NCCI is the nation’s most experienced provider of workers compensation insurance information. We gather data, analyze industry trends, and prepare objective insurance rate and loss cost recommendations. These activities, together with our research, analytical services and tools, and overall commitment to excellence, help foster a healthy workers compensation system. Visit ncci.com.
Welcome to NCCI’s 2013 Issues Report

NCCI is pleased to present this 2013 edition of our annual *Workers Compensation Issues Report*.

This year, we’ve assembled an impressive collection of industry experts to examine the most pressing market issues, offer their outlooks and perspectives, and provide predictions for the year ahead.

The topics include:
- The current economic realities facing the industry
- A broad examination of issues and opportunities in workers compensation from Insurance Information Institute President Bob Hartwig
- New interest from states in developing opt-out provisions with regard to workers compensation
- A comprehensive overview of planned and completed state legislative activities
- And much, much more

We believe that you will find these articles both timely and insightful. And, of course, NCCI will continue to provide additional industry research, analysis, and issues overviews at ncci.com throughout the year.

Please enjoy the 2013 edition of NCCI’s *Issues Report*.

Stephen J. Klingel, CPCU, WCP
President and CEO
NCCI
# TABLE OF CONTENTS

4  **Cause for Cautious Optimism? Or Not ...**  
   Stephen J. Klingel, CPCU, WCP  
   President and CEO, NCCI

8  **Growth Gusher: As Labor Markets Recover, Will Workers Compensation Take the Lead?**  
   Robert P. Hartwig, PhD, CPCU  
   President and Economist, Insurance Information Institute

12  **The Future of Workers Compensation: Is Opt-Out the Answer?**  
   Nancy Grover  
   Editor, *Workers Compensation Report*  
   Program Director, National Workers Compensation and Disability Conference® & Expo

15  **Legal Brief: Exclusive Remedy Does Not Always Bar Suits Against Coworker**

16  **Terrorism Insurance to End?**  
   Barry I. Llewellyn, ACAS, MAAA  
   President, Llewellyn Consulting, LLC

19  **Legal Brief: Georgia Supreme Court Reiterates Employer’s Right to Medical Information, With a Twist**

20  **2013 Legislative and Regulatory Outlook**  
   Peter M. Burton, CPCU, AU  
   NCCI Senior Division Executive, State Relations

23  **Legal Brief: RICO Rears Its Head in Threat to Workers Compensation Exclusive Remedy**

24  **What’s Up With the Residual Markets?**  
   James R. Nau, CPCU, ARM, WCP  
   General Manager, NCCI Residual Markets

27  **Legal Brief: Violation of Safety Standards Does Not Always Defeat Exclusive Remedy**

28  **Our Workforce Is Rapidly Aging—Is This Bad News?**  
   Harry Shuford, PhD  
   Chief Economist, NCCI

   **Research Briefs:**

32   **Comorbidities in Workers Compensation**

33   **The Role of Traffic Accidents in Workers Compensation**

34   **Workers Compensation Claim Frequency Declines—An Analysis**

35   **Narcotics in Workers Compensation**

36   **Medical Services for Claims 20 or More Years Old**

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During 2013, please be sure to visit [nci.com](http://nci.com) for continual updates on the issues and articles contained in this *Issues Report.*
In this article, we’ll examine some of the current market trends and concerns, and review some of the reasons for (cautious) optimism.

Positive Industry Indicators
Let’s begin with a look at the industry premium and some relatively good news.

Written premium for private carriers is showing a second consecutive year of growth, continuing a turnaround from several years of declining premiums. Estimated premium increased to over $35 billion in 2012—a more than 10% rate of growth. The 2012 increase is likely due to slight growth in the economy, some increase in average wages, bureau loss cost increases, and carrier pricing actions.

The recent premium increases are notable. In contrast, industry watchers will recall the disturbing drop in premium from 2006 through 2010. This drop was caused by a confluence of factors:
- The general economic recession, which reduced total payroll
- The steep losses in manufacturing and construction jobs
- Generally declining bureau loss costs/rates
- A soft market in carrier pricing

Claims Frequency Returning to Expected Downward Trend?
After increasing in 2010 for the first time in 13 years, lost-time claim frequency declined once again in 2011, by 1%. Though modest in comparison with the annual rate of decline in prior years, this suggests that the 2010 uptick may have been the result of recession-related factors, such as an increase in new hires as the recovery began to take hold and an influx of small lost-time claims.

It remains to be seen whether frequency resumed its long-term rate of decline in 2012 (approximately 2% to 3% since 1926). But with the distorting effect of the recession behind us, the long-term downward trend is expected to outweigh any upward pressure from new, inexperienced workers.

Moderating Claim Costs
With the flattening of claim frequency, claim costs have also moderated.
After a slight decline in 2010, the average indemnity cost per claim increased by just 2% in 2011—less than the change in the average weekly wage and less than the change in most years since the reform era of the 1990s.

Changes in medical costs in 2011 also showed favorable results due to the shift in the mix of claims (i.e., the increase in small lost-time claims). The medical average cost per lost-time claim increased by almost 4% in 2011.

Despite the shift in the mix of claims, the underlying cost drivers for both indemnity—and particularly medical—are still present. Still, we’re seeing less development than expected. Some reasons include a flattening in the number of treatments per claim and continued focus on medical cost control on the part of public policy makers and carriers.

However, the increases remain slightly higher than both average wage increases and the medical Consumer Price Index (CPI). For NCCI states, medical losses are now approaching 60% of total losses.

As with general health, the workers comp line continues to migrate to being a medical management business, with policy makers, employers, and carriers struggling to manage and control the costs of medical care.

**Modest Economic Recovery**
While a confident economic recovery still has not arrived, we expect modest growth in average weekly wages to continue in 2013. To date, most of the growth reflects increases in the number of hours worked per week; increases in hourly wage rates have barely kept up with the current modest pace of inflation.

This suggests that there will be limited growth in indemnity severity in 2013 since duration appears to be easing as the labor market strengthens.

At this point, however, strong job growth is not expected until 2015 at best. On the positive side, employment and payroll have increased modestly. This growth, combined with some firming in rates, has helped support the increase in workers compensation premium.

**Reasons for Concern**
While we are pleased to see the positive signs outlined above, there remain real concerns about the health of the workers compensation industry.

**Calendar Year Combined Ratio**
In 2011, for the third straight year, workers compensation held the distinction of having the highest combined ratio of all of the major commercial lines. Our preliminary analysis indicates that the combined ratio may come down slightly for 2012. However, we are not convinced that this will indicate a meaningful improvement in underlying results.

In May, we will report on the final calendar year combined ratio numbers and analysis at NCCI’s *Annual Issues Symposium*.

**Operating Results**
Combining the 2011 underwriting profit with investment gains results in a pretax operating loss of 1% for the industry. In other words, despite three years of favorable investment gain results, we have seen near zero operating gains. This is obviously not a desirable condition.

**Accident Year Combined Ratio**
NCCI’s current measure for Accident Year 2011 (the latest complete year) is 114%. The deterioration of the workers compensation insurance industry results appear to have moderated, with 2011 showing an ever-so-modest improvement in underwriting results on an accident-year basis.

It’s worth noting that, over the last few years, calendar year results are much more in line with accident year results—underscoring a degree of stability in the industry’s reserve position.

**Reserve Deficiency**
Our estimate of the industry’s reserve deficiency ticked up a bit in 2011 (up $1 billion in each of the last two years, beginning in 2009) to $11 billion. The net deficiency, after permissible discounting, is roughly $5.4 billion.

The $11 billion industry deficiency is roughly 10% of 2011 carried loss and loss adjustment expense (LAE) reserves—not alarming but worth monitoring. It remains a stark contrast to the 2001 peak, when the deficiency stood at 33% of carried reserves.

**Rate and Loss Cost Changes**
Although there are some states that have experienced significant loss cost and rate changes in the last few years, the bureau loss costs have been quite stable overall. Decreasing frequency and diminishing average wage increases have been acting to offset the impacts of rising indemnity and medical costs.

However, 2012 saw loss cost increases in 27 NCCI states—meaning that the overall environment may be changing. NCCI Senior Division Executive Peter Burton examines state-based issues and concerns in “2013 Legislative and Regulatory Outlook” in this *Issues Report*. 
Residual Market Growth
Despite the first real increase in size since 2004, the residual market continues to perform well—largely self-funded, with a modest burden to the voluntary market. However, the market is showing a little bit of firming—something that will bear watching.

The combined ratio for the residual market in 2012 is estimated to be improved from 2011, although it's important to remember that, as the pool grows significantly, the results tend to get a little better from a combined ratio perspective. A struggling economy has doubtlessly played a role in the number of accounts seeking coverage in the residual market today. Jim Nau, NCCI's general manager of residual markets, examines the current state of residual market results in “What’s Up With the Residual Markets?” in this Issues Report.

Issues That Bear Watching in 2013
In addition to both the positive and cautionary industry metrics described above, there are also a number of other issues that bear watching in 2013.

Near the top of the list remains the Patient Protection and Affordable Care Act (PPACA). With most of the law’s provisions taking effect over the next couple of years, the ultimate consequences to workers compensation stakeholders remain to be seen.

Other federal initiatives that market leaders are watching include the anticipated 2014 expiration of federally backed terrorism insurance (TRIA/TRIPRA). There are passionate voices on both sides of the renewal debate, and this should be monitored in the months ahead as Congressional hearings continue. Former NCCI executive Barry Llewellyn examines the current state of the law and some of the competing viewpoints in “Terrorism Insurance to End?” in this Issues Report.

Beyond TRIA renewal debates, it will be interesting to see if the President’s reeulation results in a more visible Federal Insurance Office (FIO) presence in the months ahead.

At the state level, we do not anticipate many major legislative efforts during 2013, aside from Oklahoma and Tennessee. Peter Burton, NCCI’s senior division executive for state relations, examines the full regulatory landscape in “2013 Legislative and Regulatory Outlook” in this Issues Report.

However, among the issues that have captured significant legislative and regulatory attention are drugs (both repackaging and opioid abuse) and ongoing efforts in Oklahoma to create an opt-out program for workers compensation insurance.

