

MANY EMPLOYERS MAY DROP HEALTH COVERAGE DUE TO REFORMS / PAGE 3

INSURER SUES TO VOID COVERAGE FOR FAILED JACKSON TOUR / PAGE 3



DATA BREACH VICTIMS INCREASINGLY WINNING IN COURTHOUSES / PAGE 4

In Brief

Liberty Mutual CEO Edmund F. Kelly to retire

Liberty Mutual Group CEO Edmund F. Kelly will retire from active management effective June 28 and be succeeded by President David H. Long, the insurer announced. Mr. Kelly, 65, will continue to serve as chairman of the board of Liberty Mutual Holding Co. Mr. Long, a 25-year Liberty Mutual veteran, will serve as CEO and president of the insurer. He has been president since 2010.

May tornadoes caused \$7B in insured damage

AIR Worldwide Corp. estimated that a series of tornadoes and other severe weather in the United States in May will result in insured losses of \$4 billion to \$7 billion. The catastrophe modeler's estimate of insured losses in the May 20-27 storms

See **IN BRIEF** page 21

COMP LANDSCAPE CHANGES



REFORM ACTION
Six states passed workers compensation reform bills this year, though their provisions vary. Details about key changes at each state appear on **PAGE 20**.

States try to fix comp problems

Key cost drivers targeted by laws in several states

By **JEFF CASALE**

It has been a busy legislative year for workers compensation reform, with several states passing bills to refine their systems, addressing cost issues as a main concern.

Six states—Illinois, Kansas,

Montana, North Carolina, Oklahoma and Washington—passed major reform bills during the spring session, with some states taking aim at cost-cutting methods including controlling medical costs, while others looked at ways of making their workers comp system more self-administering.

"Overall, this was a very active year," said Bruce Wood, general counsel and director of workers

See **COMP** page 20

WORKERS COMPENSATION

Insurers seeking end to AIG premium dispute

Seven insurers eye settlement; Liberty fights

By **ROBERTO CENICEROS**

CHICAGO—A hearing scheduled for next week is to be a turning point in a long-running dispute among the nation's largest workers compensation insurers.

At issue is American International Group Inc.'s proposed \$450 million settlement with other insurers concerning allegations that AIG underreported workers comp premiums for decades.

Seven commercial insurers want to accept the settlement and gain court approval to represent other insurers in a class action lawsuit that Liberty Mutual Group Inc. filed against AIG.

But Liberty Mutual says the seven insurers essentially are incapable of representing a class of up to 500 insurers that may have been harmed by AIG's alleged underreporting of its workers comp premiums to the 50 states.

Liberty Mutual also alleges in court documents, filed in April in anticipation of a June 21 hearing before U.S. District Court Judge Robert Gettleman, that the \$450 million is inade-

WHAT HAPPENED

- A \$450 million settlement with AIG over alleged underreporting of workers comp premiums has been proposed, but Liberty Mutual opposes it.

WHAT'S NEXT

- A hearing is scheduled for next week to decide if the proposed settlement is fair and to hear Liberty Mutual's argument.

quate because AIG underreported premiums by \$6.1 billion, not the \$2.1 billion used as the basis for the proposed settlement.

The seven insurers say, however, that the settlement is fair and will avoid millions of additional dollars in litigation expenses.

To bolster their argument that the settlement amount is within a fair range, court papers filed June 3 by the seven insurers describe several unsuccessful

See **DISPUTE** page 21



SPOTLIGHT

BENEFIT COMMUNICATIONS & TECHNOLOGY

Health reform confusion shapes communication plans; customization helps wellness plans succeed; phone apps aim to enhance wellness efforts. **PAGE 11**

DIRECTORS & OFFICERS LIABILITY

Supreme Court clarifies rule on securities class actions

By **JUDY GREENWALD**

WASHINGTON—The U.S. Supreme Court's rejection of a ruling that would have made it more difficult for investors seeking class certifi-

cation in securities litigation brings the 5th U.S. Circuit Court of Appeals in line with other appeals courts, observers say.

The high court's ruling last week in *Erica P. John Fund Inc. fka*



AP PHOTO

A lawsuit alleges that Halliburton deliberately made false statements about the potential liability of asbestos litigation.

Archdiocese of Milwaukee Supporting Fund Inc. vs. Halliburton Co. et al. was anticipated in part because a

contrary decision would have upset its decades-old precedent, observers say.

The litigation was brought on behalf of all investors who purchased Houston-based Halliburton Co.'s common stock between June 3, 1999, and Dec. 7, 2001. It alleges that to inflate its stock price, Halliburton deliberately made false statements about the potential liability of asbestos litigation, its expected revenue from certain construction contracts, and the benefits of its merger with another company.

The plaintiffs said Halliburton

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1. 30% of employers may drop health care cover after 2014
2. 2 insurance investigators, agent dead in apparent murder-suicide
3. Insurers back AIG settlement of underreported comp claims
4. Salesperson tripped, injured by own dog owed workers comp
5. Lloyd's insurer Cathedral seeks to void Michael Jackson tour policy
6. Liberty Mutual CEO Kelly to retire, Long to succeed
7. Data breach plaintiffs increasingly successful
8. Wells Fargo to pay \$32 million to settle gender discrimination suit
9. Public support of Mass. health care reform law grows: Poll
10. What if the worst U.S. hurricanes happened today?

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HEALTH CARE REFORM

Nearly one in three employers may drop health cover: Poll

Health reform law spurs benefits rethink, McKinsey reports

By JERRY GEISEL

Thirty percent of employers say they may stop offering health care plans after 2014, when key provisions of the health care reform law go into effect, according to a survey released last week.

Consultant McKinsey & Co., which surveyed more than 1,300 employers of varying sizes, found that 30% of employers "definitely" or "probably" will stop offering coverage after 2014.

That is when changes such as federal health insurance premium subsidies for lower-income uninsured employees begin for individuals to purchase coverage from health insurance exchanges that are to be set up then.

"The shift away from employer-provided health insurance will be vastly greater than expected and will make sense for many companies and lower-income workers alike," said the study published in the June issue of McKinsey Quarterly.

Employers that drop coverage would pay an annual penalty of \$2,000 for each full-time employee, a fraction of the typical cost of

30%

of employers surveyed said they "definitely" or "probably" will stop offering coverage after 2014.

\$2,000

Employers that drop coverage would pay an annual penalty of \$2,000 for each full-time employee, a fraction of the typical cost of group plans.

2014

The year major health reform law changes take effect, including federal health care premium subsidies.

group plans. Group plan costs averaged more than \$9,500 per employee last year, according to a

Mercer L.L.C.

The McKinsey findings vary from other surveys on the issue.

For example, Mercer last year found that 6% of employers with at least 500 employees and 20% of employers with 10 to 499 employees said it was likely they would drop coverage in 2014.

"Employers are reluctant to lose control over a key benefit. But beyond that, once you consider the penalty, the loss of tax savings, and grossing up employee income so they can purchase comparable coverage through an exchange, for many employers dropping coverage may not equate to savings," Tracy Watts, a partner in Mercer's Washington office said at the time.

However, about half of the 200 employers with workforces ranging from 50 to 150 employees said at a Lockton Benefit Group conference this year that they intend to exit the group market in 2014.

At the moment, the "majority of our clients will wait and see," Lockton Benefit Group President J. Michael Brewer told a congressional committee in March. What employers ultimately decide to do will depend on insurance costs in 2014 and the perceived need to offer a health care plan to gain a competitive advantage, he told lawmakers.

COVERAGE DISPUTES



AP PHOTO

Michael Jackson's death in 2009 resulted in a claim on a \$17.5 million cancellation policy written for a comeback tour that was scheduled to begin later that year.

Insurer for Jackson tour seeks to void coverage

Lloyd's Cathedral says it wasn't given vital medical info

By SONJA RYST

LOS ANGELES—Lloyd's of London underwriter Cathedral Capital Ltd.'s syndicate 2010 says it is seeking to void a policy covering the risk of the late Michael Jackson not appearing at performances.

After the singer died in June 2009, Anschutz Entertainment Group Live filed a claim on a nonappearance and concert cancellation policy of up to \$17.5 million that was issued in April 2009 for Mr. Jackson under the alias "Mark Jones," according to the Associated Press.

London-based Cathedral Capital sued AEG Live, the Los Angeles-based promoter backing Mr. Jackson's shows, and Mr. Jackson's company on Monday, alleging the concert promoter failed to provide necessary medical information and details

about Dr. Conrad Murray, the physician accused in the singer's death, the AP reported.

The complaint reportedly states that AEG Live should have disclosed Mr. Jackson's medical history, "including but not limited to, his apparent prescription drug use and/or drug addiction."

Cathedral said it tried to get the information, documentation and witness statements from AEG that it needed to decide whether the claim was valid, but could not obtain the documentation and could not proceed with witness examinations.

"We had no choice but to issue a complaint for declaratory relief in order to secure the court's assistance in reaching a determination regarding whether the claim is covered or not and in obtaining the necessary information for that determination," Cathedral's London-based representative College Group Ltd. said in an emailed statement.

AEG Live did not respond to a request for comment.

AGENTS & BROKERS

Getting the most out of your broker

Tens of thousands of middle-market insurance buyers may be using a broker that does not match their needs, according to a new *Business Insurance* white paper.

Executives at those companies often let years go by without conducting broker performance reviews and are unaware of what other brokers might be able to offer in terms of obtaining cheaper pricing or better service, the white paper states.

The reasons for the inertia by middle-market buyers vary: Sometimes the brokers have been placing the coverage for decades and are virtually members of the corporate family; other times the executives in charge of insurance purchases have several other responsibilities and devote little time to insurance; in other cases brokers may be a family member or friend.

According to consultants, though, 20% to 50% of middle-market buyers may be retaining brokers that are not equipped to service them



properly. Given the huge number of companies in the middle market, that means that between 93,000 and more than 232,000 companies should be looking for a new broker.

Should they choose to at least review their insurance brokers, there are several methods that executives at middle-market companies can employ such as open competitions, assigned market competitions or even reverse auctions.

The white paper, "Is It Time to Change Brokers? Picking the Right Broker for Your Business," examines the issue of insurance broker reviews and how often they should be conducted, and offers advice from experts on how to conduct those reviews.

To purchase a copy of the white paper, visit www.BusinessInsurance.com/whitepapers. *Business Insurance* subscribers can take advantage of the specially discounted rate of \$49.

CYBER RISKS

Data breach victims record more wins in court

More suits get over initial legal hurdles, driving up costs

By **RODD ZOLKOS**

PHILADELPHIA—Cyber liability plaintiffs are experiencing more success in the courts, significantly increasing potential costs for companies that have experienced data breaches.

Speaking last week at the NetDiligence Cyber Risk & Privacy Liability Forum, Meredith Schnur, vp of the professional risk group of Wells Fargo Insurance Services USA Inc. in New York said, “A year

ago the plaintiffs and the plaintiffs counsel were not winning.”

