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Fall 2011

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***The Illinois Manufacturer* is underwritten by Constellation Energy, Inc.**

Mission Statement

The object for which the Illinois Manufacturers' Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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President's Report

GREGORY W. BAISE

"I'll stick with you, baby, for a thousand years. Nothing's gonna touch you in these golden years."

— Golden Years, David Bowie

Doomsday has now, finally, captured the attention of lawmakers. In the spring of 2010, legislators took an initial step and established new retirement programs for government workers hired on or after January 1, 2011.

Illinois is drowning in red ink. And, the number one red ink well in this state is brimming from the pension systems of teachers and public workers. According to "Illinois is Broke," a non-partisan group of concerned organizations and citizens from across the state that is led by the Civic Committee of the Commercial Club of Chicago, pension funding is more than $80 billion less than needed to meet all obligations. The state's five major public pension systems are funded at a woeful 38 percent of what is needed. Unless action is taken soon to reverse the trend, by 2045 the amount of money needed to pay annuities will account for 50 cents of every tax dollar collected.

The wolf is not only at the door; he's in the house measuring for drapes.

When the pension systems were first established, defined benefit programs were the mainstay of society. But as most private sector employers soon learned, defined benefit programs are very expensive and often unsustainable. So, viable alternatives were developed to help workers save for their "golden years."

Unfortunately, that has not happened in State government.

Thirty years ago the financial gnomes in the Capitol had worn their stubby pencils to a nub trying to make the State pension system balance in their ledger sheets. When they couldn't, they sounded the warning bells to apparently deaf ears. Twenty years later, thanks largely to the business community, the drumbeats of pension bankruptcy have grown louder. But hey, we were only going through a little downturn from the go-go 90's. Relax . . . the economy will turn around and the big bucks will flow to take care of everything. Right?

Wrong. Really wrong. Things are worse, so state officials have decided to compound the problem by skipping a few billion dollars in pension payments. I'd like to say the day of reckoning has finally arrived. But the truth is that it established residency long ago. It's taken this long for the blinding white-hot telltale signs to be seen through the rose-colored glasses of "big government."

Doomsday has now, finally, captured the attention of lawmakers. In the spring of 2010, legislators took an initial step and established new retirement programs for government workers hired on or after January 1, 2011. The leaner pension program for new employees slightly reduced benefits, required an older retirement age, eliminated the annual three percent COLA, ended pension double dipping and set a maximum salary for determining pension benefits. New employees will be able to choose between a newly created annuity program requiring substantially higher contributions from employees or a traditional, widely used 401K type of retirement savings. The reforms for new employees are a good first step but they don't go far enough. Because the reforms apply only to new hires, the state will not see any savings for years. The unfunded pension liability will continue to grow for two decades, and pension contributions will crowd out essential state services.

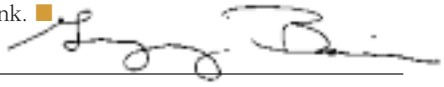
Going forward, lawmakers must restructure pension benefits for current government employees while preserving the benefits earned by current employees and retirees. Fair is fair.

SB 512 was introduced earlier this year with a focus on applying the pension reforms placed on new hires to state employees on the payroll prior to January 1, 2011. The bill calls for protection of benefits already earned by retirees and current employees and allows current employees to choose one of three pension plans. They may choose to remain in the current defined benefit program, albeit at a much higher contribution rate, or move to the new leaner program while maintaining their current contribution level. The third choice is a 401k-style system favored by the majority of private sector employers. The state will make the same contribution regardless of which plan the employee selects and the employee is responsible for any additional costs of the plan they choose.

In return, the state will adhere to a plan that pays off current debt and restores solvency to the 90 percent level on a responsible funding schedule.

SB 512 reduces the costs of the state's five pension plans and improves their funding levels. The legislation stabilizes employer contributions the state must make over the next 30 years and improves the overall health of the funds.

It's a reasonable plan to address a difficult problem. Lawmakers should seize this opportunity and act quickly to pass SB 512. If you want Illinois to remain viable, encourage your local lawmakers to pass SB 512 quickly, because we're up to our eyeballs in red ink. ■



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Legislative Report

MARK DENZLER

Illinois needs a jobs and budget plan

Reforming and balancing the state budget is one of the most important actions that can be taken to restore confidence and ease burdens on many businesses.

As we approach the holiday season, normal feelings of hope and joy have been replaced with stress and fear as the American economy continues to struggle and European countries fight to stay solvent. Despite an increase of 80,000 jobs, as reported by the U.S. Department of Labor in September, the United States' unemployment rate remains at nine percent and economic growth is anemic. Here in Illinois, our unemployment rate reached 10 percent again in September, meaning that hundreds of thousands of Illinoisans are without work.

When every lawmaker in Springfield and Washington, D.C., should be solely focused on enacting policies designed to encourage economic growth and foster job creation, it's disappointing that instead, many of our elected officials can't seem to rise above the political fray. While government does not create jobs, it's well past the time that our elected officials should have been setting long-term policies to set a course for rebuilding and strengthening the national and state economy.

In Illinois, the Governor and lawmakers face a daunting $5.5 billion operating debt coupled with a massive $80 billion pension debt that is only getting worse. Nearly every dollar of the recent 67 percent income tax increase was used exclusively to make this year's pension payment rather than used to pay down the state's mountain of debt. A realistic and meaningful pension reform package, championed by the Civic Committee and supported by the Illinois Manufacturers' Association, has been on the table for months. However, lawmakers can't bring themselves to vote against the wishes of organized labor in the face of an upcoming election season. During the recent Veto Session, members of the House Personnel and Pensions Committee narrowly passed pension reform but it stalled on the floor of the House of Representative. Lawmakers are scheduled to return to the Capitol for one day in late November, but barring a holiday miracle, it appears as if the Illinois General Assembly will once again "kick the can down the road."

In similar fashion, Governor Pat Quinn and the General Assembly are failing to balance the budget despite a constitutional requirement. As a result, thousands of vendors including manufacturers, schools, nursing homes and hospitals across the state are owed billions of dollars. It is an absolute travesty that state government is balancing its budget on the backs of taxpayers and businesses that are already struggling to stay afloat. Reforming and balancing the state budget is one of the most important actions that can be taken to restore confidence and ease burdens on many businesses.

At a time when lawmakers should be spurring economic development and easing bureaucratic red tape, some are doing the exact opposite by seeking to take $8.6 billion out of the pockets of businesses and consumers in the form of higher electric rates. Despite being defeated three times over the last two years, including once during the first week of the fall Veto Session, Senate President John Cullerton and other legislators are still pushing the "Tenaska" legislation — legislation that would lock utilities into buying power from Tenaska's proposed "clean coal" facility in downstate Illinois for the next thirty years regardless of cost. According to the independent Illinois Commerce Commission, this plan will result in "high costs to ratepayers with uncertain future benefits, and uncertainties that potentially add to already-significant costs."

One positive step occurred when the business and labor community negotiated an agreement to the Unemployment Insurance Trust Fund that will eliminate the $2.4 billion debt over a period of eight years. Under the plan passed by the General Assembly, Illinois employers will see a $405 million tax reduction compared to the current law. Eliminating the debt owed to the federal government will also prevent employers from losing $1.2 billion in FUTA tax credits. Nearly 50 percent of businesses — those with no layoffs — will see an actual reduction in rates while the maximum rate remains capped. Additionally, several measures to protect the integrity of the UI Trust Fund were included in the agreement.

It's time that lawmakers engage in a real plan to move Illinois forward. They can start with manufacturing — a sector employing nearly 600,000 workers and contributing the single largest share of the state's economy. It's time they set policies that will make Illinois a destination economy and the best place in the world to manufacture and export products.

The IMA will be advocating for passage of a long-term plan that includes reforming pensions; balancing the state budget; encouraging Illinois to embrace the Manufacturing Skills Standards Certification (MSSC) and NIMS certification to ensure that we have a high quality workforce; reforming the legal system; creating a stable and predictable tax climate; and easing environmental regulations to encourage energy production.

It's time that lawmakers focus on policy — not politics — to move Illinois forward. We will be reminding them of this point every single day. ■

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MICHAEL L. YOUNG

Effectively obtaining additional insured status in Illinois

After returning from lunch on a slow Wednesday, the blinking red voicemail light on your phone signals the troubling message that awaits: "Tom, this is Ray from XYZ Retailer. We have a new personal injury claim being brought against us relating to one of your products which we sold through our Oak Brook store. As per our contract, we'll be tendering this matter to your company for defense and indemnity. It looks pretty serious. Call me as soon as you get in." To state the obvious, this is not a message that any manufacturer wants to receive. Nevertheless, surely XYZ Retailer will be covered by your liability insurance policy, right? Let's see. Was there a certificate of insurance issued? Check. Was an indemnity agreement signed? Check. But is XYZ Retailer covered by your liability policy? Maybe, maybe not. Do you have the insurance policy? Hmm, it must be here somewhere. This article will examine the perils of relying on anything but the actual insurance policy to ensure that you or another party qualifies as an additional insured on a policy of insurance.

Certificates of insurance

For better or worse, manufacturers and their distributors and retailers often rely on certificates of insurance to verify proper insurance. A certificate of insurance is a document usually issued by an insurance broker or agent to a third party who has not purchased a policy from the insurer. Certificates show basic information about a policy: the fact of its existence, the name of the insured, the type of insurance, the policy period, limits of liability, etc. It is common practice for a retailer, for example, to ask a product manufacturer to provide a certificate of insurance showing that the retailer has been included as an additional insured on the manufacturer's insurance policy. Indeed, in many transactions or business relationships, the issuance of a certificate of insurance is the full extent of the parties' investigation into whether the manufacturer or retailer actually qualifies as an additional insured on their contractor's or supplier's policy.

The problem with certificates of insurance is that they are not a particularly reliable indicator of whether a party has been included as an additional insured. As mentioned above, certificates are usually issued by an insurance broker or agent, not directly by the insurance company itself. Thus, the information on these certificates is often not consistent with the actual terms of the insurance policy. Indeed, certificates of insurance typically state that they are informational only and contain a disclaimer that directs the certificate holder to review the actual policy in order to determine the coverage afforded. When certificates of insurance contain these types of disclaimers, Illinois courts generally hold that insurers are not bound by any information set forth on the certificate. If the statements on the certificate are inconsistent with the actual terms of the insurance policy, therefore, the terms of the policy will govern. Because most certificates of insurance issued today contain these disclaimers, it is simply not a wise practice to rely on a certificate to determine if a manufacturer, distributor or retailer has been added as an insured on another party's insurance policy. Only the insurance policy itself will show who has effectively been added as an additional insured.

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Indemnity agreements

In addition to requiring certificates of insurance, manufacturers and their distributors and retailers also try to protect against future liability by having another party, such as their contractor or supplier, agree to indemnify them against future claims. Without question, such indemnity agreements have their benefits. Coverage under another party's liability insurance policy, however, is usually not one of them. Under a well-crafted indemnity provision, a contractor may have to pay to defend and indemnify a manufacturer against certain claims that are brought against the manufacturer, such as bodily injury claims that arise out of the contractor's work. Nevertheless, just because the contractor may have to indemnify the manufacturer does not necessarily mean that the contractor's liability insurer will have to provide coverage to that contractor for that indemnity obligation. Without such coverage, the indemnity obligation may be worthless, particularly when the contractor has little or no money.

In fact, in most cases the insurer will not provide coverage for such an indemnity obligation. Commercial General Liability (CGL) policies typically have a provision which excludes coverage for liability assumed by the insured in a contract or agreement (i.e. the "Contractual Liability" exclusion). On its face, this exclusion eliminates coverage for any indemnity obligation assumed by the insured contractor or supplier. The exclusion does not apply to liability assumed by the named insured in an "insured contract," however, which is an agreement where the named insured assumes the tort liability of another party to pay for bodily injury or property damage to a third person. The problem is that either by design, lack of specificity or operation of law, many indemnity agreements do not require the named insured to indemnify another party for claims arising out of the other party's own negligence, but instead only require indemnity for claims arising out of the named insured's negligence. The result is that many indemnity agreements do not qualify as "insured contracts" and any such required indemnity owed to a manufacturer is therefore excluded from the insurance policy.

Even if coverage for a particular indemnity agreement is not excluded by the policy, the party being indemnified still may not receive any direct benefit from the contractor's or supplier's liability insurance policy. Specifically, the indemnity agreement usually does not transform the indemnified party, such as the manufacturer or retailer, into an additional insured on the contractor's or supplier's policy. Instead, application of this exception usually means only that the insurer will provide coverage to its named insureds for claims brought against them for their failure to honor their indemnity agreements. It generally does not provide the indemnified manufacturer or retailer with direct coverage under the contractor's or supplier's policy.

Additional insured endorsements

The most reliable manner in which a party can become an additional insured on another's liability policy is the one that often receives the least attention during contract negotiations: the additional insured endorsement. Quite simply, an additional insured endorsement is an insurance policy form which can add a stranger to the policy as an insured. These endorsements can expressly name certain parties as additional insured, or they can identify unnamed parties who meet certain conditions as additional insured on a blanket basis. Either way, the endorsements will typically limit the scope of coverage provided to the additional insured. Because these endorsements will vary, the only way to ensure that all conditions are met and that the scope of coverage is understood is to actually review the policy. As discussed earlier,

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JILL B. BERKELEY & SONYA ROSENBERG

Did you provide timely notice of that discrimination claim?

