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Update

Nevada regulator put on leave pending premium tax study

CARSON CITY, Nev.—Nevada Insurance Commissioner Alessandro A. Iuppa has been placed on paid administrative leave pending an investigation into the Insurance Department's alleged failure to collect $6.3 million of premium taxes.

The state assembly's Ways and Means Committee requested the investigation by the state attorney general after questioning Mr. Iuppa last week on the shortfall in premium tax collections, confirmed Larry Struve, director of the Nevada Commerce

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Captive parents win tax cases

Significant third-party business assures premium deductions

By STACY ADLER

WASHINGTON—Corporations that pay premiums to wholly owned captive insurance companies can deduct those premiums from their federal income taxes if the captives write "relatively large" amounts of third-party business, according to three recent rulings by the U.S. Tax Court.

The rulings, which were released in unison on Jan. 24, represent a major victory for captive owners.

However, the decisions will not likely end captive owners' 19-year struggle with the Internal Revenue Service over whether premiums paid to captives are tax-deductible.

Since 1972, the IRS has been instructing its agents to deny deductions for premiums paid to captives, regardless of the amount of third-party business written by the captives.

The IRS could appeal the Tax Court rulings to the 7th U.S. Circuit Court of Appeals and the 9th U.S. Circuit Court of Appeals, according to attorneys.

However, an attorney for the IRS said it is "premature" to make any decision on an appeal at this stage. He would not comment further.

If there is a conflict in the federal appellate court rulings on this issue, there is a strong possibility the U.S. Supreme Court could review the matter, attorneys say.

Only a ruling from the U.S. Supreme Court or a law passed by Congress can absolutely end the debate, they say.

The three rulings are unlikely to cause risk managers to form new captives, but they could cause existing captives to join risk sharing pools to increase the amount of unrelated business they write, experts say.

Attorneys and captive experts say the essence of all three Tax Court rulings is that parent companies can deduct premiums paid to wholly owned captives if the following conditions are met:

- The captive writes a "relatively large" amount of unrelated or third-party business.
- The parent corporation treats the captive as a separate insurance company.
- The captive is regulated by insurance laws.
- The captive has sufficient capital.
- Premiums are negotiated at arms-length.

Specifically, the court for the first time set a three-pronged test for determining whether premiums paid to an insurance subsidiary purchases "true insurance." The court said there must be:

- Insurance risk.
- Risk shifting and risk distribution.
- Insurance as that term is com-

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Gulf war's effect on insurance

Risk managers review policies

By MICHAEL BRADFORD and MARK A. HOFMANN

Risk managers are dusting off their insurance policies to determine whether they need to amend their property/casualty programs as a result of the Persian Gulf War.

WAR in the GULF

Most risk managers say they are fairly comfortable with their coverage for losses that could be connected to the war. Others worry that insurers will try to use the war risk exclusion in standard property policies to deny coverage for property damaged by a terrorist attack.

"We've had a lot of inquiries," said Fred C. Burns, managing partner of John L. Wortham & Son, a Houston broker special-

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London eases some war rates

By GAVIN SOUTER

LONDON—War risk insurance rates eased last week in the London market as underwriters recovered from the initial burst of activity that followed the start of the Persian Gulf War.

Competition among war risk underwriters, which was bolstered by claims of allied air superiority, have helped push down the additional war risk rates they charge in the Middle East. However, coverage was still being written only on a seven-day basis valid only for 24 hours for marine hull war risk coverage in the Persian Gulf, and on a per-flight basis for both aviation hull war risk and liability coverage for flights to the Middle East.

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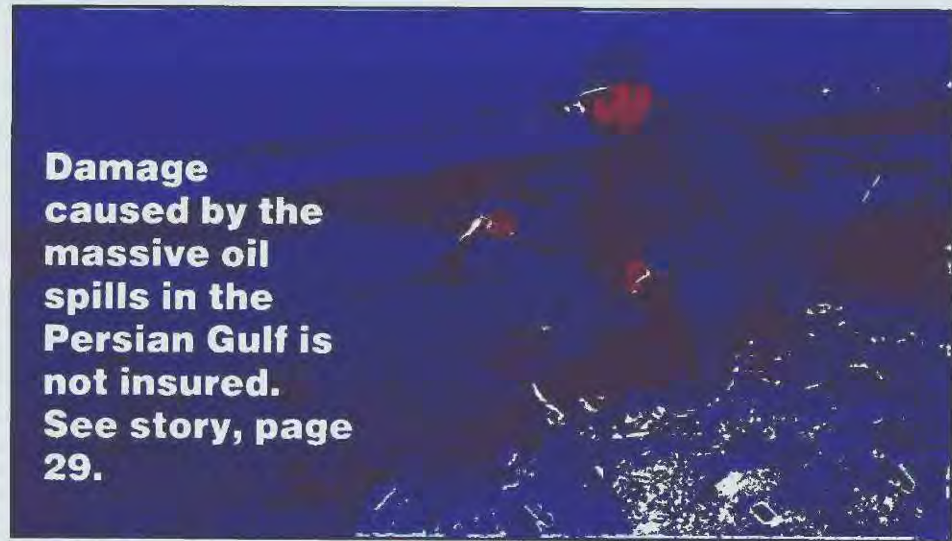

Damage caused by the massive oil spills in the Persian Gulf is not insured. See story, page 29.

AP/Wide World Photo

- Concern over Iraqi terrorist acts is increasing security consultants' business. Page 36
- House bill would require employers to reinstate health coverage for veterans. Page 36
- Many non-military employees not covered for war-related deaths and injuries. Page 37

Medicare overpayment recovery under way

By JERRY GEISEL

WASHINGTON—A federal agency will try to ease employers' burden of complying with a massive new effort to recover $600 million in benefits that employers —not Medicare—should have paid on behalf of older workers and other beneficiaries.

The Health Care Financing Administration, the federal agency that administers the Medicare program, soon will begin sending notices to more than 800,000 employers as part of an effort to identify cases in which Medicare was improperly billed for services.

Under a series of a laws enacted in the 1980s, employer plans became the primary payer of health care bills for employees who stayed on the job after age 65, while Medicare became a secondary payer.

In addition, those laws made employer plans the primary payer for some non-elderly employees with permanent kidney failure and for certain other disabilities who had previously received benefits from the Medicare program.

Those laws were intended to shift billions of dollars in health care costs to employer plans from the financially strapped Medicare program. In fiscal 1989 alone, the so-called Medicare Secondary Payer program saved the Medicare program $2.2 billion, a HCFA spokesman said.

However, hundreds of millions of dollars in potential Medicare savings haven't been realized because Medicare continued to pay claims for beneficiaries—chiefly workers 65 and over and their spouses—who were also covered by employer plans.

The claims were improperly paid because Medicare and its contractors weren't always aware that beneficiaries were covered under an employer health care plan that should have been the primary payer.

But over the last year, HCFA—in cooperation with the Internal Revenue Service and the Social Security Administration—has been scouring payroll records to identify individuals with employment-related income after they turned 65.

With the task now completed, HCFA is starting a series of three

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Survey finds liability costs eat bigger part of risk budgets Page 3

Former AmBase CEO settles $50 million claim for far less Page 2

ATRA targets 22 states where tort reform in jeopardy Page 3

NEWSPAPER

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Department, which oversees the Insurance Department.

The $6.3 million represents incorrect premium tax credits and other errors that resulted from faulty programming of the Insurance Department's computer, Mr. Struve said.

The investigation also will focus on Mr. Iuppa's alleged use of a state credit card for personal phone calls and the use of department offices by independent contract examiners, Mr. Struve said.

Teresa Rankin, Mr. Iuppa's chief assistant, will serve as acting insurance commissioner while Mr. Iuppa is on leave.

Pension testing rules issued

WASHINGTON—The Internal Revenue Service last week released proposed rules on whether different corporate units are separate lines of business for pension plan non-discrimination testing purposes.

The 165 pages of complex rules are vital for employers with many subsidiaries in different industries that offer pension plans with varying benefit levels. With the rules, employers can run non-discrimination tests separately on the different plans.

Under the IRS proposal, to be considered a separate line of business a unit would have to, among other things, be formally organized as a separate unit; be a separate profit center; and have separate workforce and management, and at least 50 employees.

The geographic distance between operating units would be irrelevant in determining whether they are separate line of business.

"The key thing is, 'Are these units separately operated?' " said John Woyke, a principal with TPF&C, the benefit consulting division of Towers, Perrin, Forster & Crosby Inc. in Valhalla, N.Y.

Employers also would be required to formally notify the government that they operate separate lines of business.

The rules would apply as of Jan. 1, 1992.

Lloyd's hit by punitive award

ANCHORAGE, Alaska—Lloyd's of London underwriters are asking an Alaska District Court judge to set aside a $61 million jury verdict for failing to pay their half of a $280,000 claim by the owners of a burned-out restaurant in Ketchikan, Alaska.

The award consisted of $60 million of punitive damages, $1 million for emotional distress and $150,000 for monetary loss.

Policyholders Carson and Jeanne Lindley sued the Lloyd's underwriters and co-underwriter Gotham Insurance Co. of New York after adjusters denied their claim for losses from a May 1989 fire.

The underwriters felt the claim for lost contents was overstated, said Lloyd's attorney Leo Fraser, a partner with Mendes & Mount in New York.

Gotham and Lloyd's underwriters, led by John Wetherell, each wrote 50% of a $280,000 property policy on the restaurant.

An attorney for the restaurant owners argued during the trial that a lawyer and adjuster that the Lloyd's underwriters hired to process the claim failed to investigate it, never intended to recommend payment and accused the owners of fraud, Mr. Fraser said.

While both Lloyd's underwriters and Gotham were named in the suit, Judge Victor Carlson limited the trial to the claim against Lloyd's.

Gotham and the Lindleys' attorney did not return phone calls.

Deputy charged in Green case

NEW ORLEANS—A federal grand jury has indicted the deputy Louisiana insurance commissioner for allegedly lying during an investigation of Commissioner Douglas Green.

Thomas C. Bentley Jr. allegedly perjured himself in May 1990 during grand jury questioning about Mr. Green, who is charged with taking bribes for favorable treatment of now-defunct Champion Insurance Co. (*BI*, Dec. 10, 1990; June 11, 1990).

Before Mr. Green took office in March 1988, A.M. Best Co. had placed Champion on its watch list. Best would remove the company only if Louisiana regulators officially documented Champion's financial stability, the indictment of Mr. Bentley charges.

The indictment charges that he made several false statements during questioning, including saying that nobody told him the department's audit of Champion would be sent to Best. Mr. Bentley signed a favorable audit and forwarded it to Best with a cover letter April 8, 1988, the indictment charges.

An Insurance Department statement says Mr. Bentley claims he is innocent and that Mr. Green stands "fully" behind him.

Mr. Green is scheduled to stand trial Feb. 19 on 40 counts of mail fraud, money laundering and conspiracy in connection with Champion.

Court denies Transit E&O cover

SAN FRANCISCO—Errors and omissions insurers of a Transit Casualty Co. affiliate are not required to defend former Transit officials in a lawsuit brought by the defunct insurer's receiver, the 9th U.S. Circuit Court of Appeals has ruled.

The court upheld a lower court's dismissal of a suit by George P. Bowie and William L. Gregory, former Transit directors and officers, against The Home Insurance Co. and New England Insurance Co. Home and New England provided $15 million of primary and excess E&O coverage for DMT Financial Group, a holding company for a Transit managing general agency.

Mr. Bowie and Mr. Gregory—who also were directors of DMT—had sought a ruling that the E&O insurers must defend them in a $156 million lawsuit filed against numerous Transit directors and officers by the insurer's receiver. But the appellate panel rejected the argument,

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Errors & omissions

• A Kentucky state judge's temporary injunction order against National Business Assn. Trust and National Benefit Administrators Inc. did not apply to Benefax Corp., as incorrectly stated in a Jan. 21 story.

AmBase settlement

Former CEO agrees to big severance pact

By JUDY GREENWALD

NEW YORK—Marshall Manley, the former AmBase Corp. president and chief executive officer who had contended the financially troubled company owed him $50 million, is settling his claim for far less.

Under an agreement in principle announced Thursday, AmBase agreed to forgive $4.1 million Mr. Manley owed the company.

In addition, Mr. Manley, who resigned last March at the board's request, will also receive up to $3.1 million to pay income tax on the settlement as well as other considerations.

Meanwhile, AmBase last week postponed until Feb. 12 a vote on the proposed acquisition of its Home Insurance Co. unit by TVH Acquisition Corp. because it said it did not mail proxy material to shareholders in time. It also warned that additional postponements are possible until either it receives enough proxies to approve the sale or concludes shareholders will not approve the sale.

The delay is expected to cost the cash-starved corporation up to $12 million in tax refunds. That means AmBase's ability to pay a possible special dividend to shareholders after the sale has been "substantially reduced," according to additional proxy material distributed last week.

AmBase, which posted a $24.7 million loss for the nine months ended Sept. 30, has said that if the acquisition is not approved, its financial resources will be "extremely limited."

Despite the company's problems, Mr. Manley, who for years was one of the highest-paid insurance industry executives, had demanded that AmBase pay him an amount that could have exceeded $50 million under various agreements.

Mr. Manley earned $1.94 million in cash compensation in 1989, $1.8 million in 1988, $1.76 million in 1987 and $1.83 million in 1986 (*BI*, Sept. 3, 1990).

AmBase's stock price has fallen from a high of $31.50 in 1986 to just 37.5 cents last week.

The settlement revealed in the supplemental proxy material calls for AmBase to continue paying Mr. Manley's legal expenses in connection with the 1987 bankruptcy of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson &

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1990 second-worst year for U.S. disaster losses

By LAURA MAZZUCA

RAHWAY, N.J.—Natural catastrophes wreaked $2.8 billion of insured property damage in the United States in 1990—the second-worst year on record, insurance industry statistics show.

The heavy 1990 losses are attributable to 32 catastrophes in 38 states, according to the Rahway, N.J.-based Property Claim Services division of the American Insurance Services Group Inc. Hardest hit were Kansas and Oklahoma, with 10 catastrophes each, followed by Texas and Illinois, with eight each, the PCS reports.

Despite the magnitude of insured catastrophe losses last year, they were still 62% less than in 1989, when a revised record of $7.3 billion of insured property losses were recorded. Hurricane Hugo, which caused insured property damage of about $4.2 billion, accounted for more than half of the 1989 losses.

The PCS, which began keeping records on insured catastrophe property losses in 1949, defines a catastrophe as any event that causes more than $5 million of insured property damage and generates a significant number of claims.

The most costly catastrophe in 1990 was the July 11 hailstorm in Denver, which caused $625 million of insured damage. This storm also the costliest hailstorm on record, according to the PCS.

Ranking second was a severe winter freeze in mid-December that affected portions of 20 states and caused more than $400 million in insured property damage.

The first phase of the winter storm, which occurred Dec. 18-25, primarily affected areas in the Midwest, the Pacific Northwest, and California. California alone sustained almost $200 million of insured damage, while the remaining 19 states suffered the remainder of damage (*BI*, Jan. 7; Dec. 31, 1990).

A second freeze, which struck Washington, Illinois, Ohio and Indiana Dec. 27-30, caused $40 million more of insured property dam-

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Municipal bond coverage growth seen

By JUDY GREENWALD

NEW YORK—Financial guarantee business will flourish this year as the municipal bond market is expected to grow by about 7%, predicts a top executive with a leading financial guarantee underwriter.

New issue, long-term, tax-exempt municipal bond volume this year will increase to $135 billion from $126.4 billion in 1990, said David Elliott, president and chief operating officer of MBIA Inc. of Armonk, N.Y.

At a forum sponsored by the municipal bond insurer last week, Mr. Elliott took issue with 470 municipal bond professionals surveyed by MBIA. They had predicted the municipal bond market would decline by 4.2% to $121 billion in 1991.

"Despite the unfavorable economic environment, MBIA remains optimistic about the prospects for the municipal bond market," Mr. Elliott said.

Recession and the war in the Persian Gulf could hurt municipal bond volume, he said, but several other factors will keep the market growing:

• Essential infrastructure projects are less likely to be postponed than other projects and therefore should be less affected by a recession.

• Federal funding to municipalities will decline, putting a greater burden on localities to finance infrastructure projects. Long-term tax-exempt bonds are "the natural vehicle" to alleviate that crunch, Mr. Elliott said.

• If interest rates continue to decline, many municipalities probably will seek to pay off old debt and reissue bonds at lower rates.

• Lower construction costs this year would make new money issues more attractive.

