

business insurance

California commissioner sues Mission reinsurers

LOS ANGELES—California Insurance Commissioner Roxani M. Gillespie is suing about 145 reinsurers of Mission Insurance Co. and its subsidiaries for more than \$1.2 billion in unpaid recoverables and punitive damages, charging them with bad faith.

As MIC's conservator, the commissioner is seeking \$700 million in reinsurance recoverables, and
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Sandoz will be liable for Rhine pollution

By CAROLYN ALDRED

ROTTERDAM, Netherlands—Swiss chemical manufacturer Sandoz A.G. will be liable for paying as much as \$60 million in claims from last month's massive pollution of the Rhine River, according to Swiss officials.

Claims from the Rhine disaster are expected to be submitted to the Swiss government initially, Swiss President Alphons Egli told a meeting of European environmental ministers.

However, "claims submitted to the Swiss government will be transferred to Sandoz, who will do its utmost to satisfy justified claims and demands," Mr. Egli said.

The Swiss government is admitting no liability for the disaster and will not pay any claims, he said.

The claims stem from a Nov. 1 disaster in which a mixture of toxic chemicals washed down the Rhine when water used to douse a fire at a Sandoz chemical warehouse in Basel, Switzerland, drained into the river.

The chemical pollution caused thousands of fish and eels to die, breweries along the Rhine to shut down temporarily and local authorities to decide against using the Rhine for water supplies (BI, Nov. 27).

Liability for the Sandoz disaster was discussed at a Dec. 19 meeting of the environmental ministers from member nations of the International Rhine Commission in the Town Hall of Rotterdam.

The ministers—representing France, West Germany, Luxembourg, the Netherlands and Switzerland—are expected to submit claims totaling at least 100 million Swiss francs (\$59.8 million) to the Swiss government, which will pass the claims on to Sandoz, Mr. Egli has said.

But so far, only the French government has prepared a claim to be submitted to Sandoz. The claim totals 252 million French francs (\$37.9 million), said French Environmental Minister Alain Carignon.

According to Mr. Carignon, the French claim, which was calculated by 50 experts who worked for six weeks to analyze the short-term and long-term effect of the pollution on the French stretch of the Rhine, includes:

- 33 million French francs (\$5 million) to cover immediate costs.
- 112 million French francs (\$16.8 million) for the loss of tourism, damage to the marketing image of the Alsace region, the loss of fishing and the cost of immediate repair the Rhine's ecological system.
- 107 million French francs (\$16.1 million) for a long-term plan to clean and improve the Rhine's riverbed.

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Administration to seek risk-related PBGC rates

By JERRY GEISEL

WASHINGTON—The Reagan administration next week will recommend that termination insurance premiums employers pay the Pension Benefit Guaranty Corp. be based on the financial condition of their pension plans, *Business Insurance* has learned.

The administration's 1988 budget proposal, to be delivered to Capitol Hill next week, endorses a so-called variable-rate PBGC premium structure.

This is the first time the administration has recommended basing PBGC premiums on pension plan funding levels.

The recommendation follows years of increasing complaints from employers with well-funded plans that they are subsidizing companies with underfunded plans through the premiums they pay to the PBGC.

Under the proposal, at least one—and possibly two—basic fixed rates would be charged employers with fully funded and overfunded defined benefit plans. The rate would probably be about \$10 per plan participant.

In addition, a new formula would be established to determine the premiums paid by employers with underfunded plans—those plans in which vested benefits exceed assets.

Under this formula, the premium would increase with the degree that the plan is underfunded. However, the annual premium would be capped at about \$100 per plan participant.

Currently, all defined benefit plan sponsors pay a flat annual PBGC premium of \$8.50 per plan participant, regardless of their plans' financial condition.

Under the new system, all employers would have to pay somewhat more than the current \$8.50 premium because the PBGC needs to collect more revenue to cover its skyrocketing deficit.

In addition to changing the PBGC premium, the administration now is considering a sweeping legislative package affecting pension plans, *BI* has learned. The legislative package would:

- Allow employers to recoup excess assets from overfunded pension plans without actually having to terminate the plans, as is the case now.

Such asset reversions would be allowed as long as

there is a "cushion" of assets to protect accrued benefits.

While a specific percentage has not been agreed upon, administration officials are considering a proposal that employers be allowed to recapture assets in excess of about 125% of plan liabilities.

- Give favorable tax treatment to pension plan asset reversions that are used to prefund post-retirement health care benefits.

This proposal, which is still being formulated, could exempt asset reversions from any special excise taxes used to prefund post-retirement health care benefits.

In addition, depending on the outcome of Treasury Department revenue estimates, asset reversions that are transferred to a trust-type arrangement, such as a Voluntary Employee Beneficiary Assn., to prefund post-retirement health care benefits would accumulate interest on a tax-free or partially-taxed basis.

Such a proposal would reverse a provision in the 1984 tax law that taxes investment income earned on VEBA assets used to prefund post-retirement health care benefits.

- Toughen minimum pension funding standards. This proposal is aimed at, among other things, improving plan funding for so-called shutdown benefits.

Administration officials, while declining to comment on specific proposals relating to plan funding and asset transfers until final recommendations are made, acknowledge that those issues now are being studied.

"The administration is considering a number of possible legislative changes relating to plan termination and funding issues," said David Walker, deputy assistant secretary at the Labor Department's office of Pension and Welfare Benefits Administration.

"The ERISA Coordinating Committee (a Cabinet-level group comprised of representatives from seven federal agencies) has been reviewing this area for approximately six months with a concentration on overfunded and underfunded plan issues," he said.

However, Mr. Walker said, decisions have not been made on whether the administration will make final recommendations on overfunded and underfunded plan issues, such as asset reversions and minimum pension plan funding.

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The top stories of 1986

State tort reform topped the risk management news of 1986, while COBRA health care provisions and tax law changes altering employee benefit plans battled for top billing among benefit stories. These are the opinions of risk managers and employee benefit managers, reported in a year-end wrap-up. See page 3.

Complete vote tallies for 1986's top stories
Page 3

Risk management winners

States pass tort reform measures

Rates continue to rise as capacity shrinks

Risk Retention Act is expanded

ISO's claims-made form wins approval

Alternative insurance facilities mushroom

Employee benefit winners

COBRA expands health coverage

Tax Reform Act contains major changes

Health care costs resume surge

Congress considers health insurance pools

Firms can cut retiree health benefits

update

Mission reinsurers sued

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\$500 million in punitive damages from the reinsurers because of the reinsurers' alleged malicious and fraudulent conduct.

Of the \$700 million in actual damages sought in the suit filed Dec. 23 in Los Angeles County Superior Court, more than \$200 million represents reinsurance recoverable for losses MIC already has paid to policyholders. In addition, the suit seeks more than \$500 million for case reserves and an unspecified present-dollar amount for incurred-but-not-reported losses.

Most of the defendants are non-U.S. entities. Among the domestic companies named are Employers Reinsurance Corp. and St. Paul Fire & Marine Insurance Co.

Mission's difficulty in collecting payments from reinsurers has been cited as major factor holding up the financial bailout plan that is designed to rescue Mission from liquidation (BI, Dec. 22).

Pinnacle dismissal denied

HAMILTON, Bermuda—Bermuda-based Pinnacle Reinsurance Co. Ltd. lost its pretrial motion to be dismissed from a suit brought in New Orleans by Mentor Insurance Co. Ltd. liquidators and has started civil proceedings against the liquidators in Bermuda.

Pinnacle, a subsidiary of Lloyd's of London broker C.E. Heath P.L.C., is one of 11 defendants that liquidators charge defrauded Mentor. Pinnacle had moved for dismissal on the grounds of lack of jurisdiction by the U.S. District Court for Eastern Louisiana.

In denying the motion last week, Judge Marcel Livaudais cited the Louisiana long-arm statute and the requirements for due process set out in the 14th Amendment. He ruled that Pinnacle had engaged in purposeful activity within Louisiana by communicating with then-Mentor Chairman Douglas Higley in New Orleans regarding changes to an excess-of-loss reinsurance contract.

Pinnacle now is seeking a declaratory judgment from Bermuda's Supreme Court on the legality of three excess-of-loss reinsurance contracts it agreed to write for Mentor between 1982 and 1984—contracts that the liquidators' suit alleges were part of a fraudulent scheme to conceal Mentor's financial position.

The Pinnacle action was served in Bermuda on Dec. 19 and named three defendants: Mentor Insurance and liquidators Charles Kempe and Michael Arnold. Mr. Kempe and Mr. Arnold have agreed to respond to the Pinnacle writ Jan. 12.

Ohio Senate upholds veto

COLUMBUS, Ohio—In a 19-13 vote, the Ohio Senate last Tuesday upheld Democratic Gov. Richard Celeste's veto of a tort and insurance reform bill, which he said would considerably weaken consumer rights.

The governor said he opposed provisions in S.B. 330 that undermine the doctrine of strict liability for product manufacturers and permit a contributory negligence defense (BI, Dec. 15).

Gov. Celeste urged the Legislature to pass the same bill without the product liability provisions, and he promised to sign it.

Manville settles coverage cases

SAN FRANCISCO—Manville Corp. settled with the last two insurers it had sued in California Superior Court in San Francisco over asbestos insurance coverage, bringing its total settlement with 29 insurers and its former broker to about \$770 million.

Under the latest settlement, the company will receive a total of \$38.5 million from Continental Casualty Co. and Columbia Casualty Co., subsidiaries of CNA Financial Corp., on March 1, 1988, or the date Manville's plan of reorganization is consummated, whichever is later. Columbia insured Manville from July 1, 1976, to July 1, 1977, and Continental provided coverage from March 18, 1966, to Sept. 25, 1975.

Manville already had announced settlements totaling more than \$730 million with the 27 other insurers and former broker Marsh & McLennan Cos. Inc. (BI, Nov. 10; Oct. 20).

Illinois says Pine Top insolvent

CHICAGO—The Illinois Insurance Department has asked a state court to order the liquidation of Pine Top Insurance Co., following the department's finding that the insurer is insolvent by more than \$70 million and cannot be rehabilitated.

The Insurance Department filed its complaint in Cook County Circuit Court on Dec. 17.

Pine Top—a unit of Phoenix, Ariz.-based Greyhound Corp. that primarily wrote treaty reinsurance—was placed in voluntary rehabilitation June 23 (BI, June 30).

Pine Top officials were unable to present an adequate rehabilitation plan to Illinois department representatives during a Dec. 15 meeting on the insurer's condition, according to Norman Koe-foed, manager of the department's financial surveillance section.

"We did not have the wherewithal to put forward what we would consider an effective plan of rehabilitation," said Pine Top President and Chief Executive Officer Glenn G. Herbst.

Pine Top has 10 days to respond after it receives a copy of the complaint, but it may get a 10-day extension.

Judge rejects Bendectin award

WASHINGTON—A U.S. District Court judge has set aside a \$1.16 million Bendectin award to a 10-year-old girl born with birth defects and her parents.

The suit claimed that the anti-nausea drug produced by a Dow Chemical Co. subsidiary, Cincinnati-based Merrell Dow Pharmaceuticals Inc., caused defects in the child.

In setting aside the September jury award, U.S. District Judge
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Forum sues N.Y. law firm over transit program losses

By STEVE TARAVELLA
and STACY SHAPIRO

NEW YORK—Forum Insurance Co. is suing a New York law firm for negligence, claiming the firm recommended insufficient loss reserves for a now defunct and loss-riddled transportation liability insurance program.

The insurer, part of the Montgomery Ward Insurance Group in Schaumburg, Ill., is suing to recover approximately \$8 million that it says it lost on the program because of the negligence of attorneys at Kroll, Tract, Harnett, Pomerantz & Cameron, a law firm known for its work for commercial reinsurers and international insurers.

Forum also is seeking a court order for the return of about 500 claim files now in the law firm's possession. The insurer says it needs the files so it can replace the law firm with another.

The litigation stems from a transportation liability program fronted by Forum and underwritten by Will Darrah & Associates, a managing general agency in Myrtle Beach, S.C., which is now operating as part of Quantex Corp.

That program was reinsured with underwriters at Lloyd's of London, who now are reporting large losses on business underwritten by Darrah, including another transportation liability program written directly by Darrah.

Some syndicates are reporting loss ratios exceeding 400%.

Between 25 and 30 Lloyd's syndicates already have incurred losses of \$75 million on paid losses and loss reserves in 1983 on the two Darrah programs, according to syndicate reports collected by Chatset Ltd., a private company that produces tables of Lloyd's results each year (see story, page 25).

National Union to cooperate in NAIC exam

By CAROL CAIN

NEW YORK—National Union Fire Insurance Co. of Pittsburgh, Pa., says it will cooperate in a market conduct examination ordered by the National Assn. of Insurance Commissioners.

The exam, originally called for in October 1985 by the Western Zone of the NAIC, was begun a few months ago after examiners completed market conduct examinations of two other Pennsylvania-domiciled insurers (BI, Oct. 14, 1985).

But the National Union exam became bogged down shortly after it began because of an alleged attitude problem displayed by company personnel.

"... There is an overall 'I don't care' attitude being displayed by company personnel," wrote Nevada Chief Examiner David J. Carbon in a Nov. 20 letter to Theodore F. Heller, vp and comptroller at National Union, a unit of New York-based American International Group Inc.

Mr. Carbon wrote the letter to request Mr. Heller's assistance in obtaining cooperation from the insurer during the exam, which, according to the letter, was "not running smoothly."

National Union, according to Mr. Carbon's letter, was not providing adequate
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The syndicates also will suffer another \$40 million in losses on the programs for 1984, the year just closing Dec. 31 under Lloyd's three-year accounting system, Chatset estimates.

Forum reported reinsurance recoverable of \$59.9 million at year-end 1985 from underwriters at Lloyd's.

The amount of premium collected by the syndicates on the program was not available.

Forum reported direct written premiums in 1985 of \$183.2 million, of which \$44.8 million was categorized as auto liability. The auto liability line showed a loss ratio of 131.1% in 1985, compared with a 67.3% loss ratio in 1984 on \$29.4 million in direct premiums written.

Forum, with policyholder surplus of \$28.2 million at year-end 1985, lost its rating from A.M. Best Co. in 1985 under Best's new policy of not assigning ratings to companies that cede a substantial portion of their business to reinsurers that have not been assigned a Best's rating.

The Forum fronting agreement called for Forum to write commercial trucking liability, public transit liability, cargo liability and related coverages. Policies were issued for Forum by Darrah, a Lloyd's agent.

The law firm was to defend Forum policyholders against claims and to advise Forum on the potential legal liability posed by the claims.

Forum relied on these evaluations when setting its reserves, according to court papers filed in U.S. District Court for the Southern District of New York.

Forum, which abandoned the program in January 1986, claims the Kroll firm's evaluations "grossly understated" the legal liability of claims against policyholders and misrepresented the program's true loss exposure. The Kroll firm "failed to exercise that degree of skill required of attorneys experienced in evaluating
Continued on page 24

Manville plan faces new challenges

By STEPHEN TARNOFF

NEW YORK—Representatives of Manville Corp. creditors and shareholders plan to appeal a U.S. Bankruptcy Court judge's confirmation of Manville's reorganization plan.

Attorneys for some Manville co-defendants in asbestos litigation, a group of asbestos victims and some common stockholders said last week they would appeal the decision on various grounds.

In addition, an attorney for the Securities and Exchange Commission said the SEC was considering whether to support appeals filed by various groups.

In his 48-page opinion, Judge Burton R. Lifland rejected an array of objections presented by Manville creditors and stockholders as to why the reorganization plan should not be confirmed. Judge Lifland called the plan "fair and equitable."

A Manville reorganization plan has been the subject of acrimonious debate ever since the company, once the world's largest asbestos producer, filed for Chapter 11 protection under the Federal Bankruptcy Act in August 1982 because of the overwhelming number of asbestos claims it faced.

Since then, the Manville bankruptcy proceedings have spawned more than 900 applications or motions, more than 1,000 orders, approximately 55 adversary proceedings, more than 40 appeals (not including writs addressed to the U.S. Supreme Court), approximately 300 hearings and thousands of pages of court transcripts, Judge Lifland said.

The Manville reorganization plan will create a trust for asbestos victims to be funded by \$815 million, including
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inside

✓ Continuing a seasonal tradition, this week's editorial takes a look ahead into 1987 with prognostications concerning commercial insurance, risk management and employee benefits. **PAGE 8**

✓ In the Perspective section, Jim Leak, Addison Shuster and Simon Israel of Coopers & Lybrand discuss radical changes contained in the Tax Reform Act of 1986 on U.S. shareholders of offshore insurance companies that will increase the shareholders' tax liabilities. **PAGE 17**

✓ Assessing the tort reforms passed by state legislatures this year, Franklin W. Nutter, president of the Alliance of American Insurers, asserts in a Speaking Out column that the reforms enacted will make a meaningful difference in the availability and affordability of property/casualty insurance. **PAGE 19**

✓ European risk managers are forming their own company to write reinsurance for liability risks of shareholder-members. **PAGE 26**

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Top stories of 1986

Tort reform movement top choice of risk execs

By JAMES M. BURCKE



Although 1986 won't be remembered as the year the tight property/casualty insurance market turned soft, it did mark a turning point of sorts.

