CPCU SOCIETY INSURING YOUR SUCCESS

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A Message from Your New Chairman—Stanley Oetken, CPCU, ARM

by Stanley Oetken, CPCU, ARM

Stanley Oetken, CPCU, ARM, is senior vice president in Marsh's Denver office, and is part of the Alternative Risk Financing Unit, assisting clients using large deductible programs, captives, and risk retention groups in loss forecasting and cash flow analysis.

He has been involved in servicing and marketing large corporate and public entity clients; and in the implementation and administration of professional liability programs for attorneys, accountants, and real estate professionals. He has spent extensive time in the formation and administration of self-insurance programs for public entities. During his tenure at Marsh, he has been actively involved with clients in the oil and gas industry, construction project wrap-ups, electric and gas utilities, environmental remediation, and sports teams and venues.

Oetken earned a B.S. in mathematics from Wake Forest University in Winston-Salem, North Carolina; and a master of science degree in insurance management from Boston University.

They say that time flies when you are having fun. I am not sure about how much "fun" I am having but time does seem to be flying. Our industry has never been more challenging, and has become ever more complex. It is with a very strong sense of humility that I assume the chairmanship of the Risk Management Interest Group. Immediate past chairman **Patricia A. Hannemann, CPCU,** set a standard of excellence that will be very difficult to continue on the same level.

As we met in Hawaii, both as a committee and as part of the CPCU Society leadership, I thought about how the industry, the CPCU designation, and the Society have changed during my career. When I was new to the industry, I went looking for something that would increase my knowledge in my newfound career, and help increase my expertise, and obviously, help make me successful. It was during that search that I found the Chartered Property Casualty Underwriter designation.

After successful completion of the exams (there were five in those days), I sought to learn more about the CPCU Society. How could it help my career, and how could I contribute to it? So—in short, membership in the CPCU Society has been rewarding as well as providing a venue to mentor new faces into our industry.

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A Message from Your New Chairman—Stanley Oetken, CPCU, ARM

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As I have met with CPCU Society members throughout the last several years, I am occasionally told that the Society doesn't meet their needs. I have responded by saying that they have something to contribute to incoming designees and encouraging young (and old) people in the industry. Therefore, if you know some people who have had their designation for a while, encourage them to get involved in the Society and in an interest group because they have expertise that someone else can benefit from.

Over the last year, under the guidance of Trish, the Risk Management Interest Group Committee has been seeking ways to provide value to our members. We know that risk managers have a plethora of resources, including RIMS, but that there is also a broad interest in risk management as a discipline by those of us in other parts of the industry. That is where we believe the Risk Management Interest Group fits in. We look to provide interesting and pertinent material to members who use risk management expertise in their careers even though they are not risk managers, per se.

The Risk Management Interest Group Committee consists of outstanding people from a wide variety of backgrounds. I would like to recognize and thank the following individuals who have participated in the committee over the last year. They include **James W. Baggett Jr., CPCU, CIC; William E. Carr, CPCU; Joel H. Monsma, CPCU; Jerome Trupin, CPCU, CLU, ChFC; Jeffery L. Bronaugh, CPCU, CLU, ChFC, CIC; Salvatore W. DiSalvo, CPCU; Robert N. Rosenfeld, Ph.D., CPCU; James E. Brown, CPCU; David J. Skolsky, CPCU; Martin J. Frappolli, CPCU; Richard G. Berthelsen, J.D., CPCU;** and **John J. Kelly, CPCU, CLU, ChFC.** A special recognition goes to **Jane M. Damon, CPCU, CPIW, CIC,** for her work as editor of this newsletter and her tireless efforts in bring top-quality material to our members.

What then do we have to look forward to over the coming year? In addition to the newsletter, a team of people led by Jerry Trupin and Marty Frappolli have been working on putting together a webinar of timely topics that will be offered to Risk Management Interest Group members (editor's note: it was presented on December 6th—hope you saw it!). We have begun working on several topics for presentation at the 2008 Annual Meeting and Seminars in Philadelphia in September. We are encouraging Risk Management Interest Group members to be proactive in letting any of the committee members know how the interest group can be of assistance in increasing your knowledge and being of value to you.

We also encourage anyone that is interested to apply to serve on the Risk Management Interest Group Committee. We meet twice a year—at the Annual Meeting and Seminars, and at the Leadership Summit, which will be held in Orlando in April 2008. I believe that it is an opportunity to bring your own special knowledge and expertise to share and mentor other CPCUs. You may apply for service on the CPCU Society's web site.

Finally, if you wrote an article or spoke at an event as a CPCU, please let us know by sending us an e-mail message to CPCURiskManagement@sbcglobal.net. We would like to hear about the great things our members are doing. ■

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Hear Phil Keoghan, adventurer and television host. Best known for his role in *The Amazing Race.*

★ ***Gain first-hand historic insights!***
Hear Keynote Speaker Doris Kearns Goodwin, an award-winning author and historian. Author of the *New York Times* best seller, *Team of Rivals: The Political Genius of Abraham Lincoln.*

★ ***Glean inside perspectives on where the industry is heading!***
Attend two new exciting panel discussions: "Heritage and Horizons: Leadership Perspectives of Large Regional Carriers," and "Through the Looking Glass: Industry Insiders Contemplate the Future."

★ ***Increase your professional value!***
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Mark your calendar today, and make plans to attend this exciting event! Stay tuned for more details. Online registration will be available in April, at **www.cpcusociety.org.**

Editor's Note

by Jane M. Damon, CPCU, CPIW, CIC

■ **Jane M. Damon, CPCU, CPIW, CIC,** is an assistant vice president and commercial account executive with Wachovia Insurance Services in Dallas, Texas. She earned a bachelor of business administration in management, and master of business administration in strategic leadership from Amberton University.

Damon also has earned the Chartered Property Casualty Underwriter, Certified Insurance Counselor, and Certified Professional Insurance Woman designations. She is past president of the CPCU Society's Dallas Chapter, and currently serves on the CPCU Society's Risk Management Interest Group Committee and edits its quarterly newsletter. Damon has more than 20 years of experience in the insurance industry, and works on large complex accounts in the real estate, construction, and technology fields. She has administered the two largest privately held construction projects (at the time) under a Contractor Controlled Insurance Program (CCIP) through a captive program. Damon joined Wachovia Insurance Services in October 2001.

I want to congratulate all the people who have been forwarding articles to me and the authors for their continued support of CPCU and the *Risk Management Quarterly* publication. Again this issue, I was provided with so many articles, that some are going to be published in a future issue.

We had some wonderful meetings in Hawaii. Between the sun and the surf, some great insurance programs were presented. **Stanley Oetken, CPCU**—our new Risk Management Committee chairman—has provided a review of the enterprise risk management seminar that was presented in Hawaii.

A constant debate is global warming. **S. Fred Singer, Ph.D.,** is providing us with an interesting article on global warming and how it impacts insurers.

Enterprise risk management has been around for years, but has not been widely used. **Michael J. Moody, ARM,** discusses the advancement in ERM and business management.

Disaster recovery and business continuity has continued to be of interest to our readers and authors. **Earl D. Kersting, CPCU, ARM, ALCM, AIC, AU, AAI, AIS,** has provided us with an article on the critical difference and vital needs of sustainability and business continuity during a disaster event. He has also written an article on how to reduce workers compensation frequency and severity.

Randy J. Maniloff has written an article on new ISO or other bureau forms and their acceptance by insurance carriers.

