

Business Insurance

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In Brief

Gallagher to cut 400 staff members

Arthur J. Gallagher & Co. said it is eliminating approximately 4% of its workforce through a combination of job eliminations and attrition during the next few months, amid concerns over its operating environment. The brokerage said it will eliminate about 400 middle and back office positions and record a fourth-quarter pretax charge of between \$10 million to \$13 million for related severance costs. Gallagher said it expects to achieve annual pretax savings of approximately \$25 million to \$28 million as a result of the reduction.

97% of Mass. employers provide health cover

Nearly all Massachusetts employers that are required by law to either offer health care

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SPOTLIGHT

CONSTRUCTION RISKS

Building "green" also results in new exposures; fresh risks emerge as contractors seek



work in new areas; lenders that foreclose projects face insurance coverage challenges; stalled jobs require special efforts on loss mitigation; Q&A with an expert on the increased risks that have resulted from the recession. **PAGE 11**

Three acquitted in bid-rigging trial

Failure to convict ex-Marsh executives gives hope to others

By COLLEEN MCCARTHY

NEW YORK—A judge last week acquitted three former Marsh Inc. executives in a bid-rigging and price-fixing scheme, offering a boost to the remaining defendants, one of whom already has indicated he will seek to have charges against him dismissed.

Meanwhile, two former Marsh executives previously found guilty in the case are seeking to have their convictions thrown out.

New York County Supreme Court Judge James A. Yates last week found Joseph Peiser, former managing director and head of Marsh's global broking excess casualty unit; Greg J. Doherty, former Marsh senior vp and ACE USA local

broking coordinator team leader; and Kathleen M. Drake, former Marsh managing director and local broking coordinator team leader, not guilty of scheme to defraud and restraint of trade charges.

The judge previously dismissed four grand larceny charges against the trio, citing insufficient evidence.

Judge Yates did not comment on his verdict, which prompted a large gathering of family members and former colleagues to erupt into cheers. If convicted in the bench trial, the three could have faced up to four years in prison for each charge.

"It's been five long years, but the judge has been very patient and he kept an open mind. I am very appreciative," Mr. Peiser said after the acquittal.

Defense lawyers, who attacked the prosecution's case during closing arguments, said the

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'It's been five long years, but the judge has been very patient and he kept an open mind. I am very appreciative.'

Joseph Peiser, Former Marsh exec.



AP PHOTO

Senate Majority Leader Harry Reid, D-Nev., vowed to include a type of public option in the Senate health reform bill. A measure unveiled last week by House Speaker Nancy Pelosi, D-Calif., also includes a public option.

As reform debate resumes, 'public option' back at center

By JERRY GEISEL

WASHINGTON—The stage is set for the full House and Senate to take up health care reform legislation.

After months of work, House Democratic leaders last week finished cobbling together a 1,900-page reform bill, pulling provisions from measures that three House committees passed this summer

while amending, dropping and adding others, including a cap on flexible spending account contributions.

With that step, the full House is expected to begin debate on the bill later this week and likely pass it at the end of the week, Washington observers say.

See **REFORM** page 32

Regulators, rivals delay 2006 AIG comp settlement

By ROBERTO CENICEROS

Three years after American International Group Inc. agreed to pay \$343 million to resolve allegations that it underreported workers compensation premiums to states, the matter is far from settled.

New York-based AIG in 2006 entered a settlement agreement with then-New York Attorney General Eliot Spitzer and the New York

Insurance Department, agreeing to disperse \$343 million among all the states for allegedly underpaying premium taxes and residual market assessments from about 1985 to 1996 (*BI*, Feb. 13, 2006).

To date, though, most of that money remains in a trust fund while insurance regulators in several states continue to investigate and negotiate with AIG to determine whether a larger settlement amount

is in order, according to sources familiar with the process.

"Not all states were satisfied with the size of the (New York) agreement," said one insurance regulator, who asked not to be identified. "In terms of the settlement capping at \$343 million, AIG may not be out of the woods."

An original deadline for states to opt into the 2006 agreement initially was set for that year. But the deadline has been extended several times and now is set for Dec. 31. And New York authorities could extend that again, sources said.

Meanwhile, in addition to states seeking more money from AIG, ongoing litigation between AIG and several competitors also may complicate the settlement process, sources said.

The AIG competitors, initially through a National Workers Compensation Reinsurance Pool operat-

ed by Boca Raton, Fla.-based NCCI Holdings Inc., have claimed violations of the Racketeer Influenced and Corrupt Organizations Act by AIG, among other allegations. In their complaint, which seeks more than \$1 billion in damages from AIG, the companies argue AIG's alleged underreporting of workers comp premiums forced them to unfairly increase their state residual market contributions.

In response, AIG countered with its own lawsuit claiming its competitors also violated RICO and underpaid residual market assessments.

In its lawsuit, AIG charges that its competitors have "conspired to disable" the fund established under the 2006 settlement with New York authorities. AIG says in its lawsuit that its competitors "effectively

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On the Web

BI BLOGS

Comp Time named top workers comp news blog



The LexisNexis Workers Compensation Law Center has named Comp Time, written by

Insurance Senior Editor Roberto Cenicerio, top workers comp news blog for 2009. Go to www.BusinessInsurance.com/section/blogs.

READERS CHOICE

Readers pick favorite industry firms



The votes have been tallied, and the finalists for the 2009 Business Insurance

Readers Choice awards have been determined. The list of finalists can be viewed at www.BusinessInsurance.com/ReadersChoice.

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Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Scandals put spotlight on workplace romance

Task for employers is finding balance of protection, privacy

By JUDY GREENWALD

Romance in the workplace is an issue employers approach with justifiable trepidation, experts say.

On one hand, they would much prefer letting employees keep their private matters private. But on the other hand, they recognize office romances can encroach on the workplace and, if handled improperly, can mean significant liability for the company.

The way to deal with it is to establish policies and procedures that protect the company without engaging in undue meddling,

observers say.

The issue has received considerable media attention recently. Late last month, baseball analyst Steve Phillips was fired by ESPN after admitting to an affair with a production assistant at the network. In early October, "Late Show" host David Letterman admitted on air to affairs with subordinates at his New York-based Worldwide Pants Inc., after an extortion threat.

The problems with workplace romance occur when a relationship sours and one or both of the participants is unhappy, observers say. Particularly problematic, say observers, are the relationships between supervisors and subordinates where the inherent power imbalance could result in charges that a subordinate was pressured into having a relationship to keep



AP PHOTO

ESPN baseball analyst Steve Phillips was fired after admitting to a sexual relationship with an ESPN staffer.

his or her job, or that a rejected supervisor engaged in retaliation.

The most frequently cited type of liability is sexual harassment, say observers. Under Title VII of the

Civil Rights Act of 1964, to successfully sue an employer, a plaintiff must show that "what occurred was actionable sexual harassment and that there's some basis for holding the employer liable for what happened," said Joanna L. Grossman, a professor at Hofstra University School of Law in Hempstead, N.Y.

In a case involving a romantic relationship between co-workers, an employer can be held liable only if it was negligent in responding to reports of sexual harassment, she said. However, in cases where a supervisor explicitly uses the employer's authority to sexually harass a subordinate or create a hostile environment, the firm automatically would be found liable, Ms. Grossman said.

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AP PHOTO

Chinese drywall used in homes built after Hurricane Katrina has been blamed for corrosion and health problems.

Insurers fighting claims over Chinese drywall

By JEFF CASALE

While commercial and homeowner insurers are determining how to handle the financial headache they allege some Chinese drywall is causing, claims and costs continue to mount.

Several small private insurance companies have filed pre-emptive declaratory judgment motions in Florida state courts, saying they are not obligated to cover damages caused by the tainted drywall based on exclusions in their policies. While no large commercial insurers have taken similar action so far, it's likely more lawsuits will roll in during the next year.

"Some insurers are denying claims left and right," said Barry I. Buchman, a partner at Washington-based law firm Gilbert L.L.P. "They are citing pollution exclusions, business risk exclusions, and construction defects and occurrence as reasons for denying coverage."

Mr. Buchman said the insurers involved primarily are companies with a larger exposure to the situa-

tion, but added that "it shows the insurers are taking this seriously and that they are willing to dig their heels in."

Towers Perrin, a Stamford, Conn.-based consulting firm, estimates the total economic losses from the tainted drywall could fall between \$15 billion and \$25 billion, costs that rival the 10 most-expensive hurricanes in recorded history, excluding Hurricane Katrina.

Towers Perrin added that, based on past construction defect experience, legal fees could represent 40% to 50% of the total claims cost, which would make a court fight rather costly for insurers. Meanwhile, the National Assn. of Home Builders estimates the cost of repairing homes with the defective drywall will be approximately \$8 billion.

The problem stems from about 500 million pounds of drywall that was imported to the United States between 2004 and 2007 when the housing market peaked and the Southeast was rebuilding after

See **DRYWALL** page 32

BI honors leading women with special report

After weeks of careful consideration by the magazine's top editors, Business Insurance's 2009 Women to Watch selection is complete. The list of honorees can be viewed online at www.BusinessInsurance.com/women2009.

This is BI's fourth annual special report on women working in insurance, risk management and employee benefits—sectors that traditionally have been led by men, but where women increasingly are taking on senior leadership roles.

As is the case every year, it was a hugely difficult task to select 25 honorees from the hundreds of nominations. Using our criteria of selecting leaders based on their recent professional achievement, influence on the marketplace, and contributions to the advancement of women, we believe we have selected an outstanding list of honorees for 2009 to join the many outstanding women we have selected in our past Women to Watch reports.

Our full 2009 Women to Watch report profiling all the honorees will be published in the Dec. 7 edition of the magazine. In addition, BI will host a lunch and reception recognizing the honorees Dec. 8 at the Four Seasons Chicago. Pre-registration is required to attend the event. For more information, please contact Event Manager Rebecca Briggs at rbriggs@BusinessInsurance.com or 212-210-0132.



Systemic risk bill would boost federal oversight powers

Measure would let FDIC intervene at nonbank firms

By MARK A. HOFMANN

WASHINGTON—Policymakers need to understand the differences between property/casualty insurers and other financial services institutions as they consider the Obama administration's proposed systemic risk regulations, industry observers say.

They say property/casualty insurers are inherently different than other financial institutions blamed for causing the economic crisis. They also say the property/casualty industry tends to invest conservatively and main-

tain low leverage ratios.

Ironically, it was the financial products unit of the holding company controlling the nation's largest commercial property/casualty insurer, American International Group Inc., that led to a record bailout of AIG and helped bring about calls for systemic risk regulation of financial institutions.

Those calls led to the draft legislation unveiled last week by the administration and the House Financial Services Committee to establish a process to wind down large, financially troubled nonbank financial institutions. The Financial Stability Improvement Act would end the "too big to fail" approach, according to a summary released by the committee.

The Federal Deposit Insurance Corp. "will be able to unwind a fail-



REUTERS

Treasury Secretary Timothy Geithner last week unveiled the administration's systemic risk plan.

ing firm so that existing contracts can be dealt with, creditors' claims can be addressed, and parties required to bear losses do so" and "prevent contagion and disruption

to...the overall economy," according to the summary.

In addition, costs to resolve a failing company would be repaid to the government before shareholders and creditors, "and, to the extent of any shortfall, from assessments on all large financial firms," according to the proposal. Only firms with at least \$10 billion in assets would be subject to the assessments, which would be levied on a graduated basis.

The bill also would establish a Financial Services Oversight Council to identify and monitor systemic risks "that pose a threat to financial stability and subject those companies and activities to heightened oversight, standards and regulation." The 253-page draft bill calls for a state insurance regulator to be a nonvoting mem-

ber of the council.

"What this bill does not do is provide a government guarantee for troubled financial firms," Treasury Secretary Timothy Geithner told the committee last week. "It does not create a fixed list of systemically important financial firms."

Although the bill makes clear that insurers would be subject to many of its provisions, observers hold that property/casualty insurers differ in significant ways from other financial institutions.

"We've been explaining for a year now why insurance is fundamentally different from other financial services products and why it doesn't pose a systemic risk," said Jimi Grande, senior vp in the National Assn. of Mutual Insurance Cos.'

See **SYSTEMIC** page 32



Airlines renewing hull and liability coverage later this year will be hit with rates that are significantly higher than last year, brokers say.

Airline rates taking off after big losses in 2009

Rates up 10%-20% and could soar higher, aviation brokers say

By ZACK PHILLIPS

Major U.S. airlines negotiating insurance renewals during the fourth quarter face a market that has hardened significantly since a year ago, brokers say.

Airlines have faced average rate increases between 10% and 20% for hull and liability insurance so far this year, a trend that may worsen in the fourth quarter. Most major airlines renew their insurance programs in November and December, including Continental Airlines Inc., Delta Air Lines Inc., JetBlue Airways Corp., Southwest Airlines Co., United Airlines, US Airways Group Inc. and United Parcel Service Inc.

According to various broker estimates, 60% to 80% of the market renews during the fourth quarter.

"We don't expect a massive change in the trend between now and the end of year," said Steve

Doyle, London-based executive director at Willis Aviation, a division of broker Willis Group Holdings Ltd. "The trend is likely set for the early part of 2010."

About 78% of placements so far this year have faced increases in lead hull and liability costs, according to Aon Ltd. In 2006, only 22% of renewing accounts faced such increases.

Brokers said following insurers have been particularly aggressive. The traditional disparity between the rates for lead and following insurers has dwindled to low single digits, Mr. Doyle said.

The only reason rates have not increased further, brokers said, is that capacity remains plentiful. Although Travelers Cos. Inc. in October decided to stop writing U.S. general aviation business, no major underwriters have exited the airline insurance market. Wayne Wignes, Chicago-based vice chairman of JLT Aerospace (North America) Inc., a division of JLT Reinsurance Brokers Ltd., estimated current market

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Consumerism wave boosts liabilities

As patients push doctors on health decisions, risk managers intervene

By JOANNE WOJCIK

DENVER—Patients have become genuine consumers, requiring some health care risk managers to intervene personally in situations where providers may let patients' demands unduly influence their treatment decisions, speakers told a meeting of health care risk managers.

"Once upon a time, doctors told patients what to do, and patients just did it. Now, patients tell providers what to do," said Sheetal Shaw, an attorney for the Palo Alto Medical Foundation in Palo Alto, Calif., during a session at the American Society for Healthcare Risk Management annual conference in Denver.

She cited as recent examples the death of entertainer Michael Jack-

son apparently from a drug overdose involving a powerful anesthetic and the multiple births for the "Octomom," Nadya Suleman.

The cardiologist that was Mr. Jackson's personal physician is facing possible criminal charges in the singer's death. Meanwhile, the American Society for Reproductive Medicine, which has a standard of care to implant only two embryos at a time, last month reportedly expelled the fertility specialist who treated Ms. Suleman.

"Royal Pains," a television series that premiered last summer about a physician who becomes a "concierge doctor" after losing his hospital emergency room job, further illustrates the cultural transformation that is occurring in

See **ASHRM** page 23



VISIT DENVER

ASHRM's 2009 annual meeting was held at the Colorado Convention Center in Denver.

European ruling on value-added tax spurs concerns about reinsurance

Court says Swiss Re owes \$3M in VAT for portfolio transfer

By MICHAEL BRADFORD

LUXEMBOURG—A European Court of Justice ruling that Swiss Reinsurance Co. is responsible for €2 million (\$3 million) in value-added tax on a portfolio transfer has set off alarms in the marketplace that insurers and reinsurers may be liable for payment of the taxes on similar transactions.

The Luxembourg-based court, which is Europe's final court of appeal on tax matters, agreed on Oct. 22 with a lower court that

Swiss Re owed the 19% tax it paid seven years ago on a portfolio transfer of 195 life reinsurance contracts from a German subsidiary to the Zurich, Switzerland-based parent.

The ECJ ruled in *Swiss Re Germany Holding GmbH vs. Finanzamt*



München für Körperschaften that the transfer was not an exempt insurance transaction and therefore was subject to German VAT. Swiss Re argued that VAT, which is paid on goods and services in many European countries, should not apply.

