

TERRORISM

- Terrorist attacks increased 61% to 17,958 worldwide in 2013.
- Countries with more than 50 terrorist-related deaths increased 60% to 24.
- 82% of the lives lost were in Iraq, Afghanistan, Pakistan, Nigeria and Syria.
- Lone, unaffiliated individuals accounted for 25% of terrorist deaths in Organization for Cooperation and Economic Development countries.

Source: Institute for Economics and Peace

RISK MANAGEMENT

Private terror coverage costs fall sharply

Rates down even in major metros

BY MATTHEW LERNER

Buyers are seeing up to double-digit price declines in the private market for terrorism insurance and are buying more of the coverage when they renew amid plentiful capacity and competition for their business, sources say.

"Rates are down in nonmetro cities anywhere between 20% and 40%; it's really, really competitive," said Jennifer Rubin, New York-based vice president and underwriting leader of war, terrorism and political violence coverage at Hiscox USA.

Even cities at the greatest risk of attack such as New York, Chicago and San Francisco — Tier 1 cities — are seeing stand-alone terrorism insurance prices that are roughly 10% lower, she said.

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EMPLOYMENT PRACTICES

RELIGIOUS HEADSCARF RULING INCREASES BIAS RISKS

Employers may need to take affirmative steps



AP PHOTO

Protesters gathered outside the the Supreme Court earlier this year as it considered a discrimination case involving an Abercrombie & Fitch Stores Inc. job applicant who wore a hijab.

BY JUDY GREENWALD

Employers must consider whether a job applicant needs an accommodation based on religious needs, even if the applicant does not mention the subject, as a result of a ruling last week by the U.S. Supreme Court.

Following the decision in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores Inc.*, employers may have to "guess" or use their "intuition" to decide whether a job prospect

has religious beliefs that should be accommodated to avoid running afoul of the Civil Rights Act of 1964, legal experts say.

A district manager's order not to hire Samantha Elauf, a practicing Muslim who wore a hijab, at the retailer's Abercrombie Kids store in Tulsa, Oklahoma, because it would violate Abercrombie & Fitch's "look policy" against wearing "caps" sparked the EEOC suit. Ms. Elauf was 17 in 2008

See **ACCOMMODATE** page 22

MERGERS & ACQUISITIONS

Humana sale could spark market changes

Rival health insurers look for diversification

BY MATT DUNNING

A sale of Humana Inc. would further consolidate the U.S. health insurance market, potentially increase insurers' influence with regulators and even benefit employers that provide group health coverage.

Rival health insurers including Aetna Inc. and Cigna Corp. have reportedly approached Humana within the last six months about the possibility of acquiring or merging with the company, industry analysts said.

The nation's second-largest insurer, Anthem Inc., also is believed to be interested in a potential deal, analysts said.

Valued at \$31.87 billion as of Friday, analysts said Humana's primary lure for potential buyers is its substantial foothold in the fast-growing Medicare and Medicare Advantage markets.

Some 7.5 million of Humana's 14.2 million members were enrolled in individual or group Medicare-related products as of March 31, more than double the combined number of Medicare enrollees at Aetna, Cigna and Anthem. The company's Medicare enrollments represent an estimated 13.6% of all current Medicare beneficiaries nationwide, according to a report by the U.S. Centers for Medicare

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Q&A: ART MOOSSMANN

CEO of Allianz Global Corporate & Specialty North America talks about the insurer's plans.

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COMMENTARY

Doctors have begun diagnosing chronic lateness, caused by the same part of the brain as ADHD.

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RESEARCH & DATA

Largest safety consultants: Hygiene, occupational health specialists; fatal work injuries

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WORKPLACE SAFETY REGULATORY UPDATE

Safety programs may need rethinking to comply with reporting requirements; new whistleblower rules tougher on employers; trucking industry faces driver training challenge; mining firms use technology to improve safety.

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Telemedicine: Phoning it in

Telemedicine offers savings and convenience but it also carries potential pitfalls, say attorneys Amy Lerman and René Quashie of Epstein Becker & Green P.C. **13**

INTERNATIONAL

Profile: New Zealand



Insured losses from a series of earthquakes, which began in September 2010, are projected to reach as much as

\$25.93 billion. An increase in earthquake rates followed, but rates have since subsided. **10**

OFF BEAT



Burning back to the Stone Age

An event in Israel may have unmade history, as revelers burned a mock temple on a hilltop scattered with prehistoric artifacts. **26**

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NEWS

WORKERS COMPENSATION

IN REPORTING WORKPLACE INJURIES, TIMING CRUCIAL

After two weeks, costs can rise 51% for claims

BY SHEENA HARRISON

Employers can help reduce their workers compensation claim costs by encouraging injured employees to report workplace accidents as soon as possible, but they also should not have rules that punish workers for reporting claims late.

Experts say strict reporting deadlines can cause workers to hide their injuries, allowing an untreated condition to worsen or encouraging workers to hire an attorney to avoid repercussions because they delayed reporting they were hurt.

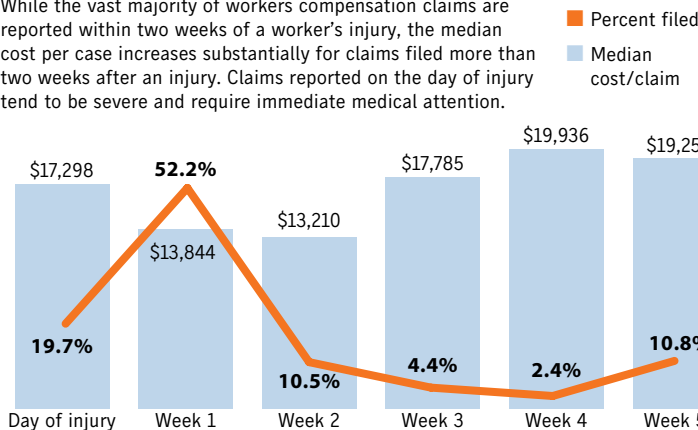
“You don’t want injured workers to feel like they somehow have to hide if an injury occurred because they for some reason missed this mandatory reporting period,” said Eddy Canavan, vice president of workers compensation practice and compliance at third-party administrator Sedgwick Claims Management Services Inc. in Riverside, California.

A study by the National Council on Compensation Insurance Inc. released last month showed that delayed injury reporting can increase comp claim costs up to 51%.

Median costs for occupational injuries were the lowest, \$13,120, for claims reported within two weeks and were higher for claims

COSTS

While the vast majority of workers compensation claims are reported within two weeks of a worker’s injury, the median cost per case increases substantially for claims filed more than two weeks after an injury. Claims reported on the day of injury tend to be severe and require immediate medical attention.



Source: National Council on Compensation Insurance Inc., 2010-2011 data

brought two weeks or longer after an accident, according to NCCI’s analysis of 2010 and 2011 data, the latest available. Claims made the day of an accident often involve serious injuries that require immediate medical care and insurer notification, NCCI said.

John Robertson, director and senior actuary at NCCI in Boca Raton, said lower costs for claims reported within two weeks of an accident likely reflect less severe injuries that don’t heal on their own.

“It might not be immediately obvious that there is an injury that should get medical attention,” Mr. Robertson said.

Costs may spike a few weeks

after an accident because injured workers are more likely to seek attorney assistance with their workers comp claim then, he said.

Attorneys were involved in 12.8% of claims made the day of an accident, rising to 31.7% for claims made four weeks or more later, according to NCCI data.

Glen Pitruzzello, vice president of workers’ compensation and group benefits claim practices at Hartford Financial Services Group Inc. in Hartford, Connecticut, completed a study in 2000 with findings similar to NCCI’s and agreed that claims that are reported within 24 hours tend to be more severe.

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HEALTH CARE BENEFITS

Brokers retool to meet holistic client demands

BY MATT DUNNING

COLORADO SPRINGS, Colo. — Health benefits brokers and consultants say the industry is slowly adapting to the changing needs of employer clients.

As employers focus on achieving a deeper integration of their employee benefit programs into their organizations’ broader operations, benefits brokers and consultants say they are under mounting pressure to provide products and services that take a more holistic view of clients’ business, including workers compensation and disability claims, employee productivity and workplace safety.

“We have to dramatically reorganize and retrain ourselves,” said Anne Presson, vice president and director of benefits innovation at Woodruff Sawyer & Co. in San Francisco. “We need to talk about the whole of the client’s business and get to those broader levels within their organization. It’s absolutely imperative, but the question is still open as to how we get there, and we need to get there pretty quickly” to maintain their market share.

“The hard part is that no company ever wants to be the first one out of the gate” to radically alter its services, she said.

Predictably, the biggest cause of the shift in employers’ priorities on the design and administration of their health benefit programs — including greater focus on well-designed workplace wellness programs, onsite or near-site health clinics and other cost-containment strategies — has been the federal health care reform act, brokers and consultants said during interviews last month at the Council of Insurance Agents & Brokers’ 2015 Employee Benefits Leadership Forum in Colorado Springs, Colorado.

“A benefits broker that stays in that traditional (insurance placement) role probably has a very short future,” said James O’Connor, president of employee benefits services at CBIZ Inc. in Little Silver, New Jersey. “Those of us that see the need to aggressively move toward merging that role with the roles of technology administrator, compliance and regulatory adviser, wellness program design and administrative

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DIRECTORS AND OFFICERS LIABILITY

Environmental responsibility latest front in litigation

BY JUDY GREENWALD

Recent litigation is putting directors and officers on the spot for environmental risks allegedly posed by the companies they oversee.

Risk managers should make certain that the terms and conditions of their environmental D&O coverage are adequate to protect top executives and board directors from such shareholder litigation, experts say.

An April 30 suit filed in Jacksonville, Florida, federal court against Jacksonville-based Rayonier Advanced Materials Inc. and its directors and officers alleges



there was insufficient disclosure to investors about the specialty fiber maker’s environmental remediation and related obligations. Rayonier Advanced Materials, previously a unit of Rayonier Inc., was spun off to shareholder a year ago.

The suit, *Oklahoma Firefighters Pension & Retirement System et*

al. v. Rayonier Advanced Materials Inc. et al., followed the company’s announcement in January that it had boosted environmental reserves by \$69 million for disposed operations.

In addition, Charlotte, North Carolina-based Duke Energy Corp. faces five shareholder derivative suits filed last October in Delaware Chancery Court and one filed in March in North Carolina state court over the 2014 release of up to 39,000 tons of coal ash into the Dan River from its retired coal-fired power plant in Eden, North Carolina, according to company regula-

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ONLINE FEATURES

WHITE PAPER

Soft Market Strategies



How to take advantage of declining insurance prices and increased capacity

www.BusinessInsurance.com/SoftMarketStrategies

IN FOCUS



Drones dropping in

Commercial drones are poised to affect insurers in many ways.

www.BusinessInsurance.com/InFocus

GALLERY

Top broker executive pay

Find out who the highest-paid insurance broker executives are in this new photo gallery.

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VIDEO

Risk Management Spotlight



Meet David Cammarata, assistant treasurer for risk management and insurance for Verizon Communications Inc.

and a member of the *Business Insurance* 2015 Risk Management Honor Roll®.

www.BusinessInsurance.com/CammarataSpotlight

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NEWS

WORKERS COMPENSATION

LATEST MOSQUITO-BORNE DISEASE THREATENS OUTDOOR WORKERS

Chikungunya's symptoms can be debilitating

BY STEPHANIE GOLDBERG

Employers with outdoor workers should prepare for chikungunya, a mosquito-borne disease that began spreading stateside last year.

The U.S. Centers for Disease Control and Prevention calls chikungunya an emerging infectious disease, putting it in the same category as Ebola and Middle East respiratory syndrome, "which respect no national boundaries (and) can challenge efforts to protect workers, as prevention and control recommendations may not be immediately available."

Chikungunya infections have been reported in Africa, Asia, Europe, islands in the Indian and Pacific oceans and the Caribbean, and the Americas, according to the CDC.

Some 2,492 cases of the virus were reported in U.S. states last year, including 11 locally transmitted cases in Florida — the first time chikungunya was transmitted within the U.S., according to the CDC. The rest were from travelers infected abroad.

In addition, there were 4,513 chikungunya cases reported in U.S. territories last year. All but 46 were locally transmitted cases.

There have been no locally transmitted U.S. cases so far this year,

but sources say that likely will change as it gets warmer, so employers with outdoor workers should take steps to recognize and prevent such infections.

With incubation of three to seven days, the virus can cause fever, severe joint and muscle pain, headaches, joint swelling and rash for about one to two weeks, said Morgan Hennessey, Fort Collins, Colorado-based epidemic intelligence service officer at the CDC.

While death is rare, chikungunya symptoms are "debilitating," Mr. Hennessey said of the illness the CDC is investigating to determine why some people have longer, more severe symptoms.

Infected *Aedes aegypti* and *Aedes albopictus* mosquitoes — the same ones that carry dengue and yellow fever — are likely to be found in the U.S. South around houses and buildings, Mr. Hennessey said. Unlike other species, these mosquitoes tend to bite during the day, making chikungunya an even bigger concern for outdoor workers, he said.

Sources speculate the workers compensation industry will handle the disease in the same way as West Nile, also a mosquito-borne virus that's been in the U.S. about

See MOSQUITO page 24

WORKER WON WEST NILE CASE

Alleging that he contracted the West Nile virus and encephalitis on the job in 2008, Texas railroad worker William R. Nami sued Union Pacific Railroad Co. under the Federal Employers' Liability Act for failing to provide a safe workplace.

Mr. Nami testified that he would have worn long sleeves and used insect repellent had he known of the West Nile threat while working outdoors in Brazoria County, Texas. He also testified he rarely spent time outdoors while off the job.

During the trial, daughter Sarah Nami testified that her father had "not been the same since" contracting West Nile, causing him to become very weak and forgetful. A jury found Union Pacific 80% negligent and Mr. Nami 20% negligent, awarding damages totaling \$940,000, according to records.

Last August, a Texas appellate court affirmed the judgment, ruling that "the evidence at trial was legally sufficient to establish that (Mr. Nami) probably contracted West Nile virus at his worksite."

By Stephanie Goldberg

SAFETY

Worker death prosecutions falling to states

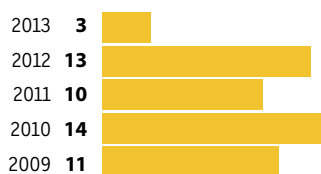
BY BILL KENEALY

Despite the receding threat of federal prosecution, officers and managers of companies that suffer workplace fatalities still face the prospect of criminal charges as state and local prosecutors look to enhance their oversight of worker safety.

While the data regarding the number of cases referred to the U.S. Justice Department by the Occupational Safety and Health Administration in 2014 has yet to be released, many believe the results will closely resemble those of 2013, which saw only three criminal referrals, a sharp decline from

CRIMINAL REFERRALS

Number of criminal referrals the U.S. Occupational Safety and Health Administration made to federal prosecutors. No data is kept on OSHA referrals to state prosecutors.



Source: OSHA

previous years.

Valerie Butera, Washington-based member in the labor employment group at Epstein Becker & Green P.C., said the slow-down in referrals may be part of a

deliberate strategy by OSHA to shift criminal enforcement to the states.

"It seems that OSHA has been relying on the fact that the Occupational Safety and Health Act doesn't prevent local prosecutors from prosecuting for manslaughter and negligent homicide under state laws," Ms. Butera said. "So, it appears that OSHA is redistributing it funds, which are admittedly limited, to other initiatives and relying upon the localities for criminal prosecution."

Indeed, the disparity under state and federal law regarding the

See SAFETY page 24

BENEFITS MANAGEMENT

Employers work harder to cut stress

Resilience training builds life skills

BY SHELBY LIVINGSTON

As increased worker stress hits the financial health of employers, more companies are turning to proactive stress-management programs to curtail the problem.

Known as resilience-building programs, the strategies seek to halt the cuts in productivity and increases in health care costs related to workplace stress by preparing workers to cope with stressful environments.

Training and educational programs that foster resilience give workers skills to manage and recover from stressful situations quickly, they say. They include in-person or online coaching on topics such as mental awareness, getting enough sleep, exercising regularly, eating a balanced diet and even meditation.

While the content and goals of resilience programs resemble traditional employer-sponsored stress management classes, wellness experts say what's different in resilience training is the approach: proactively building skills to manage stress before an incident occurs rather than responding to events such as organizational change or an employee crisis.

Employers are taking notice. According to a Buck Consultants at Xerox survey released in May, resilience is the fastest growing U.S. employer-sponsored well-being program, with 22% of employers already offering resilience-building programs and 28% planning to do so (see chart, page 24).

Though resilience programs vary widely, they use a holistic strategy and may involve "making your body physically more resilient to disease, helping your

See RESILIENCE page 24

FEELING STRESSED?

Stress-relieving practices consultants recommend include:

- Taking a deep breath
- Getting more sleep
- Exercising regularly
- Eating healthy
- Going for a walk outside
- Focusing on the most important task





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Supreme Court ruling on wartime litigation provides protections for federal contractors

But justices leave door open on related whistleblower allegations

BY MARK A. HOFMANN

The U.S. Supreme Court has given businesses that contract with the federal government a partial victory in a case involving a World War I-era law and a present-day whistleblower, but the ruling could lead to more litigation.

Kellogg Brown & Root Services Inc. et al. v. United States presented the high court justices with two issues.

