

Business Insurance

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AVIATION GROUP APPROVES AIRLINE LIABILITY CAPS, BUT HURDLES REMAIN / PAGE 3

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LOSS IN W.R. GRACE TRIAL NOT EXPECTED TO CURB POLLUTION SUITS / PAGE 3

In Brief

Hartford gets approval for \$3.4B in TARP funds

Hartford Financial Services Group Inc. said it has received preliminary Treasury Department approval to receive \$3.4 billion from the Capital Purchase Program under the Troubled Asset Relief Program. The insurer bought a Florida savings and loan to qualify for the assistance last year. Hartford Chairman and Chief Executive Officer Ramani Ayer said the funds "would further fortify our capital resources and provide us with additional financial flexibility during one of the most volatile market climates in our nation's history."

Willis, CIGNA freeze pensions

Willis Group Holdings Ltd. will completely freeze its defined benefit pension plan covering

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TRIA revamp plan worries buyers

Proposal would end federal backstop for domestic terrorism

By **MARK A. HOFMANN**

WASHINGTON—An Obama administration proposal to scale back the federal terrorism insurance backstop program has prompted concern among risk managers, but there's little appetite in Congress to change the existing program, according to Washington observers.

The proposal would, among other things, end the program's coverage of acts of domestic terrorism, raise insurer terrorism deductibles, and allow the program to expire in 2014 (see box, page 26).

But after lawmakers went

through the lengthy process of consensus building to pass the original program, created by the Terrorism Risk Insurance Act of 2002, and then to renew the program in 2007, Congress is unlikely to scale back the backstop, observers say.

The administration's proposal is part of a broader budget proposal issued earlier this month.

According to administration budget documents, the federal terrorism backstop is in part unnecessary because "prior to the 2007 reauthorization, coverage of domestic terrorism was widely available even in the absence of government support."

The proposal dismayed risk managers.

"We are struggling with these

See **TRIA** page 26

SPOTLIGHT

ENTERPRISE RISK MANAGEMENT

Profiles of ERM programs in action show how risk managers in the U.S. and

Europe are taking a different approach to managing exposures; gaining buy-in from

senior management seen as vital in establishing ERM programs; Munich Re's CRO discusses integrating risk management throughout an organization. **PAGE 11**

Coca-Cola's captive benefit funding plan hits roadblock

By **JERRY GEISEL**

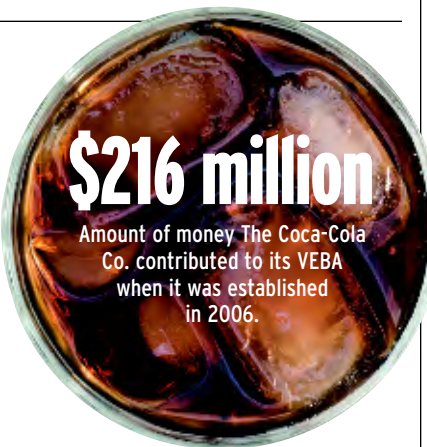
WASHINGTON—The Labor Department has tentatively denied The Coca-Cola Co.'s innovative retiree health care benefits funding proposal, but the issue is far from over.

In January, Coca-Cola filed an application with the Labor Department seeking approval of what could be a groundbreaking approach to funding retiree health

care benefits.

Under its plan, the company would use assets in a voluntary employees' beneficiary association to purchase medical stop-loss policies from Prudential Insurance Co. of America to pay claims over the expected lifetimes of about 4,000 retirees and dependents. Coca-Cola established the VEBA in 2006 and

See **COCA-COLA** page 21



President Obama spoke about health care reform last week. Momentum to pass a reform measure appears to be building.

Health groups pledge to lower care costs

By **JOANNE WOJCIK**

Viewing it as more of a political gesture than a concrete promise, most economists and members of the employer community remain dubious of the letter sent to President Obama last week by a consortium of health care industry stakeholders pledging to shave \$2 trillion off future health care costs.

But they also acknowledge that it was significant for these representatives of the health care industry to admit that systemic change is needed and that they would support it.

In the May 11 letter to the president, the leaders of the American Medical Assn., America's Health Insurance Plans, the American Hospital Assn., the Pharmaceutical Research and Manufacturers of America, the Service Employees International Union and the Advanced Medical Technology Assn., jointly pledged to do their part "to achieve the administration's goal of decreasing by 1.5 percentage points the annual health care spending growth rate—saving \$2 trillion or more" during

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On the Web



BI VIDEO

New video puts spotlight on ERM

Enterprise risk management experts John Hampton and Robert Schneider look at the state of ERM, its effectiveness during the financial crisis, and how technology can help or hurt the ERM process. Go to www.BusinessInsurance.com/video.

BI WEBINARS

Mental health benefits parity on demand

The new mental health care benefits parity law will create compliance challenges for employers when it takes effect Jan. 1, 2010, as it ushers in a new era of equalization of benefits for mental health care and medical/surgical care. The act amends ERISA and requires all health care plans covering 50 or more lives—including self-funded plans—to ensure benefit parity. View this special webcast on-demand for \$99 and hear the full discussion, download slides and listen to Q&A about the law. www.BusinessInsurance.com/webinars.

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Congressional scrutiny hurting AIG: Liddy

But lawmakers seek more detail on firm's restructuring plan

By MARK A. HOFMANN

WASHINGTON—American International Group Inc. Chairman and Chief Executive Officer Edward Liddy is justified in balking at lawmakers' calls to reveal detailed information about the company's long-term restructuring plan, market analysts say.

To do otherwise could undercut AIG's recovery efforts and place it at a competitive disadvantage, say securities analysts. But, as was evident last week as Mr. Liddy appeared before the House Oversight and Government Reform



Committee, some key lawmakers clearly disagree.

The panel's chairman—Rep.

Edolphus Towns, D-N.Y.—said AIG has received more than \$180 billion in taxpayer-funded financial assis-

AIG chief Edward Liddy testified before a House committee last week. He said AIG would not need more assistance if markets remain stable.

tance. As the hearing began, he said he is not satisfied with AIG's accounting of its use of federal bailout funds and was particularly critical of AIG's reticence in providing details of its restructuring plan, dubbed Project Destiny.

"I requested a copy of this plan, but AIG says that disclosing the plan 'would undermine its efforts to achieve its goals for the benefit of American taxpayers,'" he said, asking Mr. Liddy several times to provide plan details.

Mr. Liddy responded that he would consult with attorneys to provide as much information as

See **AIG** page 24

Experts predict uptick in pollution prosecutions

W.R. Grace trial loss likely won't dampen enforcement efforts

By SALLY ROBERTS

Despite the Department of Justice losing one of the most significant environmental crimes trials it has ever prosecuted, businesses can expect more civil and criminal environmental enforcement activity from the government in the future, environmental legal experts say.

But given the challenges associated with prosecuting a case such as the one involving W.R. Grace & Co., the government is likely to be more cautious before bringing similar charges, several attorneys say.

A federal jury on May 8 acquitted the Columbia, Md.-based chemical and building material company and three of its former executives on conspiracy charges and Clean Air Act violations relating to a vermiculite mine that Grace operated in Libby, Mont., from 1963 to 1990.

The government charged that the company and its executives conspired for 26 years to knowingly release asbestos-laced vermiculite and then hid the health hazards from miners, residents and the government. The asbestos is blamed for causing about 2,000 illnesses and 225 deaths in and around Libby.

Two other former W.R. Grace executives were acquitted of all charges near the end of the 11-week trial, while the company's former chief group counsel is to be tried separately. Attorneys say it is too soon to say whether the government will drop those charges as a result of the other verdicts.

While the verdict is a setback for the government, legal experts say environmental enforcement is a top priority of the Obama administration and companies should expect more enforcement activity—especially as it relates to the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act.

As such, now is not the time for companies to be complacent about their environmental oversight and compliance activities, they warn.

"For W. R. Grace and the individual defendants in the case, the outcome is one that I'm sure is a tremendous relief, but I don't know if there's a whole lot of comfort to take for anyone else that is...conducting their business operations in ways that put public health and the environment at risk," said David M. Uhlmann, a law professor with the University of Michigan in Ann Arbor.

"Obviously, it was a setback for the government. It was one of the most significant environmental criminal prosecutions ever brought, if not the most significant," said

Mr. Uhlmann, who was chief of the environmental crimes section of the Department of Justice when W.R. Grace was indicted in 2005. "The fact that the government was willing to bring charges like this, that reached back as far as they did, sends a message to companies that if they engage in the kind of conduct that occurred in Libby, they will be held accountable," he said.

However, others say that, given the difficulties in prosecuting the Grace case, the government likely will be more cautious in the future about bringing similar criminal charges.

See **ENVIRONMENTAL** page 23



Continental Flight 3407 after it crashed into a home in Buffalo, N.Y., in early 2009. Efforts are ongoing to limit airlines' liability for ground losses.

Vote on aviation liability won't secure loss caps

International body passes conventions, but hurdles remain

By STACY SHAPIRO

A diplomatic conference of the International Civil Aviation Organization has approved two conventions that deal with airline liability and compensation for third parties on the ground after a terrorist attack or an accident.

However, the conventions appear to have an uphill battle to become international law, observers say.

ICAO diplomatic conference delegates representing 87 nations and industry associations adopted the Convention on Compensation for Damage Caused by Aircraft to Third Parties as well as the Convention on Compensation for Damage Caused to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft during a May 2 meeting in Montreal.

Should the conventions become

international law, they would supersede international agreements on airline accident-related ground losses implemented by the 1952 Rome Convention, and introduce a new regime for ground damages caused by acts of terrorism that the Rome Convention did not address. Moves to amend or replace the Rome Convention have been in the works for years, but efforts intensified after the Sept. 11, 2001, terrorist attacks involving commercial aircraft in New York and Washington (*BI*, May 26, 2008).

Both new conventions impose strict liability on airlines up to a maximum 700 million special drawing rights, valued at about \$1 billion, depending on the size of the aircraft. It's the Unlawful Interference Convention, however, that concerns airlines the most, executives say.

The Unlawful Interference Convention would set up the International Civil Aviation Compensation Fund to pay claims caused by terror-

See **AVIATION** page 24

Yahoo! loses Internet liability case

ISP failed to remove offensive material despite pledge: Court

By JUDY GREENWALD

SAN FRANCISCO—Web site operators and Internet service providers that promise but fail to remove offensive material provided by third parties could find themselves liable for breach of contract, a federal appeals court ruled.

Observers say Web site operators should review their complaint procedures in light of the decision by the 9th U.S. Circuit Court of Appeals in San Francisco in *Cecilia L. Barnes vs. Yahoo! Inc.*

The decision says Web site opera-

tors could be found liable for breach of contract if they fail to keep their word despite the protection against liability that published third-party material normally is afforded by Section 230 of the Communications Decency Act of 1996. They should either remove the offensive material immediately or decline to do so, but not make promises they do not keep, observers say.

"This case stems from a dangerous, cruel and highly indecent use of the Internet for the apparent purpose of revenge," the three-judge panel said in its May 7 decision.

According to the opinion, Ms. Barnes broke off a lengthy relationship with her boyfriend in 2004. He responded by posting profiles of her on a Web site run by Sunnyvale, Calif.-based Yahoo! that included

nude photographs of the couple that were taken without her knowledge and "some kind of open solicitation...to engage in sexual intercourse."

The ex-boyfriend posed as Ms. Barnes on Yahoo!'s online chat rooms and directed "male correspondents" to the fraudulent profiles, which included physical and electronic addresses and the telephone number at her job.

"Before long, men whom Barnes did not know were peppering her office with e-mails, phone calls and personal visits, all in the expectation of sex," according to the decision.

After Ms. Barnes complained a number of times to Yahoo! and wrote letters demanding the postings be removed, Yahoo!'s commu-



AP PHOTO

Observers say Web site operators should review their complaint procedures in light of a recent appeals court decision that faulted Yahoo! Inc.

nications director allegedly promised that the profiles would be removed. "Barnes claims to have relied on this statement and took no further action," the appeals court said. However, the material

was not removed until two months later, and only after Ms. Barnes sued the Internet service provider, according to the opinion.

See **YAHOO!** page 22



Cristina Martínez García, corporate risk manager at Campfario Food Group S.A., and Pedro Tomey Gomez of Aon Gil y Carvajal spoke at AGERS.

More Spanish companies adopt ERM amid crisis

By ADRIAN LADBURY

MADRID, Spain—Enterprise risk management has risen sharply higher on the board of directors' agenda at Spanish companies, leading practitioners told the annual Spanish risk management conference.

Speakers and delegates at the May 5-6 gathering in Madrid said risk and insurance managers are in high demand among Spanish companies as a result of the credit crisis and subsequent economic downturn.

Risk managers who gathered for the 20th Congress of the Asociación Espanola de Gerencia de Riesgos y Seguros said they are pleased the profile of risk management has risen. But they also are keen to ensure their corporate leaders understand the potential benefits and investment needed to make ERM work, and do not think it is a quick-fix cost-control measure.

"ERM in Spain is moving up the agenda. It is a long-term tool that

can really add value, and I think management is behind the idea," said Daniel San Millan, vp of AGERS and risk manager at Madrid-based construction group Ferrovial S.A.

"ERM is something that all companies need to implement strongly and in all stages of the company. Companies must regard ERM as a management tool and not a control tool," he said.

Miguel Angel Macias, president of AGERS and director of insurance at Madrid-based construction company Formento de Construcciones y Contratas S.A., said attendance at this year's conference during a tough economic period was proof of the interest in risk management in Spain.

