

**HIGH COURT TO TACKLE CLASS ACTION CASES IN UPCOMING TERM / PAGE 3**

**ARMY CORPS OF ENGINEERS AVOIDS FLOOD LIABILITY FOR KATRINA LOSSES / PAGE 3**

**HARTFORD FOCUSES ON PROPERTY/CASUALTY AFTER LIFE UNIT SALE / PAGE 4**

## inBrief

### Wal-Mart bias suit can seek class status

A federal judge has refused to dismiss the California-based litigation in the *Betty Dukes v. Wal-Mart Stores Inc.* gender discrimination case, ruling that plaintiffs should be given the opportunity to submit a motion for class certification. In June 2011, the U.S. Supreme Court ruled against a proposed class of some 1.5 million members nationwide in the case, holding that the “respondents have not identified a common mode of exercising discretion that pervades the company.” Plaintiffs subsequently refiled the case in California and Texas.

### Colo. shooting victims file suit against theater

Three victims of the July theater shooting in Aurora,

See **IN BRIEF** page 25



## SPOTLIGHT

### MIDDLE-MARKET RISKS & LOCAL/REGIONAL BROKER LEADERS

Largest U.S. brokers by region; largest bank-owned, privately owned brokers; brokers' roles expand; banks await guidance. **PAGE 9**

### CAPTIVES

## DOL puts brakes on benefits captives

*Fast-track regulatory approval procedure placed on hold*

By **JERRY GEISEL**

The Labor Department has suspended a procedure that employers have used for a decade to obtain fast regulatory review of applications to fund employee benefits through their captive insurers, *Business Insurance* has learned.

The temporary suspension, which some describe as a review, gives regulators time to examine whether what is known as the “ExPro” procedure ensures that captive benefit funding arrangements adequately protect plan participants, according to consultants.

Under ExPro, applicants can receive, in just over two and one-half months, a Labor Department exemption for arrangements that would normally be considered a prohibited transaction. ExPro is generally available to applicants that can cite two substantially

similar exemptions the department has approved within the past five years.

Employers can considerably reduce the time, effort and legal fees needed to get through the Labor Department review process, which can take years, by using the ExPro process.

ExPro “was a big step forward. It considerably speeded up the review process,” said George O’Donnell, technical director-global risk consulting at Aon Risk Solutions in Somerset, N.J.

But Labor Department regulators now are examining the two central conditions — enhancing participants’ benefits and retaining an independent fiduciary to ensure the transaction is in the interests of participants — that employers must satisfy to utilize the ExPro process for captive benefit funding applications.

It isn’t known how long it will take the Labor Department to complete its review.

During the review, employers can take one of two approaches to seek approval of captive benefit

See **EXPRO** page 2

### WORKERS COMP



## Employer concerns grow over wasteful benefits

By **ROBERTO CENICEROS**

Large employers face substantial challenges in trying to determine whether they are paying for wasteful coverage overlaps among an array of benefit programs intended to keep employees healthy and productive, observers say.

Employers are concerned because the numerous companies providing their workers with everything from health plans, employee assistance programs, disability management services, wellness offerings and workers comp claims administration could be doing more harm than good in some cases by conveying conflicting, uncoordinated advice.

See **INTEGRATION** page 22

### HEALTH CARE BENEFITS

## Big employers join Aon Hewitt health exchange

By **JERRY GEISEL**

Aon Hewitt is rolling out a health insurance exchange that will enable employers to offer workers an array of plans from participating insurers.

By using the exchange, employ-

ers will be relieved of the time and hassle of selecting health insurers and administering their plans while employees will have a greater choice of plans. The first policies will be effective Jan. 1, 2013.

“There is a lot of work employ-

ers no longer will have to do,” said Mike Christie, senior vice president-exchanges at Aon Hewitt in Lincolnshire, Ill.

Employees will be able to choose from five plans, including consumer-driven health plans. Nine insurers, including United-Healthcare Inc., Cigna Corp. and Health Care Service Corp., which operates Blue Cross/Blue Shield plans, will provide the coverage.

Initially, premiums will be based on an employer’s claims experience.

Aon Hewitt expects that more than 100,000 employees — including U.S. employees of parent company Aon P.L.C., Hoffman Estates, Ill.-based retailer Sears Holdings Corp. and Orlan-

do, Fla.-based chain Darden Restaurants Inc. — this fall will select and enroll in plans offered through the exchange.

The exchange model deploys a defined contribution approach in which employers agree to provide a fixed premium contribution, with employees paying more or less depending on the level of coverage they choose.

The role of the employer, Aon Hewitt executives note, will be basic: deciding how much of the premium it will pay for each option, with insurers handling processing of claims.

Aon Hewitt, which will assist employees with questions they

See **EXCHANGE** page 25

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# Business Insurance

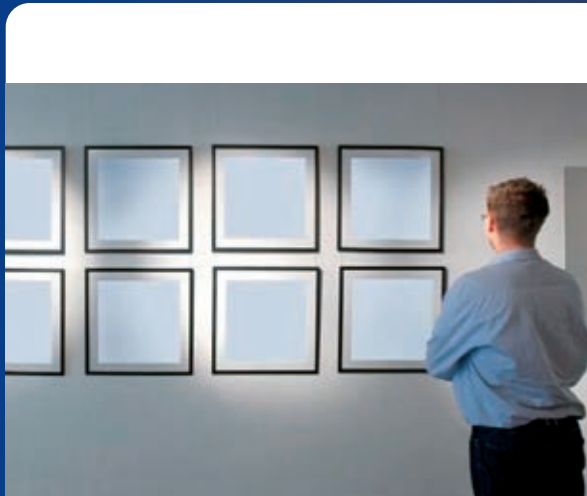
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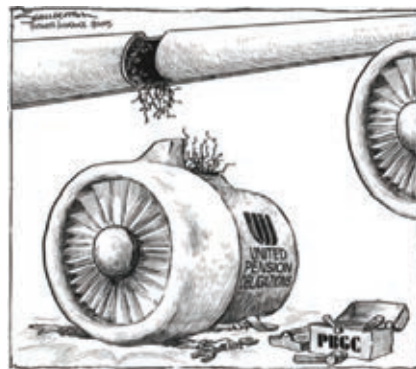
1. Colo. theater shooting victims file lawsuit against Cinemark
2. Zurich names CEO of global corporate in North America
3. Aon Hewitt to offer health insurance exchange
4. BI releases list of 2012 Best Places to Work honorees
5. Claims, underwriting errors trip up insurers' compliance efforts
6. Alliant barred from soliciting certain Aon construction clients
7. GALLERY: Pension reform editorial cartoons
8. Outstanding issues delay Solvency II implementation
9. Draft model rule aims to amend state comp laws on opioids
10. Same-sex partner seeks comp survivor benefits in Alaska case

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gallery

**SCHILLERSTROM ON PENSIONS:** Throughout all the back and forth on reforms and pension plan terminations during the past eight years, *Business Insurance* cartoonist Roger Schillerstrom, in his inimitable way, has chronicled the changes in pension regulations. [www.BusinessInsurance.com/photos](http://www.BusinessInsurance.com/photos)

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## ExPro: Labor suspends fast-track captive reviews

CONTINUED FROM PAGE 1

funding applications. They could seek an individual exemption, which in some cases has taken a year or longer, or they could seek approval utilizing what is known as a class exemption that the Labor Department instituted in 1979.

However, the basic requirement of the 1979 rule, that at least 50% of a captive's premium volume must be generated by business unrelated to its parent, is one that few captives can meet as most parents would not want that much outside business flowing through their captives.

It is not known what triggered the Labor Department review that resulted in the ExPro suspension.

"Perhaps they wanted a better understanding of what constitutes a meaningful benefit enhancement," said Kathleen Waslov, a senior vice president at Willis North America Inc.'s global captive practice in Boston.

"Perhaps they are trying to formalize the criteria more," said Karin Landry, a managing partner at Spring Consulting Group in L.L.C. in Boston.

Some experts say more formalized ExPro criteria could be a positive.

For example, applicants would know ahead of time what would be considered an acceptable bene-

fit enhancement.

"That could be a positive," Ms. Landry said.

On the other hand, some flexibility on what would be an acceptable captive funding arrangement could be lost, experts say.

A Labor Department review isn't surprising, given the length of time ExPro has been in use.

"It is natural for government regulators to see whether changes are needed," said Aon Risk Solutions' Mr. O'Donnell.

Since the first employer, International Paper Co., utilized the ExPro approach in 2003 for its captive benefit funding application, about 20 other employers have followed (see chart). International Paper cited captive benefit funding applications the Labor Department previously approved by Columbia Energy Corp. and Archer Daniels Midland Co. in its submission for approval under ExPro.

### Some approvals granted

Prior to the suspension, the Labor Department this year approved — through the ExPro process — captive benefit applications filed by Google Inc., the Mountain View, Calif.-based search engine giant; Microsoft Corp. of Richmond, Wash.; and Via Christi Health, a big Wichita, Kan.-based health care system (see chart).

## CAPTIVE BENEFITS FUNDING

Some of the nation's best-known employers have used the "ExPro" approach to win rapid Labor Department approval of their proposals to fund benefit risks through their captive insurance companies.

EMPLOYER	BENEFITS FUNDED	CAPTIVE DOMICILE	YEAR APPROVED
Google Inc.	AD&D, Life, LTD	Hawaii	2012
Microsoft Corp.	AD&D, Life, LTD	Vermont branch of Bermuda captive	2012, 2009
Dow Corning Corp.	Life, LTD	District of Columbia	2011, 2009
Memorial Sloan-Kettering Cancer Center	Life, LTD	Vermont	2009
ConAgra Inc.	AD&D, Life	Arizona	2008
United Technologies Corp.	AD&D, Life, LTD	Vermont	2008
H.J. Heinz Co.	Life, LTD	Vermont	2006
Wells Fargo & Co.	Life, LTD	Vermont	2006
Alcoa Inc.	Life	Vermont	2005
International Paper Co.	Life	Vermont	2003

One of the best-known employers to receive Labor Department approval to fund benefit risks through its captive — The Coca-Cola Co. — received an individual authorization in 2010 for its complex transaction that also involved a voluntary employees' beneficiary association.

Coca-Cola is waiting for an

Internal Revenue Service ruling before proceeding.

Corporate interest in captive benefit funding has been driven by several factors, experts say. Those factors include reduced costs compared with purchasing commercial insurance as well as diversifying their captives' book of business.

"This is a win for everyone. Employers can save money" with employees receiving enhanced benefits, Ms. Landry said.

"There continues to be substantial interest in this approach as companies have become more sophisticated about the management of risk, especially benefit risks," Mr. O'Donnell said.

## LIABILITY &amp; LITIGATION

# Supreme Court session centers on class actions

*Justices refocus on business cases after health reform*

By MARK A. HOFMANN

Cases involving class actions that are of interest to risk managers and businesses are front and center for the U.S. Supreme Court session that begins Oct. 1.

Foremost among them is *The Standard Fire Insurance Co. v. Greg Knowles*, which deals with criteria that determine whether a class action can be moved to federal court from state court as permitted under the Class Action Fairness Act of 2005.

*Knowles* is one of several cases the Supreme Court has accepted that are of interest to risk managers and businesses in general.

In fact, the Supreme Court once again is tackling a considerable business docket after broad issues such as health care reform and immigration reform overshadowed business cases in the last term, Robin S. Conrad, executive vice president of the Washington-based National Chamber Litigation Center, which handles litigation for the U.S. Chamber of Commerce, said during a court preview late last month.

Ms. Conrad said that as of late September, 48% of the court's docket consisted of business cases. Since then, the court has agreed to hear an additional business-related case regarding the

scope of the Securities and Exchange Commission's enforcement powers.

But possibly the most closely watched case with risk management implications is *Knowles*. Under CAFA, the amount in controversy in a class action must be at least \$5 million for such a case to be moved to federal court.

Mr. Knowles presented a sworn

48%

Robin S. Conrad, executive vice president of the Washington-based National Chamber Litigation Center, said that as of late September, 48% of the court's docket consisted of business cases.

stipulation that the total damages in his putative class action suit would be less than \$5 million. That was disputed by Standard, which argued the stipulation's language "does not adequately bind plaintiff" and that the total amount will exceed \$5 million once attorneys' fees and costs are included, according to the Dec. 2, 2011, ruling by Judge P.K. Holmes III, chief judge of the U.S. District Court in Fort Smith, Ark.

Ruling in the plaintiff's favor, Judge Holmes said, "The question is whether a plaintiff may meet his burden of proof by stip-

ulating at the time the complaint is filed that he will not seek more than the federal jurisdictional minimum for himself and the putative class."

In its ruling Jan. 4, the 8th U.S. Circuit Court of Appeals in St. Louis denied Standard's request for a rehearing.

Another class action case before the high court, *Comcast Corp. et al. v. Caroline Behrend et al.*, involves the question of whether a trial court can certify class actions before it resolves whether plaintiff expert testimony is admissible.

A three-judge panel of the 3<sup>rd</sup> Circuit U.S. Court of Appeals held for Ms. Behrend and the class in the case.

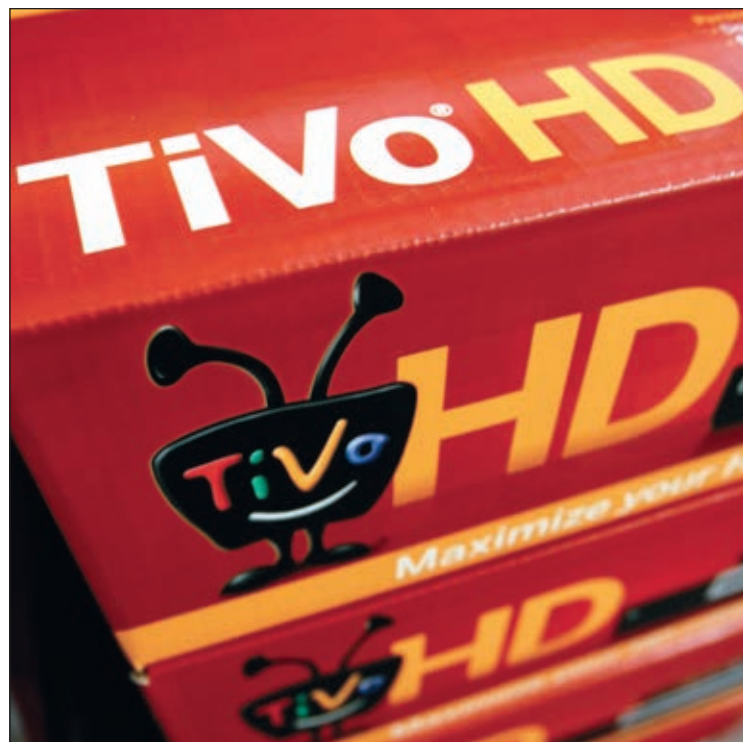
As Dan Himmelfarb, a partner in the Washington office of Mayer Brown L.L.P., put it during a Supreme Court preview at the Washington Legal Foundation last month, the issue is an important one because the "certification stage is really where the action is" in class action cases.

A third class action case before the high court is *Amgen Inc. et al. v. Connecticut Retirement Plans and Trust Funds*. At issue in *Amgen*, which is a securities case, is whether courts should reject certification for a securities class when the plaintiffs fail to adequately demonstrate that they relied on alleged misrepresentations when they purchased a stock.

A three-judge panel of the 9th

See **COURT** page 25

## LIABILITY &amp; LITIGATION



BLOOMBERG

Verizon initially will pay TiVo \$100 million and quarterly payments totaling another \$150.4 million through July 2018 to settle a patent dispute.

## Patent case highlights big liabilities at stake

*Limited insurance available to protect accused companies*

By JUDY GREENWALD

Verizon Communications Inc. pursued a loss-cutting strategy in agreeing to pay \$250.4 million to settle patent infringement litigation, while the deal furthers TiVo's strategy of using its patents to enhance its profits, experts say.

Meanwhile, insurance capacity to protect against patent liabilities

is limited, experts say.

