



OFFSHORE ENERGY FIRMS CONCERNED ABOUT PLANS TO BOOST LIABILITY / PAGE 3

LIEN FILINGS CLOGGING WORKERS COMP SYSTEM IN CALIFORNIA / PAGE 3

SEN. JOHNSON SEEN AS GOOD PICK TO LEAD KEY PANEL / PAGE 6

In Brief

Terrorism insurance market improved

The availability and affordability of terrorism risk insurance provided by the private sector has improved since 2006, according to a report prepared by the President's Working Group on Financial Markets. The report said terrorism insurance takeup rates among commercial policyholders have remained basically flat at 60% since 2006.

'Mini-med' health plan waivers top 700: HHS

The Department of Health and Human Services has approved more than 700 one-year waivers for "mini-med" and other limited benefit health plans, exempting them from meeting a key requirement of the federal health care reform

See **IN BRIEF** page 2



SPOTLIGHT

ENTERPRISE RISK MANAGEMENT

University management team puts theory into practice; risk managers study for ERM qualification; RIMS recommends ERM-related books; strategies to show ERM value to senior executives; *BI* listing of ERM service providers. **PAGE 9**

HEALTH CARE BENEFITS



MALPRACTICE

President's stand on medical liability reform draws mixed reviews. **PAGE 3**

During last week's State of the Union address, President Obama said he would consider changes to the nation's new health care reform law.

Health reform law could be tweaked

Obama would consider limited revisions

By **JERRY GEISEL**

WASHINGTON—President Barack Obama has opened the door to additional changes to the nation's health care reform law.

Last week, the president and the chairman of the White House's Council of Economic Advisers sig-

naled a new willingness to modify the reform law.

President Obama used his State of the Union address to say that he is willing to consider changes. Directing his remarks at congressional Republicans, the president

See **REFORM** page 21

WORKERS COMPENSATION

States may bar comp for illegal immigrants

Political climate aids efforts

By **ROBERTO CENICEROS**

With conservative lawmakers in control in several states, more legislation is being introduced that would deny workers compensation benefits to illegal immigrants who are hurt on the job.

And while such efforts have failed in recent years, today's changed political climate could result in some of that legislation becoming law this time around, some say.

Bills that would bar illegal immigrants from

See **COMP** page 18



AP PHOTO

EMPLOYMENT PRACTICES

High court broadens grounds for retaliation claims

By **JUDY GREENWALD**

WASHINGTON—A U.S. Supreme Court decision that an employee linked to a co-worker who has alleged discrimination also should be protected from workplace retal-

iation will lead to more litigation against employers, observers say.

Furthermore, the court's unanimous decision Jan. 24 in *Eric L. Thompson vs. North American Stainless L.P.* is vague as to whom it would apply, and it will take low-

er courts several years to sort out the issue, experts say.

To avoid a retaliation claim, the ruling means employers considering terminations and other negative job actions first may have to investigate whether the workers involved are associated with someone who has filed a discrimination complaint (see story, page 20).

According to the ruling, Mr. Thompson, a metallurgical engineer, and Miriam Regalado, then his fiancée and now his wife, both worked for Ghent, Ky.-based North American Stainless.

Ms. Regalado filed a sex discrimination claim against the company with the Equal Employ-

ment Opportunity Commission, which notified North American Stainless of the charge in February 2003.

Mr. Thompson, who had worked at the firm since 1997, was terminated three weeks later. He sued, alleging his termination was in retaliation for Ms. Regalado's complaint and violated Title VII of the Civil Rights Act of 1964.

The company argued the termination was for performance-related reasons.

In 2009, an en banc panel of 6th U.S. Circuit Court of Appeals in Cincinnati overturned a three-judge panel's decision. In the 10-6

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News In Brief

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law. As of last week, HHS said it had approved a total of 733 waivers, up from 222 waivers that had been approved as of Dec. 3, 2010. In all, the waivers affect plans with about 2.2 million enrollees, HHS said.

AIG unaware of credit default swap risks: Panel

Senior executives of American International Group Inc. were ignorant of the terms and risks of the company's \$79 billion derivative exposure to mortgage-related securities that brought the company to the brink of collapse in 2008, according to a report endorsed by the majority of the members of the government's Financial Crisis Inquiry Commission. The report examined the causes of the financial crisis that began in 2007 and said AIG's woes reflected a "profound failure in corporate governance, particularly its risk management practices." The report said some executives of AIG Financial Products Corp. were aware the company was taking on too much risk with its credit default swaps.

Harvard Pilgrim, Tufts plans agree to consider merger

Two major Massachusetts-based health care plans—Harvard Pilgrim Health Care and Tufts Health Plan—said they are exploring a merger. In a joint statement, the health plans said they had signed a memorandum of understanding on the merger and should decide within several months whether the merger, which would require regulatory approval, would move forward.

Wisconsin governor signs tort reform bill

Wisconsin Gov. Scott Walker signed into a law a multifaceted tort reform measure last week. The measure amends Wisconsin law to limit noneconomic damages awarded in liability cases against long-term care facilities such as nursing homes to \$750,000, the same limit as medical malpractice awards. The measure also caps punitive damages in most liability cases to the greater of \$200,000 or twice compensatory damages.

Foundation to award \$35,000 in scholarships

The Griffith Foundation for Insurance Education said it will award more than \$35,000 in scholarships to students studying risk management, insurance or actuarial science at colleges and universities. The Griffith Foundation, a nonprofit organization that promotes the study and teaching of risk management and insurance, said in a statement it will award 29 scholarships for the 2010-11 academic year.

Guardian to exit group medical market

Guardian Life Insurance Co. of America is exiting the group medical insurance market and has reached an agreement with UnitedHealthcare to renew coverage for Guardian clients. In a memorandum to brokers prepared in a question-and-answer format, Guardian said "its modest medical market share and its use of rental networks

significantly hampered its ability to compete in the group medical sector that has frequently favored large national medical carriers." As a result, "Guardian has determined that continuing in the medical insurance business is no longer a strategic fit," the memo said. As part of the transition, Guardian is working with UnitedHealthcare to provide comparable health care plans for clients.

Lloyd's estimates Solvency II costs

Preparing for Solvency II may cost insurers in the Lloyd's of London market as much as £300 million (\$480.2 million), according to the market's chairman. During the World Economic Forum meeting in Davos, Switzerland, Lord Peter Levene told Reuters that Solvency II is a "huge task" for underwriters at Lloyd's. Also this month, Lloyd's CEO Richard Ward told reporters that Lloyd's would lobby the European Union to reduce the amount of capital that Lloyd's would have to hold in reserve under Solvency II models.

Public-private partnerships aid disaster recovery

Public-private partnerships ease the financial burden that natural disasters often impose on governmental budgets, Swiss Reinsurance Co. Ltd. said in a report released at the World Economic Forum. A public-private partnership such as the Caribbean Catastrophe Risk Insurance Facility, which insures 16 countries and territories against earthquakes and hurricanes, is an example of how that approach works, Swiss Re said. The facility retains some risks of member governments but transfers the rest to the reinsurance markets.

Hawaii licenses 12 captives in 2010

Hawaii enjoyed healthy captive insurance company growth last year when the state licensed 12 new captives, up from four in 2009. The 2010 formations brought Hawaii's total captive count to 168 at year-end 2010.

Amlin purchases managing general agent

Amlin P.L.C. said it has acquired managing general agent J.R. Clare Underwriting Agencies Ltd. The MGA, which previously was owned by John Clare, has been in operation since 1999 and sources business for London market underwriters, Amlin said in a statement. Terms of the deal were not disclosed. J.R. Clare, which primarily underwrites U.K. commercial and homeowners insurance, lacked sufficient capital to continue to fund its operations and satisfy the solvency requirements set by the U.K. Financial Services Authority, Amlin said. Amlin, which said the FSA had approved the deal, will underwrite all of J.R. Clare's business in the future.

Achilles extends deadline to buy Brit Insurance

Achilles Netherlands Holdings B.V. extended the deadline to last weekend for shareholders of Brit Insurance Holdings B.V. to accept Achilles' buyout offer. It was the second time Achilles has extended the deadline. The deal requires 95% of Brit shareholders to accept it to proceed. Achilles, a holding company formed on behalf of funds managed by Apollo Management VII L.L.P. and CVC Capital Partners Ltd., said in October that it had reached agreement with Brit to acquire the company for £888 million (\$1.38 billion).

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4. House bill would limit med mal noneconomic damages
5. AIG execs unaware of credit default swap risks: Crisis panel
6. Market likely to remain soft in 2011: Marsh
7. Obama willing to look at med mal liability reform
8. Worker retaliation suits backed by U.S. Supreme Court
9. AIG names chief actuary, taps Allianz exec for Chartist post
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TORT REFORM

White House open to medical liability changes

Tort reform backers welcome sentiment, hope for substance

By **MARK A. HOFMANN**

WASHINGTON—President Barack Obama's openness to some types of medical liability reform is drawing mixed reviews from people on both sides of the issue.

While welcoming the president's assurance in last week's State of the Union address that he is willing to consider proposals designed to eliminate "frivolous" medical malpractice lawsuits, some reform advocates say that does not go far enough.

However, opponents of changes in medical malpractice liability say the president should pay more attention to victims of malpractice rather than circumscribing their legal remedies.

Meanwhile, even proponents of more comprehensive reform say that while a recently introduced measure to cap noneconomic medical malpractice damages can win House approval, it is likely to fail in the Senate.

Medical malpractice liability reform went largely unaddressed in the health care reform law that became U.S. law last year. But in last week's address, the president said, "I'm willing to look at other ideas to bring down costs, including one that Republicans suggest-

ed last year—medical malpractice reform to rein in frivolous lawsuits."

"I do think it's encouraging" that the president mentioned medical liability reform in the State of the Union address, said Melissa Shelk, vp-federal affairs at the American Insurance Assn. in Washington. She noted that he did not specify support for any particular piece of legislation or design of reform, but added that health care reform law calls for state-level demonstration projects to examine ways to reduce liability costs.

The president's comments drew praise from Lisa A. Rickard,

See **MEDMAL** page 17

MEDICAL LIABILITY PROPOSAL



Rep. Phil Gingrey, R-Ga.

The Help Efficient, Accessible, Low-Cost, Timely Health-care Act of 2011 was introduced by Rep. Phil Gingrey, R-Ga., and had six co-sponsors. Key provisions of H.R. 5 include:

- Capping noneconomic damages in health care liability lawsuits at \$250,000
- Capping punitive damages in health care suits at \$250,000 or twice economic damages, whichever is greater
- Instituting a "fair share rule" making each party responsible only for its share of damages and not those of any other party

■ Allowing evidence of collateral-source benefits

■ Limiting the percentage of an award paid as attorney contingent fees based on a sliding scale

Source: *Thomas.gov*

ENERGY

Pressure builds on energy firms after giant spill

Calls to boost liability raise coverage fears

By **MICHAEL BRADFORD**

WASHINGTON—Offshore energy companies say they are worried that U.S. government oversight will become onerous and insurance will be harder to find and expensive if a presidential commission's recommendations are adopted.

In its 381-page report released this month, the seven-member National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling concluded that preventable "human and engineering failures" caused the Deepwater Horizon explosion and fire that killed 11 workers and leaked millions of barrels of oil in the Gulf of Mexico.

The commission, which President Barack Obama appointed last May after the April 2010 explosion and fire, said the disaster resulted from "years of industry and government complacency and lack of safety."

Part of the commission's mandate was to suggest ways to make drilling safer and accidents less likely, and the commission responded with several recommendations that include establishing a safety agency, significantly increasing the Oil Pollution Act liability cap, without specifying how much, and forming a mutual insurer if market conditions tighten and restrict coverage that is available to smaller energy operations.

In the coming months, the



ROLL CALL PHOTOS/NEWSCOM

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling concluded the massive Gulf spill was preventable.

commission said it intends to testify before Congress, "meet with key administration officials and engage with industry leaders to advance implementation of the commission's recommendations."

Legislators responded last week when House Democrats crafted a bill based partly on the recommendations. Notably among the

provisions, the bill seeks to establish unlimited liability for companies responsible for oil spills. Under the Oil Pollution Act, liability for most damages is capped at \$75 million except in cases of gross negligence, willful misconduct, violation of federal safety

See **SPILL** page 17

WORKERS COMPENSATION

California comp system clogged by lien filings

Disputes over funds slowing claims, adding to costs

By **ROBERTO CENICEROS**

Hundreds of thousands of liens are overwhelming California's workers compensation system, costing employers and insurers hundreds of millions of dollars in loss-adjustment expenses and delaying claims adjudication, observers say.

The liens represent billions of dollars in disputes over payments for services provided to injured workers.

Workers comp liens are legal claims for payment of medical treatment, attorney fees, interpreter services, medical/legal expenses and other services. The entities filing them allege that insurers and employers are obligated to pay, and they seek Workers Compensation Appeals Board authorization to get the money.

More than 450,000 liens are expected to be filed in California during 2011, up from an estimated 350,000 in 2010, according to a report by California's Commission on Health Safety and Workers' Compensation. The liens are "choking" the state's workers comp system,

according to the report.

Experts say the onslaught of lien filings presents one of the biggest challenges that California's workers comp system faces, with employers sometimes forced to settle contested liens so the employer can close the claim.