"We are pleased to have roughly the same number of delegates as last year and it is probably because risk management activity has risen in significance for companies. It is recognized that risk management is

See **AGERS** page 22

Employers mull mental parity rules, but most plan to maintain coverage

Many firms expect only modest increase in costs: Survey

By JOANNE WOJCIK

Only a few employers are considering dropping mental health coverage in response to new parity rules that take effect for plan years beginning after Oct. 3, according to a survey.

Meanwhile, nearly 38% of responding employers plan to increase the promotion and use of employee assistance program services to help them achieve mental health parity, which is required under a 2008 law, concludes the

survey conducted by the Partnership for Workplace Mental Health.

The Paul Wellstone and Pete Domenici Mental Health Benefits Parity and Addiction Equity Act requires companies with 50 or more employees to provide the same coverage for mental disorders—and in some cases, substance abuse treatment—as they do for medical illnesses. The parity requirement applies to both self-funded and fully insured plans.

"Employers don't yet know what they're planning to do. But there's good news in that very few employers are thinking about dropping coverage," said Clare Miller, director of the Partnership for Workplace Mental Health, a program of the American Psychiatric Foundation in

Arlington, Va.

The partnership launched the 10-question Web-based survey on March 10, sending it to approximately 2,000 partnership employer contacts including the Center for Health Value Innovation, the Mid-America Coalition on Health in Kansas City, Mo., and the Disability Management Employer Coalition. It also was featured on the *Business Insurance* Web site after preliminary results were released during an April 28 online executive forum hosted by *BI*.

The survey, which closed May 12, received 143 responses primarily from human resource and benefits managers. Other respondents

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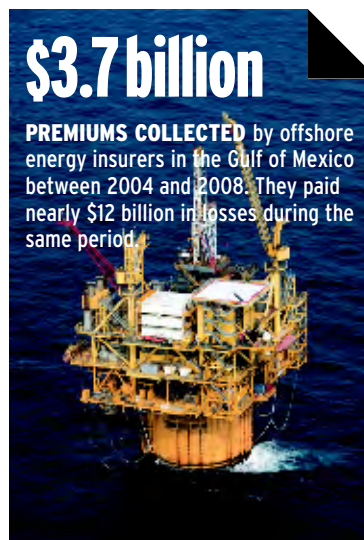
Root of Gulf losses: old oil platforms

By ZACK PHILLIPS

NEW YORK—Offshore energy insurers should re-examine how they cover low-producing or obsolete oil platforms in the Gulf of Mexico, a prominent underwriter says.

Much of the offshore losses insurers paid after Hurricane Ike last year were for drilling rigs and platforms that were relatively low-value assets before the storm, Frank Costa, president of New York-based Berkley Offshore Underwriting Managers L.L.C., said during a panel discussion at a seminar sponsored by the New York-based American Institute of Marine Underwriters earlier this month.

Energy underwriters have been talking about raising rates, retentions and deductibles significantly for Gulf of Mexico windstorm cover in light of a devastating 2008, which included \$3 billion in offshore losses from Hurricane Ike. But



Mr. Costa said the bigger problem in the Gulf of Mexico is how underwriters insure older and low-producing drilling rigs.

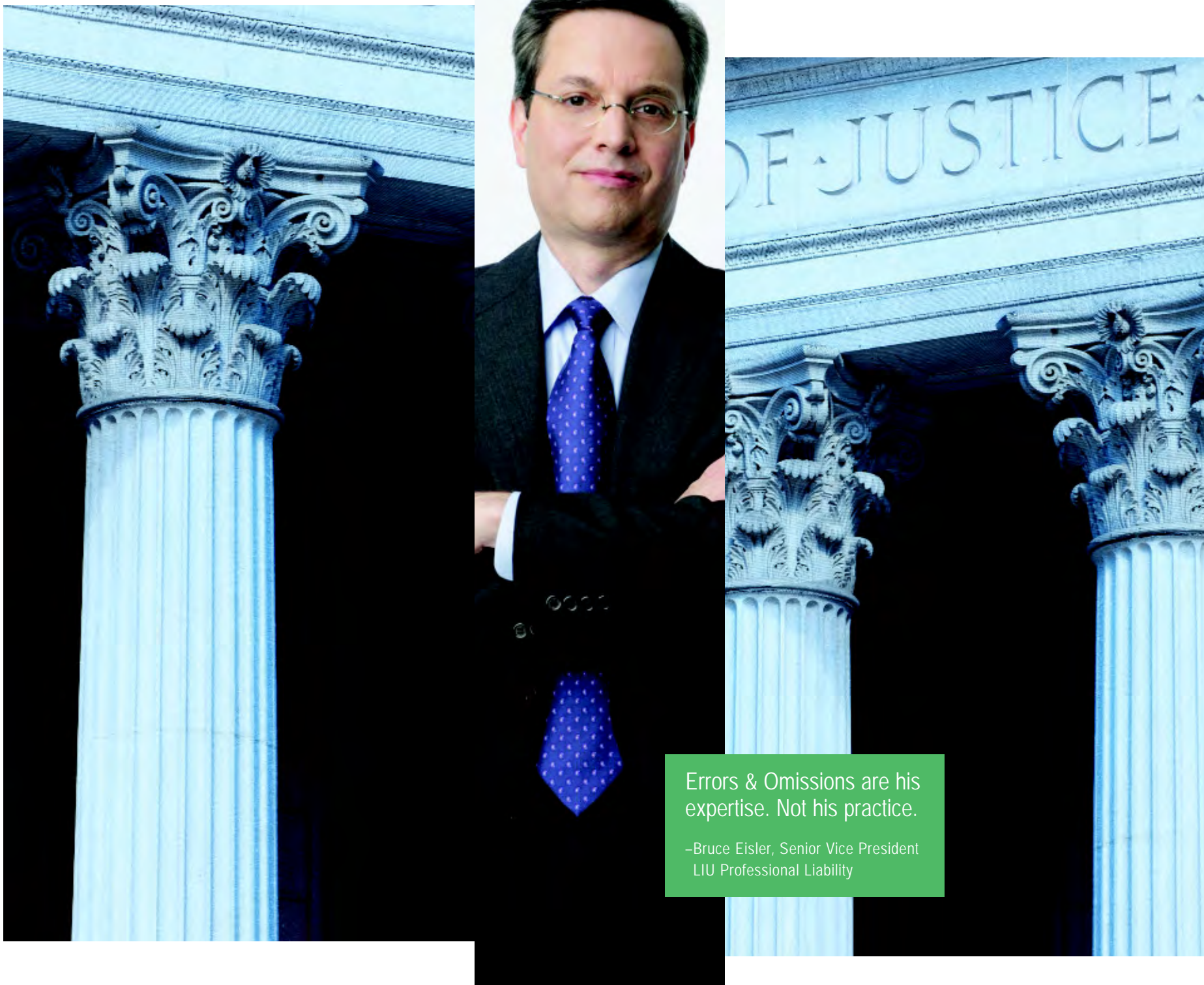
"Raising rates and imposing restrictions really doesn't address

the root cause of the problem," said Mr. Costa, who chairs the offshore energy committee for AIMU and the International Union of Marine Insurance.

Between 2004 and 2008, offshore energy insurers in the Gulf of Mexico collected \$3.7 billion in premium and paid nearly \$12 billion in losses, Mr. Costa said, citing statistics from Lloyd's Market Assn. Some insurers have sought to raise rates and impose coverage restrictions at this spring's renewals. Others have decreased their capacity or left the Gulf of Mexico windstorm market entirely, most notably Lloyd's specialist insurer Advent Capital (Holdings) P.L.C.

But Mr. Costa said a third option is to underwrite with a stricter definition of indemnity for rigs that were minimally productive or obsolete before they were destroyed by a

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—Bruce Eisler, Senior Vice President
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Commentary

Is the worst really over for insurance industry?

The good news to emerge from the first-quarter results recently published by many major European and global insurance groups is that the worst appears to be over.

The financial results may not have sparked a frenzied dash to purchase insurance stocks, because they were significantly marred by further dramatic falls in investment income and more write-downs.

But there was little to suggest that any of the limited number of big insurance groups, aside from American International Group Inc., that insurance buyers rely upon so heavily for coverage is on the brink of disaster.

This news was warmly welcomed by insurance buyers worldwide because the solvency of their insurance providers is at the top of their agenda.

Insurer financial security was the main topic of debate at the two big European risk manager meetings held in Spain and Germany during the first week of May.

Risk and insurance managers discussed a wide range of topics at the annual conference of the Asociacion Espanola de Gerencia de Riesgos y Seguros in Madrid, Spain, and the annual general meeting of the Deutscher Versicherungs-Schutzverband e.V. in Bonn, Germany.

These ranged from the popularity and benefits of enterprise risk management in the economic environment, the ability of insurers and other service providers to deliver new solutions to emerging problems, the role of government in support of insurance buyers in tough lines such as credit and terrorism insurance and, of course, the future shape of risk regulation.

The price of insurance coverage and its likely availability at the coming renewals naturally is also a hot topic, particularly as most insurance buyers are under pressure to at least maintain and, at best, reduce costs.

But the security of the coverage and willingness and ability of the insurers to pay the claims when they fall due is paramount.

During the DVS meeting, Kurt-Georg Hummel, leader of the Solvency II project at Bundesanstalt für Finanzdienstleistungsaufsicht, the German financial services supervisory authority based in Frankfurt, said he believes that the German insurance sector will emerge from the crisis in better shape than other European financial



**ADRIAN
LADBURY**

International Editor
Adrian Ladbury can be reached at aladbury@bbusinessinsurance.com

sectors.

While no doubt a comfort to DVS members, one has to bear in mind that Mr. Hummel is likely to believe the German insurance sector is in decent shape because, as a senior executive of the BaFin team, it is his job to make it so.

This is why the two just-published reports by leading credit rating agencies on the health of the European insurance sector

There's little in recent results to suggest that any of the big insurance groups that buyers rely upon is on the brink of disaster.

perhaps will be more comforting to buyers.

Standard & Poor's Corp. and A.M. Best Co. Inc. said the leading European insurance companies have lost a lot of capital, will continue to struggle with the depressed investment markets, and the insurance companies may suffer further downgrades as a result.

But the rating agencies also said the companies are reasonably capitalized and have sufficiently robust risk management systems that will help them pull through the crisis.

The bad news for buyers is that, because the reserves pot has run dry, there is scarce fresh capital, and reinsurance capacity is hardening rapidly, the only solution left for the insurers is to raise their prices to maintain their ratings.

While it is natural to moan about higher prices, one suspects many will and should be relatively happy to pay a higher price for secure coverage at this stage of the economic and insurance cycle.

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Business Insurance OPINIONS

Cutting back TRIA would be foolhardy

BY ALMOST ANY reasonable measure, the federal government's terrorism insurance backstop program has been a success. The program restored confidence in the insurance marketplace after the terrorist attacks of Sept. 11, 2001, by helping ensure that insurance coverage would be available against future terrorist attacks, particularly in areas believed to be high-risk targets.

Given the effectiveness of the program, we're more than a little puzzled why the Obama administration's budget proposal calls for scaling it back. In fact, we can't see why the program even would be considered in a budget proposal. To date, the only costs associated with the program had been administrative; it won't pay out a cent unless the nation suffers another truly catastrophic terrorist attack, which we sincerely hope never occurs. Any savings at this point would be phantom savings.

The administration's call for eliminating coverage under the program for acts of domestic terrorism also is puzzling. Determining whether an attack stems from a wholly foreign source could be extremely difficult. Even if such a determination were easy, the fact remains that a bomb detonated by a domestic terrorist can be just as destructive as one detonated by a foreign one.

The terrorism insurance backstop has proved its worth. There's no appetite on Capitol Hill to revisit the issue until much closer to its slated 2014 expiration. For the time being, we think the administration would do better by heeding a bit of folk wisdom—"don't mess with success"—and leave the program intact.

The administration would do better by heeding a bit of folk wisdom—"don't mess with success."

Health care reform bid takes a sensible turn

WAS IT A MAJOR development or a public relations ploy when medical and health insurance trade associations last week pledged to President Obama to reduce health care cost increases by about \$2 trillion over the next decade?

While we're more inclined to believe it was a ploy, perhaps the real significance is beneath the surface. To us, the announcement that organizations such as America's Health Insurance Plans, the American Hospital Assn. and the American Medical Assn. made at the White House with President Obama speaks volumes about the development of health care reform legislation.

The president, his top aides, key legislators and their staffs, and outside interest groups all are sharing information and ideas to find a common ground in assembling a health care reform package.

Contrast that with 1993 and 1994 when the Clinton administration tried to put together and win passage of a comprehensive health care reform bill. Then, the strategy was trying to win public support by attacking interest groups that opposed the plan.

Those attacks backfired. Not only did they convince interest groups that it was fruitless to try to work with the administration, they also led to counterattacks, most notably by health insurers launching an effective television advertising campaign that helped undermine what public support there was for the Clinton plan.

Fortunately, times have changed. When it comes to health care reform, neither this administration nor trade groups are on slash-and-burn campaigns. We hope good will continues and ultimately results in the enactment of legislation that expands coverage, while also boosting quality and holding cost increases to sustainable levels.



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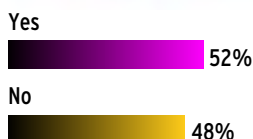
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THIS WEEK'S RESULTS

Q Have you altered the investment mix of your retirement savings in the past 12 months?



