INSURANCE

The Past and Future Changes in the Insurance Industry

By Danone Simpson

The major changes in the insurance industry are due to political mandates and economic changes for small to medium business.

Federal and state government regulations over the past ten years have increased, causing premiums to rise annually by an 8-10% trend in Employee Benefits, and mismanaged changes on the legal and political forefront are an absolute factor in premium increases. However, we are finding carriers underwriting in more detail now, which has been advantageous to our clients.

Businesses downsizing have had to deal with the COBRA subsidy, and the confusion was exhausting. With each new law, past, present or future, brokers fight for quality of care, as we negotiate with carriers, keeping competition as strong as possible.

Every state has separate regulations, forcing employers to become savvier with compliance, but ultimately confused on how to manage their employees in multiple sites. California has some of the strictest legal requirements concerning health benefits; moreover Health Care Reform (HCR) will cause more confusion for corporations in or out of state. Our brokerage firm receives over 40 different sources' e-mails a week concerning the state and federal legal updates, especially concerning HCR. Each carrier interprets these new laws differently, causing employers to throw up their hands in confusion. Discrimination rules are still under review and more and more employers are leaving Grandfathered status, as carriers are bringing forth new plans with better pricing. Brokers are more valuable and competitive than ever in these days.

Beginning March 26th, as the United States Supreme Court grapples with Healthcare Reform concerning the individual mandate, our industry is in for many changes in the future. Anna Gorman of the Los Angeles Times wrote, "The ruling, expected in June, could have far-reaching implications for healthcare, the insurance industry, state and federal budgets and even the presidential election." Carrier representatives themselves are unsure of how the bill will impact our future as the laws are not yet solid and clear. It is as if someone has hit a pause button and we are all on hold to see what the next change in the current law will dictate. It is certain the brokerage firms riding on the wave of the newer technologies are the ones that will survive.

The poor worldwide economic conditions, war, legal compliance and consumer's voices being heard worldwide in social media will cause swift changes in healthcare polices as politicians are in election years in the United States. If the mandate of the uninsured to be insured sticks, our industry will experience growth in individual plans sold. As individuals from employer paid plans experience the government exchange, employer group insurance may ultimately see some erosion as employers throw in the towel on trying to pay for increased premiums, for what appears to be a cost-saving until they receive the bill for $2,000 per employee per year minus an allowance of thirty employees. Much is unknown as 2014 looms in the distance. What is certain is that every person deserves quality of care and will need it one day. We have to face the reality that we have to pay for it. Many of the current changes due to HCR have been in the best interest of members allowing them to add their children back onto the plans until age 26 and preventive check-ups are cost-free, giving us no excuse not to get our wellness checkups. No medical underwriting on children up to age 18 has helped parents ease the burden of pre-existing conditions.

Carriers are saddled with providers negotiating for more as consumers and businesses are demanding less. Media outbreaks of the uninsured going bankrupt and heartbreaking stories of the cancer ridden child not getting the surgery due to the HMO or carrier's decisions will not change in the near future. I began my career in the 90's and remember all too well the man on the bridge threatening to jump below with media and firefighters poised to capture him on the news or in their nets. For the two hours he held up traffic, I sat wondering if this career was for me as

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What's Inside

PEOPLE ON THE MOVE

Hirings, promotions and special accomplishments in local business

BANKING

Johnson

California United Bank proudly announces the addition of **Dennis Johnson** as the newest member of the Santa Clarita Commercial Banking team. Dennis joins the group as a Vice President and Relationship Manager.

Prior to joining California United Bank, Mr. Johnson was with Union Bank where he was a Senior Treasury Manager in the Energy Division handling a portfolio of nationally renowned clients for Union and its parent, Bank of Tokyo Mitsubishi. Mr. Johnson began his banking career at Bank of America where he was in the Private Banking and then Commercial Banking areas. Mr. Johnson also worked in commercial lending at American Business Bank.

Dennis brings with him broad experience managing banking relationships and providing customers with superior customer service that will help support CUB's ongoing growth and continue to distinguish it as a premier commercial bank in Southern California.

INSURANCE

What You Might Not Know About Life Insurance

By Kira S. Masteller

Many people own life insurance so that their family will have sufficient capital for a specific period of time. Others own life insurance to enable a business partner to buy out the family's interests upon their death. Still others have life insurance specifically to pay estate taxes.

The problem arises when you are the Owner of the policy. If you own life insurance, the death benefit of the insurance will be included in your estate for estate tax purposeswhen you pass.As an example, your home, savings and retirement benefits may not comprise a taxable estate – until you add a $1,000,000 death benefit.

