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Update

AmBase tentatively approves new acquisition proposal

NEW YORK—AmBase Corp. said Friday it signed a letter of intent for the acquisition by an investor group of 50.1% of AmBase's common stock for $4 per share.

Under the proposed acquisition, valued at $68 million, the investor group would gain controlling interest in all of AmBase's subsidiaries, including The Home Insurance Co.

AmBase stock closed at $2 per share at the end of trading Thursday.

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Risk managers call regulation ineffective

By JAMES M. BURCKE

State regulation of insurer solvency is not effective, risk managers overwhelmingly agree.

Few risk managers, however, suggest that federal regulation should supersede state regulation of insurers, according to the latest survey of the *Business Insurance* Risk Management Board.

Almost half of those responding suggest that states could enforce minimum solvency standards set by the federal government. And more than a quarter of the respondents say no federal rules or actions are needed to regulate insurance company solvency.

Of the 150 risk managers who responded to the latest Risk Management Board survey, 71% said state regulation of insurer solvency is not effective. Only 27% said state insurance departments do an effective job.

One percent said some states do a good job of regulating insurer solvency while others do not, and another 1% had no opinion.

In comments accompanying survey responses, many risk managers lamented the general state of regulation in the United States.

"Insurance is a product. We have

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Risk managers question solvency regulation

More than two-thirds of the risk managers surveyed say state regulation of insurance companies for solvency is not currently effective.



Source: *BI* Survey

BI/JOHN SMITHER

Limits on liability for brokers favored

By JAMES M. BURCKE

Most risk managers say brokers generally should not be held liable if they place coverage with an insurance company that subsequently goes broke and is unable to pay claims.

However, many surveyed risk managers qualified their answers, saying that a broker should be held liable in specific situations.

Risk Management Board

And almost one-third of those responding noted that brokers have a duty to clients to place business with secure underwriters and thus should be held liable if an insurer becomes insolvent and cannot pay claims.

Overall, 62% of the 150 respondents to the latest *Business Insurance* Risk Management Board survey said that brokers generally should not be held liable when an insurer with which they placed coverage becomes insolvent. Thirty-two percent said that a broker should generally be held liable in such a scenario, while 6% either did not answer or had no opinion.

Insurance brokers historically have been immune from liability for placing coverage with insurers that subsequently do not pay claims.

For example, in a well-known 1987 decision, the Texas 6th District Court of Appeals in Texarkana ruled that Higginbotham & Associates of Fort Worth was not negligent when it placed property coverage for a bowling center with Proprietors Insurance Co., a Delaware, Ohio, insurer that was declared insolvent in August 1981.

Proprietors failed to pay the bowling center's claim after the facility was destroyed by a fire in May 1981 (*BI*, Sept. 28, 1987).

Most risk managers responding to the Risk Management Board survey agreed with this and other court decisions that hold brokers immune

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Mideast crisis, deficit, fuel talk of benefits tax

New need to hike revenues

By JERRY GEISEL

WASHINGTON—The crisis in the Middle East, coupled with the growing federal budget deficit, is fueling speculation that legislators may again seek to tax employee benefit programs when they return to Washington next month.



Proposals given no chance of consideration only a few weeks ago—such as taxing health care benefits and a securities transfer tax that would apply to pension plans—could be back on the table in early September when negotiations resume in Congress on a deficit reduction agreement, some benefit experts say.

They say that two closely intertwined problems—the crisis in the Middle East and the worsening federal budget deficit—may breath new life into benefit tax proposals employers strongly oppose.

Some existing proposals to reduce the federal budget deficit—which now is swelling because of the cost of military operations in Saudi Arabia—are viewed as less likely because of changing economic factors.

For example, soaring crude oil and gasoline prices have removed an energy tax as a likely option, Washington observers say.

And a slowing economy and fears of a recession will make raising general income tax rates very difficult, some say.

As a result, legislators will feel pressured to consider other means of tackling the deficit, such as curbing the tax-favored status of benefit programs,

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Parent may have to pay subsidiary's costs

Court broadens Superfund liability

By STACY ADLER

BOSTON—A parent corporation that controls the activities of a subsidiary can be held liable for cleanup costs assessed against the subsidiary under the Superfund Act, a federal appeals court has affirmed.

In the first federal appellate court ruling of its kind, a panel of the 1st U.S. Circuit Court of Appeals said that a corporation with "active involvement in the activities of a subsidiary" can be held liable under the Comprehensive Environmental Response, Compensation and Liability Act, better known as the Superfund Act.

Lawyers say the ruling will expand corporate liability for pollution cleanup costs.

It "is another step in the process of stretching Superfund liability to the very edges," said Dell Perelman, assistant general counsel for the Chemical Manufacturers Assn. in Washington, D.C.

The decision conflicts with a January ruling by the 5th U.S. Circuit Court of Appeals, which held that parent companies cannot be held directly liable under Superfund for cleaning up pollution caused by a subsidiary (*BI*, Feb. 5).

Such a conflict between federal appeals courts makes the U.S. Supreme Court more likely to consider a case on this issue, attorneys say.

However, apparel manufacturer Kayser-Roth Corp. of Providence, R.I., is asking the entire 1st Circuit to reconsider the Aug. 2 ruling.

The judges found Kayser-Roth liable for the costs of cleaning up trichloroethylene, a hazardous cleaning agent, that leaked into groundwater as a result of operations at the company's

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Activation of military reservists raises employee benefit issues Page 2

Rock video helps warehouse reduce employee back injuries Page 3

Pollution of natural resources to trigger coverage battles Page 3

Update

AmBase agrees to new offers

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AmBase's action casts doubt on the previously proposed acquisition of The Home and other AmBase holdings by European investor group Vik Brothers International in a deal valued at $905 million (*BI*, Aug. 20).

The Vik Brothers offer triggered a shareholder suit after debt-strapped AmBase said it was unlikely to distribute a special cash dividend it had earlier promised to shareholders.

The latest offer was made by an investor group that includes Menlo Park, Calif.-based Sequoia Associates; Hermitage Capital Corp., a subsidiary of Financial Securities Fund of New York and Nashville, Tenn.; and New York-based Whitman Heffernon Rhein & Co. Inc.

AmBase said Friday that, despite the latest proposal, "it will simultaneously continue its discussions regarding the sale of its insurance subsidiaries, including its previously announced agreement with Vik Brothers International."

However, William Walsh, a general partner of Sequoia Associates, said before his group's proposal was accepted that while he did not know "what the arrangements are between AmBase and the Vik Brothers," The Home is of "major interest" to his group.

Under terms of the latest proposal, after the investor group acquires 50.1% of The Home's stock, it will make an underwritten, transferable rights offering to AmBase stockholders for zero-coupon notes with attached warrants to purchase 34 million shares of AmBase common stock at $2 per share. Notes not purchased by AmBase stockholders will be purchased by the investor group. This transaction will create a cash infusion of an additional $68 million.

The proposal also involves refinancing of AmBase's existing bank debt of $410 million through a new financing facility to be led by Westpac Banking Corp., an Australian firm.

In addition, George T. Scharffenberger would retire as chairman, president and chief executive officer of AmBase. Donald McNaughton, a director of Financial Securities and former chairman and chief executive officer of The Prudential Insurance Co. of America, would succeed him as chairman. James J. Meenaghan, now chairman and president of The Home, would be elected AmBase president and chief executive officer.

The transaction is subject to the signing of a definitive agreement by Sept. 28. It also is subject to shareholder and regulatory approval, financing and other conditions.

Udayan Ghose, an analyst with Shearson Lehman in New York, said before the proposal was accepted that Westpac's participation in the offer is crucial. Without it, "it doesn't have much of a chance of succeeding," he said.

The "real issue" involved here is improving the position of AmBase's creditors, he said. With Westpac involved, there is a "good chance of getting the deal done."

Mr. Ghose said the proposal by the Sequoia-led group and the Vik Brothers' proposal are not comparable. The Vik Brothers' proposal would leave AmBase with only its thrift subsidiary, Morristown, N.J.-based Carteret Bancorp, he explained. The Sequoia proposal would leave AmBase's holdings, including The Home, intact.

While the Vik Brothers proposal offers shareholders a certain, if low, price for their shares, the Sequoia proposal would leave them with the uncertainty of hanging in and "trying to turn this around" in the hope AmBase's situation will improve, Mr. Ghose said. However, "it seems to me there's not much to lose."

An earlier offer by a group led by Sequoia Associates and Hermitage, which was valued at $955 million, was rejected by AmBase (*BI*, Aug. 13).

Ruling favors Mission liquidator

NEW YORK—A federal judge has dissolved a temporary restraining order blocking Mission Insurance Co.'s liquidator from drawing down $11.4 million in letters of credit posted by five Mission reinsurers.

In throwing out the order issued in July by another federal judge, U.S. District Judge John F. Keenan said the reinsurers failed to show that the drawdowns would irreparably harm them.

The reinsurers are seeking to void agreements with Mission on the grounds they were fraudulently obtained. Recovering proceeds from the LOCs, they argue, would be impossible after a drawdown.

Judge Keenan, however, noted that a California state judge's ruling would place those proceeds in a segregated account until litigation over the reinsurers' obligations is resolved.

The five reinsurers are Walton Insurance Co. Ltd., Abeille-Paix Reassurances, Folksam International Insurance Co. Ltd., Compagnie Transcontinentale de Reassurances and Hassneh Insurance Co. of Israel Ltd.

Abeille-Paix, Compagnie Transcontinentale and Hassneh are among six reinsurers seeking to vacate an arbitration panel's order that they pay $94.5 million to Pacific Reinsurance Management Corp., Mission's defunct reinsurance pooling unit.

All five reinsurers in the LOC action are also defendants in broader litigation brought by Mission's liquidator to determine the obligations of PRMC's reinsurers (*BI*, March 5).

Manville judge caps legal fees

BROOKLYN, N.Y.—In a long-expected move, a federal district judge has capped at 20% the fees asbestos plaintiffs' attorneys can receive in some cases against the Manville Personal Injury Trust.

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Errors and omissions

• A video describing American Telephone & Telegraph Co.'s employee benefits plan was produced by Hewitt Associates of Lincolnshire, Ill. A story in the Aug. 6 issue incorrectly reported that the video was produced by Designsmith, an Arlington, Va., graphic design company that produced a companion booklet on the AT&T plan.

Reservists on active duty to earn pension credits

By JERRY GEISEL

WASHINGTON—Employers must recognize the time spent on active duty by employees in the military reserves when determining pension vesting credits and benefits, benefit consultants say.

A 13-year-old Supreme Court decision makes it clear that pensions are a function of seniority and thus are protected by a federal law that says a serviceman can return to his former job "without loss of status."

However, military reservists called to active duty last week under President Bush's executive order will not—if they are placed on an unpaid leave of absence—be able to make salary deferrals to their companies' 401(k) plans. Since employees will not be receiving salaries from their employers, they would be unable to make contributions.

In addition, under a 1985 federal appeals court decision, employers do not have to make profit-sharing contributions on behalf of employees while they are on active duty in the military.

But, employees with outstanding loans from their 401(k) plans will get a break on interest charged by the plans. A 50-year-old federal law limits to 6% the amount of interest a lender can charge on an outstanding obligation to a reservist called to active duty. Once the employee's military service ends, the initial interest rate again could be charged.

On the health care side, federal law does not specifically require employers to continue to provide health care benefits to dependents of employees called up for active duty, though many companies may voluntarily do so.

However, benefit consultants say, if an employer does terminate health care benefits to dependents, the employer would be required to offer COBRA health care continuation coverage to dependents. Benefit consultants add, though, that few dependents likely would opt for COBRA since they automatically would be covered by a huge government health care plan—known as CHAMPUS—that is provided to military families.

The benefits that employers must continue to provide to reservists called up for active duty became a hot issue after President Bush's executive order last week. Defense Secretary Richard B. Cheney later told the military services that they can activate 49,703 National Guard and reserve forces by Oct. 1 to support the U.S. deployment in the Middle East.

Since that announcement, benefit consultants have been flooded with calls from employers wanting information about their benefit obligations to employees called up for active duty and their families.

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Louisiana wins lawsuit against 3 Miro companies

By DOUGLAS McLEOD

BATON ROUGE, La.—Three companies related to Carlos I. Miro's defunct Anglo-American Insurance Co. must pay the Louisiana Insurance Department $31 million in damages stemming from the insolvency, a federal judge has ruled.

In an Aug. 10 ruling that followed a default judgment against the three companies, U.S. District Judge Frank Polozola ordered Dallas-based Anglo-American Insurance Group Inc., the insurer's parent company, to pay $10.6 million.

Two related companies, Anglo-American Trust P.L.C. of London and Anglo-American International Reinsurance Co. Ltd. of Ireland, were ordered to pay a total of $20.4 million.

The Insurance Department had charged in a series of lawsuits last year that Mr. Miro and his associates used a network of shell companies—including the three covered in the recent judgment—to funnel millions of dollars out of the Louisiana-domiciled insurer for their own benefit (*BI*, Sept. 11, 1989).

Charges in the consolidated lawsuits are still pending against Mr. Miro and two associates, whom the suits seek to hold personally liable for damages to the insolvent insurer.

How much of the $31 million judgment Louisiana regulators will be able to collect from the three Anglo-American affiliates is unclear.

Anglo-American Group has few assets beyond "a couple of typewriters," said Fredrick R. Tulley, a Baton Rouge lawyer representing the department.

Insurance Department liquidators, though, are trying to trace millions of dollars paid to Anglo-American Trust and Anglo-American International.

The department earlier this month sought permission to intervene in a London lawsuit that Finers, a London law firm, and Melvyn A. Stein, a Finers partner who has represented Mr. Miro and his companies, have filed against Mr. Miro.

Plaintiffs in the London action also include two Isle of Man investment companies, Padstow Investments Ltd. and Filbert Investments Ltd., of which Finers' partners are directors and shareholders, according to Anglo-American liquidation officials.

The suit, filed last month in the Chancery Division of the High Court of Justice in London, seeks "judicial direction" on how the plaintiff firms should handle funds and other property they have held in trust for clients acting on behalf of Mr. Miro or his companies.

In an Aug. 7 affidavit, Louisiana Deputy Liquidator Ralph D. Green

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Safety consultants' deadline nears

Companies that provide safety consulting services have one last chance to be listed in a directory that will appear in the Sept. 10 issue of *Business Insurance*, which will feature a Spotlight Report on workers compensation topics.

If you have not yet received a questionnaire, please call Sara Harty at 312-280-3195 to request one. If you have already received a questionnaire but have not yet returned it, please do so today. Questionnaires may be returned via fax by calling 312-280-3174.

Consultants must return their questionnaires by Wednesday to be listed in the directory.

Inside

✔ The Boeing Co. will pay for medical examinations for more than 700 employees to settle a class action suit that charged Boeing used employees as guinea pigs in a medical experiment. **PAGE 4**

✔ This week's editorial lauds the commitment of 10 federal judges to improve the adjudication of asbestos injury claims. **PAGE 8**

✔ Insurers are squaring off for Round Two of their legal fight to regain $124 million appropriated from the New York property/casualty guaranty fund. **PAGE 11**

✔ The Second Non-Life Directive will present significant benefits for the risk manager with operations in the European Community, says Corroon & Black International's Hugh A. Warren in Perspectives. **PAGE 23**

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A rock music video that teaches employees of Costco Wholesale Corp. how to properly lift and carry heavy items has helped reduce the company's workers compensation costs.

Rock music video puts spin on safety

By DEBORAH SHALOWITZ

KIRKLAND, Wash.—A rock music video featuring a pealing electric guitar, flashing spotlights and a swiveling-hipped singer is helping a warehouse club based in Washington state reduce back injuries among its employees.

"Do It Right" is a five-minute music video custom-produced for Kirkland, Wash.-based Costco Wholesale Corp. by the Seattle office of Industrial Indemnity Co., Costco's workers compensation insurer. The video uses a catchy rock-and-roll tune and visual examples to teach employees how to safely perform tasks like lifting and carrying.

The video is part of a safety program that includes other training materials, a return-to-work program and an incentive program that rewards employees with cash for not sustaining any injuries on the job.

The safety program has helped Costco reduce all types of workplace injuries by 35% over the previous year in the 10 locations where the company has instituted the program, according to Gail Smith, Costco's personnel manager, who is in charge of the program.

And, after Costco began showing the video to employees in July 1989 and instituted other portions of the safety program in the 10 Washington locations, Costco's workers compensation claims costs in those locations dropped 7% compared with the previous year, noted Gene Dunlap, Costco's risk manager.

Additionally, lost workdays at these locations were cut by 22% compared with the previous year, while the employees incurred 7% fewer injuries that resulted in lost workdays, Mr. Dunlap noted.

Because of the success of the safety program in those locations, Costco is expanding the program to all of its 70 locations in the United States and Canada, Ms. Smith said.

Costco, a membership warehouse club that allows people to buy products in bulk at less expensive prices than it would cost to purchase them at a retail store, is particularly vulnerable to employee back injuries, Mr. Dunlap said.

"We have problems with back injuries because of the larger sizes of products that we sell," he said.

For example, employees must remove products like 50-pound bags of dog food, stacks of automobile tires and 33-inch television sets from low flatbed carts; stock shelves with the products; take them out of shopping carts; and place them on checkout counters, he explained.

Also, employees often must perform these tasks in a cramped area, he said.

"This breeds doing your lifting incorrectly," Mr. Dunlap said, noting that "back sprain is the single biggest cause" of injuries requiring time off from work.

Costco decided to institute a program specifically to address back injuries, as part of a new, comprehensive safety program, Mr. Dunlap said.

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Two insurers to appeal $21.7 million jury award

Bank wins cover dispute

By MICHAEL SCHACHNER

NEW ORLEANS—Two insurers will appeal a $21.7 million jury award to a bank in a fidelity bond coverage dispute even though a former bank employee admitted arranging fraudulent loans that caused huge losses.

Aetna Casualty & Surety Co. and Federal Insurance Co. still claim that First National Bank of Louisville in Louisville, Ky., knew of the employee's actions, failed to provide a timely notice of a claim and failed to mitigate losses.

Meanwhile, the bank is suing Hartford, Conn.-based Aetna and Federal, a Chubb Corp. unit in Warren, N.J., for denying it coverage. Damages can be trebled in such bad-faith claims.

At the center of the litigation is $30.4 million in losses on eight separate construction loans made by FNBL in 1985 and 1986. Those loans were made on the advice of Kevin DeWitt, a low-level loan officer hired in 1983. Various developers used the money to build condominiums, shopping centers and storage facilities in states bordering the Gulf of Mexico.

A review of those loans after Mr. DeWitt's March 1986 resignation turned up widespread fraud. In several cases, bank officials found credit references for contractors the developers were using were identical. When questioned by the bank, Mr. DeWitt blamed the duplicate credit references on data processing mistakes, said FNBL attorney Patrick M. Ardis, of Wolff Ardis in Memphis, Tenn.

A thorough FNBL investigation, however, found extensive infractions. According to court papers, Mr. DeWitt's misconduct included "over one hundred acts of dishonesty including falsifying credit references and information, diverting loan proceeds, fabricating construction budgets and misrepresenting to loan committees and bank officers the credentials of borrowers, guarantors, loan terms, equity contributions and condominium pre-sales."

Mr. DeWitt admitted to bank officials in 1986 that he was paid $50,000 for his role in the scheme.

Federal bank fraud charges were filed against him on April 2, 1986, and the bank informed Aetna and Federal that losses were inevitable, Mr. Ardis said.

FNBL purchased a $20 million bankers blanket bond each year from 1985 through 1988 from Aetna. Half the bond was then sold to Federal.

On Jan. 9, 1989, Mr. DeWitt pleaded guilty to 21 counts of bank

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Onshore captives grow in spite of soft market

By DOUGLAS McLEOD

BURLINGTON, Vt.—Onshore captives will play a vital role in risk financing in the 1990s, but risk managers must beware of captives' pitfalls and make sure such programs are the best alternative for their companies, one risk manager says.

"As a risk manager, I want the captive as a tool in my repertoire," said Richard C. Heydinger, director of risk management services for Hallmark Cards Inc. in Kansas City, Mo.

"We're sure glad we've got one. (But) we use it selectively. . .The captive must still compete with other forms of risk transfer," he said.

And, he added, Hallmark's captive—H.C. Insurance Co. of Vermont—is not always the best solution to the company's risk management problems.

At the Vermont Captive Insurance Assn.'s fifth annual conference, Mr. Heydinger said he is "pleasantly surprised" that the onshore captive industry has continued to grow through the current soft property/casualty insurance market.



"The tail-off that I expected has not happened and there even seems to be a growth spurt in the U.S. domiciles," he observed.

No single factor—like domestication of offshore captives or formation simply to cover a single hard-to-place line of insurance—can account for this growth in number, he said.

Instead, he noted, a number of forces are driving the growth, including the increasing sophistication of risk managers and continuing "fallout" from the insurance availability crisis of the mid-1980s.

With exponential premium increases and evaporating capacity, the last hard market brought the risk management function starkly to the attention of many senior managers, he said, adding that risk managers were under new pressure to deal creatively with insurance needs.

"Insurance was no longer the hobby of some lower management-type dupe," Mr. Heydinger commented.

Many risk managers are positioning themselves for the next hard market by forming captives now, he noted.

"If nothing else, the captive becomes a negotiating ploy" to get more favorable terms from com-

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Attorneys foresee natural resources pollution disputes

By STACY ADLER

A growing number of claims alleging pollution damage to natural resources will trigger new coverage disputes between policyholders and their comprehensive general liability insurers, attorneys say.

Many arguments that insurers use in their attempts to deny coverage for pollution cleanup costs also can be applicable for claims alleging pollution damage to natural resources, said insurer attorney Richard D. Williams of Charlston, Revich & Williams in Los Angeles.

"There will definitely be coverage disputes with regard to natural resource damage claims," Mr. Williams predicted.

"The insurer approach seems to be to dispute coverage whenever the dollars are significant," said policyholder attorney Richard A. Conn Jr. of Latham & Watkins in San Diego.

Mr. Conn's and Mr. Williams' law firms are litigating a case in California in which the insurability of natural resource damage claims is at stake.

The suit pits Montrose Chemical Corp. of Torrance, Calif., against eight insurers: Travelers Indemnity Co. of Hartford, Conn.; American Motorists Insurance Co. in Long Grove, Ill., a Kemper Group unit; Admiral Insurance Co. of Cherry Hill, N.J.; Centaur Insurance Co. of Schaumburg, Ill., which is in liquidation; Canadian Universal Insurance Co. of Providence, R.I., a unit of American Universal Group; National Union Fire Insurance Co. of Pittsburgh, Pa. in New York, a unit of American International Group Inc.; Insurance Co. of North America in Philadelphia, a CIGNA Corp. unit; and The Home Insurance Co. in New York, a unit of AmBase Corp.

Mr. Williams' firm represents The Home, while Mr. Conn's firm represents Montrose.

Montrose manufactured the pesticide DDT before it was banned by federal authorities in the early 1970s. The U.S. Environmental Protection Agency has filed suit against Montrose, alleging the company is responsible for water pollution off the Southern California coast that has allegedly damaged a marine wildlife habitat.

The California case will be one of the first in the nation to explore in depth whether natural resource damage claims are covered by insurance, the attorneys say.

Most environmental lawsuits are filed under the Comprehensive Environmental Response, Compensation & Liability Act, better known as the Superfund Act.

Private plaintiffs and the U.S. Environmental Protection Agency can sue under Superfund to recover cleanup costs or for the costs of repairing damage to natural resources.

While nearly all environmental lawsuits seek to recover cleanup costs, an increasing number are seeking to recover for damage to natural resources (*BI*, July 16).

Policyholders have been led to believe that while insurers staunchly deny coverage for cleanup costs, there is coverage for damage to natural resources, Mr. Conn explained.

For example, one early pollution insurance decision that denied coverage for cleanup costs indicated that coverage would exist for natural resource claims, said Mr. Conn, referring to the 4th U.S. Circuit Court of Appeals decision in *Maryland Casualty vs. Armco*

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Boeing settles radiation experiment suit

By JUDY GREENWALD

SEATTLE—The Boeing Co. will pay for independent medical examinations for more than 700 employees for up to 10 years under a settlement of a class-action suit that charged the company used its employees as guinea pigs in a medical experiment.

In addition, Seattle-based Boeing will pay $500,000 in the form of annuities and a lump-sum cash payment to employee Robert Strom, who claims his terminal illness was caused by being exposed to electromagnetic pulse radiation at the company. Mr. Strom has leukemia.

And, under terms of the settlement, class members also retain their rights to seek compensation for any health problems they suffer as a result of their exposure to EMP radiation at the company.

"It's hard to ask for much more," said Arthur Bryant, counsel for the Trial Lawyers for Public Justice, the Washington, D.C.-based public interest law firm that filed the lawsuit.

Washington State Superior Court Judge Mary Wicks Brucker tentatively approved the settlement Aug. 15. A hearing on its final approval is scheduled for Sept. 21.

However, William Rossbach of Missoula, Mont.-based Rossbach & Whiston, one of the plaintiffs' attorneys in the case, said additional suits could be filed by ill employees. He said it is still unclear how many Boeing employees allegedly became ill as a result exposure to EMP radiation.

In his 1988 suit, Mr. Strom charged that the company monitored the impact of EMP radiation —the same kind of radiation generated by a nuclear explosion— while failing to inform Mr. Strom and other Boeing employees of its dangers (*BI*, July 18, 1988).

The lawsuit accused Boeing of issuing false assurances that EMP radiation was safe, while simultaneously monitoring employees for signs of its impact.

The suit also charged Albuquerque, N.M.-based Lovelace Biomedical & Environmental Research Institute with coordinating the human experimentation.

A Boeing spokesman said the company, which settled the suit shortly before a trial was scheduled to begin, felt that pursuing the case would be a "lengthy and expensive process for both sides," regardless of the ultimate ruling.

He said he did not know whether the company is insured for the settlement. But, Boeing has two captives: Bermuda-based Astro Ltd., managed by Johnson & Higgins (Bermuda) Ltd., and Vermont-based Astro II Inc., managed by Johnson & Higgins Services Inc.

A Lovelace official would not comment.

The settlement also provides for supervision of the examinations of the 700-plus employees in the class by an independent medical administrator.

Boeing and Lovelace will place more than $200,000 into a fund to be used by the administrator to evaluate the voluntary medical exams, report their results, consult with independent experts, conduct any necessary additional diagnostic tests and otherwise help the class members determine whether they have suffered any adverse health effects.

The settlement has national implications, Mr. Bryant said.

"It sends a message out to all employers or anyone else" that using people as the subjects of experiments is not proper and that they "could be held accountable," he said.

Mr. Bryant also noted that the settlement represents the first case in which a court has awarded damages to people suffering from the effects of exposure to EMP radiation, which is an intense, short-duration pulse of non-ionizing electromagnetic radiation that travels at the speed of light.

He said he suspects that as a result of the settlement, electric utilities will be more cautious in placing power lines and transformers—which generate low-frequency electromagnetic fields—near homes and schools.

EMP radiation also is generated by lightning and nuclear blasts high above the earth's surface and can be created in a laboratory.

Boeing had been involved in EMP radiation research as a defense contractor, according to the suit. The radiation can cause potentially catastrophic damage to communications, transportation and other critical electronic systems.

The suit charged that EMP radiation causes cellular changes within the human body, affects the ability of cells to communicate with one another, disturbs the body's chemical balance, alters blood cells and promotes forms of cancer, including leukemia.

Mr. Bryant contended that Boeing already has changed procedures at its EMP radiation research facilities to better protect employees after Mr. Strom filed suit.

However, a Boeing spokesman denied that the changes were introduced in response to the suit.

He also said that Boeing has not been presented with conclusive evidence that indicates EMP radiation is dangerous.

However, he added: "As long as questions exist about it, we want to continue our program," which includes minimizing employees' EMP radiation exposures and implementing continuous health screening for employees who work around EMP radiation.

The settlement validates the purpose and intent of Boeing's employee health exam monitoring program, the spokesman said.

Ironically, the trial court would not have considered the issue of whether EMP radiation actually caused Mr. Strom's illness, according to Mr. Bryant.

The judge who handled Mr. Strom's workers compensation claim had concluded that Mr. Strom had not met the burden of proof required to establish EMP radiation had caused his illness. This decision was subsequently upheld by a jury, which heard the case on appeal in accordance with Washington law.

As a result, Judge Wicks Brucker ruled it could not be an issue in the litigation.

Instead, if the trial had proceeded, it would have revolved around the human experimentation issue, Mr. Bryant said.

However, the issue of whether Mr. Strom's illness was caused by EMP radiation would have been brought up if the class-action suit had gone before an appeals court, Mr. Bryant said.