As always, please feel free to let us know your thoughts on the articles, what you would like to see, what you like and don't like. If you would be interested in providing an article, please contact me at jane.damon@wachovia.com. We welcome all authors and commentaries. ■

Disaster Recovery, or Business Continuity?

by Earl D. Kersting, CPCU, ARM, ALCM, AIC, AU, AAI, AIS

Earl D. Kersting, CPCU, ARM, ALCM, AIC, AU, AAI, AIS, is assistant risk manager for The Kroger Co., Delta Division, in Memphis, TN, where he oversees all areas of risk faced by more than 100 retail stores located throughout a five-state area, a position he has held since 1986. Kersting is a past president of the CPCU Society's Memphis Chapter, and a past member of the Risk Management Interest Group Committee. Kersting may be contacted at EARLKERSTING1@yahoo.com.

Editor's note: The following article discusses the critical difference between a disaster recovery plan and a business continuity plan, and the vital needs that may not be met by a typical disaster recovery plan—distinctions that may make the difference between the sustainability, or the failure of a business during a disaster event.

Many of the companies for which we work have disaster recovery plans, and many of us have been personally involved in their formulation. However, many of those plans merely address recovery of information technology systems and stored data following an incident, such as the loss of a file server, or the infiltration of a computer virus.

However, what happens when your IT systems are fully operational, your physical building has sustained no damage, yet your site suddenly becomes inaccessible? This occurred when a high-rise burned in the heart of downtown Memphis restricting access to adjacent buildings, and when civil unrest restricted access to certain segments of downtown Cincinnati and Los Angeles. How do you continue to operate in a manner that allows you to serve your clients and customers when the still-functioning systems are located in a now inaccessible building?

What if your workforce is unable, or unwilling, to report to work? The Arkansas Department of Health and Human Services recently reported in a small northwestern rural community an outbreak of pertussis (whooping cough). As a result, dozens of working adults were quarantined from work for five to seven days until antibiotics had time to take effect and those persons were no longer contagious. An outbreak of pertussis in today's environment was unanticipated. How do you continue to operate in a manner that allows you to serve your clients and customers when your workforce is unavailable to man your still-accessible building and still-functioning systems?

These are the type of incidents not addressed by many disaster recovery plans, yet these are the exact types of incidents that can bring your business to a standstill. Although disaster recovery plans are important, before you get too comfortable and file your plans away, how many of us have business continuity plans? The difference is significant, and far more than terminology. Disaster recovery plans help to restore normal operations following an incident. A business continuity plan allows your organization to remain viable during an incident.

Please allow me to further explain. Should your business be unable to maintain basic operations for an extended period of time, its continued survival may be at risk, depending upon the duration of the interruption, and the availability of substitute suppliers of your goods or services. In the absence of a business continuity plan, your business could face obstacles that cause it to not survive, or at least not exist in its current condition, following an extended event should competitors be able to service your clients during your downtime.

How do you begin to formulate a business continuity plan? You begin by determining what are the most likely scenarios that could cause business interruption. Several of those I have just mentioned, but depending upon your business, scenarios may include, but are not limited to:

- inability to access physical buildings
- the complete loss or destruction of certain systems or equipment, especially specialized or custom equipment
- the inability to staff critical positions
- the interruption of critical supplies
- the inability to deliver produced goods

Your list will depend upon your industry, and your specific organization and structure.

Next you must determine what functions are critical for your organization to remain viable, and how long your organization could continue to function in their absence without jeopardizing the sustainability of your company. Some functions must be restored within 24 hours, others perhaps 48 or 72 hours, still others within 7 to 10 days; and then

what functions if not resumed during the first 10 days of an incident would not threaten your company's ability to survive? Again, the specific requirements will vary depending upon your industry, organization, and structure. Some essential functions will be dependent upon others, further impacting their urgency and the order in which they must be completed. For example, if manufacturing is unable to produce goods, the sales and marketing operations grind to a halt. By the same token, if sales and marketing systems are inoperative, manufacturing needs suddenly change. Many processes are interrelated within most organizations, and such dependencies must be specifically identified and contingencies considered and planned.

Once you have determined the functions critical to continuation of operations, you can determine what specific processes are necessary and start to compile a list of essential processes, and those resources—human, financial, equipment, and supplies—needed to perform those processes. This becomes an excellent time to review your training, cross-training, and contingency practices. Should only one individual be trained to perform a function determined to be essential—perhaps out of security concerns or manpower limitations—what happens when that individual is unavailable? Is a trained back-up ready to step in and assume his or her duties? Does that back-up person have a trained back-up to perform any essential duties he or she will now be vacating as he or she steps up to assume his or her new duties? What if neither is available, as when the pertussis outbreak caused a large cross-section of a community to be out of work for five to seven days? Can trained persons be brought in from other locations or employment service agencies? Have you identified those persons or agencies, because at the time of critical need is not the time to start considering such things for the first time?

What about equipment, systems, and software? If using specialized, custom, or proprietary processes, are replacements readily available, or will they have to be built? If not, have you identified substitutes that will allow you to perform the critical processes during the period of interruption?

In addition to internal dependencies, such as your own employees, what about external dependencies? If a regional incident was to occur and your major suppliers or vendors are located within the same geographic region, are back-up suppliers and vendors readily available? For example, should an ice storm interrupt power for an extended period, commodities such as fuel, water, generators, and the like will quickly become scarce in the affected area. Do you maintain lists of suppliers in other regions that may be relied upon should your regular suppliers become depleted? Have you pre-arranged a contingency agreement with them whereby you'll be given priority consideration when many other businesses are seeking the same limited supplies at the same time as you? When they're desperately needed is not the time to start searching the country for suppliers of goods essential to the sustainability of your organization.

It is important to note at this juncture that the essential functions for which to plan will vary depending upon the event scenario. If you can access and operate from your building, the steps critical to business continuation are very different than if you're having to operate from a remote site, or if employees have to work from home by dialing into your network. If your workforce is unable to perform their duties, yet the building is accessible and systems and processes operational, the steps critical to business continuation are significantly different than if the systems are inoperable but staffing is complete. Therefore it becomes necessary to create a separate list of functions critical for your organization to remain viable for each likely scenario that could cause business interruption, and a list of personnel essential to each of those scenarios. In effect, if you have identified three likely event scenarios, you will be creating within the master business continuity plan three sub plans. A visual reference may be helpful here. Consider the partial tree on page 6 (See Figure 1).

Once you've developed those business continuity plans, how can you know they'll work when needed? You can't place them in a binder and store them on a shelf to collect dust. You have to test them, and routinely and regularly retest. No, I'm not recommending you walk into your facility and shut off the power. Instead, you gather your identified essential employees and tell them you're performing a review of whichever one of the likely event scenarios you've chosen to test that particular day. If testing the inability to access the building, have the team reconvene at the designated back-up site. Once there, read through the plan step-by-step. Questions that should be asked include do the recommended core processes work as described? For example, if employees are to access your server remotely, you need to plug in laptops and attempt to remotely access the necessary data, and remotely test the applications. During an incident is not the time to learn that firewalls or other limitations restrict essential employees' access. During an incident is not the time to learn a key role has been left vacant and no replacement named and trained to assume the duties. Call the external dependencies named in the plan. If the plan calls for a trailer-mounted back-up generator large enough to power your IT center, call and ask the identified vendors how long would it take to receive and connect if needed today. Then call and ask the same question of the back-up suppliers in case your primary supplier cannot accommodate your needs. Keep in mind, in a regional incident, the nearest available generator the size you need may be on the other side of the country. Diversification of back-up suppliers and vendors becomes essential in time of

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Disaster Recovery, or Business Continuity?

