

# Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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## Clinton endorses prohibition of managed care gag clauses

WASHINGTON—President Clinton wants Congress to pass legislation banning so-called "gag rules" in managed care plans.

Meanwhile, Sen. Edward Kennedy, D-Mass., and Rep. John Dingell, D-Mich., plan to unveil this week legislation designed to regulate managed care plans. Spokesmen for both lawmakers said details of the legislation would not be available until then.

The president urged Congress to pass the law as he announced he had ordered the Department of Health and Human Services

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## Reinsurers refute claim of corporate debt guarantees

By DOUGLAS McLEOD

ORLANDO, Fla.—Financial guarantees from a small Antigua insurance company may not be the most impressive form of financial security, but backing from some of the world's largest reinsurers helps.

Unless, of course, the reinsurance is an illusion.

That is the problem facing investors who bought \$5 million in promissory notes issued by a Florida real estate developer and guaranteed by Tangent Insurance Co. Ltd. of Antigua.

Documents for the offering of unregistered Sweetwater Development Corp. notes reported that Tangent's guarantees were reinsured by several internationally known reinsurers, including a London unit of Kemper Reinsurance Co. and Lloyd's of London underwriters.

The reinsurers, however, say they know nothing about any such coverage. Several have demanded that Sweetwater and Tangent stop using the reinsurers' names and have complained to insurance regulators in Florida and Delaware.

Sweetwater Vp Jeffrey L. Klein says the developer was only passing along reinsurance information provided by Tangent representatives.

A Tangent management official blames the insurer's agents for mistakenly providing incorrect information and says the agents have

been told to stop.

Other aspects of the note offering, though, might also have given investors pause, documents show.

Tangent's U.S. claims representative, for example, is a disbarred lawyer who served a jail term in the 1980s for embezzling client funds.

Officials of Tangent's management company also have been targets of previous regulatory action or have operated other insurance companies that failed, including the defunct Victoria Insurance Co. of Georgia and Regency Insurance Co. Ltd. of the Turks & Caicos Islands.

The Sweetwater offering also was not Tangent's first foray into financial guarantees: The insurer last year guaranteed millions of dollars of similar unregistered promissory notes sold by Legend Sports Inc., another Orlando-area company. Florida securities regulators have since charged that the Legend notes and a subsequent stock offering should have been registered and that Legend has defrauded investors in an illegal Ponzi scheme.

Legend Sports denies the charge and is suing Florida State Comptroller Robert F. Milligan to enjoin regulatory action.

Mr. Klein, who acted as a consultant and corporate agent for Legend Sports before joining Sweetwater, said state regulators have not challenged the legality of Sweetwater's note sales.

See Tangent on page 21

## Asbestos exposure case may increase liability risks

By MARK A. HOFMANN

WASHINGTON—Business groups fear a Supreme Court case involving a railroad pipe fitter exposed to pipe insulation dust could open the floodgates of liability for all sorts of exposures to toxic substances.

At issue in *Metro-North Commuter Railroad Co. vs. Michael Buckley* is whether the railroad has to pay for medical monitoring for Mr. Buckley, a so-called "snowman" who worked as a pipe fitter in Metro-North's Grand Central Terminal in the late 1980s, simply because he fears



he could contract an asbestos-related disease. Snowmen were so named because they would emerge from railroad tunnels at the end of the day covered in

white pipe insulation dust, according to Mr. Buckley's attorney.

Mr. Buckley, who admitted during lower court testimony that he was "mad," "scared," "upset" and "angry" at his employer for being exposed to asbestos, sued New York-based Metro-North under the Federal Employers Liability Act for \$1 million, claiming emotional distress.

Mr. Buckley first saw a doctor concerning the exposure in 1990. He has shown no symptoms of any disease associated with asbestos and did not consult any mental health professionals about his fears before filing suit in 1994, according to court papers.

The U.S. Supreme Court heard oral arguments in the case last week. A U.S. District Court ruled in favor of Metro-North in 1995, but the 2nd U.S. Circuit Court of Appeals in New York reversed the original ruling last year and ordered the case back to the lower court for a jury trial.

See Asbestos on page 22

## Ruling protects ex-employees from retaliation for bias claims

By JUDY GREENWALD

WASHINGTON—Employers' potential liability is expanded by a U.S. Supreme Court ruling last week that it is unlawful for companies to retaliate against former employees who have filed discrimination charges.

The decision, which centered on a case in which an employer allegedly wrote a retaliatory job reference for a former employee who had filed a discrimination claim against the company, is expected to generate relatively few claims and therefore not lead to higher premiums for employment practices liability coverage, insurers, attorneys and consultants say.

These experts say most large employers already minimize their potential risks by refraining from supplying anything other than basic information in job references.

The Supreme Court found in *Robinson vs. Shell*

*Oil Co.* that Section VII of the 1964 Civil Rights Act, which makes it unlawful to discriminate against any employee or applicant who has filed discrimination charges, extends to former employees as well, even though they are not explicitly cited in the section.

The case involved Charles T. Robinson Sr., an African-American whom Houston-based Shell Oil Co. dismissed as a sales representative in 1991.

Mr. Robinson filed a complaint with the Equal Employment Opportunity Commission, charging racial discrimination prompted his dismissal.

Subsequently, Shell provided a negative reference when Mr. Robinson applied for a job with the Metropolitan Life Insurance Co.

After that, he filed a second complaint with the EEOC, charging Shell had violated the civil rights law's anti-retaliatory provision.

Mr. Robinson then sued Shell in federal court in

See Retaliate on page 22

### Controversial debt offering

Purported reinsurance of promissory note issue claimed by Sweetwater Development Corp.

Sweetwater Development Corp.

Tangent Insurance Co. Ltd.

Sept. 5, 1996, offering

GIO (U.K.) Ltd.  
Kemper Reinsurance Ltd.  
Le Rocher Reinsurance Co.  
(now Everest Reinsurance Ltd.)  
QBE International Ins. Ltd.

Oct. 29, 1996, supplement

Aetna Re-Insurance (U.K.) Ltd.  
AXA Re  
EXKO Excess  
Lloyd's of London underwriters  
Skandia International Ins. Corp.

Source: Sweetwater offering documents

GRAPHIC BY TONY BUCCINI

## Druggists still seeking discounts as settlement goes to appeal

By ROBERT KAZEL

A huge court settlement last summer that appeared to give retail pharmacists the chance to compete for employers' prescription dollars is stalled, but many druggists still are preparing to vie against pharmacy benefit managers and HMOs for drug contracts.

Some pharmacists felt vindicated last June when 11 large drug manufacturers agreed to pay about 32,000 pharmacies \$351 million in connection with alleged past anti-trust, price-fixing behavior (*BI*, June 17, 1996; May 13, 1996). U.S. District Court Judge Charles P. Kocoras in Chicago gave final approval June 21 to the settlement, which basically mirrored recommen-

dations he made after rejecting an earlier proposal.

After the lengthy district court hearing, the manufacturers also consented to afford the pharmacists equal opportunity to compete for drug discounts that purchasers that use formularies to move drug market share—PBMs, health maintenance organizations, hospitals and nursing homes—commonly receive. At the time, some on the pharmacists' side had said changes in the U.S. drug market could happen in as little as three months as retailers finally entered the scene.

That turned out to be wishful, however, as legal complications have

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Photo: Image Bank

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**Updates**

**Clinton wants to end 'gag rules'**

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to send letters to state Medicaid directors warning them it was illegal for Medicaid HMOs to invoke gag rules, which forbid HMO physicians from telling patients about treatments the plan does not cover.

President Clinton endorsed H.R. 586, sponsored by Reps. Greg Ganske, R-Iowa, and Edward Markey, D-Mass., which would prohibit any managed care plan from imposing a gag rule.

Rep. Ganske, himself a physician, sponsored similar legislation last year. The bill won the approval of the House Commerce Committee, but it never came to a vote by the full House.

Although the details of the Kennedy-Dingell measure are not known, it is not the first time lawmakers have attempted to impose federal regulation on managed care plans. For example, Congress passed legislation curbing some managed care practices, such as "drive through" maternity stays last year, by requiring plans to pay for at least 48 hours of hospital care following a normal birth and 96 hours following Caesarean section births. Legislation mandating that insurers cover inpatient care for mastectomies also has been introduced.

**New policy on workplace safety**

WASHINGTON—The Clinton administration is expected to issue new rules restricting the ability of companies that violate workplace safety rules to enter into federal contracts.

Vice President Albert Gore Jr. unveiled the new policy last week during the AFL-CIO's winter meeting in Los Angeles. Details of the policy will be in regulations expected to be issued in the next few weeks. Companies, unions and other interested parties will have 60 days to comment before the regulations become effective.

"We're going to send a message to companies that want to do business with the federal government: How you treat employees and how you treat unions counts with us. If you want to do business with the federal government, you'd better maintain a safe workplace and respect civil, human and union rights," said Mr. Gore.

While labor cheered the proposals, business groups criticized the proposed restrictions.

"The union-friendly proposals are a cheap political payoff to the AFL-CIO for the \$35 million in union dues they spent attacking congressional Republicans in the last elections," said Jeffrey H. Joseph, vp-domestic policy for the U.S. Chamber of Commerce in Washington. "This is a crystal-clear case of changing policy to reward" past political support, he said.

**Lloyd's wins ruling on R&R dues**

LONDON—Lloyd's of London has claimed another victory against its dissenting members after a court decision last week that allows the market to force those names to pay their dues.

In a High Court test case involving two members who refused to sign up for Lloyd's reconstruction and renewal plan, Justice Colman ruled that "the defendants have failed to establish that any of the grounds which have been argued before me represent arguable defenses or, if these actions were permitted to go to trial, would have any realistic prospect of success."

Dennis Leighs and David Wilkinson had argued that because they had not signed up, they were not liable to pay the reinsurance premium to close their Lloyd's liabilities into Equitas Ltd., the runoff reinsurer of all Lloyd's pre-1993 liabilities. About 1,300 members rejected Lloyd's R&R proposals.

In addition, Messrs. Leighs and Wilkinson argued that Lloyd's had acted fraudulently by concealing information about the scale of losses while encouraging members to underwrite in the market. This issue will be judged separately in a High Court hearing next month.

London-based lawyer Michael Freeman, who represented the two members, said the judge had made his decision based on the "pay now, sue later" principle. "He has said that even if (Lloyd's) is fraudulent, (members) must pay their premiums now and claim them back later," Mr. Freeman said. The members have until March 10 to produce evidence supporting their fraud allegations.

But Philip Holden, head of Lloyd's financial recovery department, called the decision a victory and warned members, "Our pursuit (of outstanding debts) will be vigorous and, by virtue of this judgment, will be effective."

**Most of tobacco suit dismissed**

CHARLESTON, W.Va.—West Virginia will appeal the dismissal of most of its suit against the tobacco industry.

The decision handed down earlier this month dismissed 11 counts of the complaint the state filed in 1994. West Virginia's suit seeks reimbursement for health care costs incurred by the state's employees medical plan and Medicare to treat smoking-related illness.

The two remaining counts are for breach of West Virginia's consumer protection and antitrust laws. A motion to dismiss these counts is pending.

In a six-page decision, state Circuit Court Judge Irene Berger said the two state agencies bringing the suit, West Virginia's Public Employees Insurance Agency and the Department of Health and Human Resources, lacked the statutory authority to maintain the action.

Because the ruling is based on a reading of specific language in West Virginia's laws, and not on the merits of the case, it should not hurt tobacco litigation filed in other states, according to

*See Updates on page 22*

**Law makes job bias criminal**

By MICHAEL PRINCE

CLEVELAND—The city of Cleveland has made employment discrimination a criminal act, and lawyers say the ordinance could be an unnecessary source of headaches and higher legal costs for employers.

The ordinance makes it a misdemeanor to fire, decline to hire or demote someone because of "race, religion, color, sex, sexual orientation, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status." Violators can be prosecuted with a minimum penalty of a \$1,000 fine or three months in jail.

The measure, which became effective in December, is designed to prevent discrimination by making people pay for their actions, said Councilman William Patmon, the law's author.

"I believe there should be individual responsibility for your actions," he said. "A person who commits the act becomes responsible for their actions," instead of the corporation. Without the criminal penalty, the Democratic councilman added, only the company faces penalties, and individuals are not deterred from discriminating.

Lawyers that represent employers criticized the ordinance.

"I don't know why anybody wants to criminalize business activity," said James Rydzal, an employment law attorney with Jones, Day, Reavis & Pogue in Cleveland.

Attorneys said existing federal, state and local laws that outlaw discrimination already deter companies and individuals from discriminating.

"I don't think it will significantly deter discrimination," said John B. Lewis, head of the employment and labor practice group for the law firm of Arter & Hadden in Cleveland. "It will be one more thing companies have to

*See Cleveland on page 11*

**Sedgwick seeks profitable partner**

By EDWIN UNSWORTH and SARAH GODDARD

LONDON—Sedgwick Group P.L.C. still is looking for a merger partner, if the partner can meet the broker's goals of expansion into emerging markets and increasing consulting revenues.

But Willis Corroon Group P.L.C., which some analysts consider a suitable match for Sedgwick, continues to dismiss a megamerger for itself.

Saying that a "second round" of consolidation was about to begin in the international brokerage sector after the merger activity of the past few months, Sedgwick

Chief Executive Sax Riley added, "We still believe in consolidation, but it has to meet our strategy."

This strategy involves equalizing the group's revenues between insurance brokering and consulting. Five years ago, the split was 82% brokering and 18% consulting, while at the end of 1996 it was 62% and 38%, respectively.

The other main element of the strategy is to diversify revenues geographically, particularly on non-U.S. and non-U.K. business. Last year, 40% of Sedgwick's revenues came from the United States, 34% from the United Kingdom and 26% from the rest of the world. Sedgwick aims to

derive revenues equally from these three categories.

For Sedgwick to consider a merger, "the culture has to fit," Mr. Riley said. To align with another company, "they have to be able to grow, increase their dividend and bring shareholder value."

Sedgwick continues to look for consolidation opportunities, he said.

Mr. Riley was speaking as the group unveiled a 5% rise in pretax profits for 1996 to £95.5 million (\$163.5 million). Gross revenues rose 3% to £960.3 million (\$1.51 billion) after improved results

*See Sedgwick on page 11*

**Pension bill introduced**

WASHINGTON—Employers would be barred as of 2004 from integrating or reducing retirees' pensions by the Social Security benefits they receive, according to legislation introduced this month by Sen. Carol Moseley-Braun and other Democratic senators.

Eliminating integration, which employers say they now use so lower-wage employees' combined Social Security and pension benefits do not exceed their pre-retirement income, is necessary to preserve the size of pension benefits, said Sen. Moseley-Braun, D-Ill.

Another provision would amend certain Internal Revenue Service pension non-discrimination tests that affect employers that operate separate lines of business. Under those tests, the percentage of non-highly compensated employees covered by a pension plan in a division has to be at least 70% of the percentage of the division's highly compensated employees covered by the plan. Sen. Moseley-Braun's measure, though, would require all employees within a division to be covered by a pension plan. ■

**Deadline set to avoid higher surcharges**

ALBANY, N.Y.—Employers nationwide have another chance to avoid higher surcharges on hospital tabs and other medical bills in New York.

Those that missed a Dec. 2, 1996, deadline to file an application agreeing to pay New York surcharges on hospital and other medical bills directly to a state health care pool administrator now have until March 3 to make that election.

More than 25,000 employers and other health care plan payers sent in the needed paperwork by the Dec. 2 deadline, in which they agreed to pay the surcharges directly to Blue Cross & Blue Shield of Central New York. These surcharges, set under a 1996 New York law, are used to help offset the cost of graduate medical education as well as indigent care provided by hospitals in the state.

The basic surcharge is 8.18%; employers with employees living in New York are liable for an ad-

ditional assessment ranging from \$4.69 per employee to \$385.29 per employee (BI, Nov. 25, 1996).

But an unknown number of employers missed the first deadline. Since Jan. 1, they have been liable for surcharges that can be as much as 57.27% of hospital and laboratory bills their employees incur in New York.

Employers that missed the Dec. 2 deadline and want to qualify for the lower surcharge rates have until March 3 to file the necessary application agreeing to pay the lower surcharges directly to the pool administrator. That election, though, only would apply to medical bills on or after April 1. The higher surcharges would apply to health care services delivered from Jan. 1 through March 31.

Applications are available through the BC/BS of Central New York; e-mail requests to bluebs9@vcomm.net or fax requests to 315-448-6786.

—By Jerry Geisel

**Inside**

• The Clinton administration should rethink any proposals reminiscent of the repealed Medicare Data Bank law, this week's editorial says. **PAGE 8**

• Poland is making adjustments to prepare for an open market. **PAGE 17**

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# Child care tax breaks proposed

By MEG FLETCHER

WASHINGTON—A surge of legislative proposals would offer employers tax cuts for helping their workers obtain good child care services.