"We are disappointed that the European Court of Justice con-

firmed the opinion of the German tax court but, in the absence of a right of appeal, we accept the decision," a Swiss Re spokesman said in an e-mail. "The €2 million VAT payment was made in 2002, and this is now clearly irrecoverable. No new tax liabilities will arise for Swiss Re as a result of this judgment," he said.

The decision likely won't have a big effect on the European reinsurance market, the spokesman said.

"We do not believe the ECJ's decision fundamentally threatens the basis of reinsurance business as a whole," the Swiss Re spokesman said.

Some observers, though, say that

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JIM ISN'T A HERO BECAUSE
HE IMPLEMENTED A NEW GROUP PROGRAM.
HE'S A HERO BECAUSE NOTHING WENT WRONG.



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Climate meeting portends change

Insurers seek global, clear requirements in any emissions accord

By MICHAEL BRADFORD

COPENHAGEN, Denmark—High hopes may be dimming for a global agreement to reduce greenhouse gas emissions at the U.N. Climate Change Conference in Copenhagen, Denmark, but risk managers and insurers do expect changes to come from the historic meeting in December.

World leaders are debating whether to try to forge a treaty at the Dec. 7-18 conference to replace the Kyoto Protocol, which was signed in 1997 and went into effect in 2005. It set targets to reduce greenhouse gas emissions by 2012 for countries that signed the document.

Recent weeks have seen growing pessimism that an agreement in Copenhagen can be reached to cut emissions and replace the Kyoto Protocol.

Yvo de Boer, executive secretary of the United Nations Framework Convention on Climate Change, is among those who have said that reaching such a consensus would be difficult. In addition, developed countries are at odds with emerging nations such as China and India over the size of any emission cuts.

The United States did not sign



REUTERS

British Prime Minister Gordon Brown last month said if a greenhouse gas emissions accord is not reached this year, no future agreement will be able to undo the damage from unregulated emissions.

the Kyoto Protocol and speculation has arisen as to whether it will embrace a new treaty if firm commitments on emissions are not made by developing countries.

Rhetoric over the issue has heated

up, too, with British Prime Minister Gordon Brown saying in a speech last month in London that failure to reach an agreement in Copen-

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New database to replace Ingenix

Successor system grows from out-of-network payment controversy

By JOANNE WOJCIK

SYRACUSE, N.Y.—Syracuse University's Maxwell School will be home to a new, independent database to determine out-of-network provider reimbursements that will replace a controversial system used by most of the health care insurance industry, officials said last week.

Syracuse will be part of a network of research facilities developing the database that will replace the much-criticized Ingenix Inc. system. Others include State University of New York at Buffalo, Cornell University, University of Rochester and SUNY Upstate Medical University.

Deborah A. Freund, distinguished professor of public administration at Syracuse, will head the project dubbed FAIR Health Inc.

The new database is the result of a settlement reached in January between New York's attorney general and Minnetonka, Minn.-based UnitedHealth Group Inc., which agreed to spin off operations of the Prevailing Health Charges System and Medical Data Research database products, both of which are operated by Ingenix, an Eden Prairie, Minn., subsidiary of UnitedHealth.



REUTERS/LANDOV

FAIR Health will bring "fairness to a broken consumer reimbursement system," New York Attorney General Andrew Cuomo said.

The settlement culminated an industrywide investigation that New York Attorney General Andrew Cuomo initiated after receiving complaints from provider and consumer groups that the Ingenix systems resulted in underpayment to physicians and additional cost-shifting to consumers.

"FAIR Health...will bring much-needed transparency, accountability and fairness to a broken consumer reimbursement system we have called Code Blue," Mr. Cuomo said in a statement. "By transforming this system for consumers

nationwide, New York proves its reputation as a reform leader."

The investigation concluded that the Ingenix databases "intentionally skewed usual and customary rates downward through faulty data collection, poor procedures and lack of audits," and that the rate of underpayment to out-of-network providers ranged from 10% to 28%.

The attorney general also found that UnitedHealth's ownership of the databases created a conflict of interest.

The probe prompted the U.S. Senate Commerce Committee to hold a hearing at which Ingenix Chief Executive Officer Andy Slavitt acknowledged UnitedHealth's ownership of his company may have created a perception of a conflict of interest, but denied that the databases were flawed and understated charges.

The attorney general also reached settlements with several other insurers using the databases, including Aetna Inc., CIGNA Corp. and WellPoint Inc. Under terms of those agreements, the insurers will discontinue using the Ingenix system once a replacement is available and contribute to a fund to finance development of the new system.

Nearly \$100 million collected from insurers as part of the settlements will be used to finance the new reimbursement system, which officials said they hoped to have operational in about nine months.

Commentary

Health care coverage for the whole family

One thing the health care debate has accomplished is make me more frequently appreciative of the fact that I have health insurance.

Last week I felt grateful again, though this time it wasn't for me or my wife, Kathy, but for the health insurance coverage for our dog, Smoke.

I'll note that Smoke's health plan isn't employer-provided, though I'd be happy to take advantage of such a benefit, if offered.

When we brought Smoke home nearly a year ago, we'd decided to purchase pet health insurance. Our experiences with Smoke's predecessor, Algren, sold us on the idea.

Algren had various health issues in his senior years that required ongoing treatment, various regular and special examinations, and some medications that certainly were not inexpensive.

We begrudged Algren none of that and, in fact, were happy that we had the resources that allowed us to enjoy several quality years with our wonderful friend that we would have missed but for the fine veterinary care he received.

But, those resources didn't include pet health insurance, so we enrolled Smoke in a pet health plan.

Here's the twist: At just under 2 years old, Smoke generally is the picture of canine health, and I didn't expect to tap his health insurance until his golden years. Well, that's why we buy insurance, right?

While in Orlando last week at the annual meeting of the Property Casualty Insurers Assn. of America, I heard from Kathy that Smoke was listless and off his chow. Smoke is never off his chow, so Kathy and Smoke were off to the emergency vet.

Various tests and X-rays later, Kathy was told that Smoke had pneumonia and was spending the night in the hospital.

Being the stoic young guy Smoke is, he'd showed no sign of trouble until the legs suddenly went out from under him. But antibiotics quickly did the trick and, a day later, Smoke was home, his energy level and appetite quickly returning to normal—including his appetite for mischief.

His first night home, Smoke took his bottle of chewable antibiotics off the counter, chewed off the cap (childproof,



RODD ZOLKOS

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not dogproof) and ate 10 of the 14 pills inside. And Kathy mastered a new skill: A call to animal poison control taught her how to induce canine vomiting.

Anyway, after following all of this by long distance, I returned home last Wednesday night to find Smoke looking none the worse for wear, but for the spots on each of his forelegs shaved to allow IVs.

I also found the paperwork

At just under 2 years old, Smoke generally is the picture of canine health, and I didn't expect to tap his health insurance until his golden years. Well, that's why we buy insurance, right?

from his hospital stay, including a pretty impressive bottom line, making me quite glad we'd purchased pet health insurance.

Pet health insurance is a growing business.

No less than Warren Buffett understands that, as Berkshire Hathaway Inc. company Central States Indemnity of Omaha recently partnered with a pet health insurance division of Nestle's Purina unit to market pet insurance products.

And some companies are offering pet health insurance as an employee benefit. In its 2009 Employee Benefits Survey, the Society for Human Resource Management found that 3% of those companies surveyed offer a pet health benefit.

I don't know whether pet health insurance will catch on as a benefit in the future, but I'd be grateful if it did.



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Business Insurance OPINIONS

Public option may kill health care reform

WHY DID Senate Majority Leader Harry Reid, D-Nev., decide to include a public option, or government-run health insurance plan, in the health care reform legislation he soon will be sending to the full Senate?

We raise that question because there continues to be no sign that there is enough support in the Senate to pass a reform bill, if a public option is part of the bill.

Surely, all 40 Republicans would oppose it. That would mean that Sen. Reid would have to win the support of all 58 Senate Democrats, as well as the Senate's two independents, to win approval. That doesn't strike us as very likely.

We'd be sympathetic to Sen. Reid's effort if we were absolutely convinced that a public option is central to health care reform legislation.

It isn't. What is central is reducing the number of uninsured—through health insurance premium subsidies, creation of state insurance exchanges to make it easier and more efficient for individuals and small employers to purchase coverage, and reform of the personal lines market. That can be accomplished without a public option.

We'd also be more sympathetic if there were overwhelming evidence that a public option would lead to a slowing of health care inflation, but there is no evidence to show that would be the outcome.

There is evidence, however, to show that inclusion of a public option could kill the chances of enactment of reform legislation that could benefit millions of Americans. Congressional leaders should be aware of that basic fact and drop the public option from the legislation.

No good would come from ending exemption

IN AN APPARENT effort to show they're serious about health care reform, some members of Congress have been pushing to strip health insurers and medical malpractice insurers of the limited antitrust exemption they enjoy under the McCarran-Ferguson Act.

The House Judiciary Committee already has approved legislation calling for repeal, and some key senators have promised they will try to add repeal language to any health care reform bill that reaches the Senate floor.

As political theater goes, such a move is understandable. Backers of the change say it's necessary to eliminate alleged price fixing, market allocation and bid rigging. Such activities, of course, already are illegal, McCarran or no McCarran.

We're hard pressed to see what practical good that getting rid of the exemption would accomplish. The only certain outcome would be a flood of lawsuits, which would increase insurers' costs, and those extra costs would be passed on to consumers.

If the stated aim of health care reform is to extend coverage and control costs, we believe that changing the antitrust treatment of insurers in the midst of this already heated debate would be the wrong prescription at the wrong time.

What is central is reducing the number of uninsured.



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.

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THIS WEEK'S RESULTS

Q Should the government limit executive pay at companies it bails out?



Special Master for TARP Executive Compensation Kenneth Feinberg

Yes



No



NEXT WEEK'S QUESTION

Q: Is your company offering free seasonal flu shots this year?

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Rulings, changes likely to affect employment law

The U.S. Supreme Court has made a series of fractured rulings that deal with workplace issues during the 2008-2009 term, says Gerald L. Maatman Jr., a partner with Chicago law firm Seyfarth Shaw L.L.P. While no clear trend emerged from the latest cases in terms of favoring employers or employees, the Supreme Court rulings, coupled with potential changes in employment law, will affect employers for years to come, he says.

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EUROPA

The European Court of Justice ruled that Swiss Reinsurance Co. is responsible for value-added tax on an intracompany portfolio transfer.

Tax: European court ruling raises concerns about VAT

CONTINUED FROM PAGE 4

ruling could have a wide impact if local tax authorities apply the ruling to portfolio transfers.

"What I am hearing from insurers is that they are going to talk to their local tax authorities," said Richard Asquith, managing director of TMF VAT & IPT Services, a unit of U.K.-based accounting and tax advisory group TMF Group. "A lot of insurers and reinsurers are hoping that the local tax authorities will look the other way," he said. "They can't, and shouldn't, but that's the hope."

Tax authorities may decide to apply the ruling to business that is transferred from one jurisdiction to another by companies that move for tax reasons, Mr. Asquith said. "Every week it seems there's a new insurer moving to Switzerland or Dublin for tax reasons, which requires them to move contracts from one headquarters to another."

The portfolio transfer by Swiss Re was simply moving the contracts from one subsidiary to another entity, Mr. Asquith said, and it is not unreasonable to expect that tax authorities, using the recent decision as guidance, may attempt to levy VAT on business transferred by companies changing jurisdictions.

"You can imagine if an insurance portfolio is worth many hundreds of millions of dollars," Mr. Asquith said, that the application of VAT, which generally ranges from 15% to 25% in European countries, could generate "mind-boggling" tax bills.

Insurance and reinsurance market participants are poring over the decision to determine how it might apply.

"People are talking about it," said Christopher Klein, managing director, global business intelligence, with Guy Carpenter & Co. Ltd. in London. "Few of us know much about the case," he said in an interview at the annual gathering of reinsurers in Baden-Baden last week. "It seems to be very specific. Like everyone else, we'll be watching it very closely to see what the implications are, if any."

Victor Peignet, chief executive officer of property/casualty business at SCOR S.E. in Paris, said during a symposium at the Baden-Baden meeting that SCOR has not run into

similar problems with the large portfolio transfers related to its acquisition of Converium Holding Ltd. SCOR also acquired life reinsurer Revios Rückversicherung A.G., but because the business between those two companies is largely complementary, life portfolio transfers have not been necessary, he said.

SCOR does transact "a lot of portfolio transfers" on nonlife business, Mr. Peignet said. "We are validating those portfolio transfers with the tax authorities of the various countries concerned...For the moment, we have not seen problems, but we are looking at this," he said of the ECJ ruling, "and we are interested to know more about it."

While he has had little time to consider the ruling, Clemens von Weichs, CEO of Allianz Re, said his first impression is that the decision is "a little bit amazing. Normally in insurance, we don't have value-added tax, but we do have an insurance tax. I have not studied the court decision in detail," he said, but at first blush it seems to present "a certain contradiction" with regard to taxes that could be owed by insurers and reinsurers.

The Swiss Re spokesman acknowledged that the decision's consequences "will need to be considered in all European countries," but noted that reinsurers and insurers "should not, in our view, panic. Many portfolio transfers may qualify for country-specific VAT exemptions under transfer-of-going-concern rules" or may not be the target of VAT payments under other local rules, he suggested.

Mr. Asquith said that insurers and reinsurers may face problems if VAT is assessed against the transactions because they cannot offset the tax in the same way as other companies.

"Most financial services companies are VAT-exempt," Mr. Asquith explained. "That means they don't have a VAT number. That's important." Holding a VAT number allows companies that are charged a VAT to offset those charges with the amount of VAT they charge others.

In other words, if insurers and reinsurers held VAT numbers, they could offset any VAT charges they incurred with amounts they paid to vendors and service providers.



Construction Risks

SPOTLIGHT

'Green' projects create new exposures

By **ROBERTO CENICEROS**

Construction contract disputes loom as demand grows for buildings that meet environmental efficiency standards, insurance and legal experts say.

Available property/casualty insurance products, meanwhile, will pay property owners for the additional cost of rebuilding to a "green standard" after damage to an existing building. Insurance policies also will protect property owners from losses during the course of construction of a "green" building, insurance sources said.

But property/casualty underwriters have refrained from insuring a potential liability that contractors and design professionals may face, several experts said.

The potential exists, they say, for disputes between building owners and con-

tractors or architects and engineers, should a new building fail to meet certification standards, such as those established by the Washington-based U.S. Green Building Council.

The council is a nonprofit organization known for its Leadership in Energy and Environmental Design certification for environmentally sustainable buildings. Under LEED's rating system, several levels of certification are possible, depending on a building's green qualities.

Demand for buildings certified for their environmental friendliness is growing because government building codes increasingly require that new structures meet green standards, construction sources say.

Demand for green buildings also is spreading because they are increasingly

desired by tenants seeking a favorable public image, and more cities and states have begun offering substantial tax rebates to encourage their construction.

Some municipalities also provide building owners with other incentives, such as variances from local building codes. A building owner may be allowed more square footage or a taller building than normally is permitted in exchange for obtaining a certain green certification level.

But the new incentives could fuel disputes between building owners and construction professionals, several sources say.

Disputes could arise should contractors or design professionals promise to construct a building that will obtain a specific

**CONTRACTORS SEEKING
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ALSO FIND NEW RISKS**
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See **GREEN** next page

Green: Environmentally friendly jobs create exposures

CONTINUED FROM PREVIOUS PAGE

green certification rating, but the completed building fails to meet certification requirements for that rating level.

The losses at stake include tax credits that building owners expected to reap from certification, said Paul Primavera, senior vp in Washington for Lockton Construction Services Group, a unit of Lockton Cos. L.L.C.

Lost tax incentives are a “new wrinkle” that green construction has added to traditional construction-related liabilities, Mr. Primavera said.

Investigating what might have gone wrong during construction, or rebuilding certain parts of a project to meet certification requirements, could be costly and send building owners to seek redress, experts said.

While there is a desire for insurance policies covering losses stemming from a contractor or design professional failing to meet specific green standards, insurers remain on the sidelines, said David Cohen, senior product director for commercial insurance at Fireman’s Fund Insurance Co. in Novato, Calif.