One was whether individuals have unlimited time to file civil suits that allege fraud when the country is at war. The Wartime Suspension of Limitations Act, first passed in 1921 to address wartime contractor fraud and later amended, can be triggered without a formal declaration of war.

The other issue was whether the False Claims Act, first passed in 1863 and later amended, bars lawsuits alleging the same wrongdoing once a single whistleblower files suit, even if the original suit is dismissed.

In a unanimous opinion written by Associate Justice Samuel Alito, the Supreme Court held that the “text, structure, and history of the WSLA show that the Act applies only to criminal offenses.”

The high court’s opinion noted that private parties may file civil actions to enforce the False Claims Act. Generally, these must be brought within six years of a violation, but the Wartime Suspension of Limitations Act suspends “the running of any statute of limitations applicable to any offense involving fraud against the federal government.”

Separately, the FCA’s “first-to-file bar” precludes a qui tam suit — a suit in which a private

party who assists the prosecution can receive at least some portion of the penalty imposed — if it’s based on the facts underlying a pending action.

Benjamin Carter, who worked for Kellogg Brown when it was a subsidiary of Halliburton Co., initially filed suit in 2006, alleging the technology, engineering, procurement and construction company “fraudulently billed the government for water purification services that were not performed or not performed properly,” according to the Supreme Court opinion.

A federal judge, noting that a similar whistleblower suit had already been filed, dismissed Mr. Carter’s claim.

But a three-judge panel of the 4th U.S. Circuit Court of Appeals in Alexandria, Virginia, held in 2013 that the Wartime Suspension of Limitations Act “applied to civil claims and that the first-to-file bar ceases to apply once a related action is dismissed,” Justice Alito wrote. “Since any pending suits had by then been dismissed, the court held, respondent had the right to refile his case.”

While the Supreme Court disagreed and said the wartime law applies only to criminal cases, it also left the door open for one of Mr. Carter’s complaints to go forward, saying that a first-filed suit does not bar all subsequent related suits, such as when the earlier suit was dismissed for a reason having nothing to do with the merits. The high court sent the case back to the appeals court for reconsideration.

Had the court ruled otherwise regarding the Wartime Suspension of Limitations Act, “it would have been an absolute nightmare — these claims could go on forever,” said Robin S.

Conrad, a partner in the Washington office of McKenna Long & Aldridge L.L.P. and former executive vice president of what now is the U.S. Chamber Litigation Center, which handles litigation for the U.S. Chamber of Commerce.

The federal government is under “enormous pressure” to bring in revenue from false claims allegations, said Ms. Conrad. “The returns on investment on these (False) Claims Act actions could be huge.”

The decision is important for two reasons, said Scott Stein, a partner in the Chicago office of Sidley Austin L.L.P.

On the defense side, “it’s very much a good-news, bad-news decision,” Mr. Stein said.

“Under the WSLA as interpreted by the lower court, as long as there is conflict going on involving armed forces, the statute of limitations would not begin to run. The statute of limitations of the False Claims Act is already aggressive. It’s already six to 10 years,” he said. “This essentially brought some rationality back to (the) enforcement side.”

“On the other side, you had this completely separate issue about the first-to-file bar,” he said of the high court’s decision, which he termed “understandable but disappointing.”

The high court said “you might have serial cases; you might have one case that’s resolved and somebody comes in and files a second case,” he said. The problem is that the Supreme Court “has thrown it back down to the lower courts to figure out under what circumstances that might be acceptable,” he said. “There will be years of litigation throughout the lower courts to try to identify the circumstances under which a subsequent or second-filed case can proceed.”



Justice Alito

INTERNATIONAL

Insurers see big problems ahead if Britain exits E.U.

BY SARAH VEYSEY

A United Kingdom exit from the European Union could challenge the competitiveness of the London insurance market.

Several insurance industry organizations expressed that fear following a pledge by the U.K. Conservative Party, which won the nation’s May elections, to hold a referendum on the United Kingdom’s membership in the European Union.

The U.K. government said it would call on the European Union to make widespread reforms on issues such as immigration, ahead of the ballot initiative.

Possibly as soon as 2016, voters

are to be asked in a binding referendum whether they wish to stay in the E.U. or favor a British exit, known as a Brexit, of the economic, political and trading bloc.

Sources say there would be several significant effects on the U.K. insurance industry should it leave the E.U.

“The main impact on the London-company market of a U.K. exit from the E.U. would be the potential loss of passporting rights for insurers,” said a spokesman for the International Underwriting Association, which represents insurers and reinsurers in the London-company insurance market.

Passporting rights allow U.K.

companies to conduct business throughout the European Economic Area — the 28 E.U. member states plus Iceland, Liechtenstein and Norway — under directives such as the Insurance Mediation Directive, the Consolidated Non-Life and Life Assurance Directive or the Reinsurance Directive.

“Under the current system, companies based in London are free to conduct business across all E.U. member states and establish branch offices while reporting only to their home state regulator,” the IUA spokesman said.

“This arrangement is much more favorable than that for insurers based outside of the European

Union,” he said. “Companies are not, for example, obliged to maintain expensive capital holdings in each of the E.U. member states in which they are doing business.

“If the United Kingdom were to exit (the European Union), insurers and reinsurers from third countries — such as the United States and Japan — might be obliged to choose other centers over London in order to passport into the European union,” he added.

At a recent event in Luxembourg hosted by Insurance Europe, which represents insurers and reinsurers, Lloyd’s of London CEO

See **E.U.** page 22

Premium subsidy up for vote

Lapsed benefit covers unemployed

BY JERRY GEISEL

Hundreds of thousands of employees who lost their jobs to foreign competition or worked for companies whose pension plans failed once again would be eligible for federal health insurance premium subsidies under legislation headed for a vote this month by the House of Representatives.

However, the legislation could increase costs for some employers, though only modestly.

Included in H.R. 1314, which is trade legislation the Senate approved 62-38 last month, are provisions to renew the health insurance subsidy, known as the health coverage tax credit, through 2019.

Until it expired in 2013, the subsidy paid 72.5% of health insurance premiums for people who lost their jobs to foreign competition and for retirees age 55 through 64 whose pension plans were taken over by the Pension Benefit Guaranty Corp.

Like the expired law, the subsidies could be used to offset premiums for a variety of health plans, such as COBRA coverage and plans offered through voluntary employees’ beneficiary associations set up for those who worked for employers in such industries as steel and auto parts manufacturing that failed and went out of business.

However, the subsidies could not be used to offset health insurance premiums for plans offered in the public exchanges authorized by the 2010 health care reform law.

Unlike the health care reform law that ties separate federal premium subsidies to beneficiaries’ income, the health coverage tax credit is 72.5% regardless of an individual’s income.

“This makes health insurance a lot more affordable,” said Ken Garber, Bradenton, Florida co-chair of the Delphi Salaried Retiree Association Benefit Trust, a VEBA that provides coverage of former salaried and

See **SUBSIDY** page 25

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Coverage is underwritten by American Family Life Assurance Company of Columbus. In New York, coverage is underwritten by American Family Life Assurance Company of New York.



AP PHOTO

Dallas, above, and several other cities in Texas suffered severe flooding late last month. Floodwaters submerged Texas highways and threatened homes and businesses.

Turbulent Texas weather expected to exceed \$1 billion in insured damage

■ Insured damage from severe weather in Texas is likely to exceed \$1 billion, according to the Insurance Council of Texas. A spokesman for the Austin, Texas-based industry group said insured losses from April hail and windstorms exceeded \$1 billion, and that May's losses from hail, windstorms and flooding would follow April's lead. Severe flooding around Memorial Day affected much of north, central and east Texas. "There was no shortage of weather catastrophes this past month, and insurance companies and adjusters have been working overtime in reaching all of those who have had property damage," said the spokesman in a statement.

Insurance may not respond to FIFA World Cup scandal

■ The Fédération Internationale de Football Association has \$900 million in event postponement/relocation insurance for the 2018 World Cup games in Russia, according to the organization's 2014 financial report, but the coverage may not respond if the games are moved as a result of FIFA's ongoing corruption scandal. U.S. federal prosecutors last month indicted 14 soccer and marketing officials, including nine FIFA executives, for allegedly arranging bribes to award contracts, among them the choice of South Africa to host the 2010 World Cup. U.S. and Swiss authorities continue to investigate Zurich-based FIFA's selection of Russia and Qatar for the 2018 and 2022 games, respectively, according to news reports. Risks covered by FIFA's insurance policies include "natural catastrophe, accidents, turmoil, war, acts of terrorism, nonparticipation of teams and epidemic diseases," the financial report says. Insurance does not cover cancellation of the event, which FIFA would cover from its own reserves, according to the report. Generally, however, event cancellation policies cover only losses from a cause that is beyond the control of the policyholder, noted a spokeswoman for Swiss Re Ltd. in Zurich. The policies also typically exclude losses arising from fraud, she added.

Insurance rates fall for large accounts

■ Commercial property/casualty insurance rates were flat on average in May but large account policyholders saw decreases, Dallas-based MarketScout reported. The electronic insurance exchange found that only commercial property, businessowners policies and commercial automobile rates rose compared with the same period last year, the first two by 1% and commercial auto by 2%. Accounts generating over \$1 million in premium saw an average rate decrease of 2%, while accounts generating up to \$250,000 in premium sustained an average rate increase of 1%.

Safety managers turn to data to assess organizational risks

■ Safety professionals are increasing their focus on metrics relevant to business executives, such as total cost of risk, a study by Aon Global Risk Consulting finds. "Safety Management Function — Organization and Responsibilities," based on a June 2014 survey of 150 environmental, health and safety professionals, asked respondents about their most pressing environmental, health and safety issues in the coming year. Managing total cost of risk, was the top response at 72%, followed by regulatory compliance at 58% and results tracking at 44%. Elsewhere, when queried about how important it is to have a comprehensive understanding of their organization's total cost of risk, 70% said it was extremely important and 20% said it was moderately important. "Safety professionals need to speak the language of the business and should strive to balance operational efficiencies for the benefit of the firm and employees," said Deborah Weigand, Detroit-based managing director of casualty risk consulting for Aon Global Risk Consulting.

Federal agencies re-issue LGBT employment guidelines

■ Four federal agencies have re-issued an updated guide on discrimination protection for lesbian, gay, bisexual and transgendered federal workers. The Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of Special Counsel and the Merit Systems Protections Board said the guide on the rights and processes available to applicants and employees who allege sexual orientation or gender identity discrimination is being reissued after more than a decade and was revised to reflect major developments in the law. "Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities" provides federal workers with a description of employee rights and agency responsibilities

under Title VII of the Civil Rights Act of 1964, the Civil Reform Act of 1978 and other procedures, the agencies said in a statement.

Former Rutgers broker admits defrauding Aetna

■ A former insurance broker for Rutgers University admitted to stealing more than \$10 million in premiums owed to Hartford, Connecticut-based Aetna Life Insurance Co. Killington, Vermont-based Bonney J. Hebert pleaded guilty before Senior U.S. District Judge Alfred V. Covello in Hartford to wire fraud and money laundering charges related to her theft from Aetna between 2009 and 2012, according to a statement released last week by the U.S. attorney's office for the District of Connecticut. Ms. Hebert's Boston-based brokerage, Academic Risk Resources and Insurance L.L.C., previously brokered contracts between health insurance providers and colleges and universities to provide health insurance for students. Between 2009 and 2012, Ms. Hebert failed to transmit \$10,358,728 in premiums paid by Rutgers, and instead used the stolen funds for personal expenses and to cover the business expenses of her brokerage. After disclosing her scheme to Aetna in 2012, Ms. Hebert sold Academic Risk to another business and directed that payments from the sale be made directly to Aetna. Ms. Hebert currently owes Aetna \$7,846,305.45 in restitution. Her sentencing is slated for Aug. 27.

Largest public companies' pension funding improves

■ The funded status of very large pension plans sponsored by public companies rose in May as rising interest rates lowered the value of plan liabilities, according to a Milliman Inc. survey. Defined benefit plans offered by U.S. employers with the 100 largest pension programs were an average of 84.1% funded as of May 31, up from 82.6% funded as of April 30. At the end of May, the plans had \$1.477 trillion in assets and \$1.756 trillion in liabilities, resulting in a funding deficit of \$279 billion. The funding shortfall at the end of April was \$311 billion.

AIG selling off \$3.7 billion in aircraft leasing firm shares

■ American International Group Inc. plans to sell about 86.9 million ordinary shares of AerCap Holdings N.V. later this month in a transaction worth about \$3.7 billion. The initial sale could be followed by an additional transaction under which AIG would divest itself of all remaining AerCap shares, the insurer said in a statement. AIG has pursued a strategy of exiting noncore businesses to concentrate on its property/casualty and life insurance operations since it received more than \$180 billion in federal assistance starting in 2008 after its near collapse. The total reflects proceeds of about \$3.4 billion from the underwriting offering and an additional \$250 million from the private sale of shares to AerCap, a Schiphol, Netherlands-based aircraft leasing company. AIG received the AerCap shares in a \$7.6 billion cash-and-stock deal in which it sold its International Lease Finance Corp. unit to AerCap in May 2014, which gave AIG a 46% stake in AerCap. In a filing with the Securities and Exchange Commission in March, AIG said that it owned about 96.7 million shares of AerCap. In an SEC filing this month, AIG said that the completion of the sale would leave it with about a 5.4% share of AerCap.

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Chinese insurers rush to site of capsized ship

■ PICC Property & Casualty Co. Ltd., the insurer of a ship that capsized in China's Yangtze River, and other insurers have sent teams to the site to settle claims in connection with what could be the country's worst shipping accident in decades. Divers searched the capsized Eastern Star for more than 400 missing people, many of them elderly domestic tourists. "We have set up emergency leadership groups, rapidly implemented emergency response measures and sent small teams who have already rushed to the site," PICC said in a statement emailed to Reuters. The Eastern Star is owned by Chongqing Eastern Shipping Corp., which runs tours along sections of the Yangtze. Ping An Insurance Group Co. of China Ltd. and China Life Insurance Co. Ltd. also said in statements that they had launched emergency responses to the accident and sent teams on-site to deal with claims.

Reuters

Gallagher's U.K. growth sparks regulator inquiry

■ Arthur J. Gallagher, the London-based international operations of broker Arthur J. Gallagher & Co., has acknowledged it is cooperating with Britain's Financial Conduct Authority on a report about the firm's operations. "We can confirm that we are in discussions with the FCA about an independent skilled person being appointed to assess the company's control and risk framework," a Gallagher spokesman said. The company said the inquiry was not unexpected, given its growth to a large customer base from a medium-size base. "This is an expected development for a rapidly growing organization whose FCA classification has changed from C3 to C2, and has undergone significant change in size and scale in a relatively short space of time," Gallagher said in a statement.

Willis completes deal with London wholesaler

■ Willis Group Holdings P.L.C. has completed its investment in London-based Miller Insurance Services L.L.P. to form a wholesale insurance brokerage. Under the deal, financial terms of which were not disclosed, the two companies' wholesale businesses will combine to trade under the Miller brand in a unit managed and regulated as a stand-alone legal entity and separate Lloyd's of London broker. As

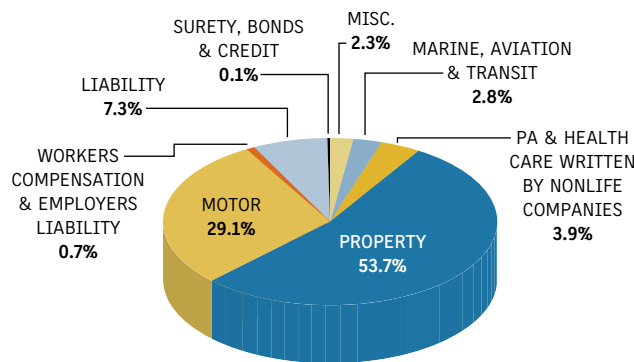
PROFILE: NEW ZEALAND

\$3.89 BILLION

Insured losses from the series of earthquakes in Christchurch, which began in September 2010, are projected to reach as much as \$25.93 billion. A sharp increase in commercial earthquake insurance rates followed the quakes, but rates have since subsided. The wider commercial property insurance market has seen increased competition due to lower reinsurance costs and low recent losses, among other things. Several foreign insurers have increased capacity available in the market.

◀ 2013 P/C gross premiums

MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



NEW ZEALAND

AREA

104,454 square miles

POPULATION

4.55 million

GLOBAL P/C MARKET RANKING

36

2015 GDP CHANGE (PROJECTED)

2.9%

MARKET DEVELOPMENTS

UPDATED MAY 2015

- The Sentencing Act 2002 was amended in December 2014 to allow people injured through the criminal conduct of another to claim reparations to make up the difference between the compensation they receive from the Accident Compensation Corp. and their actual economic loss. Damages claims against employers prosecuted for health and safety violations are expected to increase.
- Insurance Australia Group Ltd. has bought Lumley General Insurance (N.Z.) Ltd. The deal gives IAG an estimated 52% market share in New Zealand.
- In June 2014, the New Zealand Supreme Court restored the original decision in the Bridgecorp case, which concerns directors and officers liability insurance. As a result of the ruling, the receivers of an insolvent company may take charge over the proceeds of a D&O policy, thus potentially depriving directors of their legal defense costs coverage.
- Significant mergers and acquisitions in the insurance brokerage sector took place in 2014. Austbrokers Holdings Ltd. took over BrokerWeb Management Ltd.; Steadfast Group Ltd. took over Allied Insurance Group Ltd.; and Arthur J. Gallagher & Co. took over Crombie Lockwood Ltd. and Mike Henry Insurance Brokers Ltd.

