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Updates

AT&T to join ranks of employers offering cash balance plans

NEW YORK—Telecommunications giant AT&T Corp. will convert its traditional defined benefit pension plan to a cash balance plan, making it one of the largest employers with such a plan.

The conversion, which will go into effect Jan. 1, will apply to the 58,000 active participants in the company's pension plan for management employees, which, as of last Dec. 31, had $10.6 billion in assets.

As many of the roughly 200 employers that have established cash balance plans since

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Risk group enters runoff

California clinics opt to convert from RRG to purchasing group

By MEG FLETCHER

NASHVILLE, Tenn.—Members of a risk retention group with dwindling premium volume expect that converting to a purchasing group will continue to offer them a viable risk financing alternative.

That is the hope of about 120 nonprofit, community medical clinics in California, which belonged to the Tennessee-based Clinic Mutual Insurance Co. Risk Retention Group.

While CMIC began a runoff April 1, nearly all its former clinic members joined the newly organized Clinic Purchase Group Inc. in Tennessee, whose members are insured by NORCAL Mutual Insurance Co. of San Francisco.

The transition was prompted primarily by a federal law change that reduced the liability of several large members, reducing their need for high coverage limits, said Carolyn Greene, senior vp of Willis Corroon's national health care practice group in Nashville, Tenn. She serves as general manager for the risk retention group and will oversee administration services for the purchasing group.

The soft market for medical malpractice coverages also was a factor for both the risk retention group and the insurer to enter into the new arrangement.

The conversion is expected to help NORCAL diversify its business by expanding its client base. A.M. Best Co. cited lack of diversification when it downgraded its rating for NORCAL and other medical malpractice insurers last year to A from A+.

The members of CMIC risk retention group consisted primarily of independent clinics in California, which are 501(c)(3) corporations under the Internal Revenue tax code.

Since 1987, they have purchased professional liability, general liability and non-owned auto coverage through the group.

At year-end 1995, the risk retention group's gross premium was $5.28 million

See **RRG** *on page 52*

The state of risk retention groups

Since passage of the 1986 Risk Retention Act, 121 RRGs have been formed. As of April 24, their status is as follows.

Source: The Risk Retention Reporter

GRAPHIC BY JOHN HALL

Report's release angers Kaiser

By MICHAEL BRADFORD

AUSTIN, Texas—Kaiser Foundation Health Plan of Texas is crying foul over regulators' release of a report critical of its operations in Texas after the HMO agreed to pay the state a $1 million fine and make changes in the way it provides health care.

In an agreement reached April 18 with the Dallas-based health maintenance organization, the Texas Department of Insurance indicated it would release only parts of the report deemed non-confidential by the Open Records Division of the Texas Attorney General's office.

But the entire document was ordered released last week by Texas Attorney General Dan Morales after insurance regulators received requests by newspapers for copies.

The report is only part of Kaiser's woes in Texas. The HMO has lost $52 million in the state over the past two years due to rate cuts, and as part of its agreement with the Insurance Department is shoring up its financial condition with an $80 million contribution from parent Kaiser Foundation Health Plan of Oakland, Calif.

Release of the report brought protests from both the HMO and the Texas Department of Insurance.

Dr. William Gillespie, president of the Texas HMO, said the attorney general was wrong to release the report because it contained confidential patient and physician information and is laced with inaccuracies.

In a statement released by Kaiser, the HMO noted that the agreement with the Insurance Department stipulated that the HMO would have the right to appeal in district court an opinion by the Open Records Division before the report was released.

"Quality health care begins with a trusting relationship between patient and physician," Dr. Gillespie said in the statement. "The confidentiality of what is shared between patient and physician is critical to building that trust. I'm appalled the attorney general would throw that away, in violation of the law."

Texas Insurance Commissioner Elton Bomer was not happy with the release of the entire report either, saying the move violated the spirit of the agreement reached between

See **Kaiser** *on page 54*

Home offer may be signal

Insurer offers $40 million to settle $245 million obligation

By GAVIN SOUTER

BOCA RATON, Fla.—The Home Insurance Co. is offering to pay $40 million to settle total obligations of about $245 million to a residual market workers compensation pool, a move that reflects the deteriorating financial condition of the insurer in runoff.

The attempts by The Home to settle what is its largest known obligation could signal its negotiating stance with other residual market insurance pools.

The current proposal is a little more than half the amount The Home offered the National Council on Compensation Insurance last summer to settle its obligation to the NCCI-administered pool, several sources close to the discussions said.

The NCCI balked at the earlier offer.

If the new reduced offer is accepted, other workers comp insurers that contribute to the pool, which reinsures residual market pools in about 25 states, will be called upon to make up the deficit.

The NCCI officials and insurer board members are meeting today to consider the reduced offer.

The Home first tried to negotiate a reduced payment to the NCCI last summer. The insurer suggested that its obligation of $245 million be discounted at about 7% annually to reflect future investment income, which would reduce a payment made then to about $156 million. The

See **The Home** *on page 54*

North Dakota property owners still unable to determine damage

By RODD ZOLKOS and MICHAEL BRADFORD

GRAND FORKS, N.D.—With much of North Dakota's flood-ravaged Red River area still under water, many property owners have been unable to determine the full extent of their losses.

While retailers and other businesses in the heavily flooded region said late last week it was too early to estimate the extent of property damage and business interruption losses, it was clear many would suffer large losses.

A fire that swept through Grand Forks during the height of the flood added to the devastation. Among 11 buildings burned were the First National Bank and the building housing the Grand Forks Herald newspaper, which continued to publish under an

See **Flood** *on page 53*

AP/WIDE WORLD PHOTOS

In addition to heavy flooding, 11 buildings burned in downtown Grand Forks, N.D., to add to the devastation.

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NEWSPAPER

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Updates

AT&T goes to cash balance

Continued from previous page

BankAmerica Corp. set up the first plan in 1985, AT&T says it is doing so to increase employee appreciation and understanding of their pension plan. An AT&T spokeswoman said cost was not a factor in moving to the cash balance plan.

"We believe these changes will benefit employees and the company alike," said AT&T Senior Vp of Compensation and Benefits Donald Harrington.

Cash balance plans combine elements of defined contribution plans and defined benefit plans. As under defined contribution plans, accrued benefits are expressed as lump sums so employees instantly know the cash value of their benefits. But, like defined benefit plans, the plans are funded on an aggregate basis, and participants' accrued benefits are protected from investment risk.

Court strikes stop-loss rule

RICHMOND, Va.—In a victory for employers that self-insure their health care benefit plans, a federal appeals court says a Maryland insurance regulation defining when stop-loss insurance policies are considered health insurance and subject to state benefit mandates is pre-empted by federal law.

A three-judge panel of the 4th U.S. Circuit Court of Appeals earlier this month affirmed a 1996 lower court ruling that the Maryland regulation is pre-empted by the Employee Retirement Income Security Act. ERISA pre-empts state laws that "relate" to employee benefit plans. The 4th Circuit ruling is the first time a federal appeals court has ruled on the issue.

At issue is a Maryland regulation that says stop-loss insurance policies must have at least a $10,000 attachment point for specific claims and an aggregate attachment point of 115% of expected claims. Policies below those levels are considered health insurance and must abide by state requirements.

Opponents of the Maryland requirement, including the Self-Insurance Institute of America, say that ERISA denies states such authority. They also note that such requirements would subject employers to state health insurance mandates that raise the cost of providing benefits.

The issue also has been litigated in Missouri, where the state insurance commissioner has been blocked by state courts from implementing a stop-loss regulation similar to Maryland's.

However, the Maryland Insurance Department plans to ask that all 13 judges rehear the case, according to Thomas P. Raimondi, associate deputy commissioner.

Surety team leaves Near North

CHICAGO—A team of five surety bond executives and managers has left Near North Insurance Brokerage Inc. to join Aon Risk Services Inc.

Geoffrey E. Heekin, who led Near North's surety bond practice, is now executive vp-commercial surety services for Aon in Chicago. Robert E. Duncan was named senior vp-commercial surety services in Chicago, Douglas T. Hite was named senior vp-commercial surety services in Washington, Jennifer Jakaitis was named bond system manager in Chicago and Patricia Thurmond was named an account manager in Chicago.

Near North does not expect the loss to have any material impact on the company. "It's unfortunate," said Tom Ealy, a partner and managing director for Near North, but "we will withstand this fairly easily. We've been in the surety business for 30 years. For us, it's a multimillion-dollar revenue practice."

However, Near North expects it will "suffer no loss of clients or loss of support from our markets," he said. Near North's relationships with clients are "institutional," not specific to individuals.

Mr. Ealy said 13 people remain in the surety bond practice and that it already has hired one new account executive and is interviewing two possible candidates to lead the division.

Tobacco talks draw opposition

Controversy is starting to brew over the proposed settlement of tobacco litigation as attorneys general from states that have not sued cigarette manufacturers try to get a seat at the negotiating table and perhaps win a piece of any settlement fund.

It was announced this month that the tobacco industry and attorneys general from states that have sued the cigarette manufacturers are negotiating a settlement. The proposal under discussion includes the possibility of the tobacco companies contributing $300 billion over 25 years to a fund to compensate states and individuals for the cost of smoking-related illnesses (*BI*, April 21).

Bill Pryor, Alabama attorney general and a critic of the attorneys general's suits, has sent a letter to the tobacco companies saying he should participate in the negotiations on behalf of those states that have not sued. Mr. Pryor said in an interview that he "would welcome the opportunity to provide perspective and input" in "all aspects" of the negotiations.

Health groups have expressed opposition to the proposed deal. In full-page newspaper advertisements appearing in major daily newspapers, the American Cancer Society said, "We must protect the rights of present and future victims of tobacco-related disease to seek their own day in court," referring to the provision of the proposed settlement that would bind future claimants to it.

George Dessart, chairman of the American Cancer Society, appeared at a press conference with representatives from the American Lung Assn., the American Heart Assn. and government officials. Mr. Dessart said the American Cancer Society opposes any settlement that "grants the tobacco industry immunity from further legal action."

In related developments, a California state court judge in San Diego has allowed four of five counts of Los Angeles County's tobacco suit to proceed. The one count dismissed is for fraud.

Also in California, three bills that would permit the state to sue the tobacco industry have been approved by legislative committees.

See **Updates** *on page 54*

Employers may face suits over accommodation

Coping with AIDS under ADA

By JUDY GREENWALD

Employers may face a growing challenge to incorporate AIDS sufferers into their workforces as new drug treatment options prolong victims' lives and leave them well enough to return to work.

It is an issue employers can expect to deal with for years to come, because even as these new drug treatments offer fresh hope, the virus continues to spread, particularly among young people who soon will enter the workforce.

The Americans with Disabilities Act calls for employers to make reasonable accommodations to people suffering from all long-term disabilities, including AIDS. To a large extent, companies' treatment of AIDS sufferers will be no different from the treatment of any other disability, consultants say.

But complicating the situation of accommodating AIDS sufferers in particular is the fear and misunderstanding that the disease still can generate among co-workers.

Employers that mishandle these workplace situations could find themselves faced with lawsuits charging discrimination under the ADA.

"Employers are increasingly

See **ADA** *on page 51*

Patent insurance pending

By JOANNE WOJCIK

Companies that take their competitors to court to assert their intellectual property rights have a new weapon in their legal arsenal.

A Houston patent attorney has developed an insurance program underwritten at Lloyd's of London to help finance the cost of lawsuits alleging patent, trademark or copyright infringement.

The program is only the second of its kind to be offered in the United States. Intellectual Property Insurance Services Corp., a Louisville, Ky.-based managing general agent, has been the sole market for such coverage since 1989.

Unlike the existing IPISC policy, which targeted mainly mom-and-pop patent holders, the new Lloyd's policy is directed toward growing companies with $5 million to $200 million in annual revenues. Both are claims-made policies.

"The greatest risk a patent owner has is the cost of enforcement," said Joby Hughes, president of Litigation Risk Management Inc. in Houston. Mr. Hughes developed the Lloyd's program.

"There are over 5,000 companies in the U.S. that spend between $50,000 and $100,000 a month in patent litigation costs," he estimated.

"And when you get these huge corporations fighting over market share, it can really drive up litigation costs," he said.

"Intellectual property, specifically patent litigation, has been known to be a very expensive process," said Donald J. Fancher, director of litigation services for Deloitte & Touche L.L.P. in Houston.

See **Patents** *on page 52*

Alaska lawmakers approve bill that would cap punitive damages

ANCHORAGE—Alaska Gov. Tony Knowles is expected to sign a bill that would limit civil damage awards.

The legislation, approved April 21 by state lawmakers, would cap punitive damages at the greater of $500,000 or three times compensatory damages. However, in cases involving commercial activities, the punitive award would be capped at the greater of $7 million, or four times the amount of financial gain that resulted from the defendant's misconduct. The bill provides for the higher limits only if the plaintiff proves that the conduct was motivated by financial gain, and the likelihood of damage must have been known.

Punitive damage caps for illegal employment practices would vary, depending on company size. For companies with fewer than 100 employees, the cap would be $200,000, rising to $500,000 for companies with 500 or more employees.

The legislation also would limit compensatory awards for non-economic damages to the greater of $400,000 or $8,000 per year of the plaintiff's life expectancy. In cases of severe injury, the limit would be $1 million or $25,000 per year of the plaintiff's life expectancy.

The governor is expected to sign the final version of H.B. 58 because the bill resulted from a compromise with the legislation's sponsor, Rep. Brian Porter, according to a spokesman for the governor.

—By Roberto Ceniceros

Greater flexibility on work, life

Survey finds more employers offering work/family benefits

By ROBERT KAZEL

Significantly higher numbers of employers offered work and family benefits to employees in 1996 than five years earlier, a new study shows.

The report by Hewitt Associates L.L.C. shows increases in every category of work and family programs studied: flexible scheduling, child and elder care, adoption benefits, and employee assistance program.

Many of the 1,050 large U.S. employers polled are learning that such benefits are no longer an afterthought but can be a key and highly appreciated part of the employee benefit package, as well as valuable in attracting and retaining workers, a Hewitt consultant said.

"Work-life programs are being viewed more and more as an integral part of the benefit program instead of just being considered 'nice to do,'" said Aimee Chamernik, a Hewitt work-life consultant in Lincolnshire, Ill. "If you have a valued employee who knows the business well and wants to have a compressed work schedule or a part-time schedule, the employer is starting to consider that instead of losing that employee."

The category of benefits show-

See **Benefits** *on page 51*

Inside

- Although industry consolidation may trouble buyers, it is the customers who will win in the end, this week's editorial predicts. **PAGE 8**
- Businesses will not be able to tap insurance to cover losses due to recent threats of terrorism in the United Kingdom. **PAGE 45**
- A consultant warns that companies' obsession with health care costs will reduce competition and drive costs up. **PAGE 49**

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35th annual RIMS conference

Dealing with coverage denial

By DOUGLAS McLEOD

ATLANTA—Policyholders must improve their ability to negotiate settlements with liability insurers, which are increasingly prone to deny claims, experts say.

"We have learned the art of negotiating price and coverage very well, but now we need to learn the art of claims settlement," said R. David Turner, vp-risk management with Chicago-based Equity Group Investments Inc.

Coverage battles are becoming more common for a variety of reasons, including emerging new liabilities, such as employment-related exposures, repetitive stress injuries, electrical field claims and defamation, he noted.

In addition, many policies include newly developed terms and conditions that have not been tested in court and may reflect misunderstandings between insurer and policyholder of the scope of policies, he said.

Because of the proliferating coverage denials, "what we have in many cases today is a growing unfunded self-insured expense," Mr. Turner told an audience at the 35th annual Risk & Insurance Management Society Inc. conference held in Atlanta April 13-18.

A policyholder's first line of defense is to report claims in a timely manner to avoid charges that late notice has prejudiced an insurer's interest, advised Eugene R. Supparits, senior vp with Aon Risk Services Inc. in Chicago.

Whenever possible, risk managers should amend the "notice of loss" provisions in their policies to read that notice is due "as soon as practical once (notice is) received by the risk manager."

Risk managers also should keep copies of submissions, proposals and notes of any meetings with underwriters and brokers where their companies' operations and exposures are discussed.

"Those kinds of things are criti-

See **Claims** *on page 37*

Claims Management 1997 RIMS Report

PHOTOS: MICHAEL MARCOTTE

A wide variety of exhibits was shown at the 35th annual Risk & Insurance Management Society Inc. conference April 13-18. Below, risk manager Scott Lange (left) chats with *Business Insurance* Editor Paul D. Winston (center) and risk manager Brian Casey.

Risk managers at RIMS had plenty to see once they entered the exhibit hall, above.

Bucking conventional wisdom

View retentions as investments to lower costs: Consultant

By RODD ZOLKOS

ATLANTA—Setting risk retention levels in the context of an investment decision could produce far different conclusions from those that conventional risk financing wisdom would dictate.

In today's market, an investment-driven approach would suggest that a highly profitable company should retain less risk and allocate its capital in areas with a higher potential return, according to a panel of speakers at the Risk & Insurance Management Society Inc. annual conference earlier this month in Atlanta.

That sort of thinking might be unconventional, but analyzing retention levels as an investment should routinely lead to a least-cost risk financing program, the speakers contend.

Conventional risk financing wisdom dictates that retaining risk is "good" and buying risk transfer is "bad," said J.C. Beckstrand, a Minneapolis-based consultant specializing in alternative risk management solutions. Lower costs and greater control are attributes commonly associated with retaining more risk, said Mr. Beckstrand.

But, he added, "The conventional wisdom is based on a different time."

The conventional wisdom on risk retention also relies on the notion that avoiding risk transfer costs always lowers overall costs, Mr. Beckstrand said, and that's not necessarily so. Objective analysis is required to demonstrate whether retaining risk produces real economic benefits or not.

"Avoiding premiums is not necessarily inherently a good thing, especially as markets change," agreed Scott M. Sanderson, a vp at J&H Marsh & McLennan Inc. in Minneapolis and the session's coordinator.

"Retaining more risk is not necessarily a good investment decision compared to the alternatives," he said.

Mr. Beckstrand noted there are several reasons typically given for retaining risk, including avoiding frictional costs like premium taxes, insurance company profit and overhead and risk-pooling costs.

See **Retention** *on next page*

Finance 1997 RIMS Report

Brokers not the only service providers

By SALLY ROBERTS

ATLANTA—Risk managers are more sophisticated today than ever.

Companies are retaining more and more risk.

Service providers are offering unbundled solutions to a variety of risk management needs.

Brokers and insurers are consolidating.

With all this activity, do risk managers really need an insurance broker anymore?

Not surprisingly, two brokers who spoke during a session at the Risk & Insurance Management Society Inc.'s annual conference earlier this month answered affirmatively, while a risk manager answered with a more reserved, "It depends."

One of the biggest trends occurring in the marketplace is the convergence of the financial service industry with the risk management community.

A whole array of service providers outside the brokerage industry are entering the insurance field and are more than happy to serve risk managers directly, the panelists agreed.

Not only have reinsurers begun writing business directly with employers, but various investment banking firms also recently have put together insurance infrastructures with the goal to securitize insurance risks, explained James

See **Brokers** *on page 6*

Risk Management 1997 RIMS Report

Home is where the risk is

Telecommuting exposures manifold but manageable

By DAVE LENCKUS

ATLANTA—Telecommuters bring home numerous legal, safety and productivity risks, but risk managers can minimize them substantially so employers can take advantage of the benefits of virtual offices, three risk management experts say.

But, dealing with the various legal issues involved in telecommuting is like eating a plate of spaghetti, cautioned John E. Roskopf, managing director for risk management consulting in Chicago with Aon Worldwide Services, a unit of Aon Group Inc.

"You pull a string on one side and you'll be amazed at what moves on the other side," he told attendees at the Risk & Insurance Management Society Inc. conference earlier this month.

Estimates vary, but there are about 11 million telecommuters today, and there may be as many as 25 million telecommuters by the end of the century, said Sawyer B. Stern, risk manager for DeKalb, Ill.-based DEKALB Genetics Corp. Ms. Stern has been telecommuting 380 miles from her home office in Santa Claus, Ind., for seven years.

More employers are embracing telecommuting because of its potential advantages, said Ms. Stern, who moderated the session. Those advantages include:

- Cost savings of $6,000 to $12,000 annually per telecommuter due to reduced office space requirements, reduced turnover and productivity gains. Productivity gains stem from a more relaxed work environment; less time spent commuting, in meetings and socializing; and the convenience of working while sick or during bad weather.
- A larger labor pool from which to draw.
- An enhanced public image.

Companies can enjoy those benefits even if an employee cannot telecommute 100% of the time, Ms. Stern said.

But, telecommuting and apprenticeships are not a good mix, she said.

See **Commute** *on page 40*

Loss Control 1997 RIMS Report

Artist Paige Easter paints pictures to give away at Willis Corroon's booth, while the British Virgin Islands hope to harness trade winds.

Retention

Continued from previous page

"Some of the traditional methods for making risk retention decisions are based on rules of thumb," Mr. Beckstrand said, such as "the risk retention should be 2% to 3% of a company's equity."

"Who comes up with these?" he asked. "Often you see these in articles, but you don't see good citations of who the authors are."

Risk retention decisions are often market-driven, responding to a lack of available coverage, or are made in an effort to reduce a high premium.

Sometimes they reflect other approaches, such as: a management decision "based on feel," the organization's "threshold of pain" for risk, a "not a problem—couldn't happen to us" logic, or peer benchmarks.

Each of those techniques has problems, Mr. Beckstrand said:

- Guideline ratios, for example, are overly broad, bear no relationship to the premium avoided and are set subjectively, he said.
- Market-driven decisions, where retention levels are driven up during a hard market and subsequently remain there because the company "got used to it," are flawed because the retention isn't based on a rational decision, Mr. Beckstrand said.

Such externally controlled decisions assume the status quo is suitable and don't measure the relationship between risk and reward.

Setting retention levels to reduce premiums also involves no objective consideration of the retention's risk and reward and fails to consider the impact of an unanticipated claim that goes beyond the budget.

It also doesn't address how stockholders might feel about avoiding that high premium if the company does suffer a large loss.

- "Feel"-based decisions by management are driven by reaction rather than objective analysis, Mr. Beckstrand said, adding that no rational decision can result from a process relying on "feel."

In such a process, management generally makes a retention decision without the input it should receive from the risk manager. "Here's an area where you can lend some solid expertise and come right to the forefront in making a solid management decision," Mr. Beckstrand said.

- Threshold-of-pain retention decisions are much like those made on feel, he said, only masked as earnings per share decisions. The problems are much the same as well, he said. "You go in and you say: 'Well, how much of a hit will the board take? Five cents a share? Ten cents a share?' "
- The "can't happen to us" approach "ignores the probability of losses," Mr. Beckstrand said. If such a decision does happen to produce the lowest ultimate cost, it has done so purely by chance.
- Peer benchmarks "assume that everybody else is efficient," Mr. Beckstrand said. "It ignores all the different dynamics of each individual organization," he said. "It's still exceedingly difficult to have that be statistically comparable."

Relying on benchmarks also assumes your company's risks are identical to those you're benchmarking against. And it overlooks the possible flaws in the accuracy and interpretation of responses and the fact that benchmarking does nothing to measure the risk-reward relationship in a retention decision.

Whatever the approach, retaining risk exposes the organization's capital to losses, Mr. Beckstrand noted.

Retaining risk does produce an immediate reward in the premium saved, Mr. Beckstrand said, but the financial impact of retention is in the future. The result, he said, is much like an equity option investment.

Mr. Sanderson picked up on the equity option comparison, using the example of an investor purchasing a put option to sell a stock at a set price below the current price over the next three months.

"If the stock falls dramatically you will make a massive increase on the value of that option," he said.

Meanwhile, if the stock's value remains the same or increases, the put has no value at expiration, and the price the buyer paid for it is lost.

But what the buyer did receive over the term of the option is protection against the stock's price decreasing below the put price minus the cost of the option, Mr. Sanderson said. And that protection was obtained without having to sell the stock and lose the upside potential for increases in the stock's price. "Doesn't that sound a lot like insurance?" he asked.

Mr. Sanderson noted that each exposure an organization faces has its inherent volatility. In looking at retention levels as an investment decision, a risk manager must examine each exposure separately. The more volatile the exposure, the greater the premium savings must be to legitimize assuming the exposure.

Risk managers must develop a range of loss possibilities by fitting loss expectations for various exposures into probability distributions that reflect the chances different loss levels will occur, he said.

And the greater the volatility of the exposure, the more the least likely loss levels will vary from the "normal" loss, something that must be considered in deciding how much of that risk to retain, Mr. Sanderson said.

A 1 in 100 product liability loss, for example, would vary far more from the normal product liability loss than a 1 in 100 loss in a less volatile area, such as workers comp, would vary from the mean.

"Which additional retention would you want?" he asked. "Clearly workers compensation. If you take a higher retention on product liability, you'd better have avoided a much higher premium to make it worth it."

Once a risk manager has established the probability of various losses, that information can be used to view various retention levels as investments and compare their value to paying insurance premiums and making other uses of the capital otherwise exposed in the retention.

"Basically what you're trying to do is put an economic value on what the retention is," Mr. Sanderson said. "If you can buy it cheaper in the market than what the economic value is, you should buy it."

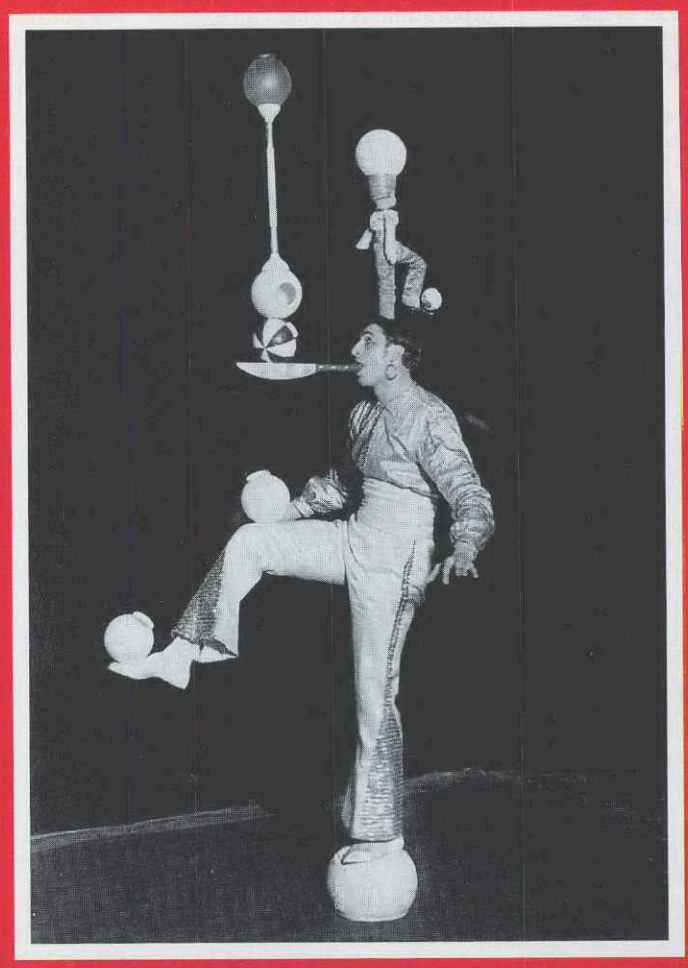
Which brought Mr. Sanderson to the question of whether a very profitable organization with numerous investment possibilities should retain more or less risk. The value of such a company's capital is high because it has so many possible ways of using it, while the rate of return from committing that capital to risk retention would be relatively low, he said.

"Given this formula, you should retain less risk," he said. "Your cost of capital is much higher, and you shouldn't waste it on retaining risk."

Such least-cost decisions will result in frequent changes in retention levels, Mr. Sanderson said.

Meanwhile, the process of analyzing risk retention as an investment allows risk management and financial management to work together to reach the best economic decision for the organization.

John B. Iverson, vp risk management for Boise, Idaho-based Albertson's Inc., moderated the session. BI



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Opinions

Buyers will win in the end

WHAT IS A RISK MANAGER to make of the tide of broker mergers and acquisitions and the many rumors swirling through the market about deals to come?

Will it mean a new era of insurance and risk management superstores, offering a gigantic array of services with global reach, or an oligopoly, where a few huge companies control the market and buyers are stuck with nowhere else to turn?

We believe that while some buyers initially may find themselves between a rock and a hard place with fewer large brokerages to choose from and an insurance market eager not to antagonize the megabrokers, eventually the consolidation trend will result in more and varied choices and a continued buyers' market for risk management services.

At the top of the food chain, Marsh & McLennan Cos. Inc. and Aon Corp. appear to be battling it out to be the world's largest broker, making several key acquisitions and taking other large players off the board. In the process, they clearly have enhanced their presence in key markets, such as retail and reinsurance brokerage, captive management and consulting, and offer much to risk managers. Indeed, since last July, five of the world's 20 largest brokers have been absorbed by these and other brokers.

The next-largest players—Sedgwick Group P.L.C. and Willis Corroon Group P.L.C.—are the subject of market rumors on whether they will merge with one another, acquire other firms or be acquired themselves.

Below them are countless other strong brokers that offer many of the same services as the big players, though through fewer offices and with fewer people. Some of these smaller brokers undoubtedly will merge or be acquired in an effort to boost their competitive stature. But others may find they have a competitive advantage just as they are.

Not all buyers want to place all their eggs in the baskets of a few megabrokers.

The current consolidation in the market gives Sedgwick, Willis and smaller brokers a key opportunity—if they take advantage of it—to compete for business that previously might not have looked twice at them as viable service providers.

We expect the so-called second-tier brokers to compete aggressively with the biggest brokers, positioning themselves as more specialized, more customer-focused, more innovative or more flexible.

To meet the needs of large buyers, many smaller brokers will certainly need to boost their capabilities in key areas: global reach, consulting and alternative risk financing, to name a few. Those that can demonstrate proficiency in these and other risk management services should find themselves with new business while enhancing their service to existing clients.

To be sure, consolidation will continue as smaller brokers look to acquire or form strategic partnerships to complement their abilities. This situation also may provide an opportunity for non-traditional players to enter the brokerage business, including retail and investment banks that have been eying insurance. And, who knows, perhaps even insurers and broad-based financial services companies will acquire brokers.

Ultimately, we think buyers will benefit from the competition for their business and a range of new options to choose from. While some may be feeling the pinch of consolidation now, they should not lose sight of the fact that the customer is king.

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Letters

Bermuda, Massachusetts deserve EMLICO criticism

To the editor: I am writing on behalf of one of the several hundred reinsurers intentionally damaged by Electric Mutual Liability Insurance Co.'s redomestication to Bermuda, to respond to the April 14 letter to the editor, "Bermuda Defends EMLICO Response," in which Roger Scotton unfairly criticizes your March 24 editorial about EMLICO.

Your editorial quite rightly criticized the Massachusetts and Bermuda insurance regulators for their inappropriate actions and inaction in the face of evidence surfacing—despite General Electric Co.'s and the EMLICO liquidators' vigorous efforts to suppress it—that indicates GE and EMLICO engaged in an elaborate scheme to "export" EMLICO from Massachusetts to Bermuda, in violation of both Massachusetts and Bermuda law.

Mr. Scotton asserts that "as a matter of prudent regulation the island has chosen to remain neutral and stay out of what is essentially a disagreement between contracting parties. . . ."

The fact of the matter is that GE and EMLICO did not simply breach EMLICO's reinsurance contracts; we contend they also violated Bermuda law, which prohibits the incorporation in Bermuda of an insolvent insurer such as EMLICO. When Bermuda law is violated, and its regulatory process is abused, the public interest of Bermuda is implicated, a fact that Bermuda court judge recently pointed out.

As your editorial justly maintained, it is not in the best interest of Bermuda for its insurance regulators to remain inert in the face of compelling evidence suggesting that GE and EMLICO engaged in serious misconduct against both Bermuda and Massachusetts. GE and its hand-picked EMLICO liquidators have repeatedly relied on Bermuda's inaction as "evidence" that no fraud occurred; hence, Bermuda's "neutrality" in effect is aiding the wrongdoers.

Mr. Scotton also suggests that the reinsurers have a "range of legal and other remedies open to them" to redress the fraud. He conveniently overlooks that:

See **Letters** *on page 50*

Letters to the editor

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611; fax: 312-280-3174; e-mail: pwinston@crain.com

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Broad view may help managers advance

By ROBERTO CENICEROS

ATLANTA—Business trends are creating the opportunity for risk managers to manage more financial risks, expand their roles within their companies and gain recognition by becoming chief risk officers.

But it is up to risk managers to seize the opportunity and show they can redefine risk management by thinking beyond traditional responsibilities, speakers at a session of the Risk & Insurance Management Society Inc. conference earlier this month said.

"It's important that you leverage yourself throughout the organization," said Richard M. Inserra, assistant treasurer-risk management and insurance for Union Carbide Corp. in Danbury, Conn.

"And if people see you driving that—a more consistent approach to risks that transcends all different types of risks—that will lead to what we are talking about today, the chief risk officer position. At least that is our hope. Time will tell," he said.

The approach requires looking at a company's entire spectrum of risks, including market risks, credit risks, interest rates and stock prices as well as operations risks, said James C. Lam, vp and chief risk officer for FMR Corp. in Boston, more commonly known as Fidelity Investments.

But most importantly, the chief risk officer approach requires looking at the integration of company-wide risks, he said. And integration is not just the flavor of the month. Several trends are creating new risks.

Those include the globalization of financial markets, which increases the political, foreign exchange and travel risks, among others, that more companies now face, said Brian Kawamoto, a San Francisco-based executive vp with Aon Group Inc. Additionally, technology advancements have created a 24-hour marketplace with a broader range of market risks, he said.

Those risks can be integrated into the risk manager's purview and provide opportunities for risk managers to create value, rather than just control costs, said Mr. Kawamoto, who coordinated the session.

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The drive at Union Carbide to gain more responsibility over financial risks—such as interest rates, commodity risks and foreign exchange—has driven Mr. Inserra to show that risk management is more than the mere control of potential hazards, the risk manager said, noting he has taken every opportunity to portray himself as a financial officer.

The key is to be viewed as a company-wide problem-solver, he said.

For example, he was recently asked to sit in on a meeting with the human resources department. The problem was that the company was not receiving a high enough investment return for what it was paying a life insurer.

Mr. Inserra suggested that the insurance be provided through Union Carbide's captive insurer. His analysis required breaking apart the life insurance program just as he would a property/casualty program, he said. That gave him a view of the variety of ways the insurer was profiting from it.

"What we did is came up with an insurance mechanism, but I was in the meeting as a financial guy," he said. "We came in with a very elegant solution that is going to be put in place this year. We will guarantee a higher rate of return."

Since then, the human resources department has called Mr. Inserra to evaluate its mechanism for assuming the home mortgages of employees it transfers until their homes are sold. And he has been involved in other projects.