NEXT WEEK'S QUESTION

Q: How would you rate Congress' monitoring of companies that got bailouts?

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Life insurers may be poised to weather financial crisis

Despite speculation to the contrary, life insurers are better poised to withstand the current economy than other financial institutions, say Gayle P. Levy, above left, and Mohana Terry, attorneys in the insurance and reinsurance department of Edwards Angell Palmer & Dodge L.L.P. While life insurers have come under economic pressure, those that are well-capitalized likely will find ways to turn tough times to their advantage, the authors say.



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EDITORIAL: Boise: 208-286-1425;

Chicago: 312-649-5200; London: 44-207-457-1400;

Los Angeles: 323-370-2455; New York: 212-210-0100;

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St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-

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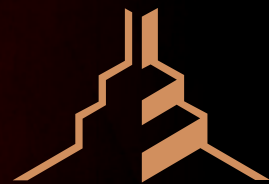


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Market Moves

Inter-Atlantic, Patriot Risk agree to stock transaction

FORT LAUDERDALE, Fla.—Special-purpose acquisition company Inter-Atlantic Financial Inc. has reached an agreement to acquire the capital stock of Patriot Risk Management Inc., which specializes in workers compensation services, the firms said.

The all-stock transaction is sub-

ject to a vote by Inter-Atlantic stockholders, regulatory approval and other customary closing conditions. The management team at Fort Lauderdale, Fla.-based Patriot Risk will continue managing the workers comp insurer and services provider.

Under the agreement, Patriot Risk stockholders are to receive 6.9 million shares of Inter-Atlantic common stock and an additional 5 million shares of common stock if certain stock price targets are met in the next five years.

The new equity capital would allow Patriot Risk to accelerate growth of its insurance businesses and respond to demand, the company said in a statement.

Inter-Atlantic, which would change its name to Patriot Risk

Management Inc. as part of the deal, is based in New York.

Starkweather & Shepley acquires R.I. agency

WEST WARWICK, R.I.—Providence, R.I.-based Starkweather & Shepley Insurance Brokerage Inc. said it has acquired C.O. Agency Inc. to expand its offerings to clients.

The acquisition pushes the combined operations' premiums to more than \$350 million, Starkweather & Shepley said in a statement.

The companies expect no staff reductions and C.O. Agency staff will continue working out of their West Warwick, R.I., office, according to the statement.

Starkweather & Shepley said it also recently established a practice focusing on risks for banks, brokers, hedge funds and other financial institutions.

Arkansas firm joins INSURICA as partner

LITTLE ROCK, Ark.—INSURICA Insurance Management Network has added Little Rock, Ark.-based Risk Services of Arkansas L.L.C. as a partner agency, the firm said earlier this month.

Before joining the INSURICA network, Risk Services was known as First Arkansas Insurance of Little Rock. The agency joins six other partner agencies in Arizona, California and Oklahoma.

Oklahoma City-based INSURICA was known as North American Group before April 9, when it formed the INSURICA network to encompass its insurance management partners. Its specialty areas include hospitality, ministries, construction, energy, transportation and education.

LWG Consulting opens Pacific Northwest office

VANCOUVER, Wash.—LWG Consulting Inc., which helps insurers and others with equipment and systems failures, has opened an office near Portland, Ore., to better serve clients in the Pacific Northwest and western Canada.

Northbrook, Ill.-based LWG has 17 other offices in North America and Europe. The company provides technical damage assessments, causal analysis, data recovery, computer forensics and equipment restoration to self-insured corporations, insurers, independent adjusters and legal professionals.

The new office's address is P.O. Box 871810, Vancouver, Wash. 98687. The phone number is 800-326-5075, ext. 7010.



Firms partner to form catastrophe price index

NEW YORK—Willis Re, the reinsurance unit of Willis Group Holdings Ltd., and Thomson Reuters P.L.C. have established a price index for property catastrophe reinsurance.

The Willis Re Catastrophe Price Index measures pricing levels in the U.S. property catastrophe reinsurance market. In a statement, Willis said other price indexes measure rate on line—the ratio of premium to limits—but its index also tracks loss costs, by measuring loss on line.

The index resides on the insurance-linked securities portal of New York-based Thomson Reuters, which Willis said is free with registration.

In a statement, the companies said demand for more sophisticated reinsurance pricing analysis will increase this year as the supply of catastrophe bonds grows and traditional reinsurance capacity shrinks.

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Enterprise Risk Management

MANAGING the full spectrum of CORPORATE RISK

By **MICHAEL BRADFORD**

Enterprise risk management is anything but a fix-it-and-forget-it approach to mitigating risk.

Four risk managers who have developed and managed ERM programs for several years say they constantly improve and expand their approaches to meet the evolving demands of their companies' operations.

Carol Fox, director of risk management at Convergys Corp. in Cincinnati, said the five-year-old ERM program at the customer and employee relationship consulting company is still maturing.

Claes Martenson, group risk manager at Solvay S.A. in Brussels, Belgium, says his four-year-old program for the chemical, plastic and pharmaceutical manufacturer also

remains in development.

"We are still working on it, putting things in place," Mr. Martenson said.

The risk managers agree that ERM, as lofty as the term may sound, is not a rocket-science approach to reining in risk. Rather, it is a way to minimize risk across the organization while maximizing opportunities that can come from the proper understanding of risk.

In fact, ERM is quite simple, says Julia Graham, chief risk officer at law firm DLA Piper U.K. L.L.P. in London, because nearly all risks overlap and that makes it sensible to manage the entire spectrum of corporate risk in a holistic fashion. "Nothing acts in a silo," is the way she frames the idea. Risk managers often refer to managing risks in silos, or separately, which is the

opposite approach to the ERM style of managing risks in a holistic fashion.

John Phelps, director of business risk solutions for Blue Cross & Blue Shield of Florida Inc. in Jacksonville, said ERM is built on a foundation of fundamental risk management and boils down to embracing and monitoring risks while considering ways to use them as sources of opportunities for the insurer.

These four risk managers, with the all-important blessing of top management, have taken the ERM bull by the horns and positioned their companies to operate as well-protected organizations that are not looking to sidestep risk, but rather to use it to their advantage. Profiles of their efforts are on pages 12 through 16.

SPOTLIGHT

FLORIDA BLUES WORKS TO MITIGATE AND EXPLOIT ITS RISKS PAGE 12

CONVERGYS' ERM PROCESS 'BAKED' INTO EVERY PART OF THE BUSINESS PAGE 13

DLA PIPER'S MODEL PROVES THE COST OF RISK TO INSURERS PAGE 14

SOLVAY LINKS ERM WITH ITS STRATEGIC PLANNING PROCESS PAGE 15

RISK MANAGERS SHOULD BE READY TO COUNTER ERM DOUBTS PAGE 16

Q&A WITH MUNICH RE CHIEF RISK OFFICER ON CHANGING ROLE PAGE 16

Florida Blues finds ERM success through personalization

By **DAVE LENCKUS**

JACKSONVILLE, Fla.—Enterprise risk management at Blue Cross & Blue Shield of Florida Inc. is a work in progress as well as a process that is working to mitigate and exploit risk, says the Blues plan's risk manager.

John Phelps, director of business risk solutions, implemented the risk-taking optimization process 10 years ago and spent the first year securing support from senior-level management at the Jacksonville, Fla.-based insurer.



Initially, the process involved only a strategic assessment of risk. ERM was pushed down into the operational side of the business a few years later, but middle management resisted it, because "it wasn't personal enough for them," Mr. Phelps said.

In response, risk management revised the process for the organization's business process managers by

making ERM a tactical tool, which helped managers better understand it and "work it into their day-to-day decision-making," Mr. Phelps said.

Today, ERM not only is one of the important instruments senior management uses to chart the organization's three- and five-year business strategies, it also helps business process management devise a 12- to 18-month operational—or tactical—plan, Mr. Phelps said.

The Blues plan's ERM process is "built on a foundation of the fundamental risk management process" of identifying and evaluating risk;

either mitigating the risk or developing a business opportunity by embracing the risk; and monitoring the results, said Mr. Phelps, a long-time supporter of ERM.

The risk assessment begins in late summer at the business-process level and takes about six weeks to complete.

Mr. Phelps' business risk solutions office teams with the company's internal audit unit to conduct a series of two-hour risk assessment meetings with eight to 15 representatives—mostly management—from each of the insurer's 35 to 40

business operations.

At those meetings, the process representatives identify their top risks.

They then rate, on a scale of one to 10, the likelihood that a risk would occur, its expected effect on the organization and the effectiveness of risk controls already in place. Those three numbers then are multiplied to create a risk index value for that particular risk.

After input from all of the business process groups has been collected, Mr. Phelps' department plots all of the identified risks on organizational risk index and suggests a dividing line. Risks with values that fall above the line would be addressed, while risks that fall below that line would be monitored, Mr. Phelps said.

The organization's risk council, which consists of representatives from various business operations, then determines whether to accept the suggested placement of the line or adjust it.

Meanwhile, based on the information it gleans from the assessments, the internal audit unit determines which areas of risk it will audit.

The strategic side of the ERM process begins in early autumn and also takes about six weeks to complete. To develop information for senior management's use in devising long-range strategic plans, Mr. Phelps personally interviews the organization's top 35 officials, whom he also asks to complete a risk assessment workbook.

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Risk management sparks educational efforts in Italy

MILAN, Italy—Enterprise risk management is getting a boost from Italy's risk management association.

"We understand from our mem-

bers that they are interested in getting information from the association regarding enterprise risk management," said Paolo Rubini, chairman of the Milan-based



Mr. Rubini

Associazione Nazionale dei Risk Manager e Responsabili Assicurazioni Aziendali. "And we are implementing new educational programs to address the ERM issue," he said.

"We think this will become a big topic in Italy," where practicing ERM is not widespread, Mr. Rubini said.

Mr. Rubini, who also is director of risk management at Telecom Italia S.p.A. in Milan, said ANRA is planning courses and seminars that will educate Italian risk managers about how to implement and use ERM programs.

He said he expects an educational program to be in place by fall.

—By Michael Bradford

ERM strategy evolves to embrace business changes

Process designed to exploit risks as profit potential

By **DAVE LENCKUS**

CINCINNATI—Enterprise risk management is a continually maturing process at Cincinnati-based Convergys Corp., which is how the company's risk manager prefers it.

"I'm one of those people who believe we're never done," said Carol Fox, director of risk management.

Chief Financial Officer Earl C. Shanks has championed ERM at Convergys since introducing the process in 2004 shortly after joining the customer and employee relationship consulting company.

The process is designed to sustain business if Convergys were hit by an adverse risk, Ms. Fox said. Risk management manages the process and provides support for it.

The process begins with senior managers, who are asked to create a risk log that identifies issues that "keep them up at night," Ms. Fox said. In the logs, managers predict the likelihood those risks would manifest and how severely such adverse developments would affect the company's business objectives and reputation.

The risks then are prioritized, and the owners of the risks are identified.

Risk management then aids risk owners in completing a more detailed assessment.

Next, the risk owners complete a risk treatment plan in which they determine whether to avoid, accept, mitigate, transfer or exploit the risk.

Exploiting the risk involves managing it in a way that creates a business opportunity with a profit potential that is commensurate with the risk the company is taking.

Risk reporting also was made "part and parcel" of the routine reports each business line submits to management, Ms. Fox said.

As a result, risk analysis and reporting is "baked into everything they do," rather than being an additional task on top of their existing duties, she said.

From there, senior management filters the information and presents it to the board to use in strategic planning.

Process still developing

Risk management early on also partnered with the company's internal audit department to imbed risk reporting information in the company's audit plan each year.

Five years into the process, it still is maturing, Ms. Fox said.

That was demonstrated by the new review of risk the company's information technology department conducted last year before a new chief information officer

came aboard.

The information developed from that "deeper dive" into risks with the IT team led to, among other things, a new training program designed to help the team better understand the business risks they were taking with their service-delivery initiatives, Ms. Fox said.



Risk analysis and reporting is 'baked into everything (risk owners) do' rather than being an additional task on top of their existing duties.

Carol Fox, Convergys Corp.



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DLA Piper is a pioneer of enterprise risk management

Company's program is highlighted in AIRMIC case study

By MICHAEL BRADFORD

LONDON—DLA Piper International L.L.P. is something of a pioneer when it comes to enterprise risk management.

The London-based law firm set out to establish an ERM framework five years ago and recruited Julia Graham to put it in place.

"I'm not saying it was an easy thing to do," recalled Ms. Graham, DLA Piper's chief risk officer, who was recruited from her risk management job at Royal & SunAlliance Insurance Group P.L.C. But a mandate from the top to put ERM in place was a great help in implementing the program, she said.

"I had support from the top at the firm and from the board; I was allowed to get on with it," Ms. Graham said.

At its heart, ERM is not a complicated process, she said.

"Nothing acts in a silo. Nothing acts in a vacuum," Ms. Graham said. "At the end of the day, it's really quite simple: ERM allows us to realize the benefits of (risk) aggregation and understand the domino effects. There are very few risks that don't overlap other risks."

DLA Piper's ERM program manages risks related to the law firm's 45 locations in 26 countries.

DLA Piper's program was highlighted in a case study that was part of an enterprise risk management report commissioned by the London-based Assn. of Insurance & Risk Managers.

According to the report, DLA Piper devised its program so all eight of its practice groups and each of more than a dozen regional operations are required to perform an annual risk assessment. The groups use questionnaires to rank their risks by how likely they are to occur and the consequences that could result.