The prescribing of opioids in workers compensation cases has garnered tremendous attention—both in terms of system costs and the long-term effects on patients—as part of the larger national debate on healthcare issues. Several states are examining the impact of narcotics on claims, and legislation addressing drug monitoring programs and reforms may be introduced this year. At the same time, some states continue to work to reduce the additional costs that repackaged drugs introduce to workers compensation claims.

Also of interest is the ongoing effort to create a workers compensation opt-out system in Oklahoma. This effort failed in 2012, but it has come up again in 2013. Writer Nancy Grover examines the issues surrounding opt-out in “The Future of Opt-Out” in this Issues Report.

Summing Up
I’ve relayed a great deal of information about the trends, metrics, and initiatives affecting the workers compensation market at the start of 2013. Let me conclude by summarizing some of the general trends we’re seeing in the market today.

Under the heading “positive trends,” we have:
• Economic recovery continuing (albeit too slowly)
• Premium growing
• Modest indemnity and medical severity changes
• Firming underwriting cycle

At the same time, we are monitoring several areas of concern:
• Combined ratio remains too high
• Claim frequency not yet returned to historic rates of decline
• Residual market growth
• Political uncertainty, particularly at the federal level involving fiscal and regulatory issues
• Impact of implementing Patient Protection and Affordable Care Act remains uncertain

As always, NCCI will continue to monitor and report on all of the above issues, including our traditional State of the Line analysis to be presented at our Annual Issues Symposium in May. In the meantime, we invite you to visit ncci.com for our continually updated research, legislative analysis, and economic forecasts.

Stephen J. Klingel, CPCU, WCP, was appointed president and chief executive officer of NCCI in 2002. Before joining NCCI, Mr. Klingel was a leader with the St. Paul Companies for more than 25 years.
Every day, NCCI partners with some 900 companies representing 350 carrier groups from across the country, as well as dozens of state regulators.

We engage with our customers through a wide range of events, from in-person visits to State Advisory Forums, from open houses and data workshops to our Annual Issues Symposium. All of these events allow us to share information, but more important, to receive feedback from our constituents.

Another way that NCCI receives feedback on the services we provide our customers is through a series of annual surveys of carriers and regulators. We dig deep to monitor the quality of support and information we provide and the value we bring to the industry. And we get an honest assessment from our key constituents of how we are doing.

Our most recent survey revealed that many customers remain concerned about rate adequacy; the economic environment; medical cost inflation; and regulatory, legislative, and political stability. The importance of NCCI’s knowledge and expertise, the need for consistent provision of our core services, and the importance of our positive working relationships were also noted.

Obviously, clear communication and the development of effective customer tools are vital to meeting the demands of our diverse customer base. Throughout the year, NCCI conducts many conferences, training sessions, and one-on-one meetings. We also work very hard to provide an array of effective Web-based tools and services that enhance the functioning of the workers compensation system.

Some of the most popular products and tools are those that underwriting staff, data reporters, and actuaries at our carrier partners use every day to execute their work.

For example, our RiskWorkstation tool is used by underwriters and agents to evaluate risk information, analyze financial data, and get experience mod and worksheet information all in one place. And WorkComp Workstation can be used to complete a comparative analysis of a company’s results to those of the aggregated market by state or by class of business.

We also have tools to provide proof of coverage (POC) information, to report and correct data submissions, and to facilitate the smooth functioning of the residual market. And we are working to improve the access to and functionality of our circulars and manuals for all users.

We recognize that there is extensive content on ncci.com, so improvements to our search tools are under way to allow users to find the right information easily and quickly.

As always, our ASEs (affiliate services executives) and SREs (state relations executives) are available to all of our constituents to help them get the information they need.

Finally, I want to note the tremendous success of the webinars that NCCI has offered on our website over the last few years. Carriers and other industry stakeholders are using them for new hire training, for ongoing development and refresher courses for existing staff, and as tools for agent engagement. A link to a webinar can easily be attached to an email and forwarded as part of regular communication.

Today, NCCI offers more than 60 webinars that are accessible to all—a password is not necessary—and they are reasonably short, about 20 minutes in length. They cover powerful topics, ranging from details on the workings of the experience rating and classification systems to how the ratemaking process works to the impact of last year’s split point change, and much, much more.

Effective customer communication and engagement remain a top NCCI priority. As 2013 progresses, we are committed to growing and improving the tools, resources, and information our customers require to ensure a smoothly functioning workers compensation system.
Growth Gusher: As Labor Markets Recover, Will Workers Compensation Take the Lead?

By Robert P. Hartwig, PhD, CPCU
President and Economist
Insurance Information Institute

A year ago, in this very publication, I lamented the possibility that even as labor markets were likely to continue their recovery in 2012, underwriting performance in the workers compensation line was likely to lag behind.

And although that good news/bad news scenario has indeed come to pass, there is—on balance—more good news to report than bad. That bodes well for workers compensation insurers in 2013 and beyond.

JOBS: No Longer a Four-Letter Word

Last year marked the third consecutive full year of uninterrupted monthly gains in private sector employment. In all likelihood, 2013 will be the fourth. In the 37 months from January 2010 through January 2013, the US economy created 6.1 million jobs. (See Exhibit 1.)

Naysayers will be quick to point out that nearly 9 million jobs were lost during the crisis (3.8 million in 2008 and 5.0 million in 2009), leaving a gap that even today exceeds 2 million jobs. In other words, barely two-thirds of the jobs lost during and immediately after the Great Recession have been recouped. More sobering is the criticism that it will be well into 2014 before employment crawls back to its late-2007 pre-crisis peak if job growth continues at its recent pace.

Fair enough—but considering the minefield of financial and political disasters the economy has had to navigate through over the past four years—including the recent Fiscal Cliff fiasco and brinksmanship over the debt ceiling and federal...
spending "sequester"—it is nothing short of a miracle that the economy did not plunge headlong into another recession, destroying a couple million jobs in the process.

But there is a broader point—6.1 million jobs is not a small number, by any stretch of the imagination. When 6.1 million jobs are created, the nation’s psyche changes along with it. People and businesses are spending more. Car and home sales are up as are construction and manufacturing activity. All bode well for workers compensation insurers and the commercial lines’ growth prospects in general.

Meet Ben: Workers Compensation’s New Best Friend

What does Federal Reserve Chairman Ben Bernanke have to do with workers compensation, you ask? He’s never been quoted on the topic of workers compensation (clearly an oversight on his part), never been seen at NCCI’s Annual Issues Symposium (no doubt on his bucket list), and probably has no idea what last year’s combined ratio was (I’m willing to cut him some slack on that one). That said, Chairman Bernanke unquestionably holds in his hands more power to influence the growth rate of the workers compensation line than any insurance company CEO. This is because the Federal Reserve, under his direction in late 2012, adopted a fundamentally new policy position when it comes to helping the US economy emerge from the doldrums. Specifically, the Fed said that it would keep interest rates low until the unemployment rate drops below 6.5%. This was a significant policy shift away from its historical practice or targeting a specific interest rate or rate of inflation—or its most recent practice of stating a certain date through which rates would be held low.

This shift is important to workers compensation insurers because it makes explicit the Fed’s intention to do everything in its power to buoy the labor markets and, in the process, expand employer payrolls. In effect, there is now a direct pipeline from the Fed to the workers compensation line’s payroll exposure base. Thank you, Ben!

The Fed’s policy shift does, however, beg a very fundamental question. How much longer will the US central bank need to keep the pedal to the metal—minting new dollars and expanding its balance sheet—before the unemployment rate finally descends to 6.5%? Exhibit 2 displays optimistic, pessimistic, and consensus unemployment rate forecasts by quarter through the end of 2014. Only under the optimistic forecast does unemployment hit 6.5% by year-end 2014. Under the consensus and pessimistic forecast scenarios, the unemployment rate remains one-half point and one full point, respectively, above the Fed’s unemployment target, suggesting that the Fed’s efforts to juice job growth (and hence payrolls) will continue well into 2015. An important caveat to this analysis is that Chairman Bernanke’s term expires in January 2014. He is unlikely to stand for a third term, so there is some risk that his (as-of-yet unknown) successor could change course as early as next year.

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Managing the Growth Gusher
The Fed’s veritable guarantee of growth is a gift that should keep on giving for the next few years, but by no means does it guarantee a profit for workers compensation insurers. Underwriting performance in this growth gusher of a line is entirely under the control of insurers (and to some extent state insurance regulators). Exhibit 3 shows that workers compensation insurance has now come full circle in terms of growth—shifting from the fastest contracting of all major property/casualty lines to the fastest expanding in just a few years. At the same time, underwriting performance on an industrywide basis remains unsatisfactory, with combined ratios in the 115-plus range for the past several years. To be sure, some insurers are posting much better results—even turning in underwriting profits in some instances. But for many, that goal remains elusive, and it will be several years before the combination of higher rates and system reforms pull the combined ratio down to a level consistent with today’s ultra-low interest rate environment.

Unemployment: Enormous Differences Persist
There’s no question that workers compensation is on a trajectory to record it strongest growth in nearly a decade. This means that labor markets—and hence wage and salary exposures—are improving from coast to coast. Yet despite more than three years of unbroken private sector job growth, job prospects continue to vary widely from state to state. Exhibit 4 shows the unemployment rate by state as of year-end 2012. At the high end, Nevada and Rhode Island—states that suffered mightily during the Great Recession—still endured double-digit unemployment rates—with joblessness at 10.2%. Populous states like California and New Jersey weren’t faring much better, with unemployment rates of 9.8% and 9.6%, respectively. At the other end of the unemployment spectrum is North Dakota, where unemployment is just 3.2%. The state’s oil and gas boom has led to a near doubling in commercial lines premiums written over the past five years. This would suggest a breakout performance for workers compensation insurers if North Dakota was not one of the few remaining monopolistic fund states. That said, eight other states had unemployment rates below 5.5% as of year-end 2012. It is important to note that all of these states are relatively small, suggesting that top line premium growth for the workers compensation insurance lines could surge as the economies of key large states, including California and Florida, enter a more robust phase of recovery over the next two years.

