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ACIG

news

INSIDE THIS ISSUE

- 2** ACIG's CEO Transition Announcement
- 2** ACIG's Investment Portfolio
- 3** ACIG Financial Report
- 3** ACIG's A.M. Best Rating
- 3** ACIG's Strategic Vision
- 4** Project Lifesaver Report
- 5** ACIG Contractors in the News
- 6** CDC Reports Startling Increase In Painkiller Overdose Deaths
- 6** AZ Program Report
- 7** ACIG Member Unique Project
- 8** Ajax Paves the Way for Soldier and His Family
- 9** ACIG Notes and Notables
- 9** Team Member Spotlight
- 10** ACIG Meetings and Workshops
- 10** Concluding Thoughts

The Risks of Green Construction

Sustainable building is transforming the United States construction industry. However, new construction materials and technologies along with new contract terms may be creating legal risks related to liability, insurance and project certification.

There have not been many cases involving LEED-igation on sustainable building projects, but we can anticipate them coming. Two cases involving Leadership in Energy and Environmental Design (LEED) have garnered interest in the construction industry.

In *Bain v. Vertex Architects* (Illinois), the Plaintiff claimed the architect "failed to pursue and obtain project certification from the USGBC LEED Program for a farm house renovation", when the stated objective of the architectural contract was to "create a sustainable green modern single-family home". The question raised: Who is liable for failure to obtain LEED certification?

In a Maryland case, *Shaw Development v. Southern Builders*, the Defendant contracted with a general contractor, who was not responsible for building design, to construct a project to LEED Silver certification standards. Shaw filed a \$1.3 million lawsuit alleging the contractor failed to finish the building in a timely manner and failed to build it in accordance with LEED standards by state deadlines to receive a green building tax credit of \$635,000.

Contractors may mitigate the risk of green construction by:

- Staying up to date on LEED requirements.
- Determining who is responsible for achieving LEED certification.
- Determining any ongoing obligations related to the operation and maintenance of the building.
- Confirming there is adequate insurance coverage, including professional liability for design professionals.
- Checking warranty and guarantee language to make sure they remain intact.
- Determining if there are intellectual property rights that need to be protected.

Use caution as you navigate the unique risks of green (sustainable) construction.

ACIG's CEO Transition Announcement

Here is the Press Release that was sent to the media outlets regarding ACIG's CEO Transition:

American Contractors Insurance Group (ACIG) has named Michael J. O'Neill as its new CEO, effective January 1, 2012. O'Neill will succeed William S. McIntyre IV in this role. McIntyre, who helped found the company in 1981, will continue to serve as Chairman.

O'Neill has been involved in construction insurance for over 38 years. He joined ACIG in August 1984 and has been responsible for the overall operations of ACIG and its subsidiary companies. O'Neill's expertise lies in the areas of captive management, risk management, retention analysis, contractual risk transfer, development of specialized coverages and risk funding programs. He was named President of ACIG in December 2009, and looks forward to continuing to serve ACIG's members as the CEO and President.

ACIG is a construction industry owned insurance facility based in Dallas, TX. ACIG provides workers compensation, general liability, automobile liability and subcontractor default insurance through ACIG Insurance Company and American Contractors Insurance Company Risk Retention Group. ACIG's mission is to save lives, prevent injuries and reduce the overall cost of risk and insurance for its members.

ACIG's Investment Portfolio

Asset Allocation as of September 30, 2011

	Market Value as of 9/30/11	Percent of Total
Insurance Reserves Portfolio	\$ 192,837,702	60.3%
BlackRock	\$ 192,837,702	
Capital Portfolio	\$ 126,994,623	39.7%
Equities		
Dodge & Cox (Global)	\$ 5,877,645	1.8%
Primecap	\$ 15,336,167	4.8%
Wellington Global Perspectives	\$ 9,656,447	3.0%
Calamos Global Growth & Income	\$ 7,984,339	2.5%
Convertibles		
Zazove	\$ 22,019,221	6.9%
Calamos Global Growth & Income	\$ 9,743,781	3.0%
Fixed Income		
Western-Absolute Return	\$ 14,108,669	4.4%
T. Rowe Price High Yield Fund	\$ 2,639,951	0.8%
Payden GNMA Fund	\$ 19,922,996	6.3%
Franklin Templeton Global Bonds	\$ 14,338,587	4.5%
Real Assets		
BlackRock TIPS	\$ 5,366,820	1.7%
TOTAL INVESTMENTS	\$ 319,832,325	100%
Shareholders' Equity (as of 9/30/11)	\$ 118,571,000	