After being voted the top story of both 1984 and 1985 by members of *Business Insurance's* Risk Management Board, property/casualty rate hikes and shrinking market capacity fell a notch to the No. 2 risk management story of 1986.

In its place, risk managers selected as 1986's most important story a collection of events spawned by the insurance crisis: the series of tort reform measures passed by state legislatures across the nation.

Some 35 states enacted some type of tort reform during 1986, largely to make liability insurance more available and affordable for businesses, professionals and non-profit organizations (see synopsis, page 10).

The intensity of the reforms enacted varied from state to state. Some states—including Alaska, Colorado, Connecticut, Florida, Hawaii, Michigan, New Hampshire, New York and Washington—passed what experts labeled as significant tort reforms, while other states passed only limited reforms, like caps on non-economic awards for medical malpractice cases only (*BI*, Aug. 18).

Risk managers responding to the survey also indicated that tort reform could repeat as the top story of 1987: When asked what stories would make headlines during 1987, risk managers named tort reform more often than any other story (see story, page 6).

Although it fell from the No. 1 position it had held for the last two years, risk managers judged the tight property/casualty insurance market important enough to rank as the second-most important story of the year.

As during 1984 and 1985, risk managers were stung at renewals during 1986 by double- and even triple-digit rate increases, while capacity still remained far short of demand for many types of liability coverage.

However, the market began to stabilize during 1986 as liability rate increases moderated and competition started to reappear later in the year for some types of property risks (see synopsis, page 11).

Although the hard market fell just one notch to second place in this year's survey of top stories, risk managers' perception of the importance of the story—for whatever reason—has declined measurably.

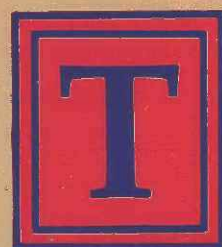
For example, in the balloting for the top stories of 1985, the tight market attracted 30 first-place votes, and 37 of the 42 risk managers responding to the survey thought it was either the No. 1 or No. 2 story of the year. Conversely, this year the tight market attracted only eight first-place votes, and only 10 of the 38 risk managers responding to this year's survey thought it was the year's No. 1 or No. 2 story (see chart).

While the tight market fell from its perch as the most important story of the year, the effect of the tight market on risk managers is clearly shown in this year's survey: In fact, the other three stories

Continued on next page

Benefit managers rank COBRA over tax reform

By JERRY GEISEL



he race for the top employee benefit story of 1986 came down to a photo finish.

By a slender six-point margin, the enactment of the Consolidated Omnibus Budget Reconciliation Act—the federal law whose provisions require employers to offer group health care benefits to former employees and employees' widowed, divorced or separated spouses—was selected as the most important benefit story of the year.

Finishing just behind in the balloting for the year's top benefit stories by members of the *Business Insurance* Employee Benefits Board was the effect of the new tax reform law on employee benefit plans.

COBRA and tax reform were selected as the most important stories of 1986 by an overwhelming majority of the benefit managers responding to this year's survey. For instance, COBRA and tax reform received 47 of the 48 possible first-place votes.

The story selected as the third most significant of the year, trailing COBRA and tax reform by a wide margin, was the new surge in health care cost increases.

Like COBRA and tax reform, the fourth most important story—the drive in Congress to pass legislation requiring employers to subsidize state pools to provide health care coverage to high-risk uninsured individuals—also was Washington-related.

A federal appeals court ruling that Congress—and not courts—should decide whether vesting standards apply to post-retirement health care benefits was selected as the fifth most important story of the year.

To determine the top employee benefit stories of the year, *Business Insurance* sent a list of the major stories of 1986 to members of its Employee Benefit Board. Board members were asked to rank in order from 1 to 5 the most significant stories of the year.

When the survey was tallied, votes were given weighted values. Each story was given five points for each first-place vote it received, four points for each second-place vote, three points for each third-place vote, two points for each fourth-place vote and one point for each fifth-place vote.

Tax reform, this year's second-place story, was the hands-down favorite as the top story of 1985, collecting 199 total points compared with 105 points for the runner-up story on court rulings on post-retirement health care benefits (*BI*, Dec. 30, 1985).

But this year, COBRA just edged out tax reform as the top story among the 48 benefit managers responding to the 1986 survey. COBRA amassed a total of 196 points, compared with 190 points for tax reform.

Included in COBRA's 196-point total were 18 first-place votes, 22 second-place votes, five third-place votes, one fourth-place vote and one fifth-place vote.

The selection of COBRA as the most important benefit story of the year might come as surprise to some. Certainly, the drive to pass tax reform legislation—and the effect that legislation would have on benefit plans—captured national attention for almost two years.

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Top risk management stories

Story	Number of votes					Total points*
	1st	2nd	3rd	4th	5th	
States pass tort reform measures	8	5	10	0	6	96
Rates continue to rise as capacity shrinks	8	2	7	5	1	80
Risk Retention Act is expanded	4	6	5	7	4	77
ISO's claims-made form wins approval	5	3	4	7	1	64
Alternative liability insurance facilities mushroom	6	4	0	3	4	56
Directors resign due to lack of D&O cover	2	6	1	1	4	43
Florida passes rate regulation law	2	2	4	3	3	39
More insurers seized by regulators	0	3	4	3	7	37
Captive formation increases	1	2	1	3	1	23
Court rules on duty to defend	1	2	0	1	3	18

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

Source: *BI* Survey

Top employee benefit stories

Story	Number of votes					Total points*
	1st	2nd	3rd	4th	5th	
Congress passes COBRA health care provisions	18	22	5	1	1	196
Tax Reform Act contains major benefit changes	29	9	3	0	0	190
Health care costs resume surge	0	5	8	2	5	53
Congress considers health insurance pools	1	3	6	4	7	50
Firms can cut retiree health benefits	0	4	4	5	9	47
Congress increases PBGC premium	0	1	5	5	4	33
Mandatory retirement eliminated	0	0	3½	8	6½	33
Pension credits mandated after age 65	0	0	6½	1	2½	24
Hospital utilization review grows	0	1	1	7	2	23
Health insurers offer "triple-option" plans	0	0	1	5	2	15

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

Source: *BI* Survey

Chart: Amy Palmer

Top risk stories

Continued from previous page
rounding out the year's top five news events are related to property/casualty rate increases or diminished capacity.

The No. 3 story, as selected by risk managers, was the expansion of the Risk Retention Act by Congress.

Signed into law Oct. 27 by President Reagan, the Risk Retention Act amendments allow special multiple-owner captive insurers—called risk retention groups—to operate nationwide to provide member-owners with all types of commercial casualty coverages except workers compensation (see synopsis, page 12).

Another provision of the new law pre-empts state regulations that make it difficult or impossible for employers to band together to purchase liability insurance on a group basis.

Under the original Risk Reten-

tion Act of 1981, risk retention groups and purchasing groups could only provide product liability and completed operations coverages.

The importance of the expanded Risk Retention Act can be seen not only in the votes by survey respondents, but also in the quick response to the new law.

Just a little more than a month after the law was passed, the first risk retention group was chartered under the new law. And, brokers and consultants say many more risk retention groups are now on the drawing board and will be chartered in the coming months.

A story that was ranked as the No. 2 event of both 1984 and 1985 finished in fourth place in this year's survey: the Insurance Services Office's controversial claims-made commercial general liability policy form.

While ISO first proposed the form during competitive market conditions, insurers promoted it

during the hard market as a tool for controlling their runaway losses and a means of providing capacity to policyholders.

After more than a year of disagreement over the wording of the form, ISO, risk managers, brokers and insurance regulators early in 1986 agreed on final revisions to the form, and states began approving this final version of the often-amended form (see synopsis, page 12).

However, 11 months later, the ISO claims-made form still has not been approved in all 50 states, and even in states in which the form has been approved for widescale use, most businesses still are able to purchase general liability coverage on an occurrence basis.

The year's fifth-most important story also is tied to the hard market: the establishment of alternative liability insurance facilities in an effort to create additional capacity.

This story had its roots in 1985,

with the establishment of A.C.E. Insurance Co. Ltd.—with capital contributions from owner-policyholders—to provide high excess liability insurance limits.

As the new year began, however, the number of so-called alternative facilities mushroomed.

Some facilities, like X.L. Insurance Co. Ltd., were organized much like A.C.E.—a wide range of corporations contributed capital to form insurers to provide excess liability limits.

In addition, members of certain industries—including banks, colleges and universities, accountants and railroads, to name only a few—formed their own insurers to cover the risks of industry members.

Still other types of alternative facilities were formed. For instance, a group of commercial insurers during the summer formed American Excess Insurance Assn., a line slip that is expected to offer \$75 million in liability coverage

excess of \$25 million by Jan. 1, or shortly thereafter.

To determine the top five risk management stories of 1986, *Business Insurance* sent a list of major stories that occurred during the past 12 months to members of its Risk Management Board, who are risk managers who agree to answer periodic surveys from *BI*. Board members were asked to rank in order from 1 to 5 the stories they believed to be the most significant.

When the ballots of the 38 risk managers responding to the survey were tallied, votes were assigned weighted values. A story was given five points for each first-place vote; four points for a second-place vote; three points for a third-place vote; two points for a fourth-place vote; and a single point for a fifth-place vote.

The points for each story received were tabulated, and the stories with the highest point totals were designated as the top stories of the year.

Unlike the previous two years, when the hard market was named the top story by a landslide, the competition between the top stories was much closer this year, and no story stood as the overwhelming choice of risk managers.

Tort reform was selected the top story of 1986, capturing 96 points out of a possible 190 points. In contrast, when the hard market was selected the top story of 1985, it attracted 185 of 210 possible points.

And while tort reform outdistanced the hard market as this year's top story by a 16-point margin, last year's top story, the hard market, received 37 more votes than the No. 2 story, the ISO claims-made form.

In addition, both the first- and second-place story this year received eight first-place votes. Last year, the hard market story attracted 30 first-place votes while the No. 2 story, the claims-made form, attracted only eight first-place ballots.

The Risk Retention Act expansion, this year's third-place story, finished closely behind the hard market, gathering four first-place votes and 77 total points.

While the ISO claims-made CGL form was ranked by risk managers as this year's No. 4 story, it attracted only 64 total points, compared with 148 last year. However, despite the decrease in number of total points, the claims-made form still was considered the most important story of 1986 by five risk managers, compared with eight the previous year.

The proliferation of alternative liability insurance facilities, the fifth-place story with 56 votes, attracted six first-place ballots, second to only the tort reform and hard market stories.

There was a 13-point gap between alternative markets and the sixth-place story: the resignation of outside directors at corporations that could not obtain directors and officers liability insurance.

Companies across the country during 1986 reported that outside directors had resigned from their boards because the company could not maintain sufficient D&O coverage. Some companies lost all but one or two of their board members.

And even though some companies that could not purchase D&O coverage promised their outside directors that the company would pay all costs related to judgments and legal fees in D&O liability suits, the outside directors were unwilling to rely on those promises and resigned (*BI*, Jan. 27).

The D&O crisis was selected as the year's top story by two risk managers. It also received six second-place votes.

The year's seventh-ranked story, with 39 points and two first-place votes, was Florida's controversial

Continued on page 6

FOR SELF-INSURED EMPLOYERS ANNOUNCING THE FIRST COBRA COMPLIANCE PLAN THAT MANAGES MORE THAN THE PAPERWORK... IT ALSO MANAGES THE RISK. THE OUTCOVERAGESM PLAN.

Everybody knows COBRA compliance will create big paperwork problems. But self-insured employers also face what could become a costly nightmare—the risk of high claims from adverse selection.

Now there's a *total* solution to COBRA compliance. Introducing the new OutCoverage Plan—a comprehensive program combining top-notch administration with protection from excessive claims.

Nobody knows what claims costs will be under COBRA-required continuation coverage. But most believe only those anticipating big medical expenses are likely to pay the high premiums necessary to continue their employer's coverage.

That means the 102% premiums that employers can charge won't nearly cover the cost of administration and claims for these former employees and dependents.

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How Wausau earns its stripes at Rust-Oleum Corporation.

Rust-Oleum is famous for stopping rust in applications that range from heavy industrial to do-it-yourself projects. Naturally, a company that knows this much about protection has an appreciation for what makes business insurance work.

"We have very active loss-prevention programs," says Robert D. Tranter, Assistant Vice President

at Rust-Oleum. "As a direct result, we've been able to reduce our experience modification from 1.46 as of a few years ago, to a current 0.74.

"Our plant people work with Wausau's safety engineers and field people on everything from fork-lift driving, to proper ways of lifting heavy items, to air sampling.

"We've always had the philosophy that it takes quality people to

make quality products. To do that, we need quality insurance programs so we can hire — and keep — quality people.

"An important factor is Wausau's cooperation. When we have questions on our loss-prevention programs, Wausau is right there to help us find the answers."

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Top 10 stories of 1986

Continued from page 4

rate regulation and tort reform law.

The law, passed by the Florida Legislature in June despite the opposition of insurers, froze most commercial property/casualty rates, mandated premium refunds and authorized that 1987 rates could be rolled back to 1984 levels (*BI*, June 16).

Insurers, many of which stopped writing new commercial business in Florida after the law was passed, filed suit challenging its constitutionality. And while a lower court upheld the law's provisions in October, most of the provisions have still not taken effect, awaiting the outcome of the insurers' appeal to the state Supreme Court (*BI*, Nov. 3).

Late last month, however, four major insurers said they would end their ban Jan. 1 (*BI*, Dec. 22).

Finishing close behind and grabbing the No. 8 spot was the increasing number of property/casualty insurers placed in liquidation or under state supervision. This story tallied 37 points, but no first-place votes.

Several prominent property/casualty insurers were taken over by state regulators in 1986, including Midland Insurance Co., which was placed in liquidation in New York (*BI*, April 14); Pine Top Insurance Co., which was placed in rehabilitation in Illinois (*BI*, June 30); and Mutual Fire, Marine & Inland Insurance Co., which was placed under the supervision of the Pennsylvania Insurance Department (*BI*, Sept. 22).

In addition, Ambassador Insurance Co. was ordered liquidated by a Vermont court after a two-year court battle (*BI*, Sept. 1).

Meanwhile, the California Insurance Department and officials of Mission Insurance Co. were still trying to bail out MIC, which was placed in conservation in California in October 1985. However, the department has discussed liquidation plans in case rehabilitation is impossible (*BI*, Dec. 8; Dec. 22).

The No. 9 story of year was the increased number of captives formed during 1986, both domestic and offshore. However, this story, which attracted 23 points and a lone first-place vote, trailed the eighth-place story by a substantial margin.

As rates rose and capacity tightened, more and more companies formed offshore captives. For instance 94 new insurers and reinsurers, mostly captives, were formed in Bermuda during the first 10 months of 1986, compared with 72 in all of 1985 (*BI*, Dec. 1).

And, earlier this month, Vermont reported that 60 captives were licensed there, compared with just 33 at the beginning of the year (*BI*, Dec. 8).

Onshore domiciles like Vermont could see even more growth at the expense of offshore domiciles, some observers say, because provisions in the new tax law will make offshore group captives more expensive to operate (*BI*, Sept. 15).

Rounding out the top 10 stories of 1986, with 18 points and one first-place vote, was an important court decision: In a major setback for policyholders, a federal appellate court said a primary insurer's duty to defend under pre-1966 general liability policies ends with the exhaustion of policy limits.

In 1966, the insurance industry redrafted the standard comprehensive general liability policy to specifically end an insurer's duty to defend at the exhaustion of policy limits by indemnity payments.

Observers said the decision by the 3rd U.S. Circuit Court of Appeals will be important in cases involving long-latent claims such as asbestos, DES and hazardous waste, where coverage under pre-1966 CGL policies is at issue.

Interestingly, one story that did not make the top 10 attracted a first-place vote: the failure of the Senate to pass a federal product liability reform bill. The Senate Commerce Committee earlier in the year approved a product liability reform bill, but the proposal was withdrawn after opponents threatened a filibuster. ■

Risk managers cite crisis, turmoil in '86

Risk managers apparently are not harboring many fond memories of 1986.

When asked to describe 1986, members of the *Business Insurance* Risk Management Board used words like "turmoil," "crisis," "tough" and "hectic."

"1986 was one of the worst years on record for availability of liability insurance, and rate increases had no upper limit," said the director of risk management services for a hospital with \$200 million in revenues.

The past year meant "going from one crisis to another as each renewal approached," said the director of risk management for a forest products company with sales of \$4 billion.

"1986 was a year when every millimeter of a risk manager's mettle was tested... a year when January renewals didn't jell until July... when reinsurers chose not to reinsure... when limits went down when deductibles went up," commented the director of risk management for a cable television company with \$200 million in sales.

"Very difficult for local government insurance programs," said the chief of risk and insurance for a county government with a \$108 million budget.

"The lowest point in the history of commercial insurance transfer of risk," observed the director of risk management for an education and research institution with a \$1 billion budget.

"The year the states lost control of the insurance industry," said the director of insurance for a conglomerate with \$900 million in annual sales.

"A year of organized, pre-meditated chaos," summed up the risk manager/safety inspector for a county government with a \$200 million annual budget.

