

Business Insurance

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ON HANDLING DOCTORS
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**FORMER GEN RE, AIG EXECs
WORKING ON SETTLEMENT
OF FINITE CASE / PAGE 4**

inBrief

**P/C insurers, reinsurers
see positive results**

U.S. property/casualty insurers are "generally on solid financial footing," according to Standard & Poor's Corp., which said U.S.-based insurers have "very strong" balance sheets and can withstand large catastrophes and manage asset, credit and underwriting risks. In a separate report, the Reinsurance Assn. of America said the U.S. reinsurance sector posted positive underwriting results in the first quarter of 2012.

**Near North's Segal
released from prison**

Michael Segal, the former owner of insurance brokerage Near North National Group Inc. convicted of fraud in 2004, was

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SPOTLIGHT

PUBLIC ENTITY RISK MANAGEMENT

Occupy protests show need for unified response; pools widen cover; ERM helps cities prepare for disasters. **PAGE 9**

RISK MANAGEMENT

Distracted driver suits piling up

Employers tighten rules on phone use for workers driving

By **RODD ZOLKOS**

Recent suits against companies whose employees were involved in vehicle accidents while using cellphones is raising employers' interest in distracted driving policies.

After an accident involving a corporate-owned vehicle, "It's now routine for the plaintiffs bar to check the cellphone records of the driver," said W. Michael McDonald, vp of enterprise risk management at Quality Distribution Inc. in Tampa, Fla.

"There's a lot more attention given to it today than there was in the past, and ultimately a lot of that is being driven by recent litigation or court judgments," said Rich Bleser, senior vp in the workforce strategies group and practice

leader of the fleet specialty group at Marsh Risk Consulting in Milwaukee.

Most recently, a Texas jury handed down a \$21 million verdict last month against Coca-Cola Refreshments USA Inc. in a case involving a woman whose automobile was struck by a Coca-Cola employee driving a company-owned vehicle while talking on a hands-free device. Among other things, the suit alleged that Coca-Cola's driver cellphone policy was vague and ambiguous.

Coca-Cola Refreshments has said its policy complied with Texas law and that it disagrees with the verdict. The Coca-Cola bottler and distributor has indicated it will appeal.

According to some, policies restricting drivers to hands-free devices as required by some state laws don't go far enough.

"Just following the law is not enough," said David Teater, senior

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TECHNOLOGY



BLOOMBERG

Litigation and regulatory investigations of various problems with Facebook's initial public offering of stock may add momentum to a trend of hardening D&O rates.

Botched Facebook IPO teaches tough lessons

By **JUDY GREENWALD**

While Facebook Inc.'s well-publicized problems with its initial public offering are in many ways unique, companies should take heed of some lessons from the company's experience, say observers.

The lessons include exercising caution in determining the

amount raised and in disseminating nonpublic information to firms' investment bankers.

Menlo Park, Calif.-based Facebook Inc. went public on May 18, selling 421 million shares to the public at \$38 a share, giving it a total value of more than \$16 billion. There were glitches,

See **FACEBOOK** page 18

INTERNATIONAL

Chartis exits U.K. public entity market, QBE enters

By **STUART COLLINS**

LONDON—Chartis Europe Ltd.'s decision to withdraw from public sector underwriting in the United Kingdom prompted capacity worries among U.K. public entity risk managers last week, but QBE Insurance (Europe) Ltd.'s entry into the market somewhat eased those fears.

London-based Chartis Europe confirmed last week that it had ceased underwriting new business through London-based managing general agent Risk Management Partners Ltd., a subsidiary of Arthur J Gallagher & Co. In a statement, Chartis Inc. said it made the decision after negotiations with RMP, which were aimed at improving terms and



Chartis Europe Ltd. said soft pricing and a trend toward adverse claims caused its decision to withdraw from the U.K. public entity market.

draw, although it said it would be prepared to return to the U.K. public sector should terms improve.

Despite its decision concerning U.K. public sector underwriting, a Chartis spokesman said the insurer remains committed to the U.S. public sector.

QBE, part of Sydney-based QBE Insurance Group Ltd., will begin underwriting RMP's public sector business starting July 1. In a statement, QBE said it will offer "all the major classes of business with significant premium volume and market share for a full range of public sector clients."

QBE, which also underwrites public sector risks in Australia, Canada and Italy, said it had been considering entering the U.K. market for some years, but did not

conditions, failed.

The insurer said soft market conditions and a trend toward adverse claims in the United Kingdom caused its decision to with-

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NEWSPAPER

Business Insurance

Online features & highlights
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LAST WEEK'S TOP FEATURES

www.BusinessInsurance.com/BI10

1. IRS relaxes health law's \$2,500 limit for noncalendar-year FSAs
2. GALLERY: Supreme Court on health care reform law
3. Dewey files for Chapter 11 in record law firm collapse
4. FM Global announces management changes
5. GALLERY: Tornado damage at St. John's Medical Center
6. Employee's off-duty car-crash injuries compensable: Court
7. Michael Segal released from prison 4 months early
8. GALLERY: Highest-paid execs at largest public brokers
9. GALLERY: RIMS 2012 in pictures
10. GALLERY: Preparing for hurricane season

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gallery

HURRICANE READY?: The Atlantic hurricane season is under way, and businesses and employees can prepare by making their properties more resistant to hurricane hazards. Tips from *PrepareMyBusiness.org* offer suggestions on what to do. Go to www.BusinessInsurance.com/galleries.

Business Insurance **BEST** places to work **2012**

NOMINATIONS OPEN: *Business Insurance* is accepting nominations for its annual Best Places to Work in Insurance program. The deadline is June 8. www.BusinessInsurance.com/bestplaces



ONLINE MARKETPLACE: Links to industry products and services. www.businessinsurancemarketplace.com



WHITE PAPER: How to keep your operations running when disaster strikes. www.BusinessInsurance.com/whitepapers



GREEN BUILDING: How to manage risks for sustainable structures. www.BusinessInsurance.com/GreenArc

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Aon Risk Solutions

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HEALTH CARE REFORM

IRS grants employers relief from FSA contribution caps

'Use-it-or-lose-it' requirement under consideration for change

By **JERRY GEISEL**

WASHINGTON—The Internal Revenue Service has eliminated a compliance problem arising from a health care reform law that imposed a flexible spending account contribution cap and is considering an even bigger change: modifying its longtime use-it-or-lose-it rule for FSAs.

Much to employers' relief, the IRS last week said the \$2,500 annual FSA contribution cap set by the Patient Protection and Affordable Care Act will not apply for plan years that begin before Jan. 1, 2013.

With that simple statement, the IRS, in Notice 2012-40, eliminated a compliance problem that loomed for thousands of employers with noncalendar-year or fiscal-year FSAs.

Prior to the health care reform law that imposed the \$2,500 cap effective Jan. 1, 2013, there was no limit on how much employees could contribute to their FSAs. Employers, though, typically limited annual contributions to \$4,000 to \$5,000.

The compliance problem was brought home in a letter that the American Benefits Council sent in April to federal regulators. The letter cited the example of an employee in an FSA with a fiscal year that begins on July 1, 2012. The employee elected to contribute \$3,600 during the plan year, making contributions of \$300 a month from July 1, 2012, through June 30, 2013.

However, if the employee elected to contribute \$2,500 for the next plan year starting July 1, 2013, that would violate the cap for the 2013 calendar year, the ABC noted. That is because the employee would have contributed \$300 a month for the first six months and \$208.33 for the last six months of 2013, for a 2013 total of \$3,050, violating the \$2,500 limit.

By clarifying that the \$2,500 FSA limit begins for plans year that begin on or after Jan. 1, 2013, employees in noncalendar-year plans that begin this year will be exempt from the limit through the end of the plan year.

"This is the right approach. It avoids complexities and confusion," said Paul Dennett, ABC's

senior vp-health care reform in Washington.

Regulators "listened to reason," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

In the same notice, the IRS cleared up another FSA issue. It said any amounts that remain in what are called grace period FSAs can be rolled over to the next plan year without those funds counting against the \$2,500 limit. Grace period FSAs—allowed by the IRS under a 2005 rule—are those in which unused balances from the prior plan year can be used to pay expenses that are incurred during the first 2.5 months of the next plan year.

"The IRS has cleared up uncertainty on the grace period issue," said Rich Stover, a principal with Buck Consultants Inc. in Secaucus, N.J.

Even bigger FSA changes may be ahead.

The IRS said it will consider modifications to its 28-year-old use-it-or-lose-it rule that requires plan participants to use contributions by the end of the plan year—or by the end of the grace period, if the employer has one—or forfeit the money.

The \$2,500 FSA cap in the reform law "limits the potential for using health FSAs to defer compensation," the IRS said in explaining why it will consider modifying the rule.

Benefit experts say there are good public policy reasons to scrap the use-it-or-lose-it rule.

The fear of forfeiting the money at the end of a plan year causes

some employees to use health care services that they don't need, experts say.

"If we want to bend the cost curve, we want to discourage unnecessary spending," said Jody Dietel, chief compliance officer at WageWorks Inc., a San Mateo, Calif.-based FSA administrator.

If unused funds could be rolled over for use the next year, for example, that incentive to spend balances at year-end to avoid forfeitures would be eliminated, experts say. The use-it-or-lose-it rule also discourages some employees from contributing more to FSAs or not contributing at all, resulting in the loss of a tax-favored way to pay for health care expenses, Ms. Dietel said.

While it was not clear whether the IRS would eliminate or modify the 28-year-old rule, experts say one approach the IRS might consider is allowing unused amounts to roll over year after year with a limit being imposed on maximum accumulation.

'This is the right approach. It avoids complexities and confusion.'

Paul Dennett,
American Benefits Council

WORKERS COMPENSATION



BLOOMBERG

AIG will pay \$146.5 million to settle allegations of underreporting workers comp premiums made by then-New York Attorney General Eliot Spitzer.

AIG premium dispute settles for \$146.5M

Alleged underreports of comp premiums stem from 2006 probe

By **ROBERTO CENICEROS**

HARRISBURG, Pa.—American International Group Inc. will pay state regulators \$146.5 million by the end of this month to settle long-running allegations that it underreported workers compensation premiums for decades.

The \$146.5 million "global resolution" includes \$100 million in penalties and \$46.5 million in additional premium taxes and assessments that New York-based AIG will pay all 50 states and the District of Columbia, Pennsylvania Insurance Commissioner Michael Consedine announced last week.

Pennsylvania helped devise a settlement in 2010 on behalf of all states.

"This culminates an effort among all of the nation's state insurance regulators to investigate

and resolve complex issues occurring over an extensive period of time," Mr. Consedine said in a statement.

The settlement stems from 2006 allegations that surfaced when then-New York Attorney General Eliot Spitzer accused AIG of underreporting workers comp premiums over several decades to avoid paying its fair share of state residual market assessments.

AIG's workers comp competitors then sued, alleging that they paid states more than their fair share of residual market assessments because AIG was assigned an improperly small share of high-risk workers comp policies as a result of the underreporting.

AIG's payout of the \$146 million to the states reportedly depended on the insurer first resolving the litigation with its rivals.

This year, a Chicago federal judge formally approved a \$450 million settlement of a class action suit brought against AIG by

See **AIG** page 17

WORKERS COMPENSATION

DVD prepping injured workers for IMEs sparks controversy

By **SHEENA HARRISON**

ATLANTA—The co-creator of a video series that instructs workers compensation claimants on what to expect during independent medical examinations says the videos help workers give doctors an accurate representation of their injuries.

However, critics of the IME Preparation videos contend that the film's marketing materials seem to point toward coaching that would help some claimants receive unfair financial gain from the workers comp system.

Ultimately, such materials may point to a need for employers to provide injured workers with information that can help them better understand workers comp claim procedures, said Rebecca Shafer, president of Amaxx Risk Solutions Inc. in Hartford, Conn.

"Good communication is really the key to having a smoother workers compensation process all the way around," she said.

Robert Hendrix III, president of Atlanta-based IME Preparation Inc., said his firm began selling its IME Prep videos in March. The three-DVD set includes instruc-



IME PREPARATION INC.

A still from a video preparing injured workers for medical exams.

tions on what claimants should expect during independent medical examinations for injuries of the lower body, the upper body

and the spine.

Mr. Hendrix, who is a claimant attorney and partner with Stottlemeyer & Hendrix L.L.C. law firm in Atlanta, said the videos are based in part on his experiences with handling workers comp claims. The videos have been sold primarily to other claimant attorneys that handle workers comp and personal injury protection cases, he said.

Injured workers sometimes exaggerate or overstate their injuries during examinations, Mr. Hendrix said, because they're concerned their pain wouldn't otherwise be taken seriously by doctors.

The IME Preparation videos encourage workers to be honest with doctors so that they don't undermine their workers comp claims by presenting symptoms that are inconsistent with the physician's findings, he said.

"You get people who get cut loose without any treatment, but they have real injuries," Mr. Hendrix said.

Fred Hubbs Jr., a workers comp defense attorney and partner with Hall Booth Smith & Slover P.C. law firm in Atlanta, disagrees that

See **DVD** page 19

QUESTIONS & ANSWERS



Firms need strategy on medical pot

Jay Krueger is chief strategy and client services officer at PMSI Inc., providing overall strategic direction for the Tampa, Fla.-based provider of pharmacy benefit management services, medical equipment, home health care and case settlement services. In a recent interview with Business Insurance Senior Editor Roberto Cenicerros, Mr. Krueger said the evaluation of medical marijuana as a way to alleviate pain warrants that employers consider their policies on the issue.