"We are still focusing on hazard and operational risks, the insurable risks we are most used to," he said of his risk management department. "But what is now happening is that we are talking about things in different ways. We are thinking strategically. We are thinking long-term."

More companies are appointing a chief risk officer, or a company-wide risk management position that looks over a company's risk profile from a horizontal prospective, rather than from a vertical one, while still maintaining business unit accountability, said Mr. Lam of Fidelity.

The holistic or integrated approach requires a self-assessment system, he stressed. Fidelity relies on an interwoven, three-component framework to assess risks. Its risk management best practices fall under the framework.

The first leg of the overall framework includes key objectives defined by four basic questions, represented by the acronym R.I.S.K., he said:

- R is for return. Or, is the company achieving an appropriate return for the risk it is taking? Alternatively, the question can be asked backwards. If it is earning a high level of profit or a high level of growth, what is the exposure associated with the investment?
- I is for immunization. Does the company have the controls in place to minimize risk losses?
- S is for systems, with the question being: Does the company have the systems to manage and measure risks?
- K is for knowledge. Does the company have the right skills, culture and values for effective risk management?

The second leg of the overall framework is made up of five risk categories. They are business risk, operational risk, market risk, credit risk and organizational risk.

"But most importantly is the organizational units," Mr. Lam said in explaining the third component. "It is the business units and corporate unit that have ultimate responsibility for risk management."

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International risks require careful attention

Workshop focuses on attendees' experience

By SARAH GODDARD

ATLANTA—Managing risks for international operations requires flexibility and understanding on the part of the risk managers.

That has been the experience of a number of attendees at a workshop during the Risk & Insurance Management Society Inc. conference in Atlanta earlier this month.

Session moderator Brian Casey, director of risk management and loss prevention at Corning Inc. in Corning, N.Y., set the stage by explaining the sorts of issues to keep in mind when managing risks of a multinational organization.

For example, he cautioned against automatically choosing a wholly centralized risk management program over a wholly decentralized program. Neither end of the spectrum is the best solution, he advised.

Instead, devise the program so it is somewhere in the middle, he suggested, using a centralized thought process with strong communication between the risk management departments and operations. "Let them know if there are changes in the deductibles, changes in the program and explain why and how it is going to affect them," he said.

Take the time to go overseas and explain these things directly to the people involved, advised Mr. Casey. In many countries, loss prevention does not have the same importance as in the United States, and it is vital that the risk manager get the loss prevention message across.

At the same time, by visiting the remote operations, the risk manager can identify problems that may affect a plant's or factory's ability to comply with U.S. loss prevention standards—for example, an inadequate water supply making a sprinkler system impossible.

A lot of U.S. companies are rethinking their "highly protected risk" approach to overseas operations, said Mr. Casey, and instead are "going for working with what they have." The emphasis has shifted from strict methodology to housekeeping.

Teresa Pahl, president and chief executive officer of Aon Enterprise in Chicago, reminded attendees they should keep their eyes on both the macro and micro issues in countries where their organizations are considering starting up new operations.

"Risk managers do not spend enough time on the macro issues," said Ms. Pahl. They ignore, for example, the potential impact of the World Trade Organization's GATT financial services talks currently on the table.

Bilateral trade agreements between the United States and countries such as South Korea and Malaysia are broader than those being discussed at the present through the WTO, she warned. Potentially, the GATT agreement could mean U.S. companies are "losing a little bit on the financial services side," she said.

Currency fluctuations and volatility also should figure high on risk managers' minds, she said, citing the devaluation of the Mexican peso at the end of 1994 and the beginning of 1995 as an example of the risks run by international organizations. Insurance policies that were denominated in pesos would not be sufficient to cover replacement costs after the devaluation, said Ms. Pahl.

Political instability is another issue to be watched, said Ms. Pahl, adding that the climate has changed over the past five to 10 years.

The top item on the international agenda, though, is workers' safety and rights. Increasingly, "the private sector is being asked to step in and assist with currently public funded social programs," said Ms. Pahl, who has seen a particular interest from multinational organizations in employee benefit programs.

"One of the trends I would like to see is more cooperation with employee benefit programs and the overall insurance program," she said. People are much more aware of their rights and are speaking out more, said Ms. Pahl.

They also are speaking out about environmental issues. Certain countries such as China and Vietnam have taken the U.S. Superfund law as the template for their own environmental liability standards, she said, and European countries have not reached agreement about how the European Commission should tackle the issue.

Legislation is "very specific by country" and risk managers should be fully aware of the different legal requirements, said Ms. Pahl.

The micro issues of a multinational also can be a headache for risk managers, said Ms. Pahl. Program administration questions—such as who is responsible for what, including the reporting line for losses—can create problems, though these are minimized if the risk manager explains to the chief financial officers in each country what he or she is trying to achieve.

"Get up and talk about what you are doing in the areas of risk and asset management," Ms. Pahl advised, though she warned that by opening up this channel of communication, "problems will come thick and fast—but you will be able to resolve them."

Also, there needs to be a clear understanding among the multinational, local broker and global broker that messages are consistent. "Ask to see any significant briefings to networks," advised Ms. Pahl. Any inconsistency generally will lead to the local market blaming the risk manager.

In Ms. Pahl's experience, claims handling has been the biggest problem over the past few years, fueled by misunderstanding and poor communications. Often, "there is a lack of understanding by the local management of what the policy does, so therefore when a loss occurs, there is an inappropriate reaction," she said.

Karen Devaney, director of insurance and human resources for Boston-based Hoyts Cinemas Corp., coordinated the session. BI

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1997 *Business Insurance* Risk Manager of the Year Judy Lindenmayer, left, confers with Publisher and Editorial Director Kathryn J. McIntyre.

Policyholders can face pitfalls with business interruption claims

By DOUGLAS McLEOD

ATLANTA—Calculating business interruption losses is no easy task, and risk managers face numerous pitfalls and "gray areas" of coverage, a panel of experts warns.

"It's not a science. It's an art," observed Glenn Pomerantz, a senior manager of the Insurance Claim Services practice of Ernst & Young L.L.P. in New York. "There are many areas where reasonable people can disagree."

The business interruption coverage that accompanies named perils property insurance normally is triggered by a chain of events, noted Michael Leasure, a claims manager with Arkwright Mutual Insurance Co. in Waltham, Mass.

For coverage to apply, he said, a claim must: stem from physical loss or damage; have been caused by an insured peril; apply to property described in the policy; and involve an interruption of business operations.

The insurance then covers the "actual loss sustained"—which is defined in the policy—for a specified period, usually from the time the property damage occurs to the time repairs could be completed to restore operations, he said.

Policyholders often make mistakes in figuring their business interruption losses, said Brad Ryden, a partner with the accounting firm of Matson, Driscoll & Damico in Philadelphia.

These mistakes include:

• Claiming a business interruption loss during an idle period at a plant.

Most policies have an "idle periods clause" stating the policy does not cover "any period during which business would not or could not have been conducted" for any reason other than physical damage, he explained.

"Obviously, there cannot be a production loss during a planned shutdown," Mr. Ryden noted in a written summary.

• Including ordinary payroll in a business interruption claim when payroll is not covered by the property policy.

• Claiming a sales loss greater than the production capacity of a damaged plant or for a period longer than the interruption period.

Sales projections should be "reasonable" and should be supported by sales averages, historical trends and other data, Mr. Ryden advised.

Another common policyholder mistake is failing to deduct from the claim normal operating costs saved because of the loss, such as utility expenses saved when a power outage causes a loss.

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• Assuming the gross earnings and gross profits of the damaged business are the same thing.

Each figure is used in a different method of calculating business interruption losses, and using the wrong one could either overstate or understate the loss, Mr. Ryden said.

• Assuming a production shortfall automatically causes a business interruption loss.

Most property policies define "actual loss sustained" to mean that a production loss does not necessarily produce a business interruption loss, he said. Instead, the policyholder must show that actual sales were lost.

For example, a company whose operations are not producing at capacity may be able to make up some or all of the lost production with reserve capacity, Mr. Ryden said.

Similarly, a policyholder may have to use inventoried product to reduce a business interruption loss, he added.

Brokers can help their clients navigate the complexities of these claims, said Salvatore Zisa, a property claims manager with Marsh & McLennan Inc. in New York.

Brokers can help arrange the assignment of a satisfactory claims adjuster, analyze the claim itself, coordinate a meeting between the policyholder and insurer to discuss the loss calculations, address coverage issues, and request partial payment from underwriters, Mr. Zisa noted.

"The broker should request partial payment early," he said, explaining that this not only helps the policyholder's cash-flow position but also shows good will on the insurer's part.

He also emphasized the need for clear communication among the policyholder, broker and insurer.

"If in real estate the key is location, location, location, in a successful business interruption claims settlement the key is communication, communication, communication," he said.

"Whenever I've seen a claim go off course, it's usually because of lack of communication or missed communication," Mr. Zisa said.

Other panelists included: David Varney, director of insurance and risk management for Terra Industries Inc. of Sioux City, Iowa; Richard Broderick, director of risk management for VF Corp. of Wyomissing, Pa.; and Dan Lentz, national director of Insurance Claim Services for Ernst & Young in Washington.

Mr. Broderick acted as moderator and Mr. Pomerantz as coordinator. BI

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Best practice research role up for grabs

Risk Management 1997 RIMS Report

By ROBERTO CENICEROS

ATLANTA—The Pittsburgh Chapter of the Risk & Insurance Management Society Inc. is expanding its research into best practices with new studies on risk management publications and variable compensation for brokers.

However, the latest research is among the last that will be done by the chapter, which after several years is seeking other RIMS chapters to carry the torch to illuminate the profession's best practices.

The chapter's final report on risk management publications is expected to be available in June. However, preliminary findings were presented at the Risk & Insurance Management Society Inc. conference.

The risk management publication report adds to best practice studies that chapter members reported on at last year's RIMS conference in Toronto (*BI*, May 6, 1996).

A year ago, the RIMS chapter had already spent a year identifying the best practices and benchmarks for a variety of risk management functions, including broker selection, cost allocation systems, safety program assessment and selecting a risk management information system.

Those topics were selected after the Pittsburgh chapter sent questionnaires to more than 300 individuals, asking which tasks respondents would like to learn more about and which ones they would find helpful to benchmark.

Since then, the Pittsburgh chapter's research has continued, with members most recently compiling information on risk management libraries and variable or incentive compensation for brokers. The latest results were presented in Atlanta.

"We all have individual blind spots because we haven't done certain things before," said Gerald L. Belfiglio, corporate risk manager for Highmark Blue Cross & Blue Shield in Pittsburgh. "We hoped to perhaps help with those blind spots."

Surveys were mailed to 120 people. They were also posted on the RiskWeb and RIMSNet sites on the World Wide Web. The chapter received 78 responses. Respondents were asked about the publications most frequently found on their bookshelves. They also ranked the usefulness of those materials, with each respondent allowed to list several periodicals.

Business Insurance was listed 47 times, the most often-cited periodical. RIMS' Risk Management magazine was cited 30 times, making it the second-most-listed periodical. National Underwriter was third with 21 cites; Risk & Insurance received 16; and the John Liner Letter followed with nine.

Respondents used a scale of one to five to rank the usefulness of the publications they listed. The Pittsburgh chapter did not attach a meaning to the number rankings.

"We decided we didn't want to do anything more than report the information because we didn't want to be seen, in any case, either endorsing or not endorsing something," said.Sue Anne Mitro, manager-risk and insurance for The Hillman Co. in Pittsburgh. However, a higher ranking clearly determines a publication's usefulness.

"In our minds a five or a four was saying, 'It is truly worth the money,'" Ms. Mitro said after the session. "A three, which is the middle range, is saying, 'It's useful, but it's maybe not stupendous. Any periodical that got a five or a four was doing good. A lot of people didn't give a five to anything; four was their highest rating."

About 90% of respondents who cited Risk Management Magazine as a publication on their shelves rated the publication as a four or five. About 70% of those who cited *Business Insurance* gave it similar ratings.

Meanwhile, among the data obtained by the chapter on broker compensation, were examples of various incentive compensation models that have worked for respondents.

One of the most sophisticated models made it quite easy to gauge the broker's accomplishments, Mr. Belfiglio said. It was used by a Pittsburgh company that negotiated for its broker to develop and put in place a workers compensation safety and education program.

The broker earned one level of compensation once it and the company completed development of the program. The program also had to be developed within a certain period of time or the broker did not receive the pay. A second level of remuneration came after so many field sessions were held within a specified time period. The final portion was based on satisfaction.

But satisfaction was not based on a reduction in losses, because the client felt it would take too long to materialize and measure. Satisfaction was based on a survey of employee participants at the end of the training session. If the broker got an excellent rating from the audience, it qualified for a maximum amount of compensation. If the rating was only good or poor, it didn't receive as much.

"I understand it worked very well with the broker earning the majority of the incentive pay," Mr. Belfiglio said.

Another broker compensation model was submitted by a company that acquired another organization with a large amount of open claims reserves for product liability losses. First the purchasing company hired an actuary to examine the reserves. Then it turned them over to a vendor with claims-handling expertise.

The vendor earned incentive pay based on a reduction of the net present value of reserves. A payment schedule was based on the amount the vendor was able to reduce over a specified period of time.

Copies of the chapter's final report will soon be available from RIMS via its home page, http:\\www.rims.org, Mr. Belfiglio said. A package of reports costs $48 for RIMS members and $60 for non-members.

Pittsburgh chapter members are too "tired and tapped out" to continue the work themselves, members said, though they think expanding on their efforts would greatly benefit risk management. They hope other chapters will continue this research project. The chapter will make its tested survey forms available to other chapters that may be interested.

Mr. Belfiglio coordinated and moderated the session. He was joined by Ms. Mitro and David F. Brauer, senior vp for J&H Marsh & McLennan Inc. in Pittsburgh. BI

Cutting losses may be as easy as taking a nap

By DAVE LENCKUS

ATLANTA—If risk managers think employee fatigue is outside of their sphere of influence, they should think again, a risk manager advises.

"Courts increasingly are saying this is your business," and the causes of fatigue are only growing, said Kevin M. Quinley, senior vp-risk services for Medmarc Mutual Insurance Co. of Fairfax, Va.

"It's become a hot area of the law. Lawyers are raising it as a new area of corporate responsibility," Mr. Quinley told attendees at the Risk & Insurance Management Society Inc. conference earlier this month.

"Fatigue is a risk management hazard that begs for risk management solutions," he said.

"Are you blurry-eyed from working on insurance renewals or finishing that report for your CEO?" Mr. Quinley asked. "The fact is work's intrusion into our daily life is taking its toll."

The result is more than sleep deprivation, he said. The impact often is loss of life, personal injury, property damage and liability. "Some of the most infamous industrial accidents all occurred in the middle of the night. Coincidence? You be the judge."

Those catastrophic accidents include the grounding of the Exxon Valdez oil tanker in Alaska, the Three Mile Island and Chernobyl nuclear accidents, the lethal poisonous gas leak at a plant partially owned by Union Carbide Corp. in Bhopal, India, and the downing of Korean Air Lines Flight 007 by Soviet fighter planes after the jet drifted into restricted airspace.

While other factors also played a role in the accidents, employee fatigue is the common thread in all of them, Mr. Quinley said.

Fatigue is a risk that employers industrywide face, said Mr. Quinley, citing statistics that purport that 12 million U.S. workers suffer from work addiction and that workers over the past 20 years have added one month's worth of work a year to their schedules.

For example: Airline pilots fight fatigue. Stockbrokers get up in the middle of the night to complete deals on foreign exchanges. Medical residents work on call for 36 hours straight. "Is this quality health care or a sane way to train doctors?" Mr. Quinley asked.

Lawyers try for 2,000 billable hours a year. Mr. Quinley recalled the suicide of a young lawyer five years ago when he no longer could withstand the pressure of 20-hour workdays and "unrealistic deadlines and workloads."

Corporate downsizing is a major factor leading to employee fatigue, Mr. Quinley said. "The net effect is often you have fewer people around to do the work, and that stretches the workday. How many people do you know who work 40 hours a week?"

Corporate cultures that measure loyalty by the number of hours worked and technological advancements that keep employees in touch with the office regardless of where they are or the time of day also contribute to fatigue, he noted.

And, courts are taking notice.

Mr. Quinley pointed out that courts are blaming corporations for accidents caused by tired employees, ruling that companies knew or should have known employees were dangerously fatigued.

Loss Control
1997 RIMS Report

For example, a Texas appellate court last year said a trucking dispatcher overworked company drivers and caused a fatal accident. The court awarded plaintiffs $2.3 million of damages, including $1 million of punitive damages.

"What should we do?" Mr. Quinley asked. "I think the solution transcends the simple advice of 'Sleep in tomorrow,'" Mr. Quinley said.

A problem is that while there is much information detailing the extent of the problem, there is little information available on how to deal with it.

A classic risk management solution may be no solution at all, Mr. Quinley said. Insurance—workers compensation, general liability, professional liability, or health insurance—may cover many losses resulting from fatigue. "But, insurance has some real limitations as a risk management technique," Mr. Quinley said. "It deals only with monetary losses, not causes. Insurance might even have the pernicious consequence of masking the problem."

High-tech help may be available soon. Mr. Quinley noted that some automobile manufacturers are testing devices that both detect when a driver may be nodding off and then sound an alarm or physically nudge the driver.

"It's a start. But the solutions have to reach the core of corporate culture," Mr. Quinley said.

Employers have to "rethink" their workshift scheduling so they do not promote employee fatigue, he said. Staffing levels should be monitored to assure that workers can accomplish their jobs in a reasonable time frame.

Employers should evaluate whether promotions are based on effectiveness or on the most hours worked, which many companies use as a yardstick on corporate loyalty.

As part of that loyalty test, many companies encourage workers to not take their vacations, he noted.

Mr. Quinley advised attendees to consider how many managers at their companies look for signs of sleep deprivation and then intervene by telling the fatigued employee "to ease off and decompress."

As risk managers attempt to solve the problem in their companies, they may hit an "invisible wall between risk management and human resources," Mr. Quinley warned. "Human resources may consider fatigue management part of corporate wellness and something they should be the sole architect of.

"To effectively manage the risk, the wall has to come down." That is especially critical if human resources view fatigue as a medical problem rather than a corporate issue, because then "nobody addresses it front and center," Mr. Quinley said.

At the same time risk managers are extending an olive branch to human resources, they also should be sensitizing top management to its implications, Mr. Quinley said.

He encouraged risk managers to begin to work immediately on remedying corporate fatigue at their companies. "But, don't pull an all-nighter to do it," he said.

Allison G. O'Sullivan, director of risk management for The Coca-Cola Co. of Atlanta, moderated the session. Jane Y. Rastallis, a senior consultant with Watson Wyatt Worldwide in Wellesley Hills, Mass., coordinated the session. BI

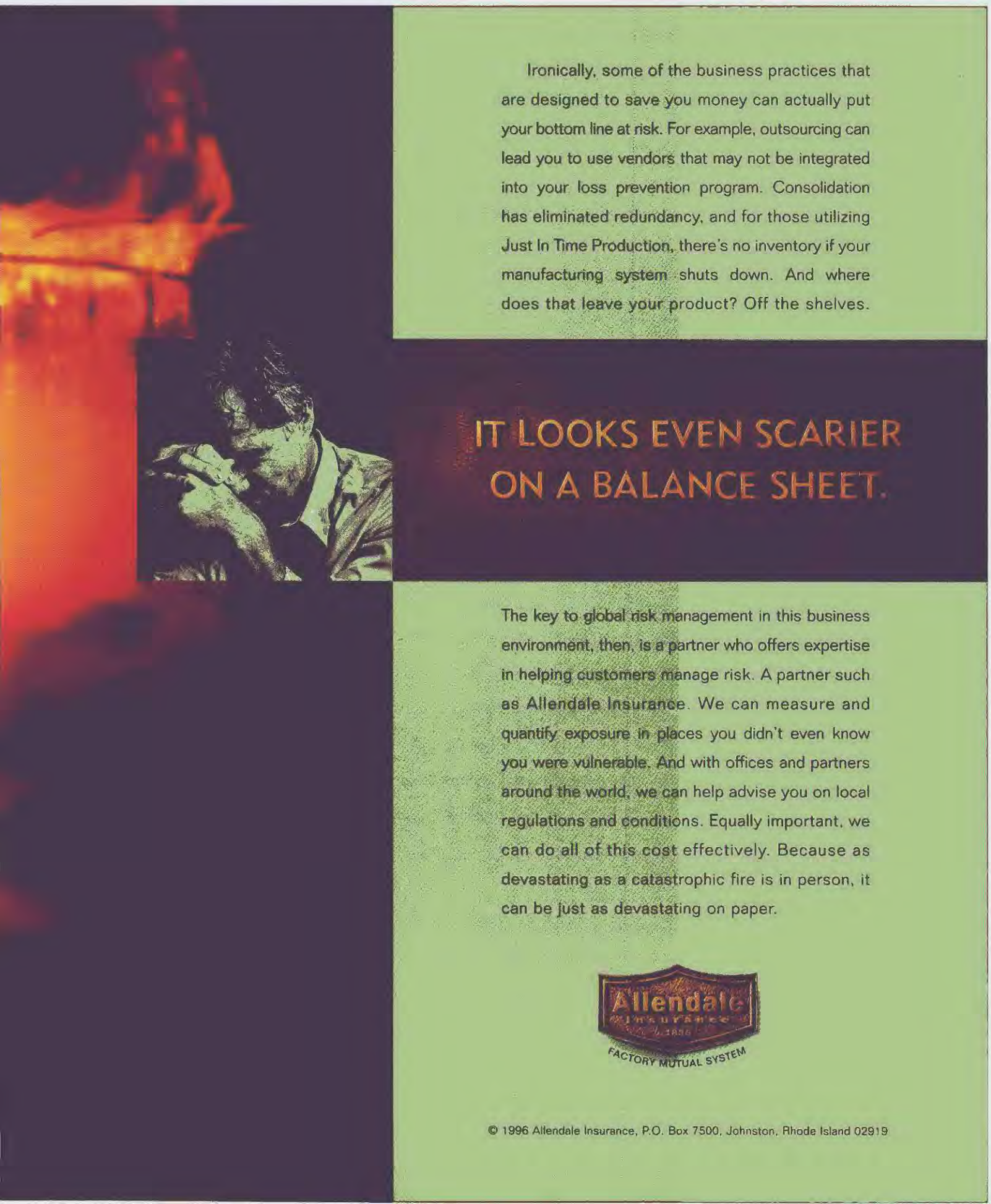

PHOTO: MICHAEL MARCOTTE

RIMS TV newscasts provided daily on-the-spot coverage of events for conference attendees.

Tailored communication key to delivering message

By MICHAEL PRINCE

ATLANTA—What do pingpong balls, the bombing at last year's Olympic Games and Pac Man all have in common?

A panel used all of them in describing ways for risk managers to effectively communicate.

To demonstrate the importance of communication, the panel at a session during the Risk & Insurance Management Society Inc.'s conference earlier this month in Atlanta created its own "factory" made of boxes and tubes.

Staffed by "volunteers" chosen from the audience, the factory manufactured special pingpong balls. Each person performed one part of the process, such as loading the balls into the manufacturing chamber—a plastic box—or approving the final shipment.

What made the process difficult was that none of the workers was permitted to speak. And their performance in manufacturing pingpong balls reflected their level of communication. None of the balls were acceptable to the "customer," another session attendee. Criteria for acceptance were provided beforehand.

But after the workers were able to talk and make some adjustments to the process, the balls were accepted, demonstrating the importance of communicating in achieving corporate goals.

Adjusting a presentation to fit the audience is a critical aspect of communicating, said David Mair, risk manager of the United States Olympic Committee in Colorado Springs, Colo.

He said there are four types of learners:

- Visual learners, who learn by seeing.
- Auditory learners, who learn by hearing.
- Kinetic learners, who learn by doing.
- Those who use a hybrid of the three.

In making a presentation, a risk manager should tailor it to the type of learner. But, as is most often the case, when one doesn't know the style of the audience, one has to adapt, he said.

"What we have to do is put together a combination of mechanisms so that everyone has the ability to take away what you are communicating," Mr. Mair said.

Knowing the purpose of the presentation also determines how to present it. For example, Mr. Mair was the risk manager during the bombing at the 1996 Summer Games in Atlanta. Immediately after the bombing, Mr. Mair needed feedback from other people to determine what was happening to develop a response, he said.

To do this, "You're going to give them information with a different focus than if you're just trying to tell them something," he said.

Mr. Mair also emphasized the importance of graphics and how they can be used to enhance a presentation. But, he cautioned, any graph or chart must be carefully drawn to make the desired point.

For example, Mr. Mair showed a pie chart with two small pieces taken out on the right side, like slices of pie being eaten by Pac Man. Without any explanatory text to identify the chart it could have many meanings, such as a big organization eating smaller ones. "Pac Man is angry and hungry," is one interpretation, Mr. Mair said.

Once words and figures are added, however, "the message changes fairly remarkably," Mr. Mair said, to change the chart to reflect how his organization's money is spent.

The hungry Pac Man image can be used if that's the goal, he added. It could be effective in making a presentation to investors who want to feel they are eating the opposition.

But he cautions not to make the charts so busy that the message gets lost. "We can't discuss what's there if you don't understand what I'm trying to tell you," he said.

Knowing how to reach the audience is another important skill in communicating, Mr. Mair said. A different style is needed when addressing other risk managers compared with reaching out to field people in an organization.

"Don't talk rocket science with" field people, advises Cali Dietrich, risk manager for Coors Brewing Co. in Golden, Colo. She recommends that risk managers keep the message simple without technical words.

Mr. Mair added that putting the job of the risk manager in terms ordinary people understand helps to get the message across. For example, when speaking to non-insurance people, he describes risk as driving with a full cup of hot coffee on your lap. And risk management, he said, is putting a small coffee in a large cup to reduce the chances of spilling.

Before you can communicate effectively with the group, you must know the expectations of those in the audience, Mr. Mair said. Preparation will allow you to tailor the presentation to fit the audience. "You can't do one thing that meets the needs and desires of everyone in your audience," he said.

Donald Pasmore, vp and director of risk management for FCC Services Inc. in Denver, also spoke at the session.

Diane Berry, manager of risk management programs for FCC Services Inc. in Denver moderated the session.

Margy McKenna, director of risk and benefits for Jones Intercable in Englewood, Colo., coordinated the session.

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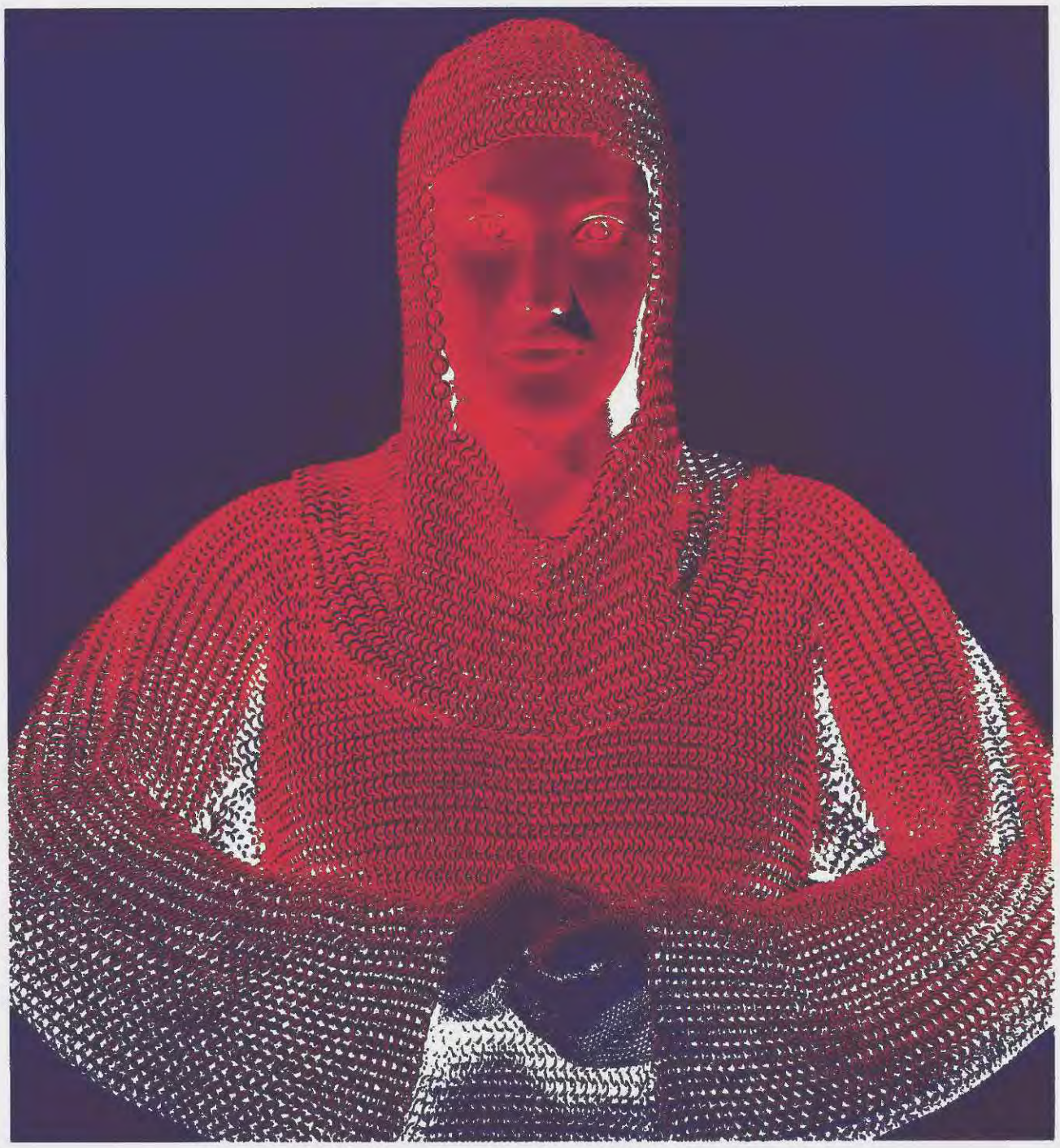

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Internet brings wide web of exposures

By SALLY ROBERTS

ATLANTA—As more corporations hurry to tap the potential of the Internet, risk managers need to be aware of the liabilities associated with electronic commerce and communication, a risk consultant and lawyer advise.

Risk managers with corporate Internet infrastructures and risk managers from Internet service providers are exposed to a wide range of potential third-party or liability exposures, many of which are not well understood and not well-suited to traditional risk financing methods, said Dominic Davison-Jenkins, a vp with Minet Risk Services, a division of Minet Inc. in New York.

Cyberspace is a "risky place to be, because there is no standard risk profile. The exposure depends entirely on what you do," Mr. Davison-Jenkins said. "There are very, very different risk implications involved."

Not only does the type and scope of Internet activity differ from company to company, but so does the level of sophistication and reliance on the technology.

In addition, the "misuses possible on the Internet are multiplied a thousand times because of its widespread use," added lawyer Eugene R. Anderson of Anderson Kill & Olick P.C. in New York.

Messrs. Davison-Jenkins and Anderson participated in a panel discussion on liabilities in cyberspace during a session at the Risk & Insurance Management Society Inc.'s conference earlier this month.

Three key sources of risks are associated with the Internet, Messrs. Davison-Jenkins and Anderson said. They are exposure to:

• Media-liability type risks. A corporation, for example, could face risks stemming from the creation, manipulation or dissemination of content found on the Internet. Such published material could potentially give rise to copyright infringement, trademark infringement, defamation, or invasion of a person's right of privacy claims.

• Intellectual property risks. An Internet service provider could be at risk for software patent or copyright infringement claims if the enabling technology infringes upon the rights of another party. Losses also could arise if the enabling technology fails to perform as promised or expected.

• Breaches of security risks. A corporation could face losses when online information is stolen or damaged or when information is released without authorization.

While the risks are there, relatively few commercial insurance policies have been developed specifically to provide coverage for Internet-related claims, they said.

"People tend to assume (the Internet risks) apply to some insurance they already have," Mr. Davison-Jenkins said.

While commercial general liability, miscellaneous errors and omissions and media liability policies may provide coverage for claims stemming from Internet-related activities, "there needs to be a comprehensive solution," he said.

American International Group Inc. took the opportunity at RIMS to unveil its new Internet security liability insurance policy, called InsureSite.

The policy has three coverage parts. The policy will respond to a company's third-party liability for loss of money or electronic funds resulting from the theft of credit card data due to business conducted on its World Wide Web site. Financial loss coverage is available with limits of liability up to $250,000.

The policy covers personal injury liability claims caused by electronic communication of information from or a person's unauthorized access to, the Web site. The coverage includes libel, slander and defamation of character and is available with liability limits of up to $1 million.

The policy also covers direct physical damage to, or loss of, computer equipment, electronic data and media as a result of vandalism, computer virus or other perils. The policy will reimburse for the loss of income, continuing operating expenses and extra expenses incurred while suspended operations are being restored. Limits start at $50,000.

Messrs. Davison-Jenkins and Anderson, in collaboration with session moderator Lori Jorgensen, risk manager of worldwide products for Microsoft Corp. in Redmond, Wash., and session coordinator Joshua Gold, director of insurance coverage projects for Anderson Kill & Olick, came up with 10 cyberspace tips for risk managers.

Among the tips:

• Make sure liability, property and other insurance provides coverage in step with the global nature of the Internet. Because insurance policies often have geographic limitations to coverage, companies may not be covered for claims brought in other countries.

• Companies that use the Internet extensively for business and communication may start transforming their risk exposures into those frequently present in the media business. Accordingly, companies may wish to consider purchasing specialized insurance policies similar to those purchased by broadcasters, publishers, advertisers and other media professionals.

• Policyholders should attempt to buy business interruption insurance that does not tie coverage to a physical act or event. Business interruption insurance may be needed to cover losses stemming from system viruses, Internet system outages or other technology failures.

• When dealing with contractors, develop and employ formal procedures. These procedures should include, for example, verification of track record, evidence of financial responsibility, the use of written contracts, indemnity and hold harmless provision, and evidence of errors and omissions liability insurance.

• Do not forget about software patents. They are monopolies of limited duration that negate independent development by any other inventor. Without a license from the inventor, patented software cannot be used, modified, copied or sold. Patent disputes should be avoided through the appropriate use of patent searches.