An irrevocable life insurance trust can help you avoid creatinga tax, if you set it up to own your life insurance.

You may not be the Trustee of the trust. You must appoint a trusted family member, friend, or a professional Trustee. The Trust will own the life insurance policy, and the Trustee will pay the premiums annually (which you will gift to the trustee each year). The Trustee will file a claim upon your death and receive the insurance proceeds available for your family, or pay the estate tax as you planned.

Not only can life insurance trustsprevent the creation of a taxable estate, they also provide liquidity to an estate that is already taxable. Singleswith estates valued above $5,120,000 may purchase life insurance to pay estate taxes so that the full value of their estate can pass to their beneficiaries. Assets will not have to be sold to pay taxeswhich will be due nine months after the death.

Couples with estates that are valued at more than $10,240,000 may also purchase survivorship life insurance which does not provide a death benefit until both spouses have passed away -- again to provide liquidity at death to pay estate tax due nine months after the death of the surviving spouse.

Many believe that life insurance is tax free at their death. While part of this may be true (beneficiaries will not have to pay income tax on the monies received), life insurance is included in the insuredperson's estate. Often life insurance will actually create a tax that would not have otherwise existed for the insured.

Because a life insurance trust is irrevocable, people are leery of creating a trust they cannot change. The solution to the issue of irrevocability lies in the drafting of the trust. Language can be included to allow for trustee and distribution provisions to be changed by a Trust Protector (an individual appointed by the Grantor of the Trust who has the limited ability to change these specific provisions) while still conforming to the rules required to be a valid life insurance trust.

You can utilize a Life Insurance Trust for the benefit of yourchildren which also provides the "what if" provisions providing for a spouse as a beneficiary, or to change distribution provisions for a child who is not mature enough to receive assets at the age initially provided in the trust.

A successful estate plan includes planning for the goals of yourfamily, each of your unique assets, and tax issues, withoutcreating an unnecessary estate tax.

Kira S. Masteller is a Shareholder in the Trust and Estate Planning practice group at Lewitt Hackman, www.lewitthackman.com. Contact her by calling (818) 990-2120.

Past and Future Changes

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he clung to his sign damning HMOs. He jumped. I stayed in to work every day, little by little to make a difference for my clients and their employees through education and claims assistance. Now we have a team with the same spirit to assist in managing claims.

Trillions of dollars are spent on Healthcare, Workers' Compensation, Auto and Homeowner's policies, Life & Long Term Care, Disability, Boats, Businesses and more. One person has more policies than hats. Will this change with Healthcare Reform? We are yet to see. There is no perfect answer in this perfect storm of waiting for the government to save us from paying for our own health. It is as impossible as technology increases and we demand more as a society. T.R. Reid in his book, The Healing of America, states, "American health care is making people healthier-at least, for those who have access to it. It's because we fail to provide access to regular healthcare for 45 million Americans that our overall rank [24th DALE Disability-Adjusted Life Expectancy] for healthy life expectancy trails the rest of the developed world." Our personal health care records are tucked away in the files of doctors limiting access of the total perspective. The future will involve providers saving their records, x-rays and lab reports online for continuity of care. The person must use a health vault, such as the one Microsoft offers, so they can access their personal records online. Using the same pharmacy to evaluate the complexities and interactions of prescriptions is imperative. The only thing that will change the cost of healthcare is for us to take care of ourselves, eat better, exercise, get our preventive checkups, slow down and live a stress free life or find Oz.

Danone Simpson is CEO of Montage Insurance Solutions, a DBA of Danone Simpson Insurance Services.

Does Your Health Insurance Broker Have Your Best Interests in Mind?

By Lori Brogin, Esq.

Health care reform has left many employers wondering if they're equipped to navigate through this uncharted territory.

The Patient Protection and Affordable Care Act (i.e. health care reform), passed on March 23, 2010, contains more than a thousand pages of rules, regulations and effective dates—causing many employers to wonder if they're prepared for the future.

Federal health care reform has brought attention to non-healthcare related administrative costs and has put the "spotlight" on broker commissions. Historically, brokers receive five percent commission on large groups of 100 employees or more and up to nine percent commission on small groups of less than 100 employees.

The current legislation has made a complicated industry even more complex. Employers are challenged with keeping on top of changing regulatory and compliance matters to minimize organizational risk and exposure. They also face the daunting task of creating a solid strategy to provide affordable, quality health insurance for their employees.

Today's best advisors in the employee benefits industry serve as guides, helping their clients maneuver through the uncertainties of health care reform and addressing long-term affordability issues.