As part of an agreement announced last week, New York-based Verizon initially will pay Alviso, Calif.-based TiVo \$100 million and quarterly payments totaling another \$150.4 million through July 2018, TiVo said in a statement about the suit it filed in federal district court in Tyler, Texas, in 2009 concerning three DVR patents.

The settlement "underscores the significant value our distribution partners derive from TiVo's

See **TIVO** page 24

## CATASTROPHES

# Court's about-face saves Army Corps from Katrina flood liability

By MIKE TSIKOUDAKIS

A federal appeals court's 180-degree switch, ruling last week that the Army Corps of Engineers is not liable for flood damage as a result of Hurricane Katrina, aligns the court with established case law, legal experts say.

The ruling by the 5th U.S. Circuit Court of Appeals in New Orleans that overturned the same three-judge panel's earlier decision is unusual, experts say, and did not include an explanation of why the court changed its mind.

More than 400 plaintiffs, including homeowners and business owners, sued the Army Corps of Engineers for allegedly delaying the "armoring" of the Mississippi River-Gulf Outlet navigation channel in the New Orleans area against flood damage that resulted from the 2005 hurricane.

The issue at hand was whether the Corps' decision to delay reinforcing the channel known as MRGO was immune from liability under the discretionary-function exception of Federal Tort Claims Act, which protects the U.S. government from lawsuits due to policy decisions.

Plaintiffs attorneys alleged that Katrina's flood damage was the result of the Corps' operation and maintenance of the channel based on erroneous scientific judgments, not public policy, which would disqualify it for immunity against liability.

In its initial ruling in March, the appeals court panel affirmed a lower court's 2009 ruling that no public policy considerations were taken into account and that the decision to delay reinforcing the channel was a misapplication of scientific principles.



AP PHOTO

The Mississippi River-Gulf Outlet navigation channel in 2005.

But last week, the 5th Circuit panel reversed itself and said that the immunity granted by the Federal Tort Claims Act applies to the

Corps and "completely insulates the government from liability," the judges wrote.

From a procedural standpoint,

the decision was "very unusual," said Andrew K. Gordon, a partner at law firm Duane Morris L.L.P. in San Francisco.

"What caught everyone's attention was the fact the same court would reverse itself and not really explain the basis for why it reversed itself," Mr. Gordon said. "It's a little surprising that it did not spend more time explaining the basis for its new decision."

Attorney Joseph M. Bruno, a managing partner at law firm Bruno & Bruno in New Orleans who represented plaintiffs in the case, said the implications of the latest decision are "distressing."

"These same three judges without explanation ... withdrew their earlier opinion and submitted a second opinion," Mr. Bruno said. "We're talking about

See **KATRINA** page 24

## OBITUARY



James D. Hinton, was *Business Insurance's* 2005 Risk Manager of the Year®.

## RMOY honoree Hinton dies

By **RODD ZOLKOS**

James D. Hinton, whose refusal to accept medical malpractice claims as part of his employer's cost of doing business contributed to his selection as *Business Insurance's* 2005 Risk Manager of the Year®, has died.

Mr. Hinton, 63, passed away Sept. 21.

A resident of Brentwood, Tenn., Mr. Hinton spent most of his career working for Nashville, Tenn.-based multihospital corporation HCA Inc., where he was vice president of risk and insurance, retiring after 33 years with the company.

In 2005 Mr. Hinton told *Business Insurance*, "I don't buy that claims are going to happen." Instead, he pursued an approach focusing on developing doctors' own risk management skills and enabling them to guide the company's claims prevention efforts. His successes at team-building and the effectiveness of the risk management programs he crafted led to his Risk Manager of the Year® recognition.

A firm believer in the power of information, Mr. Hinton made extensive use of HCA's medical claims database to convince the company's hospitals and management of the reality of results rather than perceptions, using that newfound understanding to improve those results.

Collaborative efforts were essential to Mr. Hinton's approach as he asked the facilities with the best records to share the secrets of their success with poorer performers, and assembled teams of physicians and nurses at each hospital to implement performance improvement initiatives.

Mr. Hinton also made extensive

See **HINTON** page 22

## PROPERTY/CASUALTY INSURERS

# Berkshire unit invests in Torus

*Specialty insurer secures significant capital boost*

By **BILL KENEALY**

Looking to fund its ongoing expansion efforts, Torus Insurance Holdings Ltd. has gotten a capital infusion of up to \$100 million from Berkshire Hathaway Inc.

The specialty insurer last week said it has received funding from National Indemnity Co., a commercial insurance unit of Omaha, Neb.-based Berkshire Hathaway.

The Berkshire outlay coincided with an additional round of funding provided by existing shareholders and private equity firms First Reserve Corp. and Corsair Capital L.L.C., a Torus spokeswoman said.

While terms of the transaction were not released, sources confirmed that the Berkshire infusion ranged from \$80 million to \$100 million. Torus began operations in

## \$80M-\$100M

Sources confirmed that the Berkshire Hathaway Inc. infusion for Torus Insurance Holdings Ltd. ranged from \$80 million to \$100 million.

2008 with \$720 million in equity funding from First Reserve.

"We are delighted that Berkshire Hathaway has invested in Torus," Torus Group CEO Clive Tobin said in a statement. "This is part of an expanding relationship with one of the most respected companies in our industry."

Mr. Tobin said the investment affirmed the specialty insurer and reinsurer's global

development goal.

Torus has substantially repositioned its business in the past two years. In September 2011, Torus said it would acquire Lloyd's of London syndicate 1301, which underwrites direct and facultative property, accident and health business. In December 2011, Torus acquired the renewal rights to CV Starr & Co.'s continental European business. Torus also sold its renewal rights of its property catastrophe reinsurance book of business and entered the U.S. surety market during 2011.

The investment in Torus enables Berkshire to extend its reach and increase premium volume, said Meyer Shields, Baltimore-based director at Stifel Nicolaus & Co.

"If Berkshire can get access to more premium volumes and they are expected to be profitable, then they have an interest in pursuing that," Mr. Shields said. "For them, it less a strategic move than just a good opportunity."

## PROPERTY/CASUALTY INSURERS

## Hartford sells life book to focus on P/C business

*Prudential deal raises \$615 million, reshapes insurer*

By **BILL KENEALY**

Prudential Financial Inc.'s purchase of the individual life insurance business of Hartford Financial Services Group Inc. positions Newark, N.J.-based Prudential for growth and focuses Hartford firmly on property/casualty business, experts say.

Structured as a reinsurance

deal, Prudential will pay Hartford \$615 million for 700,000 life insurance policies with a book value in force of approximately \$135 billion.

For Hartford, the sale is part of a larger effort to focus on property/casualty lines and improve its balance sheet, experts said. The Hartford, Conn.-based company said it expects the transaction to benefit its net statutory capital by approximately \$1.5 billion.

Hartford Chairman, President and CEO Liam E. McGee noted the deal is the insurer's third major divestiture in the



Hartford Chairman, President and CEO Liam E. McGee.

past six months. Hartford sold its Woodbury Financial Services to New York-based AIG's Advisor Group in July and its retirement plans unit to Springfield, Mass.-based Massachusetts Mutual Life Insur-

ance Co. in September.

The deal "represents a significant milestone in the execution of the Hartford's strategy to deliver greater value to shareholders," Mr. McGee said in a statement. "The Hartford is taking the necessary actions, as outlined in March, to position the company for higher returns on equity, reduced sensitivity to capital markets, a lower cost of capital and increased financial flexibility."

This year, Hartford came under public pressure to divest its life insurance units from John Paulson, head of New York-based hedge fund Paulson & Co. Inc., which owns 8.5% of Hartford.

"Hartford has made substantial progress in a short period of time to become a more focused

See **HARTFORD** page 25

## RISK MANAGEMENT

## Outsourcing saves costs, increases liabilities

By **RODD ZOLKOS**

**WHEELING, III.** — Companies can realize great value from outsourcing various business functions, but as they move toward doing so they must consider the risks involved, a panel of experts said.

Speaking last month at the REBEX 2012 Regional Risk Management Conference and Exhibition presented by the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc., Patricia LeBon, manager of the private client advisory department at Tave Risk Management in Northbrook, Ill., said, "When people consider outsourcing, they relish the thought of washing their hands of one of their business functions."

Unfortunately, while focusing on the upside benefits, many companies tend to overlook the potential downsides of those

outsourcing activities, Ms. LeBon said.

Panelist Daniel Steiner, manager in the risk services group of Baker Tilly Virchow Krause L.L.P. in Appleton, Wis., said that as companies consider outsourcing, "You

**'You can't outsource responsibility.'**

Daniel Steiner, Baker Tilly Virchow Krause L.L.P.

have to think about specifically why you want to outsource."

It's also important to engage internal and external stakeholders early in the process, Mr. Steiner said, and to recognize the various compliance implications that might be involved in outsourcing differ-

ent business activities.

"You can't outsource responsibility," he said.

Another panelist, Aaron Howes, vice president of Expeditors Cargo Insurance Brokers Inc. in Seattle, said it's important to consider what risks might increase from outsourcing various activities and what can be done to mitigate those exposures.

While acknowledging that "relationships are important," Mr. Steiner advised companies to avoid "selection bias" toward those with whom they have an existing relationship as they seek outsourcing partners.

"You want to look at all your options," he said.

He also advised companies to be as specific as possible in spelling out expectations in requests for proposals. In outsourcing

See **REBEX** page 22





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# Mid-Market EXECUTIVE

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

## Winner takes all with the right insurance backing

*Promotional coverage helps middle market offer prizes*

By SHEENA HARRISON

As mid-market companies look for ways to build their brands and win customers, many are using promotional risk management to help offset the costs and risks of their contest and promotion marketing strategies.

In many cases, insurance coverage can help companies set a fixed budget for marketing promotions that could create big expenses if a program is more popular than expected. It also can allow companies to offer large prizes, which can help drive the popularity of their marketing tactics.

"A lot of the (midsize) to smaller companies don't think that they can offer a \$1 million prize, that they need to be a very large Fortune 500 company," said Marlene Benoit, Las Vegas-based vice president and promotion and events specialist for Marsh Risk Consulting.

An insured promotion "gives them the ability to play with the big boys and offer these large prize pools without having the large price tag associated with it," she said.

The key, Ms. Benoit said, is making sure that such insurance policies are properly underwritten and that the rules of the policy are communicated correctly to consumers.

"It's a great thing when someone does win \$1 million; it's a horrible thing to have happen if that policy doesn't respond," Ms. Benoit said.

Two types of insurance typically cover contests and promotions. Prize insurance allows companies offering promotions to insure a portion of a large prize, typically based on the award being paid out over several years.

"Instead of offering a \$1 million prize, you can offer a \$10 million prize but offer it on a 40-year annuity," said Lori L. Shaw, entertainment group director for Aon Risk Solutions in Charlotte, N.C. "That allows the promotion to be robust (and) of more interest."

Overredemption insurance covers companies if a rebate or coupon program is redeemed by more consumers than expected. For example, if a company expects about

3% to 5% of coupons to be redeemed, an insurer would cover coupons that are redeemed above that projected level.

Both types of coverage typically are underwritten by Lloyd's of London, sources say, though promotional marketing firms sometimes agree to insure the risk themselves.

The coverage is assisting companies as they boost their investment in promotional programs. Consumer packaged goods marketers offered \$470 billion in annual coupon savings incentives in 2011, up 26% from prerecession levels in 2007, according to Deerfield, Ill.-based NCH Marketing Services Inc.

Ms. Shaw notes that promotional coverage differs from hole-in-one insurance, which is based on the statistical odds and probability of a certain event.

Promotional underwriting is based on various factors that can make consumers more or less likely to redeem an offer. That includes the amount of advertising being conducted for a contest or offer, the duration of the program, or the number of steps that must be followed for eligibility, sources say.

"In a lot of these promotions, you're trying to predict consumer behavior," Ms. Shaw said.

Brandsurance, a subsidiary of Atlanta-based marketing firm Brandmovers Inc., provides promotional risk management and insurance brokerage services. While Brandmovers has performed such services for years, Brandsurance launched about two months ago to meet growing interest in such coverage, said Sean Blair-Turner, Dallas-based vice president of business development.

Several years ago, Brandmovers worked with Sabra Dipping Co. L.L.C. to offer a rebate for the purchase of Sabra hummus products. The promotional program was intended to raise awareness for Sabra's brand, which was growing at the time, Mr. Blair-Turner said.

"Sabra was confident (that) once you tasted (the product), you would love it," Mr. Blair-Turner said. "But how do you get people over that initial purchase hurdle?"

Sabra distributed 100,000 rebate coupons at a value of about \$5, or about \$500,000 in total liability. The company paid \$15,000 to cover the promotion through Brandmovers,



### Terminology, rules should be clarified to avoid lapses

Experts say it's important to properly communicate the terms and conditions of promotions to consumers in order to limit liability.

Marlene Benoit, Las Vegas-based vice president and promotion and events specialist for Marsh Risk Consulting, said incorrect terminology or unclear rules could nullify insurance coverage in the event that a consumer wins a prize. She notes that companies have been responsible in some instances for the full amount of a contest prize because the company's insurance policy didn't cover the award that was described to the public.

"Promotions are a risky business, just like every other area of a client's risk portfolio," Ms. Benoit said.

Lori L. Shaw, entertainment group director for Aon Risk Solutions in Charlotte, N.C., recommends that companies work with insurance professionals to ensure that promotional insurance coverage can cover the liability of any promotional program.

"Just like you would do on other aspects of your business, you need to be in control of the insurance placement," she said.

— By Sheena Harrison

based on a projected coupon redemption rate of 3%.

Ultimately, about 2.5% of Sabra's rebate coupons were redeemed. But the company benefitted from the assurance that its marketing costs would remain within budget,

Mr. Blair-Turner said.

"They pay us our fixed fee up front for the coverage, then they're done with it," he said.

Many small and mid-market companies are seeking promotional campaigns and coverage similar to those used by major firms, said Cynthia Walker, Dallas-based vice president of operations for Hip Digital Media Inc., a Menlo Park, Calif.-based company that offers digital promotions and marketing campaigns.

While the company works with large clients such as Kellogg Co., Hip Digital oversees and sometimes provides coverage for campaigns as small as \$2,500.

"We service quite a few banks who are looking to enroll more people in online billing programs, because they're able to save costs that way," Ms. Walker said. "And as an incentive for that registration, they're giving digital content."

The costs of promotional risk management often are worth it for companies that are trying to build their brands, experts say. Contests and offers tend to have a "significant" return on investment for companies, helping the companies develop customer databases and build brand awareness, Marsh's Ms. Benoit said.

"It's very crowded out there in the marketplace, and insured promotions are a great way to break through the clutter and really stand out," she said.

Hip Digital's Ms. Walker said a promotion that offered a free music download with a frozen pizza purchase resulted in a 30% sales boost for that client during the program. A similar promotion resulted in a 16% sales increase for another client that sells lunch meat, she said.

Despite the benefits of promotional programs, experts say it has become more difficult to project redemption rates. The Internet has made it easier for people to share and redeem rebates and coupons that previously were available only in stores or in advertisements.

Meanwhile, the sluggish economy has prompted more consumers to seek coupons and rebates as a way to save money.

"People are more aware of trying to get things for free," Aon's Ms. Shaw said.

Hip Digital's Ms. Walker said the company's longtime experience in pricing digital promotion campaigns has helped it to accurately price promotional insurance, which is sometimes covered in-house. However, she said social media — and the risk of redemption codes being shared through websites — can make it tougher to predict some redemption rates.

"The risk for us is if we don't estimate that program correctly, then we're on the line for a budget that we've blown," she said.

While promotional insurance is still considered a "niche" market, said Ms. Benoit of Marsh, she believes the market will continue to grow as companies see the value of promotional campaigns.

"Once we tend to educate a client, we see repeat business from them," Ms. Benoit said.

