

Business Insurance

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May 4, 2009

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**FORMER GEN RE EXEC
ROBERT GRAHAM GETS
PRISON TERM / PAGE 3**



**CHRYSLER BANKRUPTCY PLAN
MAY HIT RETIREE HEALTH CARE,
PENSION BENEFITS / PAGE 3**

**EMPLOYERS IN CALIFORNIA
MAY FACE BIG COMP RATE HIKE
AS MEDICAL COSTS RISE / PAGE 3**

In Brief

Swiss Re cat bond covers storms, quakes

Swiss Reinsurance Co. has placed a \$60 million catastrophe bond to cover the insurer against potential losses from North Atlantic hurricanes and California earthquakes. The bond was issued by Cayman Islands-based special-purpose company Successor II Ltd. Swiss Re Capital Markets was the sole underwriter for the private placement, which closed April 28, the company said. The transaction brings 2009 cat bond issuance to \$965 million.

Hartford reports \$1.21 billion loss

Hartford Financial Services Group Inc. reported a \$1.21 billion net loss for the first quarter—compared with \$145 million in net income for the year-earlier period—due largely to a \$1.5

See **IN BRIEF** page 31

SPOTLIGHT

RIMS CONFERENCE: TRENDS & ISSUES

Risk managers push vendors to lower prices; interest in ERM grows; insurer solvency concerns on the rise; employers take further steps to keep workplaces safe; D&O insurers face more scrutiny as economic problems continue; rise in product recalls puts more emphasis on risk prevention; how to address employee theft risks. **PAGE 10**

Flu fears trigger crisis response plans

Risk managers work to keep organizations safe and informed

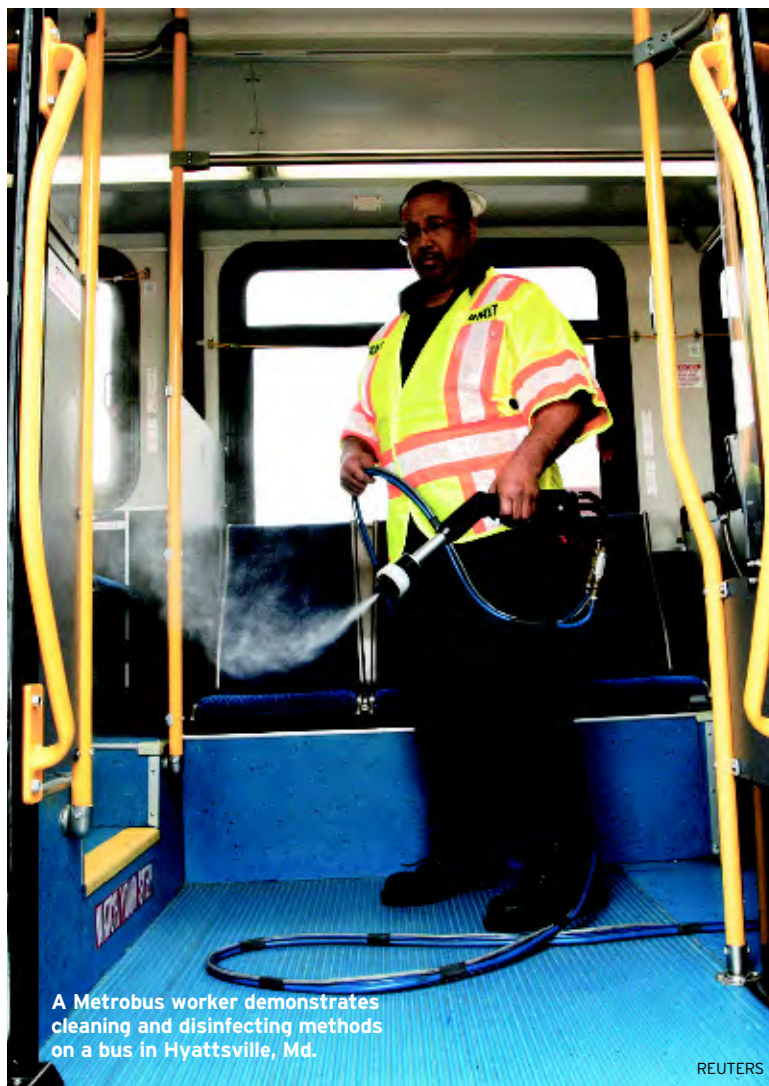
By **ZACK PHILLIPS**
and **SARAH VEYSEY**

Risk managers around the globe are working to reduce the risk to their organizations of a possible influenza pandemic by doing everything from offering basic advice on avoiding infection to ensuring that business continuity plans are in place.

As they closely monitor information from international health authorities about the spread and severity of the virus, risk managers have begun implementing procedures and plans that, in many cases, were developed in response to the avian flu and SARS threats earlier this decade.

Wayne L. Salen, director of risk management at Labor Finders International Inc. in Palm Beach Gardens, Fla., said the industrial temporary staffing company is sending employees the latest information from health authorities and reminding its customers to alert the company if a temporary staffer is ill. If a temporary staffer shows symptoms of swine flu—or H1N1 flu—the company is encouraged to send

See **FLU** page 29



A Metrobus worker demonstrates cleaning and disinfecting methods on a bus in Hyattsville, Md.

REUTERS

Experts urge calm, say firms must assess workforce, supply risk

By **MARK A. HOFMANN**

As fears continue to grow about the outbreak of swine flu, being prepared and avoiding panic are two of the most important steps risk managers can take, according to experts.

Contingency plans need to be reviewed and updated. Issues such as supply chain security and workplace attendance policies need to be addressed. Travel policies also demand attention.

Most importantly, businesses should ascertain just how much they would be affected if a significant portion of the working population is sickened by swine flu—which is also known as H1N1 flu.

"Anywhere up to 30% of their employee base may be out at some point in the pandemic," said Jeanne A. Matthews, assistant professor of nursing at Georgetown University School of Nursing & Health Studies in Washington and immediate past chair of the Public Health Nursing Section of the American Public Health Assn.

"For business, this is not just a

See **ADVICE** page 29

Health care reform effort gearing up

Sen. Baucus: Many approaches under consideration, bill likely in June

By **JERRY GEISEL**

WASHINGTON—The drive to draft and enact comprehensive health care reform legislation is on track, the chairman of the Senate Finance Committee said.

"We are on schedule," Sen. Max Baucus, D-Mont., said last week,

adding that his committee will begin consideration of a reform bill in mid-June.

"The serious stuff" is about to begin, added Sen. Charles Grassley, R-Iowa, the committee's ranking member.

As the committee prepares to draft legislative language, Sen. Bau-

cus noted that final decisions on a wide array of issues remain to be decided.

"So, everything's on the table: all the concepts, all the ideas," he said.

"I'm telling everybody to suspend judgment, even if for a nanosecond. If there's something you don't like, just suspend judgment. Just cool it. Just keep your powder dry," Sen. Baucus said.

While final decisions have yet to be made, Sen. Baucus has hinted at the shape of some of the provisions. As of now, he is supportive of the approach Massachusetts took in its 2006 reform law in which the low-income uninsured can get coverage from private health insurers offering policies through an exchange that is administered by a state agency.



REUTERS

Sen. Max Baucus, D-Mont., says lawmakers plan to begin consideration of a health reform bill in June.

"That's basically what we are thinking about in our plan," he said. "We'll set up a system similar to Massachusetts where an individual looking for health insurance can go to the exchange and get health insurance from a health insurance company who is offering insurance

See **HEALTH** page 29

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INDEX

Advertiser Index	27
Business Resources	24
Commentary.....	6
End Page	31
Market Moves.....	27
Opinions	8
Professional Marketplace	24
Up Close	24

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On the Web

RISK MANAGER OF THE YEAR Online package features 2009 honorees

Business Insurance and the Risk & Insurance Management Society Inc. jointly presented the prestigious Risk Manager of the Year award and inducted three new members into the Risk Management Honor Roll on April 21 at the Peabody Hotel in Orlando, Fla., during RIMS 2009. www.BusinessInsurance.com/RIMS2009.

BI VIDEO

Greenberg speaks at RMOY breakfast

In a keynote speech at *Business Insurance's* 2009 Risk Manager of the Year award breakfast, C.V. Starr & Co.'s Maurice R. Greenberg discusses the need for risk



management and how the financial crisis happened. Go to www.BusinessInsurance.com/RIMS2009

BI EURO 100

Guide to Europe's top risk managers

Business Insurance's Euro 100, a supplement listing the leading 100 risk managers of European companies, can be previewed online and is available for purchase in digital format. Go to www.BusinessInsurance.com/2009Euro100.

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Business Insurance® REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Bankruptcy may hit Chrysler retiree benefits

By JERRY GEISEL

AUBURN HILLS, Mich.—Last week's agreement between Chrysler L.L.C. and the United Auto Workers union on the funding of a retiree health care trust will allow the company to preserve billions of dollars in badly needed cash, but could mean the pool of assets to pay benefits will run out much faster.

Just days before Chrysler filed for bankruptcy, UAW members ratified an agreement that, among other things, significantly alters a 2007 contract that, at the time, was considered a model for employers looking to cap their burgeoning retiree health care liabilities, while giving retirees greater assurance that there



Auburn Hills, Mich.-based Chrysler L.L.C. filed for bankruptcy last week, potentially affecting retiree benefits for its workers.

would be secure assets available to pay benefits for decades to come.

Under that contract—similar to ones negotiated by General Motors Corp. and Ford Motor Co.—Auburn Hills, Mich.-based Chrysler agreed

to contribute \$8.8 billion, including \$7.1 billion in cash, to a voluntary employees' beneficiary association administered by the UAW that would be used to provide health care benefits to current and future UAW-represented retirees. In turn, Chrysler would have no future obligation to provide retiree health care benefits.

Last week's agreement considerably modifies that contract, significantly reducing the amount of cash Chrysler will have to contribute to the VEBA.

Specifically, Chrysler's total cash contribution—made in escalating amounts between 2010 and 2023—will be slashed to \$4.6 billion, while the VEBA will receive a

55% ownership in Chrysler in the form of stock after Chrysler emerges from bankruptcy.

Optimistic outlook

At the time the 2007 contracts with the Big 3 automakers were announced, UAW President Ron Gettelfinger said VEBA assets would be sufficient to fund retiree health care benefits for the next 80 years or so.

But with the cash contributions going down—meaning that the VEBA for Chrysler retirees will be earning much less interest on assets—some observers say that 80-year prediction likely is overly optimistic.

"That is unlikely to occur," said John Lapinski, a principal with

See **REFORM** page 26

Medical costs pressure Calif. work comp rates

Rating bureau wants
23.7% rate increase;
state wants answers

By ROBERTO CENICEROS

SACRAMENTO, Calif.—While California's insurance commissioner contemplates by how much to raise workers compensation rates, insured and self-insured employers in the state face rising claims costs.

Medical cost increases, particularly for a surge in the number of outpatient treatments per claim, and two controversial Workers Compensation Appeals Board en banc decisions are separate factors pushing claims costs upward, several sources agree.

Last week, Insurance Commissioner Steve Poizner held a hearing on a Workers' Compensation Insurance Rating Bureau recommendation for a 23.7% rate increase. But after the hearing, the commissioner called insurers' explanation for why medical costs are spiraling "unacceptable." He said he will hold a "special investigative hearing" June 8 before deciding what action to take on the WCIRB's rate request.

California's commissioner can only recommend that insurers raise or lower their rates by a certain amount and cannot force them to do so. But his recommendation carries weight, insurers say.

About three-fourths of the WCIRB's rate recommendation stems from rising medical costs. According to the rating bureau, California medical inflation for an average claim rose 16.5% from 2007 to 2008, while the years-long decline in claims frequency has begun to slow.

California has experienced an unexpected rise in the number of outpatient medical services per typical lost-time claim, said Alex Swedlow, executive vp for the Oakland-based California Workers' Compensation Institute.

That includes a significant increase in the number of medical office visits and radiology services, along with an increase in the number of treatments per visit and an increase in the average cost for those services, Mr. Swedlow said.

Pharmaceutical costs also are rising because of an increase in the use of brand-name drugs and a rise in use of narcotic painkillers meant for "end-stage" cancer care that now are being prescribed even for sprains, Mr. Swedlow said.

"Overall, according to our data, we see a 30% increase in medical (costs) between 2005 and 2007," Mr. Swedlow said. Boca Raton, Fla.-based NCCI Holdings Inc. will release national data this week showing the average medical cost per lost-time claim increased by 6% in 2008, marking the third consecutive year of 6% increases.

Self-insured Safeway Inc. has seen its California pharmacy costs drop as a percentage of its total medical expenditure for the past three years because it uses a pharmacy network, said Bill Zachry, vp of risk management for the Pleasanton, Calif.-based grocery chain.

Safeway's pharmacy costs as a percentage of total medical expenditure are 5%, vs. an insured industry average of about 12% to 18%, Mr. Zachry said.

But, he said, there is an uptick in outpatient surgeries and physical therapy visits per claim in Califor-

108%

Insurers' accident-year combined ratio in 2008, which has doubled from 54% in 2005, according to WCIRB data.



AP PHOTO

Robert Graham (right), former General Re Corp. senior vp and assistant general counsel, was sentenced last week to one year and one day in prison for his role in a sham reinsurance deal.

Former Gen Re exec sentenced to prison

Graham gets one-year term over finite fraud

By COLLEEN MCCARTHY

HARTFORD, Conn.—The relatively light prison terms imposed by a federal judge on five former executives from General Re Corp. and American International Group Inc. for their role in a sham reinsurance deal are not likely to be overturned on appeal, legal experts say.

Former Gen Re Senior Vp and Assistant General Counsel Robert Graham was sentenced last week to one year and one day in prison. Judge Christopher Droney of the U.S. District Court in Hartford, Conn., again rejected federal guidelines in sentencing Mr. Graham, who is the last of five former execu-

tives to be sentenced in the case since they were convicted in February 2008.

Mr. Graham also was sentenced to two years of supervised release and fined \$100,000. He and the other four defendants remain free on bond pending appeal of their convictions.

Judge Droney said Mr. Graham's participation was "important to the sham transaction." The judge added that, as Gen Re's lawyer, Mr. Graham used his expertise to draft contracts for the transaction and create a paper trail to deceive auditors and regulators.

See **GRAHAM** page 26

See **COMP** page 26

Employee furloughs can complicate benefits offerings

More employers eye off-work periods as way to cut costs

By JUDY GREENWALD

Employers that furlough employees to avoid layoffs during the recession face several decisions with respect to their benefit plans, observers say.

A growing number of employers already have introduced furloughs or are considering them, observers say. Furloughs can affect health plans, 401(k) plans and other benefits (see story, page 30).

According to a survey by Watson Wyatt Worldwide released last month, 17% of employers have imposed mandatory furloughs and

4% plan to do so in the next 12 months.

Gov. Bev Perdue of North Carolina announced last month a flexible furlough program for all state employees, but is working with the state legislature to ensure no benefits, including health care coverage, are affected, said a spokeswoman.

In addition, General Motors has said it will shut down 13 assembly operations for "multiple down weeks" in a cost-saving effort. Workers will continue to receive health care benefits, said a spokesman.

Furloughs can range from very brief periods, such as a day or two off, to extended periods of time. Particularly for short furloughs—which are more common at least for now—many employers will contin-



ue their existing programs.

Furloughs "generally don't have a material impact on an employer's benefit plan or their administration, other than questions about whether

or not an employee is allowed or entitled to use accrued paid time off for the furlough days," said Thomas G. Hancuch, an attorney with Veder Price P.C. in Chicago.

For example, a spokesman for Covington, Ky.-based Ashland Inc. said the specialty chemical company will continue to pay health benefits for its salaried employees, most of whom have been required to take two weeks of furlough. Ashland, however, will save funds by not having to match employee's 401(k) contributions during a furlough, said the spokesman.

Benefit program changes are more likely when furloughs are for more extended periods. Whether these become more common in the future "depends on how quickly the economy rebounds," said Carol

Sladek, a principal in Hewitt Associates Inc.'s work/life consulting practice in Lincolnshire, Ill.

There has been greater interest in furloughs recently, though, according to Steve Gross, a worldwide partner with Mercer L.L.C. in Philadelphia, who heads Mercer's global rewards consulting business. "In the fall, all the questions (by employers) were severance," he said. More recently, though, "it's all about furloughs: 'What can we do? How should we do it? Should it be mandatory? Should it be voluntary?'" he said.

Planning is important, said Frank C. Morris Jr., an attorney with Epstein Becker & Green P.C. in Washington.

