

Business Insurance

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Two Kensu insurance units taken over by state regulators

KANSAS CITY, Mo.—Two insurance units of Kansas City-based Kensu Holdings Inc. have been taken over by state regulators.

Ohio General Insurance Co. voluntarily entered rehabilitation Feb. 8. Court papers don't specify the amount of Ohio General's insolvency, but the Ohio Insurance Department said the company was in hazardous financial condition.

An affidavit filed by department Chief Examiner William F. Rossbach cited a
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House panel blasts states for regulatory deficiencies

By DOUGLAS McLEOD

WASHINGTON—Insurance regulation must be vastly improved if policyholders are to be protected from the mismanagement, incompetence and fraud that produced a string of gargantuan insurer insolvencies in the 1980s, a congressional subcommittee contends.

The collapses of Mission Insurance Co., Transit Casualty Co., Integrity Insurance Co. and others shared similar causes, including reckless management, heedless delegation of underwriting authority, heavy reliance on weak reinsurers and outright fraud, the House Oversight and Investigations Subcommittee has found.

These failures points to serious shortcomings in existing state regulation, and changes in the current regulatory system—including possible federal involvement—should be considered, concludes a subcommittee report on insurer solvency released today.

"The subcommittee found that the present system for regulating the solvency of insurance companies is seriously deficient," Chairman John D. Dingell, D-Mich., said in an introduction to the report.

"The parallels between the present situation in the insurance industry and the early stages of the savings and loan debacle are both obvious and deeply disturbing," Rep. Dingell added.

"They encompass scandalous mismanagement and rascality by certain persons entrusted with operating insurance companies, along with an appalling lack of regulatory controls to detect, prevent and punish such activities," he said.

The report—"Failed Promises: Insurance Company Insolvencies"—does not recommend specific regulatory changes.

It does, however, outline several issues for further study, including the need for stronger insurer capitalization standards; better regulation of agents, brokers, intermediaries and reinsurers; stricter financial reporting requirements; and stricter regulation of insurer holding companies and affiliates.

Other questions are raised about improving state regulation of insurer solvency and what role the federal government might play in insurance regulation.

Hearings are scheduled March 12 and March 19 to discuss the report.

The subcommittee's report follows a series of hearings it began in September 1988 to investigate concerns about the adequacy of state regulation following an unprecedented series of insurance company insolvencies. These included the \$1.5 billion failure of Mission, the \$2 billion failure of Transit Casualty, the \$300 million collapse of Integrity and the smaller insolvency of Carlos I. Miro's Anglo-American Insurance Co. of Louisiana (BI, April 24, 1989; April 17, 1989; April 10, 1989; Sept. 19, 1988).

The subcommittee also studied the near-collapse of Omaha Indemnity Co., which the report notes would have failed without a "commendable" infusion of \$250 million by its parent, Mutual of Omaha Insurance Co.; and the failure of Insurance Corp. of Ireland, which was bailed out by the Irish government.

Omaha Indemnity last year won a \$225 million arbitration award against Royal American Managers Inc., a former managing general

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Home Insurance sale may attract Europeans

By JUDY GREENWALD

NEW YORK—The Home Insurance Co., placed on the sale block last week along with two affiliates by AmBase Corp., most likely will be purchased by a European insurer seeking a U.S. presence, stock analysts predict.

But, the sale could be a dragged-out one, as potential buyers scrutinize The Home's loss reserves and AmBase's junk bond holdings, the analysts also say.

AmBase already has received numerous inquiries about its units from both European and domestic companies, a spokesman said, adding that The Home's loss reserves are adequate and AmBase's junk bond holdings are not a problem.

Home President and Chief Executive Officer James J. Meenaghan told employees in a letter last week that The Home "is in strong financial condition," noting that New Hampshire insurance regulators have attested that the proposed sale is not related to any solvency problems.

"With respect to our producers and policyholders, it's very important that we continue to conduct 'business as usual,' The AmBase announcement should have no effect on our day-to-day interactions with Home producers," Mr. Meenaghan told employees.

And, Mr. Meenaghan told employees that he expects a "qualified" buyer for The Home that will want the current management team to continue.

Five years ago, before Mr. Meenaghan and the current management team were installed at The Home, its former parent could not find a buyer for its insurance units.

AmBase President and Chief Executive Officer Marshall Manley said that AmBase plans to sell The Home as well as two smaller insurance units—U.S. International Reinsurance Co. and Commonwealth Insurance Co.—because AmBase's shares are significantly undervalued.

The stock closed Thursday at \$8.88 a share, compared with a 52-week high of \$16.38.

"Our recent share price does not fairly represent the inherent value of our company," he said.

Proceeds from the sale, which will be handled by First Boston Corp., will be used in part to reduce AmBase's \$500 million debt, the AmBase spokesman explained. A portion of the proceeds also will be distributed as a special dividend to stockholders, he said.

AmBase has not established a sale price, but it's estimated the units could fetch between \$600 million and \$1 billion.

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Broker earnings flat

Rebound predicted for 1990

By LINDA J. COLLINS

While the soft property/casualty insurance market did not harden suddenly at year-end, the fortunes of publicly held insurance brokers already may be turning.

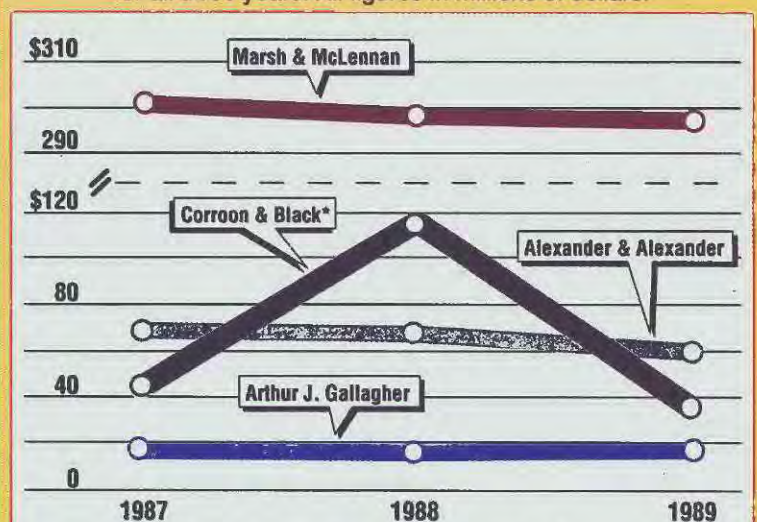
Most reported lackluster revenue growth in 1989 compared with previous years, but many brokers say fourth-quarter revenues were up slightly over other quarters.

"In general, what we're seeing is that in each quarter, brokers' domestic brokerage revenues continue to accelerate and, with each quarter, there is less of a negative effect on revenues" from rate reductions, explained Ira H. Malis, vp and analyst with Alex. Brown & Sons Inc. in Baltimore.

Despite generally higher fourth-quarter profits, annual profits still declined for most publicly held brokers (see chart).

While financial analysts and

Brokers' profits stalled
Most publicly held brokers reported lower net income in 1989 compared with the two previous years. Frank B. Hall reported a loss for all three years. All figures in millions of dollars.



*1988 net income includes gain from sale of interest in Minet Holdings P.L.C.

Source: Company reports

B/HOLLY SEGUINE

some brokers link end-of-the-year improvements to signs that prices are leveling off after three years of substantial rate reductions, others report continued rate competition

for most lines of commercial property/casualty insurance.

"It's fair to say that we have a broad range of management per-

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Health insurers try to collect \$18 million RICO judgment
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Opposing factions discuss solving work comp problems
Page 2

Upheaval in Eastern Europe may promote risk management
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Update

Kensu units insolvent

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\$7.2 million arbitration award won by Pacific Reinsurance Management Corp., a unit of the insolvent Mission Insurance Co., against Ohio Reinsurance Co., a predecessor to Ohio General (BI, Nov. 6, 1989).

Ohio Re's name was changed to Ohio General after the insurer's parent—Celina, Ohio-based Celina Financial Corp.—sold it to Kensu in 1985. As part of the sale, Celina reinsured all of Ohio Re's business into another Celina unit, First National Indemnity Co.

To secure its reinsurance obligations, First National set up a trust fund naming Ohio General as beneficiary. PRMC is attempting to garnish the trust fund, which now totals about \$13 million, to pay the arbitration award, said an Ohio General attorney.

Separately, Laramie Insurance Co., another Kensu unit, was ordered into liquidation by a Wyoming judge Feb. 14 after being found insolvent by \$8.1 million. A Wyoming department examination resulted in several reductions of Laramie's surplus, including a \$1.1 million reduction for mortgage loans on property for which the insurer could provide no title or appraisal and a \$920,000 reduction reflecting under-reserving.

Kensu also is the parent of Royal American Managers Inc. (see story, page 1).

Court throws out Indiana suit

CHICAGO—A federal appeals court has overturned a U.S. District Court injunction against an Indiana-based medical malpractice purchasing group, ruling the lower court did not have jurisdiction in a suit the Indiana Insurance Department brought against the group.

The 7th U.S. Circuit Court of Appeals earlier this month threw out an order by U.S. District Judge S. Hugh Dillin enjoining Medical Liability Purchasing Group Inc. of Indiana and Ted Allen Combs, the group's president.

Judge Dillin had found that MLPG and Mr. Combs had violated the federal Risk Retention Act and federal mail and wire fraud statutes in soliciting malpractice business from doctors for Casualty Assurance Risk Insurance Brokerage Co., an insurer then domiciled in Guam (BI, July 3, 1989).

The appeals court ruled that the Risk Retention Act does not give state regulators a federal right of action against purchasing groups and that the Insurance Department did not have standing to bring federal fraud charges on behalf of Indiana residents.

Indiana regulators have not decided whether to petition the U.S. Supreme Court for review or to refile the action in state court.

Court to rule on benefit case

WASHINGTON—The U.S. Supreme Court will decide whether a self-insured health care plan must be reimbursed for benefits paid to a beneficiary who later recovers a court award for those injuries.

The high court has agreed to review an appellate court ruling upholding a decision by a U.S. District Court that prevented Chicago-based FMC Corp. from seeking reimbursement of benefits that its self-insured health care plan paid to an employee's dependent who was severely injured in an automobile accident and later recovered \$49,875.50 in a settlement.

FMC's health care plan contains a subrogation clause.

The plan beneficiary claims that Pennsylvania motor vehicle law prohibits such subrogation. But FMC contends that the Employee Retirement Income Security Act of 1974 pre-empts the state law.

Contractor defense denied

NEW YORK—Asbestos manufacturers cannot shield themselves from personal injury claims by using the government contractor defense, the 2nd U.S. Circuit Court of Appeals ruled last week.

Under the government contractor defense as defined by the U.S. Supreme Court, companies that provide products to the federal government cannot be held liable under state tort laws for product defects if the product meets government specifications and the company warns the government of known defects (BI, July 4, 1988).

Other courts also have rejected the government contractor defense in asbestos bodily injury litigation, attorneys say. These courts and the 2nd Circuit hold that the defense is inapplicable in suits alleging that asbestos manufacturers failed to warn of the dangers of asbestos. Government specifications did not preclude the manufacturer from warning of the dangers of its product, the 2nd Circuit said.

In the most recent case, Eagle-Picher Industries Inc. sought to protect itself from a personal injury lawsuit filed by three former Brooklyn Naval Shipyard workers who claimed they were not warned of the dangers of asbestos. The 2nd Circuit vacated a trial court ruling and remanded the case for a new trial.

An Eagle-Picher attorney said the company will ask the entire 2nd Circuit to reconsider the decision.

Satellites insured for loss

LONDON—Two Japanese communication satellites, destroyed last week when an Ariane rocket exploded less than two minutes after launch, were insured for a total of nearly \$245 million.

One satellite, owned by broadcasting company Nippon Hoso Kyokai, was insured for \$94.9 million by its manufacturer, General Electric Co. of Stamford, Conn. Coverage, led at Lloyd's of London's by the Ariel syndicate, was placed by New York-based Marsh & McLennan Inc. with the help of its London affiliate Bowring Space Projects.

The other satellite, known as "Superbird," was insured for \$94.5 million by owner Satellite Communications Corp. in Japan. The coverage, placed by London-based Willis Faber P.L.C., also was led by the Ariel Syndicate.

Superbird also has \$50 million of relaunch coverage from Ariane-space captive Space Related Risks Reinsurance Co., which began offering such insurance in 1985 (BI, Dec. 16, 1985).

The explosion is the first failure after 17 consecutive successful Ariane lift-offs (BI, June 9, 1986).

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Insurers awarded \$18 million from labs

Huge fraud alleged

By DOUGLAS McLEOD

LOS ANGELES—Three health insurers are trying to collect an \$18 million civil racketeering judgment against two men they charged with organizing a massive health insurance scam.

Aetna Life Insurance Co., Metropolitan Life Insurance Co. and Employers Health Insurance Co. won the damage award earlier this month following a default judgment against David and Michael Smushkevich, two brothers who operated a network of medical diagnostic labs in Southern California.

The labs attracted patients with offers of "free" medical exams, then billed the patients' group health insurers thousands of dollars for phony or unnecessary tests that the patients themselves never knew were performed, the insurers charged.

In some cases, insurers were billed several times by different Smushkevich labs for the same tests, the insurers alleged.

Overall, the labs filed more than \$100 million in claims for fraudulent diagnostic tests with more than 50 health insurers, according to James L. Garcia, director of fraud investigations for Aetna's employee benefits division.

Aetna, Met Life and Employers—the only insurers to sue the brothers—paid a total of \$2.9 million to various Smushkevich labs, said Howard S. Veisz, a lawyer with Kornstein, Veisz & Wexler in New York, representing Aetna.

How much of the award insurers will ultimately collect is uncertain: The two left the United States in July 1988 after David Smushkevich's release from a federal prison camp in Boron, Calif., where he served eight months on a separate Medicare fraud conviction.

The brothers are believed to be in Mexico and may have taken a large portion of their assets with them, Mr. Veisz said, adding that some assets may have since been transferred back into the United States.

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Due dates nearing for BI lists

Deadlines are approaching for companies to return questionnaires to be listed in two *Business Insurance* directories: the directory of employee benefit information systems and the directory of captive management companies.

The EBIS directory will appear in the April 2 issue, which also will contain a spotlight report on computerized employee benefit information systems and trends in the design and administration of employee benefits.

The directory of captive insurance company managers will appear in the April 30 issue, which will focus on domestic and international captive domiciles and captive insurance company trends.

If your company produces and supplies software products to corporate employee benefits personnel or provides captive management services in the United States or abroad and you have not yet received a questionnaire, please request one from Sara Harty, Editorial Assistant, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590; 312-280-3195.

The deadline for employee benefit information system vendors to return completed questionnaires is March 5; captive management companies have until March 16.

Factions discuss new solutions to comp problems

By MEG FLETCHER

BOSTON—For the first time in nearly two decades, representatives of key workers compensation constituencies—including employers, labor, insurers and doctors—are forging a national advocacy group to seek work comp reforms.

However, observers say it is too early to be more than cautiously optimistic about what impact—if any—a national group may have in achieving solutions to work comp problems at local levels.

Among the challenges facing the group is that each constituency has its own agenda and that the local affiliates of national employer and labor groups are not obligated to automatically adopt any consensus.

And, observers stress that the effort, spearheaded by Gary L. Countryman, president and chief executive officer of Boston-based Liberty Mutual Insurance Co., still is in its infancy. Indeed, participants in the group have not yet developed an agenda of issues.

However, important general issues that the group is likely to consider include escalation of health care and litigation costs, distribution and utilization of benefits, the operational structure of individual state workers comp systems and effective rehabilitation programs.

In addition, the "difficult" issue of what constitutes appropriate benefits for injured workers with

permanent partial disabilities must be ironed out, said John Lewis, a national work comp expert who lives in Coconut Grove, Fla.

The "delicate" process of establishing an ongoing national advocacy organization was begun at a meeting in Washington, D.C., earlier this month when representatives of insured and self-insured employers, labor, insurers, doctors and lawyers agreed to search for common ground, said Paul Mattered, vp and assistant general counsel at Liberty Mutual.

More than one dozen representatives of the various work comp constituencies gathered to hear presentations by consultants and outside experts on general work comp issues, including medical cost containment, distribution of benefits and the administration of state workers compensation systems.

"I was impressed that the individuals and organizations representing constituencies as diverse as business, labor, insurance, medicine and law expressed a common desire to work together to address some of the major problems confronting the state workers compensation systems," Mr. Countryman said.

"I believe that we—not Liberty Mutual, but a collective we—have started a process which will allow meaningful dialogue to take place," he said.

Organizations represented at the

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Inside

✓ An effort to develop a consensus on solutions to growing problems in state workers comp systems is to be commended and supported, says this week's editorial. **PAGE 8**

✓ U.S. insurance buyers would face higher premiums and reduced capacity if the federal excise tax on premiums ceded to foreign reinsurers is hiked, RIMS says. **PAGE 10**

✓ Nearly half of all state insurance commissioners who left office between 1984 and 1989 subsequently found jobs in the insurance industry, a recent study reveals. **PAGE 13**

✓ Scrapping the Warsaw Convention's liability limits could speed claims settlements, a London broker says at a conference on disasters. Coverage begins on **PAGE 14**

✓ CIGNA's John C. Morrison and Catherine Dorris Bennett of Corroon & Black look at problems with the workers compensation system in Perspectives. **PAGE 21**

✓ The trustees of the workers compensation system must rise above politics to provide needed changes to the system,

says Franklin Nutter of the Alliance of American Insurers in Perspectives. **PAGE 22**

✓ U.S. risk managers' skills are transferable to Eastern European operations, a broker says at the Atlanta Risk Management Educational conference. **PAGE 29**

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Hundreds of thousands of people marched in Moscow earlier this month in support of political reforms in the Soviet Union.

Winds of change

Upheaval to benefit Soviet insurers

By STACY SHAPIRO

LONDON—Dramatic political changes in the Soviet Union can only benefit the Soviet risk management and insurance professions, a leading Soviet insurance executive says.

The Soviet government already is considering its first-ever insurance law to regulate the increasing number of insurers operating in the country.

And risk management principles are being taught to Soviet insurers and policyholders alike. "It is rather a new phenomenon not only for us, but for many countries," said Mikhail Safronov, chairman of Moscow-based Ingosstrakh Insurance Co. of the U.S.S.R. Ltd.

"I think that what is going on today is still in favor of our profession, that's for sure," said Mr. Safronov during a visit to Ingosstrakh's London subsidiary, Black Sea & Baltic General Insurance Co. Ltd.

"The major effect which we are welcoming very much is that the (Soviet) economy is getting more and more market-oriented. And this development really helps us to win more clients because as soon as you are autonomous—financially independent of the state—you certainly look after your expenses and look after your profit and so on. Therefore, the insurance element is becoming more and more important," he said.

Mr. Safronov spoke to *Business Insurance* in London the day after the Central Committee of the Soviet Communist Party agreed to surrender its monopoly on power.

The political reforms have no direct effect on the Soviet insurance industry because they are political changes rather than economic ones, according to Mr. Safronov.

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RIMS conference to study Eastern bloc

By JOANNE WOJCIK

The revolutionary political and economic changes in Eastern Europe and the Soviet Union also are altering the program at the 1990 Risk & Insurance Management Society Inc. conference.

In an addition to the original program, this year's RIMS conference will feature a special session on "Joint Ventures in the U.S.S.R. and Eastern bloc Countries," announced Ron Judd, executive director of the New York-based organization.

RIMS' 28th Annual Risk Man-

agement and Employee Benefits Conference will be held April 29 through May 4 in Boston.

John F. O'Sullivan, managing director of Marsh & McLennan Worldwide, a division of New York-based broker Marsh & McLennan Inc., is lining up speakers for the new session, including a leading West German insurance broker, an attorney specializing in international joint ventures and a multinational risk manager.

Mr. O'Sullivan, who also will speak during the session, also plans to add speakers from at least one major Eastern bloc insurer as



well as several political risk experts from London.

Recent developments in Eastern Europe created the need for such a session at this year's RIMS conference, said Messrs. O'Sullivan and Judd.

"The whole world turned upside-down at the end of '89," Mr. Judd said. "The more people I talk to, the more I find RIMS members

whose companies are dabbling in" ventures in Eastern bloc countries.

Mr. O'Sullivan agreed, noting that "a lot of things have changed" since he spoke at a Nov. 15 conference in New York on U.S.-Soviet joint ventures sponsored by M&M & Ingosstrakh Insurance Co. of the U.S.S.R. Ltd., a Soviet state-owned insurer (BI, Nov. 27, 1989).

"You can't really call it a 'bloc' anymore," Mr. O'Sullivan observed. "Each country has its own characteristics and has to be handled individually" by multinational risk managers working on meeting insurance requirements.

Foreign corporations establishing joint ventures in most Eastern bloc countries usually must purchase insurance from state-owned insurers that hold the monopoly on the insurance market, he said.

However, few of the coverages that Western investors need to purchase are written by Eastern bloc insurers, he pointed out.

"They don't understand the need for" product liability, directors and officers liability, or pollution liability insurance, he said.

And, some Eastern bloc countries are just now developing en-

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Plan to drop regs criticized

ICC told to keep cargo cover rules

By MICHAEL SCHACHNER

WASHINGTON—Truckers, shippers and cargo insurers are trying to derail a federal proposal to abolish longstanding cargo liability insurance requirements for interstate truckers.

Shippers are concerned that they would be unable to recoup losses for damaged cargo from non-paying or bankrupt motor carriers if the Interstate Commerce Commission's insurance requirement is eliminated.

Common motor carriers and freight forwarders, which are similar to freight brokers but assume financial responsibility for cargo they arrange to ship, also claim that eliminating the insurance requirement would create administrative headaches for them because it would force them to present proof of insurance to each shipper with which they do business.

"There is no good reason to abolish the requirement," said Andy Kerlik, vp-claims and safety for New Penn Inc., a Lebanon, Pa.-based small load carrier, and chairman of the National Freight Claims & Security Council. He noted that the current rule protects shippers and provides a central source for information about truckers' insurance.

Indeed, nearly all 145 of the letters the commission has received from shippers, carriers and cargo insurers during a 60-day comment period following the proposal's introduction by the five-member ICC board on Nov. 24, 1989, favor retaining the insurance requirement, said Jule Herbert, acting director of the Office of Government and Public Affairs in Washington, D.C.

Meanwhile, critics of the proposal believe a recent change in the makeup of the five-person ICC board will help their cause.

Under the proposal, truckers and freight forwarders no longer would have to prove they carry at least \$5,000 of cargo liability coverage per occurrence per vehicle and aggregate limits of \$10,000 per incident.

Current ICC policy allows truckers to file proof of coverage with the ICC and then present an ICC certificate of insurance to shippers.

The ICC contends that dropping the cargo liability insurance requirement would, in essence, create a free market in which truckers could arrange any type of cargo liability coverage they choose. Theoretically, truckers could carry no cargo liability coverage and agree to transport goods at lower rates for shippers, who then would assume the risk of damaged cargo, said the commission, which also suggested that

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Telexes can bind reinsurer to risk, N.Y. court rules

By STACY ADLER

NEW YORK—An exchange of telexes can bind a reinsurer to a risk, even if a formal certificate of reinsurance has not yet been received, according to the New York Court of Appeals.

The Feb. 13 decision by the state's highest court marks the first time any court has ruled on whether the acceptance of a telex can bind a reinsurance contract.

That opinion came in a decision that also marks the first time any court has ruled on the applicability of the standard nuclear exclusion, which bars coverage for nuclear-related losses. The court ruled that the exclusion only applies if the risk of radiation contamination is the primary hazard being insured.

The ruling allows the New York branch of Sumitomo Marine & Fire Insurance Co. Ltd. of Tokyo to collect about \$150,000 from Buffalo Reinsurance Co.—now Underwriters Reinsurance Co. in Woodland Hills, Calif.—and Philadelphia Reinsurance Co. in Philadelphia.

Sumitomo wrote a \$97 million "all-risks" commercial property insurance policy for the Auburn Steel Co. in Auburn, N.Y., effective Feb. 1, 1983, to Feb. 1, 1984. The policy included coverage for property damaged by radiation contamination.

Like most steel plants, Auburn used a small quantity of radioactive cesium in a device that measured the factory's output.

The plant, which melts down scrap metal, suffered business interruption and property damage losses totaling \$3.6 million due to a radiation leak

that forced it to shut down.

Attorneys speculate that the plant probably was contaminated not by the radioactive cesium but when an old X-ray machine was melted down.

Sumitomo agreed to pay Auburn for its losses and then sought indemnification from 15 reinsurers.

Seven of the reinsurers paid Sumitomo a total of \$367,000. Eight objected to the claim, and six demanded arbitration under mandatory arbitration clauses.

The two remaining companies—Buffalo Re and Philadelphia Re, each of which reinsured about 2% of the Auburn policy—were sued by Sumitomo.

Sumitomo argued that the reinsurers were bound from the time they accepted its offering telex, even though they did not provide a certificate of reinsurance until well after the loss.

The court agreed that in accepting an offering telex from a cedant, a reinsurer binds itself to a risk.

Issuing a formal certificate is merely a "ministerial" act, of no legal significance, according to the court.

Reinsurers in London, the court noted, agree to be bound to a risk through use of a line slip, a document that is signed and stamped by the leading reinsurance underwriter and following underwriters indicating the percentage of risk each is willing to assume.

"With electronic advances, the slip has been replaced by an exchange of telephone calls or telexes," the court said. "Delivery of the original insurance policy to the reinsurer and issuance by the latter of a formal certificate of authority may not occur until much later and, indeed, are technically

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Ex-chief of agency at Lloyd's to pay loss

By CAROLYN ALDRED

LONDON—The former chairman of a Lloyd's of London underwriting agency will help pay losses owed by a member who says he joined Lloyd's only for social status and alleges that the executive had agreed to pay any losses.

Former Oakeley Vaughan (Underwriting) Ltd. Chairman Charles St. George earlier this month agreed to an undisclosed settlement with Lloyd's member David Becker during the fourth day of a trial in London's High Court.

