IN THIS ISSUE, WE...

...cover the session highlights of the Third Annual Real Estate, Hotel and Gaming Symposium held this past September in Dallas in conjunction with the Twentieth Annual Construction Conference. This gathering of professionals addressed a wide range of real estate and construction risk management topics, including the current state of the insurance market and the status of Congressional renewal of terrorism insurance legislation.

...look at recent OSHA enforcement activities relative to real estate and hotel undertakings, which remind us – our industry is not immune from following OSHA rules and regulations and non-compliance can earn monetary penalties.

...highlight two new products now available to our real estate and hotel clients that will afford extra balance sheet protection through additional windstorm capacity (Hurricane PM) or protection against business interruption losses due to cancellation of hotel reservation bookings, both of which may be precluded under traditional property insurance (Cancellation of Bookings Insurance).

...review how the “individual mandate” penalty tax is calculated, effective January 1, 2014, for individuals who do not comply with the requirement to carry health insurance under the 2010 Affordable Care Act.

THIRD ANNUAL WILLIS REAL ESTATE, HOTEL AND GAMING SYMPOSIUM HIGHLIGHTS

Our Third Annual Symposium was held jointly with the Twentieth Annual Construction Practice Conference on September 16-17, 2014 in Dallas, giving more than 350 participants access to a multitude of risk management topics and networking opportunities. Highlights of the Symposium’s real estate and joint construction/real estate sessions follow.

BEST PRACTICE FOR PROPERTY CLAIMS

Panelists: John Cadarette, Managing Director, The Claro Group, LLC; Tim Kraft, Risk Manager, JBG Companies; David Passman, SVP, Director

National Property Claims Practice, Willis Panelists emphasized the importance of a successful disaster recovery plan as a Best Practice for handling property claims and the fact that technical expertise, negotiation skills and a deep understanding of your policy provisions are critical to a successful outcome. They also stressed that timely and strategic communication is a must and suggested that Advance Payments be discussed early and often.
LENDER INSURANCE REQUIREMENTS – ISSUES AND NAVIGATION STRATEGIES

Presented by: Holly McCormick, Partner, James G. Parker Insurance Group, which provides consulting services to various commercial lenders on CMBS and portfolio lending. (If CMBS is the lender, they will use Standard & Poor’s as the rating agency. Full Windstorm is required on CMBS loans as asset modeling is not accepted.)

McCormick offered strategies for meeting the new CMBS requirements and addressed portfolio lending, FNMA and FREDDIE lending requirements. She noted that Flood is an area of increased lender attention and emphasized that risk managers must be involved early with their legal and finance teams to engage the lender consultants and best position their companies.

REAL ESTATE & CONSTRUCTION OUTLOOK AND RISK PERSPECTIVES

Panelists: Bill Noonan, VP of Risk Management, Structure Tone; Shari Natovitz, SVP and Director of Risk Management, Silverstein Properties, Inc.; Timothy R. Sznewajs, Managing Director, FMI Capital Advisors, Inc.; Rick Vance, SVP, Risk Management, Hines

Moderator: Paul Becker, Chairman, Willis Construction Practice

Tim Sznewajs painted a picture of continued growth – but in various segments of the economy, including energy, multifamily housing – and the continued impact of globalization. He sees the drive for more efficient construction creating the need for construction firms and owners to embrace technology as schedules continue to get squeezed. Development firms and other construction owners are looking at alternative delivery models, including Design Build, P3 and IPD, to reduce friction in the process and gain cost and scheduling efficiencies. This trend compels construction firms to look beyond traditional insurance risks as they assume more enterprise-wide risk to meet customer demands. Finally, the era of mega projects has spurred more partnering, a consolidation of large firms that can perform on this level, and more discipline in choosing projects and potential partners.