See **FURLOUGH**s page 30



Former mine worker Mike Crill protests outside the Russell Smith Federal Courthouse during the W.R. Grace trial in Missoula, Mont. earlier this year. AP PHOTO

Ex-Grace execs dropped from asbestos litigation

Other former officials face criminal charges over asbestos exposure

By SALLY ROBERTS

MISSOULA, Mont.—Criminal charges were dropped last week against two of five former W.R. Grace & Co. executives on trial in Montana accused of trying to conceal the health risks associated with mining asbestos-laced vermiculite in the small town of Libby, Mont.

The environmental crimes trial, which began in February and is expected to conclude this week, stems from a 2005 indictment against the Columbia, Md.-based chemical and building materials company, which operated the vermiculite mine from 1963 to 1990, and seven of its former senior executives and managers. A grand jury charged them with conspiring to knowingly release a hazardous air pollutant endangering the lives of mine workers and other local resi-

dents, violating the Clean Air Act, and obstruction of justice.

The vermiculite produced from the mine was used in such products as attic insulation, fireproofing products, masonry fill, potting soils and fertilizers.

It is blamed for sickening about 2,000 people in and around Libby and for the deaths of about 225 people.

A former mine manager originally indicted in the case since has died, while W.R. Grace's indicted former chief group counsel will be tried separately.

Last week, all charges against Robert C. Walsh, a former senior vp of W.R. Grace, and William J. McCaig, a former general manager of operations at the Libby mine, were dropped, according to court documents.

Judge Donald Molloy of the U.S. District Court in Missoula, Mont., still is considering defense motions to acquit the remaining three former executives and the company,

See **GRACE** page 25

Online forum addresses mental parity

By JOANNE WOJCIK

The challenges the new federal mental health benefit parity law will pose for employers may be considerable, but they are not insurmountable, according to experts who spoke during an online executive forum hosted by *Business Insurance* last week.

The Paul Wellstone and Pete Domenici Mental Health Benefits Parity and Addiction Equity Act requires that employers provide the same coverage for mental disorders—and in some cases, substance abuse treatment—as they do for other medical illnesses. The act, signed into law last October as part of a financial services bailout package, affects fully insured and self-insured employers with 50 or more employees.

The Labor Department is seeking public comment as it and two other federal agencies develop

rules for the new law, which will be implemented for plan years beginning after Oct. 3, 2009.

During *BI*'s executive forum, Edward Fensholt, senior vp and director of compliance services at Kansas City-based Lockton Benefit Group, and Rita McCaskill, a Detroit-based senior consultant in the health and productivity practice at Watson Wyatt Worldwide, provided insights into the new law, including their predictions for what those regulations might include. They also fielded questions submitted by audience members.

In addition, the forum featured preliminary results of an online survey on employers' response to the new mandate, including that while nearly three-quarters of employers are not considering dropping mental health benefits in response, about 6.5% are, and another

20% have yet to decide. The survey is ongoing and can be accessed at www.workplacementalhealth.org and www.BusinessInsurance.com.

BI will report final results of the survey, which is being conducted by the Partnership for Workplace Mental Health, a program of the Arlington, Va.-based American Psychiatric Foundation, the week of May 18.

Meanwhile, public comments on the impact of the parity law may be submitted to the U.S. departments of Labor, Treasury and Health and Human Services until May 28. Comments can be e-mailed to the Labor Department at E-OHPSCA.EBSA@dol.gov.

BI's executive forum, "Mental Health Benefits Parity Act: Is Your Health Plan Ready?" has been archived. Visit www.businessinsurance.com/webinars for more information.

Economy tests Spain's risk managers

Need to balance coverages, cost cuts presents challenge

By ADRIAN LADBURY

MADRID, Spain—Facing some of the toughest economic conditions in Europe, risk managers in Spain are struggling to cut costs while maintaining sufficient coverage for their exposures.

With gross domestic product shrinking by 1.8% in the first quarter of 2009 and unemployment running close to 20%, corporations in Europe's fifth largest economy are looking for ways to shave all budgets, including risk manage-



Corporations in Spain are looking for ways to shave all budgets, including insurance costs.

ment and insurance.

But, experts warn, organizations should not assume unsustainable levels of risk as they seek to reduce their insurance costs. And the situation presents risk managers with an opportunity to show how they provide value to their organizations,

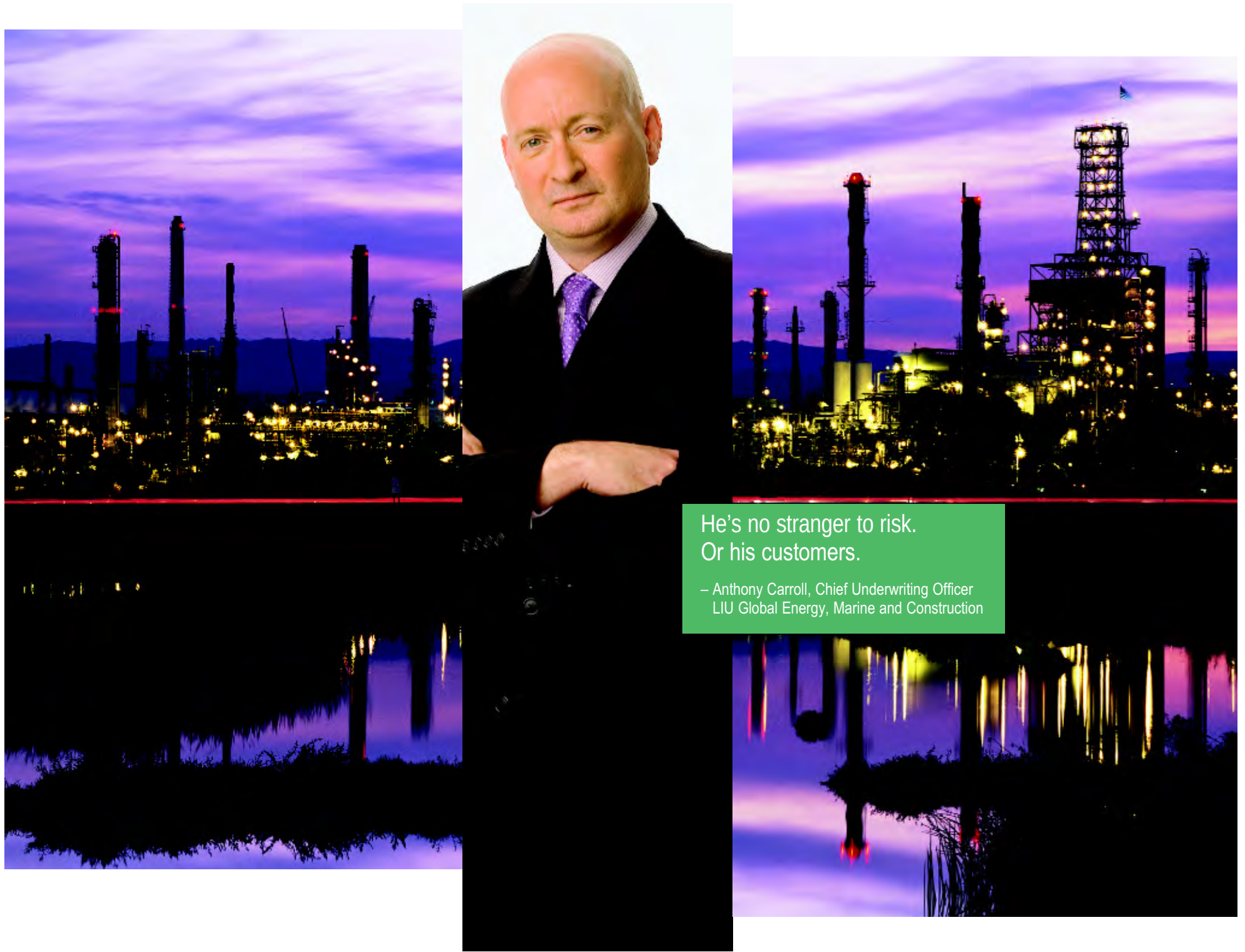
they say.

Spanish insurance buyers agree insurance rates for most lines of coverage have not hardened in recent renewals.

But those recently interviewed by *Business Insurance* expect insurers to raise rates in coming renewals and say this will lead to some hard decisions as their employers demand cost cuts.

Speaking ahead of this week's annual meeting of the Spanish risk management association Asociación Española de Gerencia de Riesgos y Seguros in Madrid, Miguel Ángel Macías, the president of AGERS and director of insurance at Madrid-based construction compa-

See **SPAIN** page 25



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— Anthony Carroll, Chief Underwriting Officer
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Commentary

Use common sense to stay free from flu

Pandemic was a much-talked about risk two years ago, when avian flu appeared to be on the rise, but then it largely fell off the public radar. Now, with the recent outbreak of swine flu, the threat of a pandemic is being taken seriously.

As we report extensively starting on page 1, many businesses and government agencies are preparing for the possibility of a pandemic and restrictions it would place on their ability to function. A public health emergency has been declared in the United States, and some European government officials even have suggested that travel to the United States be postponed.

While the number of confirmed cases of swine flu—or H1N1 flu—is low, people are focusing on the risk of widespread illness. As of May 1, the Centers for Disease Control & Prevention listed 141 U.S. cases, with one fatality, and the World Health Organization reported 331 cases and nine deaths worldwide.

It's easy to panic as the number of cases increases, which is inevitable as the disease is spread by infected people coughing and sneezing. But what can we do to reduce the risk of contracting this or other types of flu?

Influenza vaccines are available, and many employers offer flu shots in the workplace, but those typically are administered at or near the beginning of the so-called flu season, which started months ago. It's important to note that flu vaccine manufacturers must make some educated guesses as which strains will be most prevalent. If you received a flu shot and the strain for which it was designed is the not the one you're exposed to, you still may catch the flu.

Another tool against pandemic flu is antiviral medications. Two, oseltamivir and zanamivir, are being used to treat swine flu cases.

Fortunately for most of us, there are common-sense ways to stay healthy. One of the easiest is simply to wash one's hands. Many people underestimate the value of frequent hand washing, or they wash their hands improperly.

My father was a physician, and he drummed into our family the importance of hand washing. He proved it works, too, as even though he treated many ill patients, he seldom got sick himself.



**REGIS
COCCIA**

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

Here are some tips from the CDC on preventing the spread of flu and the common cold:

- Stay healthy by covering your nose and mouth with a tissue when you cough or sneeze, and throw used tissues in the trash.
- Wash hands often with soap and hot water, especially after

It's easy to panic as the number of cases increases, but what can we do to reduce the risk of contracting this or other types of flu?

coughing or sneezing. Alcohol-based hand sanitizers also are useful. An informative video is available at www.cdc.gov/cdctv/handstogether/.

- Avoid touching your eyes, nose or mouth.
- Stay home from school or work if you're sick and limit contact with others.

The CDC also suggests developing a family emergency plan: store a supply of food, medicines, face masks, hand sanitizers and other supplies. This is sensible, as a pandemic likely would require most of us to remain at home for an extended period.

Because germs are not visible to the naked eye, it's easy to forget that they're all around us, on surfaces we come into contact with casually or even accidentally.

Perhaps it's a good thing we can't see everything. We'd never want to leave home—or stay there—if we could see all of the pathogens out there.

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Business Insurance OPINIONS

Affordable benefits in best interests of all

THE EFFORTS OF Chrysler L.L.C. and perhaps other big auto manufacturers to survive should serve as a cautionary tale to other employers and their organized workforces.

Last week, amid massive losses, dwindling cash and poor sales, Chrysler filed for bankruptcy. General Motors Corp. could be next.

How did these companies, which once were hugely profitable, get into such big financial trouble? Clearly, the recession had a lot to do with it. When people lose jobs, they are not in a position to buy automobiles, while others, fearful they soon may be laid off, will hold off on buying big-ticket items, such as cars.

The economic downturn only partly explains the fall of the U.S. auto manufacturers. Intense competition from non-U.S. manufacturers also was a key factor. The U.S. market share held by GM, Chrysler and Ford Motor Co. has been in decline for a long time.

And perhaps just as important in explaining their fall from market dominance is that the Big 3 and the United Auto Workers were too slow to recognize that the rich benefits negotiated years ago—when foreign competition wasn't much of a factor—had to be pared back.

It would be great if every company could provide health care benefits to retirees long before they are eligible for Medicare, or full pension benefits many years before retirees are eligible for Social Security.

The hard reality is that the cost of such generosity—especially as people live longer and medical inflation remains high—is increasingly unaffordable.

We think the auto companies and the UAW have come to recognize this, though that recognition may be too late to save all the companies and the benefits that were provided.

But we hope other companies and their workforces learn from the experiences of the auto companies and can work together to agree on benefit packages that are affordable today and tomorrow.

The hard reality is that the cost of such generosity is increasingly unaffordable.

Flu outbreak highlights need for crisis planning

THE THREAT OF PANDEMIC has the world's attention, as we report beginning on page 1.

An outbreak of H1N1 flu that began recently in Mexico is making its way around the world, with hundreds of confirmed cases and at least nine deaths—and perhaps many more—as of Friday. It may not take long for the number of infections to reach the thousands, which will provide a larger platform for further amplification of the flu virus.

Among the precautions that businesses and public entities are taking are restricting travel, closing schools, allowing employees to work remotely, and promoting sanitary conditions. What's unsettling about the recent flu outbreak is the uncertainty over how many people may catch it and how long that may interrupt organizations' operations.

We think this pandemic scare is an important opportunity for businesses everywhere to review their continuity plans and, if they lack such plans, to develop them immediately. History has many examples of people not taking action until a threat is imminent, which could well be far too late.

The H1N1 flu, while perhaps not as virulent as prior flu outbreaks—avian flu and the 1918 "Spanish flu" pandemic, among them—still can cause serious illness. The time is now to ensure precautions are taken to keep the disease from spreading and to protect organizations' most valuable asset: their people.



WRITE

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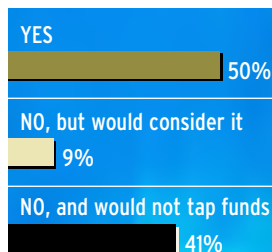
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THIS WEEK'S RESULTS

Have you ever withdrawn funds from a retirement savings plan for nonretirement needs?



NEXT WEEK'S QUESTION

Q: Has your organization informed its workforce about flu developments?

LETTERS

Wausau training shaped many careers

TO THE EDITOR: After being in business for almost 100 years, the Wausau Insurance trade name and train station logo are being phased out by parent company Liberty Mutual Group.

All of the direct sales business produced by the Wausau Signature Agency was sold off to various brokers across the country and all of the direct sales people now work elsewhere. A lot of good insurance people all across the United States got their initial insurance career start and training at Wausau. These various careers included sales, claims, loss control, audit, actuaries, credit and benefit consultants. Once trained by Wausau, these employees were sought after by many insurance agencies, brokers and other insurance carriers for their knowledge, expertise and professionalism.

There are still many good Wausau people scattered across the country with various companies in various positions, including myself (I worked at Wausau from 1976 to 1992). We owe a lot to our start at Wausau Insurance. I sincerely hope there is a training system within the current insurance industry that takes the time and energy to bring newcomers into the business like Wausau Insurance did for so many years. It is indeed a sad day at the old train station!

Steven R. Howe

Corporate Risk Manager and
Director of Human Resources
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PERSPECTIVES

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SPOTLIGHT

**INTEREST IN ENTERPRISE
RISK MANAGEMENT
GROWS** PAGE 14

**SOLVENCY CONCERNS
ABOUT INSURERS ON
THE RISE** PAGE 18

**EMPLOYERS TAKING
STEPS TO KEEP
WORKPLACE SAFE** PAGE 20

**STRUGGLING ECONOMY
MEANS STUDY YOUR
D&O INSURERS** PAGE 20

**MORE PRODUCT
RECALLS LEAD TO RISK
PREVENTION** PAGE 21

**REPORT EMPLOYEE
THEFT RIGHT AWAY,
EXPERTS SAY** PAGE 22



Risk managers seeking lower prices from vendors during recession

By **ROBERTO CENICEROS**

ORLANDO, Fla.—As the recession continues to bite, risk managers are trying to rein in their costs by asking a wide range of vendors—from medical service providers to insurers—to cut their prices.

Other ongoing risk management department budget tightening includes restricting educational and travel expenses and even some safety program reductions, according to people attending the Risk & Insurance Management Society Inc.'s annual conference in Orlando, Fla., last month.

Vendor contracts are being renegotiated particularly by companies feeling the most economic strain, with risk managers and their vendors saying they are collaborating to make changes that will help them maintain their partnerships during tough times.

Renewal premiums were the first insurance item reviewed when every department at her company was

directed to reduce costs, said Kathy McElwaine, U.S. insurance manager for furniture retailer IKEA North America Services L.L.C. in Conshohocken, Pa.

