$5

Business Insurance

October 18, 2010

www.businessinsurance.com

U.K. COURT OF APPEAL RULING LEAVES EMPLOYERS UNCERTAIN ON ASBESTOS COVER / PAGE 3

CALIFORNIA COMMISSIONER SKIRTED PROTOCOL WITH IRAN INVESTMENT RULE / PAGE 4

JUDGE SAYS D&O INSURERS DON'T HAVE TO FUND DEFENSE IN PONZI SCHEME CASE / PAGE 4

In Brief

Aon plans job cuts in Hewitt integration

Aon Corp. plans to eliminate between 1,500 and 1,800 positions as it integrates Hewitt Associates Inc., which it acquired this month, into its Aon Consulting unit. Most of the positions to be cut will be "non-client facing," Aon said in a regulatory filing. Prior to its Oct. 1 acquisition of Hewitt, Aon Consulting had about 6,300 employees, while Hewitt had about 23,000 employees. A source close to Aon said it is likely that Aon Hewitt Inc. will be headquartered in Lincolnshire, Ill., where Hewitt was based.

Judge OKs states' health reform suit

A federal judge in Florida last week ruled that a lawsuit filed by 20 states challenging the constitutionality of the new

See **IN BRIEF** page 26

SPOTLIGHT

ENTERPRISE RISK MANAGEMENT

Private, public sectors share common enterprise risk management fundamentals; recession forces rethink of risk issues across many companies; ERM program helps the University of California cope with financial pressures; Q&A with Carol Fox, director of RIMS' Strategic & Enterprise Risk Practice. PAGE 11

LIABILITY & LITIGATION

New bias threat seen from obesity

EEOC suit, law change spark concerns

By JUDY GREENWALD

NEW ORLEANS—An Equal Employment Opportunity Commission lawsuit that charges a nonprofit organization with obesity discrimination could signal future lawsuits by the agency and plaintiff attorneys on the issue, many experts warn.

A further worry for employers is that recently enacted Americans with Disabilities Act amendments, although not applicable to this case, make employers even more vulnerable to disability bias charges, including lawsuits where obesity is an issue, these experts say.

The safest way to avoid problems, according to experts, is to rigorously avoid making any assumptions about the capabilities of anyone who either has a disability, or can be perceived as having one.

The lawsuit filed Sept. 30 by the EEOC in federal district court in New Orleans charges Philadelphia-based Resources for Human Development Inc., a nonprofit human resources organization, with firing Lisa Harrison in September 2007 because of her severe obesity. Ms. Harrison began working with RHD in 1999 as a prevention/intervention specialist. She worked with young children of mothers undergoing treatment for addiction at an RHD facility that operated under the name Family House of Louisiana, in Terrytown, La.

Ms. Harrison, who died in November 2009, was about 5 feet 2 inches tall and weighed more than 400 pounds, said EEOC senior trial attorney Gregory T. Juge, who would not disclose the causes of her death. Her estate is pursuing the lawsuit.

The EEOC charges that because of her obesity, RDH perceived Ms. Harrison as being substantially limited in several major life activities, including walking, although she was able to perform all the essential functions of her position with or

See **OBESITY** page 24

Study finds obesity costly to employers in productivity
PAGE 24

Wellness programs won't be affected by bias claims threat
PAGE 24

RISK MANAGEMENT

Chile miner rescue offers risk lessons

Analysis, collaboration brought success

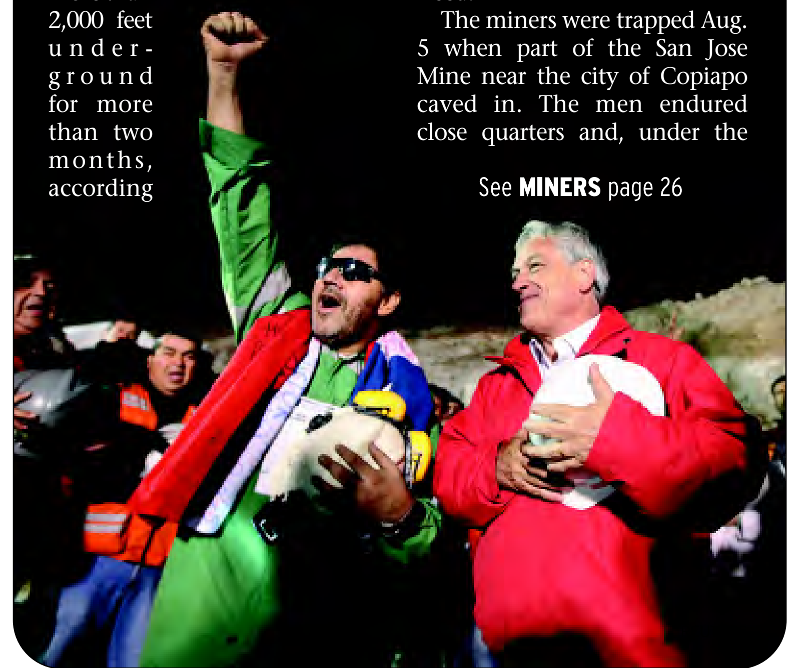
By MARK A. HOFMANN

Conducting a broad risk analysis, tapping a variety of experts and taking a deliberative approach proved key in the successful rescue of 33 Chilean miners trapped more than 2,000 feet underground for more than two months, according to experts say.

Rescuers not only had to overcome numerous technical problems but also faced the challenge of ensuring that the miners were able to cope psychologically until they could be freed.

The miners were trapped Aug. 5 when part of the San Jose Mine near the city of Copiapo caved in. The men endured close quarters and, under the

See **MINERS** page 26



ENVIRONMENTAL LIABILITY

Toxic spill highlights E.U. environmental law

Sludge accident in Hungary expected to clarify enforcement, put focus on insurance

By STUART COLLINS

AJKA, Hungary—The response by European officials to a massive toxic sludge spill that contaminated villages and rivers in western Hungary this month likely will provide significant guidance on how recently enacted European Union environmental liability laws will be enforced, experts say.

The environmental disaster, which killed nine people, injured more than 100 and contaminated land and rivers over more than 16 square miles, also will put a focus on the limited reach of environmental impairment liability insurance in Europe, they say.

"The nature of the pollution, which could prove difficult and lengthy to clean up, and the likely use of the Environmental Liability Directive by Hungarian authorities, make this a notable pollution event," said Cliff Warman, environmental practice leader at Marsh Ltd. in London.

The Oct. 4 spill was the largest pollution event since tougher environmental laws were introduced throughout the European Union in 2007 as a result of the implementation of the Environmental Liability Directive. The spill from an aluminum plant in Ajka, Hungary, resulted in the renationalization of the polluting company, MAL-Magyar Alumínium Termelı és Kereskedelmi Rt., and the arrest and eventual release pending trial of its president.

Under the E.U. directive, MAL will face strict and unlimited liabili-

See **SLUDGE** page 23

crain Entire contents copyright © 2010 by Crain Communications Inc. All rights reserved.

INDEX

Advertiser Index 25
Business Resources 21
Commentary..................... 6
End Page....................... 27
Opinions 8
Professional MarketPlace 21
Up Close 21

NEWSPAPER

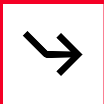
UNITED IN
RESULTS

Does your organization take a global approach to ERM?

At Aon, we help our clients understand the need for both global engagement and local delivery. Through partnership, many global organizations have optimized their ERM approach and gained a competitive edge by thoroughly understanding all facets of risk—whether at the HQ in London, Singapore or Tacoma, or local operations around the globe.

Aon provides clients with a practical, quantitative approach to deliver:

- Enhanced risk governance practices
- Deep understanding of key drivers of uncertainty
- Optimization of your firm's risk profile across all geographies and cultures



Understand the power of global risk engagement. Unlock the power of ERM by visiting **www.aon.com/erm**

AON

Business Insurance

Online features & highlights www.businessinsurance.com

VIDEO: SOCIAL MEDIA PITFALLS

This new Issues in Risk Management video takes a look at the risks employers face when they use social media as a communication channel. Click through the Multimedia tab.

Business Insurance will recognize its 25 Women to Watch honorees for 2010 on Dec. 7 at the Four Seasons Hotel in Chicago. To download a registration form to attend the awards luncheon, go to the Events & Awards tab and click through Women to Watch.

Business Insurance's 2010 Readers Choice Award & Silver Circle honorees will be announced live during the annual awards dinner, to be held Nov. 3 at the W Chicago-City Center Hotel. A registration form to attend the dinner is available online. Go to the Events & Awards tab and click on Readers Choice.

WEBCAST: MAKING ERM PAY OFF

"Value in Enterprise Risk Management: Making ERM Pay Off" will explore ERM's value in strategic planning, with risk experts John J. Hampton and Laura L. Brooks, on Oct. 27 at 2 p.m. EST. To register, go to *www.BusinessInsurance.com/webcasts.*

MOST POPULAR STORIES

Week of October 11, 2010

1. IRS delays W-2 health cost reporting requirement
2. No workers comp benefits for widow of murdered employee
3. Segal acquires Aon Consulting multiemployer DB business
4. Aon to cut at least 1,500 positions as part of Hewitt integration
5. Medical malpractice costs expected to rise: Report
6. Beazley founder Andrew Beazley dies
7. Everest Re CEO Taranto to delay retirement
8. Loss of one plan's grandfathered status will not affect other plans
9. U.S. judge allows states' health care suit to proceed
10. Integro buys reinsurance brokerage

GET ONLINE NEWS EACH DAY
Subscribe to *BI*'s daily newsletter

UPDATED FOR 2010

Business Insurance's 2010 Directory of Risk Management Consultants offers financial and contact information for 83 U.S. consulting operations in an Excel spreadsheet or PDF. Look for purchase details in the Research Center under Directories.

LOG ON, WEIGH IN

Registered *BusinessInsurance.com* users have an expanded array of online community tools. Register and log in to customize your personal profile, create blogs, invite friends, join discussions and more.

Business Insurance (ISSN 0007-6864) Vol. 44, No. 41, is published weekly, except combined issues the second and third week of August, the fourth and fifth week of November, and no issue the last week of December, by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: E-mail address change to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave. Detroit, Mich. 48207-2912. $5 a copy and $125 a year in the U.S. $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 40012850, GST No. 136760444, Canadian return address: 4960-2 Walker Road, Windsor, ON N9A6J3. Printed in U.S.A. Copyright © 2010 by Crain Communications Inc.

HEALTH CARE REFORM

Health reform 'grandfathered' status clarified

Guidance sets out changes that will void exemption

By JERRY GEISEL

WASHINGTON—The latest batch of health care benefits guidance provided by federal regulators provides yet more answers for employers to comply with the new health care reform law.

Much of the guidance involves questions that have been raised—and not fully resolved by previous guidance—about the conditions health care plans have to meet to be "grandfathered" and thus exempt from some of the new law's requirements.

For example, prior interim regulations listed six changes which, if any one were made, would result in the forfeiture of grandfathered status. Those changes include imposing or raising coinsurance requirements, increasing a deductible by an amount that exceeds medical inflation plus 15 percentage points, and increasing employee premium contributions by more than five percentage points.

The new guidance makes clear that the six changes are the only changes that would result in a loss of grandfathered status.

This position had "been assumed, but now it is absolutely clear," said Rich Stover, a principal with Buck Consultants L.L.C. in Secaucus, N.J.

In addition, regulators say they still are studying whether changing a plan's health insurer should result in an automatic loss of grandfathered status. Previously, regulators had said changing insurers would result in a loss of grandfathered status but they later backpedaled.

"As noted, the departments are separately considering under what circumstances otherwise grandfathered plans may change insurers without relinquishing their status as grandfathered health plans," according to the guidance prepared in a frequently asked questions and answers and issued by the Departments of Health and Human Services, Labor and Treasury.

Detailing the circumstances of when employers can change insurers without their health care plans losing grandfathered status is guidance for which employers are waiting "with bated breath," said Molly Iacovoni, a legal consultant with Aon Hewitt Inc. in Lincolnshire, Ill.

Another grandfathered plan-related issue clarified in the new guidance involves situations in which employers offer several types of health care plans: a preferred provider organization plan, a point-of service plan and a health maintenance organization plan.

Previous rules were not clear about whether the plans were to be considered as one employer arrangement and that if so, if a change to one of the plans would

See GUIDANCE page 22

MAKING IT CLEARER

How the latest regulatory guidance resolves health care reform law compliance questions

- **Making any one of six design changes, such as boosting employee premium contributions by more than five percentage points, will result in loss of grandfathered status.**
- **Making design changes that result in loss of grandfathered status for one type of plan, such as a preferred provider organization plan, will not result in loss of grandfathered status for other plans.**
- **Creating coverage tiers will not automatically result in lost of grandfathered status.**

Beazley co-founder Andrew Beazley dies

Remembered for commitment to Lloyd's

By REGIS COCCIA

LONDON—Andrew Beazley, co-founder and deputy chairman of Beazley P.L.C., is being remembered by friends and colleagues as an entrepreneur whose business savvy and charisma helped keep confidence high during the Lloyd's market's darkest hours.

Andrew Beazley

Mr. Beazley, 57, died Oct. 13 after a long bout with cancer.

In 1986, Andrew Beazley and Nicholas Furlonge founded the company, which has grown to become one of the largest operating at Lloyd's and has achieved a profit in every underwriting year, a feat few insurers can claim.

"Beazley Group has grown and prospered beyond our wildest dreams, but it has remained a close-knit company," said Mr. Furlonge in a statement. "Andrew was a close friend and colleague to many of us, and his inimitable humor, charisma and style will be remembered by all of us. Our deepest sympathies go out to his wife, Anne, and family."

"The management team and many others at Beazley have known and worked closely with Andrew for years, if not decades," said Beazley CEO Andrew Horton in a statement. "He had a huge zest for life that inspired all of us. We will miss him deeply."

Mr. Beazley served as CEO of the company for 22 years, becoming deputy chairman when Mr. Horton was appointed chief executive in September 2008. Mr. Beazley was diagnosed with cancer in 2007.

From 1994 to 1997, Mr. Beazley served on the Lloyd's Market Board at a time when Lloyd's was burdened by some of its largest-ever losses and created Equitas Ltd. to reinsure its pre-1993 liabilities. Confidence in Lloyd's during that period was low, and Mr. Beazley is credited with bolstering the marketplace's reputation, especially in the United States, which remains Lloyd's single largest market.

See BEAZLEY page 25

LIABILITY & LITIGATION

BLOOMBERG

A decision by the U.K. Court of Appeal means the exact wording of policies will need to be studied to determine whether they offer coverage for claimants who develop mesothelioma.

U.K. asbestos ruling muddles cover issues

Policy wording will determine if insurer pays

By SARAH VEYSEY

LONDON—A complex U.K. Court of Appeal ruling on triggers for employers liability policies could leave employers uncertain about whether they have coverage to compensate claimants with asbestos-related disease.

A decision by the appeal court judges in the "Employers' Liability Insurance Trigger Litigation" test cases this month means that the exact wording of policies will need to be studied to determine whether they offer coverage for claimants who develop mesothelioma, a rare form of cancer usually caused by exposure to asbestos.

Previously, insurers were bound by a 2008 High Court ruling that determined that insurers that provided coverage to employers at the time claimants were exposed to asbestos were required to pay out.

The appeal of that ruling resulted in a split decision, with the three judges—Lord Justice Bernard Rix, Lady Justice Janet Smith and Lord Justice Stanley Burnton—offering different opinions about which insurance policies apply in

See ASBESTOS page 23

Work comp event set

Gain tips from risk management experts, network with peers, learn about new products and services, and attend multiple presentations on the best ways to manage workers compensation programs—all from your office chair.

Business Insurance on Dec. 9 will present a virtual conference to help businesses better manage their workers comp risks and costs as the workers comp insurance market shows signs of firming.

VIRTUAL ADVANTAGE

The new event, "Virtual Advantage: Best Practices in Workers Comp Management," will be presented online Dec. 9 from 11:30 a.m. to 5 p.m. EDT, and is structured similar to a live event, including scheduled speakers and sessions, a virtual exhibit hall, and the opportunity to make connections and interact with fellow attendees.

The Virtual Advantage format, powered by ON24 Inc., allows expert speakers and attendees to share information, network and browse product and service information in a multimedia-rich online environment, without incurring considerable expense in time and travel costs.

The Virtual Advantage agenda will feature presentations on best practices in workers comp, safety and disability management.

A best practices roundtable, for example, will feature three risk management professionals who will share their expertise in three distinct areas—claims management, cost control and reform efforts—as well as discuss challenges and opportunities for employers:

- Fred Pachón, vp-risk management & insurance for Select Staffing Inc. in Santa Barbara, Calif.
- Carla Wynn, assistant vp of strategic claims management for ARAMARK Corp. in Philadelphia.
- William Zachry, vp of corporate workers compensation for Safeway Inc. in Pleasanton, Calif.

Roberto Ceniceros, senior editor of *Business Insurance* and author of the Comp Time blog, will moderate the panel.

To register for this complimentary conference, or find additional information about speakers and partners, visit *www.BusinessInsurance.com/VirtualAdvantage*.

STATE REGULATION

REUTERS

A state agency says California Insurance Commissioner Steve Poizner did not follow proper procedures in calling for insurers to divest themselves of investments in 50 companies that conduct business in Iran.

Insurers win reprieve from investment ban in Iran-linked firms

Calif. regulators vow to find different way to implement rule

By JUDY GREENWALD

SACRAMENTO, Calif.—California's insurance department is examining its options after a state agency said Insurance Commissioner Steve Poizner did not follow proper procedures in calling for insurers to divest themselves of investments in 50 companies that conduct business in Iran.

Last week's nonbinding ruling by the Office of Administrative Law agreed with a group of insurance organizations that Mr. Poizner's rule was a regulation that was subject to the state's Administrative Procedure Act. Because the rule was a formal regulation, the department should have gone through a formal rulemaking process.

In February, Mr. Poizner released a list of the companies he said do business in the Iranian oil, natural gas, nuclear and defense sectors.

In a letter to insurers at the time, department General Counsel Adam M. Cole said, "The commissioner has determined that companies on the list are subject to financial risk as a result of doing business" with these sectors. The letter noted that, effective March 31, the department would not count investments in such companies or their affiliates toward reserve requirements for insurers licensed in the state.

The letter also asked the insurers to agree not to make future investments in any companies on the list.

Five trade groups responded by filing a petition in March with the OAL seeking to invalidate Mr. Poizner's rule until it had gone through a formal rulemaking process.

