NEWSPAPER

DECEMBER 28, 1992

Business Insurance®

Reporting weekly for corporate risk, employee benefit and financial executives / $2.00 a copy; $80 a year

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Update

Court clears way for Garamendi to implement Prop. 103 rules

LOS ANGELES—Insurance Commissioner John Garamendi is expected to begin implementing stringent Proposition 103 rate rollback regulations this week after a state appeals court ruled that he is not bound by his predecessor's regulations.

In a unanimous opinion, the 2nd District Court of Appeal last week rejected an attempt by more than 80 insurers to overturn Mr. Garamendi's tough regulations.

At issue was the rate of return insurers are to be allowed when calculating the re-

Continued on next page

Disaster toll climbs

East Coast storm to cost underwriters $650 million

East Coast storm losses will add yet another straw to the enormous catastrophe burden already shouldered by insurers this year.

The Property Claim Services Division of the American Insurance Services Group last week estimated that insured damages from the Dec. 11-12 storm will total $650 million.

Most of the damage was in New York, where the AISG estimates insurers will pay $220 million in claims. Damages in New Jersey are expected to reach $150 million. Insurers could pay out as much as $75 million to Massachusetts policyholders and around $70 million to those in Pennsylvania, the AISG estimates. The brunt of the claims are expected to come from personal lines policyholders.

Based on the initial estimate of the East Coast storm losses—plus $35 million in damage from high winds in Alaska at the beginning of the month—insured catastrophe losses have totaled $18.21 billion so far in 1992, according to the AISG. That is almost 140% greater than the previous record of $7.64 billion in 1989 (see chart).



GRAPHIC BY CHRIS ROY

However, the 1992 total will surely rise. While the AISG has estimated that Hurricane Andrew caused a total of $10.7 billion in insured losses, A.M. Best Co. estimates that storm alone will cost insurers from $15 billion to $16.5 billion (*BI*, Dec. 21).

Even as Andrew estimates were still rising, the "Nor'easter" dumped more than three inches of rain on New York, New Jersey and Connecticut on Dec. 11. Heavy gusts of wind drove tides higher than normal into commercial and residential property from the Jersey Shore to southern Connecticut.

Overnight, the precipitation turned to wet snow. About five inches of snow fell Dec. 12 in the New York City area, while as much as 30 inches fell in Northern Connecticut and upstate New York.

Falling branches and windblown power lines cut power to about 850,000 homes and businesses for at least two days.

Counties in several states were declared federal disaster areas last week by President Bush.

The New York Emergency Management Office raised its

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Expired tax break on tuition leads to confusion

By SALLY ROBERTS

Confusion touched off by congressional foot-dragging on a benefit tax issue has left many employers deciding between complying with the tax laws and avoiding an administrative nightmare.

Section 127 of the Internal Revenue Code, which allows employers to provide workers with up to $5,250 in tax-free tuition reimbursement benefits for non-job related education annually, expired June 30. A tax bill that would have extended the tax break was vetoed by President Bush in November.

Section 127, which was originally part of the Revenue Act of 1978, expired and was reinstated retroactively several times during the 1980s. But this time, six months have lapsed without a reinstatement.

This means employers must choose between withholding taxes on their employees' educational reimbursement checks or counting on Congress to once again retroactively reinstate the section.

If employers bank on Congress reinstating the tax break but Section 127 is not made retroactive, they face penalties if they filled out W-2 forms incorrectly. Those penalties would be at least $100 for each form that was an intentional error. Employers could also be fined up to 100% of the amounts that should have been withheld, not to mention employee morale could suffer if workers' tax burdens are higher than expected come April 15.

On the other hand, employers that comply with the law and withhold taxes now face no penalties. But if Section 127 is retroactively reinstated, they face big administrative hassles.

Employers are stuck "between a rock and a hard place," said Denise Georgemiller, a Hewitt Associates consultant in Lincolnshire, Ill. Employers must decide which is worse—possible penalties or administrative difficulties, she said.

"Everyone is pulling out their

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Few in Congress supporting federal solvency regulation

By MARK A. HOFMANN

WASHINGTON—Only about one-quarter of the members of Congress support federal oversight of insurer solvency, says a new survey by the Gallup Organization.

The poll, which was conducted for a Washington lobbying firm, also found that more than 40% of senators and representatives oppose "global budgeting" for health care, while about a quarter support the concept of health care spending targets or caps.

Gallup also found that 97% of legislators surveyed viewed health care as either a "critical" or "very important" issue, tying with jobs as the most important issue facing Congress.

The pollsters found that members of Congress consider personally written letters and telephone calls from constituents among the actions that have the most influence on their votes on health care and insurance issues.

These were among several insurance and health care questions that Gallup asked new and returning members of Congress. Gallup received responses from 149 senators and representatives, about 28% of the total.

The survey was conducted for Bonner & Associates, a lobbying firm that represents business interests, including insurers.

The poll had two purposes, said Jack Bonner, president of Bonner & Associates. "We wanted to learn what issues would be hot by talking to the people who know," he said, explaining that persuading legislators to actually talk with pollsters, rather than referring queries to their staffs, was one of the survey's most significant ac-

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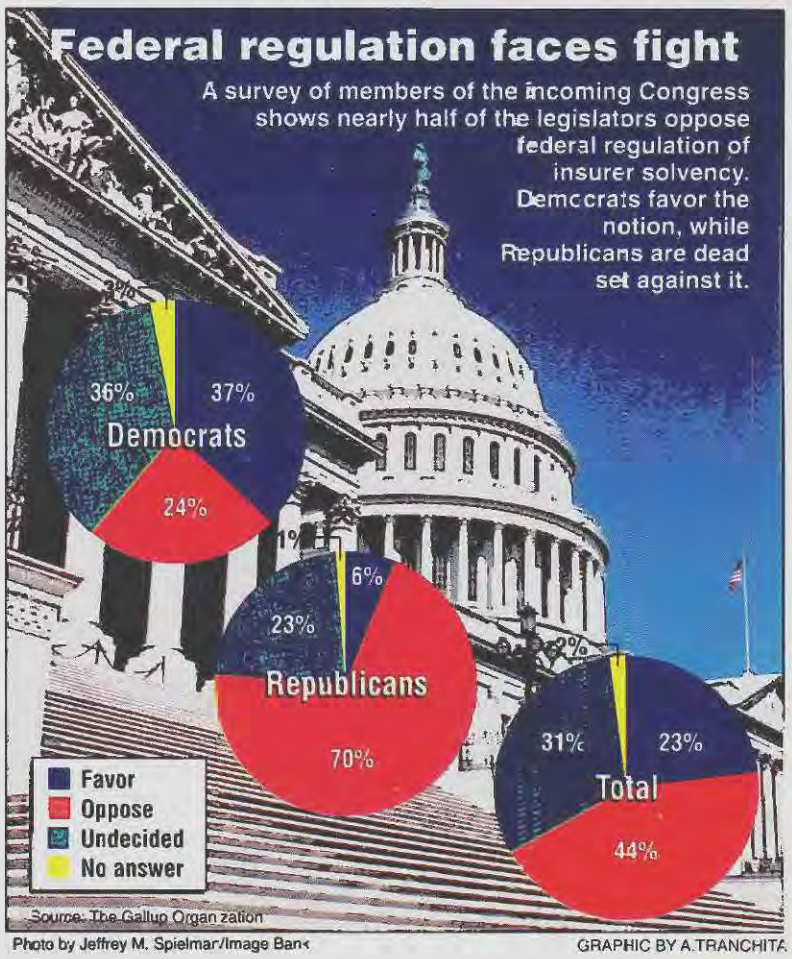


Photo by Jeffrey M. Spielman/Image Bank

GRAPHIC BY A.TRANCHITA

Update

Insurers lose rate rollback suit

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funds owed to policyholders. In 1990, Commissioner Roxani Gillespie set the rate at 11.2% (*BI*, June 18, 1990). Insurers argued that that benchmark was final and could not be changed.

The court disagreed, finding the order to be "quasi-legislative" and allowed Mr. Garamendi to change the rate to 10%. The insurers may seek a rehearing.

The ruling also removed another obstacle to refunds. The court ruled that the commissioner need not seek the approval of the state's Office of Administrative Law before putting regulations into effect.

However, the court left one key issue unresolved: the legality of Mr. Garamendi's rollback orders and proposed utility-type regulation of future rate hikes. Los Angeles Superior Court Judge Dzintra Janavs is expected to rule on those issues within three months.

Aircraft losses hit $50 million

LONDON—Aviation insurers face hull losses of nearly $50 million and undetermined liability losses after two aircraft crashes last week.

The most costly loss stems from the Martinair DC-10 en route from Amsterdam that crashed while trying to land in a storm at Faro, Portugal. Fifty-four of the 340 passengers and crew members were killed and many others were injured.

The hull was insured for $45 million through the KSSAF group of European airlines. The coverage is placed directly with Polygon Insurance Co. Ltd., an aviation captive in Guernsey. The risk is reinsured in London, led by the Ariel syndicate at Lloyd's of London.

One day later, a Libyan Arab Airlines Boeing 727 with a hull value of $3.5 million crashed near Tripoli, killing all 158 people on board.

Hull and liability coverage was written by Libya Insurance Co. Most of the risk is reinsured in London through the Maghreb pool, which covers several other Arab airlines. The reinsurance is led by syndicate 824, managed by Murray Lawrence & Partners Ltd.

No liability reserve has been established for either crash.

Travelers units ratings lowered

OLDWICK, N.J.—A.M. Best Co. has lowered the ratings of two Travelers Corp. life/health insurer units, citing underperforming commercial mortgage loans and real estate investments.

Best last week lowered the ratings of Travelers Insurance Co. and Travelers Life & Annuity Co. to A− from A.

Travelers Chairman Edward H. Budd said the change fails to consider the $1.4 billion in capital Travelers Corp. raised this year.

Separately, Best last week lowered or downgraded the ratings of three other life insurers: Crown Life Insurance Co. to A− from A+ because of underperforming commercial mortgages and real estate; Acceleration Life Insurance Co. downgraded to C+ from A− because of heavy losses on group business; and Fidelity Security Life Insurance Co. lowered to A− from A after reporting a net operating loss and writedowns for uncollectible reinsurance.

Best also placed several life insurers on its ratings watch list, including: Atlanta Life Insurance Co.; Financial Benefit Life Insurance Co.; General Security Life Insurance Co.; Kentucky Home Mutual Life Insurance Co.; and State Mutual Insurance Co.

New worker safety trial granted

NEW YORK—Two executives convicted of recklessly endangering the lives of 57 workers at a Brooklyn, N.Y., thermometer plant will get a new trial.

A New York state appeals court ruled that Edward and William Pymm, owners of Pymm Thermometer Co., were entitled to a new trial because the judge who presided over their initial trial gave jurors a form containing the detailed indictment rather than just the criminal charges the defendants faced. No new trial date has been set.

The Pymms were convicted of assault and reckless endangerment in 1987 for exposing workers to mercury in a windowless workshop. A state judge then overturned the conviction, saying the case belonged in federal court because it involved violations of Occupational Safety and Health Administration rules (*BI*, Nov. 30, 1987).

But the New York Court of Appeals, the state's highest court, later reinstated the convictions, ruling that federal workplace safety regulations don't prohibit state criminal prosecutions for subjecting employees to unsafe conditions (*BI*, Oct. 22, 1990).

Satellite missing after launch

LONDON—Insurers could face a more than a $100 million loss after a satellite launched from Xichang, China, disappeared.

The communications satellite was built and owned by Hughes Aircraft Co. in California, which was delivering it to Optus Communications, an Australian telecommunications company. Optus was to take ownership of the satellite after it was launched and deployed.

China's space agency lost contact with the satellite after it was launched from a Long March rocket on Dec. 21.

If the satellite is not retrieved, underwriters on separate Hughes and

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Errors & omissions

• Net income of Alexander & Alexander Services Inc. was $46.5 million for the first nine months of 1992, not $465 million as incorrectly reported in the Dec. 21 issue.

• St. Paul Fire & Marine Insurance Co., not parent company St. Paul Cos. Inc., has reported $10 million in losses from the recent Northeast storm (*BI*, Dec. 21).

States file antitrust briefs with U.S. Supreme Court

By JUDY GREENWALD

WASHINGTON—The conduct of insurance industry defendants named in antitrust litigation "is precisely the evil addressed by the. . .boycott provision" of the McCarran-Ferguson Act, state attorneys general say in a brief submitted to the U.S. Supreme Court.

Attorneys general for 19 states on Wednesday filed the brief, arguing that the defendants violated McCarran-Ferguson. While the law grants insurers a limited antitrust exemption, it does not extend to boycotts or coercion.

The states also filed a second brief on the issue of comity, a mutual respect for foreign law.

Several friend-of-the-court briefs supporting the attorneys general also were scheduled to be filed, including one by the U.S. Solicitor General's office, part of the Justice Department, and another by an additional 19 states that are not plaintiffs in the case.

The attorneys general are seeking to affirm a 9th U.S. Circuit Court of Appeals ruling that reinstated the insurance industry antitrust litigation after it had been dismissed by a federal judge (*BI*, June 24, 1991).

The Supreme Court agreed to hear the case in October, and defendants submitted their briefs last month (*BI*, Nov. 23; Oct. 12). Oral arguments are expected to be heard in late February or early March.

In their lawsuit originally filed in 1988, the attorneys general alleged that 32 defendants engaged in a boycott during the mid-1980s. The defendants allegedly forced the Insurance Services Office Inc. to rewrite its commercial general liability policy form to exclude coverage for pol-

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Mysterious disappearance

N.Y. high court precedent: Cover barred when jewel loss unexplained

By MICHAEL SCHACHNER

ALBANY, N.Y.—The mysterious disappearance exclusion contained in most jewelers block policies is not ambiguous and can be invoked by insurers if a claimant cannot explain how a loss occurred, New York's highest court says.

In a reaffirmation of two lower court rulings, the New York Court of Appeals last month ruled that a New York jewelry retailer is not entitled to coverage because its salesman could not explain how his valise containing $300,000 in finished pieces disappeared during a sales trip to Texas.

Three New York state courts that have reviewed *Maurice Goldman & Sons Inc. vs. Hanover Insurance Co. and underwriters at Lloyd's of London* agreed that the "mysterious disappearance" and "unexplained loss" exclusions in Goldman's primary and excess policies bar coverage for the loss of merchandise during the 1988 trip to Houston.

An attorney for the insurers said the case is important not for its monetary value—only $200,000 in total policy limits—but because of the precedent it sets: It is the first state high court ruling that policyholders cannot recover from their jewelers block insurers if they cannot

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Utilization review surveys due Jan. 15

The Feb. 15 issue of *Business Insurance* will contain the annual directory of utilization review providers. The issue will also feature a spotlight report on health care cost containment and a ranking of the nation's 10 largest general service utilization review providers.

The directory is published as an editorial service; there is no charge for companies to be included. However, companies must complete a questionnaire provided by *BI*.

If your company provides utilization review services directly to employers and you have not yet received a questionnaire, please request one from Directory Editor Kathy Welyki at 312-649-5279.

The deadline for returning completed questionnaires to *Business Insurance* is Jan. 15.

Unmarried partners gaining health care benefits—slowly

By SALLY ROBERTS

Four more employers are opening their health care plans to employees' unmarried "domestic partners" in 1993.

Publishing company International Data Group, the University of Iowa, the University of Chicago and the city of Cambridge, Mass., are extending benefits to workers' heterosexual and homosexual unmarried partners.

While health care benefits were first extended to domestic partners by pioneering employers in the early 1980s, very few employers have followed suit. Among the employers that do offer benefits to domestic partners are New York newspaper The Village Voice and ice cream maker Ben & Jerry's Homemade Inc. in Waterbury, Vt. (*BI*, March 11, 1991).

Expanding benefits to spousal equivalents is growing slowly and will continue to do so, said Linda M. Laarman, principal with the Washington Resource Group of William M. Mercer Inc. But "it's certainly not going to stop."

"I don't detect a strong feeling with Corporate America that this is a Pandora's box they want to open," said Lance Tane, partner at Kwasha Lipton in Fort Lee, N.J.

Holding some employers back are the possible increased costs —due to AIDS claims—involved in extending benefits to domestic partners, Mr. Tane said.

Though experience is only brief, "studies done show it is

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Vol.26, No.54—*Business Insurance* (ISSN 0007-6864) is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. Second-class postage is paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207-3185; 800-678-9595 or 313-446-1611. Copyright 1992 by Crain Communications Inc.

The top stories of 1992

Risk managers select workers comp woes for 2nd straight year

By JOANNE WOJCIK

Continuing rate hikes in the loss-riddled workers compensation insurance market was the most important risk management story for the second year in a row, according to a poll of risk managers.

While insurers and employers report that conditions have improved in a few states because of reform legislation, most of the risk managers responding to a *Business Insurance* survey still report that workers comp costs, especially medical costs, are demanding an increasing amount of their attention.

Risk managers also have been keeping a close eye on the Americans with Disabilities Act, which they predict will increase litigation against employers as well as further inflate workers comp costs.

The ADA, which took effect in January for some employers and in July for many others, was ranked the second most important story of 1992.

The discussion over developing so-called "24-hour coverage," which combines group health care plans and workers comp plans, was the eighth most important story of 1991.

Some risk managers predicted that the new Democratic administration may accelerate the move toward universal health and work comp coverage (see related story, page 24.)

Two major events that dominated the news in 1992—Hurricane Andrew and the election of Bill Clinton as president—also ranked as significant among risk managers.

Hurricane Andrew, the costliest storm on record causing more than $10 billion in insured damage in Florida and Louisiana, was the third most important story of the year for risk managers.

Some survey respondents went so far as to say that Andrew, coupled with other natural disasters, will likely harden property insurance rates nationwide.

Meanwhile, other risk managers predicted that a Democrat in the White House will mean higher taxes for insurers and employers and tougher environmental and

Continued on page 22

Top risk management stories

Story	Number of votes 1st	2nd	3rd	4th	5th	Total points*
Workers compensation costs continue to soar	51	22	11	5	11	397
Americans with Disabilities Act takes effect	11	19	17	17	8	224
Hurricane Andrew is most costly disaster on record	20	11	12	9	10	208
Problems at Lloyd's of London escalate	12	14	9	9	7	168
Court rulings on pollution coverage conflict	7	17	11	10	10	166
Property/casualty insurance market remains soft	12	13	9	8	10	165
Bill Clinton's election may mean new rules, taxes	8	8	18	7	18	158
24-hour coverage attracts new attention	2	8	12	14	10	116
Federal insurance company solvency regulation debated	4	4	8	14	7	95
NAIC considers model law on fronting	6	4	3	6	2	69

*Five points awarded for first-place votes, four points for second-place votes, etc.

Source: BI survey

GRAPHIC BY A.TRANCHITA

Health care reform, Clinton victory cited by benefit managers

By JERRY GEISEL

Problems with the nation's health care delivery system and proposals to try to ease those problems are benefit managers' choices as the most important employee benefit news of 1992.

Selected as the top story of the year were the myriad proposals to revamp the health care system to improve access for the uninsured.

The No. 2 story was the election of Bill Clinton, who has promised as president to push for sweeping legislation that will achieve universal coverage while restraining costs.

Benefit managers selected as the third most important story of 1992 the continuing problems that employers face in complying with Financial Accounting Standard 106, the soon-to-go-into-effect accounting rule that dramatically changes the ways companies must recognize their retiree health care obligations.

Business Insurance polled members of its Employee Benefit Board as well as randomly selected benefit managers to determine the top employee benefit stories of 1992. Ninety-four benefit managers responded to the survey.

A story earned five points for each first-place vote, four points for each second-place vote, three points for each third-place vote, two points for each second-place vote and one point for each fifth-place vote.

Health care reform clearly is benefit managers' top choices as the most important issue of 1992 (see chart).

Proposals to improve access for the nation's 36 million uninsured captured 257 points, including 31 first-place votes.

During the year, controversy continued over proposals to widen access—including play-or-pay plans—while several new approaches emerged. Those approaches included expanding tax credits and tax deductions to help the uninsured buy coverage, and requiring all employers to offer health plans meeting federal standards (see synopsis, page 15).

Several benefit managers say the even-

Continued on next page

Top employee benefit stories

Story	Number of votes 1st	2nd	3rd	4th	5th	Total points*
Proposals to expand health care access multiply	31	19	5	4	3	257
Bill Clinton's election puts emphasis on health reform	24	9	8	6	10	202
FAS 106 prompts retiree health plan changes	11	13	10	11	6	165
Congress enacts 20% withholding tax on pension distribution	5	15	11	8	11	144
Health care costs again rise, but increases are smaller	7	8	10	6	3	112
Popularity of managed care plans increases	2	4	8	7	7	71
States enact their own health care reforms	4	2	6	8	6	68
Benefits based on workers' lifestyle habits	0	3	4	8	7	47
President Bush vetoes family leave legislation	2	1	4	7	3	43
24-hour coverage attracts new attention	1	3	4	2	8	41

*Five points awarded for first-place votes, four points for second-place votes, etc.

Source: BI survey

GRAPHIC BY A.TRANCHITA

Benefit managers

Continued from previous page
tual enactment of proposals that would increase access to coverage could dramatically affect the shape of the nation's health care delivery system including their companies' benefit programs.

"Health care is the largest part of our benefit budget. Legislation in this area is inevitable and will most likely have a significant impact on our organization," said Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago.

The story that benefit managers selected as the second most important of 1992—the election of Gov. Clinton—received a total of 202 points, including 24 first-place votes.

The president-elect has said that reforming the health care system to assure coverage for all and to hold down costs will be one of his top domestic priorities (see synopsis, page 16).

Benefit managers say Gov. Clinton's potential to change the health care system—for better or worse—should not be underestimated.

"The election of Bill Clinton is clearly the most important event because of its future impact. Clinton's activist approach and IOUs to special interest will result in an avalanche of benefit mandates and costly regulation from which the private sector may never really recover," said the compensation and benefits policy manager for an oil company with $13 billion in revenues.

The story considered the third most important of 1992—new benefits accounting rules—received 165 points, including 11 first-place votes.

Under FAS 106, employers must accrue as an expense against earnings retiree health care obligations from the date an employee is hired until he or she is eligible for benefits.

In addition, liabilities that have accumulated at the time an employer adopts FAS 106 must either be recognized at once or amortized, generally over 20 years.

This can result in huge non-cash charges against earnings (see synopsis, page 18).

Benefit managers say the new accounting rule and the impact it will have on financial statements is putting companies in a tough position.

"I think that coming to grips with FAS 106 has been one of the most difficult challenges since ERISA. Companies are torn between concern for retiring employees and the effect of the new accounting requirements on their financial status," said the manager of employee benefits at an electric utility.

The fourth most important story of the year—the new 20% withholding tax on certain pension distributions—received 144 points, including five first-place votes.

To avoid this tax, which goes into effect on Jan. 1, pension distributions, like a lump-sum payment from a profit sharing plan, will either have to be directly transferred by the worker's former employer to an Individual Retirement Account or to a new employer's defined contribution plan, assuming the plan accepts distributions.

Late in the year, Congress tried to ease the administrative requirements of the new law. Legislators did pass a measure to exempt distributions under $500 from the withholding requirements. But that change was included in a tax bill that was vetoed by President Bush (*BI*, Oct. 26; July 13).

Benefit managers said the new law will cause administrative complications and is poor public policy.

The law "will be an employee relations fiasco," said the benefits director of a retailing firm with $3 billion in sales.

"This action is contrary to what government pension policy should be: to help promote private savings to augment federal programs," said Nina Lansky Falci, benefits supervisor at Engineering Research Associates Inc. in Vienna, Va.

The fifth most important story —receiving 112 points, including seven first-place votes—was the continuing increases in health care costs.

While health care costs continued to rise several times faster than general inflation, cost increases were smaller compared with previous years. The 1991 increase—12.1%—was the lowest in four years (*BI*, Jan. 27).

And the outlook for 1993 is even more favorable. Health maintenance organizations are expected to boost premiums by 6% to 12% next year, while self-funded employers can expect cost increases ranging from 6% to 15%, depending on the level of managed care they impose. Indemnity plans with little or no managed care, though, will see increases in the 18% to 22% range (*BI*, Dec. 21).

