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Updates

Clinton supports NY surcharge on employer-paid hospital bills

WASHINGTON—President Clinton says he will sign legislation—given final approval last week by the Senate—that effectively requires employers providing health care benefits to employees in New York to pay a 13% surcharge on hospital bills through year end.

The 1993 law, which expires on May 12, bars employers from deducting their health care costs as a business expense unless they pay New York's 13% surcharge on inpatient hospital bills. The surcharge applies to pa-

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Zurich's plan for Home viable: Report

By GAVIN SOUTER

CONCORD, N.H.—Claims against Home Holdings Inc. insurance units likely will be paid in full if Zurich Insurance Group's plan to take over Home's prime business is permitted by regulators, an independent actuarial report says.

Even if Home's loss reserves fell short by $1.9 billion, a possible worst case, claims would be covered by the ailing company's assets and an enhanced $1.29 billion reinsurance program pledged by Zurich, the report said.

However, reserves needed for pollution and asbestos losses are notoriously difficult to estimate, and Home's actual losses will not be known for many years, cautioned Patrick J. Grannan, a consulting actuary at Milliman & Robertson Inc. in Radnor, Pa., who presented the report at a public hearing on the transaction.

Mr. Grannan was commissioned by the New Hampshire Insurance Department, which held hearings last week on Zurich's proposal for buying Home's good business and running off its old business.

Observers at the meeting said privately that they expect New Hampshire Insurance Commissioner Sylvio L. Dupuis to approve the Zurich transaction.

Although some policyholders objected to the deal and competing insurers argued that the transaction violated accepted industry practices, no one presented a reasonable alternative to the deal, several observers said.

And even if the commissioner refuses to approve the deal, Zurich has already achieved much of its objective of taking over Home's profitable business with a cut-through endorsement and fronting arrangement.

Policyholders are unlikely to return to

See **The Home** *on page 29*

Swiss Re ups U.S. stake

North American Re to benefit from $700 million infusion

By SARA MARLEY

NEW YORK—North American Reinsurance Corp. will bolster its incurred-but-not-reported asbestos and environmental liability loss reserves with a $700 million capital infusion from its owner, Swiss Re Group.

An additional $150 million will be added to the reinsurer's capital and surplus.

Also, North American Re, a direct writer, has put its broker-market subsidiary, Western Atlantic Reinsurance Corp., up for sale.

Specifically, the $700 million infusion is a "special increase to IBNR reserves for environmental and asbestos losses," said William E. Thiele, president and chief operating officer of North American Re.

Also, North American Re will change its name June 1 to Swiss Re America, subject to regulatory approval, and move its headquarters from New York City to a neighboring suburb.

Of the capital infusion, Mr. Thiele said, "our goal is to make a special provision for very old and difficult liabilities and also to position the company with strong risk-based capital. Our determination is to be a top-tier performer, and the emphasis is on quality over quantity, on rate of return and on achieving an excellent reputation."

North American Re ranked fifth among U.S. reinsurers based on $851 million in net reinsurance premiums written in 1994 (*BI,* March 27). The additional $150 million will bring its capital and surplus to about $725 million, making it the fourth largest among professional reinsurers.

North American Re will focus on clients who are "successful insurance companies and specialists with a new and increased emphasis on the alternative risk transfer arena, including self-insureds, captives and risk retention groups," Mr. Thiele said.

North American Re has not set a market share or volume goal, Mr. Thiele noted.

The capital infusion "shows the potential effect asbestos and environmental liability has on reinsurers," said Peter Kellogg, senior financial analyst with A.M. Best Co. in Oldwick, N.J. "It may not be fully reflected yet" throughout the industry.

"North American Re's earnings have been hit year after year, and they decided to end the earnings drag," he said.

The capital infusion represents about 20% of the $4.42 billion Swiss Re raised from its sale of its insurance operations to

See **Swiss Re** *on page 7*

Catastrophe modeling systems spark controversy in California

By ROBERTO CENICEROS

In California—the epicenter of controversial trends, earthquakes and consumer scrutiny of the insurance industry—activists now are raising issues about catastrophe computer modeling.

Those sparking the debate claim the models could shape rates for years to come as insurers use them to calculate greater risk and loss potentials, which justify rate increases.

Insurers certainly are turning increasingly to catastrophe computer modeling to evaluate their exposures and how they will manage them. And plenty of room remains for insurers to step up their use of those models, said Terry Van Gilder, who became chairman of Menlo Park, Calif.-based Risk Management Software Inc. on April 1.

Mr. Van Gilder believes so strongly in that potential that he left his employer of 24 years to join RMS. He was executive vp of Chubb & Son Inc. and chief underwriting officer of Chubb Group in Warren, N.J.



The industry has been lacking a lot of insight into potential pockets of catastrophic destruction.
Terry Van Gilder

"I honestly believe this is the way the future has to be," he said. "And I honestly believe there are things (such as consistent, accurate data about potential losses) we are on the verge of being able to understand and manage more effectively if we really" develop this capability.

The insurance industry has been "flying by the seat of its pants," lacking a lot of insight into potential pockets of catastrophic destruction, Mr. Van Gilder said.

"And I think RMS can play a very large and very influential role in how the insurance industry actually understands and ultimately manages or deals with issues." That role will be based on the technologi-

See **Modeling** *on page 13*

Health care alliance invites small employers

By CHRISTINE WOOLSEY

DENVER—Employers in Colorado are the latest health care payers to plant the seeds of a health care purchasing model that is springing up around the country.

The Colorado Health Care Purchasing Alliance, a group of self-insured employers, is embarking on a group purchasing strategy designed to give both large and small employers access to high-quality, cost-effective managed care plans.

The model is based on a growing recognition among larger employers that controlling health care costs over the long-term can only be achieved by bringing the advantages of group purchasing to the small-employer market.

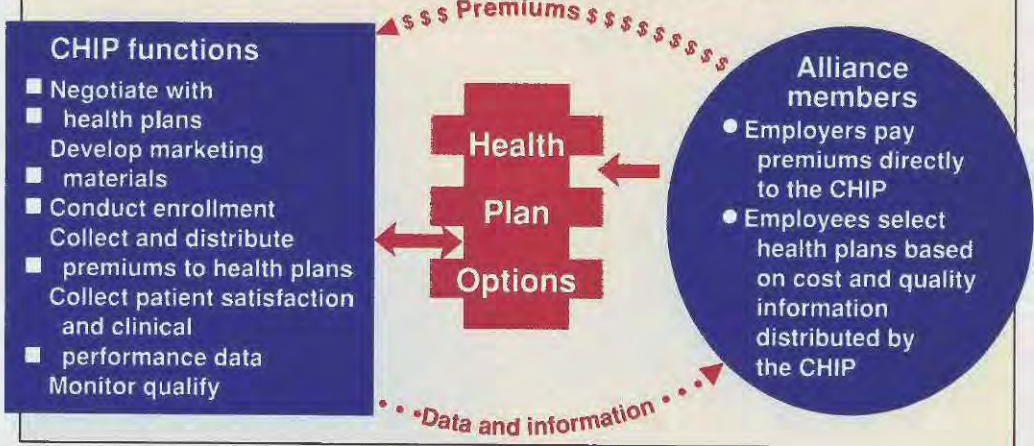
"We've been a purchasing cooperative since 1988 but only for self-insured employers," said Claire Brockbank, vp of marketing for The Alliance in Denver. "Now we recognize the need to respond to a broader segment of the market. We know we need to work with all employers in order to effect systemic changes in the health care market."

Currently, 160 self-insured employers covering 100,000 group health plan lives belong to The Alliance. But, beginning this year, The Alliance will allow small.

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CHIPing away at costs

Purchasing cooperatives like Colorado's CHIP offer employers the benefits of shared resources, aggregate data and informed decision-making.



Updates

Clinton to OK surcharge

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tients who are covered under self-funded plans or health plans sold by commercial insurers. The surcharge is not added onto bills incurred by employees covered under Blue Cross & Blue Shield plans.

The legality of the 13% surcharge is under review by the U.S. Supreme Court (*BI*, Oct. 10, 1994).

The provision effectively continuing the 13% surcharge is part of a broader bill, H.R. 831, that retroactively restores the partial tax deduction the self-employed can take on their health insurance premiums. The deduction, which expired in 1993, will be 25% for 1994. Beginning this year, the deduction is set permanently at 30%.

Texas tort reform

AUSTIN, Texas—Gov. George W. Bush is expected to sign a bill this week lowering the cap on punitive damage awards in Texas.

The legislation, which was sponsored by state Rep. Robert Junell, D-San Angelo, was approved by the Texas House late last week. The bill is a revised version of legislation passed by the Senate earlier this year.

The House bill would limit punitive damages to a maximum of twice the amount of economic damages plus up to $750,000. Under current law, the damages can total four times the amount of economic damages and non-economic damages, which includes awards for pain and suffering.

Gov. Bush, who campaigned heavily on tort reform issues, called the bill "responsible and balanced," saying it "protects the rights of consumers and punishes businesses" that "are irresponsible or flout the law, yet ensures the law will not be used as a weapon to terrorize businesses which act responsibly."

The bill would apply to cases stemming from events occurring after Sept. 1.

The state Senate was expected to approve changes to its version and send it to Gov. Bush.

Environmental claims rules

OLYMPIA, Wash.—Washington Insurance Commissioner Deborah Senn expects this week to meet her previously announced April 10 deadline for adopting regulations aimed at speeding up the environmental claims process.

The regulations will take effect July 1, according to the Department of Insurance. The rules first were announced last fall and have since been modified following a series of public hearings (*BI*, Oct. 24, 1994).

The regulations would resolve lost policy disputes by extending responsibility for lost policies to the insurer, not just the policyholder, the department said.

The regulations also would require insurers to keep records of general liability policies for 20 years. And, the regulations define several practices as unfair, such as failing to commence an environmental claims investigation within 15 days.

Ms. Senn's regulations have drawn criticism from the American Insurance Assn. and the National Assn. of Independent Insurers.

"Despite two rounds of public hearings and numerous alterations, including the inclusion of a mediation process suggested by the insurance industry, the proposed regulations still contain many provisions likely to require years of clarification by the courts," the AIA said in a statement last week.

Jenny Craig settlement insured

DEL MAR, Calif.—Weight loss company Jenny Craig Inc. will look to its insurers to cover the $9.5 million settlement of a class-action securities lawsuit.

Jenny Craig officials said they were settling the case, pending in U.S. District Court in San Diego since 1992, to avoid escalating litigation costs and because they felt the settlement was in the best interests of the company and its shareholders.

The settlement is insured under policies with combined limits of $10 million, the officials said, declining to identify the insurers. The primary insurer has agreed to pay $5 million of the settlement and negotiations are under way with the excess insurer, which has not agreed to participate in the settlement.

If negotiations are unsuccessful, Jenny Craig officials said the company would take a $2.2 million pretax charge for the quarter that ended March 31 and sue to recover under the excess policy.

The class-action litigation stemmed from four 1992 complaints alleging misrepresentations and omissions in the prospectus issued as part of Jenny Craig's 1991 initial stock offering.

Gooda Walker ruling

LONDON—Gooda Walker Action Group members will receive damages now equivalent to their paid claims, but they will receive damages for future losses only when they become due, a U.K. High Court judge ruled last week.

As a result, the Gooda Walker members believe they will receive an estimated £267 million ($429.4 million) in paid losses now from 81 members agencies and their errors and omissions underwriters, plus interest of £87 million ($139.9 million) and as much as £182 million ($292.7 million) for future losses. The group also believes the judge will award them between £15 million and £25 million ($24.1 million and $40.2 million) in syndicate runoff expenses.

Damages for paid losses must be calculated by Justice Phillips, law firm Clyde & Co., which represents the agents' E&O underwriters, said in a statement. But, "agents' arguments have succeeded on

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Product liability reform bill moves to full Senate for debate

By MARK A. HOFMANN

WASHINGTON—The outlook for enactment of federal product liability reform legislation brightened last week as the Senate Commerce Committee sent its reform bill to the full Senate, where debate could begin as early as April 24.

The reform effort got another boost when the Clinton administration, which has been at best skeptical of reform, also indicated that it would be willing to back certain changes.

The Commerce Committee voted 13-to-6 in favor of S. 565, the Product Liability Fairness Act of 1995, after the bill's sponsors agreed that they would accept amendments to the measure on the floor. Three Democrats joined the committee's unanimous Republican majority in supporting the bill.

In an impromptu press conference during a committee break, one of the bill's two chief sponsors—Sen. John D. Rockefeller IV, D-W.Va.—said that advocates of any amendment would have to demonstrate that they had "60 hard, hard votes" before it could be considered.

Sixty votes are required to cut off debate on a measure and thus eliminate the possibility of filibusters. Previous product liability bills have won Commerce Committee approval only to die on the Senate floor because proponents could not get the 60 votes necessary for the bill to proceed.

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Reinsurers downgraded

Best cites catastrophe losses in broker reinsurance market

By SARA MARLEY

OLDWICK, N.J.—A.M. Best Co. fired a shot across the bow of smaller broker-market reinsurers last week, downgrading seven in one fell swoop.

Many of the reinsurers reported lackluster 1994 results, but "most importantly, these downgrades reflect Best's growing concern with broker-oriented reinsurers that are being increasingly challenged to maintain a defensible competitive position within the U.S. reinsurance market," the rating agency wrote in its downgrade announcement.

Six of the seven reinsurers downgraded last week are U.S. subsidiaries of major European reinsurers.

"Best's is saying what we have all been seeing for a long time: it's increasingly difficult to do business in the broker reinsurance market," said Michael Smith, an analyst with Lehman Bros. in New York. "Ceding companies are looking for stability, financial security and size in their reinsurance partnerships."

"We're not downgrading classes of reinsurers," said John H. Snyder, senior vp of Best's. "It's not direct or you die; there is a place for both distribution systems within the market."

However, "there is more rating pressure on the broker-market sector," he noted. Catastrophe

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WellPoint, Health Systems set to complete merger

Regulatory approval needed

By CHRISTINE WOOLSEY

WOODLAND HILLS, Calif.—It's a done deal—almost.

Approval from California regulators is the only hurdle left for the merger of WellPoint Health Networks Inc. and Health Systems International Inc., which signed a pact last week.

Following weeks of speculation, shareholders for the two Woodland Hills, Calif.-based companies finally agreed to combine their operations, creating the nation's largest publicly traded managed health care company whose name has yet to be chosen.

The new company will have more than 4.4 million managed care plan members in California and seven other states, including 2.2 million health maintenance organization members and 2.2 million preferred provider organization members. It will also provide specialty products and services, including prescription benefit management, dental care and workers compensation, to more than 8 million members across the country.

Revenues of the new company should reach $6 billion by year end.

Under terms of the stock-for-stock transaction, valued at $1.81 billion, HSI stockholders will re-

See **HMOs** *on page 10*

House passes tax bill

Senate wary of increasing federal deficit

By JERRY GEISEL

WASHINGTON—Tax legislation that would give group long-term health care coverage new tax breaks as well as create another type of individual retirement account moves on to a skeptical Senate after clearing the House of Representatives last week.

H.R. 1215, which the House approved on a 246-188 vote, also would make permanent the Medicare Data Match program, which is now set to expire in 1998. That program, through a matching of tax, employment and health care claims records, is used by government regulators to identify and recover claims payments that employer plans—not Medicare—should have paid for older workers and certain other beneficiaries.

The legislation also would make permanent another Medicare-related law—also set to expire in 1998—under which employer plans are the primary payer for 18 months for employees who develop end-stage renal disease. After that period, Medicare becomes the primary payer.

Despite the House passage of the tax bill—which House Speaker Newt Gingrich, R-Ga., calls "the crown jewel" of the GOP's "Contract with America" package—the future of the legislation is in doubt.

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Communication yields success for XTRA 401(k)

By JERRY GEISEL

BOSTON—A 92% employee participation rate in a 401(k) plan?

That almost unheard-of participation rate has been consistently racked up by XTRA Corp. following the launch in October 1993 of a 401(k) plan at the Boston-based transportation equipment leasing company.

XTRA's 92% participation rate is a whopping 30 percentage points higher than the average, according to a broad survey of 401(k) plans conducted by KPMG Peat Marwick L.L.P. And, XTRA's participation rate is about 20 percentage points higher than plans surveyed by Hewitt Associates L.L.C., which included plans sponsored mostly by larger employers.

The only way to describe XTRA's participation rate is "phenomenal," says Jeff Croyle, a partner with benefit consultant Kwasha Lipton in Fort Lee, N.J.

"It is an unbelievable rate. Virtually no one gets that kind of participation rate," says Martha Patterson, director of employee benefits in Peat Marwick's Washington office.

Benefit consultants aren't the only ones impressed by XTRA's success in getting its employees to participate in and contribute to its 401(k) plan.

Last week, the Commission on Savings & Investment, a nonprofit educational organization, recognized XTRA's achievement through a National Savings Award at a ceremony in Washington.

"These awards exemplify the best in programs. . .on savings and investments," said James Lebenthal, chairman of the Washington-based CSIA.

While the participation rate is striking in itself, the figures for XTRA, which has about 800 employees, are even more impressive because its employee demographic profile closely matches those of many other firms rather than being skewed toward older, highly compensated employees who are most likely to participate in 401(k) plans. XTRA's employees on average make just over $30,000 a year and are an average age of 37.

In addition, while the company's matching feature—XTRA matches 100% of employees' deferrals, up to the first 3% of compensation—is considered generous, it is not overly so.

The most important factor behind XTRA's 401(k) participation

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1995 satellite launch rates holding steady

By STACY SHAPIRO

LONDON—Satellite launch insurance rates are expected to remain stable throughout this year, despite last year's record losses and a $160 million launch failure in January.

Launch insurance rates will range between 15% and 22% of the insured value—depending on the size, value and complexity of the satellite—which is similar to last year, underwriters and brokers said at the Eighth Biannual Assicurazioni Generali S.p.A. International Space Insurance conference, held in Venice, Italy, March 30-31.

The insurance rate on the $250 million American Mobile Satellite Corp. satellite scheduled for launch last Friday at Cape Canaveral, Fla., reached nearly 30% of its value, but insurance executives say this was an exception and not a reflection of rates doubling from last year.



Rates for the MSAT satellite depicted here, scheduled for launch last Friday, were an exception to the rule.

In the past, rates have gone as high as 30% for some satellites, Benito Pagnanelli, deputy general manager of Generali, told 350 delegates who attended the conference. But, since 1986, when the space insurance market dried up, he believes there has been a "rational agreement" among policyholders, brokers and underwriters to charge satellite insurance rates ranging between 13% and 16% of insured value, he said.

"I believe it is a positive thing to reach a certain grade of balance within reasonable limits of rate variability" in the satellite launch rating structure, said Mr. Pagnanelli.

The satellite insurance market, meanwhile, is at a break-even stage, he said. Total losses of $3.2 billion since 1979 are equivalent to the total net premiums paid during the same period, he said.

Last year was the worst ever for losses, however, with four launch failures costing insurers $770 million, Mr. Pagnanelli said.

This year also began badly when a Chinese Long March rocket exploded, destroying a $160 million Apstar-2 satellite during a launch attempt in China's Szechuan province (*BI*, Jan. 30). Six people were killed and many were injured by the debris, causing for the first time a third-party liability loss related to a launch, which was covered by the Chinese government, confirmed Zhang Yougen, representative of China's launch agency, the China Satellite & Tracking General in China.

Others at the conference agreed with Mr. Pagnanelli that rates are holding despite the losses.

"I said at the back end of last year that I reckoned rates of 15% to 22% were about right," a London satellite underwriter said in an interview. If just one of last year's losses hadn't happened, the space insurance industry would have made a profit, he said.

"The norm is for the industry to suffer two losses per year, and I think the (insurance) market can stand that and still make a profit," he said. Even with three losses, the market might break even, he added.

The American Mobile Satellite Corp. in Reston, Va., paid substantially more than the going rate to launch its MSAT satellite last week. Underwriters charged 29.7% of the insured value for the launch coverage on the $250 million satellite during the

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Grand jury indicts four

Former state senator denies fraud in Physicians National case

By DOUGLAS McLEOD

NEW ORLEANS—A former Louisiana state senator and four others are facing charges that they looted millions of dollars from the defunct Physicians National Risk Retention Group Inc. as the insurer was foundering in 1991.

A federal grand jury returned a 29-count fraud, money laundering and conspiracy indictment March 30 against Michael H. O'Keefe Sr., a former state senator; Eric T. Schmidt, Mr. O'Keefe's son-in-law and a former Physicians National president; John O'Brien, a former Physicians National officer; Gary Bennett, a consultant; and Paul Schmitz, a claims manager who purportedly acted on behalf of a Physicians National reinsurer, Builders & Contractors Insurance Co. Ltd. of the Bahamas.

The indictment alleges that the defendants diverted more than $7.5 million, most of it through a fraudulent reinsurance agreement with BCI, and used $527,105 of Physicians National's money to bribe a lawyer hired by the Louisiana Insurance Department to represent the insurer's policyholders.

The lawyer, Johnny C. Moore, pleaded guilty last month to a mail fraud charge connected to the alleged scheme (*BI*, March 27).

'There was not anything surreptitious done. It was all under supervision,' says Michael H. O'Keefe Sr.

Charles A. Donaldson, a Bahamas-based captive manager, also pleaded guilty to a fraud charge related to the allegedly phony BCI reinsurance deal.

Mr. O'Keefe, who pleaded not guilty at an arraignment hearing last Thursday, strenuously denied the charges.

"The transactions in this matter were complicated and technical. The conclusions drawn by the prosecutor are incorrect and cannot be supported by the evidence," Mr. O'Keefe said in a statement.

In an interview, he added that the BCI reinsurance agreement was approved by the Insurance Department and a state court and that the money allegedly diverted actually was owed under a contract between BCI and a company controlled by some of the defendants.

"There was not anything surreptitious done. It was all under supervision," he said. "Everything that was done was done in accordance with the contract."

Mr. O'Keefe also called the bribery allegation "ridiculous," charging that Mr. Moore took the $527,105 out of an escrow account that Mr. Moore himself controlled.

"How could that possibly be a bribe?" asked Mr. O'Keefe, who spent 18 months in prison on unrelated federal fraud charges in the mid-1980s.

The other defendants could not be reached.

The charges carry maximum

See **Indicted** *on page 22*

Plaintiffs finding favor as juries award more money more often

By SALLY ROBERTS

As Congress is debating sweeping tort reform legislation, a recent study suggests more jurors in personal injury cases may be beginning to side with the plaintiff.

Personal injury plaintiffs won 55% of all types of personal injury jury trials in 1994 and received a median compensatory award of $57,250, compared with winning 53% of the verdicts in 1993 with a median award of $50,614, the study said.

Plaintiff recovery rates for product liability and medical malpractice cases also were up in 1994, reversing five years of decreases, according to Jury Verdict Research, a Horsham, Pa.-based firm that analyzed about 90,000 jury verdicts for the entire study.

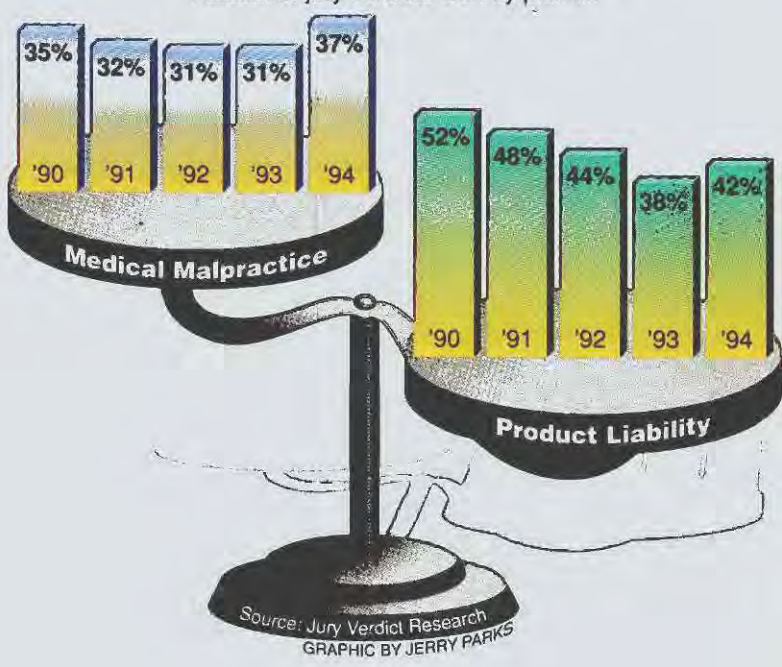
Medical malpractice plaintiffs recovered in 37% of the cases that went to verdict in 1994, with a median compensatory award of $392,790, up from 31% in 1993 but down from a median award of $500,000. Product liability plaintiffs recovered in 42% of the cases that went to verdict with a median award of $509,344, up from 38% 1993 with a median award of $500,000.

Liability experts caution that some of the Jury Verdict Research data comes from newspaper stories and lawyers who phone in details about their own cases. As a result, the study is not comprehensive or scientific.

Some personal injury attorneys are surprised by the findings and contend the results are inconsistent with their own experiences.

"The atmosphere in trying cases, from a defense lawyer's point of view, is that juries are more realistic and conservative," said James P. Donovan, a defense attorney with Wilson, Elser, Moskowitz, Edelman & Dicker in

See **Verdicts** *on page 11*



Tax bill

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Senate Republican leaders, most notably Finance Committee Chairman Bob Packwood, R-Ore., have expressed considerable concern over the tax bill because it would—without offsetting spending cuts—increase the federal deficit. The measure would cut taxes by $189.9 billion over a five-year period.

The measure, though, would give several new tax breaks to group LTC policies. Under one provision, for example, LTC policy premiums paid by employers to provide benefits of up to $200 a day would not be included as taxable income to employees.

Currently, the tax status of employer-paid LTC premiums is murky, a factor, along with the cost, in employers' reluctance to pay the premiums.

The legislation also would allow employees to take tax deductions—up to certain limits—for the LTC premiums they pay.

The deduction would be linked to the individual's age:

- Individuals who are 40 years old or younger could deduct premiums of up to $200 a year.
- Policyholders between 41 and 50 years old could deduct premiums of up to $375 a year.
- Policyholders between 51 and 60 years old could deduct premiums of up to $750 a year.
- The maximum LTC premium deduction for individuals who are between 61 and 70 years old would be $2,000.
- For individuals over age 70, the maximum annual LTC deduction would be $2,500.

But the premium payments would be deductible only if, combined with employees' unreimbursed medical expenses, they exceeded 7.5% of the person's adjusted gross income.

The dollar limits and the tax-favored $200-a-day benefit limit in LTC plans in which the premium is employer-paid would be indexed to increases in the Consumer Price Index's medical care component.

Provisions in the legislation would give several new tax breaks to group long-term care policies.

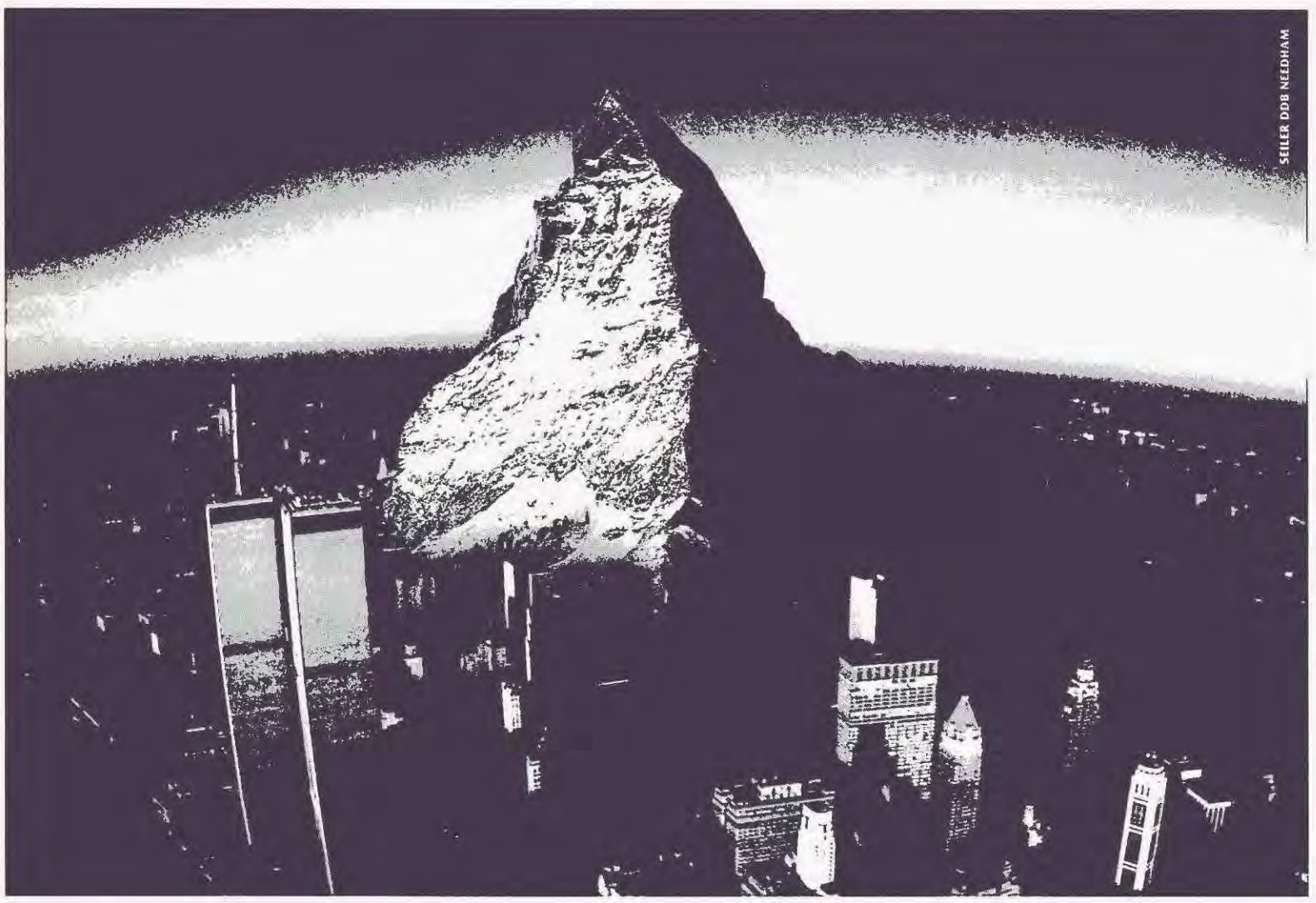
Another provision would allow employees to make tax-free withdrawals of funds from their 401(k) plans to pay for LTC premiums for themselves and for their spouses.

The legislation, though, does not allow LTC plans to be included in flexible benefit plans and employees could not use pretax dollars to pay for LTC premiums.

The new IRA—known as American Dream Savings Accounts—would let individuals, regardless of income or whether they were covered by a pension plan, make annual $2,000 non-tax-deductible contributions to the accounts.

Funds could be withdrawn after five years for any purpose by individuals over 59½, or for "qualified special purposes," which include a down payment on a first home, educational and medical expenses or LTC premiums.

A 10% excise tax on early withdrawals would not apply to these funds removed for special purposes before five years, but regular taxes would. BI



THE STABILITY AND STRENGTH YOU'RE LOOKING FOR ARE SITTING RIGHT NEXT DOOR.

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But maybe you didn't know just how close we are to you right now. Swiss Life is the world's leading international network of life insurers, also represented throughout the EU and in Eastern Europe.

We provide multinationals with first class employee benefit plans as well as the information you need to control benefit levels and achieve significant financial savings. And we're there at once when you need us.

You'll find your Swiss Life Network Partner understands the pressures you face. He'll meet your most demanding insurance needs with solutions backed by our immense international expertise and the local, personal and flexible response you expect. Plus, highly competitive investment returns.

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Markets

Fleet services

TYLER, Texas—Lindsey Morden Claim Services Inc. of Tyler, Texas, has created a transportation fleet services division to serve the transportation industry in the continental United States and Canada. Charles Dean, assistant vp, will head the new division.

