APRIL 24, 1989

Business Insurance®

Reporting weekly for corporate risk, employee benefit and financial executives / $1.75 a copy; $70 a year

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Update

Aerojet insurers to appeal ruling that cleanup costs are 'damages'

SAN FRANCISCO—Insurers will appeal a California appellate court ruling that the term "damages" in comprehensive general liability policies includes costs stemming from government-mandated hazardous waste cleanup orders.

Aerojet-General Corp. is seeking to collect tens of millions of dollars from 55 general liability insurers that wrote coverage for it from 1956 to 1984, to cover the cost of cleaning up a polluted facility near Sacramento.

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Seeking answers

The more than 4,000 registrants at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta sought advice not only on risk management issues but also on how to find the exhibit hall and the hotels where sessions were held. A full report begins on page 3.

A&A doubting strength of Weavers underwriter

By STACY SHAPIRO

LONDON—A major U.S. retail insurance broker is questioning the ability of H.S. Weavers (Underwriting) Agencies Ltd.—London's leading U.S. liability insurance market—to pay future claims despite major changes last year in the Weavers line slip.

Alexander & Alexander Inc. earlier this month sent letters to former, current and potential clients of H.S. Weavers casting doubts on the financial strength of the agency's main underwriter, Walbrook Insurance Co. Ltd.

Walbrook writes 55% of the line slip, while Anglo-American Insurance Co. Ltd., which A&A says is "adequately capitalized," writes 45% of the slip. The companies are severally, not jointly, liable for risks assumed.

"We are unable to determine Walbrook's potential to fully meet its future obligations to policyholders," says the A&A correspondence, which was obtained by *Business Insurance*.

A&A—one of the five major producers of business for Weavers—also has instructed its brokers to obtain alternative quotes to Weavers, leaving the client to decide if it wants to buy insurance from Weavers.

This renewed concern about Weavers' line slip follows questions raised in late 1987 by Marsh & McLennan Cos. Inc. (*BI*, Jan. 11, 1988). The M&M scrutiny led to major changes in the last year in the participants on the slip (see story, page 81).

A&A cites as the basis for its concerns about Walbrook three factors, based on Walbrook's 1987 financial results:

- Walbrook's reserves for losses incurred in prior years proved to be inadequate and have been strengthened.
- Underwriting losses have increased, with Walbrook reporting a net loss for 1987.
- Business written and liabilities carried have increased in relation to capital and surplus.

In an internal memo dated March 17, A&A's President and Chief Operating Officer James A. McCormick told A&A brokers that "an alternate proposal from another insurer should be delivered with all Weavers quotations, both new and renewal. Should the client or prospect advise us not to obtain the alternate proposal, you must confirm this instruction to the client or prospect in writing."

A&A also points out to clients that several of the insurers that formerly were on the Weavers line slip—until either Dec. 31, 1987, or April 1, 1988—have "increased strains" on their finances.

These insurers include three that were purchased by Weavers' parent company, London United Investments P.L.C., in September 1988: Kraft Insurance Co. Ltd., Louisville Insurance Co. Ltd. and Mutual Reinsurance Co. Ltd.

A&A says it is "unable to determine those companies' potential to fully meet their future obligations to policyholders." It cites as its reasons: increasing underwriting losses and aftertax net losses in 1987; declining capital and surplus through 1987; and increasing ratios of liabilities carried in relation to capital and surplus through 1987.

In an interview with *Business Insurance*, Weavers Managing Director Peter Wilson said: "I don't like the inference of the letter. A&A showed it to me, and I said I didn't like the inferences it made, but they sent it out anyway. Everyone can look at the accounts. Every insurance company today has to strengthen their reserves."

Walbrook's aftertax loss of 2.4 million pounds in 1987 ($4.5 million at year-end 1987 exchange rates) was created by an exceptional claims provision of 8.5 million pounds ($16.1 million), Mr. Wilson pointed out. The big reserve boost was for expected asbestos property damage claims.

Mr. Wilson has said previously that all insurance companies will have to boost reserves to pay asbestos

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Insurer failures parallel thrifts' problems: GAO

By DOUGLAS McLEOD

WASHINGTON—The failures of Transit Casualty Co. and Mission Insurance Co. can be traced to several of the same practices that produced the current savings and loan crisis, a House panel was told last week.

Expansion into riskier types of business, poor internal controls and inadequate regulatory supervision contributed to both the Mission and Transit insolvencies and the collapse of more than two dozen thrifts between 1986 and 1987, said Frederick D. Wolf, assistant comptroller general for the accounting and financial management division of the U.S. General Accounting Office in Washington, D.C.

And, while insurer insolvencies so far do not rival the size and scope of the savings and loan crisis—the bailout of insolvent thrifts is expected to cost $100 billion—insurance industry problems may be more extensive than the number of liquidations to date would indicate, Mr. Wolf warned.

Lessons learned in dealing with failed thrifts also can be applied to the insurance industry, he told the House Subcommittee on Oversight and Investigations.

Last Wednesday's hearing was the third in a series on the 1985 collapse of Transit, which may be insolvent by $1.5 billion.

Hearings earlier this month focused on the roles played in the failure by former Transit subagent Carlos I. Miro and by the top management of Transit and its parent company, Beneficial Standard Corp. (*BI*, April 17; April 10).

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Asbestos claims center offers program for settling injury claims without filing suit
Page 2

Section 89

Simplification plan hurts FSAs

By JERRY GEISEL

WASHINGTON—A proposal by House Ways and Means Committee Chairman Daniel Rostenkowski, D-Ill., will substantially ease Section 89 administrative burdens for most employers.

But the legislation, if enacted, would have a devastating effect on highly compensated employees participating in flexible spending account programs.

While experts still are studying all of the ramifications of the Rostenkowski legislation, it appears that highly compensated employees in FSAs could face whopping new taxes on their benefits.

The legislation, H.R. 1864, "will eliminate the utility of flexible spending accounts for many highly compensated employees," the Washington, D.C.-based Employers Council on Flexible Compensation warned in a special legislative alert.

"There could be a potential disaster for some flex plans," said Tom Butterworth, a consultant in the Rowayton, Conn., office of Hewitt Associates.

But for employers not sponsoring FSAs, the legislation is a major step toward simplifying Section 89 non-discrimination tests for welfare plans, undoubtedly the most complex employee benefit legislation ever enacted by Congress.

In a single stroke, the Rostenkowski legislation eliminates much of the Section 89 administrative complexity that has triggered an employer and congressional revolt.

The Ways and Means Committee will hold a hearing on the legislation next week.

"This legislation is designed to address the legitimate concerns of employers about the complexity and administrative burdens that Section 89 imposes on employers while retaining the fundamental policy objectives that led to the enactment of Section 89," Rep. Rostenkowski said.

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Update

Aerojet insurers plan appeal

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Citing several decisions in other states, the three-judge panel ruled last week that the costs of environmental cleanups mandated by the Superfund Act and state environmental statutes meet the definition of "damages" in a CGL policy.

The La Jolla, Calif.-based manufacturer and subsidiary Cordova Chemical Co. "purchased CGL policies protecting them in the event their insured conduct caused injury to or loss, destruction or loss of use of another's property," the court said.

The decision overturns a lower court's ruling (*BI*, June 13, 1988).

Scott P. DeVries, an attorney with the San Francisco law firm of Lasky, Haas, Cohler & Munter, who represents Aerojet, said: "The court has made very clear that cleanup costs are covered subject to whatever exclusions are contained in the policy. This is a decision that will be cited both throughout the state of California and nationwide, because it is extremely well-written and reasoned."

Aerojet's insurers had held that only legal damages imposed by a court fell within the definition of damages (*BI*, Feb. 20).

"What the court said is Aerojet's insurance should be consistent with the understanding of an ordinary layperson," said insurer attorney Richard L. Seabolt of the San Francisco law firm Hancock, Rothert & Bunshoft, who represents Lloyd's of London syndicates and London market companies involved in the coverage dispute.

However, "Aerojet is no ordinary layperson," he said. "The court uses that instead of usual contract interpretation rules, which we believe would result in a finding of no coverage."

Airline liability limits upheld

WASHINGTON—Airlines' limited liability to crash victims on international flights is not voided if notice of the limits on passengers' tickets is printed in type smaller than required under the Warsaw Convention, the U.S. Supreme Court ruled last week.

The Supreme Court upheld a decision by the U.S. Court of Appeals for the District of Columbia, which ruled that Korean Air Lines Co. Ltd. is liable only for $75,000 per passenger in damages to the families of passengers killed when Russian fighter jets shot down KAL Flight 007 in September 1983 (*BI*, Sept. 12, 1983).

Eighteen families alleged that the liability cap should not apply because KAL had printed notification of its liability limit in 8-point type, rather than larger 10-point type size required under the Warsaw Convention, as amended by the Montreal Agreement (*BI*, April 11, 1988).

Pension asset reversion limits

WASHINGTON—The House Labor-Management Relations Subcommittee approved legislation that would cripple employers' ability to recover surplus assets from some terminated overfunded defined benefit pension plans.

Under the legislation, H.R. 1661, employers that terminate an overfunded plan and do not establish a replacement plan or establish a replacement plan that does not meet certain minimum federal standards could not recover the surplus assets.

The surplus assets would be allocated to participants.

In addition, employers that establish new plans would have to overfund the plan with assets from the old plan before the old plan could be terminated. For example, an employer establishing an identical replacement plan would have to have a cushion equal to "125% of projected benefit liabilities" in the new plan.

Employers also would have to give one-time cost-of-living adjustments to participants before they could terminate an overfunded plan.

The full House Education and Labor Committee has not yet scheduled a vote on the reversion legislation. A similar bill is pending in the Senate Labor and Human Resources Committee.

California no-fault auto bill

SACRAMENTO, Calif.—Legislation to create a no-fault automobile insurance system in California cleared its first hurdle last week.

The Assembly Finance and Insurance Committee Tuesday approved A.B. 354, which is modeled after New York's no-fault law, and sent it to the Assembly's Ways and Means Committee.

Under the proposal, injured motorists and passengers would recover damages from their own insurers and would be prevented from suing for non-economic damages unless they could prove serious injury or losses in excess of $50,000. Minimum coverage for medical care would be $50,000 per person. The minimum coverage for lost wages would be $2,000 per month.

An insurer-sponsored state initiative for a no-fault auto insurance system, Proposition 104, failed last fall (*BI*, Nov. 14, 1988).

The bill, sponsored by Assemblyman Patrick Johnston, D-Stockton, has been endorsed by the Assn. of California Insurance Companies and Consumers Union. However, the no-fault bill faces opposition from trial attorneys and sponsors of Proposition 103.

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Errors & omissions

- Due to an editing error, the address to contact for copies of Logic Associates Inc.'s 1988 salary survey was incorrect in the April 17 issue. The correct address is: 170 Broadway, Suite 1208, New York, N.Y. 10038; 212-227-8000.

- Blue Cross of California reduced its net loss by 84% in 1988 to $9.1 million from $56 million in 1987, not from $16.7 million in 1987 as reported in the March 20 issue.

- Pinnacle Reinsurance Co. Ltd. during its nine-year history has written a significant amount of financial reinsurance with Pinnacle assuming the timing risk. An article in the April 10 issue could have left a different impression. Currently, however, Pinnacle finds that many of its clients are not seeking contracts that transfer the timing risk.

Asbestos claims center offers plan to deter suits

By STACY ADLER

PRINCETON, N.J.—Most asbestos plaintiffs' attorneys favor a new proposal by the Center for Claims Resolution to settle asbestos bodily injury claims before formal litigation is filed.

For the first time, the center has proposed a form of true alternative dispute resolution whereby plaintiffs' attorneys would notify it of an asbestos bodily injury claim involving any of the facility's 21 members before filing formal litigation.

The center promises to make a settlement offer within six months.

If an agreement is not reached two months after the center makes its offer, the plaintiffs' attorney may then sue members of the center.

At least 19 law firms contacted by the center indicated they are interested in participating in the program, said Lawrence Fitzpatrick, president and chief executive officer of the center.

In addition, many other law firms have requested additional information about the alternative dispute resolution program, he said.

Only one of 40 law firms contacted by the center so far has flatly refused to participate in the program, according to Mr. Fitzpatrick.

And, only a few of many plaintiffs' attorneys contacted by *Business Insurance* said they saw problems in the center's program.

"I expect broad-based participation in the program," Mr. Fitzpatrick said.

"A vast majority of the plaintiffs have been very enthusiastic about the program," he said.

By bringing asbestos bodily injury claims directly to the center, both plaintiffs and defendants can save a "substantial" amount of money in legal costs, Mr. Fitzpatrick explained.

For example, in most states filing a claim in state court costs $200 to $300 in court fees, according to attorneys.

And, there are additional court fees involved in litigating a claim, they note.

"This is an excellent idea," said plaintiffs' attorney Fred Baron of Baron & Budd in Dallas. Mr. Baron, who is handling about 3,500 asbestos bodily injury cases, said he will participate in the center's alternative dispute resolution program.

"This was what we all hoped for in the formation of Wellington," Mr. Baron said.

He was referring to the June 1985 Wellington Agreement, which provided for the formation of the Asbestos Claims Facility, by which 34 asbestos producers and their insurers agreed to settle their asbestos bodily injury coverage disputes and provide a joint defense against claims brought by asbestos victims.

But the members were never able to launch an alternative dispute resolution program.

Due to division within its membership over several issues, including the allocation of liability for claims settlements, the Asbestos Claims Facility was folded in May 1988 (*BI*, May 30, 1988).

The Center for Claims Resolution is the successor to the Asbestos Claims Facility.

"Wellington fell flat on its face because it had no alternative dispute resolution program," said plaintiffs' attorney Paul Gillenwater of Gillenwater, Nichol & Ames in Knoxville, Tenn.

"Any attempt to resolve this type of mass tort litigation has merit," said Mr. Gillenwater, who currently

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Chicago galleries' fire loss could reach $50 million

By LINDA J. COLLINS

CHICAGO—As much as $50 million of artwork destroyed in a blaze that roared through a historic building complex in Chicago's trendy River North district earlier this month is at least partially insured under several policies.

Meanwhile, an art gallery that was a tenant in the complex is seeking more than $10 million in a suit against the complex owner, a contractor renovating the site and the complex's lienholder. The $10 million includes damages the art gallery claims occurred during the renovation and as a result of the fire.

A total of five buildings slated for landmark status were under extensive renovation at the time of the April 15 fire. The buildings housed nine art galleries, a slide company, a storage company and several condominiums.

One of the tenant gallery owners, William Van Straaten, who filed the lawsuit, valued all the art destroyed at between $15 million and $50 million.

"That sounds like a fair estimate," agreed Arlene Rakoncay, executive director of the Chicago Artists' Coalition.

She noted that this is reported to be the worst Chicago-area art loss in recent history.

Neither the owner of the complex, Mesirow Realty Development, nor its broker subsidiary, Mesirow Insurance Services, would estimate the value of the historic buildings. Both are units of Mesirow Financial Holdings Inc. in Chicago.

Mesirow Realty Development bought the complex for more than $8 million in 1987, and announced plans to renovate the site's two main buildings into 140,000 square feet of commercial space and 212 upscale loft apartments.

The $42 million project, called Gallery Place, would have been one of the largest rehabs in Chicago and was designed to be the centerpiece of the River North Gallery district.

The buildings, which occupied an entire city block, were the site of the former Brunswick-Blake-Collender plant, predecessor to Brunswick Corp., now based in Skokie, Ill.

Because the Chicago fire and police departments are now investigating the fire, neither would comment on the possible causes.

However, fire department officials quoted at the scene noted that the buildings' sprinkler and standpipe systems were not operational and that fire doors were open or had been removed, contributing to the fire's rapid spread.

They also indicated that arson is suspected because the fire apparently started in several areas of the buildings simultaneously.

Fireman's Fund Insurance Cos. of Novato, Calif., wrote Mesirow Realty's owners, landlords and tenants liability coverage and the commercial general liability policy for CCL of Chicago Ltd., the general contractor for the renovation.

However, a Fireman's Fund spokesman would not reveal policy limits.

Property coverage for the complex was written by Crum & Forster Inc.'s excess/surplus lines subsidiary International Surplus Lines Insurance Co. in Chicago, according to broker sources.

While a Crum & Forster spokeswoman did not deny that ISLIC insured the buildings, she said the insurer "cannot give out any client

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Inside

✔ We hope successful alternative markets don't follow the path of traditional insurers, and instead remain a source of consistent coverage at predictable prices, says this week's editorial. **PAGE 8**

✔ As HMOs multiply, some employers find it increasingly difficult to control the number and quality of HMOs they offer, says Gerald E. Oljace, a consultant with TPF&C, in Perspectives. **PAGE 45**

✔ Three British soccer clubs each have liability insurance to cover potential claims stemming from the stadium tragedy that killed 95 people and injured 170 others. The Football Assn., which oversees soccer in England, has coverage separate from the clubs. The local police and city council, which may have contributed to the incident, also have liability insurance. **PAGE 78**

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Vol. 23, No. 17—*Business Insurance* (ISSN 0007-6864) is published weekly at 740 N. Rush St., Chicago, Ill. 60611-2590. Second-class postage is paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes to *Business Insurance*, Circulation department, 965 E. Jefferson Ave., Detroit, Mich. 48207; 800-992-9970 or 313-446-1611. Copyright 1989 by Crain Communications Inc.



Consumer advocate Ralph Nader, at left, and insurance industry attorney George Bernstein debate the issues at the RIMS conference, while journalist Bill Monroe keeps their time even.

RIMS 1989

Nader, Bernstein spar over industry issues

By KATHRYN J. McINTYRE

ATLANTA—The insurance industry fails to control losses, over-reserves for losses to reduce its tax liabilities, is rife with waste and inefficiency and should be subject to federal regulation, declares consumer advocate Ralph Nader.

"Nonsense," was among the many rejoinders from Washington, D.C., insurance industry attorney George Bernstein, who squared off with Mr. Nader in a heated debate April 12 at the 27th annual Risk & Insurance Management Society Inc. conference in Atlanta.

Billed as a debate on "State vs. Federal Regulation of Insurance—Should All Roads Lead to Washington?", the subject of the sparring quickly turned to the insurance industry itself and tort reform efforts.

A full house—about 2,100 people—clapped, laughed and once jeered as Mr. Nader criticized insurers and defended the tort system and Mr. Bernstein criticized consumer advocates and defended the insurance industry. The score: four major rounds of applause for each combatant and one jeer for Mr. Nader when he complained that plaintiffs have a difficult time finding attorneys to represent them.

The two advocates were so quick to respond to each other and vehement in their remarks that moderator Bill Monroe, former television anchorman and executive producer of "Meet the Press," had to issue "30 second" warnings to keep each to his allotted time.

Mr. Nader hit the insurance industry hard for what he considers its inattention to loss prevention.

"Too many companies have in their files information about unsafe bridges, unsafe automobile models, unsafe flammable fabrics and they are not providing this information to their policyholders or to product safety authorities," Mr. Nader said.

"Insurance companies have got to be something more than a pass-through mechanism," he declared. "They have to spend much more effort on loss prevention.

"Whenever you hear the word risk management in the insurance industry, it is more financial risk management. It's how you can develop the rates, how you can reduce victims' rights, in order to manage the risk.

"The most proper risk management is loss control or loss prevention. There is not enough attention to this area. If you look at the program for this week, there are about three of the programs dealing with prevention," Mr. Nader said.

(There were about 10 sessions focusing on loss control out of 100 sessions, not counting industry-specific seminars.)

"I want to see the insurance industry become the sentinel for health, safety and prevention," Mr. Nader said. "I want to see it go back to loss prevention and loss control. I don't want to see it becoming principally a financial cash cow."

"I don't think anyone in this room has to be made aware of the loss prevention efforts of the insurance industry," countered Mr. Bernstein.

And, he asserted, "As long as the insurance industry fails at (tort reform) efforts, the insurance business will never be anything more than a pass-through entity."

Mr. Nader countered that "there was no surge in tort litigation; the tort liability crisis was largely fictional."

Mr. Bernstein's response: "Anyone in this room who pays claims knows there was a liability crisis."

Mr. Nader continued: "The problem is not too much liability—there is not enough adequate liability commensurate with the grievous and negligent injury so that these costs can be internalized as a deterrent and as a loss prevention incentive on the part of in-

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Case history gives 'captive' new meaning

By KATHRYN J. McINTYRE

ATLANTA—Risk managers putting their companies' money into alternative risk financing facilities should "pay attention to how you will get it out," advises a risk manager.

It can be difficult to disengage from an alternative risk financing facility, warns Frank J. Burke, director-risk management for The Marmon Group Inc. in Chicago.

Marmon Group cannot extricate itself or its money from an interest in a joint-venture industry captive that it acquired in 1981 when it purchased Trans Union Corp., he said.

Speaking at a seminar titled "The Long-Term Solutions Afforded by Today's Special Insurance Markets," at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta, Mr. Burke outlined Marmon Group's involvement in the rail car industry liability insurance captive, dubbed TRAIL.

Mr. Burke's report on the brief underwriting life of TRAIL was in stark contrast to the report of session moderator Edith Lichota, who outlined the successful formation and operation of Bermuda-based Bankers Insurance Co. Ltd. (*BI*, April 10).

TRAIL was formed in Bermuda in the late 1970s by the four largest members of the railroad tank car manufacturing industry at the time: Trans Union; GATX Corp.; North American Car Corp.; and ACF Industries Inc.

The manufacturers wanted an alternative to the commercial liability insurance market because rates had been driven up in the hard market of the mid-1970s.

In addition, they believed that their retrofitted tank cars of the late 1970s were far safer, and deserved better insurance rates, than the cars that had been involved in catastrophic derailments and explosions in the late 1960s and early 1970s.

Beginning in 1980, the captive provided its owners with $10 million in liability limits excess of $1 million retentions. The captive ceded $8 million excess of $2 million "to a variety of reinsurers," Mr. Burke said, including General Re Corp., which was the lead reinsurer.

TRAIL provided its owners with "very broad" liability coverage. Mr. Burke said, with TRAIL's coverage written to be at least as broad as any owner's primary liability insurance.

"With four partners and all our various operating divisions and all our various coverages underneath that, it turned it into a real muddle of coverages," Mr. Burke said.

"We came together because of our common exposures in railroad tank car manufacturing and leasing," Mr. Burke said. "But we covered all the other businesses of the four partners, so we had truck leasing businesses, cooling tower construction, oil storage—all kinds of things."

TRAIL also provided broad pollution coverage, he noted.

"We had this all-encompassing, broad-form policy," Mr. Burke said. "It was a risk manager's dream."

However, for a variety of reasons, the owners of TRAIL decided it should stop underwriting in October 1984, four years after it issued its first policy.

Among the reasons were that TRAIL's owners no longer wanted its coverage and that their ownership, financial management and corporate risk management philosophy had changed radically during the four years.

Indeed, it was a month before the first policy was written in the fall of 1980 that Trans Union received a tender

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RIMS debate

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dustry and commerce, which would make your work a lot better.

"The total payout for medical malpractice verdicts and settlements in 1986 was about $2 billion. You're talking about a payout of less than what Americans spent for cat food, which is $2.7 billion," he said.

Mr. Bernstein observed: "I think you saw something interesting there—the outrage that we spend more on cat food. The problem with zealots is they are outraged that other people don't think like them. People make choices in this country. If they want to buy cat food, they buy cat food."

Mr. Bernstein also said that the $2 billion medical malpractice payout for 1986 quoted by Mr. Nader was too low because it did not include reserves for claims from 1986 that would be paid in future years.

Mr. Nader responded: "Of all the things we spend money for in the country, who has the highest moral claim on our expenditures than the injured and the sick—the most vulnerable people in our society?"

Citing a Rand Corp. report estimating the cost of personal injury litigation—for settlements, verdicts, claims processing and lawyers fees—filed in 1985 at $29 billion to $36 billion, Mr. Nader pointed out that Americans annually spend $33 billion on cigarettes, $62 billion on alcohol and $42 billion on soft drinks.

"Let's get some priorities here," he declared. "When someone wins a big case in an automobile liability area, a lot of people benefit," Mr. Nader said, referring to the disclosure to the public of the product's dangers and the re-engineering that results.

"It's shocking" that insurers "pick on the paraplegics and quadriplegics who want a fair day in court and have a hard enough time getting lawyers to take these cases because they are so risky."

The audience jeered, but Mr. Nader continued: "Of all the people burned by the Pinto fuel tank incineration, not 5% got a dime. Not one out of 20 people damaged by medical practitioners ever get a cent in verdicts."

"If Ralph is so concerned with the innocent victims, it is amazing that over the years he alone of the consumer advocates has been the strongest opponent of no-fault," said Mr. Bernstein, citing studies that show that no-fault automobile liability laws put more money into the hands of injured people.

Mr. Nader responded: "I oppose no-fault because it dehumanizes the individual injured person by prohibiting any payment for pain and suffering. Anyone who has been seriously injured knows that medical costs and wage loss are problems, but nothing is worse than pain and suffering. Human beings are not chattels like a damaged car or damaged home to be repaired and not consider pain and suffering. You show me a no-fault system with pain and suffering compensation, and I'll support it."

Mr. Nader also criticized insurers for supporting passage of "a federal law limiting a lifetime of pain and suffering to a $100,000 cap without limiting the million-dollar executive salaries of insurance company CEOs who get it every year without any pain and suffering."

Mr. Bernstein charged that Mr. Nader should not be identified as a consumer representative. "He represents some consumers. He represents consumers who want a hand-out, who want subsidies. He doesn't represent you—you are consumers."

"You are now getting a little nasty, George," Mr. Nader scolded. "I'll give you a little medicine in return.

"You mean those hundreds of thousands of mutilated women who used the Dalkon Shield want a hand-out?" Mr. Nader asked.

Asked by Mr. Monroe why the insurance industry's rate of return on equity is lower than that of other industries, Mr. Nader brought down the house with the quick reply: "Because they have something known as insurance accounting."

He contended that insurers can inflate their loss reserves because they are "subject to very modest scrutiny by insurance commissioners and the Treasury Department."

"As someone very much involved in insolvencies, I always have to laugh when the insurance industry is attacked on statutory accounting," Mr. Bernstein responded. "If anything, insurance industry reserves are too low."

Mr. Nader also accused the insurance industry of permitting "a lot of waste and inefficiency."

He particularly criticized insurers for not lobbying for strong automobile bumper standards, which would reduce property damage losses.

On regulation of the insurance industry, Mr. Nader said both the states and the federal government have a role to play. However, state insurance departments need to be improved, he said, citing inadequate staff, authority, data collection and disclosure requirements.

These need to be corrected, he said, as well as introducing more experience rating for individual policyholders, especially doctors; creating consumer advocacy boards, either within or outside the insurance department; and adopting more protection against arbitrary cancellation.

The federal government also has to "fill the gaps in state regulation," Mr. Nader continued, calling for "a regulatory scheme" over international insurers, including Lloyd's of London; lifting restraints on the Federal Trade Commission's power to investigate the insurance industry; creating an office of insurance statistics data gathering and analysis; repealing the insurance industry's antitrust exemption under the McCarran-Ferguson Act; and a contingency back-up reinsurance facility to solve another capacity crisis.

"We should never get in the position again where we have this insurance cycle develop into a veritable volcano, destabilizing a lot of businesses and professions in the country by lack of insurance availability and massive premium increases and coverage reductions—and have to rely on a few anecdotes put forth by insurance trade associations and insurance spokesman instead of getting the basic data on what is causing these problems."

Mr. Bernstein countered that federal regulation is not needed and asserted that those who want repeal of insurers' antitrust exemption are either "antitrust purists," are "out to get the insurance industry" for supporting tort reform, or are consumer advocates who "preach competition but oppose it."

Prospective loss costs that insurers develop jointly are "essential to making rates," he continued. Without this data, Mr. Bernstein said, insurers will withdraw from markets in which they only write a limited amount of business, won't enter new markets and will increase their rates to compensate for the uncertainty of the appropriate rate to charge.

In addition, he said, insurers "will be forced out of business."

Ultimately, that will create "the type of chaos that is ripe for replacement of the private insurance system," Mr. Bernstein warned.

He also dismissed as "absurd" the suggestion that the United States should have "extra-territorial jurisdiction" over foreign reinsurers.

Mr. Nader challenged Mr. Bernstein's commitment to competition, calling for the repeal of anti-rebate laws that prevent agents and brokers from returning part of their commission to insurance buyers and the repeal of fictitious group laws that prevent individual insurance consumers from joining forces to buy insurance on a group basis.

"If you want to amend the anti-rebate laws and the anti-group laws, take on the agents," Mr. Bernstein suggested. ■

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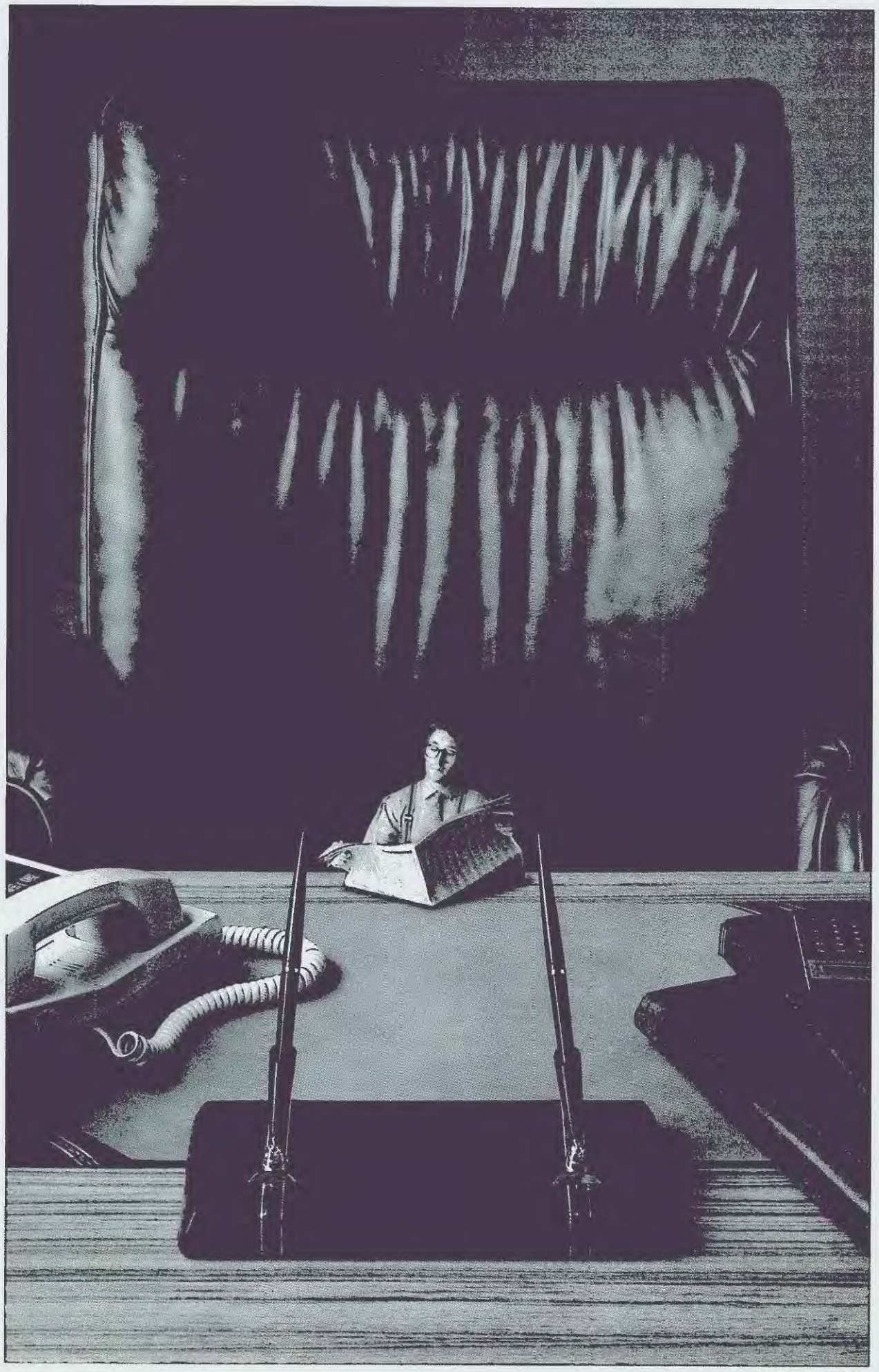
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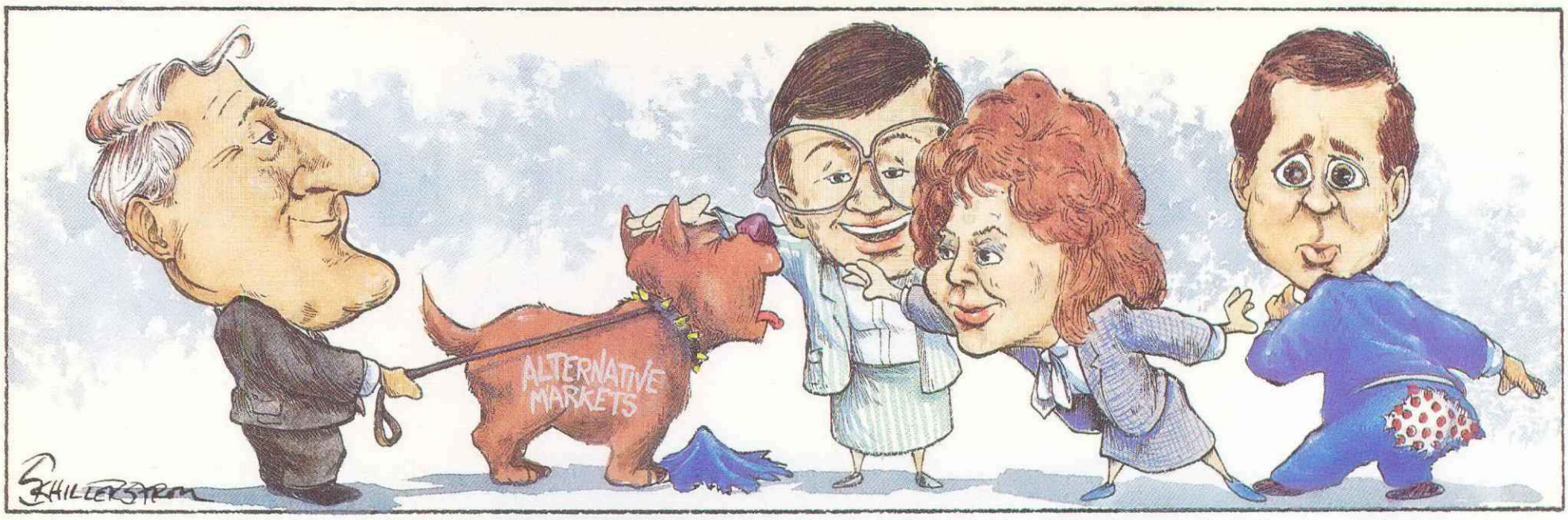
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Reviewing alternative insurance markets during the RIMS conference in Atlanta were, from left, John R. Cox, Edith Lichota, Janice C. Hackett and Frank J. Burke.

Alternatives

Continued from page 3
offer from Marmon Group. Marmon purchased Trans Union in February 1981.

As a member of the privately held Marmon Group, Trans Union subsidiary Union Tank Car's sales tripled, net worth increased "and suddenly Union Tank, which had been comfortable with a $1 million retention, was much more comfortable with a much higher retention," Mr. Burke said.

In addition, ACF later was acquired by Carl Icahn and operating companies were divested.

And, North American Car went into bankruptcy, leading to spinoff of its companies.

"In both of those cases, the corporate offices that were responsible for monitoring and controlling all the claims related to the old policies were gone," Mr. Burke said. "Suddenly we found ourselves with claims coming out of a bankrupted organization and the people we trusted getting into this deal weren't there any more."

GATX, meanwhile, spun off a lot of its divisions.

Only one person who helped set up TRAIL 10 years ago still is involved, Mr. Burke noted.

In addition, Marmon Group had risks that the other three partners did not want to insure, such as mining risks and propane gas equipment. That forced Marmon to also purchase another $10 million layer for those risks, which it did not want to do.

Marmon also wanted a uniform $3 million retention across the board; ACF didn't want a higher retention.

Furthermore, GATX, North American Car and ACF all had discontinued operations, which TRAIL was not willing to insure and the commercial insurance market would not underwrite unless it also insured their ongoing businesses, he explained.

Now, the three remaining owners of TRAIL—who purchased North American Car's interest in the captive—want to sell TRAIL, but they can't.

No commercial insurer is interested in buying TRAIL because it covered a variety of exposures on a broad form, including "the pollution coverage, which we so desperately wanted," Mr. Burke explained.

"When you sit down with an underwriter and try to explain to them what TRAIL insures, it is really impossible," he said. "You can't explain to an underwriter what you don't understand yourself," Mr. Burke said.

"It's impossible to quantify the losses that TRAIL will have because of these coverages," he said.

So far, however, TRAIL's short-term financial results have been

Continued on next page

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Continued from previous page
positive, Mr. Burke noted. TRAIL's largest loss to date was a $4 million payment on behalf of North American Car for a death claim in a truck collision.

About 75 reported claims are still open.

The three remaining partners have discussed taking their proportionate shares of the assets of TRAIL and giving up further coverage, but "that is impossible," Mr. Burke said.

They can't simply dissolve TRAIL because over its four years, additional policyholders, such as vendors, were given coverage under TRAIL.

In addition, purchasers of companies divested by TRAIL members have coverage from TRAIL.

As a result, the owners must continue to run off TRAIL's business. The administrative costs, including the cost of audits and management, continue, totaling a couple hundred thousand dollars a year, Mr. Burke said.

Marmon Group—with $3.5 billion in sales, 60-65 autonomously operating entities, 27,000 employees in 200-plus locations in the United States, Canada and Europe—today self-insures a $24 million layer excess of $1 million.

Losses within the first $1 million per occurrence are covered by a program with National Union Insurance Co. of Pittsburgh, Pa., an American International Group Inc. unit, which reinsures with a Bermuda-based company.

Marmon also buys $275 million in excess liability limits: $75 million excess of $25 million from the American Excess Insurance Assn.; $50 million excess of $100 million from X.L. Insurance Co. Ltd. in Barbados; and $150 million excess of $150 million from A.C.E. Insurance Co. Ltd. in Bermuda.

Marmon's large self-insurance program "ties into our basic philosophy of retain our risk, take care of problems and take care of cash flow," Mr. Burke explained.

Marmon believes in preventing losses, he said. "We try as best we can not to shift the problem out into the future and not to shift the problem out to some insurance carrier."

Marmon Group tries to "make the very best, safest product we can make and to protect our employees," he said.

Also speaking at the seminar was Janice C. Hackett, vp and senior consultant with Corroon & Black Management Inc. in Nashville, Tenn., and John Cox, chairman of ACE Ltd. (see related story).

The session was coordinated by Catherine Dorris, a consultant with the risk management consulting division of Corroon & Black Research & Development Division in Nashville. ■

Alternative markets falling into 'trap': Cox

By KATHRYN J. McINTYRE

ATLANTA—The alternative liability insurance markets of today will become the traditional insurance companies of 20 years from now, predicts John Cox, chairman of ACE Ltd.

Already, alternative markets are beginning to fall into "the trap of the past" that upset the relationship between policyholders and traditional insurance companies, Mr. Cox says.

That trap was not recognizing that the accumulation of funds in an insurance company should be preserved to pay future losses.

Mr. Cox described the evolution of insurance market problems and predicted the future of alternative markets during a seminar titled "The Long-Term Solutions Afforded by Today's Special Insurance Markets" at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Other speakers outlined the development of alternative markets, including one that failed (see story page 3).

Insurance companies are really fiduciaries of premiums paid by policyholders in anticipation of recovering funds to pay for unexpected events, according to Mr Cox, who formerly was president of Insurance Co. of North America.

But when the funds accumulated by insurance companies grew more quickly than the claims were reported, "the fiduciaries of these funds concluded that the funds belonged to this industry and not to those who had the foresight to accumulate for the development of society which was taking place," said Mr. Cox.

For example, he said, insurers did not predict or provide for pollution liabilities and instead called the investment income they had earned "profits."