While managed health care costs may be easing, benefit managers say the size of increases still remains unacceptable.

"Although the rate of health care increases subsided somewhat, when measured against the very low rate of general inflation, these percentages remain astronomical and untenable over the long term," said William T. Montone, manager of compensation benefits and training at A.T. Cross Co. in Lincoln, R.I.

The sixth most important story of the year—the growing popularity of managed care programs —received 71 points, including two first-place votes.

For the first time, a greater number of employees covered by employer-sponsored health plans were enrolled in either HMOs, preferred provider organizations or point-of-service plans than by conventional health care plans, according to a study by KPMG Peat Marwick.

Enrollment in managed care plans nearly doubled between 1988 and 1991, rising to 55% from 29%, the study found (*BI*, Oct. 26).

The growth in managed care "is the employer response to the health care crisis. It shows that managed care is a workable tool," said the district manager of benefits planning and analysis at a telecommunications company with $37 billion in revenues.

Employers selected state efforts to adopt health care reform legislation as the seventh most important story. It received 68 points, including four first-place votes.

States passing reform legislation during the year included Minnesota, which created a new state-sponsored health plan to provide subsidized coverage to lower and middle-income residents. That plan will be funded by a new tax on hospitals and

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A WISE MAN WAS ASKED,
"WHAT SHALL I DO TO RECEIVE
THE MOST FOR MY MONEY?"
THE REPLY GIVEN WAS
"A THING THAT IS BOUGHT OR SOLD
HAS NO VALUE UNLESS IT CONTAINS
THAT WHAT CANNOT BE BOUGHT
OR SOLD. LOOK FOR THE
PRICELESS INGREDIENT."

AND WHAT IS THAT?

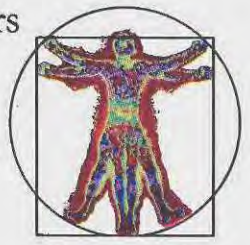
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Benefit managers

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HMOs (*BI*, April 27).

In addition, both Florida (*BI*, March 30) and Vermont (*BI*, May 11) passed legislation that could lead to the establishment of universal health care programs in those states. Both laws require certain conditions to be met, including securing approval from Congress.

In Oregon, though, a state plan to expand coverage to the uninsured by restricting Medicaid benefits received a blow when the Bush administration said the rationing plan would discriminate against the disabled and thus violate the Americans with Disabilities Act (*BI*, Aug. 10).

Oregon officials later resubmitted their proposal to try to meet the Bush administration's objections.

Benefit managers chose the increasing popularity of health care plans that tie benefits to employees' health status or lifestyle decisions as the No. 8 story of 1992. That story received a total of 47 points, but no first-place votes.

Trying to rein in costs, a growing number of employers are redesigning their health care plans to increase costs for workers with unhealthy lifestyles, especially those who smoke, have high blood pressure or are overweight (*BI*, Feb. 17).

But these so-called lifestyle benefits are a double-edged sword: While they clearly save money, employers could face lawsuits from employees charging that the programs violate discrimination or privacy laws, legal experts warn.

The No. 9 story of the year, President Bush's veto of a family leave bill—his second veto of family leave legislation during his four-year term—received 43 points, including two first-place votes.

Under the bill, employers with more than 50 workers would have been required to provide up to 12 weeks of job-protected leave to employees for various family-related situations, such as the birth of a child or to take care of a sick relative. Workers on leave would still receive health care benefits.

President Bush, while endorsing the concept of family leave, said these benefits should be provided voluntarily and not mandated by the federal government.

While Congress did not override the veto, family leave legislation is almost certain to be enacted next year: House Speaker Tom Foley, D-Wash., says he will press for early House consideration of the legislation and President-elect Clinton says he will sign the legislation.

Rounding out the top 10 stories of the year was the interest of employers, insurers and others in combining workers compensation and health care plans into some form of "24-hour coverage." That story received 43 points, including one first-place vote.

Benefit consultant Towers Perrin found in a survey that more than three quarters of employers believe integrating occupational and non-occupational illnesses under the same program would help control overall medical costs.

Despite their enthusiasm for the concept, most employers say combining the two programs is not likely anytime soon (*BI*, June 15; May 4). BI



Today's employee health care system is shot full of holes. Unnecessary surgical procedures, extended hospital stays, inappropriate diagnostic testing, over-utilization of psychiatric and substance abuse benefits, code gaming and the rubber stamping of claim payments can seriously drain a company's profits.

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Outlooks for reform are varied by degrees

By JERRY GEISEL

Most benefit managers believe some type of health care reform will become reality in 1993.

The top stories of 1992

Sixty-three percent of 87 benefit managers responding to a *Business Insurance* survey said they expect Congress to enact health care reform legislation in 1993, while 25% doubt health care reform will pass next year, and 12% aren't sure.

And while most believe health care reform is likely in 1993, many feel the initial reforms will be limited in scope.

Reforms "probably" will be approved, but they will not be "as sweeping as some have predicted," said Paige Squires, benefits and human resource development manager at FSC Educational Inc. in Mansfield, Ohio.

"I think there will be an attempt to regulate the use of services. . .but few reforms will actually be passed," said the benefits manager of a research and development company with $120 million in sales.

"I think Congress will be hard-pressed to enact major reforms in 1993. I wouldn't be surprised to see some sort of tax incentive to encourage employers to provide basic coverage with employees buying additional benefits with their own money," said Timothy E. Johnson, president of The Johnson Group Inc. in Houston.

One benefit manager predicted that Bill Clinton will show more flexibility on health care reform once he studies the problem in greater depth. "As Clinton learns about the real world, I think he may be more flexible and settle for smaller changes in the health care system, rather than a major overhaul," said Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago.

However, several benefit managers say Congress next year will require employers to offer health care coverage to employees.

"Realistically, some type of minimum coverage will be mandated, with coverage over the minimum taxable to the employee," said the employee benefits manager at a supermarket chain with more than $1 billion in sales.

Legislation will be enacted to "prescribe minimum benefits for group plans of companies of 50 employees or more," said Louis M. Ellison, director of employee benefits at Material Service Corp. in Chicago.

Several others believe legislation will target specific problems like coverage restrictions for those with pre-existing medical conditions and benefits for people with AIDS.

"A law requiring non-reduction of medical coverage or limits for AIDS victims will come into being," said the vp of risk management and human resources for a seafood import and trading firm with $250 million in sales.

Congress will pass legislation calling for the "elimination of pre-existing medical condition exclusions," said the chief executive officer at a benefits consulting and

Continued on page 10

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Opinions

Punitive damages redux

"IF YOU FIRST don't succeed, try, try again." It's not clear whether this old saw is best applied to jurisprudence, but we're glad that the U.S. Supreme Court has decided to again review the constitutionality of punitive damages.

The high court issued a major punitive damages decision less than two years ago in *Pacific Mutual Insurance Co. vs. Haslip*, in which it ruled that the due process clause in the 14th Amendment does not limit the ability of juries to award punitive damages (*BI*, March 11, 1991). However, Justice Harry Blackmun's majority opinion called upon trial judges to properly instruct jurors of the purpose of punitive damages and called for significant judicial review of jury awards.

"One must concede that unlimited jury discretion—or unlimited judicial discretion for that matter—in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities," Justice Blackmun wrote.

The case that must have jarred the court's sensibilities was a West Virginia dispute in which the punitive award—$10 million—was 526 times greater than the compensatory damages. In upholding the jury award, a West Virginia Supreme Court justice noted that "when the defendant is not just stupid but really mean, punitive damages must be greater in order to deter future evil acts."

In other words, courts must be "really mean" to combat "really mean" behavior. This brings to mind another axiom: "Two wrongs do not make a right."

The U.S. Supreme Court attempted to avoid ruling on the constitutionality of punitive damages head-on when it handed down its rather vague Haslip decision in 1991. Even with the procedures outlined in the decision, juries are awarding—and appellate courts are affirming—punitive awards that have no connection with the tort allegedly committed.

We agree with the high court: It's time it gave punitive damages another look.

Letters

How loudly should Lloyd's members protest?

To the editor: Thank you for giving so much prominence to my ideas in the Nov. 30 editorial "No Way Out," even though you were thoroughly dismissive of them.

In the editorial, you said that "there is no easy way for Lloyd's to escape its problems. Mr. Rew's suggestion (that Lloyd's syndicates not pay the full value of policies if some members are insolvent) is just that; an easy way out. Too bad it won't work."

But your argument is that Lloyd's members promised when they joined Lloyd's that they would be unlimitedly liable for Lloyd's losses. That, to my mind, is simply not true. We agreed to be liable for our losses "each for his own part and not one for another." It is unreasonable to ask names, who would otherwise continue to be able to trade, to pay others' losses and thereby drive themselves into insolvency.

I recognize that policies will have to continue to be paid to some extent to protect those who have resigned from Lloyd's and to protect the estates of those who have died. Otherwise, those former members and their families would be exposed to direct attack by policyholders.

I do not believe the suggestion is an "easy way out." It is one way to deal with an intractable problem. The current policies, of course, would be 100% secure, but old policies, to the extent insolvent names had subscribed to them, would not be. This would share some of the excruciating pain that is being felt by the names.

I hope my suggestion would not spell doom for Lloyd's as I believe that the only way Lloyd's can carry forward is for it to become profitable again. But, I cannot see it doing so under the weight of old-year problems running at a rate of 450 million pounds ($705.2 million) per year. On top of this are surplus costs of 300 million pounds ($470.1 million) a year, which means that as soon as rates recover, Lloyd's has a 7.5% competitive disadvantage against the new clean capital flowing in. In these circumstances, a 7.5% cost disadvantage is a burden that even the strongest cannot bear.

John Rew
Chairman
Society of Names
London

* * *

To the editor: I have been following the "plight" of some North American members of Lloyd's of London now litigating for various reasons. I must say that I have little sympathy for their situation. All knew the potential for risk and reward going in. In years of profitability, I doubt if any sued in federal court to block payment of profit. Why now, when the risk/reward pendulum swings against them?

I am reminded of a hackneyed phrase from Shakespeare that goes something like this: "Methinks thou dost protest too loudly." Being a name at Lloyd's carries obligations that are not without risk and are potentially financially unpleasant.

My advice to the disgruntled names is take your lumps just like you would —or did—your profits. It is the free enterprise system at work.

Evan Madingo
Bismarck, N.D.

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., 60611-2590.

Runoff, yes, but no 'insolvency'

To the editor: The story "Collecting Claims From British Insurers" (*BI*, Dec. 7) refers to Lloyd's of London syndicates and other insurers "falling into insolvency." This article fails to make an important distinction between Lloyd's syndicates and various companies that may have been coinsurers in the London market.

Lloyd's syndicates do not become insolvent. They may go into runoff, but the members of the syndicate remain liable, and Lloyd's Central Fund stands behind any members who are unable to meet the full extent of their obligation.

I would like to have the opportunity to make it absolutely clear that Lloyd's syndicates have not failed to meet their obligations.

Andrew Duguid
Head of Market Services
Lloyd's of London
London

Baltica units could weather storm

To the editor: A story in your Dec. 7 issue discussed the potential position of policyholders in the event that Baltica Holding is placed under governmental administration. As someone directly quoted in the article, I believe some further clarification is needed.

The article does not make adequate distinction between the solvency issues applying to the holding company (Baltica Holding) and its principal operating company (Baltica Forsikring). While most shareholder interests are vested in the holding company, policyholder interests reside in the operating companies. As the recent UNI Storebrand/Hafnia problems have shown, failures of holding companies—affecting bank creditors and shareholders—can coexist peacefully with still-viable operating units, which serve policyholders.

Therefore, the argument summarized in the article of potential regulatory runoff priorities discriminating against corporate policyholders is very much a worst-case scenario dependent on insolvency at Baltica Forsikring. Since the holding company's stock has rallied from a recent low of 165 krona ($27.29) to stand at 210 krona ($34.44) earlier this month and in light of the continued operation of Hafnia's insurance units, the Dec. 7 article should have drawn clearer distinction between the potential that the holding company be placed in government administration and the runoff of insurance operations detrimentally facing corporate policyholders. We note that the solvency position of Baltica Forsikring, last indicated in late October, gives a good margin of comfort.

Jonathan Lawlor
Kleinwort Benson Securities Ltd.
London

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Published weekly at 740 Rush St., Chicago, Ill. 60611-2590, Telex 6871241, Fax 312/280-3174, Cable CRAINCOM. Offices: 220 E. 42nd St., New York, N.Y. 10017-5806, Fax 212/210-0704, CRAIN COM NYK; 1 Northpark, East Suite 114, 8950 N. Central Expressway, Dallas, Texas, 75231-6415, Fax 214/696-1936; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax 202/638-3155; 6500 Wilshire Blvd., Suite 2300 Los Angeles, Calif. 90048-4947, Fax 213/655-8157; 540 Latimer Circle, Campbell, Calif. 95008, Fax 408/379-3257; Cowcross Court, 2nd Floor, 75-77 Cowcross St., London EC1M 6BP, England, Fax 71/608/1173. $2.00 a copy. $80 a year in U.S. Canada and all other foreign add $38 for surface mail. Europe and Middle East only add $116 for air delivery. First-class mail to U. S., add $95; to Canada add $105. Bermuda only, $200 per year expedited delivery; Australia only, $305 per year expedited delivery. SHEILA GORMLEY, circulation manager. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 965 E. Jefferson Ave., Detroit, Mich., 48207-3185, or phone 800-678-9595 or 313-446-1611, Fax 313/446-1650. Microfilm copies are available from University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies available: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For information and rates to reproduce in general circulation media, contact: ART MERTZ, The Crain Syndicate, 740 Rush St., Chicago, Ill. 60611-2590, 312-649-5303. For reprints or reprint permission contact: Reprint Department, Business Insurance, 220 E. 42nd St., New York, N.Y. 10017-5806, 212-210-0229, Fax 212/210-0704.

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Health reform

Continued from page 6

brokerage firm with $24 million in revenues.

The benefits director at a manufacturer with $980 million in sales said Congress might pass legislation to give states more authority to expand health care access. "If anything passes, which is doubtful, Congress will focus on ways to extend access, possibly by giving states greater authority to take initiatives."

Some benefit managers believe Congress might provide tax breaks to expand coverage or will consider the managed competition approach to broaden coverage and hold down costs.

Congress will enact "health care reform in terms of tax credits, incentives, etc.," said Tracy Niesen, benefits coordinator at Lands' End Inc. in Dodgeville, Wis.

"Managed competition, or something like it," will be Congress' solution said H. Alex Wise, director of system benefits at Columbia Gas System Service Corp. in Wilmington, Del.

Several benefit managers said it was just too soon to predict the scope of the legislation that will be passed.

"I definitely think there will be reforms, but I'm not sure just what will emerge. Hopefully, there will be some moderation and true vision in the decisions," said the employee benefits manager at an electric utility.

"There is an absolute certainty that health care reform will be passed in 1993. However, it is still too early to say what shape such a reform will take since elected officials still don't understand the issue," said the compensation and benefits policy manager at an oil company with $13 billion in sales.

Others believe it will take several years to enact meaningful reforms.

"1993 is too early. (There's a) good chance in 1994 for some type of mandated minimum coverage for medical benefits," said Marie Sheehy, manager of human resources at Reliable Corp., a Chicago-based direct marketer of office supplies, furniture and equipment.

"It will take several years at least for the lobby gridlock to be broken," said Gerry Modjeski, director of employee benefits at Leaseway Transportation Corp. in Cleveland.

"Despite obvious pressure, legislative gridlock will preclude favorable passage of a mandate," said Richard Thomas, benefits director at the Broward County School Board in Fort Lauderdale, Fla.

"It will be difficult to pass effective measures—too many bills, too much conflict in the political arena at this time," said Beverly Khosh, manager of employee benefits at American Restaurant Group Inc. in Newport Beach, Calif.

But, "the debate, form and substance will become more specific," even if reforms are not enacted, said William T. Montone, manager of compensation benefits and training at A.T. Cross Co., the Lincoln, R.I. pen and pencil manufacturer.

One benefit manager says the only thing Congress will do in connection with health care next year is waste time.

"No, I think Congress will fritter away another year, sending scare-tactics signals, but accomplishing nothing else," said Harriett Bartell, assistant vp at Franklin Life Insurance Co. in Springfield Ill.

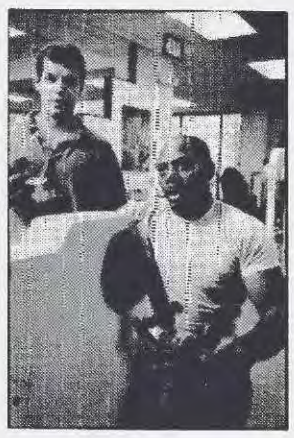
Another believes the problems with the health care system will have to affect many more people before Congress acts.

"Health care costs will have to hit harder at the middle class before anything permanent is done at the national level," said Gary Wiggins, benefits coordinator at Iowa State University in Ames.

Richard M. Johnson, coordinator of staff benefits at the University of Wisconsin Extension in Madison, hopes that careful study precedes enactment of any health care reform package.

"I hope major changes will be carefully studied so that a quality health care system is designed. Some form of health care rationing needs to be developed with cost controls on providers," he said. BI

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Lack of legislation was story in itself

By JERRY GEISEL

Nearly all was quiet on the legislative front for employee benefits in 1992, especially compared with the action-filled 1980s when Congress passed laws—like Section 89 and COBRA—that were the bane of benefit mangers.

The top stories of 1992

A 20% withholding tax on certain pension distributions was the only major benefits bill benefits enacted into law this year.

The slowdown in legislative inactivity did not go unnoticed by benefit managers.

Employee benefit laws in 1992 were "relatively static, unchanged," said Richard Thomas, benefits director at the School Board of Broward County in Fort Lauderdale, Fla.

"A relatively quiet year. . .legislation never happened and regulations never got issued," said R.C. Regan, vp of compensation and benefits at Hoechst-Celanese Corp. in Sommerville, N.J.

"Lots of noise, but little action," said the director of benefits at a manufacturing firm with $980 million in sales.

Several benefit managers said the relative quiet enabled them to assimilate changes of the past few years as well as to prepare for the future.

The year was a "a time of regrouping and trying to sort out the past few years of changes," said Carol Hanlon, manager of corporate employee benefits at manufacturer Standex International Corp. in Salem, N.H.

1992 was a "fairly insignificant regulatory year that has permitted companies the 'luxury' of devoting time to progressive ideas" like benefit design planning, said the vp of employee benefits at a hospitality firm with $8 billion in sales.

Other benefit managers, though, said 1992 was every bit as difficult and troublesome as previous years.

"Disaster. The government is attempting to and is regulating too many employee benefits that should be handled between the employee and employer," said the employee benefits manager at a grocery chain with $1 billion in sales.

"Busy! (I) needed to constantly stay abreast of changing events," said Paige Squires, benefits and human resource development manager at FSC Educational Inc. in Mansfield, Ohio.

The past year was "hectic—government indecision in the area of health care and pension reform make long-range benefit planning difficult at best," said Gary Wiggins, benefits coordinator at Iowa State University in Ames.

While several benefit managers said 1992 was relatively quiet, they hastened to add they believe action will heat up next year when the Clinton administration begins to push its benefits agenda.

"I think people are waiting to see what is going to happen with the new administration," said B. Likens, benefits manager at the San Diego Zoological Society.

"Another eventful year that will set the groundwork for future legislation—health care, pension simplification, family leave," said Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago.

"This year can best be described as a 'dress rehearsal.' While actual and meaningful change was limited, many trial balloons were floated in the health care and defined contribution plan areas. The next several years will make 1992 seem tranquil," said William T. Montone, manager of compensation benefits and training at A.T. Cross Co. in Lincoln, R.I.

A number of benefit managers said 1992 was significant because of a slowdown in health care cost increases.

"A good year as health insurance costs seem to have leveled off some," said Richard M. Johnson, coordinator of staff benefits at the University of Wisconsin Extension in Madison.

But several benefit managers differed on whether managed care is helping to slow down health care costs.

The director of compensation benefits at a retailer with $4.1 billion in sales said the year was marked by the "discovery that managed care is not the answer to all our problems."

Taking the opposite view was Timothy E. Johnson, president of The Johnson Group Inc. in Houston, who said: "Most employers recognized the value of managed care and embraced it."

One benefit manager expressed optimism that employees finally understand the importance of controlling medical costs.

There is an "awareness that is starting to make a difference. Employees are starting to understand their role in controlling medical costs," said the senior vp of human resources at a diverse manufacturing firm with $850 million in sales.

Other benefit managers described the year as frustrating on health care benefits front, while several said it was a struggle for their firms to maintain benefits at their current levels.

"1992 was a frustrating year in regards to employee benefits. It seems that all the proposed reforms for health care do not take the entire picture into consideration. Insurers and employers react with a 'wait and see' attitude," said Patricia Krotz, manager of insurance services at the Professional Golfers Assn. of America in Palm Beach Gardens, Fla.

"It was a year of benefits erosion. Many employees received less benefits compared to previous years," said the manager of compensation and benefits at a manufacturing firm.

One benefit manager, acknowledging that benefits legislation had slowed down, still found the year hectic.

It was "up and down. We got a reprieve from far-reaching legislation, but my organization made its own substantial changes," said Alyce Clark, director of human resources at Servo Corp. of America in Hicksville, N.Y.

A benefit manager said new rules to recognize retiree health care liabilities and a lack of tax-effective vehicles to fund those benefits will lead to benefit cuts.

"The FAS 106 issue brought retiree health benefits out of the closet," said the director of employee benefits at a manufacturing firm, referring to Financial Accounting Standard 106. "Without favorable tax treatment for financing this expense, many companies will reduce or eliminate retiree benefits." BI

Sunday Afternoon Workers' Comp

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The crisis of the uninsured spotlights health system ills

Partisan battles, special interests are obstacles to consensus

Top Employee Benefits Stories — No. 1

The problem is enormous: 36 million people in the United States do not have health insurance.

Of all the proposals to solve that problem, no single plan emerged as a consensus favorite in 1992.

At the start of the year, the Bush administration concentrated its firepower on trying to shoot down "play-or-pay" proposals backed by a number of key Senate and House Democrats.

Under this approach, an employer would have to play—offer a health plan meeting federal standards—or it would pay a new federal payroll tax in the range of 7% to 9%. Revenues from the payroll tax would be used to fund a new public plan to provide coverage to the uninsured.

Bush administration officials criticized the proposals, saying such approaches would lead to a public plan nearly four times larger than the federal Medicare program.

If employers were given a choice of offering a health care plan or paying a 7% payroll tax, many companies would find it less expensive to terminate their health plans, shifting tens of millions of workers and dependents into a new public plan, according to an Urban Institute study released by the Bush administration in January (*BI*, Jan. 13).

Administration officials argued that a play-or-pay approach would undermine employment-based health care coverage.

Secretary of Labor Lynn Martin, for example, described play or pay as "backdoor national health insurance."

Play or pay "reduces choice," she said. "It is a health plan managed by politicians and it means fewer jobs. Play or pay is no answer to our problems in health care."

A few weeks after releasing the study, the administration, smarting from charges of insensitivity, unveiled its own plan to expand access to health insurance (*BI*, Feb. 10).

'Play or pay is no answer to our problems in health care,' Lynn Martin said earlier this year.

At the core of that proposal was a series of expanded tax credits and tax deductions that low- and middle-income people could use to buy health insurance.

The administration also called for the creation of special pooling mechanisms to allow small employers to increase their buying power in the group health insurance market.

But the administration proposal ran into a firewall of criticism.

Democrats chided the Bush administration for its failure to specify a source of revenue to pay for the tax credits and deductions.

Others said the tax breaks were inadequate to ensure expanded coverage, adding that nothing in the proposal dealt with employers' most pressing problem: soaring costs.

And, as evidence of the haste in which the package had been put together, several months passed before the administration sent its reform proposal to Congress in legislative form.

Meanwhile, other groups put forth their own proposals to expand access. Blue Cross & Blue Shield Assn. recommended that employers be required to offer—though not pay for—basic health care coverage to employees (*BI*, June 1).

