

# Business Insurance

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## Labor Department sues firm over safety of pension annuity

NEW HAVEN, Conn.—The Department of Labor is suing a company for failing to choose the "safest available" annuity to fund pension benefits.

The suit seeks to force the employer to guarantee the annuities at its own expense through another insurer.

The Strouse, Adler Co., a lingerie manufacturer in New Haven, Conn., terminated its pension plan in March 1990, according to the suit, filed last month in the U.S. District Court in New Haven. Plan participants

*Continued on next page*

## Critics hit Bush plan

### Reforms could mean higher employer health costs

By JERRY GEISEL

WASHINGTON—President Bush's health care reform package, if approved, could lead to even larger health care cost increases for employers.

The package, presented last week by President Bush but immediately assailed by Democrats and other critics (see story, page 29), is intended to help the 35.7 million uninsured Americans gain access to health care, primarily through new tax credits and deductions.

In addition, the proposal would make it easier for small employers to purchase health insurance plans.

Other provisions in the 87-page package would bar employers and insurers from excluding health care coverage on the basis of pre-existing medical conditions, pre-empt state laws that impede managed care, put new limits on medical malpractice awards and create a more uniform system of health care claims administration.

However, in unveiling the package last week, the administration did not

detail how revenues would be raised to finance the \$100 billion that the new tax breaks would cost the federal government over five years. Previously, the Bush administration had criticized Democrats for not including precise funding mechanisms in their health care reform proposals.

While President Bush now is on the record with a comprehensive health care proposal, its short-term future appears bleak.

The combination of the lack of financing details in the proposal, strong opposition by congressional Democrats and the fact that it is an election year means it's almost certain that Congress will not act on the proposal's centerpiece—the tax credits and deductions. However, bits and pieces could win approval.

"Tax credits and tax deductions by themselves won't fly as an alternative to comprehensive reform. Democrats already have discredited that approach," said Frank McArdle, a consultant with Hewitt Associates in Washington, D.C.

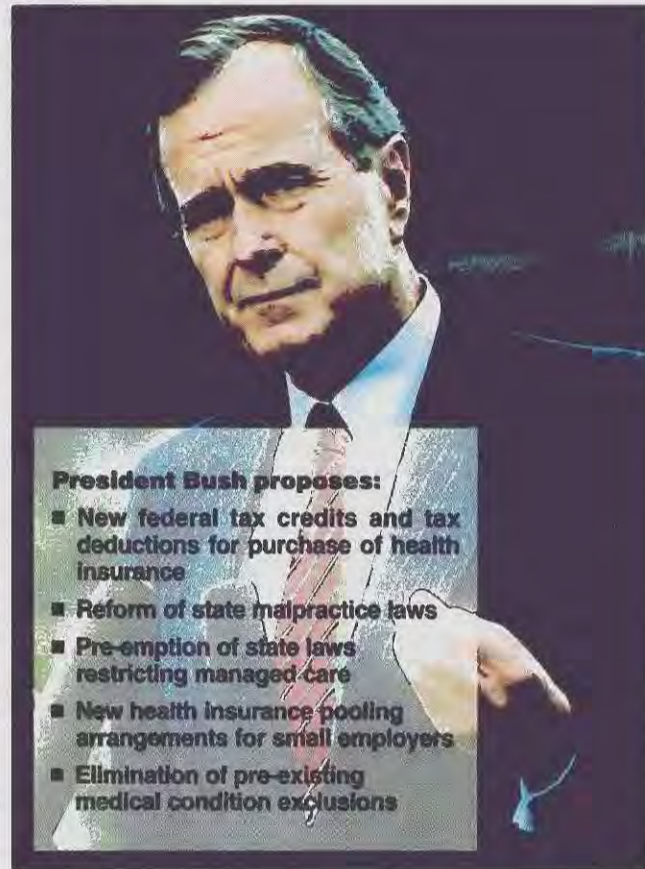
"Anything that has no financing and no cost containment really is dead on arrival on Capitol Hill," said Ellen Goldstein, director of health care policy at the Assn. of Private Pension & Welfare Plans in Washington, D.C.

"I don't see anything being enacted soon because of a lack of consensus on what needs to be done," said Stuart J. Brahs, vp-federal government relations with The Principal Financial Group in Washington, D.C.

Benefit experts fear the cost of the tax breaks would be financed by reducing federal Medicare and Medicaid payments to hospitals and physicians. That could cause providers to inflate charges to patients covered under employer plans to offset the new shortfall in Medicare and Medicaid payments.

"It seems clear that the intent is that tax credits and deductions would be (financed) through limits on Medicaid and Medicare payments. For employers, this may well increase their costs through cost shifting from public plans," said Tom Beauregard, a consul-

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#### President Bush proposes:

- New federal tax credits and tax deductions for purchase of health insurance
- Reform of state malpractice laws
- Pre-emption of state laws restricting managed care
- New health insurance pooling arrangements for small employers
- Elimination of pre-existing medical condition exclusions

AP/Wide World Photo

## Administration unveils package of tort reforms

By MARK A. HOFMANN

WASHINGTON—Tort reform advocates see a tough battle ahead to win congressional support for the Bush administration's new package of civil justice reform measures.

A key factor in determining whether the package, called the Access to Justice Act of 1992, will be seriously considered this year will be proponents' ability to build bipartisan support for the measure. Republicans introduced the package in Congress on Tuesday.

"It would be absolute folly to let this become a partisan issue," said Martin F. Connor, president of the American Tort Reform Assn. in Washington, D.C.

Vice President Dan Quayle unveiled the proposals last week before an audience of ATRA members and the members of Citizens for Civil Justice Reform, a new Washington, D.C.-based group of businesses and trade associations that supports the civil justice reforms advocated by the President's Council on Competitiveness.

"I hope you're ready to go to work—we need your help," Mr. Quayle said to a standing-room-only crowd of about 200 at ATRA's annual meeting. "It's a tough road, folks, but we will prevail, because the American people know we are right."

The Access to Justice Act unveiled by the vice president is part of a larger package of tort reforms recommended by the President's Council on Competitiveness, which Mr. Quayle chairs. Some of the recommendations in the council's package, like encouraging voluntary use among federal agencies of alternative methods of resolving disputes, were implemented in October by the president's order.

The three major initiatives that comprise the act are:

- Adopting a so-called "loser pays" rule in cases that

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The American Bar Assn. tentatively approves some tort reforms outlined by Vice President Quayle. Page 4.

## Group to aid policyholders of insolvent underwriters

By STACY ADLER GORDON

WASHINGTON—In the first effort of its kind, an international association is being launched to protect the interests of corporate property/casualty insurance policyholders in insurer insolvency proceedings in the United States and Britain.

The International Policyholders Assn., scheduled to open its doors this week in Washington D.C., will help policyholders that face mass tort claims, like asbestos and pharmaceutical claims, present their

views during insurer liquidation and rehabilitation proceedings.

Specifically, the IPA plans to:

- Provide members with detailed information about insolvency proceedings in the United States and Britain, including information about filing dates.
  - Work to make incurred-but-not-reported claims recognized in insolvency proceedings and negotiate with liquidators to set reserves for IBNR claims.
  - Negotiate on behalf of policyholders with state guaranty funds.
- The IPA also will offer its mem-

bers a wide range of services, including standardized proof-of-claims forms that can be tailored to each state, assistance in claims valuation and access to a sophisticated data base containing information on individual insolvencies and the decisions affecting them.

Officials of some guaranty funds, though, question the need for the group, saying its efforts could complicate and delay insurer insolvency proceedings.

Some insurance regulators say they would not oppose working

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## Coal mining firms debate rescue of retiree health care funds

## \$100 million benefit deficit

By MICHAEL SCHACHNER

WASHINGTON—A coal miners' union and most large coal producers support federal legislation that would force all coal producers to finance health care benefits of 120,000 union retirees and dependents.

Without the legislation, coal producers that signed the current national collective bargaining agreement could face more than a 100% increase in their contributions to two retiree health care funds.

Other, mostly smaller coal companies vow to fight the legislation,

claiming they would be forced to pay more than \$100 million annually to help fix a crisis they did not create.

The United Mine Workers of America and the Bituminous Coal Operators' Assn., which represents major coal companies, say the legislation—S. 1989 in the Senate and H.R. 4013 in the House—is the only long-term solution to the health benefits crisis now facing retirees covered by the 1950 and 1974 UMW Health and Retirement Benefit Funds. Miners who retired before 1976 are covered by the 1950 fund, while later retirees are covered by the 1974 fund.

The multiemployer funds currently are operating at a combined deficit of more than \$100 million. Unless the funds are bailed out before the current labor agreement expires Jan. 31, 1993, the union and the BCOA insist, not enough coal producers will agree to contribute to the funds under a future wage agreement and the funds will collapse.

This would cause "chaos in the coal fields," the mine workers union says.

The Senate bill was introduced late last year by Sen. John D. Rockefeller IV, D-W.Va., and had

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**Update**

**Firm told to guarantee annuities**

*Continued from previous page*  
 were offered a choice between a lump-sum distribution and an annuity. Of the 329 plan participants, 117 opted for annuities.  
 Strouse, Adler bought the annuities from Presidential Life Insurance Co. of Nyack, N.Y., currently rated B+ by A.M. Best Co. The Labor Department charges that Strouse, Adler "imprudently" chose the lowest bidder without investigating Presidential Life's claims-paying ability. Other bidders carried higher ratings than Presidential Life.  
 After terminating the plan and paying for the annuities, Strouse, Adler received excess assets of about \$458,870, according to the suit.  
 "Fiduciaries must set up a process which results in the purchase of the safest available annuity," said David G. Ball, assistant secretary of labor for the Pension and Welfare Benefits Administration.  
 However, Presidential Life was A-rated when Strouse, Adler was looking for an insurer, says the company's attorney, David R. Schaefer, a partner with Brenner, Saltzman, Wallman & Goldman in New Haven. Presidential Life was "a profitable, highly rated company at the time" Strouse, Adler chose it and continues to be a "very healthy" company, he said. "I don't understand why the Department of Labor is wasting its time on this."

**\$550 million award appealed**

GALVESTON, Texas—Coopers & Lybrand and two other defendants are appealing a \$550.5 million jury award—mostly punitive damages—to former bondholders of bankrupt MiniScribe Corp.  
 A state court jury here awarded \$20.5 million in compensatory damages and \$530 million in punitive damages to former bondholders of MiniScribe, a Longmont, Colo.-based computer disk drive maker.  
 The compensatory award, consisting of \$13.5 million in bondholder losses and \$7 million in lost potential earnings, was levied against Coopers & Lybrand; Hambrecht & Quist, MiniScribe's investment banker in San Francisco; and Q.T. Wiles, a former chairman of MiniScribe.  
 Jurors assessed \$250 million in punitive damages against Mr. Wiles, \$200 million against Coopers & Lybrand; \$45 million against Hambrecht & Quist, and \$35 million against its president.  
 Punitive damages generally are insurable in Texas.  
 The disk drive manufacturer was forced into bankruptcy in 1990 after finding that Mr. Wiles and other senior managers had misrepresented the company's financial health.  
 Coopers & Lybrand said it was "outraged" by the award and intends to "mount a vigorous appeal." The firm said it expects to win on appeal but has the "wherewithal to withstand this potential loss."

A spokesman would not comment on the accountant's professional liability insurance. Big Six accounting firms generally carry self-insured retentions of \$6 million to \$10 million per claim with an aggregate of \$20 million to \$30 million (BI, Oct. 8, 1990).  
 MiniScribe directors and officers are covered by a primary D&O policy written by National Union Fire Insurance Co. of Pittsburgh, Pa., said a lawyer for Mr. Wiles, Rita Miller of Munger, Tolles & Olson in Los Angeles. Ms. Miller did not know the policy limits but said a \$5 million excess layer is written by Aetna Casualty & Surety Co.  
 MiniScribe also is trying to tap its general liability coverage to pay for the award, she said. But its insurer, Chubb Corp., is denying coverage in ongoing litigation in federal court in Denver.

**MEWA crackdown in California**

LOS ANGELES—As part of a crackdown on health insurance fraud, California regulators will step up enforcement of a state law requiring multiple employer welfare arrangements not fully insured by California-licensed insurers to obtain insurance licenses themselves.  
 Insurance Commissioner John Garamendi also has ordered stepped-up enforcement actions against agents, brokers and MEWA promoters who sell phony coverage to employers.  
 Under a 1982 federal law, states are generally free to apply any insurance law and standards to self-funded MEWAs.  
 Mr. Garamendi is backing a bill now before the Senate Insurance Committee that would hold agents, brokers and other MEWA vendors liable for the products they sell.  
 Another part of the California initiative is an education effort to prevent employers from being duped by MEWA scams.  
 California and U.S. authorities are now jointly investigating more than 200 people who may be involved in such fraud.  
 In an action related to the crackdown, the department has issued a cease-and-desist order against Physicians Choice, a California-based MEWA offering disability benefits to employers.  
 The company, also known as Golden State Preferred Trust, claimed its coverage was underwritten by Kentucky Central Life Insurance Co. Regulators, though, say no insurer underwrites or reinsures the plan. The order says 78% of its premiums were paid out as sales commissions.

**Work begins on Bush tax plan**

WASHINGTON—The House Ways and Means Committee this week will begin action on a Bush administration tax package that includes many pension provisions.  
 H.R. 4150, formally introduced last week by House Minority Leader Robert Michel, R-Ill., among other things would establish new non-discrimination tests for 401(k) plans, simplify the definition of highly compensated employees for pension non-discrimination testing and phase out favorable tax treatment of lump-sum pension distributions.  
 The measure also would allow tax-exempt private-sector employers to establish 401(k) plans and would require multiemployer pension plans to adopt faster vesting schedules. The Tax Reform Act of 1986 allowed multiemployer plans to continue offering 10-year vesting schedules, while single-employer plans are required to offer schedules in which employees are either fully vested after five years or 20% vested after three years, with full vesting after seven years.  
 The Bush proposal also would bar the Pension Benefit Guaranty Corp. from guaranteeing benefit improvements promised by underfunded pension plans. And the measure would give the pension agency priority status as a creditor in bankruptcies (BI, Feb. 3).  
*Updates continued on page 30*

**Defense cost wording triggers CGL dispute**

By JUDY GREENWALD

NEW YORK—Proposed technical revisions to the commercial general liability policy form could result in reduced coverage for policyholders, contends the Independent Insurance Agents of America.  
 But the Insurance Services Office Inc. counters that its proposals actually broaden coverage.  
 The disputed wording pertains to coverage of defense costs for third parties in cases where the policyholder contractually assumes liability for the third party. This situation commonly arises, for example, when a subcontractor agrees to hold a general contractor or building owner harmless from

claims arising from its work.  
 The IIAA, which is based in Alexandria, Va., contends that defense costs for these third parties were covered under an endorsement to the 1973 comprehensive general liability form, but that this protection was inadvertently omitted when the current CGL form was drafted in 1986.  
 However, a spokesman for ISO in New York argues that coverage was never provided by the 1973 form and would actually be afforded for the first time by the new changes, which were filed with state insurance departments last month, to take effect in August.  
 The current CGL form covers tort liability for third parties, but

does not cover a third party's defense costs, according to Richard Katten, chairman of the IIAA's commercial lines committee.  
 This coverage is restored only to a limited extent with the recent ISO filing, said Mr. Katten, vice chairman and chief operating officer of the Ferd. Marks Insurance Agency in New Orleans.  
 He complained that while the filing provides for the payment of defense expenses, it does not call for the insurer to actively defend a third party to whom the policyholder is contractually liable. This was provided with the 1973 form endorsement, he contends.  
 In addition, under the new filing, *Continued on page 27*

**Jury out on data bank**

Doctors say it's unfair; supporters say it's producing results

By SARA J. HARTY

After almost 1½ years in operation, the National Practitioner Data Bank continues to receive poor performance reviews from health care providers.  
 Physician and hospital groups contend that the data bank is unfair because all payments stem-

ming from medical malpractice claims, even small payments to settle so-called nuisance suits, must be reported.  
 However, the data bank's supporters say it is increasingly providing information that is helpful in evaluating the competency of physicians.  
 And, those supporters say that the data bank is responding more quickly to requests for information.  
 The data bank was authorized by Congress under the Health Care Quality Improvement Act of 1986 to prevent physicians from moving to other states to hide any past incidents that could reflect on their competence (BI, May 7, 1990).

The law requires health care facilities to request from the data bank reports on physicians and dentists seeking medical privileges or whose privileges are being reviewed (BI, Nov. 4, 1991).  
 The data bank, which began operating in September 1990, collects information on all medical malpractice judgments or settlements made on behalf of a health care professional.  
 The data bank also collects information regarding any disciplinary actions by state medical or dental boards and hospital professional review boards that affect a practitioner's medical privileges for a period longer than 30 days.  
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**Captive managers will be listed in March 30 issue**

*Business Insurance* will publish its annual directory of captive management companies in the March 30 issue, which also will contain a spotlight report on domestic and foreign captive domiciles.  
 There is no charge to be listed. To be included, companies must complete a questionnaire provided by *Business Insurance*.  
 The questionnaire also gathers information on policyholder-owned alternative risk financing facilities, which will be published in a chart in the July 13 issue.  
 The extended deadline for returning completed questionnaires is Feb. 28.  
 If your company provides captive management services or manages an alternative risk financing facility, and you have not yet received a questionnaire, please request one from Karen Armaganian at *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590; 312-280-3195; fax: 312-280-3174.

**BI, researcher launch national benefit study**

*Business Insurance* is teaming up with Yankelovich Clancy Shulman to conduct new research on the key issues confronting employee benefit managers and human resource directors.  
 BI and YCS, a market research firm, are designing an in-depth national survey. More than 350 top decision makers in employee benefits at small, mid-sized and large firms will be interviewed during the first quarter of this year.  
 "The results of the survey will help employee benefit service providers trying to reach new markets and better serve existing clients," said Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*.  
 Sponsors, who will receive the survey results, will have the option

of a general study or a company-specific study, which adds an in-depth evaluation of a company's strengths and weaknesses in its communication programs, personnel and overall service.  
 "Any insurance company, broker, benefit consultant, managed care company, EAP or UR vendor would strongly benefit from a study of this depth," said Noah Waldman, the YCS vp who is directing the project.  
 Survey results will be available in June.  
 For additional information on the "Employee Benefit/Human Resource Managers' Viewpoint" study, contact Mr. Waldman at YCS, 3390 Peachtree Road N.E., Atlanta, Ga. 30326; 404-364-6569.

**Inside**

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- ✓ Risk managers can take steps to operate programs more efficiently during the recession. **PAGE 20**
- ✓ An aviation attorney says the European Community should create a fund to compensate victims of airline disasters. **PAGE 23**
- ✓ Manufacturers should develop a product liability defense strategy before they wind up in court, defense lawyers say. **PAGE 27**

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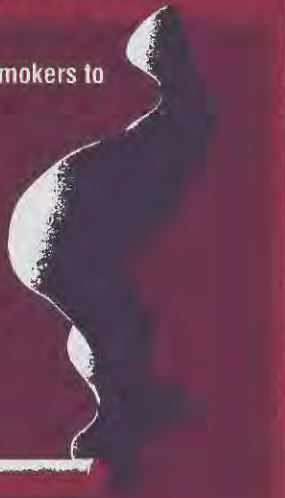
## Where there's smoke...

Smokers are 55% more likely than non-smokers to be the object of disciplinary actions.

Smokers are 40% more likely to suffer an occupational injury.

Smokers are 29% more likely to be involved in an industrial accident.

Smokers are absent from work 34% longer than non-smokers.



Source: American Journal of Public Health

GRAPHIC BY JOHN SMITHER

# Employers pay when workers smoke: Study

By SARA MARLEY

BOSTON—Smokers miss work more often and have more accidents, injuries and disciplinary problems on the job, a study shows.

The study, published in the January issue of the American Journal of Public Health, found that smokers' absences from work lasted an average of 34% longer than non-smokers'. Smokers also were 29% more likely to be involved in an industrial accident; 40% more likely to suffer an occupational injury; and 55% more likely to be disciplined. However, no significant difference was found in job turnover rates.

Absences among smokers were primarily due to short-term respiratory illnesses, in part because the average age of the employees surveyed was only 30.2 years, the study said. Smokers tended to be slightly older than non-smokers—31.2 on average compared with 29.8 for non-smokers.

Because the study focused on younger people, the costs of smoking were actually underestimated, said James Ryan, one of the authors. Dr. Ryan is an instructor of community medicine at the Tufts University School of Medicine and an instructor of occupational health at the Harvard School of Public Health in Cambridge, Mass. Cancer, cardiovascular and chronic pulmonary diseases

associated with smoking won't show up in the subjects for decades, Dr. Ryan said.

The study of 2,537 newly hired U.S. Postal Service employees in Boston is the first to adjust for factors of age, gender, race, exercise, drug abuse and job position, said Dr. Ryan, who is also director of occupational medicine at the East Boston Neighborhood Health Center, New England's largest community health center.

The co-authors of the study are Craig Zwerling, an associate professor at the Institute of Agricultural Medicine & Occupational Health at the University of Iowa in Iowa City, and E. John Orav, a biostatistician at the Harvard School of Public Health.

The study found that smokers typically were older, female, non-exercisers and were more likely to be drug users.

The study initially questioned 4,957 job-seekers who applied to the Boston postal service between Sept. 24, 1986, and Jan. 6, 1989, about their smoking, exercise and drug-use habits. Their replies were not disclosed to postal officials.

Of the 4,795 people whose responses qualified for the study, 52.9% were hired. Of the 2,537 hired, 32.5% smoked, compared with 33.2% of those not hired.

Smokers were identified as people who had smoked at least three cigarettes daily for the previous

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# M&M reaches a goal with French purchase

By GAVIN SOUTER

PARIS—Marsh & McLennan Cos. Inc. has completed its long-stated aim of owning brokerages throughout the European Community with the purchase of its French correspondent, Faugere & Jutheau S.A. of Paris.

The acquisition marks a sharp reversal of the previous stance taken by Faugere & Jutheau Chairman Robert Husson, who had fought hard to keep the reins of the family-controlled brokerage.

Marsh & McLennan already owns 33% of Faugere & Jutheau. It will buy the remaining two-thirds from Mr. Husson and his wife for \$105 million in cash, subject to French government approval.

The link between the two brokerages dates back to 1969, when Faugere & Jutheau became Marsh & McLennan's correspondent in France. Marsh & McLennan bought its one-third share in the French brokerage in 1973.

The establishment of an E.C.-wide network of brokerages in which it has a controlling interest has been a declared aim of Marsh & McLennan since 1989, said Robert Clements, chairman of Marsh & McLennan Inc., the firm's New York-based brokerage unit.

"We have come to realize in the past few years that because our clients are becoming increasingly

multinational, if we want to operate an international insurance brokerage we have to be internationally integrated like our clients," Mr. Clements said.

And in order for a brokerage to operate efficiently internationally, it must have control of its own international network, he said.

With the acquisition of Faugere & Jutheau, European premiums will total 35% of Marsh & McLennan's worldwide premium volume, up from about 30% in 1991, Mr.

very big. When you look at the amount of insurance capital in Paris, you have to say that Paris will develop into a real international marketplace in the same way that London, Bermuda and New York are," Mr. Clements.

The purchase of Faugere & Jutheau will make Marsh & McLennan's Paris operation its third largest, after New York and London, he said.

Faugere & Jutheau S.A. reported revenues of about 550 million



*'Through this deal, we are doing something which is good for our clients, our market and our staff.'*

Faugere & Jutheau's  
Robert Husson

Clements said.

Marsh & McLennan's European operations are now represented in each of the 12 E.C. member nations, as well as Austria, Hungary, Sweden and Switzerland.

The acquisition will also enable Marsh & McLennan to more easily exploit insurance capacity in the French market, he said.

