

DRUG TESTING

Doctor visits for drug testing of injured workers in California have soared since 2004.

Year	Visits	Total billed
2004	4,012	\$224,031
2006	6,833	\$610,418
2008	28,642	\$4.1 million
2011	186,023	\$38.5 million

Source: California Workers' Compensation Institute

WORKERS COMPENSATION

Tests for use of illicit drugs paid via comp

Opioid screening tests for cocaine, meth

BY ROBERTO CENICEROS

With increased urine drug screening to monitor patients taking opioid painkillers, doctors also are ordering tests to reveal use of drugs such as cocaine and methamphetamines.

But testing for illicit drug use — requested by physicians, who can bill for conducting the tests in their offices or for sending urine samples to a lab for analysis — increases workers compensation payer costs and raises questions about the necessity of the tests.

Various medical-treatment guidelines for treating injured workers call for periodic urine drug testing when doctors prescribe addictive opioid pain medications long term. That testing helps doctors learn whether patients are complying with opioid prescribing directions and not

See **OPIOIDS** page 44

HEALTH CARE REFORM

BIPARTISAN SUPPORT GROWS FOR REFORM LAW CHANGES

But significant hurdles remain in Congress



REUTERS

Bipartisan efforts to pass reforms of the health care reform law will need support from congressional leaders Senate Minority Leader Mitch McConnell, left, and Majority Leader Harry Reid.

BY JERRY GEISEL

For the first time in more than two years, congressional Democrats and Republicans are uniting to try to amend the much-maligned health care reform law.

This is a big change in Congress because House Republicans have repeatedly focused their legislative efforts on repealing — not amending — the law, while Democrats concentrated efforts on resisting those repeal attempts.

In recent weeks, proposals to delay one soon-to-take-effect Patient Protection and Affordable Care Act provision to impose new taxes on health insurers and a second provision to require most individuals to enroll in a health care plan or

See **REFORM** page 41

EMPLOYMENT PRACTICES

Ruling may curb aggressive EEOC strategy

BY JUDY GREENWALD

Employers can take heart from a recent appeals court ruling that criticizes the U.S. Equal Employment Opportunity Commission's aggressive litigation strategy over employment practices.

Despite the Oct. 7 ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Equal Employment Opportunity Commission v. Peoplemark Inc.*, employers should not necessarily expect any significant change in the agency's litigation strategy, at least in the short term, experts say.

The ruling followed several comparable rulings against the EEOC.

The appeals court panel decided in its 2-1 ruling that Memphis, Tenn.-based Peoplemark, a temporary employment agency, was entitled to more than \$750,000 in attorneys and expert fees in connection with a lawsuit that unjustifiably charged the firm with having a companywide policy of rejecting job applicants who are felons, in violation of Title VII of the Civil Rights Act of 1964.

The ruling said that in the course of the EEOC's investigation, a company official's initial statement that it had such a companywide policy was untrue. Once the EEOC learned this, it should have reassessed its claim.

"From that point forward, it was unreasonable to continue to litigate the commission's pleaded

See **PEOPLEMARK** page 45

ON THE TABLE

Changes under consideration by lawmakers and regulators to the Patient Protection and Affordable Care Act:

- Delaying by two years a new tax on health insurers.
- Revising the definition of a full-time employee to determine whether employers could be charged a penalty if they do not offer coverage to employees.
- Delaying by at least one year the fine on individuals for not enrolling in a health care plan.
- Partially exempting certain firms from a "reinsurance" fee to reimburse insurers covering high-cost individuals.

U.S. MID-MARKET

Health care reform law spurs midsize employers to embrace voluntary benefits

PAGE 8

INTERNATIONAL

Country profile of Jordan; Solvency II delay may slow insurers' ERM efforts

PAGE 12

U.S. REINSURANCE RENEWALS

Influx of alternative capital affecting market conditions for Jan. 1 renewals

PAGE 3



Q&A: JULIAN JAMES

As president of Allied World Assurance Co. Holdings A.G.'s European platform, Julian James speaks about his plans to grow the company's business in Europe and Asia, its recent move into the aviation sector, and what he's learned from his previous roles as CEO of Lockton International and at Lloyd's of London.

PAGE 34

COMMENTARY

ROBERTO CENICEROS
SENIOR EDITOR



Employers need to provide proof in fresh AIG suits

New lawsuits alleging that AIG may have underreported workers comp premiums for years longer than previously thought, raise interesting questions.

PAGE 14



ST. JOHN'S UNIVERSITY

THE PETER J. TOBIN COLLEGE OF BUSINESS

School of Risk Management, Insurance and Actuarial Science

Insurance Leader of the Year 19TH ANNUAL AWARD DINNER

The Board of Overseers honor

Robert H. Benmosche

*President and Chief Executive Officer
American International Group, Inc.*

as the 2013 Insurance Leader of the Year

January 15, 2014 • The New York Marriott Marquis



Congratulations from the School of Risk Management Board of Overseers

Dean
BRANDON W. SWEITZER

Chairman of the Board
BRIAN DUPERRAULT
*Retired President and CEO,
Marsh & McLennan Companies, Inc.*

Directors
W. ROBERT BERKLEY, JR.
*President and COO,
W.R. Berkley Corporation*
GREGORY C. CASE
President and CEO, Aon plc
JOHN CLEMENTS
*Managing Partner,
Tara Investment Partners LLC*

JAMES F. DOWD
*Chairman - International,
Tiger Risk Partners*

STANLEY A. GALANSKI
*President and CEO,
The Navigators Group, Inc.*

PETER F. GARVEY
*President and CEO,
Integro Insurance Brokers*

MAURICE R. GREENBERG
Chairman and CEO, C.V. Starr & Co., Inc.

JOHN J. HENDRICKSON
*Director of Strategy,
Risk Management and Corporate
Development, Validus Group*

MICHAEL HUEBSCH
Managing Director, BlackRock

HEIDI E. HUTTER
Principal, Black Diamond Capital

KEVIN H. KELLEY
CEO, Ironshore, Inc.

JOHN W. KEOGH
*Vice Chairman and COO, ACE Limited
Chairman, ACE Overseas General*

ANTHONY J. KUCZINSKI
*President and CEO,
Munich Reinsurance America, Inc.*

DOUGLAS M. LIBBY
*Chairman and CEO,
Crum & Forster Insurance*

JOHN L. LUMELLEAU
President and CEO, Lockton, Inc.

BRIAN MACLEAN
*President & COO,
The Travelers Companies, Inc.*

ALAN J. MAGUIRE
*President and CEO,
AEGIS Insurance Services, Inc.*

WILLIAM A. MALLOY
*President and CEO,
The Wright Insurance Group
Partner, Aquiline Capital Partners LLC*

SCOTT MARCELLO
*National Leader, Financial Services,
KPMG LLP*

RICHARD MAYOCK
Partner, PricewaterhouseCoopers LLP

MIKE MCGAVICK
CEO, XL Group plc

H. ELIZABETH MITCHELL
*President and CEO, Platinum Underwriters
Reinsurance, Inc.*

FRANKLIN (TAD) MONTROSS, IV
*President, Chairman and CEO,
General Re Corporation*

MICHAEL J. MORRISSEY
*President and CEO,
International Insurance Society*

THOMAS F. MOTAMED
*Chairman and CEO,
CNA Financial*

DAVID PAGOUMIAN
CEO, NAPCO

MICHAEL S. PRITULA
Director, McKinsey & Company

DANIEL RIORDAN
*CEO, Zurich Global Corporate,
North America*

HEMANT SHAH
*President and CEO,
Risk Management Solutions (RMS)*

VICTORIA SHOAF, Ph.D., C.P.A.
*Dean,
The Peter J. Tobin College of Business,
St. John's University*

CYNTHIA R. SHOSS
Partner, Sutherland Asbill & Brennan LLP

RICHARD G. SPIRO
*Executive Vice President and CFO,
The Chubb Corporation*

ELLEN THROWER, Ph.D.
*Professor Emerita,
School of Risk Management,
St. John's University*

PETER J. TOBIN
*Dean Emeritus,
The Peter J. Tobin College of Business,
St. John's University*

MARIO P. VITALE
CEO, Aspen Insurance

TAD WALKER
*President and CEO, PartnerRe,
North America*

HANK WATKINS
President, Lloyd's North America, Inc.

MARK E. WATSON III
*President and CEO, Argo Group
International Holdings*

JAMES J. WRYNNE
Partner, Goldberg Segalla LLP

PETER ZAFFINO
President and CEO, Marsh Inc.

Directors Emeriti

JOHN J. AMORE

DONALD J. GREENE

JOSEPH MAURIELLO

BRIAN M. O'HARA

PATRICK G. RYAN

PATRICK J. SHOVLIN

ROBERT J. SMITH

FOR AWARD DINNER INFORMATION CONTACT: LORELEI ENTERPRISES/355 LEXINGTON AVENUE, 3RD FLOOR, NEW YORK, NY 10017 - TEL: 212-838-2660 EXT. 15



CONTENTS

FEATURES

RISK MANAGEMENT

MID-MARKET



Management liability costs up

Private companies are seeing costs for management liability coverage rise as insurers keep a cautious eye on exposures. **6**

PERSPECTIVE

Confronting worker obesity



Workers comp insurers must step up to the challenge of obesity and see opportunities instead of

liabilities, says William Gallagher Associates' Philip Edmundson. **36**

OFF BEAT



Fab Four film footage flap

"Help, I need somebody" could be a plea for a lawyer from a company that wanted to distribute a Beatles documentary. **48**

SECTIONS

INTERNATIONAL 12

OPINIONS 14

MARKET PULSE 32

PEOPLE 34

PERSPECTIVES 36

OFF BEAT 48

NEWS

REINSURANCE

LOWER PRICES, MULTIYEAR DEALS SEEN FOR REINSURANCE RENEWALS

Flood of capital, lack of catastrophes favor cedents

BY MATTHEW LERNER

BOSTON — U.S. reinsurance market conditions look soft for the upcoming Jan. 1 renewal season, as the industry sees an influx of alternative capital and ends a benign Atlantic hurricane season this month, according to industry executives.

Overall, the sector remains healthy and reinsurers may benefit from early contract closings and multiyear deals. More than \$10 billion of alternative capital flowed into the reinsurance sector from the end of 2011 through June 30, said David Flandro, managing director and head of global business intelligence for Guy Carpenter & Co.

The difference between this and past capital inflows, however, is this time the boost is supply-driven rather than event-driven, Mr. Flandro said, citing the major capital influx after Hurricane Katrina in 2005.

"This is the first supply-driven capacity inflow," said Mr. Flandro, describing it as "a big change" and "really significant."

"The supply keeps coming in, and is really changing the way the sector funds itself," he said during the Property Casualty Insurers Association of America's annual meeting in Boston.

The wave of funding will hit reinsurers negotiating renewals for the start of 2014, said New York-based Tracy Dolin-Benguigui,



Reinsurance pricing is expected to soften as a benign hurricane season has left South Florida and other areas unscathed by storms so far in 2013.

Standard & Poor's Corp.'s director of financial services ratings for North American insurance.

"Terms and conditions (of reinsurance contracts) will be affected by the alternative capital," she said.

"We will definitely see downward pressure at Jan. 1," renewals, said Minneapolis-based Phillip Bowie, executive vice president and managing director for regional business at Willis Re. Regional business is defined generally as cedents with less than \$1 billion in annual revenue with a maximum geographical reach of between six and 10 states, though usually less.

"The (U.S. reinsurance) market is getting softer," Mr. Bowie said during the PCI October conference, indicating this trend became visible in the November and

December 2012 pretrading of June 1 property contracts. "Some reinsurers misread the marketplace in 2013 and didn't understand how the new capacity would play. We knew because we completed pretrades with alternative markets. If you didn't pretrade, you didn't see the market change as early as you should have."

In fact, midyear U.S. hurricane-exposed property renewals for regional cedents were down 15% to 25% or more, Mr. Bowie said.

"The degree differs, but the direction is there," said Mr. Flandro, noting that year-over-year numbers for July U.S. reinsurance renewals were off 12.5% to 30% broadly on nonloss-affected business.

See PCI page 42

CYBER RISKS

Cyber security framework welcomed

Voluntary plan may spur broader coverage

BY JUDY GREENWALD

A voluntary cyber security framework proposed for critical U.S. infrastructure ultimately could help protect noncritical data and lead to expanded cyber coverage by insurers.

Meanwhile, insurers have been asked to provide incentives to encourage wider acceptance of the proposed guidelines.

In its proposal last month, the National Institute of Standards and Technology responded to President Barack Obama's executive order in May that was a component of a broader effort to strengthen the cyber security of the nation's critical infrastructure.

The framework NIST proposed discusses five core functions in keeping information and systems safe: Identify such risks, protect systems, detect attacks, respond to incidents and recover afterwards (see box, page 46).

"From the beginning, the president envisioned this as a voluntary effort that would be based on consensus standards and industry best practices to the extent possible," NIST Director Patrick Gallagher said in a statement. "From the beginning, we wanted to make sure that this was something that would be flexible and able to be tailored to the needs of individual businesses and organizations."

President Obama's executive

See CYBER page 46

Business Insurance names Frank Quigley as publisher

Frank Quigley has been named publisher of *Business Insurance*.

Mr. Quigley will oversee the entire print, digital and events business of *Business Insurance*. He is based in the publication's main office in Chicago.

He reports to Chris Battaglia, vice president, group publisher of *Pensions & Investments* and *Business Insurance*.

Prior to joining *Business Insurance*, Mr. Quigley was vice president, general manager of RDA Enthusiast Brands, based in Milwaukee.

Previously, he was president and CEO of CFO Publishing, then part of The Economist Group. He also served as president of the Securities Group

at SourceMedia, where he was responsible for publications such as The Bond Buyer, Employee Benefit News, Financial Planning, On Wall Street, Investment Dealer's Digest and Insurance Networking News.

"*Business Insurance* is one of the key Crain Communications Inc. brands and I am pleased to have Frank in this top leadership position," Mr. Battaglia said.

"*Business Insurance* has launched a number of innovations and Frank's expertise in leveraging and growing digitally centered business models is an invaluable asset to have on our team," he said. "We have a strong com-

mitment to ensuring *Business Insurance* remains the leader in its community of corporate risk managers, agents, brokers and the insurance industry, and Frank will be a great steward for our brand leading us to new growth opportunities."

Mr. Quigley graduated from the University of Florida with a bachelor of science degree in advertising from the College of Journalism & Communications.

He replaces Mark L. Stach, who left the publication earlier this year.

Mr. Quigley can be reached at fquigley@businessinsurance.com and at 312-649-5347.



Mr. Quigley

11/4/13

ONLINE
FEATURES

SOLUTION ARC

How the insurance industry can attract, retain top talent

Look beyond traditional sources to cultivate the best employees.

www.BusinessInsurance.com/
TalentArc2013

VIDEO



Broker Tech Insights

Business Insurance explores how brokers are using technology to better analyze risks for clients.

www.BusinessInsurance.com/
PredictiveModelsVideo

AWARD

Risk Manager of the Year®

Business Insurance opens 2014 Risk Manager of the Year® nominations.

www.BusinessInsurance.com/
RMOY2014

AWARD

Innovation Awards

Nominations for Business Insurance's 2014 Innovation Awards are now open. Nominate an innovative product in the categories of risk identification, risk control, risk financing and risk assessment/analysis. Deadline is Dec. 16.

www.BusinessInsurance.com/
Innovation2014

BUSINESS INSURANCE (ISSN 0007-6864)
Vol. 47, No. 22, is published biweekly by Crain Communications Inc., 150 N. Michigan Ave., Chicago, IL 60601-7620. Periodicals postage is paid at Chicago and at additional mailing offices.

POSTMASTER: Email address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, MI 48207-2912. \$10 a copy and \$149 a year in the U.S. \$169 in Canada and Mexico (includes GST). All other countries, \$249 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850. GST No. 136760444. Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in USA. Copyright © 2013 by Crain Communications Inc.

NEWS

AGENTS & BROKERS

BROKER FACILITIES AT LLOYD'S
RAISE UNDERWRITER CONCERNS

Added capacity poses threat to small insurers

BY SARAH VEYSEY AND MARK A. HOFMANN

The launch of another broker-backed London market facility offering guaranteed capacity may lead to more efficiency in the market, but the facilities have raised concerns over underwriting control and could marginalize smaller Lloyd's of London syndicates, experts say.

Willis Ltd. last month revealed its previously announced Global 360 London market facility will be supported by Berkshire Hathaway Inc., Hiscox Ltd. and the People's Insurance Co. of China. The subsidiary of London-based Willis Group Holdings P.L.C. said it was in discussions with other Lloyd's syndicates that might participate.

Berkshire Hathaway also is backing a similar insurance side-car facility established by Aon P.L.C. in March. Under that set up, Berkshire Hathaway participates on 7.5% of the business placed by Aon that has Lloyd's participation.

Willis said its facility will offer follow-market capacity for aviation, space, construction, specialty



Willis Ltd. last month said Berkshire Hathaway Inc., Hiscox Ltd. and the People's Insurance Co. of China will participate in its Global 360 facility.

See **WILLIS** page 37

RISK MANAGEMENT

Health care providers face up to workplace violence

BY SHEENA HARRISON

AUSTIN, Texas — Risk managers need to work with senior leaders at health care systems to create prevention strategies that can reduce incidences of violence against medical providers.

Several dynamics can lead to violence in hospitals and other medical facilities, including substance abuse, stress from dealing with medical bills and problems with navigating a complex health care system, said Diane Doherty, New York-based vice president of Ace Medical Risk, a division of Ace USA.



Ms. Doherty said all medical groups need to acknowledge that violence can occur in their organizations and should work to craft up-to-date violence prevention programs that take a medical system's unique vulnerabilities into account. This includes encouraging employees to report acts of vio-

lence in health care facilities and getting buy-in from senior managers to take a zero-tolerance approach to violent acts in the workplace.

"Preventing workplace violence is everyone's responsibility," Ms. Doherty said. "It takes a multidisciplinary team approach, and the risk manager plays an important role in leading and guiding that team."

Ms. Doherty made her comments in a session on violence in hospitals during the American Society for Healthcare Risk Management's

See **ASHRM** page 40

WORKERS COMPENSATION

Self-insureds eye predictive modeling

BY SHEENA HARRISON

CHICAGO — Predictive modeling among workers compensation insurers is presenting a challenge to self-insured groups, who are facing off with insurers that are offering increasingly competitive pricing.

Predictive technology can be helpful identifying "migratory catastrophe claims" — comp claims that seem relatively minor at first but last for years and result in significant costs — said Steven J. Link, executive vice president and chief innovation officer for Midwest Employers Casualty Co. in Chesterfield, Mo.

Mr. Link gave the example of an injured worker whose claim costs had reached \$388,000 and who was taking 11 medications before Midwest Employers' excess comp coverage kicked in. The insurer entered the worker into a functional restoration treatment program, allowing the woman to return to work and to stop taking her prescriptions within six months of the intervention.

"Had we picked it off in six months instead of five years and the interventions occurred sooner, we would have saved that \$388,000, or a big chunk of that, plus a lot of the pain and misery that person went through," Mr. Link said, adding that Midwest Employers has begun using predictive modeling to catch such claims early on.

His comments were made during the Self-Insurance Institute of America Inc. annual conference held Oct. 21-23 in Chicago.

While models can help reduce claim costs and duration, they also are allowing traditional insurers to provide competitive workers comp pricing to some clients instead of throwing out entire books of business, such as construction firms, Mr. Link said. He said that dynamic has hurt self-insured groups during the soft workers comp market.

Insurers are "smarter about what they're hanging onto and they're smarter about what they let go, and that's negative to the self-insured groups industry, who historically writes a whirlwind at this stage of the cycle," Mr. Link said.

Self-insured groups can work with consultants to take advantage of predictive modeling and

See **SIIA** page 38



“TAKE SHELTER IMMEDIATELY.” A WARNING THE FACTORY WAS POWERLESS TO HEED.

After a tornado struck on a holiday weekend, causing devastating roof and structural damage, this auto parts manufacturer faced a daunting task: get back in business or risk a daily loss of \$300K in sales. We responded within three hours, and partnered with our customer to quickly have contractors set up a production/shipping operation in the parking lot. The company was fully operational by Monday morning. Partnership, knowledge, and quick response — three ways we help protect your business. To learn more, contact your agent or broker, or go to libertymutualgroup.com/propertycase

COMMERCIAL AUTO GENERAL LIABILITY **PROPERTY** WORKERS COMPENSATION GROUP BENEFITS

Insurance underwritten by Liberty Mutual Insurance Co., Boston, MA, or its affiliates or subsidiaries.



**Liberty
Mutual**
INSURANCE



Follow Liberty Mutual Insurance.



@lmbizinsurance

Helping executives at midsize firms and their brokers handle critical risks.

PRIVATE COMPANIES SEE COSTS RISE FOR MANAGEMENT LIABILITY COVERAGE

Despite plentiful capacity, insurers wary of increased exposures

BY JUDY GREENWALD

Employment practices liability claims and mergers and acquisitions are leading to higher rates for mid-market private company directors and officers liability insurance.

Private company D&O coverage, also known as management liability insurance, usually has four components: D&O, EPL, fiduciary and crime coverage.

Observers say one important difference between private and public D&O policies is there is entity coverage available for the former, and most include duty-to-defend provisions.

Experts stress that the value of this coverage is that it protects directors' personal assets (see related story).

"This has been an exciting sector since the end of 2011, and what has been happening now is, most middle-market accounts are getting 5% to 10% increases that may be closer to 5% for the most part," said Phil Norton, Chicago-based president of the professional liability division at Arthur J. Gallagher & Co.

"There's still a lot of capacity in the marketplace, but the carriers in the market are becoming more selective in where they're willing to put that capacity," said Debbie Schaffel, Chicago-based managing director for Aon P.L.C.'s financial services group.

Geography is a factor, said Damien Magnuson, senior vice president at Los Angeles-based Executive Perils Inc.

"I'd say in the last year, at least half of the accounts I've worked on have seen an increase; and in California, it's probably 90% of the accounts" because claims are brought more frequently in California and defense costs are "quite a bit higher," Mr. Magnuson said.

"Costs continue to trend upward and frequency remains a constant," said Beth Goldberg, New York-based senior vice president and head of middle market at Zurich North America. Overall, the marketplace is managing retentions, attachment points, and terms and conditions, she said.

Ms. Schaffel said insurers also

PRIVATE D&O MARKET

■ There are approximately 9.5 million private companies in the United States.

■ Only 30% of private, nonprofit and governmental entities buy D&O insurance. Most executives said the threat of litigation was insufficient to warrant such coverage.

■ The most common causes of litigation are bankruptcy and creditor actions as well as shareholder, consumer and competitor suits.

■ Industries currently seeing higher D&O rates include nonprofit health care and educational facilities, technology firms, telecommunications, sports teams and sports leagues.

■ The highest D&O claim frequency and severity are in California, Texas and Florida.

Source: Advisen Ltd.



are cutting the limits they offer and requiring more information before underwriting. In addition, while insurers previously would have tended to respond to a threat to move the business elsewhere by backing down on their rate hike demands, now they are much more inclined to say, "If you can move it, move it," she said.

De'Andre Salter, founder and CEO of Warren, N.J.-based Professional Risk Solutions L.L.C., said while placing \$10 million primary coverage on a privately held D&O account would have been "fairly easy" during the softer market, today "the underwriters are managing their limits down to \$5 million and less on any individual account, and underwriters are asking more questions" before providing \$10 million in capacity.

Observers say rate hikes have been much more significant among private companies than among public firms.

The market was "probably already appropriately priced" for public company claims, while "the private management liability has probably been underpriced for quite some time," said Bryan Costello, CEO of San Rafael, Calif.-based Costello & Sons Insurance Brokers Inc.

"Historically, the employment practices liability portion of the

policy was thought to be the primary driver of claims frequency," said Alton Moore, San Francisco-based assistant vice president of specialty casualty underwriting at Liberty International Underwriters, a unit of Liberty Mutual Group Inc.

But because of conditions stemming from the 2008 financial crisis, there has been an unanticipated increase in D&O claims, Mr. Moore said. "Many private companies have either gone into bankruptcy proceedings, or full-out liquidation" because of the weak economy, he said.

"Many carriers, including ourselves, are really looking at the financial condition of the organization, and wanting to make sure that they can get through the next 12 to 18 months, especially when you're dealing with more startup organizations," said Lynette Lyygaas, senior vice president at Rolling Meadows, Ill.-based Monitor Liability Managers L.L.C., an underwriting management unit of W.R. Berkley Corp.

Increased mergers and acquisitions also factor into the rate increases.

M&A-related litigation activity has "been exploding," with well over 95% of mergers leading to litigation, said Michael B. Chester, a principal with law firm Boundas,

Skarzynski, Walsh & Black L.L.C. in New York.

Spiro K. Bantis, a partner with London Fischer L.L.P. in New York, said a frequent source of such claims is minority shareholders against stockholders who have a controlling interest.

Another factor, Mr. Chester said, is "there has been a tremendous amount of regulatory activity that's been going on," which is affecting even private companies. With increased regulatory activity "comes the potential for more claims against companies."

Mr. Bantis also pointed to fiduciary coverage's inclusion within mid-market management liability policies.

"You don't have the controls necessary you might have with bigger companies, where you can afford more manpower and there are people watching other people," Mr. Bantis said. People at mid-market companies may be "left to their own devices and, unfortunately, some of those people turn out to be dishonest."

Private company D&O also is more challenging to underwrite than public company D&O because there is relatively little public information available, said Michael Richmond, sales executive at the Chicago-based brokerage The Horton Group.

D&O COVERAGE NECESSARY FOR EMPLOYERS

Mid-market, private firms should obtain directors and officers liability insurance to protect their directors' assets and their own balance sheets, some experts say.

Industry data indicates that only 30% to 40% of the private company and nonprofit D&O market buys the coverage, said Alton Moore, San Francisco-based assistant vice president of specialty casualty underwriting at Liberty International Underwriters, a unit of Liberty Mutual Group Inc. unit.

"These claims can be quite costly, so therefore you want to protect your balance sheet," said Phil Norton, Chicago-based president of the professional liability division of Arthur J. Gallagher & Co.

Obtaining this coverage also protects the assets of the private company's owners, who often number just a few, said Mr. Norton.

"Even if the claims are meritless, you still need to have that indemnification to back you up to pay those legal bills," said Beth Goldberg, New York-based senior vice president and head of middle market at Zurich North America.

"Why use your balance sheet to protect you from an error or omission as manager, when there are products out there where you can transfer that risk for a set price?" asked De'Andre Salter, founder and CEO of Warren, N.J.-based Professional Risk Solutions L.L.C.

PRIVATE D&O MARKET

Despite a drop in limits placed, premiums written held steady.

Year	Limit placed (in billions)	Premium written (in billions)
2010	\$272	\$2.09
2011	\$306	\$2.16
2012	\$247.6	\$2.15

Source: Advisen.com

"When you compare defense cost exposure to the amount of premium, to me it's a no-brainer," said Spiro K. Bantis, a partner with law firm London Fischer L.L.P. in New York.

"I do expect more and more private companies to consider purchasing the coverage," said Mr. Moore. "Given the visibility and awareness of recent litigation against private companies, I think it's fair to say that nonbuyers would be beginning to buy" the coverage.

Ms. Goldberg warned, however, that D&O policies vary.

"Make sure you look at the policy's terms and conditions" to ensure they match with your risk profile and desired risk transfer, she said.

By Judy Greenwald

YOU GET SUPPORT AROUND THE WORLD, ONE ON ONE.

When you're passionate about what you do, you protect your company as best as you can. With Zurich International Programs, one point of contact helps tailor the insurance protection to your needs, and manages for you one of the world's largest customer service teams in insurance.



**ZURICH INSURANCE.
FOR THOSE WHO TRULY LOVE THEIR BUSINESS.**
zurich.com/internationalprograms



ZURICH[®]

Helping executives at midsize firms and their brokers develop benefits solutions.