**'It's a great thing when someone does win \$1 million; it's a horrible thing to have happen if that policy doesn't respond.'**

Marlene Benoit, Marsh Risk Consulting

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# Opinions

## EDITORIAL

### Little time left to save pensions

**W**e have mixed feelings about the wave of changes taking place in the defined benefit pension plan universe.

Hardly a week goes by without an announcement from an employer — typically a very large one — about programs they are putting in place to “de-risk” their pension plans.

Many employers are freezing their pension plans, which stops the accrual of new benefit obligations.

Others are offering plan participants who have terminated employment but are not yet eligible to receive a benefit the opportunity to convert their future monthly annuity into an immediate cash lump-sum benefit.

And some are purchasing group annuities from insurers, who then will be responsible for the administration and payment of benefits to participants.

On the positive side, we are impressed with the creativity and ingenuity of employers and their consultants and service providers in finding new ways to manage these risks.

But what all these approaches are bringing home is that, bit by bit, the nation’s employment-based defined benefit plan system is withering away, as the actions being taken by these employers are a way to better manage benefits already promised — not an expansion of additional or new obligations.

There are many understandable reasons for the demise of defined benefit plans. Increased life expectancies, for example, have significantly increased the cost of providing benefits, while low interest rates have inflated the value of liabilities, requiring employers to contribute more than may be necessary to fund obligations.

On the other hand, government regulators and lawmakers bear responsibility as well. For example, Congress passed legislation in 2006 that removed many legal uncertainties associated with cash balance plans, once the fastest-growing defined benefit plan.

Now, six years later, the Internal Revenue Service has yet to issue final rules clarifying all the approaches employers can take in crediting interest to participants’ account balances.

And as for Congress, we are hard-pressed to think of a single step lawmakers have taken to encourage the maintenance of defined benefit plans, aside from its action on cash balance plans.

We hope the new Congress takes such an examination while there are still such plans left.

## LETTERS

*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.

Please send your letters to:

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## SCHILLERSTROM



## COMMENTARY

### Middle market defies definition

**H**ow do you define “middle market”? Since the August 2011 launch of *Business Insurance’s* Mid-Market Executive page and channel, we’ve struggled with the definition.

And based on the disparate responses I received to that question when I interviewed the local and regional broker leaders this past week, what constitutes “middle market” depends on whom you ask.

A large, national broker located in the Northeast may have one definition, while a regional broker located in the less-populated U.S. Southwest will have another. And nearly every broker defines middle-market property/casualty clients differently than they do middle-market benefits clients. Some brokers went so far as to say that they didn’t have a hard-and-fast definition for middle-market. Instead, they use what they call an “I’ll-know-it-when-I-see-it” measurement approach.

In years past, whenever I’d interview brokers about what market they were targeting, invariably they’d say “middle market,” or that “middle market is our bread-and-butter business.”

But what does that mean?

The middle market is a vast, nebulous group of American businesses that represent nearly every industry sector, and range in size from 50 to 5,000 employees with company revenues between \$10 million and \$1 billion.

There is only one thing that most middle-market organizations have in common: In most firms, there is no professional risk manager. Or if there is,

he or she usually wears many hats.

For example, last week while attending the Risk & Insurance Management Society Inc.’s Western Regional Conference in Colorado Springs, Colo., I met a risk manager who also holds responsibility for employee travel. Yet another handles employee benefits. Other middle-market “risk managers” I have met also serve as treasurers, human resource managers and chief financial officers.

Because they often have limited in-house resources, middle-market insurance buyers rely heavily on their brokers, often using them for more than just insurance placement. They also seek risk management advisory services, claims advocacy, benefits planning and administration.

In this week’s Spotlight report ranking the nation’s local and regional broker leaders, we’ve attempted to identify not only who these producers are and where they are located, but also how they define middle market, and what proportion of their revenues are derived from this business sector. Hopefully, this information will help to guide middle-market insurance buyers in selecting a broker in their home state or region that best suits their needs.

We’ve also provided some tips on how middle-market companies can get the most out of their broker partners in addressing their unique insurance, risk management and employee benefits needs.

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**JOANNE  
WOJCIK**  
SENIOR EDITOR

Middle Market  
Risks and  
Local/Regional  
Broker Leaders

# SPOTLIGHT

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## LARGEST AGENTS AND BROKERS BY U.S. REGION

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# 55%

With 55% of its brokerage revenue coming from middle-market clients, Marsh also placed more middle-market business than any other U.S.-based broker.

## Northeast leads U.S. revenues

*Middle-market clients a major source of brokers' business*

By **JOANNE WOJCIK**

**C**ommercial insurance brokers based in the U.S. Northeast led the nation in brokerage revenue during 2011, while those based in the West had a far smaller piece of the pie, according to a *Business Insurance* analysis.

To identify the leading regional brokers, *Business Insurance* used brokerage revenue provided by commercial insurance brokers nationwide and placed them into the regions where they are headquartered.

Brokers also were asked what proportion of their brokerage revenue was derived from middle-market business, a definition on which many differ.

Using brokerage revenue derived from U.S. clients as a gauge, New York-based Marsh & McLennan Cos. Inc. was far and away the largest commercial insurance broker headquartered in the Northeast, producing \$5.07 billion in U.S.-based revenue in 2011. With 55% of that revenue coming from mid-

dle-market clients, Marsh also placed more middle-market business than any other U.S.-based broker.

Its closest competitor was National Financial Partners Corp., which produced \$692.9 million in U.S.-based brokerage revenue in 2011. The New York-based brokerage declined to disclose what proportion of that business came from middle-market accounts.

With Aon P.L.C. moving its headquarters to London earlier this year, Itasca, Ill.-based Arthur J. Gallagher & Co. led the Midwest region in U.S. brokerage revenues, generating \$1.69 billion in 2011, the majority of which was derived from middle-market accounts.

Closely following Gallagher was Chicago-based Wells Fargo Insurance Services USA Inc., which produced \$1.63 billion in U.S. brokerage revenues in 2011, a little more than half of which came from middle-market business.

In the South, Daytona Beach, Fla.-based Brown & Brown Inc. narrowly beat out Raleigh, N.C.-based BB&T Insurance Services Inc. Brown & Brown

generated \$1.11 billion in U.S. commercial brokerage revenue in 2011, while BB&T garnered \$1.10 billion last year. Nearly 90% of both brokers' commercial brokerage revenue is derived from middle-market accounts.

As a group, the top five brokers based in the U.S. West trailed the other regional broker leaders. Collectively, the five largest brokers based in the West generated just less than \$1 billion in U.S. commercial brokerage revenue in 2011.

But one broker emerged as a clear leader in the West: Alliant Insurance Services Inc. of Newport Beach, Calif., which produced \$460.2 million in U.S. brokerage revenue in 2011.

Alliant was followed by the Leavitt Group, based in the remote and sparsely populated Southwest. Cedar City, Utah-based Leavitt Group produced \$188.2 million in U.S. commercial brokerage revenue in 2011.

Neither would provide an approximation of the proportion of their business derived from middle-market accounts.



## LARGEST AGENTS AND BROKERS HEADQUARTERED IN THE U.S. NORTHEAST\*

Ranked by total 2011 U.S. brokerage revenue

Rank	Company	Location	2011 brokerage revenue	% change
1	Marsh & McLennan Cos. Inc.	New York	\$5,068,360,000	8.7%
2	National Financial Partners Corp.	New York	\$692,986,755	(2.2%)
3	USI Holdings Corp.	Briarcliff Manor, N.Y.	\$659,276,000	4.3%
4	Towers Watson & Co.	New York	\$360,238,608	2.1%
5	Frank Crystal & Co. Inc.	New York	\$131,740,000	0.2%
6	Bollinger Inc.	Short Hills, N.J.	\$117,791,000	1.2%
7	Paychex Insurance Agency Inc.	Rochester, N.Y.	\$92,300,000	24.1%
8	Integro USA Inc.	New York	\$84,066,700	15.8%
9	Conner Strong & Buckelew Cos. Inc.	Marlton, N.J.	\$71,520,400	2.9%
10	Capacity Group of Cos.	Mahwah, N.J.	\$65,594,355	9.0%

\*Includes the states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont  
Source: BI survey

# 1

### MARSH & MCLENNAN COS. INC.

HEADQUARTERS: New York

2011 U.S. BROKERAGE REVENUE: \$5,068,360,000

'What's unique is the buying style of the middle market.'

TANE R. ABBOTT,  
MARSH INC.

New York-based Marsh & McLennan Cos. Inc. leads brokers based in the Northeast, with \$5.07 billion in annual U.S. brokerage revenues, half of which are derived from middle-market business.

Although Marsh operates worldwide, the Northeast produces the largest share of the broker's U.S. book of business, according to Tane R. Abbott, managing director and U.S. national brokerage leader.

Marsh, which defines middle-market customers as those with revenues under \$1 billion that often do not have a professional risk manager, serves these clients via its U.S. national brokerage office, which Mr. Abbott runs from San Francisco.

Mr. Abbott said he finds middle-market clients face many of the same risks as large, national accounts, including property/casualty exposures, financial and professional liability, employee benefits, contingent business interruption, supply chain disruption and cyber liability.

"What's unique is the buying style of the middle market," he said. "Often there is not a professional risk manager, so it's handled by finance, human resources or legal. Since it's one of many responsibilities on their plates, we tend to provide a broader level of expertise."

# 2

### NATIONAL FINANCIAL PARTNERS CORP.

HEADQUARTERS: New York

2011 U.S. BROKERAGE REVENUE: \$692,986,755

National Financial Partners Corp. is the second-largest commercial insurance broker based in the Northeast, with \$693.0 million in total 2011 U.S. brokerage revenues.

New York-based NFP defines middle market as companies with between 50 and 2,000 employees, but declined to disclose what proportion of its book of business is derived from this market segment. NFP also declined to disclose what proportion of its total U.S. brokerage revenues come from the Northeast region.

NFP's middle-market clients represent all types of industries. NFP provides commercial property/casualty and surety coverage, as well as employee benefits. More than one-third of NFP's total U.S. brokerage revenues come from employee and executive benefits, which include brokering health and retirement plans and providing plan administration services.

# 3

### USI HOLDINGS CORP.

HEADQUARTERS: Briarcliff Manor, N.Y.

2011 U.S. BROKERAGE REVENUE: \$659,276,000

USI Holdings Corp. is the third-largest commercial insurance broker headquartered in the Northeast, based on 2011 U.S. brokerage revenue of \$659.3 million, though less than one-third of the total is derived from its home region.

All of Briarcliff Manor, N.Y.-based USI's revenue comes from middle-market business. The broker targets employers with 50 to 2,000 employees and provides property/casualty insurance services to companies with revenues between \$10 million and \$1 billion.

USI's property/casualty operations cater to manufacturers, distributors, health care, construction, real estate, transportation, municipalities, technology, architects and engineers, retail, law firms, marine, energy, aviation, nonprofit, education and hospitality. On the benefits side, USI specializes in professional service firms, finance, energy, retail, manufacturing and technology-related firms.

# 4

### TOWERS WATSON & CO.

HEADQUARTERS: New York

2011 U.S. BROKERAGE REVENUE: \$360,238,608

Though typically viewed as an employee benefits and management consultant, Towers Watson & Co. is the fourth-largest commercial insurance broker headquartered in the Northeast, based on \$360.2 million in 2011 U.S. brokerage revenues.

New York-based Towers Watson defines middle-market businesses as companies that generate at least \$250 million in revenues yearly but are not considered to be among the 2,500 largest companies in the United States. Middle-market businesses fall into all industry segments, said a spokesman. But Towers Watson does not break down revenue by regions or market segment, so it could not provide details on what proportion of its business is derived from the Northeast nor quantify the value of its middle-market accounts.

Towers Watson places risks in all property/casualty lines of insurance, executive liability, and group health and welfare benefits.

# 5

### FRANK CRYSTAL & CO. INC.

HEADQUARTERS: New York

2011 U.S. BROKERAGE REVENUES: \$131,740,000

Frank Crystal & Co. Inc. is the fifth-largest broker headquartered in the Northeast, based on 2011 U.S. commercial insurance brokerage revenues of \$131.7 million.

Jonathan Crystal, executive vice president, said New York-based Frank Crystal does not classify clients by market segment, but rather by the scope of their risk management, insurance brokerage and employee benefits consulting needs. Its middle-market accounts typically start at 200 employees and \$100 million in annual revenues.

"It's a mind-set," Mr. Crystal said. "The middle-market buyer is looking for their insurance broker to be a trusted adviser and advocate for their business."

Frank Crystal has a large concentration of clients in the Northeast. It also has 10 offices across the country, serving clients in all 50 states and 70 countries.

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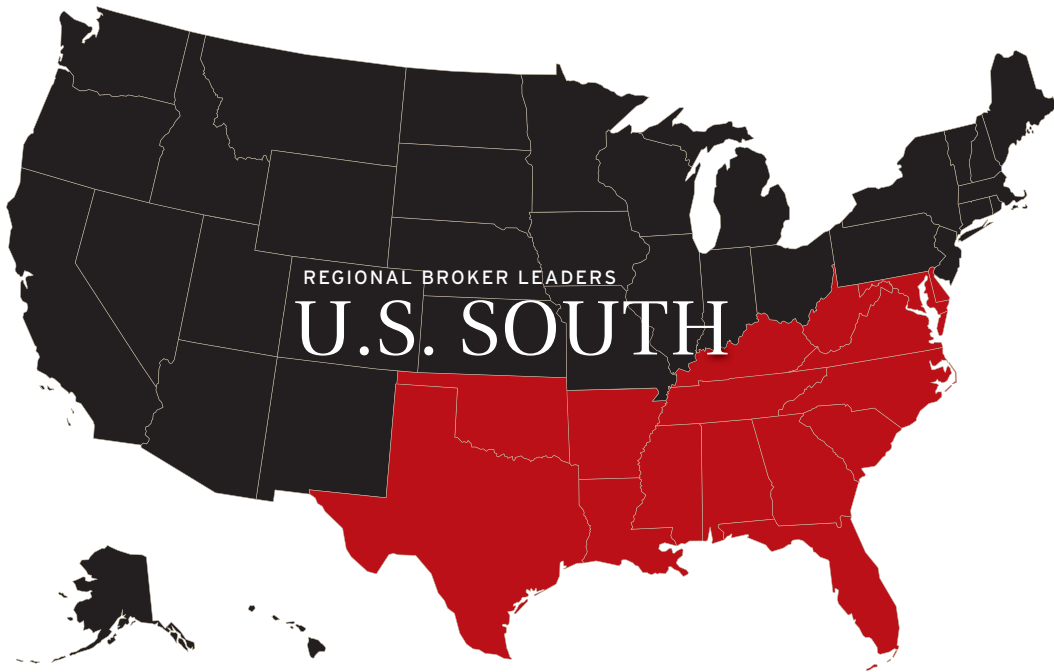
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## LARGEST AGENTS AND BROKERS HEADQUARTERED IN THE U.S. SOUTH\*

Ranked by total 2011 U.S. brokerage revenue

Rank	Company	Location	2011 brokerage revenue	% change
1	Brown & Brown Inc.	Daytona Beach, Fla.	\$1,107,656,240	14.9%
2	BB&T Insurance Services Inc.	Raleigh, N.C.	\$1,104,126,900	2.4%
3	AssuredPartners Inc.	Lake Mary, Fla.	\$172,316,140	5.9%
4	J. Smith Lanier & Co.	West Point, Ga.	\$107,929,729	2.8%
5	Regions Insurance Group Inc.	Memphis, Tenn.	\$101,892,006	2.4%
6	John L. Wortham & Son L.P.	Houston	\$99,976,140	3.5%
7	Beecher Carlson Holdings Inc.	Atlanta	\$94,981,468	2.4%
8	Insurance Office of America Inc.	Longwood, Fla.	\$89,685,193	11.0%
9	BancorpSouth Insurance Services Inc.	Tupelo, Miss.	\$89,046,870	9.1%
10	Higginbotham	Fort Worth, Texas	\$79,659,000	30.4%

\*Includes the states of Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia

Source: BI survey

# 1

### BROWN & BROWN INC.

**HEADQUARTERS:** Daytona Beach, Fla.

**2011 U.S. BROKERAGE REVENUE:** \$1,107,656,240

**'It's really all lines of coverage.'**

**CORY T. WALKER, BROWN & BROWN INC.**

Brown & Brown Inc. is the largest commercial insurance broker headquartered in the South, based on 2011 U.S. brokerage revenue of \$1.12 billion, though less than half — approximately \$450 million — is generated in the region where it is headquartered.