Sam Sorich, president of the Sacramento-based Assn. of California Insurance Cos.—one of the groups that filed the petition—said, "We had contended all along that if the department chose to take action in this area, then at the very least it should follow the Administrative Procedure Act, just like other state agencies do."

"We haven't had any communications with the department since the ruling came down, so we're just waiting to see what the department does next," he said.

An insurance department spokesman said, "We feel pretty confident that most policyholders aren't enthusiastic about continued investment in Iran's oppressive regime, and while the ruling…is disappointing, we certainly believe morally we took the appropriate steps in this matter."

"We're still going to move forward with what we're trying to do. We'll just do it a different way," the spokesman said.

According to the department, as of February, of the 1,300 insurers licensed to do business in California, about 340 held a total of about $6 billion in investments in companies that are on the list.

In addition to the Assn. of California Insurance Cos., other organizations that petitioned the OAL were the American Council of Life Insurers, the American Insurance Assn., the Assn. of California Life & Health Insurance Cos. and the Personal Insurance Federation of California.

D&O/E&O

D&O insurers off hook in Ponzi case

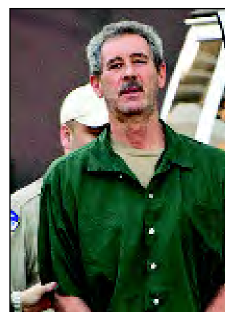
By JUDY GREENWALD

HOUSTON—Directors and officers liability insurers are not obligated to pay the legal bills for executives accused of running one of the nation's largest Ponzi schemes, a federal court judge ruled last week.

U.S. District Court Judge Nancy Atlas of the U.S. District Court for the Southern District of Texas in Houston said in her opinion that insurers do not have to pay defense costs for R. Allen Stanford and other executives under their D&O policies' money laundering exclusion clause.

Federal indictments have accused Mr. Stanford and three other executives of running Houston-based Stanford Financial Group Co. as a $7 billion Ponzi scheme (*BI*, Aug. 29). One of the executives, Laura Pendergest-Holt, has settled with the insurers. The others, in addition to Mr. Stanford, are Mark Kuhrt and Gilbert Lopez.

The company and its executives have $100 million in D&O coverage. The insurers—Lloyd's of London syndicates and Arch Specialty Insurance Co.— have spent more than $11.2 million in defense costs, according to the decision.



BLOOMBERG

Mr. Stanford

Judge Atlas said in her opinion that the policies' money laundering exclusion clause bars coverage for losses, including defense costs "resulting from any claim arising directly or indirectly as result of or in connection with" any acts of money laundering, as defined in the policy.

In concluding that the exclusion is applicable, Judge Atlas said the court "finds that Stanford personally was aware that (Stanford International Bank Ltd. certificates of deposit) were being marketed on the basis of important misrepresentations about the bank's investment portfolio and investment performance."

Judge Atlas said her ruling is narrow and "does not reach the issue of whether the evidence supports finding that Stanford personally engaged in criminal conduct."

The attorney representing Mr. Stanford on criminal charges, Robert S. Bennett of Houston-based Bennett Law Firm P.C., said he was disappointed in the decision.

An attorney for the Lloyd's syndicates and Arch Specialty, which is a unit of Bermuda-based Arch Capital Group Ltd., was unavailable for comment.

Laura Pendergest-Holt, et al., plaintiffs, vs. Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Co., Defendants, U.S. District Court for the Southern District of Texas, Houston Division, Civil Action No. H-09-3712

SURPLUS LINES

Surplus lines rates projected to rise

W.R. Berkley chief says poor insurer results will force market turn

By MICHAEL BRADFORD

ATLANTA—The prolonged soft market for surplus lines insurance rates is set to end as the U.S. economy picks up steam and insurers drop business that does not contribute to operating profits, an insurance executive predicts.

"The economy is improving," said William R. Berkley, chairman and CEO of W.R. Berkley Corp. in Greenwich, Conn. "Business is getting better and there are very few real indications that things are slipping back."

Speaking at the National Assn. of Professional Surplus Lines Offices Ltd.'s annual conference last week in Atlanta, Mr. Berkley said the surplus lines insurers have endured tough market conditions for several years.

Pricing has deteriorated and claims inflation has increased, he said. At the same time, investment returns have dropped and combined ratios have risen, Mr. Berkley said.

"When we look at current profitability on an accident-year basis, we believe the industry as a whole is running at an operating loss," he said.

Still, Mr. Berkley said his company is "optimistic about the change that is coming. We believe that the

See **NAPSLO** page 22

Webcast offers fleet safety advice

By MIKE TSIKOUDAKIS

Automotive fleet technology offers a wealth of data and can significantly reduce rollover accidents and increase fleet efficiency, said participants in a *Business Insurance* webcast last week.

Reckless behavior or a miscalculation by a driver can cost a company hundreds of thousands of dollars in a single loss. Advances in telematics-the integrated use of telecommunications and information and communication technology-has improved fleet safety and efficiency by remotely monitoring and tracking vehicles in real time, experts say.

"It has been a huge success for us," said Jim Anderson, vp of safety for Florida Rock & Tank Lines Inc. in Jacksonville, Fla., during the *BI* webcast "Eyes on the Road: Using Telematics to Improve Fleet Safety."

Prior to implementing fleet technology, Florida Rock & Tank Lines was experiencing two to three rollovers a year, which represents two to three rollovers for 34 million miles of driving. "We have now gone over 60 million miles of operation without experiencing a rollover," Mr. Anderson said, who implemented roll stability mechanisms and critical event reporting to his fleet in 2007.

Mr. Anderson

Mr. Mayo

Fleet telematics monitor vehicle and engine diagnostics, fuel consumption, unit location and vehicle dynamics such as roll stability. It also provides real-time warnings and records events as they occur, including the vehicle's speed, location and time.

"You've got to be prepared to deal with a lot of data and how you manage it," said Herbert Mayo, vp and senior loss control consultant for Lockton Cos. L.L.C. in Denver.

Mr. Anderson manages the data using a "corrective action form," which summarizes the event along with comments by a driver to determine what triggered the warning.

Mr. Mayo noted some companies realized a 200% return on investment by implementing fleet telematics.

BI Associate Editor Jeff Casale moderated the webcast, which is available at *www.BusinessInsurance.com/Webcasts.*

—By Mike Tsikoudakis

NOBODY WANTS TO TAKE THE FALL FOR A FICTITIOUS CLAIM.

When a patron claimed to take a bad fall outside the entrance of a major retail establishment, the manager first went to her aid, and then came to us. Risk management planning had ensured there were anti-slip mats at the entrance and a surveillance camera, which captured the staged accident. The fraudulent claim was then denied and referred to the local authorities, protecting the customer from unwarranted losses and potential litigation. Whether it's responding quickly, keeping you informed, or helping to mitigate potential losses, our general liability experts are committed to helping you protect your business. That's our policy. For more information, contact your broker or agent or visit libertymutualgroup.com/gl.

LIABILITY | COMMERCIAL AUTO
PROPERTY | WORKERS COMPENSATION

Responsibility. What's your policy?®

© 2010 Liberty Mutual Group.

Experience
innovation

DICKSTEINSHAPIRO LLP

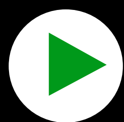
Dickstein Shapiro attorneys do more than just practice insurance coverage law—they shape and influence it. With deep experience in a broad range of coverage issues, Dickstein Shapiro is widely recognized as a leading policyholder firm.

2011 National Insurance Coverage Firm, Tier 1
Benchmark Litigation

2010 Leading Firm
Insurance Coverage: Policyholder
Chambers USA

2010 National Insurance Coverage Firm, Tier 1
U.S. News and *Best Lawyers*

2009 Largest Insurance Recovery Law Firms
Business Insurance



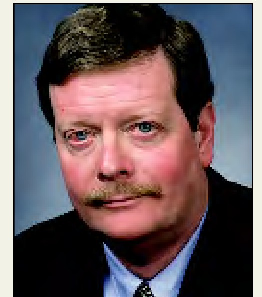
Learn why *Fortune* 500 companies rely on Dickstein Shapiro to resolve their complex insurance coverage matters.
Visit **dicksteinshapiro.com/insurance**

WASHINGTON, DC | NEW YORK | LOS ANGELES | IRVINE

Prior results do not guarantee a similar outcome.
© 2010 Dickstein Shapiro LLP. All Rights Reserved.
1825 Eye Street NW, Washington, DC 20006 | (202) 420-2200 | dicksteinshapiro.com

Commentary

Lame-duck session could be scary time



MARK A. HOFMANN

Senior Editor Mark A. Hofmann can be reached at: mhofmann@businessinsurance.com

Ducks aren't usually thought of as being particularly scary creatures.

And a lame duck would be an object of pity rather than fear to most people.

But when the lame duck in question happens to be the U.S. Congress, there's more than a little reason for concern.

Democratic leaders have said there will be a lame-duck session after the Nov. 2 elections, and some reports indicate they're planning to deal with as many as 20 bills when they reconvene. The measures—which will die at the end of the lame-duck session unless they win approval by both houses of Congress—range from extending tax cuts to authorizing government spending to even some issues with risk management implications, such as mine and food safety.

These may be worthy goals. The catch is that a lame-duck session is not a worthy venue for dealing with such matters. That isn't to say that such sessions can't lead to worthy results—the original federal government terrorism insurance backstop passed during the 2002 lame-duck session. But the sessions also encourage legislative mischief, particularly if the pre-session elections have resulted in a change of party control of one or both houses.

That's what appears likely as the result of this year's mid-terms. If trends hold, the Republicans probably will win a House majority, although probably not an overwhelming one. And while Republicans would have to run the electoral table the same way the Democrats did in 2006 to gain a Senate majority, which would be very difficult, the GOP is likely to pick up a significant number of seats in the upper chamber.

The result would be a lame-duck session in which many participants had already been repudiated by the voters, or in some cases, had chosen voluntarily not to face the voters. Such lawmakers could be truly free agents, able to pursue their own agendas provided they could win the backing of the leadership.

And further complicating the situation is the fact that the leadership of the lame-duck session might well not be the leadership of the new Congress that will begin its session next January.

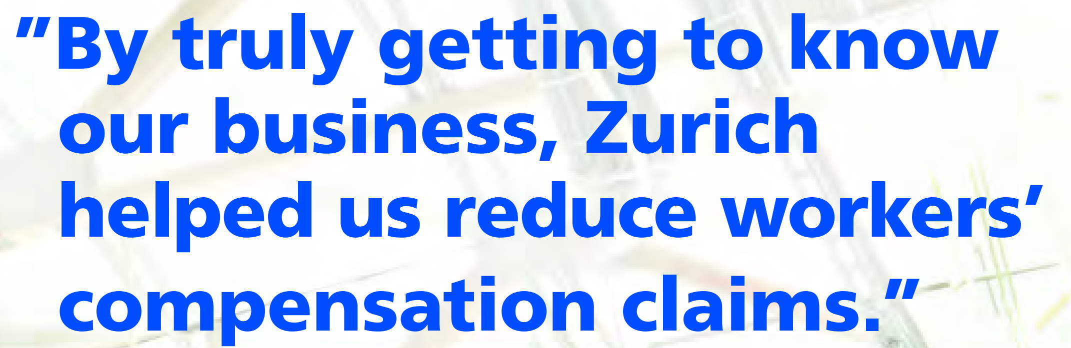
Taken together, this is not a recipe for responsible lawmaking. While most of the defeated members will no doubt continue to vote in what they consider to be the public's best interest, there's always the chance for legislative mischief or passage of well-intentioned legislation that's just waiting to explode with unintended consequences. Remember, it was a lame-duck session that gave us Superfund in 1980 as means to clean up certain hazardous waste sites. The program did so after a fashion, but at the cost of stirring up far more litigation than—I certainly hope—its drafters ever intended.

The need to convene these sessions represents a failure of political risk management. After all, lame-duck sessions aren't inevitable. They can be avoided if lawmakers actually do some of the things voters elect them to do and that the Constitution authorizes them to do, such as appropriating money for government operations. Unfortunately, this Congress failed to carry out its basic responsibility. Instead, it had to approve a stop-gap measure to keep the government up and running until November.

> **There's more than a little political risk involved when defeated lawmakers return to town for a final hurrah.**

There's more than a little political risk involved when defeated lawmakers return to town for a final hurrah. Remember what New York politician Gideon J. Tucker observed in 1866: "No man's life, liberty or prosperity is safe while the legislature is in session." That's even truer when the legislature in question is of the lame duck variety.

The country will survive whatever comes out of the session that begins next month. Still, given the temptation facing defeated lawmakers with one last opportunity to pull the levers of power, there's plenty of reason to be concerned about what this crippled fowl may do.



Brian McInerney, President & Chief Executive Officer, Glacier Water Services, Inc.

Zurich HelpPoint

Underwriting & risk management expertise that delivers results.

We carefully evaluated Glacier Water's operations to design a safety training and monitoring program tailored to their specific needs. This collaboration has led to fewer workplace accidents and, as a result, reduced claims. It's an example of how Zurich HelpPoint delivers the help businesses need when it matters most. Watch the video to learn more. www.zurichna.com/stories5

Because change happenz®

This is intended as a general description of certain types of insurance and services available to qualified customers through the companies of Zurich in North America. Zurich does not guarantee any particular outcome and there may be conditions on your premises or within your organization which may not be apparent to us. In the United States, insurance coverages are underwritten by individual member companies of Zurich in North America, including Zurich American Insurance Company. Certain coverages are not available in all states. Some coverages may be written on a nonadmitted basis through licensed surplus lines brokers. In the United States risk engineering services are provided by Zurich Services Corporation.

Business Insurance OPINIONS

Reform law debates should be realistic

IT ISN'T SURPRISING, given its enormous impact, that the new health care reform law has become a hotly debated issue on the congressional campaign trail.

Regrettably, though, much of the debate has been simple-minded, with Republican candidates in many cases saying the law should be repealed and Democrats mouthing platitudes, as Sen. Russ Feingold, D-Wis., did recently when he claimed the law was needed to "get control of the insurance companies."

We would hope in the remaining weeks of the campaign that candidates—prodded by voters—get a little more specific and realistic.

Congress' goal should be to find ways to make the reform law work better.

On that last point, with President Barack Obama remaining in office for at least two more years, talk of repeal seems ridiculous. Even if Republicans gain control of both houses of Congress and pass a repeal bill, it surely would be vetoed by the President, with Republicans not even close to having the votes needed to override a presidential veto.

We think the wiser course of action would be for Republicans to make specific recommendations on which parts of the law they think should be modified and what those modifications should be.

The same goes for Democrats. They should be specific on whether the law should stand as is or what changes they would be willing to consider, with the passage of time and the opportunity to listen to criticisms.

Republicans and Democrats alike need to recognize that there is no going back to the prereform system, one of whose features included soaring costs and shrinking employment-based coverage.

Instead, their goal should be to find ways to make the reform law work better.

Insurance industry loses one of its best

THE INSURANCE INDUSTRY has many entrepreneurs who have built successful companies, but it recently lost one who had a wider impact and whom many credit with boosting confidence in Lloyd's during difficult times.

Andrew Beazley, co-founder of Beazley P.L.C., succumbed to cancer last week at age 57. With Nicholas Furlonge, Mr. Beazley built one of the largest and most successful businesses at Lloyd's. He served on the Lloyd's Market Board in the mid-1990s, a period when Lloyd's future was in doubt. He later served on the Chairman's Strategy Group, which launched reforms including the creation of the Franchise Board.

Colleagues of Mr. Beazley noted he was a tireless supporter of Lloyd's, and his interactions with brokers and policyholders instilled confidence in the marketplace. Others spoke of Mr. Beazley's leadership and integrity, describing him as a man with a sharp business sense who gave generously of his time.

Insurance touches people and enterprises often at their lowest point, and Mr. Beazley is remembered as a person who exemplified the best of the business.

WRITE

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters.

Please send your letters to:

Letters to the Editor
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806

fax: 312-280-3174, e-mail: *rcoccia@businessinsurance.com*

VOTE

in the *BI* Online Poll at *www.businessinsurance.com*

THIS WEEK'S RESULTS

Q Is your organization discouraging travel to Europe due to terrorism risks?

YES 0%

NO 100%

NEXT WEEK'S QUESTION

Q: Has the recession created greater interest in enterprise risk management?

PERSPECTIVES

Perspectives and expert analysis online at *www.businessinsurance.com/section/perspectives*

Contribute your expert opinions and knowledge

Business Insurance accepts articles from experts in commercial insurance, risk management and employee benefits management for publication in its Perspectives section.

All articles for the Perspectives page should address the concerns of the corporate buyer of insurance; i.e., the risk management or employee benefits manager.