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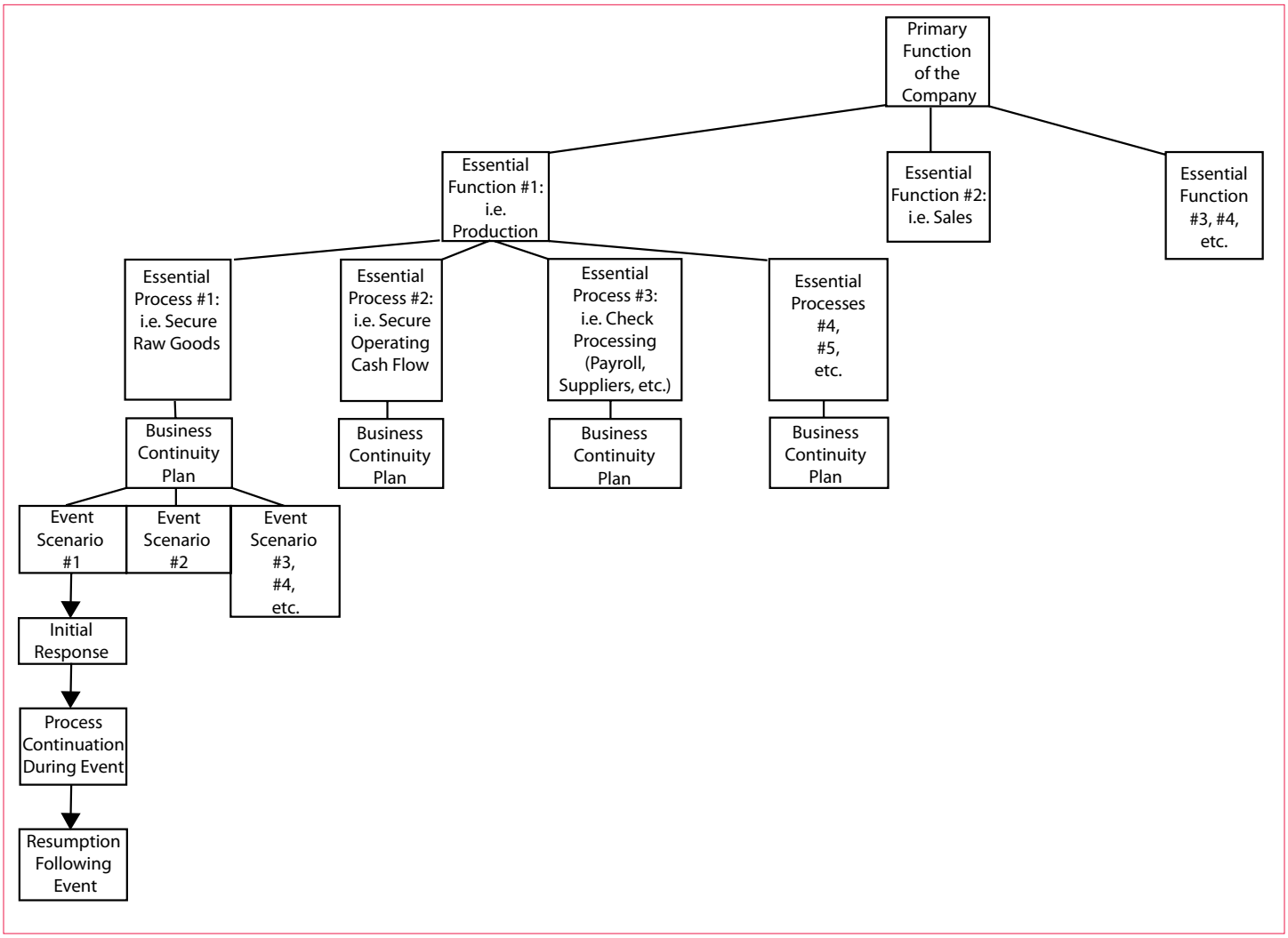
Figure 1



regional incidents as those located locally may be facing needs similar to yours, and be unable or unwilling to provide needed equipment or supplies.

Once you have generated and tested the plan, how do you distribute it? If you have an excellent plan, but it exists electronically on the servers and PCs of a now-nonfunctioning IT system, even the best plan does no good. If your detailed plan is distributed hardcopy, but is located in the desks of essential employees, and your building has now become inaccessible, even the best plan does no good. If you've distributed it on zip drives, but employees have no power at home . . . you get the picture.

The best-laid plans are worthless if they cannot be accessed and implemented. Yes, the plans contain confidential and proprietary information, but using a binding confidentiality agreement, you need to distribute multiple copies to those key employees who have any role in the plan, and those employees need to be instructed to maintain a copy in the office, a copy at home, and should they routinely travel, a copy in their briefcase. Immediate access to the plan is an essential element of the plan.

This is an extremely condensed summation of the business continuity planning process, and should not be used as a guide for the formation of such plans, as many important details and steps have been omitted. The intent of this article is instead, to explain the critical difference between a disaster recovery plan and a business continuity plan, and to highlight the vital needs that may not be met by a typical disaster recovery plan. This article is purely to encourage you to review your existing processes and realize potential shortcomings prior to an event that could otherwise jeopardize the survival and continuation of your organization. Dust off those binders and evaluate if you're really as prepared as you had thought. ■

ERM: Opportunities Abound

by Michael J. Moody, ARM

■ **Michael J. Moody, ARM,** is the managing director of Strategic Risk Financing, Inc. (SuRF), an independent consulting firm that was established to actively promote the concept of enterprise risk management by providing current, objective information about the concept, the structures being used, and the players involved.

Enterprise risk management (ERM) as a concept has been around for the past 10 to 12 years. And let's face it, as a concept, it represents a fundamental shift in the way businesses will approach risk in the future. Viewing risks from an enterprise, holistic vantage point, where both the risk and rewards are looked at in tandem, will impact all risk management decisions going forward. For those of us who have been risk managers for a while and grew up with traditional "insurable risk" mentality, this is a difficult concept to grasp sometimes. But make no mistake . . . it is coming.

While the ERM concept was initially embraced primarily by banks, it soon spread into other financial institutions, such as insurance companies. But then its advancement into other industry segments stalled. A lack of a common language, framework, and terminology all took their toll, and ultimately served as roadblocks to a more universal acceptance by general industry segments. However, the past 12 to 18 months have observed significantly more interest by the non-financial segments. Much of this interest has come about as a result of the increasing emphasis on ERM by the various rating agencies, which all have indicated they will begin analyzing a corporation's ERM function as part of their overall rating methodology. Additionally, signals from organizations such as the New York Stock Exchange, NASDAQ, and Sarbanes-Oxley have all contributed to the increasing buzz about ERM.

While ERM still has a long way to go to become an accepted management discipline, many of the prior impediments have been or are being removed. Advancement in software and data mining technology to allow complex mathematical calculations on an enterprise basis, more acceptance of the published frameworks, and stronger commitment from the board of directors have helped ERM accelerate its acceptance. But despite these positive developments, there remains one critical shortcoming: finding qualified personnel to head up the ERM effort.

For the most part, no industry trade group or organization has stepped up to fill this critical need. The Risk and Insurance Management Society (RIMS) has begun to offer some limited ERM-related training, and several other trade groups are providing some ERM educational offerings. No one organization has made a commitment to ERM that will be required to staff these new enterprise risk positions. But that all changed on August 1, 2007, when the Society of Actuaries (SOA) announced its accredited ERM program. (See article on page 8.)

