■ Swiss Re Corporate Solutions Ltd. has appointed Ivan Gonzalez as CEO of North America effective July 1. Mr. Gonzalez currently serves as CEO of Latin America. Swiss Re said in its announcement that he will relocate to New York from Sao Paulo. Mr. Gonzalez succeeds Bob Petrilli, “who has decided to leave Swiss Re at the end of 2016,” according to the announcement. Swiss Re said Mr. Gonzalez will maintain his current responsibilities until a successor is designated.

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## Japan quake insured loss could top \$1 billion

■ The April 15 earthquake that struck Japan's Kumamoto Prefecture caused an estimated \$800 million to \$1.2 billion in insured damage, according to Newark, California-based catastrophe modeler Risk Management Solutions Inc. RMS's estimate is based on assumed insurance penetration rates and includes insured physical damage to property due to ground-shaking, fire following earthquake and liquefaction, the modeler said in an analysis. It does not include business interruption or alternative living expense impacts, damage to infrastructure, damage to Kumamoto Castle, land damage, workers' compensation, post-event loss amplification such as economic demand surge and price increases, marine and cargo assets, or automobile.

## Lloyd's chair weighs in on U.K. exit from E.U.

■ Lloyd's of London Chairman John Nelson said he believes it was "irresponsible" of some politicians to assert that the United Kingdom could replicate the benefits of being within a single market if it votes to leave the European Union on June 23. In a speech to Lloyd's annual general meeting, Mr. Nelson said that if voters opt to leave the E.U. in the referendum next month, the U.K. "would have no right of access to the E.U. markets without signing up to E.U. regulations — and indeed incur the financial consequences of contributions to the E.U. — as happens to other countries within Europe who are outside the E.U." Separately, Mr. Nelson confirmed in a New York speech that he will step down at next year's general meeting, ahead of the October 2017 expiration of his current term. A spokesman for Lloyd's said the market had no further comment on Mr. Nelson's potential successor.

## Axa France CEO stepping down

■ Nicolas Moreau, CEO of Axa France, will step down on June 30, Paris-based Axa S.A. announced. Mr. Moreau has been at Axa for 25 years and previously served as CEO of Axa Investment Managers and headed Axa's operations in the United Kingdom and Ireland before being appointed CEO of Axa France in 2010. "Nicolas has had an exemplary career at Axa, and I want to very warmly thank

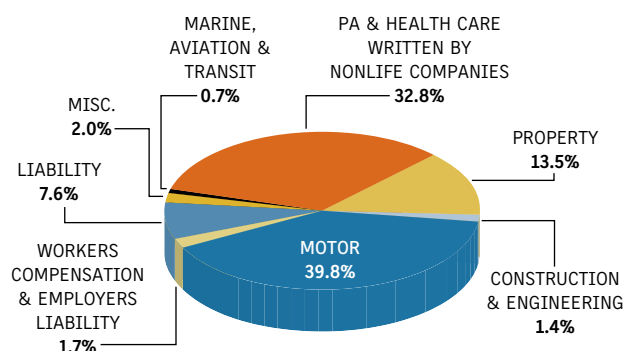
## PROFILE: ISRAEL

**\$8.03**  
BILLION

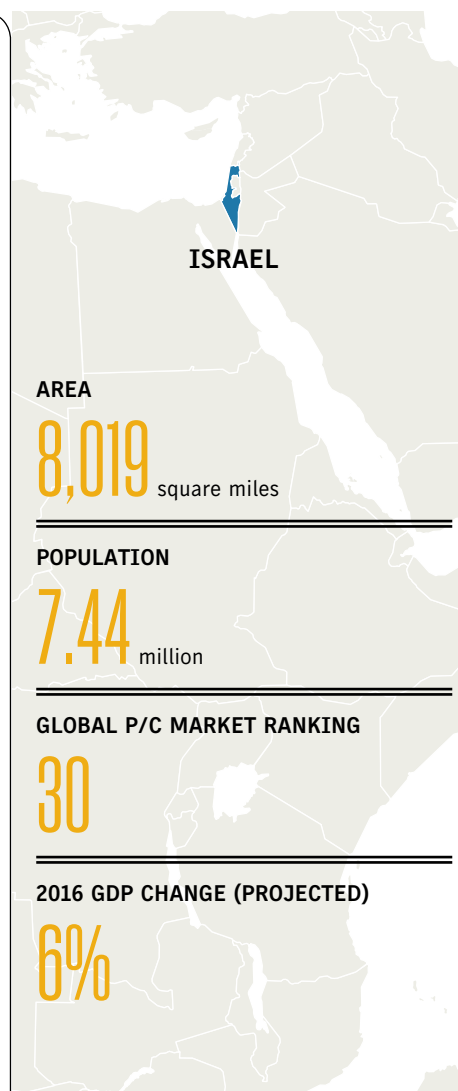
A sovereign country since 1948, Israel's technological expertise, skilled labor force and high living standards attract foreign investment and offset a lack of natural resources that create a reliance on imports for coal, petroleum and food. Having peace treaties with only Egypt and Jordan, Israel has been involved in protracted and blood conflicts with its Arab neighbors. Earthquake is the most significant natural peril to the country. Flooding and windstorms are lesser threats.

◀ 2014 P/C gross premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



### MARKET DEVELOPMENTS

UPDATED MARCH 2016

- Though not part of the European Union, Israel intends to implement its Solvency II capital requirements for insurers.
- A proposal set to take effect Jan. 1, 2017, would limit motor vehicle insurers to charge only 90% of the rates charged by the Motor Vehicle Insurance Pool for high-risk drivers. This action in the sector that has delivered 80% of profits for P/C insurers has raised questions of a pending crisis in the market.
- The Insurance Supervisory Department is considering allowing non-Israeli insurers to participate in the market via a foreign insurer license.
- Under financial duress, IDB Holding Corp. Ltd. has tried to sell its Clal Insurance Enterprises Holdings Ltd. unit to Chinese investors, a move blocked by the ISD. Similarly, Chinese buyers backed out of a deal for The Phoenix Insurance Co. Ltd. early this year. With common ownership, Menora Mivtachim Insurance Ltd. and Shomera Insurance Co. Ltd. are expected to merge soon.

### COMPULSORY INSURANCE

- Motor bodily injury
- Third-party liability for aircraft operators, yachts and pleasure craft
- Third-party liability for sport diving and scuba divers, private investigation and security services and midwives
- Group personal accident insurance for students at municipal schools
- Health care insurance for foreign workers

### NONADMITTED

Unauthorized insurers cannot carry on insurance activity in Israel, but buyers are not required to buy cover from locally authorized insurers, with a few exceptions. Likewise, there is nothing to stop buyers from obtaining nonadmitted cover abroad except for motor bodily injury.

### INTERMEDIARIES

Agents and brokers have to be registered with the Insurance Supervisory Department, and they are prohibited from placing business with nonadmitted insurers. Some do place accounts with nonadmitted insurers on a nonregulated consultancy basis.

### MARKET PRACTICE

Nonadmitted policies must be arranged and signed outside of Israel, but nonadmitted insurers are not able to subrogate. To overcome this, fronting is common. Fines for noncompliance can top \$39,000, plus 2% per day of noncompliance, with fines rising by 150% for repeat offenses.

Information provided by Axco Insurance Information Services.  
[www.axcoinfo.com](http://www.axcoinfo.com)

him for his many contributions to the success of the group in his successive roles," Henri de Castries, CEO of Axa, who will himself retire in September, said in a statement.

## \$1.3 billion buy-in for Aon's U.K. pension plan

■ U.K.-based Pension Insurance Corp. has completed a £900 million (\$1.30 billion) pension buy-in deal with Aon P.L.C. involving the brokerage's pension plan for U.K. employees and retirees. Buy-in deals, common in the United Kingdom, allow employers to transfer pension liabilities to an insurer, which assumes the obligations in exchange for receiving plan assets or other compensation. The full terms of the Aon deal were not disclosed.

## Cyber crime requires cooperative response

■ Organizations in the financial and professional services sectors must collaborate to help fight cyber risks, which are a "clear and present danger," John McFarlane, chairman of Barclays P.L.C. and chairman of TheCityUK, told attendees at the launch of a cyber report produced by TheCityUK and Marsh Ltd. "Cyber and the City: Making the U.K. Financial and Professional Services Sector More Resilient to Cyber Attack" contains recommendations to help minimize cyber risks, including that individual companies make cyber risk a standing issue on the board or risk committee agenda; ensure cyber risk is part of strategy, investment cases, acquisitions and appraisals; have a broad-based team with input into cyber

risk management; and monitor cyber readiness against a checklist. Additionally, the problem of cyber aggregation risk for insurers and reinsurers as well as the financial services sector "really needs to be understood" and assessed, Marsh Ltd. CEO Mark Weil said.

## Munich Re profit suffers on primary loss

■ Munich Reinsurance Co. reported a profit of €436 million (\$497.3 million) for the first quarter of 2016, down 44.8% from the comparable period last year due to weaker investment results and a loss in its primary insurance unit, ERGO Insurance Group. Munich Re posted an investment result of €1.6 million (\$1.82 million) for the first quarter of 2016, down 13.6% from the first quarter of 2015, and said

its insurance-related investment result fell to a loss of €208 million (\$237.2 million) in the first quarter of 2016 compared with a €579 million (\$660.4 million) profit for the first quarter of 2015. Munich Re posted gross written premiums of €12.51 billion (\$14.27 billion) for the first three months of 2016, down 4.0%, and gross written premiums of €4.53 billion (\$5.17 billion) for property/casualty reinsurance, down 1.5% from the first quarter of 2015. Munich Re's property/casualty reinsurance operations posted a combined ratio of 88.4% for the first quarter of 2016, compared with 92.3% for first quarter 2015.

## Lloyd's CRO leaving for XL Catlin role

■ Sean McGovern, chief risk officer and general counsel at Lloyd's

of London, is leaving Lloyd's to join XL Catlin as chief compliance officer and head of regulatory and government affairs, Lloyd's and XL Group P.L.C. announced. Mr. McGovern has been at Lloyd's for 20 years and was appointed chief risk officer in 2014. Dublin-based XL Catlin said in a statement that the chief compliance officer was a newly created role and that Mr. McGovern would have overall responsibility for corporate and regulatory compliance and also will lead global regulatory and government affairs for the company. In a separate statement, Lloyd's said that, to protect commercial confidentiality, Mr. McGovern would, with immediate effect, no longer be involved in syndicate-specific activity. He will go on leave in July and take up his new post at XL Catlin in November. Peter Spires, currently head of legal and compliance, will become general counsel, and Hilary Weaver, head of internal audit, will take on the role of chief risk officer on an interim basis, Lloyd's said.

## Specialty P/C added to Mexico operation

■ The Mexican Insurance Commission has granted formal approval to extend the license of Great American Insurance Group's local company, El Águila Compañía de Seguros, S.A. de C.V., to establish a specialty property/casualty operation in Mexico. Ydhelio Espinosa has been named divisional president of the new operation, Cincinnati-based Great American Insurance Group said in a statement. Based in Mexico City, the new division will focus on providing specialty insurance solutions offering a commercial package policy and selected monoline products through a network of independent agents and brokers to small and medium-size enterprises, according to the statement.

## Zurich profit down in first quarter

■ Zurich Insurance Group Ltd. reported net income after taxes of \$926 million for the first quarter of 2016, down 27.1% from the year-ago period. The Swiss insurer posted total revenue of \$13.83 billion for the quarter, a decrease of 39.6% from the first quarter of 2015. General insurance gross written premiums fell 9.8% to \$9.12 billion from last year, largely due to re-underwriting and de-risking actions to improve performance that were announced last year, Zurich said in a statement. The general insurance segment reported net income

before taxes of \$611 million for the quarter, down 34.2% from a year ago, but an improvement over the last quarter's operating loss of \$120 million. The combined ratio totaled 97.7% a slight increase from last year's 96.7%. Zurich's Farmers segment's net income before taxes was down 13.8% at \$343 million as Farmers Re reported significant catastrophe losses at the Farmers Exchanges, including more than \$250 million in claims related to

two hailstorms that struck the Dallas/Fort Worth area in March. "What I can say today is that the group is fundamentally sound," CEO Mario Greco said in a call.

## Generali results down in first quarter

■ Italian insurer Assicurazioni Generali S.p.A. said it is "pleased"

with results from the first quarter of 2016 despite not matching last year's success. The insurer's total operating result fell 12.3% from the prior-year quarter to €1.16 billion (\$1.32 billion), "mainly due to a weaker investment result of the life segment, attributable to lower realized gains," Generali General Manager and CFO Alberto Minali said during a conference call. The overall net result fell 13.8% to €588 million (\$670.6 million), the insurer

er said in a statement. The company's combined ratio improved to 92% in the quarter from 93.3% in the prior-year quarter, driven by the absence of natural catastrophes, Mr. Minali said during the call. Property/casualty premium income was "broadly stable" at €6.31 million (\$7.2 million) compared with €6.5 million (\$7.4 million), while P/C operating performance declined 1.4% to €498 million, according to the statement.

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# EXPRESS SCRIPTS EXEC SEES RELIEF AHEAD ON DRUG COSTS

**Q** What are the major drivers of prescription drug spending right now?

**A** On the traditional oral solid drugs, it's diabetes. Diabetes is going up at a tremendous rate, and it's now become the single biggest spending category for plan sponsors. And on the specialty side, it's actually the anti-inflammatory drugs — those drugs used to treat rheumatoid arthritis, Crohn's disease and systemic lupus.