The annual assessment allows DLA Piper to prioritize the risks with the potential to have the greatest impact on the firm and develop plans to manage those threats.

In addition, the company starts a new strategic planning cycle every three years. All DLA Piper operations assess the risks that could affect their strategic plans. That information is aggregated and used as part of risk management's overall strategic planning.

The risk management department also is responsible for ensuring that there are no hidden risks that come with new hires. Due diligence is performed to uncover any conflicts of interest that newly hired lawyers might bring to the firm.

Putting in a coordinated ERM

program does not mean risks no longer are recognized individually, Ms. Graham said. "Despite the fact that you categorize risks doesn't mean you can't manage them as enterprise risks," she said.

Having strong risk-related policies and processes can be effectively communicated across an organization, she said.

"Insurance and business continuity plans are put in place to cover everything, whether it's a pandemic" or recession-related risks, Ms. Graham said. "If you lose a key supplier, it doesn't make any differ-



DLA Piper's CRO Julia Graham's advice to risk managers considering an ERM approach amounts to a simple maxim: Know thyself.

ence" how that loss came about, she said.

Among Ms. Graham's most effective ERM tools is a total cost of risk model. It considers the expense of insurance, insurance losses, fees

related to control risks and other costs.

The model has incorporated nearly six years of data and also is used as a tool to negotiate insurance renewals, Ms. Graham said. The model helps her prove to insurers how well the firm's risks are managed, which she expects to translate into premium costs that are lower than for DLA Piper's peers that do not use such sophisticated risk management tools.

"Insurers are very quick to say that risk managers always buy on price," Ms. Graham said. "But I say, 'If you

don't underwrite based on risk management, what do you expect?'" Risk managers who can prove their dedication to keeping losses down with such ERM tools should be treated differently than those who cannot, Ms. Graham said.

Her advice to risk managers considering an ERM approach amounts to a simple maxim: Know thyself.

"If you start something," Ms. Graham said, "but then venture too far without going through the onion skin of understanding the business and culture that you are a part of, you will fail."

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Chemical and pharmaceutical firm Solvay S.A. has used enterprise risk management to produce some noteworthy accomplishments.

SOLVAY S.A.

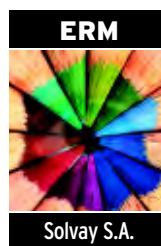
Solvay turns risk into opportunity

By MICHAEL BRADFORD

BRUSSELS, Belgium—An enterprise risk management approach at Solvay S.A. is turning risk into opportunity, according to the chemical and pharmaceutical firm's risk manager.

ERM is a work in progress at Solvay, said Claes Martenson, who began implementing ERM at Brussels, Belgium-based Solvay when he joined the company in 2004, but it has produced some noteworthy accomplishments.

Prior to his arrival, Solvay sought



to avoid exposures by steering clear of operations it deemed too risky.

"The short remit for my job was that I should help Solvay to make risk management more systematic and coherent so that Solvay could take more risk," he said.

In 2006, the company's executive committee declared that taking on risk and effectively managing it was to become a core competency, Mr.

Martenson said.

ERM now has been implemented at Solvay and the concept is instilled in the company's top management, which numbers around 400 in about 100 locations, Mr. Martenson said. "They are now risk aware. They understand risk," he said.

When he joined Solvay, Mr. Martenson made presentations on ERM throughout the company, and put together a mission statement that outlined Solvay's ERM vision.

Solvay began profiling all risks across the organization in 2006, using the Zurich Hazard Analysis method developed by Zurich Financial Services Group. The process involves profiling the risks of business units with the involvement of management teams, analyzing the risk of each unit, and developing an action plan for managing the risks.

A first round of profiling was completed in 2008 and the second round has begun and is expected to be completed this year, Mr. Martenson said.

Enterprise risk management has grown to become part of the strategic process at Solvay, according to Mr. Martenson. "All the strategy presentations to the executive committee must have a risk management component," he said.

And the process has produced business opportunities for Solvay, he said. For example, in an effort to curb liabilities, Solvay previously stopped sales to companies if it discovered Solvay products were to be used in human implants. But by using the ERM approach to profile, analyze and control the risk, the company decided it would reverse its policy and sell raw material for the implants market.

"Now we know the risk and can reduce it," he said, with the result being a new source of business for Solvay.

Another potential opportunity for Solvay is a joint venture it is considering with SIBUR Group, a Moscow-based petrochemical company. The two companies are in talks to build a polyvinylchloride plant in Russia with other potential partners.

While the venture is not a certainty, it is one that would not have been considered under Solvay's old approach, said Mr. Martenson. Now, with its ability to accurately assess the risks such a project would create for Solvay, the company is confident it can manage those risks, he said.

"Those are two opportunities that we would not have gone forward with before," he said of the implant and joint venture projects.

There are four questions that should be answered by any company considering implementing an ERM program or evaluating one in place, according to Mr. Martenson:

- Have you identified the largest risks that you face?
- Do you have a plan to address those risks?
- Are you prepared to handle losses if they arise from those risks despite efforts to prevent them?
- Do you have a systematic approach to creating opportunities out of risks?

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Demonstration of ERM's usefulness key to winning over management

Risk managers should expect resistance from their managers

By **DAVE LENCKUS**

Risk managers who are preparing to implement an enterprise risk management process should be ready to mitigate opposition from middle and lower management, experts warn.

To counter resistance, experts recommend risk managers address it before implementing the process. They suggest risk managers demonstrate that ERM is a tool managers can use to improve unit performance and promote their individual worth.

That demonstration is "critically important" to the success of the process, said Laura Taylor, a New York-based managing director at



John Phelps, director of business risk solutions at Blue Cross & Blue Shield of Florida Inc. said middle management initially resisted implementation of an ERM process.

Aon Global Risk Consulting, a unit of Aon Corp.

Risk managers also need a senior

manager to co-champion ERM in addition to top management support in general, experts say.

Some experts say a company's culture may promote immediate management acceptance of ERM, but most experts point out that risk managers typically encounter resistance, foot-dragging or fence-sitting from managers who fear ERM threatens their jobs or dilutes their authority.

Unit managers perceive ERM as a spotlight that illuminates losses and potential risks, which "doesn't paint them in a positive light," said James Lam, president of James Lam & Associates Inc. in Wellesley, Mass.

So management resistance is a challenge that risk managers "should expect almost 100% of the time," as Mr. Lam said he has experienced as an ERM consultant and a chief risk officer.

Continued on next page

Questions Answers



Although the insurance sector has not been immune to the financial crisis, holistic risk management has been crucial in helping the industry weather the storm, says Joachim Oechslin, chief risk officer of the Munich Re Group. Appointed in September 2007, Mr. Oechslin is responsible for implementing the company's integrated risk management strategy and plays a critical role in steering the company's operations. Mr. Oechslin recently spoke with Business Insurance Associate Editor Colleen McCarthy about lessons learned from the financial crisis and the changing role of a CRO.

ERM holistic, helpful

Q: What is the most important responsibility of a chief risk officer?

The CRO's responsibility is really two-part: First, the CRO is responsible for creating transparency on the risk profile of the group, which means identify and quantify risks and making sure there are internal controls established. Second, it is our job to help management shape the risk profile of the organization. We must create a risk management dialogue with the entire organization and be engaged in actively steering the risk profile.

Q: How is the role of the CRO evolving?

The next wave of development will move risk management toward the function of a "business enabler." I do not think the role of a CRO is to be solely that of the internal police.

Rather, effective risk management can be innovative and become an integral part of the development process for insurance products. Risk managers should be engaged in finding solutions and finding a way to take previously uncontrollable risks and make them controllable.

Q: How is enterprise risk management being applied in the insurance industry?

Previously, risk management was done very much in silos. Now ERM is applied with a more holistic approach. This means we have systems in place to identify and quantify risks and make them transparent—and those systems are applied across the entire business spectrum including underwriting, investing and operational risks. At Munich Re, we have introduced a strategic risk management framework as part of our ERM discipline, which helps us to determine the criteria along which we are taking risks and therefore determines our risk appetite.

Q: What are some of the criteria that determine your risk appetite?

Within our strategic risk management framework, we would assess how much capital is necessary to absorb risks. We also follow a variety of internal standards, rating agency requirements and regulatory requirements. We ask ourselves: How volatile should our earnings be and what kind of accounting volatility do we assume? Also, we decide how much and what kind of individual peak exposures we will take in terms of natural catastrophe risks, terrorism risks, pandemic risks, etc.

Q: What is the next chapter for ERM?

One of the lessons from the financial crisis we have seen is that ERM needs to be further strengthened. We need to make sure there is independent and empowered risk control in inter-

national institutions and, in particular insurance companies, going forward. Many companies still have work to do to strengthen risk management governance.

Q: What are other lessons we can draw from the financial crisis?

The first is to recognize that insurance is a global industry and needs global regulation. Systemic risks, as we have seen in the financial industry and to a lesser degree in the insurance industry, can only be tackled by global regulation. The second is that risk modeling needs to be improved. There should be a strong focus on incorporating stress tests on the basis of events that have not been observed in the past, rather than relying on calibration based on historical fluctuations. I believe the insurance industry is further along than the financial industry with respect to this.

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CONTINUED FROM PREVIOUS PAGE

The mistake many risk managers make is ignoring how ERM could help managers and instead focusing either on ERM's role in devising corporate strategy or immediately bogging down managers in the implementation process, experts say.

"I think that's a common mistake," said John Phelps, director of business risk solutions at Blue Cross & Blue Shield of Florida Inc. in Jacksonville and former chairman of the Risk & Insurance Management Society Inc.'s Enterprise Risk Management Committee.

Mr. Phelps, who implemented an ERM process 10 years ago, said middle management initially resisted it because the process—which he ultimately modified to mitigate opposition—"wasn't personal enough for them."

"Once they understand it's about their success, there is a lot of buy-in," said Carol Fox, director of risk management at Cincinnati-based Convergys Corp., which implemented its ERM process in 2004.

Ways to win support

Experts offered various suggestions to win managers' support.

First, risk managers must ensure that senior management not only genuinely supports ERM but also understands it, said Jim DeLoach, a Houston-based managing director in the governance, risk and compliance solutions practice at Protiviti Inc., a consulting and auditing subsidiary of Robert Half International Inc.

"Very few" companies that implement ERM use it to help senior management take a strategic view of risk, Mr. DeLoach said.

So, the first challenge for many risk managers is positioning themselves to be able to challenge senior management without jeopardizing their positions, he said.

If senior management has the correct understanding of ERM but lower management resists it, the problem is not ERM-centric, said Joan Schmit, the American Family Insurance chair of risk management and insurance and a senior associate dean at University of Wisconsin in Madison.

Instead, management's resistance to ERM and change in general "reflects how people see themselves within the organization" and is a systemic problem organizations have to correct, Ms. Schmit said.

In the meantime, risk managers can convince managers of ERM's value before resistance takes root, several experts say. Many experts suggest taking a multipronged approach.

At SMART Business Advisory & Consulting L.L.C., Howard Stecker, a New York-based senior vp, and John McLaughlin, a Philadelphia-based senior managing director, advised risk managers to explain the process, outline everyone's role and define the "end state," or how the board or chief executive officer envisions the company managing risk.

Messrs. Stecker and McLaughlin also suggest bringing groups of managers together to share information on their units' top risks and to offer their opinions on how others throughout the organization

Management's resistance to ERM and change in general 'reflects how people see themselves within the organization' and is a systemic problem organizations have to correct.

Joan Schmit, University of Wisconsin

view risk. Few organizations provide managers that kind of sharing experience, they said, which means managers often have no context to understand the risks their organizations face and the resources available to address them.

A robust marketing campaign should come next to ensure ERM is

embedded in the company's culture, they said.

Pilot project

Another approach that often promotes management support of ERM is a pilot project, Aon's Ms. Taylor noted.

A risk manager would have to find

one manager who embraces ERM from the outset and run a pilot project in the manager's unit. The project's success and the manager's testimony can create buy-in throughout the organization, Ms. Taylor said.

Mr. Lam maintained that risk managers who adopt seven principles will obtain and retain middle- and lower-management support. He said risk managers should:

- Simplify the ERM process, because "people don't do what they don't understand."
- Communicate its purpose.
- Provide training.
- Personalize it to help managers achieve their objectives.
- Demonstrate how it adds value to the managers' business operation.

- Monitor performance.
- Tie performance to compensation.

While "getting it right early in the process is extremely important," companies that didn't and now face management resistance still can generate support for ERM, said attorney John Landis, a partner with Foley & Lardner L.L.P. in Chicago.

Mr. Landis, who often works with brokers on ERM consulting projects, said he has seen new management at companies with ineffective ERM processes win support by investing time in management discussions about how the process could benefit individual managers as well as the company.

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Energy: Debris claims top platforms' value

CONTINUED FROM PAGE 4

hurricane.

"I believe the real problem in the Gulf of Mexico is that we as an underwriting group have moved away from the concept of indemnity—that is, putting the (policyholder) in the same economic position they were in prior to the loss," he said. "Much of the incurred loss generated by Ike was the result of damage to marginal, obsolete or nonproducing properties."

Of 54 offshore platforms destroyed by Hurricane Ike, 47 were producing fewer than 1,000 barrels

of hydrocarbons daily, and only five were producing more than 5,000 barrels a day, Mr. Costa said. The storm affected less than 2% of the Gulf's oil and gas output despite offshore insured losses that rivaled Hurricanes Katrina and Rita, Mr. Costa said.