"As far as the effective administration of claims and the resolution of cases, (liens are) a huge issue," said Jason Schmelzer, legislative advocate for the California Coalition on Workers' Compensation, a Sacramento-based employer organization.

"It's adding on extra costs for employers that frankly shouldn't have to pay most of these liens," Mr. Schmelzer said. "It's definitely a problem and it's a growing problem."

The final draft of a report that California's CHSWC released Jan. 5 shed light on the scope of the problem.

"Other states we have contacted have nothing comparable," the report's researchers concluded of the claims filed last year and expected this year in California.

Disagreements over medical treatment account for 62% of all workers comp lien filings and about 80% of the dollars in

See **LIENS** page 20

'It's adding on extra costs for employers that frankly shouldn't have to pay most of these liens. It's definitely a problem and it's a growing problem.'

Jason Schmelzer, California Coalition on Workers' Compensation

INTERNATIONAL

Credit insurance abundant, but not for all risks

U.K. retailer HMV sees cover reduced amid struggles

By SARAH VEYSEY

LONDON—The recent trade credit insurance problems at U.K.-based music and book retailer HMV Group P.L.C. reflect the impact that difficult economic conditions have had on some companies, experts say.

While there always will be companies that see their trade credit insurance limits reduced, withdrawn or canceled due to their specific circumstances, capacity remains plentiful and underwriter competition is strong, experts say.

The lessons of the ongoing weak economy have resulted in buyers and underwriters sharing more detailed risk information, they add.

After disappointing holiday sales, HMV said in mid-January that trade credit insurers were reviewing the level of coverage they provide to the London-based music and book group.

"Whilst this has resulted in the reduction in the availability of credit insurance to certain of the group's suppliers, our business remains a core channel to market for them," HMV said in a statement.

HMV issued a clarification about its credit insurance coverage after it revealed that it had suffered worse-than-expected sales leading up to Christmas, typically

its busiest time.

HMV, which operates in seven countries, said severe weather in the United Kingdom, where most of its 417 record stores and 314 bookstores are located, "significantly undermined" its performance in December.

The company warned that it may have trouble making an April payment under its banking facility and said it was taking steps to address that problem, including closing 60 stores and identifying £10 million (\$16 million) in cost reductions per year.

Separately last week in a move unrelated to HMV, the British Insurance Brokers Assn. said its trade risk focus group was working with the U.K.'s Export Credits



LANDOV

Retailer HMV Group said weak holiday sales undermined its performance, one factor in trade credit insurers reducing capacity for some suppliers.

See **CREDIT** page 19

TERRORISM



AP PHOTO

Flowers and candles at a Moscow memorial to victims who were killed last week by a bomb set off in Russia's busiest airport.

Moscow airport uninsured for deadly terrorist attack

MOSCOW—A bomb that killed 35 people and injured 180 at Moscow Domodedovo Airport last week is not expected to result in large insured losses, a risk modeling company said.

The attack, believed to be perpetrated by a lone suicide bomber, took place in the international arrival hall of the airport.

Domodedovo is Russia's largest airport in passenger traffic and has the nation's largest international air cargo terminal, according to the airport's website.

The airport likely did not purchase terrorism insurance, sources said.

In the wake of the attack, President Dmitry Medvedev ordered increased security across Moscow and its transport hubs.

A similar attack could occur at any major airport in North America or Europe, said Gordon Woo, lead catastrophist at Risk Manage-



AP PHOTO

Russian President Dmitry Medvedev inspected security at Moscow subway stations last week.

ment Solutions Inc. in London. Increased intelligence efforts are limiting the scale of terrorist attacks and, therefore, potential insured losses, he said.

—By Sarah Veysey

RISK-LINKED SECURITIES

2010 cat bond volume nears \$5B

Desire to diversify risk spurs growth: Munich Re

By JUDY GREENWALD

Insurance-linked securities' 42% growth, to \$4.84 billion in 2010 issuance volume vs. 2009, is a sign of the market's vitality, Munich Re said in a report last week.

With 23 transactions, last year "was the second-most active year in the market's history and affirms its standing as alternative capacity source for the (insurance and reinsurance) industry," according to the report.

The most active year to date has been 2007, when ILS volume reached \$6.73 billion.

"Deal activity displays a strong alignment with traditional U.S. reinsurance renewals, highlighting

23

With 23 transactions, last year was the second-most active year in the history of the insurance-linked securities market.

the increasing use of cat bonds among U.S. insurers to gain leverage in their reinsurance purchasing," according to the report.

Other observers also have noted that catastrophe bonds have become part of structured property programs developed in conjunction with insurers' traditional reinsurance coverage, generally at higher layers.

Rupert Flatscher, Munich-based head of the reinsurer's risk trading unit, said the reason for the growth is that traditional asset managers value the "diversification of the insurance risk against their other investments."

The report said new investor money entering the market has enabled sponsors "to increase their cat

See **CAT BONDS** page 19

PROPERTY/CASUALTY INSURANCE

4Q renewal prices mainly flat: RIMS

By MARK A. HOFMANN

Average renewal premiums for commercial property/casualty insurance remained fairly flat during fourth quarter compared with a year earlier, the Risk & Insurance Management Society Inc. said in a survey last week.

The survey found that directors and officers liability insurance was the only line tracked that had a material decrease, where premiums dropped 4.6% during the fourth quarter of 2010 compared with a year earlier.

The survey found that large companies with revenues of more than \$1 billion experienced larger drops in D&O premiums, 5.1%, than smaller companies,

RATES DECLINE

Prices continued to fall for most commercial lines of insurance during 2010. Changes by quarter compared with the same period a year earlier were:

Property				General liability				D&O liability				Workers comp			
1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q
			FLAT				>1%				FLAT				>1%
-2.9%		-3.0%		-2.5%				-1.1%				-2.0%			
	-3.5%			-4.4%				-3.5%		-4.0%		-3.8%			
								-4.6%							

Source: "RIMS Benchmark Survey"

where premiums fell 2.4%.

And David Bradford, editor-in-chief of the "RIMS Benchmark Survey" and executive vp of

Advisen Ltd., said he does not expect major change in the mar-

See **BENCHMARK** page 21

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New Senate Banking chair hailed

Sen. Johnson to play key role in oversight of insurance sector

By MARK A. HOFMANN

WASHINGTON—Despite his past advocacy of establishing optional federal charters for insurance companies, industry observers do not expect Sen. Tim Johnson, D.-S.D., to do the same as the new chairman of the Senate Banking, Housing and Urban Affairs Committee.

Senate Democrats last week chose Sen. Johnson to chair the committee, a panel on which he was the second-ranking Democrat in the previous Congress.

He succeeds former Sen. Chris Dodd, D-Conn., who did not seek re-election last year.

Sen. Johnson's elevation drew positive reviews from the insurance industry.

"He represents a state that benefits from financial services, and he has dug in on these issues like no other," said Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington.

"No one should expect a blank check from him. No one should expect him to be easy, but everyone will respect his knowledge and internal antennae on regulatory issues," Mr. Wood said.

"Sen. Johnson is someone who has repeatedly demonstrated a willingness to find solutions benefiting both business and consumers," said a spokesman for the American Insurance Assn. in Washington. "Combine that with his thorough understanding of our industry and our issues, and we anticipate that he

will be a very effective chairman of the Senate Banking Committee."

But Mr. Wood, who supports optional federal charters, said that in the wake of the 2008 near-collapse of New York-based American International Group Inc., "we're far more likely to see incremental reforms rather than a full-blown OFC, as much as I think the OFC is the way to go."

Jimi Grande, senior vp at the National Assn. of Mutual Insurance Cos.' Washington office, also praised Sen. Johnson, calling him a "moderate voice" who is able to work with Democrats and Republicans.

NAMIC opposes the OFC, and Mr. Grande said he doesn't expect "much of a dialogue" on the subject even though Sen. Johnson sponsored OFC legislation in the past.

Because of the financial crisis as well as enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, "I think Sen. Johnson is going to take a much more measured approach, particularly as he takes on the role as chairman," Mr. Grande said.

But insurance issues will be on the panel's agenda,

another insurance industry observers said.

"Sen. Johnson has been a leading voice for balanced reforms on the Banking Committee for 14 years," Tom Litjen, vp-federal government relations in the Property Casualty Insurers Assn. of America's Washington office, said in an e-mail.

"This will be another busy year for insurance issues as we finish rule-making for Dodd-Frank and continue deliberations over the future of the National Flood Insurance Program," Mr. Litjen said.



ROLL CALL PHOTOS

Insurance industry observers welcomed the appointment of Sen. Tim Johnson, D-S.D., as chairman of the Senate Banking Committee.

Commentary

Malpractice reform gets long-overdue nod

With a few words in last week's State of the Union address, President Barack Obama opened the way for a debate that should have happened when Congress first began considering the Patient Protection and Affordable Health Care Act.

That debate is over the role medical liability reform should play in health care reform.

In his address, the president said he is "willing to look at other ideas" to control health care costs, "including one that Republicans suggested last year: medical malpractice reform to rein in frivolous lawsuits."

Note that the president did not endorse comprehensive medical liability reform. In fact, he appeared willing to consider only one aspect of the issue—frivolous lawsuits. Yet by merely mentioning the subject, the president opened the door to a much-needed discussion.

As noted in a previous commentary, there was no consideration of any sort of meaningful change in medical malpractice liability law as Congress debated health care reform (*BI*, April 19, 2010). The law contains window dressing, such as the part calling for the feds to fund demonstration grants to states to develop, implement and evaluate alternative medical liability reform initiatives.

Demonstration projects are fine, but until the president's speech, there was little reason to believe the White House would be eager to implement their results. Unlike its predecessor, this administration has not been well-disposed to tort reforms of any kind.

But even before the president spoke, Congress began moving on the issue. Days before the speech, the House Judiciary Committee held a hearing on the subject. And a few days after the hearing, a bipartisan group of House members introduced legislation that addresses medical liability reform. The measure, while unlikely to be enacted in its current form, represents a significant development in the debate.

What comes next is key. Given the composition of Congress—with the House controlled by Republicans and the Senate controlled by Democrats—any changes will have to be incremental.

This is a very tricky area.

For example, the House bill—which bears the unwieldy name Help Efficient, Accessible, Low-cost, Timely Health-



MARK A. HOFMANN

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care Act of 2011—calls for capping noneconomic damages in medical malpractice cases at \$250,000.

But some states already have capped noneconomic damages in medical malpractice cases, and state courts have tossed some of those caps. Federal caps certainly would face the same challenges.

Medical liability reform advocates might want to

By merely mentioning the subject, the president opened the door to a much-needed discussion.

examine the relationship between economic damages and noneconomic damages, much as the Supreme Court has spent the past 15 or so years defining the acceptable relationship between punitive damages and underlying damages.

Whether a formula governing the relationship between economic and noneconomic damages, rather than a hard monetary cap, passes muster in malpractice cases is well worth exploring.

The president did not endorse capping damages of any sort, which is hardly surprisingly given this administration's record, or lack thereof, on tort reform. All the president said is that he is willing to look at the possibility of reining in frivolous lawsuits.

But that in itself is significant. With a few words, the president indicated that the administration is willing to join the debate on an issue that should have been considered in depth a year ago. It's definitely better late than never.

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Business Insurance OPINIONS

Opportunity knocks for health care change

MAKING TOO MUCH or too little of the Obama administration's apparent willingness to consider changes to the health care reform law would be an easy mistake to make.

That willingness was communicated clearly in several ways last week.

President Barack Obama was the first to deliver that message during his State of the Union address. Directing his remarks at GOP lawmakers, the president said he was eager to work with Republicans to improve the law.

One day later at a House Ways and Means Committee hearing, Austan Goolsbee, chairman of the White House's Council of Economic Advisers, affirmed the president's message, saying that "all of us should be open to ideas of how to reduce costs and improve" the health care system.

That stance is a decided contrast with the way things were done as the reform legislation moved through Congress. Republican lawmakers complained that their suggestions and questions frequently were ignored.

There certainly are limits to changes the administration will consider. It is not going to back off on bedrock provisions such as the employer and individual mandates and subsidized coverage for the lower-income uninsured.

But a willingness to listen to at least some changes is a good start. We hope GOP lawmakers and others take up that offer and share their ideas to improve the law.

A willingness to listen to at least some changes is a good start.

Time to start moving on med mal reform

PRESIDENT BARACK OBAMA'S comment on medical liability reform gives some hope that an issue that should have been debated vigorously before the health care reform law was enacted finally will receive its due.

As we report on page 3, the president said during last week's State of the Union address that he is willing to look at proposals designed to curb "frivolous" medical liability suits.

Even though people on both sides of the tort reform debate agree that few truly frivolous medical-related lawsuits are filed, the fact that the president even mentioned tackling a small component of the medical liability issue is welcome.

But now that he's talked the talk, he's got to walk the walk as well.

While substantive reforms, such as capping noneconomic damages in medical liability cases, probably are nonstarters at the federal level, there is broad range of potential reforms, such as devising new ways to deal with medical liability claims, that should be examined. We would like to see some specifics of the reforms that the president is willing to consider.

The whole issue of medical liability reform received short shrift as Congress considered the Patient Protection and Affordable Care Act last year. The president's words indicate he is willing to look at the issue, but those words are meaningless without action.