The trial marked the first time a Lloyd's member has disputed payment of underwriting losses in court and is the first of many lawsuits surrounding the loss-riddled Oakeley Vaughan syndicates that has gone to trial.

However, while some other members of syndicates managed by Oakeley Vaughan are encouraged by Mr. Becker's victory, the settlement will not have any impact on the members' litigation against Lloyd's and others, predicted Stephen Bailey, a partner with Elborne Mitchell, which represents the members.

Nearly 70 Lloyd's members hit with tens of millions of dollars in losses from Oakeley Vaughan syndicates are seeking unspecified damages in separate suits against Lloyd's, their members' agents and the company that took over responsibility for managing the syndicates.

The lawsuit against Lloyd's, scheduled to be heard in the High Court in October, marks the first

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Telex ruling

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unnecessary for a binding agreement."

Attorneys predict the telex opinion will be cited widely in reinsurance and insurance coverage disputes. Insurers and policyholders also may agree to policy terms by telex, they point out.

"The most important aspect of the decision is that it establishes the contract is made at the time either the placing slip is signed or the offering telex is accepted," said Thomas R. Newman of Bower & Gardner in New York, who represented the reinsurers.

However, any references to the binding power of telexes are purely dicta, argues John H. Haley of Bickford, Hahn & Hayes in New York, who represented Sumitomo. Dicta, those portions of an opinion superfluous to an ultimate ruling, are generally less influential than other elements of a court's opinion.

Mr. Haley explained that, in this case, the court's ultimate ruling was that the reinsurers had waived their right to argue they were not bound to the risk because they had issued the formal certificate many months after the loss. Thus, the issue of whether the reinsurer was bound at the time the offering telex was accepted is superfluous, Mr. Haley contends.

Reinsurers also argued that the policy should be rescinded because they were not told the underlying policy covered damage from radiation contamination.

But Sumitomo argued it was not obligated to bring such coverage to the reinsurers' attention because radiation coverage for steel plants is routine, due to their use of cesium.

The court, commenting on a ceding company's obligations, said: "A reinsured is obliged to disclose to potential reinsurers all 'material facts' concerning the original risk, and failure to do so generally entitles the reinsurer to rescission of its contract. But the reinsured ordinarily has no

obligation to disclose the terms upon which insurance has been granted where those terms are generally to be found in policies of that nature, for the reinsurer ought to be aware of such standard terms."

Whether or not radiation coverage is standard in policies for steel plants, the court said that by signing the cover note after the loss and issuing the certificate many months after the loss, the reinsurers waived their right to argue they were not aware radiation was a covered risk.

"Defendants not only failed to take steps to assert their alleged right to rescission within a reasonable time, as they were required to do, but also affirmatively treated the agreement as a valid one well beyond the point where they had the most complete possible notice of the coverage," the court said.

"The probable outcome of the decision is that when contracts are formed by telex the parties may be required to exercise more vigilance," predicted Mr. Haley, Sumitomo's at-

torney. For example, a reinsurer may find it necessary to carefully review all of the ceding company's policy language before accepting an offering telex, he explained.

Reinsurance attorney Vincent J. Vitkowski of Nixon, Hargrave, Devans & Doyler in New York agreed: "If you take the case to its logical extreme—as some attorneys will—it puts the reinsurer on a kind of inquiry notice. If the reinsurers see something unusual, they must speak up immediately, or a court may deem them to have waived their right to speak up later."

In interpreting the standard nuclear exclusion for the first time, the New York Court of Appeals also broke new ground, attorneys say.

That exclusion bars coverage for nuclear reactor power plants, nuclear reactor installations and other installations using substantial quantities of radioactive isotopes, among other things.

However, the fifth paragraph of the exclusion states: "It is under-

stood and agreed that this clause shall not extend to risks using radioactive isotopes in any form or where the nuclear exposure is not considered by the reassured to be the primary hazard."

The court interpreted this paragraph as overriding all others in the exclusion and concluded that since the parties agreed that use of radioactive isotopes at the steel plant was not a primary risk, the exclusion did not apply.

"Contrary to defendants' claim, the natural reading of this clause is neither unusual nor absurd," said the court. "Exclusion clauses commonly specify that they do not apply where the excluded operations are considered incidental, with the determination left to the reinsured."

The Sumitomo Marine & Fire Insurance Co. Ltd. vs. Cologne Reinsurance Co. of America, Buffalo Reinsurance Co. and Philadelphia Reinsurance Co. et al.; New York Court of Appeals, No. 3.

EMPLOYEE BENEFITS BULLETIN: MAKE CNA YOUR PARTNER IN GROUP HEALTH CARE

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BI's Ross to succeed Walsh as ad chief

NEW YORK—Martin J. Ross, Eastern advertising manager of *Business Insurance*, will be promoted to advertising sales director on April 1, succeeding Donald A. Walsh, who is retiring, *Business Insurance* Publisher Alfred Malecki announced.



Mr. Ross

Before joining *Business Insurance*, Mr. Ross was a national account representative for Lanier Business Products in New York.

He holds a bachelor of science degree in business administration from St. John's University in Jamaica, N.Y.

Mr. Walsh, 65, joined the *Business Insurance* staff as advertising director in January 1974. He has been employed by Crain Communications Inc., publisher of *Business Insurance*, since

1961, when he joined Advertising Age as an advertising salesman in New York.

Prior to that, Mr. Walsh worked as an account supervisor for Persons Advertising in New York and as a promotion manager for Hearst Magazines.

Mr. Walsh is a graduate of Syracuse University in Syracuse, N.Y., with a degree in journalism/liberal arts degree.

"Under Don's leadership, *BI's* ad volume has grown steadily, culminating in making it possible to double our frequency to become a weekly in 1980," Mr. Malecki commented.

"For the last two years, Marty has worked closely with Don on all aspects of managing and planning. Marty is expected to hit the ground running to help keep *BI* the industry leader it has become," Mr. Malecki added.

After April 1, Mr. Ross can be reached at 212-210-0133.



Mr. Walsh

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Coal miners to get health care stipend

By MICHAEL SCHACHNER

Unionized mine workers at Pittston Coal Group—who last week voted to end a bitter 10-month strike—will receive \$500 from the company every six months in a novel approach to health care cost containment.

Under the four-year agreement between Pittston and the United Mine Workers of America—tentatively approved Jan. 1 and ratified by nearly 1,700 UMW members in Virginia, Kentucky and West Virginia Feb. 20—employees and retirees under the age of 65 will receive the stipend to reimburse medical expenses. Those with medical costs below \$500 can pocket the difference.

Pittston Coal Group, the mining unit of Greenwich, Conn.-based Pittston Co., will continue to pay all expenses exceeding \$500 under its self-insured health care plan.

The company lost its bid to require workers to pay 20% of health care costs above a \$200 annual deductible for individual coverage and a \$400 deductible for family coverage.

A Pittston spokesman would only say that the \$500 reimbursement fee is designed to dissuade employees from seeking unnecessary medical care.

In addition to the health care stipend, the contract calls for Pittston to continue participating in a multiemployer mine workers' pension plan. During negotiations Pittston had sought to break off from an existing multiemployer plan and begin making pension contributions on its own.

The contract also calls for Pittston to pay UMW members a \$1,000 lump-sum ratification bonus, a general wage increase of \$1.20 per hour and to maintain death, sickness and accident benefits stipulated under a 1988 pact between the UMW and the Bituminous Coal Operators Assn.

Union President Richard Trumka earlier had called the tentative agreement "a victory for our UMW members at Pittston, a victory for UMW and a victory for the entire labor movement."

Last week's contract ratification brings to an end a strike that began April 5, 1989.

Holiday day care

Children of Boston-area employees of John Hancock Mutual Life Insurance Co. are treated to trips to local aquariums and skating rinks on school holidays when their parents must work under a month-old employee-paid program offered by the company.

Kids-to-Go organizes activities for Hancock employees' children ages 6 to 13 on school holidays such as Columbus Day and during school vacations in February and April when their parents must work. The program is open to children of all 5,000 John Hancock employees in Boston.

The program, which began Jan. 15, offers such activities as skating and trips to museums, zoos and other places of interest in the Boston area for up to 60 children a day. Programs are tailored to the makeup of each group.

Ten instructors oversee different activities for the children. For example, one group may go to an aquarium or to the zoo while other children are doing art projects or listening to readings.

Ellis Memorial, a non-profit social service agency that specializes in providing after-school day care for young children, operates the Kids-to-Go program.

The program is paid for by participating employees. Daily fees are \$20, including transportation and

Benefit beat

admissions, but the fee is halved for parents with annual family incomes below \$30,000.

Kids-to-Go was developed in response to a 1986 John Hancock employee benefits survey, which found that working parents were highly concerned about care for their children during school vacations and holidays. Sixty-five percent of the 400 employees who responded said finding child care when their school-age children are home for a school holiday was a major problem.

Survey respondents said they often had to use vacation or unpaid time to care for their children.

The program has been well-re-

ceived by John Hancock employees, said a spokeswoman, noting that 62% of the company's Boston employees are women, 15% of whom have school-age children. In addition, 20% have pre-school-age children.

The spokeswoman pointed out that 47 children of John Hancock employees participated in the program on Martin Luther King Jr. Day on Jan. 15.

Parental leave survey

More than 80% of Americans believe employers should be required to provide a leave of absence to employees for the birth or adoption

of a child or the illness of a family member, says a recent survey.

Of those respondents who advocate mandatory unpaid leave, 51% said employers should guarantee eight weeks or less of unpaid leave, 20% support three months of leave and 26% said more than three months of guaranteed unpaid leave should be mandatory, according to the survey conducted by Gallup Organization Inc. for the Employee Benefits Research Institute.

Gallup surveyed 1,000 Americans nationwide by telephone. The poll was conducted in November 1989 as a follow-up to EBRI's October 1989 survey on child care.

The new survey found that 77% of those advocating mandatory unpaid leave said employers should be required to extend employee benefits during the leave period.

Only 21% of respondents opposed mandatory continuation of benefits during leave time.

More than half of the respondents—53%—believe employers should be required to provide paid leave. Seventy-one percent of those respondents support paid leave of eight weeks or less, 10% support paid three-month leaves of absence and 11% said paid leaves should be guaranteed for more than three months.

More than 70% of survey respondents said leave policies should apply equally to men and women.

A summary report of "Public Attitudes on Family Leave" can be obtained for \$75 from Laura Bos, Employee Benefits Research Institute, 2121 K Street N.W., Suite 600, Washington, D.C. 20037-2121. The full report costs \$275. ■

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What steps are you taking this year to control property losses?



John R. Brouch
Director-risk
management
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Chicago

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Daniel W. McDermott
Director of
insurance &
pensions
GTE Corp.,
Stamford, Conn.

We are investigating ways to manufacture electronic equipment with less combustible materials so fire spread is minimized. We're trying to break up our high-value equipment offices into smaller-value locations, so a disaster at one site won't result in a monumental loss. And, like other telecommunications firms, we're looking for alternative fire protectants to Ha'lon.



William H. Murphy
Director-risk
management
**Reynolds
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Compiled by Christine Woolsey

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Insider trading

Aetna Life & Casualty Co.: John E. Donahue, director, disposed of by gift 17,990 shares of common stock at an unreported price per share from Dec. 13 to Dec. 21 and now directly and indirectly holds 568,404 shares.

Walter J. Fitzgibbon, vp, sold 3,000 shares of common stock at \$58.75 per share on Dec. 15 and now holds 7,324 shares.

Philip R. Roberts, vp, disposed of by gift 200 shares of common stock at an unreported price per share on Dec. 13 and now directly holds 2,000 shares.

Aetna stock was trading at \$51.25 per share on Feb. 16.

Continental Corp.: George S. Zacharkow, vp, disposed of by gift 1,000 shares of common stock at an unreported price per share on Dec. 14 and now holds 117 shares.

George G. Zipf, director, sold 1,000 shares of common stock at \$33.13 per share on Dec. 8 and now directly holds 3,500 shares.

Continental stock was trading at \$28.63 per share on Feb. 16.

Lincoln National Corp.: Richard S. Robertson, vp, disposed of by gift 275 shares of common stock at an unreported price per share on Dec. 26 and now directly and indirectly holds 3,000 shares.

Lincoln National stock was trading at \$53.25 per share on Feb. 16.

NAC Re Corp.: Martha G. Bannerman, vp, indirectly acquired by gift 300 shares of common at an unreported price per share on Dec. 5 and now holds 2,100 shares.

NAC Re stock was trading at \$35.25 per share on Feb. 16.

Ohio Casualty Corp.: Vaden Fitten, director, indirectly disposed of by gift 4,800 shares of common stock at an unreported price per share on Dec. 12 and now directly and indirectly holds 170,560 shares.

Stephen S. Marcum, director, acquired by gift 100 shares of common stock at an unreported price per share on Dec. 25. He indirectly acquired by gift 2,575 shares of common stock that same day at an unreported price per share and now directly and indirectly holds 74,052 shares.

Jeffrey D. Lowe, director, acquired by gift 400 shares of common stock at an unreported price on Dec. 12. Mr. Lowe indirectly acquired by gift 600 shares that same day at an unreported price. He now directly and indirectly holds 73,955 shares.

Joseph L. Marcum, chairman, disposed of by gift 8,350 shares of common stock at \$50.25 per share on Dec. 12. Mr. Marcum indirectly purchased 5,000 shares of common stock at \$50.25 per share on Dec. 14 and now indirectly and directly holds 751,692.

Ohio Casualty stock was trading at \$41.50 per share on Feb. 16.

The St. Paul Cos. Inc.: Thomas W. McKeon, vp, disposed of by gift 100 shares of common stock at an unreported price per share on Nov. 24 and now indirectly and directly holds 10,943 shares.

St. Paul stock was trading at \$58.50 per share on Feb. 16.

Transamerica Corp.: Howard J. Korth, director, disposed of by gift 4,275 shares of common stock at an unreported price per share on Dec. 1 and now directly and indirectly holds 2,013,313 shares.

Transamerica stock was trading at \$38.38 per share on Feb. 16.

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

Opinions

Work comp coalition overdue

A CURRENT EFFORT to bring together employers, workers compensation insurers, representatives of labor groups and the medical community to address growing problems in state workers comp systems is to be commended and supported.

Frankly, we're a bit disappointed that so few people are heralding the attempt to form this national coalition and instead are taking the proverbial "wait-and-see" position. Positive thinking is required.

This is the first time in nearly two decades that representatives of key workers compensation constituencies have tried to forge a national advocacy group to seek work comp reforms.

The effort is being spearheaded by Gary L. Countryman, president and chief executive officer of Boston-based Liberty Mutual Insurance Co., a major workers compensation insurance underwriter (see story, page 2).

While the group has not agreed on its agenda, important general issues likely to be considered include escalation of health care and litigation costs, distribution and utilization of benefits, the operational structure of individual state workers comp systems and effective rehabilitation programs.

With insurers increasingly saying that they cannot afford to write workers compensation insurance at rates held artificially low by many state regulators, controlling the increase in workers compensation costs is mandatory. The alternative is the death of the private workers compensation insurance market.

Workers compensation insurers increasingly are withdrawing their capacity. The residual workers compensation market grew to about 20% of direct written work comp premiums in 1988 from about 5% in 1984 (*BI*, May 22, 1989).

The cost and availability of workers compensation insurance in the 1990s could be the next com-



mercial insurance crisis if underlying costs are not quickly brought under control.

There is no dearth of possibilities for reforming state workers compensation systems (see pages 21 and 26).

As Franklin W. Nutter, president of the Alliance of American Insurers, says, "What is needed is for the trustees of the workers compensation system, the worker, the employer, the insurers and health care providers—those with a resolve to adjust the most efficient benefit system ever developed—to rise above the politics of these issues and provide an affirmative consensus on the adjustments needed in the system (see Perspective, page 22).

We heartily encourage all those involved in this effort to form a new national coalition to do just that.

Letters

Sheriffs' group not indicative of other pools

To the editor: Your Feb. 5 story on the problems with The Star Pool sponsored by the National Sheriffs' Assn. may have confused some of your readers as to the role of local units of government in the formation and membership of inter-governmental risk pools.

The term "pool" generally has been used to describe a joining together of units of local governments to manage, treat and transfer risk. Many forms of pools have evolved across the nation in the past 10 years, but all share certain common elements. Pools generally contain a membership of like units of government that are permitted by state law to band together to perform services that they could have performed individually.

No state enabling legislation of which I am aware permits or was intended to permit commercial insurance and the issuance of insurance products on an intrastate or interstate basis under the guise of the public entity pooling concept. The

current operations of more than 280 public entity pools demonstrates the commitment of public entity administrators to conduct their affairs within the spirit and intent of the laws of their respective states.

I believe you could have provided an explanation of the operation of public entity pools and clearly delineated how The Star Pool and its successor programs are not, in construction nor intent, public entity pools.

Mark Ferraro
President
Ferraro & Associates
Dallas

Non-covered occurrences may be insured

To the editor: Your recent article "EEOC Complaint Ruled Uninsurable by Appeals Court" (*BI*, Feb. 12), cries out for comment.

Exposures are "uninsurable" when they cannot be insured. Exposures are "uninsured" when the insurer or policyholder do not choose to insure them.

Your article appears to describe a coverage decision under a general liability form. Hence, it was a court decision as to whether the insurer agreed to grant coverage, not whether such coverage could ever be insured.

At least one specialty broker—Complete Equity Markets Inc. of Wheeling, Ill.—currently has available insurance that does cover EEOC complaints.

As a result, this exposure may be *uninsured* under a standard form general li-

ability policy, but it is certainly not *uninsurable*.

Randall Kleinman
Malloy & Kleinman
Des Plaines, Ill.

Malpractice suits increase health costs

To the editor: While your editorial, "Health Care Focus Overdue" (*BI*, Feb. 12), concluded with several excellent suggestions, I believe you've neglected a major component of increased medical costs: costs associated with unjustified medical malpractice suits. Not only are malpractice insurance premiums driven sky-high by these suits, but a plethora of marginal or unnecessary medical tests are performed in an attempt to avoid litigation.

A major key to reducing medical costs is to reduce the number of attorneys in this country whose only way to make a living is to sue somebody. We all know that even totally unfounded suits are settled if it is less expensive to settle than to litigate.

Attorneys and their clients should be held responsible for defense costs of lawsuits that are found to be without merit. I believe that adopting this measure alone would cut medical malpractice insurance premiums and health care costs substantially.

David A. Lovitt
Vp of Finance
and Administration
Builders Supply Co. Inc.
Omaha, Neb.

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RIMS blasts reinsurance excise tax hike

By ADRIENNE C. LOCKE

WASHINGTON—U.S. insurance buyers would face higher premiums and reduced capacity for some coverage under a proposal to increase the federal excise tax on premiums ceded to foreign reinsurers, the Risk & Insurance Management Society Inc. told a House panel last week.

If the reinsurance excise tax is increased to 4% from 1%, foreign reinsurers would pass on the increase to U.S. insurers, which would then increase policyholders' coverage costs, testified Howard Greene, director of governmental affairs for New York-based RIMS, during a hearing by the House Subcommittee on Select Revenue Measures.

The Washington-based Reinsurance Assn. of America, which proposes the tax increase, testified that a higher excise tax is necessary to eliminate a competitive advantage foreign reinsurers have obtained over domestic reinsurers following the 1986 Tax Reform Act, which increased U.S. insurers and reinsurers' federal income tax liabilities.

But, an insurer representative testified that tax reform has not created an uneven playing field for domestic and foreign reinsurers.

The House subcommittee is conducting hearings on the effectiveness of the Tax Reform Act.

"The burden of the excise tax increase would be largely passed through to insurance consumers as higher premiums," Mr. Greene said. "We must be wary of actions which will inflate the cost of insurance."

Mr. Greene characterized any increase in the excise tax, which is imposed in the form of a withholding tax, as "a double-edged sword held to the throat of American insurance consumers," because it would lead to a reduction in capacity for certain coverages as well.

"Foreign reinsurance plays an important role in the volatile domestic insurance market by assuming risks considered undesirable by U.S. reinsurers," such as product liability and environmental liability risks, he said.

By reinsuring these risks, foreign reinsurers increase the domestic capacity, he said.

However, RAA President Andre Maisonnier strongly defended the proposed tax hike at the hearing, explaining that Congress imposed the current 1% excise tax to maintain a competitive balance between domestic and foreign reinsurers.

But, while the Tax Reform Act of 1986 increased the tax liability of domestic reinsurers, the 1% excise tax on premiums paid to foreign reinsurers remained unchanged, Mr. Maisonnier said.

"The 1% tax is no longer effective as an equalizer," he asserted.

Tax reform required property/casualty insurers to, among other things, discount their loss reserves for tax purposes, as well as pay taxes on a portion of unearned premium reserves.

But other opponents of the proposal contend that available data does not establish that the Tax Reform Act has caused a competitive imbalance that would justify an increase in the excise tax.

The General Accounting Office in September 1989 found the available data "limited and insufficient for supporting a conclusion" on whether the Tax Reform Act has had an adverse effect on competition between domestic and foreign reinsurers, said Clyde Turbeville, executive vp of American Agricultural Insurance Co. in Park Ridge, Ill., who testified on behalf of the National Assn. of Independent Insurers, the Alliance of American Insurers, the American Insurance Assn. and the National Assn. of Mutual Insurance Cos.

"While it is true that the 1986 amendments, which relate specifically to the property/casualty insurance industry have increased the tax

burden" of the industry as a whole, including reinsurers, "there has been no showing that these changes have placed the domestic reinsurers at a competitive disadvantage," he said.

And, even assuming that an imbalance has occurred, there is no proof the proposed 300% increase in the excise tax would restore parity, Mr. Turbeville said.

Foreign insurers also may perceive an increased excise tax as protection-

ism at a time when the United States is trying to bring down trading barriers, RIMS' Mr. Greene said.

Mr. Turbeville agreed, adding that foreign countries might retaliate by hindering the attempts of U.S. companies that seek to expand sales within their borders.

But, Mr. Maisonnier said current U.S. tax laws can be viewed "as the reverse of trade protectionism," because they increase the tax burden on

domestic reinsurers.

In addition to the increase in the excise tax, the RAA proposal also calls for:

- The Treasury Department to justify prospective excise tax waivers on premiums paid to reinsurers in certain foreign countries based on the amount of premium taxes those reinsurers pay in their home countries.

- Ending treaties waiving excise taxes with those countries that do

not meet Treasury Department requirements.

- Federal legislation that would add an "anti-conduit" rule to the reinsurance premium excise tax treaty with the United Kingdom to prevent reinsurers based in countries that do not have an excise tax treaty with the United States from writing U.S. reinsurance business from the United Kingdom without paying the excise tax.

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Cargo insurance

Continued from page 3

the cargo liability insurance market was tight.

And, if truckers and freight forwarders do not have to make "burdensome filings with the commission and obtain endorsement forms from insurers which override conditions and limitations normally contained in insurance policies, the premium rates for cargo liability should be substantially reduced," the ICC says.

But, shippers argue that without

the ICC insurance certificate, they no longer would be able to track down an insolvent trucker's insurer through the ICC.

Currently, the ICC discloses to a shipper the name of the insurer for an insolvent trucker that cannot pay for damaged cargo so the shipper can file claims directly to the insolvent trucker's cargo liability insurer.

If the ICC insurance requirement is eliminated, "shippers would lose out and have no recourse" to collect for losses, asserted Joe Cutrona, executive director of the

National Small Shipments Traffic Conference in Washington, D.C.

In addition, the American Trucking Assns., an Alexandria, Va.-based trade group with more than 30,000 members, and the NFC&SC contend in a joint letter to the ICC that truckers would not lower their rates if they are not required to purchase cargo liability coverage.

"It has been revealed that cargo insurance comprises as little as 0.0008% to 0.0004% of the motor carriers' total revenue," the ATA and NFC&SC wrote in their letter.

"The elimination of the cargo insurance requirement would provide a de minimis cost savings to carriers that might opt to run bare."

The Inland Marine Underwriters Assn., a New York-based association representing 365 insurance companies, also disagrees with the ICC that cargo liability insurers would lower premiums if the ICC drops its cargo liability coverage requirement.

In a letter to the ICC, the IMUA noted that "most insurers presently do not impose additional pre-

miums" for ensuring that coverage meets ICC requirements.

And, in response to the ICC's contention that truckers were having difficulty obtaining cargo insurance, the IMUA said in its letter that "there is no tightness in the cargo insurance market."

"In fact, the opposite is true. Insurers who issue this kind of insurance coverage are aggressively competing for new business on a daily basis," the IMUA said.

The NFC&SC's Mr. Kerlick agrees that truckers are not having trouble finding cargo coverage. "In fact, it's usually considered a throw-in on top of general liability" insurance, he said.

"Contrary to the conclusion in the ICC notice, most motor carrier members are not experiencing difficulty obtaining cargo coverage from insurance carriers," the NFC&SC and the ATA wrote in their joint letter to the commission.

Trucking associations also argue that without an ICC cargo insurance requirement, many shippers would still require truckers to purchase the coverage. And without ICC certification, truckers would have to present certificates of insurance to each shipper with which they do business.

"We see no point in the proposal," said Kenneth E. Siegel, associate general counsel for the ATA.

Even if the proposal were adopted, "shippers would still make us purchase the coverage. Shippers now assume you have it, so this would add administrative headaches. Why go through mailing hundreds of copies of insurance to shippers?"

However, Joel Aronchick, national manager of the commercial inland marine division for Chubb & Son Inc., a wholly owned subsidiary of Warren, N.J.-based Chubb Corp., said he supports the proposal, but only "as long as a mechanism is created that will ensure that small shippers can get coverage for cargo and truckers don't have to bear higher administrative costs."

"Theoretically, the change could reduce rates for carriers," he said.

But, shippers, carriers and insurers believe that a recently revamped ICC board will eventually kill the proposal.

The proposal was initiated by former ICC Chairman Heather Gradison and supported by three of the other four commission members, according to Mr. Herbert of the ICC's Office of Government and Public Affairs.

However, since last November, Edward Philbin has replaced Ms. Gradison as chairman, he said. In addition, two other commissioners have been replaced.

