

# Business Insurance

## Los Angeles police prepare for risk of rioting after verdict

GLENDALE, Calif.—Los Angeles police are preparing for the worst this week as the second Rodney King trial moves along faster than expected.

Civil disturbance preparations include extensive training, particularly in the use of non-lethal weapons, new mobile field units and "shock troops" that will be mobilized before the verdict is announced in the widely watched civil rights trial, said Bayan Lewis, deputy chief of the Los Angeles Police Department.

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## Supreme Court may not give clear ruling on punitive awards

By MARK A. HOFMANN

WASHINGTON—Businesses hoping for clear Supreme Court guidance on punitive damages may have to keep waiting.

That is the opinion of a range of lawyers involved in *TXO Production vs. Alliance Resources Corp.*, the latest in a series of constitutional challenges to punitive damage awards to come before the court.

The justices heard oral arguments in the case last week and are expected to issue a ruling by July.

At issue is whether punitive damage awards can become so disproportionate to the actual harm that they violate a defendant's 14th Amendment due process rights.

Only two years ago, in *Haslip vs. Pacific Mutual Life Insurance Co.*, the court hinted there might be a mathematical ratio of punitive-to-compensatory damages beyond which punitive awards would be unconstitutional (*BI*, March 11, 1991).

The court in *Haslip* held that jurors had to be properly instructed about punitive damages and the awards themselves had to be subject to significant judicial review. That ruling has been widely criticized as vague.

Even lawyers who argue for clear limits on punitive awards say that a definitive ruling by the high court may still be a while in coming, if it ever does. They point out that last week's arguments were

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# FASB deals insurers a blow

## Funded cover rule could cost billions, reduce cat capacity

By JUDY GREENWALD

Changes in how property/casualty insurers must account for "funded" catastrophe reinsurance coverage could cost the industry billions of dollars and even further tighten the property catastrophe reinsurance market.

While many insurers were expected to restate earnings last week because of the rule change, none appear to have done so.

However, it may be too early to determine the implications of the March 16 announcement by the Financial Accounting Standards Board that ceding companies' obligations under funded covers must be reported as liabilities on insurers' financial

statements (*BI*, March 29).

At the very least, it has caused anxiety among insurers.

The key focus of the FASB determination is on funded property catastrophe reinsurance, which has become popular the past few years as the traditional property catastrophe reinsurance market has tightened.

Under a funded cover, part of the premiums paid to the reinsurer is put into a separate fund. If a loss exceeds the amount in the fund, this creates a negative balance when the reinsurer pays that loss. Under the terms of the multiyear program, the insurer is obligated to either pay increased premiums, cancellation penalties or "settlement adjustments" to wipe

out the negative balance.

At the urging of the Securities and Exchange Commission, FASB determined these payments must now be treated as liabilities if they do "not result in commensurate future economic benefit."

Given the FASB ruling, the SEC said liabilities associated with 1992 catastrophes must be reflected in insurers' 1992 financial statements, even though the vast majority of insurers had already publicly reported their earnings at the time of the announcement.

Many insurers with funded covers had been expected to restate their earnings by last Thursday, the date they were due to be filed

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# Insurers snowed under by cat losses

## Blizzard, bombing push insured losses to 1st-quarter record

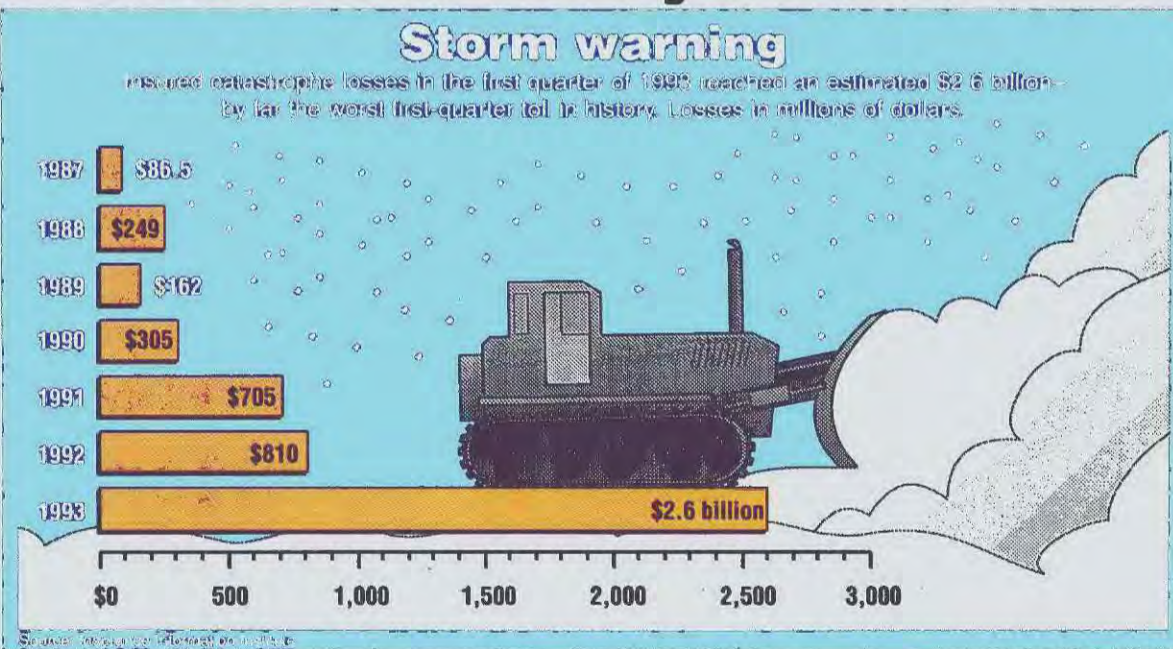
By SARA MARLEY

Still reeling from the worst catastrophe year ever, property/casualty insurers are being socked by the most disastrous first quarter on record.

The culprits were the one-two punch of the World Trade Center bombing and the East Coast winter storm that delivered blows of \$510 million and \$1.6 billion, respectively.

Total insured catastrophe losses in the first quarter will hit at least \$2.6 billion and, with two storms yet to be counted, could exceed the annual average of \$2.6 billion between 1982 and 1991, according to industry estimates.

Insurers still are recuperating from \$23 billion in catastrophe losses in 1992, including \$15.5 billion from Hurricane Andrew, the largest insured disaster loss



in history. Last year's catastrophe losses were more than three times greater than the previous record in 1989, which included Hurricane Hugo and the Loma Prieta earthquake that hit the San Francisco area.

The Blizzard of '93, a combination of tornadoes, flooding, snow and winds that rocked the entire Eastern seaboard March 13-14, was the fourth-most-costly U.S. disaster in terms of insured damage, tying the toll from Hurri-

cane Iniki and exceeding the Loma Prieta quake.

Due to the length of the blizzard and the large area it covered—up to 24 states—the loss figure is not surprising, said

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GRAPHIC BY A. TRANCHITA

# State sets rules for self-insured health plans

By DAVE LENCKUS

SACRAMENTO, Calif.—At least one stop-loss insurer is balking at obeying a new California health insurance reform law that indirectly regulates many self-insured plans.

SAFECO Life Insurance Co. says it will not require its policyholders to comply with the law, which essentially eliminates pre-existing condition exclusions and waiting periods in self-insured plans covered by stop-loss insurance.

The law, which takes effect July 1,

says stop-loss insurers "shall provide" that their self-funded clients comply with the law. It does not affect self-funded plans that do not buy stop-loss coverage.

Benefit consultant William M. Mercer Inc. also is advising its self-insured clients not to alter their plans to comply with the law.

Both SAFECO and Mercer say the law violates the Employee Retirement Income Security Act of 1974 and they expect it to be challenged in court.

"The people who drafted the bill

really don't understand ERISA," said Scott Taylor, group vp for SAFECO Life in Seattle.

The limits on exclusions in self-funded plans are contained in A.B. 1672, a 1992 small-group health insurance reform law that also is coming under fire from other fronts (see story, page 14).

The law strives to reduce the uninsured population by:

- Limiting exclusions for pre-existing conditions to six months if a condition has been diagnosed or treated within six months of the ef-

fective coverage date.

- Allowing self-funded plans to impose waiting periods of up to 60 days on new plan participants only if the plan does not impose any exclusions for pre-existing conditions.

- Reducing self-funded plans' pre-existing condition exclusion periods and waiting periods for new plan participants by the amount of time an individual was covered by "other qualifying prior coverage" immediately prior to employment.

Qualifying coverage includes employer-sponsored and individual

health insurance plans.

- Limiting the duration of coverage exclusions for late enrollees to 12 months and tightening the definition of late enrollee.

Individuals are not considered late enrollees if they did not enroll in a plan because, for example, they were covered under a spouse's health care plan but lost coverage after a divorce or after the spouse's job was terminated.

Most employers with self-funded plans in California buy stop-loss

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## Update

## LAPD prepares for King verdict

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Because the four police officers accused of beating Mr. King rested their case last week, the jury could begin deliberations this week.

Police officials have formulated a "worst-case scenario" but "will not try to guess what the jury will do," Mr. Lewis said at an insurance industry meeting last week. The department is assuming that "all will go to hell again."

Their plan also anticipates possible unrest arising from another trial—set to begin next week—of black defendants charged with beating a white truck driver.

Doing "what the politicians dictated" and keeping a low profile during the April Simi Valley state trial when the officers were acquitted—which led to rioting in South Los Angeles—"was obviously a disastrous mistake," Mr. Lewis said.

The rioting that followed the acquittal caused an estimated \$775 million in insured damages (BI, May 4, 1992).

## AT&amp;T wins death benefit suit

NEW YORK—A federal judge has ruled that American Telephone & Telegraph Co. does not have to pay death benefits to the surviving lesbian partner of an employee.

U.S. District Judge Robert Patterson of Manhattan ruled that AT&T was within its rights under the Employee Retirement Income Security Act when it denied \$53,000 in benefits to Sandra Rovira and her two sons because Ms. Rovira was never legally married to AT&T sales executive Marjorie Forlini, who died of cancer in 1988.

Although the women lived together as formal domestic partners for 12 years and exchanged vows and rings as a symbol of their relationship, Judge Patterson said AT&T correctly relied on state pension laws that limit eligible beneficiaries to legal spouses and persons who are either the dependent children or stepchildren of the plan participant.

Ms. Rovira sued AT&T in 1990, claiming it discriminated against her and her children (BI, Sept. 17, 1990).

"Pension laws in New York State are very strict," said a spokesman for AT&T in Basking Ridge, N.J. "While we have sympathy for Ms. Rovira as a person in grief, legally she was not a spouse and her children weren't legal dependents of the deceased."

Ms. Rovira's attorney said she plans to appeal.

## High-layer insurers can opt out

WILMINGTON, Del.—High-layer excess liability insurers may "opt out" of a lawsuit brought by a policyholder if they agree to be bound by coverage rulings and other findings affecting other insurer defendants, a Delaware judge has ruled.

Delaware Superior Court Judge Richard S. Gebelein ruled last month that high-layer excess insurers of Hoechst Celanese Corp. may opt out of a declaratory judgment action filed by Hoechst if they agree to abide by rulings affecting lower-layer insurers.

Somerville, N.J.-based Hoechst is suing 67 insurers for coverage of property damage claims arising from the failure of residential plumbing parts made from a Hoechst-manufactured plastic.

Upper-layer insurers had sought to be dismissed from the case, arguing that their layers will not be reached by losses. The judge denied their motion to dismiss, but offered the opt-out option instead.

Although Hoechst had argued against allowing opt-outs, the ruling should streamline the litigation, said a lawyer for Hoechst, Lorelie S. Masters of Anderson, Kill, Olick & Oshinsky in Washington.

## Health benefit cutback upheld

NEW ORLEANS—The wording of a summary plan description gives a Texas employer the right to cut health benefits for future retirees, a federal appeals court has ruled.

A panel of the 5th U.S. Court of Appeals in New Orleans late last month unanimously upheld a lower court dismissal of a retiree suit against El Paso Natural Gas Co. The suit charged that the Texas utility's decision not to provide health care benefits to future retirees violates the Employee Retirement Income Security Act of 1974.

Arguments centered on wording in the company's summary plan description, which the plaintiffs charged prevented the gas company from eliminating the benefits. The SPD said the company would provide future health care benefits but further on stated the company could eventually terminate those benefits.

Judge Jerre S. Williams ruled that El Paso could cut the benefits. He wrote that although the court is sensitive to the hardships the utility's action will have on retirees, "ERISA simply does not grant employees unfettered rights to the corporate treasury."

## Koop seeks malpractice reform

WASHINGTON—Medical malpractice reform could put a significant dent in health care costs by reducing the need for "defensive medicine," says C. Everett Koop, the former U.S. surgeon general.

"The cost to the health care system is not the cost of the (malpractice insurance premiums), it's the cost of defensive medicine," Dr. Koop said last week. Defensive medicine—procedures to avoid malpractice suits—cost up to \$80 billion a year, he estimates.

But, he added, the chances of replacing a tort-based system with a system of binding arbitration are "very, very slim" because of the political power of plaintiffs' attorneys.

Dr. Koop said that ending medically unnecessary procedures, whether linked to defensive medicine or not, could wring as much as \$200 billion out of the nation's annual health care bill. He also advocated streamlining health insurance claims filing.

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## OSHA case highlights need for repetitive motion standard

By MICHAEL SCHACHNER

WASHINGTON—A judge's decision to throw out \$1 million in fines levied by the Occupational Safety and Health Administration against Pepperidge Farm Inc. appears on its face to be a setback for OSHA—and workers.

But the decision may be a blessing in disguise if it expedites the development of much-needed federal standards governing workplace ergonomics, experts say.

OSHA cited the baked goods unit of Camden, N.J.-based Campbell Soup Co. for knowingly exposing workers to repetitive motions. The sanctions failed to hold up under judicial review, underscoring the government's need to come up with standards governing repetitive motion and carpal tunnel syndrome. Carpal tunnel syndrome accounted for more than 60% of current occupational illnesses

in 1991, according to the Bureau of Labor Statistics.

Last summer, OSHA issued an "advance notice of proposed rulemaking" on repetitive stress. The ANPR, as the notice is known, is the first official step OSHA must take when it seeks to set workplace standards.

Through February, the agency gathered information and hundreds of public comments on cumulative trauma disorders. It now must publish a proposed standard, after which public hearings will be held.

Attorneys who specialize in occupational safety say, and an OSHA spokesman did not deny, that it may take years for OSHA to set a such a standard.

Standing in the way of a repetitive-motion standard is the fact that a single standard, in all probability, would not be applicable to all industries.

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## New data base will analyze 24-hour plans

By LOUISE KERTESZ

SAN FRANCISCO—The California Workers' Compensation Institute and benefit consultant William M. Mercer Inc. are collaborating on a study they say will provide for the first time data needed to assess the potential advantages of "24-hour coverage" proposals.

A CWCI committee exploring the development of a system that would merge workers comp and health care benefits has concluded that much more data is needed to design a successful 24-hour program.

Without such data, "wild claims" have been made about the potential savings and coverage improvements that would result from a merged system, explained William P. Molmen, counsel for CWCI, an industry research group in San Francisco.

There are many flaws in the current

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## Product liability bill back in Congress

Changes made to win support

By MARK A. HOFMANN

WASHINGTON—Champions of federal product liability reforms are back with new legislation they say has a better chance of passage than any of its predecessors.

The Product Liability Fairness Act was designed to overcome the objections of consumer groups to previous product liability reform bills, said Sen. John D. Rockefeller IV, D-W.Va., one of the bill's five co-sponsors.

The concessions to consumer groups include eliminating previous bills' penalties for claimants who refused pre-trial settlement offers and then lost in court, and clarifying how alternative dispute resolution mechanisms would be used in product liability disputes.

However, Sen. Rockefeller admitted that no consumer groups have come out in support of the bill, S. 687. He also said that President Bill Clinton, who had supported product liability reform efforts as governor of Arkansas, has not yet endorsed the measure.

Nevertheless, Sen. Rockefeller said he's "optimistic" that the bill will win Senate approval. One key reason for his optimism is that this reform bill, unlike its predecessors, is being introduced early in the first year of the congressional session rather than in the second year, he said.

Last September, product liability reform advocates fell

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## Illness of Hillary Clinton's father a factor

## Clinton plan may be delayed

WASHINGTON—President Clinton may miss a self-imposed deadline to submit a comprehensive health care reform package to Congress by early May.

When he established the Task Force on National Health Care Reform, President Clinton pledged that the task force, headed by Hillary Rodham Clinton, would devise recommendations that he could send to Con-

gress within 100 days of his inauguration.

But the recommendations could be delayed until mid-May, a spokesman for the Office of the First Lady said last week.

One reason for the delay is the illness of Mrs. Clinton's father, who suffered a stroke last month. Mrs. Clinton has stayed with her father in Arkansas and has missed a number of task force

meetings and briefings, the spokesman said.

It is still possible, however, that the task force could present its recommendations by early May, the spokesman said.

Meanwhile, the task force last week heard its first public testimony. In all, the hearing lasted 13 hours and featured dozens of witnesses.

—By Jerry Geisel

## Inside

✓ Legislators must realize that product liability reform is key to the nation's economic health, this week's editorial says. **PAGE 8**

✓ Munich Re forecasts that global warming will create more intense storm damage in the future. **PAGE 23**

✓ The Supreme Court considers the issue of whether standards should be placed on scientific testimony presented in federal courts. **PAGE 29**

✓ As tenants move back into New York's World Trade Center, insured damage from the February bombing is estimated at \$510 million. **PAGE 31**

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# A 'fresh' regulatory perspective

## Consumer advocate vows to offer new ideas to head of the Missouri Insurance Department

By MEG FLETCHER

JEFFERSON CITY, Mo.—Can a former Nader raider and rock 'n' roller find fulfillment as Missouri's top insurance regulator?

Jay Angoff says yes.

Missouri offers the kind of professional challenges—in health insurance, workers compensation and solvency regulation—he enjoys, says Mr. Angoff, a soft-spoken 42-year-old now entering his second month as insurance director.

Even-handedness is his goal, he says, as if to reassure an industry that might take him for a carpetbagger.

Experienced and knowledgeable, Mr. Angoff brings "new ideas and a fresh perspective" to the post, said first-term Gov. Mel Carnahan, only the second Democrat in Missouri's statehouse in 20 years.

How fresh is Mr. Angoff's perspective? Is there another top insurance regulator

in the country who owes his job in part to a recommendation from "my good friend, Bob Hunter"?

Mr. Angoff came to Missouri by way of New Jersey, where he had spent 1½ years as special assistant to Gov. Jim Florio for health insurance policy.

In that post, Mr. Angoff was responsible for designing and developing a health and insurance reform program that was passed by the state Legislature but has yet to be implemented.

Before that, Mr. Angoff served 1½ years as a deputy commissioner of the New Jersey Insurance Department, where he worked on regulating life and health insurance, consumer protection, enforcement, and policy and development.

"It used to be that most insurance commissioners came from the insurance industry, but that's changing fast," Mr. Angoff said in a recent interview. "I think you find now that there are very few commis-

sioners that spent their careers with the industry."

His preppie background is reflected in his choice of clothes for a casual interview: khakis and a navy blazer, though a dark T-shirt peeks through the top of his open-collared white shirt.

Mr. Angoff grew up in Clifton, N.J. He graduated from Oberlin College, a liberal arts college in Oberlin, Ohio, with a philosophy degree in 1973.

For the next two years, he played keyboard and sang backup for The Brooklyn Bridge—known for "What's The Worst That Could Happen"—and singer/songwriter Elliot Murphy.

Then it was back to school, this time to study law at Vanderbilt University in Nashville, Tenn.

After earning a law degree in 1978, Mr. Angoff began a career that would soon earn him a reputation as a formidable consumer advocate. First came a short stint as an antitrust attorney for the Federal Trade Commission.

In 1980, he joined Congress Watch, a

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Missouri Insurance Director Jay Angoff

## Second-generation injuries alleged from breast implants

cause of' their symptoms, says Ms. Russano, now age 36.

This alarm resulted in a lawsuit against her implant manufacturer, Dow Corning Corp., alleging the implants were inadequately tested and that she was not warned about the potential harm of exposing her children to silicone during pregnancy and nursing.

Ms. Russano is not alone in her charges. More than a dozen lawsuits have been filed against breast implant manufacturers alleging that the silicone in a mother's breast implants may have harmed her children.

These "second-generation" implant cases open another front in what is becoming one of the most contentious product liability battles today.

An estimated 1 million women have received breast implants since they became available in 1962.

In January 1992, silicone breast implants were taken off the market by a U.S. Food & Drug Administration moratorium after concerns about their safety were raised in a product liability suit (BI, Jan. 13, 1992). In that case, a federal court jury in San Francisco ruled in favor of a woman who contracted an immune system disease after her silicone implants ruptured (BI, Dec. 23, 1991). The FDA has since limited implant use to women requiring reconstructive surgery who agree to participate in controlled clinical studies.

Silicone gel-filled implants can harm children in three ways, contends Aaron Levine, a plaintiff's attorney with Aaron Levine & Associates in Washington.

The silicone can leak into a mother's milk ducts, where it would be delivered to breast-feeding children; it can pass through the umbilical cord or placenta during pregnancy; or it can cause an autoimmune disease in the mother that in turn may cause problems with subsequent pregnancies, he charges.

However, there is no definitive study proving any rela-

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## U.S. reinsurers see unfair edge in 'tax havens'

By MICHAEL BRADFORD

TUCSON, Ariz.—U.S. reinsurers support a proposed increase in the federal excise tax on reinsurance premiums written in "tax havens," a position that doesn't sit well with risk managers and captive owners.

Risk managers fear higher taxes on reinsurance will lead to higher insurance costs. U.S.-owned captives object to the tax hike because it will increase the cost of reinsurance they purchase from companies in so-called tax havens.

**CICA** The Reinsurance Assn. of America supports an increase in the federal excise tax to 4% from 1% because it would create a "level playing field" for its members, according to Bradley L. Kading, vp and director of state legislative affairs for the Washington-based trade group.

Current tax laws make it more expensive for U.S. reinsurers to do business than their offshore counterparts, Mr. Kading said at the 20th annual meeting of the Captive Insurance Companies Assn. in Tucson, Ariz., last month.

As a result of the advantage enjoyed by offshore reinsurers, there has been "a significant placement of reinsurance offshore," Mr. Kading remarked. "Our members believe that it has an unfair impact on U.S. companies."

Mr. Kading told CICA attendees that the proposed excise tax increase has "a real chance of being adopted in the current Congress because it fits in with President Clinton's economic program of arguing for more tax equity for U.S. companies" as they compete with non-U.S. businesses.

However, a CICA member at the conference called the RAA's stance "anathema to most of the companies in this room" and told Mr. Kading "we don't appreciate your position."

Mr. Kading replied that captive owners shouldn't assume an excise tax increase would hurt their operations.

"I understand where you're at," he said. "It's a very contro-

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Kathy Kmonicek/1992 Newsday

Jama Russano claims that her sons are suffering from ailments caused by her silicone breast implant.

By SALLY ROBERTS

At 14, Jama Russano received a silicone breast implant to correct an underdeveloped breast. At 23, she began feeling burning sensations in her chest, leg cramps and chronic fatigue. She also had trouble swallowing, which was later diagnosed as a nerve dysfunction called esophageal motility disorder.

Never thinking her ailments were related to her breast implant or that the implant could potentially harm her children, she bore and breast-fed two sons. Early last year, her sons, now 6 and 9 years old, began suffering from her same ailments, including the esophageal motility disorder.

"It's alarming to think that I might be part of the

# Cuomo promotes own health reform plan

## Regulating physician fees at heart of New York proposal

By MICHAEL SCHACHNER

ALBANY, N.Y.—Less than a month before a health care reform plan is due from the Clinton administration, Gov. Mario M. Cuomo is weighing in with his own set of reforms that he hopes will influence national debate.

Notable elements of his plan for New York include regulating doctors fees, setting up regional health care purchasing cooperatives and giving doctors incentives to practice in poor inner cities.

Much of the governor's plan

would have to be approved by the state Legislature, and no bill has yet been introduced.

Business and medical groups say Gov. Cuomo's 40-page blueprint for reform contains a number of proposals that could help reduce overall health care costs and improve access to basic health care services for many New Yorkers.

"Everyone has bought into the idea that primary care is important, and ensuring higher compensation for doctors serving poor and underserved areas is a good idea," said Donna Lynne,

executive director of the New York Business Group on Health. "There are a number of very good proposals the governor is making."

Criticism of the governor's plan has focused on two things it fails to address: how to pay for the plan and how to provide care to the 2.2 million uninsured New Yorkers.

In response, Gov. Cuomo said that expanding access is a federal responsibility and funding for the programs he proposed will be ironed out if and when his suggestions are formally in-

troduced as legislation.

At the heart of the reform package, which was drafted as a special message to the Legislature, is that the state regulate rates for outpatient services and private physician services the way it now regulates hospital rates.

"We have been successful in controlling the growth of hospital inpatient expenditures, but the costs of services provided in physician offices, clinics and other outpatient settings have continued to climb to the point where they represent over half of our total spending. As we go forward, we must address the

whole cost picture," Gov. Cuomo said in the report.

Doctors and business groups were quick to oppose price controls.

"Physicians cannot function in an environment where they are completely denied the most basic right of the American economic system—to participate in the process through which service price is established," said the Medical Society of the State of New York, the state's largest doctors' group.

"I imagine that many managed care networks are currently reimbursing physicians at a rate

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## Funded covers

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with the SEC. However, as of last week it appeared none had done so.

Insurers likely did not restate earnings either because they believe their funded cover obligations will not significantly impact their earnings, they misunderstand the FASB decision's impact or they are awaiting further guidelines.

And, some insurers may have bought funded covers for the first time this year, rather than in 1992.

"We are reviewing the funded cover issue now," a CIGNA Corp. spokesman said last week.