Enterprise risk management marks a major change not only in risk management, but overall business management as well. And as with any major industry change, there will be significant opportunities for those who embrace the changes. John Phelps, director of risk management for Blue Cross and Blue Shield of Florida, Inc. and a RIMS director says that the ERM effort is just beginning, and he notes, "The role of risk management in an organization is changing, and the speed of changes is unprecedented. Risk management is now seen as a strategic tool in many organizations. All of a sudden, we have moved from evolving risk management to more of a revolutionary change." And he points out, this is big, "When you go from being 'the insurance guy,' to a player in the company's strategic team, it is a very significant change in the function." But the real question, he points out is,

"whether or not all risk managers can weather that change and contribute to the revolutionary changes, and make it to the next step; that remains to be seen."

Now is the time to start to prepare for the changes that are occurring in corporate risk management. There has never been a time of more opportunity for risk professionals, but it will require an effort to take advantage of the opportunities that are presented. Risk professionals need to follow the changes brought on by ERM to their logical conclusion. As chief risk officers (CRO) began to take control of their organization's risk programs, there is a high probability that the traditional corporate risk management function will diminish to an "insurance guy" function. My advice, don't waste this opportunity. ■

ERM Certification

Society of Actuaries Offers Its First New Credential since Its Founding in 1949

by Michael J. Moody, ARM

Editor's note: The following article was published in the October 2007 issue of *Rough Notes Magazine,* and is reprinted here with permission.

The past 12 months have seen an explosion of activity regarding enterprise risk management (ERM) in general, and more specifically with ERM educational offerings. Among other things, the Risk and Insurance Management Society (RIMS) introduced its Risk Maturity Model, developed several ERM-specific seminars, and included a separate ERM educational track at its annual conference. And several other organizations have begun offering ERM educational programs. However, it's the recent announcement by the Society of Actuaries (SOA) that has created the most attention.

On August 1, 2007, the SOA issued a press release announcing that it would be offering the first accredited ERM program. According to the SOA, the Chartered Enterprise Risk Analyst (CERA) reflects the most rigorous enterprise risk management training available today. The Society goes on to point out that the CERA can be earned by risk professionals who complete "a rigorous curriculum encompassing the most comprehensive demonstration of enterprise risk management available."

Raising the Bar

This is a most important step for the SOA. The Society has clearly taken the initiative in the ERM educational arena and is moving quickly to establish itself as the "best-in-class" of the current educational endeavors. And lest anyone should confuse this effort with just another credential program, this is the first new professional credential that the SOA has done in nearly 60 years. In fact, this marks the first credential since it established the original Fellow of the Society of Actuaries (FSA) and Associate of the Society of Actuaries (ASA) when the SOA was formed in 1949. Over the past few years, the SOA has watched enterprise risk management gain stature in the financial services industry. And in response to this increased emphasis, it began an annual conference on ERM. Over the last couple of years, the program has been expanded beyond the financial service industries and now includes sessions on most industry segments. The SOA now believes that since the rating agencies have gotten involved, there is little reason for any corporation to ignore ERM. The Society has also noted that there have been several checkpoints that have driven the interest in ERM. Among the more important of these are:

- greater transparency
- financial disclosures with more strict reporting and control requirements
- security and technology issues
- business continuity and disaster preparedness in a post-9/11 world
- regulatory compliance
- globalization in a continuously competitive environment.

Coupled with the focus from the rating agencies, ERM now becomes an important management tool. As a result, the SOA believes that ERM offers "a framework for effectively managing uncertainty, responding to risk, and harnessing opportunities as they arise."

Program Specifics

The CERA curriculum was developed to meet current and future market needs. The SOA says the breadth of knowledge imparted through this credential will provide CERAs and their employers with a broad understanding of risk management and the ability to apply that knowledge to any risk-bearing enterprise. According to the SOA, the CERA requires successfully completing five exams, an e-learning module and Validation by Educational Experience for Economics, as well as participation in an Associate Professional Course. Included in the curriculum are topics such as probability, financial mathematics, financial economics, micro and macroeconomics, construction of actuarial models, financial reporting and

operational risks, and advanced finance and enterprise risk management.

The curriculum was designed to help prepare for leadership in the identification, measurement, and management of risks within complex enterprises. In addition to insurance and benefit organizations, actuaries are increasingly working in the broader financial services market as well as energy, transportation, manufacturing, and health care industries.

According to the SOA, the CERA credential reflects the actuary's evolution "from centuries of helping the world understand risks to today's broader risk management and leadership positions." As new roles in ERM continue to grow, actuaries are becoming leaders in the practice, which takes a 360-degree view of an organization's risk profile. They note that CERAs are trained to apply both qualitative and quantitative insights to risk management and, thus, are qualified for such positions as risk analyst, risk manager, and chief risk officer.

The Ball Is in Their Court

Completing the CERA curriculum takes an estimated three to four years, and successful candidates will also become Associates of the Society of Actuaries. Some 87 professionals have signed up to earn the CERA credential. In addition, the SOA Board of Governors will name a number of CERAs. In June, the Board approved making the CERA credential available to a select group of current members of the SOA who have demonstrated actuarial expertise and substantial experience in the field of ERM, without requiring them to complete the normal examination requirements. Each has previously earned the ASA or FSA designations through the rigorous credentialing process.

The Board determined that there would be two pathways for such existing members to become CERAs. The first group consists of thought leaders who have either performed ERM at a senior level or advanced the actuarial profession within the ERM field. Additionally, they may be individuals with significant visibility in the ERM field or who have made substantial contributions to the practice of ERM and are offered the credential without any further requirements. The second group is made up of experienced practitioners in the field of ERM, who will need to submit an application and résumé, in addition to participating in a two-day seminar, to receive the CERA credential.

■ ***Enterprise risk management is just basic actuarial science, which is now being applied in all industries.***

Several SOA members have pioneered the CERA efforts within the SOA. One of those members is Sim Segal, FSA, CERA, MAA, a managing director in Aon's Global Risk Consulting Group, where he leads Aon's ERM service offerings for the Americas. Segal is a long-time supporter of ERM and says, "The CERA credential marks a new breed of risk professional."

He points out, "Enterprise risk management is just basic actuarial science, which is now being applied in all industries." He says that ERM is no longer just for insurance companies or banks, since every business has a diverse set of risks, and executives are now looking for ways to manage them on an integrated basis. As a result, he says, "there are a lot of ponds we can play in." At their core, he says, actuaries are all about measuring and managing risks. "We are able to look at risks holistically and quantify their impact on the corporate strategic plan and key metrics. This provides the risk-to-value linkage, turning risk into opportunity." ■

Coverage by Admission

Randy J. Maniloff

Randy J. Maniloff is a partner in the Business Insurance Practice Group at White and Williams, LLP in Philadelphia. He concentrates his practice in the representation of insurers in coverage disputes over various types of claims. Maniloff writes frequently on insurance coverage topics for a variety of industry publications, and his views on such issues have been quoted by numerous media, including *The Wall Street Journal, The New York Times, USA Today, Associated Press, Dow Jones Newswires,* and *The National Law Journal.*

Editor's note: This article originally appeared in the June 2007 edition of Gen Re's *Policy Wording Matters,* a research newsletter for Gen Re clients, and is reprinted here with permission.

Insurers regularly confront the question whether the time is right to adopt a new version of an ISO or other bureau form. There is no magic bullet that provides the answer. Rather, it is a decision that must be made by each insurer individually after weighing various pros and cons. In many instances, there is no right or wrong decision that can be made—only the best one.