The U.S. Senate and three state legislatures are considering bills offering employers tax credit incentives to establish child care facilities or to provide related services, such as referrals.

"Unequivocally, this country needs more and better child care," said Marguerite W. Sallee, president and chief executive officer of CorporateFamily Solutions in Nashville. "Higher quality care is employer-sponsored care."

However, federal and state lawmakers must weigh the merits of the fami-

ly-friendly proposals against the value of tax revenue lost through such credits. And the bill must compete against other tax-relief proposals, a consultant noted.

In Congress, Sen. Herbert Kohl, D-Wis., re-introduced his bill last month after an initial introduction in September.

S. 82, "The Child Care Infrastructure Act," would amend the Internal Revenue Code to provide a financial incentive to private businesses that:

- Acquire, expand or repair an onsite or near-site day care center, after-hours care facility or sick-child facility.
- Subsidize the operating costs of a child care facility.
- Fund an employer's contract with a child care resource and referral service.
- Reserve child care slots in a licensed

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## Additional pension simplification

APPWP suggests further reforms

By JERRY GEISEL

WASHINGTON—A benefits lobbying group is beginning a new effort to persuade Congress to further simplify pension laws and regulations.

Last week, the Washington-based Assn. of Private Pension & Welfare Plans unveiled a 26-page proposal detailing changes it thinks should be made to the nation's employer-sponsored pension plan system.

Those changes would be in addition to a pension simplification package the APPWP first advanced in 1989 and that Congress enacted last year.

"Last year's measure was only a first installment. There truly is a long way to truly simplify the retirement system and to encourage its expansion," said APPWP President James Klein.

Mr. Klein thinks there is a good chance Congress will enact at least some of the group's recommendations. "Pension simplification is one of a few areas that enjoy bipartisan support in an otherwise partisan environment," he said.

APPWP's recommendations include:  
See Pension on page 21

# Controversy won't halt benefit

Report questions need for some mammograms, but cover will remain

By DEBORAH SHALOWITZ COWANS

Although controversy has erupted again over whether women should begin to have routine mammograms at age 40, most employers that provide this benefit likely will continue to offer coverage beginning at that age.

Employers and benefit consultants agree that the financial and medical advantages of conducting mammograms on women in their 40s to screen for breast cancer far outweigh the costs of the procedure.

However, quantifying the money saved through health screenings remains difficult, experts agree.

State laws require group health insurers in

most states to cover screening mammograms, often beginning at age 40. Self-insured employers are exempt from state benefit mandates.

Federal legislation that was introduced earlier this month in the House would require all group health plans and health insurers that provide coverage for diagnostic mammography to cover annual mammograms for women ages 40 and older. The bill, H.R. 617, was introduced by Rep. Jerrold Nadler, D-N.Y.

Under the federal legislation, self-insured employers, group health insurers and public health care plans such as Medicare and Medicaid would not be able to impose deductibles, copayments or other cost-sharing measures for mammography screening that

exceed those assessed for diagnostic mammography.

The current controversy over when a woman should begin receiving screening mammograms stems from a draft report that was issued late last month by a panel of experts on breast cancer and mammography.

The panel of independent experts, many of whom are academics, was convened by the National Cancer Institute and the National Institutes of Health but does not represent the views of the federal government.

According to the report, "the available data do not warrant a single recommendation for mammography for all women in their forties." The report also states that "each woman should decide for herself

See Tests on page 10

## Employers with onsite screening finding programs successful

By DEBORAH SHALOWITZ COWANS

Some employers believe in screening mammography so strongly they have instituted onsite programs to facilitate participation.

According to a survey conducted last year by Hewitt Associates L.L.C., 36% of 935 large employers that had some type of health prevention, promotion or early intervention initiative offered onsite mammography screenings.

"There's a consistent level of interest" in onsite mammography, said Camille Haltom, a consultant with Hewitt Associates. "It's a wonderful convenience benefit."

Onsite screening is "a terrific idea—it's clearly the way to go," commented Jerry Lanoux, a principal in the Boston office of Buck Consultants Inc. "It really heightens employees' awareness."

Robert L. Bonin, manager of benefits administration for First Chicago NBD Corp. in Chicago, said that the bank's onsite mammography screening initiative "has been a phenomenally successful program.

"It's been perceived (by employees) as the bank doing something for me," he added.

"By making the service convenient to people, we've made it easier to get the care, and more people get it," he said.

First Chicago has conducted onsite mammography screenings since 1991; since then some 5,000 mammograms have been done for the company's employees, dependents and retirees covered under the health plan, according to Mr. Bonin.

The bank, which has spent approximately \$100,000 annually on the program, offered free mammograms for women covered by any First Chicago health plan. The First Chicago plan also covers routine mammograms taken elsewhere.

First Chicago for the past five years has brought in mobile mammography units to most large locations at least once a year,

Mr. Bonin said.

But, the program is on hold for now because the radiology group that First Chicago had contracted with in Chicago no longer performs mobile mammography, according to Mr. Bonin. The bank is considering how to continue the onsite mammography program as well as

See Onsite on page 10

### Workplace screening

First Chicago NBD Corp. tracks the costs and benefits of the onsite mammography program it launched in 1991.

Annual cost: \$100,000

600-700 routine mammograms performed annually

Average of one cancer detection per 500 mammograms

Treatment cost of cancer detected through workplace screening: \$18,500, 34 disability days

Treatment cost of cancer detected outside workplace program: \$35,000, 75 disability days

Source: First Chicago NBD Corp.

GRAPHIC BY ADAM DOI

## MTA steps up safety inspections as criticism of subway continues

By JOANNE WOJCIK

LOS ANGELES—The Los Angeles subway project will conduct a wall-to-wall



AP/WIDE WORLD PHOTOS

The death of a construction worker has prompted a full safety review of the subway.

safety inspection after the Feb. 15 death of a construction worker.

Meanwhile, liability insurers for the Metropolitan Transportation Authority have agreed to pay \$12.3 million to three men injured in a July 1994 subway tunnel explosion, settling a lawsuit that had gone to trial earlier this month.

The subway project's safety record is once again under fire, with critics accusing subway contractors of underreporting workplace injuries to state and federal authorities.

The latest developments come less than two weeks after former MTA Risk Manager Abdoul Sesay was sentenced to 14 months in federal prison for accepting more than \$140,000 in bribes.

MTA Chairman Larry Zarian ordered the subway tunnel inspection after Jaime Pasilas, 52, died when one of two chains holding a half-ton refuse bin broke, sending it crashing onto his head.

A four-man team of inspectors, led by MTA Construction Safety Director Dan Jackson, "will walk every inch" of the tunnel segment being dug just east of the intersection of Hollywood and Vine, according to Mr. Zarian.

"Every piece of equipment, including chains, will be checked," he said at a news conference last week.

"MTA safety inspectors also will meet with the contractors to review how the equipment is maintained as well as conduct a thorough review of all onsite safety policies, procedures and programs," Mr. Jackson said.

MTA officials also are cooperating with the California Occupational Safety and Health Administration, the Los Angeles County District Attorney's Office and other authorities investigating the fatal accident, Mr. Zarian said.

The accident occurred less than a week after attorneys representing the MTA settled a lawsuit filed by three construction workers injured in a July 1994 tunnel explosion.

The MTA carries a \$500,000 deductible. Beyond that, the first \$2.5 million of the \$12.3 million settlement will be paid by Argonaut Insurance Co., an MTA spokesman said.

Argonaut served as the primary liability insurer on the project until last year, when American International Group Inc. took over (BI, July 8, 1996).

The remaining portion of the settlement will come from excess coverage underwritten by syndicates at Lloyd's of London, the MTA spokesman said.

Although the employees received workers

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# Drugs

Continued from page 1

landed the case before the 7th U.S. Circuit Court of Appeals in Chicago. There it has languished, attorneys for the pharmacists complain.

"The case has sat and sat and sat," said David Melnick, a lead attorney in the pharmacists' class-action suit. "We're the proverbial ship dead in the water."

Since it was appealed, the appeals court has not scheduled briefings or oral arguments, and a silence has settled over the whole case, Mr. Melnick said. In the meantime, the drug-gists' newly won ability to compete for rebates from manufacturers hovers in limbo, and the cash settlement still is in a bank, undisbursed to the approximately 35,000 pharmacies in the class, he said.

The settlement was frozen solid due to complex legal appeals that

came from pharmacists and manufacturers. The lack of action at the appeals level so far apparently has created an impasse between manufacturers and retail pharmacists.

"The manufacturers at this point may be as troubled as to what direction to go in as not," Mr. Melnick said.

The leading lobbying group for independent druggists, the Washington-based National Community Pharmacist Assn. (formerly the National Assn. of Retail Druggists) also has become impatient over the case, said John Rector, general counsel and senior vp of governmental affairs.

"A lot of folks are eager to go ahead and get a decision one way or another," Mr. Rector said. "It's certainly very frustrating to the typical pharmacist who is running the pharmacy."

Although the settlement is in a logjam, a group of pharmacists is or-

ganizing a recruiting effort to band pharmacists together in preparation to compete for drug manufacturers' discounts.

The Fort Worth, Texas-based Pharmacy Freedom Fund, which led

**'In this business, volume and national scope are extreme advantages,' says John Voris of PCS Health Systems.**

the initial charge to sue drug companies three years ago, recently set up a subgroup, the Coalition of American Pharmacies. CAP is a non-profit corporation open to any pharmacy, said Bob Gude, president of the Pharmacy Freedom Fund and interim president of CAP.

Mr. Gude, a retired Fort Worth pharmacist, is attempting to sign up pharmacies independently or through affiliated pharmacy networks and wholesale buying groups and already has recruited about half the buying groups in the nation to affiliate with CAP, he said.

"With this, we'll be able to pool all our negotiating power together," he said. Mr. Gude said that next month he plans to mail out 28,000 invitations to both small independent and chain drugstores to join CAP.

In Mr. Gude's view, CAP will empower any drugstore to compete for a buyer's prescription drug business by giving them two things every PBM or HMO has: a drug formulary and detailed market information on drug sales.

CAP will develop its own drug formulary, supported by a pharmacy and therapeutics committee. Pharmacies then can attempt to get rebates from drug manufacturers for

drugs listed on the CAP formulary.

In addition, the group plans to advise pharmacists how to modify their store computer software to keep track of market share and transmit the data to CAP's computer regularly. The information would be critical in negotiating rebates from drug manufacturers. Last year, Judge Kocoras, who presided over the pharmacists' hearing, ruled that pharmacies are entitled to the discounts for-profit managed care vendors get so long as the pharmacies can affect market share similarly.

According to literature the CAP is mailing the pharmacists, pharmacies can expect to start earning rebates six months after the end of the settlement.

But obstacles may stand in the way of the independent pharmacists' David defeat of the PBM Goliaths. A chief problem for the independents is that the size of leading PBMs gives employers wide access to a large array of retail locations, said Larry Boress, vp of the Chicago-based Midwest Business Group on Health.

"Any group of retail pharmacists is going to have to create a very large network, depending on the size of the community they live in," he said. A national employer wants a national PBM with extensive coverage in all regions, he said.

"The last thing an employer wants is to have to deal with more fragmentation in their health benefits," he said.

An executive of the nation's leading PBM agreed.

"In this business, volume and national scope are extreme advantages," said John Voris, vp of strategic alliances for Scottsdale, Ariz.-based PCS Health Systems. "They (the employer) want to deal with one vendor."

As for the pharmacists' agenda, Mr. Voris said, "We don't really see it as a significant threat," and he said PCS has not noticed any interest among employers in hiring pharmacists to replace PBMs. PCS has 56 million members and processes nearly a million claims a day.

Employers also are looking to PBMs to fill an emerging role as a data manager, Mr. Boress said. A good disease management program can research what types of drugs employees are using and why, he said, while a coalition of pharmacy buying groups—being quite new to the game—might be unable to move beyond drug market data.

But it may be the PBMs' size that gives them the decisive advantage over any newcomer to the market, no matter how well-intentioned, according to John Fortin, principal with A. Foster Higgins & Co. Inc. in Atlanta.

"These days, bigger is bigger and biggest is best," he said. "People who aren't aligning themselves with the big players are going to find themselves disadvantaged strategically. If there is still a mom-and-pop pharmacy out there, they're really trying to defy gravity."

Some druggists are willing to try to walk on walls. "I'll compete with anyone as long as the playing field is even," said Tony Welder, a pharmacist who owns three drug stores in the Bismarck, N.D., area. A pharmacist for 36 years, he is now secretary-treasurer of the National Community Pharmacist Assn. and dislikes mail-order PBM programs the most.

"I've seen a lot of pharmacists that are good, good-thinking, hard-working professionals (lose business)," he said. "I've seen some pharmacists work for 30 or 40 years and because of these programs in mail order, they can't sell their pharmacy."

Can those same pharmacists take on the PBMs?

"No doubt about it," Mr. Welder said. **B**

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RISK MANAGEMENT SERVICES

# WOOOONTEE

## Opinions

## Fix Medicare billing up front

IS THE INFAMOUS Medicare Data Bank, which Congress last year finally put out of its misery, coming back?

In all honesty, we can't tell for sure, but there are some worrisome signs.

As we reported earlier this month, budget documents the Clinton administration released say legislation is being drafted that would require a "beneficiary's other insurance plan to tell Medicare when that beneficiary is covered."

When we called the Health Care Financing Administration for clarification, we received conflicting reports.

One HCFA staffer said insurers and plan administrators—though not employers—would be required to provide the agency with enrollment information on all employees and dependents enrolled in their group health care plans.

A second HCFA staffer said coverage information, such as names and dates of birth, would be sought only for employees and dependents eligible for Medicare, chiefly those at least 65 years old.

Yet another HCFA staffer, while not offering any details, said any new health care plan coverage or enrollment requirement would not impose any significant new administrative burdens on employers or insurers.

It isn't surprising, we suppose, that conflicting information can emerge from government officials when a proposal is being drafted. It is possible, for example, that the officials interviewed had different versions of the proposals.

But what is disturbing is that the administration is considering imposing new health care coverage enrollment requirements on insurers and plan administrators, if not on employers.

Before proposing such a new requirement, administration officials should look at the brief history of the proposal's predecessor, the Medicare Data Bank, and why the Data Bank ultimately was repealed.

The Data Bank originally was tucked into a 1993 budget law. It was supposed to save Medicare billions of dollars. Unfortunately, the way it was put together, we doubt if it would have saved the government anything.

Under the Data Bank, employers were required to file with HCFA health care coverage information for all their employees and dependents.

The idea was that having access to this information would enable government regulators to spot certain situations when a group plan should be the primary payer of hospital and physician bills, rather than Medicare—for instance, when employees are still working after turning 65.

The only problem with this requirement is that it would have flooded the government with health care coverage enrollment information for the roughly 160 million people in group plans. There is no way—not even with the fastest computers—that so much information could have been used for its intended purpose of reducing incorrect Medi-



care payments.

Employers got that message home, and Congress, after years of delaying the implementation of the Data Bank, repealed it last year.

As to the new proposals—take your pick as to which one the administration will advance—they also are flawed, just like the Data Bank was.

If a reporting requirement covering all employees and dependents is imposed, this time on insurers and plan administrators rather than employers, the government still will end up with tens of millions of useless forms.

Even if the reporting requirement is limited to those employees and dependents eligible for Medicare, we still see problems.

No doubt insurers or plan administrators know when employees turn 65 and are eligible for Medicare. But what would happen if an older worker changed jobs during the year? Would each plan administrator have to file a report? What would happen in a situation where a worker retired at 65 and then changed his mind and returned to work? Would a report also be required? No doubt reporting problems would develop in many other situations.

Certainly, the more sensible approach is vigorous government enforcement of rules that require hospitals to verify group health insurance coverage of a patient, particularly someone over 65, before billing Medicare.

Billing the right parties at the start seems a lot more logical than collecting a mass of forms, many of them useless and all of them expensive to prepare and analyze.

We hope the Clinton administration rethinks this proposal.

## Letters

## Customers not responsible for product's flaws

To the editor: Once again we see Chris Campos of Campos & Stratis broadcasting his plea that he and his insurance company colleagues don't have to pay all business interruption claims.

Mr. Campos' letter to the editor in your Jan. 27 issue states there is "needless confusion among insureds and others regarding business interruption insurance."

In simpler terms, business interruption insurance is a defective product. If an auto-

mobile manufacturer sold an automobile that did not work, that product would be withdrawn from the market. Business interruption insurance, as Mr. Campos illustrates, does not work. He blames the customer instead of the manufacturer of the insurance product.

Worst of all, Mr. Campos states, "The industry—and that includes not just insurers but brokers, agents, risk managers, consultants and insureds"—needs to take action.

Policyholders are not part of the insurance industry. Policyholders buy products from the insurance industry. It is sad but true that the insurance industry has managed to convince so many risk managers that they are part of "the industry." This is a terrible misperception of the role of a risk manager.