The risk manager for an athletic shoe manufacturer with \$1.1 billion in sales called the year "in a word, confused: Price and availability problems persist, while insurer profits soar; insurers say tort reform is the answer, but pull out of Florida when legislation is passed; and risk managers continue efforts to become accepted as professionals, but continue to act like insurance buyers."

While many risk managers complained about the year's events, especially the continuation of the tight property/casualty insurance market, others noted that 1986 was a year when risk managers, legislators and others began to formulate solutions to market problems.

Specifically, it was a year in which insurance buyers took matters into their own hands and created capacity that the commercial insurance industry could not provide, survey respondents said.

The director of risk management for an education and research institution with a \$900 million budget said, "'85 and '86 were years that will be remembered as the time we decided to put distance between us and the insurance industry."

"We will never return to reliance on the insurance industry the way we did in the past. We have learned to place our trust elsewhere," the risk management director said.

"A year of action, decisions and revelation as consumers learn they don't have to be held hostage to the vagaries of the insurance market," replied the risk and insurance manager for a state government with a budget of more than \$6 billion.

"A year of change and realignment of market focus and public awareness," said the risk manager for a retailer with sales of \$1 billion.

"A year... when the great minds in the industry went into a creative mode and dug in and brought solutions to the risk management table," said the director of risk management for the cable television company.

"The year public agencies moved permanently away from the traditional insurance markets to become part of pools or manage a significant self-insured retention on their own," said the personnel and risk manager for a government agency with an annual budget of \$175 million.

"Year-end 1986 casualty renewals are just as bad or worse than in 1985 or 1984. Thank God for the alternative markets," summed up the risk management director for a manufacturing company with sales of \$2 billion.

Coping with the challenges of 1986 did raise risk managers' visibility, risk manager note.

Risk managers were put "in positions of increasing visibility and responsibility with their employers," said the senior vp for a bank with 9,700 employees.

"1986 was the year that the insurance crisis came to the attention of everyone, not just risk management and insurance professionals. Tort reforms and resignations of directors and officers are significant examples," said the manager of international treasury services for a software company with \$160 million in sales.

Risk managers had other positive comments about 1986.

For example, it "was better than 1985," said the insurance director for a retailer with more than \$500 million in sales.

And 1986 "was just a little better than 1985," said the risk manager for a personal lines insurer and auto club with \$650 million in written premiums.

"Unpredictable, anxious times, although things turned out better than expected generally," said the risk manager for a property management/real estate syndication company with a \$250 million portfolio of real estate.

And, for some, 1986 marked the beginning of the end of the tight property/casualty insurance market.

"The beginning of the return of competition in the insurance industry," said the assistant vp of a retail drug store chain with \$3 billion in sales.

"A year which was a continuation of the 'shakeout' of poorly managed insurance companies begun in 1985, while better managed carriers achieved improved earnings and financial strength resulting in a much more stable market for buyers, with premium increases moderating," observed the controller/assistant secretary for a manufacturing, chemicals and hotel company with \$30 million in sales.

And, for the risk manager of an electric utility with \$540 million in revenues, 1986 was "the first full year of being in the recovery room—hope to get out sometime in 1987."

—By James M. Burckle

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opinions

Looking ahead

IN OUR CONTINUING tradition to suspend counsel, criticism and complaint during the holidays, we hereby make our annual predictions for events in the coming year in the worlds of commercial insurance, risk management and employee benefits.

Some of our predictions we fear, some we endorse and others we make with our tongue firmly planted in our cheek. You are left to decide which is which.

Property/casualty insurance

In the world of commercial property/casualty insurance, we predict:

Insurers will do a lot of fast talking to try to explain terrific profits to a hostile insurance buying public. Few will take the opportunity to substantially increase loss reserves.

Insurance brokers will try to shop business, promising risk managers the world and creating new competition among insurers.

Claims-made will not become the norm for the average commercial insurance buyer.

Underwriters will try to hold the line on price decreases, all the time hearing the words "market share" whispered over their shoulders.

Executives of major property/casualty insurance and reinsurance companies will stomp the country, preaching to their brethren that they must not return to cutthroat rate competition.

The Insurance Services Office will float a proposal to add a defense cost limit to liability insurance policies. Like other ISO proposals, it will not fly.

A few state insurance departments will bite the bullet and put broke insurance and reinsurance companies into liquidation. But, as in the past, too many insurance departments will allow the walking dead to stumble along.

State legislatures, responding to consumer pressure, will consider more stringent regulation of the insurance industry. Too much of it will pass while too little tort reform will be accomplished.

Congress, also responding to consumer pressure, will consider amendment and repeal of the McCarran-Ferguson Act, but no action will be taken.

Insurers will burn the midnight oil, trying to calculate the impact of their new tax liabilities under the Tax Reform Act of 1986. They won't succeed.

At Lloyd's of London, the marine market will abandon the fancy new headquarters where marine underwriters are integrated with non-marine underwriters and move back into the old Lloyd's building where they can be segregated.

Group life and health insurance

In the world of group life and health insurers, we predict:

Health care providers, insurers, health maintenance organizations and preferred provider organizations all will jump on the "triple-option" group insurance plan bandwagon as they fight for market share.

Financial problems will hit those life insurers that have failed to match assets to liabilities for their interest-sensitive products.

Few insurers will make a profit on group health insurance programs, a precursor to worse financial problems in 1988.

Everyone will try to market a COBRA-related product.

There will be at least one new—and funny—joke about actuaries this year. But, it will be repeated too often.

Risk management

In the world of risk management, we predict:

A swarm of risk retention groups formed by big and small businesses alike. Vermont will be the hands-down winner as the leading domicile for risk retention groups. Some other states, however, will try to obstruct the formation and operation of risk retention groups. Disputes over authority to operate will end up in court, where the risk retention groups will win.

Huge premiums will flow into the offshore policyholder-owned insurance companies such as A.C.E. Insurance Co. Ltd., X.L. Insurance Co. Ltd. and Bankers Insurance Co. Ltd. More risk managers also will have suntans in the winter.

Competitive bidding will be resurrected for selecting brokers.

Risk managers will gain a little weight, because they won't be running as hard or as fast to find coverage at affordable prices. The pounds also will reflect the resurgence of the business lunch with insurance brokers, who will start taking clients out to lunch again.

Risk managers will receive hefty bonuses in 1987, rewarding them for controlling their companies' insurance costs. No one will mention to management that the bonuses were earned in 1985 and 1986, while lower 1987 insurance costs are merely a product of the market cycle.

At least one risk manager will forget his professional training and drop a bundle at the tables during the annual Risk & Insurance Management Society conference to be held in March 29 through April 3 in Las Vegas.

Employee benefit management

In the world of employee benefit management, we predict:

Employee benefit managers will lose weight, induced by the stress and strain of coping with COBRA, the Tax Reform Act of 1986 and rising health care costs.

Employee benefit consultants will make a fortune as they try to explain COBRA, the Tax Reform Act and rising medical costs to employers and come up with solutions.

Along with benefit consultants' revenues, the educational conference business will boom in 1987. The topics for employee benefit conferences in 1987: benefits legislation; funding for retiree health care liabilities; how to use case management programs to control costs; and long-term health care insurance. The topic for benefit managers' luncheon discussions at these conferences: career changes.

Benefit managers will find triple-option plans a one-stop-shopping dream come true, compared with the nightmare of shopping for group health plans in the overflowing health insurance marketplace.

The new lower maximum deferral limits for 401(k) plans won't make a hoot of difference to the total amount contributed to these plans. Who were those guys deferring more than \$6,000, anyway?

Medical utilization review programs will explode to counteract the rising cost of health care plans.

Employers will remove their rose-colored glasses and focus on their liabilities for retiree health care benefits. They won't like what they see.

Congress will mandate that employers provide catastrophic coverage to employees and force employers to pick up some of the tab for providing health care coverage to the uninsurable.

Congress will fail to pass a risk-related PBGC premium.

Federal agencies like the Internal Revenue Service will fail to get the needed regulations on the Tax Reform Act out on time.

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Market restrictions worsen during 1986

The prospect of greater availability and affordability of insurance in 1987, to any extent, is a relief to corporate insurance buyers. Property/casualty rate increases, capacity restrictions, market with-



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Congress gives buyers new risk funding tool

In response to the unprecedented commercial liability insurance crisis, Congress in 1986 gave businesses, institutions and professionals a significant new risk funding tool.

Amendments to the Risk Retention Act, signed Oct. 27 by President Reagan after an eight-month congressional battle, allow special, multiowner captives—called risk retention groups—to provide all casualty coverages except workers compensation to member owners (BI, Oct. 27; Oct. 20).

And, a risk retention group chartered in one state is free to operate nationwide without having to obtain prior rate and policy form approval from every state where it does business. Also, the groups do not have to use licensed, commercial insurers as fronts to avoid run-ins with regulators.

The new law also pre-empts state laws that made it difficult or impossible for employers to band together to purchase liability insurance on a group basis.

Under the original 1981 Risk Retention Act, this freedom only applied to risk retention groups providing product liability and completed operations coverage. Because the 1981 law was so narrow, and because it was passed during the soft commercial insurance market, it isn't surprising that it didn't elicit much interest.

In fact, Delaware-chartered HOW Insurance Co., which provides product liability coverage to about 11,000 home builders, is believed to be the only major risk retention group formed in the United States under the 1981 law.

But in less than five weeks after President Reagan signed



the 1986 legislation, the first risk retention group was licensed under the new, expanded law.

On Dec. 2, C-PAC-O—short for CPA Risk Risk Retention Group Corp.—received its license from Delaware Insurance Commissioner David N. Levinson. Initially, C-PAC-O will provide up to \$1 million in professional liability coverage to small and medium-sized accounting firms (BI, Dec. 8).

More risk retention groups are on the horizon. Both Johnson & Higgins and Alexander & Alexander Services Inc., for example, are organizing risk retention groups to provide environmental impairment liability insurance, while universities and colleges are forming a risk retention group to provide educators legal liability coverage (BI, Dec. 8).

Passage of the 1986 Risk Retention Act amendments took only eight months—a remarkably short time—but the legislation had to clear many obstacles on its way to enactment.

For example, opponents of the legislation backed a proposal that would have given insurance commissioners the power to stop a risk retention group from operating in their states if they found commercial insurance was available on reasonable terms from admitted or licensed insurers.

Supporters of an expanded Risk Retention Act dubbed this so-called needs test as a "killer amendment," noting that each commissioner could establish a different definition of "reasonably available," making it impossible for a risk retention group to operate nationwide. But that needs test was brushed aside when the Senate Commerce Committee approved the legislation, introduced in late March by Sens. John Danforth, R-Mo., and Robert Kasten, R-Wis.

That committee vote was followed by months of negotiations between business groups and the National Assn. of Insurance Commissioners. Those negotiations resulted in the NAIC agreeing not to oppose the bill in exchange for certain state regulatory control over risk retention groups.

After that, progress was rapid. In July, the Senate approved the amendments; the House followed in September.

In October, a conference committee ironed out differences in the Senate and House-approved bills, and later that month the Senate and House gave final approval to the uniform bill.

—By Jerry Geisel

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update

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Claims-made controversy quieted by compromise

The heated debate over the claims-made commercial general liability form developed by the Insurance Services Office all but fizzled out by the end of 1986.

Interest in the controversial new form, which has been approved for use in 42 states, flickered as the year wore on. This was partly because ISO made most of the changes that were requested by regulators, brokers and risk managers, and partly because the claims-made form still is not widely used.

Most businesses continue to be able to purchase their general liability coverage on an occurrence basis, with only the most hazardous risks being forced to purchase coverage on a claims-made policy form.

Limited penetration of the claims-made policy form may be partly due to the inability of major insurers to gear up quickly to write the new form. And, softening market conditions are likely to further delay widespread use of the form.

However, a claims-made commercial general liability policy is expected to continue to be used for the most difficult risks, a use that is permitted even in the several states that rejected the form for widespread use, including New York.

The most significant changes to the claims-made CGL form followed action late last year by the National Assn. of Insurance Commissioners. The NAIC endorsed model policy language that required all claims-made forms to reinstate aggregate policy limits when extended reporting period coverage is purchased.

The language required insurers to give policyholders a 30-day period to decide whether to purchase tail coverage in the event the insurer cancels the policy.

ISO responded quickly to the regulators' demands, announcing in January that it would amend the claims-made form to meet the NAIC model policy language.

As a result, the Risk & Insurance Management Society, several broker groups and most state insurance regulators dropped their opposition to regulatory approval of the claims-made CGL form.

Still, some problems remained. Several broker groups argued the broad pollution exclusion in the policy was unworkable because it would exclude coverage for damage caused by smoke and fumes from any kind of fire.

ISO agreed, filing a revision in May that extends coverage for damages caused by heat, smoke or fumes from a hostile fire.

But some brokers still contend the pollution exclusion is likely to eliminate coverage in a variety of situations commonly thought to be covered under a CGL policy. Further discussion on this issue is expected in 1987.

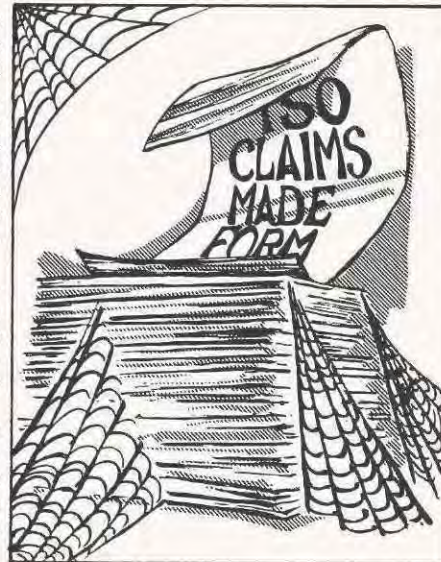
Another issue next year will be coverage for defense costs under the CGL form.

After months of discussion, the National Assn. of Insurance Commissioners rejected in early December ISO's plan to include defense costs within the limits of primary CGL policy forms (BI, Dec. 15).

Brokers and risk managers had hotly contested the proposal, while insurers argued that such a move is the only way to control spiraling defense costs.

The NAIC recommended ISO adopt an "outside" limit on defense costs for certain lines in which defense costs are a problem, with special attention given to the issue of who controls litigation and the transfer of such control.

—By Robert A. Finlayson



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Many had hoped tort reform across the country would ease the insurance availability and affordability crisis. And, in the wake of reforms in particular states, several insurers have agreed to resume some underwriting, but the long-term effect remains unknown.

To assess the effectiveness of reforms recently enacted, as well as to recommend any other reforms or to recommend changes in the state's insurance regulatory environment—or both—many states established study commissions.

The total number of states to enact tort reforms this year would have been 37, but Ariz. Gov. Bruce Babbitt vetoed a four-bill package that cleared that state's legislature, and Ohio Gov. Richard Celeste has vetoed a moderately comprehensive reform bill (see story, page 2).

—By Steve Taravella

New breed of captive insurer proliferates



surging the layer excess of \$50 million.

Next year, Tortuga expects to buy commercial reinsurance for 20% of the \$25 million excess of \$25 million layer and 30% to 40% of the layer excess of \$50 million.

Many other facilities have either

been formed or are in the works to provide general liability coverage, D&O coverage and environmental impairment liability coverage to select groups of sponsors.

Specialized general liability facilities include Railroad Assn. Insurance Ltd. for railroads; and

Corporate America's Risk Exchange, MECCA and PRIMEX, providing general liability coverage to chemical companies.

Other facilities combining general liability and D&O coverages are Energy Insurance Mutual for utilities and OIL Casualty Insurance Ltd. for oil companies.

Offshore D&O companies include Bankers Insurance Co. Ltd. and Financial Institutions Reserve Ltd. for banks; Corporate Officers & Directors Assurance for Fortune 500 companies; and Directors & Officers Liability Insurance Ltd. for utilities.

Not all of the alternative facilities are newly capitalized insurance companies. For example, M&M and Johnson & Higgins earlier this year organized American Excess Insurance Assn., a line slip

of established U.S. insurers writing excess liability coverage through a newly formed underwriting management company.

Meanwhile, with the elimination of most tax breaks for offshore insurance companies and the passage of an expanded federal Risk Retention Act, some new companies are being formed onshore in such domiciles as Vermont.

J&H, for example, recently began organizing North American Casualty Cooperative, a Vermont-based risk retention group that will write EIL coverage.

Several captive insurance experts expect such onshore formations to proliferate, while offshore domiciles retain existing captive companies but lose new formations to their onshore competitors.

By Douglas McLeod

RISK MANAGERS:



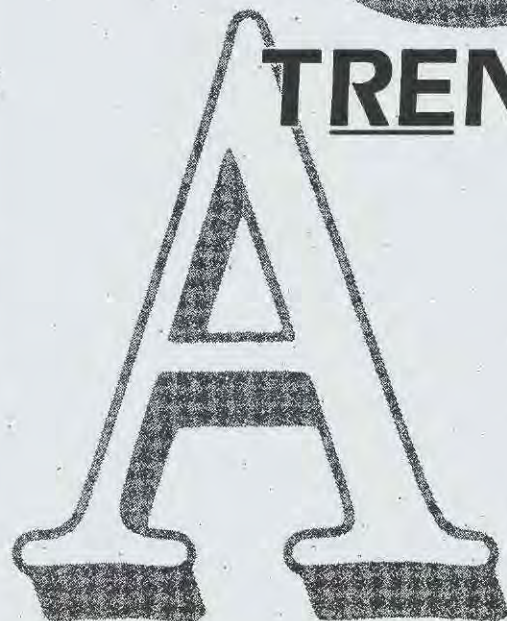
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Frozen out of traditional casualty insurance markets, many U.S. corporations last year turned to more temperate offshore domiciles to solve their coverage woes.