Some insurers—like Travelers Corp. and ITT Hartford Group—said it would not affect them. Others wouldn't comment.

Jeffrey Swormstedt, a professional accounting fellow with the SEC, said that the SEC plans to examine insurers' financial statements

even if they do not restate their earnings.

Meanwhile, there has been no change in the statutory accounting treatment of funded programs by the National Assn. of Insurance Commissioners. Historically, though, statutory accounting has followed generally accepted accounting principles unless specific provisions supersede it.

"It's very difficult to justify these transactions aren't being used to hide losses," said Alice Schroeder, project manager for FASB in Norwalk, Conn., explaining the board's position on funded covers.

"You're not doing anybody a favor" if financially weak companies are permitted to prop up their results through the use of funded covers, said Ms. Schroeder. She noted the board's determination is not a new rule but an interpretation of existing FASB rules.

Karen O'Connor Rubsam, an ana-

lyst with Paulsen, Dowling Securities Inc. in Boston, estimates the amount related to negative balances could add up to billions of dollars.

She said the issue is likely to primarily affect insurers that are in poor financial shape or companies that recently bought funded covers and did not have time to build up positive fund balances to absorb catastrophe losses.

"I think there's going to be a shift more toward the traditional-type reinsurance" because of this, Ms. Rubsam predicted.

The FASB move is "really going to be a major blow to a lot of these funded covers," said Robert N. Tremelling III, a San Francisco-based reinsurance intermediary. "It really defeats the whole purpose of the cover, which is to smooth over your loss over time."

But, in light of the tight traditional reinsurance market, the FASB ruling raises the question of

where insurers can obtain needed capacity, he said. "The traditional market's being 100% tapped out right now. Where are you going to get it?"

"The timing couldn't have been worse" given the current state of the catastrophe reinsurance market, said John H. Snyder, senior vp with A.M. Best Co. in Oldwick, N.J. The move will create a higher degree of volatility in insurers' earnings and make capital more expensive for the industry, he predicted.

If the SEC is able to effectively change GAAP accounting for funded covers, then the NAIC is going to follow suit, "which means the industry loses maybe \$10 billion of statutory surplus," predicted Michael Smith, an analyst with Lehman Bros. in New York.

"Certainly it's going to have a more dramatic effect on a marginally capitalized company" than on a large company, depending on its ex-

posure to catastrophe losses, said Bruce Bunner, chairman of Centre Reinsurance Co. of New York. "Clearly, the big property writers can have a big problem."

However, Mr. Bunner suggested, "this might be more of a first-quarter issue" than an issue affecting 1992 results. Insurers have had greater difficulty obtaining traditional catastrophe coverage this year than in 1992, he explained.

The FASB decision will affect a significant amount of money, said Myron M. Picoult, managing director and senior insurance analyst with Oppenheimer & Co. in New York. Otherwise, he asked, "Why would the SEC get involved?"

The SEC's Mr. Swormstedt said he is unsure how many funded catastrophe covers there are. But, a lot of "heat and energy" has been surrounding their use, and the SEC felt the liabilities associated with them "need to be recognized."

"I couldn't even begin to quantify it," said Dave Koegel, vp at reinsurance intermediary Gill & Roeser Inc. in New York. However, he added, "I don't think it's as big as people may think it should be."

"I think that some of the products which were produced last year, and more specifically in London, will be subject to review," said Roger J.B. Beach, president of Accord Re Ltd., a Bermuda-based financial reinsurer.

The impact of FASB's position will depend upon the structure of the particular funded cover, said Michael Palm, president of Centre Reinsurance (Bermuda) Ltd.

Some purely financial funded covers with no transfer of risk will become more difficult to use as a result of the SEC action, he said. But other multiyear programs that incorporate a significant amount of risk transfer should not be affected.

Mr. Palm said Centre Re's funded products focus primarily on casualty business and "for us, it's not a very central issue in our portfolio."

"It's difficult to say with certainty the impact" of the ruling, because the coverage is evolving and funded catastrophe covers mean different things to different people, said James R. Fisher, senior vp and comptroller at American Re-Insurance Co. in Princeton, N.J.

"I think this whole exercise is an attempt by the FASB and the SEC to try to put a fence or a definition around the issue and, frankly, it's not all that simple. It's kind of like picking out gray cats in the dark," he said.

Mr. Fisher said although he applauds efforts to get rid of accounting abuses, he fears FASB and the SEC may focus on the form of these transactions instead of their substance and, in effect, "throw the baby out with the bath water."

Centre Re's Mr. Bunner agreed: "We shouldn't attack the form. We should look at the economics that are going on."

Funded covers may be reformulated to address regulatory or accounting concerns.

Funded covers, "which fill a tremendous market need, are going to have to go through a purification process," said Paul Ingrey, president of F&G Re in Morristown, N.J., a USF&G Corp. unit. "It's going to be an evolving goal because the standards have not been set yet."

Guidance is expected to come from FASB's Emerging Issues Task Force, which has been considering accounting for funded cat covers as well as related issues. Its next meeting is scheduled for May 20.

"I think it greatly diminishes the usefulness of (funded covers), but I don't think they're dead," said Mr. Koegel. "People just have to understand how to account for them properly."

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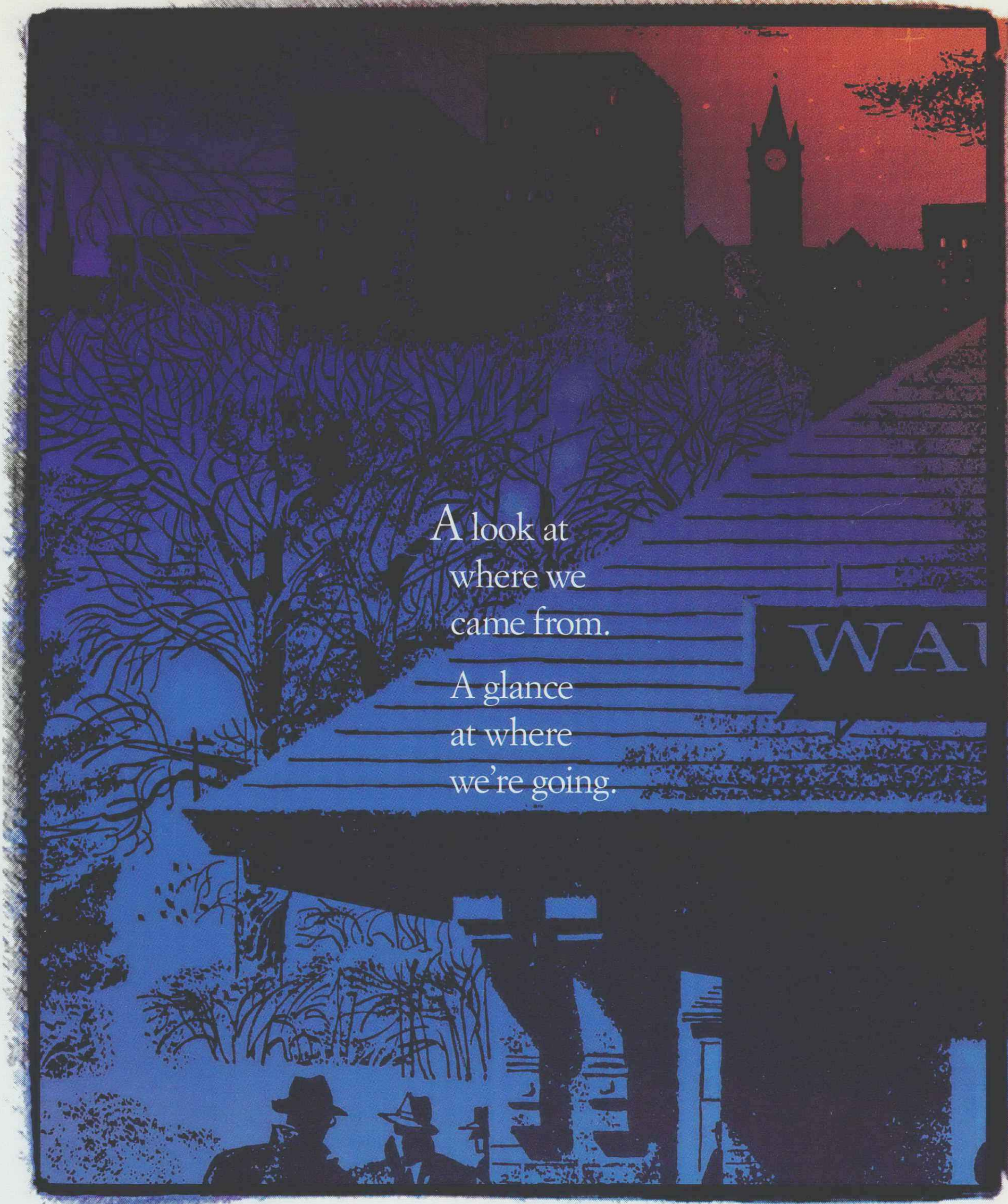
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# U.S. Steel opens employee medical clinic

By CHRISTINE WOOLSEY

GARY, Ind.—To combat rising health care costs at its largest steel-producing plant, U.S. Steel Group opened a family medical center for nearly 35,000 active and retired employees and dependents in Northwest Indiana and Northeast Illinois.

The Pittsburgh-based company's Gary Works, which is self-insured, racked up an estimated \$85 million in health claims in 1992—about 40% of the \$211 million spent on health care for all of U.S. Steel's operations.

Gary Works' soaring health care costs are fueled by several factors, including the company's high ratio of retirees to active employees—about 5.5-to-1, said John Born, staff supervisor of labor relations at Gary Works.

And hospital and doctor charges in the area are higher than provider costs in other areas where U.S. Steel has plants.

The new clinic, which opened March 22, employs 18 health care workers, including doctors, nurses, technicians and administrative staffers. Located in Merrillville, Ind., the facility is operated by Corporate Health Dimensions, a Troy, N.Y.-based health care company that operates 22 similar clinics for private employers in nine states.

U.S. Steel decided to establish the primary care facility in part because it could not wait for the federal government to come up with a solution for escalating health care costs, said David A. Pryzbylski, manager of employee relations at Gary Works.

The company studied the approach for two years before going ahead with the project, he said. "We found that these company-sponsored facilities are able to deliver high-quality care to employees while containing health care costs," he said.

Active employees and their dependents, and retirees not eligible for Medicare, will pay \$15 for an initial office visit, while retirees receiving Medicare benefits will pay no more than \$10 per visit, Mr. Born said.

Patients who return to the doctor for a follow-up after an initial visit will pay \$10.

The fee includes a full range of primary-care services available at the clinic, including routine physicals, minor outpatient surgeries, X-rays, mammograms, immunizations, physical therapy and health-education programs. Health plan members will not have to file any claims if they use the new facility.

Employees who seek care from other health care facilities must file a claim for each service they receive. The cost of those services will be applied toward their annual deductible, which varies among different employee groups.

Mr. Pryzbylski said the facility, which includes 16 examining rooms, is structured for office visits by appointment to avoid long waits, but acute problems are handled promptly.

The center also includes a pharmacy with drive-up service. Gary Works currently offers plan members a mail-order prescription drug program and a discount prescription program with area pharmacies. Employees who seek care at the new facility and get their medication from the on-site pharmacy will receive an

additional 10% discount, Mr. Born said.

The 12,000-square-foot facility cost about \$1.2 million to build. U.S. Steel's savings from the endeavor will depend on how many people actually use the facility, Mr. Born said.

## Early retirement offer

INDEPENDENCE, Ohio—Centerior Energy Corp. is offering approximately 1,900 employees early retirement as part of a strategy to reduce its annual operating costs.

The company, which owns utilities Cleveland Electric Illuminating Co. and Toledo Edison Co., will cut its workforce by 1,200 this year through a voluntary

## Benefit Beat

early retirement program and by temporarily shutting down two plants.

About 1,900 of the company's 4,800 employees are eligible for the early retirement program, which offers a choice of three different incentives on top of the regular age- and service-based retirement plan. Centerior is offering the program to workers age 55 and over, or to those whose age and years of service combined equal at least 70. Most eligible employees will exercise their option in June.

Eligible workers who choose to retire early can receive:

- A lump-sum payment equaling 3% of their present annual salary multiplied by their years of service. For example, a 20-year employee now earning \$30,000 would receive a one-time pension supplement payment of \$18,000. Early retirees must accept the payment in a lump sum or deposit it into an annuity.

- A \$650 per month Social Security supplement from the age of retirement through age 62.

- Increased pension benefits. Centerior will increase early retirees' pension benefits by adding five years of age and five years of service when calculating those benefits.

Early retirees will receive the same medical plan coverage as other retirees, he added.

The program will not hurt the company's pension plan, which is currently funded at 213% of obligations, a company spokesman said. Centerior executives estimate the fund will be funded at 197% of obligations after the voluntary retirement program is completed.

"We estimate about 900 employees will opt to retire early," the spokesman said. Another 300 workers will be laid off, he said, adding they will be offered a sweetened severance package.

The plant closings and early-retirement program will cost the company \$20 million in 1993, but will result in annualized labor savings of \$64 million in each succeeding year, according to a company statement. **BI**



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## Silicone implants

Continued from page 3  
relationship between silicone implants and their potential harm to children.

This is the defense taken by Midland, Mich.-based Dow Corning Corp., one of the largest manufacturers of silicone gel-filled implants. Dow Corning—which has been named in several lawsuits alleging injury to children, as well as hundreds of lawsuits alleging injury to women who received the implants—has at least \$250 million in claims-made commercial general liability coverage to respond to claims (BI, March 9, 1992).

The manufacturer has conducted one limited study on the presence of silicone in breast milk, which it says found no silicone in the breast milk of nursing mothers with implants.

Nevertheless, women with implants demand further studies be conducted on the health risks for children.

"No one was addressing the issue of second-generation" problems, Ms. Russano said. As a result, she formed a non-profit organization called CATS—Children Affected by Toxic Substances. The organization is distributing questionnaires to women with silicone breast implants who are in their child-bearing years, asking about possible health problems with children.

Other studies are being conducted by Mentor Corp., a surgical implant manufacturer in Santa Barbara, Calif., which received FDA approval last August to begin clinical studies on women who receive implants for reconstruction purposes.

Among other risks, Mentor will

study the relationship between birth defects and breast implants.

Despite a dearth of scientific proof, the fear of injury to children has prompted several lawsuits.

In a lawsuit filed in an Illinois

**'No one was addressing the issue of second-generation' problems, says Jama Russano.**

state court earlier this year, 93 women are suing every breast implant and component manufacturer in the United States.

Among other complaints, five of the women allege that their

silicone gel-filled breast implants leaked, causing their children to suffer rashes, welts, tuberculosis and learning disorders, said plaintiff attorney Kenneth B. Moll, a partner at McDowell, Moss, Fitzgibbons & Drew Ltd. in Chicago.

Mr. Moll contends the silicone passed through the mothers' bloodstreams and harmed their unborn children. In addition, some of the children may have ingested silicone while breast feeding, he said.

While Mr. Moss acknowledged that "science has yet to catch up to these diseases," it adds a "new dimension" to breast implant litigation, he said. "Children may be claimants in the future."

The suit, filed Jan. 25 in Illinois' Cook County Circuit Court, names 35 defendants, including Dow Corning, and seeks unspecified compensatory and punitive

damages.

In another suit, a California woman is suing New York-based Bristol-Myers Squibb Co. and other manufacturers, alleging injuries caused by her ruptured silicone breast implants in turn resulted in injuries to her two children.

According to papers filed last September in the Los Angeles Superior Court, the children's symptoms include "injuries to their immune systems and internal organs, together with disfiguring injuries to their skin and body tissue."

The suit seeks compensatory and punitive damages as well as court costs.

David B. Baum, a plaintiff's attorney specializing in complex damage actions at Baum, Wiss & Blake in San Francisco, said that of the four or five cases he knows of involving women and breast implant manufacturers that have gone to trial, plaintiffs have won three.

In the latest case, Bristol-Myers Squibb was ordered to pay \$27 million to a Houston woman who developed a lupus-like autoimmune system illness that forced her to have a partial mastectomy after her silicone breast implants ruptured (BI, Jan. 4).

Bristol-Myers Squibb, which is appealing the award, bought about \$5 billion in combined product liability and general liability insurance during the period in which its products were implanted in the woman.

The awards in these three cases would seem to indicate that "juries are accepting the plaintiffs' theories," Mr. Baum said. With a recent study linking silicone to autoimmune diseases, these cases can only get stronger and the outcomes "will fall on the line," he predicted.

In the study, researchers at the University of California at Davis allergy clinic have found that one in three women with silicone breast implants had a measurable autoimmune response.

Thirty-five percent of the women had developed antibodies to collagen, a major component of the scar tissue that sometimes occurs around breast implants.

"The existence of antibodies against collagen is an example of an autoimmune reaction, one where the body's defense system turns against itself," explained Suzanne Teuber, an immunologist who headed the UC Davis study.

The study results will be available in June.

Although results are still preliminary, studies such as this will add fighting power to their cases, plaintiffs' attorneys say.

"Today, we are where we were at 10 years ago with women" when they started complaining about problems associated with their implants, said Denise M. Dunleavy, a New York attorney.

However, "doctors are astonished to find immune problems in children who have not been exposed to anything but the silicone," she said.

Researchers will "not have a hard time" establishing that a correlation between silicone and children exists, she contends.

Ms. Dunleavy has filed two complaints seeking class-action status, including Ms. Russano's, on behalf of children born to women with silicone gel-filled implants. Instead of damages, though, she is asking for a medical fund to be established on behalf of the children. The fund would provide for medical research and monitoring. **BI**

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## Opinions

## Product liability reform redux

FOR THE SEVENTH TIME since 1981, a federal product liability reform bill has been introduced in the Senate (see story, page 2). The score now stands at trial lawyers 6, tort reform proponents 0. Is there any reason to think that the shutout will be broken in the 103rd Congress?

On the surface, prospects don't look bright. A Democrat now occupies the White House, and Democrats control both houses of Congress. Legislators will be focusing on the economy and health care, which will mean less time to consider issues like product liability reform. And, with the soft insurance market, there is not a huge cry for tort reform.

However, Sen. John D. Rockefeller IV, D-W.Va., and the other co-sponsors of this year's proposal have high hopes. We hope they're right.

Like last year's proposal, which was killed by the threat of a filibuster, the current bill would: abolish joint and several liability for non-economic damages in product liability cases; make it harder to recover punitive damages in product liability cases; and eliminate product liability lawsuits involving workplace capital goods that are more than 25 years old.

However, some trade-offs have been made to attract support.

For example, a plaintiff who loses in court after refusing a pretrial settlement offer no longer would face a penalty as in previous bills.

Of course, it does not matter what Sen. Rockefeller or other senators committed to product liability reform think.

At least 60 senators must be recruited to quash



any new filibuster attempt. And, for the bill to become law, support must be gathered in the House; efforts to date have largely been confined to the Senate. The only way to accomplish these goals is to link the need for product liability reform to efforts to heal the economy.

Business leaders—especially manufacturers, wholesalers and retailers—must convince legislators that an unbridled product liability system penalizes businesses and hurts U.S. companies' competitiveness abroad.

## Caveat emptor

IT'S DIFFICULT TO comprehend why state insurance regulators cannot take quick action against offshore insurers that later turn out to be bogus.

We can sympathize with the problems facing regulators—too little staff and money, the difficulty in proving an insurer is nothing more than a scam, etc.

But, the increasing number of thinly capitalized offshore insurers operating in the United States worries us.

Perhaps federal certification of all non-U.S. insurers is indeed the answer.

Still, the blame should not be totally shouldered by regulators.

Any risk manager who purchases coverage from an insurer domiciled in such fine regulatory environments as the Marshall Islands, Aruba, Tortola, Antigua and—our personal favorite—the Dominion of Melchizedek, a purported "nation" off the coast of Colombia, deserves what he or she ultimately gets.

## Letters

## Bureaucracy not needed in reform

To the editor: It is not surprising that Minnesota achieved savings through managed care options, as reported in "Managed Competition Pays Off in Minnesota" (BI, March 22). Many employers are reporting similar savings, but I must take issue with the fact that you are calling this managed competition, a la Hillary Clinton's plan.

In many large metropolitan areas, managed care alternatives—point of service plans, PPOs—are available to employers with as few as three employees.

In other words, the structure is already in place. Why do we need buying

cooperatives? Why not simply establish ground rules that must be followed by health insurers, such as:

- No medical requirements for coverage.
- Elimination of pre-existing condition limitations where employees can show that they had similar coverage within the previous three months.
- Community rating for groups of

fewer than 50 employees.

We don't need a new government bureaucracy that will detail every single plan provision throughout the country for every employer. We need simple rules that allow access.

**Mark A. Mitchell**

President  
U.S. Benefit Consultants  
Acworth, Ga.

## Insurers not represented

To the editor: An article in the March 29 issue, "California Bars Five Insurers," quotes our name as representatives of California Pacific Bankers & Insurance Ltd.

Please note the following information:

- We had an agency with California Pacific and placed certain business with the company from September 1992 to January 1993.
- On Jan. 13, we canceled our contract with California Pacific and wrote

to the company confirming termination of our agency.

• Although we understand the company is still writing certain business in the London market, we do not know who represents the company.

We wish to clarify that we no longer represent California Pacific Bankers & Insurance Ltd. nor California Pacific Casualty Insurance A.V.V.

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## 24-hour coverage

Continued from page 2

debate about the potential of 24-hour coverage, Mr. Molmen said at the CWCI's annual meeting March 25 in San Francisco.

The flaws include "comparing apples and oranges" in both systems to project the cost savings of a merged system, he said.

Many proponents of 24-hour coverage show "a total lack of understanding of the systems to be merged," said Mr. Molmen.

The CWCI/Mercer study, which is expected to be completed this fall, will provide data for "an integrated employment-based benefit data base covering both occupational and non-occupational benefits."

The study will gather data on who is covered and the costs of the coverage under both types of benefits, segregating the data by geographic area, type of employer, size of workforce, and other factors. It will also examine administration costs.

A model of current employment-based benefit costs will be created with the data. Lawmakers and analysts can use the model to determine the financial implications of any changes to the current benefit systems under any given proposal, including merging workers comp and health benefits, the CWCI said.

The CWCI model will include variables by geography, employer size, type of workforce and employee risk for on-the-job injuries, explained Bruce Noda, Mercer's team leader on the project.

"The model's complexity and sophistication will permit costing out, in dollars and cents, any proposal for health care or workers compensation reform. For example, we could quickly analyze how a typical Stockton agricultural employer with 100 workers would be affected by changes to the current systems," Mr. Noda said.

No other state has created such a data base and model to study the impact of 24-hour coverage proposals, he said.

"At first impression, 24-hour coverage appears to hold great promise, especially if it expands coverage. But its feasibility remains untested, and the net financial impact of added benefits and anticipated savings remains purely hypothetical," according to a CWCI report on the study.

Proponents of merging employer-provided health insurance and employer-paid workers comp say the result would:

- Eliminate duplicative administration costs and multiple insurers.
- Minimize litigation costs in determining whether an injury or illness is work-related.
- Coordinate existing, separate total disability plans and create an effective program for compensating permanently disabled workers.
- Introduce employee cost-sharing—through deductibles, copayments and direct contributions—to medical treatment for work-related injuries and illnesses.
- Extend managed care techniques—provider contracting, employer-directed treatment, utilization management and capitated payments—to treatment of work-related injuries and illnesses.

But, the CWCI said, many proponents of 24-hour coverage do not recognize "the disparate, even conflicting nature of the

two coverages."

For example, employers must provide workers comp coverage to all employees—even part-time workers—from their first day on the job, regardless of pre-existing conditions.

In contrast, health insurance coverage usually requires a waiting period and often excludes part-time workers and workers with pre-existing conditions, the CWCI noted.

In addition, "workers compensation operates on an 'occurrence' basis. Once a job-related injury or illness occurs, the employee is covered for its consequences, even if the worker changes jobs or retires.

"Health insurance, however, is 'treatment' based, paying only for treatment provided while the coverage is in effect" and discontinued if the employee switches jobs, the CWCI noted.

The two coverages also differ in extent of benefits, cost-sharing and rate regulation.

These differences must be recognized and accommodated for a merged system to succeed, the CWCI said.

Meanwhile, a committee of the CWCI that was charged last year with designing a 24-hour system has "unearthed a lot of issues" that also must be resolved to design a successful merged program, according to Mr. Molmen.

For example, several groups—including the California Medical Assn.—have maintained that workers comp administrative costs account for a much higher percentage of premiums than health insurance administrative costs.

But, a superficial comparison of overhead costs in both systems fails to recognize that the cost of litigation in the workers comp

system makes up a significant part of total administrative costs, the CWCI said.

This "casts doubt on the premise that merely integrating the two programs will produce a significant reduction in administrative expense," it adds.

Data is also needed to demonstrate the savings from "a merged program paying identical medical and disability benefits," regardless of whether the injury or illness is work-related, the CWCI said.

For example, in a merged program, cost reductions can be expected from: reduced litigation; consolidation of claims management and record keeping with one insurer; elimination of duplicate payments for the same condition by different insurers; and an emphasis on return to work.

"The unanswered question is

whether the increased costs of expanded benefits would offset the projected administrative savings," the CWCI said.

Several merged benefit designs have been proposed, but "little data is available to measure the range of potential savings—or additional costs—that may result from each merged benefit program," according to the CWCI.

Other information that is needed, according to the CWCI committee, includes:

- Data on the total costs and components of medical expenditures in California.
- Data on the potential savings from managed care and cost-sharing in workers compensation, even in the absence of 24-hour coverage.
- Data on the relative cost to treat the same types of injuries under workers compensation and health care coverage. **BI**



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# California workers comp

TUCSON, Ariz.—California is overdue for workers compensation reform and this could be the year some changes are made, an insurer predicts.

Past reforms in California have been a dismal failure, with a 1989 reform law actually leading to increased costs, litigation and fraud, according to John G. Pasqualetto, president of Great States Insurance Co. in Anaheim, Calif.