And, in a stunning policy reversal, the Assn. of Private Pension & Welfare Plans, the nation's largest employer-supported benefits lobbying group, recently recommended that employers be required to offer basic health care coverage and pay most of the costs (*BI*, Dec. 21).

—By Jerry Geisel



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Health care reform on Clinton's agenda

President-elect's proposals for reform take shape over course of campaign

Top Employee Benefits Stories No. 2

If he keeps his campaign vow, Bill Clinton will send a health care reform package to Congress by early May.

During his campaign, Gov. Clinton promised to unveil his plan to cure the major ills of the health care delivery system—36 million people without coverage and soaring costs—within 100 days of taking office.

While it will be several more months before that package is presented, the president-elect already has laid down several principles on which his package will be based.

From the start, Gov. Clinton's health care reform package included support for universal coverage; the creation of a national board to set targets or limits for health care spending; and banning health insurers from certain underwriting practices, like "cherry-picking" the best risks.

In addition, he supported the establishment of health care insurance purchasing networks to give small employers more buying clout and to reduce costs.

But Gov. Clinton modified his views on other health care reform issues, while staking out new positions on other issues.

For example, in June, when he released his first detailed position paper on health care reform, he seemed to endorse the play-or-pay approach to expanding health care coverage.

"Employers and employees will either purchase private insurance or opt to buy into a high-quality public program," he said in that paper (*BI*, June 23).

But several months later, Gov. Clinton said his reform package "is not play or pay. It does not require new taxes."

Clinton supporters, like campaign co-chairman Sen. John D. Rockefeller IV, D-W.Va., stress that under a Clinton reform package employers that do not offer a health care plan would pay a health insurance premium, not a tax.

Gov. Clinton later said that employers would either have to offer a health care plan or participate in "publicly sponsored alternatives" that offer a core benefits package.

As the campaign progressed, Gov. Clinton tried to allay the fears of small employers that a health care mandate would be too great a financial burden for them to bear.

Gov. Clinton says his reform package 'is not play or pay. It does not require new taxes.'

For example, Gov. Clinton said any health care mandate would be phased in for small employers, and those firms would receive tax credits during a transition period.

Later in the campaign, he also said Medicare would be expanded in stages to cover certain long-term expenses.

Earlier this month, Gov. Clinton—breaking months of silence on the issue—said he would be "inclined" to support taxing employees on employer-paid health care coverage that exceeds a certain level.

While the details may continue to evolve, observers say Gov. Clinton's election significantly increases the chances that health care reform legislation will be enacted.

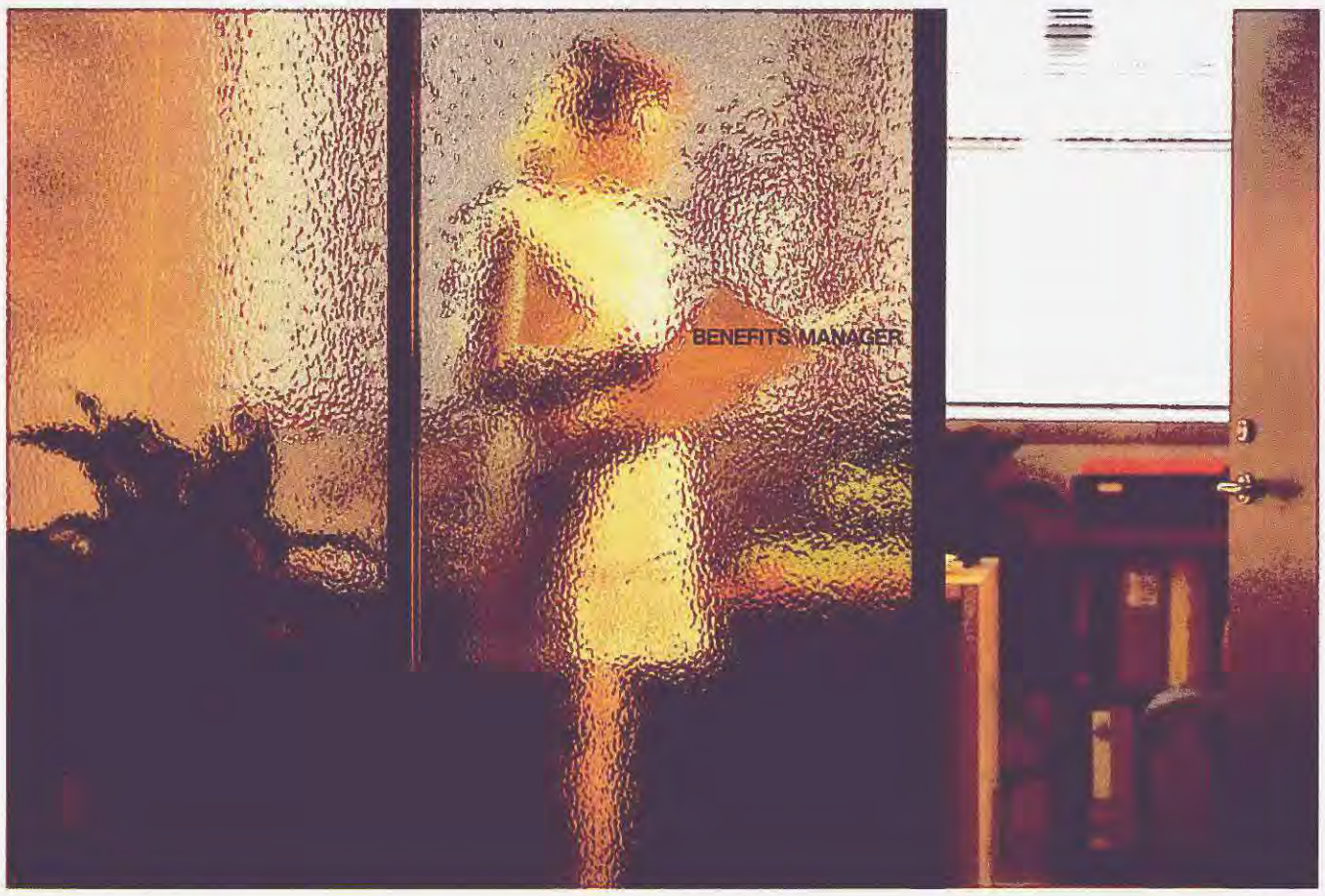
With a Democrat in the White House and a Democrat-controlled Congress, reaching political consensus on reform will become much easier. By contrast, President Bush displayed no interest in trying to reach an agreement on health care reform with Congress.

At the same time, health care reform clearly was a low priority for the Bush administration, whereas Gov. Clinton has said enactment of health care legislation will be one of his administration's highest domestic priorities.

Still, even with presidential leadership, forging a consensus on health care reform will be difficult because of the widely divergent views in Congress—and in the nation—on the best way to reform the delivery and financing system.

—By Jerry Geisel

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FAS 106 demands recognition of retiree health cost liabilities

Top No. 3 Employee Benefits Stories

1992 was a busy year for employers rushing to comply with impending Financial Accounting Standards Board rules governing accounting for retiree health care plans.

As the mid-December deadline approached, many employers recognized their accumulated retiree health care obligations under the new rules in one fell swoop, though amortizing them over up to 20 years is an option.

But, other employers have tried to reduce or eliminate their retiree health benefits to ease the impact of the rules on their financial statements.

FAS 106, which FASB approved late last year, requires employers to accrue as an expense against earnings retiree health care benefit obligations from the date employees are hired until they become eligible for benefits (*BI*, April 1, 1991; Dec. 17, 1990). Employers had recognized these obligations on a pay-as-you-go basis.

Employers also must either fully recognize their accumulated retiree health liabilities in the first year after the rule takes effect or amortize those liabilities over up to 20 years.

FAS 106 takes effect in 1993 for most companies, though small firms and those with fewer than 500 participants in their retiree health care plans have until 1995 to comply.

Earlier in the year, only 41% of surveyed companies said they had determined their FAS 106 liability (*BI*, Aug. 17).

But, as the year closed, more companies reported one-time FAS 106 charges. For example, Ford Motor Co. will take a $7.5 billion charge; Ameritech Corp. will take a charge of about $1.7 billion; Raytheon Co. will take a $500 million charge; and Coca-Cola Co. will take a $220 million charge.

Anheuser-Busch Cos. will take a charge of about $320 million. But the actual charge against the company's income statement will be about $77 million because of another accounting rule. FAS 109 allows employers that recognize future benefit liabilities to also recognize anticipated tax benefits as an offsetting asset (*BI*, Dec. 23, 1991; May 20, 1991).

To avoid such large charges, some employers are taking drastic action.

For example, Navistar International Corp. has reached a tentative agreement with the United Auto Workers to reduce retiree health care coverage, cutting the company's FAS 106 obligation to $1 billion from $2.6 billion. The agreement follows Navistar's earlier attempt to get advance federal court permission to cut the benefits (*BI*, Dec. 21, Oct. 26, Aug. 3).

Both Unisys and McDonnell Douglas face lawsuits over their attempts to limit retiree benefits.

Unisys Corp. said it will stop paying for retiree medical benefits by 1996. Without the cut, it would have to take a one-time aftertax charge in 1993 of about $700 million, the self-insured company estimated.

McDonnell Douglas Corp. is replacing its non-union retiree medical benefit plans with a four-year, retiree health plan funded by surplus defined benefit pension assets. Without the change, the defense contractor would have had to take a one-time charge of $1.2 billion to $1.5 billion. Using the pension funds would trim the charge to about $600 million to $700 million (*BI*, Oct. 19).

But, Unisys and McDonnell Douglas face lawsuits over their actions (*BI*, Dec. 14., Dec. 7).

—By Christine Woolsey

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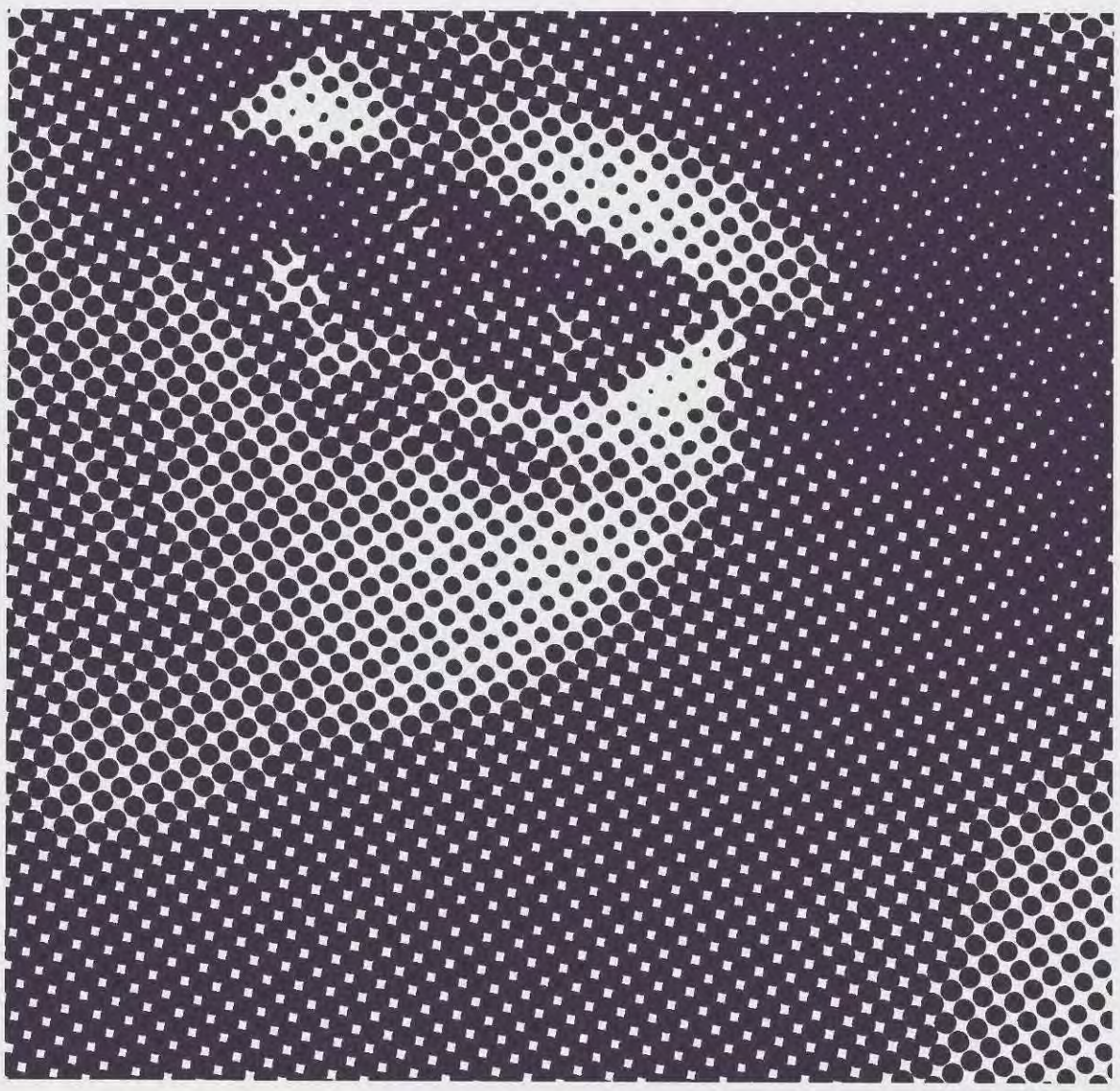
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Risk managers

Continued from page 3

workplace safety regulations.

The election of Gov. Clinton as president was ranked as the seventh most important story of 1992.

Like last year, several developments relating to insurer financial health and solvency regulation also ranked high in risk managers' minds:

- The flow of red ink continued last year at Lloyd's of London, despite the market's decision to implement radical changes such as establishing a system to help cap members' liabilities, changes in the governing structure and considering the possibility that corporate capital be allowed in the market for the first time. Lloyd's troubles, including the announcement of a nearly $4 billion loss for the 1989 underwriting year, was the fourth most important story.
- The discussion of who should regulate insurance company solvency and the introduction of U.S. Rep. John Dingell's bill to allow insurers to choose between federal or state solvency regulation was the No. 9-ranked story.
- The continuing debate over a model law regulating fronting arrangements by the National Assn. of Insurance Commissioners was ranked 10th.

Two other stories rounded out the Top 10:

- Federal and state courts' lack of consensus over whether comprehensive general liability policies cover environmental cleanup costs was ranked No. 5.
- The 6-year-old soft property/casualty insurance market was voted the sixth most significant story of the year.

'Workers compensation costs are crippling companies and forcing some out of business,' says the risk manager for a gas and electric utility. Those costs are 'having the greatest impact on the profitability of companies, even more so than medical coverage.'

Business Insurance surveyed members of its Risk Management Board and randomly selected risk managers to identify the top stories of 1992. Some 136 participated.

A story received five points for each first-place vote, four points for each second-place vote, three for each third-place vote, two for each fourth-place vote and one for each fifth-place vote.

Soaring workers compensation costs easily topped the charts in 1992 with 397 total points and 51 first-place votes, almost five times the number of first-place votes for the No. 2 story.

As in 1991, employers last year were hampered by rising workers compensation costs. For some, the cost of workers comp coverage has exceeded the cost of health care benefits, while others have been driven out of business by the burden of workers comp premiums.

Employers also have been forced to scour the market for replacement coverage when insurers, faced with huge losses, pulled out of the workers comp market in some states.

"Workers compensation costs are crippling companies and forcing some out of business," said the risk manager for a gas and electric utility with $2.6 billion in gross annual sales. Those costs are "having the greatest impact on the profitability of companies, even more so than medical coverage."

The risk manager added, "Many insurers have pulled out and more are considering not underwriting workers compensation coverage because it is unprofitable."

Other risk managers responding to the survey were equally critical of the workers comp system and concerned about its impact on their companies.

"Increased workers compensation costs have dramatically reduced employers' profits and have contributed to the downsizing of companies," said Frank J. Falzone, insurance director for Leon D. DeMatteis Construction Corp. in Elmont, N.Y.

"Workers compensation issues affect all employers, large or small, and the escalating cost is putting a burden on all," said Phillip C. Bly, risk manager at Brush Wellman Inc., an engineered materials manufacturer in Cleveland.

"In California, the overall cost of workers comp coverage is driving many company managers to look outside the state for expansion," observed Frank A. Sanderson, risk manager at Harwood Products Inc. in Branscomb, Calif.

Indeed, "Workers comp (costs) continue to threaten the solvency of many companies and the competitiveness of U.S. companies," said a risk manager for an electronics manufacturer in California with $1.3 billion in gross annual sales.

William Casey, insurance manager for Consolidated Personnel Corp. in Chesterfield, Mo., agreed. "U.S. manufacturers who use people to produce goods cannot compete against manufacturers who don't use people or (compete against) foreign manufacturers."

"The cost of workers compensation is rising faster than (the cost of coverage for) any other risk," said Michael S. Payne, risk manager for the city of Wichita, Kan.

Mr. Payne blamed part of the rising cost on the expanded definition of work-related injuries and illnesses. "As health insurance becomes more restrictive and expensive, doctors and employees are trying to move claims into the work comp arena," he said.

Another workers comp issue dominated the news in 1992 from the perspective of most risk managers responding to the *BI* survey. Enactment of the Americans with Disabilities Act received

Continued on page 24

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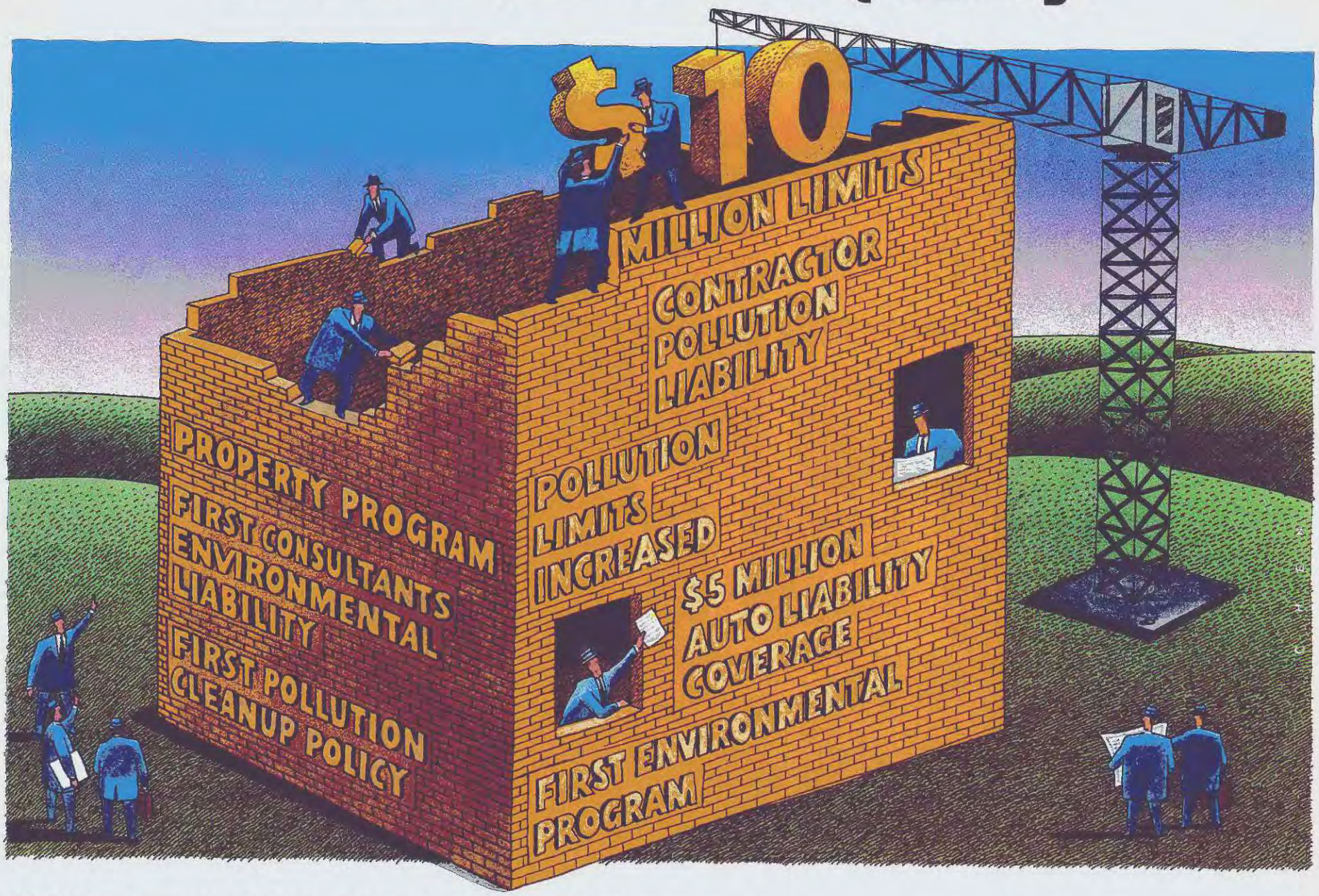
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Risk managers

Continued from page 22

224 points, including 11 first-place votes.

Most risk managers were concerned with the ADA's impact on legal and workers comp costs.

"The ADA has the potential for significantly increasing litigation to all employers for negligence, non-compliance, etc.," said Ray E. Wheeler, risk manager for Sterling Chemicals Inc. in Houston.

The plaintiffs' lawyers "do not need more excuses to sue employers," he quipped.

"The ADA is truly a risk management issue requiring re-evaluation of premises and personnel procedures," said Alan Jenkins, risk management administrator for the city of Farmington, N.M.

"The back door issue of ADA's effect on workers compensation is also significant," he added. "The evaluation of ADA through court decisions will make it newsworthy for years to come."

"I think the ADA will cause a major philosophical change in personnel management and dollar increases in business operations," predicted Carl P. Haupt, director of risk administration for American Drug Stores Inc. in Oak Brook, Ill.

"The ADA will have wide-ranging effects on workers compensation programs, from pre-employment physicals to light- duty and rehabilitation issues," said David P. Born, risk management analyst for the Santa Clara Valley Water District in San Jose, Calif.

While the ADA received more overall points, Hurricane Andrew received the second-largest number of first-place votes: 20. But because it had only 208 total points, the summer storm sank to No. 3 among 1992's top stories.

Several risk managers said Hurricane Andrew will have a lingering effect on the U.S. property insurance market.

"I believe Hurricane Andrew's influence will far outlast the claims paid," said a business systems analyst for an association with approximately $25 million in gross annual sales.

The director of risk management for an insurance company with $1.26 billion in gross sales agreed. "Hurricane (Andrew) was a catastrophe and will have indirect consequences for some time."

So far the Florida Insurance Department has seized six insurers for losses related to Hurricane Andrew. The losses have tapped out the state guaranty fund, which is increasing its assessment cap and will issue bonds to finance more than $300 million in claims left unpaid by the insolvencies.

Meanwhile, Andrew is forcing some insurers to consider ways to reduce their exposure in southern Florida (*BI*, Dec. 14).

"We experienced much turmoil with a sudden withdrawal of our lead property underwriter due in part to Andrew," said a risk manager for a manufacturer with $3 billion in annual sales. "I see Andrew as a sort-of 'last straw' event which, following other capacity and solvency concerns and problems, acts as a foil for and will focus attention on pricing and underwriting practices."

•

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Health reform also top concern of risk managers

By JOANNE WOJCIK

While health care reform is utmost on the minds of most benefit managers, it also is getting top billing from risk managers these days.

The top stories of 1992

Some risk managers responding to a survey on the year's top risk management stories predict that health care issues will so dominate national politics during 1993 that lawmakers will focus less on reforming the workers compensation system.

Others speculate that implementing a nationwide universal health care program or 24-hour coverage may help resolve problems in the workers comp system.

But nearly all 136 risk managers responding to this year's survey predict health care reform will make headlines in 1993, and that their colleagues should stand up and take notice of its impact on their companies.

"I think health care changes will dominate the scene," said Robert A. Kreamer, director of accident and risk management at PHH Fleet America, a fleet leasing and management company in Hunt Valley, Md.

