

Business Insurance

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Tanker owner's P&I club helping to pay cleanup cost

HUNTINGTON BEACH, Calif.—The liability insurer for the owner of a tanker that spilled 300,000 gallons of crude oil off the California coast last week is helping to pay for the cleanup, though it is unclear who will ultimately be held liable for the spill.

The 811-foot tanker American Trader dumped 300,000 gallons of its 26-million gallon cargo about two miles off Huntington Beach after a three-foot hole was ripped in the ship's hull.

Continued on next page



The recent series of European storm losses, including last month's windstorm that battered Britain, are forcing insurers to examine changing weather patterns worldwide.

RDR Productions/Rex Features

Insurers fear global warming to hike losses

By CAROLYN ALDRED

LONDON—The recent string of devastating storms in Western Europe could be a signal of changing world weather patterns that could result in a deluge of claims against insurers and reinsurers.

Several insurers predict that the frequency of severe storms is on the rise, due to climatic changes caused by the so-called "greenhouse effect."

In the midst of this controversy, Western Europe was hit early last week by the second wave of violent windstorms in as many months, which could push weather-related losses in Europe so far this year to \$3.7 billion or more (see story, page 30).

And, this year's storms come just more than two years after the "once-in-a-lifetime" windstorm that devastated southeastern England and northern France in 1987 (*BI*, Oct. 26, 1987).

Last month's European windstorm "once again raises the question of whether or not there is a trend toward more severe meteorological events in this country," said Norman Lynagh, a meteorologist and managing director of Noble Denton Weather Services Ltd. in London, which provides meteorological advice to insurers.

However, an increase in the number and severity of windstorms is just one example of how the greenhouse effect is changing weather conditions throughout the world, some insurers claim.

The greenhouse effect describes the warming of the earth's surface that occurs when the sun's energy is trapped by the atmosphere. The effect tends to increase as the level of pollutants in the atmosphere rises.

Many scientists argue that the greenhouse effect is accelerating because more damaging gases, such as carbon dioxide and chlorofluorocarbons, are being released into the atmosphere. This, in turn, will produce changing climatic conditions, some scientists believe.

While scientists and politicians continue to debate whether the

Continued on page 30

New reversion concerns may prompt moratorium

By JERRY GEISEL

WASHINGTON—Congressional concerns about the security of workers' and retirees' retirement benefits after companies terminate overfunded pension plans could fuel a new drive to restrict or even ban pension asset reversions.

Legislators warn that employers put workers and retirees at risk when they terminate overfunded pension plans and buy annuities from insurers whose investment portfolios are loaded with junk bonds (see story, page 31).

Legislators fear that insurers writing annuities could collapse, causing annuity benefits to become worthless since there is no federal coverage for those benefits.

"Companies are making off with bundles of cash while workers and retirees may be stuck holding an empty bag," said Sen. Howard Metzenbaum, D-Ohio.

Sen. Nancy Kassebaum, R-Kan., also warns that workers' and retirees' benefits may not be safe after an overfunded plan is terminated.

"Under our current laws and regulations, a retiree with a perfectly sound, federally insured pension can suddenly learn that his pension fund is being terminated and replaced by an annuity from



Ms. Kassebaum

an insurance company he has never heard of with no apparent backing by the federal government.

Hundreds of thousands of our retirees have learned just that in recent years, and many of them are understandably alarmed," she said.

Sen. Kassebaum believes employers terminating overfunded plans should at least be required to choose annuity insurers that meet tougher financial standards.

Last week, Sen. Kassebaum introduced legislation, S. 2069, that would impose an 18-month moratorium on pension reversions. Employers still could terminate over-

funded plans during this 18-month period, but only if they give the surplus assets to participants or place the surplus in a special trust. At the end of the 18-month period, employers could recoup the surplus from the trust.

Sen. Kassebaum said a moratorium would give legislators time to address problems posed by the terminations of overfunded plans.

This is not the first time that pension reversion moratorium legislation has been introduced in the Senate. In 1988, the Senate considered and rejected a 15-month reversion ban (*BI*, Aug. 1, 1988).

Earlier moratorium proposals, though, were viewed as a subterfuge by some—most notably Sen. Metzenbaum—to buy time to build support for legislation that would ban reversions outright or compel employers to give surplus assets to participants.

But the Kassebaum legislation—unlike earlier congressional moratorium proposals—is not part of a much broader debate on who should collect excess assets.

Continued on page 4

Federal agency may dictate coverage

Banks fear D&O crunch

By LOUISE KERTESZ

WASHINGTON—A federal agency's attempt to nullify two exclusions in directors and officers liability policies for financial institutions could severely tighten the D&O insurance market for banks and trigger a rash of lawsuits, experts say.

Banks and D&O insurers fear that the Federal Deposit Insurance Corp. will soon ask Congress to ban exclusions in bank D&O policies that bar coverage when federal regulators take action against institutions or when institutions sue their own officers.

If forced to drop the so-called regulatory action and insured vs. insured exclusions from bank D&O policies, insurers would either stop writing the coverage or charge prohibitive rates, says the Washington-based American Bankers Assn. The ABA vehemently opposes federal laws dictating D&O coverage.

Banks that cannot find D&O coverage would be unable to attract qualified directors and officers, say bankers and insurers.

In addition, experts expect the FDIC—which guarantees funds on deposit in member banks—to recommend prohibiting a provision in financial institution blanket bonds that terminates the crime coverage if regulators take over an institution.

However, laws barring either D&O coverage exclusions or the blanket bond termination provision likely would be challenged on constitutional and other

grounds, experts say.

The FDIC's recommendations are expected in an agency report to Congress on the availability of D&O liability insurance and financial institution bonds. The agency—along with the Justice and Treasury departments—was ordered to draft the report under the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The report originally was due Feb. 9, but the FDIC now expects to submit it after Thursday, the deadline to file comments with the agency on how D&O exclusions and the bond termination provision could affect coverage availability and the ability of financial institutions to attract and retain directors and officers.

The FDIC will not comment before the report is complete, a spokesman said last week.

However, experts say they base their concerns on the FDIC's role in drafting the financial institution reform bill last summer and statements by agency officials to ABA attorneys and others.

"It's very much what the FDIC would like to see happen. They have been very consistent in their views. During the legislative process last summer, they lobbied for changes in D&O coverage and in financial institution bonds, said Jeffrey W. Greenberg, president of New York-based National Union Fire Insurance Co. of Pittsburgh, Pa., a major D&O underwriter and unit of American International Group Inc.

Continued on page 29

Arbitrators void runoff policy bought by Lloyd's syndicate
Page 2

Researchers dispute validity of dire AIDS death prediction
Page 3

Idaho, insurer clash over role of self-insurance program
Page 3

Update

Tanker insurers cleaning spill

Continued from previous page

On Friday, volunteers were cleaning up some oil that had washed up along five miles of beach, while oil skimmers worked on the bulk of the slick offshore, said a Coast Guard official.

Though cleanup costs are unknown, they will be far less than the more than \$1 billion spent cleaning up the 11 million gallons of oil spilled by the Exxon Valdez off Alaska last year.

The American Trader is owned and operated by New York-based American Trading Transportation Co. Inc. and was chartered to British Petroleum Oil Shipping Co. U.S.A., which owned the oil on board.

Although Coast Guard officials were quoted last week as saying that BP had assumed liability for the spill, BP later denied this.

"We are really focusing on the cleanup right now and not the liability issues," a BP spokeswoman said. "Given that the cause of the spill is still under investigation, it's just too early to say" who is liable.

John J. Nolan, manager of insurance and claims for American Trading, said the shipowner has the obligation "to get this thing cleaned up as quickly as possible."

BP is cooperating in the cleanup effort by providing "substantial manpower," while making it clear that its cleanup efforts are on American Trading's behalf, Mr. Nolan said.

Mr. Nolan added, however, that while cleanup efforts are initially the vessel owner's obligation, "by doing that we are not admitting that the liability is an American Trading responsibility."

The American Trader is insured for cleanup costs up to a \$400 million limit by Norwegian protection and indemnity club Assurance Foreningen Gard.

The Gard Club retains the first \$1.2 million of a loss, then the International Group of P&I Clubs, of which the Gard Club is a member, assumes the next \$10.8 million. The International Group of P&I Clubs then reinsures excess of \$12 million up to \$400 million with underwriters at Lloyd's of London, the Institute of London Underwriters and world marine insurance markets.

The American Trader's hull coverage is written by U.S. and foreign hull insurers led by the American Hull Insurance Syndicate.

Mr. Nolan said representatives of the Gard Club and the Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution—an out-of-court pollution compensation mechanism that provides payments of up to \$16.8 million per ship—were at the scene last week.

The Gard Club and TOVALOP are paying for the cleanup, he said.

NRRRA opposes Georgia rules

ATLANTA—The National Risk Retention Assn. is protesting the Georgia Insurance Department's efforts to require risk retention groups operating in the state to comply with provisions of the state Unauthorized Insurers Act.

In a letter to several risk retention groups, the Georgia department said the groups must comply with provisions of the state law requiring minimum capital and surplus of \$3 million and requiring all risks to be placed through a Georgia-licensed surplus lines broker. Risk retention groups failing to meet these requirements must cease doing business in the state, the Insurance Department said.

Dan Champlin, assistant director of the department's regulatory services section, said the capital requirement is in line with federal Risk Retention Act provisions allowing states to regulate groups in hazardous financial condition.

However, Mr. Champlin added, the Insurance Department may not insist on risks being placed through surplus lines brokers. He explained that this was included in the letter in part to see what the groups' reactions would be. Most were negative, he said.

In a Feb. 8 letter to the department, the NRRRA challenged Georgia's authority to require risk retention groups to comply with any provision of the state unauthorized insurers act.

Among other things, the NRRRA contends that Risk Retention Act provisions allowing state regulation of groups in hazardous financial condition are not intended to allow states to set capital standards.

Michael J. Mullen, a Washington attorney representing the NRRRA, said the association hopes its letter will persuade the Georgia department to change its position, which has not yet been challenged in court.

Consortium of 89 arrests

LONDON—London police last week charged three men in connection with the sale of fraudulent financial guarantee insurance to a California property developer.

Colin Youell and Barry Toomey of London-based Consortium of 89 Ltd. were arrested and charged with "conspiracy to defraud," a spokesman for the London police confirmed.

Also charged with conspiracy to defraud was Royston Fenn, an official with London-based Global Minerals Ltd. In addition, police were seeking David Gale, another Consortium of 89 employee, who was out of the country at the time of the other arrests.

The police allege California developer Norbert Schlei was defrauded of about \$400,000 when he tried to secure loans from Global Minerals for U.S. land development. Mr. Schlei was offered the loans on the condition that he buy financial guarantee insurance from Consortium of 89 that turned out to be bogus, police say.

Mr. Youell was released after posting bond of 20,000 pounds (\$34,000). Mr. Toomey had not made bail as of late last week.

Mr. Youell and Consortium of 89 have been at the center of a widening controversy over allegedly phony binding authorities issued for several insurers (BI, Dec. 11, 1989; July 17, 1989; July 10, 1989).

Continued on page 29

Errors and omissions

• Former Lloyd's of London underwriter Ian R. Posgate was awarded 126,500 pounds (\$215,050) toward legal costs he incurred in defending criminal fraud charges last year following a second application to the court to recover the costs. An article in the Jan. 22 issue stated that Mr. Posgate and other defendants in the case had to pay their own legal costs.

Citibank investment in AMBAC questioned

By JUDY GREENWALD

WASHINGTON—Citibank may have to boost its investment in its AMBAC Indemnity Corp. unit to an estimated \$3.8 billion from about \$630 million to meet federal risk-based capital guidelines for national banks that begin to take effect at year-end, a competitor says.

But, an AMBAC official said the estimate, which is based on AMBAC's 1988 results, is unfounded and unsubstantiated.

A Citibank official also refused to comment on the estimate by AMBAC competitor Financial Guaranty Insurance Co., indicating the issue remains unresolved.

Citibank also refused to comment on reports that it is considering selling AMBAC.

Meanwhile, three insurance industry trade associations petitioned the Federal Reserve Board last week trying to force Citibank to divest itself of AMBAC.

In a related development, bank holding company Fleet/Norstar Financial Corp. said it no longer will seek to convert its non-voting stock in Capital Guaranty Corp. into voting shares. Capital Guaranty Corp. is the parent of financial guarantee insurer Capital

Guaranty Insurance Co. (see story, page 24).

The controversy between Citibank and FGIC, AMBAC's competitor, currently focuses on a Dec. 20 letter by Comptroller of the Currency William Clarke to U.S. Sen. Steven D. Symms, R-Idaho, a member of the Senate Finance Committee. The senator released that letter and a letter from Federal Reserve Board Chairman Alan Greenspan last week.

Sen. Symms had written to the officials concerning a 1989 petition to the Fed in which FGIC asked for a ruling on whether Citibank and AMBAC are double counting capital to meet their respective capital requirements.

A related question is posed by new risk-based capital guidelines for banks that begin to take effect at the end of this year.

Under the 1988 Basel Accord, an international agreement in which the United States is participating, banks must maintain a minimum ratio of total capital to total risk-weighted assets of 7.25% by year-end 1990 and 8% by year-end 1992, according to FGIC.

In determining total risk-weighted assets, off-balance sheet items, or contingent liability items including financial guaranty insurance obligations, would be

Continued on page 24

Runoff disputes trigger \$74 million cash call

By STACY SHAPIRO

LONDON—Members of two Lloyd's of London syndicates managed by Pulbrook Underwriting Management Ltd. face at least \$74 million in cash calls this year after arbitrators voided one runoff reinsurance policy and another runoff policy dispute was settled.

Last week's arbitration decision voiding a runoff reinsurance policy written for Pulbrook marine syndicate 334 is noteworthy for two reasons:

• It marks the first time a disputed runoff policy has been successfully voided.

• The syndicate that wrote the policy, syndicate 418/417, is managed by Merrett Underwriting Agency Management Ltd. Both Pulbrook and MUAM are subsidiaries of Merrett Holdings P.L.C.

The MUAM syndicate disputed claims filed against the runoff reinsurance policy, contending Pulbrook failed to disclose material information when the policy was written.

As a result of the ruling, syndicate 334 will have to pay for losses stemming mostly from North American liability policies it wrote. More than 500 members on syndicate 334's still-open 1985 un-

derwriting year now face a call for at least \$25 million to pay the losses, members say.

However, Pulbrook Chairman David Robson could not confirm how much syndicate 334 members will have to pay to cover the losses. "We now have to work out how much names have to cough up," he said.

In addition, members on the 1982 underwriting year of another syndicate managed by Pulbrook, non-marine syndicate 90, will be asked to pay about \$49 million in a cash call later this year following the settlement of a separate runoff reinsurance dispute last year with Lloyd's underwriter Richard Outhwaite (BI, Nov. 13, 1989). Mr. Robson confirmed.

Many members of syndicate 90 also are members of syndicate 334.

Last week's arbitration decision involved a runoff reinsurance policy that Lloyd's broker Winchester Bowring Ltd. placed in 1981 with syndicate 418/417 to reinsure syndicate 334's liabilities for 1975 and earlier underwriting years. The policy was written for an unlimited amount excess of \$12 million.

Pulbrook has kept the 1985 underwriting year open because the

Continued on page 24

BI to list risk consultants

Business Insurance will publish its annual directory of risk management consultants in the March 12 issue, which also will contain a spotlight report on trends in risk management consulting.

The directory is published as an editorial service; there is no charge for companies to be included. However, to be listed, consultants must fill out and return a questionnaire provided by BI.

If your company provides risk management consulting services and you have not yet received a questionnaire, please request one by calling Sara Harty at 312-280-3195.

The deadline for returning completed questionnaires to Business Insurance is Feb. 23.

Inside

✓ Policyholders and guaranty fund associations nationwide are battling over whether funds can deny coverage to policyholders based on their net worth. **PAGE 7**

✓ It's time for the administration to examine soaring health care costs, this week's editorial says. **PAGE 8**

✓ Many insurers still do not routinely consider home health care a viable alternative to prolonged hospitalization, says Charles Lavery in Speaking Out. **PAGE 19**

✓ An administrative action by the Equal Employment Opportunity Commission is not the equivalent of a lawsuit and, therefore, is uninsurable, a New Jersey appellate court says. **PAGE 21**

✓ Implementation of the European Community's Second Non-Life Insurance Directive may be delayed because only one EC member nation has approved enabling legislation. **PAGE 27**

✓ Investors should examine the concentration of junk bonds in insurers' portfolios, industry analyst Myron M. Picoult writes. **PAGE 31**

Departments

Advertiser index	24
Ask a risk manager	28
At issue	10
Benefit beat	6
Bermuda	14
Classifieds	26
Comings & goings: buyers	12
Comings & goings: industry	24
Insider trading	10
Insurance services guide	27
Legal briefs	20
Letters	8
London	16
Opinions	8
Perspectives	19
Speaking out	19
Ticker	31

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Pre-employment fitness tests reduce job injuries: Study

By CHRISTINE WOOLSEY

Pre-employment strength and endurance tests can significantly reduce the frequency and severity of job-related injuries among warehouse workers, a new study says.

A battery of strength and endurance tests can predict the future performance of new employees, including the likelihood that they will avoid injury and their ability to reach various productivity standards, the study found.

The tests—developed by Advanced Ergonomics Inc., a consulting firm in Dallas—are designed to mirror on-the-job demands in an attempt to single out applicants best suited to warehouse jobs.

While the study did not assess potential savings in workers compensation costs, employers in the study agree preventing one serious back injury could more than compensate for the cost of the program.

In the study, Advanced Ergonomics administered its tests to 665 prospective employees at 16 warehouses operated by seven grocery industry employers.

But the tests also could be useful to retail and automotive supply warehouses or other companies where workers handle heavy materials, said the study's author, Charles K. Anderson, executive vp at Advanced Ergonomics.

"One of our concerns was that this be something that benefits the whole manual material handling industry," said James Koskan, corporate loss prevention manager at SuperValu Stores Inc. in Eden Prairie, Minn., which participated in the survey. "We didn't want it to be a proprietary tool for one company."

During the study program, workers at the seven companies were given the physical ability tests prior to employment.

Potential employees were then assigned a "Job Match Factor"

Continued on page 23

Ruling gives insureds flexibility in disputes

By CAROLYN ALDRED

LONDON—A policyholder that purchases insurance in most European Community countries has an indisputable right to have coverage disputes heard in courts in those countries, even if both the policyholder and the insurer are based outside the EC, a London High Court has ruled.

Under the 1968 Brussels Convention on Civil Jurisdiction, signed by most EC nations, a non-European insurer with offices in any EC country that has ratified the convention is considered domiciled in that country and, therefore, is under the jurisdiction of that country's courts, Justice Hobhouse ruled.

Only the policyholder, not the insurer, can request moving litigation to what it considers a more appropriate jurisdiction, Justice Hobhouse ruled in interpreting the convention in a \$54 million dispute over cargo and fidelity coverage between New York-based NGI International Precious Metals Ltd. and New Hampshire Insurance Co. of Manchester, N.H.

Justice Hobhouse rejected the insurer's motion to stay the litigation

because New Hampshire, a subsidiary of American International Group Inc. of New York, wrote the coverage from its London office.

New Hampshire argued that New York was a more appropriate forum because both it and NGI have operations in New York and most of the witnesses are based there.

The ruling marks the first time the London High Court has interpreted application of the Brussels convention to insurance law.

Although the British court does not set precedent for courts in other EC nations, it is generally regarded as one of most important courts in interpreting international insurance law because London is the international insurance center.

Of the 12 EC countries, nine have ratified the Brussels convention: the United Kingdom, France, West Germany, Italy, Belgium, The Netherlands, Denmark, Luxembourg and the Republic of Ireland.

In addition, courts in other European nations traditionally do not grant motions to move litigation to other jurisdictions as much as U.K. and U.S. courts do.

Insurer attorneys say the ruling is significant.

It "breaks new ground," said Graham Charkham, a partner with the London firm Clyde & Co. and a leading authority on the British Civil Jurisdiction and Judgments Act of 1982, in which the Brussels Convention was incorporated.

"This is one of the first cases in which a British court has made a decision on the meaning of those articles (in the convention) which are of direct relevance to insurance," Mr. Charkham said.

But he also expects "a number of cases where courts are asked to (further) clarify" the convention.

The ruling "altered the law in England as it has been for generations," asserted another leading London insurance attorney.

Under the ruling, a U.S. insurer "with affiliates in EC countries may be sued in those countries" and the courts in those countries will have "no discretion to stay the proceedings" in favor of a more appropriate jurisdiction, he said.