"We really have to solve the problem of workers comp in California, and California in a real sense forms a microcosm of what's happening in other parts of the country," he told attendees at the annual meeting of the Captive Insurance Companies Assn. in Tucson, Ariz.

"I think the chances of reform in '93 are pretty good," he said.

One key area that could be targeted is stress

## Insurer exec predicts state will reform comp system in 1993

claims, a major headache for California employers and insurers, according to Mr. Pasqualetto. "I think we'll get some limits on stress so at least the injured worker will have to prove that there are real factors in the workplace that cause stress. Not that he perceives those factors, but that they absolutely, objectively exist."

Currently, a stress claim can be filed even if stressful factors don't exist but are perceived, he noted.

And, stress claims may have to be tied to "something extraordinary," such as a robbery, rape or other traumatic event that was experienced at work, said Mr. Pasqualetto, referring

to state lawmakers' recent discussions on this.

Elimination or restrictions on "post-termination" stress claims, that are filed by fired employees, also could be a part of reform, he added.

In addition to reforming compensation of stress claims, a mild form of managed care could be introduced into the state's workers comp system this year, Mr. Pasqualetto said.

Eliminating fraud in the workers comp system also could gain a higher profile under 1992 reforms, he said.

And the procedure for getting injured workers back on the job needs an overhaul, said Mr. Pasqualetto.

Vocational rehabilitation is "an absolute debacle in California," he remarked. "It was a minor benefit until the attorneys got a hold of it. It's out of control."

—By Michael Bradford

## Excise tax

Continued from page 3

versal position within our own association."

However, Mr. Kading added, "You shouldn't presume this increase in the excise tax directly affects your business. You do have to look at the legislation and look at the Treasury Department's interpretation of what is a tax haven country before you can be certain it will impact your operation."

The tax hike proposal that was included in energy legislation last year—but later dropped—was limited to jurisdictions in which reinsurers' effective corporate tax rate is at least 50% lower than the applicable U.S. rate (*BI*, June 29, 1992).

In addition to the excise tax issue, CICA members and reinsurers also are watching closely the National Assn. of Insurance Commissioners' interest in fronting activities.

"The saga continues," said Mr. Kading, referring to the NAIC's efforts to draft a model law on fronting arrangements.

The latest version of the draft would make captives domiciled outside the U.S. and all association captives subject to disclosure and reporting requirements of the proposed law (*BI*, March 15). Risk managers contend that will make operating captives more expensive.

The NAIC is expected to have a formal version of the proposal ready for its June meeting.

**'You shouldn't presume' an increase in the excise tax will affect your captive, says Mr. Kading.**

A prior approval requirement in the bill is "probably the most problematic piece," said Mr. Kading. In limited circumstances, a reinsurance transaction with an unauthorized reinsurer—which includes many captive insurers—would require prior approval by more than one state regulator.

Approval must be granted by the state regulator where the fronting insurer is domiciled and, in some case, by another regulator that has a "stake" in the insurer's solvency. An example of such a stakeholder would be a state in which residents account for at least 15% of a fronting insurer's gross annual premiums.

The most important NAIC proposal with regard to insurers is one that calls for risk-based capital standards, according to Mr. Kading.

The standards would assess each insurer's capital needs based on a risk profile. Property/casualty insurers at the March NAIC meeting introduced proposals that sought to soften the impact of the proposed standards (*BI*, March 22).

The RAA supports risk-based capital standards "in a way that reflects marketplace realities," he said.

If the standards are based solely on accounting or actuarial formulas, the "likely effect on the marketplace will be... a dramatic consolidation of business" that could leave only 1,000 property/casualty companies in business a year or two after such standards are adopted, Mr. Kading predicted. Currently, there are about 3,000 property/casualty insurers, he said.

While it's unclear how the risk-based capital standards would affect captives, "I do understand the current drafts don't have any exemptions for captives," Mr. Kading said.

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# Fear may spark next market turn: Insurer

## The risk of a storm worse than Andrew could serve as wake-up call for insurers

By MICHAEL BRADFORD

TUCSON, Ariz.—The next hard insurance market likely will be prompted by fear rather than economic reasoning and will strike selected geographic areas, predicts an executive with a major insurer.

"There is little to suggest a turn in the cycle" when looking at an insurance industry that appears to have a well-stocked supply of capital, said Howard Dempster, chief financial officer with CIGNA Property & Casualty Cos. in Philadelphia.

However, he added, "the psychological aspect of supply may play a much more significant role. Many companies have recently come to the realization

that they could be bankrupted by an event like Hurricane Andrew hitting a more populous area."

Those insurance companies have seen that reinsurance "in the quantities needed" to protect from such a catastrophe is non-existent, Mr. Dempster remarked.

"Consequently, companies have attempted to downsize their coastal accumulations as quickly as possible," he added. "We have already seen this in Florida, where it is widespread, and in the Northeast, though it is spotty there."

In a speech at the Captive Insurance Companies Assn.'s annual meeting in Tucson, Ariz., last month, Mr. Dempster said property lines will see firmer pricing, though some liability

lines could see even greater competition in the coming months.

Insurers' moves to reduce their writings in areas prone to windstorm and hurricane damage will lead to a "property-only" capacity shortage, he predicted. "This will have the effect of a market turn in property only in selected geographic regions."

And, as property writing becomes more restrictive and in-

today than it was when traditional cycles were a common and predictable industry characteristic."

And, a turn in the property market won't be soon followed by a full-blown hardening, he noted.

"I don't believe we will see a turn in the cycle short-term," said Mr. Dempster, because "the fact is, capital drives the cycle

charged.

In recent years, industry prices and premiums haven't "kept pace" with changes in exposures and inflation.

While the price shortfall should show up in underwriting losses, the industry, "true to its historical form, is absorbing real deterioration by weakening reserves," he noted.

"Almost all recent evaluations of industry reserves indicate that they are grossly inadequate, with common estimates of the deficiency in the range of 12% to 15%."

That translates to a reserve shortfall of \$40 billion to \$50 billion, or about a quarter to a third of the industry's surplus, Mr. Dempster estimated.

Weak underwriting cash flow also ails insurers and should total a negative figure of about \$8 billion for 1992, he said.

The industry is plagued by other problems, such as unrecoverable reinsurance balances, residual market loads and risky investments, Mr. Dempster said. And, declines in stock prices could add to an erosion of surplus.

Largely unrecognized on insurers' balance sheets are potential environmental liabilities that could eventually deal a big blow to surplus, he said.

"The reality of the industry's strength and capital position is much different from the perception," Mr. Dempster said. "The industry's true capital position is much less than is reported."

In fact, the impact of all these factors on the industry's surplus means actual surplus could be as low as \$20 billion rather than the approximately \$160 billion reported, he noted.

Despite so many negative influences, many insurers are not experiencing losses that would encourage them to raise rates, said Mr. Dempster. "There are still many companies making very good returns. They don't need, nor do they necessarily want, a cycle turn. As long as many players in the industry, or those who invest in the industry, feel this way, the cycle will not turn." **B**

**'I believe that we will not see the traditional cycle again. The P/C industry is far different today than it was when traditional cycles were a common and predictable industry characteristic,' says Howard Dempster of CIGNA Property & Casualty Cos.**

surers continue to de-emphasize personal lines and workers compensation business, capacity will shift to other areas, Mr. Dempster said.

That shift could bring "even more intense competition in monoline liability, commercial automobile and property coverages in mid-America," he said. "That is, away from the wind and earthquake exposures of the East, West and Southern coasts," he said.

The fairly predictable insurance cycles of the past could be gone with the windstorm coverage, Mr. Dempster observed.

"I believe that we will not see the traditional cycle again. The P/C industry is far different

and reported capital is at an all-time high."

However, he warned, the perception of bountiful capital is more illusion than reality. "The irony is that true industry capital is in a perilous condition and desperately in need of a cycle turn."

Mr. Dempster said there is a perception that though the property/casualty industry experienced its largest-ever underwriting loss in 1992, that deficit was offset by strong levels of investment income and capital infusions.

The industry is seen by many as soundly capitalized with "a premium-to-surplus ratio that is the most favorable that the industry has seen in 25 years," he said.

"Surely an industry that can absorb unprecedented catastrophe and underwriting losses and still produce a profit, generate significant amounts of capital gains, attract external capital and build its capital base to record levels is both strong and highly attractive."

Besides, Mr. Dempster jokingly asked, "Aren't insurance companies just fat cats that can readily transfer their costs to the insurance-buying public?"

In reality, however, "reported capital overstates the P/C industry's strength and capacity," he

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## CICA meeting draws 175 for updates on captives, risk management issues

TUCSON, Ariz.—Blue skies and heat marked the Captive Insurance Companies Assn.'s 20th Anniversary Conference, which attracted about 175 to this desert setting.

The March 21-24 meeting was held at the Loews Ventana Canyon Resort, high on a plateau over Tucson.

Morning sessions included presentations by Howard Dempster, chief financial officer at CIGNA Property & Casualty Cos. (see related story). The Reinsurance Assn. of America's position on federal excise taxes and other topics was presented by Bradley L. Kading, vp and director of state legislative affairs at the association.

Other sessions featured: a legal and tax update by Bruce Wright, a partner with LeBoeuf, Lamb, Leiby & MacRae in New York; a look at functional capacity evaluations by Paula Skinner, president of Injury Management Group in San Francisco; and an update on the U.S. and world economy by Edward Guay, senior vp and chief economist at CIGNA Corp. in Bloomfield, Conn.

Informal evening workshops that began at about sundown featured a number of captive-related topics and updates on domiciles by regulators.

Next year's conference will be March 20-23 in Palm Springs, Calif.

For more information, contact CICA, 205 E. 42nd St., New York, N.Y. 10017; 212-687-4501.

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## California reform

Continued from page 1

coverage. Many plans typically exclude coverage for pre-existing conditions for about six to nine months, though some large employers have extended the period to as long as 12 months, consultants say.

Waiting periods range from less than a month—so a plan can begin covering a new employee on the first day of the first full month of employment—to three months.

Complying with the law will be an administrative hassle for both stop-loss insurers and self-funded employers that operate in other states, insurers and consultants said.

SAFECO will not press its self-funded clients to comply with the law, Mr. Taylor said.

"Legally, we couldn't do that if we wanted to," he said. "Under ERISA, a reinsurer cannot do anything to impact a plan participant in any way."

PM Group Life Insurance Co. of Fountain Valley, Calif., is taking a wait-and-see approach until the Insurance Department clarifies how it will regulate stop-loss insurers under the law.

Gary Pyatt, second vp of planning and services for the insurer, said that the provision of the law that states stop-loss insurers "shall provide" that self-funded plans comply with the law is ambiguous.

Trying to require self-funded plans to comply would be a challenge, he said.

William M. Mercer Inc. is advising its consultants not to alter clients' self-insured plans to comply with the law, said Carol Malone, an associate in the consultant's Washington resource group.

"I suspect that larger employers won't be jumping in with both feet" to amend their self-funded plans, said Judy Bauserman, a consultant with the resource group.

Experts predict a judicial ax will eventually fall on the new law.

No lawsuits regarding the statute had been filed as of late last week, according to the Insurance Department.

"The department doesn't believe that the law violates ERISA because it regulates carriers, not stop-loss plans," said Laura Rosenthal, the department's legislative counsel.

She noted that the law imposes non-compliance penalties of \$2,500 to \$100,000 on insurers but does not impose any penalties on self-funded plans that do not comply.

"I don't think their argument holds water," said David R. Money, senior vp and general counsel for third-party administrator First Health Strategies Inc. of Salt Lake City. "They're purporting to make stop-loss carriers enforcement agencies of self-insured plans."

Benefit experts say several rulings show the law has little chance of surviving.

For example, the 9th U.S. Circuit Court of Appeals, whose jurisdiction includes California, ruled in two 1986 cases that states cannot treat self-funded plans as insured plans subject to state insurance laws just because the plans use stop-loss coverage. The court issued those rulings in *United Food & Commercial Workers & Employers Arizona Health & Welfare Trust vs. Pacyga* and in *Moore vs. Provident Life & Accident Insurance Co.*

Others point to a New York federal court ruling this year that voided state hospital bill surcharges on self-insured and commercially insured health plans (*BI*, Feb. 8).

However, the 6th Circuit ruled in 1985 in *Michigan United Food &*

*Commercial vs. Baerwaldt* that a self-insured plan that purchased stop-loss insurance was subject to state insurance law. But, in that case, the stop-loss insurer paid plan participants directly rather than the employer when claims exceeded the plan's retention under its stop-loss coverage, noted Myron Rumeld, an attorney specializing in ERISA law at Proskauer Rose Goetz & Mendelsohn in New York.

Ultimately, though, the cost of challenging the California reform law may far exceed the cost of complying, said Mark Wagoner, managing consultant with A. Foster Higgins & Co. Inc. in San Francisco. **BI**

# Law may benefit small firms

By JOANNE WOJCIK

SACRAMENTO, Calif.—Trade associations that offer insured health plans to their members in California are up in arms about a new small-group reform law that takes effect July 1.

Associations fear insurers may abandon them because the law requires companies that insure small employers—even if they only cover small firms under an exclusive association plan—to extend that cover-

age to all small employers in the state.

If insurers pull out of the small-employer market, many small employers could be forced to obtain more expensive coverage from a health insurance purchasing pool created by the law, associations say.

Agents and brokers complain the law unfairly limits their commissions on coverage placed with the new pool.

Small employers, on the other hand, are not joining the fracas. In


fact, the National Federation of Independent Business helped draft the legislation, A.B. 1672, which was introduced by Assemblyman Burt Margolin, D-Los Angeles, and signed into law last year.

The law, which is intended to make coverage more accessible and affordable to small employers in California, will:

- Create a health insurance purchasing pool for small employers. Initially, companies with as few as

Continued on next page

## The RIMS Issues Of Business Insurance



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Continued from previous page  
five employees can purchase coverage from the pool, which resembles cooperatives in managed competition proposals, except that participation in the pool by insurers and employers is voluntary. In 1994, the number of employees required for pool participation will drop to four and will fall to three in 1995.

- Require all health insurers that provide coverage to small employers—or to association plans that include small employers—to guarantee issuance and renewal of coverage. Also, an insurer cannot deny an employer coverage based on the medical status of its employees.

- Establish a rate band to keep small-group health plan premiums low. Insurers' ability to vary rates for health status, occupation or claims experience will be limited to 20% above or below a standard rate tied to demographic factors such as age, sex and geography.

- Limit the duration of pre-existing condition exclusions under insured plans to a single six-month period. For example, if a worker with diabetes changes jobs after the six-month period, he or she would not be subject to the exclusion under a new employer's plan.

Already, a bill has been introduced that would let insurers con-

tinue to limit an association plan's coverage to association members.

An estimated one in five small employers in California now get health insurance through an association-sponsored plan.

Another bill before an Assembly committee would similarly exempt multiple employer welfare arrangements from the law. MEWAs—which typically are formed exclusively to market group coverage to employers—are another popular source of coverage for small firms.

Backers of A.B. 1672 insist that exemptions would undermine the law. If underwriters of association plans can continue writing only the

risks they choose, it will leave only poor risks for the pool, contends Rich Figueroa, deputy director of eligibility and enrollment for the Major Risk Medical Insurance Board, a state agency in charge of lining up insurers to participate in the new pool.

"We wanted a level playing field," he said.

Already, Blue Cross of California has announced it will not participate in the small-employer purchasing group, and several industry sources say that John Hancock Mutual Life Insurance Co. is pulling out of the association market rather than be subject to A.B. 1672 under-

writing reforms.

Hancock officials were not available to comment.

The Assn. of California Life Insurance Cos. said it accepted the underwriting reforms when the legislation was being debated as long as they would cover health insurers.

"You couldn't survive in the small-employer market if you took all comers because of the predatory cherry-picking that has already occurred," said Ann Eowan, legislative counsel for ACLIC in Sacramento. "But if everybody is required to do it and everybody does it, the risk is spread among all carriers."

However, some association plan administrators fear the guaranteed issue component of the law will prompt insurers to withdraw from the small-group market or to only offer coverage through the pool.

The pool, though, is likely to charge higher premiums because it will offer richer benefits than many association plans, they say. Among other things, it will cover hospitalization, outpatient medical, mental health and substance abuse treatment and prescription drugs.

"That isn't a possibility. You can take it to the bank," said Gary Barnhart, senior vp at Sedgwick James Inc. in Los Angeles, referring to insurers withdrawing.

Another issue that association plans are using to persuade lawmakers that they need an exemption: They cover many one- and two-member companies, which will be left high and dry under the three-member minimum, which will not take effect until 1995.

Assemblyman Margolin has introduced a measure, A.B. 1744, that would amend the law to cover even single-employee firms.

While associations press lawmakers for an exemption from A.B. 1672, agent and broker groups are trying to persuade MRMIB to change the pool's commission structure.

A.B. 1672 permits producers to sell the small-group coverage either by contracting with the pool's administrator, Employers Health Insurance Co. of Green Bay, Wis., or through contracts with insurers participating in the pool.

Agents, though, are concerned about the way the pool's administration is taking shape.

MRMIB has established a fee-based compensation structure for agents and brokers based on the size of group for which coverage is placed.

"We realized that the commissions would be lower for the pool products, but we don't think the MRMIB standard should be the only standard used," said Mike Pinkerton, director of government affairs for the California Assn. of Life Underwriters, an agent group. "Agents and carriers think they should be free to negotiate their own compensation arrangements" with insurers in the pool, he said.

Producers also object to the itemized bills MRMIB plans to send to employers. The bills will show how much of their premium is going to administration, agent commissions and actual insurance premiums.

"The breakdown implies that using agents and brokers costs extra," Mr. Pinkerton objected. In reality, employers who use agents will pay the same as those who go through MRMIB's in-house telemarketers, he suggested.

He likened the situation to airline tickets, which cost the same whether purchased directly or through a travel agent.

"Brokers may be upset about the compensation level, but we're trying to put together a product for small employers that reduces administrative costs," MRMIB's Mr. Figueroa said. BI

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#### RIMS PREVIEW, APRIL 19

A preview of the events and sessions at the 31st annual RIMS conference in Orlando, with a special "take-out" section that details the conference program, venue, exhibitors and activities. It's a "must-read" for everyone planning to attend. Our take-out section also will be distributed at the *BI* booth in Orlando.

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#### CAPTIVES/RISK MANAGER OF THE YEAR, APRIL 26

This essential issue of *BI*, distributed at the RIMS conference, profiles the 16th annual Risk Manager of the Year and the Risk Management Honor Roll. It also includes our exclusive report on captive insurance company domiciles and Directory of Captive Managers. As a special bonus, advertisers will be

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Anyone responsible for employee benefits, or the management of those costs, will find this issue of *BI* invaluable. *BI* will provide important perspective on the issues and trends highlighted at the employee benefit sessions at the RIMS conference.

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Our final, comprehensive look at the RIMS conference will be a "keeper" for every corporate executive responsible for risk management. In it, *BI* will detail the presentations, themes and conclusions of the RIMS risk management sessions.

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# Symposium teaches 'ART' techniques

HAMILTON, Bermuda—The insurance industry will see how Bermuda has turned alternative risk transfer into an "ART" when the island hosts the first Bermuda Insurance Symposium May 25-28 at the Marriott Castle Harbour Resort.

Sponsored by Bermuda insurers and the Bermuda government, the symposium, titled "Bermuda: The ART Capital of the World," will feature eight panel discussions of alternative risk transfer methods by top risk management, insurance and reinsurance professionals from North America, Europe and the Pacific Rim.

"The conference will be a forum for different points of view and hopefully lively debate and discussion," said Robert J. Rosser, vp-marketing of Skandia International Risk Management Ltd. and a member of the symposium's organizing committee.

"We're going to try to make it more audience-interactive (than other conferences). This is all being done by industry executives who attend these conferences on a regular basis—hardened veterans. What goes wrong (with many conferences), we're going to try to make right with this one," he said.

The Bermuda Insurance Symposium will strive to "set a standard for future insurance symposiums around the world," said Jonathan Crawley, president of Sphere Drake Underwriting Management (Bermuda) Ltd. and another member of the organizing committee.

Mr. Rosser said Bermuda's government and insurance industry is planning to hold the symposium every two years.

The conference will kick off on Tuesday, May 25, with registration, the opening of an exhibition hall and a cocktail party.

The working sessions begin on Wednesday, May 26, with "Risk Managers—Financing the Working Layer," a discussion of innovations and flexibility in handling self-insured losses and determining retained limits. Moderated by Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*, the session features four former *BI* Risk Managers of the Year: Arnold L. Davenport, vp-risk management at Marriott Corp.; William L. Mather, director-risk management at The Gillette Co.; Stephen M. Wilder, assistant treasurer-risk management at The Walt Disney Co.; and Millicent W. Workman, director of corporate risk management at Belz Enterprises.

A session on "Insuring Cata-

strophic Losses" will examine capacity in the property insurance and reinsurance market and how property coverage programs are assembled. The session, moderated by Edith F. Lichota, an independent consultant and vp-administration at Bankers Insurance Co. Ltd., will feature: Anthony P. Benson, head of group risk management at Guinness P.L.C.; Richard Heydinger, director-risk management services at Hallmark Cards Inc.; and Patricia S. Kellogg, risk manager for Ameritech.

The luncheon speaker on Wednesday will be Peter W. Huber, senior fellow of the Manhattan Institute for Policy Research. Mr. Huber, author of the book "Galileo's Revenge" is a critic of the U.S. legal system, especially the use of "junk science" as evidence.

Following lunch, the conference will focus on "Captive Innovations: Corporate Structures and Reinsurance Positions." The panelists are Julian M. Griffiths, director of Griffiths & Wanklyn Management Ltd.; William S. McIntyre IV, chairman of American Risk Transfer Insurance Co. Ltd.; David J. McManus, president of Arthur J. Gallagher & Co. (Bermuda) Ltd.; and Richard D. Spurling, partner/head of corporate department at Appleby, Spurling & Kempe. The session will be moderated by Brian R. Hall, chairman and director of Johnson & Higgins (Bermuda) Ltd.

The hot topic of fronting and proposed rules in the United States that could restrict these arrangements will be the subject of the final Wednesday session. The panelists are Malcolm L. Butterfield, Bermuda's registrar of companies; Steven T. Foster, president of the National Assn. of Insurance Commissioners and Virginia's insurance commissioner; John G. Gantz Jr., president of AIG Risk Management Inc.; and Nick Pearson, partner with Carter, Ledyard & Milburn. The session will be moderated by Edmond F. Rondepierre, senior vp and counsel at General Re Corp.

A cocktail reception will be held Wednesday evening at the Bermuda National Gallery.

The conference will commence on Thursday, May 27, with "The Rent-a-Captive Solution: Why Own When You Can Rent?" The session, moderated by Robert A. Mulderig, president of Mutual Risk Management Ltd., will feature Nikolaj Boyesen, managing director of Sinsler Danmark A/S; Nicholas S. Dove, president of Skandia International Risk Management Ltd.; David Eze-

kiel, president and managing director of International Advisory Services Ltd.; and Gene M. Marsh, president and chief executive officer of California Hospitals Affiliated Insurance Services Inc.

The next session will examine "Alternative Dispute Resolution in the ART Market," a look at arbitration, mediation and other means for quick, cost-effective settlements. The panelists are John Milligan-Whyte, partner at Milligan-Whyte & Smith; John F. Powell, partner at Stephenson Harwood; Harvey G. Simons, director of CNA International Reinsurance Co. Ltd.; Theron J. Strenk, former president of INA Reinsurance Co.; and Eugene Wollan, senior partner at Mound, Cotton & Wollan. The session will be moderated by Ronald A. Jacks, partner at Mayer, Brown & Platt.

The conference will stray from insurance-related topics during lunch on Thursday when Joe Theismann, former Washington Redskins quarterback and now a pro football analyst for ESPN, will speak.

Following lunch, "Financial Reinsurance—Is It ART or Forgery?" will feature two proponents and a critics of financial reinsurance's role in risk financing. The proponents are Michael Palm, president and

chief executive of Centre Reinsurance (Bermuda) Ltd., and Graham C. Pewter, president of Commercial Risk Reinsurance Co. Ltd. The critic is John C. Narvell, senior consulting actuary at Ernst & Young Actuarial Services Group. The discussion will be moderated by Albert J. Beer, senior vp at American Re-Insurance Co.

A cocktail reception and gala dinner/dance will be held Thursday evening, sponsored by the Bermuda government.

The program on Friday, May 28 will begin with "How Will the ART Market Respond to the Problems of the 21st Century?" The session will present views of alternative risk transfer from experts around the world, including Ian R. Heap, president and CEO of Mid Ocean Reinsurance Co. Ltd. in Bermuda; Isao Kuzuhara, managing director of Dai Tokyo Fire & Marine Insurance Co. Ltd. in Tokyo; Colin Murray, chairman of R.J. Kiln Co. Ltd. in London and former deputy chairman of Lloyd's; and Patrick Peugeot, chairman and CEO of SCOR S.A. in Paris.

Two speakers will follow. First, Edward Guay, chief economist for CIGNA Corp., will discuss "Politics and the Global Economic Out-

look." Sphere Drake's Mr. Crawley will then close the conference with a review of "The State of the ART."

A golf tournament benefiting the Angus Robinson Jr. Memorial Foundation will be held Friday afternoon.

The \$895 symposium registration cost includes all sessions, workbooks, cocktail receptions, continental breakfasts, two luncheons, coffee breaks and the dinner/dance. A guest program costing \$250 entitles registrants' guests to the cocktail receptions, dinner/dance, an afternoon tea hosted by the wife of Bermuda Premier John Swan, and a home and garden tour.

"Registrations are coming in fast and furious," Mr. Rosser said, adding that the symposium organizing committee may have to limit the number of attendees to 500.

*Business Insurance* is the official publication of the Bermuda Insurance Symposium.