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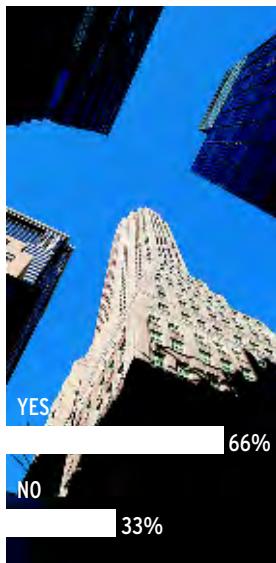
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Enterprise
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ERM **IN** ACTION

University management team puts theory into practice

By **RUSS BANHAM**

Enterprise risk management has been the guiding philosophy of how to manage organizational risk for more than a decade, yet companies in various industry sectors tend to view ERM differently.

While this makes sense given the range of financial, operational and strategic risks that confront disparate organizations, experts say the process of implementing ERM should be consistent.

One early ERM adopter that has won observer kudos for its ERM implementation is the University of Saskatchewan in Saskatoon, Canada. Although it was the second Canadian university to adopt ERM—the University of Alberta was the first—the University of Saskatchewan more fully managed key strategic risks in its ERM approach.

“They’re leading the university sector in

Canada in ERM; and if they were a corporation, the only industry they would not be as strong as is financial services, which is where the methodology first took off” in 2002, said Karen O’Brien, partner in ERM services at consultancy Deloitte L.L.P., which reviewed the university’s ERM program last year.

In 2002, the university’s board of governors enjoyed an off-site retreat with senior managers, when board Chair Gordon Thiessen, who hailed from the financial services industry as former governor of the Bank of Canada, said financial institutions were developing a portfolio view of their risks. Mr. Thiessen asked the senior managers if they had thought about obtaining an integrated view of the university’s most significant risks. The question ultimately became the catalyst for the university’s ERM initiative.

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SPOTLIGHT

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ERM IN ACTION

Action: Putting ERM theory into practice

CONTINUED FROM PREVIOUS PAGE

"After the retreat, I was asked to undertake a comprehensive assessment of the university's key risks," said Nowell Seaman, the university's manager of risk management and insurance.

Mr. Seaman, who was aware of the financial service industry's ERM efforts, said he was fortunate that he also knew about the University of Alberta's approach and sought advice from its senior managers.

"An important thing we learned was that a university is bicameral—you have the administrative side that delivers administrative services, runs finance, handles (human resources) and so on. Then you have the academic and research side of the house, and you need to engage both sides in the process," he said. "So we reached out to the provost to jointly lead the early discussions on ERM with the vice president of finance and resources."

The joint undertaking made sense for another reason. Previously, Mr. Seaman's organization was focused exclusively on insurable risks, whereas university policymakers managed operational and strategic risks. Moving to an ERM structure thus provided a more strategic focus for managing risk.

"For example, if our strategic objective is to excel in social research or medical research, we now have to think about the risks that would cause us to miss these goals," Mr. Seaman said. "We also

need to consider the opportunity side of risks. If we can identify strategic risks and manage them effectively, it may represent some sort of an advantage. An example is attracting and retaining outstanding faculty in social research, medical research or some other area."

Getting started

After forming a cross-representational risk steering committee chaired by Mr. Seaman, the



University of Saskatchewan engaged consultant PricewaterhouseCoopers L.L.P. to facilitate two workshops and 45 interviews with key university personnel to identify the risks they believed were most significant—risks that could significantly affect the achievement of the university's strategic objectives, threaten its business model or key activities, and jeopardize its existence. These risks were compiled into an enterprise-wide risk inventory called the Risk Register.

"We applied a rating system to these risks that did not take into account what we currently were doing to manage and mitigate the risks," Mr. Seaman said. "It wasn't a highly granular rating, just the naming of the risk. Then, we applied our mitigation plans, noted who was accountable for the actions against these risks and what else needed to be done, and put it all in a database."

Each significant risk is assessed in terms of likelihood and impact if

'We try to provide a quantitative measurement to all the risks, but in areas like reputation, which is extremely important to a university, we provide more of a qualitative look at the impacts. At the end of the day, it's a judgment call.'

Nowell Seaman, University of Saskatchewan

it were to occur. With regard to risk probability, the steering committee set up five categories, from "very low probability" of happening in the next 24 months to "almost certain" to occur during the period. The risk impact is similarly cleaved into five categories, from "insignificant" to "catastrophic," and assessed across five impacts—financial, operational, compliance, strategic and reputational.

"We try to provide a quantitative measurement to all the risks, but in areas like reputation, which

is extremely important to a university, we provide more of a qualitative look at the impacts," Mr. Seaman said. "At the end of the day, it's a judgment call."

Twenty significant risks were defined through the workshops and interviews, and these were distilled to 10. The university considers its top risks proprietary and would not disclose them.

After the steering committee completed its work, the university's vp of finance and resources, Richard Florizone, was delegated chair to "have a senior executive as a very visible proponent and leader of the ERM program," Mr. Seaman said. Mr. Florizone previously worked in the aerospace industry at Bombardier Inc., which had completed a corporate ERM pilot program, and he was aware of the benefits the approach provided.

"When I took over the chair, we had just finished compiling the Risk Register but hadn't defined a process to refine and report on it," Mr. Florizone said. "We needed to determine ways to govern this thing, to make sure it added value and met the requirements of the board and senior management."

A decision was reached to have the steering committee meet each quarter to review and report progress on the top 10 risks, in addition to citing any new risks or other significant developments that had developed in the interim. Every two years, the Risk Register is reviewed and a new risk might push one of the previous top 10 off the list.

"ERM here is a story of continuous development," Mr. Florizone said. "It's not like designing a building and then you build it and you're done. We have a process that keeps the Risk Register alive and accurate."

Key benefits

The process calls for reporting to the full board of governors each year. Susan Milburn, vice chair of the board of governors, lauds the methodology for assessing risk probability and impact.

greater risk of fraud by individuals who had failed to use their accumulated vacation time.

"The audit group dug into the vacation data to see if it represented an added risk to the university," Ms. Milburn said. "The important thing from the board's perspective is to have a focus on enterprise risk management without being paranoid about what is going on in the organization. We're always trying to find the balance between understanding what the risks are and not overreacting to them."

Mr. Florizone cited two key benefits of the ERM program: "One is that it creates a reasonable consensus around what the serious risks are to the institution and the momentum toward addressing these risks. For example, during the economic downturn, the approach we took wouldn't have been as effective had we not had the ERM methodology and way of thinking to flag the issues. We did scenario testing of things like the price of oil rising and the risks it presented. We did other scenario tests of economic factors like interest rates and their impact on our pension funds. This helped steer us strategically through the downturn."

The other key benefit is that senior management and the board now have a tool to consider and address the top risks to the institution.

"If there is a criticism of our program, it is that it doesn't go deep enough," Mr. Florizone said. "I'm not sure how to resolve this—I guess we could ask each manager to provide a risk mitigation plan in his or her area. But, there is a risk to this. If you go too deep in risk mitigation, it will bump into strategic planning. That's why for the time being we want to keep this a high-level strategic tool."

Ms. Milburn agreed to a point. "We could go a bit deeper into the risk mitigation side of things, not just identify the risks but make the mitigation efforts more robust. Possibly this is the next step."

Deloitte's Ms. O'Brien said the university might consider "having ongoing risk registers within each department and unit of the university. But, senior management, the board of governors and the audit committee are very comfortable with the approach taken to date, and are confident the Risk Register is providing a comprehensive view of key risks."

The ERM project has made good on its initial intent.

"Our focus was to provide a regular and explicit dialogue about our most important risks so management has the opportunity to understand these risks and make their part of their planning considerations," Mr. Seaman said. "This has fostered a number of projects to manage the key risks, from the fraud risk assessment to our actions with regard to the recent financial crisis to a health, safety and environmental management system that is still under development."

"We've got a real risk management thought process now," Mr. Seaman said.

"I had seen ERM at work within the corporate sector and felt comfortable with the way in which the major risks were identified and analyzed," Ms. Milburn said. "A couple times we asked the steering committee to provide an additional report on a particular risk so we could get a better understanding of this risk and related actions. In one case, it led to tasking our internal audit committee to undertake a project on employee fraud and embezzlement."

The committee discerned a

More study to add 'E' to ARM designation

Risk managers gain extra qualification through new course

By MARK A. HOFMANN

MALVERN, Pa.—The study and implementation of enterprise risk management is getting a boost from a relatively new educational program.

Risk managers and others are seeking to add an "E," for enterprise risk management, to the associate in risk management designation earned by those who successfully complete courses developed by the Malvern, Pa.-based Institutes, the recently adopted operating name of the Insurance Institute of America and the American Institute for Chartered Property Casualty Underwriters.

Those wishing to earn the ARM-E designation must complete a specific ERM course developed by the Institutes and the New York-

more members taking on the mantle of enterprise risk management," said Carol Fox, director of RIMS' strategic and enterprise risk practice. She said the ARM program focused on traditional risk management, which was good, but "there was a need to expand that body of knowledge to embrace ERM."

See **ARME** next page



'We're seeing more and more members taking on the mantle of enterprise risk management.'

Carol Fox, Risk & Insurance Management Society Inc.

based Risk & Insurance Management Society Inc.

Christopher Ketcham, senior director-knowledge resources at the Institutes, said RIMS approached the institutes a few years ago and said, "ERM is getting to the point that we really need to get it out to the world." RIMS then worked with the educational organization to develop the content, which was "heavily vetted by enterprise risk management professionals," he said.

Editing the material turned out to be "a wonderful collaborative process and I think it made the overall course better because it was tinged with reality and not just theory," Mr. Ketcham said.

RIMS' decision to approach the Institutes with the ARM-E idea "was a reflection of our membership, that we're seeing more and

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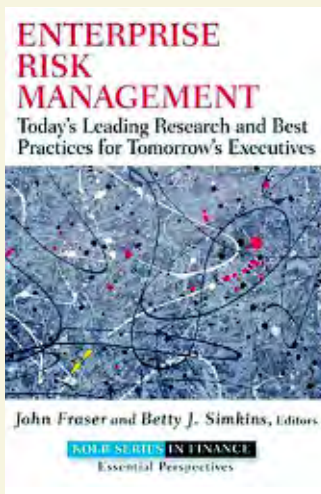
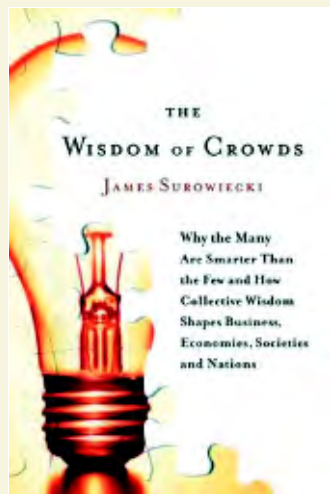
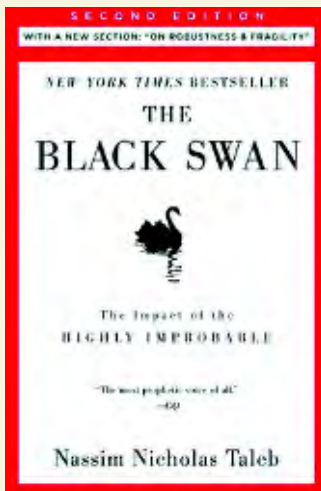
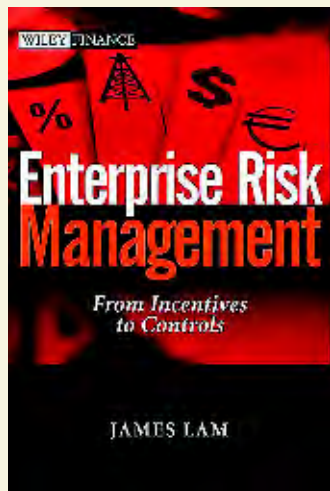
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The Risk & Insurance Management Society Inc. recommends many books in the study of enterprise risk management.

Reading up on enterprise risks

Below are some books recommended by members of the Risk & Insurance Management Society Inc.'s ERM Committee, listed by category, with publisher and list price.

ERM

- "Enterprise Risk Management: From Incentives to Controls," by James Lam, John Wiley & Sons Inc., \$90.
- "Enterprise Risk Management for Dummies," by Beaumont Vance and Joanna Makomaski, John Wiley & Sons Inc., available through the RIMS Bookstore, \$5 for RIMS members, \$8 for nonmembers.
- "Enterprise Risk Management: Today's Leading Research and Best Practices for Tomorrow's Executives," edited by John Fraser and Betty Simkins, John Wiley & Sons Inc., \$100.
- "Enterprise-wide Risk Management: Developing and Implementing," edited by Jean-Paul Louisot and Christopher Ketcham, the Institutes, \$190.
- "Risk Intelligence: Learning to Manage What We Don't Know," by David Apgar, Harvard Business School Publishing, \$29.95.
- "Simple Tools and Techniques for Enterprise Risk Management," by Robert J. Chapman, John Wiley & Sons Inc., \$125.
- "Surviving and Thriving in Uncertainty: Creating the Risk Intel-

ligent Enterprise," by Frederick Funston and Stephen Wagner, John Wiley & Sons Inc., \$34.95.

