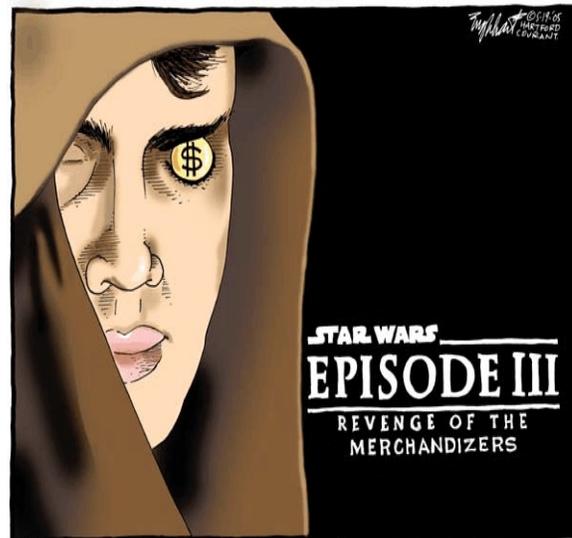


# THE PUBLIC LAWYER

PUBLIC LAWYERS SECTION

JUNE 1, 2005



## NEVADA CASES

<http://www.leg.state.nv.us/scd/OpinionListPage.cfm>

*Hymon v. State*, 121 Nev. Adv. Op. No. 23 (May 26, 2005). “During the guilt phase of the trial, appellant Roderick Lamar Hymon, who was representing himself, was required to wear an electronic stun belt as a result of his threat to kill the trial judge. On appeal, we address under what circumstances a defendant in a criminal trial may be required, as a security measure, to wear a remote-controlled electronic stun belt.

We conclude, therefore, that the district court must conduct a hearing and determine whether an essential state interest, such as special security needs relating to the protection of the courtroom and its occupants or escape risks specific to the defendant on trial, is served by

compelling the defendant to wear a stun belt. As part of this determination, the district court must consider less restrictive means of restraint. Additionally, the district court must: (1) make factual findings regarding the belt’s operation, (2) address the criteria for activating the stun belt, (3) address the possibility of accidental discharge, (4) inquire into the belt’s potential adverse psychological effects, and (5) consider the health of the individual defendant. The district court’s rationale must be placed on the record to enable this court to determine if the use of the stun belt was an abuse of discretion. Furthermore, the decision must be made by the district court, not by law enforcement officers. “The use of physical restraints is subject to close *judicial*, not law enforcement, scrutiny. It is the duty of the [district] court, not correctional officers, to make the affirmative determination, in conformance with constitutional standards, to

order the physical restraint of a defendant in the courtroom.””

*Rosky v. State*, 121 Nev. Adv. Op. No. 22 (May 26, 2005). “Appellant John Rosky was convicted in district court of sexual assault and indecent exposure. On appeal, Rosky asserts that the district court committed reversible error by denying his motion to suppress a pre-arrest videotaped statement he made to investigators, by admitting prior bad act testimony, and by instructing the jury on flight. We conclude that the district court committed no error in the admission of Rosky’s videotaped statement to detectives and in the giving of its flight instruction. However, we conclude that the admission of prior bad act testimony as proof of a common plan or scheme or modus operandi under NRS 48.045(2), combined with improper limiting instructions and the State’s improper remarks during its opening statement, compels reversal of Rosky’s sexual assault conviction. These errors, however, are harmless with respect to the conviction for indecent exposure. We therefore affirm the judgment of conviction of indecent exposure, but we reverse the judgment of conviction of sexual assault and remand for a new trial on that charge.”

*Mitchell v. Clark County School Dist.*, 121 Nev. Adv. Op. No. 21 (May 26, 2005). “In this appeal, we consider whether to modify our holding in *Rio Suite Hotel & Casino v. Gorsky*, which requires a workers’ compensation claimant to prove a causal connection between a workplace injury and the workplace environment. In this, appellant urges this court to adopt a less stringent ‘positional-risk’” test for compensation under the Nevada Industrial Insurance Act (NIIA).