Offshore platforms producing little or no oil or gas generally have a lower value, which typically means they generate lower premiums. But when these sorts of facilities were destroyed by Hurricane Ike, underwriters were obligated by contract to compensate energy companies for the expensive process of

redrilling or plugging and abandoning the wells, Mr. Costa said.

"Underwriters in effect provided decommissioning funds for properties which eventually would have had to be removed and had little or no value to their (policyholders)," Mr. Costa said. "This is not what insurance was meant to be."

In particular, Mr. Costa said removal-of-debris claims for offshore facilities destroyed by the storm were dramatically higher than underwriters expected. He said an old rule of thumb was that such claims would cost 25% of the asset's value; after Hurricane Ike, a drilling

unit valued at \$10 million or \$15 million could produce a debris claim of \$50 million, Mr. Costa said.

"Events of the past four hurricanes have shown that many of these (older) platforms are not insurable from a wind perspective," he said. "The only thing you can do if you choose to insure those platforms is impose yet higher rates, higher retentions and smaller wind limits."

He added, "It's getting to the point where, in most of those cases, it's not a product that transfers very much risk," Mr. Costa added. "And we are seeing pushback from the buyers in those cases."

Marsh & McLennan Cos. Inc. and Berkshire Hathaway Inc. reportedly have opted not to launch a planned windstorm insurance pool for the Gulf of Mexico due to insufficient

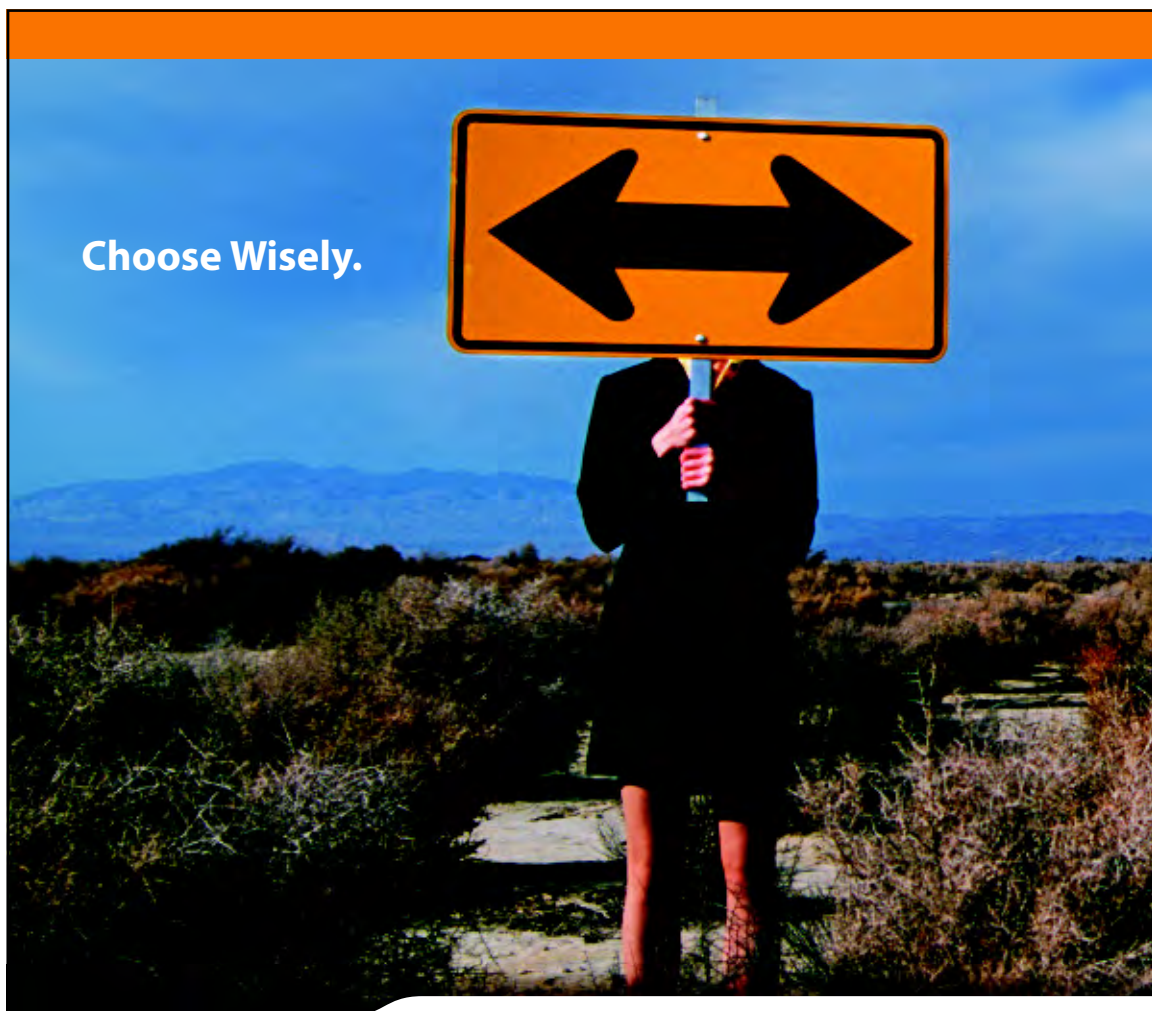
buyer interest. And market observers have said more buyers in the Gulf of Mexico are considering self-insuring because of the dramatically higher rates and lower limits sought by underwriters.

Observers seem intrigued by Mr. Costa's suggestion to re-examine the way policies indemnify older facilities.

"It's a great idea," said Kenneth Kuhlmeier, a New York-based vp at Starr Marine, a unit of C.V. Starr & Co. Inc. "We should always be doing that."

Mr. Costa said he thinks the Gulf of Mexico windstorm market is at a "critical point."

"Underwriting credibility has been damaged, results have been dismal," he said. "I believe our market has one last chance to come up with a viable product that can endure over the long term."



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U.S. trade sanctions require exclusion: attorney to AIMU

NEW YORK—Insurers writing global policies for U.S.-based companies should include a broad exclusion for transactions involving entities or countries that are subject to U.S. trade sanctions or risk violating federal law, according to an attorney.

The government's definition of transactions involving targets of trade sanctions is broad and encompasses many transactions insurers may not realize violate U.S. law, Hal Eren, a Washington-based attorney with Eren Law Firm L.L.C., said at a meeting of the American Institute of Marine Underwriters held in New York earlier this month.

The Treasury Department's Office of Foreign Assets Control, which administers U.S. trade sanctions, prohibits transactions with any country, person or entity that is a target of economic sanctions or that is controlled by such a target, without a government license to do so.

The broadness of that definition means companies should carefully examine the backgrounds of entities with which they do business, said Mr. Eren, who worked at OFAC from 1992 to 2000. The penalty for violating trade sanctions is \$250,000 or twice the value of the transaction, whichever is greater. The reputational damage to a company found to have violated the law is worse punishment, he said.

In the case of insurers, merely writing a global insurance or reinsurance policy without an OFAC exclusion violates the law, according to a 2007 directive from the agency.

Mr. Eren provided a long list of examples in which an insurance company or underwriter could violate OFAC's restriction inadvertently. A Norwegian

ship might be hit by an Iranian ship, or suffer an emergency and seek help at a Cuban port because it is closest. A global insurer might contribute to a pool that later indemnifies a claim involving Sudan, or a reinsurer might reinsure a primary insurer that covers a claim involving Myanmar. In each of those cases, the insurer would be prohibited by OFAC from even looking at the claim, much less contributing to it, Mr. Eren said.

But requiring an OFAC carve-out in all global policies could put U.S.-based insurers at a disadvantage when competing with other insurers, he said.

"You have to say, according to OFAC, 'Sorry, I can't cover any risk involving Iran or Cuba or (Myanmar) or Sudan,'" Mr. Eren said. "This is mostly an untenable position...to take because the (buyer) wants global coverage and it's usually an all-or-nothing proposition for the insurer."

In cases where getting buyers to agree to an OFAC exclusion is not commercially viable, insurers can apply to the office for a license to write the global insurance policy, Mr. Eren said.

OFAC has issued such licenses, he said. And so far, he said the office has not taken enforcement action against U.S. insurers or their policy-holders.

"We have not seen any prosecutions or enforcement action by OFAC for U.S. companies under global policies," he said. "That's not to say they won't do it, but they haven't done anything like that so far."

Still, Mr. Eren said it is important for companies to implement compliance programs to ensure that new or old business partners do not fall within the boundaries of OFAC's prohibitions.

—By Zack Phillips



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JOHN MORENO

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PREVIOUS POSITION: Riverside, Calif.-based employee benefits practice leader and Southern California regional benefits manager for Chicago-based Hub International Ltd.

GOALS FOR NEW POSITION: The goals for this position are...to gather all the various agencies that are benefits oriented and leverage the marketplace (and) employ best practices to help create something that is geared to this new national healthcare system that we are seeing emerge.

INDUSTRY CHALLENGES: The challenges facing the industry right now are the escalating cost

of health care and the large number of uninsured that are in the marketplace and the federal government's involvement in trying to solve that problem.

WHAT I WOULD CHANGE ABOUT THE INDUSTRY: Make it more efficient. We don't have electronic records and insurance companies are all using different forms. It's very inefficient.

ADVICE: To make sure they have training on customer relations so they understand what the clients are facing.

OUTSIDE THE INDUSTRY, A DREAM JOB: This is my dream job. But outside of the industry, originally, I wanted to be a child psychologist. I got my degree in that.

MOST PASSIONATE ABOUT: Taking care of people who can't take care of themselves, inside and outside the industry.

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Coca-Cola: Retiree plan tentatively denied

CONTINUED FROM PAGE 1

contributed \$216 million to the trust.

The medical stop-loss coverage would pay claims that fall between an attachment point and an upper limit. For all retirees, the attachment point would be \$100. For those younger than 65, the upper limit would be \$5,800; for retirees 65 and older, the upper limit would be \$3,500.

Prudential, in turn, would use the premium it receives from the Coca-Cola VEBA to reinsure the risk with Red Re Inc., a South Carolina-domiciled captive insurer and one of three captives owned by Coca-Cola.

Coca-Cola now uses Red Re for a wide range of risks, including benefit coverages of employees outside the United States.

But the Labor Department last month said on the basis of the facts provided, it has tentatively decided not to approve the transaction.

To demonstrate that it meets the criteria for approval of what is known legally as a prohibited transaction exemption, the Labor Department suggested in its ruling that Coca-Cola address several issues.

Among those issues, the Labor Department wants more information from Coca-Cola about how the arrangement would enhance retirees' benefits, whether Coca-Cola sought a noncancelable medical stop-loss policy from insurers other than Prudential, and why the department should approve an arrangement that may result in a profit for Red Re.

The Labor Department gave Coca-Cola until June 3 to respond to these and other issues it raised, and Coca-Cola indicated it will do so by then.

Laurie R. Solomon, Coca-Cola's director of risk management in Atlanta, said the company will continue to work with the Labor Department to win approval of its proposal.

Given the importance, innovation and complexity of the proposal, benefits and captive experts say they weren't surprised the Labor Department raised numerous issues to which it wants Coca-Cola to respond in greater detail.

"This is potentially a groundbreaking approach. Realistically, one would have to expect a very high level of scrutiny," said George O'Donnell, a senior vp with Aon Consulting in Somerset, N.J.

"When you have something cutting edge—and there are no precedents—regulators are going to be extraordinarily cautious," said Jon Harkavy, vp and general counsel with captive manager Risk Services L.L.C. in Washington.

While cautious and vigilant, the Labor Department's mind is far from decided. Regulators "have shown every intent to be open-minded and fair in addressing this important exemption," said Kathleen Waslov, a consultant with Towers Perrin in Boston. Towers Perrin is Coca-Cola's consultant on the project.

While no one knows for certain how the Labor Department ultimately will rule, some are optimistic it will approve the arrangement.

"While DOL has asked good, tough questions, these are questions" to which Coca-Cola should be able to respond, Mr. O'Donnell said.

If Coca-Cola wins approval of its proposal, other employers are likely to follow.

In fact, Mr. O'Donnell said he is working with other employers that are considering similar arrangements and are awaiting a ruling in the Coca-Cola filing before deciding whether to move ahead.

Linking a VEBA to a captive to fund retiree health care benefits is attractive for several reasons, out-

side observers said earlier.

Under federal law, assets contributed to a VEBA must be used to pay benefits or purchase insurance policies that provide benefits. Employers cannot remove VEBA assets for other purposes, even when a benefit program is being wound down.

By contrast, using a captive to fund benefits gives a company greater financial flexibility.

For example, investment gains on contributions made to the captive can be paid out as dividends to the parent.

In addition, because the Internal Revenue Service considers employ-

HOW THE MONEY WOULD FLOW

Under Coca-Cola Co.'s proposed retiree health care benefits funding plan, a company-established and -funded voluntary employees' beneficiary association would pay a premium to Prudential Insurance Co. of America for medical stop-loss coverage. Prudential then would fully reinsure the risks through Coca-Cola captive insurance company Red Re Inc.



ee benefit risks to be third-party business, funneling benefit programs through a captive could

increase the likelihood that an employer can deduct property/casualty premiums paid to its captive.

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German buyers looking closely at credit ratings of insurers

Amid security worries, buyers also watching credit firm regulation

By ADRIAN LADBURY

BONN, Germany—The financial security of insurers topped concerns at the recent meeting of the German insurance buyers' association, Deutscher Versicherungs-Schutzverband e.V., and the organization is looking closely at the role of credit rating agencies to help determine that security.