Engine of Growth
So what might fuel a more robust recovery and push payroll materially higher? Last year in these pages, I discussed the likelihood that employment in the health, energy, and manufacturing sectors were likely good bets to drive growth over the next several years. Indeed, employees in these key industries created hundreds of thousands of jobs in 2012. Yet despite these gains, overall employment and economic growth remained tepid as one of the historically important growth drivers—construction—remained in its deep slumber. That is now beginning to change, with important consequences for workers compensation insurers and commercial insurers in general.

Exhibit 5 displays construction industry employment from January 2003 through January 2013. The impact of the Great Recession and the implosion of the housing bubble led to an eye-popping loss of 2.3 million construction jobs—a net drop of 29.7%. In others words, nearly one-third of all construction jobs in the United States disappeared. The collapse in construction employment began 20 months before the “official” beginning of the recession in December 2007 and lasted 19 months beyond its official end in June 2009.

Since bottoming out in January 2011, the construction sector added 296,000 jobs through January 2013. Though this 5.4% gain in employment may seem trivial in comparison to the losses sustained, there are signs that growth will likely continue through 2013 and may even accelerate. Private sector construction spending in late 2012 was up 15%.

Leading the way was residential construction, which was
In 2013, the challenge involves capitalizing on strong growth in premiums and pushing through much needed reforms in a number of states.

up by more than 20%. The combination of job growth, associated payroll growth, and the fact that construction is a high-hazard classification industry suggests that a disproportionately large lift in the top line of workers compensation insurers could be ahead.

Final Thoughts
The year ahead will present an array of opportunities and challenges for workers compensation insurers. In 2013, that challenge involves capitalizing on strong growth in premiums and pushing through much needed reforms in a number of states. Taken together, this critical line’s underwriting performance should soon improve.

Robert P. Hartwig, PhD, CPCU, is president of the Insurance Information Institute. Dr. Hartwig previously served as director of economic research and senior economist with NCCI. He has also worked as a senior economist for the Swiss Reinsurance Group and as senior statistician for the US Consumer Product Commission.
The Future of Workers Compensation: Is Opt-Out the Answer?

By Nancy Grover
Editor, Workers Compensation Report
Program Director, National Workers Compensation and Disability Conference® & Expo

According to several experts, opt-out programs are not viable for every employer, nor are they necessarily right for every state. As workers comp stakeholders increasingly look at opting out, there are a variety of issues to consider.

The Texas Experience

In its most recent biennial report, the Texas Department of Insurance reported that 113,000 companies—about a third of the state’s private sector employers—have opted out of the system. Companies that don’t subscribe generally fall into one of two categories. One is the pre-1910 reform system, “in which exclusive remedy is removed and the employer has [no] program, or a very casual program for injury management,” said Peter Rousmaniere, a long-time workers compensation consultant and columnist. “The modern program is the one that has been developed and refined, especially in the last 15 years.”

Rousmaniere was the primary researcher on the 2012 report, Workers’ Compensation Opt-Out: Can Privatization Work?, sponsored by Sedgwick Claims Management Services. He says that the modern opt-out program has increasingly appealed to larger companies, such as Walmart.

“It includes an ERISA structure for dispute resolution, plus a mandatory arbitration provision to manage liability suits,” Rousmaniere said. “In effect, what the employer is doing is creating a 24-hour program.”

The Employee Retirement Income Security Act (ERISA) was established by the federal government. It affects the administration of benefits, but not the benefit levels.

ERISA gives employers wide latitude to create a benefit plan, the experts say. But once the plan is written, employers must stick to it.

Advantages to Employers

Opting out “is a very good option for some employers,” said Greg Krohm, a research consultant and former executive director of the International Association of Industrial Boards and Commissions, and the coauthor, with Matthew Bryant, of the recent paper “Employer Opt-Out: Assessing the Impact on Workers’ Compensation Systems.”

Frustrations with workers compensation have led some stakeholders to take a serious look at leaving the system. While Texas is currently the only state that allows employers to choose whether to participate in the workers comp system, Oklahoma lawmakers have been considering an opt-out program. Observers in other states, notably Tennessee, have also kept a close eye on the issue.
“It cuts their risk and cost of compensation considerably. But this assumes a Texas-like system that gives employers maximum flexibility in designing benefits, administration of benefits, and adjudication of disputes.”

For employers that have that flexibility, the benefits can be impressive. “We saved roughly 50% a year in Texas,” said Becky Robinson, assistant vice president of Hobby Lobby, which adopted an opt-out plan in 2004. “We have more fees associated but are saving about $1 million a year.”

Dollar General went the opt-out route in 2009 in response to difficulties closing claims in Texas. During the first year of its opt-out program, Dollar General closed $700,000 in claims. But saving money is just one of the advantages to employers.

“They love it more for the simplification than for the demonstration that it reduces losses,” said Rousmaniere. “By closely listening to what employers were saying, what they like is that workers comp becomes much more like all the other benefit programs that the employer has.”

Risks to Employers
Employers that opt out of the state-based workers compensation system give up the exclusive remedy protection. “A danger to employers is getting sued and losing big—even punitive damages,” Krohm said. However, he also said that the risk of being sued—at least in Texas—is less than what one might expect.

“The Texas courts have tended to take a narrow view of the employer’s duties to provide a safe workplace,” he stated. “The Texas courts expect an employee—especially one who is seasoned in his job—to avoid risks that might cause injuries; for example, using a cutting knife carelessly or walking on a wet floor.”

Rousmaniere believes that mandatory arbitration, when included in an opt-out program, provides a viable alternative to exclusive remedy protection and can remove the threat of a runaway jury. “You have liability that is well understood by attorneys,” he said, “and it is insurable.”

Medicare Set-Asides
Employers that have opt-out programs and Medicare beneficiaries may face an additional risk. The Centers for Medicare and Medicaid Services (CMS) has, thus far, not developed a formal response on whether it will consider such cases as workers compensation or liability.

“The agency has indicated that the litigants’ responsibilities to Medicare are the same, but they are not giving the litigants the security you would get in workers comp because they won’t review the claim,” said James Pocius, a shareholder with Marshall, Dennehey, Warner, Coleman & Goggin and the author of many of the CMS guidances on Medicare for the workers comp system. “In workers comp, we have the guidances that allow us to send a case to Medicare for mandatory approval and extinguish their interests. If they don’t treat it as a workers comp case, you have a problem because you can’t close out Medicare’s interest, necessarily.”

Impact on Workers
Among the biggest controversies in the opt-out discussion is the effect on employees. Hobby Lobby’s Robinson says that the company went to great lengths to ensure that employees understood how the program is a benefit to them. The response from workers has been overwhelmingly positive.

“We prepared a study through our third-party administrator in Texas and sent out a questionnaire to those who filed claims,” she said. “The results illustrated that 90% were ‘satisfied’ or ‘very satisfied’ with the claims process.”

Among the biggest controversies in the opt-out discussion is the effect on employees. Hobby Lobby’s Robinson says that the company went to great lengths to ensure that employees understood how the program is a benefit to them.

Dollar General also made sure its employees understood that the change was for their benefit as much as it was for the company’s. “We had computers in our stores, so we did videos,” said Rick Sumner, director of insurance and safety for Dollar General. “The CEO talked about the benefit plan, how it had changed, and what they needed to be aware of. We made a comparison. While there was ordinarily a seven-day waiting period in Texas [after an injury], they would collect from day one under the new plan. So we showed them the benefits versus what the workers comp system provided.”
But workers’ rights advocates believe that the system is inherently unfair to workers. “The reasons why employers are able to save money is because opting out gives them complete control,” said Rick Levy, legal director for the Texas AFL-CIO. “Once you cede complete control to the employer, the worker has no foothold to guarantee fair treatment. That’s why, even if you have an employer saying, ‘Look how great a job we do,’ that worker’s well-being is totally dependent on the goodwill of the employer. That’s not a situation that is either fair or advisable to put workers in.”

Krohm says that employees face a variety of risks. “Even the most pro-worker reforms will still leave some gaps in coverage for catastrophic claims, insecurity over employer bankruptcy—which would terminate the benefit plan—and a loss of procedural rights,” he said. “To the extent that you close off the risks and dangers to workers through robust benefit plans and guarantees of payment, you increase the cost of opting out so that it becomes a wash with staying within the workers comp insurance system.”

As the opt-out discussions intensify, the potential risk to workers may become more prominent. “We should expect that as other states seriously consider it, plaintiff [attorneys] will begin to launch a more thoughtful critique,” Rousmaniere said.

The Ideal Opt-Out System
Both Rousmaniere and Hobby Lobby’s Robinson agree that an effective opt-out plan is best done by an organization with a sophisticated background in human resources and risk management, something more likely seen in mid- to large-sized companies.

Says Rousmaniere, “A state entertaining an opt-out system is going to have to look long and hard at whether an opt-out system is appropriate for a small employer and an employer that does not have an ERISA plan, and that is able to sustain a negligence suit, which it can by having insurance.”

Robinson believes that appropriately designed opt-out programs can improve the system—not only for employers and employees in the affected companies, but for other employers as well. “I think that creating an alternative creates competition,” she said. “Workers comp reform becomes a higher priority, as we have seen in Texas.”

Dollar General’s Sumner says opt-out plans are not appropriate for every company. “There should be a qualifying process to opt out … a little structure to it. Not just bad companies that do what they want.”

Krohm says that “merely conditioning opt-out on some ERISA plan does not make it equivalent to state-based workers comp programs unless the ERISA medical and disability benefits are very robust—more than what even the better Texas non-subscribers offer. The benefits have to be somehow guaranteed against risk of default. Insolvency or financially related benefit cutbacks are a risk to injured workers that is not present in workers comp. And the events that qualify for disability are broadly interpreted to cover most injuries now compensable by workers comp law.”

Nancy Grover is a writer who covers the insurance, financial services, and healthcare industries. She is the editor of the Workers Compensation Report and program director for the National Workers Compensation and Disability Conference® & Expo, both services of LRP Publications. She can be reached at nancygrover@hotmail.com.
Most state workers compensation laws extend the exclusivity of the workers compensation remedy to bar not only tort claims against the employer but also tort claims against fellow employees. There are, of course, exceptions, and it is almost always the exceptions that get the attention.