Today, that’s changed significantly, said the moderator of a panel examining “The State of the Cyber Nation.”

Increasing legislation and regulation related to data breaches at the state and federal levels is contributing to plaintiffs’ success, said panelist John Mullen Sr., chair of the complex litigation practice group at Nelson Levine de Luca & Horst L.L.C. in Blue Bell, Pa. “One of the reasons that the plaintiffs and the plaintiffs bar are starting to win is that the government is helping them,” he said.

Jamie L. Sheller, principal at

‘One of the reasons that the plaintiffs and the plaintiffs bar are starting to win is that the government is helping them.’

John Mullen Sr.,
Nelson Levine de Luca
& Horst L.L.C.

Sheller P.C. in Philadelphia, said plaintiff attorneys have gotten more adept at moving cyber liability cases beyond motions to dismiss to the discovery stage. “Once that happens, the coffers are open,” Ms. Sheller said.

Another panelist, Richard J. Bortnick, West Conshohocken, Pa.-based chair of the professional liability practice area in the global insurance group of Cozen O’Connor P.C., said that once a cyber liability case has moved to discovery,

the defense costs alone quadruple.

Ms. Sheller noted that the first mistake many companies make after a data breach “is to downplay the breach.” Because of regulations in most states requiring companies to disclose exposure of consumer information, the information will become public, she noted, and the initial denials will cause greater reputational damage.

“Transparency is really important,” said Mr. Bortnick. “Because if the entity that’s attacked is not transparent, the Internet will be transparent for them.”

NetDiligence, the marketing arm of Network Standard Corp., put on the forum in Philadelphia.

RISK MANAGEMENT



AON RISK SOLUTIONS

Aon has added political violence, strikes, riots, war and civil war as factors in its Terrorism and Political Violence Map, formerly the Terrorism Threat Map.

Aon expands analysis of terrorism threats

By **MARK A. HOFMANN**

Aon Risk Solutions for the first time is including political violence, strikes, riots, war and civil war as factors in its expanded 2011 Terrorism and Political Violence Map.

The revamped map, which the Chicago-based broker unveiled last week, builds on its former Terrorism Threat Map. The map, created in collaboration with London-based consultant Janusian Security Risk Management P.L.C., shows an increased risk of political violence in the Middle East and North Africa, reflecting the “Arab spring” uprisings.

The possibility of coup d’état and rebellions in Africa “reflect a continent that presents a significant political violence risk,” Aon said in a statement announcing the map.

Civil unrest and labor disputes that have arisen from austerity measures in Europe also affected the map, which has been revised since last year’s analysis.

But terrorism continues “to severely afflict established conflict zones like Iraq, Afghanistan, Pakistan and Somalia as well as parts of Nigeria and the Sahel region,” Aon said.

The threat of occasional acts of international terrorism also remains significant for most Western countries, the brokerage said.

An increasing number of buyers have been wondering whether terrorism and sabotage coverage alone provide them with adequate protection, Neil Henderson, London-based global head of counterterrorism for Aon’s crisis management team, said in an interview.

Events in Thailand, the Middle East and elsewhere “highlighted that you should be considering a broader form of coverage,” Mr. Henderson said, adding that there is a greater demand for supplements to cover the broader perils.

“The change in the way the map is scored should not be seen as a decrease in the incidence or

See **MAP** page 19

HEALTH CARE REFORM

Health reform reshapes role of brokers

By **JOANNE WOJCIK**

COLORADO SPRINGS, Colo.—Health care reform is transforming the role of insurance brokers from specialists in benefit design and selection to “value consultants” that help employers address rising costs through wellness, cost-containment and voluntary benefits strategies, experts say.

Tracy Moorhead, president and CEO of the Care Continuum Alliance, a Washington-based trade organization representing wellness and disease management providers, said brokers can help drive wellness program success by understanding employers’ business goals, as well as the leadership style of key executives in promoting a culture of health

within their organizations.

During a panel discussion this month at the Employee Benefits Leadership Forum sponsored by the Council of Insurance Agents & Brokers, Ms. Moorhead also urged brokers to encourage employers to integrate health and wellness benefits in their employee assistance programs because employees sometimes need to address behavioral issues before they can achieve improvements in their health.

Although many health insurers are removing broker commissions from their administrative expenses due to implementation of minimum medical loss ratios under the Patient Protection and Affordable Care Act, Ms. Moorhead told attendees at the Colorado Springs, Colo., conference

that brokers can find other financial opportunities by introducing their employer clients to wellness and care management programs that ultimately will drive down their health care costs.

Such expenses previously were considered by the National Assn. of Insurance Commissioners to be part of insurers’ administrative overhead, but they are included in MLR calculations under PPACA, she said.

PPACA and U.S. employers share the same objective: “That’s better care, better health status and lower cost,” she said. “In this new paradigm, brokers will have considerable opportunity to serve as value consultants to purchasers in determining how best to

See **CIAB** page 19

RISK MANAGEMENT

ERM supports disaster recovery plans

By **MIKE TSIKOUKAKIS**

PORTLAND, Ore.—An enterprise risk management framework provides significant support for municipalities planning disaster recovery, business continuity and resiliency strategies, according to risk managers and industry observers.

Linking a city’s business continuity and resiliency planning with ERM is “uncharted territory,” said Matt Hansen, director of risk management for the City and County of San Francisco, during an educational session at the Public Risk Management Assn.’s 32nd Annual Conference in Portland, Ore.

Disasters such as the Sept. 11, 2001, terrorist attacks in New York, Hurricane Katrina in New Orleans, and the earthquakes in

New Zealand and Japan—have been instructive situations for the undertaking, Arrietta Chakos, a Boston-based independent urban resiliency policy con-

Linking a city’s business continuity and resiliency planning with ERM is ‘uncharted territory.’

Matt Hansen,
City and County of San Francisco

sultant, said during the session.

After Hurricane Katrina, weaknesses in the city’s mitigation and risk reduction strategies were identified as the disaster sur-

passed what New Orleans had planned for, Ms. Chakos said.

The disaster on Sept. 11, 2001, in New York revealed that the local government worked effectively across many departments to be prepared and respond quickly, she said.

Most importantly, New York had a strong social response and welcomed community involvement. “Without community involvement, disaster recovery cannot proceed,” Ms. Chakos said.

“We have to plan for more than just a day after the disaster,” Ms. Chakos said, by building internal links with the community.

Mr. Hansen’s focus on disaster recovery has increased since the

See **PRIMA** page 17



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Segal appeals conviction again

Former Near North owner seeks to have fraud ruling overturned

By GAVIN SOUTER

CHICAGO—Michael Segal, the former Near North National Group Inc. owner convicted of fraud in 2004, is seeking a rehearing of his previously unsuccessful attempt to overturn his conviction.

Mr. Segal recently filed for a hearing of his case by the full panel of the 7th U.S. Circuit Court of Appeals after a three-judge panel of the same court turned down his previous appeal.

Mr. Segal, who was convicted in connection with charges that he looted Near North Insurance Brokerage Inc.'s premium fund trust account of \$35 million for his own and his company's use, argues that the appeals panel's May 3 decision conflicts with the U.S. Supreme Court's 2010 decision on the application of the "honest services" provision in a federal fraud law in ruling on the case of former Enron Corp. CEO Jeffrey Skilling.

In that case, the Supreme Court ruled that prosecutions under the "honest services" provision of the fraud statute—which essentially involves fiduciary duty—should apply only to schemes involving bribes and kickbacks.

The appeals panel ruled that while there was no evidence to suggest that Mr. Segal was involved in a bribery or kickback scheme, there was an underlying fraud, and the jury "would—and most certainly did—convict Segal for money/property fraud, irrespective of the honest services charge."

According to Mr. Segal's latest filing, the 2010 ruling in *Skilling vs. the United States* means that the appeals panel "converted the violation of Illinois insurance regulations which, after *Skilling*, should not ever be an indictable offense, to money/property



AP PHOTO

Michael Segal was convicted in connection with charges that he looted Near North Insurance Brokerage Inc.'s premium fund trust account.

fraud without any evidence that Segal lied to any insurance client of Near North or any insurance company that provided coverage for Near North's clients." Violation of state insurance regulations is not a federal offense, the filing states.

In a statement, Mr. Segal, who is serving a 10-year sentence in federal prison in Oxford, Wis., said "my conviction is about compliance with an obscure and esoteric Illinois insurance regulation that provides for no criminal penalty. The only documented peer review forensic accounting in the record proves that there never was any use of other people's money.... Had the Supreme Court decided *Skilling* before my prosecution, I could never have been convicted."

Commentary

Changed landscapes increase quake risks

Collective memory can be a tricky thing.

Consider what happened after a series of earthquakes along the New Madrid fault in 1811 and 1812 that rocked the Mississippi Valley, with tremors felt as far away as Charleston, S.C., and Baltimore.

In his 1964 history, "The Final Challenge," Dale Van Every wrote that "the extent of the earthquake's effect westward across the plains and mountains remains uncertain," adding that it could have been only a coincidence that "late in 1812 a series of exceptionally violent shocks destroyed missions in California."

Eyewitness accounts filled newspapers and a congressional committee heard witness testimony as it considered relief legislation for survivors, hundreds of whom had lost not only their houses but also "the land on which those homes stood," he wrote.

But Mr. Van Every notes that despite the quake's impact, its importance soon faded. Congressional relief, the fact that vegetation began reclaiming ravaged land, and the onset of the War of 1812 all served to push memory of the quakes aside.

"That so monstrous and general a phenomenon should have gained so little notice in American history, and none at all in American folklore, is one of the stranger anomalies in our career as a people," he wrote. It was as if the event had never occurred.

The New Madrid quake enjoyed—if that's the right verb—a brief return to the public eye in 1990, courtesy of a climatologist and science writer named Iben Browning. During an interview in the summer of 1990, Mr. Browning said there was a good chance that a major earthquake would occur in the area of New Madrid, Mo., on or about Dec. 3, 1990.

Of course, Mr. Browning's prophecy didn't pan out. The date came and went and the ground didn't shake. Life went on in the quake zone.

Imagine what would happen if Mr. Browning were less a failed prophet than one who simply misread the calendar.

Then take into account what Swiss Reinsurance Co. Ltd. said in a recent study on the impact of catastrophes—natural and otherwise—in 2010.

"While the deadliest earthquakes typically occur in emerging market countries, the costliest earthquakes in terms of insured losses occur much more often in industrial-



MARK A. HOFMANN

Senior Editor Mark A. Hofmann can be reached at: mhofmann@businessinsurance.com

ized regions," Swiss Re said in the report. It noted that the Northridge, Calif., earthquake of 1994; the Kobe, Japan, earthquake of 1995; and the Chilean and New Zealand earthquakes in 2010 were the costliest for insurers in the two decades leading to 2010.

Why? Property values and exposures are on the rise around urban areas, increasing the potential for large financial losses from a single event, said

Imagine what would happen if Mr. Browning were less a failed prophet than one who simply misread the calendar.

the report. The increasing complexity of industrial processes makes damage to industrial facilities more difficult and expensive to repair.