“There is certainly going to be litigation coming out soon around this issue and insurance companies

are waiting to see” the loss results before developing coverage products, Mr. Cohen said.

“We had a lot of discussions internally about what we can do and we are still looking for ways to design a product,” Mr. Cohen said.

Fireman’s Fund does provide certain green building coverages. For example, a Fireman’s Fund property policy has been broadened with endorsements. Its features include no sublimits for plants and trees.

That way, vegetative roofs that rely extensively on plants are covered. Likewise, the policy covers normally excluded underground pipes and cisterns used to capture

runoff water.

Insurers have amended general liability and environmental policies to address green building risks, such as defects related to rooftop gardens that could cause water damage, said Paul Becker, Nashville, Tenn.-based construction practice leader of Willis North America and president of the construction division of Willis Americas.

“Those products have been amended to address (green building) risks, but as far as a guarantee that (contractors) will achieve (a specific certified green building) status, that really is not something we have seen in the normal casualty market,” Mr. Becker said.

A contractor’s failure to deliver a certain certification could fall under a surety bond remedy, Mr. Becker said. “But even the bonding companies are being pretty darn careful...whether or not they will agree to bond that guarantee,” he said.

Legal action

So far, only one lawsuit involving a failure to deliver a green certification has gained much attention, several experts said. It involved a Maryland condominium project with tax credits at stake totaling hundreds of thousands of dollars. The claim was settled without resulting in any legal precedent, observers said.

More lawsuits have yet to surface, in part, because the tax credits and other green building incentives are still very new, said Edward B. Gentilcore, an expert on green building construction contracts and vice chairman of the construction group at Duane Morris L.L.P. in Pittsburgh.

“The incentives are much younger than the green building process itself,” Mr. Gentilcore said.

But contractors have entered into agreements promising they will deliver buildings that meet certification requirements and many of those contracts are silent on the consequences of failing to deliver on those promises, said Mr. Gentilcore, who added that it is likely that the courts will have to determine those consequences.

More lawsuits also could arise because many of buildings that have been under construction during the past two years are beginning to seek green certification status, said Thomas Taylor, general manager for Vertegy, an Alberici Enterprise and sustainability consultant in St. Louis.

“Because you have that glut that is about to hit, I think we are going to start seeing owners saying, ‘Wait a minute. We didn’t get what we paid for,’ ” Mr. Taylor said.

To protect themselves, contractors and design professionals should avoid contracts that promise they will deliver specific energy savings or a building that meets certain green certification requirements, unless they truly have the ability to do so and understand the risks, several experts said.

“The risk management process in green construction has to begin with the contract,” said Michael Kennedy, general counsel for Associated General Contractors of America in Arlington, Va.

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Construction at a site in Boston was halted in August because the main investor allegedly ran out of funding.

Risks rise as contractors vie for business

Insurers concerned as firms bid for jobs outside core areas

By KRISTIN GUNDERSON HUNT

The woeful economy has hampered the commercial construction industry, forcing general contractors and subcontractors to vie for any business they can get, regardless of their expertise or impending risk.

"Contractors are facing a number of challenges right now," said Scott

Higgins, president of Travelers Construction in Hartford, Conn., a unit of Travelers Cos. Inc. "Primarily, economic times are bad. Contractors are going to have to take on new industries and new projects."

For example, the U.S. Census Bureau said U.S. construction spending through the first eight months of this year was an estimated \$629.5 billion, an 11.9% drop from the same period in 2008. Total construction spending, which hit \$1.17 trillion in 2006, fell in 2007 and 2008 as the recession took hold (see related chart, page 16).

As contractors still in business look for new streams of revenue, they are faced with more risk and exposure but a thinner profit margin—leaving less room for error.

"They are looking at new geographies. They are looking at different types of work. They are working for different types of owners," said Rick Ciullo, chief operating officer of Chubb Surety in Warren, N.J., a unit of Chubb Corp. "All of these things have the potential to increase risk."

Construction defect claims are one risk that might multiply, said

Jack Gibson, president of the Dallas-based International Risk Management Institute Inc. As contractors work outside their comfort zone, they might increase their chance for error. Contractors breaking into unfamiliar geographic regions also don't know the labor market as well, and the best laborers already may be employed elsewhere.

Finally, the competitive environment is forcing contractors to bid low on projects, tempting them to cut costs—potentially resulting in lower-quality work and, in effect, construction defect claims.

Other areas of impending risk include mounting workers compensation claims for less skilled or inexperienced laborers; violations of unfamiliar labor laws that vary from state to state; and project delay risks if a general contractor or subcontractor doesn't have adequate finances to survive a project's duration.

89.4%

INCREASE: In the direct losses industrywide for surety companies from second quarter 2008 to second quarter 2009

Mr. Gibson said additional construction delay risks might affect construction contract surety bonds—financial guarantees that kick in should a contractor or subcontractor fail to meet the terms and conditions of a contract.

He said payment delays from financially strapped owners to cash-starved general contractors and subcontractors could mean insolvency or their inability to complete the work.

Industrywide, direct losses for surety companies in the second quarter of 2009 were \$867.2 million, up sharply from \$457.8 million during the second quarter of 2008, according to the Surety & Fidelity Assn. of America. Still, 2009 is projected to be a profitable year for the surety industry as was 2008, Mr. Gibson said.

Forecasts for 2010 surety company direct losses are even bleaker, said Dan Riordan, president of Zurich Financial Services Group's surety credit and political risk unit in Washington, as surety losses often lag a recession. He said potential mitigating factors include contractors' generally improved credit quality and management expertise in recent years.

"It's a huge area of concern for surety underwriters," Mr. Gibson said. "As a result, general contractors need to do a much more intensive prequalification of owners and be much more selective of who they will work for."

Skender Construction in Chicago is not only prequalifying owners, it also is prequalifying subcontractors—making sure they are current with their unions, have good refer-

See **CONTRACTORS** page 16

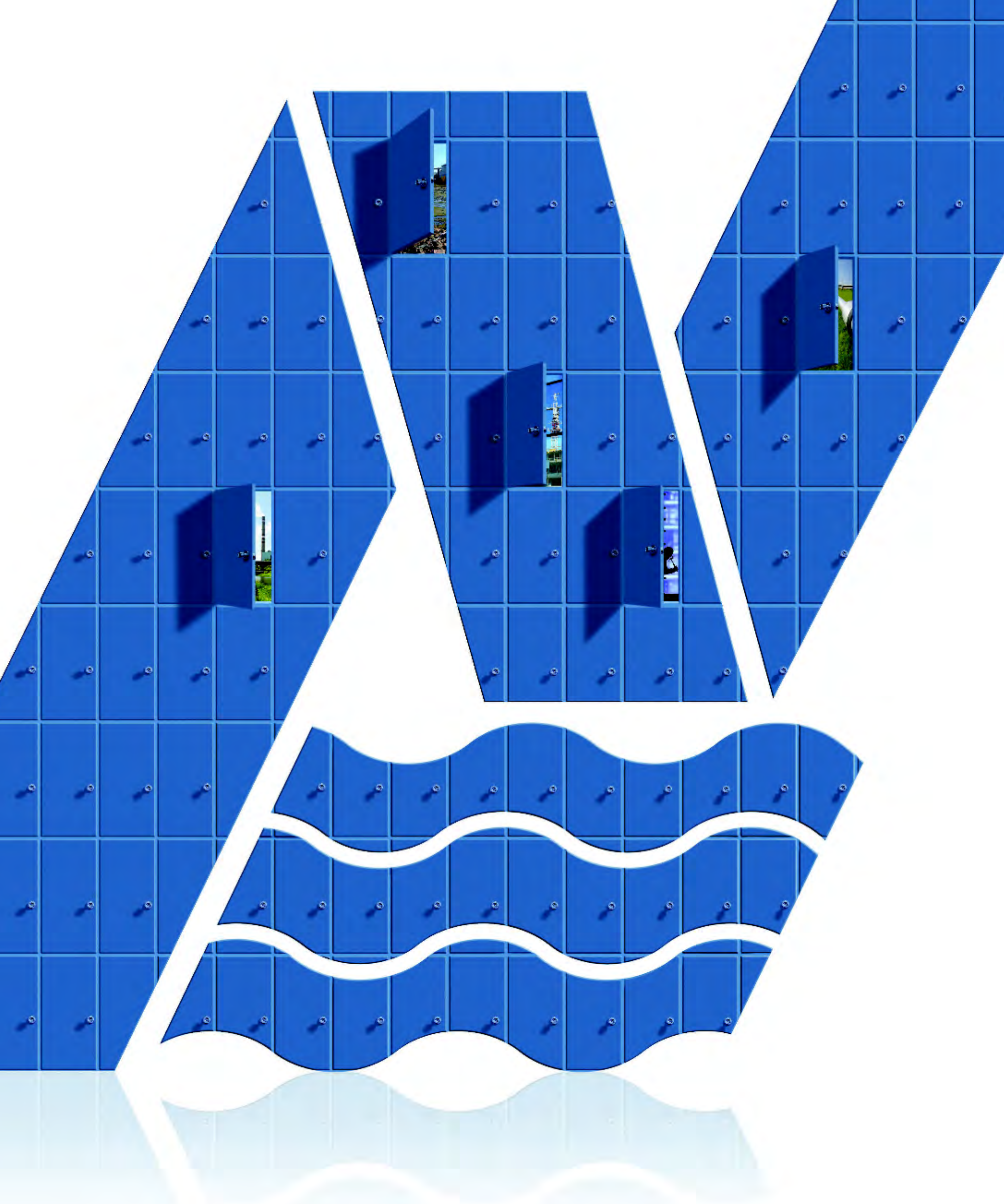
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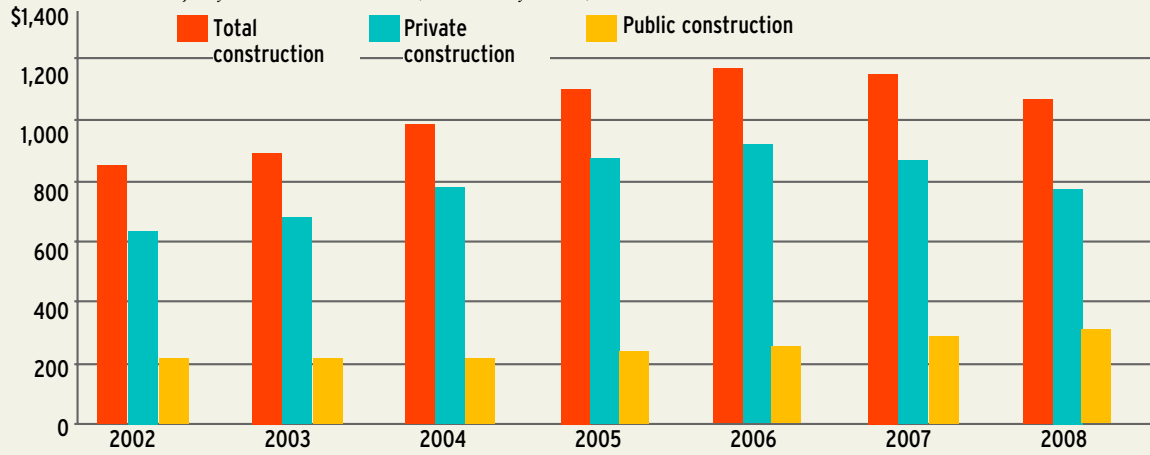


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CONSTRUCTION SPENDING

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Source: U.S. Census Bureau *Private and public construction may not equal total spending due to rounding.

Contractors: Risks rise as firms vie for business

CONTINUED FROM PAGE 14

ences, and submit letters of good standing from their banks, said Jerry Ball, the company's chief financial officer.

Additionally, Skender is spending more time analyzing its subcontractors' financial statements and is requiring more subcontractors to post bonds.

"People have to cut costs," Mr. Ball said, "but they still have to spend a lot of time and effort to make sure they're getting quality

subcontractors."

El Paso, Texas-based building contractor C.F. Jordan L.P. is mitigating its risk by partnering only with experienced and well-staffed subcontractors, said Patricia Kagerer, vp of safety and risk management. She said contractors must think ahead and not make rash decisions to solve immediate problems.

"We want to make sure we don't find ourselves in situations where we've made short-term decisions that impact our ability to perform in the long term," she said.

General contractors also can take other steps to ensure their projects aren't inherently risky, said Ed Littleton, vp of risk management for Dallas-based Balfour Beatty Construction, a unit of London-based Balfour Beatty P.L.C. He said if a contractor decides to break into a new building niche, it should take that risk in a region where it already has a presence, rather than jump into a new niche and a new region all at once.

"The challenge is when people rush in and throw caution to the wind and forget about all the risk," Mr. Littleton said.

With solid risk management practices in place and good relationships with their insurance brokers and agents, building contractors are not struggling to acquire coverage or battling increased rates, executives said.

"There is an interesting dynamic going on," Mr. Littleton said. "I think (underwriters) would love to be selective, but their premiums are down as a result of decreases in new project awards. They're not necessarily being unwise, but they can't afford to ratchet it down too much."

Instead of denying coverage or increasing rates, insurers are working to inform their underwriters and brokers about heightened risks; they, in turn, are informing and consulting clients on mitigating those risks.

Zurich set up an extensive training program for its underwriters and brokers in 2007 that covers points such as the fundamentals of construction, planning, estimating and scheduling, said Gary Kaplan, president of its construction unit in Schaumburg, Ill.

Mr. Higgins said Travelers' underwriters spend a lot of one-on-one time with clients, coaching them on how to take on new business in a less risky fashion.

Mr. Ciullo said while Chubb underwriters expect reasonable business plans from their clients that document their potential risks along with their strengths and weaknesses, they are aware that there could be a benefit from construction clients breaking into new areas.

"We can all put our finger on the fact that change is risky," Mr. Ciullo said. "But not changing can also be risky. Surety underwriters have to assess the difference between a plan that anticipates and minimizes risk from one that doesn't."

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Risks change as construction projects stall

By DAVE LENCKUS

Foreclosing lenders face various risks and risk-financing options as commercial property owners halt partially completed projects because of the weak economy, insurance experts say.

While financial institution insurance does not cover those risks, lenders can salvage the defaulting owners' commercial construction coverage or turn to the surplus lines market, experts said.

During the second quarter of 2009, 1,233 office, retail and industrial projects were deferred or aban-

doned, said Abigail Marks, a Boston-based economist with real estate consultant CB Richard Ellis Inc. That's down slightly from 1,305 projects during the first quarter but 83.8% greater than the 671 projects that were deferred or stalled at year-end 2006, CBRE's figures show.

Indeed, construction stalls have hit a 30-year high, noted Jim Haughey, the Boston-based chief economist for construction industry analyst Reed Construction Data.

The driver is falling commercial property values. Decreases vary by region, but range from 30% to 40% and exceed 50% in highly distressed

areas, estimated Stephen Cumbie, a professor at the University of North Carolina's Kenan-Flagler Business School in Chapel Hill, N.C.

Falling property values can make the owner's construction loan-to-property-value ratio soar, often compelling a lender to stop funding its loan.

Falling rental pricing and demand have exacerbated the problem, prompting project owners to voluntarily halt construction, experts noted.

As a result, whether a lender is a bank or an institutional investor, it faces "a real paradigm shift," said

George Dale, an executive vp in the construction services group at Aon Risk Services Inc. in Los Angeles.

"In the old days, banks that foreclosed sold the property to another developer and would make OK money," Mr. Dale said. "Now, banks are seriously considering going into the land development business."

When a lender quickly sells a foreclosed project, the buyer assumes the builder's risk and completed operations risk, said Joe Savarese, vp-casualty risk in Tinton Falls, N.J., for surplus lines insurer American Safety Insurance Services Inc.

But if the lender keeps the property until a buyer appears or economic conditions warrant finishing it, then the lender has a property risk and a premises liability risk, experts said.

If the lender completes and sells the project, then the lender also assumes construction-related and completed-operations liability risks, Mr. Savarese said.