"The French wholesale market is

French francs in 1991 (\$106.2 million at year-end exchange rates).

Faugere & Jutheau Group, which includes the company's African business, had 1991 gross revenues of 665 million French francs (\$128.3 million), Mr. Husson said.

That African business was not included in the main purchase. Instead, a separate company will be

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# Risk managers can plot future course of career

## Recruiter tells execs to seek opportunities

By MICHAEL BRADFORD

ATLANTA—Risk managers have to take charge when it comes to developing their careers, an executive recruiter suggests.

"Seek out the most interesting career challenges and opportunities," advised Bill Perry, president of Logic Associates Inc. in New York.

It takes careful planning and determination to guide a risk management career along the proper path, he said.

"For the 1990s, manage your ca-



reer the way you would manage your insurance program," Mr. Perry told risk managers last month at the annual education

conference run by the Atlanta chapter of the Risk & Insurance Management Society.

There is a good chance most risk managers will have to make pivotal career choices at some point, noted Mr. Perry, citing studies that indicate the average middle manager changes jobs every 2.8 to four years.

Whether a risk manager is seeking employment or looking to change jobs, there is a simple approach, a difficult approach and an "important approach" to manag-

ing a career, according to Mr. Perry.

To take the simple route is to "look at the 1990s and figure out what industry groups will be hot," he explained. "Environmental, pharmaceuticals, heavy machinery. . . . Go for the hot industry groups."

Next, narrow the list of companies to those with global exposures and growth potential, like machine manufacturers that will be involved in rebuilding the infrastructure of Eastern European countries, he said.

While the simple approach involves pinpointing the type of company to work for, the difficult approach involves adding the task of seeking companies that have "the right position" available, Mr. Perry

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# Companies downplay impact of FAS 106

By JERRY GEISEL

Most large companies doubt a new accounting rule for recognizing retiree health care liabilities will interfere with their ability to borrow funds, though the rule will damage their financial statements, according to a new survey.

Many surveyed executives also do not believe that the new rule—Financial Accounting Standard 106—will damage credit ratings or depress stock prices.

In addition, most large companies intend to wait until 1993 to adopt FAS 106. And when they do, a slim majority expect to recognize the entire "transition obligation" at once rather than amortize those accumulated obligations.

To cope with the anticipated impact of the rule, most companies

either have changed or intend to change their retiree health care plans, though most do not intend to prefund their retiree care obligations.

These findings are included in a new Hewitt Associates survey of 72 large companies that provide health care benefits to about 500,000 retirees.

FAS 106, which large employers must adopt no later than 1993, will require companies to accrue as an expense against earnings retiree health care obligations from the date employees are hired until they become eligible for the benefits (BI, Dec. 17, 1990).

Companies now generally report retiree health care expenses as they are paid, such as when a company pays an insurance premium or a self-insured company pays a claim.

In addition, companies would also be required to recognize—either at once or generally over a 20-year period—retiree health care obligations that have accumulated at the time employers adopt FAS 106. These accumulated liabilities are known as the transition obligation.

While FAS 106, and its impact on corporate financial statements, has been one of the most discussed benefit issues, financial executives doubt the rule will interfere with the ability to operate, according to the Hewitt survey.

In fact, more than 90% of those surveyed said adopting the rule would have little or no impact on their companies' borrowing ability or credit ratings. And about 85% said stock prices would not be affected.

There are several reasons for their optimism, notes Bob Vogrich, a consultant and actuary with Hewitt in Lincolnshire, Ill.

Financial analysts and lenders recognize that FAS 106 is only an accounting change that will not affect cash flow.

"It is a deferred obligation," Mr. Vogrich said.

In addition, analysts and investors already may have factored retiree health care obligations into their evaluations of a company before it actually adopts FAS 106.

At the same time, analysts recognize that companies can reduce these liabilities by modifying their health plans, Mr. Vogrich said.

Clearly, though, the executives believe that adopting FAS 106 will take its toll on balance sheets.

For example, 57% said adopting

the rule will have either much or some effect on the corporate balance sheet. The remainder said the rule would have little or no impact.

In addition, two-thirds of the executives said FAS 106 will have much or some negative impact on corporate net income. The remaining one-third saw little or no effect on net income.

In fact, adopting the rule will—for accounting purposes—swell corporate retiree health care expenses.

For example, the median annual expense of retiree medical costs reported by surveyed companies will leap to \$33 million after adopting FAS 106 from about \$8 million.

For every employee who is or could become eligible for retiree

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# ABA supports part of tort reform package

By MEG FLETCHER

WASHINGTON—The American Bar Assn. is supporting a Bush administration proposal contained in new civil justice reform legislation that calls for encouraging alternative dispute resolution.

But, the ABA is concerned about other elements of the legislation.

The ABA last week issued a 137-page report, "ABA Blueprint for Improving the Civil Justice System," that discusses some of the reforms suggested last year by a panel headed by Vice President Dan Quayle (BI, Aug. 19, 1991).

Several of those proposals are similar to those contained in administration-backed legislation introduced last week in the House and Senate (see story, page 1).

title for the legislation—"Access to Justice Act of 1992"—shows "sensitivity" to the ABA's concern of maintaining public access to the courts, said ABA President Talbot D'Alemberte.

An administration analysis of the bill says it "provides for greater access to civil justice by reducing costs, delays and excessive, needless litigation."

But, Mr. D'Alemberte contends that the legislation cannot accomplish that aim without additional proposals. The ABA still must study the specifics of the legislation before taking a formal stand on it, said Mr. D'Alemberte, an attorney with Steel, Hector & Davis in Miami.

One of the three central proposals in the legislation calls for creating pilot programs in federal

In its report, the ABA says it 'strongly supports' the multidoor courthouse approach.

district courts to foster greater use of alternative dispute resolution mechanisms, like mediation and arbitration.

In its report, the ABA said it "strongly supports funding and further implementation of the 'multidoor courthouse' and 'multidoor dispute resolution approach,'" which give disputing parties the opportunity to resolve their claims through a variety of

mechanisms.

"The idea for the multidoor courthouse was conceived in 1976 by Harvard law professor Frank E.A. Sander when he described a community-based facility where citizens' complaints could be channeled through a skilled intake specialist who would direct the complainant to an appropriate 'door' for resolution of the dispute.

"Instead of just one 'door' leading to the courtroom, such a center would have identifiable doors through which individuals might pass to find the most appropriate forum for resolving their dispute," the report explained.

These mechanisms can include "early neutral evaluation, mediation, arbitration, mini-trial and summary jury trial," according to the ABA report.

During the past 14 years, the ABA has worked to integrate alternative dispute resolution procedures into every aspect of the civil justice system, the report said. It noted that successful pilot projects have been fully implemented in court systems in Houston and the District of Columbia.

For example, a multidoor courthouse has become a separate division within the Superior Court of the District of Columbia, offering mediation, arbitration and early neutral evaluation. The division has processed more than 7,000 disputes, the report said.

"Despite this effort, the major barrier to increased use of dispute resolution is the need for enhanced professional and public education to draw attention to and promote use of all the important dispute resolution options," the ABA report said.

In addition, a lack of funding prevented implementation of the 1980 Dispute Resolution Act, which called for \$55 million in funds over five years to set up a program to encourage use of alternative dispute resolution, Mr. D'Alemberte said.

The ABA argues, though, that alternative dispute resolution should not be mandatory.

The ABA is still reviewing an administration-backed proposal contained in the civil justice reform legislation introduced in Congress that would require the loser in some mediation cases that proceed to trial to pay the winner's costs, including attorneys' fees.

An ABA committee already has stated its opposition to shifting attorneys' fees or levying other substantial penalties on parties that reject an alternative dispute resolution outcome and go to court, the report said.

The ABA also must study another administration proposal contained in the new legislation that would require losers to pay some of winners' attorneys' fees in some federal court cases hearing disputes between parties that are residents of different states, he said.

Mr. D'Alemberte said he personally is not upset by that provision because it appears to have a "very narrow" application.

In addition, he said the association must study an administration plan contained in the legislation that would require plaintiffs to give 30 days notice to defendants before filing a lawsuit in federal court.

Mr. D'Alemberte said such proposals concern him because they tend to add an additional layer of proceedings to litigation.

## ABA would subject insurers to antitrust law

WASHINGTON—The American Bar Assn. continues to support repeal of insurers' current limited exemption from antitrust laws, according to a report it prepared on civil justice reforms.

The ABA report suggests adopting legislation that would make insurers subject to most antitrust laws.

However, the ABA says the legislation should also create "safe harbors" so insurers could engage in "legitimate, pro-competitive" activities like sharing loss data and developing standardized policy forms.

# Are All Workers Compensation Provider Bill Audits The Same?

## A Newly Released Study Says "No"

An independent research firm recently sent photocopies of the same 156 medical bills to 5 different vendors of fee schedule provider bill audits. Each vendor's performance was tracked and compiled in a side-by-side comparison that's yielded some surprising results.

These results are the basis of an important new report that's now available free of charge from Crawford & Company.

Among its findings, the report reveals that provider bill audits are not a "commodity service"—the quality and effectiveness of these audits varies dramatically depending on which vendor is reviewing the bills. The report backs up this finding with a series of charts that compare vendor performance in areas such as...

- **TOTAL REDUCTIONS**—On the same bills, one vendor found reductions of just \$5,206.24 while another found over twice that, producing savings of \$13,837.74.
- **NET PERCENT SAVED**—These numbers varied greatly, from a low of 14.4% to a high of 34.8%.
- **RETURN ON INVESTMENT**—Returns ranged from as little as \$3.50 for every dollar spent to the study's best return—\$9.70 to \$1.

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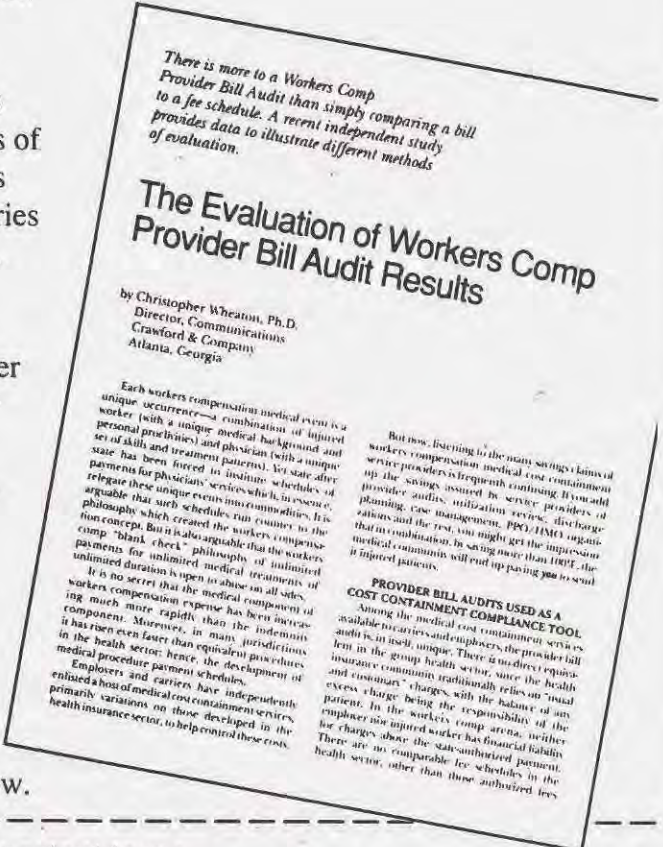
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## Opinions

## Preventing a debacle

IS THE FEDERAL government's pension insurance program destined to be a debacle of the magnitude of the savings and loan association disaster?

Probably not. If the proper steps are taken, a collapse of the pension insurance program can be avoided. And, we're encouraged that the Bush administration is proposing to take some of those steps.

The problems with the pension insurance system are obvious and have been so for some time. The biggest of those problems: Federal law encourages companies, often under pressure from unions, to promise more in benefits than the companies can ever deliver.

Even an ailing company can continue to sweeten pension benefits and take up to 30 years to fund its obligations. If the company later collapses, the bulk of those increased benefits are guaranteed by the federal Pension Benefit Guaranty Corp.

With that kind of system in place, it's no surprise that some companies already saddled with huge pension liabilities keep improving benefits.

Of course, as the PBGC picks up the obligations of collapsed pension plans, its deficit keeps rising, as do the premiums it charges employers.

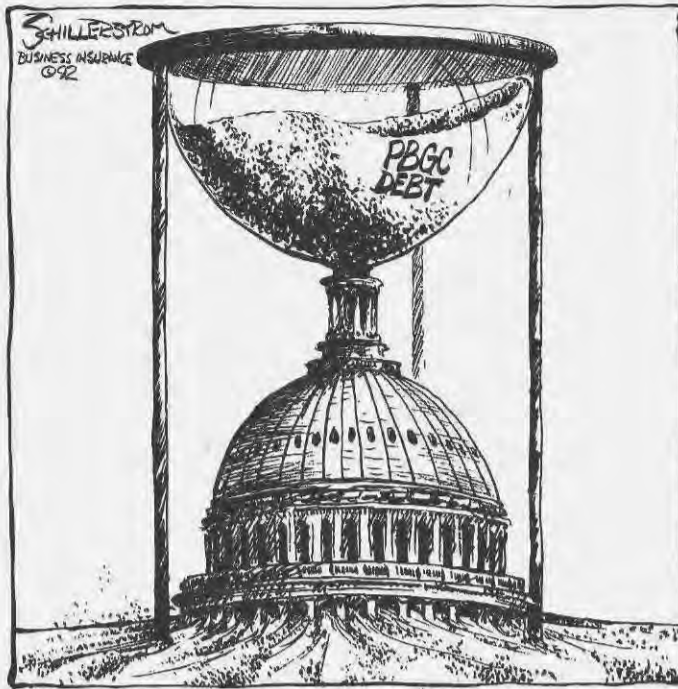
Today, the agency's deficit is about \$2.5 billion, and it could grow to \$18 billion by the end of the decade. The PBGC premium, once \$1 per plan participant, now ranges from \$19 to \$72 per participant, and no one knows how high the premium would rise under the worst-case scenario.

But, if the premium keeps climbing, employers with well-funded pension plans eventually will terminate those plans, which would lead to a PBGC collapse that requires a bailout by taxpayers.

That scenario doesn't have to develop.

First, as the Bush administration proposed last month, PBGC guarantees should not be extended to benefit improvements for companies with underfunded plans. If unions know there is no federal safety net for benefit improvements, they may pressure companies to improve the funding of already-promised benefits rather than seek benefit improvements that they know employers cannot afford.

At the same time, the administration is proposing that in certain situations an employer's annual contri-



but to its pension plan at least equal the amount of benefits paid the previous year. That reform is intended to prevent plans from quickly going broke when, for example, a company shuts down facilities and pays out large lump-sum distributions.

Other reforms, also badly needed, would speed up funding schedules for employers with underfunded plans and make clear that the PBGC is a priority creditor when a company with an underfunded pension plan declares bankruptcy.

It will take political courage for Congress to adopt these reforms. No one wins points with voters by limiting federal benefit guarantees. But if legislators fail to act now, they will face a bigger problem.

A decade ago, legislators lacked the will to clean up what was then a small crisis in the savings and loan industry. That small crisis mushroomed into a disaster that could require as much as \$500 billion to rectify.

We hope that Congress has learned from the savings and loan mess and moves to resolve the problems facing the pension insurance program before they reach epic proportions.

## Letters

## Insurance isn't only factor in health care woes

To the editor: We Americans are severely limiting our ability to address the national health care crisis by speaking and possibly thinking in terms of insurance affordability and availability.

In Deborah Shalowitz's Jan. 6 article, "Workers Value Health Benefit: Study," she quotes Dallas Salisbury of the Employee Benefit Research Institute as saying, "This finding may be telling us that most American workers are becoming more aware of the high cost of health care and, consequently, they want to ensure they have the best possible health insurance coverage."

While I believe Mr. Salisbury correctly identified public sentiment, it is our responsibility to reframe the overall public debate.

It is our responsibility to recognize and remind policymakers that no one needs health insurance; what we all need is access to health care, and insurance is only one of many possible ways to finance health care

services. At the same time, we need to recognize that in many cases insurance may not be the best possible mechanism for funding medical care.

Understandably, insurance of any type is best suited to low-frequency, high-severity exposures. Insurance is suitable for major surgery and catastrophic care. But routine care, because of its routine nature, is not a proper subject for insurance treatment.

The American people are dissatisfied with

## Manufacturer's punishment knows no end

To the editor: The front page of your Jan. 13 issue featured an interesting description of the Assn. of Trial Lawyers of America-inspired Roscoe Pound Foundation report on punitive damage awards. The article, "Punitive Damage Problem Is Exaggerated: Report," made clear that the foundation's report acknowledged that there are increasing numbers of such awards in asbestos cases. . . and that is why I am writing this letter.

The report argues that punitive damage awards have been decreasing (except in asbestos cases!) so it is surprising they are a national policy issue. There are now more than 100,000 pending asbestos cases, an increasing number of punitive damage demands, and a good percentage of major defendants have been forced into bankruptcy. This appears to be leading to extensions into

our current health care system, and it is becoming apparent that our federal officials will be compelled to take action. We will serve both our industry and our nation if we can keep the debate focused on how to finance health care and control health care costs, always keeping in mind—and clearly enunciating—that insurance is only one of the tools at our disposal.

Paul Harris  
Ballston Spa, N.Y.

other related cases—like lead paint, breast implants, heart valves, etc.—and indicates that a national policy should be created for the overall product liability area.

Keene Corp. wants to pay truly impaired parties, but punitive damages are absurd. A criminal can be punished only once, while a manufacturer can be punished thousands of times for a single act, even though—as in Keene's case—nothing was done that was illegal or improper. Yet Keene has been punished 15 times with punitive damages totaling \$38 million. You can understand why ATLA would sponsor the report when you realize that they will get approximately 50% of the punitive damage awards!

Glenn W. Bailey  
Chairman and President  
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For early retirement last year when a similar program was offered, he said.

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## Data bank

Continued from page 2

The voluntary surrender or restriction of clinical privileges by a physician or dentist being investigated for possible incompetence or improper professional conduct must be reported. In addition, the data bank must be notified if privileges are surrendered in return for an end to an investigation.

Also, review actions taken by professional societies must be reported if they jeopardize a provider's society membership.

Physicians argue that the data bank's requirement that all medical malpractice settlements be reported, no matter how small, unfairly penalizes some doctors.

The Chicago-based American Medical Assn.'s House of Delegates voted in December to seek to reform—or abolish—the data bank because it believes that small settlements should not have to be reported.

The AMA supports a threshold of \$30,000 for malpractice settlements.

The AMA noted in the resolution that currently all liability claims payments must be reported even though the probability of being sued relates "more to specialty and location of practice than to the competence of the practitioner."

Reporting a physician to the data bank who simply settled a nuisance claim will "needlessly damage and taint the physician's reputation," the

resolution stated.

The requirement that all settlements, no matter how small, be reported is unfair because it includes physicians who settle a meritless claim simply because that is cheaper than defending the claim, said Dr. Richard D. Eberle, chairman of New York's delegation to the AMA House of Delegates.

"A liability settlement is not an acknowledgment of fault," Dr. Eberle noted. In fact, many times an insurer—not the physician—will decide to settle the claim.

The AMA "recognizes that the likelihood of repeal is probably nil," he conceded, though "the House (of Delegates) spoke loud and clear in the December meeting."

The lack of a minimum reporting threshold discourages a physicians from attempting to settle out of court, suggested Beauregard Stubblefield, program director of the American Hospital Assn.'s division of medical affairs in Chicago. The threat of a data bank report is a disincentive to quick settlement of small claims, he said.

The American Hospital Assn. has supported a \$50,000 threshold on malpractice settlements since the act was passed in 1986.

Beyond the fact that many of the claims settled below this amount are nuisance claims, a threshold would also save insurers and hospitals the expense of preparing data bank submissions for every settlement, Mr.

Stubblefield said.

The U.S. Health Resources and Services Administration, which administers the data bank, is conducting an "extensive study at the request of Congress" to determine if a threshold is advisable, said Thomas Croft, acting director of the division of quality assurance for the HRSA's Bureau of Health Professions in Rockville, Md.

The study by the HRSA, an agency of the U.S. Health and Human Services Department, should be completed by midsummer.

Meanwhile, proponents of the data bank, like Mr. Croft, claim it is beginning to identify physicians seeking hospital privileges whose past actions have been reported to the bank.

The number of inquiries that turn up information about health care professionals in the data bank has doubled in the last five months. While an increase in the number of inquiries yielding information about past incidents was expected, that rate of increase was something of a surprise, he said.

The data bank received about 1.1 million queries during its first 15 months. Of those, 11,132 have yielded information about incidents reported to the data bank.

All told, the data bank has received 25,034 reports of malpractice payments and disciplinary action for all categories of practitioners.

In addition to yielding more information, the data bank has suc-

cessfully cleared up a backlog of requests for information.

The contractor that handles day-to-day operations of the data bank is "essentially meeting the requirements laid out in the contract that it respond to individual queries within five days and multiple queries within 20 days," said Mr. Croft.

In fact, the number of complaints received by the American Hospital Assn. about delays in response time have "gone down noticeably" in re-

cent months, Mr. Stubblefield said.

The hospital association and other organizations currently are working with the HRSA to develop software that can be loaded with reporting or query information and then sent to the data bank, eliminating the human errors inherent in paperwork, Mr. Stubblefield noted.

The new software, which should be available by April 1, will shorten the processing time at both ends, Mr. Croft said. ■

## Faugere & Jutheau purchase

Continued from page 3

established to control the business. The Husson family will have a majority interest in this company, with Marsh & McLennan owning 30% to 40% and local managers in Africa owning a small share, Mr. Husson said.

Faugere & Jutheau has offices in 12 former French colonies in Africa. Faugere S.A. has 12 offices in France, one in Spain, and one in Monaco.

Altogether, Faugere & Jutheau Group now has approximately 1,380 employees throughout France, Monaco and French-speaking Africa.

Between 95% and 97% of Faugere & Jutheau's business is commercial insurance, according to Mr. Husson.

Its clients include such major multinational corporations as: Airbus Industrie, Air Afrique, Ariane-space, BNP, Robert Bosch GmbH, Electricite de France, France Telecom, Michelin & Co., Peugeot S.A., Radio France, Societe Generale and Volkswagenwerk A.G.

These clients will not be scared away by the Marsh & McLennan acquisition, said Mr. Husson. Earlier, though, he had that French companies are anxious to deal with French-owned brokers (BI, July 1, 1991).

Many of these same clients are now developing their own international liaisons and are aware of the commercial forces that make these moves prudent, he said.

"For example, BNP has announced recently that it is exchanging 10% of its shares with Dresdner Bank... my concern before was much more a question of timing," Mr. Husson said.

Nevertheless, his decision to sell comes about two years after Mr. Husson sold his house and moved into a houseboat on the Seine to

raise the cash to buy a block of Faugere & Jutheau shares and prevent Marsh & McLennan from increasing its stake.

"The world and the broking community has been changing since then," Mr. Husson said, explaining his about-face.

Brokers must become part of international networks, like the UNISON network that includes Johnson & Higgins, or become part of an integrated international company to serve international clients, he said.

"Through this deal, we are doing something which is good for our clients, our market and our staff," Mr. Husson said.

The acquisition of Faugere & Jutheau comes two years after Marsh & McLennan made its European strategy clear by buying its German correspondent, Gradmann & Holler of Stuttgart (BI, Oct. 30, 1989).

It also tried, unsuccessfully, to buy Hudig-Langeveldt Group bv, a Dutch brokerage based in Rotterdam that was Marsh & McLennan's correspondent in the Netherlands.

Hudig-Langeveldt refused to sell, saying that it would conflict with its own plans to expand throughout Europe.