Almost 90% of the Daytona Beach, Fla.-based broker's revenue is derived from middle-market clients, which it defines as companies with 500 or fewer employees, said Cory T. Walker, Brown & Brown's treasurer and chief financial officer.

Businesses that fall into Brown & Brown's stable of middle-market clients run the gamut, said Mr. Walker, as do products and services provided to them.

"We place all kinds of business, from regular property insurance, auto liability and workers compensation to professional liability and directors and officers," he said. "It's really all lines of coverage."

# 2

### BB&T INSURANCE SERVICES INC.

**HEADQUARTERS:** Raleigh, N.C.

**2011 U.S. BROKERAGE REVENUES:** \$1,104,126,900

BB&T Insurance Services Inc., the second-largest broker based in the South, based on 2011 U.S. brokerage revenues of \$1.1 billion, defines middle-market clients as those whose premiums range between \$50,000 and \$500,000, generating brokerage revenue between \$10,000 and \$50,000.

These clients generate about 55% of the broker's revenue, said Randolph P. Screen, senior vice president and chief insurance marketing executive officer at the Raleigh, N.C.-based broker.

Though BB&T Insurance is known for its expertise in industries such as long-term care, construction, habitation, hospitality, equine, agriculture and manufacturing, "we can write just about everything throughout our 100-plus locations," Mr. Screen said.

Approximately 65% of BB&T Insurance's broker revenues can be attributed to the Southern region, where it is based.

# 3

### ASSUREDPARTNERS INC.

**HEADQUARTERS:** Lake Mary, Fla.

**2011 U.S. BROKERAGE REVENUE:** \$172,316,140

AssuredPartners Inc. is the third-largest commercial insurance company headquartered in the South, based on 2011 U.S. brokerage revenues of \$172.3 million.

The Lake Mary, Fla.-based broker, which has grown mostly by acquiring small to middle-market property/casualty and employee benefits agencies, generates about half, or \$90 million, of its revenue from its home region, with about 85% coming from middle-market clients.

AssuredPartners defines middle-market as those accounts that generate \$10,000 to \$700,000 in premiums, said Chief Financial Officer Dean Curtis.

Primarily local and regional-based businesses and some smaller national accounts fall under AssuredPartner's definition of middle market, Mr. Curtis said. These companies generally purchase most lines of property/casualty insurance, he added.

# 4

### J. SMITH LANIER & CO.

**HEADQUARTERS:** West Point, Ga.

**2011 U.S. BROKERAGE REVENUES:** \$107,929,729

J. Smith Lanier & Co., a West Point, Ga.-based broker, is the fourth-largest commercial insurance broker headquartered in the South, based on 2011 U.S. brokerage revenues of \$107.9 million.

Eighty percent of Lanier's clients, about 65% of which are middle market, have their headquarters in the South, said Peter Krause, vice president and managing director.

Lanier defines the middle market as companies that generate \$10,000 to \$100,000 in property/casualty revenue. For employee benefits, middle-market firms are defined as those with 50 to 500 employees.

"All types of businesses fall under this definition," Mr. Krause said. "If I had to pick one common characteristic, it would be the vast majority are private firms, similar to us."

Lanier is 100% owned by its employee-shareholders through an employee stock ownership program.

# 5

### REGIONS INSURANCE GROUP INC.

**HEADQUARTERS:** Memphis, Tenn.

**2011 U.S. BROKERAGE REVENUE:** \$101,892,006

Memphis, Tenn.-based Regions Insurance Group Inc. is the fifth-largest commercial insurance broker headquartered in the South, based on 2011 U.S. brokerage revenue of \$101.9 million, 92.6% of which is generated in its home region.

The broker finds that defining the middle-market business, which represents 39% of its total brokerage revenue, goes beyond the number of employees or company revenue.

"Some of the additional variables would include looking at the industry of the company, their buying philosophy, management style and service needs," said Mark Forrester, CEO of Regions Insurance of Tennessee, a division within the group.

However, Mr. Forrester said Regions considers employers with 50 to 500 employees among its middle-market clients. He also said they tend to be more local or regional and do not have full-time risk managers.

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## LARGEST AGENTS AND BROKERS HEADQUARTERED IN THE U.S. MIDWEST\*

Ranked by total 2011 U.S. brokerage revenue

Rank	Company	Location	2011 brokerage revenue	% change
1	Arthur J. Gallagher & Co.	Itasca, Ill.	\$1,694,277,000	8.8%
2	Wells Fargo Insurance Services USA Inc.	Chicago	\$1,626,869,000	(1.4%)
3	Lockton Cos. L.L.C.	Kansas City, Mo.	\$633,082,100	9.4%
4	Hub International Ltd.	Chicago	\$570,909,008	11.9%
5	CBIZ Benefits & Insurance Services Inc.	Cleveland	\$159,900,000	1.3%
6	Meadowbrook Insurance Group Inc.	Southfield, Mich.	\$134,552,000	0.0%
7	Hays Group Inc., dba Hays Cos.	Minneapolis	\$127,800,000	9.0%
8	Holmes Murphy & Associates Inc.	West Des Moines, Iowa	\$97,450,857	5.4%
9	Mesirow Insurance Services Inc.	Chicago	\$91,741,286	4.9%
10	Hylant Group Inc.	Toledo, Ohio	\$91,109,789	6.5%

\*Includes the states of Indiana, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin

Source: BI survey

# 1

### ARTHUR J. GALLAGHER & CO.

**HEADQUARTERS:** Itasca, Ill.

**2011 U.S. BROKERAGE REVENUES:** \$1,694,277,000

'The middle market is hundreds of times bigger than the large-account market.'

J. PATRICK GALLAGHER, ARTHUR J. GALLAGHER & CO.

Arthur J. Gallagher & Co. is the largest commercial insurance broker based in the Midwest, based on 2011 U.S. brokerage revenues of \$1.69 billion, a majority of which is generated by middle-market accounts.

AJG's growth throughout the past three decades has been fueled by acquiring smaller brokers that serve the middle market. Since 1985, Itasca, Ill.-based AJG has acquired more than 300 local and regional agencies generating between \$1 million and \$10 million in annual brokerage revenues.

"The middle market is hundreds of times bigger than the large-account market," so there is much more opportunity for growth in the middle market," said J. Patrick Gallagher, chairman, president and CEO. Although many of the acquisitions remain strong in their local markets, by being part of a larger organization, "we can enhance their capabilities locally and globally," he said.

AJG defines middle-market accounts as those that generate between \$10,000 and \$200,000 in commissions and/or fees. Middle-market industries AJG serves run the gamut from health care to transportation, and also include some religious organizations, public entities and institutions of higher education.

# 2

### WELLS FARGO INSURANCE SERVICES USA INC.

**HEADQUARTERS:** Chicago

**2011 U.S. BROKERAGE REVENUES:** \$1,626,869,000

Wells Fargo Insurance Services USA Inc. is the second-largest broker headquartered in the Midwest, based on 2011 U.S. brokerage revenue of \$1.63 billion.

About 55% of Wells Fargo's brokerage revenue is derived from middle-market business, which it defines as companies with \$10 million to \$750 million in annual revenues or that have 50 to 500 employees. About \$162 million of its U.S. brokerage revenues are derived from the Midwest, a company spokeswoman said.

The Chicago-based broker focuses on providing global placement and service in two primary areas: commercial insurance, including aviation, casualty, cyber and technology, executive and financial risks, environmental, fiduciary, marine, political and credit risk; and employee benefits, including executive benefits, health and welfare, international benefits, retirement services and voluntary benefits.

# 3

### LOCKTON COS. L.L.C.

**HEADQUARTERS:** Kansas City, Mo.

**2011 U.S. BROKERAGE REVENUES:** \$633,082,100

Lockton Co. L.L.C. is the third-largest commercial insurance broker based in the Midwest, based on its 2011 brokerage revenues of \$633.1 million.

The Kansas City, Mo.-based broker serves more than 15,000 emerging and growing businesses around the world. Lockton defines middle market as clients with between 200 and 5,000 employees for employee benefits services and between \$20 million and \$1 billion in revenue for property/casualty and risk management services.

Lockton provides all lines of property/casualty and employee benefits-related services to middle-market businesses in aerospace and defense, aviation, energy and power, construction, food processing and distribution, real estate and technology, among others. In addition, Lockton offers strategic consulting services on merger and acquisition activities, business objectives and risk action plans.

# 4

### HUB INTERNATIONAL LTD.

**HEADQUARTERS:** Chicago

**2011 U.S. BROKERAGE REVENUES:** \$570,909,008

Although Hub International Ltd. is the fourth-largest broker based in the Midwest, based on U.S. brokerage revenue of \$570.9 million, most of its business comes from the East and West coasts, according to Julie Zimmer, vice president of sales and Chicago-based middle-market business segment leader.

Hub defines middle-market accounts as those with between \$10 million and \$1 billion in annual revenue and with 100 to 3,000 employees. Those businesses represent all industry segments and face many of the same exposures as large companies, Ms. Zimmer said.

In addition to traditional property/casualty and benefits, Hub also offers its middle-market accounts data breach, international, trade credit, marine and other coverages.

"We try to focus in on what their key business drivers are and build our solutions around that," Ms. Zimmer said.

# 5

### CBIZ BENEFITS & INSURANCE SERVICES INC.

**HEADQUARTERS:** Cleveland

**2011 U.S. BROKERAGE REVENUES:** \$159,900,000

CBIZ Benefits & Insurance Services is the fifth-largest broker headquartered in the Midwest, based on 2011 brokerage revenues of \$159.9 million. About 42% of its business is from its home region.

More than 70% of Cleveland-based CBIZ's client base is middle market, which the broker defines as employers with 50 to 2,500 employees generating between \$10 million and \$250 million in annual revenue. Because middle-market organizations often lack the internal resources to manage risk and benefits in-house, CBIZ offers tools and consulting services to these entities, many of which face the same critical risk and insurance issues of upper-market companies, said Mark Dixon, national marketing director.

"We also work with them to develop and implement effective strategies for their employee benefits and retirement plans from both cost-control and recruiting/retention perspectives," he said.

1

**ALLIANT INSURANCE SERVICES INC.****HEADQUARTERS:** Newport Beach, Calif.**2011 U.S. BROKERAGE REVENUES:** \$460,193,545

Alliant Insurance Services Inc. is the largest commercial insurance broker headquartered in the West, based on 2011 U.S. brokerage revenues of \$460.2 million.

While its roots may be in California, the Newport Beach-based broker serves some 20,000 clients across the nation, providing insurance and risk management solutions for a complete range of risks.

While Alliant does not account for its middle-market business separately, it defines this client segment as property/casualty accounts that generate \$15,000 to \$150,000 in brokerage revenue and benefit accounts with 50 to 3,000 employees.

Its middle-market clients represent "the full spectrum of businesses we serve across all our key specialties," a spokesman said. These include public entities, tribal nations, health care, energy, law firms, real estate, construction companies.

Similarly, the coverage brokered to the middle market runs the gamut from commercial property and general liability, workers comp and benefits to credit and political risk, cyber risk and kidnap and ransom.

2

**THE LEAVITT GROUP****HEADQUARTERS:** Cedar City, Utah**2011 U.S. BROKERAGE REVENUES:** \$188,245,000

Despite having its headquarters in sparsely populated southern Utah, the Leavitt Group is the second-largest commercial insurance broker headquartered in the Western United States, based on 2011 brokerage revenues of \$188.2 million.

The Cedar City, Utah-based company defines middle-market business as accounts generating at least \$15,000 in agency revenue, or \$150,000 in premium.

"These businesses are looking for a strategic risk management platform that may include claims advocacy, work comp claims assistance, loss control, (human resources) services and other value-added services and guidance beyond the insurance policy itself," said Eric Leavitt, president.

Among the businesses the Leavitt Group serves in the middle market are manufacturers, food industry operations and food distribution, restaurants, wholesalers, resellers, hospitality and other clients "they require the broker to really understand the nuances around the client's business," he said.

**\$460.2M**

Alliant is the largest commercial insurance broker headquartered in the West, based on 2011 U.S. brokerage revenues of \$460.2 million. The Newport Beach, Calif.-based broker serves some 20,000 clients across the nation.



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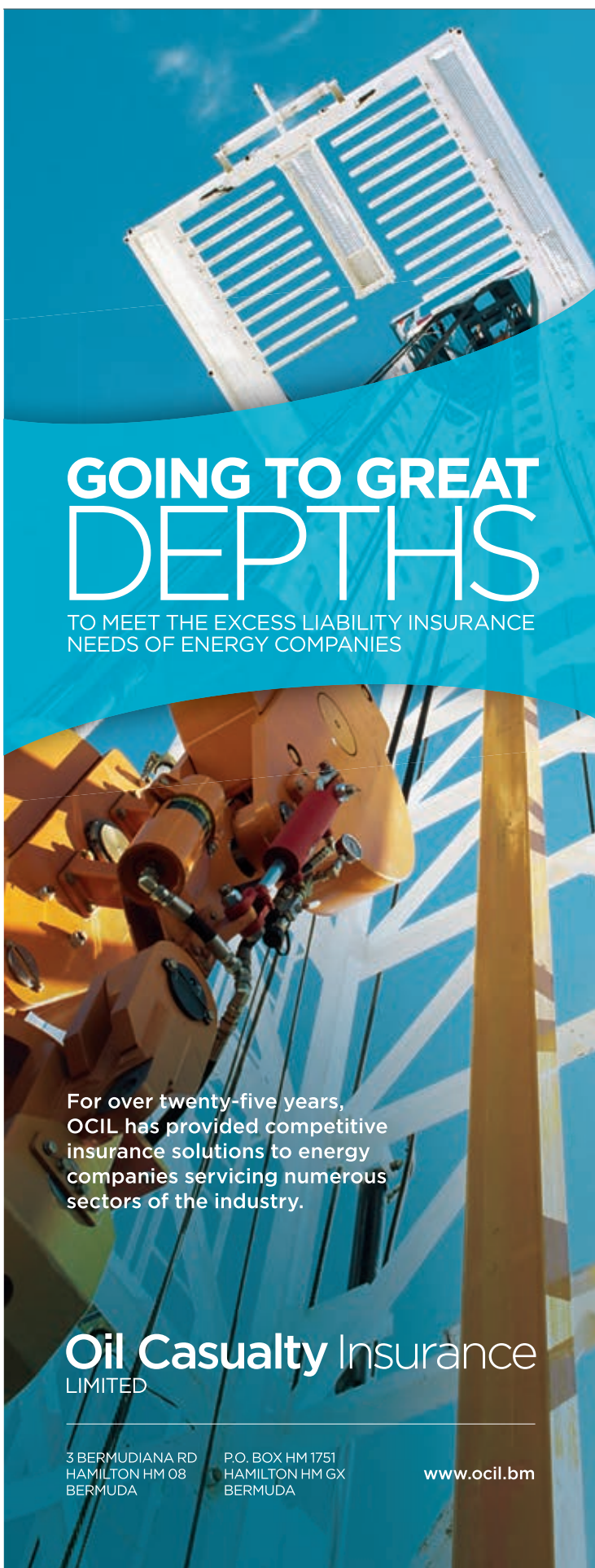


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## LARGEST AGENTS AND BROKERS HEADQUARTERED IN THE U.S. WEST\*

Ranked by total 2011 U.S. brokerage revenue

Rank	Company	Location	2011 brokerage revenue	% change
1	Alliant Insurance Services Inc.	Newport Beach, Calif.	\$460,193,545	28.8%
2	Leavitt Group	Cedar City, Utah	\$188,245,000	2.5%
3	Keenan & Associates	Torrance, Calif.	\$144,148,000	3.5%
4	Barney & Barney L.L.C.	San Diego	\$85,166,547	11.8%
5	Heffernan Group	Walnut Creek, Calif.	\$74,282,000	3.9%
6	Woodruff-Sawyer & Co.	San Francisco	\$69,498,000	7.7%
7	Edgewood Partners Insurance Center	San Francisco	\$58,271,780	10.8%
8	Western States Insurance	Missoula, Mont.	\$51,662,208	2.1%
9	Propel Insurance	Tacoma, Wash.	\$46,400,000	5.0%
10	InterWest Insurance Services Inc.	Sacramento, Calif.	\$41,271,510	0.5%

\*Includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, New Mexico, Montana, Nevada, Oregon, Utah, Washington and Wyoming

Source: BI survey

### 3

#### KEENAN & ASSOCIATES

**HEADQUARTERS:** Torrance, Calif.

**2011 U.S. BROKERAGE REVENUE:** \$144,148,000

Keenan & Associates is the third-largest commercial insurance broker headquartered in the West, based on U.S. brokerage revenues of \$144.1 million, all of which is generated in its headquarters region.