All non-European insurers that write business in the London market for non-European-based policyholders will be concerned that the Brussels convention subjects them to mandatory English juris-

Continued on page 13

Experts reject dire AIDS projections

Model predicts huge rise in deaths

By MICHAEL SCHACHNER

AIDS researchers are discounting the validity of a mathematical model commissioned by a Philadelphia-area insurance agency that projects 1 million Americans will die annually from acquired immune deficiency syndrome by 2015.

Critics of the model—which also concludes that another 1.6 million Americans will be suffering from AIDS by 2015—say the model is alarmist and unreliable because it does not take into account changes in behavior prompted by education or the impact of probable medical advancements.

Indeed, critics including researchers and insurers say the rate of the spread of AIDS in the group most at risk—male homosexuals—already has peaked.

Researchers also assert that forecasting AIDS-related deaths more than three to five years from now is pure guesswork.

"This is the type of futurism I don't participate in because there is still so much we can do," said Dr. June Osborn, chairman of the National Commission on AIDS in Washington, D.C.

"The human race is dynamic. It doesn't just sit back and let things happen to it," said Allan Johnson, an actuary with Metropolitan Life Insurance Co. in

New York.

However, Kenneth M. Steele, president of American Eagle Insurance Agency Inc. in Trevese, Pa., which commissioned the model, contends that education efforts will do little to slow the spread of AIDS.

He also contends that the spread of AIDS is not slowing, arguing that early estimates of the spread were simply too high.

American Eagle published the first of two parts of the Fuxman Dynamic Model in the March 8, 1989, edition of its biweekly newsletter, AIDS Insurance Reports. After spending more than \$1 million on developing and researching the model, AIDS Insurance Reports published the disputed projections Nov. 29.

The newsletter, which has 2,400 subscribers and costs \$460 a year, focuses on AIDS-related issues facing life and health insurers, though it reports on issues affecting all of society, said Mr. Steele, who has been a life insurance producer since 1965.

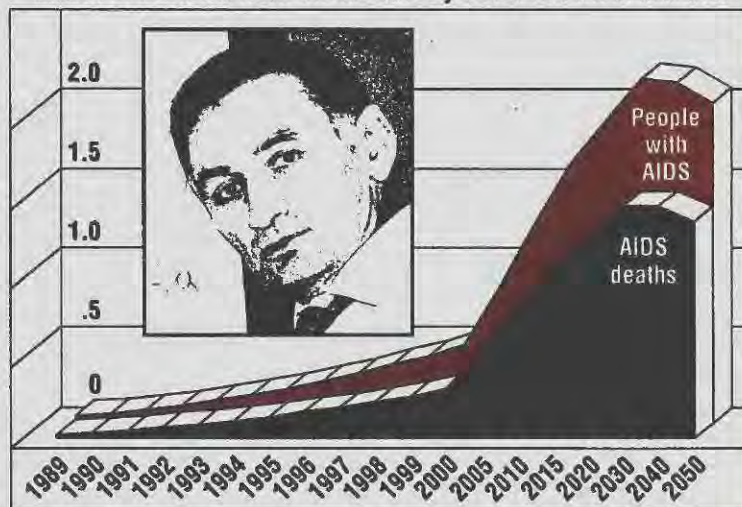
Yakov L. Fuxman, a Ukrainian who emigrated to the United States in 1988, developed the model.

Mr. Fuxman, who holds a master's degree in pure mathematics from Kiev State University in Kiev, has designed computer programs to analyze experiments, identify parameters of dynamic systems and classify

Continued on page 22

Long-term AIDS projections

A model by Soviet mathematician Yakov L. Fuxman—financed by an insurance agency and widely discredited by AIDS researchers—projects that 1 million Americans will die from AIDS and another 1.6 million of them will have the disease by 2015. Shown in millions.



Source: AIDS Insurance Reports

BI/JOHN HALL

State, insurer clash over role of self-insurance

By DOUGLAS McLEOD

BOISE, Idaho—A coverage dispute between the state of Idaho and a school board liability insurer may hinge on whether the state's general liability self-insurance program can legally be considered "other insurance."

The state and Idaho State University are suing Continental Casualty Co., the university's primary board of education liability insurer, to recover the nearly \$500,000 cost of settling a wrongful discharge and civil rights suit brought by a university professor.

Continental Casualty, however, is asking a state judge to reduce or eliminate its obligation to cover the claim.

Among other arguments, Continental Casualty contends that ISU's participation in a state gen-

eral liability self-insurance program legally constitutes insurance, triggering the "other insurance" clause in Continental Casualty's policy and excluding coverage for any part of the loss attributable to ISU's retention.

Continental Casualty maintains that the self-insurance program covers civil rights claims against the university, while the state and ISU contend it does not.

The state and ISU rebut Continental Casualty's "other insurance" argument, citing—among other things—a string of federal tax cases denying parent company deductions for premiums paid to captive insurers. These decision found that coverage written by a captive is not true insurance.

Idaho Risk Manager A.E. Fridenstine labeled Continental Casualty's position "totally ludi-



BI/JOHN HALL

crous."

He maintains that a victory by the insurer could open up subsidiaries that participate in parent self-insurance programs to similar "other insurance" claims by commercial insurers covering certain of the subsidiaries' risks.

Brian H. Boyle, the attorney for Continental Casualty with the Chicago law firm of Peterson, Ross, Schloerb & Seidel, declined to comment for the record.

A hearing on summary judgment motions by both sides is scheduled for Feb. 20 in the Idaho 4th Judicial District Court for Ada County.

The coverage dispute stems from a 1981 lawsuit brought by Thomas Hale, an ISU professor who charged university officials with wrongfully terminating him and violating his First Amendment freedom of speech rights.

A jury awarded Mr. Hale \$100,000 in damages, though the Idaho Court of Appeals later remanded the award for reconsideration of the amount. Mr. Hale agreed to settle the case in 1988 for \$375,000 and reinstatement to the university, court papers say.

ISU was one of several state entities participating in the Idaho Bureau of Risk Management's "retained risk program," which provided coverage for general liability, personal injury, auto liability and other exposures.

Under this program, the state maintained a self-insured retention of \$100,000 per occurrence and \$800,000 annual aggregate.

Compass Insurance Co. of Dallas, a unit of Northwestern National Insurance Group, provided excess limits of \$100,000 per per-

Continued on page 28

Asset reversions

Continued from page 1

Instead, the Kassebaum legislation is being driven by congressional concerns over whether loopholes in federal law are placing retirement benefits at risk after an overfunded plan is terminated.

Sen. Kassebaum is alarmed that employers terminating overfunded pension plans can purchase annuities from virtually any insurer to provide promised benefits.

The only existing requirement is that the insurer be licensed in at least one state.

And, while the federal Pension Benefit Guaranty Corp. will guarantee participants' basic benefits if an employer terminates an underfunded pension plan, it offers no such protection if an overfunded plan is terminated and the insurer providing annuities collapses.

Alarm bells began to sound in Sen. Kassebaum's office after a major employer in Kansas—Wichita-based

Coleman Co. Inc.—announced it would terminate two overfunded plans and recover about \$32 million in surplus assets.

Coleman and its parent, MacAndrews & Forbes of New York, intended to buy annuities from Executive Life Insurance Co., a unit of Inglewood, Calif.-based First Executive Corp., a major junk bond holder.

Last month, A.M. Best Co. lowered its rating of Executive Life to A from A+, while Standard & Poor's lowered the insurer's claims-paying ability to A from AAA.

Both actions were taken after First Executive Corp. said it would take a \$515 million charge against fourth-quarter earnings to reflect defaults and declines in the value of securities it holds. While First Executive Corp. expects to report a "substantial loss" in 1989, it says it remains "strong financially and highly liquid."

MacAndrews & Forbes now intends to buy annuities from a AAA-rated company, as it originally intended to do, a spokesman said.

However, pension activists say there is nothing to stop another employer from purchasing annuities from a low-rated insurer when it terminates a pension plan.

"What is to prevent someone else who isn't so nice from selecting some fly-by-night insurer" to buy annuities? asked Michael Gordon, a former Senate staffer who helped craft the Employee Retirement Income Security Act of 1974 and now is a Washington pension attorney.

Some pension activists say the real solution is simply to stop reversions.

"This (the Coleman situation) is another example of why reversions need to be stopped," said Karen Ferguson, director of the Pension Rights Center in Washington, D.C.

Sen. Metzenbaum, one of the most outspoken critics of reversions, says Coleman's actions are an example of the potential dangers of terminations.

"We've known for a long time that terminations reduce the value of pensions, but Coleman... shed new light

on the dangers to pensions. They show how junk bond risk is transferred to workers and retirees," he said.

Benefit experts say Congress—in the wake of the Coleman/Executive Life annuity controversy—is likely to consider a number of options to better protect participants when a pension plan is terminated.

"Coleman/Executive Life has highlighted the degree to which individuals may be put at risk" in a termination situation, said Dallas Salisbury, president of the Employee Benefit Research Institute, a benefits think tank in Washington, D.C.

Among other things, legislators may consider proposals to amend ERISA to extend PBGC benefit guarantees to annuities, he said.

Legislators also might consider requiring the PBGC to insist that an employer purchase annuities from a AAA-rated insurer.

"It seems to me that the PBGC ought to be given direct legislative authority to approve insurers that

can provide annuities... and that those insurers would have to meet certain, higher financial standards," said Mr. Gordon.

But such proposals, if enacted, might create a new set of problems, experts note.

For example, guaranteeing would add billions of dollars to the \$800 billion in liabilities the PBGC already insures, says PBGC Executive Director James Lockhart III. That could lead to a hike in PBGC premiums.

The current annual premium—paid by employers with defined benefit pension plans—ranges from \$16 per plan participant to \$50, varying on a pension plan's financial condition.

While some benefit experts say it may be time to tighten up rules governing reversions, they reject the cry of pension activists to ban asset reversions.

Business lobbyists say banning asset reversions actually would reduce, not increase, pension security.

For example, if employers knew they could never recover pension surpluses, they would only fund plans at the lowest level allowed, some say.

"Employers would not want to give away more benefits than they agreed or negotiated to provide," said James Klein, deputy executive director of the Assn. of Private Pension & Welfare Plans in Washington, D.C.

By funding at minimum levels, an employer's pension plan could become quickly underfunded if its investment portfolio suffered a loss.

And, if the company later ran into economic difficulty, went out of business and folded its underfunded pension plan, participants might not receive all promised benefits because the PBGC only guarantees certain basic benefits.

Some benefit experts, though, question whether employers terminating overfunded pension plans favor price over financial stability when purchasing annuities.

"It is my experience that employers do not buy annuity products from fly-by-night companies," said Howard Golden, a partner with benefit consultant Kwasha Lipton in Fort Lee, N.J.

"My sense is that employers do care about the long-term financial security of their employees. As a result, they care about the financial strength of the annuity insurer. Employers want to make sure that participants' benefits are well-protected," said Kim McCarrel, a consultant in The Wyatt Co.'s Portland, Ore., office.

Because many pension plan participants will continue working for the employer after it terminates an overfunded pension plan, "The employer has a big interest in seeing that the benefit will be delivered," said Richard Raskin, a consultant in Wyatt's New York office.

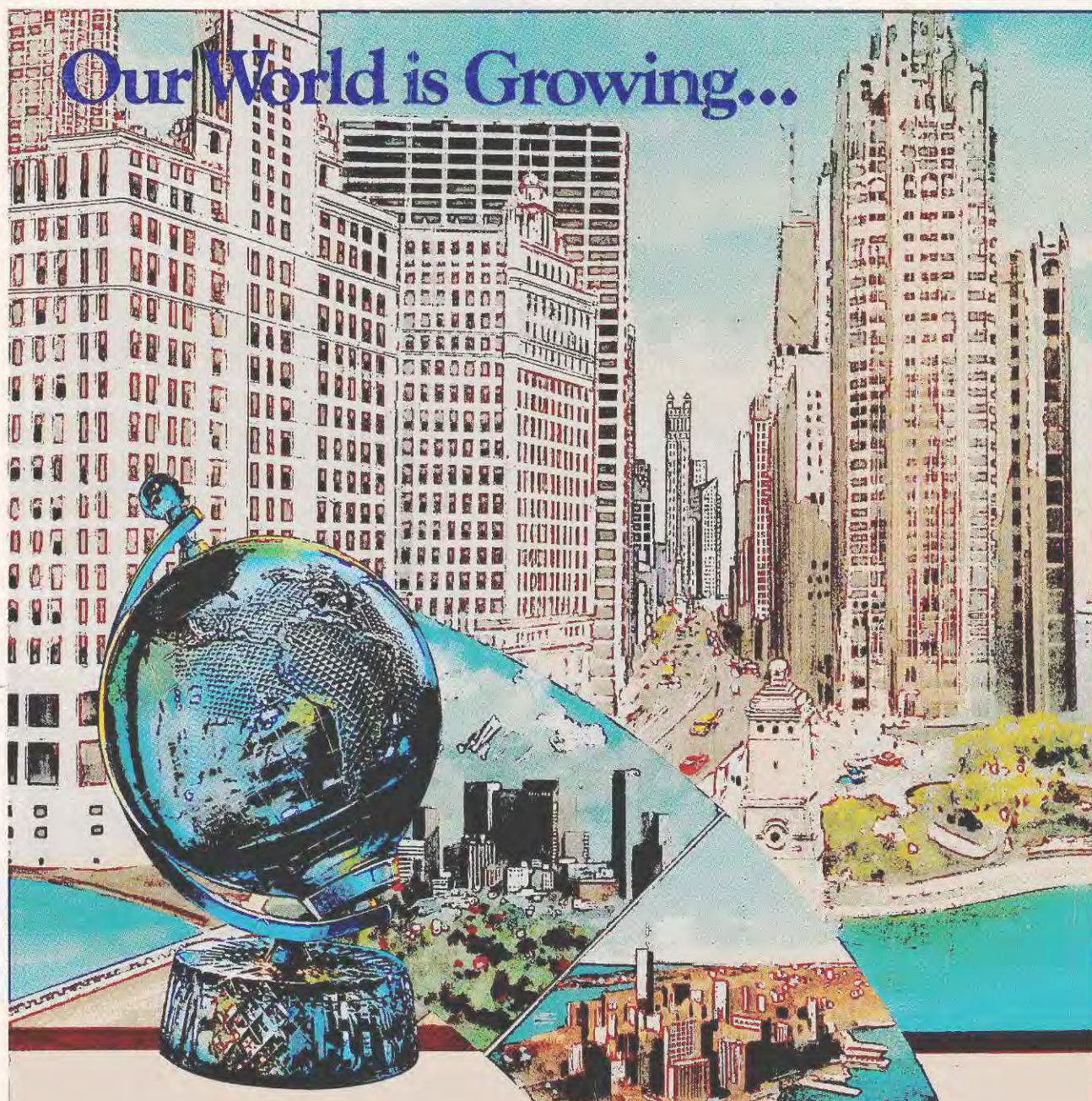
Indeed, Kathleen P. Utgoff, who headed the PBGC from 1985 until 1989, noted that when annuities were purchased to replace terminated plans, "most everything was going through top-notch insurers." Ms. Utgoff now is an economist with the Washington, D.C., law firm of Groom & Nordberg.

And while the PBGC may not guarantee annuity benefits provided through an insurer, retirees, in certain situations, are not bereft of protection if an annuity insurer becomes insolvent: Guaranty funds now operate in 44 states, though not all protect annuity holders' benefits.

Guaranty funds usually require that the policyholder be a resident of the state and that the insurer be licensed in the state to be eligible for coverage.

In addition, the guaranty funds often cap the maximum amount to be paid to a policyholder if an insurer becomes insolvent.

For example, the Illinois Life & Health Insurance Guaranty Assn. guarantees up to \$100,000 cash value for each annuitant. That would be "woefully inadequate" for a middle-aged worker entitled to a fairly substantial benefit, charges Ms. Ferguson of the Pension Rights Center. ■



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Opinions

Health care focus overdue

WE ARE ENCOURAGED that the Bush administration will examine a problem of paramount concern to employers: the soaring cost of health care.

In his State of the Union address earlier this month, President Bush said Health and Human Services Secretary Louis Sullivan will lead a Domestic Policy Council review of what can be done to bring health care costs under control.

That council, composed of several cabinet members and their staffs, also will examine the quality and accessibility of health care.

Several recent surveys illustrate that health care costs are rising out of control with little relief in sight.

For example, a survey released last month by employee benefit consultant A. Foster Higgins & Co. Inc. found that total group health care costs—including medical indemnity plans, health maintenance organizations, and dental and vision plans—climbed 16.7% in 1989 to \$2,748 per employee (*BI*, Jan. 29).

That increase comes top of an 18.6% increase in 1988 and is more than double the 7.9% and 7.7% increases in 1987 and 1986.

Cost increases for medical indemnity plans were even steeper. Last year, medical indemnity plan costs jumped 20.4%—more than four times the increase in the overall Consumer Price Index—to an average of \$2,600 per employee.

And, health care costs seem almost certain to continue to increase at a double-digit rate this year. HMOs, for example, expect to boost rates an average of about 16% this year, according to a survey by the Group Health Assn. of America, an HMO trade group.

There are many reasons why employers' health care costs are continuing to rise at such a torrid rate, including an aging workforce and advances in medical technology that allow for expensive surgical procedures like organ transplants.

But the federal government has contributed to employers' increased health care costs.

For example, Congress passed a series of measures in the early 1980s shifting health care costs of older workers and their spouses to employers from the federal Medicare program.

And, while Medicare's adoption of a new fixed-fee schedule for hundreds of hospital procedures helped to control Medicare costs, hospitals boosted fees for patients covered by employer-sponsored plans to make up for Medicare revenue cutbacks.

At the same time, the 1986 COBRA health care continuation provisions meant that employers must extend coverage to hundreds of thousands of former workers and dependents at a premium that rarely covers an employer's real cost.

And, unquestionably, the constant barrage of benefits legislation passed by Congress in the last



few years—most notably the now-repealed Section 89—has forced benefit managers to comply with mindless administrative rules rather than devise cost containment strategies.

Without wishing to unduly influence the Domestic Policy Council, we offer several recommendations to the council that, if enacted, could help hold down health care costs.

We would hope that the council proposes the end of state-mandated benefit laws on health insurance policies sold by commercial insurers. These benefit mandates, usually passed at the behest of special interest provider groups, inflate the cost of health care without providing meaningful coverage.

More significantly, we would hope that the council comes up with a well-thought-out proposal to reduce the ranks of the uninsured—estimated at 31 million to 37 million.

Obviously, if hospitals are not fully compensated for treating the uninsured, they will pass those costs on to private patients in the form of higher charges. That is hardly fair to employers that provide coverage to their employees.

One approach worthy of consideration is an expansion of the federal/state Medicaid program to enable more lower-income workers to obtain health care coverage.

While there is much that the federal government can do to restrain health care cost increases, employers cannot be passive players.

Expanding Medicaid coverage is a better approach than a proposal by Sen. Edward Kennedy, D.-Mass., that would require employers to provide coverage. The proposal includes limits, deductibles and even employer contributions.

That kind of congressional interference in employee benefit plans is not in anyone's interest.

Letters

Canadian system lacks fruits of competition

To the editor: In criticizing the Fraser Institute Report on Canada's health care system, benefit consultant Larry Leisure

compares a health maintenance organization to a Canadian province (*BI*, Jan. 22).

This comparison is flawed in two major ways: An HMO must operate in a competitive environment—not only with fee-for-service plans but also other HMOs; and, secondly, doctors are free to participate or opt out of any HMO as they see fit.

While vacationing in Montreal, my 1-year-old daughter became quite ill and was hospitalized.

The province of Quebec, though, was in the midst of a work stoppage. My wife

and I took charge of her care—even to the point of disturbing coffee breaks among striking workers.

The point is, Canadians by nature are much too complacent. They take whatever the government dishes out and believe the propaganda that they have the best medical system in the world.

We can learn a great deal from the Canadian system.

I always learn more by observing how things are done badly.

Mark A. Mitchell
U.S. Benefit Consultants
Marietta, Ga.

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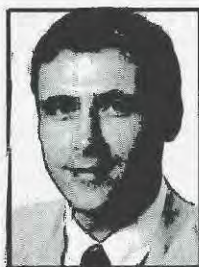
At issue

What actions are you taking to control rising health care costs?



Sandy Scarsella
Corporate compensation and benefits manager
Intel Corp.,
Santa Clara, Calif.

At the first of this year we implemented a managed care concept in our self-insured health care program. The new plan helps us take advantage of the cost controls HMOs offer by controlling the services provided to employees. In addition, we maintain the Intel indemnity plan so we control plan design and employee costs.