Contractors involved in the project also would be liable for any construction defects, although identifying the contractor at fault after a lender brings in new contractors can be difficult, an expert said.

Regardless, "everyone gets sued" if there is a defect, Mr. Savarese said.

Because a lender would have established insurance requirements under its original loan agreement, it has "a great interest" in keeping the existing coverage in force, said Colin Daigle, the Washington-based global construction consulting practice leader for Marsh Risk Consulting. The lender either could assume responsibility for the coverage or work with the project owner or contractors to maintain the coverage, he said.

When an owner-controlled insurance program—a wrap-up liability policy covering the owner and most contractors—is involved, insurers "are open" to transferring the coverage to the lender, said James Conroy, a vp and the chief underwriting officer for national market construction at Boston-based Liberty Mutual Insurance Co.

However, the original contractors would have to "stay in place," he said.

But, Mr. Savarese noted, transferring a policy would not be possible if the lender had not been an additional named insured on the policy, when the insurer has canceled the policy for nonpayment, or when the original project completion date has passed.

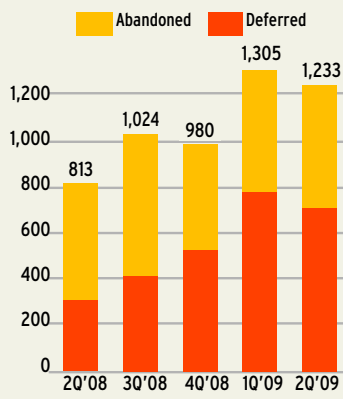
The original OCIP insurer also could cancel coverage if the lender changes the design substantially to minimize completion costs, Mr. Conroy said.

When the original OCIP cannot be tapped, arranging a contractor-controlled insurance program for the original contractors is not a strong option because their general liability policies probably would contain wrap-up exclusions, Mr. Conroy said.

But finding replacement liability coverage is relatively easy if the project is not stalled longer than 60 to

ON HOLD

Deferred or abandoned construction projects since second quarter 2008.



Source: CBRE-EA Pipeline

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Risks change as construction projects stall

By DAVE LENCKUS

Foreclosing lenders face various risks and risk-financing options as commercial property owners halt partially completed projects because of the weak economy, insurance experts say.

While financial institution insurance does not cover those risks, lenders can salvage the defaulting owners' commercial construction coverage or turn to the surplus lines market, experts said.

During the second quarter of 2009, 1,233 office, retail and industrial projects were deferred or aban-

doned, said Abigail Marks, a Boston-based economist with real estate consultant CB Richard Ellis Inc. That's down slightly from 1,305 projects during the first quarter but 83.8% greater than the 671 projects that were deferred or stalled at year-end 2006, CBRE's figures show.

Indeed, construction stalls have hit a 30-year high, noted Jim Haughey, the Boston-based chief economist for construction industry analyst Reed Construction Data.

The driver is falling commercial property values. Decreases vary by region, but range from 30% to 40% and exceed 50% in highly distressed

areas, estimated Stephen Cumbie, a professor at the University of North Carolina's Kenan-Flagler Business School in Chapel Hill, N.C.

Falling property values can make the owner's construction loan-to-property-value ratio soar, often compelling a lender to stop funding its loan.

Falling rental pricing and demand have exacerbated the problem, prompting project owners to voluntarily halt construction, experts noted.

As a result, whether a lender is a bank or an institutional investor, it faces "a real paradigm shift," said

George Dale, an executive vp in the construction services group at Aon Risk Services Inc. in Los Angeles.

"In the old days, banks that foreclosed sold the property to another developer and would make OK money," Mr. Dale said. "Now, banks are seriously considering going into the land development business."

When a lender quickly sells a foreclosed project, the buyer assumes the builder's risk and completed operations risk, said Joe Savarese, vp-casualty risk in Tinton Falls, N.J., for surplus lines insurer American Safety Insurance Services Inc.

But if the lender keeps the property until a buyer appears or economic conditions warrant finishing it, then the lender has a property risk and a premises liability risk, experts said.

If the lender completes and sells the project, then the lender also assumes construction-related and completed-operations liability risks, Mr. Savarese said.

Contractors involved in the project also would be liable for any construction defects, although identifying the contractor at fault after a lender brings in new contractors can be difficult, an expert said.

Regardless, "everyone gets sued" if there is a defect, Mr. Savarese said.

Because a lender would have established insurance requirements under its original loan agreement, it has "a great interest" in keeping the existing coverage in force, said Colin Daigle, the Washington-based global construction consulting practice leader for Marsh Risk Consulting. The lender either could assume responsibility for the coverage or work with the project owner or contractors to maintain the coverage, he said.

When an owner-controlled insurance program—a wrap-up liability policy covering the owner and most contractors—is involved, insurers "are open" to transferring the coverage to the lender, said James Conroy, a vp and the chief underwriting officer for national market construction at Boston-based Liberty Mutual Insurance Co.

However, the original contractors would have to "stay in place," he said.

But, Mr. Savarese noted, transferring a policy would not be possible if the lender had not been an additional named insured on the policy, when the insurer has canceled the policy for nonpayment, or when the original project completion date has passed.

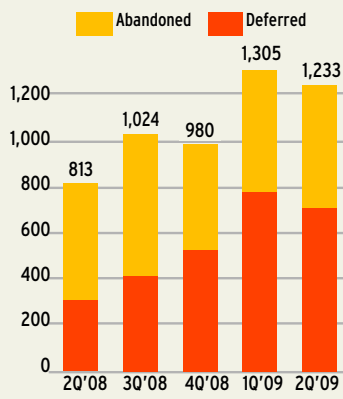
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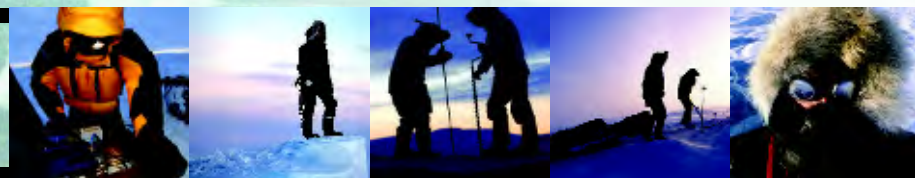
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Loss mitigation measures important to ensure construction site protection

By DAVE LENCKUS

When a commercial construction project shuts down indefinitely before it's complete, site protection depends on how well contractors demobilize and other loss-mitigation efforts once the site has been vacated, management experts say.

Before contractors leave a work-site, the facility's structural integrity should be verified, said James Conroy, a vp and chief underwriting officer for the national market construction group at Liberty Mutual Group Inc. in Boston.

For example, a wall system might have to be completed to stabilize the

portion that is up already or the partially completed section might have to be dismantled, Mr. Conroy said.

If a large construction or renovation project is halted at a fairly advanced stage, water standpipes should be charged so firefighters have an adequate water supply to fight a blaze on the site, he said.

Some work, such as pouring concrete, can't always "stop on a dime" and still leave the facility structurally sound, said Colin Daigle, the Washington-based global construction consulting practice leader for the Marsh Risk Consulting.

The consultant helps contractors manage shutting down a project

and working through disputes.

After contractors leave a site and the owner—in many cases a lender that has foreclosed on its construction loan—looks for property insurance, site security is a major factor in finding coverage, said Ronda Whaley, a senior vp for wholesale broker Brown & Riding Insurance Services Inc. in Los Angeles.

Local ordinances impose many security requirements, such as fencing and lighting, Ms. Whaley said. But adding guards and video surveillance "helps make underwriters feel comfortable," particularly when a stalled project is in a high-crime area, she noted.

Plastic-wrapping a stalled project can discourage trespassers and protect buildings with unfinished walls and roofs from the weather, said George Dale, executive vp in the construction services group at Aon Risk Services Inc. in Los Angeles.

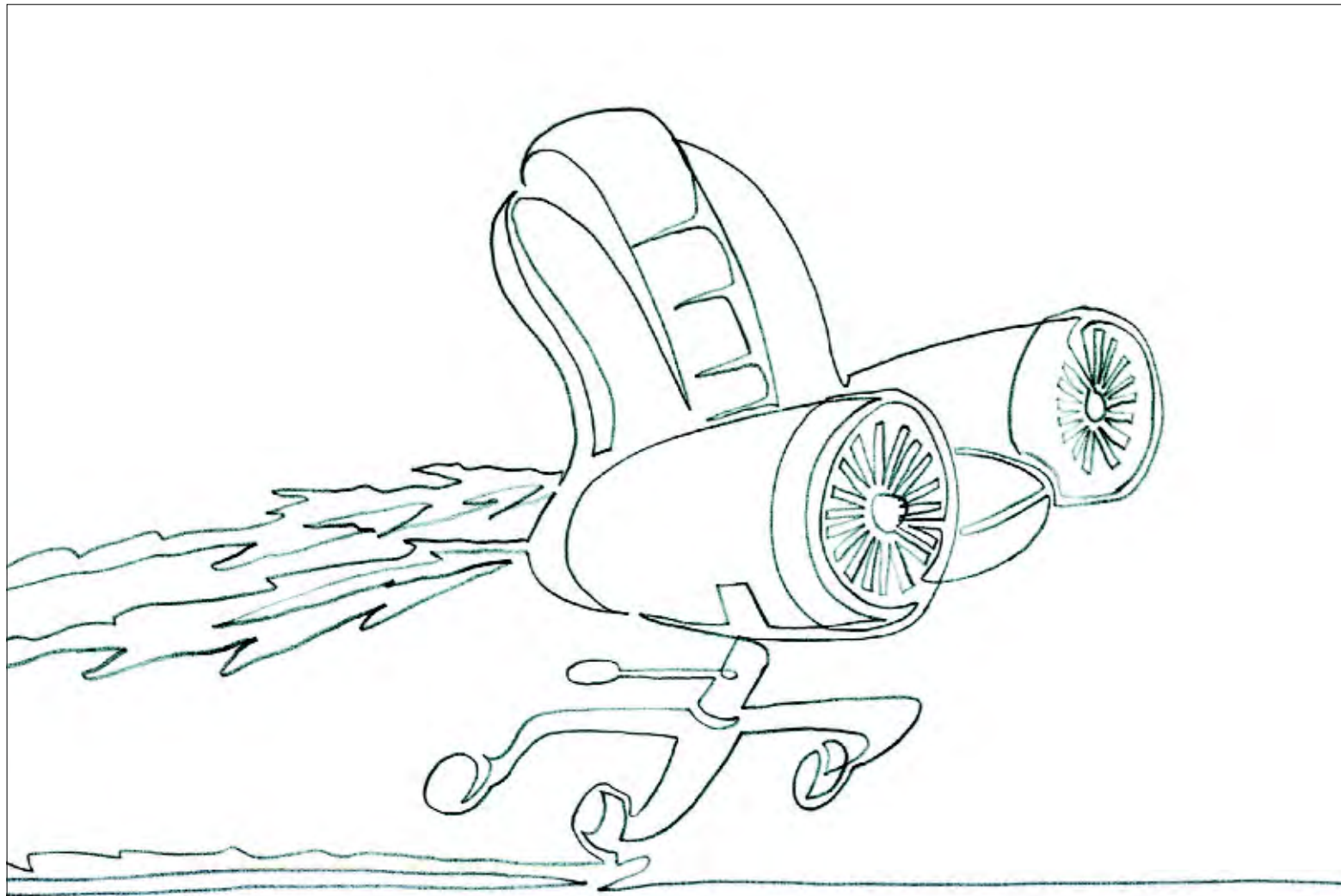
The process involves affixing large plastic sheets to one another by a heating process to essentially shrink-wrap a building's sides and roof.

Chris McMillan, chief operating officer and director of sales for Reno, Nev.-based Fast Wrap USA, said the 3-year-old company's fee of about \$1.25 per square foot of wrap is comparable to the cost of hiring a

loss-mitigation company to tarp and board up a project, but the plastic wrap provides better protection and lasts longer.

The building wrap concept is not new, however, said Tony Seraphin, president of Global Wrap L.L.C. of St. Augustine, Fla. Global Wrap has been wrapping buildings for nearly 29 years, he said.

Any size building and a project of any value can be wrapped, according to the companies' executives. Fast Wrap has secured an 88,000-square-foot building, while Global Wrap has wrapped a project in which the owner has \$1.3 billion invested, the companies' executives said.



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Lenders: Risks change for projects

CONTINUED FROM PAGE 18

90 days, said Ronda Whaley, a senior vp for wholesale broker Brown & Riding Insurance Services Inc. in Los Angeles.

"The surplus lines market will step in," she said.

Ms. Whaley said builder's risk insurers are "quite competitive," because new construction is minimal. If a project is halted only temporarily, coverage typically can be placed within 24 hours at nearly the same cost as the expired coverage, she said. But coverage for indefinitely stalled projects is more costly and restrictive, she noted.

Among surplus lines insurers offering coverage for foreclosed commercial properties is American Safety Insurance Services Inc. Foreclosing lenders can purchase general liability coverage that provides premises liability and extended completed operations coverage, Mr. Savarese said.

Boston-based Lexington Insurance Co. writes coverage for stalled commercial projects, said Tom Grandmaison, a senior vp and head of the construction practice.

Lexington's idle-asset policy provides liability coverage for indefinitely stalled projects; the insurer also can provide property coverage for facilities stalled at any stage of construction. Lexington also might offer liability cover for future operations on a project-specific or wrap-up basis. In addition, it writes discontinued operations coverage for the completed work of contractors that have been acquired or taken over via foreclosure.

Ironshore Inc. offers nonadmitted general liability cover of stalled projects at any stage through its Boston-based IronBuilt unit, said Joe George, president of the division.

He cautioned insurance buyers to carefully evaluate insurance options, because "there is a lot of misunderstanding—a lot of miscommunication in this marketplace" involving the breadth of coverage for past, present and future claims. "Buyers should be extremely diligent in knowing what is covered," he said.



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Questions Answers

Gary Kaplan is president of construction for Zurich North America Commercial in Schaumburg, Ill. During a recent interview with Business Insurance Senior Editor Roberto Ceniceris, Mr. Kaplan discussed how the economy has affected the construction industry and construction insurance premiums.



Construction sector faces challenging period

Q: Is construction one of the hardest hit segments of the economy?

Not many industries have been hit harder than construction during the recent economic downturn. We initially saw that in the residential construction business and hadn't anticipated it coming through in the commercial side. Our contractors are doing the best they can to navigate through those uneasy waters at a really difficult time.

In addition, wage growth in construction has flattened and contractors, like other employers, are looking for ways to minimize compen-

sation costs whenever they can.

Q: Are you seeing the federal stimulus dollars flow into the construction industry at this point?

It has taken some time to get going. We'd been very hopeful for an immediate impact, but that didn't happen. We had expected growth in infrastructure development in pockets, and we are starting to see that. We've started to see some stimulus

dollars result in some new projects for us and that translates into premium. There's also been a drop in material prices, but competition for projects is hotter than ever. We're hearing from some contractors that there's up to 20 people bidding on some (jobs), so contractors really need to be cautious about cutting the contractor margins razor thin.

Q: What are the risks?

As contractors are forced to go into (specialty building) areas that they maybe haven't worked in before, there are risks. If they move into geographies that they have not been in before, there's a lack of knowledge with the subcontractor world; so it's important that they consider those things and address them as they change their focus. We spent a lot of time with our contractors working through exactly those areas to make sure that they are thinking about them the right way. They're making sure they keep their best employees. They're making sure that they poll their employees to understand where their experience has been in the past.

They're looking to develop experience and, ultimately, they're being cautious not to go into areas where they don't have that experience; so some of them are hiring people that have experience in those geographies and in those industries.

Q: You're not talking about a map location when using the term geography, but about specific building or construction projects that contractors don't have experience with, correct?

Right, building in areas that they haven't built in before, where they may not understand the subcontractor environment, the legal environment, the political environment.

Q: Overall, have you seen a reduction in premium dollars?

Yes, we absolutely have. The premium dollars are down this year. Last year they were down in residential, but...the premium that we charge is based upon that individual customer and the exposure that customer has. It's based upon their historical loss experience, their safety practices and the ultimate (claims) results that they have.