Mr. Elliott predicted "robust" volume for financial guarantee insurers this year, with the insured portion of new issue municipal

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- Two editorials this week entreat employers not to give up the fight to control health care costs and to work on behalf of tort reform. **PAGE 8**
- Amoco is studying how it will pay for millions of gallons of petroleum products that have pooled under an aging Indiana refinery. **PAGE 12**
- An indigent worker hurt on the job is covered by workers comp even though his employer offered him the work for charitable purposes, a court ruled. **PAGE 15**
- PRIMA names a new executive director. **PAGE 16**
- British insurers are introducing a gradual pollution exclusion clause in policies for U.K. risks. **PAGE 29**

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Liability costs are consuming larger portion of risk budgets

By DOUGLAS McLEOD

NEW YORK—Although self-insured workers compensation losses are growing as a percentage of employers' cost of risk, the combination of these losses and workers comp insurance premiums has expanded surprisingly little in recent years, a survey has found.

At the same time, liability insurance premiums are eating up a larger share of corporate risk costs, while property premiums represent a smaller portion, the survey concludes.

The 1990 "Cost of Risk Survey," conducted jointly by the Risk & Insurance Management Society Inc. and the Tillinghast division of Towers, Perrin, Forster & Crosby Inc., collected data from 809 U.S. and Canadian RIMS members. Among other things, the survey found that:

- Workers comp insurance premiums declined between 1984 and 1989 as a percentage of employers' overall cost of risk. Cost of risk is defined as net insurance premiums, unreimbursed (self-insured) losses and administrative expenses.

At the same time, self-insured workers comp losses rose as a percentage of total risk costs.

However, self-insured losses and insurance premiums combined expanded more slowly than expected: Workers comp premiums and self-insured losses represented 39.4% of employers' risk costs in 1989, compared with 36% in 1984, 37% in 1983 and 37.9% in 1982.

Given the rising concern over runaway workers comp costs, a larger increase might have been expected, according to James B. Blinn, a Tillinghast principal.

"That, to me, was a counterintuitive result," he said. "I expected to see a big jump from 1984 to 1989, and I just didn't see it."

- Liability premiums and self-insured liability losses also increased as percentages of the total cost of risk between 1984 and 1989 (*BI*, Jan. 28). At the same time, liability coverage limits generally rose: Only about 6% of respondents had liability limits of less than $5 million in 1989, compared with about 15% of respondents in 1984.

- Captive insurance companies generated income for their corporate parents equal to 5.97% of premiums paid to the captives plus self-retained losses.

- As in earlier surveys, the transportation and health care in-

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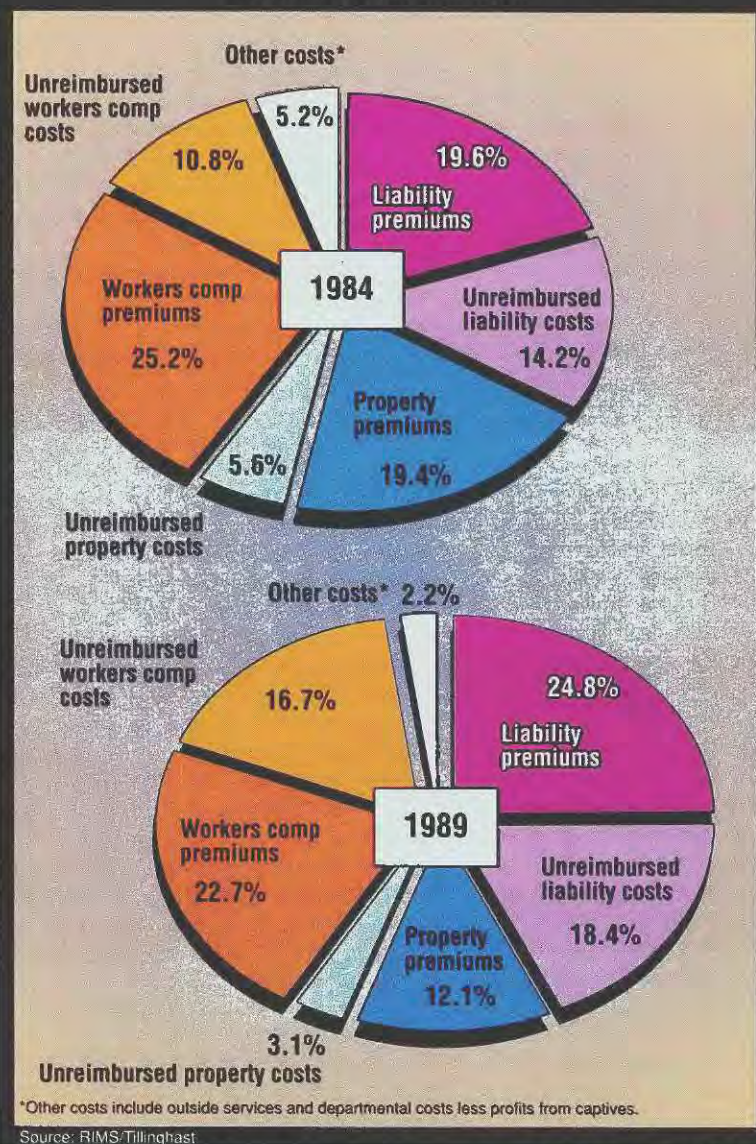

GRAPHIC BY JOHN SMITHER

Punitive damages allowed

N.Y. court clarifies insurer bad faith law

By STACY ADLER

NEW YORK—Punitive damages can be awarded in New York against an insurer for bad faith, a New York appellate court has ruled.

It had been unclear whether punitive damages could be awarded in such cases in New York.

"This is a great clarification of mass confusion" regarding the law on bad faith punitive damages in New York, said plaintiffs' attorney Henry Weisburg of Shearman & Sterling in New York.

But the court also ruled that policyholders seeking punitive damages must show a pattern of bad faith that is detrimental to the public. Attorneys describe that as a very stringent standard.

Further, the court found that a policyholder's right to sue for bad faith is not pre-empted by state regulations that allow the state Insurance Department to fine insurers that engage in "unfair claim settlement practices."

The decision arose from a dispute between Enron Corp. and American International Group Inc. over a claim by Enron stemming from the Peruvian government's appropriation of the Houston company's oil and gas wells in 1985.

National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of New York-based AIG, led a group of 11 insurers that wrote $200 million in political risk coverage on a quota-share basis for Enron subsidiary Belco Petroleum Corp. National Union had 64.3% of the risk.

In 1988 an arbitration panel awarded Belco $162 million in coverage under these policies (*BI*, Dec. 26, 1988).

At the same time, the policyholders sued in New York state court, alleging that the insurers acted in bad faith and in breach of their covenant of good faith and fair dealing by, among other things, denying the claim and rescinding the policies.

The suit further alleged that National Union and AIG "have over the last few years engaged in a pattern and practice of rescinding insurance policies without regard to the merits of the grounds for rescission, whenever faced with the possibility of a significant claim."

Both the trial court and the appellate court found that this pleading was insufficiently detailed to sustain a claim for punitive damages. However, in its Jan. 17 ruling, the appellate court gave the policyholders permission to amend their complaint.

"The decision makes crystal clear that an insured can bring a punitive damage claim against his insurer for bad faith failure to pay claims," said Enron attorney Mr. Weisburg, adding that Enron can adjust its complaint to meet the standard set by the court. Enron had the detailed proof necessary to sustain the claim, he said.

AIG has not decided whether it will appeal, said attorney George Wailand of Cahill, Gordon & Reindel in New York. He said that while any ruling allowing punitive damage claims against insurers in such cases is disappointing, this decision is favorable because "it sets a very rigorous standard."

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Belco Petroleum Corp. and Enron Corp. vs. AIG Oil Rig Inc. et al., New York Appellate Division First Department, No. 40863.

Hospitals sue BC/BS for plan failure

By CHRISTINE WOOLSEY

PARKERSBURG, W.Va.—A $40 million lawsuit filed by 10 West Virginia hospitals against the national Blue Cross & Blue Shield Assn. and an Ohio BC/BS plan attempts to force the BC/BS Assn. to take ultimate responsibility for the financial health of member plans.

The suit alleges the Chicago-based BC/BS Assn. defrauded medical providers by concealing the financial troubles of a now-defunct West Virginia plan. The suit seeks $10 million, plus interest, for medical bills left unpaid by the plan and $30 million in punitive damages.

The total amount owned to hospitals, doctors, businesses and another Blue Cross plan by the insolvent Blue Cross & Blue Shield of West Virginia Inc. is expected to exceed $53 million.

The lawsuit is the latest action following the first-ever collapse and takeover of a BC/BS plan. Charleston-based BC/BS of West Virginia, which had reported financial difficulties since 1986, was declared insolvent and ordered into liquidation in October by Hanley C. Clark, the state insurance commissioner (*BI*, Oct. 29, 1990).

Gov. Gaston Caperton, the BC/BS Assn., Cleveland-based Blue Cross & Blue Shield Mutual of Ohio Inc. and others later worked out an agreement for the 250,000 individuals covered by the insolvent plan to be covered by a new plan—Mountain State Blue Cross & Blue Shield. The new plan combines the insolvent Charleston-based plan and the solvent Blue Cross & Blue Shield of West Central West Virginia in Parkersburg, the state's only other BC/BS plan.

The Cleveland plan manages the new entity.

The agreement, however, does not cover the Charleston plan's outstanding debts to doctors and hospitals.

So the hospitals filed suit Jan. 22 in U.S. District Court in Charleston, charging the BC/BS Assn. and the Ohio plan with fraud, unfair trade practices and negligence.

Officials of the national group deny any wrongdoing or liability.

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Crunch time for tort reforms

GRAPHIC BY CYNTHIA WATSON

Challenges expected in 22 states this year

By MARK A. HOFMANN

WASHINGTON—Tort reform proponents expect a tough fight in many state legislatures this year as they try to protect recent gains and seek new reforms.

The American Tort Reform Assn. lists 22 states where legislators or judges could try to rescind tort reforms enacted since the mid-1980s.

Defensive efforts are needed, the business-supported lobbying and research group says, in Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Maryland, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia and Washington.

Among the key reforms likely to be challenged in various states are:

- Caps on non-economic and punitive damage awards.
- Collateral source rules, which allow sources of compensation such as workers compensation to be considered in awarding damages.
- Limitations on joint and several liability.

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AmBase

Continued from page 2

Casey, a law firm for which he was a partner. The company will also pay legal expenses connected with the employment agreement dispute.

AmBase also will transfer ownership of a 1986 automobile to him, though he lost the use of a driver it had provided as of Thursday. Office space will be provided only until Feb. 15. Medical coverage for Mr. Manley and his family ends June 31.

Mr. Manley agreed to resign as a director, terminate his employment agreement, irrevocably waive his rights under all benefit plans and cancel all his common stock options.

Mr. Manley did not return calls.

Proxy materials detail a generous severance package and benefits. His now-canceled employment agreement would have paid an annual base salary of $900,000 until 1995. AmBase also was to pay for the car, driver, office and clerical help.

In 1985 the company also gave Mr. Manley an unsecured, interest-free $3 million loan for a residence. Had the company demanded repayment before Aug. 14, 2000, it would have had to pay him the estimated cost of financing its outstanding balance and reimburse him for incremental income taxes on these payments.

And in June AmBase approved a personal $600,000 loan to Mr. Manley "to meet personal expenses" in anticipation of a settlement.

The Jan. 24 settlement culminated a series of negotiations.

After resigning, the proxy statement says, Mr. Manley submitted an analysis prepared by the now-defunct accounting firm Spicer & Oppenheim. Its conclusion: Various agreements and AmBase benefit plans entitled the former CEO to $42.8 million to $69.6 million.

AmBase balked. Its analysis, from New York law firm Paul, Weiss, Rifkin, Wharton & Garrison, concluded that he was owed no more than $4.3 million if the board decided it had no cause to terminate, the proxy said.

It also decided that Mr. Manley was owed an unspecified amount under a long-term incentive compensation plan. Spicer had claimed Mr. Manley was owed $20.6 million, the largest single item he claimed.

Subsequently, on Jan. 4, the AmBase board's personnel committee eliminated the value of any compensation plan awards not yet paid.

Meanwhile, on Sept. 26, Chairman George Scharffenberger was authorized to settle Mr. Manley's claims for no more than $10 million, excluding the $3 million loan.

Mr. Manley responded with a new demand on Dec. 19:

- A $9 million cash buyout of his employment agreement.
- A cash advance of $2 million, payment of salary and continuation of certain benefits until the closing date of the sale of The Home.
- Upon the closing date, the cancellation of the approximately $3.6 million of outstanding loans made by AmBase to Mr. Manley, with the company responsible for withholding taxes payable on canceled loans.
- The transfer to Mr. Manley of the automobile he now uses.

On Dec. 27, Mr. Manley's attorney demanded arbitration, saying the claims exceed $50 million.

Commenting on the settlement, Michael Smith, a Lehman Bros. analyst in New York, said "shareholders would have been better off five years ago if they had simply paid Marshall Manley $100 million to go away."

Charles Ronson, an analyst with Baird Patrick in New York, quipped, "I would say that (directors) should pay for their shareholders' medical coverage."

Probably the only reason Mr. Manley did not get more, said Mr. Ronson, is that AmBase had no more. "These guys just saw this as one big grab bag.

"This is unprecedented. This is singular. This company has been mulched systematically over the past five years," Mr. Ronson said.

Also revealed in the proxy are "special incentive severance contracts" calling for five officers to continue at AmBase for various periods.

After the five failed to agree on a company request to defer payments until after the Home sale, AmBase in December paid: $1.5 million to Jack Plaxe, executive vp/chief financial officer; $1.1 million to Lester Mantell, senior vp; $1 million to Robert Woodrum, senior vp-public relations; $940,000 to Bruce Bean, executive vp and general counsel; and $720,000 to Ted Babcock, vp and treasurer.

The additional proxy material notes that several executive officers' employment may be terminated on specified dates before June 30.

The payments, to the five officers show that AmBase officials "rewarded themselves for abject failure," charges Mr. Smith. "This is a management that just absolutely ran this company into the ground, into nothing."

Many AmBase employees had their savings in a company stock plan, he noted. "Some fairly substantial nest eggs (were) just wiped out."

Meanwhile, AmBase said postponing the vote on the Home sale until Feb. 12 will enable all shareholders to consider the proposal.

In its most recent proxy material, AmBase has also amended certain terms and conditions of its offer to purchase its notes and debentures.

The company also has said that trustees of the AmBase Savings Plan —which holds about 16.7% of outstanding common shares—will favor the acquisition. Mr. Scharffenberger, the chairman, also plans to vote his 505,000 shares, or 1.6% of the outstanding stock, that way.

However, AmBase's failure to close the transaction before Jan. 31 means it will not be able to claim a loss on the sale that would have meant a $12 million tax refund in 1992, endangering a possible special cash dividend.

It does, however, anticipate an additional $5 million will be received by AmBase before the shareholder meeting under existing tax sharing and management agreements between AmBase and The Home. These funds would not have been received if the transaction had been consummated as scheduled, an AmBase spokesman said.

Separately, AmBase made the $11 million interest payment in connection with its $410 million bank loan on which it had defaulted last month (*BI*, Jan. 28). The spokesman said the payment was funded through tax refunds, tax payments and management fees to both Home and AmBase.

However, the company is still in default on an $11 million payment that was due Jan. 15 on its 14⅞% notes, which have a principal amount of $150 million. AmBase still plans to cure this default right before the sale is consummated.

Under AmBase's proposal, The Home will be acquired by TVH Acquisition Corp., a partnership that includes Trygg-Hansa SPP Holding AB, a major Swedish insurer; Industrial Mutual Insurance Co., a major Finnish insurer; and International Insurance Investors, a Bermuda limited partnership whose participants include financial reinsurer Centre Reinsurance (Barbados) Ltd. (*BI*, Dec. 31, 1990; Oct. 8, 1990).

AmBase expects to receive $477 million in cash for The Home as well as other considerations, including an anticipated $30 million cash dividend from The Home just before the sale.

About the time of the sale, The Home is expected to enter into an aggregate excess-of-loss reinsurance contract with a syndicate of reinsurers, including Centre Re and possibly a Trygg-Hansa affiliate, the proxy says.

It is expected that the reinsurers' aggregate limit of liability under the contract will be equal to the greater of $300 million or 200% of Home's total reinsurance premium.

An investment banker who asked not to be identified said this arrangement is "standard in a transaction where the seller is of uncertain credit quality." ■

REUTERS/BETTMANN NEWSPHOTOS

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Opinions

Don't abandon tort reform

IT IS TOO EASY to forget.

We fear that many in the risk management profession and the insurance industry have forgotten how important it is to actively support tort reform efforts in individual states and to work for federal product liability reform.

Six years ago, as liability insurance premiums skyrocketed and many companies and public entities found themselves unable to buy coverage at any price, the insurance industry and risk managers rallied to enact tort reforms on the state level across the nation. And, amid the attention given to the liability insurance crisis, they were largely successful. Most states have enacted some type of reform, ranging from the elimination of joint and several liability for non-economic damages to caps on punitive damages to sanctions on attorneys who file frivolous lawsuits.