**Q** Express Scripts has worked to lower the cost of hepatitis C drugs and cholesterol drugs. You're also starting to practice indication-based pricing with costly cancer drugs. What are you going to do about the cost of diabetes and anti-inflammatory drugs?

**A** The first biosimilar insulin will come to the market this year for (diabetes drug) Lantus, and we've been preparing for this for some time. We have Lantus as our preferred insulin, so it'll be a lot easier for ... our plans to switch people to the biosimilar for Lantus when it comes to the marketplace. Insulin is one of these really

## Q&A

expensive drugs ... so we think that this year we'll be able to come up with a pretty exciting program to help our plans when it comes to their spending for diabetes. Also, the indication-based pricing has been working well for us as an experiment for cancer (treatment). And so we're also looking at the possibility of expanding indication-based pricing into the anti-inflammatories, probably for 2017.

**Q** Express Scripts' latest drug report said spending in 2015 grew 5.2%, about half of the 2014 growth in spending. Is this the start of a new downward trend in drug spending?

**A** We believe that it will moderate for a period of time, but it is not time to relax. Plan sponsors have got to continue to be aggressive in the programs they put in place. Otherwise, they will see double-digit growth come back.

**Q** Can Express Scripts continue to be effective as a stand-alone PBM amid industry consolidation?

**A** We have tremendous scale, which allows us to get the best deals for our plan sponsors from both the pharmaceutical manufacturers and also the pharmacies. If any pharmacy chain ever becomes too large, we're able to move our patients and ... get the lowest cost.

**Q** The contract dispute between Anthem Inc. and Express Scripts over drug pricing has raised questions about transparency in the PBM industry. Do you think there's a problem with it?

**A** We want our patients to fully understand what their benefit is and what their costs are going to be. We want our clients to have transparency. What we don't want



DR. STEVE MILLER

EXPRESS SCRIPTS HOLDING CO.

The rising cost of prescription drugs has come under the spotlight in recent months, with drug price sticker shock and pharmaceutical companies' pricing practices the subject of numerous congressional panels, a presidential campaign talking point and a thorn in the side of employers working to rein in benefit costs. Dr. Steve Miller, chief medical officer for the nation's largest pharmacy benefit manager, Express Scripts Holding Co.,

is at the forefront of the conversation. *Business Insurance* Staff Reporter Shelby Livingston spoke recently with Dr. Miller about the PBM's focus for 2016 and beyond. Edited excerpts follow.

is our competitors to know what the prices are. If we had to let the pharmaceutical companies know the price we were being offered from another pharmaceutical company for hepatitis C, would we have been successful to create a price war there? The answer is probably not. Gilead (Sciences Inc.) would not have gone any lower (on its price for hepatitis C treatments) than they had to if

they knew what the AbbVie (Inc.) price was.

**Q** Does the Anthem lawsuit against Express Scripts have any merit?

**A** The current Anthem leadership was not the same leadership that was there when we cut this deal years ago, and so obviously they are trying to renegotiate.

## COMINGS & GOINGS

### UP CLOSE: STACY BROWN

DENVER-BASED PRESIDENT AND CEO OF WILLIS PROGRAMS  
Willis Towers Watson P.L.C.

**PREVIOUS POSITION:** Denver-based president of Freberg Environmental Insurance Inc.

**LOOKING FORWARD TO:** New challenges and growing a fantastic business that has been around for over 54 years.

**GOALS FOR NEW POSITION:** Maintaining our core legacy business that focuses on solutions for core businesses. We also want to grow our excess and surplus lines platform, using data to drive growth.

**ON LEADERSHIP:** Integrity and developing trust are the most important in any business.

**CHALLENGES FACING INDUSTRY:** Low interest rates, and it's really incumbent upon us as a managing general agency to use our industry knowledge to improve underwriting results for our carrier partners.

**CRYSTAL BALL:** I see data and analytics leading to more automation creeping into the commercial lines.

**FIRST INDUSTRY JOB:** I was an underwriter at Freberg



sprinter

Environmental 18 years ago. Previously I was an environmental consultant.

**WHAT SURPRISED ME:** How much fun it was to underwrite. It's true. In particular, I was able to use my education from college (a B.A. in environmental science and an MBA) and translate it into a new industry.

**FAVORITE QUOTE:** "Pressure is nothing more than the shadow of great opportunity." Michael Johnson, Olympic medalist and

**HOBBIES:** Spending time with family is No. 1. Golf, skiing and (doing) a tremendous amount of home improvement. I also enjoy listening to music.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** My picture was used on a tag for a North Face sleeping bag. I was hanging off the side of a mountain.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** A guide for a helicopter skiing company.

**PET PEEVES:** Lack of customer service.

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EDITORIAL

## OVERTIME EXEMPTION HEADACHES

**O**h, boy! That's likely to be the understandable reaction to many employers in reaction to the new U.S. Department of Labor overtime regulation issued last week. The overtime rule increases the threshold below which workers are entitled to overtime to \$913 per week, or \$47,476 annually for a full-time worker, from \$455 per week or \$23,600 per year.

While certain aspects of the rule are less onerous than what had originally been considered, there is general agreement among experts that the rule is likely to not only create budgetary, structural and morale problems, it may ultimately little benefit its intended beneficiary — the American worker.

For one thing, the threshold below which workers are now considered nonexempt has been dramatically increased “way too high, too fast,” as one expert put it.

As a result, employers may be forced to actually cut back on their employees' hours in order to maintain profit margins, which means the overtime rule's purported beneficiary, the worker, may ultimately not benefit.

It's also going to cause considerable morale issues. Higher-level employees who were already exempt, for example, may find that previously much lower-paid workers are approaching them salarywise because employers would be bumping them up to the exempt level. As firms well know, actions that diminish workers' self-regard are never good business.

It also raises nightmarish logistical issues. Firms are now going to have to keep track of all job-related activities for previously exempt employees, such as emails sent outside the regular workday and travel time, which is going to be a pain for employer and employees alike.

Furthermore, while employers do have until Dec. 1 to implement these changes, which is far better than the 60 days originally anticipated, it still leaves business with an awful lot of work to do in a relatively short period of time.

Experts also warn also that wage-and-hour lawsuits, already a major problem for employers, are likely to increase dramatically with the increase in nonexempt workers.

Unfortunately, there is little to be done at this point. We can only wish the Department of Labor had spent more time considering these issues before issuing this ill-advised rule.

### LETTERS

#### Solution proposed for worker obesity

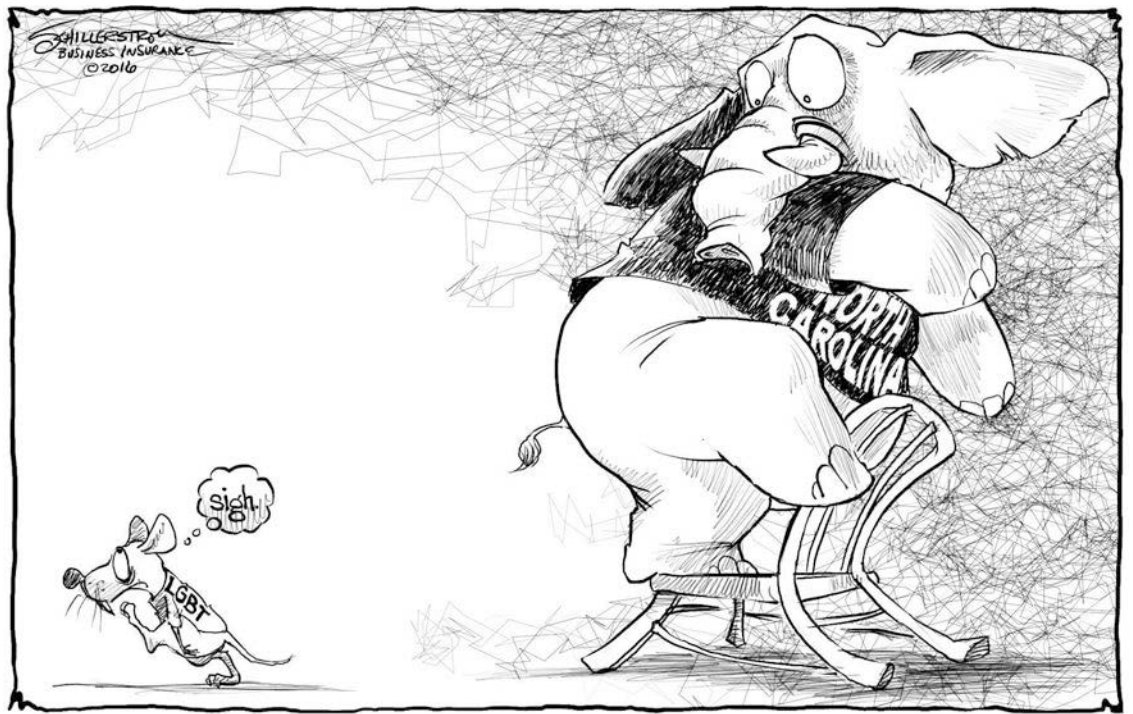
To the editor:

Both your obesity editorial (page 10) and articles (pages 3 and 20) miss the workable solution long used by both the military and public safety agencies (*Business Insurance*, May 9).

Solution? Insurers need to require position-based fitness standards and suitability tests for the insured workers. Performance-based tests determine body flexibility and stamina, using time-distance-evolu-

See **LETTERS** page 27

SCHILLERSTROM



COMMENTARY

## LAW FIRM MAKES CASE FOR COMPUTERIZED LEGAL ADVICE

**Y**our next “attorney” could be a computer. That's one conclusion to be drawn, anyway, from an announcement that Palo Alto, California-based Ross Intelligence has reached an agreement with major law firm Baker & Hostetler L.L.C., which is based in Cleveland, to retain use of its artificial intelligence legal research project.

According to its announcement, the Ross platform is built upon Watson, IBM's cognitive computer. With the support of Watson's cognitive computing and natural language processing capabilities, lawyers ask Ross their research question in “natural” language, as they would a person. Ross then reads through the law, gathers evidence, draws inferences and returns “highly relevant evidence-based candidate answers.”

It also monitors the law around the clock to notify users of new court decisions that can affect a case, and — perhaps in an improvement over mundane human attorneys — continually learns from the lawyers who use it to bring back better results each time.

According to its statement, Ross Intelligence began as a result of research at the University of Toronto in 2014 with the goal of building an AI research assistant to allow lawyers “to enhance and scale their abilities.”

After receiving funding in June 2015, the company relocated from Toronto to Palo Alto. Ten months after it began teaching Ross bankruptcy law, it commercialized its first offering.

The company says it is now in the process of teaching Ross a variety of other practice areas, so “every legal practitioner in the world will have Ross as a member of their legal team.”

The statement quotes Bob Craig, Baker &



**JUDY GREENWALD**  
SENIOR EDITOR

Hostetler's chief technology officer, as saying the law firm believes “that emerging technologies like cognitive computing and other forms of machine learning can help enhance the services we deliver to our clients.”

One of the more interesting questions all this raises from the insurance perspective is what coverage, if any, there would be if Ross screws up. Would it come

under law firms' cyber policies, their legal malpractice policies or both?

Meanwhile, we journalists have no cause to feel particularly smug. According to a column by Suzanne Lucas in Inc. magazine, a New York company called Articoolo Inc. claims it can create unique content “in a matter of minutes.”

Ms. Lucas quotes the company's CEO, Duron Tal, as stating: “At the stage we are in, our tool cannot completely replace human writers, especially not journalists and writers, but it can help them do their job quicker as it may save them time of basic content discovery and accumulation process.”

Which is not to say writers wouldn't be wise to start looking over their shoulders.

Meanwhile, we can't wait to see Ross in action in the courtroom. Watching it cross examine a witness should be particularly interesting — alas for any would-be Perry Masons out there.

# Careful negotiations reduce risk of being held to cyber ransom

Cyber attacks have become a major problem for businesses as they grow more sophisticated, frequent and lucrative. But a specific strain of malware has become a part of doing business for certain information technology vendors. James Westerlind and William Tanenbaum of Arent Fox L.L.P. discuss this use of software to lock up a client's account and how to successfully navigate it through use of contracts.

Sixty percent of the victims of cyber attacks in 2014 were small- to mid-size businesses, according to Symantec Corp.'s, "2015 Internet Security Threat Report" issued in April. These were mainly ransomware attacks, where cyber criminals use malware to hijack a company's computer system and "sell" the data back to the company. Malware is destructive software that can be used not only by criminals looking to make a quick buck, but also by vendors who use a version of it lock up their software to provide leverage in a dispute.

Carefully crafted and executed contracts can limit the need for such drastic action.

## Requests for proposals

It starts with requests for proposals issued by customers to vendors for information technology projects. They should be used strategically and as part of an end-to-end contract process. The customer has strong leverage during the RFP stage when vendors are competing for the engagement. Moreover, the RFPs should be designed so the responses correspond to important provisions in the contract and in the project plans and statements of work that cover specific technical services. As such, it is advantageous to treat RFPs as legal, as well as technical, documents.

Lawyers should be involved in drafting the RFP to require the vendors to respond promptly to customer needs on liability limits and implementation of cyber security measures. Lawyers also should review vendor RFP responses to advise the company of potential risks arising from legal protection limits the vendor seeks.

Most disputes arise under statements of work rather than overarching master service agreements. The SOWs are project plans that should set forth clear obligations, avoid shared responsibility between the customer and the vendor, which will absolve the vendor of liability, and provide clear remedies.