All authors must license copyright on original articles to *Business Insurance.*

To submit a query about writing a Perspective, e-mail *gsouter@businessinsurance.com.*

ONLINE Read the full text of this and other Perspectives online at **www.BusinessInsurance.com**

Vice President/Publisher: Martin J. Ross III (*New York*)

Associate Publisher/ Online General Manager/Event Director: Paul D. Winston (*Chicago*)
Editor: Regis J. Coccia (*Chicago*)
Editor-at-Large: Jerry Geisel (*Washington*)
Managing Editor: Gavin Souter (*Chicago*)
Assistant Managing Editor - Multimedia: Kathy L. Barnes (*Chicago*)
Assistant Managing Editor - News: Matt Scroggins (*Chicago*)
Art Editor: William Murphy (*Chicago*)
Special Projects Editor: Rodd Zolkos (*Chicago*)
Senior Editors: Michael Bradford (*Dallas*); Roberto Ceniceros (*Boise*); Judy Greenwald (*San Jose*); Mark A. Hofmann (*Washington*); Sarah Veysey (*London*); Joanne Wojcik (*Denver*)
Associate Editor: Jeff Casale (*Chicago*)
Copy Editors: Charmain Benton (*Chicago*); Ann Reus (*Chicago*)
Research Director: Kevin P. Edison (*Chicago*)
Research Editor: Karen Brown Tucker (*Chicago*)
Online Editor: Katherine Downing (*Chicago*)
Online Producer: Amy R. Curtis (*Olathe*)
Editorial Cartoonist: Roger Schillerstrom (*Chicago*)
Editorial Assistant: Mike Tsikoudakis (*Chicago*)

Regional Sales Managers: William J. McGuire (*Chicago*); Ron Kolgraf (*Boston*); Robert B. Murray (*New York*); Mary Pemberton (*Denver*);
Classified Advertising Manager: Monique Murray (*New York*)
Assistant to the Publisher: Pat Ghazvini (*New York*)
Events Manager: Rebecca Briggs (*New York*)
Production Manager: J. Thomas Janka (*Chicago*)

Promotion Director: Michael Ambrosio (*New York*)

EDITORIAL: Boise: 208-286-1425; Chicago: 312-649-5200; London: 44-207-457-1400; Los Angeles: 323-370-2455; New York: 212-210-0100; San Jose: 408-774-1500; Washington: 202-662-7200
ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5286; Denver 303-898-4043; London: 44-207-457-1412; New York: 212-210-0133
SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain Communications Inc.
Chairman: Keith E. Crain
President: Rance Crain
Secretary: Merrilee Crain
Treasurer: Mary Kay Crain
Executive Vice President/Operations: William A. Morrow
Senior Vice President: Gloria Scoby
Vice President/Group Publisher: Christopher Crain
Group Vice President/Technology, Circulation, Manufacturing: Robert C. Adams
Vice President/Production & Manufacturing: Dave Kamis
Corporate Circulation/ Audience Development Director: Kathy Henry
Chief Information Officer: Paul Dalpiaz
G.D. Crain Jr. Founder (1885-1973)
Mrs. G.D. Crain Jr. Chairman (1911-1996)
S.R. Bernstein Chairman-executive committee (1907-1993)

Published at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax: 312-280-3174, *biweb@crain.com*. Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax: 212-210-0704; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax: 202-638-3155; 6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif. 90048-4947, Fax: 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax: 408-774-1155; 21 St. Thomas St., London SE1 9RY, U.K. Fax: +44-(0)20-7457-1440; 12524 Acuff Court, Olathe, Kan. 66062, Fax: 312 280-3174. 77 Franklin St., Suite 809, Boston, Mass. 02110-1510; Fax: 212-210-0704. $5 a copy and $97 a year in the U.S., $130 in Canada and Mexico (includes GST). All other countries, $230 a year (includes expedited air delivery). E-mail subscription correspondence and address changes to customerservice@businessinsurance.com or mail to Business Insurance Circulation Department, 1155 Gratiot Ave., Detroit, MI 48207-2912. Send subscription correspondence to Circulation Department, *Business Insurance*, 711 Third Ave., New York, N.Y. 10017-5806. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission, please contact Lauren Melesio/Crain Communications at 212-210-0707 or e-mail BusinessInsurance@reprints.crain.com.

To subscribe, Call 888-446-1422, or 313-446-0450 outside the U.S.
www.businessinsurance.com

BPA WORLDWIDE
AMERICAN BUSINESS MEDIA — The Association of Business Media Companies

Workers Compensation & Disability Management

Making sense of Workers Compensation can be painful. And reaching decision-makers in this multi-billion dollar marketplace can be back-breaking work.

To get relief, *Business Insurance's* readers rely on our coverage of the hot topics, trends and developments in our Workers Compensation & Disability Management spotlight report. And advertisers depend on us for targeted audience reach that knocks them over.

Put your marketing efforts on solid ground.
For more information about advertising opportunities in this issue, call 212-210-0137 or email advertising@BusinessInsurance.com.

A Business Insurance Spotlight Report

Publishing: November 1 | Ad Close: October 20

Business Insurance

www.BusinessInsurance.com

The Trusted Voice of the Risk and Benefits Management Marketplace.

New York: 212-210-0137 | **Chicago:** 312-649-5286 | **Boston:** 617-292-4856
West Coast: 303-898-4043 | **London:** +44-207-457-1412

Market Moves

Ascension expands specialized operations

OVERLAND PARK, Kan.—Ascension Insurance Inc. has acquired specialty insurance consultant and brokerage Summit America Insurance Services L.C.

The acquisition, for which terms were not disclosed, is a part of Ascension Insurance's strategy to expand its specialized risk management and insurance operations in the education, recreation and sports markets, the Kansas City, Mo.-based insurance agency said in a statement.

Summit America focuses on consultative and brokerage services for colleges, universities, recreational, and sports organizations. The firm, which also offers administrative and claims capabilities, is the endorsed broker for the National Collegiate Athletic Assn., the National Assn. of Intercollegiate Athletics and the National Junior College Athletic Assn., according to the statement.

Ascension Insurance, which focuses on property/casualty, employee benefits and risk management services to middle-market companies, said it expects to grow $200 million in revenue during the next five years.

Allied World teams with Latin American Underwriters

PEMBROKE, Bermuda—Allied World Assurance Co. Holdings Ltd. has entered into an agreement with Latin American Underwriters to offer trade credit and political risk insurance in Latin America and the Caribbean.

The partnership, for which terms of the agreement were not disclosed, aims to provide short- and medium-term credit insurance for companies that import/export in Latin America and Caribbean countries, as well as political risk insurance for exposures in the same regions, Pembroke, Bermuda-based Allied World Assurance said in a statement.

Bermuda-based insurance producer LAU will target clients with import/export exposures in Latin America and the Caribbean, along with investors, contractors and financial institutions.

Allied World Assurance said the underwriting of trade credit and political risk insurance is effective immediately.

Crump acquires MGU, program manager

AVON, Conn.—Crump Property & Casualty Insurance Services Inc. has acquired managing general underwriter and program administrator Target Underwriting Management Corp.

"Target is an important addition to our programs platform and represents a significant expansion of our professional lines underwriting capabilities," said Dave Obenauer, president of the Roseland, N.J.-based unit of Crump Group Inc., in a statement.

Established in 1998, Avon, Conn.-based Target Management specializes in professional liability coverage and programs for accountants, lawyers, staffing agencies, home inspectors and miscellaneous errors and omissions.

Acquired assets of the deal include Target Insurance Services, Garden State Insurance Services and Florida Liability Assurance Group Inc., according to the statement.

Terms of the acquisition were not disclosed.

Argo combines two E&S units

RICHMOND, Va.—Hamilton, Bermuda-based Argo Group International Holdings Ltd. has combined two of its excess and surplus lines businesses to form one company.

Argonaut Specialty and Colony Group have combined to form Richmond, Va.-based Colony Specialty, Argo Group said in a statement.

"We want to be more responsive and make it easier for our customers to access our products," said Lou Levinson, E&S president for Argo Group, in the statement. "We're flattening and simplifying our company structure, while staying true to our roots as a wholesale-only company."

Colony Specialty's new structure "leverages the entire Argo Group platform" to quickly and consistently respond to market changes, Argo Group said.

Argo Group's third E&S unit, Argo Pro, will continue as a specialty underwriter of professional business.

XL links with agency for real estate risks

CHARLESTOWN, Mass.—XL Insurance has entered into an underwriting agreement with Breed's Hill Insurance Agency Inc. to cover real estate risks in New England.

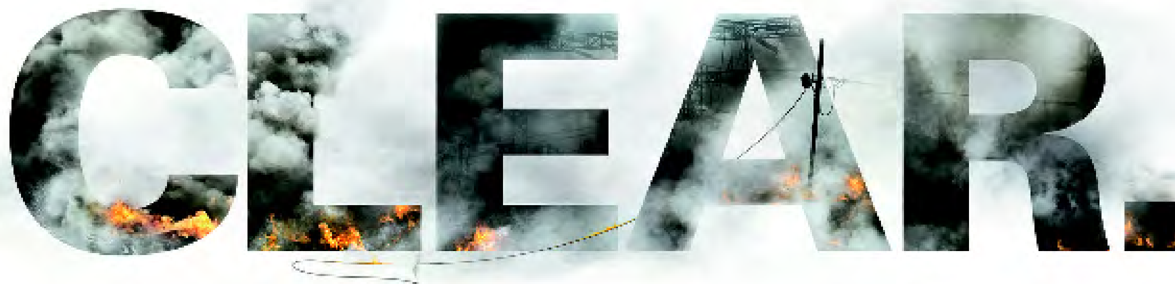
As part of the agreement, for which terms were not disclosed, the Charlestown, Mass.-based managing general underwriter will offer general liability and property coverages for multi-unit apartment buildings, condominium associations and mixed real estate risks in the New England market, the global insurance unit of Dublin-based XL Group P.L.C. said in a statement.

Breed's Hill's property/casualty coverage in the U.S. will be underwritten by XL Insurance subsidiary Greenwich Insurance Co., and Indian Harbor Insurance Co., a non-admitted unit of XL Insurance, will offer excess and surplus lines coverage.

TO SUBMIT ITEMS

BI's Market Moves column reports on activities by insurance industry companies and related entities. Please send news of Market Moves to Mike Tsikoudakis, 360 N. Michigan Ave., Chicago, Ill. or e-mail *mtsikoudakis@businessinsurance.com.*

EVEN IN THE FACE OF ADVERSITY, OUR APPROACH ENSURES YOUR GLOBAL SUPPLY CHAIN REMAINS IN THE



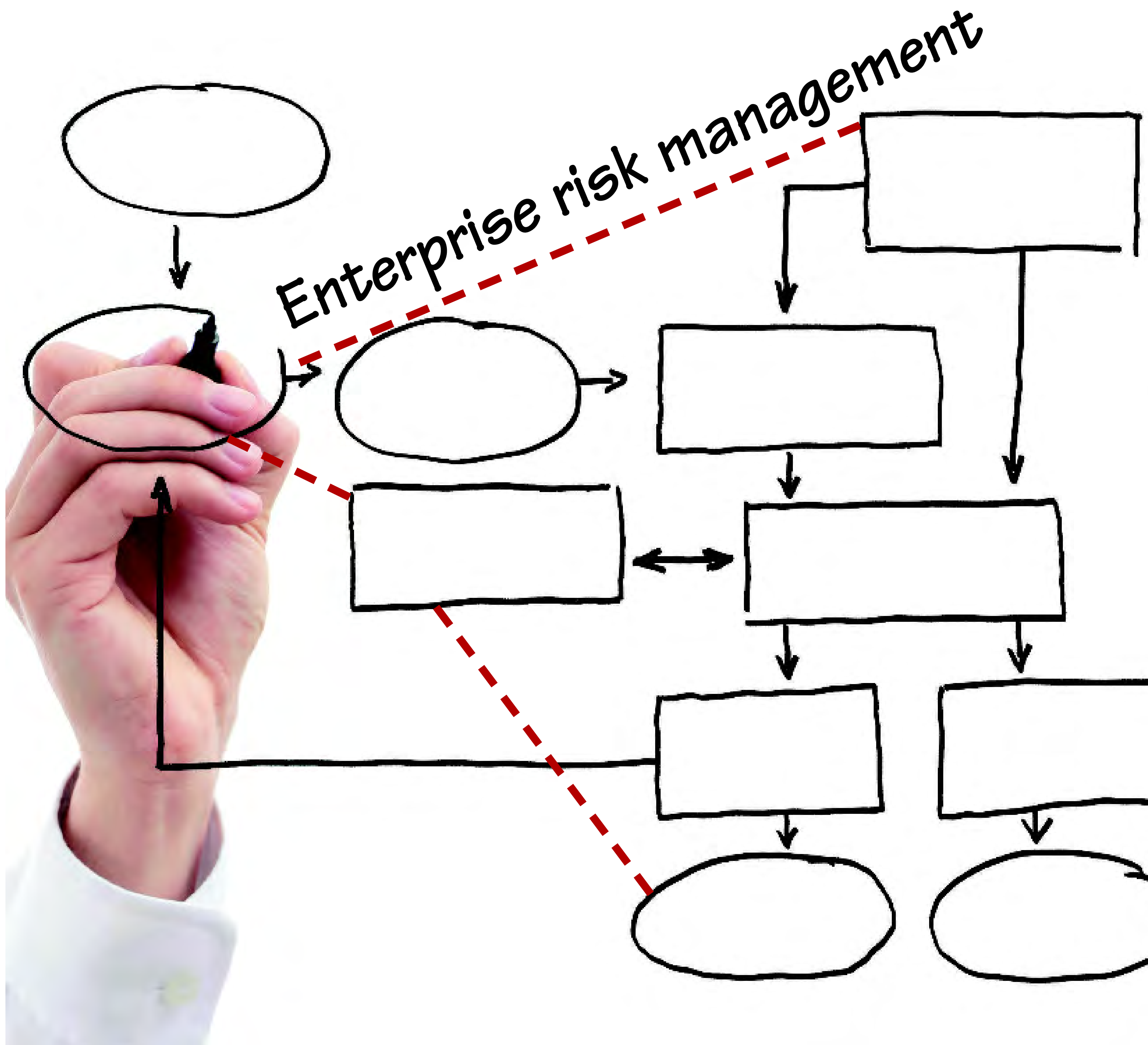
If your insurance company doesn't fully understand your supply chain, it may not be thoroughly covering your risk. And more often than not, that happens to be the case. Property-related supply chain issues are often a blind spot for companies. It's difficult to identify and quantify the risk involved. Yet an unrecognized threat of physical loss to a supplier or even a supplier's supplier can bring business to a screeching halt.

We believe that the majority of loss is preventable. That's why we've created a $100 million state-of-the-art research campus and employ more than 1,700 engineers around the world working to minimize your risk—including potential issues in your supply chain. In fact, for 175 years we've linked our underwriting to loss prevention engineering. An approach that clearly distinguishes FM Global from insurers that do not base their underwriting on engineering assessments. Which is to say, all of them. Essentially, we work hard to find the blind spots in your blind spots. Just one of the reasons our clients' losses tend to be smaller and less frequent. Underwriting through loss prevention engineering. That's insurance evolved.

Insurance Evolved

To learn more, visit fmglobal.com/insuranceevolved/clear

© 2010 FM Global. All Rights Reserved.



Enterprise Risk Management

SPOTLIGHT

LARGEST U.S. RISK MANAGEMENT CONSULTANTS
PAGE 12

FOUR CONTRASTS BETWEEN PUBLIC, PRIVATE APPROACHES
PAGE 14

RECESSION FORCES COMPANIES TO IMPLEMENT ERM
PAGE 16

Q&A WITH RIMS' ERM PRACTICE DIRECTOR CAROL FOX
PAGE 18

ERM basics same across sectors

Public, private entities must focus on same key elements, but some points differ

By MARK A. HOFMANN

The basics of a high-quality enterprise risk management process are the same no matter whether the organization implementing ERM falls into the public sector or the private sector, according to risk management experts.

They note that the ISO 31000 risk management standard codified by the International Organization for Standardization is designed to apply to all types of organizations. But they also note that the risk context between public and private entities differs, and can affect how ERM is implemented. A recent study of risk management practices undertaken by the Department of Homeland Security identified at least four contrasts in risk management approaches between public and private sector entities (see story, page 14).

"The fundamentals of good quality ERM are the same regardless of whether the organization is public or private," said Laurie Champion, director-ERM practice at Aon Risk Solutions in Atlanta.

A pair of public-sector risk managers shared that assessment. Differences in ERM are driven more by the nature of the industry or entity than whether it is public or private, said Gary Langsdale, risk officer for Pennsylvania State University in State College, Pa. The reason for adopting ERM is to assure the continuation of a business model whether it is public or private, he said.

In the framework of ISO 31000, "there is absolutely no difference" at the highest level, said Matt Hansen, director-risk management for the City and County of San Francisco. All organizations go through the same exercise under ISO 31000, he said.

But public entities face their own particular challenges in implementing ERM, said Dorothy Gjerdrum, executive director of the Public Entity & Scholastic Division of Arthur J. Gallagher Risk Management Services Inc. in Eden Prairie, Minn.

With public entities' budgets stretched, the personnel charged with implementing ERM have to do so without any additional resources, said Ms. Gjerdrum. "It's not just money. It's people, it's people's time, it's software."

Joe Underwood, a senior consultant with Albert Risk Management Consultants in Needham, Mass., said one of the first steps in ERM is to "establish the risk context," which includes a thorough assessment of stakeholder interests and organizational responsibilities. While the process is the same for public and private entities, the risk content differs.

For example, "For the private sector, ERM is about corporate survival, protecting value, and gaining competitive edge," he said. "For the public sector, ERM is about protecting the public and the public infrastructure."

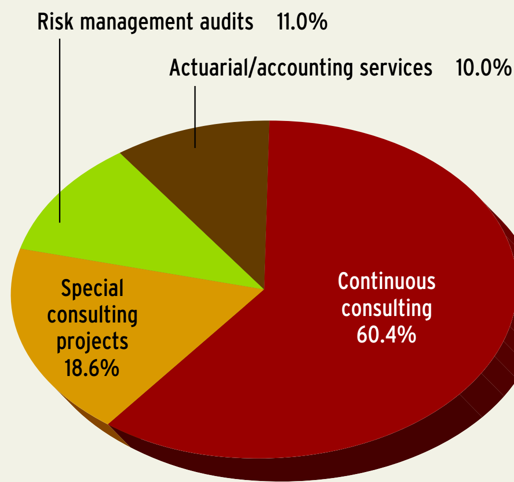
In addition, public sector entities are "stewards of public funds," he said. Therefore, they have a heightened duty to "demonstrate risk diligence," he said.