A new breed of captive stock insurance companies cropped up in Bermuda, the Cayman Islands and Barbados to provide excess general liability coverage and other difficult-to-place coverages for their U.S. corporate shareholders.

The first was A.C.E. Insurance Co. Ltd., actually organized in late 1985 by Marsh & McLennan Cos. Inc. and Morgan Guaranty Trust Co., the New York investment banking firm (BI, Dec. 23, 1985).

A.C.E. provides excess liability limits of \$100 million excess of at least \$100 million in underlying coverage. The insurer also writes directors and officers liability limits of \$50 million excess of at least \$50 million, but also will match a lesser amount of underlying coverage with a minimum attachment point of \$25 million.

A.C.E. was formed by an initial group of 34 corporate sponsor policyholders and required subsequent policyholders to purchase shares in the insurer's holding company. The holding company stopped issuing shares Oct. 1, however, and new policyholders no longer have the opportunity to become shareholders, according to Christopher Marshall, A.C.E.'s controller.

A.C.E.—which currently has about 240 shareholders—reported \$660 million in total share capital, contributed surplus and retained earnings as of Nov. 30, Mr. Marshall said. The insurer wrote gross premiums of about \$200 million in its first year of operation, which ended Sept. 30.

After A.C.E.'s formation, sponsors and organizers realized that their insurance problems were not confined to layers excess of \$100 million, and another offshore insurer—X.L. Insurance Co. Ltd.—was formed to write lower-layer excess general liability coverage (BI, March 17).

X.L.—also organized by M&M and Morgan Guaranty—provides general liability limits of \$75 million excess of at least \$25 million in underlying coverage, and various D&O limits excess of at least \$20 million.

The insurer currently has 202 shareholder/policyholders—68 of which were among the initial group of sponsors—and about \$586 million in share capital and retained earnings, according to Brian Walford, vp with Marsh & McLennan (Barbados) Ltd.

Between May 1 and Nov. 30, X.L. wrote \$206.6 million in gross premiums, he reported.

Another early entrant in the race to develop alternative casualty facilities was Tortuga Casualty Co., initially organized to provide general liability limits of \$25 million excess of \$50 million to captive management clients of The Reiss Organization (BI, Oct. 14, 1985).

In June, Tortuga added a new program to provide limits of \$25 million excess of at least \$25 million. Coverage under the new program was retroactive to Jan. 1, according to William Torpey, vp with American Risk Management, a Reiss unit.

Tortuga now has 27 corporate shareholders and will have written \$20 million in gross premiums by year-end, according to Mr. Torpey.

While A.C.E. and X.L. do not purchase any reinsurance, Tortuga reinsured 20% of the \$25 million excess of \$50 million layer with commercial reinsurers. Shareholders' captives each reinsured 1.5% of the \$25 million excess of \$25 million layer, for which no commercial reinsurance was purchased, and participated in rein-

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Photo: Index/Stone International, Inc.

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'Chaotic' 1986

Continued from page 16

"There must be a better way for Congress to develop a master plan for dealing with employee benefits other than this piecemeal approach," said a corporate benefits manager at a manufacturer with 12,000 employees.

Some benefit managers fear the legislative activity affecting benefit programs will continue.

This year was "the worst since ERISA, but only a sample of what's to come in '87 and '88," said the corporate benefits planning administrator at an electrical and gas utility with 14,000 employees.

"A year when several significant employee benefit legislation proposals became reality. It (the legislation approved in 1986) causes nervousness when thinking about what will be

next," said the manager of corporate compensation and benefits at a transportation company with 400 employees.

Others noted that the impact of COBRA and tax reform would be a continuing major burden.

COBRA and the new tax law "will cause all of us many headaches in the next few years," commented an assistant administrator for employee benefits at a manufacturer employing 3,300.

But one benefit manager saw a positive side to the swirl of benefit legislation.

"This was a year of clarity. At least we're beginning to find out where we stand so we can go ahead with 'moth-balled' changes," said the corporate benefits manager at a manufacturer with 12,000 employees.

Aside from noting the impact of legislative activity in Washington on benefit programs, benefit managers also described their concern about

a new surge in health care costs after the slowdown in health care cost increases over the past several years.

"A year of high turmoil in benefits with impact of legislation and return of rising health care costs," said the director of human resources for a manufacturer with 1,350 employees.

"Continued increases in health care costs" said the director of human resources at an apparel manufacturer with 550 employees.

"A reawakening of many employers to the fact that health care costs are out of control," noted an employee benefits manager at a manufacturer with 650 employees.

And, the director of a trade association with 500 employees was able to describe in one word how many benefit managers undoubtedly felt about 1986: "Whew!"

—By Jerry Geisel

Health care to make headlines in '87

Health care coverage issues—especially congressional attempts to establish state pools for the uninsured—will grab headlines in 1987, benefit managers predict.

Benefit managers who made predictions about events that will make headlines next year cited health care coverage more often than any other issue.

A benefit manager at a manufacturing company with 500 employees said, "Health insurance pools for high-risk people" will capture headlines next year.

"Mandated health coverage for the uninsured and the elderly, particularly retirees" will be a hotly debated issue in Congress, agreed a benefit manager for a manufacturer with 650 employees.

And, an employee benefits manager at a construction company with 1,300 employees said, "Legislation by the federal government establishing a minimum or catastrophic level of group health benefits for employers with at least 100 employees" will be a headline maker.

Indeed, at year-end 1986 there were strong indications from a variety of congressional and administration sources that health care would be a major issue next year in Congress.

For example, Department of Health and Human Services Secretary Dr. Otis Bowen in late November endorsed the concept of state pools in a report delivered to the White House's Domestic Policy Council.

In addition, Rep. Fortney (Pete) Stark, D-Calif., a key member of the House Ways and Means Committee, is expected to renew his effort to pass legislation in the next

two-year session of Congress—which starts in January—that would establish employer-subsidized state pools for high-risk uninsured individuals.

Benefit managers also expect headlines reporting modifications and clarifications of the Consolidated Omnibus Budget Reconciliation Act.

Under provisions of the federal law, employers are required to open up their group health care programs to former employees and employees' widowed, divorced and separated spouses. Employers can charge those participants a premium of up to 102% of the group rate.

An employee benefit consultant at a health care firm with 5,600 employees predicted COBRA could be modified to require employers to pay part of the health care continuation premium for terminated employees.

Several benefit managers also said clarification of COBRA requirements would be a major event next year. Currently, three federal agencies—the Internal Revenue Service, the Department of Health and Human Services and the Labor Department—are drafting COBRA regulations, but there is no word on when the agencies will complete their work.

Also, a number of benefit managers predicted that retiree health care coverage issues will be big news next year.

"The government has only begun to shift its responsibility for social welfare to employers. Next, the government will mandate health insurance for retirees," said the director of insurance at a real estate investment firm with 275 employees.

employees.

The group insurance manager at a publishing firm with 30,000 employees predicted that the Financial Accounting Standards Board will require employers next year to recognize post-retirement health care liabilities on their financial statements.

Although Congress passed the Tax Reform Act of 1986 in September, several benefit managers said the repercussions of that law will make news in 1987.

"There'll be a ton of technical corrections for TRAC for sure," said the corporate benefits manager at a manufacturer with 12,000 employees.

In particular, benefit managers singled out the new tax law's complex non-discrimination rules for welfare-type plans as a major news event next year.

There will be a "clarification of the new benefit discrimination and qualification tests," said a benefit manager at a manufacturing firm with 3,500 employees.

Also on the legislative front, several managers see congressional moves to require employers to offer mandatory parental leave to employees as a potential major news story in 1987.

Proposed legislation mandating such coverage died in the last session of Congress after clearing a House committee.

"There will be maternity and paternity leave," predicted the assistant administrator for employee benefits at a manufacturer with 3,300 employees, who also expects that tax reform and COBRA technical corrections will be in the news next year.

Rising health care costs—a major

development this year—also will make headlines in 1987, benefit managers say.

"There will be a resurgence of health care inflation," predicted the director of benefits planning at a publishing firm with 20,000 employees.

As a result, expect "further cutbacks in employee health care coverage due to (higher) deductibles and coinsurance," said a senior benefits specialist at a transportation firm with 47,000 employees.

Issues relating to the Pension Benefit Guaranty Corp., the federal agency that guarantees workers' and retirees' basic pension benefits, will be another 1987 headline-maker, benefits managers say.

"PBGC policy, premiums, terminations and changes in funding requirements" will make news next year, said an assistant vp for human resources at a financial firm with 5,000 employees.

"PBGC premiums going up" is going to be a top news story in 1987, agreed the manager of corporate compensation and benefits at a transportation firm with 4,000 employees.

The director of administration at an equipment leasing firm with 25 employees predicted bigger PBGC news: The PBGC will go bankrupt next year.

Some benefit managers believe that Congress will turn its attention next year to flexible benefit plans, which are covered under Section 125 of the Tax Code.

"Section 125 plans—now it's their turn," said the vp for human resources at a bank with 550 employees.

—By Jerry Geisel

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1986

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Dec 15	Dec 3
Dec 22	Dec 9
Dec 29	Dec 16

1987

Jan 5	Dec 23
Jan 12	Dec 30
Jan 19	Jan 7
Jan 26	Jan 13
Feb 2	Jan 21
Feb 9	Jan 26
Feb 16	Feb 3
Feb 23	Feb 11
Mar 2	Feb 18
Mar 9	Feb 25
Mar 16	Mar 4
Mar 23	Mar 10
Mar 30	Mar 17
Apr 6	Mar 24
Apr 13	Mar 31
Apr 20	Apr 8
Apr 27	Apr 15
May 4	Apr 22
May 11	Apr 28
May 18	May 6
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Employers feel COBRA's sting in '86

Few federal benefit laws have triggered as much anxiety and anger as the health care continuation provisions of the Consolidated Omnibus Budget Reconciliation Act—passed by Congress earlier this year.

COBRA, which most benefit managers would agree is an apt acronym, requires employers with at least 20 full-time workers to extend their group health care programs to former employees and widowed, divorced and separated spouses of employees (BI, June 2).

For spouses, coverage must be offered for up to three years, while former employees—except those terminated for gross misconduct—can obtain coverage for up to 18 months.

Employers are allowed to charge spouses and former employees a premium of up to 102% of the group rate to cover costs.

Employers have a good reason to be anxious about this new, broad federal benefit mandate. Failure to comply with COBRA results in the loss of the corporate tax deduction for health care expenses.

And, while the penalty for failure to comply is severe, no regulations have been issued yet to help employers meet the requirements of this vague law, which, for some companies, went into effect July 1.

There also was good reason for employers to be angry about COBRA. While the impact of the law is enormous—employers have had to open up their health care programs to millions of additional participants—neither the House nor Senate held a single public hearing on COBRA's health care provisions before approving the legislation.

Employers also were angry because of the way those health care continuation provisions were enacted. Instead of being considered on their own merits, the health care provisions were tacked onto an unrelated budget bill, where the provisions received little scrutiny.

In addition, employers say the 102% premium they are allowed to charge will not cover costs, noting that spouses and former employees most likely to opt for coverage are those who anticipate medical expenses.

The ink on COBRA was hardly dry when employer lobbying groups began an effort to modify the law. They tried to persuade Congress to limit, among other things, continuation coverage to traditional core medi-



cal and hospital benefits and exclude ancillary benefits like dental and vision care.

Employers also sought to deny coverage to those employees who voluntarily resigned and to require a one-year minimum service period before an employee or his or her beneficiary could elect continuation coverage.

But, those lobbying efforts failed, and Congress further expanded health care continuation coverage during the last days of the session.

Attached to yet another budget bill was a provision that requires companies in Chapter 11 bankruptcy proceedings to give retirees the right to buy lifetime post-retirement health care coverage, assuming the company offered retiree health benefits before its bankruptcy filing (BI, Oct. 27).

The company can charge retirees a premium equal to 102% of the group rate. In addition, after a retiree dies, the surviving spouse can buy coverage for up to three years.

—By Jerry Geisel

Tax law forces big benefit changes

The two-year drive to overhaul the tax code is over, but employers now must implement the sweeping employee benefit plan changes laid down by the new tax law.

Since November 1984, employers had been on the edge of their seats watching as legislators considered, discarded and refined proposals affecting benefit plans as part of their effort to craft a new tax code.

For example, employers had a difficult time keeping track of the variety of proposals to alter 401(k) salary reduction plans.

But the uncertainty ended in August when congressional conferees ironed out differences in a tax bill approved by the House late last year and the tax legislation approved by the Senate in June.

The uniform bill approved by the conferees and then cleared by the Senate and House was approved by Congress in September and signed into law on Oct. 22.

The new law, the Tax Reform Act of 1986, makes major changes to many employer-provided benefit plans (BI, Aug. 25). Those changes include:

- Lowering the maximum annual 401(k) salary deferral limit to \$7,000, down from the current \$30,000 limit, effective Jan. 1.

- In addition, the tax law creates new, tougher non-discrimination rules for 401(k) plans and makes it more difficult and expen-

sive for employees to withdraw funds from 401(k) plans before they reach retirement.

- Requiring employers to adopt new, rapid pension vesting schedules. Under the new tax law, employers will have to offer one of two minimum vesting schedules: 100% vesting after five years of service; or 20% vesting after three years of service, with vesting continuing at a rate of 20% annually until a worker is fully vested after seven years.

The new vesting schedules, which will apply to both qualified defined benefit and defined contribution plans, must be implemented by Jan. 1, 1989.

However, the new vesting schedules for pension plans offered under collective bargaining agreements will go into effect after the expiration of the agreement or Jan. 1, 1991, whichever is earlier. In addition, multiemployer pension plans can retain 10-year vesting.

- Adding some new twists to the current maximum limits on pension benefits and contributions in qualified plans.

Under the new tax law, as was true under prior law, the \$90,000 maximum on the annual benefit that can be provided through a qualified defined benefit plan will be indexed to inflation, beginning in 1988.

However, the qualified defined contribu-

tion limit will be frozen at the current \$30,000 level until the maximum defined benefit limit hits \$120,000. After that, the maximum defined contribution limit will be set at 25% of the maximum defined benefit.

- Imposing new restrictions on tax-deductible contributions to Individual Retirement Accounts.

Currently, employees covered by pension plans—regardless of their maximum income—can make tax-deductible contributions of up to \$2,000 to their IRAs.

But, beginning next year, generally only wage earners not covered by pension plans will retain the right to contribute up to \$2,000 on a tax-deductible basis.

Pension plan participants filing individual returns with adjusted gross incomes of less than \$25,000 or participants filing joint returns with adjusted gross incomes under \$40,000 also will be allowed to make a \$2,000 annual tax-deductible contribution to their IRAs, but individuals making at least \$35,000 a year and joint filers making more than \$50,000 no longer will be able to make tax-deductible contributions to IRAs.

A sliding scale will be used to determine the maximum deductible IRA contribution for individual filers earning between \$25,000 and \$35,000 a year and joint filers earning between \$40,000 and \$50,000.



Other tax law changes include complex non-discrimination rules for pension and welfare plans and a special 10% tax on most reversions from overfunded pension plans.

—By Jerry Geisel

Health care costs begin renewed surge despite plan changes

Despite the emphasis on health care cost containment during the past several years, health care cost inflation picked up speed again during 1986.

The medical care component of the Consumer Price Index rose at an average annual rate of 7.7% for the first 10 months of 1986, according to the Bureau of Labor Statistics.

Compared with the 6.2% increase for all of 1985 and the 6.2% increase for 1984, the health care inflation rate is approaching that of the early 1980s.

For example, the medical component rose 8.7% in 1983, 11.6% in 1982 and 10.8% in 1981.

However, while the rise in the medical component has increased, the rise in the overall CPI has decreased over the past few years.

The overall CPI rose at an average annual rate of only 1.5% for the first 10 months of 1986, compared with a 3.6% increase for all of 1985 and 4.3% in 1984. The index rose 3.2% in 1983 and 6.1% in 1982, after a jump of 10.4% in 1981.

Reasons cited for the recent surge in health care costs include:

- Efforts to control health care costs were relaxed as medical care inflation subsided.

- Employers have squeezed all the savings they can from cost-containment measures.

- Health care providers are raising prices to compensate for lower utilization of services.

- Since unnecessary hospital admissions have declined, patients who are admitted are sicker, requiring more expensive treatment.

- Hospitals are shifting costs to private payers, not only because the government's Medicare program no longer is fully covering certain services, but also because of the reductions in fees some employers have negotiated in their agreements with hospitals.



Earlier this year, group health insurers and health maintenance organizations said they weren't preparing to increase employers' premium rates to match the health care inflation rate (BI, June 23).