Job Site or Gun Site?
A recent example is the Georgia Supreme Court case of Smith v. Ellis (2012). Smith and Ellis were employed by a homebuilding developer and were working in different subdivisions. Ellis had called Smith and told him he wanted to come the next day to the subdivision where Smith worked to pick up a tool from him for personal use. Ellis also planned to shoot some new guns, including an AR-15 semi-automatic rifle, in an undeveloped field in the subdivision. Ellis was firing his new rifle while Smith organized some work tools next to his truck. When Ellis tried to clear a jam in the rifle, he accidentally shot Smith in the right thigh. The bullet went through Smith’s right leg and into his left leg, causing serious injury.

Smith received workers compensation benefits as part of a “no liability” settlement with his employer and then sued Ellis for negligence. Georgia’s workers compensation law provides that “no employee shall be deprived of any right to bring an action against any third-party tortfeasor, other than an employee of the same employer.” Ordinarily, the workers compensation exclusive remedy would bar a suit against a co-worker, but in the Smith v. Ellis case, the court ruled that a co-worker acting outside the course and scope of employment would not be considered “an employee of the same employer.”

The court explained: “Unlike Smith, who was injured while in the subdivision where he was assigned, had been doing his job, and was still engaged in organizing his work tools next to his truck, Ellis had come that day to a different subdivision in a different city to borrow a tool for personal use and to shoot his new guns. Ellis had worked little if at all that morning, and after lunch he did no work and actually hid his presence from a supervisor. Moreover, Ellis injured Smith during an activity their employer did not condone, much less direct.”

Conclusion: Although Ellis was an employee, he was not “acting as any sort of employee of the company at the time of the shooting.”

Charles H. Tenser represents clients in the areas of insurance, administrative, and regulatory law. He served six years as in-house counsel for NCCI. A graduate of the University of Virginia School of Law, Mr. Tenser currently practices in Richmond, VA.
With the election results behind us, planning and prioritization efforts by industry trade associations for and during the 113th Congress are already under way. Long awaited details on regulatory modernization, as well as the nature and direction of the Federal Insurance Office (FIO), will continue to be carefully monitored by both insurers and state regulatory authorities. Implementation of the Patient Protection and Affordable Care Act (PPACA) will likewise capture the attention of many constituencies.

But the scheduled sunset of the terrorism backstop (i.e., the Terrorism Risk Insurance Program Reauthorization Act of 2007 [TRIPRA]) at the end of 2014 will undoubtedly be the number one priority for many interest groups, including those involved in the workers compensation system.

TRIPRA—a History

Following the tragic events of September 11, 2001, insurers have made every effort to first obtain and then to retain the program, which provides a federal backstop for defined acts of terrorism.

Initially enacted and signed into law in November 2002, the Terrorism Risk Insurance Act (TRIA) was extended in 2005 for two years as the renamed Terrorism Risk Insurance Extension Act (TRIEA). In 2007, the program was extended once again, this time for seven years and with the TRIPRA acronym.

Scheduled to terminate at the end of 2014, TRIPRA includes these key features:

- Certified acts of terrorism no longer limited to acts of foreign persons or interests
- Federal reimbursement trigger set at $100M
- Insurer deductible set at 20% of insurer’s direct earned premium
- Federal share of compensation set at 85% of insured loss exceeding insurer deductibles
- $100B cap on federal share of costs
- Mandatory recoupment of federal share through policyholder surcharges

Changes to the terrorism backstop program between the initial 2002 TRIA program and the current TRIPRA program have increased, in several ways, the private insurance market’s share of the cost of any terrorism event.
As illustrated in the chart on page 18, the trigger for the federal backstop has been increased from the initial $5M under TRIA to $50M in the first year of TRIEA (2006) and to $100M since 2007. The insurer deductible has likewise grown from its initial 7% in 2003 to 10% in 2004, followed by 15% in 2005, 17.5% in 2006, and 20% since 2007.

Insurers’ share of the cost of a terrorism event in excess of the deductible was increased from the 10% level established under TRIA to 15% beginning in 2007. The recoupment mechanism for repaying the federal government following a terrorism event was initially set with a maximum policyholder surcharge of 3% per year. Under TRIPRA, beginning in 2008, there is no maximum annual surcharge percentage. The most notable area of expanding the scope of the backstop was the inclusion of acts of domestic terrorism under TRIPRA.

Terrorism and Workers Comp
Workers compensation has some unique features that elevate insurer stakeholders concerns about the need for the federal backstop.

Coverage for claims resulting from acts of war cannot be excluded in workers compensation as is typical for other lines of insurance. The standard policies that apply in workers compensation have no limit on the aggregate covered claims amounts other than the benefit limits contained in the applicable state laws. Further, the exposure from chemical, biological, radiological, and nuclear events (CBRN) cannot be excluded or limited in workers compensation.

There have been a number of key public policy issues raised during previous debates over the ongoing need for a terrorism backstop program.

1. The existing backstop program represents a public/private partnership that adds to the stability of the economy and mitigates the potentially devastating loss of capital that might otherwise result from an act of terrorism. Program proponents point to the economic uncertainty between September 11, 2001 and the 2002 enactment of TRIA, along with the easing of many of these market contractions following the program’s enactment.

2. Extreme events associated with low claim frequency and virtually unlimited claim severity present actuaries with unpredictable exposures. Catastrophe models have identified scenarios under which particular events in densely populated areas of the country could generate costs in excess of the entire capital of the property/casualty insurance industry.

3. Opponents of the program’s extension have characterized the mechanism as a “government bailout” of the insurance industry, while defenders of the program point to the fact that the government hasn’t yet paid for the insurance costs of any terrorism events, and the program includes a recoupment mechanism to repay the government. The alternative to the government backstop would be to force the legislature to approve emergency appropriations to deal with terrorism events.

4. The recognition of CBRN risks adds to the potential for doomsday scenarios, which underscores the uninsurable nature of terrorism.

Initially enacted and signed into law in November 2002, the Terrorism Risk Insurance Act (TRIA) was extended in 2005 for two years as the renamed Terrorism Risk Insurance Extension Act (TRIEA).

Leadership Changes
Who will champion efforts to extend a terrorism backstop as the December 31, 2014 expiration approaches?

The insurance industry lost an important ally when US Representative Judy Biggert (R-IL) lost her reelection bid. Representative Biggert was chairperson of the Subcommittee on Insurance, Housing, and Community Opportunity of the House Financial Services Committee, and she was expected to be a big player regarding insurance issues. For example, prior to the election, Representative Biggert’s Subcommittee held a hearing titled “TRIA at Ten Years: The Future of the Terrorism Risk Insurance Program.”

Who will take on the issue in the wake of Representative Biggert’s election defeat?

One possibility is the former director of the Illinois Division of Insurance and the current director of the Federal Insurance Office, Michael McRaith.

In his former position, Director McRaith testified before the Senate Committee on Banking, Housing, and Urban Affairs on behalf of the National Association of Insurance Commissioners in support of extending the terrorism program.
Excerpts from Director McRaith’s testimony in February 2007 include the following:

- “… we should not allow TRIEA to expire without an appropriate federal backstop being in place …”
- “… the availability of terrorism insurance has become crucial to a stable economy…”
- “… the private insurance market has shown little appetite to provide terrorism insurance coverage absent a federal backstop.”
- “… Congress should act to sustain a viable insurance market for terrorism insurance by supporting a federal backstop that includes domestic and foreign acts of terror … and a mechanism to address CBRN risks.”

Given the FIO’s responsibility for overseeing the terrorism program, it will be interesting to learn whether Director McRaith’s views have changed in any substantive ways and what, if any, role he will play in any discussions relating to the extension of TRIPRA.

Other Voices
What are the other major stakeholders saying now about the need for an extension of TRIPRA beyond 2014?

Joel Wood, of the Council of Insurance Agents and Brokers, said recently, “The most important action for stakeholders on terrorism coverage is to adequately persuade policy makers that the recoupment mechanism will be effective, and that the mechanism is not a net drain on the Treasury over the long haul.”

And Leigh Ann Pusey, president and CEO of the American Insurance Association (AIA), said, “TRIA is a fundamental part of this nation's economic security.”

In their December 2012 report titled Tensions Building, global reinsurer Guy Carpenter observed, “Speculation over the future of [TRIPRA] continues to dominate the country’s terrorism (re)insurance market. Without TRIPRA, some insurers could withdraw from geographic areas that have the greatest need for coverage or they may even exit certain lines of business, such as workers compensation.”

Countering these voices of support, David C. John, senior research fellow in retirement security and financial institutions at the Heritage Foundation, expressed opposition to extending the terrorism program. “There is no need to extend [TRIPRA] beyond 2014 except for a short [two-year] phase-out period,” he said.

Next Move for TRIPRA?
Observers have long pointed to the evolving global nature of terrorism risk. The demise of key Al-Qaeda leaders does not mean that the threat of terrorism no longer exists. Indeed, new groups are emerging, and potential terrorist tactics may be changing.

Included among the potential threats are cyber terrorism, political violence, and the heightened current concern over Syria’s possible use of chemical weapons. CBRN exposures also must recognize concerns over efforts to expand nuclear weapons capabilities in North Korea and Iran.

It remains to be seen whether these issues, along with the economic security issues cited by proponents of TRIPRA, will be enough to persuade Congress to act quickly to extend the terrorism backstop program.

While December 2014 may seem like a long time away, commercial insurance contracts to be quoted in the fall of 2013 will begin to include coverage for events that might occur in 2015.

The clock is ticking on efforts to address this important issue before another fiscal cliff approaches.

