

## COMPOUNDED DRUGS

Average cost and usage of compounded prescription medications in 2013 compared with 2012

Employer cost per prescription \$1,299.13	% change 29.8%
Prescriptions per injured worker 0.03	% change 71.9%
Compound cost per user \$43.75	% change 125.6%

Source: Express Scripts Inc.

## WORKERS COMPENSATION

# Compounded drug use soars as do worries

BY SHEENA HARRISON

The use and price of compounded medications in workers compensation has climbed sharply, prompting concerns about controlling prescription costs for comp claims and managing safety for injured workers.

Utilization of these medications in workers comp increased nearly fourfold in the past several years, while pricing spiked nearly 30% in 2013 compared with 2012, recent studies show.

Although compounds represent only 1% to 3% of drugs prescribed for workers comp patients, experts say they're keeping an eye on such medications due to the skyrocketing prices — sometimes up to \$2,000 for a month's supply — and worries that compounds may be produced with inconsistent or incorrect doses.

See **COMPOUNDING** page 34

## RISK MANAGEMENT

# GM COMPENSATION FUND FUELS REPUTATION REHAB

Litigation persists over defective ignition switches



AP PHOTO

Clarence Ditlow of the Center for Auto Safety shows an ignition switch similar to those blamed in deaths and crashes of GM cars.

BY RODD ZOLKOS AND JUDY GREENWALD

The open-ended compensation fund General Motors Co. has established will provide a claims-paying vehicle for individuals killed or injured in accidents caused by defective ignition switches and is a big step toward curbing damage to the automaker's reputation.

GM will not look to its insurance to help pay claims from the fund it formed on June 30.

"It will be done through cash on hand, no insurance," said David Roman, director of financial communications for Detroit-based GM.

While some estimates say the fund could cost the company billions of dollars, fund designer and administrator Kenneth R. Feinberg is solely responsible for setting the amount of compensation it pays.

See **GM** page 36

## BENEFITS MANAGEMENT

# Religious beliefs trump mandate on birth control

Narrow ruling affects only private employers

BY JERRY GEISEL

Now that the U.S. Supreme Court says the federal government cannot force closely-held private employers to directly provide prescription contraceptive coverage, it remains to be seen if the Obama administration will propose new regulations to close this coverage gap.

The 5-4 ruling last week struck down a health care reform law regulation from which three Christian family-owned companies argued they should be exempt because of their owners' religious objections to providing employees cost-free prescription contraceptives and related services.

The ruling applies only to family-owned private companies, and does not exclude publicly held corporations from the requirement to offer employees coverage for contraceptives.

The mandate violates privately-held corporations' rights under the 1993 federal Religious Freedom Restoration Act, which bars the government from actions that substantially burden the free exercise of religious beliefs, the high court ruled.

"The plain terms of RFRA make it perfectly clear that Congress did not discriminate this way against men and women who wish to run

See **CONTRACEPTIVES** page 34

### GM VICTIMS' COMPENSATION FUND

Eligible recipients are drivers, vehicle passengers, occupants of other vehicles and pedestrians.

Theoretical examples of possible payouts include:

**\$5.1 MILLION**

for the death of a 25-year-old married woman with two children earning \$75,000 a year

---

**\$6.6 MILLION**

for a 40-year-old married person with no children earning \$70,000 a year and survived by a paraplegic

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**\$70,000**

for injuries requiring a two-night hospital stay

Source: General Motors Co., Reuters

**Q&A: BRADY R. KELLEY**

Executive director of NAPSLO discusses challenges, outlook and legislative priorities

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## WORKERS COMP & SAFETY

Risk managers are concerned that a proposed rule mandating workplace injuries be reported electronically would make companies less likely to keep accurate safety data; research and data on U.S. workers compensation insurance: premiums, profitability, growth, severity.

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NEWS

WORKERS COMPENSATION

Telemedicine foothold grows in treating injured workers

States mull best uses and mandating coverage rules

BY STEPHANIE GOLDBERG

Telemedicine is gaining ground in treating injured workers, especially in rural areas, to speed their evaluation and possibly reduce the costs paid by employers.

Telemedicine, which is defined in workers compensation as a remote, virtual interaction involving two or more parties in the claims process, has long involved telephone communications between workers and pharmacy benefit managers, or treating physicians and specialists, experts said. It's evolved in recent years to include remote face-to-face interactions and the remote measuring of vital signs.

The costs associated with treating workers in rural areas, in addition to more awareness about telemedicine and increased acceptance of technology, has led the industry to embrace the 40-year-old practice in new ways, said Jonathan Linkous, CEO of the American Telemedicine Association in Washington.

For example, a February Rand Corp. study that examined a telemedicine program and a July 2013 study by researchers at University of California Davis Children's Hospital found telemedicine improves the quality of health care for children in rural areas.

In Nevada, a large number of



Telemedicine has evolved in recent years to include remote face-to-face interactions and the remote measuring of vital signs.

workers in rural areas who lack easy access to medical providers and a request by the Nevada Hospital Association prompted the state Department of Business and Industry's Division of Industrial Relations to propose a rule that would require insurers and third-party administrators "to pay for telemedicine services under certain circumstances" and add it to the state's medical fee schedule.

While it was shelved last month, it may turn up as part of an overall revamp of Nevada's workers comp law next year.

"In the state of Nevada, we have two primary urban population centers," said Katherine Godwin, medical unit supervisor of the workers compensation section at

the Nevada Division of Industrial Relations in Henderson. "Apart from that, the state is basically rural, so convenient access to medical care can be a challenge."

A large rural workforce also is driving Oklahoma to consider making more use of telemedicine in workers comp, said Robert Gilliland, a commissioner on the Oklahoma Workers' Compensation Commission.

Costs can add up quickly when injured workers travel long distances to seek medical care for injuries, he said.

For example, Nevada rules allow injured employees to be reimbursed for "out-of-pocket expenses for meals, lodging and actual mileage related to an authorized medical examination, reasonable and necessary medical treatment, vocational rehabilitation or vocational retraining which requires travel in excess of 20 miles round-trip to and from the injured employee's home to the location of such services."

Aside from workers comp, more employers in general are embracing telemedicine as the care and cost benefits associated with it become more evident, said Dr. Teresa Bartlett, Troy, Michigan-based senior vice president of medical quality and corporate

See **TELEMEDICINE** page 35

LIABILITY & LITIGATION

Public firms gain weapon in class actions

Ruling allows showing stock price unaffected

BY JUDY GREENWALD

The recent U.S. Supreme Court ruling making it easier to get securities litigation dismissed at an earlier stage is only a partial victory for directors and officers and is likely to increase legal costs in the initial defense of such lawsuits.

In *Halliburton Co. v. Erica P. John Fund Inc.*, the nation's highest court decided in a 9-0 vote that corporate defendants must be given the opportunity to show their actions did not affect the stock price of a publicly traded company before a class is certified, rather than have to wait until later at the merits stage of the litigation.

While the decision last month sided with Halliburton in overturning an April 2013 ruling by the 5th U.S. Circuit Court of Appeals, it failed to overturn a 26-year-old Supreme Court decision in *Basic Inc. et al. v. Max L. Levinson et al.* that spurred an increase in securities class actions.

*Halliburton* "had the potential to completely reshape the securities class action landscape," but it "only went halfway to where it could have gone," said Allison Barrett, senior vice president and FINEX Financial Services industry leader at Willis North America Inc. in New York.

As a result, legal experts recommend that companies make sure their directors and officers liability insurance covers expert fees and event studies, which assess how an event has or has not affected a company's stock price.

"There's going to be a bit of a wait-and-see attitude by both the plaintiff and defense bar to see

See **HALLIBURTON** page 35

PROPERTY/CASUALTY INSURERS

Insurer profit rests on resourcefulness

BY GAVIN SOUTER

LONDON — Insurers and reinsurers are reassessing their business strategies as prices soften, exposures evolve and new capital providers drive change throughout the commercial insurance market.

To respond to the changing commercial environment, companies will have to offer coverage that protects balance sheet risks not covered by insurers and explore new profitable lines of business wherever they are available, several industry executives say.

Catastrophe reinsurance rates already have fallen, and insurance

and reinsurance buyers are seeing lower or weakening prices in several other market sectors. And nontraditional capital providers are keeping sectors of the market flush with capacity.

While new capital entering the market is a direct threat to traditional market participants, resourceful companies can use the new capital to their own advantage, executives say.

Insurers and reinsurers still should be well-positioned to offer buyers relevant coverage and operate profitably as the market softens, but they will have to be innovative and adaptable, several of the executives said during panel

sessions at the International Insurance Society's 50th Annual Seminar held in London last month.

Insurers and reinsurers, who generally have pushed prices higher over the past several years, are dropping prices in many sectors, said Nikolaus von Bomhard, CEO of Munich Reinsurance Co.

"I was proud of the industry for a long time because of how we managed the financial crisis — by and large, I think it was outstanding ... but now we come to the point where I lose my pride a little bit because I see us falling into the old traps that I hadn't seen us falling

See **IIS** page 35

HALLIBURTON V. ERIC P. JOHN FUND

The Supreme Court's ruling:

- Leaves intact the 1988 fraud-on-the-market theory, in which plaintiffs in securities class actions do not have to demonstrate each class member relied on a company's alleged misrepresentation of information.
- Permits defense attorneys to prove at the class certification stage that any alleged misrepresentation had no effect on a company's stock price.
- Provides a way for companies to expedite dismissal of securities class actions.

ONLINE  
FEATURES

WOMEN TO WATCH

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VIDEO: IN FOCUS



Benefit Manager of the Year®

Dianne L. Howard talks about how she successfully cut benefit costs. [www.BusinessInsurance.com/InFocus](http://www.BusinessInsurance.com/InFocus)

GALLERY

OFF BEAT: The Best of June

View a photo gallery of the most popular quirky risk management and insurance stories in June. [www.BusinessInsurance.com/BestOffBeats](http://www.BusinessInsurance.com/BestOffBeats)

DIRECTORY

Property Loss Consultants



*Business Insurance's* latest directory includes the listings of 24 companies that provide loss-control services on a direct,

unbundled basis, as well as top 10 rankings, charts and more. [www.BusinessInsurance.com/PropertyLossDirectory](http://www.BusinessInsurance.com/PropertyLossDirectory)

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NEWS

BENEFITS MANAGEMENT

OFFERING HEALTH CARE BENEFITS  
CRITICAL TO RECRUITING, RETAINING WORKERS

Report shows most firms provide mental health, birth control coverage

BY SHEENA HARRISON

ORLANDO, Fla. — Employers have offered employees a greater variety of health and wellness benefits in the past five years, including coverage for mental health care and contraception, according to a report by the Society for Human Resource Management.

The 2014 SHRM Employee Benefits report showed that 87% of employers offer mental health coverage in 2014, down from 89% in 2013, but up from 82% in 2010. About 84% of employers reported covering prescription contraceptives for their employees in 2014, up from 82% in 2013 and 68% in 2010.

Under the health care reform law, most group health insurance plans are required to provide contraceptives without charge to the employ-

ee. Excepted are nonprofit religious organizations and, due to last week's Supreme Court ruling, closely held for-profit companies with religious objections.

Mental health benefits also are governed by federal law. Under the 2008 Mental Health Parity and Addiction Equity Act, companies with more than 50 employees that offer mental health benefits must ensure that copayments, deductibles and limits on treatment are no more restrictive than medical or surgical benefits.

Alexandria, Virginia-based SHRM interviewed more than 500 human resource professionals for its annual survey, which was released in late June during the organization's Annual Conference & Exposition in Orlando, Florida. Twenty-eight percent said benefits

offered by their companies increased in the past 12 months, while 63% said their benefit levels remained the same.

"Offering health benefits is critical to employee recruitment and retention," Bruce Elliott, SHRM's manager of compensation and benefits, said in a statement. "However, the rising cost of health benefits, especially health insurance, has made it challenging for some employers to continue offering it. Because of that, employers are evaluating all their benefits and making adjustments."

During the conference, Michael Cohen, a partner at Duane Morris L.L.P. in Philadelphia, said firms should create equal employment and anti-discrimination policies that include protections

See SHRM page 34

MIDYEAR RENEWALS

Workers comp rates nearly flat; creep up with company size, risk

BY STEPHANIE GOLDBERG

Employers renewing their workers compensation coverage at midyear have seen smaller price increases than a year ago, but insurers are being selective about the accounts they underwrite.

"The entire industry is starting to trend closer to flat," said Stephen Hackenburg, chief broking officer of the national casualty practice at Aon Risk Solutions in New York.

"The first quarter was more of a stabilization period, and the second quarter has been more of a return to softer market conditions," he said. "We're starting to see rates trend down (around 2.5%), and we're starting to see the return of fairly meaningful rate reductions on the right accounts."

Large employers are seeing comp rates that are flat to up an average rate of 2.5%, while middle-market employers are seeing rate increases in the 2.5% to 5.5% range, with increases up to 10% for employers with higher-risk profiles, especially those in California, said experts at Willis North America Inc., Lockton Cos. L.L.C. and

Aon Risk Solutions. These increases are slightly lower than they were last year, when rate hikes ranged from 2.5% to 5% for large employers and 5% to 10% for mid-market employers.

However, according to a recent analysis by Moody's Investors Service Inc., rates are expected to remain "sufficiently above loss-ratio inflation (about 2%) to generate further margin expansion and achieve an underwriting profit in the year." The Moody's analysis projects that workers comp insurers will achieve underwriting profitability in 2014 with a combined ratio of 98%.

"Demand is picking up because the economy is getting better and supply has never been higher," Mr. Hackenburg said. "When you combine that with the (fact that) insurance companies are performing pretty well — their profitability and return on equity has been improving — that's a pretty good recipe for increased competition and improved pricing for insurance buyers."

Midsize employers are primarily seeing higher rates because



AP PHOTO

The city of Boulder, Colorado was fortunate to renew with a "slight" rate increase despite a large property insurance claim related to the September 2013 flood in the region.

Property rates fall up to 20% on high capacity, low cat losses

BY MATTHEW LERNER

Primary commercial property insurance is a buyers' market with rate decreases of up to 20% for many U.S. accounts that renewed at midyear, with the exception being those with high catastrophe exposures.

Limited catastrophe losses and an influx of insurance capacity exerted considerable pressure on prices, brokers and market

experts say.

"The market is very insurance buyer-friendly right now," said Duncan Ellis, U.S. property practice leader at Marsh USA Inc. "Purchasers of property insurance are finding a very favorable environment toward pricing, toward capacity and toward interest in their risks."

Premium decreases should be

See COMP page 33

See PROPERTY page 33

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# PURSuing COMPLEX LIABILITY CLAIMS REQUIRES CAREFUL DOCUMENTATION

First analyze policy and evaluate potential recovery vs. cost of litigation

BY MATT DUNNING

Though litigation is never preferable, it often is a commercial insurance policyholder's only recourse to collect reimbursement for losses or defense costs connected with complex liability claims.

As the frequency of high-value third-party liability claims has increased during the past three years, so has the amount of money mid-market companies dedicate annually to legal expenses.

Simultaneously, insurers have been systematically limiting their exposure to certain forms of complex third-party liability, including mass tort environmental claims, construction defect suits, employment practices class actions and, most recently, data security failures.

"What typically drives complex litigation is where you have some set of liability-inducing circumstances occurring in the broader economy, and insurance policies that haven't been designed with those exposures in mind," said John Vishneski, a Chicago-based partner at Reed Smith L.L.P.

"That's the kind of situation where an insurance company faced with high-dollar claims is going to find any way they can to trim what they have to cover."

An insurer's refusal of coverage is likely to be a more pressing concern for mid-market companies than for larger corporations, which are capable of temporarily absorbing the underlying legal expenses during settlement negotiations with their insurers.

However, experts say midsize companies' limited financial resources also underscore the necessity of conducting a detailed value assessment of the potential recovery vs. the anticipated costs

of the litigation, as well as a coverage analysis of the policy in question.

"If I were the CEO, I'd want to be absolutely sure that the case we're getting ready to pursue has a good chance of winning," said John Dempsey, New York-based managing director and global practice leader at Aon Global Risk Consulting.

Once the lawsuit is determined to be economically and legally viable, experts say midsize companies and their legal counsel must decide on the specific relief they intend to seek at trial, because it likely will affect their overall litigation strategy.

"If all you want is to get a defense obligation established, you may not want to seek a ruling on the indemnity question right away," said Tyrone Childress, a Los Angeles-based partner at Jones Day.

"You don't necessarily want to be fighting the underlying plaintiffs at the same time as the insurers about essentially the same issues."

The nature of the relief sought from the insurer and the circumstances of the underlying liability claim should guide a midsize company's selection of the jurisdiction where it sues its insurer, which can be a crucial factor in winning an insurance dispute.

As a precaution, experts say midsize companies may want to consider drafting and filing — but not serving — their lawsuit against an insurer in a policyholder-friendly jurisdiction before starting settlement negotiations, especially since many insurers routinely take similar steps to secure their preference in forum during coverage disputes.

"It might seem like a hardball tactic, but it's one of the most pro-

## BAD FAITH

State-level courts apply a variety of standards by which an insurer can be held liable for acting in bad faith when handling an insured's claim for defense costs or indemnity:

**Reasonableness:** Denial of coverage and/or settlement offer without a reasonable basis.

Standard used in Alabama, Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

**Negligence:** Failure to settle a claim within policy limits, with varying tests.

Standard used in Colorado, Illinois, Indiana, Louisiana, Maryland, Massachusetts, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon.

**Fairness:** Failure to settle a claim within policy limits as a result of negligence, fraud or bad faith.

Standard used in Georgia, Tennessee.

**Affirmative conduct:** Dishonest, malicious or oppressive conduct designed to avoid obligations to policyholders.

Standard used in Arkansas.

**Equal consideration:** Insurer's failure to act in furtherance of its policyholders' interests in equal measure to its own.

Standard used in Idaho.

**Intentional disregard:** Display of intentional disregard for an insured's financial interests.

Standard used in Missouri.

Source: Tressler L.L.P.

dent things a policyholder can do if they are thinking about going in the direction of litigation," said Robert Horkovich, a New York-based shareholder at Anderson Kill P.C.

From an evidentiary standpoint, the most critical step a midsize company must take when pursuing complex litigation against its insurer is carefully documenting all communications with insurers, loss adjusters, investigators and independent consultants involved in the underlying liability claim.

Those documents, experts say, will provide the basis for the company to assert its right to coverage.

"You want to be able to show that the insurer had the information to properly adjust the claim at the time and just refused to do so," Mr. Childress said.

That way, "the whole story will already be in the insurer's claim file before you litigate. Then you can make a much stronger presentation to a judge or a jury."

Additionally, experts say satisfying the insurer's request for documentation during the claims process often can improve a policyholder's chances of uncovering valuable evidence of the insurer's intent once a demand for discovery is made for the insurer's entire file on the underlying claim.

Finally, mid-market companies need to work with their legal counsel to map out the "jury story," which experts say should provide jurors with relatable information and context about the circumstances of the case.

"What the policyholder should always ask a jury is whether they'd want their insurance company treating them in the manner that has been laid out at trial," Mr. Childress said.

"The hope is that the jury will view the case through the eyes of the policyholder in terms of what their reasonable expectations would be under similar circumstances."



## POLICYHOLDER LITIGATION SUCCESSES

Recent policyholder wins in state-level complex claims disputes:

### **National Surety Corp. v. Immunex Corp.**

**Washington Supreme Court, March 7, 2014:** Insurer's right to recoup undue defense costs.

**Underlying liability claim:** Civil, regulatory actions alleging price manipulation.

**5-4 ruling:** Unless an insurance policy specifically provides for it, insurers cannot recoup funds paid to an insured under a reservation-of-rights clause for defense costs in an underlying liability action, even if a court determines later the insured was not owed defense coverage for the claim.

### **Columbia Casualty Co. v. Hiar Holdings L.L.C.**

**Missouri Supreme Court, April 18, 2013:** Insurer's obligation to pay underlying settlement amount greater than the limits of its insured's policy.

**Underlying liability claim:** Class action alleging violation of the Telephone Consumer Protection Act.

**7-0 ruling:** When an insurer wrongfully denies defense coverage, the insurer assumes liability for all settlement payments and other damages resulting from its breach of duty to defend the insured.

### **American Home Assurance Co. v. The Port Authority of New York and New Jersey, et al.**

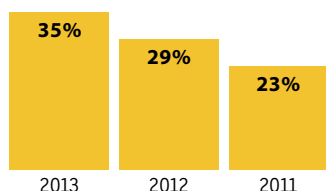
**New York County Supreme Court, Aug 21, 2013:** An insurer's duty to defend an entire underlying action when the policy does not cover some claims.

**Underlying liability claim:** Asbestos-related injuries.

**Single judge ruling:** New York law obligates insurers to defend the entire scope of liability lawsuits filed against their insureds, as long as some causes of action are covered under the policy in question.

## HIGH-STAKES LITIGATION

Companies that faced at least one lawsuit with more than \$20 million at issue



Litigation spending by mid-market companies, in millions of dollars\*

Year	<\$1	\$1-\$9.9	>\$10
2013	46%	48%	6%
2012	65%	36%	0%
2011	66%	33%	2%

\*Does not total 100% due to rounding

Source: Norton Rose Fulbright L.L.P.

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## FEDERAL AGENCIES CLARIFY MANY HEALTH CARE REFORM LAW RULES

Orientation and waiting periods for coverage are latest guidance

BY JERRY GEISEL

Employers can impose a one-month orientation period before a 90-day waiting period starts to either offer qualifying employees group health insurance or face a penalty, according to the latest federal guidance on complying with the health care reform law.

The rules, issued last month by the departments of Health and Human Services, Labor and Treasury, said employer orientation periods are “commonplace” for the estimated 5.1 million new employees per year and are reasonable as long as they are short.

“The danger of abuse increases, however, as the length of the period expands,” the agencies said in the guidance that goes into effect on Jan. 1, 2015. “The creation of a clear maximum prevents abuse and facilitates compliance.”

The orientation period rules soon are to be followed by additional rules, such as the form employers must use in 2016 to report to the government the names and Social Security numbers of group health plan enrollees.

“We are hearing late summer,” said Judy Bauserman, a partner at Mercer L.L.C. in Washington, about when the form is expected to be released by the IRS.

Other still-to-come guidance will be more far-reaching. For example, under the Patient Protection and Affordable Care Act, a 40% federal excise tax will be imposed in 2018 on health premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage.

But the law is not clear on whether costs, such as employees’ pretax contributions to health savings accounts, and benefits provided through self-insured dental and vision care plans, are to be included in calculating health plan costs.