Eugene R. Anderson  
Anderson Kill & Olick P.C.  
New York

## Letters to the editor

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# Tests

Continued from page 3  
whether to undergo mammography."

However, "for women in their 40s who choose to have mammography performed, costs of the mammograms should be reimbursed by third-party payers or covered by health maintenance organizations."

The report said that though "the potential benefits of mammography for women in their 40s include earlier diagnosis and breast-conserving therapy... these benefits must be weighed against the risks or potential risks, including discomfort and inconvenience as well as potential risk from mammographic radiation. In addition, the impact of false reassurance given to women with false-negative screens must be considered, given the lower sensitivity of mammog-

raphy in women in their 40s compared with women in their 50s."

Most breast cancer organizations and many breast cancer experts disagree with the panel's conclusions.

The New York-based American Cancer Society said the panel's conclusions "did not go far enough in support of mammography" for women age 40 and older. "In addition, the report places undue emphasis on issues such as radiation risk, anxiety caused by false positive findings and the fact that mammography will not detect 100% of cancers," according to an ACS statement.

Even Dr. Richard D. Klausner, director of the NCI, testified before Congress recently that "the draft report of the panel overly minimizes the benefits and overly emphasizes the risks" of mammography for women in their 40s.

The ACS recommends that women begin at age 40 a regular

program of mammography screening, including mammograms every one to two years until age 50. Annual mammograms are recommended thereafter.

The National Alliance of Breast Cancer Organizations has supported the ACS' recommendations

continue to cover them" for women ages 40 to 49, she predicted.

Self-insured employers, though they are not required to, typically follow state benefit mandates, most of which adhere to the ACS guidelines, Ms. Calder added.

Most employers that cover mam-

years of its mammography screening program, breast cancers detected through the program cost an average of \$18,500 to treat and employees took an average of 34 disability days. Breast cancers detected outside the bank's screening programs cost an average of \$35,000 to treat and involved about 75 disability days.

Stamford, Conn.-based Champion International Corp. covers mammography screening based on guidelines issued by the U.S. Preventive Services Task Force.

These guidelines suggest a baseline mammogram one time for women age 35 to 39, if recommended by a physician; screening mammograms once every two years, beginning at age 40; and annual mammograms for women age 50 and older, according to Howard Kraft, manager of corporate health services for the forest products company.

"I do not think we will change our guidelines based on the information now presented," Mr. Kraft stated. "We feel that our recommendation is one that makes sense economically and from a health and productivity perspective."

Mr. Kraft did not have information on how much Champion has spent on its screening mammography program, which includes on-site mammography at some locations, or how much the company has saved by detecting breast cancers earlier than they might otherwise have been detected.

Conducting a cost/benefit analysis of screening mammography generally is difficult for employers to do.

"It's very difficult to do cost/benefit analyses around preventive screenings," said NABCO's Ms. Calder.

Expenses that are associated with screening mammography can be "difficult to justify" because "it's difficult to measure claim avoidance," agreed Hewitt's Ms. Haltom. **BI**

## 'Employers that are proactive enough to cover (screening mammograms) will continue to cover them' for women 40 to 49, Camille Haltom predicts.

since 1993 and continues to do so, according to Kimberly Calder, associate executive director of the New York-based information and resource center.

A majority of large employers do pay for screening mammograms, according to a survey of 935 large employers conducted last year by Hewitt Associates L.L.C.

Hewitt found that 79% of employers that offer some type of health prevention, promotion or early intervention initiative cover screening mammograms through their medical plans.

Most large employers that cover screening mammograms follow the ACS' guidelines and are unlikely to alter their benefits based on the independent panel's report, experts agree.

"Most employers, if they are going to cover (screening) mammograms, will cover every other year between 40 and 49," stated Camille Haltom, a consultant at Hewitt's Lincolnshire, Ill., headquarters.

Employers are unlikely to cut back the benefit because it would be perceived negatively by employees, she said. "Employers that are proactive enough to cover (screening mammograms) will

mammography screening are "comfortable in following the ACS guidelines," agreed Larry Boress, vp at the Midwest Business Group on Health in Chicago. "No one's taking any action regarding this task force report."

First Chicago NBD Corp. offers screening mammograms through its medical plan—onsite in many locations—for women beginning at age 40, noted Dr. Wayne Burton, the bank's Chicago-based medical director. "I believe that the ACS is correct in their recommendations," he stated. "We're going to continue to follow" their guidelines.

First Chicago spends about \$100,000 annually, including staff time, to do some 600 to 700 screening mammograms a year, Dr. Burton noted. One case of breast cancer is detected for every 500 mammograms, on average, Dr. Burton said.

The financial cost of treating breast cancer that is detected early can be dramatically less than the cost of treating more advanced breast cancer, he said. "Non-workplace detected breast cancer unfortunately tends to be more advanced" than cancers detected by the workplace program, he said.

For example, in the first four

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## Onsite

Continued from page 3

several alternatives to onsite mammography, such as giving women covered by a bank health plan a voucher for a mammogram at different locations.

Champion International Corp. began offering onsite mammography screenings in 1993, said Howard Kraft, manager of corporate health services for the Stamford, Conn.-based forest products company.

Champion contracts with preferred providers to perform onsite mammograms at many of its mills for covered employees, dependents and retirees, Mr. Kraft noted. In some remote locations, women must go to a medical office for the mammogram.

"Overall, doing screenings and im-

munizations on site for employees increases participation, and we want a high participation rate," he said.

"It's not just the nice thing to do; it's a good business decision and it's good risk management," he added.

Zeneca Inc., a pharmaceutical manufacturer and health care services supplier based in Wilmington, Del., has offered onsite screening for more than seven years. During that time, the company has performed more than 2,500 mammograms and detected breast cancer in 12 women. As of late last year, Zeneca had spent about \$400,000 on the program.

Zeneca owns mammography equipment and performs mammograms free of charge for employees. Zeneca produces worksite breast cancer education programs for other employers. **BI**

## Risk increases with age

Breast cancer is the leading cause of cancer death for U.S. women between 35 and 54, according to the National Alliance of Breast Cancer Organizations.

- Breast cancer risk increases as a woman ages, if she has a family history of breast cancer, has never had children or had her first child after age 30. However, more than 70% of cases occur in women who have no identifiable risk factors, according to the alliance.

- A woman in her 40s has a one in 66 chance of being diagnosed with breast cancer and about a one in 190 chance of dying from

breast cancer that develops in that decade, according to data from the National Cancer Institute.

Regular mammograms starting at age 40 would lower the odds of dying to about one in 220.

- This year, more than 30,000 women in their 40s will be diagnosed with breast cancer, and a 15% reduction in mortality would mean more than 1,600 lives saved, the NCI says.

- Regular screening mammograms can reveal breast cancer at its earliest stage, up to two years before it can be felt, according to the alliance.

# Sedgwick

Continued from page 2

from each operating unit. The improvement is attributed to several factors: a 16% rise in trading profits, a 4% increase in brokerage revenue and fee income, acquisitions or expansion in a number of countries, and a reduction in interest payable.

However, commenting on the market, Mr. Riley said Sedgwick accepted that "excess capacity has become the norm" and that it must manage its business accordingly.

He added that the group's strategy "is not based on false hopes for an improvement in the rating environment but on developing and changing our business to meet, and profit from, prevailing and future market conditions."

U.S. pretax profits were little changed at £38.5 million (\$60.4 million) from £38.9 million (\$61.4 million) in 1995, with higher earnings from all units partly offset by a £1.25 million (\$2 million) provision related to litigation from an asset sale in the 1980s. U.S. revenues improved 2% to £387.4 million (\$608.2 million).

In contrast, Willis Corroon Executive Chairman John Reeve's "group vision" program has paid off handsomely. The program aims to change the organization's direction from traditional insurance brokerage to a greater emphasis on professional services, such as risk management. Willis Corroon reported a pretax profit of £91.6 million (\$143.8 million), including profits of £2.5 million (\$4.3 million) on the sales of three companies: Management Science Associates Inc. and Consumer Benefit Life Insurance Co. Inc. in the United States and Personal Performance Consultants Ltd in the United Kingdom. This

# MTA

Continued from page 3

compensation benefits from their employer, they also were able to seek damages from the MTA as the project's owner, explained Robert Cardwell, a partner with Sharp & Howell in Los Angeles who defended the case at trial.

"It's illogical, but it's still possible for them to do that," he said.

The workers were employed by contractor Shea-Kiewit-Kenny, which the MTA hired to help build the subway, he explained.

Meanwhile, critics again are charging that more injuries may be occurring during subway construction than the MTA is reporting to state and federal workplace safety authorities.

The MTA reports only lost-time cases, not less severe injuries that require only first aid.

But Mr. Zarian insists the MTA's safety record compares favorably with other major transit projects in the United States.

For example, the incidence of lost-time cases for contractor Tutor-Saliba/Perini in the section of tunnel where the worker died was 2.2 per 200,000 man-hours, compared with the national average of 4.9 in 1996.

However, the incidence rate of recordable injuries for that section was 15.5, compared with a 1996 national average of 11.8, MTA critics point out.

The MTA's safety record has repeatedly come under fire since the subway project began in September 1986.

A 1992 engineering report and a congressional analysis found that the project safety incentive program may lead to underreporting of accidents (BI, June 17, 1996). **BI**

profit was up 33% from the previous year, which had shouldered exceptional charges of £30 million (\$47.4 million) for future runoff costs and other items. Continuing operations recorded an £89.1 million (\$139.9 million) profit, up 13% from 1995.

Revenue increase was not so striking, up 3% to £725 million (\$1.14 billion). Nevertheless, profits have been used to strike out long-term bank loans.

Three key areas affected the results: a £14.5 million (\$22.7 million) profit commission from the group's Lloyd's of London members agency, Willis Faber & Dumas (Agencies) Ltd.; exchange rate movements erasing £3.1 million (\$4.9 million) from the results; and £11.3 million (\$17.7 million) in severance costs as a result of implementing the group's change program.

Exchange rate changes could be a continuing problem. "The recent

rise in the value of the sterling against major currencies, particularly the U.S. dollar, will, if sustained, affect group results adversely," said Mr. Reeve. At the same time, he warned of the "continuing, frequently severe, falls in premium rates for most classes of risk."

Severance costs applied to about 1,100 people, more than half leaving as a result of non-continuing operations, and the balance under the "group vision" program. Mr. Reeve sees severance costs yielding operational cost savings for this year and beyond. During 1996, the broker reduced staff numbers in continuing operations by 11% to 9,116.

Commenting on the continuing consolidation in the brokerage community, Mr. Reeve said he saw no reason for Willis Corroon to merge with another broker and that it had been successful in implementing "the measures designed to restore the group's financial health." **BI**

# Cleveland

Continued from page 2

worry about and one more weapon in the hands of an employee to achieve what they want in an employment dispute."

"Many ways to remedy these issues exist without trying to criminalize it," Mr. Lewis said.

Mr. Lewis added that contrary to Councilman Patmon's assertion, people are frequently individually liable for their discriminatory acts.

One large question about the ordinance is who will serve the prison sentence. In many employment discrimination cases, no single person is at fault and the company as a whole is punished.

Under this ordinance, prosecution will require singling out individuals for punishment. Other questions are: Would a supervisor be held responsible for the acts of

subordinates or should the subordinates be prosecuted? Also, would all people be prosecuted who knew of the actions that create a hostile work environment or just one? These questions will take years of litigation to answer, the attorneys said.

Although no one has been prosecuted under the law yet, Mr. Rydzek predicts the ordinance will drive up the cost of litigating employment disputes. "It will make routine employment disputes a lot more expensive," he said. Before the ordinance, a company could end the dispute by settling with the plaintiff. But now the case could continue if prosecutors become involved. As a result, he added, business will leave Cleveland.

Councilman Patmon disagrees. "The business that leaves Cleveland because it wants to discriminate we don't want in Cleveland anyway," he said. **BI**



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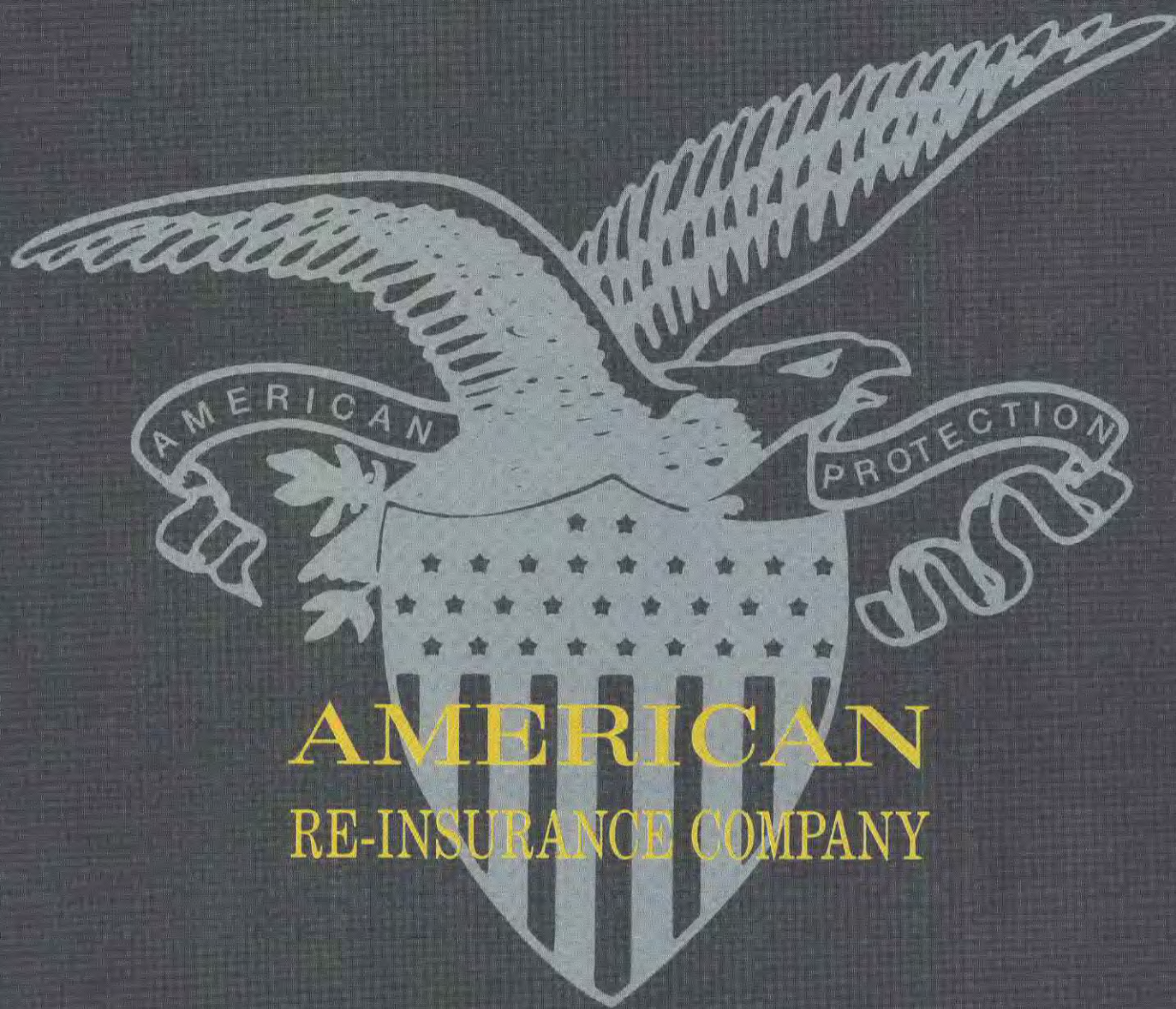
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## Datebook

### MARCH

**MARCH 3-4. Eastern Claims Conference** in New York, sponsored by Eastern Claims Conference; \$195. Eastern Claims Conference, P.O. Box 1266, Denville, N.J. 07834-1266; 508-751-7440.

**MARCH 3-20. Agency Development Program** in Wethersfield, Conn., sponsored by Independent Insurance Agent; \$950 for members, \$1,250 for non-members. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 860-563-1950.

**MARCH 5. Solving the Additional Insured Issues** workshop in Malvern, Pa., sponsored by The CPCU Society; \$95. CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa.; 610-251-CPCU.

**MARCH 5-6. Administering an Employer's Workers' Compensation Program** seminar in Atlanta, sponsored by Michigan State University; \$695. Also **March 19-20** in Philadelphia, **April 23-24** in Lansing, Mich., **April 30-May 1** in Dearborn, Mich. Human Resources Education and Training Center, Michigan State University, 422 S. Kedzie Hall, East Lansing, Mich. 48824-1023; 517-355-9591.