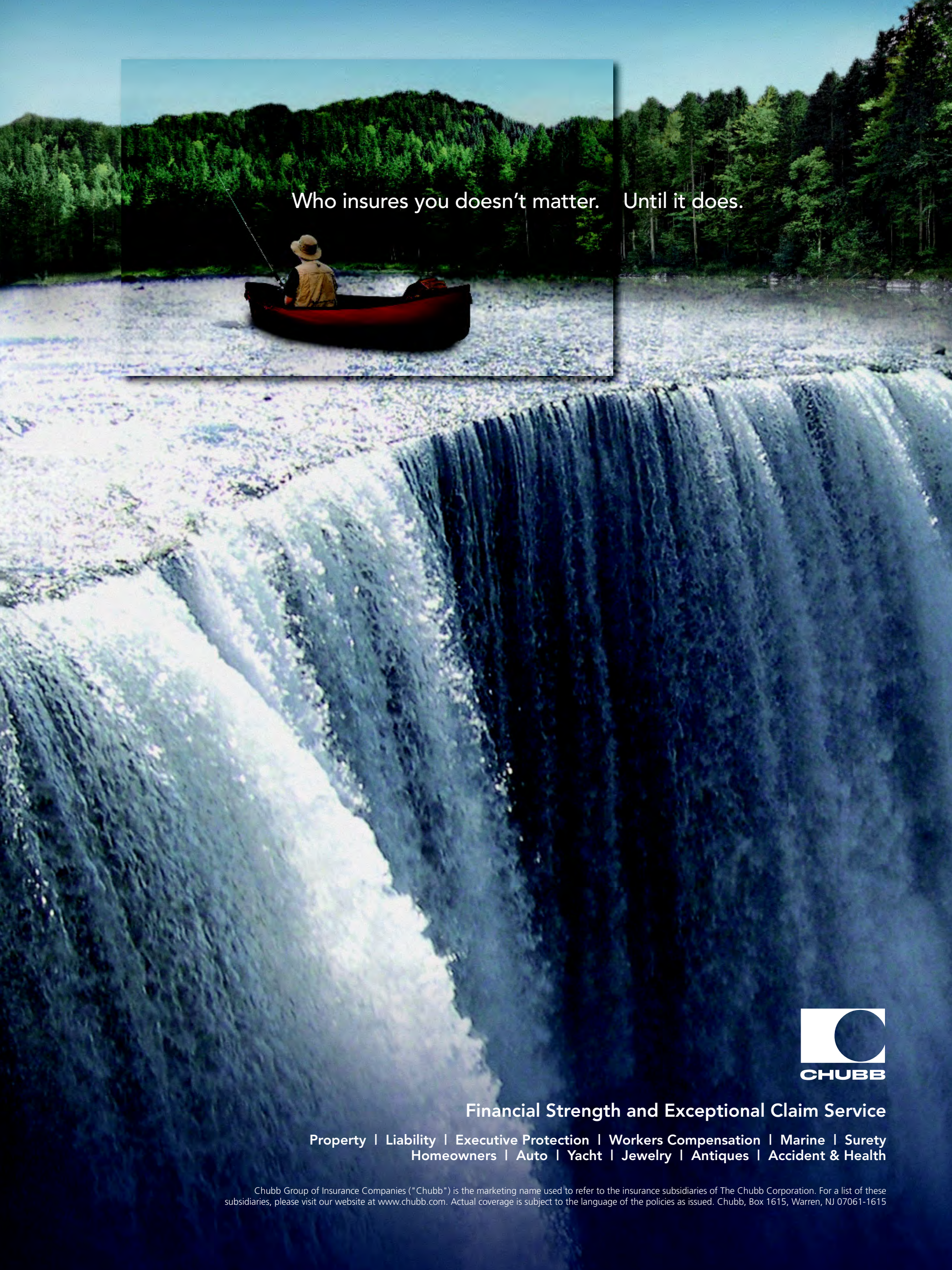
IKEA reduced its premiums about 30% across all lines during its most recent renewal, Ms. McElwaine said. The retailer also increased its self-insured retention for liability coverage.

But Ms. McElwaine attributed much of the premium reduction to IKEA's insurers' willingness to reduce premiums to retain the account in the challenging economy.

"I believe our current carrier really wanted to keep the relationship going," Ms. McElwaine said. "They have been on the account since 2001. They did not want to lose us so they did the best job they could."

With an increase in retentions, though, Ms. McElwaine said IKEA decided to keep its loss prevention bud-

See **ECONOMY** page 16



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Economy: Risk managers seeking lower prices from vendors

CONTINUED FROM PAGE 10

get intact to reduce future claims.

Other risk managers say they are looking at all areas of their program.

Fred O. Pachón, vp of risk management and insurance for Santa Barbara, Calif.-based Select Staffing Inc., said that, because of the economy's impact on the temporary staffing industry, he is not waiting for a scheduled renewal time to send out new requests for proposal to all his vendors.

The purpose of the requests is to renegotiate previously agreed-on contract pricing. The vendors he has contacted include one provid-

ing employee drug testing services and another specializing in workers comp medical management.

"There is no question that the recession has affected our ability to do many things including traveling, also investment in safety incentives," Mr. Pachón said. "We have been forced, because of the economic times, to scale down that investment. Fortunately, the performance of (our safety) program is still very, very good."

Several vendors attending the RIMS conference said they have met with clients who are similarly seeking price concessions. All the vendors said they are trying to steer the

discussions to focus on measures that reduce buyers' overall cost of risk, rather than lowering the price paid for a particular service.

"Everyone in today's environments is looking for ways to save money," said Kent Spafford, chairman and chief executive officer for One Call Medical Inc., a Parsippany, N.J.-based network provider of nationwide diagnostic imaging services.

"So the (question) we get is 'what can you do to help us save?' and one obvious answer is charge us less. But we have programs where we can show them they are not taking advantage of existing

savings opportunities."

Part of the vendor strategy is to convince buyers to bundle services they previously purchased from multiple companies so that one vendor would have a larger share of an employer's business in return for a price concession, several said.

Vendors say such strategies can help their clients and help them maintain revenues because the economy is not sparing them either.

"We would rather have them take advantage of other opportunities, rather than lower our prices, because our problem is the same as everybody else's," Mr. Spafford said.

While some clients are interested in bundling services or other measures that might lower their cost of risk, others are staying clear of changes requiring immediate expenditures, no matter the long-term cost benefit, said Daniel J. Starck, president and chief executive officer at CorVel Corp., an independent provider of medical cost containment and managed care services in Irvine, Calif.

"Anybody who has to come up with money to change, whether it's vendors or solutions, that is a big sticking point," Mr. Starck said. "It's really ground decision-making to a halt."

Risk managers, meanwhile, are under greater pressure than ever to contribute to company profitability, said Steve L. Heckle, director of risk management for Chicago-based auto part recycler LKQ Corp.

"We are definitely being smarter about how we spend our money and making sure that we are absolutely focused on bottom line

'We are definitely being smarter about how we spend our money and making sure that we are absolutely focused on bottom line improvement.'

Steve L. Heckle, LKQ Corp.

improvement, whether it's workers comp, safety and loss control, or premium renegotiations," Mr. Heckle said.

He trimmed his cost of attending the RIMS conference by participating in three presentations in return for a registration fee waiver, Mr. Heckle said.

Scott Beckman, vp-risk management and insurance at Advocate Health Care Network in Oak Brook, Ill., said conferences and educational programs his risk management department would have attended under normal economic circumstances have been cut from his budget.

He has not been directed to reduce his budget, Mr. Beckman said. But Advocate curtailed capital expansion projects because of the economy's impact on its investment returns.

"So I can't justify doing the ordinary course of business knowing that," Mr. Beckman said.

The economy also has risk managers concerned on a personal level. Dave Dolnick, risk manager for La Mesa, Calif., construction company The Brady Cos. said he knows three risk managers who recently have been laid off.

Fortunately, most companies likely realize that exposures tend to increase during an economic downturn, making risk management more valuable, Mr. Dolnick said.

"At least I am hoping so," Mr. Dolnick added. "Boy, am I hoping so."



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Interest in enterprise risk management is growing

By MARK A. HOFMANN

ORLANDO, Fla.—Enterprise risk management remains the Holy Grail of risk management.

Interest in the discipline is on the rise, as was demonstrated as attendees at the recent Risk & Insurance Management Society Inc.'s annual conference in Orlando, Fla., flocked to sessions dedicated to the theory and practice of ERM. In fact, many risk managers say ERM is becoming mainstream, at least in some industries. And, say risk managers, the financial sit-

uation has fueled interest in viewing risk from a broader perspective.

Yet there's general agreement that ERM has a way to go before it is fully developed, and the definition of ERM varies from institution to institution.

For many risk managers, ERM means determining the relationship of risk to strategy.

ERM is "a business competency to help us to optimize opportunities associated with risk," said John Phelps, director-business risk solutions at Blue Cross/Blue Shield of Florida Inc. in Jacksonville. "We

have set corporate strategies to take advantage of market opportunities; ERM gives us a tool, a process and a competency to help our organization achieve those strategies and the associated goals."

For example, the Florida Blues are trying to develop products to address the problem of the uninsured in Florida. Applying ERM to that process helps the Blues "understand the uncertainties" associated with the problem, such as reputational risk that could arise.

"We're moving away from thinking about risk as mitigation only

but focusing on how risk plays into strategy, how we exploit risk to make business more resilient and sustainable," said Carol Fox, senior director-risk management, for Convergys in Cincinnati.

ERM "is an old idea but it's evolved," said Patrick T. Finegan, a principal with Towers Perrin in New York. He said ERM is the "ability to perform risk analysis and activities across a portfolio of risk in a way that the portfolio itself is managed and not the individual risk."

"ERM demands a consistent economic framework of evaluating risk

in a consistent manner," he said, adding that it has to be part of the corporate culture. The consistency needs to be validated through reliable benchmarks.

Companies that have not engaged in ERM yet are increasingly interested in the subject, said Laurie J. Champion, director-Aon Global Risk Consulting, Enterprise Risk Management in Atlanta.

"Companies with ERM are much more interested in whether they're getting the right information and whether their investment has given them the value they expect," she said.

During a presentation at the RIMS conference, Ms. Champion said management and workers may regard implementing ERM as something that will require added time and effort on their part.

"Embedding ERM as a business discipline—aligned with business planning and strategy—overcomes these challenges and delivers value to the organization," she said.

'We're moving away from thinking about risk as mitigation

only but focusing on how risk plays into strategy, how we exploit risk to make business more resilient and sustainable.'

Carol Fox, Convergys

The financial meltdown has fueled conversations around ERM, said the Florida Blues' Mr. Phelps. "The topic, the notion and conversation around ERM has, without a doubt, become mainstream," he said. But what's not mainstream yet is the actual implementation of "effective ERM in most companies," he said. "Why? Many companies view ERM as a compliance activity, and they're going to do it only to the extent it's required by rating agencies."

"Increasing the competency of managing risks increases the organizational effectiveness of your company and sometimes that's hard to measure," said Mr. Phelps.

"If people are not doing it directly, they're looking at it as something" they might want to pursue, said Richard Roberts, corporate risk manager, Ensign-Bickford Industries Inc., a manufacturer in Simsbury, Conn., who added that the discipline is "moving" toward mainstream status. But ERM "is still in the definition stage," he said.

"I think it's still in a very developmental stage for most organiza-

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Management at trucking firm using ERM to grow and diversify company

ORLANDO, Fla.—Implementing enterprise risk management is part of the growth strategy at Matheson Inc., according to Deborah M. Luthi, the trucking company's director-enterprise risk management.

Sacramento, Calif.-based Matheson is a family-owned company, she said. President Mark Matheson and Chief Financial Officer Laurie Johnson want to grow and diversify Matheson, said Ms. Luthi, who was at the Risk & Insurance Man-

agement Society Inc. conference in Orlando, Fla., last month. Part of that process was to hire Ms. Luthi seven months ago as director-ERM.

Ms. Luthi, who also is RIMS' vp of external affairs, said ERM fits into Matheson's growth strategy. "We need to help all of the employees become risk owners so they become skilled in identifying and managing all of the risks of the enterprise," she said.

"As we look to grow and diversify, to be able to have our employ-

ees do that really becomes a competitive advantage," she said. She noted that transport is a competitive field, with some smaller companies going out of business because of economic conditions, which "creates a lot of opportunities for a company like Matheson."

Ms. Luthi said as part of the effort, she's spent a lot of time assessing and strengthening Matheson's traditional risk management program "while introducing some progressive aspects such as

the cost of risk and following that with allocation of the costs out to the business units." Along with that, she said she's mapping out processes and "redesigning those to integrate risk owners."

The past seven months have been spent building a foundation on which to structure ERM, she said. The challenge has been "balancing my innate sense of urgency to get on with the ERM show against this really great opportunity to facilitate ERM with colleagues

who are all on the same page."

Ms. Luthi noted that she previously served as risk manager for the University of California at Davis, and sometimes found herself frustrated by the fact that "the bottom line is not what drives a university." At Matheson, "they really understand that well-managed risks can have a direct impact on operations and service, the bottom line and the future of the company."

—By Mark A. Hofmann

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ERM: More showing interest

CONTINUED FROM PAGE 14

tions," said Pete Fahrenthold, managing director-risk management for Continental Airlines in Houston. "I don't think it's clearly understood because it is a new concept."

He said the ERM concept is well developed but the question remains as to "how do you make the leap to the practical? I think that's one of the biggest impediments to getting ERM enacted."

ERM has become "mainstream and very much embraced" in higher education, said Grace M. Crickette, chief risk officer for the University of California in Oakland. Programs vary in nature because of the diversity that exists within a school, she said.

In an interview at the RIMS conference, Ms. Champion, Ms. Crickette and Silvia King, director-organizational controls and performance at power company Southern Co. Services Inc. in Atlanta, offered a joint assessment of the state of and future of ERM.

ERM has been focused on risk assessment, and while risk assessments are a good tool, ERM has to go beyond just risk assessment, they agreed. It has to be part of the business plan, particularly in strategic planning.

Help is available, pointed out Mr. Phelps.

"All the major brokers will offer special services and ERM consulting to work with organizations to help them start a program or help with risk assessment," he said, adding that "consultants provide those services A to Z as well."

ERM advocates stress that the discipline is not meant to replace traditional risk management.

"Good traditional risk management skills and strategies are as important today as they ever have been," said the University of California's Ms. Crickette. "I think where ERM's going to go depends a lot on what Standard & Poor's and other regulatory or rating agencies do."

"I think it's the way risk will be handled in the future," said Continental's Mr. Fahrenthold.



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Risk managers addressing threat of insurer solvency

By ZACK PHILLIPS

As concerns rise about the financial stability of some insurers, risk managers are using various methods to address insurer solvency risks, say risk managers and other observers.

Risk managers are moving business away from insurers with financial problems, or using those problems as leverage in renewal negotiations as they shop their business elsewhere. But insurance buyers also are retaining more risk themselves, broadening policy cancellation terms, seeking broker counsel,

paying more attention to the financial stability of all insurers, and moving troubled insurers into higher layers of a program, observers say.

Jay Stein, Darby, Pa.-based vp of risk management at Mercy Health Systems, said that when the primary insurer on one of the network's accounts seemed to be in danger, he moved the insurer to an upper layer.

"So we didn't exclude them, but...we tried to minimize the risk," he said.

This approach may be particularly useful for insurers that have received mainstream attention, potentially

worrying boards of directors.

John Floras, director of risk management and insurance at Ontario Power Generation Inc. in Toronto, said he and others at his firm met in person with leadership at American International Group Inc. and XL Capital Ltd., two of its insurers, after problems surfaced for each.

Mr. Floras said AIG had been its primary directors and officers liability insurer since it began the program in 1993. But during renewals recently, Ontario moved AIG into its excess layers.

"We weren't going to kick them

out completely, but we took them off the primary," he said. "They lost a bit of premium, but I think they're probably happy."

The stability of insurers is especially important for D&O coverage, said Patrick T. Finegan, a New York-based principal at consultant Towers Perrin.

"If you ask the typical risk manager not, 'What is your biggest risk?' but 'What's the insurance that's crucial to keeping your job?' (the answer is D&O)," he said. "If you can't tell (internal management it is) satisfactorily insulated from shareholder suits, your job is in question."