Q: When it comes to chronic pain treatment, you advise that workers comp insurers and employers should carefully evaluate their position on medical marijuana and draft appropriate policies on coverage of medical pot. Why is that important for them to do today?

There is a lot of research under way on the use of medical marijuana in the treatment of pain. Given its federally illegal status and the fact that certain states have legalized medical marijuana at the state levels, pharmacy benefit managers/insurers/employers need to have a procedure or policy in place to deal with the use of this substance. There may be instances where an injured worker may approach a pharmacy with a request for medical marijuana, or an employee may come to work under the influence of medical marijuana in a state where it is legalized. Companies must have a plan in place to indicate how they will deal with these situations to avoid legal action.

Q: Is the search today for treatments that might help chronic pain sufferers—including employees suffering from work-related injuries—find relief, among issues that could bring this subject into the work comp industry?

Definitely. Patients are always looking for the next new treatment for their pain, particularly when no other agent has been

See **KRUEGER** page 17

HEALTH CARE

Health cost hikes expected to ease

Plan changes, more generics help limit increases to 5.5%

By **JERRY GEISEL**

Group health care plan costs are expected to increase an average of 5.5% in 2012 and 2013, a slight moderation from prior years as employer actions and health care market developments help hold down those increases, PricewaterhouseCoopers L.L.P. said in an analysis.

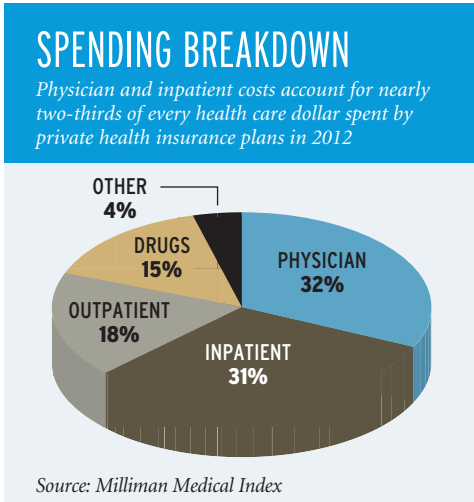
Released last week by PwC's Health Research Institute, the analysis says the medical trend—the cost of medical services that insurers assume in setting premiums—will rise an average of 7.5% in 2012 and 2013.

But after employers make design changes, such as increasing plan deductibles, net plan costs are expected to increase only 5.5% this year and next, PwC said.

By contrast, plan costs increased an average of 6% in 2010 and 2011.

"Overall, this is good news," said Michael Thompson, a PwC principal in New York.

There are several factors behind the moderating increases, PwC says in its analysis. For



example, hundreds of retail health care clinics have opened in recent years, giving consumers a less expensive alternative to hospital emergency rooms.

PwC found that nearly 25% of individuals it surveyed used a retail medical clinic in 2011 vs. less than 10% in 2007.

"There is a movement to give people access to care on a more cost-efficient basis," Mr.

Thompson said.

Timing also is a factor. Last year, more than \$28 billion in brand name drugs lost their patent protection and just more than \$26 billion brand names drugs will see their patents expire this year, allowing the introduction of cheaper generics. PwC estimates that a brand name drug that costs \$100 will be available for about \$40 as a generic within one to two years after patent protection expires.

The analysis also found significant growth of high-deductible health plans. Twenty-two percent of employers said their most common plan had an in-network deductible of at least \$1,000 in 2012, up from just 7% in 2008.

The growth of high-deductible plans can have positive and negative effects on employers' efforts to control health care costs.

"Some employees are learning to shop around for needed care, while others forgo elective procedures or possibly delay care," according to the report.

The report also found that spending on physician services, which in 2012 accounted for 32% of group health care spending, grew at an annual rate of 5.4% between 2007 and 2012—the slowest growth rate by spending category (see chart).

REINSURANCE

Charges could be settled in sham reinsurance deal

By **MARK A. HOFMANN**

HARTFORD, Conn.—A desire to avoid an expensive, complex retrial appears to be motivating former insurance executives' and prosecutors' efforts to settle charges in an alleged sham reinsurance deal that happened years ago.

The retrial of Ronald E. Ferguson, former General Reinsurance Corp. CEO; Christopher P. Garand, former Gen Re senior vp

in charge of U.S. finite underwriting; Robert Graham, former Gen Re senior vp and assistant general counsel; Elizabeth Monrad, former Gen Re chief financial officer; and Christian M. Milton, former American International Group Inc. vp for reinsurance, had been slated for Jan. 22, 2013.

But in an order issued late last month, U.S. District Court Judge Vanessa L. Bryant in Hartford, Conn., agreed to a joint defense-government request to delay pre-



Mr. Ferguson

BLOOMBERG

trial motions until Friday.

In the order, Judge Bryant said the court found that "the ends of justice served by the extended deadlines set forth in this

scheduling order outweigh the best interests of the public and the defendants in a speedy trial" for reasons that include the case's complexity, the number of defendants and the "unusual procedural posture of this case."

In seeking to delay pretrial motions in retrying the five executives, the defense and government said they were "engaged in discussions concerning a potential global resolution of this matter." If resolution is achieved, "that would obviate the need for...pretrial and trial proceedings in the case, thus saving the parties and the court significant resources."

Geoff Moulton, a former assis-

See **GEN RE** page 21

WORKERS COMPENSATION

Changes needed to keep workers comp costs down

By **ROBERTO CENICEROS**

SACRAMENTO, Calif.—An advisory pure premium rate hike approved for California workers compensation insurance policies points to a need for systemic improvements to mitigate rising costs, observers said.

California Insurance Commissioner Dave Jones last week approved an advisory pure premium rate hike amounting to 8.25% for new California workers compensation policies and those renewing on or after July 1.

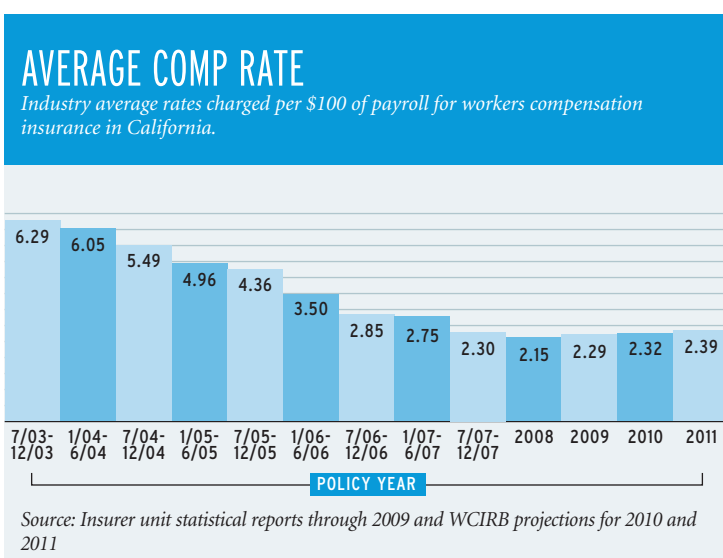
While unit medical costs "do not appear to be increasing much," rising medical utilization appears to be the main driver of

overall cost increases, the commissioner said in an order directing the Workers' Compensation Insurance Rating Bureau of California to adopt the new advisory pure premium rates averaging \$2.49 per \$100 of payroll.

An advisory pure premium rate of \$2.30 has been in effect since Jan. 1, but insurers already were using an average filed pure premium rate of \$2.41 per \$100 of employer payroll. That means the commissioner's advisory calls for increasing rates 3.3% more, on average, than insurers have been charging policyholders.

While system costs continue to

See **CALIFORNIA** page 18



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Mid-Market EXECUTIVE

Helping C-level executives at midsize firms overcome critical risk and benefits challenges

Middle market brokers eye benefits for growth

Brokers see buyers seeking more services for health care issues

By JOANNE WOJCIK

Health insurance brokers are polishing their pitches as they vie for what many perceive as the last remaining piece of the lucrative commission pie: middle-market business.

Competition is fierce because income opportunities for insurance brokers are shrinking as insurance buyers seek lower-cost benefits options such as self-funding, and as insurers cut commissions in order to meet new minimum medical loss ratio requirements set under health care reform.

Middle-market business has long been described as “bread and butter” by many insurance brokers because so many of these employers still purchase health insurance, unlike larger employers that self-fund.

As such, it’s an insurance buyer’s market for midsize employers, which never before have had so many potential broker suitors, each of whom brings something a little different to the table.

In a series of interviews conducted late last month during the 2012 Council of Insurance Agents and Brokers’ Employee Benefit Leadership Forum in Colorado Springs, Colo., brokers described how they are responding to middle-market employer demands for services.

Also during the conference, a group of five smaller, regional brokers made a formal announcement that they have formed a strategic partnership that will enable them to extend their geographic reach and service capabilities to middle-market employers (see related story).

Marsh Inc., for example, is touting its expertise with helping midsize employers transition to a defined contribution approach to benefits, in which voluntary benefits options like employee-pay-all critical illness coverage are offered to supplement high-deductible health insurance programs.

Previously, “cost was No. 1” for most middle-market firms, said Greg Arms, co-leader of Mercer Marsh Benefits based in New York. “Now it’s about how to weave in voluntary benefits.”

Mr. Arms predicts that in the future, “most, if not all, benefits will be voluntary” as employers move away from employer-paid benefits in response to rising costs and the Patient Protection

and Affordable Care Act. “Health care reform is a catalyst,” he said.

While acknowledging that “voluntary is becoming bigger,” William F. Ziebell, executive vp, North Central region at Gallagher Benefit Services in Itasca, Ill., said “that’s not what we’re getting hired for. Most middle-market employers are looking for ideas and solutions to better align their spend on health care” with their business strategy “to get more productivity” from their employees, he said.

To this end, GBS has developed a “workforce evaluation tool” that provides a diagnostic of an employer’s benefit plan to find out where it may be out of alignment with the company’s business goals, he said.

In addition, middle-market employers are seeking GBS’ legal and compliance

for health care cost containment solutions “outside of the insurance industry,” which means self-funding, said John P. Kirke, president of IMA Inc.’s employee benefits and health management division in Denver.

Using its data collection capabilities and analytics, IMA has developed targeted, evidence-based solutions for managing health risks for self-funded employers with as few as 200 employees, said Cathy Sims, vp of employee benefits at IMA.

Hub International Ltd. has been working with midsize employers to help them develop a benefits strategy that is integrated with other human resources concerns such as disability and workers compensation costs, said Joseph Torella, a member of Hub’s national employee benefits executive team based in New York.

“Most companies have a sales strategy or a growth strategy, but not a good, comprehensive benefits strategy that marries all of these concerns in an integrated approach,” he said. In addition, “many middle-market employers look at benefits separate from their business, yet it’s probably the second-largest spend” after compensation, he said.

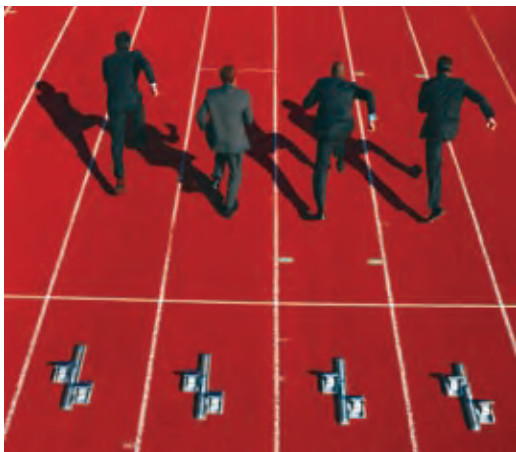
J. Michael Brewer, president of the Lockton Benefit Group, a division of Lockton Cos. L.L.C. in Kansas City, Mo., said his middle-market clients primarily are interested in two things: guidance on how to comply with health care reform and solutions for improving their “risk profiles” to ultimately reduce health care spending.

“It’s all about identifying your at-risk population. Claims follow risk,” he said. To identify and manage those risks, Lockton has created a data warehouse with claims data from insurers on more than 500 employer clients, he added.

The Horton Group in Chicago also targets health risks, but from a slightly different angle. Horton Health Initiative, a wellness program available in 21 states, uses behavioral change techniques to encourage employees to adopt healthier lifestyles, said Kenneth R. Olson, president of Horton Benefit Solutions.

“Our director of worksite wellness has a background in behavioral health,” he said. “So it’s essentially a behavior-change program” that also incorporates employee assistance program services, he said.

The Horton Group also is working on a captive to fund stop-loss coverage for middle-market employers with as few as 100 employees, Mr. Olson said.



resources so they meet the requirements of PPACA, the Health Insurance Portability and Accountability Act and other federal laws governing employee benefit plans, Mr. Ziebell said.

New York-based Willis North America also has been promoting human capital management consulting services, offering to assist middle-market employers in developing “total rewards” compensation packages that align benefits, pay and other performance-related perks with their overall business strategies, said James Blaney, Philadelphia-based CEO of the broker’s human capital practice.