Strategic Risk Management

- "The Art of the Long View: Planning for the Future in an Uncertain World," by Peter Schwartz, Doubleday Publishing Group, \$17.95.
- "The Black Swan: Second Edition: The Impact of the Highly Improbable" with a new section On Robustness and Fragility, by Nassim Nicholas Taleb, Random House Inc., \$17.
- "The Upside: The 7 Strategies for Turning Big Threats into Growth Breakthroughs," by Adrian J. Slywotzky and Karl Weber, Crown Business, \$27.50.

Quantification

- "Risk Quantification: Management, Diagnosis and Hedging," by Jean-Paul Louisot, Laurent Condamine and Patrick Naim, John Wiley & Sons Inc., \$90.
- "The Flaw of Averages: Why We Underestimate Risk in the Face of Uncertainty," by Sam L. Savage and Jeff Danziger, John Wiley & Sons Inc., \$27.95.
- "The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies and Nations," by James Surowiecki, Anchor Books, \$15.

ARME: More seek to add 'enterprise'

CONTINUED FROM PREVIOUS PAGE

She noted that RIMS conducted an ERM summit seven years ago, which led to establishing an ERM task force that then opened the way to setting up an ERM committee at RIMS.

"One of the problems we face in this whole industry is we can't even define risk," said Mr. Ketcham. "Instead of defining ERM, what we are looking at is grafting risk management onto strategic decision-making."

"It's still risk management, but you're just considering it in a different way," he said.

Mr. Ketcham pointed out that while only about 50 people have added the new designation since the program was launched at the end of 2009, more than 1,000 have ordered the textbook. He said he was "excited about the fact that this is a real tool for people—not just to get some professional bling. We're bringing actual business capital to organizations."

One of the first graduates to receive the ERM designation is Richard Roberts, corporate risk manager of Ensign-Bickford Industries Inc., a Simsbury, Conn.-based manufacturer and a member of the RIMS board of directors.

Mr. Roberts held the enterprise risk management portfolio on the board. At the annual "ERM Summit" in 2009, he happened to be sitting next to one of the course's authors and thought the program would be valuable to him. Because he already had the ARM designation, "all I had to do was pass the exam to get the 'E' part of the designation."

Mr. Ketcham said the program's textbook, "Enterprise-wide Risk Management: Developing and

'One thing RIMS was looking at is even if you don't implement an ERM program, the concepts in this course are great.'

Richard Roberts, Ensign-Bickford Industries Inc.

Implementing," is organized around the ERM process. "We thought it would be important to take the people through the different steps," he said.

The text consists of 15 chapters, ranging from a discussion of the advantages of ERM to a comprehensive case study. "It built upon the ARM coursework. At least eight of the chapters are really specific to enterprise risk," said Mr. Roberts. Included are checklists and different processes "you could try to implement within your company," he said.

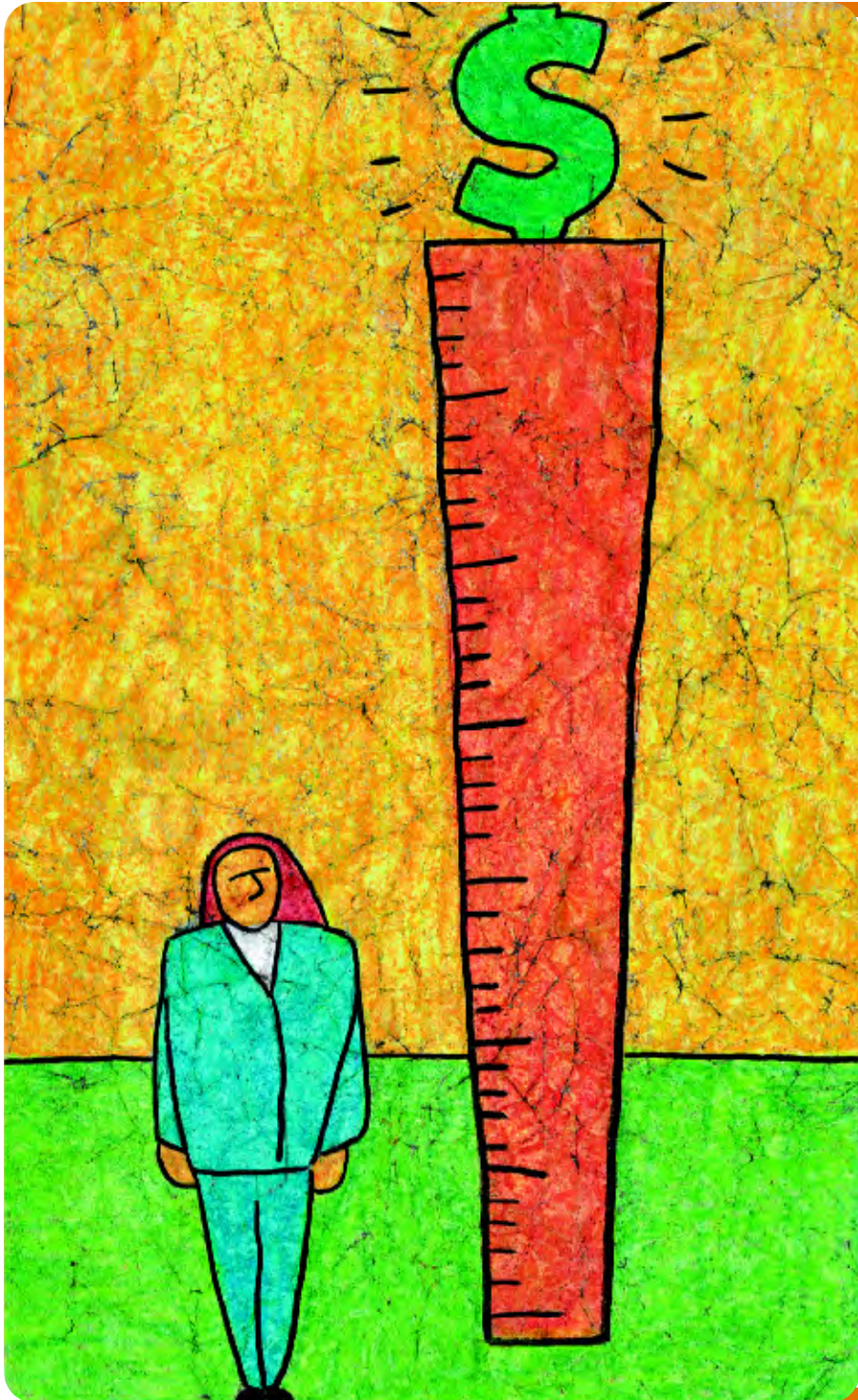
The final three chapters are designed to help risk managers make the case for ERM, said Mr. Ketcham. In fact, "kind of the uber objective is we want them to make the business case in their organization."

According to the program, making a business case for ERM requires answering six questions:

- Why does the organization need ERM?
- What resources must be committed to ERM?
- How will the success of the ERM program be measured?
- Who will be in charge of the ERM program?
- What could 'go wrong with' or derail the ERM program?
- Why might an organization not want to implement an ERM program?

"It provides a practitioner with a designation they have studied ERM and have a tool set they can utilize to focus on creating and protecting value within the organization," said RIMS' Ms. Fox. "It also gives them the background necessary to be able to articulate that value."

"One thing RIMS was looking at is even if you don't implement an ERM program, the concepts in this course are great," said Mr. Roberts. "It is good for risk managers; it would be a good course for operations folks, finance folks just to understand all the concepts behind ERM."



How to show executives that ERM adds value

Rating agency scoring, industry-specific goals support strategic plan

By MIKE TSIKOUKAKIS

Enterprise risk management is gaining ground with senior management of organizations as risk managers and ERM champions establish ways to measure its value.

“Historically with any sort of risk management, there’s always been a fundamental issue about proving the value of it. How do you prove the value of something not happening?” said Steve Saporito, managing partner of the enterprise and risk finance practice of Willis Group Holdings P.L.C. in Boston. “ERM is no different.”

In recent years, senior management has gained a better understanding of the importance of an ERM process with a committed budget and resources, observers say. The question has shifted to how to implement the programs to create overall organizational value.

ERM leaders who experience less resistance when pushing their programs before boards of directors and C-suite executives point to credit worthiness, key company metrics and complete organizational alignment, among others, as ERM value, experts say.

The inclusion of ERM in rating agencies’ analysis of publicly traded companies, led by Standard & Poor’s Corp., is a “discernible value” that has nudged organizations to at least consider ERM practices, said Mr. Saporito.

S&P has used ERM in financial institution ratings since 2005 and extended its ERM criteria to include how com-

‘Historically with any sort of risk management, there’s always been a fundamental issue about proving the value of it. How do you prove the value of something not happening? ERM is no different.’

Steve Saporito, Willis Group Holdings P.L.C.

mitted a company is to ERM.

Matt Hansen, director of risk management for the City and County of San Francisco, said despite differences in making ERM evaluations, creditworthiness is “quite a motivator.”

“The bond rating agencies and the credit rating agencies, specifically Standard & Poor’s, are starting to look at

See **VALUE** next page

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Origami Risk L.L.C.	Origami Risk
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SAS Institute Inc.	SAS Risk Management for Insurance, SAS Enterprise GRC
Strategic Thought Inc.	N/A
Zurich North America	Zurich Velocity ERM

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Source: BI survey
 Researched by Kevin Edison

Value: How to show executives that ERM programs add value

CONTINUED FROM PREVIOUS PAGE

ERM initiatives to evaluate the credit strength of a public agency," Mr. Hansen said.

In some cases, he said, there are footnotes in an organization's credit ratings report denoting that part of their strength and financial position is due to their ERM program.

"In going before the (chief financial officers) and other decisionmakers here in our organization, we specifically talk about the potential effect of the program on creditworthiness," Mr. Hansen said.

Other rating agencies could not be reached for comment.

Examining ERM activities in relation to key measurements and metrics of the business, such as reduced capital costs and improved investment returns, is another approach to gauging ERM's value, experts say.

Incrementally, "you should see hedging insurance costs, litigation costs go down; you should see a discernable improvement in reduction in uncovered losses and certainly, over time, you should see volatility reduce" by having an ERM program, said S&P's Mr. Saporito.

At the YMCA of Greater Toronto, Vp of Risk Intelligence Monica Merrifield said she sees increasing progress in the organization's ERM program, which has been in place since 2004, as target risks fall off their list of the top five risks and insurance costs decrease.

The Toronto-based nonprofit checks the status of its risks and opportunities quarterly to make certain that mitigation efforts are on target.

"Every year when we sit down and meet...with our senior underwriters on the YMCA account, we are consistently delighted to be treated as best in class," typically getting rates that are lower than the overall market, she said. "We're happy to continue to report cost containment in that area."

Part of the value equation of ERM is developing the right information and getting it to the appropriate people, allowing them to make "good risk-based decisions," said Laura Champion, director of global risk consulting, enterprise risk management at Aon Risk Solutions in Atlanta.

Ms. Champion said ERM can be evaluated by the progress of an organization's risk burden as time progresses; efficient use of risk management processes, which can free resources by closing gaps and eliminating redundancies; and aligning various units' goals throughout the company.

ERM champion Phoenix Park Gas Processors Ltd. in Port of Spain, Trinidad, with whom Ms. Champion works, said ERM allows the natural gas processing company to understand risks associated with its business and then manage those risks by reaching target goals.

"It is extremely critical to have everyone see their job on a day-in, day-out basis as managing risks. That is, from my perspective, where value is created," said Eugene Tiah, president of Phoenix Park in Port of Spain.

"At the beginning of the year, we set targets," Mr. Tiah said. "The primary means of delivering on those targets are through understanding all of the risks associated with the activity and through the robustness of the risk-mitigating measures that we have in place. The shareholders see the value in met targets, or exceeded targets, on a consistent basis."

Measurable value is not the only component of ERM. Other pieces include compliance and good corporate processes, said Mathew Allen, managing director and global practice leader of enterprise risk services and solutions at Marsh Risk Consulting in New York.

"Value is to some extent in the eyes of the beholder within the organization and it goes well outside just saying there's (a return on investment) or a hard number that we have to produce to include a lot of other subjective criteria or end results," he said.

The 2002 Sarbanes-Oxley Act, along with Securities and Exchange Commission risk disclosure requirements that went into effect last year, have made regulatory compliance a main concern for organizations.

Although regulatory compliance often is a component of an ERM program, it's not always possible to put a dollar value on it.

"(The) calculator doesn't give you the value here. Compliance...is golden right now. You can't run the risk of not being in compliance," Mr. Allen said.

As an organization's ERM program matures, the goal is to educate and inform senior management about risks and move beyond merely avoiding risk.

"Start thinking about risk in the context of risk we want to take...and then managing it accordingly," Ms. Champion said.

Ms. Merrifield said the YMCA of Greater Toronto each year is able to "dig deeper" to understand the nonprofit's risks, fulfilling the next step in its risk strategy.

"We're now looking at linking our risk strategy with strategic planning, she said. "There is value in progress that is demonstrated just in how we are advancing through our risk strategy."



'The shareholders see the value in met targets, or exceeded targets, on a consistent basis.'

Eugene Tiah,
Phoenix Park Gas Processors Ltd.

Market Moves

Financial services firm bolsters analytics, ERM

VANCOUVER, British Columbia—Financial services company Markit Group Ltd. has acquired a Vancouver, British Columbia-based risk analytics firm to expand its services.

The acquisition of QuIC Financial Technologies Inc., for which terms were not disclosed, aims to expand London-based Markit's risk analytics and enterprise risk management services, Markit said in a statement.