An SOW is successful when a company asserts a failure and the vendor's legal department determines that it has responsibility under the agreement. The ultimate reader of SOW is a judge or an arbitrator, so the SOW should be drafted clearly with industry terminology defined and concisely to fit the analysis that a judge or arbitrator would apply to the dispute.

The vendor agreement and SOWs should permit

the company to audit the vendor's security obligations and test the strength of vendor security features. Further, the agreement should require the vendor to correct any deficiencies promptly upon discovery.

Once these contracts are squared away, the company can move on to other areas of concern.

## Third-party vendors

The company should have IT lawyers review existing contracts to see whether the technology requirements have become a ceiling, not a floor. A recent analysis by the Traverse City, Michigan-based consultant Ponemon Institute L.L.C. (which conducts independent research on data protection) found that two-thirds of data breaches come through third-party vendors. As the sophistication of malware attacks has increased, hackers have overcome the technology used only a few years ago. Accordingly, yesterday's contracts may not provide the protection against today's cyber threats. The contracts should then be renegotiated to update the protection the vendor must provide.

## Cloud computing

Cloud services provide a special risk. Examples of cloud services commonly used by mid-size companies include Software-as-a-Service, where the company does not install or operate the software and an IT vendor sends the results to the company's computer systems. Cloud service providers often do not include security in their contract, opening an avenue of vulnerability. A solution is to obtain more security in the agreement with the cloud vendor.

## Legal and audit protection

The company can also retain a cyber security firm to conduct a technical audit of its IT systems and vendor services to identify potential weaknesses. Besides closing doors to cyber criminals, there are attorney-client privilege advantages of having the cyber security firm work with a law firm, which can keep the results of an audit under wraps. This audit can find technical deficiencies in the company's computer operations and work with the attorneys and the company's IT staff and external vendors to fix them. The cyber security

company can train the company's management and employees how to avoid being victims: Requiring employees to use more sophisticated passwords and avoid "phishing" attacks — deceptive emails with malware embedded in the attachments that infect the company's system when opened. Training to recognize suspicious intrusions must go all the way up a company's management, including its CEO.

## Adequate cyber insurance

Besides taking all these steps, the company should purchase adequate cyber insurance, including data breach response coverage. These policies are relatively inexpensive and can provide the first- and third-party liability coverage that the company needs to weather a data breach or ransomware attack. The typical corporate general liability and property policies most companies purchase probably will not provide the coverage that the company will need in the event of a cyber attack. An appropriate cyber insurance policy will cover all or a portion of the costs and expenses that the company will incur in investigating a data breach, actual or suspected, notifying authorities and consumers of the matter and remedying the problem (including, among other things, providing coverage for public relations firms to assist the company in protecting its reputation following a data breach).

Many of the cyber risk insurers maintain a panel of professionals, including lawyers, forensic IT specialists, public relations firms and call centers to quickly assist the policyholder when a breach is suspected. The immediate assignment by the insurer to the policyholder of legal counsel who specializes in data breaches and notification laws has numerous benefits to the policyholder, including protecting communications with vendors assigned to assist with the matter as privileged and ensuring that each person involved in the breach response process is experienced and knowledgeable. One mistake early in the breach response could be devastating for the company, which, in most instances, is a victim itself.

Many insurers offer cyber insurance policies, and the coverage is not uniform. And many insurers offer additional coverages by endorsement, which must be requested and paid for (through additional, usually modest, premiums). An experienced insurance broker and coverage counsel can help a company select appropriate and adequate coverage.

In addition to obtaining its own policies, companies can require their IT vendors to purchase cyber insurance to spread the cost of mitigating risk and covering remedial action in a breach. The company should be named as an additional insured in the vendor's policies.

Legal review and technical audits help the company determine what insurance coverage it and its vendors should have, and these requirements should be specified in the governing agreements.



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# Transforming Travel Insurance

## Innovation in service, technology easing travelers' journey

**Dean Sivley | President, Berkshire Hathaway Travel Protection**

*Travel is riskier today, for both business and leisure travelers. In this Risk Perspectives article, Dean Sivley, president of Berkshire Hathaway Travel Protection, discusses how innovative technology and service in travel insurance are helping to transform the travel experience.*

### Q. What are some of the biggest risks that travelers are facing today?

**A.** Encountering the unexpected is always a risk in travel. While nobody wants to think about terrorist attacks or medical emergencies, those things can happen. More travelers today are worried about terrorist activity like the recent attacks in Paris and Brussels, or medical incidents such as contracting and bringing home the Zika virus. The risks that can plague leisure travelers are also true for business travelers. It doesn't necessarily have to be drastic to present a big risk. Regardless of the reason you're away from home or venturing abroad, your plans could be significantly disrupted if you become sick or have an injury. Travel assistance, which typically comes with travel insurance, can be a big help. But, until now, nobody has been servicing those other, common risks, for travelers – the inconveniences, such as delays, cancellations and getting stuck on the tarmac. I've been in the travel business for a long time, and those inconveniences are just getting worse.

### Q. What are some of the main misconceptions that people have about travel insurance?

**A.** The biggest misconceptions many people have about travel insurance are that they don't need it or they can't afford it. Our research shows 77% of travelers go without insurance for trips. It's unfortunate that only 23% see the risks clearly enough to buy it. Most people tend to tell themselves, "I'm in good shape, I'm lucky, or I don't need it." When something goes wrong, travelers could face a huge out-of-pocket expense or need help translating what a doctor in a foreign country is saying. Whether it's a vacation of a lifetime or a business trip to close a major deal, travel insurance can provide cost-effective peace of mind, personal assistance in navigating difficult situations, and mitigate the financial and emotional costs of an unfortunate event.

### Q. How is Berkshire Hathaway Travel Protection responding to business travel needs?

**A.** Later this year, we intend to launch a formal business travel accident product, which will provide traditional benefits, including worldwide assistance and medical evacuation. We're excited about enhancing the business travel accident solution by incorporating some of the unique benefits of our current AirCare offering. AirCare assists individual travelers with many of the inconveniences they experience, through fixed benefit clauses for flight delays and cancellations that automatically put money into the traveler's account. They don't even have to file a claim because we have real-time trip monitoring. AirCare also provides proactive travel assistance for travelers and they can use a mobile device to send a photo when documentation is necessary. Unless a customer elects a paper check – and only a small percentage do – their claims are paid electronically, which means they

to automatically approve claims payments in real time. When it comes to travel risk, technology gives us clearer insights that empower us to keep innovating and provide personalized service.

### Q. BHTP has an innovative, technology-based approach to paying claims quickly. Where did this idea originate, and is it influencing how claims are paid throughout the insurance industry?

**A.** It really originated with our desire to make a difference in the travel insurance process. For a lot of people, insurance and claims tend to be negative experiences. Why does it have to be that way? We conducted focus groups on why people didn't buy travel insurance, and from a customer experience standpoint, we asked, "What if we did it this way? What if you didn't have to fill in forms to file claims?" We designed a process with the customer in mind from the very beginning. We also were cognizant of trends in the financial services industry

“Our research shows 77% of travelers go without insurance for trips.”

can get paid while they're traveling. They can access those funds in their personal accounts and continue on their trip. Today, no traditional business travel accident policy is compensating travelers for those types of inconveniences. We're looking forward to bringing the innovations available in AirCare to business travelers.

### Q. How is BHTP using technology to better understand and solve travel risks?

**A.** The IoT, the Internet of Things, has made it possible to monitor travelers' journeys as never before. We can know if a traveler is stuck on the tarmac, misses a connection, or is facing a flight delay. In addition to collecting and analyzing lots of data on what's occurring in travel today, our technology enables us to rebook a traveler and

where people were using payment technology in interesting ways, so we became one of the first insurers to work with PayPal. We really wanted to change the industry dynamics on how customers view claims, and we think it's already having an impact. Our "Pic and click" is a way for travelers to send us a photo rather than file a paper claim form to get paid. When a claim requires documentation, we can still process quickly and disburse payment using our electronic payment options. Imagine being delayed for two hours in an airport, getting money transferred into your account without having to file anything and being able to use those funds to buy something for a family member while you're waiting for your next flight. That can turn a frustrating experience into something positive and make you think about insurance in a completely new way.



FOR MORE INFORMATION: [www.bhtp.com](http://www.bhtp.com) | Toll-Free: 844-411-BHTP

#### About Berkshire Hathaway Travel Protection

Berkshire Hathaway Travel Protection is the marketing name for travel protection and services of Berkshire Hathaway Specialty Concierge, LLC, a subsidiary of Berkshire Hathaway Specialty Insurance Company, part of the National Indemnity group of insurance companies. Berkshire Hathaway Travel Protection created AirCare™ flight protection and other innovative products, and backs them with high-tech enhancements and industry-leading customer service. AirCare™ is written on the paper of Berkshire Hathaway Specialty Insurance Company or National Liability Fire Insurance Company. Visit [bhtp.com](http://bhtp.com) for more information.

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SPECIAL  
REPORT

Health Benefits:

Wellness

Coaches whipping  
more wellness plans  
into shape

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Electronic devices  
track progress,  
add to fun of fitness

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## Retooling pay to play

Employers overhaul wellness incentives to drive engagement

BY SHELBY LIVINGSTON

Incentives remain a key factor in the success of workplace wellness programs, but some employers are rethinking how they motivate workers to get healthy.

Wellness programs without incentives are prone to failure, many experts say. Absent the allure of a reward or the fear of a penalty, employees are more likely to skip an annual biometric screening, weight management program or nutrition seminars.

Most employers put money in their workers' pockets to drive participation.

According to an April survey by the National Business Group on Health and Fidelity Investments, 72% of employers currently offer wellness program incentives, which often are tied to biometric screenings, health risk assessments and physical activities.

Lump-sum premium reductions or one-time contributions to health savings accounts continue to be the most common financial rewards.

"We still see that financial incentives tend to be the largest strategy when it comes down to brass tacks," said Stacey Nevara, vice president of client relations at wellness program provider Interactive Health Inc. in Schaumburg, Illinois. "Money can talk."

While many employers also reward employees for reaching specific health goals, some are re-evaluating whether the strategies are worth the investment.

"There's a lot of reconsideration" of wellness incentives, said LuAnn Heinen, vice president of workforce well-being, productivity and human capital at the Washington-based NBGH. Employers are asking, "Are we on the right path? Should we just keep doing what we're doing? Should we re-evaluate? What's going to be most aligned with where we are trying to go?"

"One-time (financial) incentives are really good for awareness activities, like a health (risk) assessment, biometrics, things like that. When you get into other activities like behavior change coaching, long-term exercise, diet and stress management, financial incentives — especially big-lump delayed-gratification financial incentives — tend to not be very successful," said Seth Serxner, chief health officer at pharmacy benefit manager Optum Inc. in San Francisco.

Instead, smaller and more frequent rewards and social recognition can help keep employees' attention longer and drive behavioral change, which is the goal, he said.

For instance, Juno Beach, Florida-based renewable energy firm NextEra Energy Inc. keeps its employees engaged in wellness by raffling off items such as iPods, cookbooks or on-site gym memberships for workers who participate in fitness, weight management or nutri-



tion programs. Workers who attend a weight management class, for example, are included in a drawing to win a prize.

"We find that doing raffles on items really works well. If you look at some of the data in the area of behavioral economics, it really does support that people are more likely to do something if there's a probability of them winning a large or more valuable prize than if everyone got something at a lower value," said Andrew Scibelli, manager of employee health and well-being at NextEra, which has 14,300 employees in the U.S. and Canada.

"We have seen an uptick on not only the participation of these programs, but also the adherence and engagement within these programs," Mr. Scibelli said.

Rewarding employees if they reach a designated health goal, such as a certain blood pressure level or weight, also has been a popular employer tactic, but the NBGH survey found that employers offering incentives to employees to achieve certain health outcomes fell sharply to 24% this year from 44% in 2015.

Though the survey did not ask why some employers are dropping their outcomes-based approaches, other consultants say they've seen similar trends.

"When we look at ... employers that have an outcomes-based model, we did not see better outcomes," said Dr. Jeff Dobro, chief medical officer at Minneapolis-based wellness technology firm RedBrick Health Corp. "In fact, when it came to measuring blood pressure in year-over-year cohorts, we saw worse outcomes."

Employees "didn't like the fact that they were forced to have certain outcome numbers," Dr. Dobro said.

"Dinging (employees) because they don't hit those numbers may or may not be the best motivation," Optum's Mr. Serxner said.

While NextEra also gives workers financial incentives for meeting specified health outcomes, Mr. Scibelli says he's weighing "whether or not we continue to move forward" with outcomes-based strategies that are difficult to administer and turn some employees off.

## CONTRASTING EEOC RULES DIAL UP THE COMPLEXITY OF WELLNESS INCENTIVE REGULATIONS

Complying with often-conflicting laws that govern wellness programs can be a source of frustration for employers, benefits experts say.

Wellness programs are governed by the Health Information Portability and Accountability Act as amended by the Patient Protection and Affordable Care Act, the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act.

Sometimes, the laws don't gel.

The U.S. Equal Employment Opportunity Commission last week released final rules under the ADA and GINA for voluntary workplace wellness programs.

Employers likely will find them "problematic," said J.D. Piro, Norwalk, Connecticut-based senior vice president at Aon Hewitt and co-author of the U.S. Chamber of Commerce's "Winning with Wellness" April report that outlines effective workplace wellness strategies.