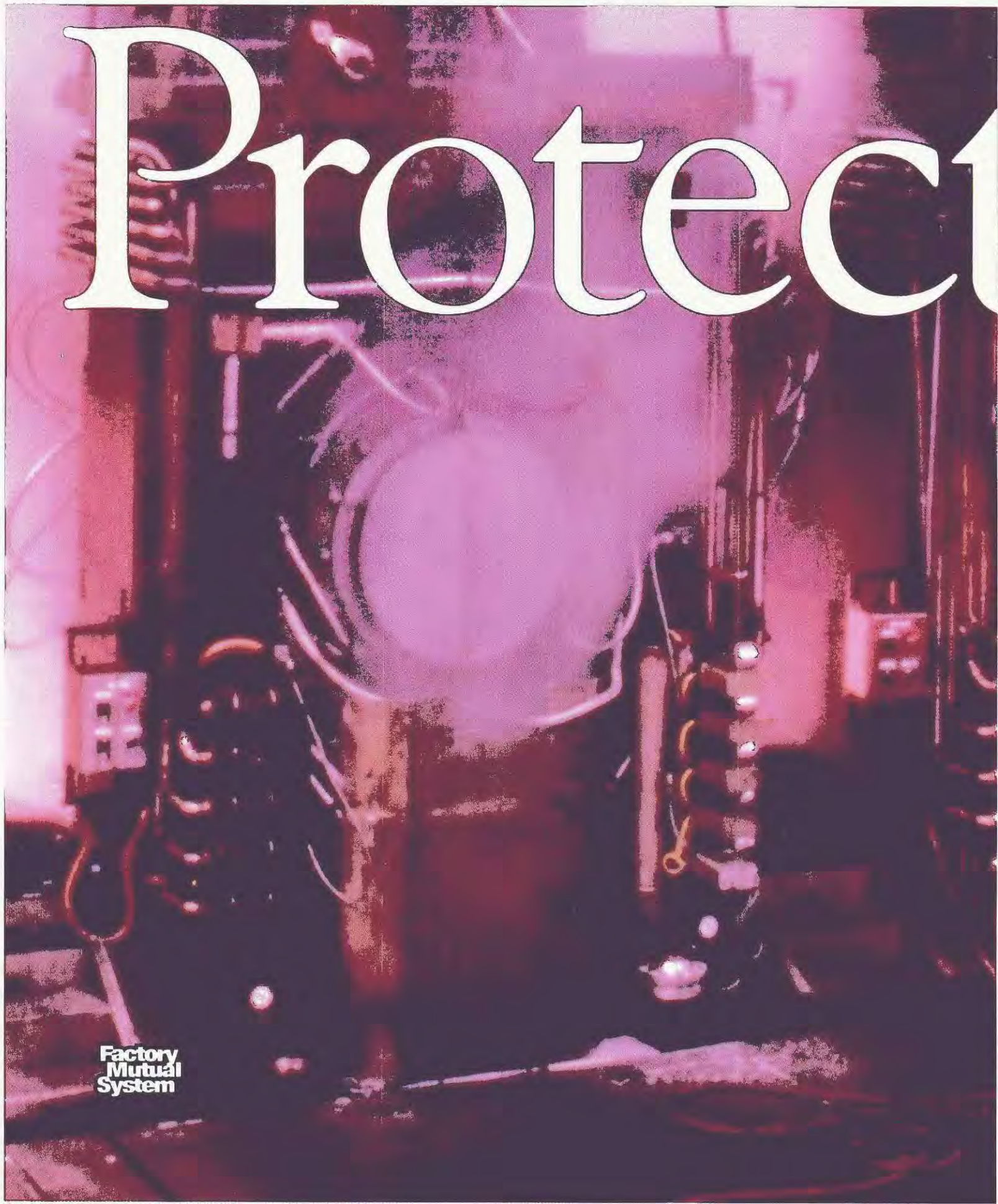
• Properly license any third-party material to be published on the Internet or intranet.

• Maintain a written company Internet and intranet policy and a policy for responding to complaints and removing infringing or inappropriate material.

• Designate an information manager to review, approve and administer all information for Internet or intranet publication. BI

Insurance

1997 RIMS Report



Restructuring issue fails to draw attendees

Legal/ Legislative
1997 RIMS Report

By DAVE LENCKUS

ATLANTA—A group of CIGNA Corp. reorganization opponents who issued a call to arms against similar property/casualty insurer restructurings were disappointed by a meager turnout during a session at this year's risk management conference.

Less than two dozen attendees, including a couple CIGNA representatives, showed up for the late Wednesday afternoon session during the Risk & Insurance Management Society Inc. conference earlier this month.

Florence J. Larcamp, corporate risk manager for Conshohocken, Pa.-based Quaker Chemical Corp., one of about three dozen CIGNA policyholders that have sued the company over its reorganization, was the most visibly upset panelist.

"I'm disgusted," said Ms. Larcamp, who moderated the session.

She and the other panelists hoped risk managers found the timing and not the topic of the session unappealing.

The panelists urged those who attended to pressure regulators not to rubber-stamp insurer restructurings that place liabilities into runoff facilities. They said insurers have to demonstrate to policyholders that the facilities have adequate reserves.

"Why aren't we all involved?" Ms. Larcamp asked. "There are a lot of long-term implications here, and you all better be involved. I'm looking at this as a risk manager, and my butt is on the line."

She added: "If you're relying on brokers, wake up. We should be asking the questions. We have the responsibility."

Insurers over the past decade have used the word "restructuring" in describing several transactions that have resulted in reallocations of assets among units and realignments of units, said policyholder attorney and session coordinator John N. Ellison, a partner with Anderson Kill & Olick P.C. in Philadelphia.

Those restructurings include:

• The Home Insurance Co.'s 1995 reorganization. Zurich Insurance Group acquired The Home's most profitable business in return for writing $1.59 billion of reinsurance for The Home, which retained its poor-performing business but placed it in runoff. Policyholder approval was not sought. Some policyholders initially objected but eventually backed off as Zurich sweetened its reinsurance offer.

New Hampshire regulators last month placed The Home under state supervision after it fell nearly $552 million short of its risk-based capital requirements (*BI*, March 10).

• Electric Mutual Liability Insurance Co.'s 1995 reorganization. EMLICO retained loss-plagued General Electric Co. business and moved more profitable business to a former subsidiary. Massachusetts regulators approved the reorganization and the insurer's relocation to Bermuda. A few months later, EMLICO collapsed after recognizing a $750 million shortfall in reserves for GE-related asbestos and environmental claims (*BI*, Dec. 11, 1995).

• CIGNA's 1996 reorganization, in which CIGNA moved most of its liabilities, including about 80% of its asbestos and environmental liabilities, into a runoff operation. CIGNA officials maintain that policyholder approval was not required by law.

A Pennsylvania appellate court last month vacated the regulatory approval of CIGNA's reorganization. It ruled that Pennsylvania Insurance Commissioner Linda S. Kaiser did not hold proper hearings before approving the transaction. CIGNA has appealed.

In all those deals, the assets to which policyholders once had access to cover claims "are now in a different form and potentially are much more difficult to reach," said Mr. Ellison, who represents a group of policyholders suing CIGNA over its reorganization.

Pointing to The Home, "Here is a perfect example of why this issue is of such great importance to policyholders," Mr. Ellison said.

"At the very least, shouldn't you, as a risk manager, want to analyze whether you want to be in a runoff company?" asked Florence A. Davis, vp and general counsel of American International Group Inc., which was among the insurers that sued CIGNA over its reorganization.

"If they're correct about the reserve level, you have nothing to worry about. But, at least you should have informed consent," she said.

But, "If CIGNA and the others had found the Holy Grail of reserving, their splits wouldn't have been necessary, because the rating agencies wouldn't have insisted on this good bank/bad bank split." CIGNA reorganized to obtain an A- rating for its ongoing business from A.M. Best Co.

Mr. Ellison called on policyholders to pressure regulators not to rubber-stamp these types of reorganizations. "That's the only way it's going to change," he said.

While a National Assn. of Insurance Commissioners working group is studying such transactions, Ms. Davis was skeptical of the group's value. She noted that Ms. Kaiser of Pennsylvania is a committee member.

During the session, the CIGNA representatives and the panelists engaged in some heated exchanges.

When Mr. Ellison criticized CIGNA for providing limited notice of its intent to reorganize, a CIGNA spokesman disagreed, saying many news services nationwide reported on the company's plans.

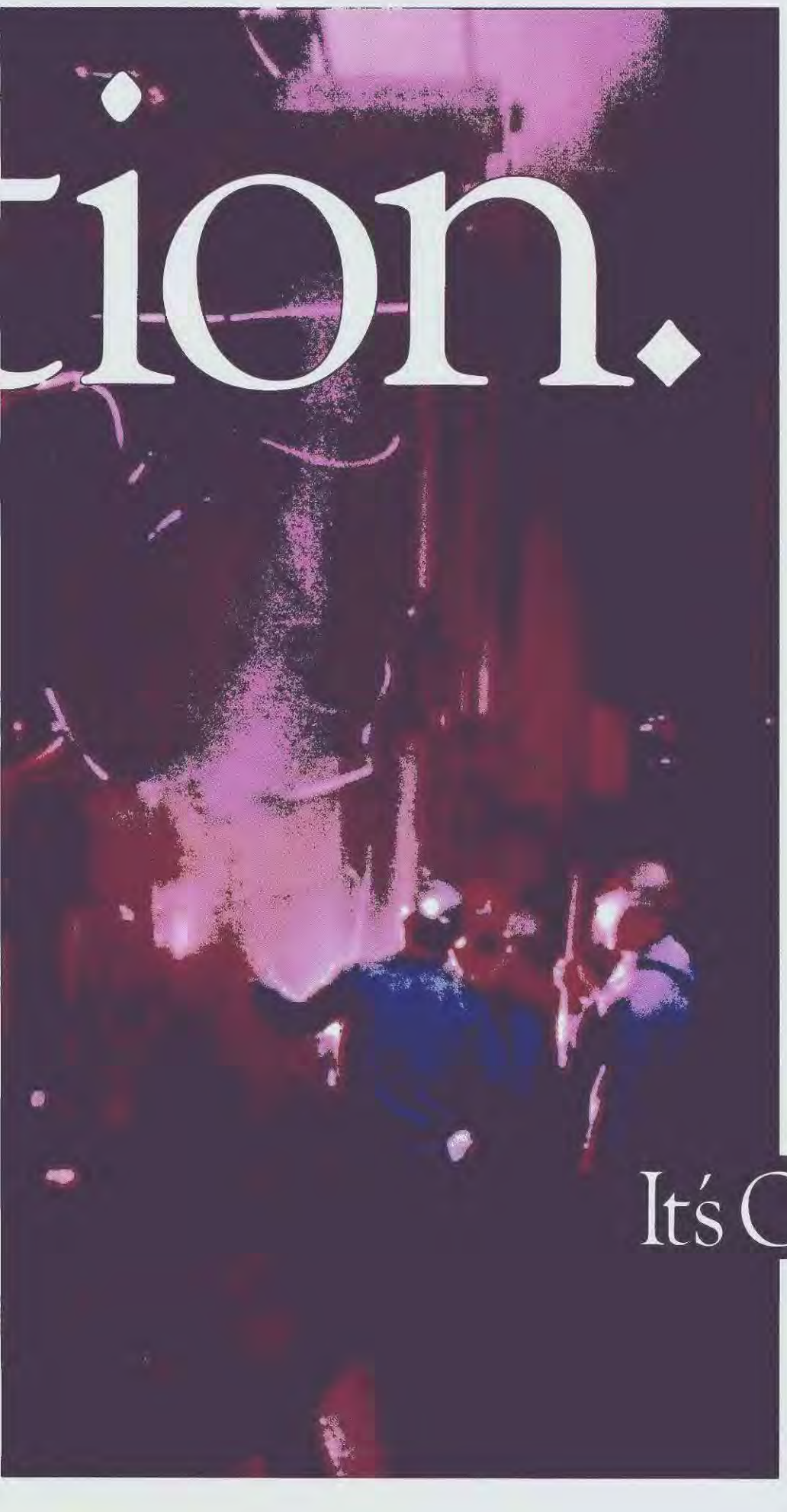
Mr. Ellison then called on CIGNA to release an actuarial report by Tillinghast on the adequacy of reserves in CIGNA's runoff facility. The CIGNA spokesman responded by asking whether AIG would release the actuarial results on Lexington Insurance Co. Ms. Davis responded that Lexington is not reorganizing.

At another point, a second CIGNA official, Arthur Chandler, a vp with CIGNA Property & Casualty Insurance Co., questioned Ms. Davis about AIG's involvement with Coral Reinsurance Co. Ltd. Coral Re is a thinly capitalized Barbados reinsurer that AIG had used extensively to the concern of Delaware regulators (*BI*, Oct. 14, 1996).

But, that dispute did not involve an insurer restructuring. The CIGNA spokesman later refused to elaborate about why Mr. Chandler brought up that line of questioning.

Ms. Davis did not respond to those questions.

The CIGNA spokesman during the session also pointed out that CIGNA's explanation of the restructuring is available on its World Wide Web site at http://www.cigna.com/pcinsurance/restructure. BI



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Risk managers must know their art before the deal

By MICHAEL PRINCE

ATLANTA—In corporate mergers and acquisitions, the role of the risk manager is not to scuttle the deal, but to alert senior management to any potential pitfalls, a consultant and risk manager agree.

"For most cases, senior management wants the deal to be done" without the risk manager putting

obstacles in the way, said Kathryn Turck Rose, senior consultant with Coopers & Lybrand L.L.P. in New York.

Arnold Garcia, manager-risk management and safety for Coltec Industries in Charlotte, N.C., said the risk manager must alert management of any potential risks. "Senior management hates surprises," he said.

Ms. Rose and Mr. Garcia discussed the role of the risk manager in corporate mergers and acquisitions at a session during the Risk & Insurance Management Society Inc.'s annual conference earlier this month.

In purchasing another company, the primary role of the risk manager is identifying what risks lurk within the target company.

"The acquiring company wants to know of exposures of the company to be acquired," Ms. Rose said.

Accomplishing this requires more than just looking at the claims made by the target, because the most costly exposures might have yet to produce a claim. "It might just mean they've been lucky up to now," she said.

It is also important for the risk manager of the selling company to assess the financial strength of the buyer if the seller manufactures a product. In product liability suits, if the buyer becomes insolvent, the plaintiffs will turn to the prior company and bring them into the suit.

Besides identifying the risks, the size of the risks needs to be assessed. The easiest ones to assess are those on the books. For the others, an actuary should be hired to make an accurate evaluation, Ms. Rose said. "Making sure you have a proper evaluation of the liability is as important as deciding who is responsible for them," she said.

Even if a company is selling part of itself, it still needs to re-evaluate its own insurance program. As an example, Ms. Rose said, selling a unit of the company might make the company too small to make a captive cost-effective.

Ms. Rose stressed that each acquisition contains its own unique exposures, depending on the nature of the acquired company. Environmental risks pose perhaps the greatest risk, she said.

Product liability risks pose a long-term concern for acquiring companies because of the long lead time between the manufacture of the product and filing of claims. When a company purchases another that makes a product, even if that product is long discontinued, they might unwittingly face product liability claims exploding years down the road.

Directors and officers liability is another area that should be watched carefully, she said. Many D&O policies have change-in-control clauses that either terminate coverage under the policy or phase it out after ownership changes. Also, directors and officers want to be protected from suits arising out of the transaction, making this "a pretty high-profile coverage," she said.

Some companies might also run into some special problems, Ms. Rose said. For example, by purchasing another company with locations in earthquake-prone areas and adding them to existing plants, the total value of the plants might exceed the limits of an existing earthquake insurance policy.

The heart of the risk manager's role is conducting due diligence of the other company, said Mr. Garcia of Coltec Industries. This involves looking at the other company's insurance program and assessing its overall risks.

"Basically it's looking for what concerns you now, what keeps you up at night," he said. "They are usually things you know and don't like, or things you don't know."

He recommends obtaining copies of all claims going back five years and gathering more details for all large claims. The idea is to evaluate the risks of the target company as an underwriter would, he said, so that a risk profile can be developed.

He also recommends visiting the locations of the target company. "That's how to get the best idea of what you're getting out there with the operation," he said.

When a risk manager's company is selling, other issues arise, he said.

For example, an agreement that the buyer will indemnify the seller for any suits is worthless if the buyer later becomes insolvent.

Mr. Garcia recommends maintaining a friendly relationship with the buyer in case future claims arise. "It makes things a lot easier to get the information you will need."

Special pressures exist on the risk manager for the selling company, said Ash Kilada, director of risk management and benefits at Sbarro Inc. in Commack, N.Y. He called these people "the risk manager on the wrong side."

One of these special issues is their potential loss of a job. After a sale or merger with a larger firm, the risk manager of the selling company may be left without a job or forced to take a smaller one with the merged entity.

To give yourself a chance on staying with the new company, he recommends the risk manager stay balanced emotionally and demonstrate the value he or she will bring to the merged entity.

But it's also advisable to put together a resume and be ready to look for a new job, he said. "No matter what is said, you really don't know what will happen," he said, so a risk manager must be prepared.

"It's not an easy thing to go through," he said. "Resilience in the face of adversity is the true test of character."

Ms. Rose coordinated the session, and Mr. Kilada moderated. BI

Minimizing risk of kidnappings

Companies should prepare for crisis in advance: Experts

By DOUGLAS McLEOD

ATLANTA—Corporations that are vulnerable to kidnapping and extortion plots need to think about how to avoid becoming victims and what to do if the worst happens despite precautionary measures, two experts say.

Companies that have operations and high-level employees abroad—especially in high-risk countries in Latin America, Africa or in Russia—should be ready to deal with kidnap and extortion attempts when they come, the experts say.

The problem is that many aren't.

"You can't do this on the fly," said Andrew J. Duffin, managing director of the Crisis Management Services Group of Pinkerton Consulting & Investigation Services in Miami.

"Corporate executives have a lack of preparedness, but one thing they do not lack is confidence," Mr. Duffin told an audience at the annual Risk & Insurance Management Society Inc. conference.

While criminals' motivations can vary, in most cases it boils down to money, he observed.

"All kidnapping now is for money. Even politically motivated kidnappers. . .are in the kidnapping business to finance their cause," Mr. Duffin said.

Scott Nelson, director of Latin American operations for CIGNA International, agreed: "In most cases, kidnappers are businessmen, and they have what they consider to be a product"—the kidnapped executive, whom they're ready to sell back to a "market," the victim's company.

Hot spots for different crimes vary, Mr. Nelson noted.

For kidnapping, high-risk countries in Latin America include Colombia, Mexico, Brazil and Costa Rica.

"Colombia has the highest rate of kidnapping in the world," averaging roughly 5,000 per year, according to Mr. Duffin. Most of the victims are Colombian nationals; fewer than 100 non-Colombians were kidnapped there last year, he said, adding that energy company officials are high on the list of foreign victims.

The United States and Australia are hot spots for other crimes, including product tampering and trade secret extortion, threats against companies' computer systems and child abduction, according to Mr. Nelson.

Several countries in Africa and the Middle East, meanwhile, present high risks of government detention of executives, hijacking and unrest that requires evacuation of company personnel.

While insurance coverage is available for these exposures, companies also should have crisis management plans in place and should have a consultant ready to assist when a crisis develops, the two men advised.

A first step for companies is to assess their vulnerability, Mr. Duffin said.

Risk managers should consider which countries they operate in; whether they have a high-profile, wholly owned operation that would make them an attractive target, or a joint venture in which the local partner is more prominent; and whether company executives reside overseas or travel frequently abroad.

Factors to consider for individual executives include the executives' wealth and lifestyles and whether anyone might bear grudges against them, Mr. Duffin said.

Executives can then take steps to make their homes, offices and travel routines more secure, he said.

Past kidnappings sometimes provide helpful data.

"Prior kidnappings show that 90% take place in the a.m.," involve a vehicle and occur as a target is on the way to work, Mr. Duffin said.

'Executives have a lack of preparedness, but one thing they do not lack is confidence,' says Andrew J. Duffin.

But "Murphy's law may take over, and with all the planning in the world, you have an incident."

If an executive is kidnapped, companies should have clear guidelines and contingency plans in place to respond quickly, he advised.

Among other things, companies should be ready to suspend the corporate authority of a kidnapped high executive so that the person can't take actions that would bind the company or its officials, Mr. Duffin said.

Companies also should decide how they will respond to ransom demands.

Options include refusing to negotiate or pay ransom, a position "very few companies would take"; paying the ransom in full, which some think can increase the risk of future kidnappings; offering a "quid pro quo"—meeting some kidnapper demands in return for concessions; making a single offer to ransom the victim; or starting with an offer knowing the company will increase it to a predetermined amount in negotiations.

The process is subject to many pitfalls, including poor choice of a negotiator who may "get off on the wrong foot" with the kidnappers, he said.

J. Gary Meggs, the session's moderator and director of risk management for The Southern Co. in Atlanta, added that companies should try to control all communications related to a kidnapping. Company officials need to be sure people are not making statements on the company's behalf that could threaten negotiations with kidnappers, he said.

Despite the pitfalls, most hostages are eventually released, Mr. Duffin said.

"The success rate for negotiated release of kidnapping victims is over 95%," he observed. "The real danger in kidnappings is in the first few minutes of the thing going down, something happening that even the kidnappers do not want to happen." BI

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Fronting deals need back-up plan, experts say

Finance
1997 RIMS Report

By GAVIN SOUTER

ATLANTA—Fronted insurance arrangements may seem like straightforward contracts, but without careful planning they can present many problems, two fronting experts say.

Simple issues, such as fees charged, the collateral needed and the method of providing that collateral, need to be written down in detail before any fronting arrangement is set up, they say.

And more complex and unpredictable issues, such as what happens if one of the parties goes under, also should be set down in writing before any business is transacted, the experts say.

Although fronting can take many forms, the basic idea is that a licensed insurer issues policies and provides other services, such as claims administration while a non-licensed party will be the ultimate risk bearer.

The formalization of that relationship can lead to numerous problems that must be addressed before they happen, said Scott M. Sanderson, vp at J&H Marsh & McLennan Inc. in Minneapolis.

The most common dispute between a front and the risk-bearing entity is that the fronting fees are too high. This often occurs because the fronting company provides an unclear breakdown of the fees charged, he said at a session of the annual Risk & Insurance Management Society Inc. conference earlier this month.

To help alleviate this tension, the fronting contract should clearly define what the fees cover, Mr. Sanderson said. For example: What's the fee for claims handling and claims oversight? Is it per claim or a percentage of the premium, and if so, what is the premium? These questions should be answered in the contract, he said.

Additionally, the element included in the fee for other services, such as loss control, should be clearly stated, he said.

The contract also should encompass the level of premium taxes charged, who is responsible for paying them and who would be responsible for any increases in taxation, he said.

"Get all of the details down. Most fronting agreements are very vague, and vagueness causes problems," Mr. Sanderson said.

The contract also should provide clear instructions on what will happen if the contract is canceled before it expires, he said.

Another common complaint from risk bearers is the collateral required is too great, he said.

Fronting companies normally like a level of collateral that covers everything that could possibly go wrong, whereas most of their clients only want to provide a little bit more than their expected loss, Mr. Sanderson said.

The biggest collateral problem, however, is the level of future adjustments. Often the contracts have a provision to adjust the collateral to "adequate" levels as losses rise, he said. "But the word 'adequate' is not an adequate word when you are talking about future obligations," he said.

Again, adjustment requirements should be detailed in the contract, he said.

Problems also may arise if the front makes an unjustified call on the collateral, he said.

The most frequent form of collateral is a letter of credit, and there is nothing to stop a fronting company from drawing down on the LOC whenever it chooses, Mr. Sanderson said.

"It is like giving them all of your cash and saying, 'I trust you with it,' " Mr. Sanderson said.

In some cases, the risk bearer can alleviate the problem by negotiating to provide a less liquid asset as collateral, he said.

For example, one airline that used a fronting insurer to issue policies for its alternative risk financing facility provided its pool of spare jet engines as collateral, Mr. Sanderson said.

The fronting contract also should address what would happen if the fronting insurer ran into financial difficulties, Mr. Sanderson said.

The risk bearer could run into problems if the fronting company failed, he said: the administrator of the insolvent insurer could claim the LOC as an asset of the company but refuse to pay claims; the administrator may look to the risk bearer as a debtor of the front; and the excess insurers may not respond to claims of the risk bearer directly.

"You need protections in the agreement that would respond if the front failed," he said.

The contract also should have an arbitration agreement establishing the resolution procedures when disputes occur, he said.

But it is not just the clients of fronting companies that need to guard against fronting problems; the fronts themselves also need to be careful, said Jerry Rivers, senior vp at Commonwealth Risk, a unit of Mutual Risk Management in Irvine, Calif.

For example, if the risk bearer becomes insolvent, the fronting company has problems, he said.

"Our agreements may be great, but still, our reputation is impacted, so we have to be very careful about whom we do business with," Mr. Rivers said.

The front also needs to ensure the collateral is continually monitored to ensure it will cover the exposures if the risk bearer runs into financial difficulties, he said.

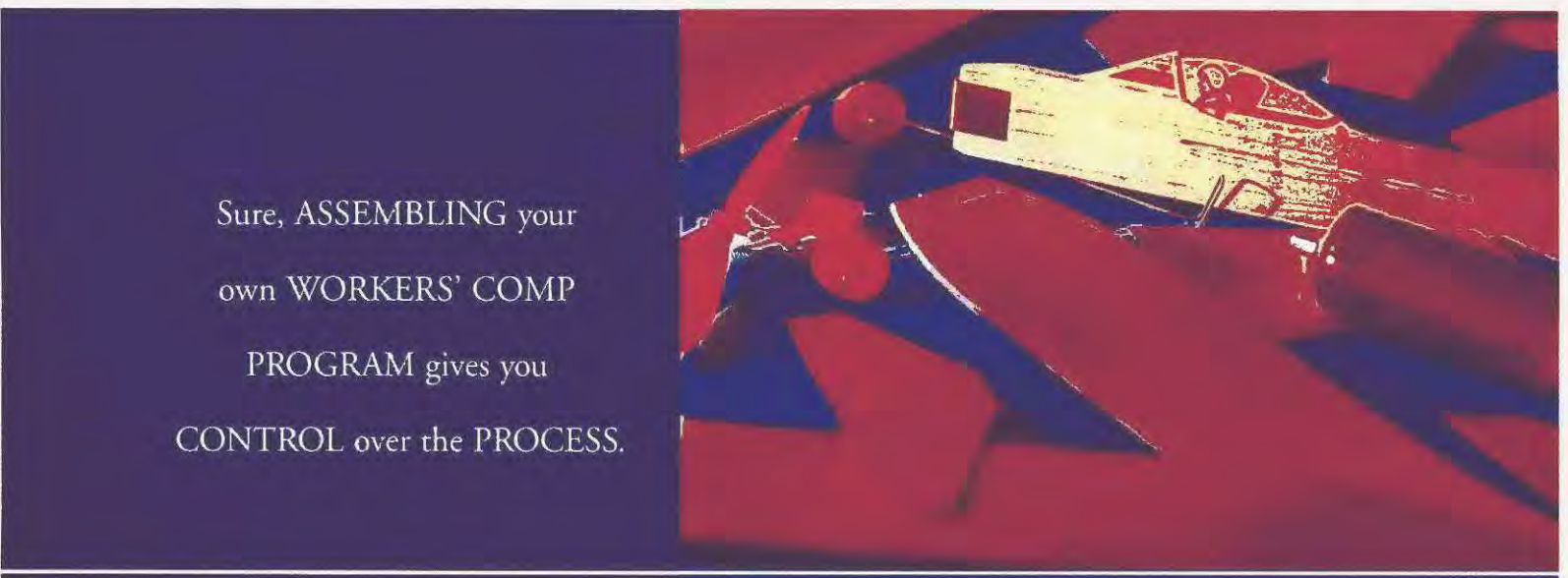
Fronting insurers also have to be wary about the third-party administrators the risk bearers choose to handle claims, Mr. Rivers said.

"The TPA is chosen by the client, and the client pays the fee, so it may be under pressure not to set high reserves" for claims, he said.

So the front should ensure it has some input when a TPA is selected, Mr. Rivers said.

Fronting insurers also should check the TPA's errors and omissions coverage in case mistakes are made and the front must take over claims handling, he said.

The session was moderated by Diana Jeanne Rich, workers compensation manager at Freedom Communications Inc. in Irvine, Calif. Mr. Sanderson coordinated the session. BI



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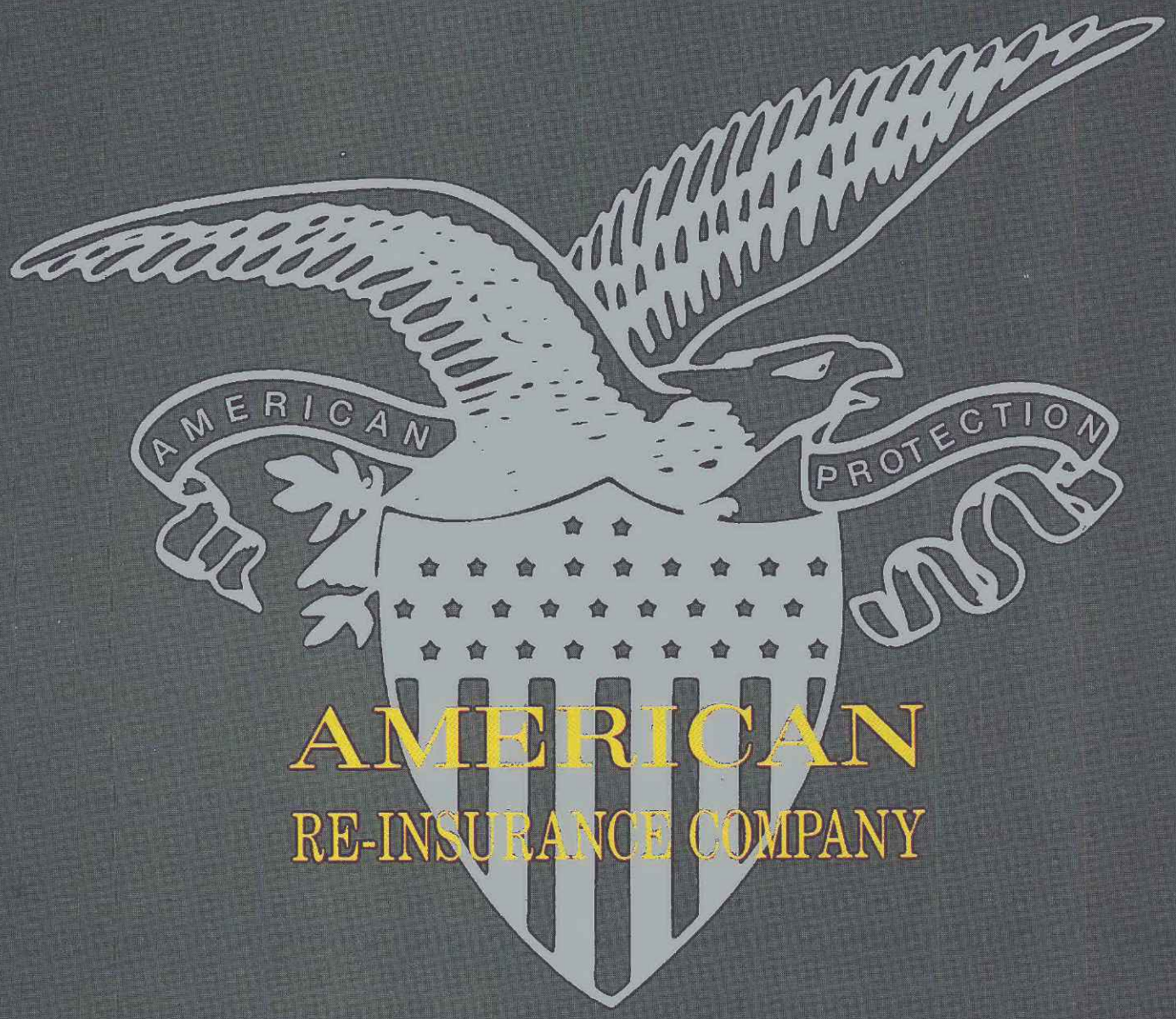

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First-time RIMS exhibitors draw risk manager interest

By MICHAEL BRADFORD

ATLANTA—In the shadows of the megabooths and the trenches of the exhibit hall toy wars, first-time exhibitors at the Risk & Insurance Management Society Inc.'s annual conference work hard and keep their fingers crossed.

Generally relegated to a tiny space in the least-desired location, a first-timer has to battle to be noticed. About 100 companies set up on the floor of the exhibit hall for the first time at this year's show in Atlanta, and many of them expect to be in San Diego next year.

"We've already reserved space for next year," said Diane Potter, senior analyst in the insurance division of the Guernsey Financial Services Commission. Booth traffic this year was heavy, she said.

Guernsey was exhibiting for the first time at RIMS to promote the domicile to risk managers who are considering forming a captive.

While most first-timers take the smallest space, Guernsey anted up for a double-wide in Atlanta.

Exhibitors pick their locations based on the amount of space required and the number of continuous years they have participated in the show.

"We've gotten a lot of good leads here," said Marianne Zmyslinski, sales manager in the commercial division-Midwest region for The Akro Corp. in Canton, Ohio.

The 48-year-old company sells matting to help reduce injuries such as slips and falls that lead to workers compensation claims.

If the leads from the Atlanta conference pan out, Akro will be in San Diego, she added.

A&S Financial Services Inc., a third-party administrator based in Tamarac, Fla., was happy with the traffic at the Atlanta show, according to Vp John Barker.

A&S Financial, which works with large self-insured clients, was on hand to tout its personalized service, which Mr. Barker said sets the 15-year-old TPA apart from its competitors.

Geographic Data Technology Inc. attended its first RIMS conference to promote "spatial solutions" that it markets to insurers and other businesses.

The company supplies geographic data that can be used with mapping software to produce digital maps according to special boundaries or customized data sets. Insurers can use the maps for such procedures as identifying policyholders in areas prone to windstorm and shoreline losses, said Suzanna Smith, account manager-insurance industry for the Lebanon, N.H.-based company.

Another first-timer also offered geographic information. The U.S. Geological Survey offers the best deal at the exhibit hall: Its services are free.

The federal agency's purpose for exhibiting was to acquaint insurers and risk managers with information available at no charge to help them do their jobs, said Anthony J. Crone, assistant chief scientist with the agency's geologic hazards team in Denver.

That information includes databases on earthquakes, landslides and other natural disasters—"things that insurers factor in to determine exposure and rate structures in different parts of the country," Mr. Crone explained.

"There's never been a concerted effort to develop a rapport with users" of the information, he added. "The U.S. Geological Survey and other agencies have been criticized for not being as relevant to users as they need to be."

Mr. Crone had on hand a wealth of information related to earthquake exposures, including examples of seismic maps that indicated the effects of shaking on particular areas, data on locations that could be hit by future quakes and information on construction and design to withstand quakes.

He encouraged risk managers to check out the agency's Web site at http://geohazards.cr.usgs.gov.

RM Cat, a Denver-based disaster recovery company, was at its first RIMS show this year and happy to be on board, said Stacy Mazur, national sales manager. "This is definitely our target market," she said. "It's been a real good show for us."

The 15-year-old company cleans up after fires and floods all around the world, she said. Its services include cleaning of structures and contents, water extraction, smoke removal, restoration of electronic equipment and machinery and reclamation of wet books and documents.