“What is counted and not counted” is a key issue for employers, said J.D. Piro, a senior vice president at Aon Hewitt in Norwalk, Connecticut.

That guidance, however, is not around the corner.

“I don’t expect guidance in the next year or two” on specific parts of health insurance to be included in calculating which employers would be subject to the penalty, said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, New Jersey. That,

### RULES TO BE DETERMINED

Health care reform law provisions for which employers await regulatory guidance

- Automatically enrolling employees that do not select a health care plan. Requirement delayed until rules are issued.
- Form employers must use to report insurance coverage provided to employees and dependents. First report on 2015 coverage to be distributed in 2016.
- Delineating what costs are included in determining 40% federal excise tax on health plan premiums that exceed \$10,200 for single coverage and \$27,500 for family coverage. Tax to begin in 2018.
- Amount owed per health plan enrollee of the transitional reinsurance fee in 2016.
- Nondiscrimination rules for insured health care plans. Enforcement delayed until rules are finalized.

in part, is because implementing the tax is still nearly four years away.

For several provisions that were ready to go into effect, regulators have delayed enforcement because they have not issued the necessary guidance.

For example, the law bars insured group health care plans from discriminating in favor of highly compensated employees, a provision that was to start in 2011 but has been delayed until rules are issued.

The issue could be important for employers that offer low-cost, limited-benefit plans to certain employees, such as part-time workers. To avoid a \$2,000 per employee penalty, employers under the law must offer health insurance to full-time employees — those who work an average of 30 or more hours per week.

Such coverage, sometimes dubbed skinny health plans, may subject employers to another penalty if a plan fails to cover 60% of expected health costs. But it would be imposed only if an employee rejects the coverage, is eligible for a federal premium subsidy and uses the subsidy to buy health insurance through a public exchange.

While an employer would be liable for a \$3,000 penalty, it would be only for each affected employee — not its entire full-time workforce.

“A lot of employers are exploring that option” as a low-cost way to offer coverage and thus avoid the \$2,000 per employee penalty that is triggered when employers do not offer a health plan, said Amy Gordon, a partner at McDermott, Will & Emery L.L.P. in Chicago.

“That is a piece of guidance that we are now missing,” said Amy Bergner, managing director at PricewaterhouseCoopers L.L.P. in Washington.

And whether such subsidized coverage could only be purchased through a state health insurance exchange is an issue pending before the Supreme Court.

While the law itself could be reshaped by lawmakers, deep divisions among Democrats and Republicans in Congress make any changes unlikely — even if Republicans in the upcoming November elections regain control of the Senate.

“Nothing will change while President Obama is in office. He has veto power,” said Greg Stancil, an account executive at Scott Benefit Services in Greensboro, North Carolina.

Meanwhile, many of the ACA-required changes, such as extending coverage to employees’ adult children up to age 26, have had only a modest cost effect on many employers’ health plans, experts say.

While the age 26 provision boosted Kendal at Oberlin’s health plan enrollment by nearly 15%, there was little financial effect, said Barbara Thomas, CEO of the Oberlin, Ohio-based senior living organization, noting that young adults tend to be healthier and use less health services.

The modest cost to employers of offering coverage to young adults is one some say they can accept.

“We are not distressed if our staff’s young adult family members are supported in this way while they navigate finding their first jobs with benefits,” Ms. Thomas said.

### RULES IN EFFECT

Provisions for which regulatory guidance has been finalized and effective dates

- 2010** Early retiree health plan sponsors reimbursed for 80% of claims between \$15,000 and \$90,000.
- 2011** Employers required to cover employees’ adult children up to age 26.
- 2011** Flexible spending accounts, health reimbursement arrangements and health savings accounts barred from reimbursing participants for over-the-counter drugs.
- 2011** Penalty on nonhealth care-related HSA withdrawals boosted to 20% from 10%.
- 2013** Employee contributions to flexible spending accounts capped at \$2,500 a year.
- 2014** Plan sponsors pay a \$63 reinsurance fee per plan participant. Fee falls to \$44 per participant in 2015.
- 2014** Lifetime and annual limits on covered services eliminated.
- 2014** New employee waiting periods for coverage limited to 90 days; employers may impose a one-month orientation period, after which waiting period starts.
- 2015** Employers with at least 100 full-time employees that do not offer coverage to at least 70% of workers penalized \$2,000 per employee, except the first 80. Mandate expands in 2016 to employers with at least 50 employees and requires coverage be offered to at least 95% of full-time employees, excluding the first 30.
- 2015** Employer penalty of \$3,000 begins for each employee whose premium for single coverage exceeds 9.5% of annual wages or whose coverage lacks “minimum essential value,” is eligible for and receives a federal premium subsidy to buy coverage in a public insurance exchange.

### COURT RULING ON SUBSIDIES ANTICIPATED

The U.S. Court of Appeals for the District of Columbia is expected to issue a decision soon on a lawsuit alleging, contrary to an IRS rule, that health care reform law premium subsidies can be used by eligible individuals to buy coverage only in state exchanges—not those set by the U.S. Department of Health and Human Services in states that declined to set up exchanges.

In January, Judge Paul Friedman of the U.S. District Court for the District of Columbia rejected the argument that would affect individuals obtaining federal premium subsidies to buy coverage in states such as Ohio, Pennsylvania and Texas that did not set up exchanges.

“There is no evidence that either the House or Senate considered making tax credits dependent on whether a state participated in the exchanges,” he ruled.

If premium subsidies are limited only to coverage through state exchanges, millions of lower-income uninsured U.S. residents would lack access to subsidies and may remain uninsured.

As of mid-April, the Department of Health and Human Services said 2.6 million people who bought health insurance through a public exchange did so through 15 state exchanges, with 5.4 million people securing coverage through federal exchanges. It also said more than 80% of the more than 8 million total exchange enrollees qualified for premium subsidies.

“If premium subsidies were not available in federally established exchanges, it would be like pulling out all of the girders from a skyscraper, causing the entire edifice to topple in fairly short order,” said Gretchen Young, senior vice president of health policy with the ERISA Industry Committee in Washington.

“Without the subsidies, probably most individuals in the federal exchanges would not be able to afford coverage. Only the sickest and those most in need of insurance would be left in these plans, which quickly would face an unsustainable risk pool,” she said.

By Jerry Geisel

# News changes. Principles don't.

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## German insurers face \$887 million bill for storm

German insurers are on the hook for about €650 million (\$887.2 million) in damage claims from storm Ela in early June, which hit northwestern Germany especially hard, insurance association GDV said. Property insurers face around 350,000 claims from homes and businesses totaling €400 million (\$546 million), while car insurers have received 100,000 claims worth around €250 million (\$341.2 million), GDV said. “Ela is the second-most expensive storm to hit property insurers in the last 15 years,” GDV said, adding that it was topped by hailstorm Andreas, which caused €1.9 billion (\$2.59 billion) in property claims in July last year. German railway Deutsche Bahn alone faces a €60 million (\$81.9 million) hit to its earnings from the storm, the Frankfurter Allgemeine Zeitung reported on Wednesday, citing a company internal document.

Reuters

## World Bank issues bond to cover Caribbean risks

The U.N.’s World Bank has issued a \$30 million catastrophe bond through its new capital-at-risk notes program to provide reinsurance for earthquake and tropical cyclone risks in the 16 Caribbean countries that are members of the Caribbean Catastrophe Risk Insurance Facility. The placement agent for the cat bond is GC Securities, a division of Guy Carpenter & Co. L.L.C., which acted as co-structuring agent with Munich Reinsurance Co. Swiss Re Capital Markets, a unit of Swiss Re Ltd., acted as adviser to the Washington-based World Bank. The cat bond “will broaden capacity over time, which in turn would help to better manage volatility in the reinsurance market,” Isaac Anthony, CEO of the CCRIF, said in a World Bank statement. It also “will open new markets for public-sector sponsors and significantly streamlines the issuance process in terms of time and cost,” Cory Anger, global head of ILS structuring for GC Securities, said in a separate Guy Carpenter statement.

## Billions in online payments compromised in Brazil

Cyber criminals may have stolen billions of dollars from the popular Brazilian online payment system Boletto Bancário, using malicious software that caused funds to be redirected to fraudulent accounts, according to a

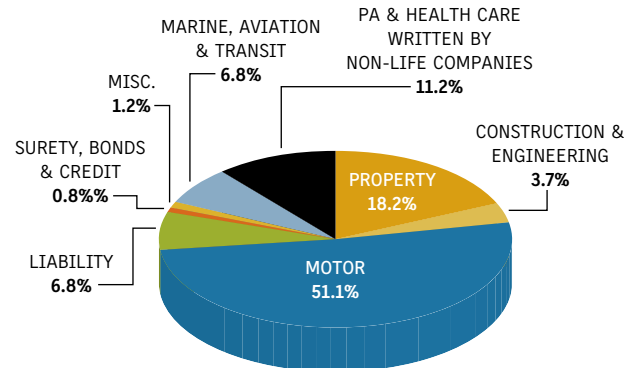
## PROFILE: TAIWAN

**\$4.41**  
BILLION

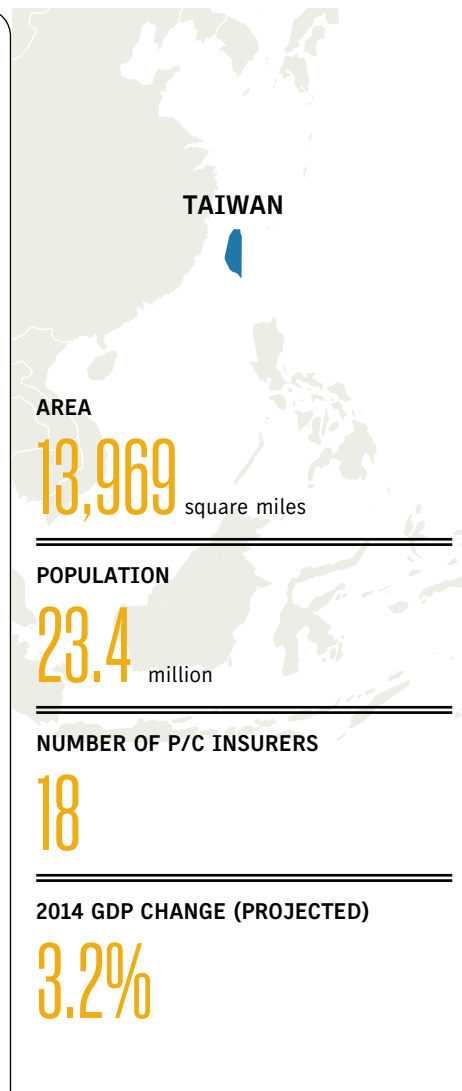
Slightly more than half of the Taiwanese property/casualty insurance market comes from auto business. Property coverage and personal accident and health insurance comprise the second- and third-largest pieces of the nation’s P/C sector. The sector is dominated by homegrown insurers, the leader being Fubon Insurance Co. Ltd. with a 21.8% market share. That’s almost double the size of its closest rival, Cathay Century Insurance Co. Ltd., which holds a 13% market share.

◀ 2013 P/C gross premiums

### MARKET SHARE



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



### MARKET DEVELOPMENTS

UPDATED JUNE 2014

- In April 2014, the Financial Supervisory Commission released a draft amendment to regulations related to brokers, proposing they should no longer be allowed to arrange for facultative reinsurance for risks placed in the direct market.
- In March 2014, the Financial Supervisory Commission said it will enhance corporate governance standards and enterprise risk management systems while continuing to monitor Solvency II progress in Europe.
- In February 2013, the Insurance Bureau of the Financial Supervisory Commission issued a rule requiring brokerages with more than 100 staff members and \$1.7 million in annual revenue to establish an internal audit function and appoint a compliance officer.
- In February 2013, regulators decided that starting with financial reporting year 2013, Taiwanese insurers’ accounts are required to comply with International Financial Reporting Standards.
- In March 2012, the compulsory limits for third-party auto insurance were increased to \$67,681 for one person in an accident plus an extra \$6,768 in case the accident resulted in a fatality.

### COMPULSORY INSURANCE

- Auto third-party liability
- Professional indemnity for insurance brokers, hospitals, clinics
- Workers compensation
- Marine pollution liability
- Third-party liability for malls, entertainment venues

### NONADMITTED

Unauthorized insurers are not permitted to conduct business in Taiwan. However, there is nothing in the nation’s laws mandating that insurance must be purchased from locally authorized insurers. This is generally interpreted to mean insurers can sell policies from overseas if approached by a buyer. The exception to the general prohibition on nonadmitted placements is protection and indemnity insurance because there are no P&I clubs in Taiwan. Ship owners source clubs in Hong Kong or Singapore that are usually associated with their hull brokers at home.

### INTERMEDIARIES

Agents and brokers are required to be licensed to place insurance business. They are not allowed to place business with nonadmitted insurers unless granted permission by authorities, because the coverage is not available in Taiwan. A broker placing business with an unauthorized insurer faces a fine between \$30,000 and \$150,000.

### MARKET PRACTICE

Although it rarely occurs outside of P&I insurance for ship owners, it’s generally accepted that if a type of coverage is unavailable in Taiwan, a broker can place such business directly with an insurer outside the country. Usually insurers can make fronting arrangements to obtain coverage unavailable in the local market.

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

research report by EMC Corp.’s RSA Security. Using software known as “Eupuds,” cyber criminals sought to siphon as much as 8.6 billion reals (\$3.9 billion) from more than 192,000 accounts, RSA estimates, though the actual amount stolen could be less because researchers were unable to confirm which Boletos were actually paid out. They said they think the operation is still ongoing and have offered to help Brazilian authorities crack down on the activity, which may have begun as early as late 2012. RSA said it met with members of Febraban, the group that represents the banking industry in Brazil. A representative for Febraban declined to comment on the report, saying the group was not granted access to its content. Brazilians use Boletos to process online payments for items including utility bills, rent,

online purchases and small-business transactions. The malware currently only targets Boletto transactions processed on PCs running Microsoft Corp.’s Windows software.

Reuters

## London Market Group commissions study

The London Market Group has kicked off a study to help better define the parameters of the London insurance market. In a letter to the chief executives of all market firms, London Market Group Chairman Steve Hearn said the group wanted to “establish some core data about our market and to understand better what our customers think of us.” The research will address issues such as “devel-

oping a common definition of the totality of activity that constitutes London market business,” as well as determining the contribution of that activity to the U.K. economy, the group said in a statement. The research project is also aimed at compiling more comprehensive data on London’s share of global markets and showing insights into customer purchasing behavior, Mr. Hearn’s letter said. It will be conducted by Boston Consulting Group, and results are expected in November, according to the letter.

## Minerals law works despite slow response

A U.S. law on conflict minerals is curbing African warlords’ presence around mines in Congo, campaigners say, but its full effect

remains unclear, with most firms failing to pinpoint the origin of their metals by a June deadline. Millions are estimated to have died in nearly two decades of bloodshed in eastern Democratic Republic of Congo fueled by the minerals smuggled through Rwanda, Uganda and Burundi. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, U.S. companies must try to establish the origin of four metals often used by rebel groups in the area to finance their activities. Only 5% of firms making filings by a June 2 deadline traced the conflict status of the minerals used in their products, said Source Intelligence, a U.S. risk management firm. “Overall we’ve been disappointed with the response of companies, and the lack of meaningful information on the supply chain checks and risk assessments they are doing,

although a few of the reports have been strong," said Emily Norton, assistant campaigner with Global Witness in London. The electronics sector has been the most robust at tracing the source of its minerals, Ms. Norton said. Campaigners say the law has had a positive effect on tin, tantalum and tungsten, while gold remains a problem. Many of the minerals are used in smartphones and other electronics goods. "The law has triggered companies right along the supply chain to change their sourcing practices," Ms. Norton said.

Reuters

## E.U. considers tax to fund financial watchdogs

■ The European Union's markets, banking and insurance watchdogs could be funded by a levy on the organizations they supervise in an attempt to save taxpayers money. The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority currently receive 60% of their funding from national supervisors and 40% from the central E.U. budget. "Given E.U. and national budgetary constraints, the (European) Commission considers that a revision of the existing funding model should therefore be envisaged, ideally abolishing E.U. and national contributions," a draft report seen by Reuters said. Staffing and budgets of the three watchdogs are modest compared with regulators in the larger member states, such as Britain's Financial Conduct Authority whose annual budget is £452 million (\$768.8 million). The EBA's budget for 2014 is only €33.6 million (\$45.7 million). However, the welter of E.U. rules approved to tighten supervision for derivatives, and bank and insurance capital, means the watchdogs will be taking on more responsibilities and will need extra staff and money. The report did not give any indication of how much the tax on banks and insurers might be, but any levy would likely be applied in direct proportion to how much supervision an institution requires.

Reuters

## Cyber crime roots in Kuwait, Algeria: Microsoft

■ Microsoft Corp. has launched a private effort to crack down on cyber crime originating in Africa by moving to disrupt communications channels between hackers and infected PCs. The operation, which began under an order issued by a U.S. District Court in Nevada, targets traffic involving

malicious software known as Bladabindi and Jenxcus, which Microsoft said work in similar ways and were written and distributed by developers in Kuwait and Algeria. It is the first high-profile case involving malware written by developers outside of Eastern Europe, according to Richard Domingues Boscovich, assistant general counsel of Microsoft's digital crimes unit. "We have never seen malware coded outside Eastern Europe that is as big as this.

This really demonstrates the globalization of cyber crime," Mr. Boscovich said.

Reuters

## JLT buys 26% stake of Indian broker IIB

■ Jardine Lloyd Thompson Group P.L.C. has acquired 26% of Indian insurance and reinsurance brokerage Independent Insurance Bro-

kers Private Ltd. Terms of the deal were not disclosed. IIB, which is based in Mumbai and has its principal office in Chennai, is a subsidiary of the Sunidhi Group, a financial services company with operations in 100 locations across India, London-based JLT said in a statement. Upon completion of the deal, IIB will be rebranded as JLT Independent and its staff will report to Duncan Howorth, Jardine Lloyd Thompson's CEO for Asia.

## Willis appoints Faber Global CEO

■ Willis Group Holdings P.L.C. has named Alistair Lester CEO of its facultative and wholesale reinsurance arm, Faber Global. Jason Howard was named CEO of Acappella Group Holdings Ltd., the Lloyd's of London vehicle being set up by Willis and Ironshore Inc., Willis said in a statement.



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**SENTRY**  
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EDITORIAL

## CONGRESS HAS CONTRACEPTION CONUNDRUM

**I**t would be difficult to think of a more emotionally charged issue than mandated employer coverage of prescription contraceptives. A segment of the population holds deep religious convictions against contraception and the so-called morning-after pill. Certainly, those individuals are entitled to their beliefs. Indeed, the 1993 Religious Freedom Restoration Act bars the government from actions that interfere with individuals' religious beliefs.

But what if an individual is the owner of a company and, because of his or her religious beliefs, refuses to comply with Patient Protection and Affordable Care Act regulations that require employers to extend prescription contraceptive coverage to employees? That company would be subjected to massive health care reform law penalties.

The U.S. Supreme Court, as we report on page 1, ruled last week that the owners of privately held companies don't, in fact, have to make such a Hobson's choice. The 1993 religious freedom law, the high court ruled, applies to corporate owners. The law "makes it perfectly clear that Congress did not discriminate in this way against men and women who wish to run their businesses as for-profit corporations in the manner required by their religious beliefs," the court said.

In the 5-4 decision, the justices suggested two ways employees of privately held companies whose owners object to prescription contraceptives could obtain the coverage.

Under one approach, Congress could pass legislation in which the federal government would provide the coverage to employees working for companies whose owners, due to religious objections, declined to offer coverage. Alternatively, the justices said, regulators could extend rules that now apply to nonprofit religious employers such as Catholic hospitals, allowing health plan administrators to provide the coverage with no direct employer involvement. But this is being challenged in court by dozens of employers.

We suggest a third option: On an issue of such importance and sensitivity, Congress should spell out what employers can and cannot do. There is precedent, as years ago the Supreme Court ruled employers were free to provide less health care benefits for pregnancy-related expenses than other medical conditions. Congress quickly acted, making clear that such a plan design was discriminatory. That law ended the controversy, and we think action by lawmakers on prescription contraceptive coverage would do the same.

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

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SCHILLERSTROM



COMMENTARY

## RESILIENCE PLANNING TAILOR-MADE FOR RISK MANAGERS' SKILLS

**T**he word "resilience" seems to be cropping up more and more frequently in the context of risk management. Insurers, brokers, consultants and academics increasingly use the term to call for a more targeted and realistic approach to risk management, and now political figures and even royalty have spoken of the need for resilience in risk management.

Last year, former U.S. President Bill Clinton called for cities to be made more resilient against climate change. And last month, Britain's Prince Charles got in on the act, saying that sustainable development should be founded on resilience when he was the surprise keynote speaker at the International Insurance Society's 50th Annual Seminar in London.

Most often, the term is used to describe how organizations should adapt their risk management strategies for natural catastrophes to focus on rapid recovery from the disasters rather than just damage prevention. Increasingly, however, it is also being used in other risk management contexts such as cyber risk management, given the near universal acceptance that attempting to prevent all cyber breaches is futile.

While the definition of risk resilience changes depending on who is speaking, the general thrust seems to be that complete risk prevention is unachievable, so organizations should focus much of their risk management efforts on what they need to do to maintain crucial operations and return to normal in the event of a disaster. For example, companies can build operations so that vital plants or facilities are spread over different geographic areas or have backup power supplies in place and secure for both main and alternative sites.



**GAVIN  
SOUTER**  
EDITOR

Many risk managers would argue they already incorporate resilience into their disaster response plans. Simply having contracts in place with disaster response firms or local contractors, a long-standing practice, can go a long way toward building resilience.

But some in the industry are suggesting that efforts to introduce resilience should be taken even further and be

integrated into financial systems. Last month, Willis Group Holdings P.L.C. issued a paper calling for companies to disclose their disaster risk exposures in their financial filings. The brokerage argued that in the 19th and 20th centuries, insurance standards and related financial rules drove significantly improved fire safety standards, and that similar results could be achieved by imposing regulatory requirements for the disclosure of disaster risks.

Whether this is achievable is open for debate, but discussions on resilience certainly give risk managers and risk management proponents a chance to shine.

Already central to discussions on risk mitigation and disaster preparation, risk managers should embrace the chance to become key players in the drive for organizations to become risk-resilient. With analytical skills and financial expertise, they are well-placed to take the initiative on resilience and develop their careers and their profession at the same time.