For one, "the incentive calculation is still different than the way it's calculated under HIPAA, so that's going to be an issue for employers," Mr. Piro said.

HIPAA limits incentives to 30% of the total annual cost of the elected group health plan

coverage, and 50% of coverage for tobacco-cessation programs.

The EEOC wellness rules that take effect

Jan. 1, 2017, allow incentives of up to 30% of the total cost of employee-only coverage, rather than elected coverage. For an employee's spouse, incentives also are limited to 30% of employee-only coverage.

That means employers may "have to scale back" their incentives, said Steve Wojcik, vice president of public policy with the National Business Group on Health in Washington.

HIPAA's incentive limits apply only to out-

comes-based incentives, while the ADA expands that to participation-based wellness programs.

Additionally, the ADA prohibits an employer from denying access to a particular health plan because an employee does not participate in a wellness program, while HIPAA allows such practices as long as they are within the incentive limits.

Now that the rules are finalized, "it's going to be much more complicated for employers to structure a program that complies with all three sets of regulations, which aren't exactly the same," Mr. Piro said.

By Shelby Livingston



For Interactive Health's Ms. Nevara, the emphasis should be on driving participation: "Health outcomes is the thing that (employers) are trying to solve, and the only way they are going to have this paradigm shift within their organization is if they get the majority to participate."

Oak Brook, Illinois-based stainless steel sink maker Elkay Manufacturing Co. combined participation and outcomes-based incentives. Its employees get \$500 off medical premiums for undergoing a biometric screening and health risk questionnaire, said Carol Partington, Elkay's employee benefits and compensation manager.

Based on the evaluations, employees are given a health-related goal. Employees who do so by the next year — aided by telephonic and online coaching in areas such as exercise, sleep, tobacco cessation and nutrition — get another \$800 toward the medical premium for a total possible reduction of \$1,300.

It worked. Last year, 2,442 of Elkay's nearly 3,000 workers took the health evaluation, up 11% from 2014. And 72% who got a biometric screening met their goal.

"We'll give you these tools to help you be successful on your journey, but you need to put something into it as well," Ms. Partington said. "That's why these resources work, because then these employees bring forth that effort, and then they are further rewarded."

"There's always been this debate: Do incentives drive engagement?" said Pam Mortenson, Omaha, Nebraska-based executive vice president of wellness solutions at Health Advocate, a health care advocacy and assistance company. "But are (employees) engaging to get their incentive ... (or) is it really driving lifestyle and behavioral changes?"

That's why "it's important that an employer really does gain an understanding of their culture, and what excites people within the business. And having a flexible program is really important, and having different options to choose from to keep that employee engaged. And hopefully it does start to drive lifestyle behavior changes," she said.

## CHART A STEADY COURSE FOR EMPLOYEE WELLBEING

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# EMPLOYERS LOOK TO WELLNESS COACHES TO CREATE, MAINTAIN HEALTHY WORKFORCE

Focus switches from saving on costs to building long-term value

BY LOUISE ESOLA

**E**mployers are changing their views about health and lifestyle coaching as part of a wellness program.

“We are seeing more employers step back and saying dollar-for-dollar (return-on-investment) is short-sighted and tough to measure,” said Dr. Ron Leopold, Atlanta-based chief medical officer at Lockton Cos. L.L.C. Companies are looking for “any combination of reduction in medical costs, short-term disability, workers comp claims and improvement in engagement, loyalty, performance (and) employee satisfaction.”

About 70% of employers offered a wellness program in 2015, and 46% offered health and lifestyle coaching, according to the Society for Human Resource Management research. Such coaching can be used to help manage chronic diseases, weight- and stress-reduction efforts and smoking-cessation programs. While many employers initially focused on how wellness efforts affected the bottom line, more are focusing on the programs’ ability to produce and retain a healthy workforce, experts say.

“The reasons are much broader than they used to be; for one employer, it was all about productivity,” said Stephanie Pronk, Minneapolis-based senior vice president and leader of the health transformation team at Aon Hewitt. “With return on investment, (companies) could never get enough people involved to see a real trend.”

Today’s focus is on “value,” according to experts.

For example, Children’s Mercy Hospitals & Clinics, a Kansas City, Missouri-based hospital system with 7,800 employees at seven campuses and 10 outreach centers, measures the success of its health-coaching program by gauging the reduction of nine areas of risk, including weight, stress, blood pressure, cholesterol and tobacco use, said Candice Gwin, employee wellness program manager at the health care system.

Children’s Mercy Hospitals’ health coaching efforts in 2015 reduced risks in seven of the nine areas and 16% overall, she said, adding that the reductions have continued.

“The monetary aspect is important, but when you take a step back, we know that we can take better care of those kids if we take better care of our employees,” Ms. Gwin said. “We want to do this (for our employees) because it’s the right thing to do.”

“I think companies still want it to be quantified, but they are looking more at the value of health coaching,” said Kristin Behler, Allentown, Pennsylvania-based manager of health education and wellness at Populytics/BeneFIT Corporate Wellness, which offers wellness services. “Companies that buy into corporate wellness want to be seen as caring for their employees.”

Another trend is that companies have shift-



ed their focus from risk identification — such as annual health screenings — to risk reduction, which is where health coaching comes in, said Fiona Gathright, Bethesda, Maryland-based president and CEO of Wellness Corporate Solutions L.L.C.

“The focus is on participants’ goals and desires for changes,” she said. “Empowering employees to change their behaviors and lower their health risk is where the focus is.”

“Health coaching continues to grow, (and) traditional telephonic health coaching is only one mode; we are seeing the use of technology, chat coaching, video coaching and, of course, in-person coaching,” said Ms. Pronk.

## Programs for every employer budget

Companies with more resources tend to adopt more robust programs, with smaller companies turning more often to remote, telephonic and Internet-based programs that cost less but can produce some of the same results, she said.

“The cost depends on the type of counseling; it can be minimal or a couple hundred dollars a year for each participant,” Ms. Pronk said.

According to a 2015 analysis by Mercer L.L.C., at least 83% of large companies offer disease management coaching; 71% offer telephonic or Internet-based counseling; and 36% offer face-to-face counseling.

Still, Kristin Parker, Mercer’s Norwalk, Connecticut-based principal and East market total health management leader, believes face-to-face counseling is on the rise.

“There’s a resurgence of on-site face-to-face coaching,” Ms. Parker said. “The trend is for employers to have on-site clinics in place and

broader well-being centers with coaching available.”

David Anderson, St. Paul, Minnesota-based chief health officer and co-founder of The Staywell Co., which provides health coaching services, said employers can still gain traction with more affordable telephone programs.

“The downside of (the face-to-face) approach is ... in terms of the relationship and the participant, it takes a bit longer for the person to open up when they are in front of you,” Mr. Anderson said. “Anonymity over the phone allows them to get to you quickly, and the phone (call) is task-oriented.”

When health coaching programs fail, anecdotal evidence points to timing as the reason why, Ms. Parker said.

“This is when the intervention is not brought to the employee at the right time,” she said.

Companies often adhere to strict enrollment periods for health coaching that coincide with health insurance open enrollment. The strategy, Ms. Parker and others said, often fails because a person could be diagnosed with a disease in the middle of the year and need the intervention then.

The solution is to offer health coaching programs all year and to “flag” individuals based on health claims, Ms. Parker said.

Dr. Leopold said mining health claim data and contacting employees who need intervention — often through a third party and with the employee’s consent — is a delicate issue, but also is a hurdle companies can avoid by offering coaching to all employees.

“Offer generally and then (send) supplemental information” to targeted individuals, Dr. Leopold said. “The industry is getting more sophisticated.”

## Wearables for wellness fit right in

Novelty factor gives programs a boost

BY KAREN PALLARITO

Many employers are embedding wearable fitness-tracking devices in workplace wellness programs.

From simple step counters to sophisticated sensors that capture activity levels, heart rate and sleep patterns, wearables have become a popular tool to promote healthy lifestyles.

Jessica Grossmeier, vice president of research at the Health Enhancement Research Organization in Edina, Minnesota, said employers that integrate wearables into robust, year-round wellness programs are seeing strong employee participation.

“They’re saying, ‘Oh my goodness, this really gave our (wellness) program lift,’” said Ms. Grossmeier, who also is CEO of Verity Analytics.

HERO’s 2015 Wearables in Wellness survey found that 46% of employers offer some type of fitness tracker as part of a wellness program. Of those, half or more said they offer the devices to increase users’ physical activity (94%) and healthy habits (62%), boost employee engagement (77%), and add fun and excitement to wellness initiatives (58%).

Wearable device manufacturers such as Fitbit Inc. and Garmin Ltd. are part of the employer wellness space, but other players also are entering the market.

In March, insurance giant UnitedHealthcare Inc. and technology partner Qualcomm Inc. unveiled UnitedHealthcare Motion, a wellness program built around custom-designed fitness trackers. Employees enrolled in the insurer’s high-deductible health plans can earn up to \$1,460 annual financial incentives for meeting daily walking goals as tracked by the device. The data is sent to an app via a platform that complies with federal patient privacy and security requirements. A smartphone app that syncs with the fitness tracker will allow iPhone and Android users to monitor their walking results and financial incentives.

A spokesman for UnitedHealthcare said the program is available to businesses with 10 to 500 employees and that the insurer plans to expand it to larger employers later this year.

Wellness programs are all about providing personalized support for employees and their families in their well-being journeys, and “wearables feed into that,” said LuAnn Heinen, vice president of

workforce well-being, productivity and human capital at the National Business Group on Health in Washington. “They make health fun and social.”

Some employers provide wearables free of charge. Others subsidize them or invite employees to bring their own fitness device.

Atlanta’s Emory University and Emory Healthcare hospital and clinic system piloted a Fitbit tracker at five sites in 2014 during an eight-week Move More Challenge. Employees received a basic version of the device for free with the option to “buy up” to a more sophisticated model, said Michael Stauffer, director of health management at Emory University.

The test, however, found a big hole: 14% of employees who got the freebie never bothered to sync it to the manufacturer’s website or mobile app. In contrast, just 4% of employees who upgraded never used the device.

With the full rollout last year, Emory offered eligible employees a \$30 subsidy to buy the Fitbit of his or her choice, with the employee paying the rest of the cost.

“Having a little skin in the game ... seems to have an influence,” Mr. Stauffer said.

Most employers hire an outside party to collect and manage personal health information generated by the wearable devices, experts say. The information provided to employers does not identify employees.

But employers also must be aware of what information the devices collect, who has access to it and how it may be used, said Joseph Lazzarotti, a principal in the Morristown, New Jersey, office of Jackson Lewis P.C. and co-lead of the law firm’s privacy, e-communication and data security practice. Without proper program designs and safeguards, employers could inadvertently breach various data protection and nondiscrimination laws, he said.

“These (wellness) programs sit at the crossroads of a lot of different laws,” and wearables add another layer of potential risk, he said.

Employers may tie biometric data from wearables to incentives in wellness programs, but the programs must comply with new U.S. Equal Employment Opportunity Commission rules that limit the incentives employees and spouses receive and ensure data is kept confidential, Mr. Lazzarotti said.

Employers “still have to go through the hoops” to ensure that wellness programs comply with the Americans with Disabilities Act and Genetic Information Nondiscrimination Act, he said.

Employers should also ask device manufacturers whether they have appropriate protections in place to ensure that the data is secure, he added. Fitbit Inc., for instance, announced last September that its corporate wellness offering complies with privacy and security rules under the Health Insurance Portability and

Accountability Act.

Employers and wearable providers have another ongoing challenge: how to sustain employee interest when the novelty of logging daily steps wears off.

“People engage with a device, and then they kind of hit a wall because they’re not learning anything new,” said Rhett Woods, chief creative officer in the San Francisco office of Rally Health Inc., a digital health firm whose insurer clients run wellness programs for employers.

Last September, Target Corp. doled out free and discounted Fitbits to its 335,000 U.S. employees and issued fitness team chal-

lenges. It put up \$1 million to donate to the winning team’s favorite charity as an incentive.

Team-based challenges “create a lot more stickiness” because everyone’s in it together, said Mr. Woods. “If there’s no defined activity around the wearable device, then it’s up to everybody to figure out how it fits into their life.”

While some employees may be more engaged in minding their health, experts say it’s too soon to say whether wearables improve wellness program outcomes.

Emory, for one, is looking to future challenges. Under consideration: a \$30 Fitbit subsidy for spouses or partners this year.

For 2017, it is weighing credits to participants’ health savings accounts, health plan deductibles or co-insurance, Mr. Stauffer said.



## FAST TRACKING



Global wristband wearable fitness device sales are projected to reach **44 million units** in 2017, up from 30 million in 2015.

Global sales of other fitness monitors are forecast to reach **25 million units** in 2017, up from 21 million in 2015.

By 2018, U.S. employers will integrate an estimated **13 million wearable devices** into wellness programs.