For more information or to register, contact Suzie McKeegan, Project Coordinator, Bermuda Insurance Symposium, 73 Front St., Penthouse, P.O. Box HM 1366, Hamilton HM FX, Bermuda; 809-292-6386; fax: 809-292-6990.

—By Regis Coccia and Roger Scotton

## Sony Pictures promotes Clausen

Janel Clausen has been named vp-risk management at Sony Pictures Entertainment, headquartered in Culver City, Calif. Ms. Clausen is responsible for the film entertainment company's insurance program and coordinates the loss-control and safety program. She reports to Joseph Kraft, vp and treasurer. Ms. Clausen joined the company's predecessor, Columbia Pictures, in 1984 as insurance administrator, West Coast. She was promoted to risk manager in 1986 and corporate director of risk management in 1987. Columbia Pictures was acquired by Sony Corp. in 1989. In 1991, she was named assistant treasurer, risk management. Prior to joining Columbia, Ms. Clausen was assistant manager, risk management and insurance, for entertainment company MCA Inc. in Universal City, Calif. She holds the Associate in Risk Management designation and is a deputy member of the Risk & Insurance Management Society Inc.

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### Comings & Goings: Buyers

**Gregory F. "Red" Hidden**, 44, has joined American General Hospitality Inc. in Dallas as director of risk and insurance services. Mr. Hidden is responsible for the development and management of risk and insurance programs, including security and industrial and environmental health and safety, for the hotel management and consulting firm and the more than 60 hotels it manages nationwide. The newly created post consolidates the former safety administration and insurance management functions. Mr. Hidden reports to President Steven D. Jorns. Before joining American General Hospitality, he was managing partner for The Hidden Group Ltd., a risk management and loss-control consulting firm in Riverside, Calif., and Longmont, Colo. Mr. Hidden also is the national risk management coordinator for USA Hockey Inc., the national governing body for the Olympic ice hockey program. He earned a bachelor's degree in criminal justice from San Diego State University in San Diego and a master's in business administration in strategic management from National University in Irvine, Calif. Mr. Hidden also holds the Associate in Risk Management designation and is a member of the American Society of Safety Engineers, the American Society of Training & Development and the Public Risk Managers Assn.

**Connie Rank** has been promoted to assistant vp-human resources at Jewelers Mutual Insurance Co. in Neenah, Wis. Ms. Rank directs human resource activities, including benefit program administration, personnel policy development and employee recruitment. She reports to President Ronald Harder. Ms. Rank joined the insurer in April 1992 as director of human re-

sources. Prior to joining Jewelers Mutual, she was director of human resources for the West Side Clinic in Green Bay and the LaSalle Clinic in Neenah. Ms. Rank serves on the national Human Resources Committee for the Conference of Casualty Insurance Companies and is a board member for the Wisconsin chapter of the National Society for Human Resources Management. Her professional affiliations also include membership in the Wisconsin Insurance Personnel Directors Assn.

\*\*\*

**Valerie Lynn Mattern**, 36, has been named vp-human resources for the Greater Atlantic Health Service, a diversified managed health care company based in Philadelphia. Ms. Mattern's responsibilities include developing benefit policies and procedures and tracking benefit-related legislation. She reports to Ernest Monfiletto, president and chief executive officer. Prior to joining Greater Atlantic, Ms. Mattern was a human resource generalist with SMS Inc. in Malvern, Pa., a software and systems developer for the medical field. She previously was manager of health plans with RCA/GE Service Co., a health care facilities service organization in Cherry Hill, N.J. Ms. Mattern holds a bachelor's degree in psychology from Rutgers University in New Brunswick, N.J., and a master's degree in human resource management from Widener University in Chester, Pa. She is a member of the Penjerdel Employee Benefit Assn.

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# Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers



## It's a new season for making deals

Agency owners looking to hit home runs in the mergers and acquisitions ball game

By SALLY ROBERTS  
and LOUISE KERTESZ

**F**ed up with the sluggish insurance marketplace, agencies are coming to bat swinging away in the mergers and acquisitions ball game.

The M&A market has sprung back from the doldrums, consultants say, naming competitive pressures, a slow economy and the soft market as the catalysts of this renewed activity.

This triple whammy is forcing some agencies to either put their business on the blocks or merge with other agencies to become more competitive.

Whichever decision agencies make, all this activity will produce a substantial consolidation in the marketplace over the next five years, predicts Larry Marsh, president of Marsh, Berry & Co., an agent/broker consulting firm in Mentor, Ohio.

In the future, there will be fewer independent agencies and more large agencies, said Jane W. Boynton, senior financial consultant with Business Management Group in Hartford, Conn.

Consultants agree the current M&A marketplace is the busiest since the mid-1980s.

In fact, Mr. Marsh thinks this year "will be an all-time record year for the acquisition and sale of agencies and for mergers."

But instead of the market being driven by increased opportunity, problems are the driving factor, consultants say.

Small to medium-size agencies "are having more difficulty these days due to competition from the alphabet houses and regional brokers who have much better resources and marketing muscle," said Fred Dopfel, executive vp and managing director at investment banking consultant Russell Miller Inc. in San Francisco.

Additionally, agencies are interested in mergers and acquisitions as "a result of a lot of years of the soft mar-

ket, a lot of years of agencies not retaining an adequate amount of earnings, becoming too heavily dependent on contingent income and not receiving it this year—and to a great extent not working as hard as they should in developing economies of scale within their agencies," Mr. Marsh said.

Agencies are feeling the pressure and are tired of waiting for the market to harden and the economy to improve, consultants say.

There's been "a flurry of activity with mergers" recently because of this, Ms. Boynton said.

In addition to just feeling the pinch, a fair number of good-quality and untroubled agencies are for sale, consultants say.

Principals at those agencies are eager to sell because of "pent-up demand," Mr. Dopfel said. "It's the natural problem that an agency owner has in deciding what to do with his agency as he gets older and the agency grows, and he asks, 'What's the next step?'"

Owners getting older in 1991-92 held on to their agencies because of the slow economy, the uncertainty of the election and the soft market, Mr. Dopfel explained. They are now looking to sell.

Some agencies, though, are refusing to sell and have instead looked to alternatives that can help them stay in the business.

Smaller agencies are increasingly interested in forming "cluster arrangements," Ms. Boynton said.

These arrangements are similar to mergers except the joining agencies do not combine their financials, she said.

Under a cluster arrangement, several agencies band to-

*Continued on next page*

## Agents await court ruling on intangibles

By SALLY ROBERTS

WASHINGTON—The long-awaited Supreme Court decision on the tax treatment of intangible assets that are acquired—perhaps the most pressing issue facing agents and brokers—could be handed down within days.

Currently, agencies and brokerages deduct an estimated \$200 million to \$1 billion annually in depreciation on their customer lists. A Supreme Court ruling disallowing those deductions could create a major disincentive to buying out other agencies or brokerages.

Regardless of the precedent the Supreme Court sets, Congress could take action on this issue this year. House Ways & Means Committee Chairman Dan Rostenkowski, D-Ill., has reintroduced his omnibus tax legislation—H.R. 13—which calls for a uniform, 14-year recovery for all intangible assets acquired after July 25, 1991.

The Revenue Act of 1992, which included the same intangible provision, was vetoed by President Bush last November.

Major brokers say the high court's ruling will determine whether they make acquisitions with cash or through stock transfers (A/BT, May 4, 1992).

*Continued on next page*

## Mergers

Continued from previous page  
 together and form a shell-like corporation. All the agencies work together to sell products and share in the profits. But each agency retains its own owners and pays its own employees, she explained.

These arrangements allow for increased premium volume, which is appealing to those agencies having a tough time generating enough business for their insurance company, she said.

The perpetuation of the existing soft market has not only created a spurt of agency sales, but a shortage of substantial offers.

Many agencies' revenues have been decreasing over the past couple years, consultants say. And because selling prices are determined by earnings, agencies are not walking away with as much money as they used to.

Agencies have generally sold for 1½ times their previous year's commissions. It's hard to get that today, "because agencies have such weak balance sheets,"

said Carol A. Hammes, president of agency consulting firm The Middleton Group in Lisle, Ill.

"A lot of agencies are in so much debt that they are literally selling for the assumption of debt, with no cash exchange," Mr. Marsh said.

In addition to sellers not having sufficient revenues, many buyers don't have sufficient cap-

**The strong deals that have been made have a 'strategic aura about them,' says Timothy J. Cunningham.**

ital to deal, said Timothy J. Cunningham, senior consultant with Hales & Associates in Westchester, Ill., an agency consultant.

The strong deals that have been made have a real "strategic aura about them," he said.

In these deals, sellers are able to deliver to buyers such things as product niches, people and locations, he said.

The prices agencies are selling for is more a function of a particular appetite of a major broker than the state of the insurance cycle and the economy, observed Stephen A. Crane, president of G.L. Hodson & Son Inc., which is Willis Corroon Group's reinsurance brokerage unit in New York. Mr. Corroon was chairman of the acquisition committee of Corroon & Black Corp.

Strategy is the name of the game for Arthur J. Gallagher & Co., which has made an estimated 22 acquisitions in the past five years.

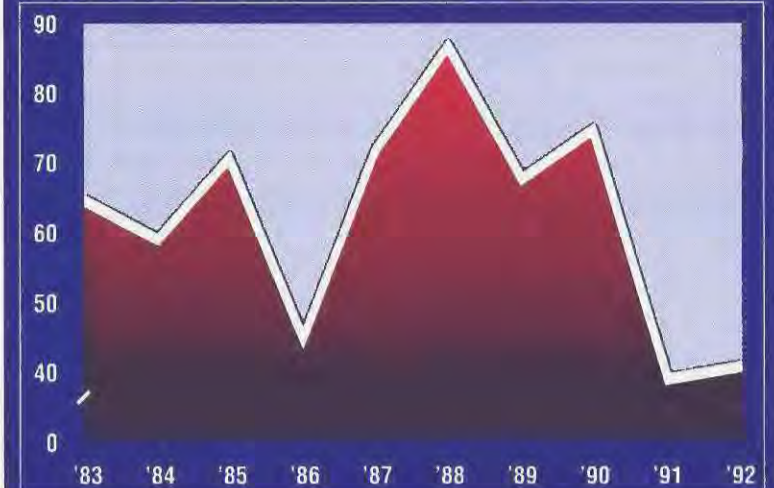
Acquisitions are about "creating value" contends Warren VanDerVoort, corporate vp and director of mergers and acquisitions for the Itasca, Ill.—based broker with 1992 gross revenues of \$272.7 million.

The broker is looking for the capability to enter new business disciplines and geographic markets, he said.

With this strategy in mind, Gallagher is currently working on three acquisitions. While most of them are in the property/casualty business, Gallagher is expanding in other areas.

## Calm before the storm?

Mergers and acquisitions among privately held brokerages have been at their lowest levels in nearly a decade.



Source: Russell Miller Inc.

GRAPHIC BY JERRY PARKS

For example, last December Gallagher acquired The ABOW Cos. Inc., an employee benefits company in Troy, Mich.

In addition, Acordia Inc. is actively acquiring smaller brokers in less populated regions of the United States.

Most recently, Acordia bought Price & MacDonald Inc., a property/casualty broker in Colorado Springs, Colo. In February, Acordia purchased property/casualty broker The Associated Insurance Managers Inc. in Indianapolis.

And, in December it purchased The Valley National Co.-Insurance, a broker in Phoenix.

"It's always a good time to buy," contends Patrick M. Sheridan, executive vp and chief financial officer of Indianapolis-based Acordia, which had 1992 gross revenues of \$207.2 million.

Acordia's strategy is to find a well-run broker and "marry" its capabilities with Acordia's.

This will increase market share in a specific geographic region as well as increase efficiencies, Mr. Sheridan said.

A key selling point—as it has been in the past—is whether an agency's specialty dovetails with the buyer's expansion plans.

However, it's the larger re-

gional brokers rather than the "billion-dollar brokers," like Sedgwick Group P.L.C., that are making acquisitions, Mr. Dopfel said.

"There has not been lots of activity among major brokers over the past year or so," said Willis Corroon's Mr. Crane.

Willis Corroon, for example, has "slowed down acquisition activity in favor of substantial investment in building international capabilities," he said.

This is a greater need than U.S. acquisitions, Mr. Crane said.

London-based Willis Corroon P.L.C. reported 1992 worldwide gross revenues of about \$1 billion (BI, March 15).

The biggest firms are now "digesting acquisitions, thinking globally and thinking diversification and not so much thinking in terms of acquisitions," said Mr. Dopfel of Russell Miller.

In addition, large public brokers, with few exceptions, are not making acquisitions.

That is because their geographic coverage is already comprehensive and they are struggling with the impact of the economy and the soft market on their business, which is a "bigger priority," Hales' Mr. Cunningham said. **BI**

## Intangible assets

Continued from previous page

The case before the Supreme Court involves Newark Morning Ledger Co., a unit of Advance Publishing Inc. that publishes the Newark, N.J., Star-Ledger.

The publishing company's predecessor claimed depreciation deductions on an annual basis on the value of a subscriber list that came with a Michigan newspaper it bought in 1977.

Beginning in 1989, those deductions were denied on a retrospective basis by the Internal Revenue Service, which asserted that a paid-subscriber list was part of the goodwill of the acquired newspaper and thus was not depreciable.

Morning Ledger sued in federal court to recoup denied deductions on the \$67 million appraised value of the paid-subscriber list from 1977 to 1980.

A trial court judge ruled the subscriber list was depreciable because customers could be identified and the value of the list could be determined with a fair amount of accuracy.

But, on appeal, a panel of the 3rd U.S. Circuit Court of Ap-

peals ruled the list was an asset that contributed to continual income, but was akin to non-depreciable goodwill.

Other federal appellate and trial courts have ruled the lists are depreciable, a discrepancy that prompted the Justice Department to request a Supreme Court ruling on the issue.

Historically, when a broker or agent purchases an ongoing business, it allocates a portion of that purchase price to intangible assets, tangible assets and goodwill.

An IRS regulation states that the taxpayer may amortize a purchased intangible if the assets can be deemed separate from goodwill—which cannot be amortized—and that they have a limited useful life. Agents operated under this law until 1990, when the IRS deemed intangibles and goodwill inseparable.

For the insurance agent, this means that customer lists and insurance expirations are part of goodwill and therefore cannot be amortized. It is estimated that without clarification, agencies can be devalued up to 30%. **BI**

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## Group 500 offers agencies marketing strength in numbers

By SALLY ROBERTS

SANTA MONICA, Calif.—If you can't beat 'em, join 'em. This philosophy describes the nearly 500 mid-size agencies that have joined to form one large marketing organi-



zation called Group 500. This is the medium-size agent's "answer to the alphabet houses," said George Nordhaus, founder of Group 500 and chairman of Insurance Marketing & Management Services in Santa Monica, Calif.

Brokerage firms like Marsh & McLennan Cos. Inc. are able to distribute their products through their offices worldwide. Smaller agencies "don't have what M&M has," he said. "Agents needed an advantage to compete with the larger agencies."

This advantage comes through Group 500, in which smaller agencies can get the "markets, products and services they didn't have before" and therefore "get a leg up on the competition," he said.

Group 500 consists of agencies and brokerages in the United States, as well as Australia, Canada, England, France, Italy, Mexico and Puerto Rico. These agencies were asked to join based on their size, reputation and commercial lines orientation. Members range in size from 20 to 300 employees, Mr. Nordhaus noted.

Members, who pay a yearly fee of \$2,340, communicate with each other through electronic networks that also give immediate access to specific information about potential clients, such as size and premium volume.

Members automatically become members of IMMS and receive the organization's six continuing information series training programs. Each member also receives an agency operations/financial performance review each year.

The first Group 500 meeting will be June 2 in Boston at the annual IMMS convention.

The first Group 500 Agency Management Conference will meet Nov. 8-10 in Chicago. **BI**

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## How to sell your agency

### Efficiency, fair compensation add value, attract buyers

By CATHERINE C. OAK

Buyers of independent insurance agencies look for certain key characteristics that add to agency value. This is true whether candidates—like sons or daughters of the owner or key employees, including producers—or outside buyers or entities interested in merging or clustering with the firm.

Whatever the situation, agency owners should concentrate on key areas while grooming the agency for its eventual sale. They include:

- Efficient systems and procedures. Automation should be used to its fullest and there should be little duplication of efforts between staff members.
- Streamlined organizational structure. The agency structure should be both productive and profitable with sales and service activities separated, no unnecessary layers of management and work delegated to the least costly *qualified* individual whenever possible. The firm should operate with fewer people and pay them more than other agencies.
- Good use of key people. Agency and producers should be tied into the agency, through equity or vested interest in their books of business, before either an internal or external sale.
- Good compensation plans. For both owners and producers, compensation plans must be fair and equitable.
- Established performance standards for producers and customer service representatives. Standards should be communicated so the employees know what is expected of them in commissions, accounts to

be handled and new business to be produced.

- An analyzed book of business. The firm's book of business must be analyzed overall and by producer at least annually to determine staffing needs and to identify the most profitable segments of the book.

- Well-established agency-insurer relations. The firm must have excellent relationships with markets, and "preferred" agency status must be achieved. It should not have more than 20% to 25% of volume with any one insurer, nor spread itself too thin.

- A well-established commercial lines book. Having a good solid book of medium to large commercial lines accounts is more important to a third party than having specialties. Life and group insurance or personal lines are not as important to a buyer as commercial lines accounts.

- Employment agreements and covenants. Three- to five-year employment contracts will need to be signed by owners who sell and possibly by key producers. Covenants not-to-compete should be signed by all producers, as well as non-piracy agreements with all employees.

- Drafted wish lists. The owners should list personal and business goals, so the parties keep in mind what must be achieved in a transaction.

- Updated fair market valuations. An annually updated fair market valuation will help the owners determine the progress, if any, that is being made on improving value. The revised value can also be used for the buy/sell agreement to help keep the agreed-upon value as current as possible, in case death or disability occurs.



Catherine C. Oak is the principal of Oak & Associates, an insurance consultant in San Francisco.

## Agent targeted for loan default, overdue premiums

FRANKFORT, Ky.—Kentucky insurance regulators are moving against an agency owner who is the son of the former chairman of a financially troubled insurer because of financial dealings between the two entities.

The action centers on \$570,000 of overdue premiums that agency Burnett & Associates owes Kentucky Central Life Insurance Co. Regulators also want to recover the

value of assets—estimated at several million dollars—that the insurer and its subsidiaries lost after the agency defaulted on loans secured by the assets, said Patrick Watts, the Kentucky Insurance Department's general counsel.

Kentucky Central Life, though not insolvent, was placed in rehabilitation in February after the insurer sought regulators' help to protect its assets (*BI*, Feb. 22).

The agency, which filed for Chapter 11 reorganization March 15, is owned by Bruce Burnett. His father, William Burnett Jr., was chairman of Kentucky Central Life when the agency produced business for and obtained the loan guarantees from the insurer.

The Insurance Department on March 29 notified Bruce Burnett that it would revoke his insurance agent's license because of alleged "illegal dealing in premiums and his fiduciary manner," Mr. Watts said.

Bruce Burnett has until April 15 to surrender the license, or the department will commence hearings against him.

A few days earlier, Kentucky Central Life filed a suit in Fayette Circuit Court in Lexington that seeks to foreclose on several properties owned by Bruce Burnett or his companies to recover the value of the assets the insurer lost.

But, the attorney for Bruce Burnett says the agency, which owes \$660,000 to many other insurers, is just a victim of the ailing economy.

The agency had an annual premium volume of about \$12 million but was squeezed by late-paying or non-paying clients during the hard economy, said attorney Thomas Bunch of Bunch & Brock in Lexington. Meanwhile, the agency still had to turn over premiums to its insurer clients, he said.

In addition, Mr. Bunch said he understands that William Burnett did not participate in any of the insurer's decisions on guaranteeing loans for his son's agency.

William Burnett could not be reached for comment.

Under a reorganization plan, the agency would be sold to two of its agents, and the new firm would pay its insurer creditors in full over six years, Mr. Bunch explained.

—By Dave Lenckus

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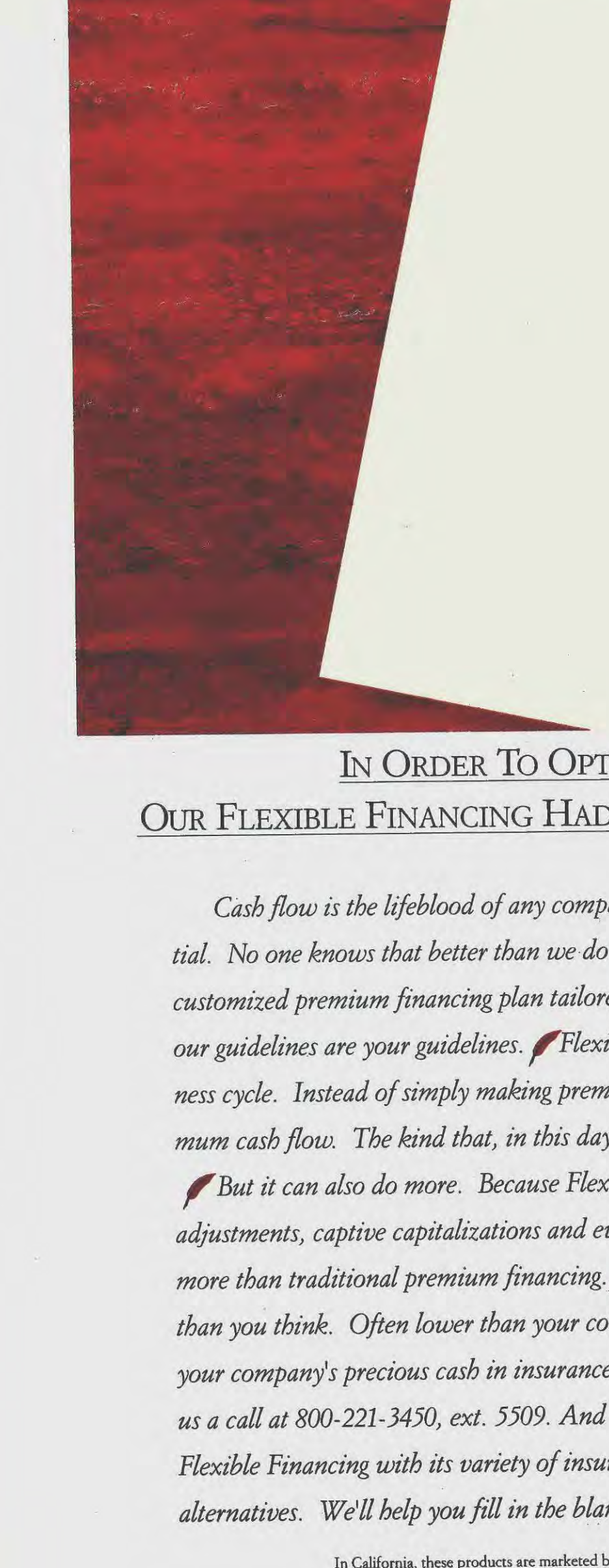
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# TRIPLE THREAT

Acclaimed former two-way college football star is now tackling insurance—and he's having a ball

By MICHAEL SCHACHNER

WORCESTER, Mass.—Five years ago, Gordie Lockbaum spent many a fall afternoon catching a pass out of the backfield one minute and dropping back into a defensive stance as a safety the next.

As the first college football player to play both offense and defense on a regular basis since Leroy Keyes did it at Purdue University in the 1960s, Mr. Lockbaum led the Holy Cross Crusaders to an undefeated season in 1987 and garnered a multitude of individual honors.

The feat of playing both running back and defensive back as well as returning kicks and covering punts—and doing them all well—earned him national recognition as one of the most versatile football players in college history.

He was third in the Heisman Trophy balloting his senior year, was selected to play in three post-season all-star games and still holds National Collegiate Athletic Assn. Division I-AA records for: most touchdowns in a single game, six; most passes caught by a running back in a season, 78 and most receiving yards by a back in a season, 1,152.

But that was then.

Today, the 27-year-old Mr. Lockbaum lives in Worcester, Mass., with his wife and 3-year-old son, is an up-and-coming commercial insurance agent for the William F. Sullivan Insurance Agency Inc. and is trying his hand at becoming a color commentator for college football games.

Life in the real world suits him fine, Mr. Lockbaum says. Oh, but with a few more pounds on his frame and a step more speed, he might have made it in the National Football League.

Drafted by Pittsburgh in the ninth round in 1988, Mr. Lockbaum tried out with the Steelers as a third-down specialty back, but was released by the club during the preseason.



The following year, he caught on with the Buffalo Bills and survived the entire preseason, splitting time at both running back and free safety. However, he again failed to make the final 45-man roster.

Rather than play football in Canada or take a gamble in Europe with the now-defunct World League of American Football, Mr. Lockbaum put aside his cleats and helmet, followed the advice of his college roommate's older brother and took a job as a rookie insurance agent with the Sullivan agency, which is in the same city where he attended college.

It was a decision that, at the time, was very hard for him to make but one he does not regret.

"Working for Bill Sullivan was a great opportunity which I didn't want to lose out on. I gave football my best shot and it just didn't work out. After being invited to a couple camps and seeing the talent at the professional level, it wasn't that difficult to walk away from," he said. "You'd be amazed at how talented those players are. They're truly in a different league."

This coming from a man who virtually owned his league while at Holy Cross.

During his junior year, Mr. Lockbaum, who excelled at three sports at Glassboro High School in

**'At a time when specialization was getting more popular, it was intriguing to play both ways. There was a lot to it, but it was a great experience,' says Gordie Lockbaum.**



New Jersey, amassed nearly 200 all-purpose yards per game, while at the same time racking up 46 tackles on defense and picking off one pass.

The following year, he led the Crusaders to a perfect 11-0 record and a Patriot League championship, caught 78 passes out of the backfield and earned approximately 30 individual honors ranging from third in the Heisman Trophy voting to The Football News Division I-AA Player of the Year.