*"\$319,832,325
in total investments"*

ACIG Financial Report September 30, 2011

ACIG's shareholders' equity is \$118,571,000 (at September 30, 2011). We reported pre-tax income of \$27,504,000 for the nine months ended September 30, 2011 before policyholder dividends and other related return premiums and fees of \$22,088,000. ACIG reported net income of \$4,528,000 for nine months ended September 30, 2011.

ACIG's A.M. Best Rating

ACIG management was contacted by A.M. Best Company in July 2011 to affirm our rating of A (Excellent) Financial Size Category VIII (\$100-250 million of policyholder surplus). Annually we meet with our Analyst Team at A.M. Best to review our financial performance and discuss our future operations.

ACIG has a backup arrangement with Zurich American Insurance Company to substitute their A+, FSC XV rating on insurance policies where ACIG's A, FSC VIII rating is not acceptable to third parties.

ACIG's Strategic Vision

At the October 2011 Executive Committee meeting, approval was given to increase our Auto and General Liability policy limits to \$5,000,000 per occurrence. The following list of pros and cons was developed in support of this decision.

Pros	Cons
1. More control of claims handling.	1. More volatile excess results.
2. Supports "Project Independence".	2. May not receive full or proper premium credit from lead umbrella underwriters.
3. Expands the broad and comprehensive ACICRRG policy coverage up to \$5,000,000.	3. Higher ACIG administration and policy counts.
4. Utilizes ACIG capital effectively.	4. Potential owner problem with ACIG's A.M. Best size rating VIII.
5. Reduces the "Stowers demand" exposure from umbrella carriers.	5. Unaggregated auto liability exposure.
6. Capture underwriting profit and investment income benefits.	
7. Lock in stable pricing.	
8. More likely to get the umbrella to follow form above \$5MM.	
9. Additional premiums to be utilized in ACIG expense scales, thereby reducing the expense rates.	
10. Increase critical mass of pooled layer premium to approximately \$31,000,000 annual (excluding AZ program).	

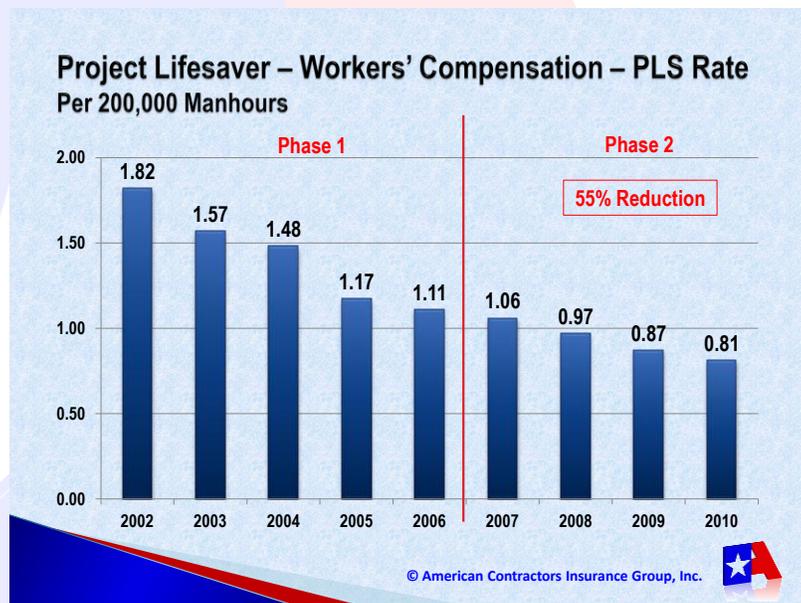
Project Lifesaver Report

ACIG members continue to produce outstanding results in our Project Lifesaver Initiative. Over the eight (8) recent policy years, they have reduced their loss rates as follows:

Workers Compensation	55% improvement
General Liability	80% improvement
Auto Liability	66% improvement