A crisis of another kind—workplace violence—is the focus of the Crisis Prevention Institute Inc. of Brookfield, Wis., a first-time RIMS exhibitor this year.

The institute offers training that gives employers a number of ways to identify potentially violent situations before they occur, resolve conflicts and even use an incident that does occur as a tool to prevent similar recurrences.

"We teach people how to identify changes in employee behavior and how to respond to that" so that a violent episode might be averted, explained Lisa J. Keehn, director of in service.

In seminars and workshops, employers and managers learn how to interact with people in such ways as delivering bad news and using body language to calm a hostile person, said Ms. Keehn.

Davol Inc. not only attended its first RIMS, but Davol's appearance also was its first at a show outside the medical industry.

"We're a surgical company and typically go to nurses' conventions, orthopedic shows" or others related to medicine, said Chris Wentz, product manager for hernia repair at Cranston, R.I.-based Davol.

Mr. Wentz was in Atlanta to promote Davol's hernia plug, a mesh cone that is implanted surgically to relieve tension or strain that the condition causes on muscles and ligaments.

While traditional hernia surgery requires a six- to eight-week recovery, that time is shortened to less than two weeks when the plug is used, speeding return to work, Mr. Wentz said.

Another type of medical product being marketed at the show was Exogen Inc.'s ultrasound bone healing device. Last year's RIMS conference in Toronto was productive enough to bring the Piscataway, N.J., company to Atlanta this year.

The device, known as the Sonic Accelerated Fracture Healing System, is a small, box-shaped unit with a "treatment head" that attaches to a cast or brace. Low-intensity ultrasound is pulsed to the fracture for 20 minutes per day until the fracture is healed.

Exogen says fractures heal 40% faster with the device.

Physicians, insurers, risk managers and case managers are among target customers, said Karin S. Carlson, regional director of reimbursement affairs in the company's Santa Cruz, Calif., office.

The exhibit hall at the 35th annual Risk & Insurance Management Society Inc. conference in Atlanta provided a wide array of eye-catching displays to promote new products and services to risk managers and other attendees. Among the exhibitors were Suzanna Smith, below left, and John Barker.

PHOTOS: MICHAEL MARCOTTE

The devil's Advocate, an Alexandria, Va.-based company that provides legal bill reviews, expert testimony and a number of other legal services, made the trip to this year's conference after a good response at last year's show in Toronto.

"And we will sign up for San Diego," said John W. Toothman, president of The Devil's Advocate. "For us, RIMS is great because other exhibitors are our potential customers. Last year, over half the leads that produced deals came from other exhibitors."

Mr. Toothman said the 4-year-old company takes its name from a technique the Catholic Church uses in canonization, the process under which a deceased person is declared a saint. "It involves a person in the church who plays the devil's advocate" and tries to prove a contrary argument.

Among the company's other services are fee dispute mediation and arbitration, litigation strategy audits, litigation monitoring and facilitating settlements.

Legal cost containment also is available from RIMS veteran exhibitor Legalgard, a Philadelphia-based company.

"We're the oldest legal cost-containment company anywhere. And the largest," said Diane Cooper, senior legal cost consultant at Legalgard.

Legalgard's clients include a number of large insurers that belong to its Counsel Partnership Program. The program creates benchmarking and trend analysis information that allows clients to measure their data against others in their industries.

Law firms that participate in the program agree to use a uniform billing format and have their bills monitored by Legalgard. The firms are able to improve relationships with the clients while adjusting their timekeeping and billing procedures to meet those clients' needs, Legalgard says. The uniform requirements cut down on billing errors and reduce the time needed to review bills.

Insurers and brokers, many of them longtime exhibitors at the conference, staked out some of the best territory on the exhibit hall floor. The soaring sand sculpture at Liberty Mutual Insurance Co.'s location and Arkwright Mutual Insurance Co.'s roving robot were among the eye-catchers.

Insurers wanted risk managers to see their latest offerings.

Chubb Corp. announced enhanced directors and officers liability coverage that pays up to $250,000 for the cost companies incur while investigating shareholder allegations of wrongdoing by executives.

TIG Insurance Co. offered a shoeshine and information on the quality of its underwriting practices and its focus on non-traditional business.

"Main Street business has relatively little appeal to us," said Michael D. Larkin, senior vp-sport and leisure entertainment insurance in the insurer's Fort Wayne, Ind., office.

"We have seven core areas of expertise," he said, naming sports and leisure, construction, marine, professional liability, railroad liability, excess casualty and commercial automobile risks as TIG's underwriting niches.

Part of CIGNA's promotion was to announce an expansion of its CIGNA Integrated Disability Services unveiled last year in Toronto and operational since Jan. 1, 1996.

The service, initially offered in Texas, Pennsylvania and Illinois, integrates management of short-term and long-term disability claims with workers compensation claims. CIGNA said expansion of the service will include all states by January 1998. BI

Online services for risk managers grow

By RODD ZOLKOS

ATLANTA—With risk managers increasingly using the Internet in the course of their jobs, it follows that many brokers and insurers are offering online risk management and information services.

The annual conference of the Risk & Insurance Management Society Inc. earlier this month provided a perfect forum for many exhibitors to showcase new online offerings or refinements of existing ones.

Among those on display was the society's own RIMSNET World Wide Web site, which continues to evolve with a new look and some new features added over the past year, said Bruce R. Biesecker, director of information services for Information Inc., the Bethesda, Md.-based company that developed the RIMS site.

RIMSNET offers risk managers such services as daily news briefs selected from some 1,300 sources and a searchable database of those stories; a federal legislative tracking service that provides daily updates on laws and regulations affecting the insurance industry; and such services as conference and society information on the RIMS home page.

"Another thing that we've recently added is Travel Intelligence Online," said Mr. Biesecker. That feature gives international business travelers easy access to a wide range of information compiled by such federal agencies as

See **Online** *on next page*

Online

Continued from previous page
the U.S. Central Intelligence Agency, State Department and the Centers for Disease Control, and additional information such as British travel advisories and reports from Kroll Information Services about possible traveling risks.

There's also an online "conference center" where RIMSNET subscribers can exchange information or post questions.

Access to the subscription RIMSNET service can be obtained through the free RIMS home page at http://www.rims.org, with the RIMSNET service priced at $19.95 per month.

Since last year's conference, Near North Insurance Brokerage Inc. has come online with its WorldLink global risk management information source. The service came online Oct. 1 and has more than 200 subscribers, said Elizabeth Francy Demaret, vp — international accounts division at Near North in Chicago.

Offering up-to-date insurance information for more than 180 countries, WorldLink details recent insurance changes and political and economic information that might affect a company's operations in a given country.

The service also offers general insurance information, such as compulsory insurance laws, non-admitted regulatory requirements and nationalized insurance coverages; property and casualty information, including forms, coverage and compulsory limits information; social security provisions, captive domicile information and bonding and marine regulations.

Near North is talking with political risk experts about the possibility of linking services with them, possibly by allowing WorldLink users to connect with the political risk information through hypertext links.

Users of the WorldLink service can print customized reports by topic and country from their own computer systems. WorldLink subscriptions are available through the WorldLink site, http://www.nnworldlink.com, priced at $475 per year.

Aon Group Inc. used the RIMS conference to announce the introduction of AonLine, a network of electronic services for risk managers and financial executives.

AonLink, which provides instant access to policy information and claims status as well as various other analytical tools and value-added services, is a secure system offered only to Aon clients. The system is an extension of the Access A&A system offered by Alexander & Alexander Services Inc., which Aon acquired earlier this year.

Basic services are provided through a menu of eight features: Your Portfolio; News; Analysis Tools; Internet Index; Research; Business Assist; Your Aon Team; and Discussion Group. But, "It's what's behind these buttons that varies," said Dori B. Wilson, product manager for AonLine, noting that the system is highly customized for each user.

The Analysis Tools area "is where we see the most growth potential for our clients," Ms. Wilson said. Working with online tools, users will get help with such tasks as monitoring developing storms, examining captive feasibility, benchmarking their cost of risk and gathering information on state and country insurance regulations.

The Business Assist area offers such services as travel planning, business directories and links to shipping services. The Aon Team function, meanwhile, provides e-mail links to the client's account team at the broker.

Charlotte, N.C.-based Royal Insurance Group used RIMS to demonstrate its new online extension of its Windows-based Advanced Risk Management System software product.

The secure system provides information to Royal customers and brokers, said Brian F. Flaherty, business applications department manager in Royal's systems services division. Risk managers can get policy information, analyze claims information, examine adjuster notes and study claims trends. Brokers can get similar detail on all their Royal accounts.

"This is all dynamic. This is real-time stuff," Mr. Flaherty said. "It's going up against our claims system and policy system and bringing it back on the fly."

Royal is constructing a loss control portion of the service; that portion would show customers the loss control schedule they've agreed on with the insurer, who will be providing the service and, once loss control services are provided, a listing of any recommendations.

"Our ultimate goal is to put the loss control reports online," Mr. Flaherty said.

Royal began introducing the online system to existing accounts during RIMS and will continue rolling it out this year, with plans to begin marketing it more broadly later in the year.

Also at RIMS, Wausau Insurance Cos. demonstrated its new InterAct online system, which also focuses on giving customers quick access to claims information and various analytical tools.

By providing access to the insurer's DIAL Wausau feature, InterAct gives Wausau customers real-time access to claims folders and e-mail links to Wausau staff.

The system also allows risk managers to download reports from Wausau's report library, with the capacity to transfer information to other software formats or develop customized reports.

While insurers and brokers demonstrated their new online tools, the broader issue of managing risks and insuring business transacted in cyberspace was a hot topic at RIMS.

American International Group Inc. announced the introduction of InsureSite, a policy developed in part by Atlanta-based broker Hamilton Dorsey Alston Co. to cover Internet exposures (see story, page 22).

"We wanted to put out a product that was very focused on this exciting new market," said Stan Galanski, president of the New Hampshire Insurance Co., an AIG member company. "We see this as a business we're focused on and we want to be a dominant player in."

The InsureSite program is linked to a Web site certification program offered by the National Computer Security Assn. By providing Web site security standards and verifying their use, the NCSA program reduces Web site risks. Policyholders earning NCSA certification qualify for discounts on their InsureSite premiums.

Separately, International Business Machines Corp. announced it is working with Chubb Corp., Reliance National Group Inc. and Danish insurer Codan Insurance Ltd. to design risk management tools that will allow the insurers to evaluate exposures on the Internet and in other virtual environments and develop appropriate insurance products.

To further assist the insurers, IBM developed a security methodology to categorize Internet activities according to exposure.

"We defined what we call the IBM Network Computing Standard for a secure environment," said Steven B. Adler, IBM's network computing manager for the global insurance industry in Lyngby, Denmark. "We feel the Internet is a safe and secure place to do business if it's done right."

IBM also is providing an Internet Bootcamp, a two-day seminar to educate insurers on Internet security issues. BI

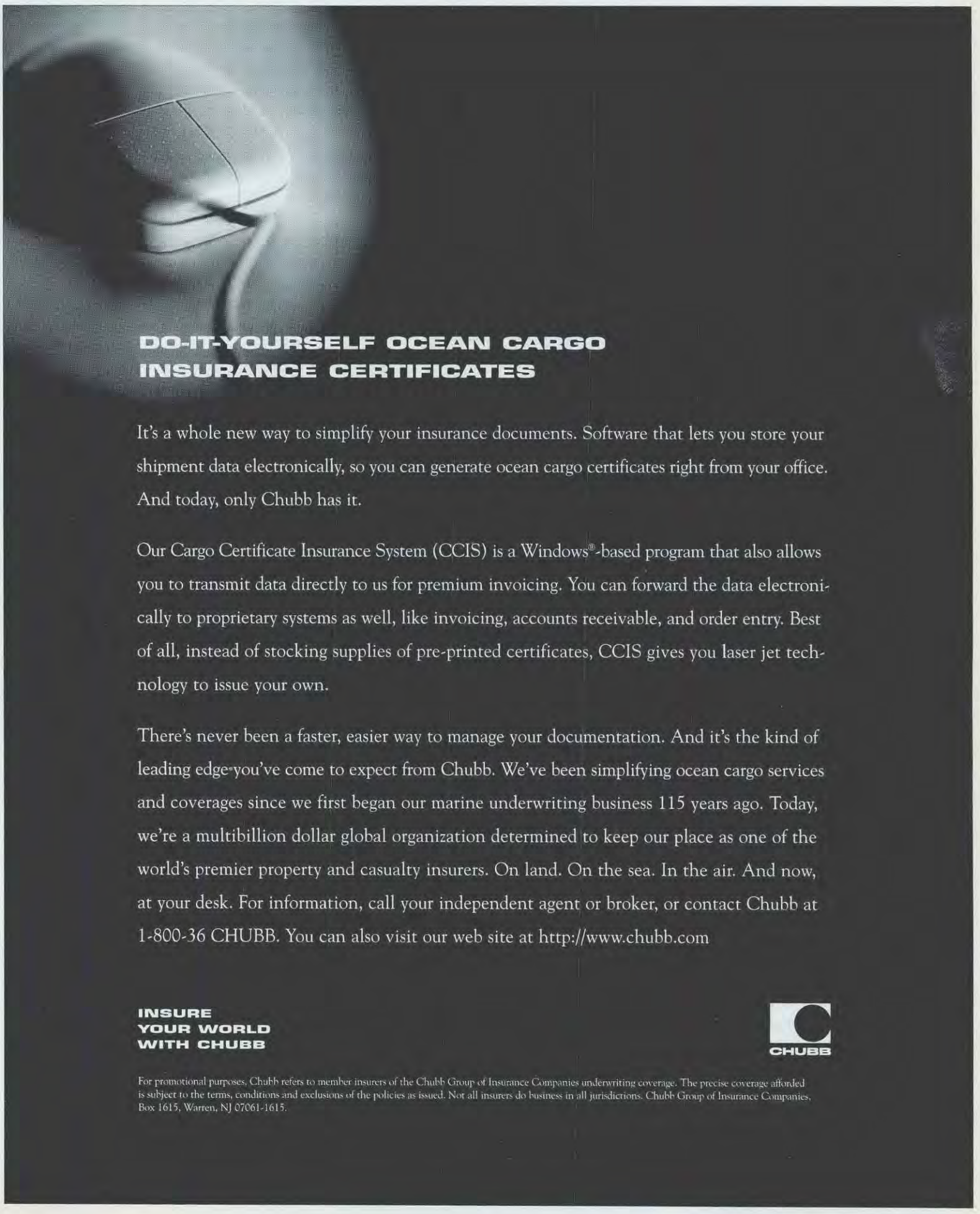

PHOTO: MICHAEL MARCOTTE

Information about the Risk & Insurance Management Society Inc. was available at its booth at the annual conference in Atlanta.

Are captives always the answer?

Self-insurance might work just as well, consultant says

By SALLY ROBERTS

ATLANTA—Before forming a captive insurer, risk managers should compare the benefits of owning a captive with other alternative risk financing methods, according to a risk management consultant.

In many cases, the benefits of owning a captive also can be achieved through other well-managed self-insurance alternatives, he said.

"I'm not saying captives don't work. I'm saying there are other options to take a look at," said Michael J. Natale, risk management practice leader for Deloitte & Touche L.L.P. in Washington.

Mr. Natale critiqued the main selling points for forming a captive and discussed when risk managers need one during a session at the Risk & Insurance Management Society Inc. conference earlier this month.

According to conventional wisdom, there are six main reasons that captives are perceived to be better than other alternatives, Mr. Natale said.

The six reasons are:

• Achieving internal administrative benefits. By owning a captive, companies can better allocate claims, premiums and administrative costs among divisions or departments, Mr. Natale said.

A captive also provides greater autonomy for the risk management department by segregating it into a profit center. Owners achieve more stable financial results by confining the impact of large losses to the captive.

While these benefits may hold true in comparison to the benefits of transferring risk in the standard market, "Why can a captive do this better than a well-managed self-insurance plan?" Mr. Natale asked.

• Gaining direct access to reinsurance. Ownership of a captive insurer can provide a company direct access, in some cases through a fronting arrangement, to the reinsurance market, as would a standard insurance company.

Mr. Natale pointed out, however, that while some reinsurers only will transact business through an insurer, "More and more reinsurers are now dealing directly" with companies. "The barriers are coming down."

Finance

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• Providing service to stakeholders. Owners can use a captive to provide insurance products to various stakeholders such as employees, vendors, dealers and customers. By doing so, the owner and the stakeholders will be more closely bound. It also allows closer coordination of defense-of-claims strategies, he said.

• Complying with external insurance requirements. Customers, lenders and governmental entities impose various insurance requirements on employers. Companies can comply with some of the certificate requirements through a captive, which is cheaper than commercial insurance.

However, "if the primary reason (for forming a captive) is to meet external requirements, there are other options," Mr. Natale said. In some instances, letters of credit or a certificate of self-insurance will suffice.

• Reinsuring a licensed primary insurer. Companies form captives to reinsure a primary insurer when the captive itself cannot serve as the primary insurer and when the primary insurer charges a premium not reflective of the owner's loss experience. In these cases, captive owners regain some of the excess premium paid to the primary insurer.

• Gaining tax benefits. Generally, captive owners gain tax benefits through an accelerated tax deduction, according to another speaker at the session, Richard Sifranek, international insurance tax practice leader for Deloitte & Touche L.L.P. in Washington.

An owner can deduct the premium paid when it actually pays the premium to the captive instead of when the captive pays the claim.

Also, in some cases, the captive establishes liabilities so that it makes no profits and therefore pays no corporate tax.

The main disadvantages of owning a captive "is the cost, time and the risk inherent in providing insurance for others," Mr. Natale said. "If you're a manufacturer, you have to ask yourself, do you really want to be an insurer?"

According to Mr. Natale, a company should use a captive "when the tax benefits exceed the cost of owning the captive."

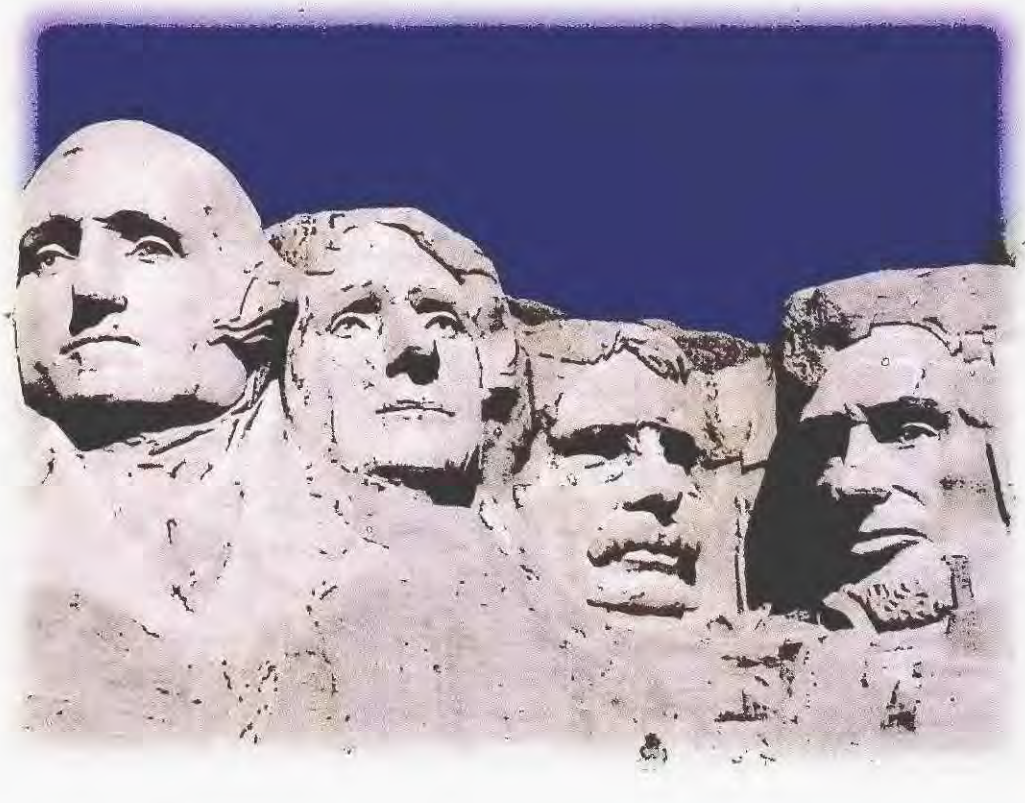
A captive also may be the answer when a company desires reinsurance from a particular reinsurer that will not deal direct or when internal administrative restrictions prevent effective program administration, he said.

A captive may be a company's best bet when it is confronted with nonnegotiable external insurance requirements that a captive can satisfy. A captive also may be needed to reinsure a primary insurer when no other vehicle is acceptable and an employer must satisfy external insurance requirements.

Owning a captive also may be the answer when an employer can profitably provide insurance products for stakeholders, Mr. Natale said.

He pointed out, however, that "there are a whole lot of options that need to be considered." He suggests that risk managers conduct a feasibility study examining the benefits, issues and costs associated with captives, commercial insurance and various forms of self-insurance alternatives.

Michael Rubenstein, director-risk financing for American Express Co. in New York, moderated the session, which was coordinated by Michael R. Levin, senior manager at Deloitte & Touche in Washington. BI



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Claims

Continued from page 3

cal when you are trying to reconstruct history to establish intent," Mr. Supparits said.

Insurers may not take pains to stay in touch with policyholders, and risk managers have to insist on being updated on the status of their claims, he added.

"They don't have a right not to communicate with you," he observed.

Policyholders face several other common causes of claim difficulties, noted John M. Wilhelm, corporate director-risk management for Pepsi-Cola General Bottlers Inc. in Rolling Meadows, Ill.

These include staff reductions at insurance companies, high turnover among claims adjusters and varying quality of the adjusters assigned to a case, he explained.

Mr. Supparits added that a risk manager should ask for a new claims adjuster if he or she is dissatisfied with the person handling a claim.

"Just as you would not accept a poor doctor or a poor lawyer, there's no reason you should accept a poor claims adjuster," he said.

Insurers deny claims for many reasons, Mr. Supparits said, including that the claimant is not an insured; the loss resulted from an intentional act; payment would be against public policy; coverage is specifically excluded; there was no "occurrence" as defined by the policy; and that the insured didn't abide by conditions in the policy.

Differing interpretations of the policy and the law account for many coverage battles, Mr. Wilhelm agreed.

He cited one case in which a Pepsi salesman had an affair with a client who, when the relationship ended, sued the salesman and Pepsi for sexual harassment. Pepsi's insurer denied coverage, citing the intentional acts exclusion; Pepsi argued that its corporate anti-harassment program demonstrated there was no intent on the company's part to cause the loss.

"This is an example of differing interpretations of coverage," he observed.

When an insurer cites specific exclusions in denying a claim, the first step risk managers should take is to look to other policies for coverage, Mr. Supparits advised. "A careful reading of the wording may lead to coverage elsewhere," he said.

Risk managers also should be sure to follow all conditions set out in their policies, Mr. Supparits advised.

So what should a risk manager do when an insurer denies coverage or issues a reservation of rights letter?

For one thing, risk managers should look for clear and specific reasons for the denial or reservation of rights and should not accept vague or general wording in an insurer's letter, Mr. Wilhelm said.

Policyholders also should be sure the insurer's explanations track with the policy language and circumstances of the claim and correctly reflect the intent of the insuring agreement.

When a denial or reservation of rights letter comes in, a risk manager should reply "fairly quickly" with a clear letter disputing the denial and tacking on a "reasonable" time limit—say 30 or 45 days—for a response from the insurer, Mr. Supparits advised.

Risk managers also may:

- Start a log, tracking developments on the claim in case the dispute ends up in litigation.
- Seek a meeting with insurer representatives. "They do start dealing with you as a person and realize you do have concerns and exposures," Mr. Supparits said.
- Seek the intervention of your broker. "There is some advantage to having the collective buying power of your agent or broker on your side."
- Set up a meeting with the insurer's top-level underwriting or claims officials. "Flying to their home office is sometimes very well worth the price of the ticket," he observed.
- Consult with insurance coverage lawyers for advice on interpretations of policy language.

If a policyholder is uncomfortable with the lawyers an insurer has hired to defend the underlying claim—knowing it may later evolve into a coverage battle with the insurer—the policyholder may negotiate hiring its own defense lawyers for the case.

If a coverage dispute develops, policyholders also could consider mediation or alternative dispute resolution rather than sue underwriters for a declaratory judgment.

"Mediation can be a reality check," giving one side in a dispute some idea of whether the other side is amenable to compromise, Mr. Wilhelm said.

Mr. Supparits added, though, that mediation sometimes results in a lot of talking and very little actual progress in settling a claim.

Policyholders may have better luck negotiating in a pretrial conference before the judge who is going to hear a coverage dispute, he said, explaining that the pressure to reach an agreement is higher in this situation than in mediation.

Even when a policyholder wins on a question of whether a policy exclusion applies, "it's sometimes a hollow victory," Mr. Supparits warned. An underwriter may admit there is coverage for a claim and then argue the claim involves two occurrences under the policy, that two retentions apply and that the insurer thus owes the policyholder nothing.

Mr. Turner of Equity Group was the moderator, and Ben C. Schull, senior vp with Aon Risk Services Inc. in Chicago, was coordinator. BI

PHOTO: MICHAEL MARCOTTE

Many attendees at the 35th annual Risk & Insurance Management Society Inc.'s conference visited the exhibit hall.

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INTERNATIONAL ADJUSTERS AND SURVEYORS

Global plans require some smooth talking

By SARAH GODDARD

ATLANTA—Communicating a global insurance program is a difficult task requiring sensitivity, say risk management and information specialists.

During a session at the Risk & Insurance Management Society Inc. conference earlier this month, delegates were told that a communications program changes as the global program it is accompanying evolves.

Joseph Anastasio, corporate risk manager at Masco Corp. in Detroit, said that from a risk management perspective, an international program is the most difficult program to manage and takes years to develop.

Six years ago, Masco, a waste metal recycling business, was highly decentralized and left newly acquired companies fairly autonomous.

Management did not require the satellite companies to buy into a global program, said Mr. Anastasio.

'It is not that complicated if you are sensitive to other people's differences, cultures and needs,' says Masco Corp.'s Joseph Anastasio.

Instead, he had to sell the concept individually to management of the overseas operations.

"It was very difficult to get their trust," he said.

But when the Masco management changed, it moved the risk management department from the responsibility of human resources to the auspices of the chief financial officer. Mr. Anastasio convinced the chief financial officer of the need for a consolidated global program. "You have got to convince management to stand behind you and bring support for a controlled program," he advised.

Within the overseas operations, "risk management was really a nonentity," said Mr. Anastasio. So he saw the process as "an opportunity to educate the operations that they can do more than just buy a policy," he said, for example, education in loss prevention and claims handling. "Management overseas are starting to see value added," he said.

But it takes time, and the risk manager should set both long- and short-term goals. "Take baby steps and you will gradually get to the objective," said Mr. Anastasio. Short-term goals could include basic information-gathering, he suggested, warning risk managers not to "gobble up more than you can chew right off."

Language and cultural barriers often are a sore point, and the risk manager must be sensitive to them, said Mr. Anastasio. "It is not that complicated if you are sensitive to other people's differences, cultures and needs," he said. "The battle is to get people to trust you and to give them value added."

When traveling to countries, learn a little about the business culture before setting off, he suggested. Showing someone you respect their customs and business ethics contributes to the trust factor, he said. Also, common courtesy dictates that despite time zone differences, you talk to them during their business day, not yours.

The best thing a risk manager can do is visit the operations and people to see how they do business and to show concern, advised Mr. Anastasio. "Try to give a little education each time you are out there," he added.

Meanwhile, a multinational's relationship with its insurer must be highly flexible, said Mr. Anastasio. "You need someone stable and familiar with the local market," he said. "They need to be flexible to local requirements."

His own organization is using independent brokers rather than a global network, partly so the long-standing relationships with local brokers are not disrupted.

"We are introducing a global program, but we are saying we can utilize the local broker for servicing," explained Mr. Anastasio.

Over the long term, he aims to pare down the number of local brokers, though not necessarily by using a global network. Instead, he would prefer to "mix and match" the best available in a certain territory.

Local claims control and loss control services are imperative, said Mr. Anastasio, particularly because of differences in local legal requirements.

"Communication is the basis of an international program," he said, adding that the communication must include visits to the overseas operations. Consistency can be achieved by producing a short risk management manual translated into each appropriate language.

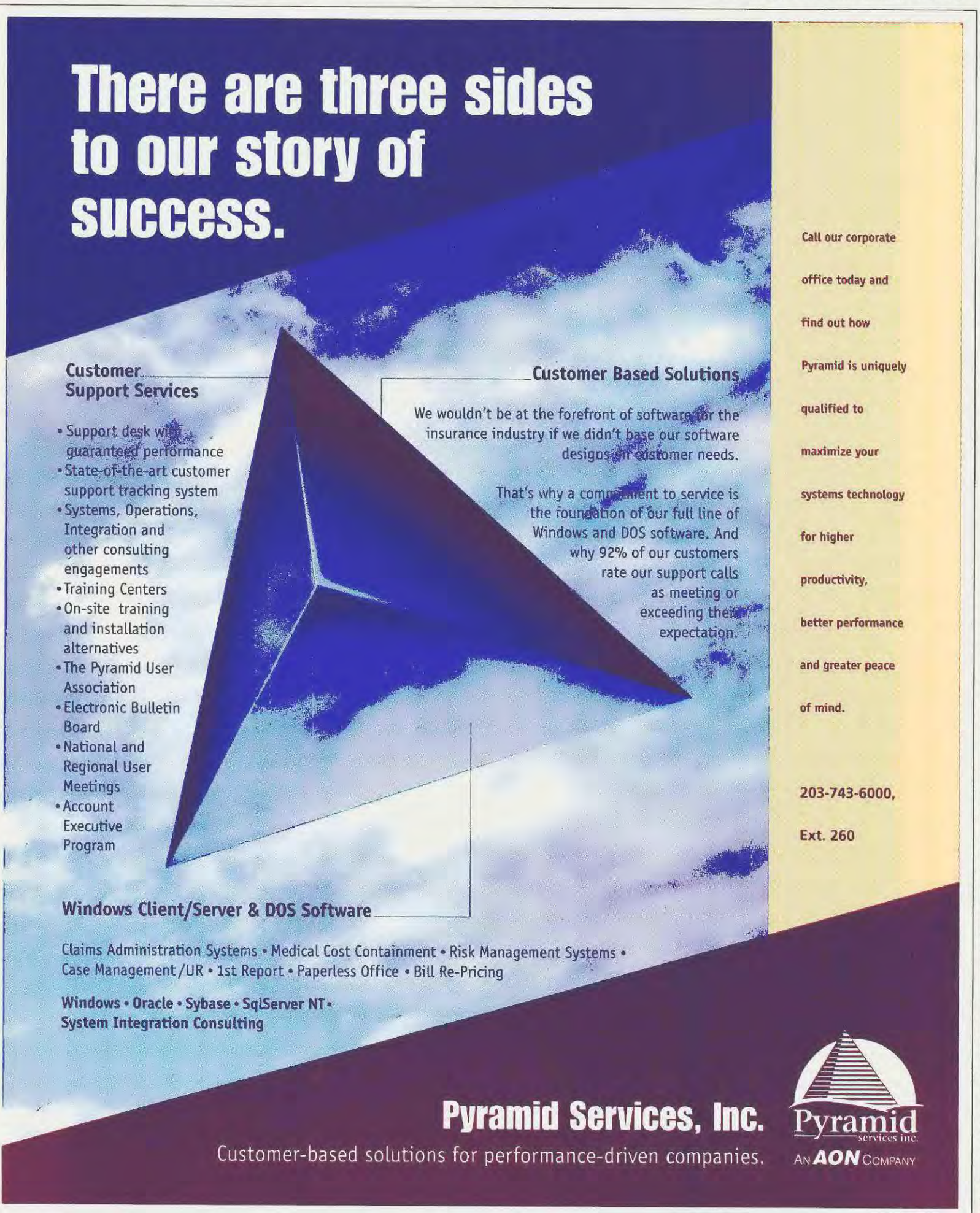
And in the other direction, insurance questionnaires including information about values and claims from the various operations help the global risk manager see what's going on in the organization.

Session coordinator Elizabeth Francy Demaret, vp-international accounts division of Near North Insurance Brokerage Inc. in Chicago, warned that the most frustrating aspect of a global program is that "you are never going to get a straight answer." The key for the broker on an international program is to make sure the communication with the clients "is in clear lines," she said, as a bridge between the overseas subsidiaries and the parent organization.

Also, the broker network must be managed efficiently. "The brokers overseas must understand what they are doing," communicate effectively and feel they are part of the team, she said. "They need to understand and help sell. . .the program," added Ms. Demaret.

Barbie Keiser, acting director at the library of the New York-based College of Insurance, also spoke at the session.

Frank Possinger, vp of risk management and benefits management at Pettibone Corp., moderated the session.



Leave act shouldn't scare employers

Companies still have some control over employee time off: Experts

By ROBERT KAZEL

ATLANTA—Like meter maids watching the clock, employers need to be more vigilant with employees who take time off under the Family and Medical Leave Act of 1993, or risk being taken advantage of in a thorny legal environment.

That is the advice from three speakers at the Risk & Insurance Management Society Inc. conference earlier this month. The presenters, two attorneys and a workers compensation specialist from a major publishing company, told a group of about 100 that employers can be smarter and bolder in their use of rules governing employee leaves to ensure a greater number of work days and to avoid redundant use of leave programs such as FMLA and workers comp.

The FMLA covers companies and public agencies with at least 50 employees. An employee must have been employed a year before the start of the leave and must have worked 1,250 hours during those 12 months.

Covered employees may apply for 12 weeks of unpaid time off in each 12-month period as a short-term leave to care for themselves due to illness or injury, or in such cases as the birth of a child, or the caring for a sick spouse, child, or parent. The employer must maintain health benefits if the worker desires.

Calling the interrelationship between FMLA, the Americans With Disabilities Act and workers comp "the most underestimated and complex legal issue" employers face, Martha Perrin, a labor attorney in the Atlanta firm of Ogletree Deakins Nash Smoak and Stewart, said the FMLA does give employers considerably more leeway in verifying requests for leave than workers comp cases.

Employers can, although often do not, use their authority to obtain medical certification to establish proof that a "serious health condition," as defined by the federal law, interferes with the employee's essential job functions.

The employer has more power in these cases to oversee a medical certification, recertification and a second recertification from a doctor than they normally do when workers comp is involved.

"You don't have to allow them to take the 12 weeks without any sort of certification at all," said Ms. Perrin, although some employers do.

The employer is supposed to track the progress of the worker using a standardized disability form, said William Carolan, vp of risk management services at Sedgwick James of California Inc. in Orange, Calif., a presenter at the session.