Mr. Finegan noted that some concerns about insurer solvency may be in response to problems that have surfaced for a few insurers or their holding companies. But he said risk managers with that concern should evaluate factors such as whether any of their insurers suffered a credit downgrade, are under review by rating agencies, have made any major, disappointing announcements recently, and

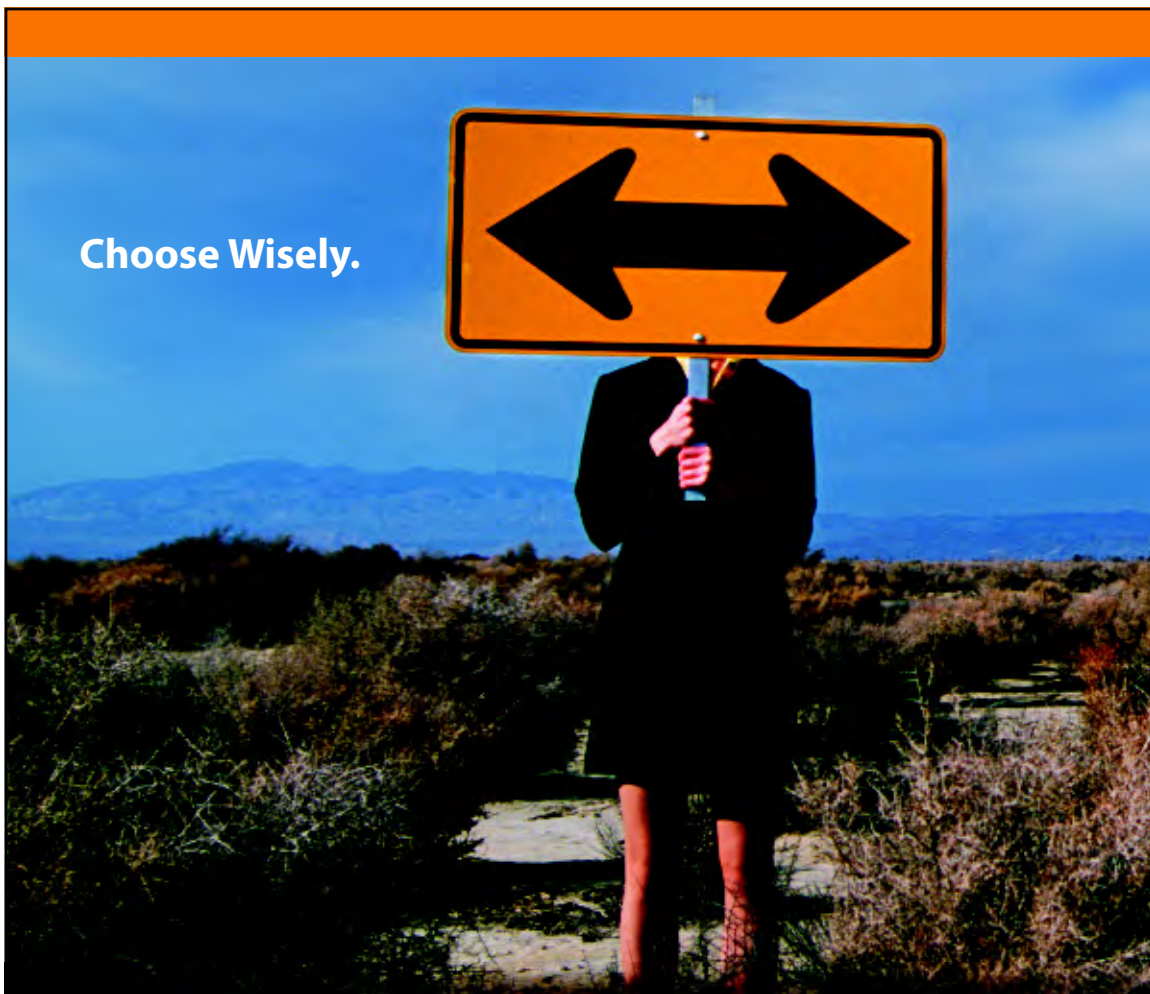
whether they have a track record of restating reserves.

"Anybody that's been downgraded, you need to keep an eye on them," said James A. Swanke Jr., a Minneapolis-based managing principal at Towers Perrin. "Make sure there's a constant review of their financial condition because things are going to change really quickly. And don't assume that somebody that hasn't been downgraded won't be downgraded in the future because I don't think we've seen all the action that's going to occur in this industry."

Many risk managers said they rely on their brokers to evaluate insurer solvency.

Gary Escobar, risk analyst at CPS Energy in San Antonio, said his company has an internal group that assesses the financial stability of its insurers. But he said he also relies a lot on brokers, not only to judge whether an insurer is financially sound enough to pay claims, but also

See **SOLVENCY** page 23



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Be cautious when choosing new insurers, experts say

Risk managers considering changing insurers should consider a few potential pitfalls before making a switch, observers say.

The financial troubles of American International Group Inc. and other insurers provide insurance buyers with leverage to use in renewal negotiations and an opportunity to shop for more favorable terms and pricing, say risk managers, brokers and other observers. But switching insurers can create a coverage gap, said Cort Malone, a New York-based attorney at Anderson Kill & Olick P.C.

For example, a company could have directors and officers liability coverage written under a claims-made policy and then switch to a new policy that excludes claims based on actions that occurred during the prior insurer's coverage period. If shareholders file suit in 2009 based on a director's actions covered during the prior policy period, the previous insurer can deny coverage because the suit that triggers coverage occurred after the switch, and the new insurer can try to deny coverage based on the exclusion of prior acts.

Mr. Malone and others say it is important to examine the new policies carefully. In addition to coverage exclusions, the new policies may have aggregate limits instead of occurrence-based limits, they may include legal defense costs within the coverage limits so a lengthy litigation would

exhaust coverage before reimbursing an indemnity claim, and they may include other provisions, the observers say. For example, a common provision is one mandating that disputes are settled through arbitration, which often deprives policyholders of the option of litigating disputes, they say.

Some risk managers say it may not be worth the trouble to switch insurers.

"If you're starting on a new program, you'll find that insurance companies are really asking for a lot more information...than they have before," said Lori Seidenberg, vp of enterprise risk management at Centerline Capital Group, a New York-based real estate asset management group. "Then you question is it worth saving five, ten thousand dollars for all the extra work and the potential of your new policy not being as great as your old policy."

Ms. Seidenberg and other risk managers say it is a favorable time for insurance buyers to shop, but that they should be careful if they select a new insurer.

"I think the closest analogy I have is after the hurricane season a couple years ago, all these little companies popped up for capacity and better quotes and people made a run to these little carriers," she said. "And the next storm season came and those carriers are insolvent. So you just really got to be careful on who you're going with these days."

—Zack Phillips



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Workplace violence prevention important amid layoffs

By COLLEEN MCCARTHY

ORLANDO, Fla.—Recent high-profile incidents of violence and the recession are fueling worries about workplace violence, and an increasing number of organizations are assessing their facilities and taking additional steps to create a secure work environment, observers say.

"Many workers are facing financial pressures today that they have never experienced in their lifetime. Unfortunately, we are seeing that stress play out in violent ways," said Pamela Rippens, senior vp-account

management with Hartford, Conn.-based Specialty Risk Services, at the Risk & Insurance Management Society Inc.'s annual conference last month in Orlando, Fla.

Panelists cited recent violent outbreaks as contributing to the heightened concern, including the April 3 shooting rampage in Binghamton, N.Y., where an unemployed man killed 14 people including himself in a community center; and a San Diego bus mechanic who shot two co-workers, killing one, in the city's bus complex last month.

In response, "a lot of organizations

are asking themselves, 'what if?' " Ms. Rippens said. And, many companies—including those not previously exposed to workplace violence—are assessing their procedures and security measures in an effort to reduce the likelihood of a violent event.

Statistics show workplace homicide rates are increasing. The Atlanta-based Centers for Disease Control and Prevention considers workplace violence a national epidemic. And, increasingly, employers are being held responsible for failure to take proper action to prevent workplace violence, or to assist employees in

recovering from it, Ms. Rippens said.

Workplace violence can range from harassment and threats to homicide and suicide, experts say. Meanwhile, perpetrators extend beyond co-workers and can include individuals with criminal intent, or personal relationships with workers and customers.

To protect employees, companies should have established hiring practices and firing procedures, and should inform employees on how to identify warning signs and procedures to follow in the event of an incident. Organizations also need to

work with senior management to establish a workplace violence policy that is well-known and implemented, experts said.

"It's not the sole responsibility of the risk manager. It's a team effort and you need to involve human resources, security and key departments to be successful," said Margo Hickman, vp-insurance and risk finance, HSBC North America Holdings Inc., who developed HSBC's violence prevention program two years ago.

To avoid policy pitfalls, Ms. Hickman recommends clearly defining all terms. For example, are employees allowed to have weapons on the property? There also are sensitive issues to be decided, for example, "If you require employees to report restraining orders they have taken out against a person, how do you enforce it?" she said. In addition, determine if the policy will extend to vendors and delivery people who visit the property, she said.

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Now's the time to re-evaluate D&O coverage

By ROBERTO CENICEROS

ORLANDO, Fla.—In today's economic environment, policyholders need to investigate more thoroughly the financial stability of their directors and officers liability insurers, experts say.

Policyholders also need to ensure that their D&O liability coverage limits are sufficient as exposures grow, they said at the Risk & Insurance Management Society Inc.'s annual conference held in Orlando, Fla., late last month.

Additional scrutiny of insurers is necessary because "there are a number of carriers...who are having liquidity and perhaps even solvency issues," said David Conca, director of risk management for Time Warner Inc. in New York.

"You need to work with your broker to review the carrier's financial ratings, but you need to get more granular than that," Mr. Conca advised. "Getting an A.M. Best or S&P report is not going to be enough."

To help him delve deeper into insurers' stability, Mr. Conca said he "engaged internal resources," teaming up with treasury and finance professionals to assess the "financial wherewithal of the carrier community."

Insurers' credit default swaps exposures are among the metrics Mr. Conca said he carefully reviewed with "the assumption being that those who price such debt must know as much about the (insurance) company internally and its financial wherewithal as anybody else."

Continued on next page

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Now's the time to re-evaluate D&O coverage

By ROBERTO CENICEROS

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Continued on next page

Risk prevention, mitigation key with product recalls

By MARK A. HOFMANN

ORLANDO, Fla.—With product recalls on the rise, there are steps risk managers can take to protect their companies, experts say.

Risk prevention and risk mitigation measures are key aspects of managing the risk, but risk managers also should analyze their insurance coverage to ascertain what protections they have in place, they said.

Speaking at the Risk & Insurance Management Society Inc.'s annual conference in Orlando, Fla., late last month, Joseph Bermudez, a member in Cozen O'Connor's Denver office, said the Consumer Product Safety Commission recorded 563 recalls involving about 60.8 million product units last year. In addition, he said food-borne diseases cause 87 million illnesses and 5,700 deaths annually in the United States.

He cited a host of factors in the increase of food-related incidents,

including the disappearance of local food producers, globalization, outsourcing and offshoring, and the centralization of food production and distribution. For example, four companies slaughter more than 70% of the meat in the United States, said Mr. Bermudez.

Food safety as a core function for food company risk managers, said Debra Rodgers, vp-global risk management at Philadelphia-based Aramark Corp. Ms. Rodgers said Aramark serves more than 2 billion meals annually in a wide range of venues, including colleges, correc-

tional institutions and special events.

In order to assure the safety of its products, Aramark employs a supply chain management team that audits suppliers to make sure their standards are up to Aramark's standards, she said. Aramark also follows the Hazard Analysis and Critical Control Points principles developed by the U.S. Food and Drug Administration. The HACCP principles include such matters as maintaining proper temperatures for foods, she said.

Ms. Rodgers said Aramark deals

with perhaps 150 incidents per year, 140 of which are found to involve illnesses unrelated to food. A first-response team is employed upon notification of an incident, which is thoroughly investigated. She said that in the past 10 years, no incident has escalated into a serious incident.

But risk managers facing a potential product liability situation need to move swiftly to determine what insurance policies will respond, said Jonathan Cohen, a partner in Gilbert Oshinsky L.L.P.'s Washington office. "Early decisions, in fact,

do matter," he said.

Once policies have been identified, generally "you should give notice to everyone," he said. "Give notice as early as you can."

In a global economy, risk managers must understand the nature of their risk, such as understanding their supply chain and its diversity, said Mitchell Schmidt, senior vp and custom casualty national manager at ACE USA in Philadelphia. A company can do everything perfectly in terms of quality control, but has to take into account the rest of the supply chain, he said.

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CONTINUED FROM PREVIOUS PAGE

After making his assessment, Mr. Conca said he is among buyers who have renewed their coverage with AIU Holdings Inc.

Underwriters also review credit default swap pricing, among other technical measures they have adopted in recent years, to help price their D&O liability products, said Brian S. Wanat, managing director for Aon Risk Services in New York.

In today's economic environment, risk managers should use experienced D&O brokers for appropriate coverage arrangements, said Rene L. Siemens, a policyholder attorney at Proskauer Rose L.L.P. in Los Angeles.

"I guarantee you if you don't do that and you get a disputed claim later on, it will be orders of magnitude more expensive," as policyholder disputes with insurers can cost millions of dollars to resolve and the outcome is unpredictable, Mr. Siemens said.

Buyers renewing coverage are likely to find D&O liability policy pricing continuing to firm, the speakers added.

An increase in claims frequency, more lawsuits filed by institutional investors who are less eager to settle than attorneys representing individual plaintiffs, falling stock prices, skyrocketing bankruptcy filings, and uncertainty about how recent financial scandals will affect litigation all are signs pointing to continued rate firming, the speakers said.

As budgets shrink, some companies may not be buying sufficient D&O liability coverage, Mr. Conca said. However, the risk of litigation may be increasing for some companies as they try to increase revenues through certain activities such as selling off "distressed assets" or business units.

"You really want to keep yourself sufficiently funded and perhaps consider raising your limits rather than lowering them," Mr. Conca advised.

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Risk managers should report employee theft ASAP: Experts

By ZACK PHILLIPS

ORLANDO, Fla.—Risk managers who discover their company has been victimized by employee theft should alert their insurer as soon as possible despite pressure from various factions to wait, legal experts say.

Crime insurance, also known as a fidelity bond, covers theft, kickback schemes and other instances of employee dishonesty. The policies are triggered by the discovery of a loss and many have strict filing deadlines based on the date of the discovered loss, rather than the date the insurance company is notified.

This means risk managers should notify their insurer early on, even if they are not certain a theft occurred, a panel of experts told attendees at a session during the recent Risk & Insurance Management Society Inc. conference in Orlando, Fla.

"Nothing good comes from sitting on a claim and waiting," said Bronze Breazeale, vp of fidelity bond and domestic claims at AIU Holdings Inc. in New York. "So many things can be avoided if there is early notice (to the insurer)."

Mr. Breazeale and others said even if the suspected theft turns out to be unfounded, notifying the

insurer of the suspicion would not increase a company's premiums.

"I don't think any underwriter is going to penalize you for giving a notice," said John Morrissey, a Chicago-based senior vp at Aon Risk Services. "It's not like your car insurance and every fender bender you report is going to make your premiums go up."

But giving early notice to crime insurers can be difficult for risk managers. Internal attorneys and leaders may want to keep the matter confidential until they know the full scope of the problem, said Mark Miller, an attorney who runs the insurance recovery advisory group at Washington-based Greenberg Traurig L.L.P. and another member of the RIMS panel.

"You find a lot of pressures on risk managers to perhaps not give notice because you don't know what the problem is and there's just so (many) legal (issues)," Mr. Miller said. "You might be looked at suspiciously if you go in and say, 'Look, we got to tell the carrier about this.' And you might have the general counsel saying, 'But we can't.'"

Some fidelity policies require victimized companies to alert the authorities, who often ask the company to not disclose its discovery to anyone, including its insurers, the panelists said.

"Invariably, in the event that it's presented to law enforcement or the district attorney or the FBI, they always say, 'Listen, this is really important. You have to keep this confidential,'" Mr. Breazeale said. "You can continue to have a dia-

logue with your carrier that doesn't impair law enforcement's investigation so long as the carrier doesn't contact the bad actor."

In many cases, the risk manager cannot alert the insurer because he or she does not know about the problem. Mr. Morrissey said in one recent case, an employee was arrested at a company's office in April, but the risk manager did not learn

'Wouldn't it be nice if every time an employee stole, he left a completely clear diagram of how it was done and what points in time they did it?'

Bronze Breazeale, AIU Holdings Inc.

of the matter until July.

In many cases, he said internal audit groups and others who discover the theft simply do not know the company has insurance for such losses.

"I think it's incumbent on risk managers to educate their management that this coverage exists," Mr. Morrissey said.

Beyond communicating with the insurer, the panelists said properly managing electronic records is crucial in cases of employee theft.

About three-quarters of the evidence in such cases is electronic,

said Glenn Pomerantz, a New York-based forensic accounting partner with BDO Consulting. He said employee dishonesty cases often are based on circumstantial evidence, which means risk managers need to understand where data is held and for how long, how to preserve electronic evidence, how to establish a chain of custody and how to duplicate the evidence later.

"Wouldn't it be nice if every time an employee stole, he left a completely clear diagram of how it was done and what points in time they did it?" Mr. Breazeale said. "That never happens. People try to cover it up and, in some instances, are successful for long periods of time....Companies that maintain good books and records, generally speaking, will have an easier time presenting a claim."