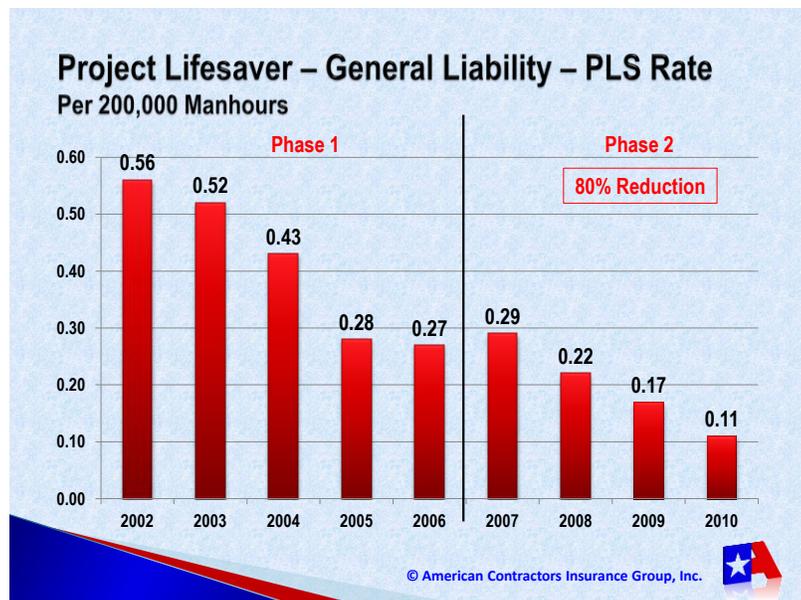
The accompanying charts chronicle the improvements over time. These results are a testament to our members' safety culture that permeates their operations. To achieve meaningful reductions, we need to remain vigilant and strive for Zero Accidents.

"A 55% reduction in PLS Recordable Cases"

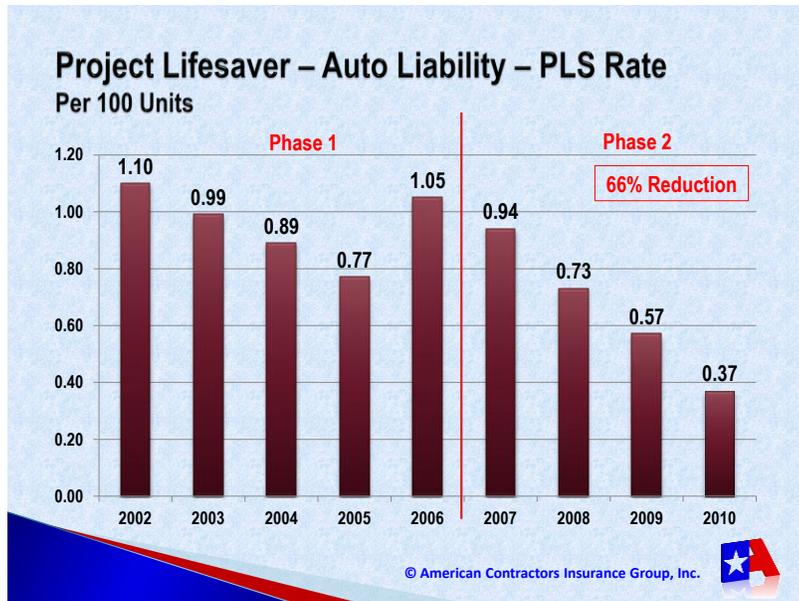


For the most recent reporting period, Kitchell Corporation had the lowest PLS rate at 0.09 per 200,000 manhours.

"General Liability loss rate has been reduced by 80%"



Eleven (11) members recorded no qualifying General Liability claims over a 24-month period.



“Auto Liability loss rate has been reduced by 66%”

Three (3) members recorded no qualifying Auto Liability losses over a 24-month period.

Project Lifesaver meetings are currently being held with all ACIG members. These sessions provide a historical perspective, an industry benchmarking study and strategic planning for the next year. These sessions are led by our CEOs and their senior leadership team.

ACIG Contractors in the News

Rob Burton, CEO of **Hoar Construction, LLC**, received the Associated Builders and Contractors 2011 Alabama Award. The award recognizes a lifelong commitment to construction in Alabama.