COMPULSORY INSURANCE

Various lines of coverage are compulsory:

- Comprehensive medical insurance for foreign students studying in New Zealand
- Shipowners liability for marine oil pollution
- Civil liability of private building consent authorities, such as surveyors

Various other coverages are automatically covered by the Accident Compensation Corp., a government agency.

NONADMITTED

Unauthorized insurers cannot carry on insurance activity in New Zealand, but there is nothing in the law indicating that insurance must be purchased from locally authorized insurers. This is generally interpreted to mean that insurers can issue any type of policy from abroad, if approached by a buyer or intermediary.

INTERMEDIARIES

Agents and brokers have to be registered with the Registrar of Financial Service Providers. Registered brokers are allowed to place business with nonadmitted insurers. Brokers involved in nonadmitted placements do not have to warn buyers that their insurer is not subject to local supervision.

MARKET PRACTICE

Considerable volumes of business are placed with nonadmitted insurers, particularly in London, Australia and Singapore. Many New Zealand businesses are owned by Australian companies and are covered under Australian policies.

Information provided by Axco Insurance Information Services.
www.axcoinfo.com

part of the transaction, Willis has become a corporate member in Miller, taking an 85% interest in the partnership. Wholesale broking activities will transfer to Miller from Willis, while Miller's treaty reinsurance, U.K. corporate clients and financial institutions retail teams will transfer to Willis, Willis said in a statement. Miller, which was founded in 1902 and employs more than 600 people, generated revenue of £112.9 million (\$190.5 million) for the year ended April 30, 2014.

London insurers jittery over Britain leaving E.U.

■ Insurers are getting nervous about the possibility Britain may leave the European Union, fearing it would curb their ability to sell

policies across the continent. Britain's new Conservative government has committed to holding a referendum on E.U. membership by the end of 2017. The threat of a British exit, or "Brexit," has particularly alarmed the City of London financial district, which fears a loss of Britain's clout in European and global markets. The Association of British Insurers and the International Underwriting Association have expressed their concerns, echoing those of Gerry Grimstone, chairman of Standard Life P.L.C. and TheCityUK, which promotes London as a financial marketplace. British insurers, which had £50 billion (\$76.2 billion) in income in London in 2013, are primarily worried about their ability to sell across the 28-country bloc without setting up full offices or reporting to regulators in each country. For the Lloyd's of London market, the

issue is particularly stark, prompting the 300-year-old institution to flag the costs involved if its 96 syndicates had to set up multiple new offices to keep trading. Leaving Europe "would be bad for business," Lloyd's CEO Inga Beale said. "We think that open trade and being part of a bigger community is very important."

Reuters

Record-low interest rate a threat to E.U. insurers

■ The European Central Bank said record-low interest rates were putting insurers under increasing pressure and warned that any sell-off in stocks and bonds could damage the eurozone's recovery. In its twice-yearly Financial Stability Review, the ECB also said risks

from Greece for the eurozone's governments had "increased sharply" but that their borrowing costs and growth prospects were being helped by measures such as the ECB's bond-buying program. The negative side-effect of that, though, was the squeeze it was putting on insurers that are finding it increasingly difficult to find assets that pay out enough to cover their costs. "Such market conditions pose a significant challenge for some insurance companies' profitability in the medium term, with the potential to erode capital positions in the long run," the ECB report said. "The impact of the low-interest-rate environment is particularly relevant for those life insurers that have locked in high return guarantees and have large asset/liability durations."

Reuters

ALLIANZ TARGETS SPECIALTIES IN U.S. GROWTH PLANS

Q In terms of market conditions, how is 2015 different than 2014?

A I don't think it's much different at all. The biggest similarities from our perspective and from the market perspective are the overcapacity that still resides within the insurance community, which suppresses rates and creates a competitive environment that we've not seen for many years. I think from an insurance company perspective it's an unhealthy environment currently. What I mean by that is insurance company margins are being compressed such that companies are forced to make critical decisions in terms of what lines of business they want to remain in or potentially move out of, which then ultimately creates the conundrum for policyholders as to not having as much choice at the end of the day.

Q What are the greatest challenges for the company in 2015? Is it that overcapacity and that competitive environment?

A That's part of it. Certainly we're part of the overall insurance

Q&A

market, so the comments I just made would apply to AGCS/Allianz (S.E.) as well. But in 2015, one of AGCS' specific challenges is integrating Fireman's Fund into AGCS, a process that has gone extremely well for the first five months. We are now integrating the commercial lines of business that had been written by Fireman's Fund into AGCS.

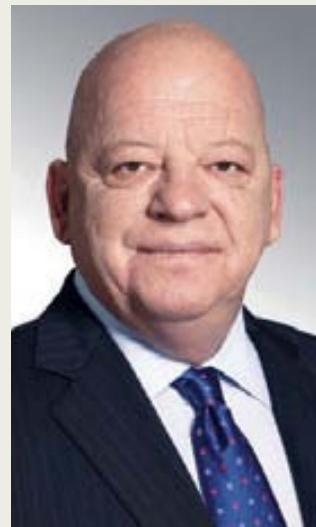
Q Where do you see opportunity in 2015?

A The opportunities for Allianz in the U.S. are significant. Allianz,

being the largest (property/casualty) carrier in the world, had a rather minimal brand awareness and product diversification in the U.S. AGCS in the U.S. was predominantly marine and aviation. Now with the integration of Fireman's Fund, we're a fully commercial product-loaded entity, which gives us tremendous opportunities for profitable growth.

Q Will the company be doing anything differently than in 2014?

A In 2015 we're setting up to become more heavily involved in the financial lines, lines of business in which Allianz has never really been a factor in the U.S. market ... Meanwhile, we will continue to be strong in the niche markets of the marine, aviation and entertainment businesses, and we'll be more aggressive in the casualty liability lines in the U.S. going forward. So we're moving forward in our core lines of business for the balance of 2015, but really gearing up with new product offerings for 2016 and beyond. So the preparation for new product launches in



ART MOOSSMANN

ALLIANZ GLOBAL CORPORATE & SPECIALTY NORTH AMERICA

Lerner to talk about the ongoing integration, along with challenges and opportunities for the company in 2015. Edited excerpts follow.

Art Moosmann is New York-based president and CEO of Allianz Global Corporate & Specialty North America, having assumed that role this year. He is also a member of the board of management. After selling the personal lines business of Fireman's Fund Insurance Co. to Ace Ltd. late last year, Allianz Global Corporate & Specialty is now integrating the Fireman's Fund commercial portfolio. Mr. Moosmann recently sat down with *Business Insurance* Associate Editor Matthew

2016 is essentially what we're doing as one part of our strategies and goals and objectives in 2015.

Q How do you approach staffing and talent improvement?

A People are our greatest resource, and for any company I believe their greatest asset. So

retaining top talent is a top priority, providing them development opportunities, fair compensation and a challenging work environment. Something we've seen over the last six months — particularly ... with the integration of Fireman's Fund — is we're seeing people who over the years have left the company wanting to come back.

COMINGS & GOINGS

UP CLOSE: MICHAEL O'CONNELL

NEW YORK-BASED FINANCIAL INSTITUTIONS INDUSTRY LEADER

Willis North America Inc.

PREVIOUS POSITION: New York-based financial institutions practice leader at Aon Risk Solutions

GOALS FOR NEW POSITION: To grow Willis' market share in the financial intuitions market and to help to shape our value ... to financial institutions. The idea of mobilizing and harnessing our resources and capabilities to develop innovative solutions and services to help our clients enhance profitability and accelerate growth is extremely exciting.

CHALLENGES FACING INDUSTRY: There is a paradigm shift in the financial space that's changing the risk landscape for banks, insurance companies, asset managers and financial technology companies. (There are regulatory changes ... technology changes ... (and) overall demographics with a new generation of customers with different expectations of financial institutions.

INDUSTRY OUTLOOK: With these changes, we see this as an opportunity for Willis to be a true risk management partner.



FIRST INDUSTRY JOB: Financial institutions underwriter at (American International Group Inc.).

ADVICE: Listen intently to clients, and don't be afraid to take chances.

OUTSIDE THE INDUSTRY, A DREAM JOB: Playing tight end for the New York Giants.

HOBBIES: Playing soccer, golfing, running, traveling and running our dog on the beach.

THING MOST PEOPLE DON'T KNOW ABOUT ME: My mom was born and raised in Glasgow, Scotland. Growing up, I think three-quarters of my friends didn't understand her with her accent.

FAVORITE BOOK: "Moneyball: The Art of Winning an Unfair Game" by Michael Lewis.

FAVORITE MEAL: Any kind of sushi.

ON A SATURDAY AFTERNOON: Hanging out with my family, including our two daughters, or watching them on some athletic field.

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EDITORIAL

GETTING AN MBA IN ESP MIGHT HELP

Employers don't like uncertainty under the best of circumstances, and that is particularly true when it runs the risk of leading to a lawsuit. Yet that is precisely what firms may face as a result of last week's U.S. Supreme Court ruling in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores Inc.*

In its 8-1 ruling, the high court held that even if an employee or applicant doesn't mention that he or she needs religious accommodation, the firm may be held liable if it is subsequently determined that this need was later a factor in a negative employment decision.

The origins of the case occurred in mid-2008 when then-17-year-old Samantha Elauf, a practicing Muslim who wears a hijab, was rejected for a job as sales floor employee with New Albany, Ohio-based Abercrombie & Fitch. The chain decided not to offer Ms. Elauf the job after internal discussion about her head scarf, even though she had never brought up the subject of religious accommodation.

The Supreme Court ruled an employer cannot make an applicant's religious practice, "confirmed or otherwise," a factor in employment decisions. In other words, the court said the employer should not have used Ms. Elauf's religious observance as a factor in its hiring decision, as was alleged, even if it was not discussed during the interview.

This creates a problem for employers. In many cases, workers will speak up themselves and announce they need some sort of religious accommodation. And in many others, it will be obvious some sort of accommodation may be needed.

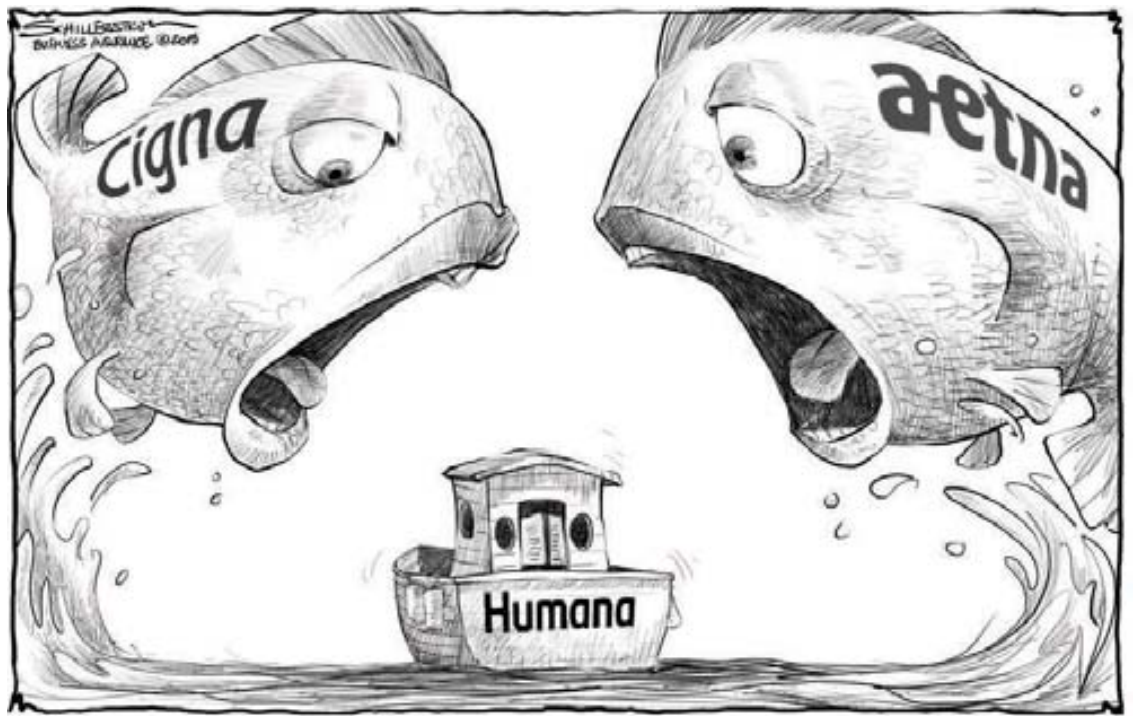
But that leaves at least a few instances where it may not be so obvious, and a little extra sensory perception would come in handy. Questions may naturally arise, for instance, if an Orthodox Jewish woman, who needs to leave work early on Friday and cannot work on Saturday because of her observance of the Sabbath, appears modestly dressed for a job interview in mid-August in New York with a long skirt and sleeves. But what if that job interview is in December? No hiring manager can be blamed for assuming she just wanted to keep warm, which raises at the least the possibility of a subsequent lawsuit if she doesn't get the job.

Perhaps the safest course of action is to have hiring managers just question everybody if they need accommodation. Because you never know, and as the saying goes, "It never hurts to ask."

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SCHILLERSTROM



COMMENTARY

COULD LATENESS BE THE LATEST PROTECTED DISABILITY?

Just when you thought you'd heard it all in terms of employee disabilities, there is always something new.

As reported by attorney Jonathan T. Hyman, a partner at Meyers, Roman, Friedberg & Lewis in Cleveland, in his Ohio Employer's Law Blog last week, doctors have begun diagnosing individuals with chronic lateness, which is said to be a condition caused by the same part of the brain affected in those who suffer from attention deficit hyperactivity disorder.

A 2013 article by the U.K. Daily Mail reports on a then-57-year-old Scotsman who was apparently relieved to be given a diagnosis of chronic lateness by a local hospital. Jim Dunbar told the newspaper he has lost a lot of jobs because of his "condition."

"My family don't believe it and think I'm making excuses. I been late for funerals and slipped in and hid at the back of the hall. I arranged to pick my friend up at midday to go on holiday and was four hours late ... A friend invited me for a meal, and I was more than three hours late."

Diana DeLonzor, the author of "Never Be Late Again: 7 Cures for the Punctually Challenged," has drawn links between chronic lateness and certain personality characteristics, including anxiety, low self-control and a tendency toward thrill-seeking, according to the Huffington Post.

Fortunately, the American Psychiatric Association, at least so far, has not defined chronic lateness as a medical condition or one that might fall under the Americans with Disabilities Act.

But as Mr. Hyman points out, that does not mean that at some point there will not be an effort to use it



JUDY GREENWALD
SENIOR EDITOR

as an ADA-protected disability. It's not such a big step from all this to workers claiming they could not help being late, and plaintiff attorneys are rarely shy about embracing new challenges.

Perhaps businesses should brace themselves.

Meanwhile, just because some employees may try to use discrimination law to their advantage in a

specious cause does not mean employers are always entirely innocent themselves.

A case in point is a report earlier this month on Fortune.com that "digital native," a term coined by author Marc Prensky in 2001, is starting to creep into help wanted ads. An ad for a director of creative and brand marketing at a car-sharing service, for instance, said the firm is seeking a "proven creative leader and digital native."

These "natives" apparently would be people to whom working with "digital" — i.e. computers, Internet, games and the like — is "native." In other words, these employers are seeking young people who grew up with computers, a less-than-subtle indication that over-40 "old-timers" need not apply. All of which, of course, raises at least the specter of age discrimination under the Age Discrimination in Employment Act.

But hey! What if they always came to work on time?

Phoning it in: Employers turn to telemedicine to offset costs

Telemedicine offers cost savings and convenience to employers and workers alike, but the practice also carries several potential pitfalls of which employers should beware. Attorneys Amy Lerman and René Quashie in the health care and life sciences practice at Epstein Becker & Green P.C. in Washington detail the risks and benefits.

Employers remain under extreme pressure to reduce the health care costs of their employees, while cutting absenteeism and increasing employee productivity. Beginning in 2018, a new twist in the form of a 40% excise tax is set to be imposed annually on health plans with premiums exceeding \$10,200 per year for individuals and \$27,500 per year for families. According to various projections, the so-called “Cadillac tax” may affect at least one-third of U.S. employers because it generally will be applicable to employer-sponsored health plan coverage, including coverage under group plans offered by employers to their employees.

Making the effort to reduce health care costs even more difficult is the fact that many employees hesitate to take time off work, particularly for ailments they perceive as minor. According to the American Medical Association, an average physician’s visit can take up to four hours out of an employee’s day.

Because many employees skip the doctor, relatively minor health issues often escalate into conditions requiring more intensive and costlier services. To combat this, some employers have established onsite clinics where their employees can access providers to receive sick care and preventive services. But there are high costs associated with creating and operating these clinics. Enter workplace-sponsored access to telemedicine, designed to address all of these variables.

Telemedicine, the diagnosis and treatment of patients via electronic communications, has gone mainstream. While only 20% of U.S. employers offer their employees access to telemedicine services, nearly 40% of U.S. employers surveyed by corporate risk and financial management company Towers Watson & Co. said they plan to offer access to such services in 2015, and an additional 33% surveyed said they are considering offering access to these services within the next three years.