However, group indemnity rates are expected to increase between 8% and 20% in 1987, according to insurers and group health plan brokers. The reason they cited: higher health care inflation (BI, Dec. 22).

Indemnity rates increased 6% to 12% in 1986.

However, HMO rate increases are expected to be lower than indemnity rates. HMOs predict average rate increases of between 2% and 8% in 1987, compared with increases of 2% to 7% in 1986.

HMOs attribute their lower increases to utilization control and competition among HMOs.

Employers can fight the creeping medical care inflation rate and the resulting increases in their benefit plan rates, experts say, by:

- Controlling both the price of health care and utilization through preferred provider arrangements.

- Using health promotion programs.

- By emphasizing preventive care over "sick" care, employers may be able to help employees avoid expensive medical problems.

- Offering employees an experience-rated multi-option plan, with financial incentives to use managed care options. These plans usually include an indemnity plan—with copayments and deductibles—and an HMO or PPO option, which require less out-of-pocket expense by the employee.

—By Donna DiBlase

Congress considers health pool proposal

It came down to the wire, but Congress decided—at least for the moment—against requiring employers to subsidize state pools providing health care coverage to high-risk uninsured individuals.

That pool proposal died in a congressional conference committee in the last days of the session after last-minute squabbling erupted among conferees over whether the pools would be allowed to provide abortion benefits.

Employers had conducted an intense lobbying effort to stop the pool proposal, which had been attached to a House budget bill, H.R. 5300 (BI, Sept. 8). The Senate budget legislation, S. 2706, lacked a similar provision.

Employers' opposition was understandable. Had the proposal been adopted, companies could have been hit with major costs.

Under the House bill, states were supposed to set up pools by 1988 to cover high-risk uninsured individuals.

In theory, the pools were to be self-supporting, with participants paying premiums to cover the costs. Pools would have been allowed to charge a premium of up to 150% of that charged by commercial insurers for a standard individual policy.

The maximum annual deductible could not exceed \$1,000 and the maximum out-of-pocket expense per individual could not be more than \$1,500. The pools would have had to offer a ceiling for lifetime benefits of no less than \$500,000.

Pre-existing conditions would have had to be covered within six months after an individual joined the pool.

But the way the legislation was drafted, there was no way that the pools would have been self-supporting, critics said. For example, coverage for pre-existing conditions such as cancer could mean tens of thousands of dollars in medical bills for just one policyholder.

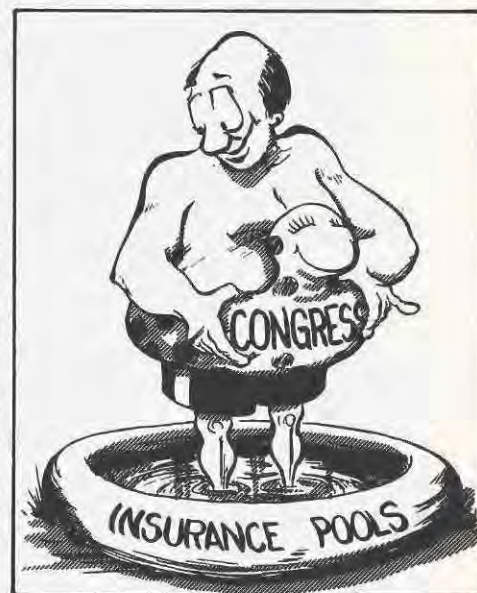
When a state pool ran out of money, employers with more than 20 employees and doing business in the state would have been hit with special assessments to pay for the losses.

Employers that refused to pay the assessments would have been liable for a special excise tax equal to 5% of the gross wages they paid.

While benefit lobbyists said they were sympathetic to the financial problems faced by the uninsured, they asked why companies, especially those that already provide health coverage to their own employees, should subsidize the costs of coverage for the uninsured.

Although the pool proposal was defeated, there is no doubt that it will return during the next session of Congress, which starts in January. Secretary of the Department of Health and Human Services Dr. Otis Bowen already has given his blessing to the pool concept—the first Reagan administration official to do so (BI, Dec. 1).

—By Jerry Geisel



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The editorial cartoons appearing on pages 10, 11, 12, 13, 21, 22 and 23 of this issue were drawn by Roger Schillerstrom, *Business Insurance's* editorial cartoonist. Mr. Schillerstrom is based in Chicago.

Retiree health benefits can be cut: Court

Employers were relieved to learn they could terminate health care benefits for retirees without violating any federal common law, following a federal appeals court ruling in a case involving White Farm Equipment Co.

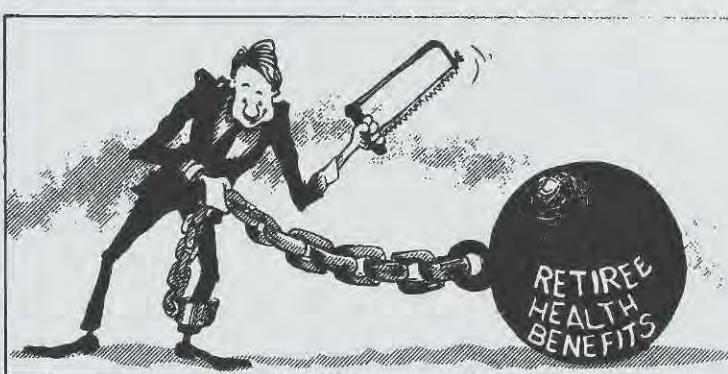
In overturning a September 1984 U.S. District Court ruling, a three-judge panel of the 6th U.S. Circuit Court of Appeals in Cincinnati ruled in April that the Employee Retirement Income Security Act does not allow a federal judge to fashion common law providing for the mandatory vesting of retiree health benefits.

Congress, not the courts, must decide whether mandatory vesting or retiree health benefits is appropriate, the appellate court ruled (*BI*, May 12).

However, the appellate court returned the case to a lower court to determine whether White Farm's benefit communications had clearly stated the company had the right to terminate the health plan and what impact, if any, other events stemming from the company's bankruptcy proceedings would have on the case.

But the court never had to make that decision. Because the preponderance of White Farm's benefit communications had stated that the company reserved the right to terminate the health plan, the case was settled out of court: White Farm was permitted to terminate its retiree welfare plan, and the retirees' lawyer was compensated for \$6,000 in out-of-pocket expenses, according to attorney John Parks of Squires, Sanders & Dempsey in Cleveland, who represented White Motor Corp., White Farm's parent.

Observers warn, however, that while the White Farm case may be settled, the underlying issue of the case—vesting for post-retirement health care benefits—is still unsettled and



probably will be a hot topic during the next session of Congress.

Observers say Washington legislators are concerned about the security of promises employers are making to provide retirees with health care benefits.

The case stems from the September 1980 bankruptcy filing by White Farm and White Motor. White Farm was sold later that year to White Farm USA Inc., a subsidiary of Dallas-based T.I.C. Investment Corp. White Farm USA agreed to assume, under certain circumstances, White Motor's obligations to White Farm employees and retirees under the welfare benefit plan.

White Farm's president initially informed retirees that the health plan would continue, but later told retirees their welfare plan would be discontinued and that they would have to

pay for continued coverage.

Some 850 non-union retirees then sued, but a bankruptcy court ruled that company documents gave White Farm the right to terminate or amend the plan.

The retirees appealed the decision and, in September 1984, U.S. District Court Judge Ann Aldrich ruled that ERISA, which protects workers' and retirees' pension benefits, also gives courts the authority to fashion common law to protect welfare benefits, including health care coverage.

The appellate court disagreed in its April 21 decision, stating that ERISA's vesting requirements for pension plans should not be extended to include welfare plans.

"We find that the statutory scheme of ERISA, though silent on this issue, counsels against the imposition by this court of an absolute rule effectively requiring mandatory vesting at retirement of retiree welfare benefits under these circumstances," the appellate court said.

The White Farm decision "helps employers because it gives them the flexibility to modernize their programs," said Dan Klein, a staff attorney with A.S. Hansen Inc. in Deerfield, Ill.

As a result of this decision, employers can add cost-sharing elements—including programs such as health maintenance organizations and preferred provider organizations—to their retirement plans, as long as plan language clearly establishes their right to do so, Mr. Klein pointed out.

It now is "left to the participants to work out their own deal" on post-retirement health plans, rather than to rely on an outside factor such as ERISA, Mr. Klein noted. "You aren't going to be stuck with something you didn't want."

—By Judy Greenwald

Manville plan

Continued from page 2

cash, receivables and \$615 million in liability insurance proceeds.

The trust also will receive \$75 million per year from Manville for 24 years beginning three years after the trust's inception.

The trust also will own or have access to up to 80% of Manville common stock and the right to 20% of the corporation's profits beginning four years after its inception and continuing as long as necessary to pay asbestos injury claims.

The plan also creates a trust for paying asbestos property damage claims that initially will be funded by \$125 million in cash, any Manville insurance proceeds exceeding \$615 million and any assets remaining in the asbestos health trust upon its termination.

In addition, the reorganization plan sets up a settlement vehicle that will attempt to settle cases brought by asbestos victims before the cases proceed in the courts. It also prohibits victims' recovery of punitive damages and calls for an injunction that would bar asbestos-related suits against the newly reorganized Manville.

The reorganization plan has been accepted by groups representing asbestos injury victims, property damage claimants, unsecured creditors and preferred shareholders. Manville common shareholders were the only class to reject the plan.

However, some Manville co-defendants and representatives of certain asbestos claimants known as the Kane objectors also have objected to various portions of the reorganization plan.

For example, eight Manville co-defendants contend a provision in the plan seriously impedes the ability of the settlement vehicle to merge with the Wellington facility, a group of asbestos producers and their insurers that is working to settle asbestos claims out of court through a separate claims-handling facility.

Specifically, the plan bars the Manville trust from merging with the Wellington facility until two years after consummation of the plan. In addition, all six trustees of the asbestos health trust must approve a merger with the Wellington facility.

In his decision, however, Judge Lifland rejected the view that these provisions limiting a merger with the Wellington facility would rapidly deplete trust assets to the detriment of asbestos claimants.

"The plan... clearly provides

"The debtor has established by convincing evidence the feasibility of this plan. Indeed, the troubled history of the Manville reorganization suggests this plan is the most feasible plan or reorganization that any party... could propose," Judge Lifland says.

that the trustees, in accordance with the fiduciary obligations, may merge the trust with another claims-handling facility," Judge Lifland said.

He added that the co-defendants' objections were unsupported by data that demonstrate the compatibility of the trust settlement facility with the Wellington facility and how a "fruitful synergism would result by merger."

In addition, attorneys representing the Kane objectors objected to a number of provisions in the plan including:

- A proposed injunction that seeks to enjoin asbestos-related suits against the reorganized Manville.

- Prohibition of punitive damages in asbestos suits brought against the trust fund.

- Estimates by Manville of the number of present and future asbestos health claims and the average cost of disposing of claims.

However, Judge Lifland ruled it was within his power to issue an injunction barring asbestos-related suits against Manville.

"The injunction sought under the plan will preserve the rights of all asbestos claimants by establishing a corpus of funds from which all can collect," he ruled.

"In the absence of the injunction, the intended beneficiaries of the reorganization will certainly suffer. Furthermore, in the absence of the injunction, one of the central purposes of Title 11, i.e., preventing the inequitable, piecemeal dismemberment of the debtor's estate, cannot be achieved.

"Therefore, this court finds that the injunction contemplated by the plan is well within its equitable and statutory authority."

Judge Lifland also noted that permitting punitive damage claims against the trust would risk depletion of the trust's assets by current asbestos injury victims at the expense of future claimants. "Such a result is inequitable on its face."

Representatives of some common stockholders, meanwhile, also objected to provisions in the reorganization plan for paying future as-

bestos claims and the ability of plaintiffs' attorneys to receive contingent fees without bankruptcy court review.

They also contend the plan unfairly discriminates against common stockholders.

However, the judge said it was not within the bankruptcy court's scope at this time to review plaintiffs' attorneys' contingent fees.

"The objectors here seek to raise a putative controversy between third parties, the merits of which may very well be subject to judicial determination at a later time and place, but which does not affect the administration of the debtor's estate," according to Judge Lifland.

"The fee arrangement between a claimant and his or her attorney is immaterial to these reorganization proceedings. As such, these objections raise collateral disputes which this court is not empowered to rule upon."

Judge Lifland also ruled that as required under the bankruptcy code, each group of Manville credi-

tors under the plan will receive more than if Manville were liquidated.

In addition, the judge ruled that confirmation of the plan will not likely be followed by Manville's liquidation or need for financial reorganization.

"The debtor has established by convincing evidence the feasibility of this plan," he said. "Indeed, the troubled history of the Manville reorganization suggests that this plan is the most feasible plan or reorganization that any party in interest could propose."

He also said that the plan does not unfairly discriminate against various creditors, including common stockholders, even though they rejected the plan.

He also rejected various challenges to the adequacy of the Manville disclosure statement regarding the plan, the adequacy of the voting procedures on the bankruptcy plan among asbestos health claimants and objections that the plan was not filed in good faith.

Last week, however, representatives of groups with objections said they would appeal Judge Lifland's decision.

"We expect to appeal," said David H. Remes, an attorney with the Washington firm of Covington & Burling who represents Manville co-defendant Armstrong World Industries Inc.

Richard Lieb, who represents 300 common stockholders, said his

clients also would appeal.

"I think it is a fair possibility the dispute may get to the U.S. Supreme Court," said Mr. Lieb, with the New York firm of Kronish, Lieb, Weiner & Hellman.

"The odds are 1,000-to-1 the Kane objectors will appeal," said Michael Goldberg, an attorney for those plaintiffs with the Washington office of the firm of Green, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg. "The opinion is a brush-off to all of the objections, not just ours."

Meanwhile, Charles E. Padgett, associate regional administrator for the SEC in New York, said the SEC is still considering whether to support any of the appeals that may be filed. The SEC, noting that portions of Judge Lifland's ruling contained factual errors and errors of law, is concerned with protecting the rights of shareholders.

The SEC does not have the right to appeal on its own behalf.

Following Judge Lifland's ruling, Manville President and Chief Executive Order Tom Stephens said in a prepared statement: "This is the official start of the new Manville. We have accepted our obligations and have challenges ahead of us. The nearly five years of uncertainty are behind us."

Manville says that it hopes all appeals will be exhausted and that the reorganization plan will be consummated by late 1987 or early 1988.



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Forum dispute

Continued from page 2

claims" against policyholders in similar circumstances, Forum says.

Therefore, Forum and its reinsurers were hindered from taking steps to control the losses by such actions as increasing premiums, reducing the number of policies issued, undertaking appropriate claims handling procedures or removing the Kroll firm from supervising claims, the insurer says.

Litigation in the case dates to April 30, when the law firm—then known as Kroll, Tract, Pomerantz & Cameron—sued Forum for \$2.7 million, claiming the insurer had not paid bills and expenses the Kroll firm says it incurred while conducting work on Forum's behalf—all relating to the transportation policies—between January 1985 and March 31, 1986.

Forum countered on June 9 that under a September 1981 fronting arrangement between Forum, the MGA and the London reinsurers, payments to the law firm were the responsibility of the reinsurers.

Forum also took the litigation one step further by bringing its reinsurers into the fray, naming them as third-party defendants in its response to the Kroll firm's suit.

These underwriters are: Anthony A. Cassidy, a principal in underwriting agency Cassidy, Davis Ltd. and the reinsurers' lead underwriter; Ralph Rokeby-Johnson, an underwriter for underwriting agency R.W. Sturge & Co.; and other unnamed Lloyd's of London underwriters.

But on the same day the Lloyd's underwriters were scheduled to respond, Forum voluntarily released them from the action "without prejudice."

However, while the dismissal—approved on Aug. 20 by Judge John E. Sprizzo—removed the Lloyd's underwriters from the suit, it permits Forum to sue the underwriters later for any related dispute. If Forum is found liable for the law firm's bills, the insurer has asked the court that it be reimbursed by the London underwriters pursuant to their reinsurance agreements.

Under those agreements, Forum ceded 87.5% of ultimate net losses up to \$350,000 per claim—including expenses billed by the law firm—to the London underwriters.

The insurer initially had retained nothing on losses up to \$25,000 but later kept 12.5% on losses in this layer as well, ceding 87.5% to other non-Lloyd's underwriters, including Mead Reinsurance Corp. of Dayton,

Ohio.

Mr. Cassidy refers to the program as "the Darrah 'disaster'" in a November 1985 letter to a Forum attorney. In a telex to the Kroll firm a month later, that same Forum attorney made note of the "horrendous results" that the program produced for Forum.

Forum suspended the transportation liability program on Jan. 1, 1986, pending results of a review of the company's loss reserves by a national actuarial firm, explained a Forum manager familiar with the program.

Forum management could not believe the reserves were as insufficient as the actuaries found them, so it called in a second firm to review them, said the Forum manager.

Through March and into April, Forum still hoped to resume the program, but when the second review revealed even worse news than the first, management decided to discontinue the program permanently, the Forum manager said.

A third audit of claim files conducted at the Kroll firm's offices in early 1986, requested by the London underwriters, concluded that reserves established or recommended by the law firm were regularly substantially lower than the indemnity amounts ultimately paid, either by judgment or settlement.