A cautionary tale about EPL insurance

Imagine this scenario. A human resources manager receives notice of a charge of discrimination filed with the Equal Employment Opportunity Commission (EEOC) by a former, disgruntled employee. The HR Manager had terminated this employee, let's call him Joe Shmoe, about two weeks earlier for poor performance and insubordination. Not only does Joe's personnel file contain multiple warnings for failure to follow instructions and engaging in disruptive workplace conduct in direct violation of the company's policies, the most recent incident involved Joe using an expletive toward his direct supervisor.

Although the decision to terminate Joe was based on legitimate, non-discriminatory reasons, his EEOC charge alleges that he was discriminated against based on every conceivable protected characteristic. The HR Manager thinks, "Come on, this guy must be joking," and, without the help of the company's employment lawyer, puts together a response to the EEOC. A couple of months later, the EEOC issues a notice to Joe and the company that it is terminating its investigation of Joe's charge. Hearing that the EEOC has closed its file, the HR Manager forgets about Joe and his ridiculous charge.

Three months later, the Risk Manager at the company gets served with a lawsuit filed by Joe against the company, and the HR Manager individually, in federal court. The Risk Manager knows that the company has Employment Practices Liability Insurance (EPLI), which, after a certain deductible, should cover the fees and costs of defending the lawsuit. The Risk Manager provides notice of the lawsuit to the EPLI carrier immediately, but the insurer denies coverage on the grounds that the company was required, but failed, to provide timely notice of the prior EEOC charge. Now the Risk Manager explains to the HR Manager that he has put himself and the company in a precarious position. Not only will the company have to foot the bill of what may well turn into protracted, expensive litigation, any real chance of challenging the coverage denial will require litigation of its own. If the HR Manager had just provided notice of that EEOC charge — such a simple step — literally hundreds of thousands of dollars would have been saved.

Unfortunately, this scenario is real, and all too common. Look, for example, at *Uhlich Children's Advantage Network v. Nat'l Union Fire Co.,* 398 Ill. App. 3d 710 (1st Dist. 2010). In *Uhlich,* the employer (UCAN) sought EPLI coverage for a discrimination lawsuit filed in federal court by a former employee, Andrew Leonard, against the employer and the Vice President of Human Resources. Leonard claimed that the defendants had discriminated against him in violation of the Americans with Disabilities Act and the Family and Medical Leave Act. The employer provided notice of the lawsuit to its EPLI carrier the same day it received the lawsuit. The carrier denied coverage. The reason cited? Failure to provide prior notice of Leonard's EEOC

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EPL INSURANCE

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charge, disposed of by the EEOC during the prior policy period.

As a result, UCAN found itself embroiled in two contentious, expensive legal battles. First, UCAN had to defend against Leonard's discrimination lawsuit in federal court. That lawsuit proceeded through a protracted discovery period to plaintiff's and defendant's cross-motions for summary judgment. These motions, designed to resolve a case on the merits before trial based on depositions and other appropriate evidence revealed through the discovery process, tend to be involved and expensive. The judge denied UCAN's motion for summary judgment, allowing the case to proceed. See, *Leonard v. Uhlich Children's Advantage Network,* 481 F. Supp. 2d 931 (N.D. Ill. 2007)). The case settled in 2008 for $350,000, after UCAN expended $425,658 in attorneys' fees and expenses: a total cost of $775,658 to the employer.

In addition, UCAN had to pursue a separate action in state court to challenge the EPLI carrier's denial of coverage. The EPLI carrier responded quickly and aggressively, and immediately sought to put a stop to UCAN's action with a motion to dismiss challenging the legal sufficiency of UCAN's claim. The trial court agreed with the EPLI carrier that UCAN failed to provide timely notice of Leonard's claim under the policy because it did not notify the carrier of the EEOC charge during the policy period when the claim was made, and the court dismissed UCAN's action. UCAN then had to go through the added, expensive step of appealing the trial court's decision to an Illinois appellate court.

In February 2010, i.e., more than five years after Leonard filed his charge and his lawsuit, the appellate court finally issued a decision and opinion in favor of UCAN. The appellate court concluded that, under Illinois law, once the employer notified the EPLI carrier of Leonard's lawsuit, the carrier should have done one of two things: either (1) defended the lawsuit under a reservation of rights to challenge coverage, or (2) sought a timely declaration from a court that the denial of coverage was appropriate. Because the insurance company did not follow either of these routes, the appellate court held that the insurance company could be deemed legally "estopped," i.e., precluded, from denying coverage. Thus, the appellate court returned UCAN's case back to trial court for entry of judgment in UCAN's favor. UCAN was able to recoup the expense for defending and settling the employee's case, but not the substantial fees incurred in prosecuting the coverage action or appeal, as these fees are not recoverable under Illinois law.

Uhlich presents an important, cautionary tale for employers who hold, or have considered purchasing, not just EPLI, but any insurance coverage. As any other important business contract, insurance policies must be carefully reviewed with counsel, so that their terms and conditions, including coverage-triggering requirements, are well-understood. Depending on the language of a given policy, service of a charge or other "administrative complaint," service of a subpoena, a tolling agreement or even a more general "threat of litigation," can constitute a "claim" for the purpose of triggering the insured's obligation to timely notify the insurance carrier of potential employment-related, Directors' and Officers', environmental, professional and/or other liability.

In addition to understanding the applicable policy or policies, employers must also take steps to ensure effective communication and coordination within management. Too often, mistakes and lapses related to coverage happen because a manager may not be fully up-to-speed as to the existence of coverage or of its requirements. In that respect, appropriate information-sharing and effective, responsive coordination within and between human resources, risk management, and in-house counsel teams when potential liability situations arise cannot be overemphasized.

In short, employers should take steps to ensure they know what they are buying when they are buying insurance coverage, and to understand what they need to do to maximize the inherent benefits and to minimize the risk of loss. If you have any questions about your company's insurance coverage and/or any employee issues, please contact the authors. ■

Mesirow Financial Insurance Services Division

2011 mid-year outlook: Employee benefits

Recently, team leaders and marketing experts from Mesirow Financial's Insurance Services Division met to discuss market conditions seen at mid-year renewals and consider emerging client issues.

Introduction

As expected, the Affordable Care Act remained in the forefront of the Employee Benefits world for the first half of 2011. Since the one-year anniversary of its enactment on March 23, 2011, a series of repeals, delays and releases of additional guidance has been the order of the day.

Not surprisingly, the cost of benefits has continued to increase in 2011. And, Illinois — along with other states — made news in the middle of the year by legalizing civil unions.

Health Care Reform

Free Choice Voucher Program repealed

Signed into law on April 15, 2011, and later repealed, the Free Choice Voucher Program provision would have become effective in 2014 and required employers that offer health coverage to qualified employees to provide free choice vouchers equal to the largest portion of what the employer would have paid to provide health coverage to the employee under the employer-sponsored plan.

This repeal is important to employers as it helps preserve the balance of healthy and less healthy individuals on employer plans. The provision would likely have resulted in the healthy moving to state exchanges to take advantage of free voucher benefits, and the less healthy remaining on employers' plans, continuing to drive the employer-sponsored group costs up.

Guidance released on women's preventive care

In July 2011, the Department of Health and Human Services (HHS) posted new guidelines that will have a major impact on many employer-sponsored plans' coverage of women's preventive services. The HHS guidance requires group plans to cover the following list of specific women's health services, with no copay or deductible:

- well-woman visits;
- screening for gestational diabetes;
- human papillomavirus DNA testing;
- counseling for sexually transmitted infections;
- counseling and screening for human immune-deficiency virus;
- contraceptive methods and counseling;
- breastfeeding support, supplies and counseling; and
- screening and counseling for interpersonal and domestic violence.

These guidelines become effective for all non-grandfathered group plans as of August 1, 2012 (January 1, 2013, for calendar year plans).

This will no doubt impact employer bottom line, and adds another layer of concern — religious beliefs — to political discussions that already question the constitutionality of the Act.

Constitutionality of individual mandate split

In June 2011, the Sixth Circuit Court of Appeals ruled that the individual mandate provision in the Affordable Care Act is constitutional, marking the first time a federal appellate court has ruled on the law's constitutionality. However, on August 12, 2011, the U.S. Court of Appeals for the Eleventh Circuit found the individual mandate under the ACA to be unconstitutional. It also held that the remainder of ACA is severable from this provision, concluding that the remaining parts of the ACA should stand.

see **OUTLOOK** *page 12*

For a comprehensive discussion about your organization's road to health care reform compliance or other information affecting the Employee Benefits arena, please contact a **Mesirow Financial** representative at 312-595-6483. Mesirow Financial is an IMA member company.

INSURED STATUS

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those who rely solely on certificates of insurance do so at their peril.

One of the conditions that is common to becoming an additional insured under a blanket additional insured endorsement of another's policy is the requirement that the named insured agree in a written contract to make the other party an additional insured. These endorsements usually require that such a written agreement already be in place prior to any incident for which the additional insured is requesting coverage. Thus, if a contractor's policy contains such an endorsement, the best way for a manufacturer to become an additional insured on that policy is for the contractor to agree in writing either to make the manufacturer an additional insured or to otherwise provide the manufacturer with insurance. Simply put, the time and attention parties usually spend focusing on certificates of insurance and indemnity provisions is much better spent reviewing the named insured's additional insured endorsement and drafting a written agreement to provide insurance that complies with that endorsement.

Indeed, reviewing these endorsements also will reveal the scope of insurance that the carrier may provide in the event of a claim. Modern additional insured endorsements have attempted to limit the scope of coverage in various ways. Some of these endorsements do not provide coverage for "completed operations." Others try to limit coverage for "ongoing operations." Older additional insured endorsements provide broad coverage for claims, including those that merely "arise" out of the named insured's work, operations or products. Illinois courts have oftentimes interpreted this language to provide coverage for an additional insured even if the additional insured is the only negligent party. In recognition of this broader coverage, more recent additional insured endorsements have attempted to limit coverage to only claims "caused in whole or in part" by the named insured's "acts or omissions." In short, regardless of any promise made by a contractor or supplier about the insurance protection it will provide, the scope of coverage actually provided to a manufacturer or retailer can only be determined by reviewing the operative policy language.

Conclusion

When parties engage in a commercial transaction, they reflexively require certificates of insurance and indemnity agreements. Both of these protective devices have their value. To ensure that the parties' insurance expectations are met, however, one needs to review and comply with the terms of the applicable insurance policy. For a party seeking to become an additional insured on that policy, compliance typically requires obtaining a written agreement from the named insured to make that party an additional insured. All parties should exercise care to ensure that these insurance requirements are met before a claim for bodily injury or property damage arises. Waiting to check on these insurance matters until after you receive an urgent phone call reporting a new claim can be a dangerous practice. ■

OUTLOOK

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The individual mandate provision may now find its way up to the Supreme Court of the United States for consideration sooner rather than later.

As of this writing, a total of 17 states have passed binding legislation opposing elements of health reform.

Benefit plan costs

Mesirow Financial clients have experienced benefit cost increases on average of six to nine percent, after plan changes, during the current 2011 plan year. Health care reform required changes have been fueling some of these increases.

Civil union and same-sex marriage

Illinois, Rhode Island, Delaware and Hawaii join Connecticut, New Jersey and Vermont in legalizing same-sex civil union, while New Hampshire joins California and New York in recognizing same-sex marriage. On the state level, civil union partners and same-sex spouses may retain the same rights to benefits as traditional marriage spouses. Remember, however, that civil union and same-sex marriage are not recognized on a federal level, and therefore do not include rights for federal COBRA. Also, watch the disparity between federal and state imputed income requirements under employer-sponsored plans for civil union and same-sex marriage partners.

Remainder of 2011

Looking forward for the remainder of 2011, we anticipate the release of more guidance as employers are gearing up for compliance with ACA's 2012 provisions:

W-2 health coverage cost reporting

Requires employers who file 250+ W-2s to show the cost of health benefits on each employee's W-2. However, an employer is not required to report these costs on the Form W-2 of an employee who requests to receive it before the end of the calendar year during which he/she terminated employment.

Comparative effectiveness research tax

Levies a new federal tax equal to $1 per enrolled employee and dependents per year to fund research related to best treatments from a quality perspective ($2 for health policy years ending during fiscal year 2013) for issuers of insurance and for plan sponsors of self-funded plans.

Employee communication requirements

Imposes a requirement on self-insured employers or insurers of fully-insured plans to provide employees with a four-page summary of benefits and coverage. Must be communicated to employees and distributed as specifically instructed. Carries penalties of up to $1,000 for each failure to comply.