The broker, which launched in 1972 to serve mostly elementary and secondary educational institutions in California, also provides property/casualty, workers compensation and employee benefits brokerage and administration services to hospitals and other health care providers, school districts and public entities.

Although Keenan has some very large clients, the vast majority are in the middle market, said President and CEO Sean Smith.

"We've got some monster-size cases — very large counties — but the average city or school district is 400 to 500 lives," he said. Because California public entities are very price-conscious due to state budget cuts, "we aggregate a lot of that business into joint power authorities," also known as public entity pools, which can be more cost-effective, he added.

### 4

#### BARNEY & BARNEY L.L.C.

**HEADQUARTERS:** San Diego

**2011 U.S. BROKERAGE REVENUES:** \$85,166,547

Barney & Barney L.L.C., the fourth-largest commercial insurance broker based in the West, generates nearly all — 98% — of its \$85.2 million in 2011 brokerage revenues in its home region.

The San Diego-based broker defines its middle-market clients as having between 50 and 2,000 covered lives for employee benefits and between \$100,000 and \$2 million in premium for commercial property/casualty services. Ninety percent of its U.S. revenues are derived from middle-market business.

Barney & Barney caters to regional and national businesses within industries including, but not limited to, technology, life science, hospitality, health care, construction and apparel sectors.

To better serve these clients, Barney & Barney's client service teams comprise consultants with industry-specific expertise who can provide risk management and employee benefits solutions tailored to the unique needs of the businesses being served. Products offered include employee benefits, property/casualty, workers compensation, directors and officers liability and surety bonds.

### 5

#### HEFFERNAN GROUP

**HEADQUARTERS:** Walnut Creek, Calif.

**2011 U.S. BROKERAGE REVENUES:** \$74,282,000

Walnut Creek, Calif.-based Heffernan Group, the fifth-largest broker based in the West, derives 80% of its 2011 U.S. brokerage revenues of \$74.3 million from its home region.

In addition, 75% of those revenues are attributable to middle-market business, according to F. Michael Heffernan, president and CEO.

Heffernan Group defines middle-market business as accounts generating between \$10,000 and \$200,000 in revenues and employing anywhere from 25 to 500 individuals.

"All classes of business can fall into what we define as middle market," Mr. Heffernan said. "From construction accounts to technology accounts to nonprofit accounts, they all have some representation in the middle market."

As such, Heffernan Group places all lines of coverage for these middle-market clients, including property, liability, workers compensation, professional liability, employee benefits, and financial services such as retirement plan administration and asset management.

'All classes of business can fall into what we define as middle market.'

F. MICHAEL HEFFERNAN, HEFFERNAN GROUP

# Rising mid-market needs alter benefit brokers' role

By MIKE TSIKOUDAKIS

The changing climate of health care has middle-market employers looking to their employee benefits brokers for services beyond the usual acquisition of health care coverage.

To get the most out of their brokers, employers need to focus on and articulate their business goals and objectives to their brokers, who in turn can provide the appropriate services that best fit the organization's needs, industry experts say.

"The days when we could just place coverage and then go play golf are over," said Mike Brewer, Kansas City, Mo.-based president of Lockton Benefit Group, a unit Lockton Cos. L.L.C. "It's much more about the value-adds and the things we do to help that employer make better decisions about their employee benefits spend," he said.

With the dramatic rise in health care costs in recent years, middle-market companies are paying more for their benefit plans without receiving the same value in return, said Michael Turpin, executive vice president and national practice leader of employee benefits for USI Insurance Services L.L.C., based in Briarcliff Manor, N.Y.

"Most middle-market employers are what I call generalist purchasers of services, and they've never really sat down and defined what it is that they want from a broker or an intermediary," he said. "Against that backdrop, the demand for more services from brokers hasn't necessarily been that acute."

But while some middle-market companies may lack defined employee benefits plan objectives, employers are increasingly competing for talent by using benefits to attract and retain employees, making the costs surrounding health plans critically important, said Kevin Krzeminski, senior vice president of sales for Liberty Mutual Holding Co.'s group benefits operation, based in Boston.

Finding the "best coverage for the best price" historically has been the role of the middle-market broker, Mr. Krzeminski said. "But with a variety of external factors, economic factors and regulatory factors, the complexity that I believe these middle-market employers are dealing with has grown significantly."

With that growth of plan complexity, benefits brokers have invested heavily in resources to provide middle-market companies more services outside the scope of transactional placements for employers to develop employee benefit strategies, experts say.

Brokerage services used for larger organizations have trickled down and merged with middle-market needs, said John Kirke, the

president of benefits and health risk management at broker IMA Inc. in Denver.

"Right now we see the market being in heavy demand for compliance for regulatory guidance" regarding the Patient Protection and Affordable Care Act, Mr. Kirke said, noting that middle-market companies need help "navigating these waters" beyond providing papers on interpretive reviews

about health care reform.

Other services include health risk management consulting, which helps employers integrate a risk strategy into their benefit plan rather than adjust the costs of an insurance plan, Mr. Kirke said.

"We're seeing more and more companies adopt a strategy that invokes risk management

See **BENEFITS** next page

## BROKER SERVICES

Services middle-market businesses should request from their benefits brokers

- **CONDUCT** health claims analysis to determine where to direct wellness and care management initiatives.
- **ORGANIZE** and implement health fairs, health risk assessments and biometric testing to identify population health risks.
- **REVIEW** regulatory compliance with state and federal benefits laws.
- **PERFORM** annual benefit plan audits to purge ineligible employees and dependents from plan rolls.
- **CONDUCT** self-insurance feasibility study.
- **PROVIDE** benefit communications services.
- **REVIEW** and recommend health and retirement plan options.
- **IDENTIFY** voluntary benefit options that employees may be interested in purchasing, such as long-term care, disability and pet insurance.
- **AUDIT** claims administrator performance to ensure medical bills are being paid in accordance with plan rules.
- **MEASURE** ROI for wellness and care management programs.



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Ingo Zimmermann, Head of EADS Corporate Insurance Risk Management

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# Benefits: Brokers' role expanding

CONTINUED FROM PREVIOUS PAGE

principles, benefit strategies, the culture inside their company and what's possible inside their company," he said. "Those solutions have come to the middle market and are merging for those high-performing middle-market companies."

One of the challenges facing middle-market employee benefit planners is becoming a part of the organization's strategic planning process to promote the goals and objectives of the company, said Kent E. Lonsdale, area

president of the Philadelphia metropolitan region for Gallagher Benefit Services Inc., the employee benefits division of Arthur J. Gallagher & Co.

"Mid-market organizations are pretty lean," Mr. Lonsdale said. "Dealing with the day-to-day is all-consuming. In many situations, they're trying to survive the day, survive the quarter, survive the year, and it doesn't necessarily allow for great strategic planning."

Brokers can help benefits planners get a seat at the planning table by providing compliance

support, benefits administration services and claims resolution services, among others, Mr. Lonsdale said.

In efforts to reduce the costs of providing benefits as health care costs increase, more middle-market companies will look at self-insurance and at unbundling insurer services and outsourcing those services to third-party providers — an opportunity for brokers, USI's Mr. Turpin said.

"You don't need to use the carrier's claims and loss runs," he said. "The brokers are going to transform themselves to a surro-

gate set of third-party solutions that are going to be theoretically more agnostic to the carrier and to the premium and focus exclusively on trying to get better outcomes."

The relationship between the middle-market employer, broker and insurer has become integrated and interactive, something brokers are facilitating, Mr. Krzeminski of Liberty Mutual said.

Brokers now are helping the employers and the insurers to work together, he said. "I think that's healthy for the business and will lead to an increasing understanding and knowledge at the employer level about the plans."

# Clearly define objectives to meet goals

*Buyer-broker relationships grow through education*

By MIKE TSIKOUDAKIS

As middle-market companies use expertise and services of their insurance brokers beyond the procurement of insurance coverage, clear communication of their business objectives and goals is essential.

To secure the best and appropriate insurance coverage, middle-market brokers need to understand their clients' needs and risks, experts say.

"A dialogue needs to occur around what are the client's business objectives, and we try to align our risk and insurance objectives around helping them become a better business," said Glenn Spencer, chief operating officer for the United States at Lockton Cos. L.L.C. in Kansas City, Mo.

Middle-market companies are much more complex today than they were 15 years ago, Mr. Spencer said, noting that many operate internationally using complex supply chains with sophisticated technology infrastructures.

"That dictates that they've got to help their broker understand their business so that the broker can protect those risks properly, give them advice on how to mitigate risk and know how to structure the coverage properly," Mr. Spencer said.

While many middle-market clients take advantage of their brokerage's services, many clients believe the insurance process is simply transactional, said Sandy Harvath, vice president of commercial lines for broker IMA Inc. in Denver.

"They should be looking for far more than that," Ms. Harvath said. "For a middle-market account, they really want to be looking for a point person to really figure out what the exposures are and, on the broker side, what we can do to best help them to really contribute to reducing their total cost of risk because that's really what it's all about."

"Oftentimes with a client, there may be, for example, 10 programs they need to develop and ... they don't know what to attack first," she said.

That point person at the brokerage facilitates a holistic understanding of a company's total cost of risk and can help focus insurance and risk management efforts based on losses and other costs, Ms. Harvath said.

Julie Zimmer, vice president of sales and middle-market segment

Continued on next page

DECEMBER 2ND, 3:52 P.M.

## A MORE PERSONAL APPROACH MAKES A BUSINESS EVEN STRONGER

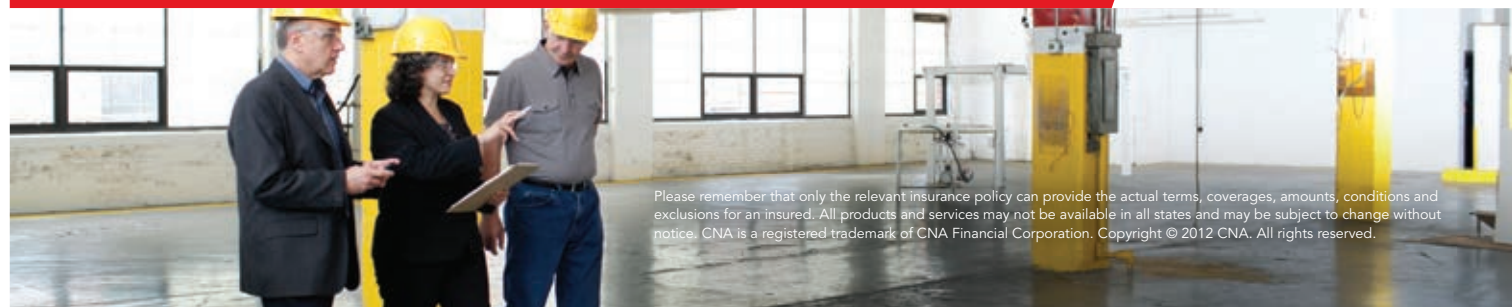
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CONTINUED FROM PREVIOUS PAGE

leader for Hub International Ltd. in Chicago, said brokers tend to put the onus of accessing services and expertise on the insurance buyer.

"This is a segment that doesn't have full-time risk managers; everybody's wearing different hats," she said. "It's our responsibility to bring the services to the customers, and bring them in a way that's scalable and relevant to them."

Many of the services provided by brokers originally were built and targeted to larger insurance buyers, and it often is not cost-effective for the broker to offer such services to middle-market buyers, Ms. Zimmer said.

"It's our job to figure out how to take those services and deliver them in a cost-effective and scalable way to that middle-market customer and educate them around what services are relevant to their business," she said.

Before placing a program with insurers, brokers need to prepare a middle-market company's risks to be presented in the most favorable light in the marketplace, said Robert Meyers, senior vice president and property/casualty leader for USI Insurance Services L.L.C., based in Briarcliff Manor, N.Y.

**'This is a segment that doesn't have full-time risk managers; everybody's wearing different hats.'**

Julie Zimmer, Hub International Ltd.

Middle-market companies should discern what type of analytics are necessary to understand their risks, what type of solutions are available to address the risks, determine the expertise needed to articulate those risks to the marketplace and identify who is doing the work, he said.

"It's not a complex answer," Mr. Meyers said. "I think by walking through those four areas, you start to get a sense of what's needed and (whether) the broker (has) the capability to do it correctly."

Clear communication and providing an understanding of a middle-market company's risk and operations to the broker can reduce complexities in the process of buying insurance, said Dan McGinnis, Berkeley Heights, N.J.-based division executive of open brokerage and small medium enterprises for Chartis Inc.

"From the underwriter's standpoint, insureds can greatly enhance the value they get from their brokers if they teach their broker the story of their business," he said.

"When a broker is in the position to convey the subtle nuances of their customer's business to an underwriter, it'll help them to eliminate that complexity from the process of buying insurance," Mr. McGinnis said. "It'll give the

customer peace of mind in their purchase, and it'll position both the underwriter and the broker to anticipate the customer's ongoing needs."