Government and trucking and shipping industry sources say the commission's new makeup now opposes the proposal.

Indeed, a government source said that the commission does not presently have the votes to pass it.

A trucking industry source said Ms. Gradison was a "deregulator who wanted to reduce the role of the commission."

But, Mr. Philbin "enforces the rules as they are written in the books. He doesn't change them," the source said.

"The matter is dead in the water. Most of the commissioners who supported the proposal are gone," said another source representing the trucking industry, who puts the current commission at 4-to-1 against the proposal.

"The chances of this happening are remote. We are not fearful of this passing," said Frank Magee, chairman of the IMUA's motor truck cargo committee.

In eliminating the requirement "you'd be taking away protection from the shipping public, and there is no support for that," Mr. Magee said.



Oakeley Vaughan

Continued from page 3

time a Lloyd's member has sought court damages from Lloyd's in connection with underwriting losses.

The members claim that if Lloyd's had disclosed details of its 1981 inquiry into the affairs of Oakeley Vaughan, they would not have remained on the syndicates in 1982 and 1983. They also claim Lloyd's failed to prevent the syndicates from repeatedly overwriting (BI, Feb. 15, 1988).

Lloyd's appointed another agency to manage the Oakeley Vaughan syndicates in 1982 but Oakeley Vaughan continued operating as a members' agency. The company, which is the first Lloyd's agency in liquidation proceedings, was placed in liquidation in 1988 (BI, Nov. 21, 1988).

However, "Mr. Becker's case relates to a particular agreement he had with Mr. St. George. The trial may impact the forthcoming trial against Lloyd's but only in a minor way," agreed Simon Rawlins, a lawyer with the London law firm Baileys Shaw & Gillett, which represented Mr. Becker.

But, several other members of syndicates managed by Oakeley Vaughan who also allege that Mr. St. George promised to settle their underwriting debts now are considering filing separate court claims against Mr. St. George.

"I got what I came for and I am very happy with the result," Mr. Becker said, refusing to comment on the terms of the settlement.

Mr. St. George did not attend the fourth and final day of the trial and was unavailable for comment.

However, sources say Mr. St. George will help pay Mr. Becker's current and future losses stemming from his past underwriting as well

as legal costs.

Mr. Becker faces underwriting losses that could total more than 100,000 pounds (\$169,750 at current exchange rates).

During the trial, Robert Webb, Mr. Becker's attorney, said that Mr. Becker joined Lloyd's in 1981 through Mr. St. George's members' agency for the social status of being a member of Lloyd's and not as a risk-taking venture from which he hoped to profit.

Indeed, Mr. Becker testified he canceled a stop-loss policy because he assumed Mr. St. George had placed him on safe syndicates that would not sustain losses.

The stop-loss policy, which would have covered underwriting years 1981 through 1983, cost 1,800 pounds (\$3,438 at year-end 1981 exchange rates) for 100,000 pounds (\$191,000) of coverage excess of 12,500 pounds (\$23,875) of a member's losses, Mr. Becker testified.

"With the assurance which was given by Charles St. George of (placing me on) sure and modest syndicates, it seemed to me a total contradiction in my understanding with him and his assurances with me that I could conceivably have 15,000 pounds of losses in my opening years," he testified.

"I then made the decision, bearing in mind again the assurances I had that would preclude any serious loss, that I would be better to conserve that extremely high cost of the policy," he said, explaining why he canceled the policy.

Mr. Becker claimed that "1984 was the first time that the really bad news (about underwriting losses) became apparent," though he had heard rumors from within the market that Oakeley Vaughan syndicates faced major losses.

"For the man in the street it's impossible to know about the affairs of Lloyd's till years later. You

cannot phone up like a bank and ask how your affairs are," Mr. Becker said.

He also noted that the 1981 Lloyd's report into alleged malpractice and accounting irregularities at Oakeley Vaughan had been withheld from members.

"I think that I was a ready-made pigeon for a situation like this," he said.

"When more conscientious underwriters at Lloyd's advised me to try to get out, Charles would per-

pay his liabilities when losses began to mount.

Mr. Powell testified that Mr. St. George loaned him the funds he needed to meet Lloyd's member requirements for the 1979 underwriting year. Mr. Powell became a member through the Oakeley Vaughan agency.

"To get into Lloyd's I was funded by Charles St. George or Oakeley Vaughan to meet the requirements. Once the requirements were met, the funds were returned" to Oake-

not chase him for it," Mr. St. George testified.

"I agreed to indemnify him against past losses if he remained an underwriting member of Lloyd's. We agreed to indemnify him in part. It was a nebulous agreement on a friendly basis where we would do the best we could for the man," Mr. St. George said.

By 1986 "I think we had advanced 40,000 to 50,000 pounds (\$59,200 to \$74,000 at year-end 1986 exchange rates) credited to his account, including payments of 22,000 pounds (\$32,560) representing a claim made on Mr. Becker's behalf by us against our errors and omissions underwriters," Mr. St. George testified.

However, "Mr. Becker had made no effort to make any contributions. This was part of the arrangement he had to make an effort. He had made no effort," Mr. St. George said.

And, Mr. St. George denied that he had ever guaranteed Mr. Becker that he personally would pay his losses.

Several times during his cross-examination of Mr. St. George, Mr. Webb, Mr. Becker's attorney, referred to various documents, including letters sent to Mr. St. George by Mr. Becker. But Mr. St. George said that he had never seen the documents before.

Mr. Webb then replied that all the documents had been sent to Mr. St. George's lawyers prior to the case and alleged that Mr. St. George had showed little regard for Mr. Becker's plight by not taking the time to read the documents relating to the case.

"If you say so," Mr. St. George replied.

The case was settled out-of-court the following day. ■

'For the man in the street it's impossible to know about the affairs of Lloyd's till years later. You cannot phone up like a bank and ask how your affairs are,' Mr. Becker says. 'I think that I was a ready-made pigeon for a situation like this.'

sue me with his charm, forcefulness, persuasiveness and aura of wealth and respectability to stay," Mr. Becker testified.

"Whenever I spoke to him about my anxieties, he would wave them aside and say to me, 'I really like you, and I know that you can't afford to lose this sort of money and that I always promise to look after you and that this period is merely a hiccup in your affairs at Lloyd's. I will get you out of it—wait and see. You are going to make lots of money,'" Mr. Becker testified.

"We had an arrangement. I believed it was a cast iron (deal) between two gentlemen" that Mr. St. George would pay any losses, Mr. Becker told the court.

Mr. Becker's chief witness in the trial—Tim Powell, another member of syndicates managed by Oakeley Vaughan—claimed that Mr. St. George also helped him to become a Lloyd's member and offered to

ley Vaughan, Mr. Powell said.

However, by 1983, Mr. Powell said he expressed concern about losses and the Oakeley Vaughan syndicates' unusual reinsurance arrangements but that Mr. St. George offered to pay his losses.

"I was amongst many Oakeley Vaughan names (offered financial settlements) by any method to keep one as a name, or if you were going to leave you were going to leave quietly, silently," he told the court.

However, Mr. St. George "reneged on the deal," Mr. Powell said.

In his testimony, Mr. St. George said that Oakeley Vaughan had offered to help Mr. Becker meet his cash calls and future losses by funding 50% of his losses "by way of a loan to be reimbursed out of future profits."

"However, Mr. Becker would know that if he was ever in a position where the money was not repayable that the company would

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Commissioners leaving office, but not industry

By MARK A. HOFMANN

ALEXANDRIA, Va.—Nearly half of all state insurance commissioners who left office between 1984 and 1989 subsequently found jobs in the insurance industry, a recent study reveals.

Former commissioners frequently became insurance company executives or providers of legal, accounting or consulting services to the industry, the study reports.

In addition, those who left office during that period served an average of only 3.3 years, according to the joint study the Alexandria, Va.-based National Assn. of Professional Insurance Agents and the Consumer Insurance Interest Group in Fairfax, Va.

"The public is not served by frequent turnover in the commissioner's position," the groups contend.

To reduce turnover, both groups recommend increasing regulators' salaries, requiring a four-year minimum term of office and increasing funding for state insurance departments. The groups also advocate prohibiting commissioners from working for insurers for one year after leaving office.

"The study reveals that many commissioners serve a short period of time and a number of those end up working for the industry. These patterns raise questions about the adequacy and impartiality of decisions made in office," said Steve Brobeck, president of the Consumer Federation of America and a member of the CIIG.

"Those concerns lie behind the PIA/CIIG recommendations to prohibit future commissioners from working for the industry for a year after they leave and for developing the position of commissioner into a more secure, well-compensated career track," he said.

"A Study of the Tenure of State Insurance Commissioners 1984-1989" found that 106 insurance commissioners served in the 50 states and the District of Columbia during those five years.

Fifty-one were still serving in 1989. Of the 55 who left office, six had served for one year or less, while five had served from one to two years. Only two had served for 16 or more years. More than half—52.7%—served between two and five years in office.

"Of particular concern is that 11 of these commissioners served in office for fewer than two years," the report said. It noted, though, that the Vermont commissioner is limited to a two-year term and that some regulators were appointed in the middle of a governor's term and only served out the term.

"Does a commissioner who serves fewer than two years have sufficient experience to adequately perform the duties of that office?" the groups asked.

The study recommends three specific steps:

- States that do not already do so should provide four-year terms for commissioners.
- Raising the salaries of state commissioners to the levels of other top state officers.
- Insurance departments should receive adequate funding.

The PIA and CIIG "strongly support the application of at least 10% of insurance premium taxes to fund state insurance departments," the study says.

An earlier PIA/CIIG survey, "A Study of State Insurance Depart-

ment Operations," found that an average of only 5.37% of state premium taxes were allocated to insurance regulation (BI, May 2, 1988). That study also called for the allocation of at least 10% of premium taxes to state insurance departments.

For information on "A Study of the Tenure of State Insurance Commissioners 1984-1989," contact the National Assn. of Professional Insurance Agents, 400 N. Washington St., Alexandria, Va. 22314; 703-836-9340.

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Scrap Warsaw limits: Aviation broker

By STACY SHAPIRO

LONDON—Scrapping the Warsaw Convention's liability limits for international airlines would speed claims settlements following an aviation disaster, a London aviation insurance broker says.

Amending Article 22 of the convention, which caps airline's liability per ticketed passenger, to allow unlimited liability for all international flights would save time often spent arguing over the limits in court, says Alan G. May, director of aviation claims with Lloyd's of London broker Nicholson, Chamberlain, Colls Ltd.

Unlimited liability will eventually come, either through treaty revisions or from the airlines voluntarily, he said.

"The airline wants to see its

claims paid quickly...to see passengers and families reimbursed and to put the accident behind it so it is not in the public's mind. Court cases (arguing liability limitations) do not help," he told lawyers at "International Disasters: The Transatlantic Perspective," a conference held last month in London and sponsored by Lloyd's of London Press Ltd.

"Compensation paid out to families of those deceased as a result of transportation accidents—in the land, sea or air—should be fair, reasonable and adequate," Mr. May said. With unlimited liability, "reasonable compensation should and would be paid by insurers in accordance with their domicile of residence."

If the Warsaw Convention cap on liability is not changed, airlines

should not shun it, he said.

"Speaking personally, I would not like to see the Warsaw Convention torn up and thrown away," Mr. May said. "It was designed to



produce uniformity and has worked well for 60 years, with the exception of Article 22. The scrapping of the convention would produce a multiplicity of laws and actions bringing pleasure only to the lawyers."

The Warsaw Convention—formally, the Convention for the Unification of Certain Rules Relating to International Transportation by Air—governs all international

flights originating in countries that have agreed to the rules. Article 22 limits airlines' liability unless willful misconduct or recklessness by the airline is proved. The convention does not govern the liability of airline manufacturers.

Liability for international flights with U.S. stops is limited to \$75,000 per passenger under the Warsaw Convention, as amended by the Montreal Agreement of 1967, unless "willful misconduct" by the airline is proved. However, the limit varies from country to country, noted Mr. May.

And, airlines can "contract out" of the convention's liability limits and offer higher limits than those stated in Article 22, he explained.

In addition, some nations have adopted the Montreal Protocols, an international agreement signed in

1975 that limits per-passenger liability to 100,000 Special Drawing Rights, an international monetary unit currently equal to about \$1.32.

British Airways has voluntarily exceeded that standard, limiting its liability in accidents to 130,000 SDRs (\$171,600), Mr. May said.

And the Japanese government, a Warsaw Convention signatory, does not recognize any liability limitation, he noted.

The U.S. Department of Transportation is now seeking ratification of the Montreal Protocols. And, a DOT Draft Supplemental Compensation Plan to provide unlimited recovery for only economic damages for U.S. citizens and residents on international flights, up to a maximum of \$500 million, is now before the Senate, he said (BI, March 27, 1989).

John N. Romans, litigation partner in charge of the aviation group of law firm Curtis, Mallet-Prevost, Colt & Mosle in New York, said he believes the Senate will ratify the proposals this summer.

The supplemental plan, however, is restricted to U.S. citizens anywhere in the world or to passengers on flights to or from the United States, Mr. May noted.

"Why limit such a good idea to U.S. citizens? Why not extend the situation across the world?" Mr. May asked. "Most international carriers already opt for 100,000 SDRs (\$132,000). Let the supplemental plan exist for all passengers regardless of nationality if their claims exceeds 100,000 SDRs."

"They could proceed to the plan for the balance (of compensation) without having to prove there are liability issues, willful misconduct, recklessness, only their worth. And if this had to be determined, then it should be referred to their courts of domicile."

Such a plan, Mr. May says, would reduce the number of international air disaster cases in U.S. courts, where plaintiffs sue U.S. aircraft manufacturers because they cannot receive sufficient compensation from the airlines.

Mr. May admitted airlines' added cost for unlimited liability would be passed on to consumers, but he said it would add only about 4 cents per ticketed passenger.

"Bear in mind that the total worldwide premium for airline risks both hull and liability in 1989 was around \$400 million, for which the passenger premium was perhaps \$150 million (for liability coverage). Even if underwriters increased premiums by 50% (to pay for unlimited liability), then the airlines would have to find \$37.5 million," said Mr. May.

"In 1989, there were 8,135 western-built jet aircraft being flown by 406 airlines. A rough estimate of passengers flown for 1989 was 1 billion, which averages out that each passenger would have to find 4 cents per ticket each purchase."

Airlines would not have difficulty finding the insurance capacity to cover unlimited liability exposure, Mr. May contends. Airline liability insurers already offer up to \$1 billion in coverage, he said.

"I am certain that unlimited liability will come, if not by treaty then by airlines contracting out," he concluded. "The capacity exists within the market. The charge would pass onto the consumer but it is the consumer who will ultimately benefit, hence happier airlines, happier brokers, comfortable insurers."

Lawyers, he added, would be the only losers. "They would have to turn to some honest labor, but hopefully the victims of air disasters would benefit by receiving fair and reasonable compensation very soon after the accident."

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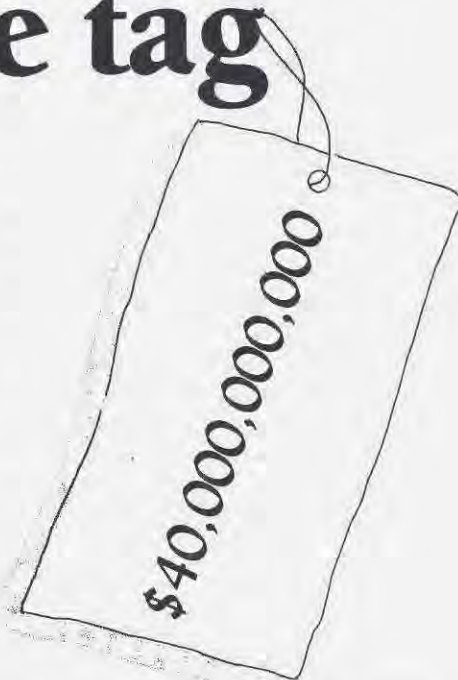
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European plaintiffs file suit in U.S. courts

By STACY SHAPIRO

LONDON—Victims of non-U.S. disasters increasingly are threatening to sue American companies in U.S. courts in hopes of winning higher awards than they would in Europe, says an aviation defense attorney.

The result, he says, is the newly in vogue "Mid-Atlantic settlement," in which U.S. companies and overseas plaintiffs agree on settlement somewhere between American and European norms.

"The attraction of such a settlement to plaintiffs and defendants is clear in appropriate circumstances," said Sean Gates of London-based law firm Beaumont & Son at the International Disasters Conference last month in London.

By settling, said Mr. Gates, plaintiffs can avoid drawn out disputes over where to litigate and still receive more money than they might have received in many European courts.

Defendants, "most commonly insurers," save on legal costs and also avoid years of litigation, he noted.

Among testing grounds for Mid-Atlantic settlements are air disasters, many of which involve U.S. manufacturers and foreign airlines, said Mr. Gates.

Another disaster with a "Mid-Atlantic" element is the \$1.4 billion explosion in July 1988 at the Piper Alpha North Sea oil platform, which was owned by three



American and one British oil company.

Victims of a disaster in Europe or one involving European companies could seek compensation in European courts, where compensatory damages can sometimes exceed damages awarded in the United States, according to Mr. Gates.

European courts award such damages based on various formulas involving the deceased or injured person's future expected salary tied in with inflation, accelerated payments and the likelihood of a survivor earning a future income.

However, "the average value of death cases in Europe varies in surprising ways from a high in Switzerland of a figure in the vicinity of \$1.2 million to lows in Scandinavia of less than \$50,000," he said.

Also, claimants are more likely in the United States than in Europe to be awarded damages for "pain and suffering, grief, loss of society, (and) loss of parental support," added Mr. Gates. These and other intangibles "seem to be the factors which attract higher awards in the United States than in Europe."

Non-American plaintiffs, therefore, usually attempt to sue in U.S. courts where cases can be settled more quickly than in Europe, said Mr. Gates.

In addition, U.S. juries are more likely than European judges to rule in favor of the plaintiff, said Mr. Gates.

"As an interested observer, I would venture that it is because of the sympathies aroused in juries by adroit plaintiffs' lawyers that these differences exist compared with awards made by appointed (as opposed to elected) judges in Europe whose principal function is professional rather than political," said Mr. Gates.

The "most startling" Mid-Atlantic settlement, according to Mr. Gates, is the agreement by Occi-

dental Petroleum Corp. to pay 100 million pounds (\$170 million at current exchange rates) to survivors of the victims of the Piper Alpha disaster "based on their assessment of Texas law."

In addition, he noted a settlement he reached with leading U.K. plaintiffs' attorney Roger Pannone within a year of a 1985 crash of a British Airtours Boeing 737 upon takeoff in Manchester, England, killing 55 of the 137 on board.

Liability losses, which were paid by parent British Airways, The Boeing Co. and engine manufacturer Pratt & Whitney, were estimated at \$10 million, but Mr. Gates would not comment on the settlement (BI, Aug. 26, 1985).

In another case before U.S. courts, no settlement has been reached in litigation stemming

from the 1986 crash of a British International Helicopters Chinook aircraft in the North Sea. Boeing, which built the Chinook, "is still fighting on a number of fronts in

'The average value of death cases in Europe varies in surprising ways,' says Sean Gates.

Pennsylvania" courts, he said.

A settlement also has not been reached in last year's crash of a British Midland Airways Boeing 737-400 on a flight from London to Belfast killing at least 44 people,

said Mr. Gates.

An October ruling from the U.S. District Court in New Orleans "resoundingly" dismissed the cases on the grounds that they should be tried in the United Kingdom. Plaintiffs are appealing another decision that transferred the cases to that federal court from a state court.

"In that case, the defendants and plaintiffs were not able to form a common view as to the exposure to U.S. jurisdiction so as to build an appropriate factor into a settlement agreement," said Mr. Gates.

Despite the higher jury awards handed down in the United States compared with European nations, American manufacturers should not try to avoid U.S. jurisdiction, another attorney said.

Consumer products manufactur-

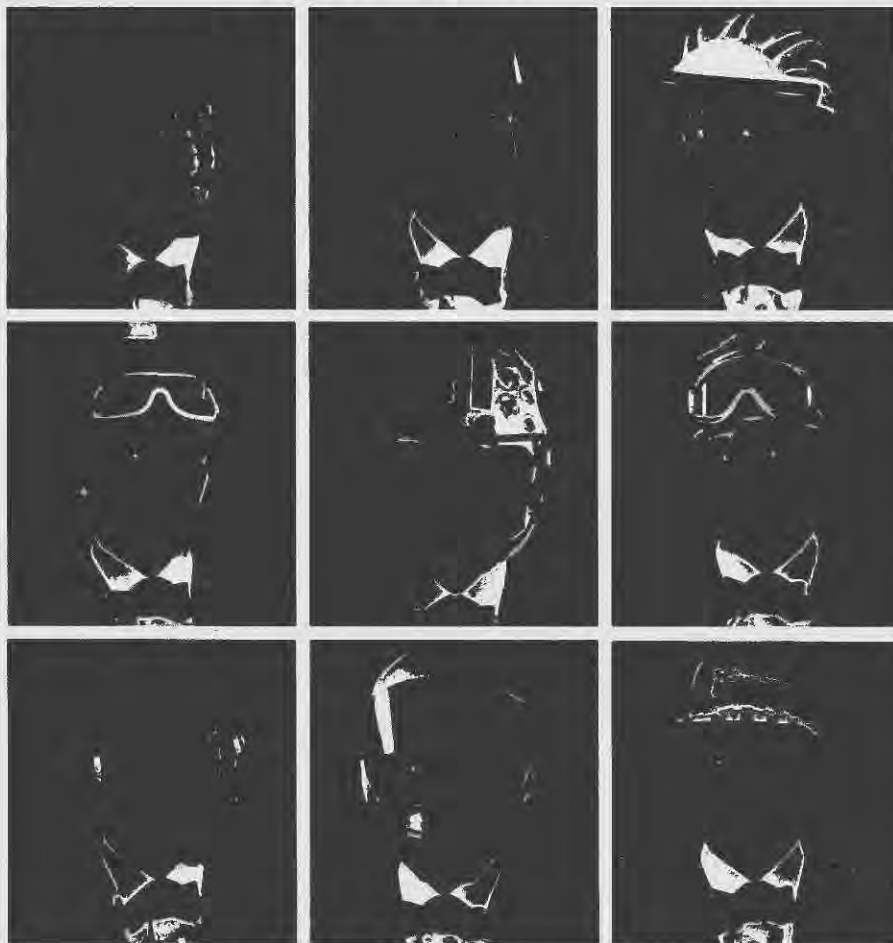
ers, in fact, "would insist on juries" in the United States, said Mark O. Kasanin of McCutchen, Doyle, Brown & Enersen in San Francisco.

"American manufacturing defendants have tried many cases, and if they are going to put their products on the line, then they want the products to be judged by a cross-section of consumers," rather than a judge, said Mr. Kasanin.

A U.S. or European judge would follow strict liability rules to come to a decision, but "we think the (U.S.) jury tries a case on the basis of whether the company followed proper safety standards," he said.

Also, if for some reason the jury gets it wrong, "then we have recourse to the judge," said Mr. Kasanin.

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New types of claims filed in airline crashes

By STACY SHAPIRO

LONDON—When Mark Twain learned that a newspaper had erroneously published his obituary, the author laughed it off with the enduring witticism: "The reports of my death are greatly exaggerated."

But when a New York resident recently read of his death in the New York Post—the result of a prank—he and his family sued for \$3 million.

"This story exemplifies the current state of litigation in the United States," said attorney John N. Romans, litigation partner in charge of the aviation group at Curtis, Mallet-Prevost, Colt & Mosle in New York.

Though more common, litigation "is not getting any cheaper," Mr.

Romans said.

Mr. Romans discussed rising jury awards and new types of claims brought by plaintiffs in airline disaster cases at the "International Disasters: The Transatlantic Perspective" conference Jan. 23-24 in London and sponsored by Lloyd's of London Press Ltd.

The number of reported verdicts in U.S. courts exceeding \$1 million has increased steadily to 488, or about nine per week, in 1985—the last year for which statistics are available—from 18 in 1973, Mr. Romans said.

A Rand Corp. study of airline compensation claims in fatal crashes from 1973 to 1984 found the average plaintiff's recovery was about \$360,000 per death, the defense lawyer added (*BI*, Nov. 7, 1988).

One reason for the growth in the number of million-dollar awards is that many new factors are being used to calculate compensatory damages in wrongful death actions following disasters, said Mr. Romans.



And as juries grant "extraordinarily high" awards, plaintiffs' attorneys become "extraordinarily skilled," he added.

Mr. Romans noted that disaster victims and survivors are now alleging a whole slew of new types of damages against defendants.

"There are now causes of action for fright alone," said Mr. Romans.

"I call this... the mental whiplash claim."

In addition to awarding judgments for loss of income, medical and funeral expenses when a breadwinner dies, some states now allow recovery of damages in deaths of non-working spouses or children.

"Even children are deemed profitable" in wrongful death compensation, said Mr. Romans.

Some states—including Florida, Virginia and Texas—also allow awards for mental anguish of surviving relatives of victims, Mr. Romans said.

In addition, plaintiffs can recover for the loss of the intellectual, moral and physical development of a child, as well as for the loss of a sexual partner in future years.

For example, in *Zaninovich vs. American Airlines Inc.*, a New York state court noted the air disaster death of a mother deprived her five children of about 75 years of motherly care, Mr. Romans said in a paper accompanying his speech.

Disaster survivors often sue for personal injury damages, including damages for pain and suffering. But because juries—rather than judges—in the United States commonly award damages, "settlement is more difficult in the U.S. than" in the United Kingdom, where a judge determines monetary damages, he said.

"To recover for pain and suffering, though, you must be conscious," said Mr. Romans.

If a decedent is rendered unconscious on impact and remains unconscious until death, damages for "post-impact pain and suffering" generally are not awarded, he explained.

The New York Court of Appeal, the state's highest court, recently also held that "past or future loss of enjoyment of life constitutes an element of pain and suffering," said Mr. Romans. But damages for such a loss can only be awarded if there is some level of awareness on the part of the injured party, he said.