With the economy turning around, “employees are no longer being held hostage” by their employers and are starting to look for better employment opportunities, he said. “So the middle-market employer has realized they had better pay attention to things like compensation if they want to acquire and retain the right talent.”

IMA Inc. is getting more requests from its middle-market employer clients

Regional brokers link up to offer benefits services for midsize employers

By JOANNE WOJCIK

In an effort to expand their geographic reach and to deliver more creative and innovative benefit solutions to middle-market employers, five regional independent health insurance brokerage firms have formed Collaboration Centric Solutions.

C2 is a joint venture founded by Kistler Tiffany Benefits in Philadelphia; McGohan Brabender Inc. in Dayton, Ohio; McQueary Henry Bowles Troy L.L.P. in Austin, Texas; The Partners Group in Portland, Ore.; and William Gallagher Associates Insurance Brokers Inc. in Boston. Collectively, C2 will have 20 offices throughout the country.

With the complexity of health care reform and ever-rising health care costs, “a dramatically new level of service needs to be offered,” said Christopher Jon Nadeau, principal and employee benefits practice leader at WGA. At the same time, “all brokers need to find a new and more efficient way of doing business,” to compete effectively in this brave new world, he added. “Many independent brokers need to make some hard investment decisions, sell to (larger brokers) or get stronger.”

At the same time, many middle-market employers take comfort in working with local business partners, according to Anita Verheul, executive vp of WGA.

“We know the local market intimately and have a connection to the local market,” she said.

If the five firms had merged, they would have formed the fifth-largest privately held benefits brokerage in the nation based on 2011 total revenues of \$185 million.

Instead, the C2 operating agreement will allow each firm to maintain their independence while sharing staff and other resources to bring the best services each has to offer on an aggregated basis, according to P. Scott McGohan, president of McGohan Brabender.

“We looked at the talents and technology of each firm. We all wanted to be better than our peers. But, as they say, ‘aim small, miss small,’” he said.

Under the operating agreement, the firms will share and invest in data analytics, health engagement initiatives, international capabilities and anything else their middle-market clients need, said Keith Carmichael, president and principal of MHBT’s Austin region.

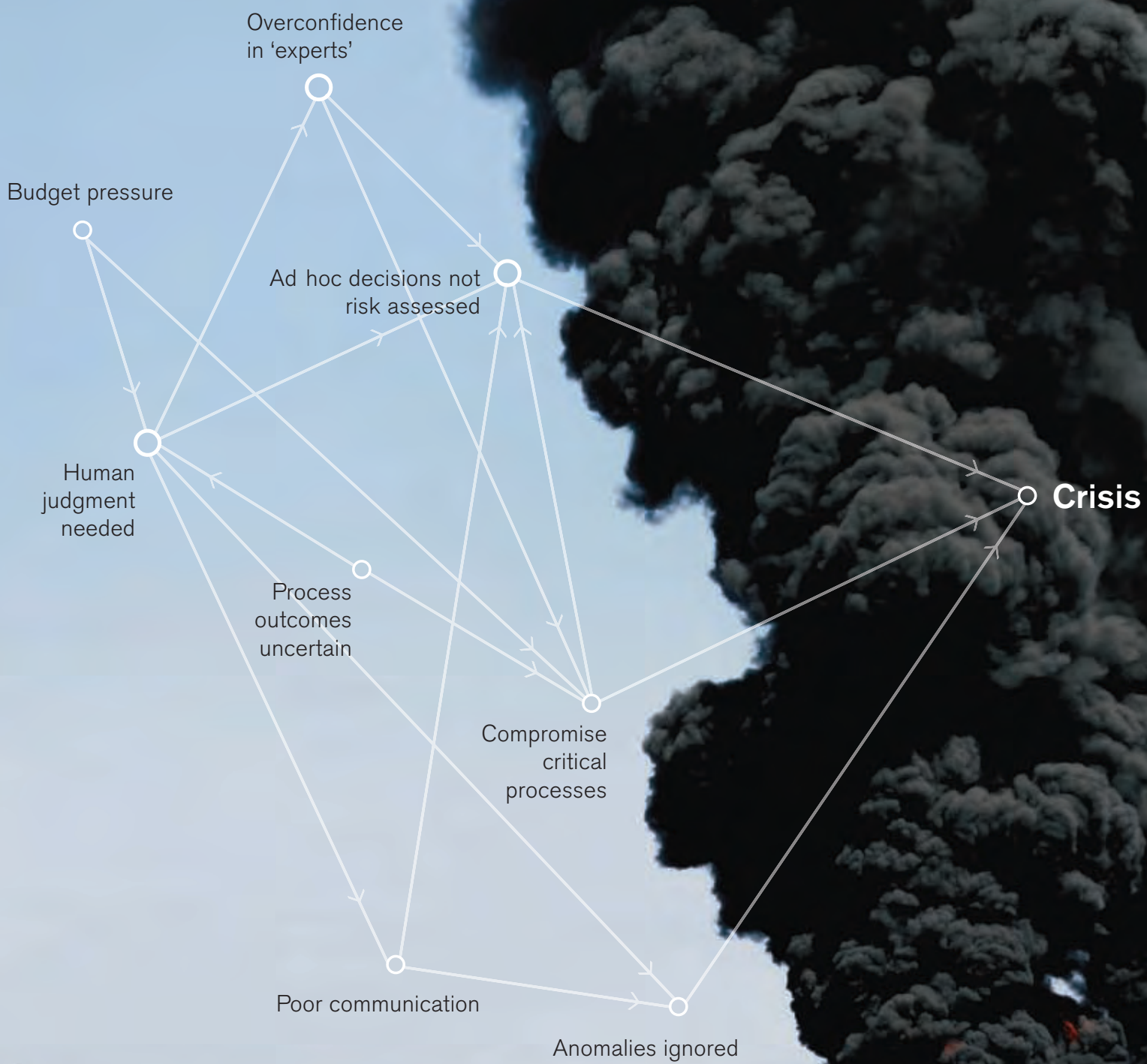
Although C2 is looking for a few more broker partners in regions of the country where it is not as well-represented, they must share the founding members’ “independent and entrepreneurial spirit,” according to Mr. Carmichael.

“We are looking for more partners, but not too many more,” he said.

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Opinions

EDITORIAL

Long-term fix needed for NFIP

ONCE AGAIN, Congress went to the brink before approving legislation to extend the National Flood Insurance Program.

The NFIP was slated to expire on May 31. On May 30, the House of Representatives approved a Senate measure that called for extending the program for 60 days. President Barack Obama signed it into law only hours before the program was to expire.

We've been down this road before. Last-minute, short-term extensions of the program have become the rule rather than the exception. In some cases, the program has actually been allowed to expire, only to be retroactively reinstated. The result has been disruption of local economies as real estate deals were delayed because of the lack of required flood insurance.

We don't want to go down this road again—and this time around, there's some reason to hope that we won't have to.

One key reason for optimism is that, unlike in the past, there are no substantial philosophical differences between the House and Senate approaches. A previous sticking point was House support of requiring the NFIP to offer windstorm as well as flood coverage. The Senate wisely rejected that approach, which would have added to the financial stresses confronting the already troubled program.

This time around, the problems have been more of timing than of philosophy. While the House moved swiftly on reauthorization, the issue did not appear to be a priority for the Senate's leadership. Fortunately, an extension bill did make it through the chamber in time to allow House concurrence and a presidential signature.

So what now? Lawmakers have two months of breathing room. With hurricane season already upon us, they can use that time best by crafting a longer-term extension of the program. We'd prefer a five-year extension of the program. Also, if the program is to remain viable, it must be revamped and permitted to charge adequate rates. We'd like to see a greater role for the private sector in the provision of flood insurance, too, but that may be some time off.

We're back from the brink. If Congress uses the next two months wisely as it considers the NFIP, we may not find ourselves back on the brink again anytime soon.

LETTERS

Business Insurance welcomes letters to the editor.

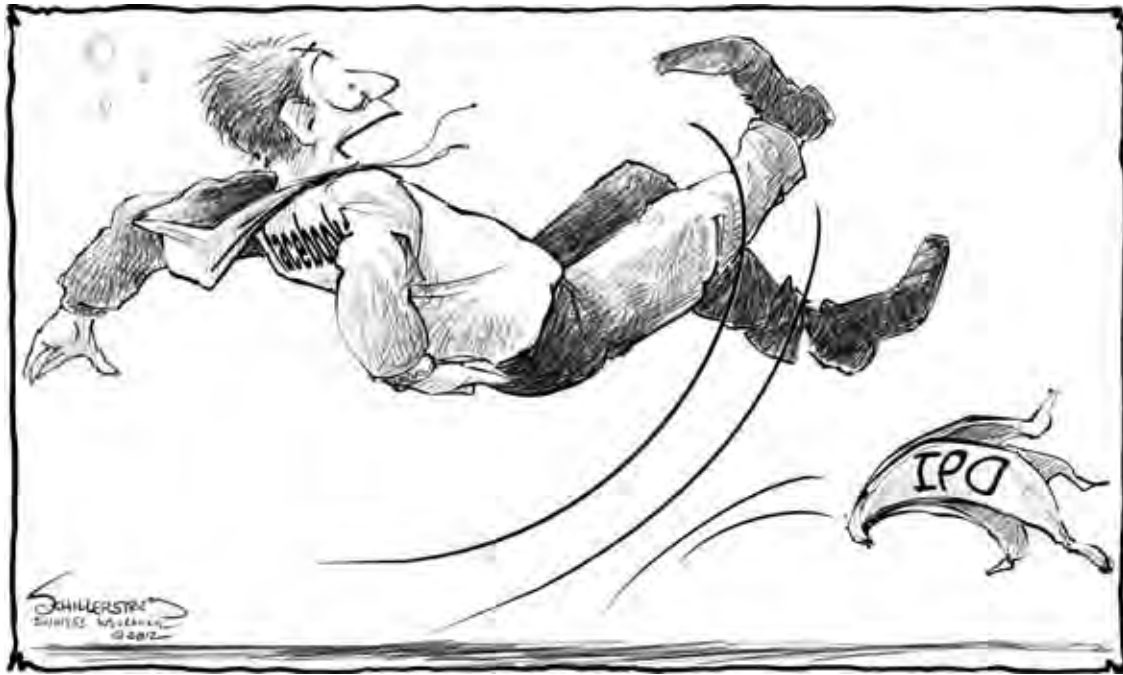
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SCHILLERSTROM



COMMENTARY

Safety seen as byproduct of efficiency

Economists do not always rely on econometric models and other sophisticated mathematical calculations to explain the world as they see it.

Sometimes things just happen that make it look as if they do.

My friend Harry Shuford, chief economist for workers compensation ratings organization NCCI Holdings Inc., has a "just-in-time Christmas popcorn" theory that helps explain how employers' efficiency improvements have contributed to making workplaces across the country safer and therefore leading to declines in workers compensation frequency.

The Christmas popcorn theory was born from discussions with a major U.S. retailer that sells large cans of the crunchy snack around certain holidays, Mr. Shuford said.

The retailer used to receive shipments of the large popcorn cans, placing some on its store shelves for customers to carry away and leaving the remainder in back-room storage until the shelves needed restocking. But with its current just-in-time process, the retailer now moves the popcorn cans directly from its loading docks to the shelves. That eliminates a certain amount of worker lifting and handling that requires the use of potentially dangerous equipment, such as ladders and forklifts.

"My point is that they didn't do that to make the workplace safer," Mr. Shuford said. "They did that to reduce the number of times their workers had to handle merchandise. But it did make it safer."

Something similar happened with the retailer's

dog food sales.

The grocer noticed that shoppers were buying the dog food 24 cans at a time, even though the retailer did not sell it by the 24-can case. So to accommodate customers, the retailer eliminated shelving on its dog food isles. Now when a truck arrives at its stores, pallets of the dog food are placed directly on store floors where shoppers haul away the preferred cases. That eliminates worker kneeling and bending

required to stock shelves while opening carton cases with potentially dangerous box cutters.

"Again, it's not to make the workplace safer," Mr. Shuford said. "It's to address a customer need and reduce the amount of time" employees must spend handling the product, "but it makes it safer."

The same has happened with the retailer's process for speeding things up at the checkout counter. This particular retailer has carousels of plastic grocery bags sitting atop its checkout counters.

The system allows the customer to load their filled shopping bags into their cart on their own. The cashier doesn't perform that task and can remain focused on speedily ringing up the goods being purchased.

The process was conceived to speed up customer checkout, not to make the workplace safer. But it also eliminates potentially troublesome repetitive motions required of the checkout clerk, such as lifting bags and handing them to customers.

All economics lessons should be so easy to grasp.

Contact: rceniceros@businessinsurance.com



ROBERTO CENICEROS
SENIOR EDITOR



AP PHOTO

University of California Davis police used pepper spray to move protesters on the school's campus in November. Students and alumni who allege they were sprayed have filed lawsuits against the school.

Occupy protests highlight need for unified response

Lack of cooperation can lead to litigation, security concerns

By **JOANNE WOJCIK**

Lawsuits filed by Occupy Wall Street protesters against the University of California Davis alleging they were pepper-sprayed during a campus demonstration has increased public entity risk managers' awareness of the need for better planning and decision-making when addressing similar situations.