**MARCH 5-6. WCRI Annual Issues & Research**

**Conference** in Cambridge, Mass., sponsored by Workers Compensation Research Institute; \$445 for WCRI members, \$595 for non-members. WCRI, 101 Main St., Cambridge, Mass. 02142; 617-494-1240.

**MARCH 5-7. Sixth Annual Workers' Compensation and Occupational Medicine Seminar** in San Francisco, sponsored by The Occupational Medical Digest and Workers' Compensation Monthly; \$525. Seak Inc., P.O. Box 729, Falmouth, Mass. 02541; 508-548-7023.

**MARCH 5-7. California Self-Insurers Assn. 67th Annual Meeting** in San Diego, sponsored by California Self-Insurers Assn.; \$455 for members; \$505 for non-members. CSIA, 921 Eleventh St., Suite 619, Sacramento, Calif. 95814; 916-442-4576.

**MARCH 5-7. Financial Analysis: Life/Health Insurance** seminar in Philadelphia, sponsored by Fells Road Group Inc./Michael Conn Associates Inc.; \$1,250. Also **May 12-14, Sept. 10-12, and Oct. 15-17**. Fells Road Group Inc./Michael Conn Associates Inc., 271 Route 46 West, Suite D-207, Fairfield, N.J. 07004; 201-227-5955.

**MARCH 6. How to Reach the Self-Insurance Market** workshop in Newport Beach, Calif., sponsored by Self-Insurance Marketing Service and Self-Insurance Exchange Inc.; \$475. Andrew J. Cmiel, Self-Insurance Marketing Service, 25251 Paseo de Alicia #200, Laguna Hills, Calif. 92653; 714-699-3434.

**MARCH 6-7. Pricing and Rate Making in Plain English** seminar in Atlanta, sponsored by Dorman Consulting Associates; \$895. Also **April 14-15** in Chicago and **May 1-2** in Boston. Dorman Consulting Associates, 1 Haverhill Court, Beachwood, Ohio 44122; 216-464-5678.

**MARCH 6-7. Benchmarking: Making Benchmarking Work for Your Organization** conference in Los Angeles, sponsored by The Society of Insurance Research; \$295 for members, \$395 for non-members. SIR, 691 Crossfire Ridge, Marietta, Ga. 30064; 770-426-9270.

**MARCH 6-8. Fourth Annual Behavioral Informatics Tomorrow** conference in Tampa, Fla., sponsored by the Partnership for Delivery System Integration, CentralLink and the Institute for Behavioral Healthcare; \$995. CentralLink-BIT, 4370 Alpine Road, Suite 108, Portola Valley, Calif. 94028-7927; 415-851-8411.

**MARCH 9-11. Brokerage: Mile High Expectations** conference in Denver, sponsored by LIMRA International Inc.; \$595 for members, \$1,195 for non-members. Patricia A. Kavalski, LIMRA, Meetings Registration Manager, P.O. Box 208, Hartford, Conn. 06141-0208; 860-298-3959.

**MARCH 9-12. 3rd International Congress on Medical-Legal Aspects of Work Injuries** in Munich, Germany, sponsored by Hauptverband der gewerblichen Berufsgenossenschaften; \$400. Secretariat of the 3rd Interna-

tional Congress on Medical-Legal Aspects of Occupational Accidents (HVBG), Alte Heerstrasse 111, D-53754 Sankt Augustin, 49-2241-231-434.

**MARCH 10-12. Property Insurance Conference and Expo '97** in New Orleans, sponsored by LRP Publications; \$575 for government and non-profit, \$675 for others. LRP Publications, 1555 King St., Suite 200, Alexandria, Va. 22314; 800-727-1227.

**MARCH 10-12. Product Management Skills and Techniques** seminar in Atlanta, sponsored by Dorman Consulting Associates; \$995. Also **April 9-11** in Chicago and **May 5-7** in Boston. Dorman Consulting Associates, 1 Haverhill Court, Beachwood, Ohio 44122; 216-464-5678.

**MARCH 10-14. Comprehensive Industrial Hygiene Review** course in Boston, sponsored by Harvard School of Public Health; \$995. Harvard School of Public Health, 677 Huntington Ave. LL-23, Boston, Mass. 02115-6096; 617-432-1171.

**MARCH 11. 32nd Annual All Industry Day Conference** in Seattle, sponsored by the Washington Chapter of Risk and Insurance Management Society Inc.; \$95 for members, \$115 for non-members. Michael Smith, SAFECO Corp., Corporate Risk Management, SAFECO Plaza, Floor T-1, Seattle, Wash. 98185-0001; 206-545-5418.

**MARCH 11-13. Comp Camp** in Glastonbury,

Conn., sponsored by Aon Management Institute; \$1,900. Aon Management Institute, Corporate Center II, 628 Hebron Ave., Glastonbury, Conn. 06033; 860-659-6780.

**MARCH 12-14. Strategic Risk Financing and Alternative Risk Management Methods** conference in New York, sponsored by International Business Communications; \$1,295. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

**MARCH 12-14. Promoting Performance-Driven Health Care Systems and Competitive Markets** conference in Washington, sponsored by Washington Business Group on Health, Attn: Health Agenda '97, 777 N. Capitol St., NE, Suite 800, Washington, D.C. 20002; 202-408-9320.

**MARCH 13-14. Strategic Risk Financing for Hospitals and Health Systems** conference in Scottsdale, Ariz.; \$1,295. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

**MARCH 13-14. Defending Industrywide Complex Liability Claims Seminar** in Tampa, Fla., sponsored by Defense Research Institute Inc.; \$485 for members, \$535 for non-members. DRI, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

**MARCH 16-18. Intro to Financial Analysis-Life/Health Insurance** seminar in New York, sponsored by A.M. Best Co. and The College of Insurance; \$950. Also **April 13-15** in Chicago and **April 13-15** in San Francisco. The College of Insurance, 101 Murray St., New York, N.Y. 10007-2132; 212-962-4111.

**MARCH 16-18. Insurance Ratings** seminar in Indian Wells, Calif., sponsored by Standard & Poor's Corp.; \$730. Donna DiGrandi, Seminar Programs, 25 Broadway, New York, N.Y. 10004; 212-208-1999.

**MARCH 16-19. Captives: "And They Said We Wouldn't Last." 24th Annual CICA Conference** in Tucson, Ariz., sponsored by Captive Insurance Cos. Assn. Inc.; \$525 for members, \$650 for non-members. CICA Conference, 4248 Park Glen Road, Minneapolis, Minn. 55416; 612-928-4655.

**MARCH 16-19. LOMA's System Forum and Exhibit** in Orlando, Fla., sponsored by LOMA; \$795 for members, \$1,590 for non-members. LOMA, 2300 Windy Ridge Pkwy., Suite 600, Atlanta, Ga. 30339-8443; 770-951-1770.

**MARCH 17-18. Workers' Compensation: Current Issues** conference in Chicago, sponsored by UBA Inc.; \$450. UBA Inc., 1331 Pennsylvania Ave., N.W., 1500 North Tower, Washington, D.C. 20004-1703; 202-662-1515.

**MARCH 17-18. Health Care Purchasers Unite! The MBGH 17th Annual Conference** in Rosemont, Ill., sponsored by Midwest Business Group on Health; \$550 for members, \$630 for non-members. MBGH, 8303 W. Higgins, Suite 200, Chicago, Ill. 60631; 773-380-9090.

**MARCH 17-18. The Impact of Climate Change on Business & Industry** in Brussels, Belgium, sponsored by IPC U.K. Conferences Ltd.; £1,028.50. Tiffany Goubard, IBC U.K. Conferences Ltd., 57-61 Mortimer St., London W1N 8JX, U.K.; 171-637-4383.

**MARCH 18-21. Analyzing Risk: Science, Assessment and Management** course in Boston, sponsored by Harvard School of Public Health; \$995. Harvard School of Public Health, 677 Huntington Ave. LL-23, Boston, Mass. 02115-6096; 617-432-1171.

**MARCH 19. Twelfth Annual Commitment to Wellness Conference** in Canton, Ohio, sponsored by the Commitment to Wellness Committee; \$75. Virginia R. Neutzling, Steering Committee Chair, Commitment to Wellness Conference, 2223 45th St. N.E., Canton, Ohio 44705; 330-492-6739.

**MARCH 19. The New England Employee Benefits Council Winter Conference and Trade Show** in Boston, sponsored by NEEBC; \$195 for members, \$250 for non-members. NEEBC, 62 Walnut St., Wellesley, Mass. 02181; 617-239-1767.

**MARCH 19. Pension Simplification and DC Plan Workshop** in Kansas City, Mo., sponsored by Corbel; \$305. Also **March 20** in Clayton, Mo., **March 25** in Baltimore, Md., **March 27** in Pittsburgh, **April 21** in Indianapolis, **May 6** in Phoenix and **May 8** in Bellevue, Wash. Attn.: Client Service Center, Corbel, P.O. Box 47720, Jacksonville, Fla. 32247; 800-326-7235.

**MARCH 20-21. Financial Analysis: Property/Casualty Insurance** in Philadelphia, sponsored by Fells Road Group Inc./Michael Conn Associates Inc.; \$1,050. Also **June 5-6, Sept. 25-26, and Oct. 30-31**. Fells Road Group Inc./Michael Conn Associates Inc., 271 Route 46 West, Suite D-207, Fairfield, N.J. 07004; 201-227-5955.

**MARCH 23. International Insurance Insolvency Workshop** in New Orleans, sponsored by International Assn. of Insurance Receivers; \$1,150 for members, \$1,250 for non-members. INSOL '97, Dept. 3282, Washington, D.C. 20042-3282; 171-583-5000.



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# ASK A CASUALTY ACTUARY

**Q**

We have consistently had 20% to 25% savings on closure of our liability claims, and thus have always believed that our case reserves were strong. A recent claims audit showed that our case reserves were 10% redundant, but an actuarial study indicated that there was a 20% deficiency in our reserves. How can I decide who is right?

**A**

Each of these indications may be correct. The problem is that each one is answering a different question!

Consider the savings on closure statistics. These provide an accurate indication of how strong case reserves are immediately prior to closure. The problem is that the total claims reserve contains only a relatively small proportion of claims that are very close to settlement. The reserve also contains a significant percentage of claims that are one or more years away from settlement, and much can, and often does, happen in the interim.

Typically, savings on closure statistics will indicate that final reserves are, on the average, redundant. This does not tell us anything, however, about how adequate initial or interim case reserves are. Nor does

**Figure 1: Type of claim**

Year of injury	Length of time to settle		
	1/2 year	1 1/2 years	2 1/2 years
1994			Tough
1995		Medium	Tough
1996	Easy	Medium	Tough

it include a provision for incurred-but-not-reported claims.

In most cases, the claim will settle for an amount close to the final reserve. On a certain percentage of claims, the settlement amount will be zero or some

**Figure 2: Savings on closure from calendar year data**

	Type of claim:			All	Savings on Closure Percentage
	Easy	Medium	Tough		
(A) Number of claims	75	20	5		
(B) Average final reserve	1,000	5,000	10,000		
(C) Average settlement	500	4,500	15,000		
(D) Total final reserves ((A) X (B))	75,000	100,000	50,000	225,000	
(E) Total final settlements ((A) X (C))	37,500	90,000	75,000	202,500	10%

amount much less than the final reserve. This usually accounts for most of the savings on closure.

Most adverse development in the case reserves will occur at interim points in the life of a claim, rather than just prior to settlement.

Another serious problem with savings on closure statistics is that they represent a cross-section of claims that is quite different from that of all currently open claims. Consider a simple example (see Figure 1) in which 75% of the claims settle within the year they are reported. These are usually small, easy claims with little potential for adverse development. The average final reserve is \$1,000 and the average settlement is \$500. On these claims, the average savings on closure is 50%.

Another 20% of the claims are medium in size and medium in difficulty and settle within the first year after they are reported. The average final reserve is \$5,000, the average settlement is \$4,500 and average savings on closure is 10%.

The remaining 5% of all claims are large, difficult claims that will take two or more years to settle and that have significant potential for adverse

development. The average final reserve is \$10,000, the average settlement is \$15,000 and the average savings on closure is -50%.

The blue area represents all claims that would be included in the average savings on closure statistics for calendar year 1996. Note that there is one block each of easy, medium and tough claims in the blue area.

The red area represents all claims that are unsettled as of year-end 1996. This area represents the total claim reserve. Note that the red area does not include any easy claims, one block of medium claims and two blocks of tough claims.

In the above example, the average savings on closure for calendar year 1996 is 10%.

However, it is *negative 20%* for the claim reserve. The savings on closure percentage is misleading because it represents a very biased

sampling of claims (if your purpose is to draw a sample that is similar to the mix of claims in the total case reserve).

Assume that there are exactly 100 claims per year (of injury). Figure 2 details the calculation of the savings on closure for each calendar year. Similarly

**Figure 3: Savings on closure for all currently open claims**

	Type of claim:			All	Savings on Closure Percentage
	Easy	Medium	Tough		
(A) Number of claims	0	20	10		
(B) Average final reserve	1,000	5,000	10,000		
(C) Average settlement	500	4,500	15,000		
(D) Total final reserves	0	100,000	100,000	200,000	
(E) Total final settlements	0	90,000	150,000	240,000	-20%

Figure 3 documents the calculation of the savings on closure for all currently open claims.

See Actuary on next page

## Pollution exclusion invoked in product claims

Discuss coverage changes, premiums with insurers

By Philip H. Hecht

The insurance industry's expansive interpretation of the absolute pollution exclusion threatens to eliminate products-completed operations coverage for products with potentially hazardous or toxic characteristics.

Since at least 1986, virtually all standard form commercial general liability policies have been written with the absolute pollution exclusion. This exclusion was developed by the insurance industry as a forceful response to the pro-policyholder judicial interpretations of the "sudden and accidental" pollution exclusion that was common in comprehensive general liability policies from the early 1970s.

The absolute pollution exclusion has been invoked by the insurance industry to bar coverage for claims involving both gradual and abrupt environmental contamination.

Policyholders can protect themselves by being aware that some insurers are trying to use the absolute pollution exclusion to eliminate products-completed operations coverage under standard form CGL policies for products that have potentially hazardous or toxic characteristics.

Standard form CGL policies generally have a products-completed operations coverage part separate from other

coverage parts in the policy and for which a separate premium is charged. The typical definition of the products-completed operations hazard includes all bodily injury and property damage occurring away from premises you own or rent and arising out of "your product."

The typical definition of your product reads: any goods or products, other than real property, that are manufactured, sold, handled, distributed or disposed of by you.

However, the typical preprinted absolute pollution exclusion states: This insurance does not apply to bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants.

The exclusion defines a pollutant as: any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

How can the products-completed operations coverage part and the absolute pollution exclusion be reconciled in the case of policyholders that manufacture, distribute or sell products with potentially hazardous or toxic characteristics?

It could be argued that a product with such characteristics by definition is an "irritant or contaminant."

Indeed, as some courts have observed, virtually every

product could be characterized as an irritant or contaminant in some form or fashion, especially if used or handled improperly. It also could be argued that when a product with potentially hazardous characteristics causes bodily injury or property damage, it most likely is the result of a "discharge, dispersal, seepage, migration, release or escape."

The fact that products with potentially hazardous or toxic characteristics can be construed to fall within the language of the absolute pollution exclusion has emboldened the insurance industry to argue that the exclusion bars coverage for all such products.

Thus, insurers have persuaded courts to bar coverage for liability arising from such widely used items as cleaning agents, aerosol sprays, and construction adhesives and glues. As a result, policyholders have little assurance that their insurers will agree to cover a liability-producing event involving any of these products, at least not without significant resistance.

Some insurers have gone a step further in attempting to eradicate coverage for products with potentially hazardous or toxic characteristics. Recently, an insurer refused to defend its policyholder in an underlying lawsuit in which it was alleged that the policyholder's products are among the possible causes of Gulf War Syndrome. The insurer took the position that coverage was barred because the policyholder's products fell within the terms of the absolute pollution exclusion in its CGL policy.

See Pollution on next page

## Actuary

Continued from previous page

Let's compare the relative proportion of types of claims in the savings statistics and in the current year's total case reserves (in terms of number of claims). While easy claims comprise 75% of all claims closed in any given year, they account for two-thirds of all currently open claims. Finally, while tough claims account for only 5% of all claims closed, they represent one-third of all currently open claims.

If savings statistics are to be used at all in estimating the degree of redundancy or deficiency in the case reserves, they should represent a cross-section of claims that is similar in mix to the types of claims that comprise the current case reserves. Savings on closure statistics seldom, if ever, satisfy this criterion. One exception to this rule is the runoff situation where all claims are at least three years old.