Shari Natovitz focused on Silverstein’s philosophy of embracing, managing and financing risk themselves rather than pushing the risk to the contractor and having them bring the insurance to their projects. This approach differs from that of others, including Rick Vance who typically relies on Hines’s construction partners to bring appropriate insurance to their projects. Distinctly different approaches, both of which have worked well for their firms – but their risk profiles have been somewhat different, with the concentration of NY-related work for Silverstein versus a more spread out geographic risk for Hines. Both firms have global risks that have created the need for more information about local risk environments and for dealing with local insurance requirements.

ENVIRONMENTAL PITFALLS ASSOCIATED WITH CONSTRUCTION DEVELOPMENT

Panelists: Willy Accame, Director of Risk Management, Panattoni Development Company, Inc.; Richard Sheldon, Environmental Practice Leader, Willis

Accame shared his perspective on the fluctuations in the construction development market from the financial decline of 2008 to the present. Sheldon commented on the changing state of the complementing environmental insurance products and marketplace over this period. While alignment was evident in some cases, many divergent characteristics were also evident. The session went on to describe numerous environmental exposures relative to site acquisition and development. Accame shared real-world examples from his experience, both as an environmental consultant and in his current role. Sheldon shared his thoughts on potential risk management solutions for these matters, including the viability of insurance solutions.

GL PROJECT INSURANCE ROUNDUP

Panelists: Janet Kerr, VP Risk Management, Boston Properties; Beverly Hill, Director, Risk Management, Balfour Beatty Construction; David DeLaRue, SVP, Managing Director, National Project Insurance Practice, Willis
Both owners and contractors agree that project insurance is an important risk management tool for construction projects. However, including workers’ compensation in a wrap-up does not always make economic or regulatory sense. Fortunately, every coverage benefit credited to wrap-ups providing workers’ compensation and general liability is associated with the general liability coverage. Benefit examples include coverage certainty, claim defense, contractor participation, cost control and meeting lender requirements. The primary market for GL-only wrap-ups is the excess and surplus lines market, which is now looking for more commercial projects to balance the amount of residential risk in the portfolios. This is all very positive for owners and contractors alike. Acknowledging the common goals of the owner and contractor while understanding both perspectives on wrap-ups are the first steps in a joint risk management solution.

**CONTRACTUAL INSURANCE REQUIREMENTS: AVOIDING PITFALLS AND POTHOLES**

*Panelists: Dan Cretella, Corporate Insurance Manager, O&G Industries; Frank Armstrong, SVP, National Director Construction Claims, Willis*

Cretella and Armstrong presented three key concepts in developing and negotiating contractual insurance requirements in construction contracts:

- **Exposure Identification** What insurance is needed based on the involved construction and jurisdictional risk?
- **Intent and Wording** Do the contract terms accurately reflect the intent of the parties with respect to insurance obligations and/or risk transfer?
- **Verification/Compliance** Does the insurance align with the intent of the parties?

The presenters discussed best practices when addressing these three concepts, including identifying the potholes and pitfalls often found on individual lines of insurance coverage, as well as other common contractual provisions that may implicate insurance coverage, such as contractual indemnity, waivers of subrogation, flow down provisions and consequential damages. Cretella and Armstrong recommended early involvement of risk management professionals and/or their respective brokers when developing and negotiating contractual insurance requirements, and they underlined the importance of developing a method for verification/compliance.

**REAL ESTATE, HOTEL AND GAMING SECURITY ISSUES**

*Panelists: Ray Kelly, President, Risk Management Services, Cushman Wakefield; David Dial, Partner, Weinberg Wheeler, Hudgins Gunn & Dial*

Moderator: Brian Ruane, EVP, Director Real Estate and Hotel Practice, Willis

Terrorism from groups such as Al Qaeda and ISIS continues to threaten our homeland, as political instability in some countries exacerbates the situation.

As a nation, we need to remain vigilant, and the real estate, hotel, gaming and insurance industries have a role to play in protecting people and property by encouraging the adoption of proactive measures to enhance security.

Based on recent cases, real estate and hotel owners have a growing duty of care to protect their tenants and guests and should maintain a comprehensive safety and security program focusing, where appropriate, on perimeter and interior security staff, adequate lighting, monitored cameras, screening and comprehensive background checks on staff.