Sources: Gartner Inc., ABI Research



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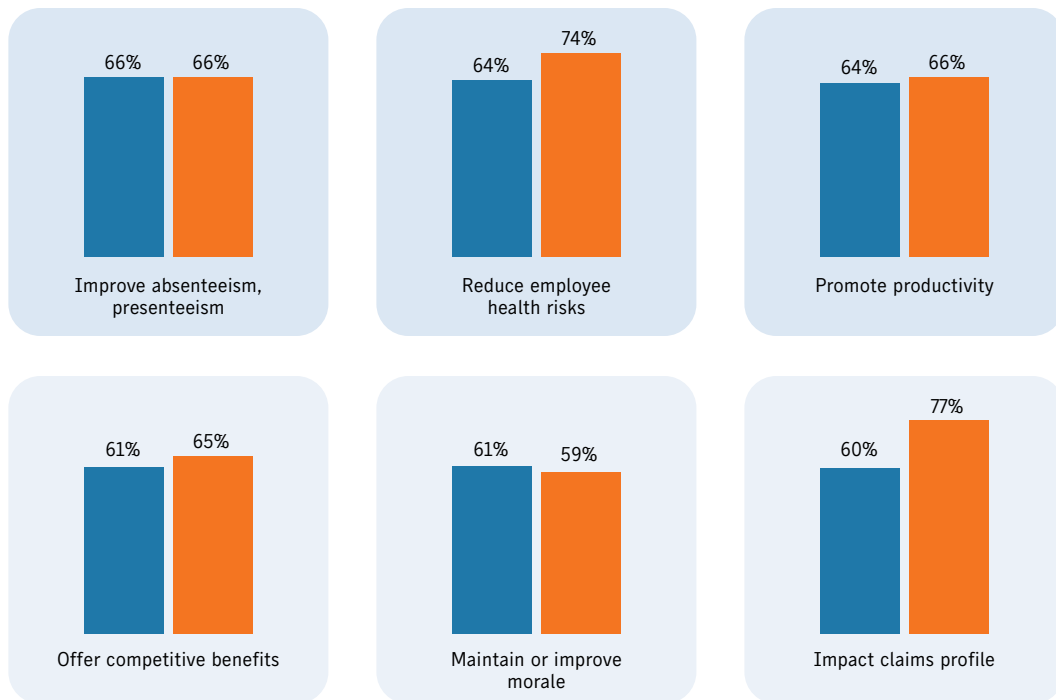
MTG-2989 (4/16)

### EMPLOYER WELLNESS PROGRAMS

While a majority of employers offered wellness programs in 2015, business leaders and human resource professionals differ in some of their goals for the programs.

#### Why offer health and wellness programs?

■ Business leaders ■ HR professionals

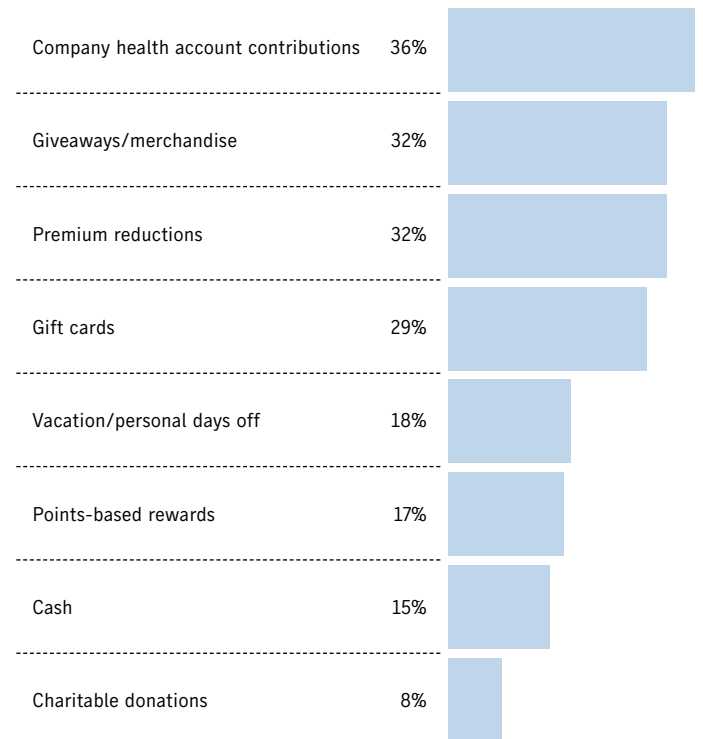


Source: Optum Inc.

### HEALTH AND WELLNESS SPENDING

Employers allocated an average of \$403 per participant in 2015 to engage in health and wellness programs.

#### Incentives 2015

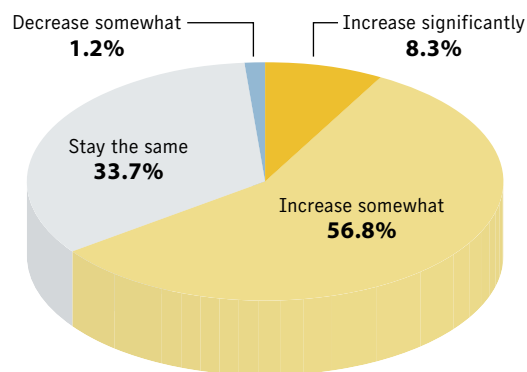


Source: Optum Inc.

### FUTURE COSTS

Some 65.1% of organizations that have a wellness program expect costs to increase in the next two years.

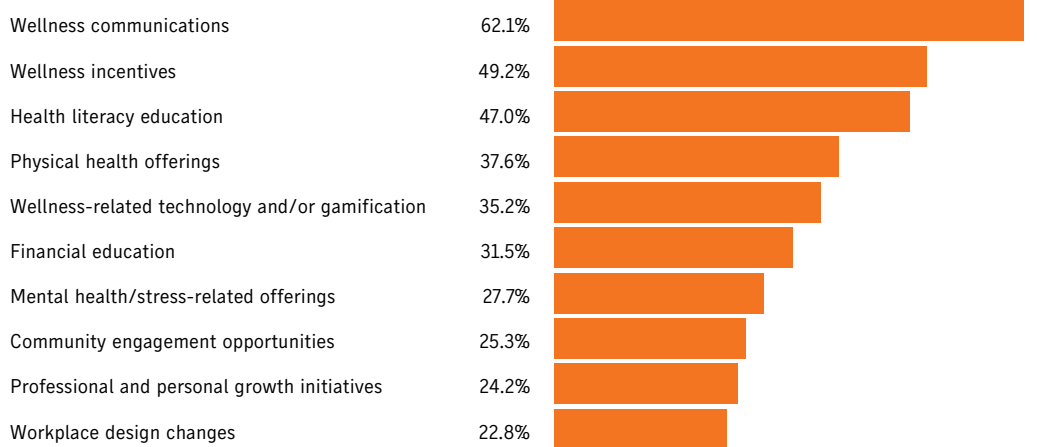
#### Costs are expected to:



Source: International Foundation of Employee Benefit Plans

### FUTURE PLANS

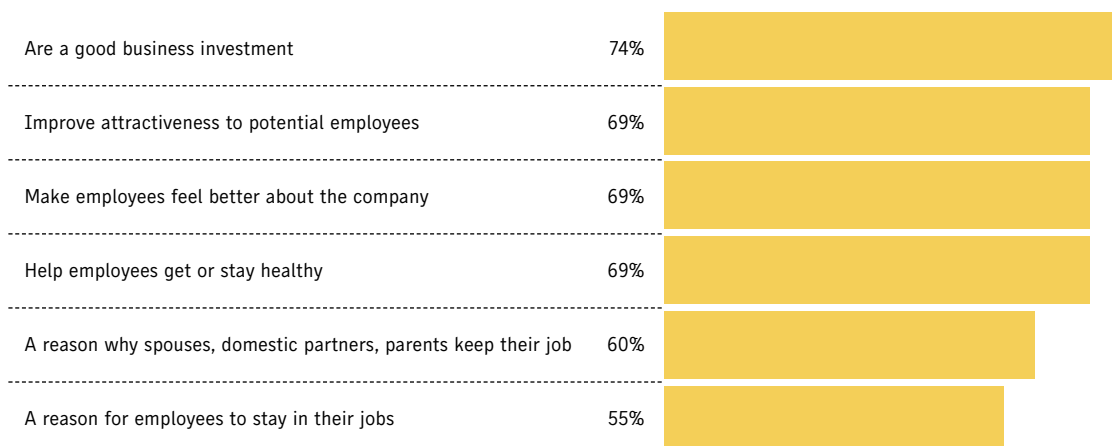
Organizations plan to expand their offerings on several fronts in the next two years to promote employee wellness. The top 10 areas are:



Source: International Foundation of Employee Benefit Plans

### WHAT EMPLOYEES THINK: VALUE

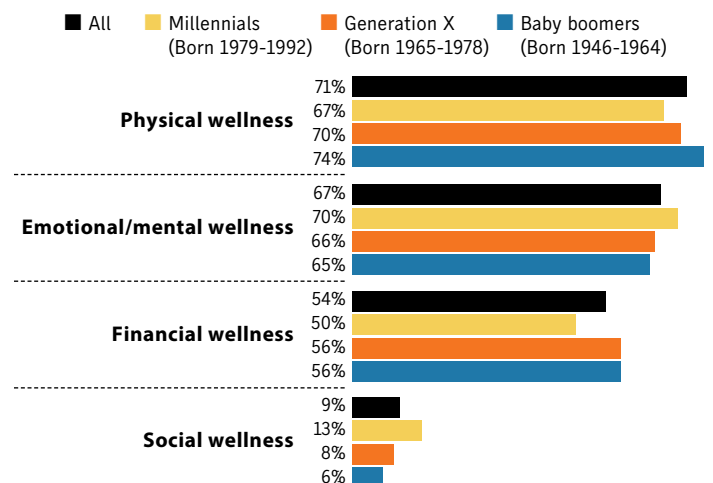
Health and wellness offerings improve employers' value to employees.\*



\*Those who agree, from slightly to strongly, on a 6-point scale.  
Source: Aon Hewitt

### WHAT EMPLOYEES THINK: SUPPORT

To support employees' overall well-being, employers should focus on:\*



\*Percentage ranking category 1 or 2 on a 4-point scale.  
Source: Aon Hewitt

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## Generali offers coverage for multinational property

Assicurazioni Generali S.p.A. has launched Tribune, a property insurance product for U.S. multinational corporations that provides coverage for U.S. and overseas property exposures.

The company has partnered with Birmingham, Michigan-based Belfor Property Restoration, under which Tribune clients can access remediation services for the multinational marketplace, Generali said in a statement.

Tribune offers a global capacity of up to \$250 million, according to the statement.

"Tribune was specifically designed to respond to the unique challenges of cross-border risk management for multinational corporations based in the U.S., and to avoid the pitfalls of insurance fragmentation across country lines," Andrew Sims, senior vice president of property and construction at Generali Global Corporate & Commercial U.S.A., said in a statement.

## Investor group targets independent MGAs

A group of investors has launched Doxa Insurance Holdings L.L.C., a managing general agent-focused holding company.

Fort Wayne, Indiana-based Doxa is a company built to partner with and acquire small to medium-size independently owned and operated managing general agents that focus on specialty commercial property/casualty niches, Doxa said in a statement.

Lead investor and CEO Matthew Sackett is the former senior vice president of national sales for Fort Wayne-based K&K Insurance Group Inc. and former president and CEO of Fort Wayne-based Leisure Sports Specialists L.L.C., according to the statement.

"Medium and small MGAs are often overlooked by firms that are actively acquiring within the insurance industry. The 'bigger is better' mindset prevails," Mr. Sackett said in the statement.

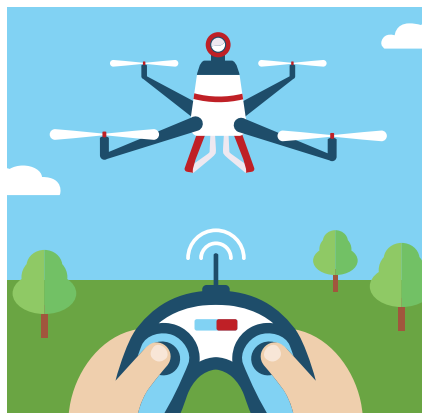
## Professional liability cover for pain specialist firms

Anesthesia Business Consultants L.L.C. launches professional liability coverage program to offer its billing services and consultancy clients.

Jackson, Mississippi-based ABC is a provider in billing and practice management for anesthesia and pain management specialty.

The coverage developed by Arthur J. Gallagher & Co. will be underwritten by PPIC, a Coverys company. This program is offered through first professional liability risk purchasing group, ABC said in the statement.

"ABC offers billing services, professional consulting services and, now, we can make available to clients a competitively priced physician professional liability product with increasing discounts over time," Tony Mira, president and CEO of ABC, said in the statement.



## Coverage developed for drone operators

\* Willis Programs, a unit of Willis Towers Watson P.L.C., and the Association for Unmanned Vehicle Systems International have partnered to develop DroneGuard, an insurance program for the association's members.

DroneGuard is designed for unmanned system owners and operators, Willis Towers Watson said in a statement. The program provides protection for physical damage, third-party liability and personal injury caused by drones, as well as risk management services to enhance operations and consumer safety for members of the Arlington, Virginia-based unmanned vehicle systems association.

The program is underwritten through Parsippany, New Jersey-based aerospace insurer Global Aerospace Inc. Policy limits will be determined on an individual account basis by Global Aerospace, according to a Willis Towers Watson spokeswoman.

"We see insurance through DroneGuard as a key component in AUVSI's efforts to promote safe and responsible use of commercial UAS (unmanned aircraft systems) technology," Brian Wynne, president and CEO of the unmanned vehicle association, said in the statement.

## Everest to offer cover for credit, political risks

Everest Re Group Ltd. has launched a credit and political risk insurance business unit.

The Everest Insurance unit, based in Liberty Corner, New Jersey, will provide credit and political risk coverages for banks, corporations, exporters, contractors, and infrastructure developers,

Hamilton, Bermuda-based Everest Re said in a statement.