Barry I. Llewellyn is a consulting actuary who offers legislative and regulatory compliance services. He is president of Llewellyn Consulting, LLC, and can be reached at llewellynb8@gmail.com.
Georgia Supreme Court Reiterates Employer’s Right to Medical Information, With a Twist

Lawyers tell their clients that easy cases never make their way to the Supreme Court. As a result, it is never supposed to be easy for a lawyer to predict the outcome of a case that gets appealed to the highest judicial levels. A recent case handled by the Supreme Court of Georgia, Arby’s Restaurant Group, Inc. v. McRae (Nov. 2012), may leave regular participants in the workers compensation system wondering about the validity of that maxim. What was so hard about that one? Aren’t workers compensation claimants deemed to have consented to the sharing of otherwise private medical information for purposes of a workers compensation claim? Yes, but there is a twist.

First, the “yes” and then the “twist.” In the McRae case, the claimant’s treating physician issued a report stating that the claimant had reached maximum medical improvement and incurred a 65% permanent partial disability. After receiving the report, the employer wanted to arrange a meeting with the doctor without the claimant or her counsel present, an ex parte meeting. The claimant was opposed to such a meeting, and the physician refused to meet without her or her counsel.

The Georgia State Board of Workers’ Compensation ordered the claimant to sign a medical release to her treating physician “expressly authorizing [her treating physician] to meet privately with a representative (or representatives) of the Employer/Insurer and discuss or provide medical information about the Employee’s claim.” The claimant refused to sign it. The Georgia Supreme Court explained that, under Georgia workers compensation law, the claimant is deemed to have waived any privilege or confidentiality with respect to all “information and records” relating to the examination or treatment of the claimant related to the workers compensation claim.

The court also noted that HIPAA (Health Insurance Portability and Accountability Act) expressly authorizes the release of that information. When any of the following three triggers occurs, the employee’s medical privilege is waived:

• The employee submits a workers compensation claim
• The employee receives weekly income benefits
• The employer pays any medical expenses

So, yes, a workers compensation claimant is deemed to have consented to the sharing of medical information. The twist, at least in Georgia at the time of the McRae decision, is that the claimant cannot demand to be present or have her counsel present at a meeting during which her medical information may be shared. Ex parte meetings between her employer and her treating physician are permitted, and she cannot prohibit them. (Some states have laws expressly prohibiting ex parte communications.)

In a further twist, however, the treating physician apparently does not have to agree to conduct the meeting on an ex parte basis. The Georgia Supreme Court explained that while physicians may not refuse to release medical information, they “may agree to be interviewed only on the condition that their own counsel, or the employee or her counsel, is present; may request that the interview be audio- or video-recorded; and may share the substance of the interview with the employee and her counsel.”

Conclusion: Perhaps as a result of the McRae decision, when doctors are asked for an ex parte meeting to share medical information, instead of saying, “I’m sorry, but I can’t,” they will now simply say, “I’m sorry, but I won’t.”

Charles H. Tenser represents clients in the areas of insurance, administrative, and regulatory law.

Read the full report on ncci.com
In 2012, there were 11 governorships up for election and more than 6,000 legislative seats in play across 43 states. The net outcome of these races was a subtle shift in party dominance, with the Republicans picking up one additional governor’s office and solidifying or seizing legislative control in three additional states.

Republicans hold control in 23 states, with a net gain of 1, and there are now 12 states in which party control is divided. (Nebraska’s legislature is both unicameral and nonpartisan, with a Republican governor.)

Perhaps the most pleasant surprise for Republicans was in Arkansas, where the Republicans gained both chambers of that state’s legislature for the first time since Reconstruction. While there was no change in party control of either the legislature (R) or the governorship (D) in Missouri, Republicans were able to win enough additional seats in the House to make it veto-proof. The Republicans also gained veto-proof majorities in both chambers in Tennessee.

Democrats posted a net increase of almost 200 legislative seats across the country, gaining control of both legislative chambers in five additional states. Overall, Democrats now control both the legislature and the governorship in 14 states—a net increase of 3 states.

Of the 11 gubernatorial races held in 2012, there were six governors running for reelection: Jack Markell (D-DE), Jay Nixon (D-MO), Jack Dalrymple (R-ND), Gary Herbert (R-UT), Peter Shumlin (D-VT), and Earl Ray Tomblin (D-WV). All were successful in securing their posts for four more years. This will be the first full term of office for Governor Herbert and Governor Tomblin, since both men had been filling out the partial terms of their predecessors.

In the five open governors’ races, Mike Pence (R-IN), Steve Bullock (D-MT), Margaret Wood Hassan (D-NH), Pat McCrory (R-NC), and Jay Inslee (D-WA) have each succeeded in their pursuit of the governorship. The only state that saw a shift in party control of the governor’s office was North Carolina, with McCrory’s victory.

In 2013, NCCI anticipates that lawmakers in several states will again be taking a look at workers compensation legislation. This is due to the continuing number of states experiencing loss cost increases, the sluggish economy, and the findings contained in the 2012 Oregon Workers’ Compensation Premium Rate Ranking Summary.
Regulatory Changes

In 5 of the 11 states that elected governors in 2012, the insurance regulator is appointed by that office and, with the incumbents being reelected in four of them, those commissioners will likely remain in office. In the fifth state—Indiana—a new commissioner is possible; however, since Republicans maintained their hold on the governor’s seat, the new governor may choose to retain the incumbent.

There were also five states in which the insurance regulator’s position was up for election. The incumbents prevailed in all of those races, with Karen Weldin Stewart (D-DE), Monica Lindeen (D-MT), Wayne Goodwin (D-NC), Adam Hamm (R-ND), and Mike Kreidler (D-WA) all securing another term in office.

There was only one ballot initiative that directly impacts workers compensation insurance—New Mexico’s Constitutional Amendment 4, HJR 17. This measure amends the state constitution to place the regulation of insurance companies under an appointed Superintendent of Insurance. Oversight had previously been the responsibility of the Public Regulation Commission.

States to Watch in 2013

• **Connecticut**—Due to the Sandy Hook school shootings, the Public Safety and Security Committee is examining the expansion of the presumption of post-traumatic stress syndrome beyond benefits for police officers to include first responders and volunteers who witness the use of deadly force in the line of duty.

• **Delaware**—Following the Delaware Compensation Rating Bureau’s proposal to increase loss costs by 38%, the Delaware House of Representatives has passed a resolution calling for an appointment of a 19-member task force, chaired by Lieutenant Governor Matt Denn, to study the state’s workers compensation system.

• **Florida**—With the Sunshine State experiencing its third consecutive rate increase, Florida’s Three-Member Panel, which is charged with setting workers compensation medical reimbursements, has called for a series of changes to both inpatient and outpatient hospital fees and caps on physician-dispensed repackaged drugs.

In addition, the Florida Workers’ Compensation Insurance Guaranty Association and the Consumer Advocate are calling for a requirement of full collateral for the deductible portion of a large deductible policy and limitations on the size of such large deductibles.

• **Georgia**—HB 154 has been introduced, calling for the capping of workers compensation medical benefits at 400 weeks for all but catastrophic injuries.

• **Hawaii**—Business and insurance trades are once again pursuing a cap on physician-dispensed repackaged drugs, similar to failed efforts attempted in last year’s legislative session.

• **Illinois**—The Illinois Chamber of Commerce is calling for a change in the causation standard to ensure that compensation is paid only for work-related injuries and not for general health conditions.

• **Indiana**—The Interim Study Committee on Insurance, composed of four members from both legislative chambers, has been looking into cost controls and is studying the introduction of a hospital fee schedule based on Medicare rates. Insurers are also considering legislation to use workers compensation healthcare networks similar to those operating in California and Texas.

• **Kansas**—The Senate Committee on Commerce has recommended passage of a measure to use the Sixth Edition of the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment*.

• **Maryland**—Following the Maryland Insurance Administration’s (MIA) study of whether Chesapeake Employer’s Insurance Company (formerly IWIF—the state’s competitive state fund) should be subject to the same authority and regulation as other property/casualty insurers, the Maryland legislature is taking up the MIA recommendation to require the insurer to be an affiliate of the state’s rating organization (NCCI).

In addition, the Maryland General Assembly is taking a second look at capping the price on physician-dispensed repackaged drugs. A similar attempt at capping by the Workers’ Compensation Commission, through rule, was unsuccessful last year.

• **Missouri**—Once again, lawmakers are expected to tackle the underfunding or closure of the Second Injury Fund and moving occupational injuries back into the compensation system. Senate Bill 1 has been introduced in order to generate more revenue for the fund and to limit injuries it will cover. Senate Bill 115 has been introduced to provide for the dissolution of the state’s competitive state fund—Missouri Employers Mutual (MEM)—citing the need for the state to get out of the workers compensation business.
• **Montana**—Senate Bill 54 is requiring counties to provide workers compensation coverage for volunteer firefighters beginning July 1, 2015.

• **New Hampshire**—Measures have been introduced to increase maximum weekly workers compensation benefits and allow employers to choose a treating physician for an injured worker during the first 10 days after an injury.

• **New Jersey**—The Labor Committee has voted out a measure to create a rebuttable presumption for all safety workers who contract a communicable disease or a cancer as compensable job-related injuries. In addition, the Committee approved a bill to provide lifetime benefits to surviving spouses of firefighters and police officers who die in the line of duty.

• **New Mexico**—The Advisory Council on Workers’ Compensation is calling for workers compensation judges to have greater discretion when deciding claims involving intoxication and drug abuse. The Council is also calling for increases in attorney fee caps.

• **New York**—New York has moved up to 5th from 13th as the most expensive workers compensation state, according to the *Oregon Workers Compensation Premium Rate Ranking Study*. This new ranking has fueled the New York Workers’ Compensation Alliance and the Business Council of the State of New York to duel over reports of the condition of the state’s workers compensation system. This is setting the stage for a significant workers compensation debate in the 2013 legislative session.

  In addition, Governor Andrew Cuomo is proposing legislation to address the costs of claims associated with failed group self-insured trusts and the cost of assessments associated with the state’s several workers compensation funds.

• **Oklahoma**—With Senate Bill 1062 being introduced, the Sooner State is considering scrapping its court-based system for an administrative process. This is being fueled by the perception of excessive attorney involvement in the current workers compensation adjudication process. In addition, the Oklahoma Injury Benefit Coalition, a proponent of nonsubscription from the traditional workers compensation coverage process, is once again mounting a legislative effort. A similar proposal in 2012 to allow employers to opt out of workers compensation lost in a close vote. And there have been several bills introduced to privatize CompSource, the state’s competitive state fund.