Of 584 personal injury and property claims for which the firm had reported a reserve amount as of 180 days prior to resolution, 46.2%—or 270 cases—were underreserved by at least 50%, according to the audit, conducted by George R. Reid II, a New York attorney at Lord, Day & Lord.

There was a total understatement of more than \$6 million, the audit determined.

But the Kroll firm calls the review "incomplete and misleading" and says the analysis is "selective and fragmented," according to court papers.

The firm points out that the audit does not disclose the results in the other 314 claims examined, nor in thousands of other claims not examined.

In his affidavit, Elliot M. Kroll, a managing partner in the law firm, contends that—considering Forum assumed little or no risk for losses in the program—the insurer could not have been damaged by the alleged reserve inadequacies, "much less damages in an amount of \$8 million."

Forum has not shown how it was damaged by the reserve estimates prepared by the law firm, Mr. Kroll maintains.

Furthermore, Mr. Kroll points out that

Forum—not the law firm—is ultimately responsible for assessing claims. The law firm's assessment is merely an opinion, whose validity Forum was responsible for determining, according to Mr. Kroll.

The audit, which was performed with the law firm's consent, also concluded that the legal fees and expenses the law firm billed Forum for its work on property damage claims regularly amounted to "a substantial percentage" of the ultimate indemnity payment.

For example, of 402 closed property claims, the average amount of fees and disbursements billed by Kroll was \$1,247 per claim—71% of the \$1,766 average claim settlement or judgment, according to the audit.

In his affidavit, Mr. Kroll said: "There is absolutely no relevance or logic to a comparison between the extent of services rendered in a defense of a claim and the amount of the ultimate settlement or judgment."

Mr. Kroll continued: "If a firm defends a suit so well that the amount of judgment against the client is for 10 cents, does it mean that if the law firm charged fees of \$1,000, that those fees were excessive?"

Mr. Reid of Lord Day declined to discuss the audit beyond what court papers disclose.

The Kroll firm is represented by Shea & Gould in New York, which referred calls to Mr. Kroll, who declined to discuss the matter.

Forum also is requesting the court to order the law firm to turn over approximately 500 files on litigation involving Forum's policyholders. The insurer claims it has a right to all information concerning the defense of its policyholders, regardless of which party may have agreed to pay the firm's fees, and needs the files before it can replace the law firm with another.

To encourage the court to issue such an order, Forum has offered to post a surety bond—which probably will be issued by American Casualty Co. of Reading, Pa., according to court papers—for the full \$2.7 million in disputed fees.

But in his affidavit, Mr. Kroll says, "Forum purports to walk a very thin line by asserting that it had a duty to provide a defense but that it has no duty to pay for such defense."

The law firm maintains that any party requesting possession of files must come forward and state unequivocally that it is the client. But for Forum to do that, it would risk being held liable for the legal fees, the law firm reasons.

In the same filing, the law firm contends it "was hired to render legal services to Forum, and that such services were rendered to Forum at Forum's direction and with its express acknowledgment."

The firm claims to have kept Forum systematically informed of the status of various matters by sending interim statements, status reports and correspondence regarding case management.

"Despite Forum's contention that it did not retain the Kroll firm, Forum's liability for the legal services rendered to it by the Kroll firm could not be clearer," the law firm says.

But Forum says the law firm did not seek payment from the insurer until August 1985 and then demanded payment for services rendered as far back as two years prior.

And Forum claims in one of its court filings—corroborated by court affidavits and related correspondence—that it has been advised by the Lloyd's underwriters not to pay the fees, pursuant to its reinsurance treaties.

The underwriters reassured Forum that they will act on the insurer's behalf in the case, according to the Forum filing.

For example, a month after Forum was asked to pay bills submitted by the firm, Lloyd's broker Derek Bryant Insurance Brokers Ltd. instructed the insurer through Darrah to not pay the bills, because "these are a matter of dispute between (the London underwriters) and the Kroll office."

Derek Bryant placed the reinsurance in London.

Forum notes in the court filings that it was at Bryant's request that it agreed to front the policies.

There is essentially no dispute between Forum and the reinsurers, says Gerald Dennis, Forum's general counsel in Schaumburg, Ill.

In fact, a letter, included in the court papers, to Forum from Mr. Cassidy in November 1985 advised the insurer: "If you elect unilaterally to pay these fees you will have ipso facto completely altered the Forum's position in my eyes as to their responsibilities in several different areas that concern this treaty."

Mr. Cassidy also wrote, "I would ask you to accept that when underwriters are seeking to protect their own interests, so simultaneously will they be protecting those of Forum."

The London underwriters met with Kroll attorneys late last year to discuss the dispute

Continued on next page

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* Source Business/Occupational breakdown of qualified circulation, May 26, 1986 issue, as submitted to BPA for June 1986 BPA Publisher's Statement.

Continued from previous page
and paid the firm \$750,000 in January 1986, while reserving their rights, court documents show. In one of many court filings, Forum cites this payment as evidence of the London underwriters' responsibility for the firm's legal bills.

Forum also notes that the reinsurance treaties recognized the law firm's relationship with the London underwriters by authorizing the firm to accept service of process on their behalf if litigation ever arose between them and Forum.

But Mr. Kroll says unequivocally that no agreement ancillary to the reinsurance treaty existed that would have required anyone besides Forum to pay the firm's bills. He also says that by maintaining it is not liable to the Kroll firm, Forum is acting contrary to the fundamental premise of reinsurance, under which reinsurers reimburse insurers for all or part of

what they pay policyholders for losses and attorneys for defense costs.

Neither Mr. Rokeby-Johnson nor Mr. Cassidy, who led the first \$75,000 layer excess of \$25,000, would comment.

But Forum maintains that the law firm was routinely paid by Messrs. Cassidy and Rokeby-Johnson, along with other underwriters, and had been retained as defense counsel before Forum came aboard. The Lloyd's underwriters and Darrah had used Kroll previously for a similar trucking liability program, under which policyholders assumed self-insured retentions of \$25,000, according to Forum.

Forum had no role in selecting the firm nor in negotiating its fees for work done on behalf of the program's policyholders, it says.

Forum says Kroll's bills routinely were submitted to Darrah, not to Forum, and were paid with

checks issued by Darrah. The bills were then forwarded to London broker Derek Bryant, Forum says. Any increases in the hourly rate charged by Kroll had to be approved by the reinsurers, not by Forum.

As evidence that Darrah's relationship with the law firm superceded Forum's, Forum submitted several court affidavits that detail an incident in December 1983:

Forum had wanted copies of case reports that Mr. Kroll was sending to Darrah. Mr. Kroll said he was willing to provide the copies but that his agreement was with Darrah and he would therefore first need Darrah's approval, according to the court affidavits of several parties involved.

In his affidavit, Mr. Kroll says his desire to check with Darrah first was "a courtesy" to the MGA and "in no way affects or alters Forum's role and responsibilities in the program."

Lloyd's underwriters hard-hit by transportation liability losses

By STACY SHAPIRO

LONDON—Two U.S. transportation liability insurance programs—one of which has spawned numerous legal disputes stateside—are sending Lloyd's of London underwriters reeling from losses.

Lloyd's underwriters are expected to pay out more than \$115 million from what is known in London as the Will Darrah Motor Liability Account, according to an estimate by Chatset Ltd., a private company that produces tables of Lloyd's results each year.

Already, between 25 and 30 Lloyd's syndicates have incurred losses of \$75 million—including paid losses and loss reserves—for Darrah trucking losses in 1983, the last year for which accounts have closed under Lloyd's three-year system, said Chatset.

The syndicates also will suffer another \$40 million in losses for 1984, the accounting year just closing Dec. 31, Chatset estimates.

The losses stem from two programs underwritten by Will Darrah & Associates, a managing general agency in Myrtle Beach, S.C.—now operating as part of Quantex Corp.—and placed in Lloyd's by Lloyd's brokers Derek Bryant Insurance Brokers Ltd.

Under the first program, started in 1976 and canceled in April 1985, Darrah underwrote on behalf of Lloyd's underwriters a truck insurance package to cover liability, theft and collision risks for large trucking firms. The program provided a \$325,000 limit excess of a \$25,000 self-insured retention.

The "Self-Insured Retention" program was written directly for Lloyd's under a binding authority held by Darrah approved by the Committee of Lloyd's.

But losses from this program have not been as severe as losses under a second Darrah program begun in September 1981 and continued through December 1985. This program was offered to smaller trucking firms, with limits of \$350,000 with no self-insured retention.

This second program was fronted by Forum Insurance Co. and reinsured by Lloyd's underwriters, most of whom were already on the SIR program.

New York attorneys at Kroll, Tract, Harnett, Pomerantz & Cameron recommended the reserves that Forum should set for claims against its policyholders. Those evaluations—and the fees charged for performing them—have given rise to several disputes in the U.S. District Court in New York (see story, page 2).

"The scheme built up via Forum brought a lot of problems in its train," said Richard Seymour, who has been chairman of Derek Bryant since Mr. Bryant died in June. "And the knowledge of the problems failed to come to underwriters' attention quickly enough. My own judgment is that if the underwriters had known the severity of the losses, they would have done something about it."

However, Derek Bryant is an innocent party in this affair, he said. "You can only give underwriters the knowledge you have," he said, pointing out that Derek Bryant presented all the information available to it to the underwriters. "There has been no concealment as far as we are concerned."

There is no current legal action against Derek Bryant, he added.

Mr. Seymour will not speculate on the premiums and losses produced on each of the programs.

However, at least eight Lloyd's syndicates with Darrah trucking losses—particularly from the Forum program—have asked syndicate members to contribute money this year to cover 1983 losses, according to syn-

dicate reports collected by Chatset.

Those include syndicate 210, managed by R.W. Sturge & Co.; syndicate 10, managed by Langton Underwriting Agency Ltd.; syndicate 582, managed by Cassidy Davis Ltd.; syndicate 471, managed by R.K. Harrison & Graves Ltd.; and syndicate 584, managed by Bankside Syndicate Ltd.

Some syndicates were hit so heavily by Darrah losses that they specifically refer to Darrah in their most recent annual accounts. For example, in the 1983 annual reports:

• Lloyd's underwriter F.J. Austin, who took over syndicate 471 from David Graves in 1983, calculated the syndicate's loss from Darrah at \$5.9 million, for a 469% loss ratio.

• Anthony A. Cassidy, underwriter for syndicate 582 managed by Cassidy Davis and who led the first layer on the Forum program in Lloyd's, told members that the syndicate's 1983 losses included two serious problems: "our involvement in the Forum reinsurance treaty covering trucking liability risks and, secondly, the United States liability book as a whole."

"It is now all too evident that the sheer scale of the Darrah 'Forum' loss to insurers is such that many involved in whatever capacity have suffered untold damage in terms of reputation, health and wealth," he continued.

Mr. Cassidy also has predicted to Lloyd's members that members will be hit with more Darrah losses this year when Lloyd's 1984 account closes. However, he said, "Although the Forum treaty lives on to haunt us in our 1984 account, the income is currently 15% less than in 1983. We must, however, anticipate another disastrous settlement even though claims are now being handled more expeditiously."

Mr. Cassidy refused to comment on his involvement with Forum.

• Ian B. Gavine, Lloyd's underwriter at I.B. Gavine & Others, formerly known as Langton, told syndicate 10 members in his report that the Darrah account "caused serious concern." The syndicate had a small share of the account that produced premium of \$280,000 but losses of \$1.5 million, including reserves for incurred-but-not-reported claims, wrote Mr. Gavine, who did not return phone calls to discuss the account further.

Syndicate 10 members were asked to pay 1,689 pounds (\$2,432) for every 10,000 pounds (\$14,400) of capacity underwritten in 1983, according to Chatset.

• C.W. Hankin, the Lloyd's underwriter who took over syndicate 584/667 after the Darrah business was written in 1983 by underwriter D.E. Harman, told syndicate members: "Now comes the most difficult task of explaining 'Darrah' to you; it cannot be explained simply."

"The statistics provided by Darrah had always been satisfactory up to and including the time when the business was renewed in 1984. It was only later in 1984 that a huge deterioration was revealed in the figures, which, on further investigation, indicated that losses had been underreserved for years."

Members of Syndicate 584 were asked to pay 5,586 pounds (\$8,044) for every 10,000 pounds of 1983 capacity, according to Chatset. Mr. Hankin, who would not comment for this story, left the 1983 account open due to uncertainties about the Forum losses.

Gary Parks, chief executive officer of Quantex Corp., Darrah's parent, declined to comment on the Darrah trucking program.

National Union examination

Continued from page 2

answers to inquiries and there were lengthy delays before receiving requested files and data runs.

But National Union always was willing to cooperate, given enough time, asserted David Smith, the insurer's vp and associate general counsel. "Our feeling has been to cooperate from the beginning."

However, "examiners showed up on Sept. 8," just three days after National Union received an Aug. 27 notice of the exam, which arrived on Sept. 5, Mr. Smith said.

According to the NAIC Examiner Handbook, an insurer should be given at least 60 days' notice before examiners are sent to an insurer, he said.

"So we virtually got no notice," Mr. Smith said, adding that as a result there wasn't enough time for National Union personnel to produce the data runs and other information the examiners had requested.

Nevada Insurance Commissioner David A. Gates discussed the situation with National Union representatives during the NAIC winter meeting in Orlando earlier this month.

"We were assured of cooperation," Mr. Gates said. "Now we'll wait and see what happens."

If that cooperation had not been promised, Mr. Gates was prepared to withdraw the examiners, write an unfavorable report and let the matter go to a hearing.

National Union was one of three insurers targeted by the Western Zone of the NAIC in October 1985 for the special market conduct studies. The other insurers, whose exams were completed earlier this year, were Insurance Co. of North America in Philadelphia, a CIGNA Corp. subsidiary, and Colonial Penn Insurance Co. of Philadelphia, a subsidiary of Colonial Penn Group Inc.

The exams were an unprecedented move by state insurance regulators, who have been under pressure from legislators and consumers to solve the property/casualty insurance availability problems.

The three insurers were chosen during a Western Zone meeting of the NAIC, during which insurance regulators determined the insurers were using unapproved policy forms and arbitrarily canceling policies midterm.

While domiciled in Pennsylvania, the three insurers are licensed in all 50 states.

"At the time, it was... a hard market," Mr. Gates said. "These (exams) were intended to send a message to the insurance industry to slow down."

According to Mr. Gates, who at the time was chairman of the Western Zone: "Regulators have to demand responsibility in the marketplace."

The exams were slated to begin Dec. 2, 1985, and take about four weeks to complete. The project, however, took longer than expected because examiners were not available, Mr. Gates said.

"Basically it was really nothing. They asked a few questions and we answered," Richard Bird, deputy general counsel of Colonial Penn, said of the examination of his company.

And, according to Commissioner Gates, the CIGNA exam centered on a rating issue in Washington.

"Further discussion clarified that issue," he said.

update

Bendectin award overturned

Continued from page 2

Thomas Penfield Jackson said scientific testimony presented during the trial established it was unlikely the birth defects were caused by the drug.

Of the eight other suits involving Bendectin that have gone to trial in the United States, the company has won five, one ended in mistrial, one ended in a hung jury and the eighth is pending appeal.

Merrell Dow, which introduced Bendectin in 1956, stopped producing it in 1983. At that time, the company was paying \$10 million annually for product liability coverage for the drug, which was generating only \$12 million in annual sales, a spokesman said.

Merrell Dow's primary product liability insurance was written by parent-owned Dorinco Reinsurance Co.; excess layers were placed primarily with Lloyd's of London underwriters (BI, June 20, 1983).

Heath taps Fielding directors

LONDON—Lloyd's of London broker C.E. Heath P.L.C. is replacing four of the five executives who left two weeks ago in a mass defection with directors of Fielding Insurance Holdings Ltd., the Lloyd's broker Heath acquired in November.

The new officers are: Callum Stewart, chairman of Heath's aviation and aviation reinsurance divisions; Michael Kier, chairman and managing director of the Latin America division and international; John Mackenzie-Green, managing director of C.E. Heath (International); and Anthony Money, chairman of C.E. Heath (Insurance Broking). Paul Hughes, who has been in charge of Heath's North American operations following the defection last September of Heath's North American team to Stewart Wrightson P.L.C., will become Heath's chief administrative director.

Twenty-eight Heath employees left Heath two weeks ago to join Citicorp Insurance Brokers Ltd.

Briefly noted

A New York state judge has ordered **The Heartland Group Inc.** to show cause why it should not be liquidated after a finding by the state Insurance Department that Heartland was insolvent by \$14 million as of year-end 1985. Also, **The Burt Syndicate Inc.** and **The First New York Syndicate Corp.** have until Jan. 28 and 29, respectively, to show cause why they should not be liquidated. All three syndicates are members of the New York Insurance Exchange. . . . The Supreme Court of Missouri unanimously ruled that a firefighter is not entitled to collect damages for physical injuries and mental distress allegedly suffered during rescue efforts following the 1981 **skywalk collapse** at the Kansas City Hyatt Regency Hotel.

PBGC premiums

Continued from page 1

By contrast, the administration agreed on the concept of a variable premium rate structure for the PBGC late this month, a well-informed source said.

While some last-minute details remain to be worked out, at least one and possibly two fixed rates would be set for well-funded plans.