Mr. Romans dismisses as "mental whiplash" new kinds of personal injury claims—"post-traumatic stress disorder" or "pre-impact terror"—that are alleged by by survivors of traumatic

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Mr. Romans dismisses new kinds of aviation personal injury claims as "mental whiplash."

airline disasters.

"In an aviation disaster, the length of time between awareness of impending disaster and death is often quite long," Mr. Romans admits.

He cited as an example a Japan Air Lines jetliner that flew off course for a half-hour before it crashed in August 1985 into a Japanese mountainside, killing all but four of the 524 people on board (*BI*, Aug. 19, 1985).

And, an incident near Hawaii in 1988 when an Aloha Airlines' Boeing 737 jetliner lost a large section of its fuselage "clearly was a frightening experience," even though the plane eventually landed safely, Mr. Romans said (*BI*, May 2, 1988).

Compensation for individual passengers aboard the Aloha plane has ranged from \$65,000 to \$400,000, according to conference attendees.

While he did not elaborate on the individual awards for victims in the JAL crash, underwriters expect that total liability losses could reach \$345 million (*BI*, June 8, 1987).

Plaintiffs who claim they suffer from these post-traumatic stress disorder or pre-impact terror contend that they experience bad dreams; have flashbacks; avoid events that would bring on the fright; and generally claim they are not the same people they were before the disaster, Mr. Romans explained.

Disaster claims involving mental disorders, he said, are hard to defend.

"It is close to the whiplash claim in automobile cases," where some plaintiffs have legitimate neck pains and others do not, Mr. Romans said.

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Old airliners' safety status must be assured: Lawyer

By STACY SHAPIRO

LONDON—Aircraft manufacturers have a duty to bring their "geriatric machines" up to safety standards, says a plaintiffs' attorney representing victims of the July 1989 United Airlines DC-10 crash in Sioux City, Iowa.

For example, the DC-10, manufactured by McDonnell Douglas Corp. "is getting a bit long in the tooth," said Donald W. Madole, a partner with Speiser, Krause & Madole in New York. "So there are questions. What should a manufacturer do as a machine ages? What is their duty?"

"They have a duty by federal law to carry out work with the highest standard of care," said Mr. Madole, a leading aviation attorney. "If (an incident) happened once before, should that organization have done a fault analysis (on the aircraft design) to prevent this kind of accident happening again?"

"We live in a society that can take people up and back safely to the moon. Surely we can take them safely from Paris to London. We have the technology to do it," he said.

Since aircraft manufacturers have a duty to ensure that aircraft are safe, they often pay a good percentage of air crash claims, Mr. Madole said.

For instance, underwriters for McDonnell Douglas paid 75% of liability claims and American Airlines' insurers paid 25% after the 1979 crash of an American Airlines DC-10 near Chicago (BI, May 4, 1981).

Mr. Madole addressed about 50 U.K. and U.S. plaintiffs and defense attorneys at "International Disasters: The Transatlantic Perspective," a conference held Jan. 23-24 by Lloyd's of London Press Ltd.

A former U.S. Navy aviator, Mr. Madole now represents families in major air crash litigation. His clients include families suing Pan American World Airways in Florida over the deaths of relatives in the December 1988 explosion of Flight 103 over Lockerbie, Scotland (BI, Dec. 26, 1988), and about 90 families who lost relatives in the Sioux City crash (BI, July 24, 1989).

The Sioux City plaintiffs are suing McDonnell Douglas, General Electric Co., and United Air Lines in U.S. District Court and Cook County Circuit Court, both in Chicago.

On a Chicago-to-Denver flight, the United jetliner attempted to make an emergency landing in Sioux City after a tail engine fan flew apart and disabled the hydraulic systems that powered the aircraft's flight controls. One hundred nine of the 293 people on board were killed in the crash.

United has up to \$850 million in liability insurance, while McDonnell Douglas and GE both have up to \$1 billion in aviation manufacturers liability coverage.

Among charges the families make in court papers are that McDonnell sold United an "unreasonably dangerous" plane that was "designed, manufactured, distributed and sold":

- In a condition in which one engine was likely to disengage or separate from the aircraft.

- Without warning United that the engine was likely to disengage

or separate from the aircraft.

- With the engine's size and weight incompatible with the plane's structural integrity.

- Without proper and adequate instructions regarding periodic metallurgical inspection and testing of the plane's engine and hydraulic system.

- Without proper and adequate instructions for maintaining the hydraulic system.

Mr. Madole advocated greater spending by airlines for new planes and skilled mechanics. Overhauling aircraft after they are 17 years old, like the DC-10 that crashed in Sioux City, may not be enough, he said.

Yet, the "total" duty for the

maintenance and design of the aircraft is on the shoulders of the manufacturer, said Mr. Madole. "If they knew about the problem and they did nothing about it, then they have a responsibility in tort to provide compensation to the families who have lost someone."

However, he added that aircraft safety is the duty of everyone in the industry—from airline bosses to government officials to plaintiffs' and defense lawyers.

"I am disturbed that there aren't fixes until there is a crash," he said. "When we think of these things in litigation, we have a duty on both sides of the bar to prevent this kind of accident from happening again."

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Plaintiffs', defense lawyers seek settlements

By STACY SHAPIRO

LONDON—A leading British plaintiffs' attorney, Rodger J. Pannone, and rival defense attorney David A. McIntosh clash regularly in litigation involving major disasters.

But several common traits and mutual respect help them hammer out settlements that satisfy plaintiffs, defendants and defendants' insurers, both attorneys agree.

"I am pleased that Rodger goes to America often" to file lawsuits, said Mr. McIntosh, a partner with London-based Davies Arnold Cooper. "I just wish he wouldn't come back so often. He is a handful."

Noting many physical and other similarities between he and his plaintiffs' attorney rival, Mr. McIntosh noted "We have arrogance in common" and "we'll both go to the mat" for clients.

"But we talk to each other," said Mr. McIntosh. "If we cannot, then we lose the ability to settle the un-settleable."

"David and I have fought each other for 25 years," added Mr. Pannone, partner of Pannone Napier in Manchester, England. "But we have more in common than we disagree, or we wouldn't have settled the cases we have."

Messrs. Pannone and McIntosh sparred during a session at "International Disasters: The Transatlantic Perspective," a conference held Jan. 23-24 in London.

The adversaries have met over many a negotiating table, with Mr. Pannone representing victims of defective products, air crashes and other transportation disasters and Mr. McIntosh representing insurers of the corporations being sued.

Mr. McIntosh "represents the people who are less attractive in the media than the ones I represent," said Mr. Pannone, a plaintiffs' litigator for 25 years and the attorney for victims in many major disasters in the United Kingdom. His clients include survivors of victims of the 1988 Piper Alpha North Sea oil rig disaster (*BI*, July 11, 1988); the 1988 explosion of a Pan American World Airways Boeing 747 over Lockerbie, Scotland, (*BI*, Dec. 26, 1988); the 1988 Clapham Junction British Railways disaster that killed 35 commuters (*BI*, Dec. 19, 1988); and last year's British Midland Airways Boeing 737 crash (*BI*, Sept. 25, 1989).

Mr. Pannone's determination to push for "Mid-Atlantic settlements"—a term referring to non-U.S. disaster claims that are filed in U.S. courts—has led to higher damage awards for victims of non-U.S. disasters (see story, page 15). It is an achievement his British colleagues and rivals have dubbed "the Pannone Phenomena."

"Why do I go to America" to file lawsuits on British disasters? Mr. Pannone asked rhetorically. "Self-preservation. If I didn't look at America, I would be negligent to my client and I would be sued."

Plaintiffs can receive higher awards in the United States than in the United Kingdom, he said. "And if you have an American product that is sold throughout the world, and the profit is retained in America, I think it is the place to go. Thank heavens some of the U.S. courts still agree."

"Awards are sometimes grotesque (in the United States). But products are safer in the United States than in most countries as a result," said Mr. Pannone.

He resents criticism that he contributes to a glut of litigation clogging U.S. courts. "I am fed up with Americans saying that there is a litigation explosion. . . . It's a myth, so let's stop it," he said.

British law, though, is changing in ways that may benefit plaintiffs.

he said. As a result of the amalgamation of law in the European Community "there will be more influence from Europe on the U.K. than the U.K. on Europe, despite what Margaret Thatcher believes," he said.

Legislation now pending in Parliament will alter the British legal system, making it more like the U.S. system he said. "I don't think you will recognize what is going on in a few years to come."

But Mr. Pannone has some ideas of his own to improve compensation for victims of disasters and defective products.

For example, he advocates punitive damages—which are not available in British courts—"for those small minority of companies that deliver unsafe products," he said. "I'd want them to be uninsurable

damages. . . with money going into a fund for industrial safety."

Mr. Pannone also supports use of U.S.-style contingency fees in British tort litigation, even though such a proposal was removed from the proposed Courts and Legal Services Act now pending in Parliament in favor of a "no win, no fee" clause

under which attorneys would waive their fees if they are not victorious. When plaintiffs prevail, British judges normally order defendants to pay legal costs.

"More people who don't know what they are talking about have

written more about this subject than any other," said Mr. Pannone, noting that the contingency fee system prompts quicker settlements, he said. "What's wrong with that?"

And, fewer cases go to court under the contingency fee system because plaintiffs' attorneys calculate their chances of winning before taking a case, he said.

"It is arrogant of the government to say you can't enter into a contingency fee arrangement," said Mr. Pannone, who now is paid on an hourly basis whether or not he wins a case. "People should be able to agree to a contingency fee without Big Brother objecting."

Although defense attorney critics have faulted several of his legal tactics, Mr. Pannone defends the techniques as effective.

For example, he defends the use of plaintiffs committees that coordinate disaster litigation against businesses.

"This redresses the balance of the last 25 years" when plaintiffs tried to sue individually because class-action suits are not allowed in the United Kingdom, he said. The committee system "works reasonably well."

Under this system, plaintiffs' committees demand whoever is responsible for a disaster to admit to liability from the outset and spare victims' families a prolonged argument. "It takes away the grief," said Mr. Pannone.

He also says that defendants should make interim payments to plaintiffs without admitting liability.

Continued on next page



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In addition, Mr. Pannone advocates skillful use of the media for his clients. "I don't believe in court by the media, but the public should be told what is going on and (media) pressure can be used" to settle a case, he said.

Another criticized tactic—naming individual corporate executives as defendants rather than companies—"clarifies the issues" by letting an executive know that he is being held liable for a disaster, he said.

Mr. Pannone also has been accused of hiding details of litigation from defendants' attorneys. "Absolute right," he said unapologetically.

However, Mr. McIntosh, the defense attorney, predictably disagrees with Mr. Pannone on a number of points.

Regarding punitive damages: "He knew that I would say that it cripples shareholders and workers" who are innocent third parties,

said Mr. McIntosh. In particular, shareholders—including pension funds—suffer when a corporation has to pay out punitive damages, he said.

"The proper way to monitor safety is through criminal sanctions" against those responsible for unsafe conditions, he said. "Punishment then punishes the right people."

Though Mr. McIntosh does not completely dismiss the concept of contingency fees, he says they would be inappropriate for the United Kingdom because "the damages (awarded) are not high enough. Therefore, the contingency fee wouldn't work. It is not the answer. And it is not coming here."

Mr. McIntosh also questions whether a defendant should pay any compensation to a plaintiff in cases where liability has not been determined. "There is no reason why Company A should compensate Mr. B when A's product didn't cause the loss."

He also wishes that Mr. Pannone and his disaster committees would give defendants more information about the people they are representing. "It is too easy for groups to speak of 3,000 cases without letting the defendant know who they are. We've never seen the cases."

However, Mr. McIntosh also criticizes corporations for failing to review "wholly inadequate and out-of-date safety procedures" that lead to a disaster. He says they are "failing in a legal and moral duty" if they don't try to prevent disasters from occurring in the first place.

"If a disaster strikes, it's the company that hasn't planned safety and security that will be blamed legally and in the media," said Mr. McIntosh.

"And they are so susceptible to this extra legal pressure (that) they will pay through the nose. . . . Rodger (Mr. Pannone) will want money. It's right that those pressures are used."

Mr. McIntosh stresses, however, that British boardrooms are not "littered" with criminals prepared to see people die or be injured just for profit. But "if the chairman took one day per year to talk over safety instead of leaving it to the safety manager, then so much the better," he said.

When a disaster does strike, "plaintiffs lawyers hit quickly from the hip. They never apologize," Mr. McIntosh noted. Thus, companies "need a crisis plan. You need a person to handle the media (who is) pro-active with the media and is not saying 'no comment'. . . . You need key documents quickly. You should have press releases for every interlocutory hearing."

If a company is indeed liable, the case should be settled quickly to stop bad publicity and years of unnecessary legal costs, said Mr. McIntosh.

"Avoiding delay is very important," he said. ■

Ingosstrakh

Continued from page 3

However, under the Soviet political system, the Soviet people have believed that the state would finance their losses, according to Mr. Safronov.

"But when the pyramid is ruined, then certainly the protection element gets more and more important," he said. "That's why our profession is getting more and more wide, (serving) the simple person and finishing with the multinational industrial company. That's why I would say that everything which is going on now is good for the (insurance) profession, not just for foreign (business), but for domestic also."

The Soviet insurance industry traditionally has been dominated by two insurance companies under the control of the Soviet Ministry of Finance, Mr. Safronov explained:

- Gosstrakh, the larger of the two companies, is a life and personal lines insurer that conducts business strictly within the national borders of the Soviet Union. The insurer's premium volume last year totaled about 18 billion rubles (\$30.6 billion), he said.

- The main sphere of (Gosstrakh's) insurance is life insurance and pension funds" along with domestic homeowners coverage, he said. Gosstrakh, however, now is beginning to write property insurance for state-controlled industries, he added.

- Ingosstrakh, which specializes in commercial lines insurance, particularly for foreign trade and foreign investment ventures like the joint ventures currently being considered between foreign companies and state-controlled companies. Ingosstrakh last year wrote total premiums of just less than 300 million rubles (\$510 million).

Technically, Ingosstrakh is a "joint stock company" and not a state-owned company, said Mr. Safronov, though its major shareholder is the Ministry of Finance and the other investors are state-owned companies like the Bank for External Economic Relations and Intourist, the Soviet tourism office.

Ingosstrakh has 450 employees in 50 offices in the Soviet Union and in 11 countries around the world, including Black Sea in London and Garant Versicherungs A.G. in Vienna, Austria.

In addition to Gosstrakh and Ingosstrakh, scores of new insurance cooperatives have been formed over the past few years following enactment of a new Soviet cooperative law, noted Mr. Safronov.

The insurance cooperatives "are mainly devoted to the insurance of domestic business like motor cars, (personal) property and some life probably," said Mr. Safronov. "And I know there are some moves—by banks and professional associations—to establish their own insurance facilities."

According to Mr. Safronov, the insurance cooperatives can be formed by anyone because there is no insurance law in the Soviet Union.

Mr. Safronov could not say how many insurance cooperatives have been set up because "I have stopped counting."

Insurance cooperatives are often made up "of two or three persons, and there is no insurance law which dictates how many million of rubles" in capitalization an insurance cooperative must accumulate before it can begin writing business, he said. "This is the most unfortunate part of the market. And I know that some of them have collapsed and some populations have suffered some unpaid claims."

The growth of the insurance cooperatives, plus the interest by foreign insurers in setting up offices

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Containing work comp costs

Apply tools used on medical plans

By John C. Morrison
and Catherine Dorris Bennett

COST CONTAINMENT of workers compensation medical expenses has become the focus of heightened levels of interest. A number of large corporations as well as small entrepreneurial groups are working within the insurance industry to develop new concepts and ideas for managing these costs. One promising approach is a series of products and procedures that provide for the coordination of health insurance and workers comp benefits or to use health insurance techniques and resources to control costs.

To gain a better understanding of recent developments in the area of cost containment of workers compensation medical expenses, we must address the current status of the workers compensation system, the development and operation of CIGNA Corp.'s efforts and improvements needed to continue these cost containment efforts.

The workers compensation system serves as an exclusive remedy for employees who suffer from work-related accidents or occupational diseases during the course of employment. The present system can be characterized as a no-fault delivery system in that according to individual state statutes, the employee is automatically entitled to compensation benefits for both bodily injury and loss of income for any work-related injury or illness. The trade-off, however, is the employee relinquishes the right to sue his employer for any such incident. The result is a workers compensation system with both positive and negative characteristics.

Focusing first upon the positive aspects of the present system, the overall delivery of benefits has been quite good. Sick or injured workers generally have been well-treated and the physicians and providers of services have been promptly reimbursed.

However, one concern associated with this delivery system is that wage replacement levels in some states are unusually low. For example, California has one of the highest average weekly wage levels in the country but, until recently, the maximum work comp benefit was one of the lowest at \$224 per week. In legislation enacted last year as a result of joint efforts by labor, business, insurance and government, temporary and permanent total disability benefits will rise 50%, up to \$336 per week, by 1991 (*BI*, Oct. 2, 1989). At that point, the Workers Compensation Insurance Rating Bureau estimates 58% of injured workers will receive two-thirds wage replacement during the period of total disability, compared with only 31% before.

Several other states have similar deficiencies in wage replacement but, in addressing this problem, care must be exercised so as not to create a disincentive such that workers compensation benefits become a substitute for unemployment insurance.

A second problem with the current delivery system is too much attorney involvement. As a result, a significant percentage of dollars flowing through the system is going to attorneys as opposed to the beneficiaries.

Finally, case management techniques need to be better developed and utilized so as to prevent the injured employee from feeling alienated and lost in the system.

Despite these areas of concern, the delivery of benefits within the workers compensation system generally meets the social and economic objectives contemplated and deserves praise.

Another positive aspect of the present system is that the subject of workers compensation has recently attracted a high level of attention. For example, the system is drawing increasing interest from state regulators, with states such as California, Florida,

Louisiana and Texas being particularly active. Business and labor are developing an active role and becoming vocal on various issues. Likewise, academicians are devoting increasing amounts of time to the discussion of the subject. By bringing the state of the workers compensation system to the forefront among the various groups, potential problems can be comprehensively addressed and a well-functioning system maintained and fine tuned.

But one of the most severe problems is that costs continue to escalate. Between 1987 and 1988, medical and indemnity costs combined rose 11.1%. Medical expenses more than doubled between 1980 and 1988. The average lost time claim costing \$6,000 in 1980 is estimated to be \$10,000 in 1990. Medical payments made up approximately 30% of total claims in 1980, but are now running 40% of the total nationwide and close to 50% in some individual states.

Compounding the problem of escalating costs is the fact that rates and premiums are not adjusting in keeping with these increasing costs. According to the National Council on Compensation Insurance, workers compensation accounted for less than 13% of total property/casualty insurance premiums in 1988 but produced 45% of the industry's net underwriting losses and suffered an operating loss of \$1 billion. The severity of this problem varies by state and can be measured by the combined ratios calculated for the individual jurisdictions.

Compounding the problem of escalating workers compensation costs is the fact that rates and premiums are not adjusting in keeping with these increasing costs.

As an illustration, the countrywide combined ratio in 1988 was 118.1%. Those states reporting the five best combined ratios based upon 1988 statistics are:

- District of Columbia, 89%.
- Hawaii, 94%.
- Alaska, 96%.
- Utah, 99%.
- Maryland, 101%.

The five states with the worst 1988 ratios are:

- Maine, 170%.
- Rhode Island, 159%.
- Louisiana, 155%.
- Florida, 150%.
- Texas, 138%.

Obviously, combined ratios of these worst states are an enormous burden on the entire system and the substantial variance among the states emphasizes a need to examine all contributing factors.

At first glance these differences in combined ratios might be thought to indicate only an inadequacy in premium levels. However, that is only part of the problem since pure cost levels follow similar patterns with much higher numbers in the worst states and much lower costs in the others. Economic and political conditions seem to have a great deal to do with these imbalances and, unfortunately, the worse the economic conditions are in a given territory (poor business conditions, high unemployment), the greater the motivation there is to resist premium increases even though their need is statistically demonstrated. This condition is further exacerbated by an increased frequency and size of disability claims during periods of high unemployment.

A third problem arising from the escalating costs and price inadequacies is an increase in the residual market burden. According to NCCI, the residual market load is currently 19.3% of direct written premium, up considerably from the 5.5% load in 1984. This represents an operating loss subsidy of 12.3% of total premium volume as compared with only a 4.3% subsidy in 1984. This percentage, too, varies by state and is most severe in the five states reporting the highest combined ratios.

A related problem is that 41% of the residual market premium is derived from accounts in excess of \$50,000, even though premium accounts of this size theoretically should not be in the residual market. Also, self-insurers escape the assessments needed to support the residual market and, worse yet, as its burden increases, more and more large employers are motivated to consider self-insurance.

In response to this growing problem, the NCCI and commercial insurers have suggested such alternatives as shifting a proportionate share of this burden back to qualified self-insurers, the use of rate differentials of 15%-25% between the standard and residual market, and tightening the rules as to eligibility for these pools so as to make them more self-supporting.

A fourth problem is that cost containment efforts are not as good as they could be. Loss control activities by insurance companies and employers have fallen short of expectations. Only recently has the situation begun to change and now more companies are focusing on developing better attitudes among employees by means of wellness programs and accident avoidance training. The intent is to develop a company attitude and an atmosphere such that employees do not want to incur lost time due to illness or minor accidents.

Similarly, more effort needs to be expended in developing and utilizing better case management techniques for severe injuries, with particular emphasis on utilization reviews and rehabilitation processes. The concept of case management was developed by insurance companies and involves their claims departments taking an active role with an employee following a worker's injury. If the employee is made to feel less alienated and lost in the system, it is believed he will be less likely to seek an attorney for assistance, he will receive controlled treatment and he will begin the rehabilitative process so as to return to gainful employment in a timely manner.

Likewise, utilization reviews need to be used more extensively. Utilization reviews serve as a check in the system to determine whether the patient is receiving the most appropriate medical care in a cost-effective manner. Such reviews may involve pre-admission screenings to determine if hospital admission is truly necessary, second opinions to determine if the recommended treatment is appropriate, or concurrent reviews to determine if the patient's estimated length of stay is reasonable. A study by The Wyatt Co. reports that 30% of hospital admissions in workers compensation may be medically unnecessary.

Hospital bill reviews are also an important part of the utilization process. Statistics show that 80% of hospital bills are incorrect. One third of the bills reviewed in the study were too low and two-thirds of the bills were too high. The areas in which they are most often incorrect are laboratory and pharmaceutical charges. It is estimated the hospital bill reviews result in as much as 15% savings in these two areas.

Managed care techniques such as these should be able to reduce the burden for both employers and insurance companies.

Medical and hospital costs in workers compensation total \$10 billion per year. While a number of cost containment techniques are already in place and working well on the health care side, currently very few have been expanded into the workers compensation arena.

One technique is the "packaging" of health insurance and workers compensation.

CIGNA refers to this product as the 24-Hour Workers Compensation Policy, which was developed in 1982 after the merger of INA Corp. and Connecticut General Corp. CIGNA now handles approximately 50 accounts in this manner and generates substantial premium volume.

In essence, the 24-Hour Workers Compensation Policy allows workers compensation and health policies to be put into a single folder and sold as a single product. This concept has not caught on as strongly as anticipated, largely because these two

Continued on next page

Rising above workers comp politics

By Franklin W. Nutter

SINCE ITS INCEPTION, no social system in the United States has raised higher expectations than workers compensation. Perhaps the Director of Insurance in Illinois said it best in October 1913:

"In addition to compensation benefits, the benefit from accident prevention, workmen's compensation laws have resulted in the conservation of business stability, greater prosperity, improved standards of living, harmonious relations between the employer and employee, fewer injuries, and prevention of poverty resulting from injuries."

Inherent in the formulation of the workers compensation system is national policy that still exists today. It is a policy in favor of conservation and preservation of human life in the workplace, and it rejects the notion of economic or technological advancement on the back of the injured worker.

The system stands for principles of social justice where industry bears the burden of its accidents and distributes that burden among the consumers of its goods and services. The system is built on the assumption that there is a social contract between employers and workers to improve workplace conditions and reduce the opportunity

for workplace accidents.

Nothing has happened in the intervening 75 years since the concept of our workers compensation system leaped across the Atlantic from Europe to dispel these principles and that social contract. Nevertheless, the trustees of that system must insure that it is not too rigid to accommodate the social and demographic trends that are constantly swirling around it.

The workplace has always been evolutionary. Recent changes are more properly characterized as revolutionary. If we look back 75 years, we see an economy moving beyond industrialization, one that is service-driven. But if we look back only 10 years at the workforce itself, we see a dramatic change in the demographics of the workplace: The aging of our population and our workforce and the "baby bust" generation are driving the social issues of our day.

Most can be characterized as quality-of-life issues, and the forum where these issues are being addressed is the workplace: safety, health and medical care, our environment, child care, and education and training.

We must recognize that these quality-of-life issues transcend employment. We must see the worker in a holistic way, not just between rush hours. Workers compensation is a

key part of these quality-of-life issues.

Just 17 years ago, the forum for addressing workers compensation issues was the Congress. However, on workers compensation and similar quality-of-life issues, the legislative process is often marked by gridlock. It has proven not to be an efficient problem solving mechanism. The resolution of these issues has shifted from the legislatures to the workplace because employers, not taxpayers, are being asked to subsidize programs to meet these needs. The legislative process is dependent upon an understanding between those with a vested interest in an issue to reach an accord.

What is needed is for the trustees of the workers compensation system, the worker, the employer, insurers and health care providers—those with a resolve to adjust the most efficient benefit delivery system ever developed—to rise above the politics of these issues and to provide an affirmative consensus on the adjustments needed in the system. We may have to approach these issues in concentric circles, beginning with those issues where there is the greatest likelihood of consensus: quality medical care delivered efficiently, workplace safety and the health environment.

We can move then to the next

concentric circle where there may be less correlation in view but still a resolve to agree: benefit delivery systems, the adjudication process and the cost of the system. Perhaps then we can move to the outer circle and address benefit levels and the exclusive remedy principal on which the system was founded.

We cannot afford to fail to find a common ground on issues of the highest likelihood of success, and from that common ground we can build a foundation of trust and respect to address the more difficult issues.