As a result, Marsh & McLennan opened its own office in Rotterdam. Marsh & McLennan bv is headed by managing director Eric Dorhout Mees and has a staff of 18. Mr. Dorhout Mees was formerly a board director of Hudig-Langeveldt before he joined M&M in London five years ago.

Rollins Burdick Hunter Group Inc. last year bought the Dutch brokerage for an estimated \$150 million to \$200 million (BI, Aug. 19, 1991).

The Hudig-Langeveldt experience may have encouraged Mr. Husson to change his mind and sell to Marsh & McLennan, said Allan Nicholls, an insurance stock analyst at London stockbroker James Capel & Co. Ltd.

"Marsh & McLennan has made clear that it wants to establish control of its European offices and this is what caused the break between it and Hudig-Langeveldt," he said.

"Looking at it from the Faugere & Jutheau point of view, it must have become clear that one way or another the relationship with Marsh & McLennan was going to change and they had to decide whether they wanted the relationship to continue or not," Mr. Nicholls said.

M&M's decision to break with Hudig-Langeveldt and set up its own office from scratch also forewarned Faugere & Jutheau that the M&M was prepared to end old relationships in order to obtain its objectives, he added.

Marsh & McLennan will have no difficulty in financing the French acquisition, said Michael A. Smith, a vp with Shearson Lehman Bros. in New York.

"It's a bit more than a tip to the head waiter, but it is something that Marsh & McLennan can find in its pockets," he said.

Now that M&M has sealed its European office network it might now turn its attention to the Pacific Rim countries, Mr. Smith speculated. M&M now has offices in Japan, South Korea, Australia, New Zealand, and Singapore. ■

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## Career advice

Continued from page 3  
remarked.

"Seek a position that will allow you to be involved in business operations," he advised those who want to take this approach.

And, he added, the difficult approach involves seeking positions that will allow the risk manager to use or obtain management skills and offer the potential to move beyond risk management into finance or other areas.

The "important approach" to career management is also known as the "theory of franchise development," according to Mr. Perry.

While no one is indispensable to a particular company, this career management approach is a long-term process that involves becoming indispensable to the risk management profession, Mr. Perry explained. It is a way of ensuring that there will be future opportunities, whether the risk manager is seeking a career change or remaining in his or her current job.

"Developing your franchise," he explained, means to "develop your skills, develop your experience" and a track record with a particular type of company and "develop your personality," Mr. Perry said.

Developing a track record means concentrating on building a career with the type of company that can survive hard times, he said.

When economic hard times hit, "certain industry groups are not as viable as others," he pointed out.

Personality is a big part of success in acquiring a job, he continued. "Nine out of 10 times a job is won on personality."

"When I go on a search assignment and agree to send six people to a client for an opening," all will be "technically competent," Mr. Perry pointed out. "The one who gets the job is the one whose personality fits the best."

The lack of "franchise development" is the reason some people are out of work for six months or longer, Mr. Perry said. "So remember to keep yourself marketable. Develop your franchise."

Along with the advice he offered on how to seek a risk management job, Mr. Perry offered one caution: "Don't seek a position in a company where risk management is a distant second cousin. This type of company... wants a risk manager in a hard market but doesn't want

one in a soft market. It's the type of company that promotes the accountant who pays the bills to risk manager until the hard market comes again and they want a real risk manager."

For those who plan to stay in their current jobs, there are ways to measure one's worth and make some positive career moves.

"Reporting relationships" with superiors are especially important, he noted. "Your bosses should know what you are doing. Your job is to raise your boss' interest level. Risk management might not always be the top burning issue on his mind."

Mr. Perry told risk managers to take the "jargon and mysticism out of your job. Communicate in a common language that your boss and all others understand."

"Be a risk management salesman," he said. "Let your boss know what you are doing and why you are doing it. In fact, let everybody know."

The relationship with the risk manager's boss should be one that allows some flexibility, he said.

**'Don't seek a position in a company where risk management is a distant second cousin,' Mr. Perry advises risk managers. 'This type of company... wants a risk manager in a hard market but doesn't want one in a soft market.'**

It is "risk management suicide" to do "whatever your boss wants, even if he doesn't know any better," Mr. Perry told the group. "It is the burden of the risk manager to do what is needed. Get the freedom from your boss to maneuver."

He pointed out that the companies with the highest turnover in risk managers are ones that don't allow such maneuverability.

"Who makes the final decisions? You or the boss? Can you purchase insurance? Can you change brokers? If your answer is yes, that's good, because this is a determining factor of your own level of importance... and how risk management is perceived in your company," Mr. Perry said.

To survive at a time when there are lots of risk management candidates looking for jobs, risk managers must be "smarter, more polished, more professional and (able to) communicate better than ever," he said. "Let me tell you that the kids coming out of school today are great. The risk management field is attracting a breed of super young people unlike anything I've seen in the past 20-plus years."

Therefore, "it is imperative to build your internal status," Mr. Perry said.

Be a "big-picture person," he advised. "Make sure that your decisions impact the bottom line. Be accepted as a business partner and make sure your opinions are as val-

ued and as important as anyone else's from legal, accounting, finance or (human resources)."

Mr. Perry said he believes there will come a time when risk managers are given the same recognition as other senior officers in a company. There may even one day be a "chief risk officer" designation listed among top management, he speculated.

"It's going to be the new young breed of risk manager" that will eventually bring corporate management to realize that the profession deserves its own designation among senior officers, he said.

"It's those people who are going to show more than the old-line insurance purchaser," he said.

Young risk managers with impressive educational credentials will be such an asset to their companies that corporate officers will be forced to either promote them to senior positions or risk losing them, Mr. Perry said.

The session was moderated by Brad Newman, risk manager at Rock-Tenn Co., a paper products company in Norcross, Ga. ■

# Many issues tangle pollution suits

By MICHAEL BRADFORD

ATLANTA—Companies that take their environmental liability coverage disputes to court should be well informed about legal precedent in the jurisdiction in which their case will be heard, a policyholder attorney advises.



"On the question of environmental insurance, as perhaps with other contentious issues, it makes a difference where you are," says Jerold Oshinsky, a partner with the New York law firm Anderson, Kill, Olick & Oshinsky.

When policyholders are involved in coverage litigation, they and their attorneys should be aware that courts may rule differently regarding the same incident, depending on which state's laws they apply, panelists agreed during a discussion last month at the annual educational conference sponsored by the Atlanta chapter of the Risk & Insurance Management Society

Inc. In fact, the 3rd U.S. Circuit Court of Appeals has in at least one case decided the same issue two different ways, using two different states' laws, according to Floyd H. Knowlton, director of environmental claims for Hartford Group Inc. in Hartford, Conn.

Mr. Knowlton was referring to a case in which the court interpreted the definition of "sudden pollution" one way as it related to Delaware law and another way as it related to Pennsylvania law (BI, Aug. 19, 1991).

"How do you deal with this?" Mr. Knowlton asked. "It's crazy."

Mr. Oshinsky added that "the oddest thing about those two decisions, where the court went in opposite directions on exactly the same issue, is that one of the judges was on both panels."

Policyholders that litigate environmental claims face much more than just jurisdictional issues, according to the panelists.

Cases also routinely get tangled up over issues like: when notice of a loss was given; whether cleanup costs are damages;

whether pollution mitigation efforts are covered; and the traditional argument over the definition of "sudden and accidental" as it relates to pollution, the panelists pointed out.

Mr. Knowlton said that even the question of "what is a suit?" and when such an action was filed can be a contentious issue in environmental coverage cases. The answer, he added, can carry high stakes.

"This is more than just an esoteric issue," because the legal costs associated with environmental coverage litigation, which themselves may or may not be covered, sometimes run higher than the indemnity costs, Mr. Knowlton said.

Whether an insurer has a duty to defend can depend on how a particular state defines "suit," he said. "Again, we have mixed results on this."

In Maine, for example, the law says that only after an actual lawsuit is filed does an insurer have a duty to defend, according to Mr. Knowlton. North Carolina, on the other hand, says compliance orders issued by federal regulatory agencies are tantamount to a suit and trigger a duty to defend, he said.

In the federal courts, the 1st U.S. Circuit Court of Appeals and the 3rd U.S. Circuit Court of Appeals have ruled that a case must be in civil litigation before there is a duty to defend, while the 2nd Circuit does not require litigation to trigger the duty, he said. "It makes it difficult for us to deal with this."

The panelists also said that asbestos coverage problems are not disappearing, as some thought they would.

"Floyd (Knowlton) and I both thought that six or seven years ago, the asbestos problems were behind us," said Mr. Oshinsky. "It turns out we are seeing more asbestos claims today than perhaps ever before."

"Asbestos is not behind us," Mr. Knowlton concurred. There now are about 140,000 cases pending nationwide involving individual plaintiffs who have sued manufacturers or installers of asbestos, he said.

Many of the issues surrounding environmental claims also apply to asbestos litigation, Mr. Oshinsky noted.

But the problem of asbestos in buildings creates a rift between insurers and policyholders regarding whether the presence of the material constitutes property damage, he said. If there is no property damage, general liability policies would not apply.

"There have been about nine de-

terminations on that, and, with no exception, the courts have held" that the problems caused by asbestos in buildings constitute property damage, Mr. Oshinsky said.

"Now you get into the question of 'when did it happen?' And the same problems" that occur in environmental cases begin to appear, he said.

In the nine cases he referred to, Mr. Oshinsky said there have been at least four different results regarding when the property damage occurred.

Meanwhile, Mr. Oshinsky advised policyholders to always check their policies after any incident, regardless of whether they think there may be coverage.

The insurance contract may contain some surprises, he noted.

He referred to a case in which a client faced a securities fraud suit and handed over its commercial general liability policy for Mr. Oshinsky to comb through.

"And lo and behold," he proclaimed, an underwriter had included a professional liability endorsement not normally found in such a policy. And that endorsement provided unexpected protection, he said.

"Whenever you get a claim," consult the policy regardless of how remote the possibility seems that there could be coverage, he advised. "You never know what you're going to find."

As an example of finding coverage where it appears there may be none, Mr. Oshinsky pointed to coverage of sexual harassment claims. While commercial insurance can't be found that will cover sexual harassment, "what you are going to find is that there are policies that cover assault and battery. And there's at least one case that I'm aware of in New Jersey that has held that sexual harassment types of claims are covered under the assault and battery provisions of the policy," he said.

There also are questions as to whether mental anguish claims are insurable, Mr. Oshinsky said. "There are cases all over the block. The issue is whether you can squeeze the definition of mental anguish under bodily injury."

While some courts have ruled that "you need to have physical injuries before you can have coverage for mental anguish, other courts have said that mental anguish is an injury... and other cases have said it's flat out not covered."

The discussion was moderated by Gary Meggs, risk manager of Southern Co. Services Inc., an Atlanta-based electric utility. ■

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## For The Best In Life—And Health.

# Going global has big price tag: Insurer

By MICHAEL BRADFORD

ATLANTA—It takes a lot of cash to go global these days, says an executive with one of the world's largest insurers.

High entry costs confront insurers that are interested in entering European markets by purchasing local companies, said Wolfgang Schlink, president and chief executive officer of Allianz Insurance Co. The insurer is a Los Angeles-based unit of Allianz A.G. Holding, Europe's largest insurer.

"International expansion does not come cheap," he said. "In Europe, insurers have been changing hands consistently at three times book value, compared to more traditional prices of 1.5 times book value."

"But it is a matter of supply and demand," said Mr. Schlink, who spoke during a panel discussion last month at an educational conference conducted by the Atlanta chapter of the Risk & Insurance Management Society Inc. "Suitable targets in Europe that are for sale are hard to come by."

Starting up a European operation is not easy, he warned: Shareholders want short-term profits in a market that requires long-term thinking.

"I think this is certainly a handicap for some U.S. insurers who would like to go global but have shareholders who would rather see short-term profits."

According to Mr. Schlink, U.S. companies expanding abroad also face managerial challenges in foreign cultures, along with the task of mastering different technological systems and dealing with an unfamiliar population of consumers.

For its part, Allianz moved quickly when Eastern Europe began opening to Western commerce (*BI*, April 16, 1990). Acquisitions were made in Hungary, and the insurer is licensed to write business in the Commonwealth of Independent States, the former Soviet Union.

Allianz doesn't expect to make a quick ruble or deutsche mark on its investments in Eastern Europe, Mr. Schlink stressed. "But we consider the market potential very high," he added.

Some 4,500 insurers compete in Western Europe, which has a population of about 320 million, he explained. But only about two dozen insurers are able to write business in Central and Eastern Europe, where about 400 million people live.

Mr. Schlink said insurers must act quickly to get a piece of the business in the new European market.

"It has been suggested that in the long term, there may only be a dozen elite global insurers. And if the goal is to be one of them, then one had better... (establish) an international presence as soon as practical," he said.

One key to international expansion is specialization, said Thomas Hite, president of Zurich International U.S., a Zurich Insurance Co. unit in Schaumburg, Ill. "One cannot be all things to all people. At the end of the day, the successful international companies are those that have obtained inside positions within the markets they expand toward."

Insurers will have to focus on specialties in different markets because insurance needs are different in various countries, Mr. Hite noted. Insurers must develop "a global strategy to segment markets

and define target classes."

As an example of such a strategist, Mr. Hite pointed to American International Underwriters.

In Japan, it handles a lot of personal lines, while its U.S. specialty is large commercial risks, Mr. Hite said.

Restrictions in Japan make it difficult for foreign companies there to insure large accounts, explained Brian Duperreault, who is president of AIU, a unit of American International Group Inc.

AIU's approach to globalization, he explained, is to have a strong local presence and a good book of local business in addition to multinational accounts.

"In general, when we've seen failures of international insurance companies, we've found that they didn't establish that local book of

business," Mr. Duperreault remarked.

Insurers need to establish local business that is self-sustaining and develop ties to a locality by, for instance, hiring local employees. Those that don't will have trouble achieving proper economies of scale and providing quality service to their policyholders, according to Mr. Duperreault.

"We've built our business around the world in spite of access issues and restrictions," he said. "We've persevered, made long-term commitments to those markets, and we've been willing to adapt to local practices. And, in particular, we've hired local personnel and local management."

Those criteria should apply not only to U.S. companies entering markets abroad, but to foreign

companies that move into the United States, he added.

Companies that come to the United States with such an approach can expect to be "very successful and welcomed," he said.

While insurers work on establishing global operating centers, brokers are developing more international ties as well, according to Michael J. Linde, manager-international sales and marketing at Johnson & Higgins in New York.

"I think it's fair to say the majority of the large alphabet-house brokers in the United States are now routinely looking for European underwriters" to provide capacity on global and domestic accounts, he said.

"This differs fundamentally from the practices of the past where we routinely left capacity

and development to the program underwriter," said Mr. Linde. "Developing the capacity ourselves better enables us to control pricing and is particularly critical when dealing with large capacity exposures such as California or Japanese earthquakes."

Mr. Linde said there are a "variety of options" for multinational insurance buyers, where there were only a few well-known players in the past.

That view is not shared by Ronald Forrest, president of Alexander & Alexander Inc. in New York, who sees those options shrinking (see related story).

The panel discussion was moderated by Joe Gregory, U.S. risk manager of BET Inc., a unit of British conglomerate BET P.L.C. in Atlanta. ■

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# Broker views consolidation

By MICHAEL BRADFORD

ATLANTA—Risk managers at multinational corporations may find themselves with fewer global insurance options as trade barriers continue to fall in Europe and elsewhere, says a major brokerage executive.

As consolidation continues, many insurers and brokers will fall behind in the race for worldwide accounts, according to Ronald Forrest, chairman and chief executive officer of New York-based Alexander & Alexander Inc.

A keynote speaker at a recent educational conference sponsored by the Atlanta chapter of the Risk & Insurance Management Society Inc., Mr.

Forrest contrasted his view with others' predictions that multinationals will have more insurance options with the loosening of trade barriers and the emergence of new markets like Eastern Europe.

Those options may not present themselves for some time, he pointed out. In fact, there is already evidence that the number of insurance choices is shrinking.

Many international insurers have cut back on their worldwide activity in the past decade, he pointed out, and apart from a few companies, U.S. insurers "have been quite passive" about global expansion.

On the brokerage side, "It is becoming quite obvious that there will only be a handful of brokers with global capacity in the next decade," said Mr. Forrest.

A&A has completed its expansion plans in Europe with the acquisition

of Alexander Howden in 1982 and Reed Stenhouse in 1985, he added.

On the reinsurance front, Mr. Forrest said there is an encouraging trend among major reinsurers to deal directly with brokers in structuring clients' insurance and reinsurance needs. "Certainly from a European perspective, that trend has changed dramatically," he said.

"This has to be to the buyer's advantage. It gives them access to the ultimate carrier of their risk. I believe that too often, buyers have been disadvantaged by the arbitraging of their risk through several hands before it reaches the ultimate carrier. So the trend of direct involvement of the ultimate risk-taker, the reinsurer, is a trend that we welcome and encourage."

Mr. Forrest told risk managers that "the world is shrinking," and as new markets emerge around the world,

risk managers, insurers and brokers who do business in different parts of the globe will have to prepare for an array of political, technological and cultural changes.

Changes are occurring "all around the world," he emphasized, "and they are going to affect us all. Every strategic decision we make relating to risk management and insurance must take into account the global implications of the world economy and political changes."

Mr. Forrest pointed out that the "free market is already beginning to happen in insurance" in Europe and "the same thing is happening in Latin America on an ever-widening basis. Even Japan is talking about allowing the breakup of their cartel. The free-market philosophy is winning."

One result of the emergence of new markets is the need for insurers, brokers and risk managers to become familiar with the cultural differences in areas of future expansion, he said.

As the global insurance market ex-

pands, the importance of cultural differences becomes profound, he noted. "They are something you have to understand and take into account. . ."

For example, Mr. Forrest said, in the United Kingdom, "the market was founded on the principle of utmost good faith. It would be quite common for a contract to commence on a handshake. The policy would not be issued for several months."

That scenario contrasts with a U.S. market that is "very much contractual," he remarked, and where business done simply on a handshake would not be tolerated.

The U.S. market operates in stark contrast with the Japanese way of doing business, said Mr. Forrest. "The Japanese don't believe their relationships with their clients are contractual. If you could find one word to define it, it would more likely be 'spiritual.'"

If a Japanese client has a claim, "no matter what it is, it's going to get paid," he said. "But they also expect that client not to shop around on price. They expect a continuity that I suspect very few American buyers are prepared to give."

As Americans begin to deal increasingly with Europeans and Asians in the global insurance market, there will have to be some compromise, Mr. Forrest said.

While Americans will have to become more involved in "relationship" dealings, Europeans and Japanese will have to recognize "commercial reality," he commented. ■

## RIMS chapter's education meeting draws record crowd

ATLANTA—Experts offered both global and personal perspectives on the risk management and insurance industries at the Atlanta chapter of the Risk & Insurance Management Society Inc.'s 9th annual Educational Conference last month.

The conference, which has gained a reputation as one of the best among RIMS chapters, was held Jan. 22-24.

This year, a record crowd of more than 300 heard discussions of global issues such as the impact of relaxed trade barriers on risk managers' insurance options, which was reviewed by Brian Duperreault of American International Underwriters, a unit of American International Group Inc.; Michael J. Linde, manager of international sales and marketing at Johnson & Higgins in New York; and Wolfgang Schlink, president and chief executive officer of Allianz Insurance Co., the Los Angeles-based unit of Allianz A.G. Holding, Europe's largest insurer.

Ronald Forrest, chairman and chief executive of New York-based Alexander & Alexander Inc., was a keynote luncheon speaker and gave his views on the global marketplace.

In addition to global perspectives on the industry, some personal insights were also offered.

Richard T. Talbot, an engineer with Cambridge, Mass.-based Polaroid Corp., conducted a session on how dominance by a particular quadrant of the brain affects personality and decision-making, leaving conference-goers to decide which area of their brains was in control.

And Bill Perry, president of Logic Associates Inc., a risk management executive search firm in New York, gave the audience of a packed session tips on how to further their careers at a time when there is a glut of risk management candidates.

Next year's conference is slated for Jan. 20-22. For information, contact Dolly Turner at the Cobb County Board of Commissioners, 10 East Park Square, Marietta, Ga. 30090-9628; 404-528-1586.

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# Opportunities close to home

## New trilateral trade pact will open doors to Latin America

By Douglas N. Smith

THE DECADE OF THE 1990s, though just under way, is already shaping up as the decade of change. Political upheaval in Eastern Europe, Latin America and other parts of the world has been accompanied by equally swift economic advances. In Latin America, a new partnership for trade, investment and growth is being fostered by the Enterprise for the Americas, a Bush administration proposal to create economic links between countries in North and South America. However, of more immediate impact to U.S. business interests will be the proposed North American Free Trade Agreement, which the United States, Canada and Mexico currently are negotiating.

NAFTA promises to create a vigorous and formidable trading bloc, with a bigger population than the European Community—360 million vs. 326 million—and a larger real gross national product—\$5.9 trillion vs. \$4.4 trillion. As Mexico constructs a sound industrial and economic base, its strengthened internal market will have a direct effect on U.S. exporters and permit U.S. firms greater access to the rest of Latin America.

The NAFTA negotiations are expected to conclude late this year. From an insurance perspective, the process of putting the foundations of trade and investment structures in place and eliminating barriers to the flow of goods, services and investment will provide U.S. insurers and brokers with greater access to a dynamic and growing Mexican market.

Mexico, long eclipsed in the global economic arena, now leads Latin American countries in privatizing stagnant public enterprises, restructuring debt, promoting sound fiscal policies and using private sector capital to drive economic development. The NAFTA negotiations are moving forward just as Mexico is preparing to position itself securely within the global trade and investment structure. As Mexico emerges from the so-called "lost decade" of the 1980s, successful completion of the free trade agreement with the United States and Canada will be perceived as a sign of Mexico's willingness to compete on a new level with those countries. Equally important, Mexico's commitment to growth will have a significant effect on U.S. firms interested in trade investment and export.

The trade agreement illustrates the desire of private and public sector groups in the United States and Mexico to build a framework for economic growth on a foundation of mutual benefit.

The U.S. Council of the Mexico-U.S. Business Committee, the largest and oldest bilateral private sector organization focusing on public policy issues of interest to both countries' business communities, has set forth several goals of primary importance to participants at the talks:

- The assurance that all three governments develop long-term, market-oriented policies.
- The provision that business operations in all three countries benefit from economies of scale.
- The enhancement of competitiveness so that greater diversification and specialization occur, which would spur greater responsiveness to consumer needs or market conditions.

Political and business interests on both sides of the border hope that NAFTA will foster opportunities to employ a wider range of technology while providing intellectual-property protection, as well as enhancing the flow of capital and scarce skilled human resources. The current fear among labor interests in the United States and Mexico regarding the implementation of NAFTA goals has been an important consideration in the negotiation process. Therefore, an adequate transition period for implementing the NAFTA framework will be

provided in order to strengthen individual countries, rather than weaken them during the negotiation period.

Underlying the various NAFTA objectives are a series of general principles that have been incorporated into the negotiation process. Among the more important are:

- The economies of each country will function with increasingly less governmental interference, allowing investment opportunities to develop as governmental restraints are dismantled.
- The development of more efficient economies will create more jobs and will increase standards of living.
- The shortest path to growth will come as a consequence of trade liberalization; elimination of governmental obstacles to trade and investment, like countervailing duties, tariffs or other protectionist mechanisms; and the unimpeded flow of capital and human resources.
- Duties will be eliminated within a reasonable time frame so that specific industries or financial sectors have time to adjust.