Mr. Strom plans to devote a major share of his settlement to establish a foundation to expose and fight the dangers of electromagnetic radiation, Mr. Rossbach said. The specific amount will be determined after consulting with tax attorneys and others, he said. ■

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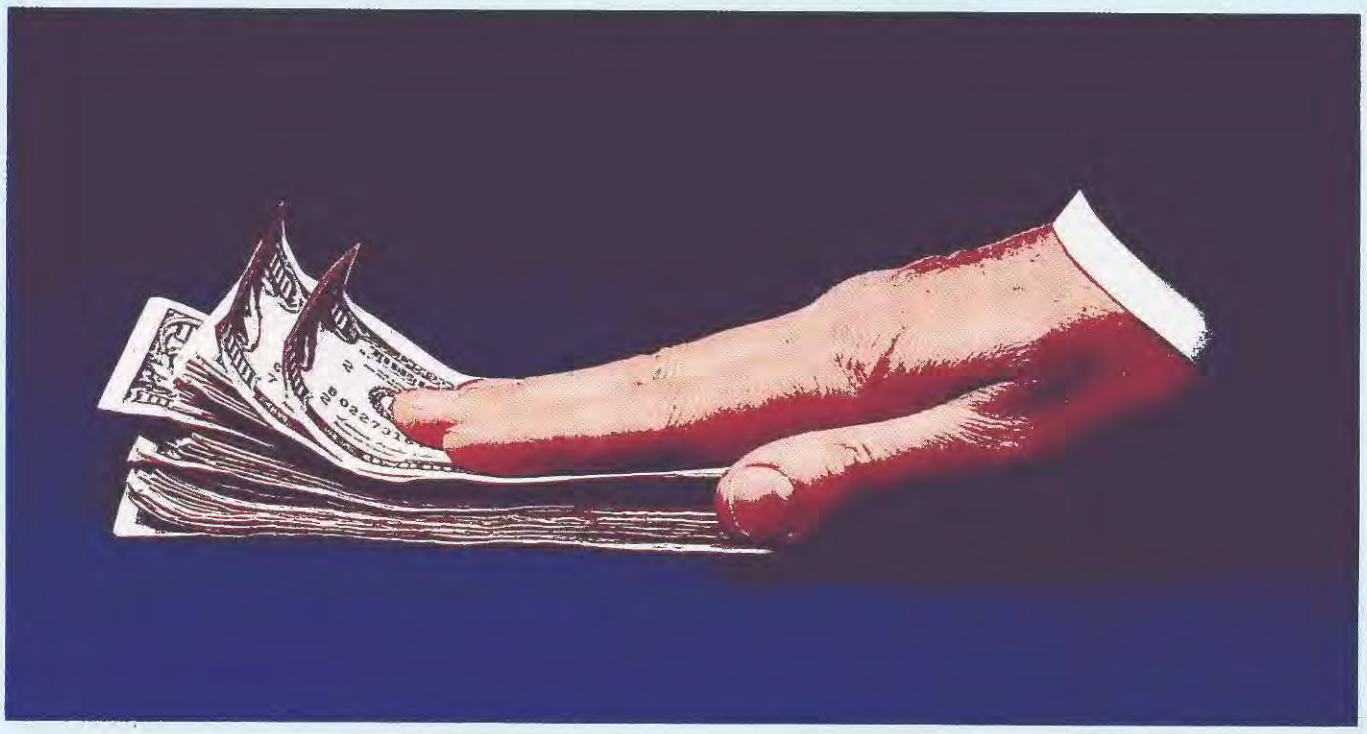
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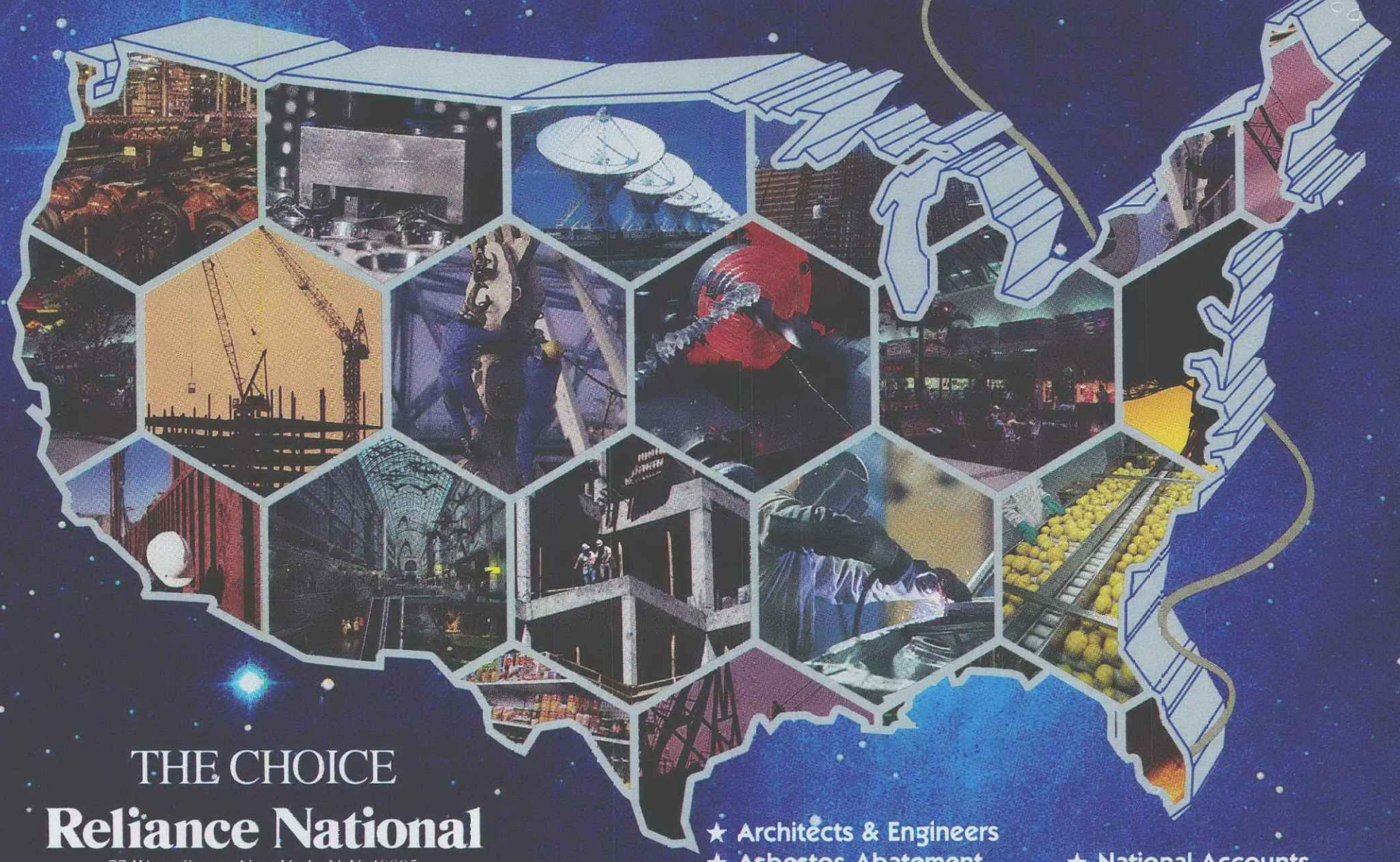
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Nestle clinic aims to cut health tab by 20%

By MICHAEL SCHACHNER and DAVE LENCKUS

Nestle Enterprises Inc. hopes that a company-sponsored family medical clinic slated to open next spring near its corporate headquarters in Solon, Ohio, will contain soaring health care costs.

The clinic is designed to cut by 20% certain medical costs covered by the company's self-insured health care plans, said Powell Woods, vp-human resources.

Employees who use the clinic will be charged a still undetermined per-visit fee, Mr. Woods said. But, he anticipates the fee will range between $10 and $20.

"It won't be free, but it will be low-cost. The objective is to make the clinic convenient and accessible," he said.

"We'd prefer to use a simple payment method rather than tie it into health plans that require claims and reimbursement," he explained.

"The cost savings will come from volume usage. We want employees to use the facility instead of seeking more expensive care through outside physicians," Mr. Woods said.

The Nestle clinic will service approximately 7,300 covered lives. It will be open to about 3,500 active employees at Nestle's home office in Solon, their dependents and retirees in the area.

Health care costs for approximately 45,000 lives covered by the Nestle plan across the country increased 21% to about $48 million in 1989 from about $40 million in 1988, which was an 18% jump from about $34 million in 1987, Mr. Woods said.

The clinic is designed to provide "low-cost, basic family practice services for adults as well as pediatrics for children," he said. "We will offer a full range of services including examinations, lab tests, X-rays and prescriptions."

Mr. Woods said the medical clinic will be modeled after a program that Goodyear Tire & Rubber Co. recently began for 31,000 employees, dependents and retirees at its Akron, Ohio, corporate headquarters (*BI*, March 5).

Goodyear reported that corporate-run health clinics saved the company $400,000 in health care costs last year.

Nestle's clinic will cost "well over $1 million" to establish, Mr. Woods said. But, "we think that we'll be able to achieve significant direct and indirect cost savings as a result of this clinic."

The clinic will allow the company to reduce the costs of lab tests, prescription drugs and physician charges to at least 20% below the commercial market rate in the Cleveland area, he said.

The clinic also will help reduce unnecessary referrals to specialists, he said.

About three or four family practitioners will staff the clinic, Mr. Woods said. Nestle plans on hiring Medicenter Inc. of Lawton, Okla., the same physician management firm that administers Goodyear's Akron clinic, to manage the clinic.

"We will be paying our doctors salaries, and even though they will be paid 20% to 30% above the going rate, they will act somewhat as gatekeepers, and they will cut down on what we call 'autoreferrals to specialists,' " Mr. Woods said.

These physicians will be the key component in achieving other indirect cost savings, he said.

"We feel our doctors will make judicious and intelligent referrals. Basically, they'll practice good medicine without being tied to incentives to overuse or underuse their referral authority," Mr. Woods said.

Nestle will rent space for the clinic for "a couple of years," he said. If the clinic is successful, "we will look to build our own clinic."

Benefit beat

Pension simplification

Government regulations for private pension plans should be simplified because they are too complex and discourage employer sponsorship of qualified defined benefit and defined contribution plans, according to a recent survey.

Some 76.5% of respondents to the "Pension Simplification Survey" by Buck Consultants Inc. of New York say pension regulations and laws are extremely complex. And, more than 81% said they would welcome pension regulation simplification.

The most troubling aspects about the pension regulations listed by the 681 survey respondents were the difficulty in understanding and implementing the rules; the task of compiling employee data for compliance testing; and the effective dates of the regulations.

In addition, 66.2% of survey respondents said there is a lack of coordination among the various government agencies that administer pension regulations, further complicating compliance efforts.

Among the pension rule changes recommended by survey respondents, 78% favored elimination or simplification of non-discrimination tests for 401(k) plans; 72% want a standard definition of "highly compensated employee"; and 63% want general non-discrimination tests on a one-time basis rather than annually.

Another suggestion by 72% of survey respondents to eliminate or simplify minimum participation rules was met after the survey was concluded: The Internal Revenue Service in May published pension non-discrimination regulations that wipe out an earlier IRS rule that could have raised havoc for many employers (*BI*, May 21).

However, more than 50% of the survey respondents are concerned that pension regulation simplification might lead to other problems.

Only 30% of the respondents are expressing their concern about pension regulation to Congress or special interest groups, the survey found.

Meanwhile, 70% of the respondents said the cost of complying with pension regulations is moderate. Only 15% termed the cost extreme.

The survey found that the average estimated cost of compliance was 7.2% of respondents' total benefits costs, while the estimated median cost was 5%.

Copies of "Pension Simplification Survey" can be obtained by contacting Carolee Martin at Buck Consultants Inc., 500 Plaza Drive, Secaucus, N.J. 07096-1533; 210-902-2558. The survey is free to clients, but there is a $50 charge to non-clients. ■



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The $500 million Greater Pittsburgh International Airport project will take five years to complete.

At issue

Should utilities be held liable for business losses caused by power failures?



Coleen Walsh-Koester
Director-risk management
Ingersoll-Rand Co.,
Woodcliff Lake, N.J.

No. Our tort system already provides ample opportunity for attorneys to earn a living and there is insurance available to spread the risk of these relatively infrequent occurrences. Perhaps, though, greater regulatory controls and/or inspections would be helpful in preventing such events.



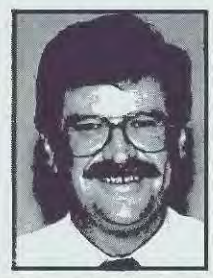
Thomas D. Lewison
Corporate director-risk management
The Hartz Group Inc.,
Secaucus, N.J.

No, unless the utility was guilty of gross or willful negligence. I believe the negative economic consequences to the majority of the utility's commercial customers would make it impractical and uneconomical to hold it liable for power outages.



Don Batchelor
Risk manager
Union Planters National Bank,
Memphis, Tenn.

Utilities should be held accountable, but not liable, for business losses. The funding for any financial liability can only be derived from higher rates, which unfairly places the ultimate financial burden on customers. The utility's regulatory authority should see that proactive and reactive steps are taken to minimize the likelihood of service interruption.



Mike McDonald
Group director-risk management
Ryder System Inc.,
Miami

They should be held liable to a greater degree than just 'gross negligence.' A utility should be held liable to a 'reasonable' degree—certainly to the degree that it could have prevented a power outage or minimized any resulting damages. After all, businesses are wholly reliant on utilities and utilities have a fiduciary responsibility to their customers.

Compiled by Christine Woolsey



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Insider trading

American International Group Inc.: Thomas K. Tizzio, vp, exercised an option for 9,750 shares of common stock at $8.60 per share and now directly and indirectly holds 28,386 shares.

AIG stock was trading at $67.13 per share on Aug. 17.

Argonaut Group Inc.: James B. Halliday, vp, exercised an option for 1,000 shares of common stock at $37.75 per share on May 2 and now directly holds 1,143 shares.

Argonaut stock was trading at $71 per share on Aug. 17.

The Hartford Steam Boiler Inspection & Insurance Co.: Kenneth S. Hynes, officer, exercised an option for 2,400 shares of common stock at $17.50 per share on July 2 and now directly and indirectly holds 10,048 shares.

John J. Kelly, officer, exercised an option for 6,959 shares of common stock at between $32.56 and $41.12 per share on July 2 and now directly holds 11,559 shares.

James E. Stevens, officer, exercised an option for 6,067 shares of common stock at between $27.50 and $32.56 per share on July 20 and now directly and indirectly holds 8,671 shares.

Hartford Steam Boiler stock was trading at $50 per share Aug. 17.

Old Republic International Corp.: Peter Lardner, director, disposed of by gift 440 shares of common stock at an unreported price per share on May 21. Mr. Lardner indirectly disposed of by gift 440 shares of common at an unreported price the same day. He now directly and indirectly holds 194,331 shares.

Wilbur S. Legg, director, indirectly purchased 150 shares of common stock at $24.25 per share on May 15 and now directly and indirectly holds 12,053 shares.

Arnold L. Steiner, director, indirectly disposed of by gift 400 shares of common stock at an unreported price per share and now directly and indirectly holds 208,539 shares.

Old Republic stock was trading at $23.78 per share on Aug. 17.

Phoenix Re Corp.: E. Sedgwick Browne, shareholder, purchased 1,000 shares of common stock at $10 per share on May 31 and now directly holds 2,000 common shares.

Donald H. Trautlein, director, purchased 1,500 shares of common stock at $10 per share on May 14 and now directly and indirectly holds 4,000 common shares.

Phoenix Re stock was trading at $9 per share on Aug. 17.

RLI Corp.: The RLI Corp. employee stock ownership plan purchased 11,868 shares of common stock at between $11.32 and $12.45 per share from May 16 to May 31. The ESOP now directly holds 1.49 million shares.

Gerald Stephens, president, indirectly purchased 100 shares of common stock at $8.88 per share on Nov. 27 and now directly and indirectly holds 455,051 shares.

RLI stock was trading at $11.75 per share on Aug. 17.

Travelers Corp.: David C. Garrett, director, purchased 1,700 shares of common stock at $29.75 per share on May 9 and now directly holds 5,000 shares.

Travelers stock was trading at $25.50 per share on Aug. 17.

•

Insider Trading, compiled by Invest/Net Group Inc. of Miami from reports filed with the Securities and Exchange Commission, tracks stock sales and purchases by insurance industry directors and officers.

Opinions

Breaking the logjam

WE ARE ENCOURAGED by the commitment of 10 federal judges to improving the adjudication of 90,000 pending asbestos injury claims.

But, the enormity of the challenge cannot be overstated.

The judges' efforts, as we reported last week, include creating class-action lawsuits and possibly developing a nationwide asbestos claims handling facility.

This will sound familiar to anyone who has followed attempts over the last decade to solve the huge asbestos claim problem.

A central claims settlement and payment facility was tried once. The facility was created in June 1985 by the Wellington Agreement, which was signed by 34 asbestos producers and 16 of their insurers. The facility, though, lacked the participation of a major defendant, Manville Corp., because of Manville's bankruptcy proceedings and the subsequent formation of the Manville Personal Injury Trust by Manville's reorganization.

Even without Manville, the Asbestos Claims Facility could have succeeded. In three years, the facility settled more than 20,000 claims.

But, the Asbestos Claims Facility fell apart when producers could no longer agree on several crucial issues, such as how to allocate liability for claim settlements, who should control the facility and claims handling philosophy.

From its ashes, the Center for Claims Resolution was formed, but it represents only 21 asbestos producers and lacks many of the major defendants.

Now, 10 federal judges are trying to succeed where others have failed in developing a nationwide method for handling asbestos injury claims.

The judges, exerting their powerful pressure, may obtain the cooperation of the asbestos industry and plaintiffs' lawyers that has been sadly lacking in the past. Unless all work together, no timely solution to this problem can be forged.

And, any universal solution should include the cash-strapped Manville Personal Injury Trust.

Of course, there is plenty of criticism already being leveled at the judges' efforts. For instance, plaintiffs' attorneys do not like class-action lawsuits, which can result in lower payments to them.



Quite frankly, any effort to more efficiently handle asbestos injury claims should include some limit on fees paid to plaintiffs' attorneys. The 20% cap on fees paid plaintiffs' attorneys instituted last week by U.S. District Judge Jack B. Weinstein on hardship claims being paid by the Manville Personal Injury Trust makes sense.

The judges' efforts also are being criticized because the legal wrangling over the class-action suits could delay payments to claimants. That would occur only if producers and plaintiffs' attorneys insist on appealing the class actions.

We hope, for the sake of the 90,000 claimants with asbestos-related injuries, these judges can forge a solution to the asbestos litigation problem. As the judges said in their order, it is "unacceptable" that as much as two-thirds of the money spent to resolve asbestos cases goes toward attorneys' fees and other legal expenses.

Also unacceptable is that without a new solution to handling asbestos injury claims, thousands of claimants will die before their cases are resolved.

Letters

Nader reached nadir at ATLA meeting

To the editor: This letter is in response to your article "Nader Calls for Expansion of Tort Systems" in the Aug. 13 issue.

Mr. Nader hit his nadir when he says we should expand the U.S. tort system, but what else can we expect at the annual Assn. of Trial Lawyers of America's meeting? The plaintiffs' trial lawyers have always wanted to "protect the little people" for 50% of the action. Sure, if you wave red-flag issues such as: "it's wrong to pollute our environment," "it's wrong to poison our children past, present and future," and "it's wrong not to protect our workers and members of the public from injury," etc., we all enthusiastically agree.

However, the plaintiffs' trial lawyers use these issues to distort the truth as they continue their brand of injustice based on deep pockets—go where the money is and to heck with negligence. This greedy attitude on the part of plaintiffs' lawyers not only restricts the development of improved products but also compromises America's greatness and its good old-fashioned Yankee ingenuity. It's hard for me to imagine the steam engine being developed in today's legal environment.

Expand the tort system, indeed! Dramatic tort reform is needed; regulation of lawyers by non-lawyers is needed; fewer lawyers in our state and federal governments is certainly needed. Lawyers are the only special interest group who regulate themselves.

Who pays the annual bill of $34 billion each year in verdicts? The consumers do, including the $20 billion going into the lawyers' pockets. When it comes to plaintiffs' trial lawyer issues, Ralph Nader is simply a case of an incredible shrinking brain. Too bad. He is supposed to be helping consumers. Helping plaintiffs' trial lawyers with their greed is certainly not helping consumers.

Walter H. Buce
Staff Vp-Risk Management
National Service Industries Inc.
Atlanta

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

Not all trial lawyers belong to ATLA

To the editor: The Aug. 13 edition of *Business Insurance* contained several articles reporting on presentations made at the annual meeting of the Assn. of Trial Lawyers of America. These articles certainly leave the impression and, in some cases, actually express the thought that ATLA is representative of all trial lawyers practicing in the United States. This is not so.

Your readers should be aware that ATLA is mostly representative of the plaintiffs' bar. There are several organizations of defendants' trial attorneys, the largest of which is the Defense Research Institute, a Chicago-based organization of approximately 17,000 defense-oriented trial attorneys throughout the United States. DRI often is contacted by the leading press for input where matters of liability and insurance law are concerned. This affords a more balanced report on the legal issues of the day.

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Environmental consultants form group

By LINDA J. COLLINS

CHICAGO—A need for industry guidelines, performance standards and a more unified lobbying voice has spurred formation of the Assn. of Environmental Consulting Firms.

The genesis of the Chicago-based group was in "conversations between environmental consultants who ran into each other" at various conventions, said James C. Mauch, a founding director of the AECF. He is director of marketing for Environmental Audit Inc., a consulting and information services firm in Lionville, Pa.

"What prompted (those conversations) was our hearing from a number of our clients that they thought there was a need for professional standards, particularly in environmental real estate assessments," said AECF President James A. Kinsey. He is project director of Roy F. Weston Inc., an environmental consulting and engineering firm in Vernon Hills, Ill.

At that time, environmental engineers and engineering consultants had trade groups. But no association specifically addressed the needs and issues of environmental consultants, Mr. Mauch said.

During their conversations, the consultants "recognized the need for a number of professional-to-professional services—such as professional guidelines, training programs and insurance," he said.

Discussions on forming AECF began last November. After determining that interest was sufficient, the consultants received state approval in late June to domicile the association in Illinois.

Full membership is open to any firm engaged "in whole or in part in performing consulting work for others for compensation with respect to matters relating to the environment," says the trade group's membership flyer.

Consulting work would include such services as environmental assessments of real estate; environmental auditing of business processes and operations; environmental contamination studies and investigations; quantitative air quality assessments; risk assessments; remediation design; waste minimization; landfill siting; recycling; and incineration.

Associate, non-voting memberships are available to such related entities as financial institutions, attorneys, insurance companies or brokers, real estate companies or brokers, laboratories or scientists, educational institutions and government agencies.

According to Mr. Mauch, setting up a purchasing group to seek preferred errors and omissions insurance rates for members is a primary AECF objective.

"By pooling together as a self-policing group," the association hopes to find insurers willing to offer more affordable errors and omissions coverage, Mr. Kinsey explained.

Underwriters use practice standards in determining the insurability of a professional liability risk, Mr. Mauch noted. "The more standards and the greater the adherence to those standards, the less of a risk they would perceive."

According to an AECF spokesman, negotiations are under way with several insurers that have expressed interest in providing coverage for the group.

"We'd like to have something put together" by the group's first national conference—scheduled for Nov. 11-12 in Chicago—Mr. Kinsey said.

At that meeting, "we'll lay out some of these topical issues and try to provide practical information about standards of practice in the industry," Mr. Mauch said.

Workshop topics are to include international environmental audits, criminal liability, standards for audits and certification, and registration of environmental consultants.

Training programs and an accreditation program for environmental consultants are future goals, Mr. Mauch said.

Both Mr. Kinsey and Mr. Mauch said that because the association was formed only recently, they could not explain in detail how they would try to meet those objectives.

The first task for the group is developing, through its professional standards committee, standards of practice that developers, lenders and consultants could follow for environmental site assessments, Mr. Mauch said.

"This is one of the most practical topical areas we are focusing on today," he noted.

Standards were requested, especially in real estate assessments, says James A. Kinsey.

"Courts have been very expansive in their interpretation of (environmental liability) law and have dragged lenders" into cleanup disputes even though that was not the original intent of those laws, Mr. Mauch contends.

Members of the standards committee have been meeting with other groups to evaluate and compile existing standards, he adds.

For example, a committee of the American Society of Testing & Materials, which sets standards for various industries, is working on such site assessment standards. "Many members of the AECF are on that committee," he said.

The association also aims to provide a forum for consultants to share information and discuss new developments.

AECF will allow us "to compare notes with other firms and to stay current" on technology and regulatory and legal developments, Mr. Mauch said.

Plans also call for lobbying state and federal legislators and regulatory authorities.

"We feel that environmental consultants need to have a hand in directing an effort" to draft state environmental laws that are similar to other state or federal laws and that reflect standard industry operating practices, he explained.

Mr. Kinsey said that his goal as president is to "develop an association that is responsible to its members" and that "provides the framework so that members can put their energies to productive use."

Of about 40 current AECF members, less than a third are associate members.

For further information, contact Glen Keller, executive director, AECF, 111 East Wacker Drive, Suite 600, Chicago, Ill. 60601; 312-644-6610. ■



Insurers file briefs in guaranty fund fight

By SAM CRISTY

NEW YORK—Insurers are squaring off for Round Two of their legal fight to regain $124 million that the New York Legislature appropriated from the state property/casualty guaranty fund between 1979 and 1982.

Attorneys for insurers and insurance industry trade associations filed briefs Aug. 6 in their appeal of the 1989 dismissal of three consolidated suits that sought return of the funds and reform of the state laws that allowed the money to be taken (*BI*, Jan. 23, 1989). Oral arguments in the appeal are scheduled for Oct. 16 before the New York Court of Appeals, the state's highest court.

The insurers charge that the state unconstitutionally appropriated $124 million from the Property/Casualty Insurance Security Fund between 1979 and 1982 and placed it in the state's general fund. In 1982 alone, $87 million was siphoned from the fund, they charge.

The New York fund, the only one in the nation that prefunds its liabilities, requires a minimum balance of $150 million.

The suits also allege that the state intentionally kept the fund below the $150 million minimum level so the Department of Insurance could continue to assess insurers.

The insurers seek the return of all money taken from the fund plus interest, as well as the return of assessments they have paid as a result of shortfalls in the guaranty fund created by appropriations.

"What happened here is clearly something that should not have happened under the (state) constitution," said attorney Charles Platt of LeBoeuf, Lamb, Leiby & MacRae, the New York firm representing three State Farm Group units that filed one suit against the state.

In their brief, the companies—State Farm Mutual Automobile Insurance Co., State Farm Fire & Casualty Co. and State Farm General Insurance Co.—argue that the state violated the insurers' constitutional right to "due process" by seizing property through transfers from the guaranty fund.

"Those transfers were arbitrary and bore no relationship to any legitimate police power objective of the state because they were designed solely to enrich the state treasury," the State Farm brief said.

In another suit, the American Insurance Assn. of Washington, D.C., also argues that the appropriation represents a breach of insurers' constitutional rights.

In its brief, filed by New York law firm Paul, Weiss, Rifkind, Wharton & Garrison, the AIA argues that the state "pledged" to keep the guaranty fund "separate and apart from any other fund and from all other state moneys," and that the violation of this pledge was an unconstitutional breach of contract.

"How can any legislature express its intention to create a contract if. . .a 'pledge' of the 'faith and credit of the state' is not sufficiently 'clear and precise?' " the brief asks.

A third suit was filed by the Alliance of American Insurers of Schaumburg, Ill., five other trade groups and 60 insurers.

"Although taking money to satisfy other state budgetary obligations may constitute a 'public purpose,' the state must still compensate appellants for such taking of its property," said that brief.

Insurers should be encouraged that the case may be drawing to a close, almost 10 years after the law was passed allowing the state to transfer money from the guaranty fund, said David Bickart, a partner with Kaye, Scholer, Fierman, Hays & Handler, a New York firm representing the Alliance and other plaintiffs.

"Hopefully we're getting closer to a final resolution to this thing," he said.

The New York Insurance Department "will not comment until we submit our briefs," which are due by Sept. 20, said a spokesman.

The state attorney general will represent both the Insurance Department and the Department of Finance and Taxation, which is the custodian of the guaranty fund.

In all three lawsuits, the plaintiffs seek to:

- Annul chapters 503 and 55 of the state's insurance law, which allow the Legislature to transfer earnings from the guaranty fund to the general fund and to assess insurers for additional payments if the fund's balance falls below the mandatory $150 million.
- Restore the fund's earnings and assets, as well as the interest that would have accrued.
- Halt future assessments on insurers in the state until an accounting of the fund's "true value" has been completed.

The AIA also included in its brief "alternative remedies" to the immediate restoration of the fund. Among the suggested alternatives to a lump-sum repayment of all moneys involved were that the state initially repay just the principal $87 million appropriated from the fund in 1982, or that the state repay in regular installments the interest that would have accrued on the $87 million.

Robert Smith, counsel for the AIA, maintains that the inclusion of "alternative remedies" is not a sign that the insurers are softening their demands.

The new "remedies" were incorporated in the brief to illustrate that the problem can be corrected without bankrupting the state, he said.

However, the brief notes that the inclusion of these alternatives does not mean insurers will not seek additional relief.

"Our demands are still what they were, but we just wanted to make the court aware that they had a range of choices," Mr. Smith said. "We don't want the court to think that they have to choose between giving us everything we want or giving us nothing."

State Farm's attorney Mr. Platt said the insurers' strategy before the New York Court of Appeals had changed very little from the approach taken in the lower courts.

"I think our position was essentially the same as it was in the trial courts and that is that we are entitled to due process before the state takes our property," he said.

Should the state's highest court rule against the insurers, plaintiffs' attorneys say, the case could end up before the U.S. Supreme Court.

"There is the possibility of review before the federal Supreme Court," the AIA's Mr. Smith said.

Meanwhile, insurers have been notified that the next quarterly assessment—totaling $5.5 million—is due Nov. 15, with assessments for 1990 expected to total $22 million, a department spokesman said.

The department assessed insurers a total of $148 million in 1989 through four quarterly $37 million assessments (*BI*, May 15, 1989).

The guaranty fund had $135 million in assets as of Dec. 31, 1989, according to the Insurance Department's 1989 fiscal report.

Because state law requires assessments to continue a full year after the fund balance reaches $150 million, the department spokesman said that insurers will continue to be assessed through at least 1991. ■



Risk manager named at Service America

Comings & goings: buyers

Robert C. Elinskas, 46, has been named director of risk management for Service America Corp. in Stamford, Conn., a food service management firm. In this newly created position, Mr. Elinskas is responsible for property/casualty insurance; corporate safety including fleet operations; claims administration and management, including third-party litigation; surety; security; and business travel. Mr. Elinskas reports to Philip Friedman, vp and chief financial officer. Prior to joining Service America, Mr. Elinskas was director of risk management at Grow Group Inc., a paint products manufacturer in New York. Mr. Elinskas also served as director of risk management at ITT Rayonier Inc., a manufacturer of paper products in Stamford, Conn. Prior to that, he was Eastern regional manager-loss control for CNA Financial Corp. in Cedar Knolls, N.J. Mr. Elinskas holds a bachelor's degree in industrial relations and a masters in business administration degree in management and marketing from the University of Bridgeport, Bridgeport, Conn. Mr. Elinskas is a member of the National Fire Protection Assn. and the American Society of Safety Engineers and is a deputy member of the Risk & Insurance Management Society Inc.