Mr. Pomerantz said kickbacks and other provider fraud often can be eliminated by conducting exhaustive background checks on employees and providers. He said risk managers also should make sure employees understand when seemingly minor steps, such as rejecting faxed copies of receipts, are crucial to the firm's larger fraud-fighting efforts. He also recommended that firms segregate duties among its employees.

"If a person has the ability to make payments to a vendor and also reconciles those accounts, generally speaking, that is a recipe for potential fraud and something we see time and time again," he said.

Fidelity bonds also cover forgeries and thefts by a third party, but the panelists said the vast majority of claims involve a direct employee.

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Solvency: Buyers eyeing potential risks

CONTINUED FROM PAGE 18

to relay how CPS Energy's competitors are handling a troubled insurer.

Todd Riplinger, risk manager at Springfield, Ill.-based Memorial Health Systems, said that during recent renewals, he asked his brokers to secure a clause allowing the company to drop its insurer for no cause with 120 days' notice. "(The clause is) so we can get out quicker and easier without penalty," he said.

Brokers also can be useful for risk managers facing internal pressure if the broker is someone the board of directors knows well and trusts.

"The board has never been more

skeptical of rating agencies," said David E. Bender, a Ventura County, Calif.-based partner in Anderson Kill Wood & Bender L.L.P. "It's a tough thing to go in front of the board, talking (about insurer financial statements). You want to have someone who has expertise in evaluating solvency and insurers' financial condition and that, I think, is your broker."

Still, Mr. Wood and others say it is important for risk managers not to rely exclusively on their brokers. He said most of his clients' brokers are diligent and knowledgeable, but it's still prudent for risk managers to check information they receive

from a broker with other sources, potentially even another broker.

Lori Seidenberg, vp of enterprise risk management at Centerline Capital Group, a New York-based real estate asset management group, said she uses one broker for her D&O cover and a different broker for her errors and omissions line.

"We have multiple brokers and it works for us," she said. "(One broker) will say, 'This is really not covered under our policy and it may be an exposure, so go back to your other broker and let them know you need to find coverage for this.'"

The credit crisis is forcing many risk managers to re-evaluate long-

standing relationships with incumbent brokers and insurers, an eye-opening experience for many risk managers, said Cort Malone, a New York-based attorney at Anderson Kill & Olick P.C.

"You've got people who for 10, 15 years, whatever it was, were just going along, renewing the same programs, just listening to whatever their broker told them..., saying, 'Well now I've got new pressures on me,'" he said. "I've got to take another look at my entire insurance program."

And if an insurer is at risk of becoming insolvent, risk managers need to know how large of a hole in their cover the insolvency would leave, how quickly they could fill it, and how the insolvency would

affect the coverage of excess insurers and their willingness to participate in the program.

Ms. Seidenberg said she was in the midst of finalizing Centerline's Oct. 31 D&O and E&O renewals last year when news broke of AIG's near collapse. She said there was discussion about whether excess insurers would be willing to write over AIG, which was participating on one of Centerline's layers.

Ms. Seidenberg said the company ultimately opted not to renew with AIG on one of the layers. Soon thereafter, the replacement insurer became the subject of unfavorable speculation about its solvency.

"We kind of looked at each other and said 'Did we even make the right decision?'" she said.

Questionable claims on rise

By JEFF CASALE

A recent report by the National Insurance Crime Bureau shows the number of questionable claims is up during the first quarter of 2009 compared with the first quarter of 2008, providing a snapshot of what claims analysts call "opportunistic fraud."

A down economy and mounting unemployment level is causing some people to look at insurance fraud as a possible way to make money by taking advantage of a situation, according to the NICB.

The report, released last Tuesday, is an analysis of questionable claims submitted by more than 1,000 NICB member companies in the first quarter of 2009 versus the same period a year ago.

A questionable claim is a claim that is reviewed by an insurance company and classified as possibly fraudulent.

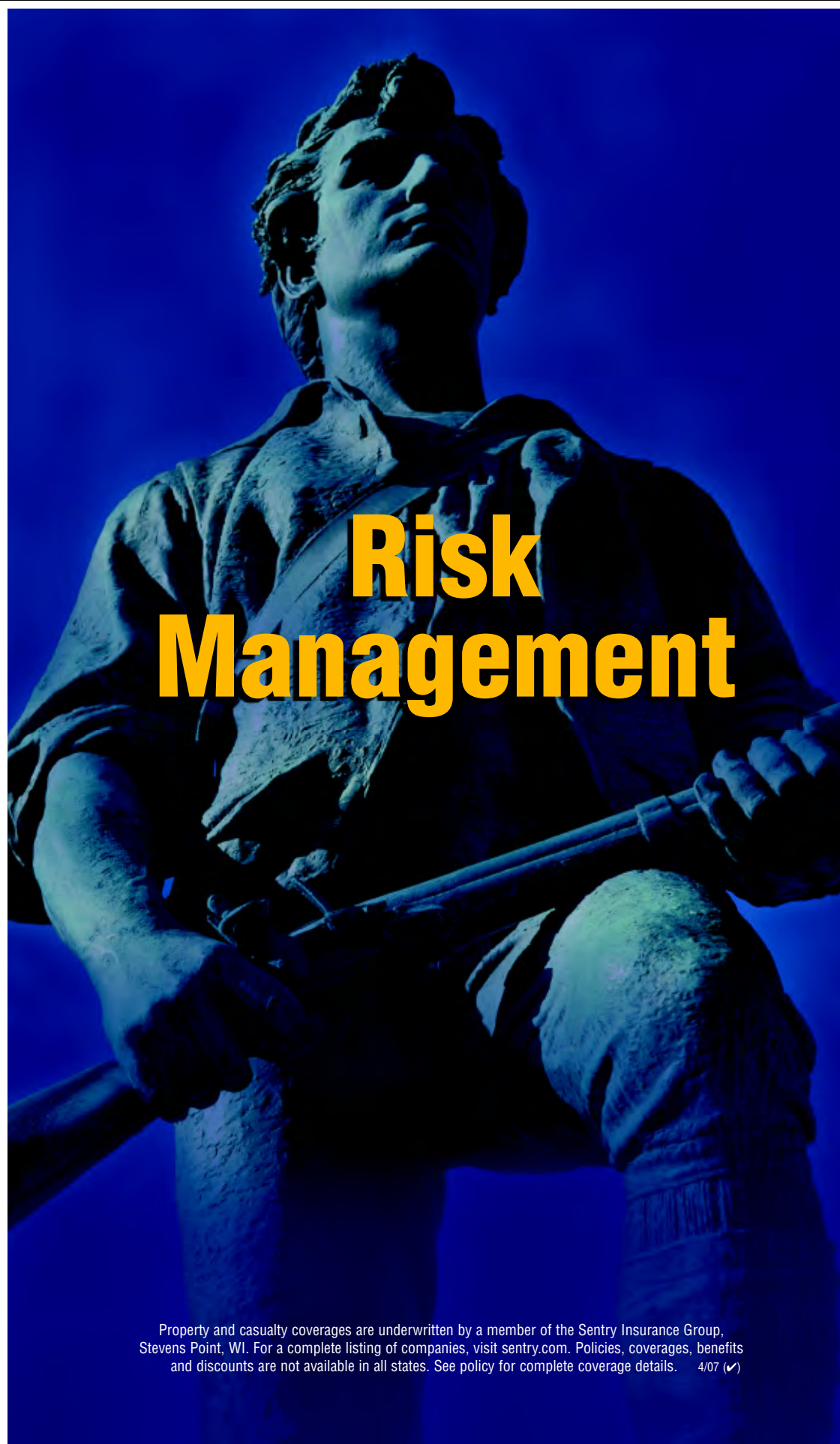
During the first quarter of 2009, the number of slip-and-fall claims under commercial policies went up 77% compared with the first quarter of 2008, according to the Des Plaines, Ill.-based NICB.

The number of suspected fraudulent claims related to workers compensation insurance was up 71% during the first quarter this year compared with last year.

The full report is available at www.nicb.org.

GEICO buyer wins drawing

Timothy Gander, risk manager at GEICO Insurance Co. in Washington, is the winner of a drawing held by *Business Insurance* during the recent Risk & Insurance Management Society Inc. 2009 Annual Conference & Exhibition in Orlando, Fla. Attendees of RIMS were invited to drop their business cards into a bowl at B1 booth #901. Mr. Gander won a 32-gigabyte iPod Touch digital media player in the April 22 drawing.



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(2) under section 112 of FSMA making ancillary provisions to implement the Scheme.
A copy of the report (the "Report") prepared by an independent expert, Mr. Allan Kaufman of Navigant Consulting (Europe) Limited, pursuant to section 109 of FSMA, and of a statement setting out the terms of the Scheme (the "Scheme Summary") and a summary of the Report will be made available free of charge to anyone requesting such copies by contacting PricewaterhouseCoopers LLP by telephone on +44 (0) 20 7213 5125 (between 09.30 and 17.30) or in writing at Plumtree Court, London, EC4A 4HT from the date of publication of this notice until the date on which the Application will be heard before the Court. Copies of the Report, the Scheme Summary and a summary of the Report will also be available on the websites of Equitas and Lloyd's at www.equitas.co.uk and www.Lloyds.com respectively.
Presentations to explain the transfer will be held in London, New York, Chicago and Los Angeles and details of dates and venues for these presentations can be found on the website of Equitas at www.equitas.co.uk.
All claims in relation to the Transferring Business currently being dealt with by Resolute Management Services Limited ("RMSL") will, after the proposed transfer, continue to be handled by or on behalf of RMSL. Future claims arising under the policies of insurance and reinsurance included in the Transferring Business will be similarly dealt with by RMSL. The proposed transfer will secure the continuation by or against Speyford Limited of any legal proceedings currently pending by or against the Names that relate to the rights and obligations in respect of the Transferring Business.
The Application is directed to be heard before a Judge of the Chancery Division at the Royal Courts of Justice, The Strand, London, WC2A 2LL on 24 June 2009 and any person who claims to be adversely affected by the carrying out of the Scheme may appear at the time of the hearing and express their views in person or by Counsel. Any person who intends so to appear, and any policyholder or reinsurer of the Transferring Business who objects to the Scheme but does not intend to attend the hearing, is asked to give notice in writing as soon as possible, and preferably before 9 June 2009 of such intention or objection, setting out the grounds of their objection, to the Solicitors named below.
Dated: 24 April 2009
Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ.
Solicitors to the Applicants
Reference: CMS/70-40268022/NS

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
No. 9392 of 2008
NOTICE OF SANCTION OF AN ARRANGEMENT
IN THE MATTER OF
**CITY GENERAL INSURANCE
COMPANY LIMITED**
AND IN THE MATTER OF THE
COMPANIES ACT 2006 OF GREAT BRITAIN

NOTICE IS HEREBY GIVEN that, by an Order dated 23 April 2009 made in the High Court of Justice in England and Wales, Chancery Division, Companies Court, in the matter of City General Insurance Company Limited (the "Company"), the Closure Plan to be made between the Company and its Eligible Policyholders (as defined in the Closure Plan) pursuant to Part 26 of the Companies Act 2006 which was voted on and approved by the Eligible Policyholders during the meetings held on 3 February 2009, was sanctioned. A copy of the Order sanctioning the Closure Plan was filed with the Registrar of Companies on 24 April 2009, and the Closure Plan became effective on that date (the "Effective Date").
Eligible Policyholders are required to submit completed Claim Forms together with the supporting evidence required by the Closure Plan in respect of their Claims (as defined in the Closure Plan) by 5.30pm (London time) on Wednesday 21 October 2009 (the "Final Claims Submission Date").
Completed Claim Forms should be returned to City General Insurance Company Limited, 3rd Floor, No. 1 Liverpool Street, London, EC2M 7QD or by fax to +44 (0) 20 7956 2376 or by email to enquiries@citygeneral.co.uk.
In the event that an Eligible Policyholder fails to complete and submit a Claim Form to the Company on or before the Final Claims Submission Date, the Claims of that Eligible Policyholder against the Company will be deemed to have been satisfied in full and that Eligible Policyholder will not be entitled to receive any payment in respect of such Claims.
Notice of the Effective Date and the Final Claims Submission Date has been sent to all known Eligible Policyholders for whom the Company has contact details which it does not believe are incorrect. Any person who believes himself or herself to be an Eligible Policyholder of the Company who has not received notice of the Effective Date should contact the helpdesk at City General Insurance Company Limited at the address above or by telephone on +44(0) 20 7956 2877 or by email to enquiries@citygeneral.co.uk.
Any Eligible Policyholder who is unclear about or has any questions regarding this Notice, or the action he is required to take, should contact the Company using the details set out below:
City General Insurance Company Limited, 3rd Floor, No. 1 Liverpool Street, London EC2M 7QD, United Kingdom
Tel: +44 (0) 20 7956 2877
Fax: +44 (0) 20 7956 2376
Email: enquiries@citygeneral.co.uk
Website: www.citygeneral.co.uk

REQUEST FOR PROPOSALS

The Delaware Department of Insurance ("DOI") is issuing this Request for Proposals ("RFP") for the State of Delaware. The DOI seeks to engage a management consulting firm in connection with a pending management review of the Department. The DOI anticipates that, after conducting interviews, it will select a firm to evaluate the DOI's management efficiencies and weaknesses.
The DOI consists of five divisions: (1) Bureau of Company Examination, Rehabilitation & Guaranty; (2) Consumer Services & Investigations Division; (3) Producer Licensing & Continuing Education Division; (4) the Fraud Prevention Bureau; and (5) the Bureau of Captive Insurance and Financial Products. The DOI is tasked with ensuring reliable insurance coverage at reasonable rates for Delaware consumers.
Persons interested in responding to this RFP may find the complete RFP on the DOI website at: <http://delawareinsurance.gov/RFPsjobs.shtml>.
Responses to the RFP may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on May 25, 2009. Address responses to:
Michael Gould, Esq. State of Delaware
Department of Insurance
841 Silver Lake Blvd. Dover, DE 19904
**Re: Insurance Department
Management Review**

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Contact Monique at 212-210-0129.

BUSINESS RESOURCES

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Enterprise Risk Management
Publishing: May 18
Classified Ad Close: May 12
Bonus Distribution: AAMGA, ACORD LOMA

Public Entity Risk Management
Publishing: June 1
Classified Ad Close: May 26

Contact Monique at 212-210-0129 For Details

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UP CLOSE

Comings & Goings

KEVIN J. TIERNEY

NEW JOB TITLE: Westbrook, Maine-based vp and general counsel for Westbrook-based Disability Reinsurance Management Services Inc.

PREVIOUS POSITION: Founder of the Falmouth, Maine-based Law Offices of Kevin J. Tierney, Esq., a private practice focusing on arbitration and mediation of reinsurance disputes.

GOALS FOR NEW POSITION: As is the case with all functional areas within our organization, the Disability RMS Legal & Compliance team works to help our clients achieve their business goals. Our primary goal is to ensure that our strategic partners receive the appropriate compliance support services required to successfully manage their books of business within the reinsurance regulatory framework.

CHALLENGES FACING THE INDUSTRY: Employee benefit costs have seen double-digit increases over the last decade and employers struggle to manage their budgets while providing critical employee benefits, including disability insurance. Educating employers

and employees about the critical role disability insurance plays in protecting an individual's most important asset, the employee's income stream, remains a challenge.

WHAT WOULD YOU CHANGE ABOUT THE INDUSTRY: Over my 30 years in the life and disability insurance business, state insurance departments have taken a number of steps to improve the efficiency of various insurance regulatory processes. With both governmental and private sector budgets likely to come under increasing stress for the foreseeable future, I would like to see continued efforts by both companies and regulators to improve the efficiency and effectiveness of the regulatory process.

FIRST EXPERIENCE IN THE JOB MARKET: I cut my teeth as an entry level lawyer for Union Mutual Life Insurance Co. (now UNUM), handling a wide range of life and disability insurance issues.

OUTSIDE THE INDUSTRY, A DREAM JOB: I would own an art gallery overlooking the ocean on the coast of Maine. I have always enjoyed working with artistically creative people.

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.

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:
Allison Martinat
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
amartinat@businessinsurance.com

POSTING THIS WEEK

BROKERS:

- Colemont Brokerage Group Inc.

INSURERS:

- AIU Holdings Inc.
- Whittington Capital Management
- Zurich Financial Services Group

REINSURANCE:

- JLT Re (North America) Inc.
- Tokio Marine Global Ltd.

OTHER PROVIDERS:

- Meritain Health
- Aon Consulting Worldwide
- Avoca Insurance Holdings

ASSOCIATIONS

- Reinsurance Assn. of America

Spain: Tough economic conditions test country's risk managers

CONTINUED FROM PAGE 4

ny Formento de Construcciones y Contratas S.A., said, "We have received a specific order to reduce costs. But it is difficult to maintain the level of coverage. You have to take imaginative action to reduce the cost and maintain the coverage without increasing the level of risk. One way to do this is to increase your retention, but that is a difficult job."