A report by New York-based security firm Kroll Inc. blamed a "communication failure" for the physical confrontation between police and protesters at the North-

ern California campus in November and advised the university to review its police policies and training and establish a better decision-making system for reactions to public protests.

Public entity risk management experts agree that all departments and personnel likely to come in contact with protesters should have open lines of communication to avoid a fate similar to UC Davis, which is embroiled in litigation filed in February by 19 students and alumni who were either sprayed or arrested. The federal lawsuit asserts the alumni and students' constitutional rights to free speech and assembly were violated in the controversial incident. The university declined to comment, citing the pending litigation.

Risk management experts also

recommend that public entities prepare a plan to address possible confrontations that might erupt out of otherwise peaceful demonstrations; or, if they already have a plan in place, to review and update it to address the risks inherent in protests involving overnight and long-term occupation.

"Oftentimes, risk managers don't have a real strong working relationship with some of the other departments that might be responsible for crowd control and safety measures. This lack of cooperation results in a less-than-unified approach to deal with these problems," said Mark Goode, Charlotte, N.C.-based executive vp and head of the public entity practice at Willis North America.

See **OCCUPY** next page

'Oftentimes, risk managers don't have a real strong working relationship with some of the other departments that might be responsible for crowd control and safety measures.'

Mark Goode, Willis North America

Public Entity
Risk Management

SPOTLIGHT

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Occupy: Unified response

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Public entity risk managers typically are not involved with the risk preparations of police departments and other first responders. According to Terri Sahli, risk manager for the city and county of Denver, "it's really the agencies that do the front-line work," such as the police and public safety departments that are involved in managing risks associated with public protests, rather than risk management departments, because "it's business as usual for them."

However, said Mr. Goode, risk management, police and public safety all "need to be sitting down internally and brainstorming" together to prepare for "the things that can happen...and have happened in other places. It's not like these riots pop up at the last minute. The resources should be over-prepared and have good visibility," Mr. Goode said.

"Communication is the big thing," said Dan Pliszka, manager of the risk management division for the City of Charlotte, Mecklenburg County and the Charlotte-Mecklenburg Board of Education.

While declining to provide specifics about the risk management preparations being made for this fall's Democratic National Convention due to "national security concerns," he said "we have formed a really good partnership with police and public safety."

In addition, the city sent 100 police officers to the NATO meeting held last month in Chicago "to not only assist, but as a learning experience," Mr. Pliszka said.

He added that prior to the passage of an ordinance prohibiting overnight camping within the city limits, "we had a fairly robust Occupy protest on the lawn of our old City Hall."

Partly to address the risks inherent in long-term occupation by protesters, several cities including Charlotte and Denver, where the 2008 DNC was held, have passed ordinances banning overnight camping.

Policy review

While political demonstrations are not uncommon at the University of California Davis, the administration did not consider the Occupy movement encampment to be a conventional campus protest, according to the Kroll report.

"The leadership team appeared to perceive it as a vehicle through which nonaffiliates might enter the campus and endanger students," which is why campus police used pepper spray to ward off protesters who refused to leave, the report said.

"The use of force by police officers is based on what the officers perceive to be the threat at the



AP PHOTO

Demonstrators march through downtown Chicago during the NATO Summit held in the city in May. Thousands of people traveled to Chicago to protest on a wide range of issues.

Address property hazards to mitigate risks

By JOANNE WOJCIK

Public entity risk managers should address potential property risks stemming from public protests similar to the way they would an impending storm, property loss control experts say.

"It's pre-emptive; you protect it the same way you might protect it if there were a hurricane warning. You take the necessary steps to mitigate or prevent any damage to property that might occur," said Mark Goode, executive vp and head of the public entity practice at Willis North

America in Charlotte, N.C.

Mary Breighner, Cincinnati-based vp and global education, health care and public entities practice leader at Factory Mutual Insurance Co., which does business as FM Global, recommends that public entity risk managers perform a threat anal-

time," said David Salmon, president of OSS-Law Enforcement Advisors, a consulting firm in Spring, Texas, who will speak on the use of excessive force at the Public Risk and Insurance Management Assn. conference this week in Nashville, Tenn.

"Pepper spray is what's normally referred to as a Level 3 use of force. It is used when someone is actively resisting the officer," Mr. Salmon said. "Pepper spray is a

temporary irritant" that the courts historically have found to be "minimally invasive" as compared with a Taser, which is a Level 4 response, one step below the Level 5 designation for deadly force, he said.

In response to what happened at the University of California Davis, community colleges throughout California have been reviewing their "public use policies" authorized under the state's

education code, according to John Chino, senior vp at Arthur J. Gallagher & Co. in Aliso Viejo, Calif.

"We work with a lot of community college districts in California," Mr. Chino said. "They don't have dorms. So the Occupy Wall Street protests created a little bit of a wrinkle for them. People are not supposed to stay overnight on community college campuses."

"Because of Occupy Wall Street and the overnight issue," the com-

unity colleges are reviewing their public use policies to avoid potential civil rights suits, he added.

ysis and develop a contingency plan that takes into consideration all possible scenarios. "It's necessary for the public entity—whether it's a municipality or a university—to try to get out in front, establish boundaries and protect property as best you can, and let the protesters know that you're going to be protecting your property. And while they may have access to the property, they can't damage it," Ms. Breighner said.

"Think of it along a continuum in terms of what might happen. It might be a peaceful protest with a lot of people in a park area. You want to protect

PUBLIC PROTEST READINESS

Pre-emptive actions to take if a protest is expected:

- Remove objects that could become projectiles
- Take down signs and flags
- Lock all building entrances
- Ensure that there are enough trash receptacles
- Bring in portable bathrooms

the property, make sure there are enough trash receptacles, portable bathrooms, remove anything that could be used as a projectile," she said.

In addition, "if you have any signs or flags that could be destroyed, desecrated or damaged, you might want to take them down. If they move onto other properties nearer to buildings, you might want to make sure all of your building entrances are locked, if possible," Ms. Breighner said.

Such risk management strategies were employed in Chicago during the recent North Atlantic Treaty Organization Summit, she noted.

Under the civic use policies in place at community colleges throughout California, "they could direct the Occupy Wall Street protesters to a specific spot on campus and say, 'That's your spot, that's where you're allowed to go,'" said John Chino, senior vp at Arthur J. Gallagher & Co. in Aliso Viejo, Calif.

community colleges are reviewing their public use policies to avoid potential civil rights suits, he added.

"It's a pretty straightforward policy that spells out things that make (certain acts) defensible. If there was an issue, if the group claimed their rights were violated, they didn't have free speech rights, it spells out everything under the law that it has to do," Mr. Chino said.

Public entity risk pools broaden cover as budgets shrink

Cyber risks, benefits cover among new offerings

By SHEENA HARRISON

Public entity risk pools are becoming more flexible with the types of coverage they offer to members as municipalities strive to deal with evolving risks on tight budgets.

Many pools have begun to offer cyber liability protection, unemployment compensation insurance and employee benefits coverage in recent years, and such groups continue to look for insurance solutions that fit the unique needs of their members, experts say.

"What we've seen in the current economic challenges is that pool boards are more receptive to new ideas and product offerings that can offer efficiency and cost savings," said Daniel Howell, senior executive vp and managing director of the public entity group at brokerage Alliant Insurance Services Inc. in San Francisco. "Many pools began in response to the public entity liability insurance crisis of the mid-1980s, and their initial offerings were directed at solving that problem. Now their members are looking to risk pools to offer more options."

Michael G. Fann, director of loss control for the TML Risk Management Pool in Brentwood, Tenn., said his pool added cyber risk liability coverage this year based on requests from the pool's 490 member

entities. The pool also recently added medical and workers compensation coverage for volunteer paramedics and emergency medical technicians after providing similar insurance for volunteer firefighters and police officers during the past few years.

Mr. Fann said the additions are based on an increasing awareness of cyber liability, and a growing interest among members to protect volunteer first responders as the down economy increases the use of such services.

"Just as the exposures change, we try to tweak our coverage documents and coverage availability to meet the needs of our members," Mr. Fann said.

Harold Pumford, CEO of the Assn. of Governmental Risk Pools in Prague, Okla., said flexibility in coverage has helped lead to a slight membership growth for public entity pools.

The association estimates that about 85% of public entities belong to a public risk pool. Mr. Pumford said pool membership is up to about 75,000 entities nationwide, compared with about 74,000 during the past few years.

Mr. Pumford said he has noticed more pools offering employee benefits coverage in the past several years, adding that pool insurance lines are continuing to evolve.

"I think that the great value of public entity risk pooling to the member entities is

they get to design a program that meets their needs and meets their objectives," Mr. Pumford said.

In addition to adding coverages to protect members, public risk pools have shifted their risk management strategies in order to assist members in preventing claims and mitigating losses.

Alliant's Mr. Howell said enterprise risk management is becoming a growing trend among public entities as risk management budgets and staffing have been cut during the economic downturn.

"The enterprise risk management model is taking hold as public entities are reorganized and face the reality of their cost of risk," he said. "Risk managers are wearing more hats and expected to deliver value on more fronts than ever before."

It's a trend that Mr. Fann has seen in his own pool. In the past few years, he said he has noticed police chiefs, fire chiefs and other non-risk management officials getting involved in risk management discussions in hopes of helping their municipalities keep risks and loss costs in check.

"They're trying to spread the expertise a little bit and trying to grow the knowledge base of how to manage risk appropriately at the local level," Mr. Fann said.

Paul Miola, area executive vp at Arthur J. Gallagher & Co. in Marlton, N.J., said he

has seen an increased focus on wellness initiatives among public risk pools that work with the brokerage. He said such groups see employee health as a way to help reduce growing workers compensation costs, and some pools are hiring wellness directors to lead health initiatives.

"If you look at any pool, the largest claims stream comes from workers compensation," he said. "So (they're) looking at tightening up physicians networks, focusing on the reporting times for claims, getting more case management intervention earlier on...for claims that have potential to be difficult."

Implementing new risk management strategies can be a tough proposition for cash-strapped municipalities, said John Brockschmidt, Southfield, Mich.-based president of York Risk Pooling Services, a division of York Risk Services Inc. in Parsippany, N.J. The company is a third-party administrator for several risk pools, mostly in the Midwest.

Mr. Brockschmidt said he expects public risk pools will keep looking for cost-effective risk management strategies, because budget pressures are expected to continue for the next couple of years.

"It's a balancing act because some loss control measures take money, and the money may not be there as it was in the past," Mr. Brockschmidt said. "Conversely, everybody recognizes anything you can do to mitigate risk in the long run saves money."

85%

The Assn. of Governmental Risk Pools estimates that about 85% of public entities belong to a public risk pool.



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Perspectives

The role of today's public entity risk manager is challenged by the effects of the economic downturn of 2007-2009, but the job may be more necessary than ever. Public entity risk managers should continue to be proactive in searching for improvement opportunities, says Bradley York, vp of business development for OneBeacon Government, who outlines pitfalls and strategies unique to government bodies.

Public entity risk managers play key role in recovery

By **Bradley York**

Government entities often lag when it comes to the economy, in recession as well as recovery. While some areas of the economy are currently beginning to experience growth, the fact is that it will be some time before those benefits reach public entities.

Most will continue to face significant fiscal challenges and tight budgets, forcing them to do more with less. As a result, a very important role within government entities—the risk manager—may forever be changed and in some instances, eliminated.

Entities and future risk managers face serious challenges to find funding, coordinate roles and, in many cases, integrate other functions such as human resources or finance into the risk manager function—all changes that ultimately could shift the effectiveness of risk management for an entity.

The role of a public entity risk manager requires a specialized set of skills and a diverse background. Incumbents must achieve efficiency without sacrificing effectiveness, establish a culture of risk management across many departments and, ultimately, determine how much uncertainty and risk an entity is willing to accept while simultaneously enhancing services effectively, efficiently and safely.

Even before the current economic and insurance environments, risk managers faced enduring challenges year after year. And

now, after years of a lingering soft insurance market, during which budget savings were allocated away from insurance programs, public entities are again faced with a strengthening market as terms and conditions once again align to more accurately reflect risk tolerance and sound underwriting principles. Simultaneously, public entities continue to struggle to emerge from the national recession while the recovery of their tax base continues to lag private industry.

Finding the funding

Because most public entities' gain a significant amount of revenue from property taxes and state transfers—generally at least 50%, whereas on a national basis property taxes make up 26% of all local government revenue, as estimated by the Census Bureau—they tend to experience a “last in, last out” phenomenon during times of recession. In other words, although a majority of consumers experienced the recession as it was happening, the impact on public entities' tax bases was delayed and lagged at least one year. Local governments are responding by increasing tax rates wherever

possible as they struggle to restore previous funding levels.²

Further, the “last in, last out” lag generally doesn't begin its recovery for 12 to 24 months after the economy starts to recover, and it may still take years to re-establish a prior year's tax base. But despite and throughout those tough fiscal realities, public entities are expected by their communities to increase or at least maintain existing services. To meet these challenges, entities are faced with difficult options, including consolidation of resources and

staff, downsizing and early retirement programs. These difficulties become even greater given that certain essential services are typically off limits from such tactics, such as police and fire protection—which, from a proportionate share, happen to be the largest budget allocations for most local governments.