MIDSIZE EMPLOYERS EMBRACE VOLUNTARY BENEFITS

Reform law seen as impetus to further expand offerings

BY JOANNE WOJCIK

While U.S. employers historically embraced employee-pay-all voluntary benefits as a way to boost their benefits offerings without increasing their costs, voluntary benefits are expected to become even more prevalent as employers re-evaluate their benefit strategies in response to the health care reform law.

While the most popular voluntary benefits offerings today are disability, life, vision and accident, gap programs, designed to supplement high-deductible health plans that increase employee out-of-pocket costs, are expected to move to the head of the pack.

Gap programs include critical illness and hospital indemnity, which pay a scheduled benefit to plan members diagnosed with certain conditions or who are hospitalized (see story, page 11).

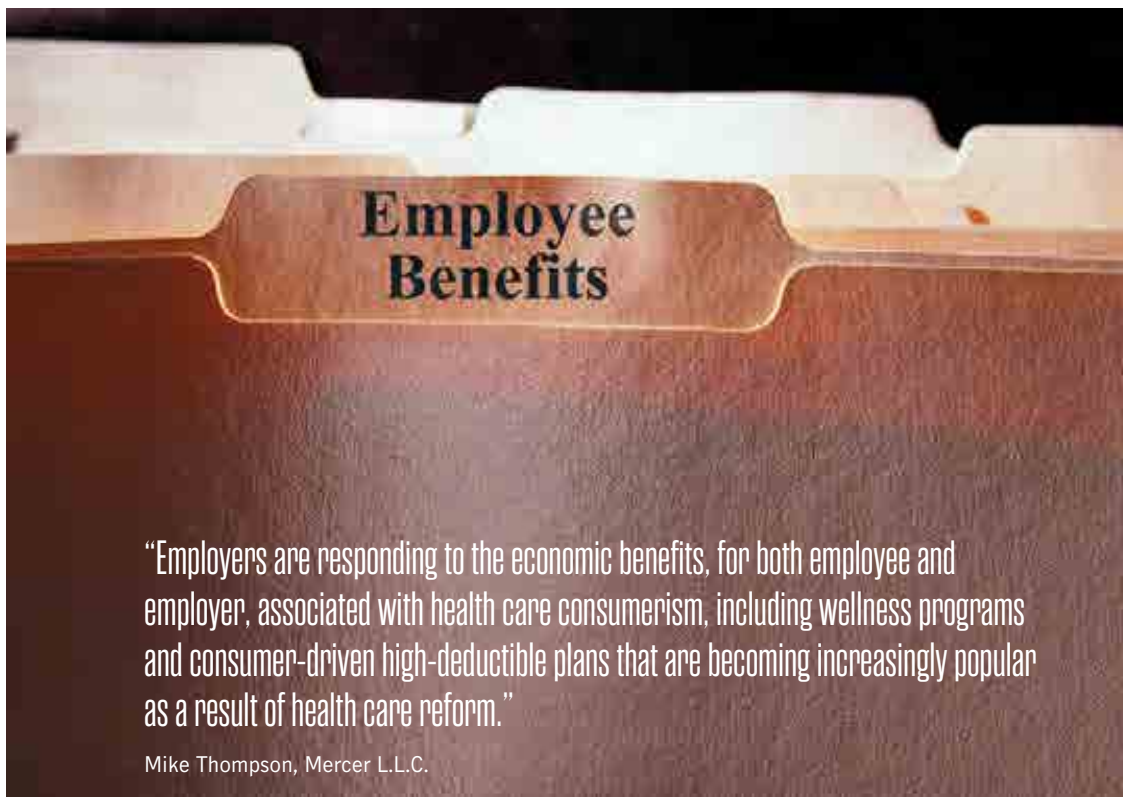
“Employers are responding to the economic benefits, for both employee and employer, associated with health care consumerism, including wellness programs and consumer-driven high-deductible plans that are becoming increasingly popular as a result of health care reform,” said Mike Thompson, Atlanta-based small and mid-market practice leader at Mercer L.L.C.

“Employers who offer CDHPs are positioning critical illness and hospital indemnity plans as an extension of the CDHP, enhancing the relevance and appeal of these products in conjunction with the overall messaging that CDHPs can be a lower-cost, higher-efficiency form of health care coverage,” Mr. Thompson said.

“Critical illness and hospital indemnity plans are increasingly viewed by employees as gap fillers to their traditional core medical coverage,” he said.

The percentage of employers that expect voluntary benefits to become very important to their total rewards strategy will more than double over the next five years, according to Towers Watson & Co.’s “2013 Voluntary Benefits and Services Survey” published in August.

The primary reasons companies



Mike Thompson, Mercer L.L.C.

cited for adopting these voluntary benefit offerings are to provide personalized benefits that fit employees’ needs and lifestyles and to enrich their total rewards packages, the survey found.

“As organizations consider new benefit strategies in the post-health care reform environment, they are seeking a delicate balance between providing their employees with a competitive rewards package and not inflating costs,” Mark Bilderback, senior health care consultant at Towers Watson, said in a statement. “We expect more employers to turn their attention to these benefits in the next few years.”

The suppliers of voluntary benefits also are bullish on this market.

Nearly 90% of insurers responding to a recent survey by Avon, Conn.-based Eastbridge Consulting Group Inc., a marketing advisory firm serving insurance and financial services organizations, expect sales of voluntary products to increase in the next 12 months. Reflecting a continuing upward trend, voluntary sales grew 6.6% to \$6.03 billion in 2012, up from \$5.66 billion in 2011, according to Eastbridge’s “U.S. Work Site/Voluntary Sales Report.” This compares

with sales of just \$4.03 billion a decade ago.

“A lot of brokers are selling these as companion plans to core products,” said Craig Hasday, chief operating officer of Frenkel Benefits L.L.C. in New York. “They are meeting a need. People have real exposure with higher deductibles and copays.”

They also are helping to replace brokers’ lost income as a result of the passage of the Patient Protection and Affordable Care Act, he added. Broker commissions for health benefits have been reduced as a result of the minimum medical loss ratio requirements that insurers must meet under the law, Mr. Hasday said.

“Prior to ACA, the offering of critical illness and accident had been out there for some time. They’ve always been popular among certain populations: accident with younger workers; critical illness with older workers,” said Bruce Sletton, senior vice president and national practice leader for elective benefits at Aon Hewitt in Dallas. “With employers embracing a defined-contribution approach to benefits, we’re seeing an increase in the offering of a high-deductible health plan and

employees certainly have a concern over the out-of-pocket risks that exist with one of those programs, so employees are looking to mitigate that risk.”

Dale Alexander, president of Alexander & Co., an insurance brokerage firm based in Woodstock, Ga., specializing in midsize and large educational systems, predicts that “we will see more medical gap or medical bridge policies helping people bridge these higher-deductible plans.”

In addition, he is seeing employers, especially in the middle-market, convert many core benefits, such as short-term disability and long-term disability, into voluntary, employee-pay-all programs.

“You’re starting to see voluntary products expand into other areas that once were employer-paid,” Mr. Alexander said.

“The cost of core benefits has gone up and budgets were cut during the recession, and maybe some core benefits are now being offered on a voluntary basis,” said Brian Celiberti, executive director of Crystal & Co. in New York. “Maybe it’s dental; maybe it’s disability. We do a lot more of that on a voluntary basis than we did years ago.”

VOLUNTARY BENEFIT SALES

Ninety percent of insurers expect an increase in sales of voluntary benefits to employer groups this year. While companies with more than 2,500 employees had the highest dollar value of voluntary benefit sales last year, the group with the greatest sales per employee was midsize employers with 500-999 employees. Estimated 2012 voluntary benefit sales, by employer size and in millions of dollars, were:

FEWER THAN 10
EMPLOYEES
\$263

10-25
EMPLOYEES
\$400

26-99
EMPLOYEES
\$863

100-499
EMPLOYEES
\$1,170

500-999
EMPLOYEES
\$571

1,000-2,500
EMPLOYEES
\$764

MORE THAN
2,500 EMPLOYEES
\$1,999

TOTAL
\$6,303

Source: Eastbridge Consulting Group Inc.

Who insures you doesn't matter. Until it does.



Financial Strength and Exceptional Claim Service

Property | Liability | Executive Protection | Workers Compensation | Marine | Surety
Homeowners | Auto | Yacht | Jewelry | Antiques | Accident & Health



RiskConversation.com



COMMUNICATION STRATEGIES BOOST INTEREST IN BENEFITS

Midsize employers more likely to promote voluntary benefits

BY JOANNE WOJCIK

Though employers with more than 2,500 employees typically account for the largest volume of worksite voluntary benefit sales, participation rates are higher among middle-market employers, research shows.

The most penetrated market segment for voluntary benefits in 2012 was the 500-999 employee segment, according to Avon, Conn.-based Eastbridge Consulting Group Inc., a marketing advisory firm serving insurance and financial services organizations in the United States and Canada.

The second-highest penetration rate was the 1,000-2,500 employee segment, Eastbridge's annual "U.S. Worksite Sales Report" showed.

These higher penetration rates are due, in part, to the fact that midsize employers typically provide more one-on-one education and communications to employees during open enrollment, said Dale Alexander, president of Wood-

stock, Ga.-based Alexander & Co., a member of United Benefit Advisors L.L.C., a network of more than 140 independent employee benefit advisory firms serving mostly middle-market clients in North

"Mid-market and small-market employers look to voluntary benefits as a way to offer broader choice in the benefit menu selection without incurring additional benefit cost."

Mike Thompson, Mercer L.L.C.

America and Europe.

"Smaller and midsize employers do have a tendency to perform better than larger groups," said Dennis Healy, vice president of group sales at ARAG Insurance Co., a Des Moines, Iowa-based provider of legal insurance. "They usually

have more comprehensive communications and a central location where employees talk around the water cooler," he said. "When you've got greater geographic dispersion, communication gets more difficult."

At midsize employers, "voluntary benefits are sold, not bought," said Craig Hasday, chief operating officer of New York-based Frenkel Benefits L.L.C. "Most middle-market employers have in-person enrollers," he said.

Moreover, "the human resources people take a much more one-on-one direct interest." In some cases, "they've seen situations where these benefits have been needed," Mr. Hasday said.

"Typically, the middle market has adopted voluntary benefits faster than the jumbo market," said Beth Grellner, St. Louis-based co-chair of the national voluntary benefits and services group at Towers Watson & Co.

Certain "gap policies," such as cancer or critical illness cover and

PENETRATION

During 2012, midsize employers were more likely to offer voluntary benefits to their employees than large employers in several categories. Benefits offered, by employer size, were:

Benefit type	50-199	200-499	500-999	1,000-4,999	5,000+
Disability	83%	85%	84%	83%	85%
Supplemental term life	74%	78%	89%	89%	89%
Vision	65%	76%	68%	81%	82%
Dependent term life	63%	68%	83%	83%	87%
Accident	53%	53%	55%	60%	58%
Critical illness	46%	47%	40%	37%	30%
Whole/universal life	40%	40%	36%	32%	31%
Hospital indemnity	26%	27%	20%	14%	12%
Long-term care	26%	24%	28%	32%	41%
Travel	15%	19%	13%	22%	23%
Auto/homeowner	4%	9%	12%	23%	35%

Source: Mercer L.L.C.

hospital indemnity, are more likely to be offered by small and midsize employers, according to the "2012 National Survey of Employer-Sponsored Health Plans" by Mercer L.L.C. (see chart).

A breakdown of data from that survey provided by Mercer to *Business Insurance* shows that cancer/critical illness insurance is offered by 37% to 46% of midsize employers. However, only 30% of jumbo employers, defined as those with 5,000 employees, provide cancer/critical illness insurance as a voluntary benefit.

In addition, hospital indemnity insurance is offered by 20% to 26% of midsize employers, but just 12% of jumbo employers.

Mike Thompson, Atlanta-based small and mid-market practice leader at Mercer, said the data reflects "simple economics."

"Smaller employers are frequently not able to match the breadth and depth of benefits that larger employers might. As a consequence, mid-market and small-market employers look to voluntary benefits as a way to offer broader choice," Mr. Thompson said.

Whole life cover with LTC rider fills a void

While group long-term care insurance has become rare, especially among middle-market employers, a type of whole life insurance is emerging that may provide some LTC benefits.

Genworth Financial Inc. is one of the few insurers that offers group LTC insurance products on a voluntary basis to employers with 500 or more employees, sources say.

The company said it will offer the benefit on a group basis to employers with 150 to 500 employees, but only if the cost of the product is picked up by the employer.

"The group long-term care market has all but dried up," said Bruce Sletton, senior vice president and national practice leader for elective benefits at Aon Hewitt in Dallas.

wrote LTC cover on a group basis have withdrawn, "what we are seeing is new development around products that will satisfy the need but are not solely long-term care products," said Beth Grellner, St. Louis-based co-chair of Towers Watson & Co.'s national voluntary benefits and services group.

For example, some insurers are offering group whole life with a long-term care rider, she said.

"Today, the vast majority of new long-term care policies sold are individual policies, which are individually underwritten," Mr. Sletton said. "But a whole life product with a long-term care rider is available on a group basis. Depending on the group's size, it could potentially be offered on a guaranteed-issue basis."

By Joanne Wojcik

POPULAR OFFERINGS

Popular voluntary benefits that are offered, by type of protection provided

Health	
Vision	84%
Dental	80%
Accident	68%
Critical illness	35%
Hospital indemnity	22%
Wealth	
Disability	80%
Legal	55%
Financial counseling	44%
Security	
Life insurance	94%
Long-term care insurance	36%
Personal travel accident	30%
Identity theft	25%
Personal	
Automobile	50%
Homeowners	49%
Pet	30%
Umbrella	15%

Source: Towers Watson & Co.'s "Voluntary Benefits and Services Survey"

Group plans growing for voluntary benefits

Many mid-market employers that previously could offer voluntary products to employees only on an individual or multilife basis may now be eligible for group plans.

Perhaps the only exception is long-term care insurance, which is available primarily on an individual basis due to the recent spate of insurer withdrawals from the group LTC market.

"Now many insurers are offering voluntary benefit products on a group basis to make it possible to enroll on self-serve platforms," said Bruce Sletton, senior vice president and national elective benefits practice leader at Aon Hewitt in Dallas.

"The trend has been toward group insurance products in the voluntary space," said Beth Grell-

ner, St. Louis-based co-chair of Towers Watson & Co.'s national voluntary benefits and services group. "For the third year in a row, we've seen group insurance (voluntary benefits) grow at a faster rate than voluntary products offered on an individual basis."

Group voluntary benefits provide guaranteed issue, regardless of employees' health status or age, and often come at a lower price than if the benefits been underwritten on an individual basis.

The downside, however, is that group products are guaranteed to be renewable only on a one-, two- or three-year basis, Mr. Sletton said. "The insurer has the right to review the products and then make price adjustments," or drop the group altogether, he said.

By Joanne Wojcik

Midsized firms expand voluntary benefits selections as part of total rewards strategy

BY JOANNE WOJCIK

While traditional voluntary benefits such as life, disability, dental and vision insurance remain popular, employees are buying more “gap insurance,” especially if they are enrolled in high-deductible health plans.

Since the Great Recession, employee interest also has been growing for voluntary products that provide legal and financial protection, experts say.

According to Towers Watson & Co.’s “2013 Voluntary Benefits and Services Survey,” the percentage of employers that expect voluntary benefits to be very important to their total rewards strategy will more than double over the next five years, jumping to 48% in 2018 from 21% this year.

Top offerings employers are considering adding over the next two years are critical illness, identity theft and financial counseling, the survey of 320 employers found.

The most prevalent voluntary benefit offerings are disability, life, vision and accident care, a Mercer L.L.C. analysis reveals.

Voluntary life insurance has been a longtime workplace offering, industry experts say.

“People understand it,” said Beth Grellner, St. Louis-based national co-chair of group voluntary benefits and services at Towers Watson. “They want to provide protection for their family if something were to happen to them.”

Dental and vision also are popular but beyond those traditional voluntary benefit offerings, “accident is becoming a front-runner,” especially among young families, Ms. Grellner said. “For \$4 a week, you can have an accident plan that will reimburse you for an emergency room visit when your kids need stitches. I bought it because I have kids in sports.”

“You’ll definitely see growth in accident, hospital indemnity and critical illness,” said Brian Celiberti, executive director of Crystal & Co. in New York.

Because of the trend toward high-deductible health plans and more cost-sharing, “employers are offering something to fill that gap,” said Pat Haraden, a principal at Longfellow Benefits in Boston.

For example, “sometimes they will pay up to half of the deductible,” Mr. Haraden said, whereas indemnity products “pay a flat dollar amount based on what they had done. They may get \$100 for going to the emergency room or \$500 or \$1,000 per day for having surgery or hospitalization.”

“There are only so many dollars

available to pay for these supplemental benefits,” which is why employers focus first on health-related products, said Bruce Sletton, senior vice president and national practice leader of elective benefits at Aon Hewitt in Dallas.

That said, “many mid-market employers are building up a total rewards strategy” using voluntary benefits, Mr. Sletton said.

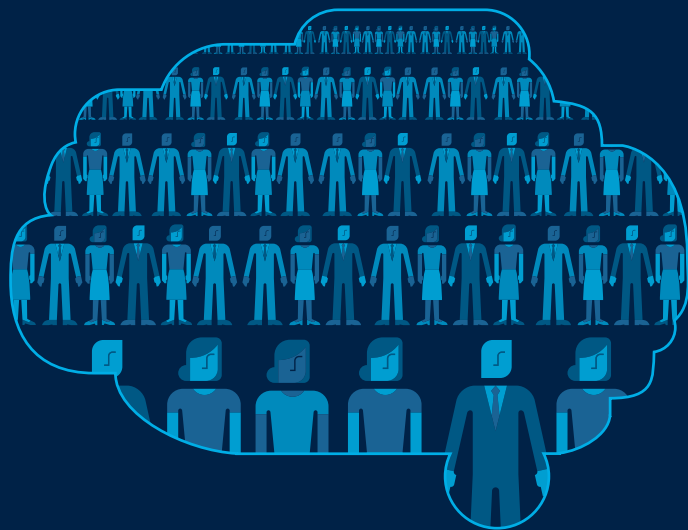
For example, some are “offering group auto and home, which provides discounts off the retail prices

that employees may be paying when purchasing these products individually,” he said. In addition, “we’re seeing a fair amount of renewed interest in group legal, pet insurance and identity theft coverage.”

Dennis Healy, vice president of group sales at ARAG Insurance Co., a Des Moines, Iowa-based provider of legal insurance, said sales of his company’s products have increased significantly since the recession ended.

PRUDENTIAL GROUP INSURANCE

IS THERE AN ROI TO HAVING FINANCIALLY HEALTHY EMPLOYEES?



Actually, yes—when you consider the possibilities of lower turnover, reduced absence-related costs and increased productivity. And when employees have the protection they need and deserve, you’ll find that they’re more engaged at work.

With voluntary benefits from Prudential Group Insurance, you can support your employees on their way to financial wellness by offering Life, Disability and Critical Illness* coverage. They’ll get convenient and affordable solutions from a carrier they know and trust—with little or no cost to you.

To learn more, contact Bob Patience, Vice President, Voluntary Benefits at 973-548-6233.

Download our white paper “Voluntary Benefits: A Critical Tool for Improving Employees’ Financial Wellness” at prudential.com/voluntaryinsights



Prudential
Bring Your Challenges®

© 2013 Prudential Financial and its related entities. Group Life and Disability Insurance benefits are issued by The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102-3777. Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide.

*Critical Illness is available to companies with more than 1,000 lives.

0230381-00002-00

Solvency II rollout delay may slow ERM efforts

■ The delay in the implementation date for Solvency II may slow European insurers' efforts to improve their enterprise risk management, Standard & Poor's Corp. said in a report. European Commissioner Michel Barnier announced this month that the start date for the set of risk-based capital rules for insurers and reinsurers in Europe would be delayed two years to Jan. 1, 2016. But S&P said that could delay insurers' ERM efforts.

77% of execs foresee more mergers: Survey

■ More than three-quarters of senior insurance merger and acquisition executives foresee an increase in M&A activity in Europe, the Middle East and Africa during the next three years, a survey by Towers Watson & Co. in London found. While 77% of respondents said they foresee an increase in insurance M&As in the EMEA region over the next one to three years, 22% predicted no change, and 1% said they expect M&As to decrease.

Retailers make changes in Bangladesh factories

■ British clothes retailer Primark Stores Ltd. and Canadian grocer Loblaw Cos. Ltd. laid out plans to pay more compensation for the collapse of a Bangladeshi factory that killed almost 1,130 people, as protesters demanded other brands follow suit. Meanwhile, sporting goods maker Adidas A.G. has signed a pact to promote the safety of garment workers in Bangladesh, picking a European-led initiative over a rival U.S. drive, it said. Adidas said although it had only limited production in Bangladesh, it thought that signing the Accord on Fire and Building Safety in Bangladesh would complement its own monitoring efforts in the country.

Reuters

Equinox increases capacity, adds syndicates

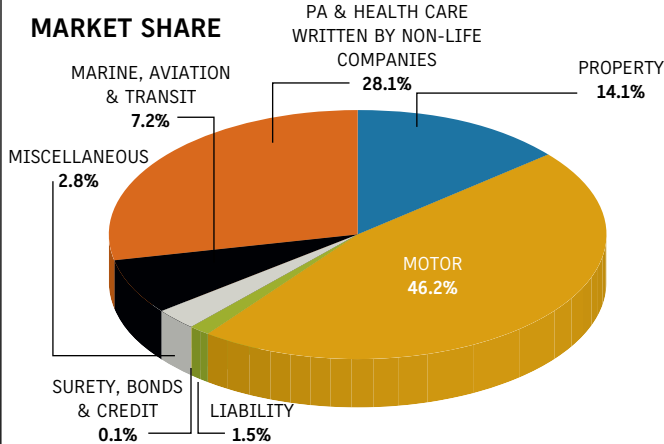
■ Equinox Global Ltd., a Lloyd's of London coverholder that specializes in trade credit, has increased its capacity to \$50 million from \$35 million and added three new syndicates to its carrier panel. Equinox said the increase in capacity would be effective Nov. 1. The company said it had added syndi-

PROFILE: JORDAN

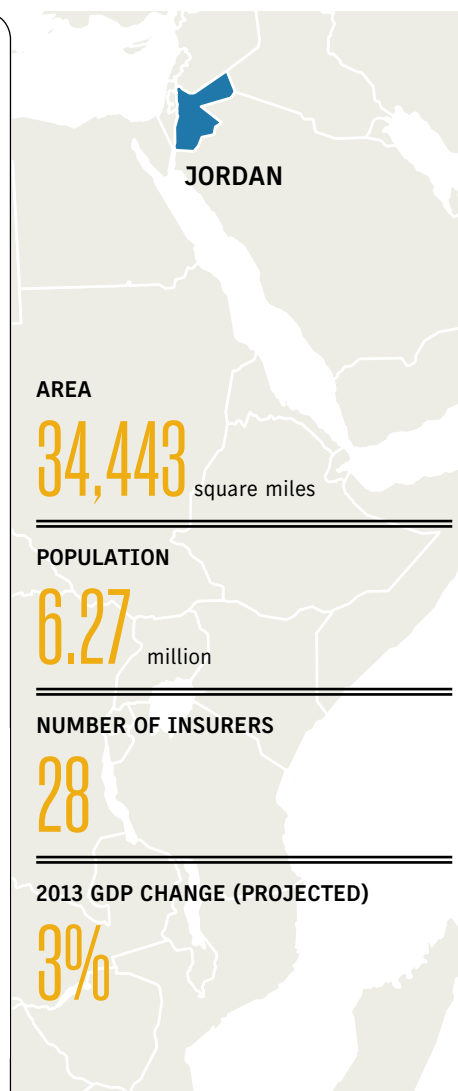
\$425.2
MILLION

The Jordanian insurance market is small and relatively underdeveloped but has shown steady growth over the past five years. Property/casualty premiums grew in 2012 largely due to an increase in auto and medical insurance premiums. Takaful, insurance that complies with Islamic principles, is available but accounts for only about 9% of the market. Insurance penetration in Jordan is more than double the average penetration in other Arab markets.

◀ 2012 P/C gross premiums



Source: Axco Global Statistics/Industry Associations and Regulatory Bodies



MARKET DEVELOPMENTS

UPDATED AUGUST 2013

- Compulsory fire and earthquake insurance for government and industrial or commercial buildings and contents was due to come into effect in March 2012 but full implementation was delayed until sometime in 2013.
- Liberalization of the compulsory auto tariff set to be introduced this year will be in two stages: Stage 1 will require insurers to obtain regulatory approval for rates they intend to charge, and they will not be allowed to change them for three months; Stage 2 will require that insurers only advise the regulator of their actuarially certified rates.
- In 2013, it was reported that the Jordanian insurance regulator, the Insurance Commission, would remain independent. This follows an announcement in 2011 that it was to be merged with another government department.
- The loss ratio for compulsory auto business showed a marked improvement in 2012 with an increase in premiums accompanied by a decline in claims paid. Despite the improvement in results, three insurers have decided to withdraw from the market.

COMPULSORY INSURANCE

Various lines of insurance are compulsory, including:

- Auto third-party liability
- Aviation liability
- Public liability for hotels and restaurants
- Clinical trials liability
- Shipowners' liability for oil pollution
- Professional liability for insurance intermediaries

NONADMITTED

Nonadmitted insurance is not permitted in Jordan because the law provides that insurance must be purchased from locally authorized insurers. The only exception to the prohibition on nonadmitted placements is for aircraft owned by Royal Jordanian Airlines. Proposed amendments to the law may allow other exceptions to be granted for risks that cannot be covered in the local market.

INTERMEDIARIES

Intermediaries must be authorized to do insurance business in accordance with Jordanian regulations. Brokers have a small share of the market, as much of the commercial business in the market is derived directly from insurers' shareholders through longstanding family or business relationships. For large programs, a panel of co-insurers is arranged by the lead insurer, and international reinsurers are approached if additional capacity is needed.

MARKET PRACTICE

Jordanian insurance buyers comply strictly with the requirements of the insurance legislation that risks be insured locally. If required by a multinational policyholder, risks can be fronted.

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

cates managed by Barbican Group, Canopus Group and Chaucer Holdings P.L.C. to its panel of underwriters, which also includes syndicates operated by Aspen Insurance Holdings Ltd., Beazley P.L.C., Jubilee Group and Pembroke Managing Agency Ltd. Barbican will supply \$5 million of the extra capacity, Canopus \$2 million and Chaucer \$1.5 million, Equinox said. Aspen, Beazley and Pembroke have agreed to increase the capacity they supply to Equinox by \$6.5 million between them.

German insurers urge end to low interest rates

■ Germany's insurers urged an end to low interest rates, which threaten to push them into losses in the coming years. Insurers say low rates, combined with tough new capital rules, are limiting options

for a sector that has about €8.5 trillion (\$11.05 trillion) in assets under management in Europe and which politicians hope will help pull the continent out of the economic doldrums. German insurers are suffering in particular because savings policies they sold in the past carried high guaranteed interest rates of 4% or more. The German benchmark 10-year government bond yield stands at 1.76%.

Reuters

Siemens wins dismissal of suit alleging bribery

■ A U.S. judge has thrown out a lawsuit accusing Germany's Siemens A.G. of funneling kick-backs to Chinese and North Korean hospital officials, narrowing the ability of plaintiffs to use U.S. courts to sue over conduct outside the country. U.S. District Judge

William Pauley in Manhattan said the anti-retaliation provision of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act financial reform law, which shields whistle-blowers from discipline for reporting alleged violations by their employers, did not apply to conduct outside the United States.

Reuters

Marathon struggles to exit Libya amid unrest

■ Libya has blocked efforts by U.S. company Marathon Oil Corp. to sell its stake in one of the country's top oil ventures by moving to preempt a deal, sources said, highlighting the struggle investors face in cutting exposure to Libya's unrest. Two years of turmoil since the Arab Spring and tough contract terms have prompted oil

firms to reassess their role in Libya.