That's been evident as Japan has struggled to recover from this year's truly devastating earthquake. Like New Madrid, the area has experienced quakes before, but a major one had not occurred for centuries.

Fortunately for New Madrid-area residents, awareness of the threat, perhaps buoyed by the Browning prediction, led area risk managers to become involved in civil preparedness efforts, creating public-private partnerships to think about the unthinkable and how to respond.

The quakes of 1811 and 1812 didn't linger long in the nation's memory. As Mr. Van Every pointed out, there was a war to be won and a broad expanse of continent to be opened to American settlement. Given the changes of the past two centuries, a future quake of 1811 proportions would be certain to deny its survivors the luxury of selective memory.

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Business Insurance OPINIONS

Texas sets example for civil justice reform

TEXAS CONTINUES to be a leader in civil justice reform.

That was evident on Memorial Day, when Gov. Rick Perry signed into law a multifaceted tort reform bill.

Among other things, the law establishes a modified system of “loser pays” for civil suits in which one party or the other rejects a reasonable settlement offer. It also allows plaintiffs seeking less than \$100,000 to seek an expedited civil action and gives trial courts the authority to dismiss a lawsuit immediately if the case is not based in law or fact.

These reforms strike us as perfectly reasonable.

These reforms strike us as perfectly reasonable, particularly coming as they do after Texas’ previous successful efforts at asbestos liability and medical liability reform.

It was telling that, as he signed the bill into law, Gov. Perry said the reforms would make the state more attractive to employers because it would allow them “to spend less time in court and more time creating jobs.”

We have no reason to doubt the governor’s assessment.

Given current conditions, other states may do well to follow Texas’ lead in instituting meaningful and balanced civil justice reforms as a means to remain competitive in creating new economic opportunities for their citizens.

Too much uncertainty to make care decision

WHAT PERCENTAGE OF EMPLOYERS will stop providing coverage to employees after the key provisions of the health care reform law take effect in 2014?

Plenty of polls have tried to answer that question. Last year, for example, 6% of employers with at least 500 employees and 20% of employers with 10 to 499 employees responding to a Mercer L.L.C. survey said it was likely they would drop coverage in 2014. Last week, a McKinsey & Co. survey found that 30% of employers probably or likely would stop offering coverage.

We aren’t surprised that the findings vary. Our hunch is the way the questions were asked and respondent demographics greatly influence the results.

Dropping coverage may make economic sense for some employers. Those that do would pay an annual \$2,000 per employee penalty, a fraction of the nearly \$10,000 average cost per employee for group coverage.

The penalty wouldn’t be employers’ only cost. To stay competitive, they would have to gross up employees’ salaries to offset the premiums employees would pay for buying coverage through state exchanges.

For lower-paid employees, though, employers wouldn’t have to provide as much financial help, as those individuals would be eligible for premium subsidies from the federal government.

But there is a big “if” here: If far more employers than anticipated drop coverage—and with that, costs soar for the federal government—does anyone think, especially with huge federal budget deficits, that lawmakers wouldn’t push to boost the \$2,000 penalty for not offering coverage?

For us, that appears a very likely scenario. For that reason, we think a prudent employer will wait awhile before deciding whether it will continue to offer group coverage.



WRITE

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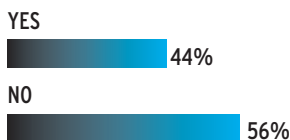
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NEXT WEEK’S QUESTION

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Global coverage key in disasters

Natural disasters can’t be prevented, but public policy can shape the way countries cope with their aftermath, says Bradley Kading, president and executive director of the Assn. of Bermuda Insurers & Reinsurers. After Japan suffered an earthquake, tsunami and nuclear power plant emergencies in March, it became apparent that the country’s lack of a global network of insurance and reinsurance has and will continue to hinder its recovery, reinforcing the need for global reinsurance, Mr. Kading says.

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Products & Services

Crump unit covers kidney dialysis centers

MELBOURNE, Fla.—5Star Specialty Programs has added insurance coverage for kidney dialysis centers.

The insurance facility is for operations of any size and includes professional and general liability, Health Insurance Portability and Accountability Act-related coverages, auto liability, and abuse and

molestation liability, the Melbourne, Fla.-based managing general agent unit of Crump Insurance Services Inc. said in a statement.

"Kidney dialysis is a life-sustaining medical treatment provided by these clinics, which treat over 500,000 people in the U.S. each year," Lee Lloyd, executive vp of program development for Crump, said in the statement. "This insurance program provides vital protection for their operations and is based on volume of visits, resulting in more affordable rates."

The premium is calculated on the yearly number of clinic visits, rather than revenue.

The coverage is underwritten by Hiscox Ltd., a spokeswoman for 5Star said in an email.

For more information, contact Mary Nolan, senior vp of 5Star's health care division, at 415-524-4322 or mary.nolan@5starsp.com.

Chubb program assists in media crises

WARREN, N.J.—Chubb Group of Insurance Cos. has added crisis assistance services to help companies manage adverse media attention.

Commercial Excess and Umbrella Insurance Crisis Assistance protection aims to mitigate negative media attention stemming from a major liability crisis, the Warren, N.J.-based insurer said in a statement.

The crisis assistance program is

an automatic endorsement to its commercial excess and umbrella insurance policy to cover crisis management services up to \$300,000, Chubb said.

"When a major crisis occurs and the reputation of your company is on the line, any wrong step could have a crippling impact," said Mark Dugle, senior vp and worldwide excess casualty practice leader for Chubb Commercial Insurance, in the statement. "Companies should have professional resources available to help them through the ordeal."

Chubb has independent crisis management service providers who are available to policyholders, who also can hire their own consultants or crisis management

firms, subject to Chubb's approval.

The crisis assistance program pays for consultant fees in addition to temporary living, travel, psychological counseling, funeral and other crisis-management expenses, Chubb said in the statement.

For more information, contact John Osaben, executive underwriting specialist for excess and umbrella insurance, at 908-572-4591 or josaben@chubb.com.

Safety National expands public entity coverage

ST. LOUIS—Safety National Casualty Corp. has added lines of coverage to its insurance program for public entities.

Its expanded excess workers comp coverage, announced at the Public Risk Management Assn.'s conference, is for municipalities, counties, public school districts and intergovernmental pools, the St. Louis-based insurer said.

Safety National also has added general, auto, law enforcement and employment practices liability to the program, which includes public officials and educators legal liability, it said in a statement.

Features include unbundled claims services, minimum self-insured retentions of \$100,000 and limits up to \$10 million.

For more information, contact Dave Randall, public entity underwriting manager for Safety National, at 314-810-5421.

Law firm publishes book on regulation

NEW YORK—Dewey & LeBoeuf L.L.P.'s insurance regulatory practice has authored an insurance regulatory handbook.

The "Insurance Regulation Answer Book 2011" provides a "high-level" overview of the U.S. insurance industry as it is governed by laws and regulations, the law firm said in a statement.

The handbook is co-authored by Dewey & LeBoeuf attorneys, led by Jane Boisseau, retired co-chair of the New York-based firm's insurance regulatory practice, and Michael Byrne, partner in the insurance regulatory practice.

The handbook covers recent legislative developments such as the Patient Protection and Affordable Care Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act and Solvency II.

It also provides information about different types of insurance and insurers, state-based regulation, insurer formations and the role of reinsurance, among other things, the statement notes.

The handbook, published by New York-based Practising Law Institute, is available for \$195 at <http://www.pli.edu/Content.aspx?dsNav=N:4294923425-165&ID=129338>.

The forces of nature can strike at any time. Let's discuss how to plug our defenses.

As the Earth's climate is changing, so are the frequency and intensity of floods and storms. What's the answer: retreat from the most hazardous locations? Protect vulnerable areas with sea walls, drainage systems and better building codes? Or take measures to transfer the financial risk and rebuild? All we know at Swiss Re is that, as our climate changes, we must adapt apace. Which is why we're helping countries and communities develop strategies to protect themselves against the forces of nature. Risk is the raw material we work with; what we create for our clients is opportunity.

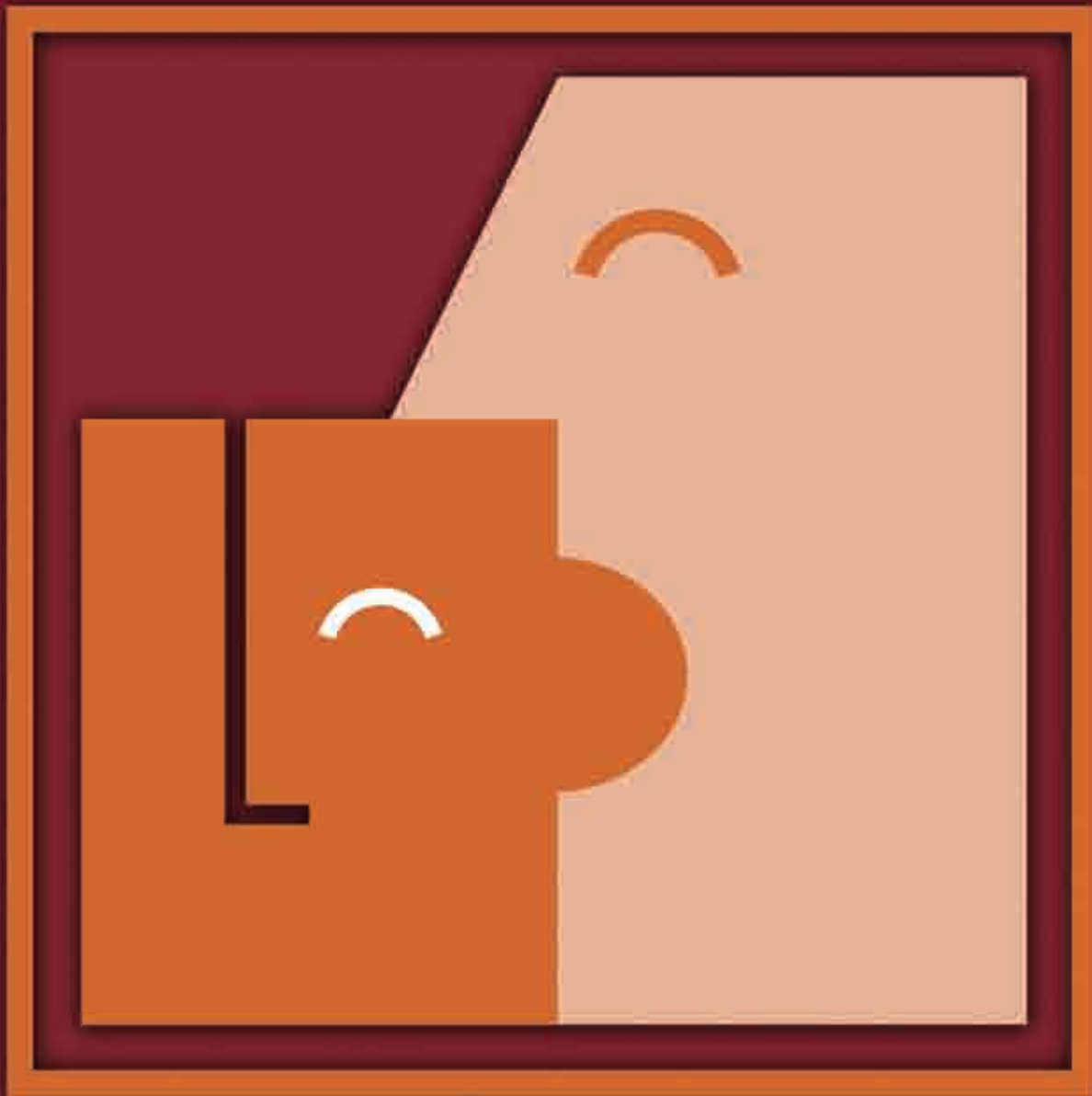
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INFO OVERLOAD

Health reform confusion shapes communication plans

By **LOUISE KERTESZ**

To minimize employee confusion from the bombardment of health care reform law news, and because details are still evolving, some employers are communicating only imminent changes in benefits, employers and consultants say.