# SPECIAL REPORT

## Workers Comp

## & Safety

Fatalities rise with surging energy industry

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Nonprofessional driver risks often overlooked

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Workers comp law in California empowers doctors

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Data: work comp insurer premiums, state growth

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# OSHA safety rule riles industry

Publicly posted worker injury data prompts worries about accurate reporting

BY SHEENA HARRISON

**R**isk managers and safety experts are concerned a rule proposed by the U.S. Occupational Safety and Health Administration mandating that workplace injuries be reported electronically and then posted online by OSHA would make companies less likely to keep accurate safety data.

While OSHA thinks the reporting requirement would improve corporate safety information tracking, groups such as the American Society of Safety Engineers, the Risk & Insurance Management Society Inc. and the U.S. Chamber of Commerce say they want OSHA to scrap the proposal — or at least eliminate the plan to post employer safety data online.

“This isn’t about trying to abrogate requirements by OSHA or anyone else,” said Richard Rabs, chairman of RIMS’ external affairs committee. “This is really just saying when you’re going to put information out there in the public domain, we need to make sure that everyone’s playing with the same rules and everyone interprets things the same way.”

OSHA said last fall that it is considering whether to mandate electronic reporting of injury and illness data by

See **OSHA** next page



### SAFETY PROPOSAL

- The U.S. Occupational Safety and Health Administration has proposed requiring employers with at least 250 workers to report workplace injuries, illnesses and fatalities to the agency via an electronic form.
- OSHA would make safety data available to the public via a website, and a database would let users search for company-specific information.
- Employee information would be anonymous in online data.
- The electronic reporting requirement would apply to about 440,000 companies.
- OSHA estimates the rule would cost each employer about \$183 per year, or about \$10.5 million for the U.S. private sector.

# OSHA

Continued from previous page

employers with 250 or more employees. OSHA said that would expand the number of employers required to report electronic injury and illness data to 440,000 companies, compared with 80,000 that participate annually in the OSHA Data Initiative survey for high-hazard firms, Dave Schmidt, OSHA director of statistical analysis, said during a January public hearing.

The proposal also would make employer injury and illness data publicly available online through a Web-based application that would allow users to search the database by establishment name, state, city and other criteria, Mr. Schmidt said. He said data provided by companies in the OSHA Data Initiative already is available online.

Information to be posted would be the same that the agency already requires employers to track, including injuries that involve days away from work or medical treatment beyond first aid, Mr. Schmidt said.

RIMS, the U.S. Chamber and ASSE submitted comments to OSHA earlier this year requesting that the agency withdraw or revise the rule. They cited concerns over potential underreporting of injuries and illnesses; the possibility that OSHA, unions or other groups could target companies based on their public safety data; and worries that the new reporting standard would increase costs for employers.

In particular, Des Plaines, Illinois-based ASSE is concerned that requiring companies to submit public data to OSHA will cause many firms to focus only on OSHA compliance rather than being proactive in trying to reduce workplace safety hazards, said Dave Heidorn, ASSE's manager of government affairs and policy.

"Our great fear is that many of our members will be forced back into that kind of nonprogressive way of doing safety — that companies will be so concerned about (online data), they won't be doing safety well," he said.

While companies with strong safety programs probably would report accurate injury and illness data to OSHA, Mr. Heidorn said companies with weak safety track records likely would underreport accidents to avoid appearing unsafe.

"It's going to incentivize not reporting, which is

not good safety at all," Mr. Heidorn said.

RIMS' Mr. Rabs said making OSHA data public would fail to include how accidents occurred or who was at fault.

For example, a fatal vehicle accident involving workers from two companies would be reported as a fatality for both companies, no matter which one was at fault, he said.

"Your record may not really reflect your safety standard," said Mr. Rabs, who also is vice president of insurance and risk management at Veolia Environnement North America in Chicago.

Marc Freedman, executive director of labor policy at the U.S. Chamber of Commerce in Washington, said OSHA's proposal would make companies susceptible to harassment by unions and "activist groups." In comments to OSHA, the chamber argued that OSHA's rule would lead to "unjustified shaming of employers" rather than increased safety.

"We see it as putting out information that doesn't accurately reflect the employers' safety program and safety record," Mr. Freedman said.

Experts say they think much of the opposition to OSHA's proposed rule would lessen if the agency agreed to remove the portion that would make safety data publically available online.

"They could change this rulemaking so all it does is collect information instead of pushing it out into the Internet," Mr. Freedman said.

Aaron K. Trippler, director of government affairs at the American Industrial Hygiene Association in Falls Church, Virginia, said the organization's members hope OSHA will take into account stakeholder opinions about the proposed rule.

In comments submitted to OSHA, AIHA President Barbara J. Dawson said the association sought assurance that data collected by OSHA would be "accurate and meaningful."

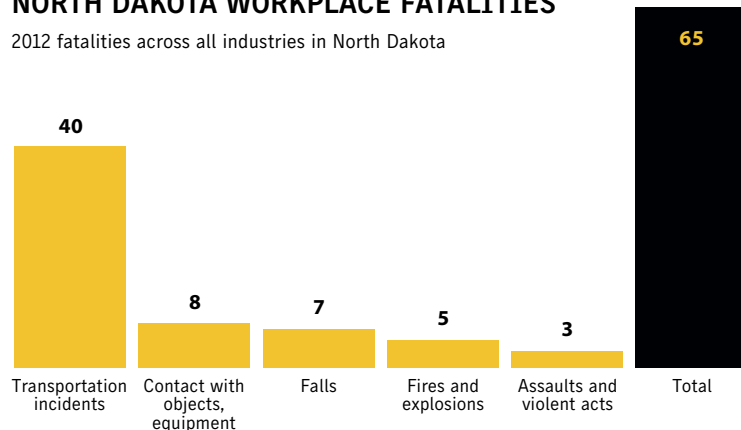
While experts wait to hear what happens next with OSHA's proposal, Mr. Trippler said it's possible the rule could fall by the wayside to prevent further uproar from employers as major elections draw near.

"We're in a midterm election, and I don't think the White House is going to let OSHA move on anything that might create any kind of controversy," Mr. Trippler said.

In a statement to *Business Insurance*, OSHA said it is reviewing comments made by RIMS, ASSE and other groups and will "develop the final rule with these comments under consideration."

## NORTH DAKOTA WORKPLACE FATALITIES

2012 fatalities across all industries in North Dakota



Source: U.S. Bureau of Labor Statistics and the AFL-CIO

# Fracking, oil boom cause spike in energy industry workplace deaths

Vehicle-related incidents one of key risks

BY STEPHANIE GOLDBERG

Employers, safety professionals and insurers are working to promote workplace safety as the fast-growing energy industry tries to stem fatalities among employees who work long hours while operating heavy machinery and vehicles.

Oil and gas extraction has produced millions of jobs across states such as Louisiana, North Dakota, Oklahoma and Texas in the past five years, but the economic boom also has brought a jump in work-related injuries and fatal accidents. An energy industry high of 142 fatalities was reported in 2012, according to the latest data available from U.S. Bureau of Labor Statistics.

Hydraulic fracturing or fracking, an oil and gas extraction technique, is "very high-hazard work," said David Michaels, the U.S. Labor Department's assistant secretary of occupational safety and health in Washington. "It involves heights, it involves hydrocarbons coming out of the Earth at huge pressure, and probably the most hazardous component is the increased use of vehicles."

Anytime an industry experiences a surge in fatalities, "you've got to look a little bit deeper," said Woody Hill, vice president of safety services at Texas Mutual Insurance Co. in Austin. In taking a closer look, Mr. Hill said he found the number of fracking-related injuries in Texas was small compared with the rate and severity of vehicle-related accidents in the

energy industry.

Inexperienced operators aren't used to driving water trucks, salt trucks or other types of vehicles that support a drilling operation, and driver fatigue is common among employees who are "working 12-, 13-, 14-hour shifts with overtime and ... are falling asleep at the wheel," Mr. Hill said.

North Dakota reported the highest incidence work-related fatalities among states with an energy industry presence. In 2012, its fatality rate in the mining and oil and gas extraction sector was 104 deaths per 100,000 workers, six times the industry's national rate of 15.9, according to an AFL-CIO report released in May.

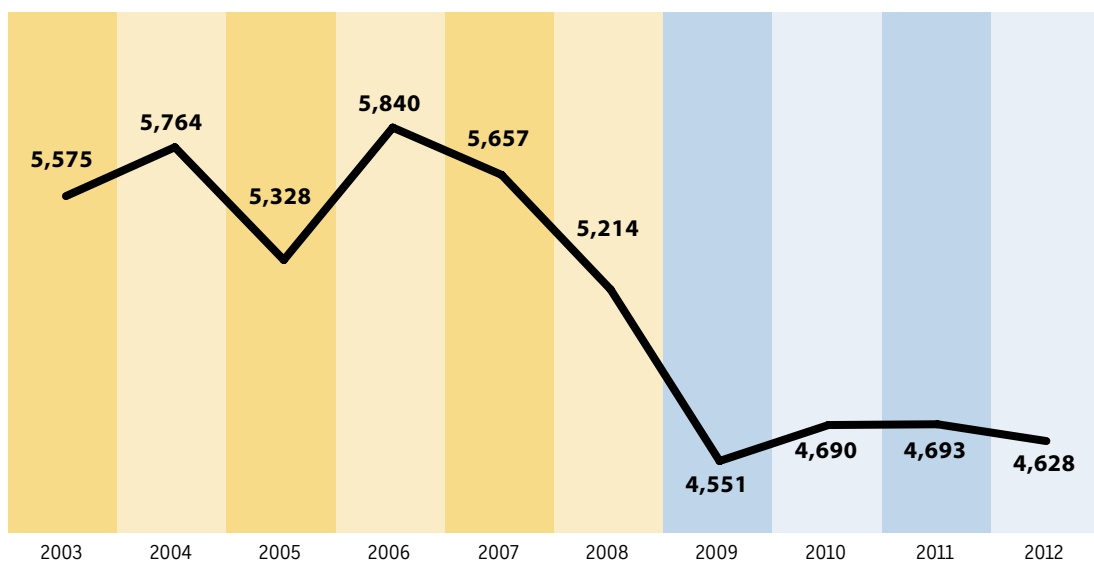
More than half of all workers who died in North Dakota in 2012 were killed in transportation-related accidents, said Eric Brooks, area director for the U.S. Occupational Safety and Health Administration in Bismarck, North Dakota. That, he said, has prompted state and local police as well as the North Dakota Department of Transportation to launch safe driving campaigns, he said.

BP P.L.C. has launched similar programs worldwide, including one that aims to increase safety awareness among the third-party drivers providing road transport services. Drivers are asked to sign and carry a safety partnership card and contact dispatch for help in the case of a safety risk, according to the company's website.

"Vehicle-related incidents remain one of the key risks facing our industry, so driving safety

## U.S. WORK-RELATED DEATHS

The number of fatal occupational injuries has remained relatively flat for several years following a substantial decline in 2009.



Source: U.S. Bureau of Labor Statistics

remains a high priority for us," a BP spokesman in Chicago said.

There are similar initiatives in Texas, such as the Give Safety a Hand campaign that Texas Mutual launched with its partners in April 2013.

When the Austin, Texas-based insurer announced the campaign and workshops last year, Mr. Hill said Texas Mutual's claims found that driving-related accidents accounted for nearly 60% of oil and gas industry fatalities.

In addition to training workers on safe driving, some energy companies "have policies in place that preclude operators from driving after a shift," he said. "They make accommodations close to where the job site is or where the work site is."

Other employers stress situations where three or four workers ride together, "with the thought being that if you keep an operator in there with others it will help them stay awake and alert, but we haven't seen that to be the case," Mr. Hill said. "You can train, train, train and have the most defensive driver, but if they've worked 20 hours and now they're driving three or four hours ... there's no amount of defensive driving that will fix that problem."

Mr. Hill said he's also seen a number of fatal accidents in which workers weren't wearing seatbelts, which could be attributed to cultural differences in some cases, he said.

Other industry hazards include falls, being struck by equipment, electrical fires and explosions, experts said.

More oversight in the oil and gas extraction industry could reduce such accidents, said Peg Seminario, Washington-based director of safety and health at the AFL-CIO.

Unlike coal mining, which is regulated by the U.S. Mine Safety and Health Administration, "the oil and gas industry is largely unorganized," Ms. Seminario said, adding that it's up to the industry to call for more controls.

"It's not as though OSHA and (the National Institute for Occupational Safety and Health) aren't doing anything," she said. "They are. And it's not as though the industry isn't doing anything. They are. But clearly the situation is one that demands a higher level of attention because the status quo is not acceptable."

There are only eight OSHA compliance officers covering North and South Dakota, according to the AFL-CIO report.

Because of limited resources in the field, Mr. Brooks, the OSHA official in North Dakota, said other regions often are called upon for "additional resources to make sure we respond appropriately." The goal is to be on-site within one day of an incident, he said.

While OSHA does plan to increase the number of compliance officers in the Dakotas, "much of what we do is reactive inspections

after someone is hurt or killed," Mr. Michaels said. "The more important change we can make is to change the overall (safety) culture of the oil and gas industry and we're working very hard with NIOSH on that and with the industry as well."

Mr. Hill said cultural change is more important than many people realize.

"If you care for people, you actively engage, you let your employees know that you think about them, you provide a safe work environment, people inherently will do the right thing and work safely," Mr. Hill said.

## CONSTRUCTION GROWTH COMES WITH FATAL PRICE

After declining for years, the number of fatalities in the U.S. construction industry increased in 2012, with a fatality rate of 9.9 per 100,000 workers compared with 9.1 in 2011, according to a May report by the AFL-CIO.

North Dakota also saw an increase in construction industry fatalities, with a fatality rate of 97.4 per 100,000 workers, nearly 10 times the national rate, according to the report.

The numbers in the construction sector could be attributed to the economic boom brought on by the energy industry in the area, experts said.

"All of these people that are coming to North Dakota to work, they need places to live, they need places to eat," said Eric Brooks, area director at the U.S. Occupational Safety and Health Administration in Bismarck, North Dakota.

"The towns are growing up

faster than anything — schools, hospitals. This construction industry has grown up at the same rate, right along side (the oil and gas industry)."

Mr. Brooks said OSHA is working to "cover both of those areas of concern" by conducting site visits and stressing safe driving, as transportation-related mishaps caused the majority of the state's 65 fatalities in 2012.

By Stephanie Goldberg

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remains a high priority for us," a BP spokesman in Chicago said.

There are similar initiatives in Texas, such as the Give Safety a Hand campaign that Texas Mutual launched with its partners in April 2013.

When the Austin, Texas-based insurer announced the campaign and workshops last year, Mr. Hill said Texas Mutual's claims found that driving-related accidents accounted for nearly 60% of oil and gas industry fatalities.

In addition to training workers on safe driving, some energy companies "have policies in place that preclude operators from driving after a shift," he said. "They make accommodations close to where the job site is or where the work site is."

Other employers stress situations where three or four workers ride together, "with the thought being that if you keep an operator in there with others it will help them stay awake and alert, but we haven't seen that to be the case," Mr. Hill said. "You can train, train, train and have the most defensive driver, but if they've worked 20 hours and now they're driving three or four hours ... there's no amount of defensive driving that will fix that problem."

Mr. Hill said he's also seen a number of fatal accidents in which workers weren't wearing seatbelts, which could be attributed to cultural differences in some cases, he said.

Other industry hazards include falls, being struck by equipment, electrical fires and explosions, experts said.

More oversight in the oil and gas extraction industry could reduce such accidents, said Peg Seminario, Washington-based director of safety and health at the AFL-CIO.

Unlike coal mining, which is regulated by the U.S. Mine Safety and Health Administration, "the oil and gas industry is largely unorganized," Ms. Seminario said, adding that it's up to the industry to call for more controls.

"It's not as though OSHA and (the National Institute for Occupational Safety and Health) aren't doing anything," she said. "They are. And it's not as though the industry isn't doing anything. They are. But clearly the situation is one that demands a higher level of attention because the status quo is not acceptable."

There are only eight OSHA compliance officers covering North and South Dakota, according to the AFL-CIO report.

Because of limited resources in the field, Mr. Brooks, the OSHA official in North Dakota, said other regions often are called upon for "additional resources to make sure we respond appropriately." The goal is to be on-site within one day of an incident, he said.

While OSHA does plan to increase the number of compliance officers in the Dakotas, "much of what we do is reactive inspections

after someone is hurt or killed," Mr. Michaels said. "The more important change we can make is to change the overall (safety) culture of the oil and gas industry and we're working very hard with NIOSH on that and with the industry as well."

Mr. Hill said cultural change is more important than many people realize.

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# DRIVING ON COMPANY BUSINESS AN OFTEN OVERLOOKED SAFETY RISK

Traffic accidents one of leading causes of serious workers comp injuries

BY BILL KENEALY

**R**isk managers overseeing commercial transportation fleets have long focused on the issue of truck driver safety, but other companies also should pay greater attention to employees' distracted driving that is causing many catastrophic workers compensation claims.

Auto accidents, often involving a lone employee traveling in unfamiliar territory for work or a group traveling to an event, typically involve nonprofessional drivers who have received no on-the-job training in defensive driving tactics, experts say.

"While companies have become very good at most aspects of enterprise risk management, travel risk management is often overlooked," said Kevin Wilkes, Pittsburgh-

based senior vice president and security practice leader at Willis North America Inc. "It remains a large vulnerability for many organizations."

Del Lisk, San Diego-based vice president of safety services at telematics firm Lytx Inc., said a popular misconception is that driving risks are greater for a long-haul truck driver than a salesman driving a midsize sedan in unfamiliar territory.

"Nonprofessional drivers, such as managers and salespeople, often present a bigger safety issue because they have had less training," Mr. Lisk said.

Rich Bleser, Milwaukee-based senior vice president and fleet safety specialty practice leader at Marsh Risk Consulting, agreed that all workers comp managers

need to address the issue, noting that vehicle collisions are the leading cause of workplace fatalities in the U.S.

"We need to focus on light vehicle fleets because a commercial fleet operator looks at himself as a professional driver; it's a core competency, but a salesperson is best at selling products," Mr. Bleser said. "Another problem we have is that salespeople live on their cell-phones, so distracted driving has become a huge issue."

Debbie Michel, Chicago-based president of third-party claims administrator Helmsman Management Services L.L.C., said the top diagnosis among workers on the job involved in car crashes is neck injuries, which tend to have higher severity as well as a higher chance of attorney involvement.

"The research we have done has

revealed that traffic accidents are one of the leading causes of high severity workers comp injuries," Ms. Michel said. "The other thing to bear in mind with motor vehicle accidents that involve employees is that they are more likely to involve multiple claims because several employees are often riding together in a car."

To minimize catastrophic driver-related workers comp claims, Mr. Bleser said every organization should build a robust fleet management safety program that emphasizes training and specifies polices regarding everything from the type of vehicles employees are allowed to use to seatbelt usage to distracted driving.

"You should have a strong defensive driver program, regardless of what type of vehicles your employees are operating," he said. "You

"Nonprofessional drivers, such as managers and salespeople, often present a bigger safety issue because they have had less training."

Del Lisk, Lytx Inc.

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## REDUCING EMPLOYER DRIVING RISKS

Peter VanDyne, New Berlin, Wisconsin-based technical director of risk control services at Liberty Mutual Insurance Co., recommends companies take several steps to drive down the cost of driving risk. They are:

- Set a written policy requiring seatbelt use and enforce it.
- Set a written policy instructing drivers to comply with motor vehicle laws and company safety policies when driving on company business.
- Set a policy on speed limits and appropriate vehicle following distance.
- Compile a list of drivers and vehicle types they are authorized to drive.
- Bar nonauthorized drivers from driving on company business.
- Prohibit employee use of alcohol and drugs while driving on company business.
- Outline specific driving convictions that disqualify candidates for positions that require driving.
- Review driving records annually.
- Tap technology to monitor driver vehicle speed, location and off-route trips.
- Investigate crashes to document what happened and identify ways to strengthen the company's fleet safety program.

need to teach employees how to eliminate distractions before a vehicle is put in motion.”

Mr. Lisk said telematic and mobile video recording technologies once used only by commercial trucking fleets can help risk managers better track employees on the road and train them if unsafe behaviors are observed.

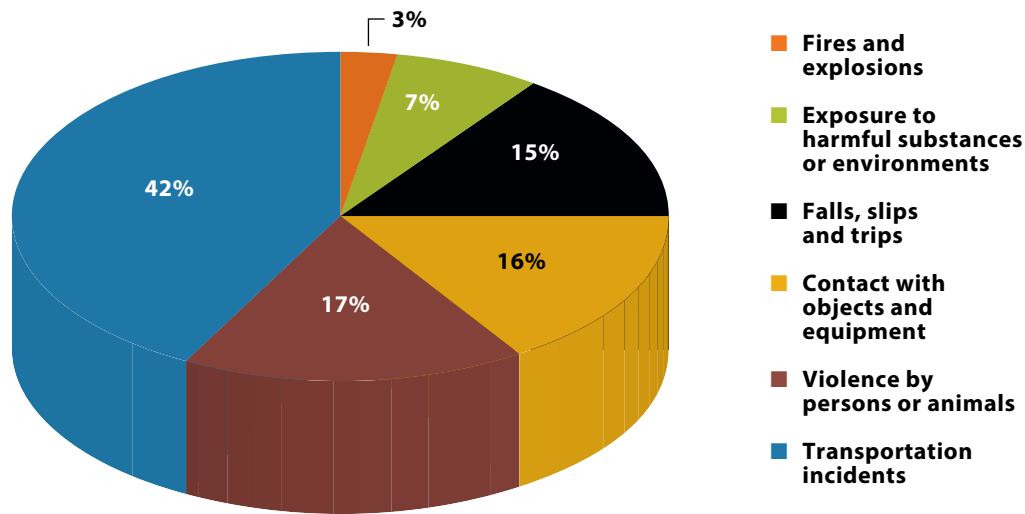
“These technologies are sliding down the food chain from large trucks and professional drivers down to nonprofessional drivers,” Mr. Lisk said. “You need tools to make sure that what’s being taught is actually being used by drivers on the road.”

Ron Skrocki, Philadelphia-based vice president of product management development workers comp case manager Genex Services Inc., said telematic system data can be merged with workers comp claims and medical data to form predictive models.

“One of the causes of catastrophic claims is people falling asleep behind the wheel,” he said. “Using the data, we were able to work backwards and see that in many

## FATAL OCCUPATIONAL INJURIES

Transportation incidents were the biggest source of workplace fatalities in 2012.