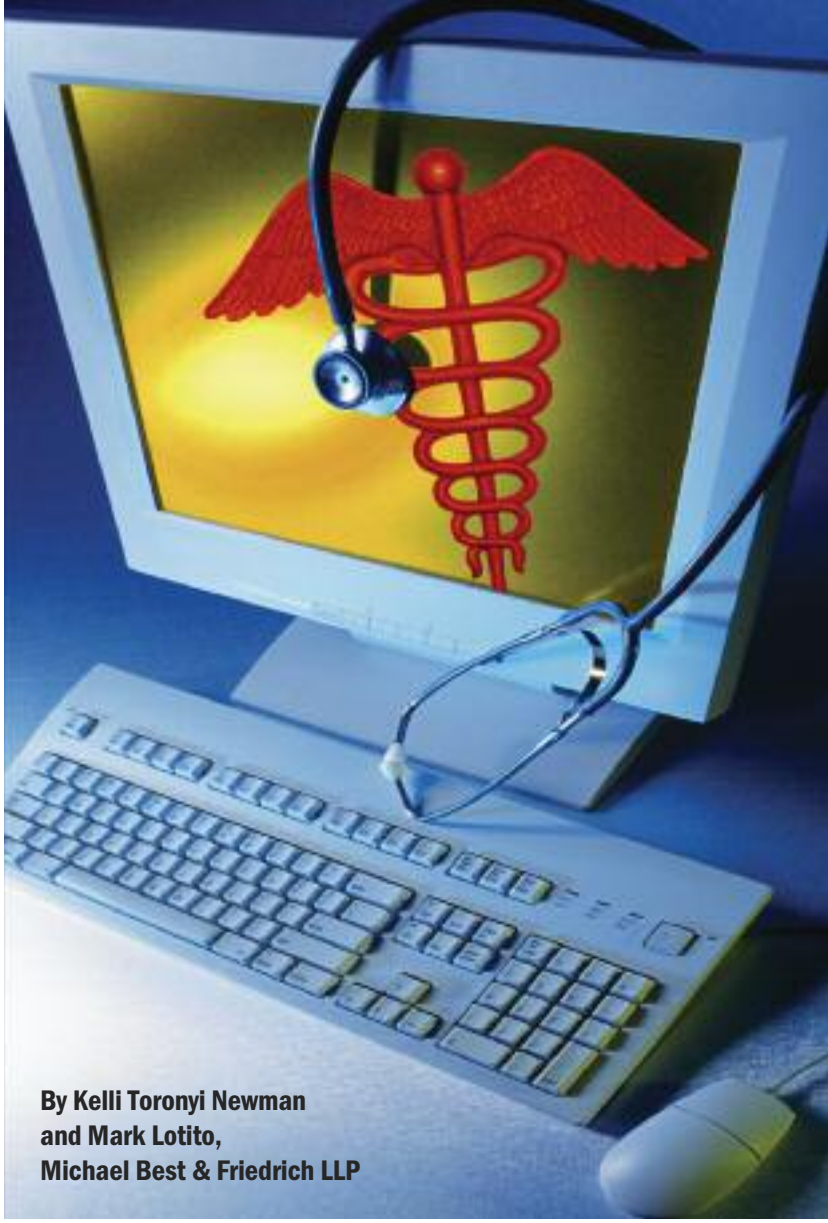
60-day notice of plan changes

Requires that any material modifications made to the terms of a plan be communicated to members 60 days before the changes go into effect. This provision was scheduled to become effective before March 23, 2012 (two years after the law was enacted); however, recent guidance suggests that compliance with this provision may be tied to release of additional guidance related to the 4-page summary requirement above.

Public long-term care program (CLASS)

Creates a new public long-term care program (CLASS Act). UPDATE: On October 14, 2011, Secretary Kathleen Sebelius transmitted a report and letter to Congress stating that the Department of Health and Human Services does not see a viable path forward for implementing CLASS at this time. ■

New guidance under Health Care Reform released for summary of benefits and coverage requirements: What plan sponsors need to know



By Kelli Toronyi Newman and Mark Lotito, Michael Best & Friedrich LLP

Introduction

Under health care reform, group health plans and health insurance issuers will be required to provide a four-page summary of benefits and coverage ("SBC") and a uniform glossary of terms to consumers. In August 2011, the Department of Health and Human Services, the Department of Labor and the U.S. Treasury Department jointly released proposed regulations and guidance. Ironically, the description of what to include in the four-page summary involved almost 100 pages of complicated regulations making compliance anything but simple.

The effective date for the proposed regulations is March 23, 2012. With this effective date, SBCs are not required for the open enrollment period for certain plans. This means that for calendar year plans, SBCs are not required at the end of 2011 at open enrollment but will be required at other times after March 23, 2012. The proposed regulations are intended to impose uniformity on group health plan and health insurance disclosures so consumers are better able to understand, and more easily compare, the benefits and coverage offered under different plans and programs. Accordingly, the proposed regulations contain guidance on the disclosure requirements, templates, and instructions regarding form and content. This article summarizes the proposed regulations and identifies important compliance considerations for group health plans. Importantly, these requirements apply to both grandfathered and non-grandfathered plans.

Providing the SBC

Group health plans and health insurance issuers will be required to provide SBCs to applicants, enrollees, and policy or certificate holders. Specifically, for a self-insured plan, the obligation to provide SBCs is imposed on the plan administrator and for fully insured plans, the obligation to provide SBCs is imposed on both the plan administrator and the insurance issuer. Furthermore, with some exceptions, SBCs must be provided to a participant or beneficiary with respect to each benefit package for which the participant or beneficiary is eligible. SBCs must be provided in writing and free of charge. SBCs must be provided as soon as possible upon a request, and in no event later than seven days following the request. SBCs, must also be provided automatically in several instances, including:

- For initial enrollment, SBCs must be provided as part of any written application materials. In instances where written application materials are not distributed, the SBC must be provided by the first date the participant is eligible to enroll. The SBC must be updated by the first day of coverage if any information changes before that date.
- For renewals (and subsequent open enrollments), SBCs must be provided no later than the date the renewal materials are distributed. For automatic renewals, the SBC must be provided no later than 30 days prior to the first day of coverage under the new plan year.
- For special enrollments, SBCs must be provided within seven days of a request for a special enrollment.

Preventing unnecessary duplication

The proposed regulations contain three provisions intended to prevent unnecessary duplication with respect to providing the SBC. First, if any entity provides the SBC in compliance with all regulations, then the requirements will be con-

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SBC GUIDANCE

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sidered satisfied with respect to all entities that would otherwise have to provide the SBC. In practice, this means that if a health insurance issuer that offers group health insurance provides the SBC to a plan's participants and beneficiaries, then the plan's obligation to provide the SBC is deemed to have been satisfied. Second, the SBC can be provided to a single household address, if a participant and any beneficiaries are known to reside at that address. By contrast, a separate SBC must be sent to a beneficiary if the beneficiary's last known address is different than the participant's last known address. Third, in the context of renewals, the only SBC that must be provided is the SBC for the benefit package in which the participant or beneficiary is enrolled. If the participant or beneficiary is eligible for a different benefit package, the SBC for that benefit package must be provided upon request, as soon as practicable, and no later than seven days following the request.

Content

The SBC is required to include nine specific content elements as follows:

- Uniform definitions of standard insurance terms and medical terms;
- A description of the coverage, including cost sharing, for a certain specified category of benefits;
- The exceptions, reductions, and limitations on coverage;
- The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;
- The renewability and continuation of coverage provisions;
- A coverage facts label that includes examples to illustrate common benefits scenarios (including pregnancy and serious or chronic medical conditions) and related cost sharing based on recognized clinical practice guidelines;
- A statement about whether the plan provides "minimum essential coverage" and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;
- A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage; and
- A contact number to call with questions and an Internet address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.

The preamble to the proposed regulations provides further guidance about several of these content elements. The "uniform definitions" requirement, for example, is met through a "uniform glossary" of health coverage terminology and a "Why this Matters" column for each coverage element in the SBC. The "coverage facts label" requirement is met through "coverage examples." These coverage examples illustrate benefits provided under the plan or coverage for common benefits scenarios, including pregnancy and serious or chronic medical conditions, such as treating breast cancer and managing diabetes. Each coverage example will demonstrate the benefits provided under the plan by presenting an estimate of what proportion of expenses might be covered by the plan or policy.

Beyond these statutory requirements, the proposed regulations also provide that the SBC must include four additional content elements, if applicable:

- For plans and issuers that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of the network providers;
- For plans and issuers that maintain a prescription drug formulary, an Internet address where an individual may find more information about the prescription drug coverage under the plan or coverage;
- An Internet address where an individual may review and obtain the uniform glossary; and
- Premiums (or cost of coverage for self-insured group health plans).

Appearance and delivery

SBCs must be provided as a stand-alone document, presented in a uniform format, and they must use terminology understandable by the average plan enrollee. SBCs must not exceed four double-sided pages in length, and must not include print smaller than 12-point font. A model template has been developed that is intended to standardize the presentation of the SBC's required content to allow for easy comparison between benefit plans.

A plan may provide the SBC to participants and beneficiaries in paper form. Alternatively, a plan may provide the SBC electronically if certain electronic disclosure requirements are satisfied. The proposed regulations refer to the requirements under current Department of Labor regulations regarding electronic disclosure. Pursuant to these Department of Labor regulations, electronic disclosure can be used for two categories of individuals: (1) participants who have effective access to documents furnished electronically at their workplace and who access their employer's information system as an integral part of their duties; and (2) participants, beneficiaries or other individuals who have affirmatively consented to receive disclosures through electronic media. The Department of Labor regulations provide specific requirements that must be met for electronic disclosure, including a requirement to provide notice when each document is furnished electronically. Because the current Department of Labor electronic distribution requirements can be relatively burdensome, a plan should carefully assess its compliance before relying on electronic disclosure.

Language

SBCs must be presented in a "culturally and linguistically appropriate manner." To meet this requirement, in specified counties a plan must provide interpretive services and written translations of the SBC in certain non-English languages. Furthermore, in these specified counties, English versions of the SBC must disclose the availability of language services in the relevant language. For purposes of this requirement, the specified counties are those in which at least ten percent of the population residing in the county is literate only in the same non-English language.

Notice of modifications

If a plan makes a "material mod-

see **SBC GUIDANCE** *page 24*

ANDREW M. PLUNKETT

Keys to recovering your insurance benefits after a disaster

We live in an age of disasters. Devastation to manufacturing facilities by fires, tornados, explosions, floods, hurricanes, earthquakes, tsunamis, etc., is now commonplace. So, you have sought to protect your business with an expensive insurance program. While it is hard to predict when and how a calamity will affect your business, you should know now the steps that you will need to take immediately after disaster strikes. The preparedness of your company's response correlates directly with the extent and speed of your recovery, including funding by your insurance policy.

In today's economic climate, it is not enough to hope that the good relationship a business has with its insurer and/or its brokers will carry you through to a fair and speedy claim resolution. It is a common misconception, even among sophisticated corporate policyholders, that the insurance carrier will handle everything following a large loss. In fact, it is the policyholder's responsibility to handle most aspects of its loss and insurance claim. The insurance policy specifically requires the insured to mitigate its loss and pursue its claim. So do management, customers, and the market. The competition will not wait for you to fully recuperate. Everyone will be watching to see how well you respond and recover from a large loss event.

Good disaster planning begins with focusing on the immediate response, or "emergency" phase, of a loss. Decisions made and actions taken within the first days and weeks after a disaster are critical. The damage caused to the facility and remaining operations, combined with navigating the claim process, will prove to be overwhelming. You will need to know how to handle the following:

Investigating the cause of loss

Determining how damage occurred is the urgent focus of all losses. The exact cause of loss is critical to knowing who is responsible and/or if it is covered by your or another insurance policy. As many businesses learned in the aftermath of Hurricane Katrina, if the loss was primarily caused by wind, as opposed to flood, then the loss was covered under the insurance policy. Determining cause requires an investigation by competent and qualified professionals. For instance, experts are called upon to discover if a fire occurred by natural, accidental/negligent, or willful means; the results of this investigation will control whose insurance policy responds to the loss. What caused the loss will also heavily influence the investigation into the full scope of damage as different causes dictate the nature and extent of the damage.