"It was inevitable that the clash between economic developers and their fiduciaries would occur," and that they "would become adversaries when the purchasers of insurance tried to recover some of their costs," Mr. Cox said.

While pointing out that "I have oversimplified the process," Mr Cox maintained that "insurance companies have reacted as if they were investment companies and have withdrawn their original promise."

As a result of the total withdrawal of insurers from certain markets in 1984 and 1985, businesses went "back to basics," and formed alternative markets like A.C.E. Insurance Co. Ltd., X.L. Insurance Co. Ltd. and others to allow businesses to pay a budgetable amount of money each year and accumulate it for the long-term to pay losses, Mr. Cox said.

A.C.E. and X.L. both underwrite excess liability insurance (*BI* April 10).

Now, however, the assets are accumulating in alternative markets more quickly than expected.

"The trap of the past—whose money is it?—emerged and what to do with the funds became part of the regular business," Mr. Cox said.

The options explored included dividends, expanded capacity and repurchase of shares.

"For the most part, the dedication of the assets to the original purpose has been retained," Mr Cox reported.

However, in the future, Mr. Cox predicts that the alternative markets "will treat as profit more of the accumulation than they should and divert the assets to other purposes."

"They will evolve historically much the same way as the traditionals did. They will acquire, be acquired, merge, consolidate and generally change so that their origins will be erased and forgotten," he said.

"They will withdraw from coverages and reduce their perceived exposures. They will become traditionals," Mr. Cox said.

This process, however, will take "at least 20 years, and perhaps longer," he said.

"Future audiences of RIMS in the next century will be learning how to deal with the creations of our generation as we did of those before us," he predicted. ■

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Opinions

A metamorphosis?

WE HOPE THAT John R. Cox is wrong in his prediction that the alternative risk financing facilities of today will become the traditional insurers of tomorrow.

The alternative risk financing markets of today represent a "back to basics" approach to insurance. That is, they were formed by companies seeking to pay a budgeted amount each year to cover the cost of unexpected events in the future.

Now, these alternative markets, including A.C.E. Insurance Co. Ltd., which Mr. Cox manages, are in danger of failing from their own success: They have accumulated too much money, Mr. Cox said in his provocative speech at the 27th annual Risk & Insurance Management Society conference earlier this month (see story, page 7).

With their coffers filled, the alternative markets are being tempted not to hold onto that cash to pay future losses, but to view that money as profits from which to pay dividends.

The facilities also are being tempted to leverage their assets by adding new exposures without properly adding to their assets.

And, they are tempted to cut their rates.

If the alternative facilities succumb to these temptations, as traditional insurers have, they also will fail to meet the needs of their policyholders, as traditional insurers have, according to Mr. Cox.

They will ultimately withdraw from writing certain coverages and will reduce their perceived exposures, he concluded.

But the owners and managers of these alternative facilities don't have to follow traditional insurers' business practices.

They can stay focused on the basics, continuing to charge a budgetable premium each year and accumulate the funds for the claims that are sure to surface in the decades ahead from activities that appear safe today.

We hope the alternative markets don't follow the path of traditional insurers. We'd like to see the risk managers who gambled their reputations and their companies' money by investing in these facilities prove that they really want what they say they want: consistent coverage at predictable prices.

But, if the alternative markets of today lose sight of their mission and become swept up in the price/coverage cycle of the conventional insurance marketplace, there is one reassuring thought: New alternative markets can and will be formed to take their place.

Letters

Western Underwriters is not the same firm as California insurer

To the editor: In your March 27 issue, you mentioned a company called Western Underwriters.

Until June 1988, Western International Insurance Co. was known as Western Underwriters Insurance Co. The Western Underwriters mentioned in your article has absolutely nothing to do with Western Underwriters Insurance Co. or Western International Insurance Co. of Huntington Beach, Calif.

Joseph H. Nevins
Senior Vp
Western International Insurance Co.
Huntington Beach, Calif.

Prop. 103 author continues to draw field of opponents

To the editor: Isn't it interesting that Harvey Rosenfield, the proponent of Proposition 103 in California, says that insurance companies are *outlaws* to use the state's court system to challenge that proposition (*BI*, April 3)?

Wouldn't Mr. Rosenfield use the same system if he believed that one of his clients had been deprived of his or her rights?

That seems to make Mr. Rosenfield either an outlaw, too, or one who favors double standards as respects access to our legal system.

If Mr. Rosenfield really wanted competition, he should allow the legal battles to run their courses. If the insurers lose, let them decide for themselves what to do in California.

It is apparent that Mr. Rosenfield's economics education was non-existent, or he did not pay attention. It still is impossible to sell a product or service as a loss and make it up in volume.

Kenneth Bush

• • •

To the editor: California Proposition 103 leaves much to be desired and seems to be a poorly thought-out piece of legislation. Harvey Rosenfield goes on record that wording of Proposition 103 was purposely written to be plain and simple, which seems to be his excuse for such an ambiguous piece of legislation (*BI*, April 3).

Mr. Rosenfield has not addressed the problems Proposition 103 can create if the rollback section is interpreted literally. For example, during 1988, thousands of commercial, industrial, servicing and contracting policyholders enjoyed property and liability rates and premiums well below the 1987 levels even considering the 20% mandated reduction. If the rollback provision is strictly enforced, those that enjoyed lower premiums will be faced with increases. Not understanding the competitive nature of the insurance business, Mr. Rosenfield apparently was not aware that premiums had been coming down quite rapidly.

Hermann Schlander
Palm Desert, Calif.

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611.

Observers clash on coverage for wrongful termination

To the editor: I am astonished that you published Clinton E. Miller's article about coverage for wrongful termination claims, "Wrongful Termination: Some Claims May be Covered by General Liability Policies," without first verifying its legal accuracy (*BI*, March 20).

In fact, the California Court of Appeal in *Commercial Union Insurance Co. vs. Superior Court*, a decision Mr. Miller does not even mention, already has ruled that emotional distress arising from wrongful termination is not defined as an "occurrence" according to the standard wording of the Insurance Services Office Inc.

Mr. Miller's description of rules application to claims handling is nonsense, too —no insurer in California is obliged to defend or indemnify a claim outside its policy's insuring agreement.

Robert N. Schiff
Fisher & Hurst
San Francisco

■ *Mr. Miller responds: Negligent infliction of emotional distress actions arising from the outrageous act of firing an employee would be an independent cause of action, due to how the employee was terminated.*

It is not that the emotional distress would be a proximate cause of the firing, per se.

I have read Mr. Schiff's case cite and find that the case hasn't anything to do with the legal issue of "emotional distress resulting from wrongful termination is not an occurrence." That case deals solely with what is and what isn't an "occurrence." Mr. Schiff's cite is from December 1987.

For an even better cite on what constitutes an "occurrence," Mr. Schiff should read State Farm Fire & Casualty Co. vs. Estate of Jenner *(USCA 9th, No. 87-2153, Sept. 8, 1988, by Wiggins, J. (applying California law)).*

The State Farm case held that the willful molestation of a child is not an intentional act, but rather an "occurrence" if the policyholder can prove that he did not intend to harm the plaintiff!

Judge's D&O ruling on attorney fees astounds reader

To the editor: I was appalled after reading the article in your March 27 issue titled "Attorneys' Fees Are Excluded From D&O Limits: Judge."

It is unbelievable any judge would decide that this policy wording is ambiguous.

Since reading this article, I have visited with a number of people and asked what they felt defense costs in a lawsuit included. Attorneys' fees was the first answer I received in the majority of the cases.

The persons I quizzed were not necessarily degreed individuals; however, I don't think it takes a college degree to figure this one out. Even the Second College Edition of The American Heritage Dictionary includes in its definition of defense "the defendant and his legal counsel."

The only ambiguity in a case such as this is the ability of some individuals to provide justice in the courts.

Gina Dyer
Agency Manager
Belway Insurance Service
Kansas City, Mo.

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Published by Crain Communications Inc., Chicago

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Spotlight report

U.S., foreign captives' popularity to rise: Panel

By CAROLYN ALDRED

ATLANTA—Formation of captive insurance companies by U.S. companies will continue to grow at a modest rate, despite the current soft property/casualty insurance market and tougher tax regulations, predicts an observer.

The growth will continue partly because of a continuing loss of confidence in the commercial insurance market, explained Charles J. Bird, president of AIU Risk Management in New York, a unit of American International Underwriters, part of American International Group Inc.

Meanwhile, more and more British, European and Australian parent companies also will form international captives, predicted Mr. Bird.

And, "watch Japan, Korea and Southeast Asia where interest in risk management is just beginning," he advised attendees of the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Mr. Bird described some of the trends occurring on the captive scene during a session titled "When Does A Captive Make Sense for International Exposures?"

For example, non-North American domiciles such as Guernsey, Luxembourg and Singapore are gaining popularity, and new captive domiciles—such as Ireland—are sprouting up, according to Mr. Bird.

The types of coverage captives are writing also is changing, he noted.

"While property programs will continue to grow, we have now entered an era where captives will be used to write all types of business," Mr. Bird predicted.

For example, captives increasingly will be used to write coverages including warranty, professional liability, credit, life, disability, malicious product tampering, product recall, product liability, pollution—including first-party cleanup—directors and officers liability, errors and omissions, even cancellation and bankers blanket bonds, he told risk managers.

Meanwhile, although captives in many countries are coming under increasing regulation and the "fiscal aspects of captives are coming under scrutiny," captives will continue to operate in a freer environment than that of commercial insurers, Mr. Bird said.

Other advantages that captives offer to their parent companies include reduced insurance costs, increased stability and increased capacity, pointed out Charles W. Brandyberry, manager of the captive reinsurance and treaty division at Johnson & Higgins in New York.

Tax advantages no longer are the sole incentive for establishing captives; there are many other advantages, agreed Mr. Bird.

For example, a captive offers a company much greater access to the reinsurance market, he said. It also provides greater control over the risk management programs of subsidiary companies, as well as the ability to reap investment income from premiums paid to the captive, he said.

In addition, a closer relationship to the reinsurance market often gives "captives and insurance vehicles" greater bargaining powers, allowing them to more "attractive discounts," he explained.

Meanwhile, operating a captive allows a risk manager greater access to all information relating to a company's entire worldwide insurance arrangements, he pointed out.

A captive allows risk managers greater flexibility to manage a company's risk financing arrangements by allowing increased levels of retention and greater access to other alternative risk transfer mechanisms, agreed Joseph F. Braunstein, vp of the special products branch of CIGNA Corp. in New York.

However, before establishing an international captive, a risk manager must consider several questions, the panelists pointed out.

For example, the country in which the risk manager's parent company is based greatly influences captive decisions, pointed out Mr. Brandyberry.

"Some countries penalize a captive if it's based in a tax haven, and, in some countries, companies can only set up reinsurance captives" outside of the home country because direct insurance must be placed with a locally licensed insurer, he explained.



As a result, many companies with operations and subsidiaries located throughout the world establish international reinsurance captives, which are fronted by commercial insurance companies, he said.

An international captive is much easier to establish if that parent company "has some form of centralized global risk management and insurance program," said Richard M. Inserra, vp of risk management and business analysis at Trican Group Limited Partnership Inc. in New York.

If a company's local operations are more autonomous, the corporate risk manager will be forced to explain the advantages of establishing a captive to each company subsidiary, he warned.

Setting up an international captive requires long-term thinking and will create additional demands on a risk manager's time, Mr. Inserra added.

"It's a complex and challenging but rewarding task," said Mr. Inserra, who moderated the session.

Another panelist, Bernard J. Mooney, assistant vp of the CIGNA Captive Center in New York, advised risk managers attending the session how a risk manager should present his case to an underwriter at a insurer that is being asked to front for the captive.

According to Mr. Mooney, a risk manager's submission to a fronting company should include comprehensive details of:

- The company's loss history.
- Engineering data.
- Financial data.
- Plant locations and operations.
- The company's expectations of the captive.

J&H Vp Robert L. Schram coordinated the session. ■



Analyst predicts soft market until '91

By KATHRYN J. McINTYRE

ATLANTA—Property/casualty insurance prices probably will remain competitive until at least 1991, an insurance stock analyst says.

"We do not expect the cycle to turn until at least 1991," says Jeffrey Cohen, vp of Goldman, Sachs & Co. in New York.

In the meantime risk managers should prepare for the next hard market, advises Michael K. White, chairman and chief executive officer of Alexander & Alexander Inc. in New York.

By 1991, it will not be "a soft landing," Mr. White said.

Some insurers are preparing for the next hard market and trying to preserve their surplus so that they will be able to provide capacity, says Charles J. Clarke, senior vp, property/casualty commercial lines-national accounts, with The Travelers Cos. in Hartford, Conn.



Mr. White

"A lot of us are not participating aggressively in the marketplace because we are saving our surplus for when things tighten," he said.

The three insurance industry experts participated in a panel discussion on "The Next Hard Market —When? What to Do Now?" at the 27th annual Risk & Insurance Management Society conference held April 9-14 in Atlanta.

"In this industry, managements will not raise prices in anticipation of rising losses," observed Mr. Cohen. "They have to wait until the losses hit them."

Insurance companies only raise rates after their surplus has declined, he said. Based on current insurance industry results, he predicts that the industry's surplus will not decline until about 1991.

"We see capacity—both financial and psychological—driving the cycle," he said, noting the increased capital invested in the insurance industry in 1985 and 1986.

While business written in 1986 and 1987 was "reasonably profitable with accident year combined ratios around 100%," Mr. Cohen expects current pricing to increase the combined ratio in 1989 and 1990, from 105% in 1988.

However, the price-cutting is slowing, reports a Goldman, Sachs' surveys of about 1,000 agents and brokers, about 23% of whom responded.

In the January 1989 survey, about 68% of the respondents said commercial lines renewal premiums were down 1% to 20% from a year earlier, compared with 54% of the respondents in July 1988 who said renewal premiums were down 11%-30% from a year earlier.

"But, there has been no significant increase in the percentage of agents who said premiums have been flat or rising," Mr. Cohen noted.

Commercial multiperil and commercial property lines appear to be the most competitive, he said, with half the agents saying premiums are down 11% to 30%.

General liability and commercial umbrella insurance premiums are down 1% to 20%, according to more than half the agents.

The majority of agents and brokers also said commercial automobile premiums were down 1% to 20% in January from a year earlier, although more reported no change in commercial auto premiums than in umbrella or general liability insurance. Workers compensation premiums were reported to be either unchanged or up 1% to 10%, with the agents divided between the two assessments.

Agents and brokers also reported rate cutting on accounts of all sizes, Mr. Cohen said, although price competition does increase by policy size. For example, renewal premiums on accounts with annual premiums of less than $10,000 are going down 1% to 10% while the prices of policies with premiums exceeding $100,000 are going down 11% to 30% or more.

But this slower decline in prices is not a sign that the cycle is turning, Mr. Cohen said, because availability of coverage is still increasing or unchanged, according to the agents and brokers surveyed.

"We've become more pessimistic about how long the down cycle will last because combined ratios are not rising very rapidly. Companies appear to be underreserving current accident year business and underestimating how much their pricing has deteriorated," Mr. Cohen explained.

The impact of the Tax Reform Act of 1986, which increased insurers' tax liability by, among other things, requiring insurers to discount their loss reserves, "is not that large," Mr. Cohen said. "Although it will reduce surplus and cash flow, the impact will be only about 2 points on the combined ratio," he said.

Mr. Cohen predicted that the insurance industry's combined ratio will peak in the current pricing cycle at about 114% to 115%, compared with 118% in 1984.

Commenting on the use of new price-monitoring systems, Mr. Cohen said insurers are using them to "compete aggressively more selectively in areas where it looks good to them."

Mr. White of A&A agreed. "A lot of the insanity of pricing right now is caused by a new phenomenon. Last time it was cash-flow underwriting. This time it is niche marketing—every underwriter has a niche that they can look back over the last 10 years and say 'I have always made money on this class of business; I will keep that account at any cost.' They are in the process of bleeding themselves to death."

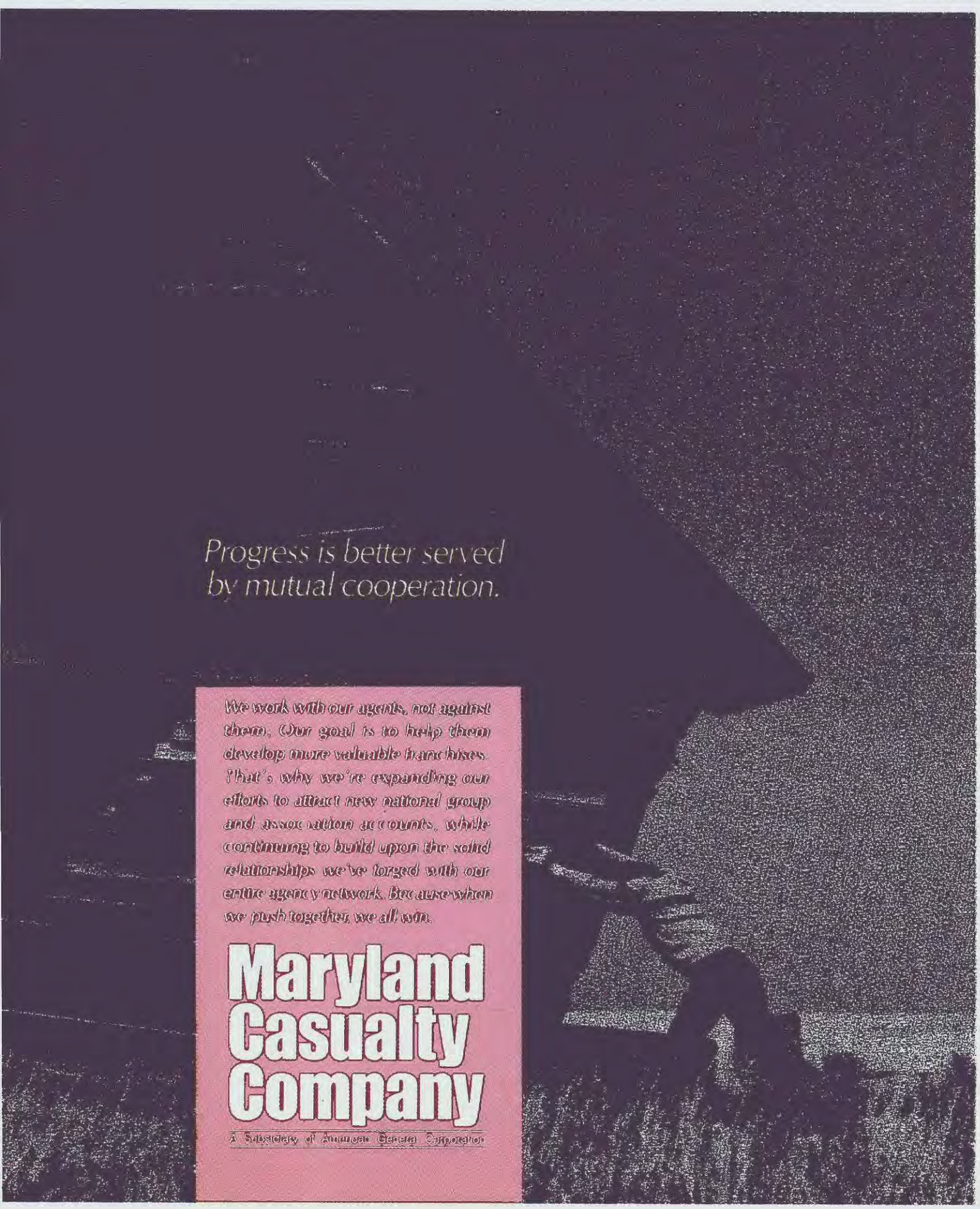
Mr. Clarke of Travelers noted that the selected niche is not by line, but by territory or size of account or type of customer.

Travelers is targeting those clients that have service-intensive needs, he noted.

In this competitive market, "Pricing to us looks much worse than many company managements believe," Mr. Cohen said, pointing out that commercial lines premiums written in 1988, excluding workers compensation, fell 1.2% and incurred losses fell 4.2%.

"How can incurred losses in commercial lines be shrinking 4% against a long-term trend growth of 11%?" he asked, adding "it doesn't make a lot of sense."

Continued on next page



Hard market

Continued from previous page

While acknowledging that the unpredictable cost and availability of insurance is a problem, Mr. Cohen said: "You don't have it too bad. The insurance industry is chronically overcapitalized. These companies earn a below-average rate of return on capital and over time that rate of return seems to be declining," to below the rate of return of the industries they are insuring. "That tells me that over time they are not charging you enough."

Commercial insurance buyers have three choices, according to Mr. Cohen: Develop a long-term relationship with an insurer and hope that it will reduce the impact of the cycle on costs and availability; use alternative risk financing mechanisms combined with buying insurance when it is attractively priced in a soft market; do nothing and accept the cycles.

Mr. White suggested that risk managers prepare for the next hard market by assessing the quality of their current insurance, broker services and risk management program.

"The No. 1 issue" for risk managers in the next three years will be the financial stability of their insurers, Mr. White said.

Not only should risk managers consider whether their insurer will be there three to four years from now to pay losses, but also whether the insurer will continue to write certain lines of insurance when its surplus is strained by rising premiums.

Mr. White advised risk managers to ask their underwriters of important lines of insurance: "When you raise prices, are you willing to dedicate some surplus to me? Are you going to be there when I need you?"

"Seek that commitment," from insurers at the highest level of management possible, Mr. White suggested.

In assessing underwriters' commitment to a line of insurance, Mr. White advised risk managers to consider how long the underwriter has been providing the coverage at issue. "Are they a recent entry or have they been writing (this) type of business for quite some time," with expertise and dedication to the product?

Mr. White also advised risk managers to develop back-up plans to cope when commercial insurance capacity dries up, including deciding now how large a retention the organization is willing to assume.

Also, Mr. White advised risk managers to begin preparing senior management for the eventual turn in the market and explain how insurance costs have fluctuated with the cycles.

Broker services also should be evaluated now against criteria based on service requirements and a risk management approach to the business, he said. "If your broker does not measure up, you will be well-advised to select one that does," he said, cautioning against using a competitive bidding process to select a broker.

"I would have a beauty contest," to select a broker based on its capabilities to service an account's risk management needs, he said. "Good brokers should be able to obtain competitive prices."

Risk managers also should review their property and liability loss control programs, because it takes time to improve them, he said, adding, "The loss dollar is by far the largest part of the premium that you pay."

Mr. Clarke of Travelers disputed the "general perception that we have exact price knowledge" and that insurers simply refuse to disclose that information. The current price competition in the insurance market results from "fragile data. We do not always know the right price."

Price competition also is fueled by the many competitors writing insurance, he said. "There are new players every day and we must compete."

"There are times I look at Warren Buffett's annual report and I would like to be like him," said Mr. Clarke, referring to Berkshire Hathaway Inc.'s insurance operations.

The Berkshire Hathaway insurers, including National Indemnity Co., do not cut rates in a competitive market to maintain premium volume.

"That means they are in and out," said Mr. Clarke. "It does not mean sticking with relationships; it does not mean stability. He is making a fortune getting in and out of this business.


Mr. Clarke

"We understand the business as well as Warren Buffet, but we have made certain commitments to brokers and to you people," he said, speaking to risk managers. "If I behave like Warren, where are you?"

Mr. White, however, said Mr. Buffett "will tell you that he doesn't get in and out of the market, that his pricing stays in a narrow range and that the buyer chooses to get in and out." But, "major insurers can't be in and out—they have a staff of people to serve the buyers' needs and they have a major overhead—a fixed cost—and they have to feed that."

Mr. Clarke also observed that rates charged by Berkshire Hathaway are "set at the max of the hard market."

("Our prices were reasonable given the market conditions," said Michael Goldberg, vp of Berkshire Hathaway, in an interview last week. "We wrote policies with a lot of risk."

Mr. Buffett wrote in his annual report this year: "We simply will not write policies at rates that carry the expectation of economic loss. We encounter enough troubles when we expect a gain.")

When a risk manager in the audience said he would rather pay Travelers the maximum rate in a hard market and asked why Travelers wouldn't always provide coverage in the last tight market, Mr. Clarke responded: "We really feared that the liability situation was out of hand and that assuming more risk was not something smart to do on behalf of our shareholders."

Asked why six months later Travelers was willing to write the coverage at a lower price than it could have earlier, Mr. Clarke explained: "When I begin to feel better—to make money—I come back into the risk-taking business.

"If for whatever reason you have threatened your surplus position, you are not in a position to take enormous risk until you feel better and the way you feel better is gradually. Some of us then will miss that opportunity to absorb an awful lot of good premium," Mr. Clarke said.

"This time, hopefully, some of us will have managed our way through the cycle and not threatened our surplus, which is what we are doing."

Insurance prices will go up, he said, when "carriers' management cannot rationalize any longer that production is in their best interest."

However, that will not occur as long as insurers believe a market change is imminent, he said. "If I believe it will be soon, it cannot happen because if I believe it is soon, I will not let that renewal go and I will pursue someone else's renewals."

Declining to name the year that will occur, Mr. Clarke did predict that the cycle will change "about the time that ISO has been dismembered, McCarran-Ferguson has been modified or shot, and the self-appointed consumerites have convinced everyone that now, finally, the cartel is gone and competition will really exist." Then, "we will have collusion by another name, of course."

The session was moderated by J. Douglas Higley, risk director for the state of Louisiana, and coordinated by W. Lee Carter III, vp and director of research and development at Alexander & Alexander Inc. in Dallas. ■



Can one non-direct writer really be different from the rest?

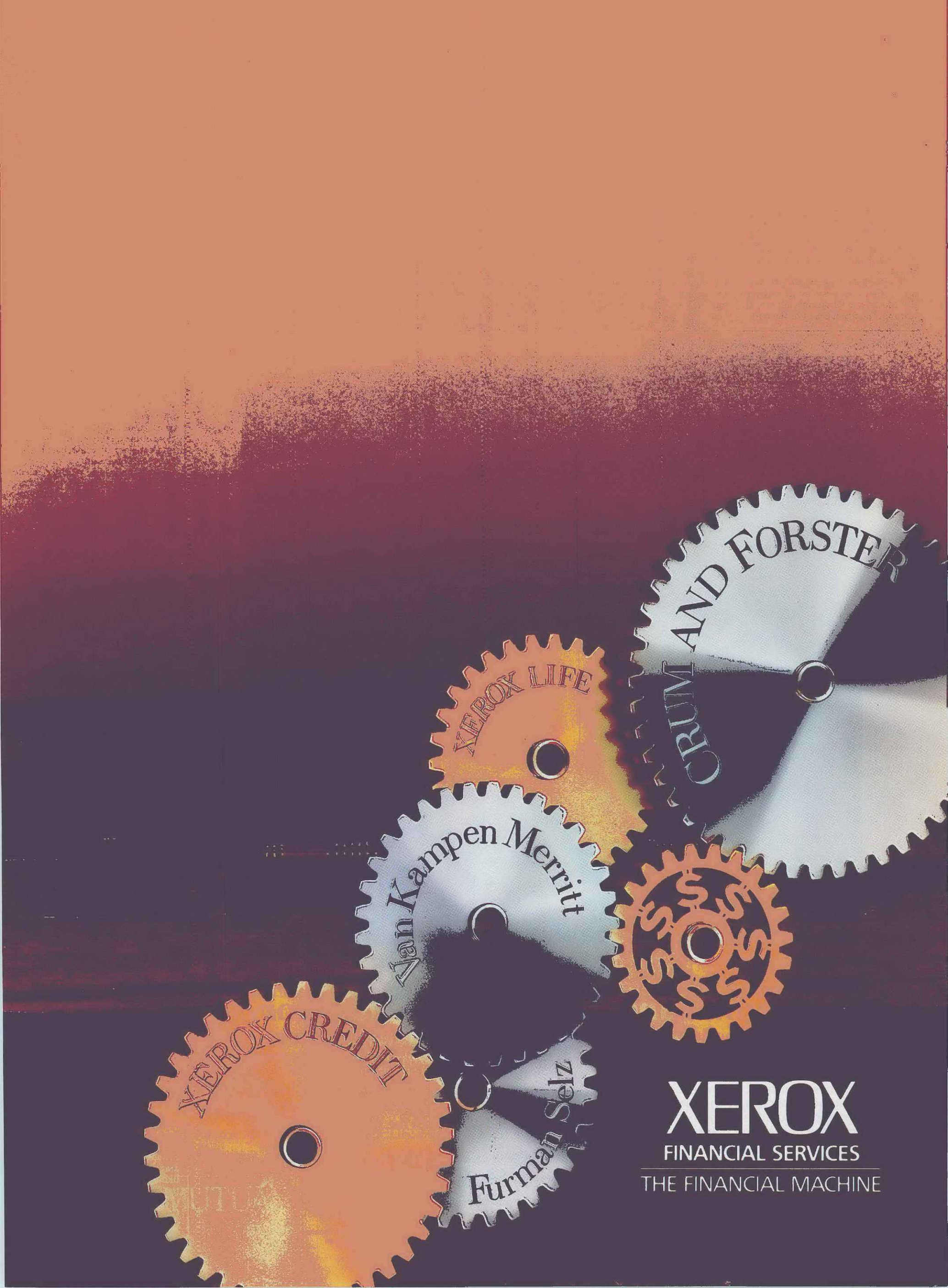
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Spotlight report

Strive for continuity of insurance layers

By CAROLYN ALDRED

ATLANTA—Excess liability and umbrella insurance programs can hide an array of unintended coverage gaps, according to several experts.

"Excess liability programs are becoming increasingly important, and there's greater emphasis than ever to know whether the program covers what you think it does," said Laura L. Hinckley, director of risk management for Avery International Corp. of Pasadena, Calif.

Ms. Hinckley moderated a session on excess and umbrella insurance at the 27th annual Risk & Insurance Management Society conference held April 9-14 in Atlanta.

Jack P. Gibson, president of International Risk Management Institute Inc. of Dallas, agreed: "Excess coverage can vary significantly from one insurer to another."

And, umbrella insurance programs are not standard, said Kathryn Furr, assistant vp of James Econn & Co. in Los Angeles, who coordinated the session. Consequently, "it is important to ensure adequacy of limits and to avoid gaps in coverage," she advised.

A properly structured excess insurance program will respond when primary aggregate limits are exhausted, but there are many problems associated with "drop-down" arrangements, Mr. Gibson said.

For example, "some policies have ambiguous drop-down provisions and some don't have any provisions," he noted.

In addition, some excess insurance programs drop down only in the event of "exhaustion of aggregate limits in underlying policies by payment of claims," he explained. But, if the primary policies include defense costs within limits, this could cause some excess insurance gap problems, because defense costs do not constitute payment of claims, Mr. Gibson explained.

Other excess insurance policy drop-down provisions apply only if primary layer limits are exhausted from the payment of claims that are covered by the excess policies, which could present a coverage gap if the excess layer is not as broad as the primary layer, he noted.

For example, primary policies often have broader pollution coverage than excess programs.

Excess policies also are ambiguous about whether they drop down if the underlying insurers become insolvent, according to Mr. Gibson.

"My suspicion is that most umbrella carriers didn't think they had to drop down to cover the insolvency of an underlying insurance company," he said.

However, so far there is not a "clear-cut trend" in court decisions on this issue, and newer excess policy forms state they will not drop down if the underlying insurer becomes insolvent, Mr. Gibson noted.

Inconsistent inception dates between the primary and excess insurance policies also can create coverage gaps, Mr. Gibson warned. If the policy dates of the primary and excess policies are not concurrent, the full primary aggregate limits may not be available for losses that occur during the policy period of the excess layer, and a coverage gap can result, he explained.

For example, a policyholder may purchase primary coverage with an aggregate limit of $1 million and a Jan. 1 inception date and excess coverage with a June 1 inception date. If the primary insurer pays a $200,000 claim before June 1 and the policyholder is hit with a $2 million claim after June 1, the excess insurer will not take into account the $200,000 claim payment before June 1.

Ms. Furr also stressed the importance of ensuring that all excess layer policies are consistent with the primary or first excess policy.

For example, many excess policies follow the same terms of the "preceding underlying layer." However, it is best to ensure that all excess policies specifically follow the primary policy or the first excess policy, rather than simply the preceding layer, she said.

Consistent and adequate limits are more important than even broad policy terms, Ms. Furr said. For example, it does not matter so much whether defense costs are included within the policy limits as long as the provision is consistent throughout the excess program, she explained.

Mr. Gibson of IRMI pointed out several areas where primary coverage usually is broader than excess coverage.

For example, blanket pollution exclusions in excess policies will exclude claims that are often covered by primary policies, he noted.

Pollution-related claims that are included in many primary policies and excluded from most excess policies include:

- Injuries to employees, which is covered under employers liability coverage.
- Liability from pollutants released when a policyholder's vehicle that is not carrying pollutants collides with another vehicle that is carrying pollutants.
- Liability resulting from smoke, heat or fumes caused by a fire.

Another area where umbrella or excess program policies are more restrictive than underlying commercial general liability policies is third-party property damage, said Mr. Gibson.

The new CGL provides limited coverage for property damage to an insured contractor's work or the work of an insured contractor's subcontractors in some cases. However, many excess and umbrella policies provide no coverage for such losses by excluding coverage for "property damage to work performed by or on behalf of the insured," he noted.

In addition, many excess policies do not specify whether they cover prejudgment interest awarded by courts, Mr. Gibson said.

Also, while many underlying policies are silent on punitive damages, and such damages are assumed to be covered unless prohibited by state law, most excess policies exclude coverage for punitive damages.

However, there are areas in which excess policies offer broader coverage than primary polices, according to Mr. Gibson.

For example, the definition of personal injury often is broader in excess policies, combining the underlying policies' definitions of bodily injury and personal injury.

In addition, some excess policies provide automatic coverage for any parties who are required by contract to be named as additional insureds, a provision not automatically contained in primary policies, according to Mr. Gibson.

Also speaking at the session was Donald S. Malecki, principal of the insurance and risk management consulting firm Donald S. Malecki & Associates Inc. of Cincinnati, Ohio, and Fort Thomas, Ky. ■



Spotlight report

Don't pick vendor solely on price: Kloman

By KATHRYN J. McINTYRE

ATLANTA—Risk managers should consider subjecting their service providers to a "conceptual competition" rather than "old-fashioned competitive bidding" every five to seven years, a risk management consultant advises.

A conceptual competition involves identifying and selecting the best qualified service provider on merits other than price, said H. Felix Kloman, a principal and vp in the Stamford, Conn., office of Tillinghast, a unit of Towers, Perrin, Forster & Crosby Inc.

Mr. Kloman participated in a seminar on "Value Added Performance: Getting the Best from Agents, Brokers and Underwriters," held during the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Other participants reviewed competitive bidding and the marketing and underwriting process.

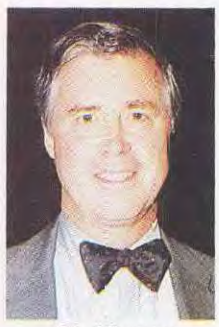
A conceptual competition is appropriate for selecting agents or brokers, consultants, captive managers, lawyers, claims managers, engineers, actuaries and risk management information system providers, according to Mr. Kloman.

A conceptual competition is needed, Mr. Kloman said, when:

- Specialized programs or service requirements exist.
- There is limited market capacity.
- There is a need for an innovative approach.
- There is a need to correct a "shopper" reputation.
- There is a need for greater control and involvement of the risk manager in the entire risk financing process.
- There is a need for an educational opportunity.

Mr. Kloman outlined the steps for selecting an agent or broker using a conceptual competition. They are:

- Begin six to nine months before renewal.
- Prequalify six or seven firms through research, including contact with risk managers and key underwriters.
- Require written proposals and oral presentations.
- Identify minimum service requirements, including specific, critical questions.
- Provide basic information on the company and the entire risk management program.
- Encourage creativity and initiative.
- Identify the team that will select the provider, including the risk manager, the treasurer or chief financial officer and perhaps an operating officer.
- Identify the selection criteria.
- Do not permit any contacts with insurance markets.
- Suggest the length of the proposed relationship.
- Require alternative compensation proposals, but state if compensation must be on a fee basis.



Mr. Kloman

The written report submitted by a broker should include such information as the names of the account team and what they will do; background on the firm itself; a conceptual design of the insurance program; a description of service philosophy and references.

"Be sure to call references," Mr. Kloman said. "All too often they are not called."

He also suggested asking the broker for the names of accounts recently lost so that the risk manager can call these risk managers to find out why they switched from the firm.

Based on the written proposals, two to four firms should be selected for oral presentations, Mr. Kloman advises.

The oral presentations should be made by the actual account team, and not salesmen, he said.

The presentations should be scheduled for the same day so the impression of each firm is fresh, Mr. Kloman says, with each presentation lasting about 1½ hours. About half the presentation time should be reserved for questions and answers, he noted.

One important question to ask of each firm is: "What do you consider to be the two most critical loss exposures of this company?" Mr. Kloman said.

After the firm is selected, the risk manager should call and thank the other competitors for their proposals for the account, and follow up with letters, Mr. Kloman advised.

David A. Jollin, president and chief executive officer of Corroon & Black of Massachusetts Inc. in Boston, described when competitive bidding is appropriate and how to manage it.

Risk managers will want to use competitive bidding to select a broker or an insurer, Mr. Jollin said, when one or more of the following is an issue:

- The underwriting cycle is changing and the risk manager is seeking new stability of coverage, new pricing or new availability of coverage.
- The risk manager is dissatisfied with the incumbent insurer or broker.
- The insurer has indicated that it is not interested in renewing.
- The policyholder has developed new exposures or suffered heavy losses.
- The risk manager wants to keep the insurer or broker "honest," or on its toes.

Many of the selection processes outlined by Mr. Kloman for a conceptual competition are necessary for a competitive bidding process, Mr. Jollin noted.

As for frequency, Mr. Jollin stressed that he believes "it is not appropriate to be out to bid every year," and suggested that serious competitive bids be sought every three to five years for both insurers and brokers.

Mr. Jollin noted that when satisfied with the underwriter, the risk manager may want to consider subjecting the broker to the kind of conceptual competition that Mr. Kloman outlined.

In competitive bidding, Mr. Jollin suggested that the process begin six months before renewal, with the first couple of months devoted to broker selection and assigning markets to brokers.

Continued on next page

Protection . . .

Continued from previous page

The next two months should be devoted to developing specifications, releasing them to insurers and meeting with insurers.

The last month is the most critical, with the proposals received early in the month for consideration and final deliberations.

Ramani Ayer, president of The Hartford Specialty Co., a unit of Hartford Insurance Group in Hartford, Conn., noted that due to the last hard insurance market, corporate insurance marketing philosophies are changing.

He sees a trend toward more frequent marketing of accounts, such as annually or every two years, encouraged by more input from treasury and financial executives who are more "bottom-line" oriented.

"Because of the last hard market, more and more people with treasury and financial backgrounds—treasurers and chief financial officers—are involved in the buying process. Quite a few of them have very limited insurance backgrounds," he said.

While risk managers recognize the "tremendous frictional costs" of changing insurers, financial managers may not, he said.

There are different considerations to marketing a primary program compared with an excess program, Mr. Ayer emphasized.

"In the primary program, service elements are so critical that it is important to maintain a longer-term relationship," he advised, noting that the same is true for the lead umbrella program.

"Once you get beyond that, capacity excess is more a commodity-type business. It is easy to change carriers as long as the carriers are fairly sound financially and their capacity is net capacity—they are not relying on inadequate reinsurance to support their capacity."

Changing primary insurers entails introducing new claims systems and educating new insurer personnel about the policyholder.

"Less marketing of the primary program creates the best potential for a long-term minimization of loss costs," Mr. Ayer pointed out, noting that 85% of a company's premium that is collected by an insurer represents the policyholder's own losses.

Also, if a risk manager shops a corporate insurance program every year, the underwriter will be "far more conservative" in its investment in servicing the account, Mr. Ayer noted.

He also stressed that when the primary and excess programs are being marketed at the same time, it is critical that consistent underwriting information be submitted to markets.

"We are in the primary business and the excess business," Mr. Ayer noted, and so Hartford Specialty is likely to see both the primary and the excess insurance submission.