**NAFTA promises to create a vigorous and formidable trading bloc, with a bigger population than the European Community and a larger real gross national product.**

- The NAFTA structure will be consistent with the General Agreement on Tariffs and Trade and other multinational trade and investment agreements.
  - A mechanism for dispute resolution will be created and the resulting enforcement authority will be recognized and capable of addressing any conflicts that may surface regarding the accord.
- NAFTA negotiations regarding insurance issues fall under the umbrella of the services agenda, particularly financial services. Historically, multinational negotiations—like efforts under the auspices of GATT—regarding cross-border regulation of services have been a complex and often contentious process with little headway in creating international regulations concerning services among countries. NAFTA proceedings on the issue of services promise to be equally complex. Currently, because there are no international rules governing services, it is difficult, if not impossible, for U.S. firms to provide either financial or insurance services in foreign markets if a country regulates against them.

U.S. efforts to provide transnational insurance services are made more complex due to differences in insurance regulations in the three countries participating in the talks. The inclusion of insurance services—and the successful completion of an accord on insurance services within the trilateral free-trade agreement—will mean that the U.S. insurance industry should be able to deliver its products and services more efficiently. This will have the subsequent effect of increasing capacity commitments to the insurance industry in general, and especially in Mexico.

Improved trade relations over the last few years have already had a beneficial impact, at least to a limited extent, on insurance opportunities for U.S. firms. Increased trade also has sped up the deregulation of Mexican insurance in certain areas (BI, Nov. 5, 1990). But many differences still exist between the two markets.

The Mexican insurance industry is regulated on the federal level. Mexico could be defined as an immature insurance market with relatively few

insurance buyers, probably because of the cost priorities of individual purchasers. Product availability is limited and, to a certain extent, so is capacity.

The Mexican market had been highly regulated both from a pricing and conditions perspective. But since Jan. 1, 1991, open competition is the norm, with an accompanying dramatic increase in market activity. More Mexicans have begun to purchase coverage and more premiums have stayed in the country on a percentage basis.

With the easing of foreign-investment policies, some foreign insurers have increased their equity position in Mexican insurers. However, it appears that almost all insurers are concerned about how NAFTA negotiations regarding insurance may affect their operations in Mexico.

By contrast, the insurance market in the United States would be considered mature, with many buyers of insurance and good availability of products except workers compensation and auto coverages. The U.S. market is noted for its myriad products, in part a result of the country's sophisticated system of jurisprudence. Insurance markets are regulated at the state level in all 50 states. The U.S. market is characterized by fierce competition, with open rating except for workers compensation coverages.

If successfully completed, NAFTA will stimulate competition, especially in Mexico, and will make for a stronger, more effective Mexican insurance industry. As the negotiation process draws to an end, several issues should be addressed so that insurance services will not be left behind in the financial services agenda:

- Demand for U.S. insurance services will increase in Mexico, but effective, mutually beneficial mechanisms for working together must be firmly established.
  - The legal systems of the United States and Mexico will not merge, but there should be a move toward international insurance standards (i.e., for the transportation industry).
  - Will Mexico subscribe to the concept that foreign ownership of business operations within Mexico should be extended beyond the current limit of 49%?
  - The issue of state regulation of the insurance industry in the United States vs. federal regulation in Mexico needs to be addressed. What institutional actions will be taken with regard to insurer insolvencies in both nations?
  - What internal sources of capacity will be developed in Mexico?
  - What are the resources for handling catastrophic covers, like earthquake or windstorm, in all three countries?
  - How will European and Asian investment in the North American insurance markets affect NAFTA?
- Finally, if either Canada, Mexico or the United States allows cross-border business, will a policy for one country be acceptable in another? Against the backdrop of present trends in the European Community insurance market, it seems unlikely that transnational policies will gain acceptance for quite some time. However, passage of NAFTA will mean that the institutional framework for addressing these issues will be in place. ■



Douglas N. Smith is senior vp and manager of the International Department of Johnson & Higgins in New York. His column appears the first Monday of every month.

# ASK A RISK MANAGER

## Risk management rises to challenge of recession

**Q**

The recession continues to have an impact on most companies with budget cutbacks and staff reductions being the norm. As we look toward a new year, I would appreciate your thoughts on how to efficiently manage a

risk management program under such circumstances.

**A**

An excellent question and one that many of us have faced. We've often heard the saying, "When the going gets tough, the tough get going." That may be true, but unfortunately, the "tough" can easily be misled when trying to find quick solutions that direct

the company into areas of risk that would otherwise be avoided under normal circumstances.

I am assuming you already have an established risk management program that is centered on achieving certain goals. The goals are typically associated with reducing the exposure to and ultimate cost of risk. The single most important objective for you and your company is to remain focused on those basic goals.

When employees find their financial security threatened, we find that accidents are suddenly on the increase. Workers become distracted in a tense, unstable environment and are prone to disregard common-sense safety practices or sometimes feel the company owes them something and will attempt to collect from workers compensation by falsely claiming an injury.

Maintaining a relatively high level of morale is a challenge for a company's management, especially when officers feel their own livelihoods may be in jeopardy. Everyone needs to demonstrate ongoing commitment to the company's safety program. Likewise, maintaining effective claims management practices is critical to controlling loss costs.

Keeping lines of communication open, both inside and outside the company, is absolutely essential in any business environment and even more so during stressful times. External communication involves

informing outside service providers (brokers, claims administrators or other consultants) of changes in the company. It is especially helpful for claims adjusters to be aware of staff reductions so that they can prepare to give particular attention to suspicious claims. It is helpful to have these outside parties keep a watchful eye over the risk management program and advise you of any negative trends that may otherwise go undetected because of your preoccupation with changes within the company.

Internal communication is vital during an economic downturn, since the company's risk complexion may change gradually over weeks or months, or dramatically almost overnight. It is therefore important for you to remain in direct contact with key departments of the company, like finance, marketing, human resources and production to determine how various exposures to loss have been affected. Risk management should always be viewed by the organization as a resource. It is important to help management find ways to operate safely, wisely and efficiently when dollars are tight.

No doubt some of your objectives have been eliminated because of budget constraints. For this reason, you must obtain optimum results from your risk management program as payback for the dollars spent.

One key area is the loss prevention program. You may have to scrap a new project and opt to modify an existing one. If the success of your risk management program relies heavily on employee training, be selective about how to improve that program. Or, you may find yourself faced with new compliance issues like the Americans with Disabilities Act, which is taking effect this year for many companies.

Learn whatever resources are available within your company or from outside service providers that are able to assist and perhaps contribute to the cost of such changes.

If your company suffers a reduction in workforce, you may find your department affected by the downsizing. I have found in talking with other risk managers that most of us operate with relatively lean staffs. If you are faced with eliminating a position, the challenge is in preserving the integrity of the department's function.

If job responsibilities cannot be easily consolidated among remaining personnel, three choices remain. The first, and least desirable choice,

is to discontinue performing that job entirely. The second choice is to modify the job so that only the most critical aspects of it are performed and transfer those responsibilities to other staff members. The third choice is to hire an outside party to perform the job.

This may be an opportune time to re-evaluate the funding arrangement of your insurance program. Again, the objective is to provide adequate protection from the effects of accidental loss but at the most economical price. Is it appropriate to raise deductibles? Is it possible to eliminate some coverages? Or is it more advantageous to purchase more coverage rather than self-insure a particular risk? Each of the questions should be given careful consideration, since you and your management must have a complete understanding of the consequences of making any change.

These economic times do offer some advantages. By causing us to carefully evaluate what we do and how we do it, we can make some improvements. And, we will certainly appreciate the good old days when they eventually return. ■

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

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

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



Ms. Werner

*actuarial questions in the casualty field. Ms. Werner's and Mr. Nirtaut's columns appear on the second Monday of alternate months. Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month.*

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

## 'Voluntary' cleanup not covered by CGL: Court

Does an agreement by a policyholder to pay for a waste cleanup, made under the threat of a lawsuit, constitute a "voluntary" payment? The Supreme Judicial Court of Massachusetts found that it did and, thus, fell within the meaning of an exclusion in a CGL policy for payments made "voluntarily."

Augat Inc., through its subsidiary, operated a manufacturing facility that electroplated mechanical devices by placing them in tanks of chemicals. In 1983, a state inspection revealed that Augat's water treatment system at the facility had failed and that contaminated water had been discharged into the sewer system and the ground at the site. Under threat of suit by the state, Augat consented to a judgment and agreed to decontaminate the site. A judgment was entered against Augat on Feb. 6, 1984. On Feb. 9, 1984, Augat wrote to Liberty Mutual Insurance Co., its comprehensive general liability insurer, advising of a situation that might give rise to a claim

### Legal briefs

under the policy. The policy excluded coverage for any voluntary payment or assumption of an obligation. Augat then waited 2½ years to inform Liberty of the \$1.1 million judgment and requested reimbursement. The insurer refused. Augat sued Liberty for breach of contract, but the trial court ruled for Liberty.

On appeal, Augat contended that it did not violate the voluntary payment provision because its consent to judgment was not "voluntary," but was coerced by threat of a more costly verdict. The court said the decision was "voluntary" because it had an alternative: to demand that Liberty defend the claim.

*Augat Inc. vs. Liberty Mutual Insurance Co., Supreme Judicial Court of Massachusetts, May 14, 1991 (BI/05/J.-\$10).*

### Comp benefits behind bars

A Colorado law suspending all workers compensation benefits to prisoners following conviction, except for permanent disability payments assigned to the prisoner's spouse or minor children, has been upheld.

Patrick Wood sought review of an order of the Industrial Claims Appeals Office ruling that he was not entitled to payment for permanent partial disability benefits during his imprisonment following a felony conviction. The law on which the order was based became effective on April 17, 1986.

Mr. Wood argued that the law increased the punishment for the crime he committed prior to the law's enactment. He contended that the law violated the ex post facto clause of the state constitution, which forbids retroactive application of law.

The Colorado Court of Appeals said

that the prohibition applies only to criminal penalties.

The court observed that the law did not show an intent to impose further punishment for past crimes. "It shows an intent to remedy the perceived unfairness of requiring employers and insurance carriers to pay benefits as compensation for lost earning capacity to persons who have no earning capacity because their imprisonment has removed them from the work force."

*Wood vs. Beatrice Foods Co., Colorado Court of Appeals, March 28, 1991 (BI/02/M.-\$10).*

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

## Mining suit

Continued from page 1

several co-sponsors from coal-producing states. Sen. Rockefeller plans to tack the bill onto upcoming tax reform legislation.

The companion House bill was introduced by Rep. John Murtha, D-Pa.

The legislation first would eliminate the funds' current deficit of more than \$100 million by authorizing a transfer of assets from the UMWA's overfunded defined benefit pension plan.

The UMWA and the BCOA fully support such a transfer.

"The pension plan is overfunded, and even after the transfer it will be overfunded. The union's position is: If this is what it takes to eliminate the current deficit, then that's what should be done," said Michael Buckner, a research director for the union.

The legislation also calls for those coal producers that signed the 1978 National Bituminous Coal Wage Agreement and are still in existence to assume responsibility for funding health care benefits for their 48,000 retirees.

Under the legislation, coal producers that are honoring the current 1988 wage agreement would pay for their retiree health care obligations through contributions to a new UMWA retiree health care fund created by the bill.

This new fund would be set up and administered much like the current funds. But the legislation does not say how the new fund would be financed. That detail would be decided in the 1993 collective bargaining agreement, according to the UMWA and the BCOA.

The legislation also would require a new government-administered fund to cover the retirees of coal companies that signed the 1978 national wage agreement but, though still in business, are no longer contributing to the retiree health care funds. These

companies have negotiated local wage agreements with the UMWA since 1978, but the union's health care funds are still paying benefits to these companies' 18,000 retirees.

The legislation does not say how such a fund, known as the Coal Industry Retiree Health Benefit Corp., would be funded.

Under the bill, this same fund would cover the health claims of the 72,000 retirees "orphaned" by companies no longer in the coal business. These benefits would be funded by a charge of 75 cents per man-hour of production levied on all coal companies—even those that never signed a wage agreement with the mine workers union—and a tax on imported coal.

Combined, the production charge and an import tax would raise \$230 million annually, the BCOA estimates.

The legislation also would require that managed care tools be applied to all future retiree medical benefits. Those tools would include a cap on physician charges set at Medicare's maximum allowable level, the introduction of prescription drug programs and mandatory utilization review.

In a related matter, U.S. District Court Judge Thomas Hogan in Washington, D.C., has ruled about 20 coal producers that signed the 1978 wage agreement containing an "evergreen clause" are obligated to pay for missed contributions—plus interest and damages—to the 1950 and 1974 funds.

The so-called evergreen clause, which originally appeared in the 1950 agreement and was later modified and included in the 1978 agreement, required that all signatories to the 1978 and later agreements continue contributing to the funds.

These companies—which include A.T. Massey Coal Co.; Pittston Co.; and Pittsburgh & Midway Coal Mining Co.—would have to contribute a total of about \$50 million under the

ruling, according to a coal industry attorney (see related story).

The BCOA is banking on passage of the Rockefeller legislation. The measure closely mirrors recommendations made in 1990 by a commission established by then-Secretary of Labor Elizabeth Dole in the face of a 1990 lawsuit filed by the trustees of the funds. That suit, filed in U.S. District Court in Washington, D.C., aims to force BCOA-member companies to live up to their promise to provide retiree medical benefits, regardless of price.

And, in a motion filed last month, the trustees asked U.S. District Judge Thomas Jackson to order BCOA members to more than double their contributions to the funds to \$5.42 per man-hour of production from the \$2.50 set by the current collective bargaining agreement.

With that increase, the trustees would be forced to stop paying benefits sometime in April, the suit says. By that time, the suit says, the funds' outstanding liability for health services already provided to retirees will exceed projected contributions for the remainder of the contract.

But, both the union and BCOA insist that even if contributions are raised, they funds would only have enough money to meet their responsibilities through January 1993.

Beyond that, retired mine workers' health care benefits would suffer a devastating blow.

"The end effect of this motion could be that the funds meet their commitments for the remainder of the current contract. But what will occur after that will be a final frenzy of coal companies leaving the BCOA, which is already becoming a last man's club," said Jim Grossfeld, a UMWA special assistant.

"Therefore, we support the legislation because it would make each company responsible for the industry's orphans and their own retirees," he said.

Morris Feibusch, vp-public affairs

with the BCOA in Washington, D.C., agreed that without the legislation, current BCOA members will "scatter to the winds" when the current wage agreement expires.

The trustees' suit is "not a long-term solution," he said.

"The increase will offset the deficit and allow the funds to meet their contractual obligations, but the deficit isn't the issue. It's only a symptom of a greater problem, which is the fact that 30% of the industry is now responsible for 100% of the retirees covered under the funds," he said.

Mr. Feibusch also emphasized that for each dollar a company currently contributes to the funds for its own retirees, it pays three dollars for beneficiaries who never worked for a current BCOA member.

"Under these circumstances, the contributing companies cannot sustain the program," he said.

Not all coal companies share that sentiment. Two other groups of producers oppose the legislation, arguing that it would force them to bail out the BCOA and pay for retirees who never worked for them.

One of those groups is the Collective Bargaining Alliance, which consists of about 20 companies that signed the 1978 national wage agreement but refused to sign later agreements.

Most CBA companies, like Massey and North American Coal Corp., a Dallas-based subsidiary of NACCO Industries Inc., now provide retiree medical benefits on their own—rather than through a fund—to their union and non-union retirees. These companies claim the bill provides undue relief to BCOA members.

The BCOA created the underfunding and should rectify the situation itself, said Hal Coxson, an attorney with Thompson & Hutson in Washington, D.C., which represents the CBA.

"They created the underfunding in 1988 by switching to an hourly-based funding mechanism from a tonnage-

based system. This reduced funding by 60%. And, pursuant to the agreement contained in the national wage agreement of 1988, the BCOA is obligated to provide those benefits. It may cost the BCOA companies some money, but nobody should lose out on benefits because the funds are dry," Mr. Coxson said.

The CBA also opposes the bill because it does not impose any cost-sharing requirements on beneficiaries, Mr. Coxson said. "Employers can no longer shoulder the entire burden of providing care. I know this is a difficult subject for the union, but it should be addressed in collective bargaining."

Also opposing the Rockefeller bill is the Private Benefit Alliance, a group of 200 coal companies, most of them small and non-unionized. Most of these companies have never signed a wage agreement with the UMWA, but they would have to pay \$120 million each year to the government-administered fund, the PBA says.

Scott Kiscaden, chairman of the PBA and president of Quaker Coal Co. in Prestonsburg, Ky., says the UMWA funds face a "manufactured crisis."

He said the largest BCOA members reported hundreds of millions of dollars in pretax profits in 1991 and can well afford to meet their 1988 promises without seeking help from other companies.

"The BCOA is trying to get out of promises they made and no longer want to keep. The PBA is primarily non-union, and we think we should decide whether to provide retiree health benefits or not. We take a very dim view of being told to pay for someone else's retirees when we never agreed to do so," Mr. Kiscaden said.

That observation angers Mr. Feibusch of the BCOA. "For every one company the PBA says is profitable, I can show you three BCOA members that will go under without this legislation," he argued.

## Coal companies to appeal benefit ruling

By MICHAEL SCHACHNER

WASHINGTON—Two major coal producers will appeal a federal judge's ruling that they and other producers must pay several years' worth of contributions that they refused to make to two struggling multi-employer funds that provide health care benefits to retired coal miners.

U.S. District Court Judge Thomas Hogan in Washington, D.C., on Jan. 31 ordered all coal producers that signed National Bituminous Coal Wage Agreements in 1978 or later to make contributions to the two retiree health care funds as long as national wage agreements with the United Mine Workers of America call for the continuation of the funds.

Trustees of the funds, which currently face a \$100 million deficit, filed the suit against all signatories to the 1978 or subsequent national wage agreements—or individual agreements patterned after national agreements—that have since stopped contributing to the funds. UMWA retirees of producers that no longer are contributing to the funds still receive benefits from the funds.

Three companies countersued the trustees, charging that an "evergreen clause" in the 1978 agreement interfered with their right to negotiate collective bargaining agreements with the unions. They are A.T. Massey Coal Co. of Richmond, Va., a unit of Fluor Corp.; Pittston Co. of Greenwich, Conn.; and Pittsburgh & Midway Coal Mining Co., a Denver-based unit of Chevron Corp.

Massey and Pittston said they would appeal the ruling.

The 1978 national wage agreement modified a so-called evergreen clause that first appeared in the 1950 agreement. The modified clause requires all signatories to the 1978 and any subsequent national wage agreement to continue financing a fund established in 1950 that provides benefits to coal miners who retired before 1976 and to a 1974 fund that provides benefits to coal miners retiring in 1976 or later.

Judge Hogan found that the evergreen clause contained in the 1978 and subsequent wage agreements clearly "creates a continuing obligation to contribute for those employers who elected to participate" in the funds beginning in 1978.

Judge Hogan also ruled that any wage agreements that coal producers reached individually with the UMWA after 1978 and were patterned after national wage agreements and incorporated provisions concern-

ing the trust funds by reference bind companies to contribute to the funds.

Despite the fact that nearly 20 coal producers could be forced to pay more than \$50 million in back contributions collectively, the UMWA is not viewing the ruling as a major victory.

"Even if these companies are required to pay into the funds again, it would not be enough to change the basic fact that, without a new system for its financing, the funds will collapse," said UMWA President Richard Trumka.

Trustees of the funds say the funds will stop paying benefits to retirees May 1 if a new financing arrangement is not hammered out.

One plan wending through Congress is backed by the UMWA and the Bituminous Coal Operators' Assn., a group of about 300 large coal producers that has negotiated national wage agreements in 1978 and subsequent agreements that call for producers to finance the funds (see story, page 1).

The ruling "offers little comfort to retired coal miners who could face the cutoff of medical benefits within weeks unless government action is taken," Mr. Trumka said.

In addition, spokesmen for the UMWA and the BCOA point out that the funds will have collapsed by the time the litigation between the funds' trustees and Massey and Pittston is completed.

Garold Spindler, president of Lebanon, Va.-based Pittston Coal Group, a Pittston unit, said the unit will "vigorously contest" the ruling on appeal.

Mr. Spindler said that Judge Hogan's ruling enforcing the evergreen clause against companies that declined to sign national wage agreements with the UMWA after 1978 "violates the integrity of the collective bargaining agreement between Pittston Coal Group companies and the UMWA and is contrary to established federal labor policy."

He said Pittston Coal Group companies, which last signed a national wage agreement with the UMWA in 1984, already has paid \$17 million to the funds to settle a UMWA strike in 1990. Pittston estimates that if Judge Hogan's ruling is upheld, it would be forced to pay \$6 million to \$10 million, exclusive of interest and damages, as well as \$8 million in ongoing costs.

Paul Barbery, senior vp and general counsel with Massey, which last signed a national wage agreement in 1981, said the company has not determined what its liability would be under the ruling. He said the company would likely appeal the ruling.

## C.E. Heath establishes wholesale brokerage

### Markets

C.E. Heath P.L.C., the world's 10th-largest insurance brokerage, has formed Health Insurance Brokers Inc. in Dallas, a new wholesale brokerage operation.

"Our goal is to establish a national chain of wholesale surplus lines brokerages in the U.S." within five years, said Thomas S. Bloom, president of Heath Insurance Brokers and former president of wholesale broker Willis Faber Holdings Inc.

Ken Pinkston, chairman of Willis Faber Holdings in Nashville, Tenn., is serving as acting president of Willis Faber Holdings, a Willis Corroon P.L.C. unit and the fourth-largest U.S. wholesale brokerage, until a successor is found.

Ronald Travis, formerly president of ENCON Underwriting Agency Inc. of Dallas, is executive vp of Heath Insurance Brokers. Taking his place at ENCON, a Marsh & McLennan Cos. Inc. unit, is James Williams, who had been vp.

Heath Insurance brokers will specialize in errors and omissions, directors and officers liability, commercial umbrella, energy, and construction insurance written on a surplus lines basis, Mr. Travis said.

"We expect to do business with all the major surplus lines carriers," Mr. Travis said.

Heath was "looking to increase their presence here. They elected to do that through surplus lines," Mr. Travis said.

Heath Insurance Brokers Inc. is located at 4809 Cole, Suite 107, Dallas, Texas 75205; 214-528-3999.

### Operations sold

Crum & Forster Inc. has sold several operations as part of its ongoing restructuring process.

The London Agency Inc., a Crum & Forster wholesaler and managing general agent subsidiary, sold two brokerages that accounted for about 14% of its \$419.9 million in 1990 premium volume (BI, Aug. 12, 1991).

London Brokers Ltd., The London Agency's wholesale division, was purchased by wholesaler Crump E&S Group, a Dallas-based subsidiary of Sedgwick Group P.L.C. London Brokers has been merged with Crump E&S of Atlanta Inc., whose president, Mike Johnston, will retain his duties.

Orville Jones, president and CEO of Crump E&S Group, said brokers and staff at London Brokers were offered jobs at Crump E&S of Atlanta.

London Agency subsidiaries Floyd West & Co. of Dallas and Floyd West of Louisiana Inc. have been sold to Burns & Wilcox Ltd., a Southfield, Mich.-based wholesale division of H.W. Kaufman Financial Group Inc. Offices and staff of both companies will be unchanged, a Burns & Wilcox spokeswoman said.

Meanwhile, Crum & Forster, a Xerox Corp. unit in Basking Ridge, N.J., also sold its Canadian operations to The General Accident Assurance Co. of Canada in Toronto. Crum & Forster's Canadian operation had combined written premiums of \$67 million in 1990, accounting for 2% of the company's total volume.

### New offices

Becher & Carlson Risk Management Inc. has opened a Hawaii captive management office at 7 Waterfront Plaza, Suite 400, Office 424, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; 808-521-0800.

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## Business Insurance

a publication of Crain Communications Inc.

## Smokers study

*Continued from page 3*

month. Of those classified as non-smokers, one-tenth of 1% smoked one or two cigarettes per day.