Washington-based Jim Thomas will lead the unit. Previously, Mr. Thomas was head of the global credit and political risk business at Zurich Insurance Co. Ltd., according to the statement.

## Ironshore launches product recall insurance

Ironshore Inc.'s Pembroke Managing Agency Ltd. said it will offer product contamination recall insurance.

The coverage offered by the Lloyd's of London managing agent will focus on exposures in the food and beverage industries and respond to the increasing amount of consumption product recalls, Ironshore said in a statement.

Pembroke Managing Agency's product contamination recall coverage provides incident response expenses associated with withdrawing a product and communication and rehabilitation costs on a first- and third-party basis.

Up to 12 months of business interruption coverage for gross income loss is available, and limits can be as high as \$15 million, according to the statement.

## Employee identity theft coverage expanded

The Hartford Steam Boiler Inspection and Insurance Co. has extended the availability of its identity theft insurance and services to the employees of small to mid-sized businesses as a standalone policy for employers.

HSB Identity Recovery coverage pays for expenses and services to help victims restore their name and credit to pre-theft status. It is available through agents and brokers to employers who can provide identity theft coverage to employees, HSB said in a statement.

In addition to paying expenses like lost wages, child and elder care, the cost of credit reports, postage, shipping and fees, HSB Identity Recovery coverage can pay for legal fees involving civil or criminal complaints and mental health counseling related to the identity theft, according to the statement.

The policy limit is \$25,000 per employee, an HSB spokesman said in an emailed statement.

## Wellness tools added to benefits platform

Marsh & McLennan Agency L.L.C. has added new wellness promotion and engagement tools to its MarketLink Benefits Administration & Private Exchange.

The wellness platform brings together an online community of MarketLink users that are focused on being healthier, Marsh & McLennan Agency said in a statement. Launched in 2014 to help mid-size employers address Affordable Care Act requirements and manage rising health care costs, MarketLink lets participants design programs around personal wellness goals, find health partners, join challenges and earn rewards, according to the statement.

## DEALS & MOVES

### Great American acquires Texas comp book of business

Great American Insurance Group has acquired Austin, Texas-based Service Lloyds Insurance Co.'s Texas nonsubscription book of business.

Terms of the deal were not disclosed.

The Service Lloyds business represents approximately \$5 million to \$7 million in gross written premium, Great American said in a statement.

Cincinnati-based Great American provides primary indemnity coverage for employers that opt out of the Texas workers compensation system, the insurer said in the statement.

"This acquisition is a great complement to our existing Texas nonsubscription business," Mary D. Ford, Great American divisional senior vice president, said in the statement.

### IMA Financial buys commercial broker in Dallas

IMA Financial Group Inc. has acquired Dallas-based broker Waldman Bros.

Terms of the deal were not disclosed.

The subsidiary, newly dubbed IMA | Waldman, has nearly 70 employees and will offer commercial insurance solutions and employee benefits, IMA said in a statement.

Waldman CEO Steve Waldman will serve as president of IMA | Waldman Texas, and IMA's Rob Broz will serve as IMA | Waldman president Dallas-Fort Worth, according to a statement.

IMA Financial is based in Wichita, Kansas.

### Hub expands in New Mexico with brokerage deal

Hub International Ltd. has acquired the assets of First Santa Fe Insurance Services Inc.

Terms of the deal were not disclosed.

Albuquerque, New Mexico-based First Santa Fe provides commercial and personal insurance.

First Santa Fe's operations will become a part of Hub New Mexico and be led by Randy Perkins, president of Hub New Mexico, Hub said in a statement.

"First Santa Fe Insurance has a history of being well-established in its communities, and this acquisition gives its clients access to the resources, services and network of Hub's property and casualty, employee benefits, risk services and personal lines solutions," Mr. Perkins said in the statement.

### USI Insurance Services acquires benefits specialists

USI Insurance Services L.L.C. has acquired Plymouth, Minnesota-based Hanratty & Associates Inc.

Terms of the deal were not disclosed.

Hanratty & Associates is an insurance agency that provides employee benefits consulting, third-party administration, human resource solutions, health care reform compliance, wellness consulting, financial services and risk management services.

Hanratty & Associates' 25 employees will remain at their current Plymouth location and operate under the name Hanratty & Associates, A Division of USI Insurance Services for six months, a USI spokeswoman said in an emailed statement.

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# MEDICARE

Continued from page 4

according to an analysis last week by Washington-based consultant Avalere Health L.L.C.

On the negative side, expanding Medicare to younger retirees could lead to more provider cost-shifting to those covered by employer plans.

“Won’t they jack up rates even more for those not on Medicare?” Mr. Gelfand asked.

On the positive side, employers could partially offset early retirees’ costs by contributing to health reimbursement arrangements to partially offset Medicare premiums.

Indeed, some employers today make HRA contributions that Medicare-eligible retirees can tap to pay premiums for Medicare Part B, which covers physician services and Part D, which provides coverage for prescription drugs, said Sharon Cohen, a principal at Xerox HR Services in Washington.

Others say the proposal’s appeal would rest on a key detail Ms. Clinton has yet to provide: how much, if anything, the government would pay.

“We don’t know yet what it means to buy in. That has important implications for the government and for individuals,” said Kathryn Wilber, senior counsel of health policy at the American Benefits Council in Washington.

Whether Congress would take up a lower Medicare-eligibility age proposal isn’t known. Legislators, though, almost certainly would hold back if the cost weakened Medicare’s financial health, Mr. Wojcik said.

“This could accelerate the time table on when Medicare is projected to become insolvent, especially if there is adverse selection,” Mr. Wojcik said.

Last year, Medicare trustees projected the program will become insolvent by 2030.

# RECORDS

Continued from page 3

assistant secretary of labor for occupational safety and health.

However, legal experts questioned both the need and legal authority for the anti-retaliation provisions because employees already can file retaliation complaints under Section 11(c) of the Occupational Safety and Health Act.

“This is really a backdoor way, to me at least, to get around 11(c) and provide a whole new way for employees to raise that cause of action,” said Melissa Bailey, a Washington-based shareholder at Ogletree Deakins Nash Smoak & Stewart P.C. “I’m not sure how OSHA justifies under its record-keeping authority some alternate path to the remedy. Congress should be doing that, not OSHA.”

But Mr. Michaels said the anti-retaliation provisions are critical to protect workers.

“If a worker is retaliated against for reporting an injury, it’s not simply an 11(c) violation, for which we have to take an employer to court,” he said. “Now, it’s a violation of the record-keeping regulation. We can issue a citation, and we can get abatement. That will really protect workers and their voice in ways that we really haven’t been able to do before.”

Employers that consistently apply their disciplinary policy for employees who fail to follow health and safety rules would not run into trouble with OSHA, but what is unacceptable is if the policy is applied only if a worker is injured, Mr. Michaels said. OSHA has seen situations where employees were fired on grounds they violated safety rules when they were actually fired for reporting injuries or illnesses, he said.

“That’s something that we see all the time, and it’s of great concern to us, and we’re hoping to eradicate that,” Mr. Michaels said.

“It signifies that maybe OSHA is planning to pursue this whistle-

blower agenda against employers based on these reporting requirements, and it seems like overkill to me,” said Jason Mills, a Los Angeles-based partner at Morgan, Lewis & Bockius L.L.P. “I’m frustrated with the fact that that’s what they viewed to be the fix here, when the bigger problem was they were placing this burden on employers. It doesn’t take much for an employee to say he or she was discouraged from reporting a workplace injury, and it’s going to put this burden on employers where they’re trying to defend themselves against this all the time.”

Under the provisions, an OSHA compliance safety and health officer will investigate and determine whether the employer violated the anti-retaliation provisions. If the complaint is validated, OSHA could issue a citation and order remedies such as purging the employee’s personnel file, reinstatement and back pay.

“It is a new concept, and I think it’s going to be very difficult for

OSHA to enforce, and it’s going to be really difficult for employers to swallow if they start citing them for this,” Mr. Mills said.

Another objection is that the anti-retaliation provisions never were part of the original proposed rulemaking, which could constitute a conflict or violation of the Administrative Procedures Act, said Amanda Wood, director of labor and employment policy at the National Association of Manufacturers in Washington.

The association is exploring its legal and legislative options, she said.

But given the August effective date, employers are going to have to move fast.

“I definitely would ... review your reporting policies and procedures, update them, distribute them and then do any manager training that you feel is necessary to ensure that there is not going to be retaliation,” said Alta Ray, a Washington-based associate at Mintz Levin Cohn Ferris Glovsky & Popeo P.C.

# WILDFIRES

Continued from page 3

event due to the general practice by the direct insurance writers of establishing reinsurance programs for such events.”

“The reinsurance programs begin to share in the losses when the direct writer has losses exceeding a certain level, ranging from \$10 million to (hundreds) of millions, depending upon the size of the direct insurer and its risk tolerance,” DBRS said in its analysis. “Therefore, the bulk of the insured losses from the fire will be borne by the reinsurers.”

While Standard & Poor’s Corp. said the effect on most insurers “should not be material,” it did say in an analysis that “insurers with a smaller premium base and more concentrated or outsized exposure to Alberta could face some strain and their ratings may come under

pressure.”

Assessing those losses could be challenging as adjusters last week had yet to be allowed into Fort McMurray, and residents reportedly were given a tentative date of June 1 to return to the area.

“The business issues are starting to come up,” said Heather Mack, director of government relations for Alberta, Manitoba and the North at the Insurance Bureau of Canada based in Edmonton. “People want to know if they can start to get some relief from their business interruption insurance, but because the fire situation is so unsafe in Fort McMurray, we’re not able to get adjusters in. The insurers have cat teams in the province ready to go, but there are these hot spots that keep flaring up.”

She said the government has hundreds of photographs of buildings in the city, “which insurers will have access to even if they’re not physically present.”

“They’ll be able to see the damage, and they’ll be able to potentially start moving some of these interruption claims where you can see the building’s gone or there’s significant physical damage,” she said.

Ms. Mack noted that Fort McMurray was dealing with economic challenges prior to the fire due to falling oil prices. Determining business interruption losses “will be very difficult for insurers and businesses to look at because the economy was fluctuating already,” she said.

“It’s not like post-hurricane or post-tornado,” said Paul Cutbush, senior vice president of catastrophe management at Aon Benfield in Toronto. “We need this technology because no one can get in there to see the damages. If you look at the satellite imagery, it’s amazing. You can see which roofs are there and which ones aren’t. You principally see residential homes.”

“As far as business insurance,” he said, “it’s just too early because no one can get in there to see the damages.”

David Mew, Toronto-based national placement leader at Marsh Canada, said area businesses will face challenges as Fort McMurray is rebuilt.

“If you’re supporting the big oil-sands companies, you’re still going to have a reasonable amount of business,” he said. But for Fort McMurray in general, “you’re going to have a lot less population to support until those houses and apartment buildings are rebuilt.”

Mr. Mew also said he did not believe “there’s going to be a big change in the commercial insurance market, at least in the short- to medium-term in Canada because insurers have plenty of capital to take care of the claims, and a lot of them have pretty reasonable reinsurance programs, where a lot of the losses will end up.”

# STANDARDS

Continued from page 4

tion of Insurance Commissioners said in an emailed statement that it is reviewing the legislation.

“While we don’t have a position at this time, we are generally supportive of more oversight of international discussions,” the NAIC said in the statement.

Some insurance groups hailed introduction of the bill.

“This is far and away our No. 1 issue,” said Nat Wienecke, senior vice president of federal government relations in the Washington office of the Property Casualty Insurers Association of America. “We’re pleased that we’ve got a bipartisan bill in the Senate. We’ve

got bipartisan interest in Chairman Luetkemeyer’s bill, and we really think the time is ripe to put these guardrails up to preserve the 150-year-old state-based system.”

Even though the bill has been introduced during an election year, that does not doom its chances of winning approval of Congress, Mr. Wienecke said.

“Conventional wisdom says election years are hard to get things passed, but the data says that election years are some of the most productive years that Congress generally has,” Mr. Wienecke said.

Similar but not identical legislation has been introduced in the Senate, he said.

“I think Chairman Luetkemeyer’s legislation is important because it sends a clear message that Congress will not allow ill-fit-

ting one-size-fits-all regulatory standards conceived in Europe to be exported to the U.S. through an opaque international standards setting process,” said Jimi Grande, senior vice president of federal and political affairs at the National Association of Mutual Insurance Companies Washington office. “It also correctly reminds the Fed that it should complete its important work on a domestic capital standard before agreeing to any international capital standards.”

“I look at this from both a regulatory and legislative perspective,” said Howard Mills, global insurance regulatory leader at consultant Deloitte L.L.P. in New York. Mr. Mills, a former New York insurance superintendent and state legislator, said there’s concern among U.S. lawmakers that

**“We’ve got bipartisan interest in Chairman Luetkemeyer’s bill, and we really think the time is ripe to put these guardrails up to preserve the 150-year-old state-based system.”**

Nat Wienecke,  
Property Casualty Insurers  
Association of America

the U.S. insurance industry is not always represented in international standard-setting forums. He said the concerns are shared at both the federal and state level.

“We’re very supportive of trans-

parency in international matters, and we think this proposal does bring some transparency,” said Frank Nutter, president of the Washington-based Reinsurance Association of America. But he also said the RAA is concerned whether the measure would hamstring regulators and the Federal Insurance Office in achieving regulatory goals.