For example, plans that are at least 120% overfunded would pay an annual PBGC premium of about \$10 per plan participant.

In addition, a second basic rate might be established for plans that are more than 100% funded but less than 120% overfunded. The premium for these plans would be a few dollars—perhaps \$2 to \$5—more than the premium charged for the best-funded plans.

Alternatively, there might be one premium rate for plans that are at least 100% funded.

Underfunded plans would pay the fixed, basic premium plus an additional premium based on a formula to be established.

Under the current proposal, the formula

would be designed so the additional premium would be roughly \$10 per \$1,000 of underfunding per participant.

For example, assume a plan with 100 participants was underfunded by \$100,000. The \$100,000 would be divided by 100 participants, which equals \$1,000. Thus, the additional premium would be \$10 per plan participant. This would be paid on top of the basic premium, so the total premium could equal about \$22 to \$25 per plan participant.

However, the maximum premium for underfunded plans would be capped at \$100 per plan participant. Sources say the administration wants to set the premium high enough to encourage better plan funding without the premium being too great a financial burden on the employer.

Employers' interest in a variable-rate PBGC premium has been increasing as the premium has escalated because the PBGC is taking on more plan liabilities than it anticipated, boosting the agency's deficit.

In March, Congress raised the premium to the current \$8.50 from \$2.60. And PBGC Executive Director Kathleen P. Utgoff has said the premium might have to be boosted

to \$20 to \$25 if financially troubled LTV Corp. terminates several massively underfunded plans and transfers more than \$2 billion in liabilities to the PBGC.

Others say that a \$40 to \$50 premium is possible if the PBGC continues to be hit with the terminations of large underfunded plans.

As premiums escalate, employers with well-funded plans increasingly resent that they are charged the same rate as those with poorly funded plans.

"It is fair to say that there is increasing interest in a variable-rate premium, given the new appreciation that the PBGC premium could go much higher," said Dallas Salisbury, president of the Employee Benefit Research Institute, a Washington-based benefits think tank.

Eventually, if the premium reaches a certain level, employers with well-funded plans might terminate those plans and set up defined contribution plans, which are not covered by the PBGC.

"There is an absolute limit to what a given company will be willing to afford to support its pension plan vis a vis the PBGC premium," said Mark Ugoretz, executive

director of the ERISA Industry Committee, a Washington-based benefits lobbying organization.

The PBGC's Ms. Utgoff, while not commenting specifically on the budget proposal, said a variable rate premium would be much fairer than the current flat rate system and would be in the public interest.

"It is time to stop taxing employers with well-funded plans in order to stop subsidizing employers who choose to underfund their plans," Ms. Utgoff said. "We must stop subsidizing employers who choose to underfund their plans. Otherwise, the healthy employers with well-funded plans will leave the defined benefits system, and that is not in the public interest."

The agency's deficit—the difference between benefits it must guarantee to participants in terminated plans and assets—now stands at \$2.4 billion, up from \$1.3 billion a year ago. The deficit could rise to more than \$4 billion if LTV terminates several underfunded plans next year.

Unless more revenue is collected, the agency could have to begin selling off assets by 1989, a spokeswoman for the PBGC said.

Rhine River pollution

Continued from page 1

West Germany, the country hit worst by the aftermaths of the Sandoz spill, has yet to assess the full amount of damage from the disaster, West German Environmental Minister Walter Wallman told the meeting.

"We expect to have detailed information early next year," he said.

The Rhine ministers expect all claims against Sandoz to be filed with the Swiss government by May, when the ministers will meet again to discuss a report on ways to repair the Rhine's ecological system and ways to prevent future pollution.

Sandoz, which was not represented at the Rotterdam meeting, will pay all "reasonable" claims for which the company feels it is legally responsible, a Sandoz spokesman in Basel told *Business Insurance*.

"What damage has been caused directly by the fire, of course we will pay for," the spokesman said.

But, he added: "We have to be sure that there is damage from the pollution and that it is our pollution. We will pay whatever we are legally responsible for."

So far, about 100 claims have been filed with the company, which "are relatively small and mostly from Switzerland," the spokesman said.

Also, Swiss President Egli said, "Sandoz is already talking to fishing federations and has come to a number of agreements."

But, the French claim has not yet been filed with Sandoz, said the Sandoz spokesman.

Sandoz has close to 500 million Swiss Francs (\$299 million) in general and product liability insurance, including coverage for pollution incidents.

The company's primary liability insurance, with limits of 1 million Swiss francs (\$600,000), is led by Gerling Konzern Allgemeine Versicherungs A.G. of West Germany. Winterthur Swiss Insurance Co. in Winterthur, Switzerland, also participates in the primary layer.

Sandoz's excess liability coverage is led by Winterthur, and Gerling also participates in the excess coverage.

Although the Sandoz disaster is the most serious single spill into the Rhine in recent years, environmental ministers said at the meeting that Sandoz is not the only company that has polluted the river.

Just five hours before the Sandoz fire, another Swiss chemical manufacturer in Basel, Ciba-Geigy A.G., spilled a small amount of chemicals into the Rhine.

However, Ciba-Geigy has said it does not expect to pay any damages as the result of the accident.

Also, on Dec. 18, the day before the ministers met, West German conglomerate BASF A.G. was reported to have spilled 1,100 pounds of a non-toxic chemical into the Rhine.

In fact, the ministers were presented by the city of Rotterdam with the findings of a 1985 study by the Dutch Rhine investigation team Forschung Rhein-grund that concluded that 14 companies along the Rhine are considered heavy polluters.

Ten of these companies are based in West Germany, two are in France, one is in Switzerland and one is in the Netherlands, according to Rotterdam officials, who would not release the names of the companies.

The city of Rotterdam said in its report that it has invited these 14 companies to a meeting in Rotterdam to discuss the pollution of the Rhine. But, only four companies so far have agreed to meet, the city said.

The pollutants in the river in 1985, according to the report, included 8.5 tons of cadmium, 403 tons of

chromium, 350 tons of copper, 243 tons of lead and 2,835 tons of zinc.

Because the Rhine is connected to all the waterways in the Netherlands and empties into the North Sea in Rotterdam, the Dutch government has had to spend 5 billion guilders (\$2.2 billion) for hundreds of water purification plants throughout the country, said Nee-lie Smit-Kroes, the Dutch minister of transport and public works.

In addition, the Dutch government will spend another 200 million guilders (\$88 million) on a site to store poisonous silt from the river, she said.

According to a spokesman for the city of Rotterdam, the Dutch government will consider taking legal action against non-Dutch companies if they do not help clean up the Rhine.

"Holland should not be the only one to solve this problem," said Ms. Smit-Kroes. "The countries along the Rhine have a collective responsibility" to clean up the pollution.

In the future, however, European companies that pollute the Rhine and other European rivers may be held strictly liable for damages, *Business Insurance* has learned.

The European Commission may introduce a European Community directive to impose absolute liability for water pollution on companies based in the EC, Stanley Clinton Davis, European commissioner for the environment, said after the meeting of the ministers.

Mr. Clinton Davis said he wants to introduce a "strict compensation system" based on a "polluter pays" principle.

"I would like to see a system of liability on Europe's waterways that operates like that at sea with oil pollution," he said. "A system of liability needs to be made effective and swift."

Under the proposed directive, the companies responsible for polluting a river would be liable for gradual as well as sudden and accidental spills, he said.

"If damage is caused by a particular polluter, even if its discharge is below legal limits, it must be liable," he added.

Strict liability for water pollution may cause serious insurance availability problems for European corporations, admitted Mr. Clinton Davis. Already, many London and European insurers are refusing to cover gradual pollution under general liability insurance policies.

Therefore, the new EC directive also may include limits of liability and/or require companies to set up an industry insurance pool to cover the pollution risks.

"If necessary, a top limit of compensation, or an industry pool, might have to be arranged to ensure adequate provisions are met," he said.

Meanwhile, the commission will be "extremely tough" on EC member states that have not yet adopted a 1982 EC directive on "major hazards of certain industrial activities," said Mr. Clinton Davis. That directive imposes strict rules on the storage of hazardous chemicals.

Any new directive on water pollution will not affect Swiss companies like Sandoz, however, because Switzerland is not a member of the EC.

But the Swiss government is tightening its own rules and regulations, particularly those concerning the manufacturing and storage of harmful substances, along the lines of EC legislation, said Mr. Egli.

"We will probably have to have some amendments in our legislation pertaining to harmful substances and hope to accelerate measures dealing with accidents," the Swiss president said at the meeting. "We will pay attention to the EC directive and attempt to integrate it into our own legislation."

'We have to be sure that there is damage from the pollution and that it is our pollution,' a Sandoz spokesman says.

European risk managers forming new reinsurer

By DENISE CLAVELOUX

BRUSSELS, Belgium—European risk managers finding it difficult to place liability insurance in the conventional insurance marketplace are forming their own reinsurance company.

The new company, to be called either European Pooling System S.A. or EPS Reinsurance Co., will be incorporated in Luxembourg by Jan. 15, said Henk W. Arntz, manager of the captive insurance broker division of Dutch chemical company AKZO.

The reinsurance company, which is being established to write reinsurance for risks of shareholder-members, is being formed under the auspices of the Assn. Europeenne des Assures de l'Industrie. The association encompasses risk management associations in Belgium, France, the United Kingdom, Italy, the Netherlands and West Germany.

This is the second major company to be set up during the last two months in Luxembourg to cover liability risks for European corporations: American International Group Inc. is forming European American Excess Reinsurance to provide excess worldwide general liability coverage to European multinationals that purchase the company's shares (*BI*, Nov. 10).

EPS will write only liability reinsurance for difficult-to-place risks such as accidental pollution and products exported to the United States, Mr. Arntz said.

European risk managers began studying the need for new capacity last March through the AEAI when it became apparent that it was going to be difficult to find liability insurance in 1987 for certain industries and risks, said Mr. Arntz, who is vp of AEAI.

"Already the insurance market has been greatly affected by recent catastrophes like the pollution of the Rhine and the nuclear accidents at Chernobyl," said Mr. Arntz. "The insurance companies are taking a different view of certain industries as a result."

"Both European and American companies have become increasingly concerned that they cannot obtain the coverage they want at a reasonable price," added Dick Vlasblom, European insurance manager for Dow Chemical Corp., who supports the new company.

"There looks like there is a lot of support" for the new reinsurer, Mr. Vlasblom said. "But it has been rather a chicken and egg problem. We have decided to go ahead and start the company, otherwise we will never see how many companies are really interested in supporting us."

EPS initially will reinsure limits up to 50 million European Currency Units (\$51.5 million), provided the first 10 million ECUs (\$10.3 million) is insured through the conventional insurance market, Mr. Arntz said.

The company is being formed as a reinsurer to comply with national regulations requiring that insurance be purchased locally.

So far, 10 European corporations are interested in becoming shareholders of the company; the companies include AKZO and the European division of Dow Chemical Corp., he said.

Any European corporation or its affiliate or a European subsidiary whose parent is based outside Europe can become a shareholder, he added.

Although shareholders can come from any type of industry, Mr. Arntz said he believes most will be chemical, pharmaceutical and product manufacturers.

The project has the support of The European Confederation of Chemical Industries, according to its president, A.A. Loudon.

"The chemical industry accepts its responsibility for compensation of damages resulting from faulty operations when causation is clearly established," Mr. Loudon said in a statement. "Adequate insurance cover is necessary (and) the present liability insurance crisis is a matter of concern since it becomes increasingly difficult to obtain the required cover."

European risk managers have not decided yet how much each company will have to contribute to become a shareholder of EPS.

However, the new reinsurer's initial capitalization will be at least 50 million Belgian francs (\$1.2 million), which is required by Luxembourg law to set up the company, said Mr. Arntz. Further capitalization "is to be discussed during one of our next meetings," he added.

Once the company is established, each policyholder will be required to pay 10% of its first annual premium into EPS's capital fund, he said.

The manager of the reinsurer is not yet appointed, but it is likely to be one of the captive insurance managers already operating in Luxembourg, said Mr. Arntz. The board of directors will be made up of one representative from each country where a member of the reinsurer is based. These representatives probably will be members of risk management associations in their own countries, said Mr. Arntz.

Hospital lengths of stay decreasing: Study

By ALISON KITTRELL

NEW YORK—The average length of hospital stay is decreasing nationwide, but the average cost of stay continues to rise, a recent survey shows.

Equicor-Equitable HCA Corp., a joint venture of the Equitable Life Assurance Society of the United States and the Hospital Corp. of America, surveyed 2,362 hospitals nationwide for their data regarding the year ending Dec. 31, 1985.

The "1986 Hospital Daily Service Charges" survey reveals that the average length of hospital stay nationwide decreased 3%, to 6.4 days in 1985 from 6.6 days reported in the 1984 survey.

Decreases in length of stay were reported in 37 states and the District of Columbia. Only eight states reported increased lengths of stay, and five states reported no change.

However, the average patient charge per stay rose 7.5%, to \$3,840 in 1985 from \$3,571 in 1984. Increases were recorded in 40 states, and 10 states and the District of Columbia reported decreases.

Explaining the reasons for the decrease in length of stay, Joseph C. Hutts, Equicor's chief operating officer, said, "These changes are partly a result of recent federal, state and industry changes in reimbursement policy."

And, "greater movement of patients to outpatient treatment facilities, the growing use of home care, new medical technologies and procedures, and increasing hospital efficiency all have contributed to the overall decline in the length of hospital stays," he said.

However, Mr. Hutts added, "While the decreasing length of stay is having a significant impact on containment of overall health care costs, hospital charges in most states are still sharply increasing."

Washington, D.C., reported both the highest length of stay and the highest cost of

stay, despite decreases in both categories between 1984 and 1985.

The District of Columbia reported an average length of stay of 8.5 days in 1985, down 2.3% from 1984. And, the nation's capital reported an average cost of stay in 1985 of \$6,605, down 9.2% from 1984.

California reported the second-highest average cost of stay: \$5,107 in 1985, down 3.4% from 1984.

Other states reporting higher-than-average costs of stay in 1985 and compared with 1984 were Michigan, \$4,851, up 12.5%; Florida, \$4,615, up 10.6%; Massachusetts, \$4,527, up 12%; Illinois, \$4,502, up 7.3%.

Also, Nevada, \$4,484, down 1.1%; Pennsylvania, \$4,389, up 4.2%; New York, \$4,183, down 1.9%; Oregon, \$4,061, up 26.6%; and Arizona, \$4,054, up 8.4% from 1984.

And, Connecticut, \$4,054, up 7.1%; Alabama, \$3,904, up 10.1%; Hawaii, \$3,864, down 5.9%; and Missouri, \$3,861, up 5.9% from 1984.

The highest percentage increase in average cost of stay was reported by Louisiana, with a 34% increase to \$3,836.

Other states reporting double-digit percentage increases in the average cost of stay—in addition to Oregon, Michigan, Massachusetts, Florida and Alabama, noted above—were West Virginia, up 27% to \$3,121; Alaska, up 25.1% to \$3,747; Georgia, up 17.2% to \$3,310; Kansas, up 11.3% to \$3,336; Tennessee, up 10.9% to \$3,822; and Arkansas, up 10.3% to \$3,221.

Double-digit percentage decreases in average cost of stay were reported by South Dakota, where costs fell 26.8%, to \$2,180 in 1985, and Maryland, where costs fell 12.4% to \$3,196.

South Dakota also reported the lowest average cost of stay. Other states reporting average costs of stay less than \$3,000 were Wyoming, \$2,458; Idaho, \$2,511; Mississippi, \$2,587; Kentucky, \$2,720; North Carolina, \$2,769; Iowa, \$2,879; and Montana, \$2,922.

New York reported the second-highest length of stay, 8.3 days, down 6.7% from 1984.

Other states reporting higher-than-average lengths of stay were Massachusetts, 7.9 days, down 2.5% from 1984; Rhode Island, 7.6 days, unchanged from 1984; New Jersey, 7.4 days, down 1.3% from 1984; and Connecticut, 7.2 days, unchanged from 1984.

Also, Illinois, 6.8 days, down 1.4%; Maryland, 6.8 days, down 11.7%; Pennsylvania, 6.7 days down 6.8%; and Delaware, 6.6 days, down 14.3% from 1984.

And, Michigan, 6.6 days, down 4.3%; Missouri, 6.6 days, down 5.7%; Ohio, 6.6 days, down 1.5%; Florida, 6.5 days, down 1.5%; Tennessee, 6.5 days, down 1.5%; and Vermont, 6.5 days, up 1.6% from 1984.

Alaska reported the shortest average length of stay with 4.1 days, down 2.4%.

Other states reporting average lengths of stay of fewer than five days were Idaho, 4.5 days; South Dakota, 4.6 days; Wyoming, Washington state, Utah and Oregon, each 4.8 days; and New Mexico, Nevada and Colorado, each 4.9 days.

The largest percentage decrease in length of stay was reported by South Dakota, down 24.6%. Other states reporting double-digit percentage decreases in length of stay—in addition to Delaware and Maryland, mentioned above—were Indiana, down 13.2% to 5.9 days; Nebraska, down 12.7% to 5.5 days; Minnesota, down 12.1% to 5.8 days; and North Dakota, down 10.3% to 5.2 days.