In a recent study focused on U.S. employers with at least 1,000 employees, Towers Watson predicted that employers could save up to \$6 billion annually if employees would routinely engage in remote consults for non-urgent primary care. Effective use of telemedicine services could eliminate 15% of physician office visits, 15% of emergency room visits and 37% of urgent care visits, according to the study.

Increasingly, the use of telemedicine technologies is viewed as an efficient and cost-effective method for delivering and accessing quality health care services. Patients also have become more adept at and comfortable with using technology instead of face-to-face interactions with physicians and other health care professionals for certain types of conditions.

This shift can be attributed to several factors, including a health care system rapidly transitioning from fee-for-service to one in which reimbursement is closely tied to quality and patient outcomes.

According to a 2013 Forbes article, annual utilization of telemedicine services was projected to increase to an estimated 3 million patients by 2018 from 250,000 in 2013.

Notwithstanding the benefits, employers considering offering telemedicine should understand some significant, though not insurmountable, legal and regulatory issues related to its use.

Licensure

State professional licensure laws are a major stumbling block to interstate practice of telemedicine. With limited exceptions, providers must be licensed in every state in which they intend to practice, and each state has its own licensure requirements. Generally, out-of-state physicians, absent certain exceptions, must obtain full and unrestricted licenses to practice medicine in a particular state. Employers should understand how the state(s) in which they are located deal with licensure.

The Federation of State Medical Boards developed an Interstate Medical Licensure Compact to facilitate license portability and the practice of interstate telemedicine. Six states have enacted it, and 11 more have introduced legislation seeking to become Compact states. Similarly, a Nurse Licensure Compact is in place in 24 states, but it covers only registered nurses and licensed vocational nurses. (Compacts for nurse practitioners and physician assistants are being separately developed.)

Physician-patient relationships

States have various criteria for establishing proper physician-patient relationships, one of which is an evaluation or examination of a patient

by the treating physician. This is particularly important when a physician is prescribing medications. Some states, Arkansas, for example, explicitly require a face-to-face examination or evaluation before a physician can prescribe online. Other states, including Missouri, require a physical examination or evaluation but do not use terms such as “in-person” or “face-to-face” to describe the nature of such exams. Still medical boards in these states have interpreted the applicable laws to mean that the treating physician must meet the patient face-to-face. A growing number of states such as Maryland and Virginia explicitly allow physical examinations or evaluations by electronic means or telemedicine technologies. Privacy and security

Compared with face-to-face encounters, telemedicine encounters are more vulnerable to risks such as third-party interference, signal errors and data transmission outages. These risks may result in loss of data, interrupted communications or alteration of important clinical information and, in turn, make telemedicine open to breaches of protected health information. The federal Health Insurance Portability and Accountability Act’s privacy and security regulations are particularly relevant to telemedicine and the electronic data they generate. State by state, analogous privacy and security laws must be carefully considered. The Federal Trade Commission also is taking a more active role in enforcement in the area of health information breaches.

Medical liability

Adapting existing principles of malpractice liability to telemedicine is a challenging task, especially the question of what constitutes an appropriate “standard of care.” There are many unresolved issues and questions regarding malpractice liability as it relates to telemedicine, including the nature of physician-patient relationships, informed consent, practice standards and protocols, supervision and availability and provision of professional liability insurance coverage.

Fraud and abuse

Finally, all potential telemedicine arrangements must comply with all applicable federal and state health care fraud and abuse laws, including anti-kickback statutes and/or physician self-referral prohibitions.

When contemplating potential fraud and abuse risks, each state has its own versions of these laws, so state-by-state analyses often are necessary. Specific facts and circumstances always must be considered because these analyses are not one-size-fits-all.

Employers seeking to access the telemedicine market must carefully assess the legal and regulatory requirements and limitations of any potential arrangements.



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SPECIAL REPORT

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Regulatory Update

New whistleblower rules tougher on employers

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Trucking industry faces driver training challenge

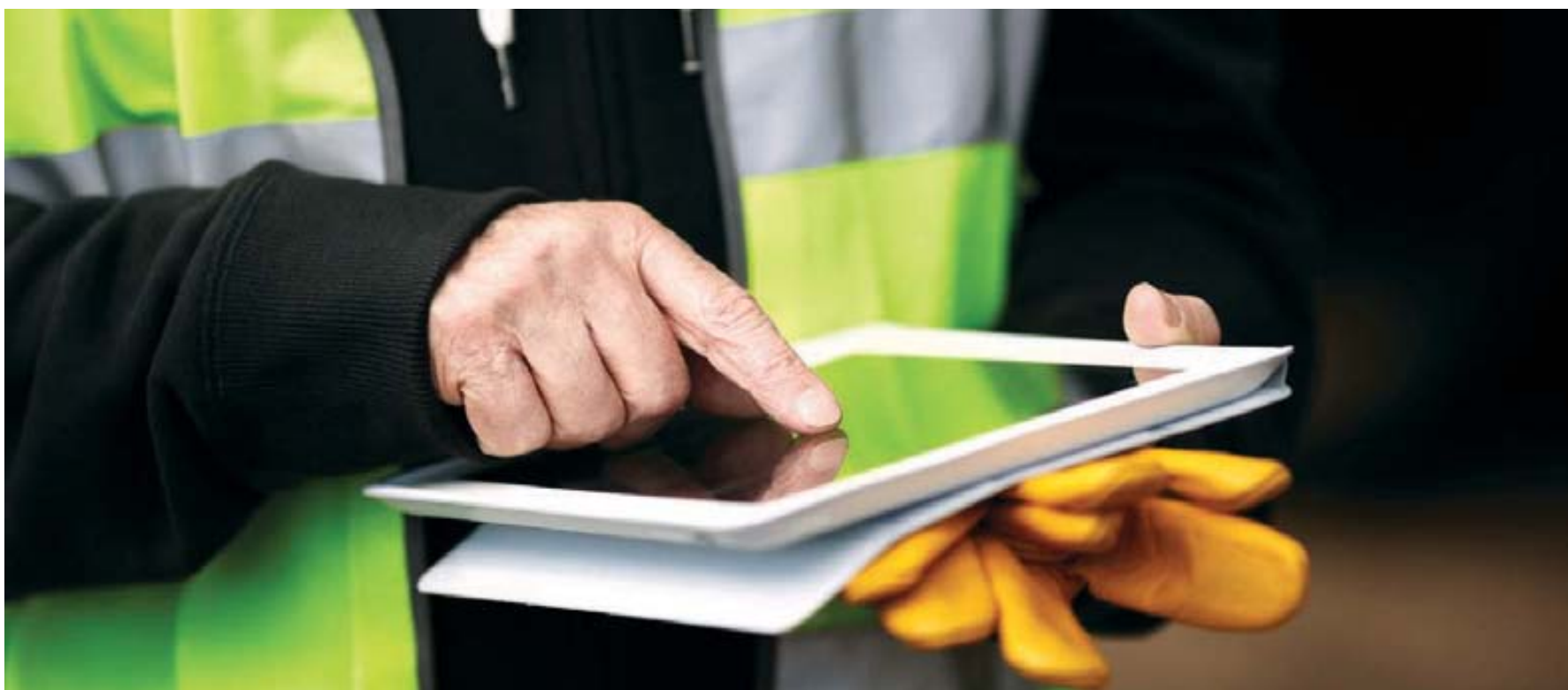
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Coal mining firms use technology to improve safety

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Largest safety consultants ranked

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Employers wary of injury rules

Some safety programs may need rethinking to comply with reporting requirements

BY STEPHANIE GOLDBERG

A federal agency's efforts to ensure that workers are neither discouraged from reporting job-related injuries and illnesses nor disciplined if they do report them could upend some employers' safety programs and drug-free workplace policies.

The U.S. Occupational Safety and Health Administration's proposal dates to November 2013, when the agency said that certain employers could be required to report injuries and illnesses electronically and that OSHA would post that data online.

Employers with 250 or more workers would have to submit information quarterly, and employers with 20 or more workers in certain industries with high injury and illness rates would have to submit information annually.

Opponents cited privacy concerns and suggested that making the data public could cause employers to underreport injuries and work-related illnesses, including certain cancers and HIV. OSHA countered with a supplemental rulemaking notice last August,

which states that discouraging workers from reporting injuries and illnesses through workplace policies and procedures, such as incentive-based safety programs and post-injury drug testing, would be considered a violation subject to civil penalties.

The proposal grew from OSHA's longtime concern that incentive-based safety programs might discourage workers from reporting injuries, said Roger S. Kaplan, a Long Island-based shareholder at Jackson Lewis P.C. Such programs usually offer money or another awards when the workplace goes a specified time without an injury, he said.

In addition, OSHA said employers that retaliate against workers for reporting injuries and illnesses or failing to report in accordance with workplace policies, for example within 24 hours or at a specified location, could also face a civil penalty.

Experts say this supplemental rule should be of even greater concern to employers. But it "hasn't gotten as much notoriety as it should have ... given the ramifications of it," said Albert B. Randall Jr., Baltimore-based

principal at Franklin & Prokopik P.C. "Perhaps many people don't think it's going to go through, so they're not overly worried about it."

However, experts and sources say the apparent lack of employer concern could stem from the fact that relatively few are aware of the revised proposal.

"This supplemental rulemaking would be the vehicle by which OSHA would come after an employer for maintaining an incentive program they didn't like," said Marc Freedman, executive director of labor policy at the U.S. Chamber of Commerce in Washington. "They would be able to issue these citations without an employee coming forward and filing a complaint. In effect, you'd have whistleblower actions without a whistleblower."

"On the one hand," Mr. Randall said, "OSHA is talking about how they're trying to do this to encourage more safe workplaces, but it seems to have a contradictory effect when you take away an employer's ability to promote a safe workplace."

OSHA also said in its plan that post-injury

OSHA'S PLAN

The U.S. Occupational Safety and Health Administration's proposal to improve tracking of workplace injuries and illnesses states:

- Employers with 250 or more workers would electronically submit information quarterly.
- Employers with 20 or more workers in industries such as construction, manufacturing and agriculture would electronically submit information annually.
- OSHA would post online injury and illness data.
- OSHA could assess civil penalties on employers who discipline workers who file injury and illness reports.

WHISTLEBLOWER REFORMS TURN TIDE AGAINST EMPLOYERS

Rules add more protections to workers, target more companies

BY LOUISE ESOLA

drug testing, used by many employers to enforce a drug-free workplace, could deter worker reporting.

If a worker who's under the influence of drugs or alcohol is injured on the job and they know they're going to be tested, they might choose not to report it, Mr. Freedman said.

"In OSHA's eyes, that means that the employer is (withholding) data," he said.

The notice states that post-injury drug testing may be permitted if there's reason to suspect drug use. However, in states such as Alabama, Georgia and Virginia, an accident is enough reason to order a drug test, sources said. And in the majority of states, employers have the option to test workers for drugs after an injury occurs, Mr. Randall said.

"There's a strong argument that state laws are going to be preempted" if this rule takes effect, Mr. Randall said.

It's not realistic to require reasonable suspicion of drug or alcohol use if nobody witnessed the accident and an injury occurs, he said, adding workers can appear impaired as a result of their injuries.

"What training have OSHA compliance officers had in identifying reasonable suspicion, and are they going to second-guess employers on that?" Mr. Kaplan said. "These unanswered questions" leave employers to wonder whether "OSHA is now going to be getting into the business of second-guessing employer policies."

Mr. Kaplan said part of the problem is that the notice contains no specifics of a final rule, which OSHA said earlier was expected by August, but declined further comment for this report.

Robert Cartwright Jr., Exton, Pennsylvania-based safety and health manager of Bridgestone Retail Operations L.L.C. and treasurer of the Risk & Insurance Management Society Inc., said his biggest concern remains that injury and illness data could be made public without context.

"It's not a matter of saying we don't want to have transparency," Mr. Cartwright said. "I don't think any company would look at it that way. If (OSHA) were to use the information that's in the Electronic Data Interchange ... most companies would be agreeable to that."

Sources said they hope to learn more when OSHA releases its next regulatory agenda this summer. The administration declined to provide an updated timeline, saying it's still reviewing comments from the period that ended in October.

"We're left with the presumption that this is the last opportunity to comment on (the notice) before we see a final rule," Mr. Freedman said of the far-reaching OSHA proposal.

Recently finalized federal rules make it simpler for employees to file complaints when they raise workplace safety issues and are subjected to retaliation.

Rules that the U.S. Occupational Safety and Health Administration finalized in March allow filing of retaliation complaints by workers under 22 federal laws.

Employer actions that can spark whistleblower complaints include demotions, layoffs and firings. And major points of the rules now allow employees to make their complaints verbally in person or over the phone; include the requirements to "economically reinstate" laid-off or fired workers who are party to an investigation; and greater employer disclosures to whistleblowers.

Employers found by OSHA to have violated its whistleblower rules, such as Union Pacific Railroad (see related story), face fines and requirement such as training supervisors and adopting policies that are not considered retaliatory.

"This is another signal from the Department of Labor and OSHA that the agency is becoming more friendly to whistleblowers," said David J. Marshall, a partner at Washington-based law firm Katz, Marshall & Banks L.L.P., which represents whistleblowers.

"Employees who turned to OSHA for justice were not being treated fairly by OSHA," he said, "and OSHA's (past) procedures favored employers."

In addition, even companies outside of industries subject to the Sarbanes-Oxley Act could be held liable if they contract with companies that are subject to OSHA's rules.

"The rules apply to a wider swath of employers, those who never thought they'd be in the gun sight of OSHA," said R. Scott Oswald, managing principal of Washington-based The Employment Law Group P.C., which represents whistleblowers. "These are new rules every employer ought to become familiar with."

"OSHA is encouraging people to come forward," Mr. Oswald said. "It's safe to say these rules are employee-friendly from start to finish."

The rules make permanent interim rules OSHA had in place since 2011, said Anthony Rosa, Washington-based deputy director of OSHA Directorate of Whistleblower Protection Programs.

"The agency feels comfortable with the new regulations," he said.

Several organizations had argued that some of the new rules are unfair to employers.

For example, the Washington-based Society of Corporate Secretaries and Governance Professionals argued the economic reinstatement requirement is unfair for employers who prevail in a OSHA whistleblower retaliation investigation. Allowing oral complaints may be unnecessary since most are filed by "sophisticated professionals," Darla Stuckey, the society's senior vice president of policy and advocacy, wrote in earlier comments.

The nonprofit Washington-based Equal Employment Advisory Council also objected

ACTIONS

- Employer actions can be determined by OSHA to be retaliation against whistleblowers who complain about workplace safety or health in general, as well as such issues in transportation industries (airlines, commercial motor carriers, public transportation, railroads, maritime, motor vehicles) environmental concerns (asbestos in schools, pipelines), financial and health insurance reforms, and securities laws.
- Employer actions that can be found to be retaliatory include policies that punish workers for making whistleblower complaints; threats or intimidation; denying overtime, promotions and benefits; demotions, reassignments, reducing pay and hours, suspensions, layoffs, firings, blacklistings; and other disciplinary steps.
- Employee awards can include compensatory and punitive damages, back pay, reinstatement and removing adverse employment record references.
- Employers can defend against punitive damages with a clear-cut anti-retaliation policy and demonstration that a manager acted on his or her own.



to allowing oral employee complaints.

"Requiring a written complaint emphasizes the gravity of invoking federal statutes protection, and thus discourages frivolous complaints," Jeffrey Norris, president of the advisory council, wrote in earlier comments.

Both organizations could not be reached for comment following formal imposition of the new rules.

Mr. Oswald praised OSHA's transparency concerning employer statements, which pre-

viously were made in private.

"Misstatements can now be used against employers later on," he said. "There are now consequences for employers. These statements are under oath, supplied to the complainant."

Tom Hams, Chicago-based managing director and national practice leader of employment practices liability insurance at Aon Risk Solutions, said there are more opportunities than ever for employers to get roped into a whistleblower retaliation suit — even in cases that a manager might not perceive as retaliatory.

To help handle what he predicts could become a major issue for employers, Mr. Hams suggests that employers retrain managers to understand what an employee could feel is a form of retaliation.

"Not inviting somebody who has made a complaint to lunch is an example," Mr. Hams said. "When it's a softer issue, that is less likely to be perceived as retaliation by a manager ... Those are the ones that can get you."

He also suggests employers review their employment practice liability insurance coverage.

"There will be more findings of liability in cases that OSHA investigates," Mr. Marshall said.

"The only way employers can minimize their liability for whistleblower retaliation and encourage employees to come forward with issues that need correction is to ensure that the avenue for employee reporting of safety and compliance is an open one that leads to understanding and investigation of the matter, rather than retaliation against the whistleblower," he said.

"These whistleblowers, in alerting the government to violations at their companies, are often protecting the safety of employees as well as saving the government from wasteful spending and safeguarding investors. We need people to feel protected when they do the right thing for the public," said Kevin Seely, a San Diego-based partner at Robbins Arroyo L.L.P.

UNION PACIFIC MUST PAY \$100,000 FINE

The U.S. Occupational Safety and Health Administration has ordered Union Pacific Railroad to pay an injured worker \$100,000 in compensatory and punitive damages for retaliating after he reported he was injured while lifting materials and equipment.