Lucien P. Laborde Jr., president of the Research & Development Division of Corroon & Black Corp. in Nashville, Tenn., coordinated the session. John G. Pinner, assistant treasurer of Mattel Inc. in Hawthorne, Calif., moderated. ■

Fee vs. commission: No 'best' answer

By KATHRYN J. McINTYRE

ATLANTA—Brokers' compensation should be equitable, negotiated and disclosed, whether it be on a commission or a fee basis, contends a consultant.

There are pros and cons for both policyholders and brokers to compensating an insurance broker on a fee basis and on a commission basis, pointed out Lucien P. Laborde Jr., president of the Research & Development Division of Corroon & Black Corp. in Nashville, Tenn.

Mr. Laborde spoke at a seminar on "Value Added Performance: Getting the Best from Agents, Brokers and Underwriters" during the 27th annual Risk & Insurance Management Society conference (see story, page 20).

While stressing that either a fee or a commission can meet the criteria of "equitable, negotiated and disclosed," Mr. Laborde reviewed the "pros and cons" of each method of compensation.

Paying brokers a commission is simple and traditional, he noted. Commissions also can be less expensive in a competitive insurance market. From the brokers' point of view, commissions reward efficiency and expertise and they reward development time invested in new products, services and clients, Mr. Laborde said.

A major reason to choose fee-based compensation, however, is that it is the method used for compensating other professionals, he said. "I like fees because of that."

In addition, paying a broker a fee eliminates any conflict of interest, such as the more the insurance costs, the more income the broker makes, he said. And, paying a broker a fee encourages the use of non-insurance approaches.

For the broker, compensation on a fee basis allows ongoing compensation for ongoing service, instead of receiving the compensation in one year for work that may be handled years in the future, such as handling claims, Mr. Laborde pointed out. This advantage for the broker, however, is a disadvantage for the policyholder, who then will be charged a fee for continuing service on a policy.

And, compensating brokers based on a fee for service discourages non-compensated developmental activities, Mr. Laborde said.

The fee-for-service compensation structure also requires a broker to maintain extensive records, which he described as the "biggest barrier to fee-based service."

In addition to the potential conflict of interest created by the commission structure, other potential problems for policyholders paying commissions are that commissions encourage brokers to minimize their services and they discourage disclosure of compensation to the policyholder, according to Mr. Laborde.

For brokers, the commission system also can create significant fluctuations in income.

In terms of cost, Mr. Laborde's handout at the seminar outlined the average commission range as a percent of premium for accounts generating less than $1 million in premium as:

- Package and monoline property insurance, 14% to 18%.
- General liability, 10% to 20%.
- Auto liability, 12% to 20%.
- Workers compensation, 5% to 8%.
- Inland marine, 12% to 18%.
- Directors and officers liability, 9% to 12%.
- Excess or umbrella liability, 5% to 15%.

These ranges are not applicable to accounts generating more than $1 million in premium because those accounts usually are quoted net of commissions, and the buyer and broker separately negotiate the commission, he said.

Hourly fees charged by brokers, according to Mr. Laborde, range from a high of $150 to $300 for a senior account executive to a low of $50 to $75 for an administrative assistant.

Generally, account managers bill $150 to $200 an hour, client service representatives bill $125 to $135 an hour and account technicians bill $50 to $150 an hour, he said.

In addition, brokers billing on a fee basis also charge travel expenses. ■

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Spotlight report

CGL policy wording can be negotiated

By JUDY GREENWALD

ATLANTA—Risk managers who want to negotiate general liability policy language with their insurers may find underwriters surprisingly flexible, experts say.

"Right now, everything seems to be negotiable," explained Kevin J. Murphy, senior vp at Marsh & McLennan Inc. in Stamford, Conn.

Mr. Murphy spoke on negotiating changes in commercial general liability policies during a session at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

The moderator and coordinator of the session, Douglas S. Williams, associate director-corporate insurance at Boehringer Ingelheim Corp. in Ridgefield, Conn., urged risk managers to negotiate policy language with their insurers.

However, if a risk manager intends to negotiate, "you have to go in prepared" and be sure your broker knows the wording desired, he warned. "You've got to bring it together."

The risk manager must be involved in the negotiation process and have insight into what is—as well as what is not—negotiable, Mr. Williams said.

In discussing coverage extensions to the 1986 CGL form, Mr. Murphy said one area that might be negotiable is liability coverage for a company doctor.

Normally, he said, health care services are not covered under the standard CGL form. But many underwriters are willing to consider extending coverage to company physicians who work each day in a company facility or who are under contract with the company.

Pollution exposures are a broad area for which a risk manager may be able to negotiate coverage extensions. Because of the soft market, "there is at present time flexibility in this area," Mr. Murphy said.

For instance, risk managers could take advantage of an Insurance Services Office endorsement that covers pollution from "hostile fires," depending on the particular operation. "Underwriters are usually very willing to provide that extension of coverage," Mr. Murphy pointed out.

Other named perils for which pollution coverage may be extended include lightning and vehicle overturns, he said. "There may be other named perils that are critical to you" that underwriters may be willing to discuss, he said.

Another area that is open to negotiation for pollution coverage is the length of time during which a claim must be filed, according to Mr. Murphy. Risk mangers may be able to negotiate a provision in their policy under which, for instance, they have 30 days to file a claim if they discover pollution within a specified number of days after it begins.

There are still other risks that companies may want to make sure are covered by their CGL policy, Mr. Murphy said.

Risk managers should be able to add discrimination and humiliation to the risks covered by a CGL form, according to Mr. Murphy. However, he warned that coverage for wrongful termination is not obtainable.

The policy also should be negotiated so that the risk manager is given a certain period of time after he personally becomes aware of the loss to report it to the insurer. This would help in situations when the legal department knows of a loss but delays informing the risk manager, he explained.

While most underwriters now insist on an asbestos exclusion in their CGL policies, this exclusion is negotiable to an extent, Mr. Murphy said. For instance, depending on the circumstances, the risk manager could try to limit the exclusion to only the company's products.

If a company's product ever included asbestos, for instance, coverage for the product might not be obtainable, Mr. Murphy said. "But, at least get it for your premises," he advised.

Another member of the panel, James B. Wallace, senior vp at New York-based Johnson & Higgins, discussed possible amendments to directors and officers liability policy forms.

Mr. Wallace said the fact that there is no Insurance Services Office D&O policy form complicates matters for the risk manager. "Each insurer has developed its own form, in its own words, to address the issues that it thinks are important," he said.

"You need to wrestle with that" when you attempt to maximize D&O policy language, he told risk managers.

Mr. Wallace urged risk managers to meet with their insurers to discuss their policy forms. That way, when the coverage renews, there will be a "friendly face across the table" and "you would be in a much better position" to achieve your goals, he said.

The market for D&O insurance is competitive in terms of policy wording, if not in terms of price, he said. He added that risk managers have an opportunity "to concentrate on the quality of the insurance."

One area of D&O coverage that might be negotiated with underwriters is who is covered under the policy. Depending on the corporate structure, a company may want to extend coverage to employees who have management jobs but who are not classified as officers, Mr. Wallace said. "Your carriers will listen to you on that," he said.

However, "you don't see a tremendous amount of flexibility" in negotiating D&O insurance that covers acquired subsidiaries' directors and officers for acts prior to the acquisition, he said.

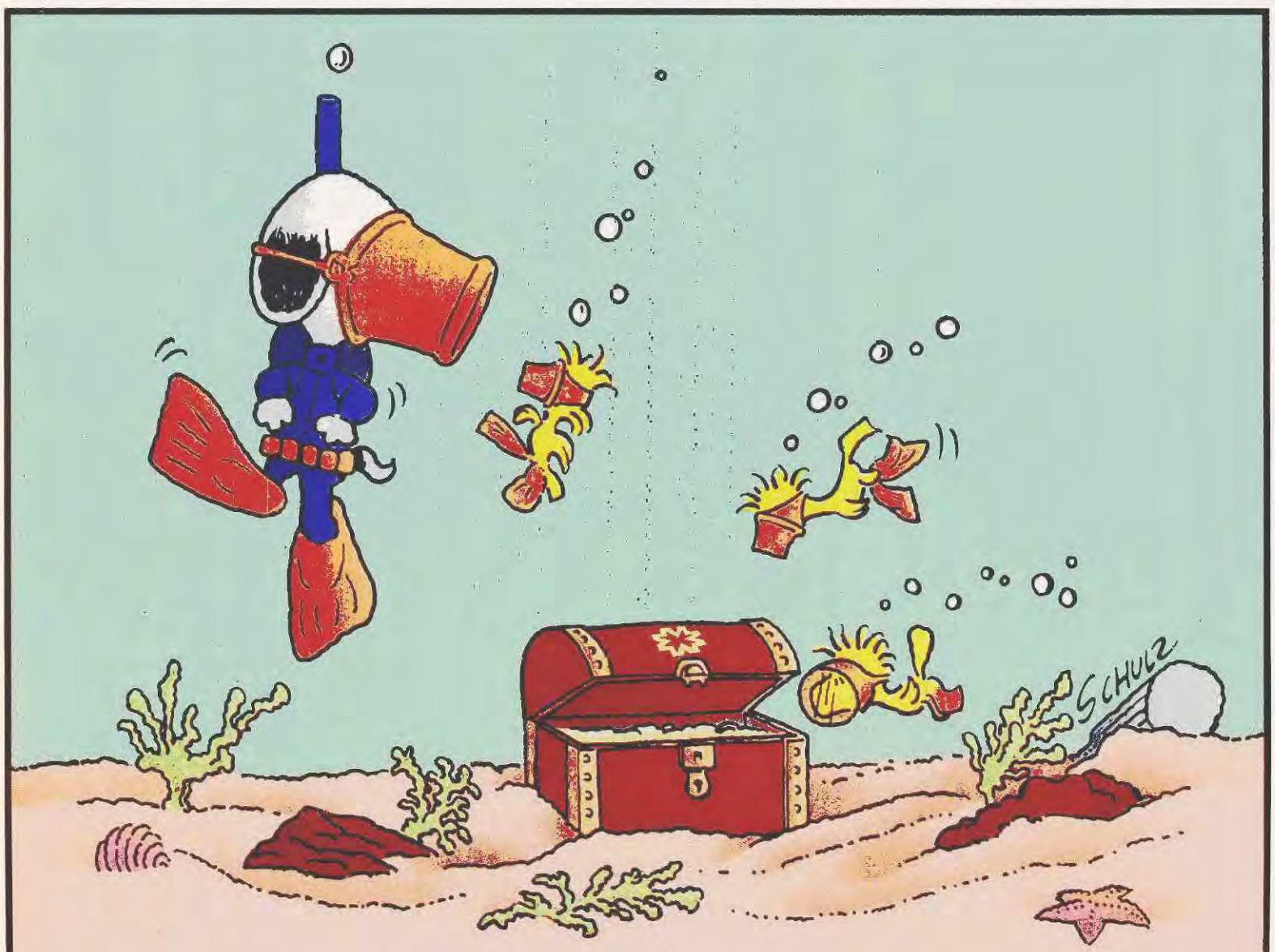
There is also no endorsement that will automatically extend coverage to directors and officers of new subsidiaries as they are acquired, but insurers "will listen to you as you acquire subsidiaries," Mr. Wallace said.

While D&O policies cover both indemnity and defense costs, D&O policies will not pay fines or penalties, punitive damages or back taxes owed by directors and officers. "You won't find much flexibility in the domestic market on that," Mr. Wallace said.

However, these exclusions can sometimes lead to other coverage arguments, he pointed out. For instance, a corporation itself—not the directors and officers—might be hit with a large punitive damage award or a tax liability, causing shareholders to sue directors and officers.

"Would that exclusionary language in the definition of loss negate the coverage?" Mr. Wallace asked. "Maybe that's an issue you want to discuss" and clarify the policy language accordingly, he said.

Also speaking at the session were Robert F. Hall, vp at Frank B. Hall & Co. of Fairfield/Westchester based in Briarcliff Manor, N.Y., and Diane B. Eisenberg, assistant manager-commercial casualty at ISO in New York. ■



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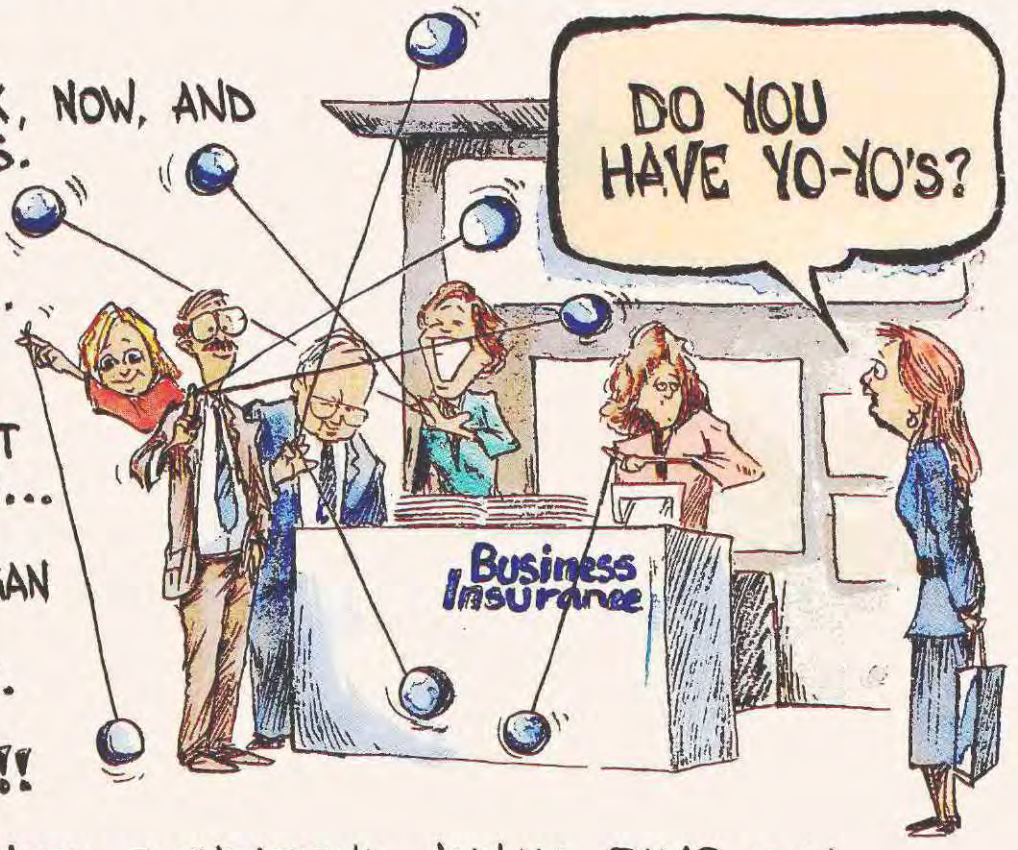
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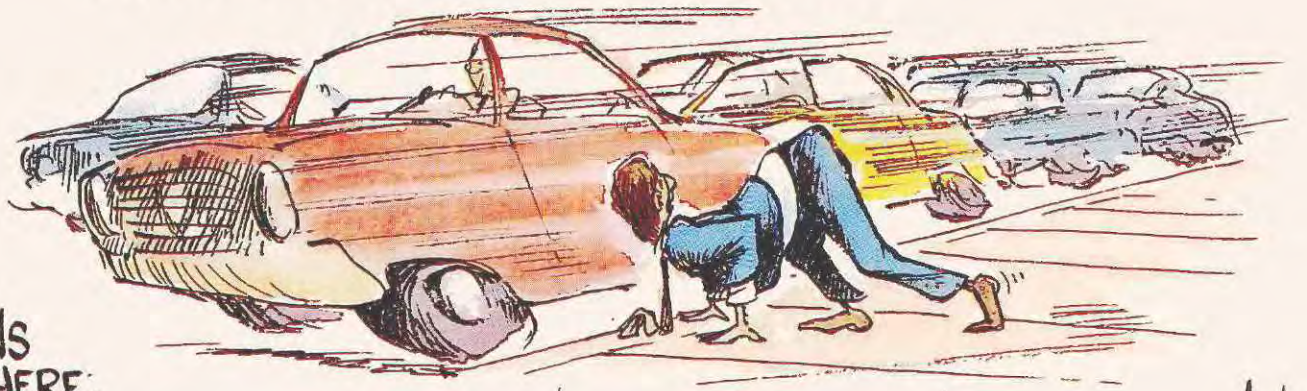
I SPENT SUNDAY AFTERNOON WANDERING THROUGH THE DISPLAY HALL. AT THE BUSINESS INSURANCE BOOTH, WE HIGHLIGHTED THE EVER-CHANGING MARKET CYCLES. OF COURSE, WE PUT OUR OWN 'SPIN' ON THE PRESENTATION...



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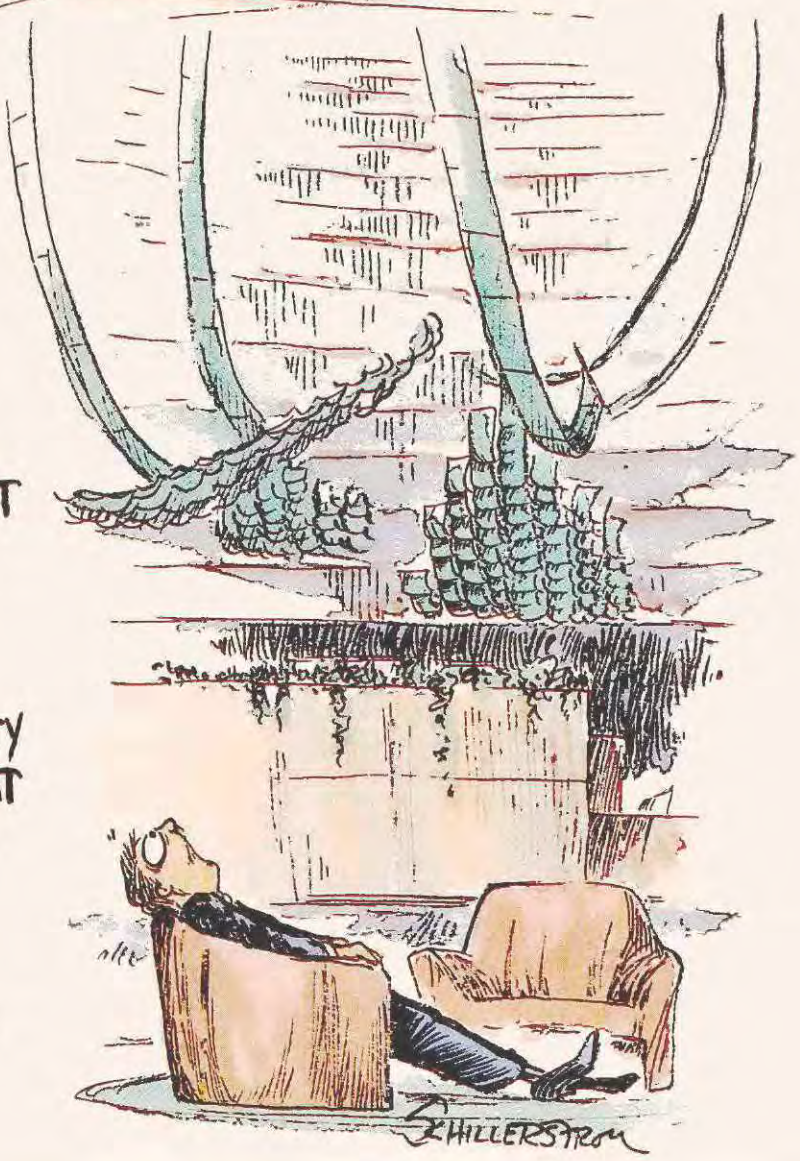
THE SPENCER FOUNDATION'S ANNUAL RIMS RUN WAS ECLIPSED ONLY BY THE ATTENDEES' STREET-SPRINTING SKILLS BETWEEN HOTELS....



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1992 to cause big changes for risk managers

By CAROLYN ALDRED

ATLANTA—Risk management techniques and the commercial insurance industry in Europe will change substantially during the next decade, experts say.

In fact, changes already are occurring as European industry prepares for the removal of trade barriers between the 12 member countries of the European Community in 1992, they say.

"European industry is on the threshold of a new era as 1992 approaches," said Edward Hester, London-based assistant manager for Zurich Insurance Co. of Switzerland's operations in the United Kingdom and Ireland.

"Significant changes are about to take place in the way in which insurance is transacted in the EC after the single market in insurance becomes a reality in the 1990s," he predicted.

"As industry expands and rationalizes within the EC as a result of deregulation, changes are likely to take place in its insurance buying and risk management practices," Mr. Hester said during a panel discussion on the likely impact of the single European market for multinational risk managers held during the 27th annual Risk &

'There will be a rapid growth in Europe in risk management techniques,' predicts Mr. Ovenden.

Insurance Management Society conference earlier this month in Atlanta.

The session was packed with participants, indicating a high level of interest in the subject among U.S. risk managers.

The removal of trade barriers among the 12 EC countries is being achieved through the gradual implementation of hundreds of European directives and regulations passed by the European Commission and the European Council of Ministers, explained Ron W. Forrest, New York-based senior vp and managing director of global business development at Alexander & Alexander Services Inc.

The European directive concerning property/casualty insurance for large commercial risks is due to go into affect in several phases starting in 1990.

As a result of the directive, many companies or their subsidiaries located in EC countries will be able to purchase insurance directly from insurers located anywhere in the European Community.

Currently, many EC countries—including France and West Germany—allow companies to purchase insurance only from those insurers that are based in the same country.

To enjoy freedom of insurance purchasing, companies must meet two of the three following criteria:

- Employ more than 500 workers.
- Have balance sheet assets of more than 12.4 million European Currency Units ($13.9 million at current exchange rates).
- Have revenues greater than 24 million ECU ($26.9 million).

In 1993, these requirements will be halved.

Initially, the "EC second non-life directive" will be applicable only in eight of the EC countries. Portugal, Greece and Ireland have been granted extensions until 1999, and Spain has been granted an extension until 1997.

In addition to the forthcoming unified market, European countries also are experiencing considerable socio-economic changes, according to J. Brady Young, a London-based consultant with the Tillinghast Division of Towers, Perrin Forster & Crosby Inc.

These changes include:

- A wide degree of concentration of assets by European companies and subsidiaries, partly as a result of increased mergers and acquisitions.
- Growing competition.
- Surging consumerism.
- The introduction of strict product liability in the EC.

According to a study being prepared by Tillinghast that compares the European, U.S. and Japanese tort systems, the European Community is "where the U.S. was in 1975-76, and we all know what's happened in the U.S. in the last 10 years," Mr. Young said.

The changes brought by the removal of trade barriers between EC member countries will likely increase frequency and severity of claims, creating "a need for more sophisticated risk management approaches" in Europe, he predicted.

"There is no doubt that Europe is nowhere near as sophisticated as the U.S." in terms of risk management, but this will change, agreed A&A's Mr. Forrest.

But, as a result of both the removal of trade barriers and the socio-economic changes, "there will be a rapid growth in Europe in risk management techniques," predicted David Ovenden, group insurance manager at The Wellcome Foundation Ltd. in London.

"The role of the risk manager currently is virtually unknown" in many of the less developed European countries, Mr. Ovenden said.

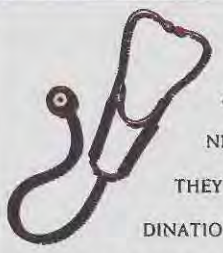
For example, "there is likely to be a significant trend to self-insurance and (alternative) risk financing, particularly on the part of larger companies," Mr. Hester predicted.

Continued on next page

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1992 changes

Continued from previous page

Mr. Young predicted that companies will retain "significant levels of risk" and that multinational companies will increasingly use group captives.

While most captives currently operated by European companies in European domiciles write mainly property coverage, "a great many captives in Europe will write more liability risks" in the future, Mr. Young predicted.

In addition, there will be "more internal management of captives. When a captive gets to a certain size, senior managers get uncomfortable with outside management, and a lot of people will consider bringing captive management in-house," he said.

Interest in risk analysis and loss control also "is likely to increase as a result of greater concentration of risk as industry consolidates in the European Community," he said. In addition, increasing use of technology and more complex operations will require greater risk management, he said.

Interest in risk analysis and loss control also 'is likely to increase as a result of greater concentration of risk as industry consolidates in the European Community,' says Edward Hester of Zurich Insurance Co. of Switzerland.

Furthermore, EC directives imposing strict liability for products and pollution, as well as the trend toward self-insurance, "will lead to a greater awareness of exposures and a desire to take steps to eliminate or reduce risks," he noted (see story, page 63).

But risk managers responsible for operations throughout Europe still may face many problems buying insurance when the trade barriers for purchasing insurance are eliminated, said Pierre Sonigo, risk and insurance manager of Paris-based Compagnie de Saint-Gobain, which has 180 production units located in 10 of the 12 EC nations. The company manufactures building product materials, including glass, insulation and piping.

Mr. Sonigo said when he was appointed Saint-Gobain's first risk manager in January 1988, the company had no corporate risk management policy and insurance buying was delegated to each unit.

Mr. Sonigo's goal was to develop a uniform loss-prevention and insurance program for all of the company's European locations.

Among the problems that Mr. Sonigo faced, and which he expects risk managers of other companies with subsidiaries throughout EC countries will continue confront, are that:

- Compulsory insurance requirements and insurance policy forms vary from country to country.
- Language translation problems from country to country can lead to gaps in coverage.
- Use of multiple currencies can cause problems. Deductibles, premiums and limits are all expressed in different currencies and subject to exchange rate fluctuations.

This could be solved by using the European Currency Unit, which many European countries already employ for their internal accounting systems, Mr. Sonigo said.

However, most insurance policies currently are not written in this currency, he noted.

- Risk managers in each location often will prefer to work with a local insurer because the risk manager has a close relationship with the company. In addition, the local insurer often has financial ties to the company, as well as knowledge of the company and its operations, Mr. Sonigo said.
- Working with three or four different insurers to develop a program "is very difficult," Mr. Sonigo said. "And I have not yet found a European insurer able to master all aspects of a European program," he said.
- Coordinated brokerage services are not always available in Europe, he noted.
- Loss prevention standards are not unified throughout Europe and "not all European insurers have qualified loss prevention engineers," Mr. Sonigo said.
- There are wide variations in the cost of insurance, with a wide range of rates in different countries and with different taxes applied to premiums throughout the European Community.

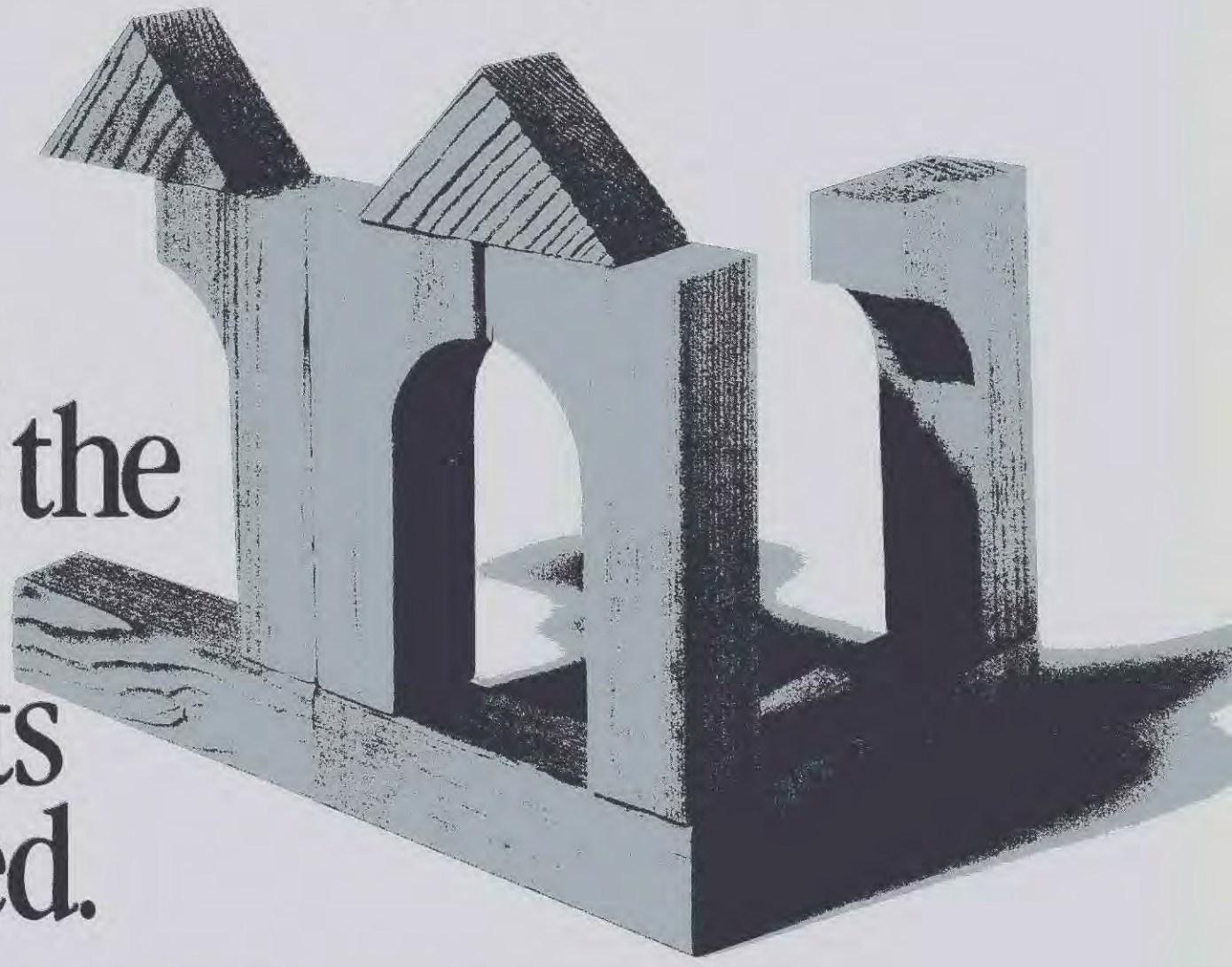
Although the European Commission has been attempting to produce directives to obtain tax harmonization throughout the EC, many different tax regimes and rates still exist throughout the Community, said Malcolm J. Finney, an international tax accountant with London-based tax consultants Malcolm J. Finney & Partners.

However, inevitably, there will be some degree of tax harmonization in the future, he predicted.

The session was moderated by Hugo Hines, corporate risk manager of Dallas-based Texas Instruments Inc., and coordinated by W. Lee Carter III, vp and director of research and development for Alexander & Alexander Inc. in Dallas. ■



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Japanese risks demand special skills

By MICHAEL BRADFORD

ATLANTA—Risk managers who deal with Japanese corporations must be patient and flexible because of the vast differences in business practices and culture, an expert advises.

As foreign investment in America continues, more risk managers are becoming part of Japanese businesses, said Al Kadowaki, president of Pasadena, Calif.-based brokerage Kadowaki Associates International, during a panel discussion at the Risk & Insurance Management Society conference in Atlanta.

Mr. Kadowaki said Japanese firms rotate management personnel every four to five years, a practice that can be frustrating to impatient U.S. brokers and risk managers who have grown comfortable with the previous management.

As a go-between, the broker can help smooth such transitions, Mr. Kadowaki pointed out, adding that intermediaries who are bilingual are especially valuable.

"Those brokers with bilingual capabilities will be beneficial to the risk manager to be his eyes and ears on important insurance matters," said Mr. Kadowaki.

Panel moderator John E. Stokdyk, national risk manager of Toyota Motor Sales USA Inc. in Torrance, Calif., also pointed out that "the broker can give a lot of stability in the exchange between insurer and insured," when one party is American and the other is Japanese.

Mr. Kadowaki suggested that U.S. risk managers who deal with Japanese insurers should carefully select their brokers.

"Many of the major brokers have established close relationships with the Japanese insurance carriers," he said. "An important part of the insurance/risk manager's job is to be able to get a solid insurance program with the carrier most suited for helping him.

"Since we are dealing with a Japanese insurer, the broker that has a strong relationship and credibility, with a thorough understanding of the Japanese method of operation here in the United States as well as in Japan, will make the risk manager's job easier and eliminate a lot of frustration for him.

"The broker can bridge a stronger relationship and understanding with the carrier by playing the role of intermediary," he said.

Yoshiaki Matsunaga, Los Angeles-based senior vp for the western region of Tokio Marine & Fire Insurance Co. Ltd., said U.S. risk managers with exposures in Japan should be familiar with how the insurance market in that country differs from the market at home.

In Japan, he pointed out, insurance pricing is regulated by the Ministry of Finance. This approach "seems to benefit the consumers by supporting a healthy insurance industry with a reasonably priced product," said Mr. Matsunaga.

He also pointed out that Japanese insurers have a reputation for being financially solid.

"No property/casualty insurer has become insolvent in the past 40 years" in Japan, said Mr. Matsunaga.

Because pricing is controlled, the Japanese insurance industry is not subject to the kinds of insurance cycles that mark the U.S. insurance marketplace, Mr. Matsunaga remarked.

Instead, market competition is driven by the kinds of services insurers offer clients, he explained.

For example, Tokio Marine & Fire makes it a practice to pay total loss claims on homeowners' policies within 24 hours, he said. "We have 24-hour claim service, seven days a week, 365 days a year."

James Y. Paulding, president of Alexander & Alexander of Japan in Tokyo, called the insurance market in Japan "a full-service industry. There is no unbundling of services. You can't buy the kinds of insurance services that you can buy in the United States from fee-based service companies or from agents and brokers. It's all provided by the insurance company."

Ronald J. Anderson, New York-based president of the Asia/Pacific division of American International Underwriters, said that "every risk manager should be discussing through his broker and with his carrier what services they will provide. Because if you're in a tariff-regulated market. . .it means (insurers) have to compete with service and other benefits.

"That is the way competition is conducted in Japan, and it is very intensive," he said.

With regard to claims administration services in Japan, Mr. Anderson told risk managers that they should look for an insurer that can provide "on-the-spot claims service throughout all the islands."

Risk managers of U.S. companies doing business in Japan face different coverage needs, Mr. Anderson pointed out.

For example, directors and officers liability insurance is not as widely available in Japan as in the United States because lawsuits that would trigger that coverage are not as common in Japan. But risk managers with U.S.-Japan joint ventures should consider purchasing the coverage, according to Mr. Anderson.

Likewise, product liability exposures are not as feared in Japan as in the United States, he added, because of the non-litigious nature of the Japanese and the absence of punitive damage awards in their country.

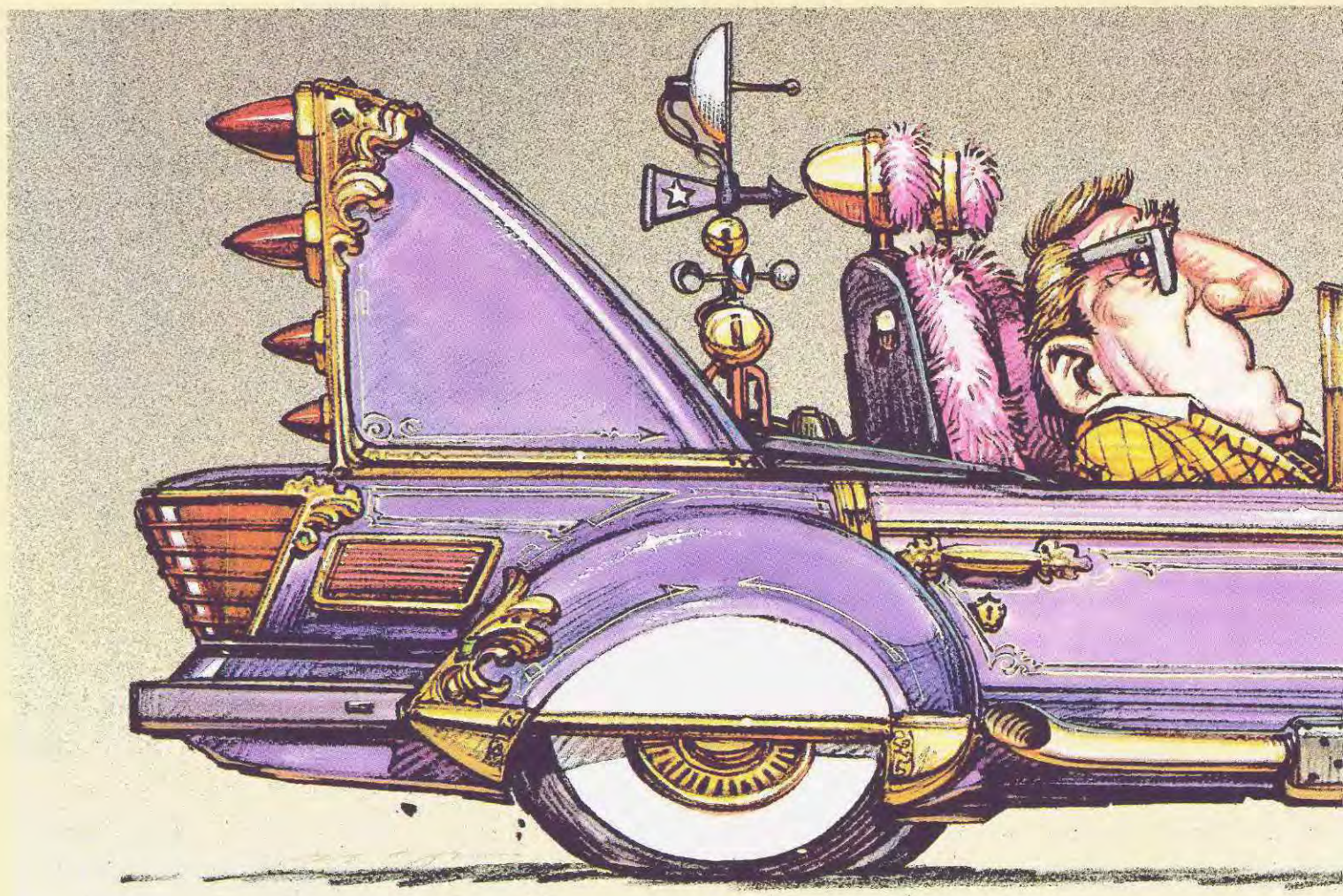
And although "environmental exposures are not a big issue at the moment, it's something every risk manager should be looking at today or you may pay the penalty tomorrow if you don't," Mr. Anderson said.

While U.S. risk managers with operations in Japan don't have to worry as much about some exposures that are troublesome at home, they should be very concerned with potential catastrophes like earthquakes, he said.

Earthquake exposures "are the first thing you have to sort out when looking at Japanese exposures," Mr. Anderson observed. The cost of the coverage is high, in some cases four times the rate for fire insurance, he added.

Risk managers also should consider coverage for typhoons that sometimes sweep the region and tidal waves, said Mr. Anderson.

The session was coordinated by W. Lee Carter III, vp and director of research and development in the Dallas office of Alexander & Alexander Inc. ■



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Deluge of environmental rules a challenge

By CAROLYN ALDRED

ATLANTA—Ever-increasing environmental regulations and regulatory agencies are hampering risk managers from doing their jobs, a consultant and risk manager agree.

Risk managers are spending more time managing the regulations than managing the environment itself, said Michael H. Tiller, principal of the St. Louis-based consultant Tiller Consulting Group Inc.

"Industry can be caught in the middle—satisfying the egos of the agencies while trying to accomplish the goal of managing the environment," agreed Patrick Harrison, manager of hazardous materials for CSX Transportation Inc., the Jacksonville, Fla.-based railroad.

Dealing with a multitude of regulatory agencies absorbs considerable time in the aftermath of any environmental accident, Mr. Harrison said during a session titled "Are Your Environmental Elephants Stampeding" at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Mr. Harrison described his primary function as "to respond to incidents involving chemicals and environmental pollution to protect employees and the public."

However, "one of the toughest jobs is to act as liaison between the railroad's management and all the government agencies" and municipal departments that need to be involved, said Mr. Harrison, who is based in Atlanta.

Among the agencies that become involved in the aftermath of a railroad environmental accident are the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the local police, fire and emergency services, local doctors and municipal officials, Mr. Harrison listed.