A professional claims audit will provide you with critical information in terms of whether or not case reserves are being properly set in relation to the facts that are evident in each claim file. It is important to know this and take

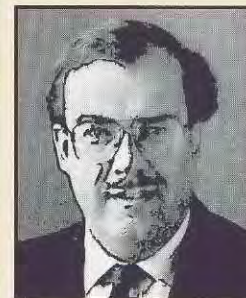
corrective action if unreasonable case reserves are being established. Otherwise, it may, at a minimum, create problems with your excess insurer or reinsurer. However, it should be recognized that even the best claims auditor can only be expected to develop a reserve estimate based on what can reasonably be anticipated based on the known facts at the time. When there are few facts in the file, such as might likely occur for claims that have only recently been reported, then it is quite possible that even the best claims audit will leave case reserve inadequacies undetected. And, of course, a claims audit will not provide an estimate of the reserve or IBNR claims.

An actuarial study is the only one of the three approaches that you mentioned which, if properly performed, is designed to answer the questions of how adequate or deficient the total claim reserves are. **BI**

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

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

*This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions in the benefits field. Christopher E. Mandel,*



Mr. Sherman

*director of risk management at KFC Corp. in Louisville, Ky., answers risk management questions. And Dennis J. Nirtaut, managing director of compensation and benefits for Andersen Worldwide S.C. in Chicago, answers employee benefit plan questions. Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, we will consider unsigned letters.*

## Pollution

Continued from previous page

The basis for the insurer's denial was clause (e) of the exclusion, which is not usually found in the standard absolute pollution exclusion: Coverage is excluded to the extent that any such bodily injury or property damage is included in the products-completed operations hazard.

It is clear that clause (e) is intended to take away the coverage provided by the products-completed operations coverage part, at least for products with potentially hazardous or toxic characteristics.

There were two problems, however, with the insurer's position in the Gulf War Syndrome case, leading to its early resolution.

First, the policyholder had an uninterrupted history of purchasing products-completed operations coverage for which it had paid substantial separate annual premiums. Second, the insurer's internal documents demonstrated it had failed to explain to the policyholder that coverage for liability arising out of its products henceforth would be barred by clause (e) of the exclusion.

If the policyholder paid a separate premium for products-completed operations coverage, it should not have been denied coverage for liability arising out of its products on the basis of the absolute pollution exclusion.

If the insurer intended the language of clause (e) of the absolute pollution exclusion to override—and in fact

eliminate—products-completed operations coverage for products with potentially hazardous or toxic characteristics, the insurer had the obligation to inform the policyholder, in advance, of the effect on its coverage and should not have charged a premium for that coverage.

Most insurers do not want to draw their policyholders' attention to significant gaps in coverage, particularly if no products claims have been presented that conceivably could be denied on the basis of the absolute pollution exclusion. For the same reason, it is doubtful that many insurers would choose to face the issue head-on by inserting a provision like the clause quoted above in their policies and risking questions from their policyholders about whether products coverage has been eliminated.

But policyholders should not conclude that their products coverage is safe as long as their policies do not contain a provision like clause (e) in the Gulf War Syndrome case. Recent cases demonstrate that insurers will continue to argue that, even without such a clause, the absolute pollution exclusion bars coverage for products with potentially hazardous or toxic characteristics.

There are practical steps, however, that corporate policyholders can take to ensure they are not unwittingly left without coverage for their products:

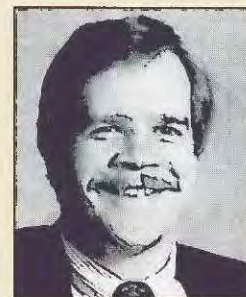
- Review your CGL policy to determine whether it contains both products-completed operations coverage and the absolute pollution exclusion.
- If the policy contains an absolute pollution exclusion, determine whether the exclusion contradicts the products-

completed operations coverage by including a provision similar to clause (e) quoted above.

• If the absolute pollution exclusion in your policy does contradict the products-completed operations coverage, check to see whether you are paying premiums for that coverage. The premium should be less than before the exclusion became effective.

• If your insurer proposes any changes in an existing absolute pollution exclusion at a future renewal, clarify the effect the changes will have on your products-completed operations coverage, and negotiate an appropriate premium for the reduced coverage.

By following these steps, you will be in a better position to deal with future liability arising out of products with potentially hazardous or toxic characteristics. You also will be able, if your insurer denies coverage, to insist upon getting the coverage you thought you purchased. **BI**



*Philip H. Hecht is a partner in the Washington, D.C., law firm of Howrey & Simon. He represents policyholders in environmental and toxic tort insurance coverage disputes.*

## Property damage must include 'tangible' losses

The Supreme Court of Alabama has ruled that lost investments are not "property damage" as defined either by a comprehensive general liability or business owner's insurance policy.

This suit arose from the financial collapse of Donald M. Martin and the real estate businesses he controlled. Murray and Roberta Berger began investing money in Mr. Martin's businesses in the late 1970s. American States Insurance Co. provided business owner's CGL insurance to Mr. Martin and his businesses. The policies defined "property damage" as physical injury to "tangible" property. Also, the policies defined "occurrence" as an accident.

The Bergers sued Mr. Martin and his businesses, claiming their security instruments and "properties" were exposed over a long period of time to unsafe financial conditions and that that fact caused the ultimate loss of their investments.

American brought this action in federal court, seeking a declaration that it had no duty to defend or indemnify Mr. Martin or his businesses under either policy. The federal court asked the Supreme Court of Alabama to decide whether, under Alabama law, the insurer had a duty to defend and indemnify Mr. Martin and his businesses.

The Supreme Court of Alabama said tangible property is that that can be felt, touched, seen, weighed, measured and estimated by the physical senses. Purely economic losses

### Legal Briefs

are not included in this definition of tangible property, according to the court. The clear basis of the Berger suit, the court noted, was that money was invested with Mr. Martin and lost in those investments.

The court concluded that strictly economic losses such as lost profits, loss of an anticipated benefit of a bargain and loss of an investment, do not constitute damage or injury to "tangible property."

The court ruled in favor of the insurer under both policies.

*American States Insurance Co. vs. Martin*, Supreme Court of Alabama, May 19, 1995 (BI/01/M.-\$10).

### Comp covers illegal aliens in Louisiana

The Louisiana Workers' Compensation Act does not exclude illegal aliens from securing workers compensation benefits when justified, according to the Court of Appeal of Louisiana.

Pablo Artiga was hired by M.A. Patout & Son as a mechanic's helper in 1994 after he presented a "resident alien card" and signed an employment eligibility

verification. In July 1994, Mr. Artiga fell about 15 feet on the job, seriously injuring his back. The employer paid workers comp benefits until November 1994, when payment was stopped after the employer was informed by the U.S. Immigration and Naturalization Service that Mr. Artiga was an illegal alien. Mr. Artiga filed a disputed claim for compensation with the Office of Workers Compensation. A hearing officer held that an illegal alien could be denied the right to pursue benefits.

The appellate court could find no clear indication that the Louisiana Legislature intended to exempt illegal aliens from recovering under the compensation act. The court said that entitlement to benefits under Louisiana law "is dependent upon the employee status of the claimant." Thus, the court said it was clear that Mr. Artiga could not be denied compensation because of his status as illegal alien.

*Artiga vs. M.A. Patout & Son*, Court of Appeal of Louisiana, April 3, 1996 (BI/03/D.-\$10). **BI**

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

## INTERNATIONAL

## Poland prepares to open market

## Global Briefs

By MARIA KIELMAS

WARSAW—Poland is fine-tuning its insurance legislation in preparation for opening its market to foreign investors in 1999 and a possible entry into the European Union sometime in the next century.

This revision has run parallel with the creation of the country's first-ever exclusively reinsurance company and the preparation of legislation to permit creation of private pension funds.

Revision of existing insurance legislation involves a long consultative process with all sides of the industry, including the Polish insurers' association, Polska Izba Ubezpieczenia, and the Polish brokers association, Stowarzysze-

nie Polskich Brokerow i Agentow. The revision is not drastic, but is just a fine-tuning of existing 1995 insurance law, says Anatol Adamski, director of the Insurance Department at the Ministry of Finance, which regulates the industry.

According to Mr. Adamski, the government is analyzing four aspects of the insurance industry: commercial business practices, regulatory matters, the role of agents and brokers, and additions to bring Poland's insurance market in line with those in Europe. Mr. Adamski declined to provide specifics.

Foreign investors may own a maximum of 49% of a Polish insurer or broker. Initially, this restriction was to be removed this

year.

But the Polish government extended it by two years to protect the nascent domestic insurance sector.

Minimum capital requirements for life and non-life insurers are low, ranging from \$4 million to \$5 million.

Mr. Adamski says that the 1999 date for full market opening is firm. "We are planning to have the new insurance codes ready by the end of 1998 to prepare for the market opening the following year," he said.

The Polish insurance market generates an annual gross premium volume of about \$2.5 billion, says Domynyk Szymanek, managing director of Warsaw-based broker GPH International S.A.

But, just two companies—Powszechny Zaklad Ubezpieczen, Poland's largest insurer, and the Warta Insurance & Reinsurance Co.—control 80% of this market. Another 25 insurance companies, most of which are poorly capitalized, control the remaining 20%. Brokers only handle about 10% to 12% of insurance premiums.

As a result, broker involvement "can only go up," Mr. Szymanek said. Insurers and bankers remain confident of growth in the Polish insurance market, given that last year gross domestic product grew by 5.5%.

The problems faced by medium-sized and small insurers in obtaining reinsurance triggered the creation of

See Poland on page 19

## Australia may strip captive owners' tax break

## Treasurer wants to remove Singapore from 'white list'

By KATE TILLEY

BRISBANE, Australia—Australian-owned captive insurers in Singapore are likely to lose the tax-related benefits of the domicile.

Australia may remove Singapore from its "white list," which allows a captive insurer to pay taxes to the domicile rather than Australia. Countries that are deemed to have a tax rate comparable to Australia's are placed on

the white list. Singapore's removal from the list would translate to an additional 10% tax for Australian captives domiciled there.

Australian Treasurer Peter Costello has proposed that the change take effect July 1 and has given parent companies and captive managers until March 1 to comment. The proposal is likely to be included in the May budget package and is expected to be passed by Parliament.

Tax experts say the proposal would encourage captive owners to reconsider the viability of Singapore as a domicile, because captives would have to make up the difference between the Singapore tax rate of 26% and the Australian rate of 36%.

Already, one Australian captive owner says the parent company "could consider" shifting the Singapore captive to Bermuda, which is not on the white list either but offers direct access to reinsurers.

Bill Kable, group risk manager and legal counsel for Sydney, Australia-based Metal Manufacturers Ltd., said the proposal, if it went ahead, could create administrative problems because its Singapore captive, Castle Pacific Ins. Pte. Ltd. writes New Zealand and Asian business as well as Australian. "Singapore's advantage is it is close in time and travel, but Bermuda has a highly developed insurance market," he said.

However, Mr. Kable added he had "not yet delved into" the

See Captives on page 20

## European Commission urged to draft EIL rules

By DON LEWIS KIRK

The European Commission has been asked to draft regulations that would govern environmental impairment liability in the European Union.

Encouraged by the European Parliament, the initiative is seen by supporters as a key to enforcement of E.U. pollution control laws. Opponents fear that substantial financial and administrative burdens will be imposed on European industry.

"Any solution must bring strict liability to all E.U. member countries," said E.U. Environment Commissioner Ritt Bjerregaard, who regards the E.U. mandate as an "efficient and flexible instrument to enforce E.U. pollution laws."

Ms. Bjerregaard said regulations would apply only to future claims and not be retroactive.

One advantage to harmonization is improved competition, Ms. Bjerregaard said. "Diverse liability regulation in Europe brings

different cost burdens to different economies," she said. In the long term, such burdens could be the determining factors in where companies set up operations.

Some E.U. members, including Germany, France and Great Britain, have voiced opposition to the new initiative.

Edwin Frietsch, head of the Department of Environmental Liability Compensatory Damages Law, warned of cost burdens on industry, which are already great. Germany he said, preferred to

"regulate itself."

Fears of unfair competition are unfounded, said Mr. Frietsch. "In most E.U. countries, environmental liability legislation is still young and has little effect on competition," he says.

Mr. Frietsch fears environmental impairment could be defined very broadly. He also said the European Union is considering introducing a provision for class-action suits in its European solution.

"While consumer groups should

See EIL on page 20

## Companies held liable for contractors

By EDWIN UNSWORTH

LONDON—U.K. companies face greater legal responsibility if their contractors' negligence injures employees or the public after a jury verdict last week in the U.K. Central Criminal Court in London.

Three companies were found guilty of breaching the Health and Safety at Work Act 1974 after six people were killed and seven others were injured in September 1994 when a pedestrian walkway collapsed as they boarded a ferry.

Port Ramsgate Ltd. and two Uddevalla, Sweden-based companies, Fartygsentreprenader A.B. and Fartygskonstruktioner A.B., which designed, manufactured and installed the walkway (BI, Sept. 26, 1994), were found guilty.

Lloyd's Register of Shipping, one of the world's major maritime classification societies, which certified the walkway as safe, had pleaded guilty to a similar offense before the trial started. Its spokesman, Michael Franklin, said this was the first time Lloyd's Register had ever been found guilty of negli-

gence.

The Health and Safety Executive, an agency that oversees workplace health and safety in the United Kingdom, brought the prosecution.

After the verdicts, the agency's deputy director general, David Eves, emphasized his determination to ensure companies do not disregard health and safety rules: "As regulators we take breaches of these duties very seriously and will not hesitate to prosecute wherever appropriate."

He added: "In bringing this matter to the court, HSE sought to send an important reminder to all employers that their legal responsibilities extend to the protection of the public from workplace activities. . . . The case also emphasizes the need for companies to ensure effective management of such projects at every stage."

The case highlights not only the direct responsibilities of companies for the safety of their employees and the public but also their responsibility for the contractors they use.

Port Ramsgate Ltd. would not comment on

See Ferry on page 19



API/WIDE WORLD PHOTOS

A criminal court found three companies guilty in the 1994 collapse of this ferry walkway.

## Special interest risks surveyed

By CAROLYN ALDRED

Special interest groups likely will cause greater risk management headaches for companies, particularly those investing overseas, in the next few years, a consulting firm says.

"Doing business internationally in 1997 is likely to prove more complex as pressure groups place an even greater onus of accountability on international corporations," London-based Control Risks Group Ltd. said in Outlook 97, its annual preview of political and security risks.

A survey of overseas business development directors of 51 major companies in Europe found that 57% of directors expected the risks posed by special interest groups to increase in the next five years. The survey was conducted for the report by Industrial Research Bureau in London.

"Pressure groups already influence investment decisions in some companies, and we believe that more companies will be affected in the fu-

ture as demands for commercial accountability increase," said John Bray, Control Risks' principal research consultant.

The survey looked at the impact of advocacy groups on: the environment, human rights, labor standards—people working in poor conditions—and corruption, including commercial bribes.

Most directors surveyed were anxious to start dialogue with special interest groups, with 90% saying it was possible to work—or negotiate their positions—with activists on the environment and 77% on labor standards. In practice, however, many businesses do little to develop ties with such groups, Control Risks said.

"Just one (company) in eight has a formal procedure in place to evaluate pressure groups, and only one in five has a procedure for formal dialogue," according to Control Risks.

Outlook 97 is available from Control Risks for £140 (\$225) by calling 44-171-222-1552.

## Japanese oil spill claims expected

LONDON—Managers of the International Oil Pollution Compensation Funds said they expect to receive thousands of claims over the next few weeks arising from last month's oil spill off Japan from Russian tanker Nakhodka.

IOPC Funds Director Mans Jacobsson said the funds—intergovernmental organizations set up by states party to shipping and pollution conventions—would begin making provisional payments as soon as they received valid claims.

But, he said that because claims might exceed the total of 135 million Special Drawing Rights (\$185 million) available from IOPC and the ship's liability insurer, the U.K. P&I Club, initial payments will be only 60% of approved claims. The IOPC Funds choose such a percentage to ensure all valid claimants receive some compensation. Mr. Jacobsson said the level of payments relating to Nakhodka claims would be reviewed April 14 or 15 at the next

session of the IOPC Funds. Payments might be increased from 60% after that meeting.

The IOPC Funds and the U.K. P&I Club have set up a claims office in Kobe, Japan. Mr. Jacobsson was surprised claims have not yet been filed but expects them to arrive any day.

The Nakhodka broke apart Jan. 2 in the Sea of Japan after a severe storm. Spillage from the 19,000 tons of fuel oil the tanker was carrying to Russia polluted more than 310 miles of coastline, affecting fishing, shellfish farms, scenic areas and bird sanctuaries (BI, Feb. 10).

The Petroleum Assn. of Japan worries that claims could exceed funds from the IOPC Funds and the U.K. P&I Club. Japanese oil importers stand to pay about 25% of the claims because IOPC Funds contributions come from participating countries' oil importers, of which Japan accounts for about one-fourth.