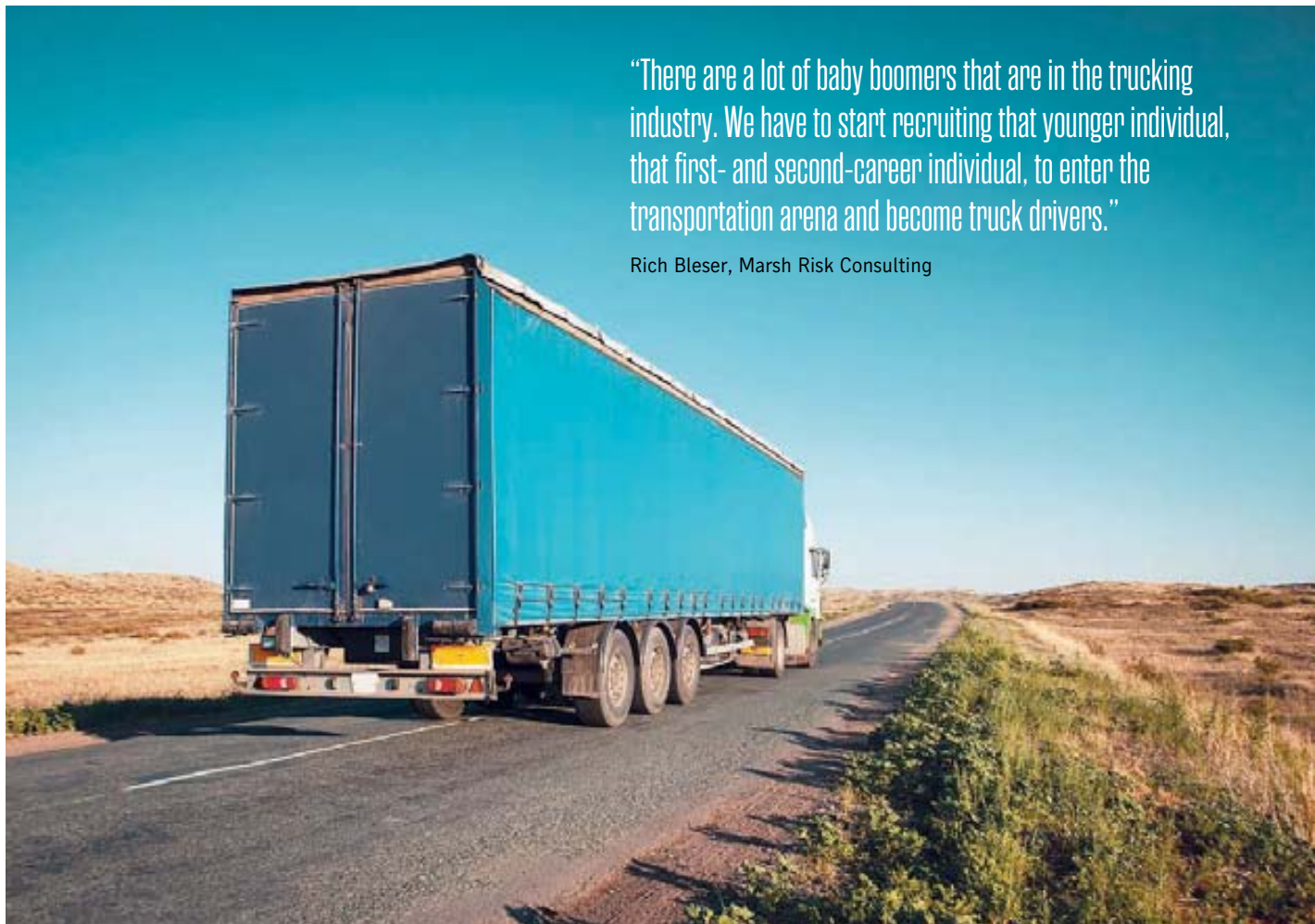
The principal operating unit of Omaha, Nebraska-based Union Pacific Corp. initially accused the unidentified employee of being the cause of his own injuries in 2011 in Roseville, California, for not using proper ergonomic and safety measures, and suspended him for five days.

It later cleared his record and paid him for the days, OSHA said in April.

The case "follows a pattern of behavior by Union Pacific toward its injured employees" of retaliating "repeatedly" against workers who report job-related injuries, OSHA said in a statement. The railroad has faced more than 200 whistleblower complaints since 2001, it said.

Union Pacific could not be reached for comment.

By Louise Esola



“There are a lot of baby boomers that are in the trucking industry. We have to start recruiting that younger individual, that first- and second-career individual, to enter the transportation arena and become truck drivers.”

Rich Bleser, Marsh Risk Consulting

Focus turns to improving safety as trucking industry rebounds

Demand for next generation of drivers fuels debate over training

BY SHEENA HARRISON

Federal training requirements being developed for entry-level commercial vehicle jobs could help improve safety among inexperienced drivers, but it also could make it more difficult for trucking firms to recruit new hires during a nationwide truck driver shortage.

“There, without a doubt, will be more hurdles to clear to provide training for drivers,” said Boyd Stephenson, director of hazardous materials and commercial driver licensing policy at the Arlington, Virginia-based American Trucking Associations. “This means that it’s going to be more difficult to get new drivers onto the road. We can only hope that it also means that we’re going to be able to get safer drivers onto the road.”

The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration convened a 26-member advisory committee in February to develop safety regulations for entry-level professional truck and bus drivers. Recommendations developed this spring by the committee — including representatives of the trucking and insurance industries, as well as government and labor representatives — are expected to be reviewed by the FMCSA and published this fall as a notice of proposed rulemaking.

The rulemaking discussion was mandat-

TRUCKING MISHAPS

The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration in April said large-truck and bus crashes involving property damage, injuries and fatalities have shown a decline from 2003 to 2013, despite a recent uptick from an increase in such accidents.



ed by the Moving Ahead for Progress in the 21st Century Act, better known as MAP 21, a federal transportation bill that generally

reauthorized funding for federal surface transportation spending that President Barack Obama signed into law in July 2012.

Discussions about new-driver safety training come at an opportune time because the trucking industry is growing again despite losses during the Great Recession, but it faces an aging workforce.

“There are a lot of baby boomers that are in the trucking industry,” said Rich Bleser, senior vice president and fleet specialty practice leader at Marsh Risk Consulting in Milwaukee. “We have to start recruiting that younger individual, that first- and second-career individual, to enter the transportation arena and become truck drivers.”

Nancy Bendickson, senior consultant at Aon Global Risk Consulting in Minneapolis, said more trucking companies are hiring and training newer drivers to fill open positions but have been doing so without a consensus on standard practices for such training.

Trucking industry companies agree that entry-level drivers should be trained to operate large commercial vehicles, Ms. Bendickson said.

“I think that due to their lack of experience, say, in handling equipment, driving situations or even understanding all that’s mandated of them, that could increase their

risk for having a motor vehicle crash,” she said.

Mr. Stephenson said entry-level commercial drivers are more likely to have accidents that involve property damage than injuries or fatalities. That’s because they are cautious about being behind the wheel of large trucks, but often have not mastered backing, turning or other common maneuvers.

Mr. Stephenson, a member of the FMCSA rulemaking committee, said committee participants have been divided on whether new drivers should have to spend a minimum number of training hours on the road to demonstrate their competency or whether they should have to pass a test showing they can perform certain functions while driving a commercial truck.

“That means that there are people that will very quickly demonstrate these things and move on to testing and getting their license,” Mr. Stephenson said. “It also means that there are people who will take far more time than the hours would require or might never meet the necessary safety requirements. So (an hours-based requirement) essentially sets a static standard, but (a performance-based requirement) says you must check the boxes and then you may move on.”

Darren Beard, senior loss control consultant and transportation and fleet safety specialist at Lockton Cos. L.L.C. in Kansas City, Missouri, believes new training requirements could hinder trucking hiring and create a burden for smaller companies, which comprise a majority of the U.S. trucking industry.

For instance, the training requirements could prevent job seekers from considering the trucking industry, Mr. Beard said. He’s also concerned that trucking companies could seek experienced drivers to avoid new training regulations, making it harder for smaller firms to compete for recruits.

“The drivers who will have enough experience not to be classified entry-level drivers will obviously become a larger commodity than they already are today, and my fear is that it will further push people from looking at the trucking industry as a viable career,” he said.

Additionally, Mr. Beard said larger trucking companies likely already have training programs that would meet any federal standards, leaving smaller firms with the task of developing new curricula in the wake of new federal training standards.

While the FMCSA and the trucking advisory committee develop training requirements for newer commercial drivers, experts say trucking firms can take a proactive role in helping entry-level drivers stay safe.

That includes implementing defensive driving programs, working to reduce driver distraction from cellphones and other devices and promoting healthy lifestyles that help drivers stay alert and well on the road.

“I think it’s going to be really important that (employers) get some behind-the-wheel time with new drivers and that they provide an ongoing coaching evaluation of the driver to really ensure that driver has the knowledge and the driving skills needed to become a successful commercial vehicle driver for them,” Ms. Bendickson said.

COAL MINING FIRMS STRIVE TO CLEAN UP IMAGE AS SAFETY CONCERNS GRAB REGULATORS' ATTENTION

Technology advances help keep miners safe underground and on the surface

BY BILL KENEALY

Coal mining companies are making strides to comply with evolving regulations from the U.S. Mine Safety and Health Administration while still taking steps to improve safety on their own.

Of several initiatives by the agency, imposition of a final rule that's intended to lower miners' exposure to breathable coal dust in underground and surface coal mines may have the biggest effect on the industry.

During the first phase of the rule, completed in March, the agency collected more than 41,000 dust samples from mines across the country and found about 99% were in compliance with the new standard, which lowers the acceptable amount of airborne coal dust to 1.5 milligrams per cubic meter of air from 2.0 in areas of underground mines where coal is produced and for surface mines.

According to the latest full-year data from the U.S. Energy Information Administration, there were 1,061 coal mines and 80,396 miners in the U.S. at the end of 2013. That compares with 1,435 mines and 86,859 miners at the peak of production for the U.S. coal mining industry in 2008.

This coal mine consolidation in the U.S. comes as the industry invests in technology and makes better use of automation, enabling companies to maintain production with fewer workers.

Moreover, the industry faces competitive pressures as other nations, most notably China, continue to increase their coal production relative to the U.S.

Joseph A. Main, assistant secretary of labor of mine safety and health, said the coal industry's successful reduction in dust levels was due largely to its increased use of ventilation systems, sprayed water to reduce dust and environmentally controlled cabs in vehicles.

"Better dust-control systems are in place than ever before for our nation's coal miners," Mr. Main said in an April statement about the test results. "This rule is working."

Other technology also is aiding mining firms' efforts to keep workers safe and avoid enforcement

actions.

"We hear a lot about the enforcement side, but there have been great strides in safety in recent years from the industry perspective from what I have been seeing in the field," said Joe Smith, Crab Orchard, West Virginia-based senior risk engineer of mining at Zurich North America.

Mr. Smith said mining firms are using better radios, proximity detectors that shut equipment down to avoid trapping workers between pieces of equipment or against a stationary object, real-time carbon monoxide monitoring and onboard cameras that enable workers to see what's ahead and behind them as they operate vehicles.

"We now have underground tracking available for every miner in a coal mine, so one person in a control room could see where every person is at all times," Mr. Smith said. "That's huge."

While the tracking is available, it is not mandated and not every mine uses it.

Gary Muck, St. Louis-based senior vice president of loss control at Lockton Cos. L.L.C., said mining industry risk and safety managers need to move beyond compliance to tackling issues that improve safety and limit the company's total cost of risk, which is the sum of all aspects of an organization's operations that relate to risk, including workers compensation costs.

The Mine Safety and Health Administration's "reportable incident rate may not correlate with your workers comp rate," Mr. Muck said. "MSHA keeps coming up with citations, but they often have little to do with (the total cost of risk.) The fact that latches are broken on bathrooms is not what is hurting our miners."

According to MSHA, during the first half of 2014, of the eight miners killed in accidents in the coal mining industry, four miners died in machinery accidents, two miners were killed in powered haulage accidents and two miners died in a double fatality when a coal seam burst.

Bruce Watzman, Washington-based vice president of safety and health at the National Mining Association, said the pace of technology-induced change in the min-



VIOLATIONS

Top 2015 violations for surface coal mines through May 28

- Failure to address equipment defects in a timely manner: **326**
- Failure to take representative dust sample from designated work positions: **283**
- Combustible material accumulation: **273**
- Presence of defects, such as worn tires, defective steering or brakes, malfunctioning hydraulics: **190**
- Failure to maintain firefighting equipment: **135**

Top 2015 violations at underground coal mines through May 28

- Combustible material accumulation: **1,980**
- Lack of approved ventilation plan: **1,039**
- Combustible rock dust percentage too high: **1,000**
- Lack of electrical equipment maintenance: **741**
- Insufficient supports of mine roofs to avoid cave-ins: **734**

Source: Mine Safety and Health Administration

ing industry change means that areas of regulatory emphasis often do not reconcile with current safety threats.

"We are still dealing with an agency that was born out of a statute from 1969 and still operates under the guise of that statute while the industry that they are regulating is dramatically different," Mr. Watzman said. "We continue to wonder about whether MSHA's resource allocations are correct given the changes in the industry."

He criticized the Robert C. Byrd

Mine Safety Protection Act of 2015, which was reintroduced this year in Congress and would expand the agency's enforcement power, including expedited authority to close mine operations with repeated and significant safety problems. Currently authorities can shut down a mine under sections of the Federal Mine Safety and Health Act of 1977, but the process is lengthy and subject to appeal from the mine operator.

"In our view, MSHA already has the necessary tools available to them and we are seeing safety

improving across the industry in the absence of new statutory authority," he said.

But Dan Colton, a Minneapolis-based partner at Dorsey & Whitney L.L.P. who specializes in mining, regulatory affairs and environmental law, said regulatory oversight is a constant in the mining industry.

"Taking a mineral deposit from conception through to getting permits is a heavily regulated undertaking," he said. "Once you are up and operating, you are heavily regulated as well."

LARGEST SAFETY CONSULTANTS

The 10 largest safety consultants ranked by 2014 revenue from unbundled safety consulting services¹

Rank	Company/Address	Phone/Website	Safety consulting revenue	Total staff	Total clients
1	Bureau Veritas S.A. 1601 Sawgrass Corporate Parkway Suite 400 Fort Lauderdale, FL 33323	888-357-7020 www.us.bureauveritas.com	\$491,000,000	3,800	50,000
2	DuPont Sustainable Solutions 4417 Lancaster Pike Wilmington, DE 19805	800-532-7233 www.safety.dupont.com	\$182,548,000 ²	500	300
3	Marsh Risk Consulting 1166 Avenue of the Americas New York, NY 10036	866-928-7475 or 212-345-9589 www.marsh.com , www.marshriskconsulting.com	\$104,000,000	354	3,500
4	Esis Inc. 436 Walnut St. Philadelphia, PA 19106	215-640-1000 www.esis.com/hse	\$29,000,000	146	N/A
5	Liberty Mutual Commercial Markets 175 Berkeley St. Boston, MA 02116	617-654-3532 www.libertymutual.com	\$25,000,000	460	14,126
6	Safety Management Group 8335 Keystone Crossing Suite 103 Indianapolis, IN 46240	800-435-8850 www.safetymanagementgroup.com	\$15,935,949	121	257
7	FDRsafety L.L.C. 360 Cool Springs Blvd. Suite 101 Franklin, TN 37067	888-755-8010 www.fdrsafety.com	\$14,659,000	80	1,000
8	Ramboll-Environ Inc. 20 Custom House St. Suite 800 Boston, MA 02110	617-259-0172 www.environcorp.com	\$11,000,000	145	2,500
9	PSRG Inc. 800 W. Sam Houston Parkway S. Suite 107 Houston, TX 77042	713-532-8800 www.psrg.com	\$10,000,000	75	750
10	Zurich Services Corp. 1400 American Lane Schaumburg, IL 60196	800-982-5964 www.zurichna.com/zna/risk_engineering/risk_engineering.htm	\$5,400,000	202	134

¹ Revenue from safety consulting services provided on a direct, unbundled basis; list includes only participating companies that provided verification of stated revenue; some companies provide other consulting services besides safety.

² BI estimates based on DuPont annual report and press releases.