Workers compensation should be synonymous with our investment in the workforce. The system has enhanced our economic prosperity, injury prevention, worker productivity and our standard of living. It is only right that the trustees convene from time to time to insure the system's continued success and to see that it is adjusted to meet the changing work force and the changing workplace. ■



Franklin W. Nutter is president of the Alliance of American Insurers in Schaumburg, Ill.

Workers compensation costs

Continued from previous page

products are traditionally handled separately at all levels by the policyholder, the agent and the insurer.

However, the 24-Hour Workers Compensation Policy offers several advantages to its users. First, its coordinated coverages help prevent double dipping; that is, a situation under which an employee may collect under both the workers compensation and health care policies. Secondly, the 24-hour approach helps detect pre-existing conditions. Savings are generated by placing the claim in its proper category. Thirdly, it is sometimes possible to experience rate these combined policies, which can be beneficial to those policyholders with effective loss prevention techniques and wellness programs.

Another opportunity here is avoidance of the spillover from non-work-related health care. There is an economic incentive for an employee to have a claim classified as workers compensation instead of health care, since the latter typically requires a large deductible or co-payment. An employee is naturally motivated to report an illness as employment-related, creating a workers compensation claim and thereby avoiding the health care deductible or co-payment expense.

This possible spillover of costs from health insurance to workers compensation is another problem that can be better dealt with under a 24-Hour Workers Compensation Plan. Since the handling of claims and claims data is coordinated, these spillover claims can be readily identified and restored to their proper category.

Despite recent developments and innovative products such as the 24-Hour Workers Compensation Plan, a number of problems still need to be addressed to improve medical cost containment efforts. The level of fees and charges by hospitals and doctors is a growing problem. Prior to 1980, workers compensation hospital and medical costs and general hospital and medical costs were rising at about the same rate each year. Then, during the period 1980-1985, when wages and the

Consumer Price Index increased 5% and 6% annually, general medical costs and workers compensation medical costs rose 10% and 14.5%, respectively. It is true that in some states, general medical costs and workers compensation medical costs have been rising at approximately the same rate, but in other states, the gap between the two is even more pronounced. One reason for this difference between general and workers compensation medical costs seen since 1980 is that in the general arena, medical cost containment techniques have been widely utilized, unlike workers compensation.

Limited incentives for cost control exist in workers compensation. In the typical scenario, the injured employee has no incentive to control costs as a patient. The physician regards workers compensation benefits as mandatory and has a tendency to overtreat the employee so as to stimulate demand for health care services. Employers would like to control costs but often feel powerless to deal with their inexorable advance.

Furthermore, regulations and laws often interfere with cost containment efforts. Just under 50% of the states allow the employer or insurer to direct the treatment of the injured employee. In the others, the employee can choose a provider and the practical effect depends on how the case is managed, whether the employer (insurance company) attempts to contain costs and whether the plaintiff's attorney and labor unions have substantial influence.

In spite of these potential problems and/or barriers, an important opportunity to control and reduce medical expenses exists. The workers compensation claim department is the focal point, using data and a "case management" approach to serious injuries or illnesses. A broad spectrum of utilization and billing review procedures can verify and/or control costs, as can rehabilitation services and advanced "case management" in cases where rehabilitation is appropriate.

There is a growing body of evidence that the use of provider group contracts—such as preferred

provider organizations, health maintenance organizations and independent practice associations—can reduce medical costs and physicians' bills significantly. Over the last two years, CIGNA's test programs indicate that savings of 20%-30% are sustainable, particularly with hospital groups. With physician programs, savings of 5%-20% have been achieved depending upon territory and other circumstances.

These savings are possible because of a general oversupply of medical facilities and physicians. Medical care providers are, therefore, willing to accept lower fees in exchange for the certainty of an increased and sustainable volume of cases. While this tactic has been used extensively in the health care field, in workers compensation the volume in terms of both number of claims and dollars is generally much lower. Volume discounts are, therefore, a much less obvious possibility.

Nevertheless, as group programs increase in popularity and products combining health care and workers compensation become available, the idea of savings generated by volume discounts should proliferate.

By continuing efforts to influence law and regulatory changes, by addressing problems within the system, and by convincing employers and labor of the merits associated with many of today's new products, techniques and services, cost containment efforts for workers compensation medical expenses should continue to improve in the upcoming periods. All of us involved in this voluntary benefit delivery system must commit ourselves to constant improvement and with that commitment, we can preserve and enhance a vital part of our socio-economic system here in the United States. ■

John C. Morrison is president of the Advanced Products Division of CIGNA Corp. in Philadelphia. Catherine Dorris Bennett is an account manager for the Advanced Risk Management Services division of Corroon & Black Corp. in Nashville, Tenn.

Ingosstrakh

Continued from page 19

in the Soviet Union for the first time since the 1917 revolution, has spawned the need to draft a national insurance law, said Mr. Safronov.

"No insurance law was required" when two state-controlled insurers wrote all Soviet insurance "because the insurance market was very simple. There were only two insurance companies under the roof of the Minister of Finance, and it was really not very difficult to organize properly the functioning of insurance," he said. "Now the situation has changed."

With new insurance cooperatives and interest from foreign insurers, "there is a real need to have the market organized, to avoid this chaos when there is no legal framework," he said. "That is exactly what is now going on in our country."

At first, the Soviets considered "stealing" an insurance law from the United Kingdom or France, but found the legal systems of other countries were too different from the Soviet Union's legal system. Thus, the Soviets are writing an insurance law from scratch.

Among those contributing to the new law are the Finance and Justice ministries, Gosstrakh and Ingosstrakh.

However, a final draft has not yet been produced, said Mr. Safronov. "Unfortunately, it is still at an early stage. Our feeling is that (early drafts) are still a bit raw, not ready. . . I wouldn't be brave enough to say it would be completed very soon. I think that the major work will be done this year."

Mr. Safronov said he and his colleagues favor an insurance law that does not differ greatly from "common international insurance law," but that "certainly has some protection" for Soviet insurers, just like many European insurance laws traditionally have protected domestic insurers.

Among other things, he said, the law should govern:

- The types of business that can be written by non-Soviet insurers.
- The "deposits" or capitalization that insurers must maintain.
- How reserves are invested.
- The role of insurance intermediaries, considering there currently are no insurance brokers in the Soviet Union.

The sooner the Soviets draft an insurance law, "the better we can start protecting our interests and our clients' interests with better standards," said Mr. Safronov.

Meanwhile, Ingosstrakh is educating its staff and its policyholders about the need to financially protect corporate risks.

"We have started re-education by making efforts to increase (the awareness) on the local staff level of Ingosstrakh," said Mr. Safronov. "Through them, we are going to the clients to explain what insurance means for them."

For example, there are "thousands" of new companies that have been set up in the past few years to trade with overseas companies that "need insurance," said Mr. Safronov. But "not all of them are insurance-minded people, and we should really be very active in explaining to them what it means" to be insured. "Otherwise, we will wait until they have a claim that pushes them toward us because they haven't been wise enough to (buy insurance) in advance."

In addition, Ingosstrakh is conducting seminars in Moscow for executives like managers, lawyers and accountants of key Soviet companies, "plus we are actively involved in various seminars that are organized by different bodies," he said.

Ingosstrakh also is leaning on foreign insurers and brokers to help its employees and clients

learn more about foreign risks and risk management.

"We need the expertise to study the insurance requirements, for example, of a joint venture project," said Mr. Safronov.

Also, Mr. Safronov has been visited by several "highly positioned insurance officials" from many Western countries in the past several years who are interested in working with Ingosstrakh, including John Parton, past chairman of the Institute of London Underwriters, and Maurice R. Greenberg, chairman of American International Group Inc. in New York.

Ingosstrakh also has invited Lloyd's Chairman Murray Lawrence to the Soviet Union in May. The meetings will include a "general study of future prospects—how we can operate closer," Mr. Safronov said (BI, Feb. 19).

Meanwhile, to take advantage of the new political and economic climate in the Soviet Union, Ingos-

Continued on next page

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Ingosstrakh

Continued from previous page
strakh in the last few years has broadened its activities to accommodate foreign investors and Soviet clients.

Several years ago, Ingosstrakh primarily wrote marine cargo insurance and export/import credit insurance from its overseas offices, particularly in Vienna, for foreign import risks.

Now, however, Ingosstrakh also writes:

- Insurance packages for joint venture companies, which are partnerships between the Soviet government and private companies, either foreign or domestic.

"We are selling them a full set of insurance requirements," said Mr. Safronov. "We start from the deliverance of cargoes to build a plant if necessary or to install some machinery; to insure the property; to insure the warehouses; to insure the stock; to insure the product liability, if necessary, for exporting; to insure

the environmental protection; to insure the employers' liability—all the necessary ingredients or elements" normally accepted in the West.

Mr. Safronov said that the number of joint ventures registered with the government has grown "astronomically," though he could not give figures. However, the number that are "functioning is not very impressive," he admitted.

(As of late last year, about 1,100 joint ventures between Eastern and Western bloc partners had been registered under the Soviet joint venture law (BI, Nov. 27, 1989).)

One such joint venture that Ingosstrakh has helped to insure is the McDonald's restaurant—the world's largest—that opened in Moscow last month. Property/casualty insurance for the new restaurant and a McDonald's food processing plant were placed by Toronto-based broker Reed Stenhouse Ltd., a subsidiary of Alexander & Alexander Services Inc.

McDonald's Restaurants of Canada

—which opened the new fast-food restaurant in Pushkin Square after a 14-year-long quest—purchased some insurance from Ingosstrakh and "certain other coverages" from insurers outside the Soviet Union, said A. James Edwards, senior vp-international at Reed Stenhouse in Toronto. Mr. Edwards said he could not be more specific.

The new McDonald's, which seats 800 and has 27 cash registers, served 30,000 meals its first day.

- Export credit insurance for Soviet companies that are now trading with foreign clients. "They badly need insurance protection against delays in payment for their export; for bankruptcy and so on," Mr. Safronov said.

- Product liability insurance, "which is very new for Russian commodities that are sent abroad. It's not a huge wave of business, but it's already started. That is what is most important and we are prepared to accommodate the requirements."

- Space insurance coverage for Western satellites to be launched by Soviet launch vehicles.

European insurers eagerly look east

By CAROLYN ALDRED

LONDON—Western European insurers are eyeing developments in Eastern Europe with more than just a passing interest.

As state control in most Eastern Bloc countries begins to decline, business opportunities for Western insurers and brokers could increase, many believe.

"We are entering a new world. Eastern Europe is opening up and the changes are probably irreversible," said insurance stock analyst Simon Rudolph of Morgan Stanley International in London.

There likely will be a "massive flow of investment capital into Eastern bloc nations. As a result, many new opportunities will emerge for insurance companies in these new markets during the 1990s," Mr. Rudolph said during two seminars sponsored last month by Morgan Stanley in London and Edinburgh, Scotland.

"As the concept of a free-market economy evolves in Eastern Europe, increasing emphasis will be placed on using private sector investment to restructure and develop economies," said Mr. Rudolph.

"Increased economic activity will lead directly to an increased demand for commercial lines," he predicted.

In the long term, he said, benefits of increased foreign investment will "filter through to the population," leading to increased demand for personal lines insurance.

But, "the drawing back of the Iron Curtain has happened so quickly that the majority of insurers are still discussing the implications and are trying to formulate a strategy," he noted.

Some Western insurers have, however, already taken initiatives in Eastern Europe, Mr. Rudolph pointed out. These include:

- West German insurer Allianz A.G., which in December bought a 49% stake in a Hungarian state-controlled non-life insurer Hungaria Biztosito for 80 million deutsche marks (\$47.7 million).

The Hungarian government will retain the remaining 51% ownership of Hungaria.

One of the country's two largest insurers, Hungaria controls 44% of the market. With a 1988 premium volume of 340 million deutsche marks (\$202.9 million), it specializes in automobile and industrial non-life insurance.

Munich-based Allianz purchased its stake in Hungaria primarily to service West German customers operating in Hungary, an Allianz spokesman said. West German investors are often drawn to Hungary by the relatively stable economic and political conditions in comparison with other Eastern European nations, the spokesman said.

Purchasing an existing company, with its contacts and expertise, rather than establishing a branch office, will allow Allianz to operate more quickly in the new market, he said. And as the Hungarian economy develops, Hun-

garia also will be able to use Allianz's worldwide contacts, he said.

Allianz says it will leave leave Hungaria's 2,500 employees in place, though Mr. Korb expects that some will be trained in Munich.

The acquisition "provides Allianz with an unparalleled opportunity to establish itself as a major force in a developing Eastern European market," said Morgan Stanley's Mr. Rudolph.

- Italian insurer Assicurazioni Generali SpA, which has signed an agreement with Czechoslovakian state-controlled insurer Ceska Statne. This agreement calls for the reciprocal support of clients in both countries, joint underwriting of insurance policies and technical cooperation.

"I believe that this will be superceded by a full joint venture company in the near future," said Mr. Rudolph.

- Colonia Versicherung of West Germany, which has signed a deal with Polish insurer Westa. Under the deal the West German insurer will offer health coverage to Poles traveling to the West.

- Pohjola Insurance Co. Ltd. of Finland, which has signed an agreement with Ingosstrakh in the Soviet Union to write insurance policies for 75 Soviet-Finnish joint ventures (see story, page 3).

"I believe that during the 1990s we will see the leading European insurers taking an increasingly active role in these emerging markets," Mr. Rudolph said.

Already in London, at least two conferences have been set up to examine insurers' opportunities in Eastern Europe.

Lloyd's of London broker Willis Faber P.L.C. is hosting a daylong seminar Thursday titled "Eastern Europe—the Real European Opportunity?"

Speakers will include a director of the Black Sea & Baltic General Insurance Co. Ltd., Ingosstrakh's British subsidiary, and Janusz Beksiak, economic adviser to Poland's Solidarity Party.

More information is available from Nick Davenport, managing director of Unison S.A. in London at 01-488-8330.

Also, consultant Risk & Insurance Research Group Ltd. in London will sponsor a one-day seminar April 20 titled "The Eastern Bloc—A New Insurance Market."

Speakers at the conference include Andrei Sazonov, a director of the Black Sea & Baltic; John Parton, former chairman of the Institute of London Underwriters; and Gerald Jansen, general manager of European American Underwriters in Vienna, Austria, a unit of American International Group Inc.

For more details contact Risk & Insurance Research Group at 01-836-0614.

Miriam Widman in Frankfurt, West Germany, contributed to this story.

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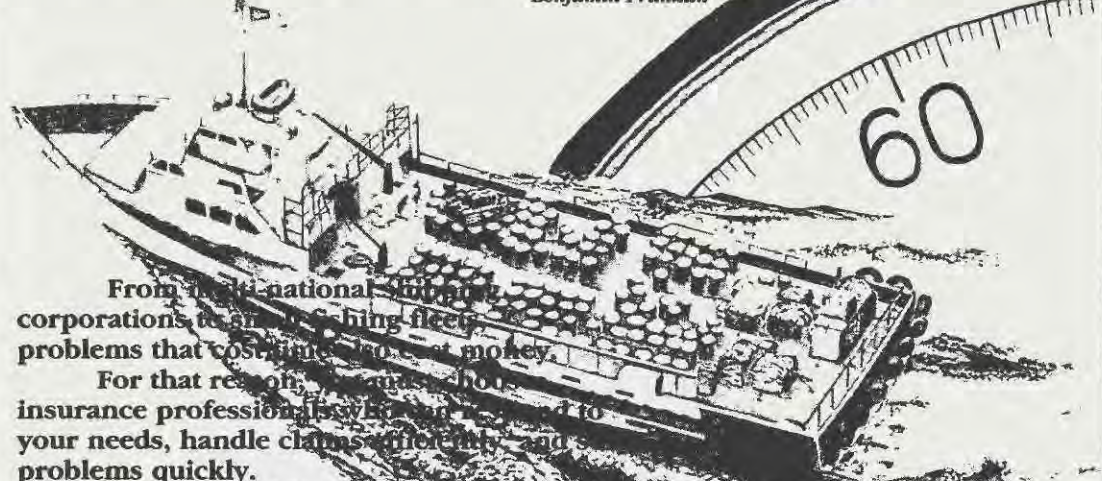
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Business Insurance

Work comp

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meeting included the National Assn. of Manufacturers; the National Federation of Independent Business; the U.S. Chamber of Commerce; the National Council of Self-Insurers; the AFL-CIO; the Greater Boston Labor Council; the Occupational Health Legal Rights Foundation; the Ohio State Fund; the Alliance of American Insurers; the American Insurance Assn.; Hartford Insurance Group; and the American Medical Assn. In addition, some attorneys attended the gathering.

While other observers also were impressed with the gathering, they emphasize that the effort is just starting.

"There was general agreement and consensus that many states could stand improvement from the point of view of the worker, employer and carrier," said Randolph Hale, vp-industrial relations for the NAM.

However, he declined to comment on the likelihood that the group would achieve workable reforms. "I think it's rather premature to indicate what will happen down the road," he said.

"I'm cautiously optimistic at best" about the national advocacy group, said Fred Krebs, manager of the business-government policy department of the Washington, D.C.-based U.S. Chamber of Commerce.

"It's always good to have communication and dialogue, but how much further it goes remains to be seen," Mr. Krebs said.

"You have to go in optimistic, or there is no sense playing the game," noted David Stephenson, the NFIB's legislative analyst.

Former New York state Sen. John Dunne, who previously chaired the state Senate Insurance Committee, said he was "very hopeful" that workable solutions will develop from the meetings because Mr. Countryman has started out "on a sound basis."

However, he warned that it will be a long process.

"I thought it was a good meeting," said Jim Ellenburger, assistant director of the AFL-CIO's department of Occupational Safety, Health and Social Security.

The initiative to "elevate" the discussion of problems in state workers comp systems is "a very healthy, positive move," he said.

However, Mr. Ellenburger cautioned that while there may be general agreement among participants that work comp systems must meet the needs of injured workers, the participants will likely have different perspectives about how to meet those needs.

Therefore, it is "absolutely" too early to describe the group as a coalition, because that incorrectly implies there is a shared consensus about necessary changes, he said.

A subgroup of the national advocacy group has agreed to meet at an unspecified future date to determine how the full group should operate.

The subgroup, chaired by Mr. Hale of the NAM and the AFL-CIO's Mr. Ellenburger, will address among other things whether meetings should consist of just the national advocacy group or be open for greater public participation.

Mr. Mattera of Liberty Mutual said he hopes that the larger group will hold a second meeting by the end of March to hear the subgroup's report.

The national group subsequently is expected to turn its attention to which specific workers comp issues it will address.

The nature of the reforms needed are "much harder" than the reforms required in 1972 when a national commission recommended broad-brush changes in benefit levels and increased medical cov-

erage, said Mr. Lewis. Several states subsequently adopted such changes.

Another hurdle reformers have to deal with is the nature of the work comp system: 50 different state programs and 50 different brands of local politics, he said. And "states guard their own turf jealously," he added.

Consensus between labor and employers can best be built on issues like safety, loss prevention and case management of injuries, rather than on topics like the benefit levels and the definition of disability, pointed out Edward Welch, director of Michigan's Workers Compensation Bureau, who did not attend the Washington meeting.

In addition, many workers comp constituencies are concerned about improving the delivery of benefits by reducing unnecessary system costs, Mr. Lewis said.

However, key constituent groups also have specific concerns.

Continued on next page

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Workers comp

Continued from previous page

For example, insurers are concerned about inadequate rates, while labor is especially concerned about inadequate benefits (see related story).

In addition, even if the national group reaches a consensus about what needs to be done, representatives from several key groups can only urge—rather than order—officials of affiliated organizations in individual states to cooperate.

For example, national representatives of the NAM, the U.S. Chamber of Commerce, the NFIB and the AFL-CIO do not dictate policy on state issues like workers compensation to officials of affiliates in individual states.

"I don't dictate to them. I work for them," said the AFL-CIO's Mr. Ellenburger.

If any consensus is reached by the national advocacy group, it will be communicated to state affiliates of many organizations only through "the force of persuasion," said the Chamber's Mr. Krebs.

"But, if there is consensus on the nature of problems and solutions, I suspect that would be a big step forward," he added.

"What may come out of this is not the creation of policy, but an understanding that there are some ways to deal with these issues that each group can buy into," said Liberty Mutual's Mr. Mattera.

Members of the national advocacy group may provide some "thought leadership" to state affiliates about local work comp problems, which may increase a proposal's chances of receiving serious consideration, he said.

Mr. Countryman introduced the idea of a national advocacy group—which he dubbed "a coalition"—last September in Philadelphia at the Workers Compensation Congress, which sought to develop a consensus about reform measures

among key constituent groups. However, the event—sponsored by the National Council on Compensation Insurance, a statistical and rate-setting organization—was an insurer-dominated gathering (BI, Sept. 18, 1989).

Some labor representatives shunned the meeting, saying their views were not adequately represented, especially in preliminary drafts of position papers prepared by broad-based subcommittees coordinated by the NCCI.

Following the congress, the NCCI's planning panel drafted a three-page statement of principles that included recommendations on workplace safety and adequate compensation.

Although the panel was dissolved late last year, several members now serve on the new group organized by Mr. Countryman, said Michael Camilleri, NCCI senior vp and general counsel.

Mr. Countryman repeated his call for a broad-based group in November at a conference sponsored jointly by the NAM and the Alliance in Baltimore.

That conference helped foster a favorable climate for a national advocacy group because labor representatives aired their views as part of several panel discussions.

Mr. Countryman said at the conferences that he is "very concerned" about the future of the workers comp system because of the scope of rate inadequacies in a growing number of states. Those inadequacies are caused by, among other things, soaring medical and legal costs and have been compounded over many years by the inadequate rate increases approved by regulators.

Meanwhile, politically difficult efforts to enact legislative reforms or control costs result in "either reform that has little cost impact or no reform at all," he said.

Insurers have responded to the "compelling economics of price inadequacy and the absence of reform" by withdrawing capacity, causing the residual work comp market to grow to about 20% of written premium in 1988 from about 5% in 1984 (BI, May 22, 1989).

For example, Liberty Mutual withdrew from Maine after losing \$130 million—after investment income—between 1981 and 1986.

Reform is "our best and only hope" and a national advocacy

group may help achieve it, Mr. Countryman said.

Labor's involvement is vital to balance the group and increase the likelihood of developing changes that can ultimately be adopted, said Alliance President Franklin W. Nutter.

Moreover, it is important that both self-insured and insured employers are represented on the national advocacy group, said Douglas Stevenson, executive director of the National Council of Self-Insurers.

Self-insured employers are more directly involved with state workers compensation systems than insured employers are because self-insured employers pay their own claims, he pointed out.

"Self-insurers and insurance carriers have a tremendous community of interest," said AIA Counsel Eric Oxfeld. Insurers are glad to see self-insured employers testify at state hearings on workers

comp proposals because they lend credence to insurers' comments that litigation and rising medical costs are responsible for increased system costs, he explained.

Hopefully, the national advocacy group may be the forum for a more honest discussion of issues that could help build up trust, said Mr. Lewis, the work comp expert.

"The question is whether we can keep this system and make it work," Mr. Lewis said. We have to find a better way, because we can't afford decades of additional combat like the bloody battles that raged recently in Texas over work-comp reform, he said.

The goal should be cooperative change like that recently achieved states like California, he said (BI, Oct. 2, 1989).

Meanwhile, in addition to participating in the national advocacy group, the Alliance and the AIA are continuing their traditional "complementary" efforts to influ-

ence workers comp proposals and legislation in many states.

The Alliance is targeting about 18 states, including Texas, California, Florida and Illinois, where recent reform legislation is being implemented, said Steve Millikan, the Alliance's vp and director of workers compensation.

In addition, the Alliance is planning another conference that will be co-sponsored by the NAM and perhaps a labor organization.

Meanwhile, the AIA is "amplifying" its efforts to improve the environment for workers compensation insurance, Mr. Oxfeld said. For example, the AIA has created a task force to analyze work comp issues and try to implement recommended changes in selected states.

In addition, AIA President Robert Vagley opened discussions earlier this month with Tom Donahue, the AFL-CIO's secretary-treasurer, on work comp issues. ■

Different groups set different agendas

By MEG FLETCHER

While the fledgling national advocacy group on workers compensation reform has not yet set its agenda, there is no shortage of ideas among labor, employers and insurers.

Labor leaders, for example, want to preserve the adequacy and promptness of benefit payments and employees' access to quality medical care as many states consider adopting cost containment measures, like provider fee schedules, that are commonly used in health care plans.

Jim Ellenburger, assistant director of the AFL-CIO's Department of Occupational Safety, Health & Social Security, said he is especially concerned about inadequate benefit levels for some workers comp recipients in Indiana, Georgia and California.

He also would like to see Indiana employers that make late benefits payments penalized.

And he points out that injured workers in states like Indiana and Illinois face long delays in having contested cases heard by state workers comp administrators.

The AFL-CIO also advocates eliminating caps—like those in Mississippi, Wyoming and Maryland—on the length of time a surviving spouse who does not remarry may receive benefits after a worker's death.

On the other hand, employers are primarily concerned with workers comp costs. Small insured employers complain about rising premiums while large, self-insured employers emphasize the system's underlying problems, like inefficient system administration, which may encourage expensive, unnecessary hearings.

Employers also want injured workers to receive prompt, appropriate and cost-effective treatment and benefits. But once they are healed, employers want workers back on the job.

Insurers are especially concerned about inadequate rates and subsidizing the growing number of employers that purchase coverage from the residual market, which is supposed to be the market of last resort (BI, May 22, 1989).

Subcommittees organized by the National Commission on Compensation Insurance last fall spotlighted Colorado, Connecticut, Florida, Louisiana, New Mexico, Oregon, Rhode Island and other states where workers comp insurers favor reforms (BI, Sept. 18, 1989).

Texas and Illinois were removed from the original list after enacting measures that allayed some concerns of payers (BI, Dec. 18, 1989).

However, each state has unique workers comp problems.

A lack of coordination between two administrative bodies in Rhode Island, for example, creates inefficiencies and delays benefits to injured workers, said most members of one of the NCCI subcommittees.