In the case of the risk manager, fundamental programs that take years to implement and perfect are suddenly at risk. When funding is reduced or eliminated, departments are forced to reprioritize already competing demands and limited resources, with risk management often the first on the chopping block, as its benefits are recognized based on long-term results. This is further compounded in the hands of a less experienced manager who may not recognize the long-term cost-benefit of the role and instead opts to defer or eliminate risk management investments for immediate, short-term cost savings.

Consolidation, decentralization, elimination

Prior to the recession, entities (especially larger ones) very rarely thought about integrating or consolidating individual functions across departments and the entity as a whole, such as human resources, legal, risk management and finance. This was partly due to the recognition of the unique and specialized skills required to perform effectively in each of these areas.

But as fiscal and economical circumstances have changed, it is the role of the risk manager, not just their programs, that is being consolidated with other functions, decentralized or simply eliminated. Unfortunately, this trend likely will continue until public entities fully emerge from the recession and can restore a healthy budget.

Although it may seem like a quick way to realize immediate cost savings, consolidating or merging the risk management role

into other key functions likely will add significant costs in the long run. Those costs can come in many forms and may not be recognized fully for years. Specifically, there is the high probability of ineffectiveness in a key functional area for public entities. There are very few individuals who possess the experience or have the background to absorb and effectively step into more than one diverse and important role. And even if an entity is lucky enough to have that one expert to handle each of those key disciplines, will he or she have the time and resources to perform well across all these areas? Or to put it another way, can an entity afford to be ineffective in so many key functions?

Like consolidation, decentralization within public entities also likely will yield inconsistent results across departments. Programs that take years to successfully implement and monitor run the risk of abandonment as responsible parties are shifted away or let go, or programs are taken over by those lacking the know-how or understanding of the long-term effects and consequences. Potentially, this can leave communities and government entities exposed to increased turnover, employee injury, decreased public safety and a potentially negative image within the community.

These risks also extend to entities that eliminate risk managers entirely.

Ultimately, entities may see some short-term savings from reduced spending on salary and benefits through consolidation, decentralization and elimination of roles, but at what cost to their proficiency as an entity and to their community at large? It is very important that entities maintain the discipline and commitment to risk management. Prior to consolidating or eliminating functional areas, public entities should proactively determine and isolate duplication within programs and evaluate whether a process truly can be improved through consolidation. While doing more with less is not always a viable option, recognizing and evaluating the costs and effectiveness of a current risk management program and whether it is sustainable for the

Continued on next page



Mr. York

The role of a public entity risk manager requires a specialized set of skills and a diverse background.

CONTINUED FROM PREVIOUS PAGE

long term should be a priority for every entity to reduce its exposure to risk and, in the end, avoid costly and perhaps needless claims or losses.

Evolving role

In today's turbulent economic environment, the role of the risk manager is evolving. In the face of fiscal pressures, public entities are proactively searching for improvement opportunities across all disciplines and departments, often leading to shifts in the roles and responsibilities of the typical risk manager.

But risk managers should continue to be strategic about setting high-level, long-term goals, ensuring compliance and implementing programs with precision and ethical considerations, all the while capturing and measuring effectiveness for continuous refinement. Even as the economy improves, risk managers will be called upon to defend and advocate their roles and recommendations to elected officials and other stakeholders, such as department leadership. Therefore it is wise to be prepared to effectively and persuasively provide the value proposition for risk management along with any recognizable costs and benefits, both in the short and long term.

When evaluating alternatives due to limited funding and resources, public entities hopefully will consider the whole picture. If handled incorrectly, an entity may realize a decision for short-term savings may have long-lasting, serious consequences, including loss and trend development and increased costs through frequency and severity in loss costs, all of which translate to the entity's insurance experience and premiums. The costs associated with improper management of a public entity's most valuable resources—its employee base and the service and safety of its constituents—are of utmost importance. The savvy risk manager will recognize the changing environment and attitude of public entities, adapt, evolve and strive to continue to serve a vital function within the entity and community.

Bradley York is vp of business development for OneBeacon Government Risks and leads the team with more than 20 years of experience in insurance, almost exclusively in the public sector. He also has extensive experience in public entity legal issues and claims management. He can be reached at byork@onebeacongov.com.

1 Not all states impose property taxes.

2 Felix, Alison. "What is the Outlook for Local Government Revenues in the Tenth District?" <http://www.kc.frb.org/publicat/econrev/pdf/11q3Felix.pdf>, Federal Reserve Bank of Kansas City

ERM can help cities prepare for disasters

But funding, politics can hamper efforts by risk managers

By MIKE TSIKOUKAKIS

Linking a city's disaster and resilience planning with enterprise risk management can reduce exposures, saving the city money, but implementation can be difficult.

The ERM process can merge disaster preparedness efforts that are often disconnected among city departments and the community and can help city managers make decisions about how to spend and allocate money and resources, industry experts say.

But strained budgets and lack of risk management expertise within cities and municipalities often stifle innovative approaches to managing disaster recovery efforts, they say.

Matt Hansen, director of the risk management division for the City & County of San Francisco, said that when linking ERM to disaster planning and resilience, communication among various city stakeholders is vital.

"The main challenge is simply the magnitude of the issues and the interplay between both policy operations at almost every level within our organization and our partners," Mr. Hansen said.

The City of San Francisco partnered with the Cambridge, Mass.-based John F. Kennedy School of Government's Acting in Time Initiative in 2008 to initiate a disaster-planning process that would aid recovery from a catastrophic event.

As a result of the partnership, the city launched the ResilientSF initiative in 2010, which offers a forward-thinking framework of how the city can react, respond, rebuild, repurpose and become resilient post-event or -events, Mr. Hansen said.

Mr. Hansen described the City of San Francisco's ERM and disaster recovery efforts as "a work in progress," noting that funding the initiative and deciding where to allocate resources is the current focus.

"Projects like this, as with ERM, may stall out for a time because there are other priorities that come up and push them aside," he said. "That's OK. It gives you time when you get back into the groove to re-look at the process."

For other U.S. cities, risk management budget contractions and loss of staff, particularly in the public sector, has dampened innovative approaches to various risks and exposures, including other mitigation efforts such as disaster planning, experts say.

"People in government have a very unsophisticated notion of what risk management is and what it can be," said Arietta Chakos, a San Francisco-based independent urban resiliency policy consultant.

Accomplishing an operational ERM approach to disaster planning and resiliency can involve teams of people depending on the complexity of the local government, which can involve various city enterprises such as airports and public utility groups, Ms. Chakos said.

Dorothy M. Gjerdrum, executive director of the public entity and scholastic division for Arthur J. Gallagher Risk Management Ser-

managers (owing) to things like elections, politics and changes in staffing," she said. "It's hard for them to really strategically plan for five or 10 years ahead because an existing city council cannot buy into the future."

Despite the challenges, linking ERM to disaster planning makes good sense, experts say.

Drew Zavatsky, section manager for the loss prevention program in the Office of Risk Management

to offer helps put it out," Mr. Zavatsky said, noting that for San Francisco, the burning issues to rally around were disaster planning and resilience.

The state of Washington published 10 priorities on its website that set the path of government and link all state agencies to those priorities, he said.

"Their strategic plans end up becoming much closer aligned with those priorities of government, and because that's linked to budget, the money in the funding—especially in times of recession, which is already scant—ends up going much more directly to the things that folks prioritized," Mr. Zavatsky said. "If you have a goal, you can use ERM. It is a completely scalable tool."

Linda Conrad, New York-based director of strategic business risk for Zurich Insurance Co. Ltd., said ERM is a tool that helps public entities identify and determine the issues that could affect their strategic goals and creates a process that fosters communication across key stakeholders.

"So it's a microcosm of resiliency and disaster management," Ms. Conrad said. "Resiliency...starts proactively by first identifying what are the issues that could cause us disruption, and then (says) how are we going to manage it. ERM provides a framework that provides common language. It will allow various stakeholders to come into common plan," she said.

'The main challenge is simply the magnitude of the issues and the interplay between both policy operations at almost every level within our organization and our partners.'

Matt Hansen, City & County of San Francisco

vices Inc. in St. Paul, Minn., said it is more difficult for public entities to innovate around management and strategic thinking because elected officials change every two to four years.

"Just by virtue of being newly elected every two to four years does a bit to limit their time horizon," Ms. Gjerdrum said, noting that it's difficult when hooking ERM with resiliency to continue to prove the viability of the initiative and keep people engaged.

"In the public sector, they have some unique pressures on their

for the Washington State Department of Enterprise Services in Olympia, Wash., said linking ERM to resiliency enhances resiliency systems and allows for the general adoption of ERM.

But if a city wants to implement ERM across its agencies, it should build it off an existing platform that affects the community, he said.

"If you want to get anything done in government—whether it's local, state, or federal—find a burning platform, and then demonstrate how what you have

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Perspectives

State health insurance exchanges soon could be a dominating fixture in the health care landscape of the United States. As a new marketplace for health care coverage, how will they operate and what will their effect be? HealthPass New York President and CEO Vincent C. Ashton sheds some light on these new players in the health care game.

How will state exchanges play out?

By Vincent C. Ashton

Health insurance exchanges soon will be a dominating fixture in the nation's health care landscape. Experts predict that exchanges will expand health care coverage to millions of people, many of whom were previously without it. One study estimates that 2.9 million employers will participate in exchanges, 1 million of which previously did not offer their workers coverage.

The health care reform law calls for two exchanges in each state. One is referred to as the American Health Benefit Exchange and will serve individuals. The other one, known as the Small Business Health Options Program Exchange, will first serve only the small-group market. Large employers likely will be brought into the fold shortly thereafter. States have the option of capping their small-group market at firms with up to 50 employees until 2016, when they must expand it to firms with up to 100 employees. Beginning in 2017, states will have the option of opening up their SHOP exchange to firms of any size. A major deciding factor in this policy decision will be the SHOP exchange's initial experience. This puts pressure on states and employers to work collaboratively to ensure robust and thriving SHOP exchanges. A healthier small-group market—one that enjoys balanced risk and affordable premiums—helps to enhance the large-group market.

These new state-based marketplaces aim to bring individuals and employers a new method of shopping for and purchasing health care coverage. Individuals will be able to easily compare their options and access federal subsidies to make coverage more affordable. Employers will benefit in myriad ways, too. Tax credits will be available to certain small businesses that offer their employees exchange-based coverage. Workers will be empowered to choose the health care plan that fits their needs. An entire menu of coverage options that span multiple carriers, plan designs and provider networks will be available to them. Employers likely will be encouraged to modify how they contribute financially to health benefits. Flat-dollar defined contributions are growing in popularity. This approach has proven an effective method—in private-sector exchanges and public exchanges that were already established when the health care reform law passed—in enhancing cost-conscious behavior on the part of employees, and bringing a greater degree of certainty to health benefits budgets.

Employer relief from the administrative burden of managing health benefits—the indirect costs of providing health care coverage—is a core exchange feature, too. Exchanges will carry out many of the back-office services—from enrollment and eligibility determination to premium aggregation and member services—that large firms' human resource departments perform. Employers will be free to devote more time and other resources to achieving their business goals. This approach is a radical and welcome departure from the current model, one that has proven largely unsuccessful, especially for small

businesses. Exchanges are not about just health care access; they serve economic development interests as well.

Under the health care reform law, exchanges are set to be installed by 2014. Some states, however, will have a federally facilitated exchange in their backyard. Political posturing and policy concerns have slowed exchange development. These slow-moving states likely will bump up against rapidly approaching statutory deadlines, forcing the federal government to step in and operate their exchange for them. As of the printing of this article, only 14 states have approved legislation or issued an executive order—after the passage of the reform law—creating an exchange. Many more are pursuing a variety of strategies aimed at achieving that outcome.

Regulatory uncertainty has been cited as one factor stalling exchange development. However, a recently released final regulation positions exchanges to substantially benefit employers. It requires exchanges to provide for rolling enrollment periods so employers can sign up whenever is most convenient, supply a robust set of back-office services to relieve employers of the burden of managing health benefits, and allow for employee choice across all options offered. Equipped with these measures, exchanges will be a force for good in the marketplace.

Benefits game changer?

Numerous factors affect the future of employer-sponsored health insurance. The economy struggles to recover, health care costs continue upward, and global competition is stiff. Employers, therefore, are reconsidering their long-term benefits strategy. A series of questions confronts them in this enterprise. Should we continue offering health benefits? If so, how do we structure an approach that is fair, sustainable and complementary to business goals?

The calculus of whether to stay in the game is not as straightforward as it may first seem. Dropping the health benefits offer—and instead sending employees to the AHBE—costs more than simply paying the employer mandate penalty, a fee imposed on large firms that do not offer their employees coverage. Costs associated with employee morale, tax implications, reductions in productivity, compensation replacement and other elements factor into this equation. A 360-degree approach must be taken when considering future health benefits.

In addition, group coverage is ordinarily more affordable than individual insurance, particularly in states that suffer from anemic, high-cost individual insurance markets. Recent research shows that even coupled with a premium subsidy, individual coverage still will be more expensive than group coverage for most workers, especially mid- and high-income earners. Sending employees to the open market likely also will mean replacing workers' lost compensation—health benefits—with cash wages. This would require not only replacing the value of the benefits, but also grossing up the cash wages considerably to make up for the tax favorability that group coverage offers. The same factors that have made group coverage a viable option for

decades still may hold.