We conclude that a positional-risk test is incompatible with the Nevada Industrial Insurance Act. As we recognized in *Gorsky*, NRS 616C.150 imposes the burden on the claimant to show, by a preponderance of the evidence, that

the injury arose out of and in the course of the employment. Because the positional-risk test reduces the claimant’s burden and requires only a showing that the claimant sustained an injury on the job, it directly contravenes the language of NRS 616C.150.”

*Foster v. State*, 121 Nev. Adv. Op. No. 20 (May 26, 2005). “In this appeal, we consider whether the district court properly denied appellant Troy Anthony Foster’s post-conviction petition for a writ of habeas corpus. Foster asserts a number of claims of error in connection with that denial. Primarily, we address Foster’s claim that his Sixth Amendment right to the effective assistance of counsel was violated when his counsel on direct appeal failed to assign any error with regard to the trial court’s finding that defense counsel violated *Batson v. Kentucky*. During jury selection, the trial court sustained the State’s *Batson* objection to peremptory challenges exercised by defense counsel, ruling that defense counsel had engaged in a pattern of gender discriminatory strikes. As a remedy for the *Batson* violation, the trial court reseated one of the women jurors who had been improperly peremptorily challenged by the defense.

We conclude that the district court did not err in rejecting this and other claims presented in Foster’s post-conviction habeas petition below, and we therefore affirm the district court’s order denying Foster’s petition. We nonetheless emphasize our strong preference that, in future cases, the trial courts of this State should follow the American Bar Association Standard recommending that all peremptory challenges to the jury venire should be exercised outside the presence of the venire.”

*Viray v. State*, 121 Nev. Adv. Op. No. 19 (May 26, 2005). “Although it is clear that a district court must grant a mistrial in cases of prejudicial juror misconduct, on appeal we consider whether a juror can be removed mid-trial and substituted by an alternate for violating the court’s

admonishment not to discuss the case before deliberations.

Appellant Benjardi Batucan Viray contends that the district court erred by refusing to: (1) grant a continuance when the State amended the information on the first day of trial, and (2) order a mistrial instead of substituting an alternate juror mid-trial for a juror who violated the court's admonishment not to discuss the case. Because we conclude the amendment to the information simply corrected a transposition of peripheral facts and the district court utilized the proper procedure for dismissing a juror during trial and appointing an alternate, we affirm the judgment of conviction."

*Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. Adv. Op. No. 18 (May 26, 2005). "Andrew Morsicato and Concetta Morsicato appeal from a final judgment of the district court, following a jury verdict, of no liability in a pharmacy malpractice action. The Morsicatos challenge the district court's admission of expert testimony that failed to conform to the reasonable degree of medical probability standard. We take this opportunity to clarify our holding in *Banks v. Sunrise Hospital* and confirm that medical expert testimony on the issue of causation must be stated to a reasonable degree of medical probability. Because, in this case, the testimony did not conform to this standard, we reverse the district court's judgment."

*Seino v. Employers Ins. Co. of Nevada*, 121 Nev. Adv. Op. No. 17 (May 26, 2005). "This is an appeal from a district court order denying appellant Sandra Seino's petition for judicial review in a workers' compensation matter. In this appeal, we examine whether Seino satisfied the jurisdictional requirements of NRS 616C.315, which requires that a hearing request be filed within seventy days of the date that the industrial insurer's notice of determination is mailed. Although Seino mailed a notice of appeal to the Nevada Department of Administration Hearings Division (NDAHD), it was never

received. Seino contends that we should reexamine our holding in *SIIS v. Partlow-Hursh*, which recognized that a workers' compensation administrative appeal is filed upon the appeals officer's receipt of the appeal request form, not upon mailing. Further, Seino asserts that the doctrines of exceptional circumstances and equitable tolling merit setting aside the jurisdictional deadlines in this instance. We decline to retreat from our holding in *Partlow-Hursh* and conclude that the doctrines of exceptional circumstances and equitable tolling do not apply. Consequently, we affirm the district court's order."