The transportation fleet services division is located at 7929 Brookriver Drive, Suite 140, Dallas, Texas 75247. The telephone number is 214-630-3730 and the fax number is 214-920-2999.

Minet acquisition

NEW YORK—Minet Inc. has acquired William Gallagher Associates Insurance Agency Inc. of Boston. WGA will become part of Minet Technology Services, a division of the New York-based Minet Inc. unit of London-based broker Minet Group P.L.C.

Details were not disclosed.

William Gallagher and Philip J. Edmundson, WGA principals, have been named executive vps of Minet Technology Services, reporting to Edward S. Contant, executive vp of Minet North America Retail. They will continue to be based in Boston.

WGA, which represents 24 of the country's top 100 biotech firms and concentrates on the high-technology energy markets and independent power producers, has offices in Boston; Columbia, Md.; and Parsippany, N.J.

Aon energy unit

CHICAGO—Aon Corp. has formed Aon Natural Resources Worldwide, an entity that coordinates all of Chicago-based Aon's energy and mining insurance businesses around the world. Michael Jenner, chairman and chief executive officer of Jenner Fenton Slade, the London wholesale and natural resource broker Aon acquired last November (*BI*, Nov. 14, 1994), is heading up the group.

Benefit consultant

WEST BLOOMFIELD, Mich.—Great Lakes Strategies L.L.C., a full-service benefit consulting and strategic human resource services firm, began operations in January. Located in West Bloomfield, Mich., GLS was formed following a buyout of certain assets of Comerica Inc.'s wholly owned subsidiary, ComeriCOMP Benefits Consulting Inc.

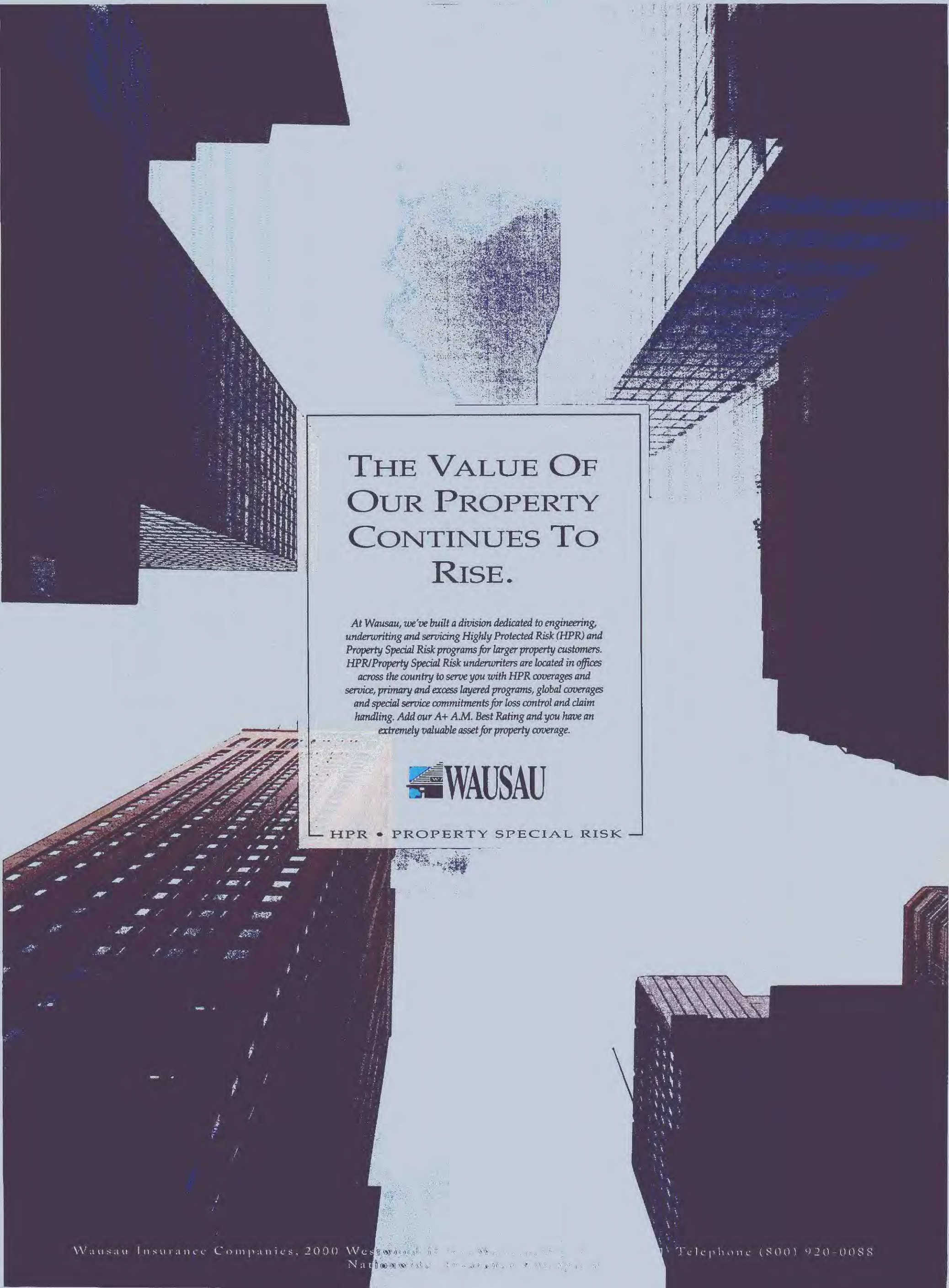
Terms of the purchase from Comerica were not disclosed.

Gary Gabel is president of GLS. Principals include Mark Toth, Patsy Pennington, Carol Rito, Farima Azmoudeh and Dick Mitchell. GLS can be reached at 810-932-7180.

Lockton stake

KANSAS CITY, Mo.—The Lockton Cos. has acquired a majority interest in Orland International, a Los Angeles-based property/casualty broker with 60 associates and offices in Palo Alto, Calif.; Chicago; and New York. Terms of the deal were not disclosed.

Lockton, a Kansas City, Mo.-based broker with additional offices in Denver; St. Louis; Nashville, Tenn.; and Houston, was the 16th largest broker of U.S. business based on 1993 revenues of $49 million (*BI*, July 18, 1994). Lockton estimates the combined revenue of the two brokers will exceed $70 million in 1995. BI



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Hospitals putting benefits under the knife

NEW YORK—Facing pressure from employers and other health care payers to cut costs, U.S. hospitals are now taking a scalpel to their own employee benefit plans.

Ninety-five percent of more than 240 health care facilities surveyed by the Human Resource Advisory Group of Coopers & Lybrand L.L.P. said they have implemented programs to contain expenses in 1994. Of that group, 75% reported making changes in employee benefits and compensation.

Raising employee contributions for group insurance plans is still the most common program hospitals have implemented to contain costs, cited by 39.7% of respondents. In 1993, 51.5% said they increased employee contributions.

And, 27.9% said they have increased employee deductibles for group insurance plans, the same percentage as in 1993, the survey found.

And, 9.7% of the hospitals said they had reduced group health plan benefits as a cost-cutting measure, compared with 7.4% in 1993.

The percentage of hospitals trimming educational benefits doubled to 12% in 1994, the survey found.

"The health care industry has undergone significant changes over the past few years," including increased competition from managed care companies and other health care delivery systems, said Janet Fuersich, national director of compensation consulting for Coopers & Lybrand in New York. "Some of the consequences of this trend include downsizing, restructuring and a more critical eye toward the financial bottom line," she said.

In addition to reducing employee benefits, the survey reported that hospitals increasingly are implementing programs designed to generate more revenue. For instance, 66.4% of hospitals said they are participating in more managed care programs to broaden their customer base, and 52.6% said they expanded their physician recruitment programs in order to generate more income.

Copies of the survey, "Total Compensation in the Health Care Industry," are available for $225 from Coopers & Lybrand's Human Resource Advisory Group, 1301 Ave. of the Americas, Room 9-56L, New York, N.Y. 10019; 212-259-1406.

—By Christine Woolsey

Benefit Beat

The survey also reported that 34% of the 3.7 million active employees covered by state health plans are enrolled in health maintenance organizations, up slightly from 32% in 1993. Among individual states, employee participation in HMOs varied, ranging from no HMO participation to more than 50% participation.

For the first time, the survey collected HMO premium data and produced a composite HMO premium for single and family coverage in each state. The calculated composite premium rates represent an average of all actual HMO rates offered, weighted by the number of state plan enrollees in each HMO.

For the 43 states that offer at least one HMO, a comparison of the HMO premiums with the total cost for the most popular indemnity plan revealed that HMO costs were higher on average for single employees in 12 states. The HMO premiums were lower than indemnity plan costs for single employees in 30 states, the survey found.

Total health care costs for the 47 states providing health budget figures exceeded $11 billion in 1994. The budgeted amount per capita ranges from less than $2,000 per employee in seven states to more than $4,000 per employee in eight states.

For a free copy of The Segal Co.'s "1994 Survey of State Employee Health Benefit Plans," contact Mary Feldman, vp-public affairs, The Segal Co., 1 Park Ave., New York, N.Y. 10016; 212-251-5029.

—By Christine Woolsey

States cut care costs

NEW YORK—State employees' health care cost increases, like their counterparts in private industry, are the lowest they have been in several years, according to a recent survey by The Segal Co. in New York.

Total cost increases for the 50 states' principal indemnity plans averaged 8.3% for single coverage, compared with a 10.4% average increase in 1993, the survey reported. The cost of family indemnity plan coverage rose 5.3%, less than half of the 11.4% increase state health plans experienced in 1993.

The survey found 48 states offer indemnity plan coverage to retirees. The 1994 average cost increase for those plans was 5.6% for single retirees age 65 or older, compared with an increase of 8.5% in 1993.

Fifteen states reported no indemnity plan increases for 1994 and six states—three times as many as in 1993—reported a decrease in total indemnity plan costs in 1994.

Most state health care plans implemented some form of cost management to help control indemnity plan expenses in 1994, such as hospital bill audits, large case management programs for psychiatric and substance abuse care and generic drug incentives.

Lactation centers

PHILADELPHIA—CIGNA Corp. has introduced another program that will likely help it remain one of the top companies for working parents.

The insurer recently opened 10 lactation centers at company locations. The centers are designed to help new mothers returning to work.

Philadelphia-based CIGNA offers other work/family programs, including child care referrals and flexible work arrangements, and was cited by Working Woman magazine as one of America's top companies for working women.

The new lactation centers feature private rooms with breast pumps, personal equipment and cooling and storage units. Seminars on nursing and consultations with lactation specialists are offered at most locations.

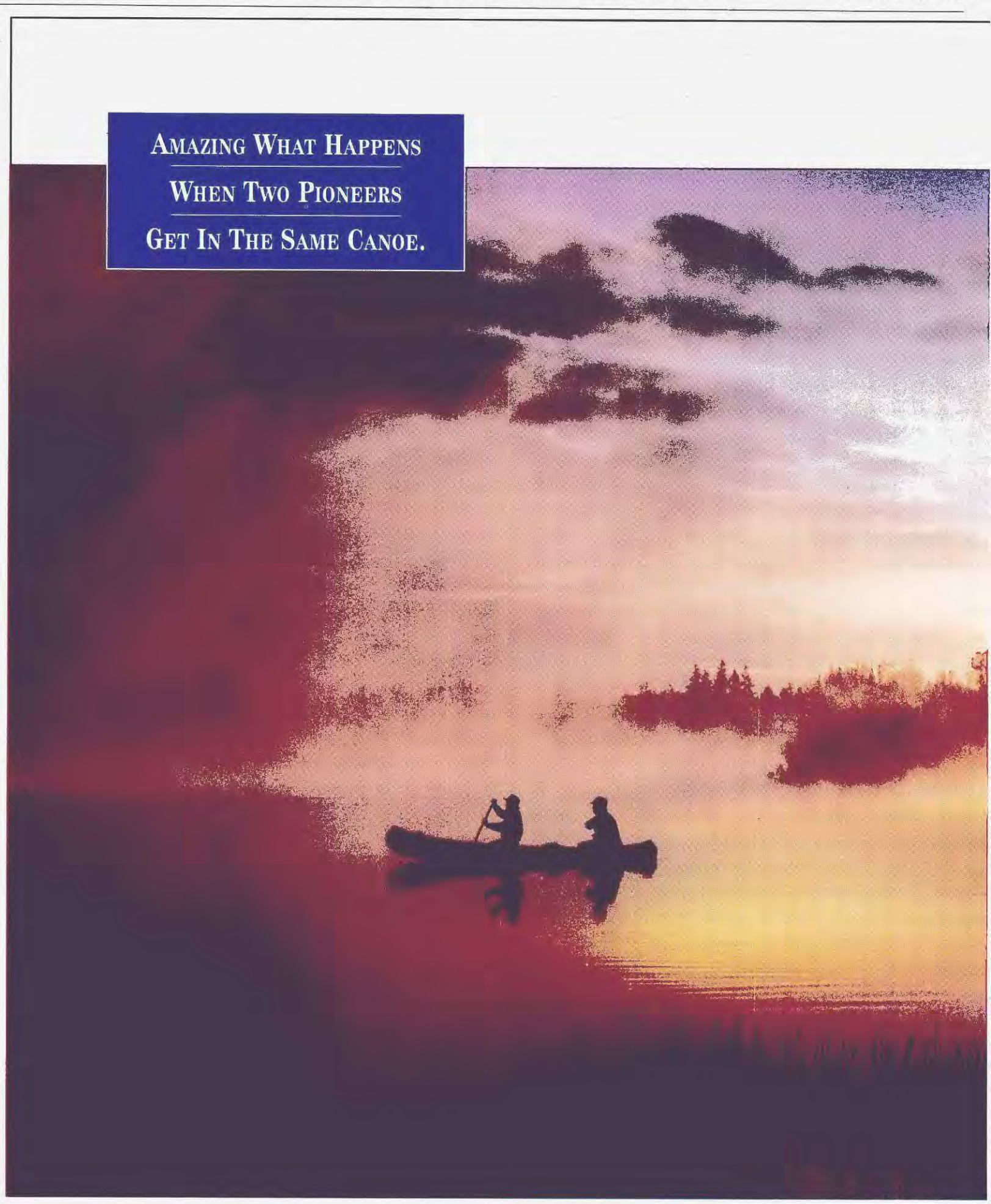
More than 70% of CIGNA's 51,000 employees are women, said Jerry Meyn, vp of employee benefits and health.

"We recognize the stress and anxieties many new mothers face," said Vicky Dickson, a nurse practitioner who runs the onsite lactation program in the Philadelphia office. Before the centers were available, many employees felt they had to wean their children prematurely, she pointed out.

So far, CIGNA has onsite centers in offices in: Berwyn, Pa.; Bloomfield and Hartford, Conn.; Charlotte, N.C.; Cherry Hill, N.J.; Nashville, Tenn.; and Columbus, Ohio. The Bloomfield, Conn., and Nashville offices each have two onsite centers.

About 30 women currently use the facilities, and based on employee demand, CIGNA may open other company locations later this year.

—By Christine Woolsey



Swiss Re

Continued from page 1

Allianz A.G. Holding and Wintherthur Insurance Co. (*BI*, Oct. 31, 1994; Oct. 3, 1994).

All the actions are dictated by a new strategic plan implemented by Lukas Muhlemann, who was a managing director with consultant McKinsey & Co. before joining Zurich-based Swiss Re as chief executive officer last year (*BI*, May 2, 1994).

As of April 1, Mr. Muhlemann created a new executive board and formed four new worldwide reinsurance divisions, placing himself directly in charge of the U.S. division in addition to his current duties.

N. David Thompson remains chairman and CEO of North American Re and Mr. Thiele continues in his position.

"The U.S. is a big, complicated piece," and one of Swiss Re's three largest operations, along with the Swiss operation and Bavarian Reinsurance Co. Inc. in Munich, Germany, said Mr. Thiele, explaining Mr. Muhlemann's direct authority over the operation. "There's more change in the U.S. than in other parts of the world," he said. "We have a direct channel to Mr. Muhlemann rather than reporting through anyone else."

Swiss Re's global employee population dropped to 7,000 from 22,000 with the sale of the European insurance operations. That enabled the reinsurer to combine management of the holding company and the executive office into a single team.

Mr. Thiele expects the elimination of some layers of management, but no reduction in U.S. staff.

North American Re expects this year to sell Western Atlantic, which employs about 43 people, to focus more on direct reinsurance underwriting rather than the brokered business that Western Atlantic accepts.

"It is a matter of focus," Mr. Thiele said. "We want to concentrate our energies on a segment of the market we can access directly."

While North American Re will primarily write reinsurance directly for clients, "we will continue to consider offerings from brokers, but not in a separate company," he said.

The reinsurer currently writes between 5% and 10% of its business through intermediaries, and Mr. Thiele expects that figure to increase somewhat.

"I think they saw some difficulty trying to have one foot in each of two camps: direct and broker," said John R. Cashin, executive vp-marketing for Willis Faber North America, a New York-based reinsurance intermediary. "In an effort to focus their North American operations, it is not surprising they would go with the longer-standing, bigger, direct-market subsidiary."

"They felt they wanted to allocate capital where they could do the most with it," Best's Mr. Kellogg said. "Maybe Western Atlantic wasn't as strategic a fit as they wanted, so they decided to concentrate on the direct."

Alan Levin, managing director of Standard & Poor's Corp. in New York agreed. "Swiss Re worldwide is primarily a direct market. To have one (broker-market) business in the U.S. was sort of contrary."

Recent efforts to sell U.S. reinsurers Prudential Reinsurance Co. and Christiania General Insurance Corp. were unsuccessful, so "whether a buyer can be found remains to be seen," Mr. Cashin said.

"Other than the Bermuda phenomenon, there's not a rush to get into the domestic, non-catastrophe U.S. reinsurance market," Mr. Cashin said. "Given the rates in the primary market, particularly casualty, it's not a gold mine."

"There are a lot of broker-market properties available for sale," Mr. Levin said. "Ultimately it comes down to a matter of price. If people want to buy into the market, they have options."

Mr. Thiele would not say what price they are seeking for Western Atlantic, which wrote about $180 million in gross reinsurance premiums in 1994. Its assets at year-end 1994 totaled $230 million.

Other observers say that as a well-capitalized company, with $95 million in statutory capital and surplus at Jan. 1, and few long-tail exposures, Western Atlantic may attract a buyer.

"If you can't write enough business in the open market, the only way is to buy some," said Michael Bungert, vice chairman of Aon Re Inc., a Chicago-based reinsurance intermediary.

Western Atlantic began writing business on Oct. 1, 1988, making it "a relatively new company," Mr. Kellogg noted. "It does not have prior year liabilities like environmental and asbestos. From the long-term liability standpoint, it's a much cleaner book of business" than that of older reinsurers and will probably attract a buyer, he said.

The sale of Western Atlantic and the change in North American Re's name to Swiss Re America "signal closer integration of the U.S. operations with the global operations," Mr. Thiele said.

"These items reflect Swiss Re's degree of support," Mr. Levin said. "Now their name is on the bottom line."

North American Re also wants to integrate its operations into a single office in New Jersey, Westchester County, N.Y., or Fairfield County, Conn. Currently 700 employees are spread throughout four office buildings in Manhattan, Mr. Thiele said.

"We want our own premises for a stronger identity both for internal and external purposes," Mr. Thiele said. "We want a suburban campus atmosphere rather than a multitenant New York high-rise."

The move will enhance the staff's quality of life by reducing their commuting time, he added.

Serving on the new executive board of Swiss Re in Zurich in addition to Mr. Muhlemann are: Rudolf Kellenberger, Northern Europe and special lines division; Urs Winter, Asia Pacific and Africa division; and Ernesto Jutzi, who will manage the Southern Europe and Latin America division until year end, when that position will be taken over by Bruno Porro.

Other members of the new board include: Walter Kielholz, head of the alternative risk transfer markets division; John Coomber, head of the life reassurance division; Stefan Lippe, chairman of Bavarian Re; and the chiefs of Swiss Re's human and financial resources, informatics and logistics divisions.

Wolfgang Gemund, who had led the insurance division, will leave Swiss Re during the first half of 1995, the company announced. Peter Frey, who had led the previous reinsurance group division, retired at the end of March. BI



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Opinions

HCFA's misdirected pursuits

WHEN WILL IT END?

We're referring to the years of controversy and litigation over the Health Care Financing Administration's efforts to collect hundreds of millions of dollars from employers, insurers and third-party claims administrators in claims that group health plans, not Medicare, should have paid.

By now, the facts regarding this issue are well known—in fact, depressingly so.

Back in the early 1980s, Congress enacted a series of measures shifting to group health care plans from Medicare the primary responsibility for paying the medical claims of older workers who stayed on the job after they turned 65.

Because of the changes in law, one would have thought that HCFA, the federal agency responsible for administering Medicare, would have conducted an extensive program to educate hospitals and other medical care providers that older workers' health care claims now were to go to employers.

But that communication effort never occurred. The result: mass confusion and ignorance. Hospitals continued to bill Medicare for expenses that employer plans were supposed to pay. In other cases, hospitals billed both employer plans and Medicare for the same claim.

Finally, HCFA caught on that it was literally paying hundreds of millions of dollars in bills that were the responsibility of employers.

Rather than cracking down on hospitals, HCFA adopted a "pay and chase" approach. Instead of taking steps to get at the root of the problem—hospital billing practices—HCFA has been going after employers and other payers of health care bills.

HCFA has been combing through medical, employment and tax records going back to the early 1980s as part of a massive effort to uncover older workers' claims that Medicare improperly paid.

After examining the information, HCFA has sent out letters demanding—at last count—$1.6 billion from employers, insurers and TPAs. The recovery effort has netted about $400 million.

But a federal appeals court decision has thrown a monkey wrench in HCFA's recovery effort. The U.S. Circuit Court of Appeals for the District of Columbia said HCFA had no right to seek back payments for claims that beneficiaries or providers didn't submit to group health care plans within their normal filing period, which is typically up to a year after a claim is incurred.



"THIS IS THE ARRANGEMENT YOU WANT TO KEEP?!?"

That ruling makes good common sense. How can an employer be expected to keep and resurrect records indefinitely as evidence that it really did pay older workers' health care claims?

HCFA, though, says it may go to Congress to get that ruling overturned. If HCFA decides to seek a legislative remedy, we hope Congress rejects it.

Overturning the court decision would reduce HCFA's incentive to stop "pay and chase" and fix the Medicare overbilling problem in the most cost-efficient way: going after providers who are billing the wrong parties.

Cutting reimbursements or taking other punitive action against providers who bill incorrectly seems far faster and fairer than the tardy pursuit of employers who have, in most cases, properly paid claims they received.

Building more equity into tort reform

SENATE JUDICIARY CHAIRMAN Orrin Hatch, R-Utah, has taken a good idea—punitive damage reform—and made it better.

Sen. Hatch last week introduced a tort reform bill that would generally ban multiple punitive damage awards against the same defendant for the same act.

That provision in the Civil Justice Fairness Act of 1995 would be a welcome safeguard for both defendants and plaintiffs. For defendants, it's a simple matter of fairness. In criminal law, a defendant gets tried for a crime and, if convicted, gets a sentence. The defendant doesn't get tried and sentenced over and over for the same offense. But, under the current tort system, a defendant can get punitive damages in one jurisdiction for an offense and then be hit with punitive damages for the same offense in another. There's nothing to stop that pattern from being repeated in jurisdiction after jurisdiction until either the plaintiffs run out of jurisdictions or the defendant runs out of money.

And the possibility that the defendant runs out of money is what makes a limit on multiple punitive damages a pro-plaintiff action. As Victor E. Schwartz, general counsel of the American Tort Reform Assn., told the Judiciary Committee last week, "multiple 'windfall' recoveries of punitive damages can deplete a defendant's limited resources, endangering the ability of future claimants to recover even basic out-of-pocket expenses and damages for their pain and suffering." Such a circumstance makes a mockery of civil justice.

Mr. Schwartz also said there should be two possible exceptions to the rule of no multiple damages. The first, already contained in Sen. Hatch's bill, allows additional awards if "new and substantial" evidence—such as undiscovered documents showing a coverup—justify it.

The second, not in the bill but suggested by Mr. Schwartz, would be if a second court found that the first punitive award was "absolutely insufficient to either punish the defendant's wrongful conduct or to deter the defendant and others from similar behavior." That is the purpose of punitive damages—to deter and punish—and there can be cases where conduct is so egregious that a single award doesn't carry out that purpose. But, he warned that the second exception should not be allowed repeatedly in a single case, or "we will return to all of the hazards that have infected the present system."

Punitive damage reform is long overdue. Incorporating Mr. Schwartz's second exception in Sen. Hatch's bill would make the reform that much more attractive and equitable.

The bill could be enhanced even further by stipulating that all punitive damage awards be paid into a public fund used to compensate and rehabilitate victims injured in accidents where no insurance coverage is available.

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For the Record

Insurer exec convicted on fraud charges

LEXINGTON, Ky.—Grahame P. Sanders, who turned himself in on insurance-related fraud charges last year after fleeing to Costa Rica, is now facing jail after being convicted on 64 counts of fraud and conspiracy.

A federal jury convicted him Feb. 24 of one count of conspiracy and 63 counts of wire fraud related to his sale of bogus policies for the now-defunct Griffin Insurance & Reinsurance Co. Ltd. of Anguilla.

Mr. Sanders remains free on $100,000 cash bond and is scheduled for sentencing May 19.

He faces a statutory maximum of five years in prison and a $250,000 fine on each count, though under federal sentencing guidelines prosecutors likely will argue for a term ranging from 41 to 51 months, said Frances Catron, assistant U.S. attorney.

Mr. Sanders was already a fugitive when he was indicted in the Griffin case in July 1994: He had fled to Costa Rica the previous year after Florida regulators filed criminal charges against him and several others involved in operating Provident Capital Indemnity Ltd., an insurer allegedly capitalized with phony certificates of deposit. He returned to the United States and surrendered to federal authorities last November (*BI*, Dec. 5, 1994; Jan. 31, 1994).

Two other defendants who pleaded guilty to charges in the Griffin case were sentenced late last month.

Gary L. White was sentenced to two years in prison and three years' supervised release. Thomas Reid Methvin received an eight-month prison sentence and three years' supervised release. Each man also was ordered to pay restitution of $97,835.60.

Two states act to stop derivative losses

Investors in Connecticut and Wisconsin can breathe easier about exposure to derivative investment losses.

Officials in both states recently took steps to minimize such losses. Wisconsin investors, including the state workers pension fund, will suffer no loss in principal despite the Wisconsin State Investment Fund's $95 million loss that officials blame on unauthorized derivative trading.

Other investors in the $6.7 billion fund include the state and about 1,000 local government entities.

The losses stemmed from swap contracts—an exchange of obligations to pay fixed and floating interest rates—based on Mexican and European interest rates and purchased in violation of a state policy against using derivatives for speculative purposes. Those initial contracts remain in place, but the state has entered into additional swap agreements to offset them.

The restructuring of the fund's swap investments also is intended to allow fund officials to amortize the losses. Patricia Lipton, the fund's executive director, said that amortization will limit the impact on fund participants' earnings, reducing annual earnings by about 0.25%. In a March 20 statement to Wisconsin's Joint Finance Committee, Ms. Lipton said the board is handling according to state policy "personnel matters" related to the unauthorized transactions.

Meanwhile, Connecticut Treasurer Christopher B. Burnham said losses stemming from unwinding the Connecticut State Retirement Trust's $96 million derivative position should total no more than $25 million, half what state officials originally feared.

The state employees' pension fund has sold the bulk of its portfolio's derivative investments. Believing them to be inappropriate for a pension fund, Mr. Burnham has moved to sell the derivatives, though not at a price he considers too low, said Karen Jannetty, his deputy chief of staff.

Separately, a U.S. Bankruptcy Court judge on May 12 will hear a motion by Merrill Lynch & Co. to dismiss on technical grounds a suit in which Orange County seeks more than $3 billion from the New York firm in connection with the county's huge losses from risky investments.

Florida reviews tobacco liability law

TALLAHASSEE, Fla.—The Florida Senate Ways and Means Committee will be the next panel to consider whether to repeal the law that enabled the state to sue tobacco companies for Medicaid recipients' smoking-related health care costs.

The state Senate Commerce and Economic Opportunities Committee late last month approved changes to the Medicaid Third-Party Liability Act that would repeal a 1994 law that gave the state authority to sue.

Earlier this year, Florida became the fourth state to file suit against cigarette manufacturers, seeking $1.2 billion in damages (*BI*, Feb. 27). Legal observers say the enabling legislation gives Florida's suit the best chance among these state actions for holding the tobacco companies liable (*BI*, Oct. 3, 1994; May 9, 1994).

The tobacco provisions were included in the law with no debate at the end of last year's legislative session. It stripped tobacco companies of their traditional defenses, such as that smokers knowingly assume the risks associated with the habit.

Business groups, including insurers, have opposed the law because they fear it could be applied to other industries as well.

Workplace deaths hit all-time low in Oregon

SALEM, Ore.—Work-related fatalities in Oregon dropped 14% to an all-time low of 55 in 1994, from 64 in 1993, says the Worker's Compensation Division of the Department of Consumer and Business Services.

The largest decreases occurred in the manufacturing, construction and transportation and public utilities sectors.

Vehicle accidents were the most common cause of death, accounting for 23 of the fatalities. Falls accounted for eight; falling objects or machinery resulted in seven; and workplace violence, six.

The remaining 11 deaths were attributed to various causes, including smoke inhalation, exposure to live power lines and contact with hazardous chemicals.

The Department of Consumer and Business Services attributed the decline in fatalities to state, employer and worker loss prevention efforts.

Information in brief

The American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America will spend $1 million over the next five years to establish and run the **Institute for Applied Ethics in Insurance** in Malvern, Pa., designed to "heighten awareness of the pervasiveness of ethical decision-making in insurance and to explore ways to raise the level of ethical behavior among parties to the insurance contract."....The Pension Benefit Guaranty Corp. and the Labor Department last month announced that employers in areas disrupted by the California floods will have more time to file **pension annual reports and PBGC premium payments**. Reports and premiums that were due on or after Feb. 13 can be filed by April 30 without penalty, though interest will be charged on late premium payments....Barry F. Carmody has been named president of the **California Insurance Cos.** effective April 1, replacing Thomas F. Conneely, who will continue with the company as president emeritus until the end of the year....The U.S. Supreme Court will not review a **Wisconsin Supreme Court** decision that held that comprehensive general liability insurers don't have to indemnify a city for a state-mandated landfill cleanup (*BI*, June 27, 1994) BI

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Savings

Continued from page 3

rate success was the multifaceted communications program it deployed to introduce the program, company executives say.

"We communicated, communicated and communicated," said Marion Ewell, XTRA's personnel director.

To that end, XTRA took a number of steps. The first step was a story in a company newsletter—during the summer of 1993—that XTRA would be launching a 401(k) plan that fall.

That was followed by memos—sometimes as often as weekly—asking and answering anticipated questions, such as how employees could enroll in the plan, what investment options would be offered and how employees could change from one investment option to another.

Ms. Ewell traveled to a number of locations where XTRA employees are concentrated to explain—through a video and slide presentation prepared by Peat Marwick—the key features of the 401(k) plan.

For example, one slide detailed how account balances can build up through the compounding of interest. The example explained that if an employee contributes $1,200 a year to the plan, he or she would have an account balance—assuming an annual earnings rate of 8%—of $220,223 after 30 years.

During the enrollment process, which was conducted through an automated voice response system, employees were encouraged to call up the company's human resources department if they had any additional questions.

"We did a lot of hand-holding," Ms. Ewell said.

XTRA executives say their success is due to their multifaceted 401(k) communications program.

The plan design also played a key factor in the high participation rate. To jump-start participation, XTRA agreed to put $100 in each employee's account over and above an employee's own deferral.

In addition, four special investment options—known as pods—were established to give employees broad choices and flexibility in investing their contributions.