Pressure to cut costs is growing, agreed Juan José Gil Sanchez, insurance manager at Madrid-based telecommunications giant Telefonica S.A.

"The reduction of cost is key. We have to fine tune our risk management. We need to analyze innovative ways to manage events at the same or even reduced costs," he said.

But Eduardo Escaffi, director of risks at Madrid-based utility company Endesa S.A., said insurance buyers should carefully consider their options as they try to cut cost but ensure they have adequate protection in place.

"We can reduce retentions and

have tools to make our retention more efficient through captive insurance companies and the like, but you have to be careful with catastrophic risks that can hit the bottom line if not managed carefully. The reduction of limits in the upper part of the program can be

'...only the risk managers that are ready to turn risk into opportunity, the risk managers that are ready to face unpredictable risks and that have business continuity plans will overcome the situation.'

Pedro Tomey Gomez, Aon Gil y Carvajal

one of the biggest mistakes," he said.

But the difficult economy also represents an opportunity for risk managers, said Cristina Martínez García, who was head of risk and insurance at Madrid-based Iberia Airlines when the discussion was held but has since moved to Campofrío Food Group S.A., the company recently formed from the merger

between French processed meats company Groupe Smithfield and Campofrío Alimentación.

"The No. 1 priority in most organizations today is risk management. Companies certainly need to focus on the reduction of cost, but we have to remind people of the bene-

increase their exposure to risks too much while seeking to reduce costs."

Risk managers should play an active role for their companies and not just focus on a reduction in premium spend, said Mr. Tomey.

"In the current economic situation in which more complex and bigger risks arise, only the risk managers that are ready to turn risk into opportunity, the risk managers that are ready to face unpredictable risks and that have business continuity plans will overcome the situation," he added.

Luis Basabe y Suárez de Tangil, managing director-risk management at Marsh S.A., the Madrid-based arm of Marsh Inc., said brokers have to work closely with customers to ensure risks are managed more efficiently.

"We are receiving the message from management that costs need to be reduced and, in many cases, one of those main costs is insurance premiums. Brokers have to listen carefully and align objectives with clients and see whether the risk can be managed more effectively. There

may be some savings that can be achieved and others may be difficult. We have to listen, align objectives and challenge existing arrangements," he said.

Mr. Basabe agreed the economic environment also offers an opportunity for risk managers because risk is very visible for every CEO and so we have to anticipate what will happen and how it is going to affect companies. We have to put into place systems that will work and gain the risk managers more visibility within companies," he said.

Jose Carlos Nájera, director of business at the global risks division of Spain's biggest insurance group, Mapfre S.A., agreed. "One of the biggest roles of risk managers is to provide opportunity and with the support of the brokers and expertise of the risk managers there should be enough knowledge to bring good solutions. If risk managers think that in this crisis the only thing to do is reduce premiums then we are in a bad way," said Mr. Nájera.

Grace: Former executives dropped from litigation

CONTINUED FROM PAGE 4

based on the government's failure to prove its charges, according to local reports.

W.R. Grace has denied any wrongdoing, saying the company and its senior managers took active steps to study the ore and prevent its release into the community. They also allege the government agencies knew about the problem decades ago but did nothing to address it.

If convicted, the defendants face up to 15 years in prison on each of the three counts of Clean Air Act violations and potential fines. W.R. Grace, which filed for bankruptcy protection in 2001, could face fines.

In March 2008, W.R. Grace agreed to pay \$250 million to reimburse the federal government for the costs of

the investigation and cleanup of the asbestos contamination in Libby, the highest sum in the history of the Superfund program, according to the Justice Department and Environmental Protection Agency.

In April last year, W.R. Grace established a \$3 billion trust under the U.S. bankruptcy code to settle all present and future asbestos-related personal injury claims against the company, including those stemming from its vermiculite mine in Libby. Among the assets in the trust are proceeds from hundreds of liability insurance policies from dozens of insurers dating back to the 1960s, bankruptcy documents show.

Officials from W.R. Grace did not return calls, and the U.S. Attorney's Office in Missoula declined to comment, citing a court order.

BI accepting nominations for European risk manager award

Business Insurance is accepting nominations for the 2009 European Risk Manager of the Year award.

The annual award is intended to recognize excellence in risk management at a Europe-based organization, and 2009 will mark the third such award. The European Risk Manager of the Year award complements *BI's* Risk Manager of the Year award, which has been awarded annually to risk managers in North America since 1978.

An independent panel of risk

management experts will select the 2009 honoree, and the award will be presented Oct. 6 at a luncheon during the forum of the Federation of European Risk Management Assns. in Prague, Czech Republic.

Nominations must be submitted by the extended deadline of June 5. For information or to nominate a candidate, please visit www.BusinessInsurance.com/RMOY or e-mail International Editor Adrian Ladbury at aladbury@businessinsurance.com.

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CLAIMS • LOSS CONTROL • BENCHMARKING

Graham: Former General Re executive sentenced to one year, one day in prison

CONTINUED FROM PAGE 3

"A message must be sent to the business community, and the lawyers that counsel them, that this kind of behavior will not be tolerated," the judge said. However, he noted that unlike many other white-collar criminals, Mr. Graham was not motivated by personal gain.

'No do-overs'

Addressing the judge, Mr. Graham said, "I realize there are no do-overs in life. Nothing I can say or do now can change what has happened or its impact on the lives of others or on me. Your honor, I regret that more than words can adequately express."

Mr. Graham and the other defendants in the case were convicted on charges of conspiracy, securities fraud and making false statements to the U.S. Securities and Exchange Commission. Prosecutors convinced the jury that the individuals had created a sham loss-portfolio transfer designed to help AIG manipulate its financial statements.

Judge Droney in November 2008 determined AIG shareholders lost more than \$500 million because of the bogus deal—a figure that, under sentencing guidelines, could have resulted in life sentences. However, federal sentencing guidelines are no longer mandatory, and many judges do not feel bound by them, experts say.

Judge Droney's decision to impose sentences far below federal sentencing guidelines for all the defendants reflects "a bit of a disconnect between the loss amount and the actual harm," said Peter Henning, a professor at Wayne

State University Law School in Detroit.

"Clearly, he felt a life sentence was just too Draconian," Mr. Henning said. But at the same time, "he wasn't letting them off the hook." Mr. Henning noted the judge rejected defendants' requests for community service and home confinement instead of prison.

Last December, Judge Droney sentenced former Gen Re Chief Executive Officer Ronald E. Ferguson

'It's a steep hill to climb to win a reversal after a jury verdict. It's not impossible, but statistically, the odds are against them.'

Peter Henning,
Wayne State University Law School

son to two years in prison and a \$200,000 fine for his role in the deal. Since then, the judge has handed down prison terms ranging from one to four years (see box).

Appeals to take time

All five defendants have indicated they will appeal their convictions and sentences. However, legal experts say their chances of successfully overturning their convictions and avoiding jail time are slim.

"It's a steep hill to climb to win a reversal after a jury verdict," said Mr. Henning. "It's not impossible,

but statistically, the odds are against them," he said.

On appeal, the defendants likely will challenge a range of issues, said Michael Cornacchia, a New York criminal defense attorney and former assistant U.S. attorney. Defense lawyers likely will argue the government excluded evidence or did not introduce sufficient evidence, or they will try to show a flaw in the judge's instructions to the jury, he said.

"They have very good lawyers, but most appeals in federal court are not successful," Mr. Cornacchia said.

After last week's final sentencing hearing, the appeals process moves to the 2nd U.S. Circuit Court of Appeals in New York, where it could take six to nine months before oral arguments are scheduled. Given the complex nature of the case and the number of defendants, experts say the appeals may not be completed until spring 2010.

Prosecutors, who asked for substantial prison time for all the defendants, also have filed documents in U.S. District Court in Hartford indicating they will appeal the judge's sentences. However, experts say, the move is essentially a standard procedure to "preserve their option" and it is unclear how serious the U.S. Attorney's Office is in pursuing this.

"A government appeal is very rare. It's a big undertaking," Mr. Cornacchia said.

However, "there is a chance they could move forward given the glaring departure" between the guidelines and the sentence, he said. Any appeal by the government would have to be "carefully vetted," he said. "The government is not going to appeal a case it does not think it can win."



SENTENCES HANDED DOWN

Five former executives of General Re Corp. and American International Group Inc. have been sentenced for their roles in a fraudulent reinsurance deal in 2000.

■ **RONALD E. FERGUSON**, former Gen Re chief executive officer, two years in prison and \$200,000 fine

■ **CHRISTIAN M. MILTON**, former AIG vp of reinsurance, four years in prison and \$200,000 fine

■ **ELIZABETH MONRAD**, former Gen Re chief financial officer, 18 months in prison and \$250,000 fine

■ **CHRISTOPHER GARAND**, Gen Re's senior vp in charge of U.S. finite underwriting, one year and one day in prison and \$150,000 fine

■ **ROBERT GRAHAM**, Gen Re's senior vp and assistant general counsel, one year and one day in prison and \$100,000 fine

Two individuals who entered pleas prior to the trial have not been sentenced.

■ **RICHARD NAPIER**, former Gen Re senior vp, who pleaded guilty to conspiracy

■ **JOHN HOULDSWORTH**, former chief executive officer of Gen Re's Cologne Re Dublin unit, who pleaded guilty to conspiracy

Chrysler: Pensions may be hurt

CONTINUED FROM PAGE 3

Buck Consultants L.L.C.'s health and productivity practice, in Southfield, Mich., referring to the 80-year prediction.

At the moment, another big Chrysler benefit obligation—its \$9 billion unfunded pension liability—has not been affected by the bankruptcy filing. In fact, prior to the filing, Chrysler's former owner, Stuttgart, Germany-based automaker Daimler A.G., agreed to pump an additional \$600 million into the plans in the next several years.

Still, if Chrysler later folds and the Pension Benefit Guaranty Corp. then takes over the plans, many Chrysler plan participants would receive far less than they were promised by the company.

While the plans have promised but not funded about \$9 billion in benefits, the PBGC would guarantee only about \$2 billion of that liability. The reason for that difference is that the PBGC does not fully guarantee all promised benefits.

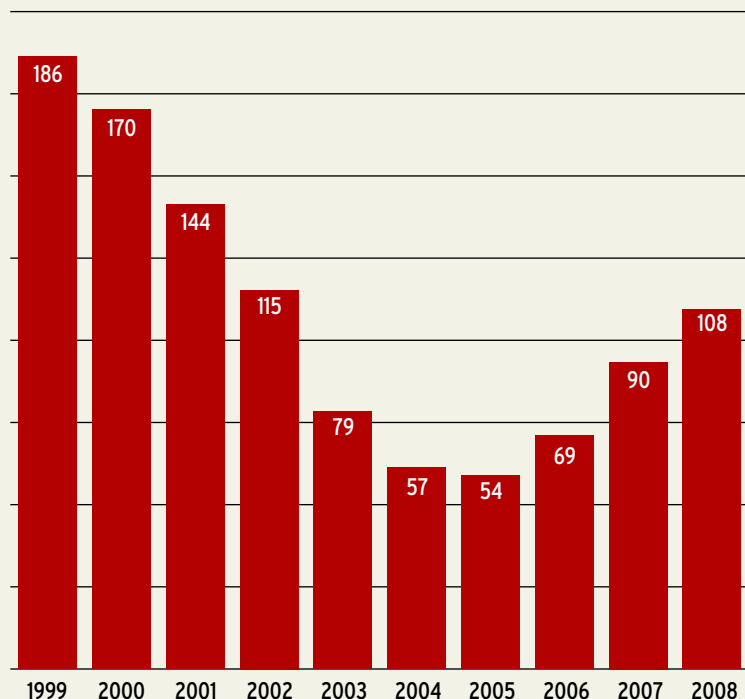
Observers say the financial woes of the big automakers are another sign the era of rich employee benefits is coming to an end.

"The world has changed," said Michael Morfe, a senior vp with Aon Consulting in Somerset, N.J. With increased life expectancies, the cost of providing retiree health care and pension benefits has significantly increased, he noted.

It no longer may be a reasonable expectation that you can retire after 30 years, and then immediately get full pension and health care benefits, he said.

CALIF. WORKERS COMP RATIOS ON RISE

Accident year combined loss and expense ratios, in percent



Source: WCIRB California

Comp: Medical costs pressuring rates

CONTINUED FROM PAGE 3

nia. Mr. Zachry said he hasn't seen data explaining why surgeries—which help drive physical therapy visits—are increasing.

"But the information I have is that (the increased surgeries and therapy visits are) consistent for self-insureds and insureds," he added.

Controversial decisions

Nearly one-fourth of the WCIRB's rate increase recommendation stems from the two February Appeals Board decisions.

In *Wanda Ogilvie vs. City and County of San Francisco* and in the consolidated cases of *Mario Almaraz vs. Environmental Recovery Services* and *Joyce Guzman vs. Milpitas Unified School District*, the Appeals Board essentially ruled California's permanent disability rating schedule can be rebutted with certain evidence.

California implemented the disability schedule in 2005, after reforms adopted in 2004. The schedule ranks the severity of a

worker's permanent injuries for compensation purposes.

Employers and insurers sought the schedule to instill objectivity and predictability into the system by removing subjective medical opinions from the rating of permanent disabilities.

But since the two controversial decisions in February, in cases that were near settlement, workers comp judges have asked for a doctor's medical opinion and advised claimants to obtain attorneys, sources said.

"The Appeals Board process significantly slowed down after these (decisions) hit," Mr. Zachry said.

That has increased claims-handling expenses and settlement costs, several sources said.

"Insurers are very concerned with this trend because we seem to be inching our way back to that pre-reform...era where it was very hard to estimate costs," Mr. Swedlow said.

The decisions "really go a long way to unwinding what was expected in 2004 on how you determine

permanent disabilities," added Mark Webb, vp and assistant general counsel for Thousand Oaks, Calif.-based Employers Direct Insurance Co.

Board to reconsider

Last week, the insurance commissioner asked the WCIRB to withdraw the portion of its rate request based on the *Almaraz* and *Ogilvie* decisions because Gov. Arnold Schwarzenegger has said he does not think the cases will survive the appeals process.

Last month, the Appeals Board, in an unusual announcement, said it will reconsider its two decisions.

"Any increase should be considered after the judicial process has concluded," Mr. Poizner said.

Meanwhile, insurers' accident-year combined ratio has doubled from 54% in 2005 to an estimated 108% in 2008, according to WCIRB data released April 7.

"That's an indication things aren't going exactly the way they are supposed to be going," Mr. Webb said.

Market Moves

Best affirms Ironshore credit ratings

HAMILTON, Bermuda—A.M. Best Co. has affirmed the credit ratings of Bermuda-based insurer Ironshore Inc., citing its acquisition of new management personnel and diversification into lines of business uncorrelated with its property book.

The rating agency validated as "stable" the issuer credit rating of "BBB-" for Ironshore Inc. and "A-" for the firm's operating subsidiaries, including Ironshore Insurance Ltd. and Ironshore Reinsurance Ltd.

Ironshore's ratings had been under review with negative implications since February. But since then the firm has formed strategic relationships to write catastrophe excess casualty and long-term environmental policies, secured pro-rata reinsurance to give clients larger limits, and added key personnel, Best said in a statement explaining its move. In recent months, Ironshore has added several former American International Group Inc. executives.

In addition, the company will benefit from a favorable market for pricing in most of its lines of business, the rating agency said.

Key & Piskuran expands with partnership

FORT WORTH, Texas—Commercial property/casualty broker Key & Piskuran Insurance Agency L.L.C. will expand its practice by partnering with employee benefits insurance broker Higginbotham & Associates, the firm announced in a statement.

The move means public entities that come to Arlington, Texas-based Key & Piskuran for industry-specific services will not have to find a separate broker for health and welfare plans, the firm said in the statement.

Fort Worth, Texas-based Higgin-

botham has expanded its operations in Texas by aligning with niche insurance firms in Houston, Wichita Falls, Henrietta, Granbury and Waco during the past year and a half, the company said in a statement.

PureSafety, Habitat for Humanity to offer training

NASHVILLE, Tenn.—Medical training and software firm PureSafety Inc. is partnering with the Habitat for Humanity chapter in Nashville to provide volunteers with free online safety training for construction work, the company said in a statement.

Volunteers will have free online access to classes on power tool safety, preventing back injuries and lad-

der safety, among others. The free courses will be available for three years, the company said in a statement. Nashville-based PureSafety provides safety training and occupational health and medical management software solutions.

White Mountains Insurance changes Bermuda address

HAMILTON, Bermuda—White Mountains Insurance Group Ltd. has changed the address of its corporate headquarters.