• **Tennessee**—Following a state-commissioned study, HB 194 and SB 200 have been introduced, calling for moving the Volunteer State’s court-based system to more of an administrative model. This initiative may have garnered additional support when Republicans gained super majorities in both chambers following the November elections.

• **Texas**—Texas Mutual was created in 1991 as the state’s competitive state fund. It has indicated a desire to cut its ties with state government, privatize, and relinquish its role as the sole source of providing assigned risk coverage.

• **Vermont**—The state’s Department of Labor, the Department of Health Access, and the Department of Financial Regulation have issued their report regarding the feasibility of integrating workers compensation medical benefits into the Green Mountain State’s new single payer system—Green Mountain Care. The report calls for delaying the integration of workers compensation medical benefits until such time as a thorough analysis can be conducted and until after the new system is in place.

• **Washington**—Citing the need for an improvement in the state’s economy, a Republican measure has been introduced to allow for the privatization of the state’s workers compensation monopoly. A similar measure was defeated by the voters two years ago.

  In summary, while broad-based workers compensation reform is again unlikely in 2013, we nonetheless anticipate a number of states to engage in meaningful workers compensation legislation.

  As always, NCCI will continue to provide actuarial and technical support to assist all system stakeholders as they debate these public policy issues.

Peter M. Burton, CPCU, AU, is a senior division executive for NCCI’s state relations unit. Mr. Burton is responsible for all state, regulatory, and legislative issues for NCCI, and he manages the company’s state regulatory executive field personnel.

**Please note:** The country’s regulatory and legislative environment changes quickly at both the federal and state levels. This article provides a snapshot of issues at the time of publication, March 2013.
The Racketeer Influenced and Corrupt Organizations Act, known as RICO, has long issued a siren call to plaintiffs’ attorneys, beckoning with the potential for damage awards that are tripled. Defendants often feel pressured—some would say extorted—by RICO claims to reach settlements to avoid the litigation lottery. When RICO is brought into the workers compensation arena, employers and insurers face the added complication of having to deal with federal court litigation over workers compensation claims that are typically handled by attorneys and staff accustomed to state courts and state administrative agencies. Recently, RICO has reared its head in workers compensation.

Walmart in Colorado
Walmart Stores recently settled a RICO class action suit in Colorado. The plaintiffs in this case alleged that Walmart and its adjuster and health management company had interfered with the independent judgment of certain medical providers who treated injured Walmart employees in Colorado. Walmart and its adjuster paid $4 million to settle the suit, and the health management company’s insurer paid an additional $4 million. The defendants also agreed to provide training to their adjusters and marketing and sales personnel regarding medical treatment guidelines and the prohibition on the dictation of medical care.

Two Cases in Michigan
In Michigan, two recent Sixth Circuit Court of Appeals decisions allowed RICO claims to proceed. The case of Brown v. Cassens Transport Co. (2012) arose out of on-the-job injuries alleged to have been sustained by employees of a Michigan trucking company who claimed that their employer solicited fraudulent medical reports to deprive the employees of benefits under the Michigan workers compensation law. In its decision, a three-judge panel of the Sixth Circuit Court of Appeals cleared away several hurdles potentially standing in the way of a successful RICO claim in a workers compensation context.

First, although the court stopped short of declaring that RICO preempts the state workers compensation law, it did hold that the US Constitution’s Supremacy Clause would prevent Michigan from declaring the exclusive remedy of workers compensation benefits to be exclusive of a possible federal remedy like RICO. According to the court, “RICO provides a distinct cause of action.” In addition, the court decided that the RICO requirement that there be an injury to “property” as opposed to a personal injury is met in the case of a workplace injury. The court explained that “the plaintiffs have alleged an injury to property because they allege the devaluation of either their expectancy of or claim for worker’s compensation benefits.” They went on to rule that “Michigan’s nondiscretionary worker’s compensation scheme creates a property interest in the expectancy of statutory benefits following notice to the employer of injury” and that “the plaintiffs’ claim for benefits is an independent property interest, the devaluation of which also creates an injury to property within the meaning of RICO.” In other words, said the court, “[w]hen a plaintiff’s personal injury is filtered through the [workers compensation law], it is converted into a property right.” The court also disposed of several other issues in sending the case back to the district court to proceed.

The RICO holding in Brown v. Cassens Transport Co. was followed up and reinforced by a subsequent Sixth Circuit decision in the case of Jackson v. Segwick Claims Management Services. In her opinion in the latter case, the judge concurred with the judgment on the grounds of the precedent of the earlier Brown case but expressed her disagreement with it: “I suppose we may be entering an era when both sides to the worker’s compensation dispute sue each other under RICO, with the winner prevailing on the worker’s compensation dispute and obtaining RICO damages as well. I do not agree that Congress enacted RICO for this purpose and I think that the limitations on RICO claims—limitations that the lead opinion and the Brown precedent have painstakingly removed—were included to prevent this.”

Conclusion: Time will tell whether we are entering such an era.

Charles H. Tenser represents clients in the areas of insurance, administrative, and regulatory law.
What’s Up With the Residual Markets?

By James R. Nau, CPCU, ARM, WCP
General Manager, NCCI Residual Markets

The second half of 2011 marked a turning point in the direction of the workers compensation residual markets managed by NCCI. After shrinking for six straight years, the number of new applications and the amount of new premium bound in the residual markets started to grow in the third quarter of 2011.

By the end of 2011, the total written premium for all pools serviced by NCCI grew to nearly $500 million. This resulted in a slight increase in the market share of the residual market business from 4.6% to 5% at the end of 2011.

Starting in January 2012, NCCI saw a significant increase in the number and size of accounts seeking workers compensation coverage in the residual markets. In the first half of 2012, the number of new applications for coverage increased 13%, and the amount of newly bound premium increased 89% from the same period in 2011. The combined new and renewal premium covered in NCCI-administered states has increased by 41% over that time. And the growth is continuing in early 2013.

This significant residual market growth is coming from all states managed by NCCI and does not significantly differ by state or region of the country. As of this date, NCCI estimates that residual market written premium in reinsurance pools serviced by NCCI will reach $806 million when all 2012 data is reported. We have not seen this rate of growth since 2001–2002.

Beyond the overall growth in 2012, it is also interesting that the highest percentage of growth is coming from accounts over $100,000 in premium. These accounts have a significant impact since the average workers compensation residual market account is only $4,100 in estimated annual premium. While NCCI and its servicing carriers can properly service these large accounts, it has been a decade since we have seen this many large accounts applying for residual market coverage.

The fallout from a struggling national economy no doubt plays a role in the increase in large accounts seeking coverage in the residual market. Continued high unemployment, tightened credit markets, low investment returns and interest...
rates, and the resulting firmer underwriting standards are all, to some degree, driving voluntary market decisions. To deal with the increased volume and size of business, NCCI and the servicing carriers that write the business have been increasing staff appropriately.

The following graphs provide a historical frame of reference to better understand the key metrics for analyzing the residual markets.

Written Premium
The residual market written premium for all reinsurance pools serviced by NCCI varies considerably over the long term and clearly shows the cyclical nature of workers compensation insurance. (See Exhibit 1.)

In 1992, for instance, during a period of significant turmoil and change in state workers compensation systems, residual market premium grew to $4.8 billion. Premium then dropped considerably due to a series of state workers compensation reforms, which included the establishment of some state mutual funds that began to act as markets of last resort. The result was that premium dropped to $300 million in 1998, a historically low level.

Since that time, we have witnessed more moderate cycles of residual market growth and depopulation leading up to renewed growth in 2011 and 2012 as described earlier. As the result of this residual market premium growth, the residual market share is expected at this time to increase from 5% in 2011, as shown in Exhibit 2, to about 6% in 2012—the highest level since 2007.

A Focus on Operating Results
While many workers compensation insurance stakeholders are focused on the rapid growth of the residual markets in 2012, NCCI is concentrating its attention on the operating results of this business and the impact this new growth may have on those results.

The latest available statistics, reported as of June 30, 2012, show that residual market results have remained fairly stable over the last few years (Exhibit 3). However, the 2012 results can be volatile until a full year of data is received. In fact, the incomplete policy year data for 2012 shows that the projected residual market combined ratio is expected to decrease to 113. The improved combined ratio is primarily due to increased premium and stable expenses that are driving the expense ratio down.
The combined ratio exhibit and following underwriting results (Exhibit 4) provide a broad historical context for analyzing the recent residual market combined ratios and operating results. The exhibits show the unsustainable combined ratios and losses that forced major changes to workers compensation laws in the early 1990s.

These reforms were very effective in balancing and stabilizing the systems, and returning the combined ratios and operating results to manageable levels. There have been relatively small fluctuations in operating results for the past 15 years.

Stable and self-sufficient residual market operating results are the most important factors in managing residual markets and maintaining a competitive workers compensation insurance system. NCCI has been working with insurance regulators to adjust assigned risk rates, rating plans, and rules as needed to maintain self-sufficient residual markets.

One of the most interesting aspects of residual market growth last year was the increase in the number of large accounts seeking residual market coverage.

Factors such as expected loss ratios, investment returns, market stability, and economic conditions all play a part in these individual transactions. Successfully managing workers compensation residual markets requires the administrator to effectively and efficiently service the residual market accounts and to maintain self-sufficient residual markets as conditions constantly change.

Despite the rapid growth in 2012, the workers compensation residual markets operated effectively and efficiently, and the residual market share and operating results remained manageable. As 2013 unfolds, NCCI, state insurance regulators, and other stakeholders need to remain vigilant to ensure that the residual markets continue to operate effectively and do not impede the voluntary markets.

Exhibit 5 shows that accounts over $100,000 in estimated annual premium have accounted for 150% of residual market growth through September 2012. This is remarkable since the average size of an account serviced in the workers compensation residual market was approximately $4,100 in 2012.