The study followed the employees until March 11, 1989, measuring rate of absence, length of time before termination, time before the first disciplinary action, time before the first work-related injury and time before an employee's first work-related accident.

The time prior to the first occurrence of disciplinary measures, injury or work-related accidents was measured rather than rates of occurrence because of the low incidence of recidivism. Of the 502 employees who reported accidents, only 76 had a second accident and 14 had a third. Some 312 respondents reported on-the-job injuries, but only 41 had two injuries and eight had three.

The study did not distinguish between the physiological effects of smoking and behavior associated with smoking.

"Why smokers have a higher absence rate and higher rates of sick leave is logical. It is well known that smokers have more colds and respiratory illnesses. There is a clear, logical link," Dr. Ryan explained.

Less clear is why smokers have more on-the-job accidents and injuries. "My personal best guess is that smokers may be risk-takers. If they're willing to take the risk of smoking, they may be willing to take other risks in life," Dr. Ryan said.

One factor the study could not control for was alcoholism. Although smoking is self-reported with an estimated 90% accuracy, alcohol abuse is severely underreported even when confidentiality is guaranteed, say the study's authors. Chemical tests do not adequately measure the amount and frequency of consumption, they say.

Therefore some of the absences, accidents, injuries and disciplinary actions reported in the study could

## Hewitt survey

*Continued from page 3*

coverage, median annual costs will increase to \$1,945 from \$647.

After FAS 106 is adopted, annual retiree health care costs for surveyed companies will grow to 5.5% of payroll from the current 1.9%.

Costs include the annual expense of recognizing future obligations as well as the cost of the transition obligation for those companies that plan to amortize accumulated liabilities.

Surveyed employers reported a median transition obligation of \$191.5 million, or \$15,030 for every employee who is or could become eligible for retiree coverage.

But some companies reported much larger transition obligations. For example, the obligation was between \$500 million and \$999 million for seven employers and at least \$1 billion for five others.

A slender majority—51%—of those surveyed said they will recognize the transition obligation immediately, while 37% said they will amortize it and the remaining employers were undecided.

By contrast, only a few years ago benefit experts were predicting that most employers would amortize the transition obligation rather than take a big one-time hit to earnings.

However, Mr. Vogrich said, more companies are seeing a key advantage to immediate recognition: future earnings are not depressed.

Reasons the surveyed executives cited for immediate recognition include: "To get it behind us—no sacrifice on future earnings for past costs;" "don't want to penalize future earnings;" "desirable to get past service behind us."

Most surveyed companies—

be due to alcoholism.

The study shows that it is "beneficial to develop smoking cessation programs to reduce some of the costs, especially absenteeism," Dr. Ryan said.

In the past, employers could document the increased cost of health benefits for smokers, but they had difficulty quantifying work-related costs like absenteeism, according to Dave Garratt, a managing consultant with A. Foster Higgins & Co. Inc. in Washington, D.C.

In a recent Foster Higgins survey of 2,409 employers, two-thirds reported having a smoke-free workplace policy.

"Usually that is not done in a vacuum," Mr. Garratt said. "Employers add on smoking cessation clinics and things to help those people along. It forces people who smoke to reassess."

"Employers are starting to see that lifestyle has a direct impact on health care costs. More and more clients are changing the (health care cost) contribution strategy as a financial incentive to get people to stop smoking."

"More and more employers are offering smoking cessation programs but there is less and less participation," said Dr. Jeffrey Harris, director of research and development of the health strategies group at Alexander Consulting Group Inc. in Lyndhurst, N.J. "We are down to the hard-core smokers. They are probably addicted either psychologically or physiologically."

Rather than an incentive to stop smoking through risk-rated benefits, Dr. Harris suggests determining a hard figure of how much more smokers cost in health care coverage and passing the cost onto the smokers. "Set a price tag on insurance based on risk behavior," he said.

Dr. Harris also suggested that programs to help employees stop smoking be complemented with seminars on stress reduction, exercise, healthy eating and weight control. ■

87.5%—expect to adopt FAS 106 in 1993. Just two said they adopted the rule in 1991, while three others said they would adopt FAS 106 this year. Other companies either were undecided or adopted the rule earlier.

Among the 69 companies that responded to the question, 30 companies, or 43%, have made estimates of their FAS 106 liabilities that will be close to the final obligations.

Another 37 companies, or 53%, said they had estimated their FAS 106 liabilities, but still were not close to final figures. Two employers have not prepared estimates.

More than 80% of companies have made and/or will make significant changes in the next one to two years to their retiree health care plans to reduce their FAS 106 costs for future retirees.

Among the changes cited most often in the survey are raising deductibles, introducing cost management techniques like managed care and linking the amount of employer contributions to length of employee service.

Just 22% of the companies said they currently prefund some or all retiree health care benefit costs. However, 30% said they are seriously considering prefunding part or all their retiree health care costs, while another 22% would consider prefunding if Congress changed tax laws to make prefunding more attractive.

Copies of "FASB Retiree Health Accounting," are available from Diane Schuett, Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60069; 708-295-5000. The cost is \$10.

## INTERNATIONAL

## Fund proposed for air disaster victims

By STACY SHAPIRO

LONDON—The European Community should opt out of the Warsaw Convention's outdated liability limits and instead create a fund to compensate victims of airline disasters, an aircraft manufacturer attorney suggests.

This fund—which would be financed by a levy amounting to “a fraction of a European currency unit” (\$1.28) levied on each passenger ticket—would provide unlimited compensation, according to Colm Mannin, senior counsel for Airbus Industrie in Toulouse, France.

This would eliminate the liability limit imposed by the Warsaw Convention of \$75,000 per passenger on international flights, which today is nearly always breached when compensation for air crashes is paid, he said. It also would halt the practice of using lengthy and costly litigation to prove willful misconduct on the part of an airline so that the liability limit will be waived, he added.

Not everyone likes the idea. Critics say it protects aircraft manufacturers like Airbus from fault if there

is an airline disaster. Others think a “first-party” protection fund would be difficult to sell to passengers.

However, many government officials and aviation defense attorneys in Europe and the United States agree with Mr. Mannin that the Warsaw Convention, originally signed in 1929, is outdated and should be replaced.

“That old Lady of Warsaw, grand regulator of airline liability, now entering her 63rd year—surely a time when one ought to be thinking about retirement—imposes an increasingly unacceptable presence in the sensitive sphere of aircraft accident compensation,” said Mr. Mannin at a lecture to the Insurance Institute of London.

Mr. Mannin's address came a few days after an Air Inter Airbus A-320 crashed near Strasbourg, France, killing 87 of the 96 people on board (BI, Jan. 27).

The Warsaw limit could be raised by the 1975 Montreal Protocols, an international agreement calling for an increase in the limit to 100,000 Special Drawing Rights (\$139,700). Most European countries have rati-



A proposed fund to compensate air crash victims would eliminate the current liability limit imposed by the Warsaw Convention.

fied the protocols and many major European airlines have increased the passenger liability limit listed on their tickets. But E.C. officials have not yet adopted the protocols.

But, the International Airline Transport Assn., a coalition of international airlines, says that the limits contained in the Montreal Protocols “will no longer suffice without

supplemental plans,” like one suggested in the United States, Mr. Mannin said.

The proposed supplemental plan in the United States, which is stalled in the Senate, would create a private insurance program with unlimited recovery per passenger for economic damages, subject only to a per-incident, per-aircraft limitation of \$500 million (BI, March 27, 1989).

At the moment, the E.C. Commission seems to be waiting for the United States to ratify the Montreal Protocols and introduce a supplemental plan before tackling the issue itself, said Mr. Mannin.

But it is unlikely that the protocols and supplemental plan will be passed by the required two-thirds majority in the Senate this year “or, indeed, anywhere in the near future,” he said. This is despite the Bush administration's support for the Montreal Protocols and the supplemental plan.

Rather than wait for the United States to make up its mind, Mr. Mannin suggested at the meeting that the E.C. Commission adopt an E.C. Air

Continued on page 26

## Nordic alliance on hold

Skandia wields vote rule to fend off forced union

By MARIA KIELMAS

LONDON—With their bid to force Skandia Insurance Co. into a Nordic alliance stalled, two other insurers may be facing major setbacks.

Skandia's restrictive system of voting rights is preventing UNI Storebrand A/S of Norway and Hafnia Insurance Co. of Denmark from forcing the Swedish insurer into an alliance with them. Under the Skandia system, for example, a shareholder with just one share has the same voting rights as a shareholder with 25% of the company.

Stock market analysts tell *Business Insurance* there is little room for compromise between Skandia and UNI Storebrand and Hafnia. They say all the cards are in Skandia's hand because of the voting rights rule and because Norwegian insurance authorities recently ordered UNI Storebrand to come to an agreement with Skandia by June 1 or reduce its stake in the Swedish insurer to 10%. UNI Storebrand hopes to ultimately hold 25% of Skandia.

The deadlock arose following a Jan. 23 meeting in Stockholm between the chairmen of Skandia, UNI Storebrand, Hafnia and Pohjola Insurance Co. of Finland, which holds 10.5% of Skandia.

After the meeting, the chairmen released a joint statement saying they would continue discussions

to achieve mutual cooperation, though they didn't say if this would be accomplished through a merger.

A Skandia spokesman said there will be another meeting this month and that “the discussions will go on.”

Late last year, UNI Storebrand and Hafnia joined forces to acquire major shareholdings in Skandia. They bought an option to buy 17.9 million shares, or 23.3%, of Skandia from Skandinaviska Enskilda Banken, Sweden's largest bank (BI, Dec. 2, 1991). The bank retained an option on 4 million shares, or 4.9% of the total.

Under the original deal signed in November, UNI Storebrand and Hafnia agreed to exercise the purchase option on 11.1 million shares, or 14.5% of Skandia's total, with a payment made Dec. 13 and an additional payment on Feb. 28.

In addition, the option on the remaining 6.8 million shares, or 8.8% of Skandia, is to be exercised with payment due Feb. 28.

A UNI Storebrand spokesman confirmed that the Norwegian insurer is still trying to find a buyer for its share of the option exercisable Feb. 28.

Commenting on the order from the Norwegian insurance authorities, the UNI Storebrand spokesman said, “If we should be forced to reduce our stake, I don't think we would keep 10%; we will keep 25% or nothing at all.”

UNI Storebrand would be “in a big mess” if the Skandia deal did not go through because it would have to raise a lot of capital to support its stake,

Continued on next page

## Marine market set for return to profits, ILU exec contends

By GAVIN SOUTER

LONDON

LONDON—Marine and aviation insurers are reversing a downward trend in rates and taking other steps to return the markets to profitability, according to the Institute of London Underwriters.

While underwriting profits are still some way off, the resolve of direct underwriters to force up rates and the tight reinsurance market will help the ILU back into the black, the market says.

In addition, the ILU says enhanced ship inspection standards will help underwriters charge the right rate for older vessels.

The ILU is a marine and aviation insurance market made up of insurers in the London market. Its underwriters, like those at Lloyd's of London, subscribe to a single policy that brokers carry from underwriter to underwriter until 100% of a risk is placed.

“At last, the marine market has turned upward in a positive and encouraging manner and, by year

end, this was also the case in the aviation market,” said Declan McMahon, outgoing chairman of the ILU at its annual general meeting last month.

During the year, London marine underwriters “regained a sense of realism and became more hard-headed in their attitudes,” said Mr. McMahon, who is managing director and underwriter of London Scandinavian Underwriters Ltd.

“Underwriters raised their sights on rates and conditions, often demonstrating a willingness to lose orders if their terms were not met.”

Still, 1991 was a poor year profit-wise for ILU underwriters.

Premiums written increased 31.5% to 2.21 billion pounds at year end (\$4.13 billion at year-end 1991 exchange rates) from 1.68 billion pounds (\$3.24 billion at

Continued on page 26

## Willis Corroon expands in Canada, Italy

LONDON—Broker Willis Corroon P.L.C. is making inroads into the Canadian and Italian insurance markets.

The moves are part of the company's plan to set up a worldwide network of offices to replace the UNISON brokerage network that it left when Willis Faber P.L.C. and Corroon & Black Corp. merged in 1990, a spokesman said.

In Canada, Willis Corroon has acquired Richards, Melling Inc. for 8.3 million pounds (\$14.9 million at current exchange rates).

Founded in 1929, Montreal-based Melling employs 240 people in 14 offices in Canada. In 1991, it had estimated gross revenues of \$16.5 million Canadian (\$14.2 million at year-end 1991 exchange rates), down slightly from \$16.9 million Canadian (\$14.5 million at year-end 1990 exchange rates) the

## GLOBAL BRIEFS

previous year (BI, July 1, 1991). Richards, Melling will be renamed Willis Corroon Melling.

Part of the purchase price will be covered with \$14.73 million Canadian (\$12.5 million) in cash. The rest will be in convertible preferred stock in Willis Corroon's Canadian holding company: 371,886 class A preferred shares and 191,694 class B preferred shares.

Those shares are convertible into Willis Corroon Group common shares over the next 10 years.

In Italy, Willis Corroon has purchased 50% of Turin-based broker UTA S.p.A. for an undisclosed price. The remaining 50% is held by Saint Gallen S.R.L., a company

owned by the Boglione, Scassa and Peracino families, which formerly owned 100% of the brokerage.

UTA, which was founded in 1933, generated a premium volume of 77 billion lire (\$61.6 million at year-end exchange rates) in 1991 and generated revenues of 8.3 billion lire (\$6.6 million).

The company employs 60 people in six offices in Italy.

With the Italian and Canadian deals done, Willis Corroon said it has nearly met its objective of setting up its own network to replace its UNISON membership. A German deal now being negotiated would complete the network.

“A prime objective of the group since its establishment in 1990 has been the completion of a worldwide network of offices through which, by participation in ownership and management, we could

provide and control a full global service to our multinational clients,” said Willis Corroon Chairman Roger Elliott.

Since the 1990 merger, the brokerage says it has established offices in: Australia, Czechoslovakia, Denmark, France, Italy, Japan, the Netherlands, New Zealand, Peru, Russia, South Korea, Spain and Sweden.

—By Gavin Souter

## Munich Re pullout?

MUNICH, Germany—Munich Reinsurance Co. says it may pull out of the space insurance market if rates drop below their current level of 15% to 20% of insured value for satellite launch coverage.

Although the move would not create a black hole in most satellite insurance programs, the exit of

such an influential reinsurer might prompt other insurers and reinsurers to drop out of the space market, brokers say. Munich Re's market share is between 15% and 20% of the \$350 million space insurance market, said Hartmut Hesse, a department executive manager in Munich.

“I would say that rates are about right at the moment, but over the last few years we have seen them come down from around 25% in 1987. If the deterioration continues, we would have to reconsider our position,” he said.

Currently, rates are between 15% and 20% of insured value for satellite launch insurance and about 2% for in-orbit coverage, Mr. Hesse said.

Rates for launch coverage rose to 25% in 1987 to compensate for

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INTERNATIONAL

Skandia deal

Continued from previous page  
a London analyst said.

UNI Storebrand bought Skandia stock at 220 Swedish krona (\$37.40); last week, it was trading at 146 krona (\$24.82). To raise the capital needed to cover the difference, UNI Storebrand might need help from the Norwegian government because it had already tapped international markets last year for the original purchase.

The international stock markets would not look favorably on the company should its Skandia venture fail, the analyst said.

"I don't see why (Skandia Chairman) Bjorn Wolrath should bend over backward and do UNI Storebrand and Hafnia a favor," said another London analyst. "He just has to sit there making reasonable noises

until June and freeze them out."

A spokesman for Hafnia in Copenhagen also declined comment on the January talks. Like UNI Storebrand, Hafnia must make an additional payment for its shares on Feb. 28 and also is looking for a buyer for its portion of the option—equal to 5.5% of Skandia stock—to be exercised by the end of the month.

He said Hafnia is speaking to other European insurers but would not say which ones. No U.S. insurers were involved in the talks, he confirmed.

"We are not in a hurry to find a buyer," the spokesman said.

Hafnia paid SE Banken 1.5 billion Danish krona (\$240 million) on Dec. 13 for its Skandia shares, and a second payment of 1 billion Danish krona (\$160 million) is due Feb. 28.

In January, Standard & Poor's Insurance Rating Service lowered Haf-

nia's claims-paying ability to A from AA-. S&P had placed Hafnia on CreditWatch in December after its participation in the Skandia deal was announced.

"The downgrade reflects weakened operating performance, increased investment and financial leverage, and reduced liquidity," S&P said in a statement. "Hafnia's consolidated operating result for 1991 is expected to be negative, reflecting large losses related to U.K. mortgage insurance exposure and a substantial write-down of equity holdings." The Skandia investment and a 33.7% stake in the Danish insurer Baltica Holding A/S together represent 112% of Hafnia's shareholder equity.

"Despite its status as Baltica's largest shareholder, Hafnia has been successfully rebuffed" in its attempts to gain control of Baltica's manage-

ment, "which has the backing of the majority of its shareholders. Absent a big rally in the Danish stock market, it is unlikely that Hafnia will be able to extricate itself without incurring further losses," S&P said.

"Hafnia appears to have gotten itself into a similar situation with Skandia. UNI Storebrand, SE Banken, Pohjola and Hafnia together have taken a majority stake in Skandia, but due to Skandia's restrictive voting rights, they do not exercise control. Skandia's management has so far resisted their call (for cooperation), and recent regulatory action appears to put time on their side," said S&P.

In response to the rating downgrade, the Hafnia spokesman said: "It will not be of any consequence at all; we do not need that rating to pay our claims. We have seen the analysis

from S&P and we don't agree with it."

S&P looks at the short term, while Hafnia management is looking at the long term, he added.

It is questionable whether any Nordic cooperation as originally envisioned by UNI Storebrand and Hafnia is feasible, with the exception of some isolated areas like reinsurance, said Jonathan Lawlor, insurance analyst at Kleinwort Benson Securities in London. The proposed Nordic insurer resembled a "many-headed hydra" without economies of scale, said Mr. Lawlor, adding that a consensual approach between so many companies was extremely difficult.

The Skandia spokesman said he does not believe talks will drag on until the June deadline set by the Norwegian authorities. ■

Slump in Bermuda growth snapped in '91

By ROGER SCOTTON

BERMUDA

HAMILTON, Bermuda—Bermuda's insurance authorities report that the domicile in 1991 experienced net growth in international insurer formations for the first time in four years, most of it from new captives.

Statistics released by Bermuda's registrar of companies show that 64 new international insurers were incorporated last year, while 53 were deleted from the registrar's books.

The net gain of 11 insurers brings the number in Bermuda to 1,323, which is still less than the 1987 peak of 1,344.

Pure captives—defined as those reinsuring a single parent and affiliates—constituted the biggest single category of international insurer incorporations last year, accounting

for 17 of the 64 formations. Pure captives were followed by: captives directly insuring risks related to groups of parents, with 15 new formations; and association captives, with 11. The count also included: nine commercial reinsurers of unrelated business; seven direct insurers of unrelated business; and five subsidiaries of insurance company parents writing unrelated direct insurance and reinsurance.

Roger Gillett, president of the Bermuda Insurance Management Assn., which represents captive managers on the island, said the number of captives had fallen in previous years because the deletion of inactive com-

panies from the registrar's books outpaced the addition of new insurers.

"Last year was a major crossroad for us," he said. "We set out to achieve a goal of reversing the trend in net incorporations, and we managed to do it in a continuing soft market. Even though it involved just 11 companies, it was a psychologically important statistic for us."

The registrar's latest statistics also included an analysis of 1990 financial returns for all international insurers. The analysis showed that gross premiums topped \$13 billion in 1990, up about 8.8% from \$11.95 billion in 1989. Net premiums written were \$10.11 billion, up about 7.6% from \$9.4 billion in 1989, while total capital and surplus rose about 7.7% to \$18.7 billion from \$17.37 billion.

With a ratio of net premiums writ-

ten to capital and surplus of less than 1-to-1, the statistics demonstrate "the continued conservatism of this insurance center," said Registrar of Companies Malcolm Butterfield.

Norad dividend

Norad Reinsurance Co.'s liquidators will be applying for court approval to freeze the level of outstanding claims against the failed captive reinsurer before they declare a second dividend this year.

The aim of the liquidation now is "to pay out a large dividend and then run down the Norad estate," said David A. Brown, one of two joint liquidators of Bermuda-based Norad, which was placed in liquidation in September 1988.

In a Jan. 27 letter to Norad creditors, Mr. Brown and joint liquidator Christopher R. Whittle said an interim dividend of 4 cents on the dollar is likely to be paid out "early in 1992." This cash payment would total about \$2 million.

The letter states: "All major problems have now been resolved, and the intention is to distribute all assets once the reinsurance due has been collected. We propose to pay a further interim dividend early in 1992. The intention is then to collect the remaining assets (principally reinsurance balances due) and pay further dividends...when significant cash balances have been accumulated."

Norad, a captive reinsurance subsidiary of Philadelphia-based Berwind Corp., has liabilities of about \$37.6 million and is insolvent by nearly \$34.6 million (BI, Nov. 4, 1991). A first dividend totaling \$5.2 million and equal to 12 cents on the dollar was paid to the most creditors in 1990 (BI, July 16, 1990).

The letter points out that the liquidators now believe that the most cost-effective way to proceed with the liquidation is to ask the Bermuda Supreme Court to freeze all claims at the amounts used to calculate the proposed second dividend.

"This will mean that future dividends can be paid promptly when funds are available, without the need to call for and adjudicate revised proofs of debt," the letter explains.

Accordingly, the liquidators are proposing a Feb. 28 deadline for the receipt of all claims. Creditors that already have filed a proof of debt are being advised not to file amended proofs unless their claims have changed significantly.

"The creditors we've spoken to so far seem quite happy with the proposal, which they see as being the least expensive way to proceed," said Mr. Brown. "Of course they can, if they wish, revise their claims ahead of the deadline. But by freezing claims at that time, it means we will not have to incur the major cost of collecting, auditing and adjudicating proofs of debt in the future."

He added that audit and adjudication costs become increasingly im-

portant as the cash available for distribution declines.

Creditors that wish to object to the proposed arrangements are being advised to write to the liquidators, both partners in the Bermuda office of Ernst & Young, before Feb. 28.

"Once the deadline for the receipt of proofs of debt has passed, provided no creditors have objected to the proposal, a court order will be applied to freeze all claims made at their current levels," says the liquidators' letter.

Mr. Brown said he is not aware of any other insurance liquidations adopting the same approach. "Different liquidations and liquidators take different approaches. We feel that this one is right for the Norad winding-up."

Of the \$711,782 in reinsurance receivables shown on Norad's books as being recoverable, the liquidators have collected roughly \$173,000 during the last three months and expect to receive an additional \$200,000 within the next few weeks.

Mr. Brown said the proposed \$2 million payout will leave about \$1 million in the Norad estate for the continued runoff of the company and to fund further collection work.

Norad's largest creditor is the insolvent Mutual Fire, Marine & Inland Insurance Co. of Philadelphia, which is claiming almost \$28 million from the Bermuda company. ■

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# INTERNATIONAL

## GLOBAL BRIEFS

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large losses in the previous three years, he said.

Munich Re last withdrew temporarily from the space insurance market between 1982 and 1985, when rates for expendable launch vehicles were at about 10% of value and rates for commercial payloads on the space shuttle were at about 6%, he said. The space shuttle has not carried commercial payloads since the 1986 Challenger disaster.

Despite Munich Re's threat, brokers say there are no indications that launch rates will drop further. Although average rates were about 16.5% of value two years ago, they are now between 17.5% and 18.5% on average, one broker said.

But, increased capacity may force that average down, Munich Re says.

"There is currently around \$350 million capacity and, while it is possible that this might be needed if several high-value satellites were launched together, the average per-satellite value over the past five years has been \$100 million," the broker said.

And the highest-value insured launch so far has been \$220 million, Munich Re's Mr. Hesse said.