"Each party has its own concerns, and often the agencies squabble over their jurisdictions," he explained.

The job of managing environmental concerns themselves also is consuming more and more company man hours and resources, noted Dale H. Bitter, assistant vp of risk management at CSX.

CSX is one of the largest railroads in the United States, operating 22,000 miles of track mainly east of the Mississippi, said Mr. Bitter. The company, which has 52,000 employees, also operates container shipping, manufactures rail components and has vast real estate holdings.

Currently, about "50 to 75 people in the company are working directly with environmental problems, including three lawyers specifically assigned to environmental concerns," noted Mr. Bitter.

The company's costs associated with environmental issues—including management time, legal fees, insurance, etc.—currently are increasing 20% per year and likely will increase further, he said.

"Five years ago, we were spending $2 million to $3 million a year. In 1989 we will spend $10 million" on environmental protection, Mr. Bitter said. "Our environmental costs are bigger than our entire insurance budget," he noted.

As a result of increasing costs, Mr. Bitter now plans to review the company's use of outside contractors and employ more in-house expertise.

"We have had some cleanups where we've spent $1 million investigating the case and deciding what to do and only $300,000 in actually cleaning it up," he explained.

The company has set up a hazardous materials/environmental committee that meets every three months to discuss new regulations, safety procedures, risk management requirements and other aspects of environmental protection.

Companies' environmental liabilities can come from a host of sources, pointed out Larry W. Mitchell, a partner in the Los Angeles-based law firm of Cotkin, Collins & Franscell.

Federal laws that enforce liability include the Resource Conservation & Recovery Act, the Clean Air Act, the Toxic Substance Control Act and the Comprehensive Environmental Response, Compensation & Liability Act, better known as the Superfund act, he said. Liability is assigned through private lawsuits based on theories of negligence, strict liability, nuisance and trespass, added Mr. Mitchell.

Under federal and state statutes, companies may be found liable for costs of cleanup, damages for injury to natural resources and, sometimes, for punitive damages, criminal fines and civil penalties, he noted.

In addition, private individuals may sue companies for many kinds of damages including property damage, bodily injury, punitive damages and emotional distress, including fear of exposure or fear of future disease, he added.

However, companies with environmental liabilities also may attempt to seek recovery from other parties, he noted.

For example, a company with a leaking underground storage tank may consider suing the manufacturer of the tank or the tank's installer for negligence or failure to warn, Mr. Mitchell explained.

Similarly, companies with polluted property can sue third-party contributors to the pollution, such as "the midnight dumper," if the illegal dumpers can be traced. Other contributors may include neighbors or nearby firms whose waste has spread to the company's land; or tenants of the property, he noted.

But, while risk managers are grappling with increasing regulation and more complex legal issues, they also must confront the wider global and social implications of environmental pollution, two speakers warned.

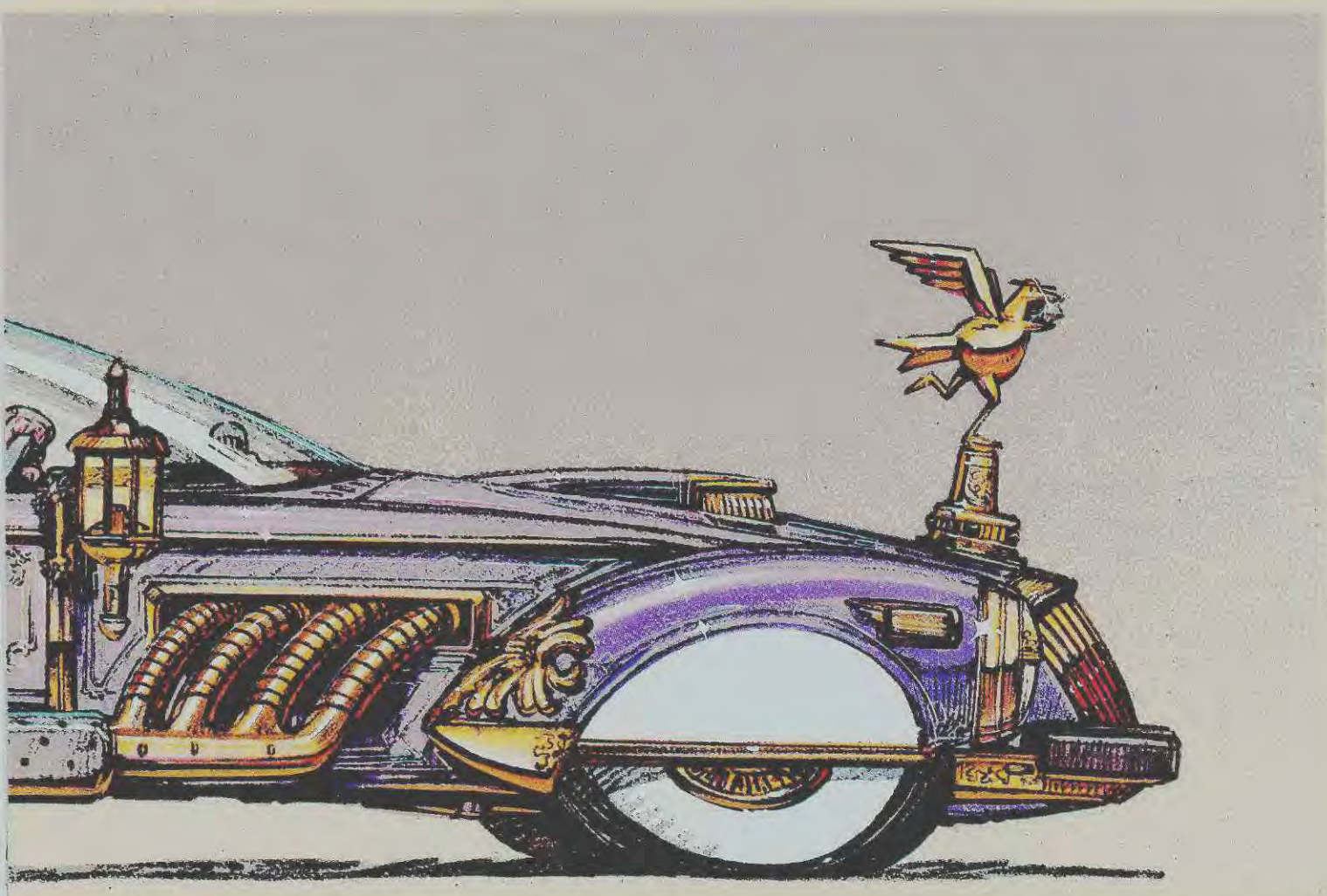
With increasing worldwide concern about global warming—the so-called "greenhouse effect"—and other issues such as acid rain, "risk managers and regulators will start to broaden out and look at a wider perspective," predicted Mr. Tiller.

North American utilities already are more concerned about global events such as earthquakes, volcanic eruptions, global warming and nuclear war, he pointed out.

"Risk managers should think about the decisions they make in broader terms, rather than just the welfare of themselves and their companies," said George L. Head, vp of the American Institute for Property & Liability Underwriters and the Insurance Institute of America.

"Your decisions affect not just your company, but your neighbors and your neighboring community and the future community," he said.

The session was coordinated by Mr. Tiller and moderated by Maria Bastanchury, risk manager for Orange County, Calif. ■



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Quake loss potential difficult to calculate

By MARK A. HOFMANN

ATLANTA—Unlike most property risks, earthquakes can affect either several locations simultaneously or one location repeatedly, making estimation of a quake's maximum loss potential very difficult to determine, agree a panel of experts.

"There are no simple solutions to the earthquake problems that apply to all companies," warned Nick DeCapua, regional risk manager for American Telephone & Telegraph Co. in Berkeley Heights, N.J., and moderator of a session devoted to earthquakes during the Risk & Insurance Management Society's 27th annual conference in Atlanta earlier this month.

Yet, despite the unusual nature of the earthquake risk, it can be managed, pointed out Russell C. Opferkuch, a senior consultant with Coopers & Lybrand in New York.

Mr. Opferkuch urged the audience to take a comprehensive approach in measuring the loss potential of an earthquake as one means of managing the exposure.

Among the factors that Mr. Opferkuch said should be considered are: the soil stability of a site, because different types of soils can result in differing degrees of damage from earthquakes of the same magnitude; the type of construction used in a company's buildings, because the tightness of roof nailing and the way that equipment is anchored can play a key role in minimizing damage; and the time at which a building was designed, because different designs result in differing degrees of protection.

One reason loss potential is difficult to measure is that the losses wrought by earthquakes can go beyond property damage, Mr. Opferkuch pointed out.

For example, a company's business interruption exposure must be considered when determining maximum loss potential from an earthquake, he said.

The cost of getting back in business after a devastating quake will be high, he said.

And, those costs will be even higher "if you want to be the first in line" for the services and equipment needed by many businesses to get an operation back on its feet, Mr. Opferkuch said.

In addition, Mr. Opferkuch warned his audience not to forget about the fire exposure that often accompanies earthquakes.

In many cases, fires caused by an earthquake have caused more damage than the temblor itself, he said.

Mr. Opferkuch urged the audience to develop detailed contingency plans to deal with both an earthquake and its aftermath.

Such plans should include instructions for guaranteeing the safety of personnel, shutting down operations and, if possible, assuring that your facility will have access to emergency services, he said. Concerns that need to be addressed to deal with the quake's aftermath include adequacy of insurance, ability of insurers to respond to all claims and an assessment of the quake's effect on both suppliers and customers, he noted.

Douglas Frazer, president of San Francisco-based EQE Engineering, an earthquake engineering, planning and management consulting firm, reiterated many of Mr. Opferkuch's concerns.

Mr. Frazer also pointed out that one of the major problems affecting earthquake preparation is a failure to learn from quakes of the past.

Mr. Frazer cited the New Madrid earthquakes, which struck Missouri and the Mississippi Valley in 1811 and 1812, as an example of past quakes that can serve as lessons.

Fortunately, this series of three quakes struck at a time when settlement in the area was sparse, so loss of lives and property was accordingly low. Yet these temblors caused church bells to ring as far away as New England, Mr. Frazer said.

Despite the fury of those early 19th century earthquakes, construction design in St. Louis and other cities that could be heavily damaged by a shift in the New Ma-

Continued on page 38

the session. ■



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A checkup for HMOs

Employers must screen providers for fitness, health

By Gerald E. Oljace

HEALTH MAINTENANCE organizations, having grown rapidly in size and number since 1975, have also been appearing in steadily greater numbers in employers' health benefit plans. Many employers, however, have allowed HMOs to proliferate in their benefit programs with little thought to where it will end or what the consequences might be. In other words, HMO growth in benefit plans has not been *managed*.

One large Midwestern company, for example, struggled with more than 330 HMOs covering more than 30% of its eligible employees. If a federally qualified HMO approached it, and if there was even one employee residing in the HMO's service area, the company added the HMO to its plan.

More and more companies are experiencing similar dramatic growth of HMOs in their benefit plans. This is not necessarily bad. In fact, HMOs are a logical addition to a comprehensive benefit package. They not only give employees a wider range of health care options, they can help employers manage costs as well.

But, as HMOs continue to multiply, employers without effective selection criteria in place are finding it increasingly difficult to control the number and quality of HMOs they offer. And, like the firm in the example above, such companies are also discovering that this build-up is causing administrative difficulties.

How can companies resolve these problems? Most could follow a process similar to that used by the Midwestern corporation in our example. That company gave itself a three-year period to reduce the number and control the quality of HMOs offered in its benefit program. By applying objective evaluation and selection criteria, the firm eliminated some HMOs and consolidated those that were already under common ownership or management control.

Here are some guidelines you can use to examine the HMOs you already offer and to decide whether to accept new entrants. These criteria are not intended to be hard and fast rules, but instead are points to consider:

- **Participation.** If you've offered an HMO for two or more enrollment periods and it has only attracted a handful of participants, you may want to drop it. But, before you do, be sure to consider other relevant factors.

For example, although an HMO has only a few participants, they may represent a high percentage of eligible employees at one of your smaller facilities. Eliminating that HMO may eliminate an important health care option for those employees.

- **Financial stability.** About two-thirds of the HMOs in the country lost money in 1987. You should request and analyze each HMO's audited financial statements to evaluate financial stability—just as you would prudently do in making a purchasing decision regarding any other vendor/supplier of similar size. Among the "benchmarks" to consider are:

✔ Membership. Those HMOs with the smallest membership are the most likely to be on rocky financial ground. But don't automatically discount HMOs with few members. With careful evaluation of other factors, you could uncover a smaller HMO with a promising future. Also, some may be affiliated with a large sponsor that provides strong financial backing. In the absence of such backing, however, you may want to concentrate on HMOs with at least 25,000 members.

✔ Date of establishment. HMOs are often unprofitable for the first few years. If you are considering one that has been in operation less than three years, indicators other than profit may be useful. For example, ask if the number of members and employer sponsors is growing and check the HMO's roster of physicians and hospitals. Also, find out if the HMO is backed by financially stable organization.

✔ Net worth. Inquire if the HMO is in compliance with financial requirements set by state regulatory bodies. And, be sure to compare the HMO's ratio of net worth to total premium revenue. If an HMO has been in operation for less than three years and its net worth is less than 2% to 3% of premium income, be suspicious.

✔ Medical and hospital expense ratio. Another important relationship is medical and hospital expenses to premium revenue. If expenses tend to run more than 85% of premium income, you may be in for some more problems (read: large premium increases).

- **Accessibility.** Compare each HMO's service area—in particular, the primary care physician locations—to where your employees live. You will probably find duplication in hospital and physician coverage and may conclude that you can eliminate one or more HMOs in a particular location without adversely affecting employee choice and access.
- **Member satisfaction.** Inquire about member disenrollment and physician turnover rates. If either is high, your employees' level of satisfaction is likely to be low. Also ask if the HMO has conducted member satisfaction surveys, what they have done with the information generated and whether providers are rewarded or penalized on the basis of the results. You may want to survey your employees on the HMOs you offer.
- **Quality assurance.** Learn how the HMO selects its physicians. Some HMOs sign up virtually any physician who applies. Others use an initial and ongoing selection process that may reject more physicians than it accepts. You also will want to review the HMO's written quality assurance program and peer review controls to be certain of its standards.
- **Premium cost/stability.** If you have offered a particular HMO for a number of years, you'll be able to examine its actual history of premium rate increases. For newly offered HMOs, however, you should obtain their community rates for the past three to five years. If an HMO is well-managed, the evidence should be there in the form of reasonable and justifiable premium increases.
- **Rate structure.** Don't let an HMO play games with its rates. Some HMOs will try to attract young and healthy "baby boomers" and discourage "empty nesters" by setting artificially low or high premiums, respectively. This can, however, make for some rather illogical and seemingly unfair employee contribution requirements. You should see that the HMO maintains a reasonable relationship between the various rate classifications so that you can develop a rational structure for employee contributions.

These have been some of the major points you will want to consider in evaluating the number and quality of the HMOs you offer. It is, of course, important to develop selection criteria appropriate to your company's business objectives and your employees' needs. You will find that, by establishing better control over the HMOs in your benefit plan, you will both ease your administrative burdens and achieve more effective health care cost management.

Gerald E. Oljace is a consultant in the Chicago office of TPF&C, a division of Towers, Perrin, Forster & Crosby Inc.

Annual brings a year at Lloyd's to life

"Digest of Lloyd's News Annual 1988"
Edited by Oliver Carruthers
Published by Ocarina Publishing Co. Ltd., Room 30, Wheatsheaf House, Carmelite Street, London EC4 OAX; 01-441-583-0590
15 pounds ($25.58)

By Stacy Shapiro

"Digest of Lloyd's News Annual 1988" is by far the most readable, enjoyable and informative book about Lloyd's of London in recent years.

From the cover's decorative painting of the inside of the new Lloyd's building by Philip Norman to the last page's story on the Piper Alpha North Sea disaster, this book is filled with major news, views and information on the 1988 market.

The book is partially an accumulation of a monthly newsletter for Lloyd's members—called "Digest of Lloyd's News."

But it also provides a wealth of information for members, policyholders and commentators on the Lloyd's market. There are several lists of members and managing agencies that include addresses and phone numbers and statistics about their business.

Books & ideas

The book gives the ranking of syndicates in the marine, non-marine, motor and aviation syndicates based on 1985 results, which were announced last year under Lloyd's three-year accounting system.

Lloyd's Global Accounts from 1981 to 1985 are also listed, as is Lloyd's Names' Deposits and Special Reserve Funding from 1975 to 1986.

The 112-page book also includes:

- Names, addresses, telephone numbers and contacts for the seven Lloyd's stop-loss brokers.
- The 70 recommendations of the government committee led by Sir Patrick Neill and what Lloyd's has done so far to implement the recommendations.
- A list of the syndicates that have runoff reinsurance policies with Lloyd's underwriter Richard Outhwaite, who has had to leave his syndicate's 1982 account open because of the losses on the policies.
- Bylaws passed by Lloyd's in 1988.
- Summaries of major speeches by former Lloyd's chairman Sir Peter Miller and his successor, Murray Lawrence.
- Summaries of Lloyd's disciplinary actions.
- A list of new syndicates in 1989.

The most enjoyable part of the book, however, is the running colorful commentary on the Lloyd's market provided by Editor and Publisher Oliver Carruthers.

For example, noting Sir Peter's retirement in 1987, Mr. Carruthers commented: "One pleasing characteristic of the outgoing chairman is that whatever he says become a lecture. Even if he says he is not going to give a lecture, a didactic note will come into his voice, and you can sit back, joining in or interjecting as the mood suits you. He never minds the interjections, enjoying the effect of riposte and rebuttal."

This is the first Digest of Lloyd's News Annual to be published and covers the period from November 1987 to October 1988, to coincide with last September's publication of Lloyd's 1985 global results.

"So when you see 1988 on the cover of the annual, do not feel cheated of two months, for you will gain them in 1989, when we will be covering the results for 1986 and considering the prospects for 1990," says Mr. Carruthers in a letter to the reader.

Pollution can trigger many losses

By The Insurance Institute of America

The following question and answer are drawn from the curriculum for the Associate in Risk Management designation awarded by the Insurance Institute of America. They represent the type of question asked—and the possible answers—in one of the three examinations for the A.R.M. designation.

This month's material, drawn from a very recent national examination in ARM 54—Essentials of the Risk Management Process—illustrates how environmental pollution causes a variety of losses, even to firms that are not polluters, and calls for a variety of control measures.

Q: One of the properties adjoining the Golden Dome Hotel is a landfill that, for several decades, has been used as a waste disposal site. The federal Environmental Protection Agency has identified the site as a source of extremely hazardous toxic materials—highly likely to pollute the surrounding land, water and air—and has ordered that this disposal site be cleaned up within the next two years.

Although the Golden Dome Hotel has no direct interest in this landfill and no liability for performing the cleanup, Golden Dome's management is concerned that the notoriety of the landfill will drive potential customers away and perhaps force the hotel to close if the EPA restricts access to the area.

Under these conditions, the hotel might also be liable to guests claiming bodily injury from exposure to hazardous materials as well as to the florist and restaurant that operate as tenants in the hotel.

Describe the proper procedure for evaluating the losses that the Golden Dome Hotel might suffer in this situation because of its:

- Personnel loss exposures.
- Net income loss exposures.
- Liability loss exposures (including contractual liability).

A.R.M. exercises

At the present time, before the cleanup of the adjoining property begins, describe—without repeating any answers—two actions the management of the Golden Dome might take to reduce each of the following types of losses that may arise from this situation.

- Personnel losses.
- Net income losses.
- Liability losses (excluding contractual liability).

A: A proper procedure for estimating each type of loss potential entails gathering the information needed to apply a formula that determines the amount of each type of loss.

- For personnel losses, this requires estimating the reduction in revenues and the increase in expenses the hotel would suffer if, because of the neighboring pollution, a key employee dies, becomes disabled or resigns. The amount of the loss would be the present value of the sum of these revenue reductions and expense increases for the period the employee's services were unavailable to the hotel, up to the time of the employee's expected retirement.
- Dangers posed by the nearby pollution might well frighten away potential guests or long-term tenants such as the restaurant or florist. Estimating the hotel's resulting net income loss requires projecting its likely reduction in revenues from this reduced business (net of any accompanying reductions in its operating expenses) and then adding the probable extra expenses the hotel would incur from, for example, increased advertising to counter adverse pollution-related publicity.
- The hotel's potential liability losses would be the sum of the amounts it would spend to investigate, defend and settle claims (primarily for bodily injury and death but also for property damage) by hotel guests, business tenants, employees and possibly other organizations occupying neighboring facilities. Estimating these amounts calls for both current knowledge and accurate projection of tort law trends in the hotel's jurisdiction and of potential amounts of jury awards and/or negotiated settlements.

Of the many pre-cleanup actions the hotel might take to lower the potential severity of the losses described above, only the required two are listed here.

- To cut the extent of its losses from the unavailability of key personnel, the hotel could, first, cross-train its current employees in a variety of tasks (so that losing one key employee would have less impact on the hotel's operations) and, second, subcontract to other firms those activities (such as ground maintenance) that expose the hotel's employees to particularly high levels of pollutants. (Persons working outdoors, whether employed by the hotel or others, should wear appropriate personal protective equipment.)
- To reduce the size of its net income losses, the hotel could, first, seek to diversify its operations so that it would be less dependent on lodging revenues from this particular facility and, second, lower its room rates and advertise aggressively in the hope of reducing the adverse effects that negative publicity may have on the hotel's revenues.
- Assuming that relocation is not feasible, the hotel could reduce the size of its liability losses by, first, obtaining waivers from long-term tenants barring them from suing the hotel for their own pollution-related losses and, second, applying good claims management in cost-effectively defending and/or settling suits brought against the hotel.

The sample questions and answers used in this column are taken from the Associate in Risk Management designation curriculum of the IIA. For more information on the content of the A.R.M. program, write Dr. G.L. Head, Vp, Insurance Institute of America, P.O. Box 314, Mal–vern, Pa. 19355.

Payment delay increased loss: Court

Where a delay in resumption of business was due to an insurer's failure to pay under a business interruption policy, the policyholder is entitled to recover losses during the period of delay, a federal appellate court ruled.

A number of loans were made to Don and Joyce Hipp, the principals of Hampton Foods Inc., and apparently were used in their business. The business was forced to vacate a building that was in danger of collapse. Hampton had business interruption coverage from Aetna Casualty & Surety Co.

Hampton sought recovery for lost profits and accrued interest on alleged corporate indebtedness as well as penalties for vexatious refusal to pay. The company sued and, initially on appeal, Hampton was found to be covered under the policy but was denied lost profits and penalties. Upon retrial, the lower court awarded Hampton interest expenses.

The appellate court noted that shortly after the Hipps obtained the $140,000 loan, they loaned the sum to Hampton to be used in the business. The Hipps simply served as a conduit for the funds and Hampton became liable for the principal and interest, the court said.

Thus, the court was satisfied that Hampton incurred an interest obligation commensurate with the interest obligation on the loans to the Hipps.

Legal briefs

And, the court said that had Aetna promptly paid what it owed Hampton and had the latter, in turn, used the insurance to reduce what was owed the bank, then the bank would have provided the Hipps with financial assistance to restore their business.

The court remanded the case again for a determination of the extent to which Hampton could have paid its interest expenses had it remained open.

Hampton Foods Inc. vs. Aetna Casualty & Surety Co., U.S. Court of Appeals for the 8th Circuit, April 6, 1988, *rehearing denied* May 4, 1988 (*BI*/01/Dec.-$10).

Stress claim not compensable

An employee was not entitled to recover workers compensation for emotional and mental stress arising from overwork and pressure by management, an Alabama appellate court ruled.

Curtis D. Belcher Jr. filed a claim against his employer alleging that while an employee, he was placed in a severe stress situation, was overworked and pressured by management, and as a result was hospitalized for emotional and mental distress. Mr. Belcher claimed that he had been unable to work since.

After his claim was denied, Mr. Belcher filed an affidavit asserting that the origin of his mental illness was an incident in the fall of 1984, when an employee under his supervision hit him, breaking his nose. Mr. Belcher claimed that this caused his nose to be swollen, resulting in hospitalization for major depression. Again, his claim was denied.

The appellate court noted that under Alabama law there is no coverage for mental disorders that are not produced by some physical injury to a claimant's body. The court emphasized that Mr. Belcher had not alleged any bodily injury in his original complaint and the lack of bodily injury was a proper basis for the determination by the trial court.

Belcher vs. Pinkerton's Inc., Court of Civil Appeals of Alabama, Nov. 25, 1987 (*BI*/02/Dec.-$10).

Psychogenic pain claim

The Court of Appeals of New Mexico held that a psychogenic pain disorder was compensable so long as it was proximately caused by an accident arising out of and in the course of employment.

Gloria Gutierrez was employed by Amity Leather Products Co. on July 26, 1984, when she sustained an on-the-job shoulder injury. She saw several physicians and underwent surgery. When she continued to experience chronic pain, her physicians referred her to a psychiatrist.

She was diagnosed with a psychogenic pain disorder, in that she had physical symptoms suggesting a physical disorder for which there was no demonstrable organic finding. Ms. Gutierrez filed for workers comp benefits. The trial court ruled in her favor.

On appeal, the employer argued that psychogenic pain disorder is not a compensable injury because the medical cause for the condition is not known and because it did not arise out of her employment. The appellate court said that there was sufficient evidence that Ms. Gutierrez's psychogenic pain disorder was a natural and direct result of the work-related accident. Thus, the court said the award of workers comp benefits was proper.

Gutierrez vs. Amity Leather Products Co., Court of Appeals of New Mexico, Jan. 26, 1988 (*BI*/02/Jan.-$10).

These abstracts were prepared by Cases Unlimited Inc. Copies of these decisions are available by sending a $10 check payable to Cases Unlimited to Business Insurance, *740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.*



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Back injury prevention key to controlling costs

By KARI BERMAN

ATLANTA—Employers can reduce costly workers compensation claims for back injuries by developing comprehensive injury prevention and rehabilitation programs, back experts say.

Back injuries can account for 80% of workers compensation costs, Nancy C. Selby, managing director of the Dallas-based Spine Education Center, told attendees of the 27th annual Risk & Insurance Management Society conference held April 9-14 in Atlanta.

"Back injuries are annually costing employers 93 million lost work days, $5 billion in medical expenses and $12 billion in legal and insurance costs," she said.

Increasing employer involvement in a back injury program is key to keeping employees on the job, as well as helping them return to work faster when an injury does occur, Ms. Selby told risk managers attending a RIMS conference session on "Controlling the Back Injury Dilemma."

"Injury prevention beats rehabilitation, but when a back injury does occur, the faster employers get employees back to work, the more they save in workers compensation claims," Ms. Selby added.

Keys to back injury prevention include:

- Dedicated management commitment to reducing the number of back-related injuries.

Managers and supervisors should promote a team approach to improving safety, according to Ms. Selby.

- Reasonable work environment.

"If you ask employees to perform impossible tasks, eventually their backs are going to wear down," Ms. Selby said. For example, instead of having one man lift a heavy box, insist that two employees share the weight.

- Office ergonomics.

Simple adjustments in the height of a chair or computer screen can make a significant difference in reducing back problems, she said.

- Pre-employment screening.

Ms. Selby stressed the importance of checking the medical records of potential hires, looking for red flags such as previous workers compensation claims and prior back problems.

She also advised attendees to administer strength capacity tests to all potential employees who will be involved in heavy lifting if hired. "If they can't lift the weight in a simulated strength test, then they can't lift it on the job," Ms. Selby added.

- Education programs on body mechanics and ways that employees can move with less stress on their backs.

"A comprehensive training program is going to give the employee enough education to take some responsibility for their own back," Ms. Selby said.

Once an employer decides to implement a back injury prevention program, it should not take shortcuts in designing the plan, Ms. Selby advised.

"The program has to be comprehensive. You can't simply hang a poster on a wall and expect employees to respond and claim costs to go down," she warned.

However, no plan is foolproof, and even when comprehensive injury prevention programs are in place, back injuries can still occur, according to the speakers.

Dr. David K. Selby, an orthopedic surgeon in Dallas and a speaker at the seminar, told attendees that when a back injury does occur, employers should try to cut their losses by beginning rehabilitation as soon as possible.

"The longer an employee is out of work, the greater the possibility of the injured never returning to work and developing psycho-social problems."

When people are injured and confined to their home, they can become depressed, often succumbing to self-pity and helplessness, which usually impairs recovery, Dr. Selby explained.

"The more time an employee with a back injury spends in bed and inactive, the more time they have to think about their pain, forget that they were once employed

Continued on page 50

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Back claims

Continued from page 48

and contact lawyers to help them collect workers compensation."

Dr. Richard L. Steig, medical director at the Center for Pain Evaluation and Treatment in Pittsburgh and a session speaker, concurred: "The majority of patients who do not get well will fail to do so as a result of psycho-social problems unrelated to their injury."

To combat the psychologically damaging effects of inactivity that ultimately can drive up workers compensation costs, the speakers advised attendees to get the injured employee back in the workplace as soon as possible.

"The single most important thing that an employer can do (to control the costs of workers compensation claims) is get the injured employee back to work and out of the house," Dr. Selby said.

"Rehabilitation after an injury to the back is over half the job of healing and should be included in all cases," he added.

Modified duty programs and "back schools" also can help employees recover from their injuries, the speakers agreed.

"Modified duty allows the employee to get back into a work and social environment that is familiar and helps reduce the potential for additional secondary costs that the employer will absorb," Ms. Selby said.

She explained that if a company does not have a modified work program, leaving "a macho man to be turned into Mr. Mom at home," the worker may develop psychological and or substance abuse problems, which will compound employers' claim costs when additional treatment is needed.

Back education school also can help an injured employee.

"At back school injured employees are both physically and mentally rehabilitated," she said.

Ms. Selby explained that back school is structured as an intense regime of physical activity that prepares the employee for job-related duties.

Employees also are taught about potential actions that can cause damage and additional injuries.

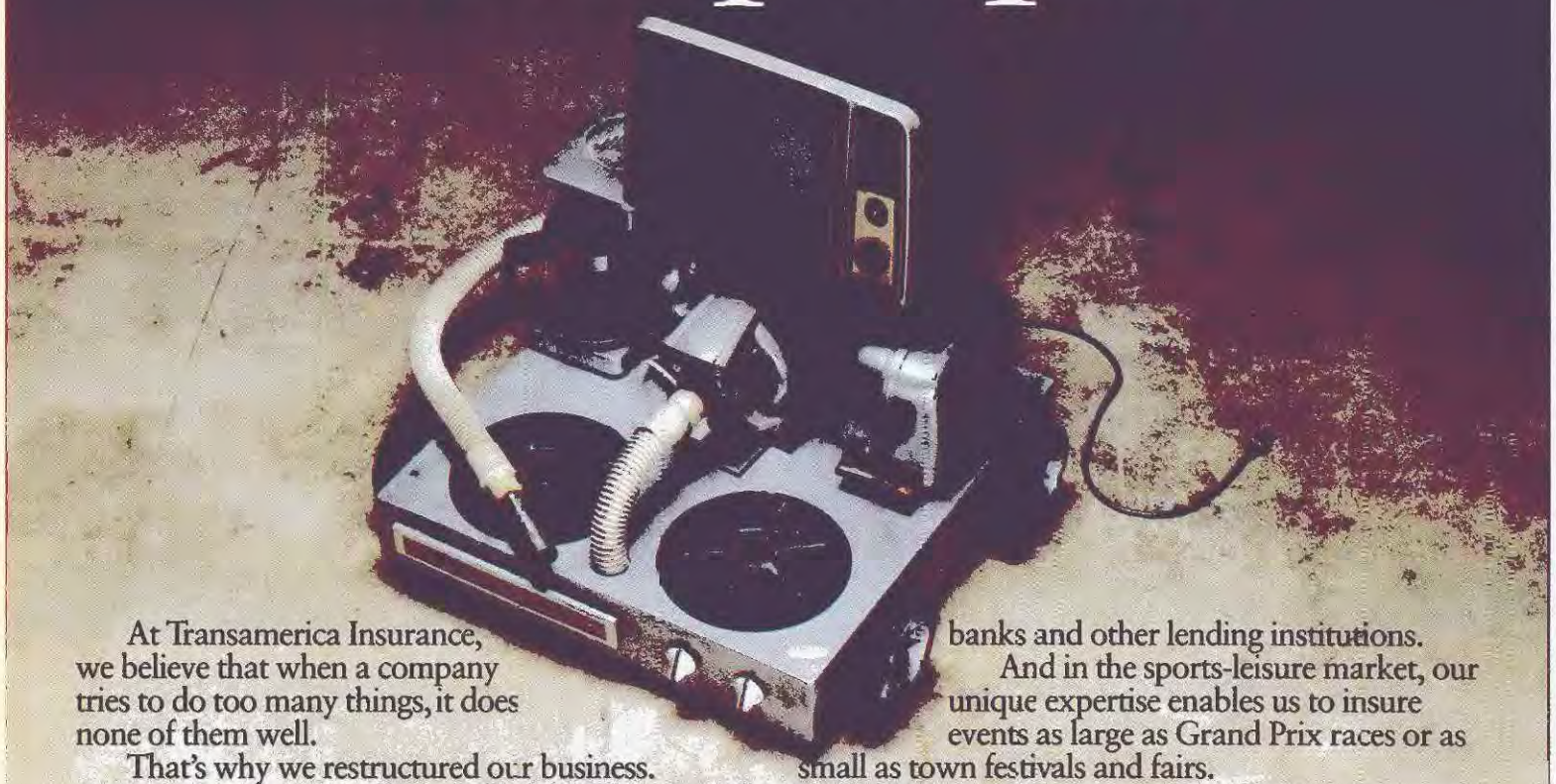
"Injured employees work together to learn about ways to help themselves to protect their backs and grow stronger," Ms. Selby told attendees.

In addition to prevention and rehabilitation programs, speakers stressed the importance of strong communications programs.

Ms. Selby told attendees to assign a company representative to each case, making that person responsible for regularly calling the injured employee and keeping lines of communication with physicians and insurance adjusters open.

"If injured employees are called often by company representatives and feel important and missed, then they will want to recover and return to work quickly," Ms. Selby said. ■

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RIMS elects new slate of officers

ATLANTA—Ronald W. Stasch, corporate risk manager at Federal-Mogul Corp. in Detroit, will assume the presidency of the Risk & Insurance Management Society Inc. on May 1.

Mr. Stasch, who served as RIMS' first vp during the 1988-89 term, will succeed as society president Richard Heydinger, risk management director at Hallmark Cards Inc. in Kansas City, Mo.

Before being named first vp a year ago, Mr. Stasch—who was first elected to the RIMS executive committee in 1982—had served as vp-communications, vp-governmental affairs, vp-finance/treasurer and director of Risk Management Society Publishing Inc.

Succeeding Mr. Stasch as first vp on May 1 will be Cheri J. Hawkins, assistant director of insurance at Weyerhaeuser Co. in Tacoma, Wash. She most recently was RIMS' vp-finance/treasurer. Ms. Hawkins was first elected to the executive committee in 1984.

Other members of the 1989-1990 RIMS executive committee who were re-elected include:

- J.A. Tony Bridger, vp-conference. Mr. Bridger is risk and insurance manager at Canada Packers Inc. in Toronto.
- Robert W. Esenberg, vp-governmental affairs. Mr. Esenberg is risk management administrator for the city of Virginia Beach, Va.
- Denis A. Julien, vp-communications. Mr. Julien is director of risk management for Florida Progress Corp. in St. Petersburg.
- Margaret P. Layne, vp-education. Ms. Layne is risk manager for California & Hawaiian Sugar Co. in Concord, Calif.
- Justin A. Murphy, vp-business and industry liaison. Mr. Murphy is director of insurance for Nestle Foods Corp. in Purchase, N.Y.

Officers newly elected to the RIMS executive committee are:

- Suzanne H. Crager, vp-finance/treasurer. Ms. Crager is corporate risk manager for The Provident National Bank in Philadelphia.
- Gerald L. Belfiglio, vp-member affairs/secretary. Mr. Belfiglio is director of risk management at Allegheny Ludlum Corp. in Pittsburgh.
- J.A. Yvon, vp-research. Mr. Yvon is manager of risk and insurance at Marathon Realty Co. Ltd. in Toronto. ■



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RIMS awards recognize achievements

ATLANTA—Samuel Y. Fisher Jr., insurance manager for Hamilton Oil Corp. in Denver, is this year's recipient of the Richard W. Bland Award presented by the Risk & Insurance Management Society Inc.

The award recognizes outstanding performance or effort by a deputy member of RIMS in the area of legislation and regulation. The award was created to honor Richard W. Bland, a member of the RIMS Kansas City Chapter who pioneered the interests of risk managers before legislative bodies.

Mr. Fisher received his award earlier this month at RIMS' annual conference.

Among other issues, Mr. Fisher has lobbied for revisions in Colorado captive and policy cancellation provisions; rewriting directors and officers liability provisions in the Colorado Corporate Code; and consideration of basic revisions in auto rental agreements by the state Legislature.

In addition, two other risk managers were presented with awards at the RIMS conference.

Mary T. Christensen, director of risk management for Mills Memorial Hospital in San Mateo, Calif., received RIMS' Cristy Award, which is presented annually to the risk manager with the highest cumulative average for the three examinations leading to the Associate in Risk Management designation.

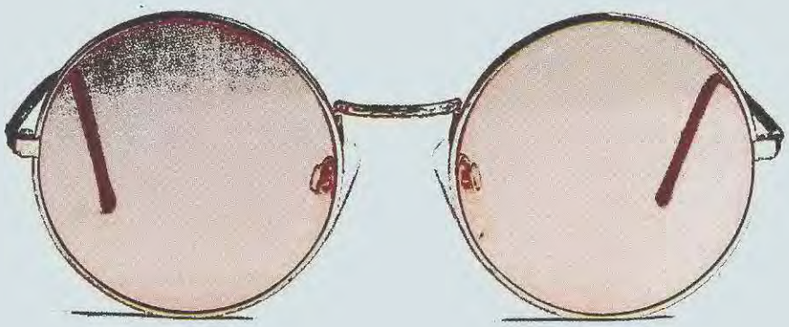
The award honors Jim Cristy, who, as RIMS vp-education, was instrumental in encouraging the Insurance Institute of America to develop the ARM program.

Anne Marie DiBella, risk management administrator-self-insurance for Houston-based Browning-Ferris Industries Inc., is the winner of the RIMS Research Award.

Ms. DiBella was honored for her paper, "The Future of Long-Term Care of the Elderly and Its Impact on Corporations."

RIMS established the Research Award in 1984 to encourage research conducted by its members. ■

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Captives can't rest on laurels: Advisers

By MARK A. HOFMANN

ATLANTA—Owners of mature captive insurance companies can't just sit back and relax once their facilities are up and running, two prominent risk management consultants say.

Captive owners must have a strategic plan to make the most of their facilities, advises a U.S.-based consultant.

And, as part of that plan, owners must ask themselves whether their captive insurance company should be moved to a new domicile, said a Bermudian risk management consultant and former regulator.

"There's not a whole lot of thought by owners as to whether the captive's doing what it was set up to do," said Richard S. Betterley, president of Worcester, Mass.-based Betterley Risk Consultants Inc., during a session on "Optimizing the Mature Captive" at the 27th annual Risk & Insurance Management Society conference held April 9-14 in Atlanta.

According to Mr. Betterley, a mature captive is one that:

- Operates "successfully," with success being defined differently by different owners.
- Has reinsurance continuity, with continuity meaning the same type of reinsurance arrangements over time rather than simply with the same reinsurer.
- Has management continuity.
- Has a "mature" line or lines of business, meaning that the captive owners understand both the problems and opportunities offered by their business.

'I think every domicile has its (positive) qualities,' says Malcolm Butterfield.

One question that needs to be asked constantly is whether a mature captive is living up to its potential, Mr. Betterley said.

For example, "Do you have the right insurance lines in your captive?" he asked.

However, captive owners need to consider carefully what they might like to add, he said. For example, adding product liability or product recall coverages might not be wise, he said.

On the other hand, fleet liability coverage, though increasingly difficult to obtain in the commercial market, is "eminently well-suited to a lot of captives," Mr. Betterley said. Directors and officers liability also might be a sound addition to some captives, he added.