Developing preliminary scope of damage

A preliminary assessment must be made early as to the scope of damage caused to a facility and its operations. Important questions are: what is the full extent of physical damage, what operations and sales have been affected, what customers have been impacted? Internal and external specialists will be needed to answer these questions. For the insurance claim, you will need experts to make a preliminary assessment into valuing the damage to the physical structure, equipment and business income. Simultaneously, your team must work in tandem with the insurance company's team

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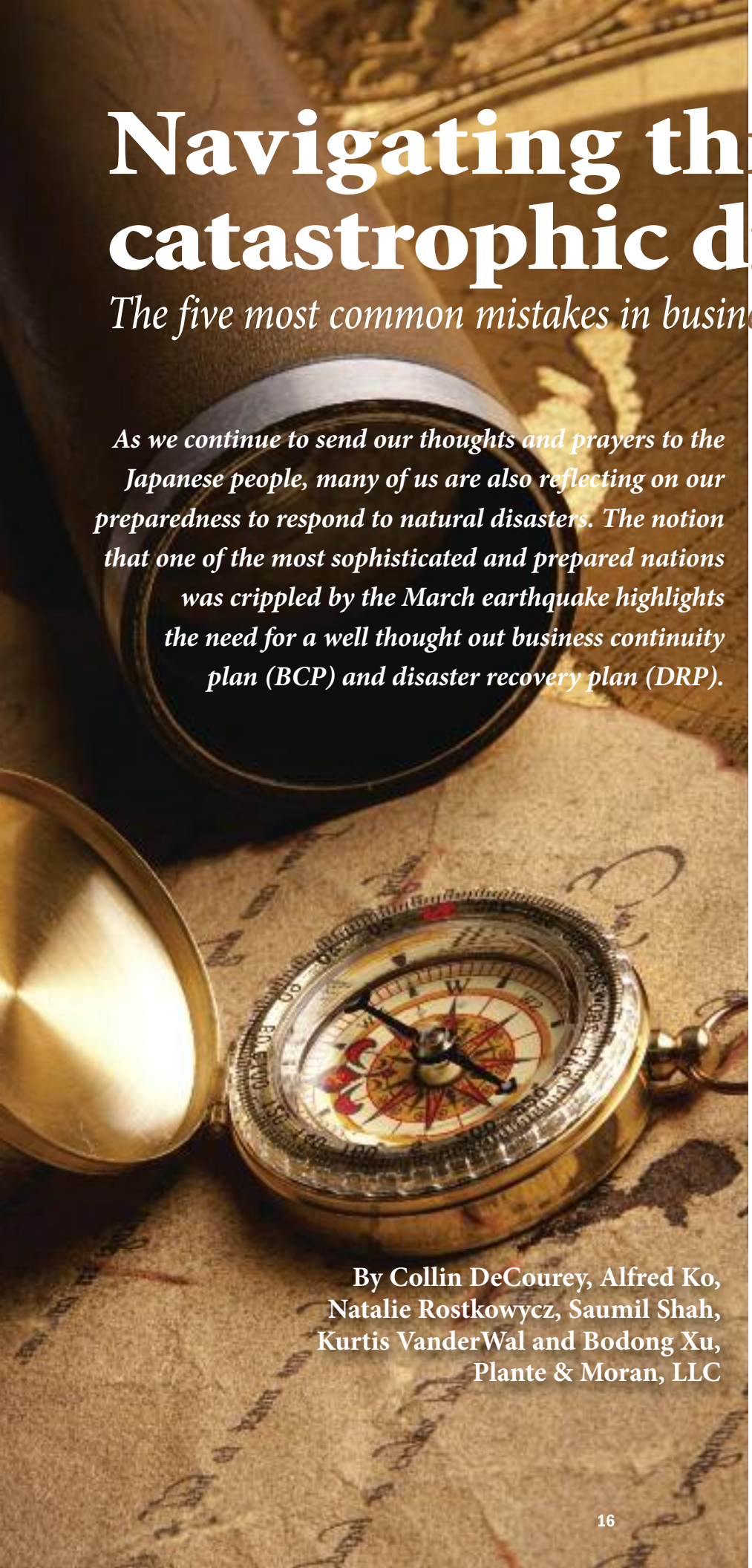
Navigating through a catastrophic disaster:

The five most common mistakes in business continuity planning

As we continue to send our thoughts and prayers to the Japanese people, many of us are also reflecting on our preparedness to respond to natural disasters. The notion that one of the most sophisticated and prepared nations was crippled by the March earthquake highlights the need for a well thought out business continuity plan (BCP) and disaster recovery plan (DRP).



By Collin DeCourey, Alfred Ko, Natalie Rostkowycz, Saumil Shah, Kurtis VanderWal and Bodong Xu, Plante & Moran, LLC

Anyone who has ever worked with a BCP or DRP would tell you that they are a massive effort that requires detailed planning. Yet, in the real world, most organizations have designated less than ideal resources to this topic. Summarized here are the five most common mistakes we have seen in our experience.

Mistake #1: Insufficient testing of plan

A key mistake, with a high probability of going unnoticed, is the lack of testing of an organization's disaster recovery and business continuity plans. The ultimate goal of any BCP/DRP ("the Plan") is to be able to respond to incidents that may impact the organization's personnel, operations, and ability to deliver goods and services. With this goal in mind, the organization must attain assurance over the effectiveness of its BCP/DRP and periodic, comprehensive testing is the only way to attain such assurance.

The frequency of testing varies from organization to organization. As a best practice, we recommend that testing be performed once every six months. Testing should at a minimum include roundtable discussions simulating a disaster, but ideally should include test recoveries by operations personnel at designated hot sites, warm sites, or cold sites, depending on the risk level identified by the organization.

Testing should strive to accomplish the following tasks:

1. Verify the completeness and precision of the plans;
2. Critically assess the reasonableness of assumptions made in the plans;
3. Evaluate the performance of the personnel involved in the exercise;
4. Appraise the training and awareness of the employees who are not members of the business continuity team;
5. Evaluate the coordination among the business continuity team and external vendors and suppliers;
6. Measure the ability and capacity of the backup site;
7. Assess the records retrieval capability, especially of critical data and processes;

8. Evaluate the state and quantity of equipment and supplies that have been relocated to the recovery site; and
9. Measure the overall performance of operational and information technology (IT) processing activities related to maintaining the business entity.

Mistake #2: Lack of buy-in

Contrary to popular belief, an effective disaster recovery plan is never specifically limited to the IT department. It is important for companies to perform a thorough analysis of all the different business areas within the organization. This means representatives from each department coming together and evaluating the criticality of the different business processes. This provides an opportunity for each department within the organization to assess its direct or indirect impact on the organization and other departments. Only through participation by all key stakeholders can an organization achieve full and total buy-in from all parts of the organization — a key requirement in ensuring an effective execution of the Plan when disaster strikes.

The common misunderstanding that IT should be responsible for the BCP/DRP likely stems from the best practice of needing a single point of contact. As important as it is to get everyone involved and achieving enterprise wide buy-in, it is equally important to appoint a single point of contact to take ownership of the Plan. Ownership of the overall Plan is crucial in ensuring periodic tasks such as Plan updates and testing are occurring as scheduled. The appointed individual should have a very good understanding of the business processes of the whole organization, not just one department. He or she should be empowered to interact freely with all departments of the organization, yet be held responsible for ensuring that employees have a good understanding of and access to the plan and are willing to follow it. Once a plan has been developed, it needs to be reviewed by all departments to verify that all critical areas have been included. There should also be approval by all department managers and ensure that they would be willing to enforce and follow the plan if a disaster should occur.

Mistake #3: Prioritization

A well tested BCP/DRP may look good in writing and work effectively in a test environment, but the human factor is often not taken into consideration in a testing scenario. When a serious catastrophe occurs, it might not only directly affect the organization, but it might also be a widespread issue impacting the local community and even the nation. Employees may be properly trained to respond to a disaster; however, when disaster impacts the community, employees will be preoccupied with their personal lives as well as the well-being of their families and friends. Their emotions may get in the way of their decision-making process, and their focus will not be 100 percent dedicated to the organization. This may cause unexpected delays in actual response time.

> As beneficial as cloud computing could be for disaster recovery purposes, organizations must understand that outsourcing also brings with it considerable risks . . .

These factors need to be taken into consideration of what is an acceptable timeframe of recovery for all business areas. Each department should perform a high level risk assessment to establish a target timeline of recovery for critical areas. These target timelines should then be incorporated into the Plan to properly prioritize recovery tasks and ensure recovery efforts are prioritized and realistic to resource constraints.

In other words, the organization should establish a recovery time objective (RTO) to define the maximum process downtime of business that will be acceptable and a recovery point objective (RPO), which is the point in time in which data needs to be recovered. Since personnel constraints are often underestimated, the organization must thoroughly evaluate and take into consideration what is truly feasible and not just what could be achieved under normal efficiency levels. The RTO and RPO should be established not only from the perspective of IT and management, but also from organization stakeholders and/or clients as well. Many service level agreements may include provisions related to service disruptions and business continuity, in which cases legal counsel may need to be consulted. Once these time objectives are established, they should be further evaluated by each department within the organization to ensure each group is in agreement with what it is to be held accountable to. Similarly to the Plan itself, these time frames should be periodically reassessed, tested, and approved at least once a year.

Mistake #4: Financial impact

An important factor to take into consideration when developing the BCP/DRP is a realistic budget. Many organizations make the mistake of including the business continuity and disaster recovery budget in the annual IT strategic plan/budget. As we have established, in the event of a catastrophe, IT is not the only area that will be affected. Additional resources will have to be purchased and allocated across the organization as a whole. The budget should not only include funding in the event of a disaster, but also the cost of planning, testing, and maintaining the plan. It is also critical to maintain a reserve fund to budget for the worst possible scenario to ensure the organization will truly be prepared.

RTO and RPO also need to be taken into consideration when budgeting, as the quicker options typically are the most expensive. The budget should also include the cost of insurance. Organizations should include the business continuity team in an annual review of insurance coverage to ensure adequate protection for property and casualty loss. Companies should also perform due diligence reviews and make sure that the insurance companies and/or third parties that they contract with are financially stable. The budget should be evaluated and updated on an annual basis along with the actual disaster recovery plan by management to ensure the funding is available and realistic.

Mistake #5: Using the cloud

Many organizations have started to virtualize their networks by turning to

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cloud computing. This option is often beneficial and in fact very popular for disaster recovery purposes. Once networks have been placed on the cloud, the basic requirements for an organization to recover from a disaster are a safe and functioning physical facility and a reliable internet connection between the organization and the service provider.

Meanwhile, cloud computing provides other added benefits. Organizations only have to pay for the actual capacity that they use, which frees up the budget for other purposes. Since the data is replicated to the cloud on a daily basis, the RTO can be shortened to a matter of hours rather than days. It is no wonder why cloud computing has become one of the buzz words of 2011.

As beneficial as cloud computing could be for disaster recovery purposes, organizations must understand that outsourcing also brings with it considerable risks. Managing the vendor and selecting a reputable provider are crucial to ensuring quality availability and security. Organizations should also ensure redundancy exists in the connection to the provider. Most importantly, organizations must take ownership of the vendor relationship and assess the quality of the provider's processes and controls. For example, a redundant or backup disaster recovery provider may need to be contracted if the current provider does not provide a failover site during downtime or outages. This example highlights the need for organizations to obtain an understanding of the provider's capabilities, whether it is through a physical walk-through of the provider's facility or review of a SAS 70 and/or service organization control (SOC) report.

In other words, despite being an attractive and often efficient option, cloud computing does not alleviate all of the organization's disaster recovery responsibilities. A formal disaster recovery plan still needs to be developed to include the details of how to recover the business while using the cloud. Representatives from each department still need to be involved in the planning process. Management should make sure that all critical and administrative applications are being replicated to the cloud. The RTO and RPO need to be clearly defined in the service level agreements with the cloud computing provider to ensure the provider will abide by the requirements. Similar to a traditional backup system, disaster recovery testing should still be performed even when it is in a cloud environment.

Conclusion

The recent disaster in Japan was a tragic event and an important reminder of how important well thought out business continuity and disaster recovery plans are. As we all continue to keep the victims of the disaster in our thoughts and prayers, we should also apply this lesson learned, in their honor, in raising the preparedness of our individual organizations to respond to nature's call. ■

This white paper is a result of a competitive exercise within Plante & Moran's Security Assurance team. The team was divided into four smaller teams. Each team was then charged with creating a white paper on Disaster Recovery within a two week timeframe. For more information, contact Raj Patel, Security Assurance Partner, 248-223-3428, or Raj.Patel@plantemoran.com. Plante & Moran is an IMA member company.

Bridging the gap between marketing and sales

If you are reading this article, you are probably involved in manufacturing at a senior level. As such, you consistently invest in the latest technology to constantly improve your production processes to give you a competitive advantage. You approach these investments with a reasoned, logical mindset requiring a demonstrable ROI. You are constantly measuring, monitoring and improving the outcome and outsourcing expertise to help you where you need it. Do you do the same for your marketing?

Are you spreading your marketing dollars across the masses or are you spending dollars developing high opportunity prospects who actually have a need for your product or service? The majority of companies have marketing and sales efforts that operate independently and at different ends of the spectrum. You wouldn't allow that with production departments, so why do you allow it to happen with marketing and sales?

Sales — one end of the spectrum

According to a recent article in *Sales Laundry,* today the cost for ***one sales call*** is anywhere from $215– $315 (not including the cost of transportation, and the time it takes to arrange the appointment and travel to the meeting).

For a client who manufactures heavy equipment, their average cost exceeds $400 per call due to the highly technical nature of the sale. Imagine that their "close" rate is five percent and apply some simple assumptions. Their view is that they are grossing over $1 million per sales person per year and making $200,000 in profit. However, when the true cost of the sale is factored in, along with the 95 percent of effort that didn't pan out, the actual profit is closer to $40,000 per sales person. In other words, $152,000 wasted and that does ***not*** include the multiple meetings with prospects who do not (and never will) buy. Multiplied across a staff of 10 sales people, that's $1,520,000 of waste each year!