One of the considerations that must be placed on the scale is whether the insurer's decision to adopt a new version of a form will be used against it as evidence of the meaning of the old version. For example, if an insurer adopts a new version of a form that restricts coverage for a certain situation, policyholders will no doubt argue that, by definition, the old version must have been intended to grant coverage for that situation. Right or wrong, this "coverage by admission" (at least tacit admission) argument has an attractive common sense ring to it and insurers should expect to hear it from policyholders. This is a particularly important factor to consider if the policy provision being changed will continue to be subject to numerous claims still in the pipeline, notwithstanding the incorporation of the new version in policies going forward.

And just as so many of the other considerations that go into whether to adopt a new version of a form does not usually lead to a black-and-white answer, here too there is no certainty whether coverage by admission will be adopted—either expressly or as some evidence of the insurer's intent—to create coverage. Several courts have been confronted with this issue, and the results are mixed.

A very recent decision, from a state's highest court, demonstrates the concern that some insurers may have about being bitten by their decision to adopt a new version of a form. In *Swank Enterprises, Inc. v All Purposes Services, Ltd.*, 336 Mont. 197 (2007), the Montana Supreme Court addressed coverage for an additional insured in a construction defect-like scenario. Because certain of the "business risk" exclusions addressed "you" and "your," which the policy defined to mean the "named insured," the additional insured argued that such exclusions did not apply to it.

The Montana Supreme Court agreed with this interpretation advanced by the additional insured—at least it concluded that the policy was ambiguous. The court noted that, on one hand, when strictly construed based on its plain language, the exclusions did not exclude claims made by the additional insured. On the other hand, the exclusions were prefaced by the language: "this insurance does not apply to," which the court concluded could be read to exclude coverage to any insured. *Swank Enterprises* at 203.

However, not content to stop there, the *Swank Enterprises* court was also guided by the insurer's decision to have amended the policy language at issue:

As further evidence of ambiguity, we need only consider the amended endorsement to the 1998 policy, entitled "Additional Insureds," which expressly provides, unlike the 1997 policy, that "all exclusions" apply to "additional insureds." Logic dictates one of two reasons for the change. Continental changed the policy so that the exclusions referring to "you" and "your" would also apply to additional insureds, which implies that the exclusions did not apply to additional insureds under the 1997 policy, or Continental sought to clarify that the exclusions apply to additional insureds, which indicates that the 1997 policy was ambiguous. *Swank Enterprises* at 203-04.

As discussed in this issue of *Policy Wording Matters*, a decision from a state's highest court on a key policy provision may go a long way toward an insurer's decision whether to adopt a new version of a form. But as *Swank Enterprises* reveals, even when a much-needed policy change would have ordinarily made the decision to adopt a new version of a form an easy one, insurers may still have reason to pause.

But not all courts agree with *Swank Enterprises*. *See Penton Media, Inc. v Affiliated FM Insurance Co.*, 2006 U.S. Dist. LEXIS 64387, *11 (N.D. Ohio), citing court's prior order. ("The mere fact that Affiliated FM decided to clarify future policies when faced with a lawsuit is not proof that the previous language meant what Penton asserts it does, or is even ambiguous.") *But see Fortunato v Highlands Ins. Group*, 345 N.J. Super. 529, 535. (App. Div. 2001) ("If an insurance company changes language in a policy in order to clarify language in the prior policy, this implies that the earlier policy needed clarification. Language which needs clarification is ambiguous and must be construed against the insurer.")

Courts also disagree over what impact *Federal Rule of Evidence* 407 has on the issue. In general, for purposes of proving negligence, this rule renders inadmissible any evidence of a subsequent remedial repair. The rationale for the rule is simple. It is good social policy to encourage people to make repairs in furtherance of safety. It would discourage people from doing so if it could be used against them as evidence of negligence for a pre-repair accident. Even though the rule states that its purpose is for proving such things as negligence, product defect or the need for a warning, it is easy to see how it could be addressed in the analogous context of an insurer's decision to revise a policy form.

In *Gilliam v American Casualty Company*, 735 F. Supp. 345, 351, n.9 (N.D. Ca. 1990), the court held: "Under *Federal Rule of Evidence* 407, evidence of subsequent remedial measures is not admissible to prove culpable conduct by the party taking those measures. Accordingly, the Court may not consider American's subsequent modification of its D&O policy in deciding this summary judgment motion." But the court in *American Casualty Company v Continisio*, 819 F. Supp. 385, 399, n.8 (D.N.J. 1993) disagreed: "The insurers argue that subsequent revisions of the policy language should be excluded under *Fed. R. Evid.* 407, which excludes evidence of subsequent repairs offered for the purpose of showing negligence or culpable conduct. Since the subsequent revisions are offered by the FDIC for the purpose of showing the ambiguity of the earlier contractual language, this objection is without merit."

Just as so many of the factors surrounding the decision whether to adopt a new version of an insurance policy form comes with no right or wrong answers, it is likewise difficult to predict if an insurer will be penalized for its decision to do so by a court that uses it as the basis for finding "coverage by admission." ■

Risk Management Interest Group Presents Seminar at 2007 Annual Meeting and Seminars

by Stanley Oetken, CPCU

The Risk Management Interest Group, along with the Information Technology Interest Group, sponsored a session at the CPCU Society's 2007 Annual Meeting and Seminars in Hawaii entitled, "Sustaining Profitability through Enterprise Risk Management and Enterprise Performance Management." The panel members were **Richard G. Berthelsen, J.D., CPCU,** of the American Institute for Chartered Property Casualty Underwriters (AICPCU); **Dan R. Anderson, Ph.D., CPCU**, professor of risk management and insurance at the University of Wisconsin; and **Patricia L. Saporito, CPCU,** of Business Objects Americas.

Richard G. Berthelsen, J.D., CPCU, spoke on Enterprise Risk Management (ERM) for insurers focusing on history, evolution, the current state, and the future. Historically, the NAIC (National Association of Insurance Commissioners) introduced risk-based capital framework in the early 1990s. After Hurricane Andrew in 1992, cat models began to be taken seriously. In 1998, Basel Committee introduced Basel II—a three-pillar regulatory framework (quantification, risk management, and transparency) to assess capital requirements of banks. The Basel Committee consists of senior authorities from 12 senior banks that exist in most countries. Basel II differentiated from Basel I in that Basel I did not distinguish between size and type of loan.

In 1999, the AIS (International Association of Insurance Supervision) developed an approach based on Basel II to rate an insurer using its own unique risks, followed by the Sarbanes-Oxley Act in 2002. In 2005, Standard & Poor's assessed an insurer's ERM program as part of its rating methodology. Moody's, A.M. Best, and Fitch followed suit.

Evolution of ERM includes the categories of:

1. Insurance Hazard (underwriting, accumulation/cat, reserve deterioration)
2. Financial (credit, market, liquidity);
3. Operational and Strategic (people/process/systems, external events, business strategy)

The ERM process, similar to a risk management process, consists of identification, analysis, examining the feasibilities, selecting appropriate techniques, implementation, and monitoring the results.

The current state of ERM for insurers consists of being between cat models, which are valuable tools and have become a baseline for insurers, and dynamic financial analysis. Other items involved in the current ERM are external pressures versus corporate culture, turf wars (underwriting and financial in separate silos), ability to quantify economic benefits, technological deficiency, and the rarity of a chief risk officer within insurers.

What does the future hold for insurers? NAIC is considering a new audit framework called CARRMEL (capital, adequacy, asset quality, reserves, reinsurance, management, earnings, and liquidity). The European Union is expected to adopt the quantification pillar of Basel II with the Capital Requirements Directive (CRD). In addition, there will be implementation of Solvency II, which corrects the deficiencies of Solvency I, which looked only at underwriting risk.