—By Edwin Unsworth

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Notice is hereby given that meetings of Scheme Creditors have been convened by the Scheme Administrators in accordance with section 8.1 of the Scheme for the purposes of receiving a report (the "Report") on the conduct of the affairs of the Company and the operation of the Scheme since 8 February 1995.

The meetings of Scheme Creditors of the Company will be held as follows:

<b>Date:</b> Thursday 20 March 1997	Wednesday 2 April 1997
<b>Time:</b> 10:30 am	10:00 am
<b>Place:</b> Winter Garden Room Rihga Royal Hotel 151 West 54th Street (between 7th and 6th Avenues) New York, New York 10019, USA	The Great Hall Chartered Insurance Institute 20 Aldermanbury London EC2V 7HY UNITED KINGDOM

Each Scheme Creditor will be required to complete a registration form to register his/her attendance at the meeting prior to its commencement. Anyone who believes that he/she may be entitled to attend the meetings may obtain a copy of the registration form and the Report without charge from the Scheme Administrators at the address given below.

**DATED:** 24 February 1997

A J McMahon  
Scheme Administrator

KPMG  
P O Box 730  
20 Farringdon Street  
London  
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### LEGAL NOTICE

### LEGAL NOTICE

### LEGAL NOTICE

#### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION OF  
FIRST OAK BROOK CORP. SYNDICATE ) NO. 96 CH 10138

#### NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on November 12, 1996, the Circuit Court of Cook County, Illinois entered an Order of Liquidation With A Finding of Insolvency against First Oak Brook Corp. Syndicate ("First Oak Brook"). Mark Boozell, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of First Oak Brook ("Liquidator").

TAKE FURTHER NOTICE, that on January 2, 1997, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and Claim Filing Deadlines ("Fixing Order"). Pursuant to the Fixing Order, all rights and liabilities of First Oak Brook and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of November 12, 1996, unless otherwise provided in prior or further orders of the Court.

TAKE FURTHER NOTICE, that all persons and entities who have, or may have, claims against First Oak Brook, its property or assets, or against a First Oak Brook insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before November 12, 1997 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by First Oak Brook shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before November 12, 1997 at 4:30 p.m. (C.S.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before November 12, 1998 at 4:30 p.m. (C.S.T.). Any contingent claim for which a proper proof of claim is filed on or before November 12, 1997 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before November 12, 1998 at 4:30 p.m. (C.S.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of First Oak Brook, at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to First Oak Brook upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST FIRST OAK BROOK CORP. SYNDICATE, OR ITS POLICYHOLDERS, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE NOVEMBER 12, 1997 AT 4:30 P.M. (C.S.T.)

Peter G. Gallanis  
Special Deputy Receiver

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## INTERNATIONAL

## Poland

Continued from page 17

the country's first reinsurance-only company, Polskie Towarzystwo Reasekuracyjne, or PTR. The government and legislators also hope that a domestic reinsurer will stem the outflow of funds overseas in the form of reinsurance premiums.

Created in October 1996, PTR has assets of \$23.1 million, less than half the \$50 million the government had hoped for when the company was in the planning stage. The shortfall is due to the last minute withdrawal of some prospective shareholders, Mr. Adamski said. The government is planning to issue an additional \$30 million of shares in PTR later this year, perhaps as early as next month. This share issue will be open to all investors, foreigners included, Mr. Adamski says.

The state also retains a 37% stake in PZU, which alone controls 64% of the domestic insurance market and was partly privatized in 1995. Nearly 20% of PZU shares are expected to be offered to private investors and employees this year.

PTR's current shareholders are the Polish government, through the Ministry of Finance, with 19.19%; state-owned bank Bank Handlowy w Warszawie, 19.19%; the state copper company, KGHM Polska Miedz, 19.19%; PZU and PZU Life, each with 19.19%; power utility Elektrim, 1.91%; Warta Insurance & Reinsurance Co., 1.91%; insurer Ergo Asekuracja, 0.19%; and Polisa Insurance & Reinsurance Co., 0.04%.

There will be no obligation for direct insurers to reinsure through PTR, says the company's marketing manager, Malgorzata Stobienia. PTR also will develop specialized niches in industrial insurance and credit risks as well as risks that may be difficult to place on the international market. When Poland opens its insurance market in 1999, foreign investors can view PTR like any other company, Ms. Stobienia said.

PTR also will be used to create a retrocessional market through a plan to retrocede a portion of its

business to other central European reinsurers. Details of this plan were unavailable.

Meanwhile, government authorization for the creation of private pension funds, known in Poland as open pension funds, could become a reality before scheduled general elections this fall. Prime Minister Wlodimierz Cimosiewicz said early this month that he expects the Council of Ministers to approve draft legislation for the funds by the end of March. The legislation should be presented to the country's parliament, the Sejm, in April.

"This is the first concrete announcement of a timetable," says Jacek Krol, legal counsel at the Warsaw office of U.K. law firm McKenna & Co., which has been advising the Polish government on pension reform.

Discussions on a complete overhaul of the social security system have been under way since the collapse of communism in 1990, Mr. Krol explained.

The only social security-related matters that are likely to be approved before the coming elections are private pension fund authorization and an authorization for the government to use privatization revenues to meet existing liabilities of the social security system, such as payment of outstanding pensions.

Membership of the planned open pension funds will be mandatory for all individuals entering the labor market, though Poland will maintain its state-run social security system, Mr. Krol said. Employees in open pension funds will be obliged to pay an as yet undecided proportion of salary into the fund. Employers will not contribute to the fund but will continue to pay into the government's social security system, though at a lower rate than at present.

Individuals older than a certain age—between 45 and 50 years, though the precise age is still undecided—will stay in the government-sponsored pension system. Those below this age will be obliged to join the new funds, while individuals at that transition age may choose between the two.

Another private pension option

under study is a system of so-called voluntary-sponsored pension funds that employers may create for their employees. Contributions to these funds will be paid by the employers only. However, employees of privatized companies will be able to make an initial contribution to the voluntary funds, Mr. Krol explained.

Other details, such as tax breaks on fund contributions, have yet to be worked out.

Polish government officials and their advisers have studied other private pension systems for ideas. Chile's experience over the last 10 years was particularly useful. "We learned by their mistakes," said Mr. Krol.

The most important lesson has been that private pension plans in emerging economies must exist alongside a state-sponsored system, which can continue to cater to lower-paid workers. In Chile, as a result of the privatization of the social security system, only 52% of the workforce has a pension.

Administrative costs of the private pension system in Chile also are high. "In Chile it is very easy to shift between funds. Under our law, this will be restricted because it makes the administration much more expensive," according to Mr. Krol.

Another problem that makes the Chilean system more expensive has been the creation of specialized pension fund administrators, Administradoras de Fondos de Pensiones, or AFPs. The Polish idea, based on current recommendations for amending the Chilean system, is to allow all existing financial institutions, such as banks and insurance companies, to manage these funds, Mr. Krol said.

Once the funds are up and running, Poland will need to establish investment rules because the small size of the Polish capital markets may be too small to absorb the funds.

Mr. Krol said he thinks the best idea would be to start with the voluntary-sponsored funds and see how the market reacts before moving into compulsory open funds. **BI**

## Ferry

Continued from page 17

the cost implications of the verdict, although earlier a spokesman said it was a matter for its insurers and lawyers. However, insurance normally does not cover neg-

### The trial was the first test of the Health and Safety at Work Act's application to foreign companies.

ligence fines.

Those found guilty face the possibility of unlimited fines. The highest penalty so far for a conviction under the Health and Safety at Work Act is £750,000 (\$1.2 million), imposed on British Petroleum P.L.C. in 1988 after the death of three men in explosions at a refinery.

The case also has implications for foreign companies operating in Britain.

While the case is by no means the first time the HSE has prosecuted U.K. companies under the Act, it is the first time it has tested in court the application of the Act to foreign companies.

FKAB and FEAB chose not to attend the trial and were found guilty in their absence. Whatever

fine is imposed on them could only be enforced if they attempted to do more business in the United Kingdom.

However, the trial will not have helped their reputations, as the prosecution convinced the jury the unsafe design and construction of the walkway caused the accident.

FKAB and FEAB declined to comment on the verdict.

The HSE alleged these defects went unnoticed or uncorrected because of commercial pressures to install the walkway as quickly as possible to meet competition from the Channel Tunnel, which was then about to open.

The walkway collapsed only four months after it was installed.

The Port of Ramsgate failed in its defense that it thought it had discharged all its obligations by instructing a reputable company to install the walkway and a reputable institute, Lloyd's Register, to check it.

The prosecution claimed the port had failed to stipulate design specifications and had encouraged the walkway to be constructed too fast so it would be ready in time for a new ferry service to begin.

The court will convene on Feb. 26 for Lloyd's Register to present any mitigating circumstances relevant to its case, while sentencing of all four defendants is scheduled for Feb. 28.

No one will be imprisoned as a result of the verdict. **BI**

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Vice Presidents, General Managers and Other Administrative Personnel	4,884
<b>Financial:</b>	
Chief Financial Officers and Vice Presidents of Finance	3,011
Secretaries, Treasurers, controllers and other Financial Personnel	2,827
<b>Risk/Employee Benefits:</b>	
Vice Presidents, Directors, Managers, and other related department personnel of insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	17,307
<b>Sub-total</b>	<b>29,775</b>
Associations	301
Government, Unions and Educational Institutions	369
<b>Commercial Consumers</b>	
<b>Sub-total</b>	<b>31,045</b>
Insurance Agents and Brokers	8,664
Insurance Companies	7,831
Accountants, Actuaries, Attorneys & Consultants	3,148
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,880
Others Allied to the Fed	680
<b>Total Qualified</b>	<b>53,248</b>
Non-qualified	12
Single Copy Sales	40
<b>TOTAL CIRCULATION</b>	<b>53,300</b>

\* Source: Business/Occupational breakdown of qualified circulation, May 27, 1996 issue, as submitted to BPA for June 1996 BPA Publisher's Statement

## P&amp;I clubs help fund anti-piracy effort

By EDWIN UNSWORTH

LONDON—Marine mutual protection and indemnity insurers have stepped in to help fund an anti-piracy center that has saved them possibly millions of dollars in theft claims since 1991.

Five P&I clubs have agreed to pay \$10,000 each over the next three years to help fund the \$100,000 annual running costs of the Regional Piracy Center in Kuala Lumpur, Malaysia. The RPC was set up by the London-based International Maritime Bureau, a unit of the Paris-based International Chamber of Commerce.

The five clubs are the United Kingdom Mutual Steam Assurance Assn. (Bermuda) Ltd., Assuranceforeningen Skuld P&I Club of Norway, The Swedish Club, The Standard Steamship Owners Protection & Indemnity Assn. (Bermuda) Ltd., and The Britannia Steam Ship Insurance Assn. Ltd.

IMB Director "Muku" Mukundan said other members of the International Group of P&I Clubs, which has 14 member clubs, are considering contributing to the piracy center. He is hopeful some will make commitments within the next few weeks. Voluntary contri-

butions from the shipping industry and related organizations fund the piracy center.

The IMB also is looking for support from marine underwriters at Lloyd's of London and the Institute of London Underwriters, although Mr. Mukundan acknowledges they are less likely to help because piracy generally is covered by P&I clubs and not under the hull and cargo policies written by Lloyd's and the ILU.

The RPC is a 24-hour information center that keeps track of acts of piracy around the world. Using reports from a number of sources, such as ships, ports and local policing authorities, it makes regular satellite broadcasts to warn ships and local law enforcement agencies of suspicious craft movements, boardings and armed robbery from vessels.

In its report for 1996 issued last month, the IMB recorded 175 piracy attacks around the world, up from 170 in 1995 and the highest number since the RPC was opened in 1991. However, the IMB attributes the increase largely to better reporting of attacks. Nevertheless, it warns: "There is no doubt that attacks on vessels have become more audacious, more violent and an issue of serious concern to shipping and seamen."

Of the 175 attacks last year, 160 involved boardings or attempted boardings of vessels. The remainder involved thefts in port, hijackings or vessels being fired upon.

Indonesia is by far the most likely country for a piracy attack, accounting for 53 of last year's reported incidents. Southeast Asia and the Far East in total accounted for 100 attacks. Brazil was the second most dangerous country, with 16 reported attacks.

Mr. Mukundan says the success of the RPC can be seen in the marked decrease in the number of attacks in the Malacca Straits. In 1991, 32 vessels there were attacked—which was one of the main reasons the RPC was formed—whereas in the past three years there have been only two or three attacks there per year.

A typical piracy attack is the one last November in Galasa Straits, Indonesia, on the tanker OM Sunshine. Seven pirates boarded it, and \$10,000 was stolen.

Two days later, the bulk carrier MV Olga was attacked in the same area by what is believed to have been the same gang, this time six armed pirates who stole \$17,000. These are the types of claims covered by P&I clubs. **BI**

# Captives

Continued from page 17

proposal. Metal Manufactures' captive underwent a four-year audit by the Australia Tax Office, or ATO, but last year was found in full compliance with the tax laws.

Captives are "an integral part of our insurance program," not a vehicle for tax advantages, said Ian Wildish, general manager of global risks with Melbourne, Australia-based Mayne Nickless Ltd., which has health care, transportation and security-related business.

Mr. Wildish, who joined Mayne Nickless late last year, is reviewing the company's insurance programs and captives in Singapore and Bermuda. He said the proposed tax changes would be considered as part of the review.

Under Australia's Controlled Foreign Corporation tax rules, introduced in 1990, income earned by Australian-owned companies operating in "white list" countries is exempt from tax in Australia, providing tax is paid at the full corporate rate to the white list country. The 60 white list countries, including Singapore and Malaysia, are deemed by the ATO to have tax rates comparable to Australia. Singapore isn't the only white list country that is likely to lose its status. The Australian government is trimming the list in order to increase tax revenue and reduce administration associated with the list.

Australian-owned, foreign-based corporations always have had the option to pay full corporate tax in Australia instead, and some publicly listed companies do so because they can then obtain tax credits for shareholders, said Peter Kennedy, taxation partner with the Melbourne office of

cable, but he expects captive owners and managers may again lobby the Singapore government for change, if the CFC tax law is changed.

"Captive owners may now seriously consider the future of their captives," Mr. Kennedy said. "With so many other countries off the white

tives, of which 18 have Australian parents.

George Tarabaras, director and general manager, said the proposed change meant the ATO would not distinguish between Singapore and tax havens, which may encourage some captives to move to tax havens.

He said that is "not the way to treat a major trading partner," and he has asked the MAS to negotiate on a government-to-government basis.

"No doubt the MAS is concerned as this is a challenge to Singapore as a domicile and could impair Singapore's ability to attract new captives," he noted.

But Mr. Tarabaras said it is "just another headache" for parent companies and, because tax advantages were not the motivating factor in establishing their captives, it is simply a bonus they would no longer enjoy.

He noted, however, that issues such as the way IBNR reserves were to be calculated in assessing profit levels were not clear. "Will the ATO accept calculations according to the current principles, or expect recalculations according to Australian principles? The current method, which is acceptable to the Singapore government, may not be acceptable to the Australian authorities."

Despite potential removal of the tax benefit in Singapore, Mr. Tarabaras said Australian captives are unlikely to go onshore because of the regulatory disadvantages.

Mr. Tarabaras said he is talking to tax and legal advisers and has not yet decided whether to put a submission in by the March 1 deadline.

George McGhie, manager, global risk management with Johnson & Higgins Risk Management Services (S) Pte. Ltd., said tax is a secondary issue in the establishment of captives, so he did not expect many parent companies to be concerned. J&H manages two Australian-owned captives. **BI**

## 'With so many other countries off the white list, if an owner is going to shift a captive's base, they may as well come to Australia,' says Peter Kennedy.

accounting firm Deloitte Touche Tohmatsu.

Under Australia's tax laws, shareholders receive credit for income tax paid by companies in the form of "franked dividends." Shareholders are not taxed on franked dividends, as the company already has paid tax, thus ensuring corporate profits are not double-taxed.

Mr. Kennedy said the Singapore government requires captives to pay only 10% tax, but when Australia first began taxing income from foreign-based subsidiaries in 1987, the Singapore government, after lobbying from captive owners and managers, introduced a program by which Australian-owned captives could elect to pay the full corporate rate in Singapore.

Sydney-based construction company CSR Ltd. has a Singapore captive, but it is one of the few that will be unaffected by the proposed changes because it continues to pay only 10% tax in Singapore and 26% in Australia, thus allowing shareholders access to more franked dividends.

Mr. Kennedy said the decision to pay 26% tax in Singapore was irrevoc-

list, if an owner is going to shift a captive's base, they may as well come to Australia."

But captive owners and managers say Australia's regulatory authority, the Insurance & Superannuation Commission, will not make sufficient concessions to attract onshore captives—they must be capitalized to the same minimum levels as all non-life insurers, even if they write no third-party business—and many owners therefore are reluctant to move their captives to Australia.