FACT: A large portion of sales people's collective time is totally unproductive — driving or flying many miles to meet with someone who will never buy, or making cold calls on unqualified prospects.

What would happen if . . .

1) the effective close rate of the sales force increased, the quality of leads and prospects were constantly qualified, nurtured or weeded out, letting the sales people spend more time doing what they do best — closing sales — and less time on activities that will never pan out? or
2) the waste in the process was identified and reduced by determining Key Performance Indicators (KPI's) and instigating best practices based upon the proven results?

Using the same example above, increasing the close rate by 50 percent to 7.5 percent would translate

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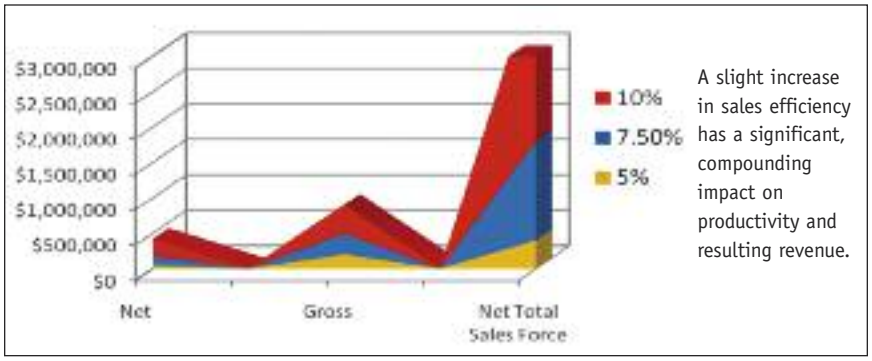
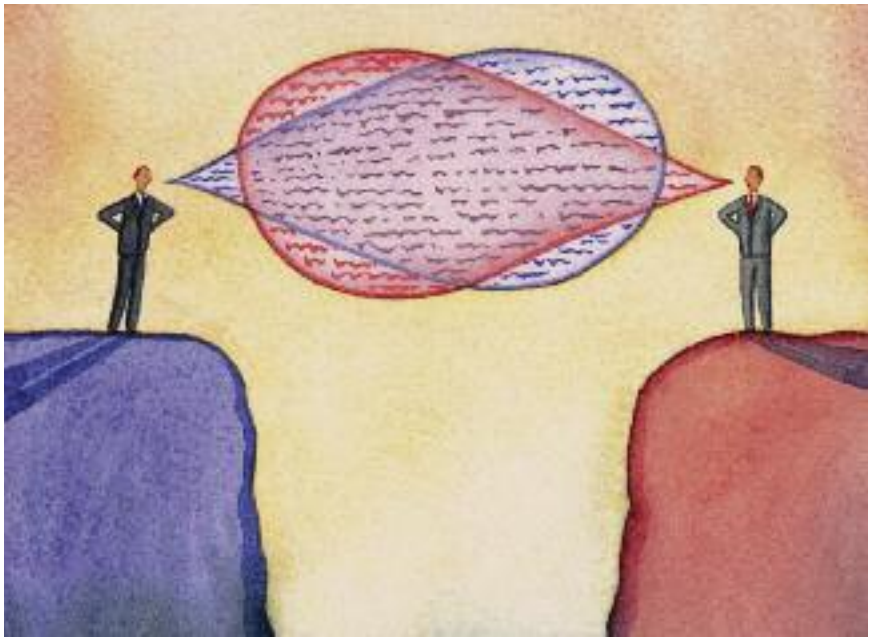


A slight increase in sales efficiency has a significant, compounding impact on productivity and resulting revenue.



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into $300,000 in gross sales profit, and $140,000 in net profit (vs. $40,000) per year. That's $1 million in new found money across the same sales force. Increasing their close rate from five to 10 percent would mean $400,000 gross, or a net profit of $240,000, translating to $2.4 million in new found money.

Marketing — the other end of the spectrum

Although times have changed dramatically over the last few years, there is still a lot of wasteful spending in marketing. Many companies still invest the largest portion of their budgets on traditional advertising channels such as print, radio, TV and general collateral. There is still a powerful, almost mythical belief that blasting the name of the brand everywhere will build brand awareness which, in turn, somehow will magically translate into increased sales — as if awareness, alone, is the key to a sale. Many manufacturers use their advertising campaigns to reiterate detailed product specifications — often called brochure ads.

There are five obvious problems with this way of thinking:

1) It is a very expensive game to play, especially when a competitor decides to outspend you;
2) Brand awareness might work great for toothpaste and deodorant, but not so much for more sophisticated product sales;
3) Being unable to precisely target and direct your message to qualified prospects is very wasteful. For example, for a product with five percent market share, the waste can approach 85 percent;*
4) Disseminating homogenous, simplified benefit statements and product specifications to the masses does not consider the individual and unique needs of the potential buyer; and
5) There is very limited ability (if any) to measure results and the impact on sales.

*Standard rule of thumb for identifying market potential = current market share x 3, which includes those who might, at any one time, be in the "consideration set" for evaluating a product or service.

The BIG opportunity: Build the bridge between marketing and sales

There is a better way. The approach is simple to understand yet it requires a new way of thinking and a logical, systematic approach. By assessing and recognizing the divide existing between your current marketing and sales initiatives, particularly as viewed from the vantage point of the prospect, a bridge can be built. It involves applying resources in a more accountable manner to move the prospect along the sales cycle while involving both sales and marketing jointly as stakeholders (too often sales has no idea of what marketing's objectives are and therefore has no ownership or interest). It involves more than just mailing brochures and producing TV ads.

It's as if marketing is now knocking on the doors and doing the upfront sales work that sales people used to do, and at a fraction of the cost. It lets sales people spend their time doing more of what you hired them to do in the first place . . . close more sales.

There is a growing list of marketing experts and technology platforms that have been designed for this very purpose — bridging the gap between traditional marketing right down to the individual sale. Their sole purpose is to move high-opportunity prospects along the sales cycle by providing relevant information to them at the right time and at a greatly ***reduced cost.*** It involves the practical application of sophisticated database and automated marketing technology, delivering ***only*** the information that is relevant to each prospect, in a personalized and service-oriented manner. It's as if marketing is now knocking on the doors and doing the upfront work that sales people used to do and at a fraction of the cost. It lets sales people spend their time doing more of what you hired them to do in the first place . . . close more sales.

Automated marketing is a burgeoning area for many reasons, but top on the list is its ability to greatly improve sales while reducing waste. Automated marketing is 100 percent data-driven and web-based, meaning that every aspect of the process can be monitored, analyzed and measured with the intent of identifying what works, and doing more of it. A typical approach follows:

- **Target:** Reallocate sales and marketing resources associated with wasteful activities and re-direct a portion to precisely identify, reach and target ***high opportunity*** prospects.
- **Multi-touch:** Deploy multi-channel, multiple "touchpoint" micro campaigns directed towards this same ***high opportunity*** audience. Use integrating channels such as direct mail, email, personalized extranets, telemarketing and even social media around a common campaign idea.
- **Interact:** Provide multiple opportunities to ***listen.*** People are conditioned and willing to offer information, on the condition they see an obvious benefit for doing so. Systematize the collection and use of the primary data they provide, as well as all of the vital campaign data (preferred channel for responding/frequency of visits to online presence/email open/click-through rates).
- **Qualify:** Based upon ***all*** of the collected data (including the number of times they reply, the methods they use, the information they provide, etc.), develop a ***lead qualification*** scoring system that accommodates your selling approach.
- **Personalize** all subsequent marketing messages and sales materials (collateral, direct mail, extranet, email, etc.) to the unique and individual needs of each prospect and deliver a mix of product feature and benefit information that is unique and relevant to each. Be sure to factor in messaging strategy over time and over channel — there is no need to dump all information all at once. Please, no more "one-size-fits-all" brochures.

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ROBERT A. PONTARELLI

Five big mistakes small to medium-sized manufacturers make when modifying their facility

Every mistake a business makes has the potential to be a threat to the very survival of the organization. Discussed here are five big ones to avoid when expanding or rearranging a production facility.

This article assumes that the reader is a company owner and/or leader in choosing ideas, plans, budget(s) and internal as well as external staff, and that all cooperate in creating a construction event of one kind or another. Such an event will lead to a modification, up or down in the scope of work undertaken at your manufacturing facility.

Mistake #1: Following your plan

The first mistake is not having a plan that you didn't make. Sound confusing? Bear with me. A plan you didn't make may be the best plan!

Let's say you need a small assembly area, a remodel of your existing toilets to comply with accessibility codes, an expansion of a spray room, a dock area and some new office space. We call this your program. A program is a list — not a plan. A plan is the translation of that list into a two-dimensional layout of what's either there or going to be there, to scale, so you can measure it.

We all have an idea of what we want and who knows our business better than we do? At the same time, there are persons much "less qualified" than yourself who have the potential to either alter or radically shift your attention to or from an area that we might never see otherwise. These could be our front line people — or even our mother-in-law! As long as you have committed listeners as to what is important to you, does it really matter where your best ideas come from? I posit that it does not.

The point is this: keeping an open mind is often the result of being unattached to how an outcome has to look for you, the owner, to support it. Nurturing a well-conceived plan for your facility is like parenting well-raised children — know when to let go of your original intention and rapidly move into mentorship, not ownership.

Particularly in family businesses, senior leadership will develop their own plan and their little secret is that they are totally attached to their own idea of how things have to go based on that plan. They also have no plan to let you know this, so they will lie about it. The next step is inviting all manner of supporters and outside consultants in to review their ideas. Having (secretly) affixed themselves to a particular outcome, they will then listen to others, not so much for new ideas, but for whether or not such input is congruent with what they have already visualized in their own head.

How does this happen? One answer may be survival. How is it that we tend to choose what is familiar over and over again, even if it constrains us? Being human means being dedicated to survival and whether we like it or not we automatically choose what is familiar over what is unfamiliar most of the time.

Once upon a time, an ancestor in your hairy clan ate the wrong berry and the rest truly is history. When your life is at stake, it doesn't take too many incidents of food poisoning to develop a pattern of relying

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AFTER A DISASTER

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of professionals as they develop their perspective of the scope.

Controlling site access

Immediately following a disaster, the policyholder will learn that many, often competing, interests heavily desire access to the loss site. First, the individuals handling the investigation into the cause and scope of loss above, on behalf of the policyholder and the insurer (of both the company as well as a tort-feasor), will demand full access. Moreover, various local, state and federal authorities (building inspectors, police and fire officials, environmental, regulatory) often request access for their investigation. In addition to the chaos involved in trying to coordinate these efforts, it will be incredibly disrupting to the business and ongoing operations. Your team needs to control who gets in, when, and for what purpose. Reasonable protocols need to be established and enforced.

Controlling the message regarding the loss

Your employees will want to know the extent of damage and how it may impact the company and their jobs. Your customers will need to know whether you can still meet their needs or if they should look instead to your competition. Management will need to know how to plan for the short and long term. The press will demand information. Some information you simply will not want disclosed in a competitive market place. Your team needs to be consistent with answers given to these questions, as well as how the loss is being presented to the insurance carrier.

Stabilizing the facility, mitigating the loss

You will need to establish a facility, or a portion thereof, that can continue operations to the extent possible. Any temporary repairs necessary to stabilizing the facility must be identified and made. This is important both in terms of continued income for your business, and it is a requirement of your insurance policy after a property loss to minimize the loss.

It is imperative that a business handle these and additional responsibilities immediately after a loss. While no one enjoys thinking about the possibility that a catastrophic loss will befall their business, knowing what to do after a large loss is the key to recovering the insurance benefits paid for. The insurer has its own interests and will view the loss through its own lens, as an outsider to your business. You will often disagree as to the amount of money lost and effort required to restore your business to its pre-loss condition. The key to controlling such potential issues is by having a qualified full-time team in place to take full ownership and responsibility for the claim. When an insured develops its own perspective on the valuation of the loss, it can more fairly resolve the claim. A properly handled emergency response to a disaster sets the groundwork for getting your business back to its pre-loss conditions and recovering the insurance benefits owed. ■

BRIDGING THE GAP

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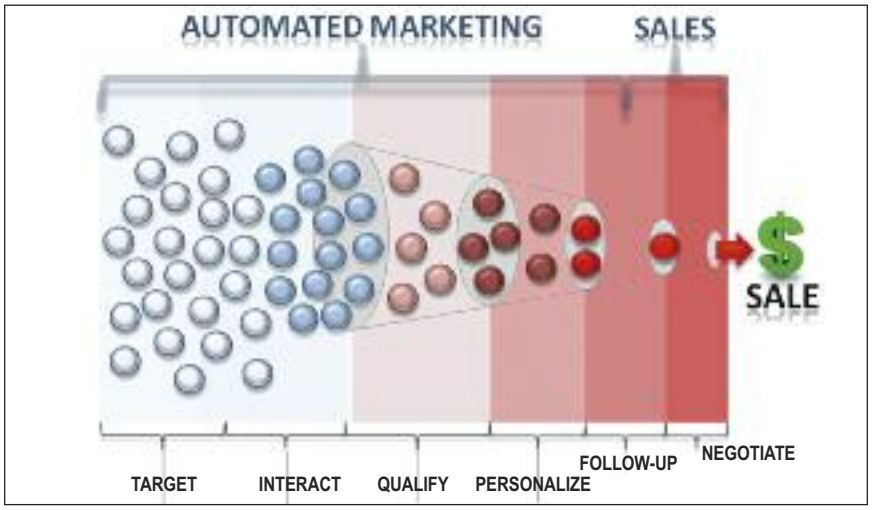
- **Follow-up:** Automatically disseminate ***leads*** down to the individual sales person and orchestrate a follow-through process that involves marketing (do ***not*** assume sales, alone, will conduct the follow-up. On average, less than 15 percent of qualified ***leads*** will ever hear from their assigned sales person).
- **Collaborate:** Share vital campaign and program information with ***all*** key stakeholders in the process, including the roles and expectations of everyone involved.
- **Measure** virtually every step of the process; learn precisely what works and ***do more of it!*** Use the measurement tools to determine KPI's and best practices. For example an automotive client discovered that responding to an inquiry a minimum of three times (via email and at least two personal phone calls) within a 48-hour window increased the likelihood of a sale by 64 percent!