Source: U.S. Bureau of Labor Statistics

cases, the driver had undiagnosed sleep apnea. It then became a wellness issue.”

Insurance is another way to mitigate driver-related risks.

Dominick Zenzola, Chicago-

based vice president and employee group benefits manager of accident and health at Chubb & Son, said dedicated business travel policies can supplement other insurance coverage.

“If you have a sales staff that travels locally or to a different state, the business travel plan can provide a number of benefits, such as accidental death benefits,” Mr. Zenzola said.

“We were able to work backwards and see that in many cases, the driver had undiagnosed sleep apnea. It then became a wellness issue.”

Ron Skrocki,  
Genex Services Inc.



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# California workers comp law has doctors resolving many more medical disputes

BY SHEENA HARRISON

California's workers compensation reforms have produced an unexpected surge in independent medical reviews, but experts and employers say more time is needed to see whether the changes reduce costs and claims management delays.

The legislation, signed into law in September 2012, was intended to reduce workers comp costs for employers and insurers and boost permanent disability benefits for workers by 30% through this year.

Provisions of the law include instituting independent reviews for medical treatment and billing disputes, creating first-time fee schedules for home health care, language interpretation and other workers comp-related services. It also introduced fees that were intended to reduce the number of liens filed for medical payments and other services.

California workers comp experts say more time is needed to determine whether the law will relieve cost pressures for insurers and employers as the California Division of Workers' Compensation in San Francisco continues implementing the law.

## CASE HIGHLIGHTS INDEPENDENT REVIEW DEBATE

In *Jose Dubon v. World Restoration Inc.*, the full California Workers' Compensation Appeals Board ruled unanimously in February that it must decide a dispute over a worker's utilization review, rather than having it decided through the independent medical review process established by California's most recent workers comp reform law.

The appeals board ruled there were "procedural defects" in a utilization review ordered by the California State Compensation Insurance Fund and that such claims can't be resolved in independent medical reviews.

An independent medical review "solely resolves disputes over the medical necessity of treatment requests," according to the appeals board. "Issues of timeliness and compliance with statutes and regulations governing (utilization review) are legal disputes" within its jurisdiction, the appeals board ruled.

In May, the board agreed to reconsider its decision in *Dubon* after the state fund argued that independent medical reviews apply to "any dispute" over a workers comp review under California law. The board has not made a final ruling.

By Sheena Harrison

"We're starting to see third parties asking for changes, and we just think it's too soon," said Carlos Rojas, director of risk management at Helpmates Staffing Services in Irvine, California, which provides workers comp coverage for about 2,000 temporary workers a year.

"There's a lot that was done in good faith, where you had labor and employers actually come together, and what we're seeing right now is positive. We just need more time before we make more changes," Mr. Rojas said.

The law is "playing itself out,"

said Steve Suchil, Western region vice president at the American Insurance Association in Sacramento, California.

"We're not seeing everything that was promised, but we're seeing a lot of it."

Experts see the greatest savings potential from independent medical reviews, where physicians resolve disputes about medical care for injured workers rather than workers comp judges.

The process, which allows 50 days to make such determinations, is meant to expedite resolution of medical disputes. Insurers or

employers pay \$550 for each physician working as an independent medical reviewer working on a case.

So far, the independent medical review process has been used at a "staggering" rate compared with initial estimates, said Mark Sektan, president of the Sacramento-based Association of California Insurance Cos.

There were 19,663 independent medical review requests in April for workers comp claims, the California Workers' Compensation Insurance Rating Bureau in San Francisco said in a June report. That compares with 178 independent medical review requests in April 2013, just after the review process was initiated at the beginning of that year.

The state workers comp agency said in a December webinar that it was receiving about 20,000 independent medical review applications per month, about five times greater than had been expected when the review process began in July 2013. About one-third of those applications are duplicates, the division said.

"We anticipated a significant number of independent medical review cases, but we didn't anticipate the huge volume of independent medical review cases that we are seeing," Mr. Sektan said.

Despite the spike, the rating bureau said independent medical reviews are expected to reduce some costs. The rating bureau said reducing medical treatment delays is expected to reduce the duration of temporary disability claims by 4% and system costs by 2.1%, or \$390 million annually.

Eddy Canavan, vice president of workers compensation practice and compliance at Sedgwick Claims Management Services Inc. in Riverside, California, said workers comp experts are optimistic about the future benefits of independent medical reviews.

"The whole idea of independent medical review is very innovative and refreshing in that they want-

ed to keep medical decisions with medical professionals, and they wanted to provide fair, nonbiased payment to an injured worker when they wanted to appeal a decision," Mr. Canavan said.

Still, experts worry that several lawsuits could reduce the effect of that process.

For instance, the California Workers' Compensation Appeals Board ruled in February that the board, not an independent medical reviewer, must decide whether a claimant's spinal surgery was medically necessary.

"Every time one of these cases succeeds, it undercuts the reforms," Mr. Sektan said.

The AIA's Mr. Suchil said he's hopeful that the California Division of Workers' Compensation will find a way to train workers comp judges in applying the provisions of the 2012 law.

"I think the judges really need to have consistency across the state with respect to implementing the bill," Mr. Suchil said.

The California workers comp agency is still drafting regulations and implementing some portions of the law, such as a fee schedule for workers comp-related copy services, and experts say the state needs time to finish its work before determining if further changes are needed.

"The reforms seem to only be good for three or four years before we have a variety of elements that come into play," Mr. Sektan said.

"One is the courts make rulings that nobody anticipated. You (also) get changes in behavior that nobody foresaw."

One behavioral change since the law was enacted is the advent of service providers charging for drug tests that determine if workers comp claimants are using medications correctly or if their prescriptions are causing health problems, Mr. Sektan said.

"What we're finding is that Medicare charges ... \$300 for a drug test and the companies charge the workers comp people, like, \$1,000 because there's no fee schedule for drug testing," he said. "So it gets very complicated."

While such services could create problems down the road, employers have asked regulators to hold tight on implementing workers comp changes outside the 2012 law to allow the measure to realize its full potential, Helpmates' Mr. Rojas said.

"We're asking for all the rules and regulations that were implemented to play out and then (the state can) make adjustments later," Mr. Rojas said.

"We see (the law) as a huge benefit for the employer community."



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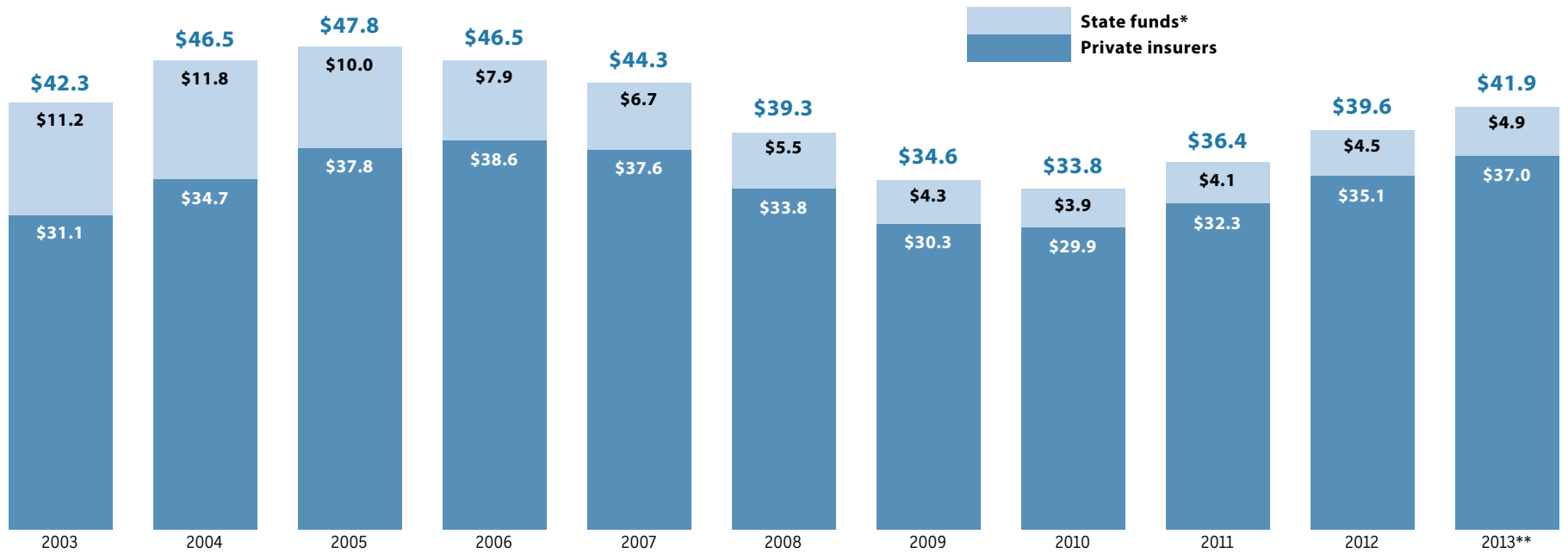
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### WORKERS COMPENSATION PREMIUMS

Net written premiums for workers compensation have rebounded from declines during the Great Recession. Private insurers' share has risen to 88% in 2013 from 77% in 2003. Figures are in billions of dollars.



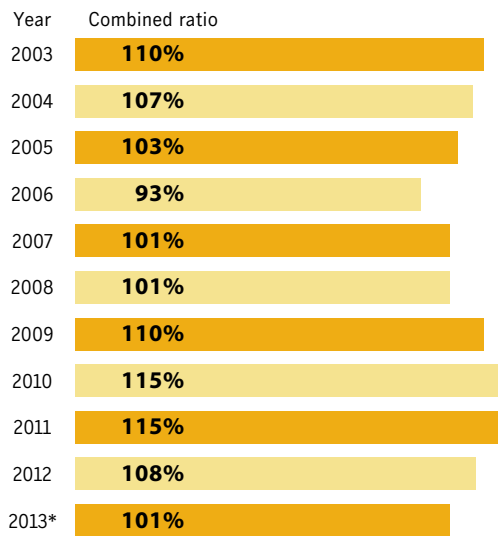
\*Includes state insurance fund data for Arizona, California, Colorado, Hawaii, Idaho, Kentucky, Louisiana, Maryland, Missouri, Montana, New Mexico, Oklahoma, Oregon, Rhode Island, Texas and Utah.

\*\*Preliminary.

Source: National Council on Compensation Insurance Inc.

### PROFITABILITY

Private workers comp insurers' combined ratio improved in 2013, but the industry as a whole has not posted a profit since 2006.

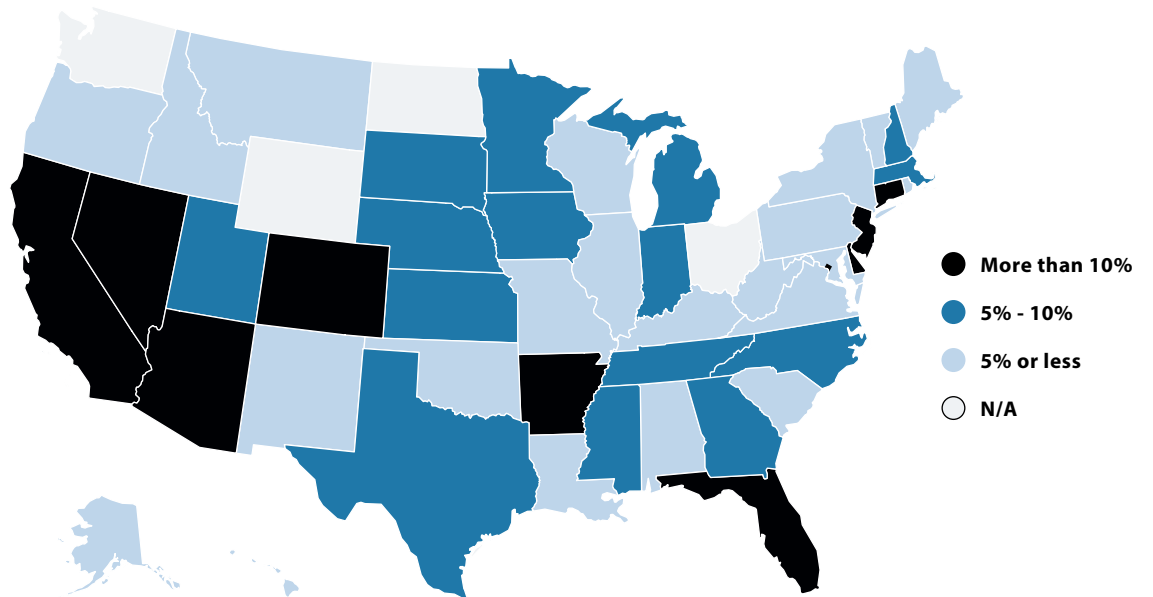


\*Preliminary

Source: National Council on Compensation Insurance Inc.

### STATE GROWTH

Nine states and the District of Columbia posted the greatest growth in workers compensation premiums in 2013.

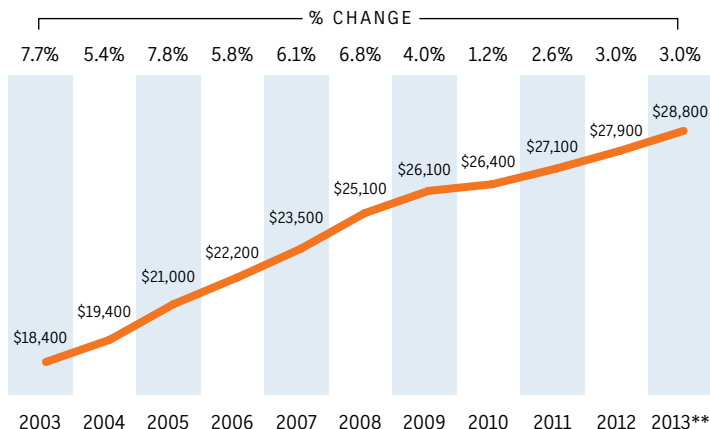


Note: Does not include state workers compensation funds

Source: National Council on Compensation Insurance Inc.

### MEDICAL SEVERITY

The average medical cost per lost-time claim has increased steadily for a decade, rising 39% since 2003.\*



\*For states, excluding West Virginia, where NCCI provides ratemaking services. Includes state funds, but excludes high-deductible policies.

\*\*Preliminary.

Source: National Council on Compensation Insurance Inc.

### FREQUENCY

The frequency of workers comp lost-time claims per \$1 million in pure premiums decreased 2% in 2013, the smallest decrease in the past decade.\*

Accident year	% change	Adjusted <sup>1</sup>
2003	(4.1%)	
2004	(3.7%)	
2005	(6.6%)	
2006	(4.5%)	
2007	(2.2%)	
2008	(4.3%)	
2009	(5.9%)	
2010	10.5%	3.5%
2011	(4.0%)	(1.0%)
2012	(6.1%)	
2013 <sup>2</sup>	(2.0%)	

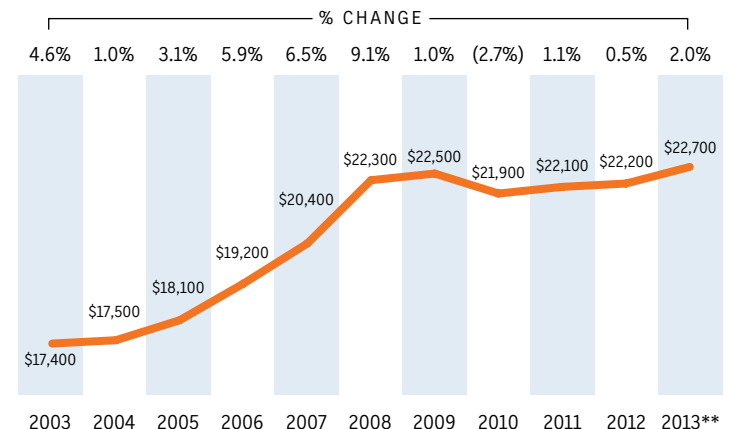
\*For states, excluding West Virginia, where NCCI provides ratemaking services. Includes state funds, but excludes high-deductible policies.

1 Adjusted due primarily to significant changes in audit activity. 2 Preliminary.

Source: National Council on Compensation Insurance Inc.

### INDEMNITY SEVERITY

The average indemnity cost per lost-time claim peaked in 2013.\*



\*For states, excluding West Virginia, where NCCI provides ratemaking services. Includes state funds, but excludes high-deductible policies.

\*\*Preliminary.

Source: National Council on Compensation Insurance Inc.

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## WORKERS COMPENSATION

*Market described as in 'balance' for now, but health care costs, TRIA among factors that may pose challenges in future*

# Workers comp market ‘balanced’

## NCCI sees positive results for comp insurance, but ongoing challenges, uncertainty temper outlook



By Stephen J. Klingel

In early May, the National Council on Compensation Insurance released its annual State of the Line report. In it, we described the condition of the workers compensation market as “balanced.”

For the industry at large, results continue to improve. We’re seeing:

- Declining frequency trends
- A reasonable rate of medical and indemnity growth
- A better combined ratio—coupled with solid investment gains—driving a double-digit operating result

Today, industry costs remain largely contained. There is a reasonable expectation of some level of profit, and the system in most states (but not all) is operating efficiently. In short, the market is operating as it should, in a balanced fashion.

On a cautionary note, our optimism does not mean that we are unaware of the uncertainties that lie ahead of us. Issues such as the renewal of the Terrorism Risk Insurance Act (TRIA), rising healthcare costs, and the Affordable Care Act (ACA) may all impact workers compensation in ways we can’t yet foresee.

As we all know, good results can unravel fast, and there are too many existing uncertainties to overstate the health of this line. In the near term, however, workers comp results are generally improving.

Let’s look at some of the market specifics.

### Overall Positive Results

This year’s NCCI State of the Line report indicates that the workers compensation calendar year combined ratio was 101% in 2013, a seven-point decrease from 2012 and a 14-point decline since 2011. The accident year results also showed notable improvement in 2013, falling eight points to a combined ratio of

99%.

In other good news, lost-time claim frequency maintained a path of decline in 2013, down 2%, on average, in NCCI states. The 2% decline is within NCCI’s long-term annual estimate of a 2%–4% decline per year.

In terms of investment gain, for the fourth consecutive year, the ratio of investment gains on insurance

2013. Premiums grew by more than 30%, and the average market share in the residual market increased from 7% to 8%. NCCI’s latest data shows the pace of growth has slowed in the first quarter of 2014.

Despite the growth in premium volume, however, the residual market policy year combined ratio held steady in 2013 at 109. The total underwriting

additional premium growth

- Significant issues, such as the renewal of TRIA and the effect of the ACA on workers comp, continue to cause uncertainty

- A continuing low-interest-rate environment threatens investment results over the long term

Workers compensation participants are finally starting to see real cause for optimism with these results.

Going forward, however, challenges remain, and there are many reasons to be cautious with regard to the long-term outlook for the workers comp industry.

While we remain encouraged by the latest results, NCCI will continue to monitor and report on known and unexpected market challenges. As always, we invite you to visit [ncci.com](http://ncci.com) to view the latest reports on industry results and trends.

*As we all know, good results can unravel fast, and there are too many existing uncertainties to overstate the health of this line. In the near term, however, workers comp results are generally improving.*

transactions to premium remained near the long-term average of 14%.

This investment gain outcome, combined with underwriting results, produced a workers compensation pretax operating gain of 14% for 2013. This represents a significant increase over 2012 and the industry’s first double-digit return since 2007.

The overall reserve position for private workers comp insurers improved in 2013, following five consecutive years of deterioration. NCCI estimates the year-end 2013 reserve position to be \$11 billion deficient for private carriers.

The growth in medical and indemnity costs was largely under control in 2013. In NCCI states, the average indemnity cost per lost-time claim increased by a modest 2%, following increases of about 1% in both 2011 and 2012.

The average medical cost per lost-time claim increased by 3%. This is the third straight year showing a change of this magnitude.

Finally, the workers compensation residual market experienced a second straight year of significant growth in

loss in the residual market pools serviced by NCCI grew to \$98 million, up somewhat from \$73 million in 2012.

### The Short- and Long-Term Outlooks

As noted above, the workers compensation insurance line continues to show signs of recovery. Results improved materially during 2013, including the following:

- The combined ratio for workers compensation improved again
- The industry witnessed another year of improvement for underwriting results
- Premium grew for the third consecutive year
- Claim frequency declined by 2% in NCCI states
- Claim severity increases remained stable

Even with these improvements, workers compensation is faced with some ongoing challenges:

- Slow growth in employment, particularly in the manufacturing and construction industries, is impeding

*Stephen J. Klingel, CPCU, WCP, is the president and CEO of The National Council on Compensation Insurance Inc., the nation’s most comprehensive and experienced provider of workers compensation information, tools, and services. Previously a senior executive*



*with The St. Paul Companies, Steve possesses more than three decades of leadership experience in the property/casualty field. He has built a respected reputation for implementing effective strategic programs, change leadership, and customer insight.*



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# Executive Insights: Workers Compensation Trends

**Q:** Employers continue to struggle to understand the impact of federal health care reform on workers comp. What are some of the work comp-specific changes that employers should expect to see on their comp programs?



**Debbie Michel**  
President,  
Helmsman Management  
Services, LLC™

**Debbie Michel:** While no specific elements of the federal Affordable Care Act (ACA) are directed at the workers compensation system, that legislation will likely impact workers compensation in both negative and positive ways. On the negative side, the ACA will likely:

- Accelerate medical inflation and increase competition for access to physician care. Both result from the ACA increasing the number of people seeking

medical care in the face of a stable supply of medical providers. Increasing demand and a fixed supply will likely slow access to medical care and increase the cost of that care.

- Increase workers compensation claims volume for those employers who shift from full-time to part-time employees, to avoid providing health insurance. Part-time workers tend to have higher rates of workplace injuries and accidents than full-time employees.

- Lead to medical-cost shifting into the workers compensation system, as Medicare reimbursements – particularly for specialists – remain low. This is particularly likely for those states whose workers compensation fee schedules allow reimbursements substantially above those of Medicare.

On the positive side, the ACA may result in a healthier workforce. Mandating coverage may lead to better care of chronic medical conditions—such as obesity, diabetes and heart disease—that can impact workers compensation injuries. And this will likely have a positive impact on workers compensation claims duration, costs and return to work.

Since the full potential impact of the ACA likely won't be clear for two to three years, it is important for workers comp buyers to work with their agents, brokers, and TPAs today to analyze and prepare for these possible effects.