Robert A. Cafarella
Manager-employee benefits
Figgie International Inc.,
Willoughby, Ohio

Managing medical costs requires a joint effort on the part of our company and its employees. We have embarked on a program to make employees better consumers of health care through education and real plan alternatives. As a company, we make the same effort in managing all of our employee benefit costs as we do in managing the rest of our businesses.



Norma Koontz
Manager-employee benefits
CRSS Inc.,
Houston

I'm skeptical about the impact of managed care as a long-term cost control device. While a company of our size has little clout with providers, we can try to convince our employees that purchasing health care services is a consumer decision. Because employers have little influence over the supply side of the equation, we must try even harder to affect the demand.



Roy E. Leet
Director of benefits
Ameritech,
Chicago

Ameritech's objectives in controlling health care costs are to avoid cost shifting and to maintain or enhance the quality of our plan. The initiatives we have taken include thorough data analysis, utilization management, contracting negotiated fees with providers and an intensive employee education program.

Compiled by Christine Woolsey

Insider trading

AmBase Corp.: Jack R. Plaxe, vp, sold 1,000 shares of common stock at \$13.88 per share on Nov. 3 and now indirectly and directly holds 7,324 shares.

Howard Silverman, officer of subsidiary, sold 25,000 shares of common stock at between \$12.38 and \$12.25 per share from Dec. 27 to Dec. 29. He now indirectly and directly holds 10,985 shares.

AmBase stock was trading at \$8.50 per share on Feb. 2.

American International Group Inc.: Maurice R. Greenberg, chairman and president, disposed of by gift 438 shares of common stock at an unreported price per share on Dec. 18. Mr. Greenberg also indirectly disposed of by gift 692 shares of common stock at an unreported price on the same day. Mr. Greenberg now directly and indirectly holds 3,615,833 shares.

Ambrose H. Kunklemueller, shareholder, exercised an option for 300 shares of common stock at \$42.44 per share on Dec. 29 and now directly and indirectly holds 92,209 shares.

AIG stock was trading at \$93.13 per share on Feb. 2.

Corroon & Black Corp.: Joseph V. Ambrose, officer and director, disposed of by gift 100 shares of common stock at an unreported price on Dec. 20 and now directly and indirectly holds 25,940 shares.

Corroon & Black stock was trading at \$33.88 per share on Feb. 2.

Arthur J. Gallagher & Co.: Robert E. Gallagher, president, disposed of by gift 91,992 shares of common stock at an unreported price per share from Oct. 13 to Nov. 30, 1989. Mr. Gallagher also indirectly acquired by gift 75,000 shares of common stock at an unreported price in Oct. 13 and now indirectly and directly holds 876,769 shares.

J. Patrick Gallagher, officer and director, acquired by gift 775 shares and disposed of by gift 2,000 shares of common stock at an unreported price per share from Dec. 1 to Dec. 11. He now directly and indirectly holds 108,146 shares.

John P. Gallagher, officer and director, disposed of by gift 9,900 shares of common stock at an unreported price on Dec. 1, 1989. He also indirectly acquired by gift 775 shares of common stock that same day at an unreported price. He now directly and indirectly holds 698,226 shares.

Frank M. Heffernan, vp, indirectly disposed of by gift 1,750 shares of common stock at an unreported price on Dec. 5 and now indirectly holds 296,651 shares.

Arthur J. Gallagher stock was trading at \$22.25 on Feb. 2.

The Hartford Steam Boiler Inspection & Insurance Co.: Donald K. Wilson, officer, disposed of by gift 200 shares of common stock at an unreported price per share on Dec. 25 and now directly and indirectly holds 24,292 shares.

Hartford Steam Boiler stock was trading at \$52.50 per share on Feb. 2.

U.S. Healthcare Inc.: Michael Stocker, vp, sold 16,667 shares of at between \$14.25 and \$14.50 per share on Dec. 12 and now directly holds 20,000 shares.

U.S. Healthcare stock was trading at \$9.25 per share on Feb. 2.

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

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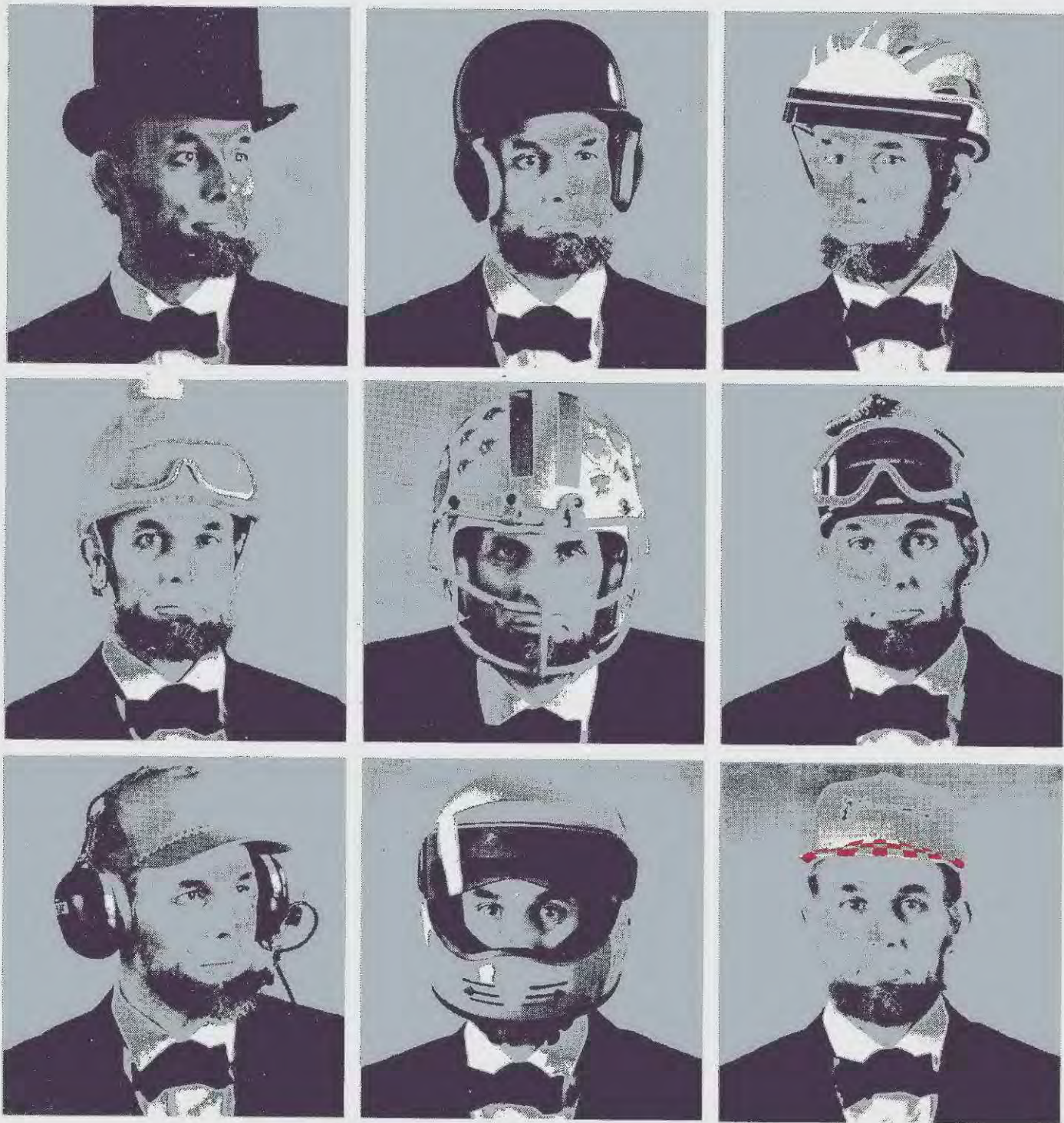
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Perry joins DHL Airways as risk manager

Ralph F. Perry Jr. has joined DHL Airways Inc. in Redwood City, Calif., as director of risk management. In this position he oversees all domestic property/casualty insurance and self-insurance, as well as claims handling, loss control and security programs. He replaces **J. Bruce Rogerson**, who left DHL, and reports to Vic Guinasso, senior vp-finance. Prior to joining DHL, Mr. Perry was vp and director of risk management at AMFAC Inc. in San Francisco. While in that post, he authored the "Ask a Risk Manager" column for *Business Insurance*. Mr. Perry received a bachelor's degree from the University of Vermont. He holds the Chartered Property & Casualty Underwriter, Chartered Life Underwriter and Associate in Risk Management designations. In addition, Mr. Perry is a deputy member of the Risk & Insurance Management Society.

Joseph C. Mallia has been elected an assistant vp of Time Warner Inc. in New York. Mr. Mallia directs the multinational publishing and entertainment conglomerate's corporate risk management and insurance department. He reports to Glenn A. Britt, vp-finance and treasurer. Mr. Mallia's previous title was director-corporate risk management and insurance. Prior to that, he was director of risk management for Warner Communications. Mr. Mallia holds a bachelor of business administration degree from St. John's University in Jamaica, N.Y. He also holds the Chartered Property & Casualty Un-



Mr. Perry

Mr. Mallia



Ms. Rayfield

Mr. Rousseau

derwriter and Associate in Risk Management designations. Mr. Mallia has taught insurance and risk management courses at The College of Insurance in New York.

Denise E. Rayfield, 35, has been promoted to manager of the employee benefits department at The Hearst Corp. in New York. In this position she is responsible for managing all employee welfare programs, as well as the company's 401(k) program and retirement plans. She replaces and reports to **Edwin A. Rusgo**, now director of employee benefits. Ms. Rayfield joined Hearst in 1983 as assistant manager of employee benefits. Prior to that she was benefits manager of Ziff Davis Publishing Co. in New York. She holds a bachelor of arts degree from Temple University in Philadelphia and a master of business administration degree in marketing and management from Fordham University in Bronx, N.Y.

Michael T. Rousseau, 34, has been promoted to vp-human resources in the cardiac pacemaker division of Intermedics Inc. of Angleton, Texas. In this newly created position, he oversees all aspects of the division's human resources activities, including employee benefits and safety. Mr. Rousseau, who most re-

Comings & goings: buyers

cently was director of risk management and employee benefits for Intermedics, will continue to oversee corporate employee benefits and consult on risk management issues. He reports to John E. Garcia, president of the cardiac pacemaker manufacturer. Mr. Rousseau joined Intermedics in 1987 as manager of risk management. He holds an associate in arts degree from Ocean County College in Toms River, N.J., and a bachelor of arts degree in risk management and employee benefits from the University of Georgia in Athens. He is a deputy member of the Risk & Insurance Management Society.

Gerald Cox, 45, promoted to se-

nior vp-human resources at Crawford & Co. in Atlanta. In this newly created position he is responsible for employee benefits, compensation, training, travel and management development. He reports to Forrest W. Mirix, chairman and chief executive officer. Mr. Cox, who joined the risk management services firm in 1980, most recently served as vp-human resources. He holds a bachelor of arts degree in economics from East Tennessee State University in Johnson City.

Earl D. Varney, 34, has been named risk manager of Wilmington Trust Co. in Wilmington, Del. In this newly created position he is responsi-

ble for coordinating insurance programs for the bank and its subsidiaries, including property/casualty, professional liability and fidelity coverages. He reports to Dale Haring, controller. Mr. Varney, who joined Wilmington Trust in 1987, also is an assistant vp of the company. He holds a bachelor of science degree in applied mathematics from Brown University in Providence, R.I., and a master of business administration degree from the Wharton School of the University of Pennsylvania in Philadelphia. In addition, Mr. Varney holds the Chartered Financial Planner designation.

Robert C. Dahling has been named manager of property and liability insurance for The Pittston Co. in Greenwich, Conn. He is responsible for both insured and self-insured

risk management programs. He replaces **Frank G. Herzog**, who left the company, and reports to Arthur E. Wheatley, vp and director of risk management. Prior to joining Pittston, which is involved in bituminous coal mining, security, and air freight service, Mr. Dahling was insurance administrator for Comstock Group in Danbury, Conn. He holds a bachelor of arts degree from the University of Connecticut at Storrs and is a deputy member of the Risk & Insurance Management Society.

•
We'd like to report on staff changes in your company's risk management, safety and employee benefits departments. Just drop a note to Paul Winston, Copy Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-5442. Please send a photograph, too.

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Continued from page 3
diction, said another attorney specializing in insurance law.

"It will come as a surprise to Americans that a European convention can have an impact on them and compel them to have proceedings in England," the lawyer said.

Lawyers point out that U.S. and other non-European policyholders may seek to sue insurers in European courts for several reasons, several of them cited in court papers by NGI and its parent company, London-based S&W Berisford, now called Berisford International P.L.C.

Both companies say they want to name their broker, Sedgwick Group P.L.C., as a defendant.

Sedgwick is based in London and therefore subject to jurisdiction of English courts.

Also, the English courts are more familiar with British insurance law and the conventions of the London market and thus are better able to

rule on a British insurance contract, the policyholders argued.

The policyholders "propose to take defenses arising primarily from the wording of the insurance contracts. These are primarily legal points of construction, but they will need to be decided having regard to English law and to the practices and conventions of the London market with which this court is familiar," court papers say.

And with jury trials for non-criminal cases are far less common in Europe than in the United States, European court rulings on insurance are far more consistent than the often "quirky" judgments by U.S. juries, European lawyers said.

In addition, litigation costs likely would be lower in Britain than in New York and, under English law, losing litigants can be required to reimburse court costs of prevailing parties.

"The costs incurred will in any event be very substantial and, indeed, may even be higher under the

procedures of the courts of New York," the court papers said. And in cases involving "very substantial sums of money" the "question of the recoverability of such costs is not an irrelevant factor," according to the court papers.

NGI and Berisford are seeking coverage for \$54 million worth of gold, gold products, diamonds, colored stones, watch movements and other materials allegedly stolen from NGI's New York property between June 1986 and May 1988.

NGI claims "they have been the victims of systematic thefts by some of employees who belong to the so-called 'Russian Mafia,'" Justice Hobhouse notes in his decision.

The claims are filed against two insurance policies placed by Sedgwick with New Hampshire's London office.

The main policy is a group permanent cargo contract that provides coverage for Berisford and its subsidiaries and/or associated companies for "goods and/or merchandise and/

or produce and/or materials of every description and/or machinery and/or all other interests incidental to the assured's business," according to court papers, which do not specify the limits of the policy.

Another policy, a "fidelity guarantee policy" provides the same companies with 1 million pounds (\$1.7 million) of aggregate fidelity coverage, court papers say.

New Hampshire questions "that losses of the scale alleged have ever taken place. (The insurer says) the alleged losses are out of proportion to the turnover (revenues) of the (NGI) and submit that their allegations are frankly incredible," Justice Hobhouse noted in his ruling.

New Hampshire claims "that the discrepancies merely arise from inadequate and inaccurate record keeping and auditing processes," the judge said.

In ruling on the NGI and New Hampshire arguments on the proper forum for the coverage dispute, Justice Hobhouse said that both sides

"made exaggerated allegations of fact."

For instance: The plaintiffs alleged that New Hampshire was "merely trying to harass the plaintiffs by oppressive, time consuming, and unduly expensive proceedings in New York in which the right of discovery would be abused," the judge said.

• New Hampshire alleged that "the plaintiff's motives in bringing proceedings in England were simply to avoid any proper investigation of their claims and to obstruct the defendants in the conduct of their defense," the judge said.

Both allegations "must be unequivocally rejected," the judge said.

"If these actions are to be tried in New York, there would be no reason to suppose that the relevant procedures would not be equitably and justly regulated by the courts of New York, albeit that the procedures would be somewhat different from those in this country."

"Similarly, the plaintiffs cannot be criticized in any way for commencing their proceedings in the courts of this country. They have an express right to do so under the principal contract upon which they are suing. They likewise have a clear right under the procedural laws of this country because of the undisputed and relevant presence of the defendants in this country," the judge said.

However, Justice Hobhouse said the Brussels convention limits on such discretionary decisions prevented him from staying the action in English courts.

The convention states that "persons domiciled in a contracting state"—an EC country that has ratified the convention—"shall, whatever their nationality, be sued in the courts of that state."

It also states that "an insurer who is not domiciled in a contracting state but has a branch, agency or other establishment in one of the contracting states shall in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that state."

"It is not in dispute that the relevant contracts were all made in London as part of the business carried on in London by (New Hampshire's) London office," the judge said.

Therefore, in this case "the defendants are deemed to be domiciled in England and the convention provides that they may be sued here," Justice Hobhouse ruled.

Also, "in my judgment, on the correct construction of the convention as applied to the present case, the provisions of the convention are in fact mandatory. . . . The English court is required to accept jurisdiction over the claim that the plaintiffs are making against the defendants in this action," the judge ruled.

The convention clearly "is designed to achieve uniformity and to 'harmonize' the relevant procedural and jurisdictional rules of the courts of the contracting states. The convention leaves no room for the application of any discretionary jurisdiction by the courts of this country; the availability of such a discretion would destroy the framework of the convention and create a lack of uniformity in the interpretation and implementation of the convention," the judge ruled.

He added that while Article 8 of the convention does allow "two other alternatives" for jurisdiction in certain cases, they "do not apply" in this litigation.

Article 8 of the convention provides that "an insurer domiciled in a contracting state may be sued:

• In the country where the policyholder is domiciled.

• In a country other than where it or the policyholder is domiciled if the insurer cowrote the coverage with another insurer and the policyholder is suing the other insurer in its country of domicile.

Neither Berisford nor New Hampshire would comment on the ruling on underlying claim while the litigation is pending.



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Reserve boost lowers A.C.E.'s profits

HAMILTON, Bermuda—Excess liability insurer A.C.E. Insurance Co. Ltd., which has not faced a claim in more than four years of underwriting, says net income fell 12% last year because it has increased reserves for non-reported losses and loss expenses more than tenfold.

Boosting loss reserves to \$51 million from \$5 million caused net 1989 income to fall to \$222 million from \$249 million, according to the financial report of ACE Ltd., the Cayman Islands-based parent of A.C.E. Insurance Co. Ltd.

Reserves were raised to "provide for a number of claims which may penetrate A.C.E.'s attachment point," said Chairman John R. Cox and Chief Executive Officer Walter A. Scott in an annual message to shareholders.

The company writes up to \$150 million of excess liability insurance with a minimum attachment point of \$100 million and up to \$50 million in directors and officers liability coverage with an attachment point of \$25 million (BI,

Bermuda

April 10, 1989).

The 1989 results, the executives say, point to an exceptional year for the company in which, "for the most part, the world's catastrophic events and product claims have not involved" A.C.E. policyholders.

But, the two warn, claims experience is "highly unpredictable" and "may result in ultimate losses and loss expenses significantly greater or less than the reserves provided."

Net written premium volume fell for the second consecutive year to \$209 million, a 22% decline from 1988. Of that volume, \$140.9 million is from excess liability policies—down from \$171.4 million in 1988—and \$67.7 million is from D&O policies—down from \$83.9 million.

Messrs Cox and Scott cite several factors for the lower premium volume:

- An overabundance of capacity

in the commercial marketplace, which has led a number of policyholders to increase their underlying coverage, thus effectively raising the attachment point of their A.C.E. policies.

- The elimination of A.C.E.'s reserve premium requirement effective Oct. 1, 1989. Before then, policyholders who did not own A.C.E. shares were required to pay a one-time reserve premium on top of their annual premium for one-year coverages or buy three-year policies. With one less disincentive to the one-year policy, fewer policyholders opted for multiyear coverage.

- The purchase of reinsurance. In 1989, the company for the first time purchased reinsurance, which reduced the company's exposure to catastrophic excess liability losses involving two or more policyholders in a single event.

—By Roger Scotton

tual Fire are based. And, he dismissed one of seven counts pending against Berwind.

Berwind argued that the litigation against its Bermuda subsidiary, Norad Reinsurance Co. Ltd., should be shifted to Bermuda, in part because important witnesses including Norad's auditors and bankers may be unavailable in U.S. courts (BI, Oct. 23, 1989).

Judge Caldwell found the company failed to prove such witnesses had "unique first-hand knowledge" and that their live testimony would be required.

A Pennsylvania court ought to hear the case, he ruled, because both Mutual Fire, and Berwind are located in Philadelphia, "and most of the negotiations and communications involving Norad took place there."

State Insurance Commissioner Constance Foster filed suit in August 1989 seeking to recover money Norad owes Mutual Fire and charging Berwind with fraud, negligence, misrepresentation, breach of contract and with violating the Racketeer Influenced and Corrupt Organizations Act of 1970 (BI, Sept. 25, 1989).