The concept of “prior similar incidents” is a factor in determining the degree of negligence in premises security cases. Be aware of what is happening in your area relative to criminal activity that could impact your property and its inhabitants.

**REAL ESTATE, HOTEL AND GAMING RISK MANAGERS WORK SESSION**

Risk managers broke into industry-sector groups, which focused on issues and best practices for allocations, certificate tracking, adding navigating lender requirements and other topics specific to their industries, including the pros and cons of OCIPS versus CCIPs on large office and mixed use projects.
The panel reaffirmed the importance of knowing your project, especially with respect to exposure to a catastrophic event, and identifying acceptable means to protect ongoing work, making certain that the builders risk or other insurance vehicle clearly addresses those exposures and trying to ensure that all parties involved understand their obligations in the event of a loss.

The panel pointed out that successful insurance claims are partially dependent on the documentation provided to the insurer. Therefore, risk managers should develop a documentation collection process, or if one now exists, be familiar with it after a loss. They should also agree on a process to develop the scope and value of the loss and come to an agreement with the insurer’s adjustment team on that process. It is important to develop and agree upon milestones for partial claim submissions and partial payments. It is critical that there is a management plan defining all individual roles, responsibilities and scope of activities.

Risk managers should also work with their organizations to protect high value or long-lead-time installation of equipment and to develop a critical path to recovery with an understanding of impacts on the project and mitigation possibilities.

A restoration contractor should recognize the need for specialized skills and equipment. Forensic accountants can also be invaluable in understanding the documents required to demonstrate a loss, soft cost issues, delayed claim issues and, immediately following the loss, developing a loss management plan detailing the roles and scope of each member of the claim team along with milestones (target dates) for partial claim submissions and advance payment requests.

**UNDERWRITING PANEL**

*Panelists: Michael Chang, Global Risk Management Manager and Global Real Estate Unit Manager, Chubb Commercial; David Finnis, National Property Practice Leader, Willis; Garret Gaughan, Managing Director, Willis North America (London); Sanjay Godhwani, Executive Vice President, Property and Programs, Berkshire Hathaway; Erik Nikodem, Property Executive, Americas Region, AIG Property Casualty*

*Moderator: Brian Ruane, EVP, Director Real Estate and Hotel Practice, Willis*

The market shows evidence of softening caused by ample reinsurance capacity and an influx of alternative capital, a second consecutive year of a quiet hurricane season, total catastrophe losses lower than historical averages, underwriting profitability, and an industry surplus of $662 billion – an all-time high. Relatively low level of investment income requires an underwriting profit to help carriers achieve ROE objectives. This may limit the degree of market softening.

Since 1995, we have been in the middle of an Atlantic Basin Multi Decadal Oscillation, which causes warmer water temperatures with stronger storms. These periods generally last 20 to 40 years and can have quiet periods of hurricane activity within the cycle. There is no guarantee that we may not revert to stronger, more frequent storms, changing market direction.

Carriers seek and encourage stronger building codes to protect people and property in all EQ zones in California, New Madrid and Seattle. Workers’ Compensation has achieved underwriting profit in only two of the past 20 years. Some carriers are reducing their Workers’ Compensation writings. An aging population and increasing medical costs concern both Workers’ Comp and General Liability. Travelers, Chubb and Hartford all released reserves. The question is: Will there be future reserve releases to increase profitability, or will the industry be under reserved?

Some believe it would take a single incident generating at least $100 billion in losses to harden the market. Panelists were not sure what the size of the loss needed to be but agreed a significant surplus-depleting event would move the market.