* * *

Paul J. West, 36, has been named risk manager of Fenton, Mo.-based Vanliner Group Inc., the insurance subsidiary of UniGroup Inc. In this newly created position, Mr. West is responsible for risk management for all subsidiaries of UniGroup—which is the parent company of household goods mover United Van Lines Inc.—including the purchase of all coverages and direction of loss control programs. Mr. West reports to Daniel E. Yates, executive vp. Prior to joining Vanliner Group Inc., Mr. West served as risk manager at household goods mover Mayflower Group Inc. in Carmel, Ind. He holds a bachelor's degree in marketing from the University of Notre Dame in Notre Dame, Ind. In addition, Mr. West has earned the National Assn. of Securities Dealers certification, and he is working toward completion of the Chartered Property and Casualty Underwriter designation. Mr. West also serves on the workers compensation committee of the St. Louis Chapter of the Risk & Insurance Management Society Inc.



Mr. West

* * *

David T. Mohler, 58, has been named manager-health and welfare administration of Trinova Corp. in Maumee, Ohio. In this newly created position, Mr. Mohler is responsible for administration and planning; government reporting and compliance; and claims management and analysis of health care, life insurance and disability programs. Mr. Mohler reports to Jeff Rhoads, director-benefits planning and administration. Prior to joining Trinova—a manufacturer of power and motion control machinery—Mr. Mohler was corporate director-employee benefits for auto parts maker Sheller-Globe Corp. in Detroit. Previously, Mr. Mohler was manager-employee benefits for Bowling Green State University in Bowling Green, Ohio. Before that, he was manager-health care administration and employee benefits cost-containment administrator at glass products maker Owens-Illinois Inc. in Toledo, Ohio. Mr. Mohler holds a bachelor's degree in liberal arts and a master's degree in education, both from the University of Toledo. In addition, Mr. Mohler is a member of the International Foundation of Employee Benefit Plans, the Toledo Benefit Managers Assn. and the Toledo Personnel Managers Assn. Mr. Mohler also is a deputy member of the Risk & Insurance Management Society Inc.

* * *

Daniel J. Pliszka, 33, has been named director of risk management for Jefferson County, Ala., in Birmingham. Mr. Pliszka is responsible for self-insured workers compensation and general liability claims; occupational safety and health; public liability prevention programs; employee health benefits; property insurance; and fidelity bonding. Mr. Pliszka replaces James Harrell, who left the organization, and reports to Steve Sayler, Jefferson County's finance director. Mr. Pliszka previously served as risk manager for the city of Manhattan Beach, Calif. Before that, he was safety manager for the city of Anaheim, Calif., and he also was a safety specialist for Martin Marietta Energy Systems Inc. in Oak Ridge, Tenn. He holds a bachelor's degree in business administration and a master's degree in industrial safety and loss control management from the University of Wisconsin-Stout, in Menomonie. Mr. Pliszka holds an Associate in Risk Management designation and is a member of the Public Risk Management Assn. as well as the American Society of Safety Engineers.

* * *

C. Carol Capossela, 41, named director of risk management at Bidermann Industries Inc. in Secaucus, N.J. In this newly created position, Ms. Capossela is responsible for risk treatment strategies and insurance purchase for property/casualty and surety exposures. Ms. Capossela reports to Peter Kells, executive vp and chief financial officer. Prior to joining Bidermann Industries—an apparel manufacturing subsidiary of Paris-based Bidermann Industries S.A.—Ms. Capossela was risk manager at Reliance Group Holdings Inc. in New York. Prior to that, she was a technical business consultant at Alexander & Alexander of New York Inc. in New York. Ms. Capossela is a past president of the New Jersey chapter of the Risk & Insurance Management Society Inc.

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U.S. captives

Continued from page 3

mercial insurers, Mr. Heydinger added.

Another reason for the growth of U.S. captives is the increasingly mature status of their domiciles and the growing acceptance of captives that has accompanied the development of these domiciles, he added.

"It's no longer necessary to fly off to some exotic tax haven," Mr. Heydinger said. "That which was once on the fringe has become a mainstream financing tool."

A federal appeals court decision in *Humana Inc. v. Internal Revenue Service*—which allowed Humana subsidiaries to take tax deductions for premiums paid to a captive—has also sparked interest in captive formations, he added (*BI*, Aug. 7, 1989).

"Tax may not be the only reason for a decision to form (a captive), but it might just push that decision over the top," Mr. Heydinger observed.

He cited several other potential benefits, including:

- Access to excess insurance and reinsurance markets that—for reasons Mr. Heydinger said he didn't understand—are willing to participate in a captive program but not a straight self-insurance program.
- Access to property and casualty group reinsurance facilities like Hopewell International Insurance Ltd. of Bermuda and Tortuga Casualty Co. of the Cayman Islands.
- Added flexibility in funding long-term contingent liabilities like pollution risks.
- Formalizing such insurance-related accounting functions as allocating insurance costs among a parent company's subsidiaries.

Some of Mr. Heydinger's least productive hours, he said, have been spent haggling with unit managers over premium allocations and other insurance chargebacks.

While there are a lot of good reasons for setting up a captive, risk managers must also be aware of the potential drawbacks, Mr. Heydinger warned.

Risk managers, for example, can fall into the trap of assuming that captive programs are always the best solution to problems. These people need to take off their "blinders" and realize that commercially insured options such as cash flow programs are often more competitive than self-insurance alternatives, he said.

Captives could also complicate the risk management function by shrouding it in mystery, making a company's insurance programs and loss experience more difficult to explain to senior executives and unit managers.

One of the most common complaints about captives within a company is that risk managers have made them "our private playground," Mr. Heydinger said, urging risk managers to explain the programs more effectively.

Another major pitfall—one that has brought down several captives—is the writing of third-party risks, he added.

While assuming controlled third-party business through a captive reinsurance pool represents "true risk management," writing outside business simply to leverage underused capital "may make business sense, but it's not risk management," he said.

"I have a big enough job trying to manage and understand the exposures of my employer, Hallmark Cards, without having to scan the latest headlines to see if I have a piece of the recent hurricane," Mr. Heydinger said.

Meanwhile, European captives are also growing in size and number as the risk financing options of European multinational companies expand, according to Paul A. Bawcutt, managing director of London-based Risk & Insurance Research Group Ltd.

As 1992 approaches, several European insurers have become more competitive in efforts to attract large multinational policyholders, Mr. Bawcutt observed.

Insurers, for example, have developed new multinational programs that include coverage of U.S. risks, he noted.

European insurers are likely to expand further abroad, he added, citing the recently announced Allianz A.G. Holding acquisition of Fireman's Fund Insurance Co. as one such development (*BI*, Aug. 6).

Meanwhile, many European insurers are serving the alternative risk financing market by offering fronting services and excess and aggregate stop-loss coverage for captive programs, he said.

All of this means that European corporations will have more risk financing options than they have had in the past and substantially improved service from commercial insurers, Mr. Bawcutt said.

However, problems remain as 1992 approaches, he added.

Mr. Bawcutt advocated, among other things, "harmonizing" European tax laws to let insurers compete on a level playing field.

While characterizing tax law in the United Kingdom as "hostile" to insurers, Mr. Bawcutt noted that insurers in Denmark or West Germany pay relatively little or nothing at all. "It's not really a fair market if you are a U.K. market competing" with European neighbors, he explained.

Separately, P. Richard Hackenburg, executive vp with Corroon & Black of Massachusetts Inc. in Boston, predicted another problem for captives: insolvency.

Mr. Hackenburg, who moderated the panel, said that poor underwriting decisions from the early- to mid-1980s coupled with uncollectible reinsurance will produce "a lot" of captive insolvencies in the next few years. He predicted "a shake-out in the captive industry."

Also speaking at the session was Joseph C. Smetana Jr., chairman and chief executive of AIG Risk Management Inc. in New York. ■



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Managers of group captives need to hone skills: Expert

By DOUGLAS McLEOD

BURLINGTON, Vt.—Group captives will flourish as alternatives to commercial insurance if they aggressively pursue marketing, underwriting and claims management goals, two group captive officials say.

Jaxon A. White, president of MEDMARC Insurance Co. Risk Retention Group Inc., offered several pointers on group captive operations to an audience at the Vermont Captive Insurance Assn.'s fifth annual conference.

MEDMARC—originally formed as a Bermuda-based group captive and later reorganized as a Vermont-domiciled risk retention group—writes medical product liability coverage for about 480 members, Mr. White said.

Because they focus on a specialized line of coverage, group captive managers should try to have the latest information available on their members' industries, Mr. White noted.

In marketing their programs, captive managers have to show brokers and prospective policyholders that they understand their members' business and know the people in that business, he said.

While marketing the program, group captive managers must also ignore rumors of competition from commercial markets and "stay focused" on the needs of their own programs, he said.

Vermont Captive Insurance Assn.

Large commercial insurers may jump into a specialty market with competitive rates, but they often lack the degree of marketing and underwriting expertise group captive staffs can develop, Mr. White said. "The competition is not as giant as it might seem."

At the same time, he added, captive officials have to convince brokers that the temporary price advantage commercial markets may offer is less important to policyholders than the price consistency an alternative market can offer.

In pursuing underwriting goals, Mr. White said, captive managers must challenge the "conventional wisdom" about the risky business they insure.

MEDMARC, for example, was always told it would fall victim to "adverse selection," with the worst medical products risks gravitating toward it after failing to secure commercial market coverage.

Mr. White said this has not happened, and pointed out that MEDMARC has attracted a wide variety of product liability accounts.

Group captives must also underwrite more creatively than their commercial market counterparts, he advised.

Commercial markets, for instance, have shunned product liability coverage for experimental medical devices. But MEDMARC—knowing that liabilities can be limited by rules requiring patients' informed consent for use of these devices—has insured such products successfully, he said.

Citing another example of creative underwriting, Mr. White noted that MEDMARC calculates members' loss ratios on a three-year rolling average, so that a large loss in a single year does not necessarily mean "doomsday" on a member's next renewal.

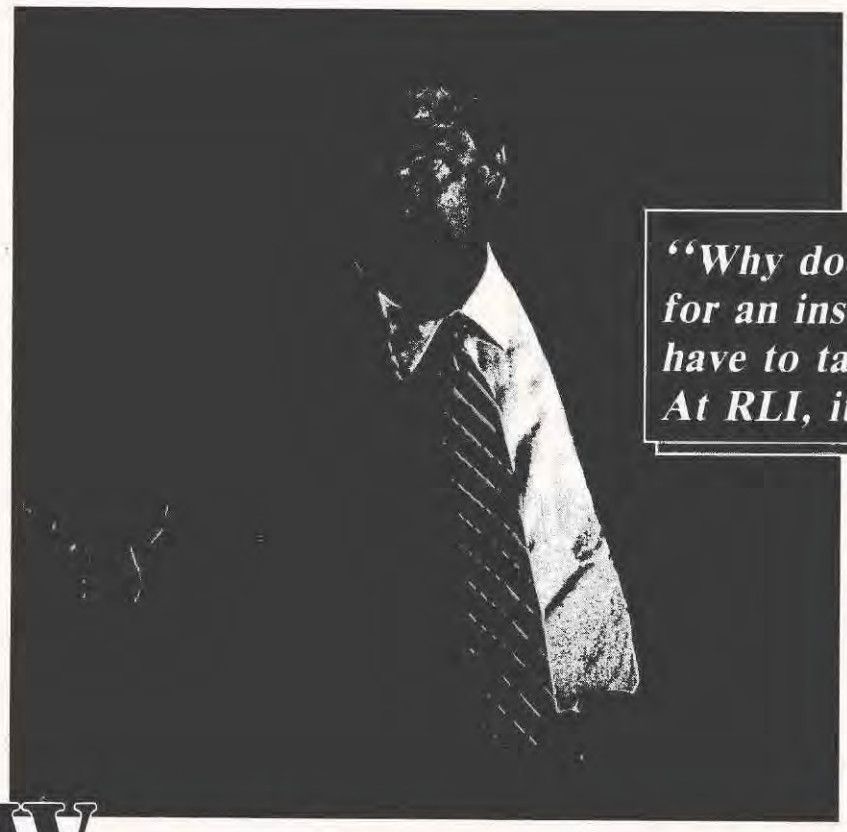
Mr. White also urged captive managers to discard the "insurance cycle mentality" that dictates making underwriting decisions based on market conditions.

"We create underwriting and pricing standards and we do not relax them in a soft market," he said, explaining that MEDMARC neither slashes prices for good risks in a soft market nor accepts "marginal" business at high prices in a tight market.

He added, however, that the risk retention group may bend these rules. For example, premium credits may be granted to a member whose sales are growing rapidly but whose losses cannot be expected to climb at the same rate.

Offering pointers on group captive operations, Mr. White urged captive managers to pursue "bul-

Continued on next page



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Continued from previous page

letproof" goals for such operating ratios as the combined ratio.

MEDMARC has aimed for a combined ratio of 100% to 103% with a 12% return on equity, he said.

The risk retention group has also stayed well within the guideline ratios established as "generally accepted captive standards" by the Tillinghast division of Towers, Perrin, Forster & Crosby Inc., he said.

For example, where the standard calls for a loss reserves-to-surplus ratio of 4-to-1, MEDMARC has maintained a ratio of about 1.4-to-1, according to Mr. White. While the guideline net premium-to-surplus ratio is 1.25 to 1.75-to-1, MEDMARC's is about 1.2-to-1, he said.

Group captives must also analyze why they lose business and keep track of where defecting members go, he added.

Among the common reasons for lost business, Mr. White noted, are losing track of members' changing insurance needs; midterm changes in management at member companies that change risk management goals; changes in the broker representing a member; and failure by the captive to recognize a member's good loss experience in re-underwriting its account.

Group captives must also develop strategies for weathering soft market competition, and then "hold tight" to those strategies, Mr. White advised.

In addition to selling its long-term stability, MEDMARC has taken steps to let members know they are appreciated and that MEDMARC is keeping tabs on their needs, Mr. White said.

Risk retention group officials, for example, send thank-you letters to members on renewal, acknowledge promotions of member executives, and attend management and sales meetings of member companies, Mr. White said.

He underscored group captives' need to keep in constant touch with their members, noting that MEDMARC sends some form of communication—such as financial reports or newsletters—to members every six weeks.

Kevin M. Quinley, MEDMARC's vp-risk services, also offered tips for improving group captives' claims management and loss control services. These included:

- Compiling a list of "legal eagles"—lawyers who specialize in defending liability lawsuits in the industry the group captive serves.

Such a list can be built by contacting other specialty insurers, claims adjustment firms and trade associations, or by scanning trade publications that quote lawyers in a given field, Mr. Quinley suggested.

- Composing written litigation guidelines for defense attorneys, outlining the captive's defense philosophy and setting out requirements for litigation budgets, billing procedures and communications on individual cases.
- Creating a data base of expert witnesses to be used in defending liability lawsuits.

Mr. Quinley cautioned against using "professional witnesses"—experts whose major source of income is testifying in court—noting that the credibility of such witnesses is open to attack.

He also suggested building a data base of expert witnesses frequently used by plaintiffs' attorneys, noting that the credentials and previous testimony of such witnesses should be investigated for possible vulnerabilities that can be exploited in court.

- Tuning up the captive's claims communications system, an effort that could include developing a claims reporting handbook for members and a toll-free telephone hot line for loss reporting or for legal advice.

Communication should also go both ways, Mr. Quinley suggested. A group captive should inform a member before it settles a case.

- Setting up a computerized claims management information system. While "off-the-shelf" systems are relatively cheap, tailored systems can serve captives' needs better, he observed.
- Conducting on-site loss prevention surveys for members. MEDMARC does this, with the cost built into members' premiums, he noted.
- Offering other loss prevention education services, such as loss prevention handbooks, seminars, newsletters and video or audio cassettes.

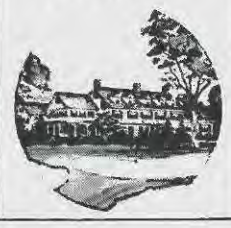
Also speaking at the seminar were Gregory E. Leonard, president and chief executive officer of Pegasus Advisors Inc. in Simsbury, Conn., and James R. Cameron, a partner with the law firm of Baker & McKenzie in New York. ■

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Caution urged after captive tax ruling

By DOUGLAS McLEOD

BURLINGTON, Vt.—Corporations must structure captive insurance programs carefully if they hope to take advantage of a federal appellate court decision allowing sister subsidiaries to deduct premiums paid to a captive, experts say.

Captive owners should examine the tests applied by the court in *Humana Inc. vs. Internal Revenue Service* to determine how a captive program must be maintained to deduct premiums paid to the captive, a panel at the fifth annual conference of the Vermont Captive Insurance Assn. advised.

In July 1989, the 6th U.S. Circuit Court of Appeals ruled that units of Humana, a hospital chain in Louisville, Ky., could deduct malpractice and general liability premiums paid to its Colorado captive (*BI*, Aug. 7, 1989).

While denying similar deductions for premiums paid by the parent company itself, the court concluded that coverage written by the captive for Humana's subsidiaries met the tests of "risk shifting" and "risk distribution" and could therefore be considered true insurance for tax purposes.

The appellate panel also turned aside the longstanding "economic family" theory, under which the IRS argued that since a parent and its captive are in the same economic family and since captive profits or losses ultimately flow through to the parent, captive coverage is not true insurance.

Premiums paid to captives are instead the equivalent of non-deductible additions to self-funded loss reserves, the IRS has maintained.

By ruling in favor of Humana, the court overturned earlier rulings by a U.S. Tax Court panel and later by the full 19-member U.S. Tax Court favoring the IRS.

"Our theory of economic family has been flatly rejected," concedes Panfilo Dicenso, a case manager with the IRS examination division in Stoneham, Mass.

But "we did win a lot up to the appeals level," Mr. Dicenso added, drawing laughter from an audience at the Vermont conference.

The Humana case involved the 1977 to 1979 tax years and produced a refund of $9 million, plus interest of $18 million, for the hospital chain, according to James D. Hinton, Humana's vp-insurance.

Humana and the IRS have since re-audited the company's 1980 to 1986 tax years, and Humana has received additional refunds of $31 million with $37 million in interest, Mr. Hinton said.

Mr. Hinton cited several elements necessary to support a case for premium deductibility, including that units buying captive coverage cannot own the facility.

In Humana's case, he said, the captive was 75% owned by the parent company and 25% owned by an offshore Humana subsidiary. He explained that ownership was divided because Humana and the captive are on different fiscal years and the 25% offshore ownership allowed Humana to exclude the captive from its consolidated balance sheet.

Vermont Captive Insurance Assn.

In addition, parent companies must be able to show that the captive program was established for bona fide business reasons and not to avoid taxes and that all transactions between the captive and insured sister companies are arms-length transactions, according to Mr. Hinton.

Parent companies also must be able to justify the allocation of premiums among the various insured subsidiaries, Mr. Hinton said.

In Humana's case, the company developed an actuarially supported calculation of premiums needed to insure all of its operations, then allocated a portion of this insurance cost to each subsidiary based on its exposure, Mr. Hinton said.

The subsidiaries paid the premiums to the parent company, which passed them through to the captive, he said.

Stephen C. Eldridge, an insurance tax consultant and a former partner with Ernst & Young in New York, agreed that proper allocation of insurance costs among subsidiaries is essential and that, without such allocation, a claim for premium deductions may have "fatal problems."

The panel discussed several other tax issues affecting captives, including:

- The effect of unrelated business on the deductibility of premiums paid by a parent to a captive.

The U.S. Tax Court suggested in a footnote to a 1987 ruling involving Gulf Oil Corp. that if a captive writes 50% of its business for unrelated third parties, parent company premiums may be deductible (*BI*, Jan. 18, 1988).

However, the IRS has taken the position that no amount of third-party business will render parent premiums deductible.

For example, in a pending case, the IRS has denied deductions to Sears Roebuck & Co. for premiums paid to subsidiaries Allstate Insurance Co. and Northbrook Excess & Surplus Insurance Co., even though the premiums paid by Sears amounted to less than 1% of the insurers' business.

- The effect of widely divided ownership of a group captive on the deductibility of premiums paid by captive shareholders.

In a 1978 ruling, Revenue Ruling 78-338, the IRS allowed premium deductions to shareholders of a group captive that each owned less than 5% of the captive's outstanding shares.

"If you are in the 5% range, I doubt very much the Service is going to raise the issue," Mr. Dicenso said. ■

Conference draws 240

BURLINGTON, Vt.—The Vermont Captive Insurance Assn.'s fifth annual conference, focusing on "Captives in the 1990s," drew 240 attendees, up about 45 from last year's meeting.

Next year's meeting is scheduled for Aug. 14-16 at the Sheraton Burlington Hotel and Conference Center.

For more information about the 1991 meeting, contact the conference coordinator, Diane Leach, at the Vermont Captive Insurance Assn., P.O. Box 39, Burlington, Vt., 05402-0039; 802-860-1619. ■

HOW ARKWRIGHT MINIMIZE YOUR COST OF RISK.

Fidelity claim

Continued from page 3

fraud in the U.S. District Court in Louisville.

But Judge Charles Ballantine subsequently threw out Mr. DeWitt's guilty plea upon learning that he had agreed to plead guilty in exchange for a recommended sentence of only four months of community service.

Mr. DeWitt is awaiting trial on the same charges.

Despite Mr. DeWitt's confessions to bank officials and U.S. prosecutors, Aetna and Federal refused to pay the FNBL fidelity claim.

In March, FNBL sued the insurers in U.S. District Court in New Orleans claiming its blanket bond should cover losses caused by Mr. DeWitt's fraud.

On June 15, Judge Henry A. Mentz granted the bank's motion for partial summary judgment on its contention that the bonds should respond because Mr. DeWitt admitted arranging fraudulent loans.

The judge ruled that the original guilty plea in federal court in Louisville "satisfies the requirements for coverage under the fidelity bond."

Four days later, Judge Mentz granted FNBL's motion to strike three of the insurers' lines of defense.

The insurers "argue that the crash in oil prices in the Gulf Coast region during the period was an intervening cause of the FNBL's loss, and that the resulting economic decline broke the sequence of events between dishonest or fraudulent acts of Kevin DeWitt and the FNBL's ultimate loss," he wrote.

"This court has already found that coverage is required under the bond for the acts of DeWitt. Therefore, loss causation, whether termed as proximate cause or based on notions of reliance by the bank, has been established within the plain meaning of the bond," the judge ruled.

Judge Mentz also rejected the insurers' contention that FNBL was guilty of contributory negligence.

Aetna and Federal accused FNBL of knowing that "DeWitt was young and inexperienced; that it realized or expected underwriting errors; and that it approved the loans based upon high appraisals and the lure of high fees and interest."

However, the judge said that the issue of causation was resolved, and contributory negligence, "however couched, is irrelevant in the case."

Judge Mentz also tossed out the insurers' claim that their subrogation rights were impaired because FNBL failed to make all possible efforts to recover the loans from the developers. "According to the language of the bond, the sureties must have paid amounts under the bond before subrogation rights arise. . .by denying coverage, the sureties have implicitly waived the impairment of subrogation defense," he wrote.

'This court has. . .found that coverage is required under the bond for the acts of DeWitt. Therefore, loss causation, whether termed as proximate cause or based on notions of reliance by the bank, has been established,' Judge Mentz says.

The judge did allow Aetna and Federal to pursue three additional lines of defense:

- The bank knew of Mr. DeWitt's dishonesty beforehand.

Lawyers for Aetna and Federal argued that bank officials knew he was falsifying loan documents, Mr. Ardis said.

"But every time they tried to prove this point, it came across as 'the bank should have known,' " Mr. Ardis said.

"At first (the defense) tried to say there was no dishonesty at all, but the man admitted to 21 counts of fraud and told bank officials back in 1986 exactly what he did," Mr. Ardis said.

"It's a real contradiction they're standing on, and we deny that the bank knew. Mr. DeWitt was on his own," he said.

- The bank failed to notify the insurers promptly of possible claims against the bond.

But Mr. Ardis contends the bank "filed notice with them five days after DeWitt's confession" in 1986. And "the only reason it took that long was because there was a holiday in between DeWitt's confession and April 2," he said.

- FNBL failed to properly mitigate losses.

"They auctioned off units at two condominium projects in Mississippi," said insurer attorney Fritz Bott, a partner in the New Orleans law firm of Deutsch, Kerrigan & Stiles, referring to FNBL's recovery of $9 million. "But they were selling units at $27,000 to $29,000 during the auction. They didn't even set a minimum entrance price. Those same units sold two months later at more than $70,000 each."

One buyer of the Mississippi units was Thomas Schwab, a Cincinnati-based claims adjuster with Aetna, whose post-claim investigation of the FNBL claim prompted Aetna not to pay, Mr. Ardis said.

"They said we didn't do a good enough job mitigating losses, and then the same claims adjuster who testified against us in court buys one of the complexes. Try to figure that one out," Mr. Ardis said. "I think getting back $9 million on $30 million of fraudulent loans is pretty impressive."

According to Mr. Bott, though, Mr. Schwab bought only a portion of one unit, and the purchase occurred two months after the alleged underpriced auction.

Mr. Bott added that Mr. Schwab's purchase was irrelevant to the trial.

A six-member jury awarded FNBL $21.7 million on Aug. 9 after deliberating less than one hour.

The award consists of $21.7 million for the unrecovered portion of the $30.4 million in loans and will likely carry $6 million in prejudgment interest, Mr. Ardis said.

Auctioning off condominium units built with the loans raised about $8.7 million.

In addition, the bank will be able to salvage outstanding loan amounts until Aetna and Federal pay the bank's claim, Mr. Ardis said.

Final judgment must still be entered by Judge Mentz.

Mr. Ardis estimates that prejudgment interest will remain at about $6 million. Mary Wolff, another attorney for the bank in this case, said the judge likely will reduce the award to the bond limit of $20 million.

The insurers will appeal the verdict, charging that Judge Mentz wrongly invalidated three lines of defense and incorrectly instructed the jury on the definition of dishonesty as it related to the termination of the fidelity bond, Mr. Bott said.

Meanwhile, the bad-faith litigation filed by FNBL is just entering the discovery phase. FNBL originally included a bad-faith claim in the coverage dispute litigation, but Judge Mentz broke out that portion of the suit. ■

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42% of women killed on the job are murdered

By ADRIENNE C. LOCKE

WASHINGTON—Almost half of on-the-job deaths involving women are homicides, according to an agency of the U.S. Department of Health and Human Services.

The report, issued this month by the Centers for Disease Control's National Institute for Occupational Safety and Health, found that homicides accounted for 42% of all fatal injuries at work for women during a six-year period, compared with 12% of the workplace fatalities involving men over the same period.

Of the estimated 7,000 workplace deaths that occur each year involving both men and women, 13% are homicides, according to NIOSH.

Data from 46 states and the District of Columbia from 1980 through 1985 identified 950 work-related murders of females, averaging about 158 each year, or 4 homicides per 1 million workers. The peak occurred in 1980 with 4.8 murders per 1 million female workers, while the low point was reached in 1985 with 3.6 homicides per 1 million female workers.

Women aged 20 to 34 years made up 46% of the victims, the largest proportion in the report, with 4.5 homicides per million workers for women aged 20 to 24 years and 4.3 murders per million for women aged 25 to 34 years.

However, while women aged 65 and older only accounted for 7% of the women murdered at work during the study period, there were 11.3 work-related homicides per million women employees over age 65.

However, NIOSH stresses that despite the high instance of this kind of workplace death for women, workplace homicides are an "extremely rare event," according to Catherine Bell, an epidemiogist in the division of safety research at NIOSH in Morgantown, W.Va.

In comparison, the workplace death rate among men and women in the mining industry averages 320 per million workers, she said.

"While homicide is the major killer of women at the workplace, they are far safer at work than at home," she noted.

Ms. Bell noted that homicides are more prevalent in the fastest growing areas of industry—retail and service businesses.

Of the women murdered, 41% worked in the retail industry, which has an annual homicide rate of 8.3 deaths per million women workers, while 20% worked in the service industry, which has a homicide rate of 1.9 deaths per million women workers.

"We need to care about these types of deaths because they will become a more prominent cause of occupational death in the future if things don't change," Ms. Bell said.

Most of the homicides involved three factors: contact with the public, the exchange of money and employment during evening hours, Ms. Bell said.

Fatal injuries most often occurred between 4 p.m. and 5 p.m., the report said.

Risk-reducing strategies, such as providing well-lit parking lots, increasing the visibility of the work area, isolating workers behind bulletproof materials, controlling access to the workplace and dispute resolution training have helped in some settings, according to the report.

But, Ms. Bell noted, "there is a great need to scientifically evaluate these things before being imposed on the workforce."

The study was published in the Aug. 17 issue of the CDC's Morbidity and Mortality Weekly Report, Vol. 39, No. 32.

Washington

Oil spill bill signed

President Bush signed federal oil spill legislation into law Aug. 18, despite the administration's reservations about some of its provisions.

In signing the Oil Pollution Act of 1990, which was approved by the House and Senate earlier this month, President Bush said the bill was in most respects "a responsible piece of legislation" (*BI*, Aug. 6).

But the president criticized Congress for not adopting an international oil spill liability treaty that would have provided access to up to $260 million per spill from an international fund and would have provided "swift and assured compensation for foreign tanker oil spills" (*BI*, June 18).

Under the new law:

- A shipowner's liability is increased to $1,200 per gross ton of a tanker's displacement, up from the former $150 per gross ton of oil. However, individual states still will be allowed to set higher liability levels.

The federal liability limits will not be applicable under certain circumstances, including cases of gross negligence or willful misconduct.