In total, Mr. Lockbaum scored 43 touchdowns during his four-year career at Holy Cross, picked off five passes, recovered five fumbles and even recorded four sacks on opposing quarterbacks.

"At a time when specialization was growing more popular, it was real intriguing to play both ways," he said. "At the time there were a lot of questions about which unit I'd practice with, what team meetings I'd attend and how I'd fit in."

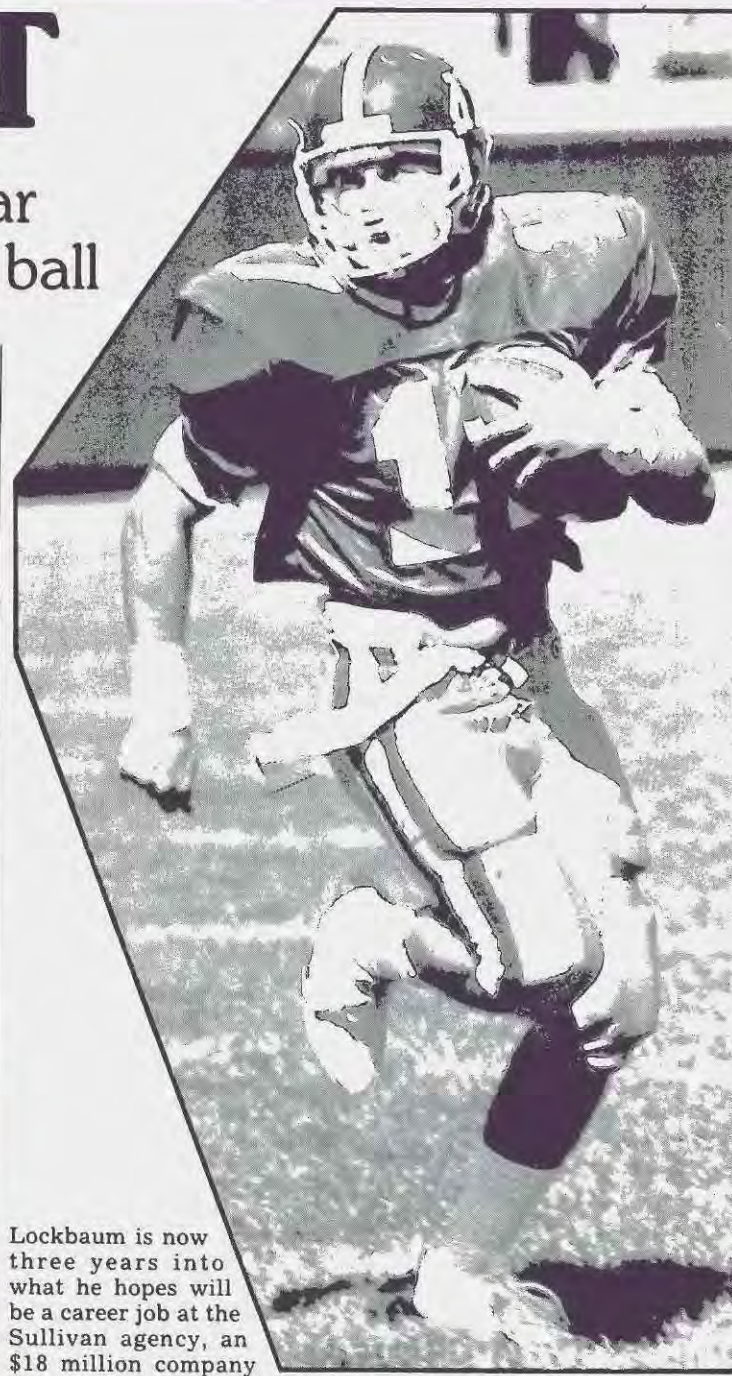
"There was a lot to it, but fortunately I handled it and despite the extra bumps and bruises, it was a great experience," Mr. Lockbaum said.

When asked to identify the pinnacle of his astounding college career, he reminisced about the Heisman Trophy award ceremony in New York during the fall of 1987.

"The whole situation surrounding the Heisman Trophy award was a blast. We were treated like kings in New York. It was an honor to meet several past recipients and to get to meet the other players personally. The whole aura was pretty overwhelming."

Tim Brown of the University of Notre Dame, who now plays for the Los Angeles Raiders, won the distinction as college football's best all-around player that year and took home the Heisman, but "it was a great honor just to be there and to be voted third in all regions of the country," Mr. Lockbaum said.

Having put his college football days behind him, except for the occasional story he's asked to tell, Mr.



Lockbaum is now three years into what he hopes will be a career job at the Sullivan agency, an \$18 million company that for 37 years has specialized in the commercial brokerage business.

"Business is great," he said. "I'm more comfortable now that I know myself and the products I'm selling. This job is one of constant learning. If you represent 15 companies, knowing all the forms and exclusions is complicated. But I realize now that this business is a lot more than just selling price."

Earlier this year, Mr. Lockbaum passed four of the 10 exams necessary for him to earn the Chartered Property & Casualty Underwriter designation. "I expect to have the CPCU distinction under my belt by the time I'm 30."

So what else lies ahead for him?

"I plan on staying here forever. My family and I love Worcester. It's the second-largest city in New England, but it feels like a small town in many ways. Commitments are something I have made and honored my whole life. You need to always look at the glass as being half full. If you view things positively, you'll be much happier in life," he insisted.

And, although his playing days are over, you can't take the football out of him completely.

"I still love watching and talking about the game," he said. "I'm trying to get a broadcast career going, but I'm still pretty inexperienced."

This past fall, Mr. Lockbaum provided color commentary for a pair of Holy Cross games that were seen on Sports Channel of New England as well as doing radio commentary for nine other games.

"I'd love to do some big games sometime down the line. I auditioned for ESPN to do color for their college games, but I'm still short on experience. Hopefully, some day it'll work out. You can't beat it as a weekend job," said Mr. Lockbaum.

The only thing you're not about to see Gordie Lockbaum doing is coaching football at any level above the Pee-Wee leagues.

"I have the utmost respect for coaches, but they have to work too hard for too little money. It's not for me," he said. "Maybe someday I'll coach my son's Pee-Wee team, but that's about it."

# Broker liability could be expanded by California case

By JOANNE WOJCIK

LOS ANGELES—Brokers' liability could be expanded if a California lawmaker fails to win a reversal of a recent appellate court decision against him, an attorney says.

The case involves Assemblyman William Hoge, R-Pasadena, who formerly was president of Pasadena Broker Insurance Communicators Marketing Corp.

The Jan. 27 court decision found him liable for fraudulently misrepresenting an employer's staff size to a health insurer when placing coverage, thus avoiding the Medicare provisions of the Tax Equity and Fiscal Responsibility Act of 1982.

However, Mr. Hoge maintains that the employer for which he procured coverage had lied to him about staff size.

"If the Court of Appeal decision stands, I don't know how a broker will protect himself from liability," said Michael Schroeder, Mr. Hoge's attorney, of Hart, King & Coldren in Santa Ana.

It is not reasonable to expect agents and brokers to investigate the veracity of customers' claims, Mr. Schroeder added.

The recent decision by the California Court of Appeal, 2nd Appellate District, stems from a 1989 lawsuit filed by Kurtz, Richards, Wilson & Co. Inc., a Pasadena claims adjusting firm that charged Mr. Hoge with fraud, negligent misrepresentation and negligence in procuring health insurance for its employees.

KRW's lawsuit was a counterclaim to one filed against the employer by its insurer, Union Central Life Insurance Co. of Cincinnati, following a dispute over large claims arising from an employee's treatment for brain cancer.

Union Central sought reimbursement for all paid claims as well as punitive damages, alleging KRW had led the insurer to believe that the employer was exempt from the Medicare provisions in TEFRA because of its size. Those provisions make private insurance plans primary to Medicare if a company has more than 20 employees.

In its countersuit against the insurer and Mr. Hoge, the claims adjusting firm alleged, among other things, that even though its officers informed Mr. Hoge the company had 30 employees, he told the insurer that KRW had only 12 employees.

However, Mr. Hoge's attorney maintains that KRW told him the company employed only 12 people.

KRW's suit against the insurer and Union Central's suit against KRW were later dropped after both sides agreed the insurer could not rescind coverage under an incontestability clause.

The trial court also dismissed the claims against Mr. Hoge and his brokerage, ruling that KRW had not stated a cause of action against Mr. Hoge and that the fraud allegations were pre-empted by the federal Employee Retirement Income Security Act of 1974.

The courts have held that ERISA pre-empts most state actions for damages arising out of disputes over group insurance plans like the one at issue in the KRW case.

But the appellate court reversed the rulings, finding that KRW had a stated cause of action for negligent misrepresentation and negligence and that ERISA did not pre-empt any of the complaint. The court reasoned that ERISA was not intended to regulate the relationship between employers and insurance agents or brokers.

As part of its reversal, the appellate court ordered KRW to amend its complaint to specify that it is not seeking lost benefits from the insurance plan but, rather, attorney fees and costs it incurred in defending against the Union Central lawsuit.

Meanwhile, Mr. Hoge filed a petition for review with the state Supreme Court in mid-March and does not expect a response from the court for at least a month.

KRW's counsel, Matthew A. Schumacher of the Los Angeles office of Pillsbury, Madison & Sutro,

could not be reached for comment.

Kurtz, Richards, Wilson & Co. Inc. vs. Insurance Communicators Marketing Corp., No. B056950 (Superior Court No. C716881) California Court of Appeal 2nd Appellate District Division 4, Jan. 27, 1993.

## Agents sponsor bill on Prop. 103 rules

SACRAMENTO, Calif.—California state Sen. Ken Maddy, R-Fresno, Kern and Tulare, has introduced legislation that would prohibit the Department of Insurance from developing regulations that would result in liability on agents or brokers for Proposition 103 rebates.

The legislation, in determining the amount of an insurer's rollback obligation under Proposition 103, would give insurers credit for all premium taxes, commissions and brokerage expenses paid during the rollback period. One aim of S.B. 905—which is sponsored by the Insurance Agents & Brokers Legislative Council, an industry lobbying group—is to prevent insurers from trying to get commissions back from agents and brokers.

Proposition 103 regulations developed by the department last year "deprived insurers of full credit for their actual expenses for commissions and premium taxes." If insurers sought to achieve a fair rate of return, they "would be forced to seek commissions back from their agents and request premium tax refunds from the state," at a cost to the state in excess of \$60 million, the IABLC said.

S.B. 905 "places the burden for rebates squarely on the shoulders of insurers as specified by Proposition 103," the IABLC said. However, it allows insurers to deduct legitimate expenses and provides them a "fair rate of return as provided by the (California) Supreme Court in its review of Proposition 103," the IABLC said. S.B. 905 would prohibit the department

from developing additional regulations to accomplish the same purpose as the Proposition 103 regulations, the IABLC said (BI, March 8).

—By Louise Kertes

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## Insurers hit for firing agent

By LOUISE KERTESZ

LOS ANGELES—California Insurance Commissioner John Garamendi has charged five life insurers with violating the law by firing an agent for rebating commissions.

The insurers charged were Metropolitan Life Insurance Co., Prudential Insurance Co. of America, Transamerica Assurance Co., Transamerica Life & Annuity Insurance Co. and Transamerica Occidental Life Insurance Co.

Agent Mark White, president of Direct Insurance Services of San Diego, had complained to regulators last spring after his agreements were canceled (A/BT, April 6, 1992).

Proposition 103 made rebating legal in California.

Mr. Garamendi alleges that between 1989 and 1990, Mr. White's agreements were terminated solely because he provided rebates.

"Commission rebating brings greater competition to the insurance marketplace and allows consumers to reap significant savings," said Mr. Garamendi. "Companies that attempt to prohibit rebating by firing, harassing or taking other measures against their agents will not be tolerated."

He brought charges under the state Unfair Practices Act, which does not specifically prohibit rebating but does give the commissioner the authority to interpret and define violations of the law.

"We disagree with Commissioner Garamendi," Met Life said in a statement. "Rebating is clearly not in the consumer's best interest.

Among other things, rebating means that the consumer's insurance premiums would (be determined by) the particular agent selling the policy. It also means that the amount of premium will depend on whether the consumer is in a position to bargain for a rebate."

Prudential said it didn't believe it was violating the law. "Mr. White is not an employee. He was not fired. We are opposed to rebating and have stated we do not want someone underwriting insurance for us to offer rebates," but Mr. White continued to do so, a spokesman said. "We did not want him carrying our product."

Mr. White offered a minimum rebate of 50% of the selling agent's commission. Rebating is a less important issue in the commercial arena, because commissions are generally negotiated for larger commercial accounts.

The insurers have been ordered to appear before an administrative law judge on Aug. 16 in San Diego. If the department prevails there, the commissioner will declare the companies' actions "unfair and/or deceptive" and, if they continue, Mr. Garamendi says he will seek a restraining order.

Meanwhile, a suit filed in Cook County Chancery Court in Illinois by R.K. Nelson, another discount broker, against Met Life, Prudential and Transamerica Occidental has been dismissed. The suit by the Northbrook, Ill., independent agent alleged the insurers violated their sales agreements by terminating Mr. Nelson for rebating. BI

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# Minority consortium's strengths gain exposure

Entrepreneurs pool resources to compete for brokerage contracts

By EILEEN P. GUNN

NEW YORK—A group of eight small-business owners in the East is challenging the typical image of entrepreneurs as individuals who thrive by flying solo.

The group—The New York Consortium of Minority Brokers—comprises African-American, Asian and Hispanic men and women who own community-based insurance brokerage, consulting and financial-management firms.

NYCOMB's goals are twofold: to give its members access to business they do not have the capacity to bring in on their own and to increase minority presence on insurance projects.

NYCOMB currently specializes in work for public entities, but it is setting its sights on the local corporate market and maybe national and international business in the future.

NYCOMB "has opened doors for us at levels where people would not talk to us before," said Gwynn Gandy, owner and president of New York-based G&G Insurance Brokers Inc., which serves small- to midsize local businesses and churches.

According to Ms. Gandy, the

business resources NYCOMB members provide each other are only one advantage. Equally important is the visibility they have gained as a group and as individuals. "Clout is definitely a perk," she said.

NYCOMB member Sandra K. Lee, vp of New York insurance broker Henry L. Lee & Sons Inc., agrees. "Longevity, capacity and staying power are important in this industry, and our work with NYCOMB has highlighted those qualities in (our agency)," she said.

NYCOMB was incorporated in June 1991, and offers risk management consulting, loss control consulting and services, claims administration, financial management and insurance brokerage services.

Typically, the person who brings in a particular piece of business acts as point person on it, while work is done out of the member office or offices that specialize in that type of business.

According to Ms. Gandy, profits are being put entirely toward generating new business, and the members have not yet begun taking any shares of profits.

The members first came together in a joint venture in 1990, when John McAllister, president of New

York broker McAllister & Johnson, wanted to bid on a contract to broker insurance for the New York City School Construction Authority. He realized he might have the resources to compete with Marsh & McLennan Inc., the world's largest broker, if he teamed up with other small firms that offered services he did not.

Mr. McAllister and his associates did not win the contract. However, the novelty of having their bid on a major city contract taken seriously inspired them to create a permanent group that could bid on other municipal contracts and eventually make proposals to large private corporations.

The other founding members of NYCOMB were: Patrick Carter, president of Patrick Carter Associates Inc. of New York; Lydia M. Colon, president of LMC International et Cie Ltd. in New York; Carmen D. Ortiz, president of C.D. Ortiz Financial Management Group Inc. in New York; Andrew B. Stroud, president of Stroud Claims Inc. in New York; and Yvonne Paretzky, president of Baltimore-based broker Paretzky Information Network Inc.

Henry L. Lee & Sons is the only non-founding member of NYCOMB. Soon after coming together, the coalition's members realized that to be a well-rounded group of urban minority business owners they needed representation from the Asian community. The Lee agency, the oldest in New York's Chinatown, was an obvious choice.

"We were direct writers with major carriers such as AIG and Chubb, which is unusual in a small, community-based firm like ours," said Ms. Lee, granddaughter of the agency's founder. "We were looking to expand and gain a more sophisticated clientele at the time, and the chemistry and level of professionalism (within NYCOMB) were alluring."

The City of New York apparently agreed with Ms. Lee. In July 1991, NYCOMB outbid Marsh & McLennan, Alexander & Alexander Services Inc. and Johnson & Higgins, among others, for the contract to broker \$110 million of coverage for the Democratic National Convention in New York. The contract was awarded by the city's Economic Development Corp.

"The convention was certainly a boon to us in terms of exposure," said Mr. McAllister.

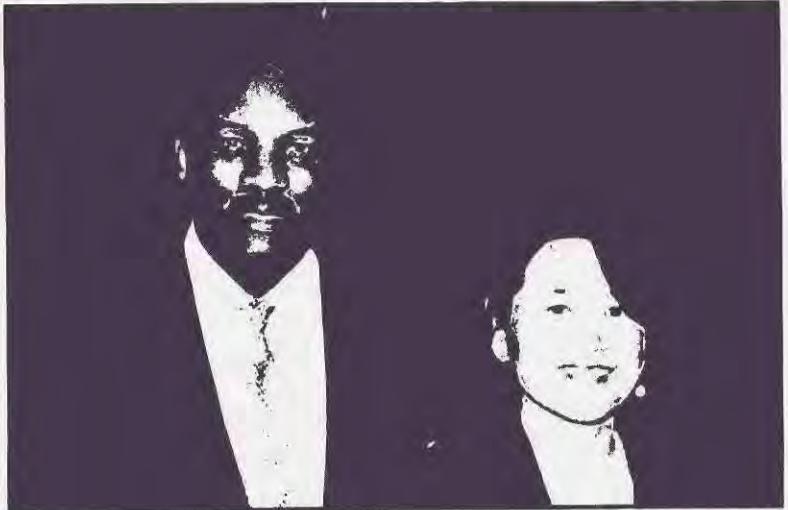
Although the consortium does team up with larger firms on occasion, this crucial deal was entirely a NYCOMB effort.

The convention contract exposed the group's members to "all types of insurance," said Ms. Lee. The convention also brought the group to the attention of state governments, some of which have since contacted it to learn more about how the consortium works.

Most minority firms—like NYCOMB's members—are small, community-based and ethnically oriented, and they do not have the staff or resources to handle big contracts, Ms. Lee explained.

A coalition like NYCOMB provides governments and large private businesses that want to work with minority firms a viable opportunity to do so, she said.

"They bring a lot to the table, and not just locally; they bring in



Brokers John McAllister and Sandra K. Lee are two of the New York Consortium of Minority Brokers Inc.'s eight members.

small minority pockets from around the country" if bidding on a project outside the New York area, said Richard Mitarotonda, regional public entity manager for the New York metropolitan area at Sedgwick James Inc. in Norwalk, Conn.

NYCOMB works predominantly with government and municipal agencies for reasons both practical and idealistic.

NYCOMB members all have previous experience working with small municipal agencies. Also, open-bidding policies of public entities give the group a foot in the door that is not readily available in the private sector.

In addition, though municipal agencies are not typically required to contract with minority firms, many are obligated to seek bids from them.

As the consortium's work gains momentum, the members are looking beyond the New York City area to opportunities at the state, federal and corporate level.

"We don't just look for municipal contracts and that's it," said Ms. Gwynn.

Proposals to work with the Port

Authority of New York & New Jersey, General Electric Capital Corp. and American International Group Inc. are in various stages at the moment.

"They're good insurance people," said Sedgwick James' Mr. Mitarotonda. "As long as they maintain the quality workmanship they showed at the DNC...they can take it as far as they want to."

The consortium has been asked to play a role in Rebuild L.A., though it would not go into details about the project. And it is working on a strategy to pitch the concept of minority business coalitions to the Clinton administration.

"We want to show (the new administration) the concept of a consortium is innovative and unique, (because) working with us you're not working with any one ethnic group—we are that gorgeous mosaic," Ms. Lee said.

Whatever level they are working on, NYCOMB members' goals remain the same.

"By putting forth the consortium, we are coming together as a group that is minority and can offer the same service as a major firm," Mr. McAllister said. **BI**

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## Angoff

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Ralph Nader organization in Washington. For 4½ years, he lobbied Congress on antitrust, tax, consumer protection and product safety issues.

After that, Mr. Angoff was legal counsel to NICO and then advised insurance reform campaigns in several states.

California's Proposition 103 was a major victory, but his effort to transplant the rollback initiative to his home state failed.

As counsel to Citizens Auto Revolt, he encouraged referendums in all of New Jersey's 21 counties on whether auto insurance rates should be cut 20%.

But those referendums were knocked off the ballot in 1989 when New Jersey's high court ruled that auto insurance reform was not within the jurisdiction of county government.

In hindsight, Mr. Angoff said, "The best thing would be if there is no need for initiatives," because elected officials act promptly to resolve citizens' problems.

During this phase of his life, Mr. Angoff found an audience for his consumer activism. He wrote several newspaper op-ed pieces, including one attributing the 1985-86 liability crisis to collusion among insurers. And he traveled around the country, urging state legislators not to be stampeded into passing bills to limit negligence lawsuits or to reduce manufacturers' product liability exposures.

His strong personal views on insurance-related issues are less evident now. "There is a big difference (between being a consumer advocate and being a regulator)," Mr. Angoff said. Now, "I must objectively consider all views and come down the middle."

When he was nominated for director in Missouri, he faced "mostly good-natured" ribbing from state senators about being a carpetbagger. Still, he was speedily approved on a voice vote.

In his new job, Mr. Angoff oversees a staff of about 175. He said he is "very impressed" with the quality of the people in the accredited department.

"It's my goal to set up a simple, clean system," in which insurers are financially sound and consumers protected, he said.

"Once the rules are set, then the free market can work," he said. "The role of government is not to micro-manage every little thing. Too much regulation doesn't help consumers or the insurance industry."

Health insurance is expected to play a key role in Missouri, and Mr. Angoff favors requiring companies to offer community rating and open enrollment.

"The trend is getting away from selecting risks," he said. The goal should be to make the pool of policyholders as wide as possible and charge all the same rate, relying on spread of risk to help keep rates down.

Such an approach should provide "significant" administrative savings because insurers would compete on efficiency instead of spending time deciding which applicants to insure.

"Companies either have to become efficient or go out of business," Mr. Angoff said.

In the area of workers compensation, Mr. Angoff favors reforms to make the Missouri market more competitive. For example, he favors restricting the National Council on Compensation Insurance to filing loss-cost data rather than advisory rates that take profit

into account.

In addition, he wants to prohibit the NCCI from trending loss-cost data.

Policyholder protection will be at least one of his goals in regulating financially weak insurers, said Mr. Angoff. "One goal is to make sure that as much money goes to policyholders as possible."

His old pro-consumer instincts were evident recently in his support for new National Assn. of Insurance Commissioners' guidelines to eliminate insurer funding of meeting-related events like dinners and a dance (BI, March 22).

With the entertainment budget suffering, perhaps Mr. Angoff will find himself pressed into service. His keyboard skills could prove valuable, for instance, during the commissioners' sing-alongs of Christmas carol parodies that gently mock congressional foes, among others. **BI**

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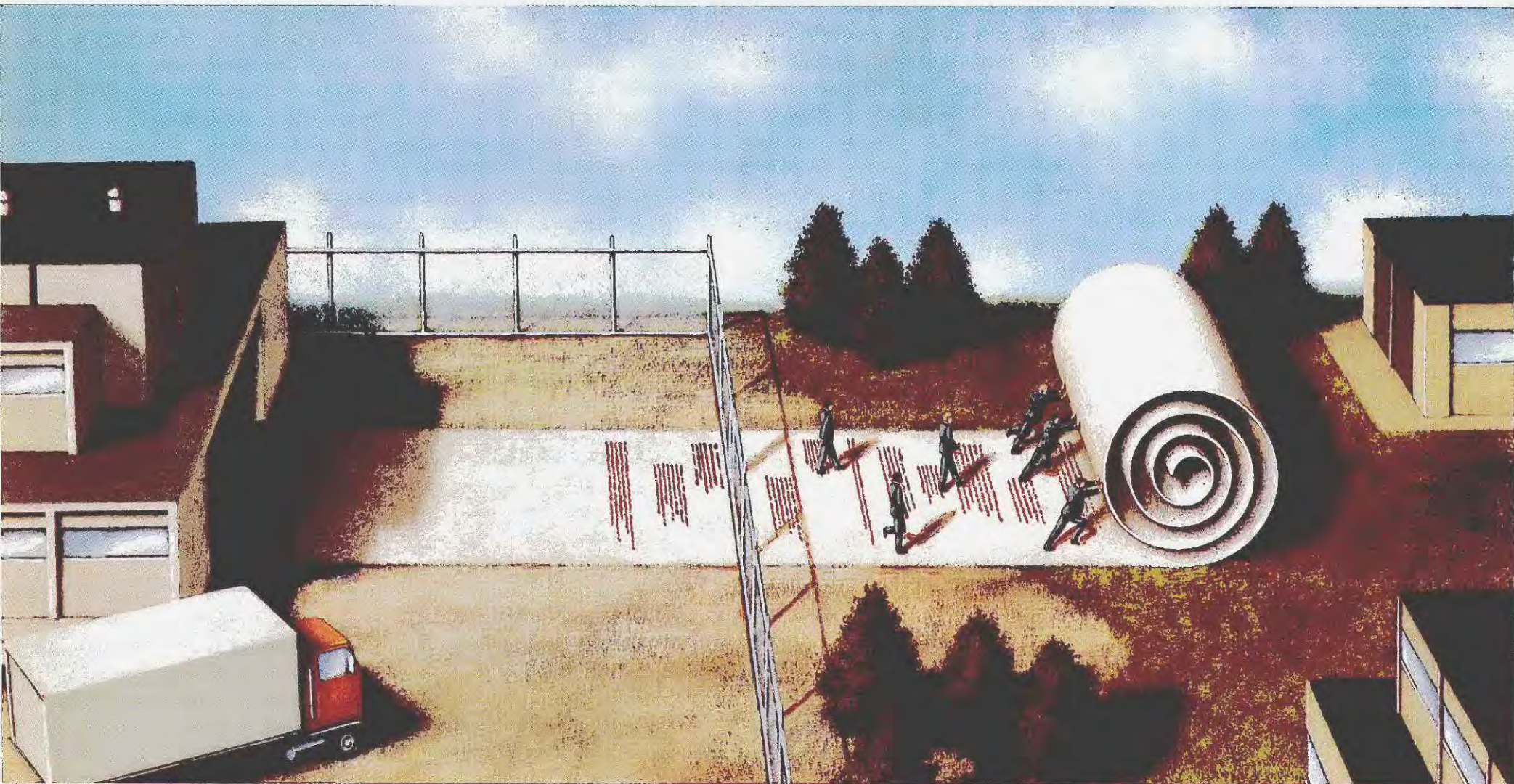
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# China's untapped potential

## Doors are slowly opening—for the brave

By Robert K. Meyers

**I**N THE PAST FEW MONTHS, this column has explored the relationship between rapid economic expansion and the insurance industries of several Pacific Rim and Far East countries. It is appropriate that discussion of current insurance trends in this region conclude with China.