The ultra-conservative pod, whose investment mix is currently 70% money market funds, 20% in U.S. bond funds and 10% in an equities fund, is described to employees as a "good choice when your retirement is approaching, when a withdrawal is planned for a downpayment on a home, or to pay for a child's education."

These pods, also known as lifecycle funds, are designed to match employees' needs for security and income growth during different periods of their lives, consultants say.

"While relatively new, everyone is talking about them," said Stacy Schaus, a Hewitt Associates consultant in Lincolnshire, Ill.

Other XTRA investment pods include conservative, moderate and aggressive options with a varying mix of stock, bond and money market funds.

Employees can invest their contributions in one pod, all the pods or any combination of pods. Employees can change their investment options six times a year with the changes allowed each quarter.

"We wanted to make it easy for employees to move money around from one investment option to another," said Michael J. Soja, vp and chief financial officer.

Employees can change investment options through an automated voice response system maintained by Watson Wyatt Worldwide. Watson Wyatt also sends out quarterly account balance statements to employees.

While few companies can even approach XTRA's 92% participation rate, XTRA executives believe they can do even better.

"I'd like to see 95% or 96%," said Ms. Ewell. BI

HMOs

Continued from page 2

ceive 1.09 shares of the newly combined company's stock for each HSI share. WellPoint will undertake a recapitalization in which each of its stockholders will receive a cash dividend of $12.31 per share, followed by a two-for-three stock split, which will give WellPoint stockholders a 0.667 share of the new company's stock for each pre-merger WellPoint share they hold.

The new company will initially have about 122 million fully diluted shares, company reports say.

Also under the agreement, Blue Cross of California, a non-profit entity that owns 80% of WellPoint, will receive more than $1.2 billion in cash.

Specifically, BC of California will receive about $985 million in cash and 53.4 million shares of WellPoint through its recapitalization. In addition, the new company will purchase the Blue plan's commercial assets, including its 15,715 HMO members and 321,669 PPO plan members, for up to $235 million in cash.

BC of California will retain a 44% ownership interest in the new company. The California Wellness Foundation, created when Health Systems converted to for-profit status in 1992, will hold a 23% stake in the new company's shares, while HSI shareholders will hold a 22% stake and WellPoint shareholders will collectively hold an 11% stake.

The California Department of Corporations requires BC of California to dedicate the cash proceeds and the equity ownership to charitable activities intended to improve health care access and affordability for uninsured and underserved Californians.

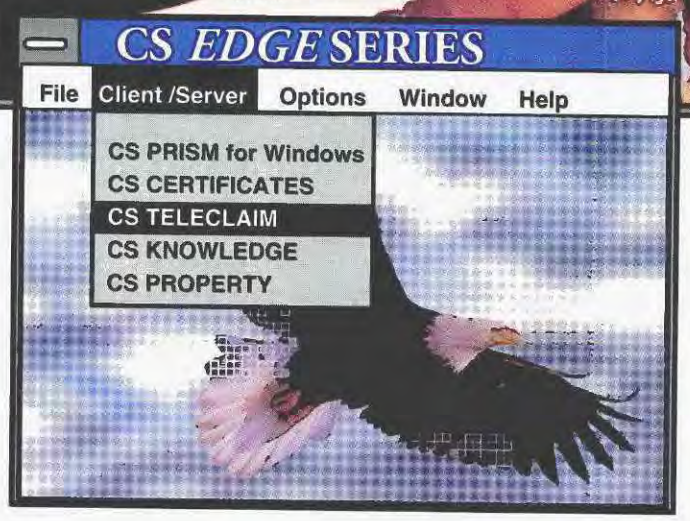
Therefore, the agreement calls for Blue Cross to donate all the cash and stock to two new charitable foundations. One foundation will be endowed with $1 billion in cash, while the other will get $200 million in cash and $2 billion in stock in the new company.

The merged entity will use the Blue Cross name and logo in California, but a new name will be developed for products and services marketed outside the state.

Leonard D. Schaeffer, WellPoint's chairman and chief executive officer, is expected to become president and CEO of the merged company. Malik M. Hasan, Health System's chairman and CEO, will be the new company's chairman.

Roger F. Greaves, who had been Health Systems' co-chairman, co-chief executive and co-president, resigned from those executive positions last week. He will serve as acting chief executive officer of Health Net, an HSI subsidiary, until a successor is appointed. BI





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Verdicts

Continued from page 3

New York. "We have a strong feeling with the jury system that it is willing to listen to the defense side of the case," he said.

Victor Schwartz, a defense attorney with Crowell & Moring in Washington, and a product liability reform lobbyist, said he was surprised with the study's results.

"I know from experience that clients are having fewer cases go to jury, so the cases that are ultimately tried are only the ones in which the defense feels it is absolutely not liable," regardless of the victim's injuries or how large a company the defendant is, he said.

But a plaintiffs attorney used the same reasoning to explain why more plaintiffs are winning cases.

"Medical malpractice and product liability cases are very expensive and tough to try, therefore plaintiff attorneys are more selective" with their cases, said Edward C. Bassett, a plaintiffs attorney with Mirick, O'Connell, DeMallie & Lougee in Worcester, Mass. Because, only 3½% of the cases actually go to a jury verdict, "The plaintiff must have a pretty darn good case" to go to trial, Mr. Bassett said, adding: "For plaintiffs attorneys, (being selective) is the only way to survive now."

Another plaintiffs attorney suggests any trend now is moot.

Any trend toward juries favoring plaintiffs doesn't matter, due to impending tort reforms, said Thomas A. Demitrio, a plaintiffs attorney with Corboy, Demitrio, Clifford in Chicago.

"The insurance industry, manufacturers and business groups have done such a terrific job of public relations, lobbying and contributing to the Republicans, (that) the laws, in effect have gone way way overboard. So what ever trend is starting, we'll see cease," Mr. Demitrio said.

Tort reform legislation, if enacted, will not only "dramatically" drop the number of personal injury cases filed, but those cases that are tried "will spiral in favor of the defendant," Mr. Demitrio predicts. The proposals "are so weighted against legitimate injured persons."

Last month, the House of Representatives approved a sweeping tort reform bill—H.R. 956, while the Senate Commerce Committee approved a product liability reform bill last week (see story, page 2).

Among other things, the House bill would cap punitive damages in "all civil actions" to $250,000 or three times economic damages, whichever is greater; limit the product liability of sellers under most circumstances; cap non-economic damages in medical malpractice cases at $250,000; and shield drug manufacturers from punitive damages if their products had been approved by the Food and Drug Administration, unless it can be proved that the companies misrepresented their products or bribed officials to win approval (*BI*, March 13).

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Copies of "1995 Current Award Trends in Personal Injury" are available from LRP Publications for $39.95 plus shipping and handling by calling 800-341-7874, ext. 307.

Hoescht gets OK to tap insurance

By MICHAEL SCHACHNER

WILMINGTON, Del.—London excess insurers that wrote coverage for Hoechst-Celanese Corp. will have to help pay for the mammoth settlement offered to end the class-action litigation over leak-prone piping, the Delaware Supreme Court has ruled.

The decision clarifies the notice requirements that trigger the enhanced claims-made policies commonly written during the worldwide scarcity of liability insurance in the mid-1980s.

The Delaware Supreme Court on March 30 overturned a 1994 trial court ruling, finding that Somerville, N.J.-based Hoechst properly notified its London-based insurers in 1989 that a circumstance had arisen that would likely involve claims against claims-made policies carrying a seven-year coverage extension.

The state high court's ruling allows Hoechst to tap a series of enhanced claims-made excess liability policies, which have a face value of $18 million, to pay for some of its portion of a $750 million settlement that it, E.I. du Pont de Nemours & Co. Inc. and Shell Oil Co. have agreed to fund. The settlement was rejected by a Texas state court judge in February for jurisdictional reasons (*BI*, Feb. 27).

But, if it is reinstated on appeal, the settlement will be made available to a nationwide class of about 6 million individuals and building owners who installed polybutylene piping made with resins produced by the chemical companies.

The London insurers had moved for summary judgment, arguing that coverage would be triggered under the claims-made policies, if at all, only where the underlying claim was first asserted in writing against Hoechst during the policy period.

Hoechst since 1990 has fielded a steady stream of product liability claims related to the piping.

The Delaware high court agreed with Hoechst's position, finding that the chemical manufacturer satisfied the notification requirements outlined in the special claims-made policies by informing the group of insurers in the 1989 policy year that a claim would likely be filed within seven years.

Furthermore, the court ruled that since the insurers denied coverage on the grounds that the policyholder failed to make proper notification, the burden of proof rested with the insurers.

The trial court had placed the burden of proof on Hoechst and ruled that Hoechst failed to prove that it properly notified its insurers.

The court ruling on the coverage issue, which is just one element of Hoechst's much larger overall dispute with dozens of insurers that wrote hundreds of millions of dollars in occurrence form and standard claims-made coverage, centered on the procedural question of notification. On appeal, Hoechst succeeded in convincing Delaware's highest court that on several occasions it notified insurers in the policy year that future claims were likely. This satisfied both the loss notification option and the notice of circumstance provisions in the enhanced policy, thus triggering coverage.

Jordan Stanzler, an attorney with Anderson Kill Olick & Oshinsky in San Francisco, which represents Hoechst in its ongoing battle with insurers over coverage for pipe claims, said the ruling, while only a minor victory for Hoechst in its battle for insurance coverage, answers a big question about what actually triggers these enhanced claims-made policies that were commonly written in the late 1980s by London excess insurers.

"This is just a small chunk of what Hoechst is trying to get at, but the ruling is important because there are a lot of policies written like this. . . .They were in demand and there was a price charged for the seven-year tail," he said.

In a related matter, Hoechst's court battle over what triggers its occurrence form policies is on appeal. The same trial court that ruled on the claims-made issue ruled that occurrence form coverage written at the time of leakage can be accessed. Hoechst is asking for a continuous trigger or at least a trigger based on time of installation.

Hoechst has settled with American International Group Inc. companies, Aetna Casualty & Surety Co. and CIGNA Corp. units, Mr. Stanzler said. BI

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Ratings

Continued from page 2

losses from Hurricane Andrew and the Northridge earthquake fell "disproportionately on the broker-market reinsurance marketplace."

"All reinsurers face these challenges, but some are better positioned to deal with them than others. The broker market is made up of a diverse group of companies."

Best's looks at a reinsurer's strategy, returns, mix of business and consistency in determining ratings.

"More and more buyers want to work with fewer reinsurers," Mr. Snyder said. "They want unquestionable, quality balance sheets and a commitment from parents."

Several primary insurers have been downgraded over the past several years, observed John R. Cashin, executive vp-marketing for Willis Faber North America Inc., a New York-based intermediary.

"You can't separate reinsurance from the problems of the primary industry, like environmental, asbestos and catastrophes," Mr. Cashin said. The broker reinsurance market "is still a very strong market."

Size or business production method alone do not indicate a reinsurer's strength, said Alan Levin, managing director at Standard & Poor's Corp. in New York.

"It's too simplistic to say the broker market is good or bad," Mr. Levin said. "The strategy is not the key, it's how the strategy is implemented."

"The differences are disappearing between broker and direct markets," said John P. Woods III, vp of John P. Woods Co., a New York-based reinsurance intermediary. "Reinsurers view the reinsured as the client."

The downgrades also reflect a new Best's philosophy of measuring intangibles—such as commitment to a market—in addition to financial statements.

"It paints the smaller reinsurers with a large brush," Mr. Smith said. "Other companies of a similar size will suffer even though they were not downgraded.

"It might accelerate the consolidation we've seen in the last several years, he continued. "$100 million in surplus is not enough. Now you have to have $250 million."

The largest company to be downgraded was SCOR U.S. Group, which saw its A+ rating drop to an A.

"It's disappointing, but it's not unexpected considering we took a major hit from the earthquake last year," said Jerome Karter, president of SCOR U.S. Group in New York. "An A rating is something a whole lot of companies would like to have." The reinsurer plans to reclaim its "superior" rating by 1997, he said.

It will do that by continuing its plan of reducing exposure to catastrophe, including all but eliminating property pro rata business.

"We are reducing our cat exposure to a level we are comfortable with," Mr. Karter said. "It doesn't mean we are pulling out of the market. We will put our cat capacity down on that business where we think we can get the right price for the risk."

Unlike most of the other companies recently downgraded, SCOR U.S. is a "major player in the broker market. We lead most of our business," Mr. Karter said. SCOR U.S. ranks 18th among U.S. reinsurers based on 1994 net reinsurance premiums written of $232 million (*BI*, March 27).

Cologne Reinsurance Co. of America was also downgraded to A from A+.

Stamford, Conn.-based Cologne's limited market presence, products and services are "not consistent with A.M. Best's requirements of A+ rated insurers," the rating agency said.

The most severe downgrade—and Best's harshest words—were reserved for Baltica-Scandinavia Reinsurance Co. of America Inc., which was downgraded to C- from B+.

The new "marginal" rating reflects the Morristown, N.J.-based company's "extremely poor underwriting results and continued surplus erosion stemming from substantial catastrophe losses in recent years, its decision to exit the reinsurance market and uncertainty of its parent's commitment to maintain a presence in the U.S. insurance market," Best's said of the new "marginal" rating

Officials at other reinsurers downgraded were disappointed with the ratings.

"Basically we feel we are stronger than ever, with strong surplus," said Jack Fu, senior vp and treasurer of Gerling Global Reinsurance Corp., which was downgraded to A- from A. "We were expecting an upgrade. This is the year they do not like the broker-market reinsurers."

Parent company Gerling Global Reinsurance Group has proposed selling its 61.2% stake in Frankona Group to Employers Reinsurance Group. Mr. Fu said Best's may have counted that development against the U.S. unit in rating it (*BI*, March 27).

But the proposed sale reflects Gerling's commitment to its core reinsurance business and international expansion, Mr. Fu said.

The rating change will not affect the New York-based reinsurer because "our competition was downgraded at the same time," Mr. Fu added.

"We are very disappointed," said Jean-Pierre Fillebeen, chief executive officer of SAFR Reinsurance Corp. of the United States, which slipped to B++ (very good) from A-.

The parent company of New York-based SAFR Re, Paris-based Societe Anonyme Francaise de Reassurances, is "fully committed to the market and to us. We are not sure that was taken into consideration," Mr. Fillebeen said. "There is not a single problem regarding our solvency."

Many of the new ratings are still in the "very good" to "excellent" range, but the marketplace does not always view them that way, Mr. Levin noted.

"A.M. Best is an important criteria, but it is not the only criteria," Mr. Woods said. "The real impact is what our clients will say, but an A+ to an A will not change anyone's view of Cologne or SCOR."

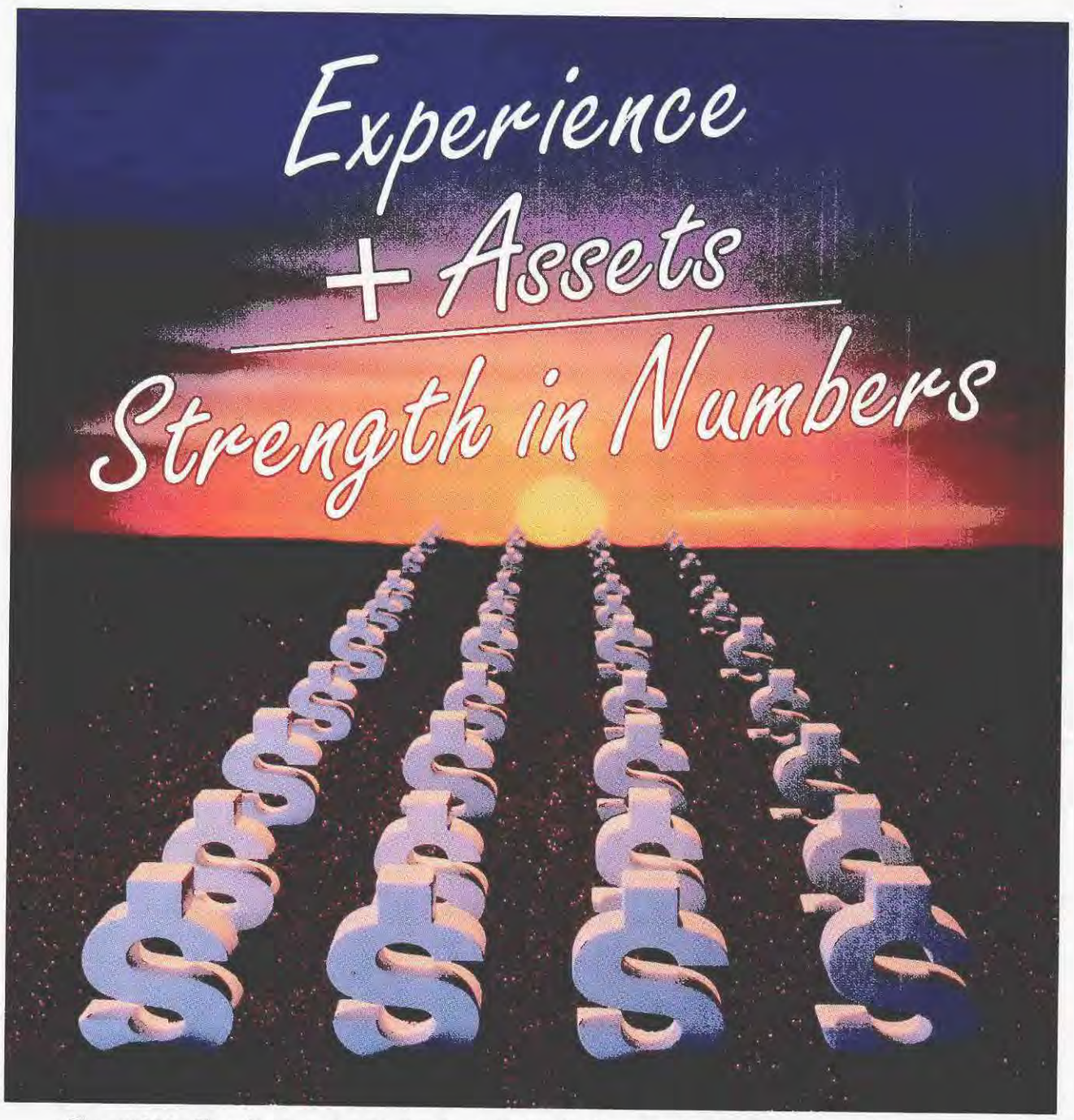
The other downgrades include:

- Christiania General Insurance Corp., which was downgraded to A- from A for "lackluster operating results" and "loss of forward marketing momentum as management engaged in corrective underwriting actions and diminished commitment from its parent, UNI Storebrand of Norway."

UNI Storebrand has attempted unsuccessfully to sell the Tarrytown, N.Y.-based unit, Best's noted.

- Reinsurance Corp. of New York, which was downgraded to B++ from A-. Best's cited "continued poor operating results, diminished reinsurance market presence and marginal capitalization."

The company's transition to a specialty lines primary insurer from a professional reinsurer, has caused "ongoing strategic and financial challenges," Best's said. BI



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Modeling

Continued from page 1

cal capability that enables RMS to draw upon information previously not used in risk assessment.

For commercial policyholders, extensive use of catastrophe modeling could mean more stable capacity and rates as insurers better understand their risk concentrations, Mr. Van Gilder and other modeling company executives say.

But the awareness that comes from modeling also spells market corrections in the short run as insurers incorporate in their underwriting the new data that suggest greater loss potentials.

Other technology sources admit the insight into rates and underwriting practices that modeling offers is a "sensitive" issue.

Traditional actuarial techniques relied heavily on recent catastrophe experience but failed to weigh important characteristics, such as the earth's crust and the vulnerability of building engineering to natural hazards. Computer modeling can take those characteristics into account.

"The market correction is more severe because people have not been attending to it over time," Mr. Van Gilder said. "If they were attending to it over time, the correction would obviously be more gradual."

Like a small handful of competitors, RMS has a stable of engineers, earth scientists and systems gurus, all loaded with advanced degrees. The company licenses the Investment Risk Assessment System, or IRAS. The software provides information about probable maximum loss, peril analysis, potential loss concentration, how much of the loss will be net of reinsurance and which reinsurance treaties will respond (*BI*, April 19, 1993).

Mr. Van Gilder explained: "It's going to tell you, for example, that—over a 10-year span—to make a particular line of business viable or to deal in a particular geography of the country you are going to have to do the following things. In other words, you are either going to have to raise more money to support your capacity because you have some likelihood of volatility there, or you are going to have to parcel out your capacity more carefully, spread it more. Or perhaps you will find just the reverse. You will find anomalies where you can commit a lot more capacity than you have been."

Although popular among insurers and reinsurers, the use of catastrophe software varies among companies. For now, many use it for periodic data analysis, Mr. Van Gilder explained. In his new role, he hopes to help insurance companies fully integrate it into their overall information system architecture as a perpetual tool.

Insurance industry watchdogs and detractors are critical of the modeling products.

RMS' name was raised recently by California Sen. Tom Hayden, D-Los Angeles, during a California Senate Insurance Committee hearing. Sen. Hayden questioned whether modeling companies such as RMS are now responsible for insurance rates. Sen. Hayden and his supporters also suggest insurance companies are turning over their underwriting functions.

And, California consumer activists are dogging insurers by claiming they are attempting to justify rate hikes with computer models that rely on "secret computer software."

Attorneys for the Proposition 103 Enforcement Project claimed in an April 4 press release that their efforts to break the "veil of secrecy" led Boston-based Commercial Union Insurance Cos. to abandon seeking approval for an increase in residential earthquake rates.

Roger Singer, general counsel for Commercial Union, said under California law the company would have been forced to pay the Enforcement Project's cost of intervening. The activists threatened to hire scientists and seek widespread discovery.

Mr. Singer noted that Commercial Union writes less than 1% of California's homeowners insurance.

"It's just not our role to finance an extensive public investigation into how this works," he said.

Others say that modeling's influence can make insurance more available.

Ben D.H. Beazley, senior vp for Tri-City Brokerage Inc. in Universal City, Calif., believes catastrophe modeling could help insurance companies reorganize their books of business, making them more attractive to reinsurers. That can help a marketplace plagued with availability problems.

But Mr. Beazley also sees the short-run correction difficulties.

He said it is a rare insurance company that does not use the modeling software and that underwriters rarely stray from its parameters. That in turn means the software dictates coverage variables such as capacity and attachment points.

"What we see happening in the marketplace right now is it's been hit by all this criteria introduced by IRAS," he said. "IRAS dictates what we write and don't write."

Yet modeling company leaders such as G. Thompson Hutton, president and CEO of RMS, and Nathan Shpritz, senior research associate at Applied Insurance Research in Boston, said insurers do not use their programs as a basis for rate filings.

Indeed, Mr. Hutton noted, "There's no question those interveners have made life difficult." They "are hurting our business because companies that would otherwise be using us for their rate filings are afraid to."

Modeling company representatives also note there is nothing secret about their products. Mr. Hutton said the calculations and formulas have been published in scholarly journals.

Mr. Shpritz stresses that the models do not drive the cost of insurance.

"Certainly the catastrophe model output can be used by both insurers and reinsurers as an input into their pricing models," he said. "AIR's models provide, among other things, estimates of both long-run average loss costs and their inherent variability. Insurance company actuaries are then free to incorporate this information in the expected loss and risk load portions of the rates.

"The estimated losses must then be adjusted for underwriting and other expenses. However, rates are ultimately determined from both actuarial and a number of other business considerations."

The Jan. 17, 1994, Northridge earthquake made customers of some insurers that formerly lacked interest in catastrophe modeling, Mr. Hutton said.

The crippling losses sustained by Woodland Hills, Calif.-based 20th Century Insurance Co. made all insurers aware of the risk of concentrating their business, said Alan Levin, managing director of Standard & Poor's Insurance Rating Services in New York.

"Northridge was a wake-up call to the whole industry that insurers ought to be comfortable with their situation," Mr. Levin said.

Mr. Thompson stresses that long before the Northridge quake, his company had suggested that annual losses could exceed premiums and that the rates had not justified the concentration of exposures.

Modeling company executives disagree as to whether the use of catastrophe models amounts to outsourcing underwriting.

"Underwriters can use these models, immediately and cost-effectively, as tools and consider the results in conjunction with other company goals and objectives," AIR's Mr. Shpritz said. "It is important to note that model vendors provide information only; underwriters and management make all the decisions."

RMS' Mr. Hutton said the use of computer modeling is an outsourcing of underwriting, to a limited extent. Unlike other outsourcing that is driven by the economics of staff reductions, for insurers using modeling, the outsourcing is driven by the need for expertise.

"In this case we are 150 people focused on one issue in which we are becoming expert," Mr. Hutton said. "It is difficult for any one insurance company to have that concentration of expertise." BI

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Rates

Continued from page 3

launch phase. The coverage was led in Lloyd's by the Marham Consortium and placed by Bowring Space Projects Ltd. in London and its parent, Marsh & McLennan Cos. Inc., in New York.

But, underwriters and brokers say the hefty rate was the exception rather than the rule. The AMSC satellite is technically complex and its performance levels are crucial, so it won't take much to cause a problem and generate a loss, they say.

AMSC is building a satellite system to provide mobile voice, fax and data services to 190 million maritime, aeronautical and fixed-site customers in the United States. The company's shareholders include: Hughes Communications Inc., the world's second largest owner and operator of commercial communication satellites; Singapore Telecommunications; McCaw Cellular Communications Inc.; and Mtel Corp.

"You won't see rates settling at that level except for technically complicated satellites," the London underwriter said. AMSC's rate was not due to last year's losses, he said.

The AMSC rating "is not an indicator of future rates," added Roger Bathurst, associate director of Space Risks International in London, a unit of Aon Corp.

There is plenty of capacity and plenty of room to negotiate, especially for smaller satellites with a lesser value, he said. The satellite insurance market "is the easiest example of Economics 101. It's a question of supply and demand."

"The space insurance market today has the capacity to cover most of our customers' requirements," added Brian Moore, managing director of Bowring Space Projects Ltd. in London to the conference delegates. "Depending on whether you are the buyer or seller of insurance, you may have a perception that the rates currently available are too high or too low. . .To a great extent the rates that have been available in the past two or three years have been fairly consistent, although from my perspective, I would have preferred my clients to have spent less than we have seen and are currently seeing."

Toward the end of 1994, satellite underwriters called for increases in rates in excess of 20% on everything, said Mr. Moore. But, based on the supply and demand right now, that statement is "nonsense."

Between $530 million and $550 million in satellite insurance capacity per launch is available today, despite the record losses, Generali conference delegates said. "We have more capacity today than we did 12 months ago," said Mr. Moore.

About 74% of capacity comes from the European market, 18% from the United States and 8% in remaining markets, Mr. Pagnanelli said. The largest satellite underwriter is Generali, with capacity of $80 million per launch, he said. Second-largest is the Marham Consortium at Lloyd's of London, consisting of 20 syndicates with $66 million per launch in capacity, said its underwriter, Simon Clapham.

For a small satellite worth $120 million, for example, more than four times that much capacity is available, so the rate may be 15% or 16%. But satellites that need higher limits and therefore more capacity might be charged a higher rate, space insurance executives say.

One wonders why satellite manufacturers and launch vehicle operators insure at all, considering they are such huge corporations and they believe they have carried out all the tests necessary to ensure success, Mr. Clapham said.

They insure because "they realize that in every high-technological program, especially a commercial program where competitive advantage may mean millions of dollars added to profits, there is an element of the unknown," he said. "Add to this the risk of human error, random failure, quality control lapses and natural phenomena—not forgetting the pressures of stockholders and banks—one can see not only why corporations of such magnitude buy insurance, but also why they should continue to do so," he said.

As an insurer, Mr. Clapham agrees that pushing technology to its limit is desirable and necessary. But he's also interested in reliability and such a program can increase the probability of failure.

"Risk-taking is what we're prepared to offer, but the price we ask is that we be in a position to make a profit," he said. "If we're in the position of having a very profitable year, we are told we are being greedy." But when underwriters make a profit, brokers are right there asking for rate reductions, said Mr. Clapham.

Insurance will continue as a major part of the financing of commercial ventures in space, he said. "Yes, buy lots of insurance, by all means. That's what I'm here for. But view me more as a partner than as an adversary. Yes, the cost of your insurance is the third-highest cost (in satellite launching). But ask yourself why. Do you see your insurers making huge profits year after year? No," he said.

Underwriters can handle bad years, but they must have good years, too, he said.

Many of the brokers and underwriters were grateful that the day before the conference started, Arianespace successfully launched two satellites valued at more than $420 million—its largest payload ever. They were: Brasilsat B2, placed by Bowring, SRI, and Willis Corroon Group P.L.C.; and Eutelsat IIF, placed by Faugere & Jutheau in Paris.

Camillo Giussani, general manager of Generali, said the space industry has not been as prolific as underwriters had hoped. In 1979, when the first Generali conference began, 1,000 space shuttle missions were expected over the next 12 years, but only 70 have occurred.

But, there have been 227 insured launches, he said. And the number of satellite launches per year has risen to 24 this year from two in 1965, said Mr. Pagnanelli.

The value of each satellite also has grown, to $365 million last year from $70 million in 1980, he said. The majority of satellite losses, 76%, occur during the launch phase, 15% occur during early orbit and 9% when the satellite is in orbit, he added.

Policyholders would like to see more in-orbit coverage, Generali conference delegates heard, either as an extension of the launch coverage or as an independent coverage. At the moment, only about $200 million to $250 million of capacity is available—about half of what is available for launch coverage—for a one-year policy that is "not worth the paper it is written on," said John Howes, deputy chairman of Crawley Warren & Co. Ltd.

But, a major reinsurer said the capacity and the three-year policies are there. "If underwriters don't offer it, then the price isn't right," he added.

Michael R. Wash, president of Martin Marietta Astronautics, told delegates that one of his customers wanted unlimited third-party liability insurance during a launch. But Mr. Wash was told by several underwriters that unlimited coverage is not available. BI

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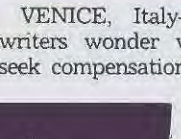


Alexander & Alexander

Insurers consider joining satellite suit

BY STACY SHAPIRO

VENICE, Italy—Satellite underwriters wonder whether they can seek compensation for the loss of a satellite last year following recent allegations by AT&T Corp. that the satellite manufacturer should have known there was a problem before liftoff.



Underwriters have already paid AT&T's $187 million claim for the Telstar 402 satellite, which failed after it was deployed from an Ariane rocket last September.

During the International Space Insurance Conference sponsored by Assicurazioni Generali S.p.A. late last month, underwriters who paid for the loss heard for the first time that AT&T is suing Martin Marietta Corp. for uninsured losses exceeding $250 million plus punitive damages for the loss of the satellite last year. AT&T also is suing Martin Marietta for $150 million plus punitive damages for failure to deliver another satellite, the Telstar 403, on time, according to the lawsuit.

Martin Marietta is countersuing, charging AT&T with breach of contract for failing to pay for Telstar 402 (*BI*, April 3).

During a question-and-answer session, Andre Clerc, deputy general manager of La Reunion Aerienne in Paris, asked the audience and panel whether insurers should join the AT&T action as co-plaintiffs.

Patrick Rivalan, senior vp and underwriter for International Technology Underwriters Inc. in Washington, replied that the first he'd heard of the case was at the conference, so no decision on what insurers should do could be made immediately.

Other underwriters said confidentially that they would be looking at their legal position to see if there was any reason to join the action.

Insurers of the satellite included underwriters in the London, French and U.S. markets.

After the meeting, Mr. Clerc said many lawyers have offered him their services. But he said he was still checking underwriters' position.

AT&T's suit, filed in the U.S. District Court for the Eastern District of Virginia last month, revolves around the company's new fleet of satellites, known as the Telstar 4 series, which are to be "extremely large and state-of-the-art," according to the suit. They are to provide C-band frequencies, which are used by most television broadcasters. "Such contracts are often worth tens of millions of dollars," the suit says. But this market will not endure because there is heavy competition to offer this service. Once all the competitors' satellites are operational, "the C-band shortage will be alleviated, and prices should fall."