"There is not really excess capacity in the market in terms of the maximum demand, but there is substantial surplus capacity for average demand. This could be a problem, because it leads to fierce competition for the insurance of lower-value satellites," he said.

The market is not unduly worried by the Munich Re announcement, one broker said. "If you look at rates at the moment, they are going up rather than down. So I think that the announcement by Munich Re is really a warning to direct underwriters that if they are thinking about reducing rates, they might not get reinsurance support," the broker said.

—By Gavin Souter

### Insurer covers media bill

BRISBANE, Australia—A credit insurer has paid out more than \$1 million Australian (\$750,000) to a Melbourne advertising agency after the collapse of an airline.

Compass Airlines Pty. Ltd., a unit of Compass Holdings Ltd., was launched in November 1990 as Australia's third domestic airline and bought a comprehensive program of aviation and other types of insurance (BI, June 24, 1991).

Compass went into provisional liquidation on Dec. 20, leaving passengers stranded. Ian Ferrier, of Sydney-based accountants Ferrier Hodgson & Co., the provisional liquidators, said liabilities exceeded assets by more than \$171 million Australian (\$130 million at appropriate exchange rates).

Bob Talbot, managing director of the Samuelson Talbot advertising agency, said Melbourne-based credit insurer Trade Indemnity Australia Ltd. paid a claim of more than \$1 million Australian for the costs the agency incurred to place Compass advertisements in the media in November and December.

"The debt was wholly insured through Trade Indemnity... which acted quickly to protect the agency's position," Mr. Talbot said. "This preserved the long-term financial strength of the agency and meant the day-to-day cash flow was unimpaired. Circumstances which could have badly affected one of the largest wholly Australian-owned advertising agencies will now have little effect on our operation."

He said Samuelson Talbot sought a debt payment moratorium from media organizations, but one large organization requested prompt

payment.

Joe Manovella, manager of Trade Indemnity, said the Samuelson Talbot claim was the only one Trade Indemnity had received from the Compass collapse. "Obviously, other suppliers to Compass were not as diligent," he said.

The Compass provisional liquidator purchased new policies to cover Compass' assets and public liability risks, canceling the previous coverage, said John Shinkfield, associate director of Compass' Melbourne-based broker, Willis Corroon Australia. Responsibility for coverage of the five Compass aircraft, which are grounded at Australian airports, has reverted to the aircraft's overseas owners.

Mr. Shinkfield said Compass had a premium funding arrangement in place, and no underwriters would be hurt financially as a result of the airline's financial problems.

—By Kate McIlwaine

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## INTERNATIONAL

## Air travel act

Continued from page 23

Travel Protection Directive, similar to the U.S. Air Travel Protection Act, which was floated in Congress in the 1970s but failed to pass.

Under the proposed directive, unlimited economic damages to victims of aircraft accidents would be paid from a fund financed through a permanent levy on tickets sold within the community, said Mr. Mannin. The levy would most likely be a "fraction of an ECU." The fund also could be used to promote air safety in general and, "in particular, contribute toward modernization of the European air traffic control network, the cost of which has been put at the staggering figure of \$10 billion," he said.

The Air Travel Protection Directive would apply throughout the European Community, replacing the Warsaw Convention for international travel. It would provide a "fair, prompt and cost-effective" form of compensation and eliminate the need for victims to litigate claims, he said.

The U.S. proposal never materialized due to criticism by the plaintiffs' bar that it excluded damages for pain and suffering.

However, the proposal has "merit" in the European Community, Mr. Mannin contends.

Several lawyers listening to Mr. Mannin's speech opposed the idea.

One London aviation lawyer who is dissatisfied with the Warsaw limits questioned whether it is more desirable to have a government-backed air travel liability system. He said he would be meeting with a number of European airlines soon to draw up a special contract with liability limits as high as 1 million SDR (\$1.4 million), possibly increasing to 1.5 million SDR (\$2.1 million) in five years.

Another lawyer recalled that the opposition to the U.S. Air Travel Protection Act centered around it being "first-party" insurance. "That's unattractive politically," he said.

"Your scheme excludes compensation for pain and suffering," added another listener. "It's a good idea, but how do we sell it?" ■

## LONDON

Continued from page 23

year-end 1990 exchange rates) in 1990.

Claims, though, shot up 49.1% to 4.07 billion pounds last year (\$7.61 billion) from 2.73 billion pounds (\$5.27 billion).

The claims figures include reinsurance claims paid by ILU member companies.

"All parts of the account—hull, cargo and aviation—produced losses in 1991 on this basis," Mr. McMahon said.

Poor 1991 results have forced some companies out of the marine and aviation market, he said.

As of Jan. 1, ILU membership had fallen to 101 companies from 114 a year earlier, and another company has since informed the ILU of its intention to withdraw.

But declining membership has not hurt the market's capacity, Mr. McMahon pointed out.

And remaining underwriters can look forward to increased rates, said Peter Evans, the incoming ILU chairman. Mr. Evans also is group marine manager of Commercial Union Assurance Co. P.L.C.

"On a day-to-day basis, we see increases coming through on most sectors and accounts," he said.

Nevertheless, the rates are still inadequate, and 1992 looks likely to produce more large losses for marine underwriters, he added.

"It will still be some years before we can say that we are out of the woods," Mr. Evans said.

The number of ships classified as total losses in the marine market increased sharply last year to 182 from 139 in 1990, according to the ILU. It did not release value of the losses.

Of the total losses, 20 were tankers, 27 were bulk and combination carriers, and 135 were other ships, the ILU said.

It is hard to pinpoint the reasons for the increase in total losses, said Roger Nixon, divisional executive-

marine and aviation at Cornhill Insurance P.L.C., and a member of the ILU Committee.

"Ships are getting older and the shipping market has had a bad time over the past decade, so costs have been cut, and this has had an effect on the maintenance of the ships," he said.

Also, the ownership of vessels has, in many cases, passed from traditional shipping families to financial companies that employ managers to run the ships at the lowest possible cost, Mr. Nixon said. "In a lot of cases, there is no direct relationship between the captain and the owners anymore."

In an effort to improve its underwriting data, the Joint Hull Committee, which represents marine underwriters at both the ILU and Lloyd's, has introduced a new structural condition warranty for older vessels.

The survey needed to obtain the warranty is more intensive than standard ship surveys and entails

Continued on next page

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## REQUEST FOR PROPOSALS

**REQUEST FOR QUALIFICATIONS  
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Notice is hereby given that the Rail Construction Corporation, ("RCC"), a subsidiary of the Los Angeles County Transportation Commission, (COMMISSION), will receive qualification proposals for the above described contract. You are invited to submit a proposal for the performance of the subject services for which work is anticipated to start after July 1, 1992. The proposal process and terms and conditions will be in strict accordance with:

The RFQ Documents which will be available on February 3, 1992. You may obtain a copy of the RFQ from the offices of RCC at 818 West Seventh Street.

Contact: Mr. Rosey Burden  
Contracts Management  
Fifth Floor  
(213) 244-6160

An original and four (4) copies of your proposal, using the RFQ Proposal Forms and including all information required must be addressed and delivered to the RCC's offices at the following address. This is also the address to be used for all communications in connection with the RFQ:

Mr. Wilfred G. Sanchez, Jr.  
Director of RCC Contracts  
Rail Construction Corporation  
818 West 7th Street, Suite 1100  
Los Angeles, California 90017-4606

All Proposals must be in writing, bound and clearly identified as to content and be received by the undersigned:

No later than 4:00 p.m. on February 28, 1992.  
Proposals received later than the above date and time may be rejected and returned to the proposer unopened.

Proposals shall be valid for one-hundred-twenty (120) days after the final proposal due date.

The RCC reserves the right to reject any or all Proposals, to waive any informality or irregularity in any proposal received, and to be the sole judge of the merits of the respective proposals received. The selection, if made, will be made to the highest ranked firm whose proposal is responsive to the RFQ and is to the best advantage of the RCC. The COMMISSION must approve the RCC's Selection of the recommended firm(s).

The COMMISSION/RCC affirmatively assure that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of age, race, color, religion, sex or national origin in consideration for an award.

## REQUEST FOR PROPOSALS

**REQUEST FOR PROPOSAL  
(RFP) NO. MR028  
CONTINUATION OF THE  
COMMISSION'S OWNER CONTROLLED  
INSURANCE PROGRAM  
(OCIP) FOR  
SEGMENTS 1 AND 2 OF THE RED LINE,  
THE GREEN LINE, AND THE BLUE LINE  
(LONG BEACH TO LOS ANGELES)**

Notice is hereby given that the Rail Construction Corporation, ("RCC"), a subsidiary of the Los Angeles County Transportation Commission, (COMMISSION), will receive qualification proposals for the above described contract. You are invited to submit a proposal for the performance of the subject services for which work is anticipated to start after July 1, 1992. The proposal process and terms and conditions will be in strict accordance with:

The RFP Documents which will be available on February 17, 1992. You may obtain a copy of the RFP from the offices of RCC at 818 West Seventh Street.

Contact: Mr. Rosey Burden  
Contracts Management  
Fifth Floor  
(213) 244-6160

An original and four (4) copies of your proposal, using the RFP Proposal Forms and including all information required must be addressed and delivered to the RCC's offices at the following address. This is also the address to be used for all communications in connection with the RFP:

Mr. Wilfred G. Sanchez, Jr.  
Director of RCC Contracts  
Rail Construction Corporation  
818 West 7th Street, Suite 1100  
Los Angeles, California 90017-4606

A pre-proposal conference will be held on February 18, 1992, 10:00 a.m., (the specific room will be clearly posted) at the Commission's office.

All Proposals must be in writing, bound and clearly identified as to content and be received by the undersigned:

No later than 4:00 p.m. on March 10, 1992.  
Proposals received later than the above date and time may be rejected and returned to the proposer unopened.

Proposals shall be valid for one-hundred-twenty (120) days after the final proposal due date.

The RCC reserves the right to reject any or all Proposals, to waive any informality or irregularity in any proposal received, and to be the sole judge of the merits of the respective proposals received. The selection, if made, will be made to the highest ranked firm whose proposal is responsive to the RFP and is to the best advantage of the RCC. The COMMISSION must approve the RCC's Selection of the recommended firm(s).

The COMMISSION/RCC affirmatively assure that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of age, race, color, religion, sex or national origin in consideration for an award.

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## LONDON

Continued from previous page  
several days' work by surveyors, the ILU says.

Although underwriters are not obliged to insist on the survey, the JHC recommends that it be applied to tankers and bulk carriers more than 12 years old and to all other vessels more than 15 years old.

Energy rates quoted by the marine market also increased, according to the ILU.

"The energy account has seen some hefty premium increases, especially on large programs, mainly the result of reduced capacity and the sharp contraction in catastrophe cover available through the excess-of-loss market," the ILU annual report says.

The report says that that conclusion was borne out when brokers were only able to place 55% of the London Master Energy Line Slip, which is the largest in the market (BI, July 22, 1991).

"As underwriters stood firm in their resolve during the midseason renewals, buyers were faced with rising prices and higher retentions. It is expected that capacity will continue to diminish and that underwriters will impose further restrictions, such as the exclusion of non-marine risks," the report says.

Cargo underwriters also are reducing their non-marine exposures and increasing rates, the ILU says. "It seems that 1992 will see a further hardening of rates and yet more reductions in the scope of cover offered."

The aviation market also saw rates turn around in 1991, said Graham Nichols, aviation underwriter at Westminster Insurance Group and a spokesman for ILU aviation underwriters.

"For major risks, premium volumes increased by 80% over the whole of 1991 and, during the last quarter alone, they increased by 114%," he said.

Even so, premiums are still too low to cover catastrophe losses in the long term, Mr. Nichols warned.

But rates are clearly "moving toward a more realistic price," he said. The number of Western-built jets

that were destroyed increased to 23 in 1991 from 17 in 1990. The total value of the jets lost in 1991 is estimated to be \$340 million, excluding Persian Gulf War losses, compared with \$229 million in 1990.

And the number of airline passenger fatalities nearly doubled in 1991 to 624 from 342 in 1990.

### New pension rules

The British government is expected to introduce a regulation that would cap at 5% the amount of a pension fund's assets that could be invested in sponsor-related stock.

That move, which would be subject to approval by Parliament, would come amid continuing investigations into the disappearance of 426 million pounds (\$764.9 million at current exchange rates) from six pension funds operated by the late Robert Maxwell's media empire (BI, Dec. 16, 1991).

Government investigators have yet to file their report, but it has been widely reported that much of the missing pension money was transferred from Mr. Maxwell's publicly traded companies to his private concerns.

British authorities are trying to downplay any connection between the Maxwell scandal and the proposed regulation on so-called self-investment. The first draft of the regulation was drawn up last summer, before the Maxwell scandal broke, said a spokeswoman for the British Department of Social Security.

Under the regulation, self-investment would be restricted to 5% of a pension fund's assets; currently, there is no cap.

Companies listed on the London Stock Exchange would be given two years to reduce their pension funds' self-investment to 5%, and companies traded on the London Unlisted Securities Market would be allowed five years to divest, the spokeswoman said.

At smaller companies, pension plans would need unanimous agreement from participants to self-invest, she added. ■

## ISO filing

Continued from page 2

defense costs for third parties would be included within, rather than in addition to, policy limits, Mr. Katten said. This "eats up" both per-occurrence and aggregate limits, he added.

Mr. Katten acknowledged, however, that insurance companies have not stopped defending third parties, regardless of the current language of the policy form.

Mr. Katten said his concern about the new wording is that the language leaves the way open for a denial of coverage.

"It's like a ticking time bomb. Somebody's going to do it for real one day," he said. "It needs to be corrected."

Commenting on the dispute, Joe Schlotman, senior vp for Sedgwick James of New England in Boston, said that the 1973 policy form never explicitly provided a duty to defend third parties. But it was widely interpreted to provide this coverage, he added.

Mr. Schlotman said he can see both sides of the issue: On the one hand, agents are seeking broader coverage for their clients; on the other, underwriters have a more precise knowledge of how much they are liable for if they include defense costs within policy limits.

However, he added, "It's a very narrow area. I don't see this as a major, major problem. All contracts are subject to court interpretation."

Eric Nordman, senior regulatory specialist with the National Assn. of Insurance Commissioners in Kansas City, Mo., said that while the new ISO filing may not provide everything the agents want, "it's certainly better" than the current situation under the 1986 CGL form. "It's providing some defense costs where the current contract is not providing defense costs," he said.

He noted, though, that the NAIC is in favor of not including defense costs within liability limits.

The Risk & Insurance Management Society Inc. in New York

could not comment on the filing.

Policyholders' defense costs have been, and continue to be, outside policy limits under the ISO CGL form, said Dominick Yezzi, ISO's assistant vp of commercial casualty.

But the defense costs of additional third parties—as with other expenses assumed under these contractual, hold-harmless agreements—should be included within policy limits, he explained.

But the IIAA's Mr. Katten said he also has other problems with the filing. The policy is vague as to how much policyholders could actually recover in defense costs, he said, noting that it calls for payment of "reasonable" attorney fees, "whatever reasonable means."

Furthermore, he said, the policy form does not specify when payment of defense costs must be made.

Mr. Katten also charges that ISO, which held discussions last year on this issue with the IIAA, acted in bad faith in its dealings with the agents group, making promises about withdrawing the filing that it did not fulfill.

"We reject any contention that we acted in anything less than the full spirit of cooperation, the ISO spokesman responded. "We acted in the best of faith," he said, describing the IIAA's concerns as an "unfortunate miscommunication."

The spokesman said that ISO, in fact, made the filing in response to the agents group's concerns. A filing, he noted, was originally made in October, and had already been approved by several states. But, after the dispute with the IIAA arose, it withdrew the filing.

Last month, ISO resubmitted the same proposal making clear in an accompanying explanation that it was acting on its own on this issue. ISO did not want state regulators to believe the ISO filing was "anything but our product," said Mr. Yezzi.

ISO must consider the concerns of several groups, including insurers, regulators and agents, said the organization's spokesman. "We

don't make filings on behalf of agents."

The ISO spokesman also defended the use of the term "reasonable." The term is widely used in legal and insurance contract wording in cases where payments "just don't lend themselves to a fee schedule," he said.

And on the issue of when payment is to be made, Mr. Yezzi said this is a procedural issue, and there is "no statement in any of our policies as to when this payment is to be made." Insurers can make payments when appropriate, whether this is on an ongoing basis, or as a reimbursement, said Mr. Yezzi.

The ISO spokesman noted also that the new CGL form is not mandatory, and insurers are free to use or reject ISO's modifications. "Some companies do provide defense costs," he said.

The filing, which is applicable to both occurrence and claims-made CGL forms, would revise the exclusions section of the form that pertains to third-party liability for bodily injury and property damage. Current language states that the exclusion does not apply to liability for damages "assumed in a contract or agreement that is an 'insured contract,' provided the 'bodily injury' or 'property damage' occurs subsequent to the execution of the contract or agreement."

The filing adds the following new language: "Solely for the purposes of liability assumed in an 'insured contract,' reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of 'bodily injury' or 'property damage' provided:

"(a) liability to such party for, or the cost of, that party's defense has also been assumed in the same 'insured contract'; and

"(b) such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged." ■

## Product liability loss control tips

By SARA MARLEY

CHICAGO—Manufacturers should develop a product liability defense strategy before they wind up in court, defense lawyers say.

During a presentation by the Chicago law firm of Pope & John last month, attorneys advised executives not to assume that they will never be sued.

The first step in a defense strategy is to educate employees about the court process to show them how their actions could hurt—or help—the manufacturer, the attorneys said.

"You should talk to the people who are day to day creating evidence," Founding Partner Michael A. Pope said. "You should explain the legal process to them. It's not fair; it is rational."

"It's been a long time since common sense played any role in product liability law," said Frank J. McGarr, formerly chief judge for the U.S. District Court in Chicago and now of counsel at Pope & John. "Don't rely on common sense or good faith. Product liability is the real world."

A manufacturing company's history of concern about safety is the best defense, added attorney Jan Feldman.

He recommended establishing an in-house product safety committee with representatives from engineering, quality control, production, sales, marketing and risk management.

Committee deliberations and decisions should be documented. If the company is sued someday,

committee records can show that safety features and warning labels were considered and why they were accepted or rejected, Mr. Feldman said.

"The committee can create a context for a decision," he said.

The product safety committee's chairman should also serve as the company's primary spokesman and representative in court. Ideally the chairman would be familiar with the product since its inception.

"The chairman should be the embodiment of the company," Mr. Feldman said. "We frequently find ourselves looking for Mr. Defendant."

Another element in a defense strategy, according to attorney Roseann Oliver, is to avoid the "bad memo," the internal communication about a product's potential hazards that could reappear years later as evidence against a company in court.

Teaching employees to avoid words like "defective," "safer" and "less dangerous" can defuse the damage from memoranda, Ms. Oliver said.

"Engineers sometimes feel they have to exaggerate to be taken seriously," she added.

The risk of a "bad memo" has become more serious in the age of electronic mail, Mr. Feldman said. Messages stay around longer, even living on in the computer's memory bank once the original has been erased, he said. The memo's writer is more likely to lose control over who reads an electronic message than a written one, Mr. Feldman said. ■

"E-mail can facilitate the preservation of your worst dreams," Mr. Feldman said.

The lawyers stressed not creating bad memos in the first place. Once one has been written, the focus should be on limiting its harm.

"We do not propose the destruction of evidence," Mr. Pope said. "We find people are afraid to create good evidence: legitimate, thoughtful responses that lay out substantive reasons."

Another way manufacturers can protect themselves is to help their industries set safety guidelines. The lack of industry standards is rarely an effective defense, the lawyers said.

If there is no interest within the industry, companies should consider joining a general safety group like the Chicago-based National Safety Council, Ms. Oliver said.

Finally, the lawyers suggested companies engage a national product liability counsel to know the history of the company and its products, to conduct employee training and to develop a defense strategy before a lawsuit is ever filed.

The session was part of Pope & John's seven-part series on preventing lawsuits. Previous seminars dealt with the use of mock trials and crisis management. Monthly sessions are planned through June on environmental lawsuits, employee litigation, internal investigations and intellectual property.

For more information, call Cynthia L. Kazan at Pope & John, 312-362-0200. ■

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# Schleisman new head of AIU division

Steve A. Schleisman has been named president of the North American division of American International Underwriters, a unit of American International Group Inc., in New York.

In his 20 years with AIG, Mr. Schleisman has held various positions in Belgium, Italy and the United Kingdom, and has served as president of UNAT S.A., an AIG property/casualty unit in Paris. Most recently, he was senior vp responsible for multinational business development with AIU in New York.

## Comings & goings: industry

The North American division is being re-established and did not previously have a president.

### In other insurer changes:

**R. Keith Blankenbicker** named vp of Aetna Casualty & Surety Co. in Hartford, Conn., and president of its Aetna/Executive Risk Management Associates subsidiary, which serves as an underwriting manager for the insurer's directors and officers liability business. Mr.

Blankenbicker replaces **Richard E. Cartland**, who was named a vp of national accounts.

**Richard L. Weill** named executive vp at MBIA Inc., the parent company of municipal bond insurer MBIA Corp. in Armonk, N.Y. He is responsible for the legal division, which includes the law, surveillance and structured finance departments.

**Robert W. Hedges** promoted to

senior vp-commercial lines from vp at The Home Insurance Co. in New York, a subsidiary of Trygg Hansa SPP Holding A.B.

**Charles J. Bird** named director of global operations for Zurich International U.S., a Zurich Insurance Co. unit in Schaumburg, Ill. He had been strategic planning and marketing manager for the AIGlobal unit of American International Group Inc.

**Mike Riney** promoted to senior vp and claims officer from vp-claims administration in the agency and brokerage group of

Continental Corp. of New York. Continental also announced these changes in its agency and brokerage group: **Margaret Berton**, formerly vp-contract lines, named vp and manager for the North Atlantic region; **Sal Ricciardone**, who had been vp and North Atlantic manager, named vp and manager of the Midwest region; **Robert Catalano** appointed vp and manager for the Pacific region; **James Parkinson** appointed vp in the Western automated business center in Englewood, Colo.; and **Doreen Horvath** named vp in the residual market center in Glens Falls, N.Y.

**Andrew S. Frazier** elected president and chief executive officer with Western World Insurance Co., a Westco Holding Corp. unit in Ramsey, N.J. Mr. Frazier, who had been executive vp and chief operating officer, replaces **Derek Hughes**, who had held the post since 1972 and is now vice chairman.

St. Paul Fire & Marine Insurance Co. of St. Paul, Minn., announced these changes: **Frank Westpfahl**, formerly vp/general manager of the Des Moines, Iowa, office, named vp/general manager in Little Rock, Ark.; succeeding Mr. Westpfahl in Des Moines is **Margaret Franklin**, who had been a health care facilities underwriter in the company's medical services division; **William Heck**, formerly vp/general manager of the Indianapolis office, reassigned as a consultant to parent company St. Paul Cos. Inc.; succeeding him as vp/general manager in Indianapolis is **Dave Birkenhauer**.

### Agent/Broker

**Herbert L. Jamison Jr.** has retired as senior partner with Herbert L. Jamison & Co., the New York brokerage and consulting firm his father founded in 1938. **William A. McManus III**, formerly managing partner, is now senior partner and **Jesse J. Watkins** succeeds him as managing partner.

**Timothy J. Danis**, who had been president and CEO of Willis Corroon Corp. of Missouri, appointed senior vp of Rollins Burdick Hunter Group Inc. in Chicago. He will be responsible for strategic planning at RBH. The Aon Corp. unit also announced these changes: **John F. Sacia** appointed chairman and chief executive officer of Rollins Burdick Hunter of Illinois Inc., and **Denis A. Julien** named senior vp and account executive for national accounts with Rollins Burdick Hunter of Florida Inc.