While no one will doubt that the reforms that have been enacted have been successful, few risk managers would agree that the civil justice system has been "reformed." Courts still hand down excessive verdicts.

Yet the cry for tort reform is much more muted than it was in the mid-1980s. And, several factors will take the spotlight off the campaign to enact tort reforms this year.

While the war in the Persian Gulf will not be an issue that normally will be debated in state legislatures, the fighting in the Middle East surely will shift attention from tort reform legislation. And, the nation's economic problems—the economic downturn; strains on local, state and federal budgets; the ongoing failure of state- and federal-chartered banks and thrifts—will monopolize legislators' calendars in the next year.

Still, the drive to reform our civil justice system must push on. Risk managers can be a big part of this.

First, take an active interest in where your state legislators stand on tort reform. While national politics garners the most attention, state governors, senators, representatives and assemblymen control the fate of most tort reform initiatives. As we report this week, the American Tort Reform Assn. fears that 1990 state elections may have shifted the balance of power in several states, blocking new tort reforms and possibly endangering reforms already on the books.

Secondly, get involved with tort reform efforts in your state. ATRA says it expects reform legislation to be introduced this year in 28 states and the District of Columbia. In addition, ATRA expects existing tort reforms to come under attack in 22 states. To get involved, contact your local Chamber of Commerce and other industry groups for more information. And, you can write ATRA at 1212 New York Ave. N.W., Suite 515, Washington, D.C. 25005.

Finally, write to your senators and representatives to tell them how badly the nation needs the uniform product liability reform legislation that Sen. Robert Kasten, R-Wis., is expected to introduce soon.

The time to enact tort reforms is now—not several years down the road when liability insurance premiums are again soaring.

Take action on health costs

THE LATEST GRIM NEWS on health care cost increases should serve as a loud call for corporate action.

Total health care costs—including employer and employee contributions for medical indemnity plans, health maintenance organizations and dental and vision care—jumped 17.1% last year to an average of $3,217 per employee from $2,748, according to a survey by benefit consultant A. Foster Higgins & Co. Inc. (*BI*, Jan. 28).

Looking just at indemnity programs, which typically are employers' largest health care plans despite the growth of HMOs, the news is even worse.

Indemnity plan costs leaped 21.6% in 1990 to an average of $3,161 per employee from $2,600 in 1989.

These increases are not one-time aberrations. Between 1988 and 1989, total health care and indemnity plan costs jumped 18.6% and 20.4% respectively.

As Foster Higgins noted, if costs continue to rise at 1990's clip, indemnity plan costs will average a staggering $22,000 per employee by the year 2000. Those skeptical of such an increase should be reminded that health care costs in excess of $3,000 per employee would have seemed impossible to believe two decades ago when costs were under $300 per employee.

Given the latest round of cost increases, many employers may be inclined to say that controlling health care costs is a lost battle. Certainly, there are factors beyond an employer's control that have led to major increases in the cost of health care. These factors are well-known, including the aging of the population, an increasing pool of retirees requiring expensive medical care and the proliferation of sophisticated medical technology that means more diseases and illnesses can be treated—but at an enormous cost.

However, there is plenty that employers can do to better control costs, and these remedies lie beyond simply shifting costs—through higher deductibles and coinsurance—to employees.

Employers have to truly manage health care costs. They and their insurers or third-party claims administrators have to identify—through analysis of thousands of claims—those health care providers that provide high-quality, cost-effective care. Once that is done, powerful incentives have to be given to employees to use those providers.

Managing health care costs involves other steps as well. For example, we wonder why more employers do not establish mail-order prescription drug programs. Under these programs, for employees to receive the highest reimbursement, they must have prescriptions filled through mail-order firms that purchase drugs in great quantities and at considerable discounts, passing on those savings to employers.

And, we wonder why more firms do not offer wellness and medical screening programs. These programs can keep employees healthier and spot medical conditions before they grow into catastrophic expenses.

In short, health care costs can be controlled, but only through concerted employer action.

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Haggar cuts premature births over 50%

Benefit beat

Haggar Apparel Co. is significantly reducing both the cost and number of premature births among its largely female workforce by boosting prenatal care benefits, paying for care directly and providing free prenatal education courses.

Premature births have been cut by more than 50% over the past two years, according to Mark Robinson, manager of Haggar's prenatal wellness program, known as Haggar Healthstyles.

In 1988, when Haggar introduced the program, 26 employees gave birth prematurely.

That number was cut to 24 in 1989 and 11 in 1990, Mr. Robinson said.

Premature birth was defined as a birth less than eight months into term with the infant weighing less than 5½ pounds.

And, the Dallas-based clothing manufacturer has reduced the average cost of a pre-term birth 14% to $24,633 in 1990 from $28,643 in 1989. An average full-term birth costs the company about $2,000.

Haggar self-funds its health care benefits.

Ninety-three percent of Haggar's nearly 6,000 employees are women, and 17%—or about 950—are pregnant at any given time. Women working at all corporate facilities can use the program, which is primarily targeted at four factories in the Rio Grande Valley in South Texas.

Mr. Robinson said Haggar implemented its Healthstyles program in late 1988 after experiencing a much higher-than-normal rate of premature births.

"Our workforce in the Valley is primarily Hispanic and poor, so their education level tends to be low," Mr. Robinson explained.

"When the women were required to pay costs up front and then get reimbursed, many women didn't even visit a doctor until the seventh month. By then, it was too late, and complications often occurred," he said.

Under the program, Haggar began covering 100% of the cost of prenatal care if the mother seeks care in the first trimester.

The company will cover 80% of the cost of care if the mother first seeks it later than the first trimester.

Haggar previously covered 80% of prenatal care, no matter when the mother first sought care.

In addition, Haggar now directly pays for the cost of prenatal care instead of reimbursing employees.

Since Haggar improved prenatal care benefits and began paying the cost of care directly, it has seen "a dramatic increase in the number of doctor visits made in the first trimester," according to Mr. Robinson.

The educational program, called "Babies and You," is a four-part series of classes provided free in both English and Spanish by the March of Dimes.

The four one-week courses cover the basics of childbearing, healthy families, drug and alcohol usage during pregnancy, and stress management.

As an added incentive, Haggar provides all women who attend the four courses a free infant car seat.

Since the courses began, 282 women have completed the series and not one of those women has had a premature birth, according to Mr. Robinson.

Retirement savings

Nearly 70% of working Americans would prefer that their employers defer on a pretax basis a portion of their salary to a retirement savings plan rather than receive the money as current pay, reports a study commissioned by the Employee Benefits Research Institute.

Sixty-eight percent—or 728—of 1,071 respondents to a survey conducted last fall by The Gallup Organization Inc. said they wished their employers required that a portion of pretax salary be deferred to a retirement savings plan.

Among those respondents willing to contribute to a retirement plan, 79%—or 575—said they would be willing to make contributions even if they were denied access to the money under any conditions until retirement.

Those survey respondents said they would be willing to contribute 10% of their pretax salary on average to a retirement plan even if they could not touch the money until retirement.

Fourteen percent—or 150—of survey respondents said they would not make pretax salary contributions to a retirement plan if they could not get at the money before retirement.

However, 73%—or 110—of those respondents said they would consider the arrangement if they could withdraw money without penalty to purchase a home or pay medical or educational expenses.

These respondents said they would be willing to contribute up to 14% of their salary on a pretax basis under no-penalty-for-early-withdrawal conditions.

Among the 33 respondents—or 3%—who said they would not contribute to a retirement plan even if they were allowed access to the account under certain conditions, eight respondents said they would change their minds if their employer provided a 50% match to their contribution.

The survey also found that 70%—or 750—respondents believe employers should be required to provide retirement benefits for all employees.

And, 66% of those respondents—or 495—said retirement benefits should be provided even if it meant lowering salaries for employees.

In addition, 41%—or 439—of all survey respondents said they would pass up an attractive job offer to remain with an employer long enough to qualify for full retirement benefits, while 44%—or 471—said they would not, and 13%—or 139—said they were not sure.

The remaining 2% did not respond.

Survey participants also were asked what they would do if they were to leave their jobs with a cash retirement benefit equal to three months' pay. Fifty-nine percent—or 632—said they would save the money for retirement, but 82%—or 878—said they would save the money for retirement if their employer transferred the money into an individual retirement account.

A summary of "Public Attitudes on Retirement Income and Savings" is available to the public for $75. The full report costs $275. EBRI members can obtain either a summary for $25 or the full survey report for $75. The summary and full report can be obtained by calling Debbie Moss at EBRI: 202-775-6315 or write EBRI, 2121 K. St. N.W., Suite 600, Washington, D.C. 20037-1896. ■

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Medicare recovery

Continued from page 1

mailings—the first of which will begin this month—to employers to track down group health care information for older employees and other beneficiaries affected by the Medicare Secondary Payer program.

The first mailing will determine if the employer was covered by the Medicare Secondary Payer program. For example, small employers—those with fewer than 20 employees—are exempt from the part of the program that made employers the primary payer for older workers and their spouses.

Small employers and employers that haven't offered a health care plan since Jan. 1, 1983—the first year the Medicare Secondary Payer program went into effect—simply should return the questionnaire in a prepaid envelope. Other employers should not return the questionnaire.

A second HCFA mailing—expected sometime in March—will go to about 5,000 major employers. HCFA will use information gathered in this mailing to determine to which department the last questionnaire should be sent.

The last and most detailed questionnaire—expected to be mailed early this summer—will ask employers for employment history and health care coverage for employees that may have been affected by the Medicare Secondary Payer program.

In all, HCFA will be asking for information about 8 million people. In some cases, employers will have to supply information going back to 1983.

Benefit lobbying groups and consultants say this requirement will impose a major administrative burden on employers with many employees affected by the Medicare Secondary Payer program.

"Employers have a tough enough time keeping track of current employees, let alone individuals who may not have worked for a company for years," noted Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

"This will be quite a daunting task for a company with many different divisions, which may have some records in one place, other records in other places, some information on PCs and mainframes or in filing cabinets," Mr. Saveth added.

'This will be a massive data collection effort for some companies,' says Mr. George.

"This will be a massive data collection effort for some companies," agreed Chris George, a consultant with The Wyatt Co. in Wellesley Hills, Mass.

"Many employers will have to compile information from inactive files," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington, D.C.-based benefits lobbying organization representing large employers.

HCFA officials acknowledge that for some employers collecting health care and employment information going back several years will be a daunting task.

"If you have 50 different divisions and are decentralized, it is a burden," a HCFA official said.

But HCFA officials say they are taking a series of steps to reduce that burden.

While a 1989 law, which required HCFA to establish a program to recover Medicare overpayments, says that employers must respond to HCFA requests for information within 30 days or face a $1,000 fine for each individual for which the agency requested information, officials say the agency will be amenable to employer requests for filing extensions.

"Obviously, if you have dozens of divisions and information is requested for hundreds of individuals, 30 days will not be enough time. We understand that," a HCFA official said.

"HCFA will be amenable to extensions," predicted Frank McArdle, a consultant with Hewitt Associates in Washington, D.C.

Benefit consultants emphasize that employers that can't meet the 30-day deadline in completing the questionnaire should quickly inform HCFA that they need more time.

"The key thing for employers is to advise HCFA that they are working on the questionnaire so that a good-faith effort is indicated," Mr. Saveth said.

Aside from giving employers extensions on completing the questionnaire when appropriate, HCFA is setting up a toll-free telephone number for employers that have questions about the program.

For example, the hot line—which is to begin operation in late February or early March—could be used by an employer who doesn't understand a question on the questionnaire. In addition, the number could be used by employers that didn't receive the HCFA questionnaire, known as Data Match, and by companies that want to verify that their questionnaire was received was received by HCFA.

The number also could be used by employers that want information on how to request a filing extension and how to file the completed questionnaires electronically.

The number—800-999-1118—will be in operation from 8 a.m. to 8 p.m., Eastern Standard Time.

After the questionnaires are completed, they will be analyzed by HCFA and compared to payments Medicare made for the individuals.

If HCFA determines that Medicare improperly paid a claim—because the employer plan was the primary payer—it will contact the employer or other responsible party, like the employer's insurer, for repayment.

At this point, HCFA is not contemplating interest penalties on payments due from employers.

If HCFA and the employer cannot agree on the amount of funds due, HCFA can refer the case to the Justice Department for legal action. Federal law allows the government to collect double damages from any party that was responsible for making primary payments, but failed to do so.

In all, HCFA expects to recover $600 million over the next three years through the Data Match program.

"Money is driving this big cleanup effort," Hewitt's Mr McArdle said.

HCFA has filed several lawsuits against health insurers that administered self-funded health care plans for employers to try to recover payments made by Medicare that should have been made the the employer plans. However, federal courts have ruled that the insurers do not have to reimburse the government for Medicare overpayments made on behalf of beneficiaries covered by self-insured plans (*BI*, July 2, 1990; April 17, 1989). ■

Utah orders surety insurer to liquidate

SALT LAKE CITY—Commercial Surety & Insurance Corp., a Utah insurer writing surety bonds in several states, has been ordered liquidated by a Utah judge after being found insolvent.

Commercial Surety, licensed in August 1989, was placed under Insurance Department supervision last November.

The company, which wrote bond premiums and related fees of about $860,000 in 1990, was found to be insolvent by $1.5 million as of Oct. 31, 1990.

Utah regulators petitioned for the liquidation after they were unable to confirm that Commercial Surety actually held $4.8 million of Government National Mortgage Assn. securities that formed the bulk of its assets.

Commercial Surety had obtained trust receipts supposedly confirming ownership of the GNMA securities from Burdge Murton Capital Corp., a company controlled by Commercial Surety officers Mark C. Burdge and Robert V. Murton. The trust receipts showed that the securities were being held for Burdge Murton by Robert H. Wyshak & Associates Ltd., a Los Angeles law firm, court records say.

However, Commercial Surety officials and Mr. Wyshak failed to produce the GNMAs on demand or show they were properly registered in the insurer's name, and the department could not trace their ownership independently, court papers say.

—*By Douglas McLeod*

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Amoco studying cover for oil pool cleanup

By MICHAEL SCHACHNER

WHITING, Ind.—Amoco Oil Co. is studying whether it can tap past liability coverage to pay for the cost of studying the effects of and cleaning up millions of gallons of petroleum products that have pooled under an aging refinery and that may have polluted offsite property.

Meanwhile, Indiana environmental and health officials disagree over the level of risk the underground petroleum pool poses to the public.

The results of a one-year groundwater study have given the oil giant reason to believe that about 16.8 million gallons of various petroleum products have accumulated beneath its 102-year-old plant in Whiting, Ind., says AOC, a division of Chicago-based Amoco Corp.

Since the refinery began operating, various petroleum products have gradually seeped underground to a level that is above the groundwater, according to the Amoco study that was begun in late 1989.

And, in announcing late last month the results of the study, company officials said it is likely that some of the 400,000-barrel pool of gasoline and crude, lubricating and heating oils has moved beyond Amoco's property.

However, the petroleum pool has not polluted groundwater, the study says.

But, in order to determine whether the petroleum pool poses an immediate safety or health hazard to area residents, Amoco is seeking community approval to conduct company-paid groundwater testing, as well as residential air monitoring, at about 500 homes near the refinery.

While Amoco does not believe the petroleum pool poses an immediate health hazard for residents near the refinery, the company wants to conduct tests for benzene levels, toxicity and combustibility as a "precautionary and reassuring measure," a spokeswoman for the company said.

Amoco will assume all of the costs for the residential testing it wishes to conduct in the homes of residents of Whiting, Hammond and East Chicago, Ind., the localities that surround the Amoco refinery.

However, the cost of this testing is unknown, the spokeswoman said.

> **'We still have a lot of questions and concerns, but Amoco's undertaking is positive, and we hope that it will serve as a signal to its peers,' says Corrine Wellish of the Indiana Department of Environmental Management.**

To date, Amoco has spent about $2 million on consulting fees and for installing about 150 groundwater monitoring devices, the spokeswoman said.

Amoco likely will spend $15 million this year for onsite repairs and remediation of the petroleum pool, she said.

A spokesman in Amoco's corporate headquarters in Chicago said company officials are reviewing whether the company can tap any past or present liability insurance to cover all or some of the incurred and future costs related to the project.

The spokesman said that Amoco operating divisions generally maintain a self-insured retention, above which the parent company purchases commercial excess liability coverage.

However, he declined to elaborate on the details of the insurance program covering the Whiting refinery.

The Insurance Services Office Inc.'s 1986 occurrence-based and claims-made commercial general liability forms excludes all coverage for pollution liability. But, sudden and accidental pollution—which various courts have defined differently—was covered under an endorsement in pre-1986 comprehensive general liability policy forms.

The Indiana Department of Environmental Management in Indianapolis is pleased Amoco undertook a "massive volunteer cleanup," said Corrine Wellish, assistant commissioner of environmental response with the department.