President Obama and former President Bill Clinton toured **Forrester Construction Company's** 815 Connecticut Avenue Project. The purpose of the visit was to announce nearly \$4 billion in combined Federal and private sector energy upgrades over the next two (2) years.

Dave Dolnick, Risk Manager, **The Brady Companies, Inc.**, received the prestigious Words of Wisdom Award at the 31st Annual IRMI Construction Risk Conference. The award recognizes his skill and generosity in sharing his expertise in many facets of Construction Risk Management.

Rich Wagman, Chairman and CEO of **G.A. & F.C. Wagman, Inc.**, has been selected to receive the Moles 2012 Outstanding Achievement Award. The Moles is a group of highway-heavy construction executives.

CDC Reports Startling Increase In Painkiller Overdose Deaths

The Centers for Disease Control and Prevention reports nearly 15,000 deaths from overdoses of powerful painkillers in 2009; more than three times the number less than 10 years before. Deaths from overdose of opioid pain relievers now exceed fatalities from heroin and cocaine combined.

The drugs include many prescribed for injured workers, including OxyContin, the number one (1) prescribed drug in workers compensation cases. OxyContin is a controlled-release narcotic painkiller prescribed for around-the-clock relief of moderate to severe pain. Monitoring injured workers who are prescribed opioids is an established Best Practice.

AZ Program Report

ACIG and Zurich entered into a Strategic Alliance on June 1, 2005 to address some significant issues facing our general building contractors.

1. Subcontractor liability exclusions, limitations and related claims disputes.
2. States that did not allow any meaningful risk transfers due to anti-indemnity and insurance regulations.
3. Low limits of insurance maintained by first and second tier subcontractors.

All of these issues are still present in the current insurance market.

The AZ Program provides a seamless program insuring core program projects, project specific CCIPs and rolling CCIPs for smaller projects. All of the insurers and limits are identical under all three (3) aspects of the AZ Program.

As of September 30, 2011, our six (6) AZ members have produced the following premiums.

Workers Compensation	\$ 28,193,051
Primary Liability	\$ 85,237,385
Umbrella/Excess Liability	<u>\$ 49,187,226</u>
Total	\$162,617,662

Included in this total is the premiums generated on 591 CCIPs, with construction values exceeding \$7,494,516,030.

The initial underwriting results and economic benefits are very positive; however, this book of business has a long tail and the overall results will not be known for several years.

We meet with the Program Underwriters every two (2) weeks to monitor the results and make any changes.

*“AZ Premiums of
\$162,617,662”*

ACIG Member Unique Project

Williams Brothers Construction Co., Inc. recently finished eight ramps connecting the Sam Rayburn Tollway and the Dallas North Tollway. This large and complex project was completed ahead of schedule. Through November 26, 2011, they worked 895,210 manhours and have had three (3) lost time accidents, a LTA rate of 0.67. This compares favorably to the Bureau of Labor Statistics (BLS) Heavy and Civil Engineering construction national average of 2.20.



By the Numbers:

- The SRT/DNT interchange is approximately 105 feet tall from the lowest roadway surface to its highest bridge
- The five-level interchange was designed to be as compact as possible so it would not become a prominent feature above the horizon
- The interchange is about as tall as a seven-story building
- More than 18 million pounds of steel bridge beams were set – an amount equal to approximately 10,000 cars (and weighing more than the steel in the Eiffel Tower)
- Approximately 30,000 linear feet of steel beams were set, equating to approximately 5.7 miles
- More than 69 million pounds of concrete beams were set – an amount equal to the weight of approximately 3,047 school buses
- Approximately 84,400 linear feet of concrete beams were placed, equating to approximately 15.9 miles

Ajax Paves the Way for Soldier and His Family

I would like to share with you a great story of sharing and caring as reported in the September 2, 2011 edition of the *Detroit News*.

Whoever said, "The road to hell is paved with good intentions" never met the guys at Ajax Paving Industries, Inc. Headquartered in Madison Heights, Ajax is one of the largest and oldest paving companies in Michigan. And, as I recently found out, they're one of the most generous.

Just ask River Rouge resident Jeffrey Meade, a member of the U.S. Army who is set to ship out to Afghanistan on Tuesday. Things have been tough for Meade, his wife, Jennifer, and their two children, ages two and 13. His car was recently stolen and he had been laid off from two jobs while waiting for his deployment. Their rent was overdue and there was just no money.