Source: BI survey

INDUSTRIAL HYGIENE CONSULTANTS

Safety consultants with the largest number of industrial hygiene consultants

Company	Number
Bureau Veritas S.A.	753
Esis Inc.	50
Liberty Mutual Commercial Markets	36
Marsh Risk Consulting	30
Pekron Consulting Inc.	28

Source: BI survey

OCCUPATIONAL HEALTH CONSULTANTS

Safety consultants with the largest number of occupational health consultants

Company	Number
Bureau Veritas S.A.	750
Liberty Mutual Commercial Markets	370
Safety Management Group	113
Ramboll-Environ Inc.	80
PSRG Inc.	75

Source: BI survey

LARGEST SAFETY SPECIALIST WITH 100% REVENUE FROM SAFETY CONSULTING

Company	Safety consulting revenues
ESIS Inc.	\$29,000,000
Safety Management Group	\$15,935,949
FDRsafety L.L.C.	\$14,659,000
PSRG Inc.	\$10,000,000
Strategic Safety Associates	\$2,925,000

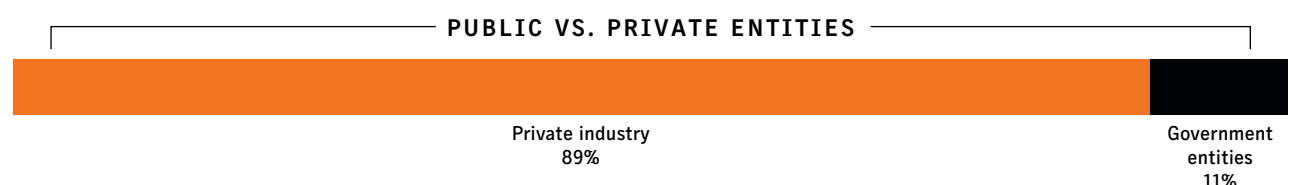
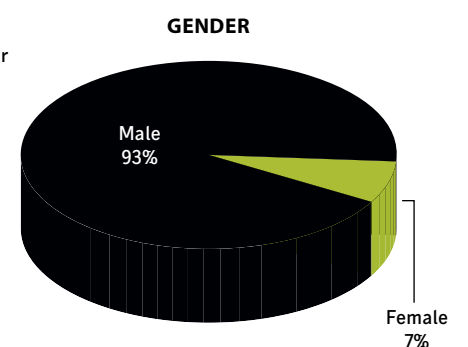
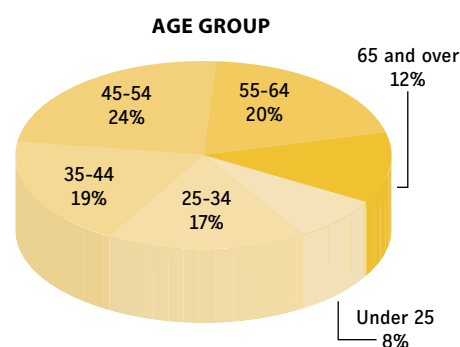
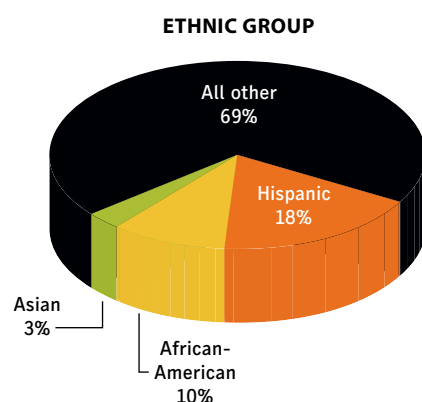
Source: BI survey

4,585

WORKERS KILLED ON THE JOB

Source: U.S. Bureau of Labor Statistics, 2013
(latest year for which data is available)

FATAL OCCUPATIONAL INJURIES: DEMOGRAPHICS



40 UNDER 40

BROKER AWARDS 2015
BUSINESS INSURANCE

NOMINATIONS OPEN

Who are your broker superstars?



THEY WOULD WEAR CAPES (IF IT DIDN'T VIOLATE COMPANY DRESS CODE).

Business Insurance's 40 Under 40 Broker Awards program honors the top insurance brokers under the age of 40 across the United States. Honorees are recognized for their leadership, client service skills and expertise in the retail commercial insurance brokerage industry.


Winners are announced online in August and their profiles published in the October 12, 2015, issue of *Business Insurance*. The program culminates with a recognition events in New York (Northeast), Chicago (Midwest), Atlanta (South) and Los Angeles (West).

For more information about the nomination process, contact Gavin Souter, editor of *Business Insurance* at gsouter@businessinsurance.com or 312-649-5482.

Deadline to submit nominations is Monday, June 15 at 11:59 p.m. EDT.



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Underwriter to focus on health care liability

New York-based Pioneer Special Risk, a unit of Pioneer Underwriting Ltd., has begun underwriting allied health care professional and general liability through Lloyd's of London.

Coverage will be available in all 50 states, Pioneer Underwriting said in a statement. Limits will vary by state but will typically be \$1 million to \$3 million, a Pioneer Special Risk spokesman said.

Minimum premiums were not disclosed, the spokesman said.

Allied health care underwriting will be led by Chicago-based Jim Stewart, senior vice president of Pioneer Special Risk.

Pioneer Special Risk targets ambulatory health care facilities with an emphasis on home health care, laboratories, pharmacies, medical spas, imaging centers, hospice, rehab, surgical centers, organ and tissue banks, substance abuse and community health centers, according to the statement.

"This is a significant milestone in Pioneer's strategy to expand its product offering in the U.S.," Gary Dubois, New York-based president of Pioneer Special Risk, said in the statement. "Jim brings a wealth of knowledge, credibility and great market relationships to our organization."

Ironshore K&R coverage expands to Latin America

Ironshore International Ltd., a unit of Hamilton, Bermuda-based insurer Ironshore Inc., has extended its kidnap and ransom insurance coverage to Latin America-based clients.

Already available to U.S.-based businesses, the kidnap and ransom insurance program, which protects against kidnap for ransom, extortion, hijacking and wrongful detention, offers limits of up to \$25 million, an Ironshore spokeswoman said.

The coverage includes event-related expenses such as ransom, loss of ransom in transit, personal accident and legal and medical services, Ironshore said in a statement.

The program also includes insurance and professional services protection through Miami-based Hazelwood Street Consultants L.L.C., a global crisis management and personal security firm, according to the statement.

Inclusive risk management consultation advice and the support of an integrated psychiatric team are also available at no cost, Ironshore said.

CNA offers endorsements for midsize businesses

CNA Financial Corp. has enhanced its CNA Paramount package policy for midsize businesses with industry-specific general liability endorsements.

The underlying general liability policy offers limits of \$1 million, and the general liability extension endorsements operate in conjunction with the policy limits, Katie Wilson, CNA's vice president of



Tool calculates foreseeable cyber losses

***** Beecher Carlson Insurance Services L.L.C., a unit of Brown & Brown Inc., has launched CyberSelect BI Vision, a cyber business interruption calculator for companies with networks across multiple divisions and locations.

The cloud-based tool is available to add to Beecher Carlson's CyberSelect cyber liability and data breach response policy, Beecher Carlson said in a statement.

It enables companies to project maximum foreseeable loss to business income at multiple key locations in case of a cyber attack, according to the statement.

The tool, created with Garden City, New York-based disaster and risk management firm Procor Solutions & Consulting L.L.C., collects financial information such as revenue flows and costs to create an estimated business income exposure.

Besides measuring potential overall impact, the calculator also captures expenses faced by companies when they are the target of a cyber attack, such as replacing hardware and software, Beecher Carlson said.

underwriting, said in a statement.

Industries include architects and engineers, contractors, financial institutions, manufacturers, real estate, technology and basic general liability, according to the statement.

"CNA's deep industry expertise allows us to quickly adapt to the evolving needs of our customers," Ms. Wilson said in the statement.

AIG launches benefit for appliance expenses

American International Group Inc. has launched AIG Home Protection, a voluntary employee benefit to cover out-of-pocket expenses related to repairing or replacing home appliances and products.

AIG Home Protection, available to employers with at least 2,500 employees, covers the costs of parts and labor to repair or replace mechanical and electrical failures on products within the home, the insurer said in a statement.

The benefit offers annual aggregate

limits of up to \$5,000, while the maximum limit for each product category varies, an AIG spokeswoman said.

Covered products include primary heating, ventilation, air conditioning systems, water heaters, washers, dryers, dishwashers, ranges and ovens, and refrigerators, AIG said in the statement.

AIG Home Protection is sold through AIG's benefit solutions unit and other employee benefit solution providers.

Marsh diagnostic tool analyzes costs of risks

Marsh L.L.C. has introduced a diagnostic tool designed to analyze casualty program costs and trends.

MPACT Cost Diagnostic will help companies "make informed decisions about how to structure insurance programs and prioritize risk management investments to maximize returns," according to Marsh.

Christine Williams, New York-based managing director in Marsh's casualty practice, said, "We're pulling together our analytics to provide our clients with a comprehensive look across all elements" of the total cost of risk, which include retained losses, the cost of claims management, managed care and the insurance program and the cost of collateral, as well as accounting for program volatility.

"This looks across all these elements in one report, so we can prioritize investments and point to comprehensive and customized solutions to those areas" that are defined as problem areas, or "ones that you have the most opportunity" for return on investment, Ms. Williams said.

Cat loss data service launched for Turkey

Verisk Analytics Inc.'s Property Claim Services unit has teamed with a Turkish consulting firm to provide loss estimates for catastrophes in Turkey.

Jersey City, New Jersey-based Verisk will provide industrywide loss estimates for events throughout Turkey via PCS Turkey to insurers, reinsurers and other risk professionals.

Verisk is partnering with Istanbul Underwriting Center to offer the service.

PCS Turkey will use projected ultimate loss estimates from insurance industry participants to aggregate industrywide loss and estimated claim counts by zones determined by the Catastrophe Risk Evaluating and Standardizing Target Accumulations organization for events caused by natural and man-made perils, Verisk said in a statement.

Turkey has a significant earthquake exposure. Most recently, it suffered a 7.2 magnitude quake in 2011.

Events with at least \$10 million in projected insured property losses will receive catastrophe designation, according to the statement.

The reports issued by PCS Turkey will include loss estimates for residential buildings and their contents, residential and commercial auto, and commercial buildings, contents and business interruption, Verisk said.

DEALS & MOVES

Willis North America buys benefits advisory firm

Willis North America Inc. has announced the acquisition of Malvern, Pennsylvania-based health and welfare benefit advisory firm Evolution Benefits Consulting L.L.C.

Terms were not disclosed.

Evolution Benefits Consulting provides advisory services to employers across segments including education, government, health care, financial services, manufacturing and religious organizations, Willis North America said in a statement.

As part of the deal, Evolution Benefits Consulting will join Willis North America's human capital business and will merge its operations with those of Willis of Pennsylvania Inc., Willis North America said. Evolution Benefits Consulting will operate under the Willis brand, according to the statement.

All of Evolution Benefits Consulting's employees will join Willis, according to the statement.

Bermuda reinsurance platform acquires captive consultant

Multi-Strat Holdings Ltd., Hamilton, Bermuda, has acquired Annapolis Consulting Group L.L.C., which provides reinsurance and finality solutions for captive insurers and self-insured corporations.

Multi-Strat will also acquire Annapolis Consulting subsidiary ACG Brokerage (Bermuda) Ltd. as part of the transaction, the reinsurance platform company said in a statement.

Annapolis Consulting is a Maryland-domiciled company with offices in Annapolis; Greenville, South Carolina; and Hamilton, Bermuda. The company specializes in the resolution of costly legacy claims and captive runoffs, according to the statement.

Middle-market broker buys condo insurance specialist

The Hilb Group L.L.C. said it has acquired All Lines Insurance Group Inc. of Clearwater, Florida.

The transaction, terms of which were not disclosed, was effective May 1, Richmond, Virginia-based Hilb said in a statement.

All Lines is a full-service brokerage specializing in property/casualty insurance for condominium associations in Florida, according to the statement.

The Hilb Group, a middle-market insurance agency has 23 offices in Georgia, Florida, Kentucky, Maryland, New York, North Carolina, Tennessee, Virginia and West Virginia, according to the statement.

Bermuda insurance services firm to purchase legacy captive

Randall & Quilter Investment Holdings Ltd., a Bermuda-based company that specializes in insurance acquisitions, said it has agreed to acquire IC Insurance Ltd. from indirect owners AstraZeneca U.K. Ltd. and Imperial Chemical Industries Ltd.

The purchase price was £17 million (\$26.3 million), Randall & Quilter said in a statement. IC Insurance, formed in 1926 as a captive insurer for Imperial Chemical Industries, stopped underwriting in 1996.

The captive's liabilities are mostly workers compensation reinsurance of the United Insurance Co. Ltd. pooling facility, the statement said.

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The State Board of Administration is soliciting competitive responses from firms or individuals offering data reconstruction and consulting services to the Florida Hurricane Catastrophe Fund (FHCF). The request for qualifications information will be available by June 16, 2015, on the FHCF web site: www.sbafla.com/fhcf (under "Announcements"). The deadline for submitting a complete response with compensation requirements is 2:00 p.m. ET on July 9, 2015.

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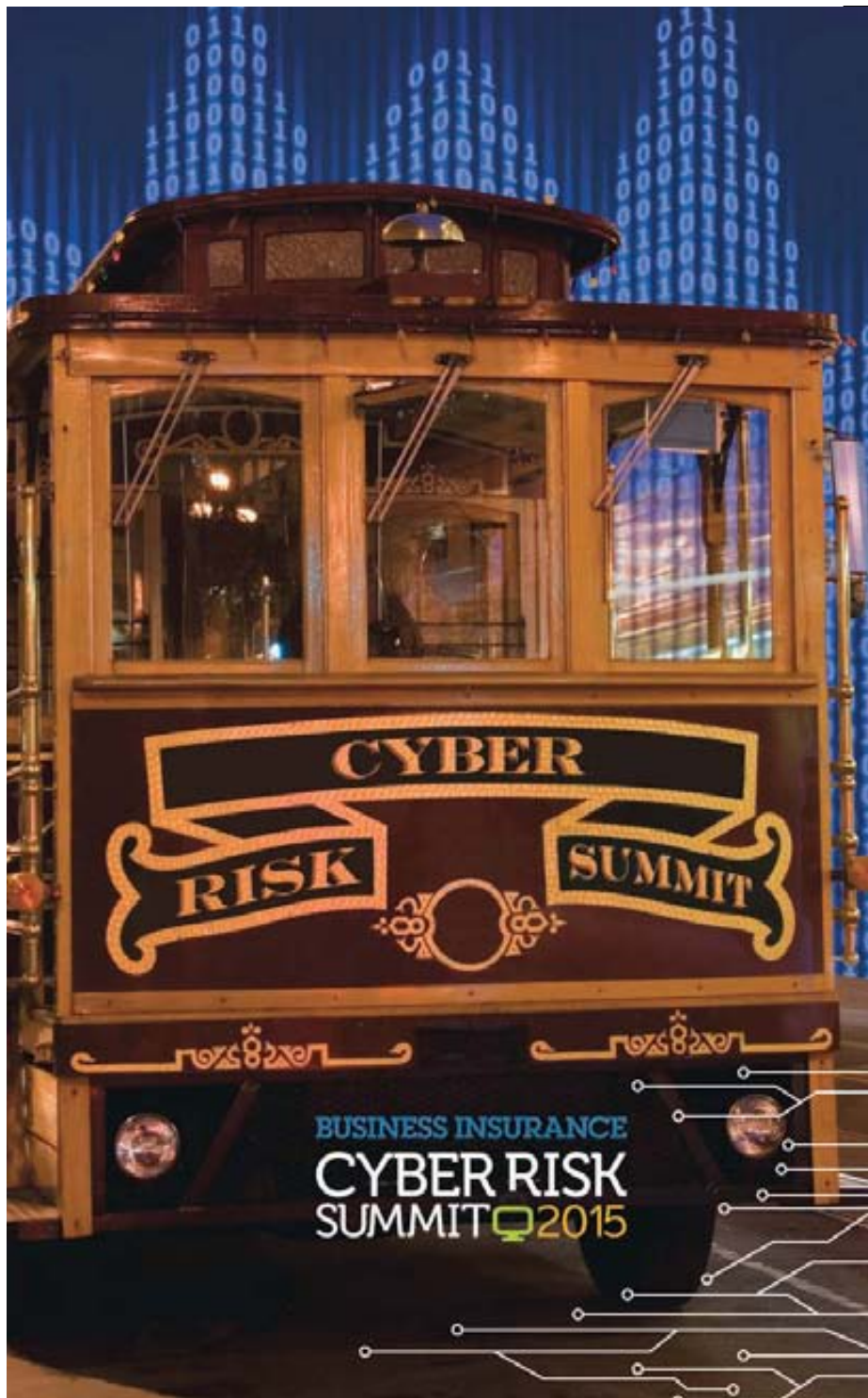
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ACCOMMODATE

Continued from page 1

when she applied for a sales job, according to the ruling.

Ms. Elauf never told interviewers that she was obligated by her religion to wear the headscarf and the interviewers never questioned her about her religious beliefs, although an interviewer discussed the potential religious issue with the district manager, according to the high court.

"An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions," the Supreme Court ruled 8-1.

While a Tulsa, Oklahoma, federal jury awarded Ms. Elauf \$20,000 in compensatory damages, the 10th U.S. Circuit Court of Appeals granted summary judgment to the retailer in 2013 on the basis that Ms. Elauf had not told Abercrombie & Fitch before its hiring decision that her practice of wearing a hijab was based on her religious beliefs.

In overturning that ruling, the Supreme Court disagreed with the retailer's argument that a potential employer must have "actual knowledge" of an applicant's need for an accommodation before it can be accused of disparate treatment.

Notification of the need for a religious accommodation is "not a necessary condition of liability," the Supreme Court ruled in remanding the case to the 10th Circuit to determine whether its dismissal of the case remains appropriate.

"This ruling protects the rights of workers to equal treatment in the workplace without having to sacrifice their religious beliefs or practices," EEOC Chair Jenny R. Yang said in a statement.

While saying it was weighing what steps to take next in the litigation, Abercrombie & Fitch said in a statement that it "remains focused on ensuring the company has an open-minded and tolerant workplace environment for all current and future store associates."

It also said that it has since changed its dress code to allow associates to be "more individual-

istic," and it has granted "numerous" religious accommodations to employees, including wearing hijabs, when asked.