The department is responsible for, among other things, ensuring that companies operating in Indiana comply with a federal law on proper storage of non-renewable materials.

The department also will ultimately decide what cleanup or other measures Amoco must take.

"We still have a lot of questions and concerns, but Amoco's undertaking is positive, and we hope that it will serve as a signal to its peers," Ms. Wellish commented.

Neither the IDEM nor the U.S. Environmental Protection Agency has classified the petroleum pool at the Amoco refinery as an environmental and health hazard. Both agencies note that drinking water for area residents is drawn from Lake Michigan and not from groundwater.

However, Greg Steele, an environmental epidemiologist with the Indiana Department of Public Health in Indianapolis, asserted that a 100-year-old accumulation of 400,000 barrels of petroleum products that has drifted offsite is "definitely a health hazard."

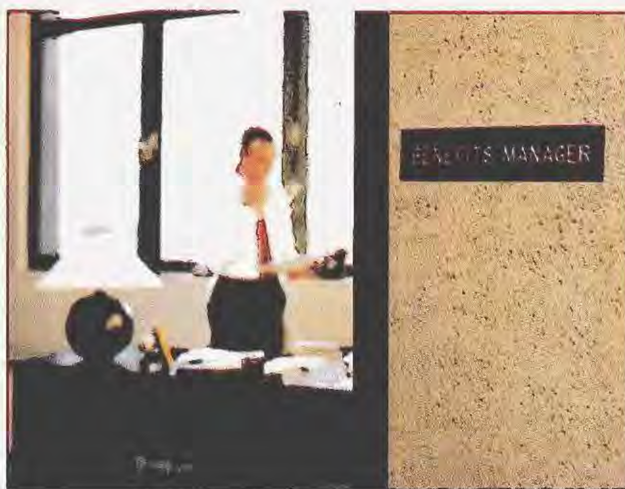
Mr. Steel said the Department of Public Health will review all samples taken by Amoco to determine what actions the company will have to take to remedy the problem.

If benzene is detected at a level of more than 10 parts per billion and can be traced to the plant, then federal, state and local authorities would require the company to take "the appropriate measures" to remove the contaminants, Mr. Steele said.

Benzene is a "major cancer-causing material in humans that is also highly combustible," Mr. Steele explained.

Mr. Steele said the Department of Public Health will review Amoco's reports on ground and air tests. The department then will offer its recommendations to the IDEM. ■

The latest breakthroughs in health care programs were developed by people who've never set foot in a laboratory.



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Hazardous waste cover litigation

Policy trigger is hot issue: Lawyers

By STACY ADLER

NEW YORK—Deciding which insurance policies should be triggered to pay for pollution cleanup costs is one of the critical issues that will emerge in future hazardous waste coverage litigation, attorneys say.

In addition, questions about whether a policyholder expected or intended the pollution and questions about what constitutes an occurrence under comprehensive general liability insurance policies also will be hotly contested in future coverage lawsuits, they say.

Attorneys discussed the future of hazardous waste coverage litigation at a program titled "Insurance, Excess and Reinsurance Coverage Disputes," sponsored last month by the Practising Law Institute in New York.

The attorneys, most of whom represent insurers in coverage disputes, acknowledged that attempts to dispose of pollution coverage lawsuits quickly by arguing that cleanup costs do not constitute "damages" as defined in the CGL policy have not been largely successful before state supreme courts.

To date, supreme courts in five states—California, Massachusetts, Minnesota, North Carolina and Washington—have found that pollution cleanup costs are insurable "damages" under the CGL policy (*BI*, Dec. 31, 1990).

Only the supreme courts of Maine and New Hampshire ruled in favor of insurers on this threshold issue.

However, even if policyholders win on the "damages" issue, they face several other critical battles before coverage is granted.

Which policies are triggered by a pollution coverage lawsuit "clearly will be one of the next major issues," said Irene Sullivan, an attorney with Skadden, Arps, Meagher & Flom in New York.

The trigger of coverage issue "is a question of which policy will respond; not whether there is coverage," said Ms. Sullivan.

The question of whether an insurer's duty to defend is triggered when a policyholder receives a government letter requesting or demanding participation in a hazardous waste cleanup is one of the first "trigger" issues that must be addressed, she said.

Often, either the U.S. Environmental Protection Agency or a state environmental agency will send a letter naming the policyholder as a "potentially responsible party" for a cleanup.

Whether these so-called PRP letters trigger an insurer's duty to defend will be hotly litigated, according to Ms. Sullivan.

CGL policies require an insurer to defend against lawsuits, she explained. But these cases will focus on whether these PRP letters are the equivalent of a lawsuit for the purpose of triggering the duty to defend, she said.

Courts that have already addressed this issue are divided, according to Ms. Sullivan. "There are cases that go both ways."

The next trigger of coverage question involves which policy years must respond to a policyholder's claim for cleanup costs.

Policyholders and insurers could advance four main trigger-of-coverage theories in these disputes, explained Ms. Sullivan:

- The "exposure" theory, which advocates that only those policies in effect when the property was exposed to hazardous chemicals are triggered.
- The "manifestation" theory, which advocates that only those policies in effect when the property damage is manifested are triggered.
- The "actual personal injury or property damage" theory, which advocates that only those policies in effect when there is actual bodily injury or property damage are triggered.
- The "triple trigger" theory, which advocates that every policy from the first exposure to hazardous substances through manifestation of property damage is jointly and severally liable.

"The few trigger-of-coverage cases which have been decided in the hazardous waste area aren't much help in determining where the law is going to go," said Ms. Sullivan, noting that rulings have adopted all four theories.

"Trigger of coverage is an insurer vs. insurer" issue, explained Ms. Sullivan. In asbestos coverage litigation, insurers often opposed each other when arguing trigger-of-coverage issues. In fact, insurers often advocated different triggers of coverage in different cases, depending on the circumstances of each case.

"Insurers are trying to be more consistent" in hazardous waste suits, said Ms. Sullivan. Each insurer is trying to at least advocate one trigger of coverage position in all cases, she said, though there is still not widespread agreement among insurers about which is the right trigger, she added.

Often insurers take the same trigger-of-coverage positions in hazardous waste coverage litigation that they took in asbestos coverage suits, according to Ms. Sullivan.

Further, the precedents set in the asbestos coverage disputes will affect hazardous waste cases, she said. Asbestos property damage litigation will be particularly influential, added Ms. Sullivan.

Another critical issue in hazardous waste coverage litigation involves whether an insurer can prove a policyholder expected or intended the damage and, therefore, is not insured for the damage, attorneys say.

"The most basic concept that is implicit in all insurance policies is a requirement that the event be fortuitous," explained Barry Ostrager of Simpson, Thatcher & Bartlett in New York.

Mr. Ostrager represented Travelers Insurance Co. in a massive coverage dispute with Shell Oil Co. over costs to clean up the Rocky Mountain Arsenal near Denver. Insurers convinced the jury that Shell expected or intended the pollution and, therefore, is not insured (*BI*, Dec. 26, 1988).

"The fact pattern of the Shell case is not radically different from most other hazardous waste cases," said Mr. Ostrager. He believes that in many cases proper investigation can reveal evidence

Continued on next page

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Primary, excess insurers can fight like family

By STACY ADLER

NEW YORK—Primary and excess insurers are part of the same "family" of insurers and have a relationship much like married couples and their in-laws, according to attorney William Savino.

"Like most families, these (insurance) in-laws tolerate each other and often are forced to deal with each other whether they like it or not," quipped Mr. Savino, who is with Rivkin, Radler, Bayh, Hart & Kremer in Uniondale, N.Y.

Mr. Savino discussed the problems that arise between primary and excess insurers in coverage litigation during the "Insurance, Excess and Reinsurance Coverage Disputes" seminar held last month in New York and sponsored by the Practising Law Institute.

Mr. Savino specifically referred to problems that arise when a primary insurer becomes insolvent, causing the policyholder to ask an excess insurer to drop down and pay claims that fall in the primary layer.

"Just as we may drop by our in-laws, these (insurance) in-laws often drop down for a visit," he quipped.

"We all have our limits. The exhaustion of these limits is critical in this (insurance) in-law relationship," Mr. Savino explained.

As with so many husbands and wives who find themselves in conflict with their in-laws, primary insurers and excess insurers also may find themselves in conflict, he said.

"Like with other families it is often hard to know how to act to avoid conflict," Mr. Savino said.

Relations between primary and excess insurers become particularly strained when the policyholder faces overwhelming liability, like a multimillion-dollar hazardous waste cleanup, he said.

Often policyholders in these cases seek coverage that spans decades. In such a scenario it is common for a primary insurer in one policy year to be insolvent or otherwise unable to pay claims. When this happens, the policyholder may ask that the excess insurer in that year drop down and pay claims unpaid by the primary insurer.

A "growing minority" of courts have held that exhaustion of the primary limits means something less than paying out the full policy limits, Mr. Savino said. Further, this rule could become a majority view in the 1990s, he predicted.

Another question involves whether an excess insurer has the ability to sue a primary insurer when the primary insurer fails to accept a reasonable settlement within policy limits, he said.

If the primary insurer does not agree to the settlement, a court can award a judgment that exceeds the primary layer, exposing the excess insurer to liability.

Just as there is no contractual relationship between married people and their in-laws, there is no contractual relationship between primary and excess insurers, he said. A legal question arises as to whether the excess insurer can sue the primary insurer in the absence of any contractual relationship between them.

"There is a trend to allow the excess insurer to sue the primary insurer directly even though there is no contractual relationship," Mr. Savino said. ■

Pollution cover

Continued from previous page

similar to the evidence that insurers used to show that Shell expected or intended the pollution.

For example, insurers found evidence that Shell employees routinely removed the carcasses of ducks killed by pollutants from the property.

Mr. Ostrager also said that it is irrelevant if the policyholder can show he may have expected to cause some environmental damage, but not all the damage that actually occurred.

If a person intends to shoot off his toe, but accidentally shoots off his entire foot, there is no coverage, said Mr. Ostrager by way of example. Although the person may not have intended to damage his entire foot, there is no coverage because he intended to cause damage. It does not matter that the damage actually caused was greater than the damage expected, he said.

"The cases properly hold that if you commit injury or damage from what you intend, you don't have insurance coverage," said Mr. Ostrager.

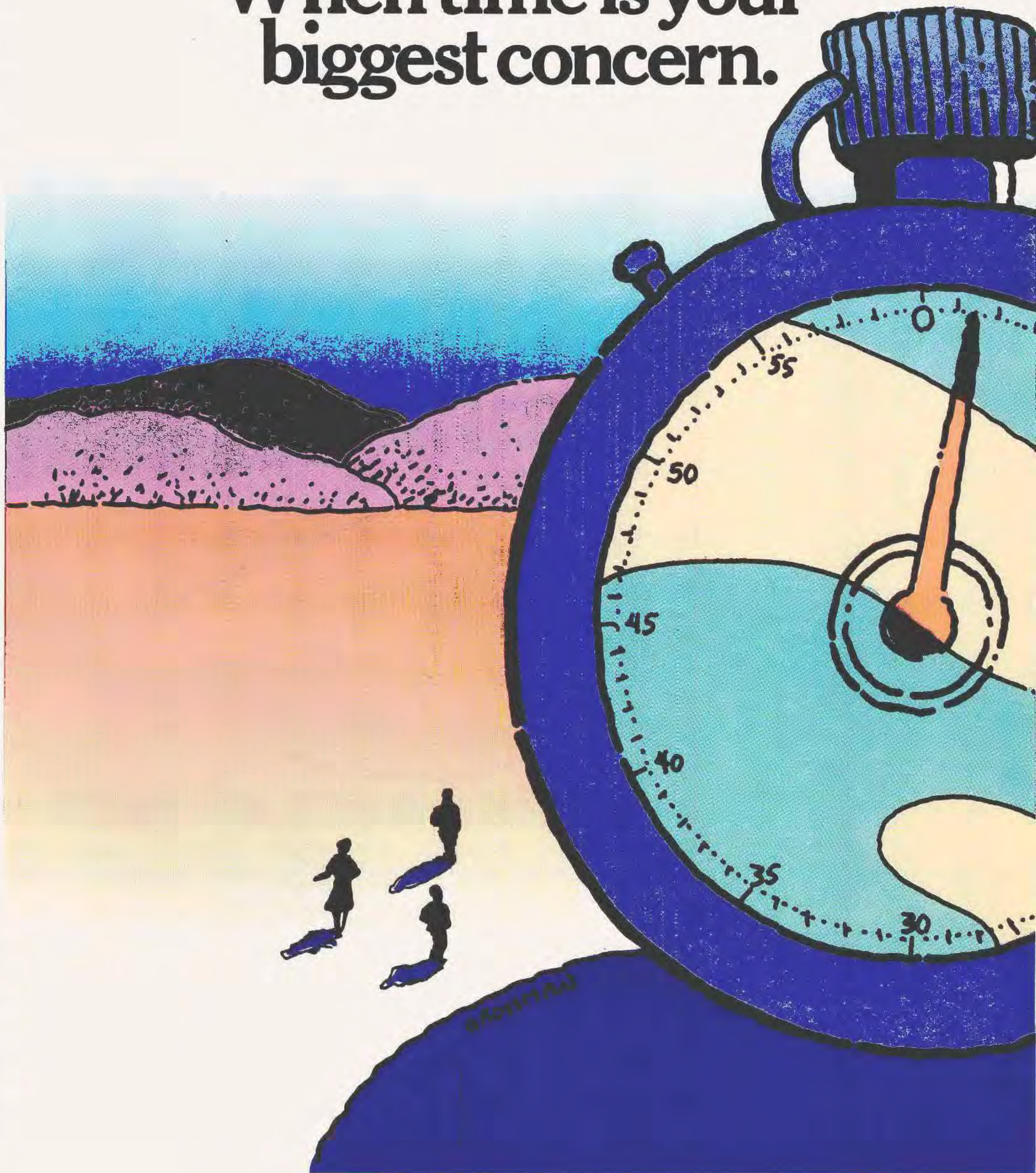
Another critical question in hazardous waste coverage cases is what constitutes an "occurrence" under the CGL policy, attorneys say.

Determining the number of occurrences is important because it affects the limits of coverage and the application of deductibles, explained Ms. Sullivan, noting that the CGL policy has per-occurrence limits and per-occurrence deductibles.

"If there is one uninterrupted cause of the damage then there is only one occurrence," she said. However, if there are many causes of the pollution, than there can be multiple occurrences.

For example, thousand of claims were filed due to exposure to Agent Orange, a defoliant used during the Vietnam War. Insurers for the chemical manufacturers argued that the production of Agent Orange was the single occurrence that gave rise to all of the claims. Manufacturers, on the other hand, argued that each spraying was a separate occurrence.

"The number of occurrences issue gives the court the opportunity to maximize coverage if it wants to," said Ms. Sullivan. By finding that multiple occurrences have taken place the court can give the policyholder access to increased coverage limits, she explained. ■



Work comp covers church 'volunteer'

Court finds 'employment relationship'

By LOUISE KERTESZ

SAN JOSE, Calif.—An indigent worker injured on the job is entitled to workers compensation benefits even though his employer—a private, non-profit religious organization—believed it offered him the work for charitable purposes, a California appellate court has ruled.

Any employee is covered by the workers compensation system if "an employment relationship exists," the court ruled.

How a worker or employer describes the worker's status is irrelevant when determining the actual status, emphasized Presiding Judge Walter Capaccioli of the 6th District Court of Appeals.

The Jan. 11 decision reverses an April 1990 ruling by the state Workers Compensation Appeals Board.

It also is the first decision on workers comp coverage for "charity" employees working for a private entity in more than 50 years, said Howard M. Levin, a San Jose attorney representing the injured worker.

Judge Capaccioli said the unanimous ruling was based on a 1981 state Supreme Court ruling that "an indigent person required to work in order to receive general assistance is entitled to workers compensation benefits."

The 1981 high court decision, involving Los Angeles County, "overruled a Depression-era decision finding workfare participants (are) not employees," Judge Capaccioli said.

In the most recent case, Thomas Hoppmann—described in the ruling as an indigent—furnished a written resume when he applied for work at the First Baptist Church of Cupertino.

However, he did not complete an employment application.

Before being injured, Mr. Hoppmann worked for 160 hours "alongside paid licensed contractors, unpaid church volunteers and persons like himself paid $5 an hour," according to court papers. No taxes were withheld from his wages, the papers said.

Mr. Hoppmann was paid partly from "a benevolent fund or assistance fund which was to be used for charitable purposes" and partly "from proceeds of a construction loan earmarked for church renovation," court papers said.

On April 7, 1987, Mr. Hoppmann "sustained multiple injuries when he fell off a roof while doing roofing work" for the church, the decision said. When he was admitted to a local hospital "in great pain," he described himself as a "volunteer" for the church, the appeals court said.

An employer cannot escape its duties by calling a hiring 'charitable,' the court says.