And Mr. Kennedy added that the tax change alone would be unlikely to make a captive owner shift domicile, as most had chosen Singapore for other reasons, including the fact that there are experienced captive managers based there.

While some Singapore captive managers were unaware of the Australian government's proposals, or had not yet studied them, Sedgwick Management Services (Singapore) Pte. Ltd., already has approached the Singapore government's Monetary Authority, or MAS, which regulates captives. Sedgwick is the largest manager in Singapore, with 21 cap-

Advantages of uniting E.U. EIL still outweigh disadvantages, said Ms. Bjerregaard, who points out

## 'We all have different problems, so we all need different solutions,' a U.K. Environment Department spokeswoman says.

that several E.U. countries, such as Austria, Greece, the Netherlands and Sweden, have yet to implement any strict EIL laws, fearing that

they will place undue burdens on industry in their countries. Instead they are waiting for E.U. guidelines that set rules for all E.U. countries.

"A solution will be found," says Ms. Bjerregaard.

Two options are under review. One is an E.U. guideline, which would set the framework for national legislation in E.U. member countries.

The other would be for the European Union to join the so-called Lugano Convention, a Council of Europe 1993 convention that sets general guidelines for environmental impairment liability.

The Lugano Convention would implement liability for dangerous activities and for damage to the environment beyond personal or property damage.

Five E.U. member countries have already joined the convention: Finland, Greece, Italy, Luxembourg and the Netherlands. Others, including Germany, Great Britain, Denmark and France, oppose the convention and will not ratify it.

The convention would not succeed if Germany, Great Britain and France continue to oppose it.

Great Britain is not signed up to the convention, and there are no indications it will.

"German insurers are very concerned about Lugano," said Alexander Mack, head of the casualty claims division at Cologne-based Gerling-Konzern Allgemeine Versicherungs A.G. "If Lugano were to be ratified, it would make companies liable for any activity."

The E.U. Commission studied the possible financial effects of new regulation on industry and concluded that the extent of the financial burden is impossible to estimate. **BI**

# Pension trustees warned to comply

By SARAH GODDARD

LONDON—Trustees of U.K. employer-provided pension plans could find themselves in hot water if they don't step up their implementation of the requirements under the Pensions Act 1995, a pension specialist warned.

With less than two months to go before the law's April 6 compliance deadline, implementation of those rules is "patchy," said Peter Rowley, pensions partner at accounting firm Grant Thornton in London.

"It is clear that some schemes have a lot to do in the remaining time if they are to be sure of compliance," Mr. Rowley said last week as he unveiled a survey showing that more than a third of employer-sponsored pension plans have not put new procedures into place in at least one key area.

The Grant Thornton survey of 101 plans, each with more than £30 million (\$48 million) in assets, showed that 38% had not consulted their participants about changes under the Act's member-nominated trustees provisions. These provisions state that at least one-third of a plan's trustees must come from the plan membership, though the majority of employer-provided pension programs already meet that standard.

Another major provision of the Act requires programs to introduce internal dispute resolution procedures between plan members and trustees. Mr. Rowley's survey showed that 36% of plans have not yet agreed on procedures, though this will be one of the major areas of scrutiny by the new regulator, the Occupational Pensions Regulatory Authority, which also will go into effect April 6.

Pension plans "will have to demonstrate a very clear complaints procedure," said a spokesman for the pension authority.

Fewer than half of the plans surveyed had issued a statement of investment principles, and most had made no changes to their pension advisers, though the new regulations shift the responsibility for selection of the advisers to the trustees from the employer.

Opra is taking a "pragmatic" view toward plans having all the necessary changes in place by April, said the spokesman, though plans that do not fulfill all the criteria at that point will have to prove they are aiming to do so. "We want to see determination on their part," the spokesman said.

Opra was established after the Maxwell pension scandal in which late media tycoon Robert Maxwell raided his companies' pension funds (BI, Oct. 11, 1993). The regulator will be able to impose penalties for non-compliance, ranging from fines of up to £50,000 (\$80,000) to removing individuals as plan trustees. In serious cases, such as trustees blocking Opra investigations, the authority will bring criminal charges.

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## EIL

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be able to take action, we're against extending this rule to class-actions in general," he said.

The U.K. Department of the Environment has yet to formulate a view on the proposed initiative since it has not yet seen the draft regulations. Nevertheless, it feels that each country should set up its own legislation, a spokeswoman said.

"We all have different problems, so we all need different solutions," she said. "It would be almost impossible to embody this in pan-European legislation."

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# Child care

*Continued from page 3*  
child care facility for employees' children.

• Train and provide continuing education programs for child care workers.

The bill offers employers a 50% credit on federal taxes for all eligible activities, capped at \$150,000 annually. Most provisions would have three-year sunset clauses.

"The legislation gives flexibility to businesses that want to get involved in providing child care for their employees' dependents," Sen. Kohl said last month when he introduced the bill.

"Businesses have a very personal stake in helping employees obtain good child care, he said.

"Employees who are happy with their child care situations are better employees. They are more productive, have less absenteeism and are more loyal to their company," Sen. Kohl said when he introduced his bill.

"Good child care is clearly very important for two reasons: It helps parents to work and concentrate on their jobs. It also helps children grow and develop into healthy, happy adults," said Barbara Reisman, executive director of the non-profit Child Care Action Campaign in New York City.

The need is great. In Wisconsin

alone, 67% of women with children under six years old are in the workforce, yet there is only one accredited child care center for every 2,800 of these children, Sen. Kohl said in a statement. "Further, it is estimated that 70,000 children will need child care as a result of the work requirements created by Wisconsin's W-2 welfare reform plan," he added.

Nationally, the need for child care slots also is expected to swell as additional aid programs require able-bodied recipients to get jobs.

Even when good child care is available, it is often expensive and creates a financial burden on working parents.

Parents now pay an average of \$75 per week for child care, though good-quality care costs \$100 to \$150, depending on the age of the child, said Ms. Reisman of the New York child care group.

Many large employers realize the situation and are helping workers with the cost of child care.

Most major employers provide employees with some type of child care benefit, primarily through a dependent care spending account, according to a 1996 survey by Hewitt Associates L.L.C. in Lincolnshire, Ill.

Under federal tax law, an employee may be able to obtain tax credits of 20% to 30% of child care expenses, depending upon his or her income and tax liability. The maxi-

mum credit is \$2,400 for the first child and \$4,800 for two or more children.

In addition, an employee typically can fund up to \$5,000 of expenses through pretax contributions to flexible spending accounts, but those contributions would be used to offset the amount of the tax credit that would be available.

Proposals now being considered would create a financial incentive

## Sen. Kohl's bill 'could make a big difference, especially for small employers,' says Barbara Reisman.

for businesses to help by reducing state tax liability.

State legislatures in Indiana, Ohio and Missouri also are considering similar tax credit programs, said Scott Greginski of the National Conference of State Legislators in Denver.

Eighteen states have passed a wide variety of such laws, according to a recent NCSL survey.

The proposals vary in scope and typically go beyond merely providing tax credits for building facilities, according to Mr. Greginski, who has been tracking the measures

for the past six years.

For example, the bill pending in Ohio provides a 50% credit on state income or corporate franchise taxes to employers for establishing or operating an offsite center as well as a 50% tax credit to employers that directly reimburse employees for child day care costs. However, a 100% credit applies to employers that establish an onsite facility.

Sen. Kohl's bill is prompting the most comment from employers and consultants.

"My impression is (S. 82) would be a boon to midsized and smaller companies that are unsure of how to handle their employee needs balanced against their profit and loss margins," said a spokesman for AT&T Corp. in Basking Ridge, N.J.

A \$150,000 cap, while helpful, is not as beneficial for larger employers like AT&T whose cost for work/family benefits runs into the millions of dollars, he said.

The bill would provide some help for companies such as International Business Machines Corp., Xerox Corp. and AT&T, "but for smaller companies, it could be what tips the balance in favor of offering a program for their people," the AT&T spokesman said.

"This bill will motivate employers to create child care facilities, greatly expanding the supply of child care," said Ms. Sallee of Corporate-Family Solutions. Government can no longer be expected to fund these

services, but it can serve as a catalyst for more and better child care, Ms. Sallee continued. Any carrot the government is willing to give will help. This bill "is a wonderful carrot."

"This could make a big difference, especially for small employers," said Ms. Reisman of the New York child care group.

"A positive feature of (Sen. Kohl's) legislation is it seems to be pretty flexible in terms of the services it would allow the credit to be used for," said Frank McArdle, a Washington-based consultant with Hewitt Associates.

However, "there are a lot of tax credit proposals out there now," Mr. McArdle said. Sen. Kohl's bill, "while appealing, hasn't gotten first-tier attention because it is competing with other, more popular proposals," he said. Those other proposals include a \$500 per child family tax credit and tax credit for providing health insurance to children needing medical care, he said.

"This (proposal) is interesting and should get an interesting debate under way," said Gwen Morgan, a consultant with WFD, a Boston-based consulting firm focusing on work and family issues. However, "it may be a little more generous to employers than most of the Congress would want."

Sally Roberts contributed to this story.

# Tangent

*Continued from page 1*

Kevin D. Rosen, assistant general counsel with the Florida Department of Banking and Finance, declined to comment on Legend Sports or Sweetwater.

Tangent has a short but complex history and until last year was in fact covered under a property treaty by some of the reinsurers now complaining about the Sweetwater offering.

Incorporated in Antigua in 1992 as World Wide Insurance Co., Tangent changed its name in May 1995 when it came under the management of Sussex Insurance Group.

The London office of Sussex is headed by Charles Gordon-Seymour, former president of Atlanta-based Victoria Insurance Co., which collapsed in 1988.

Mr. Gordon-Seymour allegedly helped to bankrupt Victoria after taking control of the insurer from convicted swindler Alan Teale, according to testimony at a 1991 U.S. Senate hearing on the failure (BI, April 29, 1991).

Sussex's Bridgetown, Barbados, office, which Mr. Gordon-Seymour said handles day-to-day management of Tangent, was headed until last summer by Eamon Baird. In 1994, the U.S. Department of Labor sued Mr. Baird over his role in placing reinsurance for a fraudulent union health benefit trust with two offshore insurers that later failed to pay claims (BI, May 18, 1992). Mr. Baird also previously worked as a producer for International Casualty & Surety Co. Ltd. of New Zealand (BI, March 7, 1994).

Mr. Baird, who could not be reached for comment, left Sussex last July, and Gary Pigot now heads the Barbados office.

In the early 1990s, Sussex managed Regency Insurance Co., whose directors included Mr. Gordon-Seymour and Simon J. Samuels, now a Tangent director.

Insurance regulators in the Turks & Caicos revoked Regency's license in 1995 for various reasons, including questions about its audited financial statements and Regency's failure to pay reinsurance claims from Caribbean hurricane losses, according to Colin Holder, superintendent

of insurance.

Mr. Gordon-Seymour said in an interview that Regency surrendered its license because of the "negativeness of its domicile" and complained that Regency was the victim of a "witch-hunt" by Turks & Caicos regulators.

After the Regency shutdown, Sussex moved its business into Tangent, management company documents show.

Tangent appears to have grown quickly. While it had only \$267,900 in total assets at year-end 1994, assets had grown to \$54.3 million by mid-1995, after Sussex assumed control, the insurer's financial statements show.

In a June 30, 1996, statement, Tangent reported writing net premiums of \$9.7 million and showed total assets of \$54.8 million, including \$46.7 million in bonds and \$6.1 million in "marketable securities" that are not described further.

Sussex documents obtained by *Business Insurance* say Tangent holds sizable stakes in Fortune 500 companies, such as Lockheed Martin Corp., Raytheon Co., Tenneco Inc. and Bank of New York. The documents describe the bonds only as treasury securities "in a spread of currencies, all of which are rated BBB or better."

Mr. Pigot said the bonds are U.S. government securities, but he and Mr. Gordon-Seymour both declined to provide further details, referring questions to Tangent's auditor, Merle S. Finkel.

Mr. Finkel said he could only respond to questions submitted in writing and approved by Tangent's management.

Tangent has in fact enjoyed support from international reinsurers: Kemper Re and GIO Insurance Ltd. of Sydney, Australia, confirmed that they participated on a property excess-of-loss reinsurance program that initially covered Regency and was shifted to cover Tangent in 1995. The program expired last July.

In addition, London broker Alwen Hough Johnson Ltd. last year placed marine excess-of-loss coverage for Tangent with Lloyd's underwriters and Cornhill Insurance, documents show.

This cover was later canceled for

um, sources familiar with the placement say. Mr. Pigot said Tangent disagreed with reinsurers over the deposit premium due in the policy period's first quarter.

Even the reinsurers actually involved with Tangent were apparently surprised, though, to find themselves identified last fall as backers of Tangent's financial guarantee business, documents show.

The guarantee business, only a small part of Tangent's book, is underwritten for the insurer by Beta Management Ltd., a Bahamas company that John K. McGarrity heads, Mr. Pigot confirmed.

Mr. McGarrity, a former president of Bermuda-based Amberco Brokers Ltd., did not return phone calls.

Tangent's U.S. claim representative on the guarantee business is Francis O. Clarkson Jr., a Charlotte, N.C., businessman. Mr. Clarkson, a former president of the Mecklenburg County, N.C., bar association, was disbarred in 1984 and later served a jail term for embezzling more than \$460,000 in client funds, state bar association officials confirmed.

Mr. Clarkson did not return several phone calls seeking comment.

During 1996, Tangent initially wrote financial guarantees on promissory notes issued by Legend Sports, a company that develops and operates golf driving ranges in Florida.

The Legend notes had at first been guaranteed by Westwood Insurance Co. Ltd., another Antigua insurer, but Tangent later was substituted, according to James T. Staples, Legend's chairman.

Westwood, capitalized almost entirely with worthless World War II-era Philippine government notes, closed its Charlottesville, Va., management office late last year (BI, Aug. 12, 1996).

Legend's efforts to raise capital soon ran into trouble, though: The state banking and finance department last November issued a cease and desist order barring further sales of the promissory notes, finding that they should have been registered with the state.

Three weeks later, regulators issued a new cease and desist order after finding that Legend also was trying to sell unregistered preferred

stock, including offering the stock in exchange for its outstanding promissory notes.

Legend quickly filed suit against the state comptroller in federal court in Orlando, arguing that the notes and stock are exempt from registration requirements and seeking to enjoin the regulatory action.

In court filings last month, the department said Legend had sold nearly 350 notes in 1995 and 1996 for a total of more than \$16 million. A department analysis of one Legend checking account showed that \$5.5 million from the note sales was deposited but that \$1.4 million was then paid out to individuals—including Legend officers—and that almost 75% of the money went for purposes other than acquiring assets for the company.

Legend has said in its own court filings that it cannot pay its debts and expenses if it is not allowed to sell stock, meaning that the company is operating as an illegal Ponzi scheme, regulators charge.

A lawyer representing Legend could not be reached for comment. Mr. Staples declined to answer questions about the company in a phone interview.

Legend's motion for an injunction and the department's motion to dismiss the company's lawsuit are pending.

Meanwhile, Tangent last year also guaranteed another unregistered note offering by Sweetwater Development, a Delaware corporation based in Orlando and headed by President John W. Staples.

Mr. Klein, the Sweetwater vp, said John and James Staples are brothers. John Staples could not be reached; James Staples would not comment directly on any relationship.

Mr. Klein emphasized that Legend and Sweetwater are unrelated companies.

In offering documents dated last Sept. 5, Sweetwater said it was seeking to raise \$5 million to buy a 215-acre site in Kissimmee, Fla., and build a "manufactured home community" for retirees.

Repayment on the promissory notes, the documents said, was guaranteed by Tangent and reinsured by Kemper Reinsurance London Ltd., GIO (UK) Ltd., Le Rochar Reinsur-

ance Ltd. and QBE International Insurance Ltd.

Kemper Re and GIO soon found out about the offering and in late October and early November wrote to John Staples, Mr. Klein and Mr. Clarkson—Tangent's claims representative—demanding that they stop using the reinsurers' names.

Responding to GIO, John Staples said Sweetwater had mistakenly used an "outdated" reinsurer list and that the problem would be corrected.

Sweetwater then issued a supplement to the note offering dated Oct. 29, with a new list of Tangent reinsurers that included Lloyd's, Aetna Re-Insurance Co. (UK) Ltd., Skandia International Insurance Corp., AXA Reassurance and EXKO Excess.

The response to this list wasn't much better: Officials of Lloyd's complaints department demanded in December that Sweetwater and Tangent stop using the market's name, and a law firm representing Skandia made a similar demand, documents show.

Mr. Clarkson replied to Lloyd's last month, explaining that "agents working for (Sweetwater)... may have inadvertently used the name of Lloyd's."

The protests apparently came too late to make a difference in the offering: Mr. Klein said the \$5 million note sale has been completed.

He also said that Sweetwater was only using reinsurance information Mr. Clarkson and Beta Management's Mr. McGarrity provided.