"The No. 1 reaction we're seeing right now is a bit of a wait-and-see (attitude) because of the uncertainty," said Ruth Hunt, principal, communication, at Buck Consultants L.L.C. in Minneapolis.

When the Patient Protection and Affordable Care Act became law in March 2010, "the main complexity that employers struggled with very

early on was what to communicate and when to communicate it," said Sheri Pixley, executive vp and practice leader at Lockton Cos. L.L.C. in Dallas. While such communications decisions have been made since then, uncertainty about upcoming changes remains.

To respond to employees' many questions, consultants have devised lists of frequently asked questions that companies can tailor to their populations and post on their websites or other communication channels.

"A number of our clients had employees calling them right away because they heard in the press that their benefits would be changing," said Aron Minken, director of the human resource services practice at PricewaterhouseCoopers L.L.P. in New York.

For example, the chief executive of one print

See **COMMUNICATION** next page

'The main complexity that employers struggled with very early on was what to communicate and when to communicate it.'

Sheri Pixley, Lockton Cos. L.L.C.

Benefit
Communications
& Technology

SPOTLIGHT

**CUSTOMIZATION
HELPS WELLNESS
PROGRAMS SUCCEED**
PAGE 15

**SMARTPHONE APPS
AIM TO ENHANCE
WELLNESS EFFORTS**
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Communication: Health reforms shape strategy

CONTINUED FROM PREVIOUS PAGE

and web communications business decided to blog about it because he felt, "We need to get in front of it," Mr. Minken said.

But the initial flurry of questions has died down. Now, employers have settled on communicating what employees need to know about their benefits for the immediate future, with little or no mention that it is related to PPACA.

If there are no changes to an

employer's plan—for example, if it has retained its grandfathered status and is not required to provide full coverage of preventive services—employers are not communicating that there is no change, because employees have not raised the issue, consultants and employer executives said.

"Our strategy so far is, there's still so many changes pending, I'm very hesitant to communicate a lot," said Cheryl Stone, director of human resources and administration at Tri Marine Management

Co. L.L.C., a tuna processor based in Bellevue, Wash. Ms. Stone said the goal is to clearly communicate only "what we have available for our employees," who number about 2,000 worldwide.

Other companies, such as Sperian Protection USA Inc. in Smithfield, R.I., had little to communicate about the reforms because the company already covers pre-existing conditions and has no lifetime caps on coverage, said Michael Vittoria, vp of human resources. Also, Sperian employees have had 100% coverage of preventive services for three years.

In communicating health care reform changes, the key is "no matter how complex the change, keep the part that faces your

employee communication as simple as possible," Mr. Vittoria said.

At Hospira Inc., a Lake Forest, Ill.-based specialty pharmaceutical company with some 14,000 employees and whose tagline is "Advancing Wellness," "we wanted to take advantage—selfishly—of the opportunity to let employees know they were already getting what the law required," said Pamela Hannon, vp-total rewards and employee services.

Not only is there no heightened concern among Hospira employees about health care reform changes, it's "almost the contrary," Ms. Hannon said. "Because we're so focused on health and health care, there's the perception we will continue

to provide good benefits."

Many employers are taking advantage of "the buzz over health reform" to communicate the value of their wellness programs and how they maintain health and reduce costs, said Joann Hall Swenson, health engagement best practice leader at Aon Hewitt Inc. in Minneapolis.

A survey conducted at the end of last year by the Midwest Business Group on Health indicated that nearly 60% of employers will expand wellness programs in light of the increased incentives permitted by the health care reform law. "From the employee perspective, communication is vital to ensure they see the connection between the programs being offered and their own improved health" as well as the tie-in to reduced costs, said Lockton's Ms. Pixley.

Some health systems are communicating to their employees that "their delivery organizations can be ahead of the curve" in health care reform by becoming



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'Our strategy so far is, there's still so many changes pending, I'm very hesitant to communicate a lot.'

Cheryl Stone, Tri Marine Management Co. L.L.C.

accountable care organizations, said Ms. Hunt. This may entail piloting changes including value-based benefit design in their employee population and select customer groups and communicating the need for the change, she said.

Organizations have until July 19 to apply to the Centers for Medicare and Medicaid Services to participate in accountable care organization pilot programs that are intended to test innovative payment and service delivery models that reduce spending under Medicare, Medicaid or the Children's Health Insurance Program.

Another new requirement for employers next year is reporting health benefits on employees' W-2 wage and income statements. That information is to be reported on 2012 W-2s, which will be distributed in 2013.

See **COMMUNICATION** page 14

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Communication: Health reforms shape efforts

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Such communication may confuse employees because “we will be reporting the average cost (per employee) of the program,” not the employee’s utilization, Ms. Hannon said. Although the amount reported is not included in employees’ taxable income, employees “could wonder if it’s a setup” for potentially taxing the benefits in the future. Because it’s not imminent, Hospira will wait one more year to communi-

cate the change, she said.

Going forward, “most communication is not going to mention health reform. The changes will go in the relevant areas of an enrollment guide,” such as dependent coverage or prescription drug coverage, said Bruce Finley, a senior partner at Mercer L.L.C. in New York.

“Most employers aren’t ready to talk about changes way down the road in 2018,” such as the provision to tax health care premiums above a certain level,

“nor should they—because that could change,” said Mr. Finley.

“It’s very much shifting sands,” said Kim Buckey, practice leader of summary plan description services at HighRoads Inc., a Boston-based communications consultant.

“It’s tremendously frustrating for a lot of employers, which speaks for having a communication strategy to know at least in theory what changes will need to be communicated at some point to various audiences. Once you have that in place, the timing is just the last piece of the pie. You’re ready to deploy the communication, once you do have the guidance,” Ms. Buckey said.

THE ROAD TO IMPLEMENTATION

When key provisions in the health care reform law go into effect

2011

- Flexible spending accounts no longer can be used to reimburse enrollees for over-the-counter drugs, except insulin, without a prescription.
- Tax on distributions received from health savings accounts not related to health care raised to 20% from 10%.
- Lifetime dollar limits on covered expenses eliminated. Annual dollar

limits cannot be less than \$750,000 in 2011, \$1.25 million in 2012 and \$2 million in 2013.

- Cost-sharing no longer allowed for preventive care services, except for grandfathered plans.
- Coverage must be extended to employees’ adult children up to age 26.

2012

- Plan sponsors must include health care cost plan information annually on employees’ W-2 wage and income statements.

2013

- Pretax contributions to FSAs capped at \$2,500 and indexed to changes in the Consumer Price Index in succeeding years.
- Employers with prescription drug plans provided to Medicare-eligible retirees no longer can take a tax deduction equal to the amount of the tax-free federal subsidy they receive for prescription drug expenses. Under a 2003 law that added a prescription drug benefit to the Medicare program, employers providing coverage at least equal to Medicare Part D received a tax-free subsidy equal to 28% of prescription drug costs within a certain range incurred by Medicare-eligible retirees.

2014

- Employers with at least 50 employees must offer qualified coverage or pay a \$2,000 penalty per employee per year, except for the first 30 employees.
- Individuals must enroll in a qualified health plan or face financial penalties.
- Federal premium subsidies are provided to eligible uninsured individuals to buy coverage from state insurance exchanges that are to be set up by Jan. 1, 2014.
- Waiting periods before new employees are eligible for coverage cannot exceed 90 days.
- Employers permitted to vary premiums up to 30% to encourage wellness program participation.
- Elimination of annual dollar limits on coverage of eligible health care plan expenses.

2018

- Health insurance premiums exceeding \$10,200 for individual coverage and \$27,500 for family coverage subjected to a 40% excise tax. Insurers—or, in the case of self-funded plans, third-party claims administrators—are to pay the tax.

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Wellness program success stems from customization

Tailored programs boost engagement among employees

By **MATT DUNNING**

The success of a company's wellness program depends greatly on its ability to cater to the specific needs of its employees, wellness experts say.

Communication of a wellness program's offerings, events and especially its rewards in which delivery methods and content are tailored to employees could mean the difference between a wellness initiative that takes off and one that sputters, consultants and wellness program providers say.

"Understanding the culture of your organization and recognizing the communication channels you already have in place are really important for a successful strategy," said Michelle Baade, vp of business development at the Omaha, Neb.-based wellness program provider SimplyWell L.L.C.

There are essentially two realms of wellness communications: high-tech and traditional. In most cases, a blend of both is best, Ms. Baade said. But she also said benefit communications should track closely with employee preferences and working conditions.

A workforce that spends most of its day in front of computers is more likely to want wellness program information communicated by emails, text messages, online chat forums with physicians or vendor specialists, and secure social media platforms, experts say.

Where workers' computer access is limited or nonexistent, more traditional posters, brochures, newsletters and "table tent" displays may be more effective in providing wellness information, she said.

However, Ms. Baade warned that employers should avoid making assumptions about employee preferences. Without surveying workers on their preferred methods of communication, an employer may be surprised to find that many workers are not getting the message.

"Ironically, a lot of the newest technology is having success in populations that were harder to reach five years ago when everyone switched from paper to Internet portals," Ms. Baade said, adding that tools such as text messages and smartphone applications (see story, next page) are in some cases becoming popular on construction sites, manufacturing plants and other lines of work far removed from a desktop computer.