Dan R. Anderson, Ph.D., CPCU, then discussed the topic of sustainability risk management. It is considered to be the management of emerging environmental and social responsibility risks. Thus, corporations are being pressured to address environmental and social responsibility performance, in addition to the traditional financial bottom line. It makes a business argument for companies becoming more sustainable by using risk management principles. Therefore, sustainable risk management needs to be a critical part of enterprise risk management.

■ *Dan R. Anderson, Ph.D., CPCU, discussed how sustainability risk management needs to be a critical part of enterprise risk management.*

The concept of Triple Bottom Line (TBL) was first articulated by John Elkington, and consists of Financial Performance (FP) + Environmental Performance (EP) + Social Responsibility Performance (SR) = TBL. TBL is maximized by reducing the risk costs of EP and SR.

Sustainability risks include global warming/climate change, boycotts, environmental liability, ecosystems, social responsibility, directors and officers. In summary, sustainability risk management is just high-quality environmental and social responsibility risk management. The key steps to sustainability risk management are:

1. prepare a sustainability report
2. waste reduction
3. voluntary/mandatory reduction in greenhouse gases
4. more efficient energy systems
5. incorporating more fuel-efficient vehicles into transportation systems
6. green buildings (LEED Certification)
7. partnerships with NGOs (e.g. Environmental Defense)
8. product design utilizing environment and life cycle assessment
9. anticipate regulatory changes
10. utilize appropriate certifications, organizations, and programs where possible
11. implement worker-based programs

Patricia L. Saporito, CPCU, addressed the issue of sustaining profitability through enterprise risk management (ERM) and enterprise performance management (EPM). As insurers seek to improve enterprise performance, ERM is gaining momentum, and insurers are leveraging EPM and ERM strategies, technologies, applications, and data in this effort.

■ *More than 75 attendees reviewed an ERM framework and its components; risk management exposures with a focus on emerging sustainability risks; and best practices use of EPM and ERM technologies and applications.*

Both EPM and ERM can incorporate external political, economic, social, and technological factors—such as regulatory changes, interest rates, demographic shifts, and global warming—into their strategic and tactical planning model assumptions. Key insurance industry challenges are profitable growth and protecting the business through risk management. Challenges include distribution effectiveness, increased competition, information and technology management, expense/cost management, and changing customer demands. In addition, these challenges create demand for timelier and more comprehensive financial and operational information.

As stated previously, enterprise risk management is part of enterprise performance management. EPM is a series of organizational processes and technologies that empower people to execute and optimize business strategy using lessons learned in the past, assessing the present, and predicting the future to optimize your organization's performance.

The session took the audience through ERM history up to the current trend of combining ERM and EPM. Since most companies now operate in a global arena, ERM and EPM have also become global topics. Sustaining profitability through these methods will only evolve further as companies go forward. ■

Global Warming: Man-Made or Natural?

by S. Fred Singer, Ph.D.

■ **S. Fred Singer, Ph.D.,** is professor emeritus of environmental sciences at the University of Virginia, a distinguished research professor at George Mason University, and president of the Science and Environmental Policy Project. He performed his undergraduate studies at Ohio State University, and earned his Ph.D. in physics from Princeton University. He was the founding dean of the School of Environmental and Planetary Sciences at the University of Miami, the founding director of the U.S. National Weather Satellite Service, and served for five years as vice chairman of the U.S. National Advisory Committee on Oceans and Atmosphere. Singer has written or edited more than a dozen books and mono-graphs, including, most recently, *Unstoppable Global Warming: Every 1,500 Years.*

Editor's note: In the July 2007 issue of *Risk Management Quarterly,* author William Stewart offered a commentary on what is happening in global warming and how it impacts insurers. Presented here is a very different point of view on climate change from S. Fred Singer, Ph.D., professor emeritus, Environmental Sciences, University of Virginia. This perspective is valuable to risk managers who must decide how best to allocate resources to handle risks.

The following article is adapted from a lecture delivered on the Hillsdale College campus on June 30, 2007, during a seminar entitled "Economics and the Environment," sponsored by the Charles R. and Kathleen K. Hoogland Center for Teacher Excellence. It is reprinted with permission from *Imprimis,* a publication of Hillsdale College.

In the past few years there has been increasing concern about global climate change on the part of the media, politicians, and the public. It has been stimulated by the idea that human activities may influence global climate adversely and that therefore corrective action is required on the part of governments. Recent evidence suggests that this concern is misplaced. Human activities are not influencing the global climate in a perceptible way. Climate will continue to change, as it always has in the past, warming and cooling on different time scales and for different reasons, regardless of human action. I would also argue that—should it occur—a modest warming would be on the whole beneficial.

This is not to say that we don't face a serious problem. But the problem is political. Because of the mistaken idea that governments can and must do something about climate, pressures are building that have the potential of distorting energy policies in a way that will severely damage national economies, decrease standards of living, and increase poverty. This misdirection of resources will adversely affect human health and welfare in industrialized nations, and even more in developing nations. Thus it could well lead to increased social tensions within nations and conflict between them.

If not for this economic and political damage, one might consider the present concern about climate change nothing more than just another environmentalist fad, like the Alar apple scare or the global cooling fears of the 1970s. Given that so much is at stake, however, it is essential that people better understand the issue.

Man-Made Warming?

The most fundamental question is scientific: Is the observed warming of the past 30 years due to natural causes or are human activities a main or even a contributing factor?

At first glance, it is quite plausible that humans could be responsible for warming the climate. After all, the burning of fossil fuels to generate energy releases large quantities of carbon dioxide into the atmosphere. The CO_2 level has been increasing steadily since the beginning of the industrial revolution and is now 35 percent higher than it was 200 years ago. Also, we know from direct measurements that CO_2 is a "greenhouse gas," which strongly absorbs infrared (heat) radiation. So the idea that burning fossil fuels causes an enhanced "greenhouse effect" needs to be taken seriously.

But in seeking to understand recent warming, we also have to consider the natural factors that have regularly warmed the climate prior to the industrial revolution and, indeed, prior to any human presence on the earth. After all, the geological record shows a persistent 1,500-year cycle of warming and cooling extending back at least one million years.

■ ***. . . the geological record shows a persistent 1,500-year cycle of warming and cooling extending back at least one million years.***

In identifying the burning of fossil fuels as the chief cause of warming today, many politicians and environmental activists simply appeal to a so-called "scientific consensus." There are two things wrong with this. First, there is no such consensus: An increasing number of climate scientists are raising serious questions about the political rush to judgment on this issue. For example, the widely touted "consensus" of 2,500 scientists on the United Nations Intergovernmental Panel on Climate Change (IPCC) is an illusion: Most of the panelists have no scientific qualifications, and many of the others object to some part of the IPCC's report. The Associated Press reported recently that only

52 climate scientists contributed to the report's "Summary for Policymakers."

Likewise, only about a dozen members of the governing board voted on the "consensus statement" on climate change by the American Meteorological Society (AMS). Rank and file AMS scientists never had a say, which is why so many of them are now openly rebelling. Estimates of skepticism within the AMS regarding man-made global warming are well over 50 percent.

The second reason not to rely on a "scientific consensus" in these matters is that this is not how science works. After all, scientific advances customarily come from a minority of scientists who challenge the majority view—or even just a single person (think of Galileo or Einstein). Science proceeds by the scientific method and draws conclusions based on evidence, not on a show of hands.

But aren't glaciers melting? Isn't sea ice shrinking? Yes, but that's not proof for human-caused warming. Any kind of warming, whether natural or human-caused, will melt ice. To assert that melting glaciers prove human causation is just bad logic.