*Langon v. Matamoros*, 121 Nev. Adv. Op. No. 16 (May 26, 2005). "In this appeal, we consider whether NRS 41.133, which mandates that conviction of a crime resulting in injury to the victim is conclusive evidence of civil liability for the injury, applies to misdemeanor traffic violations.

Because NRS 41.133 does not apply to misdemeanor traffic offenses, convictions entered upon traffic citations may not be used to conclusively establish civil liability."

*Jeidik v. State*, 121 Nev. Adv. Op. No. 15 (May 12, 2005). "In this appeal we consider the extent to which the State may rebut character evidence introduced by the defendant in a criminal case.

Jeidik contends on appeal that: (1) the district court erred in allowing the State to introduce prior bad act evidence in rebuttal to Jeidik's character testimony on direct examination, (2) the district court's admission of lay witness testimony regarding handwriting comparisons constitutes plain error, (3) insufficient evidence supports the verdicts, (4) his trial counsel rendered ineffective assistance, and (5) cumulative error warrants reversal. We conclude that the district court properly allowed admission of rebuttal evidence in response to improper evidence of character either intentionally or inadvertently introduced during defense

counsel's direct examination of Jezdik. Further, with the exception of one count of fraudulent use and one count of burglary, we conclude that sufficient evidence supports the verdicts. Finally, we decline to reach Jezdik's claims of ineffective assistance of counsel and conclude that Jezdik's remaining assignments of error are without merit."

*Wright v. State, Dep't of Motor Vehicles*, 121 Nev. Adv. Op. No. 14 (May 12, 2005). "In this appeal, we clarify that the decision in *State, Department of Motor Vehicles v. McLeod* does not limit the factors that an officer may consider when determining whether reasonable grounds exist for an evidentiary test. Substantial evidence supports the Department of Motor Vehicles' (DMV) revocation of appellant's driver's license. We, therefore, affirm the district court's order denying appellant's petition for judicial review of the determination."

### **Email from In-house Counsel Forwarded within Company Retains Privilege; Inadvertent Production Does Not Waive Privilege**

[www.ediscoverylaw.com](http://www.ediscoverylaw.com)

**Premiere Digital Access, Inc. v. Central Telephone Co., 360 F.Supp.2d 1168 (D. Nev. 2005)**

Premiere Digital Access, Inc. ("Premiere") is suing Central Telephone Co. d/b/a/ Sprint of Nevada ("Sprint") for breach of contract, violation of the covenant of good faith and fair dealing, restraint of trade, and unconscionable contract. Premiere, an Internet service provider ("ISP"), had an agreement with Sprint whereby Sprint was to provide certain services to facilitate Internet access for Premiere's customers.

### **Ninth Circuit Denies Writ of Mandamus: Privilege Objections Waived by Failure to Provide Privilege Log at Time Discovery Responses Served**

**Burlington Northern & Santa Fe Railway Co. v. United States District Court for the District of Montana, 2005 WL 730193 (9th Cir. 2005)**

Brian and Ryann Kapsner ("the Kapsners") brought suit against Burlington Northern & Santa Fe Railway Co. ("Burlington") on July 12, 2002, alleging that Burlington had dumped diesel oil and toxic solvents on their land resulting in contamination. The discovery process was fraught with controversy. The Kapsners filed their first request for production on November 6, 2002. Burlington responded on December 9, 2002, but without a privilege log despite both parties intending and expecting its production.

### **Zubulake VI: Court Rules on Various Motions in Limine and Precludes Admission of Certain Evidence Unless Defendants "Open the Door"**

**Zubulake v. UBS Warburg LLC., 2005 WL 627638 (S.D.N.Y. Mar. 16, 2005)**

In her sixth opinion in this case, Judge Scheindlin ruled on the parties' motions in limine, several of which related to e-discovery issues that were the topics of prior decisions:

1. Defendants moved to preclude the introduction of evidence regarding the court's previous decisions in the case, including the imposition of sanctions on UBS. Granting the motion, the court agreed with defendants that the earlier decisions were irrelevant to plaintiff's discrimination claims and would unfairly prejudice UBS. The court noted that the jurors would be told all they need to know through the evidence admitted at trial and through the court's

charge, and that there was no need to reference the court's earlier decisions.