"It seems employers are going to have to use their intuition, based on what they see," to determine whether they are obligated to provide a religious accommodation, said C.R. Wright, a partner at law firm Fisher & Phillips L.L.P. in Atlanta, who was not involved in the case.

"Are we supposed to guess as to whether somebody might need an accommodation?" asked Jeanine Gozdecki, a partner at Barnes & Thornburg L.L.P. in South Bend, Indiana. "How do we ask that question without venturing into areas of stereotyping, or ... asking about things that are actually prohibited?"

For example, if an applicant who looks like he may be an Orthodox Jew walks in, "you're going to have to make judgments based on stereotypes," which the law states employers should avoid, said Jonathan T. Hyman, a partner at Meyers, Roman, Friedberg & Lewis in Cleveland. "It's going to

really increase the burden on employers on how they address the issue upfront in the hiring process."

"It's a problem for employers because it's a lower standard than what the 10th Circuit required" in overturning the award, said Kevin E. Hyde, a partner at Foley & Lardner L.L.P. in Jacksonville, Florida.

However, "I would not characterize it so much as an additional burden for employers as more of a cautionary tale," said Gregg M. Lemley, a shareholder at Ogletree, Deakins, Nash, Smoak & Stewart P.C. in St. Louis. But it is going to require "making sure their lower-level hiring managers are properly trained."

Gerald L. Maatman Jr., a partner at Seyfarth Shaw L.L.P. in Chicago, said the ruling "confirms what many have believed," which is that religious bias cases are like disability cases in that "affirmative steps must be taken by the employer to accommodate the individual in the workplace," which must initiate an interactive process. There are "no magic words" that must first be spoken by the worker, he said.

E.U.

Continued from page 6

Inga Beale said Lloyd's believes a U.K. exit from the E.U. would be "bad for business."

"We think that open trade and being part of a bigger community is very important," Ms. Beale said.

She said a strong European voice would be important as emerging economies such as China and India grow in importance.



Ms. Beale

Insurance Europe declined comment on the issue as did Airmic Ltd., which represents U.K. risk managers.

"The real political uncertainty for our sector comes from the dual and interconnected possibility that the United Kingdom could leave the European Union and that the United Kingdom could dissolve if Scotland voted to become independent." Huw Evans, director general of the London-based Association of British Insurers, said in a speech last week.

During last fall's Scottish independence campaign, several insurers in Scotland urged voters to remain part of the United Kingdom.

Edinburgh-based Standard Life P.L.C., citing competitiveness concerns, said it had drawn up plans to move its business if Scotland voted for independence. It declined comment on the potential impact of the United Kingdom quitting the European Union.

Last September, 55.3% of the Scottish electorate voted to remain part of the United Kingdom, but the Scottish National Party, which favors independence, won 56 of 59 seats in Parliament in May's general election.

"On the E.U. referendum, the industry will be under pressure to have a collective position, and I would certainly expect this to feature heavily in ABI discussions over the coming months," Mr. Evans said.

The British Chambers of Commerce found in a recent survey of 3,800 respondents that 63% said a U.K. withdrawal would be negative for their business. Fourteen percent said they did not know what the effect would be, 12% said a Brexit would be positive for their business and 11% said a withdrawal would have no effect.

But 55% also said their preferred outcome would be for the United Kingdom to remain within the European Union with significant reforms, including transferring some political powers back to London from the European lawmaking bodies.

TERRORISM

Continued from page 1

Tarique Nageer, New York-based senior vice president and head of terrorism placement and advisory at Marsh L.L.C., said Tier 1 cities are seeing private-market coverage that is 5% to 10% lower, with 10% to 15% declines elsewhere.

The private market is "a little more aggressive than in 2104," said Aaron Davis, managing director at Aon Risk Solutions in New York.

"The stand-alone markets are looking to diversify" the abundant capacity that built up in the run-up to the expiration and January reauthorization of the federal terrorism reinsurance backstop, Mr. Davis said.

"A lot of that additional capacity was going to be deployed under the theory that TRIA might expire," he said. "Now, markets have to look at alternative means to deploy that capacity."

There is between \$3.5 billion and \$4 billion of per-occurrence capacity available in the U.S. stand-alone terrorism insurance market.

That plentiful capacity is causing insurers to update their offerings and, in some cases, improve coverage terms and conditions.

"We are obviously in a softer market," said Ben Tucker, New York-based head of U.S. terrorism and political violence crisis management business at XL Catlin, who puts rate reductions in the 5% to 15% range.

"We are seeing some flat renewals on higher-risk accounts. On the lower-risk accounts, we are seeing some rate reductions greater than 15%," said Mr. Tucker, with Tier 1 cities off about 5%.

"The market is overcapitalized

INSURERS EXPAND TERROR COVER OFFERINGS AS PRIVATE INSURANCE MARKET SOFTENS

Insurers and brokers offering coverage in the private stand-alone terrorism insurance market have come up with new products as a result of the market's abundant capacity.

Despite generally lower prices, Hiscox USA is seeing a roughly 10% increase in premiums this year, said Jennifer Rubin, New York-based vice president and underwriting leader of war, terrorism and political violence coverage

"That 10% is probably twice as many new policies as last year at this time," she said.

XL Catlin also has seen new business, said Ben Tucker, New York-based head of U.S. terrorism and political violence crisis management business at XL Catlin.

"We saw a couple of very large new buyers come into the market in the first quarter," he said. "Our book is actually doubling every month compared with last year, month-over-month."

Both insurers have introduced new products into this competitive environment.

Hiscox's "threat of malicious act" coverage, launched in the United States in May, covers businesses for up to \$5 million for business interruption losses caused by a malicious threat that causes a business to close or evacuate.

The business must be closed at least two hours,

and very soft," said Wendy Peters, Radnor, Pennsylvania-based executive vice president of the terrorism practice group at Willis North America Inc. "We have some major renewals we've just gone through, big portfolios, and we're looking at easily 10%, 15% down from last year on the rates," she said. "It's quite aggressive."

Some buyers are migrating from coverage through the federal backstop to the stand-alone market, much the way Verizon Communications Inc. did last year when it secured \$1 billion in coverage just as TRIA was about to expire, gain-

ing increased limits for about the same premium it paid via its captive insurer.

Tim Davies, war and terrorism underwriter in the political risk and crisis management division at Canopus Managing Agents Ltd. in London, said there were some buyers who gained "some relief" with private-market coverage when renewing TRIA was in doubt. Of those, very few have returned to the federal backstop given reductions in rates available in the private market, he said.

"We have seen some clients choosing to go to the stand-alone

and the closure or evacuation must be confirmed in writing by a third-party authority, such as police or a building manager.

The new coverage is aimed at businesses that can quantify hourly losses, with hospitality and retail being the two chief targets, Ms. Rubin said.

XL Catlin has introduced chemical, biological, radiological and nuclear coverage with limits up to \$25 million, which includes risk consulting services in conjunction with London-based Salamanca Risk Management Ltd., Mr. Tucker said.

Brokers welcome the new products.

"We have seen a desire on the part of the markets to come up with products like (Hiscox's) 'threat' product," said Aaron Davis, managing director at Aon Risk Solutions in New York.

Aon was the first to bind the coverage for "a very large client," Mr. Davis said.

Willis Group Holdings P.L.C.'s updated its terrorism modeling capabilities, which include 3-D visualizations of blast scenarios and other events.

"I've had clients who really get engaged in the whole process," said Wendy Peters, Radnor, Pennsylvania-based executive vice president of the terrorism practice group at Willis North America Inc.

By Matthew Lerner

terrorism market," said Marsh's Mr. Nageer. "It's not just the price; it's the coverage as well."

"A large number of our clients at renewal chose to go the stand-alone route," said Aon's Mr. Davis. "I would say there is definitely an uptick in that area relative to conversion to stand-alone."

Terrorism rates have essentially followed the property market downward, and the January extension of TRIA means the private market must compete harder for market share, Mr. Nageer said.

Sarah Veysey contributed to this story.

HUMANA

Continued from page 1

and Medicaid Services.

“If you’re looking to acquire a prime asset in one of the fastest-growing membership groups in the U.S. health insurance market, this is the one you want,” said Vishnu Lekraj, Chicago-based senior research analyst at Morningstar Inc.

Humana’s pursuit of a Medicare-heavy portfolio during the past five years has been deliberate, with premiums and service fees from those products accounting for 71.8% of the company’s total revenue in 2014.

Analysts said Humana has accelerated its strategy of building its brand around Medicare and Medicare Advantage products as the threat of drastic funding cuts and/or structural reforms for the program seems to have subsided in Congress.

“That makes the financial outcome of being heavily involved in the Medicare business a lot more predictable today than it was five years ago,” said Noel Obourn, director of emerging markets at Buck Consultants at Xerox in Hartford, Connecticut. “It’s a much more straightforward exercise to figure out how to create value in your relationship to Medicare today, and the demographic trends in the U.S. are obvious” amid a bulge of baby boomers entering retirement. “When you can marry those things, it becomes quite attractive.”

As far as the non-Medicare group health plan portion of Humana’s business, that accounted for less than 17% of its membership and about 25% of revenue last year.

“I don’t think one of the ‘big four’ absorbing Humana’s commercial book would be anything but a positive, scale-driven value proposition for employers,” Ms. Obourn said. “If the acquiring company is one that has a dominant share of the national commercial employer space, but a de minimus play in Medicare, then I’d say you have a capabilities merger that is probably going to be value-accretive to both marketplaces and not highly disruptive or negative for either.”

Amid a continuing consolidation trend, a Humana sale could result in three or four major health insurers dominating the market, Deb Mabari, CEO of Tampa, Florida-based Cody Consulting, said in an email.

“These larger plans may begin to push back on (Centers for Medicare and Medicaid Services’) regulations,” Ms. Mabari said. “Even now, many health plans see CMS’ aggressive style as a hindrance to providing the best and most cost-effective services to their clients; and with increased clout in the market, plans may begin resisting further changes and enhanced oversight.”

Analysts also said that if the acquiring company already has substantial enrollments in group

health and Medicare, such as UnitedHealth Group Inc., that could disrupt the market, damage the combined firms’ value proposition and draw regulators’ attention.

“Combining those two companies might push (UnitedHealth) into the ‘highly concentrated’ category, which is something the Department of Justice is probably going to notice,” said Tom Mason, a Charlottesville, Virginia-based senior financial analyst at SNL Financial L.C.

Additionally, Mr. Mason said, “UnitedHealth has such a huge presence in the Medicare market already, it might not make as much strategic sense either for them to go out and buy Humana as

it would for one of the other firms.”

Analysts said Humana’s reported interest in a sale likely is driven in part by its poor performance on health insurance sold through public exchanges established under the health care reform law, as well as higher overall medical expenses.

Humana’s first-quarter 2015 medical expenses were “driven higher by flu season, as well as profitability challenges within the Georgia public exchange,” Jennifer Lynch, New York-based research analyst at BMO Capital Markets, said in an investor report.

She said Humana has signaled that it will address its public insurance exchange difficulties by rely-



HEAR INTERVIEW

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Web page to hear Vishnu Lekraj of Morningstar Inc. discuss what makes Humana attractive to other health insurers with *Business Insurance* Associate Editor Matt Dunning.

ing more on the risk adjustment programs that are part of the health care reform law, but said they are unlikely to provide sustainable profits.

“This is a totally inbounds strategy for maintaining the 2015 break-even performance target for the business line, but does not allay general concerns that the exchange business will drag on the enterprise longer term,” Ms. Lynch said.

Should Humana merge with one of its rivals, Cody Consulting’s Ms. Mabari said there could be another outcome: “nimble cost-effective startup plans.” Such “startups will likely be niche players and focus on small geographic areas in order to compete with the larger players.”

Aetna, Anthem, Cigna, Humana and UnitedHealth all declined comment for this report.

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Senior Vice President, ACE Group
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RESILIENCE

Continued from page 4

mind and your psyche be more resilient to stress, and it could potentially have implications for financial resilience and being better prepared for the future,” said Barry Hall, Boston-based principal and innovation research leader at Buck Consultants.

IBM Corp. is among companies that have embraced workforce resilience.

About five years ago, Armonk, New York-based IBM shifted from “the more traditional (tactic of) dealing with risks” as they arise to building “resilience, capacity, energy and well-being,” said Stewart Sill, Raleigh, North Carolina-based manager of global health and vitality.

“We think about resilience in a pretty broad way because (it) relies on a lot of things,” Mr. Sill said, including “daily habits to build energy” and “other actions to promote your well-being.”

Among IBM’s strategies are virtual programs to encourage mindfulness, or focusing on the current moment, and nature-related programs that “can clear your thinking (and) help reduce brain fatigue” along with other “restorative benefits,” Mr. Sill said.

IBM has found that the programs have helped improve the health, as well as health care cost trends, of participants.

Chicago-based employee assistance program provider ComPsych Corp. offers resilience training to workers in companies undergoing shake-ups, such as acquisitions, mergers or moving employees.

With shake-ups being “the new workplace norm,” said Ken Zuckerberg, vice president of training, ComPsych’s resilience program helps employees build skills to thrive during challenging times.

Its program builds skills around what Mr. Zuckerberg said are four characteristics of resilience: self-awareness, emotional control, positive thinking and relationship management.

So ComPsych, which offers full-day programs, 45-minute webinars or on-demand five to 10-minute

doesn’t exist,” said Paul Coppola, Hartford, Connecticut-based head of care management strategy, innovation and design at health insurer Aetna Inc. Instead, the goal is to become aware of the stress and its triggers, to allow people to control it, he said.

Aetna encourages this through its Mindfulness at Work program, which includes 12, one-hour virtual sessions for workers.

“What’s often a big driver of stress is the anticipation of other things that are going on,” Mr. Coppola said. Mindfulness techniques

in a dollar return of \$3,000 per employee.

In 2014, Aetna found that workers who participated in the Mindfulness at Work program reduced their stress levels by an average of 28%. Aetna also has seen improvements in the health of its workers and a reduction in medical costs among high-stress individuals.

Mindfulness and meditation are part of the virtual resilience program to be released by Providence, Rhode Island-based online wellness program provider ShapeUp Inc. in September.

Through games and quizzes, employees are trained to resist high levels of stress throughout their lifetime, said ShapeUp founder and CEO Dr. Rajiv Kumar. It includes self-paced lessons and educational videos on factors related to stress and resilience, including getting enough sleep, financial well-being and healthy eating.

It also incorporates best practices from yoga, tai chi and expressive writing to “lessen the impact of stress on (a worker’s) mind and body and life overtime,” Dr. Kumar said. It’s not about “being able to ignore stress or destress for a moment.”

“It’s really about helping people build lifelong skills that will give them the ability to manage and bounce back from and really be resistant to high levels of stress throughout their life.”

While measuring an increase in employee resilience is difficult to link to other health costs or business performance, “I think what companies are looking to do first and foremost is to help their employees,” Dr. Kumar said. “If they can help them increase their resilience, I believe they see that as a worthwhile investment.”

COPING WITH STRESS

Some 84% of employers believe they are responsible for providing a work environment that promotes mental well-being, yet 53% of U.S. employers say on-the-job stress levels are high or very high with 33% saying stress has increased in the past five years. The fastest-growing U.S. programs are:



Source: Buck Consultants at Xerox 2015 study of 439 organizations

videos, teaches employees to diagnose the causes of their stress and how to maintain control rather than feeling helpless. For example, said Mr. Zuckerberg, workers are taught to recognize the connection between emotional stressors and physical symptoms they cause, such as headaches and lower back pain. ComPsych then can provide individual support.

“We can’t make stress go away. Unfortunately, that magic pill

help Aetna employees “stay present in the moment” and remain calm when dealing with distractions.

Since implementing the program in 2012, along with yoga classes, 13,000 of Aetna’s 48,000 employees have participated. By analyzing work volume, employee turnover, presenteeism and benefit usage, Aetna determined that program participants’ productivity rose by 62 minutes a week, resulting

SAFETY

Continued from page 4

severity of punishment achievable for employers convicted of endangering employers may lessen federal resolve to pursue prosecutions, said Edwin G. Foulke Jr., Atlanta-based partner at Fisher & Phillips L.L.P. and former assistant secretary of labor for occupational safety and health, noting that many federal charges against employers are classified as misdemeanors under the Occupational Safety and Health Act.

“OSHA just doesn’t do that many criminal referrals to the Justice Department, because the Justice Department is not overly interested in them,” he said. “So you are seeing more charges brought at the local and state levels, especially when there are fatalities.”

An example of this local prosecutorial vigor occurred in April, when Los Angeles County District Attorney Jackie Lacey announced felony charges against two managers from San Diego-based canned seafood manufacturer Bumble Bee Foods L.L.C.

In addition to civil charges against the company, Bumble Bee’s former safety manager, Saul Florez, and the company’s director of plant operations, Angel Rodriguez, were each charged with three felony counts of an OSHA violation causing death. The charges, which carry a maximum sentence of three years in state prison and/or a \$250,000 fine, stem from a 2012 accident that occurred when employee Jose Melena was burned to death after he became trapped inside a 35-foot-long industrial oven at the company’s plant in Santa Fe Springs, California.

Hoon Chun, assistant head deputy of Consumer Protection for the Los Angeles County district attorney’s office, noted that the California labor code makes it a felony for any employee that has “direction, management or control” over other employees to willfully violate OSHA safety rules. In more egregious cases, the law provides for additional liability under traditional manslaughter and homicide statutes, he said.