The subcommittee recommended increasing cooperation between the state's Department of Workers Compensation—designed to expedite workers comp hearings—and the state's Workers Compensation Commission—which has final say over claims adjudication—by charging the department's director with overseeing both.

Other recommendations included trying to speed the disposition of claims by giving employers 21 days to investigate, pay or deny a claim.

Rhode Island has been targeted as an unprofitable state by the NCCI, which is seeking a 123.3% increase in fully developed rates for both the assigned risk plan and for insurers that write less than 1% of the total premiums in the voluntary market, said Chapin Clark, NCCI senior vp.

The NCCI also seeks a 28.1% increase in pure premium rates for work comp insurers that have at least a 1% share of the voluntary market, he added.

The 1990 increases would come on the heels of rate increases approved last year, he added. The 1989 increases, which are currently under appeal, included a 32% increase in fully developed rates for the assigned risk plan and a 41% increase in pure premium rates approved for insurers that write at least 1% of the market, Mr. Clark said. Insurers with less than a 1% market share were given no increase last year.

"The basic problem is an inordinate delay in getting benefits to workers," some of whom now wait 90 days for a first hearing on contested claims, said Edward J. McElroy, president of the Rhode Island AFL-CIO.

He also recommends requiring periodic cost-of-living increases in benefits for totally and permanently disabled workers.

The Rhode Island AFL-CIO would support combining the two administrative agencies, although it disagrees with the NCCI subcommittee that the director of the Department of Workers Compensation should head the combined agency, he added.

From an employer perspective, "dramatic" increases in Rhode Island employers' premiums, which are now "unaffordable" for some businesses, have precipitated a "crisis," said Francis J. Holbrook, executive vp of the Rhode Island Chamber of Commerce Federation in Providence.

Mr. Holbrook hopes reform measures developed by the Chamber as well as a governor's task force will provide some relief. Both sets of proposals were recently introduced into the state Legislature, he said.

However, not all legislative changes bring the relief anticipated. Implementation can be delayed, the changes may not effectively address problems or the changes may be eroded by subsequent court decisions.

All of these factors have hindered repeated attempts in the past decade to improve Louisiana's work comp system, say labor leaders and insurers.

Among recent changes in Louisiana is replacement of a court-administered work comp system with an agency-administered system, with decisions appealable to the state court of appeals.

However, a constitutional challenge from the Louisiana Trial Lawyers Assn. has delayed full implementation of the changes, said Bob Maxwell, NCCI director of consumer, government and industry affairs for Louisiana.

Employers also are worried about increased litigation within the Louisiana system.

Courts, at the urging of claimants' attorneys, have eroded each legislative attempt to limit litigation, said Ray Fredlund, former administrator of Dow Chemical Co.'s workers compensation program in the state, who has long headed the Louisiana Self-Insurers Assn.

Lawyers for claimants, employers and health care providers "milk the cow faster than the cow can produce milk," pointed out Carl K. Crowe, assistant to the Louisiana AFL-CIO's president.

Average medical and indemnity costs per workers compensation case in Louisiana are now among the nation's highest, according to an NCCI subcommittee report.

The Louisiana AFL-CIO has supported enactment of a medical fee schedule and limitations on employees' choice of physicians, Mr. Crowe said. This is expected to have little or no effect on union employees because "doctor shopping" was not prevalent, he said. In addition, it may prevent future benefit cuts, he said.

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Broker results

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ceptions about what was going on in terms of property/casualty rates," said Samuel G. Liss, director of research for Salomon Brothers Inc. in New York.

"There is a mixed bag in what brokers are seeing in terms of pricing. I'm viewing this as a transitional phase in the market, with most rates bottoming out or turning upwards," noted Michael A. Smith, vp of Shearson Lehman Hutton Inc. in New York.

Messrs. Smith and Liss said Corroon & Black Corp. executives—who have predicted continuing rate competition nationwide at recent analysts meetings—were far less optimistic than other broker executives.

But, Julie Hilt, assistant vp of Interstate/Johnson Lane in Atlanta, said that in its analyst meeting, Corroon & Black officials did say there were "some pockets of the country that were seeing a flattening of rates," as opposed to rate cuts. However, they would not elaborate.

According to Ms. Hilt, other brokers said "rates were starting to stabilize in the fourth quarter and that we should continue to see rates stabilizing in the first quarter, with a possible upturn in rates in the second half of the year."

In general, "there is a guarded but positive tone" that a rate stabilization will occur in 1990, Mr. Liss said. "In all cases, I look for 1990 earnings to show an improvement over 1989."

"Based upon our renewals in the fourth quarter of 1989 and the first quarter of this year, I would characterize rates as remaining fairly constant across the board. Some accounts are seeing slight increases, and some are seeing slight decreases," said John A. Addeo, senior vp and treasurer for Frank B. Hall & Co. Inc. in Briarcliff, Manor, N.Y.

"We saw some rate stabilization in the fourth quarter, as opposed to price increases," said Frank R. Wiczynski, corporate secretary in the Baltimore office of New York-based Alexander & Alexander Services Inc. "Rates were flat to slightly down. In comparison with other recent quarters, that's pretty good," Mr. Wiczynski added.

"Prices were still down, but not as much as they had been down in earlier quarters," agreed J. Michael Bischoff, vp of the Corporate Development Group of Marsh & McLennan Cos. Inc. in New York.

Robert H. Hilb, president of Hilb, Rogal & Hamilton Co. in Glen Allen, Va., said fourth quarter rate reductions "were less than the reductions we saw in the earlier part of the year."

But, Robert P. Cuthbert, first vp and chief financial officer of Corroon & Black, said: "We're still being impacted on renewals by continued competition, except in workers compensation and employee benefits business."

Following is a report on individual broker performances:

Marsh & McLennan

Marsh & McLennan reported 1989 gross revenues of more than \$2.4 billion, a 6.8% increase from less than \$2.3 billion in revenues in 1988. Net income fell 0.5% to \$294.9 million from \$296.3 million in 1988.

However, M&M's gross revenues grew 8.8% in the fourth quarter to \$592.1 million from \$544.4 million in the fourth quarter of 1988. Its net income grew 10.3% to \$55.8 million from \$50.6 million in the fourth quarter of 1988.

Breaking its results down into three major business segments, M&M in the fourth quarter reported:

- 5.4% growth in insurance services revenues to \$327 million from \$310.1 million in the fourth quarter of 1988.

That \$17 million increase, however, accounted for nearly the entire 1.8% growth in revenues to \$1.4 billion in all of 1989 from under \$1.38 billion in 1988.

"New business for our insurance brokerage operations was strong," Mr. Bischoff said. "Given our operating environment, we were still able to produce respectable results," he added.

- 14.2% growth in consulting revenues to \$193.8 million from \$169.7 million in the fourth quarter of 1988.

While M&M's consulting revenues grew 18.7% for the full year to \$754.3 million from \$635.7 million in 1988, Mr. Bischoff still characterized the fourth quarter as a "very strong consulting quarter."

- 10.4% growth in investment management revenues to \$71.3 million from \$64.6 million in the fourth quarter of 1988.

M&M's revenues from investment management grew only 4.6% in all of 1989 to \$273.1 million from \$261 million in 1988.

The operating environment for Putnam Inc., M&M's investment management subsidiary "was essentially the same, but its assets under management went up" in the fourth quarter, Mr. Bischoff said.

Overall, he characterized M&M's fourth-quarter results as "good," especially in "a period where premium rates were still going down on a year-over-year basis."

Marsh & McLennan "came in with some pretty strong fourth-quarter earnings," Shearson's Mr. Smith agreed. "They really needed this fourth-quarter surge because they had down earnings for the first nine months of 1989."

And, Salomon's Mr. Liss said he expects even stronger revenue growth for M&M in 1990.

Although Alex. Brown's Mr. Malis noted that M&M's expenses rose nearly 8.9% in the final quarter of 1989 compared with the fourth quarter of 1988, he speculated that M&M is now beginning to replace people who left the company over the past three years.

"I'm looking for an up year" for M&M in 1990, Mr. Malis said.

Alexander & Alexander

Alexander & Alexander's gross revenues grew only 1.7% in 1989 to \$1.25 million from \$1.23 million in 1988. Its net income fell 11% to \$60.1 million from \$67.5 million in 1988.

But its fourth quarter gross revenues grew 3.4% to \$328.8 million from \$317.9 million in the fourth quarter of 1988. And fourth-quarter net income fell only 4.9% to \$13.7 million from \$14.4 million.

Nonetheless, A&A's "whole earnings picture" is "confused by the recurrence of non-recurring events," said Shearson's Mr. Smith.

For example, in the fourth quarter of 1988, A&A recorded an after-tax gain of \$18.2 million from the sale of its TIFCO Inc. premium finance subsidiary.

But that gain was partially offset by \$12.1 million in provisions made to cover estimated losses related to the sale of three other subsidiaries.

A&A also made a \$6 million provision in the fourth quarter of 1988 for the finalization of a reinsurance arrangement to protect it against any unreserved losses that might be generated by two discontinued underwriting operations (BI, Feb. 27, 1989).

And, Mr. Wiczynski said many non-recurring items in the fourth quarter of 1989 "gave rise to additional expenses" of \$5.2 million.

These expenses primarily stemmed from additional reserves for errors and omissions and a one-time "charge off" made when A&A abandoned a management information system it had been developing, Mr. Wiczynski said.

Shearson's Mr. Smith notes a better earnings comparison can be made by examining A&A's operating income.

In 1989, A&A's operating income fell 12% to \$107.6 million from \$122.2 million in 1988, while in the fourth quarter it dropped only 1% to \$25.2 million from \$28 million in 1988, he noted.

Mr. Wiczynski characterized the fourth quarter as "reasonable, considering the circumstances." He said A&A's consulting revenues were up "nearly 16% in the fourth quarter," while its reinsurance brokerage revenues "were essentially flat."

Alex. Brown's Mr. Malis said A&A's domestic retail brokerage revenues, like those of M&M, have shown a steady improvement over the past four quarters, and A&A has maintained "good control over its expenses."

Corroon & Black

Corroon & Black reported a 7.5% increase in gross revenues in 1989 to \$456.8 million from \$424.9 million in 1988.

Its net income fell 68.9% to \$36 million in 1989 from \$115.9 million in 1988. However, 1988 profits were inflated by a non-recurring \$73.9 million net after-tax gain from Corroon & Black's sale of its 29.9% equity interest in Minet Holdings P.L.C.

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to The St. Paul Cos. (BI, Feb. 1, 1988; Dec. 14, 1987).

In the fourth quarter, Corroon & Black reported a 3.5% gain in gross revenues to \$110.3 million from \$106.6 million in the final quarter of 1988. Net income for the same periods fell 12.4% to \$7 million from \$8 million.

Problems related to a small life/health insurance subsidiary, Consumer Benefit Life Insurance Co. of Nashville, Tenn., continued to plague Corroon & Black in the fourth quarter. An increase in the frequency and severity of claims forced the broker to add to Consumer Benefit's reserves and re-underwrite that business in the first half of 1989 (BI, Nov. 13, 1989).

"The effect has been that the accounts with the highest-quality experience have left us to seek coverage with less of a price increase," Mr. Cuthbert said.

"This caused our marketing operations to have deteriorating results in the third and fourth quarter and will continue to do so, to a lesser extent, in the first and second quarters of 1990," he explained.

"Corroon & Black continues to have this anchor dragging along," said Shearson's Mr. Smith. "And, their reinsurance brokerage operations continue to underperform," he said.

But Mr. Cuthbert said revenues have "leveled off" at its reinsurance brokerage subsidiary, G.L. Hodson & Son Inc. Hodson is now concentrating on "beefing up its new business production," he added.

Salomon's Mr. Liss observed that problems related to Consumer Benefit and Hodson "have hindered Corroon & Black more than its retail brokerage business."

Corroon & Black's retail brokerage operations performed well, given the competitive market conditions in the fourth quarter, Mr. Cuthbert said.

"Acquisitions have accounted for 6% of our increase in commissions and fees in both the fourth quarter and the year," Mr. Cuthbert added. Since the broker's 1989 acquisitions were made on a purchase basis, revenues from the acquired operations were combined with those of Corroon & Black's from their dates of purchase.

Corroon & Black repurchased 4.8 million shares of its stock between October 1987 and December 1989 at a cost of \$142.1 million, or \$29.40 per share. It issued 2.5 million shares of stock for acquisitions, at a market value of \$79.4 million, or \$32.13 per share, Mr. Cuthbert said.

Corroon & Black is "doing the right things in this environment by buying back its stock, then selling it back at a higher rate" to fund its acquisition activity, Alex. Brown's Mr. Malis said.

Frank B. Hall

New York-based Frank B. Hall reported a 4.6% increase in 1989 gross revenues to \$383.7 million from \$366.9 million in 1988. It recorded an \$86.2 million net loss in 1989, compared with a \$30.5 million net loss in 1988.

In the fourth quarter, Hall's gross revenues grew 8.8% to \$105.1 million from \$96.6 million in the fourth quarter of 1988. Its net loss for the quarter was \$3.2 million, compared with a \$14.4 million fourth-quarter loss in 1988.

A positive sign for beleaguered Hall is that, when pretax operations are viewed, the fourth quarter of 1989 "is the first quarter since the last quarter of 1986 that has shown an improvement," Mr. Addeo said.

"Even though there was a loss, it was less, on a comparative basis, than the prior year's loss," he said.

Hall reported a \$3.2 million fourth-quarter loss in 1989, compared with a \$14.4 million fourth-quarter loss in 1988.

Continued on next page

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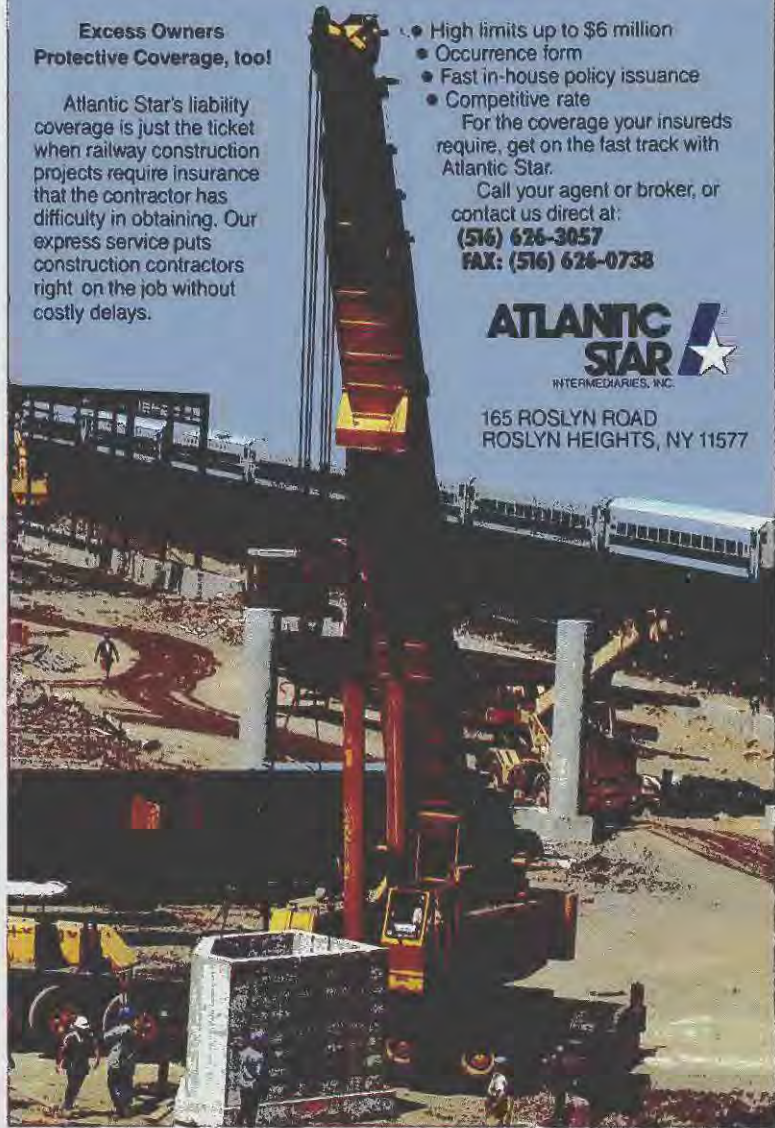
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Broker results

Continued from previous page
pared with a \$5.3 million loss in 1988.

Salomon's Mr. Liss also observed that Hall showed "the most improved revenues" in the fourth quarter of the four largest publicly held brokers.

He attributed most of Hall's growth in the quarter to its aggressive campaign in the second half of 1987 and throughout 1988 of hiring top talent from its competitors.

"It sounds like they are trying to get some bang for their bucks from the people they have brought in," said Alex. Brown's Mr. Malis.

But, while Shearson's Mr. Smith agreed that this "is paying off on the top line, its revenue enhancement program is very expensive, and the company is still a long way from making a profit."

However, Hall "expects to be profitable in 1990," Mr. Addeo said, adding that the broker based its 1990 budget on a stabilizing property/casualty marketplace.

"To the extent that rates increase, that will benefit us more," Mr. Addeo said.

"We don't expect our expenses to increase in 1990," he added. "Our signing bonuses have been expensed and are behind us, and we don't expect to add substantially to our staff in 1990, unless it is through acquisition or to pick up a top production person."

Rollins Burdick Hunter

Aon Corp. reported that its Rollins Burdick Hunter Group unit's operating revenues grew 18.5% in 1989 to \$316.4 million from \$266.9 million in 1988. However, Aon does not include investment income in the RBH figures.

Aon attributes some of RBH's growth to its acquisition last July

of Bayly, Martin & Fay International Inc., the nation's 10th-largest broker at that time. BMF revenues are reported with RBH's revenues on a purchase basis from the date of the acquisition.

RBH's 1989 pretax income fell 21.6% to \$25.3 million from \$32.2 million in 1988, primarily due to expenses from the acquisition.

In the fourth quarter, Chicago-based RBH reported a 27.3% increase in revenues to \$85 million from \$66.8 million in 1988. Fourth-quarter net income rose 47.9% to \$3.8 million from \$2.6 million in 1988.

"We were still working through the full integration of Bayly, Martin & Fay, and it still had an impact on our expenses in the fourth quarter," said Arthur F. Quern, chairman, president and chief executive officer of Rollins Burdick Hunter Co., RBH's retail brokerage unit. "We look forward to 1990 to realize the full benefits of the merger."

Rollins Burdick Hunter Co.'s revenues grew 33.2% in the fourth quarter to \$53.5 million from \$40.2 million in the fourth quarter of 1988. For the full year, revenues grew only 12% to \$200.5 million from \$179.1 million in 1988.

Shearson's Mr. Smith observed that its expenses were "too high" and its operating margins "continue to be disappointing."

Arthur J. Gallagher

Rolling Meadows, Ill.-based Arthur J. Gallagher & Co. reported a 9.4% increase in gross revenues in 1989 to \$173.2 million from \$158.3 million in 1988. Its net income rose 7.6% to \$17.3 million in 1989 from \$16 million in 1988.

In the fourth quarter, Gallagher's gross revenues grew 14.8% to \$44.1 million from \$38.5 million in 1988. Net income for the same

periods rose 20.5% to \$3.3 million from \$2.7 million.

"We were very pleased that our new business efforts have sustained us through the fourth quarter of 1989," said Michael J. Cloherty, Gallagher's vp of finance.

"People are driven to alternative forms of insurance because they do not want to continue to go through this rating roller-coaster ride. That's what is driving Gallagher's new business growth now," Mr. Cloherty added.

In fact, fee income, primarily derived from alternative risk financing services, grew in the fourth quarter at twice the rate of brokerage commission income.

Gallagher's fee income rose 14.3% in the quarter to \$60.4 million from \$52.9 million in the fourth quarter of 1988, while commission income rose only 7.2% to \$98.6 million from \$92 million.

Interstate/Johnson Lane's Ms. Hilt said that "Gallagher's fourth-quarter earnings were skewed somewhat because of three pooling (acquisitions) it made during the year," two of which actually were recorded as purchases due to their small size.

"They decided not to go back and restate their 1988 numbers," she explained. This contributed to Gallagher's increase in commission revenues and expenses in the fourth quarter, Ms. Hilt added.

And, Salomon's Mr. Liss observed that because of its mix of business, Gallagher's third-quarter results are much more substantial and more telling than its fourth-quarter results.

Hilb, Rogal & Hamilton

Hilb, Rogal & Hamilton's gross revenues grew 12.9% in 1989 to \$78.3 million from a restated \$69.4 million in 1988. Net income rose 36.9% to \$6.2 million from \$4.5

million.

In the fourth quarter, HRH's gross revenues rose 13.4% to \$18.5 million from \$16.4 million in the fourth quarter of 1988, while its net income rose 485.2% to \$515,000 from \$88,000.

However, Mr. Hilb was quick to point out that HRH's results have been restated to reflect 17 acquisitions it made in 1989. Of those, 12 were accounted for as poolings and required restatement of prior years' earnings, and five were purchases recorded from the date of acquisition.

"Five poolings made in the fourth quarter of 1989 negatively impacted that quarter's earnings. And the restatement made of 1988's fourth quarter earnings was also negatively impacted by those expenses," he said.

And, HRH's revenue growth in both the fourth quarter and throughout 1989 also "reflects the positive impact of the purchase acquisitions," he added.

Alex. Brown's Mr. Malis agreed that HRH's fourth-quarter results were "confusing. It looks like their revenues remained fairly flat" in the quarter disregarding the effects of the acquisitions, he added.

Poe & Associates

Poe & Associates Inc. reported gross revenues in 1989 of \$41.7 million, an 18.7% increase from \$35.1 million in 1988. Net income fell 24.3% to \$3.1 million compared with \$4.1 million in 1988.

In the fourth quarter, Poe reported a 49.2% increase in revenues to \$11.3 million from \$7.6 million in 1988. The Tampa, Fla.-based broker reported a \$465,000 net loss in the quarter, compared with net income of \$384,000 a year earlier.

The loss is attributable to Poe's settlement on Feb. 5 of litigation

arising from its December 1984 sale of a Puerto Rican subsidiary. The unit marketed automobile physical damage insurance policies issued by Dependable Insurance Co. in Jacksonville, Fla.

Dependable sued Poe and two of its officers, seeking reimbursement of up to \$20 million in potential losses related to that book of business. One of the purchasers also had sued Poe and Dependable.

Poe settled for an initial cash payment of \$2 million and future payments over 10 years presently valued at \$1.6 million. As a result, Poe recorded a \$3.6 million non-recurring loss in the fourth quarter.

"This settlement settles all litigation with all parties," said William F. Poe, chairman. He said that no reserve had been established to cover the settlement and none of the settlement was covered by errors and omissions insurance.

"On balance, it was a good year, and my stock went up as a result of the lawsuit being finished," he added. Poe stock was trading at \$12.25 per share on Feb. 16, compared with \$11.75 per share on Feb. 2.

"I was pleased with our results, keeping in mind the continuing soft market," Mr. Poe said.

However, he explained that "good investment income and profits we made on the sale of stock and on the sale of a small workers compensation operation in Tampa made our (1989 performance) look better than it was."

Interstate/Johnson Lane's Ms. Hilt said her firm was "very pleased with Poe's results. News of the lawsuit settlement came much earlier than we had expected and we feel that has lifted a cloud from the stock. We see the next few years as exceptional for them," she said.

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Use U.S. skills on foreign risks, broker advises

By MICHAEL BRADFORD

ATLANTA—Risk managers whose companies have operations in rapidly changing Eastern Europe should rely on the same risk management techniques they employ for domestic risks, a brokerage executive says.

"Specific risk identification, risk evaluation and risk treatment issues don't change simply because they become more global," remarked Brandon W. Sweitzer, managing director—Southeast for Marsh & McLennan Cos. Inc. in Atlanta.

However, factors like taxation, insurance and reinsurance market relationships, banking conditions and "the vagaries of loss control and settlement" do demand special attention when they apply to international risks, Mr. Sweitzer told risk managers at the Risk Management Educational Conference held in Atlanta Jan. 31 through Feb. 2.

Keeping track of global risk management programs and "seeing to it that there is adequate communication about the programs among various involved parties is simply a much harder task when it is spread out across the world stage," he said.

As risk managers view a world changing "seemingly hour by hour, I think it's incumbent upon all of us (to) push back the boundaries of our knowledge of the world around us," Mr. Sweitzer remarked.

With political upheavals in Eastern Europe, the Soviet Union and China, 1988 and 1989 will come to be regarded as "watershed years," he predicted.

Changes sweeping through communist nations are forcing risk managers to abandon some long-standing assumptions, he said.

"We now assuredly can look forward to going into an era that

will be much less comfortable and less settled simply because all the assumptions are no longer there," Mr. Sweitzer asserted.

"It was really easy over the last 30 or 40 years. The world was divided into communism and anti-communism," he said. The "security structure" of the Cold War between nuclear superpowers made things "simple, easy to understand."

But with the United States and Soviet Union recently agreeing to reduce conventional and nuclear

Continued on next page

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Conference draws 250

ATLANTA—This year's Atlanta Risk Management Educational Conference drew about 250 attendees to the Inforum in downtown Atlanta for meetings Jan. 31-Feb. 2.

Speakers aimed to provide nuts-and-bolts advice on risk management. Their topics included ethics in the profession, preparations for the next hard insurance market, negotiating skills and global issues.

The lineup included senior vps from brokerage and insurance companies, consultants, professors and risk managers.

Frank B. Hall & Co. Inc. presented its Risk Management Chess program, a film presentation of vignettes that place risk managers in tight spots and allows the audience to discuss ways of getting their counterparts off the hot seat.

Information on next year's conference, set for Jan. 30-Feb. 1 at the Inforum, is available from David G. Adler, The Portman Cos., 231 Peachtree St. N.E., Suite 200, Atlanta, Ga. 30303.

Multinationals

Continued from previous page
forces, the Cold War has thawed, Mr. Sweitzer said.

Other salient changes include an evolution from national to international communications systems and the ascendancy of environmentalism from "local, or more generally, no concern about the environment, to a time when the environment will be the global issue... for both east and west of the next decade," he said.