No country so far examined approaches the potential insurance market of China, the sleeping giant of Asia with a population of nearly 1.2 billion. The Chinese economy is estimated by some observers to be the world's third or fourth largest (following the United States, Japan and perhaps Germany), and is swiftly rising in rank.

China's short-term political and economic direction seems to be most often discussed in terms of the Communist leadership's response to pro-democracy demonstrators at Tiananmen Square in 1989 in Beijing. However, recent evidence suggests that the stifling of this political opening has not hurt economic liberalization.

From 1984 to 1990, China's economic growth rate averaged 9% a year, and this figure is projected to be 12% in 1992 as real investment closes in on \$6.6 billion for the first nine months of last year. This \$6.6 billion figure is nearly double the \$3.5 billion in direct foreign investment in 1991. In 1992 China is expected to receive nearly one-quarter of the foreign investment in the lesser developed countries of Asia.

In fact, China will receive four to five times as much foreign investment as Japan will receive.

Economic progress in China presents unique challenges and opportunities for the global community. China's development path, including its gradual approach and maintenance of authoritarian structures, contrasts dramatically to the newly liberated countries of Eastern Europe. A priority of the Clinton administration most certainly should be the U.S.-China relationship.

The opportunity for U.S. companies trading with China—particularly insurers interested in expansion—is considerable. While it is certainly not time to talk of market share or group life policies for 1.2 billion people, China will present interesting risk management and insurance challenges. A look at the current state of the industry will illuminate this point.

The People's Insurance Co. of China had been the sole authorized insurer in China for more than 40 years. Recently, the PICC's monopoly has been altered by the introduction of two new national insurers: Ping An Insurance Co. of the China Merchant Group, based in Shenzhen, and Shanghai-based China Pacific Insurance Co., an offshoot of the Bank of Communications.

The PICC, established in 1949, is the principal insurance institution run by the state. With more than 2,000 branches and sub-branches in China's 28 provinces, and a staff of more than 35,000, the PICC easily outstrips the capabilities of its new rivals.

The PICC can write all lines of insurance, but underwriting standards are strict. Standard policy wording for all coverages follow, for the most part, old United Kingdom formats. These policies have changed little since the 1950s.

The PICC named perils and "all risk" standardized policies are normally one or two pages and generally more restrictive than U.S. property forms. The PICC standard wordings do not include business interruption insurance because it is not normally purchased in China. Extensions or amendments to policies are not customary, except from PICC branches in the southern special economic zones, which are areas targeted by the government for special development.

It is worth mentioning that both Ping An and China Pacific normally adopt PICC standardized wordings. However, Ping An, which is strongly influenced by Hong Kong underwriting, seems to be generally more accepting of internationally practiced insurance policies, while China Pacific has been more conservative.

Ping An is a fast-growth company established in 1988,

### International Issues

with its key staff having worked for the PICC. It appears Ping An will be more aggressive than the PICC and more willing to explore new risk management concepts and program designs. Its business portfolio has increased threefold in the past two years, and it appears this rapid growth will continue. However, Ping An has yet to build a significant book of foreign business.

China Pacific, established in 1990, is not as aggressive or flexible as Ping An. It clearly intends to expand, but will focus on newly developed industrial cities throughout the country.

Another player in the Chinese market worth mentioning is the Ming An Insurance Co., established in Hong Kong in 1949. Ming An can do limited business in the People's Republic of China on an admitted basis.

Ming An has a license to do business in the Shenzhen Special Economic Zone and Hainan and operates branch offices in these two places. This insurer is considered progressive, though it is owned by mainland Chinese interests. Because of its base in Hong Kong, it is strongly influenced by international insurance practices.

The breakup of the PICC monopoly has increased competition and improved opportunities to reduce costs for insurance buyers with operations in China. This has been made possible by the changing attitude of Chinese

**Loss control services are essential in China because public fire departments can be unreliable or non-existent.**

underwriters in the South, who are strongly influenced by the "Hong Kong style" of doing business and ever-increasing exposure to overseas insurance practices. They have become more receptive to brokers and to the coverage and cost improvements they can create.

If current foreign investment trends persist, it is not unrealistic to expect continued coverage improvements or gradual price reductions as investors, brokers and underwriters become more accustomed to doing business together.

With the recent market changes and the challenge to its monopolistic privileges, the PICC has faced increased competition for business in the special economic zones. This means positive benefits for insurance buyers.

PICC Shenzhen has been the first branch to respond with more flexible underwriting and aggressive marketing efforts. It may be more open to new insurance ideas and more approachable in terms of negotiating tailor-made policy wordings. In the future, the PICC may be able to quote on nationwide business and discuss controlled programs for multi-location risks with facilities throughout China. The Shenzhen branch is the only branch with the capability to quote on risks anywhere in China.

The insurance buyer contemplating investment in a new plant or other facility in China, whether as joint-venture partner or by formation of a foreign subsidiary, must pay careful attention to property loss control issues. Technical information about the proposed project should be as detailed as possible to ensure sufficient protection for the facility.

Property loss control services are essential in China because public fire departments can be unreliable or non-existent, and even the availability of firefighting water supply may be in question. Policyholders also should pay particular attention to flood exposures, especially in eastern China, as rain and flooding have

been chronic problems in this country.

Except in Guangdong Province, the PICC is still not receptive to providing brokerage commissions. However, in the event that insurance coverage needs to be placed with the PICC in other Chinese provinces, a consulting fee can be charged.

Nevertheless, PICC Shenzhen, PICC Guangzhou, Ping An Insurance Co. (Shenzhen), and Ming An Insurance Co. (Haikou, Shenzhen and Hong Kong) usually follow the internationally accepted practice of including the 15% broker commission. It is therefore best to access PICC or other insurers based in Guangdong Province or Hong Kong to cover risks located anywhere in China.

Statistics reveal that as the Chinese economy has expanded, insurance awareness and purchasing has significantly increased. In 1990, the PICC registered premium income of 17.8 billion yuan (\$3.4 billion at year-end 1990 exchange rate), of which \$420 million was from foreign business ventures. In 1991, premium income is estimated to have increased to 22.6 billion yuan (\$3.87 billion at current exchange rates), including \$480 million from foreign business ventures.

In general, increases in written property and life premiums have been substantial in the last three years, particularly with life insurance.

In 1982, when the PICC began underwriting life business after a 20-year break, only 100,000 people were covered and premium income amounted to only 1.58 billion yuan (\$270.5 million at current exchange rates). By 1990, 220 million Chinese had life insurance, and premium income amounted to 5.9 billion yuan (\$1.13 billion). Including life business, China's insurance sector aims to increase premium income to 27 billion yuan (\$4.62 billion) by 1995.

Life insurance purchasing has not been limited to the industrial or special economic zones, however. Increases in written premiums in rural areas have matched and at times exceeded urban growth. With approximately 80% of China's total population still living in rural areas, the potential for expansion of life insurance services in China is dramatic.

U.S. insurers may be one of the primary beneficiaries of this new policy to expand the Chinese insurance sector. Reform of the Chinese economy has centered primarily on trade and manufacturing. China's service industries, which today account for about 20% of GNP, have been minor participants in the modernization process. The government recently agreed to allow American International Group Inc., one of the largest U.S. multinational insurers, to reopen its doors in Shanghai, where the company traces its roots.

The fact that AIG will be allowed to sell commercial and life insurance to both local and foreign interests could portend new opportunities for other foreign or U.S. insurers. The new AIG operation will be licensed in Shanghai and Pudong Special Economic Zones but will be allowed to write risks anywhere in China provided the foreign-funded joint venture is registered in the Shanghai and Pudong Special Economic Zones.

As commercial insurance business increases with foreign investments, and life insurance purchasing continues, the opportunity for U.S. companies to extend their expertise in risk management and insurance products to China should grow commensurately.

This market penetration, it should be emphasized, will probably not occur in the near future. The sustained and careful interaction between investors and their risk managers, U.S. insurance specialists and Chinese underwriters should, however, yield positive results over the long term.

Several factors may further affect trade and development liberalization in China. Since Tiananmen Square, the U.S. Congress has attempted to impose sanctions to compel China to more closely observe human rights. President Clinton, unlike Mr. Bush, has stated that he would link human rights practices to the granting of Most Favored Nation status to China. This could cause American companies currently considering investment or trade agreements in China to pull back.

Continued on next page

*Continued from previous page*

In the next four years, U.S. policymakers will have to pragmatically measure where, when and how best to promote political pluralism and greater respect for political freedoms within China. Such considerations may hamper U.S. interests in the short term.

Hong Kong presents the first test case of how to reconcile Chinese economic openness with its political recalcitrance. As the British lease on Hong Kong terminates in just over four years, recent legislation put forth by the British governor concerning democratic processes along with substantial public works projects has been met with inflammatory rhetoric by senior communist party leaders.

But China's lack of political openness should be viewed within the context of its rapid economic liberalization as well as in terms of the impending political succession crisis as aging powerful leaders such as Deng Xiaoping slowly loosen their political grip on the country.

China's rise as an economic power is important not only because of the opportunities it creates for the United States, but also because of the opportunity for moderation and modernization within China.

For the insurance buyer, continued exposure to international insurance practices should lead to improved coverage conditions and, eventually, price reductions.

The Chinese insurance industry is still highly restrictive, but the opening has begun. If trends from other sectors of the economy are any indication, the potential is unlimited, growth should be impressive and liberalization not so many years down the road. **BI**



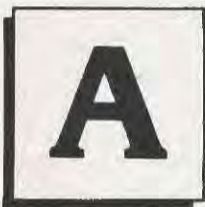
Robert K. Meyers is senior vp and manager of the International Department of Johnson & Higgins in New York. His column appears quarterly.

# ASK A BENEFIT ACTUARY

## Benefits cap would mean less favorable tax treatment



**How might a cap on health care benefits affect me?**



This question comes from an employee benefit manager who wants to be prepared for the seemingly imminent legislative changes in the health care arena. Among other things, President Clinton is considering proposing a tax cap on health care benefits.

A cap would, in some way, limit the favorable tax treatment afforded health care benefits. Currently, this tax treatment includes:

- Health care expenses or premiums paid by employers for their employees are tax-deductible by the employer.
- The payment of health care benefits or premiums by an employer does not result in taxable income to an employee.

A cap limiting the favorable tax treatment for employees would likely result in some imputed income for health care benefits to employees, in much the same way income is imputed for employer-provided group term life insurance benefits in excess of \$50,000.

Alternatively, the cap may limit the tax benefits received by an employer that provides employees with health care benefits. Under this approach, the employer would not be able to take a tax deduction for medical benefits it provided to employees in excess of some limitation.

In either case, the benefit manager is concerned about the reality of this sort of proposal. In particular, if the proposal is implemented quickly, the manager wants to be prepared to provide data on a timely basis.

A cap that would likely create the least administrative burden for the benefit manager would limit the employer's tax deduction for medical benefits it paid (in the case of a self-insured plan) or medical premiums paid (in the case of an insured plan). The law might set a fixed dollar amount per employee that would be tax-deductible by an employer; or a slightly more complex variation would be to have the law set a fixed dollar amount per coverage unit (for example, \$100 per month for a single employee and \$300 per month for a family).

In order for a plan sponsor to determine its tax-deduction limit for medical benefits, it will need to know the number of covered employees, broken down into the appropriate coverage units (single employee, family, etc.). The benefit manager would presumably be responsible for counting employees in each unit to determine the tax favored amount.

A variation on this first approach might be to have a fixed dollar amount per coverage unit within a geographical area. Under this approach, the benefit manager's job becomes only slightly more complex, gathering coverage unit information by geographic area.

If a cap placed the tax burden on the employee, rather than the employer, the benefit manager's job would likely become more difficult in administering the change. It seems likely that the law would specify a fixed dollar amount as the limit for a tax-free medical benefit. It also seems likely that the law would not attempt to tax an individual on the actual dollars received in medical claim reimbursement in excess of the amount in the law. This approach could result in huge amounts of taxable income for sick people.

Rather, I would expect that the law would provide that the value of medical benefits in excess of a

fixed dollar amount would be subject to tax. The value concept is analogous to that of an insurance premium. The value for a plan might be the insurance premium that would need to be paid out on behalf of the employee to an insurance company in order for the employee to receive the health benefit coverage provided by the employer.

The challenge for the benefits manager will be to determine the value of each plan. If experience with the ill-fated Internal Revenue Code Section 89 is any indication, this will not be an easy task. The valuation process might be simplified, though, if the law permitted the use of actual premiums for insured plans or COBRA premiums for a self-insured plan.

Only time will tell as to the administrative burden that will be created by a health care benefit tax cap. **BI**

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

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

*This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, president of Pacific Actuarial Resources (PAR) Excellence in Ashland, Ore., answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. Dennis J. Nirtaut, manager of*

*employee benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans.*

*Mr. Miner's next column will appear in July. Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*



# Punitive award neither fine nor penalty

A coverage exclusion for "fines" or "penalties" in an excess liability insurance policy did not exclude the payment of punitive damages, according to the Court of Appeals of North Carolina.

Collins & Aikman Corp., a Delaware corporation, manufactured and distributed textile products. Its transportation division was located in North Carolina. In January 1987, Wickes Cos. Inc., also a Delaware corporation, acquired C&A.

Thereafter, Wickes purchased an excess liability policy for C&A from Hartford Accident & Indemnity Co. that provided \$5 million in liability coverage excess of \$2 million primary coverage written by Aetna Casualty & Surety Co.

## Legal Briefs

The Hartford policy excluded from damages "fines or penalties or damages for which insurance is prohibited by the law applicable to the construction of the policy."

In February 1988, a C&A driver collided with a car in North Carolina killing the car's driver and his wife. The deceaseds' estate sued C&A seeking compensatory and punitive damages.

A jury awarded the estate \$2.5 million in compensatory damages and \$4 million in punitive damages. The parties thereafter settled the judgment for \$4.2 million.

In July 1990, Hartford issued a

denial of coverage contending the punitive damages award was not covered under the Hartford policy. C&A then brought this action seeking a declaration that Hartford was liable for the punitive damages. The trial court ruled for Hartford.

The appellate court said that it was well established that, if an exclusionary clause in an insurance policy is not expressed plainly and without ambiguity, then the exclusion will be construed in favor of the policyholder.

This is so, the court observed, because the insurance company selected the phrase to be construed and should have specifically excluded the risk if there was any doubt. Here the court said the policy contained no

express exclusion for punitive damages. Thus, the court said that it would not attempt to determine if somehow punitive damages could be construed as either a "fine" or "penalty." The trial court decision was reversed and C&A was allowed to recover the punitive damages.

*Collin & Aikman vs. Hartford Accident & Indemnity, Court of Appeals of North Carolina, June 2, 1992 (BI/05/My.-\$10).* **BI**

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

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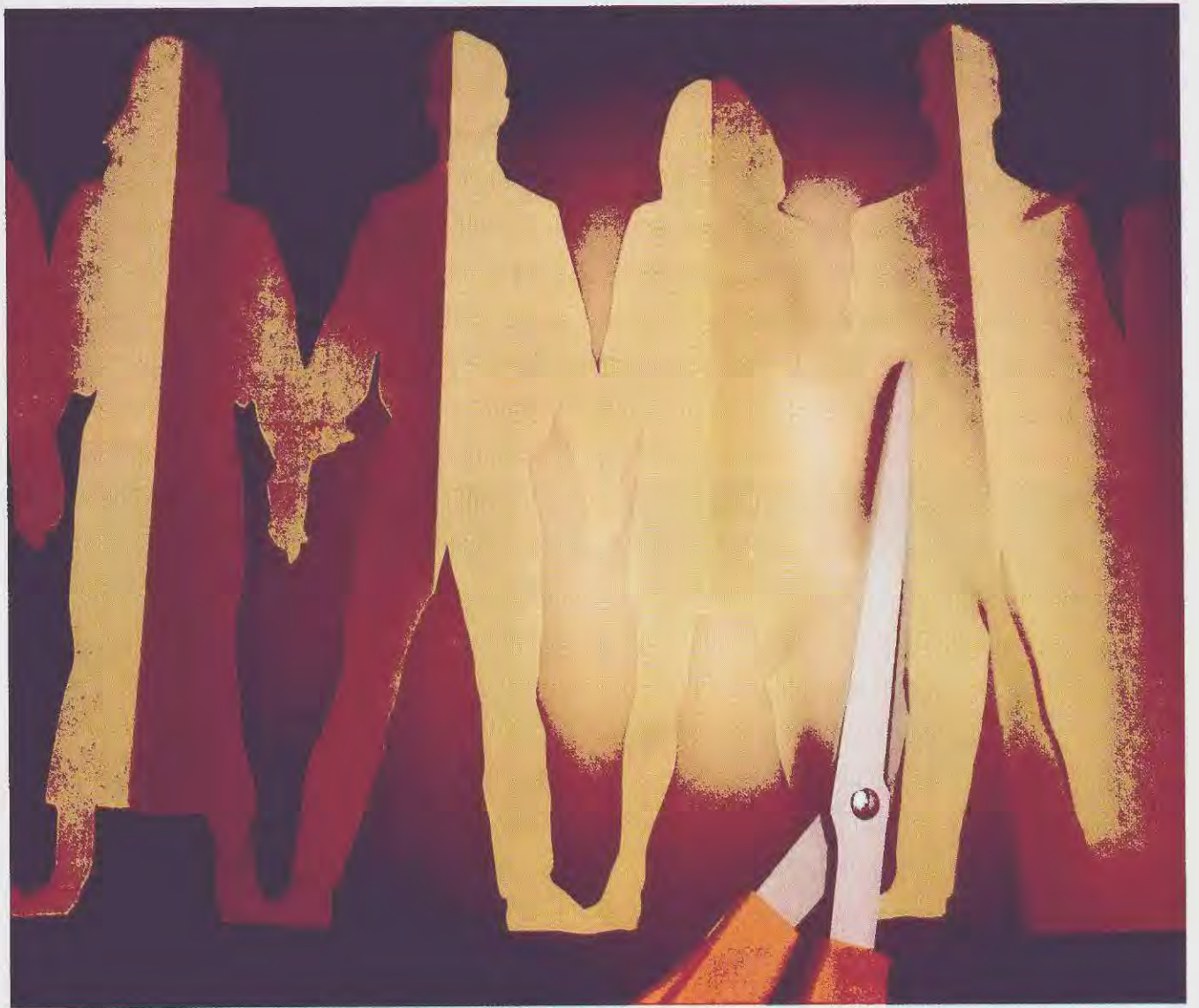
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**ITT HARTFORD**

## INTERNATIONAL

## Storm warning

*Continued from previous page*  
would increase from the increased evaporation that is a major factor in the greenhouse effect.

"The consequences are more intensive low-pressure cyclones over tropical and subtropical oceans, and heavy thunderstorms, hailstorms, tornadoes and floods," the report states.

"In Europe, six years of exceptionally mild and dry winters have weakened the continental cold high-pressure system and its blocking effect on Atlantic hurricanes," said Mr. Berz.

As a result, Atlantic low-pressure areas have become stronger over the last decade. "They now sometimes move deep into Central and Eastern Europe instead of being pushed northward or southward. That was

the case with hurricanes in 1990 and most recently (hurricane strength winds in Europe) in January 1993."

Munich Re scientists have determined that hurricanes, typhoons and cyclones increase their momentum if the water temperature rises above about 79 degrees Fahrenheit.

"As the temperature of the water rises, it strengthens and expands the cyclone effect dramatically," Mr. Berz said.

Worldwide, water temperatures are expected to increase by three degrees within 50 years, the reinsurer says. In addition, the carbon dioxide content in the atmosphere will double by then, resulting in 230-mph winds.

Munich Re meteorologists suggest a number of measures to limit storm damage risks. "The greenhouse effect must be slowed down by all means," said Mr. Berz. "Industrial

countries could start by ratifying the World Climate Convention. Storm warnings must improve. A global warning network would help."

The World Climate Convention, signed at the environment summit in Rio de Janeiro last year, is a treaty under which the signing countries agreed to take steps to reduce the amount of carbon dioxide and other gases in the atmosphere. It aims to reduce the carbon dioxide to 1990 levels by the year 2005.

In addition, Mr. Berz said better enforcement of existing construction regulations would help. "One of the lessons learned from the U.S. snow storm on March 14 is that regulations are only as good as the people who enforce them. Florida regulations are good but not enforced. Officials must monitor regulators more closely than in the

past."

Storm-secure construction increases building costs by only 1% to 4%, the report says. The building's "outer skin"—roof, facade, windows and doors—should be reinforced to absorb pressure and suction.

"Building construction should anticipate the future," Mr. Berz said. "Past observations of wind forces are no longer viable."

Insurers and reinsurers also should adjust premiums and conditions accordingly, Mr. Berz claims. "A larger deductible would free insurers of most petty claims and 75% of total losses. We learned a great deal from the storms in Europe. The typical claim is very small. If a policyholder agrees to a deductible of \$300 to \$600 for his car, it's fair to expect a deductible of the same amount for his house."

In 1990, 65% of all homeowner claims were below 1,000 deutsche marks (\$669 at year-end 1990 exchange rate). A deductible of 2,000 deutsche marks (\$1,236) would free insurers of 88% of petty claims, the report concludes.

"It's obvious reinsurers will reduce the burden as much as possible. That's why so much of the reinsurance business in this sector is (excess of) loss coverage and not in proportional loss as it used to be. Open-end coverage isn't possible anymore. Today it is important to know just what my losses are going to be," Mr. Berz said.

"More important, however reinsurers can influence direct insurers to reduce the damage potential. They in turn can influence policyholders to do more to reduce their own damages by preventative action."

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## Hong Kong

*Continued from previous page*  
the Hong Kong liquidators were forced to cease proceedings and Hong Kong creditors were left unpaid.

In Grand Union's case, though, direct policyholders in Hong Kong escaped relatively unaffected because the majority of the company's business was reinsurance. Claims from the small amount of life and motor business written are being met largely by the Motor Insurance Bureau and Dah Sing Life Insurance Co. Ltd. of Hong Kong. Dah Sing took over the liability when it acquired Grand Union's book of life business.

But Mr. Mok is concerned that in the future, the small policyholder may not be as lucky.

The commission is therefore suggesting that local assets be sufficient to meet liabilities for local policyholders. Mr. Mok puts these into three groups: claims and claim reserves; unearned premium reserves; and reserves for approximately 80% of a company's total liabilities.

The insurance industry is apprehensive about the proposal.

"There's some strong reaction from members because that will call for some restrictions" on investment, said Tang Yuen Yu, executive director of the Federation of Insurers.

Insurers would have to place their money in the Hong Kong stock market and other local facilities, he explained. Among the perceived difficulties for investors in the Hong Kong market are a volatile stock market, an uncertain political future and a government that does not issue bonds or debt.

"It may not be in the best interest of the insurer to put (assets) into something which goes up and down like a swing," said Ms. Tang.

"Are there really suitable vehicles to implement this?" asked Paul Franklin, the Hong Kong branch manager of Commercial Union Insurance Co. P.L.C., referring to the proposal.

Another argument insurers voice is that the commission already has the power to request that an insurer move assets to Hong Kong if the commission is concerned about investments elsewhere.

But while recognizing the inherent difficulties of localizing an insurer's assets, Mr. Mok said he will seek an extension of the commission's power to protect policyholders.

INTERNATIONAL

# Aviation insurers calling for rate increases—again

By GAVIN SOUTER

LONDON—Aviation insurers will continue to press for increased premiums in 1993 despite the significant rate hikes they have enforced over the past two years, said Graham Nichols, chairman of the Aviation Insurance Offices Assn.

Large catastrophe risks could still devastate insurers' reserves, regardless of the extra cash already obtained, he said prior to the AIOA's annual general meeting last month.

The group would not discuss specifics on past or future increases.

"If you look at some of the potential catastrophes that we face, the short answer is that we believe that we are still not receiving enough premiums," Mr. Nichols said. And with the capacity reduction in the worldwide reinsurance market, aviation underwriters will be less able to purchase catastrophe coverage to make up the shortfall, he said.

A steady increase in aviation claims also is keeping pressure on underwriters to increase premiums, said Peter Crawford, managing director of British Aviation Insurance Group.

Airline claims in 1992 stood at approximately \$1 billion, and this total will likely increase to between \$2 billion and \$2.5 billion by the year 2000, he estimated.

Airlines paid about \$900 million in premiums last year (BI, Feb. 8).

The upswing in claims will be generated largely from increased air traffic, higher repair costs and larger liability settlements, he said.

"If we have claims rising steadily, then premiums will have to continue to rise for a considerable period of time before we reach parity (of claims vs. premium income)," Mr. Crawford said.

Reinsurance capacity is reducing for most classes of business including aviation, said Keith Selby, manager of aviation at Swiss Re (U.K.) Co. Ltd. "The available capacity has not been particularly affected by

aviation losses but more by natural catastrophes and hurricanes, and losses on the marine account," he said.