- The types of damages for which a shipowner could be held liable are expanded to include loss of the use of natural resources and increased cost to state and local governments for fire, police and other safety services.
- Double hulls are required on all newly constructed tankers, and double hulls or double containment systems are required on all tank vessels—such as barges—of less than 5,000 gross tons in displacement.

Existing single-hull tankers will be phased out according to their size and age, with all single-hull vessels being banned by the year 2010.

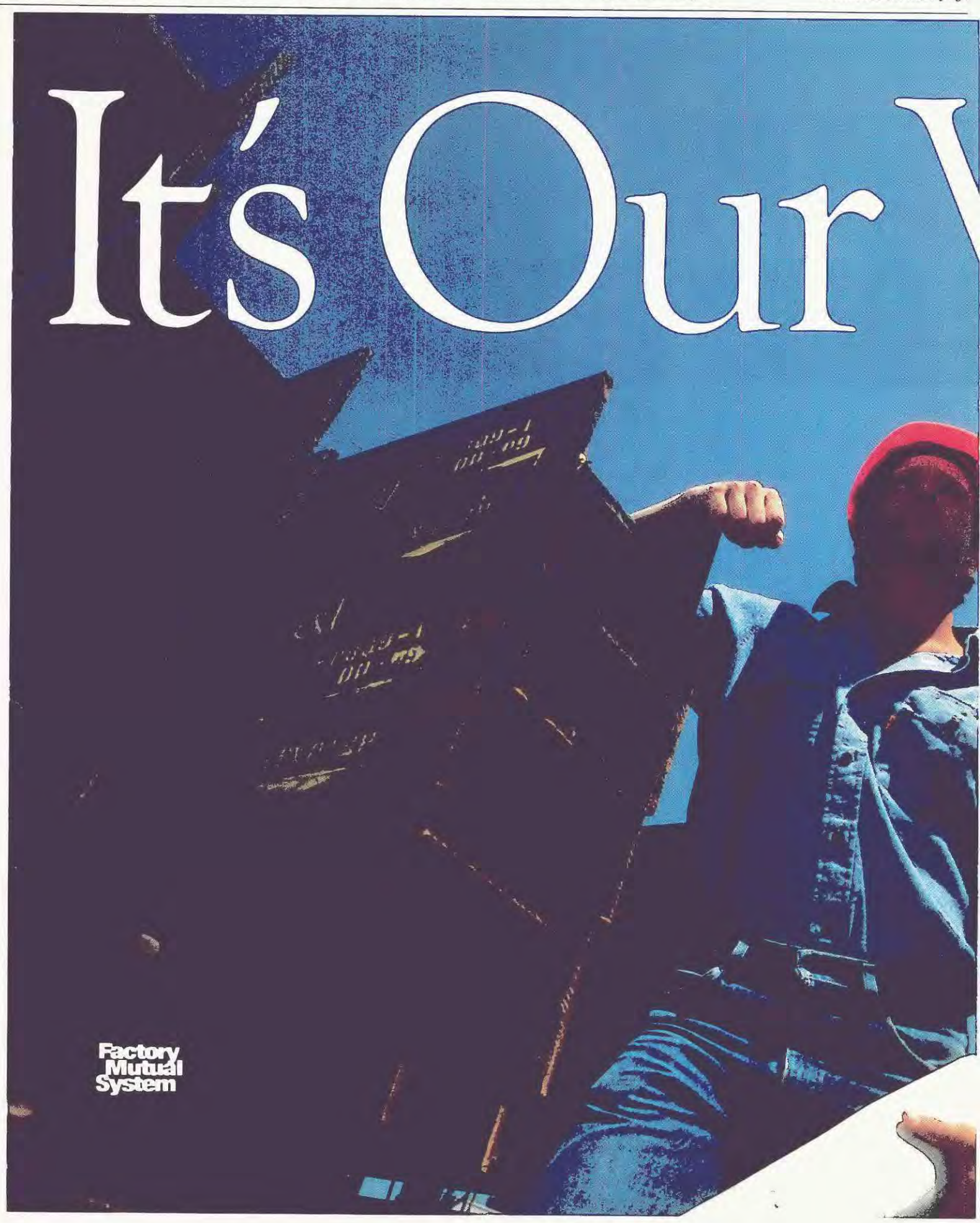
- The number of hours that tanker crews could work will be limited to 15 hours each day or 36 hours during a three-day period.

The National Transportation Safety Board listed heavy workloads and crew fatigue as contributing factors in the Exxon Valdez oil spill accident off the Alaskan coast.

- A federal oil spill liability trust fund will be established to provide up to $1 billion per incident to pay cleanup costs, natural resource damage and compensation for any victims of the damage where those responsible for the damage cannot be identified or are unable to pay, or where liability limits are reached. The fund will be financed by a levy on the oil industry.

Provisions of the new law are effective immediately.

Continued on next page



Continued from previous page

President Bush noted that the oil industry will face "increased financial responsibility" under the new oil spill law.

However, he said that a balance has been sought "to give the industry the flexibility to meet the requirements of the act without incurring excessive costs."

Hotel safety bill

The Senate earlier this month approved a House bill that would encourage the installation of smoke detectors and automatic sprinklers systems in hotels and motels.

Under the bill, H.R. 94—which was introduced in January 1989 by Rep. Sherwood L. Boehlert, R-N.Y., and passed by the House in November 1989—each state would be required to develop and submit to the Federal Emergency Management Agency a list of commercial lodgings that meet specific fire safety guidelines as developed by the National Fire Protection Assn.

Federal employees would be prohibited from staying in any hotels and motels while on government business that are not on the list unless there are no other rooms available within a "reasonable distance."

For a hotel or motel to be included on FEMA's "master list," each guest room must be equipped with a smoke detector and an automatic sprinkler.

The Senate made several changes before approving the legislation.

In the Senate version, for example, hotels or motels that are three stories or less would be exempt from the proposed law, while the exemption under the House version would apply to hotels and motels that are two stories or less, have no rooms adjoining interior corridors, and have access to immediate exits from the rooms to the ground level.

The Senate also increased the time limit for compliance by the hotel industry to two years, compared to the one year allowed by the House version.

However, a spokesman for Sen. Richard H. Bryan, D-Nev., who supports H.R. 94, says that House members will likely accept the Senate version and vote for approval of the changes on the House floor.

President Bush is expected to sign the bill in September, the spokesman for Sen. Bryan said.

Schauerte confirmed

The new federal insurance administrator was confirmed by the Senate Aug. 4.

C.M. (Bud) Schauerte fills the position within the Federal Emergency Management Agency, replacing Harold T. Duryee, who had been administrator since September 1986.

Mr. Schauerte, who was nominated by President Bush in June, will be responsible for running FEMA's National Flood Insurance Program and the Federal Crime Insurance Program.

The FCIP, which provides limited low-cost robbery and burglary insurance to businesses in high-crime urban areas, was reauthorized for another two years by Congress last year (*BI*, Sept. 25, 1989).

Previously, Mr. Schauerte, 61, was vp and associate director of governmental affairs since 1977 at American General Corp., a financial services company in Houston, Texas. Between 1973 and 1977, Mr. Schauerte was American General's corporate director of governmental affairs.

Earlier, Mr. Schauerte worked for petroleum firm Conoco Inc. in Houston in various positions between 1973 and 1955, but he took a year's leave in 1972 to serve as administrative assistant to the city's mayor, Louis Welch. ■

Resource claims

Continued from page 3

Inc. (*BI*, July 27, 1987).

The Armco decision has since been discredited by numerous courts, which have found cleanup costs are covered, Mr. Conn pointed out.

In the Armco case, the insurers "tried to set up a foil with the natural resource damages claim," he explained. Insurers argued that there was no coverage for cleanup costs because they were not "damages," but they conceded there would be coverage for natural resource damage claims, Mr. Conn said.

Today, however, insurance companies no longer are conceding coverage for natural resource damages claims.

"This is not the first time insurers have taken one position and later taken a conflicting position," Mr. Conn observed.

"Now that there are bigger problems than anticipated with regard to natural resource claims, insurers are disputing coverage," Mr. Conn said.

However, Mr. Williams said insurers have good reasons to dispute coverage for natural resource claims.

"Even though a natural resource damage claim is more akin to legal damages than a Superfund cleanup cost claim, all of the other conditions of coverage must be met," he said.

For example, the damage to the natural resources cannot be on the policyholder's own property and damage cannot have been expected or intended, Mr. Williams explained.

'Insurers are going to view these claims on a case-by-case basis,' says Mr. Williams.

In addition, the pollution exclusion, which bars coverage for all damage that is not "sudden or accidental," also may exclude coverage for natural resource claims, he said.

While insurers uniformly deny coverage for pollution cleanup claims, Mr. Williams is not sure whether the insurance industry will be as united on whether natural resource damage claims should be rejected.

"Reasonable minds can differ" on this issue, he said.

"Insurers are going to view these claims on a case-by-case basis," Mr. Williams said.

He predicted that while "there isn't going to be as big a dispute as there was with CERLCA cleanup claims," there will definitely be some coverage litigation.

But, Mr. Conn believes the CGL policy clearly provides coverage for natural resources pollution claims.

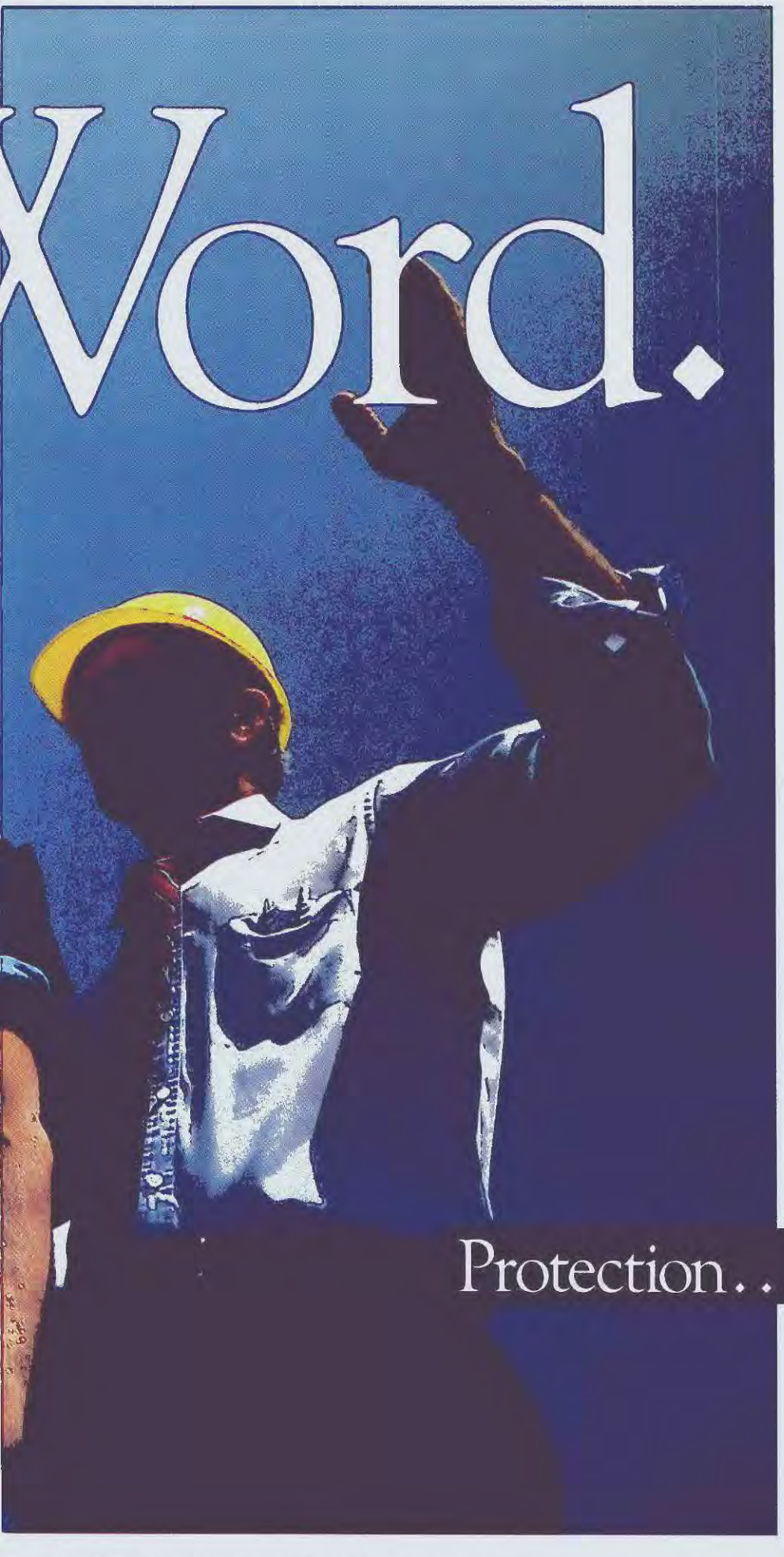
He notes that the policy states the insurer will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages."

Clearly, claims for damage to natural resources are "damages," Mr. Conn said.

Further, "there is nothing in the CGL policies to suggest that these claims would not be covered," he said. There are no exclusions pertaining to natural resource damage claims, he pointed out.

In addition, the pollution exclusion in the CGL form does not absolve an insurer from its duty to defend a policyholder against a natural resource damage claim, Mr. Conn said.

The exclusion would bar indemnification only if it is shown that the policyholder knowingly polluted, he said. ■





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European outlook for 1992

E.C. directive will usher in lower rates, broader wording

By Hugh A. Warren

THE EUROPEAN COMMUNITY'S Second Non-Life Directive was scheduled to be adopted into law by eight out of 12 E.C. member nations as of July 1. Spain, Greece, Ireland and Portugal have been given additional time to implement the measure. As of July 1, however, only France, West Germany, Denmark and the Netherlands had adopted the directive into their national laws.

The directive is part of the overall program of the E.C. Commission to achieve a single, barrier-free market by 1992. The Second Non-Life Directive stipulates that insurers of large corporate risks need not be established or authorized in member countries where they provide coverage. An insurer need only be authorized in the home country where it is domiciled.

The failure of some E.C. nations to implement the directive does not exist only in the insurance arena. Of the 68 internal market directives relating to 1992, only seven have been implemented by all 12 member states. The problem of translating elective decisions into individual national action is as old as the community itself.

Once the Second Non-Life Directive is adopted into the national laws of all members countries, there will be significant benefits for the risk manager with operations in the European Community.

These benefits include:

• **Lower insurance costs.** The result of consolidating large corporate risk exposures will result in more premiums under a single policy without the service and administration costs of issuing policies in each country. There will be more competition among the major European insurers to retain their large corporate risk business in their home countries. They will not want to lose it to other European insurers, be they from the same market or other E.C. countries.

The implementation of the Second Non-Life Directive will result in very competitive pricing for consolidated, large corporate risks, whether it be a European or U.S. multinational corporation.

Risk managers also will be able to "shop" for the policy carrying the lowest premium tax for their consolidated E.C. insurance program. At the moment, premium taxes vary by country, with the highest in Italy, at 17%, compared with no tax in the United Kingdom. Others fall in between, with West Germany and France both at 7%. And, the application of taxes varies by type of coverage.

There has been little discussion on harmonization of premium taxes within the Second Non-Life Directive. It has, however, been ascertained that the insurer of large corporate risks will have to allocate premium taxes to be paid to member country authorities based on exposures in those countries. These internal allocations by E.C. insurers will, naturally, come under intense competitive pressure.

Risk managers will be able to 'shop' for the policy carrying the lowest premium tax for their consolidated E.C. insurance program. And the implementation of the directive will allow the placement of an E.C. insurance program in the country or market providing the broadest coverage for a particular line.

• **Broader policy wording.** The directive will allow risk managers to also shop for the broadest policy for their E.C. program. There are at present several different forms prevalent in the various E.C. countries. Many of these are controlled forms and are restrictive in coverage.

As an example, the West German form of liability coverage, with an extended products endorsement, is one of the broadest in Europe. On the other hand, the West German property damage form has, until recently, been one of the more restrictive forms in terms of covered perils. The West German Government Commission has, however, recommended that premium rates and policy forms be freed from regulation in every line of insurance except health. As a result of these changes, it is now possible for the first time to get all-risks coverage in West Germany.

The implementation of the directive will allow the risk manager of large corporate risks to place his E.C. insurance program in the country or market that will provide the broadest coverage for that particular line.

The U.K. form of all-risk coverage

Continued on next page

Calculating the probability of accidents

A.R.M. excercises

By The Insurance Institute of America

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

This month's exercise, drawn from a recent national examination in ARM 54—Structure of the Risk Management Process, illustrates how some very elementary calculations can help an organization estimate its likely accidental losses and claims.

Q: The risk management professional for City Bus Co. is concerned about the growing number of traffic accidents involving one or more of the company's 500 buses. There have been substantial increases in the numbers of injured passengers and in the cost of repairing damaged buses.

• City Bus Co.'s risk management professional has developed the following probability distribution for the company's annual total cost to repair damaged buses:

Annual total cost	Probability
$50,000	0.12
$85,000	0.18
$150,000	0.32
$250,000	0.23
$500,000	0.15

Assuming that only the above loss totals are possible, give the probability that the company's annual cost to repair damaged buses will be greater than $150,000. Show your calculations.

And, on the basis of the above information, what is the expected value of the company's annual repair costs? Show your calculations.

• The probability that a City Bus Co. bus will be involved in a traffic accident in a particular month is 0.15. The probability that a bus passenger will be injured as a result of any given traffic accident is 0.1.

Show how to calculate the probability that, in a given month: A given bus will be involved in a traffic accident and a given passenger on that bus will be injured; and that a given bus will be involved in a traffic accident, but none of its 30 passengers will be injured.

A: To explain the concepts underlying this question, the following answer is much longer than expected on an examination. On that test, only the actual calculations, or in some cases an explanation of calculations, would be required.

• Because the probabilities given in the table in the question add up to 1.00, they portray a complete probability distribution that exhausts all the probabilities. By the assumptions made here, one of the five annual loss totals—but only one—must occur in any given year.

Only two possible outcomes can lead to losses of more than $150,000 per year: $250,000 and $500,000, whose probabilities are 0.23 and 0.15, respectively. Because these two outcomes are mutually exclusive—they cannot occur together in the same year—their probabilities may be added. Therefore, the probability of one or the other occurring—and, therefore, the probability of losses exceeding $150,000 in a given year—is 0.23 plus 0.15, or 0.38. Knowing this helps in estimating the likelihood that in a given year, an excess aggregate layer of insurance will be penetrated.

An "expected value" is a long-term weighted average outcome; here, the annual total of losses averaged over an extended period. An expected value is the sum of all possible outcomes, with each outcome being weighted (multiplied) by its probability. Here, the expected value of annual totals of loss is $201,800, computed as:

Cost	× Probability	= Expected value
$50,000	× 0.12	= $6,000
$85,000	× 0.18	= $15,300
$150,000	× 0.32	= $48,000
$250,000	× 0.23	= $57,500
$500,000	× 0.15	= $75,000
	1.00	$201,800

This expected value is the best indicator of the company's long-run annual average cost of these losses.

• Probability calculations like those following help estimate the likelihood of various events or combinations of events that may cause losses.

A bus accident and the injury of a passenger are two independent events. Their joint occurrence is, therefore, the product of their respective probabilities. Hence, the likelihood of a bus accident and of injury to a given passenger, in a particular month, is 0.15 × 0.10, or 0.015, which is equivalent to 1.5%.

The probability of an accident without any passenger being injured is, again, a joint probability of, first, an accident and, second, 30 uninjured passengers. Since any one passenger's probability of injury, given a traffic accident, is 0.1, that passenger's probability of not being injured in that accident is 1 minus 0.1, or 0.9. The probability of 30 passengers not being injured in a given accident, therefore, is 0.9 to the 30th power (0.9 multiplied by itself 29 times, which happens to be a relatively small number, less than 5%).

Therefore, the desired probability is 0.15 (the probability of a bus accident in a given month) times 0.9 to the 30th power. ■

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

E.C. directive

Continued from previous page
will probably end up being the European standard. A hybrid of the French and West German forms will probably set the standard for general liability and product liability coverages.

- **Access to more markets.** The Second Non-Life Directive will enable risk managers of large corporate risks in both Europe and the United States to have access to many more underwriters than in the past. The risk manager will have the option of deciding to use a home country insurer for his consolidated European program or major insurers from any other European market, as well as U.S. insurers that are established in the European Community.

Many U.S. risk managers may decide to have their entire international (non-U.S.) program written in Europe by a European insurer or a U.S. insurer based in Europe in order to take advantage of economies of scale in price and coverage. In other words, they may decide to have the program's master policy underwritten by an E.C.-based insurer so that, in addition to providing differences-in-conditions coverage over the rest of the world, the master policy will provide primary coverage for all E.C. operations. The directive will create the impetus for many U.S. risk managers to recognize, for the first time, that European insurers represent a very viable alternative on international programs that should be pursued.

In conclusion, the insurance changes in Europe in line with the E.C.'s "1992" initiative will have very positive benefits for the risk manager of a multinational corporation with E.C. subsidiaries or operations. There is, however, a certain amount of education and rethinking required to take maximum advantage of these changes. There is, also, an incredible amount of work to be done by the E.C. member countries to get the directives implemented into their national laws so that risk managers can take advantage of them. ■



Hugh A. Warren is executive vp and chief operating officer of Corroon & Black International in Boston.

Trimming health care costs

Managed care isn't just for Fortune 500 firms

By Terry D. Moore and Gerald E. Oljace

CORPORATE AMERICA has reached the proverbial fork in the road in its search for solutions to the health care cost crisis.

Employers can either shift additional costs to employees through increased contributions, deductibles and out-of-pocket maximums, or they can attempt to exert some control over the amount and cost of health care consumed by the workforce.

Many companies have already reached the end of the road with respect to the first option, because there are obvious limits to continued cost shifting. Envision the employee relations debacle of having to announce your new health care program—one with a $2,000 deductible and monthly employee contributions of $300!

The second option is generally labeled "managed care"—steering employees toward a limited panel of health care providers (doctors and hospitals) who offer price discounts and utilization controls.

Managed care has become big business for the major insurance companies that are investing millions of dollars to develop nationwide provider networks. Why? Quite simply, many insurers believe managed care represents the private sector's last chance to get health costs under reasonable control before the government steps in. Discussions about national health insurance are no longer confined to clandestine meetings behind closed doors.

Insurers also are interested in managed care because it's what their customers—particularly their large customers—want to buy. The managed care programs of some of this country's largest corporations—Allied-Signal Inc., First Interstate Bancorp, Marriott Corp., Sears, Roebuck & Co., Southwestern Bell Telephone Co.—have gained considerable publicity.

Unfortunately, relatively few companies are large enough to have the clout to negotiate these jumbo contracts with the major insurance companies. Managed care may be great for Allied-Signal, but what can the mid-sized employer do?

Globe Glass & Mirror Co. had to confront this very question. Globe is a privately held, Chicago-based provider of automotive glass replacement services. Globe has about 1,000 employees, 600 of whom are eligible for health insurance coverage, in several locations across the country.

For Globe, 1989 was the second consecutive year of significant health care cost increases. The company offered a medical plan with high and low options, and was concerned about shifting additional costs to employees in what was already a "lean" program (see chart).

Another sobering statistic: If Globe did nothing, its 1990 per-employee health costs were expected to be $5,220—an increase of 60% over 1989's already high costs. With numbers of this magnitude, Globe's senior management was very interested in what human resources was going to do to solve the problem.

Globe's former medical plan

	High option	Low option
Deductible		
-- Individual	$150	$400
-- Family	$450	$1,200
Coinsurance	80%	75%
Out-of-pocket maximum (including deductible)		
-- Individual	$1,150	$2,400
-- Family	$3,450	$7,200
Monthly deductible		
-- Individual	$24.18	$5.84
-- Family	$65.84	$16.68
Percentage of employees participating	67%	33%

BI/HOLLY SEGUINE

After some preliminary discussion, we agreed that additional cost shifting wasn't going to work. Globe's employees already viewed the company's medical plan as noncompetitive. But managed care—at least the nationwide network version being implemented by major corporations—was also a problem. Globe isn't very big, and with the exception of Chicago, it doesn't have a large concentration of employees in any one location.

The company will achieve significant cost savings, and employees appreciate the richer benefits, lower contributions and no-claim-form-hassles of HMOs.

We agreed that the most traditional, and perhaps purest, form of managed care—health maintenance organizations—did hold some promise. Group and staff model HMOs in particular have demonstrated an ability to deliver quality health care in a cost-effective manner. These HMOs pay doctors either a salary or a monthly "capitation" (a predetermined amount per enrollee for the delivery of care), so physicians are rewarded for efficiency. This is in direct contrast to the traditional fee-for-service delivery system, where physicians earn more if they treat more.

We had the beginnings of a strategy, but we needed the answer to a major question: "How would employees react?" Globe was very direct with employees about the nature and magnitude of the company's problem, and made it clear that it had to do something. But management also felt it was important to survey employees about potential health cost management options, soliciting honest feedback about the best approach to take.

The survey was mailed to just over 600 Globe employees, and 205, or 33%, responded. Employees were asked to rank various cost management approaches from most to least preferred. Some 58% of respondents said they would join an HMO, 23% opted for additional utilization review controls, 13% said contributions should be raised and 6% suggested increasing the deductible/out-of-pocket maximum. It appeared that our proposed cost control strategy was the one that was most acceptable/least offensive to Globe employees.

The next step was to obtain proposals from health plans in Globe's large locations. Fortunately, we had some well-managed and cost-effective group and staff model HMOs to choose from—Kaiser in southern California, Atlanta and Denver; Michael Reese Health Plan in Chicago; and Health Alliance Plan in Detroit. The proposals were very attractive, with average total per-employee costs of $2,700, compared with expected 1990 costs of $5,220 if Globe made no changes to its health care program.

Because of this significant cost advantage, we developed an employee contribution and communication strategy to actively encourage HMO participation. We also consolidated the high and low options in Globe's indemnity plan to achieve further cost and administrative efficiencies. The new plan has a deductible of $300 individual/$900 family, 80% coinsurance and an out-of-pocket maximum of $3,000/$9,000. In addition, we strengthened the plan's utilization management provision on pre-admission hospital certification, mental health/chemical dependency review and large case management.

Based on the actual Jan. 1, 1990 health plan enrollment, nearly 60% of Globe's employees have opted for HMO coverage, and HMO participation is more than 68% if we count only those employees living in areas served by the HMOs. Most impressively, the managed care strategy is expected to save Globe almost $800,000 for 1990, or 25% of what its health costs would otherwise have been.

While Globe's experience may not be replicated by all companies, it does present an important message—you don't necessarily need to be a Fortune 500 company to gain the benefits of managed care. In Globe's case, the new managed care strategy was a win/win situation: The company will achieve significant cost savings, and employees appreciate the richer benefits, lower contributions and no-claim-form-hassles of HMOs. ■

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State regulation

Continued from page 1

so many agencies for protection of the consumer from defective products, (but) insurers escape this scrutiny. Why?" asked James D. Birchfield, risk manager for the National Rural Electric Cooperative Assn. Inc. in Washington, D.C.

While some risk managers strongly criticize the job state insurance departments are doing, others said they believe federal regulation would be no improvement.

Only 17% of the risk managers responding to the survey said federal regulation should replace the current system of state regulation.

Forty-seven percent of the risk managers said the federal government should set minimum solvency standards for the states to enforce.

Another 8% said federal regulation is needed in addition to state regulation as an alternative licensing authority.

However, 28% rejected any type of federal solvency regulation.

"I don't believe the federal government can do a better job than the states," said Terry L. Varner, corporate risk manager for Perkins Family Restaurants in Memphis, Tenn.

"The current dilemma facing savings and loan institutions across the country is the direct result of federal regulation. Why have the feds ruin the insurance industry?" asked Don York, manager of insurance services with Iowa Power Inc., an electric utility in Des Moines.

"Less governmental regulation is better," said the risk manager/safety director for an East Coast waste hauling and removal company with annual sales of $280 million.

"Sometimes the prospect of single, all-encompassing (federal) law seems like a desirable alternative to 50 separate and varied sets of laws." However, "if you believe in states' rights, you must opt for the 50 separate laws," said Carl B. Seaholm, manager of corporate risk management for J.C. Penney Co. Inc. in Bethel Park, Pa.

"While uniform financial accounting is needed, given the (federal) government's track record with financial institutions, I doubt if anything would be accomplished by federal regulation," said the risk manager for a manufacturer with more than $100 million in annual sales.

On the other hand, many risk managers said that federal regulation of insurer solvency is now necessary.

"It is my belief that at least multistate insurance buyers and sellers would generally benefit from a system of federal insurance regulation than the current patchwork of state regulation," said the director of corporate risk management for an engineering and construction company with $850 million in annual sales.

"Insurance is a business conducted on a national and international scale. State regulation by each jurisdiction is inefficient," said Jeffrey J. Adams, director of subsidiary insurance services for General Electric Capital Corp. in New York.

The insurance industry "needs the consistency that only federal regulation can bring," said the president of a bank with 2,300 employees.

"Federal regulation similar to the regulation of other financial institutions is a must," said Duane Amos, risk manager for the Missouri Highway and Transportation Department in Jefferson City, Mo.

"Federal (regulation) is a must," agreed the director of risk management for a real estate developer in the Northeast with 5,000 employees.

Some risk managers said federal action was inevitable if states do not act quickly.

"Some type of self-policing mechanisms must be implemented by states and soon due to the increase in the number of insolvencies, which are attracting wide publicity," said Mari Jo Hill, senior risk analyst with Cary, N.C.-based SAS Institute Inc.

If not, "pressure will be brought to erode McCarran-Ferguson protection," she said, referring to the McCarran-Ferguson Act, which leaves primary insurance regulation to the states and exempts insurers from most federal antitrust laws.

Solvency regulation "needs more careful attention. We can't afford another S&L disaster," remarked the claims manager for a Midwest food manufacturer with $1.5 billion in annual sales.