We found that our customers have had some difficulty over this period with credit markets, and we've just developed an alternative to letters of credit for the collateral needs that some of those customers have. We call it EZ Trust and EZ CD.

Q: What is that for?

It's an alternative to what traditionally has been the requirement for collateral (on large-deductible policies) that mostly has been met with letters of credit. The cost of letters of credit has gone up pretty dramatically...so we've made it very simple for them to put money into a trust or into a CD that we can draw down on if there's a need to, but they can also earn interest on that money while it sits there.

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ASHRM: Consumerism wave brings liability concerns for providers

CONTINUED FROM PAGE 4

practicing medicine, Ms. Shaw said. "You watch his adventures as he tries to treat these patients who routinely disregard his advice and force him to practice outside of customary settings and guidelines," she said.

"Health care truly has become a market commodity," Ms. Shaw said. "We now refer to patients as consumers."

The nature of health care consumers is changing as they become better educated and assume greater financial responsibility for the cost of their care, a group whose membership is "the sophisticated, entitled and financially responsible patient."

However, in some cases, "patients are starting to demand inappropriate care," which can lead to adverse outcomes for which the provider or

hospital may be held responsible, Ms. Shaw said.

Although providers should be in charge of making treatment decisions, they are under intense competitive pressure to improve their patient satisfaction ratings and to increase their market share, which in some cases may lead them to give in to patients' demands, she said.

One case in particular is illustrative of the situation, Matson Sewell, director of risk management at Stanford Hospital & Clinics, said during the ASHRM session.

She said the case involved a high-strung Wall Street executive who insisted that two surgical procedures be performed simultaneously even though his doctors advised against it. He said he didn't have

time to wait to recover from one surgery before undergoing another.

"Ultimately, they buckled. They performed the two surgeries at the same time. Every complication they had told the patient might occur did occur," Ms. Sewell recounted.

A year later, the man committed suicide, leaving a note blaming the doctors for leaving him with "a life not worth living."

"It was a case that had to be settled," Ms. Sewell said. "There were no experts that could support his care. The surgeons themselves had documentation that did not support" the treatment decision that was made.

Even though patients have the right to choose their treatment after

See **ASHRM** next page



Ms. Saliba

TOP 10

Georgene Saliba, president of the American Society for Healthcare Risk Management, and administrator, risk management and patient safety, at Lehigh Valley Health Network in Allentown, Pa., says the top challenges for health care risk managers are:

- Nonpayment for hospital-acquired conditions
- Integration of risk management, hospital quality and patient safety
- Impact of federal health care reform
- Demonstration of risk management value to C-suite
- Electronic health record implementation
- Physician involvement in safety and quality
- Investigation and disclosure of adverse events
- Effective, standardized reporting systems
- MMSEA* reporting
- Mandatory state reporting of adverse events

*The Medicare, Medicaid and SCHIP Extension Act of 2007 requires defendants and insurance carriers beginning Dec. 31, 2009, to report settlements with Medicare beneficiaries to the secretary of Health and Human Services and the Centers for Medicare and Medicaid Services for purposes of subrogation.

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CONTINUED FROM PREVIOUS PAGE

being informed of the recommended options, "that same patient or the surviving family will sue and prevail on a claim of negligent care" if the patient's decision results in a bad outcome, Ms. Sewell said.

The role of risk managers in such situations is to discourage providers from rushing to a compromise to satisfy patient demands, Ms. Shaw said. Risk managers should encourage providers to take the time to discuss the situation with colleagues, refer the patient for a second opinion and document an informed refusal of the recommended treatment plan, she added.

Risk managers should "educate providers, proactively, on the impor-

tance of adherence to professional standards and limit-setting. In addition, we also should remind providers to set treatment param-

'Once upon a time, doctors told patients what to do, and patients just did it. Now, patients tell providers what to do.'

Sheetal Shaw,
Palo Alto Medical Foundation

ters" and "develop an understanding with patients that certain options do not exist," Ms. Shaw said.

It also is essential that risk managers communicate to upper management that the key to managing these situations and avoiding litigation is to adopt a coordinated approach that involves bringing everyone to the table, Ms. Shaw said.

"The drive for excellent patient satisfaction and market share should not compromise care standards," she said. "We also can be the voice to leadership (about) cases involving inappropriate patient surrogate demands that have not risen to the level of a claim or suit yet, but that have true significant operational costs in your institutions in terms of staff time, provider frustration and financial costs to the organization."

For example, hospitals and providers may decide to "write off"

the cost of care in some cases to prevent litigation, she said.

"The key to managing these types of cases, we feel, is effective communication with leadership early on to arrive at a coordinated organizational response from both physician and administration," Ms. Shaw said.

Health care risk managers need to "partner with our patients," ASHRM President Georgene Saliba suggested during a post-conference interview. She said she becomes involved as early as possible in situations where patients are trying to dictate treatment decisions.

Ms. Saliba, who is administrator, risk management, claims management and patient safety at Lehigh Valley Health Network in Allen-

town, Pa., said she recently experienced a potentially volatile situation involving a patient who wanted a certain type of chemotherapy even though it was not the right treatment for the type of cancer he had.

Ms. Saliba ultimately defused the situation by gathering the patient, his family, doctors and others involved in his treatment for a discussion in a hospital conference room.

"It is not medically indicated. You just don't do it. End of conversation," Ms. Saliba said.

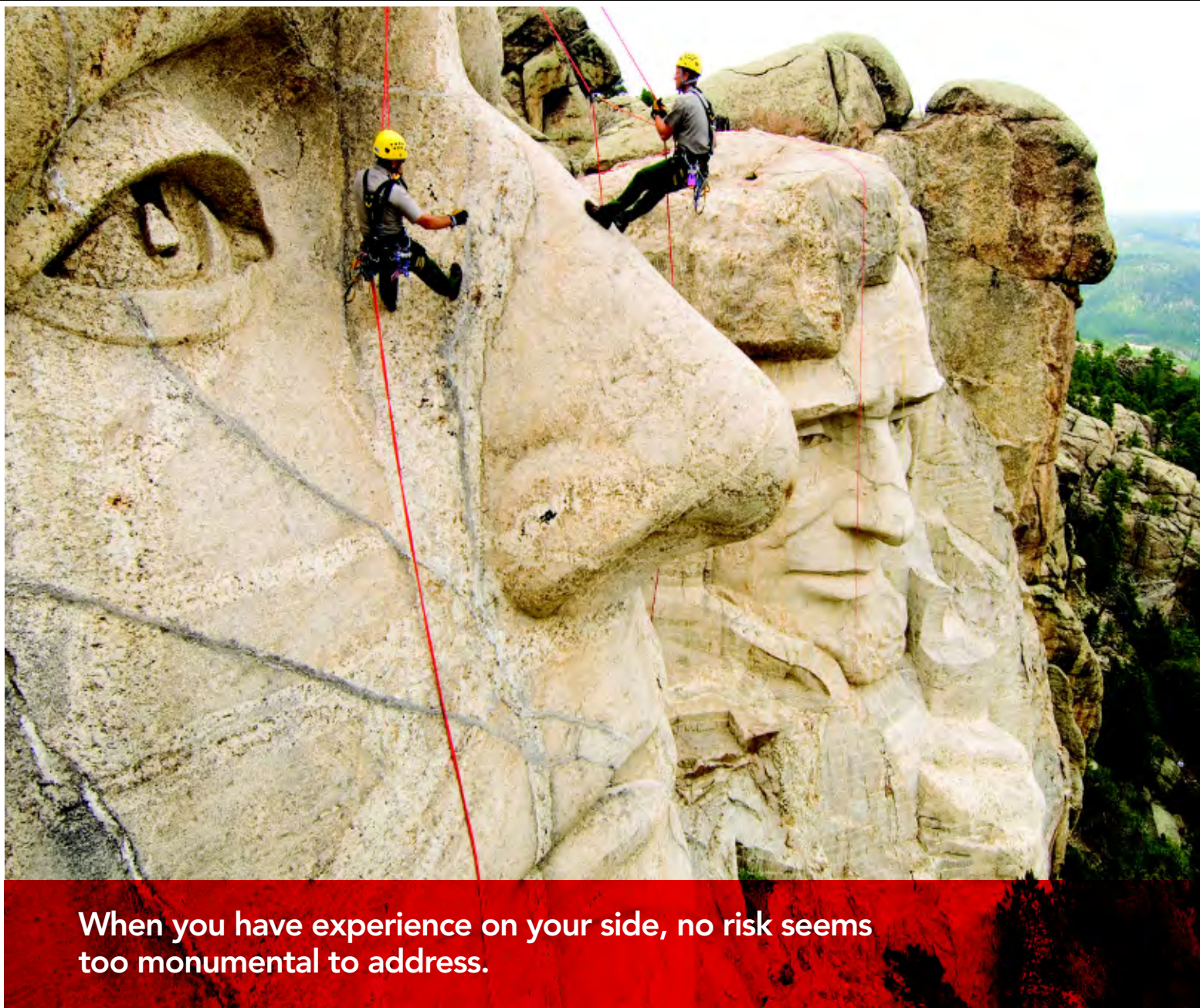
Conference draws 2,000 to Colorado

DENVER—Nearly 2,000 health care risk management professionals attended the 2009 American Society for Healthcare Risk Management Annual Conference & Exhibition held Oct. 22-25 in Denver.

This year's conference featured 60 educational sessions covering patient safety, legal and regulatory issues, claims and litigation, risk financing, enterprise risk management and leadership development issues. In addition, approximately 140 exhibitors demonstrated products and services tailored to the needs of hospital risk managers.

Next year's conference will be held Oct. 13-16, 2010, in Tampa, Fla. For more information, visit www.ashrm.org.

—By Joanne Wojcik



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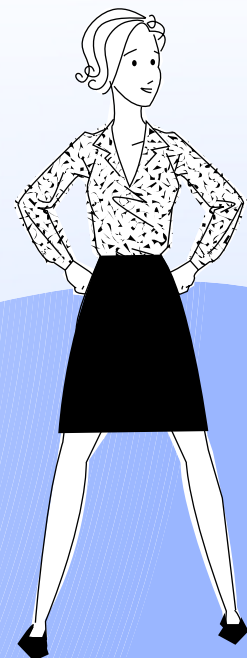


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Keep it simple when building enterprise risk structures

Big picture focus creates better view of developing risks

By John J. Hampton

Two quandaries of enterprise risk management have come together as a result of the global financial crisis.

The first is the importance of creating a structure of risk categories when some risks have owners and some do not. The second deals with how the enterprise sees changes in the organizational culture that reflect a failure of leadership. Let us examine these issues one at a time.

The wrong way to build a structure of risks is to list hundreds or thousands of risks in an electronic spreadsheet. This is plain common sense. If you have 50 strategic goals for next year, you are unlikely to achieve even a small portion of them. If you collect too much data, you will have problems making sense out of relationships.

The problem is compounded because many exposures are insignificant in an ERM framework. Companies often have extensive internal controls, business process audits and proactive compliance functions that cause central risk management efforts to be redundant, or worse, useless. In the grand scheme, it is not important to have high-level oversight of inventory, advertising copy or changes to the setup of an assembly line. Another issue arises when we try to correlate myriad risks. We know the relation-

ship historically. What will happen to it in a rapidly changing competitive environment? Finally, all expertise is not found in the higher ranks of an organization. The CEO is not necessarily the best-equipped and most knowledgeable person to solve customer relationship exposures.

The problem of understanding risk is further compounded by a failure of risk categorization. As an example, one of the more extensive efforts to categorize risk was undertaken in 2000 when Nashville, Tenn.-based e-commerce and insurance incubator Discover eHoldings Inc. surveyed organizations and developed four categories of risk: external factors, internal operations, relationships and the marketplace. These four categories were broken down into 17 subcategories and 178 sub-subcategories. Now we ask a simple question. What are we going to do with this kind of risk categorization? To take one example, the category of relationships had 43 sub-subrisks. Shortly after addressing how to handle relationship risk, we would be buried in a mixture of important and less important discussions that distract people from their real goals.

Today, we have a better approach. We identify two categories of risk: those with risk owners and those that cross departmental lines. In the first group are exposures in functional areas, relatively independent operating units and key initiatives. The CFO is responsible for financial risks, the Asia-Pacific manager oversees regional exposures and a senior vp is respon-

Emerging Risk STRATEGIES



John J. Hampton is the KPMG Professor of Business and Dean of the School of Professional and Continuing Studies and Graduate Business Programs at St. Peter's College in New Jersey. To read Mr. Hampton's columns and interviews, visit www.BusinessInsurance.com/ERM.

sible for a key initiative of growth through acquisitions. The risk owners report to the CEO and board and are held accountable for risk management. The second category contains risks without owners. Examples are strategic risk, subculture risk, leadership risk, and reputation risk. A company has strategies, dysfunctional subcultures, managers when it really needs leaders, and constant danger to its rep-

utation on all sides. Everybody, often including members of the board, has to work on these exposures by recognizing that all have an upside: opportunity.

So what do we do to ensure coordination and effective understanding of risks in both areas? We start with a hierarchical structure. At the top, whether it's the entity itself or a subentity, we identify five to nine key risks (opportunities) and assign risk owners. The CFO is accountable for capital budgeting, valuation, capital structure, credit, the investment portfolio and financial reporting risks. Each of these areas can be broken down into subcategories with specific individuals responsible for managing risk and reporting on risk status. The CFO takes in the big picture.

The next component of the model is to use technology to allow interested and authorized parties to peer into risk mitigation details. For this goal, we build or purchase technology that provides visual risk clusters showing interrelationships of risk backed up by detailed documentation and reports. Fortunately, technology has become so powerful that it can handle and organize detail and simplify it. Should we say that again? Simplify it. We can see relationships visually. We can reduce massive amounts of words or numbers in reports that clarify an exposure. It was possible for American International Group Inc. to see the massive commitments accepted by its Financial Products group. The company simply did not have the risk structure and technology in place.

Finally, augment the entire struc-

ture with a central risk function. Composed of employees, consultants, a risk management committee, other parties or a combination, it should be led by a senior executive who knows the company's industry and business. Sometimes called a chief risk officer, the head of the unit should not manage any risk. Should we say that again? Probably, yes. The task is to constantly scan the horizon for external developments that bring exposure or opportunity. At the same time, scan internally for management weaknesses that harm operations or leadership shortcomings that deny the pursuit of opportunities. When something is spotted, put it on a high-tech platform as an issue to be considered and a discussion to be started. Going back to AIG, the company insured \$500 billion in credit default obligations. Somebody could have asked whether that seemed like a lot.

Now we have enterprise risk management. Compliance, internal controls and internal audit identify or manage their risks, and technology allows us to see their efforts if we choose to do so. Somebody is buying insurance—an important function, but a small part of ERM. And the organization has a structure so it can understand things that otherwise might be missed in a changing world. In a speech at the 2009 RIMS annual conference, former AIG chief Maurice Greenberg recommended a quarterly discussion of ERM by the board. The recommendation is long overdue. The above structure would make the discussion meaningful.

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Products & Services

Updated software links regulators with market

OKEMOS, Mich.—Sircon Corp., a wholly owned subsidiary of Bothell, Wash.-based Vertafore Inc., has released updated versions of its software programs serving insurance brokers and insurance companies.

The company's online network connects insurance companies and brokers with state regulators.

The Sircon for Carriers platform, which helps insurers process producer requests, features producer records continuously updated by the National Producer Database, the Okemos, Mich.-based software company said. In addition, when processing license applications, users can now see state producer status results, including approvals and denials, by their specific qualification or line of authority.

The Sircon for Agencies and Brokers platform, which helps brokerages process agent licensing and renewal transactions, also has been enhanced, the company said. The program features an "active licenses and appointments" report to help streamline communication from state insurance departments and improve overall compliance efforts, the company said.

The program allows users to know "at a glance which producer can sell which policy for which carriers in which state," the company said.

For more information, contact Scott Morrison, vp of marketing, at 517-381-3828 or smorrison@sircon.com.