Companies not well-positioned to leverage technology at the worksite still can experience suc-

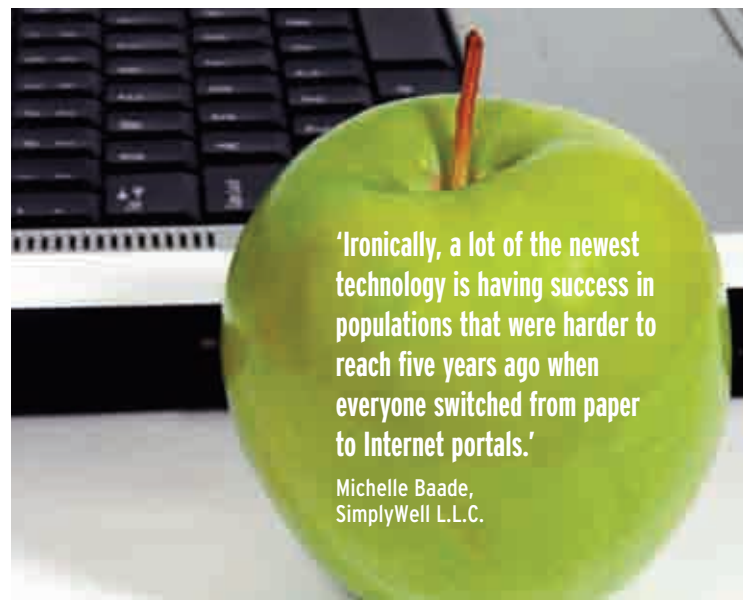
cess with their wellness program with the right combination of Web and email tools and traditional printed materials.

According to a survey by New York-based Buck Consultants L.L.C., more than 75% of U.S. companies with wellness programs still use posters, fliers and newsletters distributed at the

worksite, and more than 50% use on-site health fairs, employee meetings and mailings to the home.

For the highest probability of success no matter which communication channel is used, the material should be personalized as

See **WELLNESS** next page



'Ironically, a lot of the newest technology is having success in populations that were harder to reach five years ago when everyone switched from paper to Internet portals.'

Michelle Baade,
SimplyWell L.L.C.



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Phone apps put wellness tools in employees' pockets

By MATT DUNNING

While the market for health-oriented smartphone applications is expanding rapidly, corporate wellness providers are just beginning to incorporate the technology into their offerings.

A recent study by Noida, India-based research firm RNCOS E-Services Pvt. Ltd. estimated that the U.S. mobile health software industry will be worth \$2.1 billion by the end of this year, and that the market will grow nearly 22% from 2012 to 2014.

However, a separate survey by New York-based Buck Consultants L.L.C. found that just 4% of employers have a wellness program with smartphone applications included.

Barry Hall, Boston-based principal of clinical health consulting for Buck, said the technology is so new that the consultant just started tracking its inclusion in corporate wellness programs last year.

"All the major carriers and players seem to be working on apps, and many have begun rolling out their first-generation offerings," Mr. Hall said. While consumers have made programs that track fitness activities or diet progress the most popular in the overall marketplace, wellness providers tend to favor

applications "focused on finding a nearby urgent care or quick clinic facility," Mr. Hall said.

"There's also activity from some smaller wellness vendors and specialty health vendors, which are using not only mobile phones but also electronic tracking devices like pedometers and accelerometers to create a more personalized, data-rich environment," Mr. Hall said.

For many employers or wellness providers contemplating smartphone apps to integrate with their program offerings, the first step likely is developing mobile tie-ins to the program's Web portals. However, the applications alone may not be enough to engage employees, said Eric Zimmerman, chief marketing officer of Minneapolis-based RedBrick Health Corp.

"It's a little like the Internet in the mid-1990s," Mr. Zimmerman said. "Everyone knew that they had to have a website, but they didn't quite know why. It can't be technology just for technology's sake."

Mr. Zimmerman said developers have had success designing applications with time-sensitive triggers such as workout reminders and diet alerts, which can be customized for the individual based on

health behaviors and improvement goals. A corporate wellness provider could use similarly structured proprietary applications to track employee participation in exercise and diet initiatives, resulting in a clearer sense of its program's success in engagement and changed health behaviors.

Companies such as RedBrick, Omaha, Neb.-based wellness provider SimplyWell L.L.C. and Chicago-based Vitality Group plan to or already have developed apps tied to a wellness program's incentive structure, in which activity is converted automatically by the app into reward points or credits.

"Ultimately, the reason people fail or are less successful than they could be in terms of a positive health outcome isn't a lack of knowledge, it's a lack of motivation," Mr. Zimmerman said, adding that smartphone apps far exceed Web-

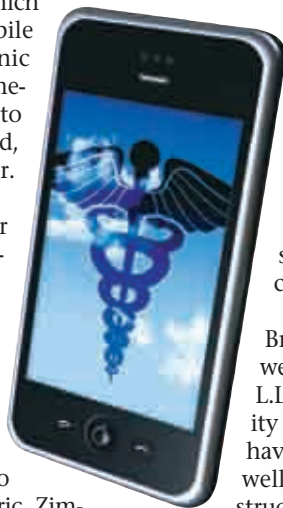
based programs in simplicity and being integrated into individual's daily routines.

"For motivation, elements through which you can transact quickly are best," Mr. Zimmerman said. "Mobile's a very natural way to do that."

Dr. James Canedy, founder and president of SimplyWell, said his company already is planning a "seamless" network of devices and resources linked largely by SimplyWell's Web portals and smartphone applications.

Wi-Fi-enabled scales, pedometers, glucose and blood pressure monitoring equipment all could be linked to an employee's health profile, with information piped directly to a physician or wellness counselor, Dr. Canedy said. If there are changes, such systems could automatically set up "an appointment with their primary care physician while it's still early on, rather than have them just wind up in a hospital again," Mr. Canedy said. "Our goal is to make the health management fully automated."

"Our biggest barrier has been cost," he said, referring to the market price of Wi-Fi-enabled health and medical instruments. "The technology is beginning to catch up, and a lot of those items have come way down in price."



Wellness: Customization aids success

CONTINUED FROM PREVIOUS PAGE

much as possible, said Barry Hall, principal of clinical health consulting at Buck.

"Delivering highly personalized support and interactions to individuals will really help get and sustain their attention much more so than traditional 'generic' communications," Mr. Hall said, adding that one wellness information communications method that has outlived its usefulness is the long-form program guide.

"People just do not have the time, and the old-fashioned, thick print booklets are simply overwhelming," Mr. Hall said. "It's fine to embed wellness-related messaging with enrollment messaging, but the old style won't get the message conveyed and absorbed."

Even as technology spawns new information channels, one of the oldest methods—face-to-face contact—is still among the most effective, Mr. Hall said. Still, more companies are forgoing the direct approach as the challenging economy forces companies to prioritize productivity and bottom-line savings over personal touch, he said.

"Studies show that face to face remains one of the most powerful ways to get and keep attention, and these events are now sufficiently unique that they're actually a novelty," Mr. Hall said. "If we really want to pursue a 'culture of health,' we need to build trust, and face to face is a powerful way to build that comfort about management's motivations for the program."

Just as important is the content of the messages themselves.

LuAnn Heinen, vp of the Washington-



BOOSTING ENGAGEMENT

Communication strategies that increase employee engagement in company wellness programs

- Demonstrating endorsement and participation by senior management
- Having a strong, consistent visual appeal
- Recognizing employee success stories
- Establishing a culture of health as the norm
- Including family members whenever possible

based National Business Group on Health, said employees are more likely to respond favorably to simple, relatable instructions and peer success stories than cold statistics on illness, injury and health care costs (see box).

"Research shows that most employees already want the same thing their employers want—to be healthy, to exercise, etc.," Ms. Heinen said. "So communication focused on why something is important is not as necessary as identifying easy ways for them to get started."

Companies also should consider the source of their wellness program's communications.

Eric Zimmerman, chief marketing officer of Minneapolis-based RedBrick Health Corp., said wellness information most likely to be absorbed and acted upon comes from an employee's "inner circle," typically another co-worker or team leader. Providers including RedBrick also are seeing increased engagement in programs where they can involve an employee's physician directly in relaying information, he said. The next

most effective communication sources are the wellness provider, followed by the employer's senior management and the company's health insurer, he said.

"When we look at engagement rates as a proxy for message effectiveness, there is a demonstrated and systematic difference between companies that have an independent health management partner and those that manage their own program," Mr. Zimmerman said. "It's an even bigger difference once you include companies that just use their insurance carrier."

Public entities face up to social media liabilities

Mitigation strategies center on restrictions, clearly stated policies

By MIKE TSIKOUDAKIS

PORTLAND, Ore.—Social networking technology presents many exposures and supervision challenges for public entity risk managers, experts say.

Social media usage is growing exponentially, with millions of users visiting multiple platforms such as Facebook, MySpace and Twitter, among others, said Charles P.E. Leitch, principal at Patterson Buchanan Fobes Leitch & Kalzer Inc. P.S. in Seattle.

"People are always making mistakes with technology," Mr. Leitch said during a session titled, "Realistic Supervision of Technology and Social Media," at the Public Risk Management Assn.'s 32nd Annual Conference.

"Supervision of social media is a moving target," Mr. Leitch said. "It's basically chaos."

The difficulties in managing social media risks relate to its reach, Mr. Leitch said. For example, a Canadian student made a video of himself wielding a golf ball retriever as a weapon against imaginary foes, which his classmates later found and uploaded it to the Internet. The video, which was intended to be private, has been viewed 900 million times, Mr. Leitch said.

The student's family sued the families of his classmates alleging harassment among other charges, and later reached an out-of-court settlement for an undisclosed amount.

Public entity risk managers "cannot ignore the implications of social media

usage," Mr. Leitch said.

Some risks public entities need to consider include teachers "friending" students on social media platforms, which could lead to inappropriate relationships.

Another example involves municipalities that have policies requiring job applicants to provide social media account usernames and passwords as



'Supervision of social media is a moving target. It's basically chaos.'

Charles P.E. Leitch, Patterson Buchanan Fobes Leitch & Kalzer Inc. P.S.

part of their employee background check. Mr. Leitch said such actions could lead to invasion of privacy allegations, which often are championed by individual rights groups such as the American Civil Liberties Union.

Social networking platforms used in schools or municipal offices are poten-

tial soft entry points for cyber hackers, said Robert J. Krall, director of risk control services in Chicago for Trident Insurance Services L.L.C., a unit of Argo Group International Holdings Ltd.

Public entities often store personally identifiable information from credit card payments, student records and tax records. Cyber threats such as malware can be used to infiltrate computer networks to pilfer financial data and/or account information, Mr. Krall said.

One strategy to mitigate the exposures is to restrict access to social media networks on work computers, he said. If employees use sites such as Facebook or LinkedIn, they should use their "own computers on their own time," Mr. Krall said during the educational session "Cyber Liability, Exposures and Strategies."

While there is no single solution to address cyber risks, solid policy and management controls, such as password controls, secure access points and up-to-date firewalls, in conjunction with restricted access to social networks, can provide a good infrastructure for loss control, he said.

There are many policies to control social media use in schools and municipalities that risk managers can use, but "consistency is a big problem," Mr. Leitch said.

A uniform notice of expectations regarding social media should be in place with consistent training, enforcement and recognition of the policy's limitations, he said. The policy crafted to include multiple social networking platforms and possibilities, not just Facebook, for example.