A good broker is a trusted advisor who knows which insurers are best for all lines of coverage, obtains multiple quotes, and provides plan design options and risk-sharing ideas. He or she must understand each insurance carrier's contractual language and how even minor changes can affect your plan provisions and costs. They not only deliver competitively priced coverage, but help you make the best business decisions.

Is your broker taking an active role in this process? Most importantly, how can you ensure he or she is protecting your best interests?

These five tips can help you to determine if you're working with someone who truly cares about your business, your financial situation and your future.

1. Make sure that your broker is an employee benefits professional with a significant amount of coverage placements. Insurance carriers tend to give the best deals to trusted advisors who have long-standing business relationships.

2. Ask your broker to confirm his or her total commission, including additional carrier bonuses. Sometimes this total compensation may deter your broker from recommending other more competitive options.

3. Consider whether or not your broker is overpaid for services provided. Some brokers only show up at annual renewal; other brokers are available to support employers and employees throughout the year.

4. Take a close look at the year-to-year growth in your broker's total compensation. Brokers, who are paid on a fixed percent basis, receive a commission increase that compounds at the same rate as your annual premium increases. Simply put, over the past five years most brokers have seen a 50 percent plus increase in commission revenue, far outpacing CPI.

5. Explore the options of compensating your broker on a fee basis or requesting a reduction in commission percentage. Most brokers will consider a reduction in their commission percentage as an alternative to losing a client.

These simple tips should help you to determine whether you're receiving the best advice and maximum value from your broker. Remember, top-notch health insurance advisors offer the expertise and resources to help your business thrive during these constantly changing times.

Work with an Employee Benefits Professional!

All insurance agents and brokers are required to be licensed by the California Department of Insurance. They must display their license number on their business cards and marketing materials. Also, be certain to see a copy of the broker's professional liability insurance.

Lori Brogin, Esq. is vice-president of PacFed Benefit Administrators, Inc., the parent company of which is Pacific Federal Insurance Corporation. PacFed has specialized in the administration of fully insured private health insurance and Taft-Hartley plans for more than 20 years.

A Summary of the Duran Opinion and its Significance

By Clancy Mendoza, JD, LLM

The California Court of Appeal issued an opinion on February 6th that may prevent many class action lawsuits against employers from proceeding to trial in California. The case will likely have the greatest impact in deterring wage/hour claims.

Background

Traditionally, California has been favorable to employees bringing class action cases. However, just last year the U.S. Supreme Court decision in 2011 (Wal-Mart Stores, Inc. v. Dukes) raised an obstacle to employer class actions cases by holding that the basis of liability and damages for a small sampling of employees could not be extrapolated to the larger class of employees for purposes of certifying the class. The California appellate court relied on the Supreme Court's reasoning in Dukes to determine the extent that a class sample can be used to determine an employer's liability in employee-friendly California.

The Appellate Court Opinion

In Duran v U.S. Bank National Association, the plaintiffs submitted a sampling of 21 out of 260 employees to certify the class action and to determine the extent of liability and damages for alleged misclassification of exempt employees. In this case, the employees were claiming that the employer owed them damages because they were misclassified as exempt employees under California wage and hour laws. At trial, the plaintiffs won and liability and damages were attributed to all of the other 239 employees based upon the sample group. Liability was even attributed to 75 of these employees who had submitted voluntary written declarations to show that they were properly classified as exempt employees.

On appeal, the court ruled that exempt employee status is a fact-specific determination that cannot be extrapolated from a sample group because the employer's liability depends upon each employee's individual circumstance. The court did say that class sampling might be practical at the damages stage. However, applying it to determine liability throughout the class was a violation of the defendant's due process rights by eliminating its ability to present its side of the story.

Why is the Duran Opinion Significant?

This case makes it clear that an employer's liability in a wage/hour class action case cannot be determined by statistical sampling. Plaintiff's attorneys will have to put a lot of extra time and effort into proving up liability based upon the facts involved with each individual in a class and not just a small sample. As a result it's much less likely that employers will have to defend against frivolous – and expensive – class action lawsuits.

Clancy Mendoza is an ERISA and Benefits Counsel in the specialty practice of Employee Benefits at USI. She has focused on employee benefits including ERISA, COBRA, HIPAA, retirement plans, health & welfare arrangements, executive compensation and tax planning and controversy. For more information call USI at (818) 251-3000.

Steps to the Success of an EAP Program

Kevin Rhymer

Do you have an Employee Assistance Program (EAP) yet? The U.S. Department of Labor reports employers get returns of $5 to $16 on each EAP dollar spent. Benefits come from increased productivity, lower absenteeism and employee medical costs, and "salvaging" of valuable employees [who have fallen victim of substance abuse].