"Lessons can be learned from the current S&L crisis. Huge profits today cannot be allowed while the future is in jeopardy," said John L. Benigno, manager of risk/insurance for Babcock Industries Inc., a manufacturer based in Fairfield, Conn., with $1 billion in annual sales.

Others caution that regulators should not be too heavy-handed.

"Over-regulation can make the insurance business too restricted," noted the director of risk management for a Texas-based chemical manufacturer with more than $5 billion in annual sales.

Likewise, "insurance company regulations should be increased only where abuses are taking place. Too many regulations increase costs, reduce the number of insurance companies and eliminate competition," said the vp/treasurer of a manufacturer with $72 million in annual sales.

"Insurers should not be overregulated—give them a chance to start up and fail," said the national risk manager for a West Coast-based automotive importer with more than $12 billion in annual sales. Overly restrictive regulation "will dry up capital" and drive "risk takers" from the insurance business, the risk manager said.

"Too much government regulation will only make (the problem) worse. The industry should police itself more efficiently," said the assistant secretary-corporate insurance at a savings and loan with 2,000 employees.

Some risk managers said that failed insurers, rather than regulators, should be blamed for problems caused by the insolvencies.

"When people run their business with integrity, our problem in this area will greatly diminish," said Chris Anderson, insurance and risk manager for the Worldwide Church of God. "To the extent that can be realized, there is hope. Otherwise, all is lost. We will surely repeat the past."

To better enforce solvency regulation, "all directors and officers of an insolvent (insurance) company should serve time in a penal institution, just as should directors and officers of failed financial institutions," recommended the vp of risk and safety at a food processing company with 2,400 employees.

Another risk manager agreed. "Make brokers and directors and officers of insurance companies financially liable for insolvencies—not the government—through a trust fund in their own companies. Let's have a true United States Lloyd's," said the director of risk management for a transportation company with more than $4.6 billion in annual sales. Lloyd's of London syndicate members bear unlimited liability.

Finally, one risk manager blames plaintiffs' attorneys, rather than insurers or regulators, for many problems in the insurance industry.

"Go after the tort system in this country. The plaintiffs' trial lawyers are bankrupting the risk transfer system," said the staff vp-risk management for a nationwide conglomerate with $1.7 billion in annual sales.

"The plaintiffs' trial lawyers in the U.S. have successfully transferred the attention from them and effective tort reform to the insurance companies as the villains responsible for insurance capacity and financial problems," the risk manager said.

•

Risk managers and other corporate executives who are responsible for risk management functions are invited to join the Business Insurance Risk Management Board. Just send a card with your name, title, company and address, noting you would like to join the Risk Management Board, to Kathryn J. McIntyre, Associate Publisher/Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. You will receive several surveys annually on risk management issues.

Risk managers believe worth should not restrict guaranty fund coverage

By JAMES M. BURCKE

Risk managers by a wide margin believe that all companies—no matter how high their net worth—should be eligible for coverage from state guaranty funds if an insurer is unable to pay claims.

Insurers, which finance guaranty funds through assessments, and other observers argue that companies with huge net worths should be excluded from guaranty fund coverage. They maintain that these companies can afford to absorb the amounts that guaranty funds would have to pay. They also argue that risk management staffs at large companies have the expertise to judge the financial stability of insurers.

However, scores of risk managers responding to the latest *Business Insurance* Risk Management Board survey point out that insurers recoup guaranty fund assessments by including loading factors in all premiums.

And many risk managers who said that companies with a high net worth should be excluded from guaranty fund coverage said that the premiums paid by these companies should be lowered to exclude guaranty fund costs.

At least 10 states use policyholder net worth in determining eligibility for guaranty fund coverage. In 1986, the National Assn. of Insurance Commissioners amended its model guaranty fund act to require corporations with net worths exceeding $50 million to reimburse a guaranty fund for liability claims payments made on its behalf (*BI*, Feb. 13, 1989).

However, a Michigan law allowing the state guaranty fund to deny coverage to policyholders with a substantial net worth was struck down last year in U.S. District Court.

While not criticizing the basic concept of denying coverage to policyholders capable of absorbing losses, Judge Barbara K. Hackett ruled that net worth is an inadequate criterion for determining which policyholders to exclude from guaranty fund coverage (*BI*, July 17, 1989).

The case is now pending before the 6th U.S. Circuit Court of Appeals in Cincinnati (*BI*, Feb. 12).

In the latest *Business Insurance* Risk Management Board survey, 76% of the 150 responding said that all corporations—no matter how high their net worth—should be entitled to guaranty fund coverage. Eighteen percent said companies with huge net worths should be excluded and the other 6% either did not answer or were uncertain of their opinion.

Of those risk managers who would deny coverage on the basis of net worth, 44% said firms with net worths of at least $50 million should be excluded. Sixteen percent said they would set the limit at $25 million and another 16% said companies with $10 million or more in net worth should not be entitled to coverage. Twenty-four percent set some other benchmark.

Many risk managers said that all companies—regardless of net worth—should be eligible for guaranty fund coverage because insurers raise premiums for all policyholders to cover the assessments.

"Large companies are forced to fund as much of the residual cost (of guaranty funds) as small employers," said Christopher E. Mandel, director of risk management at the American Red Cross in Washington, D.C.

"We pay a significant charge on our premium" to cover insurers' guaranty fund assessments, noted the vp of risk management for a retailer with $3 billion in annual sales. "If we help fund the guaranty fund, we should be included" in the coverage.

"Since all premiums support such funds, all policyholders should derive the already limited protection of the funds," said the director of risk management and property taxation for a diversified manufacturer with $300 million in annual sales.

Other risk managers said it is only fair that guaranty funds cover all policyholders.

"This is the only fair and equitable way to pay for insolvencies," said the manager of insurance products and services at a state dental association with $10.5 million in annual sales.

"All insureds of insolvent companies should be eligible to receive some funding," said the corporate insurance manger of a financial institution with $8.2 billion in assets.

"We purchase coverage to spread financial risk, not to take on a different risk"—the risk that an insurer will become insolvent, said the executive vp and controller of a commercial banking company with $8 billion in assets.

Philip C. Bly, risk manager with Cleveland-based Brush Wellman Inc., agreed. "If a corporation had decided to purchase insurance, it must need it and is entitled to guaranty fund protection."

Continued on next page

To curb insurer failures, risk managers advocate certifying loss reserves

More than two-thirds of the risk managers surveyed say requiring actuarial certification of insurer loss reserves each year would help prevent insolvencies.

However, strict regulations that would prevent insurers from setting extremely low rates would not be very effective in regulating solvency, risk managers say.

As part of a recent *Business Insurance* Risk Management Board survey, risk managers were asked which measure or measures they thought would be most effective in preventing insurance company failures.

Requiring annual actuarial certification of loss reserves was the most popular response, with 71% saying it would be effective.

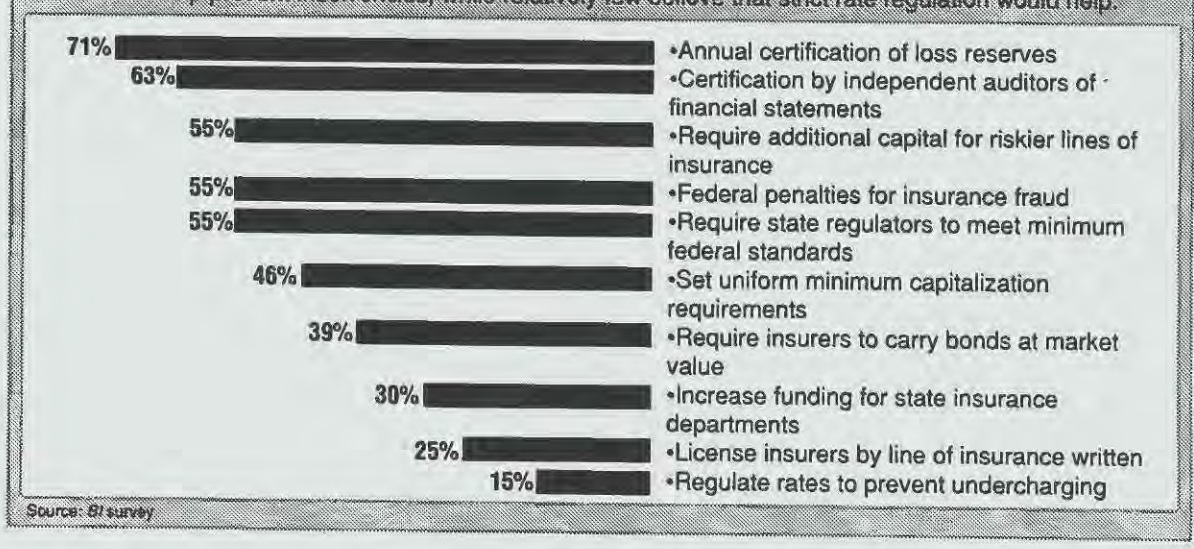
The next most popular safeguard, named by 63% of the responding risk managers, is requiring independent auditors to certify the annual statutory financial statements that insurers file with regulators.

Just more than 55% said regulators should require insurers that write riskier lines of business to support that business with more capital, rather than applying a uni-

Continued on next page

Best ways to prevent insolvencies

Almost three-quarters of surveyed risk managers believe that requiring certification of insurers' loss reserves would help prevent insolvencies, while relatively few believe that strict rate regulation would help.



Source: *BI* survey

Insurer solvency

Continued from previous page

form premium-to-surplus ratio to all insurers.

Slightly less than 55% of the risk managers surveyed support a federal criminal law setting specific penalties for insurance fraud.

"There should be stiffer penalties and criminal charges where fraud is committed," recommended the vp-risk management for a retailer with $3 billion in annual sales.

The same percentage of risk managers—slightly less than 55%—believe that state insurance departments should meet certain minimum federal standards for regulating insurers.

"The key is to force state regulators to meet minimum standards in regulation," said the vp-insurance of a health care company with $5 billion in annual sales.

Another 46% of the risk managers say uniform minimum capital requirements should be set for insurers, no matter where they are based.

'The focus of avoiding fraud should be on initial capitalization to prevent wrongdoers from entering the market in the first place,' says the insurance/benefits manager of a Midwest steel supply company with annual sales of $75 million.

"The focus of avoiding fraud should be on initial capitalization to prevent wrongdoers from entering the market in the first place," said the insurance/benefits manager of a Midwest steel supply company with annual sales of $75 million.

And the risk manager for a state university in the Southeast favored increasing the "capital requirements for licensing of commercial insurance companies."

Thirty-nine percent of the risk managers said that insurers should be required to carry bonds at market value, rather than at their amortized value.

Interestingly, while 71% of the respondents said they did not think states do an effective job of regulating insurer solvency (see story, page 1), only 30% of the risk managers say that funding should be increased for state insurance departments.

Only 25% think companies should be licensed for each line of insurance they write.

Finally, only 15% of the Risk Management Board members thought strict rate regulation should be adopted to prevent undercharging by insurers.

"Rate regulation should be limited to personal lines, allowing adequate deviation (upward or downward) for 'underwriting judgment,' " said the director of risk management and property taxation for a diversified manufacturer in the South with $300 million in annual sales.

Some risk managers also had other suggestions to beef up regulation of insurer solvency.

Insurers "should be solvent based on underwriting profit, not investment income," according to the insurance manager for an automobile fleet leasing operation with more than $10 million in annual sales.

"Personal lines should be regulated and administered completely separately from commercial lines—more regulation of personal lines, less in commercial," said the director of risk management at a Mid-Atlantic university with 10,000 employees.

The risk manager for the Southeast university also suggested the "careful review of so-called excess, specialty company operations."

—By James M. Burcke

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Guaranty fund coverage

Continued from previous page

The risk manager for a real estate management firm with $30 million in annual revenues noted that "ultimately, it is not the large corporation that would suffer—it would be the third parties that wouldn't be able to collect. The consumer or injured party should still be protected, not matter how large the corporation."

Some risk managers agreed with Judge Hackett in Michigan that net worth is not a good criterion on which to base guaranty fund coverage.

"Many large corporations are subject to takeover, stripping financial stability from the corporation," said the director of risk administration for a retail food company with 25,000 employees. "No one should be left to hold the bag because of poor management. All corporations should be treated on an equal basis."

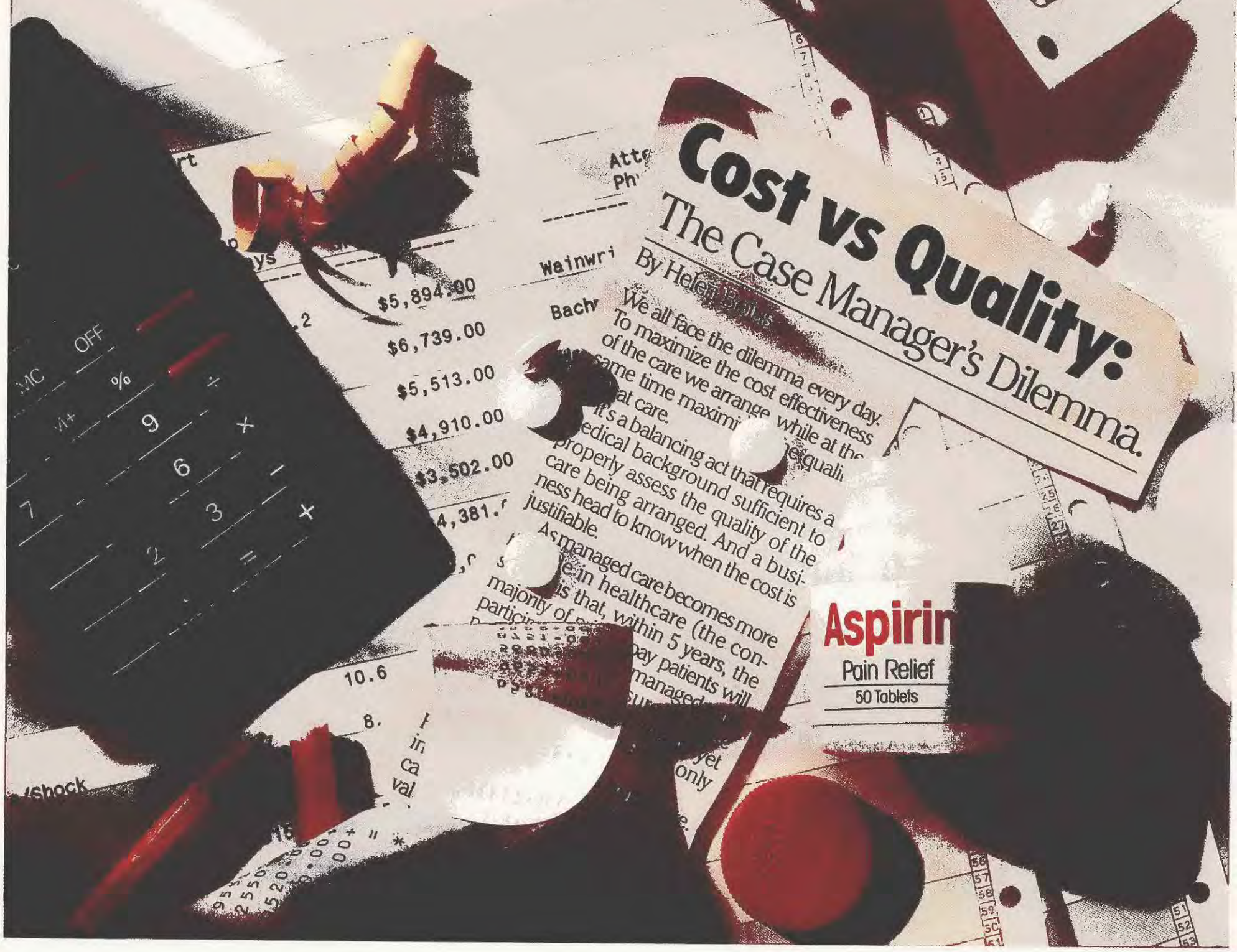
"Net worth changes rapidly. A sudden drop would not be catastrophic if covered," stated the assistant vp-risk management of an information services company with $910 million in annual sales.

"Things change too rapidly these days in the business climate," added the claims manager for a Midwestern food manufacturer with $1.5 billion in annual sales.

Some risk managers who said all companies should be entitled to guaranty fund coverage suggested changes in the current system.

"Rather then exclusion, give corporations the option of choosing or rejecting guaranty fund coverage. Set a sliding scale of charges for guaranty fund coverage based on corporate net worth—larger net

Continued on next page



Guaranty funds

Continued from previous page

worth means a larger charge," suggested Keith W. Grand, risk manager for the city and county of San Francisco.

The director of corporate risk management for an engineering and construction company with $850 million in annual sales "would not mandatorily exclude" companies of certain net worths from guaranty fund coverage, but "might provide an option to 'opt out' of coverage."

"I would not exclude any size company from receiving guaranty fund coverage unless (the) excluded company received favorable rating consideration," recommended the vp of risk and safety for a food processor with 2,400 employees.

The director of risk management for a capital goods manufacturer in the Northeast with $3.8 billion in annual sales said that if the policyholder had knowledge that the insurer was facing financial problems, "the state should be able to exclude" that policyholder from have to pay for the guaranty fund system.

Larger companies should be "excluded from paying in and taking out," said the director of risk management services for a Midwest-based manufacturer with more than $1 billion in annual sales.

"More sophisticated consumers shouldn't need the protection," the director of risk management services said.

However, some risk managers believe that companies with large net worths should not be given guaranty fund protection.

"Larger corporations can afford more expertise in risk management and should be evaluating carriers and reinsurance according to their risk," said Patrick T. McGovern, risk manager at Connecticut Mutual Life Insurance Co. in Hartford.

"Large corporations should be sophisticated buyers" that can "evaluate (insurance) company solvency," according to the insurance manager for a Midwest manufacturer with $500 million in sales.

"Risk managers should know their business and consequently should not need such guarantees," said the director of risk management for a conglomerate with more than 3,000 employees.

James D. Birchfield, risk manager for the National Rural Electric Cooperative Assn. Inc. in Washington, D.C., says companies with more than $25 million in net worth should be excluded from guaranty fund coverage, "as should wealthy individuals be excluded from Social Security. (Guaranty funds) should protect only those that need it, not those financially able to absorb the loss."

The vp/treasurer for a manufacturer with $72 million in annual sales says companies with large net worths should be excluded from guaranty fund coverage—it's "too expensive otherwise."

And, the vp of a real estate company with 350 employees believes that corporations with more than $50 million in net worth "should be required to maintain their own guaranty fund—an interest-bearing escrow-type account." ■

'I would not exclude any size company from receiving guaranty fund coverage unless (the) excluded company received favorable rating consideration,' says the vp of risk and safety for a food processor with 2,400 employees.

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Broker liability

Continued from page 1

from damages in insurer insolvencies—for a variety of reasons.

"Brokers can only assess financial viability to a limited degree. Ultimately, they are not much more informed than A.M. Best makes them," said Christopher E. Mandel, director of risk management for the American Red Cross in Washington, D.C.

"Brokers cannot any more vouch for insurance companies than the 'person' on the moon" can, said the director of insurance for a North Central educational institution with a $1.5 billion annual budget.

"Brokers cannot be responsible for the internal operations of the companies they place business with," said the corporate risk manager for a Northwest steel manufacturer with 1,200 employees.

"They must rely on the best information available to them to determine the security of those companies. That information could be inaccurate or out-of-date," according to the risk manager.

"Further, brokers may not be able to find enough (errors and omissions) insurance or have funds sufficient to pay such losses," the risk manager said.

"Brokers do not have the time or the resources to fully investigate the financial background of underwriters. If state regulators did better jobs, fewer insolvencies would occur," said the manager of insurance products and services for a Michigan-based association with $10.5 million in annual revenues.

"I believe brokers should research and carefully watch the financial condition of insurance companies they place their clients with, but not be liable for failures," said the director of risk management for a publishing company with $3.5 billion in sales.

One risk manager said holding brokers to a sweeping standard of liability would be unfair because they often cannot foresee insurers' future problems.

"The insurer may have been perfectly solvent at the time of placement," said the director of corporate risk management at an engineering and construction company with $850 million in annual sales.

Others point out that holding brokers responsible for unpaid claims would complicate the brokerage process and increase policyholders' costs.

"Making brokers guarantors of insurers will certainly be ineffective, make them overly cautious and encourage them to find a way to inflate their income—at the insured's expense—to compensate for their own additional liability," said the insurance/benefits manager for a Midwest steel supply company with $75 million in annual sales.

"To do so would only punish the good, ethical broker and would not harm or hinder the sleaze-bag broker, just like the good insurance company pays for the sleaze-bag companies," said the vp-risk management and safety of a food processing company with 2,400 employees.

In fact, holding brokers to such a high standard of liability would virtually eliminate the need for insurance company solvency regulation, one risk manager said.

"Brokers cannot perform the function of regulation and review. If that were required, we wouldn't need insurance commissioners with so-called audit staffs," said James D. Birchfield, risk manager for the National Rural Electric Cooperative Assn. Inc. in Washington, D.C.

In a similar vein, "if the state agencies with responsibility for monitoring the solvency of insurance companies cannot do an adequate job, how can the brokers? Their role would be to ensure solvency—something that is inappropriate," remarked the risk manager for a consulting engineering firm with $75 million in annual sales.

'Brokers cannot perform the function of regulation and review,' says James D. Birchfield.

Another risk manager said holding brokers liable probably would not do any good because many brokers do not have the resources to pay claims when insurers do become insolvent.

"Small brokers wouldn't have the financial ability to pay anyway," reasoned the director of corporate insurance for an East Coast chemical company with annual sales of $3 billion.

Many risk managers also said that the policyholder—not the broker—must be the ultimate judge of an insurer's security.

"The insured has responsibility for (an insurer's) creditworthiness," said the risk manager for a Texas information services company with annual sales of $90 million.

"Buyers of insurance make the final decision on what company to use," said the director of corporate risk management for a manufacturing and hotel management company with $450 million in annual sales.

"Insurance buyers should check on the financial strength of insurers," said the risk manager for a ship repair company in the Southeast with more than $75 million in annual sales.

The "ultimate risk belongs to the insured," agreed Jim Dineen, vp-risk management for Barnett Banks Inc. in Jacksonville, Fla.

Mr. Dineen said that "brokers should be held liable only if fraud is involved."

Likewise, many other risk mangers said that while brokers generally should not be held liable when insolvent insurers cannot pay claims, there may be some circumstances in which brokers perhaps should be held liable.

Brokers should not be held liable "except in cases of misrepresentation, fraud or where the broker/agent has an ownership interest in the insurer," said the director of risk management and property taxation for a diversified manufacturer in the South with $300 million in annual sales.

"If negligence is involved, then they should be held liable," said the vp-risk management for a retailer with $3 billion in annual sales.

Brokers should be held liable "in instances where the broker should have known—through readings in standard insurance periodicals and Best's quarterly updates—that an insurer was in trouble and failed to advise the insured of this financial difficulty before binding" coverage, said the corporate insurance manager of a financial institution with $8.2 billion in assets.

The vp of a commercial real estate services company with more than 1,800 employees said brokers should be held liable for unpaid claims when there was "collusion between the broker and the carrier to withhold information from the client" and when the broker "ignored obvious—or readily available—data which should alert industry professionals to the instability of a carrier."

Brokers should not be held liable "unless brokers fail to disclose all pertinent information regarding the insurer—Best's rating, financial strength, reinsurance, etc.," said the chief executive officer of a wholesale pipe distributor in the Southwest with $72 million in annual sales.

But many risk managers who believe brokers generally should not be held liable for unpaid claims after an insolvency said brokers must take steps to make sure they place coverage with only financially viable insurers.

"Brokers should establish a uniform evaluation of the markets they represent and identify these markets by their financial standing—outside of Best's or similar services," said the risk manager for a state university in the Southeast.

However, some risk managers believe that brokers should generally be held liable when insurers cannot pay a policyholder's claim.

Policyholders "accept the guarantee of the broker. The broker should be held accountable," said the director of safety and security of a transportation company in the Southeast with $42 million in annual sales.

"Brokers act on the behalf of insureds. A company that goes broke for any reason other than a very bad run of luck is an onus that brokers must carry as a part of their duty to their client," said the risk manager for a petroleum marketing company with $300 million in annual sales.

Brokers "have a fiduciary responsibility that should require financial responsibility" for unpaid claims, said the senior director of risk management for a retailer with $3 billion in annual sales.

"Brokers are part and parcel to the marketing stream and should not be exempted from liability," said the director of risk management for a food warehouse and processing company in the Midwest with 1,500 employees.

"They certainly have some responsibility for collecting commissions," said the treasurer for a Michigan business with $3.5 million in annual sales.

Several risk managers said holding brokers liable would promote more careful selection of insurers.

"Given this responsibility, brokers will take better care in evaluating insurers," said the risk manager for a school board in the Northeast with 1,300 employees.

"Brokers must have more incentive to protect insureds," said the director of budget and cash management at a Southeast fast-food chain with $190 million in annual sales.

However, like the risk managers who say brokers should not be held liable, many of those who generally favored holding brokers responsible for unpaid claims also qualified their answers.

"If the client has depended on (the broker's) expertise to place insurance with sound carriers, then the broker should be responsible. However, if the client dictates who the carrier is, either by name or insisting on below-market premiums, then (the policyholder) should be liable," said the manager of treasury operations for a Northern California manufacturer with $250 million in annual sales.

A broker should be held liable "if the broker was given instruction to place insurance with viable companies only," said the assistant vp/risk manager for a bank in the Pacific Northwest with 2,600 employees.

Likewise, brokers should be held liable "only if they have not advised the insured of the Best's rating or suspected instability of the insurer before placing coverage with that insurer," said the risk manager of a real estate management company with $30 million in annual revenues.

Some risk managers proposed setting specific standards or tests for broker liability.

Brokers should not be held liable "as long as (the insurer's) Best rating is B or above" and the broker notifies the policyholder of the rating, said the staff vp/risk manager for a conglomerate with $1.7 billion in annual sales.

"Brokers should be held to a 'reasonable' degree of accountability. Placing business with shaky insurers simply on the basis of premium would not pass this test," said the risk and insurance representative for a Midwest public utility with $300 million in annual sales.

One risk manager—who believes brokers should not be held liable for claims not paid by an insolvent insurer—put the debate on a higher plane.

"Would you want your pastor to be liable if you didn't go to heaven?" asked Carl B. Seaholm, manager of corporate risk management for J.C. Penney Co. Inc. in Bethel Park, Pa. ■

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Business Insurance

Pollution ruling

Continued from page 1

Stamina Mills Inc. subsidiary, also located in Providence.

A Kayser-Roth spokesman said the company's insurers are providing coverage under a reservation of rights, but no coverage litigation has been initiated. The company's insurance will cover the estimated $4 million to $7 million cleanup, he said.

In its decision, the 1st Circuit said, "A fair reading of CERCLA allows a parent corporation to be held liable as an operator of a subsidiary corporation." That law allows "all persons" who are either the "owner or operator" of a polluted waste site to be held liable for cleanup costs.

"Congress, by including a liability category in addition to owners ('operators') connected by the conjunction 'or,' implied that a person who is an operator of facility is not protected from liability by the legal structure of ownership," said Judge Hugh H. Bownes, writing for the majority.

"In addition, the legislative history provides no indication that Congress intended 'all persons' who are 'operators' to exclude parent corporations," he wrote.

Judge Bownes also noted that lower-level federal courts have held parent companies liable for their subsidiaries' cleanup costs.

And, most recently, the 11th U.S. Circuit Court of Appeals ruled that lending institutions that hold a security interest in polluted property and become active in the management of a corporation can be held liable for cleanup costs, Judge Bownes noted (*BI*, June 4).

If other courts are influenced by the 1st Circuit decision, attorneys say, parent corporations nationwide may find themselves liable for cleanup costs assessed against a subsidiary.

Corporate liability will be expanded under the ruling, said Kayser-Roth attorney Deming Sherman of Edwards & Angell in Providence, R.I. "The decision holds that parent companies can be held liable if they exercise significant control over subsidiaries."

Jerome Perlmutter, Kayser-Roth's general counsel, called the ruling "a change in basic corporate law." If other courts expand on the ruling, "it would significantly change the parent/subsidiary relationship," he said.

"There is a clear willingness on the part of courts" to hold parent companies liable for the environmental problems of their subsidiaries, said environmental attorney Robert Holden of Liskow & Lewis in New Orleans.

The Kayser-Roth spokesman agreed: "A lot of courts have abandoned traditional public policies of limiting liability of investors and corporations."

Mr. Perelman of the chemical manufacturer's trade group, however, claimed that "nothing in Superfund. . .indicates Congress intended to do away with basic corporate law principles."

Under those principles, the so-called corporate veil between parent and subsidiary is pierced only after a legal showing that the subsidiary was set up as a sham to avoid liability.

In holding Kayser-Roth liable, the 1st Circuit did not address whether the corporate veil separating it from Stamina Mills should be pierced.

Rather, it based liability on the amount of control the parent exerted over its subsidiary. Kayser-Roth, the court ruled, is an operator subject to liability for cleanup costs under Superfund.

The decision is therefore not entirely a defeat for companies, according to a corporate attorney.

"The 1st Circuit's decision is silent on the piercing theory—they affirmed on the control theory," said O. Kirby Colson III of Hinshaw, Culbertson, Moelmann, Hoban & Fuller in Chicago. Liability is expanded only for corporations that exercise significant control over subsidiaries, he said.

Therefore, the decision is "less damaging" to corporations than if the court found liability using both theories, according to Mr. Colson.

The court acknowledged its decision would not affect all corporations. "It is obviously not the usual case that the parent of a wholly owned subsidiary is an operator of the subsidiary," Judge Bownes wrote.

"To be an operator requires more than merely complete ownership and the concomitant general authority or ability to control that comes with ownership. At a minimum, it requires active involvement in the activities of the subsidiary."

Several lawyers fault the ruling for failing to define "active involvement."