Ms. Foster is rehabilitator of Mutual Fire, which went into rehabilitation in December 1986. Less than two years later, Norad, which had been a reinsurer and retrocessionaire for Mutual Fire, followed suit (BI, Jan. 29).

Charging that Norad was under Berwind's complete control, the commissioner has urged the court to reject the "corporate fiction" of separate entities and hold the Philadelphia company liable for an estimated \$25 million to \$50 million in liabilities of its subsidiary.

A Philadelphia attorney for the rehabilitator hailed the ruling as a "significant victory" in the "effort to hold Berwind liable for its captive's obligations to Mutual Fire." It "clears the way for litigation" to proceed against the company on a "range of counts including RICO and piercing the corporate veil," said Ralph Jacobs of Hoyle, Morris & Kerr.

In her complaint, Ms. Foster charged that Berwind breached an implied contract with Mutual Fire by allowing Norad to be run by inexperienced officers and directors "who lacked sufficient expertise to ensure that Norad decisions were made in a responsible and prudent manner."

Judge Caldwell dismissed that portion of the complaint, finding that in a management contract with Norad, Berwind did not intend to assume liability to third parties. "When the contract is unambiguous in this regard, we will not look beyond the document," he ruled.

Dechert Price & Roads, the Harrisburg, Pa., law firm representing Berwind, did not return phone calls seeking comment.

—By Roger Scotton

D&O coverage

X.L. Insurance Co. Ltd. no longer requires policyholders to

buy excess general liability coverage from the insurer before being eligible to buy directors and officers liability coverage.

Effective Feb. 1, X.L. began offering stand-alone excess D&O coverage with limits of up to \$25 million, confirmed X.L. President Brian O'Hara. The limits are available in increments of \$5 million excess of a minimum attachment point of \$20 million, with X.L.'s limit not to exceed the amount of underlying coverage.

"It didn't make a lot of sense anymore" to require the purchase of excess liability coverage before offering D&O coverage, Mr. O'Hara explained. "We would like to expand our D&O writings, and we think it was an unnatural retardant to require the umbrella."

Many corporate insurance buyers do not have a need for large umbrella limits, but still require substantial D&O protection, he observed.

About \$30 million of X.L.'s gross written premiums of \$338 million last year represented D&O business, Mr. O'Hara said, adding that he would like to see this expand to about \$50 million over the next three to five years.

—By Douglas McLeod

Firm opens Irish branch

International Risk Management Group, a Bermuda-based captive management company, is opening an office in Dublin, Ireland, this month to attract more European business and to assume some administration work currently handled in Bermuda.

International Risk Management (Dublin) Ltd. will open with a staff of three and with firm business commitments from two West German clients, a bank and a major manufacturer, said Arthur Deters, International Risk Management's chief executive officer.

The new unit will be managed by John English, the parent company's vp-finance, who currently is based in Bermuda.

Mr. Deters said the new office is being set up to allow International Risk Management to take advantage of the opportunities created by the elimination of trade barriers among European Community nations. However, he added that the Dublin operation also would assume some of back-office work currently done in Bermuda, allowing the Bermuda operation to expand.

Transferring part of the company's premium and claims processing work to Dublin over the next two years is unlikely to trigger layoffs in Bermuda, he said.

"The reality of the situation is that we're near to the bursting point in Bermuda," Mr. Deters said.

"We're also feeling the pinch in the Caymans and Guernsey, too," he said. "It's cheaper to operate in Dublin and there's a bigger labor pool there. Plus, there are incentives for locating in the city's financial center."

—By Roger Scotton

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Firm to be tried for 1987 ferry disaster

By CAROLYN ALDRED

LONDON—The company that operated the ferry that capsized in the English Channel in 1987, killing nearly 200 people, will be tried on manslaughter charges, a London magistrate ruled this month.

P&O European Ferries (Dover) Ltd., seven former employees and several directors of the ferry operator, as well as the captain of the Herald of Free Enterprise, allegedly killed two named passengers and two named crew members in the disaster.

If convicted, P&O would face unlimited fines and the individuals could be imprisoned for life.

A guilty verdict would mark the first time a British company has been convicted on a corporate manslaughter charge.

A trial date has not been set.

The Herald of Free Enterprise, owned by former P&O subsidiary Townsend Thoresen Car Ferries Ltd., capsized on March 6, 1987, off the Belgian port of Zeebrugge on March 6, 1987 (BI, March 16, 1987).

Brokers' fees

Lloyd's of London is considering proposals to drop the annual charges levied on brokers and brokerage companies that place business at Lloyd's.

Both individual brokers and their firms must now pay an annual subscription to become a Lloyd's broker and be allowed to enter Lloyd's Underwriting Room.

Brokerage firms pay a subscription based on their annual revenues. About 8,000 individual brokers each pay 615 to 900 pounds (\$1,033 to \$1,513) per year to gain access to the Underwriting Room.

Many brokers object to the annual subscriptions, and Lloyd's is anxious to improve its relationship with its brokers. The Institute of London Underwriters, in comparison, does not levy any fees on brokers placing business with underwriters in the ILU building, nor will the proposed London Underwriting Centre, due to open in 1992.

Scrapping subscription fees is "one of a whole range of things I shall be discussing with (the) Lloyd's Insurance Brokers' Committee" during late spring and early summer, said Lloyd's Chief Executive Alan Lord.

Marine rates down: ILU

Marine insurance rates continued to fall during the year-end renewal season in London's marine market despite a deluge of catastrophic claims during 1989, according to underwriters hosting the annual general meeting of the Institute of London Underwriters last week.

"North America was the scene for most of the catastrophes which struck during the year, and the final cost of each of these losses will exceed a billion dollars—in some cases, many billions," according to the ILU's annual report.

The 1989 disasters cited by the ILU, which represents the marine and aviation underwriting departments of 117 companies in the London market, included:

- The Exxon Valdez oil spill in Alaska, which could cost insurers more than \$500 million, according to the ILU (BI, April 3, 1989).

- Hurricane Hugo, which the ILU estimates will cost insurers nearly \$4 billion (BI, Oct. 2, 1989; Sept. 25, 1989).

- The California earthquake, which produced an insured loss of nearly \$1 billion (BI, Oct. 23, 1989).

- The explosion at the Phillips

London

Petroleum Co. plant in Pasadena, Texas (BI, Oct. 30, 1989), which will cost insurers more than \$1 billion, the ILU estimates.

However, although the ILU described 1989 as the "first multi-catastrophe year that the marine insurance industry has experienced" the market remains highly competitive, underwriters noted last week.

London and U.S. marine markets are trying to "take a firmer attitude" in underwriting ships but there is "considerable competition from the European and Scandinavian markets," said Tony Nunn, chairman of the International Union of Marine Insurance's Ocean

Hull Committee.

As a result hull insurance rates were reduced by as much as 20% during the renewal season, said Mr. Nunn.

"Until the bad results get into the books everybody is just living for today and nobody wants to give up their share of the business," said Trevor Scutts, a member of the ILU committee.

Aviation "rating levels continue to be depressed and there was no change in the market situation during the renewal season," said Peter Crawford, chairman of the Aviation Insurance offices' Assn.

Meanwhile, policy terms and conditions throughout the market

continue to broaden, the underwriters agreed.

For example, "in the last 12 months there has been a further switch back from underwriting on a claims-made basis to underwriting risks on an occurrence basis for liability business," noted ILU committee member Tony King.

Despite the fact that marine underwriters, like their colleagues in the non-marine market, are being hit with huge claims arising from asbestosis and pollution on policies written decades ago, some underwriters in the marine market again are prepared to accept liabilities on an occurrence basis, he said.

However, the underwriters pinpointed two areas where rates are no longer falling: energy and rein-

surance.

The few major energy accounts that renewed Jan. 1 each carried "modest increases which is a step in the right direction," said Peter Evans, chairman of the ILU's Joint Rig Committee.

The energy insurance market is largely reinsurance driven and as energy reinsurance capacity shrinks reinsurance costs are climbing, said Mr. Evans.

Recent disasters "have concentrated underwriters' minds wonderfully" in the excess-of-loss reinsurance market, said Eric Alexander, an ILU committee member.

"There have been some sizeable increases, particularly at the top end of the XL reinsurance market which should filter down the mar-

Continued on next page



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Continued from previous page
ket and may push direct underwriters to raise rates," said Mr. Alexander.

Consulting expansion

Arthur J. Gallagher & Co. is opening a risk management consulting operation in London as a first step in expanding its risk management operations in Europe.

Steve Prince, a former director of Gallagher's Lloyd's of London broking subsidiary, Gallagher Plumer Ltd., is managing director of the new operation, which will operate independently of Gallagher Plumer.

The new company—which has not yet been named—will be directly owned by Arthur J. Gallagher International (U.K.) Ltd.

Broker network

Another group of small and mid-sized European brokers are forming a European network, the Eurobrokers Consortium.

It will operate on a similar basis to the UNISON worldwide network of brokers, which includes Johnson & Higgins, the third-largest U.S. broker and fourth-largest in the world.

The establishment of Eurobrokers Consortium follows the formation of a similar group, the International Broker Network, by about a dozen small and mid-sized brokers in Europe and elsewhere (BI, Dec. 4, 1989). Eurobrokers Consortium members include:

- London-based Norex Insurance Brokers Ltd., a Lloyd's of London broker employing about 200 people. Norex specializes in placing professional liability and medical malpractice business.

- BRW Insurance & Financial Services Ltd., based in Dublin, Ireland. BRW specializes in property/casualty insurance brokerage as well as pension consulting, life insurance and investment advice.

- French underwriting agent Le Cabinet Chomel, which is based in Lyons. Le Cabinet Chomel acts as

an underwriting agent for Reunion Europeene, a Paris-based marine insurance company. Chomel also places insurance for agricultural, food, distributing, transport and pharmaceutical companies.

- Servizi Assicurativi S.p.A., a privately owned Italian broker with offices in Genoa, Milan and Turin. The company specializes in property/casualty brokering for medium-sized industrial companies.

- Madrid, Spain-based Unipsa Correduria de Seguros S.A., which specializes in industrial international risks.

- Boom & Co. Assurantien B.V. of Amsterdam, Netherlands, which specializes in international employee benefits planning and marine and transport insurance.

- Macymichalos Brothers S.A. of Athens, Greece. The broker specializes in marine insurance, though it places all kinds of insurance.

- Portuguese broker Luiz Megre Beca & Ca. Lda., based in Porto, which specializes in industrial risks,

particularly for the textile and port wine industries.

Meanwhile, "discussions are in hand with a number of other brokers throughout Europe and it is hoped to establish more formal links with these in the future," said a statement released by Norex.

"The main purpose of the consortium is to enable its member brokers to provide a more cohesive servicing capability for multinational clients. In addition, the consortium network will enable members to engage more readily in cross-border broking."

Sturge profits

Pretax profits for Lloyd's of London underwriting agency Sturge Holdings P.L.C. leaped 81% for the year ended Sept. 30, 1989, to 31.2 million pounds (\$50.5 million at Sept. 30, 1989 exchange rate) from 17.2 million pounds (\$29.1 million at Sept. 30, 1988 exchange rate).

Sturge's revenues increased 68.5% to 43.3 million pounds (\$70.1 million)

from 25.7 million pounds (\$43.4 million).

Sturge Chairman David Coleridge attributed increased profits and revenue to the "closing of the highly profitable 1986 underwriting account" at Lloyd's.

The Lloyd's syndicates managed by Sturge had a premium capacity in 1989 of 1.19 billion pounds (\$1.93 billion), or about 10% of the Lloyd's total capacity. Allocated premium limits of Sturge's Lloyd's members' agency totaled 949 million pounds (\$1.54 billion) in 1989.

Broker reorganizes

London-based broker Lowndes Lambert Group Ltd. is reorganizing into five principal divisions after last year's acquisition of Lloyd's of London broker Chandler Hargreaves Ltd.

The five new divisions are:

- Lowndes Lambert International, which includes the company's international non-marine business and subsidiaries Kininmonth Lambert Marine & International and Lowndes Lambert Construction. Michael Caley is chairman and managing director.

- Lowndes Lambert North America, which comprises North American non-marine business and Kininmonth Lambert North America. Peter Kininmonth is chairman and Michael Barnfield managing director.

- Lowndes Lambert Marine & Aviation, which is headed by Chairman and Managing Director Brian Blackshields.

- Lowndes Lambert Professional Indemnity, whose chairman is John Bartington and managing director is Tony Hazell.

- Lowndes Lambert U.K., which includes the company's retail business in the United Kingdom. David Margrett is chairman and managing director.

In addition to the five main divisions, Chandler Hargreaves (Bloodstock) Ltd. will continue to operate as a bloodstock insurance brokerage specialist. Its chairman is Stewart Wilson and its managing director is Ian Walker.

Comings & goings

Robert Stedman has been appointed director of marketing for Lloyd's of London underwriting agency Merrett Holdings P.L.C. Mr. Stedman previously was deputy chairman and chief executive officer of Minet Insurance Brokers (Holdings) Ltd.

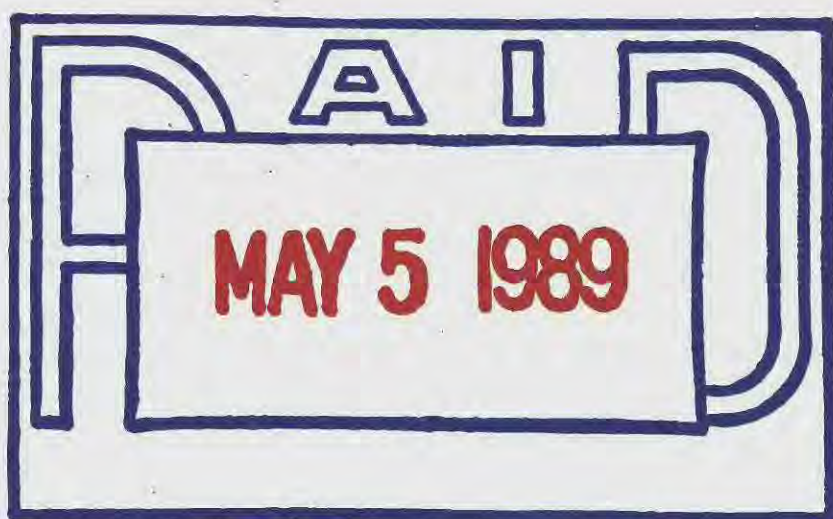
Steve Willsmer has been promoted to associate director of Lloyd's of London broker D.G. Durham International Ltd. and **Alex Woodgate** has been promoted to divisional director responsible for the claims department.

Donald Payne and **John Wooderson** have been appointed joint deputy chairmen of Lloyd's of London broker Willis Faber & Dumas Ltd.

Other Willis Faber appointments include: **John Gardner** as deputy chairman of the North American reinsurance division; **Robert Gayner** as managing director of the European division; **John Myers** as the managing director of the international reinsurance division; **Richard Bucknall** as managing director of the international division of the non-marine group; and **John Pelly** as managing director of the U.K. reinsurance division of the broker's U.K. and North American Reinsurance Group.

London-based insurance broker Windsor P.L.C. has appointed **Philip Reid** chief executive. Mr. Reid, a director of Custom House Asset Management and a non-executive director of property development and management group Warringtons P.L.C., became a director of Windsor in October, after Warringtons bought a 23.15% stake in Windsor.

Bill Dunham has been appointed head of the U.K. commercial insurance department of Guardian Royal Exchange P.L.C., succeeding **Peter Edwards** who has been appointed GRE's assistant general manager. ■



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ASK A RISK MANAGER

Most risk managers report to financial department

Q

Our company will be establishing a risk management department in the near future. A major, unresolved question is to whom should the department report?

A

I commend the wisdom of this company's management in recognizing risk management as an integral part of its operation. The answer to this question is a subjective one that will be influenced by the company's management philosophy.

If one would take a poll of risk managers today to determine the most common reporting arrangement, I am confident the typical scenario would find the risk management responsibility considered part of the finance department. However, the 1980s also saw risk managers finding homes elsewhere, perhaps as members of the human resources department or the corporate legal department. I am most familiar with the first approach since my department is part of our finance division.

Exploring the question of "Why the finance department?" takes us back a few decades when risk managers were referred to as insurance managers since their primary role was arranging for the purchase of insurance. Risks were transferred to the commercial insurance market in exchange for the payment of premiums. The entire arrangement was viewed as a purely financial one. As time passed, the insurance industry recognized that its policyholders sought variations in coverage and payment methods, making the risk management function more of a financial discipline.

At that time, we began to see a multitude of coverage options such as guaranteed cost plans, paid-loss retros, compensation balance and investment income programs. The decision of what format to select was increasingly financially sensitive to the organization. This decision-making process was further complicated by the emergence and popularity of captives and self-insurance programs. And, without question, the erratic behavior of the insurance cycle created an adverse financial impact on policyholders as well.

It was not sufficient for risk managers to mainly market coverage and to understand policy language. They were called on to advise company management on the most cost-effective coverage arrangement while

minimizing the organization's exposure to accidental losses. Instead of paying premiums and transferring risk to a commercial insurer, organizations became involved in loss retention programs.

Participation in a risk retention program emphasized the importance of establishing adequate loss reserves, and risk managers sought the advice of actuaries to assist in determining the ultimate value of losses. These influences increased the focus on the financial aspects of risk management.

No doubt the success of any coverage mechanism lies in controlling both the frequency and severity of loss. Most organizations subscribe to some form of loss allocation system whereby individual divisions or departments are charged for all or a portion of their respective losses. Since the allocation system is viewed as a part of accounting, risk management is normally considered part of finance when it is responsible for establishing, implementing and controlling the loss allocation system of an organization. Each of these characteristics provides a strong argument for viewing risk management as part of the financial group:

- Exploring and selecting coverage options.
- Determining the ultimate value of losses.
- Establishing, implementing and controlling the loss allocation system.

There are, of course, other reporting options. In recent years, workers compensation has become perhaps the single most costly and difficult to control casualty exposure facing an organization. Recruiting and maintaining a skilled labor force is a costly enterprise for most employers. A focus on employee wellness programs has created opportunities for risk management to fall under the human resources department. Medical cost containment, once identified solely with employee benefits, is the latest buzzword in the workers compensation vernacular. Ergonomic studies, aimed at increasing productivity and safety in the workplace, and an increased commitment to occupational rehabilitation, also motivate some employers to blend risk management into the human resources department.

It is important to remember that regardless of whether risk management reports to human resources or elsewhere, it is necessary for both groups to support one another. Their common objective, especially in the area of employee relations, is to make certain that the welfare of the individual comes first.

While a reporting format with workers compensation reporting to human resources and the other casualty exposures reporting to finance because can be successful, I believe it is best *not* to administer the workers compensation program separately from property and liability programs.

The third, and last, reporting structure I will address is one in which the risk management department is considered part of the legal department. Surely, the

litigation craze of the last decade has resulted in a greater degree of interaction between legal and risk management personnel. Who could argue that most big-dollar cases involve third-party liability, clearly associated with legal activity? The process of controlling the cost of liability claims centers on "if and when to settle and for how much." Many risk managers feel they have earned the equivalent of a law degree as a result of their continuing involvement with litigation.

Risk managers should work in tandem with their legal departments to manage difficult cases and interact routinely in other areas such as reviewing a variety of business contracts to assure the existence of adequate indemnification provisions. However, considering the entire spectrum of responsibilities associated with risk management, especially the financial accountabilities, I question whether the legal department is the appropriate area to direct the activities of the risk management program.

One of the many definitions of the risk management process describes it as a management discipline, directed at protecting an organization's most important assets: people, property and cash. A risk management department that is characterized by strong financial leadership, coupled with genuine humanitarian concern, will allow for a successful implementation of this process. ■

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



Ms. Werner

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. Joseph W. Duva, director of employee benefits at Allied-Signal Inc. in Morristown, N.J., answers benefits management questions. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field.

Mr. Duva's and Ms. Werner's columns appear alternately on the second Monday of each month. 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.

Court disallows evidence in cover dispute

A Louisiana appellate court ruled that because a policyholder's application for group medical coverage was not attached to the certificate of insurance, it became inadmissible to support the insurer's claim of misrepresentation.

Laurence G. Pugh Jr. had a long history of alcoholism and numerous admissions to institutions for treatment. Mr. Pugh filed a claim for treatment of alcoholism at Insight of America from Nov. 6, 1985, through Dec. 6, 1985.

Prudential Insurance Co. of America, Mr. Pugh's group insurer, employed an agent to interview him about his alcoholism. The agent filed a report with Prudential in which Mr. Pugh forthrightly explained his

treatment. Earlier, Mr. Pugh had completed an application for the group insurance in which he had not disclosed his history of drinking.