Pretty good investment. But only if employees use your EAP.

The success of an EAP rests primarily on employee trust that information divulged to counselors is kept strictly confidential.

State and federal privacy laws apply to EAPs. The only exception to strict privacy: The client's own permission to release information, or when the counselor is required by law to release information due to a threat of suicide or harm to others, crime (such as child abuse), or when subpoenaed in litigation.

Some steps you can take to encourage employees to use your EAP:

1) Make it convenient. Example: Your EAP provider is a five-minute drive from work and has a 24-hour, toll-free hotline.

2) Provide low-visibility access, where employees are not concerned they will be seen "going to the shrink." Off-site is preferred.

3) Increase family awareness of EAP services. Have your EAP provider send workers' families information advertising their services, hours and phone numbers.

4) Publicize the program continually. Display posters. Run a regular reminder listing the EAP office location and phone number in your newsletters.

5) Avoid stereotype depictions in EAP publicity. Example: Don't use a poster of a disheveled-looking character holding a bottle and surrounded by spilled pills.

6) Introduce workers to your EAP with open sessions. Example: An EAP counselor offers your workers a free "brown bag" seminar on stress management.

7) Training. Train supervisors to recognize work problems and to offer EAPs as an option to improve job performance.

8) Word of mouth. Employees refer each other to a good EAP before you even know there's a problem.

Kevin Rhymer is a freelance writer and consultant who works with companies around the country to help them set up EAP plans.

What Types of Insurance to Consider for Your Business

Mike Tottman

Some small-business owners look at insurance as if it were a tax. It may be necessary, but if they can avoid it or keep it to a minimum, all the better. This view is penny-wise and pound-foolish. Insurance can give you advantages, as well as providing in the case of catastrophe. There are several kinds of insurance to consider for your business.

Four kinds of insurance are essential: fire insurance, liability insurance, automobile insurance, and workmen's compensation insurance. In many businesses, crime insurance may be essential as well. Fire insurance can be embellished with additional protection against explosion, vandalism, malicious mischief, smoke, etc. at a minimal additional cost. A comprehensive all-risk contract may be the best buy for the broadest protection for the money.

Liability insurance is the shield for the business owner against lawsuits by customers who may slip and fall, or injure themselves with your product. A liability coverage of $1 million is not excessive. Remember, you may be legally liable even when you exercise reasonable care - in some cases even if the injury is sustained by a trespasser! Be certain whether or not property of customers that is in your care is covered.

It is a sad but true fact that in the United States, if you are in business long enough - any kind of business - sooner or later somebody will sue you. We have a greatly disproportionate number of lawyers, and a mentality that says "sue businesses for all they're worth" regardless of the stupidity of the "victim." Remember the famous hot coffee spill in the lap?

Errors and Omissions Insurance is your protection against what in the medical field is called malpractice. While liability protects you if you do everything that "a normal prudent person" would do, that may not be enough.

E&O insurance covers you if you fail to do something an "expert" would do. For instance, a prudent person wouldn't stack 50-gallon drums full of acid without some safeguards against falling. An expert should have known that they should be marked in a particular way before shipping. If an injury occurs in the first case, liability insurance is enough. In the second, E&O would be necessary, because of your "malpractice" in not properly marking the containers. In this case, the claim may not even be an injury, but it could be a fine imposed for the marking failure.

Automobile insurance is of course required by law. Inquire into fleet policies if you have five or more vehicles used for business.

Workers' Compensation is also a legal requirement, rates range from 0.1 percent of payroll for "safe" occupations to 25 percent or more far hazardous ones. The workers' comp coverage premiums can be reduced if your accident rates are below average, and using safety and loss-prevention measures.

Other coverages you should consider include:

• **Business Interruption Insurance:** Covers fixed expenses that would continue should you be closed down by fire or other reason. For instance, if the City decides to tear up the road in front of your store, so that your customers cannot come in! A more common example is if you injure yourself so that for a short period of time you are unable to operate your business. The bills don't stop when you do!

• **Disability Insurance:** Covers you if you cannot work on a permanent or long-term basis. While you were a wage slave, your workers' compensation insurance covered you as required by the state. However, self- employed people are generally not covered by workers' comp. You need to insure yourself instead.

• **Crime Insurance:** Can be valuable if you are burglarized or robbed. It may cover white-collar crime as well, depending on how the policy is written. There are federal crime insurance plans to help in high crime areas where private crime insurance would be impossible or too expensive to get.