AT&T signed a "spacecraft agreement" in 1989 with General Electric Co., now part of Martin Marietta, to build two satellites and one spare for the Telstar series. In 1990, AT&T signed a pact with General Dynamics, Commercial Launch Services Inc., also now part of Martin Marietta, to launch the satellites.

The first satellite in the Telstar series was launched successfully in December 1993. But the second, the Telstar 402, failed within minutes of the satellite separating from the Ariane launch vehicle.

AT&T now alleges that Martin Marietta could have averted the loss had the manufacturer conducted a thorough investigation a year earlier into the loss of another Martin Marietta satellite, Landsat 6, which also failed moments after it separated from the launcher.

Martin Marietta should have conducted a thorough investigation of the Landsat 6 loss but instead conducted a "careless, incomplete and inconclusive investigation into the causes," AT&T's suit alleges.

"The failure of Telstar 402 has caused AT&T direct uninsured damages exceeding $47 million, including uninsured out-of-pocket losses for the cost of the satellite, the cost of its launch, insurance premiums, interest during construction and technical support," the suit says.

AT&T also claims to have lost major customers because of the loss of the satellite. Delays in the delivery of the spare satellite, Telstar 403, also are costing the company $20 million per month, the suit says.

AT&T alleges Martin Marietta "through its officers, directors and employees, knew or should have known that the propulsion system in Telstar 402 was inherently defective and presented an unacceptable risk that the satellite would fail upon activation of the propulsion system."

If this allegation is proved, it would trigger a clause in the companies' spacecraft agreement that makes Martin Marietta liable to pay AT&T $200 million in damages if the manufacturer "willfully or maliciously breaches material provisions" of the agreement.

"Martin Marietta rejects all the AT&T claims and we consider them meritless," said a spokesman for Lockheed Martin Astro-Space, which is the successor to Martin Marietta in East Windsor, N.J.

Separately, Commercial Launch Services is seeking a judgment in Colorado state court that the company met all of its obligations to AT&T in launching the Telstar 402 satellite. BI

350 attend Generali space conference in Venice

VENICE, Italy—For the first time since it began 16 years ago, the invitation-only biannual international space insurance conference hosted by Assicurazioni Generali S.p.A. was held in the insurer's birthplace: Venice, Italy.

Usually held in Rome, Generali's meeting has become a key date for launch agencies, satellite manufacturers, lawyers, brokers and underwriters from around the world to catch up on the latest happenings in the space industry.

This year's March 30-31 meeting was no exception. More than 350 delegates from 26 countries heard representatives from various launch agencies talk about the progress on their launch vehicles.

Launch vehicles discussed included: the American Atlas and Thor Delta rockets—the Thor Delta having the best success rate of any launcher; the Russian Proton rocket, which should launch its first Western-built commercial satellite next year; the Chinese Long March rocket, which suffered a major loss in January (see story, page 3); and the Japanese HII rocket, which is still in the experimental stage.

Satellite manufacturers also updated delegates on their plans, including: Jack Juraco, program manager at Los Angeles-based Hughes Space & Communications Co., who noted that as the second-largest manufacturer of satellites, Hughes has developed more than half of the satellites in orbit; and Celso Azevedo, technical director of Societe Europeenne des Satellites in France, who spoke of the Astra satellite system, which provides 70 television channels and 50 radio channels in Europe.

Aside from the scheduled conference, delegates had lunches, dinners and formal and informal meetings around Venice. One of these informal meetings outside the conference hall included a lively five-hour presentation about an Asian satellite system as underwriters raised concerns about the performance of the Long March rocket.

The date and location of next year's conference has not yet been decided by Generali.

—By Stacy Shapiro

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Space agencies launching new programs

By STACY SHAPIRO

VENICE, Italy—Developments at the U.S. National Aeronautics and Space Administration and French launch agency Arianespace could mean opportunity or frustration for insurers and risk managers in the space business.

NASA, in partnership with the private business sector, is developing a new reusable launch vehicle that might give rise to new insurable risks and therefore new coverages for insurers to market.

Arianespace plans to offer free launch guarantees for its new Ariane V rocket, which becomes operable at the end of the year. Arianespace's move could mean a reduction in the satellite launch insurance limits needed.

Representatives of both agencies spoke at the Eighth Biannual International Commercial & Industrial Space Insurance conference sponsored by Assicurazioni Generali S.p.A. last month to explain their positions.

There are opportunities for insurers to become involved in the new role of the downsized NASA, according to Edward Frankle, NASA's general counsel.

Following a recent fundamental examination of the purpose of NASA and "a rapid and violent contraction" of the U.S. aerospace industry, the American space agency is cutting its employees and budget substantially to become more commercially relevant and cost-effective, according to Mr. Frankle.

He estimated that about a third of the workforce—which currently totals 200,000 employed contractors and 21,000 employees—could be cut by the end of the century. NASA's budget already has been cut to $13 billion for the fiscal year 1996, from a high this decade of $21 billion in 1991.

"To face those kinds of cuts, we must and will change not only the internal shape and purpose of our workforce and the content of our programs, but our basic goals and methods by which we do business," he said. It is in these business areas that delegates at the Generali conference will be most impacted, he added.

To put the best face on the situation, NASA now has many opportunities to excel and find new projects, knowing what is important and what is not, said Mr. Frankle. "NASA is a research and development agency. We live on the cutting edge. If we do not start and do new things, we will die."

NASA no longer wants to be an operational organization and would like to spin off its communications and ground operations to the private sector.

Instead, the agency is working together with commercial partners to research and develop new space-related activities, such as the renewable launch vehicle system to replace the shuttle. The new launcher would be available to satellite owners and should be cheaper and more reliable than other launch vehicles on the market today, said Mr. Frankle.

"Now, you've all heard this before," said Mr. Frankle, noting that the space shuttle was designed to do the same thing. "But while the space shuttle program developed a truly remarkable vehicle, in the long run it did not produce one that was efficient or economical enough to incur or even permit routine commercial space operations." The shuttle never reached the 1,000 missions in 12 years that was first envisioned, he said.

This time, NASA is working with the commercial sector to develop a new reusable launch vehicle in a more efficient and cheaper fashion. Through Cooperative Research Agreements, NASA and its commercial partners will fund and work together to research and develop the spacecraft, but NASA will not contribute more than 50% of the effort, according to Mr. Frankle. NASA has budgeted over $660 million for the project between now and 1999.

The commercial sector will own and operate the new vehicle once it's been developed, not NASA.

The commercial viability of the project "means that there are a whole new set of business issues before we will ever see" a renewable launch vehicle, Mr. Frankle said.

Those issues include the risks that could be insured by the space insurance market, he said. "I would imagine that any lenders or subcontractors involved in a jointly funded program to develop something as large and radical as a reusable launch vehicle might also develop some new and unusual security requirements," said Mr. Frankle. In short, insurers might have the opportunity to get involved in "that fantastic new project."

It's not difficult to see the risks that could be insured, he said. They would include:

- Political risk, if the White House stops the project once money is put down by the commercial sector.
- The experimental vehicle as it's being built by the commercial sector.
- The general liability risk when the vehicle is tested over land, which will not be covered under a corporation's main liability insurance program.

"I don't know about you, but the thought of the possible outcomes makes the hair on the back of my neck stand up. The sonic boom damage alone could be quite substantial," Mr. Frankle said.

- The vehicle once it's in operation. "Who insures a privately owned vehicle that returns from space?" Would it be space underwriters or aviation underwriters? The two sometimes overlap but often do not.

"What's the scope for third-party liability coverage for a small fleet of commercial reusable vehicles that can land almost anywhere with multiple payloads? Does it matter if they carry passengers?" he asked.

These questions are no longer academic, Mr. Frankle said. Fifteen months from now a decision will be made on whether to build the vehicles and the property/lia-

Continued on next page

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Educating risk managers

A variety of programs meet needs

Industry groups, universities offering courses on managing risk



It would be a stretch to say that risk management education worldwide is in its heyday, but risk managers across the globe are hungry for information.

Educational needs are twofold: Industry groups must strive to provide continuing education programs that keep risk managers up to date, while universities must reach the risk managers of tomorrow.

Different countries meet those needs to varying degrees.

In the United Kingdom, risk managers are receiving an extra push to stay informed. The Institute of Risk Management, the primary U.K. risk management education group, soon will require members to earn continuing education "points" every year by attending seminars or doing their own research (see related story).

Where the field of risk management is not as well developed, educational programs may be needed most. However, that is where they are the most difficult to find.

Throughout Latin America, education opportunities are few and far between. On-the-job training and seminars, often presented by visiting brokers, currently constitute the extent of "formal" education programs. However, the Latin American risk management community is growing. ALARYS, the umbrella group of Latin American risk management groups, is pushing for risk management classes in universities and formal accreditation programs (see story, page G4).

In India, the planned privatization of the insurance market will promote the need for risk managers and risk management education (see story, page G2).

The Geneva Assn. has been promoting risk management education for 20 years. Although the insurance think tank has no risk managers among its members, many of its lectures, seminars and publications serve the industry (see story, page G4).

The Swiss group also helps develop degree programs in universities, an area with much room for growth.

But, some university programs do target tomorrow's risk managers.

Great Britain can boast two well-developed programs. Glasgow Caledonian University in Scotland has turned out graduates from its risk management degree program since 1985. And, Nottingham University in England has included risk management classes within its overall management program since 1976. However, the current shortage of funds for the U.K. education system makes it unlikely that other universities will start similar programs soon (see story, page G2).

Japan's crusader for risk management education has long been Professor Isao Takei. All of his students at Toyama University take two required risk management classes as part of their law, economics or business programs (see story, page G4).

Several universities in Mexico offer risk management classes or degrees. BI

IRM sending U.K. risk managers back to school

By CAROLYN ALDRED

Annual education credits to be required for membership

LONDON—Many risk managers in the United Kingdom soon will be encouraged to pursue more continuing education and training.

The country's primary risk management education group, the Institute of Risk Management, on June 1 will begin requiring members to earn an average of 100 continuing education "points" each year to maintain their membership. Members can earn points by participating in seminars, researching and writing articles.

For example, members could earn 10 points for each half-day spent in training courses, 30 points for attending the annual IRM conference and 10 points for each half-day spent on educational experiences, such as accompanying a loss adjuster on a site.

"Continuous professional development is being introduced to make sure that members of the institute are up to date with their professional knowledge and that employers can have full confidence in their employee," said Chris Holden, risk management and insurance executive at U.K. media group Pearson P.L.C. and chairman of the joint IRM and Assn. of Insurance & Risk Managers in Industry & Commerce committees on education and training.

The institute was set up by AIRMIC in 1986 in response to demand from risk managers for a professional diploma course in risk management.

Since then, the number of risk managers studying for professional qualifications in risk management in the United Kingdom has increased dramatically. IRM membership, including students and fellows, topped 1,000 for the first time in 1995, said Gordon Dickson, a founding IRM member who is dean of the faculty of health at Glasgow Caledonian University in Scotland.

"There was a growth of awareness of the need for continuing education in risk management," said Mr. Dickson, who noted that many people have entered the field without specialized training.

Except for risk management sections included in the Char-

See **Institute** *on page G6*

GLOBAL FOCUS

U.K. students find few risk management course offerings

By CAROLYN ALDRED

Risk management education is making very few inroads into British college campuses. And, short on funds, few universities are expected to offer more dedicated risk management courses anytime soon.



One British college offers a risk management degree and only a few universities incorporate risk management classes into other degrees.

In 1976, Nottingham University in Nottingham, England, became the first U.K. university to incorporate risk management modules into its management degree programs.

In 1982, Glasgow Caledonian University in Glasgow, Scotland, began a risk management degree course for undergraduates. It is still the only U.K. university to offer one.

Soon, however, risk management modules should be introduced into engineering degree courses throughout the country, said John W. Reid, head of the department of risk and financial services at Glasgow Caledonian University. He is working with the professional engineering committees to introduce risk management modules in engineering courses and establish a teaching code of professional practice on risk issues for engineers.

Glasgow Caledonian University was fortunate in establishing its risk management course during a time when government education resources were less scarce, said Mr. Reid. Since 1982, colleges have been less able to finance new, dedicated courses, he said.

Few colleges today could afford to start such a specialized course, said Gordon Dickson, who helped found the course in 1982 and now is dean of the university's faculty of health.

"It's very expensive to start a new course, and I don't think we'll see any new programs" in the United Kingdom specializing in risk management in the near future, he said.

Glasgow traditionally has been a center of insurance due to its history as an important trading and commercial port. And its college also had a strong insurance faculty before risk management was added.

"During the 1970s we progressively began to realize that the future lay with the whole concept of risk, not just insurance," said Mr. Dickson, who joined the college lecturing in insurance in 1975. As a result, risk management was incorporated into the insurance course.

Mr. Dickson's experiences helped shape the course. Prior to entering academia, he had worked in the Glasgow claims offices of General Accident P.L.C. and Zurich Insurance Co. Although he was a Fellow of the Chartered Institute of Insurers and had completed the necessary qualifications through evening courses, it was only after he began working at the college that he completed a masters degree and doctorate.

During the 1980s he spent six months working at the University of Iowa, where he "got a feel for what was happening in risk management in the United States."

Even though the industry demand for specialized risk managers is limited, the Glasgow course has been oversubscribed since its inception.

"In the first few years of the course we had 15 applicants for every available place and all graduates obtained employment on leaving," Mr. Dickson noted.

The first course, originally a three-year degree course, started in October 1982 with 24 students (see related story). Since then, it has been upgraded to a four-year honors degree course. About 40 students annually earn bachelor of arts degrees in risk management.

Calling the course unique in Europe, Messrs. Dickson and Reid said the program attracts students from many countries. Both added that the course is very practical and tends to focus more on loss control and physical risk management techniques than many other courses, particularly those in the United States.

"British risk management education takes a more practical and holistic approach. We are much less interested in theory and more interested in the application," said Mr. Dickson.

Corporations participate by providing financial support in the form of scholarships and prizes and practical support in the form of work experience. "We are very keen on making the course practical and industry oriented," said Mr. Reid.

"In the U.S., the emphasis is more on financing of risk. We are looking at a balanced approach and put a lot of work into risk prevention and risk management in practice, such as the physical control of risk and the health and safety aspects," he said.

Even before their first lecture, Glasgow students attend a week-long introduction during which they are taken to a location, such as a factory, "so that they can see, smell and hear risk," said Mr. Reid.

People already working in the field also participate, with risk managers, health and safety executives and environmental managers often addressing students. Students also visit at least four industrial, service and recreational sites annually—such as chemical plants, the Glasgow subway system, soccer grounds and prisons—to identify risk.

It is this hands-on approach, said Mr. Reid, that makes the graduates so attractive to industry. "Maybe that is responsible for the high record of placements of our graduates into careers, with many graduates going into risk management departments and others going into all areas of insurance and risk management," he said.

Not everyone wants more risk management degree programs.

Stephen Diacon, the senior risk management lecturer at Nottingham University, argues that there is no need for more programs specializing in risk management alone. He says risk management should be incorporated into more management and business courses.

Nottingham University's School of Management and Finance has two risk management modules, two insurance modules and one legal liability module available to its management and industrial economics students.

Each module provides up to 10 credits toward the 120 credits each student must obtain annually through his or her three-year bachelors degree course, Mr. Diacon said.

The modules were started by Mr. Diacon and Robert Carter, then an insurance professor.

The university wanted to expand its already renowned insurance program and saw a corporate demand for risk management training.

The risk management modules have become extremely popular, attracting on average at least 50 of the 120 students annually.

Students are attracted to risk management because it is different and real, he said, noting that "management and economic theories often do not deal with real problems like a factory burning down or producing faulty products."

As Glasgow Caledonian, Nottingham maintains strong ties to industry. Norwich Union P.L.C. sponsors its insurance professorship, currently held by Professor Paul Fenn, and AIRMIC has strong links with the school. Indeed, the university is hosting the annual AIRMIC conference this week, and Willis Corroon P.L.C. sponsors two Nottingham University students to attend the conference.

Mr. Diacon stressed, however, that the University does not "train people to go into risk management." Rather, it provides its "high caliber" business undergraduates with an understanding of risk management.

"The profession of risk management is not clearly defined enough," said Mr. Diacon. Many of his students perceive risk management itself as a "backwater career."

"Our graduates are high quality people who do not want to get locked into a risk management job too early in their career," he said, noting that many graduates would rather go into risk management consulting than an industrial company's risk management department.

All areas of management need risk management education, he said. "But there are not enough management courses (in the country) with risk management in them," he said.

And, "there are not enough skilled academic staff in insurance or risk management," said Mr. Diacon, who graduated in mathematics and science from the University of Nottingham and then earned a Ph.D. in industrial economics at the university.

The Assn. of British Insurers is "sponsoring Ph.D. students to put more people into academia," Mr. Diacon said. BI

Graduate credits program with fast track to success

Sarah Laycock, one of the first graduates 10 years ago from Glasgow, Scotland-based Glasgow Caledonian University's risk management program, credits her degree for her fast-track career.

Now a director of J&H Global Risk Management Consultancy Ltd. in London, Ms. Laycock says "I wouldn't have got where I am today without the degree."


Ms. Laycock

Ms. Laycock, who is originally from Glasgow, Scotland, and chose the program partly for its very practical approach, said she has never regretted her decision.

Her education gave her the opportunity to "compete for jobs at a much younger age."

After graduation in 1985, Ms. Laycock joined the risk management department of U.K. media group Pearson Group P.L.C. as assistant risk manager. Two years later, at age 23, she was appointed risk manager of British chemical company Chloride Group P.L.C., meeting one of her personal goals early.

"I had wanted to be a risk manager by the time I was 25 years old," Ms. Laycock said.

After spending more than 3 years at the company, however, the company was restructured and she was laid off.

It was the height of Britain's economic recession and a time when many professionals found themselves out of work, but Ms. Laycock says she received "four job offers in four days."

She chose to "move into consultancy because it offered the greatest challenge." She was appointed a director of J&H's risk management consulting group "before reaching 30."

Ms. Laycock noted that her fellow graduates also have risen faster than many in the industry.

"Quite a few graduates went into insurance companies and were propelled through the companies' graduate training programs," she noted.

"There are very few Glasgow graduates that don't get good jobs at the end of the course," she said.

While there "will always be a place for a specialist risk management degree," Ms. Laycock also thinks that risk management education will increasingly be focused on those taking broader management degrees and those already working as managers.

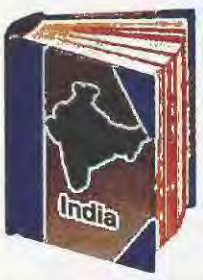
"I have seen a growing trend toward having risk management as options on business courses and there are also more insurance degrees available," she said.

—By Carolyn Aldred

More demand for risk management skills expected in India

By KATE TILLEY

BOMBAY, India—Privatization of India's insurance industry is expected to promote risk management education in India.



India's government has committed to privatizing the state-controlled industry and allowing foreign insurers and brokers to conduct business in the nation (*BI*, Feb. 13; Oct. 31, 1994).

India's planned liberalization of the insurance industry will increase opportunities for risk management education, said T. Ramanan, chairman of the Indian Institute of Insurance & Risk Management and group controller-risk management for Hindustan Lever Ltd. in Bombay and vp of the International Federation of Risk & Insurance Management Assns.

"This will encourage the development of more risk management consultancies in India," he said.

When the market opens up, foreign insurers will want reports on risks and how they can be managed, and that means risk management education levels will need to be increased, he said.

The IIIRM, which was formed in 1984, conducts courses on behalf of the U.K. Institute of Risk Management. Mr. Ramanan said 30 to 35 risk managers have graduated with an associateship or fellowship qualification over the past two years. The IIIRM also holds regular seminars and workshops in Bombay, New Delhi and Madras, he noted.

This year, the IIIRM will host its sixth international conference Oct. 12-14 in Bombay. Mr. Ramanan said more than 700 delegates are expected.

Anand Vaidya, general manager-environment, risk management and insurance for Bombay-based Essar Service Ltd., said the IIIRM encourages Indian risk managers to seek the U.K. qualifications and attend seminars. Essar is a major corporation with energy and power generation, steel, oil and gas refineries, and shipping units.

Education would "ultimately help risk managers decide what risks to retain and what to transfer," Mr. Vaidya said.

While companies conduct risk assessments now, the assessments will become more detailed as the bureaucratic procedures of nationalized insurance are broken down. The current tariff system constrains insurers from giving better rates and policy terms and conditions to corporations with better risk management procedures, Mr. Vaidya said.

Privatization of the industry, which was nationalized in May 1971, follows the recommendations of India's Malhotra Report (*BI*, March 28, 1994). The IIIRM is represented on a consultative committee of the Government Insurance Corp. of India, the main non-life insurer which is overseeing privatization.

Implementing reforms is slow, but Mr. Ramanan expects the legislative framework to be in place by December. Already, foreign insurers have set up risk management consulting firms in India, and can enter joint ventures with Indian insurers in order to operate there.

India passed the General Insurance Business (Nationalization) Act in 1972, which merged the existing 107 foreign and Indian companies into four companies controlled by the GICI. Though deductibles, captives and risk financing are not allowed, there is a "special rating" system that gives a maximum 30% premium discount for risks with "good features and good claims records," a 17.4% maximum discount for approved fire hydrants, and a 10% maximum discount for approved electrical systems.

Risk management is "in its infancy" in India, but there is great potential to contribute to economic prosperity and minimize property and human losses through application of risk management principles, Mr. Ramanan said. BI

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GLOBAL FOCUS

Geneva Assn. supports risk management education

By DON LEWIS KIRK

GENEVA, Switzerland—A pioneering Swiss insurance think tank is helping to keep risk management education on the cutting edge.

Its research on high-tech risks, such as superconductivity and genetic engineering, and product recall and manufacturers' liability issues make the Geneva Assn. one of Europe's leading think tanks on insurance theory. It has been involved in promoting risk management education for two decades.

Lectures by members and associates at universities in the United States and Europe have advanced the study of insurance economics, while publications like the "Geneva Papers on Risk and Insurance Theory" have become risk management textbooks.

The Geneva Assn., whose 70 members include the top executives from leading insurance companies worldwide, has ties to 300 universities and research centers. Although it conducted the first European studies on industrial risk management in 1976, the association also focuses on industrial development, insurance and economics. No risk managers are members of the association.

The Geneva Assn. is a driving force in promoting risk management education in schools of higher learning.

For example, the association is trying to help establish an international master of business administration degree at schools like the Institute for Insurance Science in Cologne, Germany, said Dieter Farny, director of the institute and chairman of the Geneva Assn.'s Scientific Committee.

The program would link interactive and multidisciplinary cooperation and focuses on strategic fields such as risk environments, the legal environment, the insurance market and technological environments.

"The problem of education is, first, to have a clear idea of what is at stake and stimulate an even higher management quality than we have now," said Orio Giarini, general secretary of the Geneva Assn.

Risk management education will take a big step forward when industry acknowledges technological and financial vulnerabilities as key economic issues, he said.

The Geneva Assn. has developed contacts and conducts regular surveys at 780 industrial companies, 300 universities and research centers, 380 banks, insurers and risk management organizations worldwide.

At London's City University Business School, for example, the Geneva Assn. supplies information for a data bank on educational programs in risk and insurance economics at European universities.

Since 1982, research on risk management education has been conducted in the United Kingdom, the Netherlands and Scandinavia. Research in Germany followed in 1988 and in Italy in 1993. Its findings are published in its monthly magazine "Etudes & Dossier."

The support has been a boon and badly needed, Mr. Farny said.

"Risk management (as an academic subject) is too often equated with practical safety management in a company," he said. "The tie to insurance is relatively new" in educational circles. As a result, European universities don't provide business students with adequate education in insurance and risk management, he admitted.

"Risk management is interdisciplinary by nature. It requires knowledge in law, biology and engineering to determine risks," Mr. Farny said.

"Risk management belongs within an insurance science curriculum," he said. "When something explodes, we must know why it explodes. It's an economic problem. The existence of a company can depend on it," he said.

To establish credibility for insurance economics, the Geneva Assn. holds regular lectures in European cities such as London, Paris, Geneva and Berlin.

Several seminars on various risk management topics are presented every year throughout Europe by association members.

In one of the seminars last year, 60 experts from the insurance industry and universities presented research on computer risks, environmental liability and safety management. Experts reported on the growing danger of using sophisticated computer software without assessing its potential risks.

For example, one report blamed a 1993 Lufthansa Airbus crash in Warsaw, Poland, on a computer safety code, which prevented the aircraft from braking as long as both wheels were not firmly on the ground.

"Unfortunately, Lufthansa had never been given access to the source codes," reported Dr. Anup Puri, of GEC Maroni Defense System, who warned against using software without computer source code access to validate its reliability.

"We see ourselves as an early warning system," said Walter Stahel, vice director of the Geneva Assn.. "In contrast to other educators, our main function is to uncover the dangers of technology."

"Look at Internet and the information highway, for example. We assume only responsible people will use this technology without considering the mad, the ignorant, terrorists or the malicious," he said.

"The management of pure insurable risks has become as strategically important as the management of entrepreneurial risk. It's a characteristic of modern post-industrial society," Mr. Stahel said.

By gathering information, promoting seminars, conferences and studies on corporate vulnerability and related insurance issues, the Geneva Assn. set a standard for risk evaluation.

The Geneva Assn. University Program on Risk, Insurance and the Economics of Uncertainty has sought to gain credibility for insurance economics. The program includes lectures, publications, seminars and scholarships for students studying risk and insurance.

Its annual lectures are held at universities throughout Europe and are accompanied by seminars for the European Group of Risk & Insurance Economists, a group of 200 risk and insurance professors from universities in Europe and elsewhere which has become a forum for scientific works dealing with insurance. The collaboration of university professors and lectures in related fields has attracted risk managers throughout Europe.

"Corporate vulnerability is our chief interest," Mr. Stahel said. "If we want to use highly vulnerable and complex technology, we must find ways to prevent its misuse."

The Geneva Assn. tracks the number of undergraduate and post-graduate degrees in insurance and actuarial science at European universities. Recent growth has been dramatic—the number of degrees has more than doubled to 112 degrees in 1992 from 49 in 1980, he said.

Those degrees are important because risk management is playing a larger role in business, said Jan Holsboer, president of the Geneva Assn. and executive board member of Internationale Nederlanden Groep N.V.

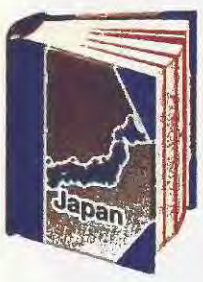
"Losses occur when risks are ignored," he said. "Controls and incentives must be installed to prevent people from taking the wrong action." BI

Kobe disaster raises new awareness

Quake fuels demand for crisis management instruction

By KATE TILLEY

TOKYO—Losses in excess of $200 billion from the Kobe earthquake are increasing Japan's focus on risk management education.



Since the Kobe quake (*BI*, Jan. 23; Jan. 30), there has been demand for Professor Isao Takei, Japan's only full-time teacher of risk management, to teach crisis management and disaster planning to government officials and private corporations. "They are seeking very practical courses" rather than theoretical information, he said.

Mr. Takei, who was an insurance underwriter with Tokio Marine & Fire Insurance Co. Ltd. before joining the Toyama University economics staff, said his interest in risk management began when he was exposed to foreign insurance markets and saw that rates, terms and conditions varied by a company's approach to risk management.

He has taught two required risk management classes to all of the university's business administration, law and economics students since 1980.

The classes are based on programs taught overseas, including Risk & Insurance Management Society Inc. and Assn. of Insurance & Risk Managers in Industry & Commerce education courses, Mr. Takei said. He also incorporates aspects of law, engineering, medicine and other sciences into the classes.

"My approach to risk management is a management, not an insurance one," he said.

The underwriter turned professor saw a need for an understanding of risk management among top level executives. The very top managers at companies need to look at the wide spread of risks and the alternatives for managing and financing them beyond insurance, he noted.

As Japan has moved beyond its post-war economic rebuilding era, the business community is beginning to appreciate the need for crisis and risk management. Factors which have fueled the increase in risk management awareness include:

- The planned introduction of a product liability law this July 1 (*BI*, Feb. 7, 1994). The government hopes it will help forestall litigiousness by forcing corporations to implement quality assurance, he said.
- The ease with which shareholders can take action against directors and officers of Japanese companies.
- Recent litigation over intellectual property rights by U.S. companies against Japanese companies.
- An increase in litigation from former employees as companies reengineer and reduce staff.
- Pressure to contain increases in medical expenses for injured workers, which are provided by some companies as an employee benefit.
- A consumer rights movement, which is forcing corporations to release more information on product hazards to the public.

An international risk management conference that Mr. Takei organized and hosted at Toyama in 1991 (*BI*, Nov. 18, 1991) helped to raise interest in the topic, he said. Tokyo-based Keidanren, a 6,000-member Japanese federation of employer organizations, was a major sponsor.

Mr. Takei plans to host another conference this November. He hopes to attract at least 300 practicing risk managers from Japanese companies.

While several organizations represent risk management interests in Japan, no single group represents the growing number of Japanese risk managers on a wide-scale basis.

But, "this will happen before too long," Mr. Takei said. "We are at the turning point for risk management in Japan, and that's why education is so much in demand."

Japan does have an affiliated member of the International Federation of Risk & Insurance Management Assns., the International Risk Management Society of Japan.

Although IRMSJ formed 13 years ago, it does not offer any educational courses, according to Yasuhiki Ushiba, the organization's president.

However, his Ushiba International Office, a risk management consulting firm, does run an education program of week-long courses twice a year.

This month, a course will be held in Tokyo on risk management information systems.

Mr. Ushiba said 25 to 30 people enrolled for each course, but not all are designated risk managers within their corporations.

"Risk management education is not popular yet, but I hope its profile will be raised," he said.

The Kobe quake has increased risk managers' awareness of quake exposure, and they are becoming more aware of the need for product liability, kidnap and ransom, directors and officers and intellectual property coverages, too, he said.

When IFRIMA next meets, Mr. Ushiba said he plans to discuss an education program which would follow the model syllabus prepared by IFRIMA. But until risk management is further advanced, there is not sufficient interest for courses that last for more than a week, he said.

"So far, there are very few risk managers in Japanese enterprises. Some have that title, but compared with risk managers overseas, they are only doing insurance buying, not a true risk management role." BI

Educational opportunities in Latin America grow with risk manager demand

By ROBERTO CENICEROS

Risk managers throughout Latin America are hungry for information on risk management issues.



Thirty or so Brazilian risk managers attended a recent risk management association gathering in Rio de Janeiro that addressed reinsurance.

The speaker at the Associacao Brasileira de Gerencia de Risco meeting was a broker from London.

Unlike in the United States, the meeting in Brazil was one of the few opportunities for Latin American risk managers to learn about reinsurance and other risk management issues.

Deregulation of reinsurance is new in much of Latin America and still to come to Brazil, making it a topic of great interest. And, many Latin American countries have fewer risk management education options than their European or U.S. counterparts.

"We don't have specific risk management courses in (Brazilian) universities as you have in the United States and Europe," said Luiz Paulo Costa Barcellos, risk manager in Rio de Janeiro for Shell Brasil S.A.

Risk managers throughout Latin America are attempting to upgrade the standing of their profession. In 1992, they formed ALARYS, which stands for Asociacion Latinoamericana de Administradores de Riesgos y Seguros, an umbrella group representing several Latin American risk management associations. Among other goals, risk managers would like to encourage the implementation of formalized education curricula for risk management (*BI*, Dec. 5, 1994).

Much of Latin America lacks university or independent programs that grant risk management accreditation, they say. But that varies by country.