The Washington-based American Insurance Association praised Rep. Luetkemeyer for being open to the insurance industry and other stakeholders in crafting the bill.

“We appreciate his thoughtfulness and look forward to working with him as this legislation goes forward,” said Wes McClelland, vice president of federal affairs at the AIA.

# ENTERPRISE

Continued from page 4

of Airmic Ltd., the London-based U.K. risk management association.

The Enterprise Act also brings this aspect of insurance law in line with rules that allow damages under other types of commercial contracts, the London-based British Insurance Brokers Association said in a statement.

“It is absolutely correct that there should be an implied commitment in all insurance contracts that the insurer should behave reasonably on claims and that there can now be legal consequences for failing to do so,” Mr. Hurrell said.

Most Airmic members, who typically are large insurance buyers, already tend to be treated “reasonably” and “fairly and efficiently” by insurers, even if the outcome is not always what the buyer had hoped, he said.

And most large insurance buyers can withstand claims delays by borrowing, and any interest payments already are recoverable under current law, Mr. Hurrell said.

Still, he said it will be fairly difficult to meet the legal hurdles of proving the claim was handled unreasonably, that it resulted in damages and that the damages could have been foreseen by the insurer.

Legal experts say uncertainties remain about how the courts will interpret the law.

For example, the Enterprise Act does not define what constitutes a “reasonable” amount of time to pay a claim. The issue is “certainly going to be a flashpoint between parties,” said Nick Young, a partner at DAC Beachcroft L.L.P. in London.

“The question of what is a reasonable time to investigate a claim, and how insurers can demonstrate that they have not unreasonably delayed payment, is likely to be a contentious area,” said Stephen Netherway, partner and head of the insurance team at CMS Cameron McKenna L.L.P. in London.

Insurers should start updating their procedures and policy wordings now, Mr. Young said. They also should ensure that everyone involved in claims is trained to respond to the changes.

“Insurers and brokers must take steps to prepare for the changes,” Mr. Netherway said.

Insurers and brokers also may need to change policy language to limit their potential liability for late-payment damages, he said.

One potential area of concern for insurers will be the subscription market, where they might not have control over the claims process.

“Insurers should consider the risk of liability where they do not have control of claims and may therefore be exposed to mishandling by a third party,” London-based Sidley Austin L.L.P. said in

**“The question of what is a reasonable time to investigate a claim, and how insurers can demonstrate that they have not unreasonably delayed payment, is likely to be a contentious area.”**

Stephen Netherway,  
CMS Cameron McKenna L.L.P.

a briefing note.

“This may be relevant, for example, in the case of a following insur-

er on the subscription market, an insurer taking an excess layer or an insurer which has relinquished control to its reinsurer,” the law firm said. “Parties to these arrangements may wish to agree how such risk will be allocated.”

Insurers also should review their reinsurance arrangements to check for any exclusions or positive statements of coverage in relation to a cedent’s liability arising from late payment to a primary buyer, Mr. Young said.

“Reinsurance wordings should be reviewed; outwards reinsurers may or may not be prepared to provide cover for liability for late payment,” the Sidley Austin note said.

## LETTERS

Continued from page 12

tion based metrics.

Example? A warehouse worker needs to walk a specified distance, reach a specific height, reach outward a specific distance, bend over to a specific angle, then lift and hold a specific weight object — all in a specific time period (evolution).

This is fully Americans with Disabilities Act-compliant, and even allows for the prosthetic limbs increasingly used by today’s Wounded Warrior military veterans. Yet it quickly disqualifies the morbidly obese

applicants who lack the body flexibility and heart-lung stamina to perform these essential workplace-based tasks.

Sharp-eyed insurers would quickly note that the above example did not even include the notoriously rigorous military or public safety standards. Just BFOQ — Bona Fide Occupational Qualifications — a win-win solution for both the employers and insurers.

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Director of Safety and Security  
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AP PHOTO

North Carolina Gov. Pat McCrory on May 4 discusses his state's controversial law regulating transgender bathroom use.

## TRANSGENDER

Continued from page 1

Carolina upward of \$5 billion a year, much of that from the loss of federal dollars, from the state's noncompliance with the U.S. Civil Rights Act of 1964.

"It's not only stirred the pot, it's caused real discussion and, unfortunately, it has created barriers ... for a certain group of our citizenry," said Reuben Daniels, district director of the U.S. Equal Employment Opportunity Commission's Charlotte district office. "This has caused most people in the country a great deal of concern."

North Carolina's law is the only one of its kind. Although lawmakers in a handful of states attempted to pass similar restrictions, none became state law, according to the Washington-based National Center for Transgender Equality.

As a result of the law, the EEOC, the U.S. Occupational Safety and Health Administration and the U.S. Department of Health and Human Services in recent weeks restated or introduced guidelines for various

organizations, naming transgender individuals as being among the protected classes in federal anti-discrimination laws.

The law also has sparked litigation by several organizations and governmental entities, such as a U.S. Justice Department suit that seeks to withhold federal money from the North Carolina Department of Public Safety and the University of North Carolina.

"This is evolving extraordinarily quickly," said Nonnie Shivers, a Phoenix-based shareholder at employment law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. who spends much of her time advising employers on how to handle gay and transgender issues. "This is the time for employers to identify what their obligations are."

Private employers ought to examine this carefully, as they are subject to EEOC investigations and lawsuits, according to Mr. Daniels, who is predicting an uptick in activity. The EEOC maintains a list on its website of cases on discrimination against transgender employees. Since 2012, the commission has gone after 17 private enterprises. Businesses with more than 15 employees are subject to investigations

by the EEOC.

And while North Carolina's law affects one segment of the working public, it's helped declare on a national level the rights of transgender individuals, said Todd Solomon, a Chicago-based partner in the employee benefits affinity group at McDermott Will & Emery L.L.P. He said national attention on the issue has spurred private businesses and organizations to establish policies if they haven't already.

"At this point, (public) employers are caught in the middle of lawsuits," said Mr. Solomon.

Several public entities in North Carolina reportedly have decided to follow federal guidelines under Title VII of the Civil Rights Act instead of the new state law given the threat of losing federal funding.

At the University of North Carolina-Chapel Hill, enforcement of the law isn't clear, said Terri Phoenix, director of the campus's LGBTQ Center, which provides services for the "lesbian, gay, bisexual, transgender and queer" population. "There are no enforcement procedures whatsoever ... the bill has amplified anxiety on campus, making people think they have the right to police the bathroom," he said. "It is a problem on campus."

The law also includes a provision disallowing individuals to sue the state for discrimination, another contested issue that Gov. McCrory has said he would like to see repealed.

While the North Carolina law, introduced to nullify a transgender rights law passed by the City of Charlotte, responded to concerns that Gov. McCrory said included fears that transgender individuals could "do harm," opponents said the law won't stop criminal activity.

All the hype has caused mass anxiety among transgender individuals who fear being attacked "no matter what bathroom they

use," said Mr. Phoenix.

That's why the American Civil Liberties Union and Lambda Legal in mid-May filed an injunction seeking more time to study the law's ramifications before it's put into effect.

"H.B. 2 is causing ongoing and serious harm to transgender people in North Carolina," Chris Brook, Raleigh-based legal director of the ACLU of North Carolina, said in a statement. "Our Legislature and our leaders of our state pedal some problematic mythology about the LGBT community, and that bullying is only going to increase," he said in an interview.

Among the pleadings are statements by several transgender individuals — mostly university students — who said they fear for their safety.

The North Carolina law "says I am supposed to use the men's room," said Victoria E. Nolan, risk and benefits manager at Hillsboro, Oregon-based Clean Water Services, who transitioned to female in 2011. "I would just use the women's room and take my chances."

As a frequent speaker at risk management conferences on workplace transgender issues, Ms. Nolan is slated to speak in June at the Public Risk Management Association conference in Atlanta, a part of the country she travels to reluctantly. In March, the Georgia governor vetoed a law that would have allowed businesses in the state to refuse service to gay or transgender individuals.

"A year ago, I could have walked into any public restroom and not have anybody look twice at me," Ms. Nolan said of the furor caused by the North Carolina law. "I feel very vulnerable right now. This feels a lot like the times of segregation, when blacks were separated from whites because (people feared) blacks were going to harm whites."

## HINES

Continued from page 6

human resources and a person from communications, as nearly all crises would affect at least one of those departments, said Mr. Moyer.

There also needs to be a "quarterback," a person who understands their job is to pull in the resources that are necessary, he added. "They pull in other subject matter experts as needed."

During a confluence of events that pile on one another, a team can try to find the "common thread in various scenarios" to be better prepared for a crisis, Ms. Barnat said.

An important aspect of preparation is asking what keeps you up at night and finding out the likelihood of an occurrence and the impact of occurrence, Mr. Moyer said. "Decide which ones you are prepared for and work on spending time developing a muscle memory on how to respond to the ones not likely to happen," he said.

While it's impossible to plan for every crisis, organizations should consult with peer organizations, when possible, said Brian Graves, director of communication and public relations for Community Unit School District 308 in Oswego, Illinois.

As the communications leader, he "compares notes" with colleagues at other school districts who have had crisis experience with gun violence or other incidents that his district has not, Mr. Graves said. This allows him to plan where vulnerabilities could be.

"Based on their experiences, we can prepare for providing the layer of protection we may need," he said.

The panel was moderated by *Business Insurance's* editor, Gavin Souter.

## NCCI

Continued from page 6

And Connecticut S.B. 134, which would have created a presumption for individuals suffering from a severe mental or emotional impairment after witnessing someone's death or maiming, failed in April.

"In most cases, (presumptions) are narrow in scope," Michael Bourque, senior vice president of external affairs for The MEMIC Group in Portland, Maine, said in an email. "Nonetheless, they are an expansion of benefits, and with more benefits there (are) more (workers comp) costs."

To keep costs down, legislators have introduced a number of bills regarding workers comp medical reimbursements and fee schedules, sources said.

While prescription drug costs

*"In most cases, (presumptions) are narrow in scope. Nonetheless, they are an expansion of benefits, and with more benefits there (are) more (workers comp) costs."*

Michael Bourque,  
The MEMIC Group

per active claim continue to increase, the average medical cost per lost-time claim decreased 1% in 2015 to \$28,500, according to preliminary findings by NCCI, chief actuary Kathy Antonello said earlier this month during the Boca Raton, Florida-based rating and research organization's 2016 Annual Issues Symposium in Orlando.

Ms. Antonello added that the

average indemnity cost per lost-time claim "increased slightly" by 1% in 2015 to \$23,500.

"When seeking to control costs, naturally you look to where the biggest dollars are," Mr. Bourque said in the email. "There also remains concern about cost shifting that could result from the implementation of the (Patient Protection and Affordable Care Act). The comp industry is trying to be vigilant in seeking to prevent those shifts."

Beyond controlling medical costs, a competitive fee schedule helps ensure injured workers don't have an issue accessing quality physicians, said Desiree Tolbert-Render, assistant vice president of national technical compliance for workers comp at Sedgwick Claims Management Services Inc. in Orlando, Florida. It's important "to have doctors in the system who provide quality care and get the person back to work."

More education surrounding the opioid epidemic is another driving factor, Carlos Luna, Westminster, Colorado-based director of government affairs at MDGuidelines, part of disability case management services firm Reed Group Ltd., said in an email.

"Compassion for those addicted (to prescription drugs) and the humanizing of the suffering caused by this epidemic is the fuel that ignited passionate exchanges around the country," he added.

In addition, the "boom in the gig economy" — also called the on-demand economy — is leading more states to address the potential for the misclassification of employees as independent contractors, Mr. Luna said.

The definition of an employee has been on the industry's radar since the early 2000s construction boom, which was "partially driven by misclassified construction workers who were illegally labeled

as independent contractors to reduce cost to the employer," Mr. Bourque said in the email.

Companies like Uber Technologies Inc. and Lyft Inc. "are leading some policymakers to re-think the definition of employee yet again," Mr. Bourque added. "The question is, is this really a new kind of worker, perhaps somewhere in-between an employee and a true independent contractor, or is this just a new face on an employer-employee relationship?"

Overall, Ms. Lovgren said it has been a pretty comparable year to 2015, despite four off-cycle rate filings in Alaska, Florida, Oklahoma and Tennessee.

"With a few exceptions, such as the push for reform in Illinois, this has been a relatively placid year in workers comp legislation so far," Mr. Bourque said. "There are emerging issues that we're all watching, but few seem ripe for major change this year."

# CONTRACEPTIVE

Continued from page 1

insurers or TPAs then providing the coverage.

The objecting nonprofits — mostly religiously affiliated universities and colleges, nursing homes, charities and Roman Catholic clergy — feel the 2013 accommodation is too onerous and still violates their faith and rights under the 1993 Religious Freedom Restoration Act.

In two orders, the high court vacated rulings on 13 cases challenging the mandate in the 3rd, 5th, 7th, 8th, 10th and District of Columbia appeals courts. All of the appellate courts previously upheld the government's rule except for the 8th circuit, which issued a preliminary injunction.

While the court said there was “substantial clarification” of the parties' positions regarding the accommodation through highly unusual supplemental briefs it had the parties file in April, it's unclear how a compromise would be forged.

Experts say the court did not provide a clear path to resolve the issue, and the case could wind up back before the high court once a ninth justice is seated.

“It's questionable to me on how that's going to resolve the issue seeing as how (the lower courts) were not able to agree in the first place,” said Amy Gordon, Chicago-based co-chair of the health and welfare benefits affinity group at law firm McDermott Will & Emery L.L.P.