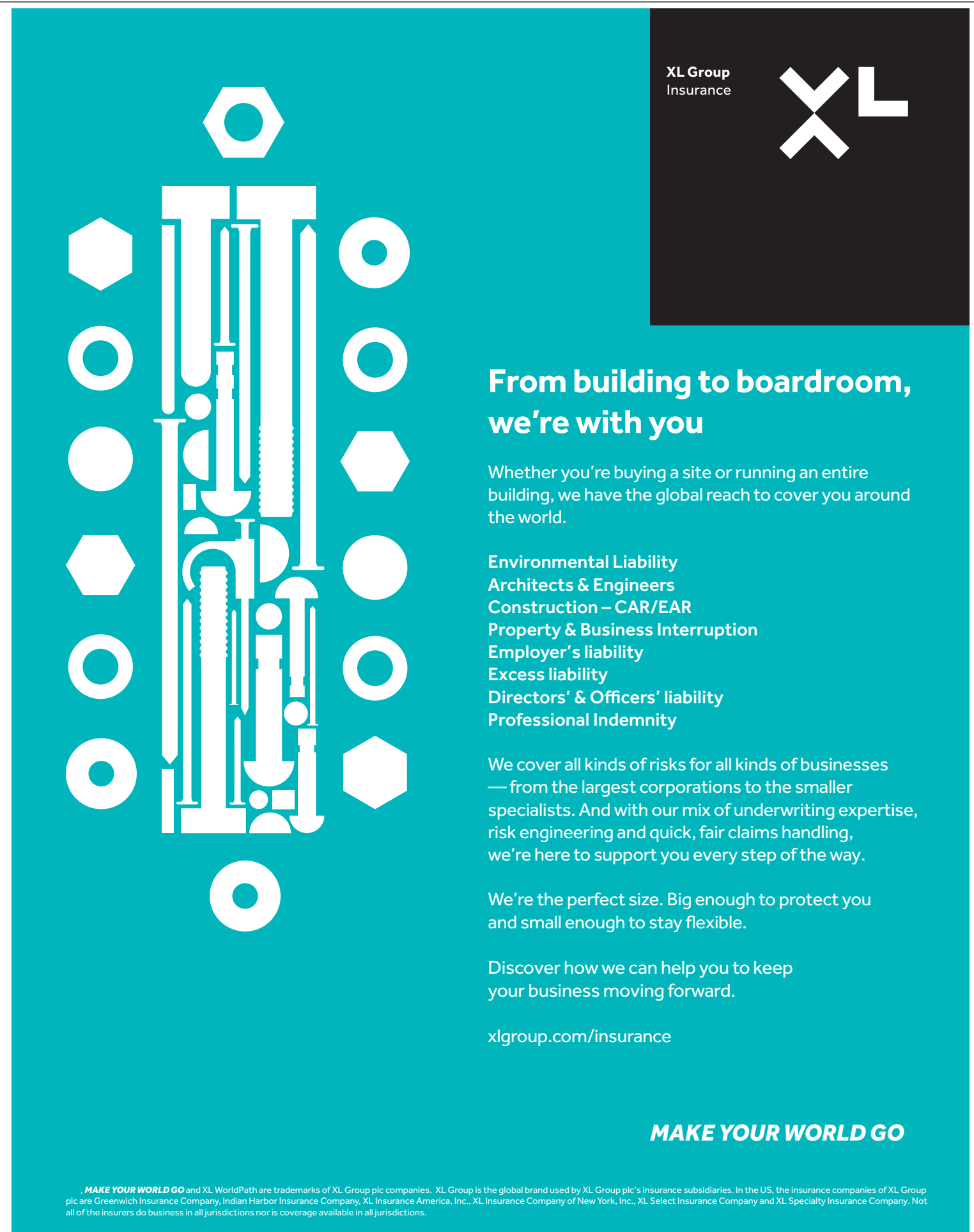
Middle-market companies should think of their broker as a valued financial adviser, communicating their operating environment, business and personal goals just as they would to a banker or financial partner, Mr. McGinnis said.

"If we can facilitate better communication and discussions between insureds and their brokers, and parlay that into a better discussion and presentation from the brokers to the underwriters, I think we can eliminate these complexities," he said.

## BROKER SERVICES

Services middle-market businesses should request from their property/casualty insurance brokers

- **PERFORM** an analysis of the business insurance portfolio to determine if there are any coverage gaps, and whether limits need to be increased in some lines.
- **CONDUCT** a claims analysis to identify trends and advise on loss prevention.
- **PERFORM** a "cost-of-risk" analysis to determine optimal deductibles and retentions.
- **PROVIDE** loss control inspections and advice.
- **PROVIDE** risk management advice.
- **PROVIDE** claims handling advice. For example, the insurance broker can vet claims to determine which should be reported to insurers and which should be handled internally.
- **CONDUCT** exposure analysis to determine maximum probable losses and whether adequate loss prevention measures and insurance are in place.
- **PROVIDE** advice on related topics such as trade credit risk, business interruption/continuity risks and bonding.
- **PROVIDE** education to a middle-market business' staff on various loss control, insurance and risk management topics.
- **CONDUCT** an annual stewardship review. This is a report summarizing what the broker has done for the business during the past year, how it has performed, whether it met its promised service standards and what it plans to do for the business in the future. The size of the business will determine the comprehensiveness of the report.
- **ASK** brokers for advice on any matter that involves potential for loss, risk, insurance, claims or any other matter with which a middle-market business needs help. The worst thing the broker will say is that such services are unavailable or that there is an accompanying fee.



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# Banks wait for guidance on JOBS Act compliance

By MATT DUNNING

Six months after President Barack Obama signed into law the Jumpstart Our Business Startups Act, mid-market investment banks are still waiting for guidance needed to set their compliance and insurance strategies.

Designed to spur growth by giving small and midsize businesses greater access to investment capital and a smoother transition from private to public ownership, the JOBS Act creates new exemptions to several initial public offering and crowdfunding regulations, and a significant roll-back of restrictions on analysts' research reports and participation in meetings with IPO clients.

Despite an August guidance statement from the U.S. Securities and Exchanges Commission on the law, banking liability experts say that considerable ambiguity remains for small and midsize

banks' compliance obligations.

"Unfortunately, I think a few firms are going to have to wind up being targeted by regulators before that kind of clarity can be had," said Derek Lakin, a New York-based senior vice president of financial services and executive risk at Lockton Cos. L.L.C. "I hate to say it, but I think we're in sort of a gray area until that happens."

Under the new law, investment banks brokering IPOs for qualifying emerging-growth companies are permitted to use their own analysts to produce and distribute research reports on those companies, a practice outlawed by the 2002 Sarbanes-Oxley Act and the Global Analyst Research Settlement reached in 2003 between the SEC and the country's 10 largest banks. The new law also allows in-house analysts to attend and participate in pitch meetings and other conferences between an IPO client's management team and the

bank's investment personnel, which had been similarly banned.

The research rules were relaxed largely for logistical reasons, experts said. Most emerging-growth companies — defined in the JOBS Act as companies with less than \$1 billion in gross annual revenue — aren't big enough to warrant the attention of the broader analyst community. Therefore, only research analysts working for the banks brokering an IPO typically are positioned to evaluate those companies' potential stock performance.

"When you're talking about all of these smaller, emerging-growth companies, there might not be any other investment bank covering them," said Richard Magrann-Wells, New York-based senior vice president and financial services practice leader at Willis North America Inc.

"Obviously, the problem with that is the only investment bank that understands the stock is the one taking it public," he said. The JOBS Act "rolls all of that back a bit and does allow analysts from an underwriting bank to issue statements for emerging growth companies."

Allowing analysts to attend and participate in their banks' investment meetings with clients shortens and simplifies preparing an IPO for small and mid-market companies and their banks.

"Theoretically, what Congress did makes a lot of sense," said Fred Knopf, a White Plains, N.Y.-based partner and securities industry practice chair at Wilson Elser Moskowitz Edelman and Dicker L.L.P.

However, experts said mid-market investment firms may find the new law's practical application more difficult. In its Aug. 22 guidance (see story, page 20), the SEC noted that while limitations on certain activities have been relaxed, banks and their directors and officers still can be held liable under federal antifraud laws for analysts' conduct while engaged in those activities.

"The one thing that hasn't changed is the liability," Mr. Magrann-Wells said. "All of this wonderful change that's come about to make it easier to do an IPO doesn't mean they've relaxed any of the liability for banks or for their officers and directors."

The SEC's guidance also said the JOBS Act does not supercede the Global Analyst Research Settlement, meaning that the eight remaining banks — with Bear, Stearns & Co. Inc. and Lehman Bros. Inc. having dissolved since the settlement — cannot take advantage of the relaxed research regulations. That could lengthen the time it takes the middle market to develop internal compliance standards, as experts said smaller firms often look to larger competitors for guidance on compliance.

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- Drafting, publishing and distributing research reports on an emerging-growth company for which their firm is brokering or assisting an initial public offering.
- Attending and participating in meetings between their bank's investment personnel and emerging-growth clients. Acceptable analyst conduct includes outlining for the client research program and factors considered during an analysis; asking for clarifications of factual statements made by the company's management; and, after a formal relationship between the bank and the emerging-growth company has been established, participating in client presentations to the investment firm's sales force about the company.
- Publishing research during quiet periods prescribed under existing securities laws, including immediately after an IPO or the expiration of a lockup period.

*In August, the U.S. Securities and Exchange Commission issued preliminary guidance outlining its interpretation of the JOBS Act research provisions' applicability to existing antifraud regulations and other securities laws. According to the SEC, investment firms and their analysts remain prohibited from:*

- Changing research as a result of a communication in an effort to obtain investment banking business.
- Indicating to an emerging-growth company a willingness to exchange favorable research if the analyst's firm is selected for the IPO.
- Publishing reports that are inconsistent with an analyst's personal views about the company or its securities.
- Directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction.

— By Matt Dunning

## LARGEST U.S. BANK-OWNED AGENTS AND BROKERS

*Ranked by 2011 U.S. revenue*

Rank	Company	Parent	2011 brokerage revenue
1	Wells Fargo Insurance Services USA Inc.	Wells Fargo & Co.	\$1,626,869,000
2	BB&T Insurance Services Inc.	BB&T Corp.	\$1,104,126,900
3	Regions Insurance Group Inc.	Regions Financial Corp.	\$101,994,000
4	BancorpSouth Insurance Services Inc.	BancorpSouth Inc.	\$89,046,870
5	First Niagara Risk Management Inc.	First Niagara Financial Group	\$64,334,605
6	Huntington Insurance Inc.	Huntington Bancshares Inc.	\$57,723,000
7	Eastern Insurance Group L.L.C.	Eastern Bank Corp.	\$56,745,763
8	Associated Financial Group L.L.C.	Associated Bancorp	\$54,132,824
9	M&T Insurance Agency	M&T Bank	\$37,666,000
10	Old National Insurance	Old National Bancorp	\$36,199,157

Source: BI survey

## LARGEST PRIVATELY OWNED U.S.-BASED BROKERS

*Ranked by 2011 U.S. brokerage revenue*

Rank	Company	2011 brokerage revenue
1	Lockton Cos. L.L.C.	\$904,403,000
2	Towers Watson & Co.	\$409,362,054
3	Leavitt Group	\$188,245,000
4	AssuredPartners, Inc.	\$172,316,140
5	Keenan & Associates	\$144,148,000
6	Frank Crystal & Co. Inc.	\$131,740,000
7	Hays Group Inc., dba Hays Cos.	\$127,800,000
8	Bollinger Inc.	\$117,791,000
9	J. Smith Lanier & Co.	\$107,929,729
10	John L. Wortham & Son L.P.	\$100,986,000

Source: BI survey

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## Integration: Worry grows about wasteful benefits

CONTINUED FROM PAGE 1

Think of an employee suffering from a physical disability and depression who receives conflicting messages from a disability insurer's nurse case manager and an EAP's nurse case manager, said Thomas Parry, president of the San Francisco-based Integrated Benefits Institute. The conflicting messages could make the employee's life harder, not easier, and hamper their return to work, he said.

"It's not only an issue of coordination, but also an issue of making sure the vendors are delivering a consistent message to employees," Mr. Parry said. "After all, that is what it's all about — getting employees the right care, the right help, the right information, the right programs. And if you have two vendors that are delivering different information, sometimes in conflict, then it is worse. You are wasting money and your employees are confused and frustrated."

Issues surrounding benefits management integration are becoming more important to employers as upper management increasingly demands to know not just how much money the company is spending, but how much value it derives from programs that aim to keep employees productive and on the job, Mr. Parry said.

Employers seeking to manage these issues remain in the minority, said John C. Garner, principal at benefits consultant Garner Consulting in Pasadena, Calif. But it is a growing minority, driven by the realization that absenteeism and presenteeism often cost corporations more than they spend on health benefits for employees, excluding dependents, he added.

Yet employers striving to develop what is known as a "total

health and productivity strategy" face challenges in integrating the delivery of benefits to make sure they are not wasting money on overlapping services, leaving holes in the care employees need and not providing conflicting information to workers, sources said.

Culling meaningful information from a mountain of data from each provider is the most significant challenge to determine whether a program is helping keep employees healthy and productive, said Daniel Shaughnessy, director of disability and wellness programs for Textron Inc., a diversified Providence, R.I.-based company that makes aircraft, automotive, lawn care and other equipment.

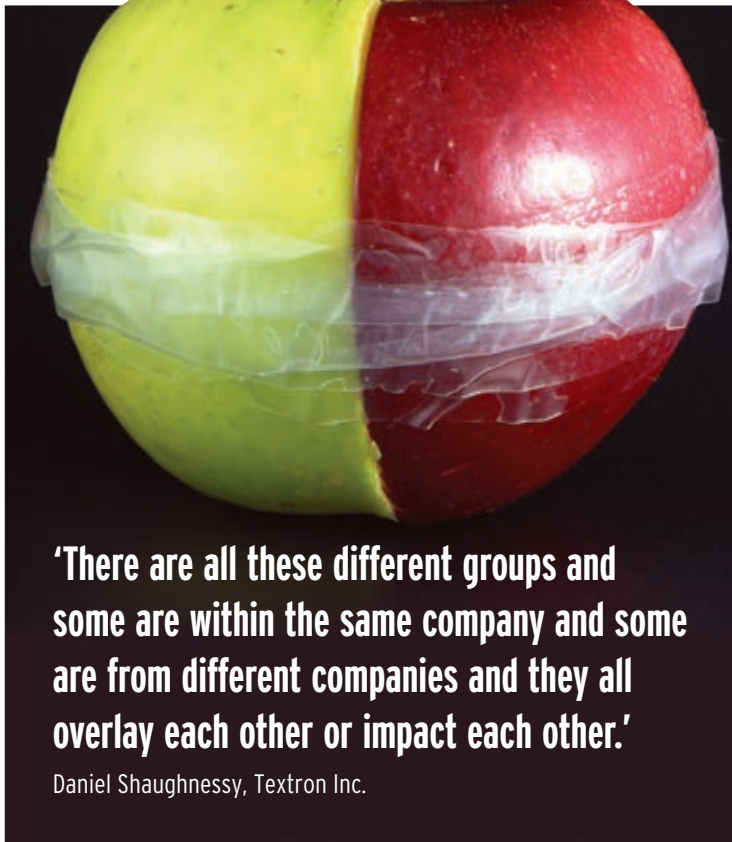
Outside providers' "data dumps" make it tough to determine whether there is a return on investment for the dollars spent, how many employees are using a specific program, whether those programs have helped employees and, if not, why not, Mr. Shaughnessy said.

"You can look at reports that are over 100 pages long and they don't tell me anything," he said.

The problem is further complicated because some providers, such as health plans, are so large that each has business units or subgroups providing disease management, prescription drug plan management, wellness and other programs.

"There are all these different groups and some are within the same company and some are from different companies and they all overlay each other or impact each other," Mr. Shaughnessy said.

Like Textron, other large employers also are examining how to bring their providers together to reduce absences, increase productivity and reduce their total health care spending,



**'There are all these different groups and some are within the same company and some are from different companies and they all overlay each other or impact each other.'**

Daniel Shaughnessy, Textron Inc.

said Kimberly Mashburn-Lee, vice president of strategic client solutions at Pacific Resources Benefits Advisors L.L.C. in Chicago.

But that requires providers to share data and work together to help employees more easily navigate the maze of benefit offerings, Ms. Mashburn-Lee said.

"Otherwise, how are you going to come alongside your employee and assist him if you have a case manager at your disability company, a case manager at your leave management company and a case manager at your health insurer; and how does an employee know how to navigate all of that?" Ms. Mashburn-Lee asked rhetorically.

A challenge for providers is that each may have different data capabilities or data standards that can complicate information sharing with an employer, said Karen English, a partner at Spring Consulting Group Inc. in Boston.

Employers can overcome the challenge by contracting for data

warehouse services, which would increase their costs. But the more benefit programs an employer offers, the more help they may need in integrating them, Ms. English said.

"The broader an employer's program becomes, the more they need (to evaluate them) because they need to see how these programs are working separately and working together so they can decide how they are going to continue to evolve them," Ms. English said.

With limited budgets, employers may want to learn, for example, which among several disease management programs they offer most effectively improve return-to-work outcomes or eliminate absences and disability recurrences from occupational and nonoccupational illnesses and injuries, she said.

"Really, trying to figure out what is working is the key," Ms. English said.

## Hinton: Obituary

CONTINUED FROM PAGE 4

use of creative risk financing techniques through HCA's Health Care Indemnity Inc. captive, of which he was president.

Along the way, Mr. Hinton's risk management work not only improved HCA's loss experience, it improved the experiences of many of the patients at HCA hospitals.