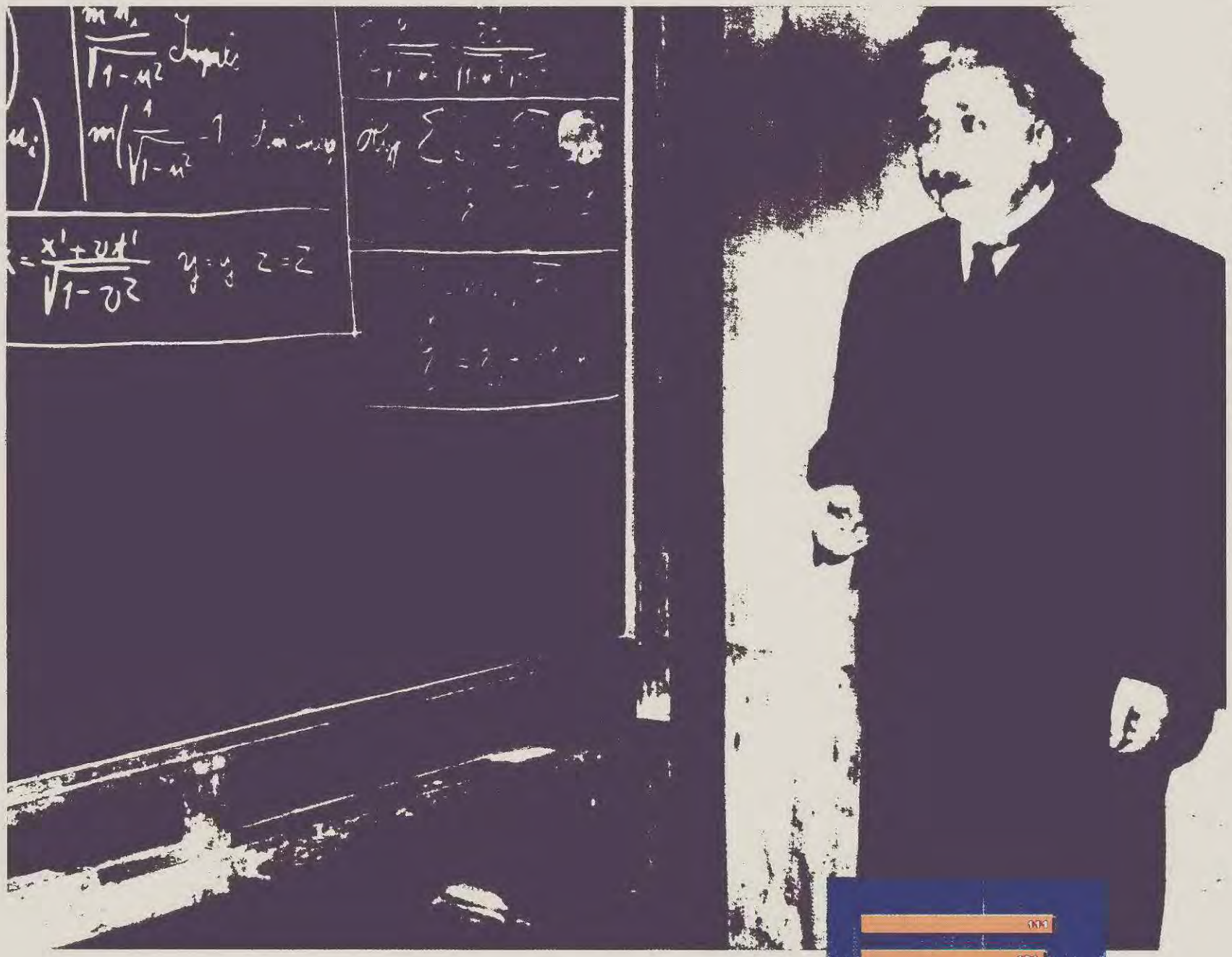
The Universidad Nacional Administracion de Mexico in Mexico City grants a masters degree in risk management, said Victor Manuel Garay Flores, risk manager for Asesoria Corporativa Cifra S.A., a retailer in Mexico City. In fact, Mexico is generally ahead of other Latin American countries in providing opportunities for risk management education.

Professionals in Mexico's risk management community first stirred interest in career studies about 15 years ago, said Mr. Garay Flores, a founder of the risk management association Instituto Mexicano de Administradores de Riesgos, Asociacion Civil.

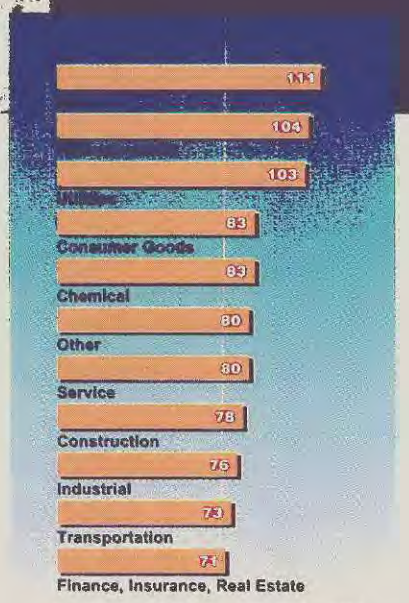
About five years ago, the universities' interest increased as large Mexican companies and multinationals

See **Latin** *on page G6*

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GLOBAL FOCUS

Latin America

Continued from page G4

moving into Mexico sought programs for their employees.

While some Latin American risk managers can match the sophistication of their counterparts anywhere in the world, receiving formal training often can depend on obtaining employment with multinational companies that have worldwide risk management programs.

Take for example, Jorge D. Luzzi, the Latin American risk manager working in Argentina and Brazil for tire manufacturer Pirelli S.p.A. He is also president of ALARYS.

He received his degree in business administration from the University of Buenos Aires. His first job was with Swiss insurance broker Argau in Argentina, and he later worked as an insurance manager for diversified manufacturer Ciba-Geigy Ltd. in Argentina. In 1987, he went to work in Switzerland for Pirelli and eventually moved back to Argentina and Brazil.

"In general, the people working in risk management are coming from the (international) insurance market and from the brokerages," Mr. Luzzi said. "At this moment, we don't have risk management at the university level."

There is a need for education in the basic areas of risk management, such as risk identification, risk analysis and risk transfer, Mr. Luzzi said. But because some risk managers work for companies that have provided them with foreign education and intense training, more complex courses also are needed. Even the basics, like risk management books printed in Spanish or Portuguese are lacking, he said.

Mr. Costa Barcellos earned degrees in civil engineering and economics before becoming a loss prevention engineer for Johnson & Higgins. Later, he worked for a French insurer in Latin America as a sales manager.

He said he depends on training he receives at work to continue his education. For instance, last year he traveled to London where he met and studied with other Shell risk managers from Asia, Europe, Australia and other parts of the globe.

While Mr. Costa Barcellos can rely on the resources provided by Shell, he said Brazilian colleagues who work for smaller companies lack educational resources. Meanwhile, their jobs are growing more complicated because the historically tight regulation of the Latin American insurance industry is giving way to implementation of free-market principles.

That means insurance buyers will have to make more financial decisions than before. Many could benefit from lessons in the basics of risk management, such as hazard analysis, Mr. Costa Barcellos said.

In the meantime, they learn where they can—including seminars from experts like the visiting London broker.

With deregulation, more international insurers and brokerages are showing an interest in Latin America and some of them are promoting education through seminars to help risk managers level of education rise for professional expediency.

Not all agree, however. Some brokers may believe that what a risk manager doesn't know about risk control means more business for the broker, he said.

"We have brokers and insurers helping a lot and some that are worried the customer is learning something," Mr. Luzzi said. BI

Institute

Continued from page G1

tered Insurance Institute's professional exams, no professional qualifications for risk managers existed in the United Kingdom, he said.

"The was no opportunity for further education through work and the IRM was formed to fill the gap," he said. Since its formation, the IRM has attracted students from a range of backgrounds and industries from all over the world.

Currently, the institute has students in 35 countries and its qualifications are recognized throughout the world, said Mr. Dickson.

The IRM's primary aim is to promote excellence in risk management, which it tries to do by:

- Identifying and establishing a body of professional knowledge relevant to risk management theory and practice.
- Issuing syllabi, textbooks and study guides and promoting the teaching of risk management by lectures, seminars and study days.
- Holding examinations to test candidates for admission to professional membership in the institute.
- Providing an organization for risk managers and promoting and protecting the interests of the risk management profession.
- Holding conferences and seminars and other meetings related to the risk management profession.

The institute offers exams in six subject areas, of which five are compulsory. These are: business organization and finance, risk analysis, risk control, risk financing, and corporate risk management. Students may choose the sixth course from among: occupational safety and health, insurance, or liability exposure.

Students earn associateship designation in the IRM, as well as the A.I.R.M. designation, when they complete the six courses. The institute considers this category of membership suitable for those who are interested in risk management but not working in the field.

The IRM grants fellowship status to students who have completed the associateship exams, prepared an original dissertation, have a minimum of five years of work experience and have participated in the CPD program. Fellows earn the F.I.R.M. designation.

Students who have completed the six exams and have an approved qualification, such as a degree in risk management, but lack the necessary work experience may register as graduates of the institute.

Those who wish to register in the institute without taking the exams may apply for an affiliate membership.

A court of 17 governors, who are elected each November at the IRM's annual meeting, manage the institute. "The governors come from a wide variety of risk management-related activities and have included risk managers in industry and commerce, risk management academics, professional consultants, insurance brokers, chartered loss adjusters, underwriters, health and safety specialists and company secretaries," the IRM prospectus notes. "Any fellow of the institute may" be elected to the court.

The IRM's daily operations are controlled by committees, including education, examinations, finance, development, information and membership committees.

Although the IRM is an independent organization, it maintains links with AIRMIC, he said. In January, AIRMIC and IRM merged their Education and Training Committees to form a joint panel chaired by Pearson's Mr. Holden.

"IRM was formed to educate risk managers, while AIRMIC plays an important role in training. We felt we could do the jobs better together rather than treading on each others' toes," Mr. Holden said.

Mr. Holden said few employers require professional risk management qualifications, but he believes this will change. "I think we are going to see better-qualified people. It has to be so," he said, adding he hopes more colleges and universities will offer risk management courses in the future (see related story, page G2). BI

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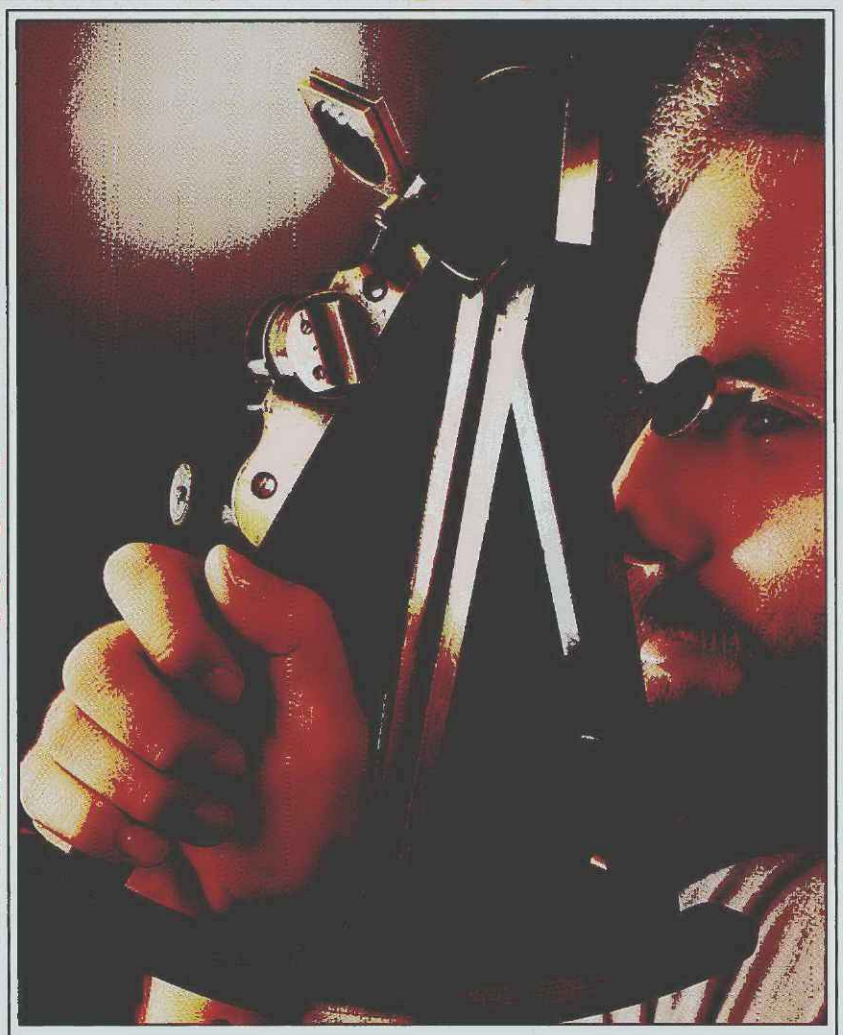
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Continued from previous page
bility insurance issues will become real. "The general liability insurance concerns will become urgent. They may well determine if the effort is successful. It is not likely in the modern commercial era for anyone to consider committing to a risky program worth well over $1 billion without a reasonably comprehensive insurance program. Will such a program be ready by the end of 1996?" he asked.

During the conference, some brokers said privately that they thought NASA's new program offered tremendous opportunities for the space insurance market. However, other brokers and underwriters were more skeptical. "I'm yet to be convinced there are greater opportunities," said one broker.

Meanwhile, Arianespace in Paris plans to offer free launch guarantees to its customers launching satellites on the new Ariane V rocket. The Ariane V is set to become operational at the end of 1996.

For the past eight years, Arianespace has offered an optional launch risk warranty for an additional premium through its French captive, Space Related Risks Reinsurance Co. Customers have been able to forego that coverage and instead buy insurance in the space insurance market, which would pay for a second launch if the first one fails.

"But customers thought we should go further," said Charles Bigot, chairman and chief executive officer of Arianespace during an interview at the Generali conference. "They said if you are convinced your service is a good service, you should give a guarantee."

Under the Ariane V plan, the launch guarantee will be free and mandatory. The launch costs will vary, but the guarantee will be covered by Arianespace's captive and will not be reinsured. "We guarantee our service," said Mr. Bigot. "If the service is no good, we give (customers) another launch."

As a result, Ariane V users will not need to buy insurance in the open space market to pay for a relaunch.

Underwriters complained privately about the premiums that the mandatory guarantee will take away from the space insurance market, though the satellites still will be insured during the launch phase. During a question and answer session, brokers also raised the question of whether satellite manufacturers or owners would have to buy the launch insurance anyway to be able to pay for a reflight through a different agency if the Ariane V rocket failed. A customer may want to go to another launch agency to save time, despite having the guaranteed Ariane V reflight.

But Arianespace is offering the launch guarantee because insurance capacity may not be sufficient for the large payloads on board the Ariane V rocket, which could be worth as much as $600 million to $650 million, noted Mr. Bigot. "We think the market will have some difficulty at the beginning to insure Ariane V (payloads)," because insurance capacity per launch at the moment doesn't exceed $420 million to $450 million, he said. "We think this guarantee will help. After awhile, maybe the insurance market will grow and provide more coverage." If that happens, Arianespace is flexible, "and if we consider it is in our interest to (insure) part of our warranty, we may."

Arianespace will cover the guarantee "as long as the insurance is not there," said Brigitte Vienne, the agency's risk manager. BI

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ASK A RISK MANAGER

Opportunity knocks: a chance for tort reform

Q **With runaway verdicts still overwhelming any meaningful efforts at tort reform, do you feel the new Congress really will change liability laws?**

A What a thought-provoking question. Politics and insurance are an interesting mix, so your inquiry can easily initiate a serious debate.

I'll bet the verdict you refer to involves the "infamous" coffee burn case, which resulted in an initial jury award of a few million dollars to a consumer who should have handled the product differently and, according to most folks, could have used a bit of "good, old-fashioned common sense."

Believe me, as a risk manager for a food service operation, that case certainly got my attention. If nothing else, such claims cause us to consider exactly what we do, why we do it and what the consequences could be if something in the delivery process goes "wrong."

I will agree that this particular case appears to belittle any honest efforts toward meaningful tort reform. Unfortunately, we've come to realize that the scenario will be repeated again and again. Yet, we shrug our shoulders, shake our heads at the failures of our judicial system and move on.

Without climbing on my soapbox, I'll say that the new Congress, through its "Contract with America," appears to be eagerly embracing and championing the cause of tort reform. It's no secret to anyone that corporate America is struggling to survive in the current economic climate (see story, page 2). The prevailing attitude towards "rightsizing" is simply another indicator that it costs too much to remain competitive in today's marketplace.

Statistics reveal that real job growth in this country originates with those small entrepreneurs who are willing to take a risk with the hopes of achieving the American dream. To think that this risk-taking attitude is stymied by the fear of dealing with liabilities associated with frivolous litigation is truly disheartening. If the great inventors throughout history were burdened with this fear, our world would be quite different than it is today.

Think about how many times your organization hesitated in designing a new product or delivering a certain service because of the dread of being sued. It is a sad commentary on how society tolerates a liberal "sue anybody" attitude.

The "Contract with America" is one that intends to question such irrational behavior and attempts to bring morality back into the mainstream. It should cause all of us to consider the human and economic costs of systems that are nothing more than "giveaways."

Just the thought that the courts are jammed with nuisance claims instead of dealing efficiently with the real criminals makes tort reform more urgent than ever. What each of us has to realize is the cost of frivolous claims and outlandish awards impacts everyone. The small-business operator, who had dreams of expansion, finds his or her hard-earned money spent to pay insurance premiums or absorbed by the increased cost of goods and services being passed along from other companies that are covering the expense of necessary insurance protection.

What we refer to as "this legal mess" did not appear overnight, so it will certainly take some time to get the system back on track.

We can take some reassurance that our friends on Capitol Hill appear headed in the right direction, but it's our responsibility to keep the cause in focus. It finally seems as if we have an excellent opportunity to create a change. For everyone's sake, let's make tort reform happen. BI

Would you like advice from an experienced colleague on a risk management, benefit management or actuarial problem? Four quarterly features in the Perspective section of Business Insurance can give you some answers.

Ask A Risk Manager, Ask A Benefit Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefit management issues and actuarial problems.



Susan Werner

This month's column on risk management issues is written by Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C. Dennis J. Nirtaut, managing director of compensation and benefits for Arthur Andersen & Co. in Chicago, answers questions on employee benefit plans.

William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefit issues. And, Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Monitoring insured's counsel

Court establishes insurers' rights

By Michael R. Brown

A RECENT CALIFORNIA RULING MAY have national implications for businesses that have retained independent defense counsel through their insurer.

An insurance company generally may not sue a policyholder's independent defense counsel for malpractice in connection with the handling of a case, even if the insurer suffers damage.

Despite that general principle, a California court of appeal ruled in *Assurance Co. of America vs. Ronald R. Haven* on Feb. 6 that an insurer may sue a policyholder's independent defense counsel for failing to meet the obligations imposed on that counsel by California law to disclose, inform, consult and cooperate with the insurer as to the underlying litigation.

As a result of this decision, if a policyholder attorney's failure to comply with those duties cause injury to an insurer, the insurer may be able to obtain damages from the attorney.

Furthermore, the California court noted that an insurer is permitted to require that a policyholder's independent defense counsel have errors and omissions coverage.

The court stated that this requirement must have been intended for an insurer's benefit in an action against the policyholder's defense counsel for breaching the statutory duties owed to the insurer. Hence, such a policy should provide coverage for this kind of claim.

Policyholders can expect that insurers will begin using the court's decision in their attempt to keep informed about litigation involving policyholders. Furthermore, breach of the duty owed by independent defense counsel may lead insurers to claim that policyholders have breached their obligations under the "cooperation clause" that is typically contained in insurance contracts, thus jeopardizing their right to a defense.

Policyholders will be unable to alter this decision in typical comprehensive general liability policies and, because of the significance of the ruling, insurers will not give up the right in more heavily negotiated insurance policies.

Indeed, this decision is likely to have national implications as it is relied on by insurers in other states that require the retention of independent defense counsel. These insurers will look to the California ruling as persuasive authority in their efforts to regain control over litigation involving their policyholders, at least to the extent of obtaining timely reports from defense counsel so that they may be informed of the status of the lawsuits and settlement possibilities.

Providing a defense

An insurer usually provides a defense to its policyholder by hiring competent defense counsel who represent the interests of both the insurer and the policyholder. In some instances, though, there is a conflict of interest or a potential conflict of interest between the insurer and the policyholder. Usually, this involves situations where the policyholder is trying to obtain coverage and the insurer is trying to avoid it.

When there is such a conflict, defense counsel may not be permitted to represent both the insurer and the policyholder. Instead, the insurer may be required to provide the policyholder, at the insurer's expense, with independent counsel who then controls the litigation. In California, this independent counsel is known as *Cumis* counsel.

California Civil Code Section 2860 defines and clarifies the court-made *Cumis* doctrine and specifies certain duties owed by *Cumis* counsel to an insurer.

Under Section 2860, *Cumis* counsel must: (i) "disclose to the insurer all information concerning the action except privileged materials relevant to coverage disputes"; (ii) in a timely manner "inform and consult with the insurer on all matters relating to the action"; and (iii) "cooperate fully in the exchange of information that is consistent with. . .counsel's ethical and legal obligation to the insured."

As a practical matter, the Section 2860 obligations require *Cumis* counsel at least to inform insurers on a timely basis about deposition dates, the retention of experts, settlement conferences, settlement proposals, evidence that may be important in settlement and the like.

Typically, though, *Cumis* counsel will view their role as completely independent of the insurance companies that pay their bills and thus may intentionally or negligently fail to fulfill these duties.

The California Court of Appeals' decision seems to have stemmed from just such a case.

Failures alleged

The Assurance Co. of America charged that *Cumis* counsel representing one of its policyholders in

See **Defense** *on next page*

Return-to-work problems

Controlling work comp costs in unionized companies

By Rebecca Shafer Bruce and William C. Bruce

RISK MANAGERS AT unionized companies face special obstacles when creating a return-to-work program. Unions will always oppose a proposed program until they realize that it offers them something. Management must show that a solid program is in the best interests of workers and the union.

It is not always necessary to bargain with the union to set up the return-to-work program. If the management rights clause in the collective bargaining agreement is broad enough, the company probably can go ahead without getting the union's permission. This clause says that management has the right to maintain discipline, establish reasonable work rules and run the business.

Federal law requires that an employer bargain in good faith with the union, but it doesn't require reaching agreement with the union. If a company bargains in good faith but reaches an impasse, it can implement the program. But it is preferable to win the union's agreement and cooperation.

When bargaining with a union, it's important to understand why the union has structured its contract the way it has. Workers compensation laws vary a great deal state by state. For instance, some states require a four-day waiting period; others have a 12-day wait. The union wants its members to be treated the same no matter where they work in the United States or even when assigned to other countries. The contract thus is structured to equalize differences among states. This has to be considered when setting up a return-to-work program.

Knowing your union pays off. Are members cooperative when you present a good case, or are they dedicated obstructionists? Are the members of the bargaining committee close to retirement age or in their 30s? By doing a little research, you can shape your appeal to the union so that it speaks to their interests.

Few employees are aware that workers comp costs affect their wages and job security. Discuss these points with the union's business agent, explaining how workers comp affects the profit-sharing program and financial survival of the company.

It's important to translate raw numbers into information that people can grasp. For instance, let's say your company is paying $10 million a year in workers comp. You can translate that into lost jobs and lower bonuses and so on. Ask the union business agent to convey this information to the membership. The key point is that workers comp isn't just the company's problem; it's the union's problem, too.

The impact can be both indirect and direct. Union welfare funds may be used up by employees out on spurious workers comp claims. Are union dues unnecessarily being stopped when members are out of work? Such things can drain the union's financial resources.

Union members may rightly wonder, "What's in it for us?" Money talks. Consider sharing the savings from a return-to-work program with participating employees. This should be paid as bonuses, not wages, so it is an incentive, not an ongoing obligation.

Using an existing committee, such as a joint union-management safety committee, can be a good starting point to discuss how to most effectively return injured employees to work. The same type of program can be offered to employees who are injured outside of work. Programs that encompass both non-occupational and occupational injuries are called absence-management programs and work well for many companies.

Union members may rightly wonder, 'What's in it for us?' Money talks. Consider sharing return-to-work savings with employees.

Management commitment

No employer can implement a successful return-to-work program unless senior management understands the concept and is behind it 100%. Management must be willing to allocate the resources to improve safety and cut workers comp costs.

The union may test management to determine how strong the commitment actually is. When the union senses that management is truly committed to reducing workers comp costs and is willing to dispute grievances, face National Labor Relations Board inquiries and deal with possible workplace disruption, the chances for union acceptance increase dramatically.

What should go into a return-to-work program? One prerequisite is to eliminate collateral source payments and other disincentives to work. Otherwise, some employees may earn more when they stay out of work than by going back to work on modified duty. For example, if a long-term disability policy has no offset, employees receiving tax-free workers comp payments may also receive full LTD payments. As a result, they may receive more than 100% of wages while not working. When they return to their job or modified duty, LTD benefits stop and their income decreases. Not surprisingly, many employees in this situation will drag out their claims as long as possible.

Consider eliminating voluntary employer contributions to benefit plans when an employee refuses work in a suitable modified-duty position or refuses to follow company procedures. Perks should also be trimmed. For instance, a national airline revokes its travel pass if the employee fails to abide by its return-to-work policy.

Employers should periodically review all group benefit programs to ensure that all allowable offsets are used. Follow up with your claims administrator to ensure that all offsets are obtained. You should also review and revise company policies that may make it more profitable for employees not to work.

Another smart move is to request a "withdrawal card" when an employee requests a lump-sum settlement. This prevents the employee from reapplying for the same job after receiving a permanency award. Ask the employee to sign a waiver to ensure that no other claims, such as an ADA claim, will follow.

The claim process should be monitored closely. Employers that take a vigorous stance on workers compensation defense send a message to the union and employees who seek to abuse the system.

All workers comp claims should be investigated immediately to ensure they are work-related. If not, the injured employee should be covered by the group health plan, which may have a deductible and will not reimburse the employee for lost wages.

It's important to attend all workers comp hearings. If an employer representative is at every hearing, this sends a clear message. Following up on each claim goes a long way toward eliminating malingering.

Creating a return-to-work program in a unionized setting takes more planning and effort. Ideally, you should make the union an active partner in controlling workers comp expenses. If that's not possible, many of the key elements of a good return-to-work program can be implemented even without union agreement. BI

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She also heads the Aon Risk Management Institute, an onsite workers comp training facility in the Glastonbury office.
William C. Bruce is an attorney and consultant with a national practice in labor, employment and risk management in his own firm in Glastonbury, Conn.



Ms. Shafer Bruce



Mr. Bruce

Defense counsel

Continued from previous page
litigation had:

- failed to keep ACA properly informed of the facts, theories, status, procedural developments and evaluations in the underlying action;
- failed to disclose to it all non-privileged information concerning that action; and
- failed to inform and consult with it on all matters relating to that action in a timely manner.

These failures allegedly precluded ACA from presenting statute of limitations and "peculiar risk" defenses that could have resulted in the dismissal of the underlying action.

ACA claimed the attorney's failure thereby caused damage to the insurer when, barred from raising the defenses, it had to settle the underlying suit for the $1 million policy limits.

After the trial court dismissed ACA's complaint against the attorney, ACA appealed.

The appellate court declared that the purpose of requiring *Cumis* counsel is to protect a policyholder's interests and not those of an insurer. Thus, the court said, *Cumis* counsel has no duty to an insurance company to investigate, prepare, assert or establish a defense or position in the insurer's favor.

But, although no such duty to protect an insurer's interests exists, the appeals court held that a policyholder's independent defense counsel could be found liable to an insurer to the extent the attorney breached the statutory duties imposed by Section 2860.

Of course, there are numerous issues that remain to be decided as a result of the appellate court's decision. For instance, if a policyholder's independent defense counsel intentionally fails to meet its statutory obligations to an insurer, can it be held liable for punitive damages?

And does defense counsel's E&O coverage apply only if such a breach was negligent?

One thing is clear, however. The appeals court's ruling is destined to significantly change the relationship between insurers and policyholders' independent defense counsel. BI



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Colorado

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fully insured employers to join so they can increase their health care purchasing leverage.

State legislators gave The Alliance permission last year to form a Cooperative for Health Insurance Purchasing, or CHIP, that will serve as a purchasing agent for employer members, including small, fully insured companies.

In Colorado, businesses with 50 or fewer employees represent 93.8% of the state's employers, according to a survey by The Alliance and the National Federation of Independent Business. Based on the large number of small employers in the state—more than 126,000—The Alliance's new purchasing cooperative could potentially cover from 131,400 to 257,600 employee lives for the small-group market. That estimate is based on the number of small employers that are dissatisfied with the health insurance coverage they currently offer and those that cannot afford to offer insurance.

"It's important to give smaller companies the ability to share in a large purchasing alliance," commented Dick Esser, vp of human resources for Amax Gold Inc., a gold mining company with 30 employees in Denver that belongs to The Alliance. "If we don't, we'll see large employers continuing to enable themselves to get reductions in health care, but in the long run the cost burden on smaller employers will come back to haunt large employers."

Benefits experts say health care providers will continue to operate inefficiently until all purchasers—large and small—demand the same level of cost control, service and accountability.

"Small employers have a hard time negotiating rates because of their size, but cost-shifting will continue until all purchasers are treated the same," said Sally Leibbrandt, corporate services manager for Axem Resources Inc., an oil and gas production company in Denver. Axem, which employs 50 workers, is a self-insured member of The Alliance.

"This puts pressure on the providers because we are all coming to the table together. My size is not important; I can come to the table with the clout of a Coors Brewing Co. or a Public Service Co. of Colorado," both of which employ more than 6,000 workers.

The emergence of "hybrid" health care purchasing alliances, which serve both small and large employers' interests, is a growing trend.

Employers in Minnesota and Illinois have implemented similar projects designed to improve small employers' access to a broader range of cost-effective health plans (*BI*, Dec. 26, 1994; Sept. 19, 1994).

And, a report published in December by the Health Care Services arm of Smith Barney Inc. predicts that 30% of the insured population will be covered by such health care purchasing cooperatives by the year 2000.

Evidence is emerging that small group purchasing pools do control costs. For example, the Council of Smaller Enterprises, a Cleveland-based purchasing alliance of employers with fewer than 500 workers, recently reported an average rate increase of 2.5% for 1995—the smallest increase in the group's history and less than half the medical care inflation rate for the Greater Cleveland area.

But, purchasing alliances do more than harness employers' buying power or provide small employers access to more affordable managed health plan options, experts say. The entities also conduct many of the time-consuming purchasing functions and complex health plan evaluations only the largest employers have the staff and resources to perform.

"In addition to negotiating better rates, it's important to bring improvement to the purchasing process," said Mark Tierney, chairman and chief executive of Network Management Services Inc. in Minneapolis, which The Alliance selected to perform the administrative functions for the CHIP. "If you think about how a small employer currently purchases health plan services, it's very complicated and requires as much administrative resources and labor as for a large corporation with 10,000 employees."

To ease that burden, the CHIP will, among other things, negotiate with area health plans, collect and distribute employer premiums and disseminate patient satisfaction information and data on clinical quality to employers and employees.

The Alliance will handle enrollments using standardized forms, perform marketing and sales tasks and interface with employer members. That should substantially reduce health plans' administrative costs compared to the expense they normally incur for small group administration, Ms. Brockbank noted.

"It's an attractive model. It reduces administration, has single billing and standardized benefits," said John Bertko, a consultant in the San Francisco office of Coopers & Lybrand L.L.P., who is working with The Alliance. "The CHIP will be negotiating, monitoring and partnering with health plans for the long term."

The CHIP will select at least three, and possibly five, health plan providers to offer fully insured gatekeeper model health maintenance organizations and/or point-of-service plans to CHIP members for a three-year period. The health plans will have to design the HMO and POS plan options to meet Colorado's mandated standard and basic benefit package requirements. The Alliance has specified the copayment and deductible levels the health plans should use.