A representative of Standard & Poor's Corp. was invited to discuss the role of credit rating agencies during the May 7 meeting and the association announced it would be a key topic of debate during its annual symposium in Munich, Germany, in September.

In his keynote address to the annual general meeting in Bonn, Germany, Günther Schlicht, chief executive of the DVS, said events of recent months, such as the government bailout of American International Group Inc., have been "totally shocking" for insurance buyers.

Mr. Schlicht said buyers have reacted sensibly to the problems as economic conditions worsened, but added they remain uncertain.

"The insurance industry says that they have played a stabilizing role in the crisis," Mr. Schlicht said. "But can one really be certain that it will stay this way?"

Kurt-Georg Hummel, leader of the Solvency II project at BaFin, Bundesanstalt für Finanzdienstleistungsaufsicht, the German financial supervisor based in Frankfurt, partially answered Mr. Schlicht's open question.

Mr. Hummel said he believes the German insurance sector will emerge from the financial crisis in better shape than other financial sectors in Europe. He said his analysis is based upon information from an insurance task force that BaFin set up last October, which compris-

es 26 German insurance groups accounting for about 80% of the market's premium volume.

"We collect a lot of information from the insurance industry and, after an analysis of this information, we came to the conclusion that there is no reason to worry about the state of the German insurance industry. I cannot compare (Germany) to other countries, of course, but do feel that the European insurance industry is in relatively good condition," Mr. Hummel told *Business Insurance* after his speech.

'The insurance industry says that they have played a stabilizing role in the crisis. But can one really be certain that it will stay this way?'

Günther Schlicht,
Deutscher Versicherungs-
Schutzverband e.V.

In late March, German insurance association Gesamtverband der Deutschen Versicherungswirtschaft, or GDV, published its annual analysis of 2008 market figures.

The association's report found the insurance sector improved in 2008 from 2007. The nonlife sector reported an underwriting profit of €2.5 billion (\$3.49 billion) last year compared with €2.1 billion (\$3.07 billion) in 2007. Its 2008 combined ratio fell to 95% from 95.7% the year before.

During an interview, Mr. Schlicht discussed Mr. Hummel's comments about the relative health of the German insurance sector.

"The market says that it is suffering, but it is not really. At this stage in the cycle, people always take positions that suit their interests,

which is understandable. But the fact is that the 2008 results, as shown by the recent GDV figures, are not that bad," Mr. Schlicht said.

Despite the relatively good news from GDV and encouraging words from BaFin, Mr. Schlicht said insurer financial security remains a top concern for German buyers and credit rating agencies' ability to help buyers is key.

"How to penetrate and analyze the solidity of your partner has become a really significant point lately and will remain a key point for buyers. We are trying to sort out the different parts of the picture of which ratings are just one. There is also the question of how you analyze the risk management capability of your counterparty. This is an important question," he said during the interview.

During his speech, Mr. Schlicht also pointed out that future regulation of the credit rating agencies is a topic buyers will watch closely to see how it will work in practice and what results it will deliver. The European Union announced in April that the European Parliament and Council of Ministers had approved new regulations for credit rating agencies.

Mr. Schlicht also said the DVS is watching the development of Solvency II, Europe's planned new capital adequacy regime for insurers, particularly because of the potential effect on captive and smaller insurers.

"We are a little ambivalent on Solvency II. On the one hand, we appreciate the introduction of a coherent and stronger set of rules in Europe that guarantees the security of the insurers," Mr. Schlicht said. "But on the other hand, we are not sure how the implementation of the rules will affect the market. We cannot really be sure that it will leave the market unchanged. We are concerned that small and medium-sized companies may be challenged and the number reduced—that we will see a worsening of conditions for insurance buyers."



Pierre-Philippe Poffet of XL Insurance, AGERS Board Member Manuel Garrote and Juan Jose Gil of Grupo Telefonica at a recent AGERS conference.

AGERS: ERM becoming more important in Spain

CONTINUED FROM PAGE 4

now very important and not just for insurance buyers but the wider sector," Mr. Macias said.

"Chief risk officers are more important in many companies and some risk managers, especially in Spain, are taking on the role of chief risk officer, particularly in the bigger companies. There is a trend to upgrade risk management for sure," said Bruno Laval, country manager of Spain and Portugal at XL Insurance Co. Ltd.

"The risk manager in Spain 10 years ago was expected primarily to be an insurance buyer with a focus on cost control," Mr. Laval said. "This is no longer the case in many companies, as they focus much more on risk management as much as cost control. This evolution is very positive and is a great opportunity for those who wish to introduce enterprise risk management."

Cristina Martínez García, corporate risk manager at Campforio Food Group S.A. in Madrid and vp of AGERS, presented her analysis of ERM and how to make it work. The work recently won the AGERS' research prize, The Premio Internacional Julio Sáez de Investigación, honoring the late former AGERS president and director of insurance at retail group El Corte Inglés, who died in 2006.

Ms. Martínez later told *Business Insurance* that, while companies may increasingly recognize the benefits of ERM, it is not easy to implement and

needs a high level of corporate commitment to make it work.

"The problem in the implementation of an ERM framework comes from the failure of organizations to adapt to change. There has to be recognition of the current imbalance between strategy and culture," Ms. Martínez said.

"It is more a risk management approach itself, because it implies a redefinition of company philosophy," she continued.

Another key topic of debate at the AGERS conference was the insurance market's ability and willingness to respond to buyers' needs for innovative, affordable coverage while continuing to deliver the required level of security.

Mr. San Millán said buyers need more solutions. "The insurance market remains a little behind what we need. Buyers need more insurance products to help us manage this situation. I expect the market to be more proactive and innovate. Those markets that are able to innovate will have the greatest success," he said.

Pedro Tomey Gomez, managing director at Aon Gil y Carvajal, a Madrid-based unit of brokerage Aon Corp. and communications director for AGERS, said the commercial insurance market remains soft in Spain because of high competition, with the exception of some lines such as credit insurance.

One useful tool to help manage the situation and perceived shortfalls in coverage is effective business continuity planning, he added.

Yahoo!: Web site operators should review policies after court ruling

CONTINUED FROM PAGE 4

Section 230 "shields from liability all publication decisions, whether to edit, to remove or to post with respect to content generated entirely by third parties," says the opinion. However, "insofar as Barnes alleges a breach of contract claim," Section 230 "does not preclude her cause of action," the appeals court said in partially overturning an Oregon court's decision and remanding the case for further proceedings.

James R. McCullagh, a partner with law firm Perkins Coie L.L.P. in Seattle, said the case's clear message is that Section 230 "continues to bar

claims for content that the Web site does not generate itself. However, this case does leave open the door for liability for other causes of action if the Web site operator makes commitments to others to remove content that it later does not remove."

"In the past, companies thought they had pretty much unlimited immunity for claims relating to third-party content, either through the (Communications Decency Act) or through certain copyright laws," said Jeffrey D. Neuberger, a partner with Proskauer Rose L.L.P. in New York. "This case carves back a little bit on that immunity, potentially."

Companies operating Web sites

that post third-party material should re-examine their policies in light of this decision, observers say.

Thomas R. Rask III, who represents Ms. Barnes and is a member of law firm Kell, Alterman & Runstein

L.L.P. in Portland, Ore., said the ruling is an opportunity for all ISPs "to understand that if a promise is made to undertake to remedy a situation, the failure to do so can result in liability."

ISPs or Web site operators "need

to be more cautious now when handling complaints that people bring to their attention," said Evan D. Brown, an associate with law firm Hinshaw & Culbertson L.L.P. in Chicago.

Marc J. Randazza, a partner with law firm Weston, Garrou, Walters & Mooney in Altamonte Springs, Fla., said any policy should be consistent. He said the policy could be to call on Section 230's protection and refuse to make any changes in response to complaints.

However, "most responsible businesses" will have a policy of agreeing to remove any material complained about unless doing so

would violate an internal policy, such as removing a consumer review Web site item that negatively reviews a hotel, product or service. "But don't tell somebody what they want to hear" and then not follow through, Mr. Randazza said.

A Yahoo! spokesman could not be reached for comment. However, a footnote in the appeals court ruling said Yahoo! had indicated it would "hotly contest" the complaint's factual allegations if it was not dismissed.

Cecilia L. Barnes vs. Yahoo! Inc.; 9th U.S. Circuit Court of Appeals, No. 05-36189; May 7, 2009



Environmental: More 'judicious' criminal, civil enforcement foreseen

CONTINUED FROM PAGE 3

"The Grace prosecution represented an aggressive and exceptional use of the knowing endangerment provisions of the federal Clean Air Act," said Gregory F. Linsin, a partner with Blank Rome L.L.P. in Washington. The government also charged a conspiracy that continued over a 26-year time period, so the prosecution was required to prove who had what information about the hazards of the asbestos, when they had that knowledge and whether they actively conspired to release the asbestos into the environment despite knowing that it posed serious health risks to workers and to the community.

"Those are very difficult facts to establish in the context of a criminal prosecution," Mr. Linsin said. "I expect that, in the future, where a case involves a developing scientific issue...or where there hasn't been a solid prior record of administrative or civil enforcement, the government will be more cautious in pursuing a criminal prosecution based on the knowing endangerment provisions of the environmental statutes." said Mr. Linsin, who is a former federal prosecutor in the environmental crimes section of the Department of Justice.

"This wasn't a case where there were five discrete acts of violation that were easily identified," said Kevin Holewinski, a partner and head of Jones Day's environmental practice group in Washington. The Grace case was about "a long series of corporate behavior that the government tried to pigeonhole into conspiracy and other counts."

It was a "difficult case" and the government is likely to be more "judicious" about the facts they have before bringing more large cases like this, said Mr. Holewinski, a former Justice Department environmental crimes prosecutor.

Overall, though, companies should anticipate a more aggressive posture by the Environmental Protection Agency in seeking to prosecute companies violating environmental laws, attorneys said.

The Grace case is "definitely a

very big blip on the screen and the department is going to be more careful and should be more careful, but overall, I would look for more enforcement ahead" including criminal enforcement, said Jerry Block, a partner with Venable L.L.P. in Washington and a former chief of the environmental crimes section of the Justice Department.

"We will see an upswing in civil and criminal enforcement," said Walter D. James III, who owns his own environmental boutique law firm in Grapevine, Texas, noting the EPA's increased budget request for civil and criminal enforcement and desire to hire more full-time

BY THE NUMBERS

U.S. Environmental Protection Agency enforcement figures

\$10.5 BILLION: EPA's budget for 2010

34%: Funding increase for 2010 vs. 2009

\$600 MILLION: Amount earmarked for civil and criminal enforcement

5.6%: Increase in funding for civil and criminal enforcement

30: New criminal and civil enforcement staff positions the EPA is looking to fill

Source: EPA

investigators (see box).

Given the more lax enforcement actions under the Bush administration, "I would be willing to bet a lot

of companies have gotten complacent in their compliance," Mr. James said. As such, companies need to take a "second and third look that

they are compliant with the laws." A company that invests in a meaningful environmental compliance program "can be assured that it is not only reinforcing its corporate compliance policies and standards, but also, if problems are identified, the company is able to manage the risks associated with those compliance issues more effectively," Mr. Linsin said. "If a regulatory investigation is initiated...the company will be in a stronger position to demonstrate that it has vigilantly and responsibly managed its compliance obligations and effectively remedied issues as they have been identified."



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AIG: Liddy justified in hesitation to divulge information, experts say

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possible without putting AIG at a competitive disadvantage. In fact, at one point the committee suspended proceedings briefly so Mr. Liddy could confer with counsel.

In response to a question from Rep. Towns, Mr. Liddy said AIG should not require more federal assistance if market conditions remain stable or improve. In fact, Mr. Liddy said he believed "it will take somewhere between three to five years" for AIG to repay the government.

The committee also questioned three federally appointed trustees who oversee AIG.

"We've come to the conclusion that if AIG is to succeed, it needs a fresh start—a rest, if you will—a rest in the eyes of Congress, the American public and other important constituencies," said Douglas Foshee, chairman and CEO of El Paso Corp.

"We've recommended five new highly competent, highly capable, independent director candidates to the board. We expect that the board will approve these candidates soon, that their names will appear in the proxy statement that the company will be issuing within a week, and that they will be elected at the upcoming shareholders meeting," he said.

Analysts say disclosing too much about AIG's plans could hurt the company's long-term fortunes.



'It will take somewhere between three and five years' for AIG to repay the government.

Edward Liddy,
American International Group Inc.

"The biggest problem they have right now is that the quality of their franchise is eroding every single day and I agree with Liddy that providing more details about the restructuring could hurt their competitive position, particularly if they're talking exiting certain areas of the busi-

'I requested a copy of this plan, but AIG says that disclosing the plan "would undermine its efforts to achieve its goals."'

Rep. Edolphus Towns, D-N.Y.



ness or reducing risk in certain areas," said Mark Lane, principal and research analyst at William Blair & Co. in Chicago. "It will call insurance buyers and brokers to question their commitment to the market. It's not good for employee morale."

Joyce Sharaf, an assistant vp at A.M. Best Co. Inc. in Oldwick, N.J., said she believes Mr. Liddy is in a difficult position with regard to what he can or should publicly disclose. "I'm sure that there are some competitive concerns with regard to disclosing what he is doing. It's not unthinkable that all of the swirling sources of discussion, much of it negative, can hamper Mr. Liddy and his team to effect his plan."