Willis Re service aims to help insurers assess risk

NEW YORK—Willis Re Inc., the reinsurance unit of Willis Group Holdings Ltd., has launched a service for insurers to evaluate how much overall risk they are taking.

The Value Based Capital Management service is aimed at helping insurers manage their capital and determine which products help protect a company's value.

According to Willis Re, the program begins with a comprehensive assessment of an insurer's overall risk from multiple sources, including underwriting, adverse loss reserve development, stock market volatility, bond defaults and reinsurer defaults, all of which relies on the insurer's data.

In addition, the customized program addresses how much and what form of capital a firm should have given its risk profile, with a specific focus on the types of capital that will maximize an insurer's value.

The program addresses the "trade-off between maximizing earnings and protecting risk," Willis Re said in a statement.

For more information, contact William H. Panning, executive vp, at bill.panning@willis.com or visit www.vbcm-willisre.com.

AllOne Health to offer benefits, wellness model

WILKES-BARRE, Pa.—AllOne Health Group Inc. said it plans to introduce a health and productivity management model to help employers integrate employee benefits and wellness program offerings.

The company has partnered with Philadelphia-based Reliance Standard Life Insurance Co. on the program, according to a statement.

RelianceOne aims to integrate wellness, disease management and employee assistance programs with disability and absence management services, the company said.

In addition, the program streamlines relevant data and offers customized reports to help organiza-

tions "provide earlier points of intervention," the companies said.

The program aims to reduce direct health care costs, decrease employee absences, and reduce the frequency and duration of employee disability.

RelianceOne will be tested with employers beginning in March 2010 and is expected to be available in 2011. For more information, call 800-351-7500, ext. 3741; or e-mail RelianceONE@rsli.com.

Sedgwick CMS program to aid Medicare compliance

MEMPHIS, Tenn.—Sedgwick Claims Management Services Inc. has introduced a Medicare compliance program for organizations that are

paying workers compensation or medical liability claims to individuals who are eligible for Medicare.

The third-party administrator said its Sedgwick CMS Medicare Solution helps organizations comply with Medicare set-aside determinations, calculates reimbursement amounts, and offers conditional payment negotiation and resolution consulting services. In addition, the program coordinates services with reporting obligations under the Medicare, Medicaid and SCHIP Extension Act of 2007, the company said.

Memphis, Tenn.-based Sedgwick CMS said the service can help organizations meet the burden placed on them by the federal government's enforcement of the Medi-

care Secondary Payer Act.

The program aims to align Medicare services with an organization's core claims management program, rather than being an "unrelated administrative afterthought," the company said.

For more information, contact Michael Merlino, Medicare compliance director, at 678-628-1336.

TO SUBMIT ITEMS

BI's Products & Services column reports on new product offerings. Please send Product & Services news to Colleen McCarthy, 711 Third Ave., New York, N.Y. 10017 or e-mail cmccarthy@businessinsurance.com.

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AND IN THE MATTER OF THE COMPANIES ACT 1981

NOTICE IS HEREBY GIVEN under Clause 8 of the Scheme of Arrangement between Mariner Reinsurance Company Limited and its scheme creditors that the Scheme became effective with effect from Friday 23 October 2009. In accordance with the terms of the Scheme, the Final Claims Submission Date is 5pm (GMT) on 22 January 2010.

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The Scheme documents, the claim form and other information regarding the Scheme are available from the website www.mariner.bm.

Scheme creditors with any questions concerning the action they are required to take should contact Richard Finney of KMS at the address above, by telephone on +44 (0) 207 488 5452 or by email: richard.finney@kmsim.com.

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UP CLOSE



ALAN SEEGRIST

NEW JOB TITLE: Salt Lake City-based senior vp with Buckner Co. Inc.

PREVIOUS POSITION: Salt Lake City-based senior associate with the health and benefits division of Mercer Inc.

GOALS FOR NEW POSITION: Buckner Co., in the Mountain/West region, is generally within the top five producing agencies in property/casualty and employee benefits. When you look at the block of business in the health and benefits side, my responsibility is to continue to grow that into a larger market....The focus is to work more to form a consulting practice.

INDUSTRY CHALLENGES: The health reformation in the works and not knowing what that is going to do. Of course, the driver behind health reform is inflationary trends within the health insurance marketplace that are running many times that of typical inflation, or the Consumer Price Index.

CAREER HIGHLIGHT: Legislative involvement over the years and helping effect change from a legislative perspective. That would probably come down to the years the Health Insurance Portability and Accountability Act came about. I was basically working with both state and federal legislators in how that was created and implemented.

ADVICE: If I were to talk to someone new in the industry, to me the absolute essential is that they have very strong work ethic, that they get involved and that they give back.

GROWING UP: When I was 4 or 5, I wanted to be a fireman.

OUTSIDE THE INDUSTRY, A DREAM JOB: I do a lot of volunteer work with the Boy Scouts of America and with my local church, and homeless initiatives for those who do not have a lot. I know that may not be a job, but I would love to volunteer more.

FAVORITE BOOK AND WHY: "The Book of Mormon." I have found more leadership skills and guidance in that than any other book.

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:

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Legal experts' reactions mixed on Marsh acquittal

But judge's decision not seen as lessening impact of Spitzer

By SALLY ROBERTS

NEW YORK—The acquittal of three former Marsh Inc. executives accused in connection with New York state's bid-rigging investigation of the brokerage drew mixed reactions from legal experts last week.

Some said the not-guilty verdicts for Joseph Peiser, Greg J. Doherty and Kathleen M. Drake were not surprising, given New York County Supreme Court Judge James A. Yates' relatively light sentences imposed in the first trial last year in the case.

In that trial, Judge Yates found William Gilman and Edward J. McNenney—called the “architect” and “enforcer,” respectively, of Marsh's bid-rigging scheme in its global broking unit—guilty of violating the state's antitrust law and sentenced them to 16 weekends in jail, five years of probation, and 250 hours of community service. Judge Yates, however, acquitted the duo of 20 other charges of fraud and larceny.

Other legal experts say that, given the antitrust conviction last year, they were surprised Judge Yates didn't render a similar decision for Messrs. Peiser and Doherty and Ms.

Drake, who prosecutors alleged misled Marsh's excess casualty clients by steering business to selected insurers and prevented a competitive bidding process.

Mr. Peiser is a former managing director and head of Marsh's global broking excess casualty unit; Mr. Doherty is a former Marsh senior vp and ACE USA local broking coordinator team leader; and Ms. Drake is a former Marsh managing director and local broking coordinator team leader.

Overall, legal experts say that while the verdicts show that former New York Attorney General Eliot Spitzer, who initiated the probe, went too far in his original prosecution, the verdicts do not lessen the impact or the importance of the misconduct that he brought to light.

“I was not surprised,” James W. Carbin, a partner with Duane Morris L.L.P. in New York, said of last week's acquittals. “I think it was consistent with the earlier verdict where only one of 21 charges was sustained. It's an affirmation of what many in the industry have said, that the bad acts were isolated and few, and not endemic to the industry.”

James M. Burns, a partner and chair of the antitrust group of Williams Mullen in Washington, also said he was not surprised by the verdicts, given Judge Yates' “rela-

tively light” penalties on Messrs. Gilman and McNenney.

“Given that it was the same judge who presided over this second wave, the fact that he found junior folks even less culpable and less worthy of criminal punishment was not particularly surprising,” Mr. Burns said.

Had the cases been tried in federal

surprised all three former executives in the second trial were “totally vindicated.”

“After the decision in the earlier case, I expected the judge to come down similarly, but obviously he found evidence to the contrary,” Ms. Semaya said.

The verdict “really questions the whole investigation” and sends the

industry were fundamentally changed. And not only did (Messrs.) Gilman and McNenney get criminal sentences, there also were several other folks who pled guilty,” he said.

“I think the investigation and its aftermath really still speaks for itself, notwithstanding the most recent rulings,” Mr. Burns said.

In addition to the seven indicted former Marsh executives who were tried or are facing trial, at least 19 other individuals, including an additional 10 former Marsh employees, have pleaded guilty to criminal charges stemming from the investigation.

“Spitzer's office did an outstanding job to bring this to light,” said Matthew S. Wild, senior counsel of Levitt & Kaizer in New York. “I don't think (the verdicts) speak badly of what Mr. Spitzer did or the results.”

“No one should forget that Marsh...paid \$850 million” to settle the case and that it basically admitted in its 2005 apology to clients that improper conduct took place, Mr. Wild said.

In a statement, Marsh said simply, “These proceedings, to which Marsh was not a party, are about the past.”

Associate Editor Colleen McCarthy contributed to this story.

‘Given that it was the same judge who presided over this second wave, the fact that he found junior folks even less culpable and less worthy of criminal punishment was not particularly surprising.’

James M. Burns, Williams Mullen

court rather than state court, the outcomes might have been different, Mr. Burns added. The rulings are “more of a reflection of Judge Yates' personal views about how significant this conduct is, and those are views more likely to be found in a state court judge” who has “significantly more discretion” in imposing a sentence than do federal judges.

However, Fran Semaya, chair of the insurance regulatory practice of Nelson Levine de Luca & Horst L.L.C. in New York, said she was

message that it “was too far and too broad,” she said. However, “you can't say the prosecution was completely baseless because there were convictions, which are under appeal, and business practices were revisited and ultimately changed.”

“I don't think that the ruling can be used to criticize Spitzer's decision to investigate,” Mr. Burns said. “If you look at the investigation as a whole, hundreds of millions of dollars (were paid in settlements) and business practices all across the

Marsh: Former executives acquitted of charges

CONTINUED FROM PAGE 1

acquittal was “well deserved.”

“I still believe Greg Doherty never should have been prosecuted,” said Maranda Fritz, a partner at Hinshaw & Culbertson L.L.P. in New York, who represented Mr. Doherty. We are “so grateful that he can begin to rebuild his life.”

A spokesman for New York Attorney General Andrew Cuomo did not respond to a request for comment on the verdict, which drew mixed reactions from industry observers and legal experts (see related story).

Last week's acquittals came after the February 2008 convictions of former Marsh Managing Directors William Gilman, who prosecutors called the “architect” of the bid-rigging scheme, and Edward J. McNenney, deemed the “enforcer.” Messrs. Gilman and McNenney were found guilty of violating New York's antitrust law, but were acquitted of all other charges including fraud and grand larceny.

The duo had begun the process of appealing their convictions. However, lawyers for Messrs. Gilman and McNenney since have filed a motion seeking to have the convictions thrown out citing “prosecutorial misconduct.” (see related story)

Prosecutors argued during the three defendants' trial that they misled the broker's excess casualty

‘I would not be surprised if there was an announcement from the New York (attorney general) that they were not going forward with the prosecution of the remaining two defendants.’

James W. Carbin, Duane Morris L.L.P.

clients by steering business to selected insurers and preventing competitive bids. During closing arguments, Assistant Attorney General Evelyn Baez asked the judge to “send a message to the defendants that no matter how powerful, no one is above the law.”

The three were among a group of eight executives indicted in 2005 by then-New York Attorney General Eliot Spitzer after a probe of the broker's contingent commission practices. Prosecutors accused them of colluding with employees at various insurers—including American International Group Inc., ACE USA, Liberty International Insurance Co.,

Zurich American Insurance Co. and others, to rig the market for excess casualty insurance. One of the former executives, Edward J. Keane Jr., pleaded guilty to criminal charges and agreed to cooperate with the government.

About a dozen other individuals who previously pleaded guilty to criminal charges also served as cooperating witnesses during the trial.

Observers said last week's verdict is a boost for former Marsh Senior Vps Thomas T. Green Jr. and William L. McBurnie, the remaining defendants awaiting trial.

Mr. Green's attorney last week

said he will seek to have his client's charges dismissed. Given the verdict, “I would be very surprised, if the prosecution wants to move forward,” said Stephen P. Scaring of Stephen P. Scaring P.C. in New York.

A status hearing for Mr. Green is scheduled for this week, Mr. Scaring said. “The charges will either be dismissed or we will go to trial,” he said.

Dane Keller Rutledge, an attorney for Mr. McBurnie, said he and his client “are delighted” by the acquittal, but declined further comment.

Others said the prosecution likely is considering its next move.

Attorneys claim misconduct in related case

NEW YORK—Attorneys for two former Marsh Inc. executives found guilty in 2008 of violating New York's antitrust law said they are seeking to have the convictions “thrown out” due to “prosecutorial misconduct.”

Robert Cleary, partner with Proskauer Rose L.L.P. in New York, who represents former Marsh Managing Director William Gilman, said he has filed what is known as a “440 motion” asking New York County Supreme Court Judge James A. Yates to “vacate the judgment.” The motion was filed on behalf of Mr. Gilman and former Marsh Managing Director Edward J. McNenney, who were first former Marsh executives to face trial in the case.

The duo were acquitted of all other charges, including fraud and grand larceny, and sentenced to 16 weekends in jail. Their sentences have been stayed pending appeals.

According to documents filed in court, prosecu-

tors “failed to produce or disclose multiple forms of exculpatory evidence.”

Among the nondisclosed material, the motion cites “hundreds of thousands” of documents produced by Liberty International Underwriters, prior statements made by cooperating witnesses to other state's attorneys general, and a prior conviction of one of the prosecution's cooperating witnesses.

The motion charges that the New York Attorney General's office was in possession of this material during the trial and obligated to produce it. In addition, withholding the material “prejudiced” Messrs. Gilman and McNenney's right to a fair trial.

Mr. Cleary said a ruling in favor of the 440 motion could result in a retrial that would include the previously undisclosed material. A hearing has not been scheduled.

—By Colleen McCarthy

“I would not be surprised if there was an announcement from the New York (attorney general) that they were not going forward with the prosecution of the remaining two defendants,” said James W. Carbin, a partner with Duane Morris L.L.P. in New York.

Fran Semaya, chair of the insurance regulatory practice of Nelson Levine de Luca & Horst in New York, said it's possible the prosecution may try to settle to avoid another failure. “I would expect them to push more for a settlement, rather than withdraw the charges,” said Ms. Semaya, who was not involved with the case.

Reform: 'Public option' returns to center of health care debate

CONTINUED FROM PAGE 1

The Senate is not quite as far along, with consideration of reform legislation possibly to begin next week.

Senate Majority Leader Harry Reid, D-Nev., last week, though, announced a key decision: The reform bill he will send to the Senate floor will include a public option—a government-run health insurance plan.

A public option is part of the House reform bill, as well as an earlier bill passed by the Senate Health, Education, Labor and Pensions Committee, but is not in the measure approved by the Senate Finance Committee. Sen. Max Baucus, D-Mont., the chairman of the Finance Committee, kept a public option out, saying it lacked the votes to be approved by the full Senate.

Creation of a government-run plan has triggered enormous controversy. Its advocates say a public option is needed to inject competition into the health insurance market, while critics say a public plan would drive out private insurers and self-funded employers from the market and result in a single-payer health care system.

With both congressional branches moving ahead on reform measures, whose central features include health insurance premium subsidies for the low-income uninsured and penalties on employers that do not offer coverage, the odds of a final agreement being reached—either later this year or early next year—continue to improve, observers say.

"The Democrats control the

House and Senate and the White House. They will make it happen," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

Still, there are many battles to be fought and issues to be resolved.

"The last chapter certainly has not been written," said Paul Dennett, senior vp-health care reform with the American Benefits Council in Washington.

"We are nowhere near the end," said Neil Trautwein, vp and employee benefits counsel with the National Retail Federation in Washington.

In fact, a looming battle—perhaps the most important one to date—soon will play out on the Senate floor: whether a public option will be part of the reform legislation.

Sen. Reid has provided few details on how the public option would work beyond saying that states would have the right to opt out.

At the moment, though, observers doubt if Sen. Reid has the votes for a public option.

"He is giving it the old college try, but I don't see 60 votes for it," Mr. Trautwein said.

"I just don't see where 60 votes would come from," Mr. Dennett agreed.

In fact, Sen. Reid dodged answering questions at a news conference last week on whether he thought there was enough support for the full Senate to pass a public option, said James Gelfand, senior health care policy manager for the U.S. Chamber of Commerce in Washington.