You may already have invested in automated platforms for marketing or sales, or both. However, these are only as good as the people who run them and all too often these are run in a vacuum with no regard for the corporate outcome required. They serve only their department's goals, not the company's goals. Fully integrated automated marketing programs, combined with the correct expertise from consultants with experience in data-driven marketing, can forge the alliance between sales and marketing and often show ROI numbers as high as $29 in increased (measured) revenue for every $1 invested in the program while collecting primary prospect data and business intelligence with typical response rates in the high teens or more.

bopi's Innovation Division bridges the gap between marketing objectives and desired results. bopi uses measurement and analytics to deliver improvements to communication investments and drive interactive, real-time relationships with prospects and clients, as well as offering a number of solutions to streamline and standardize collateral creation, management and fulfillment. ■

KURT STITCHER

Recent developments: A product liability defense "two-fer" in Illinois

In late September, two heavy hitters in Illinois product liability law — the federal Seventh Circuit Court of Appeals and the Illinois Supreme Court — handed down opinions quite favorable to manufacturers who sell products in Illinois. In one, the Seventh Circuit held that, under Illinois law, "consumer expectations" were merely one aspect of the "unreasonably dangerous" standard for finding a product "defective" and that plaintiffs need expert testimony on consumer expectations. In the other, the Illinois Supreme Court clarified the standard of care in a product liability negligence case and confirmed that, in order for plaintiffs to prove a product defect, they must show that the risks inherent in a product outweigh the benefits of the product's design (the so-called "risk-utility test"). Both cases offer glimmers of hope to product manufacturers in a jurisdiction that has traditionally been relatively hostile to them.

Show v. Ford Motor Co., Nos. 10-2428 & 10-2637 (7th Cir. Sept. 19, 2011)

In *Show*, plaintiffs were involved in a rollover accident in a 1993 Ford Explorer. They sued Ford, contending that the vehicle's design made it inherently unstable and, thus, "defective." By the close of discovery, however, plaintiffs had failed to identify an expert on the defect issue, and the trial court granted Ford summary judgment. On appeal, plaintiffs conceded that expert testimony was needed on the risk-utility test under Illinois law but argued that the jury could, relying on its own experience and knowledge, find the vehicle defective under a consumer expectations analysis, without the need for expert testimony.

On appeal, the Seventh Circuit noted that, under Illinois law, plaintiffs may prove a design defect in one of two ways. First, plaintiffs may show that the product failed to perform as safely as an ordinary consumer would expect it to perform when used in a reasonably foreseeable manner. This is called the "consumer expectations test." Second, plaintiffs may prove that an alleged design defect proximately (legally) caused their injuries, which then shifts the burden to the defendant to establish that, on balance, the benefits of the design outweigh the risks inherent in it. This is called the "risk-utility test."

The Seventh Circuit went on to clarify, however, that the consumer expectations and risk-utility tests are merely methods of proving that a product is "unreasonably dangerous." They are not theories of liability. Quoting extensively from Illinois Supreme Court precedent, the Seventh Circuit then held that "consumer expectations" are included as a factor within the broader risk-utility test. The risk-utility test requires

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SBC GUIDANCE

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ification" of any terms of the plan that is not reflected in the most recently provided SBC, the plan must provide notice of the modification to enrollees. A material modification refers to either an enhancement or reduction of covered benefits or plan terms that an average plan participant would consider to be an important change. The notice requirement applies if the material modification occurs other than in connection with a renewal or reissuance of coverage. If required, notice must be provided 60 days in advance of the effective date of the change. (The advance notice requirement is a significant change from current Department of Labor regulations that require notice no later than 60 days after a material reduction in coverage or benefits.) The SBC notice requirement can be satisfied either by providing a separate notice describing the material modification or by providing an updated SBC that reflects the modification.

Uniform glossary of terms

Standard definitions are to be developed for certain insurance-related and medical terms. To implement this requirement, the proposed regulations refer to a uniform glossary that defines insurance terms such as co-insurance, co-payment and deductible, and medical terms such as emergency room care, hospitalization and physician services. A plan must provide the uniform glossary in an authorized appearance, to ensure that the glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee. A plan must make the uniform glossary available upon request in either paper or electronic form within seven days of a request.

Penalties

A plan that willfully fails to provide a participant or beneficiary with the information required under the regulations will be subject to a fine of not more than $1,000 for each failure. The regulations provide that a failure with respect to each participant or beneficiary constitutes a separate offense. Furthermore, a failure may trigger IRS excise taxes of $100 per day per failure.

Conclusion

The SBC is a new document that must be provided in addition to Summary Plan Descriptions ("SPDs") and Summaries of Material Modifications ("SMMs"). Under the proposed regulations, the SBC will need to follow a standardized format that is intended to allow for easy comparison between benefit plans. In addition to the proposed regulations, templates and instructions are now available to help plans with their compliance obligations. However, it is important to note that the current regulations are proposed, rather than final, regulations, and at this point, it is not clear whether the SBC requirements will be delayed beyond March 23, 2012. Nevertheless, sponsors of both grandfathered and non-grandfathered group health plans should begin considering how they will draft and distribute the new SBC when the requirements become effective. ■

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BIG MISTAKES

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on what is safe or better yet "proven." Once we get results from our own ideas, that ancient primordial sense of survival kicks in and we tend to ride the groove of results — often right to the grave!

Tips to keep your plan in check:

1) Get a critique, not a buy-in, from as many people in your organization as possible. The critique allows for the buy-in to show up without you around;
2) The earlier you get an architect or engineer on board, the better;
3) Stop lying or trying or protect yourself! People who have been around you long enough know you better than you think. As a leader, it is you who gives a sense of safety to people, not the other way around; and
4) Give people the freedom to fully interrogate your ideas without their fearing you might take offense.

Mistake #2: Following your budget

How many people do you have on your list of reviewers to your budget that you are afraid of sharing information with?

You have your CPA involved, your staff has made what you see as critical observations and you may already have an architect or engineer on board as a preliminary effort.

So what's so terrible about following your own budget anyway? True, you know you have only so much to spend, or can afford, and there truly may be only so much money anyway. So what's the issue?

Admit it: you are afraid, very afraid, and your fears are running things instead of you.

Throughout human history, nothing makes people quite as crazy as conversations about money. This is largely due to each of us having a different type of programming about value picked up over the course of life. Our historic relationship to money and value starts with our family conversation. This imprinting usually continues and is reinforced by a series of experiences over the course of one's life, most of the time before we're eight years old.

So are we ready to sit down and negotiate contracts with an eight-year old? Get ready!

Restating the first question above, you could say, "Who are you afraid of sharing your fear (about money and budget) with and why?" Most of the time, human behavior is not driven by the desire for results so much as the fear of the conse-

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BIG MISTAKES

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quences of failing in our attempt at achieving those results. Taken a step further, we tend to make stuff up to compensate for a host of other internal conversations, driven mostly by fear that we may be having about those intended outcomes.

So now we are sitting around a table, looking at a budget together with our entire team of eight-year olds on a "limited" budget. What to do?

1) Before you do anything, ask yourself where your attitude about money comes from and be honest about the bias this has helped to create.
2) Deal with people you totally trust, starting with your own staff and moving outward from there. If it takes having people sign a confidentiality agreement (with serious consequences for breaking it) then do that.
3) Spend most of your time listening to what your best, most qualified people are saying about your budget.
4) Don't necessarily count on labor costs to either go down or be cheap for now. The contingencies requested by trusted staff and consultants should be heeded.

Mistake #3: Attempting to connect your own budget to your own plan

Let's assume we have transcended any manner of behavioral constraint regarding attachment to what we "know" and have successfully navigated the landscape of fixed-budget relative to past notions of value.

Now we are looking to integrate our plans and budget together in a mass-editing process driven by a single individual, charged by a vision. Now is the quintessential opportunity for leadership. It has been said that real power is having what you say, divided by the time it takes for what you say to occur in reality. Leadership, the execution of a vision, is only as good as the support and cooperation of a team who is also committed to that vision.

You are responsible for the success of your team (not the other way around).

Integrating a limited budget with your vision now requires a further separation between "parent and child." It's time to give up your idea to "time and the elements." If you are thinking that further detachment applies here, you would be correct. It's time to let your team do what they do best in a context of rigorous structures of accountability that serve the highest expression of "your" original intention. In effect, your plans and budget are now only as good as how well you hold the people to whom you have entrusted them with, accountable.

Remember, it may not be so much your team's performance but the stealth through which you hold your team accountable that determines the success of the final outcome. It's a bit counterintuitive, isn't it? Your view as to what is happening from here (in a context of you avoiding the poison berries by the way) is not nearly as critical as your sensitivity to how things are occurring for your team.

1) It is your job to hold your team accountable for your budget constraints.
2) Now that you are fully detached (okay partially detached is better than being attached) you can stay in communication while your team does what they do best.
3) Above all, stay in communication and try to operate without judgment (good luck).

Mistake #4: Thinking you are the best person to qualify who you're working with

Although you may have the final decision as to who to hire in terms of consultants, you also may be the worst choice for analyzing the decision-making criteria upon which your choice is based; and if you are like most small to medium-sized manufacturers anywhere in the world, most of your time is spent on concerns about your business rather than having anything to do with construction (or mostly anything else).

Just because you have to make the final decision does not necessarily mean you're the best person to make that decision. Nor does it make you more able to blame others for things not working out either. Too bad for you boss!

1) Suck it up. Swallowing the "bad news" about yourself is the door to your own transformation as well as the transformation of everyone around you. Humility is contagious!
2) Your internal team is responsible for your being best-counseled on who your best choice for consultants are. They are there to assist you in having your reputation successfully on the line.
3) Your internal team should have the overall performance of the new Op in mind, rather than cater to what your singular fears are.
4) Exercising the courage of a lion, start laughing at your own judgments, opinions and evaluations, as they are now worthless. When you do, people will contribute to you more than you can imagine.

Mistake #5: Believing that you are the sole arbiter of quality

The fifth biggest mistake is thinking you are responsible, or the best "assessor," for keeping the quality of the work coherent with what you're paying.

This is simply not accurate, though the "value proposition" you signed on to is most definitely in line with final cost.

Your team is not only responsible for performance specs, they are the best choice to establish them, and I am not speaking about your General Contractor. The GC's job is making certain they are meeting your team's requirements. None of the above is limited to architecture, engineering and so on.

Real quality is comprehensive by nature. The successful outcome of your project is relative to a delicate balance between schedule, cost and quality of work. In the end, before you ever complete the planning stage, you absolutely must prioritize those three categories.

1) A Vietnam veteran friend of mine once told me, "About fifteen seconds after you get the whole thing figured out, you die." Please do not make the mistake of using this comment to forgo diligent pursuit of your own sense of what you think you know, about anything.
2) Take a course somewhere where you can have your ego killed-off. You'll live longer, be healthier and do less work. It won't die by itself, and when it does toss in the chips, it will be happy to take you with it.
3) Remember: If what you were looking for was where you were looking, you would have found it already. ■

IMA's Women in Manufacturing

Panelists at the IMA Women in Manufacturing event included (l to r) Gloria Georger, Ford; IMA Board member Marsha Serlin, United Scrap Metal; Jan Allman, Ford; IMA Board Chairperson Janice Christiansen, Flagsource and IMA Board member Renee Togher, Azteca Foods.

On September 22, the Illinois Manufacturers' Association held its inaugural Women in Manufacturing event. Over 100 attendees gathered at the Ford Motor Company in Chicago to participate in this first event of its kind.

This successful event connected women who share a passion for manufacturing. The day kicked off with a panel consisting of four women with diverse backgrounds in manufacturing: Jan Allman and Gloria Georger from Ford Motor Company, Marsha Serlin from United Scrap Metal and Renee Togher from Azteca Foods. With Pam McDonnough, CEO of the Alliance for Illinois Manufacturing as the moderator, they discussed the many challenges facing manufacturing today including introducing lean manufacturing at their plants, balancing work and family, giving back to the community and continuing education. Attendees also enjoyed a tour of the Ford motor plant and executive garage, a networking session and the luncheon keynote address from Senator Pamela Althoff (R-Crystal Lake).