**Joe Delaney**  
President and CEO,  
One Call Care Management

**Joe Delaney:** While no one knows exactly how healthcare reform will impact workers' compensation, there are measures that employers can take to prepare for the pros and cons.

Ideally, healthcare reform should lead to a healthier society, in which injured workers have fewer pre-existing conditions, so they should recover and return to work sooner. There should be greater adherence to evidence-based guidelines

resulting in improved medical results, as providers are rewarded based on outcomes. However, with high deductibles and copayments in group health, employees may file workers comp claims to cover non-work-related conditions, shifting costs to the workers comp system.

Also, as previously uninsured individuals obtain coverage, provider access may be impacted.

Many forward-thinking employers are proactively addressing these potential trends on their own through workplace safety and prevention programs, wellness programs, health-based hiring, and partnering with specialty network services that scorecard providers based on their outcomes.



**Betsy Robinson**  
Senior Vp of Product  
Development & Marketing,  
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Services

Our nation is experiencing a significant shortfall of graduating physicians. Experts have warned that there will not be enough doctors to treat the current patient mix, let alone an additional estimated 30 million newly insured individuals that could result from health care reform. The Association of American Medical Colleges has gone so far as to say that the shortage could reach 150,000 doctors in the next 15 years, with the greatest demand being for primary care physicians.

A shortage of primary care physicians could mean less access and longer wait times, and, depending on reimbursement and other factors, could affect workers' compensation patients first. The ultimate impact will vary by state and will be affected by the provider's desired patient mix, the state's workers compensation reimbursement, the relationships that the provider has with other product lines; e.g., commercial insurance and Medicare, and the administrative burdens associated with each of those relationships.

Another developing scenario: Physician groups are creating partnerships with health care delivery systems and in turn these systems have more leverage when it comes to reimbursement. While this is not specific to workers comp or even networks, it is a trend worth acknowledging. These systems may choose to manage their patient mix more closely based on the combination of products they participate in, the financial arrangements being offered and the administrative burdens inherent in those relationships. Providers and payers (and their networks) must mutually benefit from these relationships in order for them to be sustainable.

Strong relationships with health systems and physicians will be more important than ever.

**Q:** With advancements in technology and data analysis, how widespread is use of predictive analytics by employers to identify claims in need of extra attention?

**Debbie Michel:** Data analytics and predictive models have evolved over the past 10 years and have become the new buzzwords in claims management. Almost every TPA, carrier, and managed-care provider touts some form of data-driven analysis.

Early forms of predictive modeling served as a "check engine" light, warning of broad potential-claim management problems. Today, they help identify and solve specific issues.

**Betsy Robinson:** The impact of reform on workers compensation remains to be seen; however, thinking that there will be no impact would be foolish. Much of the change that workers comp networks may encounter would directly result from things happening in the general health care industry.

Data analytics and predictive models are being used by TPAs and carriers to better manage claim costs by finding actionable information at both the macro and micro levels. For example, at the macro level, they help identify the early warning signs of claims likely to drive total costs without the addition of specialized resources; or assess the likelihood that a particular comorbid factor will impact recovery time. At the micro level, they can aid settlement discussions by identifying general liability trends in a particular jurisdiction for a specific injury, or showing which doctors have better treatment outcomes.

Many of these models fall short in their ability to share the data with employers, in order that they might be more aware of escalation risk and can be engaged in mitigation strategies. In order to be truly effective, data must be interpreted and shared with all claim participants to the extent legally permissible—including claim staff, employers, and medical providers. The model must provide actionable intelligence supported by proven strategies to address any identified risks.

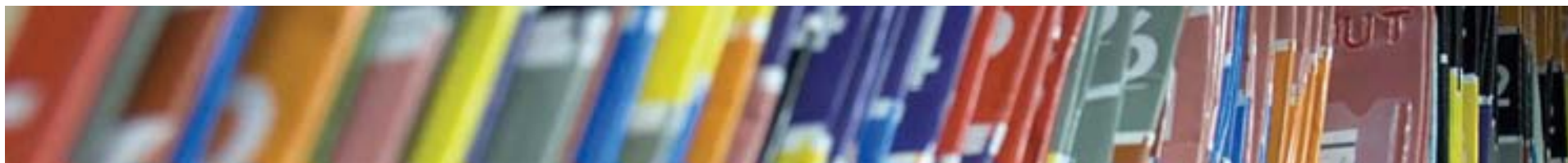
**Joe Delaney:** The use of predictive analytics is an emerging practice in workers compensation, particularly for identifying potentially complex claims that generate the majority of costs.

By selectively looking for characteristics—such as obesity, co-morbidities, certain types of injuries, the use of opioids—that lead to "runaway" claims and excessive expenses, employers can pinpoint these cases without wasting time and resources examining their entire volume of data. To accomplish this goal, employers need to work with workers comp service providers to establish an infrastructure capable of receiving data streams from bill review companies and TPAs, of supporting leakage capture strategies and of performing the required analysis. An early referral notification systems can also alert employers to catastrophic and complex injuries that require clinical oversight. With the right level of expertise assigned to these cases, injured workers can now be quickly directed to the right specialists throughout the continuum of care.

**Betsy Robinson:** While advancements in technology and data analytics are furthering the ability of predictive analytics to identify claims requiring extra attention, adoption of data driven claim strategies is not yet widespread despite active industry discussion in the area. Most organizations have tools that use data to answer two questions: "What has happened?" and "What is happening right now?" These tools provide hindsight and insight, but seldom consider the missed opportunities that could arise from a framework that enables foresight.

Although most companies recognize the value of data as a strategic asset, few have demonstrated an ability to manage or capitalize on cross-organizational data. As the volume of captured information continues to grow, the "data-as-an-asset" challenge comes with increased urgency to more efficiently move data into actionable information used throughout an organization and in the marketplace.

Meaningful information can do more than suggest relevant actions to management; it can improve corporate health and growth. As the workers compensation buying market continues to embrace the use of predictive analytics and ongoing risk modeling throughout the life of each claim, there is little available that can guarantee driving those claims from injury to closure. We still primarily rely upon people with skills that may vary dramatically to watch claims as they develop and this challenges our need to drive consistent results. Organizations need to develop and train their staff in the art of best practices for clinical and claim management, to fully benefit from the value of early risk identification. Those who succeed will be those who balance the science of risk modeling with the art of effective claim management.



# Helmsman Management Services

[www.helmsmantpa.com](http://www.helmsmantpa.com)

## Two emerging issues are critical to managing total workers compensation costs

Helmsman Management Services (HMS) helps better control the total cost of risk by delivering superior outcomes for workers compensation, general liability and commercial auto claims.

The third-party claims administrator—a wholly owned subsidiary of Liberty Mutual Insurance—delivers better outcomes by blending the strength and innovation of a major carrier with the flexibility of an independent TPA.

Central to this approach is HMS' ability to understand the emerging issues that may impact claim costs, and then help customers appreciate that potential influence and how to manage it.

Two of the most pressing issues potentially impacting workers compensation costs today are the federal Patient Protection and Affordable Care Act (ACA), and the need to evaluate the performance of medical care providers in order to build networks that deliver better outcomes.

Here is a summary of how each issue may impact workers compensation.

### Affordable Care Act

While no major elements of the ACA are specifically directed at workers compensation medical care, there are areas where the law could have potentially significant effects – both positive and negative – on the cost of workplace injuries.

Specifically, the ACA may:

- Accelerate medical cost inflation – By mandating all Americans have qualified health insurance, the ACA may result in millions of previously uninsured individuals seeking medical care. Increasing demand is already meeting a fixed supply of medical providers. This gap will only grow. By 2020, the number of insured Americans is predicted to rise 21 percent, while the number of doctors will grow by only seven percent, according to the U.S. Department of Health and Human Services and the American Association of Medical Colleges. The result is will likely be rising medical costs and delays in treatments for all patients, including workers compensation claimants.

- Produce a healthier workforce – Health insurance for more Americans will likely improve overall health in the U.S., particularly for those with chronic conditions such as obesity. Such conditions often lead to work-related injuries and delayed return to work. As workers learn to better manage these conditions, there may be an overall reduction in workers compensation claim frequency, duration, and injury severity.

- Shifting medical costs – Reducing the number of uninsured workers means fewer will try to file workers compensation claims for

- injuries unrelated to the workplace. However, mandating employers with 50 or more employees provide medical insurance might increase the number of part-time workers. Experience shows that part-time workers are more prone to workplace injuries, potentially resulting in increasing claims frequency.



*'We offer our clients the flexibility and control they desire...but we also offer them the backing of Liberty Mutual and the discipline of an insurance carrier.'*

— **Debbie Michel,**  
President, Helmsman  
Management Services

### Workers Compensation and the ACA

- Medical costs associated with WC are 1.3% of the aggregate medical expenditure in the US\*
- No significant elements of the ACA are directed at WC
- Numerous potential indirect effects on the WC system (vary by state)
- Potential impact likely won't be felt for at least 2-3 years

\* NCCI

More information on Helmsman's PPE can be found at:

[www.helmsmantpa.com/Pages/Provider-Performance-Evaluation.aspx](http://www.helmsmantpa.com/Pages/Provider-Performance-Evaluation.aspx)

Understanding the ACA and provider performance evaluation will help companies better manage their total cost of workers compensation claims.



**Helmsman**  
Management Services LLC®

### WHAT WE DO:

Helmsman Management Services is a wholly owned subsidiary of Liberty Mutual Insurance and provides the flexibility of a third-party administrator and the strength of a national carrier. Claims resources such as predictive modeling, nurse case managers, and regional medical directors are shared across both organizations.

### WHO WE TARGET:

With more than \$5.5 billion in losses under management, Helmsman is the TPA partner of choice for businesses with 1,000 employees or more.

### SOLUTIONS:

- Workers compensation claims management
- Liability claims management
- Integrated managed care
- Risk control
- Predictive modeling
- Data analytics

### METRICS:

- **Workers Compensation Claims:** Closed 23% faster than the competition (SNL Financial data published 2013)
- **Workers Compensation Claims:** Total cost 22% lower than the competition (SNL Financial Schedule P as of 12/31/2012)
- **Medical Bill Review:** 60% average savings (53% net of duplicates) (Helmsman Analysis - MBR Statistics - NAC MSA 6-12-13)
- **Medical Director Services:** \$3,400 average savings/case (Helmsman Analysis)
- **Medical Case Management:** \$9,120 average medical and indemnity savings per claim (Helmsman Insurance (IWE).)
- **Pharmacy Benefit Management:** Pharmacy costs as a portion of overall costs run 5.5% lower than the industry (Source: Helmsman Analysis (MDAS Rx Trend Report))
- **Chronic Pain Program:** \$1,000/month average savings for individuals who complete the program (Source: Helmsman Analysis)
- **PPO Network Services:** \$255 million in savings (20.8% discount) (Source: Helmsman Analysis)

To learn more about how we manage claims to the best possible outcomes, visit [www.helmsmantpa.com](http://www.helmsmantpa.com) or email [info@helmsmantpa.com](mailto:info@helmsmantpa.com).

# WE CAN HELP YOU LOWER YOUR COSTS,

# EVEN FOR YOUR MOST COMPLEX CLAIMS.



Thankfully, catastrophic and complex claims don't happen often. But when they do, they can result in significant losses for your business and significant injury to your valued employees. A compassionate claim professional with the right resources and experience can make all the difference in bringing about a positive outcome for you and your injured worker. To learn more, ask your broker or visit [helmsmantpa.com](http://helmsmantpa.com).



# One Call Care Management

www.onecallcm.com



**Who We Are:**

One Call Care Management is the nation's leading provider of specialized solutions to the workers compensation industry enabling faster, more efficient and more cost-effective claims resolution.

**What We Do:**

With a focus on our customers and their injured workers, One Call provides best-in-breed services across six centers of excellence, comprehensive leakage capture solutions and added value across the continuum of care. Whether customers use us for one, three or six specialty areas, they receive top-of-the-line service, deep clinical expertise, and quality care.

**Our Centers of Excellence:**

- Equipment + Devices
- Dental + Doctor
- Diagnostics
- Home Health + Complex Care
- Physical Therapy
- Transport + Translate

**Our Customers:**

- Payers
- TPAs
- Self-Insureds

## A Passion for Care. The Power to Help.



**Joe Delaney**  
President and CEO  
One Call Care Management

Managing workers compensation claims is complex, time-consuming, and costly. One Call Care Management (One Call) helps by reliably connecting injured workers to best-in-class specialized services nationwide. Through the power of this specialization, injured workers get better, faster, and back on the job—at a lower overall cost.

One Call is the only company bringing this unprecedented value to workers compensation today through:

**1. Best-in-Breed Services.**

One Call brings together market leaders across multiple specialized services needed to care for injured workers, with each service area representing a center of excellence with deep clinical experience: diagnostics, dental and doctor, physical therapy, transportation and language services, home health and complex care, and equipment and device management. Whether you're using one, three or all of them, you know you are getting top-of-the-line service, expertise and quality care, customized to meet your unique needs.

**2. End-to-End Leakage Capture Solutions.**

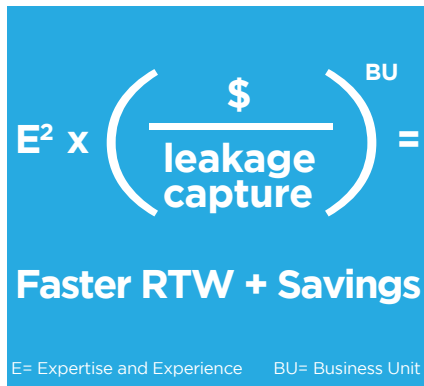
Every workers compensation company struggles to keep claims in-network for better care and lower costs. To help, One Call leverages its advanced technologies, business relationships, and in-depth expertise to deliver the most comprehensive end-to-end leakage capture programs—from first report of injury, to referring physician programs, to retroactive bill review. As a result, customers keep more claims in-network and achieve greater value for their spend.

**3. Value across the Continuum of Care.**

One Call recognizes the importance of focusing on the injured workers' needs across the continuum of care. So, it combines quality providers with seamless patient logistics to create efficiencies and faster return to work. For example, One Call's technology enables custom reporting and analysis of customer performance across specialties. Its goal is to eliminate delays, provide the communication needed for timely and informed decisions, and create a dynamic process for patient recovery never seen before in workers compensation.

As One Call continuously refines its systems and services, customer benefits just get better: a higher standard of care for injured workers, economies of scale and improved pricing, and greater value for dollars spent, all backed by the financial strength and stability of the industry's leader in customized solutions.

To learn more about One Call's capabilities, visit [www.onecallcm.com](http://www.onecallcm.com).



1  
**Hh**  
HOME HEALTH  
+ COMPLEX CARE

5  
**Dme**  
EQUIPMENT  
+ DEVICES

2  
**Dd**  
DENTAL + DOCTOR

3  
**Dx**  
DIAGNOSTICS

6  
**Pt**  
PHYSICAL THERAPY

4  
**Tt**  
TRANSPORT  
+ TRANSLATE



### Our elements of expertise bring solutions to life

With over 80 years of combined experience, we bring together best-of-class service lines with the largest and most highly skilled network of providers. With these elements working in tandem, we're able to provide our clients with customized solutions across the entire continuum of care. Contact us to discover the formula for cost containment and optimal outcomes that's right for you.

www.onecallcm.com

# Coventry Workers' Comp Services

www.coventrywcs.com



## Using Data to Drive Drug Safety

Any number of risk factors can contribute to the occurrence of a work-related injury. Similarly, any number of factors can increase the risk associated with a given workers' compensation claim. First Script digs into data to uncover evidence of emerging clinical risk and takes appropriate actions to promote patient safety and avoid unnecessary spending.

### More Data or Better Data? Well, It's Both.

Claims examiners face heavy caseloads and are inundated with information. On the pharmacy side, with a much higher volume of transactions, the sheer number of individual prescription alerts makes it easy to miss the one that contains critical information. In addition, most claims examiners have not been clinically trained to understand the risk factors associated with these individual prescription alerts. First Script's RxProfile makes this more manageable by providing an at-a-glance view of relevant data — such as injured worker demographics, drug activity and provider prescribing patterns — and rating the claim's risk. This stratified intelligence helps the claims examiner make timelier, more effective decisions around engaging clinical or other resources.

### The Past Predicts the Future

The risk profile is based on several attributes and gives more weight to factors that have been shown to increase

risk, such as narcotic use, claimant age, and specific types of injuries. Based on a huge volume of historical data, including pharmacy transactions filled in and out of the PBM network, each attribute is weighted with regard to risk and then added to the total risk score on the profile. The RxProfile algorithm also considers non-narcotic medications that may contribute to risk, prescriber history, the presence of multiple prescribers, and other factors.

### Focus on the Right Action

RxProfile replaces the need to review individual pharmacy triggers and focuses on combinations of factors that point to overall claim risk. Claims examiners receive fewer notifications, but those they receive prepare them to make decisions. Depending on the risk level, the examiner may decide to watch

the claim more closely, request utilization review, a drug utilization assessment with a peer-to-peer intervention, send the claim to case management or to an IME.

By bringing claims that require a higher level of clinical management to the forefront in a timely manner, RxProfile helps claims examiners mitigate risk early in the life of a claim, preventing runaway narcotic escalation with its potentially catastrophic consequences to injured workers.



### WHAT WE DO

- Case Management
- Pharmacy
- Networks
- Durable Medical Equipment
- Utilization Review
- Nurse Triage
- Independent Medical Exams
- Bill Review

### WHO WE TARGET

Managed care executives and risk managers of:

- Employers
- Insurance carriers
- Third-party administrators

### CONTACT

Barb Robinette  
Vice President, Marketing  
barbrobinette@cvty.com  
www.coventrywcs.com

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You don't need a complicated pharmacy solution, just one that captures every prescription, intervenes early, and continues to clinically manage appropriate medication use. Let us solve this problem for you.



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Durable Medical Equipment | Utilization Review  
Nurse Triage | Independent Medical Exams | Bill Review



Workers' Comp | Auto | Disability



## Ukraine conflict highlights political risks



Mr. Pasich



Mr. Heintz

The strife between Russia and Ukraine puts a focus on the role of political risk insurance and the need to evaluate securing such coverage for companies doing business in other hot spots around the world. Kirk Pasich and John Heintz of Dickstein Shapiro L.L.P. discuss the benefits of buying political risk insurance, as well as the types of coverage available.

Last November set off an escalating chain of events that has plunged Ukraine into a crisis that threatens to splinter the nation.

Ukraine's then-president, Viktor Yanukovich, had rejected a trade deal with the European Union in favor of pursuing an economic deal with Russia. After protests forced Mr. Yanukovich from power, Russia seized Crimea and massed troops on Ukraine's eastern border. Pro-Russian protesters in a number of cities in eastern Ukraine then seized government buildings, declared independence from Ukraine and urged Russia to come in.

These developments have led the United States and the European Union to impose limited economic sanctions on certain Russian leaders and oligarchs, along with one Russian bank, Bank Rossiya. Russia has countered with similar sanctions.

In June, Russia cut off natural gas deliveries to Ukraine over a longstanding dispute over delayed bill payments. Pockets of fighting continue to break out.

The possibility that both sides will impose far more significant sanctions still looms. Wider sanctions pose a real threat to the economic interests of numerous U.S. and E.U. companies conducting business in both Ukraine and Russia. Many of those companies may have political risk insurance, a specialty form of insurance designed to protect a company's assets, investments, or contractual rights in a foreign country against losses caused by a variety of foreign government actions.

While underwriters have suspended issuing political risk insurance relating to Ukraine and Russia, the crisis highlights both the role of political risk insurance and the need to evaluate securing such insurance for companies doing business in other "hot" spots around the world.

Political risk insurance has been available for some years from the Overseas Private Investment Corp. and the Multilateral Investment Guarantee Agency, a World Bank affiliate. These organizations insure investments in developing and other countries in order to facilitate investment and economic growth. The private market for political risk insurance, provided by such insurers as American International Group Inc. and Zurich Insurance Group Ltd., and the Lloyd's of London market, also has seen significant growth in recent years.

### Types of political risk insurance

Political risk refers to a wide range of risks, including some that may not come to mind

when one thinks of political risks. The most common example of political risk is loss associated with political violence, a terrorist attack, or civil unrest, such as the losses that resulted from the Arab Spring protests in Egypt and subsequent civil wars in Libya and Syria.

Coverage for these types of losses is narrowly written and expensive. However, political risk also includes the risk that a host government may frustrate or repudiate a contract with an international company to build a facility for which the company expects a certain rate of return, or the risk that a foreign government may expropriate or confiscate assets.

Political risk also includes the risk that a foreign government wrongfully calls a line of credit, or blocks currency conversion or the repatriation of funds. Political risk may also include the risk that a company's supply or distribution chain is disrupted due to export/import embargoes. Political risk insurance available in the marketplace, with variations, typically covers one or more of these risks.

### Providing political risk insurance

Political risk insurance can be obtained from public insurers, such as OPIC, MIGA, and the Export Credits Guarantee Department in the United Kingdom, or from private-market insurers. The nature of the coverage and the policy forms and terms vary between the public and private markets, with advantages and disadvantages to both.

OPIC, ECGD, and MIGA, backed by the U.S. and U.K. governments and the World Bank, respectively, have eligibility requirements consistent with their investment and development objectives that may limit access to insurance:

- OPIC requires that the company must be a U.S. company; the investment or project must be registered with OPIC before the company starts the investment or project; the company must obtain the foreign government's approval of the insurance; the project must take place in one of the countries that OPIC services; and the project must not fall into one of OPIC's categorically prohibited sectors.

- ECGD requires that the company be conducting business in the United Kingdom; and the investment must be made in an enterprise outside of the United Kingdom.

- MIGA requires that the company making the investment be in a MIGA member country; the investment be made in a MIGA member country; and the proposed invest-

ment project must be economically viable, environmentally sound, and consistent with the labor standards and development objectives of the host country.

Insurers in the private political risk insurance market are not backed by any governmental or international banking entity and do not have strict eligibility requirements imposed by those entities. Private-market insurers also have greater flexibility to tailor a policy to a company's specific needs or to offer coverage for risks the public insurers do not insure. Many businesses also appreciate the fact that the purchase of private-market political risk insurance can be kept confidential, unlike policies issued from government or quasi-government providers.

Obviously, what a political risk insurance policy covers depends on how the policy is drafted. Unlike other types of insurance policies, private political risk insurance policies are more likely to be tailored to the specific needs of the company purchasing the policy. Companies may also decide to mix and match coverage, obtaining coverage for certain investments with official providers and coverage for other projects with private providers. For example, if a company is opening a new hotel in a historically unstable region, it may consider purchasing political risk insurance to cover that region. Likewise, if a company is working with a government with whom it has not worked before on a particular project, it may want to insure just that project.