Founded in 1998, QuIC provides risk management services for financial institutions.

Markit said it will combine its financial data and valuation tools with QuIC's risk analytics expertise to offer risk-related services across different platforms.

"The field of risk analytics continues to grow at an accelerated pace and presents some very interesting opportunities for Markit," particularly ERM, Lance Uggl, CEO of Markit, said in the statement.

As part of the agreement, QuIC's 150 employees will join Markit's valuations and analytics services unit, led by Executive Vp Sal Naro.

The branding of QuIC is yet to be determined, a spokesman for Markit said.

Anderson Kill & Olick opens office in Northeast

STAMFORD, Conn.—Anderson Kill & Olick P.C. has opened a new office to expand its services in the Northeast.

The Stamford, Conn., location extends the law firm's presence in the Northeast and "its ability to represent policyholders on the insurance industry's home turf," New York-based Anderson Kill & Olick said in a statement.

The Stamford office is headed by Charles T. Lee, a partner and Connecticut practice group leader who focuses on commercial litigation and insurance recovery on behalf of corporate policyholders. He joined the law firm in September from McCarter & English L.L.P., where he was partner.

"We see tremendous opportunity in Connecticut, particularly on the insurance recovery front, where law firms have largely left the field to the insurance industry," Mr. Lee said in the statement.

The office is at 1055 Washington Blvd., Suite 510, Stamford, Conn., 06901.

The telephone number is 203-388-7950.

Assurex Global network adds Asia-Pacific brokers

BEIJING and SEOUL—Insurance brokerage network Assurex Global said it has added two brokerage firms in the Asia-Pacific market to

its network.

Continental Insurance Brokers Ltd. and Daewoo INS Korea Corp. have joined Assurex's independent brokerage network, strengthening its presence in the Asia-Pacific region, Columbus, Ohio-based Assurex said in a statement.

"We continue to expand our presence throughout the important Asia-Pacific region...to provide even greater local expertise to clients with exposures in this part of the world," John Rodwell, vp of international business development for Assurex, said in the statement.

Established in 2003 with the approval of the China Insurance Regulatory Commission, Beijing-based CIB specializes in energy, marine, aviation and space, and wind power coverage, among others.

Daewoo INS Korea, formed in 1999, is headquartered in Seoul and focuses on marine and aviation, property and treaty, and engineering coverage, among others.

The Assurex Global network includes 107 agencies or brokerages with \$28 billion in annual premium volume in 2009, Assurex said.

NCA Group expands with adjuster acquisition

KANSAS CITY, Mo.—National Catastrophe Adjusters Inc., which does business as NCA Group Inc., has acquired Newsam Harp Inc. for an undisclosed amount.

The acquisition of Kansas City, Mo.-based Newsam Harp, which does business as NHI General Adjusters, will expand NCA Group's loss-adjusting and claims management services, the Indianapolis-based third-party administrator said in a statement.

The deal comes after NCA's recent acquisition of insurance adjusting firm T.M. Mayfield & Co. and "represents a continuation of our strategy to align with companies that will enable NCA to serve all of the property loss-adjusting needs of insurance carriers throughout North America," Jim Pearl, president and chief operating officer of NCA, said in the statement.

NCA said the acquisition will enhance its large commercial business loss-adjusting services and claims operations in the Midwest.

NHI General Adjusters, which was founded in 1984, will continue to operate under its name at its current locations, according to the statement.

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Retiree reimbursement program grows

By JERRY GEISEL

WASHINGTON—The Department of Health and Human Services has approved applications of more than 5,000 organizations to receive partial reimbursement of health care expenses of early retirees and their dependents, an HHS official said last week.

The Early Retiree Reinsurance Program, established as part of last year's health care reform law, is certain to grow. In all, 6,500 early retiree health care plan sponsors have filed applications to participate in the program, said Richard Popper, director of

insurance programs at the Office of Consumer Information and Insurance Oversight, a unit of HHS.

Under the program, the government will reimburse employers and other sponsors of early retiree health care plans for a portion of claims incurred starting June 1, 2010, by retirees who are at least 55 but not eligible for Medicare, as well as their covered dependents regardless of age.

After a participant incurs \$15,000 in health care claims in a plan year, the government will reimburse plan sponsors for 80%

of an enrollee's claims up to \$90,000. In general, the reimbursement must be used to reduce employers' and/or retirees' health care costs.

Congress appropriated \$5 billion for the program, which was seen as a way to encourage employers to continue their early retiree health care plans until at least 2014, when subsidized coverage for the uninsured will be available through newly established state insurance exchanges.

As of the end of last year, the government already had distributed \$1 billion in reimbursement to approved applicants.

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LEGAL NOTICE

IN THE MATTER OF THE LIQUIDATION OF ADIRONDACK INSURANCE COMPANY OF NEW YORK, BENSON & JAMES INSURANCE COMPANY INC., DENALI CASUALTY COMPANY, DENALI NATIONAL SURETY COMPANY, E TITLE INSURANCE, INC., OLD TOWER INSURANCE COMPANY, PMI MORTGAGE INSURANCE CO. OF NY AND WESTMINSTER NATIONAL INSURANCE CORPORATION

Supreme Court County of New York, Index No.: 400850/10

NOTICE

The Superintendent of Insurance of the State of New York, has been appointed by an order of the Supreme Court of the State of New York, County of New York (the "Court"), entered June 10, 2010 (the "Liquidation Order"), as the liquidator (the "Liquidator") of Adirondack Insurance Company of New York, Benson & James Insurance Company Inc., Denali Casualty Company, Denali National Surety Company, E Title Insurance, Inc., Old Tower Insurance Company, PMI Mortgage Insurance Co. of NY and Westminster National Insurance Corporation (collectively, the "Companies") and, as such, has been directed to take possession of the Companies' property and liquidate the Companies' business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has, pursuant to Insurance Law Article 74, appointed Dennis J. Hayes Special Deputy Superintendent ("Special Deputy"), as his agent to liquidate the business of Companies. The Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038-3889. The Liquidator has submitted to the Court a verified petition (the "Verified Petition") seeking an order that: (i) approves the Liquidator's first and final report on the status of the Companies' liquidation proceeding (the "First and Final Report"); (ii) authorizes and directs the Liquidator to destroy or otherwise dispose of any and all of the books, files, records and other property of the Companies without further order of this Court; (iii) releases and discharges the Liquidator, his predecessors and successors in office, their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with this proceeding; and (iv) terminates and closes this proceeding.

A hearing is scheduled on the Verified Petition on the 23 day of February, 2011, at 9:30 a.m., before the Court at the Courthouse, IAS Part 46, 71 Thomas Street, in the County, City and State of New York. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least 15 business days prior to the hearing. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Insurance of the State of New York as Liquidator of Adirondack Insurance Company of New York, Benson & James Insurance Company Inc., Denali Casualty Company, Denali National Surety Company, E Title Insurance, Inc., Old Tower Insurance Company, PMI Mortgage Insurance Co. of NY and Westminster National Insurance Corporation
 110 William Street, New York, New York 10038
 Attention: John Pearson Kelly, Esq., General Counsel

The Verified Petition and First and Final Report are available for inspection at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor Claims Department at (212) 341-6809.

Dated: January 19, 2011

Superintendent of Insurance of the State of New York as Liquidator Adirondack Insurance Company of New York, Benson & James Insurance Company Inc., Denali Casualty Company, Denali National Surety Company, E Title Insurance, Inc., Old Tower Insurance Company, PMI Mortgage Insurance Co. of NY and Westminster National Insurance Corporation.

REQUEST FOR PROPOSAL

NEW YORK CITY HOUSING AUTHORITY

PUBLIC NOTICE-REQUEST FOR PROPOSALS (RFP) for Analysis of NYCHA's Housing Choice Voucher

The New York City Housing Authority (the "Authority") requests proposals from qualified business entities to perform an analysis of its Section 8 Housing Choice Voucher Program and to present recommendations for improvements to the Section 8 Program.

Proposals must be submitted in the format outlined in the RFP solicitation document containing instructions, specifications and detailed submission requirements.

The release date of RFP number 27783 is February 7, 2011. Completed proposals must be received by 4:00 PM on March 9, 2011.

Interested firms may obtain a copy on NYCHA's website: Doing Business With NYCHA. <http://www.nyc.gov/nychabusines>; Vendors are instructed to access the "Register Here" link for "New Vendors"; if you have supplied goods or services to NYCHA in the past and you have your log-in credentials, click the "Log into iSupplier" link under "Existing Vendor". If you do not have your log-in credentials, click the "Request a Log-in ID" using the link under "Existing Vendor". Upon access, reference RFP number 27783.

Proposers electing to obtain a non-electronic paper document will be subject to a \$25 non-refundable fee; payable to NYCHA by USPS-Money Order/ Certified Check only for each set of RFP documents requested. Remit payment to NYCHA Finance Department @ 90 Church Street/6th Floor; obtain receipt and present it to 12th Floor/ General Services Procurement Group. A RFP package will be generated at time of request.

All inquiries concerning the scope of work for this RFP are to be directed in writing to NYCHA's Coordinator: Janet Wilson, General Services Department, 90 Church Street, New York, NY 10007-2919 or e-mail to Janet.Wilson@nycha.nyc.gov, no later than 4:00 PM on February 22, 2011.

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Contact Monique Murray at 212-210-0129

UP Comings & Goings CLOSE



JOE GALUSHA

NEW JOB TITLE: Detroit-based U.S. leader of casualty risk consulting for Aon Risk Solutions, a unit of Aon Corp.

PREVIOUS POSITION: Detroit-based global risk leader of central partnership for Marsh Inc.

GOALS FOR NEW POSITION: The ultimate goal is to work with what I consider the outstanding loss-control and claims talent that exists here at Aon, providing value and innovation to our clients.

FIRST MARKET EXPERIENCE: My first job was as an intern at General Motors in Kentucky as a safety engineer. At the time I was excited about being exposed to heavy industry and manufacturing, which is what brought me to Detroit. We were involved in some advanced safety techniques, the application of robotics and certain paints—things that at the time were just coming onto the scene and had some unique safety challenges.

ADVICE: You need to understand

your client's business and advise, don't sell.

WHAT DID YOU WANTED TO BE GROWING UP: I wanted to be my dad. I had a father that was hard-working and honest, and understood the definition of a father.

OUTSIDE THE INDUSTRY, A DREAM JOB: I have always wanted to be involved in search and rescue. I have volunteered during periods of my life. I am an avid outdoorsman and it would be great to use what I have learned to help others.

HOBBIES: My job is pretty demanding, but when I can get away, I enjoy fly-fishing with my friends in different parts of the world.

FAVORITE BOOK: "Blink: The Power of Thinking Without Thinking." I like anything by Malcolm Gladwell.

ON A SATURDAY AFTERNOON: In the middle of winter here in Michigan, I enjoy getting a movie and sitting at home with the family. It's a great way to unwind.

Comings & Goings ONLINE

VISIT www.businessinsurance.com/ComingsandGoings for a full list of this week's personnel moves and promotions. Check our Web site daily for additional postings and sign up for the weekly e-mail.

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Spill: Pressure builds on energy firms after giant spill

CONTINUED FROM PAGE 3

regulations, failure to report an incident, or refusing to cooperate with remediation activities, the commission's report said.

Energy companies say significantly increasing liability and adopting the report's other recommendations would restrict drilling operations and make insurance scarce to the point that all but the largest oil companies would be unable to afford the cost of operating in the Gulf of Mexico.

If implemented, the changes recommended in the report "will make it so tough to operate that we will see a decline in the Gulf of Mexico drilling industry," said Don Briggs, president of the Louisiana Oil & Gas Assn. in Baton Rouge, La. "It truly will drive some companies out."

Lee Hunt, president of the Houston-based International Assn. of Drilling Contractors, said the commission's suggestion that "only systemic reforms of both government and industry" will prevent a repeat of the Deepwater Horizon disaster is unfounded.

While there was "very poor judgment" shown in some decisions that led to the Deepwater Horizon incident, the causes "were not systemic to the industry or the other rigs (that were) working that day," Mr. Hunt said.

Mr. Briggs agreed. "They did a study on one incident" but applied their findings across the entire oil industry. "That, I really felt, was wrong," he said.

Some drilling procedures need to be re-examined, but the failure to properly manage the risk of an accident on the Deepwater Horizon "doesn't mean that's the policy of the entire industry," Mr. Briggs said.

OIL SPILL PANEL'S PLAN

The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling recommends dozens of safety and regulatory changes in its report released this month. Key proposals said:

- Congress should establish an independent safety agency within the Department of the Interior to oversee all aspects of offshore drilling safety.
- Drillers operating in the Gulf of Mexico should adopt an approach similar to that used in the North Sea, in which drilling companies demonstrate that they have evaluated all risks for each well.
- The oil and gas industry should move toward developing safety as a collective responsibility, partly by establishing a safety institute similar to those in the nuclear power and other high-risk industries.
- The liability cap under the Oil Pollution Act should be increased significantly from \$75 million, but no amount was suggested.
- The oil and gas industry should consider forming a mutual insurer if commercial market insurers restrict coverage because of increased liability.
- The industry should create and maintain readily deployable resources to respond to blowouts, rescue workers and contain spills caused by blowouts.
- The president should seek much greater funding for regulatory agencies that oversee oil spill response and planning, including the Interior Department, U.S. Coast Guard and National Oceanic and Atmospheric Administration.