■ ■ ■

IMA member companies named tops by *Working Mother* magazine

Several Chicago-area businesses have been named to *Working Mother* magazine's 100 Best Companies, an annual list of workplaces that recognizes companies for leadership in providing family-friendly benefits, programs and workplace culture. IMA member companies that made the list are Grant Thornton LLP, Abbott Laboratories, BDO USA LLP and Kraft Foods, Inc.

Abbott Laboratories has been named one of the 100 Best Companies by *Working Mother* magazine for the eleventh consecutive year. *Working Mother* magazine also recognized Abbott as one of the 10 Best Companies for Kids for providing family-friendly benefits — from adoption assistance and child care to college scholarships.

"Abbott is honored to be recognized by *Working Mother* magazine for our ongoing efforts in creating a supportive and fulfilling work environment for working mothers and their families," said Stephen Fussell, Senior Vice President, Human Resources. Abbott offers health care, wellness, work/life and other family-friendly benefits, as well as flexible work options such as job sharing, compressed work-weeks, telecommuting and flextime to help employees find success at work and home.

Profiles of Abbott and the other 100 Best Companies, as well as national comparisons, are in the October issue of *Working Mother* and at workingmother.com/bestcompanies.

■ ■ ■

ADM employees donate 133,930 pounds of food to help feed families around the world

In celebration of World Food Day, October 16, 2011, Archer Daniels Midland Company employees donated more than 133,930 pounds (67 tons) of food to soup kitchens and food pantries in ADM communities worldwide. The donations were coordinated through the company's ADM Cares program.

Throughout its history ADM has aided in the world's efforts to reduce hunger. Last year, ADM Cares funded the creation of the ADM Institute for the Prevention of Postharvest Loss at the University of Illinois at Urbana-Champaign. The goal of the institute is to work with smallholder farmers in the developing world to help preserve millions of metric tons of grains and oilseeds lost each year to pests, disease, mishandling and other factors. Helping farmers preserve more of what they already grow is fundamental to feeding the world, and to making the most of the land, water, energy and other inputs already used to grow crops. For more information, visit www.postharvestinstitute.illinois.edu.

Today, 30,000 ADM employees around the globe convert oilseeds, corn, wheat and cocoa into products for food, animal feed, chemical and energy uses. With more than 265 processing plants, 400 crop procurement facilities, and the world's premier crop transportation network, ADM helps connect the harvest to the home in more than 160 countries. For more information about ADM and its products, visit www.adm.com.

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Manufacturers are switching to Cloud computing systems to achieve improved business performance

For years, manufacturing companies have used Enterprise Resource Planning (ERP) systems to manage their finance and shop floor information. Baker Tilly Virchow Krause, LLP (Baker Tilly) this year shared a case study highlighting the experiences of a manufacturer, who chose Baker Tilly to assist them in evaluating and implementing a Cloud-based solution that replaced their obsolete ERP system.

"Cloud solutions not only offer robust functionality with the simplicity of an internet connection, but also leverage modern technology in new ways to bring agility and speed to the business," said Matt Haller, a Principal in Baker Tilly's business technology consulting practice.

Baker Tilly's business technology consulting practice assists manufacturing clients with evaluating, implementing and leveraging Cloud computing solutions. The full article highlighting the manufacturer's experience can be read online at www.baker-tilly.com/Manufacturers-Switching-to-Cloud-Computing. Baker Tilly is an IMA member company.

Affordable accounting and virtual CFO services from DHJJ now available using Intacct's cloud financial applications

DiGiovine Hnilo Jordan + Johnson Ltd., a CPA and business consulting firm, and IMA member, has joined the Intacct Partner Program to provide affordable, secure cloud computing financial solutions to mid-sized businesses.

"Businesses are struggling with how to manage their accounting efforts in a cost-effective way as their business grows," says Ken Overholt, Principal. "Cloud-based financial management is the future. DHJJ offers full financial, accounting and tax services including virtual CFO services. Intacct solutions allows firm employees and clients to access financial information and collaborate in real-time from anywhere in the world via the Web."

DiGiovine, Hnilo, Jordan & Johnson, Ltd. is a CPA and business consulting firm with offices in Naperville and St. Charles. For more information, please visit www.dhjj.com.

■ ■ ■

President of Quality Float Works, Inc. attends white house Women in STEM event

Sandra Westlund-Deenihan, President and Design Engineer of Quality Float Works, Inc., an IMA member company, was tapped to participate in the White House's announcement of new workplace flexibility policies for America's scientists. The event also highlighted the work of several national organizations' efforts to increase the pipeline for women in science, technology, engineering and math (STEM).

In August of this year, the National Alliance for Partnerships in Equity Education Foundation (NAPE-EF) and Illinois School District U-46 announced their collaboration in securing $50,000 as part of the Innovation Generation grant program from the Motorola Solutions Foundation to inspire students to learn about STEM. Through the grant, the creation of a STEM Equity Pipeline program at U-46 will engage 40 administrators, counselors and faculty from five high schools in intensive professional development to implement research-based practices to increase access, success and post-secondary transition of girls and other underrepresented groups in STEM.

"As a third generation manufacturer, I have witnessed first-hand the tremendous lack of skills potential workers possess as they search for employment in the manufacturing industry," said Westlund-Deenihan. "It is my goal to bring more young girls into the field of engineering and manufacturing and I look forward to continued collaboration in developing a curriculum for students that provides the necessary job skills they will need to enter the workforce."

For more information on Quality Float Works, Inc., visit www.metalfloat.com.

■ ■ ■

World's largest chocolate bar on tour with healthy lifestyle message

A gigantic chocolate bar is bringing an even bigger idea to children and their families across the nation.

Weighing 12,190 pounds, the bar was produced by World's Finest® Chocolate of Chicago, an IMA member company. Guinness World Records recently certified the bar as the World's Largest Chocolate. The bar is a replica of the World's Finest "dollar bar" and is four feet wide, three feet high and 21 feet long.

World's Finest Chocolate, the leading provider of chocolate fundraising products, is featuring the bar in a tour called "Think Big. Eat Smart!" to take the message of "eating right and staying fit" to students during presentations at schools.

The first phase of the tour included stops in Nebraska, Iowa, Wisconsin and Illinois. The next stop was New York City where the bar made an appearance October 10 on the new ABC daytime food and lifestyle show, The Chew. The tour will conclude next May at the Sweets and Snacks Expo in Chicago.

Based in Chicago, World's Finest Chocolate is one of only a few companies in the U.S. that produces chocolate products from "bean to bar" in a single location.

■ ■ ■

Bison Gear & Engineering recognized by WorkforceChicago

Bison Gear & Engineering Corp., was recently honored for its exemplary commitment to its employees' learning and development at the 10th annual WorkforceChicago Award Event.

WorkforceChicago is an organization made up of Chicago-based business leaders dedicated to building the talent pool in companies throughout the region by encouraging continued education and networking. As a joint collaboration between the Council for Adult and Experiential Learning (CAEL) and the Human Resources Management Association of Chicago (HRMAC), the group honors leading area companies.

"We are very honored to have been noticed and formally recognized by some of the area's best and brightest CEOs and business leaders," said Sylvia Wetzel, Chief Learning Officer of Bison Gear & Engineering. "It reflects well on our long-standing commitment to our associates' development within our company."

Companies recognized by WorkforceChicago serve as an example to other Chicagoland businesses for the successful implementation of best practices and development. Corporate visionaries are presented this award by the Honorable Rahm Emanuel, Mayor of Chicago.

"This recognition confirms Bison's culture is one of nurturing and improving our organizational knowledge." said Martin Swarbrick, President and CEO of Bison.

The WorkforceChicago Award Event took place Thursday, Oct. 20 in Chicago. For more information on Bison Gear & Engineering, visit www.bisongear.com.

Advertiser Index

PRODUCT LIABILITY

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expert testimony, because complex engineering issues — including design trade-offs, overall design safety, and feasible alternative designs — are beyond the common knowledge of the average juror.

Wrapping up its logical argument, the Seventh Circuit concluded that "[i]f, as plaintiffs concede, it takes expert evidence to establish a complex product's unreasonable dangerousness through a risk-utility approach, it also takes expert evidence to establish [that] product's unreasonable dangerousness through a consumer expectations approach." Otherwise, "a jury unassisted by expert testimony would have to rely on speculation."

In short, *Show* has gravely damaged a powerful plaintiffs' tool in product liability design defect cases, i.e., the ability to get a jury without hard evidence of an actual design defect, including proof of a feasible alternative design. Whereas the consumer expectations test allows a jury to opine about how it believes a product should perform — which opens the door to "equitable" verdicts to sympathetic plaintiffs — the risk-utility test requires a balancing of factors that real engineers use in the real world. This development cannot help but benefit manufacturers defending against such vague design defect claims in the Illinois courts.

Jablonski v. Ford Motor Co., No. 110096 (Ill. Sup. Ct. Sept. 22, 2011)

In *Jablonski*, the driver of a 1993 Lincoln Town Car died, and his wife was seriously injured, when the car burst into flames following a high-speed rear end collision, in which a pipe wrench in the Town Car's trunk punctured the gas tank. At trial, plaintiffs alleged that Ford was negligent in its design of the Town Car, because Ford (1) placed the gas tank behind the rear axle; (2) failed to install a shield to protect the tank from rear impacts; and (3) failed to warn consumers of the risk of trunk contents puncturing the tank. The jury returned a verdict of $28 million in compensatory damages and $15 million in punitive damages. The intermediate appellate court affirmed the verdict.

After an extensive review of the competing evidence offered at trial, the Illinois Supreme Court set forth the legal prism through which the trial court should have viewed the evidence. First, the Court confirmed that in a negligent design case, the key question is whether the manufacturer exercised reasonable care to design a product that did not pose unreasonable, foreseeable risks to users. Critically, the Court then stated that "whether the manufacturer exercised [such] reasonable care . . . encompasses a balancing of the risks inherent in the product design with the utility or benefit derived from the product." In other words, "the balancing test developed for strict liability claims [that is, liability without fault] . . . is essentially identical to the test applied in determining whether a defendant's conduct in designing a product is unreasonable. . . ." This holding seems to confirm the Seventh Circuit's opinion that Illinois law requires the use of the risk-utility test as an overarching legal framework in design defect cases.

Second, the Illinois Supreme Court offered that "a myriad of factors" may be relevant to this balancing test and held that the trial court "must initially balance factors it finds relevant to determine if the case is a proper one to submit to the jury." This holding is somewhat remarkable, as it suggests that Illinois trial courts should not even let a "negligent design" case go to the jury, unless plaintiffs have introduced evidence on the risks and benefits of the challenged design.

Third, the Court made clear that it was plaintiffs' burden to produce evidence that the risks associated with Ford's design choices outweighed the benefits of the design (a burden apparently at odds with the one the Seventh Circuit described in *Show*). The Court then proceeded to discuss the evidence on each of plaintiffs' three negligent design theories, concluding that (1) competing design considerations favored Ford's position; (2) plaintiff had failed to show a feasible alternative design; and (3) the "substantially similar accident" evidence that plaintiffs adduced did not involve objects puncturing the tank and were not, therefore, relevant.

The Court summed up its analysis by holding that "after balancing the foreseeable risks and utility factors, plaintiffs failed to present sufficient evidence from which a jury could conclude that at the time of manufacture, Ford's conduct was unreasonable. . . ." Again, this holding is somewhat remarkable, because the Illinois Supreme Court — overruling the jury, the trial court, and the appellate court — effectively reviewed the factual evidence in the case and decided, as a matter of law, that this evidence was insufficient even to reach the jury.

Given that "reasonable care" is a vague concept susceptible of widely varying jury interpretations, the issue is usually treated as being too fact-intensive for summary disposition. Now, however, the Illinois Supreme Court has empowered trial courts to assess negligent design evidence under a risk-utility test and to conclude that plaintiffs' evidence is inadequate even to merit jury consideration. And a standard that requires plaintiffs to put on evidence of realistic and reasonable design alternatives cannot help but assist manufacturers in defending against these types of claims.

Taken together, the *Show* and *Jablonski* decisions provide manufacturers who sell products in Illinois with powerful weapons against overreaching plaintiffs' lawyers, hired gun experts whose opinions don't reflect real-world considerations, and trial courts historically less-than-friendly to manufacturer defendants. ■

Two NEW affinity programs for IMA members . . .

Acxiom employment screening services

The Illinois Manufacturers' Association is pleased to announce a new partnership with Acxiom. Acxiom understands that the people you hire define your business. IMA recognizes the importance of employment screening along with drug testing to ensure its member companies attract quality applicants, provide a safe, non-violent workplace and have the opportunity to establish a long term, cost effective relationship with a leading industry provider.

IMA members will have the ability to utilize Acxiom Corporation to provide an extensive suite of employment and security screening services to help companies verify the identity and background of potential employees prior to offering employment.