What about the fact that carbon dioxide levels are increasing at the same time temperatures are rising? That's an interesting correlation; but as every scientist knows, correlation is not causation. During much of the last century the climate was cooling while CO_2 levels were rising. And we should note that the climate has not warmed in the past eight years, even though greenhouse gas levels have increased rapidly.

What about the fact—as cited by, among others, those who produced the IPCC report—that every major greenhouse computer model (there are two dozen or so) shows a large temperature increase due to human burning of fossil fuels? Fortunately, there is a scientific way of testing these models to see whether current warming is due to a man-made greenhouse effect. It involves comparing the actual or observed pattern of warming with the warming pattern predicted by or calculated from the models. Essentially, we try to see if the "fingerprints" match—"fingerprints" meaning the rates of warming at different latitudes and altitudes.

For instance, theoretically, greenhouse warming in the tropics should register at increasingly high rates as one moves from the surface of the earth up into the atmosphere, peaking at about six miles above the earth's surface. At that point, the level should be greater than at the surface by about a factor of three and quite pronounced, according to all the computer models. In reality, however, there is no increase at all. In fact, the data from balloon-borne radiosondes show the very opposite: a slight decrease in warming over the equator.

The fact that the observed and predicted patterns of warming don't match indicates that the man-made greenhouse contribution to current temperature change is insignificant. This fact emerges from data and graphs collected in the Climate Change Science Program Report 1.1, published by the federal government in April 2006 (see www.climatescience.gov/Library/sap/sap1-1/finalreport/default.htm). It is remarkable and puzzling that few have noticed this disparity between observed and predicted patterns of warming and drawn the obvious scientific conclusion.

What explains why greenhouse computer models predict temperature trends that are so much larger than those observed? The answer lies in the proper evaluation of feedback within the models. Remember that in addition to carbon dioxide, the real atmosphere contains water vapor, the most powerful greenhouse gas. Every one of the climate models calculates a significant positive feedback from water vapor—i.e., a feedback that amplifies the warming effect of the CO_2 increase by an average factor of two or three. But it is quite possible that the water vapor feedback is negative rather than positive and thereby reduces the effect of increased CO_2.

There are several ways this might occur. For example, when increased CO_2 produces a warming of the ocean, a higher rate of evaporation might lead to more humidity and cloudiness (provided the atmosphere contains a sufficient number of cloud condensation nuclei). These low clouds reflect incoming solar radiation back into space and thereby cool the earth. Climate researchers have discovered other possible feedbacks and are busy evaluating which ones enhance and which diminish the effect of increasing CO_2.

Natural Causes of Warming

A quite different question, but scientifically interesting, has to do with the natural factors influencing climate. This is a big topic about which much has been written. Natural factors include continental drift and mountain-building, changes in the Earth's orbit, volcanic eruptions, and solar variability. Different factors operate on different time scales. But on a time scale important for human experience—a scale of decades, let's say—solar variability may be the most important.

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Global Warming: Man-Made or Natural?

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Solar influence can manifest itself in different ways: fluctuations of solar irradiance (total energy), which has been measured in satellites and related to the sunspot cycle; variability of the ultraviolet portion of the solar spectrum, which in turn affects the amount of ozone in the stratosphere; and variations in the solar wind that modulate the intensity of cosmic rays (which, upon impact into the earth's atmosphere, produce cloud condensation nuclei, affecting cloudiness and thus climate).

Scientists have been able to trace the impact of the sun on past climate using proxy data (since thermometers are relatively modern). A conventional proxy for temperature is the ratio of the heavy isotope of oxygen, Oxygen-18, to the most common form, Oxygen-16.

A paper published in *Nature* in 2001 describes the Oxygen-18 data (reflecting temperature) from a stalagmite in a cave in Oman, covering a period of over 3,000 years. It also shows corresponding Carbon-14 data, which are directly related to the intensity of cosmic rays striking the earth's atmosphere. One sees there a remarkably detailed correlation, almost on a year-by-year basis. While such research cannot establish the detailed mechanism of climate change, the causal connection is quite clear: Since the stalagmite temperature cannot affect the sun, it is the sun that affects climate.

Policy Consequences

If this line of reasoning is correct, human-caused increases in the CO_2 level are quite insignificant to climate change. Natural causes of climate change, for their part, cannot be controlled by man. They are unstoppable. Several policy consequences would follow from this simple fact:

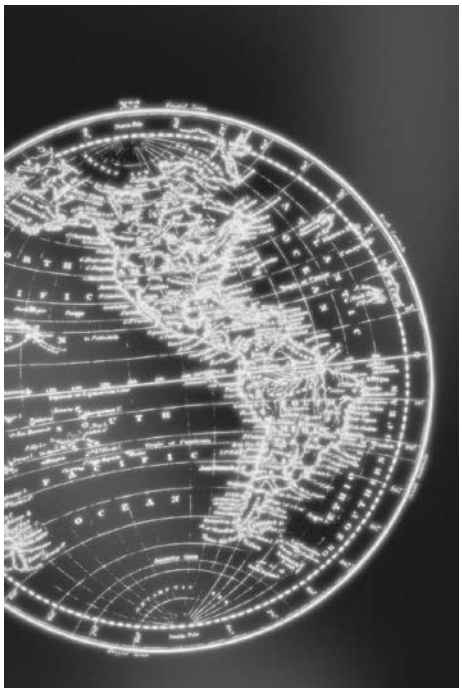
- Regulation of CO_2 emissions is pointless and even counterproductive, in that no matter what kind of mitigation scheme is used, such regulation is hugely expensive.
- The development of non-fossil fuel energy sources, like ethanol and hydrogen, might be counterproductive, given that they have to be manufactured, often with the investment of great amounts of ordinary energy. Nor do they offer much reduction in oil imports.
- Wind power and solar power become less attractive, being uneconomic and requiring huge subsidies.
- Substituting natural gas for coal in electricity generation makes less sense for the same reasons.

None of this is intended to argue against energy conservation. On the contrary, conserving energy reduces waste, saves money, and lowers energy prices—irrespective of what one may believe about global warming.

Science vs. Hysteria

You will note that this has been a rational discussion. We asked the important question of whether there is appreciable man-made warming today. We presented evidence that indicates there is not, thereby suggesting that attempts by governments to control greenhouse-gas emissions are pointless and unwise. Nevertheless, we have state governors calling for CO_2 emissions limits on cars; we have city mayors calling for mandatory CO_2 controls; we have the Supreme Court declaring CO_2 a pollutant that may have to be regulated; we have every industrialized nation (with the exception of the U.S. and Australia) signed on to the Kyoto Protocol; and we have ongoing international demands for even more stringent controls when Kyoto expires in 2012. What's going on here?

To begin, perhaps even some of the advocates of these anti-warming policies are not so serious about them, as seen in a feature of the Kyoto Protocol called the Clean Development Mechanism, which allows a CO_2 emitter—i.e., an energy user—to support a fanciful CO_2 reduction scheme in developing nations



in exchange for the right to keep on emitting CO_2 unabated. "Emission trading" among those countries that have ratified Kyoto allows for the sale of certificates of unused emission quotas. In many cases, the initial quota was simply given away by governments to power companies and other entities, which in turn collect a windfall fee from consumers. All of this has become a huge financial racket that could someday make the UN's "Oil for Food" scandal in Iraq seem minor by comparison. Even more fraudulent, these schemes do not reduce total CO_2 emissions—not even in theory.