Employers with workers using the FMLA should be aware that the leave may include accrued sick or vacation days, said Diana J. Rich, workers' compensation manager of Irvine, Calif.-based Freedom Communication Inc. and the panel's coordinator and moderator.

During the time the employee is on FMLA leave, benefits from other sources, such as short- or long-term disability and workers comp, may be used toward the 12-week FMLA limit, as well. Workers comp leave can count against the 12-week FMLA allowance if the absence is due to a qualifying illness or injury and the employee is properly notified in writing that the leave will count as FMLA leave, according to government rules.

And the employer is not required to pay health benefits beyond the 12 weeks if the worker cannot return to his or her job; in that case, COBRA benefits could be assigned, Ms. Rich said.

Starting the FMLA "clock" as soon as an employee takes a disability leave, no matter what its nature, is of key importance because it prevents the case of a worker returning to the job after time off, such as workers comp leave, and then filing for an additional 12-week leave under the FMLA, Mr. Carolan said.

Any time a worker goes on workers comp leave, the employer should immediately send a letter saying FMLA leave also has begun, Ms. Perrin said. The employer, she said, should not be afraid of taking forceful action out of fear of legal retaliation.

"The reality is the employer has a great deal of control over policy, and I think too often employers roll over and play dead because it's like the employer is accused of sexual or racial discrimination," she said. "There's just paralysis."

Many employers delay action even when the situation drags on for months or years, she said. "You'd be surprised how many supposedly sophisticated employers are afraid to terminate employees after three to five years (on workers comp)," she said.

A key element to handling leaves successfully is coordination between risk management and human resources departments, she said.

"Employers hang themselves by the way they structure their employee benefits and leaves," she said.

She urged companies to bring together the affected departments to discuss leave policies "or you're going to have a colossal mess."

The speakers had this guidance for employers faced with workers on leave:

- Be sure the worker has a complete and accurate written job description so that the examining physician, and perhaps ultimately a judge, will be able to tell just what the employee is expected to do. The lack of a job description, however, is not a fatal error on the employer's part.
- Stay in frequent touch with the worker's doctor to monitor progress during an FMLA leave.
- Do not send threatening letters to workers warning when they need to come back to work. Conduct educational sessions with employees before the need for a leave arises to explain what types of leave may be available.
- Audit personnel files to make sure medical information related to leaves is not in general files and that access to medical information is on a strict "need to know" basis. BI

Workers Compensation
1997
RIMS Report

Commute

Continued from page 3

How does an employer select which employees to allow to telecommute?

"The employees who make the best telecommuters are the employees you trust," said Mr. Roskopf, who coordinated the session. They have the skills to perform the job, and they are self-starters and self-managers, he said.

"The problem is, the 'employees you trust' is not a job category," Mr. Roskopf noted. Therefore, employers cannot use that standard to select which employees they will allow to telecommute. "Anytime you do, you're in trouble," because that selection process exposes the employer to discrimination claims, he warned.

One employer remedied the situation by setting up a simulated work-at-home environment at its headquarters. Test-case telecommuters were segregated from the remainder of the staff and were allowed to come and go as they pleased. The employer even provided them keys to the office and the building so they could work whatever hours they chose.

"It very quickly weeded out those who were not good telecommuters," Mr. Roskopf said. More importantly, those who were not good telecommuters recognized they would not be happy in that environment, he said.

"It's an easy way to get a handle on what job functions and what employees do and do not work," he said.

Ms. Stern of DEKALB advised employers to define in a policy statement what type of work can be done out of the home. "More jobs than office type jobs are suitable, but not all are."

Regardless of whether employers are considering offering employees the opportunity to work at home, the Americans with Disabilities Act may force the issue before them. Employers do not have to offer telecommuting to all workers with disabilities, Mr. Roskopf said. But, courts have ruled that if a disabled worker is qualified, telecommuting would not create an undue hardship on the employer, he said.

He also advised employers to protect themselves against the slander, libel and defamation risks a telecommuter can create through his or her communications on the Internet. Mr. Roskopf recommended issuing guidelines for communicating across the Net, including limiting those communications to business purposes.

He noted that software can allow employers to monitor their telecommuters' Internet activities. But, he cautioned employers that they may create liability issues for themselves if they reserve such monitoring only for telecommuters rather than tracking all employees' Internet activities.

Mr. Roskopf advised employers to stipulate within the employment agreement that employers have the right to monitor those activities.

The panelists also advised employers not to be complacent about telecommuters' work safety issues.

While state workers comp laws vary, all "clearly" apply to work-at-home situations, Mr. Roskopf said.

Sorting out some injury claims, though, can be dicey, he said. Examples include an injury sustained in a fall while a worker is running to the door to accept an overnight package or a back injury sustained while installing a computer monitor.

"My personal opinion is that the vast majority of those would be ruled compensable by a workers compensation review board," Mr. Roskopf said.

But, he said he did not base his conclusion on past cases, because "almost all" compensable injuries that have occurred in work-at-home offices have been ergonomic claims.

Still, he suggested that companies and telecommuters sign employment agreements that clearly spell out what are compensable injuries, which would leave all other injuries and illnesses subject to the coverage terms of the company's medical plan.

Mr. Roskopf noted that one company and its telecommuting worker, who was doing assembly work at home, agreed that a compensable injury is one that occurs within the worker's designated work area during prescribed work hours.

"As far as I'm concerned, if you're going to put your money anywhere, consider the ergonomics," said Joanell C. Powers, corporate safety officer for Kemper Insurance Cos. of Long Grove, Ill. She also telecommutes.

Kemper handled its first ergonomic claim from one of its own employees in 1989, and ergonomics now "is the greatest type of loss we have," Ms. Powers noted.

She advised employers to take a keen interest in their telecommuters' working environment at home and develop a written policy statement on the types of furniture as well as provisions and accessories the company will provide its telecommuters.

For example, she advised employers not to provide only laptop computers to telecommuters who work eight hours a day at their keyboards. Telecommuters should have a fully adjustable desk and keyboard with a full-sized computer mouse "to do a full day's work," she said.

If a telecommuter must work off a kitchen table, simple advice can help minimize ergonomic-related workers comp claims. For example, the telecommuter can use a rolled up wash cloth as a wrist rest, a pillow as lumbar support when sitting on a straight-backed kitchen chair and an ironing board as a foot rest.

Employers also should take an interest in telecommuters' fire and other safety exposures.

"We often forget about the diversity of risk that lurks in the average home," Ms. Powers said. Those include fire hazards such as paint, combustibles, old files and stored clothing.

"So, it's not unreasonable to have the employee have a fire extinguisher nearby," she said.

A telecommuter also should have two exits to leave his or her office during an emergency, she said.

Air quality may not be a big issue in many cases, but the employer should ensure that the work-at-home environment is well-ventilated, Ms. Powers said. That is especially important with telecommuters working in basement offices. Naturally occurring radon often is detected in basements. In addition, malfunctioning furnaces located in basements can present carbon monoxide hazards.

Ms. Powers also advised employers to establish a claims-handling procedure so telecommuters know in advance who they would contact if they are injured in their home office.

The employment agreement should stipulate that a telecommuter must report any problems—regardless of whether it is an injury or equipment breakdowns—to the home office immediately, Mr. Roskopf said.

But, he advised employers not to highlight the importance of reporting workers comp claims immediately, because it would erode their feeling of independence.

Acknowledging that other consultants and employers will debate his perspective, he told employers to get the workers comp message out, "but don't hammer it home constantly."

The panelists agreed that telecommuting should not be a response to employees' child day care problems and that family life should not be a distraction to telecommuters. But, they advised against dictating to telecommuters that they must arrange day care for their children.

The exception may be if the company sponsors a day care program, Mr. Roskopf said. BI

Spencer's scholars

Foundation presents 15 scholarships

ATLANTA—The Spencer Educational Foundation Inc. awarded a little more than $100,000 in scholarships to 15 students and created a "Risk Manager in Residence" program at its annual meeting April 14 in Atlanta.

The 1997 Spencer Scholarship recipients were announced at the Spencer luncheon for RIMS chapter presidents and society directors held the same day.

In the undergraduate category, nine students were selected to receive $5,000 scholarship awards.

The scholarship recipients are: Eric Carlson, University of Hartford; Vi Cheng, Temple University; Karen Lasky, Georgia State University; Melissa McDonough, The College of Insurance; Kathleen Pritchett, University of Illinois; Arthur Randolph, Temple University; Marc Savasta, Temple University; Chad Scheller, University of Wisconsin at Madison; and David Zarovsky, The College of Insurance.

Victor Maroukian of The College of Insurance was awarded the 1997 Holwerda Memorial Award, which was slightly more than $5,000.

Four Spencer Scholars were selected to receive $10,000 scholarships. They are: David Anderson, University of Texas at Austin; Deborah Shaner-Little, Virginia Commonwealth University; Lawrence Williams, University of Pennsylvania-Wharton School; and Elizabeth Morrell, Georgia State University.

Karen Epermanis, University of South Carolina, was selected to receive a $10,000 pre-dissertation doctor of philosophy scholarship award.

In addition, the Spencer Foundation board authorized spending up to $15,000 to fund a "Risk Manager in Residence" program.

The grants will cover transportation and housing costs to college and universities that host this program where risk managers will be invited to speak to students and work with faculty.

The foundation is seeking risk managers to participate. The prospective risk manager must have: 10 years' minimum work experience; good communication skills; classroom experience; ideally CPCU or ARM teaching experience; senior specialist in his or her organization; and must be able to spend two to three days on a college or university campus.

A Risk & Insurance Management Society Inc. chapter with a risk manager who meets the criteria or a risk manager who wants to be considered for this program is asked to send a resume to: The Spencer Educational Foundation Inc., Risk Manager in Residence Program, 655 Third Ave., Second Floor, New York, N.Y. 10017.

BI Risk Management Honor Roll awards

Members of the *Business Insurance* Risk Management Honor Roll received recognition during the week of the RIMS conference at a luncheon, above, hosted by *BI* Publisher and Editorial Director Kathryn J. McIntyre (far left) and Editor Paul D. Winston (far right). Receiving awards, clockwise from top, were: Betsy R. Kutska, executive director of the Park District Risk Management Agency; William R. Powell, manager-risk management department of the Salt River Project; Jeannie Sedwick, the former director of risk management at Wake County Hospital Systems Inc.; Russell C. Opferkuch, vp at Bankers Trust Co.; and John J. Carney, vp-risk management at National Freight Industries Inc.

PHOTOS: MICHAEL MARCOTTE

Loss control plans can help tame tremors

Risk Management 1997 RIMS Report

By GAVIN SOUTER

ATLANTA—The timing of an earthquake is unpredictable but the damage it causes is not only predictable but, in many cases, also preventable, a panel of experts says.

By using simple but effective engineering techniques to strengthen buildings in earthquake zones, policyholders can reduce the risk of losses in the future and reduce their insurance premiums now, the panelists say.

In addition, they added, a proactive approach to earthquake risk management can help policyholders avoid chaos in the earthquake insurance market.

Colgate-Palmolive Co. decided to take a new approach to earthquake risk management to attain these goals, said James D. Noble, director of corporate risk management & insurance in New York.

The company turned to Allendale Mutual Insurance Co. and EQE International, a loss-control consulting firm specializing in earthquakes, to assess Colgate-Palmolive's earthquake exposure, said Mr. Noble at a session he moderated during the Risk & Insurance Management Society Inc. conference held earlier this month in Atlanta.

As a result of the assessment, Colgate-Palmolive discovered that 90% of the projected damage that would follow an earthquake was preventable, Mr. Noble said.

The company is now in the process of following up on the consultant's recommendations, he said.

The Colgate-Palmolive assessment was based on assessments Allendale and EQE had conducted at more than 400 locations of other clients in California between 1991 and 1995, said Kenneth E. Devlin, senior vp and operations manager at Allendale in Woodland Hills, Calif.

"We documented carefully everything that we thought could happen in an earthquake," he said.

The procedure was much more effective and site-specific than standard underwriting techniques, which often rely on computer models to assess earthquake risks, Mr. Devlin said.

Computer-based assessments are often either over-conservative or not conservative enough, he said.

"And the business interruption estimates are very unreliable because you are not talking to people at the plants to find out what the real cost will be," Mr. Devlin said.

Allendale used computer models to assess the risks but only in conjunction with the site visits, he said.

Allendale then prepared reports containing engineering recommendations for each site, Mr. Devlin said.

"We gave it to the customers and talked about the cost of the recommendations, but we just left the report with them," he said.

A few months after the reports were completed, the Northridge earthquake struck in southern California, Mr. Devlin said.

Allendale then revisited 40 of the locations that had been affected by the quake and compared its damage predictions with the actual damage, he said.

"The damage that had occurred was not only predictable but it was uncanny how precise the engineers had been," Mr. Devlin said.

And in many cases millions of dollars of damage could have been prevented with a few thousand dollars worth of structural strengthening beforehand, he said.

For example, flooding losses could have been avoided if sprinkler systems had been braced and attached to the building so that they moved with the building, Mr. Devlin said.

To decide whether instituting the changes will be worth the expense, risk managers need to conduct simple cost benefits analyses, said Peter I. Yanev, the session coordinator and president of EQE International in San Francisco.

"It's a business decision not an engineering decision," he said.

Risk managers can be aided in making that decision by talking to the plant managers and determining what really needs to be protected to keep the plant going, Mr. Yanev said.

"You have the information at the plants, you just need to pull it out," he said.

Once the cost of the engineering improvements is determined it can be compared with the reduction in insurance premium that property insurers will give to well protected buildings, Mr. Yanev said.

An EQE client in California carried out engineering work that cost $10 million but its insurance premiums were reduced by a similar amount because of the reduced risk, he said.

The improvements at the latter site were carried out a few months before Northridge struck the area. Although the plant suffered $35 million in damage, its fundamental operations areas had been protected so it was running again with four days of the quake, Mr. Yanev said.

If the earthquake protected areas had been damaged, the plant could have been out of operation for over a year, he said. BI

PHOTO: MICHAEL MARCOTTE

Exhibitors for the 35th Annual Risk & Insurance Management Society Inc. conference in Atlanta came from all over to display their products. Among those exhibiting this year were Lloyd's of London, Wausau Insurance Cos., GAB Robins and *Business Insurance*.

READER REPLY SERVICE

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Disaster plan critical to recovery

By RODD ZOLKOS

ATLANTA—A thorough emergency response plan is critical to a company's disaster recovery, a group of speakers said.

Such a plan provides a "road map to recovery" from an unplanned event, said Dennis Anderson, vp and director of engineering at Protection Mutual Insurance Co. in Park Ridge, Ill. He spoke during a session at the Risk & Insurance Management Society Inc.'s annual conference earlier this month.

"The recovery depends on doing the right things fast, right after the damage occurs, no matter what the issue is," Mr. Anderson said. "If you don't have any planning, you can be sure that (the recovery) will go worse than it otherwise would have."

The plan should include an assessment of how the company's ability to continue operations might be vulnerable, Mr. Anderson said. It also should examine resource requirements after an emergency vs. the potential availability of those resources and include a process for supporting and defending the company's strategic mission and operational plan in the wake of an emergency.

According to Thomas J. Grimes, managing director for J&H Marsh & McLennan Ltd. in Toronto, a good emergency response plan "is made up of common sense, logic and is reduced to a written form."

"Your job through the whole process is to examine your experience and determine the worst things that can happen and then set in motion a set of processes that can prevent those things from happening," Mr. Grimes said.

Risk managers must recognize the difference between "problems" and "crises," Mr. Grimes said, noting that problems can typically be overcome within a limited time frame without publicity, while a crisis is a major unexpected happening that can significantly damage an organization.

He suggested risk managers create a "risk assessment matrix" for their organizations, with possible adverse events listed across one axis and the aspects of the business that are at risk along the other.

"Ultimately, your goal of creating this matrix is to separate the problem issues from the crisis issues," he said.

When completed, a properly prepared emergency response plan should coordinate "with everything else your business is doing," Mr. Anderson said. "There's a lot to one of these things if it's really going to work, but it's still got to be simple enough to understand. And it can't consume all of the resources of the organization."

Along with the plan, a company should create an emergency response team, according to Mr. Grimes, drawing its participants from all operations of a company. Those on the team must be capable of dealing with issues under stressful conditions, of determining potential damages and implementing any recovery.

An emergency response plan also must have management commitment, Mr. Grimes said, or it is "designed to fail." It should be updated regularly and include clear details of specific actions and functions.

Another panelist, Renaud Nicolas, senior adviser for loss prevention and risk management at VIA Rail Canada Inc. in Montreal, offered a similar view.

"An emergency management plan has to be not only supported by upper management, but key resources have to be committed to that plan," he said.

The plan should be tested regularly and updated as necessary, Mr. Grimes said. "If it's not tested regularly, the only time it is tried is when you need it, and you might find there's a lot of little things wrong with it."

"If you've got a plan, you can't just put it on a shelf," agreed Mr. Anderson.

Once a plan is in place, risk managers should watch for "signals" of emergency situations so they can move quickly to head off problems, Mr. Grimes said.

Such signals could include lawsuits or problems reported in the press affecting similar businesses, increasing product returns or customer complaints, social or political instability, rumors of embezzlement or of possible workplace violence, and an increase in the frequency of small accidents.

"All of these are indicative of something off kilter, something that should be fixed," Mr. Grimes said.

And when disasters do occur, dealing with the media is probably the most critical matter, Mr. Grimes said. Dealings with the press could turn a problem into a crisis if handled improperly, he said.

While professional public relations people can be helpful in a disaster, the media wants to see a "take charge" chief executive officer, Mr. Grimes said. "If you deal with the media through public relations people, there may be a perception on the part of the media that you're trying to hold something back."

"It's important to remember that the media can either be your enemy or your ally," Mr. Grimes said. He noted that if companies don't provide the news media the information they need, they'll look elsewhere, often to competitors or ex-employees.

Mr. Nicolas and Ron Denoville, senior vp and managing director of GAB Robins Environmental Inc., offered case studies that examined disaster recoveries.

Mr. Denoville discussed Ashland Oil Co.'s response to a 1988 oil spill into the Monongahela River near Pittsburgh, while Mr. Nicolas discussed a 1994 VIA train accident.

In that latter case, a train with nearly 400 passengers and crew traveling 96 mph struck a section of scrap rail that had been laid across the track by vandals, puncturing the engine's fuel tank and causing the train to burst into flames. No one died in the crash.

The incident taught VIA officials that "emergency response plans are critical," Mr. Nicolas said, and "followup correction measures are of prime importance."

A close examination of the disaster exposures a company faces and developing plans for recovery carries the additional benefit of providing greater insight into the nature of the organization, Mr. Anderson said.

"When you're all done, you have to have a better understanding of what you do," he said.

Grant B. Suffel, supervisor of administrative services for the Ottawa Hydroelectic Commission, coordinated and moderated the session. BI

Risk Management
1997 RIMS Report

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More managers may eye derivatives

By RODD ZOLKOS

ATLANTA—As risk managers become increasingly involved with their companies' financial operations, risk financing that combines traditional insurance with derivatives is likely to become more commonplace.

The move is a natural offshoot of the impact the risk manager's operation has on corporate earnings and stock value, suggested James A. Cunningham, a senior vp at Near North Insurance Brokerage Inc. in Chicago.

Mr. Cunningham coordinated and spoke on a panel on derivatives' place in an insurance program at the Risk & Insurance Management Society Inc.'s annual conference earlier this month.

"America worships at the altar of earnings," Mr. Cunningham said. "If you're not measuring or evaluating your risk management program in terms of how your risk management program affects earnings, maybe you should."

He noted that derivatives can be used with traditional insurance to do "combined hedging."

"These things are being done today. They're being quoted," he said. "They're not being done routinely. This is a market in its infancy."

He offered the example of a company that faces a 20% chance of a lawsuit costing a given amount and a 20% chance of an interest rate hike costing the same amount.

While the company could survive each of those risks occurring independently, in Mr. Cunningham's example, if they happened to occur together, the company's net income for the year would be zero.

Purchasing insurance and an interest rate swap effectively could eliminate the company's risk, Mr. Cunningham noted, removing any earnings volatility resulting from the two exposures.

That risk-free scenario might not satisfy stockholders, however, who could be willing to exchange some year-to-year earnings risk for a higher return long-term, he said.

Because the company in his example can handle the interest rate and liability suit risks individually, Mr. Cunningham suggested it could realize a higher average annual return while reducing risk over a multiyear period by purchasing a combined risk transfer or "dual-trigger" product that insured it against both the liability suit and interest rate increase occurring in the same year.

Over a five-year period, the company's overall net earnings could be higher—despite any losses that might not be covered—because the premium on the combined product would be lower than the combined cost of a swap and liability insurance, he said.

"The math in these things works, and it works because of probability theory and because you're establishing a basket of risk as opposed to addressing them independently," Mr. Cunningham said.

Wilfred J. Romero, a vp with Swiss Re Financial Products in New York, took the audience through some derivatives basics before Mr. Cunningham's example, noting that derivatives are financial instruments whose cash flow and value are based on the performance of an underlying instrument.

Derivatives are commonly based on interest rates, foreign exchange rates, commodity prices or some sort of index.

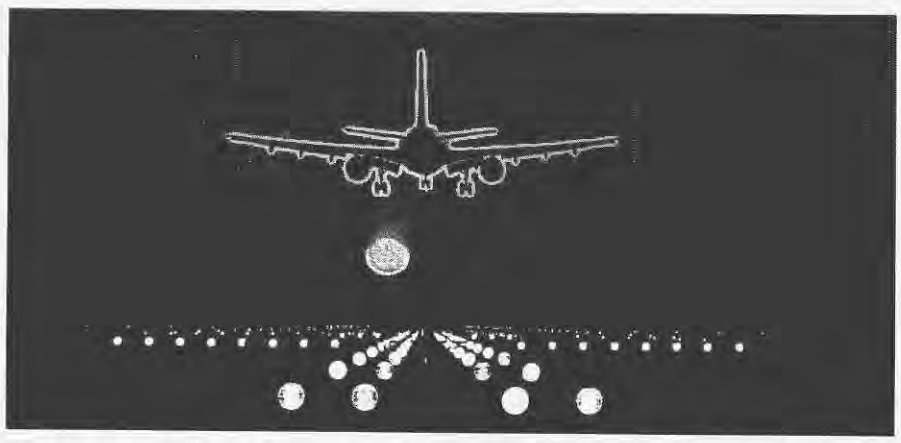
"An insurance contract is one form of derivative where the underlying instrument is your losses," he said. "If you ever bought a house, you've created a derivative."

In that case, the value of the purchase contract changes with changes in the value of the house while the buyer waits to secure a mortgage.

The four basic derivative products are forwards, futures, swaps and options, Mr. Romero said. "These four

See **Derivatives** *on next page*

Finance
1997 RIMS Report



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Evaluate networks carefully

By GAVIN SOUTER

ATLANTA—Risk managers with international exposures should work out their own system for handling the risks and not simply rely on their brokers' and insurers' international networks, a group of risk managers says.

While many brokers and insurers boast international capabilities that may be attractive to corporate risk managers, the concerns and local relationships of overseas units should not be overturned for the sake of simplicity, they say.

Risk managers should not subject themselves to the dictates of insurers in the United States with regard to their overseas units, they say.

For example, the stringent requirements of highly protected risk insurers are often impractical overseas, and risk managers should consider other coverages, they say.

And risk managers who choose to use international rather than U.S. insurers may obtain more extensive coverage, one risk manager said.

Risk managers often use the international network of one broker to handle exposures worldwide, said David G. Pugh, senior insurance officer in the capital markets department of International Finance Corp., a unit of the World Bank in Washington.

"When you use a network, there are obvious advantages where ownership is involved, but there's not necessarily a problem when there is a correspondent relationship," he said at the international solution sharing session of the Risk & Insurance Management Society Inc. conference this month.

But risk managers who use a broker that has a correspondent network should ensure the correspondent has a longstanding relationship with the U.S. broker and that the two brokers have a firm and smooth accounts procedure, Mr. Pugh said.

To check that the correspondent relationship between the brokers will be satisfactory, risk managers should review the written agreements between the brokers, said Brian M. Kawamoto, a San Francisco-based executive vp with Aon Group Inc.

"Look at what formalized protocols they have in place. . .they should have a published set of guidelines," he said.

Agreements between brokers in different countries sometimes can lead to extra costs for risk managers and should be discarded, said Karen S. Devaney, director of insurance and human resources at Hoyts Cinemas Corp. in Boston, speaking from the floor.

For example, Hoyts had an international liability program that originated out of Australia, and the Australian broker took 90% of the fee, but most of the claims arose out of the U.S. operations, she said. "I said: 'Forget it. I'm going to negotiate with each country,' " Ms. Devaney said.

Hoyts managed to cut its insurance costs by negotiating with the individual brokers, she said.

Risk managers also should not force international operations to deal with the overseas office or correspondent of their U.S. brokers, several risk managers said.

For example, FMR Corp. used to use Johnson & Higgins' UNISON network, said Judy M. Lindenmayer, vp-Fidelity insurance and risk management and the 1997 *Business Insurance* risk manager of the year.

"But in the (United Kingdom) our U.K. company had been using the same Willis Corroon broker since it opened its doors, and I did not think it was appropriate for me to tell them to get rid of him," she said.

Instead, the U.K. unit used Willis Corroon P.L.C. while FMR's overall broker remained J&H. FMR has since moved its overall international account to Aon.

Insurance
1997
RIMS Report

The ideal of having the same broker for all international locations often is not worth the friction it generates within a company, agreed Brian D. Casey, director of risk management and loss prevention at Corning Inc. in Corning, N.Y.

"Having the same broker for all locations isn't worth the aggravation of dealing with a country that wants someone else," he said.

And units in other countries still may choose to use the parent company's U.S. broker if they are given the choice, Mr. Casey said.

For example, Corning gave its over-

See **Global** *on next page*

Derivatives

Continued from previous page

products are the building block of every derivative."

He explained that forwards are contracts between two private parties sold over the counter rather than on regulated exchanges. They involve an obligation on the part of one party to purchase an asset on a certain future date at a price specified at the contract's inception.

The major risk associated with forwards is the credit risk of the counterparty—the possibility that the other party might not be able to meet the contract's terms.

An oil company, for example, might enter into forward contracts for the sale of oil to stabilize revenue in the face of changes in oil's spot price—the price of the underlying at any point in time.

Futures contracts provide a way to limit the credit risk of a forward. Futures are standardized and listed on exchanges and include a margin requirement that is settled daily, reducing credit risk. Futures are more liquid than forwards because they can be traded on the market, but they are less flexible because they are standardized.

Swaps are private contracts between two parties to exchange cash flows in the future according to some prearranged formula. The most common example is an interest rate swap in which the parties agree to swap the cash flows from fixed and variable interest rate payments on a set "notional" principal amount.

Options give the owner the right, but not the obligation, to buy or sell an asset at a set price on or before a specified date. The upside for option buyers is "basically unlimited," Mr. Romero said, while the downside is limited to the price paid for the option.

Mr. Romero said he believes the lower price offered by the products is attracting risk managers to begin incorporating derivatives in their risk financing programs.

But, Mr. Cunningham noted that because of the newness of the market, the savings aren't yet what they should be. "These are still exotic, and each is a one-off deal so you're not getting as low a price as you ultimately should be," he said.

"You're not getting the absolute efficiency," agreed Mr. Romero. But, "you're getting 80% of it."

A. Herbert Johnson, manager-risk management for Michigan Consolidated Gas Co. in Detroit, moderated the session. BI

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Global

Continued from previous page

all broker one year to convince all of Corning's international units that it could provide a satisfactory service, he said.

"At the beginning we had six requests to use their own broker, but after we came over and gave a seminar with the broker, five out of the six decided to use the overall broker," Mr. Casey said. Before the year's end, all the units were using the same broker.

Good brokers should not be replaced just to fit a corporate policy, said Will M. Simon, international insurance manager at Billiton in The Hague, Netherlands.

"We operate in over 20 countries, and the choice of broker is dictated by the local circumstances and the local requirements. The local broker is chosen on the basis that if he's in place and does a good job, then he doesn't deserve to be fired," he said, speaking from the floor.

Risk managers also should be flexible in their choice of insurers for their overseas units and not always insist they have the same type of coverage as the U.S. parent, said Mr. Casey of Corning.

In particular, HPR insurers may not provide the best coverage for units overseas, he said. Often the HPR insurers insist on U.S. standards of fire protection at overseas units. Although the local units may have fire protections systems that meet local standards, they do not meet the U.S. standards, so the HPR insurers do not give a premium discount for the protection, Mr. Casey said.

In these cases, a risk manager can use a captive to give the local units a discounted premium that reflects the fire protection engineering they have, he said.

The inflexibility of insurers, particularly in the United States, may also encourage risk managers knowledgeable about international markets to review their insurers, Mr. Simon said.

More and more insurers are inserting exclusions in insurance policies to avoid liabilities they do not want to cover, he said. "That doesn't help me at all, because the risk doesn't go away," Mr. Simon said.

If insurers do not think they are being sufficiently compensated for the risks they take, they should charge higher premiums rather than curtail coverage, he said.

Risk managers who use European insurers often are able to obtain wider protection from the more flexible insurers there, Mr. Simon said.

Many insurers are starting to react to the dissatisfaction risk managers express about coverage exclusions, said Ms. Lindenmayer.

For example, insurers are more willing to offer combined aggregate coverage, which often includes coverage for difficult risks, she said.

Ms. Lindenmayer moderated the session. BI

Protect access, content to curb online risks

By ROBERTO CENICEROS

ATLANTA—Building adequate security for World Wide Web sites is the key to ensuring disgruntled employees or contractors don't bring a home page crashing to the ground, a security consultant says.

When a computer contractor felt he wasn't paid adequately for the services he provided a mail-order company, he "electronically repossessed" his work by replacing the client's online order form with a photograph of a burning U.S. flag. The contractor did so by reprogramming Internet router information so that attempted contacts with the site actually went to a different World Wide Web address.

All it took was an e-mail to reprogram the routers and change the address for the mail-order company's online order form, said Alan E. Brill, managing director for Kroll Associates Inc., a New York-based risk assessment and investigation company that recently was acquired by Equifax Insurance Services Inc. (*BI*, April 7).

"It's happened before and it's likely to happen again," said Mr. Brill, who spoke at a session of the Risk & Insurance Management Society Inc. conference earlier this month.

When Mr. Brill goes to work for an organization that finds Internet graffiti has replaced its Web site material, he first asks who the employer has authorized to work on the site.

"Sometimes it's not even your employees, it's contractors," Mr. Brill said of common perpetrators. "Or it's even more exciting when it's disgruntled employees who are just waiting for the right time, for that creative moment, to send an e-mail message that can put anything they want on your site. It also causes all your e-mail to go to them and puts you electronically out of the picture."

To reduce the risk of a such a meltdown, Mr. Brill suggested that companies should request that Herndon, Va.-based InterNIC—an Internet coordinating organization that can be reached at http://rs.internic.net—provide their Web sites with the appropriate security protection. Every Web site in the United States must be registered with InterNIC, which assigns and lists addresses on the Internet, Mr. Brill explained.

Without its security treatment, all it would take to change a Web site address is a properly formatted e-mail message and the appearance of having the authorization to do so, he said.

More than in the past, risk managers need to be aware of the potential losses and liabilities associated with their company's computer systems, the speakers said.

The nature of data theft means it is not likely to be insurable, said A. LeConte Moore, senior vp in the Arts and Entertainment Group of J&H Marsh & McLennan Inc. in New York.

"They're probably not going to take it; they are just going to copy it," he said. "So how do you go to your underwriter and say: 'Somebody took some data, and we think it's a product list. We can't really prove they took it, but someone was in our system, and we don't know what they are going to do with it. But we want to claim a $1 million loss.'"

Loss Control
1997 RIMS Report

Prevention often hinges on understanding losses other companies have experienced and taking measures to avoid them, the speakers said.

Risk managers can learn about potential data intrusion problems by reading computer trade magazines and materials made available by their vendors of computer technology and services. The U.S. Department of Justice, through the Federal Bureau of Investigation, also issues bulletins on subjects such as economic espionage and high-technology crimes.

Other advice includes keeping in mind that a certain percentage of the population is up to no good, the speakers said. As a result, never give temporary employees or contractors computer passwords or access to data without having them sign a non-disclosure agreement.

And educate employees about using silly computer passwords such as "password," Mr. Brill said.

Another safeguard is to have a process for actively determining where on the Internet your company's name, brand names and the names of senior executives appear. That is important because more corporations are experiencing a rise in cases of deliberate misstatements of fact about them going out on the Internet, Mr. Brill said.

The Securities and Exchange Commission has been looking into numerous cases of "people manipulating stock prices on the Internet by badmouthing companies or saying false good things about them," he said.

Mr. Moore was the session coordinator. William W. Johnson, risk financing manager for Hallmark Cards in Kansas City, Mo., moderated. BI

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INTERNATIONAL

Global Briefs

Bermuda insurer **ACE Ltd.** has signed a quota share treaty reinsurance agreement with the Multilateral Investment Guarantee Agency, a unit of the World Bank Group set up to encourage investment in developing countries. The agreement will "significantly" extend the ability of MIGA and ACE to meet increased demand for political risk insurance and will allow MIGA to provide private investors and developing countries with additional capacity to support investment projects. . . .**Lloyd's of London** has appointed Richard Summers as marketing manager of its recently formed Insurance Services business unit. Mr. Summers, who has worked as an underwriter both with Lloyd's and in the London company market, will be responsible for marketing a range of technology, information and business support services. . . .The **London Processing Centre Ltd.**, jointly owned by the Institute of London Underwriters and the London International Insurance & Reinsurance Market Assn., processed 678,000 transactions in 1996, down from 737,000 in 1995. The overall value of premiums processed declined to £4.1 billion ($7.02 billion) from £4.5 billion ($6.99 billion), though the LPC said the decline in transaction numbers was largely owing to a welcomed 7% fall in the number of claims processed. . . .**Wellington Underwriting P.L.C.**, one of the largest syndicate managers at Lloyd's of London, reported a 1996 pre-tax profit of £10.5 million ($17.9 million), up nearly four-fold from £2.2 million ($3.4 million) in 1995. The rise was helped by profit commission on the "very strong underwriting performance" for the 1994 year of account on syndicates it manages. Total underwriting profits of Wellington syndicates for 1994 were £96 million ($164.4 million), against £110.8 million ($172.1 million) for 1993, which benefited from £13.6 million ($20.4 million) that had been overreserved for Equitas Ltd. . . .**VELO Group**, the U.K. fleet management services company, reports in its sixth Fleet Insurance Statistics Report that the cost to insurance companies of vehicle thefts—which account for the biggest single item of auto insurance claims—fell by 3.5% in April compared with three months earlier. VELO says the change results from a continuing fall in car crime, though this is the first time it was reflected in a genuine fall in the cost of crime per fleet vehicle. . . .**Zurich International (U.K.) Ltd.**, part of the Zurich Insurance Group, has launched a specialist protection and risk management service to the financial services sector. Employing a dedicated department of specialist underwriters, risk engineers and claims handlers, the service will offer conventional insurance alongside products designed specifically for banks, building societies, institutional fund managers and financial services providers.