Large employers care deeply about exchanges. One reason for this is that participating in an exchange is another possible health benefits strategy. Some will send active employees to exchanges, others will use them for pre-Medicare retirees, and still more will draw on exchanges for both sets of beneficiaries. If a state decides to open its exchange to large groups, these employees and firms will benefit from the same advantages that small businesses enjoy.

Large employers will examine several issues when deciding whether to enter an exchange. The major one will be the viability of an exchange—some experts predict that some SHOP exchanges will fail after only a few years. Others will thrive and provide long-term solutions. And some exchanges will be a good fit for some large employers, and a poor one for others.

A second consideration is the state of the economy and the labor market. Much can happen in five years, and the demand for health benefits could be different in the future than it is today.

Lastly, legal challenges to the health reform law put in question the future of the nation's health care landscape. Although we will have a better sense of that future when the Supreme Court rules on this issue in June, it could thrust implementation dynamics into new and unforeseen directions.

Large employers also care about exchanges because the two can be purchasing partners. The health reform law presents an opportunity to align employers' purchasing values and goals with those of the exchanges. Many exchanges will be configured as health care change agents affecting delivery system and quality improvement reforms, issues of great importance to employers. The combined voice of the employer community and the exchanges will make for a formidable force in the marketplace, catalyzing the implementation of innovative delivery mechanisms and payment reforms. This consistent and powerful signal to health plans and providers will surely help bring about much-needed change to the health care system.

All that said, it is far too early to know if exchanges will be viable options for large employers. Nevertheless, they present an opportunity worth considering and tracking.

A whirlwind of change is overtaking the nation's health care and insurance systems. Health insurance exchanges could very well quickly emerge as a sensible and sustainable solution for many small, midsize and large employers. Although large-employer participation will arrive as one of the later points of health reform implementation, these firms should carefully track the development and evolution of state exchanges. Their partnership with and participation in exchanges could lead to the next wave of health care innovation.

Vincent C. Ashton is president and CEO of HealthPass New York, a nonprofit commercial health insurance exchange serving New York-based small businesses in the New York City metropolitan region. He can be reached at vashton@healthpass.com.



Mr. Ashton

A whirlwind of change is overtaking the nation's health care and insurance systems.

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Market Moves

Frank Crystal teams with marine broker on P&I

NEW YORK—Frank Crystal & Co. has partnered with P.L. Ferrari & Co. S.R.L. to launch a marine insurance practice in the United States.

The two brokerages are offering protection and indemnity insurance through individualized transactional, technical and advisory support, separate from the traditional package of general marine services.

The new joint venture will be led by managing director Paul Barnes, who previously was senior vp and underwriter at the Shipowners Claims Bureau Inc. He is based in New York.

“Ship owners and charterers are facing a world of ever-increasing regulation and governmental

oversight,” said Mr. Barnes in a statement. “Consequently, the liability regimes in which those owners and charterers find themselves operating mean an incident could threaten not only the ship, but the entire fabric of the company. It is now more critical than ever that owners and charterers receive specialist P&I advice.”

The marine insurance practice will be based within the corporate insurance services group at Frank Crystal & Co. The financial terms of the partnership were not disclosed.

USI inks deal to buy affinity business

BRIAR CLIFF MANOR, N.Y.—USI Insurance Services L.L.C. has acquired of certain assets of National Insurance Specialists.

USI Affinity, a division of USI Insurance Services, will absorb the operating assets of the business, which are expected to add approximately \$1.6 million in revenue annually, according to a USI statement.

“We have the staff that really understands the rental equipment business and the risks they face,”

said Douglas W. Kreitzberg, CEO of Philadelphia-based USI Affinity, in the statement. “USI and NIS have deep experience over many years handling these types of accounts. This move greatly strengthens USI Rental Specialties’ fully integrated approach that combines sales, underwriting, customer service, claims and risk control.”

Terms of the acquisition were not disclosed.

Gallagher, Brown & Brown continue acquisitions

Two brokerages have announced new acquisitions.

Itasca, Ill.-based Arthur J. Gallagher & Co. has acquired Dallas-based Professional Claims Managers Inc. Terms of the deal were not disclosed.

PCM is a full-service third-party administrator that provides comprehensive claims and litigation management services to their domestic and foreign clients. According to Gallagher, PCM specializes in complex programs such as health care liability, private detention liability, errors and omissions for architects and engineers, construction liability, law enforcement and public officials liability and miscellaneous professional liability.

In addition, Daytona Beach, Fla.-based brokerage Brown & Brown Inc. announced last week that its Brown & Brown of Nevada Inc. subsidiary had acquired certain assets of Las Vegas-based Insurcorp and Maalouf Benefit Resources, which recently combined under the name Insurcorp.

Insurcorp provides employee benefits retail brokerage and consulting services to employers in Nevada and other nearby states. It also offers property/casualty products to its clients.

According to Brown & Brown, Insurcorp has annual revenues of about \$5 million.

W.R. Berkley forms unit to offer marine coverage

NEW YORK—Berkley Offshore Underwriting Managers L.L.C. has formed a marine division, the unit of W.R. Berkley Corp. announced in a statement.

Based in the company’s New York office, the group offers a variety of marine hull and liability coverages for brownwater vessel operators, ports, terminals and other U.S. and Canada-based marine entities.

Brian Murphy has been named vp-marine manager of Berkley Offshore. He serves on the hull committee at the American Institute of Marine Underwriters. Prior to this new position, he was vp with Starr Marine Agency Inc., a division of Starr Indemnity & Liability Co.

W.R. Berkley also named Les Bogdan as vp-marine liability. Previously, he also worked for Starr Marine as senior vp. He serves on AIMU’s liability committee.

Messrs. Murphy and Bogdan are based in New York.

For more information, contact Mr. Murphy at bmurphy@berkley-offshore.com or Mr. Bogdan at lbogdan@berkleyoffshore.com.

UP COMINGS & GOINGS CLOSE



MICHELLE RICHTER

NEW JOB TITLE: Rockville, Md.-based vp for Federal Employees Health Benefits line of business for Kaiser Permanente.

PREVIOUS POSITION: Cleveland-based senior director for sales and marketing strategy with Kaiser Permanente.

LOOKING FORWARD TO: I am looking forward to working closely with our customer, the (U.S.) Office of Personnel Management, during a time of immense change in health care. Our approach is to partner with OPM to look beyond the benefits we provide to their employees and to collaborate on achieving our shared vision of what health care looks like in the future.

CHALLENGES FACING INDUSTRY: The most obvious is the continued rising costs of health care that employers cannot sustain. One of the results is more of those costs landing on the employees who consume the health care services. Additionally, chronic disease is a significant driver of cost, and a focus on prevention is critical.

BEST THING ABOUT A BAD ECONOMY: It causes people to dig deeper so they can get at the root of the problems and find a solution.

COLLEGE MAJOR: Bachelor of Arts degree with double major in English and writing and organizational communication from Western Michigan University.

ADVICE: In whatever goal you are trying to achieve, be honest, ask for help when you are unsure of the direction to go next, and have the courage to speak up when something isn’t right.

OUTSIDE THE INDUSTRY, A DREAM JOB: Traveling journalist, writer

HOBBIES: Reading, running and traveling.

FAVORITE BOOK: I am currently reading a great book called “Switch” by Chip and Dan Heath. It is about how to change things when change is difficult.

FAVORITE MEAL: Pizza.

ON A SATURDAY AFTERNOON: A run outside in the sunshine and (have) coffee with a friend.

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Krueger: Medical pot strategy necessary

CONTINUED FROM PAGE 4

able to provide effective pain relief. Regardless of the cause, industrial or not, pain is pain, and the need to effectively manage it is the driving force in finding new analgesic strategies.

There have been several clinical trials that have found statistically significant pain relief in patients utilizing medical marijuana vs. placebo. One such randomized, placebo-controlled trial conducted in 2007 with 125 patients indicated that participants utilizing marijuana for medical purposes reported statistically significant reductions in pain scores, as well as improvements in secondary outcome measures of sleep and neuropathic pain symptoms. A similar study conducted in 2008 on 38 patients and published in the *Journal of Pain* reported that smoking marijuana led to a significant analgesic response while exhibiting minimal psychoactive side effects.

Several studies are in the process of being conducted regarding the use of marijuana (or marijuana components) for the treatment of pain, and we may see more results supporting this as a viable treatment option.

It's possible that we'll see more synthetic marijuana preparations than the actual use of smoking home-grown marijuana. Use in this manner can be regulated more easily and quality can be assured more readily. Furthermore, a physician cannot legally "prescribe" medical marijuana as it is not an FDA-approved medication.

Any prescription for this substance would be considered invalid and is not legally viewed as a legitimate prescription. A synthetically manufactured FDA-approved product however, could be legitimately prescribed.

Q: What are barriers you suspect will delay or stop medical marijuana from becoming a work comp issue?

Although some states have legalized the use of medical marijuana, it still remains illegal at the federal level, and therefore is not viewed as a legitimate medication. Additionally, the potential for misuse of medical marijuana for nonmedical purposes is high and the possibility of functional impairment is a concern as it is not conducive to a return-to-work situation. However, synthetic preparations (pharmaceutically manufactured) marijuana general-

ly only contain the active ingredient and would not be as likely to lead to the euphoric effects normally associated with smoking marijuana.

Finally, due to its federally illegal status, there is no carefully regulated manufacturing process. In general, medical marijuana is cultivated by individual growers with no oversight into purity, content or strength. The medical community is more likely to experience barriers to acceptance for medical marijuana if legalization occurs for smoking home-grown product vs. a synthetic version, generated by pharmaceutical manufacturers.

The medical community (and the federal government) is more likely to view a synthetic, FDA-approved marijuana substance as a legitimate pain-management option vs. home-grown marijuana which is not held to the same standards for purity, quality, etc. For example, Marinol is currently an FDA-approved synthetic preparation of delta-9-tetrahydrocannabinol, one of the 66 active compounds in marijuana, which is approved for the treatment of anorexia and nausea/vomiting. Given its FDA approval status, clinical assurance is granted to the end-user and the medical community regarding the mitigation of the abuse/euphoric effect that is possible with home-grown mari-

juana, while ensuring that stringent manufacturing processes have been met.

By focusing clinical efforts at identifying and manufacturing marijuana-based products that specifically address pain, the workers compensation industry may be more likely to view such a product as a legitimate treatment option.

Currently, there are a number of clinical trials under way evaluating the effect of delta-9-THC, and other marijuana constituents for the treatment of pain. These trials may one day lead to the FDA-approval of marijuana-based products which are specifically approved and manufactured for the treatment of pain.

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AIG: Comp settlement

CONTINUED FROM PAGE 3

its competitors.

"The (National Assn. of Insurance Commissioners) multistate workers compensation examination focused on allegations of conduct taking place between 1975 and 1996, the same period that was the subject of the 2006 regulatory settlement between AIG and the state of New York," an AIG spokesman said in a statement. "We are pleased that if this settlement becomes final, we will have resolved all remaining regulatory issues related to AIG's workers compensation premium reporting for our stakeholders. The settlement represents AIG's unwavering commitment to regulatory compliance and principled corporate governance."

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Facebook: Botched IPO teaches tough lessons

CONTINUED FROM PAGE 1

though, in the trading process at NASDAQ. Furthermore, and more significantly, since the initial sale the stock has decreased by \$10.28, closing at \$27.72 on Friday.

According to one reported estimate, as of Thursday, the company was worth \$26 billion less than it was just two weeks previously.

The situation has led to at least two purported class action lawsuits filed against Facebook and its investment bankers, including one in U.S. District Court in New York and another in state court in California, as well as investigations by regulators.

Meanwhile, Facebook has \$10 million of primary coverage with Houston-based HCC Insurance Holdings Inc., according to market sources, although it is likely to have a tower totaling perhaps \$300 million, with many other insurers involved.

Experts say at least the primary layer is likely to be eaten up by defense costs, even if Facebook is ultimately not held liable. Doug Busker, HCC's director of investor relations, said HCC does not comment on any individual policyholders. A Facebook spokesman

could not be reached.

Although some 23 pages of Facebook's IPO prospectus were devoted to outlining risk factors, *Brian Roffe Profit Sharing Plan et al. vs. Facebook Inc. et al.*—the lawsuit filed in New York—alleges that the company made misleading statements and omitted material facts.

The suit also states that defendants failed to disclose during the IPO's road show that certain underwriters reduced their performance estimates for the company and only "selectively disclosed" this information to "certain preferred investors." The charges in the state suit, *Darryl Lazar et al. vs. Facebook Inc.*, are similar.

Plaintiffs attorney Michael E. Criden of Criden & Love P.A. in South Miami, Fla., who is soliciting plaintiffs for a lawsuit against NASDAQ and is considering filing one against Facebook, said the company issued shares that raised more than three times the original \$5 billion offering planned.

"They either overestimated the appetite for the stock, or they didn't care, and they just wanted to clear out a lot of selling shares from inside the company," he said.

Ty Sagalow, president of New York-based Innovation Insurance



AP PHOTO

According to one reported estimate, as of Thursday, Facebook Inc. was worth \$26 billion less than it was two weeks prior.