The new address is 14 Wesley St., 5th Floor, Hamilton HM 11, Bermuda. The phone number is 441-278-3160. The mailing address is P.O. Box 2275, Hamilton HM JX, Bermuda.

The address of White Mountains'

principal executive office in Hanover, N.H., remains unchanged.

Laid-off insurance workers offered education discounts

MALVERN, Pa.—The American Institute for CPCU and Insurance Institute of America are offering a 50% discount on course materials and exam registrations to insurance industry professionals who lost their jobs in the economic recession.

Those with proof they are unemployed can use the half-off discount on textbooks, study aid materials, exam registration and exam retakes, until Dec. 15, 2009, the institutes said in a statement. The insurance programs and courses help students

maintain technical knowledge and add credentials to a resume, the companies said.

Interested individuals can visit the Web site at http://www.aicpcu.org/e_campaigns/stimulus.htm or submit registration forms to specialconditions@cpcuiia.org or fax 610-725-1010.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Zack Phillips, 711 Third Ave., New York, N.Y. 10017 or e-mail zphillips@businessinsurance.com.



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INDEX

Issue of May 4

ADVERTISER	PAGE #
ACE Insurance Group	7
AIG Corporate	32
Allianz Global Corporate & Specialty	12
American Institute for CPCU	18
Aon Corporation	2
Arch Insurance	17
Assurant	13
Brownyard Programs Ltd	24
Business Insurance	19, 20, 30
Chubb Insurance	11
CRC Insurance Services	14
C.V. Starr	9
Dickstein Shapiro LLP	6
Express Scripts	16
FM Global	21
Health Alliance Plan	20R
Liberty International Underwriters	5
MarketScout	27
Milliman	15
Oil Casualty Insurance Ltd.	22
RWH Myers	22
Sentry Insurance	23
Specialty Risk Services	25

Flu: Risk managers respond

CONTINUED FROM PAGE 1

the employee directly to the emergency room, he said.

He also said the company's system allows managers to operate branches from remote areas, should an outbreak occur.

Past pandemic scares allowed firms to test their response procedures and see what worked and what didn't, said Lance Ewing, vp-risk management at Harrah's Entertainment Inc. in Memphis, Tenn.

"Three years ago, most of us (saw) a trailer of this same movie and it was known as avian flu," he said.

The most prominent lesson from the avian flu threat was the importance of educating employees about universal precautions like hand-washing and seeking medical attention if they exhibit symptoms of the flu, Mr. Ewing said.

Harris County, Texas, is following the lead of public health authorities in advising employees about the specific symptoms of swine flu and sanitary measures to limit its spread, said David Kester, risk management director for the county in Houston.

In addition, the county has modified a policy that mandates employees out of work for more than four days provide a note from a physician; for flu-like symptoms, that threshold has been extended to six days. Public health authorities have expressed concern about a flood of patients overwhelming physicians and hospitals and the county does not want its sick leave policy to contribute to the problem.

"We don't want (employees) to say 'Gosh, I need to go get a doctor's note or I won't get paid,'" he said.

Mr. Ewing said risk managers should check with their insurers to see to what extent business interruption, workers comp and liability policies cover flu-related losses.

"This is not the time to dust off the Bible and figure out which verse applies," he said. "You should probably know ahead of time."

Harrah's is monitoring any employees traveling on business to affected countries, Mr. Ewing said.

Business continuity plans

Continuity plans are occupying risk managers everywhere.

Risk managers have a vital role to play in ensuring that their companies have business continuity, human resources and disaster recovery plans in place to deal with a pandemic such as a flu outbreak, said Franck Baron, a director of the Federation of European Risk Management Assns. and head of international relations at the Swiss Assn. of Insurance and Risk Managers.

Risk managers may need to check whether their company has stocks of antiviral drugs, gloves and masks, for example, he said.

Katoen Natie swiftly enacted its existing pandemic plan—with adaptations—in its Mexico City and Texas operations, said Carl Leeman, chief risk officer for the Antwerp,



REUTERS

A worker disinfects school books inside a classroom at a school in Dallas. Schools are seen as centers where viruses can spread easily as they are gathering places for many people.

School risk managers consider options as concerns over swine flu virus grow

By ZACK PHILLIPS

Late last week, Fort Worth Independent School District in Fort Worth, Texas, became the first school district in the U.S. to close all its schools due to concern over the spread of H1N1 flu.

Risk managers say educational institutions have a unique collection of challenges in containing and responding to a potential influenza pandemic.

"Schools, as well as a lot of public institutions, are gathering places for a lot of different people," said Paul Stasz, vp-risk management at EdisonLearning Inc., the nation's largest private operator of schools. "It's assumed that schools would be a vector for transmission of the virus. (They) always have been."

The school closings in Fort Worth, the nation's 17th largest city, added 80,000 pupils to the 53,000 already out of school in Texas, according to published reports. Hundreds of schools elsewhere in the country reportedly have shut down.

Mr. Stasz said company officials have alerted management and teachers to be on the lookout for children with symptoms of swine flu and send them immediately to the nurse. He said the company has implemented low-level precautions, encouraging students and employees to wash and sanitize their hands and to avoid touching their faces after shaking hands. He said the company also has

alerted its third-party administrator to brace for a rise in claims, because a teacher infected with influenza due to contact with children is considered a workers compensation claim.

Mr. Stasz also said that if an outbreak were discovered in one of the approximately 100 schools EdisonLearning operates, the company would shut it down until the incubation period of the illness had expired and until authorities had been able to sterilize the facilities.

But shutting down is not as simple for educational institutions as it is for other companies. Closing classrooms would put a burden on parents if they do not have time to watch their children or can't afford daycare.

"It's a tough situation that no one has come up with a good solution (to), at least that we've seen," he said.

Also, many states have laws mandating end-of-year tests and a minimum number of days in a school year, and some state laws even specify the date by which the school year must end. That means that closing schools for weeks at this time of year potentially could imperil some students' ability to move on to the next grade.

"It'd be one thing if you have snow days in December and you have the next five months to make them up, but...there's not a lot of time left in the school year...to accommodate as little as a few days (off) and certainly not a week to 10 days."

Belgium-based logistics, storage and distribution company.

The company, which has had no staff members fall ill, has taken several preventive measures, Mr. Leeman said. For example, staff telephones, keyboards and door handles are cleaned several times a day, truck drivers are no longer allowed inside offices, and commercial staff has been asked not to travel.

Businesses must have business continuity plans in place to deal with a pandemic outbreak, said Marg Hemsley, president of the Western Australia chapter of the Risk Management Institution of Australasia Ltd. "Organizations must focus on protecting their

workers and business continuity planning to ensure critical functions and services are maintained."

Ms. Hemsley was involved in Western Australia's preparation for an avian flu pandemic and said that while businesses in the region were well-placed to respond, they needed to guard against complacency.

"In discussing the bird flu epidemic, many businesses thought they would not be affected because they didn't deal with birds. There is a risk of the same attitude" with swine flu, she said.

One potential outcome of a pandemic for which businesses must be prepared is a lack of available staff, she said. Employees who are not

sick but who live a long way away from the workplace or those whose children's day care facilities have been closed because of a flu outbreak, may not be able to come to work, she said.

Risk managers should ask themselves what effect absenteeism would have on their businesses and what effect staff shortages at suppliers or customers could have on the operation, she said.

Risk managers should monitor the World Health Organization Web site, www.who.int, said Julia Graham, chief risk officer at law firm DLA Piper L.L.P. in London and chair of Assn. of Insurance and Risk Managers.

Mr. Stasz said EdisonLearning would seek a state waiver of such laws in the event of an extended school closing due to H1N1 flu. He said states vary widely in how easy or difficult it is to receive such exemptions, but that education professionals hoped and expected that state education officials would react reasonably to H1N1 flu closings.

Mr. Stasz noted that none of his company's schools has seen a student with symptoms of H1N1 flu. He is hoping they get through the next 45 days unscathed, because containment is easier when students are at home in the summer.

"A lot of school districts are just hoping they can get through exams and graduation," he said.

Colleges and universities also are hoping to avoid outbreaks long enough to reach summer break. The student population at Pennsylvania State University's main campus in State College, Pa., drops from about 42,000 to between 10,000 and 15,000 in the summer, said university risk officer Gary Langsdale. The campus also hosts a number of academic and athletic camps, which the college would shut down in the event of an outbreak, he said.

At Penn State, May 1 was the last day of classes and exams begin May 4. Mr. Langsdale said last week that if the university had to shut down now due to an outbreak, he would ask faculty to consider allowing students to take exams in their dormitory rooms, in small groups or over the Internet, to avoid collecting large numbers of students in one place.

"If tomorrow the state health department were to order all universities to close...my prediction is that the faculty members would find a way to either post the exams online...or take (work) the students had already turned in and try to give them a grade," he said.

If an outbreak occurred at the beginning of or in the middle of the semester, the university likely would postpone classes for a week or more and compress the semester, he said.

The other issue for universities is students and faculty who are in or planning to travel to Mexico, the origin of the outbreak. The first thing New York University officials did after news of the outbreak emerged was to figure out how many university students and faculty were in Mexico, said Mike Liebowitz, director of risk management and insurance at the school. University officials contacted the handful of students and faculty to ask where they had been and pass along all the information they had, he said.

"The No. 1 key is to get information into the hands of the people that are closest to the situation," Mr. Liebowitz said.

Penn State University has canceled three school-sanctioned student trips to Mexico and worked with a Mexican university to allow two Penn State students studying abroad there to return to the U.S. and complete their classes through video conferences and the Internet, Mr. Langsdale said.

"The first thing people should do is monitor the phases," she said. "Then look to your business continuity plans according to those phases," she said.

When the WHO preparedness level reached phase 3, risk managers should have made sure that their plans were up-to-date, said Ms. Graham.

When that level reaches 5, as it did last week, business continuity plans typically would be triggered and moves such as travel restrictions should be implemented, she said.

Senior Editor Mike Bradford contributed to this report.

Advice: Outbreak of swine flu prompts review of risk management

CONTINUED FROM PAGE 1

public health problem; it's a problem of the economy as a whole," she said. "There are supply chain issues if you think about potentially 30% of the employees in all businesses being affected. We need businesses to think about what happens if their vendor is affected. Do they have a Plan B in terms of meeting their own needs and looking forward who do they meet the needs of their customers?"

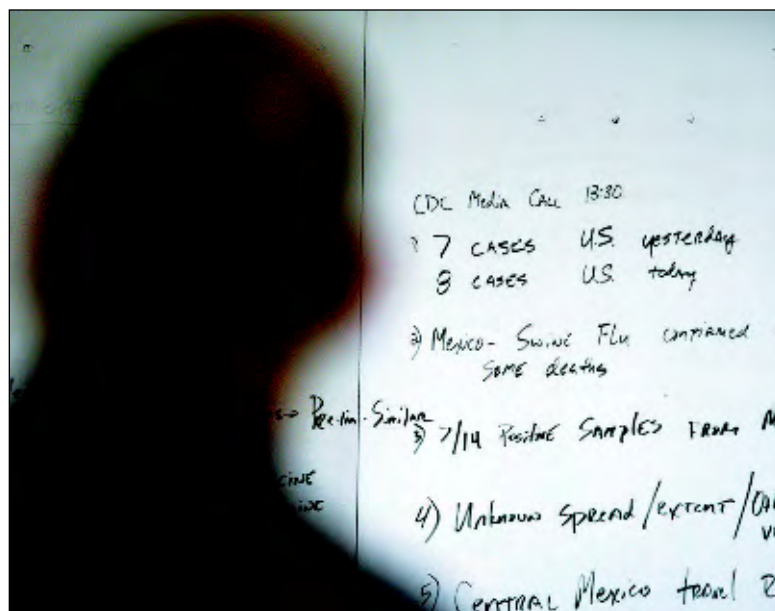
Review existing plans

For many risk managers, the first action will be to review existing pandemic plans, experts say.

Risk managers "are really assessing the plans they put in place a few years ago around the avian flu because the issues and the approaches are not dissimilar," said Prakash Shimpi, managing principal and head of Towers Perrin's corporate enterprise risk management practice in New York. "The challenge perhaps is for companies who had not had the opportunity to put some plans in process."

Risk managers should be "checking into the contingency plans that have been put into place already," said Mike Giacobbe, director of enterprise risk management for Aon Global Risk Consulting in Chicago. "Hopefully, there's been some pre-planning done at the organization for this particular event," he said.

Aon recommends employers should determine availability of backup suppliers to ensure supply chains are uninterrupted; review succession planning; create a process for sending critical messages to employees; develop a protocol for



A doctor at a Dallas County Medical Operations center looks at a marker board outlining facts on swine flu. The center was set up to track the flu outbreak.

'There are steps that we can take even at this early stage of the outbreak to prevent exposure and to prevent even getting the flu if you are exposed.'

Jeff Tanenbaum, Nixon Peabody

working from home; inform employees of any travel restrictions; and construct a plan of action

should an employee be suspected of having an H1N1 flu infection.

Many educational institutions have planned for a pandemic "and if they haven't then they've been negligent in not doing so," said Leta Finch, executive director-higher education practice group for Arthur J. Gallagher Risk Management Services in Burlington, Vt. "The world has known about this risk of a pandemic outbreak for years now."

Mr. Giacobbe stressed the need for a "unified response" to avoid miscommunication and conflicting messages. Risk managers also need to keep up with the latest information from the World Health Organization and Centers for Disease Control and Prevention, he said.

A pandemic will not affect all

industries equally, said Carl Groth, director at Deloitte & Touche in Wilton, Conn. High-impact industries could include travel such as airlines. The hospitality industry, particularly resort areas, also could be impacted, he said. Health insurers would be affected and, for life insurers, "pandemic is always at the top of their mind."

Safety precautions

A company should "look at its own business model, its own demographics and consult with someone who knows something about public health," said Don Dowling, international employment counsel at White & Case L.L.P. in New York.

Considerations include taking workplace safety precautions like washing hands," said Mr. Dowling. "Then you'd have a provision on the cluster of issues involving people not showing up to work," he said. These issues would include whether the employer can force people to work from home and whether employees can be forced to take paid leave or unpaid leave. The company also would need a disaster communications protocol, he said.

"There are steps that we can take even at this early stage of the outbreak to prevent exposure and to prevent even getting the flu if you are exposed," said Jeff Tanenbaum, a partner and labor and employment practice leader in Nixon Peabody's San Francisco office.

For example, employers should mandate universal precautions, said Mr. Tanenbaum in an article he posted at the Nixon Peabody Web site. These include frequent hand washing, and because access to soap

and water is not always convenient, ready access to a hypoallergenic hand sanitizer should be provided. The precautions also should minimize exposure to people who are ill. Employees who appear ill when they are at work should be sent home. And, when employees are ill, they should be encouraged, or perhaps required, to stay home.

Supply chain management also is critical.

Businesses "need to get a full view of their supply chain for the products that are most important to their business," said Gary Lynch, managing director in Marsh's New York office. They need to identify every aspect of the supply chain, from suppliers to public infrastructure that could be negatively affected by pandemic flu. And remember the human element, he said.

"Without people, we don't have a supply chain."

"Any sort of overreaction is extremely dangerous where arbitrary decisions are being made to shut down facilities," said Mr. Lynch.

That's true on many levels, said Nixon Peabody's Mr. Tanenbaum.

It's important "not to panic yourself as an employer and to do what you can to prevent employees from panicking. The best thing you can do is to educate yourself and to educate your workforce," he said.

"The reassuring part is you can do something and we're still talking the very early stages of an outbreak," he said. "We don't know it's going to become worse—it may. I think most medical professionals are assuming it will become worse but how much worse we don't know yet."

Health: Lawmakers gearing up to draft health care reform legislation

CONTINUED FROM PAGE 1

on that exchange," similar to the way federal employees can shop for coverage, he said.

The panel chairman said he has no intention of interfering with the way self-funded employers provide coverage to employees.

"The system I envision is one where self-insured companies...can keep their own plans and manage health insurance in the way they have. We're not going to change the way self-insured companies handle health care for their employees," he said.

That approach is very different from the one the Clinton administration tried to pursue in 1993 when it called for dismantling the employment-based system in favor of coverage through public purchasing cooperatives. Congress rejected that approach.

The hints that Sen. Baucus has dropped are comforting, benefit lobbyists say.