“The remand just keeps this issue alive with the possibility that it won't be resolved during the current term of the court,” said

Steven J. Friedman, co-chair of the employee benefits practice group at Littler Mendelson P.C.

Religious nonprofits, however, hailed the ruling.

“We are encouraged” by the ruling, the Rev. Frank Pavone, national director of Priests for Life, which challenged the accommodation, said in a statement.

“It is only a matter of time before the lower courts make this victory permanent,” Mark Rienzi, senior counsel at The Becket Fund for Religious Liberty, which represents objecting nonprofit Little Sisters of the Poor, said in a statement.

Others were less satisfied.

“We are disappointed that the court did not resolve once and for all whether the religious beliefs of religiously affiliated nonprofit employers can block women's seamless access to birth control,” Gretchen Borchelt, vice president of reproductive rights and health at the National Women's Law Center, said in a statement.

“This was really an attempt to keep this issue away until there was a 9th member of the Supreme Court,” said Aaron Goldstein, Seattle-based partner with law firm Dorsey & Whitney L.L.P.

“The avoidance of a 4-4 split certainly was my interpretation,” said Tami Simon, Washington-based global practice leader of the Knowledge Resource Center at Xerox HR Services.

A split would have let the lower courts' rulings stand, creating different laws in different states.

Saying the opposing parties conceded in the supplemental briefs that the accommodation could be modified “in a way that does not require any involvement of petitioners,”

the Supreme Court seems to be “saying this is what these people said on paper, this is what they've agreed to, so now make them work out the details,” said Robin Fretwell Wilson, a law professor and director of the College of Law's Family Law and Policy Program at the University of Illinois at Urbana. “I think they are holding the government to their promise.”

But the parties did not agree on how to modify the accommodation to the contraceptive mandate.

The nonprofits said in their supplemental briefs that they would be satisfied if contraceptive coverage was offered to their employees “through a separate policy, with a separate enrollment process, a separate insurance card, and a separate payment source, and offered to individuals through a separate communication.”

But the government countered that separate contraceptive policies would be “unworkable” and create a barrier to the “seamless” coverage under the law.

In a concurring opinion joined by Associate Justice Ruth Bader Ginsberg, Associate Justice Sonia Sotomayor said “such separate contraceptive-only policies do not currently exist” and if they did, “requiring stand-alone contraceptive-only coverage would leave in limbo all of the women now guaranteed seamless preventive-care cov-



## HEAR INTERVIEW

Amy Gordon, Chicago-based co-chair of law firm McDermott Will & Emery L.L.P.'s health and welfare benefits affinity group, discusses the three questions that remain in light of the Supreme Court's nondecision on the Affordable Care Act's contraceptive mandate with *Business Insurance* Staff Reporter Shelby Livingston.

erage.”

Observers also point out that the Supreme Court's ruling clearly said the contraceptive policies should be provided by the nonprofits' same insurers, but say that would work only for fully insured employers, not those that are self-insured.

About 63% of covered U.S. workers are part of a self-insured health plan, according to the latest Kaiser Family Foundation data.

“There is no insurer in a self-funded plan, so the mechanism the court is clearly contemplating doesn't exist for those kinds of plans,” Ms. Wilson said.

“There may be the possibility for a compromise for insured plans, but there's no glimmer of a compromise for self-insured plans,” said Timothy Jost, health care law expert and emeritus professor at the Washington and Lee University School of Law.

Observers say a compromise is still far off. Many aren't convinced that common ground will be found and say the case could end up back before the Supreme

Court during the next administration.

“I'm thinking that the government is on its back heels here, and it's going to have to come up with the same plan for everybody in all of those different circuits,” Ms. Wilson said. “It may be that the religious objectors don't all see this the same way. There is real question about whether we just kicked the can down the road.”

# OVERTIME

Continued from page 1

workers.”

The federal agency said the overtime rule would immediately affect about 4.2 million workers. Currently, about 7% of full-time salaried workers get overtime versus 62% in 1975. The new overtime threshold is expected to increase that to 35% of full-time workers, the Labor Department said.

However, experts say the changes also are expected to result in more litigation.

“I think it's going to trigger a slew of litigation,” said Robert A. Boonin, a member of law firm Dykema Gossett P.L.L.C. in Detroit.

Mistakes in the way time is kept or misunderstanding about bonuses could be sources of such lawsuits, he said.

One entirely new aspect in the rule allows employers to count nondiscretionary bonuses and incentive payments that include commissions made at least quarterly to satisfy up to 10% of someone's salary.

“The most significant litigation development is likely to be class actions on behalf of employees who are entitled to overtime payments and don't get them because now you have millions of employees who are entitled” to these payments, said Richard D. Glovsky, a partner at Locke Lord L.L.P. in Chicago. “If a company gets it wrong, they'll have a big problem.”

“There will probably be a spike of litigation because of the publicity and employees who think they are not being paid right,” said John E. Thompson, a partner at Fisher & Phillips L.L.P. in Atlanta.

He added there was a spurt of litigation in 2004 — the last time the white-collar over-

## OT RULE

The new overtime rule issued last week by the Department of Labor updates regulations that determine which salaried employees are entitled to overtime under the Fair Labor Standards Act. The rule:

- Raises the salary threshold below which most workers are entitled to overtime to \$913 per week from \$455, or to \$47,476 a year from \$23,660.
- Extends overtime protection to 4.2 million additional workers who are not eligible for overtime under current federal rules.
- Automatically updates the salary threshold every three years, based on wage growth over time.
- Allows bonuses and incentive payments, which must be paid at least quarterly, to count for up to 10% of the new salary level.
- Goes into effect Dec. 1, 2016.

time-exempt threshold was adjusted — and “there will probably be some lawsuits challenging the changes” that just have been made.

The Labor Department said the \$913 per week/\$47,476 per year threshold also will be adjusted every three years starting Jan. 1, 2020.

Already, “we have a ton of wage and hour litigation,” said Michael J. Killeen, a partner at Davis Wright Tremaine L.L.P. in Seattle. Even if just 1% of the 4.2 million new people entitled to overtime file suit, “it's going to add up to a lot of claims.”

A July 2015 report by New York-based NERA Economic Consulting said wage-and-hour settlements, which include unpaid overtime and other issues, totaled more than \$3.6 billion between January 2007 and the first three months of 2015.

“It's very likely employers will adjust their operations and pay practices to try to keep their labor costs as static and level as possible,” said Matthew S. Disbrow, a partner at Honigman Miller Schwartz & Cohen L.L.P. in Detroit. Still, most employees “will not realize a substantial increase in their pay” and some may even see a reduction, he said.

“Employers are going to have to be doing some fairly detailed analyses of what to do with that population of people,” Mr. Disbrow said.

“This is something that is going to have a traumatic effect on small businesses, nonprofits, higher education, public agencies, local businesses and other organizations that don't have excess revenue” to pay the higher wages, Mr. Killeen said.

The Labor Department said employers have several ways to comply with the revised overtime rule: increase an employee's pay to maintain their overtime-exempt status; pay them overtime above 40 hours a week; reduce their hours to avoid overtime; reduce their base pay but pay them overtime above 40 hours; or some combination of the options.

Observers say it's unlikely that Congress would try to overturn the rule and, even if they voted to do that, President Barack Obama would veto such a bill.

Furthermore, “I don't think here's much question this is within the DOL's statutory authority under the regulations,” said Shannon D. Farmer, a partner at Ballard Spahr L.L.P. in Philadelphia.

# SECRETS

Continued from page 6

if the order was not issued.

“I would presume that the ex parte seizure order would be very, very rarely granted,” although the potential would increase when a suspected employee is about to leave the country, said Mark F. Saloman, a partner at Ford & Harrison L.L.P. in Berkeley Heights, New Jersey. “There's no guidance right now as to what it will take to get that seizure order, and it may very well depend on the judge that you draw.”

“It gives companies a degree of comfort to know that it's not going to take months or possibly years to lock down evidence,” said Mr. Johnston, who said a court must hold a hearing on the ex parte seizure within seven days.

However, Michael P. Elkon, a partner at Fisher & Phillips L.L.P. in Atlanta, said the impact on firms at the receiving end of these orders could be “devastating” because “it can freeze an entire business.”

Experts say the law has a whistleblower provision, granting immunity to employees or contractors who reveal trade secrets while reporting a violation to an attorney or government official. The law requires employers to inform employees and independent contractors of this immunity, which experts say could require changes in employment agreements.

Most observers say they do not expect the law to significantly affect the insurance market, in large part because trade secrets are rarely insured. A trade secrets claim usually “falls outside the scope of most commercial policies,” said Mr. Saloman.



HISCOX LTD.

Volunteers at Hiscox's York, England, office work on the rooftop beehives.

## Insurer offers cover for drones

**T**here's a real buzz around Hiscox Ltd.'s office in York, England — caused by the arrival of two colonies of bees.

The insurer and reinsurer opened an office in the historic northern English city in December and this month announced it had installed the bee colonies on the roof on the building.

The colonies will produce about 120,000 bees by the summer, which will be cared for by a team of Hiscox staff volunteers — “workers,” perhaps? — who undertook 10 hours of practical training to prepare for the arrival of their new, winged office mates.

Of course, being in the risk business, Hiscox made sure that safety systems are in place to ensure there's no sting in the tale.

“We are keen not only to increase the bee population here in York for pollination, but also to encourage Hiscox staff to promote bee-friendly planting in their own gardens,” said Edward Pop, Hiscox' apiaary consultant.

## Ferragamo wines about quarterback

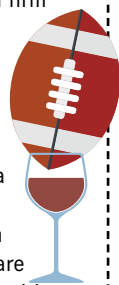
**W**hile it doesn't appear too likely that an Italian luxury goods maker would be mistaken for a former quarterback, that issue has apparently caused some worry at Italian firm Salvatore Ferragamo SpA.

The high-end accessories firm is suing former Los Angeles Rams quarterback Vince Ferragamo, saying he is infringing on its trademark by operating his namesake winery in Southern California, according to a Reuters report.

Ferragamo SpA says in a complaint filed in federal court in Manhattan that consumers are likely to be confused into thinking the two entities are related.

Mr. Ferragamo was accused of illegally selling his wine, which goes for \$59 a bottle, with the Tenuta di Ferragamo name and festooning his winery's website with images of Tuscany and the Italian countryside even though it is located in Orange Park Acres, California, near Los Angeles.

Now the question remains, even if Mr. Ferragamo does agree to change his winery's name, what would he change it to? Even the Italian firm would have to agree “Vince's Winery,” leaves something to be desired.



## ROCK BAND'S VIDEO SEEN AS TOO SIMILAR TO 1960s TV SHOW



Radiohead's “Burn the Witch” video has drawn ire from the family of the creator of the BBC children's show “Trumpton” (inset).

**F**or the family of British television producer and puppeteer Gordon Murray, imitation isn't the highest form of flattery. British rock band Radiohead is accused of copyright breach of 1960s stop-motion children's television series “Trumpton” in their new video for the song “Burn The Witch” a single off of their new album, “A Moon Shaped Pool,” which was released May 8.

After a five-year wait, Radiohead's anticipated new album was greeted with critical acclaim, but Mr. Murray's family is not pleased. They feel that the puppets in the band's video resemble characters from the series that originally aired on BBC. William Mollett, son-in-law of “Trumpton” creator Mr. Murray said, “It is not something we would have authorized. We consider that there is a breach of copyright, and we are deciding what to do next,” the Daily Mail reports.

In an interview with Billboard, the video's animator Virpi Kettu cited Islamophobia, the refugee crisis in Europe and the 1973 horror film “The Wicker Man” as creative inspiration for the video.

Video director Chris Hopewell and Radiohead both declined to comment to the Daily Mail.

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## Bored worker sues employer

**A** French employee is suing his former company for boring him to tears. The plaintiff, 44-year-old Frédéric Desnard, wants \$415,000 from his former employer, Paris-based perfume enterprise Interparfum, as compensation for the boredom it allegedly caused.

Mr. Desnard claims that he was removed from his previous high-profile position after the company lost a major account and asked to carry out much more boring tasks. He believes his company wanted him to quit voluntarily to limit severance payments he would have been entitled to, but he decided to stay on due to a sluggish economy.

Despite earning a handsome salary for doing nothing, he described the four-year period as “hell” and “a nightmare” and said it caused multiple health issues, including ulcers and depression. He was ultimately fired after sustaining injuries from a car crash.

Mr. Desnard believes the company should be held responsible for mental and other health damages and for his missing out on a promotion. A verdict in the case is expected July 27.

However, a lawyer for Interparfum said there was no proof the company tried to bore him into quitting and accused Mr. Desnard of shifting gears to the boredom allegations after previously claiming to be suffering from burnout.



## Temp is flat out against heel rule

**B**eauty is pain, according to some workplace dress codes. Nicola Thorp, a 27-year-old who wore flats on her first day as a temporary receptionist for PwC in London, told media outlets that she was sent home without pay when she refused to buy a pair of heels between two and four inches high.

Nearly six months later, Mr. Thorp has collected more than 127,000 signatures in a petition that asks Britain's Parliament to make it illegal for firms to require that women work in heels, stating that such requirements are “outdated and sexist.”

But rather than a question of appearances, the debate could ultimately revolve around workplace health and safety. Up to one-third of women suffer permanent problems, such as osteoarthritis of the knee, plantar fasciitis and low back pain, as a result of frequently wearing high heels, according to the American Osteopathic Association.

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