Reuters

Varying theories emerge on Tokyo earthquake risk

■ Competing theories regarding earthquake risk in the Tokyo area are emerging in the wake of the Tohoku earthquake of 2011, a report issued by Guy Carpenter & Co. L.L.C. finds. The report notes that while one widely cited study suggests stress changes to fault lines in Japan have increased by a factor of 2.5 the probabilities of earthquakes with magnitudes higher than 6.5 near Tokyo, another study contends the stress increase caused by the Tohoku earthquake is being released in a manner that does not produce earthquakes and thus is not increasing long-term risk near Tokyo.

1.8 seconds from now, you'll discover a major defect in the grip adhesive.

And suddenly, the cost of goods sold jumps from \$78 to \$1,078. We are experts in risk. Arguably, the best in the business. But the world of product liability gives even us pause. *You stopped making them years ago. You just acquired the retailer. A supplier made the defective part.* It doesn't matter. No one is safe anymore. All the more reason to know exactly where you stand. Or might stand, years from now. Did we mention, it's complicated? Watch the film: Milliman.com/PL.



EDITORIAL

COURT RULING PUTS BRAKES ON EEOC

The U.S. Equal Employment Opportunity Commission's questionable policy of "shoot first, aim later" when it comes to filing litigation against companies may be drawing to a close at last, to employers' considerable relief. A ruling last month by the 6th U.S. Circuit Court of Appeals in Cincinnati in *Equal Employment Opportunity Commission v. Peplemark Inc.* criticized the agency for pursuing a lawsuit against a temporary agency even after it became clear pretty early on that its litigation had been based on incorrect information, and that it should have done more due diligence before filing the lawsuit.

But instead of withdrawing the litigation, as it should have, the EEOC persisted with the case and is now left with a \$750,000 bill for attorney fees that must be paid at taxpayers' expense.

The appellate court ruling was blunt. From the point when it learned its litigation was unjustified, "it was unreasonable to continue to litigate the Commission's pleaded claim," the 6th Circuit said.

This is not the only such case where the EEOC has come under disapproving judicial scrutiny — there have been several others, and experts expect there will be more to come as other judges take note of these rulings.

The EEOC says publicly that it has no plans to change its litigation strategy, but some experts believe these rulings cannot help but give officials at the agency pause to reconsider, and that the agency eventually will modify its stance.

For now, though, firms sued by the EEOC unfortunately still face the quandary, in cases where they feel they have done no wrong, of either sticking to their guns and risking exorbitant legal bills, or swallowing hard and agreeing to a settlement.

But they still should be encouraged by the direction in which matters are moving. And, of course, the best course remains for firms to continue to do their best to remain out of the EEOC's crosshairs to begin with by introducing good antidiscrimination policies, thoroughly investigating any complaints, and remediating discrimination wherever it is found in the workplace.

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:
Letters to the Editor, *Business Insurance*,
150 N. Michigan Ave., Chicago, Ill. 60601-7524

Fax: 312-280-3174; email: gsouter@businessinsurance.com

SCHILLERSTROM



COMMENTARY

EMPLOYERS MUST SHOULDER BURDEN OF PROOF IN AIG SUIT

American International Group Inc. underreported its workers compensation premiums years longer than previously reported, if new allegations filed by attorneys seeking to represent employers in several new lawsuits are true.

However, the plaintiffs say they don't yet have proof to back that claim. So it will be interesting to see whether these lawsuits advance and if plaintiffs have to prove that allegation.

I also find the employer plaintiffs in these recently filed lawsuits interesting. One of them is tied to Palm Medical Inc. The occupational medical clinic gained attention a few years ago for winning \$1.1 million in a lawsuit claiming that the California State Compensation Insurance Fund unfairly excluded it from the insurer's preferred provider networks.

The California Chamber of Commerce opposed that lawsuit, fearing it would undermine insurer and employer ability to reduce costs by selecting network members.

But before proceeding, allow me to background readers unfamiliar with the roots of the topic at hand.

The lawsuits recently filed in California, New Jersey and New York seek to represent employers as a class. They claim employers suffered harm when AIG, over several decades, escaped premium assessments and taxes by allegedly underreporting workers comp premiums to state regulators across the country.

The underreporting allegations first surfaced in 2006, when then-New York Attorney General Eliot Spitzer accused AIG of the activity. But reports back then said the underreporting stopped around 1996.

In 2012, AIG paid \$146.5 million to regulators in all 50



**ROBERTO
CENICERÓS**
SENIOR EDITOR

states to settle the 2006 allegations. A year earlier, AIG agreed to pay a \$450 million settlement to several rival workers comp insurers who also claimed harm from the alleged underreporting.

But now plaintiffs in the new cases claim that employers also should get compensated because AIG harmed them, too.

As I said, the new employer plaintiffs make this lawsuit interesting.

One employer is a small, Newark, N.J., body shop that began operations in 1998, about two years after reports said AIG's alleged underreporting stopped. So whether the body shop was substantially harmed by AIG depends on whether the underreporting occurred longer than previously thought.

The New Jersey plaintiffs say allegations that AIG underreporting may have continued into 2007 surfaced in the earlier litigation. But they say evidence pointing to that remains under seal.

The California lawsuit, meanwhile, lists Franjo Inc. as a plaintiff, and Franjo maintains the same Fresno, Calif., address and telephone number as Palm Medical. And the same law firm that represented Palm Medical in its lawsuit against California's SCIF now represents Franjo against AIG.

Following this case will remain interesting for several reasons — among them seeing whether the attorneys and Franjo, or Palm Medical, prevail again.



We are  insured.

Insurance for Directors & Officers | acegroup.com/us

What does it mean to be ACE insured?

It means our company, management team and board are protected by an AA- rated global insurer. ACE people truly understand the unique and complex risks facing a multinational company and go out of their way to help. With ACE's experience and global footprint, we are protected today and in the future – and wherever our business takes us. We can focus on our business knowing that ACE is there when we need them.

SPECIAL REPORT

Professional Liability Report

Health care reform may trigger change in med mal pricing

PAGE 17

Construction revival expected to lead to more A&E claims

PAGE 21

Financial crisis fallout affects rates for law firms

PAGE 26

Real estate bust still affecting realtor E&O

PAGE 19

Class actions pose the greatest risk for franchisors

PAGE 22

Perspective: SEC settlements no longer routine

PAGE 28



BUYERS TREATED TO SOFT LANDING

Some insurance rates edging higher, but competition limits increases

BY JUDY GREENWALD

Much depends on an individual policyholder's line of business and loss experience when it comes to pricing for professional management liability insurance, also known as errors and omissions coverage.

While the market generally remains relatively soft, there has been some hardening, and companies in problematic lines of business such as real estate are likely to see less competition among insurers and higher rates, observers say.

There is, however, plentiful capacity available in the excess layers.

While not a true hard market, E&O overall has become a more difficult market, said Christopher Goettelmann, Palm Beach, Fla.-based executive vice president at Professional Risk Solutions L.L.C.

"We've seen a bifurcated approach between new and

renewal business," said David Powell, New York-based senior managing director at Aon Risk Solutions' professional services group, a unit of Aon P.L.C. Insurers are "more competitive on new business than they would be on the renewal book that they currently write."

They also are differentiating between high-hazard and low-hazard risks, while policyholders with poor loss histories "get a different approach" than those with good loss histories, Mr. Powell said.

Geoffrey Allen, New York-based executive vice president at FINEX North America and national cyber and E&O product leader at Willis North America Inc., said professional liability is distinct from other E&O lines.

Law firms' or accountants' risk appetites and loss experiences are "very likely to be largely, if not radically, different from the more general E&O market, so those same markets are going to be their own drummer, to a large extent" when insurers price professional liability coverage, he said.

The more general E&O market, he said, can be any ser-

vice provider or technical product provider. It also can include management consultants, computer programmers and media companies, said Mr. Allen.

As this year started, general E&O underwriters thought they had to increase rates 5% to 10% "to make up for many years of a soft market" and a deteriorating loss experience. But significant competition has meant underwriters wanting higher rates have been somewhat held in check "by the broader market dynamic," he said.

Excluding professionals with very serious claims or in a difficult class of business, "most of our clients are seeing their renewals coming in flat, with no increase to maybe a point or two up," Mr. Allen said.

"We do even have insureds where competition has been very heated for their business amongst insurers, leading to rate reductions," he said. "A well-run company with good loss experience, with good risk management, can see anywhere from a slight reduction to a flat renewal, with maybe a little bit of an increase

REFORM LAW MAY TRIGGER CHANGE IN SOFT MEDICAL MALPRACTICE PRICING

But strong insurer results, new entrants to market may keep cap on rates

BY JOANNE WOJCIK

The medical professional liability insurance market has remained soft for nearly a decade as insurers continue to post strong results due to positive claims experience despite a shrinking number of buyers.

However, changes in the health care delivery system as a result of continued industry consolidation and the federal health care reform law could lead to some market tightening, medical malpractice insurance experts warn.

In the meantime, new entrants to the medical malpractice insurance market are helping to fuel competition (see story, page 18).

"It's an unusually long, soft market phase," said Henry Witmer, an assistant vice president of property/casualty ratings at Oldwick, N.J.-based A.M. Best Co. Inc. and co-author of a May special report, "Medical Professional Liability Writers Prosper, Despite Soften-



ing Market."

"Frequency has been precipitously declining. Together with flat severity, the companies have been generating profits. So they've been decreasing rates and issuing fairly substantial dividends to their policyholders. This can either be in the form of a check sent to the insureds or a discount on their renewal premium," Mr. Witmer said.

Indeed, the medical professional liability sector's underwriting and

operating results outpaced the property/casualty composite, according to the Best report.

"In the aggregate, this sector continues to be flush with liquidity and has produced positive operating cash flow and steady increases in surplus year over year," the report said.

At the same time, most medical professional liability insurers are enhancing member services, including risk management, continuing education programs and

aggressive legal defenses against nonmeritorious lawsuits, all of which are helping to keep claims costs in check, the report said.

Strong contrast

Today's soft medical malpractice market stands in strong contrast to the late 1990s, when a spike in claims triggered the last hard market.

"We had a liability spike lead to the 2002 and 2003 hard market,"

said Rob Francis, chief operating officer of The Doctors Co. in Napa, Calif., which was formed in 1976 after enactment of medical malpractice reforms in California, and is now the second-largest medical professional liability underwriter in the country.

"But in 2004, the number of claims started to decline, falling by an average of 40% across the country in just a couple of months," he said. The decline in claims was "partly due to improvements in patient safety, but the single biggest thing was the passage of a number of state tort reforms," Mr. Francis said.

According to Best, 42 states have enacted medical malpractice reforms.

One of the most notable was the passage of a constitutional amendment in Texas, which reduced the frequency of med mal claims 60% to 70%, Mr. Francis said.

"Even states like California that had tort reform in place since 1976 saw declines," he said. "With that frequency change, everything got better."

See **MED MAL** page 18

depending on specifics," he said,

Overall for miscellaneous, general E&O, there is "no problem. It's soft," said Peter Taffae, managing director at wholesale brokerage Executive Perils Inc. in Los Angeles. "There are 20 markets" for this business.

"Where you're going to run into problems" is real estate, including property managers, mortgage brokers and real estate brokers. "Anything that is associated with real estate, buckle your seatbelt," he said.

Rodger J. Laurite, Atlanta-based senior vice president of Lockton Cos. L.L.C.'s financial services practice, said rates have been flat to up a couple of percentage points on renewals for miscellaneous professionals, which includes consultants, trustees, staffing firms and third-party administrators.

For architects and engineers, rates are flat to up slightly; professional liability rates for lawyers are seeing at most moderate increases; rates for technology firms are soft; while rates for privacy and cyber coverage are very soft.

Focusing on accountants, lawyers, architects, engineers, cyber and commercial E&O, which includes miscellaneous media and technology coverages, Kenneth Rand, New York-based managing

director of Marsh Inc.'s E&O practice, said rates ranged from flat to up 5% in the second quarter.

While an uptick in claims is the basis for driving larger increases on select accounts, "that's balanced with still an abundance of capacity," which is keeping increases to a minimum, Mr. Rand said.

There is more competition in the excess layers than in the primary markets.

"We've certainly seen a bifurcated approach to primary or secondary layers vs. high excess layers," which insurers are "more inclined to participate in," while business in the lower layers is subject to "much more scrutiny," Mr. Powell said.

"Higher excess layers are still very competitive, but the insurers are looking to increase rates on the primary level," he said. "Capacity is being deployed more carefully for primary and lower excess layers," while "it remains relatively abundant" in the higher layers, he said.

Lockton's Mr. Laurite said there is significant competition in the \$5 million to \$10 million layers. As a result, "you might see an increase (in the primary layer) and manage to squeeze out a 5% decrease (in the excess layer), so overall it's flat," he said.

PRICING TRENDS

The rates insurers are charging for management liability insurance, also known as errors and omissions coverage, vary greatly depending on several factors. Current market trends include:

PRICING DEPENDS ON THE CUSTOMER'S LOSS HISTORY.

PRICING FOR MANAGEMENT LIABILITY COVER HAS HARDENED SOMEWHAT, BUT GENERAL E&O PRICES REMAIN SOFT.

WHILE UNDERWRITERS BEGAN THE YEAR SEEKING PRICE INCREASES, COMPETITION AMONG INSURERS HAS BLUNTED THAT TREND.

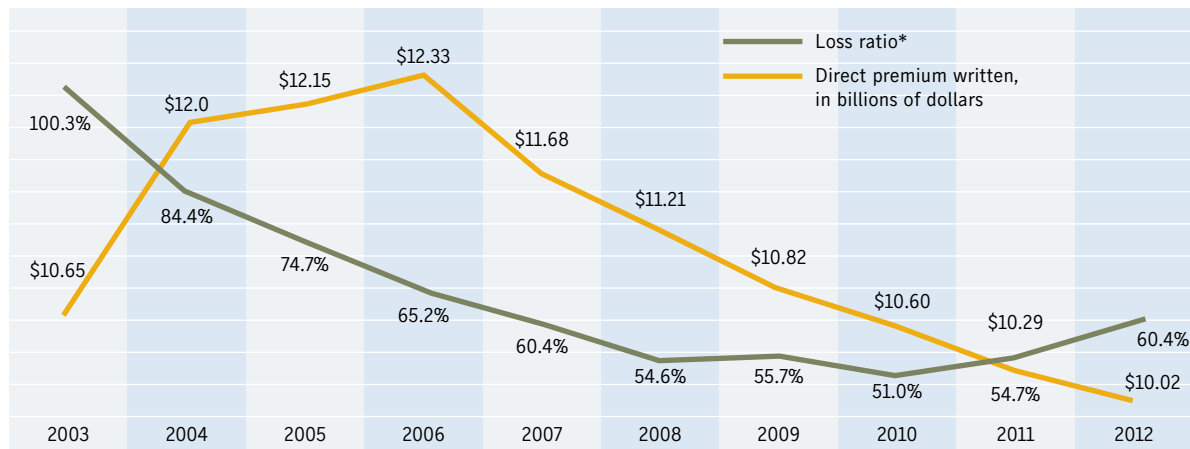
INSURER COMPETITION IS GREATER IN THE EXCESS LAYERS OF COVERAGE.

NEW ACCOUNTS ARE MORE LIKELY TO RECEIVE A LOWER PRICE THAN RENEWING ACCOUNTS.

INDUSTRY CATEGORIES SEEING HIGHER RATES INCLUDE PROPERTY MANAGERS, MORTGAGE BROKERS AND REAL ESTATE BROKERS.

MEDICAL PROFESSIONAL LIABILITY

The dollar value of medical professional liability insurance peaked in 2006, but has declined since then amid industry consolidation. At the same time, insurers, which posted loss ratios above 100% in 1999-2003, have achieved more profitable underwriting in the subsequent years.



* Loss ratio = direct losses + direct defense and cost containment expenses incurred / direct premiums earned

Source: National Association of Insurance Commissioners

MED MAL

Continued from page 17

However, given that medical malpractice is a long-tail line of liability coverage, it took several years before buyers benefited from improved claims experience, Mr. Francis said.

“The industry was still charging rates based on loss projections of the prior years. It took five or six years to build that frequency trend into the rate structure,” he said.

At the same time that claims experience was improving for insurers, though, the number of buyers was dwindling due to industry consolidation. Hospitals began buying up doctors’ practices, making doctors members of their staffs, while hospitals merged. As a result of the reduction in the number of medical malpractice insurance buyers, direct premiums written in this market sector has been declining steadily for the past several years, according to Best and the National Association of Insurance Commissioners (see chart).

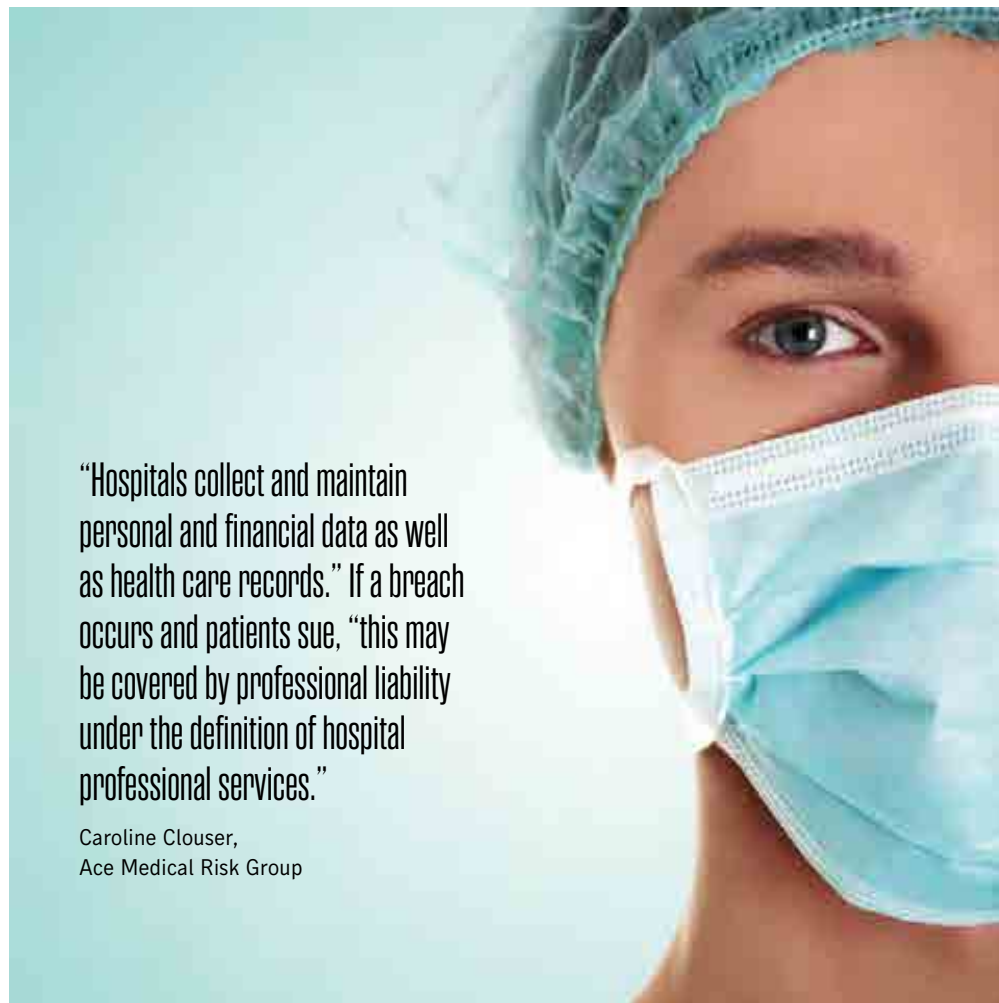
“One of the things that’s keeping pricing down is concern about losing market share,” said Dana Switzer, senior vice president and unit manager of health care at Lockton Cos. L.L.C. in Kansas City, Mo. “In past decades, medical malpractice carriers fought for market share because they wanted investment income. Now they’re fighting for survival. Insurers are losing market share on the hospital side because of the M&A activity.”

Ms. Switzer said even though hospitals are becoming larger and gaining additional medical staff as a result of this consolidation, “the exposure doesn’t increase exponentially after a merger or acquisition. They might add another \$5 million or \$15 million at the top, but those top layers are very inexpensively priced.”

Self-insurance and captives

Commercial insurers also have been losing premium to the alternative market as more hospitals and large medical groups opt to self-insure or form captives, experts said.

“If you go back to when the market was hard at the early part of this century, clients were forced to take on higher retentions before transferring risk to the commercial market,” said John Geisbush, managing director and national health care placement leader at Marsh Inc. in Phoenix. “A lot of our clients have captives in various venues. Cayman is one of the more sig-



“Hospitals collect and maintain personal and financial data as well as health care records.” If a breach occurs and patients sue, “this may be covered by professional liability under the definition of hospital professional services.”

Caroline Clouser,
Ace Medical Risk Group

nificant domiciles.”

Because these providers and hospitals were taking on more risk themselves, “there was more focus on clinical risk management and improving quality,” which has helped to improve claims experience across the medical sector, Mr. Geisbush said.

But the positive claims environment for insurers and self-insured medical providers could change if the number of patients receiving care increases as a result of the Patient Protection and Affordable Care Act, Mr. Geisbush said.

“Premiums may increase if the number of patients increases. It’s all rated on the number of visits or occupied beds,” he said.

“When you’ve got 32 million more patients in the system, you’re bound to have more exposure to loss,” Mr. Francis said, adding that he also is concerned that the increased transparency required by PPACA, such as reporting “never events” for which the Centers for Medicare and Medicaid Services has said it will no-

longer compensate providers. “Any time you have knowledge of adverse events, it is likely to increase litigation,” he said.

Another concern, Mr. Francis said, is that the increased use of “bundled payments will create some of the problems that managed care created in the 1990s” when many health maintenance organizations that were paid on a capitated basis were accused of withholding care to maintain profitability.

Caroline Clouser, executive vice president at Ace Medical Risk Group, a division of Ace USA in Jersey City, N.J., said hospitals’ increased exposure to cyber liability risks already is increasing, which could drive up med mal pricing.

“Hospitals collect and maintain personal and financial data as well as health care records,” she said. If a breach occurs and patients sue, “this may be covered by professional liability under the definition of hospital professional services.”

INSURERS BULLISH ON SECTOR

Despite concerns about increasing medical professional liability exposures, most insurers remain bullish on this sector of the property/casualty market.

Berkshire Hathaway Specialty Insurance Group, launched in June by Omaha, Neb.-based Berkshire Hathaway Inc., is beefing up its capabilities to focus on hospitals and integrated delivery systems, physician group practices and allied health care facilities that include dialysis centers, urgent care clinics and ambulatory surgical centers, said Peter Eastwood, president of BH Specialty.

BH Specialty also recently hired Leo Carroll as senior vice president of health care professional liability. Mr. Carroll, previously was senior vice president and head of health care professional liability at Zurich North America, has spent most of his career in this sector.

“I generally view (the health care industry) as a growing sector of the U.S. economy,” Mr. Eastwood said. “We have an opportunity to provide customers with a high-quality balance sheet to which they can transfer risk.”

Moreover, “the medical professional liability business is a profitable segment of the commercial property/casualty market even with the decline in premium. Institutions are retaining more risk. This shows it’s an industry that is very invested in risk management. This is a positive sign in helping to drive positive results,” he said.

But even with insurers entering the market, the continuing decline in premium volume means the market probably has bottomed out.

“Rates have now equilibrated at the level of an appropriate combined ratio. They really can’t go down any more,” said Rob Francis, chief operating officer of The Doctors Co. in Napa, Calif. “There is a possibility of a rapid increase in rates if the frequency and/or severity increase as a result of (the Patient Protection and Affordable Care Act), but it also could lead to deterioration in insurer profitability.”

By Joanne Wojcik

REAL ESTATE E&O RISKS INCREASE AS AGENTS EXPAND RANGE OF SERVICES

Realtors venture into unfamiliar territory in search of more revenue

BY MATT DUNNING

After the implosion of the U.S. housing market in 2007-09, experts say the resulting flurry of catastrophic professional liability lawsuits targeting real estate brokers and agents has finally begun to dwindle.

However, new realities in the realtor marketplace — coupled with sustained improvement in housing prices and sales volume — likely will continue to drive errors and omissions claims against real estate professionals, experts said.

“The profile of the real estate E&O space has changed quite a bit, in that a lot of agents and brokers that we would typically cover only for that service have had to evolve their traditional services in order to stay competitive,” said David Egosi, a New York-based vice president and national underwriting leader for miscellaneous professional liability at Hiscox Ltd. “There’s been a change or shift in the overall scope of services that a lot of brokers and agents will offer, which opens up the nature of the claims we’re seeing come in.”

Specifically, experts said many real estate brokerage firms are expanding the range of services they offer their clients to include project and construction management for newly built developments, as well as property management services for existing condominium, co-operatives and apartment complexes.

“There’s been a lot of merger activity and consolidation in the marketplace as a result of the economic conditions,” said John Stathis, a senior vice president in National Financial Partners Corp.’s property/casualty practice in Scottsdale, Ariz. “Various firms are combining, changing or otherwise trying to get a leg up on their competition, or just trying to get more revenue in the door. It’s been tough, and there’s been a lot of transition in the market in personnel from point A to point B and, with that, a lot of transition in terms of what some companies have had to do in order to stay alive.”

Lacking experience in drafting and executing contracts for services beyond their normal scope of business could expose real estate professionals to additional sources of E&O liability for negligence, breach of contract, breach of fiduciary duty and misrepresentation — typically the most common causes of professional liability claims against real estate brokerage firms and individual agents,

experts said.

In addition, it is unclear how — or even if — a real estate brokerage’s E&O insurance would respond to claims stemming from services performed outside traditional operations. Experts said companies should carefully review

their existing E&O cover prior to advertising or providing services with which they are not familiar.

“They may or may not be adequately covered by the policy form that they purchased, especially the ones that are more price-driven, so it’s important that insurance car-

riers are evolving with the broker-clients,” Mr. Egosi said.

Even if home prices continue to increase, experts said real estate agents should expect to see a rise in the frequency of E&O claims as the volume of residential sales increases.

In particular, residential brokers and agents, which experts said traditionally generate a higher annual volume of professional liability claims than their counterparts in other market segments,

See REAL ESTATE page 20

DECEMBER 2ND, 3:52 P.M.

A MORE PERSONAL APPROACH MAKES A BUSINESS EVEN STRONGER

IN AN INSTANT,
JIM WEIDMAN SEES
THE VALUE OF
DEDICATED EXPERTISE

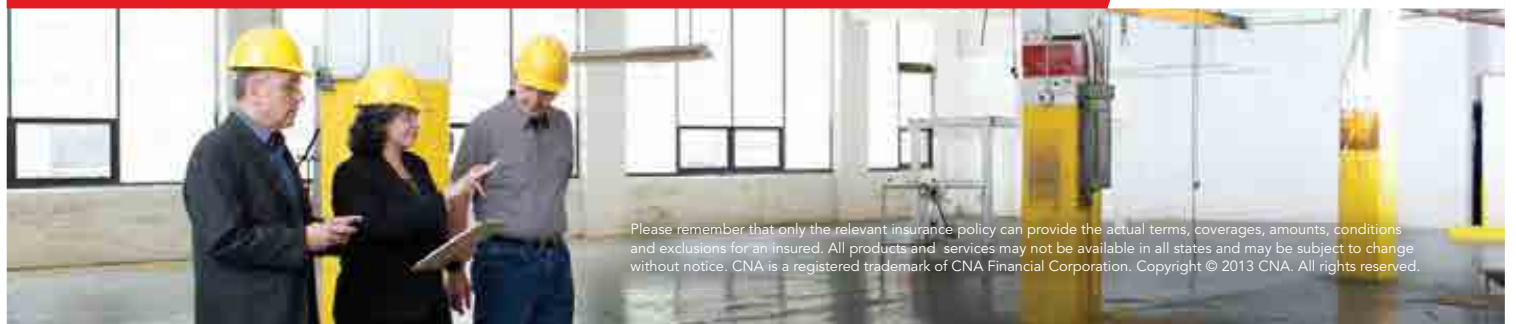
When it came time to expand his business, Jim decided to take another look at his business insurance. So his agent brought CNA underwriter, Jill Santos, to get a personal look at Jim’s new plant. Jill’s industry experience helped her see opportunities to better align Jim’s coverage with the unique risks of his business. Way to call in the right people for the job, Jim.