A workers compensation judge ruled in March 1989 that there was an employment relationship and that that relationship entitled him to compensation.

But, in a 2-1 decision, the Workers Compensation Appeals Board reversed that ruling on the grounds that Mr. Hoppmann was not a church employee.

However, the state appeals court reversed the workers comp appeals board decision. "It would make no difference what (Mr. Hoppmann) said or what (the) church believed, because the reality of the situation, not the parties' characterization of the relationship, controls the outcome," the court ruled.

"Where the traditional features of employment are present—consent of the parties, consideration for services rendered, and control of employer over employee—the presumption is employee status," the court ruled.

"The law confers employee status under the Compensation Act when an employment relationship in fact exists, and an employer cannot escape the obligations of such a relationship by characterizing his hiring of an employee as 'charitable,' by failing to report it to the Internal Revenue Service, nor by paying below-scale wages," the court ruled.

As a result of the decision, the church's workers compensation insurer, Maryland Casualty Co., must reimburse government agencies for Mr. Hoppmann's medical bills.

Mr. Hoppmann also will receive temporary disability payments of $112 a week beginning on the date of his injury and ending when his "condition is permanent and stationary," Mr. Levin said.

At that point, Mr. Hoppmann could receive "a small amount of permanent disability" payments and also may be eligible for vocational rehabilitation, Mr. Levin said.

The church paid $553 in workers compensation premiums on an annual payroll of $5,000 in 1987, when Mr. Hoppmann was hired, according to court papers.

The church will not appeal Judge Capaccioli's decision, said Paul Ko, an attorney for the church with Grey & Prouty in San Mateo. ■

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PRIMA appoints Wall as executive director

By MEG FLETCHER

ARLINGTON, Va.—A former hospital association executive is the new executive director of the Public Risk Management Assn.

Martin A. Wall joined the Arlington, Va.-based association of public entity risk managers last month after nearly nine years with the American Osteopathic Hospital Assn. in Alexandria, Va. He most recently was senior vp of the AOHA and previously handled governmental affairs for the association.

In addition, he served as a government relations representative for the American Hospital Assn. from 1978 to 1982.

"I'm impressed with PRIMA's leadership and staff and am excited about the prospect of contributing to the continued growth of the organization and the risk management profession," Mr. Wall said.

Although PRIMA has "a very different" orientation from the hospital organizations where he has worked, Mr. Wall said he sees risk management as an emerging and growing profession.

'I'm impressed with PRIMA's leadership and staff and am excited about the prospect of contributing to the continued growth of the organization and the risk management profession.'

—Martin A. Wall

Public entity risk managers face particular challenges because they seek to protect the myriad "human and financial resources" of a wide range of governmental entities, including municipalities, schools, transit districts and park districts, he said.

Mr. Wall said he would like to help develop a positive image of public entity risk management by emphasizing the impact a risk manager's duties have on the lives of individual citizens.

However, that task may be difficult because risk managers who do their jobs well typically don't get a lot of attention from the general public, he added.

Mr. Wall, 40, expects that his experience in managing associations and governmental programs will be useful to PRIMA.

Officials of the public entity risk management group agree.

Mr. Wall "possesses a broad background of skills and experience in association management that will serve PRIMA well in carrying forward our strategic plan and ensure PRIMA's continued growth and development as an association," according to PRIMA President Tom Phillips, risk manager for the city of Santa Monica, Calif.

Mr. Wall observed that PRIMA's membership is at an all-time high of 1,868, an increase of 12% from last year.

PRIMA's main membership includes 1,478 governmental entities and 121 risk pools. Among PRIMA's other members are 144 insurance industry members and 102 academicians.

PRIMA's growth is likely to continue, despite the economic slowdown, Mr. Wall said.

"When times are tough, risk management is a real asset," he said. It typically saves money, though that can be hard to quantify except through the use of statistics, he added.

Mr. Wall said he plans to continue PRIMA's emphasis on providing education and training opportunities for public entity risk managers through its conferences, seminars, publications, videos, legislative tracking services and risk management library.

In addition, Mr. Wall said he is looking forward to continuing PRIMA's "collegial" relationship with the New York-based Risk & Insurance Management Society Inc. and other groups that represent governmental finance and business officers.

Prior to working for the hospital associations, Mr. Wall began his career working for the federal government.

Mr. Wall was a legislative analyst for the U.S. Department of Health, Education and Welfare from 1976 to 1978; a staff member for the U.S. House of Representatives' Labor/Health, Education and Welfare Appropriations subcommittee from 1975 to 1976; management director of the President's Committee on Mental Retardation from 1974 to 1975; and program manager for the Veterans Administration from 1972 to 1974.

Mr. Wall holds a master's degree in public administration from American University in Washington, D.C., and a bachelor of arts degree from Ohio University in Athens.

Mr. Wall succeeds Bradley Johnson, who left PRIMA last year to join the public entity division of broker Sedgwick James Inc. in Columbia, S.C. ■

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Illinois employers offered 'no frills'

Group health plan offers 40% savings to small companies

By ADRIENNE C. LOCKE

CHICAGO—Blue Cross & Blue Shield of Illinois is the first insurer in the state to write a "no frills" group health care insurance plan for small employers.

Small employers under a new state law can offer a smaller benefits package than the insured plans large employers are required to provide.

Deductibles and out-of-pocket requirements are higher under the new "Blue Cross Basic" plan. But rates are about 40% lower than rates for other BC/BS small-group coverage, and those savings will allow more employers to offer health insurance, said Brian Van Vlierbergen, vp and general counsel in Chicago.

"We think the new Basic plan will significantly reduce the number of employees in small business who are now uninsured because they can't afford present group policies," he said.

Mr. Vlierbergen said he had no estimates on how many of the state's 600,000 working uninsured are employed by small companies.

The Small Employer Group Health Insurance Law, enacted late last summer, allows plans offered by firms that have 25 or fewer workers and have not provided health coverage in the last year to provide only basic coverage, including hospital and physician charges and the cost of mammograms for women over age 35 (*BI*, Sept. 17, 1990).

Those companies will be exempt from requirements to provide mental health and substance abuse coverage.

The law also allows insurers to offer incentives to workers to obtain health care from certain doctors or hospitals, but insurers may not require workers to obtain care from certain providers.

The new Basic plan covers:

- 70% of the cost of inpatient and outpatient hospital care obtained from a BC/BS of Illinois preferred provider organization and 50% of the cost of care obtained from providers outside of the network after deductibles.

The standard plan for small groups covers 85% of care obtained from network providers and 65% of the cost of care from other providers after deductibles are met.

- 70% of medical and surgical costs after deductibles, compared with 80% under the standard plan.
- 70% of emergency room care after deductibles, compared with 100% under the standard small group plan.

The policy also covers some benefits that the state no longer requires insured plans for small groups to cover.

For example, it provides $500 of coverage annually after deductibles for occupational, physical and speech therapy—half of the $1,000 annual coverage provided by the standard plan for small groups.

And, after deductibles, the Basic plan covers 70% of pre-natal care obtained from network providers and 50% of care obtained outside of the network.

"We haven't stripped away every possible mandate from the Basic plan that by law we could have," Mr. Van Vlierbergen said.

Like the standard plan for small groups, the new plan:

- Caps lifetime benefits at $1 million.
- Applies a one-year waiting period for pre-existing conditions.
- Requires pre-approval for elective hospitalization.
- Requires notification within two working days for emergency and obstetric admission.

The new BC/BS of Illinois Basic policy for small employers requires sharply higher deductibles and out-of-pocket expenses than the insurer's standard plan for small employers requires.

Basic plan deductibles are $1,000 for individuals and $3,000 for families, compared with $100 and $300 under the standard plan.

The new plan caps annual out-of-pocket expenses at $7,500 for services obtained from the BC/BS of Illinois PPO but does not cap out-of-pocket expenses for services obtained from providers outside of the network.

BC/BS had over 150 inquiries before noon the first day the plan was advertised, says Mr. Van Vlierbergen.

Standard small-group plans cap annual out-of-pocket expenses at $750 for services obtained within the PPO and at $8,750 for care from other doctors.

However, premiums for the Basic plan are much cheaper than premiums for standard BC/BS of Illinois small group plans.

For example, the monthly Basic plan premium for a 25-year-old single male is approximately $57, compared with $96 under the standard plan.

Basic coverage would cost a 25-year-old single mother $100 a month, compared with $170 under the standard BC/BS small group plan.

And, a 50-year-old woman would pay $123 under the no-frills plan, compared with $208 under the standard plan.

Response to the Illinois plan has been encouraging, Mr. Van Vlierbergen said.

On the day BC/BS began advertising the plan, its Chicago office received more than 150 telephone inquiries before noon, he commented.

BC/BS hopes to begin processing applications for the plan this month.

Six other states—Florida, Kentucky, Missouri, Rhode Island, Virginia and Washington—allow small employers to offer pared-down group health plans, the insurer says.

The BC/BS plan in Virginia offers a no-frills policy, and Blues plans in four of the five other states—except Florida—plan to offer similar policies soon. ■

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McLane named CEO of Aetna Health Plans

James W. McLane, a senior vp for global insurance with Citicorp, has been named the first chief executive officer of Aetna Health Plans effective early this month.

Last year Aetna Life & Casualty Co. of Hartford, Conn., consolidated its group health benefits and services under the name Aetna Health Plans.

Mr. McLane will report to Edmund F. Kelly, the Aetna senior vp who had been in charge of the health plans unit.

Other insurer changes:

Dodson Insurance Group, a holding company in Kansas City, Mo., announced these changes: **George W. Elkins**, who had been vp-underwriting, named to the newly created position of vp and chief underwriting officer; and **James C. Cook** named to the newly created position of vp-research and development.

Comings & goings: industry

Dale V. Hawk, formerly vp and regional manager of a Farmers Group Inc. office in Texas, named vp-underwriting at the insurer's Los Angeles headquarters.

Kemper National Insurance Cos. of Long Grove, Ill., announced these changes: **Thomas D. Weaver** elected a vp of American Protection Insurance Co., a Kemper subsidiary, and named highly protected risk manager of the Kemper Northeast commercial lines operation based in Braintree, Mass.; and **Timothy P. Murphy** also elected vp of American Protection and named highly protected risk manager for the Kemper commercial lines office in Overland Park, Kan.

Thomas Shea promoted to vp with New York Life Insurance Co. He is to coordinate efforts to market 401(k) plans to small and mid-sized companies.

Stephen T. Chambers named vp and manager at the Cranbury, N.J., headquarters of Continental International, a Continental Corp. unit. He is responsible for all marine insurance operations outside North America for Continental International & Marine Office of America Corp., another Continental unit.

Northland Insurance Co. of St. Paul, Minn., announced these promotions: **Daniel J. Zaborsky** promoted to senior vp from vp-finance; **Randall D. Jones** promoted to senior vp-commercial lines marketing from vp-specialty lines; and **Barbara L. Sutherland** named vp and assistant secretary-corporate legal.

Gary P. Lia named senior vp-administrative at Liberty Mutual Insurance Co. of Boston.

Reinsurance

Societe Commercial de Reassurance of Paris announced these changes: **Craig Johnson** named vp and manager of alternative risk with SCOR Reinsurance Co. of New York; **Daniel Brooks** appointed president of two other SCOR U.S. units—Unity Fire & General Insurance Co. and General Security Assurance Corp. of New York. He succeeds Jean Masse, named president of UAP Re, a SCOR Group company.

Gisela Brooks named vp in New York with the U.S. branch of Great Lakes Reinsurance Co. of Toronto.

Demarest S. Newman joined G.L. Hodson & Son Inc., a reinsurance intermediary in New Hyde Park, N.Y., as executive vp and assistant national production manager.

Michael J. Tyrrell promoted to vp in the treaty property department of Prudential Reinsurance Co., a Prudential Insurance Co. of America unit in Newark, N.J.

Willard T. Donnelly named manager of treaty operations with Mariner Management Group Inc. of Ridgewood, N.J.

David K. Bradford named senior vp and head of the new products department with Reliance Reinsurance Corp., a Reliance Group Holdings Co. unit in Philadelphia.

Agents/brokers

Alexander & Alexander Services Inc. named four global managing directors: **Lawrence E. Burk**, formerly director for the Eastern United States, appointed director of business development; **N. Christopher E. Caton**, formerly chief operating officer of a Canadian subsidiary, appointed director of client service; **Robert J. Murphy**, formerly director of the U.S. national marketing group, appointed director of specialty groups and risk management consulting; and **Robert C. Nevins**, formerly director of U.S. national target accounts, appointed director of marketing. All four will report to Ron W. Forrest, senior vp in charge of global business operations and based in London.

David R. Bledsoe named vp of Health Providers Service Co., a brokerage subsidiary of the American Hospital Assn. in Chicago.

Johnson & Higgins announced these changes: **Robert O. Collins Jr.**, branch manager of the Louisville, Ky., office, elected senior vp of J&H in Louisville; and **James B. Meathe**, manager of the Grand Rapids, Mich., office, elected senior vp of J&H of Michigan.

John C. Oliver named vp of the claims management services division of Sedgwick James Inc. in Chicago. He had been the division's Southwest regional director.

Robert M. Pryor, former president of the Sedgwick James Inc. office in Houston for eight years, joined Poe & Associates Inc. as managing vp of the Houston office.

Affiliated Insurance Consultants Inc., a brokerage and financial services firm in Burr Ridge, Ill., announced these promotions: **Gregory F. Gilbertson** named vp of the commercial trucking accounts division; and **Thomas G. Klehr** named vp of the commercial property/casualty division. ■

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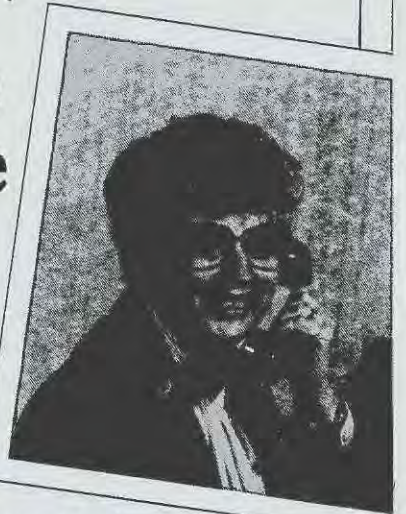

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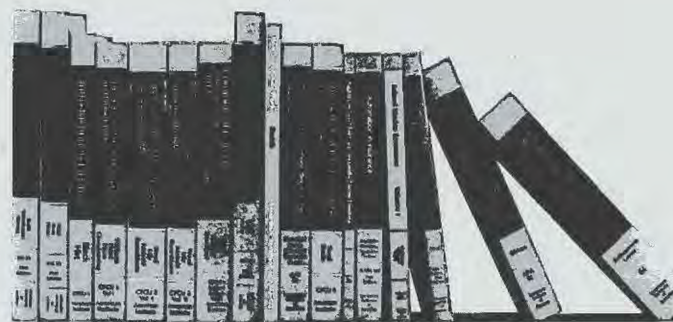

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Report COBRA violations: GAO study

By ADRIENNE C. LOCKE

Washington

WASHINGTON—The Internal Revenue Service and the Labor Department must do more to ensure that alleged employer violations of COBRA benefit continuation provisions are reported to the IRS, a report by the General Accounting Office says.

The GAO says that while the IRS provides information to those asking about the sanctions for violating the benefit continuation provision in the Consolidated Omnibus Budget Reconciliation Act of 1985, it provides no information to individuals denied benefits on what action they can take.

"The informational material does not suggest that persons who believe they have been improperly denied benefits notify (the) IRS so it can consider imposing tax penalties," the report by the GAO said.

Employers that do not properly extend COBRA benefits can face civil action from the Labor Department. In addition, a $100 a day excise tax per beneficiary can be levied by the IRS for each violation.

Under COBRA, employers with 20 or more employees that offer group health care plans are required to offer the option of continued coverage if certain qualifying events occur, like the death of the covered employee or divorce. Benefits also can be extended for job loss except in cases of gross misconduct. Generally, coverage is provided for 18 to 36 months, depending on the qualifying event. The amount an employer can charge for the coverage is capped at 102% of group cost.

Those who need more information on possible COBRA violations are referred to the Labor Department by the IRS after being told that "failure to comply with COBRA requirements may violate the Employee Retirement Income Security Act," which is administered by the Labor Department and the IRS, the GAO report says.

The GAO says that between November 1986 and June 1989, the IRS has received more than 8,000 telephone calls and responded to more than 1,300 inquiries regarding COBRA violations.

The Labor Department estimates more than half of the 42,000 telephone calls it received between July 1989 and March 1990 and the nearly 3,500 letters it received between October 1988 and April 1990 on ERISA matters involved COBRA benefits, according to the report.

The GAO says the Labor Department has identified 590 instances between October 1988 and March 1990 where it has helped people obtain COBRA benefits.

However, the report also says the department will not take enforcement action unless more than one beneficiary is involved.