"There are clearly differences—it depends on which dimensions you're looking at," said Barry Franklin, managing consultant for

See PRIVATE page 14

BREAKDOWN OF REVENUES

Revenue sources for all companies listed in the directory



Source: BI survey

LARGEST OVERALL RISK CONSULTING FIRMS

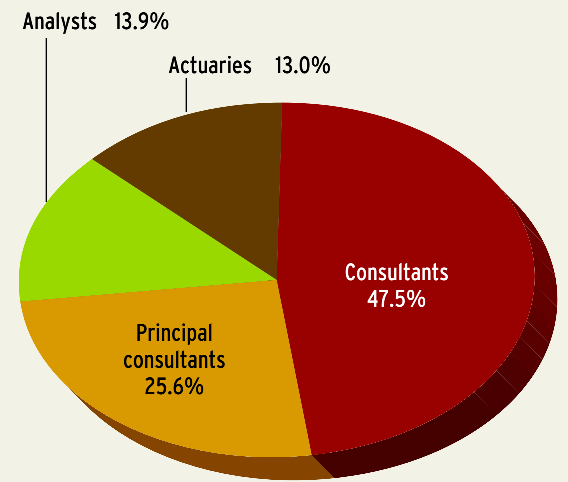
*Reflects both independent and nonindependent risk consultants**

Company	2009 unbundled revenue from risk management consulting
Aon Risk Solutions: Global Risk Consulting [1]	$350,000,000
Marsh Risk Consulting	$190,000,000
Gallagher Bassett Services Inc	$13,000,000
RMI Consulting Inc.	$11,300,000
Ernst & Young L.L.P.	$10,500,000

**Companies need not derive majority of revenues from unbundled risk management consulting, but those deriving 50% or more of such revenues from actuarial, captive, environmental, property loss or safety consulting are not ranked.*
1 Includes Advanced Risk Management Techniques Inc. and Aon Fire Protection Engineering, formerly Schirmer Engineering.
Source: BI survey

BREAKDOWN OF PROFESSIONAL STAFF

Risk management professionals for all companies listed in the directory



Source: BI survey

Largest independent U.S. risk management consultants

*Companies deriving a majority of their gross revenues from unbundled risk management consulting**

Rank	Company/Address	Phone/website	2009 unbundled revenue from risk management consulting	Unbundled clients	Professional staff	Principal officer
1	**RMI Consulting Inc.** 20 Soundview Marketplace, Port Washington, N.Y. 11050	516-767-7373 *www.rmiconsulting.com*	$11,300,000	550	31	MaryAnn Sackman, president
2	**J.H. Albert International Insurance Advisors Inc., dba Albert Risk Management Consultants** 72 River Park, Needham Heights, Mass. 02494-2631	781-449-2866 *www.albertrisk.com*	$7,400,000	600	33	Alfred H. Nagelberg, Stuart T. Cowart, presidents
3	**Risk International Services Inc.** 4055 Embassy Parkway, Suite 100, Fairlawn, Ohio 44333	216-255-3400 *www.riskinternational.com*	$5,550,000	45	20	Michael D. Davis, president/CEO
4	**Corporate Risk Solutions L.L.C.** 178 Myrtle Blvd., Larchmont, N.Y. 10538	914-834-1234 *www.crslimited.com*	$5,500,000	312	9	Joseph F. Coughlin, CEO
5	**Alpha Risk Management Inc.** 60 Cutter Mill Road, Great Neck, N.Y. 11021	516-829-3500 *www.alphariskmanagement.com*	$3,980,000	71	18	Herbert H. Feldman, president/CEO
6	**Robert Hughes Associates Inc.** 508 Twilight Trail, Suite 200, Richardson, Texas 75080	972-980-0088 *www.roberthughes.com*	$2,600,000	242	13	John R. Oakley, president
7	**Insurance Buyers' Council Inc. & First Risk Management/IBC Inc.** 9720 Greenside Drive, Suite 1E, Cockeysville, Md. 21030	410-666-0500 *www.consultibc.com*	$2,425,000	130	9	Adam P. Sielicki Jr., president/treasurer
8	**Kevin F. Donoghue & Associates** 190 High St., Boston, Mass. 02110	617-482-7015 *www.kfda.com*	$2,400,000	150	11	Michael E. Norek, Liam K. Donoghue, principals
8	**Risk Navigation Group L.L.C.** 37 Dumont Road, Suite 100, Far Hills, N.J. 07931	908-470-1010 *www.risknavigation.com*	$2,400,000	85	7	Richard M. Sabetta, managing principal
10	**Pinnacle Risk Services Inc.** 620 Freedom Business Center, Suite 200, King of Prussia, Pa. 19406	610-205-6116 *www.pinnacleriskservices.com*	$2,250,000	55	3	Kenneth M. Maher, president/CEO

** Business Insurance defines independent consulting operations as those that are not owned by insurers or brokers. In addition, companies deriving 50% or more of their revenues from actuarial, captive, environmental, property loss or safety consulting are not ranked.*
Source: BI survey
Researched by Karen Tucker

Visit *www.businessinsurance.com/directories* for more information and to access the full searchable Directory of Risk Management Consultants. *Business Insurance* now offers the option to purchase the entire online directory as an Excel file or as a PDF.

Entire contents copyright © 2010 by Crain Communications Inc. All rights reserved.

AN ANSWER TO EMPLOYEE ABSENCES IS NOW PRESENT.
INTRODUCING THE HARTFORD PRODUCTIVITY ADVANTAGE.

No more administering multiple leaves, overpayments and multiple claim costs. Supported by our premier clinical claims professionals, The Hartford has integrated group disability, leave management and workers' compensation to create a simple, single source for managing multiple leaves. Find out what our productivity solutions can do for your business. Visit us at **thehartford.com/info/productivity**, or contact your local Hartford group representative.

With The Hartford behind you, achieve what's ahead of you.®

© 2010 The Hartford Financial Services Group, Inc., Hartford, CT 06155 All Rights Reserved. The Hartford is The Hartford Financial Services Group, Inc. and its subsidiaries, including its administrative service companies, Hartford-Comprehensive Employee Benefit Service Company and Specialty Risk Services, LLC, and issuing companies Hartford Life Insurance Company, Hartford Life and Accident Insurance Company and Hartford Fire Insurance Company. All non-property and casualty policies sold in New York are underwritten by Hartford Life Insurance Company. The home office of Hartford Life Insurance Company is Simsbury, CT. All property and casualty policies are underwritten by Hartford Fire Insurance Company and its property and casualty affiliates.

This document outlines in general terms certain benefits and services that may be afforded under a Hartford policy or service contract. In the event of a conflict, the terms and conditions of the policies and contracts prevail. All Hartford policies and services described in this document may be offered by one or more subsidiaries of The Hartford Financial Services Group, Inc.

3815 NS 04/10

DHS finds four contrasts between public, private approaches

The Department of Homeland Security recently undertook a study of risk management practices in the private and public sectors as part of an initiative to bolster its own risk management program (*BI*, Oct. 11). In the course of the study, DHS identified four contrasts between public- and private-sector approaches to risk management:

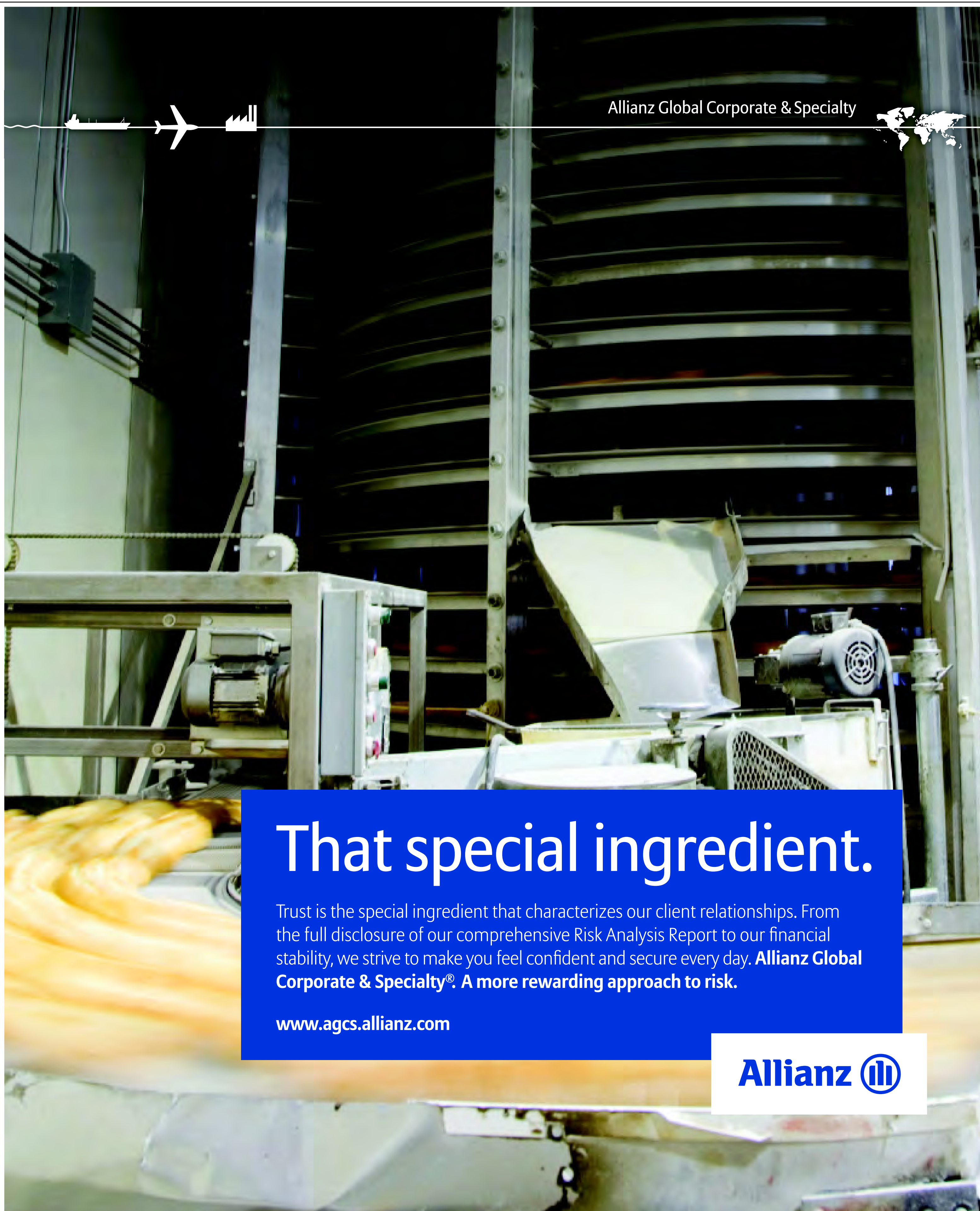
■ Securing consistent, ongoing support from leadership. The study noted that participants had identified sponsorship and support from executive leadership as a key success factor in risk management. "However, numerous participants from the public sector expressed difficulty in achieving consistent support," according to the study. Some participants linked the difficulty to the high rate of turnover among political appointees in federal agencies.

■ Responsibility for managing politically controversial risks. Some participants reported problems implementing risk management programs when confronted with risks that had politically controversial implications. "These are generally risks that private sector organizations do not face because they have different mandates than government agencies, or risks that they rely on government to manage," said the study.

■ Managing risk at an enterprise-wide level. The study called this contrast "the most significant difference" between the two sectors. Many private companies "were trying to understand and manage their risk on a holistic, enterprise-wide basis while many public agencies were managing risks on an uncoordinated ad hoc basis," said the report.

■ Linking risk management to achieving objectives. The lack of a link between risk management and a government agency's ability to achieve its objectives "could be related to why the public sector has lagged behind the private sector in adopting" ERM, said the study. The study said many federal agencies simply focus on risk as "uncertainty or bad things that could happen to the agency or the public."

—By Mark A. Hofmann



Private: ERM basics stay same

CONTINUED FROM PAGE 11

Towers Watson & Co. and a director in the company's corporate risk management practice in Chicago.

One big difference is the environment in which the two entities operate, said Mr. Franklin. Companies operate in a competitive environment, they don't have much price control, and "they are free to go anywhere."

Public entities operate as quasi-monopolies, he said. "You don't have neighboring towns competing with one another for the services they provide." They provide relatively fixed services and have fixed revenue streams, he said. Public entities also have taxing authority, he said, adding "a company cannot go out and compel people to pay them money."

Some of the key risks faced by the two types of enterprise are similar, but the same risk presents different challenges for each, said Mr. Franklin. For example, a municipality and a hotel company could face hurricane risk, he said. The company would be worried about business interruption or disruption; the municipality may have to worry about additional costs to provide services to its residents.

"They're both worried about crisis response and disaster recovery, but for different reasons," he said. The business wants to maintain market share, while the municipality wants to get things back to normal for its residents.

Aon's Ms. Champion said public entities face other issues that differ from their private sector counterparts.

The internal and external governance structures within public sector organizations and the need for stakeholder communication internally and externally add an extra layer of complexity for ERM in the public sector, she said. This is particularly apparent in the areas of risk analysis and reporting. As a result, public sector organizations may require more complex reporting solutions and may take longer to implement the ERM framework for them.

Public sector organizations may have longer-term planning cycles, objectives and "risk horizons" in which to understand and manage risk, said Ms. Champion. While private sector organizations can be focused on shorter-term financial aspects of risk, public sector organizations seem to gravitate more easily to a longer-term view of risk and they may more readily incorporate risk to their respective mandates and stakeholder expectations.

Also, changes in leadership in the public sector can result in changes in prioritization of ERM, which can make establishing an effective ERM framework a bit more challenging in the early stages of implementation, said Ms. Champion.

ANNOUNCING THE 2010 READERS CHOICE FINALISTS

Captive Manager
- Aon Global Insurance Managers
- Marsh Captive Solutions
- Willis Management

Employee Assistance Program Provider
- CIGNA Behavioral Health
- ComPsych
- Magellan Health Services

Employee Benefit Consultant
- Aon Hewitt
- Gallagher Benefit Services
- Mercer

Health Plan Provider
- Aetna Inc.
- CIGNA Healthcare
- UnitedHealthcare

Insurance Wholesaler/MGA
- AmWINS
- C.V. Starr & Co.
- Swett & Crawford Group

Liability Insurer
- ACE Ltd.
- Chartis Inc.
- Chubb Corp.

P/C Reinsurer
- Lloyd's
- Munich Reinsurance Co.
- Swiss Reinsurance Co.

Property Insurer
- Chartis Inc.
- Chubb Corp.
- FM Global

Risk Management Consultant
- North American Risk Management
- RMI Consulting
- Risk International Services

Reinsurance Intermediary
- Aon Benfield
- Guy Carpenter & Co.
- Willis Re

Retail Agent/Broker Revenues >$250 M
- Arthur J. Gallagher Risk Management Services, Inc
- Aon Risk Solutions
- Marsh Inc.

Retail Agent/Broker Revenues $50 m to $250 M
- Beecher Carlson
- Integro
- Mesirow Financial Services

Retail Agent/Broker Revenues $25 m to $50 M
- DeWitt Stern Group
- Riggs, Counselman, Michaels & Downes
- William Gallagher Associates Insurance Brokers

Retail Agent/Broker Revenues <$25 M
- Alper Services
- Mid American Group
- R.C. Knox & Co.

Surplus Lines Insurer
- ACE Westchester Specialty
- Arch Specialty
- Lexington Insurance Co.

Third-Party Administrator Specializing in Benefit Claims
- CoreSource
- Health Plans Inc.
- Principal Financial Group

Third-Party Administrator Specializing in P/C Claims
- Gallagher Bassett Services
- Sedgwick Claims Management Services
- Specialty Risk Services

Workers Comp Insurer
- Chartis Inc.
- Liberty Mutual Group
- Zurich Financial Services Group

DON'T MISS THE **LIVE** ANNOUNCEMENT OF THE WINNERS

NOVEMBER 3, 2010 IN CHICAGO, IL

For information on attending and available partnership opportunities,
please contact Becky Briggs Tel: 212-210-0132 E-mail: RBriggs@BusinessInsurance.com

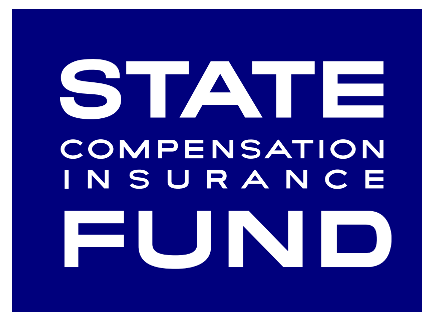
Business Insurance

We protect the people who make California work.

The gears of California don't just turn in Sacramento; they turn in the fields, on the job site, and at "the shop." And when hard working Californians turn to you, you can turn to us. After all, we've been providing workers' compensation insurance uninterrupted for 95 years. State Fund has never pulled out of the market due to an economic downturn, and we never will. That's stability you can count on.

Together, we'll help keep California working.

statefundca.com



State Compensation Insurance Fund is not a branch of the State of California.

Recession forces companies to implement ERM programs

Lessons of economic downturn help shape program designs

By ROSEANNE WHITE GEISEL

Enterprise risk management is being viewed in the context of the recession's broad swath, and the assessment of the value and performance of this approach often depends on where a company or organization is positioned on the ERM spectrum.

Many entities that had implemented or had begun planning an ERM program prior to the 2008 subprime mortgage crisis see it as an important tool. Some of those private and public sector operations learned from the recession where their programs should be expanded or tweaked.

Some experts, however, have not been convinced that a formal ERM program is necessary for every business, or that it is significantly different than what top executives do as part of sound management.

Regardless of whether an ERM program is embraced, risk managers and consultants agree the recession unleashed so many unexpected effects that every organization has had to make a thoughtful assessment of its approach to risk.

"A lot of organizations were surprised by how their business was affected by the economic (downturn) in general, the credit crunch and the impact of the credit crunch on their customers," said Pete Fahrenthold, managing director, risk management for Continental Airlines Inc. in Houston. "In general, there was a belief that the economic situation would not get as bad as it did. Models being used as the worst-case scenario weren't sufficient." The recession raised the need for ERM and was a factor in more companies starting ERM programs, he said.

Mr. Fahrenthold, a member of the Risk & Insurance Management Society Inc.'s ERM committee, said the recession showed him the need to keep updating ERM plans to fit current conditions. "ERM should challenge the assumptions that underlie estimates on which budget and long-term planning are based."

Joe Restoule, leader, risk management at NOVA Chemicals Corp. in Calgary, Alberta, agreed that the recession drew more companies into ERM. "The financial crisis or meltdown heading into recessionary times was the impetus for boards and corporate executives to re-examine the whole idea of ERM. It was an opportunity to validate what they were doing or explore what ERM would do for them."

"This was a catastrophe that no one even listed as a possible scenario," Mr. Restoule said. Companies are talking more about models and stresses, he said. Many companies had only recently implemented ERM programs when the recession hit, Mr. Restoule said. "Scenarios and models hadn't been tested with the rigors that they need to be tested with."

RIMS

'The financial crisis...was the impetus for boards and corporate executives to re-examine the whole idea of ERM.'

Joe Restoule, NOVA Chemicals Corp.

For Mr. Restoule, a key lesson from the recession is that companies should examine whether an ERM program sufficiently addresses business continuity or supply chain risk management.

But, said David Adler, president of Atlanta-based Strategic Risk Advisors and a former real estate industry risk manager, "The real estate industry and others that were hit hard had so much energy tied up in their own crisis management, that if there were an ERM model in place, it would not have made a difference."

But the crisis offered some valuable lessons, he said. "It made a lot more organizations realize they could be vulnerable to some mortal incident," he said.

Another lesson is that "management teams are siloed, and that is not good," Mr. Adler said. "I don't think there's any question that there needs to be a multidisciplinary approach, whether they call it ERM or something different. People should know what other operating units are doing. There should be

See RECESSION page 19

You take care of your business plan.
We take care of your voluntary benefits plan.

Prudential makes enrollment easier *and* more effective.

More value. Less administration. Prudential delivers end-to-end voluntary benefits that add attractive plans to your benefits package to help you compete for talent—without adding costs.