## NINTH CIRCUIT CASES

(Ninth Circuit cases can be found at <http://www.ca9.uscourts.gov/ca9/neopinions.nsf>)

*United States v. Wyatt*, No. 04-30316 (May 26, 2005). “Joel A. Wyatt and Rebecca Kay Smith appeal their convictions for (1) using, or aiding and abetting the use of, a hazardous or injurious device on federal land with the intent to obstruct a timber harvest; and (2) maintaining an unauthorized structure on National Forest land. We have jurisdiction under 28 U.S.C. § 1291. We consider below whether 18 U.S.C. § 1864(a), which in part prohibits the use of hazardous or injurious devices on federal land with the intent to obstruct or harass the harvesting of timber, is unconstitutionally vague as applied here to visible and unmodified ropes strung above a proposed helicopter landing site. We conclude the statute is not unconstitutionally vague as applied, and thus we affirm.”

*United States v. Cassel*, No. 03-10683 (May 24, 2005). “We must decide whether the First Amendment permits the government to punish a threat without proving that it was made with the intent to threaten the victim.

In November 2000, Cassel was charged in the Eastern District of California with two counts of interfering with a federal land sale under 18 U.S.C. § 1860 and two counts of witness tampering under 18 U.S.C. § 1512(c). In April 2001, the government filed a superseding information dropping one of the witness tampering counts. Cassel was tried before a magistrate judge by his consent, and a jury convicted Cassel on all remaining charges.

Although Cassel’s facial challenge to 18 U.S.C. § 1860 fails, his conviction was based on

jury instructions that inadequately described the elements of the crime. Accordingly, the district court’s judgment of conviction is **VACATED** and the case is **REMANDED** for a new trial.

*Gonzalez v. Free Speech Coalition*, No. 04-16172 (May 23, 2005). “The government appeals the district court’s award of attorneys’ fees to the Free Speech Coalition under the Equal Access to Justice Act because the court held the government was not ‘substantially justified’ in defending the Child Pornography Prevention Act. We reverse. Multiple objective indicia support the reasonableness of the government’s position, including the novelty of the issue involved and the government’s string of successes in defending the CPPA against constitutional attack. We conclude that reasonable minds could have differed over the CPPA’s constitutionality, especially where four sister circuits, the district court below, one member of the Ninth Circuit panel, and three Ninth Circuit judges dissenting from denial of rehearing en banc all determined the CPPA to be constitutional before the Supreme Court ultimately struck two sections as unconstitutional.”

*United States v. Martinez*, No. 04-30098 (May 16, 2005). “In this appeal, we consider whether a domestic disturbance constitutes an emergency sufficient to justify a warrantless entry into a home. Under the circumstances presented by this case, we conclude that it does, and affirm the district court’s denial of a suppression motion.”

*Santiago v. Rumsfeld*, No. 05-35005 (May 13, 2005). “Emiliano Santiago, a sergeant in the Army National Guard facing immediate deployment to Afghanistan, appeals from the district court’s denial of his petition for a writ of habeas corpus. Santiago’s eight-year enlistment in the Guard was due to expire on June 27, 2004, but shortly before that date his enlistment was

extended by a ‘stop-loss’ order when his unit was alerted prior to being ordered to active service. Santiago challenges this application of the government’s ‘stop-loss’ policy on the ground that it violates his enlistment contract and is unauthorized by statute. He also asserts a due process claim. We affirm the district court’s denial of the petition because we conclude that the stop-loss order was authorized by 10 U.S.C. § 12305(a), and that it neither violated Santiago’s enlistment agreement nor his right to due process of law.”