Standardized benefit packages offer employees an "apples to apples" comparison of health plans, Ms. Brockbank said. Employees are then better able to select health plans based on cost and other characteristics, such as whether a specific doctor or hospital is included in a particular health plan's network or whether the network offers Spanish-speaking providers, she added.

"We think the quality of each of the plans will be comparable," she said, noting that The Alliance will require the health plans it chooses to adhere to employers' cost, quality and service standards—or be penalized financially.

For starters, each health plan must view The Alliance's combined membership as a single group for purposes of billing, enrollment and eligibility administration. The Alliance will divide member companies into three different groups: small employers, with two to 50 employees; medium-sized employers, with 51 to 200 employees, and large employers, with more than 200 employees.

The group is asking health plans to charge one set of base premium rates, with differences only for age, family status, and region, but health plans will be allowed to submit different base premiums for large vs. small groups.

In addition, the group is asking health plans to set various performance targets for claim adjudication accuracy and turnaround time, waiting time for non-urgent office

See **Colorado** *on next page*

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Colorado

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visits and the like. Plans must also agree to provide utilization and cost data, as well as submit HEDIS information. HEDIS is the Health Plan Employer Data & Information Set, an HMO report card that is distributed by the National Committee for Quality Assurance.

Alliance members and employers in the community with fewer than 50 employees can offer the new managed care plans, while employers with more than 50 employees can offer workers the choice between the new plans and a self-insured preferred provider network currently marketed by The Alliance.

"We will create a 'Health Mart' that offers one-stop shopping," Ms. Brockbank explained. "Under this model, we can take our volume and use our leverage to purchase health plans based on quality, price and service levels."

The Alliance hopes the CHIP will increase competition among managed health care plans in Colorado and encourage more employers to offer capitated, rather than fee-for-service, health plans.

Currently, about 10 HMOs operate in Denver and six others have plans to enter the market. But the metropolitan area is dominated by Kaiser Health Plans and FHP Corp.

"Denver can't support 16 HMOs, but we need more than two giants," Ms. Brockbank said. "The timing is right to inject competition into the marketplace" by asking managed care plans to bid for the CHIP's business.

At the same time, she said, "very few of our current self-insured members offer an HMO, because we've been successful in controlling their health care cost increases through our PPO."

But, many employers now believe closely managed health plans, like HMOs, offer the best way to control costs.

"I'm convinced that if we are going to solve the health care problems in this country, we'll have to go the capitated route," said Bill Coors, chairman of Adolph Coors Co. in Golden, Colo., and the founder of The Alliance.

The Alliance will not create economic incentives to steer employers toward any particular health plan, but individual employers will be allowed to set employee contribution levels based on the cost of the various health plans.

"This is a good strategy because it's not a total replacement" of fee-for service plans, which is less palatable to employees, Coopers & Lybrand's Mr. Bertko said. "The movement into managed care will occur as planned, based on consumer education and choice." BI

Indicted

Continued from page 3

prison terms ranging from five to 20 years. If convicted of all charges, Messrs. O'Keefe, O'Brien and Bennett face statutory maximums of 295 years in jail and $28 million in fines; Mr. Schmitz faces 215 years and $28 million in fines; and Mr. Schmidt faces 95 years and $4.75 million in fines.

Messrs. Schmidt, O'Brien and Schmitz also pleaded not guilty last week and along with Mr. O'Keefe were released on bond. Mr. Bennett is scheduled to be arraigned this week.

Mr. Bennett was previously involved in a failed attempt to win a Louisiana license for Security American Mutual Risk Retention Group Inc., which regulators found to be capitalized with a forged certificate of deposit. Mr. Bennett said at the time that he believed the CD to be genuine (*BI*, Oct. 16, 1989).

Previously, Mr. Bennett was sued by American Interfidelity Exchange, an Indiana risk retention group for which he arranged reinsurance through a London firm that had no binding authority for the reinsurer.

Physicians National, a medical malpractice risk retention group, was ordered into liquidation in November 1991, a few months after it had been placed in conservation and was barred in about 14 of 44 states where it did business.

An avalanche of litigation followed the collapse, including civil lawsuits by the Louisiana department against Messrs. O'Keefe, Schmidt, O'Brien and Bennett (*BI*, March 21, 1994).

The allegations in the criminal indictment echo the department's charges in its civil suit.

The indictment charges that the defendants:

- Diverted more than $7.5 million of Physicians National policyholder funds for their own benefit or the benefit of companies they controlled.

Messrs. Schmidt, O'Brien and Bennett personally received about $5.7 million in purported "profits" under an agreement by which BCI supposedly assumed malpractice business written by Physicians National, prosecutors allege.

Associated Insurance Consultants Inc., a New Orleans firm operated by the defendants, also received about $1.9 million in fees on the business, the indictment says.

Mr. Donaldson had been charged in a separate indictment with signing the reinsurance agreement even though he had no binding authority for BCI and concealing the agreement from BCI's auditors.

- Obtained excess-of-loss reinsurance for BCI with Sphere Drake Underwriting Management (Bermuda) Ltd. to make the BCI reinsurance deal appear more financially secure. The defendants later canceled the Sphere Drake coverage and recovered unearned premiums, the indictment says.
- Canceled physicians' policies and offered less attractive replacement coverage through Physicians Medical Indemnity Assn., a company formed by the defendants and purportedly insured by BCI. Premiums collected through PMIA were never paid to BCI and it was never intended that BCI would pay any claims, prosecutors charge.
- Pressured claimants to settle by noting that BCI was an offshore company from which they might have difficulty collecting.
- Offered political protection and "the use of $527,105" of Physicians National funds to "the attorney for the Louisiana Department of Insurance." The defendants then suggested various ways the lawyer could cover up the alleged bribe, according to the indictment, which does not identify the lawyer as Mr. Moore.

Law enforcement authorities last month accused Mr. O'Keefe of discussing a coverup with Mr. Moore. Mr. O'Keefe denies any such discussions.

- Failed to pay $140,000 in federal excise taxes on premiums collected from physicians.

Mr. O'Keefe said this money was being held in a trust account.

Along with multiple mail and wire fraud, money laundering and conspiracy charges, the indictment seeks an order requiring Messrs. O'Keefe, Schmidt, O'Brien and Bennett to forfeit $6.2 million. BI

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Members make their case against Merrett, auditor

By STACY SHAPIRO

LONDON—The first Lloyd's members action group trial that includes a syndicate auditor among the defendants began last week as members of former Merrett syndicates brought Ernst & Young to court.

The action brings Lloyd's of London members into the "nightmare world" of the American tort system, where he who has the deepest pocket pays, said plaintiffs trial lawyer Anthony Boswood.

Lloyd's names are deemed to have deep pockets, but they are not giant corporations, said Mr. Boswood, who represents Lloyd's members suing to recover their share of losses on now-defunct syndicates underwritten by former Lloyd's deputy chairman Stephen Merrett.

Some of the members are wealthy, and their losses are no more than an "inconvenience," but others are not wealthy and have lost their homes and inheritance, said Mr. Boswood. "Death is no escape," he added, because members' estates are still liable to pay Lloyd's losses.

So began the first in a series of action group trials in which up to 2,000 of the 4,018 members in the open 1985 underwriting year are suing members agency Merrett Syndicates Ltd., managing agency Merrett Underwriting Agency Management Ltd., underwriter Stephen Merrett and syndicate auditor Ernst & Whinney, now known as Ernst & Young.

The members allege negligent closure of syndicate 418/417's 1982 underwriting year and the underwriting of 11 runoff reinsurance contracts that year. Merrett instead kept the 1985 underwriting year open, which has cost members £163.6 million at the end of 1993 ($242 million at the appropriate exchange rate) and could cost as much as £723.2 million ($1.17 billion), Mr. Boswood said. The losses relate mainly to American asbestos and pollution claims.

Mr. Boswood, successfully negotiated a £116 million ($186.9 million) settlement in 1992 for 987 members belonging to underwriter Richard Outhwaite's defunct syndicate, ending the lengthy trial without a judgment (*BI*, March 9, 1992). Those mem-

See **Merrett** *on next page*

Most 'Estonia' claimants accept settlement offer

OSLO, Norway—Some 98% of the 2,221 survivors and relatives of victims from the September 1994 "Estonia" ferry disaster in the Baltic Sea accepted a compensation offer from Assuranceforeningen Skuld, the Norwegian protection and indemnity club that wrote liability insurance for the vessel.

The other 2% have given notice that they reject the offer but it's not known what action they will take, a Skuld spokesman said.

Oslo-based Skuld made the settlement offer of 400 million to 500 million Swedish kronor ($55.2 million to $69.1 million) in January (*BI*, Jan. 16; Oct. 3, 1994). The offer provides differing levels of compensation depending on claimants' nationalities. Claimants from Estonia, Lithuania and the former Soviet Union would receive 35% less compensation under the settlement than what Swedes and other Western Europeans would receive.

Skuld said at the time of the offer that the scales reflect cost of living differences in Western and Eastern European countries.

Payments are expected to begin in May.

Henning Sjostrom, managing director of Stockholm-based law firm Juristhuset, which represented some of the minority claimants, and a critic of the compensation offer, said that at least one of his clients will contest the compensation offer in court.

Although he thought the offer was unacceptable, Mr. Sjostrom said he was unable to advise his clients not to accept it since many, especially those from Estonia and Lithuania, do not have the money to fight it in the Swedish courts. In addition, the survivors and victims' family members are still grieving and are not interested in arguing about money, he said.

"A few said 'no', but none from the Baltic states," he said.

He said he is preparing a case for one Swedish client to fight Skuld. "She told me that she is suing because 'it is as though they hit me in my face, they killed by 19-year-old daughter and now they are offering me 50,000 crowns' ($6,770)."

The P&I club spokesman said that if the Swedish courts award any claimant a higher offer, then Skuld will pay all of the claimants in that category the higher award.

—By Maria Kielmas

Deterring pollution

Group offers plan for environmental risk management

By DON LEWIS KIRK

Four major European insurers and a British pension fund management company are finalizing "best practice" standards for environmental insurers as part of a pact aimed at mitigating environmental risks.

Pledging to make "environmental considerations" a business priority, Swiss, British, German and Norwegian insurers said they intend to set premiums in line with policyholders' steps to limit environmental losses.

"Insurers have been dealing with natural catastrophe losses for 100 years and more," said cosigner Rudolf Kellenberger, executive vice director at Swiss Re Group. "We want to provide that knowledge to minimize the risk and show how to best finance those losses."

The insurer coalition wants to increase clients' awareness of environmental risks and thus help them control losses. Toward that end, the insurers also plan to help clients insure their environmental risks, Mr. Kellenberger said.

UNI Storebrand Group, Norway's largest insurer, initiated the agreement with the backing of the United Nations Environment Program. The group also includes General Accident P.L.C., Gerling Global Reinsurance Group, Swiss Reinsurance Co. and National Provident Institution, the British pension fund manager.

"We feel insurance and loss prevention. . .go hand in hand with (proactive) environmental protection," said Age Korsvold, president and chief executive officer of UNI Storebrand. "From an economic viewpoint, it is more profitable to employ resources in prevention than in paying insurance claims," he said.

By next month, the insurer plans to finalize a statement on the environment and the development of global economies that addresses key issues, including policyholder compliance to local, national and international environmental regulations.

See **Purify** *on page 26*

Hull loss insured in Romanian plane crash

BUCHAREST, Romania—The recent crash of a Romanian airline's Airbus A310 resulted in a $49 million insured hull loss, the broker on the risk confirmed.

A spokesman for Willis Corroon Group P.L.C. in London, which placed the coverage, could not provide details of liability coverage.

Coverage on the Airbus was led by British Aviation Insurance Group and placed mostly in the London market.

The Tarom airlines plane exploded and crashed shortly after takeoff from the Otopeni International Airport in Bucharest, Romania, on March 31. All 49 passengers and 10 crew members were killed.

The plane was en route to Brussels, Belgium, and 33 of the passengers were Belgian.

The cause of the crash had not been determined as of late last week, but reports surmised that it might have been caused by a terrorist bomb placed on board the airplane.

A spokesman at the French embassy in Brussels, Belgium, said an anonymous caller told the embassy a bomb had been planted on the plane. And, police in Brussels reported receiving a hand-written note from an organization called the "Hand of Allah," claiming responsibility for the crash. The note said, "The hand of Allah has hit the non-believers in the sky. Death to the infidels. Islam will conquer."

The Romanian incident is the latest in a series of crashes involving the French-made Airbus planes.

Last year, a Korean Airlines Airbus crashed in bad weather in South Korea, a China Airlines jet crashed after an aborted landing in Japan and a Russian Aeroflot Airbus went down in Siberia, believed to be due to pilot error (*BI*, Aug. 15, 1994; May 2, 1994; March 28, 1994).

—By Maria Kielmas



GRAPHIC BY JOHN HALL

Kiwi quake predicted

Experts disagree on potential loss costs to Wellington property

By KATE TILLEY

WELLINGTON, New Zealand—Insurers, engineers, social scientists and seismologists easily agree on one thing—one day "the Big One" will hit Wellington. Estimating the damage is not so easy, however.

The Wellington After the Quake conference, hosted by New Zealand's Earthquake Commission in Wellington March 27-29, examined a hypothetical scenario of such a catastrophe. The hypothetical was prepared as a background paper by the EQC, which is a government fund that covers earthquake risks through a premium levy on fire insurance policies. As of next year, however, the fund will provide earthquake coverage for homeowners only.

The EQC estimates in the scenario that insured damage from "the Big One," which was set at 7.5 on the Richter scale, could be $1.9 billion New Zealand ($1.24 billion) for residential losses, which would be covered by the EQC, and a similar amount for industrial and commercial losses, which after this year would no longer be covered by the fund. In addition, $1 billion New Zealand ($654.9 million) in damage to uninsured government property and infrastructure would result.

Many speakers at the conference said the damage estimates may be too low, particularly as claims tend to escalate in the months after a major quake.

Werner Schaad, head of the earthquake and volcanism group at Swiss Reinsurance Co. in Zurich, Switzerland, said he could think of no place of similar size to Wellington, which has a population of more than 325,000, with such a high earthquake exposure, and the insured portion of property was far higher than in other earthquake-prone cities like Los Angeles or Tokyo. He estimated that a large quake hitting Wellington; which lies on a fault line, would create an insured loss of more than $5 billion.

Property in the five zones that would be affected by a big quake in Wellington is valued at $73 billion New Zealand ($47.81 billion), including $22 billion New Zealand ($14.41 billion) in commercial and industrial risks, Mr. Schaad said. Business interruption would add between $3 billion New Zealand and $5 billion New Zealand ($1.96 billion to $3.27 billion). A $4 billion New Zealand ($2.62 billion) loss would, therefore, represent only a 5% damage ratio, he said. Swiss Re's probable maximum loss calculations assumed a much higher damage figure, he noted.

Mr. Schaad pointed out that the quakes in Northridge,

See **Wellington** *on next page*

Merrett

Continued from previous page

bers also alleged negligent underwriting by Mr. Outhwaite of 32 runoff contracts.

He is using many of the same arguments now that he used then.

Mr. Boswood claimed last week that by the time the Merrett syndicates wrote the 11 runoff policies, the U.S. litigation involving compensation for exposure to asbestos was "widely appreciated" by insurers. He claims Mr. Merrett played an active part in defending these actions, but various court orders may prevent plaintiffs from either using evidence to support this or at least the reading of the evidence in open court.

Nevertheless, the Merrett syndicates wrote the runoff contracts, thus exposing members to asbestos-related losses from other syndicates and insurance companies, according to Mr. Boswood. The "prudent underwriter" would have considered whether he should have bought high-level reinsurance for the runoff contracts, or calculated the premium and excess point on a sensible basis, he argued. But "Merrett Underwriting Management did none of these things," said Mr. Boswood.

Mr. Merrett has always claimed that underwriter John Emney wrote all the contracts and Mr. Emney was fired when the syndicate was left open. Mr. Merrett also has always claimed that he did not know the contracts were being placed.

But Mr. Boswood said that various transcripts from loss reviews and arbitrations show that Mr. Merrett approved all the contracts before Mr. Emney signed them.

Mr. Merrett also knew there was a problem with the contracts, and until the end of 1983 "misled" auditors Ernst & Whinney, the auditors hired to approve syndicate closures until 1985, Mr. Boswood said. When Ernst & Whinney discovered the problem with the contracts, it allowed the syndicate to be closed anyway, thereby wholly failing to discharge its responsibilities to members, Mr. Boswood said. "Lloyd's itself was misled" by Mr. Merrett, Mr. Boswood alleged.

The deterioration of the contracts was not unveiled to the Merrett board until April 1985, said Mr. Boswood. That year, Kenneth Randall became managing director of the Merrett group and said in a letter to the board that he was "shocked" by the way the losses were handled, the lawyer said. Mr. Randall then questioned whether there were other problems in other Merrett syndicates. The syndicates of the group have since shut down or moved to other agencies.

Mr. Boswood said he wonders why various Merrett executives who could shed light on what really happened will not be testifying during the three-month trial.

Those not testifying include Mr. Emney, now a regular expert witness, Mr. Merrett, and former Merrett syndicate 799 underwriter Robin Jackson, who played a major role in asbestos litigation. Jim Ayliffe, Merrett's claims manager, will be testifying.

In a press statement, Ernst & Young said last week that the action against Ernst & Whinney is "wholly misconceived." Though the members believe Merrett's accounts should have been qualified from 1979 onward because of unquantifiable asbestos and pollution losses, "no other syndicate or insurance or reinsurance company in the U.K. or U.S. were qualified for this reason," the auditor said.

Ernst & Young noted that 280 members are now discontinuing their action against the firm and another 756 members have been unable to demonstrate that the actions of Ernst & Whinney could possibly have caused them any loss "since those names were participating in the syndicate before the first audit complained of. . ."

The auditor also claims that many Merrett members have yet to demonstrate that their claims, which date from more than six years ago, are not time-barred.

Under a House of Lords ruling last year, a three-year statute of limitations from the time the members' damages manifested themselves as specified in the Latent Damages Action 1986 applies.

"Ernst & Whinney will be strenuously defending the high quality of work carried out by it for the syndicate," the statement read. "It is confident that the outcome of the trial will be in its favor."

Mr. Merrett did not return phone calls. BI

Wellington

Continued from previous page

Calif., in 1994 and Newcastle, Australia, in 1989, showed the impact of late claims and increasing claims costs. Thus, even a $4 billion New Zealand insured loss estimate for Wellington could double.

An engineer's report last year estimated that the total bill for replacing commercial buildings, contents, residences and infrastructure at $8.4 billion New Zealand ($5.5 billion), of which $3.8 billion New Zealand ($2.49 billion) would be commercial and industrial building replacement, said Sir Frank Holmes, professor emeritus at Wellington's Victoria University and a past director of the National Bank of New Zealand Ltd.

Sir Frank said he was "troubled by the widely diverse assessments of the cost of the big quake," suggesting insurers and financial institutions should conduct more research on the potential loss.

If a quake of the magnitude of the 7.2 temblor that struck Kobe, Japan, on Jan. 17 hit Wellington, it would cost $7.725 billion New Zealand ($5.06 billion) in reconstruction costs, said engineers Tony G. Lanigan, management and technology consultant with Wellington-based A.G. Lanigan & Associates Ltd., and David C. Hopkins, director-buildings division with the Wellington office of engineering firm Kingston Morrison Ltd.

Their figure included labor, plant and machinery costs. Among other costs, commercial and industrial buildings accounted for $4.596 billion New Zealand ($3.01 billion), and port infrastructure was assessed at $89 million New Zealand ($58.29 million). The cost of replacing gas, electricity, water and sewerage networks was estimated at $324.8 million New Zealand ($212.71 million), and telecommunications and broadcasting facilities at $120.6 million New Zealand ($78.98 million).

Even though the estimates are approximate, they are not irrelevant, Mr. Hopkins said.

The time it would take to reconstruct Wellington and the pattern of damage from a major quake would be similar to Kobe, agreed Hal Cochrane, director of the Hazards Assessment Laboratory at Colorado State University in Fort Collins.

But Mr. Cochrane argued that despite Wellington's smaller population—350,000, compared with Kobe's 1.4 million—and lesser industrial development, the ramifications for New Zealand's economy would be far greater than the Kobe quake's impact on the Japanese economy. When scaled for the size of the two economies, a Kobe-sized quake in Wellington would cause economic losses 10 to 20 times larger than those experienced in Kobe, he said.

George Walker, director of research for the Sydney office of Alexander Howden Reinsurance Brokers (Australia) Ltd., said he expected inflated building costs would be a major problem in Wellington, as they had been when Cyclone Tracy hit Darwin, Australia, in 1974 and after the Dec. 28, 1989, Newcastle earthquake (*BI*, Jan. 8, 1990; Jan. 1, 1990).

Post-cyclone inflation in Darwin after Cyclone Tracy, where building materials had to be flown in, transported by land or sent by sea to a remote part of Australia, saw the cost of building homes double, said Chris Henri, New South Wales regional manager of the Insurance Council of Australia.

Many insurers are ill-prepared for such severe quakes, speakers said.

Peter I. Yanev, co-founder and chairman of EQE International Ltd. in San Francisco, said although Wellington is on a known fault, the past four most damaging quakes in California had been on previously unknown faults. "We don't have the foggiest idea when or where the next earthquake will be," he said.

"The typical New Zealand insurance or reinsurance company is in about the same state of comprehending its earthquake risk as was the typical company in the U.S.A. and elsewhere before the industry debacle in the Northridge quake," Mr. Yanev said.

He said New Zealand insurers would be surprised by the cost of a Wellington quake unless they take steps to adequately determine their exposures before the quake occurs.

The Northridge quake—with total losses now at more than $20 billion, and an insured loss of $11.2 billion—caused damage similar to what a large quake in Wellington would produce, Mr. Yanev said. "Except for certain major commercial structures, such as high-rises, the structural characteristics of Wellington's buildings are very similar to Los Angeles," he said. Wellington should "milk the Northridge experience for all it's worth."

EQE's Northridge exposure estimate was $21 million, but its loss ratio was better than the market average, he said.

He blamed inaccurate initial seismological data and greater ground motion than anticipated for the blowout in insured losses. Underinsurance, which effectively lowered deductibles, was another factor, he said. Also blamed were adjusting practices, the hidden nature of claims and post-quake inflation of building costs.

Mr. Yanev also warned that "adjusting big claims without earthquake engineers is not good business." Adjusters did not understand earthquake damage, which meant buildings were sometimes torn down when they could have been repaired more cheaply.

Mr. Yanev said the EQC's $200 New Zealand ($131) deductible for household claims was so low as to be "ludicrous," and said California was increasing deductibles after the Northridge quake. "It took an industry disaster to convince individual companies that earthquake insurance should be disaster insurance, not a conveyance for trading dollars to pay for minor damage and/or home remodeling," he said.

Higher deductibles encourage retrofitting and other forms of risk reduction, he noted.

And, Wellington-based corporations have extensive business interruption coverage, Mr. Schaad said. If corporations in other areas, for example, Auckland, had suppliers' extension losses covered, they could claim if earthquake damage in Wellington caused their production to stop, he said.

David A. Middleton, EQC general manager, said estimates prepared for the EQC suggested a quake in Wellington would generate more than 100,000 household claims, amounting to $3 billion New Zealand to $3.5 billion New Zealand ($1.96 billion to $2.29 billion). The fund has $2.4 billion New Zealand ($1.57 billion), and additional reinsurance, he noted.

Bruce Cliffe, New Zealand's minister of finance, who oversees the EQC, confirmed that the New Zealand government would be "the insurer of last resort" if claims exceeded the EQC's reserves and reinsurance.

The EQC's reinsurers reimburse the EQC once claims exceed $1 billion New Zealand, providing another $1 billion New Zealand, Mr. Middleton said. The EQC's reinsurance is placed by Greig Fester in Auckland with major reinsurers.

The Insurance Council of Australia's Mr. Henri said reinsurance was akin to a loan, with reinsurers "clawing back" through increased premiums when they have a large payout.

However, Swiss Re's Mr. Schaad said although there was uncertainty about the extent of a potential Wellington quake loss, he was still confident the insured loss would "remain below $10 billion," and therefore he did not think there would be a major effect on reinsurance rates.

Mr. Cliffe said some in the commercial and industrial sector had complained about the decision to phase out the EQC's commercial earthquake coverage. This year is the last in which the commission will provide any coverage to commercial entities, and only to a maximum of 25% of a property's value (*BI*, Aug. 16, 1993).

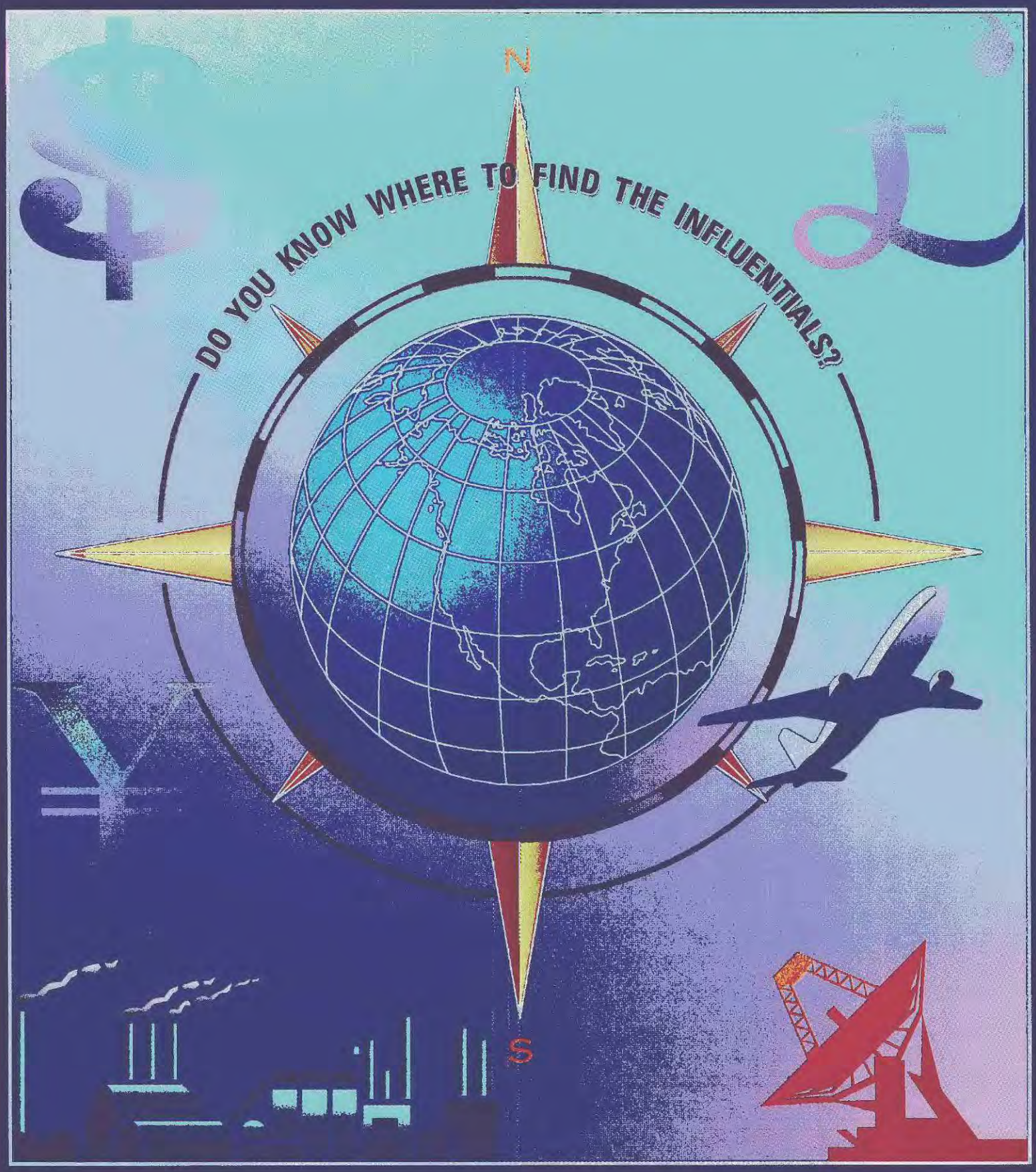
"It's been a rude shock to a lot of businesses," he said. But businesses must implement risk management principles and seek insurance in the commercial market, he said, adding it is not the government's duty to provide coverage. BI



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INTERNATIONAL

Purify

Continued from page 24

In a draft statement, the group pledges to develop products and services to promote environmental protection and risk management. For example, the insurers may design insurance products for clients with high safety standards on waste removal and provide environmental risk assessment services to smaller companies.

As part of their normal underwriting procedures, the group will develop and use environmental checklists and require their policyholders to provide environmental impact assessments of their companies' production and distribution processes. The statement also includes a commitment to orient insurance and investment products toward environmental responsibility. For instance, the insurers may offer more environmental liability coverage and invest pension fund assets in companies with environmentally sound practices.

In addition, insurers pledge to promote positive business relations by reviewing their own environment-related activities and reporting the results to the public.

Norbert Strohschen, director of Cologne, Germany-based Gerling Global Re, sees the group's primary aim as identifying solutions to environmental problems. "We want to make the public and governments aware of our environmental concerns. We must effect stricter building codes."

For instance, he said, too many buildings are close to water and exposed to storm and flood damage.

One possibility for active environmental insurance management would be a change in the way cars are insured, Mr. Strohschen said. He recommends basing premiums on miles driven and not the car's horsepower, which is how German underwriters currently calculate rates.

Mr. Strohschen believes the insurance sector can mitigate risks by offering lower premiums to policyholders that exhibit environmentally responsible behavior, such as not building in a flood- or earthquake-prone area.

Other international insurers are expected to join the environmental effort, UNI Storebrand's Mr. Korsvold said. "After all the companies have signed the declaration of active environmental management, the aim is to obtain the signature of 50 more companies from around the world," he said, adding that the insurers do not have a timetable for this goal.

"A growing number of insurance companies are very serious about environmental issues. This is not a matter of corporate philanthropy, but bottom-line business concerns," said Elizabeth Dowdeswell, executive director of the UNEP.

"Insurers are alarmed about the potentially devastating financial losses linked to a long list of environmental issues, from the impacts of climate changes to risks of contaminated landfills," she said. Ms. Dowdeswell said companies, including insurers, can make "smart" investment decisions by investing money in companies with strong environmental track records. BI

No pre-emption under McCarran

RICO is in harmony with state insurance law

By MARK HOFMANN

SAN FRANCISCO—The McCarran-Ferguson Act does not automatically pre-empt other federal laws, including the Racketeer Influenced and Corrupt Organizations Act, according to a federal appeals court.

Oxnard, Calif.-based Merchants Home Delivery Service Inc. had charged that Frank B. Hall & Co. and a number of other defendants had defrauded it by "overbilling on premiums for actual policies"; billing for "premiums on nonexistent policies" and billing for "direct, uninsured claims that were never paid to the claimants."

The suits stemmed from the actions of two account executives in Hall's Oxnard office who were indicted on grand theft charges in 1992 (*BI*, Nov. 2, 1992).

According to the 9th U.S. Circuit Court of Appeals in San Francisco, in addition to pursuing claims in the state courts, "Merchants alleges that these fraudulent acts were accomplished through use of the mails and wires, thus bringing them within the scope of RICO." Merchants initially sought judgment in the U.S. District Court for the Central District of California in Los Angeles.

Hall sought summary judgment from the district court. The court determined that "irrespective of whether Merchants' complaint states a claim under RICO, judgment in favor of Hall was appropriate because the operation of the McCarran-Ferguson Act makes RICO inapplicable to the facts alleged." Merchants took its case to the appeals court.

The appeals court sought to determine whether the actions cited by Merchants "fall within the business of insurance" as defined under the McCarran-Ferguson Act. Writing for the court, Circuit Judge Robert R. Beezer noted that the

The High Court says three factors determine 'whether a practice constitutes the business of insurance.'