**Conclusion**

The rise and fall of workers compensation residual markets is neither new nor unusual. The size of residual markets varies, like any other market, based on the cumulative actions of insurance agents, underwriters, and policyholders as they each seek optimal coverage and pricing for their workers compensation insurance needs.
Three recent cases shed light on when an employer’s violation of safety standards may open the door to a tort suit by an injured employee. The exclusive remedy bar remains high in the context of those three cases.

**Nebraska**

The Nebraska case of *Teague v. Crossroads Cooperative Association* (2011) revolved around an employee who worked inside a grain bin, shoveling grain to the center of the bin’s conical base. He was pulled under the grain and suffocated when the grain removal auger caused the grain to begin to flow. The employer was charged by OSHA with a number of safety violations stemming from the incident and pled guilty in federal court for willful violations of safety provisions resulting in Mr. Teague’s death. Despite the employer’s willful violation of safety provisions, the Nebraska Court of Appeals upheld the dismissal of the employee’s estate’s tort claim, noting that “the Nebraska Supreme Court has clearly indicated that alleging intentional conduct on the part of the employer does not remove from the purview of the Act an action to recover for injuries sustained in the course and scope of employment.”

**Ohio**

Ohio and New Jersey have statutory exceptions to the exclusive remedy for “intentional” wrongs, but two recent cases from those jurisdictions demonstrate that showing an intentional wrong remains a high bar. In the case of *Wineberry v. North Star Painting Co.* (2012), the Ohio Court of Appeals dealt with the case of an employee who fell from a perch on scaffolding while sandblasting a beam and sandblasted himself on the arm. The scaffolding perch lacked guardrails. The court noted that the removal of safety equipment creates a rebuttable presumption of the employer’s intent to injure, and further stated that the failure to install safety equipment provided by the manufacturer is tantamount to removing safety equipment. In the case at hand, however, there was no evidence the guardrails were removed or that guardrails were provided by the manufacturer and never installed.

**New Jersey**

In New Jersey, the workers compensation remedy is exclusive, except for injuries resulting from an employer’s “intentional wrong.” New Jersey case law is clear that an employer’s deliberate intent to injure is not essential, instead, as the New Jersey Supreme Court said in *Van Dunk v. Reckson Associates Realty Corp.* (2012), “a substantial certainty that injury or death will result must be demonstrated,” a standard that the court called “formidable.” In that case, an employee had been injured when he entered a 20-foot-deep trench that collapsed on him. The trench had not been protected against cave-ins in accordance with OSHA requirements, and the employer had been fined by OSHA for having committed a willful violation of safety standards.

The New Jersey court explained that willful violation of an OSHA safety standard, by itself, does not constitute an intentional wrong and does “not equate to the more egregious circumstances involving intentional and persistent OSHA safety violations.” What distinguished earlier cases from *Van Dunk* is that “those cases all involved the employer’s affirmative action to remove a safety device from a machine, prior OSHA citations, deliberate deceit regarding the condition of the workplace, machine, or . . . the employee’s medical condition, knowledge of prior injury or accidents, and previous complaints from employees.”

The New Jersey court also expressed concern with a favorite strategy in litigation against businesses, which appeared to be given some weight in the lower court’s opinion—that the employer “disregarded plaintiff’s safety ‘to increase defendant’s profit and productivity.’” The New Jersey Supreme Court was concerned that “the broad language of the [lower court] panel could be used, inappropriately, to chasten any employer who acts with economic business motivation.” Noting that it had previously “used profit consideration language only to critique an employer’s long-term choice specifically to sacrifice employee safety for product-production efficiency,” the court “decline[d] to extend that limited relevance of a profit motive to the circumstances of this case.”

Conclusion: An employer’s effort to minimize expense and the delay that results in harm to an employee is not always evidence that the employer intended to harm the employee.

Charles H. Tenser represents clients in the areas of insurance, administrative, and regulatory law.
Our Workforce Is Rapidly Aging—Is This Bad News?

By Harry Shuford, PhD
Chief Economist, NCCI

And this is a global phenomenon. Both 60 Minutes and Bloomberg have reported, for example, on efforts by BMW to address the challenges of its aging production line workers. To ease the strain on workers’ lower extremities, BMW installed wood floors and began supplying specially designed work shoes. And for reading part numbers, the company increased the size of the characters and supplied workers with magnifying glasses.

The Bureau of Labor Statistics (BLS) is now reporting that injury rates of older workers have been falling more slowly than those of younger workers; they now are virtually equal. And the number of US workers over 55 is surging. In fact, the share of the workforce aged 65 and older has more than doubled in recent years and will continue to rise as boomers age.

How will the economy in general and workers compensation in particular cope?

The Distressing Demographics of the US Workplace

The number of workers 55 and older actually began to increase in the early 1990s; the BLS projects that between 2010 and 2020 the total will double to near 25 million. And a material portion of this increase will be workers in their 60s and 70s. How will the workers comp system cope?

In reality, the workers comp system should be able to handle this with ease. Indeed, the aging workforce reflects far greater challenges for the rest of the US economy. The unsettling truth lies in the details.

Relatively, more younger people—particularly younger men—aren’t even looking for work, much less working! To some extent this reflects greater college enrollment. But it also reflects the lack of skills and, according to some, the work ethic of some young men.

In his recent book Coming Apart, author Charles Murray has examined in detail the related sociological issues. His research suggests that the inability to pass background checks and drug tests is another factor underlying chronic unemployment among younger men.

The US workforce is getting older:

In 2011, the Wall Street Journal reported that Duke Energy was instituting “customized stretching programs” for its rapidly aging line workers. In the same article, we found out that older Harley-Davidson employees are now encouraged to go to a local gym after work—at company expense.
Among middle-aged men, there has been a marked increase in reliance on Social Security Disability Insurance (SSDI) as an alternative to work. The leading diagnoses from 30 years ago—heart disease and cancer—are now far less prominent, having been superseded by musculoskeletal disorders and mental disorders, which are associated with workplace injuries. Also, the inability to work in a previous occupation appears to have become a major consideration in awarding eligibility.

The recent Great Recession has also played a role. Many of the middle-aged workers who lost their jobs are now taking early retirement because of the inability to find new employment.

These are some of the most notable structural shifts in the US labor market over the past 20 or so years. They reflect a growing weakness in the quality of the workforce relative to the economic needs and opportunities that exist today. It as an example of what economists call “selection bias”; in this case, the weakest players drop out of the system. This puts pressure on federal, state, and local budgets; it deprives the economy of potentially productive workers; and it weakens traditional social institutions. None of this is good news.

What Does This Aging Workforce Mean for Workers Compensation?

Contrary to the overall picture, recent research from NCCI indicates that the aging of the workforce does not appear to be bad news for workers compensation. This is an unexpected conclusion. Previous research findings indicated that the observed higher costs of older workers were offset by the higher frequency of younger workers. Now, however, recent BLS data indicates that the differences in workplace injury rates across age groups have largely disappeared.

The recent analysis reveals that severity—both medical and indemnity—has grown relatively faster for younger workers in the past two decades. This essentially offset the shrinking difference in injury rates mentioned above. The key driver was the increasing prominence among younger workers of the high-cost diagnoses that previously had been common in older workers—especially rotator cuff and knee injuries. Medical severity of younger workers was impacted primarily by the related increase in the number of medical treatments; indemnity severity of younger injured workers increased due to the longer duration of their recovery from these injuries.

A panelist at NCCI’s 2012 Annual Issues Symposium offered an explanation—the increasingly sedentary lifestyle and lack of physical work demands for Americans of all ages. According to him, the health of the rotator cuff muscles and of knee cartilage is dependent on adequate blood flow. Blood flow requires movement, and sitting at a desk or in front of a TV limits blood flow. Again we face “good news is due to bad news”—the observed shrinking difference in the severity of workplace injuries appears to be due largely to the deterioration of the physical well-being of younger workers.

An aging workforce does not pose a significant challenge for workers compensation. But it is not all good news. Many of the weakest workers—both young and old—have dropped out of the workforce. Comparing older and younger workers, injury rates are similar. The prominence of serious injuries is similar; medical severities are similar; and the modest differences in indemnity severities are due to the higher wages of older workers, which are covered by higher premiums.

Perhaps we need to shift our concerns from older to younger workers. If there is little difference in their health status today, just imagine what condition these younger workers may be in 30 years from now.

By the way . . . that BMW production line that was outfitted to accommodate older workers? The retrofitting cost about $50,000. And it is now one of the most productive and profitable lines in the BMW system.

Harry Shuford, PhD, is an NCCI practice leader and chief economist with NCCI’s Actuarial & Economic Services Division. His research has addressed workers compensation-related issues in corporate finance and trends in loss costs, with particular focus on medical utilization and the underwriting cycle.
As the baby boomers age and also choose to retire later than earlier generations, there is a growing concern about the potentially adverse impact of this aging workforce on workers compensation experience.

Two recent studies posted on ncci.com suggest that these fears are largely unwarranted.

A 2011 NCCI study showed the rapidly shrinking gap between the historically lower injury rates of older workers and the higher rates observed for younger ones. An analysis of workers compensation claims data shows that claim severities grew faster for younger workers over this period, which offset the relative shifts in frequency.

After combining the offsetting patterns in frequency and severity trends and adjusting for the higher wages of older workers (a key factor in determining premium income), there are only minimal differences in medical and indemnity losses for injured workers ranging from their mid-30s to mid-60s, as shown in the accompanying exhibits.

This strongly suggests that an aging workforce does not pose a material exposure to adverse claims experience.

A 2012 NCCI study found further evidence of similarities between the 35-and-older-age cohorts, including the convergence of the leading injuries sustained by older and younger workers.

In particular, in the mid-1990s, rotator cuff and knee injuries were far more common in older workers; by the mid-2000s these high-cost injuries had also become common (i.e., in the top 10) for workers in their mid-to-late 30s.

The analysis also indicates that, for medical severity, both the level and trends in the average cost per treatment and the average number of treatments per claim for a comparable mix of injuries are virtually identical, particularly for the 35-and-older-age cohorts.

As the accompanying exhibits show, this is also true for indemnity severity—duration of temporary claims and average cost per day are also remarkably similar.