"I was away on maneuvers at Camp Grayling when someone came to my home and told Jennifer, in public, that we were going to be evicted the next day," said Meade, 36. "Our street was being repaired and an Ajax safety inspector happened to overhear everything and saw my wife crying."

Later that night, that safety inspector, Joe Landino, visited the Meade home and turned over \$900 in donations from fellow safety committee members Sandy McMillan, Chris George, Johnnie Williams, Bob Bame, Al Farina, Paul Graney, Dave Grabowski, Brian Borich and Leo Remijan.

"It made us feel so very blessed," Meade said. But Landino had another surprise for the family.

"The previous day he had noticed that my daughter's glasses were broken," Meade said. "He returned and took Jennifer and my daughter to a store and bought her two pairs of glasses out of his own pocket."

The story gets better.

"Later, the guys from Ajax showed up again and this time presented us with three checks totaling \$10,000," said Meade, who was dumbfounded by the generous act. "Then they took us to a used car lot where we got a special deal on a 2002 Saturn Vue. We were able to pay our rent, catch up on some bills and were even able to put a little money in the bank."

According to Meade, Landino raised \$5,000 from Ajax employees across the state which was then matched by Ajax president Mark Johnston. The family sent a heartfelt letter of thanks to Ajax CEO James Jacob, who said his employees had done everything completely on their own.

When things really get tough, sometimes your best friends are strangers.

ACIG Notes and Notables

ACIG was actively involved at the International Risk Management Institute's 31st Annual Construction Risk Conference.

- Bill McIntyre – Conference Co-Chairman
- Mike O'Neill – presented "Practical Strategies for Creating Effective Joint Ventures"
- Rob Hunt – presented "Improving Performance by Engaging Employees" with Troy Lake, Cajun Constructors, Inc. and Tom Skaggs, Murphy Company.



Team Member Spotlight

Each quarter we feature one of our ACIG team members.

Team Member: Cheryl Riely

Position at ACIG: Senior Claim Representative

Years of Service: 1 year

Family Members: Daughter, Roxy (21)

Pets: Sherwin (cat named after Sherwin Williams – looks like he fell in a paint can! He is a polydactyl) and Angel (also a cat), both 12 years old.

Hometown: Annapolis, MD

First Paying Job: Anne Arundel County Dept. of Recreation (taught tennis)

Dream Car: Champagne-colored Corvette

Favorite Pastime: Entertaining, cooking and golf

Favorite Movies: Casablanca, Holiday Inn and March of the Penguins

Most Recent Book Read: Vince Flynn: Memorial Day

iPod Favorites/Favorite Songs: Anything from band "YES", Fleetwood Mac, Adele, Kenny Chesney and Jimmy Buffett

Dream Vacation: African Safari, Galapagos

People at Your Fantasy Dinner: Robert DeNiro, my parents, Ina Garten (The Barefoot Contessa chef), Clark Gable, Sean Connery, Candace Olson (HGTV star) and Betty White

ACIG Meetings and Workshops

Meeting	Location	Dates
ACIG University	Dallas, TX	Jan. 31-Feb. 1, 2012
Best Practices	Scottsdale, AZ	February 23, 2012
Annual General Membership	Scottsdale, AZ	February 24, 2012
Vail Contractors Forum	Vail, CO	March 15-17, 2012
Safety/Claims Workshop	Charlotte, NC	April 10-12, 2012
Quality Peer Groups I through VII	Various	Throughout the Year

Concluding Thoughts

We are in the final stages of our CEO Transition that began in April 2011. Bill and I have been working closely with a Management Consultant on this important project. Our relationship dates back to the late 1970s; at that time I was a broker at Alexander & Alexander in Lincoln, NE, and had a number of large construction clients. Bill was, and still is, one of the best risk management and insurance experts in the country. After attending his seminar, my contractor client was able to save over a million dollars in workers compensation premium based upon Bill's sage advice and counsel. I knew then I would someday team up with him to serve the best interests of the construction industry. It has been my great privilege to work with Bill and our ACIG team to develop and expand the ACIG Program.

All the best,



President and CEO