U.S. Supreme Court has identified three factors that need to be applied to determine "whether a practice constitutes the business of insurance: (1) whether the practice has the effect of transferring or spreading the policyholders' risks, (2) whether the practice is an integral part of the policy relationship between the insurer and the insured, and (3) whether the practice is limited to entities within the insurance industry."

Then he noted dryly that "overcharging for premiums on actual policies is part of the business of insurance," holding that the act of overcharging met all three criteria. "We fail to see, however, how the collection of premium payments for nonexistent policies falls within the business of insurance."

Judge Beezer added that "because no policy is sold at all, this comes close to being the 'business of fraud,' as characterized by Merchants." Collecting money for false claims to be directly paid by Merchants is not even arguably the business of insurance, he said.

"As some of Hall's alleged practices fall within the business of insurance, it is necessary for us to determine whether the application of RICO to those practices would 'invalidate, impair or supersede' California's laws regulating those practices. We hold the application of RICO to Hall's alleged fraudulent acts is consistent with California's insurance laws."

Judge Beezer wrote that applying a federal law that prohibits acts that "are also prohibited under a state's insurance laws does not 'invalidate, impair or supersede' that state's laws" under McCarran-Ferguson. As RICO prohibits the same acts as the California law, there was no conflict.

The appeals court returned the case to the district court for further action.

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Nos. 93-56302, 93-56589, 94-55035. Merchants Home Delivery Service Inc. vs. Reliance Group Holdings Inc., et al, U.S. 9th Circuit Court of Appeals. March 28.

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Datebook

APRIL

APRIL 18-19. Achieving Quality Outcomes and Cost-Effectiveness with Case Management seminar in Cambridge, Mass., sponsored by the Institute for International Research; $1,295, or $895 for academic, government or hospital-affiliated attendants. Conference Coordinator, Institute for International Research, 708 Third Ave., 4th Floor, New York, N.Y. 10017-4103; 212-661-8740.

APRIL 18-19. Property & Casualty Licensing course in South Burlington, Vt., sponsored by the Vermont Chapter of the Professional Insurance Agents; $230 for PIA members, $330 for non-members. Barbara R. Harris, Director of Education, PIA of Vermont, 1 Ash St., Hopkinton, Mass. 01748; 800-222-2699.

APRIL 19-20. Intermediate Liability Reinsurance course in London, sponsored by the Chartered Insurance Institute College of Insurance; $762. **Also Sept. 21-22.** The CII College of Insurance, London Training Centre, 19-21 Billiter St., London EC3M 2RY, England; 071-702-9997.

APRIL 20. Tax & Accounting seminar in Scottsdale, Ariz., sponsored by the Alliance of American Insurers; $375 for Alliance members, $450 for non-members. Laurie Hendrickson, AAI, 1501 Woodfield Road, Suite 400 W., Schaumburg, Ill. 60173-4980; 708-330-8571.

APRIL 20-21. Increasing Human Resources Effectiveness seminar in Cambridge, Mass., sponsored by the Program on Negotiation at Harvard Law School; $1,950. Amy Philips, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

APRIL 20-21. Environmental and Chemical Exposure seminar in Baltimore, sponsored by the Defense Research Institute Inc.; $445 for DRI members, $495 for non-members. Defense Research Institute, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

APRIL 21. Pollution Liability: The Law and Available Insurance conference in Oak Brook, Ill., sponsored by the Chicago-West Suburban Chapter of the CPCU Society; $95 for CPCU Society members, $105 for non-members. Brenda Longacre, CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2774.

APRIL 23-25. 11th Annual Western Claim Conference in Anaheim, Calif., sponsored by the Western Claim Conference; $200. Francesca Archilla, c/o UNUM, 101 N. Brand Ave., Suite 800, Glendale, Calif. 91203; 818-956-2624.

APRIL 23-25. Teaching Negotiation in the Corporation program in Boston, sponsored by the Program on Negotiation at Harvard Law School; $1,950. Anne Daniels, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

APRIL 23-25. Market Conduct Regulation School in Philadelphia, sponsored by the Insurance Regulatory Examiners Society Foundation; $425 for IRES Foundation sustaining members, $495 for non-members. IRES Foundation, 130 N. Cherry, Suite 202, Olathe, Kan. 66061; 913-768-4700.

APRIL 23-25. Changemasters: EAP's For The Future conference in Chicago, sponsored by the Employee Assistance Society of North America; $425. EASNA, 2728 Phillips, Berkley, Mich. 48072; 810-545-3888.

APRIL 23-26. GICS '95 The Ninth Annual Symposium in Rancho Mirage, Calif., sponsored by the Institute for International Research; $1,295. Conference Coordinator, Institute for International Research, 708 Third Ave., 4th Floor, New York, N.Y. 10017-4103; 212-661-8740.

APRIL 23-28. 22nd International Workers Compensation College in Newport, R.I.; $550 for regular course for members of the International Assn. of Industrial Accident Boards & Commissions; $650 for non-members; $700 for judicial course for IAIABC members, $800 for non-members. International Workers Compensation College, 1575 Aviation Center Parkway, Suite 512, Daytona Beach, Fla. 32114; 904-252-2915.

APRIL 24-25. Detect and Prevent Provider Fraud and Abuse conference in Philadelphia, sponsored by the Institute for International Research; $1,295. Conference Coordinator, Institute for International Research Inc., 708 Third Ave., 4th Floor, New York, N.Y. 10017-4103; 212-661-8740.

APRIL 24-27. The Measurement of Building Firesafety workshop in Boston, sponsored by FIREPRO Institute Ltd.; $695 for FIREPRO Institute members, $795 for non-members. **Also June 19-22** in Lund, Sweden; **Sept. 18-21** in Minneapolis; **Oct. 23-26** in San Francisco. Course Coordinator, FIREPRO Institute Ltd., P.O. Box 600, Putney, Vt. 05346; 802-387-5600.

APRIL 24-28. Radiation Safety seminar in Evanston, Ill., sponsored by the Northwestern University McCormick School of Engineering and Applied Science; $1,595. Northwestern University, McCormick School, Technical Institute, 2145 Sheridan Road, Evanston, Ill. 60208-3124; 708-491-3365.

APRIL 24-28. Practicing Property Conservation seminar in Norwood, Mass., sponsored by Factory Mutual Engineering & Research, for insureds of Allendale Insurance, Arkwright, Protection Mutual Insurance or Factory Mutual International; $995. Factory Mutual Engineering Corp., Attn: Insured Education Training Resource Center, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

APRIL 25. Workers Compensation seminar in Elmsford, N.Y., sponsored by the Westchester Chapter of the CPCU Society; $80 for CPCU Society members, $90 for non-members. Brenda Longacre, CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2774.

APRIL 25. Warehouse Legal Liability seminar in Bloomington, Minn., sponsored by the Inland Marine Underwriters Assn.; $65. Susan Schuster, ITT Hartford, 612-844-3335.

APRIL 25-26. 1995 Work and Family Conference in New York, co-sponsored by the The Conference Board and the Families and Work Institute; $885 for Conference Board associates; $1,095 for non-associates. Customer Orders, The Conference Board, 845 Third Ave., New York, N.Y. 10022; 212-339-0345.

APRIL 26. Warehouse Legal Liability seminar in Chicago, sponsored by the Inland Marine Underwriters Assn.; $75. Ann Boehmcke, St. Paul Cos., 312-648-4909.

APRIL 26-27. Flexible Benefits Course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; $510 for IFEBP members, $570 for non-members. Registrations Department, IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

APRIL 26-28. Indoor Air Quality for HVAC Contractors and Operators short course in Philadelphia, sponsored by the MidAtlantic Environmental Hygiene Resource Center; $775. MidAtlantic Environmental Hygiene Resource Center, 3624 Market St., First Floor East, Philadelphia, Pa. 19104; 215-387-2255.

APRIL 27. Warehouse Legal Liability seminar in Independence, Ohio, sponsored by the Inland Marine Underwriters Assn.; $55. Cathy Hammer, Atlantic Mutual Cos., 216-642-0000.

APRIL 27. Spring Seminar in New York, sponsored by the New York Claims Assn.; no charge. Karen Chambers, Continental Risk Management Services, 180 Maiden Lane, New York, N.Y. 10038; 212-440-2889.

APRIL 27-29. National Dental EDI Council's Fourth Annual Conference in Phoenix, sponsored by the National Dental EDI Council; $375 for members, $670 for non-members. National Dental EDI Council, 1130 E. Missouri, Suite 530, Phoenix, Ariz. 85014-2716; 602-266-7740.

APRIL 27-29. Employment and Labor Relations Law for the Corporate Counsel and General Practitioner course in Boston, sponsored by the American Law Institute-American Bar Assn. Committee on Continuing Professional Education; $595. Registrar, ALI-ABA, 4025 Chestnut St., Philadelphia, Pa. 19104-3099; 800-253-6397.

APRIL 28. Tenth Annual Commitment to Wellness Committee conference in Canton, Ohio, sponsored by the Commitment to Wellness Committee; $95. Virginia Neutzling, Steering Committee Chair, 2223 45th St. N.E., Canton, Ohio 44705; 216-492-6739.

APRIL 28. Is the Insurance Industry in the State of California Overregulated? conference in Santa Clara, Calif., co-sponsored by the Santa Clara University School of Law, the Leavey School of Business and the Institute of Insurance Law & Regulation; $200 for SCU alumni and members of the Santa Clara Bar, $250 all others. Deirdre Santa Clara University, School of Law, Institute of Insurance Law & Regulation, Law House, Santa Clara, Calif. 95053; 408-554-5467.

MAY

MAY 1-2. Managed Dental Care Networks seminar in Phoenix, sponsored by International Business Communications; $1,195. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

MAY 1-2. 1995 Spring Symposium in Oakbrook Terrace, Ill., sponsored by the Illinois Assn. of Health Maintenance Organizations; $275 for IAHMO members, $350 for non-members. Illinois Assn. of Health Maintenance Organizations, 500 N. Dearborn, Suite 1119, Chicago, Ill. 60610.

MAY 1-2. The Health Care Antitrust Forum in Chicago, sponsored by the The Health Care Antitrust Forum; $725. Program Director, Health Care Antitrust Forum, 3 First National Plaza, Suite 1400, Chicago, Ill. 60602; 312-214-3299.

MAY 1-2. Lead Liability Litigation seminar in New York, sponsored by the Law Journal Seminars; $545. Law Journal Seminars, 345 Park Ave. S., New York, N.Y. 10010; 212-545-6111.

MAY 1-2. Managed Care: The New Contract with America symposium in Oak Brook, Ill., sponsored by the Illinois Assn. of Health Maintenance Organizations; $285 for IAHMO members, $350 for non-members. IAHMO Symposium, c/o Michael Argetsinger, 500 N. Dearborn, Suite 1119, Chicago, Ill. 60610; 312-321-0341.

MAY 2. Re-Engineering: Today's Underwriter, Tomorrow's Tools seminar in Cromwell, Conn., co-sponsored by the Underwriting Section Northeast and the Information Technology Section of the CPCU Society; $93 for CPCU Society members, $143 for non-members. Brenda Longacre, CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2774.

MAY 2-3. Instrumentation and Sampling Methodology for IAQ Surveys short course in Philadelphia, sponsored by the MidAtlantic Environmental Hygiene Resource Center; $575, $500 if also taking Investigating and Mitigating Microbial Contamination in Buildings, May 4-5. MidAtlantic Environmental Hygiene Resource Center, 3624 Market St., First Floor East, Philadelphia, Pa. 19104; 215-387-2255.

MAY 2-3. Vision & Eye Care Networks conference in Cambridge, Mass., sponsored by International Business Communications; $1,195. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

MAY 4-5. Drug and Medical Device Litigation seminar in Seattle, sponsored by the Defense Research Institute Inc.; $445 for DRI members, $495 for non-members. Defense Research Institute, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

MAY 4-5. Investigating and Mitigating Microbial Contamination in Buildings short course in Philadelphia, sponsored by the MidAtlantic Environmental Hygiene Resource Center; $575, $500 if also taking Instrumentation and Sampling Methodology for IAQ Surveys, May 2-3. MidAtlantic Environmental Hygiene Resource Center, 3624 Market St., First Floor East, Philadelphia, Pa. 19104; 215-387-2255.

MAY 4-5. European Insurance and Reinsurance Law course in London, sponsored by the Chartered Insurance Institute College of Insurance; $777. The CII College of Insurance, London Training Centre, 19-21 Billiter St., London EC3M 2RY, England; 071-702-9997.

MAY 4-5. Dealing With An Angry Public seminar in Cambridge, Mass., sponsored by the MIT-Harvard Public Disputes Program; $1,175. Elizabeth Walker, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

MAY 6-7. Case Management Practice seminar in Chicago, sponsored by the Foundation for Rehabilitation, Certification, Education & Research; $425. Foundation for Rehabilitation, Certification, Education & Research, 1835 Rohlwing Road, Suite E, Rolling Meadows, Ill. 60008; 708-818-1967.

MAY 7-10. 1995 Annual Meeting in Miami, sponsored by the National Council of Self-Insurers; $300 for members; $425 for non-members. The National Council of Self-Insurers, 10 S. Riverside Plaza, Suite 1350, Chicago, Ill. 60606; 312-454-5110.

MAY 8-9. Specialty Capitation & Risk Sharing conference in Philadelphia, sponsored by the Institute for International Research; $1,295. Conference Administrator, Institute for International Research Inc., 708 Third Ave., 4th Floor, New York, N.Y. 10017; 212-661-8740.

MAY 8-10. 1995 Catastrophe Conference in New Orleans, sponsored by the American Insurance Services Group's Property Claims Services division; $295 for PCS subscribers; $395 for non-subscribers. PCS Conference Registration Department, 700 New Brunswick Ave., Rahway, N.J. 07065; 908-388-5700.

MAY 8-10. Washington Legislative Update in Washington, sponsored by the International Foundation of Employee Benefit Plans; $625 for members, $715 for non-members. Registrations Department, IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710.

MAY 8-10. Fundamentals of Employee Benefits Management course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; $1,175 for IFEBP members, $1,375 for non-members. **Also June 19-23.** Registrations Department, IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

MAY 8-11. Team-Based Compensation: Measurements, Rewards & Incentives in Chicago, sponsored by the International Quality & Productivity Center; $1,195 for conference, $1,595 for conference and one workshop, $1,795 for conference and two workshops. International Quality & Productivity Center, P.O. Box 43155, Upper Montclair, N.J. 07043-7155; 1-800-882-8684.

MAY 9-12. Intermediate Reinsurance Workshop in London, sponsored by the Chartered Insurance Institute College of Insurance; $1,271. The CII College of Insurance, London Training Centre, 19-21 Billiter St., London EC3M 2RY, England; 071-702-9997.

MAY 9-12. Look to the Future Annual Meeting in Washington, sponsored by the Council for Affordable Health Insurance; $395 for Council members, $425 for non-members. Jane Northern, Council for Affordable Health Insurance, 112 S. West St., Suite 400, Alexandria, Va. 22314; 703-836-6200.

MAY 10. Insurance Coverage for Employment Related Liability Claims in New York, sponsored by the Practising Law Institute; $495. **Also June 7** in San Francisco. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 800-260-4754.

MAY 10-12. Risk Control: Practical Applications in Seattle, sponsored by the Risk & Insurance Management Society Inc.; $700 for RIMS members, $800 for non-members. **Also Oct. 25-27** in Orlando, Fla. Risk & Insurance Management Society, Education Department, 655 Third Ave., New York, N.Y. 10017; 212-286-9292. BI

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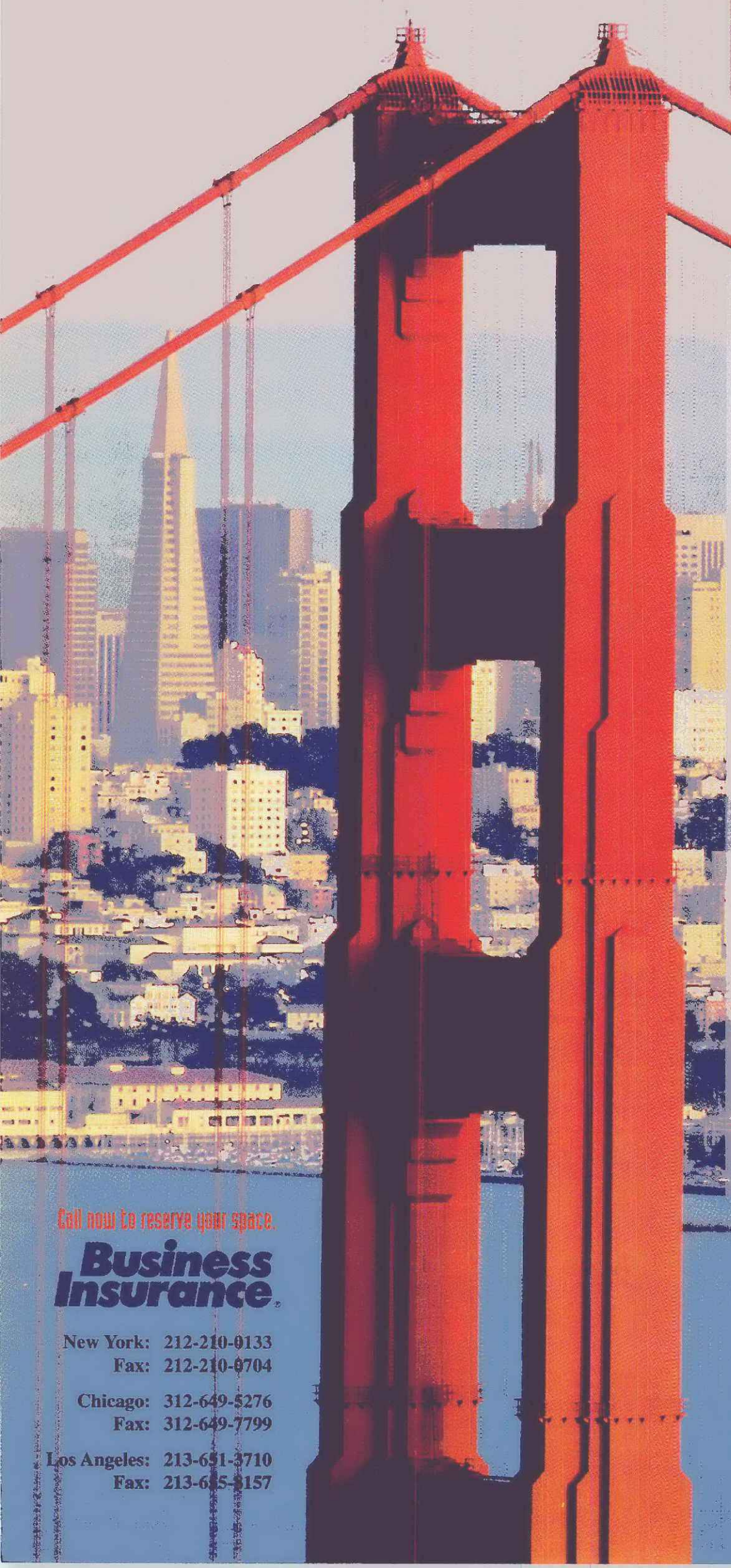
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The Home

Continued from page 1

a B-rated Home if the deal falls through, most agree.

Zurich and Home executives testifying at the hearing contended that the package proposed by Zurich is in the best interests of Home's policyholders, bondholders, shareholders and employees.

"Nothing would lead me to believe that, in the light of this transaction, the policyholders of this company would not be paid in full," said Steven M. Gluckstern, president and chief executive officer of Zurich Centre Investments Ltd. and chairman, president and CEO of Zurich Reinsurance Centre Inc. in New York.

Peter F. de Vos, managing director of investment banker Alex, Brown & Sons in Baltimore, said the analysis that the Insurance Department hired him to conduct indicates that "the Zurich transaction is fair to Home Insurance Co. and Home Insurance subsidiary policyholders in the aggregate."

Others were more skeptical.

Several representatives of policyholders testifying at the hearing opposed the deal, saying Zurich should put its assets behind the Home's liabilities if it wants to take over its profitable business.

Other policyholders complained that they had insufficient information to evaluate the proposal. If they ultimately decide that the deal would be bad for policyholders, they will seek to have it overturned in court, they said.

During a feisty first day of testimony, policyholder attorneys frequently interjected protests about the unavailability of some documents and the late availability of others.

The attorneys met with Zurich executives Monday night to request information and documents. On Tuesday they were more subdued but reserved their rights to object to the transaction after they had reviewed the documents that are to be made available to them.

Two competitors—units of American International Inc. and Chubb Corp.—also testified against the deal.

The hearing on the first-of-its-kind proposal to rescue an ailing insurer by other than outright purchase was conducted by Mr. Dupuis April 3 and 4 at The New Hampshire Department of Safety in Concord. New Hampshire is the domicile of Home Holding's principal operating unit, The Home Insurance Co. Representatives from six other states where Home has operating units also attended the hearing, as did recently appointed New York Superintendent of Insurance Edward Muhl.

The proposed transaction is important to regulators and insurers across the country because it may set a precedent for future rescues of insurers plagued with long-tail liability claims.

State regulators, led by Robert Solitro, deputy commissioner of New Hampshire, and interveners from policyholders and competing insurers were free to grill the Home and Zurich executives at the hearing.

Conspicuously silent were representatives of bondholders who were among the more than 100 people at the hearing. The bondholders may file written testimony with the New Hampshire Insurance Department, they said.

Late last month the bondholders proposed an alternative plan for rescuing Home by segregating its insurers into two pools. One pool would be structured to obtain an A- rating, while the second pool would have a lower rating and manage much of Home's existing business. The proposal was rejected by Home and received little initial support from rating agencies (*BI*, April 3).

In a last minute amendment to the proposal offered the weekend before the hearing, Zurich added $290 million in reinsurance to its previous $1 billion reinsurance program. The extra $290 million would be applied if the bondholders are paid from Home's assets and the money is needed to pay policyholder claims. Under the existing agreement, Zurich already guarantees interest payments on the outstanding $280 million in Home bonds for two years (*BI*, Feb. 13).

Late last week bondholders were still in negotiations with Zurich.

Moody's Investors Service last week lowered the ratings on Home Holdings senior debt to B3 from Ba2 and the insurance financial strength rating of Home Insurance to Ba3 from Baa3.

The reinsurance program is designed to attach whenever Home's assets are exhausted, said Mr. Gluckstern. "To the extent that Home has assets, it's the general intent that the reinsurance will not respond. That being said, the intention is clear that at such a time that the cash resources of Home are depleted, it's the intention that the reinsurance should respond," he said.

Central testimony at the hearing was given by the expert witnesses retained by the New Hampshire department: Mr. Grannan of Milliman & Robertson; Stephen P. Lowe, vp at Tillinghast, a unit of Towers Perrin in Weatogue, Conn.; and Mr. de Vos of Alex, Brown & Sons.

The Milliman & Robertson report provided three estimates of the deficiency in Home's loss reserves.

- $863 million. This is the minimum reasonable reserve deficiency estimate. This was calculated by comparing Home's reserving practices with the reserving practices of other insurers.
- $1.4 billion. This was described as an alternative reasonable estimate, but this was characterized as an optimistic view of Home's ultimate liabilities.
- $1.9 billion. M&R suggested that this as a less optimistic outcome once long-tail pollution and asbestos claims have been paid.

"We don't think that we can pinpoint a specific number for pollution and asbestos reserve deficiencies," Mr. Grannan said.

Unknown factors, such as the possible reform of the Comprehensive Environmental Response Compensation & Liability Act, known as Superfund, could substantially affect any estimates, he said.

Also, the assessment of Home's deficiencies does not include a consideration of possible short falls in reinsurance in the future if one or more of its reinsurers fails to pay claims.

However, based on the analysis, shortfalls in cash available to policyholders and bondholders likely would occur only if Home's reserve deficiency exceeded $1.9 billion.

Under that scenario, the $170 million debt held by Trygg Hansa SPP Holding A.B., debt held by Zurich and its co-investors, and profit paid to the runoff company set up by Zurich to manage Home's liabilities would not be paid. But Home's reserves, assets and reinsurance program would just cover policyholder and bondholder payments.

M&R's calculation of Home's loss reserves was repeatedly criticized by Steven J. Kolleeny, a partner at Skadden, Arps, Slate, Meagher & Flom who represents Home.

How much Home units ultimately owe in claims will be governed by issues such as whether policyholders win coverage disputes with Home units and whether its high-excess policies are ever pierced by losses. Home was often a high-level excess insurer for pollution and asbestos risks, he noted.

Also, M&R, and Tillinghast—which reviewed the M&R report—did not use actuarial methods that have been refereed by the Casualty Actuarial Society, Mr. Kolleeny complained.

"The methods that were utilized to come up with the report are not accepted actuarial methods by the governing body," he said.

The actuarial methods used were "something other than a wild-assed guess," countered Deputy Commissioner Solitro.

'I would expect Zurich to stand behind the contracts issued to my company,' says Charles S. Wilson.

In fact, actuaries are not limited to using methods that are refereed by the Casualty Actuarial Society, said Mr. Lowe of Tillinghast.

They can also use methods presented in other literature and papers, especially for emerging and evolving techniques like those used for assessing asbestos and pollution liabilities, he said.

However, the asbestos and pollution losses of Home could still turn out to be lower than the M&R report, said John Snyder, senior vp at A.M. Best, in an interview after the hearing.

The M&R report used Best's asbestos and pollution loss assessments that were made by the Oldwick, N.J., rating agency over a year ago, he said.

Those assessments were pessimistic when made and with better prospects for Superfund reform now, they might be even more pessimistic today, Mr. Snyder said.

The precarious financial state of Home was emphasized in testimony given at the hearing.

The company has lost a substantial amount of business and about 175 of its 3,000 staff have left since the company was downgraded by rating agencies in November 1994 (*BI*, Nov. 14).

If the Zurich deal is not approved by regulators and Home were to continue as a B-grade insurer, it would have to lay off a significant number of staff and insure only non-credit sensitive business, said Lars-Goran Nilsson, president and chief executive officer of Home Holdings.

"There would be significant damage to the company, but my best estimate is that it would be a manageable situation," he said.

Zurich already has picked up a significant amount of Home's business.

Through a cut-through endorsement to Zurich security, which was implemented shortly after the proposed deal was announced in December, Zurich-American Insurance Group picked up $35 million worth of Home's business, said Constantine Iordanou, president and chief operating officer of Zurich-American.

And after Zurich in February enhanced the arrangement, with Zurich-American issuing the policies and reinsuring the business with The Home, Zurich-American picked up an additional $225 million in annual premiums. Under this arrangement, Zurich pays to The Home 1% of the premium for each policy for three years.

Of the $225 million: $120 million was business that was canceled and rewritten; $91 million was renewal business; and $14 million was new business, Mr. Iordanou said.

Mr. Iordanou said Zurich continues to take on about $15 million to $16 million of Home business a day.

About 1,500 Home employees are expected to transfer to Risk Enterprise Management Ltd., a new Zurich subsidiary, to manage the runoff of remaining business and to Zurich-American to continue underwriting the current business.

Existing Home policyholders at the hearing were divided on the proposal.

Zurich should be compelled to stand behind all of The Home's liabilities, said Charles S. Wilson, president of Truk-Away of Rhode Island Inc., a trash hauling company in Warwick, R.I., which has policies with both Home and Zurich-American.

Truk-Away has gross sales of $12 million a year and is being asked to pay $5.7 million for its share of a site cleanup, he said.

"I have serious concerns about this transaction. . . .If it is to take place, I would expect Zurich to stand behind the contracts issued to my company," he said.

If it refuses, Zurich will be taken to court as policyholders seek to have the insurer made responsible to pay Home claims, added Andrew J. Enschede, an attorney at Williams & Zevnik P.C. in New York who represents Truk-Away and several other Home policyholders, including ITT Corp., Sara Lee Corp. and Whitman Corp.

"To the extent that Home is unable to meet its obligations to our clients and satisfy the claims of policyholders, we will pursue them to the fullest extent," he said.

Zurich could face law suits long before Home has to pay its long-tail claims.

Several other policyholders at the hearing said they had insufficient opportunity to review the Zurich proposal and therefore they would not object to the transaction during the hearing. However, if they disagree with the commissioner's final decision, they said they would appeal it to New Hampshire's Superior Court. Under New Hampshire law, the commissioner's decision can be appealed.

"We have a very strong concern that we have not had the statutorily required access to discovery materials that would allow us to be fully prepared for the hearing and to allow us to present the type of case we would like to present," said Richard V. Wiebusch, a partner at Hale & Dorr in Boston who represents WMX Technologies Inc.

Also, Home's book of business is an asset of the company, and WMX might question whether the transfer of Home business to Zurich was "a fraudulent conveyance," he said.

In the future, regulators should not allow an acquiring company to renew business prior to the approval of the transaction, said Robert Rusis, senior vp of Federal Insurance Co., a unit of Chubb Corp., and general counsel of Chubb.

One of the main reasons that Chubb opposes the deal is the risk that other insurers could be forced to pay losses through state guaranty funds if the deal does not provide sufficient resources to pay Home policyholders.

Allowing the transfer of the business diminishes an insurer's assets and "gives the appearance that the commissioner has prejudged the transaction before holding a public hearing," he said.

Regardless of the transfer of business, Zurich should be required to take over all of the assets and liabilities of Home, Mr. Rusis said.

The proposed transaction breaches the accepted notion that the ongoing book of business of an insurer is one of its principal assets, agreed Richard E. Stewart, chairman of Stewart Economics in Chapel Hill, N.C., who represented the interests of American International Group Inc. and Atlantic Richfield Co (*BI*, April 3).

The hearing was adjourned late on Tuesday afternoon, but any ruling could be delayed until June. Zurich has until April 20 to submit all the relevant documents for the transaction. Comments on the transaction must be submitted by May 5, and Zurich will then have until May 9 to respond to those comments. The New Hampshire commissioner will then have 30 days to make a finding.

Other states where Home units are domiciled will hold hearings on the proposed transaction. New Jersey will hold a hearing on April 11; Indiana will hold a hearing on April 13; and Wisconsin will hold a hearing in mid-April. BI

RIMS joins Quality Insurance Congress' efforts

NEW YORK—The Risk & Insurance Management Society Inc. will endorse the Quality Insurance Congress and plans to participate jointly in projects to improve the quality of products and services in the insurance industry.

RIMS members now are able to join the QIC at no cost and have access to the QIC's industrywide computer bulletin board service. The QIC plans to build an electronic folder on the bulletin board containing quality-related risk management articles and other information.

The QIC also is teaching continuing education courses on quality in risk management for RIMS (*BI*, Nov. 14, 1994) and will participate in RIMS' national conference later this month in San Francisco.

The first of the joint projects between the QIC and RIMS is a research project called "The Voice of the Customer," which will be a benchmark for measuring industry improvements in quality and customer service. The QIC plans to interview agents, brokers, insurers, reinsurers, regulators and third-party administrators as well as conduct focus groups with risk managers. The QIC expects to release results in September.

A group of insurance executives formed the QIC in 1993 to address the need for quality improvement within the insurance industry (*BI*, Sept. 6, 1993).

—By Sally Roberts

Product

Continued from page 2

"I think we'll win this one," said Sen. Rockefeller.

S. 565 contains many of the same provisions as H.R. 956, the Common Sense Product Liability and Legal Reforms Act approved by the House last month, but applies them only to product liability matters (*BI*, March 20; March 13). It limits punitive damages in product liability cases to $250,000 or three times economic damages, whichever is greater; abolishes joint liability for non-economic damages in most cases; sets a uniform legal standard of "clear and convincing" evidence of a defendant's "conscious, flagrant indifference to the safety of others" as a prerequisite for punitive damages; and provides a defense against product liability suits if a plaintiff was drunk or drugged while using the product.

The measure also sets a 20-year statute of repose for most durable goods and encourages the use of alternative dispute resolution to settle product liability cases. S. 565 also gives workers comp insurers the right of subrogation against a manufacturer or seller to "recover any claimant's benefits relating to harm that is the subject of a product liability action" covered under the bill.