"I understand that reticence and I understand the notion that this could involve competitive disadvantage," said Cathy Seifert, an insurance equity analyst at Standard & Poor's Corp. in New York. "I also think within the AIG restructuring story there lies a high degree of execution risk, meaning that there are a lot of variables. There's a high degree of uncertainty. A lot of the projections and forward-looking statements that management may make, a prudent person would have to assume those forecasts are subject to a high degree of execution risk."

Regarding Mr. Liddy's statement that AIG could repay government assistance in three to five years provided there are stable or improving markets, Bill Bergman, an analyst with Morningstar Inc. in Chicago, said "his qualifier there was certainly important."

"Having an expeditious transition to have the insurance operations on a more-or-less standalone

basis is something that's attractive to the public and shareholders," Mr. Bergman said. "But it's difficult to accomplish this in the current market environment, especially with respect to AIG. They need to rebrand. You don't want to sell at a bad price."

S&P's Ms. Seifert said, "I think the significance of the announcement of the additional directors is an appropriate step in the process. I think we have a management team in Ed Liddy and (Vice Chairman and Chief Restructuring Officer) Paula Reynolds who have stepped in at a very difficult juncture and are seeking to take appropriate action...I don't think it is especially significant, but it's appropriate."

Mr. Lane questioned whether AIG could find qualified directors.

"There are significant pejorative connotations associated with AIG and people don't want to be part of that," he said. "I think they're going to have a lot of problems finding qualified people."

Mr. Lane also said Congress deserves some blame for AIG's condition.

"The one thing politicians have done very well is to ruin the quality of the AIG franchise by dragging the name through the mud during the past three to six months. They're just as responsible for the deterioration of company's core franchise in the past three to six months," Mr. Lane said.

Aviation: International group's vote on liability won't secure loss caps

CONTINUED FROM PAGE 3

ist attacks up to \$4.5 billion after the first 3 billion special drawing rights. The compensation fund would be managed by an ICAO secretariat and funded by a levy of \$1 per airline passenger and a levy on each ton of cargo at an amount yet to be determined.

If there are claims from a terrorist attack that exceed the combined total of the two layers, then the Unlawful Interference Convention allows victims to break the airline's liability limit by proving intentional misconduct or recklessness with knowledge that damage would result. But if the terrorist attack were caused by an airline's employee, the airline could maintain its liability limit by proving it had an appropriate system to select and monitor employees that the terrorist somehow overcame.

The ICACF also has the right to seek reimbursement from the airline if recklessness is proved.

For the conventions to become international law, at least 35 states must ratify them. In the case of the Unlawful Interference Convention, states also must have at least a combined total of 750 million passengers departing from those states to meet the contributions for the ICACF.

In order to meet the fund's limit of 3 billion, states must charge a certain amount to each passenger. To achieve this without the cost being

prohibitive, the convention must cover at least 750 million departures, which is why this extra requirement has been included for ratification.

But observers question whether enough states with sufficient air traffic will ratify either convention, but particularly the Unlawful Interference Convention.

"From the discussions during and after the conference, it was suggested that it is unlikely that the European Union states will ratify the General Risk Convention," said Sean Gates, senior partner at Gates and Partners in London and legal adviser for the International Union of Aerospace Insurers at the diplomatic conference. "The representatives of France and Germany indicated that it was unlikely they would ratify the Unlawful Interference Convention; although, if they receive significant support from other European states, that position will no doubt be reviewed."

The concern is that the Unlawful Interference Convention's liability limits are breakable and there can be recourse against airlines for an unlimited amount, said representatives of the International Air Transport Assn. in Montreal.

"We're still looking at (the Unlawful Interference Convention) from the airlines' perspective and we're analyzing it. It may affect airlines differently depending on the jurisdiction they're in," said Carole Gates, director of industry risk man-



agement and insurance for the IATA. "In some jurisdictions, some airlines could be better off having the (Unlawful Interference Convention). In other jurisdictions, it does nothing and they could be worse off. The bottom line is that it will affect airlines differently depending on their liability regime."

"I personally think that (the Unlawful Interference Convention) will never enter into force because

the threshold for entering into force is way too high," said Alex Piera, senior legal counsel for the IATA in Montreal.

The U.S. airline industry opposes the convention as it is considered a state responsibility, Mr. Piera said, "so it will be difficult for the U.S. to ratify the treaty."

Without U.S. support, then about 50 states in continental Europe would have to ratify the treaty in

order to reach the 750 million-passenger limit required by the convention, Mr. Piera said.

The U.S. Federal Aviation Administration offers some of the best war risk coverage in the world, so ratification may not be necessary for U.S. airlines, said Ken Coombes, operations director for London brokerage United Insurance Brokers Ltd., who also was at the ICAO conference. In that case, the Unlawful Interference Convention would need support from most European states and possibly China and Japan, he said.

"We need the dust to settle first before we see what has been achieved with these conventions," Mr. Coombes said. "It could be an improvement over what currently exists."

Although there is sufficient airline war risk insurance to cover one event like 9/11, there probably isn't for two events, so underwriters would have to cancel coverage after a future terrorist attack which the Unlawful Interference Convention would not do, said Mr. Coombes. Some EU state law also is more onerous than the Unlawful Interference Convention and could leave a number of aerospace businesses exposed, he said.

"We will look carefully at the proposals and decide what stance to take," said Reiner Siebert, a member of the group executive insurance board of Cologne, Germany-based airline Lufthansa A.G.

Health: Many skeptical of health care groups' plan to lower costs

CONTINUED FROM PAGE 1

the next 10 years.

That pledge came amid several other health care reform-related developments last week in Washington, including comments by Senate Finance Committee Chairman Max Baucus, D-Mont., that current law in which employer-paid health insurance premiums are not included in employees' taxable income (see related story).

The group said it would achieve this goal by implementing a set of initiatives aimed at restructuring the health care system so it provides more efficient and higher-quality care (see related story).

Dr. James Rohack, president of the Chicago-based AMA, said the group has decided to step up to the plate because it has come to the realization that "the American economic engine is very tightly interwoven with health care" and that fundamental change needs to occur. "There's a system problem. Our incentives have evolved over time to get us where we are. Now we have an opportunity to change the system."

Steve Raetzman, a senior consultant at Watson Wyatt Worldwide in Arlington, Va., acknowledged that the united front presented by the group of health care industry stakeholders is "unprecedented."

"It was a statement to say the insurance and health care delivery community get that they have to do something to contribute to the solution. It may end up being a shrewd political move. They're being viewed as recognizing what has to happen and not being obstacles to change," he said.

"I've interpreted it that they're signaling that they're supporting reform and want to be at the table," said Paul Ginsburg, president of the Center for Studying Health System Change in Washington. "They're also acknowledging that the nation has to deal with health care costs and want to be part of the solution rather than be viewed as the problem."

However, Joe Paduda, a principal at Health Strategy Associates in Madison, Conn., said it could end up being a hollow gesture, made primarily to stave off the possibility of enactment of legislation giving the government greater control over the health care system.

Lawmakers offer differing views on health care reform future

WASHINGTON—As medical and insurer groups pledged to slow future health care cost increases, one key lawmaker was promising fast action on health care reform legislation, while another was hinting at possible changes to the tax-favored status of employer-provided coverage.

Rep. Nancy Pelosi, D-Calif., who is speaker of the House of Representatives, last week told President Obama that she expects the House to pass health care reform legislation just prior to the August recess.

At the same time, Senate Finance Committee Chairman Max Baucus, D-Mont., said it might be time to limit employers' ability to provide tax-free health care coverage.

As his committee moves closer to considering comprehensive health care reform legisla-

tion, Sen. Baucus voiced concerns about the current system in which employers can fully deduct group health care premiums as a business expense and the cost of the premiums is excluded from employees' taxable income.

At a Finance Committee hearing, Sen. Baucus said he opposes a total repeal of the health care tax exclusion. But the senator also said the exclusion "is not perfect. It is regressive. It often leads people to buy more health insurance than they need," he said.

"We should look at ways to modify the current tax exclusion so that it provides the right incentives. And we should look at ways to make it fairer and more equitable for everyone," Sen. Baucus said.

While not mentioning them by name, Sen.

Baucus suggested tax breaks provided through health savings accounts also should be examined to ensure the benefits are structured fairly and efficiently. Under law, employees can take a tax deduction or reduce their taxable salaries by the amount of their HSA contributions, and accumulated interest on the contributions can be withdrawn tax-free to pay health care-related expenses.

Alarmed at possible moves to curb the tax-favored status of employer-provided health care coverage, the Washington-based National Business Group on Health warned such changes could result in making coverage more costly and lead some employers and employees to drop coverage.

—By Jerry Geisel

Some key points included in industry cost-cutting plan

Reforms backed by the health care industry include:

- Implementing proposals in all sectors of the health care system, focusing on administrative simplification, standardization and transparency that support effective markets;

- Reducing overuse and underuse of health care by aligning quality and efficiency incentives among providers across the continuum of care so physicians, hospitals and other health care providers are encouraged to work together toward the highest standards of quality and efficiency;

- Encouraging coordinated care in the public and private sectors, and adherence to evidence-based best practices and

therapies that reduce hospitalization, manage chronic disease more efficiently and effectively, and implement proven clinical prevention strategies;

- Reducing costs by addressing cost drivers in each sector through common-sense improvements in health care delivery models, health information technology, workforce deployment and development and regulatory reforms.

The letter also recommends implementation of a national health-promotion and disease-prevention effort to reduce the prevalence of chronic disease and poor health status that contribute to higher health care costs.

—By Joanne Wojcik

"It's a nebulous pledge made without any standards or criteria by people who have failed in the past voluntary efforts to produce any long-term savings," he asserted. "If you read the letter, it's about mom, apple pie and the Pledge of Allegiance, but there's nothing there."

Harvard Business School economist Regina Herzlinger, the Nancy R. McPherson professor of business administration chair, observed that "it's an easy promise to make when you're on the down side of the underwriting cycle," referring to the health insurers'

recent lackluster financial performance. "All these insurers are hurting badly," she said. At the same time, "your employers are putting a huge squeeze on you. It's Economics 101; what else are you going to do?"

Ray Brusca, vp of benefits at Black & Decker Corp. in Towson, Md., said he found it "frustrating that this consortium has made a promise that for all intents and purposes has left out the payers—employers and employees."

Moreover, "I suspect that we'll be taxed to give the government that \$2 trillion, and yet we'll never see the corresponding \$2 trillion in savings ourselves," he said, alluding to possible proposals to curb the tax-favored status of employer-provided health insurance coverage. "It won't be bankable dollars, but we're going to end up paying real money to fund it."

Steve Wojcik, vp of public policy at the National Business Group on Health in Washington, wondered why the industry was offering so little, so late.

"While we're glad they're doing it, we're wondering why it took so long," he said. "It's a good sign that the health care industry is willing to look at cuts. That's where we need to go. But (the Office of Management and Budget) says we've got \$700 billion in waste in the system each year. If we're overspending by \$700 billion a year, we could feasibly cut \$7 trillion over 10 years.

Why only \$2 trillion?"

When presented with this question, the AMA's Dr. Rohack responded: "A journey of 1,000 miles starts with one step."

Bill Custer, director of the Center for Health Services Research at Georgia State University in Atlanta, concurred: "This is one step in a long series of negotiations. But it's the right first step. In the end there has to be some assurance to the people who believe we need a public program."

He compared the situation to the introduction of Medicare in the 1960s. "Some wanted a national system," like that in Canada and the United Kingdom. "Others were fearful of a public plan. We actually got Part A and Part B because of last-minute compromises. That was nobody's starting position."

Ultimately, "the signers of the letter all will have to give up something. It seems impossible to get systematic cost savings without major restructuring of how health care is delivered and financed," he said. However, "the angel and the devil are both in the details," and they were lacking in the letter, Mr. Custer noted.

Dr. Rohack said the letter was intentionally vague.

"What we wanted to do was address the low-hanging fruit, the things that are somewhat under control of the health sector itself," he said.

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News In Brief

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U.S. employees, completing a process it started in 2007. Effective May 15, Willis employees no longer will accrue benefits in the plan. On Jan. 1, 2007, the plan was closed to new employees. Earlier this year, the brokerage announced it would freeze its 401(k) plan match for 2009. It intends, after a review later this year, to restore the match sometime in the future. Meanwhile, CIGNA Corp. is freezing its cash balance pension plan and enhancing its 401(k) plan. Effective July 1, cash balance plan participants no longer will accrue new benefits, though they will continue to earn interest credits on their account balances. In addition, on July 1, the managed care company will fully vest all employees who are not yet vested. This enhancement will apply to anyone who was a CIGNA employee as of April 1. Effective Jan. 1, 2010, CIGNA also will sweeten its 401(k) plan.

HSA enrollment up in 2008: AHIP

Enrollment in health savings accounts linked to high-deductible health insurance plans continues to surge, with 8 million people covered by HSAs as of Jan. 1, a 31% increase in the past year, according to an annual census released last week by an industry group. HSA enrollment rose in all markets, according to the Washington-based America's Health Insurance Plans, and posted the greatest percentage increase in the large-employer market. Employers with at least 51 employees had 3.8 million people enrolled in HSAs as of Jan. 1, a roughly 35% increase in the past year. In the small-employer market—or businesses with up to 50 employees—HSA enrollment rose to 2.4 million people, up about 34% from a year earlier, while enrollment in the individual market climbed to 1.8 million, an increase of about 22%.