"I only operate on the information I'm given, and have no basis to question it," Mr. Klein said.

Tangent's Mr. Pigot also said the lists were simply mistakes, conceding that even companies like Kemper Re that actually reinsured Tangent property risks would not have covered financial guarantee risks. Tangent has told its producers to stop providing any information on the company's reinsurance, he added.

"Anything we do should not be marketed on the back of our reinsurance," Mr. Pigot said. "I've gone to great lengths to nip this in the bud."

Tangent has new reinsurance treaties covering its property, marine and financial guarantee business, according to Mr. Pigot. He declined to name any of the current reinsurers.

# Asbestos

Continued from page 1

Immediately after hearing arguments in the *Metro-North* case, the justices confronted the issue of asbestos yet again as they heard arguments in *Amchem Products Inc. et al. vs. George Windsor et al.*

The case involved the question of whether a court can certify a class for settlement purposes only. The case went to the Supreme Court after the 3rd U.S. Circuit Court of Appeals in Philadelphia rejected a class-action settlement reached between 20 former asbestos producers, including Amchem, that belong to the Center for Claims Resolution, and potentially hundreds of thousands of claimants suffering from asbestos-related diseases (*BI*, May 20, 1996).

The CCR is a Princeton, N.J.-based facility that provided a framework for member insurers and policyholders to settle coverage disputes and settle bodily injury claims.

Businesses are watching both cases closely.

In regard to *Metro-North*, Craig A. Berrington, senior vp and general counsel of the American Insurance Assn. in Washington, said that even if the court were to decide in Mr. Buckley's favor simply in the context of FELA, the ruling could have "dramatic ramifications."

The legal system historically has followed the "irreducible requirement" that individuals have to compensate those whom they have physically harmed or subjected to a "near miss" that caused other harm, he said.

Not requiring the proof of harm would "basically transform the legal system into a system to compensate people for the normal exposures in life," he said.

"The impact on societal costs is literally incalculable," said Mr. Berrington.

"The medical monitoring tort, if widely accepted, would have staggering implications for the administration of the civil justice system. This new tort opens the courthouse doors to literally millions of would-be claimants who have no demonstrable illness but who can allege some type of exposure to some substance that may create a risk of future illness. And, once inside the courthouse, these claims are not easily screened out because the medical monitoring tort, as courts have so far defined it, sets the threshold of a triable claim extremely low and tolerates—indeed invites—highly speculative proof," the Chemical Manufacturers Assn. and the National Chamber Litigation Center Inc. wrote in a brief supporting *Metro-North*.

Other business groups shared that assessment, but Mr. Buckley's lawyer disagreed.

"This argument has no foundation in reality and is based on two false premises: that the FELA case consti-

tutes binding precedent on all non-FELA state and federal tort cases; and that the type of massive exposure to enormous amounts of asbestos fibers over a three-year period resulting in a significant increased risk of death from cancer suffered by the snowmen of Grand Central Terminal is a common, everyday occurrence throughout the nation," wrote Charles C. Goetsch of the New Haven, Conn., law firm Cahill, Goetsch & DiPersia in his brief to the court.

"The facts of this case are unique and will never recur as long as employers comply with (the Occupational Safety and Health Administration's) mandatory regulations for controlling asbestos in the workplace," he added.

## 'The actual issue is whether medical monitoring is a remedy under FELA,' says lawyer Ronald Simon.

Mr. Goetsch's assertion before the Supreme Court that the fact that the "snowmen" were covered with fibers was in and of itself significant did not sit well with at least one justice.

Anyone who takes a swim in a pool emerges "covered from head to toe with chlorine," said Justice Stephen Breyer, who added there was nothing in the high court's courtroom itself that did not contain a carcinogen.

Justice Antonin Scalia also seemed dubious of Mr. Goetsch's reasoning. He asked what would happen if a subway rider sneezes on another rider, therefore increasing the odds that the second person would contract a cold, the flu or even pneumonia. He wondered whether the sneezer should be responsible for the medical monitoring costs. "Every time someone causes me some inconvenience, am I entitled to a cause of action?" he asked.

"You can never say how important a case is before it's done. The actual issue is whether medical monitoring is a remedy under FELA," said Ronald Simon of the law firm Simon & Associates in Washington. Mr. Simon filed a brief supporting Mr. Buckley on behalf of the Assn. of Trial Lawyers of America and Medical & Scientific Professionals, a group of medical experts unaffiliated with Washington-based ATLA.

"If the Supreme Court were to be negative in this case, it wouldn't necessarily affect other cases," he said, because medical monitoring requirements usually are set by state rather than federal law.

"Medical monitoring for asbestos is done all the time. It's certainly legitimate," he said.

He added that he thought *Metro-North* had been fortunate its case was

heard immediately before the *Amchem* asbestos class-action case, adding the perception that the courts are cluttered with asbestos-related litigation.

In *Amchem*, the appellate court held that the settlement between the asbestos makers and the current and future claimants violated Federal Rule of Civil Procedure 23 because disparity among the claimants' illnesses was greater than commonality. In addition, the court said classes formed only for settlement purposes must meet the same standards as those formed for litigation. And the court found that members of the class, which included people exposed to asbestos but who have no injuries now, could not be adequately represented by the counsel for the class.

"What the 3rd Circuit ruled is that, for purposes of determining whether a class can be maintained, a court must ignore the fact that the parties have settled and act as if the case were actually going to be tried. If the 3rd Circuit is upheld, then class-action settlements in virtually all areas of the law will be extremely more difficult to do, would lead to more individual litigation and needless wastes of resources," said Lawrence Fitzpatrick, president and chief executive officer of the Center for Claims Resolution.

"The *Amchem* settlement is a settlement of all future asbestos claims against the members of the Center for Claims Resolution. The settlement itself sets up objective medical criteria to weed out meritless claims and promptly compensates asbestos claimants who actually have asbestos-related disease."

Mr. Fitzpatrick added that, during the first 10 years of the settlement, it is anticipated that about \$1.3 billion will be paid to claimants if the settlement is upheld.

"The sole issue before the court is whether a court considering a class-action settlement can take into account that the settlement has actually been reached," he said.

An attorney not directly involved with the case agreed *Amchem* could have a considerable impact.

"I think it's a significant case, certainly in the context of attempts by the judiciary to manage mass torts in general and on asbestos cases in particular. The asbestos litigation has bedeviled the courts for the past two decades in terms of sheer numbers, and the cases just don't seem to be going away," said John Kazanjian, a partner with Anderson, Kill & Olick P.C. in New York.

"I guess the real issue is whether the settlement itself is sufficient to permit those with future claims to have access to adequate compensation. It's really a balancing between trying to protect their legitimate concerns and the concerns of the judiciary in protecting the civil justice system. The issue is whether Rule 23 will permit this type of settlement," he added. **BI**

pal with Towers Perrin in Valhalla, N.Y.

"It's another small notch in the entire trend of broadening the employer's liability," agreed Phillip N. Norton, managing director with Sedgwick Financial Risk Specialists in Chicago.

However, Allen Lenchek, the Rockville, Md.-based attorney who represented Mr. Robinson, said that while "There's no question that laws like this have an impact on employers... it is an impact which all of us should be willing to bear in order to live in a just society."

An attorney for Shell could not be reached for comment.

Observers do not expect the decision to raise insurance rates, however.

"I don't see this as having much of a material impact on the rates for

Continued on next page

## Updates

### Most of tobacco suit dismissed

Continued from page 2

Deborah McHenry, West Virginia's managing deputy attorney general. She expressed confidence the decision will be overturned on appeal as it "has no basis in the facts or the law."

Gregory Little, senior assistant general counsel for one of the defendants, New York-based Philip Morris Cos. Inc., expressed support for the decision. "We are delighted with Judge Berger's opinion, and we look forward to seeing a wave of similar dismissals of these baseless claims throughout the country in the coming months," he said in a written statement.

Meanwhile, speculation continues about a possible settlement for all tobacco litigation. Tobacco companies have denied these rumors. A spokeswoman for Philip Morris said: "There are no negotiations going on regarding a comprehensive solution of tobacco issues. But we will be willing to consider any reasonable ideas that are presented to us that are in the best interest of our shareholders."

### IBM wins keyboard case

NEWPORT, R.I.—International Business Machines Corp. won its seventh keyboard injury case earlier this month when a federal court jury in Rhode Island unanimously reaffirmed a 1995 verdict in favor of the company.

A second trial had been ordered by Judge Raymond J. Pettine because he determined that evidentiary rulings on the admissibility of expert witness testimony and certain IBM internal documents had unfairly prejudiced the plaintiff, Patricia H. Piester.

Ms. Piester, a data-entry clerk, developed carpal tunnel syndrome that she attributed to her IBM keyboard. In her suit, she alleged that the keyboard was dangerous in its design and that she should have been warned about potential injuries.

The IBM case brings to 24 the number of trial court decisions favoring keyboard makers. Plaintiffs have won only one keyboard product liability case so far, and the defendant in that case, Digital Equipment Corp., is asking a New York Superior Court judge to reverse a \$5.3 million jury verdict for failure to provide adequate warnings (*BI*, Dec. 16, 1996).

### N.C. court OKs negligence suit

RALEIGH, N.C.—Survivors and families of deceased victims of a 1991 fire at a chicken processing plant can proceed with their suit charging the North Carolina Department of Labor with negligence, the state court of appeals ruled earlier this month.

The Sept. 3, 1991, fire killed 25 workers and injured more than 50 others at the Imperial Food Products processing plant in Hamlet, N.C. Investigations after the fire revealed that the plant never was inspected in its 11 years of operation by the state Department of Labor, which is responsible for enforcing North Carolina's workplace safety laws.

A group of survivors of the fire and the estates of those killed sued the department for negligence, a suit the state Industrial Commission refused to dismiss. The Labor Department sought to have the suit dismissed by the appeals court, holding that North Carolina law charges employers, not the Labor Department, with guaranteeing workplace safety. But a three-judge panel disagreed.

The law "clearly imposes specific duties upon the commissioner of labor to enforce inspection laws, to inspect the workplaces of North Carolina and to prosecute violations. One obvious purpose of this statute is to provide for the safety of people who work in commercial establishments and to protect them from injuries in the workplace arising from unsafe conditions. Therefore, we hold that a violation of these duties to inspect and enforce can give rise to an action for negligence," wrote Judge John B. Lewis.

North Carolina law limits the state's liability to \$100,000 per plaintiff, or a total of \$8.1 million in this case.

The state intends to ask the North Carolina Supreme Court to review the decision, said a spokeswoman for the state attorney general.

### Briefly noted

Two African-American employees are suing their employer, Citibank N.A., alleging they were subjected to racist jokes that several bank supervisors sent via electronic mail. The allegations are similar to a race discrimination suit filed by two employees of Morgan Stanley & Co. last month. . . . The Senate Environment and Public Works Committee is scheduled to hold its first hearing on the Republican leadership's Superfund reform bill, S. 8, on March 5. . . . The president of the Board of Trade in the United Kingdom, Ian Lang, last week issued a consultation paper on limited liability partnerships, which are not permitted in the United Kingdom. Interested parties, such as the Big Six accountants and law firms, have until May 16 to comment on the paper, which is the first step in the United Kingdom toward introducing legislation to limit the liability of partnerships. . . . The 8th U.S. Circuit Court of Appeals further reduced to \$350,000 a \$50 million jury award given in 1995 to a Missouri woman who said she was sexually harassed while working for Wal-Mart Stores Inc. (*BI*, Aug. 7, 1995). A federal judge cut the award to \$5 million in 1995. . . . Cypress, Calif.-based PacifiCare Health System's acquisition of Fountain Valley, Calif.-based FHP International Calif. has received final regulatory approval (*BI*, Aug. 12, 1996). . . . The city of Chicago is protected under the state's sovereign immunity law from compensating businesses for damages they suffered as a result of the 1992 Chicago flood, the Illinois Supreme Court ruled last week. The flood caused an estimated \$300 million in insured damage.

# Retaliate

Continued from page 1

Baltimore, which dismissed his complaint. In 1995, in a decision that conflicted with other appellate court rulings, the 4th U.S. Circuit Court of Appeals in Richmond, Va., upheld the lower court, ruling that the term "employees" in the section referred only to current employees.

The Supreme Court opinion, written by Justice Clarence Thomas, who formerly headed the EEOC, says that the term employee in the anti-retaliatory section is ambiguous. However, several other sections of the statute "plainly contemplate that former employees will make use of the remedial mechanisms of Title VII," Justice Thomas wrote.

In addition, Justice Thomas noted

that according to the EEOC, excluding former employees would "undermine the effectiveness of Title VII by allowing the threat of post-employment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide perverse incentive for employers to fire employees who might bring Title VII claims."

The EEOC filed an amicus brief supporting Mr. Robinson.

"Those arguments carry persuasive force," Justice Thomas wrote, reversing the 4th Circuit decision and permitting Mr. Robinson's suit to proceed.

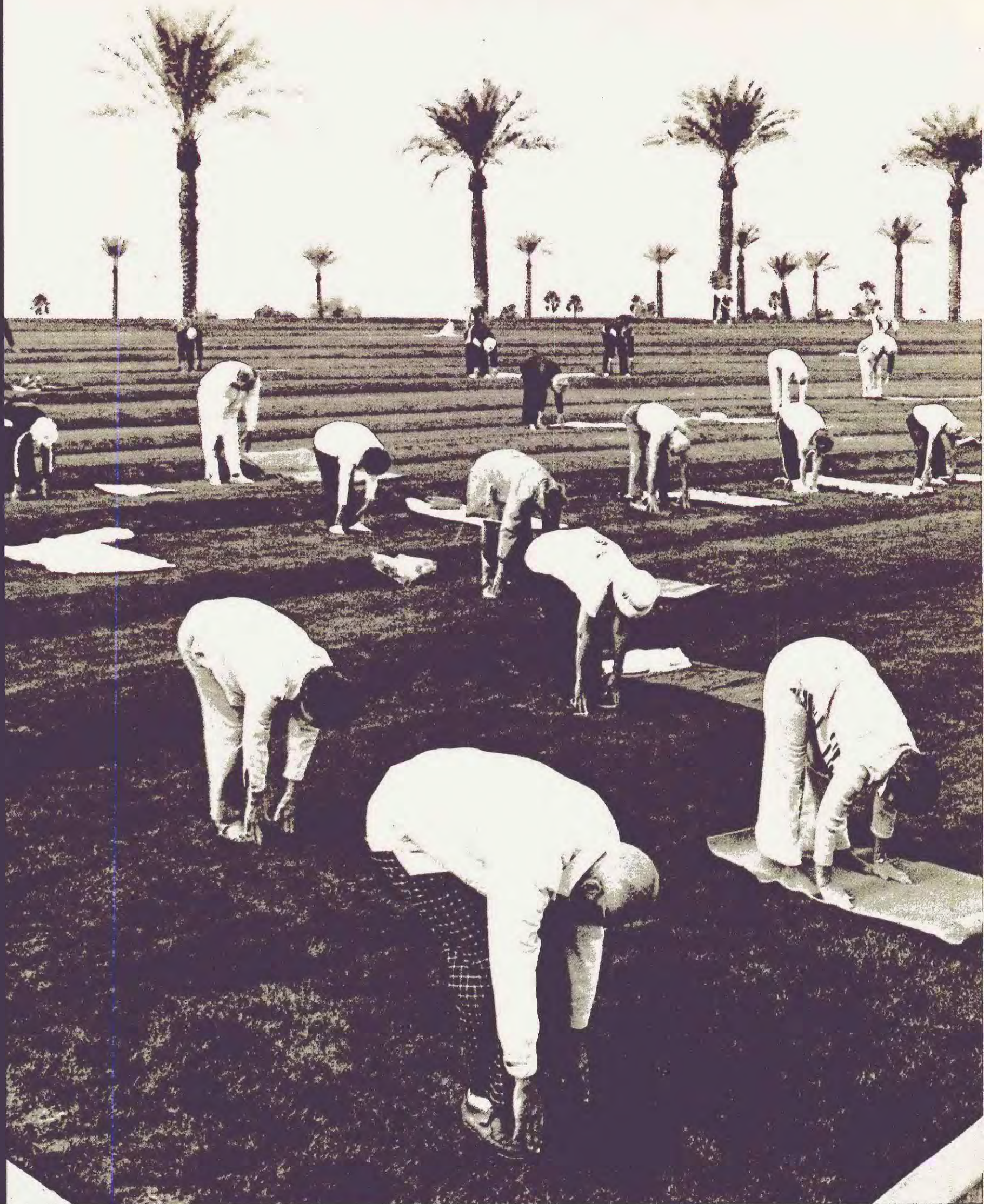
The ruling expands employers' potential liability just by potentially broadening "the group of plaintiffs that employers may face in employment discrimination lawsuits," said Rich Gissony, an attorney and princi-



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