Both studies add to the growing evidence that an aging workforce will have a far less negative impact on workers compensation claim costs than might have been thought.

Sidebar

Evidence Shows Little Influence From Aging Workers

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**Exhibit 3**
Average Number of Treatments per Claim
After Controlling for Differences in Injury Mix
Lost-Time Claims With Temporary Payments
Closed Within 24 Months of Date of Injury

**Exhibit 5**
Average Duration for Temporary Payments
After Controlling for Differences in Injury Mix
Lost-Time Claims With Temporary Payments
Closed Within 24 Months of Date of Injury

**Exhibit 4**
Average Cost per Treatment After Controlling for Mix
Lost-Time Claims With Temporary Payments
Closed Within 24 Months of Date of Injury

**Exhibit 6**
Average Temporary Benefits Paid per Day After Controlling for Mix
Lost-Time Claims With Temporary Payments
Closed Within 24 Months of Date of Injury
While the average medical cost for a workers’ compensation claim is approximately $6,000, the medical cost of an individual claim can be a few hundred dollars or millions of dollars. In 2010, an NCCI study found that claims with an obesity comorbidity diagnosis incurred significantly higher medical costs than comparable claims without such a comorbidity diagnosis.

Relative to that study, our new examination of comorbidities and workers compensation expands the number of comorbidities examined and provides additional information on both the types of claimants receiving comorbidity diagnoses and the types of providers submitting comorbidity diagnoses.

**AMONG THE KEY FINDINGS**
- The share of workers compensation claims with a comorbidity diagnosis nearly tripled from Accident Year 2000 to Accident Year 2009, growing from a share of 2.4% to 6.6%
- Claims with a comorbidity diagnosis incur about twice the medical costs of otherwise comparable claims
- Comorbidity diagnoses for hypertension are the most prevalent of those investigated
- The initial comorbidity diagnosis tends to occur early in the life of a claim
- Hospital and physician visits account for the majority of visits resulting in a recorded comorbidity diagnosis
- Only a small portion of visits result in the recording of a comorbidity diagnosis

In sum, NCCI found that the share of claims with a comorbidity diagnosis has been rising over the past several years, and the cost of claims with a comorbidity diagnosis is about twice the cost of comparable claims without such comorbidity diagnoses.

For more information and to read the complete NCCI research brief, “Comorbidities in Workers Compensation,” please visit [ncci.com](http://ncci.com).
Traffic accidents are a leading cause of high-severity workers compensation injuries. Moreover, they are pervasive; indeed, a study by NCCI published in December 2006 noted that even the clerical classification has surprisingly high exposure to traffic accidents.

Driver-related factors that are linked to traffic accidents include speeding, distraction, and impairment. There are differences between accidents for large trucks and for passenger vehicles, as well as impacts due to recessions.

This research update extends NCCI’s analysis to add several years of data, allowing us to observe the reduction in traffic-related injuries during recessions and, thus, to confirm the cyclical characteristics of traffic accidents during the Great Recession.

Also new to this update is an analysis of traffic accidents as a source of claims with multiple claimants. Finally, the claim characteristics exhibit from the original study have been updated with more recent data.

Key findings include:

- The decline in frequency of motor vehicle fatalities and injuries overall and in the workplace observed in the 2006 study has continued. Moreover, the cyclical pattern mentioned in the earlier study was particularly pronounced in the recent Great Recession. That is, the rate of decline tends to increase during recessions, particularly for accidents involving large trucks.

- Risk varies by type of vehicle. While the frequency of truck fatalities is now very similar to the frequency of passenger vehicle fatalities, the frequency of nonfatal injuries is higher for passenger vehicles.

- In contrast to the previous study, which found that motor vehicle accidents comprised a growing share of nonfatal workplace injuries, this study shows that the share has fallen since 2006 as the number of traffic-related injuries fell more than nontraffic-related injuries during the recession.

- Motor vehicle accidents are more likely to result in multiple claims, and severity is higher for motor vehicle claims from multiple-claim events.

- Claim characteristics are consistent with findings from the previous study—motor vehicle accidents are more severe than the average workers compensation claim; they impact a diverse range of occupations other than just truckers; top diagnoses include neck injuries; duration is more than a third longer; subrogation is significant, with traffic accident claims comprising more than half of all claims with subrogation; and attorney involvement is greater.

- Distracted driving continues to be a leading cause of accidents and near accidents, and employers can play a big part in encouraging safe practices and procedures.

For more information and to read the complete NCCI research brief, “Role of Traffic Accidents in Workers Compensation—An Update,” please visit ncci.com.
Workers Compensation Claim Frequency Declines—An Analysis

The Great Recession of 2007–2009 was the most serious and long lasting economic contraction since the Great Depression. And the recession and its tepid recovery had a considerable influence on workers compensation claim frequency.

However, after increasing by 3% in 2010, NCCI reported that claim frequency for workers compensation injuries declined in 2011, albeit by a modest 1%.

In July 2012, NCCI issued its annual research brief examining trends in workers compensation claim frequency. Some of the key findings included:

**2011 OVERALL TRENDS**
- Prior to the 2010 uptick of 3%, claim frequency had been declining at an average rate of more than 4% per year since 1990. According to preliminary estimates, lost-time claim frequency once again declined in 2011 by 1%.
- For indemnity and medical combined, the average cost per lost-time claim increased 3.2% in 2011.

**FREQUENCY PER PAYROLL VS. FREQUENCY PER PREMIUM**
- Claim frequency measured relative to payroll (frequency per payroll) varies far more by class than frequency measured relative to premium (frequency per premium)
- Hence, changes in industry mix typically have a greater impact on frequency per payroll than on frequency per premium measures
- The decline in the construction industry resulting from the recession put downward pressure on frequency per payroll and upward pressure on frequency per premium

**FREQUENCY CHANGES BY CLAIM AND EMPLOYER CHARACTERISTICS**
- Claims involving injuries to the lower back declined at a higher-than-average rate, whereas the frequency of injuries to the arm or shoulder declined at a lower-than-average rate
- Percentage frequency declines were successively smaller as size of loss increased
- Percentage frequency declines were relatively consistent by type of injury

For more information and to read the complete NCCI research brief, “Workers Compensation Claim Frequency—2012 Update,” please visit ncci.com.
Narcotics in Workers Compensation

Prescription drugs account for about 19% of workers compensation medical costs.

The American College of Occupational and Environmental Medicine states, “the overuse of opioid therapy to treat chronic pain conditions is becoming epidemic in the United States,” and “there are many treatments that should be considered before opioids.” According to this organization:

- “Opioids are becoming more controversial in large part because of . . . markedly elevated death risks that have paralleled increases in consumption of opioids [narcotics]”
- “Routine use of opioids for the treatment of chronic nonmalignant pain conditions is not recommended”
- “Opioids are recommended for select patients with chronic persistent pain, neuropathic pain, or CRPS [complex regional pain syndrome]”

Two years ago, NCCI released a study on the use of narcotics in workers compensation. Findings from that study included the following:

- There is a correlation between drug abuse treatments and heavy narcotic use
- There has been an increase in early narcotic use
- The use of narcotics can continue for many years

In 2012, NCCI updated that original narcotics research brief with a refreshed analysis. Key findings from the new analysis include:

- Per-claim narcotic costs have increased
- There have been changes in which narcotics are most commonly used
- Narcotic use is concentrated among a small percentage of claimants
- Initial narcotic use is indicative of future use

The 2012 NCCI research concludes that narcotics costs per claim in workers compensation are increasing. Further, narcotic use is highly concentrated among a small share of claimants. High use of narcotics in the first quarter following injury indicates a higher-than-average probability of narcotic use in subsequent periods.

For further details on the role of narcotics in workers compensation costs and treatments, please see the full “Narcotics in Workers Compensation” research brief on ncci.com.
Medical Services for Claims 20 or More Years Old

It is likely that more than 10% of the cost of medical benefits for the workplace injuries that occur this year will be for services provided more than two decades into the future. That percentage has been growing and might continue to grow.

A new NCCI study looks at workers compensation medical services provided beyond 20 years after the injury, with a view toward anticipating:

- Which medical service categories will account for the largest shares of costs
- Future treatment and utilization that will drive those costs

NCCI first looks at the demographics of claimants who are still being treated for job-related injuries that were suffered more than two decades ago. The focus then shifts from patients to their medical care, looking at medical costs by service and diagnosis categories. Some key findings concerning services provided from 20 to 30 years following the date of injury are as follows:

- Patients are predominantly male, more so than can be explained by historical gender differences in the workforce
- Deteriorating medical conditions of the more elderly claimants is not a main cost driver; indeed, claimants younger than age 60 cost more per year, per claimant, to treat than those older than age 60
- Relative to services within the first 20 years after injury, care provided later has a significantly greater portion of cost going for prescription medications, supplies, home health services, and the maintenance of implants, orthotics, and prosthetics

For more information and to read the complete NCCI research brief, “Medical Services for Claims 20 or More Years Old,” please visit ncci.com.
NCCI Mission Statement
To foster a healthy workers compensation system by providing high quality information and analytical services that result in:
• Adequate loss costs/rates
• Objective reform evaluation
• Self-funded residual markets
• Tangible value for our stakeholders

NCCI Values Statement
The following ethical and performance values guide our behavior and decision making at NCCI. We believe that the commitment of each employee to these values will continue to make NCCI a success.

• **Integrity**—Our actions are guided by the principles of honesty, fairness, and professionalism. We abide by all laws, regulations, and corporate policies. We foster an open environment and behave ethically in all we do.

• **Respect**—We show consideration for all people, value the differences among us, and deal with each other in a courteous way.

• **Quality and Excellence**—We strive constantly to improve our processes and products to remain the industry’s unimpeachable source for accurate, objective workers compensation information. We draw upon our individual strengths and collaborate to consistently meet and exceed the highest expectations of our stakeholders.

• **Responsibility**—We honor our commitments and are personally answerable for our actions. We actively give back to the communities in which we live and work.

• **Commitment**—We are driven to achieve our business objectives. We exhibit passion, focus, and intensity of effort in our work while simultaneously striving to achieve work/life balance.