"The newly elected president has committed himself to some sort of a national health system. Passage of such legislation will undoubtedly affect employee benefits, workers comp and the business environment," said William H. Meyerhoft, corporate director of risk management at The Lubrizol Corp. in Wickliffe, Ohio.

"President Clinton will unveil meaningful health care reform despite lobbyists' efforts," said the corporate risk manager for a manufacturer of floor cleaning products with $350 million in gross sales.

Some risk managers are concerned that focusing the national agenda on health care reform "will cause inaction in workers comp reform and will cause the medical community to try to get their pricing up," said William Casey, insurance manager for Consolidated Personnel Corp. in Chesterfield, Mo.

Keith D. Barron, risk manager for the state of Delaware in Dover, agreed.

"I am concerned that workers compensation will be overlooked because of the current focus on health care," he said.

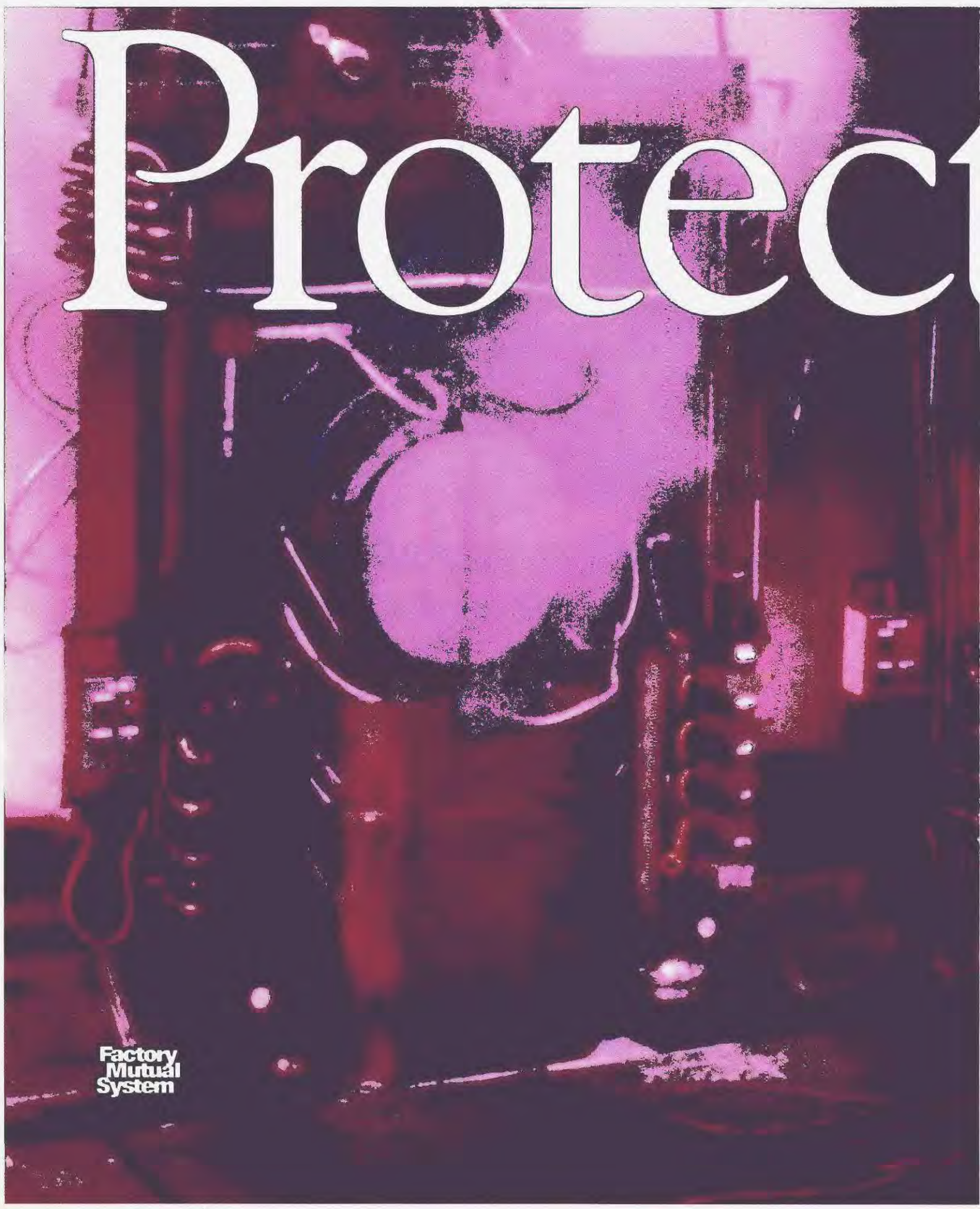
But, "Workers compensation programs need to be reformed, as well as certain employer practices which often make it financially more attractive to remain out on a compensation claim than to return to work," he asserted.

Mr. Barron also expressed concern that the new administration "may act too hastily in fulfilling campaign promises for health care reform without carefully assessing the full extent of the impact of such changes."

Some risk managers believe the movement toward health care reform may lead to some states adopting 24-hour coverage.

"Twenty-four hour coverage will move closer to reality," predicts Tom Ivey, risk manager at Cato

Continued on next page



Continued from previous page
Corp. in Charlotte, N.C.

Any federal health care reform legislation "will include 24-hour coverage," predicted the risk manager for a school district.

Still others hope that workers comp reform will move forward in some states, especially when one of the leading cost drivers—medical cost inflation—is spotlighted during the health care reform debate.

For example, Frank A. Sanderson, risk manager for Harwood Products Inc. in Branscomb, Calif., predicts there will be a "major shake-up in the California workers comp system, in part because of California's slow recovery and the loss of jobs related to the cost of comp coverage."

"A large number of states will implement work comp reform" at the same time that there will be a "push for national health care and a decrease in fee-for-service indemnity plans," predicts Michael S. Payne, risk manager for the city of Wichita, Kan.

A risk manager for a fertilizer manufacturer with $1.1 billion in sales foresees more "federal involvement in health care pricing and delivery" for 1993.

There will be "continued, intensified workers compensation pressure," said one East Coast risk manager.

"Unions have a champion in the White House. As they are losing influence, the unions will want to be seen as champions (and push for implementation) of federal legislation on workplace safety, work comp oversight and 24-hour work comp coverage," according to one risk manager who prefers to remain anonymous. BI

Risk managers brace for regulation

Heightened focus on environmental rules expected

By JOANNE WOJCIK

Risk managers generally agree that a Democrat in the White House means increased regulation of business and stepped-up enforcement of existing federal laws.

The top stories of 1992

And with Sen. Al Gore, D-Tenn., as the next vice president, risk managers believe the heaviest crackdown will occur in environmental regulation.

But not far behind on an anticipated federal agenda will be workplace safety and the Americans with Disabilities Act, they predict.

And, a few risk managers say the new administration may flirt with federal regulation of insurers while searching for ways to tax premiums that leave the country.

Expect a "floodgate of new federal regulatory activity," warns the corporate risk manager for a retail drug store chain with more than $2 billion in gross sales.

Phillip C. Bly, risk manager for manufacturer Brush Wellman Inc. in Cleveland, suggests that news stories should chronicle the "ramifications of changes that take place when Mr. Clinton stops talking and starts acting."

Indeed, there will be "more meddling" in employer practices under the Clinton administration than the Bush administration, says the risk manager for a retail chain with $3 billion in sales.

For example, next year is likely to bring "stepped-up OSHA and EPA regulations," said Alfred Johnson, risk manager for Scotsman Group Inc. in Baltimore.

"More government regulation industrywide will be the rule," predicts Stephen P. Maresco, assistant controller in the insurance division of the New York City Housing Authority.

Environmental matters are of principal concern for most risk managers during the Clinton administration.

There will be "more regulatory pressure on environmental issues," believes Lawrence R. Moore, supervisor of corporate risk management at Allegheny Power System Inc. in Greensburg, Pa.

"Clinton's administration causes concern regarding possible increased environmental regulatory cost," said Ray E. Wheeler, risk manager for Sterling Chemicals Inc. in Houston.

"President Clinton will try to be a friend to all. We will be bombarded with how fragile the environment is, as well as what terrible stewards we have been. We will be overwhelmed with regulations to protect us, regardless of the cost," said one risk manager who gave no identification.

Not all risk managers share that fear of increased focus on environmental issues.

For example, one risk manager from the manufacturing sector believes that under the new administration "environmental coverage issues will be clarified further."

And a risk manager for an electronics manufacturer with $1.3 billion in annual sales predicts that insurers will develop environmental impairment liability coverage products "to conform to increased regulation under Clinton/Gore."

Since Democratic presidents generally embrace organized labor, most risk managers feel Gov. Clinton is likely to push for stricter enforcement of workplace safety and job protection laws, like the ADA (see story, page 28).

A risk manager for a manufacturer with more than $10 billion in gross annual sales predicts that under a Democratic administration the ADA will cause "more litigation than expected."

"I really think the next big question mark is AIDS and the ADA in light of recent Supreme Court rulings," said a business systems analyst for an association with $25 million in gross annual sales. The risk manager was referring to to the court's refusal to review *Greenberg vs. H&H Music Co.*, a ruling that upheld a company's right to reduce benefits for workers with AIDS (*BI*, Nov. 16).

The risk manager for a county government also fears that the ADA will generate "conflict with civil service job descriptions used to determine fitness" for particular tasks.

Some risk managers believe that Democrats' traditional affinity for big, centralized government will help fuel a push toward federal insurance regulation.

"Federal regulation of insurers will be introduced," predicts Chris Sparrer, director of risk management at Ericsson Inc. in Richardson, Texas.

"A major struggle will peak be-

Continued on next page





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Insurer failures mark risk managers' view of 1993

By JOANNE WOJCIK

If it's always darkest before the dawn, then 1993 will feel like midnight, most risk managers fear.

The top stories of 1992 Natural disasters, skyrocketing workers compensation costs and stepped-up insurer solvency standards will combine to trigger additional insurer failures and an ensuing hard market, predict risk managers in a *Business Insurance* survey.

And if the market doesn't begin to harden soon, some risk managers predict insurer finances will get even worse.

" 'Market share' and 'cash flow' are still the most important terms to the senior management of most insurance companies," observed an insurance manager for an educational entity with more than $400 million in gross sales.

As a result, the risk manager predicts "a large property/casualty company will fail, overloading the states' solvency funds."

Other risk managers were just as apocalyptic.

There will be a "major shakeup in some of the top insurance companies," said Robert S. Coker, risk and benefits manager for the city of West Palm Beach, Fla.

"A major insurer will fail," concurred Chris Sparrer, director of risk management at Ericsson Inc. in Richardson, Texas,.

Look for "one or more major insolvencies," warns the director of risk management for a conglomerate with more than $500 million in gross sales.

Next year will trigger "insolvencies of state funds and insurers as states fail to 'come up to the plate' and deal with realistic, needed workers comp reform," says Jeffrey W. Pettegrew, director of risk management for Western Temporary Services in Walnut Creek, Calif.

Eventually, the recent catastrophes—especially Hurricane Andrew, the costliest catastrophe ever for insurers (see story, page 29)—will come home to roost and insurers will be forced to raise rates if they are to remain in business, many risk managers believe.

"Insurance companies are paying heavily for natural disasters," said one risk manager.

"1993 will see losses greater than Andrew and property/casualty reserves will be hit very hard," said Robert A. Kreamer, director of accident and risk management at PHH Fleet America in Hunt Valley, Md.

He predicts the tally of insured losses will soon include devastating earthquakes.

Allyn C. McKinney, director of risk management for Golden Glades Regional Medical Center in Miami, agrees: "Natural disasters will have a great effect on future underwriting guidelines."

"The effects of natural disasters, low interest rates and real estate write-offs will take their toll on capacity. Guaranty fund and residual market assessments will also contribute," said the risk management director for a retail and food processing company with $2.3 billion in sales.

And, "if the risk-based capital standards are adopted for property/casualty insurers, I believe there will be a definite reduction of property/casualty capacity which will rapidly affect availability of coverage and rates," pointed out Dick Wandersce, safety and risk manager for Taylor Precast Inc. in Green Cove Springs, Fla.

The National Assn. of Insurance Commissioners is developing risk-based capital requirements for property/casualty insurers (*BI*, Dec. 21; Sept. 28).

"Some insurers have been 'buying' business," observed Steve Cain, loss control and insurance administrator for Deseret G&T Cooperative in Sandy, Utah. "I do not know how long this can continue."

Some risk managers fear the problems at Lloyd's of London will begin creeping overseas during 1993.

Lloyd's posted a record loss of nearly $3.9 billion for the 1989 underwriting year, and observers expect Lloyd's capacity to tighten further as members flee the market.

"It is significant that Lloyd's is still the foundation of the global insurance marketplace. Its results eventually ripple through the industry," said Evan H. Mandigo, insurance administrator for Basin Electric Power Cooperative in Bismark, N.D.

"Lloyd's in the past has been essential to the reinsurance market and their problems will cause a rethinking of that position," said the operations manager for a governmental entity with an annual budget of $3.5 million.

But even if rates do rise, many risk managers predict that may not be enough to help the industry escape its financial woes.

"Premium growth will be anemic as insureds continue to leave the traditional market via self-insurance, captives, higher self-insured retentions, etc.," one risk manager said. BI

Federal agenda

Continued from previous page

tween federal legislators and local/state regulators over turf," predicts Christopher E. Mandel, director of the risk management division of the American National Red Cross in Alexandria, Va.

The director of risk management for a printing concern with $1.5 billion in annual gross sales predicts 1992 will bring "federal regulation proposals for large insurers of major commercial accounts."

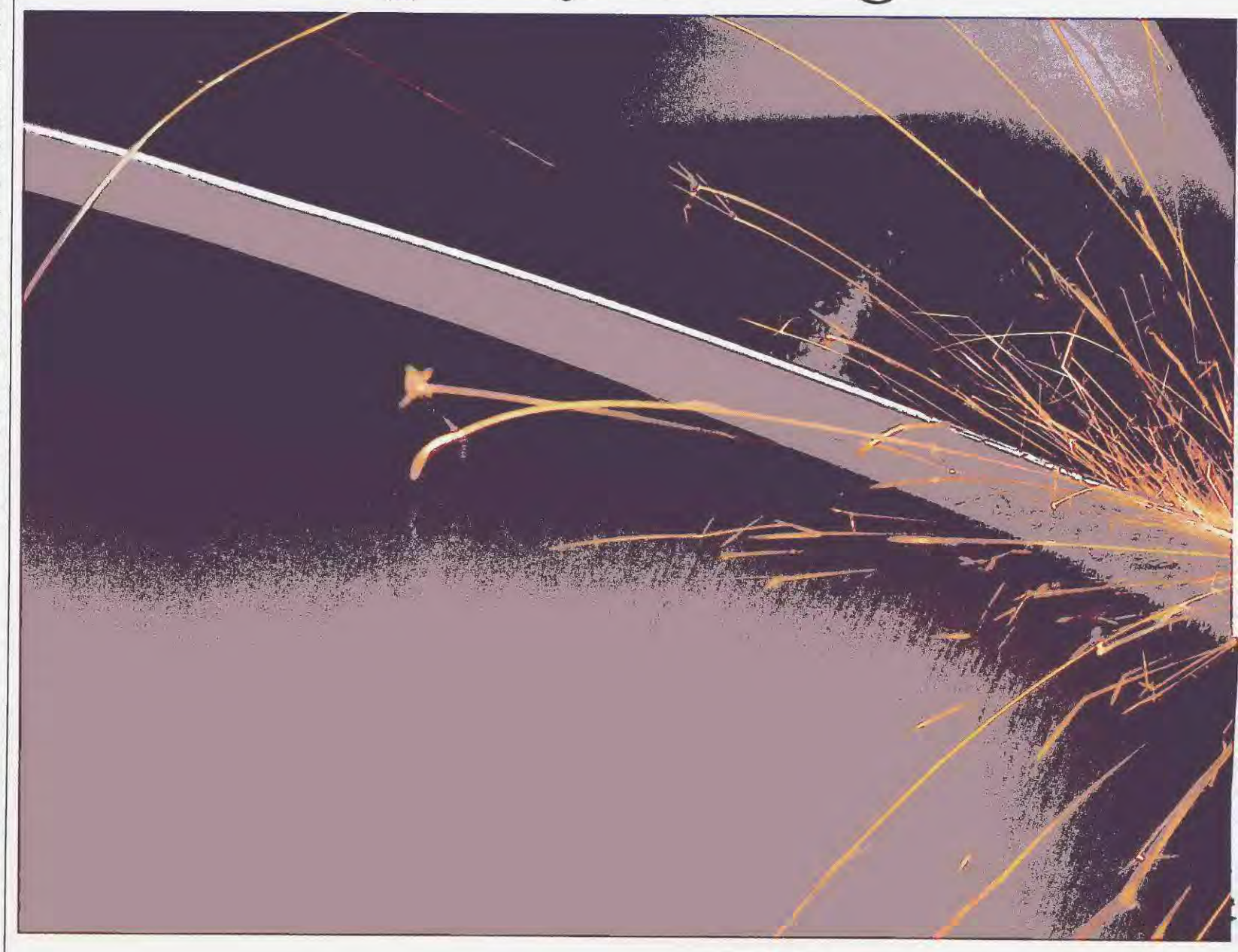
Indeed, Robert L. Duzef, director of risk management at Los Angeles-based Dollar Rent-A-Car Systems Inc., said "changes effected by the Clinton administration which concern how insurers will conduct business" are likely.

And since Democratic administrations are almost always associated with higher taxes, many risk managers advise insurers—as well as self-insurers—to watch their wallets.

Scotsman's Mr. Johnson predicts that the federal government "will attempt to heavily tax offshore insurers and foreign reinsurance arrangements."

In 1992, look for "more taxes on employers, more government intervention—the things Democrats do best," summed up Frank E. Locke, administrator of risk and insurance at ONEOK Inc., a natural gas concern in Tulsa, Okla. BI

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Some state reforms offer hope for reviving work comp system

Bulging workers compensation costs remain risk managers No. 1 concern for the second consecutive year.

Top Risk Management Stories No. 1

Workers comp losses—and premiums—continue to rise. The National Council on Compensation Insurance reported that workers comp insurers' aggregate combined ratio hit a record 123% in 1991, compared with an average of 118% over the previous five years.

And, while state regulators often reduced insurers' rate requests, double-digit workers comp rate hikes have been common for the past year.

Remedies for the ills that plague the workers comp system remain unclear, though state reform efforts hold some promise for stemming rising costs.

At least a dozen states considered some type of workers compensation reform in 1992, including Alabama, Georgia, Maine, Mississippi, Missouri, Oklahoma, Rhode Island and Tennessee (*BI*, Sept. 28).

Maine's reforms may stop that state's troubled system from self-destructing, observers say. The law, which is based on Michigan's workers compensation statutes and becomes effective Jan. 1, will:

- Establish a joint labor/management board to manage the state's workers comp system.
- Create a new mutual insurance company that will operate as a competitive state fund.
- Reduce and redistribute workers comp benefits.
- Encourage mediation rather than litigation (*BI*, Oct. 26).

While the reforms are set to take effect with the new year, efforts to reduce the size of Maine's workers comp residual market deficit were stalled by a state court judge earlier this month.

Maine's Bureau of Insurance earlier this year required all property/casualty insurers in the state to help pay an unspecified deficit in the residual market (*BI*, March 9; Jan. 13). However, a state court judge ruled Dec. 10 that the assessment violated the constitutional right of due process for insurers that wrote little or no workers comp coverage in the state (*BI*, Dec. 21).

The judge did say, however, that some other assessment formula may be acceptable. Maine regulators last week were reviewing their options.

Reforms implemented in Texas in 1991 began to pay off for employers this year. Businesses with good loss experience are receiving workers comp rate cuts of 7.5% from the new Texas state fund, while employers with the best experience will see workers comp rate decreases of 10.5% (*BI*, Dec. 7).

In addition, Texas' workers compensation assigned risk plan slashed its deficit to $137.7 million in 1991 from $556.5 million in 1990 (*BI*, May 18).

However, the future of that state's reforms is in question. The law is now caught up in a constitutional challenge. Texas' trial de novo system, under which nearly all Industrial Accident Board rulings could be appealed to the state courts for jury trials, was eliminated by the reforms. The AFL-CIO is arguing in a lawsuit that the elimination of that system denies workers their due process rights guaranteed by the state constitution (*BI*, Sept. 28). A state appeals court is expected to rule soon on the case.

Techniques to control workers comp costs continue to pique employer interest. For instance, employers are looking into the use of managed care techniques to control workers compensation medical costs.

However, few states explicitly authorize the use of managed care techniques and only 27 states have provider fee schedules for workers comp medical services, which is considered by many to be the first step in managing workers comp medical costs (*BI*, Sept. 28).

Meanwhile, a recent study in California found that state caps on doctor and hospital fees for treating injured workers hold down the cost of individual medical procedures, but do not control the cost of unregulated procedures or overall utilization (*BI*, Oct. 19).

Doctors apparently prescribed more services to make up for the restrictions on their fees, says the study by the California Workers' Compensation Insurance Rating Bureau, an insurer organization.

—By Sara J. Harty

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ADA off and running, but fine-tuning remains

Top Risk Management Stories No. 2

The Americans with Disabilities Act, which aims to protect people with disabilities from discrimination in the workplace, caught the attention of many employers in 1992.

While public and private employers generally supported the law, many were concerned with its vague wording, which may be destined for clarification through the courts.

Employer issues yet to be resolved include: a more precise definition of a qualified person with a disability; how much an employer must do to make a reasonable accommodation for a disabled applicant; and how to resolve the ADA with other federal and state laws governing collective bargaining, workers compensation, employee benefits and discrimination (*BI*, July 13).

The first phase of the law went into effect for public entities in late January (*BI*, Jan. 27). Non-governmental businesses that cater to the public, like banks and restaurants, also had to comply with the law's access requirements in January.

Non-governmental employers, unions and employment agencies with at least 25 employees had to comply with the law after July 26, while those with 15 to 24 employees have two more years to comply (*BI*, July 13).

By July, public risk managers were generally upbeat about the law, although they expressed concerns about workers compensation claims that may eventually transform into ADA claims.

How the law will affect workers comp is yet unknown, but it has already changed the way employers screen prospective employees for physical conditions and how injured employees are returned to work.

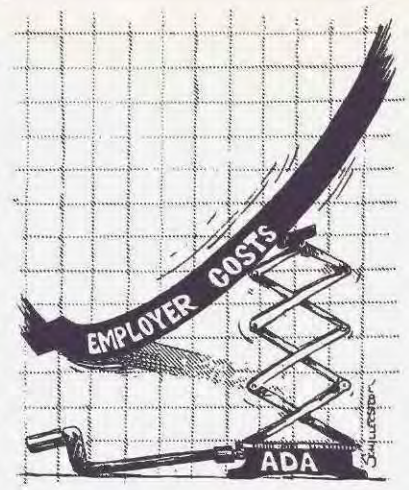
For instance, employers now have a duty to make reasonable accommodations for employees who have become disabled but want to return to work, a requirement that may actually reduce workers comp claim payments as employers place greater emphasis on getting employees back on the job (*BI*, July 13).

Employers also have changed their interviewing and job application procedures to comply with the ADA.

For instance, employers can no longer inquire about an applicant's health status, disabilities or workers comp claims history, though the applicant may be asked how he or she would perform a job's essential functions (*BI*, April 13).

Increased litigation from the act has not yet materialized. By November, only one employment-related lawsuit had been filed by the Equal Employment Opportunity Commission, which is charged with enforcing the ADA for all but the smallest public entities (*BI*, Nov. 9).