Growing up on a farm in Kentucky where he was the eldest of 11 children, Mr. Hinton studied accounting and earned a bachelor's degree in business administration from the University of Notre Dame in 1971, adding a master's degree in the same discipline from the University of Louisville in 1975. After serving in the Air Force from 1971 to 1975 as a lieutenant, Mr. Hinton joined the Coopers & Lybrand accounting firm, then accepted a position with Louisville, Ky.-based Humana Inc. as assistant corporate controller in 1975.

He later served as chief financial officer, director of tax planning and vice president-risk and insurance for Humana; and when the company decided to spin off its hospital operations in 1993 and focus on its health plan business, Mr. Hinton opted to remain with the spinoff. It ultimately became part of HCA, where he became the company's top risk manager.

Mr. Hinton's survivors include his wife of 43 years, Linda Critchelow Hinton; his sons, Mike Hinton and Brian Hinton; his granddaughter, Taylor Hinton; his mother, Jenny Hinton; and his 10 siblings.

## REBEX: Outsourcing increases risks

CONTINUED FROM PAGE 4

internationally, "there can be a culture gap," Mr. Steiner said, so companies should make sure there is someone with the outsourcing partner who understands the difference in the cultures and can help bridge those gaps.

Mr. Steiner said doing appropriate due diligence of outsourcing partners before contracts are signed can prevent problems later.

"Making sure you have a strong partner to begin with mitigates the risk of something happening," he said.

Mr. Howes agreed. "I can't focus enough on kicking the tires," he said.

It's important to make sure contract language is clear and that contracts contain all the terms agreed to with the outsourcing partner, Mr. Steiner said. And, he said, while you want to negotiate those

### 300 ATTEND REBEX CONFERENCE IN CHICAGO AREA

**WHEELING, Ill.** — The REBEX 2012 Regional Risk Management Conference and Exhibition drew approximately 300 attendees to the Westin Chicago North Shore hotel in Wheeling, Ill., Sept. 20 and 21.

Organized by the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc., the event included sessions examining such topics as cloud computing implementation in regulated environments, strategies for managing imported product risk and exposures, and evolving solutions in entity investigations.

For information about next year's REBEX gathering, visit [chicago.rims.org](http://chicago.rims.org) or [wisconsin.rims.org](http://wisconsin.rims.org).

— By Rodd Zolkos

terms aggressively, "You want to make sure it's a win-win. You don't want to poison the relationship."

Once outsourcing agreements are in place, "You want to make sure you have someone who has ultimate oversight so you don't

have miscommunication among the different groups," Mr. Steiner said.

Regular risk reviews have been an important part of making sure his company receives consistent quality of service in its outsour-

ing relationships, Expeditors' Mr. Howes said.

Looking at an emerging outsourcing exposure — the risks associated with third-party social media outsourcing — Ruth Wagner, vice president at CMP.LY Inc. in Chicago, said companies that engage third parties such as celebrities, bloggers, agencies or third-party vendors in their media marketing efforts face inherent "borrowed reputation" risk.

To avoid running afoul of regulators such as the Federal Trade Commission, it's essential that companies outsourcing social media marketing activities make clear and conspicuous disclosure, create a culture of compliance, document processes and procedures, and monitor those marketing activities to make sure policies are adhered to, Ms. Wagner said.

The risks of not complying with those requirements include reputational damage, regulatory action, or legal exposure or liability, she said.

Ms. Wagner said many compa-

nies that are outsourcing social media activities rely on their agencies or other third parties to make sure they're meeting necessary requirements.

But "I wouldn't recommend it," she said. "It's your reputation that's at risk."

Best practices for outsourcing social media activities include ensuring third parties engaged to discuss the brand make necessary disclosures and that they're truthful; having a documented process for informing third-party advocates of those disclosure requirements; and selecting advocates who value compliance and transparency, Ms. Wagner said.

In outsourcing social media activities to agencies and third-party vendors, companies should make sure those partners have social media policies in alignment with their own, and that those partners aren't engaging additional vendors on the marketing program who lack appropriate compliance policies and procedures.

# UP COMINGS & GOINGS CLOSE



## MICHAEL MALOUF

**NEW JOB TITLE:** Chicago-based managing partner and CEO, Willis of Illinois Inc.

**PREVIOUS POSITION:** Schaumburg, Ill.-based senior vice president for global sales and strategies for the Metlife Global Solutions team.

**CHALLENGES FACING INDUSTRY:** Employers are faced with a great deal of price pressure and challenges related to the due diligence that they undertake, whether it is in casualty or human capital. They are under more pressure than ever on the heels of the economic crisis.

**FIRST EXPERIENCE IN JOB MARKET:** I was a service supervisor in the Chicago market at Metlife almost 28 years ago, dealing directly with customers. Of course, learning was a big part of this role in terms of growth and understanding of this business. Learning all aspects of insurance contracts was my goal and objective back then. It was a neat way to start out.

**ADVICE:** Persistence without exception. Stay focused on your goals. Surround yourself with wise people. Stay accountable for your goals. Maintain your integrity, and do what's right for yourself and the folks around you.

**OUTSIDE THE INDUSTRY, A DREAM JOB:** I'm in a dream job. I love this industry. I am really having fun. I am very passionate about this business.

**HOBBIES:** I love boating and being on the water. That's my favorite thing to do. Maybe that's what I would do (as a dream job); I'd be a boat captain.

**FAVORITE BOOK:** The most recent favorite book, because there are many, is "Unbroken: A World War II Story of Survival, Resilience, and Redemption," by Laura Hillenbrand. Talk about persistence without exception.

**FAVORITE MEAL:** I like just about everything. ... But a traditional Thanksgiving dinner I love.

**ON A SATURDAY AFTERNOON:** Work associated with things around the house or reading, or doing something related to work. I also hang out with the family. Life and work need to be in balance. It's any combination of those things.

## Comings&Goings

**VISIT** [www.businessinsurance.com/ComingsandGoings](http://www.businessinsurance.com/ComingsandGoings) for a full list of this week's personnel moves and promotions. Check our website daily for additional postings and sign up for the weekly email.

### TO SUBMIT ITEMS

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

Anna Gaynor  
*Business Insurance*  
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[agaynor@businessinsurance.com](mailto:agaynor@businessinsurance.com)

### POSTING THIS WEEK

#### BROKERS

- Poms & Associates Insurance Brokers Inc.
- Sterling & Sterling Inc.
- Marsh Inc.
- Ames & Gough

#### INSURERS

- Markel Corp.
- Zurich Insurance Co. Ltd.
- Arch Insurance Group Inc.
- Ironshore Australia

#### OTHER PROVIDERS

- CS Stars L.L.C.
- The Segal Group Inc.

## Products&Services

### Pizza delivery coverage offered by Willis

Willis Group Holdings P.L.C. has launched an insurance program tailored to the pizza delivery industry.

Called PizzaGuard, the program is available to franchised and independent pizza delivery restaurants.

The coverage provided through PizzaGuard includes owned and nonowned auto liability coverage up to \$2 million, but nonowned auto is only available with the business owners policy, which includes property and general liability coverages.

Other products include equipment breakdown, employee theft of money and losses in transit to bank, and food-borne illness.

The program is available in all states, except in Arkansas, Hawaii, Massachusetts and Vermont.

For more information, contact Karen Kiernan, PizzaGuard program manager, at 800-825-2700 or [karen.kiernan@willis.com](mailto:karen.kiernan@willis.com).

### Thomco expands coverage for medical transportation

Thompson Insurance Enterprises L.L.C., which does business as Thomco, is expanding its coverage for the medical transportation

industry, the Markel Corp. unit announced.

Starting in October, Thomco will offer improved property extension endorsements as well as general liability and auto endorsements. Excess liability coverage also will increase.

The Kennesaw, Ga.-based company was acquired by Markel in January. It offers property, general liability, professional liability, commercial auto, inland marine and excess liability products through its Ambulance Plus and Para-Transit Pro programs. Its Hospital Fleet Complete program includes commercial auto, inland marine and excess liability.

For more information, contact Kent Clements, vice president, medical transportation, at 800-877-0949 or [kent.clements@thomcoins.com](mailto:kent.clements@thomcoins.com).

### Aspen U.S., Axiom expand marine offerings

Aspen U.S. Insurance and Axiom Insurance Management Ltd. will expand their offerings for commercial marine businesses.

Effective Oct. 1, Aspen U.S. will write inland and coastal brown water hull accounts and commercial marine operations, which include ship repairers, stevedores, terminals, wharfingers and char-

ters, the insurer announced in a statement.

The company has worked with Axiom, an Atlanta-based managing general agency, since 2011.

For more information, contact Rich Soja, executive vice president, marine, Aspen U.S., at 646-502-1031 or [richard.soja@aspen-insurance.com](mailto:richard.soja@aspen-insurance.com).

### Willis launches app for benefits enrollment

Willis North America Inc.'s human capital practice has launched an app to help streamline voluntary benefits enrollment into an enterprise resource planning human capital management system.

Called Benefits X-ChangeApp, the service simplifies the process of creating a real-time connection with an insurers' online underwriting and policy management databases, according to a Willis statement.

The app can be used during open enrollment, qualified life events or standalone enrollments, and provides an alternative option to building an internal program or using a third-party platform.

The program is available through Innotech Benefit Solutions, an employee benefit enrollment and communication firm and Willis North America subsidiary.

The system is available to employers using PeopleSoft for their human capital management system, but Willis plans to expand to additional systems in late 2012 or early 2013, the company said.

For more information, contact Tim Stofka, managing director, Innotech, at [T.Stofka@innotechbenefits.com](mailto:T.Stofka@innotechbenefits.com).

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## Cyber security webinar from BI

Cyber security is a major concern for many organizations, but the task of protecting sensitive data too often is seen as a concern solely for information technology departments.

Risk managers can play a vital role in establishing policies and protocols that help their organizations guard their data and react when a breach occurs. To do that, however, risk managers need to understand the threats and work closely with their IT departments, other corporate colleagues and insurance providers to collectively address data security issues.

In a *Business Insurance* webinar, "Cyber Risk Mitigation: Not just an IT problem," a panel of cyber risk experts will discuss how risk managers can expand their expertise and work with other departments within their organizations and insurers in an effort to actively manage cyber risks, and the webinar will provide an overview of how authorities view data breaches.

Presenters at the Oct. 16 webinar, which is sponsored by One Beacon Professional Insurance, are:

- Ethan Harrington, manager, risk and insurance at H&R Block Inc.;
- David J. Molitano, vice president and division manager content, technology and services division at OneBeacon Professional Insurance; and
- Nithan Sannappa, attorney at U.S. Federal Trade Commission's division of privacy and identity protection.

To register for the webinar, go to [BusinessInsurance.com/cyberwebinar](http://BusinessInsurance.com/cyberwebinar).

## TiVo: Patent settlement highlights big liabilities

CONTINUED FROM PAGE 3

technological innovations and our shareholders derive from our investments in protecting TiVo's intellectual property," President and CEO Tom Rogers said in a statement.

Verizon said in a statement it is pleased with the settlement.

The settlement is the latest development to reflect TiVo's aggressive strategy.

■ In May 2011, it settled patent litigation with Dish Network Corp. and EchoStar Corp., both based in Englewood, Colo., in which they agreed to pay TiVo \$500 million through 2017. The settlement also granted certain patent licenses to one another.

■ In January, TiVo reached a \$215 million settlement and mutual patent licensing arrangement with Dallas-based AT&T Inc.

■ Still pending is litigation involving New York-based Times Warner Cable Inc. and San Jose, Calif.-based Cisco Systems Inc., with Cisco and TiVo suing one another.

Commenting on the settlement, attorney Joel W. Mohrman, a member of law firm McGlinchey Stafford P.L.L.C. in Houston, said, "Nobody settles for that amount of money without a real concern there was liability for the allegations that were made" or that "the potential level of damages were so high — even if there was 1% liability — they didn't want to go there."

The outcome, though, provides little guidance to other companies because there is "never an absolute resolution to an issue" when a case is settled, Mr. Mohrman said.

The litigation has been "a profit center for TiVo," said E. Leonard Rubin, of counsel at Querry & Harrow Ltd. in Chicago. "TiVo may be making more money by filing these lawsuits than it would make simply licensing its technology to the various defendants who

they claim are infringing it."

The settling companies "aren't necessarily admitting any guilt. What they're really doing is saying, 'This is cheaper than pursuing litigation,'" said Mr. Rubin.

"Patents can be a real source of revenue for companies, separate and apart from their business," said C. Graham Gerst, a partner at Global IP Law Group L.L.C. in Chicago.

Mr. Rubin said the settlement may spur other companies to file patent litigation and hope to "settle for some huge amount," but he

**'TiVo may be making more money by filing these lawsuits than it would make simply licensing its technology to the various defendants who they claim are infringing it.'**

E. Leonard Rubin,  
Querry & Harrow Ltd.

also said "there has to be some sort of credible claim."

Robert W. Fletcher, president of Louisville, Ky.-based Intellectual Property Insurance Services Corp., a managing general agency that specializes in intellectual property insurance, said the pace of patent litigation has increased in the past two years.

Patent litigation can be costly, said Richard S. Betterley, president of Sterling, Mass.-based Betterley Risk Consultants Inc.

"If you are accused of violating a patent, you in effect are forced to stop selling whatever you're selling, because the damages start

accruing" from the day a company is notified of potential patent infringement, he said. "As a defendant, you're just almost forced into either settling right away and staying in business, or really taking a chance that you're going to be taken down in a big way" through years of litigation.

Karl Pedersen, Los Angeles-based senior vp with Willis North America Inc.'s FINEX North American cyber and errors and omissions team, said one strategy defending companies have used is to ask the U.S. Patent and Trademark Office to re-examine the patent's validity and whether it should have been issued in the first place.

As far as patent insurance, observers say capacity and limits offered are low with limited buyer take-up.

"There are a limited number of markets," said David Lewison, New York-based vp with AmWins Brokerage of New York. "A lot of buyers don't buy after they do a full patent search."

Furthermore, the amount of settlements that TiVo has reached "probably exceed what's available in the marketplace," which is only several million dollars, he said.

Mr. Fletcher said his firm can commit to \$10 million in coverage as a managing general agent for Lloyd's of London and for Ameritrust Insurance Corp., a unit of Southfield, Mich.-based Meadowbrook Insurance Group Inc.

Adequate coverage generally is not available for entities that have more than \$500 million in revenue, said Willis' Mr. Pedersen. Absent insurance, he said companies that want to protect their patent rights instead should take a proactive risk management approach that begins at the research and development stage and goes "all the way through active defense strategies."

Meanwhile, observers say one recent problem in the patent arena is "non-practicing entities." Mr. Fletcher said these entities, which also are known as patent trolls, "purchase patents for the sole purpose of suing people" for their violation.

## Katrina: Court's reversal saves Corps from liability

CONTINUED FROM PAGE 3

the same evidence, we're talking about the same trial court opinion and we're talking about the same finding of facts. One has to ask: What has changed?"

The Department of Justice, which is defending the Army Corps of Engineers, declined comment.

"I don't see this as a big change in the law," Paul Figley, associate director of legal rhetoric and torts at American University in Washington, said of last week's ruling. Had the 5th Circuit stuck to its earlier ruling, "that would have been a big change," he said.

"This is of such significance

that it would have gone to the Supreme Court," Mr. Figley said. "The Supreme Court has been constant in its support for the discretionary-function exception, figuring if there should be a change, it's a change that Congress should make."

The U.S. government generally cannot be sued except to the extent that Congress has waived the government's sovereign immunity.

"The difficulty for plaintiffs is that MRGO was not just an engineering project, it was also a major policy decision as to where to put the channel, how to put it there, how to support it, build it up and maintain it," said Mr. Figley, who was a former deputy director in

the torts branch at the Department of Justice.

"The rules will continue to apply as they always have" for commercial insurers as a result of the decision, Mr. Figley said.

"This has broad ramifications as to many other individuals in the area who have potential Katrina claims," Duane Morris' Mr. Gordon said.

Disasters such as Katrina often bring flood insurance concerns to the forefront for business owners and homeowners and could increase demand for such coverage, he said.