*United States v. Kwan*, No. 03-50315 (May 12, 2005). “Kwok Chee Kwan appeals the district court’s dismissal of his petition for writ of error coram nobis. Kwan’s petition collaterally attacks his conviction by guilty plea and his sentence on the ground of ineffective assistance of counsel. Because we find that Kwan’s counsel was constitutionally ineffective in affirmatively misleading him as to the immigration consequences of his conviction, and that Kwan has satisfied all of the requirements for coram nobis relief, we reverse.”

*United States v. Kimbrew*, No. 04-10193 (May 11, 2005). “Rodney Kimbrew, a.k.a. Carlton Cochran, appeals his conviction and sentence for conspiracy to commit money laundering. In an issue of first impression, we must decide whether the sentencing enhancement for being in the business of receiving and selling stolen property can apply to a defendant who sells only property that he himself has obtained by fraud. We agree with the overwhelming majority of circuits that it cannot. We affirm Kimbrew’s conviction, but vacate his sentence and remand for resentencing.”

*Horton v. Mayle*, No. 03-56618 (May 10, 2005). “James F. Horton, II, a California state prisoner, appeals from the denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. We agree

with the magistrate judge’s analysis, adopted by the district court, and affirm on all issues except for Horton’s claim that his rights under *Brady v. Maryland*, 373 U.S. 83 (1963), were violated. As to that claim, the court reverses and remands in a separate opinion authored by Judge Paez.”

*High v. Ignacio*, No. 04-15053 (May 10, 2005). “Juan High appeals the denial of his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. High’s state petition for post-conviction relief was dismissed by the Nevada trial court as untimely under Nevada Revised Statute 177.315(3), which required Nevada petitioners for postconviction relief to file their petition in the Nevada trial court ‘within 1 year after entry of judgment of conviction or, if an appeal has been taken from such judgment, within 1 year after the final decision upon or pursuant to the appeal’ whichever is later. The Nevada Supreme Court affirmed this dismissal.

The district court then denied High’s federal habeas petition, holding that NEV. REV. STAT. 177.315(3) was an independent and adequate state procedural rule that barred federal review of the Nevada court’s dismissal of High’s petition for post-conviction relief. Under the independent and adequate state procedural bar doctrine, a federal court will not review a question of federal law raised in a state court ‘if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.’ *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

High challenges NEV. REV. STAT. 177.315(3), arguing that the Nevada courts have applied the rule in an inconsistent manner. Therefore, the question before us is a narrow one: Whether the Nevada Supreme Court consistently applied NEV. REV. STAT. 177.315(3), Nevada’s statute of limitations for initiating a petition for post-conviction relief. We hold that the Nevada Supreme Court has

consistently applied NEV. REV. STAT. 177.315(3).”

*United States v. Houston*, No. 04-30216 (May 9, 2005). “Rosemary MacDonald Houston was convicted of distributing methadone to Trina Bradford which resulted in Bradford’s death. 21 U.S.C. § 841(a)(1), (b)(1)(C). Houston challenges the sufficiency of the evidence supporting her conviction, and particularly protests being held responsible for a death that she claims was an unforeseeable suicide. We conclude that the plain language of the statute establishes that although cause-in-fact must be proven, foreseeability is not an element of the crime, and that sufficient evidence supports the jury’s verdict as to the remaining elements. We have jurisdiction over this federal crime and affirm.”

*United States v. Weatherspoon*, No. 03-10551 (May 6, 2005). “Kendrick Weatherspoon appeals his conviction on one count of felon-in-possession of a firearm. Because we find that prosecutorial misconduct during the closing arguments affected the jury’s fair consideration of the evidence in the record, we reverse and remand for a new trial.

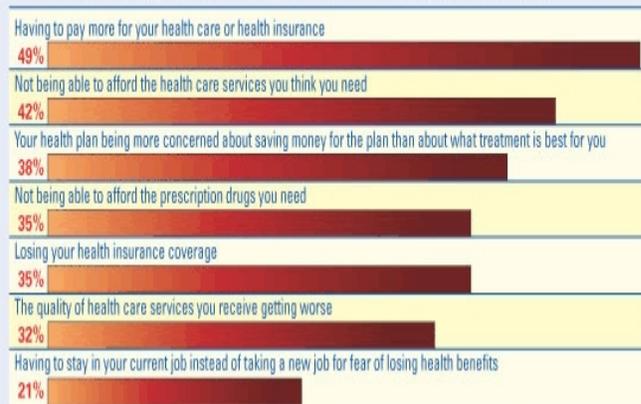
As to the threshold issue of impropriety, we conclude that prosecutorial misconduct was clearly involved, both (1) because the prosecutor vouched for the credibility of witnesses and (2) because he also made arguments designed to encourage the jury to convict in order to alleviate social problems.”