On May 14, 1986, Mr. Pugh was a passenger in an automobile involved in an accident in which he sustained a fractured hip requiring numerous hospitalizations. Thereafter, Prudential notified Mr. Pugh that, had it known of his history of alcoholism, it would not have issued the medical coverage for which he applied. Prudential stated, therefore, that it would not honor any claims under the policy. Mr. Pugh's claim for benefits was, therefore, denied and he sued.

Legal briefs

While the trial court concluded that Mr. Pugh had made no material misrepresentation, it denied his claim for penalties and attorneys fees.

On appeal, Mr. Pugh argued that the trial court should not have attached into evidence his insurance application because it was not physically attached to the insurance certificate, as required by state law. Prudential argued that was unnecessary because the policy involved a multiemployer trust administered by Prudential that involved the issuance of a master group policy. However, the court said it was clear that state law required

Prudential to attach a copy of the application to Mr. Pugh's certificate of insurance. Having failed to do so, the application should not have been considered, the court said. It awarded Mr. Pugh's estate penalties and attorney fees, since he died during the litigation. *Pugh vs. Prudential Insurance Co. of America*, Court of Appeal of Louisiana, June 28, 1989 (B/I/04/Feb.-\$10). ■

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

EEOC complaint ruled uninsurable by appeals court

By STACY ADLER

TRENTON, N.J.—An administrative action by the Equal Employment Opportunity Commission is not the equivalent of a lawsuit and, therefore, is uninsurable, a New Jersey appellate court ruled.

The decision, upholding an earlier trial court ruling, marks one of the first times a court has ruled on the insurability of an EEOC administrative proceeding, according to attorneys.

Policyholders Campbell Soup Co. and Campbell Soup (Texas) Inc. are appealing the ruling, which stems from a suit Camden, N.J.-based Campbell filed in 1987 against 22 liability insurers seeking coverage for the cost of defending an employment discrimination claim before the EEOC.

Liability insurers, including Liberty Mutual Insurance Co. of Boston, denied coverage, claiming that an EEOC proceeding was not the equivalent of a lawsuit and does not trigger a duty to defend. Similarly, the insurers denied any duty to indemnify Campbell Soup for any adverse ruling by the EEOC.

The trial court in September 1988 agreed with the insurers and dismissed Campbell Soup's claim.

An EEOC proceeding, the court ruled, was not "the functional equivalent of a suit so as to compel the insurers... to defend the plaintiff (Campbell Soup) against charges of discriminatory employment practices."

The court also found the duty to defend "is triggered when the insured is involved in an adversarial proceeding, a consequence of which is the factual determination that legal liability may or may not be imposed upon the insured."

Without further comment, the appellate court affirmed that ruling Jan. 18.

Although this is the first time a court has denied the insurability of an EEOC proceeding, "at least one other court has determined that an EEOC proceeding does trigger a duty to defend," said Campbell Soup attorney Jerold Oshinsky of Anderson, Kill, Ollick & Oshinsky in Washington, D.C.

Insurer attorneys say the ruling denying insurability will be cited widely in coverage litigation.

The decision could be applied to "any kind of administrative proceeding," said insurer attorney Thomas Brunner of Wiley, Rein & Fielding in Washington, D.C.

For example, Mr. Brunner predicted insurers nationwide will cite the decision in hazardous waste coverage litigation.

The decision can be used to support insurers' argument that a letter from the U.S. Environmental Protection Agency naming a policyholder as a "potentially responsible party" for a hazardous waste cleanup does not trigger insurance coverage, he explained.

Insurers argue that a so-called PRP letter is not an adversarial proceeding and, therefore, should not trigger liability insurance, said Mr. Brunner, who filed an amicus curiae brief on behalf of the American Insurance Assn. in the Campbell Soup litigation.

Insurer attorney Barry Ostrager of Simpson, Thatcher and Bartlett in New York agreed: "The decision is important in the PRP context."

However, Mr. Oshinsky notes, "an overwhelming number" of courts hold that an EPA letter triggers a duty to defend.

Insurer attorneys point out that even if Campbell Soup proved that an EEOC proceeding triggered the

duty to defend, it likely would be unable to tap its policies because the 1986 commercial general liability policy excludes employment-related claims.

However, Mr. Oshinsky said, "the exclusions are incomprehensible."

And, he noted, some of Campbell Soup's liability policies specifically provide coverage for discrimination claims.

Campbell Soup Co., Campbell Soup (Texas) Inc. vs. Liberty Mutual Insurance Co. et al., Superior Court of New Jersey Appellate Division, No. A-990-88T5.

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AIDS projections

Continued from page 3

biological objects, and is widely published in the Soviet Union, Mr. Steele said.

The men met "by chance" in 1988 while Mr. Steele was preparing to begin a math tutorial to forecast AIDS cases. He said the FDM began to take shape after Mr. Fuxman's research found three other models were flawed because they did not take into account birth and death rates.

According to his model, by 2015, 1 million Americans will die from AIDS each year and another 1.1 million new AIDS cases will be diagnosed annually, based on a 10-year mean incubation period of the human immunodeficiency virus, which can develop into AIDS.

Mr. Fuxman projects that more than 1.6 million Americans will have AIDS by 2015.

Between 2020 and 2030, he projects, 2 million Americans will have the disease, while the AIDS death rate and the number of new cases will increase to about 1.4 million each.

In addition, 15 million Americans will be infected with the HIV virus by 2050, according to the model.

The model also projects that by some unspecified time in the 21st century, 4.28% of the U.S. population—or between 14.5 million and 19.3 million of an estimated U.S. population of 340 million to 450 million—will be infected with the HIV virus.

And, at that time, one in four Americans will "stand a chance" of dying of AIDS, Mr. Steele wrote in the newsletter.

However, AIDS researchers put lit-

tle stock in the model.

"It's ludicrous and irresponsible," said Victor DeGrutola, a bio-statistician with the Harvard AIDS Institute in Cambridge, Mass., a facility affiliated with Harvard University.

"The parameters needed for a prediction this far into the future are not currently known. We need 10 to 15 more years of information. Therefore the validity of this model is moot," said Joel Hay, a senior research fellow at the Hoover Institute, a think tank at Stanford University in Palo Alto, Calif.

"At the most simple level, applying mathematical analysis to an epidemic can work for 18 months, maybe two years," said William Johnston, vp-special projects in the Alexandria, Va., office of the Hudson Institute, an Indianapolis-based AIDS think tank.

"But it becomes increasingly unsound the further out you go," he said.

The Hudson Institute has three scenarios on the number of AIDS cases and AIDS-related deaths by the year 2002:

- The best-case scenario: 59,000 deaths annually and 190,000 people living with AIDS.

- The most probable scenario: 193,000 deaths annually and 423,000 people living with AIDS.

- The worst-case scenario: 412,000 deaths annually and 710,000 people living with AIDS.

"Our worst-case scenario is possible, but unlikely," Mr. Johnston said. "It assumes no change in behavior and that medicine stops in its tracks. If this were to happen, the national attention AIDS would cause would make current attention seem like we now have a hidden epidemic."

AIDS projections from the federal Centers for Disease Control in Atlanta extend only five years into the future, said John Karon, a senior statistician.

"We cannot precisely estimate how many people are infected now, so future projecting is hazardous," he explained.

Between 800,000 and 1.3 million people currently are infected with the HIV virus, the CDC estimates.

Between the disease's onset in the late 1970s and Oct. 31, 1989, 66,493 people died from AIDS-related illnesses, the CDC report.

Behavioral changes are factored into all CDC projections, but not in the Fuxman model, Mr. Karon also pointed out.

For example, Mr. Karon said, "HIV incidence has dropped dramatically in sectors of the homosexual male community since the mid-1980s. Education has resulted in a change in behavior among homosexual and bisexual men. Research has shown that gay men had fewer partners after the mid-'80s than they did in the early '80s."

Other AIDS research experts agree with Mr. Karon that Mr. Fuxman's conclusions contradict current trends. They say the spread of AIDS appears to be slowing, especially among male homosexuals in large cities like San Francisco, New York and Los Angeles.

Only among intravenous drug users is the spread of AIDS not slowing, they said.

The epidemic peaked in 1981 among homosexuals in San Francisco, Los Angeles and New York, and in 1985 for homosexuals nationwide, said Mr. Hay of the Hoover Institute.

"The biggest problem with the model is that there are no adjustments for reductions in virus transmission efficiency for those outside the traditional risk groups" of homosexuals and intravenous drug users, Mr. Hay said.

"And I would argue that HIV incidence among the heterosexual population is low. There have only been 1,930 heterosexual AIDS cases reported to the CDC in the past 12 months," Mr. Hay said.

Andrew Moss, an epidemiology professor at the University of California at San Francisco, concurred.

"At the moment, (the spread of AIDS in) the heterosexual community is proceeding slowly, and some experts will say the disease isn't spreading at all within this group," Mr. Moss said. "Models of catastrophe and large case numbers just are not realistic."

"Most Americans who contract AIDS are homosexual men and intravenous drug users. And the number of AIDS cases has already peaked for homosexual men and will peak soon among intravenous drug users," he asserted.

"The possibility of the number of AIDS deaths rising above 1 million (annually) sometime in the next century is very unlikely," he said.

"By scaring the whole population, we focus away from the real problem, and that is the inner-city minority community," where 70% of new heterosexual AIDS cases are reported, most of which can be traced to intravenous drug use, Mr. Hay said.

"Anyone can make an alarmist statement, and that is unfortunate," he added.



Soviet mathematician Yakov L. Fuxman's predictions concerning AIDS growth have been criticized by other AIDS researchers.

In addition, Mr. Johnston of the Hudson Institute said he was troubled by the model's forecast that the number of AIDS cases will reach an endemic level. "With the characteristics of a transmissible virus, I don't think you can predict when an epidemic will turn endemic. That's like throwing darts at a board."

But, Mr. Steele insisted in an interview that the Fuxman model will prove completely accurate, barring a cure or vaccine for AIDS.

He maintains education is no weapon against the spread of AIDS.

"Those who are sexually prudent by nature will not put themselves at risk, while others who are not will continue to do so. Those who fancy that a broadside warning from the surgeon general will affect AIDS are living in a fool's paradise," Mr. Steele asserted.

He also takes issue with AIDS researchers who say the spread of AIDS is slowing, calling such reports illusory and saying they simply show that researchers' earlier estimates were too high.

But researchers have other problems with the Fuxman study, including the failure to circulate it through the medical community for peer review.

"Fuxman has never published anything in a peer-reviewed publication," Mr. Hay said. "His source is biased," Mr. Hay asserted, referring to the newsletter.

The model, Mr. Steele said, has been submitted for review at the Sixth International Conference on AIDS, scheduled in San Francisco in June.

He said he is certain that AIDS experts at the conference will corroborate the model's findings.

"We know our model is true," he said. "We feel we will be vindicated in time. People will inevitably find out that we are the closest."

In addition to reporting on the FDM projections, the newsletter—AIDS Insurance Reports—suggested that prices for life and health insurance are too low and do not ade-

quately reflect the future increase in AIDS deaths.

Mr. Steele suggested in the Nov. 29 newsletter that by 2050, medical care for about 2 million AIDS patients will cost \$200 billion per year, or about \$100,000 per person.

"Profit margins of companies that have not reserved or priced adequately for the coming tidal wave of AIDS cases will come under increasing pressure, and group health insurance as presently marketed may become unavailable," Mr. Steele said.

Several major life and health insurers say they are not worried by Mr. Fuxman's figures.

"We don't find projections this far into the future to be helpful or reliable because of all the factors that are left out when you're dealing with a purely mathematical model," said a spokeswoman for the Blue Cross & Blue Shield Assn. in Chicago.

"The last thing we need is additional hysteria caused by the forecasting of large numbers of AIDS deaths," she said.

A spokesman for Newark, N.J.-based Prudential Insurance Co. of America said the model "isn't something the company is putting stock in because it isn't in line with anything we have been seeing."

Although the model is "of interest, we won't be staking our fortune on it," said Mr. Johnson at Met Life.

Mr. Johnson said that determining an average cost of treating a person with AIDS is difficult. "You have hospices vs. \$1,000-a-day hospitals, and people are being kept alive much longer through AZT and other life-prolonging drugs."

He noted that the annual cost of treating an AIDS patient during the early years of the epidemic was estimated at about \$140,000. And, "when people said \$140,000, most AIDS patients died within 11 months," he pointed out.

But, he said, that figure was "probably not appropriate." The cost probably was less, especially in San Francisco, where AIDS treatment was most cost-efficient, he said.

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Strength testing

Continued from page 3

based on their individual physical fitness scores. The JMF predicts the risk of workers compensation injuries and the likelihood of an employee leaving a job before finishing the probation period—usually eight weeks for grocery warehouse workers—Mr. Anderson said.

"New hires with a higher JMF, which means that their physical fitness level is higher relative to the job requirements, have up to 23% fewer workers compensation injuries and 15% greater retention," the study reported.

And new hires with higher Job Match Factors "are also up to 21% more likely to perform at the (company's) productivity standard by the end of eight weeks," the study noted.

Warehouses long have basically hired "people on traditional standards that didn't indicate how well they would perform," said SuperValu's Mr. Koskan.

One of those standards is the perception of physical strength, he said, but there is a real difference between strength and endurance. "A big burly guy may look strong, but he may not be" aerobically fit.

"You're looking for people with the physical abilities necessary to do the job, and grocery warehouse jobs are fairly demanding physically," Mr. Anderson said.

Lifting the 20- to 100-pound items in warehouses for eight hours a day requires not only strength, but also a healthy cardiovascular system, he said.

"The purpose of the test is to determine if someone is capable of doing a job," said G. Thomas Rochford Jr., director of treasury operations at Houston-based SYSCO Corp., which also participated in the study.

"It takes some of the guesswork out" of choosing job candidates, he said.

Implementation of the tests requires three steps, Mr. Anderson explained:

- Job analysis.
- Criteria establishment.
- Test administration and data processing.

The first step involves determining the specific job requirements at a particular warehouse. An ergonomist from Advanced Ergonomics reviews a job's strength and endurance requirements. During the warehouse visit, the ergonomist analyzes movement reports and monitors heart rates on a sample of warehouse workers.

After these initial observations, the ergonomist may suggest to management ways of lowering the physical requirements of the job.

In the second phase, experts meet with a company's management and set the testing criteria to be used at a particular warehouse. The criteria should reflect the physical demands

at the warehouse as well as the score that will be considered a passing grade. That "pass rate" may vary among locations, depending on the available labor pool.

"The higher the criteria, the greater the effectiveness, but the more people that need to be interviewed in order to fill personnel demands," the study noted.

Next, Advanced Ergonomics personnel train a local clinic to administer the physical ability tests. These tests typically include isometric strength tests focusing on the arms, and step tests where an individual tests his endurance by stepping up and down from a bench for several minutes.

An individual's pulse rate, body weight, age and sex are then used to predict the individual's aerobic capacity adjusted for body weight.

The clinic then sends the data to Advanced Ergonomics for interpretation. The consultant subsequently will contact either the company's personnel manager or the clinic with the results.

Besides being used for job appli-

'A big burly guy may look strong, but he may not be' aerobically fit, says Mr. Koskan.

cants, Mr. Anderson noted that the physical abilities tests could be used to periodically screen current employees to see whether they are still fit to perform their job duties. Employers also could test employees who have been transferred to another location or who are assigned different jobs. Tests also could be used in a return to work program, he said.

The tests, Mr. Anderson stressed, meet the Equal Employment Opportunity Commission's non-discrimination guidelines.

"There can be costly discrimination suits filed against employers who use screening batteries that have not been validated" according to EEOC guidelines, the study noted.

In addition, back X-rays, which are commonly used to determine an employee's propensity for back injury, don't accurately predict a worker's capabilities, Mr. Anderson said.

"This is a legal issue so we had to show that the tests were predictive of actual job performance," Mr. Anderson said. "Otherwise you're defenseless in an EEOC suit."

To meet EEOC guidelines an employer also must "be knowledgeable about other (screening) programs, and whatever program is implemented has to have as little adverse impact as possible," Mr. Anderson explained. For example, pre-employment tests could not require employ-

ees to meet such unreasonable standards that virtually everyone would fail.

Women in the study passed the tests at less than 80% of the rate for men, but the study group included only five women. "This reflects the general trend of very low numbers of female applicants for these jobs," the study noted.

"Tests and the pass/fail criteria have been selected in a way that is independent of sex," according to the study. "Specifically, the tests reflect basic abilities, strength and endurance, which are required of anyone doing the warehousing jobs."

The study also noted that older job candidates fail more often than younger candidates, but said the difference does not violate EEOC rules.

Employers say they are confident the tests meet non-discrimination guidelines.

"When you lift a box, the box doesn't know who's lifting it," Mr. Rochford said. "The whole population obviously can't lift the same amount of weight."

Besides, "how fair is it to hire someone that could hurt himself, maybe for the rest of his life?" Mr. Koskan asked.

Potential savings from use of the tests are difficult to quantify, so employers that consider screening applicants should focus on reducing overall workers compensation injuries rather than on reducing costs by a certain amount, say study participants.

Implementing the project at one location costs about \$10,000, including the cost of training local health care providers to administer the test, Mr. Anderson said.

That is nearly the same amount that an average back injury costs—\$10,000 to \$11,000, according to the National Safety Council.

"If a company keeps data on direct costs from accidents, it is easy to prove you can save the implementation costs by preventing one overexertion injury," SuperValu's Mr. Koskan said.

SYSCO is "focusing less on the dollars than the reduction of injuries," Mr. Rochford said. "A more relevant statistic is the number of injuries and their severity—the dollars should follow that."

While the study indicates a person with the strength and endurance to perform a job will have 30% fewer accidents, Mr. Koskan cautioned companies not to expect a 30% reduction in accidents.

"That won't occur until everyone in the warehouse goes through the program," he said. "It's a benefit you will identify as you replace your current workforce through attrition with workers who are screened through this process."

Risk and loss control managers stress that a physical aptitude test is not a miracle cure to end workplace accidents and injuries. Screening new employees for strength and

endurance should be one part of a comprehensive safety program that includes active involvement of top management, they say.

One of the grocery companies in the study, McLane Co. of Temple, Texas, will add the new physical tests to the "flex and stretch" exercise program it implemented about four years ago, said James D. Camp, vp of human resources and risk management.

That program, marketed by Athletes in Industry Inc. of Orange, Calif., consists of eight minutes of stretching before work, and "was well-received by our employees," he said. The activity is similar to an athlete warming up, and "it makes sense to get your muscles warmed up to start the day off right."

Mr. Camp attributes savings to the exercise program and safety awareness. "From 1985 to 1989, while the company was growing 25% to 30% a year, the total dollars paid in workers compensation losses have been re-

duced."

McLane began implementing the Advanced Ergonomics program at its 10 warehouses last fall, but Mr. Camp said it is too early to see any results. "I don't know if I'll see a dramatic change in our (loss) experience because we've been doing strength testing for four years," he added. "What we will find out is whether we can reduce our turnover."

Other companies participating in the study were Albertson's Inc. in Boise, Idaho; Fleming Cos. in Oklahoma City; Gateway Foods Inc. in La Crosse, Wis.; and Scrivner Inc. in Oklahoma City.

For a free copy of the study, "Impact of Physical Ability Testing on Workers Compensation Injuries and Job Performance in Grocery Warehousing," contact Kirby Dalton, Vp-Marketing, Advanced Ergonomics Inc., 5520 LBJ Freeway, Suite 200, Dallas, Texas 75240; 214-239-3746.



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**Business
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Citicorp

Continued from page 2

taken into account along with on-balance sheet items such as loans (BI, Nov. 10, 1986). The accords are designed to encourage international banking organizations to strengthen their capital positions.

In response to Sen. Symms' letter on double counting of capital, Mr. Clarke said that it "is not permitted under the risk-based capital framework. As a general rule, a national bank's ratio is computed on a consolidated basis, thus eliminating the possibility of double counting."

"Consistent with this general rule, the (comptroller's office) has informed Citibank that we expect it to consolidate AMBAC onto its balance sheet when computing its risk-based capital requirements."

In the two years during which risk-based capital requirements will be phased in, Mr. Clarke said his office will "educate national banks about (the requirements) and resolve questions that will inevitably arise as banks begin working with the new capital computation."

The question about capital treatment at the Citibank subsidiary "is an example of the types of issues that are being addressed during the implementation process," Mr. Clarke wrote.