To learn more about our broad portfolio of insurance products and services, and the industries we serve, visit www.cna.com.

Construction • Education • Financial Institutions • Healthcare • Manufacturing
Professional Services • Real Estate • Retail • Technology • Wholesale Distribution

CNA

We can show you more.®



Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2013 CNA. All rights reserved.



REALTOR LITIGATION

The number of suits brought against realtors increased in two of four categories in 2012 compared with 2010.

Category	2010	2012
Agency*	85	71
Breach of fiduciary duty	73	94
Disclosure	151	115
Fair housing discrimination	126	127

*All types excluding fiduciary duty
Source: National Association of Realtors "2013 Legal Scan"

REAL ESTATE

Continued from page 19

are likely to encounter more allegations of misrepresentation, failure to disclose property conditions and other breaches of fiduciary duty to home buyers.

According to the National Association of Realtors' "2013 Legal Scan," the volume of U.S. lawsuits accusing real estate professionals of breaching their fiduciary duty to their client increased 29% since 2011 (see related chart).

Though individual agents ultimately were found not liable in 38% of the cases identified in the NAR's report, 80% of real estate professional polled said breach of their fiduciary duty is likely to be among their top three legal exposures in the near future.

"Some buyers certainly have bought houses on the expectation that they were buying on the downturn, and that they would see a very quick and immediate appreciation in property value," said Gregg Kahn, a Florham Park, N.J.-

based partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. "When that doesn't occur ... the buyer may very well become dissatisfied with their real estate professional for possibly pulling them into an overpriced transaction that didn't turn out as well as they would have liked."

Mr. Kahn said the potential for increased professional liability lawsuits against brokerages and/or their agents — not to mention E&O insurance disputes that may arise thereafter — should compel real estate professionals to put more care into their documentation of agreements and representations made to their clients.

"If I were going to give any practical advice to real estate professionals, it would be to document all of your conversations with your clients," he said. "When you see the demand letters, and you see the time and expense that brokers and agents have to go through in defending a claim, it makes it much easier to defend in front of a judge or a jury when the agent has documented their communications."

**BUSINESS INSURANCE
RISK MANAGER
OF THE YEAR® 2014**

Do you know someone who deserves recognition for outstanding performance in the practice of risk management?

Business Insurance is seeking nominations for its 2014 Risk Manager of the Year® Award.

Nominate a candidate at www.businessinsurance.com/RMOYnominate.

The Risk Manager of the Year® Award is presented every year during the annual Risk & Insurance Management Society Inc. Conference and Exhibition.

April 29, 2014

ARCHITECTS AND ENGINEERS FACE RISING E&O LITIGATION AS ECONOMY IMPROVES

Documenting communications can help defend against claims

BY MATT DUNNING

Steady gains in U.S. construction spending in 2013 have aided architectural and engineering firms' revenue, but experts warn that the resulting rush on new or restarted projects likely will generate greater frequency in E&O claims against designer professionals.

"One of the things that we know that happens is that as the economy improves, claims frequency actually increases," said Randy Lewis, a Denver-based vice president of loss prevention and client education at XL Group P.L.C. "When the economy went into the tank, it set the stage for claims frequency to start to experience a spike."

Though the number of active construction projects has increased steadily over the past two years, according to Federal Reserve data (see chart, page 22), experts said the greatest gains have been made in industry sectors that typically pose the greatest liability claim potential against design professionals, including single-family housing and high-rise condominium and apartment buildings.

Across all construction segments, experts said the most common driver of E&O claims against design professionals is their lack of documentation of all communications with contractors and project owners, particularly in cases where material changes are made to final designs or the prescribed building materials.

"Overall, the lack of documentation of decisions — who made them, when they were made and what alternatives were presented to the client — is probably the single greatest challenge we have in extricating clients from a professional liability claim or dispute," Mr. Lewis said.

Further complicating matters is the extent to which design professionals still face the lingering market effects of the 2007-2009 Great Recession. For example, experts say, increased competition for new work continues to undermine architects' and engineers' footing in contract negotiations with project owners.

"There was so much competition for a very low number of projects, they were much less forceful in their negotiations, and that's generally the most powerful tool for a design firm to protect itself in a professional liability claim scenario," said Mary Mazza, a Chicago-based senior vice president of property/casualty insurance lines

and risk management at Wells Fargo Insurance Services USA Inc.

"As a consequence, she said, "claims don't close as quickly as they used to. They seem to drag out, and that can be very painful for design firms because their

defense costs are usually within their E&O deductibles."

Experts said the severity of claims for this segment, even during and immediately after the economic downturn, did not fluctuate much. "It's always going to be a

frequency business," Ms. Mazza said.

She said it remains to be seen whether architectural and engineering firms' acquiescence to unfavorable contractual risk transfer terms or assuming liabil-

ity they likely could have refused under better economic conditions will drive an increase in the frequency of E&O claims.

"It's still probably too early to

See ARCHITECTS page 22

XL Group
Insurance



INNOVATIVE

It's not a buzzword. It's who we are.

When the insurance crisis struck in the late 1980s, XL Group saw the need. Led the way.

As risks get more complex, the world needs innovators. And the world turns to XL Group.

Day in. Day out. We look for ways to make things better.

Complex, hard-to-place risks: When others say no, we look for solutions and turn convention on its head.

Learn more about our *επιχειρηματική* thinking: xlgroup.com/fast-fast-forward

MAKE YOUR WORLD GO

and MAKE YOUR WORLD GO are trademarks of XL Group plc companies. XL Group is the global brand used by XL Group plc's insurance subsidiaries. In the US, the insurance companies of XL Group plc are Greenwich Insurance Company, Indian Harbor Insurance Company, XL Insurance America, Inc., XL Insurance Company of New York, Inc., and XL Specialty Insurance Company. Not all of the insurers do business in all jurisdictions nor is coverage available in all jurisdictions.

FRANCHISE EXPANSIONS UP DEMAND FOR E&O COVERAGE

Class action lawsuits seen as biggest risk



BLOOMBERG

The franchise business is growing, spurred by interest from returning veterans and experienced workers.

BY JUDY GREENWALD

Errors and omissions coverage for franchisors can be a challenging line of business for insurers to underwrite, but it is an increasingly growing area of the economy.

Observers say franchisor insurance generally covers issues reflected in the Franchise Disclosure Document required by the Federal Trade Commission. The issues include marketing or solicitation activities, services provided to franchisees, approval or rejection of proposed sites, supplies franchisees can buy on their own and those they must purchase from designated providers, and the distance they must be from each other.

There will be an estimated 757,350 franchise establishments in the U.S. this year, according to a forecast by IHS Global Insight, a unit of El Segundo, Calif.-based IHS Inc. Quick-service restaurants will account for 20.3% of the total, followed by personal services, at 14.3% (see chart, page 26).

Peter Taffae, managing director at wholesale brokerage Executive Perils Inc. in Los Angeles, which recently established a franchise unit, said the franchise business is growing, spurred by returning mil-

"The beautiful thing about franchising from an insurance underwriter's perspective is that it's a 'proven business plan. When you go into a McDonald's, you know those french fries are going to be the same. You design a business model for the business and you multiply it, you rubber stamp it and you charge people for it."

Peter Taffae,
Executive Perils Inc.

itary veterans who are finding few available jobs and by experienced middle-age workers who "can't get back into the corporate world and don't want to, because they feel like they've been burned."

Jim Donovan, New York-based senior vice president of the professional liability unit at Liberty International Underwriters, a unit of Liberty Mutual Holding Co. Inc., said most insurers provide the

coverage in their miscellaneous professional liability policies.

"A good chunk" of the estimated 50 underwriters cover franchisors, and rates in the sector are "pretty stable," Mr. Donovan said.

But rates are "pretty much going up. It's not a cheap line of business," said Jeanmarie Giordano, New York-based chief underwriting officer of professional liability of the U.S. and Canada at American International Group Inc.

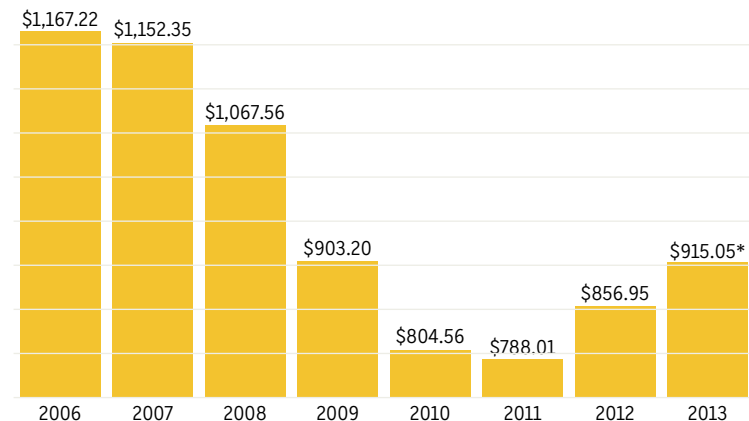
Much of the coverage is purchased by large fast-food and hospitality franchisors.

"The main exposure on franchisees is the class action," where multiple franchisees join in litigation if they feel the franchisor is not meeting their needs, Ms. Giordano said. An example would be where the franchisor requires supplies to be purchased from a particular source, when they are available more cheaply elsewhere. As a result, "you are typically seeing higher retentions and the rates staying pretty strong," said Ms. Giordano.

Stacie A. Waller, president of national accounts at Althans Insurance Agency Inc. in Chagrin Falls, Ohio, who said she is seeing slight rate increases, said another

CONSTRUCTION SPENDING

Total U.S. construction spending dipped from 2008 to 2011, but it has risen since then and again is near \$1 trillion. Figures are in billions of dollars.



*Through August 2013
Source: U.S. Department of Commerce

ARCHITECTS

Continued from page 21

tell, because a lot of projects are only just starting or resuming construction," Ms. Mazza said. "I'll be very interested to see whether that actually manifests itself as an increase in claims activity, because the insurers have always told us that where they really focus when underwriting these risks is the client's contract and risk management practices when it comes to their professional services agreements."

By effectively choking off funding for new projects in most construction sectors, the financial collapse also hurt architectural and engineering firms' ability to hire and retain design professionals qualified to perform critical functions, such as on-site reviews of general contractors' work during the build-out phase.

"It's become a problem, as you consider economic conditions in the overall market," said Tom

Gambardella, a White Plains, N.Y.-based partner at Wilson Elser Moskowitz Edelman & Dicker L.L.P. "Many of these projects have been dormant for a period of time because of a lack of funding, so you have the issues related to restarting a project where you have design professionals picking up an existing project that's entirely new to them."

Mr. Gambardella added that failing to preserve continuity in the design professionals responsible for a specific project — especially following multiyear delays — often generates disputes between project owners and professional services firms over the payment status and schedule, as well as copyright issues regarding the handling of another designer's drawings.

"That has all sorts of implications as far as potential exposure for design professionals, so they need to make sure they're doing their due diligence and, to the extent that they're able, seek contractual safeguards," Mr. Gambardella said.



See **FRANCHISORS** page 26

Named one of **America's 100 Most Trustworthy Companies.**

— *Forbes Magazine, 2013**



What's behind Navigators?

Management & Professional Liability products, backed by financial strength you can trust.

Our world-class underwriting divisions for Management and Professional Liability offer:

Management Liability

- Directors and Officers Liability
- Employment Practice Liability
- Fiduciary Liability
- Crime Insurance
- Excess "Side A" DIC

Professional Liability

- Accountants Professional Liability
- Miscellaneous Professional Liability
- Real Estate Professionals E&O
- Insurance Agents & Brokers E&O
- Technology, Media & Cyber Liability
- Design Professionals Liability

Go to www.navg.com to learn more about our broad product range and about the benefits of having our specialist underwriters and financial strength behind you.

What's behind Navigators? The simple answer is: more.


Insuring a World in Motion®

QBE Visionary

Gain new perspective with QBE. We see risk differently from other insurance companies. We understand it better. And where others avoid it, we embrace it.

More than 20 years ago, QBE entered the North American market with a unique view of risk. Rather than focusing solely on numbers and formulas, we brought imagination and creativity into the risk-writing process. Today, this thinking continues to help us find new possibilities for all types of customers. So bring us a vision for what your business can be—and we'll deliver the insurance to make it possible.

For information visit QBEvisionary.com

ry

Made possible by



LAW FIRMS SEE INCREASE IN E&O CLAIMS IN AFTERMATH OF FINANCIAL CRISIS

Insurance rates hardening as attorneys' clients try to recoup lost funds

BY JUDY GREENWALD

The professional liability insurance market for attorneys is hardening, say experts.

"We're seeing a firming market approaching a hardening market. We're dealing with a lot of the issues" that began with the 2008 financial crisis and the litigation that developed as a result of failed mergers and acquisitions, said Michael Richmond, sales executive at Chicago-based brokerage The Horton Group, which focuses on firms with 10 to 100 attorneys.

Former clients are trying to recoup lost funds and going after their attorneys, said Mr. Richmond, who noted higher frequency and severity of claims have been factors in the increased rates.

Anne Marie Davine, New York-based U.S. law firm practice leader at Marsh Inc., said in the small-firm segment, which Marsh defines as 50 to 200 attorneys, rates may range from a 5% decrease to a 10% increase, with the average being a 5% increase.

FAILED MERGERS

Roughly 70% of proposed mergers and acquisitions fail.

In about half of the failed mergers and acquisitions, due diligence on a proposed purchase did not provide an adequate roadmap to find synergies and create value.

Source: McKinsey & Co.



In the medium-size segment of 200 to 500 attorneys, rates range from flat to increases of 10%, with

the typical rate being a 2% to 5% increase. Among large firms, rates are flat to up 12%, with the typical

rate being a 2% to 5% increase, Ms. Davine said. Meanwhile, capacity is plentiful.

There is an "incredible amount of available capacity" for lawyers professional liability, said Ms. Davine, who estimates capacity to be "well in excess" of \$500 million.

Particularly in the excess layers of \$20 million to \$25 million, "there is more capacity up there than most firms need, so there is an awful lot of competition taking place in that space, as well as the new entrants into that segment," she said.

A factor that makes lawyers professional liability attractive is the line is syndicated, so no one insurer bears the entire loss. "You have that spread across multiple insurers, and there is a comfort level that insurers have with the fact that the risk is spread. They're not taking it all on themselves," said Ms. Davine.

"Generally speaking, if the law firms themselves are well-managed, underwriters in this space believe they can ascertain which firms are the right risks" and

See **LAW FIRMS** page 29

FRANCHISORS

Continued from page 22

focus of litigation is franchisor "overpromising," often concerning territorial issues.

"It's a difficult class of business," said Florence Levy, senior vice president of Aon Risk Solution's financial services group in Denver. "It's very litigious," where investors, or individuals who make a big life change and invest their life savings, sue if the franchise's business does not go well, she said.

Mr. Donovan said the quality of franchisors varies. "We are definitely selective" as to which franchisor Liberty Mutual insures, he said.

"The beautiful thing about franchising from an insurance underwriter's perspective" is that it's a "proven business plan," said Mr. Taffae. "When you go into a McDonald's, you know those french fries are going to be the same. You design a business

model for the business and you multiply it, you rubber stamp it and you charge people for it."

The challenge for the insurer is to underwrite professional services but not areas considered to be a business decision, such as distance requirements in the franchise agreement, said Ms. Levy.

"My advice would be to try to structure a program where there's a lot of communication and sharing of information" between franchisors and franchisees to nip any problems in the bud, she said.

When it comes to using specified providers, if franchisors communicate openly with their franchisees about the cost of those products and their potential profit, or on how the profit is shared, they may be able to avoid legal disputes, Ms. Levy said.

Meanwhile, some observers see room for growth in the coverage.

Franchising is a "huge business and it's a nice, potential revenue for insurers," said Harold L. Kestenbaum, a partner with law firm Gordon & Rees L.L.P. in East Meadow, N.Y., who specializes in this area.

However, Kenneth Rand, New York-based managing director for Marsh Inc.'s E&O practice, said policyholders' appetite for this coverage "is generally most focused on food or casual dining" and the hospitality industries, with less interest in other areas.

Janice M. Dwyer, president of the franchise business division at Cleveland-based Luce, Smith & Scott Inc., works with about 50 franchisors, most of which have fewer than 500 units and only about 15% buy E&O insurance.

"If you look at the community for franchisors, oftentimes they feel they have control over their system. It's a friendly situation and it doesn't warrant the cost of buying the E&O policy," she said. The specialized franchisor coverage is limited, so buyers may conclude that the coverage is not broad enough, Ms. Dwyer said.

However, "it tends to be your more seasoned and experienced franchisors" that are purchasing such insurance, said Ms. Waller, who also sees growing interest in E&O coverage in the service industry.

GROWING SECTOR

The number of franchises is expected to increase 1.4% this year with a 4.3% increase in economic output. The largest franchise categories and their economic output are:

Category	Number of franchises	Output (in billions)
Quick-service restaurants	153,425	\$206.50
Personal services	109,079	\$87.90
Retail products and services	97,308	\$39.65
Business services	93,581	\$148.88
Real estate	87,601	\$49.47
Commercial and residential services	61,926	\$53.37
Retail food	61,262	\$38.69
Table/full-service restaurants	36,436	\$59.93
Automotive	30,526	\$38.23
Lodging	25,911	\$79.76
Total	757,055	\$802

Source: IHS Global Insight

No matter what your
insurance career needs...



▶ You can find a perfect fit with
The Institutes.

The Institutes are the leading provider of professional development solutions for the risk management and property-casualty insurance industry. You can advance your career with respected certifications through The Institutes' courses. And you can conveniently earn and track your continuing education requirements with our CEU.com online courses.

With our proven knowledge, you can achieve powerful results. Go to TheInstitutes.org/BI today.

© 2013 American Institute For Chartered Property Casualty Underwriters

Insurers fight disgorgement payout



Mr. Kevane

BY TIMOTHY D. KEVANE

What were previously considered routine settlements between financial institutions and the U.S. Securities and Exchange Commission could result in headaches for corporate directors and officers if an admission of wrongdoing is mandated. Timothy D. Kevane, special counsel at Sedgwick L.L.P. in New York, discusses how recent cases in this unsettled landscape may affect insurers and policyholders.

Last year, we wrote about how Judge Jed Rakoff of the U.S. District Court, Southern District of New York turned down a routine settlement between the U.S. Securities and Exchange Commission and Citibank arising out of the bank's marketing of collateralized debt obligations.

Judge Rakoff rejected the government's longstanding practice, "hallowed by history but not by reason," of allowing financial institutions to pay sums as disgorgement (in this case, \$285 million) without admitting any wrongdoing, and ordered the parties to trial in *SEC v. Citigroup Global Markets Inc.*

The 2nd U.S. Circuit Court of Appeals issued a temporary stay of Judge Rakoff's order and is considering the merits of his disapproval of the settlement. Among other preliminary comments in its decision to issue a stay, the 2nd Circuit noted the possibility that Citigroup did not in fact mislead investors and that the SEC might actually fail to win at trial.

The decision has provoked so much angst that the SEC recently announced a change in policy, requiring certain settlements of claims involving particularly egregious misconduct to include an admission of wrongdoing. The new SEC chairwoman, Mary Jo White, acknowledged that "in the interest of public accountability, you need admissions" in some settlements. Recent settlements involving the Harbinger Group and JPMorgan Chase & Co. (for unrelated conduct) demonstrate this new policy.

The Citigroup case is not an insurance coverage dispute. But among the many issues it raises is a concern that corporate policyholders might find themselves in a precarious position, given the new order that Judge Rakoff may just yet establish in the aftermath of the financial institution crisis: the huge risk of trying an SEC enforcement action and the implications for insurance.

The honor of deciding that issue more directly recently fell on New York's highest court, the Court of Appeals, which recently decided, on a preliminary basis, a bank's alleged entitlement to insurance for a consent settlement with the SEC that required the "disgorgement" of \$160 million, *JPMorgan Securities v. Vigilant Insurance Group et al.* Disgorgement payments are not covered under liability policies, so the question arose, as with Citigroup, how the court would approach the SEC settlement.

In *JPMorgan*, the SEC accused Bear

Stearns, which JPMorgan acquired in 2008, of operating a mutual fund trading scheme based on illicit "late trading" and "market timing" practices.

Late trading consists of placing orders for mutual fund shares after trading is closed and after the mutual funds have calculated their daily net asset value. Late trading thus allows a trader to reap profits from market events that occur after closing, thus obtaining unfair trading advantages.

Market timing involves frequent buying and selling of the same mutual fund or buying and selling shares merely to exploit pricing inefficiencies, and is illegal if it induces a mutual fund to accept trades it would normally reject pursuant to its own market timing policies.

After a three-year investigation by the SEC and the New York Stock Exchange in which thousands of documents were analyzed and 30-plus witnesses were interviewed, Bear Stearns agreed to a consent order that detailed factual findings regarding its activities, and agreed to pay \$160 million as disgorgement plus a penalty totaling \$90 million. The SEC consent order provided that Bear Stearns agreed to pay the sanctions "without admitting or denying the findings." Bear Stearns then demanded reimbursement for the \$160 million paid as disgorgement from its professional liability insurers. The insurers rejected the claim.

The insurers argued that the policy did not cover the \$160 million payment, citing the law and public policy prohibiting insurance coverage for the return of ill-gotten gains and for damages paid due to intentional misconduct. It did not matter that Bear Stearns did not personally pocket the entire \$160 million, the insurers argued, because it collaborated with its hedge fund customers to generate those gains, which made Bear Stearns personally liable for restitution of the entire sum under the securities laws.

Echoing Ms. White's recent disclosure of the SEC's new policy, the insurers argued that if the disgorgement payment was viewed as compensatory damages for purposes of insurance recovery, any deterrence of improper conduct would be diminished, if not eliminated, since vast sums of money

paid to the regulators could be subsequently reimbursed by insurance. Borrowing a theme from *Citigroup* (which made a cameo appearance in the parties' briefs, but not the decision), Bear Stearns argued that the \$160 million payment, although labeled disgorgement in the SEC consent order, was not actually a disgorgement of its own profits and was therefore insured under the policy.

The trial court denied the insurer's motion to dismiss the bank's claim, but the intermediate appellate court reversed, finding that coverage was barred since the bank collaborated in a scheme that made it jointly and severally liable for the combined profits. The Court of Appeals reversed and reinstated the bank's claim. Ironically, in a twist on *Citigroup*, it found that the SEC consent order did not establish that the \$160 million payment was predicated on monies that the

bank "itself" improperly earned as a result of securities violations.

Accordingly, at the pleading stage, the evidence did not "decisively repudiate" the bank's contention that the disgorgement payment was calculated based on the profits of its customers,

for which the bank merely acted as a clearing broker. In distinguishing other New York authorities, the court found there was no "conclusive link" between the disgorgement payment and the insured's improperly acquired funds.

As to the public policy exception banning coverage for an insured's intentional misconduct intended to cause injury, the court noted that it is a narrow exception. Notwithstanding the detailed findings in the SEC order that the bank's numerous securities laws violations were willful, the Court of Appeals found that on the "limited" record before it, the order did not "conclusively demonstrate" that Bear Stearns had the requisite intent to cause harm.

Polar opposites

The case lies at the other end of the spectrum from Judge Rakoff's analysis in *Citigroup*. Rather than questioning the convenience of a regulatory settlement that purports to make no actual findings of guilt of the insured in *Citigroup*, the court in *JPMor-*

gan appeared untroubled by the "without admitting or denying" disclaimer.

In contrast to Judge Rakoff's scathing critique of this procedure in *Citigroup*, and the SEC's recent policy change, the court in *JPMorgan* noted matter-of-factly that defendants in SEC enforcement proceedings "commonly" agree to pay sanctions without admitting or denying guilt. But in doing so, the court seemed to minimize the years of intense investigation by regulatory experts into the bank's wrongdoing. As to the disgorgement aspect in particular, the opinion reflects the conceptual disparity between SEC enforcement rules, which permit "disgorgement" of funds from violators even if they do not actually possess those funds, and insurance principles, which ban insurance coverage for disgorgement payments on policy grounds.

At least for now, at the pleading stage, the court found that the basis of the disgorgement actually paid by the bank, even if labeled "disgorgement" in the SEC consent order, would not defeat coverage since it was not the bank's own ill-gotten gains. As to the policy barring coverage for intentional harms, the court recognized the distinction between willful (intentional) conduct and the intent to cause harm.

Interestingly, the court's opinion could be read to imply that if the SEC consent order contained further indications of that intent to cause harm, it might have reached a different result, notwithstanding the "without admitting or denying" disclaimer. Ultimately, the opinion has it both ways. It moves away from Judge Rakoff's iconoclastic opinion in *Citigroup*, thereby appearing to promote the settlement of disputes, but leaves open the possibility for insurers to develop further evidence beyond the regulators' findings that may reveal more about the bank's gains from the scheme and its intentions. Indeed, the insurers have just recently filed a new summary judgment motion under a policy exclusion for dishonest acts and are again relying on the conclusive nature of the SEC consent order.

Thus, while keeping in mind the case is still at an early stage, it preserves a bit of the old order that Judge Rakoff tried to dissolve, but which the SEC itself may gradually bring to an end.

Timothy D. Kevane is a New York-based special counsel at Sedgwick L.L.P. He can be reached at Timothy.Kevane@sedgwicklaw.com.

The decision has provoked so much angst that the SEC recently announced a change in policy, requiring certain settlements of claims involving particularly egregious misconduct to include an admission of wrongdoing.

LAW FIRMS

Continued from page 26

which “they can take a pass on,” she said.

No two risks are the same, said Kim Quarles, New York-based senior vice president at Willis North America Inc. Underwriting for two law firms of the same size could vary widely based on their areas of practice, procedures, claims history and where they practice, she said.

Ms. Quarles said one development in the sector is attorneys who have been laid off by large firms are establishing their own practices. A \$2 million or \$3 million policy may cost only \$3,000 or \$4,000, but the coverage comes with restrictions and less willingness to manuscript, she said.

“Generally speaking, if the law firms themselves are well-managed, underwriters in this space believe they can ascertain which firms are the right risks” and which “they can take a pass on.”

Anne Marie Davine, Marsh Inc.

Meanwhile, “there is fairly good evidence out there that there are probably more attorneys than there is real legal business,” which puts stress on many small attorneys who are “vying for a finite amount of business, and who have to constantly reinvent themselves and make sure they’re adding value to the client,” said Joseph G. Shores, president of Rolling Meadows, Ill.-based Monitor Liability Managers L.L.C. and of Chicago-based Berkley Select L.L.C., both units of W.R. Berkley Corp., who focuses on firms with 10 or fewer attorneys.

There is “going to be a shakeout over time” and there is going to be a separation “between those who add value and those who cannot” and “insurance carriers have to understand that,” Mr. Shores said.

At the other end of the size spectrum, more law firms “are thinking about globalization and global issues,” said Robert Cook, New York-based managing director at Aon Risk Solutions, a unit of Aon P.L.C.

“Really large, sophisticated firms are devoting a lot of resources to risk management, and particularly technology within risk management within the firms,” including issues such as the confidentiality of information and its vulnerability to outside parties, Mr. Cook said. “They’re all investing a lot of time and effort to make sure that information remains secure.”

“The whole role of cyber and computerization has just created a lot more questions about security,

so I think the firms are making doubly sure that everything remains secure,” Mr. Cook said.