IMA members will have access to a full suite of background screening and drug-testing products at highly discounted IMA member prices. Products such as employment and education verifications, motor vehicle records, and federal/civil records are offered in addition to our exclusive TRUSST product. The capabilities Acxiom demonstrates as an IMA partner far exceeds that of handling background screening and drug testing during the pre-employment process alone. Acxiom offerings extend to the post employment arena as well with I-9 verification, workers compensation review, scoring and adverse action services. These Acxiom services can ease the administrative and compliance burdens on your HR department. If handled improperly, many of these services, such as I-9 verification, come with severe non-compliance penalties. Acxiom's comprehensive compliance expertise in the background screening industry ensures that you are 100 percent FCRA compliant.

While bringing its unique perspective to this very challenging environment, Acxiom offers you nearly 35 years of expertise and experience with over 12 million reports a year. As the premier provider of data collection, cleansing and delivery processes in the industry, Acxiom understands data integrity like no other provider.

ACXIOM®
WE MAKE INFORMATION INTELLIGENT™

For more information on Acxiom background screening capabilities and drug testing services, contact Kurt Campbell, National Accounts Consultant, Acxiom Corporation, 216-685-7456, email: kurt.campbell@acxiom.com — or visit Acxiom at http://www.acxiom.com.

You may also contact the IMA's Mark Frech (ext. 3022 or email mfrech@ima-net.org) or Janie Stanley (ext. 3020 or email jstanley@ima-net.org) at 800-875-4462 for more information.

IDTheftDoctor offers premium identity theft coverage

The Illinois Manufacturers' Association is also pleased to announce a new partnership with IDTheftDoctor.com.

Here at IMA, we continually focus on elevating the value of your membership. In establishing this affinity partnership with IDTheftDoctor.com, IMA members now have access to exclusive identity theft protection and recovery services. IDTheftDoctor.com is powered by ID Theft Assist, the leader in the identity theft and security industry currently serving over 20 million families.

Identity theft is one of the fastest growing crimes in America, with over 10 million victims in 2010. Recognizing that, IDTheftDoctor.com rises above industry standards by offering 24/7 service to help identity theft victims recover more quickly — with only one phone call. IDTheftDoctor.com combines both prevention and recovery services, which are paramount to providing victims with peace of mind. IDTheftDoctor.com provides this combination of services to assist victims with the overwhelming and time consuming steps required to recover their identity after a theft.

Recent government studies estimate that it takes hundreds of hours, and immeasurable amounts of stress, to clean up the mess when a person's identity is stolen. As an employer, offering these services to your staff is a valuable employee benefit at a reasonable cost.

Finding the best opportunities and services to assist IMA members is a constant goal of the association. This is why the IMA has teamed up with IDTheftDoctor.com's identity theft recovery system, so that you can stay focused on your business.

The IDTheftDoctor is standing by to assist victims 24 hours a day, seven days a week.

IMA is excited to extend this offer to our members and their employees at a discounted annual rate of $99.00 for a family membership.

We invite you to learn more by visiting the exclusive IMA member purchase page at: www.idtheftassist.com/IMA.asp.

You may also contact the IMA's Mark Frech (ext. 3022 or email mfrech@ima-net.org) or Janie Stanley (ext. 3020 or email jstanley@ima-net.org) at 800-875-4462 for more information.

New IMA members

ADVANCED MONITORING TECHNOLOGIES (AMT)
Woodridge, Illinois

AVATAR CORPORATION
University Park, Illinois

BKA PROMOTIONS, INC.,
Schaumburg, Illinois

CHICAGO TRIBUNE COMPANY
Chicago, Illinois

CRONKHITE INDUSTRIES, INC.
Danville, Illinois

EXPRESS SCRIPTS
Bloomington, Minnesota

FORMALOY CORPORATION
Morton, Illinois

GRIFFITH LABORATORIES, INC.
Alsip, Illinois

OPS-ASIA, LLC
Northbrook, Illinois

PETERSON ELECTRIC PANEL MANUFACTURING COMPANY
Berkeley, Illinois

W. D. ALLEN, INC.
Crystal Lake, Illinois

2011-2012 Calendar of events

December 20, 2011
Effective Presentation Skills — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–5:00 pm
Turn fear into energy and become the presenter everyone enjoys listening to; well-prepared, polished, composed, persuasive and ready for any audience at any time. Learn the key skills, techniques and methods that will help you create memorable presentations delivered with power and passion. For more information or to register, visit http://www.ima-net.org/dec-20-mit-effective-presentat.

January 18, 2012
IMA Breakfast Briefing: The Obama Labor Board and It's Impact on Manufacturers, Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am
The Obama Labor Board is attempting a fundamental re-examination of the legal framework for labor-management relations in the United States. Everything from Quickie Elections, Union Organizing Activities, Collective Bargaining, Employee rights within and outside the work place, Management Rights and more are under scrutiny. Manufacturers are being impacted, union and non-union workplaces alike. Learn about the evolving new direction of the National Labor Relations Board and its Obama majority. Presenters from Chicago-based law firm Vedder Price PC will discuss these hot topics and answer questions. For more information or to register, visit http://www.ima-net.org/ima-breakfast-briefing-011812.

January 18, 2012
IMA-MIT Event: Coaching & Counseling Skills for Improved Performance — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–4:45 pm
Whether you are working with a new employee or a seasoned veteran, there is always something you could be doing in the way of coaching and counseling that will help propel your team to dramatically improved performance and outstanding results. For more information or to register, visit http://www.ima-net.org/jan18-coaching-and-counseling.

January 25, 2012
IMA-MIT Event: Essential Leadership Skills for Front Line Managers & Supervisors — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–4:45 pm
Today's business environment requires strong leadership; leaders who can do more with less. In some cases individuals are "born leaders" who know intuitively how to effectively lead others, but more often, a formalized orientation and introduction to the core skills and competencies leaders practice on a daily basis is required. For more information or to register, visit http://www.ima-net.org/jan25-mit-event-essential.

January 31, 2012
IMA-MIT Event: Essential Internal Training Skills & Techniques — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–5:00 pm
Navigating the turbulent waters of internal training has never been more challenging and complex. Increasingly, organizations are attempting to solve this critical need by turning to internal Subject Matter Experts (SME's). While these SME's do possess the technical knowledge and have the required expertise to succeed, many lack the essential skills needed to deliver World Class training, skills that are absolutely essential to produce the required high quality outcomes. For more information or to register, visit http://www.ima-net.org/jan31-mit-essential-internal-t.

February 3, 2012
IMA-MIT Event: Effective Presentation Skills — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–5:00 pm
Learn the key skills, techniques and methods that will help you create memorable presentations delivered with power and passion. For more information or to register, visit http://www.ima-net.org/feb-3-effective-presentatio.

February 10, 2012
IMA-MIT Event: Time Management & Personal Effectiveness Skills — DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am–4:45 pm
The bottom line for most organizations is: the work "must" get done in a timely manner. Increasingly, organizations are looking to provide their employees with the skills and knowledge to effectively manage their time in order to dramatically improve their productivity while coping with the resulting stress. For more information or to register, visit http://www.ima-net.org/feb10-mit-time-management-pe.

February 23, 2012
IMA Breakfast Briefing: Gaining Supply Chain Advantages through Superior Payment Practices — Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am
Roberta Tamburrino, Vice President Transportation Solutions Sales for U.S. Bank will discuss relevant topics such as: Supply chain challenges for 2012 and beyond–focus on payment challenges; new payment models that drive cost savings and process efficiencies; and how best practices in payment can result in improved carrier relationships, lower overall costs (including rates) and better business intelligence. For more information or to register, visit http://www.ima-net.org/feb23-2012-breakfastbriefing-s. ■

Visit http://www.ima-net.org/special-events or http://www.ima-net.org/training-events for information, pricing, etc., and a complete listing of IMA and IMA-MIT offerings.

Quarterly Economic Update

citibank

The reversal of some temporary drags from the first half has given near-term growth a boost as consumer and business spending have surprised. But we continue to expect below-trend growth on average through next year, with the jobless rate likely to edge up slightly from already elevated levels. Fragile financial supports for growth and continued deleveraging still are important headwinds. Recurring bouts of heightened risk aversion have been a feature of early recovery, and despite the better tone in credit and equities for much of this past month, domestic policy uncertainties still weigh on confidence, posing risks of disappointment.

The Fed's back-to-back easing efforts have given a modest lift to financial conditions, which still remain weaker than norms. Although some officials have kept alive the chances of new support for housing, we think enhanced accommodation is more likely to be in the form of communications strategies to alter rate expectations. Fiscal policy presents a continuing wild card. We think the scheduled expiration of payroll tax relief will be extended but prospects for more substantive longer-term fiscal consolidation remain in limbo, with possible financial market repercussions. Retrenchment among state and local governments is likely to remain a drag on income and employment. Inflation has remained elevated with high-frequency core measures of 2%-2.5% running above desired ranges. This has narrowed policy options but also undercut growth. Easing bottlenecks in autos are beginning to ease up one source of price pressure while business pricing intentions have also rolled over. With only limited labor market improvement, wage growth remains anemic and consumer resistance to higher prices is widely evident. Easing in inflation ahead represents a key prerequisite for sustaining modest recovery in our view.

To discuss how this data can impact your business please call:

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United States Economic Forecast 2010-12F

					2011				2012			
		2010	2011F	2012F	1Q	2Q	3QF	4QF	1QF	2QF	3QF	4QF
GDP	SAAR				.04%	1.3%	2.0%	1.9%	1.6%	2.0%	2.2%	2.0%
	YoY	3.0%	1.8%	1.9%	2.2	1.6	1.7	1.6	1.9	2.1	1.9	1.9
Consumption	SAAR				2.1	0.7	2.3	1.9	1.8	1.6	2.1	2.1
	YoY	2.0	2.2	1.8	2.6	2.2	2.1	1.7	1.7	1.9	1.9	1.9
Business Investment	SAAR				2.1	10.3	10.0	5.4	5.3	5.3	7.4	5.1
	YoY	4.4	8.1	6.5	10.0	8.0	7.7	6.9	7.7	6.5	5.9	5.8
Housing Investment	SAAR				-2.4	4.2	-8.4	1.9	7.5	9.0	11.5	12.6
	YoY	-4.3	-3.1	5.2	-2.9	-6.9	-1.2	-1.3	1.1	2.3	7.4	10.2
Exports	SAAR				7.9	3.6	5.4	5.4	7.0	7.4	7.0	6.7
	YoY	11.3	6.9	6.3	8.9	7.3	6.1	5.5	5.3	6.3	6.7	7.0
Imports	SAAR				8.3	1.4	1.0	3.8	5.8	5.2	5.0	5.0
	YoY	12.5	4.9	4.3	9.6	4.7	2.0	3.6	3.0	4.0	4.9	5.2
CPI	YoY	1.6	3.2	2.0	2.2	3.3	3.8	3.5	2.7	1.9	1.6	1.5
Core CPI	YoY	1.0	1.7	1.9	1.1	1.5	1.9	2.1	2.1	2.1	1.7	
Unemployment Rate	%	9.6	9.0	9.3	8.9	9.1	9.1	9.1	9.2	9.2	9.4	9.4
Current Account	US$bn	-471	-468	-439	-478	-472	-466	-458	-430	-444	-427	-456
	%nl GDP	-3.2	-3.1	-2.8	-3.2	-3.1	-3.1	-3.0	-2.8	-2.8	-2.7	-2.9
S&P 500 Profits (US$ Per Share)	YoY	37.6	13.5	4.1	19.2	12.4	12.0	10.9	5.3	4.6	3.7	3.0

Notes: F-Citi forecast. YoY-Year to year percent change. SAAR-Seasonally adjusted annual rate.
Sources: Bureau of Economic Analysis, Bureau of Labor Statistics, WSJ/DJ, Treasury Department, Wall Street Journal, and Citi Investment Research and Analysis

Interest Rate and Bond Market Forecast (End of Period) as of 26 Oct 2011

		Forecast End Period				
	Current	4Q 11	1Q 12	2Q 12	3Q 12	4Q 12
US						
Policy Rate (Fed Funds) End Quarter	0.25	0.25	0.25	0.25	0.25	0.25
3-Month Libor	0.42	0.45	0.50	0.55	0.60	0.70
2 Year Treasury Yield	0.28	0.27	0.30	0.35	0.40	0.65
10 Year Treasury Yield	2.21	2.15	2.05	2.30	2.60	2.90
30 Year Treasury Yield	3.23	3.15	3.05	3.35	3.60	3.90
2-10 Year Treasury Curve	193	188	175	195	220	225
30 Year Mortgage Yield	4.17	4.15	4.15	4.30	4.40	4.60

Notes: Monthly Data as of October 2011
Source: Citi Investment Research and Analysis

OUR ENERGY FUTURE IS COMING TOGETHER.

We all want the same thing: affordable, reliable, clean, and secure sources of energy. The good news is that we know how to get there, and we're already on the way. Energy markets are increasingly competitive. New Smart Grid technologies are making energy use more efficient. Investments in nuclear, solar, wind, and natural gas will more cleanly provide electricity for homes and businesses today, and for the cars and trucks of tomorrow. At Constellation Energy, we understand the challenges. And we're delivering the innovative energy solutions that are helping our customers succeed and our communities prosper.

constellation.com/ima

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