In his Oct. 24 letter to Sen. Symms about double counting, Mr. Greenspan said: "Let me assure you that this is not permitted under the risk-based capital framework."

"Once the staff has completed its investigation of the question raised in the FGIC petition, we will make a judgment on whether any further clarifications or revisions are needed in the risk-based framework," Mr. Greenspan wrote.

Peter J. Schmitt, FGIC executive vp and chief operating officer, said last week the risk-based guidelines are ambiguous as to whether Citibank must provide sufficient capital based on its exposure to both the principal and interest of

AMBAC's insured issues or based on the principal alone.

If the answer is principal and interest, he said, FGIC estimates Citibank will have to increase its total investment in AMBAC to \$3.8 billion by year-end 1990 and \$4.2 billion by year-end 1992.

If only principal is taken into account, Citibank would have to increase its investment to \$1.6 billion by year-end 1990 and \$2.8 billion by year-end 1992, Mr. Schmitt said.

FGIC bases its estimates on Citibank's statutory filing to the comptroller as of Dec. 31, 1988, the latest report available, in which Citibank said it had invested \$630 million in AMBAC, he said.

Estimates of the additional funds needed will have to be updated based on newer figures, Mr. Schmitt noted, adding that he believes it is unlikely the estimated capital increase could be offset by reinsurance.

Mr. Schmitt said he believes AMBAC now has an unfair competitive advantage because double counting of capital boosts AMBAC's return on equity, which in turn allows it to charge lower rates.

James W. McLane, division executive at Citicorp's global insurance division, would only say, "We have consolidated (AMBAC) and will continue to consolidate."

Beyond referring to Mr. Clarke's written comment that the issue will be addressed during implementation, he would not say whether or how the new guidelines will affect Citibank.

However, Robert J. Genader, executive senior vp of AMBAC, reacted angrily to the FGIC charges, saying, "I don't where FGIC gets their numbers. I think they make them up."

AMBAC's success has made the insurer "a threat to them," he said.

Mr. Genader also stressed that the risk-based capital guidelines have not taken effect and the federal government has not issued specific compliance guidelines. He also charged the release of the letters the same week that insurance trade groups petitioned the Fed to force Citibank to

divest AMBAC is part of an "orchestrated campaign by FGIC."

Michael Lovendusky, counsel to one of the petitioners—the American Insurance Assn.—said he was unfamiliar with the Symms correspondence and said timing of the events was "just coincidental."

The petition by the AIA, the American Council of Life Insurance and the National Assn. of Independent Insurers is the latest in a series of insurance trade group efforts to force Citibank to divest AMBAC.

In August 1988, the U.S. Court of Appeals for the District of Columbia ruled that the comptroller had correctly decided that Citibank's acquisition of AMBAC did not violate the National Bank Act, which regulates banking activities.

But the appellate court also agreed with the AIA's contention that the comptroller should not have approved the AMBAC acquisition without first requiring New York-based Citicorp, the bank holding company that controls Citibank, to obtain approval by the Fed.

The Fed administers the Bank Holding Company Act, which limits the non-banking activities, including insurance, of bank holding companies (BI, Sept. 5, 1988).

However, the appellate court later partially reversed its decision, stating it was "inappropriate" for it to have ruled on the holding company act issue (BI, Jan. 23, 1989).

In petitions filed last week, the trade groups state that the "plain language" of the Bank Holding Company Act prohibits Citicorp's acquisition or retention of AMBAC unless an exception is made and none is appropriate.

It also describes Citicorp's ownership of AMBAC as "perhaps the most significant, and certainly most notorious, evasion of the BHC Act occurring at this time."

The petition asks the Fed to review Citicorp's acquisition of AMBAC, and if it determines that the acquisition was unlawful, "to ensure that Citicorp promptly and com-

Fleet/Norstar drops stock conversion

Fleet/Norstar Financial Corp. has withdrawn its petition to convert its shares of Capital Guaranty Corp. to voting from non-voting stock after the Federal Reserve Board agreed to modify requirements governing how the bank holding company could divest the stock.

Capital Guaranty Corp. is the parent of financial guarantee insurer Capital Guaranty Insurance Co.

In a move opposed by insurance trade groups, Fleet/Norstar had sought Fed approval of the conversion, which would have given the bank holding company about 35% of Capital Guaranty's outstanding voting capital stock (BI, June 19, 1989; May 22, 1989). Fleet/Norstar now holds about 9.8% of Capital Guaranty's voting stock.

The Fed prohibits bank holding companies from owning more than 25% of an insurer's stock, including more than 4.9% of its voting shares. Fleet/Norstar found itself in violation of the policy after its two components, Fleet Finance Group and Norstar Bancorp Inc. merged in January 1988 (BI, May 1, 1989).

Fleet/Norstar was told by the Fed that it could not sell more than 2% of Capital Guaranty's stock to any one entity when the Fed approved the merger of Fleet and Norstar, said an attorney representing the company.

Efforts to sell such small blocks of stock were unsuccessful, said Robert J. Dilworth of New York-based Cleary, Gottlieb, Steen & Hamilton. It then asked the Fed to convert the non-voting shares to voting shares.

Fleet/Norstar withdrew its petition because the board agreed to give Fleet/Norstar permission to sell up to 17.5% of the company's stock to a single entity. It was given a deadline of Jan. 29, 1991, to comply, said Mr. Dilworth.

—By Judy Greenwald

pletely ceases all direct or indirect municipal bond insurance activities."

"The Bank Holding Company Act clearly prohibits a bank holding company and its subsidiary to own directly, or indirectly, an insurance subsidiary," said Mr. Lovendusky.

He said it is clear from the act itself and the appellate decision that Citicorp should have sought Fed approval before acquiring AMBAC.

Messrs. McLane and Genader defend Citicorp's acquisition.

Citicorp has obtained both government and court approval for the acquisition, said Mr. McLane. "As far as we're concerned, the issue is behind us and has been from some time

now."

Meanwhile, a Citibank spokeswoman said the company as a matter of policy would not respond to reports that the bank was planning to sell AMBAC.

Mr. Genader said the sale of AMBAC would be a decision made by Citicorp's directors, but he dismissed the report as an old rumor dating back to the fall. "It's clearly old news," he said.

Citibank bought 85% of AMBAC Inc., AMBAC Indemnity Corp.'s holding company, in June 1985, and continued to buy remaining shares until it obtained 100% ownership in July (BI, Nov. 20, 1989). ■

Runoff policies

Continued from page 2

dispute over the validity of the contract erupted before that underwriting year was closed.

As of Dec. 31, 1988—the latest accounts available—losses to be paid under the runoff contract totaled 13.1 million pounds (\$22.3 million), according to a Lloyd's member.

However, members estimate that the total payable under the runoff policy has since increased to around \$25 million. The amount is expressed in U.S. dollars because most of the syndicate's liabilities are from U.S. business.

After two weeks of testimony before an arbitration panel, the panel ruled that syndicate 418/417 could

void the runoff contract because the "presentation of information" concerning the risks to be reinsured was inadequate, said Mr. Robson, who would not elaborate.

"There are aspects of the placing we were unhappy about," said Ken Randall, group managing director of Merrett Holdings, who also would not elaborate.

But, observers in the Lloyd's market are criticizing Merrett Holdings in light of the arbitration decision because the ruling favors the thousands of members on syndicate 418/417—Lloyd's largest syndicate—rather than the hundreds of members of syndicate 334.

In addition, MUAM will be able to cite the decision in other runoff

reinsurance policy disputes.

However, Merrett's Mr. Randall stressed that Mr. Robson—who is also a director of Merrett Holdings—proceeded with the runoff reinsurance policy dispute as Pulbrook's chairman and not as a Merrett director.

"The area that Merrett Holdings could have been open for criticism was if we had compromised" and settled without spending two weeks in arbitration with independent arbitrators, Mr. Robson said. "But it was a fight to the death. If we had compromised, it would have been far harder to defend."

Mr. Robson said he is considering appealing the arbitrators' decision in High Court.

However, he noted that none of the previous arbitration decisions relating to runoff policies written by Mr. Outhwaite has been allowed to be appealed.

The runoff policy written for syndicate 334 is one of seven runoff contracts Winchester Bowring placed with 418/1417 that MUAM is disputing, Mr. Randall said.

The reasons for the disputes vary, he said.

Despite the recent arbitration decision, syndicate 418/417 probably will continue to leave its 1985 underwriting year open when the syndicate's accounts are audited later this year for the three years ending Dec. 31, 1989, Mr. Randall

Continued on page 26

Hohn named New York Life chairman

Harry Hohn has been elected chairman and chief executive officer of New York Life Insurance Co. of New York, effective Aug. 1.

Mr. Hohn, vice chairman of the board and a member of the office of the chairman, has been with New York Life for 34 years. He will succeed Donald Ross, chairman and president, who is retiring.

George Bundschuh will succeed Mr. Ross as president, also effective Aug. 1.

Mr. Bundschuh, also a vice chairman and a member of the office of the chairman, has been with the company for 31 years, the last seven as a director.

In other insurer changes:

Industrial Indemnity Insurance Co. of San Francisco, a Crum & Forster subsidiary, announced these changes: President Robert H. Whitehead assumed the additional title of chief operating officer; Courtney C. Smith, who left

Comings & goings: industry

the company in 1988 to take a position with a subsidiary of American International Group Inc., rejoined Industrial Indemnity as senior vp-underwriting; and Robert P. Finlayson named vp-property/liability claims.

Patricia A. Drago named senior vp-claims at North River Insurance Co. in Basking Ridge, N.J., another Crum & Forster unit.

Claus Cardinal named president and chief executive officer of Jefferson Insurance Co. of New York and two subsidiaries: Monticello Insurance Co. and Jeffco Management Co. Mr. Cardinal also will remain president of Allianz Management Inc. of New York, which, like Jefferson, is ultimately owned by Allianz A.G. of West Germany.

Reinsurance

Skandia America Group of New York announced these changes: Denise L. Davies named vp and director of internal audit; Vp Ronald C. Stanziale Jr. also named controller; and Patrice M. Conboy promoted to vp-manager treaty accounting.

Brian R. McGuire appointed vp at U.S. RE Corp. of New York.

Vincent Gackenhaimer promoted to vp-facultative property and Thomas Kilcher promoted to vp-facultative casualty at Allianz Management Inc., a reinsurance underwriting manager for Allianz Group A.G. in New York.

Richard D. Eckis named vp at Reliance Reinsurance Corp., a Reliance Group Holdings Inc. subsid-

iary in Philadelphia.

Theron S. Hoffman Jr. joined General Re Services Corp. of Stamford, Conn., as senior vp.

Other suppliers

Kevin J. Swanson named benefit consultant and director of group consulting practice in the Los Angeles office of Buck Consultants Inc.

Joseph Gross named a resident partner for Riley & Fleming Adjusters Ltd., a claims adjuster in King of Prussia, Pa.

Terry M. Borchers named vp-marketing, sales and client services of Occupational-Urgent Care Health Systems Inc., a cost-containment company in Sacramento, Calif.

Stephani L. Brafman named benefit communications consultant at Yaffe & Co., a consulting firm in Washington, D.C. ■

Advertiser Index

Issue of February 12

ADVERTISER	PAGE #
American Reinsurance	16-17
AON Reinsurance Agency Inc.	4
CIGNA	32
Countrywide Services	23
Gay & Taylor	21
General Rehabilitation Serv.	14
General Star Management	5
K & K Ins./Lincoln National	11
MCC Companies	15
Media/Professional Ins.	10
Merrill Lynch	6-7
MIP, Inc.	14
NAC Reinsurance Company	18
Reliance National	9
Transamerica Ins. Group	12-13
Travis Software	22
Vermont Insurance Management	14
Floyd West & Company	22

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Runoff policies

Continued from page 24

said, "It remains a possibility, but it is unlikely" that the syndicate will close its 1985 year, he said.

Meanwhile, a spokesman for RHM Outhwaite (Underwriting Agencies) Ltd. said the recent arbitration decision will not have any bearing on disputes over runoff policies written by Mr. Outhwaite.

The Outhwaite agency still is involved in disputes over how much

in runoff reinsurance should be paid to syndicates managed by M.H. Cockell & Co. Ltd.; Anton Underwriting Agency Ltd.; and Roberts & Hiscox Ltd.

However, the Outhwaite agency, which lost arbitrations over three runoff policy disputes, is not disputing the validity of any more contracts.

"This Merrett case shows just how close we were" to winning the arbitrations, the spokesman said.

Meanwhile, members of syndicate 90 met last week to decide

whether they have grounds to sue their members' agencies for the huge losses they face this year.

Pulbrook has told the members that they face a cash call of 135% of the stamp capacity of the syndicate's open 1982 underwriting year, or 28.7 million pounds (\$48.7 million).

Syndicate 90 last year settled a runoff policy dispute with syndicate 317/661, managed by the Outhwaite agency, which reinsured 50% of the syndicate's liabilities from the 1974 and previous

underwriting years excess of \$27 million (BI, Nov. 13, 1989; July 31, 1989).

Under the settlement, the Outhwaite syndicate will pay the syndicate about \$64 million now. Syndicate 317/661 also may be required to pay another \$37.5 million later toward the syndicate 90's \$250 million in gross outstanding losses, members say.

However, under the settlement, the Outhwaite syndicate is no longer responsible for paying unlimited reinsurance losses.

Members point out there is no reinsurance to replace the Outhwaite runoff policy.

But Mr. Robson said it is difficult to criticize syndicate 90's settlement with Outhwaite, considering that the syndicate paid \$1 million in premium in 1981 for the policy and has since received a return of more than \$60 million.

"I feel that the strength of the deal with Outhwaite—considering the Merrett arbitration—is pretty good," he said. "It's a pretty fair return."

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Bids will be opened publicly at 2:00 P.M., March 20, 1990 at the main office facility located at: 683 North 20th Street, East St. Louis, Illinois 62205.

All documents shall be enclosed in a sealed envelope and shall be labeled with the words "Bid Documents - Property, Liability and Flood Insurance".

Additional information and bid forms may be obtained from the office of the Housing Authority of the City of East St. Louis, 683 North 20th Street, East St. Louis, Illinois 62205, or by calling Nell Ebel, Director of Finance at (618) 271-0498.

Stephanie A. Stafford, Acting Director of Operations

INVITATION TO BID TO METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR FURNISHING EXCESS LIABILITY INSURANCE FOR AUTOMOBILES, TRUCKS, TRAILERS, UNINSURED AND UNDERINSURED MOTORIST AND NON-OWNED AUTOMOBILES CONTRACT 90-008-11

Sealed proposals for furnishing Excess Liability Insurance for automobiles, trucks, trailers, uninsured and underinsured motorists and employee's non-ownership for a one-year contract will be received in the Board Room, Room 100, 100 East Erie Street, Chicago, Illinois 60611 between 10:00 a.m. and 10:30 a.m., Chicago Time on Tuesday, February 27, 1990 and will be publicly opened at 11:00 a.m. on that day.

NO BIDS WILL BE ACCEPTED BEFORE 10:00 A.M. OR AFTER 10:30 A.M. ON THE SCHEDULED BID DATE. BIDS MAILED TO THE DISTRICT WILL BE RETURNED TO THE BIDDER.

Proposals must be submitted on furnished proposal forms and shall conform to all the terms and conditions of the "Requirements for Bidding and Instructions to Bidders" attached thereto.

Detail specifications for the plan of coverage to be provided the appropriate underwriting data together with the forms necessary for bidding may be obtained at the office of the Purchasing Agent of the District, Room 508, 100 E. Erie Street, Chicago, Illinois 60611, (312) 751-6608. Bid documents will be mailed upon request. The Metropolitan Water Reclamation District of Greater Chicago assumes no responsibility for contract documents sent through the mail. No fee is required in order to receive bid documents.

The estimated cost under Contract 90-008-11 is \$126,000.00.

Each proposal must be accompanied by a bid deposit in the form of cash (currency only), cashier's check or certified check payable to the clerk of the District in the amount of \$1,500.00. Such checks will be acceptable only if drawn on a bank or savings and loan association. If the check is not stamped as a "certified" or "cashier's check" on its face, such check must be accompanied by a letter on letterhead of the financial institution and signed by an officer of the financial institution stating that the check is guaranteed obligation of the financial institution. Any proposal submitted without being accompanied by such bid deposit will not be considered and will not be read after it is publicly opened.

If there are any questions regarding procedural details after receipt of the documents, please contact the Purchasing Department, (312) 751-6600. The District reserves the right to reject any or all proposals.

METROPOLITAN
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PROPOSALS

REQUEST FOR PROPOSAL

The Massachusetts Workers' Compensation Advisory Council, Department of Industrial Accidents extends an invitation to all eligible applicants interested in bidding on two separate projects. One concerns an analysis of Friction Costs associated with workers' compensation in Massachusetts. The second concerns access to medical care for injured employees. This evaluation is to be conducted by a party or parties with expertise in the analysis of policy and financial issues relating to workers' compensation. A maximum of \$50,000 for each component is available from approval date through 6/30/90. The Request for proposal is presently available, and can be obtained by contacting Stevens Day, Executive Director, Massachusetts Workers' Compensation Advisory Council, Department of Industrial Accidents, 600 Washington Street, 7th Floor, Boston, MA. 02111 at 617-727-6096. Proposals must be submitted no later than 4:30 PM on February 28, 1990, to receive consideration. THE COMMONWEALTH OF MASSACHUSETTS IS AN EQUAL OPPORTUNITY EMPLOYER.

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Nations slow to adopt EC non-life directive

By DENISE CLAVELOUX

BRUSSELS, Belgium—Implementation of the European Community's Second Non-Life Insurance Directive may be delayed because only one EC member country has passed enabling legislation.

So far, only France has ratified the directive, according to Françoise Blum, a Brussels, Belgium-based partner in the London law firm of Clifford Chance.

Without knowing how the remaining member countries will implement the directive, it is difficult to analyze its financial impact on the European insurance-buying community, Ms. Blum said during a speech at "1992: Opportunities and pitfalls for the European insurance industry," a Jan. 25 seminar in Brussels sponsored by Hawksmere Ltd.

The directive, which is supposed to take effect in most EC member nations in July 1990, allows an insurer in one EC nation to insure the risks of a large commercial policyholder in another EC state, provided that the buyer meets two of three criteria:

The road to a single 'Europolicy' is not so easily paved, Ms. Blum asserts. 'In theory, you should be able to cover all of a large client's industrial risks in the EC in one policy. In practice, it's likely to be much more complicated than that.'

"In theory, you should be able to cover all of a large client's industrial risks in the EC in one policy. In practice, it's likely to be much more complicated than that," Ms. Blum said.

For example, an EC member nation may only consider a local branch of a company when determining the company's size for cross-border insurance placement purposes. As a result, a large multinational corporation may find that its branch in France with 300 employees is considered to be a large risk, while its branch in Spain with only 100 employees falls into the mass risk category.

Furthermore, certain types of insurance coverage—such as employee health care coverage and pension plans—could be excluded from the large risk category, regardless of the size of company involved, according to Ms. Blum. Automobile insurance, coverage for pharmaceutical products and compulsory building insurance are automatically excluded.

But the division of large risks and mass risks is only a "halfway" stage in the EC's plans for unifica-

seek authorization from the French government, which could take up to six months. After that, it must follow French rules and be subject to supervision by the French Ministry of Finance, she explained.

The EC Commission plans to introduce three new proposals in 1990 to move closer to a single insurance market, according to Anthony Cary, deputy head of cabinet for Sir Leon Brittan, the EC commissioner responsible for financial services.

The first two proposals would establish a single license enabling insurance companies to market their products throughout the EC without establishing branches (BI, Dec. 4, 1989).

The Non-Life Framework Directive is likely to be proposed first, possibly as early as March, followed by the Life Framework Directive, which Mr. Cary says will take longer to prepare.

The third proposal, which should be made by the year end, would allow cross-border marketing of private pension benefits; full freedom to provide pension fund management services; and the possibility of creating EC-wide pension funds.

However, the pension proposal could meet opposition from some member states where current laws dictate that 50% of pension funds be invested in government stocks, Mr. Cary said.

The EC Commission originally intended to issue a separate directive for group insurance and pensions, Mr. Pool noted.

"With this approach, full consideration could have been given to the interaction between insurance and other forms of pension provisions," he said.

However, a few months ago, the EC Commission announced that it would bring group insurance into the scope of the Second Life Directive, which will establish full freedom of services for individual policyholders who seek an insurance policy from a company established in another member state.

Mr. Pool said that this approach was "no doubt taken to gain time," but said there are two risks.

One is that the change of plan might lead to further delays in the European Parliament—which has yet to approve the second life proposal, he said.