Corporations are left "in the dark," said the CMA's Mr. Perelman. "It is not clear what 'active participation' means."

Corporations need to know "under what circumstances a parent can be held liable," agreed Mr. Sherman, Kayser-Roth's attorney.

In its petition for a rehearing by the full 1st Circuit filed on Aug. 16, Kayser-Roth says: "There are frequently questions of parental liability, and the panel's opinion does not clarify the respective liability of parent and subsidiary."

The petition continues that the U.S. Environmental Protection Agency "is spending millions of dollars litigating these issues, and this panel's opinion will give little guidance to future litigants."

Although the 1st Circuit did not set out a standard for parent company liability under CERCLA, it did review the circumstances that created liability for Kayser-Roth.

And some guidance may be provided by looking at how Kayser-Roth operated, attorneys say.

The appellate court noted that the trial judge concluded that "Kayser-Roth. . .exerted practical total influence and control over Stamina Mills operations."

Specifically, the U.S. District Court for the District of Rhode Island found that Kayser-Roth "exercised pervasive control over Stamina Mills" by, among other things, having:

- Total monetary control over the subsidiary, including the collection of accounts payable.
- Control over the subsidiary's governmental contacts, including environmental matters.
- Control over its purchase or sale of real estate.
- Control over its capital expenditures of more than $5,000.

Kayser-Roth "had the power to control the release or threat of release of TCE, had the power to direct the mechanisms causing the release, and had the ultimate ability to prevent and abate damage," the district court said.

Kayser-Roth also filled almost all of Stamina Mills' director and officer positions with its own personnel, the district court noted.

The 1st Circuit concluded that "such control is more than sufficient to (make Kayser-Roth) liable as an operator under CERCLA."

Mr. Perlmutter, the company's general counsel, said the court erred. Kayser-Roth "was not the alter ego" of Stamina Mills, he said. "What Kayser-Roth did is typical of what any parent does with regard to a wholly owned subsidiary."

The 1st Circuit also noted in its decision that it was "unpersuaded" by the 5th Circuit's reasoning that parent companies cannot be held liable for pollution by subsidiaries.

The 1st Circuit said its decision does not conflict with the 5th Circuit's ruling. The court reasoned that the 5th Circuit was determining whether the parent corporation can be held liable for the activities of its subsidiary. But in the Kayser-Roth case, the 1st Circuit was determining whether the parent company itself—by controlling its subsidiary—can be held liable under CERCLA.

Attorneys, however, saw conflicts in the rulings.

"There certainly appears to be a conflict," said attorney Mr. Holden, who argued the case before the 5th Circuit.

The conflict means that "as a practical matter, the law in this area is unclear," said Mr. Sherman, Kayser-Roth's attorney

A conflict between circuits "enhances the chances the Supreme Court will take up the question," said Mr. Holden.

"One of the criteria for Supreme Court review is a conflict with the circuits," said corporate attorney Mr. Colson. ■

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Markets

Corroon & Black unit provides TPA services

A new Corroon & Black Corp. unit will provide third-party administrative services for both property/casualty insurance and employee benefit programs.

Corroon & Black Administrative Services Inc. of Nashville, Tenn., will work in conjunction with C&B's Benefits and Specialty Sales Group, which provides employee benefits, retirement plans and managed care systems consulting and utilization review. The group also markets and administers group life, health and accident products and property/casualty programs.

By December, C&B plans to consolidate administration of workers compensation and employee benefits claims now handled through separate programs, said Robert J. Jennings, president and chief executive officer of CBAS.

"We've seen studies that indicate that 5% to 20% of employee medical claims have already been paid under workers compensation and this" integration "will help avoid that double-dipping problem," he said. Though not necessarily intentionally, "there is a lot of cross-over between the two," he added.

C&B, which is planning to merge with Willis Faber P.L.C., currently is the world's fifth-largest broker with 1989 gross revenues of $456.8 million (*BI*, June 18).

For more information, contact Robert J. Jennings, President/Chief Executive Officer, Corroon & Black Administrative Services Inc., P.O. Box 1280, Nashville, Tenn. 37202; 615-399-0177.

International PPO

An international preferred provider network is being marketed as a way to provide high-level executives with top-quality medical care in the United States, Switzerland, France and the United Kingdom.

International Medical Network Inc., headquartered in Indianapolis, is targeting multinational employers. When a key executive becomes seriously ill, he or she can receive care from more than 25 hospitals in the IMN network, explained Jeff Brougher, chairman of the new venture. Most of the current medical facilities are located in the United States, he said.

The program "plugs into the employer's insurance program. When an employee is seriously ill, we'll get him transported to whatever facility is prepared to treat that condition," Mr. Brougher said.

Hospitals send bills directly to IMN, which then bills employers, he said.

Mr. Brougher said network hospitals offer 15% to 25% discounts off final bills in return for patient volume. Unlike domestic PPO arrangements under which the preferred facility typically serves patients it has been serving all along, these facilities are getting new patients, he said.

"We were able to negotiate substantial discounts because we are giving hospitals patients they would not have otherwise," he said.

Betsy Brougher, president of IMN, said, "we have sensed a growing dissatisfaction with both the availability and quality of health care in other parts of the world. The mission of IMN is to bridge the gap between the supply of American medical technology and the global demand for quality health care."

For information, contact Betsy Brougher, president, or Bill Atkins, vp of marketing, International Medical Network Inc., 135 N. Pennsylvania St., Suite 17, Indianapolis, Ind. 46204; 317-636-4721.

New office

US Benefits Inc., a subsidiary of US Facilities Corp. in Costa Mesa, Calif. and an underwriting manager for group medical stop-loss coverage, opened a regional office at 1412 S. Boston Ave., Suite 620, Tulsa, Okla. 74119; 918-584-1400. ■

INTERNATIONAL

Aneco to stop writing London reinsurance

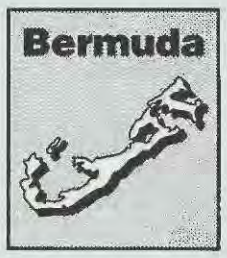
By ROGER SCOTTON

HAMILTON, Bermuda—Aneco Reinsurance Underwriting Ltd. has stopped writing property and marine catastrophe reinsurance in the London market after suffering heavy losses from Hurricane Hugo.

Aneco writes about $7 million a year in premiums for property catastrophe excess-of-loss reinsurance business ceded by Lloyd's of London syndicates and London companies. It writes more than $1 million in marine business.

The Bermuda-based company says that the London market business has been unprofitable and that it cannot afford to jeopardize its more lucrative portfolio of reinsurance assumed from captive insurers, which it regards as its primary book of business.

The withdrawal, announced at a July board meeting, comes on the heels of Aneco's decision last year to expand its property catastrophe business for 1990. The action was based on a policy decision by Mark Hardy, the chairman and majority shareholder of Aneco's parent, Forum Re Group (Bermuda) Ltd., who wants to steer Aneco away from unprofitable business.



Forum Re Group (Bermuda) is affiliated with Concord, Mass.-based The Group Inc. through the common majority ownership by Mr. Hardy. State regulators recently placed several U.S. underwriting units of The Group Inc. in rehabilitation or conservation (*BI*, June 4; May 21).

Aneco Vp Bruce Jones flew to London in July to advise brokers and ceding underwriters of the company's withdrawal from the market.

"They weren't exactly overjoyed at the news, but the response was better than we'd expected," Mr. Jones said. "I think they realized that it was a business decision and appreciated that if you're not making a profit, there's no good reason to continue writing it."

Mr. Jones added that Aneco was also having to buy "significant outward protections costing the equivalent of a high percentage of the premiums."

Aneco's book of London market property and marine catastrophe reinsurance, which is to be run off in-house, comprised almost 35% of the company's total book, Mr. Jones said.

Gross premiums totaled about $20 million in 1989, up from about $18 million the previous year (*BI*, April 30). About $11 million in gross premiums from captive reinsurance made Aneco Bermuda's largest underwriter of reinsurance for captives.

Aneco's decision to expand its London property catastrophe book was based on former Aneco President Jonathan Crawley's belief that rate hikes would make 1990 very profitable for reinsurers.

Mr. Jones said Aneco's losses were at least $12 million on Hurricane Hugo, which ripped through the Caribbean and Southeast United States a year ago. "It may even go has high as $14 million. But we've got $20 million in protections so our estimate is that we're probably going to be looking at a net loss of $1 million to $1.5 million.

"Though this business represents only 35% of our book, it's 35% that was slowly killing us and we felt that the cost of staying in it was just too high," Mr. Jones said. "By taking this action we're hoping to avoid having red ink on Aneco's 1990 financials."

Even without the Hugo claims, Aneco was concerned with low profits from what it regarded as high-risk business. "We weren't making much out of it, even in a non-catastrophe year," he noted.

The final straw, according to Mr. Jones, came last month when Mr. Crawley's plan to form a new company to acquire the Aneco business was scrapped (*BI*, July 16). "Aneco had been hoping to restructure, but was then suddenly faced with having to decide what it wanted to do with this business. Our decision was not to renew it and to concentrate instead on building up our captive book in Bermuda."

Mr. Jones said no cutbacks are planned in the Bermuda operations in the wake of the withdrawal from London market reinsurance underwriting. ■

Brokerage acquisitions to increase, analyst says

By CAROLYN ALDRED

LONDON—Mergers, acquisitions and alliances among U.S. and European brokers will increase in the next year, a London stock analyst predicts.

"We believe that the next 12 months will see an acceleration in the process of acquisitions and other deals between U.K./U.S. brokers and European intermediaries," said Julianne Jessup of Barclays de Zoete Wedd Research Ltd. in a report on brokers' opportunities in Europe. "Continental Europe is seen as offering almost unlimited opportunities to the enterprising U.K. broker, and virtually all U.K. brokers with international business are looking to improve their strategic positioning in Europe."

New developments, like the pending merger of Willis Faber P.L.C. and Corroon & Black Corp., "have raised the stakes in Continental Europe and intensified brokers' concern to secure their position," according to Ms. Jessup.

Willis Faber is a member of the UNISON brokerage network that Johnson & Higgins helped establish. But the planned merger could change Willis' position within the network, according to Ms. Jessup.

The proposed merger—which could cause "the break-up or restructuring" of the UNISON network—"has introduced a new and crucial element into the European scenario which could significantly alter the strategic positions of the major brokers," she said.

"It is difficult to see how the UNISON network in Europe can continue in its present form. In fact, we believe that given the competitive pressures and uncertainties of the deregulated market, informal relationships on every level are likely to become increasingly tenuous and brokers will look for more formal ties," she said.

For brokers without wholly or partly owned subsidiaries in Continental Europe, Ms. Jessup warns, "time is running out."

Most substantial brokerages in that region "are already tied to major U.K. or U.S. brokers whether through whole or part shareholdings or less formal links such as UNISON," she explains.

For example:

- In France, three brokers already have ties with U.S. brokers. Faugere & Jutheau is owned 30% by Marsh & McLennan Cos. Inc.; Gras Savoye S.A. is a privately owned member of UNISON; and S.G.C.A. is 49.9% owned by Alexander & Alexander Services Inc.
- In The Netherlands, the situation is similar. Hudig Langeveldt Group bv is 30% owned by M&M; Sedgwick Nederland bv is owned by Sedgwick Group P.L.C.; and Bekouw Mendes Holdings bv is 84% owned by A&A.
- In Belgium, both the largest brokers also have U.S. affiliations. Henrijean is owned by M&M and Boels Begault Holdings SA is a member of UNISON and is 20% owned by Willis Faber.
- In Spain, the three largest brokers already have external brokerage affiliations. Gil y Carvajal is a UNISON partner and is 25% owned by J&H; Nespa is 100% owned by Dutch broker Hudig

Continued on next page

Policy for West German holdings in the East

Investment cover developed

BONN, West Germany—An insurance policy now being developed aims to protect investments in struggling post-Communist East Germany.

The policy, produced at the request of West German corporations, would limit current owners' losses should the original owner of property seized after World War II return to claim it.

Jauch & Hubener, West Germany's largest brokerage, and Nordstern Verischerung, a Colonia A.G. subsidiary in Cologne, say the policy covers "moving costs" of investors forced to give up land or relinquish title to companies.

Costs for constructing new buildings, development already completed at a site or for restocking inventory at a new site would also be covered under the policy. And, should the owner of reclaimed property be willing to sell the property, the new policy would cover costs of buying it back.

Legal costs incurred fighting old claims are insured by the policy as are losses—including business interruption claims—that stem from relocation.

Uncertainty over the ultimate ownership of East German property threatens the nation's economy by slowing much-needed Western investment, says Dieter Rath, spokesman for the Federation of German Industries, or BDI, a business lobbying group. "A conflict over title claims means an investor could lose everything."



Only 200 East German companies have been bought out by foreign companies or signed joint venture agreements since historic economic unity measures took effect in July, he said.

The East German State Trust Fund, in charge of coordinating Western acquisitions, says more than 8,000 East German companies are potential investments.

Coverage provided by the policy is limited to 3 million deutsche marks ($1.94 million), though higher limits could be negotiated on an individual basis.

Companies that already have invested in East Germany could add this coverage to their existing policies and pay a single premium, says Peter Hermes, a spokesman for Jauch & Hubener in Hamburg.

Meanwhile, West German authorities are discussing a plan for the government to guarantee corporate investments in East Germany that were threatened by the ownership question. Also, the Justice Ministry says it hopes to speed up the process of settling title suits.

—By Don Lewis Kirk

Around the Pacific Rim in 80 ways

By John J. Hampton

"THE PHILIPPINES is the country of the future. It always has been and always will be." Thus began a broker in Singapore responding to my query on the prospects for insurance in Southeast Asia.

Over the next few weeks I would ask similar questions of brokers and underwriters in Singapore and Hong Kong. I would like to share their answers and my impressions.

The purpose of my trip ostensibly was to participate in a seminar sponsored by the University of Delaware and the Singapore Port Authority. My efforts, though, were more directed toward learning about risk management strategies in the Pacific Rim.

INTERNATIONAL PERSPECTIVE

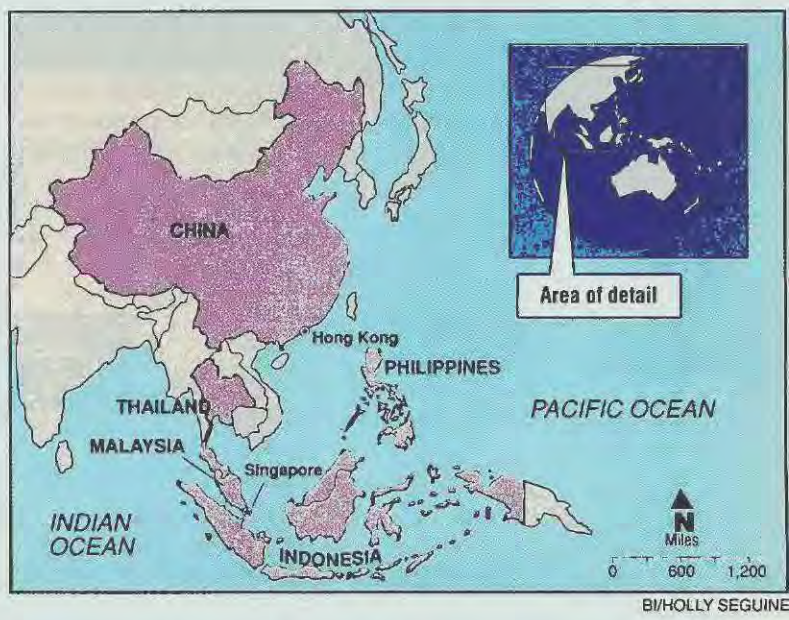
That phrase—"Risk management strategies in the Pacific Rim"—sounded so lofty and worthwhile before I left the United States. It fell apart rather quickly, though, in one conversation after another.

In the United States, we recognize "risk management" as all those organizational activities that reduce, avoid, transfer or share risks. In Southeast Asia, the concept is more elusive. Singapore, with its modern economy, pursues many of the goals of risk management. In less developed nations, though, a suitable term may not exist to translate the concept into the local language.

Insurance is another story in this part of the world. Every small business knows the importance of insuring against fire and other natural perils. This is true even when no insurance is purchased.

Few merchants are comfortable risking the perils of the ocean when shipping goods across the South China Sea. They load their valuable cargoes on a variety of vessels only after purchasing appropriate coverage. Individuals, including those of quite modest means, know that life insurance can provide for loved ones left behind. And possibly even provide a windfall to cushion the pain of death.

Continued on next page



BI/HOLLY SEGUINE

Asian strategies

To be fair, brokers and the large underwriters appear to have made considerable progress in the region with forward-looking managers who use a number of risk management techniques. But the term "risk management" is too broad to convey an accurate description of most activities in these countries. Insurance is still the operative term.

The word "strategies" became the second casualty of my fact-finding trip. A great deal of insurance is sold by both private and state-owned companies and brokers place much of it in the unregulated markets. Still, the term strategy implies conscious goals and purposeful behavior to achieve them. By this criterion, strategies were hard to find. In any case, they seem to be limited to insurance rather than risk management. Some of the more interesting strategies and their outcomes:

• **Establish captives in Singapore.**

During the 1980s, a number of Australian companies and international brokers discovered the economic benefits of captives domiciled in Singapore, with its financial and telecommunications resources. Now, 40 captives are operating.

However the future of this activity is clouded somewhat by new tax regulations in Australia (*BI*, April 30), and no new captives have been started in recent months.

• **Employ local nationalities.**

The nations of Southeast Asia house a wide mix of nationalities and languages. Many of the cultures are suspicious of outsiders. Business dealings across ethnic lines are tightly restricted. Between some racial groups, they are unthinkable. To do business with a Malay, for example, a company can hire a Malay. The brokering and insurance operations reflect conscious efforts to use local personnel who conduct operations in accordance with local customs.

• **Capitalize on multinational company nationalism.**

Lest anyone believe that tribal practices are limited to developing countries, a successful strategy can be built by matching one's own personnel with the nationalities of the home country of multinational firms. In spite of great strides toward what has been called the "stateless corporation," many multinational firms have specific preferences when doing business. Japanese, American and European insurers and brokers follow their clients around the world.

While in Singapore, I attended a farewell party for a European broker who had worked for five years in Singapore for a U.S. brokerage firm. As part of the praise for a job well done, it was noted that he had brought in 80 new accounts from companies domiciled primarily in his native homeland.

The final casualty of my trip was the phrase "Pacific Rim." The challenges to this were made by brokers and underwriters alike:

• "How can you be discussing the Pacific Rim when you exclude the country with the largest coastline on the Pacific Ocean?" When this question was raised in Hong Kong, I was puzzled. I was finally informed that the country in question was Chile. To this day, I do not know whether Chile has the longest coastline on the Pacific Ocean.

I *do* know that it certainly does not meet my definition of a country on the Pacific Rim.

• "Australia and New Zealand should not count. They are really British." Does this mean that these countries should be studied as part of the London market? If so, how can we explain Singapore captives and growing commercial and economic links between Australia and Southeast Asia and Japan? And, most importantly, who will tell Australia and New Zealand they have been re-colonized?

• "If you include China, you should also include India, since India has more business ties to Southeast Asia than does China." A variation on this theme is, "You should exclude both India and China since they really belong to the Asian landmass, not the Pacific Ocean." How to respond? India seems quite securely located on the Indian Ocean. China has Pacific ports, even as the country is quite prominent on the Asian landmass. I would include China, exclude India.

• "No listing of the Pacific Rim is complete without its regional capital—the city of Los Angeles. It is the emerging powerhouse of Asian development, trade and commerce." Possibly true. And I did see similarities between the tongs of Hong Kong and the street gangs found in Los Angeles. But does anybody really believe Los Angeles is the capital of the Pacific Rim? And, who would tell the Japanese?

By this point, we probably can see that my idea of "risk management strategies in the Pacific Rim" is in trouble. As a consolation, forgive me if I narrow the scope somewhat and simply discuss the insurance markets of Southeast Asia. This may appear to be a cowardly action.

To restore your confidence in my level of courage, I will even rank each market with respect to its attractiveness to foreign insurance activities. The scale will be from one to 10. A 10 indicates high potential for success, while a one indicates likely failure to make any money even if everything is done correctly.

• **Indonesia.**

The book on this country since the 1950s has been corruption and a Wild West attitude in the midst of incredible natural resources. Problems still exist, but the corruption seems to be more organized. And, business can clearly be done with local partners who perform the more complex and possibly disagreeable activities. The Chinese community is cohesive and prosperous, but other groups are learning the skills to take a larger piece of the pie. Patient and sophisticated Westerners can share the dessert. Six out of 10.

• **Malaysia.**

To succeed here, it is important to deal carefully with the real tensions that exist between the Chinese and Malay communities. More potential exists on the Malay side for foreigners. A problem arises, though, in the implementation. The government requires the hiring of locals at all levels, even when necessary skills and expertise in insurance are lacking. Training programs and a long-term view are a must but prospects otherwise are promising. Seven out of 10.

• **Thailand.**

This is the hot spot for Southeast Asia in 1990. The country is experiencing major capital inflows in response to investment opportunities. The country offers relatively low-cost labor, political stability and a favorable business climate. I suspect it is not quite as good as some people think, but they do have high regard for it. Eight out of 10.

At the opposite poles in Southeast Asia are the Philippines and Singapore. In one, money can be made despite volatile politics and a decimated economy; and in the other a thriving economy fosters competition and razor-thin margins.

• **Philippines.**

This is the most difficult situation to assess. Brokers and underwriters use terms such as "awful" and "hopeless." The political situation in the Philippines is volatile. The economy is a shambles. Yet, money has been made and is being made. There is an attitude that it is possible to extract hard currency if you really know how to work the Philippine system. Boy, it looks risky to me. Three out of 10.

• **Singapore.**

A bustling, modern, well-managed country—but a problem. Knowledgeable brokers and a solid underwriting community produce severe competition and small profit margins. Casualty insurance sells domestically based on three factors: price, price and price. And accounts move from insurer to insurer for a few pennies of reduction in premium. As a regional center, it has everything: a modern airport, outstanding restaurants and Orchard Road. Six out of 10 for domestic business. Nine out of 10 for regional business.

• **Hong Kong.**

With 1997 right around the corner, two big questions are raised: Will Hong Kong lose the bulk of its skilled insurance and brokerage community to Canada, the United Kingdom and elsewhere? And, will Hong Kong lose the huge capital flows that make it such a powerful financial center? Geography places the city at a crossroads. The business climate and infrastructure are excellent. This would be New York City if it had more potholes, a stable Chinatown and a subway gunman. The government of China is the big risk factor. Six out of 10 at present. Nine out of 10 if China settles its internal tensions.

• **China.**

These are difficult times indeed for our friends in the central kingdom. The south of China is doing business as previously, absent the tour groups. Guangzhou and Pearl River bustled with activity in March of 1990. But a chill wind was blowing from the north. It is only partly warmed by the recent decision to allow dissident Fang Lizhi to leave the U.S. embassy in Beijing. Insurance in China is easy. The People's Insurance Co. of China has a monopoly and provides a full range of life and property coverages. Its monopoly is tighter than ever and no Western insurer has made any big money in China since 1949.

Political and economic changes are needed if China is to resume its long march to a stronger economy. Different problems than the Philippines, but the same score. Three out of 10. If internal tensions settle, four out of 10. If economic reforms are introduced, five out of 10.

And so we have it. Risk management became insurance, strategies became activities and the Pacific Rim became Southeast Asia. Some days it does not pay to get out of bed. ■



John J. Hampton is the Goerlich Professor of Insurance and Risk Management at The College of Insurance in New York.

European brokers

Continued from previous page

Langeveldt; and Gavial Alexander SA is 49.9% owned by A&A.

• In West Germany, the three largest brokers already have links with other brokers. Jauch & Hubener is privately owned but is a UNISON partner; Gradmann & Holler is 100% owned by M&M; and Jaspers Industrie Assekuranz GmbH is 20% owned by A&A.

In addition, since 1985, more mid-sized and smaller brokerage firms have formed ties with British brokers, "leaving fewer and fewer unattached companies of any size," according to Ms. Jessup.

"The alternative to acquisition or securing links with established brokers is to build representation from scratch, but the still-insular nature of most Continental markets means that it is difficult to establish a broker from scratch, particularly where the parent company is outside Continental Europe," she warns in the report.

She does foresee, however, opportunities for U.S. or British brokers that successfully expand in Europe.

"Liberalization of European insurance markets offers new opportunities to develop indigenous business in Western Europe," she says.

"Moreover, growth of international business in Europe means that it is increasingly important for the international broker to be able to service the business interests of multinational clients in local markets," Ms. Jessup says.

"While the main opportunities have been perceived to lie mainly in the commercial retail area, reinsurance is also beginning to look a more promising area. . .as a result of growing demand for excess-of-loss cover rather than the proportional forms which have traditionally prevailed in Europe," she noted.

'Reinsurance is also beginning to look a more promising area,' says Ms. Jessup.

"Brokers are also becoming more conscious of the opportunity a European presence gives to access the high-quality capacity of Europe's major insurers for international placings," Ms. Jessup said.

"Finally, the opening up of Eastern Europe offers potential for development of existing and new reinsurance business as well as in the longer term commercial direct accounts," she said. ■

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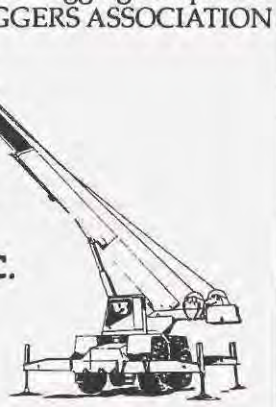
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INTERNATIONAL

PCW runoff agency seeking more work

By CAROLYN ALDRED

LONDON—The Lloyd's of London agency set up to manage the runoff of loss-riddled syndicates once managed by PCW Underwriting Agencies Ltd. is equipped to handle additional syndicate runoffs, according to its new managing director.

As a result, Lloyd's could use the company to help solve the problem of dozens of open syndicate accounts at Lloyd's, which syndicates have been unable to close because of the uncertainty of past liabilities, said Alan C. Pollard.

The problem of open accounting years is causing extreme anxiety in the market, particularly among syndicate members who are unable to estimate their likely losses or profits as a result of the uncertainty. The Council of Lloyd's has repeatedly said that it is looking for a way to solve the problem, including the formation of a separate reinsurance vehicle that could bear the liabilities from open accounting years for a suitable premium.

The council currently is discussing with the British Department of Trade and Industry the feasibility of forming such a reinsurance company.

Mr. Pollard contends that Syndicate Underwriting Management Ltd., formerly known as Additional Underwriting Agencies (No. 4) Ltd., will soon have the bulk of its PCW work in hand and will have sufficient resources to handle additional runoff business.

"I am as sure as I can be that the company will have the staff and systems resources to take additional runoff business fairly soon," he said.

Although the PCW runoff will take "at least 20 years," the majority of the "work connected with the PCW syndicates will peak within the next two to three years." As a result, SUM and its staff "will have the technical resources and skills available for further business," he said.

Additional Underwriting Agencies (No. 4) was formed by Lloyd's to run off business written by syndicates managed by PCW after the huge losses owed by the syndicates became known (*BI*, April 13, 1987).

SUM already manages an insurance company, Lioncover Insurance Company Ltd., into which the PCW liabilities have been reinsured.

However, Mr. Pollard doubts that Lioncover would be expanded to reinsure the liabilities of the other open accounts in the market.

Funds sought for suit

Lloyd's of London members of the 1982 underwriting year of syndicate 317/661, managed by R.H.M. Outhwaite (Underwriting Agencies) Ltd., are being asked for more money to finance the litigation they are pursuing in an effort to recoup tens of millions of pounds of underwriting losses they face.

More than 800 Lloyd's members are suing 81 members' agents and the Outhwaite agency over massive losses they face from runoff reinsurance policies underwritter. by Richard Outhwaite in 1982 (*BI*, Dec. 25, 1989).

The names had been asked to contribute 4% of their underwriting capacity for the syndicate toward a legal fund, but more funds are needed.

The association "became concerned earlier this year that we were spending money rather faster than we had hoped we would when we set the litigation subscription at 4% of line," said Peter Nutting, chairman of The Outhwaite 1982 Names Assn., in a letter sent to members on Aug. 16.

"That continues to be the position and so I must tell you that I believe we will need more money to see the case through trial," he added.

"The lawyers advise us that we should go to court with enough funds to pay the other side's costs if the unthinkable happens and we lose," said Mr. Nutting.

Estimates of the further funds necessary will be ready by Oct. 4 and will be put forward for voting at the association's annual general meeting on Oct. 31, according to Mr. Nutting.

Mr. Nutting also told members that defense documents recently filed in court by the Outhwaite agency and the members' agents contained nothing that altered the view of Richards Butler, the London law firm representing the members. ■

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Sub-total 24,648

Associations 539
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Commercial Consumers
Sub-total 26,576

Insurance Agents and Brokers 10,223
Insurance Companies 7,713
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Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers 1,115
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SEPT. 5. Workers Compensation Seminar in Rockford, Ill., sponsored by the Illinois State Chamber of Commerce; $120 for ISCC members; $180 for non-members. **Also Sept. 6** in Peoria, Ill.; **Sept. 11** in Springfield, Ill.; and **Sept. 13** in Chicago. Illinois State Chamber of Commerce, 20 N. Wacker Drive, Chicago, Ill. 60606-3083; 312-372-7373.

SEPT. 5-7. Techniques of Risk Management course in Vancouver, B.C., sponsored by the Risk & Insurance Management Society Inc.; $540 for RIMS members; $640 for non-members. **Also Dec. 5-7** in New York City. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

SEPT. 5-7. An Introduction to International Employee Benefits conference in Chicago, sponsored by International Benefits Information Service and Charles D. Spencer & Associates Inc.; $780. International Benefits Information Service, 250 South Wacker Drive, Suite 600, Chicago, Illinois 60606-5834; 312-993-7900.