For example, in a case involving one beneficiary, the Labor Department advises that person of his or her right to sue but takes no action itself against the employer.

The department has taken legal action in two cases, both involving several beneficiaries:

- In December 1989, Eastern Airlines Inc. agreed to more quickly notify striking and laid-off workers of their eligibility for COBRA benefits (*BI,* Jan. 8, 1990).
- A federal court ruled in February 1990 that Dayton-Hudson Corp. and a former subsidiary must reimburse former employees for medical expenses incurred when the company prevented them from purchasing COBRA coverage (*BI,* April 9, 1990).

When the IRS becomes aware of possible COBRA violations, the cases are sent to district offices, which decide whether to pursue them further.

The IRS says that from the time COBRA was enacted in 1986 until April 1990, it has referred 95 cases to the regional offices. In that time, only one examination had been completed, while examination of five other cases has begun, the report says.

New deferral limits

Employees can defer up to $8,475 to their salary reduction plans this year, up from the 1990 limit of $7,979, the Internal Revenue Service has announced.

In addition, the maximum annual benefit that can be funded through a qualified defined benefit plan will be $108,963, up from $102,582.

However, the current $30,000 per-participant limit on annual contributions to a defined contribution plan remains unchanged.

In addition, for non-discrimination testing purposes, highly compensated employees will be considered as those earning at least $60,535 in 1991, up from $56,990 in 1990, the IRS said.

Insurance issues

Property/casualty insurance-related issues will not be a priority of the 102nd Congress, but they will not be forgotten either, says an insurance trade group.

Insurer solvency, repeal of the McCarran-Ferguson Act of 1945 and product liability reform remain on several federal lawmakers' agendas, according to David M. Farmer, vp of federal affairs at the Alliance of American Insurers.

However, "insurance will take a back seat" to more dominant issues, such as the war in the (Persian) Gulf, the federal budget and campaign reforms, Mr. Farmer said at an Alliance media briefing last month.

Mr. Farmer considers solvency regulation the No. 1 issue for the insurance industry.

Others have advocated a federal role in insurer solvency regulation, but Mr. Farmer thinks Congress' current role of "showing the path" to states is sufficient.

"Congress has performed a very valuable role in having these hearings and investigating some of these insolvencies," he said.

The Alliance encourages improving regulatory oversight, but the group is firmly believes that insurance regulation should be handled by the states, he said.

However, states will have to convince Congress that they can adequately do the job, he said.

"The burden of proof is purely on the states to prove that regulators are able to properly regulate the insurance industry. State regulators should spend more time concentrating on solvency rather than pricing regulations," Mr. Farmer said. "The market should determine the price."

The Alliance also is preparing to fight newly introduced legislation that would repeal most of the McCarran-Ferguson Act, the federal statute that gives insurers limited immunity from federal antitrust laws and gives the states primary responsibility for insurance regulation (*BI,* Jan. 21).

Mr. Farmer said the Alliance is united in its position to oppose changes to McCarran-Ferguson.

The group is now trying to find out why the bill's supporters want to amend McCarran-Ferguson, Mr. Farmer said. "If the answer is to reduce the cost of insurance, then we will not change our position," he said.

"McCarran-Ferguson has nothing to do with the cost of insurance —underlying loss costs drive the cost of insurance," Mr. Farmer said.

Another ongoing battle in Congress is the attempt to pass federal product liability reform legislation.

However, Thomas A. O'Day, associate vp at the Alliance, said that chances remain "pretty slim" that renewed efforts on behalf of a federal product liability reform bill will get much farther this year than in previous years.

"The odds are against them doing much this Congress, but they will make a good effort," he said of the bill's supporters.

Proponents of federal product liability reform in the Senate hope a bill will clear the Commerce Committee and be ready for floor debate by mid-1991.

The proposal, though, faces

Continued on next page

Added exposure — the March 4 issue will be distributed at the International Captive & Reinsurance Forum in Bermuda.

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Something to lean on

An old standby may help agents in tough times

By LAURA MAZZUCA

Fears of a recession have insurance agents turning to an old ally.

Sales of life insurance and financial planning services, which have helped carry many property/casualty agencies through the soft market, may also prove to be their ticket to surviving an economic downturn.

Cash-strapped companies are expected to put off raises by bolstering employees' benefits. Some firms will opt for low-cost benefits like payroll-deduction life policies. And nervous families are expected to seek financial shelter.

These and other factors will help agencies offset lost property/casualty revenues, say veterans of earlier recessions. Some even predict boom times for well-positioned agencies.

More property/casualty agencies than ever have begun offering life insurance and, to a lesser extent, financial planning services in recent years. Such sales can help retain clients and meet volume requirements set by insurers (*A/BT*, Dec. 4, 1989).

By supplementing declining property/casualty revenues, these specialty sales can also help smooth out a recession's rough edges, experts believe.

"The sale of life and benefits will be an earmark of the property/casualty survivor in the near future," said Dave Goodwin, president of Dave Goodwin & Associates, an agency consultant in Surfside, Fla.

Agents can actually profit in a recession by capitalizing on customers' uneasiness, he said. He recommends both selling new coverages and offering to upgrade old ones.

Mr. Goodwin and others believe that recession will first be felt by commercial property/casualty coverages. Profits from life insurance and related sales could help soften that blow.

He pointed out that disability claims rose significantly during the Great Depression. Suddenly unemployed, many people tried to tie the condition to sickness or accident.

He predicts a worsening economy will bring more arson, burglary and other crimes. Property/casualty loss ratios will rise and contingencies drop to reflect this rise, he said.

To offset these losses, and to tie valued commercial clients closer to the agency, producers will turn to life and benefits sales, experts say.

"To me, the agency that's going to survive is the one that's going to keep up its relationship with both the insurers and the clients, and one that will keep marketing," said Julian A. Zander, president of Zander Insurance Agency in Nashville, Tenn.

Most of its life/health business, which now comprises about 12% of agency profits, came directly from commercial clients. "That business is just lying out on the street," said Mr. Zander.

As recession sinks in, commercial clients will put off raises. Instead, they may offer more and better group life and health coverage to employees, he added.

Recognizing this, more independent agents are offering those coverages both to satisfy client needs and to keep competing producers at bay, said Catherine C. Oak, senior consultant at Russell Miller Inc. in San Francisco.

Businesses' renewed focus on frugality in a recession will also increase the popularity of payroll deduction life insurance and other benefit programs in which employees fund their own benefits.

At Zimmerman & Co. in Liberal, Kan., "mom and pop" employers are asking about offering universal life to employees through a payroll deduction program, according to Max Zimmerman, the agency president.

"I look for this to be a growing area, because it's something an employer can do at very little cost," he said (see story this page).

But the old tried-and-true indi-

Continued on next page

Need for stability also spurs life sales efforts

By LAURA MAZZUCA

A recession may be the primary reason for renewed agent interest in selling life insurance and financial planning services. But it's hardly the only reason.

Ongoing market changes, like company withdrawals, also are playing a major role.

As more commercial property/casualty insurers pull out of markets and lines of business, independent agents will have to develop other specialties to pick up the slack. Life/health insurance and benefit products will become increasingly popular alternatives, predicts the National Assn. of Professional Insurance Agents.

At Smith-Field Insurance Agency in Alexandria, Va., principals recently agreed to boost group life insurance sales to protect against fluctuations in other lines, said Steven R. Bourne, director of employee benefits.

"The financial services division of our agency is counted on more and more," according to Mr. Bourne. "We're really expected to pull a lot of weight."

Fierce competition among agents also will make life insurance and other benefit products more attractive to small to medium-sized agencies determined to remain independent and survive, said Franklin duBois Jr., director of the marketing consultation group of the Life Insurance Marketing & Research Assn. of Hartford, Conn.

From 1979 to 1989, the number of independent insurance agencies fell by 40% to 45,000 from 75,000, according to Mr. duBois. He attributes much of the decline to large agencies and brokerages buying out smaller ones.

Even after that consolidation, only 20% of independent agencies have total premium volumes exceeding $4 million, he said, citing statistics from the Independent Insurance Agents of America.

To survive, smaller independent agencies must remain keenly competitive, he said. Selling life/health insurance and financial services is one way to do so.

"The key for survival in the '90s will be definition and execution of service," Mr. duBois said.

Using life and financial services sales as a hedge against a fluctuating property/casualty market is nothing new.

Before the current soft market, agents scurried to meet high demand for universal life policies. High interest rates attracted investors to life insurance for the first time during the go-go mid-1980s.

And while some consultants and producers say that universal life insurance's popularity with producers has "bottomed out" because of low commissions and heavy servicing requirements, others say it is as popular as ever with customers.

In addition, while interest-sensitive investments and securities have fallen into disfavor with producers, in part because of the 1986 tax laws, consumer interest has not abated, agents and brokers report.

When they are organized efficiently, life/health sales departments can improve premium production, raise client retention rates and allow agencies to be full-service representatives, according to Mr. duBois of LIMRA.

But these products are not trouble-free, he pointed out.

Commercial agents are often too busy servicing existing accounts to properly market life insurance or similar products. More importantly, agents frequently do not understand these products, he said.

According to LIMRA, property/casualty agents accounted for less than 5% of all life insurance sales in the United States and Canada. "And that number hasn't changed very much in the last 10 years," Mr. duBois said.

Low commissions, especially for renewals, are one reason for the low number. Many property/casualty agents also perceive life insurance as difficult to sell and service.

Competition also exacerbates the decline in interest, as many life insurers are reducing premiums and cutting agent commissions,

Continued on next page

Recession

Continued from previous page

vidual life and health sales also can help an agency in hard times.

"I've been through four recessions and, during each, life sales were strong because people become more concerned with protecting what they've got and their family's lifestyle," said Glenn D. Scott, president of Glenn Scott Insurance Inc. in Portland, Ore.

Because group coverage tends to be "a volatile, high handling type of account," he advertises individual universal and term life coverage. Phone inquiries average about 10 a week and "we even sell it over the fax machine," he said.

Especially in hard times, Mr. Scott said, client retention is far more important than commissions.

"I'll drop anything I'm doing and drive through the snow anytime to write a life policy on a property/casualty client," he said. Even if it's only a "cheapo term policy, over the long run it will benefit the agency," he added.

Individual life policies are not strictly small potatoes, though.

At Richards & Fenniman Inc. in New York, individual life policies for executives of key commercial clients start at $1 million, said James A. Fenniman, the agency's president. And, he said, they can run up to $10 million or higher.

Returns can be substantial. Premiums and commissions on this coverage vary, depending on the type of insurance sold, the insurer, and the agency contract. At Mr. Fenniman's agency, individual life premiums generally range from $10,000 to $50,000, with first-year commissions for the agency between 40% and 70% of the premium, he said.

About five years ago, Richards & Fenniman adopted personal lines and life insurance sales to insulate itself from swings in the commercial property/casualty market. "It certainly has worked," he added.

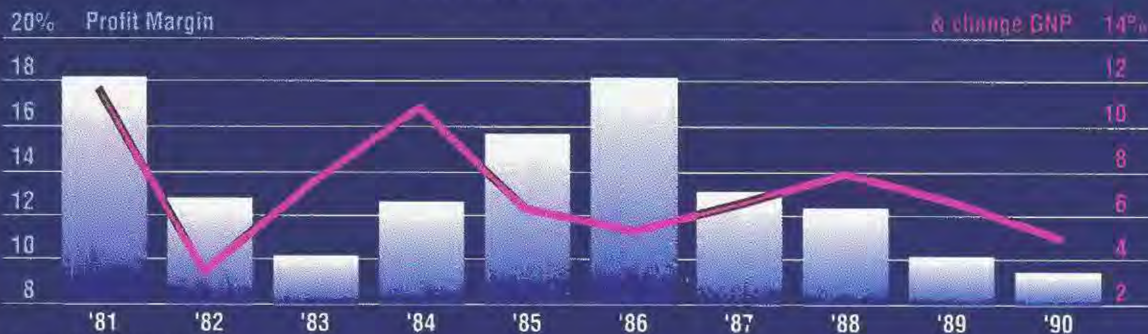
Life and benefits sales now account for 20% of agency revenues.

In spite of—or maybe because of—the recession, Mr. Fenniman's executive clients are interested in "bonus-type," interest-sensitive insurance products. Those include large disability income policies and large term life policies.

In a recession, "the sales are still going to be there; it just might be a tougher sale," he said. ■

How major brokers fare in hard times

For a group of seven major public brokerages, profit margins often rise as GNP growth slows. 1990 figures are for three quarters.



GRAPHIC BY CYNTHIA WATSON

Life sales

Continued from previous page

said Dave Goodwin of Dave Goodwin & Associates, an agency consultant in Surfside, Fla.

Figures from the national agent trade groups tend to bear this out. Most members of the IIAA and the PIA sell some life insurance. But profits from individual life and health policies comprise a negligible portion of agencies' total books of business (*A/BT*, Dec. 4, 1989).

Commission structures for individual life sales vary widely, depending on the insurer, its agency contract and the type of coverage.

Other factors affect commissions on group life and health policies.

According to a monograph published by the Academy of Producer Insurance Studies, group life commissions vary according to how involved an agency becomes in its clients. For example, when agents sell group policies to a company, fully participate in pre-enrollment employee communications and enroll participants, they may receive the entire commission.

Agencies that both sell and service personal lines coverage may get 10% to 15% commissions on the sales, but only half of that on renewals, says the Insurance Marketing & Managing Services, an agency group in Santa Monica, Calif.

Individual life commissions are typically high the first year—from 55% for insurers licensed in New York, where state law caps commissions, to more than 100% in other states, said Mr. Goodwin. That rate, however, tends to drop dramatically on renewals—in general, to 5% to 8%, he said.

But recently, several Canadian life insurers, led by Mutual of Canada, have adopted life commissions of about 15% to 20% that remain constant from the first year throughout subsequent renewals, said Mr. duBois of LIMRA.

Group life commissions tend to be lower—10% to 20% of premiums—but they generally stay constant through renewals, he said. And group medical, which requires more servicing than life, usually generates 10% to 12% commissions in both first year and at renewals, Mr. Goodwin said.

But for agencies that sell life insurance and other benefits, commissions often are a secondary consideration. More profits can be generated for the agency that offers clients other benefits—such as disability insurance, 401(k) plans, profit-sharing arrangements and other benefits, said James Fenniman, president of Richards & Fenniman in New York. "You can't throw enough benefits at people today."

Only 6% to 10% of total agency revenues generally comes from life/health insurance sales. But the new enthusiasm for benefits could increase that figure to 20% in the near future, said Catherine Oak, a senior consultant with Russell Miller Inc., a consulting firm in San Francisco.

Yet most brokers and agents cite increased retention as the greatest benefit from selling life and health policies.

"The main thing they're looking for is client control," said Edwin P. Morrow, chairman of the board of Confidential Planning Services Inc. in Middletown, Ohio, which advises commercial producers on adding life/health sales.

Concern over losing customers, said Mr. Morrow, is what motivates commercial insurance agents to offer other financial services. "Anything that lets an existing client become dependent on another firm becomes a threat" to commercial agents, he said.

"I would recommend (adding financial services) to anybody, because it ties your clients to you," agreed Wes Bailey, president of Bailey Insurance & Financial Services in Waco, Texas. The agency established financial services as a separate corporation in 1987. Revenues for the financial services unit were about $363,000 in 1990, he said, up from $278,000 in 1987. The unit projects 1991 revenues of $415,000, Mr. Bailey said.

Revenue growth is not the only advantage to an independent agent expanding its offerings.

Services from Bailey's financial services division—including group and individual health, annuities, mutual funds, stocks and certificates of deposit—allow the agency to develop new property/casualty clients and to round out its offerings to property/casualty customers, said Mr. Bailey.

Mr. Fenniman of Richards & Fenniman credits individual life insurance sales for his agency's 95% retention rate. Those retentions, he said, have been invaluable throughout the soft market. "Even though the last two years have been tough, they haven't been deadly," he said. ■

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Born of necessity, life sales now agents' choice

By LAURA MAZZUCA

Many property/casualty agencies originally added life and health divisions for a simple reason: They had to.

That move is now paying off handsomely for many through higher profits and retentions and better customer relations.

And since there are several ways to do it, agencies can offer options like financial planning, life or health policies and employee benefits products, and still remain within their financial means, consultants say.

Why were many agents forced to expand their offerings?

Some were pressured by insurers to increase life insurance sales. Others say they were concerned about client retention or just wanted to insulate their business from a volatile property/casualty market.

"We were getting pressure from our regular companies to produce life business, and we felt the handwriting was on the wall," said Julian A. Zander, president of the Zander Insurance Agency in Nashville, Tenn. "That was really the motivation."

Like other agents, he also wanted to protect his business from fierce competition in the Nashville area.

What often started out as an emergency measure has become an integral part of the agency's business.