If Sen. Reid sees that he lacks the



Sen. Harry Reid, D-Nev., speaks on Capitol Hill last week. He is joined by Sen. Max Baucus, D-Mont., left, and Sen. Christopher Dodd, D-Conn., right.

AP PHOTO

60 votes needed to stop a certain Republican-led filibuster on a public option, he might revamp the proposal to try to attract enough votes. One way the public option might be revamped, observers say, would be if it was triggered if health care costs exceed a certain level or if studies find there is insufficient competition among health insurers.

While the outcome of the public option battle won't be known for some time, employers already may have lost a battle on another reform provision: curbing tax breaks for those who contribute to health care FSAs.

The House bill now includes a provision in which, starting in 2013, the maximum pretax contributions an employee could make to an FSA would be \$2,500. That

amount would be increased annually to match annual increases in the Consumer Price Index.

That cap is somewhat similar to one embedded in the Finance Committee bill. That panel also would cap FSA contributions at \$2,500, though starting in 2011 and with no future indexing.

With an FSA tax cap expected to be included in the health reform bill Sen. Reid will send to the Senate floor, and the House bill also including an FSA cap, the odds now are high that a cap will be part of the final bill.

Employers have embraced FSAs as a way for employees to pay for uncovered health care-related expenses on a pretax basis, significantly cutting the true cost for employees in higher tax brackets.

But employers prevailed on

another issue: Excluded from the House bill is a provision that would have allowed states to set up their own single-payer health care systems.

Under current law, the Employee Retirement Income Security Act pre-empts states from passing measures that relate to employee benefit plans. The Education and Labor Committee provision, proposed by Rep. Dennis Kucinich, D-Ohio, would have exempted state single-payer laws from ERISA pre-emption.

Other provisions in the measures approved by the House panels and opposed by employers that made it in the bill that the full House will consider include:

- Preventing employers with retiree health care plans from reducing benefits unless they also cut benefits provided to employees. Experts previously said the effect of such a requirement would be to accelerate the exodus of employers from sponsoring retiree health care plans.

- Allowing COBRA beneficiaries to retain coverage far beyond what current law requires. Under the measure, COBRA beneficiaries could continue coverage until they become eligible for group coverage under a new employer's plan or until they become eligible for coverage through new state health insurance exchanges, which the legislation would start in 2013.

Under current law, employees who terminate employment are entitled to up to 18 months of COBRA coverage, while employees' dependents can obtain up to 36 months of coverage in situations involving death, divorce or marital separation.

Relationships: Scandals put spotlight on romance in the workplace

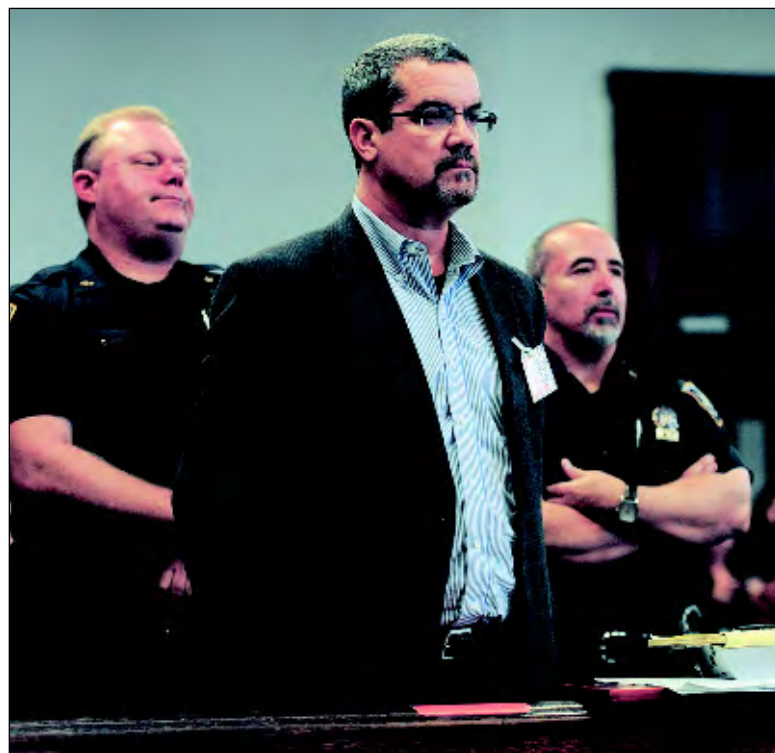
CONTINUED FROM PAGE 3

Another potential area of liability is sexual favoritism complaints, which may be brought by co-workers who may feel, for instance, the recipient of a supervisor's attentions is getting preferential treatment. These are very difficult to prove, however, said Ms. Grossman.

Established policies can help minimize employers' liability. Observers say it probably is not feasible to introduce policies that prohibit all dating between employees. Forty percent of workers say they have dated a co-worker at some time during their careers, according to a February survey by Chicago-based CareerBuilder.com.

However, "the basic policy should certainly prohibit personal relationships where they can cause a conflict of interest, such as a direct-reporting relationship," said D. Gregory Valenza, managing partner with law firm Shaw Valenza L.L.P. in San Francisco. Transfers should be arranged or one or both may have to leave the company, observers say.

"The policy should state clearly that, if a relationship ends, that the parties are expected to report, if there's mistreatment, to the appropriate people," Mr. Valenza said. It



REUTERS/LANDOV

Robert Joel Halderman listens during his arraignment in New York on Oct. 2. The television producer is accused of trying to extort \$2 million from talk show host David Letterman. He has pleaded not guilty.

also should stipulate that "people should refrain from conduct that could cause an uncomfortable work environment for others."

Prohibiting sexual harassment should be the foundation of any policy, say observers.

"Employees and, in particular,

supervisors, need to know that sexual harassment will not be tolerated in the workplace," said William W. Bowser, a partner with law firm Young Conaway Stargatt & Taylor L.L.P. in Wilmington, Del. It also is important that employees "know where to turn if they believe they are being subject to sexual harassment by their supervisors or by their co-workers," he said.

Diana L. Hoover, a partner with law firm Mayer Brown L.L.P. in Houston, said, you "have to start with a very strong policy and then you have to follow it and abide by it. And that means when your best salesperson who brings in the most revenue violates the policy, you have to discipline him just as you would anyone else," she said.

If the employer becomes aware of a relationship that does not violate a policy, such as one forbidding supervisor-subordinate relationships, "make sure you can live with the potential risk of the two working together," and that it is consensual, said Andria Lure Ryan, a partner with law firm Fisher & Phillips L.L.P. in Atlanta.

If there are subsequent complaints of harassment, "be very proactive," Ms. Ryan said. But, "don't be so rigid as to require peo-

ple to put it in writing or file a complaint."

Employers also should investigate secondhand complaints, said Ms. Ryan. Good employees "who don't want to be troublemakers may talk to co-workers," and so the only time an employer may hear about a "truly serious harassing problem may be secondhand," she said.

But do not go too far, warned Robert E. Gregg, a partner with law firm Boardman, Suhr, Curry & Field L.L.P. in Madison, Wis. He cited a case, in which he represented the employer, where a sales manager followed two employees he suspected of having an affair to a hotel, but who never bothered to find out if they rented a room or were just friends who went to its bar for a drink.

Instead, he discharged both and told both their spouses. Charges subsequently filed against the company included invasion of privacy, defamation, interference with a marital relationship, and unfair discharge.

His behavior was "just so far out of line," that all the employer could do was settle, Mr. Gregg said.

"It wasn't any of the sales manager's business," said Mr. Gregg, who would not reveal details of the confidential settlement.

FMLA rights expanded for families with relatives serving in military

Changes focus on service personnel sent overseas

By **JERRY GEISEL**

WASHINGTON—A Defense Department spending bill that President Obama signed into law last week further expands Family and Medical Leave Act coverage for families who have relatives in the military, effective immediately.

The measure, H.R. 2647, builds on a 2008 law that gave new FMLA rights to military families.

Under the new law, employees will be allowed to take up to 12 weeks of job-protected unpaid leave when a spouse, child or parent on active duty is deployed to a foreign country. The 2008 law did not

legal consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

The effect of the FMLA expansion since 2008 has varied significantly, with the biggest impact on employers, such as airlines and defense contractors, that have a high number of employees called up for military service, said Ophelia Galindo, national leader, absence and productivity solutions, in the Orange, Calif., office of Buck Consultants L.L.C.

While the latest FMLA expansion

is welcome, Congress needs to make additional changes to expand the reach of the law, such as applying the FMLA to employees working for small companies, said Sharyn Tejani, senior policy counsel with the National Partnership for Women & Families. The Washington-based advocacy group promotes policies that help men and women meet the dual demands of work and family.

The FMLA applies to employers with at least 50 employees.



H.R. 2647, which President Obama signed into law last week, builds on a 2008 law that gave new Family and Medical Leave Act rights to military families.

12 weeks

Under the new law, employees will be allowed to take up to 12 weeks of job-protected unpaid leave when a spouse, child or parent on active duty is deployed to a foreign country.

explicitly give a right to FMLA in that situation.

In addition, the new law allows employees to take up to 26 weeks of leave to take care of a child, spouse, parent or next of kin who was discharged from the military and whose military service aggravated a medical condition that existed prior to the service.

While the new law “makes changes around the edges” of the 2008 law and will affect few employees, those changes will be very important to those individuals it does affect, said Matt Morris, a

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Aviation: Rates begin to take off

CONTINUED FROM PAGE 4

capacity is 150% of what is needed.

But Mr. Wignes said actual capacity is lower because many underwriters are choosing to write smaller portions of accounts or withhold capacity until they can achieve rates they desire.

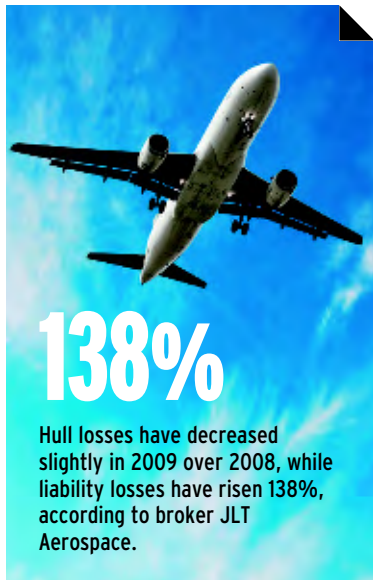
Mr. Doyle said many underwriters have sought 25% rate increases since the June 1 crash of Air France Flight 447 off the coast of Brazil. That was the fourth high-profile accident of the year. Others include the June 30 crash of a Yemenia Airways flight into the Indian Ocean; the Feb. 12 crash of a Colgan Air Inc. jet in Buffalo, N.Y.; and the Jan. 15 ditching of a US Airways flight in New York's Hudson River in which all survived.

All told, there has been about \$2 billion in losses this year, brokers say. Excluding 2001, 2009 is expected to be the costliest year in aviation history and likely will join 2008 and 2007 as loss-making years for aviation underwriters, said Magnus Allan, a London-based aviation analyst at Aon Aviation and Aerospace.

Aon projects that, by the end of the year, aviation underwriters will have been hit by \$2.3 billion in claims compared with a long-term annual average of \$1.4 billion. If trends hold, 2009 premiums will reach about \$1.9 billion, leaving a shortfall of about \$400 million that likely will continue to exert pressure on rating levels, Mr. Allan said.

"Claims this year have complicated matters because claims are so high above average that it's making it very difficult to say where the market should be," he said. "(That) is why 2010 is going to be such a focal year."

According to broker JLT Aerospace,



hull losses actually have decreased slightly in 2009 over 2008, while liability losses have risen 138%.

Recent years had been unusually free of aviation losses, Mr. Wignes said.

"We went through delusional periods where the safety experience, particularly in the U.S., was so terrific, there were some who had convinced themselves that we had engineered ourselves out of loss experience," Mr. Wignes said. "Though great, great strides have been made in flight safety training...there are going to be losses."

Brokers say they do not know if or for how long aviation underwriters can maintain discipline in withholding capacity to get desired rating levels. They say insurers and their reinsurers have been hit hard by the aviation losses, investment losses and other factors.

Angus Roberts, an aviation underwriter for Travelers' syndicate 5000, said in a recent JLT Aerospace newsletter that the large losses this year were not the real reason for the aviation rate increases.

"The real reason that rates are increasing is simply that they have been reduced, indeed by over 40%, since 2004," Mr. Roberts said in the newsletter.

Drywall: Many insurers fighting claims

CONTINUED FROM PAGE 3

Katrina. The drywall was traced back to Chinese subsidiaries of German manufacturer Knauf Plasterboard Tianjin Co. Ltd. (BI, May 11.)

Early environmental studies conducted by health officials in Florida found the gypsum wallboard used in the homes was tainted with strontium sulfide and elemental sulfur that, when exposed to high levels of humidity and heat, produce a gas strong enough to corrode copper wiring, pipes and appliances.

Additionally, homeowners have contacted state health departments complaining of dizziness, nosebleeds, difficulty breathing, and itchy or irritated skin, among other symptoms.

Federal investigators released initial results of its ongoing investigation of Chinese drywall and found no direct link between the chemicals in the drywall and the health problems homeowners reported. While they said they did find higher concentration levels of sulfur and strontium in Chinese drywall than

from non-Chinese drywall, they could not determine any direct correlation.

The report, released Oct. 29, is the first of an ongoing series. The U.S. Consumer Product Safety Commission along with Environmental Protection Agency will conduct more tests during the coming months. Next month, the results of a 50-home indoor air quality study will be released as well as engineering analysis of electrical and fire safety associated with corrosion.

The CPSC has received 1,897 reports from residents with homes built with the contaminated drywall in 30 states, the District of Columbia and Puerto Rico. Nearly 70% of those reports are from Florida homeowners. The office received its first consumer complaint on Dec. 22, 2008.

Mr. Buchanan and Ron Kozlowski, Hong Kong-based Towers Perrin principal and leader of the company's property/casualty insurance consulting practice in Southeast Asia, said how courts define pollution will be a major determining

factor as to how insurers react.

In the past, Mr. Buchman said Florida courts have taken a broader view on the exclusion, which could lead to more litigation bouts.

Recently, Citizens Property Insurance Corp., a state-backed insurer of last resort in Florida, denied homeowner claims, saying it considered the drywall a pre-existing condition and that such defective materials fall under the pollution exclusion. After media coverage about the denial, Jacksonville, Fla.-based Citizens reversed its decision and said it will renew policies for homes built with the defective drywall.

Torus Specialty Insurance Co. sees the Chinese drywall event and Chinese product importation as an emerging liability.

R. Lincoln Trimble Jr., Jersey City, N.J.-based senior vp of Torus' U.S. excess casualty unit, said it is likely that general liability underwriters will ask a lot more questions when constructing a policy that will leave general contractors little wiggle room in the future, but will provide good coverage.

Systemic: Bill would boost oversight

CONTINUED FROM PAGE 4

Washington office. "Insurers have to remain very liquid to maintain low leverage ratios. They're not interconnected and they're heavily regulated for solvency at the state level. Their policyholders are backed by the state guaranty funds. For all of those reasons and many more, we hope that policymakers understand the fundamental differences between insurance and banking."

"We endorse the concept of a systemic risk oversight mechanism and agree that our financial regulatory system must be reformed so there is sufficient supervision over firms that engage in activities that

pose a broader risk to the financial system," a spokesman for the American Insurance Assn. in Washington said in an e-mail.

"That being said, we stand firm in our belief that traditional property and casualty companies did not cause the current crisis and do not pose a systemic risk like other financial firms," he said. "Traditional property/casualty companies don't operate like banks or other financial firms. Therefore, it is absolutely critical that as lawmakers proceed on any systemic risk or resolution authority legislation, these differences are taken into account."

Reinsurers do not present a sys-

temic risk either, according to the president of the Reinsurance Assn. of America in Washington. "Generally, the industry doesn't feel that it is a systemic risk in the sense of the broad economy," said Frank Nutter. "Reinsurers are going to be critically important in the capital structure of individual companies, but the market as a whole would not appear to systemically critical in the context it's being defined in the public debate."