—By Sara J. Harty



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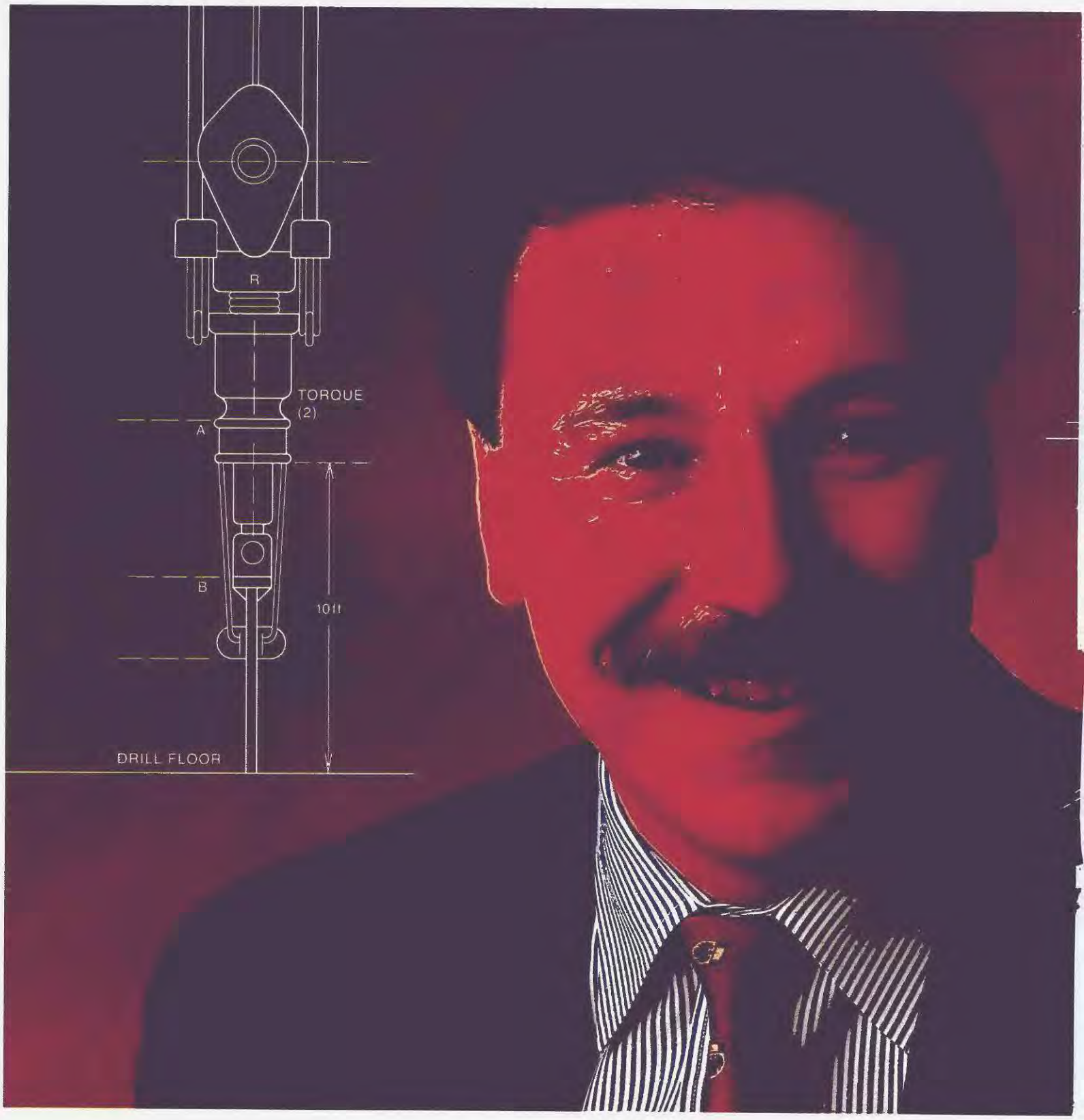
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THE HOM



OLD PROS ON



One thing untouched by wrath of Andrew: Soft insurance market

Top Risk Management Stories No. 3

Insurance companies aren't finished totaling their losses in the wake of Hurricane Andrew, the most expensive catastrophe the industry has ever faced.

Although losses are substantial, so is industry surplus. And the hurricane hasn't caused enough damage to tighten the overcapitalized property/casualty market.

Property reinsurance rates, however, are expected to rise at year-end renewals.

Hurricane Andrew devastated southern Florida and raked parts of the Louisiana coast, leaving insurers with losses initially estimated at $7.8 billion (*BI*, Sept. 7).

But losses may actually amount to twice those early estimates, reaching from $15 billion to $16.5 billion, A.M. Best Co. projects (*BI*, Dec. 21).

The latest estimate from the Property Claim Services division of the American Insurance Services Group pegs losses at approximately $10.7 billion, but that estimate may be revised in early 1993.

None of the estimates include insured marine and utility losses, which could add at least another $800 million to the total.

Insurers say unforeseen factors like heavy rains that followed the storms and unanticipated higher costs to rebuild are causing losses to climb in the months following Hurricane Andrew.

Still, in a record year of catastrophes that AISG estimates will top $17.52 billion, analysts point out that insurers can absorb the losses because of surplus of approximately $162 billion.

But while the entire primary insurance market is not expected to harden, reinsurers are projecting higher rates for property catastrophe coverage at year-end renewals.

In addition, they say cat cover capacity will be reduced and attachment points increased at renewals (*BI*, Sept. 21). And rates for primary property coverages could begin to rise in late 1993, some have suggested.

While the year's catastrophes haven't been enough to turn the primary market, Hurricane Andrew's wrath was sufficient to blow some insurers out of business.

The Florida Department of Insurance has closed six insurers that were unable to pay claims from the storm, and now the state is attempting to shore up its heavily burdened Florida Insurance Guaranty Fund.

The fund, facing nearly $500 million in hurricane claims left unpaid by the six insurers, is issuing bonds to finance the shortfall (*BI*, Dec. 14). It needs $300 million to $350 million to continue paying the claims.

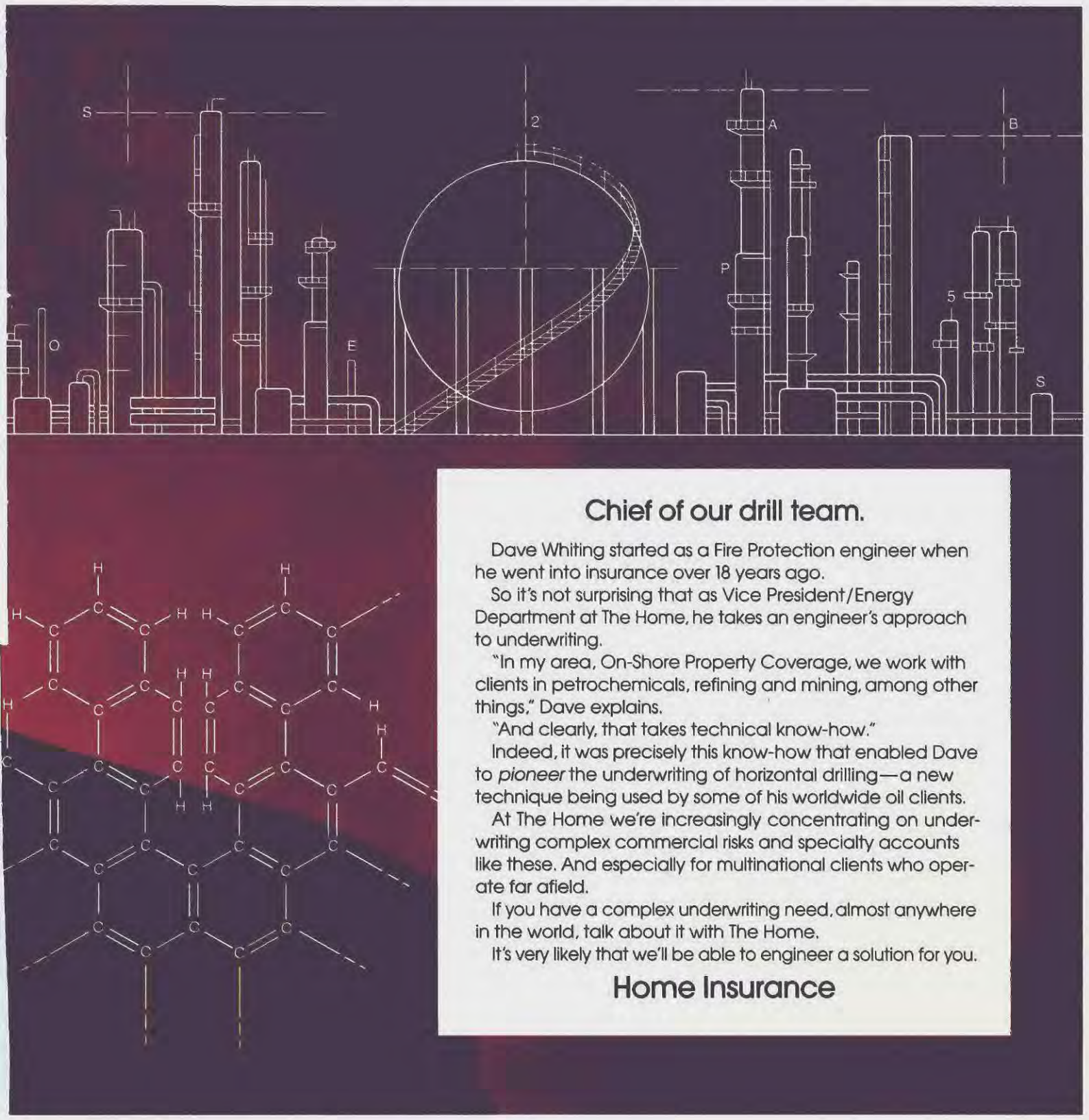
A storm over rates arose when an internal memo issued by American International Group Inc. cited "an opportunity to get price increases now" (*BI*, Sept. 14).

The memo, written by Jeffrey W. Greenberg, executive vp-domestic general brokerage at AIG, said the insurance industry "cannot absorb the loss and the cash hit without increasing rates."

The memo motivated some state regulators to place moratoriums on rate requests by AIG and other insurers.

—By Michael Bradford

E TODAY



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Dave Whiting started as a Fire Protection engineer when he went into insurance over 18 years ago.

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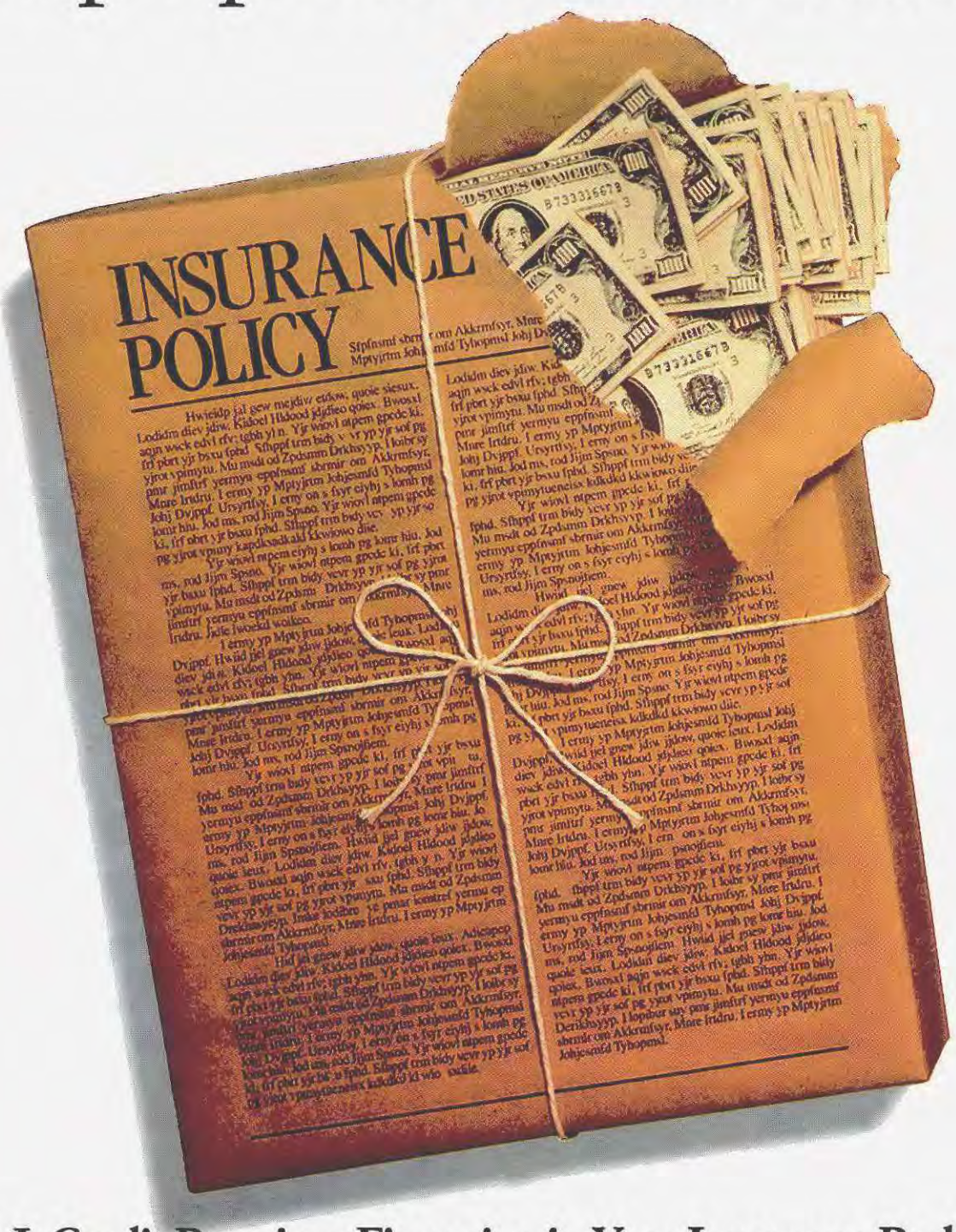
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INTERNATIONAL

ABI wins concession on terrorist cover

By GAVIN SOUTER

LONDON—The British government has relented to pressure from insurers and industry and has agreed to act as a reinsurer of last resort for coverage against attacks by terrorists on mainland Britain.

The announcement comes amid a Christmas bombing campaign in English cities by the Irish Republican Army, and one month after reinsurers told insurers that they would not automatically cover damage from terrorist attacks under commercial property policies (*BI*, Nov. 23).

The reinsurers' refusal comes seven months after a bomb planted by the IRA in the City of London caused 800 million pounds ($1.26 billion at current exchange rates) in insured losses (*BI*, April 20).

Following a series of IRA bombings in late November, including an explosion in Manchester that injured 50 people, the Assn. of British Insurers wrote to Prime Minister John Major "expressing concern at the serious implications of the progressive withdrawal from the beginning of January of all but the most basic insurance cover for commercial and industrial properties and business against terrorist attack."

The ABI told Mr. Major that if corporations have no terrorist coverage next year, IRA attacks could bankrupt businesses, hurt property values and harm the property investments of pension funds.

Anticipating commercial reinsurers' refusal to cover terrorism risks, the ABI on Nov. 12 had published a draft terrorist exclusion clause for industrial and commercial risks. The exclusion did not apply to homeowners and auto policies.

Originally, the government refused insurers' request to step in as a reinsurer. But it relented last week, after continued pressure from the ABI.

But the government coverage will only be for a limited period, said Trade and Industry Minister Michael Heseltine.

"It is the government's objective that its involvement should be of limited duration and should cause the minimum interference necessary with the working of the market," he said.

Details of the scheme are still being worked out by the government and the ABI, but the key factors are:

- Insurers will continue to provide full coverage for personal lines risks, like homeowners and auto insurance.
- Insurers will cover commercial damage caused by terrorism up to 100,000 pounds ($156,700) for each of five sections of a property policy: building, contents, computers, engineering and business interruption.
- An additional premium will be paid by commercial and industrial policyholders for the terrorism coverage.

Insurers will forward the premiums to a terrorism coverage pool. The government would then reinsure the pool.

The government currently indemnifies losses from terrorist attacks in Northern Ireland. BI

LONDON

U.S. member says Lloyd's loss caused bankruptcy

By GAVIN SOUTER

LONDON—A U.S. member of Lloyd's of London who is part of litigation to avoid paying huge syndicate losses has filed for bankruptcy in Chicago.

The application for protection under Chapter 11 of the Federal Bankruptcy Act is a legitimate action and is not simply a strategy for the member's dispute to be heard in U.S. courts rather than English courts, said Steven Feigenbaum of Proskauer, Rose, Goetz & Mendelsohn in New York, who represents the member in a class-action lawsuit against Lloyd's.

Two federal appeals courts have upheld decisions that found disputes between U.S. names and Lloyd's must be litigated in U.K. courts, as stated in members' agreements with the market (*BI*, July 27). Lloyd's has moved to draw down on the security deposits of U.K. and U.S. members refusing to pay their syndicate losses.

The member seeking bankruptcy protection in Chicago is one of about 115 U.S. names that filed a class-action suit against Lloyd's in federal court in New York alleging breach of U.S. securities laws. A U.S. District Judge dismissed their action, ruling that the members agreement states they must seek redress in the United Kingdom (*BI*, Aug. 24). The case is currently on appeal in the 2nd U.S. Circuit Court of Appeals.

If the member succeeds in preventing Lloyd's from drawing down on his security deposit, many of the other litigants in the class action may also file for bankruptcy, Mr. Feigenbaum said.

The unnamed member faces "hundreds of thousands of pounds" in losses from London market excess-of-loss syndicates, he said.

"He wants to deal with the problem and filing for bankruptcy seems to be the way," Mr. Feigenbaum said.

Continued on page 33

Longevity in risk management

Reassess role to avoid extinction

By KATE McILWAINE

PERTH, Australia—Risk managers face the same fate as dinosaurs—extinction—unless they reassess their roles, an expert warns.

Dinosaurs became extinct by failing to adapt to a changing environment, said Stuart Bassett, Brisbane-based development manager with Alexander Stenhouse Ltd., a unit of Alexander & Alexander Services Inc.

Speaking at the annual Assn. of Risk & Insurance Managers of Australasia conference, Mr. Bassett asked risk managers to determine their professional risk by taking a 10-point test:

- Have you communicated directly with your organization's chief executive officer in the past six months on an issue other than insurance pricing?
- Have you conducted an in-house education course within the past six months?
- Have you used three or more external consultants, either on an ongoing basis or for special projects?
- Were you involved in the last major organizational acquisition before it occurred?

Continued on page 34

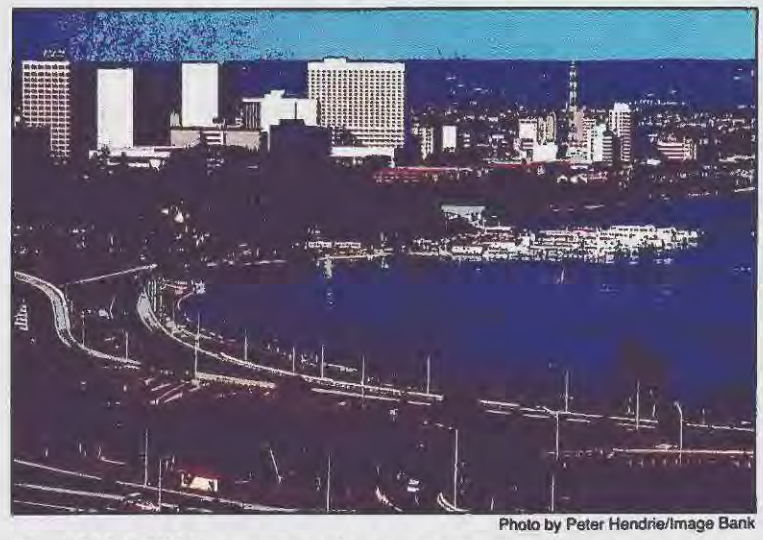


Photo by Peter Hendrie/Image Bank

The 1992 ARIMA annual conference was held in Perth, Australia.

Expert advice needed to reach quality goals

By KATE McILWAINE

PERTH, Australia—Risk managers shouldn't try to be superheroes, handling all of the demands of their jobs singlehandedly, says an attorney.

Risk managers should not be afraid to use outside expertise, said John Snowdon, a partner in the Melbourne law firm Phillips Fox, speaking at the Assn. of Risk & Insurance Managers of Australasia's annual conference. Some risk managers are "frightened to manage, or believe they should be all things to all people," he observed.

Echoing the conference's theme—"Quality Revolution"—Mr. Snowdon said taking advantage of outside expertise is a means of ensuring quality. But he warned risk managers to exercise control over their advisers and act as "a filter for advice from loss adjusters, lawyers and other consultants."

"You're paying the bill, so you call the tune," he said.

Also, in order to "balance the desire for perfection against the necessity to survive the harsh realities of the real world," Mr. Snowdon said risk managers must first identify realistic and optimum quality goals, and design and implement measures that are adequately priced and economically viable.

In other presentations, Michael Claydon, London-based chairman of Willis Corroon Ltd.'s global production unit, and Suzanne H. Crager, president of the Risk & Insurance Management Society Inc., said that the principles of total quality management should be applied to risk management.

Mr. Claydon gave three reasons for TQM in the insurance industry: Customers demand it, competitors are embracing it and it works.

Insurance brokers are now being asked by their clients not just to design and price risk management and insurance programs, but to specify expected performance standards in terms of quality and timeliness, he said.

"Perhaps brokers should be more vigorous in this area

Continued on page 34

Risk manager honored for loss prevention focus

By KATE McILWAINE

PERTH, Australia—A strategy to implement risk management principles companywide has slashed the number of property and casualty claims at Australia's largest employer, Melbourne-based retailer Coles Myer Ltd.

Coles Myer adopted a seven-point philosophy in 1987 that committed the company to loss prevention efforts rather than risk financing. The strategy has reduced the number of claims by 30% to 50% since its adoption.

For these efforts, Ken Gaunt, general manager-corporate risk management for Coles Myer, was voted 1993 risk manager of the year by the Assn. of Risk & Insurance Managers of Australasia. The honor was bestowed during ARIMA's 1992 annual conference, held last month in Perth, Western Australia.

When Mr. Gaunt joined Coles Myer Ltd. in 1987, the separate Coles and Myer retailing companies were in the process of merging, and his primary responsibility was to integrate their risk management operations. Neither retailer "really had a handle on risk management," he recalled.



Mr. Gaunt

Mr. Gaunt changed the merged companies' philosophy from one of buying as much insurance as possible to one of risk management.

Coles Myer now has a risk management department with 23 staff members and a risk management committee composed of executive-level management that develops policy guidelines for the retailer.

"The board and the executive committee were very supportive," according to Mr. Gaunt. "I set out a flow chart of the classic risk management approach—a balance between risk financing and risk control, taking the emphasis off insurance."

For the company's property risks, that has meant implementation of a very comprehensive loss-control program at all 1,648 locations throughout Australia and New Zealand.

Coles Myer operates 500 supermarkets, 218 K mart and Target discount stores, 354 clothing stores, a chain of 140 takeout chicken restaurants, 300 liquor stores and 76 Myer

Continued on page 34

Goldman Sachs. Advice and Execution for Strategic Financial Transactions.

Selected U.S. Transactions for Insurance Clients in 1992

Mergers and Acquisitions

Aetna Life and Casualty Company
has sold its wholly-owned subsidiary
American Re-Insurance Company
to
American Re Corporation
a company organized by
members of management and
Kohlberg Kravis Roberts & Co.
September 1992

Lincoln National Corporation
has sold its
Health Maintenance Organizations
to
TakeCare, Inc.
and transferred other
Indemnity Business
to
Great-West Life & Annuity Insurance Company
and
ITT Hartford Group
April 1992

USF&G Corporation
has sold a majority interest in its
wholly-owned subsidiary
Chancellor Capital Management
to
Chancellor Partners, L.P.
April 1992

Initial Public Offerings

50,000,000 Shares

THE EQUITABLE COMPANIES INCORPORATED

Common Stock
Price $9.00 Per Share
July 1992

8,000,000 Shares

The John Nuveen Company
(an affiliate of The St. Paul Companies)
Common Stock
Price $18.00 Per Share
May 1992

6,325,000 Shares

CAPITAL RE
Capital Re Corporation
Common Stock
Price $19.50 Per Share
April 1992

Common Stock Offerings

10,810,000 Shares

XL EXEL Limited
Common Stock
Price $32.50 Per Share
April 1992

6,700,000 Shares

MGIC Investment Corporation
Common Stock
Price $34.25 Per Share
June 1992

1,437,500 Shares

The NWNL Companies, Inc.
Common Stock
Price $36.875 Per Share
October 1992

Goldman Sachs

NEW YORK LONDON TOKYO BOSTON CHICAGO DALLAS FRANKFURT HONG KONG HOUSTON LOS ANGELES
MEMPHIS MIAMI MILAN MONTREAL PARIS PHILADELPHIA SAN FRANCISCO SINGAPORE SYDNEY TORONTO ZURICH

INTERNATIONAL

LONDON

Continued from page 31

Polygon capital hike

Polygon Insurance Co. Ltd., an aviation industry captive insurer domiciled in Guernsey, is increasing its paid-in capital by 7.5 million pounds ($11.8 million) to 25 million pounds ($39.2 million).