Building life business is not an easy task, noted Dave Goodwin, president of Dave Goodwin & Associates, an insurance consultant in Surfside, Fla. Starting up a new division requires a commitment by the whole staff, no matter what method is used, he said.

"It takes commitment and good management, not just a selling job," Mr. Goodman stressed.

Depending on their size and revenues, agencies have several options.

Some agencies contract with existing financial planners. Other firms may send an employee to school for a professional designation, such as the Chartered Life Underwriter, the Chartered Financial Consultant or the Chartered Financial Planner (see story, page 20G).

Still others create an entire department staffed by financial planners, said Edwin P. Morrow, chairman of the board of Confidential Planning Services Inc., an agency consultant in Middletown, Ohio.

Starting up a life/health or financial planning division will cost an agency at least a few thousand dollars, Mr. Morrow said. And, agencies that want an expert financial planner can spend up to $100,000, including clerical staff, office space and computer equipment.

Though expensive, many agents say the investment eventually will pay off.

With start-up costs high and commissions generally lower for life than for commercial property/casualty policies, "They'll definitely lose money the first year," Mr. Morrow said. "But, by the third year, they should be turning a profit."

Success did not come easily when Bailey Insurance & Financial Services launched a financial services division in 1986.

"It took about 18 months before we broke even," said Wes Bailey, president of the Waco, Texas, agency.

The division initially was composed of one life/health agent and a clerical aide. Lower commissions on life and health sales slowed early growth, Mr. Bailey pointed out.

The division, however, gradually gained strength and added a licensed securities broker and another agent who now handles nothing but life sales.

Producers are compensated through commissions only, and Mr. Bailey, as an officer and partner of the division, draws a salary contingent upon its net income.

Annual revenues for the division now run about $375,000. That, says Mr. Bailey, is a nice addition to the property/casualty agency's $14 million in annual revenues.

After losing several customers to competitors in the early 1980s, R.C. Knox & Co. Inc., a Hartford, Conn., agency, set up its life and benefits division. It now accounts for about $10 million in annual premiums, almost 10% of the agency total, said Jeffrey R. Partridge, assistant vp and head of the life and employee benefits division at Knox.

Another factor in the decision to launch the division was pressure to increase life sales to meet preferred agency requirements set by leading property/casualty insurers, said Mr. Partridge.

For instance, Aetna Life & Casualty Co. requires a minimum of $28,000 in first-year commissions on life business, while units of Hartford Insurance Group seek $18,000 in commissions, Mr. Partridge said.

Several earlier forays into life insurance sales had failed. One agent already handled both life and property/casualty policies, so Knox specifically hired a "group insurance gun," he said. Mr. Partridge himself was hired in 1987 and a third producer was added late last year.

Only after about seven years did the life division begin regularly turning a profit.

But even when it was losing money, the life insurance division referred property/casualty customers to the agency, Mr. Partridge said.

The division markets various life products, as well as disability insurance and employee benefits like dental and medical, pension plans, profit sharing, payroll deduction products and annuities. Besides Aetna and Hartford, products are provided by insurers like Travelers Corp., Manufacturers Life Insurance Co. of American in Toronto, Paul Revere Life Insurance Co. and CIGNA Corp., he said.

Knox employs no financial planners, but can contract with one if clients want such services, Mr. Partridge said.

He attributes the division's strong performance to a solid relationship between the agency's life and property/casualty producers.

Continued on next page

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Adding life sales

Continued from previous page

"It's that kind of cooperation that breeds success," he said.

Despite its apparent success for Knox, Mr. Partridge warned that hiring life insurance agents and setting up a separate division can be expensive and take a long time. It's not for smaller agencies, he cautioned.

Mr. Morrow of Confidential Planning Services agreed, recommending that smaller agencies contract with a financial planner or life producer rather than hire or train their own personnel.

And, while sending a property/casualty producer to school to get a professional life or financial planning designation may cost less than hiring a seasoned pro, it still is a costly undertaking, Mr. Morrow said.

Tuition and books alone could cost $2,500, as could sending the employee to conferences and workshops, he said. Add to that professional dues, at about $500 per year, and $3,500 or so worth of computer equipment for marketing and cross-sales, and you're talking big money, Mr. Morrow said.

However, contracting with an outside expert—being careful, of course, to outline the specifics of the working relationship in writing—costs an agency virtually nothing, he said.

Its major outlay would be a few thousand dollars to test the waters, he said. A "fairly aggressive" direct mail campaign could tell commercial customers about the financial planning services and assess the customers' interest, Mr. Morrow said.

No fees are shared in such an arrangement, he said. Instead, the planner could take, for example, all commissions from securities and disability sales, with the agency in return getting all life and commercial referrals, Mr. Morrow said.

Just getting qualified customers in the door is a lot of work, he said. "The financial planning firm will send you a customer, and then you've got them and their whole book of business. It's a win-win proposal for all parties."

If both sides find the arrangement satisfactory, the financial planning firm can even send a professional to work out of agency offices under the same terms, Mr. Morrow added.

Outside contracting remains one of the most common ways for commercial agencies to expand the services they provide. But it's not universally praised.

It's a "cop-out," charges Mr. Goodwin of the Goodwin & Associates consulting firm. "Even smaller agencies are big enough to support a full-time, in-house life producer, as long as he gets a lot of leads."

Mr. Goodwin

Many life insurance producers don't understand the long-term relationships between a property/casualty agent and customers.

"It goes against the basic training of a life agent," who is trained to sell new policies or die, he said. That difference in approach creates the possibility that a life agent would "burn" a valued property/casualty customer for the sake of a one-time sale, Mr. Goodwin said.

Even that pales in comparison to problems that can arise when the producers part company. Unless their contract spells out commission structure, referrals from leads, control of renewal business and other specifications, real trouble could arise, he warns.

Some creative agencies try to finesse the addition of a life insurance producer or financial planner by creating hybrid arrangements.

Malloy Insurance Agency Inc. of Medway, Mass., for example, has three employees and less than $1 million in annual premium volume, noted Edward Malloy, president of the property/casualty agency. However, Malloy has successfully linked up with a local financial company that increases referrals to both firms.

Richardson & Richardson specializes in tax preparation, while also offering financial planning services and investment advice, said Mr. Malloy.

Since Richardson & Richardson also owns shares in the insurance agency, there is not a formal, contractual arrangement between the two, said Mr. Malloy. "It was a natural tie, a nice referral system," he said.

Unlike similar referral systems in place at many other agencies, though, Malloy and Richardson & Richardson have no set formula to determine which business gets the commission; rather, it depends "on who does most of the work," Mr. Malloy said.

About 40% of agency revenues now come from referrals from Richardson & Richardson, Mr. Malloy estimates.

Referring customers to the financial planners definitely gives the agency an edge in the very competitive local market, says Mr. Malloy. "It's a door-opener, if nothing else."

When it comes to motivating agents, such non-contractual systems are clearly superior, Mr. Goodwin contends.

Agencies that do opt for outside contracting must be very careful in choosing life insurance agents or financial planners, experts agree.

"There are problems if you don't recruit the right people to do this; that's where most agents fail," Mr. Bailey said.

When establishing his financial planning division, Mr. Bailey recalls, he was careful to hire "people we already knew in the community." Baylor University in Waco and other nearby schools offered a good local employment pool, he noted.

Mr. Bailey

But sometimes even promising relationships go sour.

At the Zander Agency in Nashville, Tenn., President Julian A. Zander eventually wanted to turn over the life/health reins to his son. But when he set up a separate life/health corporation eight years ago, the son was still in training, so another producer was hired to head the unit.

Problems arose quickly. The new agent, recalls the senior Mr. Zander, preferred the higher commissions offered by life insurers to the ones offered by the multiline insurers that were pressuring the agency to increase sales. He eventually left the agency.

Today the agency, with $5 million in annual premium volume, markets term insurance, universal life, pensions, deferred compensation, and "anything that anybody else can do," he said. The division, which is now run by the younger Mr. Zander, is no longer a separate corporation and now generates about 12% of the agency's total revenues.

And, since multiline insurers have improved life rates and coverages recently, their products are more competitive and selling well, he said. "We had to grow as they grew."

At least one principal warns that, occasionally, a new agent can be overqualified.

"Less is more" has been the password for life sales at Glenn Scott Insurance Inc., said Glenn Scott, president of the property/casualty agency in Portland, Ore.

Five years ago, when the $1.4 million annual premium agency launched an in-house life/health division, five full-time customer service representatives marketed life/health products. Today there is only one. That reduction in headcount is in spite a 28% rise in total volume in 1990, Mr. Scott said. He credits stable accounts, profitable business and efficient computer marketing for the increased productivity.

Two qualified financial planners were also on staff at one time. But rather than being an asset for the agency, they shunned the basic life policies that its customers wanted. "It was beneath their dignity to write a plain Joe policy," said Mr. Scott.

The financial planners left "for greener pastures" last year, he said; today only Mr. Scott sells life insurance. But life/health now generates 20% of total agency revenues, he said. He attributes this success to selling what customers really want and need.

"Anytime you get away from selling the need, you're lost," he said. "You've got to focus on the need of the customer, not the needs of the agency."

Some 95% of life sales, he adds, are for individual term policies "for people who are buying to protect their families," not for investment income.

Regardless of whether an agency contracts for outside help or hires someone in-house, overpaying life insurance producers and financial planners remains a concern for agency principals.

Mr. Goodwin cautions against giving life insurance agents a sal-

Continued on page 20F

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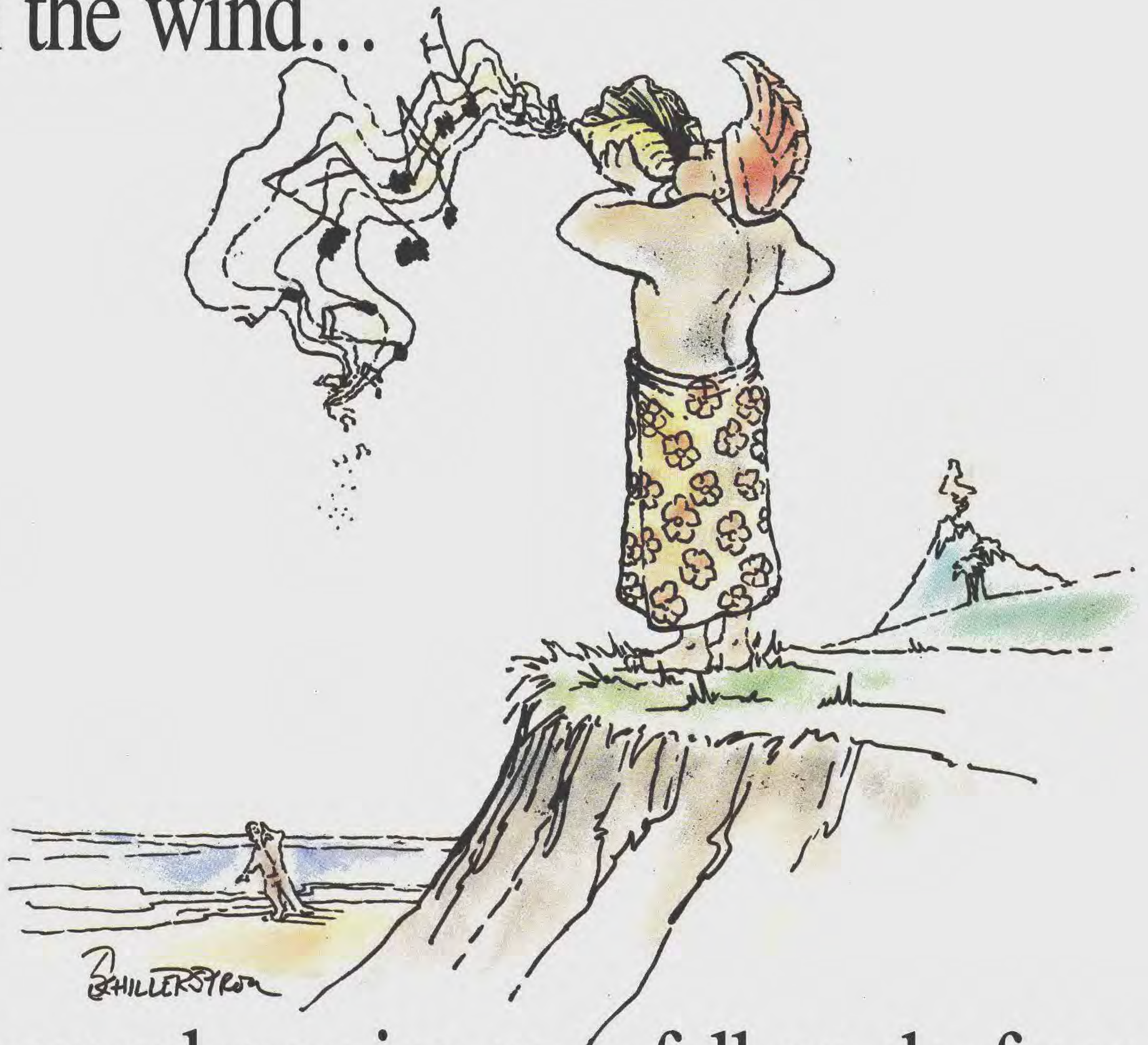

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Agent/Broker Topics

Adding life sales

Continued from page 20D

ary plus commissions. Salaries should only continue for about six months, he said. Once agents are generating their own leads, they should get straight commissions.

Commission splits also tend to favor the agent over the company, he said. One common split—80% for the life producer and 20% for the agency—never lets an agency that is paying the life producer's overhead make a profit.

Instead, a 50-50 split is generally agreeable to both parties, he said.

Commission splits generally apply to both new business and renewals, Mr. Goodwin said.

For both individual and group benefit sales, this system can effectively simplify recordkeeping and avoid the problems associated with multiple split formulas. These "build pools of temptation; the producer is going to go only for the higher commission products," Mr. Goodwin said.

But agencies that want to market more complex products do not necessarily have to hire a producer or contract with an outside expert. Multiline property/casualty insurers, hungry for benefits sales, will often help.

For instance, when Zander agency customers are interested in more complex offerings, CNA Financial Corp., one of the agency's major insurers, gives them access to in-house attorneys and financial consultants, Mr. Zander said.

"If it gets too complicated, we can go to the companies," he said. "This puts us on an equal footing with anyone."

Group insurance marketing has gone well; individual life sales are another story, Mr. Zander said. "We're still not happy; a lot of people still say they don't know we sell life insurance," he said.

He hopes to remedy that with a "very aggressive" marketing campaign begun recently. Radio commercials and telemarketing efforts are aimed at a more sophisticated clientele, "people who need to spend $15,000 or $20,000 a year on estate planning," he said. CNA has also subsidized these efforts.

Field representatives for property/casualty insurers can be especially helpful for agencies new to life/health sales.

At Zimmerman & Co., an agency in Liberal, Kan., a single life producer generated large revenues beginning in 1975. That experience showed that leads from property/casualty customers can boost sales of group and individual life payroll deduction programs and group health, said Max Zimmerman, the agency president.

That success prompted several property/casualty producers to begin selling life policies, he said. Field representatives from CNA and USF&G Corp. helped set up a marketing program for the agency and still conduct seminars on a universal life payroll deduction program for interested customers.

Insurers also can help by maintaining close working relationships with agencies, and offering the rates, coverages and limits customers want.

Richards & Fenniman Inc., a $10 million annual premium volume agency in New York, specializes in life and benefits. Its separate life corporation derives 65% of revenues from individual policies, says James A. Fenniman, the president.

Because these policies are marketed to executives of property/casualty customers, they start at $1 million, he said.

Placing such large coverages is a complex procedure, said Mr. Fenniman, adding that the agency recently spent about six months on a $20 million case. During this time, the agency works closely with the company underwriters, who all need medical records, financial statements, tax returns and other vital client information.

"It's not like underwriting a building or something," he said. "That's one little body walking around. If he walks across the street and gets hit by a car, bingo, that's it. It's a significant difference."

Richards & Fenniman places coverage with several major life and multiline insurers, though most can only underwrite $3 million to $5 million before turning to reinsurers, Mr. Fenniman said. ■

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Life insurers focusing on safety, not returns

Many property/casualty agencies are hoping new products will spur client interest in their life and health insurance divisions.

Several insurers are now marketing a "second to die" policy. It would cover the estate taxes due when both parents die, said Jeffrey R. Partridge, assistant vp and owner of the life and employee benefits division at R.C. Knox & Co. Inc. in Hartford, Conn.

A variation, known as "first to die," has applications to business partners with a buy-sell agreement, he said.

CNA Financial Corp. provides the agency with both these coverages.

Such coverage on both partners means that if one dies, the other gets the amount needed for the stock buyout. This coverage could also be used for families when both spouses work and expenses are high, Mr. Partridge said.

Other insurers are beginning to introduce combined packages of property/casualty and life/health coverage, said Dave Goodwin, president of Dave Goodwin & Associates, a consulting firm in Surfside, Fla. These open doors for agents to sell other coverages, such as disability insurance, he added.