Shortly before the Commerce Committee met, Sen. Rockefeller and S. 565's other chief sponsor—Sen. Slade Gorton, R-Wash.—agreed to incorporate two changes in the measure. The first alteration limits the product liability of companies that lease equipment, such as car rental firms, under some circumstances. The other limits the liability of manufacturers of raw materials used in medical devices.

The lack of debate on the changes led to grumbling among the bill's opponents. "They sneaked in last night, I just heard about them," said an obviously peeved Sen. Ernest Hollings, D-S.C., the former chairman of the Commerce Committee who led the battle against previous versions of the bill. "This manufacturing crowd has run amok," Sen. Hollings said.

The debate came after the vote because of the difficulty Commerce Committee Chairman Larry Pressler, R-S.D., had in assembling a quorum as Democratic senators caucused on a different matter. Opponents and proponents, fully aware that the bill would pass, agreed to the unusual timing provided that they could express their concerns.

That gave Sen. Rockefeller an opening to note that two Justice Department officials said publicly shortly before the vote that the administration now could support some changes in the product liability law. He said that Associate Attorney General John R. Schmidt, while stopping short of endorsing the bill, said that "some" standards were needed because products are sold in a national market. Mr. Schmidt's statement was particularly noteworthy because it is the first time the Clinton administration has said that it could support reform, said one longtime product liability advocate.

The statement sends a "very important signal that there's certainly room for significant reform to be worked out between the Hill and the administration," said Tom O'Day, associate vp in the Alliance of American Insurers' Washington office.

Mr. O'Day said that he is "very optimistic" that a product liability bill eventually will be sent to the president, who would have a hard time vetoing the bill if it continued to enjoy bipartisan support.

However, during a speech last Friday, President Clinton vowed to veto any legal reform bill that contains a "loser pays" rule in which the unsuccessful party in a civil suit would have to pay at least part of the legal fees of the winner.

The Senate bill does not require plaintiffs to pay any portion of a defendant's legal costs should the defendant prevail. The House bill, however, contains such a provision. BI

Sen. Hatch proposes restraints on multiple punitive damage awards

By MARK A. HOFMANN

WASHINGTON—Punitive damages could be awarded only once for a particular act under a tort reform bill introduced last week in the Senate.

That is the most significant difference between S. 672, the Civil Justice Fairness Act, and H.R. 956, the Common Sense Product Liability and Legal Reform Act passed by the House of Representatives last month (*BI*, March 13).

Otherwise, the Senate bill, sponsored by Judiciary Committee Chairman Orrin Hatch, R-Utah, resembles H.R. 956, although it does not address product liability broadly. Instead, the Senate Commerce Committee last week approved its own product liability bill, which differs somewhat from the product liability provisions in H.R. 956 (see story, page 2).

After describing in general terms what he perceives as problems with the current system of punitive damage awards, Sen. Hatch said, "The imposition of multiple punitive damages has also raised great concern about the fairness of punitive damages and their ability to serve the purposes for which they are intended.

"While I do not suggest that a person or company that acts with conscious, flagrant disregard for the rights or safety of others should not be subject to punitive damages, there is real concern about the repeated imposition of punitive damages for the same wrongful act or conduct. The imposition of multiple punitive damages awards for the same act can occur, of course, in several different states. Indeed, I am so concerned about this problem that I will also introduce separate legislation embodying the multiple damages provision of my comprehensive bill," said Sen. Hatch.

The limitation on multiple punitive damage awards won praise from tort reform advocates. Victor E. Schwartz, general counsel to the Washington-based American Tort Reform Assn., told the committee that allowing the current system of multiple awards to remain intact hurts the interests of plaintiffs because it drains a defendant's resources. That can mean "endangering the ability of future claimants to recover even basic out-of-pocket expenses and damages for their pain and suffering," said Mr. Schwartz.

As the House-approved bill, the Hatch bill:

- Requires that punitive damages be awarded only if "clear and convincing evidence" shows that the act in question was meant to cause harm or was carried out with conscious, flagrant indifference to the rights and safety of others;
- Limits punitive damages to the greater of $250,000 or three times economic damages.
- Bans awarding punitive damages against the manufacturer or seller of a product or drug that received premarket approval from the Food and Drug Administration.
- Limits a defendant's joint liability for non-economic damages to its own degree of fault under most circumstances.
- Clarifies courts' discretion in determining what expert testimony is acceptable.
- Encourages states to require that lawyers' working on a contingent fee basis disclose the actual services rendered and time spent on the case.
- Establishes a very limited "loser pays" system under certain circumstances in certain civil cases.
- Limits non-economic damages in health care liability cases to a maximum of $250,000.

The Hatch measure also addresses some aspects of medical liability, prisoner lawsuits and some miscellaneous procedural concerns.

H.R. 956, which was drawn from the House GOP leadership's "Contract With America," is a comprehensive tort reform measure that also deals specifically with product liability and securities litigation. The Senate is dealing with those matters in separate bills. BI

Experience rating improves safety measures: Study

By MEG FLETCHER

BOCA RATON, Fla.—Experience modification rating in workers compensation plays a pivotal role in prompting workplace safety measures, a new survey says.

That conclusion, which verifies a long-held insurance industry belief, stems from an analysis of the 1994 employer survey by the National Council on Compensation Insurance and broker Johnson & Higgins.

A cross section of 150 companies doing business in Illinois as manufacturers, contractors, clerical and general service businesses, among others, participated in the survey. Their workers comp premiums ranged from $40,000 to $160,000.

Under experience modification rating, employers with better-than-average safety records pay a lower-than-average premium while those with worse-than-average safety records pay higher premiums. NCCI calculates an experience modification factor that adjusts an employer's premium based on the employer's prior loss record compared to the overall average for its particular business type in the state.

A majority of respondents said that lowering the experience modification factor was an "extremely effective" cost control procedure and 77% said it was "extremely important" to adopt safety techniques to prevent workers comp claims.

The survey also established statistically significant relationships between employers' spending on workplace safety and experience rating modification factors. It found that the more a company spent on workplace safety in the previous year, the more its experience modification factor declined over a three-year period.

The study also found that employers with higher experience modification factors were spending more on safety per premium dollar than their counterparts, presumably in an effort to decrease their losses.

"This survey offers substantial evidence that experience rating modification is uniquely effective as an employer safety incentive," said NCCI President William D. Hager. "The system works well."

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A copy of the "NCCI Experience Rating/Workplace Safety Survey" can be ordered for $35 by calling 800-622-4123.

Updates

Gooda Walker ruling

Continued from page 2

a number of issues which significantly will reduce Gooda Walker names' final award," the firm said. In particular, delay in payment of damages for future claims may mean that Gooda Walker Action Group names are not "first past the post" in getting their losses paid by E&O underwriters before other action groups obtain judgments.

Since a second settlement offer is expected imminently from Lloyd's, the E&O underwriters hope that "the latest clarification on damages will assist to encourage names' expectations to be more realistic."

Any damages awarded by the judge will be frozen until an appeal is heard April 26 to decide whether members who are awarded damages should be paid before other action group cases are heard.

Health plan operator indicted

DALLAS—The operators of an allegedly phony union health care plan are facing criminal charges that they pocketed about $1.4 million in employer contributions, leaving substantial unpaid claims.

A federal grand jury earlier this month returned a 24-count fraud, conspiracy and money laundering indictment against Lawrence D. Kenemore Jr. and several others involved with the Assn. of Trust & Guarantee, an Arlington, Texas, firm that has marketed workers compensation and health coverages through allegedly bogus labor unions.

According to the indictment, Mr. Kenemore and the other defendants sold the health coverage to hundreds of employers in numerous states, collecting about $1.7 million between April 1993 and August 1994. Only $300,000 of this actually went into the welfare funds, and the defendants diverted about $1.4 million for their own use, prosecutors allege.

Also charged in the indictment were: Sherlyn D. Kenemore, Mr. Kenemore's wife and secretary of ATG; Joseph B. Kenemore, his son and an officer of National Employees Trade Assn. Local 101, one of the purported unions; Michael J. McKeown, president of NETA; Chris W. Kellum, an officer of National Employees Trade Alliance, another of the unions; Crystal Kellum, Mr. Kellum's wife and an ATG employee; and Vernon L. Byrd and Charles E. Postle, officers of Affiliated Guilds of America, a third allegedly bogus union.

All of the defendants were arrested and released on bond except Mr. Kenemore, who was held pending a detention hearing last Friday.

None of the defendants could be reached.

If convicted on all the charges, Lawrence Kenemore and his wife each face a maximum of 260 years in jail, Joseph Kenemore faces 65 years, Mr. Kellum faces 135 years and Ms. Kellum 130 years, and Messrs. McKeown, Byrd and Postle face 25 years each. The defendants also could be hit with millions of dollars of fines.

ATG became a target of state insurance regulators in late 1993 and was hit with administrative orders or suits in a dozen or more states. The U.S. Department of Labor in January won a court order freezing ATG's assets and benefit plan (*BI*, Jan. 30; Dec. 27, 1993).

Intel offers Pentium settlement

SANTA CLARA, Calif.—Intel Corp. is offering to pay up to $6 million in attorneys fees and maintain a lifetime warranty to settle 11 product liability suits filed by users of its flawed Pentium microprocessor chips.

"The plaintiffs wanted us to maintain a lifetime replacement for the flawed chips and that's what we have said we will do," a spokesman for the Santa Clara, Calif.-based computer chip maker confirmed.

The proposal was filed last month in Superior State Court in San Jose, Calif., and is expected to be ruled on in June, the spokesman said.

The 11 suits are all the product liability suits outstanding with regard to the chip, he said. The company declined to say whether it has insurance to cover the settlement.

The spokesman said all derivative and securities-related suits filed because of the chip have been dismissed. Several such suits had been filed (*BI*, Jan. 2).

Briefly noted

Citing subpar earnings in the core business areas as well as ongoing exposure to securities-related litigation, A.M. Best Co. last week downgraded **Prudential Insurance Co. of America** to A from A+. However, Best did say that Prudential recently has improved its capitalization and reduced its risk and will be re-evaluated sometime during the next two years. . . .The **Medicare trust funds** could become insolvent in the year 2002, a slight improvement from last year when fund trustees said insolvency could occur in 2001. The funds are financed by payroll taxes paid by employers and employees. . . .**Bermuda's Insurance Amendment Act 1995** goes into effect April 29. The new regulations separate insurers into four categories and include minimum capital requirements of $100 million for the island's catastrophe reinsurers and excess liability insurers. . . .Final Labor Department regulations detailing procedures employers must follow to comply with the federal **Family and Medical Leave Act** went into effect last week (*BI*, Jan. 9). . . .**Premium rates** either are remaining stable or falling in all areas of coverage except aviation liability, where rates continue to rise, according to Lloyd's of London's quarterly trends survey of its underwriters for 1995's first quarter. . . .An insurer coalition is asking Massachusetts legislators to adopt **competitive rating of workers compensation** insurance to replace administered pricing by a state rating bureau. . . .The Gard Club and the North of England P&I Assn. Ltd. have been given Standard & Poor's Corp.'s three-flag ranking in its latest **Marine Mutuals report**. Japan Shipowners' Mutual P&I Assn. dropped to two flags, leaving five P&I clubs with the top three-flag ranking.

Building a better brokerage

Market, investors prompt brokers to restructure

By LEONARD M. WILSON

Special to *Business Insurance*

CORPORATE RESTRUCTURINGS aimed at unlocking the intrinsic value of financial assets have been part of the investment scene for at least a decade. In the 1980s, public companies were taken private in order to accomplish the requisite task. In the 1990s, underperforming companies have encountered the ire of professional investors or the restiveness of directors, and restructuring more often than not is accomplished from within. Tolerance for underperforming assets or lackluster stock performance has worn thin.

Restructuring now comes to insurance brokerage. Both Alexander & Alexander Services Inc. and Willis Corroon Group P.L.C. are currently in the midst of sweeping programs of cost reduction, rearrangement of assets and divestiture of non-core operations. We recently met with one of our contacts in the industry to discuss the rationale and possible implications of these restructurings.

Analyst: Consolidation and retrenchments are not new to brokers.

Contact: It is possible to argue that the consolidation of the industry over the past several years is different from the wave of mergers that characterized the business in the '70s and early '80s. In a process of competitive evolution, firms then were seeking greater critical mass and wider geographical spread. So acquisitions by the publicly owned alphabet brokers were perfectly logical and were initiated from a position of strength. Changes in the industry and at individual companies today reflect a less favorable set of operating fundamentals. Firms now are restructuring from within, as in the case of Alexander & Alexander Services and Willis Corroon P.L.C., or from without, as in the case of Aon's acquisition of Frank B. Hall & Co. several years ago.

Analyst: We read in their public releases of pronounced initiatives to cut expenses. Why is this happening?

Contact: It is no secret that brokers' profitability has eroded dramatically under the weight of self-insurance and the chronic soft market. It was routine in the 1970s for brokers to achieve profit margins in the 25% to 30% range, including of course highly profitable reinsurance brokerage. When it becomes hard to earn a decent return in retail brokerage despite the deployment of what we believe is an unprecedented level of talent dedicated to serving the client, then something has to happen.

Analyst: The numbers are large. A&A talks about cutting $100 million in costs, while Willis Corroon seems to have targeted reductions in the area of $60 million. Is there room to reduce expenses by these magnitudes?

Contact: We have listened to presentations by the new top management of A&A. They are clearly concentrating on what they perceive as redundancies. Expense structures must change when the economics of the business have changed. Leaner is a necessity in the much-altered environment of chronic soft markets.

Analyst: Do you think these cost reductions, which involve shrinkage in headcount, can be accomplished without impairing client services?

Contact: My impression is that management believes that they can pare costs and simultaneously enhance client service in the essential areas by closely analyzing processes. Is this realistic? We have to see the result, but insurance brokerage has evolved, and we have ourselves felt that something was amiss with the pricing of insurance brokerage services. Brokers today are much more professional than they were 20 years ago, and they offer a broader array of expertise. Yet, retail brokerage is less profitable than it was in those simpler times.

Analyst: Will cost reductions fall to the bottom line, or will continued soft rates defeat the efforts to raise profit margins?

Contact: It would be unfortunate if markets remained so competitive that attempts to restore profitability were damaged. We are of the school that believes rates are not about to turn anytime soon. It could be that with continued soft markets, cost reduction is aiming at a moving target. It is too soon to know the answer to your question.

Analyst: How long will it take for the savings to show up? After all, the process involves a transitional period.

Contact: There are immediate costs that have to be absorbed in any restructuring program. The benefits can be estimated, but as in all projections, the ultimate effect on the bottom line must await the completion of the program. We would guess that most of the benefits will be achieved over a 12- to 18-month period.

Analyst: How does the balance sheet fit into the process?

Contact: It is almost an axiom that a company that has underperformed is also in need of balance sheet remediation. This means finding the wherewithal to pare debt or get rid of outstanding obligations. In the case of insurance brokers, litigation often implies a sizable claim on assets. A&A, for example, is currently moving with dispatch to deal with its own litigation-driven obligations.

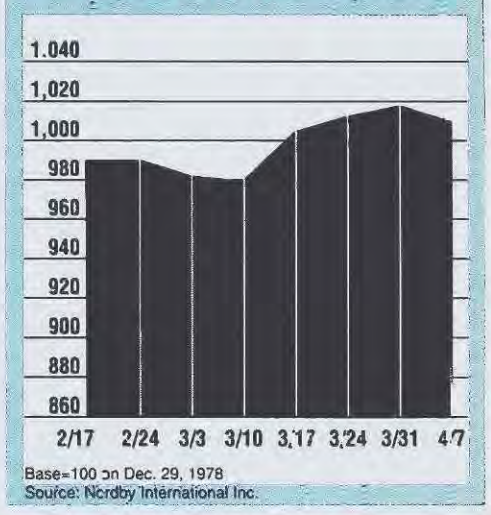
Analyst: Where do the resources come from to improve the balance sheet?

Contact: Divestiture or liquidation of assets that do not earn an adequate return is certainly one avenue. Management in all industries, including insurance brokerage, has to take a hard look at businesses that have subpar market share or can't cut it for whatever reason. Those operations are often worth more to a strategic buyer that can create an attractive fit. So restructuring also incorporates asset sales as well as cost reduction. BI



Leonard M. Wilson is a senior vp with Lazard Asset Management Inc. He is a member of the New York Society of Security Analysts.

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc.

Catastrophe insurance option call spreads

As of April 7

Call spread	Price bid/ask	Rate on line %	Call spread	Price bid/ask	Rate on line %
Eastern September 1995			Western Annual 1995		
45/65	5.8/6.5	29/32.5	20/30	0.5/E	5/30
50/70	5.0/5.7	26.5/28.5	30/40	0.3/1.3	3/18
60/80	4/5.5	20/27.5	30/50	0.5/2.5	2.5/12.5
100c	1.5/12	8.5/12	50/70	0.6/1.3	3/9
150c	3.5/5	7/10	60/80	0.3/3.5	1.5/17.5

Total volume: 78 Total open interest: 1,853

For quotes, call the CBOT trading floor at 312-341-3342. For general information, call 312-435-3674.

Source: Chicago Board of Trade

British Issues

April 6 Companies	Price pence	P/E	Div. pence	Yield %	1 week high—low
Comml Union	555	11.1	33.0	5.9	555—534
Genl Accident	591	8.7	36.3	6.1	591—567
Gdn Royal Exch	192	N/M	10.3	5.4	192—181
Independent	271	7.5	11.9	4.4	271—271
Royal	295	5.6	15.0	5.1	295—280
Sun Alliance	341	11.5	19.7	5.8	341—327
Brokers					
Bradstock	81	9.1	7.1	8.8	83—81
Fenchurch	140	9.8	10.0	7.1	142—140
CE Heath	234	11.7*	20.0*	8.5	235—234
JIB Group	120	10.4	9.4	7.8	120—120
Lloyd Thmpson	151	10.5	9.8	6.5	151—150
Lowndes Lmbrt	151	8.9*	10.4*	6.9	151—143
Nelson Hurst	151	11.7	8.3	5.5	158—151
PWS Holdings	19	N/M	0.8	4.2	21—19
Sedgwick Grp	155	14.1	8.1	5.2	155—151
Steel Brl Jones	105	12.3	11.3	10.8	105—103
Willis Corroon	142	N/M	8.3	5.8	145—141

Source: Philip Olsen, London * Estimated 1994 data

BI Industry Stock Report APRIL 3, 1995, THROUGH APRIL 7, 1995

BROKERS		Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vo.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
Acordia Inc.	NYS	32.50	0.00	-2.99	34.50	24.63	15	0.72	2.22	16	13.24	2.45
Alexander & Alexander	NYS	22.38	-5.29	20.95	23.75	14.00	520	0.10	0.45	-8	6.08	3.63
E.W. Blanch Holdings Inc.	NYS	18.63	0.68	-9.70	23.00	16.88	24	0.40	2.15	15	4.55	4.09
Gallagher Arthur J. & Co.	NYS	35.00	-1.06	9.38	36.00	29.00	53	1.00	2.86	16	6.48	5.40
Hilb, Rogal & Hamilton	NYS	10.50	-3.45	-13.40	13.38	10.50	120	0.56	5.33	13	4.72	2.22
Marsh & McLennan	NYS	84.00	2.28	5.99	88.75	71.25	435	2.90	3.45	16	19.40	4.33
Poe & Brown	NDQ	22.00	0.57	1.15	22.75	18.25	5	0.48	2.18	14	4.49	4.90
BROKERS	AVERAGE		-0.9	1.6					2.7	12		
INSURERS/REINSURERS												
ACE Ltd.	NYS	26.00	2.97	11.23	28.88	20.75	320	0.44	1.69	-9	22.45	1.16
Acceptance Insurance Cos.	NYS	14.75	-0.84	-1.67	18.00	11.50	93	0.00	0.00	9	9.83	1.50
AEGON N.V.	NYS	73.13	2.27	15.16	73.13	49.75	122	2.92	3.99	12	43.84	1.67
Aetna Life & Casualty	NYS	58.50	2.63	24.14	59.00	42.25	2053	2.76	4.72	14	57.21	1.02
AFLAC Inc.	NYS	40.00	-2.44	25.00	42.75	29.00	861	0.46	1.15	14	57.21	0.70
Allied Group Inc.	NDQ	28.50	0.88	15.15	31.00	22.00	123	0.68	2.39	6	23.43	1.22
Allmerica Prop. & Casualty	NYS	19.38	1.31	14.81	20.13	14.25	125	0.16	0.83	12	19.45	1.00
Allstate Corp.	NYS	28.38	-1.30	19.47	29.00	22.63	993	0.78	2.75	26	19.60	1.45
American General	NYS	31.38	-2.71	11.06	33.25	24.88	1967	1.24	3.95	13	20.39	1.54
American Heritage Life Ins.	NYS	16.75	-6.94	-11.84	19.75	16.50	34	0.64	3.82	10	12.42	1.35
American Indemnity/Fin'l	NDQ	11.88	-1.04	17.28	14.25	10.00	1	0.24	2.02	3	15.92	0.75
American International	NYS	105.38	1.20	7.53	108.25	83.50	1927	0.46	0.44	15	49.75	2.12
American Re Corp.	NYS	36.00	2.86	11.63	36.25	25.25	100	0.32	0.89	18	16.85	2.14
Aon Corp.	NYS	37.13	1.71	16.02	37.56	29.25	361	1.36	3.66	12	21.96	1.69
Argonaut Group	NDQ	30.00	0.00	6.19	31.25	26.25	41	1.16	3.87	10	29.80	1.01
AVEMCO Corp.	NYS	17.88	1.42	16.26	18.00	13.38	15	0.44	2.46	15	6.30	2.84
Baldwin & Lyons Inc.	NDQ	16.00	-1.54	8.47	17.63	14.00	2	0.24	1.50	12	13.56	1.18
Berkley W.R. Corp.	NDQ	37.50	2.39	0.00	42.00	32.50	55	0.48	1.28	26	36.47	1.03
Berkshire Hathaway Inc.	NYS	22600.00	-0.22	10.78	25200.00	15400.00	0	0.00	0.00	29	9157.79	2.47
Capital RE Corporation	NYS	23.50	1.62	-14.16	27.38	18.63	48	0.20	0.85	9	21.48	1.09
Capsure Holdings Corp.	NYS	13.00	4.00	-11.11	16.13	12.13	80	0.00	0.00	14	13.72	0.95
Chubb Corp.	NYS	79.88	1.11	3.23	82.63	68.63	545	1.96	2.45	13	48.40	1.65
CIGNA Corp.	NYS	73.38	-1.84	15.32	76.38	57.00	935	3.04	4.14	10	80.98	0.91
CNA Financial Corp.	NYS	75.50	0.00	16.38	76.50	60.00	39	0.00	0.00	148	73.83	1.02
Continental Corp.	NYS	19.75	0.64	3.95	23.63	12.00	228	0.00	0.00	-2	29.69	0.67
EMC Insurance Group Inc.	NDQ	10.38	3.75	9.21	10.88	8.50	1	0.52	5.01	8	10.77	N.A.
Emphesys Financial Gr. Inc.	NYS	33.63	-6.60	5.91	39.50	21.25	685	0.60	1.78	9	N.A.	N.A.
EXEL Ltd.	NYS	46.50	5.38	17.72	46.63	36.00	531	1.32	2.84	21	31.62	1.47
Fremont General Corp.	NYS	19.88	1.27	-14.97	26.00	18.88	123	0.76	3.82	6	22.90	0.87
Frontier Insurance Group	NYS	24.13	2.12	10.29	37.50	16.75	130	0.48	1.99	18	14.94	1.61
Gainsco Inc.	ASE	10.50	1.20	27.27	11.00	7.25	171	0.04	0.38	14	3.79	2.77
General RE Corp.	NYS	133.25	0.95	7.89	135.13	104.50	469	1.96	1.47	17	57.17	2.33
Guaranty National Corp.	NYS	15.25	-1.61	-17.01	18.50	14.50	64	0.48	3.15	8	11.84	1.29
Harleysville Group	NDQ	24.25	-0.51	0.00	26.50	19.75	58	0.68	2.80	18	20.18	1.20
Hartford Steam Boiler	NYS	42.75	-0.58	7.21	48.63	35.88	125	2.20	5.15	17	14.62	2.92
HCC Insurance Holdings	NDQ	24.25	5.43	15.48	25.75	16.50	75	0.00	0.00	16	10.75	2.26
Home Holdings Inc.	NYS	9.00	22.03	-4.00	15.00	3.00	701	0.00	0.00	-1	22.36	0.40
ITT (Hartford Group)	NYS	101.50	-1.10	14.53	104.38	77.00	1090	1.98	1.95	12	49.95	2.03
Lincoln National	NYS	41.00	1.86	17.14	43.88	34.63	729	1.72	4.20	12	31.99	1.28
Markel Corp.	NDQ	50.00	3.63	20.48	51.75	37.50	131	0.00	0.00	15	25.15	1.99
Mid Ocean Ltd.	NDQ	28.06	2.98	2.98	30.50	22.25	563	1.00	3.56	11	20.24	1.39
Mutual Risk Mgmt. Ltd.	NYS	28.75	3.14	9.52	29.25	21.13	106	0.32	1.11	16	9.11	3.16
NAC Re Corp.	NDQ	32.25	6.61	-3.73	34.00	24.00	380	0.16	0.50	18	19.75	1.63
National Re Corp.	NYS	29.38	0.43	11.90	31.75	22.25	63	0.16	0.54	18	17.3	1.70
Navigators Group	NDQ	15.13	-2.42	4.31	20.00	13.75	21	0.00	0.00	-4	10.2	1.48
Nobel Insurance Ltd.	NDQ	9.25	1.37	12.12	9.63	7.63	25	0.20	2.16	4	6.8	1.35
Ohio Casualty Corp.	NDQ	33.00	-2.22	16.81	34.25	26.50	277	1.52	4.61	14	24.65	1.34
Old Republic Int'l	NYS	25.00	4.17	17.65	25.50	18.88	379	0.48	1.92	10	24.60	1.02
Orion Capital Corp.	NYS	34.75	0.00	-1.42	37.88	28.13	31	0.80	2.30	9	25.86	1.34
Partner Re Holdings Ltd.	NDQ	23.25	9.41	12.05	23.25	18.50	1108	0.40	1.72	9	N.A.	N.A.
Penn-America Group Inc.	NDQ	7.06	-7.38	-4.24	8.00	6.50	5	0.00	0.00	9	6.21	1.14
Phoenix RE Corp.	NDQ	23.25	-3.63	-17.70	29.25	18.50	350	0.60	2.58	5	22.86	1.02
Provident Life	NYS	23.13	0.54	6.32	29.88	21.50	108	0.72	3.11	9	27.05	0.85
Re Capital Corp.	NDQ	18.25	-0.68	48.98	18.50	12.00	47	0.32	1.75	16	17.63	1.04
Reliance Group Holdings	NYS	5.38	0.00	3.61	6.75	4.88	657	0.32	5.95	14	3.45	1.56
Reliastar Financial Corp.	NYS	34.88	2.57	20.26	35.50	27.00	423	0.90	2.58	11	24.81	1.41
RLI Corp.	NYS	23.75	1.60	15.85	23.88	19.88	75	0.60	2.53	-28	20.51	1.16
St. Paul Companies	NYS	50.25	0.50	12.29	51.00	37.69	1026	1.60	3.18	10	31.88	1.58
SAFECO Corp.	NDQ	55.56	2.42	6.85	59.75	46.75	1194	1.96	3.53	12	46.94	1.18
SCOR U.S. Corp.	NYS	7.75	-1.59	-7.46	12.25	7.50	51	0.20	2.58	-17	13.60	0.57
Seibels Bruce Group	NDQ	1.13	-10.00	-55.00	3.50	0.88	168	0.00	0.00	5	1.05	1.07
Selective Ins. Group	NDQ	28.75	0.00	13.86	29.75	23.00	181	1.12	3.90	10	23.36	1.23
Sphere Drake Holdings	NYS	15.38	1.65	10.81	17.00	10.75	75	0.16	1.04	7	13.15	1.17
TIG Holdings	NYS	22.50	0.00	20.00	23.00	17.00	301	0.20	0.89	28	17.25	1.30
Titan Holdings, Inc.	NYS	10.25	2.50	5.13	10.63	7.75	46	0.28	2.73	8	9.31	1.10
Tokio Marine & Fire	NDQ	58.25	-0.19	-4.12	66.00	49.88	11	0.44	0.76	-	57.72	1.01
Torchmark Corp.	NYS	41.88	1.82	21.38	44.50	32.38	496	1.12	2.67	11	17.49	2.39
Transatlantic Holdings	NYS	63.75	4.08	14.09	63.75	45.63	163	0.40	0.63	14	32.43	1.97
Transnational Re Corp.	NDQ	19.75	-1.25	-15.96	25.50	17.75	491	0.00	0.00	7	N.A.	N.A.
Travelers Corp.	NYS	39.50	2.27	22.01	39.88	30.38	2430	0.80	2.03	10	24.26	1.63
Trenwick Group Inc.	NDQ	43.75	4.48	3.24	44.25	35.25	41	1.12	2.56	14	29.20	1.50
United Fire & Casualty	NDQ	28.38	-0.44	2.56	29.81	24.66	0	0.80	2.82	9	28.96	0.98
Unitrin	NDQ	46.50	-4.12	8.14	51.50	38.50	193	2.00	4.30	16	38.54	1.20
UNUM Corp.	NYS	44.38	-1.93	17.55	56.75	35.13	598	0.96	2.16	21	27.78	1.60
US Facilities Corp.	NDQ	13.63	-0.91	36.25	14.63	9.13	149	0.20	1.47	13	11.07	1.23
USF&G Corp.	NYS	14.00	0.00	3.70	15.50	11.69	1191	0.20	1.43	7	10.04	1.39
USLIFE Corp.	NYS	38.00	-0.33	8.96	39.63	30.88	214	1.32	3.47	9	40.32	0.93
Washington National	NYS	18.38	-0.68	-3.29	23.13	17.75	60	1.08	5.88	7	23.31	0.78
Zenith National Ins.	NYS	21.25	4.94	-6.59	27.38	19.38	57	1.00	4.71	11	17.54	1.21
Zurich Reinsurance Centr.	NYS	30.50	0.41	5.63	30.88	24.50	15	0.00	0.00	-26	22.26	1.37
INSURERS/REINSURERS	AVERAGE			0.8	7.8				2.3	12.9		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	NDQ	26.88	-8.90	4.37	31.00	20.25	356	0.00	0.00	15	12.22	2.20
Humana Inc.	NYS	25.13	-1.95	11.05	27.13	15.88	3205	0.00	0.00	23	6.04	4.16
Pacificare Health Sys.	NDQ	71.50	-0.69	9.79	79.50	44.25	519	0.00	0.00	22	14.21	5.03
Safeguard Health Enter.	NDQ	9.75	0.00	5.41	15.00	8.25	0	0.00	0.00	36	6.16	1.58
Sierra Health Services	NYS	30.75	-6.46	-2.77	33.63	21.25	09	0.00	0.00	18	6.04	5.09
United Healthcare Corp.	NYS	45.50	-2.67	0.83	55.38	37.25	3160	0.03	0.07	28	6.57	6.93
U.S. Healthcare	NDQ	42.00	-5.08	1.82	49.00	33.75	1173	1.00	2.38	17	5.04	8.33
Wellpoint Health Networks	NYS	33.00	-5.71	13.30	39.00	24.25	1238	0.00	0.00	15	12.73	2.59
HMOs	AVERAGE			-3.9	5.5				0.3	19		
ALL COMPANIES	AVERAGE			-1.3	5.0				2.5	16		

Top advancing issues: Home Holdings Inc.; Partner Re Holdings Ltd.; NAC Re Corp. Leading decliners: Seibels Bruce Group; FHP International; Penn-America Group Inc. Most active issue: U.S. Healthcare. The BI Index fell 0.8%; the Dow Jones 30 Industrials rose 0.9%; the S&P 500 increased 1.1% and the NYSE Composite gained 1.0%.

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