The commission recommends that Congress establish an independent safety agency within the Department of the Interior to oversee offshore drilling and renewable energy projects. The agency would be involved in project planning, design, construction, operating and decommissioning offshore drilling projects.

The commission also said a safety institute modeled after one already in place for the nuclear power industry should be set up to develop standards of excellence that would "ensure continuous improvement in safety and operational integrity offshore."

"The nuclear model has worked well in the U.S.," said Mr. Hunt,

"but the commission knows it has not worked well internationally. We are a global organization. This would put us out of sync with regulations elsewhere. It would be Gulf of Mexico-specific and would not contribute to global safety," while costing a lot of money to develop, he said.

If the \$75 million liability cap were increased significantly or eliminated, such a move could drive up insurance costs and restrict coverage, some sources said. If that happened, the report suggests the energy industry consider forming a mutual insurer to provide additional capacity.

"This is a critical issue," said Mr. Hunt. "Obviously rates will go up"

if the cap is raised "and maybe insurance wouldn't be available." If that happens, some companies, particularly smaller independents, are likely to find it too expensive and risky to do business in the Gulf.

"You will see companies re-deploying their rigs to other markets," Mr. Hunt said.

"We don't disagree that it needs to be changed," Mr. Briggs said of the liability cap. "But it has to be something reasonable. If it's in the billions," companies will simply say, "we're outta here," he said.

However, Andrew Steptowe, upstream energy practice leader at Marsh Inc. in Houston, said raising or eliminating the liability cap isn't likely to have a major impact on the insurance market because oil pollution cleanup costs are not among the damages that are under the \$75 million cap.

"There are six specific areas limited to \$75 million," Mr. Steptowe said. "So I don't think we will see a massive change."

The six areas subject to the \$75 million cap are damage to natural resources, subsistence use, revenues, profits, earning capacity and public services.

Removing the cap "obviously is significant but may not be in itself a game changer in respect of insurance," said Bertil Olsson, Marsh's Houston-based U.S. energy practice leader.

Regardless of the implications of the commission's recommendations, "the insurance industry will respond," said Mr. Olsson. "However, it is pretty clear that the more insurance that is needed, the more expensive it's going to get."

Formation of an energy industry mutual might not draw a lot of interest, Mr. Steptowe said.

Small to medium-size deepwater drillers might need additional

capacity, but shallow-water companies probably won't want to participate in a mutual that shares risks with deepwater operations that have much different exposures, Mr. Steptowe said.

As for the large deepwater drillers, most self-insure the bulk of their exposures and likely would have little use for a new insurer, he said.

Insurance brokers Willis Group Holdings P.L.C. and Aon Corp. declined to comment.

Oil Insurance Ltd., the Hamilton, Bermuda-based energy mutual that provides oil pollution liability coverage to its members, would welcome another mutual in the marketplace, said George F. Hutchings, the insurer's senior vp and chief operating officer.

"We would wholeheartedly support any mutual" formed to provide additional capacity, Mr. Hutchings said. But for it to be successful, there would need to be commercial market involvement in some fashion, he said.

OIL offers up to \$250 million in per occurrence oil pollution limits to its members. If the liability cap is significantly increased for drillers, it will require more capacity than is available in the marketplace, Mr. Hutchings said.

As for whether the commission's report will result in safer offshore drilling, Mr. Hunt said drillers see no need for most of the recommendations.

"It is based on a false premise," he said of the report's conclusion that systemic problems caused the Deepwater Horizon disaster, and its recommendations are not very different from what energy companies already have in place.

"Overall, I believe risk management is very good," Mr. Briggs said. Hundreds of wells have been safely drilled in deep water in the Gulf of Mexico, "then one disaster throws everybody under the bus."

Med mal: Obama open to medical liability changes

CONTINUED FROM PAGE 3

president of the U.S. Chamber Institute for Legal Reform in Washington.

"We wholeheartedly support President Obama's call for meaningful medical malpractice reform," Ms. Rickard said in a statement. "The president's support for reform dovetails with efforts by many in Congress."

But Victor Schwartz, general counsel of the American Tort Reform Assn. in Washington, was more skeptical. He noted that the recently introduced Help Efficient, Accessible, Low-Cost, Timely Healthcare Act of 2011—H.R. 5—does not mention sanctioning frivolous lawsuits. The measure instead focuses on "substantive" reforms such as capping noneconomic and punitive damages, he said (see box, page 3).

It is "rare or unusual" for a plaintiff lawyer to bring a frivolous malpractice suit because they are too expensive to bring, said Mr. Schwartz. "Frivolous"

claims tend to be made against small businesses as an effort to leverage a settlement rather than in medical malpractice cases, he said.

"The president has been openly opposed to caps on noneconomic damages," said Lawrence Smarr, president of the Physician Insurers Assn. of America, a Rockville, Md.-based trade group representing medical professional liability insurance companies owned by health care professionals or institutions. "We'll now have to see, since he came out with such a strong statement, where he's going now," he said.

A consumer advocate criticized the president's comments for the message they send to victims of medical malpractice.

"There are very rarely frivolous lawsuits," said Joanne Doroshow, executive director of the Center for Justice & Democracy in New York. By using such language regarding medical malpractice, the president "really upset medical malpractice victims whose lives have been dev-

astated and who seek justice in the court," she said.

"Medical malpractice errors are an enormous problem in this country and I think everyone would agree that the best way to reduce injuries and deaths and claims and lawsuits is to make hos-

'I think everyone would agree that the best way to reduce injuries and deaths and claims and lawsuits is to make hospitals safer.'

Joanne Doroshow, Center for Justice & Democracy

pitals safer," Ms. Doroshow said.

Meanwhile, a bipartisan group of congressmen introduced the bill that takes a quite different approach to medical malpractice issues.

Instead of targeting frivolous lawsuits, H.R. 5 would cap punitive damages, where permitted, at \$250,000 or twice the economic

damages in medical malpractice awards, whichever is greater. Noneconomic damages would be capped at \$250,000.

The measure also would limit attorney contingent fees in medical malpractice cases, on a sliding scale, to a maximum of 40% on

the first \$50,000 to 15% on awards of more than \$600,000.

But proponents and opponents of medical malpractice liability reform say the measure is unlikely to become law.

"We think it will pass the House, but when we get to the Senate it's very likely we'll have the same issues we had before due

to the Democrats not voting for tort reform," said the PIAA's Mr. Smarr. Nevertheless, he does not consider the bill "an exercise in futility." Instead, he said the measure "clearly demonstrates" the House leadership's commitment to reform.

AIA supports the legislation, said Ms. Shelk. "This has been the template we've supported in states," she said, adding that "we'll work to get it through the House. We're going to certainly face a tough road in the Senate."

Even when Republicans controlled both houses of Congress, proposals capping damages garnered insufficient votes in the Senate, Mr. Schwartz said.

"It's extremely difficult to get caps through the Senate," he said, adding that it also would be very difficult to integrate federal caps with existing state caps.

Ms. Doroshow agreed that the measure has no future in the Senate.

"From what I can gather, the Senate has no real interest in doing anything like that," she said. "It may pass the House, but I don't see it going anywhere in its current form in the Senate."

Comp: States may bar pay for some

CONTINUED FROM PAGE 1

collecting workers comp benefits are pending in Georgia, Montana, New Hampshire and South Carolina.

There is growing demand from legislators and their staff for information on barring illegal immigrants from collecting workers comp benefits, said Ann Morse, program director, immigrant policy project for the bipartisan National Conference of State Legislatures in Washington.

"It seems to be making a resurgence this year," Ms. Morse said. "It just seems like it's heating up right now."

In the absence of federal immigration reform, state legislators will continue to step forward with local solutions, said a NCSL report released Jan. 13. NCSL found that in 2010, 46 state legislatures and the District of Columbia enacted or adopted 333 laws or resolutions addressing immigration.

Previous efforts to bar illegal immigrants from collecting workers compensation have failed in part because of objections to their unintended consequences for employers, observers say. For example, such a change would deprive employers of workers compensation's exclusive remedy protection, exposing employers to civil litigation over worker injuries.

"Most legislators (eventually) realize they are shooting themselves in the foot if they enact this kind of legislation," said Rebecca Smith, a staff attorney who tracks workers compensation legislation affecting immigrants for the New York-based National Employment Law Project, a worker support organization.

But recently introduced bills that would restrict providing workers comp benefits to illegal immigrants have a greater chance of passing than in the past because of increased political support, said Keith Bateman, vp of workers compensation at the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America.

"With the increased strength of the very conservative wing of the Republican party, the chances are better this year," Mr. Bateman said.

In Montana, where systemwide workers comp reform efforts are under way, legislators on Jan. 19 approved H.B. 71 by a 69-31 vote. The bill, sponsored by Rep. Gordon Vance, R-Bozeman, now must be considered by the state Senate.

The bill would require insurers to establish processes to ensure that wage-loss or medical benefits for work-related injuries would not be paid to illegal immigrants, according to a state fiscal note. The bill does not specify potential responsibilities for self-insured employers, and Rep. Vance did not return a call seeking comment.

In South Carolina, meanwhile,

WORKERS COMP LEGISLATION

State lawmakers have proposed legislation to limit or eliminate workers compensation benefits for illegal immigrants. In recent years, legislators in several states introduced bills that would have banned providing illegal immigrants with workers comp benefits, but the bills were not adopted into law. Those states include Arizona, Colorado, Maryland, Mississippi, New Jersey, Ohio and South Carolina, according to the New York-based National Employment Law Project. Legislation introduced recently includes:

GEORGIA

State senators filed legislation Jan. 24 that would forbid providing illegal immigrants with workers compensation wage-loss or medical benefits for work-related injuries. Sen. Bill Heath, R-Bremen, along with several other senators, sponsored S.B. 7.

NEW HAMPSHIRE

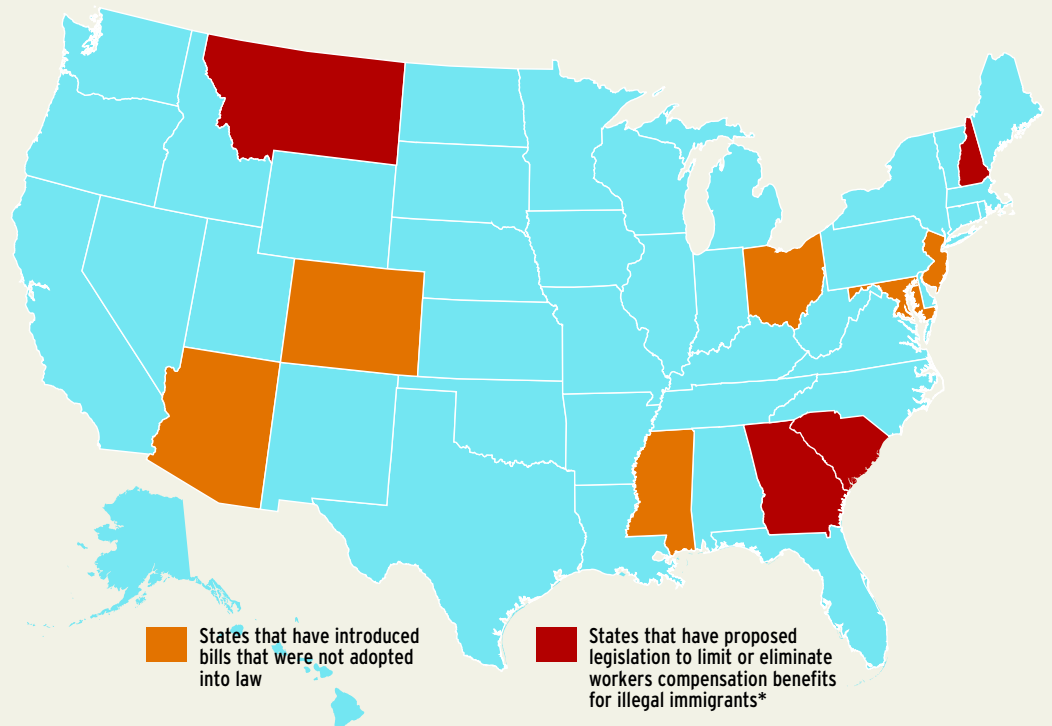
State Rep. William Infantine, R-Hillsborough, on Jan. 6 introduced H.B. 236. It would limit workers comp benefits to medical expenses and "remedial payments" when an illegal immigrant is injured on the job. It also would require employers or insurers to pay for workers comp benefits if they knew, or should have known, that an injured worker resided in the country illegally.

MONTANA

Montana's House of Representatives approved H.B. 71 on a 69-31 vote on Jan. 19 and sent the legislation to the state Senate. Sponsored by Rep. Gordon Vance, R-Bozeman, the bill would require insurers to establish processes to ensure that wage-loss or medical benefits for work-related injuries would not be paid to illegal immigrants.

SOUTH CAROLINA

State Sens. Glenn F. McConnell, R-Charleston, and Michael T. Rose, R-Summerville, filed S.B. 21 on Jan. 11. The bill would forbid workers compensation benefits for illegal immigrants "whose illegal status was known to the employer at the time of the immigrants' hire and illegal immigrants whom the employer discovers the illegal status during employment but before injury."



*South Carolina also previously introduced a bill that was not adopted into law.