The outlook for next year for lawyers professional liability coverage is “much of the same, with hopefully more recovery taking place in 2014,” said Horton’s Mr. Richmond.

“For the short term, it’s going to stay harder,” said Ms. Quarles.

“When you look at all the things that happened” during the financial crisis, “we are in a much more benign economic environment right now,” Monitor’s Mr. Shores said. “Many of our insureds will probably not see a great deal of difference in how we go forward with our policies.”



Blue sky thinking. Down to earth insurance solutions.

Some call it pioneering spirit. Some call it pushing the envelope. At Swiss Re Corporate Solutions, we simply call it doing our job. We draw upon our broad scope of global insurance capabilities to respond to your needs in ways that are as practical as they are innovative - from standard property and casualty insurance covers and multi-line programmes to highly customised solutions. No wonder we’re insuring the Solar Impulse programme, the first manned aircraft designed to circumnavigate the globe on solar power alone. When we work together and combine our expertise, visions can literally take flight. Risk is our raw material; what we create for you is opportunity.

Reach for the sky at blueskythinking.swissre.com

Corporate Solutions

Swiss Re



©2013 Swiss Re

SOLARIMPULSE

AROUND THE WORLD IN A SOLAR AIRPLANE

Swiss Re



Corporate Solutions

OFFICIAL INSURANCE PROVIDER

Become a pilot.

Download our free app and win the Solar Challenge.

Download on the App Store

GET IT ON Google play



LARGEST MEDICAL LIABILITY INSURERS

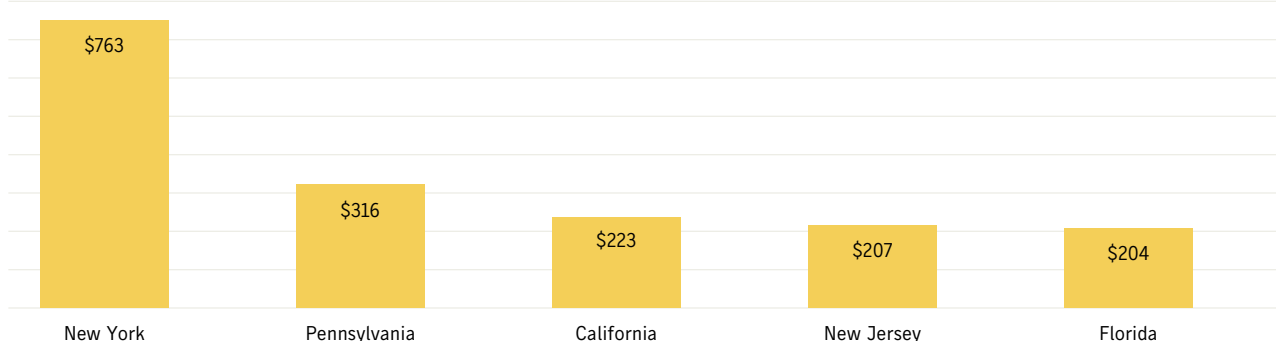
Ranked by direct premiums written in 2012

Rank	Company	Headquarters	Direct premiums written 2012	Market share
1	Berkshire Hathaway Inc.	Omaha, Neb.	\$840,579,267	8.4%
2	The Doctors Co.	Napa, Calif.	\$794,133,856	7.9%
3	Medical Liability Mutual Insurance Co.	New York	\$558,706,554	5.6%
4	ProAssurance Corp.	Birmingham, Ala.	\$521,575,990	5.2%
5	CNA Financial Corp.	Chicago	\$483,040,963	4.8%
6	American International Group Inc.	New York	\$434,692,153	4.3%
7	Physicians' Reciprocal Insurers	Roslyn, N.Y.	\$366,108,677	3.7%
8	Coverys	Boston	\$360,489,873	3.6%
9	NORCAL Mutual Insurance Co	San Francisco	\$294,318,363	2.9%
10	ISMIE Mutual Insurance Co.	Chicago	\$262,885,173	2.6%
11	MAG Mutual Insurance Co.	Atlanta	\$230,786,538	2.3%
12	Hospitals Insurance Co. Inc.	White Plains, N.Y.	\$217,082,375	2.2%
13	MCIC Vermont Inc.	Burlington	\$167,139,306	1.7%
14	Allied World Assurance Holdings A.G.	New York	\$161,023,708	1.6%
15	State Volunteer Mutual Insurance Co.	Brentwood, Tenn.	\$157,039,683	1.6%
16	Medical Mutual Liability Insurance Society of Maryland	Hunt Valley, Md.	\$152,437,222	1.5%
17	MMIC Insurance Inc.	Minneapolis	\$129,145,587	1.3%
18	Mutual Insurance Co. of Arizona	Phoenix	\$120,054,898	1.2%
19	W.R. Berkley Corp.	Greenwich, Conn.	\$113,415,367	1.1%
20	Controlled Risk Insurance Co. of Vermont Inc.	Burlington, Vt.	\$112,836,020	1.1%
21	White Mountains Insurance Group Ltd.	Hanover, N.H.	\$107,391,244	1.1%
22	Zurich North America	New York	\$101,496,013	1.0%
23	Medical Mutual Insurance Group of North Carolina	Raleigh, N.C.	\$98,881,525	1.0%
24	Ace Group	Philadelphia	\$94,257,903	0.9%
25	Markel Corp.	Glen Allen, Va.	\$93,981,644	0.9%
Top 25			\$6,973,499,902	69.6%
Total industry			\$10,099,576,764	

Source: National Association of Insurance Commissioners

TOP STATES

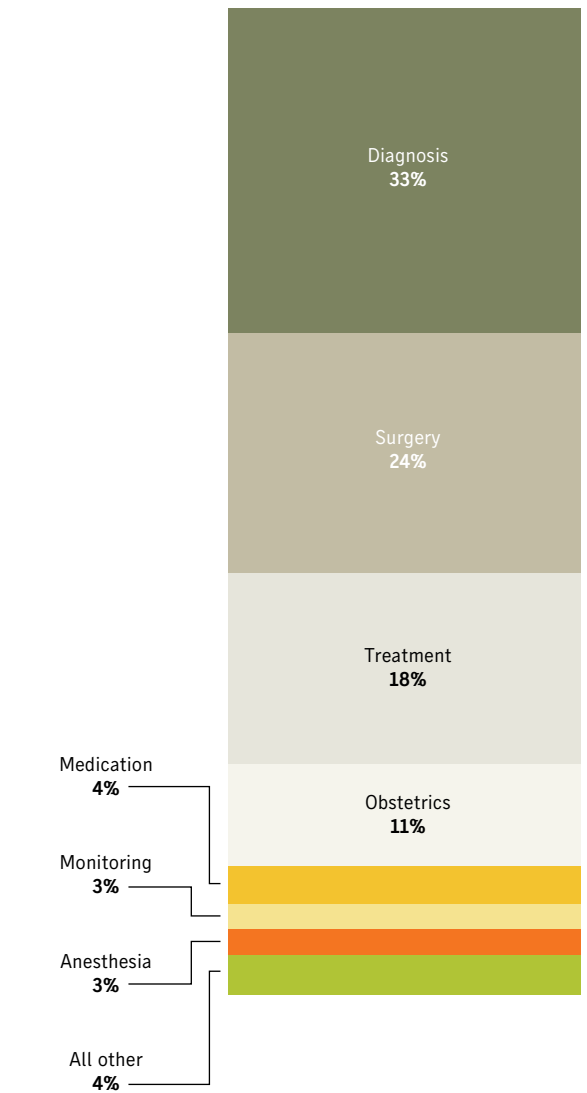
Five states accounted for nearly half of the more than 12,000 medical malpractice payouts in 2012. Ninety-three percent of the payouts, which totaled \$3.6 billion, resulted from settlements. The payouts have declined steadily since 2003. Top state payouts, in millions of dollars, were:



Source: Diederich Healthcare analysis of data from Department of Health and Human Services' National Practitioner Databank

CAUSES

Errors that lead to malpractice payouts were nearly evenly divided between inpatient and outpatient cases in 2012, with misdiagnosis the No. 1 cause.



Source: Diederich Healthcare analysis of data from Department of Health and Human Services' National Practitioner Databank

PREMIUMS PAID

Median annual malpractice insurance premiums paid in 2011, by specialty. Primary care physicians' medical malpractice insurance premiums stayed the same or declined slightly.

Specialty	Premiums
Obstetrics/gynecology	\$43,400
Surgery	\$30,000
Plastic surgery	\$27,700
Urology	\$23,500
Gastroenterology	\$20,000
Cardiology	\$19,400
Neurology/neurosurgery	\$17,500
Emergency/acute care	\$15,000
Internal medicine	\$12,900
Ophthalmology	\$12,300
Family/general physician	\$11,900
Dermatology	\$10,300
Pediatrics	\$10,300
Psychiatry	\$4,700

Source: Medical Economics "2012 Exclusive Malpractice Survey"



BUSINESS INSURANCE

RMS 2014

RISK MANAGEMENT
SUMMIT

INNOVATIVE IDEAS FOR
THE RISKS OF TOMORROW

JOIN YOUR PEERS

The Business Insurance Risk Management Summit, March 19 & 20, 2014, is a unique 2-day conference serving the information and networking needs of senior risk managers from the largest US and Global companies.

The annual Risk Management Summit, now in its fifth year, provides attendees with focused insights into key risk management concerns via expert panels and strategic, thought-provoking discussions with peers and industry leaders.

To register or to find out more about this outstanding educational and networking event go to www.businessinsurance.com/RMS2014

For sponsorship and event information, please contact Susan Stilwill, Advertising Sales Director, at sstilwill@businessinsurance.com or 312-649-5224; or Martha Donato, Director of Events & Brand Marketing, at mdonato@businessinsurance.com or 845-545-0653

BUSINESS INSURANCE®

Aon unit launches excess facility for rail companies

Aon Risk Solutions, a unit of Aon P.L.C., started Aon Rail Excess Liability facility. The facility was created in response to emerging risks related to requirements in the Rail Safety Improvement Act of 2008 involving positive train control technology, the broker said in a statement.

The facility will provide up to \$175 million in liability insurance to qualified buyers. It is backed by Lloyd's of London and other commercial markets and is designed to be in excess of the current liability limits carried by the individual railroad subject to a minimum excess point of \$25 million, according to the statement.

"With the imminent implementation of positive train control technology and the recent unfortunate events in the rail arena, Aon developed this innovative facility to respond to client interest in purchasing higher excess liability limits," Otis Tolbert, Aon Risk Solutions' rail practice leader, said in the statement.

USI offers clients private health care exchange

USI Insurance Services L.L.C. this week became the latest U.S.-based insurance brokerage to offer a private insurance exchange. It's available for USI clients seeking greater control of their group benefit costs.

The Briarcliff Manor, N.Y.-based broker said it has adopted the Bright Choices Exchange, a proprietary health insurance marketplace designed and operated by New York-based Liazon Corp.

The exchange is designed to ease employers' transition toward a defined contribution funding strategy for their group health benefit programs, USI said in a statement.

Within the exchange, employers set a fixed per-employee premium allowance for health, dental, vision and other coverage options selected by the employees themselves, according to their individual needs.

"We will be integrating the Bright Choices Exchange with our extensive set of solutions to help consumers and the employers who help subsidize their choices better control costs as the Patient Protection and Affordable Care Act plays out in the commercial market," Michael Sicard, USI's president and CEO, said in the statement.

USI is one of several large and midsize insurance brokerages to launch private insurance exchanges in the past 18 months using Liazon's Bright Choices platform.

Last month, Chicago-based Hub International Ltd. announced the national expansion of the private exchange it launched with Liazon in September 2012.

Gallagher Benefits Services Inc., the employee benefits consulting arm of Itasca, Ill.-based brokerage Arthur J. Gallagher & Co., also launched a private insurance exchange using the Bright Choices platform, in July 2012.



Marsh provides cover for lawyers

Marsh Inc. has unveiled a new form of insurance protection that gives individual lawyers their own professional liability limits.

Attorney PersonalProtect provides cover in excess of any professional liability protection a law firm purchases to protect individual lawyers in case their firm's underlying protection is exhausted or ceases to exist, Marsh said in a statement. The product provides similar coverage to that found in Side A directors and officers liability policies, Marsh said.

"Although law firms typically obtain professional liability insurance on a practicewide basis, genuine concerns exist among individual lawyers regarding the adequacy of shared insurance protection," Richard May, errors and omissions placement practice leader at Marsh, said in a statement. "Events such as a firm's breakup or bankruptcy, for example, could lead to professional liability coverage being canceled with no extended reporting period provision to cover subsequent claims made against individual attorneys."

The policy provides \$1 million in coverage for a \$2,500 premium, remains in effect if the insured lawyer moves to different firms and includes prior acts, Marsh said.

Marsh forms global surety bank syndication desk

Marsh Inc. created a global surety bank syndication desk as part of its surety growth strategy and hired banking and insurance expert Manuel López to run it.

Mr. López will report to David C. Moylan, chairman of Marsh's global surety practice, and Roy White, CEO for U.K. specialties, the broker said in a statement.

Previously, Mr. López held senior roles with Deutsche Bank A.G. and WestLB A.G., now called Portigon A.G., which provide global risk distribution programs through insurance.

He will be based in Düsseldorf, Germany.

"The changed regulatory environment forces banks to allocate much more capital in their core lending business, including performance bonds, thereby potentially reducing risk appetite and returns on these transactions," Mr. Moylan said in the statement.

Guidance on biometric screenings in workplace

A group of national health care organizations issued a joint report offering employers guidance on effectively integrating biometric screenings into their workplace wellness programs.

The report, "Biometric Screenings for Employers," outlines best practices for employers and wellness vendors on a range of issues regarding the implementation of workplace biometric screenings, including data collection methods, workforce population selection, operational and administrative issues, privacy consideration and budget limitations.

The report was co-authored by the American College of Occupational and Environmental Medicine, the Health Enhancement Research Organization and the Care Continuum Alliance; it was published in the October issue of the ACOEM's Journal of Occupational and Environmental Medicine.

"With the rise of chronic disease in the United States, and an aging population, it is imperative that we take steps to keep our national workforce as healthy as possible," ACOEM President Dr. Ron Loeppke said in a joint statement.

The organizations' report includes advice for employers on proper collection and use of specific employee health metrics, such as weight, body mass index, blood pressure and cholesterol, within the confines of state and federal privacy regulations.

AIR's cat modeling platforms certified

AIR Worldwide Corp. announced that its catastrophe modeling platforms Touchstone and CATRADER have been certified as fully compliant with ACORD's property exposure standards.

The ACORD catastrophe exposure reporting standards can be used to supply a fine level of data granularity at an aggregated level, AIR said in a statement.

"Fulfilling the ACORD certification requirements demonstrates AIR's continued support for open and industry data formats to capture and move information about property location, building attributes, and policy coverage terms throughout the insurance value chain and into the risk models," George Davis, vice president at AIR Worldwide, said in the statement. "AIR is the first catastrophe modeling firm to be certified for these standards, and we look forward to continuing our collaboration with ACORD and other industry organizations to make data standards more universal and transparent."

"To achieve the efficiencies that will ensure better risk management practices, it is essential for the insurance industry to adopt a consistent framework for the exchange of information about exposure at risk," Puneet Bharal, director of global development at ACORD, said in the statement. "There is near universal call for industry standards for collecting, sharing, and reporting of exposure data. Throughout the standards development process and beyond, AIR has supported this industry initiative."

DEALS & MOVES

Aspen forms dedicated brokered facultative unit

Aspen Reinsurance, the reinsurance unit of Hamilton, Bermuda-based Aspen Insurance Holdings Ltd., formed a dedicated brokered facultative unit within its U.S. operation called Rock Re.

The unit will operate from Rocky Hill, Conn., and be led by Russ Wagner as senior vice president and manager. Previously, he was senior vice president and property facultative manager at Aspen.

In addition, Jim Connors will join Rock Re as vice president and assistant manager. He previously was vice president and underwriter at Montpelier Re Holdings Ltd.

Andrew Lombardo, previously vice president and underwriter at Montpelier, will join Rock Re as assistant vice president.

"Aspen Re has primarily written property facultative business on a direct basis and, while this will continue to be a key focus for us, we are establishing Rock Re with a dedicated team to better serve the needs of the broker marketplace," Brian Boornazian, chairman of Aspen Re, said in a statement.

Equinox Global increases capacity, adds Lloyd's syndicates

Equinox Global Ltd., a Lloyd's of London coverholder that specializes in trade credit, has increased its capacity to \$50 million from \$35 million and added three new syndicates to its carrier panel.

Equinox said the increase in capacity would be effective Nov. 1.

The company said it had added syndicates managed by Barbican Group, Canopus Group and Chaucer Holdings P.L.C. to its panel of underwriters that also includes syndicates operated by Aspen Insurance Holdings Ltd., Beazley P.L.C., Jubilee Group and Pembroke Managing Agency Ltd.

Barbican will supply \$5 million of the extra capacity, Canopus \$2 million and Chaucer \$1.5 million, Equinox said.

Aspen, Beazley and Pembroke have agreed to increase the capacity they supply to Equinox by \$6.5 million between them.

Mike Holley, CEO of Equinox, said in a statement that the coverholder's capacity now was "significant."

Equinox is owned by its management and by Beazley.

QBE North America partners with Sedgwick on claims

The claims division of QBE North America, a unit of QBE Insurance Group Ltd., has partnered with Sedgwick Claims Management Services Inc. to be the third-party administrator associated with QBE's new claims administration model.

The partnership between QBE and Sedgwick will enhance the overall service provided to agents, brokers and policyholders, Paul Stachura, chief claims officer for QBE North America, said in a statement. QBE will work on the delivery of complex and litigated claims and Sedgwick will manage the balance of the claims.

"Sedgwick's solid commitment to providing technology-enabled claims management solutions will be enriched by QBE's outstanding reputation in our industry. Together, we will serve an ever-growing national client base," David A. North, president and CEO of Sedgwick, said in the statement.

2014 Editorial Calendar Opportunities - 1st half

Issue Dates Ad Closing/Ma- terial Due Dates	Special Reports	Mid-Market	Benefits Manage- ment	Rankings/ Research/Data Poster	Special Advertising Sections/ Guides/ Supplements	Conference Distribution Business Insurance Events*
January 6 December 20 December 27	Health Care Reform Em- ployer Update ☼ ● ◆ ▲	Workers Comp Cost Containment ★ ■ ▲ ◆	Mental Health Benefits ☼ ■ ▲ ◆	Health Insurance Exchange Data		Property/Casualty Insurance Joint Industry Forum
January 20 January 3 January 10	D&O Liability Risks ★ ● ▲ ◆	Media Liability Risks ★ ■ ▲ ◆	Web-Based Retirement Planning Tools ☼ ■ ▲ ◆	D&O Insurer Ranking	Captive Insurance	PLUS D&O Symposium World Captive Forum
February 3 January 17 January 24	Environmental Liability Risks ★ ● ▲ ◆	Risk Management for Financial Services Firms ★ ■ ▲ ◆	Benefits Program Design Strategies ☼ ■ ▲ ◆			CIAB Legislative Leadership Summit ABA - Insurance Risk Management Annual Forum
February 17 January 31 February 7	Cyber Risks & Liabilities ★ ● ▲ ◆ ✕	Coverage Review Strategies ★ ■ ▲ ◆	Health Care Coverage Op- tions ☼ ■ ▲ ◆	Poster/Survey: Risk Managers' Cyber Risk Concerns		VIRTUAL CAREER FAIR - 2/13 AAMGA Automation & Technology
March 3 February 14 February 21	Emerging Risks and Specialty Lines ★ ● ▲ ◆ ✕	Conducting a Captive Feasibility Study ★ ■ ▲ ◆	Medical Stop- Loss Captives ☼ ■ ▲ ◆		Specialty Risk Exposures	NAPSLO Mid-Year Forum NBGH CICA
March 17 February 28 March 7	2014 Innovation Awards, Captive Trends & Profiles, CICA Report ★ ☼ ● ▲ ◆	Protecting Intellec- tual Property ★ ■ ▲ ◆ ✕	Disability Plans ☼ ■ ▲ ◆	Captive Domicile, Manager Rankings		RISK MANAGEMENT SUMMIT Ad Study
March 31 March 14 march 21	Claims Management Trends, Year-End Financial Analysis ★ ☼ ● ▲ ◆	Evaluating Workers Comp TPAs ★ ■ ▲	Evaluating Benefits TPAs ☼ ■ ▲ ◆	TPA Rankings	Claims Management Technology	IIABA National Legislative Conference & Convention World Health Care Congress
April 14 March 28 April 4	Social Media Risks Risk Management Trends, ★ ● ▲ ◆ ✕	Nursing Liability Risks ★ ■ ▲ ◆	Health Care Cost Containment ☼ ■ ▲ ◆	Poster/Survey: How Technology Has Changed Risk Management	RIMS Preview	PLUS Medical/P&L Symposium
April 28 April 11 April 17	Risk Manager of the Year® ★ ● ▲ ◆	Commercial Bonding ★ ■ ▲ ◆	Health Care Exchanges ☼ ■ ▲ ◆		Cyber Risks	RIMS BI RIMS SHOW DAILY ACORD/LOMA RMOY® AWARD BREAKFAST
May 12 April 25 May 2	RIMS Conference Report, Benefit Plan Design Trends ★ ● ▲ ◆ ✕	General Aviation Industry Risks ★ ■ ▲ ◆	Retirement Plan Options: 401(k)s ☼ ■ ▲ ◆	Poster/Survey: How Regulation Is Impacting Risk Management		AAMGA
May 26 May 9 May 16	Alternative Benefits Fund- ing, Captives ★ ☼ ● ▲ ◆	Web-Based Safety Training ★ ■ ▲ ◆	Hybrid Pension Plans ☼ ■ ▲ ◆	Benefit Broker Ranking	Bermuda Market Report	CIAB Employee Benefit Leadership Forum Bermuda Captive Conference Ad Study
June 9 May 23 May 30	Catastrophe Risks, Public Risk Management ★ ● ▲ ◆ ✕	Risk Mitigation ★ ■ ▲ ◆	Public Entity and Nonprofit Retiree Benefits ☼ ■ ▲ ◆	Property Loss Control Ranking	Commercial Property Risks	PRIMA IASA AIRMIC
June 23 June 6 June 13	Benefit Manager of the Year® ★ ☼ ● ▲ ◆	Human Resources Risks ★ ■ ▲ ◆	Wellness Programs ☼ ■ ▲ ◆	Benefit Consul- tant Ranking	London Market Report	SHRM IIS BMOY® LUNCHEON

For more information on media opportunities from Business Insurance
contact advertising@businessinsurance.com or call 312-649-5224

ALLIED WORLD PRESIDENT EYES GROWTH IN EUROPE, ASIA

Q What are your ambitions for the growth of Allied World in the Europe and Asia regions?

A My ambitions are quite simple: We want to be a lot bigger and more relevant to both buyers and brokers than we are at the moment. That involves underwriting more products, such as aviation, and to move away from being a traditional Bermuda excess player into writing more primary business ... If you look at Allied World as a company, we are still relatively young but an interesting study in terms of development. We have managed to achieve industry-leading growth without compromising profit. We typically have had a combined ratio of about 95%. As ever, with any underwriting business, it comes down to the talent that exists (within the business) and hiring star people. As we look to build out in Europe and Asia, it's not rocket science; it's about underwriting talent.

Q Allied World Europe has moved into aviation business recently. What attracted you to that line and are there other lines of business in

Q&A

which you would like to become involved?

A The aviation team that have joined us (in October, Allied World announced it had acquired the renewal rights to the aviation business written by Markel International's Lloyd's of London syndicate and European insurer) are pretty well known to us. Through our reinsurance operation, we have been writing quota shares (of that business). So, we knew the people, we knew the book of business. We felt happy with the talent and like the fact that it adds prod-

uct depth to our capability. For Allied World to grow, we know we need to offer new products to our broking partners and this was a good way to do it. In terms of other lines, we have an excellent reputation for writing excess casualty, excess high-hazard property and will look to develop primary capabilities in those areas. We will start to become a more traditional London market-type business.

Q Are there any particular geographic areas in which you would like to grow?

A It is important to have a balanced European team. The market in Europe is very fragmented in some ways — it is a different market in, say, Sweden than in Spain. It is important to make sure we have a diverse talent base and people who really understand the risks. In September, for example, we hired Enrico Bertagna (who most recently was head of southern and eastern Europe and Africa at Lloyd's of London) as senior vice president of business development. He has a perspective of the Continental



JULIAN JAMES

ALLIED WORLD ASSURANCE CO. HOLDINGS A.G.

Julian James was appointed president of Allied World Assurance Co. Holdings A.G.'s European platform in February. Mr. James previously was CEO of Lockton International, the international arm of brokerage Lockton Cos. L.L.C. The London-based executive spoke recently with *Business Insurance* Senior Editor Sarah Veysey about his plans to grow Allied World's business. Edited excerpts follow.

European market and has spent his life in Milan until moving to London for this role.

Q How does this role differ from your previous positions? What lessons can you bring from those roles to help you to grow Allied World?

A Someone said to me the other day that they don't quite know whether to view me as a broker, an underwriter or someone who

works in underwriting management. What I will say is that I have spent more than 30 years in the insurance industry and I feel that I am an insurance person through and through. I'm lucky to have spent time as a broker, within Lloyd's and running an insurance operation. And I've had the experience of five years working in the United States. So that gives me a perspective that allows me to look at the insurance world from many different angles.

COMINGS & GOINGS

UP CLOSE: JIM DOYLE

TAMPA, FLA.-BASED MANAGING PARTNER FOR TAMPA OPERATIONS

Willis North America Inc.

PREVIOUS POSITION: Tampa, Fla.-based executive vice president and producer for Aon Risk Solutions.

LOOKING FORWARD TO: Growing our business by working with the best insurance professionals in the state of Florida.

GOALS FOR NEW POSITION: I'm looking to expand and enhance our brand in Tampa and western Florida. I want to ensure Willis is the insurance brokerage of choice in Tampa.

INDUSTRY OUTLOOK: I am very positive. I think we are in growth business. We are in a tremendous market in Tampa. We have a lot of headroom to grow. We are very bullish and optimistic.

FIRST INDUSTRY JOB: I started with American International Group Inc. as a trainee in its casualty claims department in New York.

WHAT SURPRISED ME: The bandwidth of the industry and its affect on businesses in the world. I was surprised



at how important insurance is.

ADVICE: Become a specialist in something. Learn all you can about one facet of insurance before you move onto another. There are no such things as generalists. Becoming a specialist is where the future is.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would have loved to have been involved in the music or the film business. It's very glamorous.

HOBBIES: Golf, tennis and spending time with my family.

CAN'T-MISS TELEVISION SHOW: "Boardwalk Empire." It's based in New Jersey, and I grew up in New Jersey.

FAVORITE BOOK: "Game Change: Obama and the Clintons, McCain and Palin, and the Race of a Lifetime" by John Heilemann and Mark Halperin.

FAVORITE MEAL: Pasta.

THOUGHTS ON SMARTPHONES: They are tremendously functional and annoying at the same time.

Professional Moves & Promotions

Visit 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.

BROKERS

Cavignac & Associates	Matt Slakoff
Lockton Cos. L.L.C.	Matt Edelheit
Miller Insurance Services L.L.P.	Razi Sulaiman
Willis North America Inc.	David Carroll
Willis North America Inc.	James Galvin
Willis North America Inc.	Jamie Garner
Willis North America Inc.	Drew Gunn
Willis North America Inc.	Larry Shapiro
Willis North America Inc.	Kelly Turezyn
Willis North America Inc.	Bruce Whitmore

INSURERS

Hiscox Ltd.	Angela Adams
XL Group P.L.C.	Tom Fenner
XL Group P.L.C.	Gabriel Martinez
XL Group P.L.C.	Wayne Speeg

REINSURERS

Southport Re	Brandon Young
--------------	---------------

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: Kate Shepherd, *Business Insurance*, 150 N. Michigan Ave., Chicago, Ill. 60601-7524. kshpherd@businessinsurance.com.