U.K. businesses watch losses mount as IRA terrorist threats continue

By SARAH GODDARD

LONDON—British businesses are generally uninsured for the huge economic losses they have suffered as a result of terrorist attacks during the weeks running up to the May 1 general election.

A string of bombings and false bomb threats placed by the Irish Republican Army over the past two months have shut down roads, railways and airports, in a strategy designed to cause economic loss rather than bodily injury. Estimates have put the cost to British business at more than £100 million ($160 million).

In the most recent string of threats last week, London was brought nearly to a complete halt. Coded warnings, received by shops and hospitals shortly before 7 a.m. Monday, resulted in seven rail stations and the four London airports being closed for hours. No bombs were found, but the British Transport Police took the precaution of closing all the threatened buildings and evacuating the areas.

Gatwick Airport, one of the busiest London airports, was closed for most of the day. About 8,000 would-be travelers found themselves camped out on the tarmac as the terminals were evacuated and passengers on arriving planes were kept on board until the security alert was over.

A spokeswoman for Virgin Atlantic Airways Ltd. said that only one VAA flight—to Athens—was canceled, and she anticipated the loss to the airline to be minimal. Although a number of planes were delayed, they eventually took off for their original destinations, she said.

British Airways P.L.C., the largest airline in the United Kingdom, also sustained delays, incurring losses that will not be insured. A spokesman said the costs of the problems had not been fully assessed. "But the work we did during that day and overnight meant we were perfectly able to operate the timetable the following day."

Rail stations at Gatwick, Watford Junction, Kings Cross, St. Pancras, Charing Cross, Baker Street and Paddington were all closed, seriously delaying commuters both in and out of London. Most were reopened mid-morning, though Gatwick—which serves the airport—was closed until the middle of the afternoon.

A spokesman for the British Retail Assn., a trade association for retail outfits, said the economic loss was hard to judge because people would have bought any items they wanted from another store or at another time.

But previous bombs and threats may well

See **Terrorism** *on next page*

AP/ WIDE WORLD PHOTOS

Earlier this month, the U.K.'s Grand National horse race was postponed two days after an IRA coded warning cleared the Aintree racecourse moments before the race was scheduled to start.

Lloyd's puts on new public face

By SARAH GODDARD

LONDON—Lloyd's of London is dropping London.

As a result of customer research Lloyd's undertook over the past two years, the insurance market decided its name and image needed a revamp. So it has become simply Lloyd's, dropping the "of London" part of its title, and spruced up its corporate logo.

"There was quite a lot of confusion among clients and brokers in the U.S. and the U.K. regarding what exactly was Lloyd's visual identity," said Beverly Landais, head of marketing at the Corporation of Lloyd's.

LLOYD'S

About 47 icons and logos have been used to represent Lloyd's, she explained, and "it didn't really aid communication."

Lloyd's reconstruction and renewal plan intervened to stretch the development time of the new image to more than two years. During this time, Ms. Landais' team, aided by design consultants, tried out a number of variations on the present Lloyd's logo to find out which one people responded to best. Their guinea pigs were managing agents, brokers and clients.

"We found that Lloyd's itself was the thing that clients related to," explained Ms. Landais, rather than Lloyd's of London, so the geographical reference has been dropped, though it remains in the market's legal title.

As for the logo, a revamp of the one created for the market on its tercentenary in 1986, Ms. Landais is confident it reflects the customer research discovery that it should be "clean and uncluttered."

It will take time for the new image to spread out among the Lloyd's community. Rather than demand a "big bang" start date for everyone to adopt the same style, Ms. Landais' team is taking a softer approach. People can use the new image as they need more

See **Lloyd's** *on next page*

Aon organizes London groups

By SARAH GODDARD

LONDON—Chicago-based broker Aon Corp. is quickly bringing its acquired London operations under the Aon corporate banner.

The businesses of Nicholson Jenner Leslie Ltd., Bain Hogg International Ltd. and Alexander Howden Group Ltd. will be merged by July 1 to create Aon Group Ltd.

Wholesale, reinsurance and specialist divisions of the three brokers will be consolidated under the Aon name, though how Minet Ltd., Aon's most recent acquisition, will be integrated remains to be seen.

The U.K. retail operations of Bain Hogg Group P.L.C. and Alexander & Alexander Ltd. are expected to be combined into Aon Risk Services later in the year.

And the actuarial and pension consulting operations, Alexander Clay and Godwins Ltd., are being combined to form Aon Consulting Ltd.

After Aon Group Ltd. announced the new structure and board last month, the broker last week internally announced the appointment of 150 managing directors and directors in London.

Aon's London board is headed by Alan Colls, as chairman, supported by Dennis Mahoney as deputy chairman and chief executive. Mr. Mahoney is also chairman of the executive committee. Francis Marjoribanks is Aon Group's chief financial officer and also sits on the executive committee.

Other board members are: David Ambrose, Colin

See **Aon** *on next page*

German court ruling increases D&O risks

By DON LEWIS KIRK

KARLSRUHE, Germany—Directors of German companies are required to pursue damages if aware of criminal or negligence activity by company executives, or risk being sued themselves, following a recent decision from the German Supreme Court.

This and other court decisions in the past year are expected to boost demand for directors and officers liability insurance in Germany.

In last week's ruling, the Supreme Court, or Bundesgerichtshof, held that a board of directors was required to sue a top executive for damages when the directors knew about negligence by the executive in failing to stop an illegal activity.

The ruling overturns a state court decision in a case involving the board of directors and former chairman and chief executive of ARAG Rechtschutzversicherungs A.G., a leading German legal expense insurer in Dusseldorf.

The executive allegedly had knowledge of but did not stop illegal financial transactions made by a former chief financial officer, court papers show. The former CFO had invested in securities without authority and was eventually sentenced to 4½ years in prison.

Initially, a majority of the ARAG board of directors had voted not to seek 55 million DM ($32 million) in damages—the amount lost that could not be recovered—from the chairman and CEO.

As CEO, the executive was responsible for the company's management and therefore allegedly was negligent for failing to halt the CFO's illegal transactions, according to court papers.

In 1995, though, dissenting board members brought the case before a state court. The dissenting members sued the board of directors for not taking action against the executive. The state court ruled the board's decision was an internal matter for the board to decide.

That court held that Germany's judicial system is responsible only for determining the legality of boards' actions, not reviewing the appropriateness of directors' business decisions.

On appeal, the German Supreme Court overturned that decision, saying the case involved allegations of illegal activity and therefore was not an internal matter

See **Germany** *on next page*

Terrorism

Continued from previous page
have hurt retailers' bottom-line figures, said a spokesman for the Freight Transport Assn., a trade association representing all kinds of cargo transportation companies. On April 18, threats of devices beside motorways in the heart of England effectively cut off the north of the country from the south. This could well have delayed deliveries to supermarkets and other stores, and "if it's not on the shelves, people can't buy it," he pointed out.

The FTA estimated the basic economic loss to haulage companies of bombs placed on the same roads in March to be about £2.3 million ($3.7 million) each hour. Overall, the spokesman estimated the March delays to have cost his association's members about £10 million ($16.2 million), though he said this estimate was conservative and covered just the cost of the drivers' pay, fuel, road tax and insurance. Related costs, such as penalty payments for late deliveries, were not factored into the amount, he said.

Any businesses carrying terrorism insurance, whether through the U.K. government-backed reinsurer Pool Reinsurance Co. Ltd. or the various Lloyd's syndicates prepared to write the business, will not be able to claim for delays because of the disruption.

Currently, terrorism policies only cover for losses caused by physical damage to the insured's property or business interruption losses due to that physical damage. In addition, Pool Re coverage is triggered only after the first £100,000 ($162,000) on any claim. Leslie Lucas, chief executive of Pool Re, thought it unlikely that the reinsurer will see any claims, both because of the deductible and because in most cases there was no property damage. "The threat of a device...won't trigger a reinsurance claim to Pool Re," he said.

Raymond Dumas, underwriter at Wellington Underwriting P.L.C., said his syndicate will not see claims. "An essential of the policy is that there must be damage at the insured location," he explained.

"Mere threat is not an insurable loss, and mere delay is not an insurable loss," he said, adding that he would consider writing such business should he receive a request. "The Lloyd's marketplace has a tradition and pride that it would consider any risk," said Mr. Dumas.

Ina Barker, executive director of the Assn. of Insurance & Risk Managers, said new forms of terrorism coverage could be a "marvelous opportunity" for the insurance market. But she foresaw problems with assessing the risk exposures, for example putting a value on a proportion of a company's employees not being able to get to their workplace, or the business interruption and contingency costs of evacuating a factory. "Nevertheless, it is a risk which could be assessed," she said. "If it was put in as part of a business interruption program, I would have thought it would be of interest," she added.

In the meantime, AIRMIC is advising its members to remain vigilant, as it has since the start of the latest wave of IRA activity with last February's attack on London's Docklands area (*BI*, Feb. 19, 1996). Risk managers should ensure facilities such as closed circuit television cameras are used to monitor people in and out of their sites and that security is as tight as possible. What's more, they need a contingency plan that is constantly evolving alongside the organization and includes media relations. Such plans "have to be tested in real time," advised Ms. Barker. BI

Lloyd's

Continued from previous page
branded products, she said, and she hopes brokers and agents will happily adopt it.

"We have been working with the (Lloyd's Insurance Brokers Committee)," and are "putting a lot of effort into showing how the new identity can be used," said Ms. Landais.

As clients increasingly identify with the new Lloyd's look over time, the logo will become the choice for marketing and promotion literature, Ms. Landais predicted.

Overall, the exercise has cost Lloyd's £600,000 ($974,000).

Two-thirds of that was taken up by research, development and consulting fees, with the other £200,000 ($325,000) the costs of producing artwork, guidance literature and stationery for the Corporation.

Lloyd's companies will foot their own bills to incorporate the new logo into their literature and stationery, under guidelines currently being issued. BI

Germany

Continued from previous page
to be settled by the board of directors. The Supreme Court's ruling means the board now will have to sue the CEO for damages, which it already has done. If it had not done sue, the board would be exposed to suits from shareholders or objecting board members alleging negligence on the board's part.

Legal experts say the ruling inevitably will have wide-reaching effects on German corporations.

"The liability of boards of directors was never really spelled out in the past," said Friedrich Graf von Westphalen, a corporate defense attorney based in Cologne. "Now it is clear" that boards of directors must seek to recover damages when aware of negligence by executives or else risk being liable for the damages themselves.

Because of this and other recent decisions increasing potential liability exposures for corporate actions, demand for D&O coverage in Germany has skyrocketed, says Ulrich Reinholdt, executive vp of European operations of American International Group Inc. in Frankfurt. "Demand is driven by serious, real concern" about the liability climate for directors and officers, he said.

'There is a heightened awareness that errors are costly and errors are being made,' says Ulrich Reinholdt of AIG.

The Supreme Court ruled earlier this year, for example, that employers in financial trouble could face criminal charges and fines if they do not pay social insurance premiums before other debts (*BI*, March 10).

Germany's changing business climate also is responsible for the increased demand, said Mr. Reinholdt. "There's a heightened awareness that errors are costly and errors are being made. More than ever, that is coming to light."

As an example, Mr. Reinholdt cited a recent failed hostile takeover effort by steelmaker Krupp A.G., which could increase its exposure to lawsuits by shareholders.

"When such steps become questionable, shareholders get nervous. It's the kind of situation that has radically changed the attitudes about D&O in Germany," he said.

Mr. Graf von Westphalen says a change in the German court system is also responsible.

"The attitude is that shareholders have certain rights that must be upheld. That is far-reaching. The freedom of directors and officers to act is more limited and the liability for actions increased." BI

Aon

Continued from previous page
Bryan, Charles Cantlay, Paul Chilton, Alan Griffin, John Kavanaugh, Ross McKenzie, Paul Milton, Bill Oram, Jonathan Palmer Brown, Tony Pickering, Anthony Pinsent, Brian Stewart-Brown, John Turner and Alan Williams. John Hill is company secretary.

Already, Aon Group Ltd. has split into nine brokerage divisions: aviation direct, headed by Mr. Palmer Brown; aviation reinsurance, and marine and energy reinsurance, both headed by Mr. Stewart-Brown; marine and energy direct, headed by Mr. Chilton; non-marine reinsurance, and non-marine direct, headed by Mr. McKenzie; financial institutions and professional risks, and special risks, headed by Mr. Kavanaugh; and overseas partner offices, headed by Mr. Williams.

But the physical process of bringing the brokering teams from the various constituent companies together is still to happen, and until July 1—when Aon Group will be fully registered as a company under British law, and registered as an insurance broker with both Lloyd's of London and the Insurance Brokers Registration Committee—brokers are working under their original company names.

'The whole logic for the integration was to get on with it,' an Aon spokesman says of the speed of the process.

A spokesman for Aon said there was no information about the level of staffing expected at Aon Group. However, he did comment that Aon Group is aiming for a "flat structure for management efficiency."

Back-office operations also will be combined from the beginning of July, leading to the closure of Bain Hogg's administrative office in Haywards Heath in the south of England. Staff will have the opportunity to move to Romford in east London, which currently services Alexander Howden's business and will process Aon Group business. Or they can move to Glasgow in Scotland, where the retail business will be processed. About 400 jobs are expected to be trimmed from the back-office restructuring.

Consolidation activity within the Aon-owned London operations has been driven by an integration task force, with the help of management consultants. "The whole logic for the integration was to get on with it," said the Aon spokesman, referring to the speed with which it has progressed.

Overall, the organization now has a number of properties on its books. Aon Group will be housed in the current Alexander Howden building in Devonshire Square, while the risk services operation is expected to move to Bain Hogg's present headquarters, Lloyd's Chambers to the east of the financial district.

Bringing these new businesses under the Aon banner likely will change the worldwide corporate structure, though Aon is yet to decide how.

"We are now in growth mode," said the Aon spokesman. "There is new business to win and new opportunities." BI

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Jurisdiction on trial for multinationals

By CAROLYN ALDRED

LONDON—U.K. companies with multinational operations are closely watching the outcome of several court cases that could make it easier for foreign employees and U.K. citizens working overseas to sue their employers in the holding companies' home territory.

In order for such an employee to claim that there is jurisdiction to sue a multinational in U.K. courts because the holding company is located there, that plaintiff must prove that the holding company exerted a degree of control over the unit where the worker was employed or was negligent in some way.

Britain's highest court, the House of Lords, is reviewing a landmark 1996 Appeal Court ruling that a former employee of a Namibian-based subsidiary of mining group RTZ Corp. P.L.C. can sue the company in England on a conditional-fee basis, even though Namibia had been held to be the most appropriate forum. Conditional fees are the U.K. equivalent of contingency fees.

The employee alleges that he was stricken with laryngeal cancer as a result of substances he was exposed to while working at the mine.

Previously, the appellate court ruled that the issue of legal funding was irrelevant to the question of jurisdiction. The plaintiff, who lives in Scotland, had claimed that he would be unable to obtain any form of legal funding in Namibia.

The plaintiff's lawyers, London based Leigh, Day & Co., then entered into a conditional-fee arrangement with him, resulting in the Court of Appeal decision last year to allow the trial to be held in England. The Court of Appeal ruled that in a choice between a more appropriate jurisdiction where the plaintiff cannot sue because he is financially unable to do so, and a less appropriate one where he can, the latter may be chosen.

Last week the Law Lords heard two appeals, one by RTZ to halt the English proceedings and one by the plaintiff to allow him to fight his case in England using government-funded Legal Aid.

In a separate case involving South African workers, a British-based chemical company this month agreed to an out-of-court settlement with 20 South African workers claiming to be poisoned by mercury at the company's plant in Cato Ridge Natal.

The 9.4 million rand ($2.1 million) settlement, which covers damages and legal costs, comes months before a London High Court trial scheduled for October. The claimants, three of whom have died, began legal proceedings in the London High Court in October 1994. They had secured government-funded Legal Aid to pursue their claims in the U.K. courts despite attempts by the company to have the case transferred to South Africa.

Thor Chemicals SA (Pty.) Ltd., a multinational company with headquarters in Margate, Kent, transferred its mercury operations to Cato Ridge, South Africa, in 1987 from a plant in Margate.

According to the plaintiffs' lawyer, Richard Meeran of Leigh Day & Co., the Margate plant "was criticized continually by the U.K. Health & Safety Executive for bad working practices and overexposure of U.K. workers to mercury" throughout the 1980s.

Meanwhile, the Cato Ridge operation "relied substantially on casual, untrained and unskilled labor," said Mr. Meeran.

The claimants, supported by the South African Department of Manpower, which oversees all employment issues, alleged that the poisoning of the South African workers was the "direct result of precisely the same defects as had been identified and brought to Thor's attention earlier on in Margate by the HSE," according to a statement from Leigh Day.

Thor Chemicals agreed to the global settlement "for commercial reasons," said Rebecca Agnew, assistant lawyer with London based law firm Beachcroft Stanleys.

As the claimants were on Legal Aid, Thor Chemicals would not have been able to recover its legal costs even if it had won the case, Ms. Agnew pointed out.

Meanwhile, the company's insurance will not cover the settlement, Ms. Agnew confirmed.

Under South African law, employees are not allowed to sue their South African employer. Nominal damages can be claimed under a statutory compensation system, according to Ms. Agnew. Thor Chemicals Holdings Ltd., is the holding company of Thor Chemicals, and as such has no employees and no employers' liability insurance to cover the claims, Ms. Agnew said.

The plaintiffs' lawyer hailed the case as a victory for workers in developing countries.

"Multinationals should be required to operate to the same standards applicable in their own countries," said Mr. Meeran, "If they exploit less stringent standards in developing countries and injure people in the process, then they should be accountable. I hope this case will send out a warning signal to other multinationals operating in South Africa and elsewhere around the globe," he said.

Mr. Meeran claimed that the case is an example of a growing number of successful attempts by foreign workers around the globe to make multinational companies accountable for their working conditions in overseas subsidiaries.

There have been similar cases against U.S.- and Australian-based multinational companies, he said.

Mr. Meeran also is pursuing legal action against British-based multinational Cape P.L.C. of Middlesex, England, on behalf of South African asbestos mine workers suing for asbestos-related health problems. Mr. Meeran would not comment on the ongoing case.

David MacIntosh, partner of London law firm Davies Arnold Cooper, pointed out that the RTZ case is quite different than the Thor and Cape cases.

The Thor Chemicals settlement and appellate court ruling "does not set a precedent," Mr. MacIntosh said. There are "considerable distinctions and differences" between the factual backgrounds of the Thor case and the RTZ case, he said., adding that RTZ can defend its case on several issues, including jurisdiction.

In the RTZ case, Edward Connelly claims he developed laryngeal cancer at the age of 37 after working at the Rossing Uranium mine in Namibia between 1977 and 1982. The mine was operated by Rossing Uranium Ltd., an RTZ subsidiary. The plaintiff argues that the parent company was responsible for the formulation of health and safety policy, regulation and monitoring of health and safety at Rossing, both from its London headquarters and through senior health and safety managers at Rossing.

Mr. MacIntosh, who is also defending Cape P.L.C., noted that RTZ had an excellent health and safety record and that the company can argue that the cancer was not caused by working conditions.

However, he agreed that the ruling on forum could have wide implications for multinationals, and he noted that several "forum cases were being drummed up" by plaintiffs lawyers.

Ms. Agnew of Beachcroft Stanleys also warned that the House of Lords ruling "could be groundbreaking" and would mean that companies would have to review their liabilities and insurance arrangements.

Mr. Meeran said that several lawyers had recently contacted him to discuss the implications of the cases for multinational liabilities. BI

Shell resists pressure to alter pollution policy

By CAROLYN ALDRED

LONDON—Royal Dutch/Shell Group is resisting a shareholder resolution to amend its environmental and corporate responsibility policies, claiming it already has improved and continues to improve its long-established health, safety and environmental policy.

During the past two years the oil company, like many other multinational companies, has faced increasing criticism from shareholders, special interest groups, the media and the public about its environmental standards and human rights issues. The thrust of the criticism of Shell relates to its operations in Nigeria and the disposal of the Brent Spar oil rig.

Greenpeace forced Royal Dutch/Shell Group to abandon its plans to dispose of the rig in the North Sea. The public outcry included bombings of Shell Oil stations in Germany (*BI*, Oct. 2, 1995). The rig is currently in a Norwegian fjord awaiting Shell's decision on how to dispose of it.

At next month's annual general meeting of Shell's holding company, The Shell Transport and Trading Co. P.L.C., the oil company faces a shareholder resolution promoted by Pensions Investment Research Consultants Ltd., which accounts for about 10% of Shell's shareholders. London-based PIRC is an independent adviser to pension funds and institutional investors set up, among other things, to advise on socially responsible corporate governance.

PIRC's members include 30 private and public sector pension funds representing £150 billion ($245.2 billion) of investment, said PIRC Research Director Stuart Bell.

The resolution calls on the holding company, which is headquartered jointly in London and The Hague, Netherlands, to:

- Designate responsibility for the implementation of environmental and corporate responsibility policies to a named member of the Committee of Managing Directors.
- Establish effective internal procedures for the implementation and monitoring of such policies.
- Establish an independent external review and audit procedure for such policies.
- Report to shareholders regularly on the implementation of such policies.
- Publish a report to shareholders on the implementation of such policies in relation to the company's operations in Nigeria by the end of 1997.

Shell directors, meanwhile, have written to shareholders, recommending that they vote against the resolution at the annual meeting in London. The vote will be binding and as the PIRC members represent a minority, Shell directors expect the resolution to be defeated.

The directors point out that they have reviewed the company's Statement of General Business principles and environmental policy and are taking steps to reinforce and monitor standards.

They also point out that health, safety and environmental policies already have been brought under the responsibility of Cor Herkstroeter, President of Royal Dutch Petroleum Co., as the PIRC resolution requests.

Shareholders also got a brochure outlining the community welfare program undertaken by the Shell Petroleum Co. of Nigeria Ltd. as well as its en-

See **Shell** *on next page*

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INTERNATIONAL

Shell

Continued from previous page

vironmental performance. Additionally, they received a copy of the group's health, safety and environmental policy, endorsed by the Committee of Managing Directors last month. It states that every Shell company:

- Has a systematic approach to HSE management designed to ensure compliance with the law and to achieve continuous performance improvement.
- Sets targets for improvement and measures, appraises and reports performance.
- Requires contractors to manage HSE in line with this policy.
- Requires joint ventures under its operational control to apply this policy and uses its influence to promote it in its other ventures.
- Includes HSE performance in the appraisal of all staff and rewards accordingly.

Shell directors are urging shareholders to reject a resolution to amend the company's environmental policies.

The directors point out that while they have already responded positively to most of the resolution's recommendations, they are opposed to establishing an independent audit.

"Your directors are responsible, and accountable to their respective shareholders, for the content of these policies and standards and for ensuring that they are effectively implemented and monitored. These responsibilities do not belong to any outside body, although outside bodies many be used," according to the directors' statement. BI

Another victim of M&A

German broker Jaspers struggling after losing partner A&A

FRANKFURT, Germany—Broker Jaspers Industrie Assekuranz says the wave of broker megamergers, which took away its international partner Alexander & Alexander Services Inc., has left it "high and dry."

Director Klaus Nowitzky says the broker is searching for a replacement to "secure its international presence." The broker is considering several forms of cooperation but has not reached an agreement. "By midyear we'll know one way or the other," said Mr. Nowitzky.

Frankfurt, Germany-based Jaspers is the second major broker to lose its international network through merger. Earlier this year, Jauch & Huebener KGaA also found itself alone after its UNISON partner, Johnson & Higgins, merged with Marsh & McLennan Cos. Inc. (*BI*, March 17).

Both brokers say they want to keep their independence.

"Service organizations in Europe like it that way," says Jauch & Huebener Executive Partner Christian Dahms. "It's the traditional form."

After Chicago-based Aon Group Inc. acquired Alexander & Alexander (*BI*, Dec. 16, 1996), Jaspers also lost its most important international partner.

"Mergers are having an enormous effect on German companies," Mr. Nowitzky said. "New large international units are being formed, and German companies could join them," he said.

Both Jauch & Huebener and Jaspers expect far-reaching decisions within their own companies by midyear that could fundamentally change the character of business in Germany. Jauch & Huebener also is in talks with possible international partners. An announcement of its new partner is expected by June.

—By Don Lewis Kirk

Kidnap risk easing in Peru

But caution still advisable: Consultant

By EDWIN UNSWORTH

LONDON—Business executives working in Peru probably face a slightly lessened kidnapping risk after the successful rescue of hostages at the Japanese Ambassador's residence in Lima, a political risk consultant says.

However, while last week's end to the 126-day siege bodes well for the security of key personnel, the risk of kidnapping and terrorism in Peru is still relatively high, said John Wade, analyst on the Americas desk of London-based Control Risks Group Ltd.

Nevertheless, the failure of the Tupac Amaru Revolutionary Movement to achieve its political aims after invading a party at the Japanese ambassador's residence last Dec. 17 and the death of all 14 guerrillas as Peruvian military forces ended the siege "should intensify the decline of the MRTA, which was already evident since the early 1990s," he said.

The success of the military rescue, with all but one of the 72 hostages surviving, also is likely to revive faith in Peru's security forces and the popularity of President Alberto Fujimori. Both of those developments should discourage similar sieges, Mr. Wade noted.

While Peru is seen by Control Risks as less risky than Colombia, for example, Mr. Wade said his advice to businesses after the siege remains the same: "Continue to take common-sense precautions."

He noted that following the siege in Lima, the Tupac Amaru rebels had issued a warning that they would continue to target the Peruvian regime, and that while he does not think foreigners are particular targets of the terrorist movement, "they are not free of risk either."

Parts of Peru are still designated by the government as being under "emergency regulations," and these areas would be best avoided, Mr. Wade warned. The risks come not just from terrorists, but also from criminals and other "opportunistic" attackers.

When traveling in Peru, each trip must be approached on an individual basis to "ascertain the level of risk," he said. BI

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'Cost over quality' an expensive policy

By MARK A. HOFMANN

WASHINGTON—Employers' obsession with reducing health care cost at the expense of medical quality has created a "dysfunctional" health care market, a consultant warns.

As a result, less competition will mean bigger cost increases, predicts Dwight McNeill, president of Barrington, R.I.-based consultant WayPoint Health.

"How can there be any room for quality" when health care is being driven by cost considerations and Wall Street concerns? he asked during a panel discussion during the recent National Managed Health Care Congress in Washington.

As managed care market consolidation has produced what Mr. McNeill called "Wall Street harvests" for lucky investors, consumer unrest has grown. A widespread mistrust of managed care has arisen, and Congress has responded with what he called "organ-by-organ legislation," mandating minimum stays for certain operations.

Mr. McNeill offered a three-part series of "definitions a la Dilbert," named for the popular comic strip, to underscore his point.

- "Employees" are defined as "our most valuable asset," he said.
- "Outsourcing" as defined by Dilbert, is "taking work away from our most valuable asset."
- "Health management" is "shifting cost and risk to our most valuable asset," he said.

The Dilbert theme reappeared in Mr. McNeill's recommendations for restoring quality to health care. Among Mr. McNeill's "top 10 list" for achieving that goal is "Treat your employees like your most valuable asset. Really!"

"Employers can no longer say employees are their most valuable asset and give them the cheapest health plan in town," he said.

His other recommendations include requiring accreditation of all health care plans offered, giving employees access to all the information resources they need to make responsible and cost-effective health care decisions and "outsourcing health management to employees."

Another speaker warned that if employers are not careful, health care decisions will be turned over to legislators.

Raymond B. Wernetz, vp-compensation and benefits for Rolling Meadows, Ill.-based Whitman Corp., said that with an emphasis on cost control above all else, employers are really saying to employees and providers alike, "We don't trust you."

As a result, there is a concern that employers soon may be depicted as the villains in the debate over managed care, he said.

"If you put all of your resources to (controlling) costs, you'll have virtually no time to manage care," said Andrea B. Castell, health services consultant with Bellevue, Wash.-based consultant Castell & Associates.

Managing costs is basically an accounting function, she said. It involves financial control, renegotiation with providers, collecting and displaying data, and patient and practitioner control.

Managing care, though, is an "accountability" function, said Ms. Castell. As such, it involves re-engineering and control over operations, she said.

She expressed sympathy for the challenges medical practitioners face. They must deal with fluctuating plans, accountability and liability for their actions and repeated changes in their reimbursement systems.

"Remember, the practitioner's responsibility is to the patient," she told her audience.

Dr. George J. Isham, medical director and chief health officer of Minneapolis-based HealthPartners, described how health care worked under both the old "open checkbook" model and the current system of cost containment by payers before sketching an ideal model for value-based care.

Such an ideal would feature, among other things, consumer-centered care, effective prevention programs, team-based care and meaningful outcomes data that isn't tinged by ideology, according to Dr. Isham.

Such a change is necessary for a variety of reasons, he said. Not the least of these is that the health care system can't sustain the conflicts of the current system, which include confrontations between care givers and health plans as well as between employers and employees.

In a brief question-and-answer session after the formal presentation, an audience member asked the panel what would drive improvements in the system in the next century and whether the system would be better than that of today.

WayPoint's Mr. McNeill said he could answer the question in two words: "baby boomers," who will demand changes.

Mr. Wernetz of Whitman replied that if employers can't "prove to the folks in Washington that what we're doing" is not just good for cost control but good for the country as well, the country will end up with a government-run health system.

Marianne Fazen, executive director of the Dallas/Fort Worth Business Group on Health in Dallas, moderated the session. BI

Emphasizing value leads to quality care

By MARK A. HOFMANN

WASHINGTON—As employers attempt to get the most for their health care dollars, they should focus more on value than cost.

Employers today are really managing costs when they approach health care, said Dr. David B. Friend, global director-health care consulting for Watson Wyatt Worldwide in Wellesley Hills, Mass.

There is "very little effort to benchmark" plans, he said. Instead, there is a situation where the supplier is the enemy, and there can be an annual ritual of vendor-switching when there should be efforts to create longer-term relationships, Dr. Friend said during a discussion of evaluating health care choices during the recent National Managed Health Care Conference in Washington.

Decisions are made on what Dr. Friend described as a "primitive system" of three Cs: cost, clerks and control.

While the factor of cost is self-evident, clerks means thinking a plan is working well if someone answers the phone within a certain amount of time. But timeliness doesn't necessarily mean that person can give the right answers, he said.

Control is focusing, for example, on how quickly to get a new mother and baby out of the hospital, when more emphasis should be placed on how they are doing after delivery, he said.

Dr. Friend predicted health care costs will "explode" in the near future, which will put tremendous pressure on quality. Employers should focus instead on "value," he said.

"It's not just looking at quality, it's not just looking at costs, it's making tradeoffs," he said.

He went through the steps of a Watson Wyatt proprietary value creation process to explain how value can be achieved in a health plan. The first step for the employer is deciding exactly what it wants in a health plan; then comes going to the marketplace and demanding it; that is followed by the employer's analysis to ensure it is getting what it's paying for; finally comes employer efforts to improve performance.

Dr. Friend emphasized that creating longer-term relationships with health care service providers is key to creating value.

The long-term relationship can help cut administrative costs, for example, by eliminating expenditures for such things as marketing, he said.

Andrea B. Castell, health services consultant with Castell & Associates of Bellevue, Wash., described how so-called "boutique tools" can help improve both employee health and an employer's bottom line.

These tools, which are used only in particular situations, include such things as inventories of covered populations and services available within a certain community, she said.

For example, using these tools can allow the employer to focus on enrollees prior to medical care and thus anticipate what types of services an enrollee would need, she said. That improves the health of the coverage population. It improves the bottom line by allowing employers to anticipate care needed and make arrangements for chronic care management, among other things, she said. They also help achieve both ends through such means as identifying service gaps in given areas, Ms. Castell noted.

Mark Ryan, an official of the Office of Policy and Management for the State of Connecticut, accompanied Dr. Friend and spoke briefly.

Marianne Fazen, executive director of the Dallas/Forth Worth Business Group on Health in Dallas, moderated the session. BI

Congress eyeing health system

Major reforms unlikely, but oversight will continue: Chafee

By MARK A. HOFMANN

WASHINGTON—Even though the current Congress is unlikely to initiate any sweeping health care reforms, members will continue to be interested in the quality of care provided by employer health plans, a senator says.

Improved access to emergency medical care and expanding the number of children with health insurance—a key issue for the working poor—are among the areas Congress probably will deal with, said Sen. John Chafee, R-R.I.

Sen. Chafee made his observation during the keynote address to the National Managed Health Care Congress in Washington this month.

Sen. Chafee shared the podium with Dr. Patrick Mattingly, senior vp of Harvard Pilgrim Health Plan; Dr. Timothy Ray, president and chief executive officer of Consortium Health Plans in Stamford, Conn.; and Sean Sullivan, president and CEO of the National Business Coalition on Health. Dolores Mitchell, executive director of the Group Health Insurance Commission of Massachusetts in Boston, moderated the session.

Although the theme of the keynote was "Health Care in the 21st Century: Who's Going to be in the Driver's Seat," Sen. Chafee concentrated on what the current Congress was likely to do, and he made clear that it would be incremental reform at best.

The "big-ticket item" for the current Congress is likely to be Medicare reform because the federal program threatens to "swallow up the resources" needed to fund all discretionary spending if there are no changes. He called for an end to "harsh rhetoric" and implementation of some sort of means testing for wealthier Medicare beneficiaries.

Sen. Chafee also said that he's "troubled" by one aspect of Congress' moves toward incremental reform. He said that if Congress is going to get into the business of setting managed care standards, it should not do so on a "disease-by-disease" basis. Instead, he recommended that another entity, perhaps a new entity along the lines of the Financial Accounting Standards Board, should deal with the issue.

NMHCC estimates 10,000 people attended the annual conference. Next year's conference will be held April 20-23, 1998, in Atlanta. In addition, the organization plans to hold a fall conference in Los Angeles Nov. 3-6 of this year.

For more information on the two upcoming conferences, contact the NMHCC after May 5 at its new address: 71 Second St., Third Floor, Waltham, Mass. 02154; (617) 663-6000 or toll-free (888) 446-6422.

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Letters

Continued from page 8

• Private arbitration can do nothing to reverse the fraudulent redomestication and repatriate EMLICO to Massachusetts.

• Private arbitration can do nothing to punish those individuals responsible for the violations of Bermuda and Massachusetts law and restore the confidence of the industry and the general public in the regulatory process of the two jurisdictions.

• Representatives of the regulators have indicated that the regulators will resist reinsurers' efforts to call their employees and themselves to testify in the private arbitrations, even though they are key witnesses.

Mr. Scotton also makes the amazing claim that "Bermuda's regulators have maintained close contact with Massachusetts' regulators and. . .have not been persuaded that the U.S. regulators were duped."