Innovative enrollment solutions. We start by understanding your employees' specific needs. Then, we guide you in your choice of enrollment activities with life-stage and educational communications. We also deliver leading-edge technology solutions, administrative services, and marketing support—plus toll-free customer service for you and your employees.

Real results. A win-win for all. Employees better understand their Life, Disability, Long-Term Care and Dental plan benefits and get the coverage they want and need. And higher participation makes your plans financially stronger.

Backed by experts. From refining your plans to empowering your employees with online tools, we support you with knowledgeable consultation and service—so you can concentrate on running your business plan, not your benefits plan.

Prudential is The Rock® you can rely on.

Contact
James Gemus, Vice President
Life Product Management,
Prudential Group Insurance
at **973-548-6252.**

Download our free report at
www.prudential.com/group

RETIREMENT SERVICES • INSTITUTIONAL ASSET MANAGEMENT • GROUP INSURANCE

Prudential

© 2010. Prudential Financial. Group Life, Disability, and Group Long-Term Care Insurance. Group Insurance benefits are issued by The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102-3777. PRUDENTIAL, PRU and the Rock logo are registered service marks of The Prudential Insurance Company of America.
0184736-00001-00

Did you know?

Large dental network numbers look great . . .

But they don't mean much if the dentist doesn't have any hours in the office. That's why United Concordia only uses "practicing locations" when we talk about our network (and there's over 115,000 of them)!* It's a much better indicator of true access for members.

And, our long-term focus on providing the greatest level of network access to all our members has helped us grow our network in more rural areas than many other carriers. So, while numbers can tell any story you want, United Concordia can provide greater network access to businesses that aren't located right on Main Street.

Ask your producer or United Concordia sales representative how United Concordia's networks, plan designs, and educational materials come together to make a stronger dental benefits plan. Reach us online at www.UnitedConcordia.com or call 1-888-884-8224.

UNITED CONCORDIA®
Insuring America's Dental Health

*PPO network number based on United Concordia internal research & reports, 07/10.

ADV-0017 0810 BUSINSUR • United Concordia dental products are underwritten by one or more of the following subsidiaries of United Concordia Companies, Inc. (UCCI): United Concordia Insurance Company, United Concordia Dental Corporation of Alabama; United Concordia Life and Health Insurance Company, and United Concordia Insurance Company of New York. United Concordia Insurance Company is not licensed in AL, DE, DC, IL, KY, MD, MO, NJ, NY, NC and PA. All products are not available in all jurisdictions. United Concordia policies cover dental benefits only. Fee-for-service and dental HMO products are delivered under separate contracts. For a complete listing of the products and services available in your area and the specific UCCI company licensed to provide those products, contact a United Concordia account representative or log on to our website at www.ucci.com. United Concordia Insurance Company, California certificate of authority number 3739-0, is domiciled in Arizona at its statutory address, 2198 East Camelback Road, Suite 260, Phoenix, AZ 85016. Available Concordia products are underwritten by United Concordia Insurance Company in OK and written on OK policy forms OK9802 (11/07) and OK9802L (11/07). The administrative office of UCCI and/or its licensed corporate affiliates is located at 4401 Deer Path Road, Harrisburg, PA 17110.

University of California system implements ERM to save money amid state budget cuts

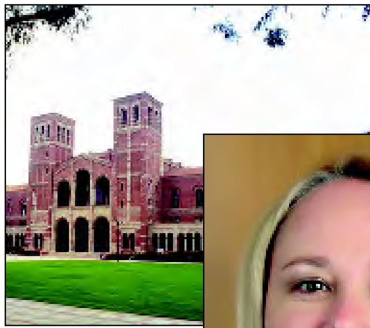
Even before the recession began to sweep the nation in 2008, enterprise risk management proved its value to the University of California system after the state's own financial crisis led to huge budget cuts.

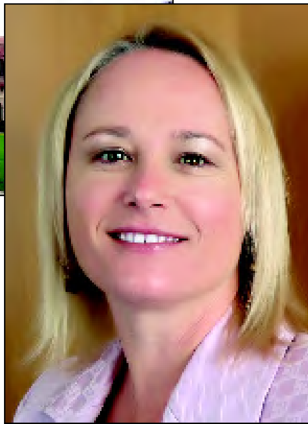
"The ERM program touches every program in the university (system)," said Grace Crickette, Oakland, Calif.-based chief risk officer for the University of California system. "It's a very collaborative program."

The budget cuts that were imposed by the state had repercussions throughout the system, said Ms. Crickette. The ERM program provides operational, compliance, strategic and communication tools that help save costs and create cost-efficiencies that have helped weather the storm and deploy resources effectively, Ms. Crickette said.

Most importantly, "ERM has improved the University of California's creditworthiness," Ms. Crickette said. "ERM is another tool we can use to improve our cost of borrowing."

Ms. Crickette explained how the ERM tools help the university system use resources most effectively: The high-tech part of the program, the Enterprise Risk Management Information System, can gather many types of data from any department. For example, human resource specialists need to work with all departments on succession planning. There are more departments than there are human resource specialists. The ERMIS can tell which departments have the highest percentage of employees soon to retire. Human resources staff would work with those departments first so they are ready to fill vacant positions.





Grace Crickette, chief risk officer for the University of California system said ERM has proven its value to the system.

The ERMIS program, in addition to reducing IT redundancies, also delivers a wide range of key performance indicators through different dashboards. The development of dashboards and indicators is ongoing to meet emerging needs. Some are customized for a specific department, others are not. Such key performance indicators include frequency and severity of workers compensation claims, medical center patient outcomes, and the percentage of departments that have implemented business continuity plans.

"ERM is a process," she said. "You always have to be changing," she said.

While the high-tech part of the program is invaluable, Ms. Crickette, who previously was a risk manager in the private sector, cautions that the low-tech part is equally important.

"In the private sector, a division that operationally looks really good, financially is very successful, may have underlying problems that are only going to show up qualitatively," she said.

—*By Roseanne White Geisel*

Want to STAND OUT from the crowd?

Promote your coverage with Business Insurance Custom Reprints

What are the benefits of reprints?

- Offer a unique opportunity to co-brand your company with a reputable news source
- Help underscore your PR efforts
- Great addition to your press kits
- Great recruitment and retention pieces
- Digital reprints boost your news/press web pages and help drive traffic to your site
- Boost employee and company morale

ASK ABOUT OUR REPRINT PRODUCTS:
HARD COPY REPRINTS • EPRINTS • PLAQUES • BANNERS/BUTTONS • TRADE SHOW COLLATERAL • POSTCARDS

Contact Lauren Melesio at 212.210.0707 or lmelesio@crain.com for information on how to turn your Business Insurance press coverage into great marketing.

Business Insurance
www.BusinessInsurance.com

Questions & Answers

Carol Fox is director of the Risk & Insurance Management Society Inc.'s new Strategic & Enterprise Risk Practice. Ms. Fox recently spoke with Business Insurance Senior Editor Mark A. Hofmann about plans for the new venture and the state of enterprise risk management.

RIMS looks to future of ERM

Q: What's the main focus of the new Strategic & Enterprise Risk Practice?

RIMS' focus always has been on accelerating evolving risk management theory into practice. RIMS seeks to assist those in the boardroom and executive suite by clarifying how risk management, as a strategic discipline, can create as well as protect organizational value. We anticipate leading new research in the development of innovative yet workable strategic and enterprise risk practices across all types of organizations. We expect to deliver programs and techniques designed to increase strategic risk intelligence and risk-based decision-making.

Q: What spurred the creation of the new practice?

The RIMS board recognized the need for developing additional capabilities and creative methodologies for organizations to use. Choosing an organization's overall objectives requires attention to the full spectrum of its risks including its strategic risks, and then managing the combined impact of those risks and interrelated risk portfolio.

Strategic risk practices address the uncertainties in achieving strategic goals and objectives, how risk can be exploited and used as a competitive advantage, as well as the emerging and dynamic threats and opportunities posed by the strategic objectives themselves.

Q: Do you think current economic conditions are sparking greater interest in ERM?

Economic conditions certainly have sparked greater interests in risk management practices by legislative and regulatory bodies. Take for example last year's (Securities & Exchange Commission) rule requiring transparency in the proxy filings of publicly traded companies regarding risk management oversight and compensation practices. Some of those filings specifically reference their enterprise risk management practices using the term ERM. RIMS' own research indicates organizations with ERM programs jumped significantly in 2009 and 2010 from 9% to 28%. Regulators, customers, investors, and other key stakeholders are pressuring organizations to identify and explain how they manage the risk. As more demands are made, the need for more innovative risk practices will expand. Strategic risk practices associated with risk appetite, risk-bearing capacity, and emerging risk will advance.

Q: What are some of the specific actions the new practice is planning to help risk managers link risk management programs or enterprise risk management programs with corporate strategy?

RIMS is forming a new development committee focused on conceptualizing, developing and implementing innovative risk practices to create tighter links with strategy formation and execution. We already have a workshop on integrating year-round with strategic planning, and we'll be launching a new workshop on risk appetite and emerging risks in early 2011. A number of our members'—nonprofits and governmental agencies, as well as for profits—are successfully making the connection.

Q: Where do you expect the practice of ERM to be five years from now?

Considering five years ago only 4% of the respondents to RIMS' Excellence in Risk Management survey indicated they even had an ERM program, we expect that organizations will continue to evolve and integrate their risk practices as a discipline for achieving their overall objectives. In 2008, RIMS reported that only 4% of the more than 500 organizations completing the RIMS risk maturity model assessment had attained the highest maturity level in all seven attributes that the model assesses. For 2015, we expect that percentage will be much higher, and RIMS wants to help organizations get there faster by accelerating evolving risk management theory into daily practice.

Recession: Economic downturn forces companies to implement ERM

CONTINUED FROM PAGE 16

someone in the executive suite that knows all of the operating units."

The Securities and Exchange Commission's 2009 risk management disclosure rules for proxy statements, which were prompted by the subprime mortgage crisis, were a stronger force than the recession for financial companies to evaluate their ERM programs, said Continental Airlines' Mr. Fahrenthold.

Under the rules, companies have to disclose the board's role in risk oversight and whether that role is executed, for example, through a designated risk committee or the audit committee.

"Many companies were looking at risk without a definite structure. Now they had to disclose how risk is looked at," Mr. Fahrenthold said. From his perspective, those rules "pushed a lot of organizations to look at ERM a great deal, and more companies adopted a more effective system for looking at risk and how information is channeled to the board."

Well before the downturn, Standard & Poor's Corp. used companies' risk management programs as a "useful analytic tool" in the rating process, said Mark Puccia, managing director and global criteria officer in insurance and funds ratings

RIMS

'In general, there was a belief that the economic situation would not get as bad as it did. Models being used as the worst-case scenario weren't sufficient.'

Pete Fahrenthold,
Continental Airlines Inc.

at S&P in New York. The rating agency has expanded its criteria for evaluating enterprise risk management programs since the downturn. One criteria is how committed a company is to ERM, determined by document-based evidence that might show, for example, that ERM was used in making a difficult decision.

Some companies in the ERM camp in the wake of the recession requested audits of their ERM programs, according to John McLaughlin, managing director and leader of the risk, governance and control practice for Devon, Pa.-based consultant LECG Corp. In response, the consultant developed a four-phase audit system that examined, among other things: whether the scope of an ERM program is appropriate and whether a company's leadership and rank and file have the same understanding of a program's objectives; the tolerance for failure and errors; ERM's link to an organization's objectives; and how often risks are being recalibrated.

"What was identified as a risk mitigation six months ago may no longer be a good strategy," Mr. McLaughlin said.

Join *BI* for ERM webcast

Enterprise risk management is much talked about but not widely understood, as there are a multitude of approaches. Some are compliance-based, while others regard ERM as a tool to improve organizational performance. What's not debated is the idea that implementing an effective program can contribute to organizational value—the distinguishing feature that makes ERM more than just risk management. ERM is about creating value for the enterprise.

After the financial crisis that emerged in 2008, many people questioned whether enterprise risk management really works. What lessons can risk managers learn from the financial crisis to protect and increase value?

In a live webcast Oct. 27 at 2 p.m. EST, *Business Insurance* will explore the performance-based aspects of ERM and how it can pay off for various organizations.

Panelists for the webcast will be Laura L. Brooks, vp of risk management and chief risk officer for Public Service Enterprise Group, and John J. Hampton, a professor of business specializing in finance and enterprise risk management at St. Peter's College.

Mark A. Hofmann, *Business Insurance* senior editor, will moderate the free webcast. To register, please visit *www.BusinessInsurance.com/webcasts*.

think
solutions.

We're a PBM with the services you want and the results you expect.

PrescriptionSolutions®
A UnitedHealth Group Company

Improving Care. Maximizing Value.

We're about innovation. And choices. And flexibility. And collaboration. And savings. In short, we're what you've been looking for – an industry leader who offers custom prescription benefit plans that control costs without limiting benefits. We build lasting partnerships because we have the expertise to deliver exactly what our clients want. *We think solutions.*

Want to improve your prescription plan? Try our *Benefit Maximizer*: www.benefit-maximizer.com

1.866.236.4393 pbmsales@PrescriptionSolutions.com www.PrescriptionSolutions.com

Taking STOCK

Myron M. Picoult is an independent insurance consultant. An archive of Mr. Picoult's columns is available at www.businessinsurance.com. He can be reached at mpicoult@aol.com.

Experience, knowledge important for success in insurance industry

By Myron Picoult

I continue to read articles and hear commentary about how well the property/casualty insurance industry handled the 2008 financial meltdown. Except for a few notable exceptions, that is a true statement. However, the investment modus operandi and investment time frames for most property/casualty insurance entities did not and do not lend themselves to the various investment and synthetic investment instruments that helped create the financial tsunami.

As I look at the industry's operating earnings for the first half of 2010, I would describe the results as palatable, but with an asterisk attached. Industry results were clearly affected by an increase in catastrophe losses and by what I would describe as sluggish (if not stupid) pricing dynamics in the commercial arena. These facets were partially offset by continued favorable loss reserve development that has been going on for several years. I have long maintained that reserving is partially a metaphysical art. My sense at this juncture is that the industry's loss reserve base is either a little pink or a light shade of black. Simply put, the cushion has been largely used up.

Going forward, the industry has to deal with the confluence of low investment yields, tepid economic growth (that is manifesting itself in very sluggish to negligible premium growth) and poor industry pricing dynamics (particularly in the commercial lines sector) and the prospect of fewer, if any, reserve redundancies popping out. Logic would indicate that the aforementioned should result in a reversal in pricing, particularly in commercial lines. The problem is logic does not work too well in this business and it takes a long time for the logic to take root.

I remain skeptical about the industry's embrace of the current economic environment that many, me included, have referred to as the "new normal" that may persist for some time. Admittedly, I have heard more about customer retention than I have heard in many years, however such programs do not sprout overnight and the customer service and customer interface facets leave much to be desired in large chunks of the industry. Furthermore, I get the sense that a meaningful portion of the industry continues to prefer staying on the side of the road, avoiding substantive innovation and nursing along their bottom lines.

The insurance industry, along with most of corporate America, long has been held hostage by Wall Street's maniacal focus on short-term results. In the insurance business, one year is a relatively short time frame. The words "long term" and "farsighted" seem to have been expunged from the dictionary of finance for fear of upsetting Wall Street's traders. It would be a breath of fresh air to see insurance executives and their corporate brethren putting a stop to earnings guidance, letting the numbers do the talking, acknowledge that there is such a thing as "the long term," and focus more on innovative growth strategies.

There has been a hint in some quarters of possible changes in the hierarchy at some carriers. My ears perked up when I heard about the possibility of some Generation Xers and Yers being eased into more substantive executive positions. Logic says these folks are more attuned to the computer age and individuals' increasing interest in instant access

Continued on next page

Business Insurance White Papers

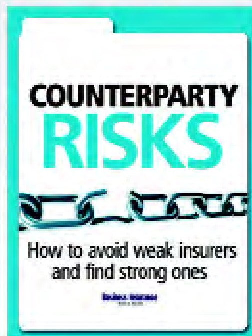
BusinessInsurance.com

NEW White Paper
Hard Market Game Plan:
Steps Risk Managers Need to Take Before Rates Rise

How much longer can the soft P/C market continue? As the economy improves, demand for insurance capacity will return to typical levels and the supply-demand imbalance that has kept rates low will be less of a factor. Meanwhile, insurers have nearly tapped out excess reserves and are running out of excuses to raise rates. If a major catastrophe loss occurs—always a possibility—things will shift in a hurry. This Business Insurance White Paper, **"Hard Market Game Plan: Steps Risk Managers Need to Take Before Rates Rise,"** will explore the steps risk managers should be taking now, while rates remain soft, to soften the blow when it comes.

$100
$29 for Premium Subscribers

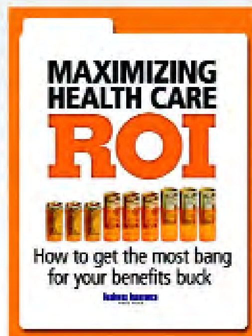
Additional Business Insurance White Papers



Counterparty Risks: How to Avoid Weak Insurers and Find Strong Ones

Know the warning signs of insurer financial trouble before they become your problem. This white paper offers key strategies risk managers can employ to minimize their counterparty exposures to troubled insurers.

$199
$99 for Premium Subscribers



Maximizing Health Care ROI: How to Get the Most Bang for Your Benefits Buck

How can employers tell if the money they invest in employee benefit programs is benefitting their business? This reports provides answers with an analysis of current trends in health care benefits including plan design, cost shifting and a look to what the future holds.

$199
$99 for Premium Subscribers

To view samples, purchase, and see more BI White Papers:
www.BusinessInsurance.com/whitepapers

Taking STOCK

Myron M. Picoult is an independent insurance consultant. An archive of Mr. Picoult's columns is available at www.businessinsurance.com. He can be reached at mpicoult@aol.com.

Experience, knowledge important for success in insurance industry

By Myron Picoult

I continue to read articles and hear commentary about how well the property/casualty insurance industry handled the 2008 financial meltdown. Except for a few notable exceptions, that is a true statement. However, the investment modus operandi and investment time frames for most property/casualty insurance entities did not and do not lend themselves to the various investment and synthetic investment instruments that helped create the financial tsunami.