"There might be more pressure posed by the government to make this type of insurance affordable," Mr. Gordon said, citing as an example the National Flood Insurance Program, which offers protection in certain flood risk areas where private coverage is difficult or impossible to obtain.

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## Exchange: Big employers join Aon health exchange

CONTINUED FROM PAGE 1

have about the plans offered, will be compensated by fees and commissions paid by insurers that participate in the program.

While the health care coverage will be offered through an exchange, employers still will be plan sponsors. As a result, their premium contributions will be tax-deductible, while employees will be able to pay their share of the premium on a pretax basis.

Health care observers say the exchange model is appealing, especially for smaller companies that either don't offer coverage or

want to expand choices offered to employees but don't have the resources to do so.

"There are employers that want to focus on their core business and do not want to take on the challenges of offering and administering health care plans," said Michael Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York.

On the other hand, a significant percentage of employers, especially larger organizations, want to offer their own individually designed plans as integral to their strategy of attracting and retaining employees, Mr. Thompson said.

Others note that employers, especially those that self-fund their health care plans, will have to analyze whether the exchange approach is cost-effective, noting that premium rates charged by participating insurers will include a margin for their profit.

"Employers will have to evaluate for themselves whether this will save them money," said Steve Raetzman, a partner with Mercer L.L.C. in Washington.

Several organizations, including Aon Hewitt, Extend Health, which Towers Watson & Co. purchased this year, and Xerox Corp. unit Affiliated Computer Services Inc., offer retiree health care coverage through a network of insurers. Many plans offered in those exchanges supplement coverage provided in the federal Medicare programs.

## Hartford: Life sale puts focus on P/C business

CONTINUED FROM PAGE 4

property and casualty company, which we believe will have a positive impact on its valuation," Charles Murphy, an analyst at Paulson & Co., said in a statement.

In a research note, Standard & Poor's Ratings Services praised the deal as a way for Hartford to bolster capital and reduce debt leverage, and said the deal would not affect Hartford's credit ratings.

When complete, the move will expand Prudential's market share

in universal, term and variable life insurance. According to data from industry association LIMRA International Inc., the combined business will rank among the top five largest individual U.S. life insurance companies in recurring premium volume.

Edward Shields, Chicago-based associate director of the research department of Sandler O'Neill & Partners L.P., said the deal will increase Prudential's asset base by roughly 44%.

"It's largely a bolt-on acquisition that complements the busi-

ness they already have," Mr. Shields said. "If Prudential had tried to do it organically through their own distribution system with their own products, it would have taken many years."

In a statement announcing the deal, John Strangfeld, chairman and CEO of Prudential Financial, said the combined unit will benefit from an expanded distribution network and enhanced product offerings.

Hartford's individual life insurance business "represents a unique opportunity for us to acquire a very high-quality life insurance business with talented people, complementary capabilities and financial performance consistent with our objectives," Mr. Strangfeld said.

## Court: Justices to hear several class action cases

CONTINUED FROM PAGE 3

U.S. Circuit Court of Appeals held in favor of the retirement plan.

Foreign affairs and business converge in yet another case before the court, *Esther Kiobel et al. v. Royal Dutch Petroleum Co. et al.* At issue is whether the Alien Tort Statute of 1789 applies to conduct outside the United States.

During the NCLC briefing, Andrew J. Pincus, a partner in Mayer Brown's Washington office, said the plaintiffs in the case are taking a broad position

that "U.S. courts are open for business" to provide a civil remedy for anyone who is injured anywhere in the world.

The case was brought on behalf of the widow of Barinem Kiobel, a Nigerian activist who was executed in 1995. The plaintiffs allege that Royal Dutch Shell bribed witnesses to give false testimony to a special tribunal that sentenced Mr. Kiobel and others to death.

Lower courts had rejected the plaintiffs' position, but the Supreme Court agreed to hear the

case, and held oral arguments in February. A few days later, the court said it was postponing its review until this term, and instructed lawyers on both sides to file new arguments as to whether the Alien Tort Statute allows U.S. courts to permit lawsuits for violations of international law that took place in foreign territory.

The court also will deal with an employment case — *Mayetta Vance v. Ball State University et al.* — that asks whether the supervisor liability rule under Title VII of the Civil Rights Act of 1964 applies to workplace harassment by people who oversee and direct a victim's daily work or whether it is limited to those who have the power to hire, fire, demote or otherwise affect their victim.

## inBrief

CONTINUED FROM PAGE 1

Colo., have filed a lawsuit against theater company Cinemark USA Inc. In two separate lawsuits filed recently in U.S. District Court for the District of Colorado in Denver, the victims claim that Cinemark failed to provide adequate security to prevent the July 20 attack by suspect James Holmes, who allegedly killed 12 people and injured dozens after bursting into Cinemark's Century 16 theater in Aurora, Colo., and opening fire during a premier of "The Dark Knight Rises."

### Group health spending increases in 2011

Group health care spending in the United States accelerated last year, according to a new analysis. For those covered by employer plans, spending on health care services increased by 4.6% to \$4,547 per plan enrollee. By contrast, in 2010, costs rose an average of 3.8%, according to the Health Care Cost Institute.

### Board members see more liability risk

A majority of corporate board members say their liability risk has increased during the past several years, according to a survey by consulting firm BDO USA L.L.P. Sixty-three percent of the more than 70 corporate members of public company boards surveyed said their liability as a director has increased, according to the August survey of firms with annual revenues ranging from \$250 million to \$750 million.

### Calif. work comp reforms prompt rate filing change

California's Workers Compensation Information Rating Bureau plans to amend its 2013 rate filing to recommend no rate increase for next year in light of recent workers comp reforms passed in the state. The WCIRB's governing committee voted 6-5 in favor of amending the bureau's rate filing. The bureau previously had requested

a 12.6% average pure premium rate increase effective Jan. 1 for new and renewing policies.

### Percentage of workers in HDHPs jumps

The percentage of employees enrolled in high-deductible health care plans has jumped during the past five years, according to a new government study. During the first quarter of 2012, 27.5% of group health care plan participants were enrolled in a high-deductible plan, up from 15.6% in 2007, the National Center for Health Statistics said.

### NFL to freeze referee pension plan

The National Football League will freeze its pension plan covering referees at the end of the 2016 season under an agreement that settles a highly publicized labor dispute. The NFL had sought to immediately freeze the plan, which it said was too expensive. But under the compromise agreement with the National Football League Referees Association, the plan will continue for five more seasons for current officials. Retirement benefits will be provided through a defined contribution plan to new referees immediately and for all officials beginning in 2017.

### Atlanta transit system paying high health costs

Atlanta's public transit system paid nearly 20% above the national average for its employee health benefits programs in 2011, an independent audit of the agency's finances has found. Medical premiums cost the Metropolitan Atlanta Rapid Transit Authority an average of \$11,556 per employee in 2011, 18% higher than the national per-employee average of \$9,792, according to a KPMG L.L.P. audit.

### S.D. declines to set up insurance exchange

South Dakota will not set up a state health insurance exchange where the uninsured, among others, could use premium subsidies authorized by the health care reform law to buy coverage, South Dakota Gov. Dennis Daugaard said. "After extensive research and analysis, it has become very apparent that operating our own exchange will simply not work for South Dakota," Gov. Daugaard said.

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## CUE LAWSUIT: BUYER FAULTS TRANSPARENT POOL TABLE

A company in Texas has filed a lawsuit claiming it was hustled by the maker of a glass pool table.

A company identified as Desert Beach L.L.C. in an Orange County, Calif., court filing is suing Adelaide, Australia-based Nottage Design Pty. Ltd. for fraud, breach of warranty and false advertising after the glass surface on the table became scratched. The suit says the \$73,000 table failed to live up to the claims of durability made by Nottage.

"The transparent glass table top of Nottage Design's tables is coated with a proprietary playing surface called 'Vitrik,' which Defendants described as a highly durable surface," the lawsuit states. "In reality, the 'Vitrik' playing surface is a highly delicate surface that easily scuffs and scratches with the use of any standard pool ball, which Plaintiff unfortunately learned the hard way when a set of standard pool balls destroyed its table."

Moreover, the plaintiffs accuse the defendants of playing dirty pool by modifying the FAQ section on their website to include a warning about using standard pool balls only after the plaintiffs complained.



## Lucky dog survives to take home award

From a near-death experience of being buried alive beneath the deck of his owners' New Jersey home to the fame and recognition that accompany being named Veterinary Pet Insurance Co.'s 2012 VPI Hambone Award winner, Peanut has had quite a year.

Peanut, a dachshund-terrier mix and, apparently, inveterate chaser of four-legged critters, took his first steps toward the recognition in October 2011 when he chased a skunk beneath the deck and wound up not only skunked but buried alive.

Having been unsuccessful in attempting to locate the dog, first responders from the Winslow Township Fire Department in Sicklerville, N.J., ultimately regretfully informed Keith and Christy Wolfram they'd done all they could. Seeing Christy continue to dig, however, one firefighter decided to take another

look and spied Peanut's paw.

After the first responders administered oxygen to poor Peanut, the Wolframs took the skunked and barely breathing pooch to a 24-hour veterinary clinic, where he was treated for hypothermia and kept under care for two days. A couple of weeks later, Peanut was good as new and on his way to a Hambone.

In addition to the bronze trophy in the shape of a ham recognizing Peanut's adventure as VPI's most unusual medical claim of the year, Peanut will receive a swag bag full of dog toys, treats and a pet emergency kit. Voters chose Peanut's story as worthy of VPI's fourth annual Hambone from among those of 12 pets selected by Brea, Calif.-based VPI as this year's nominees after reviewing more than 1 million claims.



## INMATES SUE IN TEETH OF FLOSS BAN

Denying jail inmates dental floss violates their civil rights, says a group of prisoners who filed a lawsuit seeking \$500 million from Westchester County, N.Y.

In their 25-page complaint, they say the jail's refusal to let them floss is causing cavities and pain and ruining their teeth, according to news reports. Even though they say in their lawsuit that they brush three times daily, "tongue and gums included," they still suffer from bleeding gums as well as mental anguish.

But jail officials say dental floss presents security problems. It can be used to attack other inmates and has been used in attempts to saw through prison bars.

The lead plaintiff in the case, Santiago Gomez, is in jail on a weapons possession charge and filed the lawsuit without counsel.

There may be some alternatives to dental floss, one observer told a local newspaper. Dentists sometimes advise prisoners to remove threads from their clothing.

But it's not the first lawsuit the lead plaintiff has filed from behind bars.

He has sued police for ignoring his calls for help when anxiety caused by his arrest triggered breathing troubles, and he claims that he suffered from post-traumatic stress disorder.

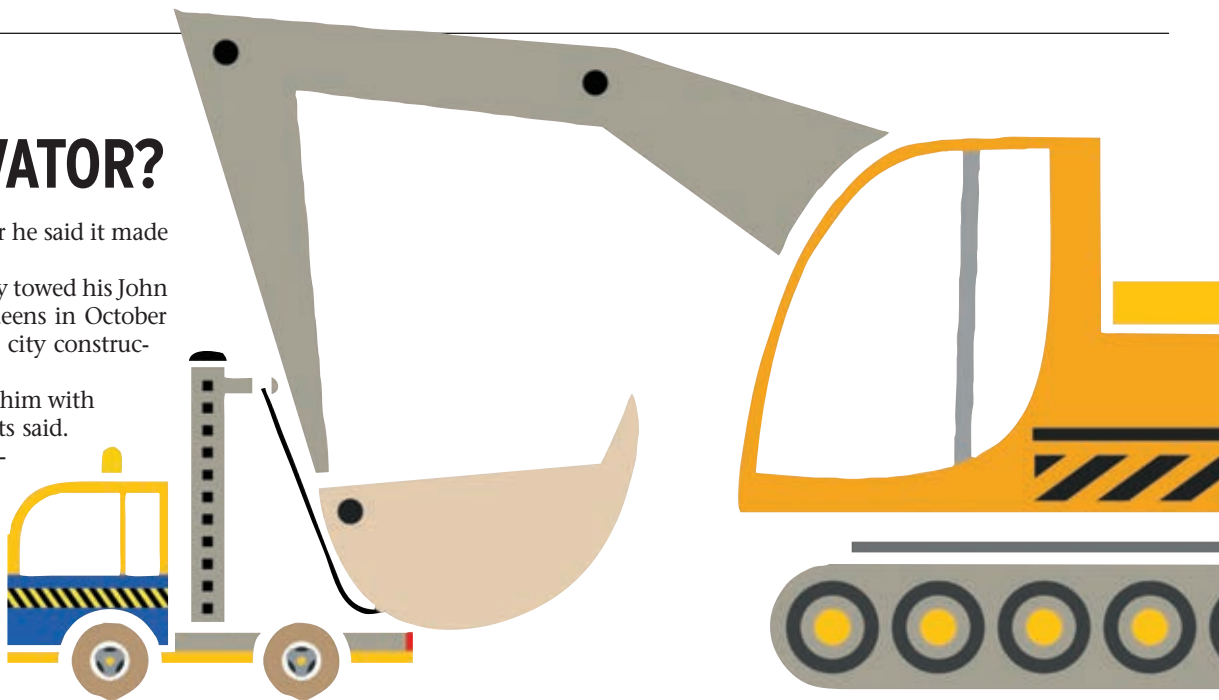
## DUDE, WHERE'S MY EXCAVATOR?

A New York man is suing New York's sanitation department after he said it made a 40,000-pound excavator vanish into thin air.

In court records, Jeff Clemente claimed that the city improperly towed his John Deere hydraulic excavator while it was "lawfully parked" in Queens in October 2011, reports say. The machine reportedly was being used for a city construction project.

Mr. Clemente said the sanitation department failed to provide him with information about the vehicle when he called to claim it, reports said. In records, Mr. Clemente said he still does not know the excavator's whereabouts or the machine's condition.

Mr. Clemente is seeking \$130,000 from the city for the value of the excavator. The New York law department is reviewing the lawsuit, according to the New York Post.



# 2012

# Business Insurance's WOMEN TO WATCH LEADERSHIP WORKSHOP AND AWARDS LUNCHEON



DECEMBER 4, 2012, NEW YORK CITY

## KEYNOTE SPEAKER:



Photo: Deborah Feingold

**Suzy Welch,**  
The best-selling author, popular television commentator, and noted business journalist will be the keynote speaker at the Leadership workshop.

## CONFIRMED SPEAKERS:

**Beth Bierbower,** President, Employer Group Segment, Humana

**Bonnie Boone,** Senior VP and Health Care Practice Leader, Alliant Healthcare Solutions

**Helene Fisher,** Commercial Head Underwriting Quality, Chartis

**Trevor Gandy,** Chief Diversity Officer, Chubb Corp.

**Deborah Luthi,** President of Risk & Insurance Management Society

**Seraina Maag,** CEO, of XL North America

**Carol Murphy,** Managing Director, Aon Risk Solutions

**Kathleen Savio,** Chief Administrative Officer, Zurich North America

## FULL DAY AGENDA

7:30 - 11:30 a.m.	Leadership Workshop Registration Open
7:30 - 8:15 a.m.	Networking Welcome Breakfast & Registration
8:15 - 8:30 a.m.	Welcome Address
8:30 - 9:30 a.m.	Session 1: A Juggling Act: Achieving Effective Work Life Balance
9:30 - 10:00 a.m.	Keynote Speaker: Suzy Welch, author, "10-10-10"
10:00 - 10:30 a.m.	Coffee Break and Book Signing
10:30 - 11:15 a.m.	Session 2: Show Me the Money: Bridging the Wage Gap
11:30 - 12:00 p.m.	Registration for Awards Luncheon Open [for people only attending the luncheon]
11:15 - 12:30 p.m.	Session 3: Using Sponsorship to Break into the Executive Suite
12:30 - 2:55 p.m.	Women to Watch Awards Luncheon
1:00 p.m.	Luncheon Keynote: <i>Tweet this: How Social Media can Make or Break Your Reputation</i>
3:00 p.m.	Final Comments & Program Closes

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