"You have to think what the technology will be later on" when trying to put together social media policies, Mr. Leitch said.

PUBLIC RISK MANAGEMENT CONFERENCE DRAWS 950

PORTLAND, Ore.—The Public Risk Management Assn.'s 32nd Annual Conference June 5-8 drew more than 950 attendees to the Oregon Convention Center in Portland.

Subjects covered during the conference sessions included how to implement an enterprise risk management framework for disaster planning, social media and cyber liabilities facing public entities, and risk financing options such as self-insurance.

PRIMA also named James E. Huckaby Public Risk Manager of the Year. Mr. Huckaby is director of risk management of the Mesquite Independent School District in Mesquite, Texas, a post he has held for 17 years. Arlington Va.-based PRIMA gives the award annually to public risk managers who demonstrate innovation and commitment to the field.

PRIMA's next conference is scheduled for June 3-6, 2012, in Nashville, Tenn.

For more information, visit PRIMA's website at www.primacentral.org.

—By Mike Tsikoudakis

PRIMA: ERM supports disaster recovery plans

CONTINUED FROM PAGE 4

quakes in New Zealand and Japan. "Earthquakes are a fact of life for us," he said.

The ERM process links disaster preparedness and response and helps city managers make conscious decisions about how to spend money and resources, said Dorothy Gjerdrum, executive director in Arthur J. Gallagher & Co.'s public entity and scholastic division in St. Paul, Minn., during the session.

ERM merges disaster remedies that often are disconnected, such as emergency response and disaster recovery teams, the panelists said.

ERM "gives us a shot at operationalizing the process of managing risks," Ms. Gjerdrum said. "We can't think through every eventuality."

But ERM assists in prioritizing risks that are identified and track massive amounts of data to best respond when a disaster occurs, she said.

But one of the key aspects of linking ERM to a city's disaster planning is that it "helps you work through the communications process," Ms. Gjerdrum said.

For effective community involvement to take place, and for interdepartmental buy-in, "continuous and consistent communication is very important," Mr. Hansen said.

Discussions with community partners, such as mobile phone providers, telephone companies and utility companies, need to happen often and before and after an event to decide how each operation fits together dur-

ing a crisis, he said.

"ERM will not succeed with a top-down mandate," Ms. Gjerdrum said. Municipalities need to build incrementally. "Eventually, it's all going to get hooked up."

Driving numerous diverse municipal departments to work collectively before, during and after a disaster is challenging, Mr. Hansen said.

"Implementing ERM gradually is an understatement," he said.

The application of ERM to disaster recovery, business interruption and resiliency has culminated to achieve objectives with the city's ResilientSF initiative, Mr. Hansen said.

ResilientSF's mission "advances San Francisco's overall resilience by providing a framework that coordinates existing programs and plans, as well as creates new initiatives, tools and resources that increase the capacity of individuals, organizations and communities to participate in collective problem-solving," according to the ResilientSF website.



KYODO/LANDOV

Disasters, such as the earthquake in Japan, have been instructive situations for the undertaking of linking a city's business continuity and resilience planning with ERM.

Halliburton: High court clarifies class action rule

CONTINUED FROM PAGE 1

later made corrective disclosures that caused its stock price to drop and investors to lose money.

In 2007, a federal judge ruled the case could not be certified as a class action because the fund had "failed to establish loss causation with respect to any" of its claims, which the 5th Circuit in New Orleans affirmed in 2010.

The Supreme Court agreed early this year to hear the case because the ruling conflicted with those of other federal appeals courts.

The high court said reliance on a defendant's deceptive acts is an essential element in a private cause of action to ensure there is a connection between the defendant's misrepresentation and a plaintiff's injury.

The court pointed to its 1988 decision in *Basic Inc. et al. vs. Max L. Levinson et al.*, saying the ruling permitted plaintiffs in class actions "to invoke a rebuttable presumption of reliance (on deceptive acts) based on what is known as the 'fraud-on-the-market theory.'" According to this theory, the price of shares in well-developed markets reflects all publicly available information, including any material misrepresentations.

The 5th Circuit, however, concluded that to obtain class certification, the plaintiffs "also had to establish loss causation at the certification stage" to trigger the fraud-on-the-market presump-

tion. The appeals court said the plaintiffs needed to prove the decline in Halliburton's stock was due to a correction of a prior misleading statement and that the subsequent loss could not otherwise be explained, the Supreme Court said in its decision.

But this requirement "is not jus-

'The 5th Circuit was going in a different direction' than other courts and the Supreme Court 'in a pretty straightforward way was bringing it in line with the other courts.'

Jack C. Auspitz,
Morrison & Foerster L.L.P.

tified by *Basic* or its logic," Chief Justice John Roberts wrote for the court in remanding the case to the appeals court. "The term 'loss causation' does not even appear in our *Basic* opinion."

Reacting to the ruling, Halliburton said it looks forward to presenting its arguments to the appeals court.

"The Supreme Court did not

address the question of whether proof that alleged misrepresentations had no impact on the stock price rebuts the presumption of reliance and prevents class certification," Halliburton said in a statement.

Observers say the Supreme Court's narrow ruling essentially put the 5th Circuit's outlier opinion back in line with other appeals courts' rulings.

"It's a fairly bare-boned opinion and a fairly simple holding that basically just says that investors don't have to prove loss causation in order to get a class certified. It doesn't question the underlying premise in *Basic vs. Levinson*," said Erik F. Gerding, associate law professor at the University of New Mexico's school of law in Albuquerque. "The bottom line is, it really just strikes down an outlier in the 5th Circuit."

"It's not going to change anything in terms of the bigger picture," said Dan A. Bailey, a member of Columbus, Ohio-based law firm Bailey Cavalieri L.L.C.

"This was not a surprising decision," said Jack C. Auspitz, a partner with Morrison & Foerster L.L.P. in New York. "The 5th Circuit was going in a different direction" than other appeals courts and the Supreme Court "in a pretty straightforward way was bringing it in line with the other courts."

Thomas O. Gorman, a partner with Dorsey & Whitney L.L.P. in Washington, said the ruling is what "you would have expected from the court" and is "very consistent with its prior jurisprudence in the *Basic* case."

Ronald F. Wick, a partner with Cozen O'Connor P.C. in Washington, said although it obviously was a victory for security class action plaintiffs, it "really removes a requirement that was fundamentally at odds with 20 years of Supreme Court precedent."

UP Comings & Goings CLOSE



BRIAN J. KELLY

NEW JOB TITLE: Glen Mills, Pa.-based partner and head of workforce metrics and analytics with the talents and rewards business at Mercer L.L.C.

PREVIOUS POSITION: Glen Mills, Pa.-based vp for San Mateo, Calif.-based SuccessFactors Inc.

INDUSTRY CHALLENGES: For a long period of time, there has been a belief that (human resources) folks don't understand a company's business models or the advice provided by HR professionals has been qualitative, that it has been soft. That may have been true 10 years ago, but not today. I look at the type of clients we work with and their HR professionals and leaders are solid businesspeople. The challenge is that we have to dispel previously conceived notions of what HR professionals can provide to businesses. They can have a significant value on your business.

ADVICE: Be prepared for change. We are in a period of evolution not only in HR but the way technology can be deployed to

help organizations.

OUTSIDE THE INDUSTRY, A DREAM JOB: The ultimate fun job would be to be a community college professor as opposed to a larger institution. I would be very interested in helping those who are putting themselves through school, going to school at night and really focused into acquiring skills to transfer into the business (skill) set. I am interested in helping students become successful in the business world.

HOBBIES: Love to golf and I love to be involved in coaching my kids. I love spending time volunteering with my kids. I also love to read and travel.

FAVORITE BOOK: I love history and I love politics. A recent book I read is quickly becoming a favorite of mine. It's called "The Death of a President" by William Manchester. It's about the Kennedy assassination.

CAN'T-MISS TV SHOW: My schedule doesn't allow me to watch recent TV shows, but if there happens to be a "West Wing" (rerun) on TV, I have to watch it.

Business Resources

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Nominations still open for annual awards

Know a woman who is doing extraordinary work in the risk and insurance world? Nominate her for *Business Insurance's* 2011 Women to Watch feature.



The Women to Watch list is an annual feature spotlighting exemplary women working in commercial insurance, reinsurance, risk management, employee benefits and related fields, such as law and consulting. The list is open to women worldwide. Prior honorees are not eligible.

Readers are encouraged to nominate candidates using the nomination form at www.businessinsurance.com/section/women-to-watch.

Honorees will be recognized in the Dec. 5 issue of *Business Insurance* and at an event in New York City.

Nominations are due July 22.

Comings & Goings ONLINE

VISIT www.businessinsurance.com/ComingsandGoings for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly email.

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:

Mallory Gillikin
Business Insurance
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Chicago, Ill. 60601-3806

mgillikin@businessinsurance.com

POSTING THIS WEEK

BROKERS

- Marsh Inc.
- Hirsch Wolf
- Willis Global Specialties
- Arthur J. Gallagher & Co.
- Howden Insurance Brokers Ltd.

INSURERS

- CNA Insurance Co. Ltd.

OTHER PROVIDERS

- Hanover Stone Partners L.L.C.
- Buck Consultants L.L.C.
- DSG Benefits Group L.L.C.

ASSOCIATIONS

- Insurance Institute for Business & Home Safety

CIAB: Reform reshapes role of brokers

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address the needs of their populations.”

The increased financial incentives permitted under health care reform will provide additional ways to encourage greater participation in wellness and disease management programs, Ms. Moorhead said.

Whereas the Health Insurance Portability and Accountability Act limited financial incentives for participating in wellness programs to 20% of the cost of single coverage, that incentive can grow to 30% and as high as 50% under PPACA with approval of the Department of Health and Human Services, she said.

As more employers take advantage of wellness incentives permitted under PPACA, they will rely on their brokers to obtain, interpret and coordinate biometric and claims data so they can better focus their health management efforts, said Michael Kelly, director of HealthCheck360, a Dubuque, Iowa-based wellness provider, who

‘There is a significant shift toward outcomes-based wellness programs from education, assessment and self-reporting and participation.’

Michael Kelly, HealthCheck360

also spoke as part of the panel.

“There is a significant shift toward outcomes-based wellness programs from education, assessment and self-reporting and participation. In 2010, 6% of large employers incented an outcome

other than smoking. In 2011, more than 20% said they were going to link their wellness program incentives to achieving a specific health outcome,” Mr. Kelly said, citing a recent survey by Aon Hewitt Inc.

Brokers will play a role in doing that effectively by integrating wellness data into benefit analytics, he said.

Brokers also can serve as stewards of that data, maintaining it separately from the data that insurers, third-party administrators and other health care vendors store to make it easier for employers to change service providers from time to time, Mr. Kelly said.

Brokers also can assist employers that choose to downsize their benefits programs by providing access to voluntary or supplemental benefits, said Mitch Besvinick, president of InnoBenefits L.L.C., a Newtown Square, Pa.-based firm that specializes in designing programs for organizations whose

employees lack access to traditional health benefits.