Aviation insurers need to work hard to encourage large reinsurers to accept more aviation business, said Mr. Nichols.

"There is still too much aviation reinsurance held within a close circle of reinsurers," he said.

Meanwhile, the number of member companies in the AIOA fell to 17 during 1992 from 19 at year-end 1991. Andrew Weir Insurance Co. Ltd., Excess Insurance Co. Ltd. and NW Reinsurance Corp. Ltd left the AIOA. Sirius (U.K.) Insurance P.L.C. joined the association. Also, Orion Insurance Co. P.L.C.

## LONDON

and NRG Victory Reinsurance Ltd. still are AIOA members, but they are no longer accepting new business.

### Mixed broker results

Mixed results were reported by two British brokers last week as the economic recession continued to restrain profit growth.

Profits at Hogg Group P.L.C. dropped more than 20% last year, while Bain Clarkson Ltd. saw its profits nudge slightly ahead in 1992. Hogg's pretax profits were 13.4

million pounds in 1992 (\$20.3 million), 20.2% less than the 16.8 million pounds reported in 1991 (\$31.4 million). Gross revenues increased to 124.8 million pounds (\$189 million) in 1992, up 3.7% from 120.4 million pounds (\$225.1 million) in 1991.

Profits were hurt by poorer performances at Hogg's credit and London market excess divisions in Britain and its benefit and property/casualty divisions in the United States, said Hogg Chairman James Vaughn.

"The basis for credit business is the clients' (sales volume), and that was impacted by the recession last year," he said.

The LMX division's profit fell because of the severely reduced capac-

ity in London, Mr. Vaughn said.

LMX annual premium volume was down by 50% at Hogg, but most of that reduction was neutralized by an increase in reinsurance treaty business, he said.

In the United States, gross revenues at subsidiary Hogg Robinson Inc. fell 6% to \$68.7 million in 1992 from \$73.1 million in 1991.

Revenue at its benefit division fell 12%, largely because of reductions in clients' workforces, Mr. Vaughn said.

The soft insurance market was the major factor behind the property/casualty division's 3% gross revenue decrease.

Hogg Group ranked 13th, based

*Continued on next page*

### Topics to be Discussed:

- NEW INITIATIVES IN MANAGED CARE
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- STRUCTURING AND MANAGING AN ON-SITE MEDICAL FACILITY
- HOW TO ENROLL RETIREES IN MANAGED CARE PLANS
- WORKERS COMPENSATION: INTEGRATING MANAGED CARE TO CONTROL WORKERS COMPENSATION COSTS
- HEALTH CARE REFORM: WHAT ARE THE OPTIONS?
- RECEIVING THE MOST VALUE FROM YOUR PHARMACEUTICAL BENEFIT PLAN
- CASE STUDIES OF SELECTED WINNERS FROM THE BUSINESS INSURANCE EMPLOYEE BENEFITS COMMUNICATION AWARDS
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## Product liability

Continued from page 2

two votes short of the 60 required to invoke cloture—a parliamentary procedure that cuts off debate—and their bill, S. 640, died (BI, Sept. 14, 1992).

S. 687, which was introduced March 31, is like last year's bill but more balanced, said Sen. Slade Gorton, R-Wash.

Like 1992's S. 640, which also was called the Product Liability Fairness Act, the current bill would: abolish joint and several liability for non-economic damages in product liability cases; make it harder to re-

cover punitive damages in product liability cases; and eliminate product liability lawsuits involving workplace capital goods that are more than 25 years old.

The key difference between the bills is S. 687 makes clear that a plaintiff who loses in court after refusing a pretrial settlement offer would face no penalty. Previous bills would have let the plaintiff be assessed the defendant's legal fees.

The new bill also would eliminate any penalty for a plaintiff who refused to participate in voluntary alternative dispute resolution and then lost in court.

The new bill would bar punitive

damage awards against drug or medical devices that have been approved by the Food and Drug Administration or against makers of light aircraft that have been certified by the Federal Aviation Administration, provided that the manufacturers did not withhold or misrepresent information to federal regulators.

Sen. Rockefeller dismissed criticism that he would be too involved in health care reform to push for product liability reform, saying he is adamant the bill be passed. He added he has consulted with House Energy and Commerce Committee Chairman John Dingell, D-Mich.,

about possible House action on product liability reform.

Rep. Dingell favors a uniform product liability code but hasn't introduced any tort reform legislation this session.

One proponent of uniform product liability law praised S. 687 as a first step. "This isn't all that needs to be done. It's sort of a minimum," said Tom O'Day, associate vp in the Alliance of American Insurers' Washington office.

The Alliance is the only major insurance association to endorse S. 687. Other insurer groups have said the proposed reforms don't go far enough. **BI**

## N.Y. proposal

Continued from page 3

lower than what the state might impose," Ms. Lynne said. "And, employers, because they can't negotiate directly with hospitals, also have been negotiating discounted rates with doctors. Mandated rates would no doubt cause some problems."

Beyond regulating fees, Gov. Cuomo also called for a state delivery system that focuses on primary care services rather than "sub-specialty care." He called for the creation of preferred health care networks, under which various types of professionals would join together to create and provide comprehensive service organizations.

Preferred networks would be free to compete to enroll doctors and other providers as well as to attract consumers. Prices would be determined by regional oversight entities, which could establish community rates based on per capita costs.

"This approach would provide the benefit of global budgeting without a command-and-control bureaucracy," Gov. Cuomo said.

Ted Nussbaum, New York regional practice leader with The Wyatt Co., criticized community rating through the networks as unfair to some large employers.

"What will happen here is that the healthy population with good experience will end up subsidizing the older, sicker population. Community rating is acceptable for individuals and small groups, but not for companies coming to networks

**To expand access to basic health services, Gov. Cuomo calls for the 'building of primary care capacity.'**

with a large workforce that has favorable experience," he said.

To expand access to basic health services, Gov. Cuomo called for the "building of primary care capacity," which would include increasing Medicaid payments to physicians practicing in poorer areas.

To encourage medical students to pursue careers in primary care, the state would issue grants of up to \$10,000 per year for up to two years of primary care residency, and up to \$20,000 per year if the residency was performed in an underserved area of the state.

In addition, doctors with established practices in underserved areas would qualify for up to four years of loan forgiveness worth up to \$60,000.

Carol Malone, a William M. Mercer Inc. associate in Washington, faulted the primary care proposals as "unrealistic."

"There would have to be dramatic changes to reimbursement for it to work," she said. "We're talking about taking money away from specialists, who now earn three or four times as much as primary care physicians, and giving that money to generalists. I can't see that happening."

Also included in the package is a certificate of need program, which would require individual doctors to make out an application to purchase equipment costing more than \$400,000.

"This is probably a good idea," said NYBGH's Ms. Lynne. "With the number of MRI units out there, it looks like a medical equipment arms race."

At least some elements of the governor's package are expected to be introduced later this year as formal legislation. **BI**

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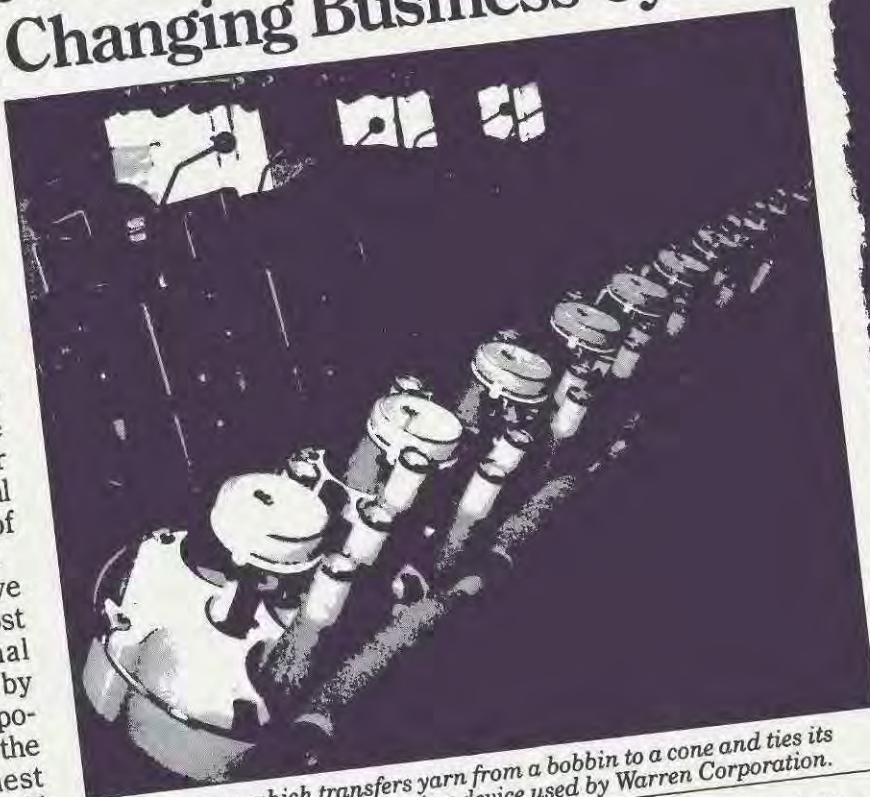
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STAFFORD SPRINGS, CT—Warren Corporation and Industrial Risk Insurers began doing business together just before the gold panic of 1893 and have continued their association for 100 years—a period of unusual stability through decades of changing business conditions.

Both IRI and Warren have grown beyond—but never lost touch with—their original roots. "Warren, now owned by Italian-based Loro Piana, is positioning itself to become the manufacturer of the highest quality fabrics in the U.S.," said Robert Modica, Vice President of Operations.



Robert Modica, left, and Joseph Tinetti, District Manager of IRI's Hartford Office, examine fabric in finishing room.



The autoconer, which transfers yarn from a bobbin to a cone and ties its own knots, is just one labor-saving device used by Warren Corporation.

The formula for Loro Piana's success worldwide is to convert textile manufacture from a labor intensive to a capital intensive operation. "Modern production technology helped us expand our product line and save jobs," said Mr. Modica.

The formula for IRI's success is also the same in 70 countries across the globe: dedication to property conservation through superior loss prevention principles.

"Warren has always kept its facilities and risk management programs up-to-date," said Joseph Tinetti, Manager of

IRI's Hartford District Office.

"For a century, IRI representatives have worked with Warren Corporation and its insurance agent to develop loss prevention programs and install equipment to help keep the plant productive and its people employed continuously," Mr. Tinetti added.

Loss prevention, customer service, financial strength, claim handling and market stability are all part of The IRI Difference, which works to conserve millions of dollars of property and save thousands of jobs worldwide.

For information concerning IRI's global underwriting, loss prevention and claim handling capabilities, contact your servicing IRI office or IRI Marketing (800) 243-8308 (in Connecticut call Trish Sasso 520-7412).

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# IRI

can make a difference

## Punitive awards

Continued from page 1  
dominated by factual and technical matters.

TXO Production Corp. argued that its due process rights were violated when a West Virginia jury ordered the Texas company to pay a competitor \$10 million in punitive damages. The competitor's actual harm was only \$19,000 (BI, Dec. 7, 1992).

The jury had found that TXO knowingly filed a frivolous lawsuit against Alliance Resources Corp., in an attempt to increase its mineral rights to a tract of land in McDowell County, W.Va. Alliance countersued, claiming "slander of title," which is a false and malicious statement designed to call into question someone else's title to property.

On appeal to the West Virginia Supreme Court, TXO not only lost, but its claims were rejected in famously colorful language.

"When a defendant is not just stupid but downright mean, punitive damages must be greater in order to deter future evil acts," wrote Chief Justice Richard Wheeler. "Even punitive damages 500 times greater than compensatory damages are not per se unconstitutional" if the defendant had "committed mean-spirited and harmful acts."

"This case does not involve just any old punitive damages award," TXO's attorney, Carter Phillips, told the justices.

TXO had caused no one physical harm and had done nothing to deserve such a punitive damage sanction, said Mr. Phillips of Sidley & Austin in Washington. "You don't need a \$10 million verdict" to deter incautious behavior in land deals, he argued, characterizing the award as "gross overdeterrance."

Supreme Court Justice Sandra Day O'Connor, who has previously questioned the way in which punitive damages are awarded, questioned Mr. Phillips pointedly. She asked if he could suggest a test for determining whether an award was arbitrary or whether it was simply a matter of "I know it when I see it," referring to Justice Potter Stewart's famous statement in a pornography ruling.

Mr. Phillips replied that he knew it when he saw it in this case, adding that courts should look at the seriousness of the conduct underlying a punitive damage award.

However, he refused to say that a \$10 million punitive award would never be justified, only that it wasn't justified in this case.

Representing Alliance before the court was Laurence Tribe, a Harvard law professor who has been mentioned as one of the president's possible Supreme Court nominees.

Mr. Tribe concentrated on the

specifics of TXO's conduct rather than raising larger constitutional questions, and in fact asked the justices not to consider the due process question because it had not been raised before the West Virginia Supreme Court.

He defended the size of the TXO award, noting that TXO stood to reap as much as \$8.3 million in profits from the land deal it attempted to close through its alleged slander of title.

Justices O'Connor and Anthony Kennedy disputed that figure. Justice O'Connor held that Mr. Tribe was "trying to concoct something" by citing a figure that had never been entered into testimony before the jury. Mr. Tribe said the figure had been based on testimony about TXO's plans.

Mr. Tribe also said the jury had concluded that TXO's West Virginia actions were part of a century-long pattern of abuse and fraud, precisely the type of conduct punitive damages are designed to combat.

Such fact-specific argument led many interested observers to speculate that TXO may not be a broad, definitive ruling.

"The court got bogged down in the facts of an arcane tort" and did not tackle the larger constitutional questions, said Victor E. Schwartz, a partner at Crowell & Moring in Washington. He filed an amicus brief on behalf of the American Insurance Assn. and U.S. Chamber of Commerce in support of TXO.

"Because the arguments were so fact-intensive, it is unlikely that the court will produce a broad-based

ruling clarifying the limits the due process clause places on punitive damages. Its ruling is more likely to be enmeshed in the complex facts involving slander of title," he said.

Although the case presents the opportunity for the court to impose principled restrictions on punitive damages, "the manner in which the case was presented and argued certainly makes it possible that the court will decide the case on narrower grounds," said Theodore Olson, a partner at Gibson, Dunn & Crutcher in Washington. He filed a brief supporting TXO on behalf of Allstate Insurance Co., and Phillips Petroleum Co. and United Services Automobile Assn.

Advocates on the other side agreed that TXO is not likely to be a definitive ruling.

Generally, the Supreme Court will not intervene if a state has a fair system for assessing punitive damages and the punitive awards themselves serve a legitimate interest, said Andrew F. Popper, a dean at American University Law School and author of a brief filed on behalf of Consumers Union in support of Alliance. And, West Virginia uses an appropriate system to assess punitive damages, he said.

Overtaking a lower court award when the process is fair would be "disastrous" and would demonstrate arrogance on the part of federal courts, Mr. Popper said. If the court rules in favor of TXO, "maybe we ought to get juries out of the business of making difficult decisions" involving punitive damages and capital punishment, he said. **BI**

## High court reviews 'junk science' case

By NANCY P. JOHNSON

WASHINGTON—Where should courts draw the line on the validity of evidence presented as scientific fact?

The Supreme Court wrestled with that question last week in oral arguments in *Daubert vs. Merrell Dow Pharmaceuticals*, a case involving the anti-nausea drug Bendectin, which Merrell Dow took off the market under pressure in 1983.

Standards of evidence can be critical in product liability cases, especially when one side wants to introduce expert testimony that is sharply at odds with standard scientific opinion. Such testimony has been popularly dismissed as "junk science."

On one side of the debate are those who argue that jurors should be allowed to consider virtually all scientific evidence and then draw their own conclusions.

On the other side, business groups and others argue that judges should only admit evidence that meets certain standards of credibility.

In *Daubert*, the 9th U.S. Circuit Court of Appeals had dismissed a 1984 suit against Merrell Dow by the parents of Jason Daubert and Eric Schuller, who were born with deformed limbs. Merrell Dow made Bendectin, which the boys' mothers had taken during pregnancy.

The appellate court had upheld the trial court's exclusion of an analysis of some animal and chemical studies that linked the use of Bendectin to birth defects. Courts ordinarily allow only human studies to show whether a drug causes a defect.

Expert opinion based on a scientific technique is only admissible if that technique is "generally accepted" within the scientific community, the appellate court said.

The test of being "generally accepted" stems from a 1923 ruling, *Frye vs. United States*, in which the court refused to admit evidence from an early form of polygraph test on the grounds that the test had not yet gained "scientific recognition."

But some attorneys say the "Frye rule" was wiped out in 1975, when Congress adopted the Federal Rules of Evidence.

Rule 702 of those guidelines addresses expert testimony: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in

## Businesses seek standards of credibility for evidence

issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

When expert witnesses disagree, the rules allow each side to present its views to the jury, subject to cross-examination.

The wording of these rules of evidence was at the heart of last week's oral arguments in the *Daubert* case.

Congress rejected the Frye rule in 1975, argued Michael H. Gottesman, a Georgetown University law professor who represented the parents.

By omitting any requirement that the expert's views were generally accepted, "Congress relied on the adversarial process to demonstrate that a marginal expert's conclusions are marginal," he said.

Several justices appeared openly skeptical of Mr. Gottesman's arguments, said two attorneys.

"(He) was asking for more than the court would consider reasonable. He asked that anything that an expert testified to should be deemed admissible, subject only to its later being ruled insufficient," said William J. Kilberg, an attorney with Gibson, Dunn & Crutcher in Washington. Mr. Kilberg filed an amicus brief on behalf of the American Insurance Assn., which wants stricter standards on what evidence can be admitted.

Justices Sandra Day O'Connor, Anthony Kennedy and David Souter seemed unsympathetic to the parents' argument, while Justice John Paul Stevens leaned in the other direction, according to Mr. Kilberg. Chief Justice William H. Rehnquist and Justice Antonin Scalia were harder to read than usual, but "I'd be surprised if they bought" the plaintiff's argument, he said.

"I think it will be a clear victory" for Merrell Dow, Mr. Kilberg added.

Donald N. Bersoff, a professor at Villanova Law School and Hahnemann University in Philadelphia, agreed that the justices appeared to be more skeptical of the plaintiff's side, but added that this doesn't mean they will necessarily rule in Merrell Dow's favor.

Mr. Bersoff, who filed a brief on behalf of a group of law professors, said that a question from Justice O'Connor posed the biggest problem for the plaintiff.

Referring to Rule 702, she asked Mr. Gottesman what are the boundaries of "scientific knowledge." Her questions seemed to indicate that she believes there must be some boundaries, and Mr. Gottesman's answers didn't seem to satisfy her, according to Mr. Bersoff.

Merrell Dow's attorney, Charles Fried, did not escape scrutiny during oral arguments.

Mr. Fried, a Harvard law professor and former solicitor general, told the justices that a court should set high standards for scientific testimony, but Chief Justice Rehnquist interrupted to ask how judges can be expected to know if scientific evidence is valid.

Chief Justice Rehnquist also asked Mr. Fried if any scientific evidence presented should undergo peer review by, for example, being published in standard scientific journals.

Mr. Fried replied that it wasn't always necessary, but is necessary in the Bendectin case.

"If I had to guess, I'd say Dow is more likely to prevail," predicted Mr. Bersoff.

An attorney who represented the parents in the underlying case contends that it is essential for both sides to be able to present scientific opinions that have not been subjected to peer review.

"It makes no sense to allow juries to hear only 'generally accepted' scientific opinions. At one time, scientists 'generally accepted' that the earth was flat, that the atom could not be split and that cigarettes were not harmful," said Barry J. Nace of Paulson, Nace, Norwind & Sellinger in Washington. "Truth is not a matter of counting noses."

"Rigorous cross-examination provides more exacting scrutiny than publication or peer review. This safeguard gives us confidence in the decisions of juries, who bring not only common sense to deliberations, but also the lack of any financial or professional bias," he said.

"To turn these decisions over to judges or a vague 'consensus' of scientists is to throw away Americans' 200-year-old constitutional guarantee of the right to trial by jury," added Mr. Nace, who is president-elect of the Assn. of Trial Lawyers of America. **BI**

## Court says pension plan must follow written rules

By NANCY P. JOHNSON

CHICAGO—Pension plan sponsors cannot stray from their formal written procedures when distributing plan assets, a federal appeals court has ruled.

Amoco Corp.'s pension plan violated the Employee Retirement Income Security Act of 1974 when it failed to follow its formal distribution procedures, according to a March 1 ruling by the 7th U.S. Circuit Court of Appeals in Chicago.

Richard Schoonmaker, a participant in Amoco's pension plan, notified the company in early 1987 that he was getting a divorce and that he intended to use the funds in his defined contribution savings plan to pay his divorce settlement.

Under ERISA, an employee's ex-spouse may obtain rights to the employee's benefits

if those rights are spelled out in a qualified domestic relations order—a court order to pay one party from another party's assets.

The Amoco plan's written procedures provide that upon receipt of a domestic relations order, the plan will notify the participant, send a copy of the order to the participant and, while the issue of whether the domestic relations order is qualified is being determined, the plan administrator will place a hold on the employee's account.

The plan also followed an unwritten practice of placing a hold on a participant's account after both parties confirm that the divorce is final, that an order will arrive soon and that plan assets will be used to meet the domestic relations order.

In August 1987, the attorney for Mr. Schoonmaker's ex-wife informed Amoco that the divorce was final, that the settlement

provided for \$80,000 from his account, and that an order would be coming soon.

An Amoco legal assistant placed a hold on the balance in the account without telling Mr. Schoonmaker.

A month later, Mr. Schoonmaker tried to sell 2,220 shares of Amoco stock that were in his plan account and have the proceeds deposited in the plan's money market fund, but he was unable to sell the shares because of the hold on his account. The stock market crash of October 1987 caused him significant losses.

The plan did not actually receive the domestic relations order until November 1987.

Mr. Schoonmaker filed suit against the plan and the plan trustees in June 1990 charging that they had breached their fiduciary duty under ERISA. The U.S. District Court for the Northern District of Illinois

dismissed his claim in a summary judgment.

However, the appeals court said that according to the plan's written procedures, only the receipt of a domestic relations order should trigger the hold process.

The court ruled that Mr. Schoonmaker is entitled to recover unspecified damages from the plan, but also ruled that the individual trustees were not liable for breach of fiduciary duty.

The case will now be remanded to a trial court to assess damages.

Jerome S. Feder, a Chicago attorney who represented Mr. Schoonmaker, confirmed that Amoco will not appeal the ruling.

Richard D. Schoonmaker vs. The Employee Savings Plan of Amoco Corp. and Participating Companies, 7th U.S. Circuit Court of Appeals, No. 91-2944, March 1, 1993.

## Catastrophes

Continued from page 1

Sean Mooney, senior vp and economist for the Insurance Information Institute in New York.

"It brings the day closer to the turning of the market," Mr. Mooney said. "It was mainly a personal lines loss, but not as much as Andrew."

Even without the blizzard and the bombing, cat losses in the first quarter of 1993 would have been worse than average. Five other first-quarter storms together wreaked a total of more than \$500 million in insured damage.

Two of those storms hit many of the same states walloped by the December 1992 Nor'easter and the Blizzard of '93, while the other three socked the West Coast and the Southwest.

In all, Arizona, California, Delaware, Georgia, Kentucky, Maryland, Nevada, New Jersey, New York, Oregon, Pennsylvania, Tennessee, Utah and Washington state suffered damage due to wind, hail, tornadoes, flooding, snow and ice from the five storms.

In addition, two severe hailstorms hit Kansas and Texas in late March, though insured loss estimates had not been totaled as of last week.

While Mr. Mooney predicted the first-quarter toll would hasten a market turn, others are not so sure.

"The industry thinks it has enough surplus" to cope with rising catastrophe losses, said Michael Smith, an insurance industry analyst with Lehman Bros. in New York. "It won't cause the cycle to turn until they see their surplus decline."

Property/casualty insurers reported \$163.77 billion in policy-

holder surplus at year-end 1992.

Underwriting standards will have to tighten before the market turns, Mr. Smith said. "We're seeing '40-year storms' every 18 months. Underwriters have to get the idea the weather has changed."

"It's a hell of a way to start the year," observed Myron M. Picoult, managing director and senior insurance analyst with Oppenheimer & Co. in New York. "And the worst is in front of them. The industry's financial flexibility is gone."

"One wonders how many more nails there need to be in the coffin before it sinks," he said. "Logic says prices should change, but logic has not always worked in the past."

"I don't think this is going to be too huge a reinsurance loss," said Ajit Jain, president of the reinsurance division of Berkshire Hathaway Inc. in Stamford, Conn. "I think it will probably have less of an impact than it probably should."

He noted that after Hurricane Andrew, primary insurers significantly increased their retentions, which will lessen the impact on reinsurers. And, "it's not driving (primary insurers) into buying more reinsurance protection," he said.

The market already is in a state of turmoil, but "I don't see this storm in any way adding to the turmoil," Mr. Jain said. "People don't focus on (early-year losses) and try to extrapolate."

The \$1.6 billion blizzard loss appears to be spread throughout the industry, affecting both regional and national companies.

Allendale Mutual Insurance Co., Arkwright Mutual Insurance Co. and Protection Mutual Insurance Co. estimate combined claims of more than \$200 million.

State Farm Group estimates \$177 million in claims from the storm, while Nationwide Mutual Insurance Co. predicts \$88.2 million in claims.

Industrial Risk Insurers in Hartford, Conn., estimates claims of \$50 million.

Regional insurer Alfa Insurance Group in Montgomery, Ala., expects \$15 million in claims. The Georgia Farm Bureau Group in Macon, Ga., predicts \$20 million and the North Carolina Farm Bureau anticipates \$24 million in claims.