In addition to taking stock of the coverages a mature captive is underwriting, the vendor servicing the facility also should be evaluated, Mr. Betterley said.

"Doing the evaluation is time-consuming if you do it right," he said, and implementing the recommendations will take even longer.

He also urged captive owners not to underpay their captive managers. "You get what you pay for," he said.

Regulations that govern a captive also can influence its effectiveness, prompting its parents to consider a move to a domicile with a more favorable regulatory climate, explained Malcolm L. Butterfield, managing director of Betterley Risk Consultants (Bermuda) Ltd. in Hamilton, a unit of Betterley Risk Consultants.

To help decide whether to stay or go, Mr. Butterfield advises captive parents to visit the regulators in their domicile and find out what might be on the horizon regarding the climate for captive operations.

He also urges captive parents to build contacts with knowledgeable people in the captive domiciles, so captive owners can rely on "people who can keep you up to scratch."

Before deciding whether to move to a new a domicile, captive insurance company owners must understand both internal and external influences, Mr. Butterfield said.

Internal influences include the domicile's regulatory environment and legislative procedures, while external influences include the tax implications of establishing a captive in a given domicile, experts' perception of the domicile and market conditions, he explained.

However, owners of mature captives may find the decision of whether to change domiciles to be a difficult one because each domicile has its attractions, Mr. Butterfield said.

"I think every domicile has its (positive) qualities," he said.

For example, two or three years ago, domestic captive domiciles generally were more regulatory stringent than their offshore counterparts, like Bermuda or the Bahamas, Mr. Butterfield said.

But, today, this is no longer the case. Vermont, for instance, is considering cutting premium taxes paid by captives, he said.

Many domiciles—both onshore and offshore—are taking steps to increase their attractiveness because they want to retain their mature captives, Mr. Butterfield said.

"I believe the dignity of the domicile rests more predominantly with mature captives" than with start-up operations, he said.

Mr. Butterfield added that he believes there will not be as many captive formations per year in the future as there have been in the recent past, making domiciles more eager to keep proven captive operations within their borders.

The question is not one of captives dissolving and their members returning to the traditional insurance market for coverage; it is one of captives shifting domiciles, Mr. Butterfield said.

"Once you move into the captive business, I believe it's permanent," he said.

Mr. Betterley noted that the perceived permanence of successful group captives raises special strategic evaluation and planning issues for the mechanisms.

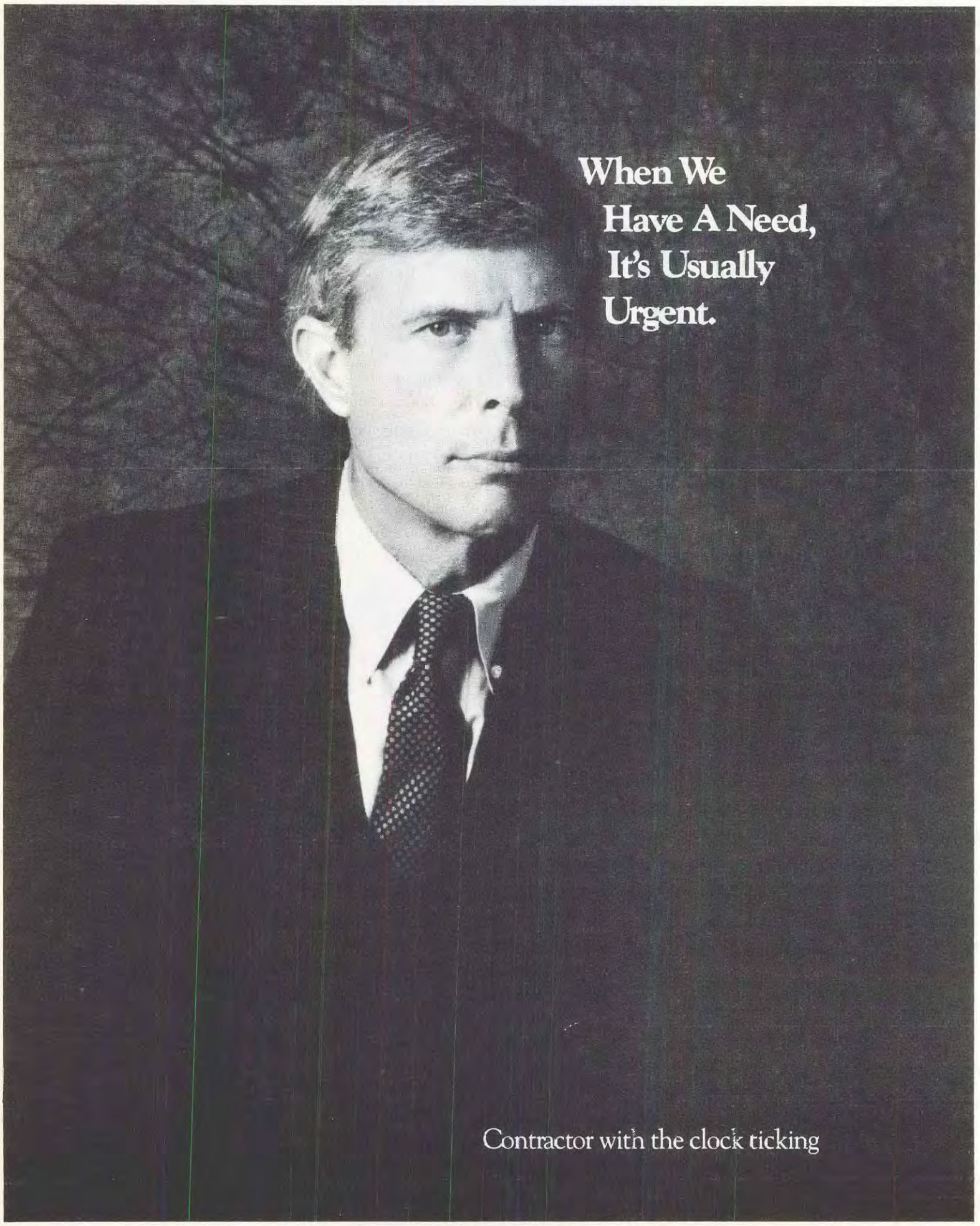
For example, the board of directors must be representative of the owners, he said.

"Too often, the board operates as a closed club," Mr. Betterley said.

The board also should examine how similar captives or risk retention groups operate, he said.

To get the most out of their facilities, captive owners have to think like owners, and not just like customers, Mr. Betterley stressed.

In addition to Messrs. Butterfield and Betterley, Walter M. Duer, a partner with KPMG Peat Marwick in Houston, spoke at the session. William L. Mather, administrator of risk management for The Gillette Co. in Boston, served as moderator. ■



Insolvencies inevitable but controllable

By JUDY GREENWALD

ATLANTA—While there will always be insurer insolvencies, there are steps that can be taken to minimize their number and mitigate the damage they cause, a regulator, a broker and risk manager agree.

For example, state insurance regulators could keep a tighter rein on troubled insurers, the state regulator admitted.

Or, states could follow New York's lead and prefund their insurance guaranty funds, the broker suggested.

And, risk managers could be more careful about the insurers with which they place business, the risk manager said.

All three speakers made their recommendations during a panel discussion on insurer insolvencies at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

A takeoff point for the discussion was "Managing Insurer Insolvency," a report prepared by New York-based insurance consultant Stewart Economics Inc. for the National Assn. of Insurance Brokers, which organized the RIMS session (*BI,* Dec. 5, 1988).

The problem of insurer insolvencies is "huge, it's growing and it appears, unfortunately, to be unchecked," observed Colorado Insurance Commissioner John Kezer.

"It's obvious to me" that the insurance regulatory system works, but it would take a "fool" to say it is working well, said Mr. Kezer.

The focus of regulators should not be on managing insolvencies, but on preventing them, he suggested.

One way to prevent insolvencies is to give insurance regulators more clout, suggested John W. Foley, managing director at Marsh & McLennan Worldwide in New York.

Most observers would agree that state insurance regulators be given the authority and responsibility to do their jobs, Mr. Foley said. In addition, regulators should focus their audits on those insurers that have problems, he recommended.

And, regulators should communicate to the market when they see an insurer is in trouble, said Mr. Foley. "I really don't like secrets any more," he said. If regulators see that a company is in trouble, "they really have a duty to tell the world."

Mr. Kezer agreed that regulators should pay closer attention to what the market is saying as to which insurers are in trouble. "Why we insurance regulators can't listen better is beyond me," he said.

Regulators should use the tools at their disposal to investigate companies that cannot demonstrate management competence as well as holding companies whose only interest is the bottom line, Mr. Kezer said.

Outdated approaches to insurer examinations should be abandoned, Mr. Kezer said. For instance, he suggested that regulators conduct performance—not just financial—audits of companies. Post-mortems of insurer failures should also be conducted, said Mr. Kezer.

But when an insurer insolvency does occur, one way to mitigate its effects is to implement a pre-assessment guaranty fund, such as that used by the state of New York, M&M's Mr. Foley suggested.

Under the New York system, all insurers—including those that ultimately will become insolvent—contribute to the fund, he explained.

However, under the post-assessment system now used in other states, only still-solvent insurers are assessed once another insurer goes out of business, he said.

"I think it's unfair" to require the solvent insurer to pay the claims of the insolvent insurer that stole business by underpricing its products, Mr. Foley asserted.

However, the New York state Legislature's appropriation of at least $87 million from the New York Insurance Guaranty Fund may discourage other states from following New York's lead (*BI,* Jan. 23. May 9, 1988), Mr. Foley noted.

To prevent state lawmakers from dipping into state insurance guaranty funds, these funds should be put into an account "no one could touch," said Mr. Foley. "Let's have a fund that's inviolate."

Mr. Foley also suggested that the limits paid per claim by guaranty funds, which now vary widely, be uniform among the states. "Let's standardize them," he said.

The requirements for drawing on a particular state's guaranty fund should be standardized as well, he said, and a forum for resolving conflicts over guaranty fund payouts should be developed.

In addition, regulators should consider establishing guaranty funds for surplus lines risks, Mr. Foley suggested, because "those companies fail just as rapidly as everybody else." So far, New Jersey is the only state that has a surplus lines guaranty fund.

Mr. Foley also suggested non-insurance parents of insolvent insurance companies be held accountable for their subsidiaries.

Insurer insolvencies also should concern risk managers, said J. Larry Griffin, director of risk management and loss control at Sundstrand Corp. in Rockford, Ill., who said in the course of his career as a risk manager he has been affected by the insolvencies of Ideal Mutual Insurance Co. and Transit Casualty Co.

Mr. Griffin suggested that risk managers can sometimes contribute to an insurer insolvency. "Are we looking for insurance coverages that are cheap" and don't care what has to be done to get prices down? he asked.

An insurer insolvency also can affect the credibility of a company'y risk management department, Mr. Griffin pointed out.

Once an insurer becomes insolvent, claims payments stop immediately, and "this can cause you tremendous problems," particularly when the insolvent insurer stops paying workers compensation claims, thus triggering union activity, he said.

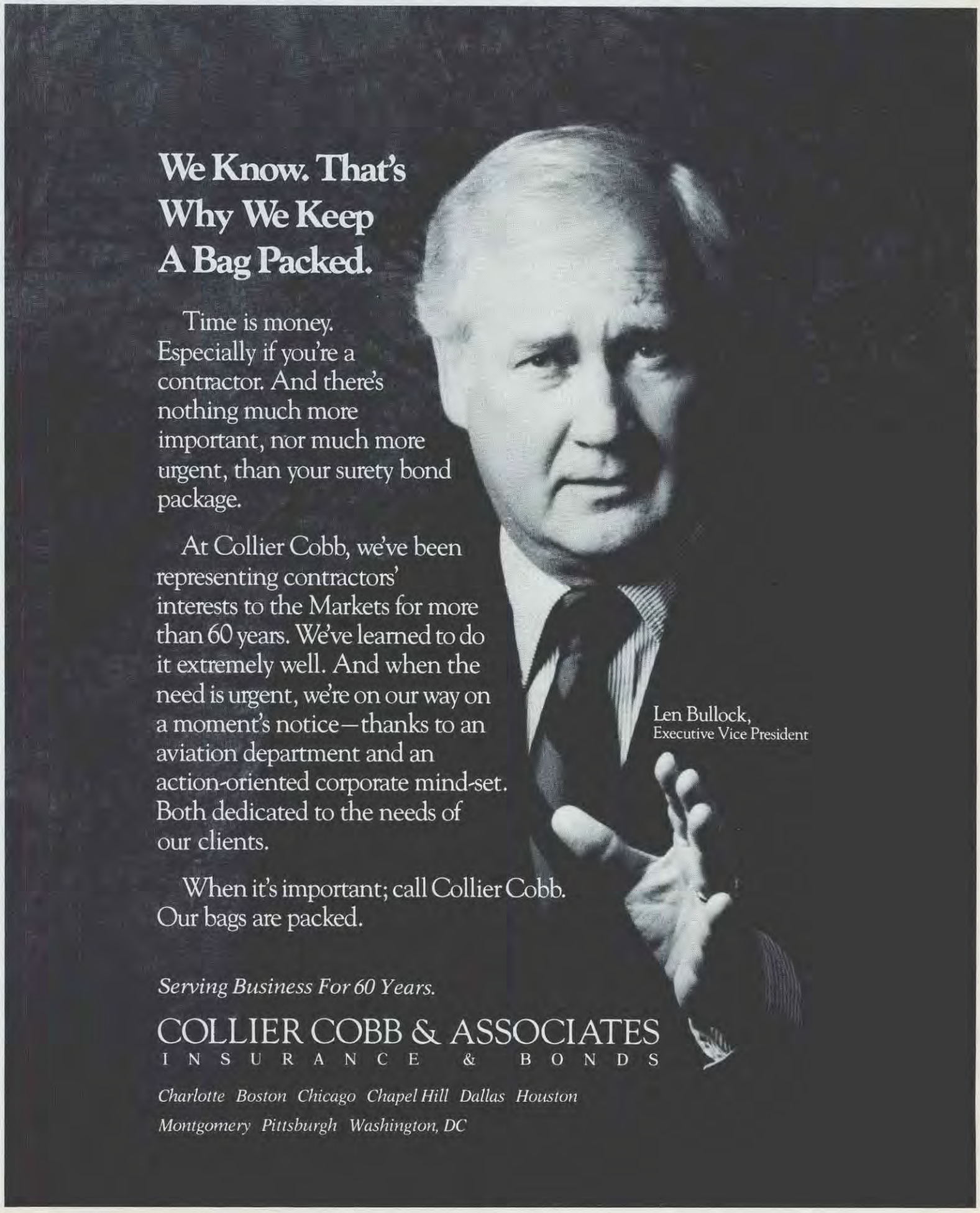
Mr. Griffin asked: When an insurer becomes insolvent, what happens to letters of credit posted by the policyholder in retrospectively rated workers compensation programs?

The letters of credit, he noted, become an asset of the insurer that can be drawn down to pay any claims owed by the insurer.

"What effect does that have on you?" he asked. "That means you have to pay for the same letters of credit twice."

Also speaking at the seminar was Charles J. Clarke, senior vp of property/casualty commercial lines-national accounts for Travelers Cos. in Hartford, Conn.

The session was moderated by Carol L. Nist, director of risk management at Marion Laboratories in Kansas City, Mo.; and coordinated by Martin J. McFadden Jr., managing director of Marsh & McLennan Inc. in New York. ■



RIMS Run

5-K competition only a warm-up for marathoner

ATLANTA—Tom Houldsworth, director of the Florida League of Cities in Winter Park, Fla., raced to an 18:09 finish to win the 5-kiiometer RIMS Run at the 27th annual Risk & Insurance Management Society conference earlier this month.

The race, sponsored for the third consecutive year by Frank B. Hall & Co. Inc., raised $2,445 for the Robert S. Spencer Educational Foundation Inc. However, the sum was well below the more than $4,000 generated by the race in 1988.

While 119 runners registered for the race, only 76 showed up at the starting line on a chilly morning at Memorial Park in north Atlanta.

For Mr. Houldsworth the race was a tune-up. "I don't like these short ones," he said of the 3.1-mile circuit through Memorial Park.

Sufficiently limber after his RIMS victory, Mr. Houldsworth ran in last week's Boston Marathon.

Sandy McKean, risk manager with Computer Sciences Corp. in El Segundo, Calif., was the top female finisher in this year's competition with a 23:16 clocking.

Blair Driskell, director of Medstat Systems Inc. in Ann Arbor, Mich., had the second best time in the race with a 19:01. Rich Ruwell, West Coast manager in the Los Angeles office of National Union Fire Insurance Co. of Pittsburgh, Pa., was third at 19:09.

In the women's category, Ms. McKean finished ahead of Annette Ruff, risk manager of BE&K Inc. in Birmingham, Ala., who turned in a 24:38 performance. Finishing third in the women's category was Katherine Dunlap, risk analyst with The Coca Cola Co. in Atlanta, at 26:32.

Mr. Driskell also was honored as the top finisher in the men's 18-40 age group; Ms. Ruff led that category among women.

In the over-40 group, Mr. Ruwell took top honors, and Christine Veator, senior vp of Frank B. Hall & Co. of Massachusetts in Boston, was first with a 26:33 time.

In the risk management category, Roy Van Duivenbode, risk administrator at Avery International Inc. in Pasadena, Calif., was the winner at 19:38 and Ms. Dunlap took second place in that group.

Richard Denning, president of Risk Sciences Group in Atlanta, recorded a 19:43 time to win the service company/exhibitor category, and Renee Webb, international representative with the Bank of N.T. Butterfield in Bermuda, turned in a 27:19 to capture first place among females in that group.

Ed Holinski, vp with Alexander & Alexander Services Inc. in Detroit, was clocked at 20:34 to take top honors in the broker/consultant category, while Kathy Adam, an executive with Sterling Adam, notched a 26:06 as the top female finisher in the category.

Ricardo Romanelli, corporate unit manager with Grupo Juncal de Argentina, won the insurance/reinsurance category with a 21:29 time, and Kathleen Adamson, assistant vp at Reliance National Risk Management in Philadelphia was the top female insurer/reinsurer finisher at 25:26.

The fastest male spouse of a conference participant was Ken Paretzky with a 26:13, and the female winner in that category was Bernadette Hemmer at 28:48.

—By Michael Bradford





Photos: Alfred Malecki

Sandy McKean, left, risk manager with Computer Sciences Corp., was the top female finisher, while Tom Houldsworth, director of the Florida League of Cities, was the overall winner.

Foundation short of $100,000 goal

By KARI BERMAN

ATLANTA—The Spencer Educational Foundation is far short of its goal of raising $100,000 by June 30 from Risk & Insurance Management Society members, deputy members and chapters.

All contribution made by individual RIMS members before that deadline will be matched by a Corporate Challenge Fund.

So far, RIMS members, deputy members and chapters have contributed only slightly more than $21,000 during the fiscal year that ends June 30, according to Ronald Judd, executive director of New York-based RIMS.

"We thought that the Challenge Fund would be much more successful than it is now. The whole concept behind the fund was to get the RIMS members involved," said Margaret P. Layne, vp of education for RIMS and risk manager for California & Hawaiian Sugar Co. in Concord, Calif.

The $100,000 Corporate Challenge Fund, established this year, is designed to encourage RIMS members to make personal or corporate donations, which will then be matched by funds from industry sources.

RIMS' corporate members, deputy members and individual RIMS chapters are asked to make donations of at least $25 each, and participating industry-related companies—including brokers, insurance companies and service vendors like consulting firms and third-party administrators—pledge to match the donations.

"Industry companies are asked to pledge a minimum of $2,500 to be used on a matching basis for contributions of $25 or more received from RIMS' deputy members and member organizations," explained Michael Maliavsky, RIMS' assistant executive director.

The industry participants in the Corporate Challenge Fund then pay a percentage of their pledges, depending on how close RIMS' members come to reaching the Spencer Educational Foundation's goal of $100,000 in non-industry contributions by the end of June.

"If we reach $100,000, then the corporation pays 100% of its pledge," Ms. Layne explained. But, if members contribute only $50,000, the industry participants pay half of their pledge, Ms. Layne said.

"We thought that RIMS' members would be more supportive," Mr. Judd said.

Mr. Maliavsky agreed. "We are disappointed in the member response but hope to get as close to the goal as possible."

All donations raised from the Corporate Challenge Fund will be added to the foundation's general educational scholarship fund, which currently stands at $575,000, according to Mr. Maliavsky.

"The general fund increased by $150,000 over the past year, and we hope to reach $1.3 million by 1993," said Ms. Layne.

As of March 31, New York-based Johnson & Higgins made the largest contribution from any source this fiscal year—almost $64,000. J&H also led all contributors in fiscal 1987-88 with a $59,000 donation.

J&H's contribution earned it a spot on the RIMS President's Circle list for contributors of $30,000 or more.

Golden Circle members, or those that have donated $12,000-$29,000 as of March 31, are:

- Alexander & Alexander Inc.
- Marsh & McLennan Inc.
- The Starr Foundation.

Sponsors, or those that have donated $5,000-$11,999, are:

- American International Group Inc.
- Atlanta Chapter of RIMS.
- *Business Insurance.*
- Corroon & Black Corp.
- Fred S. James & Co. Inc.

Benefactors, or those that have contributed $2,500-$4,900, are:

- Crawford & Co.
- General Reinsurance Corp.
- The Hartford Steam Boiler Inspection & Insurance Co.
- Liberty Mutual Insurance Co.
- Reliance Insurance Co.
- Washington Chapter of RIMS.

Patrons, or those that have donated $1,000-$2,499, are:

- C.J. Spivey Associates Inc.
- Davis, Dorland & Co.
- GAB Business Services.
- H.S. Weavers (Underwriting) Agencies Ltd.
- Information Inc.
- International Risk Management Institute Inc.
- Los Angeles Chapter of RIMS in memory of David L. Broadway.
- Mead Paper Co.
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- Old Republic Risk Management Inc.
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- Virginia Chapter of RIMS.
- X.L. Insurance Co. Ltd.
- Zurich-American Foundation.

Individual contributors who have donated $250-$999 include:

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- Samuel Y. Fisher, Jr.
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- Mr. & Mrs. John Robert James.
- Willis T. King Jr.
- H. Felix Kloman.
- Dick Smith.
- Myra Leigh Tobin.

Organization contributors that have donated $250-$999 include:

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- Durr-Fillauer Medical Federation.
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- Houston Chapter of RIMS.
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- Industrial Risk Insurers.
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- Newell Cos.
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- Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc.
- Wilcox Inc.

The Spencer Educational Foundation, originally the Robert S. Memorial Foundation, was established in 1979 to provide scholarships to assist deserving students of risk management, property/casualty insurance or employee benefits.

The Spencer Educational Foundation named five new recipients of $4,000 scholarships at the 27th annual RIMS' conference in Atlanta earlier this month.

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Check environmental risks before buying land: Experts

By MARK A. HOFMANN

ATLANTA—The importance of evaluating property for environmental exposures before purchasing it cannot be understated, according to a panel of experts.

"The failure to check out land before you buy it may be one of the biggest mistakes your organization can make," said George M. Mills, risk manager for the New Jersey Highway Authority—which operates the Garden State Parkway—in Woodbridge, N.J.

Mr. Mills moderated a session on environmental liability in real estate transactions at the 27th annual Risk & Insurance Management Society conference in Atlanta earlier this month.

"The problem is huge," said Jaswant Singh, senior vp and technical director of Novi, Mich.-based Clayton Environmental Consultants, a wholly owned subsidiary of New York-based Marsh & McLennan Cos. Inc.

In many cases, the cost of cleaning up an environmentally impaired property may outstrip its purchase price, said Mr. Singh, who coordinated the session.

For example, Mr. Singh said that a developer bought an eight-acre parcel of land for use as a golf course in 1980. The developer did not know that the Fullerton, Calif., site had been used from 1942 to the late 1950s as a dump site for acid sludge from a nearby refinery and drilling mud from area oil fields. The site contained 200,000 tons of contaminated soil.

After the land was purchased, the state of California restricted development of the site. And, the U.S. Environmental Protection Agency put the site on the Superfund National Priority List in 1983.

But, Mr. Singh pointed out, very little cleanup work has been done on the site, which remains unused.

Even a parcel of "unimproved" farmland can be an environmental time bomb, pointed out Nill V. Toulme, a partner in the Atlanta law firm Alston & Bird.

For example, early-20th century farmers in Florida and southern Georgia used to fill pits with kerosene and pesticides and then drive their cattle through them to get rid of pests, Mr. Toulme said.

The pits have long been abandoned, but the chemical residues remain, he said.

Many possible contaminants can turn a piece of choice real estate into an increasingly expensive toxic wasteland.

Pollution risks about which real estate buyers should be concerned include: buried wastes; underground storage tanks that might have once leaked hazardous substances; substances that have been spilled on a piece of property and have leeched into groundwater; airborne hazardous chemicals, such as polychlorinated biphenyls; and asbestos.

"Don't be surprised if there are a few buried USTs everyone has forgotten about," Mr. Singh said.

But to uncover pollution risks posed by a piece of property involved in a real estate deal, risk managers may have to do a lot of legwork, because property contamination often is not apparent, he said.

For example, a simple walk-through inspection of a site might lead a risk manager to believe that a property is not contaminated because it is covered with healthy trees and other plants.

However, the roots of those healthy plants may not have tapped into thousands of gallons of toxic wastes dumped at the site decades earlier.

The walk-through is one of the least sophisticated means of attempting to determine whether a site is environmentally impaired, Mr. Singh said. "You're looking for obvious signs of problems," he said.

Thus, the risk manager should review site documents to construct a history of site usage. But a paper chase is not enough, Mr. Singh explained.

"Interview the right kind of people" to uncover the property's past, he said. These would include people who worked on the site and employees of regulatory agencies who once had jurisdiction over the site.

Continued on page 60



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Real estate risks

Continued from page 58

If there are signs of environmental impairment, the site should be sampled. This includes taking subsurface soil and water specimens.

Those samples should be sent to laboratories that are part of the federal Environmental Protection Agency's laboratory program, that hold accreditation from the American Industrial Hygiene Assn., that have been licensed by the Centers for Disease Control and that participate in various state certification programs.

Mr. Singh said only about 20 laboratories in the nation meet all four recommendations.

In addition, adjoining properties should be visually examined for signs of impairment, Mr. Singh recommended.

Nobody should be fooled into thinking that carrying out environmental examinations will be cheap, Mr. Singh warned. Walk-throughs, record examinations and interviewing could cost $5,000, and a sampling and testing program might cost 10 times as much, he said.

Yet whatever survey costs might run, they will be trivial compared with liability costs if a site is contaminated, he said.

A colleague of Mr. Singh's zeroed in on the risks posed by underground tanks to underscore the need to assess the potential pollution risks posed by real estate transactions.

Kenneth P. Bechely, a senior environmental consultant and geologist in Clayton Environmental Consultants' Kennesaw, Ga., office, said there is a 77% chance that an underground tank will leak after 16 years. And, the average age of a UST in the United States is 17 years, he noted.

While UST cleanup costs in most cases average about $36,000, in some cases UST cleanup costs can exceed $1 million, he said.

The range of costs reflects the relative expense of disposing of different substances, he said.

Mr. Bechely pointed out that USTs can leak for a variety of reasons, including corrosion of the tank, ruptured pipes and faulty fittings.

Mr. Bechely suggested a three-prong strategy for owners and operators of underground storage tanks to minimize pollution exposures.

"In the long run, try to gather as much data as you can on your existing tanks," he said. From this data, the risk manager should identify high-risk UST systems; close off the problem tanks from the system and remove contaminated soil; and develop a long-range program that involves the installation of a reliable leak-monitoring system, upgrading existing tanks and, if necessary, replacing old tanks, he said.

Mr. Toulme of Alston & Bird recommended hiring a professional environmental auditor to examine land considered for purchase.

After an audit, the risk manager should ask the auditor for explicit information on how it inspected the property, Mr. Toulme said.

The risk manager then needs the detailed findings of the audit because as owner of the property, the risk manager's employer theoretically needs to know the prior uses of the site.

The risk manager also should ask the auditor to specify exactly what was found on the site, the attorney said.

For example, if the auditor reports that it found a metal drum on the site, the risk manager must know whether it was a brand new, empty drum or the condition of an old drum.

Finally, the auditor must be asked if it regards the level of inquiry undertaken to be reasonable. If the auditor does not think the inquiry was thorough enough to meet federal and state regulations, the risk manager must determine what the auditor thinks should be done in addition to the task already completed. ■

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Work comp costs subject to controls

By DONNA DiBLASE

ATLANTA—Employers can and should develop cost containment strategies to better manage their workers compensation programs, a panel of experts says.

"While there are statutory constraints on workers compensation programs, most of the costs involved can be controlled," said Thomas Wander, a principal of Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc. in San Francisco.

While workers compensation costs continue to increase for several reasons, including a rise in the number of claims filed and escalating health care costs, the experts said employers can control workers comp costs through such measures as:

- Educating employees in the prevention of workplace injuries.
- Implementing utilization review techniques.
- Auditing hospital bills.
- Developing preferred provider organizations in some states.
- Managing legal costs when claims are litigated.

The panelists offered their suggestions during "Cost Containment Strategies for Workers Compensation," held during the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Several factors contribute to the costs of workers comp programs, said Mr. Wander, who coordinated the session. These include:

- The aging of the workforce.
- A greater number of chronic illness and stress-related workers comp claims.
- Increasing health care and rehabilitation costs.
- Inadequate risk control and rehabilitation programs.
- A lack of integration by employers of workers comp, health benefit and disability programs.
- Poor workers comp claims management and poor risk management information systems.
- A consumer mentality that "more care is better care."

In addition, Mr. Wander explained that cost containment strategies applied by employers to their health care benefits programs have resulted in some cost-shifting to workers comp programs.

For example, if an employee is a member of a PPO or health maintenance organization offered by the employer and seeks care for an illness or injury under the benefits plan, "health care providers have financial incentives to classify an injury or disease as work-related," he said.

By doing this, the employee's care would be governed by the workers comp system, under which the provider could receive greater compensation and less restriction on cost and utilization than would be allowed under the employer's managed health care plan.

Employers can contain compensation costs in several ways, workers comp experts say.

For example, at Oakland, Calif.-based Safeway Stores Inc., "prevention is my first line of defense" in controlling workers comp costs, said Bert Anderson, vp of the grocery store chain's risk management division and moderator of the session.

Safeway, which has 107,000 employees, operates 849 stores in the United States and 249 in Canada. It has 59 manufacturing facilities, 35 administrative facilities and operates 950 trucks, he said.

"In the last five years, we experi-

Continued on next page

Continued from previous page
enced an 89% increase in incurred costs under our workers comp program and a 12% increase in frequency" of the filing of workers comp claims, he said.

A great portion of its claims are related to back injuries resulting from improper lifting techniques used by employees, he said. So, the company developed education programs to help prevent injuries.

Employees can participate in body building programs to strengthen their backs and classes on proper lifting techniques, receiving hats, T-shirts and belt buckles as awards, Mr. Anderson said.

The company also introduced an alcohol and substance abuse education program that includes videotapes in which employees tell their stories of recovering from these problems.

In addition, Safeway conducts pre-employment drug screening in its warehouses and is beginning a similar program in its stores.

Safeway also introduced an incentive lottery program called Safeway Accident Free Employees—or SAFE—in which employees can win $600, $800 or $1,000 when there is a net savings to the company as a result of education and prevention programs developed by employee involvement committees at a particular location.

When there is a loss to the company as a result of injuries at a particular location, the cost of those accidents are "charged back" to the store or warehouse where the accidents occurred, he said.

Safeway also produced a video called, "It's Already the Law," which tells employees that it's unnecessary to hire an attorney to receive workers comp benefits.

Along with education and prevention of workplace injuries, employers also can apply to their workers comp programs the utilization review and case management techniques already in use in medical benefit plans, some panelists said.

"Three percent of your insureds produce 40% of your costs. So, a well-placed call to a case manager early on in an employee's case" can help employers control the medical costs under their workers comp programs, said Sandy Scott, a national product manager with Intracorp in Philadelphia.

Intracorp, a subsidiary of CIGNA Corp., performs case management and UR services for both health benefit and workers comp programs.

Under the program, a case manager works with a patient's attending physician to arrange the best-quality, but most cost-effective care for the patient, Ms. Scott explained. The case manager can help arrange the best acute care, rehabilitative care and any follow-up care needed to help the employee return to work, she said.

Along with managing the care received by an injured employee, employers also can control workers comp medical costs through hospital bill auditing, said one expert.

Since this task usually is performed for the employer by an outside vendor, "careful vendor selection is very important," said Gail Nethercutt, director of the workers comp practice of National Medical Audit, a San Francisco-based division of benefit consultant William M. Mercer Meidinger Hansen Inc.

NMA helps employers evaluate vendors of UR, hospital bill audit and PPO services.

Bill auditing can be used in states that require hospitals to follow statutory fee schedules, she said.

To select an auditor, "send a batch of bills to three different vendors and see how each interprets the fee schedules and picks up billing errors," she suggested.

Then, "split up your different company units, select two vendors that look the best to you. Let them run a horse race to see who really performs the best for you," Ms. Scott said.

When contracting with a vendor, employers should negotiate specific performance requirements, such as time limits on claims review and bill audits and expected savings.

Employers also can negotiate "sharing results with the vendor, where a percentage of the savings will be the vendor's reimbursement for services," explained Ms. Nethercutt of National Medical Audit.

In some states whose workers comp laws allow employers to direct employees to certain providers, employers also can establish PPOs to control workers comp costs, she said.

In establishing a workers comp PPO, employers should make sure the location of providers matches the geographic location of its employees, she said.

A UR program also should be established independently from the PPO's own utilization controls to monitor workers compensation health care services in the PPO, she said.

Along with medical costs, legal costs are a major portion of workers comp programs, said William Lee, a consultant with Tillinghast in Stamford, Conn.

To control these costs, employers must first make every effort to keep employees from seeking legal help in settling a workers comp claim, he said. This can be accomplished by prompt handling of the employee's claim by the company claims manager, plus ongoing communication with the injured employee, he added.

However, when a claim is litigated, "you, as risk managers, should take an active role in managing your outside legal counsel," he said.

Employers should demand open communication between themselves and the company attorney and determine a schedule for the attorney to report on the progress of the case, Mr Lee explained.

Employers also should develop a billing arrangement and defense budget at the start of the case, he said, adding that employers also can use expert witnesses and investigational services when defending a contested workers comp claim. ■

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STATUTORY SURPLUS (000 Omitted)	COMBINED RATIO
1983 – $12,238	1983 – 94.9
1984 – $16,739	1984 – 97.0
1985 – $37,037	1985 – 99.7
1986 – $53,063	1986 – 84.1
1987 – $57,243	1987 – 84.2
1988 – $60,024	1988 – 97.1
	5 YEAR COMBINED RATIO: 90.8 (1984-1988)

ASSETS (000 Omitted)	LOSS RESERVES (000 Omitted)
1983 – $ 35,156	1983 – $ 4,983
1984 – $ 48,719	1984 – $ 9,150
1985 – $105,993	1985 – $22,784
1986 – $159,568	1986 – $46,243
1987 – $168,859	1987 – $59,712
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Spotlight report

Purchasing group insurers deserve scrutiny

By JERRY GEISEL

ATLANTA—Buyers should carefully scrutinize the insurers writing coverage for a risk purchasing group before joining a group program, an expert advises.

Many insurers writing risk purchasing group business are modestly capitalized and may lack the expertise to successfully underwrite for so many different groups, said Thomas West, senior vp with Alexander & Alexander Inc. in Dallas.

"Frankly, I can't help but wonder whether some risk purchasing group insurers will be around to pay claims," Mr. West said.

Speaking this month in Atlanta before a special session on the federal Risk Retention Act at the 27th annual Risk & Insurance Management Society conference, Mr. West said he is concerned about insurers that almost overnight are marketing coverage to many different risk purchasing groups.

"Do they really have the expertise to insure so many different types of risks?" Mr. West asked.

At the same time, buyers should closely examine the business plans of risk retention groups, he pointed out.

For example, the motive behind the business plan of one unnamed risk retention group in which 44% of premiums were intended to pay for various management and administrative fees "seemed more to generate fees for the management company" than to give policyholders an alternative to the commercial market, Mr. West said.

Buyers should closely examine the business plans of risk retention groups, Mr. West says.

Several other speakers recommended prompt changes to the federal Risk Retention Act to clear up issues that are causing confusion for both risk managers and state regulators.

For example, Edward Barrett, a U.S. Commerce Department staffer, suggested that risk purchasing groups should be established and controlled by buyers. Currently, many of the more than 300 risk purchasing groups that have been formed since enactment of the 1986 amendments to the Risk Retention Act have been organized by insurers.

"We feel there should be an arms-length" distance between insurers and policyholders, which can be difficult if the insurer is controlling a risk purchasing group, Mr. Barrett said.

Indeed, he noted that some purchasing group insurers may be organizing the groups simply as a means to try to circumvent state regulation.

Mr. Barrett also recommended that a purchasing group insurer be admitted in at least one state and meet certain objective financial criteria, such as maintaining a minimum amount of capital and surplus.

This recommendation, proposed earlier in a Commerce Department staff discussion paper (*BI*, Nov. 21, 1988), would replace an ambiguous provision in the 1986 amendments that now says the insurer of a purchasing group must be admitted or authorized in the state in which the group is "located."

State regulators as well as a federal court in Iowa, have interpreted this provision to mean that a purchasing group insurer must be admitted or authorized in any state where the purchasing group has members.

Buyer groups, though, say that such an interpretation would eliminate hundreds of potential insurers from writing coverage for purchasing groups.

At least one state should have primary responsibility for regulating a risk purchasing group insurer, Mr. Barrett said.

While some state regulators say that the Risk Retention Act has opened the door for "entrepreneurs" to set up thinly capitalized insurers to write purchasing group business, Mr. Barrett says there is plenty that regulators can do—under authority they already possess—to shut down those insurers.

For example, state regulators have the power to go to court to stop an insurer from writing purchasing group coverage if the insurer is in "hazardous financial condition."

But state regulators are going to have to talk to each other and cooperate more if they are to quickly find out the backgrounds of purchasing group insurers, Mr. Barrett said.

"States can no longer act in a vacuum. They must talk to one another," added Jon Harkavy, director of government affairs and general counsel for RIMS in New York.

Ultimately, changes to the Risk Retention Act involve a delicate balancing act, another speaker noted.

"There has to be a balance between the need of state regulators to protect policyholders" and the intent of the law, which is to provide limited pre-emption of state law, said Drew Bagot, an attorney with the law firm of Gardere & Wynne in Dallas.