Group Inc., said Facebook, which "started a whole new paradigm in social interaction," is an example of disruptive innovation, which is "a good thing for society" but creates a "rocky road" in pricing an IPO.

Kevin LaCroix, executive vp at OakBridge Insurance Services L.L.C. in Beachwood, Ohio, said the eleventh-hour increase in the number of shares and its pricing at the top of the suggested range, raised questions.

Jay R. Ritter, a professor of finance at the University of Florida in Gainesville, said "From an investor's point of view, what went wrong, of course, is the stock price has dropped after the IPO, which happens especially for a company as difficult to value as Facebook, where the company is growing rapidly but there's a huge amount of uncertainty about how fast future revenues and profits will grow."

Mr. LaCroix noted, however, that "the offering was a success" in that the company was able to maximize it.

"It's probably a bigger issue for those companies sort of waiting in the wings, hoping to ride Facebook's coattails, and take advantage of a marketplace that was

assumed to be more receptive to investing in tech IPOs," Mr. LaCroix added.

Some observers say Facebook may have done little, if anything, wrong. Some of the information the company is charged with not disclosing, including problems with Facebook's mobile applications accessibility, was public knowledge, said Joseph Monteleone, a New York-based partner with the Tressler L.L.P. law firm.

Daniel I. Goldberg, a partner with law firm Reed Smith L.L.P. in New York, said problems emerge whenever the spotlight is on an IPO. "I don't think there's anything more wrong or more different" here than has been the case with other IPOs, he said.

The case is likely to be settled, said Perry S. Granof, Glencoe, Ill.-based of counsel to law firm Williams Kastner. "Even if plaintiffs' case is flimsy, the amount of damages is so significant that nobody's going to take a chance on litigating this case in court."

But the Facebook litigation will add momentum to an already hardening directors and officers liability insurance market, said Peter R. Taffae, a D&O expert at Los Angeles-based wholesale brokerage

Executive Perils Inc. "A lot of D&O treaties come up July 1, and the timing of this is pretty bad because the insurers already are starting to talk about increases," he said.

There are lessons to be learned from the Facebook IPO, including the need to be conservative in the size of an IPO and exceedingly cautious in the information relayed to others, say observers.

Some commentators have said the share increase caused a classic supply-and-demand problem, said Mr. LaCroix. You "can't stuff in more product than there is demand," he said.

Richard J. Bortnick, a member of law firm Cozen O'Connor in Philadelphia, said, "If you believe what plaintiffs alleged, Facebook did not widely disseminate its reduced earnings projections. The whole premise of transparency and open trading is (that) everybody knows the same thing and is playing on a level playing field."

Some observers are concerned the Facebook IPO will lead to revisions of the Jumpstart Our Business Startups, or JOBS, Act, which was signed into law by President Barack Obama in April and is intended to reduce the number of regulations required to issue an IPO.

California: Changes need to curb costs

CONTINUED FROM PAGE 4

increase, there has been little change in the average price that insurers have charged employers because market competition is keeping premiums in check, the commissioner said.

"Second, and equally important with increasing costs and the draw-down of surplus and capital, this pricing trend will not continue. Eventually, premiums will increase for employers," the commissioner said in the order.

He also advised that disagreements between medical providers and payers need to be

addressed promptly to speed the delivery of medical care and reduce liens being filed for medical payments.

On the other hand, the commissioner said injured workers have been deprived of "reasonable compensation" as a result of reforms affecting permanent disability, which he said needs to be rectified by finding system savings and increasing benefits.

"Failure to find savings for increased benefits will only result in additional cost burdens on California employers at a time when the economy is slowly recovering," the commissioner warned.

California's pure premium rates are only advisory; insurers determine their rates and can accept or ignore the commissioner's recommendation.

But the increase is another point of proof about "why we need to take another crack at reforming California's (work comp) system," said a spokesman for the Sacramento-based Workers' Comp Action Network, which represents employers and insurers.

The commissioner reported that system cost increases are "steady and dramatic," added Mark Sektan, president of the Sacramento-based Assn. of California Insurance Cos.

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All hard copies of the entire proposal must be received by the Director of the Department of Administration no later than 4:00 p.m., June 27, 2012, Guam time.

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/s/

BENITA A. MANGLONA, Acting Director
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Contact Monique Murray
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For Details

DVD: Controversy over IME prep for injured workers

CONTINUED FROM PAGE 3

instructional videos can help workers be more honest in independent medical exams.

Though Mr. Hubbs has not seen the video series, he takes issue with some of the marketing materials for the videos. For instance, he pointed to a portion of the IME Preparation website that says the videos “instruct your client on some of the tricks that IME examiners use” to identify exaggerated or false symptoms.

Mr. Hubbs said the videos could make injured workers skeptical and less cooperative with the medical evaluation process. Additionally, he said the IME Preparation videos could teach claimants how to manipulate the workers comp system by instructing them on how to behave during exams.

“The whole idea is to get someone to transition back to employment,” Mr. Hubbs said. “It’s not to teach them how to make money from disability.”

A blog post written in April by another Hall Booth Smith attorney criticized the IME Prep videos. Mr. Hendrix notes that he worked for Hall Booth Smith early in his career.

A preview of the IME Prep video posted online shows Dr. Scott Barbour, an orthopedic surgeon from Decatur, Ga., telling viewers that they should not exaggerate their symptoms during a medical evaluation.

“When you go to see your doctor, they’re going to run you through a physical exam and they’re going to be able to pick up what’s wrong with you,” said Dr. Barbour, who is a partner in IME Preparation. “So be honest, and let them know exactly how you’re feeling.”

Mr. Hendrix said the videos describe procedures that doctors use during exams. Additional advice includes such tips as arriving on time and not seeking pain medications during the appointment, he said.

Such advice could be beneficial in helping injured workers provide appropriate details during an independent medical examination, said Dr. Kathryn Mueller, a professor in the school of public health at the University of Colorado in Denver.

Dr. Mueller, a certified independent medical examiner, said workers sometimes can weaken the credibility of their workers comp claims by exaggerating their pain.

‘When you go to see your doctor, they’re going to run you through a physical exam and they’re going to be able to pick up what’s wrong with you. So be honest, and let them know exactly how you’re feeling.’

Dr. Scott Barbour, IME Preparation

Many of those types of patients suffer from psychosocial issues, or are trying to get relief for injuries they believe haven’t received proper care, she said.

Tests conducted during an inde-

pendent medical examination usually can determine if a patient’s pain is inconsistent with the type of injury he or she has suffered, Dr. Mueller said.

Ms. Shafer of Amaxx believes

companies should talk to injured workers about what to expect during the examination and other aspects of the workers comp process. By doing so, she said employers can help prevent an “us-vs.-them” mentality from their employees.

“I think there’s a perception with employers that they’re not entitled to speak to their employee about a claim if they have an attorney,” she said. “But that’s not really the case.”

Ms. Shafer advises companies to provide written guidelines that give such information as when an injured worker can expect to

receive workers comp benefit payments, or how their claim will be managed. Companies also should talk regularly with injured workers, she said, to stay up to date on their recovery.

Employers should work with their legal counsel or workers comp defense attorney to create an appropriate communication plan, she said.

While the IME Prep videos have created some controversy among workers comp experts, Mr. Hendrix of IME Preparation believes the videos will help injured workers receive benefits they genuinely deserve.

“You can’t really cheat the exams,” he said. “You can’t fake problems that you don’t have.”



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Distracted: Driver accident suits pile up

CONTINUED FROM PAGE 1

director of the National Safety Council in Itasca, Ill. "In 2009 we looked at all the research around this issue and decided that people should not be using cellphones while driving. It's way too dangerous," he said.

"It's becoming best safety practice," Mr. Teater said. "We think about 20% of the Fortune 500 companies have these bans in place already."

The NSC estimates that driving while talking on a cellphone—handheld or hands-free—increases the risk of an accident by four times. It also estimates that 21% of all vehicle crashes in 2010 involved talking on cellphones.

Mr. Teater noted that the issue is a complicated one for many businesses that rely on cellphones to stay in touch with their drivers. Still, he said, "We recommend that businesses put in place policies that prohibit employees from using cellphones while driving, period."

"Because of some recent litigation, everybody is trying to get on board really quick" with distracted driving policies, said Bert Mayo, vp of risk control at Lockton Cos. L.L.C. in Denver.

"We've been pushing this for years," Mr. Mayo said. "Statistically, the data's been out there for years that you shouldn't be doing

anything else and driving."

A prohibition on using cellphones while driving is at the heart of Quality Distribution's distracted driving policy. "Basically our (standard operating procedure) is that you do not use communications devices while you are in transit. You're driving," said Mr. McDonald. If drivers need to use the phone, they must pull

21%

The NSC estimates that driving while talking on a cellphone—handheld or hands free—increases the risk of an accident by four times. It also estimates that 21% of all vehicle crashes in 2010 involved talking on cellphones.

over before doing so, he said.

Mr. Mayo said companies' efforts to address distracted driving should be threefold. "One, have a policy, a written policy. Two, have the training on that policy." That training should include not just drivers but also employees such as dispatchers, fleet managers and driver supervisors, he said. "And three, enforce it."

Likewise, David Barry, national

technical director, casualty risk control, at Willis North America Inc. in Overland Park, Kan., said Willis advises clients to have a written distracted driving policy, conduct formal training on the policy and have a formal enforcement vehicle for the policy.

"We've actually created several templated best practices policies that we can give to clients, and from those we can tailor it to their individual operations," Mr. Barry said. He added that he favors keeping the policies as simple and straightforward as possible. "What most companies have said is if the vehicle is in movement, you're not allowed to use your wireless communications device," Mr. Barry said.

Marsh's Mr. Bleser noted that many companies that have had policies related to cellphones are expanding them to take in a broader range of potential driver distractions. "Today vs. two years ago, there's a lot more emphasis on having very strong and comprehensive driver distraction policies," he said.

And, Mr. Bleser said, it's important for companies to recognize that drivers aren't the only problem. It used to be routine at most companies for dispatchers to call drivers; now, recognizing the risks, many companies are developing new dispatching procedures to eliminate those calls to drivers

and reduce the risk, he said.

Mr. McDonald said training on Quality Distribution's distracted driving policy begins early on. "Generally, I would have to say that we start right at the beginning. This is one of the issues that we cover in our driver training school," he said.

"Enforcement is a different matter, like it is in a lot of things," Mr. McDonald said. "That comes down to training, disciplinary actions, retraining." Disciplinary action against drivers and dispatchers found violating the company's policy can go all the way to dismissal, Mr. McDonald said, adding, "We do take it very seriously."

"It's not really rocket science. It's a lot of training, retraining," he said. "That's what safety's all about: a lot of repetition."

"Companies that educate people on the dangers of this don't seem to have a lot of enforcement problems," said the National Safety Council's Mr. Teater.

Willis' Mr. Barry said some insurers have begun considering companies' approach to distracted driving in their underwriting, a factor that's also driving employers' interest in addressing the issue.

"Certain carriers have this as one of their hot-button underwriting topics," he said.

But, he added, "It's something that I'm really recommending to all my clients as a good business best practice, whether the insurance company requires it or not."

Chartis: U.K. public sector exit

CONTINUED FROM PAGE 1

want to merely add capacity. With RMP—the second-largest provider of U.K. public sector insurance—it can provide replacement capacity and long-term coverage for U.K. public entities.

RMP did not respond to requests for comment, but a source at the company said QBE's offering will be similar to Chartis'. In a statement, RMP said the agreement with QBE will allow it to continue growing its "core support to brokers and clients" in the public sector.

Chartis' decision to withdraw from the market caused some concern for risk managers, said Simon Davis, chairman of Sidmouth, England-based Alarm, the U.K. public sector risk management association, and risk manager at Llangunnor, Wales-based Dyfed Powys Police.

Just three insurers—Zurich Municipal, a trading unit of Switzerland-based Zurich Insurance Group Ltd.; Chartis Europe; and Travelers Insurance Co. Ltd., the U.K. arm of New York-based The Travelers Cos. Inc.—served the U.K. public sector, he said.

In an email, Zurich Municipal said it remains committed to serv-

ing its U.K. public sector customers. Travelers could not be reached for comment.

Had QBE not entered the market, Chartis' withdrawal likely would have resulted in public sector risk managers facing a "significant impact on the price and availability of cover," said Mr. Davis.

"There is likely to be no great change and the status quo looks likely to be maintained," said Mr. Davis. However, depending on QBE's offering, some public sector risk managers may review their programs, he said.

"Risk managers would like to see more players and competition in the sector, but given the current unattractive market conditions for insurers, this seems unlikely," said Mr. Davis. "But for as long as there are three insurers in the market, there is an element of competition and choice," he said.

Aside from the insurers, public entities could form a mutual to cover such risks, he said (see box).

However, details of QBE's insurance offering and the transfer of existing business from Chartis have not yet been finalized, Mr. Davis said.

RMP has assured clients that the level of cover offered will be remain the same with QBE, but further details have not been released, said Mr. Davis, who places his organization's insurance with Chartis through RMP. For example, it is not clear if long-term agreements, which are common in the U.K. public sector, will continue to be serviced by Chartis,

Mutuals provide capacity, but require capitalization

LONDON—Public entities having difficulty finding capacity in the traditional insurance market have an option: form a mutual, the chairman of the U.K. public entity risk management association said.