*Blanford v. Sacramento County*, No. 03-17146 (May 6, 2005). “Matthew Aaron Blanford appeals the summary judgment in favor of Brett Anderson, Todd Hengel, Lou Blanas, and Sacramento County in his 42 U.S.C. § 1983 action alleging claims of excessive force and unreasonable seizure in violation of the Fourth Amendment. Blanford was shot and severely

injured after he ignored warnings and commands to stop and drop an edged sword that he was carrying and instead tried to enter a house in a residential area. There is no doubt that the facts of this case are tragic and that the case is a

## Worker worries

The Kaiser Family Foundation asked more than 1,200 employees about their health care worries. Here are their top concerns:



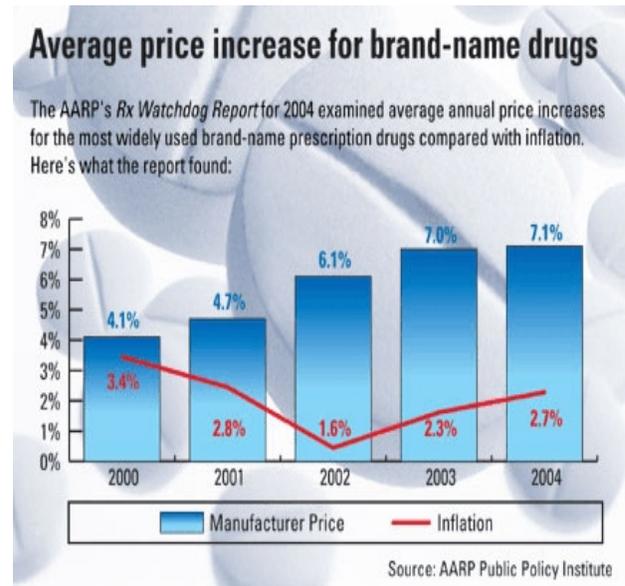
Source: Kaiser Family Foundation March/April 2005 Health Poll Report

difficult one. Nevertheless, because Deputies Anderson and Hengel did not exceed constitutional limits on the use of deadly force when they shot Blanford and because, even if their actions did violate Blanford’s constitutional rights, a reasonable law enforcement officer in their position at the time would not have known that shooting Blanford was a violation of clearly established law, the deputies are entitled to qualified immunity. We therefore affirm.”

*United States v. Cardenas*, No. 03-10009 (May 4, 2005). “Martin Cardenas appeals the mandatory minimum sentence he received after pleading guilty to three counts of possessing heroin with intent to distribute, and one count of possessing heroin and cocaine with intent to distribute. Although he waived the right to appeal, he contends that the government breached the plea agreement and that his sentence is illegal because he was entitled to the safety valve codified at 18 U.S.C. § 3553(f). We

hold that there was no breach by the government and that the sentence was not illegal. We dismiss the appeal.”

*Allen v. Calderon*, No. 02-16917 (May 3, 2005). “Ernest Lee Allen appeals the district court’s order dismissing his petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 for failure to prosecute. Specifically, Allen asserts that the district court erred in not considering the evidence of his incompetence before dismissing the petition. We have jurisdiction pursuant to 28 U.S.C. §§1291 and 2253 and will reverse and remand for further proceedings.”



## Tool calculates economic impact of migraine on workforces

Angela Maas *Employee Benefit News* • May 2005



Migraines can be a pain to more than those who suffer from them. Affecting approximately 28 million people, most of working age, migraines can impact a company's bottom line. However, a new tool can assist employers in determining not only the extent of that impact on their workforce but also potential savings to the company by helping employees get the treatment they need.