This claim flies in the face of the Massachusetts Insurance Division's statements that they received virtually no cooperation from the Bermuda regulators and that there is strong evidence that deliberate misrepresentations were made to the Massachusetts division by EMLICO during the redomestication application. Mr. Scotton must be aware that the two Bermuda judges who reviewed the evidence have both concluded that reinsurers have raised "a serious issue of fraud." In the face of these holdings by Bermuda's own courts, and similar observations by two Massachusetts judges who reviewed evidence of the fraud, *Business Insurance*'s criticism of the inaction of the Bermuda regulators can hardly be challenged.

Finally, Mr. Scotton seems to suggest that the actions of GE and EMLICO and the passivity of the Bermuda regulators reflect "the spirit of a very real working partnership between the regulated and the regulators, which produces an efficient regulatory environment that does not stifle private-sector innovation." With all due respect to Mr. Scotton, one cannot condone the clever manipulation of the regulatory process and any violation of Bermuda and Massachusetts law as "private-sector innovation" that deserves immunity from scrutiny and prosecution.

Unfortunately, when our representatives contacted Mr. Scotton to discuss the mistaken assumptions in his letter, he preferred "not to be drawn into" this matter.

One would have thought that, having voluntarily and publicly interjected himself into the EMLICO affair, Mr. Scotton would be anxious to know the actual facts when he professes to speak for the "Bermuda insurance industry."

The only thing that reinsurers desire—and rightly deserve—from the Bermuda and Massachusetts regulators is a public evidentiary hearing into the highly questionable circumstances surrounding the EMLICO redomestication.

The Bermuda and Massachusetts regulators are wrong to deny reinsurers this fundamental due process, and they should take no actions that in effect condone this flagrant abuse of the regulatory process.

Business Insurance is to be commended for speaking out against this injustice. I am sure that the reputable, law-abiding insurance companies domiciled in Bermuda, as well as reinsurers that do business in that country, support the views expressed in your editorial.

The onus now is on the insurance regulators to do the right thing and fully investigate this matter in a public hearing, regardless of any political pressure brought to bear by GE and its allies or any embarrassment a public airing of the evidence may cause them.

Richard J. Marcus
Chief Underwriting
and Claims Counsel
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City of New York

The City of New York Office of Labor Relations is soliciting proposals from qualified vendors for a Group Universal Life Insurance Contract for the City of New York's Management Benefits Fund. Work for the Group Universal Life Insurance Contract is scheduled to commence on January 1, 1998.

The Request for Proposals (RFP) for the Group Universal Life Insurance Contract is available as of April 18, 1997. If you have any questions or would like to request a hard copy of the RFP, please call Lou Porpora at (212) 306 - 7306. Proposals are due no later than May 29, 1997.

REQUEST FOR PROPOSALS

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- Assisting members in filing appeals against Medicare claims.
- Supplying members with MBF specific educational material covering Medicare and Medicare related issues.
- Providing annual reports of hot-line telephone usage to the Fund.

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Secretaries, Treasurers, controllers and other Financial Personnel	2,973
Risk/Employee Benefits:	
Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	17,043
Sub-total	**30,511**
Associations	290
Government, Unions and Educational Institutions	946
Commercial Consumers	
Sub-total	**31,747**
Insurance Agents and Brokers	8,588
Insurance Companies	7,327
Accountants, Actuaries, Attorneys & Consultants	2,831
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,624
Others Allied to the Field	966
Total Qualified	**53,083**
Non-qualified	9
Single Copy Sales	16
TOTAL CIRCULATION	**53,108**

★ *Source Business/Occupational breakdown of qualified circulation, November 25, 1996 Issue, as submitted to BPA for December 1996 BPA Publisher's Statement*

Benefits

Continued from page 2

ing the greatest percentage increase was elder care, which more than doubled in employer participation—to 30% from 13%— between 1991 and 1996. Of this segment, about eight out of 10 respondents offered employees a resource and referral service that typically consisted of a telephone number and an adviser who could place an elderly relative with a caregiver during an unexpected period of need. In most cases, the employer reported contracting with an outside referral service but 10% conducted the elder care service themselves.

Of the nearly one-third of respondents offering some form of elder care benefit, 25% also reported offering to workers long-term care insurance, and 17% offered counseling on elder care issues.

Most employees have not been able to apply dependent care spending account money to older relatives, however, due to Internal Revenue Service restrictions that preclude workers from claiming the elderly as dependents unless they actually appear as dependents on tax returns, Ms. Chamernik said.

The percentage of employers offering child care programs also increased, rising to 86% from 66% during the five-year period, though in half of these cases the only benefit offered was a dependent care spending account. The next most common benefit was a resource and referral service for parents, offered by 32% of those companies with child care programs. Such a program was most frequently managed by a contract referral service.

Nearly seven out of 10 employers in the survey reported offering flexible scheduling to at least some workers.

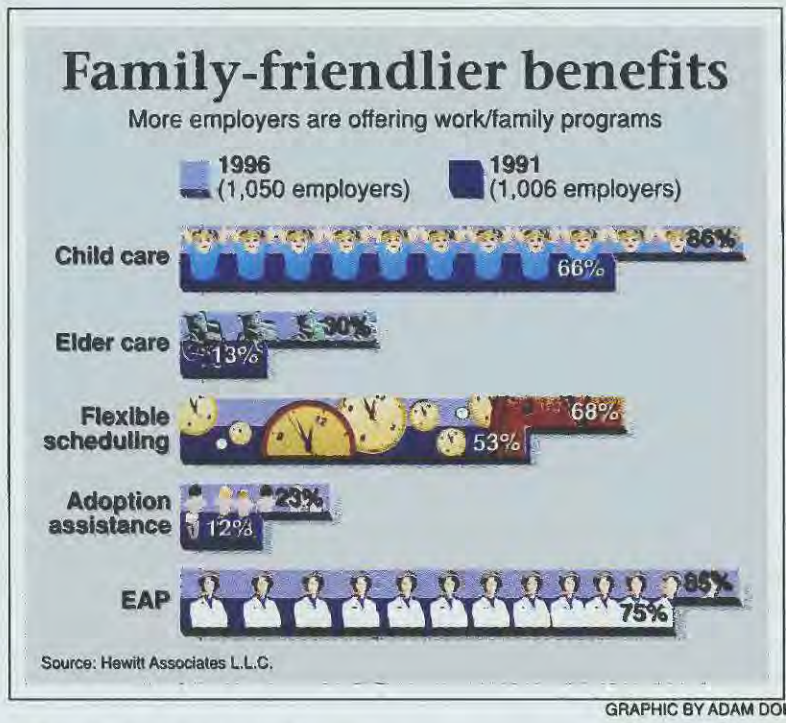
Thirteen percent of those companies offering child care benefits offered child backup care programs, in which the employer or a contractor actually supplies a caretaker when a child is ill or injured. But few companies were constructing nurseries or child care centers at the work place.

"We don't see a lot of growth in the area of building child care centers" at worksites, Ms. Chamernik said.

Also becoming increasingly popular last year were flexible scheduling arrangements, the Hewitt survey found. These are a broad class of benefits that allow employees to structure their workdays or work weeks more to their needs and, in some cases, to work from home.

Nearly seven out of 10 employers in Hewitt's survey reported offering flexible scheduling to at least some of their workers. About three-quarters of those who offered flexible benefits offered flextime, 64% offered part-time employment, 36% offered job sharing and 22% offered compressed work schedules. One in five respondents reported offering work at home.

Some companies, though not measured by the survey, were offering a paid time off "bank" in which workers' sick time, vacation days and holiday days were pooled and employees could draw on the time for any purpose.



GRAPHIC BY ADAM DO

Twenty-three percent of companies also said they provided adoption assistance to their workers other than leave, mainly in the form of legal fees, mother's medical expenses and agency or placement fees.

The report, "Work and Family Benefits Provided by Major U.S. Employers in 1996," costs $50. For more information, contact Marie Lipari or Saline Leckman, Hewitt Associates, at 847-295-5000.

ADA

Continued from page 2

faced with the complicated issue surrounding AIDS and HIV in the workplace. Many are not prepared," said Brian Humphrey, vp and managing executive at Sedgwick Noble Lowndes in St. Louis.

Last year, AIDS experts at the 11th International Conference on AIDS in Vancouver, B.C., presented a new approach to fighting HIV that appears to suppress virus activity in all stages of HIV infection (*BI*, Aug. 26, 1996).

The treatment involves a so-called "cocktail" of drugs, combining one or more anti-viral medications already commonly used, such as AZT, with newer protease inhibitor drugs the Food and Drug Administration has approved.

The protease inhibitors slow down the reproduction of the virus in the body.

Researchers say by using the anti-viral drugs and protease inhibitors together, the HIV virus in the patient's bloodstream frequently can be reduced to amounts too small to measure.

But the "cocktail" is a long way from a one-pill cure. For one thing, not everyone responds to the drugs. For another, no one knows for sure whether the drugs will be effective over the long term.

"While we are particularly optimistic about the efficacy of the protease inhibitors and the combination therapies, the reality is that we've got very little experience with them," said Paul Ross, worldwide manager of HIV/AIDS programs for Maynard, Mass.-based Digital Equipment Corp.

As a result, he said, "I think there's the double-edged sword of enormous hope and promise, but also the disheartening phenomena if the drugs do not continue to work, and we don't know at this point, because our history is so limited."

Furthermore, say experts, AIDS sufferers must follow a dauntingly strict regimen of taking numerous pills at very precise times.

"You've got to take the drugs on time; you've got to take the right amount of drugs. You can't take a drug holiday," said Dr. Mary Romeyn, a San Francisco AIDS physician.

"People who are coming back to work will be doing so on a very strict regimen of medication," said Mr. Ross. "You have people who will be on as many as 25 to 40 different pills and combinations a day," he said.

Companies must "be sure that the workplace in itself is a supportive place, that people will be able to take their medications without fear or anxiety," Mr. Ross said.

Furthermore, "People need to understand that these have to be taken on a very strict schedule, and if you miss a time—even a half-hour late—you're running the risk of going back to square one," he said.

In addition to managing the medication, even if an employee coping with AIDS is physically capable of returning to the job, he or she may not have the stamina to put in the same number of hours as before and probably will have to go to medical appointments during business hours, as well.

"One of the challenges that AIDS has brought to the workplace is sometimes those individuals go in and out of the workplace" and can be in one day and out the next, said Roxanne Newland, leader of disability and workers compensation consulting at Lincolnshire, Ill.-based Hewitt Associates.

As of January, there were an estimated 100,000 AIDS sufferers who have taken the new round of inhibitors, and of those, 75% have experienced an improvement in health to the point of considering returning to work, said Jeff Monford, manager of the Workplace Resource Center at the Washington-based National Aids Fund, a national non-profit organization that works primarily with the private sector.

More returnees are expected.

"I know within the AIDS community that a lot of people who had sort of given up and were preparing to die now have to deal with living, which is good news," said Lynn Franzoi, vp of human resources at Fox Inc. in Los Angeles, who said she anticipates employees with AIDS will come back to work.

AIDS sufferers returning to work "is something that I anticipate is going to happen more and more," said Raymond Wheeler, an attorney with Morrison & Foerster in Palo Alto, Calif., who represents employers on employment issues.

"Normally in the past when someone has gone off because of an AIDS-related condition, they've gone off and they haven't been able to come back, so it's a new challenge for employers," Mr. Wheeler said.

In preparation, "Employers really ought to review interview practices to make sure those are in conformance with the ADA," said the AIDS Funds' Mr. Monford. "In other words, one shouldn't ask about an interviewee's disability, but rather his or her ability to get the job done," he said.

'What you need to do is look at the individual and their situation and try to develop a plan that would enable the individual to continue to work and work productively,' says Rick Williams.

"People with AIDS don't have special needs apart from other groups of workers with disabilities. However, they have faced more stigma and discriminatory treatment because of lack of understanding of HIV, so the law's there to protect them and give them fair access to the workplace," said Mr. Monford.

He added that while most companies already have policies in place, "too few of them have followed through with training and education. In my view, that leaves them exposed to an unacceptable risk."

That can be a company's "Achilles heel," Mr. Monford added. Companies must "make sure the policies have a life and are going to be used."

A manager, for instance, "must be prepared to confront fear with facts in a way that is appropriate and understanding to effectively deal with coworker concern," he said.

Rick Williams, worldwide manager of Boston-based Polaroid Corp.'s AIDS awareness program, estimates that less than 10% of companies "have the right policies in place" and are providing a reasonably comprehensive education on AIDS.

"If you talk about how many companies have had somebody with HIV and have treated them reasonably well, that's really an estimate, but. . .I would say that about 50% of companies treat them in a compassionate, supportive way," he said.

One possibly thorny issue is what happens if a returnee's job has already been filled or no longer exists, either because of downsizing or technological advances.

"The ADA doesn't say that you have to hold a job open forever so I think those are going to be things that some employers are going to respond positively to and some aren't, but the law isn't necessarily going to be able to answer that question," said Mr Wheeler.

"The way businesses are running in America right now, it's very volatile, and so very little has stayed the same," said Mr. Ross "The technology changes fast, the business goals change, work groups merge. Frankly, we're also dealing with downsizing, which is part of corporate life these days, so it raises some complexities."

Under provisions of the ADA, "If they're not able to perform the essential functions of a job that's currently available to them, I don't think you have an obligation to go beyond that and give them training," said Rich Gisonny, a principal and attorney with Towers Perrin in Valhalla, N.Y.

But some employers may want to look beyond the strict letter of the law.

DEC, for instance, looks at "both a combination of our legal obligations as well as ethical and consummate employee relations," said Mr. Ross, who noted his company has had a full-time HIV/AIDS office in place to assist employees since 1988.

If a recovering AIDS victim applied for a position at Houghton Mifflin Co., "We would open our arms to them," said Margaret Doherty, senior vp of human resources for the Boston-based publisher.

Situations have to be handled on a case-by-case basis, said Polaroid's Mr. Williams.

"Every case is individual, and what you need to do is look at the individual and their situation and try to develop a plan that would enable the individual to continue to work and work productively," he said.

"I will sit down with the individual and talk with them about their situation and try to get a clear idea about what their needs are and what are some options for them," he added.

Mr. Williams said he then holds a similar conversation with the worker's supervisor, "and then what I do is bring the two together, because they're the people who really need to have this conversation."

Mr. Williams added that while Polaroid's policy is to support people with long-term serious illnesses, and it will make accommodations to the extent it can; "on the other side, the individual has to be willing to go the distance" and recognize that work needs to get done, he said.

Litigation on the issue of accommodating AIDS victims is inevitable, though, warn observers.

"I think there probably will be cases where individuals with AIDS will find employers less than receptive to bringing them back," and this will naturally lead to litigation, said Towers Perrin's Mr. Gisonny.

However, Mr. Wheeler of Morrison & Foerster said he is optimistic the issue will not create a significant amount of litigation.

"I think most employers, frankly, do a pretty good job of accommodating themselves to people who have AIDS," he said. "I think employers are much more sophisticated about it these days than they used to be, and there's a real desire to work things through." BI

Patents

Continued from page 2

Plaintiffs' legal fees in patent infringement cases currently average $1.2 million, Mr. Fancher said, citing statistics from the American Intellectual Property Law Assn., which is based in Arlington, Va.

In some areas of the country, such as California's Silicon Valley, these fees often top $2 million, according to Mr. Hughes.

And the cost of enforcement has risen due to insurance coverage litigation victories providing greater resources for defendants, one attorney noted.

More and more defendants' lawyers are seeking defense cost coverage under the commercial general liability insurance policy, said David Gauntlett, an attorney specializing in intellectual property and insurance coverage at Irvine, Calif.-based Gauntlett & Associates. Mr. Gauntlett represents plaintiffs in intellectual property disputes.

Recent court rulings granting defense cost coverage for patent and trademark infringement claims under the advertising injury clause of CGL policies have "raised the ante" in such disputes, thus contributing to the need for patent enforcement insurance, he said.

Over the past several years, insurers also have developed specific contracts to provide coverage for intellectual property exposures, but these policies generally provide only defense and/or indemnification.

Mr. Gauntlett thinks the emergence of patent enforcement insurance will help victims of corporate cribbing by leveling the litigation playing field.

"This is a good program for people who like to see the law applied appropriately and not be dependent on its economic merits," Mr. Gauntlett said.

Many large companies consider the costs associated with infringing on a smaller competitor's patent a business expense, Mr. Gauntlett said. "Their general counsel is asked to do a cost-benefit analysis" that includes the likelihood of a suit and the associated defense costs before deciding whether to infringe on another company's patent rights, he said.

With insurance coverage available, it is easier for smaller companies to take the offensive to protect their patents. "When you obtain a patent, you essentially get a right to sue. So these policies provide the financing to enforce that right," Mr. Gauntlett said.

Family-owned King Safety Products in St. Louis is just one example of a small company that might not have been able to assert its intellectual property rights if not for the availability of enforcement insurance.

In an infringement suit filed last year against Ideal Industries Inc. of Sycamore, Ill., King alleges that the larger manufacturer is infringing its 1992 patent for a silicone-filled waterproof connector used in electrical wiring.

But King would not have been able to actively pursue this enforcement case if the company hadn't purchased "infringement abatement insurance" from IPISC, according to L. Herbert King Jr., president and chief executive officer.

"Most inventors are unprepared to handle that kind of litigation expense," said Mr. King. The insurance "gives inventors and patent-holders who are trying to bring a product to market the fuel to combat an attack on their patents."

The case still is pending in U.S. District Court in St. Louis.

IPISC's policy, underwritten by Homestead Insurance Co. of Secaucus, N.J., pays 75% of the company's legal costs up to limits of $100,000, $250,000 or $500,000, explained William L. Ritter, a senior account representative for IPISC.

The average premium is just $3,500 for $500,000 in coverage for a single patent.

The Lloyd's policy, by comparison, is much more expensive, with the premium averaging $25,000 for $1 million in coverage.

In comparing the two policies, coverage experts say buyers essentially get what they pay for.

For example, the IPISC insurance policy covers just one patent, while the Lloyd's policy covers a family of related patents that can number in the hundreds, explained Emily Q. Freeman, a vp at Sedgwick James Inc. in Portland, Ore.

And while the IPISC policy pays 75% of costs up to policy limits, the Lloyd's policy provides 80% coinsurance.

Both policies require the policyholder to pay for an independent analysis of its patent rights. But while Lloyd's requires the review up-front before coverage is bound, the IPISC policy doesn't require the review until a claim is filed. As a result, some IPISC policyholders may find they have no coverage at the time they pursue a patent suit, critics of its coverage point out.

But Mr. Ritter of IPISC said a later review is more valuable because it is more up to date.

The IPISC policy also includes a subrogation clause permitting the MGA to seek damages from the attorney who arranged the policyholder's patent, provided the patent turns out to be invalid.

Both underwriters also offer—for an additional premium—extended reporting period coverage for claims that start during the policy period but extend beyond it.

Attorney Mr. Gauntlett used a car analogy to compare the two policies: "Intellectual Property is selling a Hyundai; Lloyd's is selling a Chevy."

And if and when American International Group Inc. comes out with a policy, "it will be a Cadillac," he predicted.

The premium difference reflects the quality of the underwriting, agreed Sedgwick's Ms. Freeman, who said she liked the "security" of the Lloyd's syndicates involved.

While IPISC's policy is underwritten by Homestead, a surplus lines insurer rated B++ by A.M. Best Co., the Lloyd's policy is led by Andrew Beasley, a leading syndicate manager, and Cottrell & MacGuire, which writes errors and omissions coverage for members of the AIPLA. D.P. Mann Underwriting Agency Ltd. is the third underwriter on the Lloyd's slip.

The Lloyd's slip also can provide higher limits on a manuscript basis, Ms. Freeman pointed out.

And the underwriters are even willing to write "known infringement" coverage, as opposed to "unknown infringement" coverage, Mr. Hughes added.

"It's about triple the cost, but the house *is* on fire," he quipped.

Some coverage experts, though, question the value of either policy, as both policies require victorious policyholders to reimburse the insurer's legal fees, plus a bonus of 10% to 40%—even if there is no monetary award.

"This is an investment, not an insurance policy," said Ernest Beffel, a partner with Hancock, Rothert & Bunshoft in San Francisco.

It's almost a sure bet the underwriters will make money, because policy terms provide they get their money back plus a bonus if they prevail in enforcing a patent in court, he pointed out.

Mr. Beffel is handling a coverage suit against Homestead on behalf of one of his clients who had purchased an infringement abatement policy from IPISC in 1993.

Homestead approved Hancock, Rothert as patent counsel for the client but balked at paying the firm's fees after the litigation started. Eventually, Homestead paid the legal fees. The client ultimately settled the underlying patent suit for an undisclosed sum.

Meanwhile, Homestead is trying to recover part of the award, claiming that as the patent insurer it is entitled to recoup legal costs plus a 25% bonus.

The client is resisting repaying the legal fees to Homestead, insisting the insurer had acted in bad faith by delaying claims payment during the litigation. About $60,000 is in dispute, according to Mr. Beffel.

The coverage case is pending in San Francisco Superior Court.

Litigation Risk Management's Mr. Hughes maintains the underwriters should share in the spoils of victory because they are taking a risk that a patent cannot be enforced.

While 75% of the patent enforcement suits settled before trial are resolved in favor of the plaintiff, there's still a 25% chance the patent-holder will lose, he said.

And, in some cases, the pre-binding analysis can serve as a risk management tool by thoroughly researching the patent's validity and ownership, he added. BI

RRG

Continued from page 1

and total admitted assets neared $8.89 million, while policyholders surplus was $1.6 million, according to The Risk Retention Group Directory & Guide 1996. However, its unpaid loss adjustment expense had increased 60% to nearly $2.5 million.

The operations of the group changed after federal authorities extended broader legal protection to about 30 of the group's federally funded clinic members as a result of the Federal Tort Claims Act, signed into law in late 1995.

The change meant that "the clinics and their employees are viewed as federal employees" and the federal government would provide some protections, including defense services, Ms. Greene said.

As a result, the large clinics' need for coverage shrunk dramatically. They had previously purchased broad malpractice coverage, which contributed about 60% of the risk retention group's $6 million in gross written premium. However, they now need only minimal gap coverage, which costs considerably less.

"With the change in our large policyholders' needs, this transition seems to be the most financially prudent move," said Ms. Greene.

That is especially true because operational changes, too, have been "fairly seamless" for members, she said.

NORCAL will issue identical policies with equivalent or higher limits, while using the risk retention group's applications and policies. In addition, there will be continuity in service providers, which include Willis Corroon, LAI Insurance Agents of Oakland, Calif., and Chapman & Associates in Pasadena, Calif.

Experts say a provision that allows the risk retention group's board of directors to serve as an advisory committee to NORCAL, and oversee the risk retention group's runoff, is particularly helpful.

'The value of converting into a purchasing group is that the RRG may be warehousing the risk,' says Jon Harkavy.

"They did the best thing for their members. They really preserved the experience they had and put it into a large company's book," said Karen Cutts, managing editor/publisher of the Risk Retention Reporter in Pasadena, Calif. "Everybody benefits from keeping the business distinct."

"The value of a risk retention group converting into a purchasing group is that the risk retention group may be warehousing the risk," said Jon Harkavy, vp and general counsel of USA Risk Services Inc. in Arlington, Va. Should another hard market occur, the risk could be pulled out of mothballs and the risk retention group revived, he said.

The advantages of the change benefit the insurer as well as the risk retention group.

It benefits NORCAL by helping it diversify its operations, said John Andre, assistant vp of the property/casualty division of A.M. Best.

NORCAL was one of seven medical malpractice insurers that saw its rating by A.M. Best Co. rating downgraded last June to A from A+ because of "significant uncertainty in the medical malpractice marketplace and the company's limited insurance market focus, as it primarily writes professional liability coverages for physicians in California," said Hope Maxwell, a Best's analyst.

An insurance company with "a narrow product line and geographic concentration" is "highly exposed" to adverse market conditions and regulatory changes, especially in light of evolving managed care issues, which create uncertainty, according to Ms. Maxwell.

NORCAL disagrees somewhat with Best's analysis but acknowledges that inclusion of the Clinic Mutual's $4 million in premium will help a little to diversify its operations, said Ken Smole, NORCAL vp. In addition, "We are going to consider expanding the program to find out if there are other clinics in other states that might be interested," he said.

In 1995, NORCAL had total admitted assets of $632.8 million and policyholder surplus of $212.5 million.

Late last year another risk retention group arranged for its members to covert to a risk purchasing group.

Pest control companies that are members of S.E.C.U.R.E. Underwriters Risk Retention Group agreed late last year to voluntarily dissolve the Maryland-based group and arrange to obtain coverage through a purchasing group operated by Legion Insurance Co. of Philadelphia.

The risk retention group was profitable from a loss-ratio standpoint, but appeared to be losing money because of the large loss reserves required under statutory accounting rules, said Dan Reardon, a former risk retention group executive who now is president of companies that provide reinsurance and general services to the program.

The purchasing group, called S.E.C.U.R.E. Assn. Inc., offers the same type of general liability coverage, including pollution and contamination on a full occurrence policy form. It also offers a variety of related coverages, including errors and omissions liability insurance for real estate inspections.

"The policyholders got the identical or better coverage for the same premium without the concerns or the liabilities of owning an insurance company," Mr. Reardon said. BI

Managed care plans targeted

WASHINGTON—Two bills introduced in the House and Senate last week would take aim at several managed care practices as well as open up new avenues to sue plans.

Provisions in the measures, introduced by Sen. Alfonse D'Amato, R-N.Y., and Rep. Charles Norwood, R-Ga., would guarantee patient access to emergency care without prior approval from a managed care plan.

Other provisions would prohibit so-called gag rules under which some plans have restricted health care professionals from discussing with patients alternative treatment options or financial incentives to limit care.

The measures also would allow enrollees in self-insured managed care plans to sue the plans for malpractice under state law rather than under the federal Employee Retirement Income Security Act. That would expose the plans to punitive damage awards, which are barred under ERISA.

—Jerry Geisel

Opinion sought in tort case

WASHINGTON—The Supreme Court has "invited" the U.S. solicitor general to file a brief stating the government's interest in a product liability case.

The case, *Iolab Corp. vs. Ruth Hunter*, involves the breadth of the pre-emption against product liability suits granted to manufacturers of certain medical devices by the 1976 Medical Device Amendments to the Food and Drug Act.

Last year, the court limited the pre-emption in its decision in *Medtronic Inc. vs. Lohr*, but left unclear how much greater an exposure medical device manufacturers would face (*BI*, July 1, 1996). In *Iolab vs. Hunter*, which involved injuries allegedly caused by an implanted lens that had been covered by the Food and Drug Administration's "investigational device exemption," the Missouri Supreme Court took an expansive view of the Medtronic decision and precluded all pre-emption defenses for Iolab, the Johnson & Johnson Co. unit that manufactured the lens.

The justices have not scheduled hearings yet, but last week asked the solicitor general if the federal government wishes to make its concerns known.

In another action last week, the justices agreed to hear a Louisiana case—*Dolores V. Oubre vs. Entergy Operations Inc.*—involving the right of workers to sue for alleged age discrimination under the Age Discrimination in Employment Act after they have accepted a severance package.

—Mark A. Hofmann

Flood

Continued from page 1

arrangement with the St. Paul (Minn.) Pioneer Press.

US West Inc. was able to maintain telecommunications services in the area by sandbagging and pumping water away from its facilities.

Facilities at the University of North Dakota in Grand Forks late last week were being prepared for use as a shelter to house flood victims. Meanwhile, the university had canceled the remaining two weeks of the spring semester and graduation.

Automobile dealers in Grand Forks were waiting for flood waters to recede before they could reach their operations to survey damage.

"We can't tell how many lost their stores," said Bob Lamp, executive vp of the Automobile Dealers of North Dakota, the state's Fargo-based dealers association. "They can't get to them to tell."

Mr. Lamp said there are about nine dealers in the Grand Forks area, and it is unclear to what extent they are affected.

Insurance coverage for property damage and inventory lost in the flood will be determined by the type of policies dealers purchased, Mr. Lamp said. "For garage and liability insurance, I suspect they would have to have a flood rider on the policy. Each dealer selects their own packages."

A spokeswoman for the Target chain of retail stores said its location in Grand Forks was untouched by flood waters but closed temporarily. She had no estimates of revenue lost because of the disaster and said merchandise was being sold at a 10% discount as a goodwill gesture to help flood victims.

A Grand Forks Sears, Roebuck & Co. store also escaped damage but lost an undetermined amount of business because of the flood, according to a spokeswoman.

Vaaler Insurance Inc., one of North Dakota's largest insurance agencies, was forced to relocate its Grand Forks operations to its Fargo office. There, despite the addition of four new telephone lines, calls have been constant from both business and residential insurance customers, said Shirley Solberg, manager of Vaaler's Fargo office.

"Our situation, as it stands, it's probably too early to tell," Ms. Solberg said. "We definitely have 500 flood claims in the Grand Forks/Fargo area."

Ms. Solberg said her agency also has received about 400 claims so far for sewer backup and sump pump failure and about 100 auto claims, "but we expect significantly more auto claims than that."

Adjusters from the National Flood Insurance Program have been working steadily on claims since April 21, she said. Though flood victims in a small portion of Grand Forks were able to begin visiting their property late last week, most of the area remained under water, making it impossible to get an accurate picture of the extent of damages so far.

"Talking with the National Flood people, their adjusters just have not been able to examine the damage, so it's been impossible to set reserves at this point," Ms. Solberg said. Adjusters hoped they would be able to begin inspecting damage early this week, she said.

State Farm Insurance Group, the largest underwriter of homeowners coverage in North Dakota, had received more than 1,000 claims late last week, according to a spokeswoman who was touring the flood-ravaged area.

The insurer is sending 27 adjusters into the area to help manage claims that are expected from many of the 3,200 homeowners State Farm insures in Grand Forks County. Another 5,500 homeowners in Cass County, which encompasses Fargo, have policies with the insurer, but damage is expected to be lighter in that area.

The spokeswoman could not provide estimates on how high State Farm's losses would climb. "We only know it will be in the millions," she said.

Jo Zschomler, risk manager for North Dakota state government, said the most extensive damages to state property will likely be those to facilities at the University of North Dakota.

Much public property around the state including the university does have some flood coverage through the North Dakota Fire and Tornado Fund, a public entity self-insurance program, and fund officials are looking for ways to maximize the amount of coverage they can provide public entity flood victims.

"The fire and tornado fund insures governmental entities for buildings and contents," said Bob Olson, administrator of the fund. "Four years ago we expanded it and we gave limited flood coverage."

Flood coverage is $10,000 per occurrence. "That's basically per policyholder," Mr. Olson said. "But what we're doing now is we're looking at using our liberalization clause and seeing if we can look at per building and do it that way. But if we look at it that way, we're looking at our financial aspect and how solvent we are," she said.

Hard-hit Grand Forks, Welsh and Pembina counties in the northeastern portion of the state all are covered, and the fund has 88 public entity policyholders in those three counties, Mr. Olson said. "So if all of them have damage, we're talking $880,000."

AP/ WIDE WORLD PHOTOS

Damages are difficult to estimate as Grand Forks, N.D., remains flooded, top. A Coast Guard officer, above, surveys flood and fire damage from a boat in Grand Forks.

If the fund sought to apply coverage limits on a per-building basis rather than per-policyholder, it would be looking at covering 1,121 insured buildings in the three counties, the fund's administrator said, "so if they all have damage, our exposure there is $11 million, and we don't have $11 million."

The fund covers 355 buildings at University of North Dakota alone, and a total of 651 insured buildings in Grand Forks County, Mr. Olson said. "Right now it's all under water. We can't even get in there to take a look."

The fund has reserves of $16.5 million, but by law must maintain reserves of $12 million or must assess policyholders to get the fund back above that minimum. "I know right now without counting the flood we have open claims reserved at about $4 million," Mr. Olson said.

The fund is scheduled to collect about $2.7 million from policyholders when the new policy year begins July 1, but even with that it appears unlikely it will be able to cover its policyholders at a $10,000 per-building level. So fund officials are looking for other ways to assist public entity flood victims.

One way will be to find other ways to assist policyholders, such as taking a lead role in working with contractors involved in the flood cleanup.

The Fire and Tornado Fund covers all the public school districts in the state except three that have chosen to opt out of the program, including the Grand Forks public school district. "They've never been in it for some reason," Mr. Olson said. 'We've given them plenty of opportunity."

Grand Forks school officials could not be reached for comment.

Industrial Risk Insurers had not received claims as of late last week from its approximately four policyholders in the flooded area. Any water damage is expected to be "less than the attachment point of our coverage," a spokesman for the insurer said.

Norwest Corp. of Minneapolis said late last week that its 11 banks in the area were undamaged by the flood waters, and all were expected to reopen by the end of the week.

Coverage written through Norwest's Vermont-based captive Superior Guaranty Insurance Co. will cover lost revenue and extra expenses related to the flooding, according to Jill Combs, assistant risk manager at Norwest.

The Federal Emergency Management Agency said about 25,000 flood victims in North Dakota, South Dakota and Minnesota had registered for disaster assistance as of late last week.

The U.S. Army Corps of Engineers sent about 400 workers to the three states. In Grand Forks, the Corps worked last week to restore operations at a water treatment facility and complete a ring levee around a hospital and nursing home. Levees also were being built to prevent flooding in areas not yet touched by the waters.

FEMA said about 30,000 homes and businesses lost electrical power, in some cases because local officials ordered electrical and gas service cut off when areas were evacuated. BI

Internet usage on the rise for risk managers

By MICHAEL BRADFORD

Risk managers are logging on to the Internet in greater numbers, and many have plans to upgrade or buy risk management information systems soon, according to a recent survey conducted by Liberty Mutual Group.

The survey of more than 125 risk managers also indicated that their top technology priority in 1997 was developing and maintaining their RMIS. A close second was upgrading computer hardware and training to support new equipment.

On non-technology issues, risk managers listed development of a strategic approach to risk management at the top of their priority list for the year. Building an effective infrastructure of internal risk management departments was number two on that list.

The survey showed that "82% of risk managers have access to the Internet today and that number has continued to increase" as indicated by past surveys, said John F. Ryan, Liberty Mutual's vp of commercial marketing. He unveiled the survey results at the Risk & Insurance Management Society Inc. conference.

Mr. Ryan pointed out that "over a third of them have access both at work and home. It's not unusual to talk to someone who will say, 'You can e-mail me at home or you can e-mail me at the office.' "

The survey indicated that 34% of risk managers with Internet access spend one to three hours online per week for job-related tasks, while 14% use it for three to five hours. Fifteen percent are heavy users, using the Internet five or more hours per week, and the remaining 37% are logged on less than one hour.

Risk managers are using the Internet primarily to gather work-related information and use e-mail, according to the survey.