It is also worth noting that tens of thousands of interested persons benefit directly from the global warming scare—at the expense of the ordinary consumer. Environmental organizations globally, such as Greenpeace, the Sierra Club, and the Environmental Defense Fund, have raked in billions of dollars. Multi-billion-dollar government subsidies for useless mitigation schemes are large and growing. Emission trading programs will soon reach the $100 billion a year level, with large fees paid to brokers and those who operate the scams. In other words, many people have discovered they can benefit

from climate scares and have formed an entrenched interest. Of course, there are also many sincere believers in an impending global warming catastrophe, spurred on in their fears by the growing number of one-sided books, movies, and media coverage.

The irony is that a slightly warmer climate with more carbon dioxide is in many ways beneficial rather than damaging. Economic studies have demonstrated that a modest warming and higher CO_2 levels will increase GNP and raise standards of living, primarily by improving agriculture and forestry. It's a well-known fact that CO_2 is plant food and essential to the growth of crops and trees—and ultimately to the well-being of animals and humans.

You wouldn't know it from Al Gore's *An Inconvenient Truth*, but there are many upsides to global warming: Northern homes could save on heating fuel. Canadian farmers could harvest bumper crops. Greenland may become awash in cod and oil riches. Shippers could count on an Arctic shortcut between the Atlantic and Pacific. Forests may expand.

Mongolia could become an economic superpower. This is all speculative, even a little facetious. But still, might there be a silver lining for the frigid regions of Canada and Russia? "It's not that there won't be bad things happening in those countries," economics professor Robert O. Mendelsohn of the Yale School of Forestry & Environmental Studies says. "But the idea is that they will get such large gains, especially in agriculture, that they will be bigger than the losses." Mendelsohn has looked at how gross domestic product around the world would be affected under different warming scenarios through 2100. Canada and Russia tend to come out as clear gainers, as does much of northern Europe and Mongolia, largely because of projected increases in agricultural production.

To repeat a point made at the beginning: Climate has been changing cyclically for at least a million years and has shown huge variations over geological time. Human beings have adapted well, and will continue to do so.

The nations of the world face many difficult problems. Many have societal problems like poverty, disease, lack of sanitation, and shortage of clean water. There are grave security problems arising from global terrorism and the proliferation of nuclear weapons. Any of these problems are vastly more important than the imaginary problem of man-made global warming. It is a great shame that so many of our resources are being diverted from real problems to this non-problem. Perhaps in 10 or 20 years this will become apparent to everyone, particularly if the climate should stop warming (as it has for eight years now) or even begin to cool.

We can only trust that reason will prevail in the face of an onslaught of propaganda like Al Gore's movie and despite the incessant misinformation generated by the media. Today, the imposed costs are still modest, and mostly hidden in taxes and in charges for electricity and motor fuels. If the scaremongers have their way, these costs will become enormous. But I believe that sound science and good sense will prevail in the face of irrational and scientifically baseless climate fears. ■

Educate, Don't Alienate: How We Reduced Workers Compensation Frequency and Severity

by Earl D. Kersting, CPCU, ARM, ALCM, AIC, AU, AAI, AIS

The other day I was asked to explain why, if we all oversee similar operations, and our employees all perform similar job duties, my division's workers compensation frequency and severity was notably better than my peers'. After contemplating the question, it occurred to me that our path to improvement began when we took a proactive stance and decided it was better to educate, not alienate, our employees.

Let me explain what I mean, as well as my approach, as several of the processes implemented were considered quite controversial by my peers, and some even thought to carry risk.

The first step implemented was designed to control the severity of incidents as they occurred. My approach was considered radical at the time by my peers, but its purpose was to simply reassure injured employees in an effort to reduce their uncertainty about what would now happen to them, post-injury, and to eliminate the perception that we didn't care about them, and the perception that they needed to seek legal representation to protect their interest. After all, you and I know that workers compensation benefits are typically statutorily governed, so there are certain benefits to which the employee will be entitled regardless. So why not voluntarily explain those benefits up front, and show our employees that they won't be left to fend for themselves.

How exactly do we accomplish this? At the time of incident, we explain to the injured workers to not worry, that their necessary medical care will be provided at no cost to them. We further explain that should they be unable to immediately return to their normal job duties, we will work collectively as a team with them, the physician, and their site manager to return them to productive employment as soon as the physician believes it in their best interest, in an effort to continue their earning ability, even if we have

to temporarily modify their job duties. Should they be unable to immediately return to even an alternate-duty position, we explain that there are wage replacement benefits available, subject to certain statutory limitations. Again, all these benefits are statutorily provided, yet by reassuring employees right up front that they will receive medical care, that they will be able to keep earning an income, and that if unable to work, be provided replacement income, we've eliminated much of the apprehension and fears that drive employees to seek legal representation.

Does this approach work? Now several years into this process, we have exponentially decreased workers compensation litigation in this division.

My next target was to reduce the frequency of incidents. I performed the typical loss analysis we all do to determine where injuries were occurring, but then went one step further by not only sharing this information directly with employees, but also educating them how to avoid becoming the next statistic. Yes, we all do preventive measures such as machine safeguarding, but how about voluntarily explaining to employees the early-stage symptoms of repetitive motion injuries and carpal tunnel syndrome? Yes, you heard me correctly; we teach employees the early-onset symptoms of repetitive stress injuries so that they may receive conservative treatment before it becomes a full-blown surgically treated condition. Did we not see an increase in the number of injuries reported? Only at the very onset of this process, and many of those were referred for evaluation and released with anti-inflammatory medication, perhaps a wrist splint to wear while sleeping, or other very minor treatment. Once this initial influx passed, our instance of repetitive motion injuries and carpal tunnel syndrome exponentially decreased and is now nearly non-existent.

From repetitive motion injuries and carpal tunnel syndrome, we moved on to back and shoulder injuries, explaining not only how to properly lift, but we provide strengthening exercises, warm-up exercises, and easy-to-understand, easy-to-implement, educational materials that are applicable both on and off the job. As additional injury cause factors were identified, our library expanded, and our frequency rate decreased.

Next I introduced *The Risk Review,* a safety-specific newsletter distributed to every employee, from the division president, to the 15-year-old kid who carries out your groceries. This is not a canned newsletter purchased from a vendor, but an in-house produced publication that is very applicable to our employees' actual "real-world" environment. We discuss actual events and incidents that have occurred in our stores, how and why they occurred, what could have prevented their occurrence, and what the reader can do to protect themselves from personally becoming the victim of a similar incident. We also share success stories, in which case we name names, giving credit where due to those who went above and beyond to improve safety in their job, their department, their store, or in our division, recognizing and rewarding those who make a difference.

The Risk Review also became a vehicle in which to convey supplements to the educational materials previously described, such as short refreshers of strengthening exercises, in addition to providing off-the-job tips that may impact an employee's health and safety. After all, off-the-job safety issues, such as cellular telephone use while driving, also directly affect job performance and attendance, and topics related to the employees' family member's safety impact the company's overall health care and insurance costs. We also actively encourage all employees to submit articles or story ideas, truly making *The Risk Review* their publication.

This is not an exhaustive list of my processes, but only a brief overview of how we have tremendously reduced workers compensation frequency and severity by choosing to educate, not alienate, our employees. Not every method we implemented is transferable to every type of employer, but the bottom-line message is the same. Don't be afraid to step beyond perceived boundaries simply because it hasn't been done in the past, or may be controversial or pose risk. Every new or different approach poses some degree of risk; but without risk, there can be no change, and without change, you are destined to accept the same results as in the past. Your reading this means that you seek education and the change it brings. Educate your employees and see what change it can bring. ■

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