BUSINESS INSURANCE

2013 TO WOMEN WATCH

LEADERSHIP WORKSHOP AND AWARDS LUNCHEON

DECEMBER 3, 2013
NEW YORK MARRIOTT MARQUIS



KEYNOTE SPEAKER:
MIKA BRZEZINSKI

CO-HOST OF MSNBC'S *MORNING JOE*
Best-Selling Author of *All Things at Once*, *Knowing Your Value*,
and *Obsessed: America's Food Addiction-and My Own*

In her first book, *All Things At Once*, she discusses the challenges of career, family and the news business. Her second best-seller *Knowing Your Value*, discusses perceptions of value and how successful women today have achieved their deserved recognition and financial worth in the workplace.

FULL-DAY TICKETS ARE AVAILABLE NOW
DON'T MISS ONE OF THE HOTTEST INDUSTRY
EVENTS OF THE YEAR!

REGISTER TODAY!

7:30 a.m.	Networking Welcome Breakfast & Registration
8:15 - 9:00 am	Welcome Keynote Address: Meryle Kaplan, Ph.D., Sr. Vice President, Global Member Services, Catalyst
9:00 - 10:00 am	Overcoming Unconscious Bias in the Workplace
10:15 - 11:15 am	Achieving Financial Independence
11:30 - 12:25 pm	The Chief Executive's Role in Cultivating Diversity
12:30 - 1:15 pm	Luncheon Keynote Address: Mika Brzezinski
1:15 - 3:00 pm	Award Luncheon

KEYNOTE SPONSOR:



GOLD SPONSORS:



SILVER SPONSORS:



BRONZE SPONSORS:



Stepping up to the obesity challenge



Mr. Edmundson

BY PHILIP EDMUNDSON

Add workers compensation to the list of insurance issues that are being driven by the rapid and sustained rise of obesity. The increase in obesity rates around the world, and specifically in the United States, offers great challenges to employers and their insurers.

The facts are undeniable. The one statistic that resonates most with me is that today's state with the lowest obesity rate, Colorado, has a rate of obesity that is higher than the highest obesity rate in any state in 1990. In other words, Americans today are heavier than ever, proving that no state is immune to this trend just because there are more folks biking or hiking its hills and valleys.

A less well-discussed fact is the impact of high obesity levels on workers compensation trends and how our industry may respond to it. At a recent conference with a leading workers compensation underwriter, the audience heard that workers are getting older, that older workers are getting more obese, and that disability claims costs for obese workers are 5.9 times higher than for nonobese workers.

The conclusion from this and many other insurers is to exit the

workers comp market in part or in whole. The American Medical Association's recent classification of obesity as a medical disease will only worsen the fears of comp insurers that they cannot price enough for claims trends in workers comp.

Wellness programs focus on helping employees help themselves. However, for the workers compensation insurer, the focus needs to be different. With the recognition that obesity is a disease, workers comp insurers will be facing an increase in the number of claims and will play a major role in dealing with the medical and economic burden of obesity. In late 2010, the Boca Raton, Fla.-based National Council on Compensation Insurance Inc. also released research that found the range of medical treatments and costs, as well as duration, typically is greater for obese workers than for those with similar injuries

Workers compensation insurers can no longer avoid dealing with the rise of obesity in the United States — and exiting the market isn't the answer. Philip Edmundson, chairman and CEO of William Gallagher Associates Insurance Brokers Inc., urges workers comp insurers to seize the opportunities inherent in this changing market and become proactive on loss prevention.

who are not obese.

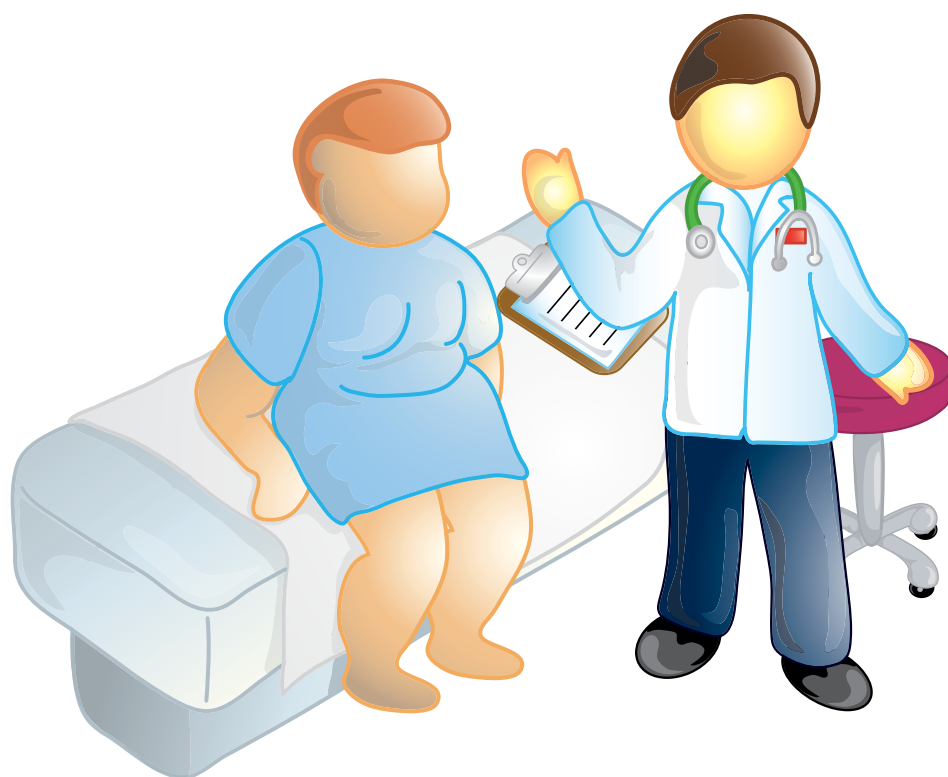
Health insurers, long on the front lines of obesity warfare, have taken a more proactive approach to this challenge. These insurers have been working for a decade or more on wellness initiatives to reduce obesity and the chronic diseases that it fosters. Further, the Patient Protection and Affordable Care Act, following insurers' leads, allows for health insurance purchasers to provide greater credits than ever for employees who follow wellness programs.

While this is a great incentive for employees to participate in wellness plans, it seems that there is still little agreement among academics that anything other than intensive, expensive intervention programs can produce long-lasting positive results, and these programs may not have a positive payback. The debate on these matters is active.

Health insurers, to their credit, are at least fully engaged in this conversation with policyholders, including whether and how to offer incentives to employers who deploy wellness strategies. Brokers and consultants actively promote a menu of possible solutions in support of clients looking for a slowing of costs, particularly from chronic disease control.

Workers comp insurers, on the other hand, have yet to show any interest in market-leading engagement in solutions. Don't get me wrong — some insurers are trying to target their case management in order to provide loss reduction results. But where are workers comp insurers when it comes to loss prevention? Many seem to be in such a rush to leave the market that they are missing the opportunity to succeed in a changing environment.

The new leaders in workers comp insurers will address the 'quality of care' given to the obese worker. They will start internally to educate their claims staff. Claims management will incorporate obesity not as a co-occurring condition, but as a treatable condition that interacts with most work injuries and illnesses. Nurse case managers and risk managers together will be proactive in setting up a return-to-work program that rec-



ognizes obesity. Workers comp insurers will seek out the employer's wellness program and assist in forming a joint policy of safety and wellness.

Workers comp insurers will align themselves with specialized service provider networks that look at diet, nutrition, exercise, medications and behavior as ways to treat obesity and develop best practices in weight maintenance in terms of productivity.

Admittedly, insurers may need some help from regulators, because there are fears that insurance commissioners may target insurers that treat claimants in ways that might be seen as discriminatory. But we seem to have overcome that hurdle in sensitive ways in health insurance scenarios. Perhaps regulators and workers comp insurers need to buy into a system of win-win solutions for claimants that address their chronic health problems effectively while at the same time addressing their back-to-work issues.

When all insurers, lemming-like, exit a market, new players eventually find higher prices and innovative solutions as a means

of producing a profitable growth strategy. Which insurers will carve out a position in workers comp, with effective loss prevention/wellness strategies, perhaps partnering with health insurers and/or health care providers, to be the leaders of the next decade in this huge market? The opportunity awaits those who are bold.

In the end, employers, workers comp insurers and regulators will face the freedom of choice at the foundation of our society. Ultimately, the success of a weight management plan is up to the individual. Also, if the industry targets obesity only, this can be discriminatory. Why not smokers or older workers? They also affect worker's compensation costs.

Which workers comp insurer will lead the way in a well-thought-out, new-thinking wellness/safety program?

Philip Edmundson is the chairman and CEO of William Gallagher Associates Insurance Brokers Inc. He can be reached at 617-261-6700 or pedmundson@wgains.com.

WILLIS: Broker facilities at Lloyd's raise underwriter concerns

Continued from page 4

property/casualty, marine, energy and facultative reinsurance for London subscription market business. The brokerage said the capacity allocated to each line of business would reflect market conditions.

"The proposition of access to whole portfolios of business has proven to be very appealing to capital providers," Steve Hearn, CEO of Willis Ltd., said in a statement. "We have attracted high-quality capital from around the world: insurers who wish to provide additional capacity to the specialty market or expand into new lines of business or territories, and reinsurers who want to enter the market in a cost-effective way."

WHAT'S OFFERED

Willis said its facility will offer the following follow-market capacity for London subscription market business:

- Aviation
- Space
- Construction
- Specialty property/casualty
- Marine
- Energy
- Facultative reinsurance

The facility will provide policyholders with additional capital and they "will benefit from increased price competition and faster placements and claims agreement," the statement said.

A spokesman for Willis said the facility likely would start underwriting in the coming weeks.

High-profile moves

While follow-market facilities have been set up before in London, the high-profile announcements by Willis and Aon have created a stir.

The Aon facility has drawn criticism from some senior figures in the Lloyd's market who say it dilutes underwriting expertise.

Aon, however, says the facility has been well-received by its clients as an efficient way to bring more highly rated capacity to business placed in the London market.

One London market broker, who asked not to be identified, said such facilities are "not necessarily a bad thing," and can bring extra capacity where it is needed, such as for offshore energy business.

But concerns will arise if these facilities are seen as a "free rider" on the expertise of Lloyd's, he said.

The arrangements could raise some questions for insurers, said Stefan Holzberger, managing director-analytics, EMEA at A.M. Best Co. in London.

"For insurers that are involved in the new contracts, A.M. Best would become concerned if they lose underwriting control," he said. "Should history repeat

itself—as was the case in the late 1990s and early 2000s when many specialty companies in the United States and several Lloyd's syndicates gave their pens to U.S. managing general agents, which were volume-driven and not focused on underwriting profits—the consequences could be disastrous."

Mr. Holzberger added, though, that for insurers participating in such programs, and other insurers more generally, the change in broker placements could have some positive implications.

"For example, insurers that are part of the facilities may benefit from a reduction in acquisition costs," he said. "Such partnerships with brokers can result in good business flow and provide risk diversification."

"Co-insurance per se is not only not a problem, it's the basis on which the London insurance market actually exists," said Stuart Shipperlee of London-based Litmus Analysis, an insurance consultancy.

"Broker facilities are therefore an overall positive or negative dependent on two issues: namely where and how the underwriting is controlled and the quality of the security of the broker facility follow market.

"So, if a broker-generated facility relies on London-based underwriting knowledge and controls and has healthy security, that's a good thing overall, even if it presents a competitive threat to individual organizations," he said.

There are questions, however, about how the facilities could affect smaller Lloyd's syndicates.

"Those insurers that are deemed to be offering limited added value at the bottom end of slips may be removed from contracts," said Mr. Holtzberger of A.M. Best.

Consequently, smaller syndicates and London market insurance companies could lose business, he said.

"What could make it more challenging for smaller players is that the major brokers feel less pressure to keep them onside as a market for their business overall," Mr. Shipperlee said.

But he added, "We shouldn't lose sight of the fact, however, that it's really the buyer's choice where the business is placed, not the broker's."

One London market underwriting source, who said his company had looked at participating in Willis Global 360 and other facilities, but was not taking part at this time, said such mechanisms are "a normal extension of market practice and negotiations."

He said insurance buyers need to feel comfortable with the level of underwriting and claims delegation such facilities involve, and accept that the motivation of a broker putting together such a facility will not be the same as the motivation of a participating underwriter.

"The proposition of access to whole portfolios of business has proven to be very appealing to capital providers. We have attracted high-quality capital from around the world: insurers who wish to provide additional capacity to the specialty market or expand into new lines of business or territories, and reinsurers who want to enter the market in a cost-effective way."

Steve Hearn, Willis Ltd.



BLOOMBERG
Smaller Lloyd's of London syndicates risk being marginalized by broker facilities.

IN A WORLD OF COMPLEX DECISIONS
this one is easy

With all the risks associated with running a business, employee benefits shouldn't be one of them. When you partner with us, business gets a whole lot simpler.

- A full portfolio of products including FSA, HSA, HRA, TSA, COBRA administration and Billing Solutions
- Experienced and accountable staff—specialists in each line of business
- Award-winning customer service that leads to high retention rates
- Due to health care reform, our products are more important than ever. Offer your clients benefits they can really use.



Scan to request a proposal

Find out why consultants nationwide recommend Discovery Benefits more than any other TPA.

Request a proposal at DiscoveryBenefits.com or call 701-239-6225. Mention code BI2013 and get 10% off rates.

Discovery Benefits®
simplify.™

IRS focus on captives raises concerns for 831(b) owners

BY RODD ZOLKOS

CHICAGO — Small captive insurance companies eligible for the Internal Revenue Code's 831(b) tax election have been a major factor in the pace of new captive formations in recent years, but 831(b) captive owners have to be careful to avoid running afoul of IRS guidelines, experts say.

The IRS is showing increased interest in captives lately, including a heightened focus on 831(b)s, observers say.

"The IRS has never liked captives," said Charles J. Lavelle, partner at law firm Bingham Greenebaum Doll L.L.P. in Louisville, Ky. "They are much more active on audit these days."

Under IRC Section 831(b), insurance companies with no more than \$1.2 million in annual written premium pay no tax on their underwriting profits. Multiple insurers owned by related parties have an aggregate \$1.2 million limit, according to Ernest C. Achtien, chief financial officer at Captive Resources L.L.C. in Schaumburg, Ill.

"The rules are kind of picky and you just have to watch it," Mr. Achtien said. "First and foremost, it has to be a good insurance company," he said. "You have to have a non-tax business purpose. You have to be transferring true insurance risk."

The comments were made at

Self-Insurance Institute of America Inc.'s Annual National Educational Conference & Expo last month in Chicago.

While the small 831(b) captives are a fast-growing segment of the captive insurance market — Mr. Achtien said he has heard anecdotally that there are 3,000 831(b) captives and others suggest the number is even greater — panelist Jeffrey K. Simpson, director at law firm Gordon, Fournaris & Mammarella P.A. in Wilmington, Del., said most regulators don't keep track of the number of captives in their domicile that make an 831(b) election.

"For the most part, nobody's really keeping track," Mr. Simpson said. Of the regulators he's interviewed, only one said the domicile tracks the number of captives making an 831(b) election, he said.

Every regulator he spoke to said his or her domicile makes no exceptions or accommodations to attract 831(b) captives, even those whose statutes provide some relaxation of standards for small insurance companies, Mr. Simpson said.

States that do the most 831(b) business seem to be those most likely to be asked to consider less traditional captive ownership arrangements, Mr. Simpson said. His discussions with regulators showed that states that do significant 831(b) business allow the captive to be owned outside the corporate chain, such as by a trust or for



The Self-Insurance Institute of America Inc.'s annual National Educational Conference & Expo was held last month in Chicago.

the benefit of the founder's heirs, he said. Conversely, regulators in states that do not do significant 831(b) business told him they'd never been asked to consider such

arrangements.

And of the regulators he discussed 831(b) issues with, only one looked closely at IRS guidance and expected captives to follow it. The

others said they focus only on captives' solvency, liquidity and policyholder protection, Mr. Simpson said.

Mr. Lavelle said he thinks much of the IRS' increased attention to captives recently is an attempt to "fill in the gaps" between previous revenue rulings.

Among the frustrations for captives in trying to pass IRS muster is that, among the agency's guidelines for companies looking for insurance company treatment, is that the company take on "insurable risk" rather than "business risk," Mr. Lavelle said.

"The really frustrating thing is they haven't defined business risk," he said.

The IRS is also likely to interpret the absence of claims as a lack of true risk transfer to the captive, Mr. Lavelle said. "Here's what the service really doesn't like: They don't like it when you buy insurance and there are no claims," he said. "They equate that with no risk." He advised captive owners to make claims if a loss occurs and pay claims if they're valid.

John T. Naughton, principal at Keystone Risk Partners L.L.C. in Conshohocken, Pa., moderated the session.

SIIA's 33rd National Educational Conference & Expo drew approximately 1,600 attendees to the Sheraton Chicago Hotel & Towers Oct. 21-23. Next year's event is scheduled for Oct. 5-8 in Phoenix.

SIIA

Continued from page 4

improve their own pricing, said Stanford A. Smith, predictive analytics manager for the Northeast region at consultancy Milliman Inc. in Wakefield, Mass. "You'll be much more informed," he said. "I look at it as managing the underwriting process with intelligence that's not been available before. It affects both the selection and guides the pricing process."

Mike Crandall, founder and owner of Covenant Risk Partners Inc. in Norcross, Ga., said self-insured groups should see predictive models as a tool that can help make them more competitive with insurers. "This is an opportunity to bring improvements though similar modeling techniques to both sides of the equation, so you have improved risk selection, more appropriate pricing and you're doing ... smarter things sooner on the claims side to help over time improve the profitability of the business you have," he said.

The predictive modeling panel was moderated by Kimble E. Coaker, CEO and administrator of the Alabama Trucking Association Workers Compensation Fund in Montgomery, Ala.

In another SIIA conference ses-

sion, panelists said group captives can provide stability for small to midsize employers that seek to avoid fluctuating prices in the traditional workers comp market.

Tom Schmidt, vice president and general manager of Walford, Iowa-based Gordon Sevig Trucking Co., said his company has belonged to the Traffic Insurance Ltd. group captive for 20 years. Gordon Sevig no longer shops for traditional workers comp insurance because the company has been able to manage its comp claims within the captive and control its costs.

"I know what my cost is going to be by the time it comes around per my losses over the past five years," said Mr. Schmidt, whose company has about 180 employees.

Tony Griffin, president of Charlotte, N.C.-based Griffin Masonry Inc., said being in a group captive has increased his firm's profits by about 2% by reducing his workers comp insurance costs. Griffin Masonry and two affiliated businesses have about 800 employees covered by the Archway Insurance Ltd. group captive.

"It has stabilized our rates," said Mr. Griffin, whose firms joined Archway in 2005. "We don't have the swings that happen (in the traditional comp market), and it has given us, we think, a competitive advantage. We haven't shopped our rates in about three years."

PUBLIC NOTICES

TAKE FULL ADVANTAGE OF YOUR RESOURCES!

In Print...



and Online



For more information call Monique Murray at 212-210-0129

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF CENTENNIAL INSURANCE COMPANY Supreme Court of the State of New York County of New York, Index No.: 402424/10 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered on April 27, 2011 ("Liquidation Order"), the Superintendent of Insurance of the State of New York and his successors in office were appointed as Liquidator ("Liquidator") of Centennial Insurance Company ("Centennial") and, as such, has been directed to take possession of Centennial's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Centennial. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Centennial. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator sought and obtained an order setting a bar date, but notice of the application thereof was inaccurate and therefore the Liquidator has filed an Order to Show Cause with supporting papers seeking an order: (i) vacating the order, signed by the Court on September 18, 2013, establishing September 30, 2013 as the bar date in this proceeding; (ii) establishing December 15, 2013, as the bar date ("Bar Date") for the presentation to the Liquidator of all claims against Centennial or its insureds other than the Liquidator's claims for administrative expenses and January 16, 2015 as the last date on which the holder of such a claim against Centennial or its insureds submitted by the Bar Date, other than the Liquidator's claims for administrative expenses, may submit to the Liquidator proof, including all facts regarding such claim, in support of the allowance of such claim; and (iii) providing for such other and further relief as the Court may deem just and proper.

A hearing is scheduled on the Order to Show Cause on the 19th day of November, 2013, at 11:00 a.m., before the Court at the Courthouse, IAS Part 15, Courtroom 327, 80 Centre Street, New York, New York. If you wish to object to the relief sought, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Insurance Company, 110 William Street - 15th Floor, New York, New York 10038, Attention: General Counsel

The Order to Show Cause and supporting papers are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditors and Ancillary Operations at (212) 341-6589.

Dated: October 8, 2013, Benjamin M. Lawsky Superintendent of Financial Services of the State of New York as Liquidator of Centennial Insurance Company.

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF GRAND CENTRAL ASSURANCE CORPORATION Supreme Court of the State of New York County of New York, Index No.: 451373/2013 NOTICE OF LIQUIDATION ORDER

Benjamin M. Lawsky, the Superintendent of Financial Services of the State of New York (the "Superintendent"), in his capacity as court-appointed liquidator (in such capacity, the "Liquidator") of Grand Central Assurance Corporation ("GCAC"), hereby gives you notice that on September 24, 2013, the Honorable Doris Ling-Cohan of the Supreme Court of the State of New York, County of New York signed an order (the "Liquidation Order"): (i) appointing the Superintendent and his successors in office as Liquidator of GCAC; (ii) authorizing and directing the Liquidator to immediately take possession of GCAC's property, liquidate GCAC's business and affairs, and dissolve GCAC's corporate charter; and (iii) authorizing and directing the Liquidator to take possession of GCAC's books, files, records and other property, wherever located. The Liquidation Order also provides for certain injunctive relief, which the Liquidator believes is in the best interest of the GCAC estate. In accordance with Section 7432(b) of the New York Insurance Law, all claims against GCAC must be presented to the Liquidator by no later than February 10, 2014.

Please take notice that a copy of the Liquidation Order has been posted at http://www.nylib.org/Documents/GCAC_Liquidation_OrderAm.pdf.

Requests for further information or questions should be directed to (212)341-6138 or to ehong@nylib.org. Dated: October 9, 2013, Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as Liquidator of Grand Central Assurance Corporation.

LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF ATLANTIC MUTUAL INSURANCE COMPANY Supreme Court of the State of New York County of New York, Index No.: 402424/10 NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered on April 27, 2011 ("Liquidation Order"), the Superintendent of Insurance of the State of New York and his successors in office were appointed as Liquidator ("Liquidator") of Atlantic Mutual Insurance Company ("Atlantic Mutual") and, as such, has been directed to take possession of Atlantic Mutual's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Atlantic Mutual. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of Atlantic Mutual. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator sought and obtained an order setting a bar date, but notice of the application thereof was inaccurate and therefore the Liquidator has filed an Order to Show Cause with supporting papers seeking an order: (i) vacating the order, signed by the Court on September 17, 2013, establishing September 30, 2013 as the bar date in this proceeding; (ii) establishing December 15, 2013, as the bar date for the presentation to the Liquidator of all claims against Atlantic Mutual or its insureds other than the Liquidator's claims for administrative expenses; and (iii) providing for such other and further relief as the Court may deem just and proper.

A hearing is scheduled on the Order to Show Cause on the 19th day of November, 2013, at 11:00 a.m., before the Court at the Courthouse, IAS Part 15, Courtroom 327, 80 Centre Street, New York, New York. If you wish to object to the relief sought, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address: Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Insurance Company, 110 William Street - 15th Floor, New York, New York 10038, Attention: General Counsel

The Order to Show Cause and supporting papers are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditors and Ancillary Operations at (212) 341-6589.

Dated: October 8, 2013, Benjamin M. Lawsky Superintendent of Financial Services of the State of New York as Liquidator of Atlantic Mutual Insurance Company.

HELP WANTED

State of Hawaii

Department of Commerce & Consumer Affairs • Insurance Division
Captive Insurance Administrator

The State of Hawaii, Department of Commerce and Consumer Affairs, Insurance Division, under the direction of the Insurance Commissioner, is actively seeking a qualified individual to fill its exempt Captive Insurance Administrator position. The duties include overseeing all aspects of the administration of the captive insurance program including the licensing, regulation and development of the captive insurance industry in the State of Hawaii.

Interested candidates should submit their resumes and salary requirements, by November 30, 2013, to the following:

The Honorable Gordon Ito
 Insurance Commissioner
 State of Hawaii, Insurance Division
 335 Merchant Street, Room 213
 Honolulu, Hawaii 96813

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

First Mutual Transportation Assurance Company ("FMTAC"), a New York State-licensed captive insurance subsidiary of the Metropolitan Transportation Authority ("MTA"), is soliciting responses from qualified firms to provide general risk financing advisory services, legal services, initial purchasing and structuring, risk modeling in connection with Insurance-Linked Securities ("ILS") transactions.

To secure copies of the request for proposals (RFP #13243) please contact Yuliana Konovalova at MTA Procurement, 333 W 34th St, NY, NY 10001 via e-mail ykonoval@mtabc.org or by phone (646) 376-0076. Pick up or view the RFP between 9:30 a.m. - 4:30 p.m., weekdays (except holidays) or have them mailed to you. The RFP will also be available on the MTA website, www.mta.info. The RFP is expected to be available on or about October 28, 2013. All questions concerning this RFP should be directed to Yuliana Konovalova.

Proposals are due by 4:00 p.m. (EDT) on Thursday, November 14, 2013.

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE No. 6837 of 2013 CHANCERY DIVISION COMPANIES COURT IN THE MATTER OF CHEVANSTELL LIMITED

AND
 R&Q INSURANCE (MALTA) LIMITED

IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000 TRANSFER OF INSURANCE BUSINESS

NOTICE IS HEREBY GIVEN that, by application issued on 4 October 2013, Chevanstell Limited (Chevanstell) and R&Q Insurance (Malta) Limited (R&Q Malta) applied to the High Court of Justice of England and Wales for, amongst other things, an order under Section 111(1) of the Financial Services & Markets Act 2000 (the Act) sanctioning an insurance business transfer scheme (the Scheme) providing for the transfer of certain lines of insurance business to R&Q Malta and for an order making provision under Section 112 of the Act.

The business included in the proposed transfer (the Transferring Business) comprises all of the general insurance and reinsurance business of Chevanstell. The Transferring Business includes business transferred to Chevanstell by the following insurers:

- 1 Baltica Insurance Company (UK) Limited;
- 2 Colonia Versicherung AG;
- 3 Nordstern Allgemeine Versicherung AG;
- 4 Arran Insurance Company Limited.

If you are in any doubt as to whether your (re)insurance policy is included in the proposed transfer please contact Chevanstell, at the address and reference set out below.

Copies of a report on the terms of the Scheme prepared by an independent expert in accordance with section 109 of the Act (the Scheme Report) and copies of a statement setting out the terms of the Scheme and containing a summary of the Scheme Report may be obtained, free of charge, by telephoning 020 7780 5922, or by emailing chevanstell@rqi.com, or by writing to Chevanstell at 110 Fenchurch Street, London, EC3M 5JT, Ref Paul Corver. Alternatively, these documents may be downloaded from the website: <http://www.rqi.com/news-events/chevanstell-part-vii-transfer/>

Anyone who has questions regarding the proposed transfer or who requires any further information regarding the transfer may also contact Chevanstell at the above telephone number or address.

The application will be heard on 20 December 2013 before a Judge of the Chancery Division of the High Court at 7 Rolls Building, Fetter Lane, London, EC4A 1NL, United Kingdom. Any person who alleges that he or she would be adversely affected by the carrying out of the Scheme is entitled to:

- (i) appear at the hearing and make representations in person;
- (ii) instruct a barrister or solicitor advocate to appear at the hearing and make representations on his/her behalf; or
- (iii) make representations in writing.

If you intend to appear at the hearing in person, or to instruct someone to appear on your behalf, you are requested to give notice of your intention to do so in writing, setting out the reasons why you believe you may be adversely affected.