Immigration status not relevant in work death

HOUSTON—A trial court's ruling that an employer trying to limit its liability for future lost earnings could not present evidence that a deceased employee was an illegal immigrant was reasonable, a Texas appellate court has ruled.

The decision by the 1st District Court of Appeals of Texas in *Republic Waste Services Ltd. vs. Elida Griselda Martinez* upheld the trial court's grant of a \$1.4 million judgment to the deceased worker's common-law wife and his father.

Oscar Alfredo Gomez and Ms. Martinez immigrated to Houston from El Salvador, court records state. He died when a co-worker backed a garbage truck over him.

Republic is a "nonsubscriber" as defined under Texas' Workers' Compensation Act, which essentially allows employers to opt out of the system, and Ms. Martinez filed a wrongful death suit alleging negligence. During legal proceedings, the parties argued about the relevance of Mr. Gomez's immigration status.

The plaintiffs argued that such evidence was not relevant and highly prejudicial.

The employer said the plaintiffs had planned to show that the 21-year-old Mr. Gomez earned \$33,000 per year and would have worked another 35 to 40 years had he lived. But the employer argued that Mr. Gomez would have been deported after a federal immigration raid at Republic's facility two weeks after Mr. Gomez's death.

The trial court ruled that it was "gross speculation" whether Mr. Gomez would have been deported and would not allow a jury to hear evidence concerning his immigration status.

Among other findings, the appellate court ruled last week that testimony on whether the raid may have led to deportation was speculative. It also found that the trial court's decision to exclude evidence regarding Mr. Gomez's illegal immigrant status was in line with Texas law.

It affirmed the trial court's judgment.

—By Roberto Cenicerros

Republican lawmakers on Jan. 11 introduced S.B. 21, which would restrict illegal immigrants from receiving workers comp benefits.

And in Georgia, a Republican-backed bill, S.B. 7, also would ban illegal immigrants from receiving wage-loss or medical benefits for work-related injuries.

Such legislation could expose employers to legal and insurance problems, said Alissa C. Atkins, a workers comp defense attorney at David & Rosetti L.L.P. in Atlanta. Illegal immigrants barred from accessing the workers comp system could take their claims into the tort system, where employers are exposed to awards that are capped under the workers comp

system, Ms. Atkins and others said.

"That is the whole point of the Georgia workers comp act, that the employers get the benefit of the exclusive remedy argument," Ms. Atkins said. "And if we are taking that away, that opens a can of worms of potential for pain and suffering (awards) which is not allowed under the Georgia workers comp act."

Should that occur, employers could be pushed to tap their general liability policies rather than their workers comp coverage, Ms. Atkins said.

One solution could be to craft companion legislation that also would prohibit illegal immigrants from taking work injury claims

before a civil court. But that could raise constitutional challenges, she said.

"It's a tricky thing for drafters to try and do that, because they can't deny people access to the courts," Ms. Smith of NELP said.

There also is a public policy problem with stripping illegal immigrants of workers compensation benefits, said Bruce C. Wood, associate general counsel and director of workers comp for the American Insurance Assn. in Washington. Adopting such a measure could encourage some employers to hire illegal immigrants knowing they would get a free pass should an employee get injured, Mr. Wood said.

"We find that (potential) policy result to be troubling," Mr. Wood said. The AIA opposes adoption of laws barring illegal immigrants from receiving workers comp benefits, he notes.

Although past legislation initially may have received significant support, the potential for it to open employers to civil suits and encourage some employers to hire illegal immigrants eventually convinced lawmakers to rethink their support for them, Mr. Wood said. "There are those interests that maybe think longer and harder about the merit of the issue and then begin to think otherwise," Mr. Wood said.

One bill attempts to address some of those issues.

Legislation introduced in New Hampshire early this month by Rep. William Infantine, R-Hillsborough, would limit workers comp benefits for undocumented immigrants, while also discouraging employers from hiring such individuals.

H.B. 236 would limit work comp benefits to medical expenses and "remedial payments" when an illegal immigrant is injured on the job. It also would require employers or insurers to pay for workers comp benefits if they knew, or should have known, that an injured worker resided in the country illegally.

"There are probably some unscrupulous employers that will hire these people knowing they are not legal to work here," Rep. Infantine said. "There are also situations where the employee will provide faulty (residence) information. So I am trying not to make it so severe that it borders on being morally wrong."

Credit: Insurance cover available, but not for all risks

CONTINUED FROM PAGE 4

Guarantee Department to form a working group to ensure that U.K. companies have better access to export trade credit finance.

"We have seen some major changes to the trade risk market over the past 18 months and brokers have an important role by continuing to work with government to ensure that the United Kingdom trades its way out of this recession," said Peter Staddon, technical director of BIBA.

Economy a major factor

During the recent economic downturn, some trade credit insurers lost clients or saw them buy less coverage as their need for credit insurance decreased, said Tim Smith, head of the trade credit practice for Europe, the Middle East and Africa at Marsh Inc. in London.

But as the economy has regained some ground, insurers have become more confident and

claims have declined, he said.

With plentiful capacity, many insurers have reinstated or increased their levels of trade credit coverage, Mr. Smith said.

In some cases, the weak economy helped companies better understand the value of credit insurance and prompted them to provide better information to underwriters, Marsh's Mr. Smith said. This means the quality of the coverage has improved in many cases, he said.

Under many trade credit insurance policies, limits can be

reduced or withdrawn during the policy period if a "trigger" event occurs, such as a company defaulting on a debt payment, Mr. Smith said.

However, some underwriters offer policies that have noncancellable limits, he said.

HMV's difficulties are a reminder to companies that coverage can be canceled before a policy term is up in many cases and added uneasiness about the coverage during the financial crisis, said Mike Holley, CEO of trade credit insurance managing general agent

Equinox Global Ltd., which launched in November (*BI*, Nov. 8, 2010).

London-based Equinox offers trade credit limits that cannot be canceled, he said.

In writing such coverage, insurers need to place great emphasis on how they believe the insured client will manage its risks, he said.

With the return of insurers' underwriting appetite, it is easier for companies to procure the desired trade credit limits with more competitive pricing, Mr. Holley said.



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Cat bonds: Issuance nears \$5B

CONTINUED FROM PAGE 4

bond capacity through upsizings or additional takedowns from their shelf programs, while generally locking in prices at the lower end of guidance."

Mr. Flatscher also predicted this year "will see additional perils coming to the market," which will help investors seeking diversification.

The report said investors "are keen on expanding their ILS investments to new and diversifying task types" and that "modeling uncertainties with 'exotic' perils are gradually being overcome."

The market is expected "to further broaden its peril spectrum within the next years," according to the report.

For more information on "Insurance-Linked Securities, Market Review 2010 and Outlook 2011," go to http://www.munichre.com/en/reinsurance/business/non-life/financial_risks/risk_trading/default.aspx.



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Retaliation: High court broadens claims grounds

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ruling, the full court said only those who engaged in protected activity under the law are protected against retaliation.

The U.S. Supreme Court disagreed in last week's ruling.

"We have little difficulty concluding that if the facts alleged by Thompson are true," then his firing violated Title VII, said the unanimous opinion written by Justice Antonin Scalia.

Title VII's "anti-retaliation provision prohibits any employer action that might well have dissuaded a reasonable worker from making or supporting a charge of discrimination," the court ruled in citing its 2006 decision in *Burlington Northern & Santa Fe Railway Co. vs. Sheila White*.

In that case, the high court held that reassigning Ms. White to a different job and temporarily suspending her pay were retaliatory acts for her previous complaint of sexual harassment. "We think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired," the Supreme Court said last week.

Lacking clarity

But the decision lacked clear guidelines as to which third parties can sue.

The court must "decline to identify a fixed class of relationships for which third-party reprisals are unlawful. We expect that firing a close family member will almost always meet the *Burlington* standard, and inflicting a milder reprisal on a mere

acquaintance will almost never do so, but beyond that we are reluctant to generalize," the ruling states. Title VII's anti-retaliation provision "is simply not reducible to a comprehensive set of clear rules," the court ruled in *Thompson*.

The court held that Mr. Thompson "falls within the zone of interests" protected by Title VII and can pursue his suit, which was remanded for further action.

The decision was not a surprise, said Bruce R. Alper, a shareholder with law firm Vedder Price P.C. in Chicago, noting that author Justice Scalia is considered the most conservative judge on the court.

Permitting retaliation against an employee because of his link with someone who is engaged in protected activity "would defeat the purpose of Title VII" by deterring individuals from exercising their rights under the employment discrimination law, Mr. Alper said.

Plaintiff attorney Frederick M. Gittes, at Gittes Law Group L.L.C. in Columbus, Ohio, said he doubt-

ed that the ruling would "be the basis for any large wave of new litigation." In his experience, "retaliating employers more often retaliate against the people who make the complaints" rather than third parties.

However, others say they expect retaliation charges—which outnumbered other types of charges filed with the EEOC last year—will increase because of the ruling.

"There's nothing to put the brakes on the continuing growth" of these claims, said Gerald L.



'There's nothing to put the brakes on the continuing growth.' The Supreme Court has created a 'petri dish that grows lots of claims.'

Gerald L. Maatman Jr.,
Seyfarth Shaw L.L.P.

What employers should do in light of the decision

Experts say employers must be even more cautious in taking adverse employment actions and they should re-examine their anti-retaliation policies in light of the U.S. Supreme Court's ruling in *Eric L. Thompson vs. North American Stainless L.P.*

In the case, the Supreme Court held that someone associated with an employee who engaged in a legally protected activity is protected from workplace retaliation, but left vague the guidelines that employers should follow to comply with the ruling.

Michelle I. Anderson, an associate with law firm Fisher & Phillips L.L.P. in New Orleans, said employers now "need to be aware" when taking any employment action against someone whose spouse or family member has filed a discrimination claim.

"You're certainly going to think twice before taking adverse action against a family member," said Bruce R. Alper, a shareholder with law firm Vedder Price P.C. in Chicago. "It's high-risk."

Employers also should be aware if a worker against whom they are taking an adverse action is a friend of a co-worker who has filed a discrimination claim, observers say.

"I think a lot of employers are going to have to be very careful as they go forward" before terminating someone to make sure they are not friends with someone who has filed such a claim, said Diana L. Hoover, a partner with law firm

Hoover Kernell L.L.P. in Houston.

"Employers have to be able to establish legitimate, nondiscriminatory reasons for any disciplinary action they take," said Leigh Gross Latherow, a partner with law firm VanAntwerp, Monge, Jones, Edwards & McCann L.L.P. in Ashland, Ky., who represented North American Stainless in the litigation. That should be the case whether it is a termination, a suspension or "any lesser type of disciplinary action," she said.

Employers need to "bulletproof their internal protocols," said Gerald L. Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago. "One of the best defenses to a claim of retaliation is (being able to say) that 'we have policies and procedures that make it impossible for managers, supervisors to retaliate against those who bring claims forward,'" he said.

Employers also might want to look at their anti-retaliation policy "to see if it needs to be tweaked" in light of this decision, he said.

"Show that you've taken the court's ruling seriously and make sure your (policy) language is clear to your employees" on this issue, Ms. Hoover said. "Be sure you have good procedures in place to follow consistently for employment decisions that are made, specifically for those that would be considered adverse."

—By Judy Greenwald

Maatman Jr., a partner with Seyfarth Shaw L.L.P. in Chicago. The Supreme Court has created a

"petri dish that grows lots of claims," he said.

Diana L. Hoover, a partner with

law firm Hoover Kernell L.L.P. in Houston, said, "It opens up quite a universe of claims because if you are popular and have a lot of friends at a particular workplace, and you make a claim of discrimination," those friends will complain they are being retaliated against if any negative job action is taken against them.

"In most cases, there's going to be some more requirements of proof that the employer's now going to have to show" to succeed in having the case dismissed before trial, Ms. Hoover said.

As for which third parties could sue, "Can it be just a friend? Can it be someone they have lunch with every day?" asked Steven D. Hurd, a partner with law firm Proskauer Rose L.L.P. in New York. "It's going to be left to the lower courts to make that decision as far as how the line is drawn, but it's going to take time to develop that case law," he said.

"It will really be three or four years" before there are "a sufficient number of appellate court decisions to give us some more guidance on exactly how close the relationship has to be," said Michael W. Fox, a shareholder with law firm Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Austin, Texas.

Disappointed in ruling

Leigh Gross Latherow, a partner with law firm VanAntwerp, Monge, Jones, Edwards & McCann L.L.P. in Ashland, Ky., who represented North American Stainless, said: "We're disappointed with the decision. It...is going to open the doors for employees to claim retaliation, or to threaten retaliation claims, as a defense to legitimate disciplinary decisions that employers need to make."

The decision "just complicates things" for employers, said Christopher W. Olmsted, a shareholder at Barker, Olmsted & Barnier P.L.C. in San Diego. "It's another chess piece on the board that we have to consider, and it makes it that much more difficult for a company to manage its human resources," he said.

Even if the plaintiff does not win the litigation, employers are "going to have to spend money fighting over these types of claims before the EEOC" and in the courts, Ms. Hoover said.

Liens: California comp system clogged by lien filings

CONTINUED FROM PAGE 3

dispute, the CHSWC study concluded. Employers and insurers spend roughly \$200 million a year on loss-adjustment expenses to manage medical services liens, the report said.