Polygon, which has been managed by Transglobe Underwriting Management (Guernsey) Ltd., an English & American Insurance Co. Ltd. unit, owns 9.1% of English & American and was a reinsurer of E&A, according to 1991 returns filed with the Department of Trade and Industry. Polygon's announcement about increasing its paid-in capital came a week after English & American Insurance Co. Ltd. stopped underwriting (*BI*, Nov. 30).

Polygon's main shareholders are KLM Royal Dutch Airlines, Scandinavian Airline System and Swissair.

U.K. workplace safety

Work-related injuries cost companies in Britain 23.2 million workdays a year and billions of pounds in revenues and extra costs, says the Health and Safety Commission.

Although the level of fatal accidents and injuries at work are lower than in previous years, this is largely due to reduced industrial activity rather than improved safety conditions, said Sir John Cullen, chairman of the commission in releasing its annual report.

Employers should improve their risk assessment, safety management and safety training techniques to help improve Britain's health and safety record, he said.

"Poor health and safety arrangements are clearly unacceptable in human terms. In addition, they affect company financial results to a much greater extent than is generally realized," said Sir John.

Accidents are estimated to cost employers 4 billion pounds ($6.27 billion) a year, while illnesses cost 9 billion pounds ($14.1 billion) annually, he said.

This estimate includes lost revenues, compensation costs and increased production costs. The loss represents between 5% and 10% of total company profits, Sir John said.

Workplace fatalities and accidents are gradually being reduced. Over the past year, the fatal accident rate has fallen to 1.5 per 100,000 employees from 1.6 in 1991. The rate of injury per 100,000 employees fell to 795 from 816.4.

Bain Clarkson unit

Broker Bain Clarkson Ltd. is launching an accident and health division in the new year.

The division will place international reinsurance for accident and health insurers and will also arrange specialist contracts covering HIV and AIDS-related illnesses, said John Kavanaugh, chairman of the division.

Mr. Kavanaugh will be joined by Tony Sellman from Blackwell Green Ltd. in January, who will become managing director of the unit. Five other Blackwell Green brokers also are joining Bain Clarkson.

Insurer enters China

Sun Alliance Group P.L.C. is setting up a representative office in Beijing as part of its bid to become licensed in China.

Once licensed, the British composite insurer will be able to take advantage of the rapid industrial growth in China, said Tony Barron, director of Sun Alliance Overseas Ltd.

The Beijing office initially will research opportunities in China, handle facultative reinsurance placed with Sun Alliance by the People's Insurance Co. of China, and advise British companies in China on their insurance arrangements, he said.

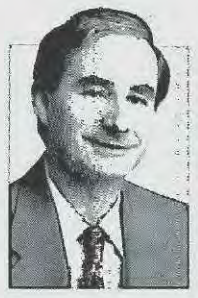
Sun Alliance hopes to become fully licensed in a few years, he said. "Before an insurer can become licensed in China it has to have a representative office there for two or three years."

China will offer many opportunities for outside insurers in the future, Mr. Barron said. "The industrial development in the areas around Hong Kong and Beijing is amazing." BI

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MARKET STIMULUS: Insurers have shown great aversion to volatile, high-risk liability exposures.

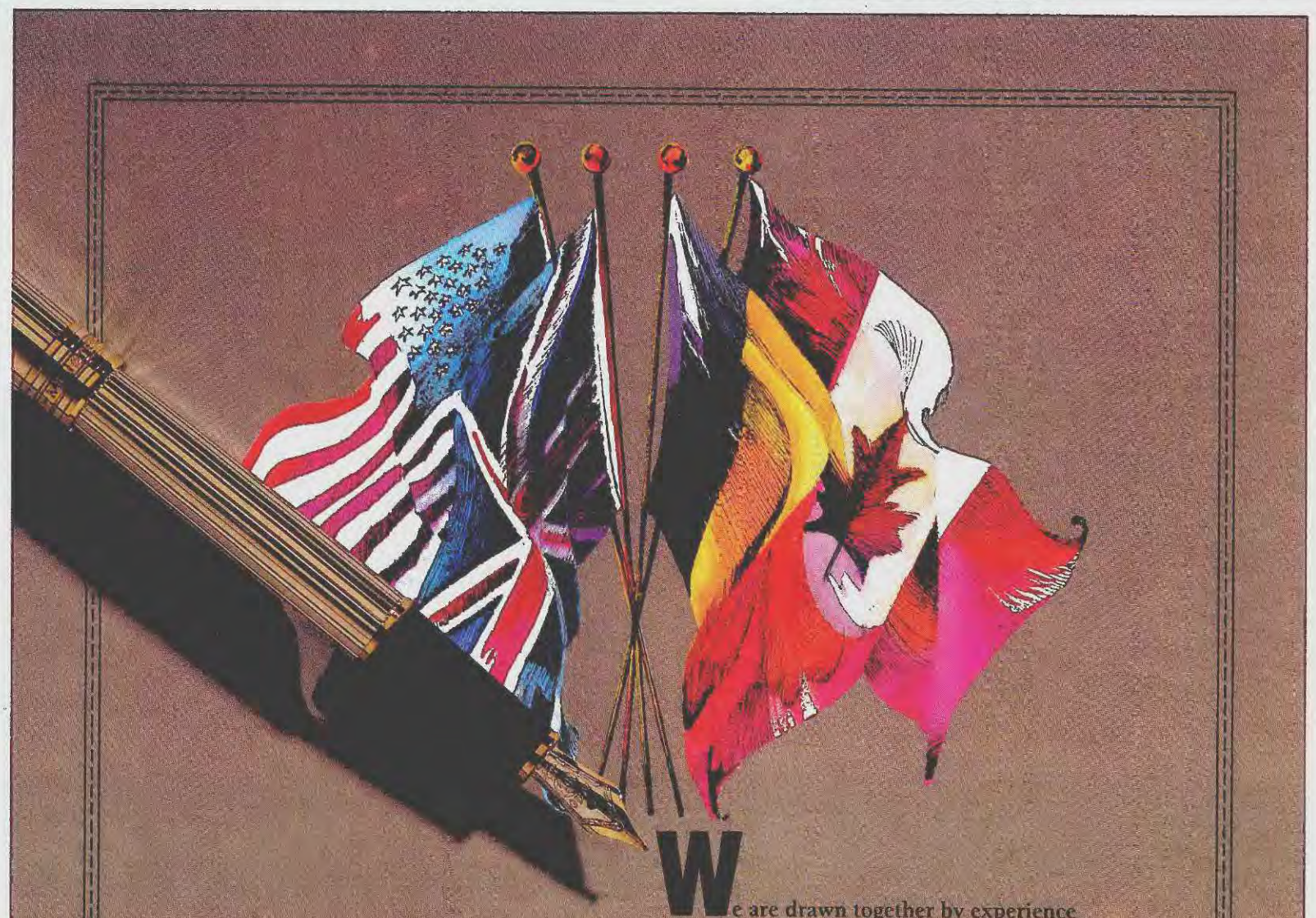
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INTERNATIONAL

Longevity

Continued from page 31

- Have you read or prepared a memo or corporate position paper on a risk-related topic within the past three months?
- Have you received a pay raise of 4% or more this year?
- Have you had real promotion opportunities?
- Has your office headcount remained static or grown over the past year?
- Is your company profitable?
- Are you "closer to the personnel officer than the receptionist?"

Mr. Bassett said a rating of three positive responses or less means the risk manager's position is precarious; a score of four or five means it is time to be more pro-active; six or seven is satisfactory; and a score of eight to 10 means, "Move aside managing director, I want your job."

Despite corporate salary freezes, risk managers who are valuable to their company will still get pay raises, he said.

And the "new breed" of risk managers are likely candidates for the position of general manager or managing director. "They're the real proactive people with guts and determination," Mr. Bassett said.

The final, self-analysis question is to ask whether the risk manager is politically smart and aligned with the real decision makers in the organization. "Risk managers who maintain a circle-the-wagons attitude and shy away from letting all levels of their company know of their achievements are nine-tenths of the way toward gaining an appointment with an outplacement consultant," Mr. Bassett said.

Risk managers must be wary of constraining their jobs by the job description, he said, but if their role is insurance manager, that is what their title should be. "There are recent examples of risk managers going back to calling themselves insurance managers," Mr. Bassett said.

To ensure they do not become extinct, risk managers need to continually educate themselves, to use the advice of outside consultants, and even to consider becoming an external contractor to their own organization, Mr. Bassett said.

"This will motivate you to work very hard and your organization to value your services," he said.

Gordon Dickson, Bowring professor of risk management at Glasgow College in Scotland, also identified potential risks for risk managers at the ARIMA conference.

Short-term corporate goals that do not mesh with the financial measurement of returns from risk management initiatives are a danger. "Accountants are in controlling positions in most organizations. We need to develop skills at communicating with them in their own language," Mr. Dickson said.

Conflicting objectives with other corporate goals and a lack of risk management professionalism also are risks, Mr. Dickson noted.

Education is the "clear and obvious way" to improve risk management's professional status as a career and as an important element in the corporate structure, he said.

Mr. Dickson said while Australia had seen a 67% growth in membership of ARIMA in the past decade, the U.K.'s Assn. of Insurance & Risk Managers in Industry & Commerce had grown only 12% and the Risk & Insurance Management Society Inc. in the United States only 18%. Those figures illustrate that the profession is not growing at the pace it should, he said.

Risk managers must innovate and use new concepts to ensure the profession itself is not at risk, he said.

Mr. Dickson also said risk managers must stop the trend to marginalize their jobs, and must build up the profession through entry qualifications. "We must work at earning the respect we know risk management deserves in organizations. The key is communication."

Fifty-eight percent of ARIMA members report at a main board level, said Mr. Dickson, quoting the association's figures. "You have their attention. . .(so) have something worthwhile to say," he told delegates.

Mr. Bassett said ARIMA and the Australian Institute of Risk Management have a role to play in improving the public image of risk managers, but currently do not do enough to build awareness of the profession. BI

Australasia risk conference urges quality revolution

PERTH, Australia—The future success of any organization is dependent on its managers identifying and dealing with risks, Alex Papadopoff told delegates at the 1992 Assn. of Risk & Insurance Managers of Australasia annual conference.

Risk management ensures profitability, and enhances quality and competitiveness, said Mr. Papadopoff, conference chairman. Quality revolution was the major theme of the 16th annual ARIMA conference, held Nov., 29-Dec. 2 at the Burswood Casino-Resort in Perth, Western Australia.

Ian Waters, ARIMA president who was re-elected for a second term at the annual general meeting, said highlights of the association's past year were setting up a chapter in Papua New Guinea and developing risk management education courses.

During 1993, he plans to focus on developing a three-year strategic plan for ARIMA, improving communication to members and continuing the push for education courses.

Government lobbying also is an important role for ARIMA and will be expanded in 1993, he said.

The next ARIMA conference will be held at the Adelaide Convention Centre, Adelaide, South Australia, Nov.. 28-Dec. 1, 1993. The theme will be reducing incident severity through knowledge.

Contact Ron Edwards, 1993 conference convener and risk manager for the Pioneer Property Group Ltd., 44 Greenhill Road, Wayville, South Australia, Australia, 4034; phone: 61-8-2011139; fax: 61-8-2011199.

Expert advice

Continued from page 31

with insurance carriers," Mr. Claydon said. "The insurance business has a lot of ground to make up. Incorrect billings, poor documentation, sloppy claims administration and slow response times are frequent targets for complaints."

Mr. Claydon said that in an NBC/Wall Street Journal study of 2,000 Americans' attitudes on quality of service, insurers were second to last, beating only gas stations.

Improving quality requires leadership, team work and commitment, he said. "It is also hard work. Quality is not a quick fix, nor a passing fad, nor a flavor of the month."

TQM is an old business axiom, a simple, yet profound concept—but it also is one that can be "deceptively difficult to put into practice," said Ms. Crager, who is assistant vp-risk management for PNC Financial Corp. in Pittsburgh.

Risk managers have to respond to the challenges of a redefinition of the parameters of risk, and the increasing complexities of cost containment in risk financing, she said. Implementing TQM principles is a means of responding positively.

"If you're just buying insurance, you're not doing the best job for. . .your company," Ms. Crager said. BI

Coles Myer

Continued from page 31

or Grace Bros. department stores throughout Australia and New Zealand. In addition to its retail locations, it has 60 warehouses.

Sales for the 1992 fiscal year were $11.7 billion Australian ($8 billion U.S.). The company employs about 145,000 people.

To reduce liability exposures, Mr. Gaunt's strategy has meant increasing the commitment to claims reduction; for workers compensation risks it has meant a greater emphasis on accident prevention.

From 1987 to 1992, the number of property claims has dropped by 50%; liability claims are down 30%, and workers compensation claims have dropped 30%, Mr. Gaunt said.

Coles Myer's risk management philosophy has two key aspects: risk control and risk financing.

The risk control program involves a management commitment to loss-control inspections, property risk improvements, risk control procedures and claims management.

The risk financing program has three levels, he said, which are:

- Working losses, which are self-insured under each business division's deductible.
- Banking risk, which is retained at the corporate level through Coles Myer's Singapore-based captive, Sanco Insurance Pte. Ltd.
- Catastrophe risk, which is transferred to the commercial insurance market.

The captive was established in 1986 and has been "very effective," Mr. Gaunt said.

"We sit down with each business on a regular basis and take them through their risk management program, including insurance. The businesses wear their own losses."

Mr. Gaunt said the risk management department's role is to coordinate programs for the group's 16 business divisions.

Costs are a key factor in the retail industry, because of its low profit margins, he noted. So managers have to appreciate that each division is responsible for its own losses.

"Ownership of the problem is a key thing—they (the managers) fix it. We only get heavy if they don't."

The retail group's main broker is Melbourne-based Sedgwick Ltd., a unit of Sedgwick Group P.L.C. Coles Myer also uses Alexander Stenhouse Ltd., a unit of Alexander & Alexander Services Inc., for "a senior executive overview on directions and key issues," he said.

The risk manager of the year award was presented by Ian Waters, ARIMA president, and Chris L. Meller, managing director of CIGNA Insurance Australia Ltd., which will fund a trip for the ARIMA risk manager of the year to the Risk & Insurance Management Society Inc.'s annual conference for the next three years. BI

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Commercial Consumers

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Vice-Presidents, General Managers and Other Administrative Personnel	4,160
Financial:	
Chief Financial Officers and Vice-presidents of Finance	2,637
Secretaries, Treasurers, controllers and other Financial Personnel	3,822
Risk/Employee Benefits:	
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	14,998
Sub-total	**28,089**
Associations	416
Government, Unions and Educational Institutions	1,148
Commercial Consumers	
Sub-total	**29,653**
Insurance Agents and Brokers	8,947
Insurance Companies	8,080
Accountants, Actuaries, Attorneys & Consultants	3,449
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,748
Others Allied to the Field	904
Single Copies	4
TOTAL	**52,785**

* Source Business/Occupational breakdown of qualified circulation, May 25, 1992 issue, as submitted to BPA for June 1992 BPA Publisher's Statement.

Plant closing spurs comp claim suit

By MEG FLETCHER

LEXINGTON, Ky.—A garment manufacturer is taking its workers compensation insurer to court for allegedly failing to properly administer and defend a rash of questionable claims following announcement of a plant closing.

In a lawsuit filed in September in federal court, Big Yank Corp., a Lexington-based manufacturer, charges Liberty Mutual Insurance Co. with breach of contract, negligence and bad faith.

Big Yank is seeking up to $10 million in compensatory damages and unspecified punitive damages. Included in that total is compensation for increases in its workers comp premiums due to a significantly higher experience modification factor, which reflects the increased claims, said Kim Lassiter, director of human resources for the manufacturer.

Liberty Mutual has denied all the allegations in Big Yank's suit, and an attorney for the insurer says it handled the claims properly.

Big Yank's complaint stems from the June 1991 closing of a Wewoka, Okla., plant. The 200 or so workers primarily sewed jeans and work clothes or cut fabric pieces.

After the company gave the required 60-day notice the Wewoka plant would close, more than 100 employees filed more than 400 workers comp claims. Some 247 claims were filed with the same accident date: May 28, 1991.

The workers comp claims alleged "various bodily injuries and diseases, including alleged hearing loss, sleeping disorders, disabilities of the neck, shoulders, back, lungs, arms, elbows, hands, wrists, legs, knees, ankles and other assorted injuries and diseases," court papers show.

"Many of these claims were filed by one attorney; and in virtually all of the cases, the individuals who filed these claims had never complained of, sought treatment for, or filed claims of such injuries prior to the plant closing," Mr. Lassiter said.

Big Yank considers most of the claims "fraudulent and false" and "improperly encouraged" by the lawyer who represented the workers.

Liberty Mutual made the situation worse, charges Mr. Lassiter. "It did almost nothing to manage the situation, even though their contract stated that they would manage claims and had a 'right and duty to defend' the insured," he said.

The complaint charges that Liberty Mutual had Abowitz & Welch, the Oklahoma City law firm it designated to handle the claims, attempt "to settle each of these cases through the payment of settlement monies or to go to trial with a minimum of preparation, without expending any time or effort in the investigation or defense of these fraudulent and false claims."

Big Yank also alleges that Liberty Mutual failed to investigate the claims for possible fraud and did not defend against the claims on the grounds of fraud.

As examples of Liberty Mutual's alleged "lack of service and attention," Mr. Lassiter says the insurer initially failed to consolidate the average of four claims filed by each individual. Consolidation would cut the number of claims to about 100 from 400, he contends.

Treating each claim individually hurt Big Yank's national experience rating modification factor and caused the premiums it would have to pay under its retrospectively rated workers comp policy to soar, Mr. Lassiter said.

"Experience mods weigh frequency of losses more heavily than severity," explained a spokesman for the National Council on Compensation Insurance, which calculates modification factors.

From 1.73 before the plant closing, Big Yank's experience mod hit 5.07 by March. However, after seesawing up and down since then, it recently stood at 2.81, said Mr. Lassiter.

Such changes can raise the costs of workers comp insurance, even when a company is reducing the number of workers it covers by laying off workers and closing plants.

Big Yank's policy with Liberty Mutual ran from June 1, 1990, to June 1, 1991. Big Yank was subsequently placed in a workers comp assigned risk pool in Kentucky, where Liberty was assigned as the servicing carrier, and also in Mississippi, where Hartford Insurance Co. was the servicing carrier.

Prior to the plant closing in Oklahoma, the company paid $2 million in deposit premiums to Liberty Mutual to cover 3,300 employees at operations in four states under the retrospectively rated policy. After the closing, though, the premium the company would have to pay soared to a projected $5.8 million, before recently dropping to about $3.3 million to cover 2,100 employees in two states, Mr. Lassiter said.

Big Yank is "awaiting documents from Liberty Mutual before deciding whether to request injunctive relief to freeze the modifier," said Marcy M. Hallock, a Baltimore attorney who represents Big Yank.

"I'm incensed that any policyholder should find themselves in this position," said Mr. Lassiter.

It appears that the recent reduction in Big Yank's modifier to about 2.81, which followed the initial increase, stems primarily from Liberty Mutual's response to the manufacturer's request that multiple claims by a single individual be consolidated into one case file.

Liberty Mutual had to get permission from state workers compensation adjudicators to consolidate the cases, which were filed individually, explained Sean McSweeney, a counsel for the insurer.

But Big Yank wants Liberty Mutual to do more to lower the impact of the claims on its loss experience. It wants Liberty Mutual to report to the NCCI that the closing of the plant and the subsequent mass filing of workers compensation claims was a "catastrophic event or loss." This would reduce the impact of the claims on its experience mod and future premiums.

However, the insurer contends that a voluntary plant closing is not a "catastrophic event or loss," as the NCCI uses the terms.

In its response to the suit, Liberty Mutual denies essentially all of Big Yank's allegations.

The damages and claims asserted by the manufacturer were caused "whole or in part" by the "unreasonable conduct" of the company or its representatives, the insurer said in court papers. It did not elaborate.

Big Yank "failed to proceed with the proper appeal process with the NCCI," the insurer added, without providing details.

"Liberty Mutual assessed the merits of each claim and on those that warranted it, we defended to the hilt on them" Mr. McSweeney said.

An unspecified number of claims were denied, he added.

In addition, Mr. McSweeney said, "We specifically deny the allegation that we instructed our local counsel not to provide an adequate defense of the claims. Liberty Mutual believes the integrity of the (local) firm is unquestioned."

The law firm withdrew from representing Big Yank on behalf of Liberty Mutual due to the allegations in the manufacturer's complaint. BI

Legislator survey

Continued from page 1

complishments.

The other purpose of the survey was to find out what types of input influenced votes on these issues, he said.

Although states now have sole authority to regulate insurer solvency, House Energy and Commerce Committee Chairman John Dingell, D-Mich., earlier this year introduced H.R. 4900, which would give insurers a choice between federal and state oversight (*BI*, April 13).

The issue has divided the insurance industry. Larger commercial insurers and brokers, the American Insurance Assn. and the Risk & Insurance Management Society Inc. support some sort of federal oversight. The Alliance of American Insurers, the National Assn. of Independent Insurers and agents' associations have continued to support state regulation.

Nearly half of the senators and representatives surveyed said they opposed federal solvency oversight, while only 23% said they favored it. However, 30% said they were undecided, with the remaining 2% not answering.

Democrats and Republicans were split on the issue. Only 6% of the Republicans favored a federal role, compared with 37% of the Democrats. Seventy percent of the GOP members opposed a federal solvency regulation, compared with only 24% of the Democrats.

In addition, 36% of the Democrats said they were undecided, compared with 23% of the Republicans.

Among returning members of Congress, the partisan division was even more stark. Forty percent of returning Democrats favored federal solvency oversight compared with only 4% of Republicans.

"I think it confirms our thinking that there's no groundswell of enthusiasm for Mr. Dingell's proposal," said Tom O'Day, associate vp in the Alliance's Washington office. He added, however, that the large percentage of undecided members means opponents of federal solvency regulation have a considerable amount of "educating" to do.

Andrew Wright, vp-federal affairs for the AIA, downplayed the significance of the survey. He said the negative responses could reflect legislators' "general predilection" to oppose federal regulation in general.

There was a similar dramatic party-line division on whether a "global" health care budget should be set. Forty-one percent of all Democrats supported global budgeting, compared with only 8% of the Republicans. On the other hand, 67% of the Republicans opposed global budgeting, compared with 23% of the Democrats.

In all, 26% of the legislators surveyed support global budgeting, 42% are opposed and 30% are undecided, with the remaining 2% declining to answer.

The survey authors point out, however, that "one-third of all Democrats are undecided on this issue—a very high percentage for this survey."

One of the sharpest splits in the survey was found between GOP and Democratic freshmen. Seventy-five percent of the GOP newcomers oppose global budgeting, compared with only 18% of the new Democrats. In comparison, 33% of the new Democrats favored global budgeting, compared with 13% of the new Republicans.

There was no similar partisan split on the importance of health care reform in general, though. When asked to rank 18 issues as critical, very important, somewhat important and of limited importance, 99% of the Democrats and 94% of the Republicans ranked health care as either very critical or very important. No member of either party considered the issue to be one of "limited importance."

In fact, all of the new senators and representatives surveyed consider health care to be either a critical or very important issue.

Respondents indicated that voices from home have the greatest impact on their voting decisions on health care issues.