Developed by the Scottsdale, Ariz.-based HSM Group with support from the Pharmaceutical Research and Manufacturers of America, the Migraine Calculator was unveiled in March. Similar to HSM's Depression Calculator, the model estimates how migraines will impact a given workforce. It is based on research covering studies that focused on the use of triptans for migraine and that tracked improvement and treatment rates.

“With employers, we noticed they are highly aware of things that affect the workforce through direct and indirect costs,” says Jim Hendrix, vice president of research with the HSM Group. “They know about migraines and depression and that they affect the workforce, but they haven't had numbers or anything quantifiable.”

That has all changed, however.

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“The calculator provides benefit managers with the information they need to go to the CFO and make a case on why providing treatment may save the company money,” says Lori Reilly, deputy vice president for policy with PhRMA. “It provides them with dollar figures.”

Employers enter information on the company's size, type of industry, location and age and gender of its employees. Using the input figures, the model calculates the expected number of days that the workforce will most likely suffer from migraines and thus be either absent or suffering from low productivity, or presenteeism. Then the model will estimate the company's expected savings, less the cost of treatment using triptans-treatment that has been very promising with respect to limiting or reducing migraines - if its employees seek treatment for the ailment.

All in all, an employer can expect to spend approximately five minutes navigating through the model. “The company only needs to put in the demographic numbers, and everything else is calculated,” says Wayne N. Burton, M.D., wellness and productivity executive with JP Morgan Chase.

The calculator is available at [www.migrainecalculator.com](http://www.migrainecalculator.com). As with the Depression Calculator, those without Internet access can request a CD of the calculator from PhRMA at 202/835-3400.

The first step is realizing that migraine is a common problem, but employers don't see it in medical or disability claims, says Burton. “It is an episodic problem, so employees are not taking short-term disability for it, and it's not in claims because it's classified as a headache. There are usually several reasons those affected see a doctor.”

Burton notes that companies can see incidence of migraine within their organization in their prescription drug benefit claims. “In the top 25 drugs, it's not uncommon to see drugs that treat migraines.”

The calculator is helpful to determine whether migraine is one of the diseases a company should focus on, says Burton. Raising awareness of the impact on a workforce can also lead to employers being proactive about employees seeking treatment and medication, and their possibly even revising the benefits package, notes Hendrix.

Predominantly females are affected more than males, at a rate of 3 to 1. People between the ages of 25 and 55 are primarily affected, mostly those in the 30-to-49-year-old range, which is significant to employers because these are the working years of most people's lives. Estimates put annual losses to employers at \$13 billion due to absenteeism and presenteeism as a result of migraine.

“A pretty large chunk of folks will report pain and discomfort, but they won't leave work,” says Hendrix. “The impact of presenteeism is almost as big or bigger than absenteeism.”

Employees who suffer from migraines will be absent or not doing well about eight days out of the year, he says. When employees receive treatment, employers can expect to get about half of those days back.

Hendrix notes that about half of the people affected by migraine are not diagnosed or do not seek treatment. “Even those diagnosed often don't get the right diagnoses,” he says.

There are plans to apply this model to other illnesses; cardiovascular disease and diabetes will probably be the next focuses. “Most major conditions lend themselves to this,” says Hendrix.

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“It is more and more difficult to get claims data,” says Burton. “These kinds of evidence-based calculations will be increasingly helpful to employers.”

“The important point is that migraines are a health problem that affects the working-age population,” says Burton. “But a lot can be done to help these employees and their families.”

### **How migraines impact sample employers**

#### *Example 1:*

School district in the Northeast with 1,000 employees

174 employees can be expected to suffer from migraines

With treatment, lost workday equivalents can be reduced by 509 days \*

This means that the employer will pay \$129,717 less in replacement costs \*\*

Treatment costs would be \$53,287 \*\*\*

The net savings to the school district would be expected to be \$76,430 per year

#### *Example 2:*

An employer in the North Central region of the country has 10,000 employees and is in the Finance & Insurance industry.