That the world has changed "is a truism," said Mr. Sweitzer. "It's also a truism that this world around us will continue to change at an even more accelerated rate."

"Similarly, the role of the risk manager has changed over the last decade or so," he added. No longer is the risk manager simply an insurance buyer, but now serves as an "analyst and adviser" on protecting physical and human assets,

Mr. Sweitzer remarked.

Currently, Mr. Sweitzer pointed out, U.S. risk managers "are the worldwide standard. In many places, even in sophisticated countries in Europe with highly developed economies, a risk management function does not exist in a manner in which a lot of companies in this country are accustomed to having."

He told risk managers that "the way you conduct yourselves professionally will determine to a large degree the international standards for this profession for the next decade."

Mr. Sweitzer reminded risk managers with international responsibilities that:

- Explaining an international risk management program can be a problem.

"Never assume that you are understood or that you understand the party on the other end of the communication. Ask a question to

confirm your understanding. Ask the question again," he said.

- They must take the offensive in gathering information. "Provide your international locations with summary information and risk management policies and procedures and keep the information current," he said.

- It is very important to learn local customs in areas where the company has operations.

- To people in other countries, Americans are the foreigners. "Try to think internationally rather than bilaterally. Then think about the difference," said Mr. Sweitzer.

- It is important to determine how international losses will be settled and who will settle them.

Vincent J. Masucci, president of American International Global in New York, a unit of American International Group Inc., pointed out that the bureaucratic nature of Eastern European business dealings means risk managers will need

help in establishing local relationships.

"I wouldn't go there alone and try to strike up a relationship with a friendly bureaucrat," he advised. "Work with a major broker or a major carrier who has had those relationships for a while and let that strength work with you and for you."

Mr. Masucci advised risk managers to give international insurance the same attention they pay to domestic coverage.

Some companies have downplayed coverage for international risks, Mr. Masucci noted, but that strategy will no longer work "because international, with the hundreds of thousands of exporters and the amount of trade that exists, should be looked at by each of you as standard a line as any other."

Despite sweeping changes in Eastern Europe, the upcoming removal of trade barriers among Eu-

ropean Community nations and the growth of trade with Pacific Rim countries, U.S. businesses must not forget about their trading partners to the north and south.

"Although we're dazzled these days by Eastern Europe... I think statistically it's much more likely that" risk managers will be "dealing with things involving Canada and Mexico in the coming decade," said Mr. Sweitzer.

Trade with Canada, the United States' No. 1 trading partner, is "substantially bigger than with Japan," Mr. Sweitzer said. And Mexico is a bigger trade partner than West Germany and Britain.

Mr. Sweitzer said the large amount of trade with Canada and Mexico should tell risk managers, insurers and brokers that "it's not so bad to stay close to our neighbors."

Sheldon M. Roth, risk manager at Atlanta-based Contel Corp., moderated the session. ■

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Business ethics on upswing: Panel

By MICHAEL BRADFORD

ATLANTA—If insider trading was a corporate hallmark of the previous decade, the 1990s likely will be characterized by more ethical behavior, at least among risk managers, brokers and insurers, predicts a brokerage executive.

"There is increasing evidence that the tide is turning toward sound business ethics," said Robert H. Moore, senior vp-corporate relations at Alexander & Alexander Services Inc. in Washington, D.C.

The decade may well be a time of conciliation among businesses, he said during a panel discussion at a January meeting of the Atlanta Risk Management Educational Conference, sponsored by the Atlanta Chapter of the Risk & Insurance Management Society.

"Conferences like this demonstrate the self-awareness of ethical dilemmas" faced by risk managers, insurers and brokers, he said. In such an atmosphere, there is a "growing spirit of professionalism" among parties.

Risk managers and brokers realize there are "no ethical boundaries between their roles," Mr. Moore said. "Each contributes to the other's ethical dilemmas and they must work together to solve common problems."

Robert Esenberg, vp-governmental affairs for RIMS in New York, said he is "hopeful that things are turning around" because trust that once existed among American businesses has been eroded.

"I think our society, unfortunately, has gotten away from the Golden Rule," said Mr. Esenberg, risk management administrator for the city of Virginia Beach, Va. Insurers, brokers, risk managers and other businesses too often toe a different line, he said: Do unto others before they do unto you.

The "breakdown of ethical training" in families, schools and businesses makes the prognosis for recovery gloomy, said H. Felix Klonan, principal and vp of the Tillinghast division of Towers, Perrin, Forster & Crosby Inc. in Stamford, Conn.

'Kinder, gentler' industry foreseen

But ethical conduct and training will not ultimately matter to a company that does not foster an image of ethics and propriety, said William H. Boornazian, senior vp at Aetna Life & Casualty Co. of Hartford, Conn.

"The only true reality is perception," Mr. Boornazian claimed. "And we in the insurance business have a problem with our image, at least with everyday consumers."

Most profitable corporations "do, in fact, have high ethical postures," he said. They live by ethical guidelines and "employees and management understand that."

Aetna's ethical credo is summarized in a document called "Taking Part," which explains why consumer perceptions are more important today than they were several years ago.

It "suggests that the consumer keeps a pretty watchful eye on organizations, particularly insurance companies, regarding ethical and non-ethical actions," said Mr. Boornazian.

He cited several principals that insurers ought to live by:

- **Promise-keeping.** "Insurance companies basically manage money," he said. In accepting people's money, "we give them something in return—the promise to spread the risk and return money to them" in the event of a loss. Insurers' intangible product—"a promise of future conduct"—makes keeping one's word "the bedrock" of insurance ethics, he said.
- **Truth-telling.**

"Nobody in their right mind will give their hard-earned cash to a person or entity they perceive to be dishonest," Mr. Boornazian said. Companies, no matter how large, will fail if consumers regard them as dishonest.

• Reparation.

In the event of a loss, the company has to be made whole as part of the contract agreed to by the insurer, he said.

• Justice.

"We are bound by law in our dealings with customers," but when circumstances arise that are not covered by law, insurers are responsible for going beyond the mere letter of the law, Mr. Boornazian said.

• Beneficence.

The industry has a responsibility to refrain from "profit-taking" that will harm people or the environment, he said.

RIMS' Mr. Esenberg said risk managers, too, suffer from public misconceptions.

Part of that problem stems from a tendency by the general press to consider risk managers as part of the insurance industry and undeviating allies of insurers on policy questions, he explained.

"From time to time we take a position that runs parallel to the insurance industry's and at other times we disagree," he said.

But when the public believes insurers act unethically, risk managers have been judged guilty by association, Mr. Esenberg said.

He challenged the audience to "be aware of the public's perception. Your actions must be above and beyond reproach."

Mr. Esenberg also urged the audience to assist in a public relations effort to explain the "realities of ethical business practices." Such efforts could counter the influence of what he said were individuals representing their own interests in the guise of consumer advocacy.

Workers' actual behavior is an important consideration in developing codes of ethics for employees, said A&A's Mr. Moore.

It is "self-defeating to form principles that are out of synch with people's lives," he warned. "Any discussion of ethics should

take into account how people behave on a daily basis."

Mr. Moore, co-author of "School for Soldiers: West Point and the Profession of Arms," offered a real-world example.

His 1974 book on the history of West Point argues that cadets could not live up to the military academy's strict honor code because it was out of touch with student life.

For example, identical tests were being administered to classes several times each week. Cadets taking the tests late in the week soon learned that they could benefit through discussions with those who took the exams earlier, Mr. Moore said.

A few years after the book was published, several hundred cadets were involved in a cheating scandal that left scores of students expelled, he noted.

Companies, like the academy, must realize that "ethical standards evolve out of the way people behave," he said.

Mr. Moore pointed to several factors that can undermine ethical conduct among brokers and risk managers:

- The cyclical nature of the insurance business, which often "tempts the broker and risk manager to exploit the market for their own gain."

- Pressure by company management on risk managers to cut costs beyond what is prudent and sensible. The result can be unfunded and uninsured liabilities.

- Using the risk management position merely as a stepping stone for executives on their way up can undermine a company's long-term interests.

- The unrealistic negotiation of brokerage fees. When buyers ask for arbitrary price reductions, "such adversarial behavior undermines the possibility of establishing partnership relationships." And, brokers sometimes promise more than they can deliver.

William R. Feldhaus, associate professor of risk management and insurance at Georgia State University in Atlanta, moderated the discussion.

Negotiating skills extolled

By MICHAEL BRADFORD

ATLANTA—Some risk managers are born with personality traits that make them good negotiators, but even those who falter at the bargaining table can improve their negotiating skills, an expert says.

Risk managers and other professionals who often find themselves haggling over insurance contract wording or bargaining with labor unions can build advantages before entering negotiations, said Paul M. Swiercz, assistant professor of employee relations at Georgia State University in Atlanta.

One's "negotiating personality" can be a key to success, he told a group at the Atlanta Risk Management Educational Conference held in Atlanta from Jan. 31 through Feb. 2.

"Some would argue that if you're talking about personality, you're really talking about something that you can't change," Mr. Swiercz noted.

But while some people are "more predisposed" toward an ability to negotiate, "most of us can improve our negotiating performance," he said.

That performance, according to Mr. Swiercz, can be enhanced by improvements in these areas:

- **Thinking clearly under stress.** This, he conceded, may be "more of a personality trait," but "as we move through the experience, we develop that capacity."

- **General practical knowledge.** Because successful negotiating often requires creativity, "people who are well-read, who have a variety of experiences, do better at negotiating than very narrow, specialist-type people," Mr. Swiercz said. Without practical knowledge, "you're really short on creativity because you can't envision solutions that are available to you."
- **Verbal ability.**

This is a specialty of lawyers, who deliver terminology that "will just say enough, or leave enough ambiguity in the agreement so that the parties can settle on it."

• Product knowledge.

It is "certainly going to give you an edge in the negotiating process," said Mr. Swiercz, who then confessed his ignorance of insurance products. "They're just too much for me. I'm convinced that they have a master computer in the insurance industry with 10,000 to 100,000 words in it and they just put a randomization program in there and generate a clause or an agreement."

• Personal integrity.

Although "hard won and easily lost," integrity will prove "very, very important" to negotiators, he said.

• A sense of self-worth.

"Very shy people don't do well in negotiating," he noted.

Negotiators must consider several points before beginning talks, according to Mr. Swiercz.

First, one must know which trade-offs and compromises are acceptable.

"You have to recognize the points at which you are going to stick and how you are going to negotiate around those sticking points," he said.

A negotiator also must evaluate "the risk you are willing to assume," said Mr. Swiercz. Union negotiators, for example, must assess the willingness of members to strike.

"Personal attribution patterns," Mr. Swiercz said, are also important to each party.

"People respond to cues," he explained. "To be a successful negotiator, you have to recognize the cues and how to respond to them. What happens is you will pick up one image from the person across the table and you will translate

that and extend it and it will cast a shadow over your behavior subsequent to that."

To illustrate, Mr. Swiercz used the example of people in the midst of contract negotiations lighting cigarettes.

Immediately, a non-smoker may ask himself: "Why can't they quit? Don't they have any capacity, any self-control? Why do they want to pollute their lungs? Obviously they don't care about me because they're polluting my air also."

Such attribution of motives based on single actions is a pitfall seasoned negotiators will avoid, said Mr. Swiercz.

A negotiator should carefully analyze his counterpart before talks begin, he advised. "It's not always obvious to us what the goals and objectives of the other party are, but nonetheless we have to try and sort them out."

Discrepancies in "power and status" of a negotiating counterpart also should be recognized before talks begin, Mr. Swiercz said.

Power and status are "not always in balance," he said. "We could have someone coming to us who is of very low status in the organization we are negotiating with," like a newly hired employee.

"Or you can have high status with low power. President Bush could go over and negotiate with the Queen of England, but in reality she has very little power. That may be true for many people who run corporations."

His example: "If you want to go and negotiate with (financially troubled retailer) Robert Campeau right now, you're probably talking to the wrong person. You should talk to the bankruptcy judge."

Jewel L. Yergin, corporate director of risk management of National Healthcare Inc. in Atlanta, moderated the session.

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Hard market is coming—but when?

By MICHAEL BRADFORD

ATLANTA—The commercial property/casualty insurance market will eventually turn, experts agree, but the next hard market is not expected to arrive as suddenly and dramatically as the one that squeezed buyers in the mid-1980s.

And, a panel discussing insurance market forces at the Risk Management Educational Conference sponsored the Risk & Insurance Management Society's Atlanta Chapter stopped short of predicting just when the market will harden.

"We obviously don't have much of a consensus in the industry as to where the market is going or on what timetable," said David Peck, senior vp and manager of the property department at Johnson & Hig-

gins in New York. "But I think it's safe to say... that the market is ready for a turn."

"I don't think we'll see the type of change in the market that took place in 1985 and 1986," Mr. Peck added.

Ray Salter, chairman of the North American Reinsurance Division of London-based Willis Faber & Dumas Ltd., said the market "does seem to be very nearly ready for a turn, but not quite yet."

"There seems to be some isolated pockets of hardening rates and tightening conditions, but the overall picture is one of a continuing insurer and reinsurer competition in both the direct and reinsurance markets," Mr. Salter remarked.

He pointed out that despite deteriorating loss ratios in 1989, pre-

mium-to-surplus ratios remain healthy for most U.S. and foreign insurers. "And a large number of players are available to write almost every class of business."

the financial health and growth of stock insurance companies," Mr. Peck remarked. "Poor ROE can result in the flight of capital from the industry and increased costs of

'Poor return on equity can result in the flight of capital from the industry and increased costs of capital for individual companies, not to mention some disillusioned shareholders,' says David Peck of Johnson & Higgins.

Mr. Peck agreed that insurers' policyholder surplus still is growing, but listed other numbers that he said may indicate a change in the market is coming.

"Return on equity is critical to

capital for individual companies, not to mention some disillusioned shareholders."

A 6% to 8% estimated return on equity for stock insurance companies last year is only about half

the typical 13% to 14% return for financial services firms, he said.

"That's going to get the attention of a lot of people in the industry to make some changes," Mr. Peck predicted.

He also mentioned that in 1989 the major markets for highly protected risks were hard hit by disasters including Hurricane Hugo, the California earthquake and the blast that ripped apart a Phillips Petroleum Co. plant near Houston.

"What does all this mean?" Mr. Peck asked. "Is the market ready for a turn? I believe the simple answer is 'yes.' What is not so simple is when and how much."

Gail Norstrom, senior vp-operations at Industrial Risk Insurers in Hartford, Conn., acknowledged that IRI was hard hit by losses last year. But apart from the oil, gas and petrochemical classes of business, Mr. Norstrom said he does not foresee any reduction of capacity for property risks.

"One bad year does not undermine the operation of the large property market," said Mr. Norstrom. "The capacity is there... and there's nothing that I can see that should cause any concern as far as capacity for most classes."

But while capacity remains stable, property insurance loss costs are going up, Mr. Norstrom pointed out.

IRI experienced tremendous increases in "medium-sized"—\$1 million to \$4 million—losses from in 1988 and 1989 across a broad range of business classes, he said.

He attributes that increase in part to the strong economic climate in the United States.

"Plants were being run very hard for very long" without proper attention to maintenance and upkeep of machinery, he remarked. "Frankly, some of the facilities were being operated to the point of breakdown."

High profits churned out while the plants ran at full tilt meant, of course, higher business interruption claims during shutdowns.

Those losses, coupled with claims from natural disasters and other losses will force property insurance rates upward, according to Mr. Norstrom.

Mr. Peck offered some suggestions to risk managers anticipating the next market hardening:

- Keep senior management up to date by reviewing market forecasts with them. Clip articles regarding market changes and distribute the information to management.
- Refresh managers' memory of the last hard market.

It is important to remind them that the low prices they have enjoyed will someday rise, said Mr. Peck.

- Use stable insurers and consider all viable markets.

- Have current, complete and accurate underwriting data available.

- Consider higher retentions, the use of captives and other alternative funding mechanisms.

- Prepare management to spend more money for loss control.

- Identify the "throw-in" coverages that were negotiated during the soft market because they will probably be the first to be eliminated by underwriters in a hard market.

"What it all means is be prepared so there are no surprises for you or your management," said Mr. Peck.

Todd Williams, corporate insurance analyst of Southern Co. Services Inc. in Atlanta, moderated the session.

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Billing fraud

Continued from page 2

Insurers are now working to locate and attach Smushkevich assets, according to Mr. Veisz, who would not provide additional details on this effort.

A lawyer for the brothers, Randolph Shipley of Palos Verdes Estates, Calif., said any claims against their assets would have to be filed in bankruptcy court in Los Angeles, where they filed personal bankruptcy petitions in 1988.

Mr. Veisz said insurers probably will notify the bankruptcy court of the award because a court-appointed trustee still holds "a couple of hundred thousand dollars" of Smushkevich assets. However, he said, the court recently threw out the bankruptcy filings because the brothers submitted misleading financial statements.

Mr. Shipley said he does not know whether the Smushkevich brothers will appeal the default judgment, adding that the brothers—who are Russian emigres—are now in the U.S.S.R., not in Mexico.

He attributes the brothers' default in the insurers' lawsuit to Michael Smushkevich's inability to leave the Soviet Union.

Meanwhile, the U.S. attorney in Los Angeles is investigating possible criminal charges related to operation of the diagnostic labs.

Aetna sued in U.S. District Court in Los Angeles in October 1986, charging David and Michael Smushkevich and their labs with common law fraud and violations of the federal Racketeer Influenced and Corrupt Organizations Act.

That suit was consolidated with suits by Met Life and Employers.

In all, Aetna found roughly 240 labs run by the Smushkevich brothers. Aetna's complaint describes these labs as "shell corporations," many of which listed the same addresses in Los Angeles.

RIMS program change

Continued from page 3

environmental regulations.

Mr. O'Sullivan says insurance will play a major role in the development of the Soviet Union and Eastern Europe.

"Companies will be unwilling to make the investment" for expanding into these countries "without insurance," he stressed.

Currently, "there appears to be more interest in investing in Eastern European countries" than in the Soviet Union, Mr. O'Sullivan said, citing two specific reasons:

- Some corporations are looking to reconnect old ties that were severed after World War II.

- Unlike the Soviet Union, which is primarily an exporter of natural resources, most Eastern bloc countries already are established manufacturing centers.

The special RIMS session, to be held at 10 a.m. Wednesday at the Westin Hotel Copley Place Boston, will follow the format of a panel discussion with a brief introduction by Charles Salek, risk manager for Combustion Engineering Inc. of Stamford, Conn.

Scheduled speakers include:

- Mr. O'Sullivan, who in addition to being managing director of M&M Worldwide is general manager of M&M Worldwide's U.S. operations and a member of the broker's management committee.

- Walther Leisler Kiep, general managing partner of Gradmann & Holler, a leading West German insurance broker.

- Jeffrey A. Burt, a partner of Arnold & Porter, a Washington, D.C., law firm. His principal areas of practice are international joint ventures, international trade law (including U.S. export controls) and general transactional law.

He is co-author of a 1986 book titled "International Joint Ventures" and edited and co-authored "Joint Ventures with International

area communities and several of which purportedly operated from the brothers' homes.

The proliferation of bogus labs allowed the brothers to cover up the extent of the scam by using different lab names and addresses to file multiple claims for the same patients, Aetna charged.

According to Aetna, the brothers generated business with blanket phone solicitations offering "free" diagnostic tests for cancer, heart disease and other catastrophic illnesses. Often, solicitors misrepresented the tests as endorsed by the American Cancer Society, the American Heart Assn. or the patients' own group insurers, Aetna alleged.

Patients were told labs would accept whatever their insurers paid as payment in full, regardless of whether deductibles had been met.

The testing itself was also bogus, Aetna charged. Staff doctors at Smushkevich clinics prescribed the same battery of tests for patients regardless of age, medical history, health complaints or exam results, the insurer alleged.

Exams were often cursory, and some patients received no physical exam or were examined only after diagnostic tests had been performed, according to Aetna.

In some cases, staff doctors were not licensed or had had their licenses suspended. In addition, tests were run on machines that were not operational or not plugged in, and test results were routinely lost or substituted for those of other patients, Aetna alleged.

After running the purported tests on a patient at one clinic, several different Smushkevich labs would submit claims to the patient's insurer reporting multiple medical problems, Aetna charged.

Most claims, however, were for services the labs never provided,

and falsely diagnosed serious medical conditions in actually healthy patients who were informed neither of the diagnoses nor the labs' claims, the insurer alleged.

The Aetna complaint cited several examples of the Smushkevich operation, including the case of a Los Angeles woman who was tested in April 1985. Aetna was billed a total of \$8,001 by seven labs for tests resulting from diagnoses of various cardiovascular problems and tension headaches, though the woman had no medical complaints, was never informed of the diagnoses and never received any treatment.

The woman's husband was tested in May 1985, and Aetna received \$8,133 in claims from eight Smushkevich labs for the same tests, Aetna charged.

Smushkevich labs recruited numerous patients from Los Angeles-area health clubs, the complaint says.

One was a woman who made an appointment for an exam but later canceled and was never tested. Despite this, three Smushkevich labs billed Aetna \$2,343, the complaint charged.

The brothers denied insurers' charges and fought the lawsuit for roughly two years, contending among other things that the RICO charge was unjustified, lawyers involved in the case say.

However, U.S. District Judge John Davies entered a default judgment against the brothers last year after they left the country and failed to continue their defense, Mr. Veisz said.

On Feb. 15, Judge Davies awarded the three insurers \$18 million, representing treble damages under RICO including the insurers' court and legal costs.

Aetna was awarded about \$7 million, Met Life \$5.7 million and Employers \$5.3 million, Mr. Garcia said.

Partners," published last fall.

Besides the newly announced session on Eastern Europe, this year's RIMS conference features 90 other technical sessions, including sessions on employee benefits, finance, property/casualty insurance, legal, loss control, risk management and workers compensation topics.

In addition, the conference includes more than 35 industry sessions, which allow risk managers from the same or similar industries to discuss common problems. And, the conference will again feature common interest groups, small group sessions for individuals sharing a common interest.

Sessions will be held in the John B. Hynes Veterans Memorial Convention Center, Sheraton Boston Hotel, Westin Hotel Copley Place Boston and Marriott Hotel Copley Place.

Conference attendees also can visit an exhibition hall in the convention center featuring the latest products and services from more than 200 companies and organizations.

Other special speakers featured at this year's RIMS conference include New York Yankees owner George M. Steinbrenner III and former U.S. Rep. Thomas P. "Tip" O'Neill Jr.

Best known for his association with the venerable New York ball club, Mr. Steinbrenner also has served as chairman, president and chief executive officer of the American Ship Building Co. of Tampa, Fla., and is a partner in Nederlander-Steinbrenner Productions in New York, producer of such Broadway plays as the Tony award-winning musical "Aplause."

Mr. Steinbrenner will speak at noon on Tuesday, May 1, in the ballroom on the third level of the Hynes convention center.

Mr. O'Neill's political career spans 50 years, culminating with his election as speaker of the U.S. House of Representatives in 1977.

The Massachusetts Democrat was one of the Reagan administration's strongest adversaries in efforts to curtail federal spending for health and education programs and assistance to the disadvantaged.

Mr. O'Neill will speak at noon on Thursday, May 3, in the ballroom on the third level of the Hynes convention center.

Also scheduled as a luncheon speaker at this year's RIMS conference is Dr. Peter G. Hanson, author of "The Joy of Stress" and "Stress for Success."

The Canadian family doctor is considered a leading authority in the field of stress management in the workplace. Dr. Hanson will speak at noon on Wednesday, May 2, in the grand ballroom of the Marriott Hotel Copley Place.

The registration fee for this year's RIMS conference is \$595 for RIMS members who register before March 2 and \$695 for those who register later; and \$695 for non-RIMS members who register before March 2 and \$795 for those who register later.

Partial week registration—Monday through Wednesday or Wednesday through Friday—costs \$475 for RIMS members who register before March 2 and \$575 for those who register later; and \$575 for non-RIMS members who register before March 2 and \$675 for those who register later.

In addition, one-day registration is available at a cost of \$195 for both RIMS and non-RIMS members.

For more information or to register, contact the RIMS conference department at 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

Update

Tire dump's cover questioned

HAGERSVILLE, Ontario—The owner of a giant tire dump near Toronto has only \$2 million in liability coverage to pay damages resulting from a 2-week-old blaze at the dump, an Ontario Environmental Ministry spokesman said.

Tyre King Recycling Center has \$1 million Canadian (\$836,500) in general liability coverage and \$1 million Canadian in environmental impairment liability insurance, underwritten by Pilot Insurance Co., said a ministry investigator. The dump also has \$240,000 Canadian (\$200,760) in property insurance from Pilot.

Pilot would not comment on the coverage.

Ontario environmental law requires waste site facilities to purchase EIL or general liability coverage. The mandated limits depend on the make-up of the waste dumped at a site. But, because the dump was operating as a "recycling center," owner Ed Straza may not have been subject to the insurance requirements, the spokesman said.

In 1987, the Environmental Ministry ordered Mr. Straza to store the 15 million tires in smaller piles, establish fire aisles, install a 100,000-gallon water reservoir and erect a fence around the property to protect against arson, the suspected cause of the fire, the spokesman said. Mr. Straza has not complied while appealing the orders, the spokesman said.

At the outbreak of the fire, about 800 people were evacuated from 260 nearby homes. But residents of only nine area homes have not been allowed to return.

Extreme heat has melted tires into oil, which contaminated a creek and could infiltrate groundwater. Officials also fear that thick, black smoke mixed with steam will harm crops and livestock.

High court upholds OSHA rules

WASHINGTON—The construction industry must comply with federal workplace hazard communication regulations, the Supreme Court ruled last week.

In a 7-2 decision resolving conflicting opinions by two panels of the 3rd U.S. Circuit Court of Appeals in 1988 (*BI*, Sept. 5, 1988), the high court ruled that the Office of Management and Budget cannot block enforcement of federal safety rules solely on the grounds that the rules would impose too much paperwork on employers.