SEPT. 6. Information Strategies to Manage Your Health Care Costs seminar in Chicago, sponsored by the National Assn. of Health Data Organizations; fee for NAHDO public associate and supporting members; $125 for NAHDO individual members and non-members. National Assn. of Health Data Organizations, 316 Pennsylvania Ave. S.E., Suite 202, Washington, D.C. 20003; 202-546-5881.

SEPT. 9-10. Evaluating Case Mix, Severity of Illness and Health Status in HMOs conference in Washington, sponsored by Group Health Assn. of America; $315 for GHAA members; $425 for non-members. **Also Dec. 2-3** in Los Angeles. Group Health Assn. of America, Dept. 0612, Washington, DC 20073-0612; 202-778-3230.

SEPT. 9-11. Annual American Assn. of Preferred Provider Organizations Conference in New Orleans; $425 for AAPPO members; $525 for non-members. American Assn. of Preferred Provider Organizations, 111 E. Wacker Drive, Suite 600, Chicago, Ill. 60601; 312-644-6610, Ext. 3270.

SEPT. 10-11. 1990 Casualty Loss Reserve Seminar in Dallas, cosponsored by the American Academy of Actuaries, the Casualty Actuarial Society and the Conference of Actuaries in Public Practice; $375 for members of the three sponsoring organizations; $450 for non-members. American Academy of Actuaries, 1720 I St., N.W., Seventh Floor, Washington, D.C. 20006; 202-223-8196.

SEPT. 10-11. Insurance Investigative Accounting and Auditing Conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

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SEPT. 10-12. Fundamentals of Insurance course in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $495 for RIMS members; $595 for non-members. **Also Dec. 3-5** in New York City. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

SEPT. 10-14. Fundamentals of Employee Benefits Management course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; $1,000 for IFEBP members; $1,125 for non-members. **Also Oct. 22-26** in Brookfield, Wis. IFEBP, Registration Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

SEPT. 10-14. Certificate in Environmental Health & Safety Law program in Las Vegas, Nev., sponsored by the Institute for Applied Management & Law Inc.; $1,475. Institute for Applied Management & Law Inc., 610 Newport Center Drive, Suite 1060, Newport Beach, Calif. 92660; 714-760-1700.

SEPT. 11-12. Illinois Environmental Regulation conference in Chicago, co-sponsored by the California Business Law Institute and the National Institute for Management Research; $695; $345 each for three or more registrants from the same organization. California Business Law Institute, National Institute for Management Research, P.O. Box 3275, Santa Monica, Calif. 90403; 213-450-0500.

SEPT. 12-13. Product Safety and Liability Prevention course in Madison, Wis., sponsored by the University of Wisconsin-Madison Extension; $720. The Wisconsin Center, 702 Langdon St., Madison, Wis. 53706; 608-263-4712 or 608-263-3370.

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SEPT. 13-14. Law Practice Roulette-A Seminar for the Exposed in Washington, D.C., sponsored by the American Bar Assn.; no registration fee for dues-paying members of the National Legal Malpractice Data Center, state bar officials and staff; $300 for all others. American Bar Assn., Standing Committee on Lawyers' Professional Liability, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-5763.

SEPT. 14. Beyond the Bottom Line: Analyzing Dental Benefits seminar in Chicago, sponsored by the Chicago Dental Society; $350. **Also Dec. 7** in Chicago. Karen Brucki, Program Coordinator, Dialogue in Dentistry, 2645 Washington St., Suite 214, Waukegan, Ill. 60085; 708-662-2770.

SEPT. 14. The New Non-discrimination Rules for Retirement Plans seminar in Boston, sponsored by the New England Employee Benefits Council; $90 for NEEBC members; $125 for non-members. New England Employee Benefits Council, 45 William St., Suite 225, Wellesley, Mass. 02181; 617-239-1767.

SEPT. 14-18. Annual Independent Insurance Agents of America Convention in Chicago, co-sponsored by the IIAA of Illinois; $360 for IIAA members; $420 for non-members. Independent Insurance Agents of America, 600 Pennsylvania Ave. S.E., Suite 200, Washington, D.C. 20003; 800-221-7917.

SEPT. 16-18. Annual Conference in San Francisco, sponsored by Life Office Management Assn.; $475 for LOMA members; $700 for non-members; $200 for guests. Life Office Management Assn., 5770

Continued on next page

Work comp rock video

Continued from page 3

Costco showed a few off-the-shelf back injury prevention videotapes to employees and found that the employees were not paying attention to the tapes, according to Michael Johnson, who worked with Costco on the custom videotape when he was the loss control manager in Industrial Indemnity's Seattle office.

The tapes were "boring" and too technical, commented Mr. Johnson, who currently is an account executive in the Seattle office of Rollins Burdick Hunter Co., Costco's broker.

"We were looking for a training-type aid that was more applicable to our type of business" and "more acceptable to our employee base," Mr. Dunlap said, noting that most of Costco's employees are between 19 and 35 years old and many are college students who work part-time.

"We wanted something that would get their attention and that they could relate to," he continued. "We tried to make it catchy so they wouldn't go to sleep" and "so they could see it again and again."

The tape "can be left on continuous play in the breakroom" and "can be shown as part of an employee introduction," Mr. Dunlap noted.

"Do It Right," which cost $15,000 and took four months to produce, soon will be available at each of Costco's 70 locations, according to Mr. Dunlap. Costco has 12,000 employees.

The tape—which was shot "on location" in Costco's Kirkland warehouse—begins with a young man dressed in jeans and a red T-shirt walking through the employee breakroom and being greeted by other young employees who ask about his back.

Then the camera follows the man into the warehouse, where he sees workers improperly unloading all sorts of merchandise onto shelves and into stacks and improperly pulling carts.

The young man, a local actor from a Seattle school of the arts, walks past a television showing a man singing and playing an electric guitar.

Suddenly, the TV guitar singer tosses the guitar out through the screen and the Costco employee catches it.

He is transformed immediately into a rock star, wearing tight, shiny black stretch pants, a matching black and blue sleeveless tank top, one black fingerless leather glove, a clunky bracelet, one dangling earring and high-heeled crocodile boots.

"Working for your back, do it right, do it right," he sings. "Working for your back, use your head and bend your knees."

Dancing around the warehouse with the guitar, the worker-turned-rock-star encounters the same employees doing the same tasks as before, but now the employees are demonstrating the proper way to perform the activities.

Workers are shown bending from the knees, breaking large loads into smaller ones and pushing carts instead of pulling them.

And, as the guitarist leaps from the floor to a raised pallet, smoke clouds explode, lights flash and employees dance to the music.

Toward the end of the video, the five featured workers—in reality Industrial Indemnity volunteers—do a line dance behind the rock star, demonstrating proper techniques for warehouse activities.

The guitarist dances in front of them, rhythmically shaking his hips and singing the song's refrain, "Working for your back, do it right, do it right."

Suddenly, he drops his guitar and it turns into a broom; the rock star again is a jeans-clad worker, doing his regular warehouse job.

"The employees loved the video," Mr. Dunlap said. "It came off quite well."

In addition to the video, Costco instituted a return-to-work program for injured employees, Ms. Smith noted.

A Costco employee in the human resources department talks to each employee who is out of work due to an injury and to the worker's doctor to make sure that the employee returns to the job as soon as possible.

And, an incentive program that rewards employees with cash also has helped prevent injuries, Ms. Smith noted.

Under the incentive program, employees at each warehouse are divided into teams, Ms. Smith explained. For each week that no member of the team sustains an injury that results in an employee being out of work, each individual on the team gets 25 points.

Each time an individual accumulates 100 points, he or she is entitled to a free hot dog and soft drink. When an individual accumulates 400 points, he or she receives $50; if a worker accumulates 800 points, he or she receives another $50.

If an employee accumulates 1,250 points—which is equivalent to the team going 50 weeks without an injury requiring time off from work—the individual receives an additional $100, Ms. Smith explained.

Workers can receive a maximum of $200 annually through the incentive program, she noted.

Last year, 80% of the teams that were part of the incentive program succeeded in going 50 out of 52 weeks without an injury requiring time off from work, Ms. Smith noted.

Costco decided to employ a team approach instead of an individual one to take advantage of "peer pressure," Ms. Smith said.

And, the team approach fosters cooperation, she added, explaining that employees "help each other avoid situations where they might be injured." ■

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Continued from previous page
Powers Ferry Road, Atlanta, Ga. 30327; 404-951-1770.

SEPT. 17. Managing Your GIC Portfolio: A Seminar for Sponsors in Boston, sponsored by John Hancock Mutual Life Insurance Co.; $150. Jeanne Quinn, John Hancock Mutual Life Insurance Co., John Hancock Place, P.O. Box 111, Boston, Mass. 02117; 617-572-9446.

SEPT. 17-18. Chemical Labeling and Regulation: 1991 conference in Washington, D.C., sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

SEPT. 17-18. The Environmental Insurance Law Institute in Houston, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333.

SEPT. 17-18. Managing Health Care in the 1990s seminar in Washington, D.C., sponsored by Deloitte & Touche; $825 for D&T clients; $925 for others. **Also Oct. 18-19** in Phoenix, Ariz., Deloitte & Touche, Seminar & Conference Division, P.O. Box 33189, Washington, D.C. 20033-0189; 202-638-7310 or 800-654-8920.

SEPT. 17-19. Benefits Administration/Automation Institute in Boston, sponsored by the International Foundation of Employee Benefit Plans; $525 for IFEBP members; $600 for non-members. IFEBP, Registration Department, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6700.

SEPT. 18-19. Health Care Cost Containment workshop in San Francisco, sponsored by the Health Research Institute; $595. **Also Oct. 9-10** in Columbus, Ohio; **Dec. 11-12** in Chicago. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

SEPT. 18-20. Fundamentals of Reinsurance Seminar in Irving, Texas, sponsored by the University of Dallas; $545. Bruce Evans, Reinsurance Management Institute, University of Dallas, Irving, Texas 75062-1999; 214-721-5360.

SEPT. 19. Advanced Risk Management Financing Techniques seminar in Stamford, Conn., co-sponsored by the Society of Chartered Property & Casualty Underwriters and its Southern Connecticut chapter; $135 for society members; $195 for non-members. Mari Jennings, Continuing Education Coordinator, Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2741.

SEPT. 19-21. Southern Regional Educational Seminar in Charleston, N.C., co-sponsored by the Carolinas, Palmetto, Piedmont and Western Carolinas chapters of the Risk & Insurance Management Society Inc.; $85 for RIMS members; $100 for non-members. Golden Corral Corp., P.O. Box 29502, Raleigh, N.C. 27626; 919-881-4606.

SEPT. 19-21. Entering the '90s—Are You Ready? seminar in Cincinnati, sponsored by the Cincinnati chapter of the Risk & Insurance Management Society Inc.; $125 for RIMS members, $200 for non-members. Chuck Rizzo, Scripps Howard Inc., 110 Central Trust Tower, Cincinnati, Ohio 45202; 513-977-3848.

SEPT. 20-21. Health Care Cost Containment: Employers Taking Control conference in Orlando, Fla., sponsored by The Florida Assn. of Business & Health Coalitions Inc.; $100 for FABHC members; $190 for non-members; $150 each for two or more registrants from the same company. FABHC Conference, 1510 E. Colonial Drive, Suite 301W, Orlando, Fla. 32803; 407-898-3665.

SEPT. 20-22. 39th Annual Illinois Assn. of Professional Insurance Agents Convention in Bloomingdale, Ill.; $210 for PIA members; $165 for spouses; $245 for non-members; $200 for non-member spouse. Illinois PIA, 955 Durkin Drive, Springfield, Ill. 62704; 217-546-7700.

SEPT. 23-26. 94th Annual National Assn. of Mutual Insurance Companies convention in Orlando, Fla.; $350 for NAMIC members; $500 for non-members. National Assn. of Mutual Insurance Companies, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250.

SEPT. 23-28. The Management Program seminar in Princeton, N.J., sponsored by The College of Insurance; $1,495 for College sponsors; $1,695 for non-sponsors. **Also Oct. 28-Nov. 2.** The College of Insurance, Professional Programs, 101 Murray St., New York, N.Y. 10007; 212-964-3381.

SEPT. 24-25. The Insurance/Reinsurance Cash-Flow conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

SEPT. 24-26. 1990 Corporate Retirement Benefits Conference in Chicago, sponsored by the International Foundation of Employee Benefit Plans; $615 for IFEBP members; $690 for non-members. International Foundation of Employee Benefit Plans. Registration Department, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6700.

SEPT. 24-26. 1990 Health Care Cost Management Conference in Denver, sponsored by the International Foundation of Employee Benefit Plans; $1,000 for IFEBP members; $1,125 for non-members. International Foundation of Employee Benefit Plans, Registration Department, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6700.

SEPT. 25-26. Insurance Regulation Course in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333.

SEPT. 25-28. Planning for the 21st Century conference in New York City, sponsored by William M. Mercer Inc.; $550. Mercer International Conference, 3500 Texas Commerce Tower, 2200 Ross Ave., Dallas, Texas 75201; 214-220-3539.

SEPT. 26. Introduction to Risk Management for Non-Insurance Managers seminar in New York City, sponsored by The College of Insurance; $195 for College sponsors; $225 for others. **Also Nov. 7** in Atlanta. Jane Wechsler, The College of Insurance, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

SEPT. 26. Insurance Carrier Solvency and Computer Security symposia in San Antonio, Texas, sponsored by The Society of Chartered Property & Casualty Underwriters; $115 for Society of CPCU section members; $135 for non-section members; $150 for non-members. Bonnie Kinsley, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2735.

SEPT. 26. Insurance Market Regulation conference in London, England, sponsored by Insurance & Reinsurance Research Group Ltd.; 250 pounds ($468) plus 15% VAT. Caroline Atkinson, IRRG Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD; 071-236 2175.

SEPT. 26-27. The Corporate Healthcare Balance Sheet: Realistic Solutions That Go Beyond the Basics conference in New York City, sponsored by Infoline Inc.; $1,195; 10% discount each for three or more registrants from the same company; $895 for the main conference; $495 for a half-day seminar. Infoline Inc., 633 Third Ave., Suite 2227, New York, N.Y. 10017; 212-557-3400.

SEPT. 26-27. Air Toxics Regulation conference in Washington, D.C., sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333.

SEPT. 26-27. Duties and Liabilities of Directors and Officers conference in New York City, sponsored by the Institute for International Research; $995; $695 for government and non-profit organizations. Institute for International Research, 437 Madison Ave., 23rd Floor, New York, N.Y. 10022; 212-826-3340.

SEPT. 26-28. National Risk Retention Assn. Annual Meeting in Washington, D.C.; $400 for NRRA members; $550 for non-members. National Risk Retention Assn., P.O. Box 1740, 3421 M St. N.W., Washington, D.C. 20007; 800-999-4505.

SEPT. 27-28. Eastern Europe-Opportunities for the Insurance Industry conference in London, England, sponsored by Insurance & Reinsurance Research Group Ltd.; 499 pounds ($934) plus 15% VAT. Caroline Atkinson, IRRG Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD; 071-236 2175.

OCTOBER

OCT. 1-2. Cost Control of Environmental Remediation Projects conference in Atlanta, sponsored by Executive Enterprises Inc.; $1,045. **Also Nov. 14-15** in Houston. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

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Benefit taxes

Continued from page 1

benefit experts say.

"The risk to benefits is great if the situation in the Middle East forecloses significant other revenue options," said Frank McArdle, a consultant with Hewitt Associates in Washington, D.C.

"The wild card is the Middle East situation," observed Kenneth Feltman, executive director of the Employers Council on Flexible Compensation, a lobbying group in Washington, D.C.

Still, benefit experts point out, the outcome of a deficit reduction pact and thus the fate of the tax-favored status of benefit programs is not clear at this point.

"The key will be how much negotiators are willing to reduce the deficit this time around," Mr. McArdle predicted.

"If they decide on only a token effort, then very little is likely to be taken out of benefits," he said. "But if they decide on a major, multi-year deficit reduction effort, then the risk to benefits is very great."

Taxing health care benefits would be the most obvious and effective way to raise revenues from employee benefit programs. Congress, however, may consider other options. These include:

- Increasing the federal excise tax on pension plan reversions.
- Freezing maximum employee contributions to 401(k) savings plans.
- Cutting Medicare benefits. This option would affect employers whose retiree health plans are coordinated with Medicare so that when Medicare pays less, the employer plan automatically pays more.

"There are literally scores of options and variations of options that could be considered to raise revenues," Mr. McArdle said.

Even without the uncertainties added by the Middle East crisis and the budget deficit, the remaining weeks of the 101st Congress had been shaping up as a crucial period for employee benefit managers.

By its scheduled mid-October adjournment, Congress will consider proposals to restrict early retirement window programs, curb flexible spending accounts used to fund dependent care expenses, expand COBRA health care coverage and retain the tax-favored status of employer-provided educational assistance benefits.

And, while legislators are making important decisions, regulatory agencies will be active as well.

The Internal Revenue Service, for instance, soon is expected to issue guidance and possibly restrict a new and easier way—sanctioned in earlier IRS regulations—for employers to run 401(k) nondiscrimination tests.

For employee benefit programs, "much will be at stake in the next few weeks. A lot of extremely important issues have to be settled," said Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

Topping the list of their concerns is the resumption of talks on cutting the federal deficit.

A reduction is needed to meet the targets laid out in the Gramm-Rudman deficit reduction law. If those targets are not met, automatic and drastic cuts in federal spending would kick in later this year, a prospect legislators want to avoid.

Those negotiations—aimed at producing a budget deficit or budget reconciliation bill—virtually collapsed before the August recess. But a so-called budget summit between congressional leaders and Bush administration officials is set to begin next month—possibly at Andrews Air Force Base outside Washington.

Some experts say they believe the tax-favored status of employer-provided health care benefits could be vulnerable to attack at those talks.

"There will be a desperate search for revenues, and it seems likely that an effort will be made to extract revenue out of health care coverage," said Mr. Saveth of Foster Higgins.

Taxing the coverage certainly would produce sizeable new revenues.

Earlier this year, the Congressional Budget Office estimated that nearly $50 billion in federal income and payroll taxes would be raised over the next five years if employees were taxed on employer-paid health care premiums exceeding $100 a month for individual coverage and $250 a month for family coverage.

Others, though, believe legislators will veer away from taxing health care coverage. Such a move would cause huge administrative problems for self-funded companies, which would be required to calculate the cost of coverage for tax purposes.

Proposals to tax health care coverage would make allies of employers, insurers and labor unions and "Congress would like to avoid tangling with such an alliance," said the ECFC's Mr. Feltman.

Other business lobbyists say time is too tight to allow consideration of a contentious issue like health care taxation but that the issue will be back next year.

"The feeling about a health care tax is not this year, but watch out for next year," according to James Klein, deputy executive director of the Assn. of Private Pension & Welfare Plans in Washington, D.C.

Another deficit reduction proposal, first discussed in 1987, that could resurface at a budget summit is a so-called securities transfer tax, in which pension plans would be taxed on purchases of bonds and stocks. The tax, benefit observers say, might be in the range of 0.15% of the value of the transaction.

Such a tax would leave less money with which to pay benefits and employers would have to raise their contributions.

Powerful opposition is sure to come from the securities industry.

At the same time, legislators may consider a proposal by Rep. Peter Visclosky, D-Ind., to double the federal excise tax on pension reversions to 30%.

However, business lobbyists and other observers are divided on whether that proposal is likely to be attached to a deficit reduction bill.

"There is a real possibility the excise tax could be raised," said the APPWP's Mr. Klein.

Mr. Klein noted that some legislators might see a higher tax as an alternative to restricting reversions, which Sen. Howard Metzenbaum, D-Ohio, has long favored.

However, Gerald Uslander, a principal with William M. Mercer Inc. in Washington, D.C., said Rep. Visclosky's proposal is unlikely to go anywhere unless he secures support from members of the congressional tax committees.

Another proposal that may be considered is a one-year freeze on the maximum pretax contributions employees can make to 401(k) plans. That limit, which is adjusted annually for inflation, is currently $7,979.

Budget negotiators also may try to raise Medicare deductibles and coinsurance requirements, Mr. McArdle said.

Such a strategy would hurt employer-provided retiree health care plans that are integrated with Medicare because when Medicare benefits are cut back, employer-sponsored plans must pay more.

Employers, however, may find something to praise coming out of budget negotiations.

Legislators could, for example, take another look at allowing employers to transfer surplus defined benefit pension plan assets into special accounts to pay for retiree health care expenses without first terminating the defined benefit plan.

'There will be a desperate search for revenues, and it seems likely that an effort will be made to extract revenue out of health care coverage' sponsored by employers, according to Foster Higgins' Mr. Saveth.

Allowing such moves could actually trim the deficit. Employers, after shifting excess pension assets to retiree health care accounts, could cut back on their retiree health care contributions, which are tax-deductible.

While there is concern that benefits could be taxed to reduce the deficit, sparks also may fly in unrelated areas.

For example, the Senate next month may take up legislation that could jeopardize or even kill some early retirement incentive programs.

That legislation is intended to overturn a June 1989 Supreme Court decision, known as the Betts case, in which the justices ruled that the Age Discrimination in Employment Act of 1967 applied to only hiring and firing practices and not to employee benefit programs like life and disability insurance benefits.

The decision effectively overturned regulations published by the Labor Department and the Equal Employment Opportunity Commission letting companies provide smaller welfare-type benefits to older workers than younger employees without violating ADEA as long as the cost of the benefits was equal.

If legislators make 'only a token effort' to reduce the deficit, 'then very little is likely to be taken out of benefits,' says Mr. McArdle. 'But if they decide on a major, multi-year deficit reduction effort, then the risk to benefits is very great.'

Older workers could, for example, receive reduced life insurance benefits if a company proved that the cost of providing that benefit was equal to the cost of better benefits for younger workers.

The 1989 Supreme Court ruling, though, said an employer need not demonstrate a legitimate cost justification to reduce or deny benefits based on age.

Soon after the decision, legislation was introduced to reinstate the so-called equal benefit/equal cost rule.

But a Senate bill, S. 1511, and a similar House bill, H.R. 3200, approved by the House Education and Labor Committee, go far beyond that.

Language in the two pieces of legislation suggests that features common to retirement incentive window plans, such as subsidized early retirement benefits, would have to be offered on a permanent basis to be lawful.

Other provisions say that a retirement incentive window plan would be considered bona fide only if it "furthers the purposes" of ADEA.

Window plans are designed to encourage older workers to retire. A central purpose of the discrimination act, of course, is to encourage the employment of those same workers.

This provision could prompt a slew of litigation to determine what is a bona fide early retirement window plan, observers have said (*BI*, April 30).

And, that could make employers reluctant to offer such programs, which are seen as a humane alternative to outright firing when companies cut their workforces.

Some observers say time has run out on the Betts legislation, which business has strongly opposed as overreaching.

"The push behind it seems to have cooled. The early retirement provisions has been a lightning rod attracting opposition," said Mercer's Mr. Uslander.

"Congress has been hearing from employers on how disruptive this bill would be," said the APPWP's Mr. Klein.

But Mr. McArdle of Hewitt Associates predicts a renewed push to pass the Betts legislation when legislators return.

"We expect an intensive bipartisan effort to get Senate passage," Mr. McArdle said. "Betts remains very much alive." He added that changes are expected to be made on the Senate floor to quell employer objections.

Meanwhile, a congressional conference committee will resume meetings on sweeping child-care legislation that would limit high-paid employees' use of flexible spending accounts for dependent care.

Currently, employees—regardless of income—can make annual pretax contributions of up to $5,000 to their FSAs for dependent care expenses.

However, under legislation, H.R. 3, approved by the House in March, maximum contributions would be reduced by $250 for each $1,000 of income exceeding $70,000. As a result, dependent care FSAs would be eliminated for employees with adjusted gross incomes exceeding $90,000.

High-paid workers using the federal child care tax credit would face similar restrictions (*BI*, April 2).

Some lobbyists, such as the APPWP's Mr. Klein, are cautiously optimistic that the House provision restricting dependent care FSAs will be deleted by a conference committee—but only if legislators immediately hear from employers and employees on the importance of these programs.

Legislators also may consider a newly introduced proposal, part of the broader Women's Health Equity Act, H.R. 5397, that would require employers to extend COBRA coverage for up to 15 years for some dependents.

This proposal would apply to former employees' dependents who were at least 50 years old when they became COBRA beneficiaries. Those dependents could retain COBRA coverage until becoming eligible for Medicare at age 65 or obtaining health care coverage for another employer's health care plan (*BI*, Aug. 20).

Some observers say that Congress, after expanding the law last year to allow a beneficiary with pre-existing medical conditions to retain coverage after joining another employer's health care plan, may not be in the mood for another expansion.

"I think legislators will be willing to draw a line," said ECFC's Mr. Feltman.

However, Mercer's Mr. Uslander said the 15-year expansion may be the starting point of discussions and that a shorter expansion period may emerge.

Employers now must extend COBRA coverage to dependents—regardless of their age—for up to three years.

And, as in past sessions, legislators will have to decide during the session's waning weeks whether to retain Section 127 of the Internal Revenue Code. That section allows employers to provide an employee with up to $5,250 in tax-free tuition reimbursement benefits.

Section 127 expires on Sept. 30.

While legislation, S. 2988, has been introduced to permanently extend Section 127, benefit observers say a temporary extension, following the pattern of previous sessions, is most likely.

"Section 127 is a provision with nine lives on Capitol Hill, and I don't think all the lives have been used up," said Foster Higgins' Mr. Saveth.

Other proposals, notably absent from the agenda this fall, are expected to return next year.

For example, President Bush earlier this summer vetoed a bill to require companies with at least 50 employees to provide up to 12 weeks of job-protected leave for the birth or adoption of a child; to take care of a seriously ill child, parent or spouse; and for an employee's own illness.

Employers would have had to continue offering the health insurance as if employees had stayed on the job (*BI*, June 18).

While President Bush's veto, later sustained by the House, effectively killed the legislation, observers say new efforts will be made to pass the proposal in the next session.

"Parental leave is a popular issue. It will be back again and again," according to Mr. Uslander.

Benefit observers also do not expect any action on legislation, S. 768, introduced by Sen. Edward Kennedy, D-Mass., that would require employers to offer health care plans that would have to meet minimum federal standards.

The Kennedy bill was approved in July by the Senate Labor and Human Resources Committee (*BI*, July 17).

But support is lacking this year, experts say.

"The bill is too big and has too many potentially unknown effects," Mr. Saveth said.

"The very concept of mandating is tough for legislators to accept in a country that prides itself on freedom of choice," according to Mr. Feltman.

However, Sen. Kennedy's interest in improving health care access remains strong, and he likely will renew his push for the bill during the next session, benefit consultants say.

Not all of the benefit-related action this fall will be taking place in Congress.

For example, the IRS says it will soon issue guidance on 401(k) plan restructuring, a provision included in May pension regulations that would enable high-paid employees to increase their contributions and decrease the chances that 401(k) plans will flunk non-discrimination tests (*BI*, July 9).

Benefit consultants say the IRS and the Treasury Department are still discussing restructuring.

"An internal debate is still going on at the IRS and Treasury," according to Kyle Brown, a consultant in The Wyatt Co.'s Research and Information Center in Washington, D.C.

"I suspect that Treasury and IRS have not made up their minds," Mr. Saveth agreed. ■

Reserves

Continued from page 2

"I can tell you that my phone has been ringing off the hook," said John Woyke, a principal with TPF&C, the benefit consulting division of Towers, Perrin, Forster & Crosby Inc. in Valhalla, N.Y.

Some benefit issues are clear. For example, the U.S. Supreme Court, in a 1977 decision known as the Alabama Power Co. case, laid out a two-prong test to determine whether a benefit is a "perquisite of seniority" and thus protected by federal law when a worker is called to active duty in the military (*BI*, June 27, 1977).

Under this test, there must be a reasonable certainty that the benefit would have accrued if the employee had not gone into military service and must be a reward for long-term service rather than short-term compensation.

In the Alabama Power case, the court noted that a pension plan, which required 20 years of service for vesting, was a reward for length of service, and thus any job interruption for military service must be recognized in calculating the benefit.

"Anything that is service-related has to be credited for pension vesting and benefit accrual purposes," said Chip Kerby, a principal in the Washington, D.C., office of William M. Mercer Inc.

However, companies may not have to make contributions to profit-sharing plans on behalf of employees on active duty.

The 6th U.S. Circuit Court of Appeals in February 1985 overturned a lower-court ruling that granted to veterans employed by Chemi-Trol Chemical Co. of Gibsonville, Ohio, retroactive profit-sharing benefits for the time they spent in the military (*BI*, March 4, 1985).

Borrowing from the Supreme Court ruling in the Alabama Power case, the appellate court ruled that Chemi-Trol's profit-sharing plan represented short-term compensation for work performed, not a reward for length of service.

Benefit experts also say it is clear that employers do not have to extend health care coverage to dependents of reservists called up for duty since medical care coverage is not a function of seniority.

However, employers may be unaware that they do have an obligation to extend COBRA coverage even though reservists' dependents automatically will have coverage in CHAMPUS, the government health plan covering those in the military and their dependents.

Generally, under the health care continuation provisions of COBRA, employers do not have to offer COBRA coverage when beneficiaries obtain coverage under another employer-provided health care plan.

However, 1988 amendments to COBRA made clear that a health care plan sponsored by the federal government or another government entity would not be considered an employer plan.

"The statutory intent is that CHAMPUS is not a group health plan for COBRA purposes," said Bob Kerns, a technical consultant with TPF&C.

While employers have a COBRA obligation, it is unlikely that many dependents or reservists would opt for COBRA coverage, said Mary Lynn Eubanks, a consultant with Hewitt Associates.

That is because an employer can charge COBRA beneficiaries a premium equal to 102% of the group rate—which can amount to hundreds of dollars a month. However, CHAMPUS does not charge participants a premium.

In addition, CHAMPUS deductibles are low—$50 for individual coverage and $100 for family coverage. The plan also requires a 20% copayment, generally with an out-of-pocket limit of $1,000.