The discussion draft is just the beginning of the process, said one observer. "It's fairly broad and sweeping in nature and will need to be refined in the coming months," said NAMIC's Mr. Grande.

AIG: Regulators, rivals delay 2006 workers compensation settlement

CONTINUED FROM PAGE 1

shut down the fund" by sending warnings to state regulators that there may be problems with their acceptance of distributions from the New York fund.

Several state regulators declined to comment, citing an ongoing investigation and settlement discussions, but the State of Nevada Division of Insurance confirmed it received a letter from Liberty Mutual Group Inc. "urging us not to take any action in connection with the settlement, stating that 'the structure of the settlement appears to be inadequate and ineffective in addressing the rights of the workers compensation residual market mechanisms and the individual insurance companies.'"

Liberty Mutual declined to comment, but several of its units have sought court approval to become lead plaintiffs in the Chicago federal court suit against AIG (BI, Sept. 2).

The regulator who asked not to

be identified said the states' hesitation to opt into the original New York agreement helped AIG's competitors to pursue their claims.

"If the states would have signed on from the start, that probably would have been the end of the story," the regulator said. "The other companies only became involved after they became aware that (the New York settlement) was not finalized and other states were looking at it."

There also has been confusion about intended recipients of the New York settlement funds, sources say.

Although the original intent was for the states to receive distributions from the fund, the 2006 New York agreement with AIG left uncertainty as to whether the funds were to go to states or to insurers or insurance groups that may have paid more in state residual assessments because of AIG's alleged underreporting, the regulator said.

AIG declined to comment, as did

'I thought, "Well, there goes our \$20 million." But shortly thereafter, Treasury and the feds stepped in and infused AIG, and we had our check within 20 days.'

Carl W. Cummins, Minnesota's Workers' Compensation Reinsurance Assn.

insurance regulators for several states still working to determine whether AIG will have to pay more money.

The lead states in the multi-state examination are Delaware, Florida, Indiana, Massachusetts, Minnesota, New York, Pennsylvania and Rhode

Island. All other states and the District of Columbia have agreed to participate in the multi-state examination.

But in an SEC filing for the financial period ended June 30, AIG reported that regulators from several states, working under a National Assn. of Insurance Commissioners group, have been examining its workers comp practices prior to 1996 as well as its compliance measures.

AIG said in the quarterly report that it cannot predict the outcome of the multi-state investigation "or provide assurance regarding regulatory action that may result from the investigation."

The \$343 million settlement reached in 2006 was part of a \$1.64 billion fraud settlement AIG entered into with New York and federal authorities over broader civil fraud charges. (BI, Feb. 13, 2006)

While the New York settlement continues to drag on, at least one organization independently pursued litigation and has reached a

settlement with AIG over allegations the insurer underreported workers comp premiums.

Minnesota's Workers' Compensation Reinsurance Assn. received \$20 million from AIG, said Carl W. Cummins, the St. Paul-based organization's president and chief executive officer.

The WCRA took the position that New York officials did not have the authority to settle with AIG on its behalf, Mr. Cummins said. So it joined other Minnesota organizations in pursuing AIG, and on Sept. 12, 2008, he signed a stipulation for settlement with AIG, Mr. Cummins said.

Shortly after signing the settlement agreement, AIG had to turn to the federal government for a rescue package.

"I thought, 'Well, there goes our \$20 million,'" Mr. Cummins said. "But shortly thereafter, Treasury and the feds stepped in and infused AIG, and we had our check within 20 days."

News In Brief

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coverage meeting certain standards or pay a penalty chose to provide coverage in fiscal year 2008. According to the report by the Massachusetts Division of Health Care Finance and Policy, 97% of employers provided the required coverage, up from 96% in fiscal 2007.

PBGC maximum benefit guarantee unchanged

The Pension Benefit Guaranty Corp. will guarantee a maximum annual benefit of \$54,000 to participants who retire at age 65 and are in plans that the agency takes over in 2010, the PBGC said last week. The 2010 amount is unchanged from 2009 because the maximum is indexed to wage inflation. Because wages did not rise during the past year, the maximum benefit guaranteed by the PBGC will not be increased.

New risk management group launched in Spain

Eleven risk managers in Spain have launched an association for risk managers at large Spanish corporations. The association, Iniciativa Gerentes de Riesgos Españoles Asociados, was established during the summer, soon after the group's provisional president, Daniel San Millan, and a group of other risk managers were not re-elected to the committee of the established Spanish risk and insurance management association, Asociación Española de Gerencia de Riesgos y Seguros. IGREA, which hopes to have 20 members by year-end, will coexist with AGERS.

Willis to sell part of Gras Savoye stake

Willis Group Holdings Ltd. said it has entered into "an exclusive arrangement" with Astorg Partners to sell part of its stake in Gras Savoye & Cie. Willis said it expects the deal to eliminate its "put" arrangement with Gras Savoye shareholders and bring it \$100 million to \$150 million in cash while keeping a 33% interest in the brokerage with the ability to acquire a majority interest in 2015. Willis said it anticipates executing a definitive agreement in the next few months.

Special master doubts AIG will repay all it owes

The special master for executive compensation under the Troubled Asset Relief Program told a congressional panel he does not believe American International Group Inc. will repay all the money it has received from the federal government. During a hearing before the House Oversight and Government Reform Committee, Rep. Darrell Issa, R-Calif., asked Kenneth Feinberg if he agreed AIG would not be able to repay all the government aid. "I think that's right," said Mr. Feinberg, noting that he based his assessment on conversations with AIG officials. According to AIG, it received about \$182 billion in government assistance, with about \$83 billion to be repaid.

Pension funding bill introduced in House

Bipartisan legislation to temporarily ease pension plan funding rules and reduce the amount of money employers need to contribute to plans depleted by the equities markets plunge was introduced last week in the House of Representatives. Under the measure, employers would have more time to replenish plans for investment losses that occurred in 2008 and that would have to be amortized over a seven-year period under current law.

OSHA fines BP unit record amount

BP Products North America Inc. was slapped with a proposed \$87.4 million fine by the U.S. Department of Labor's Occupational Safety and Health Administration. The fine, the largest in OSHA's history, is due to BP's failure to correct potential hazards faced by employees at BP's Texas refinery, which exploded in March 2005, killing 15 people and injuring 170. OSHA said a six-month inspection of the plant, which evaluated the BP's obligations under a previous agreement, found it did not comply with them. BP said it would contest the OSHA action.

IRS delays retirement age rule for public plans

The Internal Revenue Service has given state and local government pension plan sponsors a second extension to comply with an IRS rule that defines the "normal" retirement age for a pension plan. It said public plan sponsors generally will have until Jan. 1, 2013, to comply. The IRS said the extension is intended to give it and the Treasury Department time to consider plan sponsor comments.

Climate: Insurance industry weighs in

CONTINUED FROM PAGE 6

hagen to reduce emissions could lead to catastrophic floods, droughts and heat waves. If the opportunity passes to forge a new treaty in December, no future agreement will be able to undo damage from unregulated emissions, he said.

"I agree with him," Jorge Luzzi, director of corporate risk management at Milan, Italy-based Pirelli & C. S.p.A. and president of the International Federation of Risk & Insurance Management Assns. Inc., said of Mr. Brown's remarks. "Politicians sometimes use strong words to make people react, but the solution is not easy."

"I am totally in favor of a reduction in emissions," said Mr. Luzzi.

Insurance market sources are hopeful that an agreement on emission reductions and other issues, such as a fund to help poor countries adapt to climate change, can be worked out in Copenhagen, but they acknowledge that the details may take some time to develop.

"I think it is very likely that there will be an agreement on emission targets, the emission reduction framework, as well as on the adaptation fund in general terms," said David Bresch, head of sustainability and emerging risks at Zurich, Switzerland-based Swiss Reinsurance Co. "But further discussions are likely to follow to get the implementation details fleshed out."

Mr. Luzzi said the worldwide financial crisis is not helping efforts to forge a treaty that would lower emissions. Some countries likely will resist any new standards that could require investments to meet, he said.

Pessimism about reaching a new emissions agreement is understandable, said Mr. Bresch. "This is the first time humankind has tried to get a global agreement on how human society will develop in a severe-climate scenario. We should have high expectations," he said, "but we shouldn't try to overload the boat."

Any decision coming out of the conference will affect risk managers, said Peter den Dekker, president of the Federation of European Risk Management Assns. and corporate insurance risk manager at Stork B.V. in Naarden, Netherlands. "I'm sure the whole risk management community will watch closely anything that comes out of the Copenhagen conference," he said.

How much effect the conference has on risk management remains to be seen, said Mr. den Dekker. "Will

they really reach an agreement and set clear measures and ratios on what we all want to achieve and work towards?" he asked. "Will there be room for interpretation according to countries and regions?"

It is clear, though, that if tougher emission limits are set, "companies will have to look at how to manage their pollution and (carbon dioxide) emissions," Mr. den Dekker said. "Whether that is where they want to go is still vague; it is up to the politicians to make decisions."

Insurers and reinsurers hope to have some influence in climate-



RICHARD COOKE

'A global agreement on reducing emissions is extremely important to insurers and reinsurers as climate change is viewed by many as one of the biggest risks we have ever faced.'

Tony Cabot, XL Insurance

change decisions at the conference.

"A global agreement on reducing emissions is extremely important to insurers and reinsurers as climate change is viewed by many as one of the biggest risks we have ever faced," Tony Cabot, Zurich, Switzerland-based director of global programs at XL Insurance, said in an e-mail.

"Our industry has taken a strong position in regards to a successful outcome of the Copenhagen summit and the need for clear agreements," Mr. Cabot said. He said

insurers and reinsurers worked closely with the Geneva Assn., an insurance think tank, on climate change research and its economic impact on insurance. The research findings are due to be presented at the conference.

Swiss Re will participate in a side event at the conference as part of the Economics of Climate Adaptation Working Group, a group formed last year to develop economic strategies to deal with the effects of climate change. The group prepared a report, Shaping Climate-Resilient Development, that will be discussed with delegates and others attending the conference.

The report provides a methodology to determine the risk of climate change on economies by determining an area's "total climate risk," which is calculated by considering existing climate risks, climate change and the value of the region's future economic development.

"The ECA report provides a methodology to devise an adaptation strategy" based on specific needs of a region and the climate threats it faces, Mr. Bresch said.

While the report does not factor in potential emissions reductions, it notes that adaptation measures should not be a substitute for action to reduce carbon emissions.

"There clearly needs to be a reduction of greenhouse gases," said Mr. Bresch. But even if all such emissions were stopped immediately, the climate will continue to react to the damage already done, he said.

Lindene Patton, Washington-based climate product officer at Zurich Financial Services Group, agreed that it is important for any climate-change solution to recognize regional differences since "certain issues do not affect all areas."

While some regions may need programs to address drought, others may need solutions geared toward flooding, Ms. Patton said.

Zurich produced a white paper, The Climate Risk Challenge: The Role of Insurance in Pricing Climate-Related Risks, that has been distributed to academic groups and some conference participants, Ms. Patton said.

The paper argues for recognition of the regional nature of climate problems, and makes the case that insurers have the expertise to help shape public policy in the climate change debate. It also seeks to "close the governance gap," said Ms. Patton. "There are areas where, without government involvement, you cannot influence adaptation and mitigation," she said.



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The newest 'Saw' film offers a sort of commentary on America's health care reform debate.

'SAW' HAS GORY VIEW ON HEALTH REFORM

When considering horror movies, blood, gore and other unsettling things splashed generously across the screen to the delight of a largely teenage audience generally come to mind.

But, according to Boston Globe movie reviewer Wesley Morris, the latest entry in the "Saw" series "steps right into the debate about America's health care crisis—offering, well, a slightly more punitive public option."

In the new "Saw VI," the killer featured in all of the series' films goes after an insurance executive who denied the killer's request for an experimental gene therapy. The killer apparently succumbed to cancer a few films back, according to the review.

The executive in the film, whose name is William Easton, wakes up in a sort of torture apparatus from which he has to complete four tests in 60 minutes or bombs strapped to his body will explode. A lot of people die along the way, so we get the requisite blood, gore and the rest.

"Yet suddenly, the carnage has a wicked bit of literal and metaphorical social resonance," Mr. Morris wrote in the review. "Seriously: Health insurance as house of torture."

Let's just hope this doesn't lead to a case of life imitating art; for many people, going through the claims process already is painful enough.

EX-STARBUCKS EXEC GETS BURNED IN DEAL



Revenge also can be served piping hot, it seems.

According to the Associated Press, Paul Twohig, a former Starbucks Coffee U.S. senior vp, left Starbucks in March and was covered by an 18-month non-compete agreement. In August, he asked to be released from the agreement so he could work for Dunkin' Donuts, but Starbucks refused to grant his wish.

Dunkin' contacted Starbucks about the matter in September, and Starbucks sued Mr. Twohig in early October, "after learning 'through periodic Internet searches' that (Mr.) Twohig had taken a job as a brand operations officer for Dunkin'," according to the AP.

Last week, Starbucks announced that it had reached a settlement with Mr. Twohig. According to Starbucks, Mr. Twohig agreed not to share trade secrets or other confidential information with his new employer or to start work for Dunkin' before Jan. 15.

In addition, Starbucks said he had agreed to pay \$500,000 as part of the settlement. Dunkin' declined to say whether it was covering any of it.

Business Insurance END PAGE

Contributing: Jeff Casale, Mark A. Hofmann



Supermodel Naomi Campbell was slapped with a lawsuit last week claiming breach of contract.

ALPHA/LANDOV

Cosmetics company sniffs out raw deal

Supermodel Naomi Campbell is accused of skunking a cosmetics marketing company and the company is not happy about it.

Moodform Mission, which had a fragrance-licensing agreement with the model, filed a breach-of-contract suit against her last week that accused Ms. Campbell of cutting them out of the profits her perfume line is making.

Moodform Mission, a firm with offices in London and Miami Beach, Fla., said it worked for years with Ms. Campbell in designing and marketing such scents as Naomi Campbell, Cat Deluxe and Seductive Elixir, only to have her keep their portion of the proceeds.

The agreement between Ms. Campbell and Moodform Mission, according to court documents, called for regular payments to Moodform Mission when the scents hit the market in 2001. Ms. Campbell reportedly made millions throughout the years, as the scents were popular

throughout Europe.

According to court documents, Ms. Campbell's payments stopped last year when she struck a deal with an affiliate of Cincinnati-based Procter & Gamble Co., which was distributing the fragrances.

The deal is "a fraudulent scheme arranged by (Campbell) for the purpose of avoiding her obligation to pay Moodform Mission," the lawsuit said.

Ms. Campbell, who is famous for various legal dust-ups, issued a statement saying she will be "vindicated."

In June 2008, reports said she pleaded guilty in a tirade involving two police officers at London's Heathrow Airport that started over a missing piece of luggage. She was sentenced to 200 hours of community service.

In 2000, she pleaded guilty to an assault charge for beating an assistant who said the model hit her on the head with a phone in Toronto.

Insurance helps NFL player after bad break

It was a bad break on many levels for New York Jets Pro Bowl kick returner and running back Leon Washington.

During the Oct. 25 game against the Oakland Raiders, Mr. Washington suffered a broken right tibia and right fibula after a six-yard run in the first quarter. The break was so bad that Jets right tackle Damien Woody said it was the worst injury he'd ever seen in his 11 seasons in the National Football League.

However, prior to the start of the season, Mr. Washington reportedly took out an insurance policy with Lloyd's of London in case of injury, according to a report by the Newark Star-Ledger.

Good thinking by Mr. Washington, who is earning \$535,000 this year, the final year of his contract with the Jets. According to news reports, the Jets offered Mr. Washington a \$5 million-a-year contract in August, but he did not sign the tender at the time.

"As soon as I saw it, I knew (his season) was over," Mr. Woody told reporters after the game.

"(Washington's) foot was in the ground and (defensive tackle) Tommy Kelly hit it. I saw blood squirting out. That's emergency surgery right there."

Indeed, after surgery, the team put Mr. Washington on injured reserve last week and re-signed kick returner Justin Miller.



New York Jets kick returner and running back Leon Washington suffered a season-ending injury Oct. 25.

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