All panelists stressed the importance of developing a relationship with your carrier and meeting regularly.
CYBER RISK PANEL

Panelists: Marsha Bonner, SVP and Risk Manager, FelCor Lodging Trust, Inc.; Tyler Goff, AVP, Risk Management, Equity Residential; Rachel Simon, Vice President, Professional Risk, ACE Insurance; Peter Smith, Senior Vice President, Willis Executive Risks

The panel dealt with Cyber Risk as part of the risk management process and provided practical information on identifying, evaluating and measuring cyber risk in an organization. They also shared risk management techniques to mitigate and/or transfer the risk, based on their own experience as their organizations tackled cyber risk exposures. Attendees came away with much food for thought as this exposure continues to garner attention in both the press and boardroom.

INSURING TERRORISM RISK: 2015 AND BEYOND

Wendy Peters, Senior Vice President, Willis, Terrorism, Political Violence and Trade Disruptions Practice, presented news from Capitol Hill and possible consequences of indecision as well as options to ensure optimal coverage. In our Post-Symposium Survey, an attendee commented, “I found Wendy's session to be fascinating and thought she brought a lot of knowledge/facts to the table regarding this important issue.”

REAL ESTATE INDUSTRY OVERVIEW

Panelists: Terry Darrow, Managing Director, Industrial, Jones Lang LaSalle Americas, Inc.; Jeff T. Eckert, Managing Director, Office, Jones Lang LaSalle Americas, Inc.; Jeff Price, Managing Director, Multi-family, Jones Lang LaSalle Americas, Inc.; Clay Smith, Managing Director, Retail, Jones Lang LaSalle Americas, Inc.

Moderator: Brian Ruane, EVP, Director Real Estate and Hotel Practice, Willis

Residential For the majority of markets, new supply will be absorbed. An expected increase in household formations will, when combined with preference by many millennials to rent vs buy, keep this sector healthy. National vacancy of residential properties is at a 10-year low.

Office Demand is leading supply. Much of country is experiencing positive absorption. Rents up 2.2% to an average of $22.36 per sq. ft. San Francisco rents will approach $70 per sq. ft. next year. Tenants seek more efficient workplaces. Per-employee space requirement is down over 50% from 1970.

Retail Fortunes of retail real estate are tied closely to jobs and economic growth. Development at malls was 25 million sq. ft. in 2001, now down to 4 million sq. ft. Lack of new supply is helping sector recover. Some shopping centers are finding new uses for space vacated by retailers that have gone out of business or need less space. Health clubs and medical facilities, with increasing need for outpatient treatment facilities, are examples of new uses. Cap rates on retail are getting close to 2007 and there is good sales velocity.

Industrial Supply is not likely to catch up with demand any time soon. Developers are building on spec. Greater emphasis on high quality space, including superior infill location, higher ceilings, and some traditional retailers are consolidating into logistics facilities as tenants want to be closer to end customers. Online sales are under 10% of total sales, and this number is expected to rise, generating demand for industrial space. Vacancy is approximately 7.6%, and rents are still lower than 2008 with an expectation the recovery will continue.

GL COVERAGE ISSUES AND SOLUTIONS

Panelists: Pam Ferrandino, EVP, National Practice Leader Casualty, Placement, Willis; Jim Hensley, Regional Practice Leader Claims, Willis

Moderator: Steven Sachs, EVP, Director Real Estate and Hotel Practice, Willis

Pam Ferrandino and Jim Hensley identified GL ISO coverage issues and possible solutions, including risk management actions, additional coverage endorsements and coverage modifications. They reviewed anti-indemnity statutes and their present and possible future impact on ISO 2013 endorsements and beyond. The panelists offered strategies for internal discussions with legal and the need for policy workshops. They also discussed the Property Damage Exclusion for Real Estate Property Managed and solutions as well as the need for property and hotel managers to ask for additional named insured status on the owner’s liability policies.

LOOKING BEYOND INSURANCE - USING ANALYTICS TO MEASURE RISK, IDENTIFY OPPORTUNITIES AND DRIVE RESULTS THROUGH EFFECTIVE COMMUNICATION

Ben Fidlow, Senior Vice President, Willis Global Solutions, explained the use of analytics to measure risk and
identify opportunities and how to drive results through effective communication. He underscored the investment that Willis is making in advanced analytics and shared feedback from the recent Willis Global Client Council.