But some employers—even though it is not required—may continue to offer regular group health benefits to the dependents of reservists who have been activated.

"Employers aren't going to want to pull the rug out on people's medical benefits" in this kind of situation, said John Hoos, a national practice leader with Hewitt Associates.

"Can you imagine the negative publicity an employer would receive for cutting coverage?" said Mercer's Mr. Kerby.

Employer health care plans do have certain advantages over CHAMPUS. For inpatient service, CHAMPUS generally requires participants to use a military health care facility if one is nearby—generally, within 40 to 60 miles.

In addition, CHAMPUS only provides limited dental coverage. However, a separate comprehensive dental program is available to dependents from the Department of Defense. The monthly premium is $4.57 for one dependent and $9.14 for multiple dependents.

If an employer does provide health care coverage, CHAMPUS coverage would continue, but the program would be secondary to the employer plan. ■

Alliance suggests work comp reforms

CHICAGO—"Incremental" rather than "monumental" change could substantially improve the workers compensation system, says the Alliance of American Insurers, which last week released a booklet outlining its reform suggestions.

Strengthening state workers comp administrative agencies is a key to reform, the trade group contends in "Workers Compensation in a New Decade—Restoring the Balance."

Among other things, the Alliance proposes central administrative agencies in states that still rely mainly on the courts to resolve claim disputes: Alabama, Louisiana, Tennessee and Wyoming.

Appeals of claim-hearing officers' rulings should be limited to points of law in all states, the group suggests. Further proposals include higher budgets for work-comp administrative agencies and advisory committees to assist them.

The Alliance also contends that allowing insurers and self-insurers to begin payments before reaching an agreement with state agencies or injured workers would ensure prompt delivery of benefits. Payments could be suspended if it is later determined the injury is not compensable.

The trade group also recommends improving communication and data collection among state agencies, employers and workplace safety regulatory organizations.

Hull war risk rates lowered for Gulf ports

LONDON—London marine underwriters have lowered hull war risk rates for ships headed to many Persian Gulf ports.

Additional hull war rates previously levied for ships going to parts of the Persian Gulf were reduced Aug. 17 to 0.2% from 0.25% of insured value for seven days of coverage.

Additional hull war risk rates for vessels stopping at the Persian Gulf coasts of Saudi Arabia and Iran were also reduced to 0.75% from 1%.

Additional hull war risk rates for vessels stopping at Saudi Arabian Red Sea coast ports were set at 0.2%, and additional hull war risk rates in the Gulf of Aqaba were set at 0.25%.

Additional rates are charged on top of the worldwide hull war risk rate of 0.05% of the insured value for 12 months of coverage (*BI*, Aug. 13).

Meanwhile, ports and areas around Iraq, Kuwait and the "Neutral Zone" between the two countries remain on a "held cover" basis, which means that the market is not prepared to set advisory rates, leaving rates up to each underwriter's discretion.

Cargo war risk rates were left unchanged last week.

—By Carolyn Aldred

Consortium of 89 charges dropped

LONDON—Prosecutors have dropped criminal fraud charges against Colin Youell, Barry Toomey and David Gale, officials of reinsurance intermediary Consortium of 89 Ltd. in London.

The three were arrested earlier this year on charges that they had issued bogus financial guarantee coverage on a loan Global Minerals Ltd. of London made to a California developer (*BI*, Feb. 12).

The fraud charges that were dropped stemmed from actions that occurred in the United States, said a spokesman for the British Crown Prosecution Service.

However, charges of handling money obtained in the alleged fraud are still pending against Royston Fenn, a Global Minerals official, the spokesman said.

Mr. Youell and Consortium of 89 were at the center of disputes last year over allegedly phony binding authorities issued for several insurers (*BI*, Dec. 11, 1989).

—By Douglas McLeod

Damage not yet determined from blaze at Shell refinery

DEER PARK, Texas—Shell Oil Co. is investigating a fire that damaged a distillation unit and injured two workers at a refinery near Houston last week.

A spokesman for Houston-based Shell said no cause has been determined and the company is "evaluating the extent of the damage and the impact on refinery production."

Only the damaged unit was shut down, with production continuing normally at the rest of the refinery, the spokesman said.

Damage estimates were unavailable, and the spokesman could not provide details about the company's coverage for property damage or business interruption losses.

Shell is a member of Oil Insurance Ltd., the oil and gas industry mutual insurer, and its sister company Oil Casualty Insurance Ltd.

Bermuda-based OIL writes all-risk property, well-control and third-party pollution liability insurance. Primary limits of up to $150 million per occurrence are available and the insurer writes an additional $150 million in excess limits.

Oil Casualty provides excess liability limits of $100 million per occurrence with a $100 million annual aggregate above at least a $20 million per occurrence retention.

—By Michael Bradford

Update

Manville judge caps legal fees

Continued from page 2

Judge Jack B. Weinstein of Brooklyn last week limited the fees in his role as the judge overseeing the cash-strapped trust, which has delayed payments to victims in some cases for 10 to 20 years (*BI*, Jan. 22).

Judge Weinstein earlier had ordered the trust—established as part of the Manville Corp. reorganization plan—to stop paying most settlements or judgments. Only seriously ill asbestos victims in "extreme financial hardship" are to receive payments.

The new order limits attorneys' fees in these hardship cases to 20% of each payment to a victim.

Judge Weinstein also hinted that he may eventually cap fees for all lawyers with cases against the trust. In his Aug. 21 order, he said: "The matter of fees is now being considered in connection with a restructuring of the Trust's payment program."

The stay on payments will expire Sept. 6, when the trust is to propose a financial restructuring plan.

NSC alleges misrepresentation

ATLANTA—A U.S. District Court judge has issued a temporary restraining order prohibiting Wakashaw Corp. of Roswell, Ga., from selling surety bonds in the name of National Surety Corp.

NSC, the Chicago-based subsidiary of Fireman's Fund Insurance Co., alleged in a suit filed last week that Wakashaw fraudulently represented itself in issuing a contractor four bogus NSC bonds totaling $120,000. A $94,000 performance bond was issued to a contractor performing hazardous waste removal work for the federal government.

Judge Robert H. Hall last week ordered Wakashaw and several individuals associated with the firm to stop representing themselves as NSC agents and issuing bonds or other insurance in NSC's name, court papers say.

A Fireman's Fund spokesman said he had no details about Wakashaw or how the individuals named as defendants are associated with the firm.

The judge also ordered Wakashaw to turn over documents related to the bonds to a U.S. marshal.

The company did not return phone calls.

A hearing for a preliminary injunction is scheduled for Aug. 30.

Nuclear accident claims plan

WASHINGTON—Victims of a catastrophic nuclear accident should be "fully compensated" for injuries and losses under proposed claims resolution procedures for the Price-Anderson Act, a presidential commission recommends.

That law now limits nuclear industry liability to $7.3 billion per accident.

In its report to Congress last week, the Presidential Commission on Catastrophic Nuclear Accidents also recommends resolving nuclear disaster claims through a multi-tier federal court process that includes "administrative features" to speed up resolution. Victims of nuclear accidents now would have to file claims in court like other plaintiffs.

No source of revenue was recommended for recoveries exceeding $7.3 billion, the limit funded by the nuclear power industry and its insurers under Price-Anderson. The panel noted it had "no special expertise" to address that issue.

In addition, the 10-member commission concluded that the inability to determine whether a person's cancer was caused by radiation exposure from a nuclear accident or occurred spontaneously "should not bar recovery for latent injuries."

However, punitive damages should be prohibited following a nuclear accident, the commission recommended.

Court delays retiree benefit cut

BRIDGEPORT, Conn.—A federal judge has barred Societe Nationale Elf Aquitaine of Paris from reducing medical benefits for several retired senior executives of U.S. subsidiary Texasgulf Inc. until a suit challenging the energy company's move is resolved.

U.S. District Judge T.F. Gilroy Daly issued the preliminary injunction Aug. 17. It is to remain in effect until resolution of a suit alleging that terminating an executive medical plan would violate Elf Aquitaine's 1981 purchase agreement with Stamford, Conn.-based Texasgulf.

In her order, Judge Daly said the executives had established "a strong likelihood of success" with the breach of contract action.

Under the 1981 pact, Elf Aquitaine promised to provide 25 retired executives with medical benefits "at least equal to the level of benefits under the plan currently in force," retired Texasgulf executive Richard D. Mollison alleged in his petition for the injunction (*BI*, June 4).

Medical costs are paid in full under the retired executives' current plan, but are only 80% covered under the basic retiree plan. Elf Aquitaine told the retirees in April would be placed in the basic benefit plan as of May 31.

Briefly noted

Rock band **Judas Priest** did not intentionally include subliminal messages in lyrics in its Stained Class album that would lead listeners to attempt suicide, a state district court judge in Reno, Nev., ruled last week in a product liability suit against record distributor CBS Records. The plaintiffs had charged that subliminal messages in the album caused two teen-agers to attempt suicide. One of those teen-agers died (*BI*, Feb.2, 1987). The judge also said there is no scientific evidence that subliminal messages can cause people to attempt suicide. . . .Leaders of the Independent Insurance Agents of America and the National Assn. of Professional Insurance Agents last week said they intend to **consolidate the two national agents organizations.** The two groups will present a feasibility study to their respective boards by March 1, 1991.

Anglo-American

Continued from page 2

harged that at least $3.4 million misappro-riated from Anglo-American Insurance Co. vas paid into a trust account controlled by Mr. Stein and that Mr. Stein "wittingly or nwittingly" became "mixed up in and/or nvolved with large scale misappropriations" f the insurer's funds.

The affidavit also says that Anglo-Ameri-an Insurance Co. money may have been ransferred to a new network of British and rish companies which Mr. Miro controls and or which Mr. Stein serves as a director. Padstow and Filbert hold shares in one of hese companies, the affidavit says.

Mr. Stein and lawyers representing Finers n the London action could not be reached or comment.

Collin Gibbons, a London lawyer repre-enting Mr. Miro, confirmed that Mr. Miro has objected to the Louisiana department's ntervention action, but he declined to com-nent further.

Mr. Miro established Anglo-American In-surance Co. in Louisiana in 1986 with $1.5 million in initial capital. The insurer wrote about $56 million in gross premiums—mainly workers compensation coverage—be-fore it was ordered liquidated in March 1989. Its insolvency has been estimated at $23 mil-lion.

Anglo-American Insurance Co. is unre-lated to Anglo American Insurance Co. Ltd. of London, formerly a participant on the H.S. Weavers (Underwriting) Agencies Ltd. line slip.

Mr. Miro's role in the insurer's collapse be-came the focus of several hearings before the U.S. House Oversight and Investigations Subcommittee in 1988 and 1989 (*BI*, April 10, 1989).

The subcommittee last October asked the U.S. Justice Department to launch a criminal investigation of Mr. Miro and several associ-ates, including Mario J. Mendiola, an Anglo-American Insurance Co. officer, and J. Albert Kroemer, Mr. Miro's Dallas-based attorney (*BI*, Oct. 23, 1989).

That investigation is continuing, according to Mr. Tulley, a partner with the firm of Tay-lor, Porter, Brooks & Phillips in Baton Rouge.

The Louisiana department in August 1989 filed three separate lawsuits in U.S. District Court in Baton Rouge against Mr. Miro and several companies he controlled.

Mr. Miro, the suits charged, used devices including management fees, reinsurance agreements and loans to drain millions of dollars from Anglo-American Insurance Co. through a network of affiliated shell companies.

The complaints—each of which dealt with a separate set of allegedly improper transactions—named parent Anglo-American Group, Anglo-American Trust of London and Anglo-American International of Dublin, which reinsured its Louisiana affiliate and failed to pay several million dollars of claims.

The complaints were later consolidated and amended to add as defendants Mr. Mendiola, Mr. Kroemer and Kamel Properties Inc., a company Mr. Kroemer headed and which received—and later defaulted on—a $1 million loan from Anglo-American Insurance Co. to buy a Dallas mansion in which Mr. Miro lived.

Mr. Mendiola has denied the charges in an answer to the complaint.

Mr. Miro—who was only recently served after months of unsuccessful Insurance Department efforts to locate him—and Mr. Kroemer have asked the court for extensions of time to file pleadings.

Mr. Miro was only recently served with court papers after months of unsuccessful efforts to locate him.

Mr. Miro, who has repeatedly denied wrongdoing in his management of the Anglo-American group, is scheduled to respond to the complaint by Sept. 28, according to his New York-based lawyer, Lawrence S. Feld.

The three Anglo-American affiliates, meanwhile, failed to respond to the complaint and never hired legal counsel, leading Judge Polozola to enter a default judgment against them on July 20.

On Aug. 10, Judge Polozola signed an order directing the three companies to pay $31 million to Anglo-American Insurance Co's liquidator.

The judge's order also nullified a series of wire transfers and other payments totaling more than $7.6 million to Anglo-American Trust and Anglo-American International between April 1987 and August 1988.

In nullifying these transfers, Judge Polozola declared the funds the property of the insolvent insurance company, clearing the way for the insurer's liquidator to try to recover the money.

The order also enjoined Anglo-American Trust and Anglo-American International from transferring or disposing of any of their assets and requires them to provide records that will allow liquidation officials to trace money received from the insurance company.

Liquidation officials are hoping intervention in the London Chancery Court action will shed some light on the whereabouts of at least some of the money taken from Anglo-American Insurance Co.

Mr. Green charges in his affidavit that at least $3.4 million was fraudulently misappropriated from Anglo-American Insurance Co. and was deposited into a client trust account set up by Stein, Swede, Jay & Bibring, Mr. Stein's London law firm, which merged with another firm in 1989 to become Finers.

In seeking to intervene in the London action, the Louisiana liquidator is requesting access to records of the Stein, Swede client account, without which the liquidator would be unable to trace funds that were "wrongfully removed" from the insurer, the affidavit says.

The affidavit also raises the possibility that some of the Anglo-American Insurance Co. money has funded new insurance operations set up by Mr. Miro and his associates.

Padstow and Filbert, the two investment company plaintiffs in the London action, are shareholders of an Isle of Man holding company called Westminster & St. James Holdings Ltd., whose directors include Mr. Stein and James M.V. Butterfield, a former director of Anglo-American Trust, according to the affidavit.

The Isle of Man company appears to be affiliated with London-based Westminster & St. James Associates Ltd., the directors of which include Mr. Miro, Mr. Mendiola, Mr. Stein and Mr. Butterfield, the affidavit says.

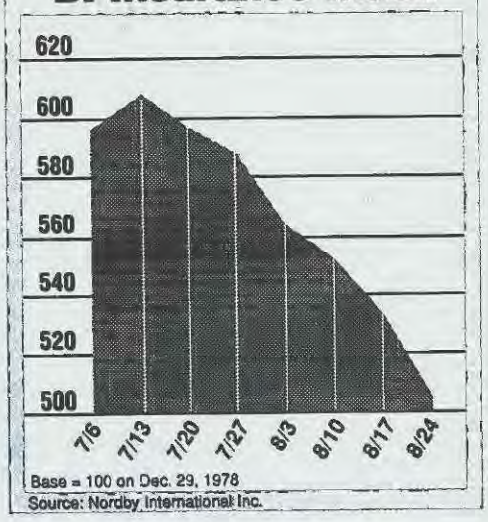
Another affiliated company is St. James Reinsurance Co. Ltd. of Ireland, directors of which include Mr. Miro, Mr. Stein and Brian Hynes, another former Anglo-American Trust director and official of Anglo-American International, the affidavit says.

"In light of the foregoing, it would appear that Miro and Mendiola are in the process of building a further group of companies to replace the now collapsed Anglo-American group," Mr. Green's affidavit says.

"In the circumstances, I am also extremely concerned that assets properly belonging to (Anglo-American Insurance Co.) may have been transferred to companies within the new structure."

A hearing is scheduled for tomorrow on the liquidator's application to intervene, according to Mr. Tulley. ■

BI Insurance Index



Insurance industry stocks continued to plunge last week, as the *Business Insurance* stock index fell 28.8 points to 505.7 on Aug. 24 from 533.5 on Aug. 17. Advancing issues were led by American Indemnity Financial Corp., up 13.3%; AmBase Corp., up 5.9%; and Lawrence Insurance Group, up 5.7%. Declining issues followed Harleysville Group, down 16.7%; Statesman Group Inc., down 15.4%; and Protective Life Corp., down 14.7%. The most active issue during the week was Sears, Roebuck & Co. (Allstate), 36.7 million shares traded. The *BI* Index fell 5.2% for the week; the Standard & Poor's 500 fell 5.0%; the Dow Jones 30 Industrials dropped 4.2%; and the New York Stock Exchange Composite lost 5.1%.

British Issues

Aug. 23 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence	pence
Comml Union	450	20.3	28.7	6.4	468—450	
Genl Accident	473	14.4	33.4	7.1	490—473	
Gdn Royal Exch	195	17.0	15.3	7.8	200—195	
Royal	407	21.8	34.0	8.3	425—407	
Sun Alliance	287	10.4	16.7	5.8	288—280	
Brokers						
Bradstock	207	14.5	10.0	4.8	227—207	
CE Heath	413	12.1	34.5	8.3	442—413	
Hogg Group	136	9.0	9.7	7.1	143—136	
Lloyd Thompson	289	18.0	9.7	3.3	300—289	
PWS Holdings	65	10.2	3.3	5.1	75—65	
Sedgwick Grp	183	13.8	16.0	8.7	188—183	
Steel Brrl Jones	248	15.0	14.7	5.9	261—248	
Willis Faber	219	13.7	16.0	7.3	225—219	

Source: Philip Olsen, Insurance Industry Specialist London

BI Industry Stock Report

AUGUST 20, 1990 THROUGH AUGUST 24, 1990

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	20.38	-4.68	-35.32	34.00	20.00	222	1.00	4.91	19	9.18	2.22
Corroon & Black	NYS	29.38	-2.08	-23.20	41.00	28.50	226	1.36	4.63	14	12.73	2.31
Gallagher Arthur J. & Co.	NYS	20.88	-3.47	-15.66	26.50	20.75	6	0.60	2.87	17	5.33	3.92
Frank B. Hall	NYS	2.88	0.00	-4.17	4.25	2.50	73	0.00	0.00	-2	-2.80	-1.03
Hilb, Rogal & Hamilton	OTC	12.75	-9.73	-31.54	20.63	12.25	27	0.28	2.20	17	4.60	2.77
Marsh & McLennan	NYS	67.25	0.37	-13.78	89.75	66.75	586	2.60	3.87	16	10.56	6.37
Poe & Associates	OTC	11.75	4.44	-11.32	13.00	8.00	4	0.40	3.40	14	1.93	6.09
BROKERS	AVERAGE		-2.2	-19.3					3.1	14		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	31.75	-5.22	-23.72	46.50	32.00	151	0.44	1.39	7	25.06	1.27
Berkshire Hathaway Inc.	NYS	6275.00	-5.99	-27.25	8900.00	5675.00	1	0.00	0.00	-20	2869.00	2.19
ITT (Hartford Group)	NYS	51.13	-3.31	-14.61	63.75	50.63	2094	1.60	3.13	6	56.33	0.91
Sears (Allstate)	NYS	28.00	-3.03	-27.74	45.63	27.88	3667	2.00	7.14	8	37.75	0.74
CONGLOMERATES	AVERAGE		-4.4	-23.3					2.9	0		
INSURERS/REINSURERS												
Aetna Life & Casualty	NYS	43.50	-5.43	-25.00	62.50	43.50	691	2.76	6.34	7	58.11	0.75
Ambase Corp.	NYS	2.25	5.88	-82.18	16.25	1.50	2253	0.00	0.00	-1	29.08	0.08
American General	NYS	39.25	-7.37	19.85	50.63	28.13	2280	3.20	8.15	9	34.68	1.13
American Heritage	NYS	20.63	0.00	-27.63	24.63	20.13	6	1.00	4.85	10	22.60	0.91
American Indemnity/Fin'l	OTC	4.25	13.33	-46.88	10.75	3.38	1	0.08	1.88	-1	17.38	0.24
American International	NYS	63.38	-5.59	-24.91	89.63	62.88	1852	0.44	0.69	9	41.92	1.51
Aon Corp.	NYS	32.13	0.00	-24.19	43.25	31.50	341	1.52	4.73	9	19.62	1.64
Argonaut Group	OTC	70.13	-1.23	1.81	78.00	63.25	20	1.60	2.28	8	36.83	1.90
AVEMCO Corp.	NYS	22.38	-4.28	-8.21	30.13	20.38	14	0.44	1.97	16	9.52	2.35
Baldwin & Lyons Inc.	OTC	20.50	0.00	-4.65	24.00	19.25	4	0.28	1.37	7	20.80	0.99
Belvedere Corp.	ASE	3.38	-6.90	-38.64	5.63	3.38	2	0.04	1.19	-4	8.03	0.42
Chandler Insurance	OTC	6.13	-5.77	-47.87	13.25	6.25	37	0.00	0.00	3	9.53	0.64
Chubb Corp.(s)	NYS	40.88	-3.25	-57.37	51.38	38.63	1087	1.32	3.23	8	55.49	0.74
CIGNA Corp.	NYS	42.00	-3.72	-30.29	66.75	42.13	1192	3.04	7.24	11	66.64	0.63
CNA Financial Corp.	NYS	66.00	-7.53	-34.00	108.75	65.75	193	0.00	0.00	11	54.87	1.20
Continental Corp.	NYS	23.38	-2.09	-25.50	37.63	22.50	743	2.60	11.12	17	41.36	0.57
Durham Corp.	OTC	25.00	0.00	-18.70	34.75	25.00	10	0.92	3.68	12	26.32	0.95
Fund American Corp.	NYS	46.75	-5.56	32.62	51.88	29.50	1166	0.68	1.45	104	32.74	1.43
Fremont General Corp.	OTC	13.88	2.78	-31.06	22.50	13.00	292	0.80	5.77	4	19.09	0.73
Frontier Insurance Group	NYS	16.25	-22.62	-12.16	33.00	14.13	57	0.00	0.00	7	7.29	2.23
General RE Corp.	NYS	70.50	-4.57	-21.67	96.25	70.13	1321	1.52	2.16	11	29.04	2.43
Hanover Insurance Co.	OTC	23.50	-3.09	-22.95	33.00	22.75	84	0.44	1.87	7	32.03	0.73
Harleysville Group	OTC	20.00	-16.67	-27.27	28.75	19.50	88	0.64	3.20	6	18.94	1.06
Hartford Steam Boiler	NYS	44.13	-11.75	-18.66	62.13	43.50	107	1.80	4.08	12	18.94	2.33
Kansas City Life Ins.	OTC	35.88	0.00	0.00	36.25	34.50	64	1.12	3.12	9	39.22	0.91
Kemper Corp.	NYS	31.00	-13.89	-34.39	51.88	31.00	214	0.92	2.97	48	29.97	1.03
Lawrence Insurance Group	ASE	7.00	5.66	-1.75	9.13	6.50	2	0.36	5.1[illegible]	12	4.40	1.59
Liberty Corp.	NYS	45.00	-2.17	5.88	50.25	35.00	18	0.92	2.0[illegible]	10	31.82	1.41
Lincoln National	NYS	44.88	-2.18	-26.43	62.88	44.00	253	2.60	5.79	8	49.19	0.91
NAC Re Corp.	OTC	27.25	-4.39	-24.83	41.00	27.25	88	0.20	0.7[illegible]	12	22.81	1.19
Navigators Group	OTC	32.00	-3.03	16.36	33.75	25.25	53	0.20	0.0[illegible]	12	15.22	2.10
Nobel Insurance LTD.	OTC	3.00	0.00	50.00	3.75	1.50	25	0.20	0.0[illegible]	-8	7.76	0.39
NWNL Companies	OTC	19.50	-11.36	-50.63	44.13	19.25	713	1.32	6.7[illegible]	4	37.50	0.52
Ohio Casualty Corp.	OTC	39.38	-6.25	-17.54	52.50	34.75	1413	2.32	5.8[illegible]	12	33.30	1.18
Old Republic Int'l	OTC	24.25	2.11	-5.37	29.00	21.13	322	0.76	3.1[illegible]	6	30.70	0.79
Orion Capital Corp.	NYS	17.50	-7.28	-24.73	28.50	17.25	22	0.92	5.2[illegible]	6	19.72	0.89
Phoenix RE Corp.	OTC	9.25	2.78	-28.85	15.50	8.75	15	0.20	2.1[illegible]	-10	12.99	0.71
Protective Life Corp.	OTC	10.88	-14.71	-23.68	15.50	10.75	282	0.76	6.9[illegible]	6	14.54	0.75
Provident Life	OTC	18.75	-6.25	-27.54	30.13	17.00	594	0.40	4.2[illegible]	5	23.24	0.81
Re Capital Corp.	ASE	13.00	-3.70	-10.34	15.25	11.25	7	0.40	0.0[illegible]	10	14.43	0.90
RLI Insurance Corp.	NYS	12.00	2.13	35.21	14.75	6.88	11	0.32	3.6[illegible]	6	12.42	0.97
St. Paul Companies	OTC	53.75	-2.71	-10.42	63.50	53.00	871	2.40	4.4[illegible]	7	43.47	1.24
SAFECO Corp.	OTC	30.75	0.82	-22.64	42.38	29.75	893	1.36	4.4[illegible]	7	24.87	1.24
SCOR U.S. Corp.	NYS	8.75	-1.41	-38.60	14.50	8.50	21	0.20	2.2[illegible]	11	10.61	0.82
Seibels Bruce Group	OTC	6.88	-1.79	-36.78	11.88	5.75	75	0.80	11.6[illegible]	-1	13.75	0.50
Selective Ins. Group	OTC	14.75	-4.84	-22.88	20.25	14.50	84	1.04	7.0[illegible]	5	15.72	0.94
Statesman Group Inc.	OTC	1.38	-15.38	-50.00	3.31	1.25	73	0.04	2.9[illegible]	3	4.19	0.33
Tokio Marine & Fire	OTC	38.00	-0.33	-49.59	78.13	36.00	23	0.26	0.6[illegible]	-	70.93	0.54
Torchmark Corp.	NYS	42.75	-8.56	-25.33	58.75	42.50	219	1.40	3.2[illegible]	10	13.23	3.23
Transamerica	NYS	30.50	-13.48	-31.65	48.00	29.88	57	1.52	6.3[illegible]	7	34.63	0.88
Travelers Corp.	NYS	24.00	-5.88	-34.92	43.38	23.75	85	2.40	10.0[illegible]	6	44.85	-
Trenwick Group Inc.	OTC	18.00	-8.86	-26.15	26.88	17.25	135	0.48	2.6[illegible]	8	16.91	1.06
United Fire & Casualty	OTC	33.50	-2.90	1.52	35.00	30.50	16	1.20	3.5[illegible]	9	22.56	1.48
USF&G Corp.	NYS	21.00	-4.55	-29.11	32.38	20.13	1195	2.92	13.9[illegible]	15	22.87	0.92
UNUM Corp.	NYS	47.75	-7.28	0.00	57.13	36.75	256	0.80	1.6[illegible]	10	31.20	1.53
USLIFE Corp.	NYS	32.25	-5.49	-28.73	47.75	32.38	88	1.48	4.5[illegible]	8	54.34	0.59
Washington National	NYS	17.88	-5.30	-36.73	28.75	18.00	1	1.08	6.0[illegible]	20	32.90	0.54
USLICO Corp.	NYS	19.75	-1.25	-16.84	25.00	19.75	40	1.00	5.0[illegible]	7	27.73	0.71
Zenith National Ins.	NYS	13.38	-5.31	-28.67	21.50	13.38	18	0.88	6.5[illegible]	8	13.81	0.97
INSURERS/REINSURERS	AVERAGE		-4.4	-21.6					4.[illegible]	10.0		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	12.50	-13.79	-41.18	26.38	12.00	33	0.00	0.0[illegible]	11	3.54	3.53
HMO America Inc.	OTC	5.00	-11.11	-35.48	9.75	4.38	126	0.00	0.0[illegible]	6	1.12	4.46
Pacificare Health Sys.	OTC	14.25	0.00	-45.19	30.38	12.00	27	0.00	0.0[illegible]	11	6.35	2.24
Safeguard Health Enter.	OTC	5.25	-4.55	-38.24	12.50	5.13	40	0.00	0.0[illegible]	9	2.99	1.76
Sierra Health Services	ASE	5.75	-13.21	-35.21	9.63	5.50	40	0.00	0.0[illegible]	-16	0.62	9.27
United Healthcare Corp.	OTC	16.00	-9.86	30.61	20.13	7.88	93	0.12	0.7[illegible]	16	0.34	47.06
United Medical Corp.	ASE	7.38	-14.49	22.92	11.38	5.88	11	0.20	2.7[illegible]	10	5.70	1.29
U.S. Healthcare	OTC	17.50	-3.45	22.81	22.25	9.63	2	0.55	2.0[illegible]	20	3.07	5.70
HMOs	AVERAGE		-8.8	-14.9					0.7	8		
ALL COMPANIES	AVERAGE		-4.6	-20.2					3.[illegible]	9		

System design: Nordby International Inc.

It's a rare crisis that responds to a small fix. Yet, year after year, that's exactly what's been offered.

Cost-containment programs that were effective in the areas they targeted but not broad enough to truly slow surging medical costs.

At the CIGNA companies, we believe what's needed is a whole new framework for offering health care. And so we've created one.

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Integrated Managed Care. Simply put, we form a long-term partnership with each of our clients and with local providers of medical services.

A partnership where each member is committed to two goals: ensuring quality medical care and containing costs.

Then, drawing from a broad array of managed care products and services, we design health care programs to meet each client's short- and long-term objectives. And we implement them in a way that lets clients move at their own pace.

What does this mean for your company? That at last there are health care programs that can help you contain escalating medical costs.

And what does it mean for your employees? That they have access to quality medical care through the health care delivery system that's best suited to their needs.

Write the CIGNA Companies, Dept. R2, 1600 Arch St., Philadelphia, PA 19103. And discover a long-term health care solution that may not be simple or easy, but does have one important thing going for it. It's right.

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