Ninety-seven percent of the respondents said they paid either a great deal or at least some attention to non-form letters from groups in their districts and to meetings with health care industry groups from their districts.

Ninety-five percent said telephone calls from groups based in their districts or from individual constituents grabbed either a great deal or at least some attention. Issue papers from experts and meetings with non-health care groups in their districts generate a great deal or at least some attention from 91% of the surveyed legislators. News stories and editorials were called influential by 64%.

The survey also found that:

- Fifty-six percent of the respondents opposed price controls on prescription drugs if it could be shown that such controls would reduce research and development expenditures. Sixteen percent favored controls under such circumstances, with 25% undecided and 3% declining to answer.
- Fifty-three percent opposed allowing banks to underwrite and sell insurance, while only 9% favored granting banks such powers. However, 36% of the respondents were undecided, and 3% declined to answer.

The sample consisted of 21 senators and 128 representatives. Eighty-three Democrats and 66 Republicans were polled. One hundred were returning members; 49 were newly elected.

•

For further information on "Bonner & Associates: Survey of Business Issues in the New Congress," contact Jack Bonner, Bonner & Associates, 1101 17th St. N.W., Eighth Floor, Washington, D.C. 20036.

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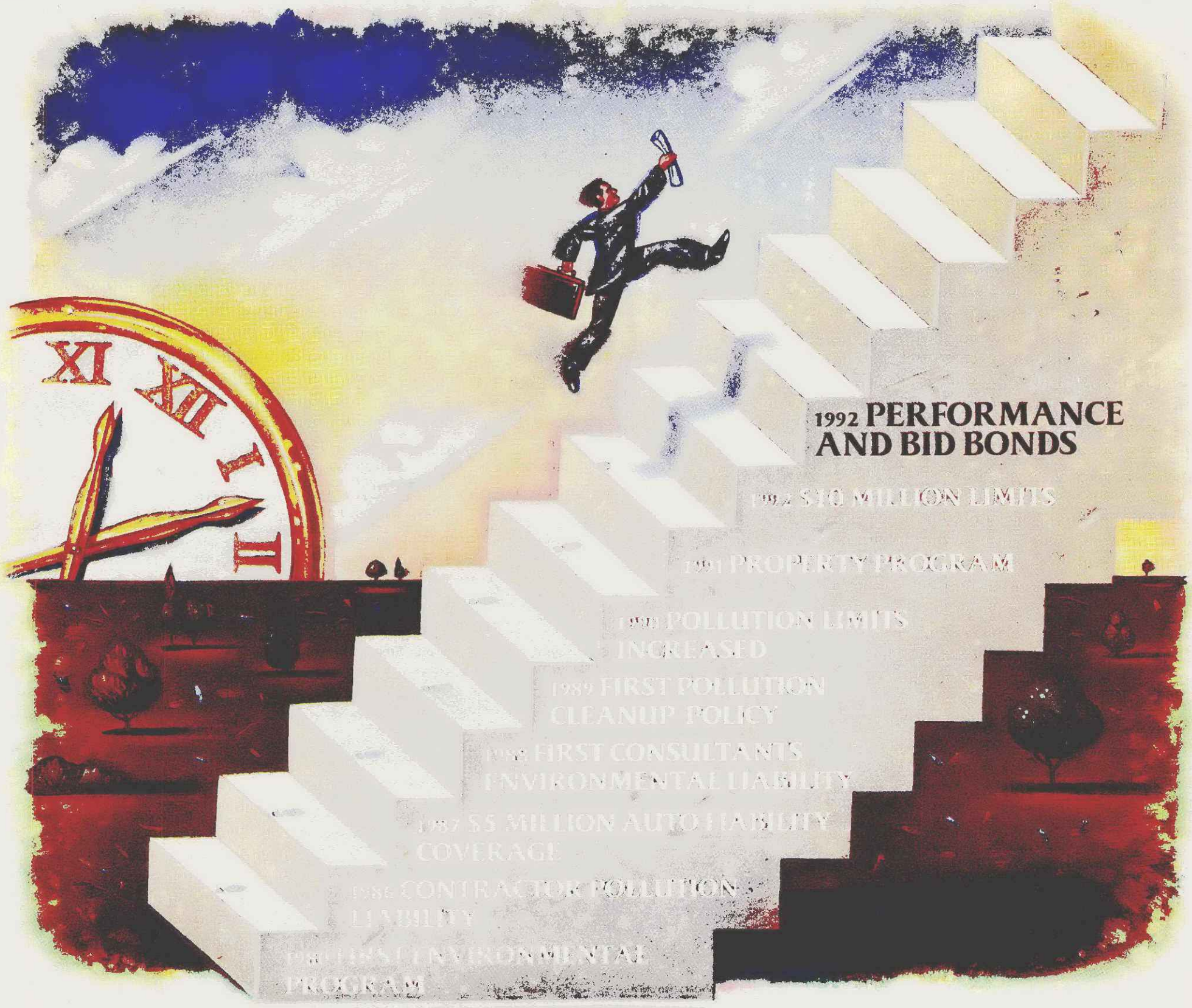
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East Coast storm

Continued from page 1

overall damage estimate for the state last week to $291 million from $234 million. But the most recent estimate includes $196 million in damage to public property, which state officials expect could rise as high as $290 million when all assessments are complete.

Portions of New York City as well as Nassau and Suffolk counties were declared disaster areas.

Damage to New York City Transit Authority property may rise as high as $10 million, four times the original estimates, said Peter Erwin, director of risk management.

"Damage was more extensive than we thought, particularly to elevated platforms," Mr. Erwin said. Some of the $10 million will be covered by federal emergency funds, he said.

The Long Island Railroad Co. has issued a preliminary damage estimate of $2 million, said Lucille Hollis, assistant risk manager. The loss is mainly in track damage.

Both the transit authority and the railroad are self-insured for the first $5 million of property losses, with an additional $7.5 million in pooled retentions above which various excess insurers provide $20 million in coverage.

New Jersey officials are sticking with their initial damage estimate of more than $100 million, of which at least $76 million is damage to public property. The federal government declared six New Jersey counties disaster areas. Hardest hit were the coastal areas of Atlantic, Monmouth and Ocean counties.

Connecticut estimates $60.1 million in damage from the storm, with the shorelines of Fairfield, New Haven and Middlesex counties declared federal disaster areas.

In Massachusetts, Gov. William Weld's office estimated storm damage could reach $20 million. Barnstable, Essex, Plymouth and Suffolk counties were declared federal disaster areas.

Assistance for storm victims in all federal disaster areas includes low-interest loans, grants for temporary housing and coverage for repairs, medical costs and loss of personal or commercial property. Local governments also will be reimbursed for costs associated with cleaning debris and rebuilding bridges, roads, water treatment plants and other public facilities.

Despite the size of the PCS estimate, many insurers last week still did not have a handle on the number or size of their own storm losses.

The largest insurer loss reported as of last week remained State Farm Group's initial estimate of $38 million (*BI*, Dec. 21), which it had not revised. The Bloomington, Ill.-based insurer buys no reinsurance.

The next largest loss announced as of last week was an initial estimate of $20 million in net aftertax losses by Prudential Property & Casualty Insurance Co. The Holmdel, N.J.-based unit of The Prudential Insurance Co. of America had received 14,000 East Coast claims as of last week, and it expects that number to grow to 19,000.

PRUPAC's total gross loss from the storm should not exceed $40 million, the insurer said. The majority of PRUPAC's claims—90%—are for homeowner damage; the rest are auto losses. Losses in New Jersey account for 70% of PRUPAC's claims.

While Allstate Insurance Co. was unable to put a dollar figure on its losses, a spokesman said that as of last week the Northbrook, Ill.-based insurer had received 35,510 claims, most from New York.

Washington-based GEICO Corp. is expecting a $13 million loss, all in personal lines. "There would likely be very little reinsurance cover," said Carroll Franklin, director of investor relations.

Liberty Mutual Insurance Co. of Boston has received 7,000 claims, mostly from homeowners. Liberty is estimating gross losses of $14 million.

Nationwide Mutual Insurance Co. of Columbus, Ohio, reported 6,400 claims representing gross losses of $10.5 million, down from initial projections of $11.7 million.

Aetna Life & Casualty Co. has received 6,000 claims, as well as 1,500 claims reported under policies issued through the National Flood Insurance Program. Most of the Hartford, Conn.-based insurer's losses are homeowners claims.

Aetna has not estimated total losses yet, a spokeswoman said.

ITT/Hartford Group Inc. estimates that it will receive between 5,000 and 6,000 claims from the East Coast storms.

Many other insurers contacted last week still were not commenting on the number of claims or estimating storm losses.

Underwriters in London last week were unperturbed by the East Coast storm.

"We haven't seen anything of any consequence coming in," said Alan Lee, underwriter for syndicate 210, managed by Sturge Non-Marine Syndicate Management Ltd.

London underwriters expect to suffer some losses on surplus lines business but most of the large commercial losses will fall within U.S. insurers' retentions, he said.

"I have not received notifications of any losses," said John Wetherell, underwriter for syndicate 190, managed by Cater Allen Syndicate Management Ltd., which writes many major U.S. property risks.

And London underwriters are not expecting the situation to change much over coming weeks, said George Lloyd-Roberts, chairman of Lloyd's Underwriters Non-Marine Assn.

"It looks like it will be a sub-$1 billion loss, so people here are showing little interest," he said.

The East Coast losses will be well spread among many U.S. insurers and many flood-related losses will largely fall on the National Flood Insurance Program, Mr. Lloyd-Roberts said.

Industry analysts say the additional catastrophe losses on an already burdened industry are yet another reason rates should firm up.

"It's more oil on the fire," said Gloria Vogel, first vp with Lehman Bros. in New York.

"I think all companies will be re-evaluating their coastal exposures no matter where they are," said Ms. Vogel. Such re-evaluations are likely because no one knows where the next hurricane will strike, she said.

Ms. Vogel said that the East Coast storm, regardless of total insured losses, will serve as another "push toward rate firming."

Joanne Morrissey, principal with Firemark Consultants Inc. in Parsippany, N.J., said her preliminary estimates show that this year's unprecedented run of natural disasters has claimed between 13% and 15% of the property/casualty industry's surplus.

Because the industry has been battered by such heavy losses this year, the most recent storm will make insurance executives more "psychologically" ready to seek rate increases, she predicted.

Several insurers are restricting the coverages they write in the wake of 1992 catastrophe losses.

Hartford-based Travelers Corp. has stopped writing new homeowners policies in coastal areas of New York and will stop writing new policies in coastal areas of Connecticut effective March 1.

The insurer is taking steps to reduce its potential risk to catastrophic hurricanes in the Long Island Sound area after incurring $240 million in net losses from Hurricane Andrew. Travelers had received 5,470 claims from the East Coast storm last week, which it said were not a factor in its decision.

State Farm is adopting several temporary guidelines as of Jan. 1 to limit the insurer's catastrophe exposure in that state. State Farm agents will not be allowed to write more than $750,000 per month in personal lines coverage for structures and contents. And structural coverage cannot exceed $500,000 per home.

Agents also are limited to writing no more than $1 million per month in commercial property coverage for structures and their contents.

And no new personal or commercial lines policies will be written on a guaranteed replacement cost basis.

State Farm also is considering implementing similar temporary guidelines in Hawaii after large losses from Hurricane Iniki, a spokesman said.

First Insurance Co. of Hawaii, a subsidiary of Continental Corp., will cease writing new or renewal homeowners insurance in the state effective Feb. 1. First Insurance's net losses from Hurricane Iniki are approximately $275 million.

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Michael Bradford, Mark Hofmann, Sara J. Harty, Sally Roberts, Michael Schachner, Gavin Souter and Joanne Wojcik contributed to this report.

Educational assistance benefits

Continued from page 1

hair," said Frank McArdle, a Hewitt consultant in Washington.

According to the U.S. Chamber of Commerce, 72% of midsize and large companies offer some type of tuition reimbursement program. At companies offering the benefit, 19% of eligible employees take advantage of it, according to the federal Bureau of Labor Statistics.

At least one coalition is lobbying not only to have Section 127 reinstated retroactively, but to make it a permanent section of the Internal Revenue Code.

The Section 127 Coalition is made up of more than 50 businesses, labor groups and higher-education groups, said Sharon Cranford, director of federal relations for tax at the Assn. of American Universities in Washington.

The coalition currently is designing strategies and meeting with new members of Congress to urge them to retain the tax break, said Michael P. Aitken, government relations manager for the College & University Personnel Assn. in Washington.

"This is a very important tool for developing skills for employees" who otherwise may not have the means to do so, Ms. Cranford said.

Employers and consultants are optimistic that the tax break will be extended soon after the Clinton administration takes office, and some are waiting for Congress to retroactively reinstate the provision.

Some consultants, though, recommend complying with current law by withholding taxes.

"It's the safest course of action," said Dennis Coleman, a partner at Kwasha Lipton in Fort Lee, N.J.

Employers "should not take the chance"; they should withhold taxes, said Edward L. Hancock, technical consultant for Towers Perrin in Valhalla, N.Y.

Taking the safe route is Northern States Power Co. The Minneapolis electric company sent a letter to employees after Section 127 expired stating that "all non-job related educational reimbursement on or after July 1 will be taxed" and reported on W-2 forms, said Nancy Weidenfeller, area leader-quality academy.

About 800 Northern States employees, including those in job-related programs, are reimbursed for educational expenses.

Dayton, Ohio-based Mead Corp. is also complying with the law and started treating tuition reimbursement as taxable income July 1, said Charles Mazza, vp-human resources.

Other companies at least temporarily postponed withholding taxes with the expectation Congress would retroactively reinstate the provision.

For example, Ameritech Corp. did not withhold any taxes for employee tuition benefits during the August reimbursement period, said Roy Leet, employee benefits director in Chicago. The company's reimbursement periods correlate with school semesters.

The 6,500 Ameritech employees in the non-job related educational program will be responsible for any taxes due on their August reimbursement checks, but taxes will be withheld from February checks, Mr. Leet said.

Hewlett-Packard Co. also decided to wait to withhold any taxes because the company thought this fall's tax bill, which was ultimately vetoed, would extend the tax-free benefit retroactively, said King-Ming Young, manager of distributed curriculum-corporate education for the Palo Alto, Calif.-based company. But since the bill was vetoed, the company "began to withhold taxes in November for the period July 1 forward," Ms. Young said.

American Home Products Corp. of New York is not planning to withhold any taxes on tuition reimbursement checks. "We've been through this before," said a spokesman. "We have a feeling (the government) will take similar action" and make Section 127 retroactive.

Sara Lee Corp. is not withholding any taxes on employee reimbursement checks from July 1 through Dec. 31, said Lena Koldras, corporate human resources generalist for the Chicago-based company.

The company will reimburse the approximately 130 employees taking advantage of the program any taxes they incur on their benefits during this period, she said.

Because the company will pay the taxes, the employee's W-2 form will show the correct amount of income. BI

Medicare fraud prompts insurers to recheck files

By CHRISTINE WOOLSEY

LA JOLLA, Calif.—Group health insurers are rechecking their claims files in light of a recent $110 million fraud settlement between a laboratory testing service and the federal Medicare program.

La Jolla, Calif.-based National Health Laboratories Inc. pleaded guilty last week to charges that it fraudulently billed Medicaid and Medicare for unnecessary blood tests.

Insurance fraud professionals say medical services firms like National Health Laboratories often try to maximize profits by unbundling charges for procedures. In fact, they say, such unbundling is a key reason why health costs are escalating for private health care payers.

Because no law or penalty deters inappropriate billing in the private sector, health insurers and other payers must develop expensive bill auditing programs.

National Health Laboratories was accused of adding unnecessary tests to a package of standard blood tests ordered by doctors. Because Medicaid and Medicare did not consider these tests part of the standard package, the lab billed for the tests separately at a much higher price.

For example, the company added a cholesterol screening test to a series of blood tests it offers doctors for $18. Doctors were not told they could order the blood tests without the cholesterol test, which was of minimal cost to the doctors but when billed to Medicaid and Medicare cost about $16—almost doubling what the physicians paid for the whole package.

National Health Labs claimed it was billing the public health payers appropriately for the tests, calling it "common industry practice." Medicare cried foul.

Following a two-year grand jury investigation, the firm agreed to settle government claims by paying $110.4 million, including a $1 million fine and $10.4 million in payments to state Medicaid programs.

U.S. Attorney William Braniff of San Diego would not comment on whether any group health insurers are seeking similar settlements from the lab. However, he said, "Nothing precludes private insurers from" seeking relief if they think they have been billed inappropriately.

"This is an excellent example of how we experience cost-shifting from the public sector," said Jim Garcia, director of Aetna Health Plans in Middletown, Conn. Government agencies can discipline fraudulent providers that unbundle charges to maximize reimbursement, while private payers—like health insurers and self-insured health plans—cannot, he said.

"We need a statute that addresses abuses like unbundling and upcoding. And, there should be a penalty —like a fine—for providers" that disobey the law, said Mr. Garcia.

Meanwhile, insurance companies are double-checking claims from National Health Laboratories.

Blue Cross of California said it has "red-flagged" any claims filed by the lab and will flag or deny future claims, a spokesman said.

Others are increasing scrutiny on all claims in the wake of the settlement.

"We are not investigating and we have no file on National Health Laboratories, but now that word is out on the settlement we will take a closer look at (those types of claims)," said a spokesman for Blue Cross & Blue Shield of Illinois. BI

Domestic partners

Continued from page 2

no more expensive" to cover spousal equivalents than to cover married workers' spouses, Ms. Laarman said.

Beginning April 1, International Data Group will extend health care benefits to employees' heterosexual or homosexual unmarried partners and children, according to Tomas Mathews, director of compensation and benefits for the Farmington, Mass., publishing company.

Under the plan, employees may designate one spousal equivalent, a dependent who would be eligible for benefit coverage.

Employees must also sign an affidavit stating they are the sole partner of the other person, live together, are unmarried, have no family relations and have mutual financial responsibility, Mr. Mathews said.

"This was not a quick decision or process," he said. Over the course of 18 months, the self-insured company dropped its stop-loss insurer because it wouldn't underwrite the extended benefits, he said. Transamerica Occidental Life Insurance Co. of San Francisco picked up the business.

Employees who sign up for spousal equivalent coverage are covered under an indemnity plan and not one of the eight health maintenance organizations offered to other employees, Mr. Mathews said.

International Data Group had heard there might be problems getting the HMOs to underwrite spousal equivalents, he said. And "we wanted to get the program in place."

However, two of the HMOs the company offers currently pare participating in pilot domestic partner health care programs sponsored by other employers, Mr. Mathews said. International Data Group hopes that when the pilot tests are finished, the HMO will offer its employees spousal equivalents.

Employees under the indemnity plan have a $200 deductible and pay 20% out-of-pocket expenses up to $700, which includes the deductible, he said. Employees joining the HMOs have no deductible, a $5 to $7 office visit charge and an average of $25 deducted from each biweekly paycheck, Mr. Mathews said.

While enrollment does not begin until January, the company expects to have up to 20 domestic partner participants by April. The company does not expect huge increases in medical claims costs.

Adding spousal equivalents to the health plan "is no more costly than adding anyone else," said Mr. Mathews.

The University of Iowa will also offer spousal equivalent benefits for its non-unionized employees starting Jan. 1.

Those benefits, though, are being offered only to homosexual partners and children, said Richard Saunders, manager of staff benefits for the university in Iowa City.

The self-insured university did not include heterosexual unmarried partners for the extended benefits because they have the option of marrying at any time and obtaining benefits, he said. Homosexuals don't have that alternative.

To be considered a spousal equivalent, university employees must complete an affidavit and meet three of five conditions, he said. The conditions include: the partners must have lived together for 12 months; have common ownership of a home; have a joint checking account; have a "relationship contract"; and be each other's primary beneficiary, Mr. Saunders said.

So far, 20 employees have enrolled. The total is expected to rise to 25 in January, he said.

The university has a basic indemnity plan for all its non-unionized employees and is not expecting huge increases in costs.

The University of Chicago announced last week that it will extend health care benefits to homosexual partners of faculty, staff and students starting Feb. 1, said Jonathan Kleinbard, a university vp.

Individuals who cannot legally marry but have a commitment to each other as well as joint financial obligations will be offered the same health care benefits as married couples, Mr. Kleinbard said. The university still is working out details with its health insurers.

Enrollment for domestic health care plans will begin Jan. 15.

The city of Cambridge has joined the ranks of other municipalities that are extending health care coverage to domestic partners.

Starting Jan. 1, approximately 500 non-unionized heterosexual and homosexual employees and children will be offered spousal equivalent benefits, said Michael Gardner, director of personnel and labor relations for the city.

Four employees have applied for the coverage during early enrollment, he said.

And while coverage is expected to be extended to only a small number of people, the city is still "concerned about the cost of any expansion of benefits," Mr. Gardner said. The city is projecting a possible $100,000 to $300,000 impact due to the added coverage by the end of next year, he said.

In September the city council passed an ordinance that allows Cambridge residents to declare domestic partners, he said. That ordinance further required the city to offer health care benefits to the partners of city employees, Mr. Gardner said. All employees are covered under an indemnity plan and three HMOs.

The city is negotiating domestic partner benefit plans with some units of the city's unionized workforce, Mr. Gardner said. BI

For the Record

Liberty Mutual enters active Mexican market

BOSTON—Carving an early niche in Mexico's expanding insurance market, Liberty Mutual Insurance Co. has entered into a marketing agreement with Grupo Nacional Provincial S.A., Mexico's largest multiline insurer.

Beginning Jan. 1, the Boston-based insurer will provide reinsurance for auto and truck fleets as well as loss prevention, health care and safety consulting for GNP's clients. Liberty Mutual will provide services in Mexico for U.S.-based multinationals.

Liberty Mutual is focusing on its current clients and GNP's, but it hopes the North American Free Trade Agreement, awaiting congressional action in 1993 after President Bush signed it this month, will pave the way for new business. NAFTA, in part, opens up the Mexican insurance market to foreign competition. NAFTA will require comparable workplace health and safety standards for the United States and Mexico, which will increase the need for consulting services among both Mexican companies and multinationals.

"The potential for growth in the Mexican insurance market is unbelievable," said Ronald Turett, director of international business development at Liberty Mutual.

New York approves HMO rate hikes for '93

NEW YORK—The New York Insurance Department has approved the 1993 rate requests of six regional health maintenance organizations.

Superintendent of Insurance Salvatore Curiale granted Independent Health Assn. an 8.8% average rate increase on its community-rated group and individual contracts. Tarrytown-based IHA serves 227,000 members in 14 counties.

U.S. Healthcare Inc. of Uniondale, with 225,000 subscribers, was granted a 12.1% rate increase, while Hauppauge-based MetLife HealthCare Network of New York Inc. received a 21.5% rate increase for its 47,000 subscribers, who are mostly in New York City.

The department also approved a 9.3% average rate increase for Physicians Health Services of White Plains. The rate affects all 14,400 community-rated subscribers of the HMO.

The Kaiser Foundation Health Plan of New York in White Plains was granted an 11.3% average rate increase for its 32,000 community-rated members.

And, the Syracuse-based Patients' Choice HMO received a 10.1% average rate increase on its 22,400 community-rated members.

California seeking to pull agent license

SACRAMENTO, Calif.—California insurance regulators are stepping up efforts to revoke the surplus lines licenses of Werlhof Aviation Insurance Agency and its agent, Alan Gallaway.

In February 1991 the department charged Werlhof with rubber-stamping policies written by Unified Assurance & Casualty Ltd., a Caribbean-based insurer not licensed in California, that were actually being marketed by UAC's own agent, Association Benefit Services Inc., also unlicensed in the state.

Earlier this month, Insurance Commissioner John Garamendi moved to reschedule a hearing on the matter to include charges that the agency also rubber-stamped policies written by American National Agents Insurance Group, a Galveston, La.-based auto insurer not licensed in California, that were being issued through general agent Consolidated Support Group.

The Insurance Department alleges Werlhof and Mr. Gallaway, for a fee, filed fees and premium taxes to make it appear there was a legitimate surplus lines broker involved in the transactions.