**BEST PRACTICES FOR DISASTER PLANNING – THE TEN COMMANDMENTS OF SUCCESS**

*Panelists: David Gluckman, Senior Vice President, Risk Control and Claim Advocacy Practice; Steven Sachs, EVP, Director, Real Estate and Hotel Practice, Willis*

Steve Sachs and David Gluckman emphasized that disaster planning follows the basic risk management process and highlighted the critical elements of a successful plan. The risk manager can facilitate pulling together the resources necessary to develop a model plan. Quality control procedures of approval, audit, and required updates and practice (exercises) are critical elements of a well designed and successful plan. Pre-commitment of resources is crucial in Nat Cat exposed areas. Stories highlighted the values of the Ten Commandments of Success. Bottom line for any successful plan is simple: “Preparation, Preparation, Preparation.”

**SUMMARY**

Attendance at the Third Annual Real Estate, Hotel and Gaming Symposium increased 70% over the 2013 event. Comments from attendees included:

- “I think the symposium was great – lots of interesting topics and speakers.”
- “This was my first one so I don’t have any comparison but I felt my 2 days was time well spent on behalf of my company.”

There was great networking and interaction among the attendees. It was our first attempt to combine our Symposium with the Construction Conference and we learned some very good lessons which will incorporate into plans for our 2015 Symposium. Thank you, clients and guest panelists for the preparation and energy you brought to the two days in Dallas!

**OSHA ENFORCEMENT ACTIVITY RELATIVE TO REAL ESTATE AND HOTEL ENTITIES**

Since the enactment of the Occupational Safety and Health Act (OSHAct) in 1970, nearly all U.S. employers have the responsibility to:

- “Ensure each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” (a.k.a., the “General Duty Clause”)¹
- Comply with occupational safety and health standards promulgated under this Act

Historically, the Occupational Safety and Health Administration (OSHA) has focused much of their enforcement attention on “high-hazard” industries most likely to have serious on-the-job injuries or deaths, such as construction, manufacturing, agriculture. This focus, however, should not be construed by other (“low-hazard”) industries as any indication that OSHA requirements or potential for enforcement activities only apply to high-hazard industries. In fact, recent enforcement undertakings indicate that all covered employers can be inspected by OSHA and that perhaps OSHA is even broadening enforcement efforts to include more low-hazard industries.

**Real estate and hotel entities are also subject to OSHA requirements and enforcement activities.** A quick search using OSHA’s Enforcement Page ([https://www.osha.gov/pls/imis/industry.html](https://www.osha.gov/pls/imis/industry.html)) finds 742 real estate operators of apartment buildings (SIC 6513) and 2470 hotels and motels (SIC 7011) cited by federal or state OSHA over the past five years. Perhaps the single most telling reminder of OSHA enforcement potential for real estate and hotel entities is the recent case involving Olivet Management LLC in Dover Plains, NY ([https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=25812](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=25812)). In April 2014, the company was cited for 45 willful violations of OSHA standards, with $2,352,000 in proposed fines assessed. Twenty-four of the willful citations concerned instance-by-instance exposure of workers to asbestos and lead hazards, while a serious citation dealt with failing to inform waste haulers of the presence of asbestos and asbestos-containing materials. This later citation carries the implication
that asbestos from the site may have been disposed of improperly at an unknown location by these haulers, opening up the potential for EPA-related fines, General Liability claims and other actions against Olivet Management.

According to OSHA investigators, Olivet Management knowingly failed to notify any of the 13 contractors and their own employees working at the site about the presence of asbestos- and lead-contaminated debris. This debris included asbestos-containing floor tiles and insulation, as well as the presence of lead paint throughout the shuttered hospital. Reportedly, workers were not provided any training on the dangers of asbestos and lead exposure, nor were they given respiratory protection and decontamination equipment as required by OSHA. Again, the potential for harm to non-Olivet workers carries General Liability claim and other implications. Finally, because the citations were considered “willful,” Olivet Management was placed in OSHA’s Severe Violator Enforcement Program and will have targeted follow-up inspections at any or all of the company’s worksites.