Mr. Chun said that while he was unable to discuss the specifics of the Bumble Bee case, it was indicative of a broader effort by Ms.

Lacey to prosecute violators of workplace safety laws.

“What’s occurring right now is that this district attorney has shown a very strong interest in enforcing safety laws,” he said. “She has put resources and effort into it and is very consciously sending a message to businesses that break worker safety rules.”

Woody Hill, Austin, Texas-based vice president of safety services at workers compensation insurer Texas Mutual Insurance Co., said the issue of the potential criminal liability is on the minds of the safety professionals he interacts with.

“I’ve talked more about this in the last six months than I have in most of my career,” he said.

Mr. Hill said safety managers could do much to mitigate the risk of both employee death and potential criminal liability by stressing training and performing a job hazard analysis on every operation they have with every employee.

“When we do a root cause analysis of a workplace loss or fatality, we see two key factors keep coming up,” he said. “One is that the injured person was not trained and oriented to the particular exposures of their job. The other is that

they were trained in a language other than their primary language, even though OSHA mandates that workers are trained in a language they understand.”

Ms. Butera agreed that proper training is essential, and said the trend of local prosecutors filing criminal cases against employers for workplace fatalities is likely to continue.

“The states are not reluctant to pursue these cases,” she said. “The fact that federal OSHA is not sending over as many cases as it used to is no excuse for companies to let their guard down.”

Bradford Hammock, Reston, Virginia-based attorney with Jackson Lewis P.C., said the lack of federal prosecutions was no cause for complacency for companies when it comes to worker safety.

“I don’t think any employer should take comfort in the fact that OSHA doesn’t use the criminal prosecution option very often,” Mr. Hammock said. “OSHA is being very aggressive on the civil side, in respect to their enforcement actions and violations that they are issuing. The reality is that employers have to be very vigilant.”

MOSQUITO

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15 years.

“Over the past 15 years since the West Nile virus was first identified in North Texas in 2002, the City of Dallas has had only one West Nile virus workers compensation claim filed (and) that claim was unsubstantiated,” spokesmen for the City of Dallas said in an email.

Claims for mosquito-borne diseases are rare since it can be difficult to prove a bite occurred at work — unless other people witnessed the bite, there is an immediate adverse reaction or several workers are affected simultaneously, said Dr. Teresa Bartlett, Troy, Michigan-based senior vice president and medical director of Sedgwick Claims Management Services Inc.

People who spend time outdoors during their free time decrease the likelihood that a bite would be found compensable, said Edward Canavan, Riverside, California-based vice president of workers compensation practice and compliance at Sedgwick.

Still, employers should educate workers about the risks to avoid liability, sources said.

Employers should provide insect repellent and encourage workers to wear light-colored

CHIKUNGUNYA CASES

Confirmed cases of mosquito-borne virus chikungunya in 2013-2014

Location	Local transmission	Imported transmission	Deaths
Americas	24,375	2,538	178
United States	11	2,010	0

Source: Pan American Health Organization/World Health Organization

clothing, with long sleeves and pants when possible, according to the CDC. Workers should be discouraged from wearing fragrances and to discard food to avoid attracting insects. It’s also a good idea to empty standing water from containers so they don’t become breeding grounds for mosquitoes.

While the chikungunya infections have not yet resulted in litigation, West Nile infections have. (see story, page 4)

Just like there’s no treatment for chikungunya beyond managing symptoms, there’s no way to prevent it beyond avoiding mosquito bites, sources said.

Employers need to realize that even if a case of chikungunya isn’t found to be work-related, “it’s going to create worker disability,” said Dr. Maury Guzick, Dallas-based branch manager and physician adviser at Genex Services L.L.C., a managed care services provider. “Employers have to be cognizant that this may take an individual out of the workforce for a number of weeks.”

COUNCIL

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service provider, those are the companies that are likely going to fare better as we go forward.”

Another trend that many brokers and consultants said has driven the need for a more comprehensive, advisory approach is that many senior executives, risk managers and operational leaders are involved in benefits-related discussions.

“We’ve been seeing that for some time, actually, especially when it comes to the finance department,” said Scott Rabin, a

principal at Buck Consultants at Xerox in Los Angeles. “In many ways, that’s really attractive to us. You’d rather have all the decision-makers in the room if you’re doing your job right on the consulting and brokering side, because our responsibility is to help that benefits manager understand the broader picture and impact they can have in contributing value to their own organization by looking at benefits more holistically.”

In response, some brokers and consultants have dramatically altered their workforces.

“Looking at what our staff looks like today versus what it looked like two or three years ago, and where we’ve invested in addition-

al resources, you can start to see evidence of some of these changes,” said Michael Mascolo, national employee benefits practice leader of the North region at Wells Fargo Insurance Services USA Inc. in Madison, New Jersey.

Mr. Mascolo said Wells Fargo has been particularly aggressive in its pursuit of additional actuarial, clinical, legal and technological experts. “If you think about the role of the traditional benefits broker, none of this stuff was really on the list of services provided,” Mr. Mascolo said. “But these are the areas where our clients are telling us they have the greatest need, and it’s forced us to staff up in those areas.”

ENVIRONMENTAL

Continued from page 3

tory filings.

Meanwhile, significant attention has focused on a case in Canada, in which former directors of a bankrupt aerospace firm agreed to personally pay a settlement with regulators in an environmental case (see related story).

D&O coverage can have significant differences in terms and conditions, said Donna Ferrara, Chicago-based senior vice president and managing director at Arthur J. Gallagher & Co. in Chicago.

“There’s no D&O policy that is going to pay for the cleanup of a brownfield, but you may have coverage for a security claim and a shareholder claim ... that says, ‘Board of directors, why did you make this great big mess happen,’ or ‘Why did you buy this brownfield?’” Ms. Ferrara said.

Paul R. Walker-Bright, a partner at Reed Smith L.L.P. in Chicago, said it’s common for D&O policies to exclude claims for the discharge, dispersal or release of pollutants.

This “creates a potential avenue for insurance companies to contest coverage for claims against the directors or officers,” Mr. Walker-Bright said. “We’ve seen that happen, so we think that it is very important for companies to be aware of that. It’s sort of a hidden trap door, if you will, that insurance companies can take advantage of, and your best defense against that is to try to negotiate better wording, or narrower wording, to avoid exactly that problem.”

On top of that, remediation costs frequently are included in pollution exclusions.

Kevin LaCroix, executive vice president at RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio, said a “lot of disclosure is required” by companies on environmental issues, and “there are a lot of ways companies can guess wrong,” such as the status of environmental remediation proceedings or determining reserves for legal or environmental costs.

“Where I see it come up most

often is with regard to acquisition or divestiture activity,” said William G. Passannante, a shareholder at Anderson Kill P.C. in New York.

“Directors can get second-guessed” about environmental liabilities, Mr. Passannante said. “The question is whether what you’re talking about, really, is an environmental claim or is it really a claim related to a mistake in the valuation of the corporate assets.”

Another recent case involves Charleston, West Virginia-based Freedom Industries Inc. The company and four former directors pleaded guilty in March to envi-

DIRECTORS FORCED TO PAY FOR POLLUTION CLEANUP

An Ontario, Canada, case in which directors and officers of a now-bankrupt aerospace company agreed to help pay environmental remediation costs remains applicable only to Canada, but experts say the deal is disturbing.

Twelve former directors and officers of bankrupt Bedford Park, Illinois-based Northstar Aerospace Inc. agreed to pay 4.75 million Canadian dollars (\$3.81 million) to the Ontario Ministry of the Environment and Climate Change to help cover environmental remediation and monitoring expenses of the company’s Cambridge, Ontario, airplane parts plant.

The settlement was reached in October 2013 while the directors and the company, which Rosemont, Illinois-based private equity firm Wynnchurch Capital acquired in 2012, were appealing a ministry order holding them liable for the environmental cleanup. It also was before a final judicial ruling had been reached by Ontario’s Environmental Review Tribunal.

A ministry spokeswoman said this was the first time corporate directors were held personally responsible for

remediation costs.

The former directors’ attorney, Terrence O’Sullivan of Lax O’Sullivan Scott Lisus L.L.P. in Toronto, said: “There was no applicable insurance in the case.”

Mr. O’Sullivan said the Ontario environmental legislation that permitted the ministry to pursue the directors was “draconian and should be of serious concern to any director or officer or any insurer of any company that might be associated now, or historically, with environmental contamination” in the province.

“Canada has a different legal framework around environmental liability” than the United States, said Rob Yellen, New York-based executive vice president of Finex North America, a unit of Willis Group Holdings P.L.C.

But given that individual directors were charged with being personally liable, this was a “very disturbing settlement” and is “certainly something you want to keep an eye on,” said Kevin LaCroix, executive vice president at RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

By Judy Greenwald

ronmental crimes in connection with a January 2014 chemical spill in the Elk River in West Virginia, in which several thousand gallons of a coal-processing chemical were released.

Gregory Schilz, San Francisco-based executive vice president at JLT Specialty Insurance Services Inc., said pollution legal liability coverage is available that specifically addresses corporate liability for pollution resulting from operations.

“I think we’re going to see a lot more critical viewing” of the issue of providing coverage as a result of this case, Mr. Schilz said.

TIMING

Continued from page 3

“A more expensive claim — one that is a little more significant and has much more definition around when and where it occurred in the workplace — begets a more immediate report to the insurance carrier,” Mr. Pitruzzello said.

Early reporting allows employers to better investigate by collecting evidence and interviewing witnesses soon after it happens, Sedgwick’s Mr. Canavan said. Fast reporting also allows employers to help injured workers understand the process, such as how they will receive medical care and wage replacement payments, and alleviate fears that could lead them to hire an attorney, he said.

“You’re easing their concerns,” Mr. Canavan said. “You’re letting them know that somebody cares about them.”

Workers may wait to report seemingly minor sprains, strains or other injuries in the hope they will heal on their own, said Pamela F. Ferrandino, New York-based national casualty practice leader of placement at Willis North America Inc.

Encouraging employees to report such injuries as soon as possible to their supervisor can keep them from developing into costlier claims that, for example, could require surgery instead of physical therapy, she said.

“Any reporting delays inhibit our ability to start the employee on the road to recovery and may allow a minor injury to fester and become a serious and costly problem,” Jim Wucherpennig, vice president of workers compensation at insurer Travelers

Cos. Inc., said in a statement to *Business Insurance*.

Experts say reporting an injury within the first 24 to 48 hours after a workplace accident is optimal to help keep workers comp costs down.

While early reporting is best to manage workers comp costs, experts say employers should avoid being punitive in their reporting policies, which could backfire if an employee feels they could face repercussions for missing a reporting deadline.

Tom Ryan, workers compensation market research leader of Marsh L.L.C.’s Workers’ Compensation Center of Excellence in New York, said employers should discuss and encourage early reporting with employees and investigate ways to reduce lag time for claims that appear weeks after an accident.

“If there are cases that do, in fact, go beyond that period of time, address those case by case,” he said.

Mr. Ryan said there also are situations where an injured worker reports an accident quickly, but the supervisor waits several days to report it if the injury did not appear to be severe or the worker was treated by an in-house occupational health clinic.

He and Sedgwick’s Mr. Canavan said employers should tell their TPA or insurer about such incidents in a “report-only” format, which alerts them to an accident without turning it into a formal comp claim. They say doing so can help claims handlers prepare to manage a potential claim, even if an injury is minor. “We really encourage our clients to report their claims, even as just an incident, because at least we have it on record,” Mr. Canavan said.

SUBSIDY

Continued from page 6

hourly employees of Delphi Corp., a Troy Michigan-based auto parts manufacturer that filed for bankruptcy reorganization in 2005 and whose massively underfunded pension plans the PBGC took over in 2009.

Subsidies to buy health insurance would be smaller and cost-sharing requirements would be higher to buy the same coverage through a public exchange, Mr. Garber said.

Buying coverage using the health care tax credit “could be a much better deal” for eligible participants, said Frank McArdle, who is an independent benefits consultant in Bethesda, Maryland.

There is another advantage to the health coverage tax credit compared with public exchange coverage, observers say.

In the case of individuals able to use the subsidy to offset premiums for COBRA coverage

from their former employers, they would be able to continue with the same health care plan and provider network they had when they were employed rather than moving over to a new health care plan and possibly different providers.

That “could drive more people to stick with COBRA,” said Ann Marie Breheny, a senior legislative adviser at Towers Watson & Co. in Arlington, Virginia.

While COBRA enrollees traditionally use more health care services than other health plan enrollees, the additional employer cost is likely to be low because of the small number of people likely to opt for the health coverage tax credit.

“This would not overwhelm employers,” said Steve Wojcik, vice president of public policy at the National Business Group on Health in Washington.

Indeed, a 2010 Government Accountability Office report found that of the “hundreds of thousands of potentially eligible individuals,” less than 30,000 a year used the tax credit.



AP PHOTO

Retired relief pitcher Mariano Rivera

Hartford calls for the relief pitchers

Looking to get back in the marketing game after a few years on the bench, Hartford Financial Services Group Inc. announced a multiyear agreement that will make the company an official sponsor of Major League Baseball.

Kathy Bromage, Hartford, Connecticut-based chief marketing officer, said that while the insurer curtailed sports sponsorships in the wake of the financial crisis, the chance to work with the league and engage retired relief pitchers Mariano Rivera and Trevor Hoffman as spokesmen was too good to pass up.

"The demographics of baseball work really well with people we are trying to reach, such as small-business owners and risk managers at large businesses, Ms. Bromage said."

Accordingly, Hartford will sponsor clinics and events with major league teams, as well as an award recognizing the season's most outstanding relief pitchers in both the American League and National League.

Fan sues DJ over dinghy-diving injury

When attending an Electronic Dance Music concert, one might expect to end up with sore legs or maybe a stubbed toe.

But media reports say one woman complains in a lawsuit that she was injured when a stage-diving DJ smashed her under an inflatable dinghy.

EDM superstar DJ Steve Aoki (left) is accused of knocking the one-time fan unconscious after jumping off a 20-foot platform onto the bright yellow dinghy at a 2012 show in San Diego, according to *youredm.com*.

The Los Angeles Times reports that plaintiff Brittany Hickman claimed in her suit that she was trapped under the raft and broke her neck and ankle.

"I was trapped underneath the pool raft because they threw it out right where I was standing," Ms. Hickman reportedly told San Diego's ABC 10 News. "My friends told me he landed on top of the pool raft, hit me on top of the head, and I got knocked over."

The Times said the lawsuit also names the show's venue, San Diego's Hard Rock Hotel, a defendant.

FESTIVAL ORGANIZERS SHOW REMORSE OVER STONE AGE FIRE



AP PHOTO

Festival-goers at the Midburn festival unwittingly burned flint tools from the Paleolithic, Neolithic and Chalcolithic periods.

An event in Israel's Negev desert related to Nevada's Burning Man festival may have literally unmade history, according to media reports. Festival-goers at the May 20-24 Midburn festival unwittingly burned a mock wooden temple on a hilltop scattered with flint tools from the Paleolithic, Neolithic and Chalcolithic periods, Israeli archaeologist Yoram Haimi told media.

Mr. Haimi said the extent of damage was unclear. The site — discovered 30 years ago — was unmarked.

A Midburn spokesman told media that antiquities authorities did not approach festival organizers until midway through the communal event.

"We are sorry," the spokesman said. "One of our principles is 'leave no trace.' We are not for destroying."

The Times of Israel reported that Midburn is a combination of the Hebrew word for desert, "midbar," and "burn," and said the festival is modeled after and licensed by the annual one-week Burning Man event held in Black Rock Desert, Nevada.

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Internet of things in your pants?

The next big thing in wearable tech may just be your pants. Google Inc. has partnered with denim designer Levi Strauss & Co. to create touch-sensitive jeans capable of interacting with mobile devices — lending a whole new meaning to the term, "smarty pants," according to media reports.

In a venture aptly titled Project Jacquard after 19th century looms, which was unveiled at Google's



annual developer conference in May, the tech giant is working on weaving conductive yarns laced with sensors through textiles, allowing those fabrics to operate like touch screens while maintaining the appearance of normal clothing.

And the conductive fabric will be scalable, so the clothing can be manufactured through industrial weaving machines to make larger quantities.

According to business and tech news site *wired.com*, Google also has a series of apps and services in the works that will allow you to interact with your phone and other devices by grabbing, tapping, swiping, and touching your clothes.

Though there's no word regarding when smart Levi's will hit the market, the future of computerized clothing is near.



The yet-to-be-released film *Colossal* will star Anne Hathaway

Movie sparks monster lawsuit

A lawsuit is reminding producers of a new film that when it comes to Tokyo-destroying giant reptiles, you have to pay Godzilla its due.

Japanese company Toho Co. Ltd., which owns the rights to the iconic film series, is suing Los Angeles-based Voltage Pictures L.L.C. for trademark infringement over its yet-to-be-released film *Colossal*, which centers on a woman who shares a special connection with the monster. According to the lawsuit filed in the U.S. District Court for Central District of California, Voltage was attempting to fund raise for the film, which is set to begin production in September and will star Anne Hathaway.

"Toho is informed and believes, and based thereon alleges, that Defendants have knowingly used the Godzilla Character to attract interest ... in their 'Colossal' project so that it would stand out ... on the film sales circuit," the lawsuit states.

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