Willis Corroon P.L.C. announced these changes: **William J. Baird Jr.** promoted to president from executive vp at Willis Corroon Corp. of Maryland in Baltimore; and **Phillip A. Marsh** promoted to president and chief executive officer from executive vp at Willis Corroon Corp. of Sacramento Insurance Services. Mr. Marsh joined the firm last year. **James O. Burpo**, who had been chairman and CEO in Sacramento, Calif., since 1977, will remain chairman.

**John N. Tipping** named vp of new business development with KMC Insurance Services Inc. in Dallas. He had been a vp with Frank B. Hall & Co. Inc. in Dallas.

### Other suppliers

**Laurent Schor** named president of Corporate Health Strategies Inc., a health care management consultant in New York. Mr. Schor, who has been senior vp for marketing and client services for the Metropolitan Life Insurance Co. subsidiary since 1990, succeeds **Leon I. Hyman**, who is retiring. Also at Corporate Health Strategies: **James G. Stumpf** appointed executive director for the Western region; and **Robert Jahreis** appointed vp of the development group. ■

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"Jet lag and culture shock are being talked about less and less, as more and more business people join the million-mile club," Ron said. "At the same time that the world is shrinking in terms of air miles, it is enlarging as more and more countries produce goods and services for international consumption. IRI provides insurance for well protected manufacturing and marketing prop-



Ron Berler, Industrial Risk Insurers

erties and services them with local people in local offices. Thus, new and established businesses insured by IRI are free to innovate and think boldly.

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## Tort reform

Continued from page 1

involve state law but are brought in federal district courts. Under this provision, a losing party would be required to reimburse the winning party for attorney's fees up to an amount equaling its own attorney's fees. Judges would have discretion to further limit the amount of attorney's fees paid to the winning party.

The vice president said this provision would discourage frivolous suits on the federal level.

- The creation of a so-called "multidoor courthouse" program, which would encourage the use of alternative dispute resolution methods, like mediation and arbitration, in federal district court.

- Making prior notice a prerequisite to bringing a lawsuit in a federal district court. The act would require that plaintiffs notify defendants in writing 30 days before filing suit to inform the defendants of the amount of damages and expenses already incurred, as well as

the amount expected to be incurred during trial.

This provision is designed to "try to solve our differences before we go to court," Mr. Quayle said.

The Bush administration will follow its federal bill with a model tort reform act for the states within the next couple of months, he said.

After his brief address, the vice president went to Capitol Hill, where the bill was introduced in the Senate by Sen. Charles Grassley, R-Iowa, and in the House by Rep. Hamilton Fish Jr., R-N.Y. The bill has been referred to the two chambers' judiciary committees.

After the measure was unveiled, Theodore B. Olson, an attorney and chairman of the Citizens for Civil Justice Reform's policy committee, noted that the bill's most likely opponents—plaintiffs' attorneys—are very active politically. "They've been making campaign contributions to their favorite members of Congress and state legislatures for a long time," said Mr. Olson, former assistant attorney general in the Reagan

administration and currently with the Washington, D.C., office of Gibson Dunn & Crutcher, a Los Angeles-based law firm.

The Washington, D.C.-based Assn. of Trial Lawyers of America had no comment on the latest administration package.

Tort reform advocates "should turn it into a front-burner presidential issue," said Wayne Vallis, executive director of Citizens for Civil Justice Reform and a Republican activist. But, like Mr. Connor, Mr. Vallis stressed that efforts should be made to cast it as a bipartisan issue, adding that his group would try to meet with representatives of both parties.

"There is a danger" that tort reform will be seen as a partisan Republican issue, agreed Tom O'Day, associate vp of the Alliance of American Insurers in Washington, D.C.

Mr. O'Day said that he thinks that proponents and opponents of the Bush administration's tort reform proposals may be missing a chance to promote various tort reforms that

both sides endorse.

"It's too bad that both sides focus on the wrong things. We focus on our disagreements, not our agreements," he said, adding that the American Bar Assn., though critical of the current administration proposals, has endorsed a number of reforms, including greater use of alternative dispute resolution methods (see story, page 4).

Meanwhile, a new area of disagreement arose even as the vice president was preparing his remarks.

A senior researcher with the Rand Corp.'s Institute for Civil Justice in Santa Monica, Calif., disputes some statistics that the Bush administration has used to support its call for reforms.

Specifically, the researcher disputes data Mr. Quayle cited in his controversial August 1991 address to the ABA on the cost of the current tort system to the U.S. economy.

Drawing on information compiled by the National Center for State Courts, the vice president said that 18 million civil lawsuits filed in the

United States in 1989 amounted to "one for every 10 adults—making us the most litigious society in the world" (BI, Aug. 19, 1991).

The 18 million figure includes "millions of routine cases" like divorces, wills and small-claims cases that have little or no bearing on the nation's economic competitiveness, said Deborah E. Hensler, a senior social scientist with Rand.

Using the 18 million figure to declare the United States the world's most litigious society is deceptive, she said. She estimated that a more realistic figure, weeding out routine actions, would be about 2.5 million suits.

Ms. Hensler said she has no position on the new legislative package. She added, however, that imposing a loser-pays rule would appear to limit the ability of private citizens to sue corporations, because they wouldn't have the same resources.

"That's a political agenda," she said. "I don't think it should be promoted as a kind of neutral procedural reform." ■

## Bush health plan

Continued from page 1

tant with Hewitt Associates in Rowayton, Conn.

"There is no explicit financing. That tells us that the package, like other packages, is heavy in smoke and mirrors. If, ultimately, (financing) comes through Medicare or Medicaid, it could lead to increased cost shifting to private payers," said Dallas Salisbury, president of the Employee Benefit Research Institute, a benefit think tank in Washington, D.C.

"Businesses that offer health insurance are concerned about cost shifting from public plans, like Medicaid. It appears that that situation would not be helped—and may well be exacerbated—if one of the principal ways to pay for this proposal" is to curb spending for public programs, said Walter B. Maher, director of federal relations for Chrysler Corp. in Washington, D.C.

Others point out that the administration package, unlike legislation introduced by congressional Democrats, does not give the federal government the authority to limit total health care spending or call for fixed fees for health care services.

The lack of cost containment provisions may cause large employers "to shrug their shoulders and say, 'There is not much in this package for us,'" said Ms. Goldstein.

"The critical concern I have with the proposal is the absence of a means of reducing health care spending," Mr. Maher said.

The heart of the administration's package is a new system of tax credits—or tax deductions for middle-income taxpayers—to help Americans pay for health care coverage. The credit also could take the form of a certificate which could be transferred to an insurer to purchase coverage. The credit could not be used for other purposes or taken as cash.

The maximum credit or deduction would be \$1,250 for a single person, \$2,500 for married couples and \$3,750 for families of three or more.

Individuals with incomes below the federal poverty level would receive the maximum tax credits. Those earning more than the poverty level would receive a smaller tax credit, which would decrease to 10% of the maximum for those with incomes equal to 150% of the poverty level.

The poverty level last year was about \$7,000 for individuals and about \$14,000 for families of four.

Those with incomes exceeding 150% of the poverty level generally would receive a tax deduction for their health insurance expenses.

For example, a family of four with an adjusted gross income of \$60,000 could take a tax deduction of \$3,750—which actually is worth about \$1,050—to help cover the cost of health insurance.

No tax deductions or credits would be available to individuals with in-

comes of more than \$50,000, couples with incomes exceeding \$65,000 or families of three or more with incomes exceeding \$80,000.

However, the maximum amount of tax credits or deductions would be reduced dollar for dollar by any employer contributions to the employee's health care plan.

In addition, the credits would not be available to individuals covered under Medicare, Medicaid or other federal health benefit programs.

While the new tax credits and deductions would make health insurance more affordable for millions of Americans, the proposal would fully fund the cost of health insurance for only the poorest people.

For example, a comprehensive indemnity health care plan offered by Blue Cross & Blue Shield of Maryland now costs a family—assuming the head of the household is in his or her 20s—\$2,765. The same plan, which offers a \$200 deductible and requires 20% copayments—would cost \$5,397 if the head of the family is in his or her 50s.

In all, the Bush administration says the new tax credits and tax deductions for health insurance, which also include increasing to 100% from 25% the tax deduction the self-employed can take for health insurance premiums, would result in 24 million uninsured Americans gaining health insurance. Other proposed changes, like reforms in the small group health insurance market, could result in another 5 million people gaining coverage, the administration estimates.

That would leave roughly 5 million to 6 million people without health insurance, compared with the nearly 36 million now uninsured, the administration says.

The reduction in the number of uninsured would provide enormous savings to the nation's health care delivery system, said Health and Human Services Secretary Louis W. Sullivan. For example, individuals with health insurance would not have to use high-cost emergency rooms—as the poor without health insurance now often do—to receive primary care, he said.

With more people insured, there would be a reduction in the free care hospitals provide to the indigent, the cost of which currently is shifted to insured patients, experts say.

"If there are more paying customers, there should be less cost shifting," said Michael Langan, a vp with TPF&C, the benefits consulting division of Towers, Perrin, Forster & Crosby Inc. in Valhalla, N.Y.

However, while the administration's package could reduce the amount of uncompensated care, it could increase the amount of "undercompensated" care, observers say.

Benefit experts worry that the administration will try to limit Medicare and Medicaid payments to providers to help cover the tens of

billions of dollars in lost tax revenues. That would result in providers boosting charges for privately insured patients, they say.

"The president's plan could well result in cost shifting from federal plans to employers. That would be of concern to every employer," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington, D.C.-based benefits lobbying group representing large employers.

The administration's package also attempts to make health insurance more available and affordable to small employers.

Under the package, small employers, with minimal interference from the states, form so-called "Health Insurance Networks" to self-insure or to purchase insurance on a group basis from commercial insurers.

These HINs could be organized by national trade associations or professional societies. Insured HINs would be exempt from state laws that mandate that insured health care plans cover certain types of medical services, as well as from "excessive" state insurance premium taxes.

HINs also could be self-funded. But self-funded HINs would be subject to enhanced, but as yet undefined, state solvency standards or yet-to-be-developed Department of Labor solvency standards. HINs would be certified at the state or federal level.

By buying coverage through an HIN, "small businesses would be able to achieve more effective purchasing power in the market, thereby helping to reduce the cost of insurance to their employees," the administration says.

By exempting HINs from state benefit mandates, "you help to squeeze unnecessary costs out of health insurance programs," said Dirk Van Dongen, president of the National Assn. of Wholesaler-Distributors in Washington, D.C.

State benefit mandates "inflate the cost of health insurance for small employers, those least able to afford insurance" to begin with, said Carl Sardegna, chairman and chief executive officer of BC/BS of Maryland in Baltimore.

Others, though, worry about whether the states or federal government have the resources to properly regulate self-funded HINs.

"It will require a whole new regulatory structure," said Mary Nell Lehnard, senior vp in the Blue Cross & Blue Shield Assn.'s federal affairs office in Washington, D.C.

While most of the health insurance reforms contained in the Bush proposal are aimed at small employers, one—the elimination of provisions in health care plans barring coverage for pre-existing medical conditions—would apply to all employers.

While such exclusions vary, a common provision might bar coverage for

## Democrats blast Bush proposal

WASHINGTON—Congressional Democrats took little time last week to rip into the Bush administration's health care package.

The Democrats—whose own proposals include a Canadian-style national health insurance program or a "play-or-pay" system in which employers either must offer a health care plan or pay new payroll taxes to fund a public plan for the uninsured—say the administration's plan would do nothing to rein in rising health care costs.

"The president's plan fails to meet the first and most important test of any plan, that of controlling costs," said Senate Majority Leader George Mitchell, D-Maine.

Sen. Edward Kennedy, D-Mass., described the administration's proposal to give individuals tax credits and tax deductions to purchase health insurance as a "gimmick" and "wasteful."

"The expensive tax incentives and deductions and credits are enormously expensive gimmicks in the whole health care debate. It's wasteful to pour billions of dollars more into the inefficient wasteful system of health care in America. It's like pumping billions of gallons of water back into the sinking Titanic," Sen. Kennedy said.

Sen. John D. Rockefeller IV, D-W.Va., said providing tax credits to help individuals purchase health insurance—in the absence of price controls on providers—will lead to only more health care inflation.

"Printing health care vouchers, credits, the way Russian republics print paper rubles, without acting to contain costs is simply fueling inflation," Sen. Rockefeller said.

For his part, President Bush, who unveiled his plan in a speech last week in Cleveland, blasted the Democrats' proposals.

A single-payer national health care plan, he warned, would lead to long waits for medical services and higher costs.

With a single-payer system, "You will get the worst of both worlds. No one has an incentive to control costs and everyone pays," he said.

And the play-or-pay approach to expanding health care coverage would present small employers with difficult choices, he warned.

"Play or pay will leave a lot of small businesses—businesses struggling on the edge of survival right now—with a tough choice: They can cut workers' wages to pay for mandated health care, they can fire some workers to cover the workers they keep or they can raise prices. Lower wages, lost wages, higher costs. Any way you look at it, that's the wrong choice for America," Mr. Bush said.

By contrast, the president said his own plan "preserves what works and reforms what doesn't. And, above all, it will ensure every American universal access to affordable health insurance."

—By Jerry Geisel

six months for any condition for which a new employee received treatment in the previous three months, said Dave Young, a consultant with The Wyatt Co. in Washington, D.C.

However, the proposal would likely increase the cost of both insured and self-funded health care plans, because plans would have to cover additional services.

The administration says other provisions in the package would help slow health care costs, including:

- Medical malpractice reforms. States would be "encouraged" to reform medical malpractice statutes. Those reforms would include eliminating joint and several liability for non-economic damages, caps on the amount of awards for non-economic damages, requiring structured payments for large awards and requiring a losing party who refused to engage in alternative dispute resolution before trial to pay the winning party's attorneys' fees.

The administration unveiled similar medical malpractice reforms a year ago in its fiscal 1992 budget proposal (BI, Feb. 11, 1991).

- Pre-emption of state laws that impede managed care, like those that

place restrictions on the ability of insurers to recruit providers.

A study by The Wyatt Co. last year concluded that these laws can significantly increase health care costs for employers with managed care programs (BI, Aug. 19, 1991).

- Expanding efforts to reduce administrative and paperwork costs through standardized billing formats and electronic health insurance cards to obtain services. Administration officials, health care providers and health insurers in November agreed to work toward slashing administrative costs through development of such a system (BI, Nov. 11, 1991).

- Requiring states to develop and make broadly available data on the average prices for common health care services.

"This information could be especially useful for large purchasers of care for preferred provider arrangements and negotiated discounts," the administration said.

In addition, the package, in provisions aimed at the small group market, would require insurers to renew coverages—except in cases of non-payment of premiums—and bar them from refusing to insure certain individuals in a group plan. ■

## Insolvency group

Continued from page 1

with the group in an effort to ensure that policyholders come away from insurer insolvencies with the best deal possible.

The IPA was formed, in part, at the request of members of the Center for Claims Resolution, an asbestos claims handling facility in Princeton, N.J., explained Scott Gilbert, an attorney with Covington & Burling in Washington, D.C., who helped launch the IPA. Covington & Burling will serve as the IPA's legal counsel.

The CCR consists of 20 asbestos producers and 10 supporting insurers that have agreed to work together to settle asbestos bodily injury claims (*BI*, Oct. 17, 1988).

The CCR is the successor to the Asbestos Claims Facility. That facility was formed in June 1985 by 34 asbestos producers and 16 insurers that signed the Wellington Agreement, which was the first attempt to resolve mass tort claims more quickly and cost-effectively than through the court system (*BI*, July 1, 1985).

The success achieved by the Asbestos Claims Facility and the Center for Claims Resolution led members to believe that similar victories could be won in insurer insolvencies, said Mr. Gilbert, who also was instrumental in forming the CCR.

"Corporations are spending hundreds of millions of dollars pursuing their insurance coverages, but they often do not pursue insolvent carriers," said IPA President Mark F. Leopold, assistant general counsel at G.D. Searle & Co. in Skokie, Ill. "They view insolvent carriers as a lost cause. But it's not a lost cause." Searle faces mass tort claims over the CU-7 copper intrauterine device it once marketed.

Because it often takes many years and a great deal of money for an individual policyholder to get results in an insolvency proceeding, "many policyholders are dissuaded from pursuing their rights in insolvencies," agreed Ellis Mirsky, the IPA's executive vp and chief counsel-litigation management at GAF Corp. of Wayne, N.J., a former asbestos manufacturer.

Companies should "look more closely at insolvent coverages before deciding they are worthless. The IPA offers an alternative to these would-be discarders of insurance rights," he said.

The IPA plans to involve itself in existing—as well as future—insolvencies, including the insolvencies of Transit Casualty Co.; Integrity Insurance Co.; Midland Insurance Co.; Mission Insurance Co.; Mutual Fire, Marine & Inland Insurance Co.; and the so-called KELM group of insurers owned by London United Investments P.L.C. of London (see story, page 31).

"A major problem for companies faced with an insurer insolvency is getting information," said Mr. Leopold. "The IPA will be a clearinghouse for information for policyholders."

"In fact, many companies are not even aware of which of their carriers are insolvent," Mr. Gilbert said.

When a company joins the IPA, the association will conduct an in-depth analysis of its property/casualty coverages and inform the company whether any of its insurers are insolvent.

The IPA also will advise members about which insurers should be put on a watch-list for possible future insolvency.

And, the IPA will furnish members with a bimonthly newsletter tracking events in insurer insolvencies in the United States and Britain.

Obtaining information about insolvency proceedings in Britain is especially difficult for U.S. policyholders, Mr. Gilbert said. "The U.K. is virtually impenetrable

without this type of organization."

IPA members already have "significant relationships" with the London market, including regulators, he said.

Another significant problem policyholders face is being heard during insolvency proceedings, Mr. Leopold said. By representing policyholders as a group, the IPA will give policyholders a louder voice and increased leverage, he said.

In fact, the impetus to form the IPA was the concerns expressed by many companies that "individually they could not effectively pursue their interests in insolvencies in either the U.S. or the U.K.," Mr. Gilbert said.

"It became clear to us that by pooling our resources we could get more cost-effective representation in insolvency proceedings," said GAF's Mr. Mirsky.

Another former asbestos manufacturer that has expressed an interest in joining the IPA is U.S. Gypsum Co. of Chicago.

"U.S. Gypsum, like many other U.S. companies, has substantial amounts of excess liability coverage in London," said Chris McElroy, senior corporate counsel. "Policyholders' rights in (London insolvency proceedings) and the process itself are frankly just mysteries to us. This group will be able to gather more information than an individual company would

would do. These claims must be settled on an individual basis," Mr. Gates said.

But, a representative of five guaranty funds said that "this type of organization could have advantages."

"It could save discussion on the same issues with a number of different people," said Ted Sweeney, president of Golden, Colo.-based Western Guaranty Fund Services, which manages the guaranty funds in Colorado, Kansas, Idaho, Montana and Wyoming.

While policyholders and other creditors often form creditor committees during insolvency proceedings in the United States and Britain, the IPA will be different from these committees.

A key difference is that policyholder committees consist of many different types of policyholders with many different interests. The IPA will represent only policyholders facing long-tail claims, whose interests are more closely aligned.

In addition, policyholder committees are involved only in court-supervised liquidation or rehabilitation proceedings. But, the IPA will meet with liquidators and receivers on an informal basis to discuss members' needs.

Policyholder committees also find it difficult to win official recognition during insolvency proceedings.

**'Corporations are spending hundreds of millions of dollars pursuing their insurance coverages, but they often do not pursue insolvent carriers,' says IPA President Mark F. Leopold. 'They view insolvent carriers as a lost cause.'**

be able to. And, an organization speaking on behalf of several companies would get better reception."

The IPA plans to use its clout to convince liquidators in both the United States and Britain that reserves should be established for IBNR claims, Mr. Gilbert said.

"We do not view IBNR claims as contingent claims—they need reserves. We would like insolvent companies in liquidation to deal with our members as solvent insurers do by setting reserves for IBNR claims," he said.

In addition, liquidators should take into account reserves for IBNR claims when interim distributions are made, Mr. Gilbert said.

The IPA also will negotiate with state guaranty funds on behalf of its members. This has never before been done, Mr. Gilbert noted.

Specifically, the IPA has targeted guaranty fund regulations, which vary from state to state and require policyholders to file separate forms in each state, as an issue it will address through negotiations with guaranty funds.

"It is difficult for policyholders facing mass tort claims to reach settlements with guaranty funds," Mr. Gilbert said. In addition to the usual disputes, guaranty funds also raise many statutory defenses, like the funds do not cover IBNR claims and cannot respond to policyholders of insolvent companies until other appropriate insurance has been exhausted, he explained.

But executives at several guaranty funds were skeptical about the IPA.

"Guaranty funds and liquidators always look for help from any source that might come along," said John Smith, an attorney with Lord, Bissell & Brook in Chicago, which serves as counsel to the Illinois Insurance Guaranty Fund. "However, this organization could just delay and add expense to the proceedings."

John Gates, executive director of the California Insurance Guaranty Assn., said the IPA is "not necessary."

"I can't see what good a group

For example, during the Mutual Fire rehabilitation, a Pennsylvania state court judge in 1989 dissolved the policyholders committee, finding it was an unnecessary drain on the estate's assets (*BI*, Dec. 4, 1989). This order was stayed by the Pennsylvania Supreme Court.

Since that time, the policyholders committee has been active in the rehabilitation proceedings, operating under the stay, said committee counsel Richard A. Brown of Spiegel & McDiarmid in Washington, D.C.

Mr. Brown said IPA sounds like an "excellent idea."

"If policyholders are not organized and represented as a group, they basically end up having no rights," he said.

However, "a policyholders committee, which has more diverse interests, can be more effective because it is not perceived as a special-interest group," he said.

Mr. Gilbert pointed out that "the IPA hopes to become an important part of the various policyholders committees, both recognized and unrecognized."

Court recognition of the IPA is not terribly important, he noted. "The label of official recognition is not as important to our group as it is to a policyholders committee." A policyholders committee may find court recognition more useful to draw members into the committee, he explained.

"Our group will be a free-standing, pre-organized group, whether we are recognized or not," he said. The group is free to work with liquidators without court recognition.

While insurance regulators are charged with representing policyholders' interests during liquidation proceedings, many policyholders involved in the formation of the IPA believe regulators needed help, Mr. Gilbert said. "They need help in protecting mass tort policyholders, and they need additional education" to understand the needs of mass tort policyholders.

"The IPA's approach with state regulators will be one of mutual

Continued on next page

## Update

### Garamendi seeks comp reform

SACRAMENTO, Calif.—A workers compensation reform package proposed by California Insurance Commissioner John Garamendi would give regulators greater discretion in ratemaking by no longer permitting insurers to build a standard expense ratio into rates.

A law that expires at year-end allows insurers to automatically claim expense ratios of up to 32.8%. But, insurer expenses usually range from 18% to 27% of premium, an Insurance Department spokeswoman said.

No new level of allowable expenses would be set by the bill, which was introduced by Assemblyman Burt Margolin, D-Los Angeles.

The American Insurance Assn. opposes the proposed reform.

The California Workers Compensation Rate Study Commission is scheduled to release a study next month on the economic impact of California's rating law and its effect on competition in the workers comp market, an AIA spokesman said (*BI*, March 11, 1991). But, "it seems that (Mr. Garamendi) has already determined that the results of the work product of the commission are irrelevant," the spokesman said. He added that it would have been more appropriate for Mr. Garamendi to wait for the commission's report before backing a reform plan.

The AIA does not object to the commissioner's other two proposals: the creation of a workers comp fraud investigation team and an effort to explain new insurance fraud laws to employers.

### Briefs filed in antitrust suit

WASHINGTON—Foreign defendants in the massive insurance antitrust suit filed briefs with the U.S. Supreme Court last week supporting one another's petitions for review (*BI*, Jan. 20).