Under OSHA regulations, real estate and hotel entities must, among other requirements:

- Meet your general duty responsibility to provide a workplace free from recognized hazards
- Keep workers informed about OSHA and safety and health matters with which they are involved
- Comply, in a responsible manner, with standards, rules, and regulations issued under the OSH Act
- Be familiar with mandatory OSHA standards
- Make copies of standards available to employees for review upon request
- Evaluate workplace conditions
- Minimize or eliminate potential hazards

For additional information, please contact Del Kubeldis, Vice President, Sr. Risk Control Consultant, Risk Control and Claim Advocacy Practice at 412 482 2207 or del.kubeldis@willis.com.

SIGNIFICANT NEW SUPPLEMENTAL WINDSTORM CAPACITY

When it comes to protecting your real estate and balance sheet from losses due to hurricanes, there is a large difference between the actual cost of a complete recovery and what you get from most traditional insurance programs. This is a result of:

- Large deductibles, generally a percentage of total value or unit insured

- The items most likely to trigger loss are often uninsurable and not even included in the accumulation of the deductible liability (landscaping, beach erosion, seawalls...)
- Exclusions contained in the policy; for example, a property damage requirement to trigger business interruption coverage, weathering and deterioration, wind driven rain, utility interruption
- The traditional claim process itself, which can be contentious and take months to years before you see any reimbursement

Now available to many is Hurricane PM, supplemental windstorm insurance designed to provide affordable, first dollar ($500 deductible) risk transfer to one of the world’s largest insurance companies, rated A+, with a financial category size of XV by A.M. Best. Further, as a supplemental product, Hurricane PM offers a straightforward and streamlined claim process that can lead to swift claim payment following a hurricane.

Hurricane PM can provide coverage for most types of losses, including:

- Damage to covered property below primary carrier deductibles
- Coverage for items that are difficult to impossible to insure, such as landscaping, outdoor property, T&D lines, beach/lake erosion, seawalls, docks, roads
- Items excluded or sub-limited in primary policies
- Storm surge and flood damage
- Business interruption, including lost or reduced business in the days leading up to the storm and unrealized profits –no property damage requirement, off premise power, or evacuation exclusions
- Diminution of value of real estate
- Extra or extraordinary expenses to prepare for, or recover from, the hurricane
This is all possible because Hurricane PM utilizes a slightly different coverage trigger than traditional insurance – what is called a parametric trigger; specifically, the wind speed recorded in your area by a special network of almost 100 hurricane hardened, wind-monitoring stations arrayed in hurricane exposed areas from Texas through the Northeast. If you have exposure close to one or more of these stations, you are eligible for coverage. Claim payment is triggered by whatever wind speed you preselect being met or exceeded. The wind speed is certified by RMS, one of the world’s leading catastrophe risk modeling companies. Once this happens, just about any economic loss is eligible for coverage up to the limit purchased.

Hurricane PM coverage is available in multiple formats and in small to very large limits depending on your needs. If you would like additional information please contact your Willis Client Advocate® or Evan Glassman, CEO of New Paradigm Underwriters, at 954 713 9999, Evan@npuins.com.

BURNS & WILCOX BROKERAGE LAUNCHES FIRST-EVER MONOLINE PRODUCT FOR CANCELLATION OF BOOKINGS INSURANCE (COBI)

Proprietary COBI Product Delivers Higher Limits and Makes Coverage More Widely Available

The COBI solution from Burns & Wilcox Brokerage addresses a serious gap in the coverage available for the hospitality industry. Previously, most hospitality clients had to rely on the limited provisions, if any, for cancellation of bookings, which was not always included in their property insurance program.