But indirect costs also mount when injury claims stay open longer because workers comp judges are too busy settling lien disputes to attend to workers' injury claims, said Mark E. Webb, vp and assistant general counsel for Agoura Hills, Calif.-based Pacific Compensation Insurance Co.

"When you are taking away

time from the workers comp judges to adjudicate cases because they are tied up with medical billing disputes, that makes it harder to schedule cases for resolution," Mr. Webb said. "You wind up paying more in temporary disability" benefits.

The CHSWC report said one Los Angeles judge estimated liens consume about 35% of his court's calendar and would take up even more if the court did not ration its time for hearing them.

While the backlog of liens forces some employers or insurers to settle liens they may not be legally obligated to pay, the prob-

lem also forces some service providers to accept less than they are owed, researchers found.

"The volume of liens forces the courts to encourage settlement, almost to the point of coercion," the CHSWC report said. "The necessity of settlement rewards both unjustified claims and unjustified refusals."

Disputes commonly arise over issues such as whether the correct bill coding was applied to a claim, meaning payers may be uncertain whether they are being billed too much or whether the employer authorized a medical provider to provide treatment.

California's official medical fee schedule contributes to the problem because it is out of date, Mr. Webb said.

"It's very difficult for medical providers to know what to bill, and that creates more disputes with bill review," Mr. Webb said.

A significant number of the liens could be removed from the workers comp court system if providers were required to discuss billing issues with payers through a formal process before they could file liens, Mr. Webb said. Legislation would be required to establish such a system.

California health maintenance

organization regulators now rely on such a system to resolve billing disputes in the group health arena, as does Oregon's workers comp system, Mr. Webb said.

Among the CHSWC report's 30 recommendations are requiring a fee to file medical liens and requiring frequent lien filers to use an electronic filing system that would eliminate clerical work, impose penalties for material misrepresentations by frequent filers, and forbid the filing of liens until a bill is genuinely in dispute.

The California Coalition on Workers' Compensation and other system stakeholders are reviewing those options to determine whether to propose legislation or new system rules, sources said.

Guernsey skips Solvency II equivalence

Domicile sees no benefit for captives

By SARAH VEYSEY

ST. PETER PORT, Guernsey—Guernsey's financial regulators say the domicile will not seek equivalence under Solvency II, noting they doubt that the mutual recognition status would benefit the captive industry.

The States of Guernsey Commerce and Employment Department and the Guernsey Financial Services Commission, which regulates captives and insurers, said in a joint statement that they have no plans to seek equivalence under the risk-based capital regulatory regime slated for introduction in the European Union in 2012.

Guernsey, the fourth-largest captive domicile in the world, is a U.K. crown dependency but is not itself a member of the European Union.

In the joint statement, the regulators said Guernsey "remains committed to meeting internationally accepted regulatory standards as set by the International Assn. of Insurance Supervisors and endorsed by" the Group of 20 industrialized nations.

The regulators also said they will monitor the development of Solvency II and whether full or partial equivalence with the regime might be beneficial to Guernsey and consult with the insurance industry before any decision is made.

In the statement, Peter Niven, chief executive of Guernsey Finance, which promotes the island's financial industry, said it is not believed that seeking equivalence under Solvency II would benefit the captive industry in Guernsey as things currently stand.

"Indeed, the treatment of captives under Solvency II remains uncertain and so we will be keeping a close eye on this," Mr. Niven said.

While Guernsey is not seeking Solvency II equivalence, other jurisdictions outside the European Union, including Bermuda and Switzerland, are seeking the mutual recognition status.



AP PHOTO

"Let's fix what needs fixing" in the health care reform law, President Obama told members of Congress during last week's State of the Union address.

Reform: White House open to tweaks

CONTINUED FROM PAGE 1

said he was "eager" to work with legislators to improve the law to make health care better and more affordable.

"Let's fix what needs fixing," President Obama said.

He also said he would look at proposals to curb "frivolous" medical malpractice lawsuits (see story, page 3).

For the first time, he went on record in backing repeal of a health care reform law provision that will require employers to furnish Form 1099 if they do more than \$600 in annual business with a corporate vendor. After the November congressional elections, President Obama said the 1099 reporting requirement that goes into effect in 2012—about which small employers in particular have complained—was something "we should take a look at."

At the same time, a top administration official, Austan Goolsbee, who chairs the Council of Economic Advisers, said during a House Ways and Means Committee hearing that "all of us should be open to ideas of how to reduce costs further and improve the system."

That willingness to consider the issues contrasts strongly with the way the reform legislation was put

together and moved through Congress in 2009 and 2010. The measure was written by congressional Democratic leaders and their staffs, with assistance in the final few months from the administration. In some cases, committees with jurisdiction over the legislation voted on the reform measure after only one day of debate, giving little time for Republicans to suggest changes.

Republicans said they had trouble even getting the administration to hear their points. For example, Rep. Peter Roskam, R-Ill., said at the Ways and Means Committee hearing that he never received responses to letters he wrote to the White House back in 2009 concerning certain provisions in the reform legislation.

Business groups welcomed the administration's new receptivity to health care reform law changes.

"The take-away message is that the administration is open to consideration to changes in the law. Not every suggested change will be met with resistance," said Paul Dennett, senior vp-health reform at the American Benefits Council in Washington.

"There has been a dramatic change in how willing (the administration is) to listen," said Helen Darling, president of the National Business Group on

Health in Washington.

Still, the administration likely would not be open to changes that would undercut the heart of the law: expanding coverage to tens of millions of uninsured U.S. residents and restricting certain insurance industry underwriting practices.

"President Obama has made clear that major provisions will not be changed," said Gretchen Young, senior vp-health policy with the ERISA Industry Committee in Washington.

Whether a willingness to listen will lead to bipartisan agreements on changes to the law is far from clear.

"I question if there will be serious negotiations regarding changes. The leaders on each side are so far apart," Ms. Young said.

"I don't have a lot of hope that there will be much engagement between Capitol Hill and the administration," said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington.

Mr. Dennett of the American Benefits Council said the next few months will be a time of a "gathering of evidence" by lawmakers on changes they will propose.

"There will be a period of uncertainty while changes are discussed and perhaps hammered out," Mr. Dennett said.

Benchmark: Rates flat

CONTINUED FROM PAGE 4

ket this year.

General liability, property and workers compensation policies renewed during the final quarter of last year with "essentially no change" in premiums, RIMS said in a statement about the survey, which was administered by New York-based Advisen. That contrasts with 2009, where general liability and workers comp premiums dropped at least 5% in fourth-quarter renewals compared with a year earlier.

Unlike D&O during 2010, company size was not a meaningful factor in general liability, property and workers comp pricing, New York-based RIMS said.

Some slowing in the rate of decrease was evident in third-quarter renewals. But Mr. Bradford said the fourth-quarter results probably do not signal a hardening market.

"It seems to be a mixed bag depending on who you talk to," Mr. Bradford said in an interview. "Some underwriters are saying there's a little bit of firming; others say that things are continuing to fall off, but the members were pretty consistent in what they were saying. Overall, there hasn't been much change in the past couple of quarters."

"I think we're going to see rates rattle around at the bottom of the trough for a while," Mr. Bradford said. "I don't see them rising materially anytime in 2011. There's way too much capital in the market right now."

Mr. Bradford said it is a buyers' market, but he added that "could change rather quickly with one or two major catastrophes. But barring any catastrophes, it's pretty much going to be status quo for the year."

"We have seen more carriers exercising underwriting discipline—walking away from business that does not meet their pricing targets—but it is still a very competitive market," Robert Cartwright, loss prevention manager of Bridgestone Americas Holding Inc. in Exton, Pa., and a member of the RIMS board of directors, said in the statement.

Advisen analyzes data submitted online from risk managers and other commercial insurance buyers or their brokers. The results are available online or in an annually published book. See www.RIMS.org/benchmark for details.

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Contributing: Michael Bradford, Jeff Casale, Mark A. Hofmann, Rodd Zolkos

WOMAN HAS A COW OVER TACO BELL'S SEASONED BEEF

Amanda Obney has a beef with Taco Bell. Or rather, the California woman's complaint alleges a lack of beef in some of the Irvine, Calif.-based restaurant chain's products.

In a Jan. 19 complaint filed in U.S. District Court for the Central District of California, Ms. Obney—the lead plaintiff in a putative class action lawsuit—accuses Taco Bell of false advertising when it says it uses “seasoned ground beef” or “seasoned beef” in some of its products.

“In reality, a substantial majority of the filling is comprised of substances other than beef, and is required to be labeled and advertised as ‘taco meat filling,’ according to the complaint, which says corn starch, soy lecithin and an “anti-dusting agent” are among the fillers.

According to published reports, Dee Miles, a shareholder in Montgomery, Ala., law firm Beasley, Allen, Crow, Methvin, Portis & Miles P.C., which is representing Ms. Obney, said lawyers had tested the filling and found it contained less than 35% beef.

The suit is somewhat unusual in that it doesn't seek monetary damages, although it seeks legal fees. Instead, it asks the court to make Taco Bell be more forthcoming in its advertising.

But Taco Bell, a unit of Louisville, Ky.-based Yum! Brands Inc., has its own beef with the suit. Greg Creed, president and chief concept officer, responded on Taco Bell's website. “We are proud of the quality of our beef and identify all the seasoning and spice ingredients on our website. Unfortunately, the lawyers in this case elected to sue first and ask questions later—and got their ‘facts’ absolutely wrong. We plan to take legal action for the false statements being made about our food.”

This is one food fight that's likely to be settled far beyond the food court.



Business Insurance END PAGE



John C. Stone was fired from his job at a car dealership after he showed up at work wearing a Green Bay Packers necktie.

Boss bears down on Packers fan

Wearing a Green Bay Packers necktie in Chicago Bears territory can be job-jeopardizing move, as a suburban Chicago car salesman found out last week.

Just hours after the Packers defeated their longtime archrival to win the NFC Championship game and advance to Super Bowl XLV, John C. Stone went to work at Webb Chevrolet wearing a Packers tie.

The 34-year-old salesman told his boss that he was wearing the tie to honor his 91-year-old grandmother, a longtime Packer fan who died this month, according to reports.

Mr. Stone said when he showed up to work, Jerry Roberts, the dealership's general manager, told

him that he would be fired if he did not take off the tie, the Chicago Tribune reported. Mr. Stone told the newspaper he thought his boss was joking and went back to work.

An hour later, Mr. Roberts again told Mr. Stone to remove the tie. When he didn't remove the neck garb, Mr. Roberts fired him, according to reports.

The Oak Lawn, Ill., car dealership is a promotional partner with the Chicago Bears and has been for years.

But Mr. Stone wasn't hung out to dry. After a 48-hour media tour, Mr. Stone landed a new job—at Chevrolet of Homewood, Ill.

“I didn't know all this publicity was going to come with this,” Mr. Stone told reporters. “But you know what? It lets me know who has my back.”



Tech fans bill insurers for upgrades

Some gadgets are so irresistible that some British homeowners will commit insurance fraud to get their hands on the newest plasma TV, laptop computer or iPhone, a London insurer says.

“Fraudstoppers Report 2011” by Legal & General Insurance Ltd. found that 29% of British homeowner policyholders said it is acceptable to exaggerate insurance claims.

A key reason for doing so “is the need to keep up with the latest gadgets and technology,” according to the report.

“Many people think it's a victimless and free way to upgrade their latest technology or electrical gadgets, a trend identified by this report as ‘up-raiding,’” Steve Phillips, head of fraud services for Legal & General, said in the report's introduction.

Men that the report classified as gadget junkies are twice as likely to exaggerate a claim to get a new tech toy. Men are more blasé when it comes to insurance fraud, with almost three times the number of men being confident that they'll get away with an inflated claim compared with women, according to the report.

In many cases, fraudsters intentionally damage the device they want to upgrade, such as a hand-held gaming controller slipping from a user's grip and damaging a flat-screen television, the report said.

“You may think that you have a ferocious top spin forehand,” said Mr. Phillips, “but you'd have to be Rafael Nadal to cause the kind of damage to TV screens some people suggest.”

Disaster recovery firm CEO gets reality check with TV stint

Going undercover to work on his company's front lines taught BELFOR USA Group Inc. CEO Sheldon Yellen about a disconnect between the company's executives and its employees.

It also taught him that tasks such as packing boxes and driving screws aren't as easy as one might think.

Appearing in recent weeks on the CBS television program “Undercover Boss,” Mr. Yellen grew a beard and donned a wig to assume the guise of “Tom Kelly from Phoenix, Ariz.,” an unemployed insurance salesman looking for work.

At the episode's beginning, Mr. Yellen said he hoped his undercover adventure would help him discover issues affecting the disaster recovery and property



BELFOR USA Group Inc. CEO Sheldon Yellen donned a wig to disguise himself as an unemployed insurance salesman on an episode of “Undercover Boss.”

restoration company's bottom line, such as employees doing side jobs or equipment that wasn't being returned.

Instead, four days on the job at various BELFOR job sites working

alongside employees addressing water or fire damage proved to be a life-changing experience, the CEO said.

In one of the episode's many tearful moments, Mr. Yellen said, “I really

believed that sitting in Birmingham, Mich., at a desk, I had the right to stand up and say we take care of our people. I learned firsthand that the people take care of this company.”

It's likely he also gained greater appreciation for a job that doesn't involve removing dead animals from walls or maneuvering on one's belly through a crawl space.



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