“To keep premium and cost neutrality,” employers will “turn some traditionally employer-funded benefits into voluntary benefits” for which employees pick up the tab, Mr. Besvinick said.

Employee-pay-all benefits such as life insurance, short- and long-term disability insurance, accident insurance, critical illness insurance, dental and vision insurance, and even hospital indemnity plans are not regulated by PPACA, Mr. Besvinick said.

Tim Byrne, vp of M3 Insurance Solutions Inc., a Madison, Wis.-based insurance broker, moderated the panel discussion.

Map: Terror analysis

CONTINUED FROM PAGE 4

severity of terrorist threats, but rather the fact that it provides businesses with a more inclusive view of some of the risk management issues they are facing around the world,” Mr. Henderson said in the statement announcing the new map.

Terrorism remains a “very clear threat,” but threats to business continuity are coming from many forms of political violence as well, he said.

“Businesses should, as a first step, identify the threats they face and implement a comprehensive risk management program to protect their employees, physical assets and, ultimately, their bottom line,” said Mr. Henderson. “As the insurance market for terrorism insurance is very mature and can cope with complex international risks, it should be considered as part of a sound risk management program.”

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NOMINATIONS NOW BEING ACCEPTED

Visit BusinessInsurance.com for the nomination form, and submission details. **Deadline July 22!**

The annual Women to Watch program spotlights 25 women who are doing outstanding work in commercial insurance, reinsurance, risk management, employee benefits and other related fields.

This year we will expand the annual awards luncheon to include a full day networking and educational conference. This event will be held the first week in December in New York City.

For questions about the nomination process, or the conference and awards luncheon please contact Becky Briggs, Events Manager at RBriggs@BusinessInsurance.com or 212-210-0132.

Business Insurance

Comp: States try to fix problem cost drivers

CONTINUED FROM PAGE 1

compensation for the Washington-based American Insurance Assn. "It was beyond normal, though something is usually bubbling when it comes to workers comp. I think what set the stage was the November elections when legislation became predominately Republican, which provided a political foundation for debates."

Republicans took over 680 legislative seats nationwide in November, which some insurance industry experts said provided for more business-backed support in the effort to reform workers comp systems.

"In 2011, we thought states would focus on budgets, but instead a lot of them looked at workers compensation issues," said Peter Burton, Wayne, Pa.-based senior division executive for National Council on Compensation Insurance Inc.

Montana got to work early and passed a major overhaul of its system in April with a primary focus on cutting down its workers compensation premium rate of \$3.33 per \$100 of payroll, according to the 2010 Oregon Workers Compensation Premium Rate Ranking Summary, which is put out every two years by the Oregon Department of Consumer and Business Services.

According to NCCI, the sweeping changes to its system should provide a 22.4% savings in medical costs, which includes terminating medical benefits for permanent partial disability claims 60 months from the date of injury (see box).

"We had to get a handle on costs, as our rates were substantially higher than other states in the country," said Jon Bennion, government relations director of the Montana Chamber of Commerce in Helena, who noted the legislation not only provided for an immediate 20% average reduction in premiums, but also will help cut costs in the future.

"Montana had a cost issue and they worked in trying to address it," said Keith Bateman, vp of workers compensation for the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America. "Reducing costs was a major goal for them and the bill that was passed was a product of its business community."

Oklahoma also passed a sizeable reform bill this spring, which is projected to reduce the system's medical costs by about 5%. The bill also took steps in streamlining Oklahoma's workers comp system, making it more of an administrative system, which legislators hope will make it easier for injured workers to get treatment and back to work faster and reduce the number of claims handled in the court system.

"Oklahoma had chronic workers compensation issues and this was the first time they made changes to their system in years,"

Mr. Wood said. "They made changes to their system that will yield improvements over time and, while they fell short of making it a purely administrative system, it is a significant reform that was passed."

Kansas' legislation addressed needed changes to its workers compensation system hinging on overturning previous court decisions that eroded the system, and ending payment of unwarranted claims by raising the threshold required for an incident to be compensable.

"Quite often, legislators and stakeholders will address costs when attempting workers compensation reform, but they also look to address areas of friction within the system," said Trey Gillespie, Austin, Texas-based senior workers compensation director for PCI. "When you

'Montana had a cost issue and they worked in trying to address it. Reducing costs was a major goal for them and the bill that was passed was a product of its business community.'

Keith Bateman, Property Casualty Insurers Assn. of America

address areas of friction, it's hard to measure cost-savings, but by addressing those areas, it produces a fair and equitable system that makes it easier to use."

While Illinois garnered plenty of media attention during its legislative session, its workers compensation reform bill left much to be desired by insurance and business groups.

"Illinois remains a troubled system and it's a small miracle that anything was passed," Mr. Wood said.

On its face, the reform package passed by lawmakers on the last day of the spring legislative session provides a 30% decrease in medical fees employers must pay to doctors, which supporters of the bill estimated will provide a savings to employers between \$500 million and \$700 million each year.

NCCI has yet to issue its analysis of the bill, but it is expected within the coming weeks.

Doug Whitely, president of the Illinois Chamber of Commerce, said while he was pleased steps were taken in revising the maligned Illinois workers comp system, business groups will make another run at lawmakers in 2012 to get a stronger reform passed.

"Workers comp reform is hard

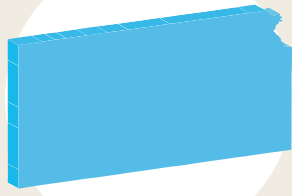
SYSTEM CHANGES

Six states—Illinois, Kansas, Montana, North Carolina, Oklahoma and Washington—passed workers compensation reform bills during their respective spring legislative sessions. While some states took aim at controlling medical costs, others produced bills that would benefit labor and business. Here are a few key initiatives in each state reform plan.



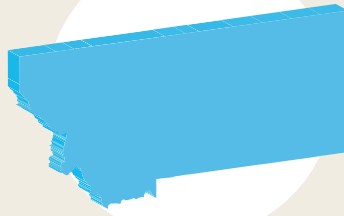
Illinois

- Establishes a medical network for workers compensation claims.
- Requires the use and application of American Medical Assn.'s Guides to the Evaluation of Permanent Impairment when evaluating a worker.
- Replaces arbitrators with ones appointed by the governor and requires they be licensed attorneys, confirmed by state Senate and reviewed every three years.



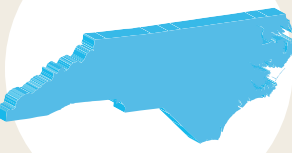
Kansas

- Increases benefit caps for injured workers who are totally disabled and have lost the capacity to work.
- Ends payment of unwarranted claims by raising the threshold required for an incident to be compensable.
- Overturns court decisions that eroded the workers comp system.



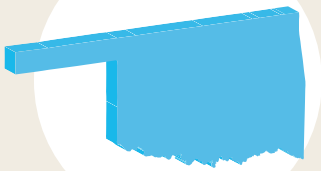
Montana

- Requires doctors to apply the sixth edition of the American Medical Assn.'s Guides to the Evaluation of Permanent Impairment when rating impairments.
- Limits employer liability for injuries that occur off company grounds, which includes injuries that occur while on a break or participating in social or recreational activities.
- Freezes medical fee schedules from July 2011 through June 2013 at rates that were in effect on Dec. 31, 2010.



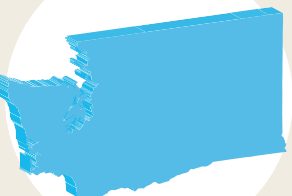
North Carolina

- Places a 500-week cap on temporary total disability benefits and increases the cap on temporary partial disability benefits from 300 weeks to 500 weeks.
- Defines the term "suitable employment" to provide clarity for court decisions that have made it more difficult for employees to return to work.



Oklahoma

- Establishes a new medical care fee schedule designed to help cut the system's medical costs by 5%.
- Requires treatment plans for injured workers to follow nationally recognized standards.
- Requires governor to appoint new judges of the Workers' Compensation Court next year, with the presiding judge serving a two-year term.



Washington

- Approves structured settlement agreements for workers 55 years or older beginning in 2016 and establishes minimum and maximum periodic payments.
- Establishes the Stay-at-Work program authorizing Washington State Fund employers to receive a wage subsidy and reimbursements for putting an injured employee back to work on light or transitional duty.

work and making any gains is a strenuous task," Mr. Whitely said. "We made some gains this year and progress was made, but I think we left some things on the table and we will need to address those in 2012."

North Carolina sent its reforms to the governor last week after the Senate passed a measure Thursday, which would cap temporary total disability benefits at 500 weeks and will increase the duration of benefits for partial disability to 500 weeks from 300 weeks. The bill passed the Senate by a

final vote of 46-0 after passing the House 100-3 on June 1. It will head to Gov. Beverly Perdue, who is expected to sign the measure.

Meanwhile, Washington also passed a reform designed to save the state's disability system \$1.1 billion during the next four years. The measure freezes the cost-of-living allowances and provides the option of a structured claims settlement among a short list of other actions.

PCI and AIA acknowledged that, while some progress was made in Illinois and North Caroli-

na, the gains were "modest" and that there still is much work to be done if each state's system is going to achieve full reform.

"Some states are addressing some difficult problems that they've had and we've also seen some states that are less willing to address their problems," said Rita Nowak, vp of commercial lines and research for PCI. "What we've seen during this past legislative session, though, is a change in proactive reforms that will eventually improve the workers compensation system overall."

News In Brief

CONTINUED FROM PAGE 1

includes residential, commercial and industrial properties and their contents, as well as automobiles.

P/C rates drop 4% in May: MarketScout

U.S. property/casualty insurance rates dropped an average of 4% in May compared with the same period last year, electronic insurance exchange MarketScout said. Property/casualty rates also fell 4% in April and March. MarketScout said general liability insurance rates decreased an average of 3% in May compared with last year after posting a 4% decline in April.

Groups oppose allowing PBGC to set premiums

Nearly a dozen business groups have asked federal lawmakers to oppose an administration proposal to transfer the authority from Congress to the Pension Benefit Guaranty Corp. to set premiums that employers with pension plans pay the PBGC. In its proposed fiscal 2012 budget this year, the Obama administration proposed that employers' PBGC premium be based in part on their credit ratings. That would be a big shift from the system in which employers pay the same annual base premium regardless of their financial strength. Employers with underfunded plans pay a variable-rate premium of \$9 per \$1,000 of plan underfunding. But the business groups said in a letter to members of Congress that a creditworthiness test would be ill-advised and inappropriate.

U.K. property insurance rates stable: Survey

Most U.K. insurance buyers have seen rates for property and business interruption coverage stabilize or decrease during the past year, according to a survey of members of the Assn. of Insurance & Risk Managers. According to AIRMIC's second benchmarking study, 34% of insurance buyers said there was no change in the premium they were charged for property damage and business

interruption coverage at their last renewal. Twenty-five percent of respondents said their rates decreased 5% to 10% at renewal, while 11% saw a reduction of 10% to 20%.