COBI covers business interruption and business income losses that occur when reservations are cancelled or the insured is unable to accept bookings. The policy is activated following a range of occurrences, from bed bugs, violent or criminal activity and the outbreak of a contagious disease, to the public authority’s closing of all or part of the premises resulting from a covered cause of loss within five miles of the insured location. Reasonable and necessary expenses are then provided as part of the claim to restore the insured location to its previous condition had no covered cause of loss occurred.

Reservations are the lifeblood of the hospitality industry, which makes this product relevant to all hotels and resorts within the coverage territory of the continental United States.

The Burns & Wilcox Brokerage COBI product is written through non-admitted, A.M Best “A” rated carrier and provides two coverage options: $1,000,000 per occurrence/$2,500,000 in the aggregate annually, and $2,500,000 per occurrence/$5,000,000 in the aggregate annually. There is a minimum deductible of $25,000 per occurrence.

Rating is based on number of rooms, the average daily rate and revenue from amenities such as restaurant and spa. Any historical loss scenarios that would have given rise to a COBI claim are also considered when developing a proposal. For additional information, please contact your Willis Client Advocate® or Evan D. Bull, Executive Vice President, National Property Practice Leader, Burns & Wilcox Brokerage at 646 571 2353 or evanbull@burns-wilcox.com.

HOW MUCH IS THE INDIVIDUAL MANDATE PENALTY TAX?

The health care reform law requires individuals to have health coverage or pay a tax penalty. This “individual mandate,” which became effective in 2014, does not apply to those who have minimum essential coverage (which includes coverage under most government-sponsored programs, an eligible employer-sponsored plan or a grandfathered plan) for themselves and their dependents starting January 1, 2014. While some workers are exempt (information about available exemptions is available on the Internal Revenue Service’s website), most who do not have coverage
will pay a penalty tax for each month of noncompliance. I.e., they will owe 1/12th of the annual penalty amount for each month they or their dependents do not have coverage or are not eligible for an exemption.

So, how much is the penalty tax? The penalty tax is calculated as the greater of either the “percentage of applicable income amount” or the “flat dollar amount.” The greater of these two amounts is then divided by 12 to determine the penalty due for each month that the penalty applies.

- **A percentage of the “applicable income.”** Applicable income is defined as the amount by which household income exceeds the applicable filing threshold for the applicable tax year. The filing threshold comprises the personal exemption amount (doubled for those married filing jointly) plus the standard deduction amount. For 2014, the standard deduction is $6,200 (single) and $12,400 (family) and the personal exemption is $3,950; so the filing thresholds for individuals under 65 in 2014 would be $10,150 for a single filing status and $20,300 for a married couple filing jointly.

The percentage of the applicable income amount is determined by subtracting the taxpayer’s exemption (or exemptions for married couples) and standard deductions from the taxpayer’s household income. The difference is then multiplied by the applicable percentage. The percentage will be 1.0% in 2014, 2.0% in 2015, and 2.5% thereafter.

- **A flat dollar amount assessed on each individual.** The annual individual flat dollar amount is phased in – $95 in 2014, $325 in 2015, and $695 in 2016 and beyond (adjusted for inflation), assessed for each taxpayer and any dependents. The individual amount is reduced by one-half ($47.50 for 2014) for dependents under the age of 18. The total penalty is capped at 300% of the individual amount if married, filing jointly ($285 for 2014).

The maximum penalty tax is the national average premium for a bronze option (i.e., the insurance plan pays, on average, 60% of the costs of covered benefits) in the public exchanges (also known as the Health Insurance Marketplace). The IRS has announced that for 2014, the annual national average premium for a bronze level health plan is $2,448 per person ($204 per month per individual) and $12,240 for families with five or more members ($1,020 per month for a family with five or more members).

Taxpayers will pay the penalty when they file their 2014 federal income tax returns. Note that individuals failing to pay the penalty will not be subject to any criminal prosecution or penalty for such failure, and the IRS cannot file notice of lien or file a levy on any property for a taxpayer who does not pay. The IRS can attempt to collect any owed penalties by reducing the amount of any tax refund, current or future, the individual is due. The IRS has information about how to calculate the penalty, including examples, available on its [website](#).