The findings also showed that

'82% of risk managers have access to the Internet today and that number has continued to increase,' says John F. Ryan.

a growing number of risk managers are finding they can order goods and services on the Internet. Twenty-seven percent of the respondents indicated they go online for that reason, compared with 13% that listed that reason when the insurer surveyed risk managers at its Liberty Mutual Risk Management Forum last fall.

When asked what future services were likely to be available on the Internet, 60% of the respondents agreed that the day would come when they would be able to conduct claims reviews electronically, and 59% said it was likely they would be able to hold video conferences with their insurer that way.

The Internet in the future will become their primary business communications tool, according to 48% of the respondents, and 43% said they believe they will be able to renew insurance programs online.

Only 18% said they thought they would one day be able to purchase commercial property/casualty insurance over the Internet, and 12% thought it likely reinsurance could be bought in that fashion.

The survey indicated that 43% of risk managers will be developing a new RMIS this year, with most of those buying a packaged system rather than developing their own. Another 19% will be upgrading an existing RMIS.

Risk managers listed the most important qualities of an RMIS as ease of use, fast response time, accuracy, flexibility in report generation and graphics and the ability to consolidate risk information from different sources.

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Copies of the survey are available by contacting John F. Ryan, vp of commercial marketing at Liberty Mutual Group, 175 Berkeley St., Sixth Floor, Boston, Mass. 02117; or by e-mail at msmail.ryanj3@tsod.lmig.com.

Kaiser

Continued from page 1

the two parties to end their two-month spat over the document.

Kaiser's problems in Texas began earlier this year when the Insurance Department completed the 19-page report, which detailed dozens of alleged violations of the state's insurance code and recommended a $3 million fine against the HMO. The report also asked for a number of changes in the way Kaiser provides services to its 129,000 covered lives in the Dallas-Fort Worth area.

The HMO filed suit in late February in Travis County District Court in Austin and won a temporary restraining order blocking release of the report (*BI*, March 17).

The report charged that Kaiser violated state law by denying payment of emergency care services after advising enrollees to seek such care, delaying claims payments, engaging in unfair claims settlement practices and failing to follow programs and procedures the HMO said were in place and necessary to maintain a certificate of authority to operate in Texas.

Listed in the report were some specific allegations, including one in which the parent of an 11-year-old child called 911 because the child was bleeding severely and experiencing dizziness and weakness. Kaiser allegedly denied the resulting emergency room claim even after paramedics who responded to the call wrote letters informing the HMO that the treatment was needed, the report said.

The report also charges that Kaiser denied a claim for an enrollee who was taken to a hospital for emergency treatment after being found in a state of disorientation apparently as a result of overdosing on prescribed medication. And, an emergency room claim by a pregnant woman who fell on her abdomen and experienced pain was denied by the HMO, according to the document.

Kaiser also was charged with taking a year or more to settle some claims and denying others in which "Kaiser's liability had become reasonably clear," the report said.

According to the HMO, claims were in fact paid in a number of cases even though the Insurance Department report indicated that they were not. The report's allegations were made by "unqualified and untrained" Insurance Department reviewers, the HMO claimed.

Under the agreement reached earlier this month, $250,000 of the $1 million fine could be waived by the insurance commissioner depending on Kaiser's compliance with terms of the agreement.

The HMO is required to submit a business plan next month that will indicate how it intends to carry out terms of the agreement.

The terms call for Kaiser, which admitted no wrongdoing or violations of Texas insurance laws, to pay for an independent consulting firm to review and recommend changes in its emergency care services, claims processing, quality assurance and improvement programs, peer review and credentialing procedures.

The HMO is required to have on its staff a qualified medical records librarian who will develop a plan for ensuring proper training of personnel who create or maintain patient records. Kaiser also has agreed to accept $80 million in financial help from its parent after losing $52 million in Texas over the past two years.

The HMO, which has operated in the state since 1979, tried to boost market share with price cuts in 1995 and 1996, according to a spokesman in its Dallas headquarters.

"But due to increased competition from our longstanding competitors, as well as new entrants in the last couple of years, the member growth we were hoping for was not realized," the spokesman acknowledged.

"We are not satisfied with our cost structure," he added, and the HMO is working on ways to "improve the cost-effectiveness" of its operation.

A business plan expected to be completed in June will detail how Kaiser Permanente expects to reach that goal. BI

Kaiser proposes partnership with AFL-CIO

OAKLAND, Calif.—Kaiser Foundation Health Plan & Hospitals and the AFL-CIO are proposing a "national partnership" under which the union organization will help Kaiser market itself as a "union-endorsed health care provider of choice" to more than 40 million people covered by union-connected health insurance plans.

The agreement also provides that Kaiser will remain neutral in union organizing drives within the health care company and recognize union representation "on documentation of majority status."

According to a joint Kaiser-AFL-CIO statement, the partnership, if approved by 50,000 unionized Kaiser employees, will give Kaiser workers "unprecedented input into patient care, strategic and marketing decisions, greater job security; and a fair way to organize new members."

A Kaiser spokesman could not be reached for comment.

The agreement was criticized, however, by a spokesman for the San Francisco-based California Nurses Assn., which staged a one-day strike on April 16 in northern California as part of a contract dispute with Kaiser and is not a participant in the partnership.

The agreement will have "absolutely zero effect on Kaiser's business plan" and its "egregious" business practices, which include facility closures and redlining of low-income areas, he said.

"That's a serious problem for patients and for consumers," he said.

—By Judy Greenwald

The Home

Continued from page 1

Home then made an offer to pay nearly 50% of the discounted obligation, or about $72.9 million.

The NCCI rejected the initial offer but countered that it would consider a payment of about $130 million.

The matter remained unresolved and little further action was taken until the past few weeks, when The Home reduced its offer further to $40 million.

The unusual negotiation stance of reducing an offer already rejected for being too low reflects the deterioration in The Home's financial condition, which was made public with the publication of its 1996 annual statement in March (*BI*, March 10).

Worse-than-expected losses at The Home resulted in it falling nearly $552 million short of its authorized risk-based capital requirements. On publication of the results, The Home was immediately placed under formal state supervision by the New Hampshire Insurance Department, which has jurisdiction over the Home.

Also influencing the reduced offer is the NCCI pool's position in the line of people seeking money from The Home.

As general creditors to The Home, the pool will not be compensated before the insurer's policyholders, who are first in line to receive payments.

If, as some believe, The Home does not have sufficient assets to meet all of its policyholder and creditor claims, the NCCI may ultimately risk receiving even less than the current offer from The Home.

Neither The Home nor the NCCI would confirm the details of the negotiations.

But The Home is negotiating with its creditors and policyholders to commute claims and other obligations, said Arthur Wilson, vp and controller of The Home.

"The deterioration in the financial condition (of The Home) is influencing the direction of the offers," he said.

The Home also has obligations to other residual market pools, Mr. Wilson said.

The financial condition of The Home is far worse than was generally thought last year, and that deterioration is reflected in the reduced offer, confirmed David Nichols, the examiner appointed by the New Hampshire department to oversee the runoff of The Home.

Under the terms of the supervision order, New Hampshire Insurance Commissioner Sylvio L. Dupuis has to approve any payment to The Home's creditors over $500,000.

The commissioner would likely view favorably any agreement that would preserve the orderly runoff of The Home, said Mr. Nichols. "But the commissioner also has the concern of allowing money to flow out of the company to non-policyholder creditors," he said.

The Home has been in a strained financial condition for several years.

In late 1994, the insurer was downgraded by rating agencies. It then became the subject of a takeover battle between an investor group led by John J. Byrne, which intended to inject new money into The Home and to keep it running, and the Zurich Insurance Group, which wanted to take over only the good business of The Home and place the remainder in runoff. Zurich refuses to reveal how much of The Home's business it renewed.

In June 1995, the Zurich deal was approved (*BI* June 5, 1995). Under the terms of the deal, Zurich provided a $1.3 billion stop-loss reinsurance program to pay The Home's liabilities once its assets have been exhausted.

The program also calls for Zurich to put up $290 million that would be needed to pay claims if The Home is allowed to use earmarked funds to make dividend payments to the holding company, Home Holdings Inc., for Home bond holders.

The runoff of The Home is being conducted by Risk Enterprise Management Inc., a Zurich-owned company in New York.

Few other workers comp insurers were willing to comment on The Home's offer prior to the NCCI residual pool meeting today.

But one insurance executive, who did not want to be named, said: "We've been expecting something like this. It was fairly clear when the Zurich took over The Home's business that the coverage didn't look adequate."

Some NCCI board member insurers may hold out for a larger payment despite the apparent financial weakness of The Home.

"We feel that The Home's offer is far too low and that the industry needs a better deal," said a spokeswoman for Hartford Group Inc. in Hartford, Conn. BI

Updates

Court OKs Equitas collection

LONDON—Lloyd's of London has received approval from a U.K. court to start collecting £350 million ($569.1 million) from members who refused to reinsure their old-year liabilities into runoff company Equitas Ltd.

Justice Colman of the U.K. High Court last week delivered the second part of a ruling on a case testing the "pay now, sue later" clause in members' contracts. He denied members' assertions that they are not liable to pay their Equitas reinsurance bills because Lloyd's operated fraudulently.

Justice Colman delivered the first part of the ruling in February, striking members' allegations that the structure of Equitas is invalid (*BI*, Feb. 24). Together, the decisions mean that dissenting Lloyd's members must pay their losses before taking legal action against the market.

Although litigating members have vowed to appeal the decision, Justice Colman has allowed Lloyd's to proceed with collecting outstanding funds from about 1,300 non-paying members.

Ron Sandler, chief executive of Lloyd's, said the ruling "upholds the legal basis for the reinsurance into Equitas and allows Lloyd's to pursue, for the benefit of members of the Society, those members who are yet to pay their Equitas premium."

Nevertheless, the litigating members will go ahead with an action claiming Lloyd's has acted fraudulently, said Catherine Mackenzie Smith, chairman of the United Names Organization.

Part of the recovered losses will be used to pay off Lloyd's £300 million ($487.8 million) bridge loan from a conglomerate of banks, led by Citibank International P.L.C., which according to a Lloyd's spokesman has been "deployed extensively." The full extent of its use will be clearer in the Corporation annual report and accounts, to be published next week.

The 450 non-paying U.S. members will not be chased by Lloyd's debt collectors until litigation in U.S. courts has been settled. Lloyd's would not release how much U.S. members owe the market. Three cases, including one beginning in Texas this week, remain.

Non-resident suits at issue

SAN FRANCISCO—The California Supreme Court is expected to hear arguments this summer on whether the state's courts should be the forum for national class-action lawsuits involving securities litigation claims filed by non-residents.

The state's high court rarely hears securities litigation cases, but California courts have recently "become a major battleground" for plaintiffs attorneys who pursue cases against the state's high-tech industry, said Steven M. Schatz, a partner at Wilson, Sonsini, Goodrich & Rosati in Palo Alto, Calif.

More than 30 securities fraud complaints have been filed in Northern California courts alone since Congress passed the Securities Litigation Reform Act of 1995, creating tougher standards for claims filed in federal court (*BI*, Jan. 8, 1996). Before the reform, Northern California courts saw about one such lawsuit every two years, Mr. Schatz said.

He represents Diamond Multimedia Systems Inc., a San Jose, Calif., company that wants the state Supreme Court to rule that California securities laws are meant to protect only state residents and not everyone who merely invests in corporations within the state.

Diamond Multimedia's case reached the high court after a Superior Court in San Jose ruled that the company's shareholders could move forward with a class-action lawsuit and an appeals court declined to review the decision.

William Lerach, a San Diego attorney who represents Diamond Multimedia shareholders and who has filed numerous securities lawsuits, could not be reached for comment.

Briefly noted

The Senate Commerce, Science and Transportation Committee is scheduled to mark up the **Product Liability Reform Act of 1997** on May 1. . . .Gov. Benjamin Cayetano has signed two bills supported by **Hawaii's captive industry**. One allows reciprocal insurance groups to set up association captives or risk retention groups, while the other liberalizes captives' ability to write credit life and credit disability insurance (*BI*, April 14). . . .New York insurance consultant John D. McAllister was sentenced last week to 18 months in federal prison after his **conviction for bribing** Los Angeles Metropolitan Transportation Risk Manager Abdoul Sesay. . . .**Alan R. Gruber**, recently retired chairman and chief executive officer of Orion Capital Corp., died April 18 following complications from brain cancer surgery. He was 69. . . .The Montana Legislature authorized the state **workers compensation fund** to provide additional coverage for employers with multistate operations beginning July 1. . . .The **Medicare hospital trust fund** could go broke as early as 2001, fund trustees reported last week. . . .The 5th U.S. Circuit Court of Appeals this week will hear oral arguments on a federal court decision that struck down a Louisiana law setting capitalization and other requirements for **risk retention groups** licensed in other states that want to do business in Louisiana. . . .**Swiss Reinsurance Co.** has increased its stake in financial guarantee insurer and reinsurer Enhance Financial Services Group Inc., based in New York, to 9.1% from 5.5% with its purchase of 700,000 shares of common stock for $39 a share, or a total of $27.3 million. . . .A second bill that would allow **third-party bad faith suits against insurers** in California has passed a legislative panel. S.B. 985, sponsored by Sen. Herschel Rosenthal, passed the state Senate Insurance Committee last week and now goes to the Senate Judiciary Committee. The first third-party suit bill to be introduced, A.B. 1109, was approved by the Assembly Judiciary Committee April 16 and is awaiting hearing in the Assembly Appropriations Committee (*BI*, March 17). . . .A San Francisco judge will hear arguments from British West Indies-based Mesa Reinsurance Co., the principal **reinsurer of Golden Eagle Insurance Co.**, that California Insurance Commissioner Chuck Quackenbush does not have authority to take Mesa Re into conservation because it operates outside the state. Mesa Re is owned by John C. Mabee, former owner of Golden Eagle.

Ticker

Domestic reinsurers may face changing times

By MYRON M. PICOULT
Special to *Business Insurance*

MORE OFTEN THAN NOT, all good things come to an end. We suspect that this will be the case with the domestic reinsurance business over the next year or so.

Primary insurers have been increasing their retention levels, mirroring management efforts to satisfy investor premium growth demands and to make use of a burgeoning capital base.

We also are getting a sense that "working-layer" treaties are being replaced by excess-of-loss covers in order to further reduce premiums paid by primary companies to their reinsurers. There also appears to be rising interest in the use of multiyear contracts and finite risk covers, which in essence seek to further optimize the cost of traditional risk transfer. Finally, it is quite clear that Lloyd's of London is back with a vengeance and has been aggressively seeking to regain lost market share.

All of the aforementioned factors have been pressuring the premium growth prospects of reinsurers and are likely to continue to do so. This is all occurring against the backdrop of numerous efforts to develop securitized products that could move risk away from reinsurers and would clearly be a competitive threat to the business, except for perhaps the strongest and most nimble participants.

Globalization also has become a buzzword within the industry. On the surface, it would seem that the drive to become a global entity rests in the desire of reinsurers to spread their risks both geographically and by line of business. The geographic dispersion is of particular significance where property and property catastrophe covers are involved.

Having said this, there is no question that there is also a drive to find other sources of revenue growth, given the increased competitive nature of both the domestic and numerous foreign insurance markets. One other factor fostering the need for globalization is the desire of many cedents to find reinsurers offering significant capacity. Over the years, there clearly has been a flight to quality within the reinsurance industry as cedents have reduced the number of reinsurance entities on their approved lists.

Reinsurance, like primary insurance, is cyclical. Furthermore, reinsurance underwriting cycles tend to be more volatile than those of primary insurance because of the greater volatility of the business reinsurers write. For the most part, reinsurance is purchased to cover commercial risks as opposed to personal risks, because of the potential for larger losses. However, well-positioned reinsurance companies typically have produced better profit dynamics than most primary insurers.

This is particularly relevant for those reinsurers whose books of business are dominated by excess-of-loss covers. Excess-of-loss covers permit a reinsurer to uncouple its pricing from the vagaries of the primary market. Proportional reinsurance is more closely correlated to primary industry pricing trends.

The reinsurance industry in general tends to fare better than the primary sector, in part due to the wholesaling nature of the business and to somewhat less regulatory peer review. Put another way, reinsurance entities generally have leaner infrastructures and greater operating flexibility. While we believe that conservative reinsurers will continue to be among the most profitable segments of the property/casualty industry in terms of return on equity, there is clearly an interim squeeze on margins due to the slowdown in written premiums and some deterioration in reinsurance pricing.

Traditionally, conservatively run reinsurers suppress their profitability during the good times and pull down some doubloons when things get a bit tight. We expect this modus operandi to continue. Hence, returns on equity should still average in the 12% to 15% range over various time frames but could slip a little from this range on an interim basis.

The most likely way for either direct or broker-oriented reinsurers to produce strong premium growth in the years ahead appears to be through consolidation, combined with an ability to carve out business segments that heretofore might have been primarily the province of primary insurers. For 1997, we would not be surprised to see the premium growth for the Reinsurance Assn. of America group of companies to be flat or down from the year-end 1996 figure, given continuing shifts in primary retention levels, price cutting at both the primary and reinsurance levels, and the increased competitive threat from Lloyd's. Hence, if a company can achieve a high-single-digit pace of growth for a while, it may compare well relative to industry numbers.

"Critical mass" factors such as capital, global girth and premium growth will remain important. However, the torrid pace of M&A activity that was evident during 1996 is not likely to be repeated, due to valuation disparities and a clashing of management styles. Logic suggests that the slowing of premium growth and a squeeze on margins should result in some multiple compression. However, in specific instances, speculation about a reinsurer being caught up in the industry's consolidation can quickly add a premium to an average multiple. We note that the lofty multiples paid for the acquisition of direct writers are not likely to be obtained for broker-market reinsurance acquisitions.

We would not be surprised to see consolidation further reduce the number of reinsurance industry participants by a third over the next three to five years.

While there always has been a subtle caste system in the reinsurance business, recent activity seems to have produced a sharper tiering of the industry participants.

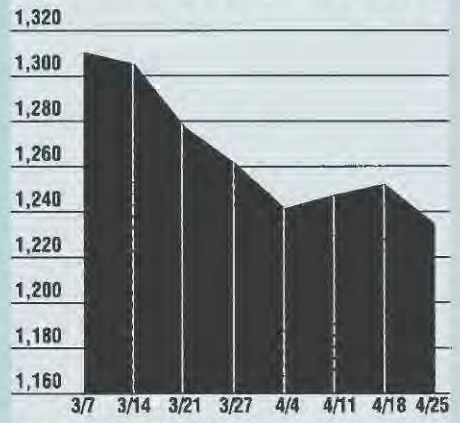
The top rungs of the ladder are clearly occupied by reinsurers that have a dominant position in the U.S. market, have exemplary balance sheets and have positioned themselves as global players. The middle of the ladder is occupied by reinsurance underwriters that have a strong U.S. presence, possess solid underwriting capabilities and good balance sheets and have differentiated themselves via their service and market specialization.

This specialization, which involves an above-average understanding of a client's book of business and the challenges the client faces, enables the reinsurer to offer customized solutions in addition to various services. These services run the gamut from risk management, alternative risk transfer mechanisms and actuarial analysis to capital-enhancing services.

Finally, the reinsurers hanging on to the bottom rungs of the ladder are entities that have a modest presence in the domestic market, and for the most part they have not differentiated themselves in the marketplace. These entities' long-term existence is questionable. BI

Myron M. Picoult is a vp and senior insurance analyst at Wasserstein Perella Securities Inc. in New York. Mr. Picoult is the past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts.

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc.

PCS catastrophe options

As of April 25

Call spread	Price bid/ask
Eastern September 1997	
40/60	2/4
60/80	—/4
80/100	—/2.5
National Annual 1997	
80/100	—/6
120/140	—/4.5
June Midwestern 1997	
10/20	—/2
California Annual 1997	
40/60	—/3.4
80/100	—/2
Western Annual 1997	
40/60	—/3.4
80/100	—/2

Total volume: 0 Total open interest: 11,692

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.
Source: Chicago Board of Trade

British Issues

April 25 Companies	Price pence	P/E	Div. pence	Yield %	52 week high—low
Comml Union	656	11.6	30.3	5.8	759—550
Genl Accident	838	7.7	34.3	5.3	876—614
Independent	709	8.8	13.3	2.3	714—373
Royal & Sun	465	13.5	19.0	5.1	515—349
Brokers					
Bradstock	76	12.4	5.7	9.4	81—54
CE Heath	93	11.3	4.5	6.0	115—74
Lloyd Thmpson	188	NA	10.0	6.7	206—167
Lmbrt Fenchurch	110	12.8	8.4	9.5	150—101
Nelson Hurst	134	12.2	8.6	8.1	206—121
Sedgwick Grp	127	9.4	8.0	6.3	152—115
Steel Brl Jones	27	9.4	1.5	6.9	48—22
Willis Corroon	149	12.4	6.6	5.6	168—117

Source: Nordby International Inc.

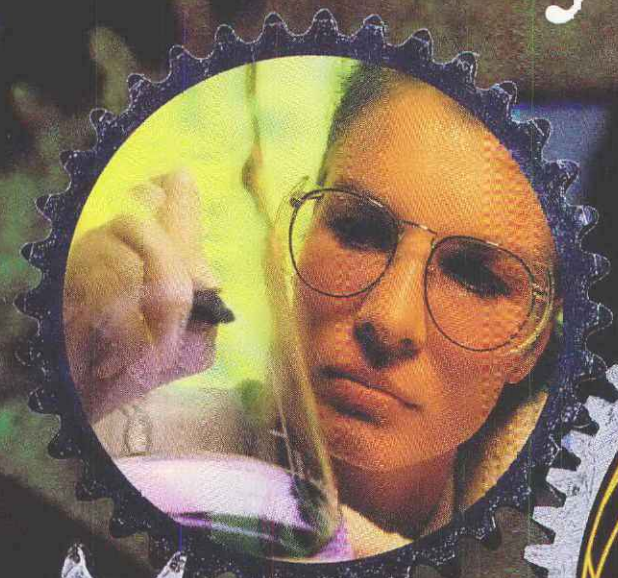
BI Industry Stock Report APRIL 21, 1997, THROUGH APRIL 25, 1997

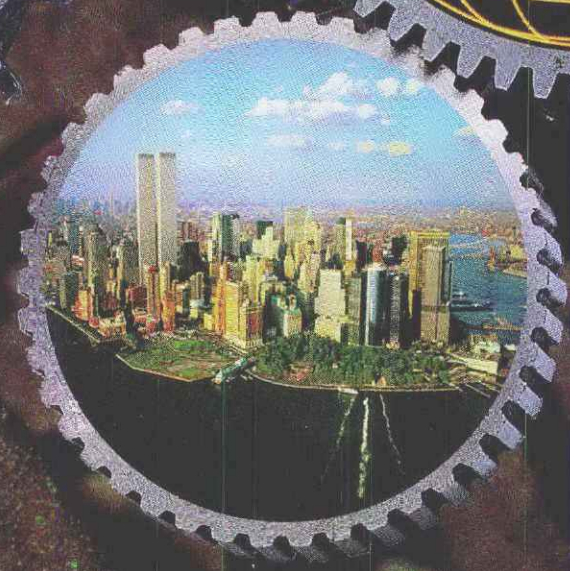
BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Acordia Inc.	NYS	31.75	0.00	9.48	33.75	27.25	35
E.W. Blanch Holdings Inc.	NYS	22.63	-1.63	12.42	23.50	17.75	120
Gallagher Arthur J. & Co.	NYS	31.50	-1.56	1.61	35.00	29.13	13
Hilb, Rogal & Hamilton	NYS	13.88	0.91	4.72	14.00	11.38	40
Kaye Group Inc.	NDQ	4.75	0.00	-9.52	7.25	4.38	2
Marsh & McLennan	NYS	114.63	-1.19	10.22	129.63	88.00	706
Poe & Brown	NDQ	26.88	-0.46	1.42	27.50	23.00	4
BROKERS	AVERAGE		-0.56	4.33			
INSURERS/REINSURERS							
ACE Ltd.	NYS	58.75	-2.89	-2.29	66.38	40.50	759
Acceptance Insurance Cos.	NYS	18.25	-1.35	-7.59	23.13	15.00	162
AEGON N.V.	NYS	71.25	0.71	12.65	73.63	42.25	141
Aetna Life & Casualty	NYS	84.00	-2.33	5.00	93.38	55.38	1882
AFLAC Inc.	NYS	41.25	2.80	-3.51	44.00	28.25	1066
Allied Group Inc.	NYS	35.50	-0.35	8.81	38.63	22.38	105
Allmerica Prop. & Casualty	NYS	31.38	0.00	3.29	32.25	25.00	167
Allstate Corp.	NYS	61.13	-3.74	5.62	68.25	37.38	2922
AMBAC Indemnity Corp.	NYS	63.63	0.99	-4.14	74.00	47.00	216
American Bankers Ins.	NDQ	53.25	-0.23	4.16	59.50	33.13	196
American Financial Group	NYS	33.38	-3.96	-11.59	38.88	28.50	301
American General	NYS	40.25	2.22	-1.53	44.63	33.00	1717
American Heritage Life Ins.	NYS	25.75	1.98	-1.90	27.75	19.00	33
American Indemnity/Fin'l	NDQ	12.63	-1.94	23.17	14.00	9.50	8
American International	NYS	119.13	0.11	10.05	129.63	88.13	3606
Aon Corp.	NYS	64.63	0.98	4.02	67.25	47.50	793
Argonaut Group	NDQ	28.75	2.68	-6.50	34.25	27.25	24
AVEMCO Corp.	NYS	23.63	2.16	51.20	27.38	11.75	53
Baldwin & Lyons Inc.	NDQ	17.50	0.72	-4.76	20.75	14.75	1
Berkley W.R. Corp.	NDQ	48.69	-1.39	-4.06	55.00	40.25	311
Berkshire Hathaway Inc.	NYS	37750.00	-0.40	10.70	37900.00	30000.00	1
Capital RE Corporation	NYS	39.38	-0.63	-15.55	48.00	32.50	100
CapMac Holdings Ltd.	NYS	25.38	11.54	-23.40	36.88	22.50	180
Capsure Holdings Corp.	NYS	11.75	0.00	2.17	18.88	8.00	107
Chartwell Re	NYS	24.75	-2.94	-7.48	28.50	20.75	6
Chubb Corp.	NYS	54.63	2.34	1.63	62.75	40.88	2963
CIGNA Corp.	NYS	144.13	0.26	5.49	161.63	103.75	1072
CNA Financial Corp.	NYS	97.00	-4.55	-9.35	114.75	95.75	174
EMC Insurance Group Inc.	NDQ	11.06	-7.81	-7.81	14.50	10.13	57
Enhance Financial Services	NYS	38.13	0.00	4.45	39.50	26.13	28
Everest Reinsurance	NYS	28.38	0.00	-1.30	32.75	21.88	265
Executive Risk Inc.	NYS	44.38	0.85	19.93	49.00	29.25	50
EXEL Ltd.	NYS	40.00	-3.61	5.61	45.13	31.75	334
Fremont General Corp.	NYS	27.63	-2.21	-10.89	32.63	21.50	285
Frontier Insurance Group	NYS	51.63	-4.18	34.97	54.00	30.13	567
Gainsco Inc.	NYS	8.50	-4.23	-11.69	11.63	8.38	249
GCR Holding Ltd.	NDQ	22.25	-2.73	0.00	27.25	21.50	415
General RE Corp.	NYS	161.50	-0.15	2.38	177.75	138.75	626
Gryphon Holdings	NDQ	14.00	-1.75	-0.88	19.25	12.00	82
Guaranty National Corp.	NYS	18.63	2.76	11.19	19.00	13.50	29
Harleysville Group	NDQ	32.00	-3.03	4.92	34.00	24.50	88
Hartford Steam Boiler	NYS	46.38	-0.27	0.00	49.13	42.75	131
HCC Insurance Holdings	NYS	24.25	1.57	1.04	32.75	19.13	163
IPC Holdings Ltd.	NDQ	22.50	-2.17	0.56	26.38	19.00	135
ITT Hartford Group	NYS	69.13	-1.78	2.41	81.00	46.13	792
LaSalle Re Ltd.	NDQ	28.75	0.88	-1.71	29.50	19.75	147
Lincoln National	NYS	51.75	-1.43	-1.43	61.63	40.75	617
MAIC Holdings Inc.	NYS	33.38	-1.84	-1.48	36.00	28.25	59
Markel Corp.	NDQ	107.00	1.42	18.89	113.50	79.50	21
MBIA Insurance Group	NYS	93.25	-0.13	-7.90	104.63	70.13	544
Meadowbrook Insur. Group	NYS	24.25	1.04	15.48	34.13	15.25	23
Mid Ocean Ltd.	NYS	45.88	0.82	-12.62	55.38	35.50	105
MMI Cos. Inc.	NYS	21.63	-0.57	-32.95	33.38	20.75	153
Mutual Risk Mgmt. Ltd.	NYS	36.38	4.30	-1.69	40.00	26.88	198
NAC Re Corp.	NYS	38.38	0.33	13.28	40.63	30.25	232
Navigators Group	NDQ	17.50	-2.78	-4.11	20.25	15.75	7
Nobel Insurance Ltd.	NDQ	12.25	0.00	-2.49	14.00	10.88	22
NYMagic Inc.	NYS	18.38	0.00	2.08	21.13	17.00	5
Ohio Casualty Corp.	NDQ	36.13	-7.96	1.76	42.63	30.00	308
Old Republic Int'l	NYS	27.38	2.34	2.34	27.75	20.13	655
Orion Capital Corp.	NYS	63.00	-0.59	3.07	67.75	42.75	74
Partner Re Ltd.	NYS	33.00	-0.75	-2.94	36.50	25.63	374
Penn-America Group Inc.	NDQ	12.75	-1.92	18.60	14.50	8.63	73
Philadelphia Cons. Holding	NDQ	29.00	-1.69	24.73	30.25	16.75	18
PXRE Corp.	NYS	25.13	-1.47	1.52	27.00	22.25	114
Reliance Group Holdings	NYS	11.00	-3.30	20.55	12.25	6.50	815
Reliastar Financial Corp.	NYS	58.25	-2.92	0.87	65.38	40.00	418
RenaissanceRe Holdings Ltd.	NYS	36.88	3.51	11.74	41.25	26.75	98
Risk Capital Holdings	NDQ	18.00	4.35	-7.10	20.75	15.88	32
RLI Corp.	NYS	32.63	-1.51	-2.25	36.63	22.38	27
St. Paul Companies	NYS	65.00	-1.52	10.87	72.63	50.13	533
SCOR	NYS	39.25	-0.63	14.18	42.25	34.00	4
SAFECO Corp.	NDQ	39.75	1.92	0.79	44.00	30.88	2009
Seibels Bruce Group	NDQ	6.50	6.12	-21.2	12.25	5.88	18
Selective Ins. Group	NDQ	40.25	-3.59	5.92	43.50	31.00	76
Sphere Drake Holdings	NYS	9.00	-1.37	1.4	11.75	8.13	41
TIG Holdings	NYS	27.00	-13.94	-20.30	38.00	27.00	3031
Titan Holdings, Inc.	NYS	17.50	-4.76	6.06	18.38	13.38	18
Tokio Marine & Fire	NDQ	48.00	-2.04	2.95	69.00	42.00	97
Torchmark Corp.	NYS	58.50	7.59	15.84	61.88	40.25	1802
Transatlantic Holdings	NYS	81.50	-0.46	1.24	88.25	62.38	76
Travelers Aetna Property	NYS	31.63	-4.53	-10.60	39.63	23.13	829
Travelers Corp.	NYS	48.88	-2.25	7.7	58.38	28.38	6553
Trenwick Group Inc.	NDQ	31.88	-2.30	3.38	36.25	30.75	41
Unico American Corp.	NDQ	10.25	2.50	-5.75	11.00	6.75	61
Unionamerica Holdings	NYS	17.00	0.00	-4.23	20.75	14.75	6
United Fire & Casualty	NDQ	36.25	0.00	2.84	40.00	29.25	9
Unitrin	NDQ	50.00	0.50	-10.3	56.38	44.25	368
UNUM Corp.	NYS	72.50	2.29	0.35	79.63	55.50	1208
US Facilities Corp.	NYS	18.50	-5.73	-5.73	20.50	14.88	43
USF&G Corp.	NYS	18.63	-5.10	-10.78	23.13	15.00	1872
USLIFE Corp.	NYS	46.88	0.81	40.96	48.63	26.88	867
Vesta Insurance Co.	NYS	40.13	11.85	27.89	41.50	24.50	258
Washington National	NYS	27.63	-1.34	0.45	30.75	25.13	87
Zenith National Ins.	NYS	25.00	-1.96	-8.66	28.88	24.25	31
Zurich Reinsurance Centr.	NYS	38.50	0.33	23.20	38.88	28.38	249
INSURERS/REINSURERS	AVERAGE		-0.52	2.16			
HEALTH MAINTENANCE ORGANIZATIONS							
Healthsource Inc.	NYS	20.88	-1.18	59.05	36.50	9.75	331
Humana Inc.	NYS	20.38	1.24	7.24	25.38	15.00	2572
Oxford Health Plans	NDQ	59.38	-1.45	1.39	67.13	27.69	6058
Pacificare Health Sys.	NDQ	73.25	-4.87	-9.85	86.25	59.63	483
Safeguard Health Enter.	NDQ	11.38	15.19	-35.00	22.50	9.63	27
Sierra Health Services	NYS	24.13	-3.98	-2.03	35.88	22.38	493
United Healthcare Corp.	NYS	44.50	-5.57	-1.11	59.75	30.00	7211
Wellpoint Health Networks	NYS	39.88	-1.54	16.00	45.88	23.38	2018
HMOs	AVERAGE		-0.27	4.46			
ALL COMPANIES	AVERAGE		-0.45	3.65			

Top advancing issues: Safeguard Health Enter., Vesta Insurance Co., CapMac Holdings Ltd. Leading decliners: TIG Holdings, Ohio Casualty Corp., EMC Insurance Group Inc. Most active issue: United Healthcare Corp. The BI Index fell 1.4%; the Dow Jones 30 Industrials increased 0.5%; the S&P 500 decreased 0.1% and the NYSE Composite decreased 0.6%. Average P/E: Brokers, 16.2; Insurers/reinsurers, 17.5; HMOs, 26.8.

System design: Nordby International Inc.

Reliance National's Casualty Risk Services





Machinery won't function properly or produce positive results unless all of its parts and gears are working in conjunction with each other. Like machinery, the mechanism of managing risk can also be a complex, multifaceted process that requires the right alignment and balance.

At Reliance National, our Casualty Risk Services Division accommodates the nuances and synergistic approach necessary to do business with larger accounts – allowing for smooth, efficient and responsive outcomes. Multidisciplined, innovative underwriters, creative and strategic programs and customized insurance products are all part of our approach.

When keeping your client's business in motion is crucial…come to THE CHOICE, Reliance National.

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- Construction
- Global Risk Management
- Environmental Products
- Global Infrastructure
- Managed Care

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