As I look at the industry's operating earnings for the first half of 2010, I would describe the results as palatable, but with an asterisk attached. Industry results were clearly affected by an increase in catastrophe losses and by what I would describe as sluggish (if not stupid) pricing dynamics in the commercial arena. These facets were partially offset by continued favorable loss reserve development that has been going on for several years. I have long maintained that reserving is partially a metaphysical art. My sense at this juncture is that the industry's loss reserve base is either a little pink or a light shade of black. Simply put, the cushion has been largely used up.

Going forward, the industry has to deal with the confluence of low investment yields, tepid economic growth (that is manifesting itself in very sluggish to negligible premium growth) and poor industry pricing dynamics (particularly in the commercial lines sector) and the prospect of fewer, if any, reserve redundancies popping out. Logic would indicate that the aforementioned should result in a reversal in pricing, particularly in commercial lines. The problem is logic does not work too well in this business and it takes a long time for the logic to take root.

I remain skeptical about the industry's embrace of the current economic environment that many, me included, have referred to as the "new normal" that may persist for some time. Admittedly, I have heard more about customer retention than I have heard in many years, however such programs do not sprout overnight and the customer service and customer interface facets leave much to be desired in large chunks of the industry. Furthermore, I get the sense that a meaningful portion of the industry continues to prefer staying on the side of the road, avoiding substantive innovation and nursing along their bottom lines.

The insurance industry, along with most of corporate America, long has been held hostage by Wall Street's maniacal focus on short-term results. In the insurance business, one year is a relatively short time frame. The words "long term" and "farsighted" seem to have been expunged from the dictionary of finance for fear of upsetting Wall Street's traders. It would be a breath of fresh air to see insurance executives and their corporate brethren putting a stop to earnings guidance, letting the numbers do the talking, acknowledge that there is such a thing as "the long term," and focus more on innovative growth strategies.

There has been a hint in some quarters of possible changes in the hierarchy at some carriers. My ears perked up when I heard about the possibility of some Generation Xers and Yers being eased into more substantive executive positions. Logic says these folks are more attuned to the computer age and individuals' increasing interest in instant access

Continued on next page

We've multiplied our doctors and hospitals. We've subtracted the referrals for specialists.

With HAP, your employees will have access to over 18,000 area doctors and their choice of the leading hospitals. Plus access to a range of specialists—most without referrals—preventive care, personalized wellness programs, and award-winning customer service. The right plan will also help you control costs. Isn't it time you took another look at HAP? Contact your agent or call HAP at 800-HAP-PLUS today.

Improving health. Enhancing lives.

hap.org

UP CLOSE
Comings & Goings

DR. ROBERT BONNER

NEW JOB TITLE: Hartford, Conn.-based clinical practices director for group benefits of Hartford Financial Services Group Inc.

PREVIOUS POSITION: Hartford-based medical director and vp of medical practices for Hartford's workers compensation business. My new role is an expanded role bridging two businesses within Hartford's Commercial Markets: group disability and workers compensation.

GOALS FOR NEW POSITION: To use my medical expertise to help manage non-work-related disability issues.

INDUSTRY OUTLOOK: We continue to be pressured by the push and pull of the economic downturn. Some employees, who have disabling medical conditions, are staying on the job instead of going on disability because they are worried about losing their position. Their productivity is compromised. We also have others who anticipate being part of layoffs and decide to go on disability rather than being laid off. Our goal is to help get people back to active, productive lives after a disabling illness or injury during a time when fewer jobs are available.

ADVICE: My advice for physicians entering this industry would be to focus on functionality, not a person's medical diagnosis. To manage workers' return to work after a disability, we need to look at their job functions, as well as their abilities.

OUTSIDE THE INDUSTRY, A DREAM JOB: Professional musician. I play tuba with community organizations every week.

MOST PASSIONATE ABOUT: My new granddaughter Julia, who was born on July 13, 2010.

FAVORITE BOOK: I've read Tom Clancy's "Red Storm Rising" a few times. The techno thriller is pure escapism.

ON A SATURDAY AFTERNOON: Running errands.

E-MAIL OR PHONE, AND WHY: Phone because I like to hear a person's voice inflections.

Comings & Goings ONLINE

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

TO SUBMIT ITEMS

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news and photos of recently promoted, hired or appointed senior-level executives to:

Mike Tsikoudakis
Business Insurance
360 N. Michigan Ave.
Chicago, Ill. 60601-3806
mtsikoudakis@businessinsurance.com

POSTING THIS WEEK

ASSOCIATIONS:
- Assn. of Average Adjusters of the United States
- London Business Interruption Assn.

BROKERS:
- Aon Risk Solutions
- Jardine Lloyd Thompson Group P.L.C.
- Silberstein Insurance Group

INSURERS:
- Chaucer Singapore Pte. Ltd.
- CNA Insurance Cos.
- Harleysville Group Inc.

REINSURANCE:
- BMS Group Ltd.

Taking Stock: Experience, knowledge key

CONTINUED FROM PREVIOUS PAGE

and information. This in turn could foster a better sense of the many faults most insurers have with their customer service operations. Insurer databases and data management need improvement and there is increasing demand from clients for insurance entities to go beyond their traditional roles of purveyors of coverage and incorporate some modicum of strategic advice. Indeed, the industry has to become more sensitive to the technology that enables clients to get their insurance information the way they want as opposed to only the way the insurer wants to distribute the information and the policy.

However, speed bumps have arisen. The "new blood"—and I am referring to the insurance industry and corporate America—seems to be more focused on expediency, moving on to the next project, and booking the revenues. The recent revelations that JPMorgan Chase & Co., GMAC Mortgage L.L.C. and Bank of America Corp.'s mortgage operations all have been heavily involved in the "robo-signing" of foreclosure documents underscores the comment on expediency and the flagrant abuse of the concept of doing a job correctly. In a multitude of operations, it appears that the corporate modus operandi has shifted to a belief that "staff is a necessary evil." Doing the job correctly, which can be defined in many ways, seems to have taken a backseat to the process. There is very little appreciation, if any, for the details. I have heard this comment from many folks who are involved with the property/casualty insurance industry and interface with underwriters and other company personnel as well as brokers.

> I get the sense that a meaningful portion of the industry continues to prefer staying on the side of the road, avoiding substantive innovation and nursing along their bottom lines.

There are many ways for employees to gain experience and knowledge. The axiom seems to have gone awry at too many carriers. There are clearly employees who are wedded to old methodologies and processes and impede progress if top management is so inclined. Management and employees have to gain a greater appreciation for details. They have to put themselves in the shoes of their customers to get a better understanding of what their customers' needs and wants are in terms of service and products.

In discussing this with an esteemed colleague a few days ago—a student of the industry—he simply said "there are no CliffsNotes for the insurance industry. It's all about experience and knowledge."

Business Resources

To place your ad, contact Monique Murray 212.210.0129 • E-mail: mmurray@BusinessInsurance.com

Business Insurance, Classified Department, 711 Third Ave., New York, NY 10017-4036 • Call for details on blind box and internet advertising

BENEFIT STATEMENTS

BENEFITS SHOULD MAKE A STATEMENT!

Our professional communicators and extensive production resources, assure accurate personalized information for each employee:
- Customized designs
- Always accurate and on time
- Highly competitive pricing
- Strong IT support

866.440.4402
info@aboutyourbenefits.com
www.aboutyourbenefits.com

EDUCATION & TRAINING

Florida State University
Totally ONLINE master's degree in Risk Management and Insurance
Complete your degree from anywhere in the world
Classes taught by full-time faculty
Affordable and Flexible
Visit http://riskmanagement.fsu.edu

Professional MarketPlace

WORKERS' COMPENSATION SERVICE PROVIDER

WHAT Color IS YOUR WORKDAY?

Paint over that shade of gray with cost containment a brighter way! Based on input from real customers, VeroSuite™ by Modern Medical is a set of web-based tools designed to make managing claims easier and more cost-effective.

As a secure gateway to these tools, TruNet™ provides customers with real results in real time with helpful features such as: Real Time Rejections, Reporting, and Analysis; Customized Alerts; Simplified Ordering of Services; Easy Dashboard View of All Claimant Information in One Place.

Call 800-547-3330 or visit modernmedical.com to learn more!

Pharmacy Benefit Management Services & Durable Medical Equipment

LEGAL NOTICE

IN THE MATTER OF SECTION 104B OF THE COMPANIES ACT 1981 OF BERMUDA (THE "ACT") AND IN THE MATTER OF THE AMALGAMATION OF SCHOOL, COLLEGE AND UNIVERSITY UNDERWRITERS, LTD. AND SCUUL USA, INC.

NOTICE IS HEREBY GIVEN that School, College and University Underwriters, Ltd., a Bermuda exempted company, intends to amalgamate pursuant to the provisions of Section 104B of the Act with and into SCUUL USA, Inc., a Vermont corporation, and to continue as SCUUL USA, Inc. in Vermont, an appointed foreign jurisdiction for the purposes of the Act.

APPLEBY
Bermuda Attorneys for the Applicant

Need to Publish a Legal Notice, Announcement or RFP ?

Contact Monique Murray at 212-210-0129

Guidance: Health care reform law 'grandfathered' status clarified

CONTINUED FROM PAGE 3

jeopardize the grandfathered status of all the plans.

In the FAQs, the agencies affirm that changes to one plan will not affect the grandfathered status of the other plans.

"It is permissible to treat the PPO, POS arrangement and HMO as separate benefit packages. Accordingly, if any benefit package ceases grandfather status, it does not affect the grandfather status of the other benefit packages," the guidance said.

Another situation addressed in the new guidance involves employers adding new tiers of coverage to reflect the number of individuals that are in an employee's family unit and receive coverage through the employee's employer.

For example, some companies are modifying tiers of coverage in which they are moving to a multi-tier structure of employee-only coverage, employee plus one dependent, employee plus two dependents, and employee plus three or more dependents. That compares to more traditional designs, such as a dual approach, in which employers only offer two tiers of coverage: employee-only and family coverage.

In the dual and multi-tier approaches, the premium employees pay for coverage is linked to the tier they are in. In prior guidance, it was not clear how grandfathering status would be affected by changing structures.

The new guidance says as long as the employer contribution rate for a new tier is within five percentage points of the contribution rate for a prior corresponding tier, grandfather status would be maintained.

For example, if the employer previously paid 50% of the premium for family coverage, the employer would have to pay at least 45% for any new tier of coverage—other than employee-only coverage—for the tier to enjoy grandfathered status.

The guidance also makes clear that in nearly all situations, dental and vision plans are exempt from the requirements set by the health care reform law, such as a ban on lifetime dollar limits.

Dental and vision benefits are considered "excepted benefits" when they are offered under a separate policy or if employees have a right not to receive the coverage or if they elect coverage or are required to pay an additional premium, according to the guidance.

"If a plan provides its dental or vision benefits pursuant to a separate election by a participant and the plan charges even a nominal contribution towards the coverage, the dental or vision benefits would constitute excepted benefits and the market reform provisions would not apply to that coverage," the guidance says.

Common databases closer to reality

Surplus lines market moves to streamline exchange of information

By MICHAEL BRADFORD

ATLANTA—After years of work, the surplus lines insurance market is making slow but steady progress toward an elusive goal of developing common data standards that would streamline policy placement, claims administration and other functions.

"We've been struggling for quite some time within in our industry because we've got to figure out a better way to exchange information among all of our different systems," said Angelyn Treutel, vp of Treutel Insurance Agency Inc. in Bay St. Louis, Miss., during a recent panel discussion. "Because right now, guys, it's not working."

Ms. Treutel was a panelist at a discussion on technology standards for the surplus lines market during the annual conference of the National Assn. of Professional Surplus Lines Offices Ltd. in Atlanta last week.

"We have got to get away from all the paper and all the redundant data entry, everyone having a different way that they want to do things," Ms. Treutel said. "I personally support about 30 different carrier or MGA markets and everybody wants everything done differently."

Ms. Treutel is a co-chair of the Retail Agent E&S Initiative—a joint effort by NAPSLO, the American Assn. of Managing General Agents, the Independent Insurance Agents and Brokers of America's Agents Council for Technology, the Assn. for Cooperative Operations Research & Development and Lloyd's of London that aims to find a way to standardize data transfer in the excess and surplus lines market.

John Deibler, who also co-chairs the Retail Agent E&S Initiative and is a principal at JBD Consulting L.L.C. in Scottsdale, Ariz., explained that the initiative's makeup of "E&S-oriented industry associations" has made it possible to gather input from a wide spectrum of market participants who belong to those organizations.

"We have made what we believe is significant progress over the last couple of years," Mr. Deibler said of work that the group hopes will lead to technology standards in the surplus lines market.

Still, there is much to be done, Mr. Deibler said. "We have a huge, profitable market," he said, "but it's primarily a paper-based manual processing flow (with) lots of unique forms and a substantial amount of redundant data entry."

"We all struggle today with our systems because we all are doing things so differently," said Tammie Miller, business automation manager at Southern Cross Underwriters Inc. in Conway, S.C., and chair of a subgroup within the initiative that works with Lloyd's to implement common standards between that marketplace and its U.S. coverholders, which are intermediaries authorized to accept risks on a syndicate's behalf.

> **'It creates an E&O exposure for all of us because everything is done differently.'**
>
> Angelyn Treutel,
> Treutel Insurance Agency Inc.

The initiative's vision is for agents and brokers to be able to receive information, input it into their agency management systems and send it in a single format to all participants in the coverage distribution chain, Ms. Treutel said. "The only way to make this happen is with standardized electronic data exchange," she said.

"We need to be able to request quotes, issue policies, make inquiries, request changes, and then have the information downloaded and synchronized so that we all have the same information at our fingertips," said Ms. Treutel.

Apart from generating efficiencies, standardizing data exchange will remove an errors-and-omissions risk that comes with the old paper system, Ms. Treutel said. "It creates an E&O exposure for all of us because everything is done differently. We have to have standardized processes."

The nonadmitted market has some catching up to do with its more tech-savvy colleagues in the standard market, according to Ms. Treutel.

That market is using "real-time interfaces where I can put information into my system one time and it's able to be transferred to multiple carriers," she said.

Adam Stafford, senior project manager of market operations at Lloyd's of London, said work is under way to make it easier for Lloyd's coverholders to do business with the marketplace in London.

MGAs dealing with Lloyd's syndicates have to submit lots of different data to each underwriter, depending on what information they require, Mr. Stafford said. "There is inconsistency in the data we ask of our MGAs," he said, causing inefficiencies, adding expense to the process and raising questions about the integrity of so much varied information that has to be re-keyed.

"What we need to do to make it easier to do business with Lloyd's is to standardize that information where we can," said Mr. Stafford. It won't be possible to boilerplate all information related to the large, complex risks covered at Lloyd's, he said, "but there is some core information which we need to move towards standardizing."

The key to standardizing data flow is to adopt common ACORD standards, Mr. Stafford said. "We are working closely with ACORD to develop standards for the London market. These standards will underpin everything we do, not just for the coverholder model, but also in the open market in London as well."

Lloyd's, along with ACORD, already has developed standards that apply to coverage placement, accounting and claims administration in the retail insurance market in London, Mr. Stafford said.

New coverholders will be expected to use the new standards as of Jan. 1, 2011, Mr. Stafford said. Existing coverholders that want to keep their systems are advised to work with their brokers to determine how those systems can function in tandem with the standardized framework Lloyd's is adopting, he said.

Ms. Miller said "it is clear that Lloyd's has made tremendous progress in standardizing their data requirements," and her group will continue its work with Lloyd's to help ensure U.S. coverholders adapt to those standards.

NAPSLO: Surplus lines rates projected to rise

CONTINUED FROM PAGE 4

market is about to change. Companies do not continue to write business, knowingly, at an operating loss. We have confidence that the pricing cycle is currently in the process of correcting itself."

He noted, however, that uncertainty among insurance market executives and policyholders has hampered growth in the economy and, therefore, the surplus lines market.

Executives interviewed at the conference were divided over the direction of the market, but tended to agree with Mr. Berkley that a recovery is slowed by general economic uncertainty.

"We need certainty, and until we get certainty from the external environment, much of which is driven from Washington, D.C., we are going to have a hard time seeing significant increases in demand for our product," said Peter Eastwood, president and CEO of Boston-based Lexington Insurance Co., a unit of Chartis Inc.

"What happens when there is uncertainty is people freeze," he said. "When they are uncertain about the effect something is going to have on you, unfortunately many people and many corporations do nothing."

"The uncertainty is very unhealthy," agreed Alan Jay Kaufman, president and CEO of Burns & Wilcox Ltd. in Farmington Hills, Mich. And, he did not express as much confidence as Mr. Berkley that pricing is experiencing a correction.

"I think we will see a little bit more erosion of rates" in the short term, with some flattening in 2011, he said. "But that's about it" as far as price changes are concerned, Mr. Kaufman said.

"In the absence of a market-changing event, we don't expect any real change in the next 12 to 24 months," said David Perez, Hamilton, Bermuda-based president and chief underwriting officer of the global casualty unit of Torus Insurance Holdings Ltd.

Louis D. Levinson, New York-based president of the excess and surplus lines operations of Argo Group U.S., a unit of Argo Group International Holdings Ltd., said he is seeing encouraging signs in the marketplace.

"I'm an optimist by nature and generally I think the market is changing and it is improving," Mr. Levinson said. "For example, our rate decreases have stopped. Every quarter they've gotten better, to the point where we are now wrapping up the third quarter and we may in fact be rate positive. It's definitely moderated and we're seeing a slow improvement, although revenues continue to be depressed and there are very few startups out there."

When business begins to pick up, the surplus lines market, which is flexible and can respond quickly to coverage needs because of its freedom from rate and form regulation, will be well-poised to grow, Mr. Eastwood said.

"Once we get back to an environment where the business is growing again, I think you'll see that the surplus lines industry probably grows at a pace that's greater than the broader property/casualty industry," Mr. Eastwood said.

Mr. Berkley said the signs are in place for an economic recovery that should be good news for insurers.

"Businesses have substantial liquidity, profitability is generally good," and workers are productive, according to Mr. Berkley.

3,000 turn out for NAPSLO event

ATLANTA—The 2010 NAPSLO Annual Convention held Oct. 11-14 in Atlanta drew around 3,000 attendees.

Letha E. Heaton, vp of marketing at Admiral Insurance Co. in Cherry Hill, N.J., was elected president of NAPSLO at the meeting. Robert T. Sargent of Mercator Risk Services Inc. in Hartford, Conn., was elected vp.

Next year's conference is scheduled for Oct. 10-13 in San Diego.

Information on NAPSLO and next year's conference is available at *www.napslo.org.*

—By Michael Bradford

Asbestos: U.K. ruling muddles cover issues

CONTINUED FROM PAGE 3

mesothelioma claims.