Although political risk insurance is generally considered for work abroad, it also may protect a company in its home country in the event of a terrorist attack or unfavorable actions by the government if drafted broadly enough. Because of these wide variations, the pricing of the policies will likely be dependent on the scope of the project, the length of the policy period and the risk associated with certain regions. Similarly, because of the specialized nature of these types of policies, it is important to review the policy terms to ensure the policy accurately reflects the scope of coverage sought.

### Features of political risk insurance

- **Arbitration clauses:** Many political risk policies contain a mandatory arbitration provision applicable to any dispute arising under the policy, while some policies allow for litigation in the U.S. Arbitration has both advantages and disadvantages that a company should weigh when considering political risk insurance containing a mandatory arbitration provision.

- **Choice of law clauses:** Most political risk policies have choice of law clauses, often designating the laws of England as the controlling law. English law differs in various respects from the laws of many U.S. states and should be carefully considered.

- **Notice provisions:** Most political risk policies contain a provision requiring that the insured immediately provide notice to the insurer upon the occurrence of any event likely to give rise to a claim under the policy. Because notice is typically identified as a condition precedent to coverage, political risk insurers often will attempt to deny coverage if the insured does not fully comply with a notice provision. For this reason, it is crucial that insureds provide notice as soon as possible and comply with the explicit terms of their policies, including providing notice in the proper medium and through the designated party.

- **Disclosure requirements:** Political risk insurance policies also typically impose a continuing obligation on the insured to disclose certain information to the insurer not only prior to the policy's inception but on a continuing basis thereafter. One such disclosure requirement may be that the insured had no knowledge at the policy's inception of any circumstance that could give rise to a loss under the policy. If an insured does not satisfy a disclosure obligation, the insurer may seek to void or rescind the policy ab initio (from the beginning). Companies should communicate clearly and openly with underwriters during the negotiation of any political risk policy and following placement to ensure disclosure obligations are being met.

- **Mitigation or due diligence:** An insured also should be aware that many political risk policies contain a due diligence clause requiring the insured to do everything "reasonably practicable" to protect or remove insured property and to avoid or diminish any potential loss in the event of a political situation. Thus, an insured is not required to undertake measures that would be impractical or futile, beyond the insured's financial means, or otherwise unreasonable under the circumstances.

*Kirk A. Pasich is the client strategy leader of Dickstein Shapiro L.L.P.'s insurance coverage practice and leader of its political risk insurance practice. He can be reached at pasichk@dicksteinshapiro.com or (310) 772-8305. John E. Heintz is Dickstein Shapiro L.L.P.'s insurance coverage practice leader. He can be reached at heintzj@dicksteinshapiro.com or (202) 420-5373.*

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After a thorough review by a panel of senior editors at Business Insurance, who will consider various criteria, including recent professional achievements, influence on the marketplace and contributions to their community, eight (8) Brokers will be identified in each region, and the results will be announced on-line prior to the event date for each region - and a compilation of all 40 of the award winners will be in the Oct. 13, 2014 issue of Business Insurance. Honorees are selected from nominations submitted by readers of Business Insurance, and they must be age 40 or under at the time of their nomination. A series of regional receptions will be held in celebration of the achievements of the broker leaders.



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## ENISA, Europol team to fight cyber crime

The European Union Agency for Network and Information Security and the European Police Office, or Europol, have launched a new partnership to thwart cyber crime.

Heraklion, Greece-based ENISA and The Hague, Netherlands-based Europol in a joint statement said their strategic cooperation agreement will facilitate closer cooperation and the exchange of information in the fight against cyber crime.

The organizations said that by combining their areas of expertise, they can help make Europe a safer place online.

“This agreement is an important step in the fight against ever more skilled cyber criminals who are investing more time, money and people on targeted attacks,” ENISA Executive Director Udo Helmbrecht and Europol Director Rob Wainwright said in the statement. “Cyber crime is estimated to cost the global economy more than \$400 billion annually. By cooperating more closely together and sharing expertise, we strengthen Europe’s capacity to combat cyber criminals.”

## Marsh D&O program gives access to attorneys

Marsh L.L.C. has started a directors and officers program that gives clients faced with securities litigation access to defense counsel on a preapproved basis.

The Marsh D&O panel consists of 32 top securities law firms and four of the industry’s leading D&O underwriters, and can be endorsed onto clients’ D&O policies, Marsh said.

Marsh said panel firms have agreed to assist Marsh and the D&O underwriters involved in the initiative in providing policyholder clients with ongoing education and training on a variety of legal, business, risk and insurance topics.

Marsh has not identified the participating law firms and underwriters.

“Companies facing securities lawsuits want to engage with legal experts as soon as possible but can face delays in obtaining consent from D&O underwriters for their counsel selection,” Devin Beresheim, New York-based managing director with Marsh’s FINPRO practice, said in a statement. “This has the potential to result in uncovered costs being incurred during the initial, critical stages of litigation, as underwriters will not reimburse defense costs until consent has been granted.”

Marsh’s D&O panel gives clients “easy access to top legal firms on an optional preapproved basis, eliminating any debate in defense counsel selection and any delay in the approval of such selection,” Mr. Beresheim said.

## AIG launches multinational commercial property line

American International Group Inc. has introduced a new line of multinational commercial property insurance products and services for middle-market compa-

## PRODUCTS & SERVICES

### Marsh unveils cyber product for energy sector

Marsh L.L.P. has launched a cyber insurance product for the energy industry underwritten by insurers and reinsurers in London and Europe.

The product is aimed at allowing commercial insurers to offer coverage comparable to the limits provided by energy industry mutual insurer Oil Insurance Ltd., Marsh said in a statement.

Most energy policies exclude coverage for bodily injury, property damage and business interruption arising from a hacking event, Andrew Herring, London-based leader of Marsh’s energy practice in Europe, the Middle East and Africa, said in a statement, and the stand-alone cyber insurance market currently focuses on covering losses from data breaches. But buyers increasingly are concerned about potentially catastrophic events that could arise from a lack of control caused by a hacker attack, and Marsh has developed coverage that protects against fires, explosions or machinery breakdowns resulting from a cyber attack, Mr. Herring said.

Marsh’s Cyber Gap Insurance product indemnifies the buyer in case indemnification is denied because of cyber risk exclusions in property, business interruption or package policies, Marsh said.

Mr. Herring said Marsh hopes to be able to achieve limits for clients comparable to the \$300 million limit offered by Bermuda-based OIL, which does not exclude cyber exposures.

nies expanding overseas.

AIG’s Property Performance Series suite of coverage, loss prevention engineering and risk management solutions is available to midsize businesses based in Australia, Canada, Europe, South Africa and the United States that have international exposures, the insurer said in a statement.

AIG plans to expand this offering to businesses in other countries later this year, including several industry-focused policy forms tailored to different specialties such as health care, higher education, manufacturing, real estate and retail, the company said.

AIG’s property performance insurance policy provides all-risk property and

business interruption coverage for all operating locations and property exposures. Additional coverage extensions, including environmental cleanup, equipment breakdown, crisis management and cyber, also are available. The policy also offers optimized business income coverage to give clients the flexibility of choosing settlement after a loss on either a gross profits or gross earnings basis, whichever results in a greater loss calculation, the AIG statement said.

## Cross health care practice widens industry scope

Cross Insurance, a subsidiary of Cross Financial Corp., has formed a new health care practice that will focus on primary and excess medical malpractice coverage.

The Bangor, Maine-based insurance agency’s service offerings now extend to all corners of the health care industry — hospitals, physicians, elderly care and allied health professionals — Cross said in a statement.

Primary and excess medical malpractice coverage are available for traditional first-dollar and deductible programs and alternative risk structures including captives, risk retention groups and trusts, according to the statement.

The practice will be led by Cross Insurance vice presidents William B. McKechnie and Dennis R. Lundgren.

Cross also has a third-party administrator unit that allows it to offer in-house capabilities for claims advocacy and claims handling, according to the statement.

## Agents group launches portal for foreign insurers

The Council of Insurance Agents & Brokers has launched an online portal to simplify the form exchange between U.S. insurance brokers and foreign insurers.

The unveiling of the W8BENE Portal coincided with the implementation of the Foreign Account Tax Compliance Act and allows insurers to easily obtain the W-8BEN-E forms needed to meet the new IRS reporting requirements, the Washington-based council said in a statement.

“We’ve worked hard over the past few months to develop this portal in a way that would make this massive change in business process as easy and seamless as possible,” Ken A. Crerar, president and CEO of the council, said in the statement.

“Insurers and brokers who sign up for the website will be able to exchange forms quickly with minimal impact to their normal business process.”

The portal features a searchable catalog of participating global insurers’ W-8BEN-E forms, contact information for insurers and reinsurers’ W-8BEN-E administrators, immediate and safe document access, secure W-8BEN-E uploading and educational resources, according to the statement.

A free trial period is underway and will last until Jan. 1, 2015, the council said in its statement.

## DEALS & MOVES

### Validus buying specialty insurer Western World for \$690 million

Validus Holdings Ltd. is buying Western World Insurance Group Inc. for \$690 million.

Franklin Lakes, New Jersey-based Western World is a specialty lines insurer that will give Validus an entry into the U.S. market and will operate as a stand-alone business within Validus led by its current management team, Validus said in a statement.

Pembroke, Bermuda-based Validus intends to use existing funds for the cash deal, which it expects to close during the third quarter subject to regulatory approvals, the company said.

### Sirius International secures managing agency at Lloyd’s

Hamilton, Bermuda-based Sirius International Insurance Group Ltd. has obtained approval to operate a managing agency at Lloyd’s of London.

The managing agency, Sirius International Managing Agency, will manage Sirius’ multiline syndicate 1945.

Syndicate 1945, which has capacity of £98.7 million (\$168.1 million), until now has been managed by London-based Asta Managing Agency Ltd.

The decision to create an integrated Lloyd’s vehicle reflects its growing commitment to Lloyd’s “with the intention of increasing capacity and activity when conditions allow,” Sirius said in a statement.

The managing agency also would provide its ultimate parent company, Hamilton, Bermuda-based White Mountains Insurance Group Ltd., a channel to the Lloyd’s market.

### AmTrust acquiring workers comp insurer OptaComp

New York-based AmTrust Financial Services Inc. has agreed to acquire Florida workers compensation insurer Comp Options Insurance Co. Inc., also known as OptaComp.

Terms of the deal, expected to close in the fall, were not disclosed.

Fort Lauderdale, Florida-based OptaComp is a subsidiary of Blue Cross & Blue Shield of Florida. It generated about \$60 million in Florida workers comp premiums in the past 12 months, AmTrust said.

Both AmTrust and OptaComp write workers comp policies for small businesses with a low-hazard risk profile.

### Ironshore increases stake in Lexon Surety to 20%

Ironshore Inc. has increased its ownership of Mount Juliet, Tennessee-based Lexon Surety Group L.L.C. to 20%, exercising an option it received as part of its initial investment in Lexon in 2013, when it acquired a 9.9% equity stake in the surety bond insurer.

Lexon writes more than \$100 million in direct premiums annually and is the 12th-largest surety bond writer in the United States, according to Hamilton, Bermuda-based Ironshore.

Ironshore said its subsidiaries will continue to provide quota-share reinsurance and primary fronting facility on new and renewal business for most types of U.S. commercial and contract surety risks.

# D&O rates for private companies jump as much as 20%

As regulators become more stringent, investigations coverage capacity becomes limited

BY JUDY GREENWALD

Competition in the excess layers is limiting rate hikes for companies and organizations renewing their directors and officers liability insurance at midyear.

Rates range from flat to single-digit increases for accounts with good loss histories amid abundant capacity and improving terms and conditions, but private company D&O accounts are seeing rate hikes up to 20% amid limited capacity for investigations coverage as regulatory scrutiny increases.

New insurers entering the market and increased capacity among existing D&O insurers has ramped up competition in excess layers.

"It's a good time to be a buyer," said Brian Wanat, New York-based national practice leader of Aon Risk Solutions' financial services group. "Between the pricing and the coverage, it's really starting to go in the buyers' direction."

"Price is stabilizing, and most companies are going to see rates of

flat to 5% increase as a rough average," said Amy Baranoucky, Denver-based western region FINEX leader at Willis North America Inc. However, "some financial institutions might see slightly higher pricing," which also depends on whether an organization's expo-

**"It's a good time to be a buyer. Between the pricing and the coverage, it's really starting to go in the buyers' direction."**

Brian Wanat, Aon Risk Solutions

sure has changed or if they have filed claims.

Competition remains intense in the excess level.

There are "too many people in the market and there are still new forms coming into the market," said Brenda Shelly, New York-based managing director of Marsh

L.L.C.'s FINPRO unit. At the same time, Side A coverage, which protects an organization's directors and officers, continues to get broader, "so you're getting a lot of impact from a rate perspective and also a broadening of the coverage perspective," she said.

The private D&O market is very different from the public market, experts say.

Private company D&O rates are increasing up to 20%, Ms. Baranoucky said. In many cases, the business had been priced "exceptionally low," while the exposure has changed for other companies as they have grown, she said.

"That still is a more challenging market," Mr. Wanat said. "They were just so underpriced for so long that even though the marketplace has been driving rate increases for the last year or two or even three," rates are "going up even double digits at this point," he said. "We're just coming off such a low base from a dollar perspective, it's not all that much, even though

it's double digit."

Private company D&O rates are flat to positive across the marketplace, said Steve Boughal, New York-based vice president and chief underwriting officer of Hartford Financial Products, a unit of The Hartford Financial Services Group Inc. "That tends to be more of a primary market just because privately-held markets tend to buy lower limits for D&O coverage," he said.

Public D&O rates range from a decrease of 1.5% to an increase of 2.5% in the primary layer, with the total program flat to down 5%, Ms. Shelly said.

## Investigation coverage

A "hot button" with respect to terms and conditions is investigation coverage, Ms. Baranoucky said.

"Brokers have been pushing the insurers to try to broaden" policies' investigation coverage, but there is limited capacity for inves-

tigations, she said. "I think it will continue to be a focal point," particularly for financial institutions because the government has more regulatory authority to police them, she said.

John Phelps, director of business risk solutions at Jacksonville, Florida-based Blue Cross & Blue Shield of Florida and a past RIMS president, said the current D&O market is stable.

"What's going to trigger changes, I think, is going to be some whopping large suits based on some new legal theory," a capacity restriction due to catastrophic losses in other lines or a change in the reinsurance market, which is "usually the canary in the coal mine," Mr. Phelps said.

"I think you're going to continue to see an aggressive market," said Rodger Laurite, senior vice president and unit manager at Lockton Cos. L.L.C.'s financial services practice in Atlanta. "There's a lot of new capacity and a lot of risks trying to write new business."

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## NAPSLO FOCUSING ON RECRUITING, REGULATIONS AND EMERGING RISKS

**Q** What challenges and opportunities face the excess and surplus lines market in the coming year?

**A** The annual A.M. Best Co. review of the surplus lines industry continues to demonstrate opportunity in the market's financial strength and stability. That report demonstrates the market's success in developing new and innovative solutions to emerging complex risks. That commitment to innovation creates opportunity for our industry.

Second, I would say adapting to changes in surplus lines legislation and regulation across the country also can be a challenge. As an example, the Terrorism Risk Insurance Act is set to expire at the end of 2014, but the timing and substance of its renewal is still somewhat unclear.

We are hopeful that reauthorization legislation, which is approved now in both the Senate and House committees, will move quickly through Congress. We've been saying for some time the reauthorization would happen sooner rather than later. This is our best

### Q&A

hope that some reauthorization will happen quickly.

**Q** How does NAPSLO help its members recruit and train new talent for the surplus lines industry?

**A** We have our career awareness and internship committee, and that committee supports a number of initiatives to attract and retain new talent to NAPSLO member companies. NAPSLO and its member firms host an average of 15 students in an internship program that exposes students to a variety

of roles within the surplus lines industry.

What makes that program great is that interns work with both insurance company and wholesale broker members and gain hands-on experience in all facets of the surplus lines business.

We are also working very hard to raise the level of awareness on university campuses about careers in our industry, and that works best when we connect a NAPSLO member to share their experience in a college classroom. We've made 17 of these presentations in 2014 alone, reaching more than a thousand students.

**Q** What legislative issues are on the horizon for the industry?

**A** A key priority has been the uniform implementation of the Nonadmitted and Reinsurance Reform Act. The NRRA created a national framework for uniformity and efficiency in surplus lines regulation and taxation, and we continue our work to insure the NRRA establishment of home-state regulation and taxation truly streamlines compliance in these



**BRADY R. KELLEY**

**NATIONAL ASSOCIATION OF PROFESSIONAL SURPLUS LINES OFFICES LTD.**

Commissioners, most recently as its chief financial and business strategy officer responsible for financial management and reporting, business strategy, risk management and compliance activities. He recently spoke with *Business Insurance* Senior Editor Judy Greenwald about NAPSLO's challenges, outlook and legislative priorities. Edited excerpts follow.

Brady R. Kelley is the executive director of the Kansas City, Missouri-based National Association of Professional Surplus Lines Offices Ltd., where he is responsible for the overall management of the association's staff activities, services to members and business operations. He started with NAPSLO in September 2011 as executive director. Prior to joining NAPSLO, Mr. Kelley spent 13 years with the Kansas City-based National Association of Insurance

areas for our industry.

We are also focused on reformation of the National Flood Insurance Program and promoting private-market solutions to flood

insurance. There are two bills that will amend the definition of private flood insurance and clarify the eligibility of surplus lines insurers to provide these solutions.

### COMINGS & GOINGS

## UP CLOSE: VERONICA FUENTES

LAS VEGAS-BASED ACCOUNT EXECUTIVE OF THE NEW GAMING, ENTERTAINMENT, AND SPORTS PRACTICE

Lockton Cos. L.L.C.

**PREVIOUS POSITION:** Las Vegas-based risk and safety director at M Resort L.L.C.

**LOOKING FORWARD TO:** Working with the talented and specialized team at Lockton. Particularly, I am excited to offer our clients Lockton's unique solutions that cover the multiple aspects of this industry.

**GOALS FOR NEW POSITION:** To establish and develop meaningful relationships with clients nationwide. For me, it's offering my first-hand experiences in loss control and legal issues, to offer creative risk management solutions that will meet and exceed clients' expectations

**CHALLENGES FACING INDUSTRY:** One of the most significant challenges is the high level and diversity of claims filed. There's everything from workers comp to trip-and-fall, event cancellation, adverse weather. You really need to have a keen eye to differentiate the frivolous lawsuits.

**FIRST INDUSTRY JOB:** I worked as a legal secretary for



Mandalay Bay in Las Vegas. I mostly reviewed legal contracts for the company.

**WHAT SURPRISED ME:** In my six years in working as a risk manager, I was never offered the level of specialization and solutions that Lockton provides through this new practice.

**ADVICE:** My best advice is never stop learning about your job, and build meaningful relationships. Continue to grow.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** To work as a sports, gaming and entertainment lawyer.

**HOBBIES:** Yoga and spending time with my kids.

**THING MOST PEOPLE DON'T KNOW ABOUT ME:** I studied international business in Paris, France, for two years.

**WHEN I RETIRE:** Travel the world and enjoy my family.

**BEST CITY:** Las Vegas, of course.

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XL Group P.L.C.	Kelly Lyles
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CNA Financial Corp.	Chris Heckman
Safety National Casualty Corp.	Mark Walls

#### OTHER

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Ultimate Risk Solutions L.L.C.	Riccardo Nicolini
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# General liability premium increases minimal thanks to stiff competition, added capacity

## But Big Apple's tough construction rules make coverage tight

BY BILL KENEALY

With the notable exception of New York, prices for general liability insurance renewing at midyear have ranged from flat to an increase of 5%.

Douglas J. O'Brien, New York-based casualty and alternative risk national practice leader at Wells Fargo Insurance Services USA Inc., said most of the brokerage's clients have renewed their liability coverage at the same rate as last year.

"The year is playing out much as we expected. There's been a tapering of rate increases," Mr. O'Brien said. "For general liability in general, we're seeing flat renewals to an increase of a couple of percentage points. For lead umbrella policies, it's been flat to 5%, but in a few cases, we've seen a reduction due to competition."

Likewise, Jack Green, New York-based managing principal at Integro Ltd., said flat to mid-single-digit renewals are prevalent this year.

"Overall the market has remained pretty stable," Mr. Green said. "On your more innocuous classes of business, there is abundant capacity."

Mr. Green said higher rates were reserved primarily for sectors with a greater perceived risk.

"There are different segments seeing rate increases such as for energy and chemical companies, where insurers are trying to push for 5% or 10% increases," he said.

Another area that could see greater rate increases is construction liability coverage in New York, Mr. O'Brien said.



Factors such as New York City's scaffolding law have pushed rates higher and prompted insurers to alter terms and conditions there.

"Construction liability in New York City has always been tough, and it's not getting any easier," he said.

Shari Natovitz, New York-based senior vice president of risk management at Silverstein Properties Inc., knows this firsthand.

"It's beyond tight in New York," Ms. Natovitz said. "There are very few carriers willing to write coverage. There used to be 20 markets for our coverage. We are now down to two or three."

Mitigating factors such as New York's scaffolding law, which imposes strict liability on building site owners and general contractors for "elevated" injuries, have pushed rates higher and prompted insurers to alter terms and conditions.

Ms. Natovitz said while a \$1 million deductible on construction liability policies once was com-

mon, insurers now are asking for deductibles of \$1.5 million to \$2 million.

"The liability market has been quite reasonable other than in New York," she said.

While a lack of liability buyer options has affected New York, the opposite is true elsewhere.

For lead umbrella coverage, relatively new entrants such as Berkshire Hathaway Specialty Insurance have added capacity and forced insurers to hold the line on pricing.

"Berkshire Hathaway is keeping the incumbents honest, so we've seen flat renewals in the lead umbrella space," Mr. O'Brien said. Other insurers, such as Allianz S.E., have become more competitive, he said.

Joni Elliott, New York-based practice leader of U.S. liability at Allianz Global Corporate & Specialty, said the insurer streamlined its umbrella form to standardize its offerings and better compete against traditional players such as American International Group Inc., Ace Ltd. and Zurich North America. Ace, AIG, Berkshire and Zurich did not respond to requests for comment.