You are requested to send such notice, or if you are not intending to appear in person or by your legal representative, any written representations that you may have, to Chevanstell at the above address or to Clyde & Co LLP, The St Botolph Building, 138 Houndsditch, London, EC3A 7AR (ref: G Quirk 1213954). Please provide such notice or such written representations by close of business on 12 December 2013.

If the Scheme is sanctioned by the Court, it will result in the transfer of all the contracts, property, assets and liabilities of Chevanstell to R&Q Malta notwithstanding any restriction or right that might otherwise apply in relation to such transfer. Any such restriction or right will only be enforceable to the extent the order of the Court makes provision to that effect.

Clyde & Co LLP, The St Botolph Building, 138 Houndsditch, London, EC3A 7AR. Solicitors to Chevanstell and R&Q Insurance (Malta) Limited (Ref: G Quirk 1213954)

Need to Publish a
 Legal Notice,
 Announcement,
 Help Wanted or RFP

Contact
 Monique Murray at
 212-210-0129

MEDIA PARTNER

NBCH REGISTER TODAY!
 National Business Coalition on Health

**Health Care Transformation:
 Accelerating Purchaser Strategies**

18TH Annual Conference
 November 18-20, 2013

The Westin-Kierland Resort & Spa
www.nbch.org/2013-Annual-Conference



- Get Access**
- Get Answers**
- Get Ahead**

See how with the
 IRMI KnowledgeBase
 Visit IRMI.com/Go/5



ASHRM: Health care providers face up to workplace violence

Continued from page 4

annual conference, held Oct. 27-30 in Austin, Texas.

Richard D. Sem, president of Lake Geneva, Wis.-based Sem Security Management, offered advice for health care systems that are looking to prevent violence in their workplaces. Mr. Sem, who provides security consulting for health care organizations, said he has seen an increase in "rude and aggressive" behavior at hospitals.

Mr. Sem said that risk managers should develop close relationships with internal security managers,

as well as police or sheriff's departments in their communities.

"You need to have that liaison with your local law enforcement agencies," Mr. Sem said. "They need to know you, they need to know your plans, they need to tour your facility, they need to have layouts, (and) they need to know what you're going to do in case of violence and what their relationship is. They can be a great resource."

Mr. Sem recommended limiting the number of entrance points in hospitals, and recommended having people greet visitors as they

enter facilities. By establishing contact with people entering the hospital, Mr. Sem said staff can make an early assessment of whether a person might pose a threat of violence.

'How can i help you?'

"I think the most powerful five words in security are 'How can I help you?'" Mr. Sem said. "They're not a threatening question, (and) most ... people coming in will appreciate the question. But it's a good way of assessing what people might be up to."

Mr. Sem also recommended providing security training for all employees in medical facilities.

"Your staff needs to have responsibility," he said. "Often when I talk to nurses and physicians, they'll say, 'It's not our job, it's security's job.' Well, it is their job really. It's part of their role."

In another ASHRM conference session, a joint study by Aon Risk Solutions and ASHRM showed that medical malpractice claim frequency is expected to remain flat in the next year, while the cost of med mal claims has seen the smallest increase in more than a

decade.

The study projected no increase in hospital professional liability claim frequency for 2014. Meanwhile, med mal claim severity, including defense costs, is growing by 2.5% annually, which is the lowest rate of severity growth in the report's 14-year history.

"This risk appears to be fairly under control and fairly stable," said Erik Johnson, Raleigh, N.C.-based health care practice leader for Aon Risk Solutions' actuarial and analytics practice, in a presentation at the ASHRM conference.

The report estimated that med mal claims in 2014 will represent 60 cents in costs for every \$100 of hospital revenue, or \$135 per average hospital admission. Hospitals have been reducing med mal costs in part by improving patient safety and self-insuring to cover malpractice claims, the study said.

Aon and Dublin-based insurer and reinsurer Beazley P.L.C. also performed an analysis of high-severity med mal claims with costs of more than \$2 million.

Valentina Minetti, London-based underwriter and pricing actuary for Beazley's health care specialty lines, told ASHRM conference attendees that Washington, Philadelphia, and Cook County, Ill., had the highest frequency of high-severity med mal claims.

However, she noted that states with tort reform laws, such as California and Maryland, have seen a recent increase in med mal claim severity that is steeper than the national trend.

Beazley claims managers "are seeing record verdicts in states that are not necessarily the usual suspects," Ms. Minetti said. "States like Wyoming, Maine, Virginia and Colorado have all had state-record verdicts in the last 12 to 24 months."

About 3,000 people attended this year's ASHRM conference. Next year's conference is set to be held Oct. 26-29 in Anaheim, Calif.

Members Voice the Value of RIMS

RIMS has afforded me the opportunity to **exchange ideas** with my peers which has been **invaluable** to my organization and me.

Dan Holden
Manager, Corporate Risk & Insurance
Daimler Trucks North America

Learn more about the extraordinary successes of our members at
www.RIMS.org/RIMSuccesStories

RIMSuccesStories

Real Stories. Real Members. Real Success.



ADVERTISER

INDEX

Issue of November 4

ADVERTISER	PAGE #
About Your Benefits	41
ACE	15
AIG	Cover 4
Allied World Assurance	Cover 3
Berkshire Hathaway	Cover 2
Business Insurance	20, 31, 33, 35, 43, 45
C.N.A. Insurance	19
Chubb	9
Discovery Benefits	37
Florida State University	41
The Institutes	27
Liberty Mutual	5
Milliman	13
Navigators	23
OneBeacon Professional Insurance	17A-B
Prudential	11
QBE	24/25
Risk & Insurance Management Society	40
St. John's University	2
Swiss Re	29
Westrope & Associates	38
XL Insurance	21
Zurich North America	7

REFORM: Bipartisan support grows

Continued from page 1

pay a fine have received bipartisan support.

In addition, some earlier proposals, such as one introduced in June that would ease a health care law requirement that employers offer coverage to full-time employees or pay a penalty, now have support from members of both political parties.

Even the regulatory agencies seem more open to consider changes to the law.

For example, the U.S. Department of Health and Health Services disclosed last week that it will propose a slight relaxation of a provision that requires all health care sponsors to pay a so-called reinsurance fee effective next year to partially offset costs incurred by insurers covering high-cost individuals buying coverage in public exchanges.

Whether these new bipartisan steps — and perhaps others yet to come — to amend the law will be backed by congressional Republican and Democratic leaders, as well as the Obama administration, remains to be seen.

Hurdles remain

Some Washington observers say forging bipartisan agreements to amend the health care reform law still faces rough sledding.

“There still is no widespread appetite” in Congress to amend the law, said Gretchen Young, senior vice president of health care policy at the ERISA Industry Committee in Washington.

“In the current political climate, it still is very unlikely, if not impossible, to address needed” changes to the law, said Eric Zimmerman, a partner with McDermott, Will & Emery L.L.P. in Washington.

Others say legislative changes are possible.

“There could be opportunities for some bipartisan agreements,” said Geoff Manville, a principal with Mercer L.L.C. in Washington.

It was only a couple of years ago when Republicans and Democrats were able to work together on making health care reform law changes. For example, in 2011, Congress, with little dissent, approved a measure repealing a provision that would have required employers to offer low-wage employees company-paid vouchers to buy coverage in public health insurance exchanges.

Business groups strongly opposed the requirement, arguing that it would boost employer costs and add administrative complexity.

In 2011, Congress also agreed on another tweak to the law, repealing a provision that would have required employers to furnish Form 1099s if they did more than \$600 in business with a corporate vendor.

Since those attempts two years ago, bipartisan efforts to amend ACA have largely dried up.



AP PHOTO

President Barack Obama spoke at Boston's historic Faneuil Hall last week about the federal health care law.

Now some Republicans and Democrats are joining forces in the wake of a politically unpopular move by Republicans last month, when they blocked for two weeks legislation to keep the federal government fully running as leverage for repealing the health reform law, are focusing on targeted changes to it.

For example, last week Reps. Ami Bera, D-Calif., and Charles Boustany, R-La., co-sponsored legislation that would delay a provision that imposes a new tax on health insurers until 2016, a two-year delay.

“We need to work together to fix the areas of it that are problematic and make it work better for the American people,” Rep. Bera said in introducing the bill.

By delaying the tax, which Rep. Bera said insurers would pass on to employers and individuals in the form of higher premiums, health insurance markets would have more time to stabilize while providing immediate relief to buyers, he said.

Full-time employee

In addition, Sen. Susan Collins, R-Maine, has secured support from several congressional Democrats, including Sens. Jon Donnelly, D-Ind., and Joe Manchin, D-W.Va., for her proposal that would amend the law's definition of a full-time employee, shielding more employers from a fine imposed by the law.

Under the law, employers are required to offer qualified coverage to full-time employees — defined as those working an average of 30 hours per week — or be liable for a \$2,000 penalty per employee in 2015.

Under the Collins bill, the definition of full-time employees would be those working an average of 40 hours per week.

Experts say without a change in law, some employers will reduce hours worked by employees whom they consider to be part-time, such as those working 35 hours a week or less and have not extended health care coverage, to below the 30-hour threshold set in the law to avoid the \$2,000 penalty.

“Traditionally, employers have required employees to work more than 30 hours a week to be eligible for benefits,” said Amy Bergner, managing director of human resources solutions at PricewaterhouseCoopers L.L.P. in Washington.

Without amending the law, some employers would reduce employees' hours, which was not the intent of the law, Ms. Bergner added.

Federal lawmakers aren't the only ones who will be shaping the health care reform law in the coming months.

A federal judge in Washington, for example, said he will rule early next year on a suit challenging an Internal Revenue Service rule that says federal premium subsidies are available to lower-income uninsured individuals seeking coverage in public insurance exchanges.

The plaintiffs argue that under the law, the subsidies are available only in state exchanges and not the 34 states where the federal government established exchanges after the states declined to do so.

If the plaintiffs prevail, millions of people living in states that declined to set up exchanges would lack access to premium subsidies, making it unlikely that the law's central purpose of significantly reducing the number of uninsured would be achieved.

In 2012, 48 million U.S. residents were uninsured, according to the U.S. Census Bureau.

RESOURCE CENTER

BENEFIT STATEMENTS

BENEFITS SHOULD MAKE A STATEMENT!

ABOUT YOUR BENEFITS
The Source for Statements

Our professional communicators and extensive production resources, assure accurate personalized information for each employee:

- Customized designs
- Always accurate and on time
- Highly competitive pricing
- Strong IT support

866.440.4402

info@aboutyourbenefits.com
www.aboutyourbenefits.com

EDUCATION



FLORIDA STATE UNIVERSITY
COLLEGE OF BUSINESS

ONLINE RMI MASTER'S DEGREE

- Take your knowledge and skills to the next level
- Earn our Top 10-ranked degree in under two years

business.fsu.edu/OnlineRMI

Every student – regardless of location – pays the same price, plus applicable fees, for coursework.

BI CUSTOM MEDIA GROUP WEBINAR

presented by **ZURICH**

November 19, 2013
2pm eastern

Join us to hear an expert panel discuss how best to prepare and respond to the changes coming from the Affordable Care Act.

This webinar will explore a range of issues associated with how health care providers should prepare for the Affordable Care Act, including such issues as:

- New staffing and employment-related risks from consolidation
- Structural changes in the delivery system, including the development of ACOs
- New security and privacy risks from managing patient records
- Adequacy of safety and risk management communication to personnel
- Property risks arising from acquiring or building new facilities
- Adapting health care benefit plans to comply with federal reforms

To register for the live event on November 19 visit <http://mkt0.businessinsurance.com/HC-Webinar-Register.html> or visit www.businessinsurance.com/webinars

INTERNATIONAL, FEDERAL REGULATIONS VIEWED WITH WARY EYE BY INSURERS

Regulatory overreach seen as primary threat to insurance industry

BY BILL KENEALY

BOSTON — As a highly regulated industry, the property/casualty insurance sector confronts a degree of regulatory risk in daily operations.

Indeed, Property Casualty Insurers Association of America President David Sampson recently singled out risk emanating from a “rising tide” of regulatory initiative as a primary threat to the industry.

“What we must guard against are policies that work to hinder the viability of a competitive private insurance market,” he said. “Namely, regulatory overreach by state, federal and international officials and laws that undermine a (property/casualty) company’s ability to operate on actuarially sound principles and that interfere with market dynamics.”

Nonetheless, Mr. Sampson also cited areas where government inaction was a threat to the industry, such as the ongoing uncertainty surrounding the National Flood Insurance Program and the soon-to-expire Terrorism Risk Insurance Program Reauthorization Act as examples.

Mr. Sampson’s comments were made at the PCI’s annual meeting held Oct. 20-23 in Boston.

Peter Raab, senior vice president and head of property underwriting regional clients at Princeton, N.J.-based Munich Reinsurance America Inc., noted that the time remaining to renew the Terrorism Risk Insurance Program Reauthorization Act was dwindling as renewal season approaches.

“We are pushing for renewal of this backstop and would like to see a decision as soon as possible,” Mr. Raab said. “Our concern is that we may not have a decision from

PCI CHAIRMAN’S AGENDA

Robert Restrepo, new chairman of the Property Casualty Insurers Association of America, has three main priorities for his one-year term that began at the group’s annual meeting Oct. 19-23 in Boston. They are:



Mr. Restrepo

- Help achieve bipartisan consensus for Congress to extend the Terrorism Risk Insurance Act, which is set to expire on Dec. 31, 2014.
- Preserve underwriting integrity and provide private market solutions to property insurance, particularly in regard to coastal exposures.
- Defend the integrity of a state-based insurance regulatory system from threats at the international and federal level.

Washington by the end of the year, but we are optimistic that it will be renewed in some shape or form. We have terrorism exposures in our insurance and reinsurance portfolios that are manageable ... but without a government backstop, it will be difficult to provide that support going forward.”

William Donnell, Armonk, N.Y.-based president of U.S. property/casualty and managing director, Americas for Swiss Re Ltd., agreed that the need for a decision regarding TRIA was imperative, noting that every policy that renews after Jan. 1, 2014, will have exposures that go beyond the expiration date of TRIA on Dec. 31, 2014.

“The policies that start renewing



MICHAEL MARCOTTE

David Sampson says too much financial regulation coupled with inadequate government movement on natural catastrophes and terrorism pose threats to the industry.

on Jan. 1 will be affected,” he said. “Clients are trying to figure out a Plan B if TRIA is not renewed.”

Much like TRIA, there also was concern surrounding the NFIP. Mr. Sampson said the passage of the Biggert-Waters Flood Insurance Reform Act of 2012 has yet to stabilize the program.

“Insurers are also worried about reputational risk as this program rolls out in a haphazard and inefficient manner,” he said during a keynote address at the meeting.

Looking further out on the horizon, Mr. Sampson noted that the insurance industry’s regulatory and political issues were not limited to the U.S., citing the plans of the International Association of Insurance Supervisors to create a

quantitative global insurance capital standard by 2016 at the behest of the Financial Stability Board as a primary source of long-term risk facing the industry.

“The FSB is clearly seeking to be the final arbiter of global financial service regulation,” he said. “While it may be years before capital standards are finalized and implemented, we must realize the very real threat of new layers of bank-centric, unnecessary regulation.”

Health care reform

Another, more immediate source of uncertainty in casualty lines is the Patient Protection and Affordable Care Act.

David Dee, head of casualty underwriting, national clients, reinsurance division at Munich Reinsurance of America, said health care systems are now facing larger liability issues as they merge in the wake of the legislation. “We are seeing a consolidation in the health care delivery system, which is leading to a convergence of liability exposure,” he said.

However, Mr. Dee said the uncertainty around the health care reform law is also creating opportunities for the insurance industry.

“Nobody knows exactly what will come of the Accountable Care Organizations at this point, but we expect some opportunities there,” he said.

PCI: Lower rates, multiyear deals expected at renewals

Continued from page 3

“The market can move lower, but how far?” Mr. Bowie said. “I don’t know how much lower it can go on Jan. 1.”

A relatively calm 2013 in terms of catastrophe losses also is contributing to the U.S. reinsurance market’s overall softness.

“Insurance companies have had a pretty good 2013,” said Edina, Minn.-based Phil Campbell, executive vice president for reinsurer BMS Intermediaries Inc., part of BMS Group Ltd.

“Reinsurers are so well-positioned in terms of capital, they will have to struggle to find a rationale to raise prices ... Buyers will be asking for reasonable consideration.”

Phil Campbell, BMS Intermediaries Inc.

In the absence of severe storm-related losses this year, insurers and reinsurers likely will post strong financial results.

“In this (loss) absence, insurers have done well and will likely pub-

lish pretty good numbers. Likewise, reinsurance companies will have nice numbers,” Mr. Campbell said.

“Reinsurers are so well-positioned in terms of capital, they will

have to struggle to find a rationale to raise prices,” Mr. Campbell said. “Buyers will be asking for reasonable consideration.”

This buyers’ market has afforded reinsurers some opportunities, too.

“We are about to close placements in October, which historically did not close until November, and we are able to get multiyear contracts with buyers which we were not able to place before,” Mr. Campbell said.

Willis Re’s Mr. Bowie also said the soft rate environment could

lead to more active consumption on the part of reinsurance buyers faced with lower rates. “Reinsurers will only go so far on rate reductions in the regional space, but we expect them to extend and expand coverages,” he said.

Mr. Campbell cautioned, however, against the industry misreading such moderate storm activity and overcompensating with inadequate rates.

“The insurance industry as a whole must take a long-term view. One or two low hurricane seasons does not a trend make,” he said.

Leverage Business Insurance's Media Experts

Savvy marketers understand that powerful content builds new business and cements existing relationships. Business Insurance's Custom Media Group can create, curate & distribute original content to your clients and potential clients through Business Insurance's media outlets. Custom services include:

White Papers	Infographics
Webinars	Custom Publications
Custom Events, breakfast/lunch networking & presentations	Interactive Media
Virtual Events	Email Development & Marketing
Customized Roundtables – live/print/virtual	Blog Posts
Commemorative collateral & campaigns	Lead Generation
Case Studies	Videos
Research	Social Media
	Case Studies

Our Custom Media Group can also help you re-purpose existing content, distribute and generate new qualified leads through multi-channel distribution, with a turnkey operation and customized programs for every budget. Together, we can develop the idea that links your brand to a powerful story.

Find out how BI Custom Media Group can provide consultation and assessment of your needs and develop custom content that will generate sales.



Contact Fern Sheinman, Sales Manager
at 619-944-5114 or fsheinman@crain.com



OPIOIDS: Testing for illicit drugs adds to workers comp costs

Continued from page 1

engaging in inappropriate behavior such as illegally selling the drugs or doctor shopping for multiple prescription refills.

A recent analysis of medical expenses for treating injured workers in Michigan and Tennessee surprisingly uncovered a substantial increase in bills for tests looking for the presence of drugs such as cocaine and methamphetamines, said Jeffrey Austin White, director of medical management practices and strategy for Accident Fund Holdings Inc. in Lansing, Mich. Those charges are being combined with billing for opioid prescription compliance testing, he said.

Paying for monitoring a prescribed opioid medication's use seems appropriate for a workers comp insurer aiming to keep injured workers safe while helping them return to work, Mr. White said. But he wonders if the insurer should be on the hook for the testing of illegal drugs.

"The providers are prescribing opioids, they are not prescribing methamphetamines, they are not proscribing cocaine," Mr. White said. "They are prescribing opioids purely to relieve pain and to get the person back and functioning. So why is it all of the sudden the responsibility of a work comp carrier to pay for all these additional tests?"

For Accident Fund, a workers comp insurer, the practice has pushed costs up to \$1,200 from \$200 each time a set of tests is conducted, Mr. White said.

What's more, a 2012 California Workers' Compensation Institute study evaluated more than 450,000 opioid drug tests conducted on injured workers in California between 2004 and 2011. The Oakland, Calif.-based institute found a "viral-like growth rate in the volume of drug testing and in the amounts billed and paid for these services."

Drug testing medical visits climbed to 186,023 in 2011 from 4,012 in 2004, according to the study. Meanwhile, the average amount paid for the tests increased 315%, to \$148 in 2011, from \$36 in 2004. Consequently, total drug testing payments rose to \$27.4 million in 2011, from \$142,481 in 2004.

The California institute has begun gathering fresh data to update the study and research the cost increases when testing for illicit drugs is added in, said Alex Swedlow, the institute's president.

Several medical treatment guidelines do call for doctors prescribing opioids to also test for illicit drug use under certain circumstances, such as when addiction or abuse is detected or when patients are at risk for overdose and death, sources said.

Doctors need to identify patients abusing drugs because it is inappropriate to provide them opioids

and it can change the treatment required for them, said Michael J. Shor, managing director of Best Doctors Occupational Health Institute in Boston.

"If you have a patient who is addicted ... they will be using multiple things, and if they are addicted you certainly need to have a different approach to how you deal with them clinically," Mr. Shor said. "And drug testing is one of the best tools you have to manage that process because, unfortunately, once a patient becomes addicted, getting truth out of them is a high art form."

Tests revealing that patients are using drugs for other than "clinical health" can also help workers comp payers arguing before a judge or hearing officer regarding their responsibility for the claimant, Mr. Shor said.

Doctors should consider ordering tests for illicit drugs because they can help determine whether prescribing opioids to certain patients will cause additional problems, said Dr. Dwight Robertson, national medical director for Reno, Nev.-based Employers Holdings Inc.

Testing can run amok, however, when doctors view it as a profit generator, he said.

To prevent that, employers have discussed the billing issue with doctors suspected of ordering more tests than necessary. The workers comp insurer's contracts cap the amount testing labs and doctors can charge for the drug tests, making the tests well worth the expense, Dr. Robertson said.

Ultimately, though, how doctors follow up on the test results is more important than the conducting of the tests, said Kathryn Bronstein, vice president of medical affairs at Ameritox Ltd., a Baltimore-based pain medication monitoring company.

"You should be testing for a reason, and then when you get the test results back, you modify your treatment plan based on the urine testing results," she said.

But Accident Fund's Mr. White said that overall he isn't seeing evidence of doctors adjusting treatment plans or requesting new therapies that would indicate tests for illicit drugs are producing adverse findings.

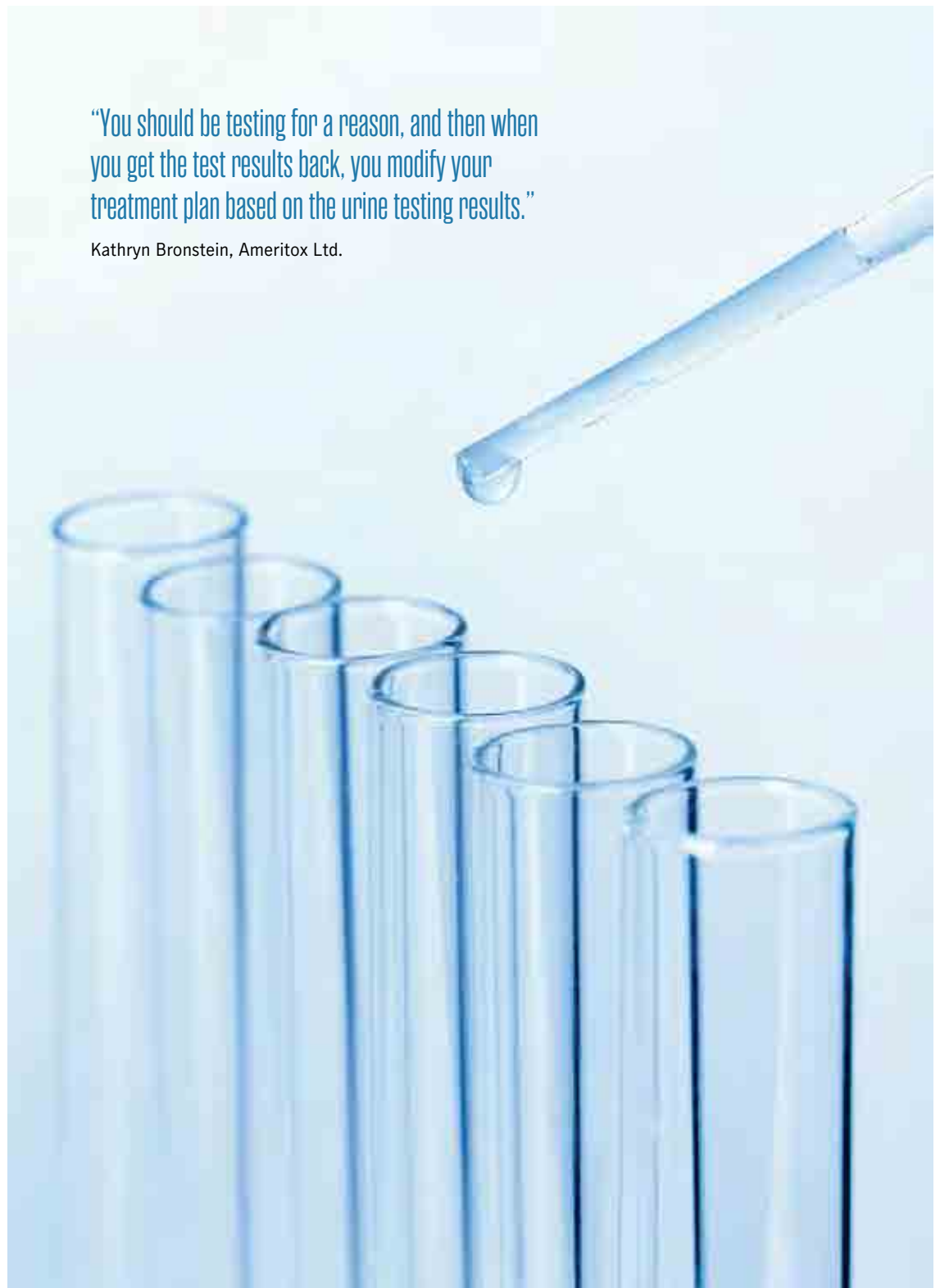
"They are not sending (claimants) to addiction programs," Mr. White said "We would be funding that, so we would know."

HEAR INTERVIEW

Access *Business Insurance's* interactive digital edition to hear Dr. Dwight Robertson, national medical director for Employers Holdings Inc., discuss urine drug testing for illegal drug use by patients on opioids.

"You should be testing for a reason, and then when you get the test results back, you modify your treatment plan based on the urine testing results."

Kathryn Bronstein, Ameritox Ltd.



States turn to treatment guidelines

Washington state's "Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain" is among the respected medical guidelines doctors look to for determining appropriate treatment for injured workers.

Some states that require doctors to consult the treatment recommendations, such as Washington, publish their own guidelines, while others turn to national vendors.

With addiction, overdose, and death risks in mind, Washington's guidelines recommend urine drug testing of patients taking opioids for chronic noncancer pain in order to "identify aberrant behavior, undisclosed drug use and/or abuse, and verify compli-

ance with treatment."

The guidelines describe aberrant behavior as losing prescriptions, requesting multiple early refills, unauthorized dose escalation and apparent intoxication.

It may also be useful for doctors to order an "expanded drug urine" panel to look for use of other drugs such as cocaine, amphetamines, barbiturates and alcohol, according to the guidelines.

"While illicit drug use is unrelated to an industrial injury, it impacts the treatment and outcome of the injury," said Jaymie Mai, pharmacy manager for Washington State's Department of Labor & Industries.

Roberto Cenicerros

"While illicit drug use is unrelated to an industrial injury, it impacts the treatment and outcome of the injury."

Jaymie Mai,
Washington State
Department of Labor
& Industries

PEOPLEMARK

Continued from page 1

claim,” according to the majority opinion, in granting the award.

The EEOC said in a statement it is considering its options with respect to the ruling.

“We will take the ruling into account, but do not plan on any major changes in our litigation strategy. We believe that the cases we file are strong, and it is important that the legal process play out before coming to any (premature) conclusions,” the EEOC said.