1,666 employees can be expected to suffer from migraines

With treatment, lost workday equivalents can be reduced by 4,871 days \*

This means that the employer will pay \$1,225,895 less in replacement costs \*\*

Treatment costs would be \$507,683 \*\*\*

The net savings to the company would be expected to be \$718,211 per year

#### *Example 3:*

A governmental agency with 15,000 employees across the country

2,142 employees can be expected to suffer from migraines

With treatment, lost workday equivalents can be reduced by 6,263 days \*

This means that the employer will pay \$1,571,122 less in replacement costs \*\*

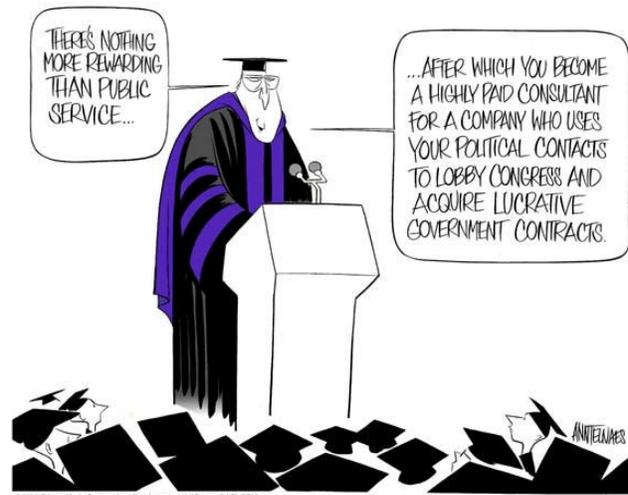
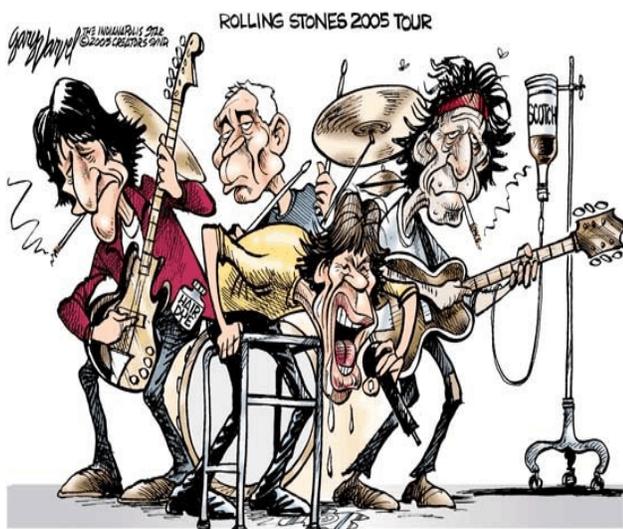
Treatment costs would be \$647,077 \*\*\*

The net savings to the governmental entity would be expected to be \$924,044 per year

Lost workday equivalents includes the number of days a person was absent from work and a calculation of the amount of work missed because of reduced effectiveness on the job known as presenteeism

\*\*The costs of absenteeism are directly related to replacement costs, which are dependent on total compensation. Compensation is comprised of average wages, benefits and fringes for each specific industry as reported by the Bureau of Labor Statistics. Users of the model are able to adjust the wages and benefits to better represent their own companies.

\*\*\* The model takes account of the cost of triptan treatment. The average treatment costs include the cost for the medicine that the employer or health plan will pay, which is partially offset by the employee co-pay for the prescription. The default co-pay value used by this calculator is \$25 per prescription based on HSM's analysis of publicly available data.



**Today's Word:**

**Callipygian** (*Adjective*)

1. **Pronunciation:** [kæl-î-'pi-j(ee)ên]

**Definition 1:** Having or pertaining to shapely buttocks.

**Today's Word:**

**Zaftig** (*Adjective*)

1. **Pronunciation:** ['zæf-tig]

**Definition 1:** Having a full, rounded figure (usually of a woman).

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