The decision means some employers may find they do not have coverage for workers' claims, experts say. And some claimants will be left without recourse to compensation if their former employer is insolvent, they add.

The case is likely to go to the U.K. Supreme Court. Zurich Insurance Co. Ltd., the U.K. unit of Zurich Financial Services Group, said it plans to appeal the judgment.

Under the Court of Appeal ruling, whether a policy is triggered depends on whether the words "contracted" or "sustained" are used in the policy to refer to when a claimant develops an illness.

The "sustained" wording came into use broadly after 1972, when the Employers' Liability (Compulsory Insurance) Act 1969 came into force.

Lord Justice Rix ruled that policies dated after the Employers' Liability (Compulsory Insurance) Act 1969 would respond if mesothelioma were caused during the policy period.

> **'This outcome not only impacts on the people who are dying from this deadly disease, but also raises concerns for employers still in business, and local councils, who may find there is a black hole in their insurance cover.'**
>
> Helen Ashton, Irwin Mitchell L.L.P.

He said a disease can be said to be "contracted" when it is caused but that mesothelioma is not "sustained" when a claimant inhales asbestos, but rather when the illness develops.

Lord Justice Burnton ruled that insurers were entitled to deviate from the previous market practice of indemnifying claimants on the basis of when they were exposed to asbestos until there was better understanding of the cause and development of mesothelioma. He said that, in his opinion, policies that contained the "sustained" wording would only respond if they were in place at the time a tumor started to develop.

Policies that used the "contracted" wording would respond if they were in force at the time the claimant was exposed to asbestos, he said.

Lady Justice Smith said policies should be interpreted according to how they were understood at the time they were underwritten.

Lady Justice Smith noted that she did not consider the court bound by the 2006 ruling in the case of *Bolton Metropolitan Borough Council vs. Municipal Mutual Insurance Ltd. and Commercial Union Co. Ltd.*, which ruled that a claimant's injury was not sustained when he inhaled asbestos but when his illness began to develop.

That was a public liability case and was, therefore, not applicable in this instance, according to Lady Justice Smith.

The Court of Appeal judges' differing opinions mean policy wordings will have to be studied in each individual case and that some employers may find themselves liable to pay compensation but not covered by insurance, experts said.

"This outcome not only impacts on the people who are dying from this deadly disease, but also raises concerns for employers still in business, and local councils, who may find there is a black hole in their insurance cover," said Helen Ashton, a partner in the Sheffield, England, office of law firm Irwin Mitchell L.L.P.

The lack of uncertainty brought by the judgment is "deeply troubling" and means that employers may lack coverage for their liabilities, according to law firm Berrymans Lace Mawer L.L.P.

Richard Mattick, of counsel at policyholder law firm Covington & Burling L.L.P. in London, said the ruling introduces a "great deal of uncertainty and complexity" for employers facing claims.

Many of the insurers involved in the test cases are insolvent. But Zurich said it was disappointed that the Court of Appeal had not followed the 2008 High Court ruling, which it said was consistent with the way active insurers "have always handled industrial disease claims, including mesothelioma."

It said in a statement that the immediate effect of the ruling would be that "there will be no insurance in place for a number of policyholders and, as a result, victims and their families will be without compensation."

Nick Starling, the director of general insurance and health at the London-based Assn. of British Insurers, said active insurers remained committed to paying compensation to claimants affected by asbestos-related disease.

Equitas Ltd., the runoff reinsurer for the pre-1993 long-tail liabilities of Lloyd's of London syndicates, said it would continue to pay compensation, without admitting liability, to claimants whose former employer is no longer in existence or for whom there is no insurance policy to respond.

"Equitas has made the decision that for mesothelioma victims in this position, where they would previously have been compensated by a Lloyd's of London policy for which Equitas is responsible, it intends to make payments, calculated in the same manner as previously, on an ex-gratia basis," it said in a statement.

Sludge: Spill highlights environmental law

CONTINUED FROM PAGE 1

ty for damage to land and water, including protected species and habitats, said Valerie Fogleman, an attorney and consultant at Guilford, England-based law firm Stevens & Bolton L.L.P.

Other pollution incidents have occurred since the directive was implemented, said Ms. Fogleman, who also is professor of law at Cardiff University in Wales, but the Hungarian spill is the first test for the directive, which has been broadly publicized.

There still is considerable uncertainty about how officials will apply the new environmental laws to significant pollution events such as the one in Hungary, said Mr. Warman of Marsh. For example, the cross-border nature of the Hungarian spill, which has contaminated rivers in neighboring countries, will test the application of the directive across borders, he said.

The directive significantly increased the environmental liabilities of companies operating in the European Union, experts say.

General liability policies purchased by many companies typically do not have the limits or scope of coverage to protect policyholders against major losses, experts say.

Allianz S.E.'s Hungarian subsidiary, Allianz Hungaria Biztosító Zrt., confirmed it has provided liability insurance to MAL, though a spokeswoman would not provide further details.

MAL did not return calls, but Reuters quoted its chairman as saying the company had 20 million forints ($101,360) in third-party liability limits. Market sources in London said the company's pollution sublimit is thought to be around half that figure.

Property damage from the disaster is estimated to be about 1 billion forints ($5.1 million) and total damages could be 10 times that amount, said a spokeswoman for Magyar Biztosítók Szövetsége, the Assn. of

REUTERS

Toxic sludge poured from an aluminum plant in Hungary earlier this month. The level of damages will be determined under new E.U. laws.

Hungarian Insurance Companies.

"MAL's limits would seem wholly inadequate given the course of events that has transpired," said Simon Harwood-Matthews, a London-based environmental underwriter at XL Insurance, a unit of XL Capital Ltd.

General liability policies typically don't cover statutory cleanup orders to restore polluted habitats and species and pay compensatory and complimentary damages, he said.

The spill likely will raise awareness of the increased environmental liability exposures E.U.-based companies face under the directive, said Karl J. Russek, head of environmental risk at ACE International in London. "Traditional general liability cover would not be adequate in an incident of this size. Some sudden and accidental cover may have been available but it will fall well short of the liabilities," he said.

The majority of environmental liability insurance policies purchased by Hungarian companies provide basic sudden and accidental coverage and are attached to general liability policies, said a spokesman for JLT Hungary Biztosítási Alkusz Kft., part of Vienna-based GrECo Group.

Policyholders in Europe tend to buy low limits of environmental liability cover, said Duncan Spencer, vp of environmental liability impairment at Liberty Mutual International Underwriters in London.

However, environmental impairment liability policies, similar to those offered in the United States, have been adapted in light of the E.U. directive.

The number of insurers offering EIL insurance in Europe has increased since the directive was introduced and the price of coverage has plummeted, said Mr. Spencer of Liberty Mutual.

Last week the European Commission issued a report into the effectiveness of the directive, saying that it was not in a position to make a decision on whether to introduce mandatory financial guarantees (see related story).

European risk managers generally oppose compulsory financial guarantees, said Pierre Sonigo, general secretary of the Brussels-based Federation of European Risk Management Assns. But the Hungarian spill likely will strengthen the case for mandatory requirements, he said.

E.U. environmental liability directive delayed

By SARAH VEYSEY

BRUSSELS—It is too early to judge how effective the E.U. environmental liability directive has been in remedying environmental damage or whether an E.U.-wide compulsory liability financial guarantee fund is needed, according to a report by the European Commission.

The report, published last week, also said it's too early to assess whether there is sufficient insurance capacity to cover liabilities under the directive. The directive establishes a "polluter pays" principle of strict liability for companies that cause environmental damage through their business operations.

After several delays, the directive was implemented in all states on July 1, 2010.

The European Commission's report on the effectiveness of the directive's implementation was delayed by this time lag.

There have been few cases—probably about 50—that have fallen under its scope, according to the report.

The implementation delay has meant it is difficult to assess the effectiveness and availability of insurance to cover potential liabilities, the report said.

Some member states have opted to impose mandatory financial guarantee pools for liabilities under the directive, while others have existing mechanisms in place or have opted to allow the insurers to offer coverage.

According to the report, "there is not sufficient justification at the present time for introducing a harmonized system of mandatory financial security."

But it said it may address the question of whether such a plan is required before the next slated review of the directive in 2014.

The Brussels-based Comité Européen des Assurances, which represents insurers and reinsurers in Europe, welcomed the decision not to propose an E.U.-wide compulsory plan at this time.

"The CEA is pleased that the European Commission report recognizes that insurers are steadily developing products to provide environmental liability cover…based on the expertise they have with environmental losses," said CEA Director General Michaela Koller, in a statement.

The report can be viewed at *http://ec.europa.eu/environment/legal/liability/index.htm*.

Research shows cost of employee obesity

Health care expenses rise with body mass

By JOANNE WOJCIK

A study that attempts to quantify the cost of obesity in the workplace should help health benefits professionals persuade upper management that weight management programs will yield a return on investment, health benefit experts say.

However, some health benefit experts say the study, which estimates obesity costs U.S. employers $73.1 billion annually in increased medical costs and lost productivity, may be underestimating the scope of the problem because it does not also take into account disability and workers compensation costs.

Others questioned whether the impact on productivity losses may have been overstated because it relies heavily on presenteeism data, which was self-reported.

"The Costs of Obesity in the Workplace," which was published in the October issue of the Journal of Occupational and Environmental Medicine, attempts to quantify per capita and aggregate medical costs and the value of lost productivity, including absenteeism and presenteeism, as a result of workers being overweight or obese.

$73.1b

ESTIMATED value of medical expenditures resulting from excess weight

To measure the impact of obesity on medical costs, researchers used the Medical Expenditure Panel Survey, a survey by the Agency for Healthcare Research and Quality that quantifies annual medical spending by type of service and source of payment.

Absenteeism and presenteeism—a lack of productivity from those present at work—were assessed using Consumer Health Sciences' U.S. National Health and Wellness Survey, the largest self-reported patient database in the health care industry, and the Work Productivity and Activity Impairment questionnaire, an instrument commonly used by health researchers to assess employee productivity loss related to health.

The study found that per capita medical expenditures, presenteeism and absenteeism costs ranged from $9,507 for normal weight men—those with body mass indexes between 18.5 and 24.9—to $15,561 for obese men with a body mass index of 40 or higher. For women, the per capita costs ranged from $10,241 for normal weight to $16,969 for those whose BMIs were 40 or higher.

Overall, the estimated value of medical expenditures, absenteeism and presenteeism resulting from excess weight was $73.1 billion per year. 82% of this expense was equally split between medical expenditures and presenteeism, while 18% resulted from increased absenteeism.

Researchers said this figure is roughly equivalent to the cost of hiring an additional 1.8 million workers per year at $42,000 each.

Marianne Fazen, executive director of the Dallas-Fort Worth Business Group on Health, said the study will be "helpful to employers to justify the programs they have in place for weight management. I know they have been taking a leap of faith in many cases waiting for an ROI. This will certainly give them more ammunition for justifying those costs to senior management."

Moreover, "in this economy, with all the layoffs and high unemployment, I'm thinking what a case this is for investing in weight management," she said.

"Even though it is hard to uncover the direct cost of obesity in claims data, studies like this make it possible to infer what the cost is," said Laurel Pickering, director of the New York Business Group on Health. "Employers really should do what they can to address obesity because it does have a huge cost on the organization."

But Thomas Parry, president of the Integrated Benefits Institute in San Francisco, says that while the study "certainly says obesity is associated with far more than medical costs…in a sense it underestimates the impact of productivity."

For example, it doesn't include how obesity affects occupational and non-occupational disability costs, he said.

LuAnn Heinen, a vp at the National Business Group on Health in Washington and director of the NBGH's Institute on Innovation in Workforce Well-being, agreed that if the impact of obesity on short-term disability, long-term disability and workers comp claims were included in the study, the cost estimate would have been higher.

But Shelly Wolff, national leader for health and productivity at Towers Watson & Co. in Stamford, Conn., questioned the validity of the presenteeism data, suggesting it may have been overstated.

"When two-thirds of the costs are attributable to presenteeism, it makes you wonder whether it's being accurately measured. Presenteeism is a proxy of productivity, not an absolute. It's not unlike health risk questionnaires that are self-reported data," she said.

However, Cristi Travis, CEO of the Memphis Business Group on Health, said that "even though it's self-reported data, it's the best measure we've got. Getting feedback from employees about how they feel out these issues is valid. And even if presenteeism is taken out of the equation, it's still a lot of money when you put the absenteeism and medical costs together."

The study is available online to subscribers and purchasers on the Journal of Occupational and Environmental Medicine website at *http://journals.lww.com/joem/pages/currenttoc.aspx*.

Obesity: New bias threat seen for firms

CONTINUED FROM PAGE 1

without accommodation. The lawsuit seeks compensation for losses resulting from her termination, among other things.

RHD issued a statement saying in part it "emphatically and categorically denies that it discriminated against Lisa Harrison on the basis of her obesity. RHD looks forward to being fully exonerated of any such claims and will defend itself against these baseless charges, should the EEOC continue to pursue them." The company added that it was "extremely disappointed that the EEOC filed this action without first conducting an investigation or allowing RHD to demonstrate the wrongness of the EEOC's position."

While the EEOC charges that Ms. Robinson's employer perceived her as disabled, employees also can successfully file discrimination charges against their firms if they are, in fact, disabled, or have a history of disability and are treated unfavorably. The law requires employers to provide a reasonable accommodation unless doing so causes significant difficulty or expense.

Mr. Juge said the case does not present a new drive on the part of the agency. The EEOC looks at this issue "with close scrutiny all the time," he said.

Allan H. Weitzman, Boca Raton, Fla.-based partner with law firm Proskauer Rose L.L.P. and co-head of the firm's employment law counseling and training group, said obesity discrimination claims "have been around for a long time and I would not look at this case as newsworthy or the setting of any trend."

But others disagree, and believe this case could signal more litigation.

The case "sounds a cautionary note for employers that they should be aware that the EEOC is taking an interest in claims of discrimination by obese individuals," said Laura Sack, a shareholder with law firm Vedder Price P.C. in New York.

Margaret J. Grover, an attorney with Kronick, Moskovitz, Tiedemann & and Girard in Walnut Creek, Calif., said, "I think this is a case that we have to watch very carefully." Ms. Grover said while there have been court rulings saying that those who are obese are not in a protected class, "I know the EEOC is trying to change that outlook and that it's going, I think, to be relying heavily on a lot of the literature that's come out talking about an epidemic of obesity which seems to make it a medical classification."

"Sometimes, these obesity cases in the past haven't really gone anywhere, but the fact that the EEOC is taking this on may end up having plaintiffs attorneys take a second look at these kinds of issues," said Sally Griffith Cimini, a shareholder with law firm Babst, Calland, Clements & Zomnir, P.C. in Pittsburgh.

'You really have to look at somebody's actual ability to do a job.'

Sally Griffith Cimini, Babst, Calland, Clements & Zomnir

In a society, "where people are starting to pay attention to obesity and its long-term effects, I think that it doesn't surprise me that we're actually running into this kind of claim," she said.

Experts say the ADA Amendments Act, which is not applicable in Ms. Robinson's case because it was enacted in January 2009, after her termination, will make it more difficult for employers to win summary judgments in discrimination cases, including those where obesity is involved.

Among other changes, the act expands who is covered under the "regarded as" disabled category, which experts say could be applicable to obese individuals (*BI*, Aug. 2).

Jonathan T. Hyman, a partner with law firm Kohrman Jackson & Krantz P.L.L. in Cleveland, said with the Amendments Act, for employees to successfully file discrimination charges, "it's enough that the employer perceives them as having some kind of impairment that substantially limits them and it's a totally subjective test."

William R. Pokorny, a partner with law firm France Radelet P.C. in Chicago, said, "The courts obviously have not done a lot of interpretation under the new law, so we don't know exactly how this is going to come out," but "it's clear it's going to be a much broader standard" for establishing coverage under the ADA.

Ms. Cimini said employers should not make assumptions based on a worker's characteristics. "You really have to look at somebody's actual ability to do a job, and you have to look at the actual performance factors."

Ms. Sack said "employers should always take care to make every employment decision based on legitimate business needs, and not on personal characteristics that have nothing to do with someone's ability to perform the job at issue."

They should also consult with their counsel if they "are contemplating taking employment action against someone whom they believe may have a medical condition that may constitute a disability," she said.

Mr. Hyman said an employer needs "to be doubly, or triply, vigilant in how it handles personnel issues" with individuals who have medical conditions "in making sure that all work rules are followed, that all performance problems are documented, that they are treated no worse, if not better, than other similarly situated employees without medical conditions."

Wellness programs unaffected by obesity bias threat: Experts

By JOANNE WOJCIK

Employers shouldn't be dissuaded from offering financial incentives to encourage employees to participate in weight-management programs despite the Equal Employment Opportunity Commission's decision to take up an obesity discrimination case, legal and health benefits experts say.

The case, *Equal Employment Opportunity Commission vs. Resources for Human Development Inc.*, involving an employee who allegedly was terminated after her employer decided her obesity prevented her from performing her job, is more about employment law than benefits law, these experts note.

However, the case ultimately could decide whether obesity should be treated as a disability, something that federal regulators have not yet ordained, they add.

Regarding wellness efforts, James R. Napoli, Washington-based senior counsel with Proskauer Rose L.L.P., said: "Make sure that the structure of the financial incentive is more along the lines of a reward, like a premium discount. That would be more likely to be permitted than if you had a penalty like a premium surcharge," he said.

He added that he has heard informally the EEOC may be re-examining its position on wellness programs and may issue some form of guidance soon.

The EEOC suit involves "a hiring-and-firing decision. I don't think it impacts future wellness programs," said Larry Boress, president of the Midwest Business Group on Health in Chicago. "I don't know how this would apply to a wellness program. It doesn't talk about her participating in a wellness program or about reaching certain goals," he said.

As long as employers give employees who participate in wellness programs that pay incentives a "reasonable alternative" if they are unable to meet certain goals, they should be safe, according to Jay Kirschbaum, vp-national director in Willis Group Holdings P.L.C.'s legal and research group in St. Louis.

For example, a wellness program that requires employees to have a cholesterol level under 200 in order to receive a premium reduction would violate the nondiscrimination provisions of Health Insurance Portability and Accountability Act. However, a program that requires

See WELLNESS next page

Wellness: Programs unaffected

CONTINUED FROM PAGE 24

employees complete a health risk assessment to enroll in a plan passes muster because it does not discriminate based on certain health factors.

"Most employers these days are not really tying rewards in wellness programs to health status.... It's usually participation-based," Mr. Kirschbaum said.