No state reported a double-digit percentage increase in average length of stay.

The 10 cities that reported the highest average cost of stay in 1985 were Ann Arbor, Mich., \$10,744; Palmdale, Calif., \$8,585; Northridge, Calif., \$8,327; North Hollywood, Calif., \$8,271; Galena Park, Texas, \$8,040; San Francisco, \$7,900; Zion, Ill., \$7,792; Kalamazoo, Mich., \$7,631; Hawthorne, Calif., \$7,562; and Anaheim, Calif., \$7,554.

The 10 cities reporting the lowest average

cost of stay in 1985 were Wakita, Okla., \$422; Kapaa, Hawaii, \$434; Stanley, N.D., \$585; Sheridan, Mont., \$658; Ocilla, Ga., \$663; Glennallen, Ark., \$687; Tunica, Miss., \$756; Orange City, Iowa, \$794; McMinnville, Tenn., \$804; and Viborg, S.D., \$812.

The 10 cities reporting the highest per-day hospital costs in 1985 were Canoga Park, Calif., \$1,504; Needles, Calif., \$1,500; Monterey Park, Calif., \$1,465; Fountain Valley, Calif., \$1,462; Los Gatos, Calif., \$1,361; Santa Ana, Calif., \$1,359; Valencia, Calif., \$1,351; Coalinga, Calif., \$1,342; Incline Village, Nev., \$1,332; and Sun Valley, Calif., \$1,263.

The 10 cities reporting the lowest per-day cost were McMinnville, Tenn., \$141; Mendricks, Minn., \$152; Stanley, N.D., \$158; Orange City, Iowa, \$162; Kapaa, Hawaii, \$181; Sneedville, Tenn., \$190; Wakita, Okla., \$192; Tulia, Texas, \$200; Ocilla, Ga., \$201; and Viborg, S.D., \$203.

All of the hospitals included in the survey were classified as short-term hospitals, meaning more than 50% of admitted patients stay fewer than 30 days.

All federal hospitals, such as Navy and Veterans Administration facilities, were excluded.

Surveyed hospitals also were asked to exclude from their data geriatric and orthopedic beds; beds reserved for maternity, nursery, prenatal or post-natal and infant care; and beds reserved for psychiatric, alcoholic recovery rehabilitation and isolation purposes.

The average charge per stay included room and board, medication, laboratory fees and other hospital charges, but did not include private physician charges.

Copies of the survey, "1986 Hospital Daily Service Charges: A State-by-State Guide," are available free from Equicor, Group Marketing Department, 195 Broadway, New York, N.Y. 10007; 212-618-4994.

Liquidators sue Cambridge parent, ex-directors

HAMILTON, Bermuda—Liquidators of Bermuda-based Cambridge Reinsurance Ltd. have begun several proceedings against the company's former directors and its Canadian parent, National Sea Products, in an effort to recover funds.

Also named in the action is Hamilton Insurance Brokers Ltd., another affiliate of National Sea Products.

Cambridge Re stopped writing reinsurance business in the summer of 1984 and filed for liquidation in April 1985.

Liquidators David Lines and Gerhard Weiss issued writs two months ago in London, Nova Scotia and Bermuda naming 11 defendants, including: Bermudian lawyers Charles Collis and James Pearman; former Cambridge Re President Graham Tardif in London; and Cambridge Re's previous

Vp John Kane, who now heads the Powerscourt Group in Bermuda. Other defendants include: David Wilson in London, W.T. Wilson in Bermuda, W.O. Morrow in Bermuda, J.E.A. Nickerson in Nova Scotia, Canada, and J.B. MacAulay in Ontario. All had been directors of Cambridge Re.

The liquidators' claim, as filed in the Chancery Division of London's High Court, seeks damages against the directors for alleged breach of fiduciary and/or contractual duty.

The complaints involve agreements the liquidators say were made four and six years ago between Cambridge Re and Orion Royal Bank Ltd. in which about \$3 million of Cambridge's capital and investment funds are alleged to have been pledged and/or made payable to the bank and a divi-

dend of about \$2 million paid to Hamilton Insurance Brokers.

Both liquidators, who were appointed in May 1985, refused to comment on the action.

However, lawyers in Bermuda say the writ has been issued as a device to avoid later legal difficulties and to fall within the statute of limitations.

Mr. Pearman and Mr. Kane in Bermuda said they have not been served with the writ issued here in October and therefore are not in a position to discuss it.

The London writ is dated Oct. 10. It has a life of 12 months during which it must be served on the defendants or renewed by the court if proceedings are to remain active.

BI Industry Stock Report

December 22, 1986 12/18/86 thru 12/22/86

Brokers	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
Alexander & Alexander Svcs	NYSE	26.63	2.4	380.4	1.00	3.8	26.63	26.00
Baldwin & Lyons Inc	OTC	22.13	7.9	18.0	0.20	0.9	22.13	20.00
Corroan & Black Corp	NYSE	34.25	-0.7	15.5	0.65	1.9	35.00	34.25
Gallagher Arthur J & Co	OTC	26.00	-6.3	19.0	0.20	0.8	27.75	26.00
Hall Frank B & Co Inc	NYSE	15.38	-3.1	0.0	0.00	0.0	15.88	15.38
Marsh & McLennan Cos Inc	NYSE	62.63	-0.6	20.0	1.90	3.0	63.00	62.50
Poe & Assoc Inc	OTC	11.75	2.2	14.9	0.32	2.7	11.75	11.50
AGENTS/BROKERS	AVERAGE			20.8				2.3

Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)	
Fairmont Finl Inc	AMEX	15.38	4.2	12.3	0.00	0.0	15.50	14.75
Fireman Fd Corp	NYSE	36.38	2.5	0.0	0.30	0.8	36.50	35.50
Fresnost Gen Corp	OTC	16.13	0.8	0.0	0.48	3.0	16.13	16.00
Great West Life Assurn Co	OTC	700.00	0.0	14.4	18.00	2.6	700.00	700.00
Home Group Inc	AMEX	20.50	1.2	33.1	0.00	0.0	20.50	20.25
Hanover Ins Co	OTC	62.25	1.2	13.2	0.56	0.9	62.25	61.50
Harleysville Group Inc	OTC	15.25	-1.6	9.7	0.32	2.1	15.50	15.25
Hartford Steam Boiler Insptn	OTC	48.63	0.3	12.4	1.60	3.3	48.75	48.50
Kans City Life Ins	OTC	25.50	-1.9	10.6	0.87	3.4	26.00	25.50
Keeper Corp	OTC	26.00	-1.9	10.4	0.60	2.3	26.50	26.00
Liberty Corp S C	NYSE	37.75	2.0	12.7	0.72	1.9	38.38	37.00
Lincoln Natl Corp Ind	NYSE	47.88	3.5	11.0	2.16	4.5	47.88	46.25
Mission Ins Group Inc	PAC	1.25	0.0	0.0	0.00	0.0	4.38	1.25
Monumental Corp	OTC	55.63	0.0	18.8	0.00	0.0	55.63	55.63
Nac Re Corp	OTC	26.00	0.0	0.0	0.00	0.0	26.00	25.88
Nobel Ins Ltd	OTC	16.75	-1.5	12.6	0.37	2.2	17.00	16.75
Northwestern Natl Life Ins	OTC	31.88	-0.4	10.6	0.86	2.7	32.13	31.88
Ohio Cas Corp	OTC	76.75	1.0	14.5	3.00	3.9	76.75	76.00
Old Rep Intl Corp	OTC	28.25	-0.4	10.9	0.78	2.8	28.50	28.25
Orion Cap Corp	NYSE	27.50	0.0	0.0	0.76	2.8	27.63	27.50
Protective Corp	OTC	18.75	1.4	10.3	0.70	3.7	18.75	18.25
Provident Life & Acc Ins Co	OTC	25.25	-3.8	9.6	0.84	3.3	26.25	24.75
St Paul Cos Inc	OTC	41.25	0.0	12.7	1.50	3.6	41.50	41.25
SAFECO Corp	OTC	55.00	-1.3	12.0	1.70	3.1	55.75	55.00
Scor U S Corp	OTC	10.75	-10.4	21.5	0.00	0.0	12.00	10.75
Seibels Bruce Group Inc	OTC	15.75	1.6	0.0	0.80	5.1	15.75	15.50
Selective Ins Group Inc	OTC	22.00	-0.6	43.1	0.92	4.2	22.25	22.00
Statesman Group Inc	OTC	5.00	2.6	0.0	0.05	1.0	5.00	4.88
Tokio Marine & Fire Ins Co	OTC	562.50	1.4	63.3	1.66	0.3	562.50	555.00
Torchmark Corp	NYSE	26.13	-0.9	10.0	0.80	3.1	26.38	26.13
Travelers Corp	NYSE	45.75	0.3	10.9	2.16	4.7	45.75	45.63
Trenwick Group Inc	OTC	16.00	-5.2	123.1	0.00	0.0	16.88	16.00
United Fire & Cas Co	OTC	28.88	0.4	13.6	0.80	2.8	28.88	28.50
United States Fid & Gty Co	NYSE	41.00	0.0	47.1	2.32	5.7	41.00	40.63
Unum Corp	NYSE	26.25	-0.9	7.7	0.40	1.5	26.50	26.25
Uslife Corp	NYSE	46.63	-0.3	12.1	1.20	2.6	47.38	46.63
Washington Natl Corp	NYSE	32.88	1.5	14.9	1.08	3.3	32.88	32.38
Zenith Natl Ins Corp	OTC	22.25	3.5	26.8	0.80	3.6	22.25	21.50

Conglomerates & Holding Cos.

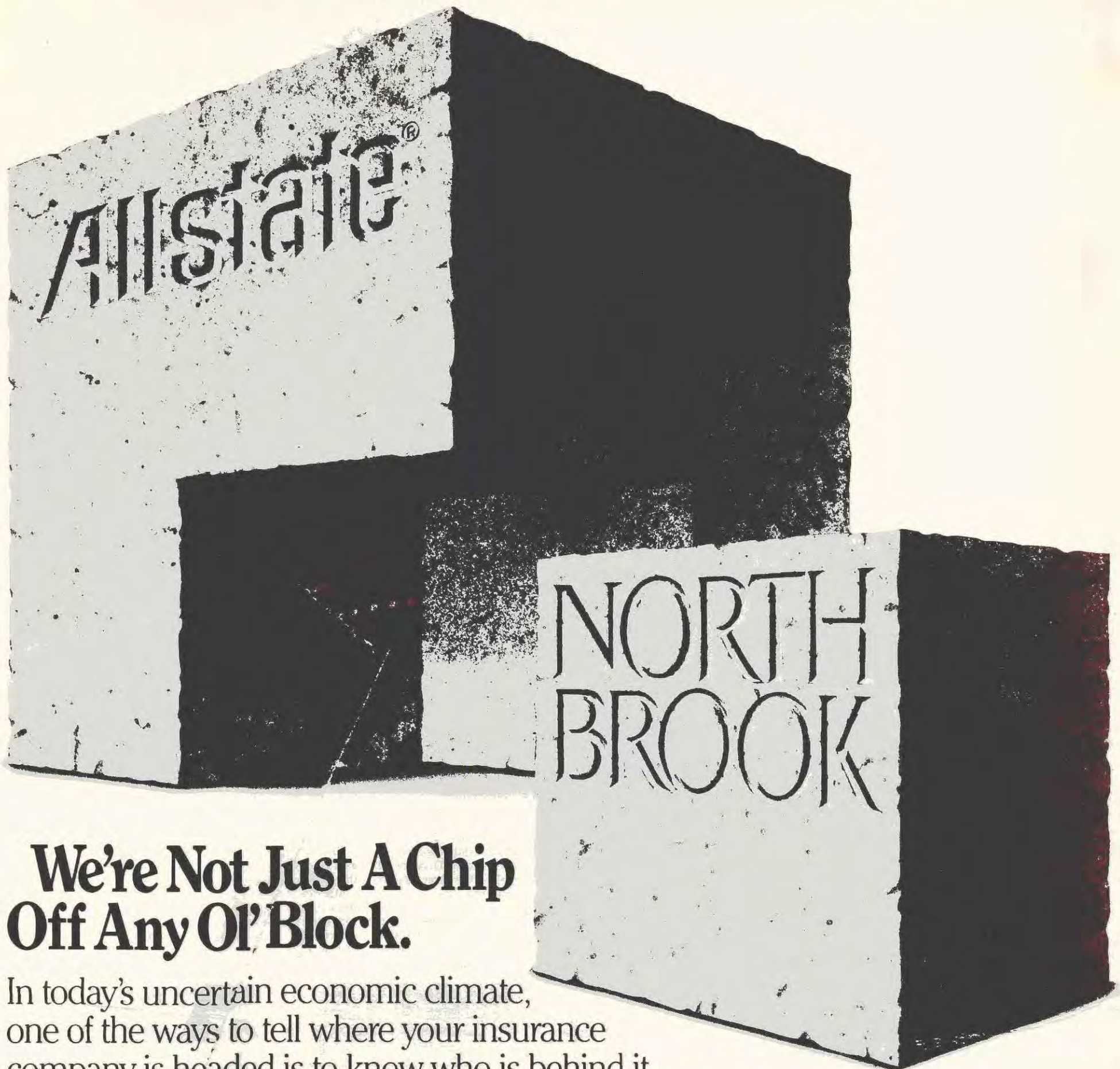
Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)	
Anderson Clayton(Ranger/ParAm)	NYSE	65.63	0.0	18.8	0.00	0.0	0.00	0.00
Arco Inc	NYSE	5.50	10.0	0.0	0.00	0.0	5.50	5.00
Berkley W R Corp	OTC	26.38	-2.3	14.6	0.24	0.9	27.00	26.25
Berkshire Hathaway Inc Del	OTC	2730.00	0.2	158.4	0.00	0.0	2750.00	2725.00
CIGNA Corp	NYSE	55.88	2.1	0.0	2.60	4.7	55.88	54.75
CNA Finl Corp (CNA)	NYSE	56.75	2.7	14.3	0.00	0.0	56.75	55.25
General Re Corp	NYSE	58.00	1.1	25.0	0.88	1.5	58.00	57.38
ITT (Hartford Group)	NYSE	53.88	0.9	22.2	1.00	1.9	53.88	52.00
Sears Roebuck & Co. (Allstate)	NYSE	41.50	0.9	11.3	1.76	4.2	41.50	41.13
Transamerica Corp (Occidental)	NYSE	34.63	-1.1	9.9	1.76	5.1	35.00	34.63
CONGLOMERATES/HOLDING COS.	AVERAGE			79.8				0.2

Insurers

Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)	
Aetna Life & Cas Co	NYSE	56.50	1.1	9.8	2.64	4.7	56.50	55.75
American General Corp	NYSE	38.25	-1.3	10.5	1.12	2.9	38.75	38.25
Ameren Heritage Life Invst Co	NYSE	40.00	-0.6	14.3	1.32	3.3	40.25	40.00
American Intl Finl Corp	OTC	18.25	0.0	0.0	1.12	6.1	18.25	18.25
American Intl Group Inc	NYSE	63.63	2.4	18.2	0.25	0.4	64.50	62.13
Aneco Reins Ltd	OTC	2.13	0.0	0.0	0.00	0.0	2.13	2.13
Avenco Corp	NYSE	27.63	-2.2	13.5	0.50	1.8	28.25	27.63
Business Mens Assurn Co Amer	OTC	26.00	0.0	0.0	1.10	4.2	26.00	25.88
Chubb Corp	NYSE	61.88	2.5	24.8	1.68	2.7	61.88	60.38
Combined Intl Corp	NYSE	53.38	-1.8	10.4	2.24	4.0	56.50	55.38
Continental Corp	NYSE	46.50	-2.1	221.4	2.60	5.6	47.50	46.50
Crown Life Ins Co	OTC	355.00	0.1	12.3	6.40	1.8	355.00	354.75
Durham Corp	OTC	41.00	-1.2	12.5	1.36	3.3	41.50	41.00
Farmers Group Inc	OTC	40.25	1.9	13.4	1.00	2.5	40.25	39.50

BI Insurance Index

The Business Insurance index of insurance industry stocks continued its slump, falling 0.6 points to close at 480.6 points on Dec. 22, down from 481.2 points on Dec. 17. A total of 26 stocks were up, 25 were down, and 12 were unchanged. The biggest gains were by Fairmont Financial Inc., up 4.2%; Lincoln National Corp., up 3.5%; Zenith National Insurance Corp., also up 3.5%; CNA Financial Corp., up 2.7%; and Statesman Group Inc., up 2.6%. The biggest losses were by SCOR U.S. Corp., down 10.4%; Arthur J. Gallagher & Co., down 6.3%; Trenwick Group Inc., down 5.2%; Provident Life & Accident Insurance Co., down 3.8%; and Frank B. Hall & Co. Inc., down 3.2%. The BI index fell an average of 0.1%, while the NYSE composite rose 0.3% during the same period



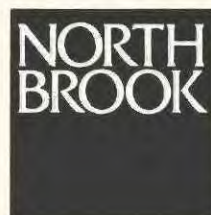
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At Northbrook, we enjoy the solid, substantial backing of the Allstate Insurance Company, a member of the Sears Financial Network.

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