The OMB in 1987 objected to several provisions in the hazard communication standards proposed by the Occupational Safety and Health Administration. Among other things, OSHA proposed that material safety data sheets, which detail the nature of hazardous substances in use, be exchanged among employers at multiemployer work sites like construction sites.

But the justices ruled that while the 1980 Paperwork Reduction Act gives the OMB authority to disapprove federal regulations that require the government to collect information for use by a federal agency, the law does not give OMB authority to block rules requiring disclosure.

Ashland settles oil spill claims

PITTSBURGH—Ashland Oil Inc.'s liability insurance will cover most of a \$30 million settlement for damages resulting from a 1988 diesel fuel spill in the Monongahela River near Pittsburgh.

The out-of-court settlement of 20 class-action lawsuits approved last week in U.S. District Court in Pittsburgh credits Ashland with \$14 million it has paid or has agreed to pay to settle claims by businesses, individuals and state agencies.

In addition, Ashland agreed to pay \$9.8 million to settle claims for lost wages, business interruption and property damage as well as \$6.2 million in attorneys' fees and in compensation to businesses that lost water service during the cleanup.

The agreement "essentially concludes all outstanding litigation associated with the spill," said Ashland Chairman and Chief Executive Officer John R. Hall.

Ashland has \$400 million in liability insurance with a \$2.5 million deductible to cover claims stemming from the spill (*BI*, Jan. 11, 1988). The first \$150 million of coverage was written by Bermuda-based captive Oil Insurance Ltd. An excess-limits endorsement with OIL provided Ashland with another \$150 million in limits, and Ashland had a \$100 million layer excess of \$300 million written by Oil Casualty Insurance Ltd., a sister entity to OIL.

Briefly noted

W. Clement Stone, 87, is retiring as chairman of Chicago-based Aon Corp. . . The Risk & Insurance Management Society Inc. last week formally endorsed the U.S. Commerce Department's recommendations to overhaul the federal **Risk Retention Act** (*BI*, Dec. 4, 1989). . . President Bush is directing his Domestic Policy Council to draft recommendations to "restore common sense and fairness" to the nation's **medical malpractice system**. . . Insurers for **Valley Coca-Cola Bottling Co. Inc.** are funding an annuity that will pay \$2.7 million to the family of a child killed last year when a company truck struck a school bus, killing 21 and injuring 60 (*BI*, Sept. 25, 1989). The company and a plaintiff's attorney would not identify the insurers. . . Wind, hail, tornados and flooding in the Southeastern United States, designated **Catastrophe No. 26**, caused **\$140 million in insured property damage** Feb. 9-10, reports the American Insurance Services Group. . . Preliminary evidence indicates poor communication between the flight crew of **Avianca Airline flight 52** and New York air traffic controllers just before the jet crashed (*BI*, Jan. 29). The National Transportation Safety Board says. . . The State of Alaska opposes a tentative plea bargain agreement between the U.S. Justice Department and **Exxon Corp.** over the March 1989 Exxon Valdez oil spill because the agreement was drafted without Alaska's input and would give Exxon a four-year shield from federal civil suits. Meanwhile, Exxon says it will take a \$300 million aftertax loss in the fourth quarter of 1989 for cleanup costs and litigation resulting from the spill on top of the \$500 million fourth-quarter charge it recently said it would take for cleanup costs only (*BI*, Jan. 29). . . The New Jersey Insurance Department has ordered 15 servicing insurers in the state's **automobile joint underwriting association** to show cause why they should not be required to refund unspecified fees and other funds to the JUA.

Solvency report

Continued from page 1

agent the insurer accused of negligence and fraud (*BI*, June 12, 1989).

So far, Omaha Indemnity has collected \$5.7 million from an errors and omissions insurer of RAM (see Update column).

These insolvencies and near-insolvencies had several elements in common, according to the report, including: "rapid expansion, over-reliance on managing general agents, extensive and complex reinsurance arrangements, excessive underpricing, reserve problems, false reports, reckless management, gross incompetence, fraudu-

lent activity, greed and self-dealing."

"Deplorable management attitudes" are the most disturbing, said the panel, which also notes that executives "abdicated their responsibility to set sound policies and control the activities of their subordinates and agents."

When the "fatal results of these outrageous attitudes reached the breaking point," these officers disclaimed responsibility and walked away, leaving guaranty funds and liquidators to "clean up their mess," the report says.

Specifically, the report cites as responsible for the insolvencies of their companies:

- E. Richard DeRosa, president

and chief executive officer of Mission; Louis J. Marioni, its chief operating officer; and Michael Mulholland, its chief financial officer.

The report also cites Ronald Bengston and Robert Marsh, who controlled Mission affiliate Pacific Reinsurance Management Corp., and later had a hand in the collapse of Integrity through their operation of Continuity Re Management Corp., another reinsurance pool manager.

• George P. Bowie, president of Transit, and Joseph N. Mitchell, president of Transit's parent company, Beneficial Standard Corp.

Also blamed for contributing to Transit's insolvency were MGAs

Donald F. Muldoon & Co. and Mr. Miro, who also is blamed in the report for the rapid demise of Anglo-American.

Separately, the report lays the blame for many of Omaha Indemnity's woes at the feet of James R. Wining and Willie A. Schonacher, the owners of RAM.

"Although the overwhelming majority of men and women in the insurance industry are dedicated and talented professionals, the subcommittee's record of inquiry on both the insurance and thrift industries shows that a relatively few crooks, scoundrels and incompetents are capable of bankrupting huge companies, and possibly an entire industry," the report ob-

serves. "A regulatory system based on the presumption that all companies will be managed honestly, competently and prudently is doomed to failure."

After reviewing subcommittee findings on Mission, Integrity, Transit, Anglo-American, Omaha Indemnity and ICI, the report targets several problems and raises questions about how they should be solved. These include:

• Inadequate insurance company licensing procedures.

Initial capitalization requirements are often too low and too easily met with illiquid and inflatable assets like real estate, the report notes.

Continued on next page

Home sale

Continued from page 1

The three insurance units wrote net premiums of about \$2.2 billion last year, with year-end statutory surplus of approximately \$840 million.

Once the sale is completed, AmBase's remaining principal units will include Morristown, N.J.-based Carteret Bancorp, a savings and loan institution; securities brokerage Gruntal Financial Corp. in New York; and Sterling Forest Corp., a real estate holding company in Tuxedo, N.Y.

Udayan Ghose, a Shearson Lehman Hutton analyst, noted the "very troubled history" of AmBase stock, which sold for up to \$30 a share in 1986.

"It's just gotten to the point where management had to do something," he said.

Charles Ronson, a Baird, Patrick & Co. analyst in New York, said Mr. Manley is being forced to sell the insurance units "to avert an institutional shareholder revolt."

"The shareholders are upset, to be euphemistic," he remarked.

Mr. Ronson said that AmBase should be selling Gruntal, which it bought for \$148 million in 1987, and Carteret, which it purchased in 1988 for \$266 million, because those units are less valuable.

But, AmBase cannot sell those units because it overpaid when it bought them "and would have to recognize a ridiculous loss," Mr. Ronson said. He likened the planned sale to "taking a sledgehammer to a fly."

AmBase decided to sell the insurance units after management consultant McKinsey & Co. of New York, hired to advise AmBase on enhancing share value, concluded "the most marketable assets we had were the insurance companies," admitted the spokesman.

"Everyone felt the insurance companies being sold this year was the right timing because everyone anticipates the market will harden this year or early '91," he said.

This is "not the right time to consider selling a savings and loan or a stockbrokerage," he conceded.

The spokesman denied, however, that an impending "stockholder revolt" pressured AmBase to place the insurance units on the block.

AmBase employees, including Mr. Manley, control 15% of the company's stock, the spokesman.

"We have been just as frustrated as other shareholders" because the stock is undervalued.

The Home met with its producers and received positive feedback on the sale, the spokesman said. "A lot of reinsurers and producers volunteered to vouch for us with any prospective buyers," the spokesman said. "We fully expect The Home will come out of it with a very good parent."

Mr. Ghose said the sale could benefit policyholders.

Pointing to The Home in particular, Mr. Ghose said AmBase has not been the "strongest parent," partly because of the debt and good will on its balance sheet.

A major insurer, whether domestic or foreign, that invests more

capital in The Home will make it a stronger company, Mr. Ghose said.

U.S. International Re and Commonwealth may be purchased separately from The Home.

Focusing on The Home, some observers say they would not be surprised if the buyer is European. They point to Zurich Insurance Co. of Switzerland's acquisition of American General Corp.'s Maryland Casualty Co. as a precedent (*BI*, Feb. 20, 1989).

And, they note, unlike the initially unsuccessful effort of London conglomerate B.A.T. Industries P.L.C. to acquire Farmers Group Inc., this will be a friendly takeover. After a bitter battle, Farmers finally agreed to be taken over by B.A.T. (*BI*, Aug. 29, 1988).

European insurers have a "large interest" in having a United States presence and they have the financial wherewithal to consummate the deal, said Alan Levin, senior vp at rating agency Standard & Poor's Corp.

In addition, while European insurers are concerned about U.S. tort problems, they realize that buying The Home would be a good opportunity to pick up \$2 billion in market share, Mr. Levin said.

The Japanese, though, probably would prefer a joint venture to "such a visible investment," he said.

Most other U.S.-based insurers lack the financial standing to buy the AmBase units and have little incentive to do so, Mr. Levin said.

And, "there's not too many non-insurance companies that are too interested these days in getting into the" business, he added.

"I don't see it as a gem for anyone in the U.S. to buy," agreed Joanne Morrissey, a principal with Firemark Consultants Inc. in Morristown, N.J.

A U.S. insurer would be more familiar with The Home than a European insurer would be and therefore more likely to drive a harder bargain, she said.

Marvin L. Shulman, a senior analyst with Moody's Investors Service Inc. of New York, said there is a 50% chance the The Home's buyer will be European.

"There's really no market" in the United States for an insurer as large as The Home, he said.

However, The Home specializes in complex types of risks that require underwriting expertise, which some European buyers may see as a plus, Mr. Shulman said.

There is a 50% chance the buyer will be European, agreed Baird, Patrick's Mr. Ronson.

European buyers have been eager for the past couple of years to enter the U.S. market, he said.

However, he said, European insurers also have been busy with consolidations in their "own backyard" and could be holding back capital for possible opportunities

in Eastern Europe.

Mr. Meenaghan wrote to Home employees: "I'm fully confident that several qualified buyers will step forward in the near future. I am equally confident that the new owner will want us, as a team, to continue the strategy that has been producing such positive results over the past several years."

In addition, he said, "It is my intention and desire to continue as chief executive officer of The Home, with the present management team in place and with the same basic strategy—to be a solid underwriting company."

Yet, some analysts say concerns over the adequacy of The Home's reserves could impede its sale.

"They'll be very lucky to find a buyer," said Joyce Culbert, a vp with Warburg Securities in New York. "I have deep suspicions that their reserves are adequate."

Shearson's Mr. Ghose agreed. "I think it's going to be a very tough sale," in part because of questions about the reserves, he said. "My guess is it will take at least a year to find a buyer, if not more."

"I think the buyer will really have to go in and get an independent view of those reserves," said Robert Branche of the Branche Research Group in Morrisville, Pa. "The reserves are the real question mark."

"No one's ever believed their reserves are up to snuff," said David Wells, a vp with Fitch Investors Service in New York. "I still don't have great confidence with their reserves situation."

"I would only say, 'Buyer, beware,'" Mr. Wells said.

However, Mr. Meenaghan in his letter to employees asserts that The Home "is in strong financial condition" and that management expects The Home "to become even stronger as a separate company."

The letter continues: "This fact was made clear in the announcement... by the Insurance Department of the State of New Hampshire (where we are domiciled) to all other state insurance departments which, in essence, says that the sale of Home Insurance is in the best interests of our policyholders, and the proposed sale is not being taken because of any solvency issues or concerns on the part of the department."

The New Hampshire Department also noted in its Feb. 20 letter that the sale would be subject to regulatory hearing.

A spokesman said AmBase looks "at these reserves constantly." He said an outside firm, which he would not identify, is now assessing the reserves.

The spokesman disagreed with analysts who said AmBase's stock is undervalued because of concern about The Home's reserves. The stock is undervalued because AmBase is involved in the insurance, savings and loan, and stock brokerage industries, he asserted.

The fortunes of companies in all three industries are particularly sensitive to bad news about their competitors, which causes securities analysts to cut earnings esti-

mates across the board, he said. While this approach may be "statistically right," it does not necessarily accurately reflect a company's value, the spokesman said.

Analysts also expressed concern about the \$400 million in junk bonds in AmBase's investment portfolio, which some estimate are now worth only \$300 million.

AmBase probably will have to write down the bonds' value, said Firemark's Ms. Morrissey, adding that "right now, there is not a whole lot of empathy out there for someone with junk bond holdings."

In addition, analysts pointed to a \$42.7 million loan that Home Capital Service, a Home Insurance Co. subsidiary, made to Drexel Burnham Lambert Group Inc., the New York-based junk-bond specialists that filed for Chapter 11 bankruptcy earlier this month.

Firemark's Ms. Morrissey charged that the Drexel loan, which is unsecured, "says management of the company is not concerned with the bottom line or with its shareholders."

However, S&P's Mr. Levin described the Drexel loan as "bearable." And as for The Home's junk bond portfolio, "we're not terribly concerned about the issue," he said.

The AmBase spokesman responded that AmBase has "no plans to do anything like a write-down" on the company's junk bond portfolio.

He also noted that AmBase has reduced its junk bond holdings, which account for 9% of its total investment portfolio, by more than \$150 million over the last two years.

This is not a time for "panic selling," he added.

Apart from the junk bonds, the portfolio also consists of \$1.2 billion of investment-grade corporate bonds; \$1.1 billion of municipal bonds; \$525 million of mortgage-backed securities; and \$400 million in cash and cash equivalents, according to AmBase.

As for the Drexel loan, the spokesman said: "We're not doing that type of investment any more." The company expects to get most, if not all, of its money back, the spokesman said.

Besides questioning The Home's reserves and investment portfolio, some observers also criticized the insurer's management.

"The Home has suffered from non-insurance ownership for 20 years," said Firemark's Ms. Morrissey. "They may have destroyed what once upon an excellent insurance company."

"It's hard to see a great old company like The Home being put through such a degrading situation," she said.

"The plan to sell is, I guess, not so surprising considering management has never been overwhelmingly excited about the insurance business," said Mr. Levin.

However, the AmBase spokesman asserted that Home management has done a good job. "It's not a turnaround any more."

Harry Fong, director of research at Conning & Co. in Hartford, said he also feels that AmBase management has done a lot over the past few years to enhance the insurance unit's long-term value.

But, the value of the units were diluted because they were part of AmBase, he said. "I think it's a very good move on their part," he said of the planned sale.

S&P last week placed its triple-B rating for The Home's claims-paying ability on its CreditWatch with a "developing" label, meaning the rating may be raised or lowered, depending on the financial strength of the company that purchases it.

S&P also placed The Home's preferred stock B rating on CreditWatch with a "developing" label, though the rating firm placed AmBase debentures on CreditWatch with a "positive" label because the sale has positive implications for the company's debt.

Meanwhile, Moody's has placed AmBase's debt ratings under review to coincide with the planned sale.

AmBase Corp., which changed its name last year from The Home Group Inc., has been an independent entity only since 1985, when parent City Investing Co. distributed Home Group's common stock to its shareholders. The move came after New York-based City Investing, which was liquidating itself, did not find a buyer for the insurance holding company (*BI*, April 8, 1985).

In 1986, Home Group filed a registration statement with the Securities and Exchange Commission seeking to sell 40% of the stock of Home Reinsurance Co.—whose name was later changed to U.S. International Re—for an estimated \$105 million to \$125 million (*BI*, Aug. 11, 1986).

The company, however, later canceled its plans, explaining market conditions were not appropriate for the sale (*BI*, Nov. 17, 1986).

The Home wrote \$2.3 billion in gross premiums in 1989, approximately 90% of which was commercial business, while U.S. International Re wrote \$207 million and Commonwealth wrote \$120 million in gross premiums. The Home wrote \$2 billion in net premiums in 1989, while U.S. International Re and Commonwealth wrote \$184 million and \$31 million in net premiums, respectively.

The AmBase insurance units reported an aggregate 109% combined ratio in 1989, up slightly from 108.7% in 1988.

The Home's 1989 statutory combined ratio stood at 108.8%, which was better than the industry average of approximately 110.4%, pointed out Mr. Meenaghan.

The Home's pretax operating income increased 139% to \$141 million in 1989 from \$59 million a year earlier. Combined operating income for all three units in 1989 totaled \$191 million, up 8.5% from \$176 million in 1988.

A.M. Best Co. has assigned an A-minus rating to The Home and its affiliates.



Mr. Meenaghan

Continued from previous page

In addition, insurance department background checks on the character and competence of licensees are inadequate or non-existent.

State regulators fearing libel lawsuits are loathe to exchange information about undesirable operators and most seem unwilling to exercise their discretionary authority to deny licenses to persons whose integrity and fitness are suspect.

During the course of the hearings, two state regulators actually asked the subcommittee to provide a letter recommending denial of licenses to two former officials of a failed insurer, a "bizarre" turn of events the subcommittee found "surprising and disturbing."

The subcommittee report recommends further study of capitalization requirements, what levels of capital should be required for various types of licenses, how capital should be measured and how insurer investments should be regulated.

• Inadequate regulation of agents, brokers and intermediaries.

Noting that MGAs have been a problem for many insurers, the subcommittee reports that it found "conclusive evidence that MGAs can kill a property/casualty company like Mission or Transit, but the regulatory system has not yet responded with adequate safeguards."

Brokers were also active participants in some of the worst business assumed by Mission and Transit, but have denied any responsibility for its consequences, the report says.

The subcommittee recommends investigation into how the activities of agents and brokers can be better regulated.

• Deficient regulatory monitoring of insurer operations.

The subcommittee found that the annual reports of the insurers it examined were "materially false and misleading as a result of lies, unsupported assumptions and a complete lack of adequate books and records upon which to prepare financial statements."

Despite underreserving of "gargantuan proportions" at these insurers, 33 states still do not require actuarial certification of property/casualty insurers' reserves and 35 states do not require independent auditors to verify insurer financial statements, the report notes.

While the National Assn. of Insurance Commissioners has attempted to improve solvency monitoring with its Insurance Regulatory Information System, this system still relies on financial information reported by

the insurance companies themselves.

"Over the course of many investigations into financial fraud and mismanagement... the subcommittee has always found that the persons committing such deeds are equally willing and committed to misrepresenting the results of their activities, which negates the effectiveness of any monitoring system using information provided by those persons."

The report also calls the states' system of examining insurers every three to five years inadequate, observing that the "horrendous mismanagement" that created the Mission and Transit insolvencies occurred between regular exams.

The report recommends further study of what changes can be made in accounting and auditing rules to ensure more accurate and

'Reinsurance abuse has been a key factor in every insolvency studied by the subcommittee,' the congressional report says.

timely financial reporting.

• Problems with reinsurance, which the report calls the "black hole" of solvency regulation.

"Reinsurance abuse has been a key factor in every insolvency studied by the subcommittee. The level of reinsurance has been excessive, the quality has been poor and controls on reinsurers have been minimal or nonexistent," the report says.

To rely on poorly managed companies like Mission, Transit and Integrity to line up stable and reliable reinsurance is "simply unrealistic," the report says.

Regulators have tried to resolve this problem by requiring letters of credit to secure unauthorized reinsurance balances. However, this requirement has "failed abysmally" in the case of the largest insolvencies because LOC amounts were based on grossly understated loss reserves and have proven "woefully inadequate."

Noting complaints about state jurisdictional problems in dealing with alien reinsurers, the subcommittee questions whether the federal government should seek some regulatory controls through treaty negotiations.

The report also recommends further study of whether limits should be placed on the amount of reinsurance covering individual

risks, whether reinsurance credits should be restricted and how retrocessional placements should be monitored.

• Abuse of the relationship between insurers and their parent companies and affiliates.

Transit's holding company was used to absorb Transit assets in the form of dividends paid before the failure, then to insulate top management from taking responsibility for the insurer's demise, the report says.

Mr. Miro, meanwhile, used a network of affiliated companies to siphon money out of Anglo-American to support an extravagant lifestyle, the report says.

The subcommittee recommends study of whether limits should be imposed on inter-company dealings involving loans, dividends, management contracts and investments. The report also questions whether holding company and affiliate directors and officers should be presumed responsible for insurer insolvencies unless proven otherwise.

• Failure to impose adequate civil and criminal sanctions against those responsible for insolvencies.

"With little fear of meaningful administrative sanctions or criminal prosecution, there is no effective penalty for wrongdoing and no real deterrent," the report says.

The subcommittee asks whether a specific federal criminal statute should be adopted to deal with insurance fraud, whether the five-year statute of limitations on mail and wire fraud charges should be extended and how administrative sanctions can be strengthened.

Overall, the report also questions whether and how the existing system of state regulation can be improved to deal with the deficiencies the subcommittee found.

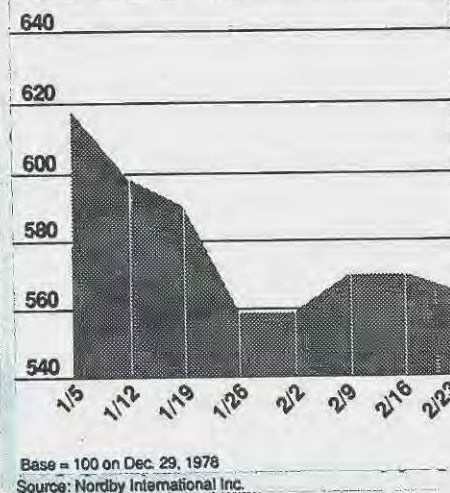
"Realistically, can the present system correct these problems when 50 state legislatures and insurance commissions are involved?" the report asks.

The report also raises the question of what role, if any, the federal government should play in solvency regulation.

At one extreme, the federal government could completely take over insurance regulation, the report notes. Less sweeping possibilities include federal minimum solvency standards for state regulators to follow, possibly while allowing insurers the option of being nationally licensed and regulated by the federal government.

Another possibility, the report notes, would be a federal law empowering the NAIC or some other association of regulators or insurers to act as a self-regulatory body with compulsory authority to establish solvency standards.

BI Insurance Index



Insurance industry stocks fell last week, as the *Business Insurance Index* dropped 4.4 points to 564.4 on Feb. 23, from 569.8 on Feb. 16. Advancing issues were led by HMO America Inc., up 21.7%; United Medical Corp., up 12.7%; and Kemper Corp., up 8.9%. Declining issues followed Tokio Marine & Fire Insurance Ltd., down 11.5%; Phoenix Re Corp., down 7.0%; and Berkshire Hathaway Corp., down 5.6%. The most active issue during the week was Sears, Roebuck & Co., 3 million shares traded. The *BI* Index lost 0.9% for the period; the Standard & Poor's 500 dropped 3.2%; the Dow Jones 30 Industrials fell 2.7%; and the New York Stock Exchange Composite was down 2.4%.

British Issues

Feb. 22 Companies	Price	P/E	Div. %	Yield %	1 Week	
					High-Low	pence
Comm Union	491	28.2	29.0	5.9	504-488	
Genl Accident	1130	17.0	68.0	6.0	1135-1128	
Gdn Royal Exch	239	19.9	15.3	6.4	245-239	
Royal	503	29.6	34.0	6.8	504-498	
Sun Alliance	311	11.5	17.0	5.5	313-310	
Brokers						
Bradstock	249	17.5	10.0	4.0	249-243	
CE Heath	540	15.2	34.5	6.4	540-537	
Hogg Robinson	162	11.3	9.7	5.9	168-162	
Lloyd Thompson	271	18.1	9.3	3.4	273-271	
PWS Holdings	63	9.8	3.3	5.3	65-63	
Sedgwick Grp	282	21.2	16.0	5.7	284-282	
Steel Brl Jones	284	17.7	15.3	5.4	287-284	
Willis Faber	267	18.8	15.3	5.7	269-267	

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

BI Industry Stock Report

FEBRUARY 20, 1990 THROUGH FEBRUARY 23, 1990

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Corroon & Black	NYS	32.75	-5.42	-14.38	41.00	31.00	106	1.24	3.79	15	12.73	2.57	Liberty Corp.	NYS	45.75	-1.35	7.65	46.50	32.50	26	0.92	2.01	17	31.82	1.44																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													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National	NYS	52.38	-1.64	-14.14	62.88	46.75	77	2.60	4.96	9	49.19	1.06																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			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Hibb, Rogal & Hamilton	OTC	15.25	-1.61	-18.12	20.63	11.00	65	0.28	1.84	17	4.60	3.32	Navigator Group	OTC	30.50	0.00	10.91	31.50	21.00	10	0.00	0.00	11	15.22	2.00																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
Marsh & McLennan	NYS	76.00	-1.62	-2.56	89.75	57.50	298	2.48	3.26	19	10.56	7.20	Nobel Insurance LTD.	OTC	2.00	0.00	0.00	5.00	1.50	9	0.00	0.00	0	7.76	0.26																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
Poe & Associates	OTC	12.25	0.00	-7.55	12.75	8.00	1	0.40	3.27	15	1.89	6.48	NWNL Companies	OTC	29.25	-2.50	-25.95	44.13	26.50	516	1.20	4.10	6	37.50	0.78																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	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The do-it-all, tailor-made we'll-put-it- all-together- for-you group.

Flexible benefit programs – ChoiceFlex. Managed care programs – HMOs, PPOs, EPOs. Life insurance – basic, supplemental, term, group universal life. Health benefits – medical, dental, vision, short/long-term disability and long-term care. Alternative funding techniques – ASO, cost plus/minimum premium. Services – benefit communications, plan design, implementation. Pension programs. Employee benefit plans made to order.

**Mutual
of Omaha[®]** 
**Companies
Group Operation**

The Managed-Cost Professionals.SM

For further information on Mutual of Omaha's all-inclusive range of products and services for employers, send your business card to Tom McKellar, Director of National Accounts, Dept. D, Mutual of Omaha Group Operation, Mutual of Omaha Plaza, Omaha, NE 68175.