“The EEOC has demonstrated now its ability to move forward and ignore the facts and ignore the law,” said Gerald L. Maatman Jr., a partner with law firm Seyfarth Shaw L.L.P. in Chicago.

It is almost “as if, in this case, they put the cart before the horse and went after the big, flashy lawsuit without having substance behind it,” said Rae T. Vann, general counsel to the Washington-based Equal Employment Advisory Council, an employer group that submitted an amicus brief on Peoplemark’s behalf that was joined by the U.S. Chamber of Commerce.

It is encouraging that the federal courts are beginning to “take a moment to reflect on what the EEOC is doing in its aggressive” efforts “other than simply deferring to the agency’s judgment on these matters,” Ms. Vann said.

“These rulings may help arm employers who feel like they’re being strong-armed

into settling frivolous claims,” she said.

John B. Lewis, a partner with law firm Baker & Hostetler L.L.P. in Cleveland, said, “The courts are saying, ‘Wait a minute. You don’t have a proper basis for your case,’” and then holding the agency responsible for attorneys and expert fees. “The chickens are coming home to roost in these cases, which is very good news for employers,” Mr. Lewis said.

Robin E. Shea, a partner with law firm Constangy, Brooks & Smith L.L.P. in Winston-Salem, N.C., said that “it’s encouraging to employers, or should be, that they’re winning some of these cases and not only getting lawsuits thrown out, but actually getting compensated for the time they’ve spent on litigation.”

“I can’t imagine this isn’t making an impression on the EEOC regardless of what they’re saying publicly,” she said.

The ruling suggests to employers that “there may be times when the EEOC may be taking a position that is overly aggressive and the employer will need to push back,” said Mark B. Wiletsky, of counsel at law firm Holland & Hart L.L.P. in Boulder, Colo.

Brian D. Hall, a partner with law firm Porter Wright Morris & Arthur L.L.P. in Columbus, Ohio, said if employers are “clearly on the right side of the line and the EEOC is continuing to aggressively pursue them, then I think they should stand their ground and continue to fight because ... courts are willing to award costs against the EEOC.”

However, Mr. Lewis said, “My suspicion is, short term, (the ruling) probably won’t

have much of an impact. I think there’s a feeling that the EEOC needs to be aggressive. Long term, the hope is they’ll moderate” their position.

Diana Hoover, a partner with law firm Hoover Kernell L.L.P. in Dallas, said, “While there may be some light at the end of the tunnel for the employer in terms of getting their fees back, I think that in some of those cases you have to take the risk of going to trial,” and many employers are averse to doing so. “I don’t know that this really will be a big weapon for employers,” she said.

Unfortunately, the ruling means that although employers ultimately may win attorneys fees, it “doesn’t mean they still won’t have to go through years of expensive and very burdensome litigation until they get to that point,” said Ms. Shea, noting that the *Peoplemark* case went on for six years.

“It would be risky to avoid a reasonable settlement simply because the EEOC has been losing in court recently,” Ms. Vann said. “That’s always a risky and dangerous proposition for any employer that wants to get to the bottom of discrimination claims.”

And the best course of action continues to be avoiding such lawsuits in the first place.

“Continue to implement good anti-discrimination policies by quickly and thoroughly investigating and remediating discrimination in the workplace,” said Natasha L. Wilson, a shareholder with law firm Greenberg Traurig L.L.P. in Atlanta.

OTHER RULINGS AGAINST THE EEOC

The 6th U.S. Circuit Court of Appeals’ ruling in *Equal Employment Opportunity Commission v. Peoplemark Inc.* is only the latest among several cases in which the EEOC has suffered a defeat. Cases cited by experts include:

■ *U.S. Equal Employment Opportunity Commission v. Freeman (Freeman Decorating Services Inc.)*, an August 2013 ruling in which a federal district judge in Maryland criticized the statistical evidence presented by the EEOC to support its charges.

■ *Equal Employment Opportunity Commission et al. v. CRST Van Expedited Inc.*, an August 2013 ruling in which an Iowa federal judge ordered the EEOC to pay \$4.7 million in legal fees and costs for “unreasonable or groundless” claims in a putative class action sexual harassment lawsuit it filed against a trucking company.

■ *Equal Employment Opportunity Commission v. Kaplan Higher Learning Education Corp. et al.*, a January 2013 ruling in which a federal judge in Ohio said the EEOC failed to meet its burden or prove that Kaplan’s use of background checks had a disparate impact on minority applicants.

■ *Equal Employment Opportunity Commission v. TriCore Reference Laboratories*, an August 2012 ruling in which the 10th U.S. Circuit Court of Appeals in Denver affirmed a lower court’s dismissal of an EEOC lawsuit and its grant of \$140,571.62 in attorney’s fees in a case involving the Family and Medical Leave Act.

■ *Equal Employment Opportunity Commission v. Bloomberg L.P.*, an August 2011 ruling in a pregnancy discrimination case in which a federal court in New York said the evidence presented by the EEOC was insufficient.

By Judy Greenwald

CAPTIVES IN THE GLOBAL ECONOMY

WORLD CAPTIVE FORUM

KEYNOTE SPEAKER



MICHAEL KERNER
CEO General Insurance
Zurich Insurance Group

January 29-31, 2014

Turnberry Isle Miami, Aventura, Florida

REGISTER TODAY!

The World Captive Forum organized by

Business Insurance, R&Q Quest and Towers Watson

WWW.WORLDCAPTIVEFORUM.COM

CYBER: Framework best practices include securing private data

Continued from page 3

order preceded a May congressional report, which concluded that despite the U.S. electric grid being targeted by numerous cyber attacks every day, most utilities comply only with mandatory cyber security standards set by the Atlanta-based North American Electric Reliability Corp. and have failed to implement voluntary measures proposed previously.

In a meeting last week, President Obama and executives from eight companies — MasterCard Inc., Symantec Corp., Northrup Grumman Corp., Lockheed Martin Corp., Intel Corp., Bank of America Corp., Pepco Holdings Inc. and Visa Inc. — discussed how to encourage the framework's adoption, and the difficulties involved in helping small and medium-size companies adopt best practices, the White House said in a statement.

"Both companies and government officials also expressed the strong desire to have Congress pass information sharing legislation that protects privacy and civil liberties," the White House said in the statement.

Legislation intended to protect the nation's critical infrastructure failed to win Congressional approval earlier this year amid privacy advocates' concerns about protecting personally identifiable information.

Joseph M. Rigby, chairman, president and CEO of Washington-based energy delivery company Pepco who attended the meeting with the president, said that his firm has volunteered to be among the first utilities to apply the NIST-proposed framework. In a statement, he said individual states should support the framework and provide prompt recovery of investments made for cyber security.

'Good first step'

The NIST guidelines are a "good first step in framing the cyber security conversation," said Jack Whitsitt, principal analyst with the Energy Sector Security Consortium Inc., a Clackamas, Ore.-based industry group. "There's a lot of coordination and communication involved in improving cyber security nationally, and having a common framework will be critical to that."

"This is designed for critical-infrastructure entities only, although it provides very good guidance to others of what at least the NIST believes is appropriate for security measures," said Michael R. Overly, a partner with law firm Foley & Lardner L.L.P. in Los Angeles.

"It may formalize somewhat practices that in many places may already be in place" and "raise the bar" for other entities that do not have advanced information security practices in place, said David N. Fagan, a partner with Covington &

Burling L.L.P. in Washington.

"It's a great start to put a voluntary framework together" and a "good way to develop the standards," said Christopher Keegan, New York-based senior vice president of national resource errors and omissions and e-risk at Willis North America Inc.

However, Kevin Kalinich, Chicago-based national managing director at Aon Risk Solutions, said the framework "was intended to have great flexibility, which was supposed to be a strength, but it's also a weakness because it doesn't say what you need to do to meet a specific threshold."

Observers say incentives must be provided to encourage adoption of these guidelines, which was the purpose of an August White House meeting between federal officials and insurance brokers.

"Any time anything is voluntary, you've got to incentivize somebody to adopt it, and the administration has been trying to think about ways of what could be those incentives, and on the top of the (administration's) list was cyber insurance," said Ben Beeson, a London-based partner with Lockton Cos. L.L.P., who attended the meeting.

Rather than products narrowly focused on data breaches, the industry should — and ultimately will — develop products that have the scope of earthquake coverage should there be a major cyber-related disaster, observers say.

"We think that the analysis (of the risk) needs to be broader and deeper and not just limited to cyber insurance experts, but broadened to catastrophic, black swan-type of experts that are more familiar with thinking in terms of a Superstorm Sandy or in terms of the Japanese nuclear plant issue," said Mr. Kalinich.

There may be \$200 million to \$300 million in cyber coverage available currently, but it would be "somewhat problematic" whether there is sufficient capacity available to cover 20 such cyber attacks at \$300 million each, said Joe DePaul, managing director for cyber risk services with Arthur J. Gallagher Risk Management Services Inc. in Parsippany, N.J. "At some point I think that will be available."

Among concerns about the voluntary standards is they could increase firms' potential liability.

"Shareholders are going to look at that framework and ask, 'How do we measure up against that framework?'" said Mr. Beeson.

"Companies should be looking at this document from a legal risk perspective" because of the current environment in which there is litigation over security practices, said Gerald J. Ferguson, a partner with Baker & Hostetler L.L.P. in New York.

Once the public comment period is complete, release of the final document is set for February 2014.



"From the beginning, the president envisioned this as voluntary effort that would be based on consensus standards and industry best practices to the extent possible. From the beginning, we wanted to make sure that this was something that would be flexible and able to be tailored to the needs of individual businesses and organizations."

Patrick Gallagher, National Institute of Standards and Technology



AP PHOTOS

Left: The U.S. Department of Commerce facility in Boulder, Colo., which houses the National Institute of Standards and Technology and other Federal Government operations.

CORE FUNCTIONS

The National Institute of Standards and Technology's proposed cyber security framework identifies five "framework core functions." They would be:



Identify: Develop the institutional understanding to manage cyber security risk to organization systems, assets, data and capabilities.



Protect: Develop and implement the appropriate safeguards, prioritized through the organization's risk management process, to ensure delivery of critical infrastructure services.



Detect: Develop and implement the appropriate activities to identify the occurrence of a cyber security event.



Respond: Develop and implement the appropriate activities, prioritized through the organization's risk management process, including effective planning, to take action regarding a detected cyber security event.



Recover: Develop and implement the appropriate activities, prioritized through the organization's risk management process, to restore the capabilities or critical infrastructure services that were impaired through a cyber security event.

Treasury, IRS to allow workers to carry over some FSA funds

■ In a significant modification of the nearly 30-year-old “use-it-or-lose-it” rule, employers will be allowed to modify flexible spending accounts to permit employees to carry over to the following year up to \$500 in unused account balances, the U.S. Treasury Department and the Internal Revenue Service said.

Zurich CFO suicide review uncovers no impropriety: Sources

■ Zurich Insurance Group Ltd. is expected to tell investors its finance chief, Pierre Wauthier, was not subjected to undue strain in the run-up to his suicide and there was no evidence of impropriety in the company’s finances, two people familiar with the situation told Reuters. Auditing firm PricewaterhouseCoopers L.L.P. and Zurich securities law firm Homburger have conducted interviews and scoured scores of emails and other correspondence for evidence that Mr. Wauthier was placed under undue stress at work, the two sources said.

Reuters

R-T Specialty to merge with Westrope

■ R-T Specialty Group L.L.C., a unit of Chicago-based Ryan Specialty Group L.L.C., has reached a definitive agreement to merge with Kansas City, Mo.-based wholesaler Westrope, the companies announced. Terms of the deal were not disclosed. The merger is subject to regulatory approval. Westrope, which is independent and privately owned, ranked No. 7 in *Business Insurance’s* 2013 ranking of the top 10 wholesale brokers in the United States. Ryan Specialty Group ranked No. 4.

AIG reports \$2.2 billion in third-quarter profit

■ American International Group Inc.’s net income for the third quarter rose 16% over the same period a year ago to \$2.2 billion, AIG said. Net written premiums for the insurer’s property/casualty operations for the July-through-September quarter dropped less than 1% to \$8.67 billion. Total revenue for the company dropped 1.1% to \$14.85 billion. The property/casualty operations’ combined ratio improved to 101.6% from 105.0% during the same period in 2012. For the nine months ending Sept. 30, net income dropped 6.9% from the prior-year period to \$7.12 billion. AIG’s property/casualty operations’ net written premiums rose 1% from the first nine months of 2012 to \$16.0 billion.

2013 Atlantic hurricane season could be quietest in 45 years

■ The 2013 Atlantic hurricane season looks set to go down as a big washout, marking the first time in 45 years that the strongest storm to form was just a minor Category 1 hurricane. There could still be a late surprise in the June 1-Nov. 30 season, but so far it has been one of the weakest seasons since modern record-keeping began about half a century ago, U.S. weather experts say. Apart from Tropical Storm Andrea, which soaked Florida after moving ashore in the panhandle in June, none of this

year’s storms has made a U.S. landfall. That meant relief for tens of millions of people in U.S. hurricane danger zones.

Reuters

Insurance rates up 3.4% in third quarter: Survey

■ Commercial property/casualty insurance prices in the third quarter rose 3.4% over those of the same period of 2012, according to the Council of Insurance Agents & Brokers’ quarterly Commercial P/C Market Index Survey. On average, pricing rose for large, medium and small accounts at a rate of 3.4% compared with 4.3% in the second quarter of 2013, according to the charts prepared by Barclays Research based on the council’s data.

Berkshire insurance operations show weakness in third quarter

■ Warren Buffett’s Berkshire Hathaway Inc. posted a 29% jump in third-quarter profit, but operating results fell short of analyst forecasts amid weakness in its insurance operations. Net insurance underwriting premiums fell 57% to \$170 million from \$392 million a year earlier, while profit rose at the Burlington Northern Santa Fe railroad unit and MidAmerican energy and utilities unit. Results benefited from \$1.39 billion of gains from investments and derivatives, more than twice the \$521 million a year earlier, but these do not factor into operating results.

Reuters

Liberty Mutual reports 3.4% increase in net income

■ Liberty Mutual Holding Co. Inc.’s net income in the third quarter of 2013 rose 3.4% compared with that of the same period a year earlier to \$481 million, Liberty Mutual reported. Net written premiums increased 8.2% to \$9.36 billion, while revenues increased 8.0% to \$10.02 billion. Net investment for the quarter dropped 7.3% from that of the same period a year earlier to \$700 million. The insurer’s combined ratio improved to 99.2% from 99.4% during the same period a year earlier. For the nine months ending Sept. 30, Liberty Mutual’s net income rose 17.3% compared with that of the first nine months of 2012 to \$1.25 billion.

Penn State to pay \$59.7 million to settle with 26 Sandusky victims

■ Pennsylvania State University has reached settlements totaling \$59.7 million with 26 sexual abuse victims of former assistant football coach Gerald Sandusky, the school announced. Terms of the settlements — which have been reached “over the past few months” — include a release of all claims against Penn State and other parties and are subject to confidentiality agreements, the university said in a statement. Penn State said it has received claims from 32 individuals alleging they were victims of Mr. Sandusky.

New York faces series of flood-related risks

■ A study by The Rand Corp. says rising flood insurance prices resulting from redrawn flood maps and changes in the National Flood Insur-

ance Program will present various challenges for New York. Among those challenges will be economic hardship faced by homeowners in the highest-risk areas, who might face annual flood insurance premium increases of \$5,000 to \$10,000 along with decreased property values and increased foreclosures, Rand said. Some commercial properties also will be adversely affected, the study concludes. The study looks at the flood insurance market in New York before Superstorm Sandy and the changes since including the effects of changes in the NFIP and redrawn flood maps for New York.

Report blames judicial system for high comp costs in Illinois

■ A report from the Illinois Chamber of Commerce blames the state’s judiciary for “high workers compensation costs” and calls for lawmakers to correct the problem. “Rulings by the Illinois Appellate and Supreme Courts over the last decade have expanded employer liability far beyond what was intended by state law,” Chamber President and CEO Doug Whitley said in a statement. “The General Assembly must pass clearer guidelines in 2014 to stop Illinois’ higher courts from further undermining legislative efforts to lower employer costs and improve the workers compensation system,” he said. The report discusses 19 cases where judges engage in practices such as “creating new concepts that have no statutory basis.” To correct the problem, the chamber wants the Illinois General Assembly to require an employee’s medical condition to be causally connected to an accidental workplace injury before workers comp benefits are awarded and better define a “traveling employee” so employers are not responsible for injuries occurring during commutes or while workers engage in personal activities.

Risk managers fear lower limits if terror backstop allowed to lapse

■ A survey of risk professionals shows that 44.9% of respondents feel allowing a federal terrorism backstop to expire would decrease their terrorism coverage limits, while 23.8% indicate they think terrorism coverage would not be available without the federal backstop. The survey, conducted by the Risk & Insurance Management Society Inc., also showed 11.3% of respondents indicating they think allowing the Terrorism Risk Insurance Act to expire at the end of 2014 would lead to increased terrorism insurance limits, and 19.9% indicating they would expect limits to stay the same.

Health cover subsidies challenge overcomes legal hurdle

■ A lawsuit challenging the heart of the health care reform law — the extension of federal premium subsidies to millions of lower-income uninsured U.S. residents to purchase coverage in a public insurance exchange — can go forward, a federal judge in Washington has ruled. The suit, filed by four individuals, contends that the Internal Revenue Service overstepped its authority in its 2012 rule saying that the subsidies are available through state and federal insurance exchanges. The plaintiffs argue that that under the Patient Protection and Affordable Care Act, premium subsidies are limited to states that have set up insurance exchanges, and not the 34 states where the U.S. Department of Health and Human Services established exchanges after the states declined to do so.

Publisher:

Frank Quigley (Chicago)

Associate Publisher/

Online General Manager:

Paul D. Winston (Chicago)

Editor: Gavin Souter (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor:

Paul Bomberger (Chicago)

Assistant Managing Editors:

Charmain Benton (Chicago);

Aranya Tomseth (Chicago)

Art Editor: William Murphy (Chicago)

Senior Editors: Roberto Ceniceros (Boise);

Judy Greenwald (San Jose);

Mark A. Hofmann (Washington);

Sarah Veysey (London);

Joanne Wojcik (Denver);

Rodd Zolkos (Chicago)

Associate Editors:

Matt Dunning (New York);

Sheena Harrison (Chicago);

Bill Kenealy (Chicago)

Matthew Lerner (New York)

Copy Desk Chief:

Katherine Downing (Chicago)

Copy Editor/Assistant Art Editor:

Ann Reus (Chicago)

Copy Editor/Video Producer:

Anna Gaynor (Chicago)

Editorial Assistant:

Kate Shepherd (Chicago)

Director of Research:

Angelina Villarreal (Chicago)

Editorial Cartoonist:

Roger Schillerstrom (Chicago)

Advertising Sales Director:

Susan Stilwill (Chicago)

Regional Sales Managers:

Ron Kolgraf (Boston); Robert B. Murray

(New York); Mary Pemberton (Denver)

Southeast & Classified

Advertising Manager:

Monique Murray (New York)

Sales Manager,

Content Marketing Services

Fern Sheinman

Production Manager:

J. Thomas Janka (Chicago)

Director of Events and Brand Marketing:

Martha Donato (New York)

Audience Marketing Director:

Michelle O'Malley (Chicago)

Director of

Demand Generation Services:

Steve Susina (Chicago)

Marketing Manager

Kathy L. Barnes (Chicago)

Digital Product Manager:

Christina Kneitz (Chicago)

Sales & Marketing Assistant:

Emily Stein (Chicago)

EDITORIAL: Boise: 208-286-1425;

Chicago: 312-649-5200;

Denver: 303-278-7444;

London: 44-207-457-1400;

New York: 212-210-0100;

San Jose: 408-774-1500;

Washington: 202-662-7200

ADVERTISING: Boston: 617-292-4856;

Chicago: 312-649-5224;

Denver 303-898-4043;

New York: 212-210-0136

SUBSCRIPTIONS & SINGLE COPY SALES:

1-877-812-1587 (U.S. & Canada)

1-313-446-0450 (All other locations)

Business Insurance is published by

Crain Communications Inc.

Crain Communications Inc. Board of Directors

Chairman: Keith E. Crain

President: Rance Crain

Treasurer: Mary Kay Crain

Cindi Crain

Executive Vice President/Operations:

William A. Morrow

Executive Vice President/

Director of Strategic Operations:

Christopher Crain

Senior Vice President/Group Publisher:

David Klein

Vice President/Group Publisher:

Chris Battaglia

Vice President/Production & Manufacturing:

Dave Kamis

G.D. Crain Jr.: Founder (1885-1973)

Mrs. G.D. Crain Jr.: Chairman (1911-1996)

Merrilee P. Crain: Secretary (1942-2012)

S.R. Bernstein:

Chairman-executive committee (1907-1993)





BLOOMBERG PHOTO

Case worthy of Judge Judy

Though it's unlikely that Judge Judy will hear the case, the production company behind this reigning queen of daytime television is suing a YouTube user for allegedly posting an unauthorized video of the reality TV court show.

The suit, filed Oct. 17 in U.S. District Court for the Southern District of New York, asserts that YouTube user Ignacio De Los Angeles posted a September 2006 episode of the show on the video-streaming site without the permission of Big Ticket Television Inc., the company that produces "Judge Judy." Per YouTube's procedures for enforcing copyrights, Big Ticket sent Mr. De Los Angeles a takedown notice seeking removal of episode No. 2443 from the site, according to the complaint.

Though Mr. De Los Angeles responded to Big Ticket and YouTube by email agreeing to remove the episode, it was later reposted to the site, the suit asserts.

The suit seeks a preliminary and permanent injunction enjoining Mr. De Los Angeles from committing further infringement of the copyright, unspecified damages for willful infringement, and attorneys' fees and court costs.

Reviewer yelps over lack of pay

The brouhaha over unpaid interns has now spread to Yelp Inc., the company that operates websites that rates and features opinions about businesses.

A lawsuit filed in U.S. District in Los Angeles seeking class action status charges the San Francisco-based company with violating the Fair Labor Standards Act by refusing to pay its reviewers wages. These reviewers are employees, charges the lawsuit.

"The misclassification of employees as something other than employees, whether they go by such monikers as volunteers, independent contractors, interns, contributors, freelance writers, reviewers, elites or Yelpers, presents a serious problem for affected employees, employers and the entire economy," says the lawsuit.

The lead plaintiff in the case, Houston resident Dr. Allen Panzer, says he has written about 70 reviews for Yelp since November 2007.

The lawsuit seeks unpaid wages, expenditure reimbursement, liquidated and statutory damage and, of course, attorneys fees.

FILM FIRMS FIGHT OVER FOOTAGE OF FAB FOUR



BLOOMBERG PHOTO

The Beatles in 1964. Several distributors are in a legal fight over who has the distribution rights to a documentary of the band made in that year.

Help, I need somebody ... not just anybody" could be a plea for a lawyer coming from a company that wanted to distribute a Beatles documentary, but now seeks \$100 million. Ace Arts L.L.C. is suing Apple Corps Ltd. and Sony/ATV Music Publishing L.L.C. over its attempt to distribute the documentary containing rare, film footage of the Beatles performing their first U.S. concert in 1964, according to published reports.

Ace Arts claims in its lawsuit recently filed in New York that it obtained the rights to distribute the documentary of the Beatles' early impact in the United States, but Apple Corps and Sony/ATV unlawfully interfered.

Copyrights for many of the songs performed in the 1964 concert are controlled by Sony/ATV, and Ace Arts argues that it had a licensing deal with the publishing company. Ace Arts also claims, according to published reports, that Sony/ATV withdrew its license, likely because it learned that Apple Corps also planned to release a film about the 1964 concert.

The plaintiffs claim that Sony/ATV sabotaged distribution of the 2012 documentary "The Beatles: The Lost Concert" by making false copyright infringement threats.

Business Insurance isn't all business all the time, and we know you're not either. So visit www.businessinsurance.com for more Off Beat stories and monthly photo galleries featuring the best of the weirdest news about insurance, fraud, liability issues and related topics that make people and companies do funny, silly and strange things.

Sex injury comp claim gets no love from court

The Australia High Court has come down against an amorous worker seeking workers compensation.

The unnamed worker, an employee of Australia's Human Relations Section of the Commonwealth Government, was injured in a motel room in 2007 after a glass light fitting separated from the wall and fell on her while she was engaged in sexual intercourse. The woman subsequently sought compensation from Comcare, the workers compensation insurer for the Australian Commonwealth Government, claiming the injuries she sustained occurred during her course of employment.

After two lower courts decided in the woman's favor, Comcare appealed to the highest court in the Australian judicial system, the High Court, which ruled on Wednesday that the insurer was not liable for the woman's injuries.

"When the circumstances of an injury involve the employee engaging in an activity at the time of the injury, the relevant question is: did the employer induce or encourage the employee to engage in that activity?" the court said in its ruling. "On the facts of the respondent's case, the majority held that the answer to that question was 'no.'"



Texas 'taco bible' fracas heats up

In Texas, tacos are serious business — so much so that an Austin, Texas-based taqueria is accusing one of its competitors of corporate espionage.

The owners of the Torchy's Tacos chain of restaurants claim one of its former employees stole the company's "taco bible" recipe book and gave it to the company's fledgling competitor, the Baytown, Texas-based Texas Taco Co., according to a report by CultureMap Houston.

In a lawsuit filed earlier this month in a Harris County, Texas, District Court, Torchy's accuses Texas Taco of copying several of its signature dishes, including the descriptions listed on its menu.

According to CultureMap Houston, Torchy's owners claim to have surveillance footage of the employee leaving with the recipe book, but have yet to produce a copy of the video tape in court.

We would make a joke referencing Torchy's "taco bible," but have been advised that doing so would be snack-rilegious.

BUSINESS INSURANCE

November 4, 2013

www.businessinsurance.com

\$10



SOFT MARKET

SOFT

LANDINGS

crain Entire contents copyright © 2013 by Crain Communications Inc. All rights reserved.

NEWSPAPER

PROFESSIONAL LIABILITY REPORT

Competition limits insurance rate increases for most buyers, with plentiful capacity in excess layers; health care reform may trigger changes in medical malpractice pricing; property bust still affecting real estate agents' E&O rates; construction revival expected to lead to more A&E claims; class action lawsuits pose the greatest risk for franchisors; financial crisis fallout affecting rates for law firms; SEC settlements no longer routine.

PAGE 16

agile.

CUSTOMER FOCUS,
UNENCUMBERED.



specialty
insurance

A Division of the Berkshire Hathaway
Group of Insurance Companies

www.bhspecialty.com

Insurance coverage is underwritten by member companies of Allied World. Coverage is subject to underwriting. Member companies may not be licensed in your state or jurisdiction. To find out if coverage is available, please contact your insurance broker.

Journey further.

With specialty insurance from Allied World.

GENERAL CASUALTY | GENERAL PROPERTY | HEALTHCARE | MANAGEMENT LIABILITY
PROFESSIONAL LIABILITY | PROGRAMS | RISK CONTROL | TRADE CREDIT & POLITICAL RISK

At Allied World, we believe boundaries exist to limit imagination. We find inspiration in discovering new ways of doing business and exploring new markets. As a global specialty insurance provider, we help clients navigate unfamiliar landscapes with innovative solutions that balance risk and reward. Come explore with us – road map optional.

Specialty solutions. Worldwide.

alliedworldinsurance.com





More capacity.
Fewer carriers.

Introducing up to \$100 million limits of Side A D&O insurance.

AIG's unparalleled claims handling can facilitate an efficient resolution of complex litigation. With its strong financial strength and global footprint, AIG now offers expanded capacity in Side A coverage – allowing you to consolidate multiple layers of coverage under one policy. All from the global leader in D&O insurance. Less complication. More protection. Learn more at www.AIG.com/sideA



Bring on tomorrow

Insurance and services provided by member companies of American International Group, Inc. Coverage may not be available in all jurisdictions and is subject to actual policy language. For additional information, please visit our website at www.AIG.com.