Aetna Life & Casualty Co. says the blizzard will cost it \$25 million after taxes and reinsurance. The Home Insurance Co. expects a \$15 million net loss.

Several insurers reported blizzard claims of between \$15 million and \$25 million: CNA Insurance Cos. \$16 million; Kemper National Insurance Cos., \$20 million; Prudential Property & Casualty Insurance Co., \$20 million; and Royal Insurance Co., \$19 million to \$22 million.

Allstate Insurance Group, which has a large share of the personal lines market in the states hit hardest, will not discuss its losses because of its proposed initial public offering.

Stock analysts do not expect the losses to have any impact on Allstate's IPO or the expected share price of \$26 each. Even storm claims totaling \$100 million would result in a loss of only 15 cents per share after taxes.

"Unless a catastrophe cripples an insurance company, we view it as fortuitous," said William W. Dyer, director of research at Century Shares Trust, a Boston mutual fund that specializes in insurance stocks. "It's what insurance companies are in the business for." **BI**

## Repetitive motion standard

Continued from page 2

Thus, it's most likely OSHA will have to settle for general standards that are flexible and allow for some employer discretion, experts said.

"The problem we're facing with standards for repetitive motion is that the more specific the standard, the less practical it is across different industries. The only logical answer is that OSHA issue general standards," said John Marshall, an attorney with Powell, Goldstein, Frazier & Murphy in Atlanta.

In addition to the challenge of making one standard applicable to unrelated industries, there are other questions OSHA must answer before it can establish a repetitive-motion standard, another occupational injury attorney noted.

"The whole area of (cumulative trauma disorders) still is cloudy. The causes of, and solutions for, CTDs are still unclear," said Willis Goldsmith of Jones, Day, Reavis & Pogue in Washington, which represents the Newspaper Assn. of America in workplace safety cases. "CTDs aren't always physical in nature. No standard could address that."

In the most recent case to stir up debate over repetitive-motion standards, Administrative Judge David Oringer of the Occupational Safety and Health Review Commission last Monday reversed nearly \$1 million in sanctions leveled by OSHA in 1988 against Pepperidge Farm's now-closed baked goods factory in Downingtown, Pa.

OSHA cited the plant that made Mint Milano cookies and other specialty products for willingly exposing line workers to repetitive motion under its general duty clause, which is a catch-all standard that requires employers to provide workers with a safe working environment.

OSHA also fined Pepperidge Farm \$394,000 for forcing some workers to lift heavy sugar bags and for faulty record keeping.

In total, OSHA cited the company for 389 willful violations of safety standards, the most serious of which was exposing 175 Mint Milano assembly-line workers to unnecessary repetitive motion that could lead to carpal tunnel-related injuries.

Fines brought under the general duty clause, must meet four conditions:

- A hazard must be present.
- The hazard must be recognized by the employer or by other employers in the same industry.
- The hazard could result in serious injury or death.
- OSHA must offer the company it is fining a means by which the existing problem can be abated.

In the ruling, most of which remains sealed to protect Pepperidge Farm trade secrets, Judge Oringer agreed the

assembly line was hazardous and that Pepperidge Farm had been alerted of the hazard through employee complaints. He also backed OSHA in its claim that the company's assembly line could cause injuries to workers.

However, he dismissed the fine pertaining to repetitive motion because OSHA could not prove that its solution for eliminating the problem—slowing down the pace of the assembly line—would be safer.

Norwalk, Conn.-based Pepperidge Farm praised the ruling, claiming it has been an industry leader in work-site ergonomics. "Long before OSHA's interest in ergonomics, Pepperidge Farm had been using such tools as ergonomic audits, medical management programs, employee and supervisor training, job rotation and rest pauses," President Richard Shea said in a statement.

Judge Oringer, however, upheld the \$394,000 in fines for poor record keeping and exposing employees to unsafe heavy lifting.

Meanwhile, OSHA also is claiming a partial victory in what it believes is the longest ongoing case in its history. "We met three of the four requirements under general duty, and this is the first time that the relationship between cumulative trauma and working conditions has been established. It should go a long way toward helping us establish a standard for repetitive motion," said a spokeswoman in OSHA's Philadelphia bureau.

She said OSHA will likely appeal Judge Oringer's ruling to a full three-judge panel of the OSHRC. From there, the case could be sent to a federal appeals court and may eventually land in the Supreme Court.

Roger Freeman, an attorney who has defended a number of companies against OSHA fines brought under the general duty clause, said the Pepperidge Farm ruling highlights the government's need to come up with repetitive-motion standards.

"This is a major ruling that we in this field have been awaiting. I hope it will speed up OSHA's schedule for establishing a standard. Decisions like this put even greater pressure on OSHA to act," said Mr. Freeman, who is with Davis, Graham & Stubbs in Denver.

But Mr. Freeman, like other occupational safety attorneys, said deriving a standard is a difficult task.

"The problem lies in applying one standard to a cross-section of industries. It's the problem we're facing now, where the only guidelines companies have are the ones OSHA issued for the meat-packing industry in 1990. Those don't have much to do with cookies," he said.

When OSHA eventually issues a proposed standard, Mr. Freeman said, it must be flexible. "Any standard must afford employers flexibility and the discretion to undertake the means they feel are appropriate for their line of business. Without discretion built in, we'll never have an adequate standard." **BI**

## Update

### Liquidator setback in NFL suit

NEW YORK—The National Football League and half its teams scored a major victory when a federal judge dismissed most claims brought against them by the liquidators of their Bermuda mutual insurer.

The liquidators sought more than \$14.5 million from the NFL and 14 of its teams, which they alleged were jointly and severally liable for the debts and liabilities of defunct N.F.L. Insurance Ltd. (BI, Jan. 20, 1992).

The league and the 14 teams, which had organized N.F.L. Insurance, are not liable for its debts because, as participants in a limited liability company, they were only required to finance an initial reserve fund, ruled Judge Peter K. Leisure.

Judge Leisure did allow the plaintiffs to replead a claim for liability under a breach-of-contract theory. He also let stand breach-of-fiduciary duty claims against individual directors, arising out of their alleged failure to properly keep records and meeting minutes.

The liquidators are expected to replead the claims.

In October, a state trial court dismissed a suit by Travelers Insurance Co., which was the fronting insurer for a workers comp program written by N.F.L. Insurance, seeking to recover \$3 million in unreimbursed claims (BI, Oct. 19, 1992).

### AIRMIC blasts terrorism pool

LONDON—The terrorism insurance pool set up by British insurers after they adopted a terrorism exclusion on all U.K.-based property "will not work," says the Assn. of Insurance & Risk Managers in Industry & Commerce.

The pool—reinsured by the British government—covers damage to U.K. property caused by terrorist acts. The pool is funded by an additional premium paid by commercial policyholders to members of the Assn. of British Insurers (BI, Jan. 11).

However, the pool was set up "without meaningful consultation with either clients or with brokers," AIRMIC claims.

AIRMIC Chairwoman Elizabeth Taylor told members at their annual conference last week that the pool is "seriously underfunded," which concerns the Department of Trade and Industry. The DTI and ABI would not comment.

The pool is underfunded because many British risk managers do not want to pay the hefty terrorism premium and would rather self-insure the risk, contends Ms. Taylor, group risk manager of Harrisons & Crossfield P.L.C., an animal feed and timber company in Suffolk, England.

In a special meeting at last week's AIRMIC conference, members voiced their dissatisfaction with the pool. Some members say policyholders should operate the pool, not the ABI. Others believe that if insurers are charging such high premiums for property coverage, they should just include the risk as part of the coverage.

### Briefly noted

A group of **Blue Cross & Blue Shield of Maryland** subscribers are seeking \$135 million in damages in a lawsuit filed last week that alleges mismanagement by six former officers, a dozen former or present directors and management consulting firm Booz Allen & Hamilton Inc. A Senate subcommittee faulted the Maryland plan last year for extravagant expenses and poor service (BI, Aug. 3, 1992).

President Clinton is expected to nominate Joseph Dear to head the **Occupational Safety & Health Administration**. Mr. Dear, director of the state of Washington Labor Department, was hired as consultant by the U.S. Labor Department late last week.

**Natural and manmade disasters** worldwide caused an estimated \$27.1 billion in insured property damage last year, estimates Swiss Reinsurance Co. . . **SCOR U.S. Corp.** has sold \$86.25 million in convertible subordinated debentures to institutional investors in a private placement. SCOR said it will contribute \$50 million of the net proceeds to strengthen capacity and increase retentions of its operating units, among other things.

All of **Alexander & Alexander Services Inc.**'s principal retail brokerage operations worldwide now are doing business under the Alexander & Alexander name. The change pertains to the Reed Stenhouse Cos. Ltd. in Canada and A&A's Alexander Stenhouse subsidiaries in Europe, Australia and New Zealand.

**ACE Ltd.** began trading on the New York Stock Exchange March 25 at \$27.50 a share (BI, Feb. 1). The company's shareholders raised \$648.8 million as a result of the initial public offering, including \$557.2 million in direct proceeds and another \$91.6 million from shares repurchased by ACE.

**The Equitable Cos. Inc.** plans to raise \$600 million in a private placement of convertible securities with parent AXA Group and other institutional investors. Paris-based AXA is expected to buy 49% of the offering. Proceeds will be used to increase the capital of Equitable's life insurance units.

In the wake of revelations of fiscal mismanagement at Empire Blue Cross & Blue Shield, several Republican state lawmakers are calling for the resignation of **New York Insurance Superintendent Salvatore Curiale**.

**NYNEX Corp.** will take a \$3.1 billion charge amortized over 20 years to account for its retiree health benefits liability under FAS 106.

**Donald R. Smith**, president and chief operating officer of Kemper Reinsurance Co., is retiring Aug. 1.

The 9th U.S. Circuit Court of Appeals last week upheld a lower court decision that Aetna Casualty & Surety Co. was not obligated to provide coverage under a homeowners policy for a \$14.5 million verdict against **Rock Hudson**'s estate that was awarded to his former lover. The appellate court said coverage is precluded because Mr. Hudson did not tell his lover he had AIDS.

Federal authorities last week arrested Tony Habib, head of Bermuda-based **Financial Services Insurance Ltd.**, and charged him with misrepresenting the company's asset base in order to obtain authorization to write surplus lines insurance in at least California and Illinois.

# World Trade Center repairs ahead of schedule

By SARA MARLEY

NEW YORK—Repair work on the World Trade Center is running ahead of schedule, and nearly half of the tenants already have returned to their offices.

One month after a bomb blast ripped through an underground parking garage in the complex, 59 tenants of 2 World Trade Center and 93 tenants of 1 World Trade Center had returned to their offices as of late last week.

All 350 companies displaced by the blast may return by mid-April, said Jeffrey Green, general counsel for the Port Authority of New York & New Jersey, which owns the complex.

March 18 marked the return of the first tenant—Gov. Mario M. Cuomo, who has offices in 2 World Trade Center—two weeks before the April 1 target date. Tenants of the more severely damaged 1 World Trade Center began returning on March 29.

The Port Authority has not yet estimated the total damage, Mr. Green said. Virtually all offices sustained some soot and smoke damage.

However, the Property Claim Services division of the American Insurance Services Group Inc. estimated last week the bombing caused \$510 million in insured property damage, business interruption and extra-expense costs.

CIGNA Corp., one of the most heavily exposed insurers, announced last week it would take a \$25 million charge net of taxes and reinsurance in the first quarter to account for claims from the World Trade Center and the center's Vista Hotel.

CIGNA is a major participant in the Port Authority's \$600 million in property coverage. The insurer underwrites \$130 million of a \$290 million excess of \$10 million layer, and \$61 million of a \$100 million excess of \$300 million layer (BI, March 8).

Philadelphia-based CIGNA also underwrites property coverage for the Vista Hotel. CIGNA retains about 10% of the risk, reinsuring the remainder with a captive insurance unit of the hotel's owner, Ladbroke Group P.L.C. of London. The captive retrocedes much of the risk. The Vista is not expected to open for at least six months.

Many insurers reported receiving primarily small business interruption and extra-expense claims from tenants of World Trade Center.

Zurich American Insurance Co. in Schaumburg, Ill., received notice last week of a significant claim, particularly in terms of business interruption losses, from a policyholder in one of the subbasements, said Dave Dawson, assistant vp and manager of property claims. That claim could exceed \$1 million, he said.

Kemper National Insurance Cos. expects less than \$1 million in losses from a half-dozen claims, said Don Pence, property claims officer of the Long Grove, Ill.-based insurer.

Kemper National began reopening its own offices in the complex early last week. Nearly 300 Kemper employees work on floors 28, 31 and 38 of 2 World Trade Center. They have worked out of Kemper's Summit, N.J., office since the explosion.

Crum & Forster Inc. of Basking Ridge, N.J., has received \$4 million in claims, a spokeswoman said.

The three Factory Mutual companies—Allendale Mutual Insurance Co., Arkwright Insurance Co. and Protection Mutual Insurance Co.—incurred less than \$1 million in losses from the explosion, a spokeswoman said.

CNA Insurance Cos. of Chicago estimates only a \$167,000 loss from the explosion.

Meanwhile, tenants praised the Trade Center management for its handling of the cleanup. The Port Authority provided basic cleaning of the offices and common areas, while many firms hired specialty cleaners for computers and other technical equipment.

"We've never had it so good," said Michael Magdol, chief financial officer of Fiduciary Trust Co. International. "It's cleaner than it ever was before."

The investment management firm was the first business to return to the World Trade Center, becoming fully operational on floors 94-97 of 2 World Trade Center by March 19, Mr. Magdol said.

Fiduciary Trust spent more than \$1 million to rent an emergency computer facility from Comdisco Inc., Mr. Magdol said.

The company says it has adequate insurance—led by Chubb Corp.—to cover business interruption costs and the expense of moving 550 employees and cleaning office equipment.

Dean Witter & Discover Co., the complex's largest tenant, hoped the last of its 4,500 employees based in the complex would return to 2 World Trade Center by the end of last week, a spokesman said. The first of the 30 floors the company occupies were opened on March 22.

Aetna Life & Casualty Co.'s 330 employees were expected to return to their offices

today. The Hartford, Conn.-based insurer occupies floors 35-37 of 2 World Trade Center.

Since March 8, most displaced Aetna employees have been in temporary office space at 1 Liberty Plaza, across the street from the trade center.

Not all companies are so anxious to return.

Big Six accounting firm Deloitte & Touche is delaying its return until after the April 15 tax deadline. That date will coincide with the completion of a detailed cleaning of the firm's computers, disks, furniture and artwork, said Russ Raman, director of marketing. "Rather than interrupt our accountants during the tax season, we'll wait," he said.

Deloitte & Touche moved 1,200 employees and 1,500 boxes of files to its Midtown Manhattan office after the blast, Mr. Raman said. The accounting firm rented meeting and conference rooms and 200 cellular telephones.

Deloitte & Touche will return to seven floors between levels 86 and 101 in 1 World Trade Center by the end of the month, he said.

The World Trade Center loss was intensified by corporate consolidation in recent years, said William D. O'Connell, head of the risk management consulting division of Deloitte & Touche in Dallas. Companies have been concentrating employees in central locations like the Trade Center. "When you concentrate people, you concentrate risk," he said.

The accounting firm expects all losses to be covered by insurance with The Home Insurance Co. above "a modest deductible," Mr. O'Connell said.

The earlier-than-expected return may not necessarily save companies money. "To take a computer apart or get the drapes dry-cleaned costs the same whether you have light or heavy soot damage," Mr. O'Connell noted.

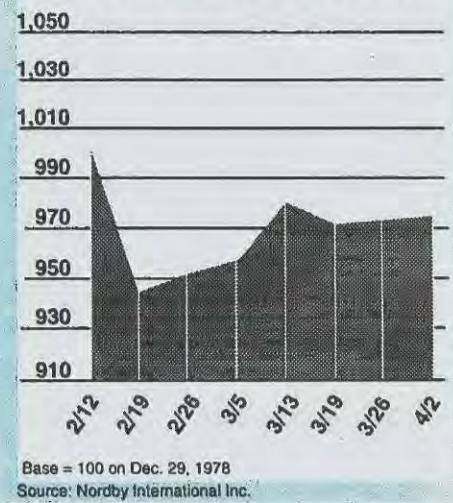
The return to the World Trade Center may have a downside for the Port Authority. At least one New York attorney expects the number of lawsuits to increase as tenants return.

"People will realize what they have gone through," said Paul Rheingold, a partner with Rheingold & McGowan. "They will talk to other people who have filed suit."

The Port Authority has received fewer than 25 notices of lawsuits, Mr. Green said.

In New York, lawsuits against public entities must be filed within ten months of an incident, and notice must be given sixty days before the suit is actually filed.

## BI Insurance Index



Insurance industry stocks fell slightly last week, as the *Business Insurance Index* dropped 0.9 points to 972.6 April 2 from 973.5 on March 26. Advancing issues for the week were led by Reliance Group Holdings, up 14.3%; Tokio Marine & Fire, up 13.8%; and Allied Group Inc., up 9.3%. Declining issues for the week followed Nobel Insurance Ltd., down 11.3%; Zenith National Insurance, down 8.2%; and Trenwick Group Inc., down 5.1%. The most active issue was U.S. Healthcare, 7.3 million shares traded. The BI index was down 0.9%; the NYSE Composite was down 1.2%; the Standard & Poor's 500 was down 1.4%; and the Dow Jones 30 Industrials fell 2.0%.

## British Issues

April 1 Companies	Price pence	P/E	Div. pence	Yield %	1 Week	
					High	Low
Comm Union	610	N/M	32.5	5.3	610-608	
Genl Accident	589	N/M	35.7	6.1	589-572	
Gen Royal Exch	185	N/M	9.3	5.0	185-176	
Royal	314	N/M	6.7	2.1	314-308	
Sun Alliance	340	N/M	19.0	5.6	342-340	
<b>Brokers</b>						
Bradstock	141	16.5	6.8	4.8	141-141	
CE Health	348	20.1	21.3*	6.1	356-348	
Hogg Group	186	16.4	10.9	5.9	186-185	
JIB Group	194	19.2	10.0	5.1	194-188	
Lloyd Thompson	284	22.9	7.5	2.6	285-283	
Lowndes Lambert	342	13.5	16.8	4.9	342-342	
PWS Holdings	65	9.7	5.3	8.1	66-65	
Sedgwick Grp	162	19.5	8.0	4.9	163-162	
Steel Brl Jones	235	13.8	17.7	7.5	240-235	
Willis Corroon	195	18.2	8.8	4.5	195-190	

Source: Philip Olsen, London \* Estimated

# BI Industry Stock Report

MARCH 29, 1993 THROUGH APRIL 2, 1993

BROKERS	Price	Weekly % change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	Price	Weekly % change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value			
				High	Low										High	Low									
Acordia Inc.	NYS	22.88	1.67	6.40	24.75	15.13	37	0.36	1.57	15	7.01	3.26	Mutual Risk Mgmt. Ltd.	NYS	37.75	-3.21	-6.79	46.00	25.75	37	0.28	0.74	22	7.51	5.03
Alexander & Alexander	NYS	24.88	2.58	-6.13	28.88	18.00	237	1.00	4.02	19	10.00	2.49	NAC Re Corp.	OTC	43.00	3.61	6.17	44.75	21.75	185	0.16	0.37	75	13.60	3.16
Gallagher Arthur J. & Co.	NYS	35.00	3.70	23.89	35.00	21.00	117	0.72	2.06	24	6.35	5.51	National Re Corp.	NYS	33.25	0.00	12.24	39.00	17.00	175	0.12	0.36	19	N/A	N/A
Hilb, Rogal & Hamilton	NYS	16.13	5.74	3.20	16.88	11.00	95	0.44	2.73	23	3.11	5.18	Navigators Corp.	OTC	35.00	2.94	7.69	47.00	28.50	10	0.00	0.00	27	15.69	2.23
Marsh & McLennan	NYS	92.88	-1.07	1.64	97.63	71.25	403	2.68	2.89	22	14.40	6.45	Nobel Insurance LTD.	OTC	6.88	-11.29	17.02	8.25	4.25	222	0.00	0.00	2	3.91	1.76
Poe & Associates	OTC	17.50	-1.41	4.48	19.00	11.25	13	0.40	2.29	70	2.64	6.63	NWNL Companies	NYS	61.50	-4.09	20.88	64.88	32.00	274	1.48	2.41	15	46.21	1.33
BROKERS AVERAGE			1.9	5.6					2.2	25			Ohio Casualty Corp.	OTC	65.75	-3.31	4.16	68.75	49.00	170	2.84	4.32	12	43.08	1.53
<b>CONGLOMERATES &amp; HOLDING COMPANIES</b>																									
Berkley W.R. Corp.	OTC	46.00	-1.08	6.98	50.50	31.00	297	0.40	0.87	17	23.51	1.96	Old Republic Int'l	NYS	25.75	0.00	3.52	27.38	18.75	610	0.40	1.55	8	18.63	1.38
Berkshire Hathaway Inc.	NYS	12200.00	-2.79	3.83	12900.00	8675.00	1	0.00	0.00	49	6437.3	1.90	Orion Capital Corp.	NYS	43.50	-1.69	22.97	46.00	23.19	112	0.80	1.84	10	28.62	1.52
ITT (Hartford Group)	NYS	79.75	-0.16	10.76	81.00	62.50	929	1.96	2.46	-30	68.23	1.17	Phoenix RE Corp.	OTC	24.38	-2.01	54.76	27.00	8.88	677	0.20	0.82	-38	13.32	1.83
Sears (Allstate)	NYS	52.50	-3.00	15.38	55.25	37.75	6337	1.60	3.05	-9	40.18	1.31	Provident Life	NYS	27.63	-0.45	-3.07	31.50	20.00	57	1.04	3.76	11	30.38	0.91
CONGLOMERATES AVERAGE			-1.8	9.2					1.6	7			Re Capital Corp.	ASE	15.50	3.33	-6.06	16.63	12.25	3	0.28	1.81	74	16.88	0.92
<b>INSURERS/REINSURERS</b>																									
AEGON N.V.	NYS	47.50	-1.55	14.11	48.38	33.00	162	0.68	1.43	8	34.06	1.39	Reliance Group Holdings	NYS	8.00	14.29	30.61	8.50	4.13	1761	0.32	4.00	3	2.94	2.72
Aetna Life & Casualty	NYS	48.63	4.29	4.57	53.75	38.00	1665	2.76	5.68	88	67.08	0.72	RLI Corp.	NYS	25.50	-2.86	3.03	28.63	17.75	57	0.52	2.04	11	17.92	1.42
Allied Group Inc.	OTC	44.25	9.26	39.37	44.25	18.75	209	0.72	1.63	11	11.29	3.92	St. Paul Companies	NYS	79.75	-0.47	3.57	83.25	66.50	527	2.80	3.51	-14	59.79	1.33
Allmerica Prop. & Casualty	NYS	58.25	-3.52	15.35	60.38	34.75	58	0.44	0.76	9	40.44	1.44	SAFECO Corp.	OTC	64.38	-3.38	13.44	66.75	42.00	834	1.64	2.55	15	35.37	1.82
American General	NYS	30.38	-4.33	-46.71	32.88	20.50	1033	1.08	3.56	12	39.89	0.76	SCHOR U.S. Corp.	NYS	19.75	0.00	12.86	20.75	13.13	34	0.32	1.62	82	14.39	1.37
American Heritage Life Ins.	NYS	33.00	-1.86	9.09	34.00	24.88	5	0.84	2.55	15	16.51	2.00	Seibels Bruce Group	OTC	1.06	6.30	-43.31	6.13	0.38	59	0.00	0.00	0	6.22	0.17
American Indemnity/Fin'l	OTC	7.88	-3.08	31.25	9.75	4.75	54	0.08	1.02	5	14.43	0.55	Selective Ins. Group	OTC	24.50	-0.51	11.36	25.75	16.75	41	1.12	4.57	12	20.22	1.21
American International	NYS	127.38	1.49	9.81	127.88	82.00	1606	0.56	0.44	16	54.21	2.35	Statesman Group Inc.	OTC	15.38	-2.38	28.13	16.50	5.00	644	0.20	1.30	9	6.71	2.29
American RE Corp.	NYS	39.38	5.70	6.42	41.75	34.25	238	0.00	0.00	39	N/A	N/A	Tokio Marine & Fire	OTC	59.88	13.78	24.74	59.88	32.25	91	0.00	0.00	120	70.93	0.84
Aon Corp.	NYS	54.13	-2.26	0.23	56.00	39.75	251	1.80	3.33	18	27.17	1.99	Torchmark Corp.	NYS	58.63	-1.68	3.30	64.75	36.00	360	1.04	1.77	16	14.87	3.94
Argonaut Group	OTC	34.00	1.49	11.48	35.25	25.50	220	0.84	2.47	10	21.70	1.57	Transamerica	NYS	52.13	1.71	8.59	53.13	40.00	612	2.00	3.84	13	35.86	1.45
AVEMCO Corp.	NYS	23.13	0.54	-1.07	28.00	21.00	13	0.40	1.73	28	7.33	3.15	Transatlantic Holdings	NYS	54.38	4.57	-3.12	56.75	29.38	12	0.28	0.51	17	21.85	2.49
Baldwin & Lyons Inc.	OTC	36.50	0.00	0.00	36.50	26.75	0	0.48	1.32	9	30.85	1.18	Travelers Corp.	NYS	26.63	-2.29	-2.29	30.75	17.13	889	1.60	6.01	-3	43.85	0.61
Chandler Insurance	OTC	3.75	0.00	-21.05	7.63	3.75	18	0.00	0.00	17	8.63	0.43	Trenwick Group Inc.	OTC	44.25	-5.09	8.59	49.25	25.00	113	0.80	1.81	18	23.87	1.85
Chubb Corp.	NYS	93.00	-1.85	4.64	96.38	62.38	949	1.72	1.85	13	40.67	2.29	United Fire & Casualty	OTC	37.50	-1.96	-9.64	43.00	36.75	6	1.00	2.67	107	28.47	

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