With budgets already tight for public sector entities, however, the costs of capitalizing an insurer and potential added volatility might be an impediment, said Simon Davis, chairman of Sidmouth, England-based Alarm and risk manager at Llangunnor, Wales-based Dyfed Powys Police.

In 2007, 10 London boroughs established London Authorities' Mutual Ltd. But, RMP filed suit challenging local authorities' right to participate in the mutual under their statutory powers, as well as through procurement rules. LAML was placed into runoff in 2009, although leg-

he said.

Negotiations about transferring the business continued last week, including whether QBE would take on Chartis' outstanding long-term contracts. In a statement,

isolation was passed later that year to grant local authorities the authority to establish and participate in mutuals. The U.K. Supreme Court also clarified procurement law in 2011.

"Local authorities should continue to consider mutuality as an alternative approach to financing their risks and exposures, particularly in the light of market conditions," said London-based Martin Fone, chief executive and senior underwriter at Charles Taylor Services Ltd., which managed LAML. "However, unless mutuality particularly resonates with the mood music of the time, it requires some significant opinion-forming catalyst to generate momentum. The replacement of one A+ rated insurer with another is not likely to be that catalyst," he said.

—By Stuart Collins

Chartis said it is working closely with RMP to transfer the risks to other underwriters, and its future involvement will be limited to runoff administrative and claims handling services.

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Disaster prep confidence lags

75% of employees say employers not well-prepared

By **RODD ZOLKOS**

A study suggests that the vast majority of U.S. workers have little confidence in their employers' preparation for dealing with natural disasters.

According to the Business Risk Pulse Check study from Johnston, R.I.-based Factory Mutual Insurance Co. which does business as FM Global, 75% of U.S. workers feel their employer is not well-prepared for a natural disaster, with 25% indicating they feel their employer is well-prepared.

There's slightly more confidence among employees of large enterprises—those of 1,000 or

more employees—where 36% said they felt their employer was very well-prepared for natural disaster and 64% said they felt their employer was not well-prepared. Among small to medium-size enterprises, however, 81% felt their employer was not well-prepared with only 19% feeling their employer was well-prepared for a natural disaster.

Workers surveyed also indicated they would be concerned for their safety in the workplace during a natural disaster, with 72% saying they would not feel totally safe vs. 28% that said they would feel very safe. Among employees of large enterprises, 67% said they would feel not totally safe vs. 33% that would feel very safe. Among small to medium-size enterprises 76% said they would not feel totally safe, with 24% saying they would feel very safe.

Employees also indicated little confidence in their employers' ability to recover from natural disaster, with 71% saying they were not fully confident their employer could bounce back quickly and 29% said they were very confident their employer could recover quickly.

Again, employees of small to medium-size enterprises were the least confident with 77% saying they were not fully confident in their employer's ability to bounce back vs. 23% who said they were very confident. Among large enterprises, 61% of employees said they were not fully confident their employer could recover quickly from a natural disaster while 39% said they were very confident in their employer's ability to bounce back.

The national online survey had 1,364 total responses.

inBrief

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freed from prison last week, four months ahead of his scheduled release date. His sentence was reduced to time served, allowing him to return home on supervised release, while also ordering that Mr. Segal perform 120 hours of community service. Mr. Segal, who was convicted in connection with charges that he looted Near North's premium fund trust account of \$35 million for personal and company use, has maintained his innocence.

Colorado State increases 2012 hurricane estimate

The hurricane forecasting team at Colorado State University has increased its prediction of the number of hurricanes it expects to form in the Atlantic basin this hurricane season to five from the four predicted in April. Still, the Tropical Meteorology Project said Friday that it expects "slightly below-average" activity in this year's hurricane season, which began Friday and runs until Nov. 30. In addition to increasing the number of hurricanes it predicts, the team increased the number of named storms likely to form this season to 13 from 10.

DOMA struck down by appeals court

The controversial federal law that effectively denies married same-sex couples the same federal benefits afforded to heterosexual couples violates the constitutional guarantee of equal protection, a federal appeals court ruled. The 1996 Defense of Marriage Act, legally recognizes marriage as the union of one man and one woman. Though the law does not invalidate same-sex marriages, it prohibits gay couples from filing joint federal tax returns, collecting their spouse's Social Security after their death, prevents gay federal employees from enrolling their spouse in government-sponsored health care plans, and precludes other marriage benefits granted to heterosexual couples. Last week, a three-judge panel of the 1st U.S. Circuit Court of Appeals in Boston ruled unanimously that sections of the law are unconstitutional for

discriminating against lawfully married gay couples.

NFIP extension bill signed into law

President Barack Obama signed into law legislation that extends the National Flood Insurance Program through July 30. The program had been slated to expire on Thursday. Insurance industry groups—which, along with the Risk & Insurance Management Society Inc. and other organizations, support a longer-term extension and reform of the program—welcomed the latest House action but expressed hope that a longer-term solution would be approved soon.

Italy quakes cause up to \$875M in insured losses

A May 20 earthquake followed by two May 29 aftershock quakes that struck Italy's Emilia-Romagna region caused an estimated \$375 million to \$875 million in insured losses, EQECAT Inc. said. Its estimate was based on assumed insurance penetration rates of about 3% to 5% for commercial lines and less than 1% for residential. Meanwhile, catastrophe modeler Risk Management Solutions Inc. said that even where there is earthquake cover, the amount of coverage under such policies is limited.

HSA enrollment up 18%: AHIP

Enrollment in health savings accounts linked to high-deductible health insurance plans leaped more than 18% to 13.5 million as of Jan. 1, according to an annual census by America's Health Insurance Plans. HSA enrollment rose in the large and small group markets as well as the individual markets.

Conn. Gov. signs new medical marijuana bill

Connecticut Gov. Dannel P. Malloy signed new medical marijuana legislation into law that expands its previously permitted use. A statement issued by the office of Gov. Malloy said the legislation permits licensed physicians to certify an adult patient's use of medicinal marijuana after it is determined the patient has a specified debilitating disease or medical condition and could benefit from its regulated treatment. The new law includes several safeguards designed to prevent potential abuse and carefully control its handling.



BLOOMBERG

The convictions of former reinsurance executives Elizabeth Monrad, from left, Christopher Garand, Christian Milton, Robert Graham and (not pictured) Ronald Ferguson in a sham reinsurance deal were overturned in 2010.

Gen Re: Unified effort works toward settlement

CONTINUED FROM PAGE 4

tant U.S. attorney and Justice Department official, said trying to settle the matter is "not unusual in a large complex case, particularly after it's already been tried once."

"There's a desire to resolve the entire matter," said Mr. Moulton, now an associate professor at the Widener University School of Law in Wilmington, Del. "There's, generally speaking, psychological pressure on all sides in resolving cases like this after they've been remanded for a new trial."

"These defendants are proba-

bly not interested in sitting another two months rehearing these allegations, nor are prosecutors generally interested in retrying the same case again when they could be pursuing other cases," Mr. Moulton said. "What this motion suggests is rather than an every man or woman for himself or herself approach, the defendants are working together to resolve the matter globally."

A jury in 2008 convicted the five former executives on charges of conspiracy, securities and mail fraud, and making false statements to the U.S. Securities and Exchange Commission stem-

ming from a loss portfolio deal in 2000 and 2001.

Prosecutors alleged the defendants devised the deal to artificially bolster AIG's loss reserves, costing AIG investors as much as \$597 million as word of the SEC investigation emerged and the stock price declined.

Last August, however, the 2nd U.S. Circuit Court of Appeals overturned the convictions and said U.S. District Court Judge Christopher Droney erred in allowing prosecutors to use a line graph tracing AIG's stock price, which the three-judge panel said was prejudicial. In March, Judge Bryant set the retrial for 2013.

The U.S. attorney's office declined comment on the settlement discussions. The defendants' attorneys either declined to comment or did not return calls.



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LEXCASTS

JILTED WIFE SUES NIEMAN MARCUS OVER GUILT GIFTS

Beware of husbands bearing overly lavish gifts.

That's the hard lesson learned by a wife who allegedly learned her husband, who had given her some \$1.4 million worth of merchandise from luxury retailer Neiman Marcus, was simultaneously conducting an affair with the Dallas store's personal shopper.

Patricia Walker, who has since divorced her husband, Robert Tennison, said in a lawsuit she was recovering from an automobile accident and was bedridden for three years during the period her husband gave her the gifts—the same time he was conducting an affair with personal shopper Favi Lo.

Ms. Walker had spent a mere \$100,000 a year at the store before her accident, according to news reports.

She sued Neiman Marcus after the store refused to give her refunds on the merchandise, which includes jewelry, crystal sculpture and \$285 pajamas.

"The real villain in this case is Neiman Marcus," said her attorney, Mark Ticer. "After learning of this affair they decided they weren't going to do anything about it."

Mr. Ticer said Ms. Lo, who earned commissions on the merchandise she sold Mr. Tennison, continues in her job at the retailer.

"It's a sad story about breach of trust and profits over people," Mr. Ticer said. "And Neiman Marcus isn't taking responsibility."

According to the news reports, the chain's retail policy says it "will gladly accept your timely return of unworn, unwashed or defective merchandise."

Unfortunately for Ms. Walker, there's apparently no mention in the policy of refunds on gifts given by philandering husbands.



CONTRIBUTING: Roberto Cenicerros, Judy Greenwald, Sheena Harrison

End Page



AP PHOTO

United Airlines Inc.'s Million Miler frequent flyer program was modified in a merger with Continental Airlines.

Million Miler finds he's not so special

A well-traveled Chicago man alleges that United Airlines Inc. "stripped away" his exclusive benefits under its Million Miler frequent flyer program after it was modified in a merger with Continental Airlines.

According to a class action lawsuit filed last week in U.S. District Court, George Lagen earned Million Miler status with United's MileagePlus Program after flying 200,000 to 250,000 miles a year on average with the airline.

The designation—which could only be obtained by purchasing airline tickets—came with "lifetime benefits," such as bonus miles, booking and seating priority and upgrades on various flights.

Mr. Lagen's lawsuit says that Chicago-based United downgraded its Million Milers

to "third-tier Gold" status under the airline's 2010 merger with Continental. The move has resulted in a "severe cut in benefits" for Million Milers, according to the complaint.

United's website shows that flyers with 1 million lifetime flight miles receive "Premier Gold" status. A traveler would need to fly at least 4 million miles in his or her lifetime to reach United's "Global Services" status, according to the site.

The lawsuit estimates that United has thousands of Million Miler frequent flyers in the United States. Mr. Lagen is seeking unspecified compensatory damages, attorney fees and interest from United Continental Holdings Inc. for breach of contract and other claims.



ACCIDENTS FOLLOW IF AUTO ETIQUETTE TAKES A BACK SEAT

Drivers who are driven crazy by back seat drivers are in good company, says a survey.

Confused.com, which offers comparisons of insurance rates, has released a report that says 66% of British motorists have been victims of unwanted attention from self-appointed back seat drivers, and 24% have been in an accident while dealing with the distractions of other passengers.

The report says the worst offenders are bus and train drivers and delivery men "who obviously forget that they're off duty." Teachers are the most patient passengers, according to the report.

Personal relationships also pose a problem when it comes to back seat drivers, says the report, with husbands and boyfriends disrupting the driver most often, followed by parents.

The most popular backseat gestures include "the terrified grip-tightening on the door handle," the "not-so-subtle glance at the speedometer" and the "imaginary brake pedal push," the report says.

The report also said 68% of women and 70% of drivers over age 55 find themselves on the receiving end of bad etiquette.

This simply will not do, according to a spokeswoman for etiquette expert firm Debretts Ltd., who said in the report, "If you're a passenger in someone else's car, your behavior must be polite at all times, just as it would be if you were visiting their home."

Now tell that to the screaming toddler in your back seat.

SOME INSURERS TUCKING THEIR TAILS

With the number of dog bite claims and their costs increasing, lists of the most-dangerous canines are finding their way into media stories.

A Forbes column, for example, recently warned that insurance companies tend to resist covering 11 types of dogs, including any mix of the 11.

This month, the Insurance Information Institute reported that dog bites accounted for more than one-third of homeowner insurance liability claims payouts in 2011.

The total cost reached nearly \$479 million with the number of claims increasing 3.3% from 15,770 in 2010 to 16,292 in 2011.

Meanwhile, the average cost of a dog bite

claim jumped to \$29,396 in 2011, up 12.3% from \$26,166 in 2010.

From 2003 to 2011, the average dog bite claim cost increased by 53.4%," the ILL reported. Medical cost expenses and an increase in settlements and judgments are to blame for the rising costs.

But State Farm Mutual Automobile Insurance Co. says that a dog's tendency to bite depends on factors such as heredity, obedience training, socialization, health, and the victim's behavior.

"There are good dogs and bad dogs within every breed, just as there can be responsible and irresponsible owners of each breed," State Farm reports.



PERILOUS PUPS

So what are the riskiest pooches? According to Forbes, they are:

- Pit bulls and Staffordshire terriers
- Doberman pinschers
- Rottweilers
- German shepherds
- Chows
- Great Danes
- Presa Canarios
- Akitas
- Alaskan malamutes
- Siberian huskies
- Wolf hybrids

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