Mike Thompson, a principal with PricewaterhouseCoopers L.L.P. in New York, said that while "clearly the issue of discrimination against people with obesity is a serious one, it doesn't mean that employers can't design reasonable penalties and incentives. In fact, those penalties have been spelled out and further encouraged through health reform."

The recently enacted Patient Protection and Affordable Care Act increases the maximum incentive amount to 30% of the cost of individual coverage from the 20% limit under HIPAA.

Though the EEOC suit may not deter the use of incentives in wellness programs, it still could have an impact on disability determinations, affecting employer-provided benefits and employment policies in a different way, legal and benefits experts say.

Mr. Kirshbaum said the case ultimately could give employers some guidance about whether they should treat obesity as a disability that would be protected from employment discrimination under the Americans with Disabilities Act.

"There isn't anything in the law that states that being obese is a disability," he said. However, "there's been movement in that direction, and certainly, with this lawsuit, the EEOC is suggesting that."

Judy Greenwald contributed to this story.

Beazley: Co-founder of Lloyd's of London firm dies

CONTINUED FROM PAGE 3

As a member of the Chairman's Strategy Group in 2003, he helped Lloyd's launch its Franchise Board, one of several reforms.

Richard Ward, CEO of Lloyd's, said: "I was very sad to hear of Andrew's passing. He was a leading figure in the market, played a key role in establishing the Franchise Board and supported Lloyd's through some of its most difficult years. He will be sorely missed."

In 2004, Mr. Beazley led the creation of an admitted U.S. insurer, Beazley Insurance Co. Inc., as a way for the group to write business that generally was not placed in London. That unit wrote about $15 million in gross premium in 2005 and grew to more than $371 million at the end of 2009.

Worldwide, Beazley P.L.C. wrote more than £1.1 billion ($1.76 billion) in gross premiums in 2009 through offices in London; Brisbane, Australia; Paris; Munich; Hong Kong; Dublin; Oslo; Singapore; and several offices in the United States. The insurer's lines of business include specialty liability lines, property, marine, reinsurance, life, accident and health.

"Andrew epitomized all the great qualities of the London market. He was a terrific businessman and underwriter, fiercely competitive but a great team player who invested so much of his great intellect in helping the wider insurance community and the Lloyd's market in particular," said Julian James, CEO of Lockton Cos. International Ltd. and former director of worldwide markets at Lloyd's. "His great enthusiasm and wit was matched by his joie de vivre—I feel fortunate that I've had the opportunity to know him for over 25 years."

"Andrew was a true entrepreneur of the Lloyd's market. Not just a business associate, but a friend," said Hugo Crawley, chairman of London-based reinsurance brokerage BMS Group Ltd. "He conducted business in a fair manner. He had a great sense of humor and he will be sorely missed."

"Andrew Beazley was a banner leader, one of the best examples of why this industry is so good," said Stan Loar, chairman of brokerage Woodruff-Sawyer & Co. in San Francisco. "He was a keen businessperson, a person of great integrity, who had a passion for insurance. He will be missed."

DECEMBER 9, 2010
ONLINE CONFERENCE AND TRADE SHOW

Registration is now open
Please visit **www.BusinessInsurance.com/VirtualAdvantage** to register today!

For further information on attending or partnering on this event please contact Becky Briggs
Tel: 212-210-0132 E-mail: RBriggs@BusinessInsurance.com

Business Insurance

ADVERTISER INDEX

Issue of October 18

ADVERTISER	PAGE #
About Your Benefits	21
Allianz Global	14
American Institute for CPCU	9A
Aon Corporation	2
Business Insurance	9, 15, 18, 20, 25, 26
Chartis	28
Dickstein Shapiro	6
Florida State University	21
FM Global	10
The Hartford	13
Health Alliance Plan	20R
Liberty Mutual Group	5
Modern Medical	21
Prescription Solutions	19
Prudential	16
State Fund	15R
United Concordia	17
Zurich North America	7

News In Brief

CONTINUED FROM PAGE 1

health care reform law can proceed in the courts. The suit alleges, among other things, that Congress lacked the authority under the commerce cause in the U.S. constitution, to impose a mandate that requires individuals starting in 2014 to have health insurance or pay a fee. This month, in a different case, though, a federal judge in Michigan said Congress had such authority.

Soft commercial market continued in Q3: Marsh

The soft commercial insurance market continued through this year's third quarter, according to a report by broker Marsh Inc. According to Marsh, the market remains marked by intense competition and overabundance of capacity. The report—"U.S. Insurance Market Report 2010, Third Quarter Update: Insureds Net Benefits as Downward Rate Pressures Persist," said, barring some unforeseen event, the market should remain stable into next year.

Everest Re CEO Taranto to delay retirement

Everest Re Group Ltd. Chairman and CEO Joseph V. Taranto will remain in his position as head of the company through Dec. 31, 2012, the reinsurer said. Mr. Taranto announced in July that he intended to retire as CEO at the end of the year. Ralph E. Jones III, the company's president and chief operating officer, was to take over as CEO, the company said at the time. But in a statement, Everest Re said that Mr. Jones "has asked the company to accept his resignation effective Oct. 7, 2010." The Everest Re board asked Mr. Taranto to reconsider his decision to retire, the statement said.

Chinese drywall maker, others pay to fix homes

The Plaintiff's Steering Committee in the Chinese drywall multi-district litigation and Knauf Plasterboard Tianjin Co. Ltd. announced an agreement to remediate homes built with Knauf's defective drywall. The agreement establishes a demonstration remediation program, which will be funded by Knauf and several builders, drywall suppliers and their insurers. The program includes the removal of the defective drywall from up to 300 homes in Alabama, Mississippi, Louisiana and Florida. Among the insurers involved include QBE Insurance Group Ltd. and State Farm Insurance and the Louisiana Homebuilders Indemnity Trust.

Port Authority agrees to WTC settlement

The Port Authority of New York and New Jersey has agreed to pay $47.5 million to settle injury claims stemming from the rescue, recovery and debris removal operations after the 9/11 terrorist attacks on the World Trade Center. But before plaintiffs suing the Port Authority can receive any compensation, the settlement first must be approved by the Port Authority Board of Commissioners and the two state governors.

Integro acquires reinsurance brokerage

Integro Insurance Brokers Ltd. has entered the U.S. reinsurance brokerage market with its acquisition of ReSource Intermediaries Inc. Integro announced the acquisition of the reinsurance brokerage and advisory firm. In a statement, Integro President and CEO Peter Garvey said ReSource Intermediaries would complement Integro's existing operations, particularly in the areas of health care and professional liability. Terms of the transaction were not disclosed.

Noted

Florida's insurance commissioner has approved a 7.8% increase in workers compensation rates effective Jan. 1, 2011, slightly less than the 8.3% increase that had been sought by the **National Council on Compensation Insurance Inc.**...**Allied World Assurance Co. Holdings Ltd.** said Barry Zurbuchen has been named chief risk officer. Mr. Zurbuchen, previously senior vp of modeling and corporate pricing for Allied World Assurance Co. Ltd., will oversee the global enterprise risk management for the insurer...Standard & Poor's Corp. has affirmed its A+ ratings on **Swiss Reinsurance Co.** S&P said in a statement that it had affirmed its insurer financial strength and counterparty credit ratings on Swiss Re and its core entities....Claim frequency against hospitals combined with increased claim severity is expected to drive up medical malpractice liability costs this in 2010 and 2011 for hospitals and physicians, according to a report by **Aon Risk Solutions**.

REUTERS

The 33 trapped Chilean miners escaped the mine last week in a single-man rescue pod through a shaft only around 28 inches in diameter.

Chile: Several factors key to rescue success

CONTINUED FROM PAGE 1

stretched two days' worth of food into 17 days' rations before beginning to receive relief from the surface.

The first of the miners reached the surface 69 days after the cave-in, followed by the rest at roughly one-hour intervals. The miners escaped the mine in a single-man rescue pod through a shaft only around 28 inches in diameter.

"All focus was on having a successful rescue," said Lane Bos, senior risk engineer and mining industry practice leader for Zurich Services Corp. in Bozeman, Mont.

Collaborative and deliberative

Mr. Bos said that from a risk management perspective, a critical step was conducting risk analysis with a group of experts from varied backgrounds. Such an analysis allowed rescue planners to consider a broad range of issues, including personal health risks and geotechnical risks involved in drilling the escape tunnel.

The rescue effort brought in a wide variety of experts—including some from the U.S. National Aeronautics and Space Administration and the Chilean submarine service—to examine all aspects of the situation, he said. Having a broad spectrum of experts is crucial in performing a focused hazard analysis, Mr. Bos said.

"Quite often in an emergency response, people have blinders on. This time, they looked for their options" and were able to rely on assistance from outside organizations that contributed equipment and expertise, said Steven Boydston, Denver-based mining practice specialty administrator for the American Society of Safety Engineers and lead consultant for risk consulting firm Det Norske Veritas.

"They did an extremely good job in a continuous risk assessment process, looking for things they could anticipate or unforeseen issues," he said.

Rescuers' methodical approach was vital, observers said.

Planners "developed procedures and followed those procedures and didn't rush—it was never a rushed process," Mr. Bos said.

The rescue planners were careful to avoid a failed attempt, which would be "very deflating" to people below and above the ground, said Scott Shappell, a professor in the department of industrial engineering at Clemson University in Clemson, S.C. "They did take their time. They did do it right. They did not rush through it," he said.

The rescue was a careful and methodical process that worked because of detailed planning and thorough inspections that ensured the integrity of the bore hole and the rescue equipment, Mr. Boydston said.

Mr. Bos noted that the rescue team paused a couple of days after the initial drill broke into the underground chamber in which the miners were trapped so a metal casing could be put in the first few hundred feet of the escape tunnel. This was critical because "you can lose a drill hole in a matter of seconds," he said.

"They took the time to put in the steel casing—they didn't rush it. They were extremely conservative on the timetable," Mr. Bos.

Managing stress

Mr. Shappell said the miners confronted extreme stress from the time of the collapse—they were confined, had no individual privacy and did not know whether they would survive.

He said that while communication from the surface was important, "part of the dynamic is to keep their hopes up and keep them optimistic," he said. "You've got to come up with unique ways to keep their minds off" their situation. For example, the foreman put the miners on work details, said Mr. Shappell.

"If you can get your mind the off the duration of the confinement, that's very helpful," he said.

Having the foreman provide leadership was "hugely important," said Col. Tom Kolditz, chairman of the department of behavioral sciences and leadership at the U.S. Military Academy at West Point, N.Y.

"What a leader can do, even when the physical circumstances don't change, is create in that group activity that creates predictability, clarity and focus on a way ahead and mitigate against uncertainty, ambiguity and threat," he said.

Col. Kolditz said that by doing so, the leader provides hope and stability.

"That's why you don't have a meltdown or a 'Lord of the Flies' situation in a dangerous context like that," he said.

Michael Bradford contributed to this article.

Business Insurance Webcasts & Webinars

***Business Insurance's* Webcasts** are developed by *BI* editors to discuss the latest and most pressing issues facing our readers. ***Business Insurance's* Webinars** are educational and informative presentations by leading companies serving the risk management, employee benefits and commercial insurance communities. Both formats are presented live online and afterward are accessible on demand.

For details, visit BusinessInsurance.com/Webinars

Value in Enterprise Risk Management: Making ERM Pay Off

Live Online: Wed. Oct. 27, 2010 | 2 p.m. Eastern | Free of Charge

In this live online webcast, *Business Insurance* will explore the performance-based aspects of ERM and how to make it pay off for various organizations. Panelists will include Laura L. Brooks, vp of risk management and chief risk officer for Public Service Enterprise Group, and John J. Hampton, Professor of business, specializing in finance and enterprise risk management at St. Peter's College. *Business Insurance* Senior Editor Mark A. Hofmann will moderate.

Webcast Sponsored by:

Business Insurance END PAGE

Contributing: Jeff Casale, Judy Greenwald, Rodd Zolkos

WILLIS

Joe Plumeri, center, chairman of Willis Group Holdings P.L.C., stands with Chicago Mayor Richard Daley, left, and winning CharityChase team leader Thomas Ealy.

Willis chases fundraising dollars in race

Hundreds of Willis North America employees and volunteers logged serious miles in Chicago last week to raise more than $1 million for the Willis Foundation, a nonprofit affiliate of broker Willis Group Holdings P.L.C.

The first Willis CharityChase took place in Chicago's Grant Park, with 11 teams of runners participating in a 15-mile race to raise seed money for the Willis Foundation, which makes contributions to charities across North America. Each team raised at least $50,000, with a portion of the funds donated to a charity of their choice.

The footrace was the first major fundraising event to benefit the Willis Foundation, which was formed this year.

A pre-race rally was held at Chicago's Willis Tower, and after the race participants returned to the tower to recognize the top fundraising teams and the fleetest of foot.

DIGITAL NEWS AGENCY

Austrian daredevil Felix Baumgartner takes the first high-altitude test skydive jump.

High-flying stunt idea is grounded

Red Bull might give you wings, but a lawsuit is grounding the energy drink company's plans to conduct a record-breaking skydive from the edge of space.

The lawsuit is getting in the way of what was to have been a record-breaking 120,000-foot jump by Austrian daredevil Felix Baumgartner. Mr. Baumgartner, who would ascend to the jump altitude in a capsule suspended from a balloon, also would become the first parachutist to break the sound barrier. A launch date had not yet been set.

Red Bull GmbH and Red Bull North America Inc. pulled the plug on the project after Daniel Hogan, a promoter, filed a lawsuit in Los Angeles Superior Court claiming that he had approached the energy drink company in 2004 with the idea of a "Space Dive," in which a skydiver would jump from 24.6 miles above Earth, breaking the 50-year old record set by retired Col. Joe Kittinger.

On Aug. 16, 1960, Col. Kittinger set a skydiving record of 102,800 feet.

Mr. Hogan's lawsuit claims that he owns certain rights to the project that Austria-based Red Bull dubbed "Red Bull Stratos," which he estimated would generate between $375 million and $625 million in corporate advertising sponsorship, according to reports.

"Despite the fact that many other people over the past 50 years have tried to break Col. Kittinger's record and that other individuals have sought to work with Red Bull in an attempt to break his record, Mr. Hogan claims to own certain rights to the project and filed a lawsuit," Red Bull said in a statement. "Red Bull has acted appropriately in its prior dealings with Mr. Hogan, and will demonstrate this as the case progresses."

Red Bull said it has put the project on hold until the matter is resolved.

Sponsorships cropping up on FarmVille

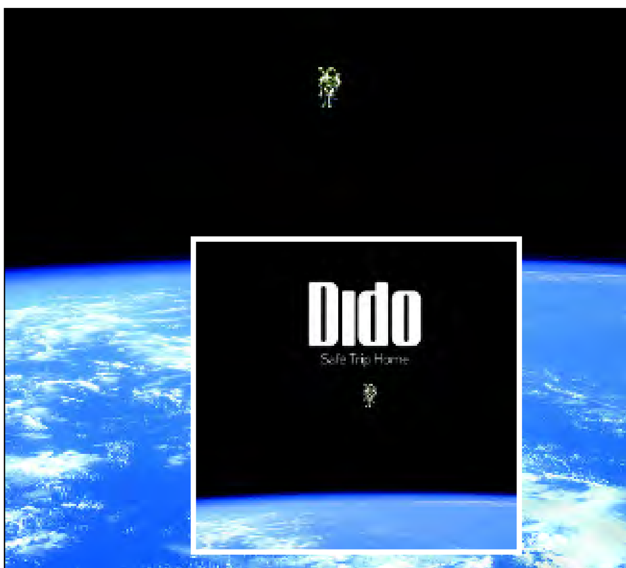
One insurer is cultivating business in the virtual world through a partnership with the makers of FarmVille, a popular Facebook game.

Farmers Group Inc. has entered a partnership with San Francisco-based Zynga Game Network Inc., under which FarmVille participants will be able to place a likeness of Eureka, the insurer's 246-foot zeppelin, over their virtual farms to receive free "wither protection" for their crops.

This means players' crops will not wither for the 10 days of the promotion, said Farmers in a statement. The campaign begins Oct. 18 and the airship will be available for free for the first 10 days.

"It's an innovative and exciting way to showcase our online and interactive presence," Kevin Kelso, Los Angeles-based Farmers' chief marketing officer, said in a statement.

FarmVille, with 60 million players a month, is Facebook's most popular game, according to Farmers.



NASA, DIDO

The original NASA photo of astronaut Bruce McCandless II and the cover of Dido's 2008 album, "Safe Trip Home," inset.

Astronaut launches lawsuit

Astronaut Bruce McCandless II is not exactly over the moon about being featured on the cover of female vocalist Dido's 2008 album, "Safe Trip Home."

Mr. McCandless, who was photographed while on a 1984 space shuttle mission, has filed suit against New York-based Sony Music Entertainment and New York-based Getty Images (US) Inc., among others, charging they misappropriated his image for commercial gain and refused to compensate him.

Mr. McCandless' picture was taken when he traveled 320 feet from the shuttle while on the first untethered free flight using the Manned Maneuvering Unit. This was the farthest away from the confines of a spaceship than any previous astronaut had ever been, according to the complaint filed Sept. 30 in federal district court in Los Angles. The photo was taken by mission co-pilot Robert L. Gibson.

Mr. McCandless contends in his lawsuit it is clear that the photo is of him because of a similar image featured on NASA's website, where he is identified, as well as from what is described in the lawsuit as the distinctive red stripes on his pressure suit and the mission patch on the chest of his life support system.

The suit says because of Mr. McCandless' special background as pilot, engineer and astronaut, his "name, image, likeness and identity" have "become valuable assets symbolizing McCandless and his good will." This "represents a valuable commercial asset" that "he alone has the right to license and exploit."

The suit seeks $32,500, which he says Getty had promised but failed to pay, and punitive damages, among other things.

Mr. McCandless, who retired from the U.S. Navy as a captain, lives in Conifer, Colo. No word on whether he likes Dido's music.

It's a BIG WORLD, after all.

With the right multinational insurance, you can do business anywhere.

Whether your business is exposed to risk in two countries or 102, the Chartis companies can execute and service your program—from underwriting to loss control to claims payment—no matter where you do business. See why businesses around the world have turned to Chartis for over 80 years.

Visit **www.chartisinsurance.com/multinational**

All products are written by insurance company subsidiaries or affiliates of Chartis Inc. Coverage may not be available in all jurisdictions and is subject to actual policy language. For additional information, please visit our website at www.chartisinsurance.com.