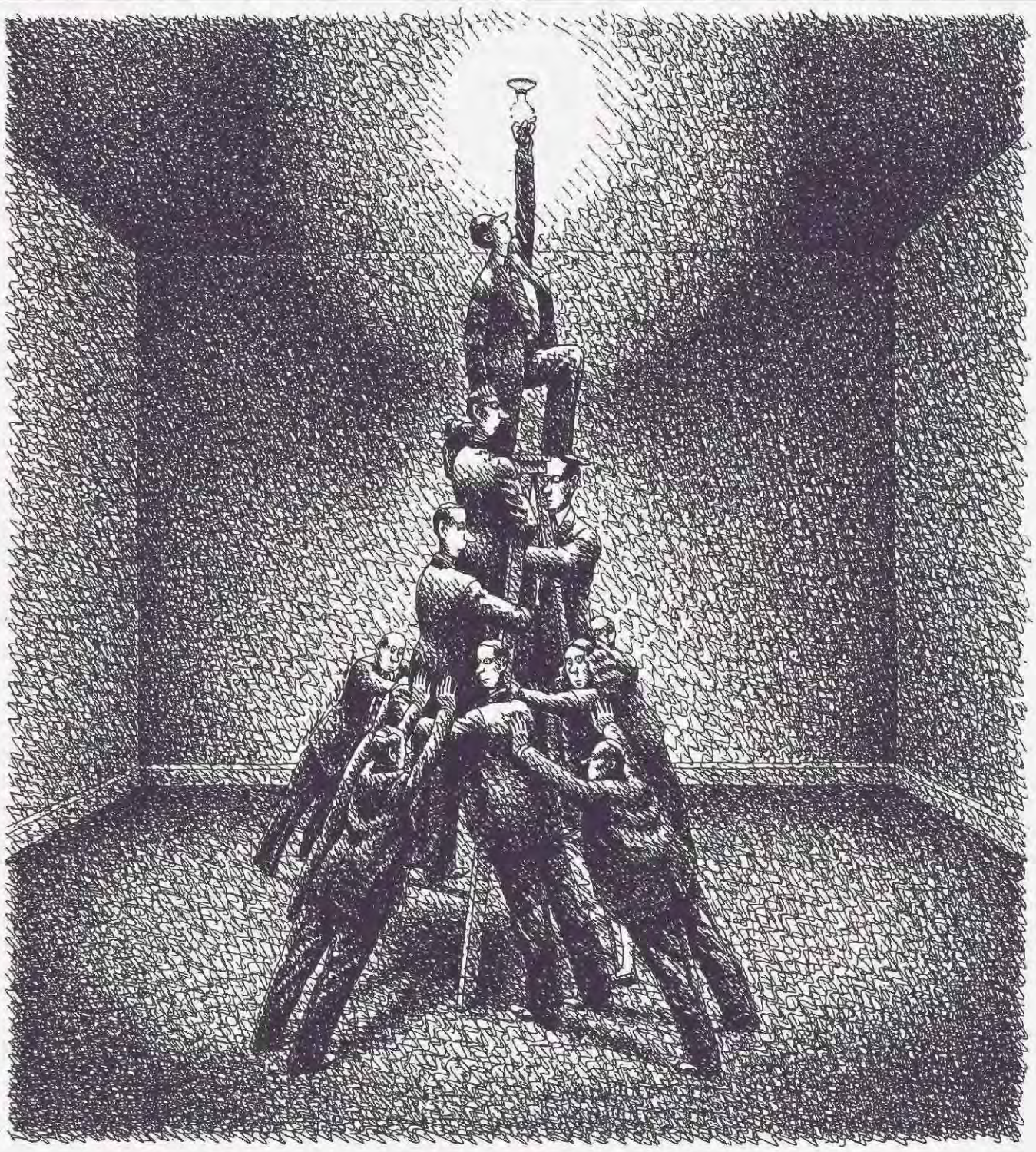
Tomas Russell, a partner with the law firm of Hopkins & Sutter in Chicago, recommended that the Risk Retention Act be expanded to allow risk retention groups to cover all commercial risks. Currently, risk retention groups cannot insure property exposures and workers compensation risks.

Under these restrictions, for example, a group of attorneys could organize a risk retention group to cover their professional liability exposures, but not the buildings in which they work.

Risk retention groups would be a more attractive alternative if they were available for all commercial risks, Mr. Russell said.

The real growth in risk retention groups is in the future when the commercial market hardens, according to Mr. Harkavy of RIMS. Currently, between 50 and 60 groups have been organized, much fewer than some predictions that were made in October 1986 when President Reagan signed legislation that expanded the Risk Retention Act, he said.

The session was moderated by Robert Duty, risk manager at Blount Inc. in Montgomery, Ala., and coordinated by W. Lee Carter III, vp and director of research and development in the Dallas office of Alexander & Alexander Inc. ■



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Continued from previous page
said Mr. Amore.

While at one stage in the early 1980s companies could purchase and other interested parties, said Mr. Amore.

"There have been a lot of questions" about the proposal "but outweigh the cleanup costs, he noted.

"A cleanup cost estimated at $6 million with 200 third-party de- we all have to share and that the environment will be cleaned up," he said.

Another panelist, Lynne M. jail sentences for polluting the environment.

• Increased personnel to administer the Superfund program.

EC trends reshape liability standards

By CAROLYN ALDRED

ATLANTA—Companies' liabilities in Europe will multiply as the principle of strict liability becomes increasingly prevalent in the European Community, two European underwriters agree.

A forthcoming European Commission directive on hazardous waste could impose unlimited strict liability on all waste producers, according to Sylvain R. Boueil, senior vp and chief underwriting officer for SCOR Reinsurance Co. in New York.

Meanwhile, EC countries already are enacting legislation imposing strict product liability, which likely will increase the frequency and severity of product liability claims filed by Europeans, said Charles P.J. Veels, assistant director of Zurich Insurance Co. in Leidschendam, The Netherlands.

Both underwriters made their predictions during a session on product and pollution liability in Europe at the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

"The product liability directive and pollution changes are symbolic

The principle of strict liability and 'the polluter pays' will be enforced in Europe, says Sylvain Boueil.

of a changing perspective in Europe," said M. Patricia Casey, vp of Johnson & Higgins in New York.

Pollution of the environment has become a "hot political subject" in Europe, and increasing pressure is being brought upon politicians and industry to clean up the environment, said Mr. Boueil.

The European Commission already has set guidelines to reduce chemical risks, water and air pollutants, waste products and noise levels, noted Mr. Boueil.

Individual governments within the 12 member nations of the European Community also are introducing new legislation to reduce pollution.

For example, France's secretary of state for the environment this year imposed a series of measures to control waste, and West Germany is planning to extend its strict liability law covering water pollution to include air and soil pollution, said Mr. Boueil.

Meanwhile, the European Commission is drafting a new waste products directive due to be enforced in the European Community by Jan. 1, 1991, said Mr. Boueil.

Although the draft directive has not been published, current feedback from the European Commission indicates that the directive likely will impose strict joint and several liability on any waste producers for any kind of pollution caused by their waste from the "cradle to the grave," Mr. Boueil told session attendees.

The only exemption for responsibility likely will be an act of God; a producer will not be exempted simply because it followed national laws, he noted.

All kinds of products likely will be covered under the directive as waste products, and a producer likely will be defined as anyone who generates the waste, imports the waste into the European Community or is in charge of the waste at the time the damage occurs, according to Mr. Boueil.

However, the European Commission likely will impose the liability on the waste generator if it is known, rather than on the importer or transporter, said Mr. Boueil.

Those who will sue producers under the directive likely will include victims of pollution, product users and associations or groups legally recognized as protectors of public health or the environment, predicted Mr. Boueil.

As a result, groups such as Greenpeace, the worldwide environmental conservation group, likely will be able to sue companies on behalf of victims, he explained.

Plaintiffs likely will have three years to sue from the date on which the damage and the producer's identity is known, and within 30 years of the original cause, said Mr. Boueil.

Although no one can be sure what the final terms of the directive will be, there is no doubt that the principle of strict liability and "the polluter pays" will be enforced in Europe, he said.

According to Mr. Boueil, the insurance implications for these developments likely will include:

• The further narrowing or elimination of pollution coverage in European general liability policies.

• The introduction of new and specialized pollution liability policies in Europe.

• Much more technical underwriting, including site-by-site surveys, increased use of experts, analysis of prevention methods and detailed analysis of manufacturing processes.

• Higher premiums.

• Changes in rating techniques.

In addition, policies will be written on claims-made forms to cover accidental pollution that is released in a gradual manner, he noted.

Currently, at least three European insurance pools are offering sudden and gradual pollution coverage on a claims-made basis for accidental pollution occurring in Europe, said Ms. Casey of J&H.

Continued on next page

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THE ONE FOR ALL

Domiciles' exhibits vie for attention

By MARK A. HOFMANN

ATLANTA—Captive insurance domiciles were out in force to capture the attention of risk managers wandering the exhibit hall at the 27th annual Risk & Insurance Management Society conference.

But the domiciles had to cope with some hefty competition from other vendors in the two-tiered RIMS exhibit area in Atlanta's Merchandise Mart. Indeed, risk managers faced a sensory assault from more than 240 vendors whose wares ranged from earthquake protection to electronic surveillance of workers compensation claimants.

Risk managers also could walk away with a bag full of free goodies as well, ranging from the Factory Mutual Engineering Organization's red kites to Risk Retention Groups Management Co.'s Holstein cow bookmarks. Other premiums handed out by vendors included pens, letter openers, candy and paper clip holders, not to mention a yo-yo or two.

But competition from purveyors of other goods and services at the largest exhibit hall in RIMS conference history didn't seem to dampen interest in the services offered at the U.S. and offshore captive domiciles' booths.

For example, business was brisk at the Hawaiian booth, said Gordon Nishiki, an insurance certification specialist with the state Division of Insurance.

Mr. Nishiki said the insurance division had given out more than 1,000 fabric pineapple stickers for attendees' name tags by the fourth day of the conference.

Risk managers, who also received a small packet of macadamia nuts at the booth, generally wanted to know why they should form a captive in Hawaii, Mr. Nishiki said, explaining that the state is emphasizing the flexibility of its captive law and the speed with which applications are processed.

At the other end of the hall, Illinois' attempt to spark interest in the Land of Lincoln as a captive domicile with a first-time booth greatly surpassed its designers' expectations.

"I can't believe it," said James K. Johnson, senior industrial specialist with the Illinois Department of Commerce and Community Affairs, who said he alone had handed out 60 business cards in a day.

Risk managers seemed interested in the idea of captives in general, rather than solely as a defense against a coming hard market, Mr. Johnson explained. He added that he had received a few inquiries about bringing offshore captives back onshore.

Tomas M. Russell, an attorney with the Chicago law firm of Hopkins & Sutter and an architect of Illinois' 1987 captive law, said that during the first three days of the conference, he had received "more than 200 serious inquiries" about forming Illinois captives.

Like his colleague Mr. Johnson, Mr. Russell said that there had been no particular pattern of inquiries. "It comes from so many different quarters" that Mr. Russell could not generalize on what caused the interest, though he speculated that fears of a future market contraction probably fueled interest.

Interest was keen in the Colorado booth, as well.

"There's been a lot of interest, we sort of gauge it by the number of pins we hand out," said Daniel B. Fitzgerald, business development representative for the Colorado Office of Development. Like Hawaii's Mr. Nishiki, Mr. Fitzgerald said he had started out with about 1,000 enamel pins of the Colorado state flag, and had only a handful left by Wednesday morning.

Risk managers appeared most interested in the recent liberalizations of Colorado's captive law, Mr. Fitzgerald said (*BI*, April 10).



The largest U.S. captive domicile, Vermont, was represented at the conference, as well.

Inquiries at the Vermont booth tended to fall into several categories, said Michael Palmer, a Middlebury attorney who was one of the many volunteers from the state's insurance industry and legal community manning the exhibit.

Those people who had little knowledge of captives generally wanted to know how forming a captive insurer would benefit them, he said. More experienced risk managers asked why they should form a captive in Vermont rather than elsewhere, Mr. Palmer reported.

He added that two concerns appeared to be fueling interest in captive formation.

The first was "controlling availability of insurance in a hard market situation," Mr. Palmer said. The other was creating a profit center in place of paying premiums to traditional insurance companies.

At the Barbados booth, Wayne I. Fields, a partner with Coopers & Lybrand in Bridgetown, said that interest in Barbados as a domicile has not dropped off. Risk managers wanted to know what advantages they might gain by creating captives in the offshore domicile, he said, particularly concerning the expense of doing business there.

But Mr. Fields said that no one he had spoken to had asked for a specific comparison of doing business in Barbados compared with any other domicile.

At both the Bermuda and Cayman Islands booths, industry volunteers reported continuing interest in their countries as captive insurance domiciles.

And, as in the case of some other domiciles, they said that there appeared to be no particular exposures or market conditions driving risk managers' questions.

"I've seen more activity than last year or the prior years," remarked Judy A. Higgs, president and chief executive officer of British American Management Ltd. in Nassau, Bahamas.

Ms. Higgs, who was in Atlanta to promote her island nation as a domicile, said she was "very pleased, indeed," at the number and quality of inquiries she had received. Many of the questions mentioned the possibility of a hardening of the insurance market, she said, "and they're trying to prepare for that."

Preparation for another type of setback brought attendees to EQE Engineering's booth as a television monitor showed scenes of the devastation wrought by recent earthquakes in Soviet Armenia.

Earl Aurelius, vp of the San Francisco-based firm, said the engineering company sent letters to the presidents of RIMS chapters in earthquake-prone cities such as Seattle and Salt Lake City offering the free use of a tape of the Armenian earthquake before the conference to add to the interest.

Mr. Aurelius added that the video had been filmed by EQE's chairman shortly after last year's quake struck. One scene that showed the local earthquake research center in ruins demonstrated the state of Soviet earthquake preparedness, he pointed out.

EQE personnel later met with Soviet President Mikhail Gorbachev's science adviser to discuss what might be done to help avoid similar tragedies in the future, Mr. Aurelius said.

Mr. Aurelius explained that EQE has provided its three-stage corporate risk reduction program to more than 100 companies, with a special emphasis on real estate development concerns. The three stages consist of a seismic risk survey that includes a preliminary estimate of probable maximum loss for the corporate facilities; a detailed seismic risk identification that develops alternate solutions and cost estimates for problems identified in the first phase; and the selection of the most cost-effective solution based on criteria set by the client.

Mr. Aurelius was far from the only exhibitor relying on the power of the videotape to make his point.

Hank Porier, vp of Farmington Management Inc. in Farmington, Conn., used a series of video graphics in an attempt to persuade risk managers of the benefits of choosing the American Excess Insurance Assn.'s "$75 million blanket" excess liability insurance policy rather than "the patchwork quilt" of multiple excess policies.

AEIA offers single layers of $25 million, $50 million or $75 million in liability insurance excess of $25 million in underlying coverage.

The video's storyboard flipped to illustrate what percentage of policies were in force by regions, how they were distributed by company asset size as well as the degree of each AEIA member company's liability.

One thing the presentation did not feature, though, was a soundtrack, but Mr. Porier said the omission was deliberate. A soundtrack could distract viewers from the tape's message, which is that the association is an extremely secure facility.

The aim of the display was not to attract passers-by out of mere curiosity as much as it was to draw the attention of risk managers who already had an interest in bolstering their excess liability coverage, he said.

Another set of videos—these portraying workers compensation fraud—drew attendees to Naperville, Ill.-based InPhoto Surveillance's booth.

Janine Harper, manager of information services for the company, explained that InPhoto fights workers compensation fraud by catching miscreants in the act.

Ms. Harper showed a tape of what might be called "the case of the truthless tiler," which showed a man climbing out of his car laden with the tools of his trade to carry out a job on the side while he was claiming to be disabled.

InPhoto has about 25 investigators who secretly film for employers and insurers people believed to be fraudulently receiving work comp benefits. "It's sort of like 'Candid Camera,' " she said.

Continued on next page



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mid-1970s, most policyholders did not feel a need to purchase insurance for gradual pollution risks.

However, it then became apparent that "gradual pollution can affect corporate assets and EIL policies began to be developed, mainly in the London market,"

Continued on next page

Continued from previous page

Interest at RIMS in the company's services was considerable, Ms. Harper said. "It's been a really good conference for us."

With so many exhibits vying for attention, the key to a successful exhibit is promoting interaction with potential customers, said Bev Widas, an assistant vp-corporate marketing with CIGNA Corp. in Philadelphia.

CIGNA again tested risk managers' putting skills to foster that interaction.

"It draws people in and gets our people talking with customers," Ms. Widas explained.

Over at the Hartford Steam Boiler Inspection & Insurance Co. booth, a man on stilts and a magician served to spark interest in the Hartford, Conn.-based insurer's services.

"We do like the interaction. We try to draw the crowd into what we're doing," said Michael R. Fusselbaugh, a regional marketing manager in the insurer's Chicago office.

Apart from the entertainment, Hartford Steam Boiler demonstrated a fiber optics probe that inspects pipes for leaks and corrosion. The probe snaked through a piece of piping and showed the pipe's condition on a television monitor.

The probe magnified pits and grooves in the pipe's wall so that the picture was far more detailed than any inspection by the naked eye could be.

Mr. Fusselbaugh said Hartford Steam Boiler uses a different tactic each year to draw visitors to its display. "It's kind of fun when you're competing with a lot of other people for people's time."

And, some vendors exhibiting not-so-everyday products were even swept up in the competition.

For example, Hillsborough, N.C.-based Isotechnologies Inc. returned with its "model in a machine."

The exhibit featured a professional model demonstrating the company's Isostation B-200 Back Evaluation System, a computerized framework that helps employers identify employees with back problems.

Mary Williams, the company's manager for industrial marketing, said that while the display did not make as big a splash as it did in its 1988 debut, it was drawing a "steady" stream of onlookers.

A floor below, however, MedX Corp. of Ocala, Fla., had three somewhat similar machines on display, each designed to perform muscle tests.

Scott Koch, technical representative for MedX, was only too happy to show exactly how the lumbar extension unit worked. Strapping himself into the $50,000 machine, Mr. Koch demonstrated how the extension unit isolated back strength, plotting it on a computer-generated strength curve on a television screen that was part of the unit.

Mr. Koch said the unit could show when a worker who claimed to be suffering from an injury was truly injured and the extent of his pain. He added that the machines had drawn a lot of interest from risk managers.

A considerably less kinetic display on the second floor drew risk managers interested in the New York-based College of Insurance, a first-time exhibitor with a timeless message: Education pays.

Amy J. Geffen, the college's vp, said that risk managers seemed to be looking for one- or two-day seminars that explained the basics of risk management to people who know nothing about it. After being assured that the college offered such programs, some risk managers stayed to find out more about the college's master in business administration degree program, she said.

Risk managers wanted to find out more about Lamba Systems Inc.'s four-sided warning pylons even though the company's booth was located in a far corner of the exhibit hall, said Marianne Zmyslinski, the Tonawanda, N.Y.-based manufacturer's sales coordinator.

She said that the red-lettered, yellow pylons come in two heights—25 inches and 35 inches—and represent the only such devices on the market with four-sided visibility.

Ms. Zmyslinski said that the pylons, which warn of wet floors and other hazards, are available in English, Spanish, French and Japanese. She added that the recent purchase of 100 pylons by the Atlanta Marriott Marquis, one of the RIMS conference hotels, had certainly not hurt the booth's traffic in the exhibit hall.

At the booth sponsored by Hazox Corp., a Chadds Ford, Pa.-based environmental software firm, Senior Vp Anthony W. Rudolf said that he was "quite surprised" at the response to the first-time exhibit.

Mr. Rudolf said he normally made his presentations at engineering and technical conferences and had underestimated the interest risk managers had in software that helped them track compliance with federal environmental laws. ■

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Spotlight report

Job evaluations can trigger termination suits

By MICHAEL BRADFORD

ATLANTA—Employers must be honest when assessing employee performance because a job evaluation can play an important role in a wrongful termination suit, a panel of experts agrees.

And, evaluations are not correctly handled by most employers, the panel agreed after acting out a situation in which a male boss who had made advances toward a female employee later gives her a poor job performance evaluation and finally fires her.

The role-playing occurred during a session at the Risk & Insurance Management Society conference held earlier this month in Atlanta.

In the scenario, a boss gives an employee a poor but honest job rating after she shunned his advances. According to the script, the employee's earlier evaluations while working in different departments at the same company were better than satisfactory.

The skit, which featured James W. Peterson, senior vp of Fred S. James & Co. Inc. in San Francisco, and Regina M. Connell, insurance manager for Apple Computer Inc. in Cupertino, Calif., pointed up the fact that past evaluations that are not altogether honest can later prove harmful.

"I get so many phone calls from managers wanting to fire somebody for poor performance," said Gloria J. Shanor, senior counsel-labor and employment at Georgia-Pacific Corp. in Atlanta.

When Ms. Shanor asks Georgia-Pacific managers how long the employee has been a poor performer, the answer often comes back: "Oh, about 30 years," she said.

However, the employee's personnel file is often full of satisfactory job evaluations, she added. Many times managers tell Ms. Shanor that in such situations they have pitied the worker who needed a raise and couldn't get one without a good evaluation, she said.

Giving the employee a good-but-inaccurate appraisal makes it very hard to fire the worker later on the basis of poor job performance, she remarked.

Inaccurate job ratings often are convenient to assign, given the tools managers have to evaluate workers, said Ms. Shanor.

The forms developed for performance evaluations in many cases call for the manager to check one of five boxes to indicate how the worker has performed, she explained. Because of a behavior called "central tendency," the third—or middle—box on a form often is the one checked, she continued.

"We all do it," she said of the psychological tendency to pick a central item, adding that such behavior can have serious implications when a manager follows that tendency on employee evaluations.

To overcome that behavior, some companies have developed forms that require managers to write in comments regarding the worker's performance. "But that can backfire, too," and cause problems that could surface in a wrongful termination suit, Ms. Shanor warned.

To illustrate, she described the job performance evaluation of a woman working at a job not traditionally held by females. The woman received the highest rating available for her attitude toward her work. But in a blank space on the form, her manager explained: "Suzy is experiencing a lot of discrimination but is handling it well." This comment could later be used to support allegations of job discrimination, Ms. Shanor said.

Favorable but inaccurate evaluations often come back to haunt the employer in a wrongful termination suit. Employers often make the mistake of holding on to personnel files they no longer need, Ms. Shanor said, instead of throwing them out before they become part of a wrongful termination case.

"There's nothing in the law that I'm aware of that says you have to keep every single performance evaluation" of all employees, she noted.

Ms. Shanor reminded her audience that old records in the fictitious case involving the worker and her amorous boss were the source of a problem for the employer. The employee probably was a poor performer, she said, "but the problem was that everybody in the past" said she did her job well.

John A. Skelton Jr., a trial lawyer with Williams, Kelly, Polverari & Skelton in Redwood City, Calif., advised attendees that "if you're not going to do your appraisals with an eye toward accuracy. . .then don't do them."

One way of improving the accuracy of job performance evaluations is to make sure managers are conducting them properly, according to Ms. Shanor.

She said Georgia-Pacific is implementing procedures that require its upper management personnel to rate the ability of lower-level managers to conduct candid performance appraisals.

Mr. Skelton pointed out that other companies are using methods similar to Georgia-Pacific's to ensure that evaluations are conducted properly. It "is a very good technique for emphasizing the importance of doing it right and to educate people that you don't have to be brutalizing to people in order to be accurate," Mr. Skelton said.

Meanwhile, "traditional" wrongful termination suits brought by employees who charge they had no warning about poor performance may be an endangered species, said panel member Michael H. Porazzo of Williams, Kelly, Polverari & Skelton.

He pointed out that neither the skit involving a case of sexual harassment nor a second scenario that dealt with an AIDS patient leaving an accounting firm and later filing suit involved firings in which a boss said, "Get out of here, you're fired."

The traditional wrongful termination suits are disappearing because the courts are less sympathetic to plaintiffs than in the past, said Mr. Porazzo, and insurance companies aren't as eager to provide employers with coverage for damages awarded in the cases.

Mr. Porazzo said the courts "have attempted to cut back on employee's rights in some respects to bring wrongful termination suits," which leads plaintiff's lawyers to become creative in building cases.

One way of easing the pain of a termination and directing a fired employee's thoughts away from "how bad the company is" is to use outplacement firms to help the worker find another job, said Ms. Shanor.

These firms "turn the direction of the person to more forward-looking," said Ms. Shanor, instead of leaving that person to "sit around all day and focusing on how bad the company was."

However, she noted, outplacement services are "frightfully expensive," with fees ranging as high as one-fourth of the terminated employee's salary.

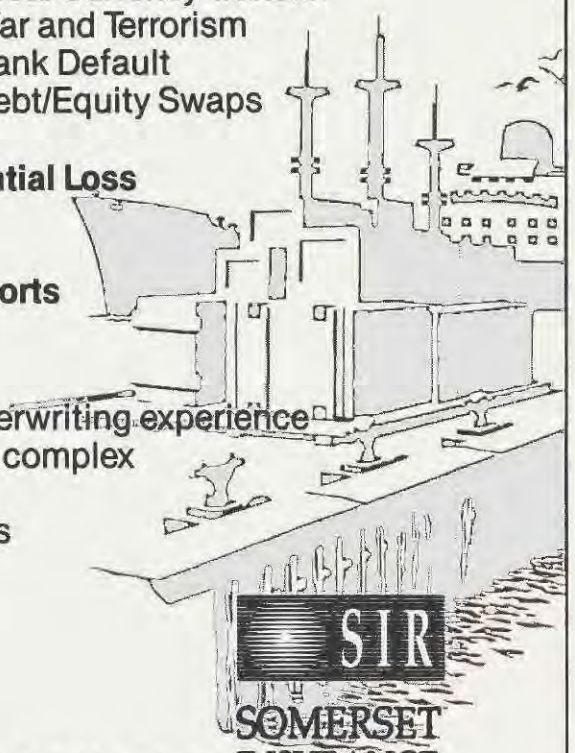
Also speaking at the session were Donald J. Belger, senior vp of Marsh & McLennan Cos. Inc. of New York and coordinator/moderator Diane Labrador, U.S. risk manager with Intel Corp. in Santa Clara, Calif. ■

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Lloyd's to speed claims payments, executives say

By CAROLYN ALDRED

ATLANTA—Lloyd's of London plans to speed up its claims payment system for policyholders, a Corporation of Lloyd's executive and a Lloyd's broker say.

It is no secret that Lloyd's current claims-payment system "is a cumbersome process, which can be time consuming to get agreement of all underwriters" on the risk, said Andrew Duguid, head of Lloyd's market services department.

Lloyd's currently is looking at "ways of streamlining the process, using electronic support so that claims information can pass more quickly" through the market, he explained at a session during the 27th annual Risk & Insurance Management Society conference in Atlanta earlier this month.

Currently, at least 400 syndicates and about 250 Lloyd's brokers trade in the 301-year-old marketplace, which consists of four separate insurance markets: non-marine, marine, aviation and automobile. Although the different markets each have their own central claims offices to help process claims, often a claim still has to be seen and approved by every underwriter on the underwriting slip—which can take weeks.

"Historically, the procedures for processing much of the business in the London market, ranging from policy issuance to the agreement and settlement of claims, has attracted substantial criticism and has, without question, significantly hampered brokers' ability to provide the level of service which clients are entitled to expect," said John W.M. Tyndall, a director of Bowring North America Ltd. in London.

A market initiative was started in 1986 to improve this situation, Mr. Tyndall noted. And, in November 1988, a computerized program for improving and collecting the notification and settlement of claims in the London company market was started by the Policy Signing and Accounting Center, which acts for more than 100 insurance and reinsurance companies operating in London, he said.

This claims-handling program is "the first major system to be developed to take advantage of the London Insurance Market Electronic Network and without doubt heralds a new era in utilizing modern technology in the service of clients," Mr. Tyndall said.

LIMNET is a joint venture between Lloyd's; the Institute of London Underwriters, representing London's company marine insurance market; PSAC, representing London's company non-marine insurance market; and Lloyd's brokers, he explained.

Continued on page 70

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Lloyd's claims processing

Continued from page 68

"The network provides the ability to transmit information electronically between clients, brokers and underwriters, avoiding the need for much of the traditional paperwork, which will improve the speed and quality of services available," he added.

Lloyd's plans to follow PSAC's lead and eventually process all claims via LIMNET.

The question of claims processing at Lloyd's is the subject of a "major project led by Sir Peter Miller," Lloyd's former chairman, Mr. Duguid pointed out.

Although the project will be "a drawn-out process of discussion to get the agreement of a lot of different people, a lot of progress is being made," he said.

For example, last year Lloyd's Chairman Murray Lawrence instructed all syndicates to join their market claims processing office by March 1, 1989, and to link up to LIMNET by January 1990 (*BI*, Oct. 17, 1988).

Under the new system currently being operated by PSAC, a broker transmits a loss notification from a client electronically via LIMNET to the policy's lead underwriter.

The broker then visits the lead underwriter to receive his agreement with the contents of the loss notification. The lead then transmits the information to the other underwriters.

Following underwriters have the option of agreeing to the loss notification; asking the broker to provide more information via the network; or asking the broker to visit them.

Any inquiry from any underwriter has to be lodged within 10 working days from receipt of the notification.

"The new procedure represents a major change of practice, sweeping away the historic need for the broker to visit every underwriter on the risk and to obtain his agreement to the claim," Mr. Tyndall explained.

As a result, "clients will be able to obtain faster agreement to and settlement of claims," he said.

'The new procedure represents a major change of practice, sweeping away the historic need for the broker to visit every underwriter on the risk and to obtain his agreement to the claim,' Mr. Tyndall says.

In addition, brokers will be able to better monitor the progress of claims payments and determine which underwriters pay claims slowly, thereby increasing those underwriters' accountability, Mr. Tyndall added.

"We brokers see this investment (in technology) as but the start of a revolution designed to bring radical changes to our marketplace. By 1990, almost all claims in the London insurance market will be processed via LIMNET," he predicted.

"We will see a lot of advances in the next year to speed up the placing and servicing of business," Mr. Duguid agreed.

"We do not envisage that the technology will ever entirely remove the need for face-to-face negotiation, particularly for the complex risks. But for some classes of business, or some aspects of processing—such as simple endorsements—the personal visit by the broker to the underwriter may soon become a thing of the past" in the London market, Mr. Tyndall predicted.

Other modifications in its operations that Lloyd's is examining also would prove advantageous for insurance buyers, according to Messrs. Tyndall and Duguid.

For example, the internal barriers between the separate London markets of marine and non-marine business likely will come down, according to Mr. Tyndall.

"The barriers definitely are coming down, particularly because the marine underwriters need the barriers to come down to increase their premium income, " he said.

The breaking down of the internal market barriers will increase policyholders' abilities to place more risks under one policy, Mr. Tyndall said.

Although the non-marine underwriters are not happy about this, they cannot stop the marine underwriters from writing business they themselves will not write, he noted.

In addition, although Lloyd's still plans to use Lloyd's brokers to produce commercial business, Lloyd's underwriters may well choose to open offices in other cities or countries outside of London, Mr. Duguid said after the session. "The increased sophistication of the insurance consumer and increased internationalization will mean we may develop new flexible and innovative" means of obtaining business, he said.

"By 1992 we within the expanded European Community should be undergoing a trading and political revolution," noted Mr. Tyndall, referring to the forthcoming removal of trading barriers within the EC.

As a result, many Lloyd's brokers likely will "become wed" with European brokers, Mr. Tyndall said, predicting a spate of mergers and acquisitions similar to the mergers between U.S. and Lloyd's brokers in the 1980s.

"Clients and markets previously unavailable by virtue of national restriction should be open to approach. Brokers should be able to engage openly in the solicitation of business and in the search for market capacity," he said.

Conversely, "those international risks seeking Lloyd's and London capacity should find the ability to obtain speedier answers greatly enhanced. The broker networks, electronically linked, should provide a rapid means of transmitting data and of obtaining speedy responses," Mr. Tyndall said.

Also speaking at the session was Doris J. Ramsay, director of risk management at ROHR Industries Inc. of Chula Vista, Calif. The session was coordinated by Charles B. Crane, senior vp of Marsh & McLennan Inc., and moderated by Virginia F. Tormey, director of risk management of Pacific Telesis Group of San Francisco, Calif. ■

Several factors viewed when picking a domicile

By MICHAEL BRADFORD

ATLANTA—The key considerations in choosing a captive domicile revolve around financial and regulatory issues and the amenities a domicile offers, according to a panel of experts.

Financial considerations should be the first issue studied, according to Paul W. Pinckney, senior consultant with Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc. in Irvine, Calif.

"We think it's very important to consider costs of formation, although they may in fact be relatively nominal in the overall scope of the operation of the captive once it's developed," Mr. Pinckney said during a session he coordinated at the 27th annual Risk & Insurance Management Society conference in Atlanta earlier this month.

Larger financial considerations are capital and surplus requirements, applicable taxes and investment restrictions, he pointed out.

And, "with very, very few exceptions, I would say pretty much that every captive that is being put together these days should have a feasibility study," which involves another cost, said Brian S. Webb, senior vp at Parker & Co.-Interocean Ltd., a Bermuda captive management unit of Frank B. Hall & Co. Inc.

There also are costs for using various professionals to help structure a captive, regardless of the domicile, Mr. Webb pointed out. "Lawyers cost you a fortune wherever you go; actuaries cost you twice that; captive managers come cheap wherever they are.

"One of the most important things that you are going to have to take a look at in the overall consideration is how you approach your application," Mr. Webb said.

"What you should be doing in your formation process is putting together a five-year financial pro forma —a balance sheet," he said. "Some of the domiciles require it, some like it, some don't care whether you've got it or not. I personally think you should do it wherever you are thinking of domiciling your captive so that you know what it's going to cost" now and in the future, he said.

Mr. Webb said he's seen "too many captives put a business plan together and three months later, it doesn't mean anything. A lot of regulatory environments don't follow up on that business plan."

However, some do, pointed out Cayman Islands Insurance Superintendent Gilbert Connolly. Mr. Connolly, an attendee at the seminar, told panelists that Cayman law requires a captive to inform his office of any changes in its business plan.

Vermont also closely studies business plans for captives, said Robert Hessel, senior vp at Becher & Carlson Risk Management Inc. in Woodland Hills, Calif. "Vermont has a very extensive application and takes a very close, hands-on look at what you're going to do."

If, during the captive's operation, the insurer strays from its original five-year projections, Vermont regulators will "want to know what you are going to do about it," he pointed out.

Prospective captive owners also should bear in mind that regulators may be more flexible with some types of captives than with others, Mr. Hessel said. "I think, clearly, a pure captive that is writing only the risk of its parent—a straightforward captive that is financed by a strong parent—is going to be treated with a great deal of flexibility by domestic regulators," while those regulators might be more rigid with a captive insurer that writes third-party risks.

For example, Lea Sirota, risk manager for Elixir Industries in Gardena, Calif., pointed out that her company moved its captive from Colorado to Vermont because Elixir believed that Vermont regulators had a more receptive attitude toward captives that write third-party business.

Vermont regulators allowed the captive to write a certain percentage of unrelated business, but the company soon saw it was going to exceed that cap, said Ms. Sirota, who moderated the session. "It was a semi-panic situation. What do we do?" she said.

"We went back to Vermont, showed them our financials, which were very strong" and the limit on unrelated business was increased, Ms. Sirota explained.

She added that she was "very impressed" with the flexibility of regulators in that state.

Regarding laws allowing captive formation, Mr. Pinckney noted that Tillinghast thinks "perhaps that over time, within the U.S. particularly, the advantage one domicile may momentarily have over another will probably smooth out. Aggressive domiciles that seek to be successful over the long pull will probably end up having some of the same characteristics. It may boil down over that period of time to who you want to do business with and where do you want to do it."

Ross E. Stromberg, managing partner with the law firm Epstein, Becker, Stromberg & Green in San Francisco, agreed. He pointed to Colorado as an example of where the state Legislature has passed amendments to the state's captive law, which the governor is expected to sign, in an effort to put that state back in the thick of the captive race.

Mr. Stromberg said that Colorado has gone from a "stern and firm" attitude toward captive regulation to a more receptive approach by amending its captive law. For example, one amendment allows captives to make loans to their parents. And, another amendment exempts single-parent captives from filing policy forms or rates with the state's Division of Insurance.

Other not-so-businesslike aspects of captive domiciles, whether offshore or onshore, also should be considered when selecting a domicile, the panelists mentioned. For example, some domiciles tout their golf courses, beaches or proximity to the United States.

Mr. Pinckney said decisions concerning where to locate captives are made to some extent with regard to "accessibility and some of the amenities one will encounter in a particular place of domicile."

"The environmental factors I think are sometimes mocked," Mr. Webb observed. "We can all be philosophers, but at the end of the day, that does enter into it. Where do you want to do business?" ■

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Business Insurance

Risk managers can deal with reinsurers

By JUDY GREENWALD

ATLANTA—Risk managers with alternative risk financing programs may be able to forge long-term commitments from reinsurers by dealing with them directly, according to a reinsurance company executive.

There are reinsurers that are committed to long-term relationships with such alternative risk financing vehicles as captives or self-insurance programs, said Jim Pearce, executive vp of Am-Re Managers, a Princeton, N.J.-based subsidiary of American Re-Insurance Co. that offers a range of services to companies with alternative risk financing vehicles.

"It's not a short-term deal," he said.

Reinsurers' service capabilities and their knowledge of risk are two other reasons for risk managers to deal directly with the reinsurance market, Mr. Pearce explained during a session titled "Cutting Through to the Reinsurance Markets" at the 27th Annual Risk & Insurance Management Society conference earlier last month in Atlanta.

In addition to discussing the advantages for risk managers with alternative risk financing programs in directly accessing the reinsurance market, speakers at the session also covered how reinsurers can establish good relationships with risk managers, how the soft market affects the reinsurance industry and other trends.

Reinsurers must know their clients, which is the key to any insurance program, Mr. Pearce asserted. The reinsurer should recognize that "the client knows his business the best, period," and must listen to what the client has to say.

Another key element in the relationship between the reinsurer and the risk manager is that the reinsurer must deliver what it has promised, Mr. Pearce said. "Don't promise what you can't deliver to an insured," he said.

Reinsurers also must to keep in touch with clients to develop products and services policyholders need, he said.

The reinsurer should recognize that 'the client knows his business the best, period,' and must listen to what the client has to say, Mr. Pearce says.

Turning to the subject of pricing reinsurance coverage for alternative risk financing programs, Mr. Pearce explained that reinsurers evaluate each risk on an individual basis, without superimposing a lot of data gleaned from similar programs.

When reinsurers price a risk, they also separate loss-sensitive business from catastrophic exposures, he said.

Another element involved in pricing this business is the value-added services, such as claims services, that reinsurers provide, and whether these services are bundled or unbundled, he said.

Reinsurers that will write coverage for alternative markets are not interested in market share, according to Mr. Pearce. "They're looking to be selective," he said.

Also during the session, Joseph C. Smetana, president and chief executive officer of AIG Risk Management Inc., a risk management consulting unit of American International Group Inc., traced the recent history of the reinsurance market and discussed its future.

During the soft market of the early 1980s, there was heavy use of reinsurance, he said.

And, many primary insurers ceded business to reinsurers located in far-away places like Brazil and countries in the Pacific Rim that did not have the "foggiest notion" of the U.S. jurisprudence system, Mr. Smetana pointed out.

Then, in 1984, "the whole house of cards came tumbling down," and the market hardened, he said.

As a result, AIG in January 1985 cut back on the amount of reinsurance it placed and became "pretty much a net-line underwriter," Mr. Smetana noted.

Historically, the number of reinsurers AIG would work with took up a book an inch thick, Mr. Smetana said. But today, the entire list takes up about two pages and consists of about a half-dozen domestic and another half-dozen foreign reinsurers.

Among key trends Mr. Smetana predicts for the reinsurance market are:

- Less use of reinsurance by the primary marketplace, with more business retained by primary insurers on a net-line basis. The exception is speciality lines of coverage, where additional capacity and reinsurers' special expertise are necessary, he said.
- Non-traditional risk financing will continue to "eat into" the reinsurance market as well as the primary insurance marketplace.
- "More and more utilization of financial reinsurance on the part of larger companies," Mr. Smetana said (*BI*, April 10).
- Continued use of treaty reinsurance for specialty lines and for building up capacity, particularly on the property side.

Other speakers at the session included David P. Mann, of the London-based D.P. Mann Syndicate, and session coordinator Corbette S. Doyle, president of Corroon & Black Corp.'s national accounts services division in Nashville, Tenn.

The session was moderated by Dennis R. Santoli, president of HFIC Management Co., a Vienna, Va.-based subsidiary of National Medical Enterprises Inc. ■

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Prosecutor, attorney debate antitrust suit

By JUDY GREENWALD

ATLANTA—Defendants in the massive antitrust litigation filed against members of the property/casualty insurance industry conspired to shrink the availability of general liability coverage in the United States, an assistant state attorney general contends.

Yet, an attorney representing an insurance company in the antitrust litigation denied this allegation, explaining that if a torpedo hits a ship and everyone onboard swims for safety, it "doesn't mean they conspired to do it."

Michael F. Brockmeyer, Maryland's assistant attorney general and chief of the state's antitrust division, and John J. Swenson, an attorney with Gibson, Dunn & Crutcher in Los Angeles, debated the merits of the antitrust litigation at the 27th annual Risk & Insurance Management Society conference earlier this month in Atlanta.