London market reinsurers filed a brief that supports a petition by Lloyd's of London defendants, while Lloyd's of London defendants filed another brief in support of the London market reinsurers. The brief filed by London reinsurers argues that the ruling by the 9th U.S. Circuit Court of Appeals, which overturned a lower court's dismissal of the antitrust suit, "raises a question of global import" (*BI*, June 24, 1991).

Briefs also were filed by Lloyd's defendants in support of petitions by U.S. defendants and Winterthur Reinsurance Corp. of America.

Attorneys general in the 20 plaintiff states are scheduled to file responses Wednesday to the defendants' petitions. Friend-of-the-court briefs also are expected to be filed Wednesday.

### Judge threatens Union Carbide

DANBURY, Conn.—The chief judicial magistrate of Bhopal, India, says he will take control of Union Carbide Corp.'s Indian property unless company officials, including former Chairman Warren Anderson, appear to face criminal charges related to the 1984 Bhopal poison gas disaster.

The court late last year revived 1987 homicide charges against the company and company officials and ordered officials to appear before the magistrate, Gulab Sharma, on Feb. 1 (*BI*, Dec. 9, 1991).

Through its subsidiary, Union Carbide India Ltd., Union Carbide still has assets in the country, said a company spokesman. However, Union Carbide insists it is not subject to Indian criminal law.

Union Carbide in 1986 submitted to the civil jurisdiction of the Indian courts and ultimately agreed to pay \$470 million to settle claims. But it "never agreed to submit to criminal law jurisdiction of the Indian courts, so neither the corporation nor its past chairman, Warren Anderson, are otherwise subject to criminal jurisdiction in India," the spokesman said.

### Governors back state authority

WASHINGTON—The National Governors' Assn. has affirmed its support for leaving the authority for insurer solvency regulation with state insurance departments.

State regulatory authority is sufficient and should not be pre-empted by federal authorities, the group said in a policy statement on insurance regulation adopted at a recent meeting in Washington, D.C.

The NGA also said that states are taking important steps to improve regulation, demonstrated by response to the National Assn. of Insurance Commissioners' program to certify states that adopt minimum standards for solvency regulation. Nine states have been certified thus far, and several others are seeking certification (*BI*, Dec. 9, 1991).

Congress could further help state regulators by passing an NAIC-proposed measure that would make insurance fraud a federal crime and by closing existing loopholes in federal criminal law, the NGA said.

The governors took no position on the proposed repeal of the McCarran-Ferguson Act's antitrust exemptions for insurers. Instead, they sought assurances that any changes would promote competition and not threaten the viability of smaller insurers.

### Briefly noted

Legal experts last week said they were unsure whether federal law establishes that the federal government or the Kentucky Air National Guard could be liable in the crash of a National Guard C-130 transport plane. The plane crashed into a restaurant and motel in Evansville, Ind., killing five crew members and 11 others on the ground. . . . Eight major life insurers led by Prudential Insurance Co. of America Inc. in conjunction with the National Organization of Life & Health Guaranty Assns. will spend the next few months conducting an in-depth analysis of the assets to liabilities ratio of **Mutual Benefit Life Insurance Co.** The project is designed to provide information to be used in formulating the rehabilitation plan that will be presented to courts for approval later this year. . . . The California Supreme Court granted review of an October appellate ruling that California employers cannot inquire about sexual orientation or religious beliefs in **pre-employment psychological screening** tests (*BI*, Nov. 11, 1991). A trial court had earlier denied the request of a Target Stores worker for an injunction to halt the use of the company's pre-employment test. . . . A dispute centering on a runoff reinsurance contract written by syndicate 317/661, managed by **R.H.M. Outhwaite (Underwriting Agencies) Ltd.**, for syndicates 347 and 570, managed by M.H. Cockell & Partners, has been settled for an undisclosed sum. The contract was the largest of three outstanding runoff contracts not yet settled.

# Insolvency group

Continued from previous page information exchange," Mr. Leopold said. "We are not looking to create an adversarial relationship."

Kevin Foley, deputy superintendent in charge of liquidations at the New York Insurance Department, offered cautious support of the IPA.

"We consider ourselves to be the policyholders' representative in a liquidation. But that doesn't mean other groups can't get involved."

"Liquidations have become a very complex affair. Unraveling it and exchanging information can only benefit everyone," Mr. Foley commented.

And, to the extent that the IPA is able to cut down on the amount of litigation that stems from an insolvency, it would be "very helpful," Mr. Foley said.

But, he expressed concern over whether the IPA will operate as a genuine consumer service and not "a means of generating legal fees."

The IPA now plans to focus only on property/casualty insurance company insolvencies, though it may expand its focus in the future to include insolvencies of life/health insurers.

Any size corporation can join the IPA for an annual fee of \$20,000. Associations also can join. Their fees will be determined based on their size.

Mr. Mirsky said the IPA also might con-

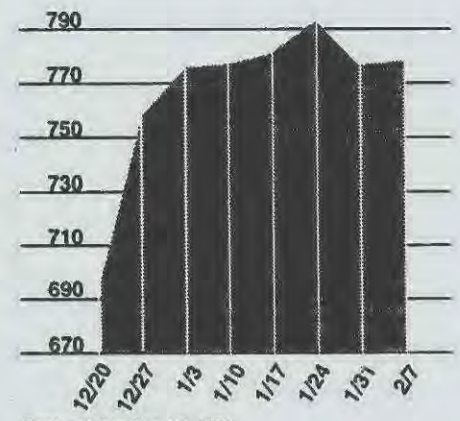
sider allowing brokers, insurers and reinsurers to join.

He predicts that 50 companies will join the IPA within the first few months and that membership will swell to 200 to 300 within one to two years.

In addition to Mr. Leopold and Mr. Mirsky, IPA executives are Treasurer Emmett W. Hines Jr., special adviser to the president at Armstrong World Industries Inc.; and board members Harry Baines, legal adviser at T&N P.L.C.; and Lawrence Fitzpatrick, president and chief executive officer at the Center for Claims Resolution.

The International Policyholders Assn. can be contacted 1201 Pennsylvania Ave. N.W., P.O. Box 7612, Washington, D.C., 20044; 202-467-6666; fax: 202-833-4477.

# BI Insurance Index



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

# Transit may oppose KELM rehab

By STACY SHAPIRO

LONDON—The liquidators of Transit Casualty Co. are threatening to withdraw support for a proposed reorganization of four insolvent insurers owned by London United Investments P.L.C. and instead seek their liquidation.

Unless an impasse between Transit and the court-appointed administrators of LUI can be resolved by Feb. 26, Transit intends to advise the London High Court that the companies should be "wound up without delay," according to a Feb. 4 letter from Transit's attorneys in London to LUI's law firm.

However, LUI's administrators say Transit alone could not derail proposed schemes of arrangement—which are similar to reorganization plans—for the four insurers that are supported by many other creditors.

The High Court in December allowed an extension of applications to liquidate the companies until Feb. 26. That move gave creditors and other concerned parties more time to consider schemes of arrangement for the companies (BI, Jan. 13).

The schemes of arrangement for the four insolvent insurers, the so-called KELM companies, have already been stalled for the nearly two years since LUI went into administration, which is similar to Chapter 11 bankruptcy protection in the United States (BI, April 2, 1990).

The KELM companies—which have total gross liabilities of between \$2 billion and \$2.3 billion—are Kingscroft Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd. and Mutual Reinsurance Co. Ltd. of Bermuda.

Transit objects to a disclaimer to an explanatory note that accompanied the latest draft of the schemes of arrangement given to creditors by LUI administrators at accounting firm Price Waterhouse. The disclaimer implies that creditors cannot rely on the analysis of financial information contained in the draft.

Last week, Transit and the LUI administrators were trying to resolve this dispute,

**A number of the KELM insurers' other creditors support the schemes of arrangement, says Mr. Evans of Price Waterhouse.**

according to Paul Evans, assistant to the administrator of LUI at Price Waterhouse in London.

Mr. Evans added that a number of the KELM insurers' other creditors support the schemes of arrangement. "On their own, Transit can't sink them," he said.

Transit reportedly is owed about \$100 million from the KELM companies and about the same amount from LUI subsidiary Walbrook Insurance Co. Ltd.

Transit has no official authority to force KELM into liquidation. It is simply a member of an informal committee of about eight major U.S. creditors that acts as a sounding board for the KELM company directors.

Transit's London law firm, Clifford

Chance, declined to comment.

A formal creditors' committee will be established once the KELM companies are either put into schemes of arrangement or liquidated, Mr. Evans said.

The schemes of arrangement have been a "matter of dispute, debate and a lot of hard work," said Robert Poyourow, senior counsel for GAF Corp. of Wayne, N.J., who is also on the KELM creditors' committee.

In theory, a scheme of arrangement is preferable to liquidation for creditors because there is more certainty of payouts and some cost savings, Mr. Poyourow said. But there have been a "number of caveats" to overcome before the KELM schemes of arrangement can be approved, he said.

The KELM companies are just four of the scores of insurers that participated on the line slip operated by H.S. Weavers (Underwriting) Agencies Ltd. over a 30-year period. Once London's largest U.S. casualty underwriter, the Weavers slip shut down in April 1990 after Walbrook, its largest insurer, suspended underwriting (BI, April 2, 1990).

Although Walbrook remains technically solvent, it may not be paying all claims.

Last September, London accounting firm KPMG Peat, Marwick, McLintock sued Walbrook in London High Court for breach of contract for failing to pay a \$1.6 million claim.

Peat Marwick's legal department would not comment on the claim leading to the coverage dispute.

Mr. Evans had not heard of the writ, though he said that Walbrook was still paying claims.

Insurance industry stocks slid last week as the Business Insurance Index fell 13.7 points to 757 on Feb. 7 from 791.6 on Jan. 31. Advancing issues were led by Pacificare Health System, up 35.7%; Sierra Health Services, up 16.9%; and Belvedere Corp., up 11.1%. Declining insurance issues followed Bruce Group, down 16.0%; Statesman Group Inc., down 8.5%; and Liberty Corp., down 8.4%. The most active issue for the period was Berkshire Hathaway Inc., with 10.9 million shares traded. The BI Index was up 1.6%; the New York Stock Exchange Composite was up 0.6%; the Standard & Poor's 500 was down 0.8; and the Dow Jones 30 Industrials were up 0.1%.

# British Issues

| Feb. 6 Companies | Price per share | P/E  | Div. per share | Yield % | 1 Week   |           |
|------------------|-----------------|------|----------------|---------|----------|-----------|
|                  |                 |      |                |         | High-Low | per share |
| Comml Union      | 455             | N/M  | 30.7           | 6.7     | 463-455  |           |
| Genl Accident    | 428             | N/M  | 35.7           | 8.3     | 442-428  |           |
| Gdn Royal Exch   | 129             | N/M  | 15.9           | 12.3    | 136-129  |           |
| Royal            | 247             | N/M  | 34.7           | 14.0    | 256-247  |           |
| Sun Alliance     | 296             | N/M  | 18.7           | 6.3     | 296-293  |           |
| <b>Brokers</b>   |                 |      |                |         |          |           |
| Bradstock        | 165             | 18.6 | 6.3            | 3.8     | 165-165  |           |
| CE Health        | 468             | 16.4 | 34.5           | 7.4     | 474-468  |           |
| Hogg Group       | 180             | 10.7 | 10.7           | 5.9     | 180-178  |           |
| JIB Group        | 192             | 16.0 | 10.0           | 5.2     | 196-192  |           |
| Lloyd Thompson   | 249             | 25.0 | 6.0            | 2.4     | 258-249  |           |
| Lowndes Lmbt     | 334             | 16.5 | 15.3           | 4.6     | 334-333  |           |
| PWS Holdings     | 68              | 7.4  | 5.3            | 7.8     | 68-63    |           |
| Sedgwick Grp     | 217             | 20.6 | 16.0           | 7.4     | 221-217  |           |
| Steel Bri Jones  | 305             | 16.2 | 16.3           | 5.3     | 305-305  |           |
| Willis Coroon    | 243             | 12.8 | 17.6           | 7.2     | 250-243  |           |

Source: Philip Olson, Insurance Industry Analyst, London

# BI Industry Stock Report

FEBRUARY 3, 1992 THROUGH FEBRUARY 7, 1992

| BROKERS                                      | Price | Weekly % change | Year to Date % change | Annual |         | Vol.(000) | \$ Div. | % Yield | P/E  | Book value | Mkt/Bk. value | Price | Weekly % change | Year to Date % change | Annual |       | Vol.(000) | \$ Div. | % Yield | P/E  | Book value | Mkt/Bk. value |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|--|-------|-----------------|-----------------------|--------|---------|-----------|---------|---------|------|------------|---------------|-------|-----------------|-----------------------|--------|-------|-----------|---------|---------|------|------------|---------------|------|-----|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
|  |       |                 |                       | High   | Low     |           |         |         |      |            |               |       |                 |                       | High   | Low   |           |         |         |      |            |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Alexander & Alexander                        | NYS   | 21.75           | -2.79                 | 6.10   | 27.63   | 18.00     | 443     | 1.00    | 4.60 | 20         | 9.77          | 2.23  | 61.00           | -2.39                 | 2.74   | 61.00 | 45.38     | 316     | 2.92    | 5.19 | 10         | 45.16         | 1.25 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Gallagher Arthur J. & Co                     | NYS   | 24.25           | 3.74                  | 8.38   | 28.38   | 19.00     | 46      | 0.64    | 2.64 | 19         | 5.88          | 4.12  | 26.00           | 1.96                  | 18.18  | 28.00 | 13.75     | 238     | 0.00    | 0.00 | 12         | 3.22          | 8.07 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Frank B. Hall                                | NYS   | 3.75            | -3.23                 | -11.76 | 5.50    | 3.00      | 88      | 0.00    | 0.00 | -6         | -5.24         | -0.72 | 35.38           | 3.28                  | 0.71   | 37.50 | 17.00     | 91      | 0.12    | 0.34 | 30         |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Hib. Rogal & Hamilton                        | OTC   | 13.50           | 2.86                  | 1.89   | 17.50   | 11.25     | 258     | 0.40    | 2.96 | 23         | 3.56          | 3.79  | 30.25           | 2.54                  | -3.97  | 33.00 | 21.75     | 116     | 0.16    | 0.53 | 14         | 18.90         | 1.60 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Marsh & McLennan                             | NYS   | 77.50           | 2.31                  | -4.76  | 87.25   | 70.00     | 421     | 2.60    | 3.35 | 19         | 14.77         | 5.25  | 41.50           | -3.49                 | 1.22   | 43.00 | 25.75     | 3       | 0.00    | 0.00 | 22         | 13.52         | 3.07 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Poe & Associates                             | OTC   | 12.88           | 0.98                  | 7.29   | 12.88   | 6.50      | 0       | 0.32    | 2.49 | 14         | 2.52          | 5.11  | 4.88            | 8.33                  | 21.88  | 5.25  | 2.75      | 46      | 0.00    | 0.00 | 6          | 7.76          | 0.63 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| BROKERS AVERAGE                              |       |                 |                       |        |         |           |         |         |      |            |               |       |                 |                       |        |       |           |         |         |      |            |               | 0.6  | 1.2 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>CONGLOMERATES &amp; HOLDING COMPANIES</b> |       |                 |                       |        |         |           |         |         |      |            |               |       |                 |                       |        |       |           |         |         |      |            |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Berkley W.R. Corp                            | OTC   | 34.75           | 4.51                  | 13.93  | 35.00   | 23.50     | 127     | 0.32    | 0.92 | 14         | 23.89         | 1.45  | 33.00           | 2.54                  | -3.97  | 33.00 | 21.75     | 116     | 0.16    | 0.53 | 14         | 18.90         | 1.60 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Berkshire Hathaway Inc                       | NYS   | 8710.00         | -1.58                 | -3.76  | 9125.00 | 7550.00   | 10883   | 0.00    | 0.00 | -37        | 4612.00       | 1.89  | 33.00           | 2.54                  | -3.97  | 33.00 | 21.75     | 116     | 0.16    | 0.53 | 14         | 18.90         | 1.60 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| ITT (Hartford Group)                         | NYS   | 58.75           | 1.29                  | 1.73   | 63.00   | 50.00     | 1076    | 1.72    | 2.93 | 9          | 64.01         | 0.92  | 41.50           | -3.49                 | 1.22   | 43.00 | 25.75     | 3       | 0.00    | 0.00 | 22         | 13.52         | 3.07 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Sears (Allstate)                             | NYS   | 43.25           | 5.49                  | 14.19  | 43.50   | 29.63     | 5719    | 2.00    | 4.62 | 13         | 37.38         | 1.16  | 33.00           | 2.54                  | -3.97  | 33.00 | 21.75     | 116     | 0.16    | 0.53 | 14         | 18.90         | 1.60 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CONGLOMERATES AVERAGE                        |       |                 |                       |        |         |           |         |         |      |            |               |       |                 |                       |        |       |           |         |         |      |            |               | 2.4  | 6.5 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <b>INSURERS/REINSURERS</b>                   |       |                 |                       |        |         |           |         |         |      |            |               |       |                 |                       |        |       |           |         |         |      |            |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| AECON N.V.                                   | NYS   | 70.25           | 1.81                  | 0.36   | 71.75   | 54.75     | 31      | 2.30    | 3.27 | 7          | N/A           | N/A   | 35.38           | 3.28                  | 0.71   | 37.50 | 17.00     | 91      | 0.12    | 0.34 | 30         |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Aetna Life & Casualty                        | NYS   | 43.00           | 3.61                  | -2.27  | 49.13   | 31.88     | 1529    | 2.76    | 6.42 | 9          | 64.23         | 0.67  | 30.25           | 2.54                  | -3.97  | 33.00 | 21.75     | 116     | 0.16    | 0.53 | 14         | 18.90         | 1.60 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Allied Group Inc                             | OTC   | 19.25           | 4.05                  | 13.24  | 21.50   | 13.00     | 60      | 0.56    | 2.91 | 7          | 11.50         | 1.67  | 41.50           | -3.49                 | 1.22   | 43.00 | 25.75     | 3       | 0.00    | 0.00 | 22         | 13.52         | 3.07 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| American General                             | NYS   | 41.38           | 0.00                  | -7.02  | 45.63   | 35.50     | 1267    | 2.00    | 4.83 | 10         | 37.14         | 1.11  | 4.88            | 8.33                  | 21.88  | 5.25  | 2.75      | 46      | 0.00    | 0.00 | 6          | 7.76          | 0.63 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| American Indemnity/Far'l                     | OTC   | 6.88            | 0.00                  | 44.74  | 9.25    | 4.50      | 35      | 0.08    | 1.16 | 6          | 12.93         | 0.53  | 31.50           | -1.56                 | 1.20   | 38.50 | 18.63     | 335     | 1.40    | 4.44 | 8          | 42.73         | 0.74 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| American International                       | NYS   | 89.88           | -2.04                 | -8.64  | 102.00  | 78.63     | 1169    | 0.48    | 0.53 | 12         | 45.34         | 1.98  | 55.50           | 0.91                  | 12.12  | 56.50 | 40.00     | 151     | 2.48    | 4.47 | 9          | 36.38         | 1.53 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Aon Corp                                     | NYS   | 41.63           | -0.60                 | 5.05   | 43.25   | 33.50     | 213     | 1.60    | 3.84 | 11         | 18.50         | 2.25  | 39.00           | 9.86                  | 9.86   | 39.00 | 23.63     | 266     | 0.72    | 1.85 | 9          | 33.09         | 1.18 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Argonaut Group                               | OTC   | 25.00           | -3.38                 | 5.26   | 33.28   | 21.75     | 180     | 0.68    | 2.72 | 8          | 48.26         | 0.52  | 33.00           | -1.12                 | 4.35   | 34.00 | 18.75     | 50      | 0.92    | 2.79 | 9          | 20.42         | 1.62 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| AVEMCO Corp.                                 | NYS   | 25.38           | -1.93                 | 1.50   | 27.25   | 18.25     | 53      | 0.40    | 1.58 | 19         | 9.55          | 2.66  | 10.75           | 0.00                  | 2.38   | 11.50 | 8.50      | 12      | 0.20    | 1.86 | 15         | 13.30         | 0.81 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Baldwin & Lyons Inc.                         | OTC   | 26.50           | 0.00                  | 2.91   | 27.50   | 20.00     | 1       | 0.28    | 1.06 | 8          | 24.29         | 1.09  | 23.00           | 0.00                  | -1.06  | 24.50 | 16.75     | 181     | 1.00    | 4.35 | 7          | 25.88         | 0.89 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Belvedere Corp.                              | ASE   | 5.00            | 11.11                 | 53.85  | 5.00    | 2.63      | 40      | 0.04    | 0.80 | 20         | 7.65          | 0.65  | 14.00           | -4.27                 | -2.61  | 18.63 | 13.50     | 16      | 0.20    | 1.43 | 11         | 15.05         | 0.93 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Chandler Insurance                           | OTC   | 4.00            | 0.00                  | 23.08  | 4.75    | 2.13      | 37      | 0.00    | 0.00 | -2         | 5.95          | 0.67  | 4.50            | -2.70                 | 9.09   | 7.50  | 3.50      | 54      | 0.32    | 7.11 | 3          | 5.61          | 0.80 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Chubb Corp.                                  | NYS   | 67.88           | -1.81                 | -11.85 | 78.00   | 60.75     | 1601    | 1.48    | 2.18 | 11         | 35.19         | 1.93  | 19.75           | 6.04                  | 19.70  | 19.88 | 11.88     | 83      | 0.48    | 2.43 | 9          | 14.41         | 1.37 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CIGNA Corp.                                  | NYS   | 54.38           | 0.69                  | -11.04 | 61.75   | 41.25     | 790     | 3.04    | 5.59 | 11         | 73.15         | 0.74  | 70.63           | -3.75                 | -3.09  | 75.75 | 57.13     | 369     | 2.60    | 3.68 | 8          | 52.00         | 1.36 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| CNA Financial Corp.                          | NYS   | 82.88           | -6.09                 | -15.43 | 104.50  | 75.50     | 145     | 0.00    | 0.00 | 12         | 70.23         | 1.18  | 46.38           | 4.13                  | -4.87  | 50.00 | 35.50     | 1279    | 1.48    | 3.19 | 11         | 31.50         | 1.47 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Continental Corp                             | NYS   | 27.50           | 0.46                  | -0.45  | 30.63   | 23.25     | 678     | 2.60    | 9.45 | 12         | 37.83         | 0.73  | 18.75           | 7.91                  | 21.95  | 18.75 | 11.63     | 64      | 0.24    | 1.28 | 11         | 11.19         | 1.68 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| EXEL Ltd                                     | NYS   | 36.75           | 8.49                  | -2.00  | 40.25   | 27.38     | 774     | 3.60    | 9.80 | 8          | N/A           | N/A   | 5.25            | -16.00                | -4.55  | 8.88  | 5.00      | 174     | 0.36    | 6.86 | -75        | 7.35          | 0.71 |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Fund American Corp.                          | NYS   | 67.25           | -2.18                 | -3.76  | 70.25   | 55.00     | 677     | 0.68    | 1.01 | 18         | 36.11         | 1.86  | 18.25           | 2.82                  | 8.96   | 19.00 | 13.75     | 103     | 1.04    | 5.70 |            |               |      |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

# CONTRACTORS

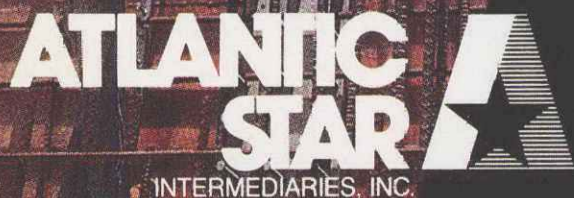
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