Bermuda court won't expedite Validus lawsuit

The Supreme Court of Bermuda has ruled against a request by Validus Holdings Ltd. to expedite a lawsuit related to its takeover bid for IPC Holdings Ltd. On April 28, the

Bermuda-based reinsurer filed a lawsuit challenging a \$50 million termination fee and "no-talk" provision contained in a merger agreement between IPC and fellow Bermuda-based insurer Max Capital Group Ltd. Validus was seeking an injunction to stop payment of the termination fee and said the amount of the fee and other provisions amounted to "unlawful penalty under Bermuda law." The Supreme Court of Bermuda's commercial court division last week refused to order an expedited trial. A trial date has not been set. Validus—which launched an unsolicited offer for IPC on March 31—was rebuffed by IPC's board in favor of its previous agreement with Max Capital.

Court rules for insurer in Abu Ghraib dispute

A panel of the 4th U.S. Circuit Court of Appeals ruled 2-1 that the insurer for CACI International Inc., a security firm whose employees are accused of torturing and abusing prisoners at Abu Ghraib, is not required to defend or provide coverage. The case pitted Arlington, Va.-based CACI against St. Paul Fire & Marine Insurance Co. The appeals court panel affirmed an earlier decision by a federal judge, who ruled in favor of St. Paul after determining the alleged events took place in Iraq and outside CACI's policy coverage area.

Fewer firms sponsor defined benefit plans

Less than half of the largest U.S. employers offer a defined benefit pension plan to new salaried employees, according to a study. As of last week, 45% of Fortune 100 companies offered a defined benefit plan to new salaried employees, according to Arlington, Va.-based Watson Wyatt Worldwide. That's down from 49% in 2008 and 83% as recently as 2002.

Proposal would drop tax break for punitives

Punitive damage awards no longer would be a tax-deductible business expense if Congress approves an Obama administration proposal. If enacted, the proposal, which the administration included in its federal budget for fiscal 2010, would apply to punitive damages paid or incurred after Dec. 31, 2010. In calling for the change in tax law, the administration said the "deductibility of punitive damage payments undermines the role of such damages in discouraging and penalizing certain undesirable actions or activities."

TRIA: Little enthusiasm for Obama plan

CONTINUED FROM PAGE 1

proposed changes and asking ourselves what has changed in the insurance market since 2007 that necessitates modifying TRIA," said Brad Wood, senior vp-risk management at Marriott International Inc. in Bethesda, Md. "By all accounts, insurers continue to rely on the federal reinsurance to make available their capacity to policyholders at a reasonable cost."

In addition, finding coverage for domestic acts of terrorism before its inclusion in the federal program "was hit and miss," he said. "There was uncertainty in the insurance markets about what constitutes a domestic act of terrorism," because that determination would be left up to the Treasury secretary. "All policyholders would be one event away from the entire market collapsing," he said.

The Risk & Insurance Management Society Inc. "is very disappointed in the Obama administration's proposal to decrease federal support for the terrorism insurance market," said Deborah Luthi, RIMS director-external affairs, in an e-mail.

Without the federal backstop it would be extremely difficult, if not impossible, to obtain terrorism

THE PLAN

Key points of the terrorism risk insurance program proposal made by the Obama administration

- **ELIMINATE** coverage for acts of domestic terrorism.
- **ENCOURAGE** "the private sector to better mitigate terrorism risk through other means; such as developing alternative reinsurance options and building safer buildings."
- **INCREASE** insurer deductibles and copayments.
- **END** program as scheduled in 2014.

Source: White House budget documents

insurance, said Ms. Luthi, who is director-enterprise risk management at Matheson Inc. in Sacramento, Calif.

But supporters and critics of the terrorism insurance program questioned the political viability of the administration's call.

"Having been through this TRIA process three times now, I am 100% convinced that there is no congressional appetite for reopening the act before 2014 or in the absence of a triggering event," said Joel Wood, senior vp of the Council of Insur-

ance Agents & Brokers in Washington.

"It would take authorization legislation, and I have heard nothing that would suggest that this is a real live debate in the Congress," said Mr. Wood.

Neither insurers nor most lawmakers in Congress want to reopen the debate on TRIA until 2014, when the program is slated to expire, said Marliiss McManus, senior federal affairs director in the National Assn. of Mutual Insurance Cos. in Washington. "This program shouldn't be in the budget proposal to begin with."

There does not appear to be much support of scaling back TRIA, said Eli Lehrer, a senior fellow who directs insurance studies at the Competitive Enterprise Institute in Washington and who has been critical of TRIA at times.

"I think, in many ways, the administration's proposal is a step in the right direction. That said, it's going to be very hard to do, and I wonder if this is more political theater than a serious proposal," he said.

Administrations occasionally make budgetary proposals that they know are not politically viable, "and this may very well be on this list," Mr. Lehrer said.

Survey: Mental health parity law raises questions

CONTINUED FROM PAGE 4

reported they worked in the EAP field (17%), and the remainder said they served in roles such as consultants, chief executive officers, disability managers, directors of health and wellness, customer care advocates, and directors of behavioral health.

The survey found 7.1% of employers are considering dropping mental health benefits and 7.8% are thinking about discontinuing coverage for substance abuse treatment.

However, 73.5% said they would not drop mental health coverage, while 76.7% said they don't plan to discontinue coverage for substance abuse treatment. Another 19.5% said they do not know whether they plan to drop mental health coverage, while 15.5% are undecided about whether to discontinue coverage for substance abuse treatment.

In addition to the 38% of respondents who plan to step up EAP use and promotion, 26.1% plan to increase promotion and disease management to achieve mental health parity. In addition, 23.9% are considering adding or increasing use of case and/or disability management, while 21.7% plan to increase utilization management and/or prior authorization for mental health treatment.

The two benefit features employers responding to the survey said they are most likely to change for the 2010 plan year are copays, which 36.7% reported they would change, and outpatient visit limits, which 35.7% said would change. Other features that employers are looking at altering are: coinsurance (25.5%); deductibles (28.6%); inpatient day limits (28.6%); and out-of-network coverage (28.6%).

A large proportion of respondents—35.7%—said they expected

their health benefit costs to increase less than 2% as a result of instituting mental health parity; 23.8% said they anticipate costs will remain the same. Another 16.7% said they expect cost increases exceeding 2%, while 21.4% said they were uncertain what costs will do. An equal number—1.2%—said they expect costs to increase more than 2% or decrease less than 2%.

While the vast majority of respondents—78.3%—sponsor self-funded plans, 29.4% of those offering fully insured plans said they were concerned about how the new law will integrate with existing state laws requiring mental health parity. About 41% said they didn't know and 29.4% said they were not concerned about this issue.

The partnership is asking the Labor Department for clarification about the interaction of state and federal mental health parity laws, Ms. Miller said.

Unlike many state laws that specify which diagnoses are required to have parity, "the federal law doesn't define which illnesses need to be covered under the law," she said.

For more information about the survey or the Partnership for Workplace Mental Health visit www.workplacementhealth.org. The BI Executive Forum "Mental Health Benefits Parity Act: Is Your Health Plan Ready?" has been archived for future listeners. Go online to www.businessinsurance.com/webinars for more information.

Public comments concerning regulations enforcing the new law may be submitted to the U.S. Departments of Labor, Treasury and Health and Human Services until May 28, and can be sent via e-mail to the Labor Department at E-OHPSCA.EBSA@dol.gov.

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New Yorker has her fill of dripping mercury

Imagine Carol Wilson's surprise in January 2006 when she noticed something dripping from a hole in the ceiling of her New York apartment.

City environmental officials found that fluid was mercury and bagged about 15 fluid ounces of the heavy metal that weighed about 15 pounds. But a search of the apartment directly above Ms. Wilson's, the other apartments in the building and the roof found no source of the toxic material.

City officials ordered the building evacuated and the mercury cleaned up.

The owner of building, Janart Equities Inc., contends the most likely cause of the leak was a dentist, who was in the upper apartment from the 1940s through the late 1960s, storing mercury between the floor and ceiling of the two units. At the time, mercury was used to make fillings.

Janart sought reimbursement for its expenses resulting from the mercury spill from its commercial property policy. However, Greenwich Insurance Co. denied coverage, citing the policy's pollution exclusion.

Janart then sued Greenwich for declaratory relief, alleging breach of contract and unjust enrichment. In turn, Greenwich sought summary judgment to deny the claim.

On May 6, however, a federal judge rejected both arguments as unconvincing. While coverage for the leaked mercury is not barred by the policy's pollution exclusion, other exclusionary language in the policy might bar coverage, the judge ruled. Further proceedings are needed to resolve the case.

While the policy provided all-risk coverage, the judge said, "it is a matter of connecting the dots" of all the appended declarations, schedules, riders and exclusions, which he said are "like ornaments on Christmas tree, although without their charm."

Business Insurance END PAGE

Contributing: Jeff Casale, Sally Roberts

Britain's ad watchdog ruled that an insurer should actually cover Iggy Pop if it portrays him as a customer in its marketing.

Car insurer will cover 'Passenger' as driver

Iggy Pop, known as the Godfather of Punk with a rock 'n' roll career that began in the 1960s, is finding fresh success as an insurance salesman for AXA U.K. P.L.C.'s *Swiftcover.com*.

"Get a Life!" is the mantra of the online auto insurer's advertising, but one that ran into opposition last month when Britain's Advertising Standards Authority ruled it in violation of its advertising standards code.

Swiftcover.com launched the campaign featuring the punk icon—born James Newell Osterberg Jr.—in January, with Mr. Pop playing golf and showing that he had "more interesting things to do" than buying auto insurance, plugging the ease and swiftness of buying auto insurance online. However, the ASA said that despite the pitchman's assertions that he "got Swiftcovered," he, in fact, did

not have a policy with Swiftcover.

"Because the policy was promoted by a well-known musician, which might lead some viewers to believe the policy covered those who worked in entertainment, when it did not, and because Iggy Pop did not have a policy with Swiftcover, we concluded the ad was misleading," the ASA said in its ruling.

However, Swiftcover was swift in its recovery on the issue, telling *The Guardian* newspaper that "we would be crazy to lose Iggy." In a statement, Swiftcover said Mr. Pop's ads had boosted sales by nearly one-third in the first quarter of this year vs. the year-earlier period.

"We appreciate that some musicians were disappointed that they could not be 'Swiftcovered,' so we are now one of the few insurers that actually insures musicians," the AXA unit said in the statement.



REUTERS

Capt. Chelsey Sullenberger became a national hero after he landed a plane in the Hudson River. But photos of the incident have concerned some.

Photog told to scrub image of downed jet

The image of a wing from U.S. Airways Flight 1549 jutting out from frozen ice chunks of the Hudson River crisply captures the remarkable story of the emergency landing of the aircraft by Capt. Chelsey Sullenberger.

But left to the airline and its insurer, the photo may never have been available to the public.

The image, captured by photographer Stephen Mallon, is one of several taken in the aftermath of the January landing that made Mr. Sullenberger and his crew heroes. All of the plane's passengers and crew survived the landing, which Mr. Sullenberger had to execute after the aircraft hit a flock of geese.

In a recent interview with *Wired* magazine, which featured his exclusive salvage photos of Flight 1549, Mr. Mallon recalls the moment he received the call about the downed plane while having drinks with his wife and how he was able to get on the next boat to the crash site with maritime contractor Weeks Marine.

Although he was in full view of National Transportation Safety Board investigators throughout much of the aircraft's removal from the river, once his photos appeared on his personal Web site, they asked him to remove them, he said.

Further, U.S. Airways and its insurer, American International Group Inc., also told him to remove the photos from the site. Mr. Mallon told *Wired* the reasoning behind U.S. Airways and AIG's call was "U.S. Airways hired AIG, who hired the lawyer, who hired (lead contractor) J. Supor and Son, who hired Weeks Marine, who hired me."

In the end, the parties agreed Mr. Mallon could show his photos as long as he removed any obvious U.S. Airways logos from the photographs. A spokeswoman for AIU Holdings Inc., the new holding company for AIG's property/casualty units, confirmed the agreement.

Mr. Mallon's photos of Flight 1549 can be viewed at www.stephenmallon.com.

Will sale of famed ski resort help AIG reverse downhill slide?

American International Group Inc. appears to be conducting an everything-must-go sale. Among the available items is Stowe Mountain Resort, a popular skiing destination in Vermont.

AIG confirmed last week that the upscale East Coast ski resort is for sale as the New York-based insurer tries to rid itself of debt. AIG already has received several unsolicited bids for the resort from qualified buyers, according to the *Burlington Free Press*.

Talk about a potential sale of the resort surfaced late last year when

AIG received its first federal bailout money after the insurer reported it was near collapse. Now, after being given access to more than \$180 billion in federal aid, AIG has sold some assets and is looking to sell more.

"We are selling assets and business where possible, despite adverse conditions in global financial markets," Edward Liddy, AIG's chief executive officer, testified last week before a House committee.

AIG's connection to the resort reportedly reaches back to the

1940s, when the founder of AIG, Cornelius Vander Starr, skied Mount Mansfield, Vermont's tallest peak, and decided to purchase the resort. Since then, AIG reportedly has spent millions in improving what now is known as Stowe Mountain Resort, including a \$400 million hotel complex that opened last summer.

According to the *Burlington Free Press*, Stowe's worth was about equal to another Vermont ski resort, Killington, which sold for \$85 million in 2007.



AP PHOTO

AIG reportedly has put the Stowe Mountain Resort up for sale. The insurer has owned the Vermont ski resort since the 1940s.



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