Mr. Brockmeyer pointed out that there is a "basic misunderstanding" of the allegations contained in the suits. Nineteen state attorneys general now are party to the consolidated antitrust litigation pending in U.S. District Court in San Francisco, while the Texas attorney general is pursuing a similar but not identical suit in a Texas state court (*BI*, April 17).

Contrary to some reports, the suits do not allege either that the insurance industry conspired to manufacture an insurance crisis, or that it falsified claims experience to justify tort reform, said Mr. Brockmeyer. Instead, the suits charge that the industry tried to limit coverage under commercial general liability insurance policies, he said.

"The defendants conspired to limit the scope of coverage for long-tail risks," he said.

"There's an awful lot of loose talk" concerning the alleged conspiracy by the insurance industry, said Mr. Swenson, who represents Aetna Casualty & Surety Co. in the antitrust litigation.

Given some of the recent problems faced by insurers, the fact that a number of insurers simultaneously reached the same decision to stop writing certain lines of business does not necessarily mean there was a conspiracy to do so, Mr. Swanson said.

He added that he believes if there had been any evidence to support the existence of a conspiracy to fix rates, it would have appeared in the attorneys general's suits. "Isn't it interesting it's nowhere to be found in these lawsuits?" he asked.

Mr. Brockmeyer responded, though, that there was a "good legal reason" why no charges related to price fixing appeared in the suits: Pricing, he explained, is part of the business of insurance, which is protected under provisions of the McCarran-Ferguson Act, the federal law that provides insurers with a limited antitrust exemption.

Mr. Swenson also questioned why the 30 remaining states have not joined the antitrust litigation.

Mr. Brockmeyer responded that because the structural relief called for in the consolidated suit will impact all the states, there is no need for the remaining states to join. And, every state attorney general that has an effective antitrust unit is in the litigation already, he added.

Mr. Swanson said the antitrust litigation could slow down the pace of tort reform and affect insurers' freedom of speech because insurers will be afraid to speak out on certain issues. The litigation also could turn insurance regulation into a "political football," he said.

Continued on next page

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Spotlight report

Take stock before buying RMIS: Experts

By MICHAEL BRADFORD

ATLANTA—Risk managers designing a risk management information system can follow several steps to make choosing a microcomputer, minicomputer or mainframe system as painless as possible, RMIS experts say.

Risk managers should first "sit down and take a look at what you have" with regard to a computer system to help administer claims and better manage risk, said David Tweedy, senior consultant with Betterley Risk Consultants Inc. in Worcester, Mass. "You all know what your strengths and weaknesses are."

The key to setting up an RMIS is "knowing where you are now and where you want to be," Mr. Tweedy stressed during a session he coordinated on the design and selection of an RMIS during the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

Once that determination is made, "an RMIS team" should be assembled, he said.

That group will be responsible for determining what features the new system should have, and can include personnel from different departments in the company, Mr. Tweedy explained.

"I heavily recommend having a (data processing) guy or woman on the team" because that person will be a valuable link with the vendor that installs the system, he said.

He suggested that once a team is assembled, "you're going to go into the data gathering and analysis stage."

At that point, it is important to identify "people inside and outside the organization that have any kind of connection with what you're doing. And I encourage a lot of brainstorming here. You may not even know how large the risk management organization can get within your organization," he said.

Those who will be using the RMIS should be sent questionnaires asking what features they would like the system to provide, said Mr. Tweedy.

And, when all the data gathering and brainstorming is finished, a "wish list" should be compiled and prioritized regarding the kinds of functions the RMIS should offer, he added.

An RMIS requires 'knowing where you are now and where you want to be,' says David Tweedy.

"The vendor needs to know what to expect," he said, emphasizing that the vendor has to know the unique needs of users.

Stephen Younglove, director of risk management for Ralph's Grocery Co. in Los Angeles, stressed to risk managers the significance of informing a vendor of any unique computer needs.

Not providing that information "can cause untold heartache later on," he said.

When Ralph's switched from a mainframe system to a personal computer environment, one point had to be made clear to the vendor, said Mr. Younglove, who moderated the session.

He said Ralph's "is working with a rolling, 13-period fiscal year. The vendor had to recognize that we've got a moving target of 13, four-week periods" and design the company's RMIS to accommodate for that unique feature.

System specifications have to be developed once needs are identified and prioritized, said Mr. Tweedy.

That means deciding what hardware and software will be required for the RMIS functions the company desires and deciding how much vendor support will be needed, he explained.

Mr. Tweedy said that throughout the process of designing and implementing an RMIS, "you ought to be keeping senior management advised."

"Definitely, at the end, you want to put it all together in a nice formal report that will include such things as all your needs identification, a cost/benefit analysis where you justify the expense that you're recommending, and so forth. It's very important to keep management advised as to your progress.

"One of the things you need to do, if it's a fairly involved system, whether you're starting from scratch or you're modifying what you have, you've got to get senior management's attention and support," Mr. Tweedy urged.

When a system is finally in place, Mr. Tweedy said risk managers should not "dismantle the RMIS assembly team," but use it to monitor the performance of the system.

Choosing whether to use a minicomputer, microcomputer or mainframe system means weighing the pros and cons of each after determining specific RMIS needs, according to other panel members.

C. Scott Gilmour, vp of marketing at Corporate Systems in Amarillo, Texas, pointed out that mainframe timeshare arrangements, in which an RMIS user can tap into a mainframe at a remote location, offer risk managers a system that needs little support from the risk management department.

Mr. Gilmour, whose company offers timeshare arrangements and stand-alone RMIS software, said, "if you've got a small risk management department without a great deal of data processing expertise, this is one of the things I see as an advantage to a mainframe timeshare environment."

Another advantage, he said, "is the ease of nationwide connectivity. I know of several corporations out there that are working very well with their brokers or their carriers or their third-party administrators in connecting all this data and using it among all these sources."

On the downside, mainframe timeshare systems are slow, he pointed out. Retrieving reports can take much longer than on minicomputer or microcomputer systems.

PC-based microcomputer systems have affordable and easy to use, said another panelist.

Linda P. Sundram, assistant director of risk management information systems at The Travelers Corp. in Hartford, Conn., told the group that PCs are "not the be-all and end-all just because they're cheap."

However, PC-based systems can offer "lower costs, greater control and simplicity of use" for risk management departments that choose the systems, she said.

"They are flexible enough to accommodate a modular, one-application-at-a-time approach to automation, and they can also allow you the luxury of leveraging the technology your corporation may already have by allowing you to tap into their mainframe for data. . .without a whole lot of aggravation," she pointed out.

"They're also portable, so you can take your department home with you," she said of PC-based systems.

Although a few short years ago risk managers were using PCs that were akin to "stone knives and bear skins," today the computers have become so powerful that they are beginning to rival the capabilities of minicomputers and mainframes, Ms. Sundram said.

"PCs can perform many of the reporting functions that were previously reserved for the minis and mainframes," she said. "They can do more and heavier number crunching and they're becoming easier and easier to use."

Frank Kertai, consultant with California Interactive Computing Inc. in Northridge, Calif., agreed that "as time goes by, the lines continue to blur" between microcomputer, minicomputer and mainframe systems.

"I'd like to propose today that solutions for the three environments are no longer mutually exclusive," Mr. Kertai said. "It's not unusual for companies to be able to use all three."

However, Mr. Kertai said he believes the minicomputer system is the most flexible RMIS option.

The systems can be easily upgraded to add processing power, he pointed out, "all the way up to the high end where mainframe capacity starts."

Mr. Kertai noted that microcomputer systems are appropriate for one to four users and one or two applications, "but when you get beyond that, I think you should give serious consideration to a mini-based system." ■

Antitrust litigation

Continued from previous page

"I think we're going to have regulation of the insurance industry by litigation probably as long as we have politicians who want to bring these cases," Mr. Swenson added.

In response to an objection by Mr. Brockmeyer, Mr. Swenson said he did not mean to imply all the attorneys general were politically motivated in bringing the suits. "Some of them are just wrong," he said.

J. Peter Shapiro, an insurer attorney with Bogle & Gates in San Francisco, discussed with session attendees the legal issues behind the antitrust litigation.

According to Mr. Shapiro, the question that should be asked is: "What are the antitrust laws designed to protect? Competition or competitors?"

Mr. Shapiro said it is a "paradox" that under current antitrust laws the consumer is "left in the lurch" by courts and litigants.

Maryland's Mr. Brockmeyer replied that "I think the antitrust laws are designed to protect consumers. They're not designed to protect competitors."

Turning from the debate on the merits of the antitrust litigation, a risk manager who also spoke during the session discussed her company's experience with insurers during the hard market.

Lucille A. Gallagher, vp-risk management at Monfort of Colorado Inc. in Greeley, Colo., noted that insurers sought to increase the premium for Monfort's $50 million in umbrella coverage limits to $1.2 million from $48,000.

"This isn't price fixing—going from" $48,000 to $1.2 million? she asked.

Each insurer she contacted quoted approximately the same rate, Ms. Gallagher explained, even though a claim had never penetrated the meat processing and distribution company's umbrella layer during its 50-year history.

Also, during the hard market, insurers refused to write certain lines of coverage based on the business in which the policyholder was engaged, whether it was a government entity or a company involved in long-haul trucking, an area in which Monfort is active.

"Nobody wanted to touch us," she said. "Because you were a certain class of business, you were boycotted."

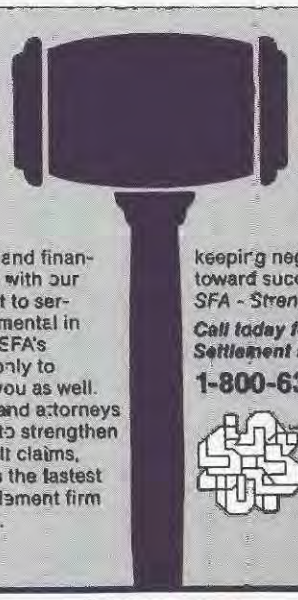
Primary casualty, fidelity, professional liability, medical malpractice, and sudden and accidental pollution coverage all were impacted, said Ms. Gallagher. "Did it happen to all companies in all places at all times? I ask you that question," she said to the audience.

The session was moderated by Samuel Y. Fisher, insurance manager for Denver-based Hamilton Oil Co.

George H. Griffin, managing director of Marsh & McLennan Inc. in Seattle, and Mark Edlund, an M&M account executive in Seattle, coordinated the session. ■

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Strategic plan can control companies' defense costs

By DONNA DiBLASE

'There is an unspoken assumption that lawyers' fees are like the weather: You can complain about them, but you can't do anything about them,' says Kevin M. Quinley, claims manager for Hamilton Resources Corp. of Fairfax, Va.

ATLANTA—As the United States continues to become more litigious, risk managers must develop and implement strategies to control legal defense costs, risk management and legal experts say.

"Americans are filing a record number of lawsuits," noted Donald Nelson, director of risk management for ARA Services Inc. of Philadelphia.

"The problem is that we have over 35 million laws in the United States to enforce the Ten Commandments," he quipped, adding that ARA currently spends about $4 million a year on legal costs.

"There is an unspoken assumption that lawyers' fees are like the weather: You can complain about them, but you can't do anything about them," said Kevin M. Quinley, claims manager for Hamilton Resources Corp. of Fairfax, Va.

But, in light of the litigation explosion, "risk managers are going to have to take some proactive, aggressive steps toward managing legal fees," Mr. Quinley charged.

Legal cost management strategies for risk managers include careful selection of defense counsel, participating in the development of defense strategy with defense attorneys and developing a legal budget with attorneys at the start of the case.

These strategies were discussed during "Managing Legal Fees—Alternatives to Wallet-ectomy," a session at the 27th annual Risk & Insurance Management Society conference held April 9-14 in Atlanta.

The first step in managing legal costs is to "recognize that selection of counsel is critical to the management of the suit," Mr. Nelson said.

Under ARA's casualty insurance program, the company can participate in the selection of its defense counsel, although its insurers have the final say over which attorneys will be retained on a particular case, he explained.

One resource ARA uses in selecting attorneys is the American Law Firm Assn.'s directory of national firms, he said.

However, risk managers should be careful to "choose a lawyer, not a law firm," suggested Lisa J. Kramer, an attorney and litigation consultant with the Tillinghast Division of Towers, Perrin, Forster & Crosby Inc. in Philadelphia.

Risk managers must choose a lawyer based on characteristics in addition to affiliation, she said.

"You need to consider the attorney's availability to work on your case, plus his or her fees. In addition, think about the attorney's responsiveness to clients, such as does he or she answer phone calls, answer questions and know about your company," Ms. Kramer noted.

Also, risk managers must consider the "chemistry" between themselves and defense counsel. "Will you and the lawyer have a good rapport?" she asked.

Selection criteria can include the lawyer's area of expertise, his or her track record of wins and losses, and the location of the law firm. "You should consider how far the attorney's firm is from the jurisdiction of the case," Ms. Kramer explained.

Once an attorney is selected, risk managers must be actively involved in the attorney's management of the suit, the experts said.

"The defense counsel has the most significant impact on results. But whom do they serve? My rule is, if you pay the piper, you call the tune," said Kenneth Doss, vp and general counsel for Eden, N.C.-based Fieldcrest Cannon Inc.

Once ARA selects an attorney, "an engagement letter is sent to the attorney explaining ARA's litigation philosophy," said Mr. Nelson. The letter also includes the name of a person on the company's 10-person litigation management team that will be in contact with the attorney.

The members of the litigation management team are in constant contact with defense counsel and ARA's claims managers, he said.

ARA also has a claim review committee composed of corporate legal staff, claims managers, risk management staff, operations staff members and representatives from the company's insurers.

The committee reviews selected high-exposure claims to ensure that the company and the claims administrators have proper information on the case and whether to recommend settlement of these cases, Mr. Nelson explained.

ARA asks its outside defense attorneys to provide the company with a litigation plan and defense budget within 30 days of receiving the engagement letter. Within 90 days, the attorney must provide a case evaluation report; and the attorney must prepare a pretrial report on the case 30 days before the start of a trial, he said.

Ms. Kramer noted that litigation plans can also be developed jointly by the client and attorney.

In addition to requiring the submission of these plans, risk managers can take other steps to manage their outside defense counsel, she said. These include determining from the start which of the law firm's clerks and associates will handle research and clerical work on the case; whether legal assistance from the client's in-house counsel will be utilized; how communication will be conducted between client and counsel; how discovery will be conducted; and who will handle any media coverage of the case.

Along with these strategies, risk managers must develop a defense budget at the start of the case, the experts said.

"The process of developing a budget is more important than the (budget) itself. The budgeting process instills discipline in outside defense counsel," said Ms. Kramer.

However, "you need flexibility in a budget because you don't want to strap your counsel" and limit his ability to successfully handle the case, she said.

"Problems can develop when clients have unrealistic expectations. You have to realize that judges and the courts also are responsible for litigation costs," said Jeffrey Singer, a partner with the Chicago law firm of Segal, McCambridge, Singer & Mahoney. He noted that in Chicago it takes about seven years from the date of filing before a civil case goes to trial.

Risk managers also should decide whether they or their attorneys will develop the budget, as well as the time frame of the budget, how often it will be reviewed and what level of detail should be included, Ms. Kramer said.

"If you really want to manage legal fees, don't depend on your lawyer to do it for you. You have to be involved," Mr. Singer noted.

Mr. Quinley coordinated and moderated the panel discussion. ■

Companies can cut costs by litigating nuisance lawsuits

By MICHAEL SCHACHNER

ATLANTA—The long-term results of not caving in to fraudulent or nuisance lawsuits can outweigh the high cost of defending such claims, legal experts say.

However, companies that adopt such a get-tough—or proactive—approach to handling such claims must be consistent, even if sometimes it would be less expensive to settle a bogus claim out of court, they say.

The pros and cons of adopting a proactive risk management response to liability claims was discussed by a panel at the 27th annual Risk & Insurance Management Society conference earlier this month in Atlanta.

"Self-interest players in the legal and medical fields have brought

Continued on next page

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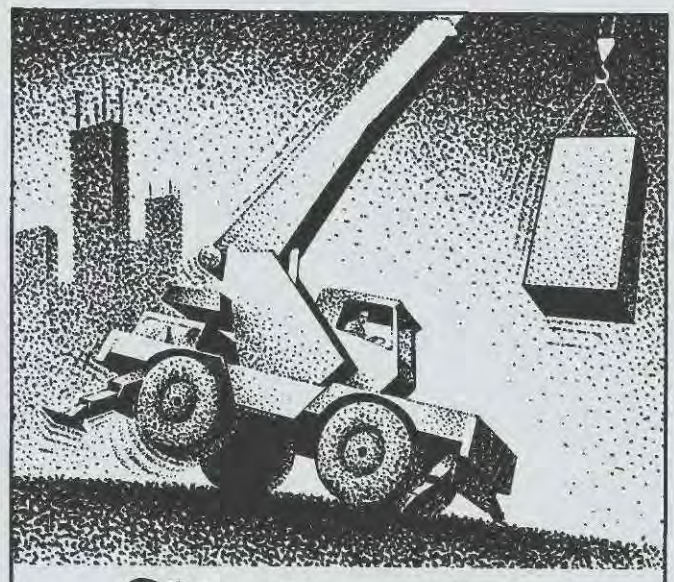
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Defending fraudulent claims

Continued from previous page
the nuisance claim to the forefront of risk management," said William D. Gavin, director of insurance for Hertz Corp. in Park Ridge, N.J.

Nuisance claims, simply defined, are claims that would cost a company more to defend than to settle.

"The United States is quite concerned with non-meritorious claims and fraud," echoed Stuart M. Rover, vp and account representative for Frank B. Hall & Co. of California in Los Angeles. "One of every 10 claims is fraudulent according to the U.S. Institute of Commerce," he said.

Mr. Rover added that according to the Insurance Crime Prevention Institute in Westport, Conn., 10% to 15% of a policyholder's liability insurance premium goes to pay for fraudulent claims.

One way companies can thwart bogus or nuisance claims is to establish a get-tough stance, experts say. When the word gets out that a certain company is not an easy mark for cash settlements, plaintiffs filing frivolous suits will take their shenanigans elsewhere, they said.

However, establishing this type of reputation within the legal community can be costly in terms of defense costs, the panelists admitted.

It can also cause risk managers some serious headaches as they try to convince upper-level management that fighting claims that would cost less to settle than to defend makes good economic sense, they pointed out.

"There is a downside to the pro-active response to claims," said Mr. Rover. "As a risk manager you could spend more of your allocated expenses" fighting some claims than it would cost to settle them out of court.

A major reason why nuisance claims are such a big problem today is because insurers traditionally have taken the easy way out by paying claims that it would cost more to fight, according to Thomas J. Santorelli, president of Park Ridge, N.J.-based HCM Claim Management Corp., a subsidiary of Hertz.

"But with self-insured retentions becoming more popular, there's a long-range goal to fight these claims and make them go away," said Mr. Santorelli.

Wayne T. Kistner, an attorney with the Long Beach, Calif., law firm of Bennett, Kerry, Kistner & Garcia, agreed.

"You must recognize that insurance companies are in the business of adjusting and settling claims," said Mr. Kistner. "Self-insured companies are not."

If and when risk managers decide to subscribe their companies to the proactive approach to handling fraudulent and nuisance claims, it is vital from the outset that all players—including management, the risk manager, the claims manager, the insurance broker and the defense counsel—know the parameters of the program, according to Mr. Rover.

"Plans should be limited in scope," he said. "You can't conduct a witch hunt on every claim. You want to avoid any bad-faith claims, and it's a good idea on the local level to seek out how the Fair Claims Practices Act would apply in your jurisdiction," said Mr. Rover.

Mr. Kistner advocates applying the "Four Cs"—consistency, coordination and cost containment—to determine exactly which claims to fight.

"Identifying consistent criteria to respond proactively is the key," Mr. Kistner said. "It's not feasible nor economical to go after all of them. Reaching an agreement with defense counsel as to what claims are appropriate and which ones aren't is, in the long run, a good idea."

Mr. Santorelli suggested a team approach to proactive risk management, where the risk manager acts as team captain or coach and sets team policy.

"It's you and your team," Mr. Santorelli reminded the audience.

Once a claim appears as though it might be heading for litigation, it is important for a company to contact the plaintiff's counsel and let him or her know right away that the company questions the validity of the claim, advised Mr. Kistner.

"It's better than waiting two or three years when (plaintiffs' attorneys) have put lots of money into it and are committed to going to trial," he said.

"Often, claims are drawn up by paralegals who haven't fully looked into the legal merit of the case," added Mr. Kistner, explaining that a strong initial response can sometimes make the claim disappear.

Mr. Kistner also suggested that a company that wins its case against a fraudulent claim in court consider filing a countersuit to recover legal expenses. That action will send a message to future plaintiffs and their attorneys that the company means business, he said.

Initiating a malicious prosecution action against a fraudulent claimant also reinforces a company's get-tough stance, he suggested.

Mr. Rover coordinated the session, while Mr. Gavin served as moderator. ■

Branches need to know risk manager's role

By KARI BERMAN

ATLANTA—Risk managers of decentralized companies must make sure that managers of branch offices and subsidiaries are aware of the importance of risk management, a risk manager says.

"Never assume that they know what you do as a risk manager. Often, employees view you as the insurance man, and it is up to you to explain the value of your job," said Paul J. Gallo, casualty insurance manager of Wayne, N.J.-based GAF Corp.

Mr. Gallo participated in a panel discussion of "Centralized Risk Management in Decentralized Organizations" during the 27th annual Risk & Insurance Management Society conference April 9-14 in Atlanta.

More risk managers are being forced to implement their programs in decentralized companies because of the recent spate of mergers and acquisitions, the panelists agreed.

"The problem that risk managers often face when trying to maintain a centralized risk management program in a decentralized company is educating managers of the different branches about risk and the financial impact it can have if not controlled," Mr. Gallo said.

Paul E. Perks, a vp in the New York office of Johnson & Higgins, agreed.

He advised risk managers to explain their role to various corporate units as one designed to "protect the company from possible financial catastrophes."

He added that risk managers should regularly remind branch or subsidiary managers of potential losses the company may suffer if risk management programs are not implemented uniformly.

Steps that Mr. Gallo suggested risk managers take to communicate the importance of risk management to branch managers, as well as employees, include:

- Establishing risk management guidelines within the organization and providing each branch with a risk management manual and corporate risk management policy statement.

Mr. Gallo stressed that different policy statements should be written for each branch based on its individual exposures.

- Tailoring the design and implementation of risk management plans to the needs of each operating subsidiary.

For example, the risk management program for a company's radio station will not work well for the same company's chemical plant, he said.

"Centralized risk management and insurance programs will only work if they are tailored to each operation's needs," Mr. Gallo said.

- Establishing workers comp claims reporting requirements that employees from each branch are expected to follow.

After managers and employees from the organization's various subsidiaries are informed about the role of the risk management department, the difficult task of gaining their respect and cooperation begins, Mr. Gallo warned.

He told risk managers to expect initial resistance from each branch's management, explaining that risk managers are often viewed as unnecessary creators of additional paperwork.

Mr. Gallo suggested that risk managers work toward gaining the acceptance of each subsidiary's management by offering insurance training programs that explain the types of policies covering each branch.

"Sending out a memo on workers compensation is not enough. You should go to the workplace personally and begin developing trust while getting an idea of the environment and its risks," Mr. Gallo suggested. He estimated that he spends 70% to 80% of his time in GAF's plants.

Mr. Gallo said he attempts to gain the trust and acceptance of branch managers and other employees by not intimidating them when he visits.

"I need their cooperation, and I find that I get farther if I take off my corporate suit, put on my jeans and talk to them in a relaxed and friendly manner," Mr. Gallo said.

Risk managers should become familiar with the internal intricacies of each subsidiary, advised Helen B. Terry, vp and risk manager at The Equitable Life Assurance Society of the United States in New York.

"Learn the jargon that different subsidiaries use to measure their success and express your plans and programs in their units of measure. If you make the effort to find out how they work, they will realize that your concern is genuine," Ms. Terry said.

Mr. Gallo suggested that risk managers perform an in-depth risk assessment of each branch or subsidiary, pinpointing all potentially dangerous situations and showing the branch manager why they are red flag zones.

After the risk is identified, the risk manager should work with the branch manager to develop a safety program designed to reduce accidents and claims, Mr. Gallo urged.

Risk managers should monitor the effects of their programs and report the results to each branch as well as to corporate headquarters, the speakers agreed.

"Continuously reinforce your value by showing statistics that prove you are helping the company save costs by reducing claims," Mr. Gallo said.

Risk managers also must gain the support of upper management, experts said.

Risk managers should keep their senior management up to date on the risk management program and how it is structured, he advised.

"Risk management programs need management's support, and it is important that you prove that your program fits in with long-term goals, because there will always be a need for loss control," Mr. Perks explained.

"The goal for risk managers in decentralized organizations is to get their foot in the door of each branch and take advantage of the opportunity to show management the valuable services they can provide," Mr. Gallo said.

Ms. Terry served as moderator and coordinator of the session. ■

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University students attend RIMS conference in Atlanta

ATLANTA—Fourteen students of risk management, insurance and employee benefits were special guests at the 27th annual Risk & Insurance Management Society conference.

The students attended the conference in Atlanta earlier this month courtesy of the RIMS Student Involvement Program. The 12-year-old program's goal is to help assure a continuing high level of professionalism in the field of risk management and to provide tomorrow's risk management practitioners with an opportunity to learn and gain contacts.

Students at this year's RIMS conference were:

- **Paul Aird of the University of Texas at Austin.**
- **Charles A. Breedlove of Mississippi State University in Starkville.**
- **Angela Chessa of La Salle College in Philadelphia.**
- **Lisa Gardner of Georgia State University in Atlanta.**
- **Faith D. Jurcyck of Ohio State University in Columbus.**
- **Awad Loubani of the University of Calgary.**
- **Kenneth M. McNulty of Temple University in Philadelphia.**
- **Leonard C. Morgan of Olivet College in Olivet, Mich.**
- **Jonita C. Morrow of North Texas State University in Denton.**
- **Richard Ollis of Southwest Missouri State University in Springfield.**
- **Nora Rupnick of the University of Wisconsin-Madison.**
- **Sherri Lynn Smith of St. Cloud State University in St. Cloud, Minn.**
- **Janae Tapley of the University of Georgia in Athens.**
- **Patrick A. White of Florida State University in Tallahassee.**

The students attending the RIMS conference were selected by RIMS Student Involvement Program on the basis of academic excellence from among students nominated by college faculty members.

Claims management vital to self-insurers

By KARI BERMAN

ATLANTA—A self-insured company's risk management program is useless if a good liability claims management program is not implemented as well, experts say.

Risk managers of self-insured companies should take extra care when developing and monitoring their claims management programs, the experts agreed.

"Claim management is where the rubber meets the road in relation to risk management programs. All of your efforts are worthless if the claim function doesn't work," said Fred J. Keeton, assistant corporate claims manager in the risk management division of the Memphis, Tenn.-based Holiday Corp.

David A. Tweedy, a senior consultant at Betterley Risk Consultants Inc. of Worcester, Mass., agreed: "When claims go up, all risk financing is worthless."

Messrs. Keeton and Tweedy made their comments during a panel discussion entitled "Claims Management for Self-insureds" held during the 27th annual Risk & Insurance Management Society conference in Atlanta earlier this month.

Mr. Keeton listed several measures that risk managers of self-insured companies should take to successfully and cost-effectively manage claims:

- Identify the objectives of the claims management process.
- Ascertain the organization's attitude toward claims payments.

"Be aware of how aggressively the organization wants to defend certain claims," he said.

- Maintain management support.

"You need executive support and must seek upper management support or your claims management program won't work," Mr. Keeton said.

- Make sure to comply with state laws and regulations in handling workers compensation claims.

"You don't want to make a career-ending error by getting your organization fined for your violation," Mr. Keeton warned.

- Educate employees and management about the importance and value of a claims management program so they are more willing to cooperate.
- Maintain ongoing and comprehensive communication with management and employees, keeping them informed about any changes in the claims management program.

Mr. Keeton also suggested that risk managers of self-insured companies incorporate a system of accountability by financially penalizing company locations or departments responsible for costly claims.

"The penalty has to go where the accidents are happening so that we can lessen our frequency and severity of losses," Mr. Keeton said. "No insurance can cover bad internal management, and you have to do what you can to keep things running properly."

When a claim is filed, risk managers should launch an in-depth investigation, Mr. Keeton advised.

If a company decides to defend against claims, evidence gathering is crucial, Mr. Keeton noted. "You need to find out what happened, preserve the information and be able to impeach somebody who tries to change the story down the line," he said.

"Facts are not facts unless the court says it is fact, " Mr. Keeton reminded his audience.

One way self-insured companies can improve their claims investigation and administration programs is to select the right third-party claims administrators, the experts noted.

"The key to successful self-insurance programs is knowing where to go for help and how to use other people's expertise," said Nancy B. Pastore, claims supervisor of New Haven, Conn.-based United Illuminating Co.

TPAs can complement self-insurance programs, said Robert B. MacDonald, president of RBM Companies Inc., a TPA in Bridgeport, Conn.

"We can administer claims, verify damages by doing workers compensation investigations, perform safety inspections of workplace facilities and help design improved programs," Mr. MacDonald said.

'All of your efforts are worthless if the claim function doesn't work,' says Fred J. Keeton.

However, TPAs function best when risk managers precisely detail the services they need, he stressed.

"You have to tell us what you want and what you hope to accomplish. Look at your needs in relation to what the TPA says it can do for you," he said.

When selecting a TPA, risk managers should be wary of those that advertise they can provide all services, Mr. MacDonald cautioned.

"No TPA can do everything well, and if they say that they can, then look somewhere else," Mr. MacDonald advised.

Mr. MacDonald suggested that risk managers keep the following guidelines in mind when selecting a TPA:

- Do not be afraid to ask "stupid" questions, because they probably are worth asking.
- Establish cost parameters.

"You should always tell the TPA what you are willing to spend and do not give them a free hand in spending," Mr. MacDonald said.

- Do not select a TPA because the price seems significantly lower than the others.

"Low-ball pricing can often be trouble. Don't expect a TPA to do the job for any less than you would charge to do it," Mr. MacDonald said.

Whether a self-insured company uses a TPA or administers claims internally, risk managers should audit claims for accuracy on a quarterly basis, Mr. Tweedy advised.

"If the people who are handling the claims—whether it be a TPA or the internal staff—know that they are being measured, they will do the job better," he said.

Also speaking at the session was Gene Netze, risk management administrator in the electric boat division of General Dynamics Corp. in Groton, Conn.

Ms. Pastore served as moderator and coordinator of the session. ■

SAVING JOBS: IRI

When a Plant in Your Community is Productive, do you have any idea of the disruption it avoids? People continue earning wages, paying bills, buying goods and services, doing the 101 things that people do to relax, entertain or educate themselves. Life goes on and, in many cases, is probably taken for granted. But, what happens when a local plant, employing several hundred people, burns to the ground overnight?

The Townspeople of a Small New England Community can tell you what happens. In early December 1987, a fire engulfed an interconnected mill complex, which was destroyed. "It was scary," said one resident. "All I could think of was the whole thing going up in flames." Another resident saw a "... ball of flame. It shot up seven or eight stories." Billowing, black smoke was seen 30 miles away, while down on the streets the intense heat melted two tractor trailers, peeling their sides away and exposing steel ribs. Fire companies from 15 communities responded. Water from a nearby river was used to fight the fire Runoff of the water and various unknown chemicals, some burning, spilled into storm drains which belched balls of fire. The town's water supply was contaminated and residents were warned not to drink or wash with municipal water, even if boiled, until it was declared safe. The local hospital cancelled elective surgery and sterilization of equipment. Schools, factories and restaurants closed. More than two dozen businesses downwind of the fire were evacuated. The next day, one of the firefighters commented that the charred mills resembled "... Europe during World War II."

The disaster occurred at a time when the small town was experiencing new growth. Population was increasing. New businesses were moving in. A town-sponsored industrial park was half full. Now, 190 people are out of work, perhaps permanently, and the consequential economic loss – greater than the actual destruction of the building and its contents – may approach $50 million.

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Soccer clubs, city insured for stadium tragedy

By STACY SHAPIRO

LONDON—Three British soccer clubs each have 20 million pounds ($34.2 million) of liability insurance to cover potential claims stemming from an April 15 crush at a British soccer stadium, which killed 95 people and injured 170 others.

The Football Assn., which oversees soccer in England, has liability insurance separate from the clubs'.

The local police and city council, whose actions may have contributed to the disaster, also have liability insurance.

Observers cannot yet estimate the liability cost of Europe's worst sports disaster, which occurred at Hillsborough Stadium in Sheffield during a semifinal match between Liverpool and Nottingham Forest for the FA Cup, one of British soccer's most coveted trophies.

However, "no one will recover a single penny-piece unless they can prove fault and that the injury was foreseeable," said Blaise Smith, a partner with the law firm of Ford & Warren in Leeds who represented 200 claimants after the 1985 fire at the Bradford City Football Club's stadium, which killed 53 people and injured 200 (*BI,* May 20, 1985).

Mr. Smith estimated that compensation for individual victims of the Sheffield stampede could range between a few pounds and 85,000 pounds ($145,350) per person.

The semifinal match for the FA Cup turned into a nightmare when thousands of Liverpool fans tried to enter their end of the stadium as the game was ready to begin. Hillsborough stadium, where the match was to be played, was a neutral site.

The Liverpool fans were allocated 3,000 fewer tickets than the Nottingham Forest fans, even though Liverpool is a much bigger club, in an attempt to curb soccer hooliganism. Liverpool fans have been involved in several incidents, including a riot at the 1985 European Cup finals in Belgium, where fights between Liverpool fans and Italian fans led to 39 deaths.

Reports say that South Yorkshire Police, who feared a wall would collapse under the pressure of the fans outside Hillsborough Stadium, opened the gate into a standing-room only section for Liverpool fans. Those outside the stadium rushed through the open gate as the game started, crushing spectators already in the standing room section against 10-foot-high steel mesh barriers that had been constructed to stop hooligans from coming onto the field or from starting fights with fans in other sections.

Reports say police did not ask for a delay in the start of the match to attempt to quell the crowd control problem.

Many of those killed and injured were children and teen-agers under the age of 18. Forty-seven people were hospitalized, several in intensive care.

The Hillsborough stadium was required by the Sheffield City Council to put up the barriers—which are blamed for the deaths and injuries of many of the victims—for the stadium to receive a safety certificate allowing games to be played.

The Sheffield Wednesday Football Club, which owns the stadium, and the Liverpool and Nottingham Forest soccer clubs, all members of the Football League, purchase public liability insurance through the league and Lloyd's of London broker Windsor Insurance Brokers Ltd., a unit of Windsor P.L.C., confirmed a Football League spokesman in Lytham St. Anns, Lancashire.

Sources in the London insurance market agree the policies have limits of 20 million pounds, though Windsor Chairman Stan Taylor would only say that the coverage "is adequate to meet all potential claims."

The coverage, which has been placed by Windsor for many years, is led by Sun Alliance & London Insurance P.L.C., confirmed a Sun Alliance spokesman who would not reveal limits.

The London law firm of Davies Arnold & Cooper has been hired by the clubs' insurers to handle the potential claims, confirmed partner David McIntosh.

The clubs' insurance, however, does not cover the Football Assn., which leased the stadium for the match and issued the tickets, sources confirm.

The Football Assn.'s liability insurance also is placed in the London market and led by Commercial Union Assurance Co. P.L.C., confirmed a CU spokesman, who would not comment on the limit.

The Football Assn. is not insured for the loss of revenue due to the postponement and possible cancellation of the FA Cup matches, primarily because the association has not canceled a cup final in the 100 years it has been held, confirmed the FA spokeswoman and the CU spokesman.

The association has called on Nottingham Forest and Liverpool to replay the match, which was postponed after six minutes of play. But, Liverpool has said that the request so soon after the disaster was "insensitive" and would not be considered until after the victims' funerals.

Liability insurance for both the South Yorkshire Police Authority and Sheffield City Council is placed under separate policies written by Municipal Mutual Insurance Ltd., confirmed Gordon Geoffrey, accident underwriting manager for MMI in London, who would not reveal the limits.

Meanwhile, the British government has launched a public inquiry into the disaster to establish exactly what happened and who is to blame.

Plaintiffs' attorney Mr. Smith said that potential defendants would include the Sheffield Wednesday Football Club, which owns Hillsborough Stadium; the city council; the police; and the Football Assn.

"No one's been particularly negligent," said Windsor's Mr. Taylor, noting the club abided by safety regulations and that the police's actions may have saved more people.

Various British laws will come into play when assessing who is at fault and what levels of compensation will be paid, Mr. Smith said.

The Occupiers Liability Act of 1957 says that the occupier of the premises, in this case the Sheffield club, has a common duty of care to ensure the safety of the stadium, he said. In addition, the Safety of Sports Grounds Act of 1975 also governs the club and the authority that issues the safety certificate to the grounds.

After the 1985 Bradford stadium fire, Mr. Smith successfully sued the local authority, West Yorkshire Metropolitan County Council, because it was established that the authority should have known that there was a fire hazard. The council paid two-thirds of the claims, while the Bradford football club paid the other one-third.

The Football Assn. also could be found liable for negligently allocating the tickets between Liverpool and Nottingham Forest fans, said Mr. Smith. A Belgian court, for example, found the manager of the Heysel Stadium guilty of criminal negligence for mixing Liverpool and Italian fans during the 1985 European Cup finals.

British law does not cap the compensation that can be sought by those injured at Hillsborough Stadium, Mr. Smith said. Judges in the past have awarded permanently disabled accident victims as much as 80,000 pounds and 85,000 pounds ($136,800 and $145,350), he said. However, the Administration of Justice Act 1982 defines bereavement awards for survivors of those who died.

Under the act, for example, spouses of those killed and parents of "infant" children below the age of 18 who were killed receive only 3,500 pounds ($5,985), according to Mr. Smith. "If the children are past their 18th birthday, the parents receive nothing," he said.

However, any charitable donation accepted by victims' survivors will not be included in calculating any liability under British law, according to Mr. Smith.

More than 1 million pounds has been paid into a disaster fund, including 500,000 pounds contributed by the British government under the orders of Prime Minister Margaret Thatcher. ■

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Transit hearing

Continued from page 1

Last September, the subcommittee also held hearings on the 1986 failures of Mission and Integrity Insurance Co. of Paramus, N.J., later recommending investigations of possible criminal fraud and securities law violations by persons connected with the companies (*BI*, Jan. 16; Dec. 19, 1988).

Mission also is estimated to be insolvent by $1.5 billion and Integrity by more than $300 million.

The GAO report, prepared at the subcommittee's request, compared the Transit and Mission failures to the collapse of 26 thrift institutions between January 1986 and September 1987.

Offering some background to the report, Mr. Wolf noted that the number of property/casualty insurer liquidations rose from an annual average of six during the 1970s to an average of 12 per year from 1980 to 1987, hitting a peak of 23 liquidations in 1985.

Only seven property/casualty insurers were ordered liquidated in 1988, with five additional liquidations reported so far this year, he said.

Even as the pace of liquidations rose, however, the number never represented more than 1% of all property/casualty companies operating in a given year, he observed.

Still, potential solvency problems may be more serious than these figures indicate, Mr. Wolf added, pointing to the rising number of insurers targeted for regulatory attention by the National Assn. of Insurance Commissioners' Insurance Regulatory Information Service.

The NAIC targeted 569 companies last year—21% of the 2,654 insurers reviewed based on 1987 financial statements—compared with only 132 companies—or 8.5% of the 1,566 reviewed—in 1979, Mr. Wolf testified. In 1985, the year with the largest number of property/casualty liquidations, the NAIC targeted 418 insurers, or 17% of the 2,458 reviewed, he said.

"Thus, while the number of liquidations may have decreased since 1985, the number of designated problem companies is increasing," he noted.

The Transit and Mission operations may not be typical of those of other failed insurers, but the two companies had internal control weaknesses also observed in the failed thrifts, Mr. Wolf testified.

The two insurers and the insolvent thrifts got themselves in trouble with "excessive growth and poorly managed entry into new activities," he told the panel.

The savings and loan failures resulted from management decisions to increase earnings by soliciting deposits at above-market rates and using the proceeds to make highly speculative loans and investments, "often of dubious economic value," he said.