Sen. Baucus and other key leaders in Congress "realize the vast majority of people are satisfied with the coverage they receive from their employers. There is no point taking away from people with what they



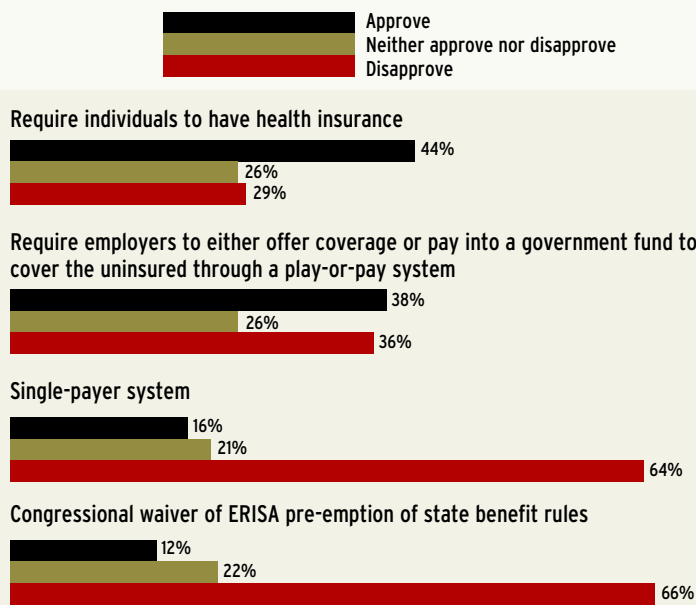
Sen. Charles Grassley, R-Iowa, noted that work is beginning in earnest on health care reform.

are content," said James Klein, president of the American Benefits Council in Washington.

"At this point, we are encouraged," added Michael Ferguson, chief operating officer of the Self-Insurance Institute of America Inc. in Simpsonville, S.C. Mr. Ferguson said the SIIA has spent a lot of time

OPINIONS ON REFORM

Where employers stand on health care reform proposals



Source: Mercer L.L.C.

educating members of Congress and staff on the role self-funded employers play in providing coverage.

Aside from wanting to keep

employers and insurers as purchasers and providers of coverage, respectively, the reform approach being taken by Sen. Baucus differs in other major ways from the Clin-

ton strategy.

It is clear, for example, that this time around Congress is taking the lead, with input from the Obama administration in drafting legislation. By contrast, the Clinton administration shut out Congress, with the result that members felt no ownership with the Clinton plan and quickly spurned it.

"This is the way most legislation is drafted. The president gives an outline and leaves it to Congress to develop the specifics," said Mr. Klein, referring to the reform drive.

"Many of the players involved in 1993 and 1994 are around today and have learned from the mistakes that were made then," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Still, as Mr. McArdle notes, there are plenty of political minefields ahead. Reform leaders face tough and sensitive decisions on such issues as whether employers should be mandated to offer coverage, whether individuals must be enrolled in a health care plan, and how to pay for an expansion of coverage.

"The critical and most controversial issues soon will be coming to fore," Mr. Klein said.

News In Brief

CONTINUED FROM PAGE 1

billion aftertax charge related to estimates of future gross profits in its life operations, which was taken as a result of "significant equity declines," according to the company. Hartford's property/casualty operations reported an 89.9% combined ratio for the first quarter from ongoing operations, vs. 87.8% for the comparable quarter a year ago. Net premiums written dropped 4.9%, to \$2.46 billion. Discussing media reports that its property/casualty operations may be up for sale, Chairman and Chief Executive Officer Ramani Ayer said during an analyst call, "We're considering a range of additional actions" and that Hartford may determine the best course "is to continue with a diversified business model."

Tax change would limit reinsurance: Report

Imposing new taxes on foreign-owned insurers and reinsurers would shrink the supply of reinsurance in the United States by about 20%, according to a report. The report, sponsored by the Washington-based Coalition for Competitive Insurance Rates, notes that enacting legislation similar to H.R. 6969—which was introduced last year by Rep. Richard Neal, D-Mass., and alleges that favorable tax treatment for foreign insurance groups makes it difficult for U.S. insurers to compete—would reduce the overall reinsurance supply in the United States by between \$19 billion and \$22 billion. The bill, which is expected to be reintroduced in Congress, would cap the deductibility of reinsurance premiums paid by U.S. insurers to their foreign affiliates.

Securities litigation up in first quarter

Securities lawsuits surged during the first quarter of 2009, according to a report by Advisen Ltd. Advisen said it tracked 169 significant securities cases filed during the first quarter of 2009, up from 125 the previous quarter and 134 for the first quarter of 2008. "Advisen notes that Madoff-related cases were responsible for 30% of all securities cases in the first quarter, so the brisk

pace of filings will likely abate through 2009," the company said in a statement. Of the 169 cases filed during the first quarter of this year, securities class action suits led the way, accounting for 67, which was an increase from 53 the previous quarter and 56 cases a year earlier.

Validus files suit against IPC, Max

Validus Holdings Ltd. has filed a lawsuit in the Supreme Court of Bermuda against IPC Holdings Ltd. and Max Capital Group Ltd. The move is the latest twist in the battle between Validus and Max to acquire IPC. Validus said the lawsuit challenges the \$50 million termination fee and "no talk" provision contained in the agreement and plan of amalgamation between IPC and Max. IPC and Max in March agreed to merge. Validus later in March launched an unsolicited offer for IPC, which IPC's board rejected in favor of the Max offer. Validus said in a statement it was seeking an injunction to stop payment of the termination fee and to restrain the operation of the "no talk" agreement.

House panel to hear Liddy, AIG trustees

The House Oversight and Government Reform Committee has rescheduled to May 13 a hearing at which American International Group Inc. Chief Executive Officer Edward Liddy is slated to appear. The panel's chairman, Rep. Edolphus Towns, D-N.Y., initially asked Mr. Liddy to appear before the committee on May 6. The change was made due to a scheduling conflict. In an April 22 letter to Mr. Liddy, Rep. Towns said he wanted Mr. Liddy to discuss several issues, including the causes of the downfall of AIG, what AIG has done with its federal financial assistance and the major risks and problems the insurer faces. Rep. Towns later requested the three trustees overseeing the U.S. government stake in the company also appear before the committee.

Sebelius sworn in as HHS secretary

Former Kansas Gov. Kathleen Sebelius was sworn in as secretary of the Department of Health and Human Services last week. The Senate approved Ms. Sebelius' nomination on a 65-31 vote. Ms. Sebelius, a former commissioner of the Kansas Department of Insurance, is expected to play a key role as the Obama administration and Congress attempt to negotiate comprehensive health care reform legislation.

Furloughs: Benefits offerings may change

CONTINUED FROM PAGE 4

"As you're planning a furlough, review the terms of your benefit plan to see what the implications of a furlough might have on each of the benefit plans, and then potentially structure them in a way that would have the least impact on employees and their continued participation in the plan," Mr. Morris said.

The key issue employers are addressing is "How do I achieve what I need to achieve in terms of cost savings but, at the same time, protect employees from calamities?" said Robert M. Projansky, an partner with Proskauer Rose L.L.P. in New York.

Employers' approaches may differ, though, depending on their individual circumstances, he added. Some hope to achieve the desired savings without cutting benefits while others "need to save every dollar possible," so their questions focus on what they may be required to do under the law, Mr. Projansky said.

Health insurance is one major area that could be affected. Extended furloughs could put employees below the minimum hours needed to be considered eligible for company-paid health care coverage, Mr. Morris said. "Employers have looked at trying to structure their furloughs so as not to impact continued eligibility for health care," he said.

"It's fairly common to restrict health and welfare benefits eligibility to regular, full-time employees, and then to define that term, 'full-time employee,' as someone who's regularly scheduled to work at least 30 hours per week to 35 hours per week," Mr. Hancuch said. "If you have a furlough where employees are being forced to work, for example, one day less per week for a period of time," they may no longer satisfy that requirement. This means employers who want to continue to provide coverage may need to amend their plans, which may require the consent of any insurers that are underwriting the benefits, Mr. Hancuch said.

"The other way I'm seeing employers dealing with this issue is by adopting an internal policy or practice, which says, in effect, that furloughed hours will be counted as scheduled hours for purposes of eligibility," Mr. Hancuch said. For example, this could apply when employees are moved indefinitely from a 40-hour week to a 32-hour week, although this is done "usual-

Furloughs may complicate admin for savings plans

While health care coverage is the primary benefit affected when employers furlough employees, other benefits also may be changed, observers say.

One of those areas is 401(k) plans, said Susan K. Hoffman, an attorney with Littler Mendelson P.C. in Philadelphia.

"If an employee has a scheduled amount per paycheck to reach a savings goal for the year, or a maximum for the year, they may have to readjust the future deductions to reach that goal, because (employees are) basically going to be missing a paycheck," she said.

Employees should be made aware that if they eliminate or reduce their deduction, they also will lose the matching contribution from their employer, assuming that program has not been suspended, Ms. Hoffman said.

A related issue is how 401(k) loans, which more people are taking out these days, will be repaid, said Robert M. Projansky, an partner with Proskauer Rose L.L.P. in New York.

"Typically, they're repaid through salary reductions" on a regular basis. "The question becomes: How do you collect repayment when there's no salary being paid for some period, which could be an extended period," Mr. Projansky said. "Employers have to make sure their plan has terms that allow for repayment through another mechanism" and that the 401(k) administrator has the means to accomplish that.

Furloughs also can affect flexible savings accounts, observers say.

Thomas G. Hancuch, a shareholder at Vedder Price

P.C. in Chicago, said an employee can change his or her FSA deduction during a plan year if there is a change of status, but a furlough generally would not qualify as a change of status under the Employee Retirement Income Security Act cafeteria plan regulation. "Of course, that's not necessarily a bad thing because you're planning on using that money to pay for unreimbursed medical expenses on a pretax basis," he said.

Generally, employees who are on disability leave or leave under the Family and Medical Leave Act are not put on furlough, said Brian B. Snarr, a partner with Morrison Cohen L.L.P. in New York.

"Employers are just more careful of somebody who's on a protected status," Mr. Snarr said. After they return to work "would be the time at which the decision would be made" about putting them on furlough, if they are no longer disabled, he said.

Furloughs also carry some employment liability considerations, observers say. For instance, employers must take care not to disproportionately furlough workers in certain protected classes such as race or gender.

Employers also should be careful not to violate the federal Worker Adjustment and Retraining Notification Act or similar state laws, observers say. To qualify under the WARN Act, for instance, "you'd have to reduce hours by 50%" for each of six months, said Alison S. Hightower, an attorney with Littler Mendelson in San Francisco.

—By Judy Greenwald

ly with the hope that it'll only be for a couple of months," he said.

Another approach is through COBRA continuing coverage. Under regulations implementing a recently enacted federal law, employees who are laid off or furloughed from Sept. 1, 2008, through Dec. 31,

2009, are eligible for a 65% federal subsidy of their COBRA premiums. As a result, Mr. Projansky said employers may allow employees to lose their health coverage, thus permitting them to take advantage of COBRA, which reduces company expenses.

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Business Insurance END PAGE

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



AP PHOTO

Richard E. Hicks (right) the chief cook for the Maersk Alabama has filed suit against the vessel's the owner alleging the company knowingly put him in danger.

Ship's cook stewing over pirate attacks

Ships' cooks have long played leading roles in adventures on the high seas.

In Robert Louis Stevenson's classic pirates tale "Treasure Island" the pirates' ringleader, Long John Silver, was the ship's cook before leading a mutiny. More recently, in the 1992 movie "Under Siege," actor Steven Segal played a cook aboard a U.S. Navy battleship that is attacked by terrorists, whom Mr. Segal's character defeats with his usual aplomb using an array of martial arts moves and weapons.

But in real life, it seems ships' cooks are more like the rest of us and would prefer a quieter working environment.

Richard E. Hicks, the cook on the Maersk Alabama, who was held hostage for 12 hours when Somali pirates took over the ship on April 8, is filing a lawsuit against Maersk Line Ltd. and Waterman Steamship Corp. for failing to provide him with a "safe place to work" and a seaworthy vessel, according to news reports.

Mr. Hicks, who had been aboard the ship for three weeks before it was attacked by pirates, filed his suit under the Jones Act, which allows injured sailors to obtain damages from their employers if they are negligent in protecting them while at sea.

"Defendants knowingly sent their employees, including (the) plaintiff, into pirate-infested waters rather than take safer routes," according to the complaint. Mr. Hicks alleges the defendants should have provided safety and security to employees on the ship.

Mr. Hicks told reporters during a press conference Monday that he didn't know "if I was going to live or die," while aboard the ship when it was hijacked. Mr. Hicks' attorney, Terry Bryant, told reporters the shipping company should have provided barbed wire on the exterior of the ship for protection, along with armed guards.



AP PHOTO/JASON McLANE

The sight of an Air Force One plane pursued by fighter jets caused alarm in New York last month, as residents feared another terrorist attack.

Flight of fancy chills onlookers

Even though it's said a picture's worth a thousand words, the image of an Air Force One look-alike being pursued by an F-16 fighter jet over lower Manhattan last week can be summed up in one: Terrifying.

And the reason for that image may be summed up in one of many words, the gentlest of which may be "dumb."

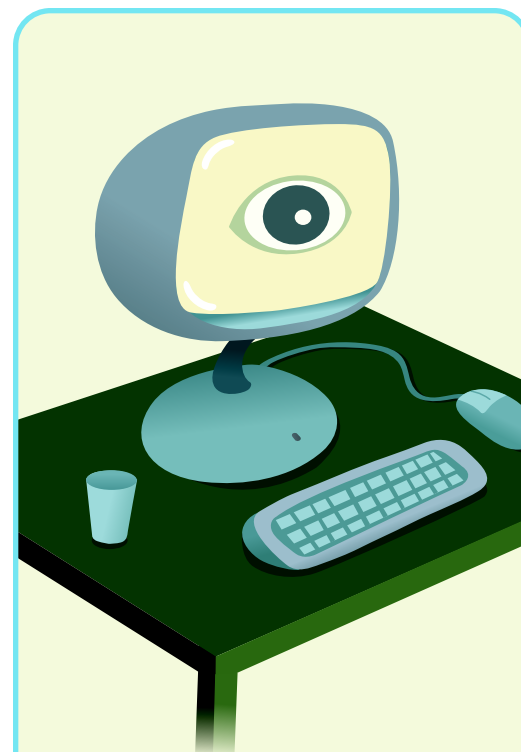
Or dumber. Or maybe dumbest.

Here's what happened: Thousands of New Yorkers looked up and saw what looked eerily like the beginning of a repeat of Sept. 11, 2001. People fled their offices and jammed emergency telephone lines. "I was crying and praying to God to forgive me my sins because I was going to get killed," a woman told the New York Daily News.

Turns out the whole thing was a photo op. Sources told the Daily News the flight was intended as a means to create what are basically souvenir photos of Air Force One flying over the Statue of Liberty.

White House officials said they told local authorities of the mission, but word never reached New York Mayor Michael Bloomberg, who blasted the incident. Louis Caldera, director of the White House military office, took the blame, along with a low-ranking city hall functionary who allegedly knew of the plan but didn't tell the mayor. Mr. Caldera said, "I apologize and take responsibility for any distress the flight caused."

Somehow, it seems safe to think that a few words of apology won't be sufficient to erase an image so terrifying to so many in New York and beyond.



Swiss worker says Facebook brings job to unfriendly end

Many employees worry they will be fired for toiling on Facebook during work hours, however, last week one Swiss insurance worker found she could be fired for using the social networking Web site while off sick.

The Nationale Suisse employee had told her boss she could not work because she needed to lie in a darkened room due to the migraine headache she was suffering, according to news reports. But it was discovered by someone working for the insurer that the woman had been active on Facebook that day, prompting the insurer to fire her.

"This abuse of trust, rather than the activity on Facebook, led to the ending of her work contract," Nationale Suisse said in a statement.

The woman, who remains unnamed, said she had been lying in bed checking her Facebook page on her iPhone, according to reports. She then accused Nationale Suisse of spying on her by having employees send her friend requests, which then allowed access to her personal page and online activity.

Maybe now she'll have to spend more time on the professional networking site LinkedIn.

Hoops star makes play to assist kidney patients

Florida lawmakers are going up strong with a measure named for a former National Basketball Assn. star that would provide greater access to medical insurance for kidney disease patients.

According to news reports, on Monday the Florida House unanimously passed the Alonzo Mourning Access to Care Act, named in honor of the former Miami Heat star and kidney transplant recipient who has worked for passage of the measure.

The measure would give end-stage renal disease patients under age 65 who qualify for Medicare access to Medigap insurance to pay for Medicare-

required deductibles and co-pays. A similar bill was awaiting action in the Florida Senate earlier this week.

Mr. Mourning, a former Miami Heat center and seven-time NBA All-Star who also played for the Charlotte Hornets and New Jersey Nets, was known for his tenacious style of play.

He was forced to retire from basketball due to complications from his own kidney disease in 2003 but, after receiving a kidney transplant late that year, ultimately returned to play five NBA seasons before officially retiring from the game early this year.

The Florida House passed a measure named for former Miami Heat star Alonzo Mourning (right) that would offer better access to health cover for kidney patients.



AP PHOTO



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