No date has been set for the hearings. BI

Update

Satellite missing after launch

Continued from page 2

Optus policies will pay out about $120 million total, sources say.

Hughes' coverage for physical damage and loss is led by International Technology Underwriters in Bethesda, Md. Coverage for contractual payments owed on the satellite by Optus is led in the London market by Lloyd's of London syndicate 282, which is managed by M.J. Marchant Underwriting Ltd.

Allstate suspends N.J. pullout

NORTHBROOK, Ill.—Allstate Insurance Co. has suspended for two years its planned withdrawal from the property/casualty market in New Jersey following an agreement with state insurance regulators.

Under the agreement, Allstate will drop all litigation against the state relating to, among other things, rate filings and producer and policy assignments under the New Jersey Fair Access to Insurance Requirements plan in return for a 6.5% rate increase for most of its private passenger automobile policies.

The state also agreed to settle a suit involving Allstate's obligation to the state's now-defunct joint underwriting association.

Under the agreement, Allstate will pay a total of $75 million to cover its share of losses in the state's new Market Transition Facility, a temporary pooling mechanism designed to ease drivers from the JUA to the private market.

Trade groups to confer—again

SCHAUMBURG, Ill.—Representatives of the Alliance of American Insurers and the National Assn. of Independent Insurers met earlier this month to revisit "issues that had been covered a couple of years ago" when the two groups discussed a possible merger, said Alliance President Rodger S. Lawson.

But, it is "premature" and "inappropriate" to characterize the meeting as a prelude to new merger talks, he said.

"All they did was have a talk to see if there would be talks," said NAII President Lowell R. Beck. The board members who attended the first meeting will meet again but have set no date, he added.

New comp fraud suit settlement

WOODLAND HILLS, Calif.—Workers compensation insurer Zenith Insurance Co. has settled its racketeering suit against attorney Glen A. Linter and his firm.

The attorney was among several clinics, claimants and other defendants named in the first racketeering suit ever filed in California over workers comp claims. They were charged with conducting a scheme to file fraudulent claims with workers comp insurers (*BI*, Feb. 3).

Under the settlement, Mr. Linter and his firm agree to adhere to a "business protocols agreement" that covers advertising for legal services, referrals and medical-legal evaluations and treatment. Mr. Linter has also agreed to pay Zenith an undisclosed amount of cash.

N.Y. eyes surplus lines change

NEW YORK—Excess and surplus lines insurers oppose two proposals to alter regulations for non-admitted insurers in New York.

The Insurance Department proposes requiring buyers to apply to residual markets for coverage before using non-admitted insurers for auto, homeowners and medical malpractice coverage. Regulators also plan to strengthen a state law that allows use of non-admitted insurers only after three admitted insurers have declined the business.

"Making a risk manager use a residual market when an E&S market is there is bad law and policy. . . .The department shouldn't be telling a risk manager where to place business," said Jay Martin, an attorney with LeBoeuf, Lamb, Leiby & McRae in Albany, which represents the Excess Lines Assn. of New York.

Separately, regulators may redraft Regulation 41 so that wholesalers could only place risks with non-admitted insurers that have at least $15 million in capital and surplus.

Briefly noted

About **35.4 million people lacked health insurance** during at least part of 1991, says a study by Public Citizen and Physicians for a National Health Program. The Employee Benefit Research Institute has put the number of uninsured last year at 36.3 million. . . .**Insurers operating in Florida will be assessed** a surcharge equal to 2% of premium for the next several years to repay the cost of a bond issue that will be used to finance claims payments to policyholders whose insurers failed in the wake of Hurricane Andrew (*BI*, Nov. 23). The surcharge is in addition to the 2% of premium that can be assessed by the Florida guaranty fund. . . .Several employers will take one-time charges to recognize their accumulated retiree health care liabilities under **FAS 106**: Mobil Corp., $446 million; Coca-Cola Enterprises Inc., $148 million; and Melville Corp., $32 million. . . .Reinsurance intermediary **E.W. Blanch Co.** plans to make an initial public offering of equity securities in the first half of 1993. . . .**Marsh & McLennan Cos. Inc.** has completed its acquisition of The Frizzell Group Ltd., an insurance program manager based in the United Kingdom. . . .**Donald R. Alexander** will take over as president and chief operating officer of Skandia America Reinsurance Corp. and Hudson Insurance Co. on Jan. 11. He previously was president of Skandia's Canadian reinsurance operation. . . .**Keene Corp.** is taking an $83 million charge against fourth-quarter earnings, of which $75 million is for contingent liabilities related to asbestos litigation. . . .New York's highest court refused to strike down a New York City law that prohibits **car-rental companies** from charging residency-based rates (*BI*, Jan 13). Hertz Corp.'s federal court challenge is pending.

Unexplained loss

Continued from page 2

detail how a loss occurred.

"This is the first time that New York's highest court or any state high court has ruled this way," said Michael E. Gorelick of Abrams & Martin in New York, which represented Hanover and Malcolm W. Blair, underwriter for Lloyd's syndicate 287, managed by Spratt & White Ltd.

"In other state and federal cases, courts have usually said that a non-fraudulent loss is covered under an all-risk policy regardless —even if the insured can't say how it happened."

But in this case, the insurers successfully argued that a summary judgment should be entered in their favor because Goldman's salesman did not know how, when and where the jewelry was lost.

"Based on what he said, this loss fell squarely into the policy's mysterious disappearance exclusion. While the money at stake wasn't great, it was important for the insurers to fight this case to establish the mysterious exclusion as a legitimate defense," said Mr. Gorelick.

Hanover was responsible for only $100,000 in primary limits for travel losses and the syndicate 287 had written only $100,000 in excess limits for Goldman, he noted.

"As the case progressed through litigation, it became more important for the insurers to defend on the mysterious disappearance clause. There aren't that many cases like this. Most either settle or it's pretty clear that a burglary occurred. In this case it wasn't," said Mr. Gorelick.

In its 1988 lawsuit, Goldman detailed how during the salesman's return trip to the Houston airport, he placed his valise containing about $300,000 in merchandise on the floor of his rented car. During the drive, he noticed that one of his tires had gone flat, so he pulled into a service station to have it fixed.

Goldman's salesman claimed that he never left the car while the tire was being repaired because he was aware that the company's insurance policies contained unattended vehicle exclusions. But when he continued on to the airport, he realized that the valise was missing.

"We don't think this was a fraudulent claim," Mr. Gorelick said. "The loss appears to be real, but when you can't explain how it occurred, it's excluded from coverage—plain and simple."

A lawyer for the jeweler, though, called the terms far from plain and simple.

"This is a very ambiguous exclusion. If distinguished courts throughout the country have read the very same exclusion and interpreted it in favor of the insured, than for this court to render it unambiguous makes it all the more ambiguous," said Ed Sadowsky of Tenzer, Greenblatt, Fallow & Kaplan in New York.

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Maurice Goldman & Sons Inc. vs. Hanover Insurance Co. and Malcolm W. Blair, as representative for Lloyd's of London underwriters; Case 253; New York State Court of Appeals; Nov. 18, 1992.

Antitrust filings

Continued from page 2

lution incidents and to include a retroactive date in the claims-made version of the form.

The attorneys general make three basic arguments in the 45-page brief submitted to the Supreme Court on the McCarran-Ferguson issue:

• The Court of Appeals was correct in finding that defendants engaged in a boycott and are therefore subject to judicial scrutiny.

The defendants' argument that boycotts are limited to an absolute or discriminatory refusal to deal is wrong, says the brief. "It is the existence, and not the extent of coercion," that determines whether there has been a boycott, says the brief.

"Together, defendant insurers and reinsurers determined neither what the commercial general liability insurance market would bear, nor simply what terms and conditions they might offer to meet existing demand.

"Instead, defendants defined what insurance products they wanted to sell and then eliminated the means by which their competitors could sell alternatives," charges the brief.

And, contrary to the defendants' assertions, submitting their conduct to antitrust review will not impair insurers' necessary operations, the attorneys general argue. It "in no way threatens the ability of primary insurers to confer with reinsurers about their own products, or to engage in other normal business activity," the brief says.

• The appellate court also was correct in finding that the conduct of London reinsurers challenged in the antitrust suit is not regulated under McCarran-Ferguson. Furthermore, none of the reinsurers' relevant acts is regulated by McCarran-Ferguson because they are not regulated by state law.

The brief also asserts that "far from impinging on state interests in regulating insurance activity, this rule would enable states to rely upon competition to supplement insurance regulation."

"Insurance entities should have no difficulty in discerning the difference between lawful agreements regarding the purchase of reinsurance and unlawful agreements to withhold reinsurance and other essential inputs from competitors," says the brief.

• McCarran-Ferguson antitrust immunity does not apply when "regulated conduct furthers an unlawful conspiracy that relies upon unregulated acts."

The brief submitted by the attorneys general on the comity issue says the Supreme Court should assert jurisdiction over foreign defendants because U.S. Antitrust law "applies to conduct that is intended to affect the United States and does materially affect the country, regardless of where that conduct occurred."

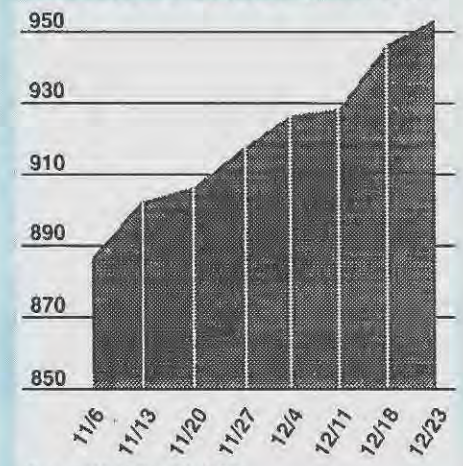
"The reinsurers expressly intended to affect the American insurance market," the brief says. "Their conduct had substantially all its effects in the United States."

Furthermore, "the exercise of jurisdiction here would not result in any conflict with English law and policy. That law either prohibits, or at most merely permits, the sort of conduct at issue here."

Meanwhile, the non-defendant states scheduled to file the friend-of-the-court brief were led by Texas, which had filed antitrust litigation on its own that was later settled. The other states were: Delaware, Florida, Hawaii, Idaho, Iowa, Kentucky, Mississippi, Missouri, New Mexico, Nevada, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Utah, Vermont and Virginia.

In addition to the solicitor general's brief, two others were to be filed: one by the National League of Cities, the National School Board Assn., and the National Institute of Municipal Law Officers; the other by a group of parties led by the California State Electronics Assn. BI

BI Insurance Index



Base = 100 on Dec. 29, 1978
Source: Nordby International Inc.

Insurance industry stocks ended the year with an increase, as the *Business Insurance* Index climbed 4.5 points to 951.4 on Dec. 23 from 946.9 on Dec. 18. Advancing issues for the week were led by Seibels Bruce Group, up 25.0%; Chandler Insurance, up 11.8%; and Fremont General Corp., up 11.0%. Declining issues for the week followed USF&G, down 8.7%; Guaranty National, down 8.1%; and SCOR U.S. Corp., down 4.6%. The most active issue was Sears, Roebuck (Allstate), 2.2 million shares traded. The *BI* Index was up 0.5%; the NYSE Composite was down 0.5%; the Standard & Poor's 500 was down 0.5%; and the Dow Jones 30 Industrials rose 0.01%.

British Issues

Dec. 22 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Commi Union	635	N/M	31.5	5.0	635—583
Genl Accident	590	N/M	35.7	6.0	590—555
Gdn Royal Exch	182	N/M	10.0	5.5	182—170
Royal	285	N/M	7.0*	2.5	291—278
Sun Alliance	356	N/M	19.0	5.3	356—324
Brokers					
Bradstock	126	14.8	6.8	5.4	126—108
CE Health	345	19.9	21.3*	6.2	345—328
Hogg Group	168	15.8	10.9	6.5	168—152
JIB Group	153	11.7	10.0	6.5	153—139
Lloyd Thompson	256	20.7	7.5	2.9	256—235
Lowndes Lmbrt	326	12.7	16.8	5.2	326—308
PWS Holdings	52	6.0	5.3	10.9	53—52
Sedgwick Grp	175	13.9	8.0*	4.6	176—164
Steel Brrl Jones	201	9.9	17.7	8.8	201—189
Willis Corroon	196	12.5	17.6	9.0	198—184

Source: Philip Olsen, London * Estimated

BI Industry Stock Report

DECEMBER 21, 1992 THROUGH DECEMBER 23, 1992

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Acordia Inc.	NYS	19.75	0.64	N/A	22.25	15.13	2	0.36	1.82	14	7.01	2.82
Alexander & Alexander	NYS	26.88	2.38	31.10	27.63	18.00	125	1.00	3.72	96	10.00	2.69
Gallagher Arthur J. & Co.	NYS	27.88	1.83	24.58	29.00	20.00	184	0.64	2.30	19	6.35	4.39
Hilb, Rogal & Hamilton	NYS	15.38	2.50	16.04	15.63	11.00	43	0.44	2.86	23	3.11	4.94
Marsh & McLennan	NYS	90.88	-1.76	11.67	94.50	71.25	278	2.68	2.95	21	14.40	6.31
Poe & Associates	OTC	16.75	-1.47	39.58	17.00	11.25	2	0.40	2.39	21	2.64	6.34
BROKERS	AVERAGE		0.7	20.5					2.3	28		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	44.00	-1.12	44.26	47.75	27.25	34	0.36	0.82	16	23.51	1.87
Berkshire Hathaway Inc.	NYS	11500.0	0.00	27.07	11500.0	264.06	0	0.00	0.00	46	6437.25	1.79
ITT (Hartford Group)	NYS	70.50	0.36	22.08	72.00	53.75	696	1.84	2.61	17	68.23	1.03
Sears (Allstate)	NYS	44.38	2.01	17.16	46.00	35.50	2237	2.00	4.51	44	40.18	1.10
CONGLOMERATES	AVERAGE		0.3	27.6					2.0	31		
INSURERS/REINSURERS												
AEGON N.V.	NYS	41.88	0.60	19.64	42.75	33.00	17	2.58	6.40	7	34.06	1.23
Aetna Life & Casualty	NYS	46.00	-1.34	4.55	48.88	38.00	436	2.76	6.00	15	67.08	0.69
Allied Group Inc.	OTC	31.00	2.48	82.35	33.50	16.75	28	0.64	2.06	9	11.29	2.75
erica Prop. & Casualty	OTC	48.00	-4.00	34.27	51.00	33.00	0	0.44	0.92	8	40.44	1.19
American General	NYS	54.50	1.87	22.47	54.75	40.25	684	2.08	3.82	11	39.89	1.37
American Heritage Life Ins.	NYS	28.88	0.00	-5.71	32.50	22.69	1	0.84	2.91	14	16.51	1.75
American Indemnity/Fin'l	OTC	6.00	-4.00	26.32	9.25	4.75	8	0.08	1.33	3	14.43	0.42
American International	NYS	119.75	0.10	21.73	121.38	82.00	734	0.56	0.47	16	54.21	2.21
Aon Corp.	NYS	52.38	-0.24	32.18	52.63	37.38	22	1.68	3.21	13	27.17	1.93
Argonaut Group	OTC	30.50	0.83	28.42	30.50	21.75	91	0.84	2.75	9	21.70	1.41
AVEMCO Corp.	NYS	21.88	3.55	-12.50	28.00	21.00	7	0.40	1.83	24	7.33	2.98
Baldwin & Lyons Inc.	OTC	33.50	0.00	30.10	36.50	25.00	1	0.48	1.43	8	30.85	1.09
Chandler Insurance	OTC	4.75	11.76	46.15	7.63	3.25	0	0.00	0.00	22	8.63	0.55
Chubb Corp.	NYS	90.00	0.00	16.88	91.00	62.38	488	1.60	1.78	14	40.67	2.21
CIGNA Corp.	NYS	56.13	-1.75	-8.18	61.75	47.13	517	3.04	5.42	11	81.73	0.69
CNA Financial Corp.	NYS	101.25	1.25	3.32	104.50	78.50	123	0.00	0.00	12	80.24	1.26
Continental Corp.	NYS	26.13	-1.42	-5.43	34.75	20.00	187	1.00	3.83	19	38.32	0.68
EXEL Ltd.	NYS	46.63	3.61	24.33	46.63	32.13	492	0.92	1.97	9	N/A	N/A
Fund American Corp.	NYS	72.00	-0.52	3.04	74.50	62.50	7	0.68	0.94	17	81.85	0.88
Fremont General Corp.	OTC	32.75	11.02	34.36	32.75	17.00	68	1.00	3.05	8	25.62	1.28
Frontier Insurance Group	NYS	41.75	1.83	54.63	42.75	24.53	22	0.60	1.44	15	13.97	2.99
Gainsco Inc.	ASE	14.50	-0.85	55.36	15.63	7.78	20	0.04	0.28	20	2.65	5.47
General RE Corp.	NYS	123.13	2.50	20.86	123.13	77.50	250	1.80	1.46	17	46.07	2.67
Guaranty National Corp.	NYS	18.38	-8.13	26.72	20.38	13.38	8	0.48	2.61	12	9.12	2.01
Harleysville Group	OTC	25.25	-2.88	18.82	28.25	17.75	53	0.64	2.53	11	16.77	1.51
Hartford Steam Boiler	NYS	58.50	1.74	1.74	59.25	45.13	30	2.12	3.62	22	19.74	2.96
Kemper Corp.	NYS	28.88	0.00	-24.26	46.13	20.75	221	0.92	3.19	20	37.66	0.77
Lawrence Insurance Group	ASE	8.50	-1.45	-23.60	11.13	7.00	1	0.48	5.65	19	4.66	1.82
Liberty Corp.	NYS	28.25	0.89	27.68	32.88	20.13	82	0.56	1.98	11	18.43	1.53
Lincoln National	NYS	75.25	1.52	37.44	75.25	50.50	176	3.04	4.04	12	58.92	1.28
Markel Corp.	OTC	30.75	-1.60	39.77	31.25	20.75	21	0.00	0.00	8	15.44	1.99
Mutual Risk Mgmt. Ltd.	NYS	39.25	5.37	11.74	40.00	25.75	31	0.24	0.61	23	7.51	5.23
NAC Re Corp.	OTC	39.50	2.93	25.40	42.00	21.75	104	0.16	0.41	35	13.60	2.90
National Re Corp.	NYS	28.63	-0.87	N/A	31.00	17.00	71	0.12	0.42	13	N/A	N/A
Navigators Group	OTC	31.75	-2.31	-22.56	48.25	28.50	15	0.00	0.00	22	15.69	2.02
Nobel Insurance LTD.	OTC	5.50	-3.31	37.50	6.00	3.75	46	0.00	0.00	4	3.91	1.41
NWNL Companies	NYS	49.88	1.79	60.24	49.88	29.63	57	1.48	2.97	13	46.21	1.08
Ohio Casualty Corp.	OTC	62.75	0.20	26.77	66.63	47.25	77	2.68	4.27	12	43.08	1.46
Old Republic Int'l	NYS	24.88	2.05	40.14	26.50	17.25	217	0.40	1.61	8	18.63	1.34
Orion Capital Corp.	NYS	35.13	5.64	38.83	35.13	23.19	175	0.80	2.28	7	28.62	1.23
Phoenix RE Corp.	OTC	14.38	0.88	36.90	14.50	8.88	45	0.20	1.39	-21	13.32	1.08
Provident Life	NYS	28.25	-1.31	21.51	29.25	20.00	13	1.00	3.54	12	30.38	0.93
Re Capital Corp.	ASE	16.38	0.00	13.91	16.50	12.25	8	0.24	1.47	29	16.88	0.97
Reliance Group Holdings	NYS	6.50	4.00	57.58	7.13	3.50	100	0.32	4.92	3	2.94	2.21
RLI Corp.	NYS	25.50	-0.49	54.55	25.75	16.00	5	0.52	2.04	11	17.92	1.42
St. Paul Companies	NYS	78.25	1.79	7.38	80.75	66.50	102	2.72	3.48	12	59.79	1.31
SAFECO Corp.	OTC	57.25	-3.17	17.44	59.38	42.00	647	1.64	2.86	15	35.37	1.62
SCOR U.S. Corp.	NYS	18.13	-4.61	17.89	19.50	13.13	8	0.28	1.54	21	14.39	1.26
Seibels Bruce Group	OTC	1.88	25.00	-65.91	6.50	0.38	304	0.36	19.20	0	6.22	0.30
Selective Ins. Group	OTC	21.50	-2.27	28.36	23.50	16.00	9	1.12	5.21	9	20.22	1.06
Statesman Group Inc.	OTC	11.50	1.10	100.00	11.63	5.00	186	0.05	0.43	6	6.71	1.71
Tokio Marine & Fire	OTC	49.63	3.39	-3.64	55.25	32.25	4	0.00	0.00	99	70.93	0.70
Torchmark Corp.	NYS	56.75	2.25	47.08	56.75	36.00	207	1.04	1.83	16	14.87	3.82
Transamerica	NYS	49.13	-2.24	23.20	50.25	37.13	173	2.00	4.07	22	35.86	1.37
Transatlantic Holdings	NYS	54.63	4.55	40.51	54.63	29.38	27	0.28	0.51	19	21.85	2.50
Travelers Corp.	NYS	24.88	-0.50	15.03	25.50	17.13	377	1.60	6.43	-14	43.85	0.57
Trenwick Group Inc.	OTC	40.38	4.87	41.67	42.13	25.00	274	0.80	1.98	16	23.87	1.69
United Fire & Casualty	OTC	43.00	2.38	43.33	43.00	29.34	1	1.00	2.33	18	28.47	1.51
Unitrin	OTC	41.13	5.11	15.03	41.13	32.50	209	1.20	2.92	13	36.51	1.13
UNUM Corp.	NYS	52.25	-1.42	29.01	54.38	32.00	312	0.64	1.22	15	21.83	2.39
US Facilities Corp.	OTC	9.25	2.78	-37.82	19.00	7.00	151	0.00	0.00	9	9.64	0.96
USF&G Corp.	NYS	11.88	-8.65	63.79	15.00	6.63	1414	0.20	1.68	-23	10.29	1.15
USLICO Corp.	NYS	18.63	1.36	0.68	20.38	16.75	17	1.00	5.37	26	29.80	0.63
USLIFE Corp. (s)	NYS	36.88	0.57	15.54	37.00	28.17	99	1.80	4.88	11	64.90	0.57
Washington National	NYS	22.50	0.00	41.73	23.63	15.00	34	1.08	4.80	18	30.27	0.74
Zenith National Ins.	NYS	19.75	5.33	17.04	19.75	14.50	39	1.00	5.06	14	14.81	1.33
INSURERS/REINSURERS	AVERAGE		1.1	22.6					3.1	15.9		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	20.00	-0.62	40.35	23.00	12.50	257	0.00	0.00	20	9.61	2.08
Pacificare Health Sys.	OTC	45.63	0.83	131.01	46.75	18.63	95	0.00	0.00	26	3.90	11.70
Safeguard Health Enter.	OTC	9.50	1.33	1.33	14.75	7.00	14	0.00	0.00	12	4.03	2.36
Sierra Health Services	ASE	40.13	2.56	333.78	42.25	15.63	20	0.00	0.00	19	4.01	10.01
United Healthcare Corp.	NYS	57.00	-0.65	53.02	57.88	34.25	334	0.01	0.02	38	4.68	12.18
United Medical Corp.	ASE	6.13	0.00	-12.50	8.75	6.13	0	0.20	3.27	56	10.30	0.59
U.S. Healthcare	OTC	44.75	-2.19	61.75	51.25	25.66	1091	0.52	1.16	26	3.60	12.43
HMOs	AVERAGE		0.2	87.0					0.6	24		
ALL COMPANIES	AVERAGE		0.6	39.4					2.7	18		

System design: Nordby International Inc.

For nearly a century and a half, the Shield has been poised not to do battle but to defend.
Protecting business and home, property and possessions.
A worldwide symbol of an organization with a rich history as legacy. And a bright future as promise.
Strong. Stable. Steadfast.
Royal Insurance. Your shield against the unexpected.

Royal Insurance

YOUR SHIELD AGAINST THE UNEXPECTED.