"Our sweet spot is the umbrella layer," Ms. Elliott said, noting that midyear renewals on the layer on average were flat to a 5% bump. "We can compete effectively for the risks we want to write."

Insurance buyers also have benefitted from a profusion of insurers offering excess casualty coverage.

"The excess market, both Bermuda and London, and even the onshore markets, are hungry," Ms. Elliott said. "It's very competitive."

## PROPERTY

Continued from page 4

"on an average basis, probably high single digits to low double-digit percentage decreases," Mr. Ellis said. Some accounts could see rates fall up to 20% "based upon good solid competition in the marketplace."

"For 2014, we are definitely in a rate decrease environment," said David Finnis, Atlanta-based national property practice leader at Willis North America Inc.

Willis clients saw property rates fall 7.5% to 12% through June 30, he said.

However, catastrophe-exposed accounts will find a somewhat "less friendly" market than those without catastrophe exposure, Mr. Finnis said.

"As one would expect, premiums are still higher in high-catastrophe areas like Florida and California vs. noncatastrophe areas like the Midwest," he said.

Stewart Ellenberg, risk manager for the city of Boulder, Colorado said the city was fortunate to renew with a "slight" rate increase

despite a large property insurance claim related to the September 2013 flood in the region.

Likewise, Union County, North Carolina renewed its commercial property coverage for a 2% price increase, but deductibles for flooding and earthquake each doubled to \$50,000, said Tiffany Allen, the county's risk manager.

Looking ahead, about the only thing that could turn the market would be a major hurricane or other disaster.

"If there are no catastrophe events, we predict that you're going to be looking at double-digit decreases for the remainder of the year," said Al Tobin, New York-based managing principal of Aon Risk Solutions' property practice. "Double-digit decreases will continue," approaching 20% for some accounts, he said.

"There's just so much capacity in the property market right now, between incumbent insurers wanting to increase their lines or new underwriters trying to get on to the accounts," Mr. Finnis said.

Mr. Tobin said, "What's driving the market as much as anything is increased appetite among the top 10 catastrophe property carriers."

"The absence of major losses ... would be the No. 1 market driver, because that's starting to attract capital," Mr. Ellis said. "When looking at the results for 2013 combined with what we have seen in 2014 thus far, property is looking like a solid bet right now and is thus why we are seeing a lot of money or capital flowing into the property space."

Analysts agreed.

"If you take a step back, it's how financial markets work," said Cliff Gallant, an analyst at Nomura Securities International Inc. in San Francisco. "There's been an area where profits have been pretty good in recent years relatively speaking and so capital is flowing there in different forms."

"I think where there's underwriting success, that attracts capital to those lines," said James Auden, managing director at Fitch Ratings Inc. in Chicago. "So if you have large underwriting gains in a segment, existing players put more capital into those lines."

Alternative capital flowing into the reinsurance space may reduce reinsurance pricing for primary insurers, but it has not significantly affected primary insurance

prices.

"Reinsurance is just one ingredient in the makeup of (primary insurance) costs," Mr. Tobin said.

Also, there is no broad lingering effect from Superstorm Sandy on property pricing this year, Mr. Tobin said. "Insurance companies are more acutely aware of deductibles and limits, but price has not been affected," he said.

"There is no Sandy hangover on pricing," Mr. Finnis said. "The only lingering result is that individual insurers are no longer providing \$100 million in limits in the areas that were affected." Those policy limits now vary by account but usually range from \$25 million to \$50 million.

What's more, the uncertainty of congressional renewal of the federal terrorism insurance backstop thus far has not caused property pricing movement. The backstop will expire at the end of the year unless Congress renews it. Renewal legislation has been introduced in the House and Senate.

"There has not been any effect on (property) pricing and there is not likely to be because there is more supply," Mr. Tobin said of the federal terrorism program.

they're buying guaranteed-cost workers comp coverage with little or no self-insured retentions often used by larger employers, said Pamela F. Ferrandino, New York-based national casualty practice leader of placement at Willis North America.

Despite the softening rates overall, "the marketplace still has a good deal of discipline," said Eric Silverstein, Dallas-based risk management leader at Lockton, with employers with higher experience modifications and higher risk profiles seeing greater increases.

Uncertainty about whether the federal terrorism insurance backstop will be renewed continues to affect the comp market, primarily for companies with large worker populations in New York and California, experts say.

While legislation has been introduced to renew the backstop, the threat that it might expire has led "some insurers to build sunset clauses into policies," said Carolyn Snow, Louisville, Kentucky-based director of risk management at Humana Inc. and president of the Risk & Insurance Management Society Inc.

The backstop is not an issue for Humana, which renews in January, Ms. Snow said.

"We've only seen it materially impact a few dozen accounts on our books," Mr. Hackenburg said. "It's hard to label it as an industry-changing event. It's certainly very material if you're a very large financial institution in lower Manhattan. It's a very big deal for them, but for the majority of our clients, it hasn't been."

Some employers are holding down their total costs by turning to alternative ways to transfer the risk.

"If you can find alternative ways to manage that risk, for example, use a captive, which is one of the things we do (at Humana) ... then the money that goes out the door is less," Ms. Snow said.

Mr. Silverstein said many employers with whom he works are interested in captives to retain risk over longer periods, as well as "areas where they can have a positive outcome on lost cause — like training, like data analytics, things of that nature."

More companies are implementing safety and wellness programs to keep their comp costs down, Ms. Snow said.

"Wellness really has great benefits," she said. "Obviously, it helps the insurance companies, but it really helps the employees and it helps the employers. It's one of those rare programs where everybody can benefit."

Though not all employers are enjoying the softer market conditions, "the competition seems to be getting greater and greater as time goes on," Mr. Hackenburg said.

# CONTRACEPTIVES

Continued from page 1

their businesses as for-profit corporations in the manner required by their religious beliefs,” the court ruled, siding with Hobby Lobby Stores Inc., Mardel Inc. and Conestoga Wood Specialties Corp. “Protecting the free-exercise rights of closely held corporations thus protects the religious liberty of the humans who own and control them.”

The court, though, did suggest a way — one embedded in Department of Health and Human Services regulations — in which contraceptives could be provided without violating the 1993 law.

That approach would have an employer’s third-party administrator obtain contraceptives at no cost to the employer, an option the government already extends to nonprofit organizations with religious objections to prescription contraceptives.

“The court seems to be telling regulators what to do,” in drafting new rules that will pass legal muster, said Sharon Cohen, a principal at Buck Consultants L.L.C. in

Washington.

The Obama administration declined to discuss its next step.

“Frankly, we’re still assessing the decision and its legal implications. So, as we gather some information, we may be in a position to

## CONTRACEPTIVES COVERAGE

The Supreme Court’s ruling in lawsuits brought by Hobby Lobby Stores Inc., Mardel Inc. and Conestoga Wood Specialties Corp. applies only to privately owned employers with religious objections to prescription contraceptives. The ruling does not pertain to:

- Publicly held companies
- Employers with grandfathered health care plans
- Nonprofit religious organizations, such as Catholic health care systems, which must comply with different contraceptive coverage rules
- Religious organizations, such as churches, that object to the coverage
- Employers with less than 50 full-time employees that do not provide health coverage

better consider the range of options that are available to the president,” White House Press Secretary Josh Earnest said last week in a briefing after the court’s

ruling.

Some think the Obama administration will propose new coverage rules for privately held companies directly affected by the ruling.

“The White House may feel compelled to come up with an approach to fill the coverage gap” established by the Supreme Court ruling, said Amy Bergner, a managing director at PricewaterhouseCoopers L.L.P. in Washington.

But the approach suggested by the Supreme Court also is under attack. Numerous nonprofit religious-affiliated organizations have sued to challenge providing cost-free prescription contraceptives through a TPA. Those suits, filed in various federal courts, still are pending.

“We are certainly not done with the litigation,” over the prescription contraceptive coverage issue, said J.D. Piro, a senior vice president at Aon Hewitt in Norwalk, Connecticut.

Publicly-held employers, have stayed out of the fray. For them, covering prescription contraceptives is a mainstream benefit. A 2011 Mercer L.L.C. survey of 779 employers found nearly 90% offered prescription contraceptive coverage.

Benefits experts doubt large employers would test the legal waters and drop the coverage.

“Generally speaking, there doesn’t seem to be a high level of noise for not providing coverage,” said David Dross, managed pharmacy practice leader in Mercer’s Houston office, adding that dropping the coverage would not be “a cost saver and it could hurt employee relations.”

“It would be very hard for a publicly-held firm to do this. It is not just what the CEO thinks,” Buck Consultants’ Ms. Cohen said. “You need a consensus there and there are shareholders to consider as well. In the real world, exclusion of prescription contraceptive coverage would not be practical or very likely.”

The Supreme Court also was skeptical that large publicly-held employers would try to exclude prescription contraceptive coverage.

“The idea that unrelated shareholders — including institutional investors with their own set of stakeholders — would agree to run a corporation under the same religious beliefs seems improbable,” the justices said in their written opinion.

# SHRM

Continued from page 4

for employees based on sexual orientation and gender identity to help prevent discrimination complaints.

Employers also should address inappropriate behavior by employees that can be perceived as discriminatory against lesbian, gay, bisexual and transgender people, and can offer benefits to same-sex spouses, civil union partners and domestic partners of employees after checking with their insurer, he said.

“Make sure that the insurance company that you’re working with actually provides domestic partner benefits because you don’t want to start self-insuring people,” Mr. Cohen said. “It would be a beautiful gesture on your part, but I’m guessing it’s not something you want to do.”

A wellness program expert recommended that employers provide self-care programs that teach which symptoms can be treated at home and which need medical attention.

Such programs can help reduce unnecessary medical spending for

# COMPOUNDING

Continued from page 1

“I’ve seen ... compound bills come across our network that have been in the tens of thousands,” said Donald Lipsy, pharmacy benefits management communications and regulatory manager at Coventry Workers’ Comp Services in Tucson, Arizona.

“Without consistent protocols to prepare each drug, compounded drugs can have a greater batch-to-batch variability. This poses significant safety concerns as injured workers could be receiving medication with a higher potency than intended,” Sarah Randolph, St. Louis-based clinical account executive at pharmacy benefit manager Express Scripts Inc., said in a statement to *Business Insurance*.

Compounded prescriptions are two or more medications that are

combined outside their typical, commercially available form, such as pills. Compounds, which typically are customized for each patient, include topical creams and gels, injections and oral liquids, anesthetics, anticonvulsants, analgesic painkillers and muscle relaxants.

“In the past ... compounds would typically combine two or three different ingredients,” said David Calabrese, Northborough, Massachusetts-based vice president and chief pharmacy officer at pharmacy benefit manager Catamaran Corp. “Today, it’s not unusual for us to see claims for compounds that combine up to a dozen or more active ingredients. And that’s obviously going to increase the cost of the compound, but simultaneously increase some of the safety concerns that we have relative to these products.”

Pharmacy dispensers of compounded drugs typically bill insurers and employers for each ingredient, said Jim Andrews, executive vice president of pharmacy services for Atlanta-based pharmacy benefit manager Healthcare Solutions Inc. That has led some companies to use several high-cost medications in compound prescriptions, such as the anticonvulsant gabapentin, to increase their profit margin, he said.

Physicians, pharmacists and compounding pharmacies “have found a niche business that allows them to ... charge a tremendous amount of money for that,” said Mr. Andrews, who has seen claims of \$1,000 to \$1,500 for a 15-day supply of compounded drugs.

The recent studies confirm the escalating use. An April study by Madison, Connecticut-based pharmacy benefit manager consortium

CompPharma L.L.C. showed there were 30,669 prescriptions for compounded medications in workers comp claims in 2012, up from 6,416 compound prescriptions for workers comp claims in 2007.

Meanwhile, an April Express Scripts report showed the use of compounded medications in workers comp among its workers comp clients increased 71.9% in 2013 vs. 2012, and the average cost per prescription rose 29.8% to \$1,299.

Compounding has taken off in group health and workers comp as states controlled other prescription cost drivers, such as drug repackaging and physician dispensing, experts say.

“What the payers, especially in work comp, have issue with is it looks like everyone’s after the golden goose again,” said Mark Pew, senior vice president of product development at Prium, a Duluth, Georgia-based medical management company and unit of Ameritox Ltd.

In addition, experts say the effectiveness and safety of compounded drugs is uncertain, especially

topical creams containing drugs that are normally taken orally. Sources say there is little research on the subject.

Because the U.S. Food and Drug Administration does not oversee quality standards for compounded medication production, sources say they’re concerned patients could receive inconsistent amounts of medication or a mix with negative interactions.

Still, experts agree compounded drugs clinically benefit some patients. For instance, a patient who is allergic to inactive ingredients in a commercially available drug may use a compounded drug with nonallergenic fillers.

Additionally, employers may see benefits from compounded drugs that are used in place of narcotics to alleviate an injured worker’s pain. “In my mind, that would be considered a plus rather than a negative,” Mr. Andrews said.

Sources say workers comp payers should work with dispensers of compounded medications to evaluate whether they are medically appropriate.

## DEATHS BRING REGULATION CALLS

**H**igh-profile cases involving deaths due to compounded medications have prompted calls for consistent regulation of such medications, workers compensation experts say.

At least 64 people died in a 2012 meningitis outbreak caused by contaminated injectable steroids made by New England Compounding Pharmacy Inc. That case also resulted in at least 700 confirmed meningitis cases, and victims are awaiting approval of a \$100 million settlement from owners and insurers of the now-bankrupt pharmacy.

Last month, a grand jury in Orange County, California, reportedly charged three medical professionals with involuntary manslaughter in the death of a 5-month-old boy who allegedly ingested a compounded cream that contained an antidepressant, a cough suppressant and a painkiller. The charges were part of an indictment accusing 15 Californians of workers compensation fraud.

By Sheena Harrison

“Make sure that the insurance company that you’re working with actually provides domestic partner benefits because you don’t want to start self-insuring people.”

Michael Cohen, Duane Morris L.L.P.

workers and employers, said Don R. Powell, president and CEO of the American Institute for Preventive Medicine in Farmington Hills, Michigan.

He said about 25% of physician visits each year are unnecessary, equaling about \$227 million in excess medical costs, and 55% of emergency room visits are unnecessary, resulting in \$65.6 million in extra costs to treat nonurgent medical problems.

Employers should provide printed resource guides and websites that employees can use to evaluate whether their medical symptoms can be treated at home, by a doctor and what questions to ask when they visit a physician, Mr. Powell said. Some companies offer a nurse advice hotline to discuss their symptoms.

“You’re cutting into those unnecessary doctor and ER visits,” he said. “If you’re a self-funded company ... that’s \$199 per visit to \$350 per ER visit right back into your pocket, so you stand to gain the most. Not to say a company that’s fully insured doesn’t stand to gain, because it allows employees not to miss work when they’re at the doctor or ER unnecessarily and because people really appreciate a medical self-care program.”

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## HEAR INTERVIEW

Access *Business Insurance's* interactive digital edition to hear Dr. Teresa Bartlett, senior vice president of medical quality and corporate medical director at Sedgwick Claims Management

Services Inc., talk with Associate Editor Stephanie Goldberg about how telemedicine can be used in the workers compensation industry to improve care for injured workers and reduce costs for employers.

## TELEMEDICINE

Continued from page 3

medical director at Sedgwick Claims Management Services Inc.

The benefits include keeping injured workers out of emergency rooms, reducing or eliminating wait times for workers who need to see specialists, and improving their return-to-work rates, she said.

“A patient visiting his occupational health care provider who needs an evaluation from an orthopedist could have the consultation right on the spot, via a conference call during which results of diagnostic tests are projected onto a screen visible to the specialist,” Kimberly George, senior vice president and senior health care adviser at Sedgwick, wrote on the firm’s blog.

“Consider restaurants, for example, where burns are a fairly frequent occurrence,” Ms. George, wrote. “Using telehealth, a nurse at a remote location can evaluate the symptoms and determine whether the worker needs to be seen directly or can be discharged with instructions for home care. The technology is sophisticated enough to allow the provider to see deep into the hair follicles — much more advanced than, say, Skype or FaceTime,” and it complies with the

Health Insurance Portability and Accountability Act, she wrote.

In many cases, telemedicine exams take place at a worksite or a central location where “pieces of equipment that look something like an iPad” are set up in booths for privacy, Dr. Bartlett said. “You push a button, and there’s a doctor that appears on the screen and they can see you.”

Exams such as blood sugar levels, EKGs, pulmonary function and hearing tests can be performed and the information relayed to physicians in real time, she said.

Many physicians are also fans, Dr. Bartlett said.

“Physicians have told me they feel it’s a higher quality health care experience because they’re really focused on all aspects of the patient” even though the physician payment remains the same, Dr. Bartlett said.

“It’s just providing a convenience to a patient,” she said.

Some medical providers could be hesitant to embrace telemedicine not only because it’s different, but also because it has the ability to stimulate competition, Mr. Linkous said.

“From the patient side, it’s great because you can choose among a variety of different physicians, but from the physician side, they’re a little afraid they might lose a patient or two,” he said.

And more provider options could mean better prices for employers and insurers, experts said.

This is one reason TPAs such as Sedgwick work with clients to implement the technology through companies, including Concentra Inc. or Kaiser Permanente, that make telemedicine accessible on worksites or at a number of central locations, Dr. Bartlett said.

“It’s still relatively new to the employers out there,” she said, “even though there’s a lot of buzz about it and it’s being used widely in health care. It’s still something that’s being carefully examined in the workers comp space.”

Mr. Linkous said it helps to think of telemedicine as a tool rather than a specialty.

“We’re not talking about telemedicine, we’re talking about medicine,” Mr. Linkous said. “It’s just another tool you can use in providing health care services. ... It may take a little training to use it, but it takes training to listen to a heart sound on a stethoscope, too.”

## HALLIBURTON

Continued from page 3

how courts are going to take this decision and interpret it and apply it,” said Edward M. Larkin, a partner at law firm Edwards Wildman Palmer L.L.P. in New York.

In *Halliburton*, plaintiffs alleged that the Dallas-based oil field services company understated its asbestos liabilities. The case centered on the Supreme Court’s 1988 ruling in *Basic*, in which the court endorsed the fraud-on-the-market presumption theory. Under that theory, plaintiffs do not have to demonstrate that each member of a class action relied on a company’s alleged misrepresentation of information.

It is based on the presumption that in an efficient marketplace, a company’s share price reacts to all publicly available information about the company. Experts have said *Basic* made it much easier for plaintiffs to file class action lawsuits.

### Basic still stands

While companies had hoped the Supreme Court would overturn *Basic*, which it left intact, the high court did give defendants a partial victory.

“Defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock,” Chief Justice John Roberts wrote for the court.

Permitting defendants to challenge the effect of alleged fraudulent misstatements at the class certification stage will enable defendants to “shorten the litigation considerably,” although “discovery will get more complicated” to produce evidence that misstatements had no effect on stock

prices, Mr. Larkin said.

“Once plaintiffs get past certification, more often than not the case is settled, so I think what you’re going to see is (plaintiff attorneys) working harder at the class certification stage in order to get the class certified,” he said. That will be more difficult “because now defendants can offer evidence to rebut the presumption.”

While two-thirds to three-quarters of securities suits never get to the class certification stage, *Halliburton* means at least some class certifications “that might have been granted” previously now will be denied, said Kevin LaCroix, an attorney and executive vice president at RT ProExec, a division of R-T Specialty L.L.C. in Beachwood, Ohio.

Heidi A. Lawson, a member of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C. in Boston, recommended that buyers examine their D&O policies to be sure they cover expert fees and event studies, since some provide only narrow coverage of “legal costs incurred.”

“They really should double-check their definitions and make sure that they do have coverage for expert fees and the kind of fees that would be involved to do an event study, and it’s broad enough to cover these kinds of defense costs,” Ms. Lawson said.

In anticipation of *Halliburton*, American International Group Inc. last month introduced a D&O policy endorsement that will provide funds immediately to clients named as defendants in securities litigation to prepare event studies.

As for the ruling’s effect on the D&O liability market, Mark Weintraub, insurance and claims counsel at Lockton Cos. L.L.C. in Atlanta, said it’s unlikely to be significant. While defense costs could go up marginally, spending a few hundred thousand dollars to defeat class certification could avoid an even larger settlement, he said.

## IIS

Continued from page 3

into in the last 10 years,” Mr. von Bomhard said.

Reinsurance prices in particular are softening in many areas, said Denis Kessler, chairman and CEO of Scor S.E. in Paris.

“The environment is challenging, and there are headwinds that we all face, but I remain optimistic,” he said.

While the market for reinsurance may be soft generally, individual markets differ and reinsurers can redeploy their capital in profitable markets and profitable lines of business, Mr. Kessler said. Reinsurers that mainly offer commoditized coverage, such as some natural catastrophe coverage, may suffer in the current market, but diversified companies can look to other areas, he said.

“We are in a cyclical industry, and every good company has a set of strategies and a plan for a soft market and a different set of strategies and plans for a hard market,” said Albert Benchimol,

president and CEO of Axis Capital Holdings Ltd. in Bermuda. “It’s about risk selection. Prices may be down, but not every building is going to catch on fire, not every company is going to get sued, so risk selection and analysis is very important.”

Insurers and reinsurers also can grow by offering coverage that addresses the evolving risks of their policyholders, said Inga Beale, CEO of Lloyd’s of London.

Commercial entities are facing a changing array of risks and many of their traditional risks still are not covered by insurance, she said.

In general, insurers take on only about 10% of the balance-sheet risks that companies face, so there is a huge opportunity for insurers to grow, even in mature markets, Ms. Beale said.

However, insurers need to adapt if they are to address the new risks facing policyholders, said Evan Greenberg, chairman, president and CEO of Ace Ltd.

“Our ability to remain relevant ... and not marginalized is questionable,” he said.

Commerce is developing “in

intangible areas” such as intellectual property, cyber technology and biochemistry, and insurers will have to offer meaningful protection to address those risks to remain relevant, Mr. Greenberg said.

Also, insurers have to adapt to meet the needs of a new generation of risk managers who are imposing new demands on the industry, said Dominic Casserley, CEO of Willis Group Holdings P.L.C.

“We are seeing risk managers move from a generation who were primarily insurance purchasers ... to a generation who may be differently educated and who have become true risk managers whose clients are the CEO and CFO,” he said.

And those executives are asking risk managers questions about the correlation between traditionally insured risks and other risks that their companies face, Mr. Casserley said.

The insurance and reinsurance industry itself is changing as well, and those changes are affecting how the industry offers coverage.

Alternative capital providers such as hedge funds, pension

funds and, increasingly, individual investors are providing significant amounts of capital through the insurance-linked securities market, several executives said during the conference.