Pension plan funding levels fell in May

The funding levels of pension plans sponsored by large, publicly held U.S. employers fell slightly in May, but still is significantly higher compared with the end of last year, according to a Milliman Inc. survey. Defined benefit plans offered by 100 U.S. employers with the largest pension programs were on average 85.6% funded as of May 31. That's down from an average funding level of 87.2% at the end of April, but up from 84.1% at the end of December.

Worker fired after injury can sue employer

A machine shop employee fired within an hour of reporting an injury, but before he could file a workers compensation claim, can sue his employer for wrongful termination, Ohio's Supreme Court ruled. The 4-3 decision upholds an appeals court finding and stems from a back injury DeWayne Sutton suffered in April 2008. He had been a Tomco Machining Inc. employee for two and a half years when he was fired without being given a reason, court records state. The Supreme Court's task included determining whether a state law prohibiting the firing of workers in retaliation for filing workers comp claims also applies to firings that occur after an injury, but before a claim is filed. The Supreme Court remanded the case to a trial court to resolve remaining issues.

Noted

Insurance brokerage **Marsh Inc.** said it has appointed Jessica Isaacs to lead a new segment in its international division focused on small- and medium-size enterprises. Ms. Isaacs, who is head of small and medium enterprises, is based in New York and reports to Sandy Vietor, president of Marsh's global specialties unit....Eileen McCusker will retire next year from her post as chief executive, international property/casualty insurance at **XL Insurance**, a unit of XL Group P.L.C. XL said David Duclos, CEO of global insurance operations, will take on her responsibilities until a successor is named.

Files show how settlement talks failed

By **ROBERTO CENICEROS**

CHICAGO—Court papers filed in preparation for a federal court hearing next week disclose insurers' private attempts to settle closely followed litigation involving the nation's largest workers compensation underwriters.

Documentation filed June 3 by seven insurers includes details of an April 2010 settlement offer in which Liberty Mutual Group Inc. proposed that American International Group Inc. pay \$965 million to all insurers harmed by decades of AIG underreporting workers compensation premiums.

In that proposal, Liberty Mutual, with the approval of the National Workers Compensation Reinsurance Pool, proposed that AIG pay \$810 million to NWCPR plus another \$155 million to Liberty Mutual.

"AIG did not immediately respond to this proposal," according to court documents filed by seven insurers backing AIG's proposed \$450 million settlement and opposing Liberty Mutual's efforts to scuttle the \$450 million deal.

Then, in a May 2010 meeting involving Liberty Mutual CEO Edmund Kelly and AIG President and CEO Robert Benmosche, Liber-

ty Mutual again offered to settle the litigation, this time in exchange for AIG paying \$500 million to a class of insurers and another \$100 million to Liberty Mutual, the seven insurers allege.

The seven also say that in a September 2010 meeting, Liberty Mutual General Counsel Sean McSweeney answered another insurer's question by stating that AIG's \$450 million offer was a reasonable settlement amount for the class and that Liberty Mutual would support it if AIG agreed to pay Liberty an additional amount for its "nonclass claims."

The seven insurers claim such statements show that \$450 million is a fair amount to compensate all underwriters for losses they suffered from AIG's premium underreporting.

Liberty Mutual "denies the allegation and looks forward to responding appropriately in the coming weeks," the insurer said last week in an emailed statement.

By the end of 2010, NWCPR participants "became convinced that AIG could not, in fact, be induced to increase its offer beyond \$450 million," the seven insurers state. Even an attempt to convince AIG to raise its offer by \$3 million to cover settlement expenses was rejected, the documents state.

Dispute: Insurers seek end to comp argument

CONTINUED FROM PAGE 1

discussions, at least one involving Liberty Mutual CEO Edmund Kelly and AIG President and CEO Robert Benmosche, in attempts to settle the dispute (see related story).

The litigation began in May 2007, when the National Workers Compensation Reinsurance Pool operated by Boca Raton, Fla.-based NCCI Holdings Inc. sued AIG. The pool alleged its members paid states more than their appropriate share of residual market assessments because AIG was assigned an improperly small share of high-risk workers comp policies.

The pool argued it was excluded from a 2006 settlement with then-New York Attorney General Eliot Spitzer in which AIG agreed to pay more than \$343 million to the states to settle allegations that it underreported workers comp premiums to avoid paying its

fair share of the residual market assessments.

Since then, Judge Gettleman has dismissed the NWCPR as lead plaintiff, but the litigation continued when Liberty Mutual units Safeco Insurance Co. of America and Ohio Casualty Insurance Co. sued in 2009, seeking to replace the NWCPR and seeking class action status in a suit against AIG.

The seven insurers now considered interveners in Liberty Mutual's lawsuit against AIG argue that they, not Liberty Mutual, should represent the class. They are ACE INA Holdings Inc., Auto-Owners Insurance Co., Companion Property & Casualty Insurance Co. Inc., FirstComp Insurance Co., Hartford Financial Services Group Inc., Technology Insurance Co. Inc. and Travelers Indemnity Co.

"ACE, Hartford and Travelers are attempting to hijack the case through a settlement agreement that is only in their

interests and AIG's and at the expense of the other 500 members of the settlement class," Sean McSweeney, Liberty Mutual's deputy general counsel, said in an emailed statement. "As part of the proposed settlement, the class is being asked to subsidize AIG's release of its significant counterclaims against ACE, Hartford and Travelers for underreporting," he said.

The seven insurers argue that continuing the litigation would mean the NWCPR would "incur scores of millions of dollars in litigation costs."

The June 21 Chicago hearing in *American International Group Inc. vs. ACE INA Holdings Inc.* and *Safeco Insurance Co. of America vs. American International Group Inc.* is expected to be significant because it will affect the judge's decision on whether \$450 million is a fair settlement and whether the seven insurers or Liberty Mutual units will represent all insurers, legal sources said.

The litigation before Judge Gettleman also includes a complaint by AIG alleging its competitors also underreported workers comp premiums.

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Punishment fits the character limit

An out-of-court settlement in a defamation suit resulted in a Malaysian blogger tweeting 100 times over three days to say his previous postings were untrue and he retracts the statements.

The punishment stemmed from Fahmi Fadzil's tweets in January stating that a friend was treated badly by her employer, Female magazine, because she was pregnant, according to news reports.

Attorneys for the magazine's owners, Blu Inc. Media, threatened legal action and reportedly demanded that he post an apology in newspapers.

But when it turned out he couldn't afford that, the two sides reportedly settled the case, with Mr. Fadzil agreeing to tweet his apologies.

His apology: "I've defamed Blu Inc Media & Female magazine. My Tweets on their HR policies are untrue. I retract those words & hereby apologize."

Completing 100 tweets in the allotted time required him to post one every 35 minutes.

The digital equivalent of scrawling an apology on a chalkboard hasn't been all bad for Mr. Fadzil, whom reports described as a social activist. His story and his tweets won him hundreds of new Twitter followers.

His lawyer, meanwhile, told media sources he believes the settlement was the first of its kind in Malaysia, where residents are big fans of social media.

Business Insurance END PAGE

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The National Labor Relations Board has ruled that a giant inflatable rat displayed at a worksite is not intimidating.

Display complaint squeaks by NLRB

A giant inflatable rat is not intimidating, the National Labor Relations Board has ruled.

The 16-foot-tall, 12-foot-wide rat was displayed at Brandon Regional Medical Center in Brandon, Fla., in 2003 while a leaflet-bearing union member was stationed near the hospital's entrance. The display grew from a complex labor dispute the Sheet Metal Workers International Assn. had with a contractor and a staffing company the contractor used for a hospital project.

In last month's decision, a majority of NLRB members overruled an administrative law judge and held that the rat and the union members' activities were acceptable under federal regulations.

The displays were not confrontational "as they were stationary and located at sufficient

distances from the vehicle and building entrances to the hospital that visitors were not confronted by an actual or symbolic barrier as they arrived or departed from the hospital," according to the ruling.

"Further, there was no evidence that (the union member) or the individuals attending the rat physically or verbally accosted hospital patrons," said the decision.

But one NLRB board member disagreed. "For pedestrians or occupants of cars passing in the shadow of a rat balloon, which portrays the presence of a 'rat employer' and is surrounded by union agents, the message is unmistakably confrontational and coercive."

"Clearly, these means of protest owe more to intimidation than persuasion," he wrote.

Aussie workers get stiff penalty for planking

"Planking" is an Internet craze that involves people lying flat on their stomach and balancing on a surface in unusual environments, which means some people are trying it at work and getting in trouble.

That was the case for seven mine workers in Australia, who were fired or suspended for planking at mining sites in western Australia's Pilbara region, according to a report by the Brisbane Times.

Six were employees of Sydney-based Conneq Infrastructure Services (Australia) Pty. Ltd. and one was an employee of Melbourne-based BHP Billiton Ltd., according to the newspaper.

Two reportedly were fired for planking while the others, including a supervisor, were suspended for watching and taking photos.

The craze, which includes taking photos and videos and sharing them via social media, took the country by storm in May when a man was arrested for planking on a police car. Later, a 20-year-old Brisbane man died after falling off a seventh-floor balcony while attempting to plank on it.

Conneq and BHP denounced the actions, but Australia's Construction, Forestry, Mining and Energy Union said the punishment was too stiff.

"Surely a warning would have been more than appropriate," an agency spokesman told the Brisbane Times, adding that he hoped workers would realize planking is not a game and is unsafe.



ENTERTAINER WAS NAUGHTY, SKIPPED GIG: SUIT

Two Illinois theaters have sued former adult film star Jenna Jameson for ditching work to join the birthday party for celebrity blogger Perez Hilton.

In the suit, which alleges breach of contract, against Jenna Marie Massoli, the owners of Hollywood Palms Cinema in Naperville and Hollywood Boulevard Cinema in Woodridge reportedly allege that Ms. Massoli faked an illness and refused to reschedule a March appearance, which the chain spent thousands to promote.

The movie theaters reportedly sold hundreds of advance tickets for the event that was to include a book signing and a screening of Ms. Massoli's 2008 "Stripper Zombies!" The cinemas anticipated making "tens of thousands" on the event and Ms. Massoli was to receive at least \$10,000 for her appearance along with airfare and

hotel expenses, according to the suit, filed in DuPage County Circuit Court in May.

While the theaters reportedly received a "vague doctor's note" from Ms. Massoli's agent that she couldn't travel because of a "medical emergency," pictures soon surfaced on the Internet showing her in good health and attending Mr. Hilton's birthday party in Hollywood on the same date.

Ms. Massoli never was ill and "got an offer that she thought would be more fun and decided to leave Hollywood in the lurch," according to the suit, which seeks financial and loss of reputation damages.

Ms. Massoli could not be immediately reached for comment on the suit, which is scheduled for an August hearing.



Adult film star Jenna Jameson is being sued for allegedly skipping an event to party with Perez Hilton.



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