• **Glass Insurance:** Covers broken windows, signs, etc. For stores with a lot of glass windows, this can more than pay for itself the first time you have to replace one of those large show windows.

• **Disability Insurance:** You can purchase coverage for injuries your employees sustain off the job as well as on. This replaces the loss of income while they are recovering.

• **Retirement Income:** You can get an income tax deduction for funds used for retirement insurance plans under the Employees Retirement Income Security Act.

• **Key-Man Insurance:** Your key employees can be insured with life and disability insurance made payable to your company.

It definitely pays to shop around for your insurance needs. Different companies may have very different rates for the same coverage - in fact different offices of the same company may offer differing rates, as most are independently owned and operated.

While shopping, check about including many of the coverages under one "umbrella policy." If the company is ensuring your home and your car and your business policies, you can often get a combination deal that will save you money over the premiums of all the policies billed separately.

Mike Tottman is a writer and retired independent Broker.

Protect Against Employee Theft

By Martin Street

Just as some manufacturers tolerate product defects, many businesses are satisfied with an acceptable amount of shrinkage or loss. "It is just a cost of doing business," they justify.

In today's competitive environment, every penny counts. Tolerating even the smallest losses due to fraud or theft does not make good business sense. If your profit is 10 percent, it takes $10 in sales to make up for each $1 stolen.

It costs money to eliminate product defects and it costs money to create a fraud-and theft-free environment, but the investment pays off.

If it's not nailed down...

In a law firm, employee productivity and morale plummeted as personal property began disappearing. As the thefts continued, employees began to suspect each other, causing further disruption.

Finally, the firm's partners realized the extent of the damage to their business the losses were causing and the steps were taken to stem the thefts. When the culprit was identified, a noticeable change in employee attitudes and productivity was felt instantly.

Proprietary information may have more value to a thief--and your company--than tangible items. A giant personal care products company was aghast when a rival company came out with a virtual duplicate of a product on their drawing board. How did it happen? The leak was traced to a telephone in their own offices. But who was making the calls? A covert video camera provided the necessary and undeniable evidence tocatch the information thief. Compared to protecting the company's intellectual property, the cost of the video camera installation was negligible.

Whether raw materials, cash, products, or personal property, many businesses are not just being stolen blind; they are blind about what is being stolen. And this includes stealing company time.

A major air freight handler discovered the enormous cost of stolen time. Covert video cameras documented workers punching in, then leaving the premises for the entire 8-hour shift and returning when it was time to check out. Because their work was not being done, other employees were being paid premium overtime rates to get the jobs done.

There is also the problem of stealing business from a company. One firm obtained evidence that employees were stealing parts and installing them after hours and on weekends for the company's own customers. Stopping the practice increased sales.

Zero-loss theft policy

Tolerating fraud and theft as a cost of doing business is a faulty premise. Shrinking margins mandate a "zero losses" policy for businesses today.

The issue is not one of vulnerability. Every company faces the possibility of being defrauded. The prevalence of expensive parts, equipment, materials, supplies and proprietary information makes it only prudent to take theft seriously.

Taking appropriate steps to establish a policy and then identifying those who may be violating the company's trust is highly cost-effective. Eliminating this unnecessary financial drain is a wise, long-term investment.

Four ways to begin eliminating losses by fraud and theft:

1. Establish the policy that theft and fraud will not be tolerated.

Many companies are lax about handling employee dishonesty. They ignore it or treat it with a slap on the wrist. Employees must be shown that the company takes losses seriously and will not tolerate fraudulent activity. Make it clear that employees who violate the policy will be prosecuted. Then follow through with the appropriate action.

2. Make it clear that the theft of information is no different than the theft of product raw material or money.

With data being one of a company's most valuable assets, protecting information from loss is more critical than ever. Far too often, the value of proprietary data is recognized only after it has been stolen and then used by a competitor.

3. Let employees know that the company demands full restitution.

Even though the company may have proper coverage, do not treat theft and fraud as "an insurance issue" with the carrier picking up the tab for the loss. The threat of being fired may not have sufficient impact on some employees to deter them from stealing, but knowing that the company will demand full restitution makes clear the company's position. Having to pay for what is stolen may be viewed by some employees as a greater threat than being caught or fired.

4. Make the fraud and theft policy clear to everyone.

That includes all vendors, suppliers, consultants, and other firms servicing the company. Whether contracting with a temporary help agency, cleaning firm or computer consultant, clearly state the company's position. The policy should indicate that vendors are responsible for all costs if anyone on their payroll is determined to be involved in theft or fraud.

Martin Street is a freelance writer and consultant.