The other risk is that markets for group pensions would be more restrictive than if a separate directive were adopted that specifically targets group insurance.

But, as Mr. Cary confirmed, the EC Commission still intends to introduce a separate proposal concerning occupational pensions and other employee benefits.

"How these proposals will dovetail is not clear," he said.

tion of the European insurance market, according to William Pool, formerly head of the EC Commission's insurance division and currently a Brussels-based consultant.

"In the next stage... a single authorization, granted in the state where the head office is situated, will enable the insurer to sell throughout the (European) Community, using branches or cross-frontier selling, or a mixture of the two," he said.

Mr. Pool emphasized, though, that there is no rigid timetable for reaching this final stage, and that 1992 is simply a goal of the EC.

Some countries, like the United Kingdom and The Netherlands, already permit corporate insurance buyers to place coverages across national borders without restrictions. But other countries are not so free of restrictions.

For example, while a French insurance company can write product liability insurance for a small or medium-sized company in Britain, France has adopted very restrictive host country controls, Ms. Blum said.

A British insurer that wants to provide coverage to a small or medium-sized French firm must first

2 states lose top regulators

Top insurance regulators in Minnesota and Alaska voluntarily resigned last month.

Minnesota Commissioner of Commerce Michael Hatch voluntarily resigned shortly before announcing last month that he will challenge Gov. Rudy Perpich, who appointed Mr. Hatch as commissioner in July 1983.

Both men will seek the endorsement of the Democratic Farmer Labor Party in June, said Ray Bohn, the governor's communications director. Mr. Hatch has said his participation in the party's September primary depends upon his receiving the party's endorsement, Mr. Bohn said.

Mr. Hatch could not be reached for comment. Gov. Perpich named Thomas Borman to replace Mr. Hatch, subject to confirmation by the state Senate.

Mr. Borman is a partner with Maslon Edelman Bor-

man & Brand, a 43-member law firm with a commercial practice. He holds a law degree from the University of Minnesota and is a Phi Beta Kappa graduate of Cornell University.

In Alaska, Acting Insurance Director Jim Jordan resigned last week for personal reasons.

Mr. Jordan has served as acting director of the Anchorage office of the Alaska Department of Commerce and Economic Development's Division of Insurance since September of last year.

Mr. Jordan served in the department for 10 years, including 1½ years as deputy director.

Richard Monkman, deputy commissioner of the Department of Commerce and Economic Development, will serve as acting director of the division until a successor is named.

—By Meg Fletcher

Varying EC tax laws called an impediment

By DENISE CLAVELOUX

BRUSSELS, Belgium—Differences in taxation among the 12 European Community nations are likely to impede establishing uniform insurance regulations throughout the EC, a consultant contends.

Those discrepancies in national tax policies will likely have a greater impact on life insurance than on non-life coverages, said William Pool, a former EC official and now a consultant in Brussels.

"Different tax treatments may keep life insurance within one country or attract it to another," Mr. Pool told attendees of "1992: Opportunities and Pitfalls for the European Insurance Industry," a Jan. 25 seminar sponsored by Hawksmere Ltd. in Brussels.

Mr. Pool noted that tax policies of EC nations differ widely on: premium taxes; deductibility of premiums; taxation of employee benefits; and taxation of insurers' investment income.

For example, Spain, Ireland and the United Kingdom do not tax premiums; France taxes some up to 30%; and Denmark levies up to a 50% tax on auto liability premiums (BI, Oct. 16, 1989).

The EC eventually plans to resolve such discrepancies by harmonizing premium taxes among the 12 countries, Mr. Pool said. However, little progress has been made, and little can be expected in the near future, he said.

While EC insurance rules can be approved by a qualified majority, all tax decisions must win the unanimous support of all 12 member countries, Mr. Pool said.

"It must be concluded that many of these tax problems will remain long after regulatory differences have ceased to be a problem," Mr. Pool said. "The different tax treatments will continue to have a divisive effect on markets for life insurance," he said.

For example, in some countries, group life and health insurance premiums are treated as taxable income of the employee, he noted.

Mr. Pool also pointed out that EC nations' different social security benefits, especially for old age, will not be affected by the EC's freedom of insurance services directive. That will mean that the scope of life insurance coverage will vary widely from one member country to another, he said.

In non-life insurance, the differences among the national markets will be less significant once the new 1992 measures are in place, although Mr. Pool predicted that complete uniformity of markets will not be achieved.

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Civil rights cover

Continued from page 3

son and \$300,000 per occurrence above the state's retention. The Compass policy also became primary after exhaustion of the state's \$800,000 annual aggregate retention.

In addition, ISU and several other state universities bought primary board of education liability coverage from Continental Casualty, a Chicago-based unit of CNA Financial Corp. The Continental Casualty policy issued to ISU provided a limit of \$1 million per occurrence with a \$2,500 deductible, Mr. Fridenstine said.

The state's retained risk program paid the \$375,000 settlement to Mr. Hale and negotiated a \$150,000 contribution from Compass, which received a release from any further liability in the case. Continental Casualty—which had offered a \$130,000 payment prior to the settlement—did not contribute, court papers say.

The state and ISU filed suit against Continental Casualty in June 1988, and both sides have since filed numerous summary judgment motions.

In a Dec. 23 ruling that Continental Casualty has at least some responsibility for covering the Hale settlement and defense costs, Idaho District Judge Robert M. Rowett dismissed Continental Casualty's claim that the jury verdict in Mr. Hale's favor was for back pay and therefore represented a contractual obligation not covered by the liability policy.

The judge also threw out Conti-

mental Casualty's argument that First Amendment rights were implicitly incorporated into Mr. Hale's employment contract with ISU and that violation of those rights would thus constitute a breach of contract excluded by the policy.

Judge Rowett also rejected Continental Casualty's argument that it is not liable for defense costs under the terms of its policy. While agreeing that the policy includes no traditional duty to defend, the judge noted that the policy definition of "loss" includes defense costs, which he ruled may be recovered after a judgment or settlement.

In papers filed last month, Continental Casualty added several new arguments to support a summary judgment motion to restrict or eliminate its liability under the board of education policy.

Among other things, Continental Casualty argues that the state's retained risk program provides coverage for the Hale claim.

The state's risk management bureau did not issue a policy outlining the coverages included in the retained risk program, but instead relied on the Compass policy to identify the exposures included in the retention, according to papers filed by Continental Casualty.

Since the Compass policy's personal injury provisions specifically include coverage for civil rights violations, the retention program also includes this risk, Continental Casualty argues.

Continental Casualty also contends that the retained risk program is legally insurance and that the board of

education policy's "other insurance" clause thus excludes coverage for losses covered by the state program.

ISU is a separate legal entity from the state and ISU's participation in the retained risk program—to which it paid premiums—represented a transfer of risk to the state, Continental Casualty argues.

Although the Compass policy contains its own "other insurance" clause—which Judge Rowett earlier found conflicts with the Continental Casualty policy clause, rendering both clauses unenforceable—the retained risk program has no "other insurance" provision, Continental Casualty contends.

Because of this, Continental Casualty argues that its "other insurance" clause should exclude coverage for losses attributable to the risk retention program.

Portions of the Hale claim attributable to Compass should be apportioned between Continental Casualty and Compass based on their respective policy limits, the insurer argues.

Because the Hale claim has already been paid by the retained risk program on ISU's behalf, the university no longer has a claim under the Continental Casualty policy, the insurer also maintains. While the state may have a subrogation claim arising from the payment, Continental Casualty argues that the state should be barred from recovery because it concealed from Continental Casualty until February 1988 the fact that the Compass policy included civil rights coverage.

In court papers filed earlier this

month, the state and ISU oppose all of these arguments and ask the judge to find Continental Casualty liable for the bulk of the Hale settlement and defense costs under a complex formula apportioning the loss based on the Continental Casualty and Compass policy limits.

Continental Casualty should pay \$340,875 of the \$375,000 settlement and \$145,095 in defense costs, the state contends.

Since the 1988 Hale settlement, "Continental has dredged up every esoteric legal proposition it could find to escape its responsibilities under the insurance policy which it issued," the state charges.

Denying that the retained risk program constitutes insurance, the state cites several cases in which tax courts have found that a parent company's use of a captive does not produce sufficient risk transfer and risk distribution to be considered true insur-

ance.

"Since the general fund of the state of Idaho remains at risk as to all tort and constitutional claims asserted against ISU not covered by insurance purchased from commercial companies, there has been no risk-shifting or transfer of risk as to those risks so retained," the state and ISU contend.

The state risk management bureau's assessments to fund the retained risk program and buy excess insurance do not constitute insurance premiums, the state also maintains.

If the retained risk program is not insurance, Continental Casualty cannot use its "other insurance" clause to avoid liability, the state argues.

The state and ISU had originally leveled bad faith claims against Continental Casualty but withdrew these earlier this month in the wake of state court rulings limiting the applicability of such claims. ■

Bank risk managers' importance to rise: Ex-attorney general

By LOUISE KERTESZ

ANAHEIM, Calif.—Financial institutions' risk managers will play a more important role than ever in the 1990s as they protect firms from external and internal threats, a former U.S. attorney general says.

With the public's confidence in financial institutions shaken by such recent events as bank collapses, insider trading scandals, write-offs of foreign debt and the bailout of failed thrifts, "events that in better times might be viewed as inconsequential are seen as life threatening," Benjamin R. Civiletti told the American Bankers Assn. National Security and Risk Management Conference Jan. 23-26 in Anaheim, Calif.

To minimize those events, risk management should be a high priority in the boardrooms of financial institutions, said Mr. Civiletti, an attorney general in the Carter administration and now a partner with Venable, Baetjer & Howard in Baltimore.

Banks have never before faced the variety and size of security threats they do now, and the job of protection and detection, followed by remedies in the form of litigation and prosecution is "tougher than ever," he said.

"Your role in 1990 as risk managers is more important to the health and survival and the growth of financial institutions than ever before," he said.

Mr. Civiletti outlined four "nightmare" scenarios that would not be unlikely for financial institutions in the 1990s, and offered suggestions to prevent them or at least control the losses they would entail.

In the first "nightmare," a bank director inflates the balance sheet, increasing the bank's loan capacity to accommodate the bank's largest construction loan borrower. Resulting losses total \$75 million.

To prevent such abuses, ensure "that the same rules apply to the CEO as to the most modest employee," he said. A bank adhering to this principle "has gone a long way toward preserving its reputation of integrity and can weather any particular crisis."

In the second scenario, a militant group incensed at a bank's loan policies bribes cleaning employees to plant explosives in critical locations. The bank is called and told to cancel the offending loans or the explosives will be detonated.

The likelihood of such an event underlines the importance of a complete, tested evacuation program supervised by a crisis man-

agement team which already has authority to order evacuation, Mr. Civiletti said.

"From a risk management point of view, it is important to realize that the weakest link is what will be attacked," so screening and review of low-echelon employees is as important as comparable procedures for managers, he said.

When the bank's information systems are attacked by "those errant geniuses out there"—computer hackers—or hostile governments or besieged by natural disasters, another "nightmare" can become reality unless the bank has implemented a well-considered program of multiple storage facilities, he said.

Someone should be in charge of transferring operations to the alternate facilities and have standing authorization to do so, he stressed.

Yet another "nightmare" would be a drug cartel succeeding in planting tellers at a bank to launder money. Mr. Civiletti said that the basic preventive step against drug-related crimes is a policy on drugs consistent with the bank's overall management philosophy.

Very few organizations and institutions maintain a rigid "drug-free" policy that would entail pre- and post-employment drug testing, but there are variations of such a policy, he said.

Venable, Baetjer and other law firms have developed manuals of drug policy implementation, including rules of conduct and disciplinary measures that can be tailored to a specific institution's needs, he said.

"Just as significant as criminal attacks are internal risks," he emphasized. Negligence and ignorance on the part of bank employees can expose a bank to litigation based on violations of a wide variety of record-keeping requirements.

Violations of non-disclosure rules also can have dire consequences, he said.

"The biggest threat is not the outsider seeking information, but the insider selling out," giving information through erroneous judgment to those who seek it. The bank should emphasize to employees that the bank has "an absolute policy of confidentiality required by law," and that infractions will not be tolerated.

"But it's hard to create and develop incentives for compliance" with the confidentiality code, which are more successful than an emphasis on punitive measures, Mr. Civiletti said.

"You all have a tough mission," he concluded. ■

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D&O coverage

Continued from page 1

All D&O policies underwritten by National Union contain the insured vs. insured exclusions and most have the regulatory action exclusion, Mr. Greenberg said.

The bankers association was to file its response to the expected FDIC proposal today.

Talks with the FDIC have been "non-productive," said Brad G. Welling, an ABA lobbyist, at a session of the ABA's National Security and Risk Management Conference, held last month in Anaheim, Calif.

"The FDIC has an agenda and seems intent on pursuing it," Mr. Welling said.

"I absolutely see it happening," said a D&O expert, referring to the expected recommendations by the FDIC.

In mandating that the FDIC conduct a study of D&O coverage—in conjunction with the Treasury and Justice departments—Congress assured that the study would "not be even-handed," the D&O expert said. "That was akin to letting the fox into the chicken coop."

"It's not really a study—it's an opportunity for the FDIC to buttress their position," the D&O expert said.

Observers say banks in "tough economic areas" would have the

derwriting bank D&O, we've not made money in that business," said National Union's Mr. Greenberg. The exclusions are necessary "to control the risk we're underwriting and underwrite what we view as a reasonable risk."

In addition, "it must be borne in mind that regulatory exclusions arose because of the abuse of the policy form by regulators, who sought to reimburse themselves for losses resulting in some measurable part from faulty or inadequate regulation," pointed out Kevin McHugh, vp in the specialty operations department of Chicago-based CNA Financial Corp., a major underwriter of D&O policies for financial institutions.

"The government should not look to private industry to make it whole from the sins of its excesses," he said.

Outlawing the exclusions would exacerbate an already difficult situation for some banks, observers said.

"Even with the general softening of the insurance market, many financial institutions cannot obtain adequate D&O insurance at an affordable price in the commercial market. With the help of trade associations and consultants, banks and S&Ls have turned to captives to provide assurance of a continuous source of D&O protection," Wyatt's Mr. Wollner com-

"for a little extra in premium," Mr. Boucherle said. However, only five or six banks accepted the offer.

On the other hand, Progressive does not want to drop the insured vs. insured exclusions from its contracts, Mr. Boucherle pointed out.

In addition, banks would face additional premiums if the blanket bond provision that terminates the bonds when banks are taken over by the FDIC is outlawed, experts said.

The bankers association argues that this is a particularly troubling prospect because the FDIC is "empowered to actually require bond coverage and, in instances where the bank does not purchase the bond itself, to purchase coverage on behalf of the bank and charge the bank for premium costs incurred."

By prohibiting the termination provision, "regulators want to expand their source of funds to help ailing thrifts," said Michael F. Grace, risk manager at United Banks of Colorado Inc. in Denver. Mr. Grace presided over a session at the recent ABA risk management conference to solicit ideas for a response to the expected FDIC report.

"The FDIC wants the good guys to pay for the bad guys," one banker said.

Many experts also are concerned whether the federal government has any right to regulate what cannot be excluded from insurance policies.

"With minor exceptions, this is the first time a government body has tried to regulate the terms of a D&O contract," said the D&O expert. The situation is "without precedent."

ERMA says in its comments to the FDIC: "By nullifying the express terms of such contracts and imposing a completely unexpected liability in potentially disabling amounts, the government would occasion the evils that the Contract Clause of the United States Constitution... was intended to prevent through the Due Process Clause of the Fifth Amendment."

It's not "an insurer/insured issue. It involves the fundamental issue of a right to contract. The government is saying it can intervene in that," commented John W. Morrison, a D&O insurance expert with law firm Altheimer & Grey in Chicago.

"There is a major constitutional issue if a statute is enacted that retroactively changes private contracts," said Wyatt's Mr. Wollner, who believes such a statute would be contested in court.

In addition, if Congress prohibits the D&O exclusions and the blanket bond termination clause through federal law, that law "could be in conflict with the McCarran-Ferguson Act, which gives states the right to regulate insurance," Mr. Morrison said. That could lead to additional litigation, he said.

Adoption of the FDIC changes would "have a tremendous chilling effect on D&O for any industry," said a D&O expert.

"It goes far beyond D&O for financial institutions. For example, if the EPA decided it wanted to increase its recoveries, it could rewrite policies" and eliminate pollution coverage exclusions, Mr. Morrison said.

However, Arter & Hadden's Mr. Knepper noted that both exclusions in D&O policies "have been a source of litigation all over the country, and I think the trend in most instances has been to uphold the exclusions."

Mr. Knepper added, though, that "there have been decisions the other way that have knocked out the regulatory endorsement, particularly in actions where the FDIC has been involved."

Update

New York City sues Exxon

NEW YORK—New York City is seeking about \$10 million in damages from Exxon Corp. in a lawsuit that charges the oil company filed false maintenance reports for at least five years on leak detection equipment for the pipeline that spilled 567,000 gallons of heating oil into Arthur Kill Jan. 2.

The suit, which the city and Fire Commissioner Carlos M. Rivera filed in state Supreme Court in Staten Island, alleges the Houston-based oil company fraudulently reported from at least Jan. 1, 1984, through the third quarter of 1989 that inspections showed the pipeline's leak detection system was acting properly.

Exxon has admitted that its leak detection system was malfunctioning for 12 years and that a back-up system also was malfunctioning when the spill occurred (BI, Jan. 22).

But a company spokesman in Bayonne, N.J., contends the reports it filed said the leak prevention system—not the leak detection system—was operating properly.

The spokesman said the company is "extremely disappointed" with the suit because "Exxon is participating with 10 city, state and federal agencies, including New York City, in natural resource damage assessment negotiations."

The suit also seeks reimbursement for an unspecified amount of cleanup costs and asks the court to order Exxon to repair all damage to the estuary, which separates New York and New Jersey.

Meanwhile, the U.S. Environmental Protection Agency has given Exxon until Feb. 21 to provide more information on its operating and maintenance budget, the causes of the spill and who was operating the pipeline. Failure to meet EPA demands could cost the company daily fines of \$25,000, said an agency spokeswoman.

Stiffer safety violation penalties

WASHINGTON—Legislators in both houses are expected to introduce bills next week to increase penalties for felony violations of Occupational Safety and Health Administration regulations.

Companion bills by Sen. Howard Metzenbaum, D-Ohio, and Rep. Tom Lantos, D-Calif., would increase maximum sentences for willful or negligent violations resulting in wrongful death to 10 years for a first offense and 20 years for second and subsequent offenses.

Maximum jail sentences would be increased to seven years for violations resulting in severe bodily injury and to five years for violations resulting in reckless endangerment.

The bills also would increase maximum fines for all of these violations to \$250,000 but would not recommend minimum fines.

Currently, the maximum jail sentence for any criminal OSHA violation is six months and the maximum fine is \$10,000.

Passing the measures would "make business more aware that we take worksite safety very seriously," a spokeswoman for Rep. Lantos said.

Claims manager sentenced

TRENTON, N.J.—A former insurance company and claims adjusting firm employee was sentenced last week to 24 months in prison for defrauding both firms.

Ferdinand Cirillo Jr. also was ordered to pay the two companies a total of nearly \$400,000.

Mr. Cirillo pleaded guilty in December 1989 to submitting and approving five fraudulent personal injury claims totaling more than \$30,000 in early 1989 while a branch manager of the Mountaintop, N.J., office of Bremerton, Wash.-based claims adjuster Scott Wetzel Services Inc. (BI, Dec. 11, 1989).

Mr. Cirillo also pleaded guilty in July 1989 to defrauding Charlotte, N.C.-based Royal Insurance Co. of America of \$368,000 while a workers comp claims manager for Royal in Parsippany, N.J.

Pension fraud overstated: Ball

WASHINGTON—The Labor Department's Office of the Inspector General has greatly exaggerated the problem of pension plan fraud and abuse, says Assistant Secretary of Labor David Ball.

Mr. Ball told the U.S. Chamber of Commerce last week that pension fraud and abuse is in the millions, not billions, of dollars.

The inspector general frightened people by exaggerating the problem and "that was a disservice," Mr. Ball said, referring to comments made in the wake of a federal investigation of welfare plan abuse (BI, Jan. 29).

Railway uninsured for crash

FRANKFURT, West Germany—Deutsche Bundesbahn, the West German government-owned railway system, has no liability insurance to cover a crash earlier this month in Ruesselsheim, near Frankfurt, that killed 17 people and injured more than 70.

A spokesman for the railroad said liability claims stemming from the Feb. 2 accident will easily surpass 10 million deutsche marks (\$6 million).