While natural catastrophe reinsurance historically has been the most profitable area of the reinsurance industry, the business “is breaking away to financial markets and that’s challenging for the traditional market,” said Urs Ramseier, chairman of Twelve Capital, a Zurich-based investment manager specializing in the insurance industry.

Other reinsurance risks, such as liability risks, theoretically also could be transferred to capital markets, but it is difficult to structure capital market products with an appropriate trigger to address those risks, Mr. Ramseier said.

But as nontraditional capital providers expand in the reinsurance market, traditional reinsurers also can benefit from the trend through purchasing retrocessional coverage from the new markets, investing in insurance-linked securities and offering catastrophe bonds, Mr. Kessler said.



“We are seeing risk managers move from a generation who were primarily insurance purchasers ... to a generation who may be differently educated and who have become true risk managers whose clients are the CEO and CFO.”

Dominic Casserley,  
Willis Group Holdings P.L.C.

“There’s no cap on it,” Mr. Roman said. “Mr. Feinberg will have the final determination on numbers.”

Under the compensation fund, family members of those killed as a result of defective switches are eligible for at least \$1 million; other factors may increase the compensation. Those injured in accidents caused by the defective switches also are eligible for compensation. At least 13 deaths have been tied to accidents resulting from the defective switch, and GM has recalled 2.6 million older-model cars to fix the problem.

“For General Motors, their reputation at this point is at risk,” said Nir Kossovsky, CEO and director of Steel City Re, a Pittsburgh-based broker and adviser specializing in corporate reputation management and risk transfer.

“They’ve arguably made one of the best strategic moves for reputation restoration. It will be expensive, but it beats the alternative,” he said.

Mr. Feinberg is no stranger to such compensation funds, having led the September 11 Victim Compensation Fund, the BP Deepwater Horizon Disaster Victim Compensation Fund as well as the fund established for victims of the 2013 Boston Marathon bombings.

Despite the potential cost of the GM Ignition Compensation Claims Resolution Facility, it’s the right direction for the company to address the crisis, other crisis management experts agree.

“A company almost has no

choice but to go this route. I think it’s the right thing to do even from a cost/benefit standpoint,” said Larry Walsh, vice chairman of Alexandria, Virginia-based consultant Hawthorn Group L.C.

“Years of litigation could be more harmful to the company and even more expensive,” Mr. Walsh said. “It seems to me a smart way to go. It is trying to reach out to people directly, deal with them honestly.”

General Motors “is doing the smart thing, the right thing, throwing in a bunch of billions” and addressing the black eye to its reputation it has received, said Anthony Sabino, founder of law firm Sabino & Sabino P.C. in Mineola, New York.

“It certainly is a tremendous idea from a public relations standpoint for General Motors to go beyond what a lot of people would see as the minimum steps necessary to make things right,” said Royal F. Oakes, a partner at Barger & Wolen L.L.P. in Los Angeles.

There is danger for GM, though, in considering claims already settled prior to GM’s 2009 bankruptcy reorganization. “That step could undermine the ability of General Motors down the line to try to enforce the finality of the (bankruptcy) agreements,” Mr. Oakes said.

Mr. Kossovsky thinks GM’s selection of Mr. Feinberg is solid.

“Ken does a great job of speaking to the ethics point, but to the financially oriented investors, Ken also has a reputation for helping companies control what might be uncontrolled compensation,” Mr. Kossovsky said.

Despite the compensation fund, GM still faces numerous suits that



BLOOMBERG

Fund designer and administrator Kenneth R. Feinberg is solely responsible for setting the amount GM will pay to claimants.

## KEY POINTS

Details of the General Motors Co. Ignition Compensation Claims Resolution Facility:

- The program is voluntary and individuals waive rights to sue GM only if they’re satisfied with the compensation provided.
- Fund Administrator Kenneth R. Feinberg has sole discretion over compensation awards to eligible victims.
- The fund is uncapped and will pay what the administrator deems appropriate in each case.
- Individuals who settled claims with GM before knowing of the ignition switch defect may receive additional compensation through the fund.
- Contributory driver negligence, such as intoxication or speeding, is not considered under the program.
- Claimants must prove the ignition switch defect in an eligible vehicle was the proximate cause of death or physical injury in the accident.
- There are three categories of eligible claims: individual deaths, catastrophic injuries such as those resulting in paralysis or brain damage, and less serious physical injuries.

Source: General Motors Co.

have been filed in connection with the switch defect. The defect, which goes back more than a decade, can result in “inadvertent key rotation,” allowing the switch to move out of the “run” position, turn off the engine and deactivate

the power steering, power brakes and air bags.

Plaintiff attorney Jonathan A. Michaels, a partner at Newport Beach, California-based MLG Automotive Law A.P.L.C., has filed litigation on the issue. “We contin-

ue to strongly believe in our case, which subjects GM to punitive damages,” he said of one wrongful death suit he has filed against GM and two putative class actions seeking economic damages.

“Victims have the burden of proof to establish the ignition switch was the proximate cause of the accident” to receive compensation from the fund, Mr. Michaels said. With many accidents occurring up to 10 years ago, “I just don’t know how lay people” will be able to provide that proof, he said.

Jere L. Beasley, founding shareholder of plaintiff law firm Beasley, Allen, Crow, Methvin, Portis & Miles P.C. in Montgomery, Alabama, said his objections to the fund include that Mr. Feinberg has the sole ability and authority to establish eligibility, the burden of proof and the amount of compensation to be awarded.

He said, however, “There’s some good features of the plan, obviously, and I think with some modification and some improvement, a plan could be workable.”

Mr. Beasley said he already has filed four suits in the case, and as of late June, had been contacted by some 300 people about pursuing litigation.

“We anticipate filing a tremendous amount of lawsuits,” he said.

Joanne Doroshov, executive director of the Center for Justice & Democracy at New York Law School in New York, likes the structure for allowing compensation before 2009, but agreed that the required documentation is “so extraordinarily burdensome that it’s going to be unlikely that any deserving victims are going to get anything.”

## INTERNATIONAL

# Canadian insurance leaders chart efficient course as risks evolve

BY MATTHEW LERNER

NIAGARA-ON-THE-LAKE, Ontario — Business should be good this year, according to a leading Canadian economist — as long as nature cooperates and political volatility remains moderate.

Robust global economic growth, as evidenced by an index of leading economic indicators from the Organization for Economic Cooperation and Development, would provide a fertile environment for business in 2014, said Peter Hall, vice president and chief economist at Ottawa, Ontario-based Export Development Canada, Canada’s self-financed export credit agency that provides insurance and financial services.

A “significant natural event,” however, such as a severe catastrophe that produces extensive losses, poses a risk to the business environment for the insurance industry, Mr. Hall said. “I will have to say, over the past few years there seems like there is a repeti-

tive” instance of natural events jarring the insurance industry, he said.

Political risk such as the current turmoil in Iraq also could roil world economies, said Mr. Hall, and provide another hurdle for the insurance industry.

Working in insurers’ favor, however, is a relatively high level of employee engagement in their work, according to Toronto-based Todd Mathers, talent and engagement consulting partner with Aon Hewitt.

The 22 Canadian insurers tracked by Mr. Mathers post an engagement score of 69%, he said. “For an industry group, that’s actually a pretty high level of engagement,” said Mr. Mathers.

Both Messrs. Hall and Mathers were speaking to insurers, brokers, agents and related professionals gathered at the Canadian Commercial Insurance Summit at Niagara-on-the-Lake to discuss how to respond to challenges facing their industry in 2014 and cre-

ate sustainable growth.

The industry does face some headwinds for 2014, according to speakers.

Alternative capital entering the insurance industry from nontraditional sources poses a challenge to established players, said Alister Campbell, CEO of Toronto-based insurer The Guarantee Co. of North America, during a panel discussion featuring several industry chief executives.

“You are watching capital seeking returns in areas in which it has not historically. So you have pension funds and private equity entering alternative risk vehicles,” said Mr. Campbell.

Independent brokers will have to adapt to competition from direct underwriters, said Andrew Kemp, president and CEO of Vancouver, British Columbia-based CMW Insurance Services Ltd., during the CEO panel. “We’re going to have to look at more efficient ways to transact business because the sophistication of direct underwrit-

ers is growing and poses a challenge,” said Mr. Kemp.

Remaining as an independent broker is a vital part of remaining successful, said Barry Lorenzetti, president of commercial brokerage BFL Canada Risk & Insurance Inc. in Montreal. “Being independent has obviously helped our growth over the years,” he said during the CEO panel.

“Regulation is something that concerns me,” said Greg Somerville, president and CEO of insurer Aviva Canada Inc. in Markham, Ontario. “The kind of regulation we’re being subjected to both provincially and federally is a concern.”

Regulation was also mentioned during a discussion concerning the lessons learned from the Calgary, Alberta, floods during June 2013. A lack of reciprocal licensing agreements between provinces prevented claims adjusters from crossing provincial lines in some cases, according to Bob Fitzgerald, president of insurance claims manager

ClaimsPro Inc. in Toronto.

U.S. adjusters faced a similar problem responding to Superstorm Sandy in 2012, as a lack of such agreements between U.S. states delayed and prevented some claims adjusters from entering storm-hit states, especially New York, Mr. Fitzgerald said.

And just as a natural disasters can hit world financial markets, so too can such an event change insurance markets and even create opportunities.

After the Calgary floods, the market for flood insurance changed drastically for many of those hit by the water, said Calgary-based Eddie Fung, vice president with brokerage BFL Canada.

Terms and conditions changed, deductibles were instituted and raised, and pricing went up, Mr. Fung said. Being able to go into a newly defined market and secure coverage for existing and new clients was one way for a broker to distinguish itself in the wake of the floods, he said.

## U.S. Supreme Court rejects ex-AIG CEO Greenberg's appeal

■ The U.S. Supreme Court rejected an appeal by former American International Group Inc. CEO Maurice R. Greenberg, who accused the Federal Reserve Bank of New York of unlawfully bailing out the insurer at the height of the 2008 financial crisis. The court left intact a 2nd U.S. Circuit Court of Appeals decision from January that said the New York Fed's authority to address major threats to the economy justified the dismissal of Delaware breach of fiduciary duty claims by Mr. Greenberg's Starr International Co., which once held a 12% AIG stake. AIG is based in New York but incorporated in Delaware. Starr had accused the New York Fed of engineering a "backdoor" bailout for Goldman Sachs Group Inc. and other Wall Street banks at the expense of AIG shareholders by forcing the insurer to unwind bets on mortgage debt through hundreds of billions of dollars of credit default swaps.

Reuters

## Montana health department computer server hacked

■ Montana officials said the state will notify 1.3 million people that hackers have gained access to its Department of Public Health and Human Services' computer server, although there is no knowledge to date that information has been used inappropriately. The department is notifying individuals whose personal identity information was on the server, including current and former Montana residents as well as deceased individuals in some instances, officials said in a statement. The state is also notifying individuals of free credit monitoring and free identity protection insurance. The information on the server included names, addresses, dates of birth and Social Security numbers, and may also have included information regarding department services clients applied for and/or received, among other data.

## Hannover Re cat bond to cover Texas named storm risks

■ Hannover Re S.E. has completed an insurance-linked security transaction that transfers named storm risks for the Texas Windstorm Insurance Association to the capital markets. Institutional investors had made \$400 million available for the catastrophe bond, which will mature in three years, Hannover Re said in a statement. The risks covered by the bond are limited to the state of Texas, Hannover Re said. The bond will provide three years of catastrophe protection and coverage of up to \$3.25 billion, according to a note by Fitch Ratings Inc. The bond, issued via Bermuda-based special purpose vehicle Alamo Re Ltd. is based on an indemnity trigger, Fitch's note said. The TWIA is Texas' insurer of last resort for wind and hail losses for Gulf Coast property owners.

## Lockheed to completely freeze pension plan by 2020

■ Lockheed Martin Corp. will completely freeze its defined benefit pension plan for salaried employees, the aerospace firm said. In the first step of a two-part plan, the amount of employees' pay used for pension benefit calculation purposes will be frozen as of Jan. 1, 2016. Under

the second step, employees' credited service for pension benefit calculation purposes will be frozen as of Jan. 1, 2020. By 2020, affected employees will receive an automatic company contribution equal to 6% of pay to a defined contribution plan. They also will be eligible for company matching contributions, up to 4% of pay. About 48,000 of Lockheed Martin's 113,000 employees participate in the pension plan. New salaried employees no longer could participate in the defined benefit plan as of 2006.

## Zurich to take \$300 million hit from selling Russian retail unit

■ Zurich Insurance Group Ltd. said it would take a hit of about \$300 million in the third quarter from selling its Russian retail business to the OLMA Group, part of the insurer's strategy to shed underperforming units. The Swiss insurer said it is selling the Russian retail unit, which had a gross written premium volume of 7.1 billion rubles (\$207 million) in 2013, to Russian investment group OLMA for \$30 million. Zurich said it would keep and expand its Russian corporate business. Zurich began a three-year restructuring program at the end of 2013 to invest in high-margin businesses and sell underperforming lines, the cost of which will total \$600 million. A spokeswoman for Zurich said the retail business had not been profitable for the past two years. The sale is expected to close in the third quarter, Zurich said.

Reuters

## Law firm malpractice claims slow but still cost insurers millions

■ The frequency of law firm malpractice claims has started to level following a post-recession surge, but their severity has increased, according to specialty broker Ames & Gough survey "Lawyers' Professional Liability Claims Trends: 2014." The survey covered eight malpractice insurers who insure more than 80% of the 100 biggest U.S. law firms: American International Group Inc. and its Lexington Insurance Co. unit, Markel Corp., Axis Capital Holdings Ltd., Brit P.L.C., Catlin Group Ltd., Ironshore Inc., CNA Financial Corp. and Swiss Re Corporate Solutions. It found that six of the eight had more claims with reserves of \$500,000 or greater, including loss and expenses, in 2013 than they did in 2012. In addition, four of the eight had either paid or participated in paying a claim of \$100 million or greater, while two others had a payment of between \$50 million and \$100 million. Conflict of interest is the most common alleged legal malpractice error.

## Subaru recalling 660,238 vehicles in U.S. due to brake line rust

■ Subaru of America, a unit of Fuji Heavy Industries Ltd., is recalling 660,238 Outback, Legacy, Impreza and Forester vehicles registered in cold-weather U.S. states because of possible corrosion of brake lines, safety regulators said. Brake line corrosion could cause leaking of brake fluid and make the brakes less effective, increasing the risk of a crash, according to a report by the National Highway Traffic Safety Administration. Affected vehicles are the 2009-2013 Forester, the 2008-2011 Impreza and the 2008-2014 Impreza WRX/STI, the 2005-2009 Outback and the 2005-2009 Legacy, the NHTSA said.

Reuters

## Pension agency report estimates future financial position

■ The Pension Benefit Guaranty Corp. projects that the deficit in its single-employer insurance program will shrink to \$7.6 billion by 2023, down from last year's \$27.4 billion deficit. In its fiscal year 2013 projections report, the PBGC attributes the shrinking deficit to strong investment returns, higher interest rates which drive down the value of plan liabilities, and federally mandated increases in premiums that plan sponsors pay the PBGC. However, the agency's multiemployer pension plan insurance program's deficit is expected to widen to \$49.6 billion by 2023, up from \$8.3 billion last year. Without changes in law and/or premium increases, the PBGC multiemployer pension plan insurance program "is more likely than not to run out of funds in eight years and highly likely to do so within 10 years," the report said.

## Hub acquires New Mexico brokerage Free Market

■ Hub International Ltd. has acquired the assets of Free Market Insurance Agencies L.L.C., a full-service commercial insurance brokerage located in Albuquerque, New Mexico. Terms of the deal were not disclosed. Michael Dennis, Free Market's president, will join Hub New Mexico as a client executive and vice president for the region, and the rest of his team will relocate to Hub New Mexico's newly renovated Albuquerque headquarters, according to a company statement. Free Market has a concentration of clients in the restaurant/hospitality, construction, health care and financial services industries.

## Gardner Denver to pay \$29 million to settle shareholder lawsuit

■ Gardner Denver has agreed to pay \$29 million to its former shareholders to settle allegations the industrial pumps producer was undervalued in its \$3.7 billion sale last year to private equity firm KKR & Co., court documents show. The settlement, reached after two days of mediation in Chicago last month, was subsequently filed in a Delaware court and must be approved by a judge. Shareholders sued Gardner Denver, its board and KKR, saying the sale price was too low and accusing KKR of tainting the sale process by hiring Gardner Denver's former CEO, Barry Pennypacker, shortly after he resigned in July 2012. KKR, the shareholders alleged, "improperly obtained confidential information from Pennypacker" that informed KKR's bid. Randall Baron, an attorney for the plaintiffs, said in an email the settlement was "a very good result for shareholders in what would have been a very challenging case."

Reuters

## Most painkiller prescriptions written in southern states

■ Opioid prescriptions per person nationwide are highest in southern states such as Alabama, Tennessee and West Virginia, according to the U.S. Centers for Disease Control and Prevention in its July "Vital Signs" report. Providers in Alabama, the highest prescribing state, wrote nearly three times as many scripts per person as prescribers in Hawaii, the lowest prescribing state, according to the report.

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Secretary (1942-2012)

**S.R. Bernstein:**  
Chairman-executive committee (1907-1993)



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## Hershey not down with pot candies

Just a short while ago, “marijuana” and “trademark infringement” would not have been expressed in the same thought. But now a Colorado Springs, Colorado, manufacturer of pot-infused candy has been sued by The Hershey Co. for trademark infringement.

In a lawsuit filed in U.S. District Court in Denver last month, Hershey, Pennsylvania-based Hershey says packaging for marijuana candy sold by TinctureBelle L.L.C., which manufactures the Ganja Joy, Hasheath, Hashees and Dabby Patty brands, bears too close a resemblance to its own Almond Joy, Heath, Reese’s Peanut Butter Cups and York Peppermint Pattie candies.

Hershey says the products are packaged in a way that will confuse consumers, including children, and create “a genuine safety risk.”

“Individuals and families the world over trust Hershey and its various brands as signifying safe and delicious treats for people of all ages,” says the lawsuit, which seeks an order that TinctureBelle stop selling the items as well as damages.

TinctureBelle products are available only in state-licensed medical marijuana dispensaries, says its president, Char Mayes.

## Jurors spot thief’s true identity

In 2004, convicted identity thief Jeffrey Groover got a day out of federal prison to testify in front of a U.S. Senate committee on how to prevent identity thieves like himself from committing crimes, but he found himself giving sworn testimony again last month in an entirely different set of circumstances.

The South Florida man testified on his own behalf in federal court in Fort Lauderdale, Florida, to defend himself against six federal charges for stealing identities and committing bank fraud in Broward and Palm Beach counties, according to the Sun-Sentinel newspaper.

The jury found Mr. Groover guilty on all charges.

When he is sentenced in September, Mr. Groover is potentially facing 20 years in prison for each of the four most serious bank fraud charges, according to the Sun-Sentinel.

He is already serving a five-year federal prison sentence for another crime: making false claims to the IRS in 2012 and attempting to cash fraudulent tax refund checks, the newspaper said.

## ROYALS STRIKE OUT OVER MASCOT BEATING FAN WITH HOT DOG



AP PHOTO

Kansas City Royals mascot Sluggerrr engaged in a “hot dog launch” from atop the visitors’ dugout between innings.

Hot dogs may be as much a part of baseball as the sound of hardwood hitting horsehide and an ice-cold beer, but the risk of getting hit in the eye by a hot dog is not an inherent risk of the game, according to the Missouri Supreme Court. The Missouri Supreme Court ruled last month in the case of John Coomer, a long-time baseball fan and frequent spectator at the Kansas City Royals’ Kauffman Stadium. It was there during a game in September 2009 that Mr. Coomer, seated six rows behind the visitors’ dugout, caught a hot dog to the face as the Royals’ mascot, Sluggerrr, engaged in a between-innings “hot dog launch” from atop the dugout.

After developing vision problems Mr. Coomer was diagnosed with a detached retina and sued the Royals for negligence over the team’s care, training and supervision around Sluggerrr’s hot dog tossing. While admitting responsibility, the Royals denied negligence and claimed that Mr. Coomer had assumed the risk of injury by attending the game.

In its unanimous ruling, the Missouri high court held that the trial court erred in directing the jury to determine whether a possible hot dog toss injury was an inherent risk of attending a baseball game. “Hot dog tossing has nothing to do with watching baseball,” according to the court, remanding the case for retrial.

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## Man gets canned over beer can image

A college teacher’s impressive beard has apparently proved to be his downfall, at least insofar as his employment is concerned.

Paul Root won second place in the Full Beard Freestyle division of the third Mid-Atlantic Beard and ‘Stache Championships in Richmond, Virginia, about a year ago, according to news reports.

However, the college where he worked as associate professor of sociology, Charleston Southern University in Charleston, South Carolina, was evidently less than

thrilled when his image also appeared on a beer can.

Mr. Root did not find out he would be on the beer cans until they were already in production, and he has received no payment for the use of his image. The college also was not moved by the fact that the beer — Chucktown Follicle Brown, produced by North Charleston, South Carolina-based Holy City Brewing Co. — was created to raise money for ovarian cancer research and support.

Mr. Root was summoned to a meeting with his dean over the issue, and afterward thought all was well, according to news reports. But two days later, he was called into a vice president’s office and fired. “I was told that it was not representative of a Christian environment,” he said of his beer can appearance. Mr. Root said he plans to consult an attorney to consider his next steps.



## Even superheroes need car insurance

You can be faster than a speeding bullet, more powerful than a locomotive and able to leap tall buildings in a single bound — but if you are driving without car insurance, you can’t outsmart the U.K.

Central Motorway Policing Group.

Two hapless motorists, both dressed as Superman, were stopped on the highway near Solihull, England, last month on suspicion of driving without insurance.

The would-be superheroes’ car didn’t have a rear window but was accessorized instead with a red cape muck that of the comic-book hero.

But despite their attention to detail in aping the Man of Steel’s attire, the two men found their lack of insurance coverage to be their real-life equivalent of kryptonite.

The Central Motorway Police Group was quick to tweet a warning to other motorists.

“Even Superman needs insurance. We don’t work for Lex Luthor, but we had to remove Superman’s wheels from the road,” the police group tweeted.

The officers’ action garnered praise from as far afield as Oklahoma, where a county sheriff tweeted: “Nice work! Not even Superman has a chance against police Kryptonite. He’s much better at flying than driving, anyway. Stay Safe!”



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