"While this resulted in rapid growth, such growth was accompanied by increased—and often fatal—risk," Mr. Wolf explained.

Likewise, both Transit and Mission embarked on high-growth strategies, moving away from their traditional transportation and workers compensation books of business into high-risk, large-scale commercial liability insurance programs.

Poor underwriting and poor management of reinsurance programs also hastened the insurers' demise, he observed, adding that Mission's huge losses subsequently triggered the collapse of Integrity, which had purchased reinsurance from Mission.

"In many respects, the problems experienced with reinsurance agreements are similar to those we have noted with reverse repurchase agreements and loan participations in the securities, banking and thrift industries," Mr. Wolf testified.

While state regulation of insurers differs vastly from federal and state supervision of the savings and loan industry, both insurers and thrifts have suffered from lapses in regulatory oversight, he added.

Transit and Mission were subjected to triennial statutory audits, while the savings and loans were audited every year or two, he indicated. In the interim, the insurers and thrifts were able to significantly change their operations in ways that affected their financial condition.

"As with some of the failed thrifts we reviewed, by the time regulators conducted examinations, both (Transit and Mission) were already nearly insolvent," he said.

Regulators also found similar deficiencies in the quality of the financial information being provided by the troubled insurers and thrifts, including loss reserve levels, Mr. Wolf testified.

Savings and loans are required to establish reserves for uncollectible loans and losses on real estate transactions. Eighteen of the 26 failed thrifts were found to have inadequate loss reserves on their

Continued on next page

Chicago gallery fire

Continued from page 2

information."

The Mesirow companies would not comment on their insurance coverage.

CCL could not be reached for comment. The contractor is owned by William H. Smith of Chicago, according to attorney Joel H. Fenchel, a partner with Fischel & Kahn Ltd. of Chicago, who represents the Van Straaten Gallery.

No information was available on the contractor's builder's risk coverage.

Although builders' risk coverage is not required to obtain a building permit in Chicago, the property owner likely would have required that it be purchased.

In the first instance, the art lost will be covered by insurance purchased by the galleries. "But if any negligence is construed, their insurers will likely subrogate from the responsible party," a broker said.

Under an Illinois consignment law, art galleries are responsible for all art in their possession, explained Ms. Rakoncay of the Chicago Artists' Coalition.

Huntington T. Block Insurance, a Washington, D.C.-based insurance brokerage specializing in art risks, was the fine arts broker for the Van Straaten Gallery and three other galleries destroyed in the fire, confirmed Huntington T. Block, president.

Mr. Block said that the Van Straaten Gallery was insured through syndicates at Lloyd's of London.

Block Insurance also placed other coverages for the Van Straaten Gallery and one other gallery, including business interruption, he noted.

Mr. Block would not disclose the other galleries for which he placed coverage, coverage limits or their insurers due to client confidentiality. However, he did say each gallery was insured by different insurers.

Near North Insurance Agency Inc. in Chicago placed fine arts coverage and other coverages for Rowe Co. Fine Arts and the Klein Gallery with syndicates at Lloyd's, said agency President Michael J. Segal.

One of the galleries has filed a $1.2 million claim with Lloyd's, according to a London source.

The other six galleries that were tenants in the complex are Peter Miller Gallery, East-West Contemporary Art Inc., Habitat Gallery, Objects Gallery, Zolla-Lieberman Gallery and Sazama-Brauer Gallery.

Meanwhile, the Van Straaten Gallery filed an amended suit last Wednesday in Cook County Circuit Court seeking more than $10 million in damages from Mesirow Realty Management Inc. (although a Mesirow Realty Development spokeswoman said the company has no such unit); American National Bank & Trust Co., the lienholder on the complex; and CCL.

Jan Van Straaten, co-owner of the Van Straaten gallery, valued that gallery's artwork lost in the April 15 fire at between $2 million and $5 million. The gallery also lost a library and all of its records and contracts accumulated over 20 years in business.

Van Straaten filed its original suit April 14, seeking $750,000 in actual damages against Mesirow Realty and CCL—and $1 million in punitive damages against Mesirow—for several previous incidents of water and fire damage and business interruption resulting from the renovation activities.

Van Straaten also had sought an immediate court injunction to halt all of the renovation activities until the gallery terminated its tenancy on April 30.

Cook County Circuit Court Judge David Shields denied the gallery's request to completely halt renovation activities, citing insufficient evidence. However, he did prohibit construction immediately adjacent to the gallery until it could relocate. The fire occurred the morning after Judge Shield's ruling.

The Chicago Artists' Coalition and Lawyers for the Creative Arts, a non-profit organization that provides free legal assistance to artists and art organizations, held a joint meeting last Friday with the gallery owners and artists who had works on exhibit in the galleries to discuss their legal options.

Representatives of both organizations say that artists whose works were destroyed may also suffer severe and lasting emotional trauma.

The Chicago brokerage community agreed that additional litigation is likely to ensue.

"If it is proven that the sprinklers were turned off, everybody will be named in suits—the owner, contractor, subcontractors and the sprinkler manufacturer," one broker predicted.

"Even the fine arts carriers will look for subrogation. Someone was negligent, and they'll find out who it is," he added.

John Harney, account executive with Near North's Fine Arts Risk Management Division, said that "the Chicago art community is devastated by what has happened, not only because of the financial aspects, but also over the loss of the art itself."

Ms. Rakoncay noted that the fire came at a particularly bad time for several of the galleries, which were "getting ready to show their works at the International Art Expo in Chicago from May 12-16. They were having works shipped into their galleries daily in preparation" for the expo, she said.

"I hope for the insurers and commercial galleries involved that there will be some recourse" against the owners or contractors, Mr. Block said. "A lot of gallery owners in Chicago have taken a long look at their insurance coverage as a result of the fire."

The Brunswick-Blake-Collender buildings, built between 1881 and 1902, were designed by internationally renowned Chicago architect Louis Sullivan.

Meredith Taussig, program specialist with the Commission on Chicago Landmarks, did not know the buildings' monetary value. However, she characterized them as "architecturally and historically important."

The commission had recommended the buildings for landmark status last July and was awaiting approval from the Chicago City Council. ■

Update

California mulls new insurer tax

SACRAMENTO, Calif.—Insurers would pay income tax on net investment income for the first time in California under a constitutional amendment proposed by a state legislator and backed by a member of the state Board of Equalization.

Assembly Constitutional Amendment 46, introduced last week by Assemblywoman Maxine Waters, D-Los Angeles, would institute an annual 9.3% tax on insurers for all net investment income earned in California.

The tax on insurer investment income would generate an estimated $250 million in state revenue annually.

Insurers currently pay a 2.35% gross premium tax but are exempt from most state and local taxes.

"There is no rational reason why insurance companies should not pay their fair share of investment income tax when every other business in California is required to do so," Ms. Waters said.

Board of Equalization member Conway Collis called for passage of the amendment, which requires two-thirds approval by state lawmakers and a majority vote during a general election.

"This proposal isn't insurance-company bashing; it's a simple matter of tax justice. This discount ride must stop," Mr. Collis said.

The Assn. of California Insurance Companies, the industry's lobbying group in Sacramento, has not taken a formal position on the proposal.

However, an ACIC spokesman pointed out that the insurance industry pays more than $1 billion in premium taxes annually—more than any other industry in the state.

"The crying need now is to reduce the costs of insurance, not to increase costs by passing additional taxes," the spokesman said.

Auto insurance plan rebuffed

WASHINGTON—A 14-point plan proposed last week by the Alliance of American Insurers to control auto insurance rates was immediately attacked by a consumer group.

The Alliance is distributing a workbook of 14 short- and long-term legislative goals for controlling high auto insurance rates, according to an Alliance spokeswoman. However, specific plans would have to be tailored on a state-by-state basis, she noted.

Among other things, the Alliance proposed: improving or establishing effective no-fault insurance laws; reforming uninsured motorist laws; exploring ways to control medical care costs; creating and supporting consumer information programs; designing residual markets to better address consumer needs; allowing consumers in no-fault states to choose between compensation from the auto or health insurance systems; promoting driver and vehicle safety; and promoting laws and regulations essential for competition in the marketplace.

But Jay Angoff, general counsel to the National Insurance Consumer Organization, criticized the plan, calling it a "venal effort" that is part of the "insurance industry's campaign to blame everybody in the world for high auto insurance rates except themselves."

Alliance President Franklin W. Nutter rebutted Mr. Angoff's charges, stating that the plan presents substantial proposals that reflect the ideas of both consumers and the insurance industry.

Anistics pares ARIS staff

NEW YORK—Anistics Inc. is paring its employee ranks as the risk management consulting subsidiary of Alexander & Alexander Services Inc. phases out its ARIS mainframe-based risk management information system.

Anistics is eliminating 50 mainframe system jobs, 27 of them in Palo Alto, Calif., where the mainframe system is based.

In Anistics' Atlanta office, Vp Charles Tucker resigned earlier this month. Mr. Tucker was scheduled to leave Anistics in September, an A&A spokesman said. In addition, about a dozen mainframe-related jobs have been eliminated in Atlanta. Of those, four employees resigned and four employees were reassigned to other positions within A&A, the spokesman said.

The 58 Anistics employees on its U.S. consulting staff, 23 microcomputer-based RMIS employees and 40 employees abroad are unaffected by the mainframe system move.

Meanwhile, Frank Rau, an Anistics vp in New York who was not involved in the mainframe business, also resigned earlier this month to join the Corporate Risk Division of Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y. as a vp.

And, former Anistics President Richard B. Hall has been hired as a senior consultant and vp in the national casualty office of Johnson & Higgins in New York.

Mr. Hall was dismissed in February after his wife, Tracey A. Carragher, former senior vp of A&A of Connecticut Inc. in Greenwich, was hired as president of Frank B. Hall & Co. of Fairfield/Westchester in Briarcliff Manor, N.Y. (*BI*, Feb. 27).

Anistics, a leading RMIS vendor, announced late last year it would discontinue its ARIS system (*BI*, Dec. 26, 1988).

Briefly noted

The 1965 federal law that requires health risk warnings on cigarette packages does not bar **product liability lawsuits against tobacco manufacturers** for misrepresentation, strict liability and breach of warranty, the Minnesota Supreme Court has ruled. But, the federal act does pre-empt lawsuits claiming that tobacco manufacturers have failed since 1966 to warn consumers about the health risks associated with smoking. . . .The Louisiana Insurance Department placed **New England International Surety of America Inc.** in rehabilitation last week. The department earlier this month had placed the insurer in conservation. . . .A U.S. District Court judge has approved a $60 million settlement in a class-action suit that pitted the Federal Deposit Insurance Corp. and stockholders of Chicago-based **Continental Illinois Corp.** against the company's five directors and officers liability insurers (*BI*, Nov. 7, 1988). . . .The Kansas Supreme Court has upheld the constitutionality of the state's **$250,000 cap on non-economic damages** (*BI*, March 20). A formal opinion explaining the justices' reasoning will follow later this year.

A&A letter

Continued from page 1

property damage claims, which had been unforeseen.

"I don't know any insurance company that has not had to increase its reserves over the last few years," Mr. Wilson said last week.

Weavers will announce its year-end 1988 results in May; until then Mr. Wilson will not comment on them.

At year-end 1987, Walbrook reported 54.9 million pounds ($103.2 million) in capital and surplus to the U.K. Department of Trade and Industry, and 63.1 million pounds ($118.6 million) to shareholders—the difference due to differing accounting treatments.

The A&A letters to clients, which have been out for a couple of weeks, have yet to affect any renewals at Weavers, Mr. Wilson said.

"I don't expect to lose any business at all," he said. "But, I may be more selective as to who I write business to."

Mr. Wilson also said that no changes will be made on Weavers' line slip as a result of the A&A letter.

While A&A in the United States is circulating letters on Walbrook, A&A's London-based brokerage unit Alexander Howden Ltd. continues to enthusiastically support Weavers.

Dennis Mahoney, chairman of Howden, would not comment on the details in the A&A letter, but when pressed on specific issues he emphasized that Weavers "provides a unique and valuable market facility. In my personal view they work in a professional fashion."

Over the 20 years that Mr. Mahoney has worked in the London market, he has had no problems with Weavers paying claims, he said.

"We have to keep clients informed of all of our security. But, let me stress that we hold Weavers in the highest esteem," said Mr. Mahoney.

"To the best of my knowledge I don't know of any client which has refused to renew" their Weavers policies as a result of the A&A letter, he said.

In its correspondence to former, current and potential Weavers' policyholders, A&A points out that Weavers' management "is considered by many London market participants to be highly skilled in underwriting and has provided a high level of service and a long record of prompt payment of claims."

A&A executives in New York would not comment on the correspondence, which they say is privileged and confidential.

However, A&A's senior financial analyst Marshall Pinnix in Baltimore, who drafted most of the information in the A&A letter, points out that A&A is not saying that Walbrook will not meet its future obligations to policyholders, just that A&A is unable to determine if the company will be able to do so.

In addition, the correspondence on Weavers carries the disclaimer: "While this information was obtained from sources believed to be reliable, its accuracy is not guaranteed."

Walbrook's 1987 accounts show that it wrote 99.06 million pounds ($186.2 million) in premiums from North America, representing 54% of its total gross premiums of 182.332 million pounds ($342.8 million).

Liability risks generated 93% of gross premiums.

A&A points out in its correspondence to clients that a "very major portion of business" written by Weavers is U.S. general liability insurance.

It adds that since October 1985, Weavers has written U.S. liability insurance on a Weavers-developed claims-made form.

Insurers developed claims-made forms to allow them to more quickly know their underwriting results each year compared with the long period of time it takes losses to develop under an occurrence-based form.

Because the two companies on the slip are not admitted insurers in the United States, "they are not subject to state regulation or protection in the event of insolvency," A&A is telling it clients. "Further, since they are not domiciled in the United States, they are not rated by A.M. Best Co.," A&A points out.

"Several changes in accounting for its operations which have been implemented by Walbrook in recent years have complicated our ability to make a complete analysis of its financial condition," A&A's letter to clients says.

Specifically, A&A points out that:

- Beginning in 1986, amounts represented by letters of credit that had been applied as paid claims have been included in assets, and corresponding amounts have been included in the unpaid claims segment of technical reserves. No retroactive adjustments to prior years were made.

For Walbrook, 17.1 million pounds ($25.3 million) were added to assets and 15.8 million pounds ($23.4 million) were transferred from paid claims to unpaid claims reserves as of Dec. 31, 1986.

- Walbrook changed its method for discounting its loss reserves for unpaid claims beginning in 1987.

Prior to 1987, these loss reserves were discounted to their present value using a 20-year discount period and a 7.5% discount rate. The amount of this discount for Walbrook at Dec. 31, 1986, was 61.9 million pounds ($91.6 million).

At the beginning of 1987, the discount period was shortened to approximately 13 years, so that at the end of 1987, the amount of the discount for Walbrook was 53.7 million pounds ($101 million).

Anglo-American, however, has not discounted reserves, A&A believes.

- Walbrook changed its periods of accounting for underwriting results.

Prior to 1987, all Weavers stamp companies used one-year, two-year and three-year accounting, depending on the line of business.

Beginning in 1987, Walbrook converted to two-year accounts for all lines of business but one and adopted three-year accounting for that line.

This basis of accounting reports underwriting results for each year only after the two or three years have elapsed. As a result, the balance sheet shows one figure for technical reserves.

Total technical reserves going into 1987 were 113.6 million pounds ($168.1 million), which included 14.7 million pounds ($21.8 million) of unearned premiums and 54.1 million pounds ($80.1 million) of unpaid claims for business accounted for on a one-year basis and 44.9 million pounds ($66.5 million) of technical reserves for business accounted for on a three-year basis.

A&A does not report Walbrook's total technical reserves going into 1988.

A&A does not point out in its letter that Walbrook changed its accounting method to comply with the Assn. of British Insurers' Statement of Recommended Practice on Accounting for Insurance Business.

Mr. Pinnix said he didn't feel this point was necessary to make in the letter.

A&A does point out in its correspondence that multiyear accounting is one of two significant differences between accounting practices of U.S.- and U.K.-based insurers.

U.K. insurers have traditionally accounted on a multiyear basis "on the assumption that information, particularly as to incurred losses, is inadequate at of the end of each year to properly account for the operating results of those lines for the year," A&A explains.

The other significant difference is that the British Department of Trade and Industry allows insurers to discount loss reserves as long as the discounting is reported.

However, A&A points out that while U.S. insurers must discount their loss reserves for tax purposes, U.S. insurance regulators do not permit liberal discounting of loss reserves for statutory accounting purposes.

"Rejection of discounting of loss reserves to any substantial degree by U.S. regulators and other interested parties is based on the fact that, even without it, loss reserves for many companies have proved to be insufficient, in some cases causing insolvency. Furthermore, having to forecast investment income that can be earned during the payout period introduces another uncertainty."

A&A also makes a point of the difference between Walbrook's capital and surplus reported to the DTI and the amount reported to shareholders.

But, the A&A letter adds that reporting a lower capital and surplus to the DTI results from "a tendency toward more conservative statement of assets and liabilities in the DTI return."

Anglo-American, however, reports capital and surplus of 51.9 million pounds ($97.6 million) at year-end 1987, both on the DTI

Continued on next page

Transit failure

Continued from previous page

real estate and loan portfolios, Mr. Wolf said, pointing out that Transit and Mission also were found to be grossly underreserved for reported and incurred-but-not-reported losses.

Given the similarities in the problems faced by the defunct insurers and thrifts, Mr. Wolf suggested several steps that could be taken to avoid future failures. These included:

- Ensuring adequate internal controls. The GAO has proposed legislation that would require banks and thrifts to make annual reports to regulators on their internal control systems and compliance with laws and regulations. These management reports would be reviewed by outside auditors.

"Insurance regulatory authorities may wish to consider similar requirements," Mr. Wolf said.

- Ensuring the accuracy and reliability of financial information reported to regulators. Banking regulators, he noted, do not all require annual audits of financial statements, and the GAO has proposed that this be made mandatory.

Likewise, state insurance regulators should consider requiring annual audits of insurance companies in accordance with generally accepted accounting principles, along with a requirement that the GAAP information be reconciled with the insurers' statutory filings, Mr. Wolf said.

- Review by state regulators of the effectiveness of the current triennial audit.

"Long lapses between examinations can permit adverse changes to occur and not be detected, thus forestalling appropriate regulatory actions," he noted.

- Ensuring regulators have the resources to identify problem companies and take necessary enforcement action.

"To the extent that the insurance regulators' three-to-five year examination cycles reflect a lack of resources, we would question their ability to take the timely action often necessary to minimize losses," Mr. Wolf said.

"One clear message from the thrift crisis is that the costs of delays in acting on problems, once they are identified by examiners, are enormously expensive," Mr. Wolf testified. "Insolvent organizations have little to lose and, thus, have strong incentives to take risks. When such risky ventures result in further losses, the costs of resolution increase accordingly."

The GAO now is conducting several other insurance-related studies for the House Subcommittee on Commerce, Consumer Protection and Competitiveness, Mr. Wolf reported. These include reviews of the ways state regulators first identify problem insurers; NAIC's IRIS, an early warning system for insurer failures; and reinsurance regulation.

John W. Gates, executive director of the California Insurance Guarantee Assn., also testified last week on the impact of insolvencies on state guaranty funds.

Through 1986, guaranty funds have collected assessments of roughly $1.2 billion to cover claims against insolvent insurers, he said. Assessments in 1986 alone accounted for $480 million, or about 40%, of this total.

The California guaranty fund assessed insurers $58 million in 1986, $235 million in 1987 and $160 million in 1988.

Despite this, the fund will show a $600 million deficit as of Dec. 31, 1988, and will have to levy additional assessments over the next several years, including a 1989 assessment that will probably total $240 million, he said. Most claims against the California fund relate to the Transit, Mission and Integrity insolvencies.

Mr. Gates also argued for enhanced state regulatory efforts, including examinations of insurer operations that could lead to future financial problems.

Observing that guaranty funds were not originally intended to handle claims of large commercial policyholders, Mr. Gates noted that California is now considering introducing legislation to amend its guaranty fund law to exclude coverage for claims from corporations with a net worth of more than $50 million.

Also testifying at last Wednesday's hearing was Paul Gulko, president of Boston-based Guaranty Fund Management Services, which manages guaranty funds for seven eastern states and the District of Columbia. ■

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Old Weavers' slip raises uncertainty

Alexander & Alexander Services Inc. is questioning the ability of some insurers formerly on the H.S. Weavers (Underwriting) Agencies Ltd. line slip to pay future claims.

All but one of those companies under question are now owned by Weavers' parent company, London United Investments P.L.C., A&A pointed out in a recent letter to clients of Weavers (see story, page 1).

Weavers' line slip was dramatically changed in the last 15 months, following a letter to clients issued in late 1987 by Marsh & McLennan Cos. Inc.

M&M had raised concerns in a letter to clients about the discounting of reserves by five of the then-eight participants on the line slip (*BI*, Jan. 11, 1988).

A&A says in its recent letter to clients that it is unable to determine whether several insurers that formerly participated on the Weavers slip can "fully meet their future obligations to policyholders."

The letter refers clients to an appendix that lists five former participants on the Weavers' slip:

- El Paso Insurance Co. Ltd. in London, owned by LUI, which wrote as much as 15% of the slip in 1986 and as little as 5.5% in January 1988. El Paso was taken off the slip in April 1988.

El Paso had about 10 million pounds ($18.8 million) of capital and surplus in January 1988.

- Kraft Insurance Co. Ltd. in London, formerly a subsidiary of Glenview, Ill.-based Kraft Inc., which wrote as much as 22% of the slip in 1984 and 1985 and as little as 5% in January 1988. Kraft was taken off the slip in April 1988 and purchased by LUI in September 1988.

Kraft had about 12 million pounds ($22.6 million) in capital and surplus in January 1988.

- Louisville Insurance Co. Ltd., a London-based company that was owned by Humana Corp. of Louisville, Ky., which wrote as much as 10% of the slip in 1984 and 1985 and as little as 3.74% in 1987. Louisville was taken off the slip in January 1988 and purchased by LUI in September 1988.
- Ludgate Insurance Co. Ltd. in London, a subsidiary of Multi-Hospital Mutual Insurance Ltd. in Bermuda, which is owned by Chicago Multi-Hospital Services. Ludgate never wrote more than 6.75% of the slip and as little as 3.58% in 1987. Ludgate also was taken off the slip in January 1988.

Louisville and Ludgate together had less than 10 million pounds ($18.8 million) in surplus in January 1988.

- Mutual Reinsurance Co. Ltd., formerly owned by Mutual Insurance Co. Ltd. of Bermuda, which is a captive of the American Newspaper Publishers Assn. Mutual Reinsurance wrote as much as 10.2% of the slip in 1984 and 1985 and as little as 5.2% in January 1988. Mutual Reinsurance was taken off the slip in April 1988 and purchased by LUI in September 1988.

As a result of the January 1988 changes in the slip:

- Walbrook Insurance Co. Ltd., also owned by LUI, increased its participation to 41.9% of each risk from 36.14%. As of year-end 1987, Walbrook reported capital and surplus of 54.9 million pounds ($103.2 million) to regulatory authorities and 63.1 million pounds ($118.6 million) to shareholders in accordance with accounting rules.
- Anglo-American Insurance Co. Ltd., a subsidiary of Los Angeles-based financial services group Calfed Inc., increased its participation to 39.75% of each risk from 33.42%. Anglo-American was activated in April 1988 with $80 million in capital and surplus.

Three months after the slip changed, in April 1988, Weavers changed the participants on the line slip again, this time removing all participants having less than 50 million pounds in capital and surplus.

In addition to Kraft, El Paso and Mutual Reinsurance, Weavers in April 1988 removed Compagnie Europeene D'Assurance Industrielle in Belgium, a subsidiary of Petrofina in Italy, which wrote 2.65% of the slip (*BI*, April 18, 1988).

The Petrofina subsidiary, which is part of a worldwide network of Petrofina-owned insurance interests, is not mentioned in the A&A correspondence except in the list of Weavers' slip participants.

Since April 1988, the two companies remaining on the slip have been Walbrook, writing 55% of the slip, and Anglo-American, writing 45% of the slip.

LUI in September 1988 acquired Kraft, Louisville and Mutual Reinsurance for a total of 150,000 pounds ($252,000 at the appropriate exchange rate), with a possible further payment to Kraft after five years. The companies are currently in runoff.

At the time of the purchase, LUI announced that the companies' total assets of 10.5 million pounds ($17.6 million) plus any investment income on the assets would be used to "provide additional reserves and reinsurance protection until a reassessment in five years' time."

LUI also stated that any "adverse development" during the five-year period would be sheltered by the companies' existing surplus and reinsurance arrangements.

However, should these be inadequate "there is no commitment for London United or any of the vendors to give any support, nor is it the current intention of London United to give any such support," the announcement said. ■

A&A letter

Continued from previous page

returns and in its annual report.

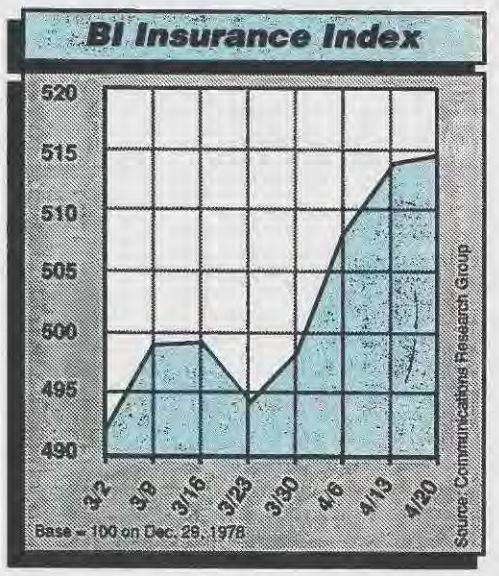
A&A's investigation of the Weavers line slip has been mainly carried out by Mr. Pinnix, senior financial analyst for A&A based in its Baltimore office.

Although Mr. Pinnix will not comment on the reasons for distributing the letter, he did say that A&A's recent letter follows a 1988 letter that told clients A&A would continue to monitor Weavers.

"We said we would follow up (last year's letter), and this letter does this," said Mr. Pinnix.

In May 1988, A&A wrote to clients saying it could not "adequately assess the financial condition of the companies participating on the Weavers stamp" because the information was not available. A&A at the time asked Mr. Wilson to provide additional data, but "Mr. Wilson felt unable to provide any further documentation other than that publicly available."

On March 17, Mr. McCormick sent to all managing vps, regional directors and others in A&A a memo, which says they must "take immediate action regarding notification to clients having in-force policies with and future new and renewal policies placed with H.S. Weavers." ■



Insurance industry stocks were up slightly last week, as the *Business Insurance Index* rose 0.5 points to 514.7 on April 20, from 514.2 on April 13. Leading advancers were Trenwick Group Inc., up 10.2%; Provident Life & Accident Insurance Co., up 6%; and Arthur J. Gallagher & Co., up 5.4%. Declining issues followed Forum Re Group (Bermuda), down 18.1%; HMO America Inc., down 16%; and Hartford Steam Boiler Inspection & Insurance Co., down 5%. The most active issue was Sears, Roebuck & Co. (Allstate), 4.5 million shares traded. The *BI Index* gained 0.1% for the period; the New York Stock Exchange Composite was up 2.9%; the Standard & Poor's 500 grew 3%; and the Dow Jones 30 Industrials was up 3.5%.

British Issues

April 20 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence	pence
Comml Union	369	12.8	25.3	6.9	373—	369
Genl Accident	934	8.7	58.7	6.3	953—	934
Gdn Royal Exch	201	10.4	13.3	6.6	202—	198
Royal	405	12.6	30.0	7.4	409—	405
Sun Alliance	1098	8.6	54.7	5.0	1101-	1084
Brokers						
Bradstock	225	15.4	9.0	4.4	225—	225
CE Heath	453	14.4	34.5	7.6	455—	453
Hogg Robinson	146	12.9	8.9	5.9	146—	145
Lloyd Thompson	229	17.6	8.0	3.5	232—	220
PWS Holdings	65	17.6	4.6	7.2	66—	64
Sedgwick Grp	234	19.3	16.0	6.8	235—	231
Steel Burt Jones	223	19.1	13.3	6.0	231—	223
Willis Faber	224	16.6	15.3	6.8	229—	224

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

BI Industry Stock Report

APRIL 20, 1989 — 4/14/89 THRU 4/20/89

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander Svcs	NYSE	25.88	2.5	10.1	26.50	22.63	105	1.00	3.9	16.5	3.71	6.98
Corroon & Black Corp.	NYSE	34.38	-0.7	10.4	35.00	30.75	147	1.24	3.6	5.1	12.40	2.77
Gallagher Arthur J. & Co.	NYSE	19.50	5.4	16.4	19.25	16.13	75	0.52	2.7	13.8	5.46	3.57
Hall Frank B. & Co.	NYSE	3.75	-6.3	30.2	4.63	2.50	33	0.00	0.0	-2.2	0.00	N/A
Hilb, Rogal & Hamilton	OTC	14.75	1.7	-3.3	15.75	13.75	70	0.00	0.0	12.8	4.60	3.21
Marsh & McLennan Cos. Inc.	NYSE	62.38	-1.8	10.9	64.50	55.13	707	2.50	4.0	15.3	6.48	9.63
Poe & Assoc. Inc.	OTC	8.75	2.9	6.1	8.75	8.25	5	0.40	4.6	9.5	0.27	32.41
BROKERS	AVERAGE		0.5	11.5					2.7	10.1		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W R. Corp.	OTC	32.25	4.4	9.3	33.25	29.25	250	0.40	1.2	6.9	20.24	1.59
Berkshire Hathaway Inc. DEL	NYSE	5900.00	4.0	25.5	6000.00	4375.00	186	0.00	0.0	21.6	2492.68	2.37
ITT (Hartford Group)	NYSE	56.88	3.9	13.5	58.38	49.75	2095	1.48	2.6	10.0	52.23	1.09
Sears Roebuck & Co. (Allstate)	NYSE	45.38	2.8	11.0	45.88	40.13	4506	2.00	4.4	18.9	34.74	1.31
CONGLOMERATES	AVERAGE		3.8	14.8					2.1	14.3		
INSURERS/REINSURERS												
Aetna Life & Cas Co.	NYSE	53.63	0.7	13.5	54.88	46.75	914	2.76	5.1	9.2	54.73	0.98
American General Corp.	NYSE	35.25	1.8	18.0	35.63	29.50	822	1.50	4.3	10.2	28.04	1.26
Amer Heritage Life Invt	NYSE	26.25	-3.7	1.9	27.88	25.00	6	1.08	4.1	10.9	22.47	1.17
Amer Indty Fin'l Corp	OTC	10.13	1.3	-3.5	11.25	9.50	48	0.56	5.5	6.6	17.06	0.59
American Int'l Group	NYSE	81.75	3.0	20.7	83.13	66.25	1446	0.40	0.5	11.4	33.55	2.44
Aon Corp.	NYSE	32.38	1.2	15.6	33.38	27.00	190	1.40	4.3	10.2	15.13	2.14
Argonaut Group	OTC	53.50	0.2	22.3	56.00	43.50	198	0.00	0.0	7.4	34.94	1.53
AVEMCO Corp.	NYSE	23.63	-1.0	-8.7	26.13	23.50	27	0.40	1.7	12.4	9.20	2.57
Baldwin & Lyons Inc.	OTC	16.13	0.8	8.4	16.50	14.50	31	0.20	1.2	6.4	17.57	0.92
Belvedere Corp.	AMEX	5.75	-4.2	27.8	6.50	4.50	1	0.04	0.7	8.3	8.43	0.68
Chandler Insurance	OTC	11.00	0.0	18.9	11.75	8.75	221	0.00	0.0	5.3	6.65	1.65
Chubb Corp.	NYSE	68.38	1.3	17.9	69.00	57.63	487	2.32	3.4	8.0	46.13	1.48
CIGNA Corp.	NYSE	54.88	1.2	16.4	56.13	45.88	499	2.96	5.4	9.8	51.37	1.07
CNA Fin'l Corp.	NYSE	64.88	2.6	7.2	65.25	57.63	196	0.00	0.0	10.3	46.40	1.40
Continental Corp.	NYSE	34.00	2.3	5.0	36.00	31.50	1014	2.60	7.6	16.3	42.10	0.81
Durham Corp.	OTC	32.75	4.0	-0.8	33.75	30.00	29	0.92	2.8	19.4	26.23	1.25
Fireman's Fund Corp.	NYSE	32.63	0.0	11.6	34.25	29.00	487	0.60	1.8	6.9	30.91	1.06
Forum Re (Bermuda)	OTC	1.13	-18.1	-30.7	1.75	1.13	4	0.00	0.0	3.1	2.58	0.44
Fremont Gen Corp.	OTC	16.88	0.8	26.2	18.25	12.13	391	0.60	3.6	10.8	16.06	1.05
Frontier Insurance Group	OTC	15.63	-5.3	25.0	16.75	12.25	87	0.00	0.0	7.7	7.53	2.08
General Re Corp.	NYSE	66.88	2.1	20.5	67.50	54.38	1062	1.36	2.0	13.3	27.10	2.47
Home Group Inc.	NYSE	13.00	-4.6	18.2	14.50	11.00	830	0.20	1.5	5.5	18.66	0.70
Hanover Ins Co.	OTC	29.25	0.0	9.3	30.25	26.00	53	0.44	1.5	5.4	31.47	0.93
Harleysville Group Inc.	OTC	20.50	1.2	13.9	21.38	17.75	20	0.48	2.3	7.4	18.24	1.12
Hartford Steam Boiler	OTC	42.25	5.0	15.0	42.50	34.75	302	1.40	3.3	12.2	13.04	3.24
Kans City Life Ins	OTC	33.50	0.8	-2.9	35.00	32.75	2	0.00	0.0	10.7	39.22	0.85
Kemper Corp.	OTC	33.50	1.1	39.6	34.25	22.75	1768	0.84	2.5	9.6	28.91	1.16
Lawrence Ins. Group	AMEX	6.88	-1.7	-12.7	8.50	6.88	2	0.24	3.5	15.0	2.90	2.37
Liberty Corp. S.C.	NYSE	35.50	-1.4	-1.4	38.00	34.63	17	0.80	2.3	13.9	20.76	1.71
Lincoln Nat'l Corp.	NYSE	49.88	1.5	13.4	50.63	42.75	136	2.48	5.0	12.1	37.11	1.34
NAC Re Corp.	OTC	38.25	2.7	20.5	38.75	31.00	131	0.00	0.0	15.2	22.06	1.73
Navigators Group	OTC	22.00	-2.2	10.0	22.75	20.50	23	0.00	0.0	10.9	14.79	1.49
Nobel Ins Ltd	OTC	2.13	0.0	-55.2	2.50	0.75	331	0.42	9.7	-8.2	7.76	0.27
Northwestern Nat'l Life	OTC	34.00	1.5	9.2	34.25	26.88	242	1.20	3.5	8.5	35.05	0.97
Ohio Cas Corp.	OTC	41.25	-0.6	15.4	45.25	35.50	80	2.08	5.0	6.3	33.30	1.24
Old Rep Int'l Corp.	OTC	24.38	1.0	1.6	28.88	23.75	117	0.74	3.0	12.2	26.50	0.92
Orion Cap Corp.	NYSE	20.75	1.2	34.9	20.88	15.38	50	0.76	3.7	6.9	12.93	1.60
Phoenix Re Corp.	OTC	9.25	2.8	-2.6	11.00	9.00	23	0.00	0.0	4.8	12.49	0.74
Protective Life Corp.	OTC	13.75	0.0	3.8	14.50	12.88	172	0.70	5.1	152.8	17.25	0.80
Re Capital Corp.	AMEX	10.00	0.0	9.5	10.88	9.13	2	0.00	0.0	22.2	11.93	0.84
RLI Corp.	NYSE	8.50	-1.5	11.4	9.25	7.50	21	0.36	4.2	7.0	10.71	0.79
Provident Life & Acc Ins Co.	OTC	24.25	6.0	26.0	24.63	19.13	1106	0.68	2.8	13.3	21.96	1.10
St. Paul Cos. Inc.	OTC	50.50	1.2	16.1	51.00	43.00	1245	2.20	4.4	7.0	43.47	1.16
SAFECO Corp.	OTC	28.63	1.8	21.2	29.13	23.13	405	1.08	3.8	8.0	24.87	1.15
SCOR US Corp.	NYSE	9.00	-1.4	-1.4	9.50	7.50	88	0.20	2.2	6.6	10.35	0.87
Seibels Bruce Group Inc.	OTC	12.00	0.0	5.4	13.00	11.25	57	0.80	6.7	7.6	13.42	0.89
Selective Ins Group Inc.	OTC	24.00	0.5	4.3	24.50	21.75	16	1.24	5.2	5.3	22.33	1.07
Statesman Group Inc.	OTC	2.75	-8.3	-12.1	4.00	2.75	124	0.05	1.8	27.5	3.48	0.79
Tokio Marine & Fire Ins	OTC	74.50	-3.9	-18.5	95.50	75.75	30	0.22	0.3	45.2	0.00	N/A
Torchmark Corp.	NYSE	33.38	1.5	9.4	33.75	30.00	339	1.20	3.6	10.4	12.24	2.73
Transamerica Corp.	NYSE	35.25	2.9	4.0	35.75	32.75	452	1.88	5.3	8.0	27.36	1.29
Travelers Corp.	NYSE	40.50	2.8	16.5	40.50	34.50	952	2.40	5.9	44.0	45.28	0.89
Trenwick Group Inc.	OTC	16.25	10.2	12.1	15.50	13.75	65	0.24	1.5	10.1	16.91	0.96
United Fire & Cas Co.	OTC	29.25	0.0	-4.1	30.75	29.00	7	1.08	3.7	5.2	22.56	1.30
United States Fid & Gty	NYSE	31.63	-0.4	11.0	32.88	28.50	1640	2.80	8.9	8.9	22.15	1.43
UNUM Corp.	NYSE	31.63	0.0	17.1	32.88	26.63	256	0.60	1.9	11.1	30.64	1.03
USLIFE Corp.	NYSE	42.13	-2.0	20.8	44.88	34.13	387	1.36	3.2	11.1	46.77	0.90
Washington Nat'l Corp.	NYSE	26.63	-0.4	-1.4	27.63	25.25	14	1.08	4.1	-19.0	32.33	0.82
Zenith Nat'l Ins Corp.	NYSE	19.13	2.0	9.3	19.50	16.75	26	0.80	4.2	9.1	13.61	1.41
INSURERS/REINSURERS	AVERAGE		0.2	8.8					3.2	12.7		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International Corp.	OTC	23.38	0.0	92.7	25.25	11.75	136	0.00	0.0	12.8	3.54	6.60
HMO America Inc.	OTC	2.00	-16.0	112.8	2.88	0.88	48	0.00	0.0	-3.2	1.12	1.79
Maxicare Health Plans	OTC	0.28	0.0	-62.7	0.81	0.13	0	0.00	0.0	0.0	0.00	N/A
Pacificare Health Systems	OTC	24.25	3.2	98.0	24.50	12.25	45	0.00	0.0	19.4	6.35	3.82
Safeguard Health Ent.	OTC	5.50	2.2	0.0	5.75	4.75	4	0.00	0.0	11.0	2.96	1.86
Sierra Health Services	AMEX	3.13	4.3	92.0	3.25	1.50	79	0.00	0.0	24.1	1.59	1.97
United Health Services	OTC	7.00	0.0	55.6	7.75	4.13	869	0.00	0.0	3.1	2.59	2.70
United Medical Corp.	AMEX	5.50	-4.3	4.8	6.75	5.13	33	0.00	0.0	10.8	4.11	1.34
U.S. Healthcare	OTC	10.13	1.3	74.4	10.50	5.25	3357	0.20	2.0	84.4	2.87	3.53
Western Health Plans Inc.	AMEX	1.00	0.0	44.9	1.13	0.50	24	0.00	0.0	-0.5	0.82	1.22
HMOs	AVERAGE		-0.9	51.3					0.2	16.1		
ALL COMPANIES	AVERAGE		0.3	14.7					2.7	13.0		

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