The railway's preliminary investigation into the disaster—in which two commuter trains traveling in opposite directions collided—found that one of the trains had failed to stop for a red light signal. Damage estimates were unavailable.

Met unit protests rate freeze

LOS ANGELES—The California Insurance Department's 4-month-old freeze on private passenger auto insurance rates is unconstitutional, Metropolitan Property & Liability Insurance Co. charges in a suit filed in Los Angeles Superior Court Feb. 1.

The unit of Metropolitan Life Insurance Co. of New York contends that the freeze is "void and unenforceable because it violates due process," is "confiscatory" and is contrary to Proposition 103 as modified by the state Supreme Court in May 1989.

Metropolitan's suit puts the insurer's losses on such insurance in California at \$15 million since 1987. Its pre-freeze rates were 20% to 40% below those of leading competitors, the suit says.

'We disagree with the FDIC. Their approach will reduce the available market for D&O insurance and will hurt the ability of banks to attract qualified directors and officers,' says National Union's Jeffrey W. Greenberg.

most trouble obtaining D&O coverage if the regulatory action and the insured vs. insured exclusions are outlawed.

However, big banks, smaller community banks with solid track records and banks that obtain coverage from policyholder-owned facilities still would be able to find affordable D&O coverage if the FDIC changes are approved, observers say.

There are about 16,000 financial institutions in the United States, including 13,000 banks. A 1988 survey by the ABA found 72% of its 11,000 commercial bank members purchased D&O liability coverage.

Sources say nearly all D&O policies for financial institutions contain the insured vs. insured exclusion, while about half contain the regulatory action exclusion.

But FDIC recommendations to Congress probably "would involve a substantial amount of debate," said William E. Knepper, an attorney with Arter & Hadden in Columbus, Ohio, and an expert in D&O law.

Congress "could love it or hate it," he says.

"We're hoping that ultimately Congress will see this as creating too much of a problem," commented Stephen J. Sills, vp and chief underwriting officer of Simsbury, Conn.-based Executive Risk Management Associates, the D&O underwriting management subsidiary of Aetna Casualty & Surety Co.

D&O insurers adopted the regulatory action and insured vs. insured exclusions about five years ago after sustaining heavy losses from such claims.

"It's important to emphasize that insurers lost money" in the D&O market, said Kenneth S. Wollner, a consultant with The Wyatt Co. in Chicago.

Wyatt surveys have demonstrated those losses, Mr. Wollner said, and "an adjustment in pricing and other policy terms was inevitable."

"From the time we've been un-

mented.

"We disagree with the FDIC. Their approach will reduce the available market for D&O insurance and that it will hurt the ability of banks to attract qualified directors and officers," Mr. Greenberg said.

The expected FDIC recommendations would "drastically reduce capacity and make coverage substantially more expensive," agreed William Loschert, executive vp-underwriting at policyholder-owned facility A.C.E. Insurance Co. Ltd. in Hamilton, Bermuda, which writes D&O coverage.

Mr. Sills of ERMA said that "if we knew the exclusion wouldn't stand up, we either wouldn't write the business" or write it at a much higher price.

ERMA's D&O policies generally do not contain the regulatory action exclusion, because it writes coverage for banks with a history of good performance, he said. "The exclusion gets put on when there's a problem."

The regulatory action exclusion does not prevent the FDIC from making claims against a bank, it just eliminates the D&O policy as a source of funds for regulators, Mr. Sills said.

"We're not going to be their deep pockets," he said.

Like almost all insurers that write D&O coverage for financial institutions, the ERMA D&O policy contains an insured vs. insured exclusion.

"It disturbs us that the FDIC wants to go in and retroactively change the terms" of D&O contracts, said Charles C. Boucherle, assistant vp at Progressive Casualty Insurance Co. in Beachwood, Ohio.

Progressive will write \$9 million in D&O premiums for 500 banks in 1990, according to Mr. Boucherle. The company reinsures a portion of that business with the ABA's Hamilton, Bermuda-based captive, American Bankers Professional & Fidelity Insurance Co.

Progressive offered to remove the regulatory exclusion last year

Weather patterns

Continued from page 1

Earth is warming, "our results show that the frequency and magnitude of weather losses are changing unarguably," warned Graham Dimmock, non-marine manager for Swiss Reinsurance Co. (U.K.) Ltd. in London.

In fact, the seven warmest years in the Northern Hemisphere since accurate weather records began to be recorded all have been in the 1980s, he said in a lecture hosted by the Insurance Institute of London last week.

The "frequency and magnitude of weather-related catastrophes during the 1980s has been unparalleled," he added.

As a result, "We have to make a fundamental review of our strategies regarding tropical and temperate weather patterns," Mr. Dimmock said.

At least one British insurance company already has begun to factor an increase in the frequency of weather losses into its underwriting formula.

Huge weather-related losses will begin to occur yearly in the United Kingdom because of changes in the Earth's climate, predicted Andrew Dlugolecki, commercial insurance manager of General Accident Fire & Life Assurance Corp. P.L.C. of Perth, Scotland.

As a result, General Accident now is underwriting U.K. property policies "on the basis that there will be that frequency of severe effects from now on," he said.

Five years ago, General Accident reckoned on "a severe event every five years," Mr. Dlugolecki said in an interview. In 1985, General Accident revised this timetable to a severe loss every 2½ years, and "now we're allowing for something every year," he said.

In particular, the insurer is underwriting commercial and domestic property risks on the basis that there will be an increase in the frequency of windstorm and flood claims, Mr. Dlugolecki explained.

For example, during the last two years General Accident has introduced a compulsory retention of 250 pounds (\$425) for commercial property and business interruption policyholders against "wet perils," which include damage caused by flooding, he said.

Indeed, flooding is one of several risks that many insurers and reinsurers have identified as likely to increase if the earth's surface continues to warm.

"At the present rate... it is thought that the temperature will rise by between 1.5 degrees centigrade and 3 degrees centigrade by 2030" worldwide, Mr. Dlugolecki said at another IIL-sponsored lecture the day before the January windstorm struck.

"In the early 1980s, reinsurers lost their shirts with big freezes. In the late 1980s and early 1990s, we have had a plague of windstorms. What I fear for us in the future is coastal floods" as sea levels rise due to global warming, agreed Swiss Re's Mr. Dimmock.

According to Messrs. Dlugolecki and Dimmock, the sea levels are rising for at least two reasons: First, as the temperature of the sea rises, the water expands; second, melting of mountain glaciers and polar ice also increases the volume of the seas.

So far, the earth has warmed by an average of about 0.5 degrees centigrade since 1900, and ocean levels are rising by between 1 millimeter and 5 millimeter per year, said Mr. Dlugolecki.

Meanwhile, climatic changes and increased heat energy in the atmosphere will alter wind and ocean currents, causing changes in

'The frequency and magnitude of weather losses are changing unarguably,' warns Mr. Dimmock.

weather patterns in different regions, the underwriters agreed.

"Some areas may cool or become drier in the overall change to warmer, wetter conditions," explained Mr. Dlugolecki.

As a result, the greenhouse effect likely will increase the risk of flooding, tornadoes and other windstorms, Mr. Dlugolecki pointed out.

At the same time, "it is possible that droughts and freeze-ups will become less common in some areas and more common in others as wind circulation patterns alter," he added.

Munich Reinsurance Co., which has been tracking natural disasters worldwide for several years, also expects insured losses from weather-related disasters to increase, a spokesman for the West German reinsurer said. Munich Re underwriters and meteorologists debated the issue last week, he noted.

However, the increase will not be solely due to changes in storm frequencies, but because of rising populations and increased property values subject to weather damage, the spokesman said.

"It is to be hoped that the insurance and reinsurance industry will react to the higher probability of weather-related catastrophes," the spokesman said.

However, while the excess-of-loss reinsurance market "has reacted promptly" to the recent

weather losses by increasing rates and reducing capacity, competition in the proportional reinsurance market shows "no signs" of reaction, he noted.

Although reinsurers and insurers may struggle to raise rates in a competitive market, underwriters can take other actions now to help diminish the size of weather-related losses, said Mr. Dimmock.

For example, "we have to lobby for the building industry to improve standards of building to reduce the risk and lobby for more effective coastal barriers," he noted.

Mr. Dlugolecki stressed in an interview that British building regulations should be revised because they are designed to allow buildings to withstand a lower frequency of windstorms than is now occurring.

In addition, the insurance industry should help produce research into weather patterns and climate change, said Mr. Dimmock.

In London, Mr. Lynagh of Noble Denton is asking insurers to sponsor a detailed study of depressions and anticyclones affecting the North Atlantic and Northwest Europe weather patterns over the last 40 to 50 years.

He wrote to senior executives of up to 100 insurance companies seeking their participation in the project.

"This study would be carried out on behalf of the insurance industry and would be funded by those companies that choose to participate. The results of the study would be confidential to the participants," he said in his letter.

"Low-pressure areas with unusually deep centers appear to be occurring over the North Atlantic and Northwest Europe more frequently than they used to... To a lesser degree I also have a perception that very intense high pressure systems occur rather more often than in the past," he said.

Very high and very low pressures can lead to extremes in temperatures and weather conditions. For example, "three years ago we experienced the coldest day this century. Last year there was a prolonged drought," he noted.

"It may well be that there are definite real trends toward more frequent extremes of weather. If so, the implications for the insurance industry are very serious," said Mr. Lynagh, who lists many underwriters among his clients.

The study he proposes would entail detailed analysis and computer compilation of all low- and high-pressure centers in six-hour or three-hour intervals over a 40- to 50-year period.

The study likely would cost about 250,000 pounds (\$425,000) and take about 12 months, he estimated.

One of the surprises of the study was the junk bond exposures of some of the life segments of the major property/casualty insurance companies, Mr. Picoult says.

Junk bond portfolios

Continued from page 31

should be selling balance sheet strength first and reinsurance second.

Hence, a conservative premium-to-statutory surplus ratio is critical, and questionable assets should be minimized. Last, but not least, the integrity of an insurance company's reinsurance recoverables is of the utmost importance.

All of the above should be viewed within the context of an industry where a larger capital base is becoming necessary to be considered a viable competitor. Furthermore, the likelihood that new reinsurance entities will be created has been reduced markedly by

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Mr. Picoult

both the cash-flow impact of the 1986 tax law and rising minimum capital requirements.

For example, New York state recently increased the amount of surplus required to be licensed as a multiline reinsurer to \$35 million from \$3 million.

We recently reviewed the non-investment-grade holdings—including junk bonds—for the major property/casualty insurance and reinsurance companies. We looked at the size of each company's total bond portfolio, statutory surplus and the applicable percentage relationships (see chart, page 31).

A good rule of thumb is to assume that 10% to 15% of a company's junk bond holdings could be impaired. This figure can then be compared with the insurer's surplus to provide some idea of the importance of junk bond holdings.

The companies' junk bond holdings averaged 19.7% of statutory surplus as of Sept. 30.

It should be noted that the figure is greatly distorted by Ohio Casualty Co.'s 108.8% figure, AmBase Corp.'s 57.4% number and USF&G Corp.'s 23.5% total. The other insurers either had no junk bond exposure or a very small exposure.

One of the surprises of the study was the junk bond exposures of some of the life segments of the major property/casualty insurance companies.

The junk bond exposure for the two reinsurers that we reviewed also was quite low with junk bonds—actually "Fallen Angels"—representing 2.4% of General Re Corp.'s surplus and only 0.1% of NAC Re Corp.'s surplus.

High exposure to junk bonds relative to

1990 storm losses in Europe increase

By CAROLYN ALDRED

LONDON—Violent winds and heavy rainfall continued to lash Western Europe last week causing hundreds of millions of dollars in additional insured losses.

Combined claims from a January windstorm (BI, Jan. 29) and the more recent storms in Europe will exceed \$3.7 billion, some insurers predict. Others say total weather-related claims will be even larger.

"Personally, I would not be surprised if total windstorm claims in Europe this year exceed 3 billion pounds (\$5.1 billion)," said Barry West, head of the London Market division for Commercial Union Assurance Co. P.L.C.

Meanwhile, one analyst says insurers are underestimating the storm damages policyholders will claim.

"The total damage from Northern Europe since the start of the year will reach 5 billion pounds (\$8.5 million)," said Peter Constable, senior European insurance analyst with Robert Fleming Securities Ltd. in London.

A second storm that swept across northern France Feb. 3 could cost insurers about 4 billion French francs (\$708.7 million), according to the Assemblée Plénière des Sociétés D'Assurances Dommages, a property insurance association in Paris.

The storm hit France and West Germany, killing nearly 30 people and leaving hundreds of thousands without electricity. Paris was among the hardest hit cities.

Up to 500,000 claims could be filed in France as a result of the Feb. 3 storm, said Catherine Roques, an Assemblée Plénière claims evaluator.

Combined claims in France from that storm and the January windstorm likely will reach about 5.5 billion French francs (\$974.5 million), Ms. Roques said.

Storms continued to buffet the United Kingdom last week with gusts up to 90 mph. At least two people were killed last week and many buildings, weakened by the earlier storms, suffered more damage, insurers say.

Moreover, continuous torrential rain is compounding damages, noted a Lloyd's of London spokesman.

Several rivers in the United Kingdom burst their banks last week causing extensive flood damage in the Thames Valley to the west of London; parts of Southwestern England and Wales; and stretches near the River Severn in Western England and the River Ness in Inverness, Scotland; and other areas.

"Many areas of the country have had problems with flooding, which will cause substantial claims," said a spokeswoman for the Assn. of British Insurers who could not estimate the amount of damages.

However, Alan Lord, Lloyd's chief executive, pointed out that flooding generally causes less damage than windstorms do. "Carpets cost less than roofs," he said.

Although most insurers say it is too early to estimate the total British storm losses during the last few weeks, several agree that the amount now could exceed the 1.1 billion pounds (\$1.87 billion at current exchange rate) in U.K. claims from the October 1987 windstorm.

In West Germany, areas struck by the January storm included Schleswig Holstein, Hamburg, Lower Saxony, North Rhine Westphalia and part of Hesse. And, areas of Saarland, Hesse and northern Bavaria also were hit by the Feb. 3 storm.

Allianz A.G. estimates that damage from the two windstorms in West Germany will cost the insurer more than 100 million deutsche marks (\$60.2 million). Allianz has a 16% share of the property insurance market in the areas hit by the storms, said a spokesman.

Based on that figure, storm-related losses in West Germany could be as high as \$376.3 million.

Insurers from other European countries also are tallying massive losses from the storms.

For example, insurers estimate losses in Belgium, The Netherlands and Denmark will exceed \$460 million from the January storm alone (BI, Feb. 5).

Freelance reporters Isabelle Berglas in Paris and Miriam Widman in Frankfurt, West Germany, contributed to this article.

statutory surplus is not necessarily a death knell for an insurer or reinsurer. It should, however, encourage existing and prospective investors to take a closer look at a company's investment strategies and financial underpinnings.

Other factors also should be considered. For example, the rating of junk and non-investment-grade issues would shed some light on the quality of the portfolio, and the number of issues held could provide some insight into the average dollar size of holdings, which further limits the risk factor. Furthermore, in reviewing particular relationships with a company's management, some insights should be sought as to the type of liabilities being offset with junk bonds and whether any of the issues have equity kickers.

The Securities and Exchange Commission has sent a notice to insurance companies indicating that they should provide more insight into their junk bond holdings when reviewing operations in their 1989 annual reports.

It will be interesting to monitor the results of the request given investors' rising concerns about balance sheet quality.

Junk bonds require review

By MYRON M. PICOULT
Special to Business Insurance

WE HAVE STRESSED for some time that investors should look carefully at insurance company balance sheets, based on the belief that the financial integrity of the insurance industry's overall balance sheet has been compromised in recent years. This concern applies to all segments of the busi-

ness, including property/casualty, life and reinsurance companies.

The concern in the property/casualty sector relates to the ultimate impact of deficient reserves, exacerbated in recent years by increased retentions, the probable write-offs of reinsurance recoverables beginning this year with the filing of 1989 convention statements and the maintenance of other questionable asset valuations. This should all be

viewed within the context of an industry that is having trouble accreting statutory capital and that is unlikely to enjoy easy access to the capital markets for some time. The problem of increasing an insurer's statutory capital base is related to both poor profit trends and the impact of the Tax Reform Act of 1986.

In essence, property/casualty insurers

Continued on page 30

Insurance industry junk and non-investment grade bonds

Junk bonds account for widely varying proportions of insurers' policyholder surplus.

All figures in millions of dollars as of Sept. 30, 1988.

Company	Remarks	Junk bonds/ non-investment- grade bonds	Statutory surplus	Junk bonds as percentage of surplus
Property/casualty insurers				
AmBase Corp.	Rated BAA and below	\$508.0	\$884.3	57.4%
American International Group	Life data (domestic)	250.0	1,225.0 ¹	20.4
	P/C data (domestic)	60.0	3,164.9	1.9
Chubb Corp.	Consolidated data	0	1,500.0	0
Continental Corp.	Consolidated data	25.0	2,087.0	1.2
Fund America Corp.	Consolidated data	20.6 ¹	1,367.0	1.5
Ohio Casualty Corp.	Life data	168.8	35.1	480.9
	P/C data	642.7	590.5	108.8
SAFECO Corp.	Life data	425.0	133.5	319.2
	P/C data	22.1	1,025.3	2.2
St. Paul Cos.	Consolidated data	0	1,407.0	0
USF&G Corp.	Life data	564.7	248.2	227.5
	P/C data	322.8	1,416.8	23.5
Reinsurance companies				
General Re Corp. ²	Consolidated data	60.0 ¹	2,596.8	2.3
NAC Re Corp.	Consolidated data	0.3	184.3	0.1
Multiline insurers				
Aetna Life & Casualty Co.	Life data	1,025.0 ¹	1,575.0 ¹	65.1
	P/C data	438.0 ¹	2,382.9	18.4
CIGNA Corp.	Life data	750.0	2,094.0	35.8
	P/C data	Nil	2,065.0	0
Lincoln National Corp.	Life data	549.9	1,000.0	55.0
	P/C data	0.1	1,024.8	0
Travelers Corp.	Life data	135.0	1,363.0	9.9
	P/C data	165.0	2,057.4	8.0

¹ Estimate ² "Fallen Angels" as opposed to junk

Source: Oppenheimer & Co.

BI Insurance Index

640

620

600

580

560

540

12/22 12/29 1/5 1/12 1/19 1/26 2/2 2/9

Base = 100 on Dec. 29, 1978

Source: Nordby International Inc.

Insurance industry stocks shot up last week, as the *Business Insurance Index* rose 10.5 points to 569.9 on Feb. 9, from 559.4 on Feb. 2. Advancing issues were led by Nobel Insurance Ltd., up 23.1%; RLI Insurance Corp., up 12.5%; and NAC Re Corp., up 12.2%. Decliners followed NWNL Cos., down 7.9%; Statesman Group Inc., down 7.5%; and Tokio Marine & Fire Insurance Ltd., down 4.3%. The most active issue during the period was Sears, Roebuck & Co. (Allstate), 3 million shares traded. The *BI* Index gained 1.87 for the period; the Dow Jones 30 Industrials were up 1.8%; the New York Stock Exchange Composite was up 0.9%; and the Standard & Poor's 500 gained 0.8%.

British Issues

Feb. 8	Price	P/E	Div.	Yield	1 Week
Companies	pence		pence	%	High—Low
Comm Union	496	28.5	29.0	5.8	512—492
Genl Accident	1150	17.3	68.0	5.9	1173—1139
Gdn Royal Exch	242	20.2	15.3	6.3	252—236
Royal	508	29.9	34.0	6.7	525—236
Sun Alliance	312	11.5	17.0	5.4	317—309

Brokers	Price	P/E	Div.	Yield	1 Week
	pence		pence	%	High—Low
Bradstock	235	16.5	10.0	4.3	238—235
CE Heath	532	15.0	34.5	6.5	532—526
Hogg Robinson	173	12.1	9.7	5.5	173—172
Lloyd Thompson	273	18.2	9.3	3.4	273—273
PWS Holdings	65	10.2	3.3	5.1	66—65
Sedgwick Grp	286	21.2	16.0	5.6	290—285
Steel Brl Jones	286	17.9	15.3	5.4	286—285
Willis Faber	271	19.1	15.3	5.7	275—270

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists; Kitecat & Aitken Stockbrokers, London

BI Industry Stock Report

FEBRUARY 5, 1990 THROUGH FEBRUARY 9, 1990

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Which side are you on?

In every business relationship, people start out on the same side. Seems like only a matter of time before they end up on opposite ones.

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