CIGNA Corp, for instance, combines workers compensation and off-the-job medical coverage, according to Mr. Goodwin. Although it is considering combining them into a single policy, it has not done so yet, he said.

Other insurers considering similar packaging programs, he said, include Aetna Life & Casualty Co., The Travelers Co., Kemper National Insurance Cos. and Allstate Insurance Co.

And even when agents are not selling new policies, they can profit by upgrading existing coverages, Mr. Goodwin stressed.

No matter what product a customer has now, "chances are great that his insurance program holds potential for improvement and cost reduction," he said

For example, rated policies—where premiums are higher because of an existing medical condition—can frequently be rewritten at lower premiums because of current market conditions, additional knowledge about the medical condition and improved outlooks on mortality, Mr. Goodwin said.

A declining stock market can actually improve the sales of annuities and related products since prices are good and yields are better than investments such as certificates of deposit, said Max Zimmerman, president of Zimmerman & Co. in Liberal, Kan.

Many property/casualty agents fear that selling life insurance and financial or benefit products is radically different than selling other policies. But "a lot of that difference is perceived by the seller," claims Mr. Zimmerman.

"Clients are looking for safe products from solid insurers," he said. If the property/casualty is sold already, "life is the easiest part of the sale. . .it's just a matter of addressing your client's needs."

—By Laura Mazzuca

Life insurer jitters

Poll finds even agents concerned with stability

By LAURA MAZZUCA

BRYN MAWR, Pa.—Add another group to the growing list of people concerned with the financial stability of life insurers: the agents and brokers who sell their products.

Most agents and brokers believe the stability of life insurers will continue to be a crucial issue for the next five years, according to a recent survey. Yet most also said they feel comfortable with their own primary insurers.

The American Society of CLU and ChFC surveyed 353 of its members late last year. The Bryn Mawr, Pa.-based organization sponsors the Chartered Life Underwriter and Chartered Financial Consultant professional designations.

Forty-seven percent of those surveyed said life insurer stability is "extremely important" today; 41% said it was "very important"; and 12% said it was of "average importance."

However, 65% of the respondents said that by 1995 financial stability will be "extremely important" and 30% believe it will be "very important." Only 5% said it would be of "average importance."

But nine out of 10 respondents said they felt comfortable about the level of risk in the portfolio of their primary life insurers.

Consumers, the responding agents said, do not seem terribly concerned with life insurer finances. Sixty-six percent of the agents said less than half of their current or prospective customers ask about a company's financial stability when considering a policy.

Surveyed agents added that even when customers do not ask, they tend to volunteer solvency information. Half the agents said that eight out of 10 times they will volunteer data to customers that did not request it.

Nine out of 10 times, respondents said, customers that see good ratings from A.M. Best Co. or other sources will be encouraged to buy.

Respondents were divided almost evenly on whether service from life insurers has declined, improved or remained the same over the last three to five years. The first two options each drew 35%; 30% said service remained the same.

Other questions concerned the U.S. health care "crisis," which 97% of those responding said was an important issue today and would remain so in 1995.

Eighty-three percent of respondents said they have health insurance clients. Of that number, 76% said health insurance comprises less than 40% of their business. And 78% indicated that they will either maintain or increase active marketing of health insurance over the next five years.

More than 60% considered medical insurance somewhat or very important in their overall business activities, and nearly the same percentage said their clients are primarily business and group insurance clients.

The rest of their client base is equally divided between individual insurance clients and an even mix of business and individual insurance clients.

The survey respondents were composed of general field sales personnel, field managers and specialists in areas like estate planning, business insurance and employee benefits located throughout the United States.

The median age of the respondents was 47, and 92% were male. Sixty percent had earned the CLU designation more than 10 years ago. ■

Financial planning programs still attract students

By LAURA MAZZUCA

Although some say financial planning designations have lost their luster for independent agents in recent years, growing enrollment in professional financial planning programs suggests otherwise.

The Chartered Financial Consultant and Chartered Life Underwriter designations—both offered through the American Society of CLU & ChFC in Bryn Mawr, Pa.—and the Certified Financial Planner designation—offered through the College for Financial Planning in Denver—continue to see increases in enrollment, according to representatives of both societies.

There currently are 28,500 people authorized to call themselves Certified Financial Planners, or CFPs, said John Blankinship, chairman of the Institute of Certified Financial Planners in Denver, a professional organization of CFP designees.

And, another 12,000 students currently are enrolled in the CFP program at 43 institutions, including accredited colleges and universities across the country, he added.

The American College, which grants the Chartered Life Underwriter and Chartered Financial Consultant designations, reports that its membership grew 4% to 34,500 from 1989 to 1990, said Donald H. Mehlig, president of the American Society of CLU and ChFC, the organization for the designees.

At the American College, enrollment of 17,000 in these two programs alone broke a record in 1989, he added.

However, Mr. Mehlig noted that life enrollments outstrip financial planning, which had been booming before the Tax Reform Act of 1986. "Today, the bloom is off the rose," he said, mostly because life agents lost interest after many tax shelters were eliminated. In fact, less than 10% of life insurance agents think of themselves as financial planners, he added.

Most new American College enrollees are pursuing the CLU designation, said Mr. Mehlig. A small portion go on to earn ChFC designations, but most do not.

CFP certifications average about 3,500 per year and have been declining slowly for several years, according to a spokeswoman for the ICFP's International Board for Certified Financial Planners, which sets CFP standards.

Part of the problem could be semantics. The term "financial planning" in the insurance industry today generally refers to insurance products rather than securities, tax shelters and the like, Mr. Mehlig said.

But trouble can arise when producers represent themselves as financial planners without understanding how such instruments work, he warned.

"While financial planning and life sales are related, they are two separate disciplines," said Dave Goodwin, president of Dave Goodwin & Associates, an agency consultant in Surfside, Fla.

Part of the reason independent agents began to shy away from the term was that life agents and direct writers charged into the market, "calling themselves financial planners and getting themselves and their clients into trouble because in many cases they weren't," said Mr. Goodwin.

Bad press generated by bogus financial planners has left the insurance industry concerned about legitimacy.

Yet no state has yet adopted the National Assn. of Insurance Commissioners' 1989 amendment to its unfair trade practices model act.

The amendment stipulates that individuals representing themselves as financial planners must have some sort of "expertise" and, if they also sell insurance, they must inform potential customers about what other services they provide at what cost. There is no recognition of professional financial planning designations in the amendment.

Some states do, however, have rules governing financial planning, an NAIC spokeswoman said.

Many states require agents or financial planners to be licensed in securities before marketing stocks, bonds and annuities, she said.

In addition, a bill introduced in the House of Representatives last session by Rep. Frederick C. Boucher, D-Va., would require all those who present themselves as "investment advisers" to fully disclose their fee structures and any conflicts of interest that might exist in their businesses, according to Mr. Blankinship of the ICFP.

Although the bill never came up for a vote, a spokesman for Rep. Boucher said that it will be reintroduced during this session as an amendment to the Investment Advisers Act of 1940.

Meanwhile, a few states have adopted policies requiring those calling themselves "financial planners" to have some sort of professional designation.

Maryland, for instance, requires practitioners using the title "insurance adviser" to have an annually renewable state license, said a spokeswoman for the state insurance division.

And in Washington, regulations governing insurance agents are patterned after the NAIC model act, said Robert E. Johnson, deputy of consumer protection in the state insurance commissioner's office.

Washington does not let agents use the terms "financial planner," "investment adviser," "financial consultant" or "financial counselor," unless they have an advisory business unrelated to insurance sales. If so, the agent must be licensed as a financial planner by the state, he said.

Many states, however, do not license financial planners.

"States license people to be barbers or beauticians, but not to practice financial planning," Mr. Blankinship said.

With this in mind, the ICFP's International Board last summer began drafting a set of professional standards for its designees, Mr. Blankinship said. States could eventually base licensing criteria on those standards, he suggested.

The organization now has 28 proposed standards relating to what financial planners do and what the public expects of them. The standards will specifically relate to due diligence, the practice

Continued on next page

March

Agency-Insurer Relations

What are agents expecting from their insurers and vice-versa? BI editors will focus on the special pressures agencies and insurers exert on each other as a result of the continuing soft market. And, they'll look at how each side relies on the other to prepare for a change in market conditions.

Issue: March 4
Ad Closing: February 19

April

Compensation & Incentives

Agency principals are becoming innovative when it comes to luring new producers to their firms. And they're putting as much creative effort into designing packages to retain their current employees. BI will review these innovations, look at compensation packages and the employee benefits most often offered to producers.

Issue: April 1
Ad Closing: March 19

May

Advertising, Sales Promotion & Community Relations

What affects will the growing recession have on advertising, sales promotion and marketing budgets for agents and brokers? BI editors will report on less costly, and in some cases free, alternatives such as charitable events. Plus a look at how agents can help cultivate a good image for the insurance industry in their community.

Issue: May 6
Ad Closing: April 23

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Agent/Broker Topics

ABT briefs

House bill may devalue insurance agencies

Insurance agencies could be devalued by as much as 30% under a bill recently introduced in the House of Representatives.

The legislation would prevent insurance agencies from deducting the depreciation in value of their customer renewal lists after a sale or merger, according to agency associations.

The bill, H.R. 563, was introduced late last month by Rep. Brian Donnelly, D-Mass., a member of the House Ways and Means Committee, which is expected to consider the bill.

H.R. 563 would forbid small businesses, such as insurance agencies, from amortizing intangible assets such as customer renewal lists. Currently, businesses can deduct intangible property that has a demonstrably limited life.

The Donnelly bill would affect all customer lists, ranging from magazine subscriptions to bank depositors.

The issue of customer list amortizations has been an ongoing controversy for agency associations for several years, said Robert A. Rusbuldt, vp of federal affairs for the Independent Insurance Agents of America in Alexandria, Va.

The Internal Revenue Service classifies an agent's customer list as "inseparable" from the agency's goodwill, and has determined that it should not be deductible. But in 1987, Congress determined that since these lists represent a large portion of the dollar value of a business, owners should be allowed to deduct the depreciation that occurs after the business is sold, Mr. Rusbuldt said.

Concerned about this ambiguity, the IIAA and the National Assn. of Casualty & Surety Agents have written to the IRS pointing to the 1987 congressional action and other legal precedents that support their view. While the IRS responded by saying they would stand behind its position, the agency added that it would consider the issue on a case-by-case basis.

Although the Donnelly bill was drafted in order to eliminate the ambiguity between the IRS's and congressional interpretation of the issue, agents are lobbying the Ways and Means Committee for specific legislation to explicitly allow depreciation, Mr. Rusbuldt said.

The Ways and Means Committee is currently studying the agenda for 1991, and won't set hearing dates for several weeks, he said.

E&O rates declining

Many agents with errors and omissions coverage through the National Assn. of Professional Insurance Agents will receive rates that are up to 20% lower than last year. Utica Mutual Insurance Co. in New Hartford, N.Y., the underwriter, will file rates throughout 1991 that are 5% to 20% lower, resulting in premium reductions of up to $800.

Rates in 24 jurisdictions will decrease this year while in 28 others rates will remain flat. No increases are planned.

Charles M. Oliver, chairman of the PIA errors and omissions committee, attributes the lower costs to higher deductibles and emphasis on loss prevention.

Some 11,000 policyholders pay $50 million a year in E&O premiums through the program, which is available to member agents in all states, as well as to non-members except in Florida, Ohio and Wisconsin. Sixteen deductibles ranging from $500 to $25,000 are available. This range keeps premiums down by permitting agents choose the highest deductible they can afford, Mr. Oliver said.

For information on the program, call the PIA Insurance Marketing Department at 800-742-6900.

Banking survey

Banks are in the insurance business to stay, and the international weakness of U.S. banks will force Congress to repeal or amend the Glass-Steagall Act soon, claims a recent study.

In its survey of 69 large U.S. financial services companies, Cleveland consultant Tasker Financial Marketing Inc. addresses specific issues like the viability of banks as a distribution system for insurance; competition; the biggest winners and losers if banks entered insurance sales; and likely products and consumer and business buying patterns and attitudes in such a scenario.

Among its major findings, based on the survey of 23 banks, 22 life/health and property/casualty insurers and 24 property/casualty insurance brokers:

- Banks are in insurance to stay.

For banks, insurance has gone from the "phenomenon" of the 1980s to a full-fledged growth industry. Sixty-seven percent of the banks surveyed and 46% of the insurers report being active in bank-insurance marketing.

- Congress will be forced to repeal or amend Glass-Steagall.

A global marketplace is rapidly rendering obsolete the 1933 law's separation of banking and insurance, the Tasker report claims.

Banks, insurers and securities brokerages would all benefit from combining services, the report said.

Sufficient "firewalls" can be constructed between banking and insurance to protect the integrity of the bank's capital and deposit bases. A majority of the survey participants—72%—believe that the regulatory barriers separating the two industries will fall within three years.

- Technology will provide the impetus for growth in banking and insurance.

Technology will permit banks with insurance operations to improve customer service, exert greater management control over the flow of information and create major gains in employee productivity.

Copies of "1990 Banking and Insurance Survey Benchmark Report on Shifting Insurance Distribution Patterns; A Study of America's Largest Financial Service Companies" are available for $385. For information, contact Tasker Financial Marketing Inc., 1127 Euclid Ave., Suite 329, Cleveland, Ohio 44115; 216-574-2200. ■

Financial planning

Continued from previous page

of current academic standards and full client disclosure, he said.

Designated study groups across the country, as well as a representative of the public from the Better Business Board in Washington, D.C., are involved in drafting the standards.

However, "a lot of these things are anathema to people" because many in the industry "are still in the selling and trade camp and not in the professional camp," he said.

After a draft of the standards is approved by the ICFP's board of directors, it will be sent to CFP designees, state regulators and the media for comments and suggestions, Mr. Blankinship said.

The group hopes to publish formal standards this fall, he added.

Also beginning this fall, CFPs will be required to pass a single certification examination, according to Mr. Blankinship.

For the past 17 years, those pursuing the designation were given a series of six exams over a two-year period, similar in structure to the Chartered Property & Casualty Underwriter program administered by the American Institute for Property & Liability Underwriters.

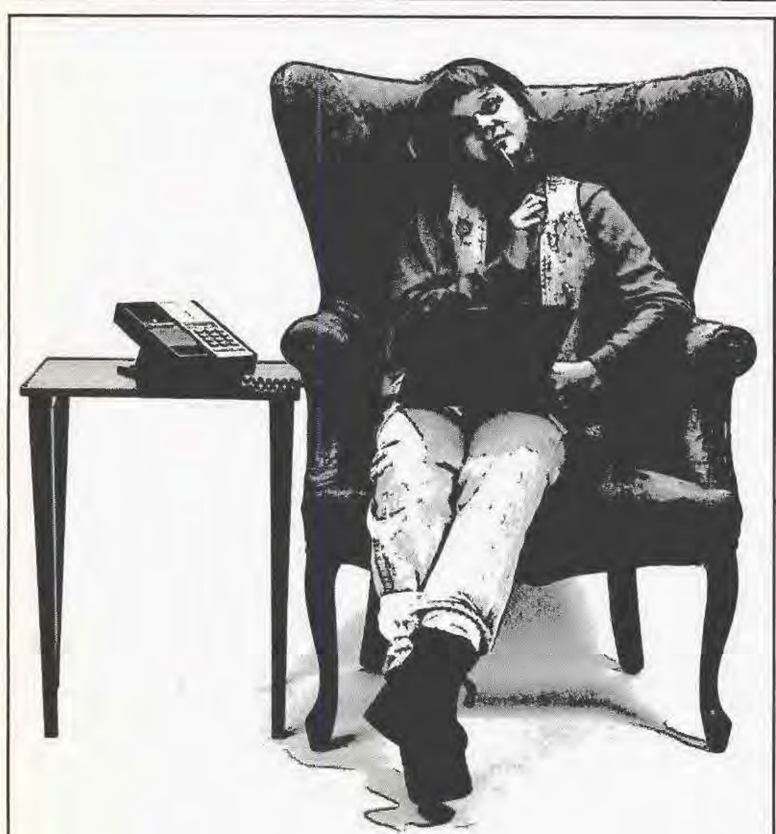
CFP coursework covers six different areas, including accounting and finance, psychology, estate planning, tax planning, investment planning, retirement planning and all types of insurance—including life, health, disability, property/casualty and liability, Mr. Blankinship said.

Coursework for the ChFC and CLU programs is similarly structured. The ChFC program is a 10-course program offering an extensive curriculum on financial planning, including the planning process, case studies and client concerns like retirement, tax and insurance planning, investments and capital accumulation.

The CLU is a 10-course program on the life insurance business, its operations and distribution systems, as well as its importance to the economy and to safe and secure investments.

For information on the CFP designation, contact the College for Financial Planning, 4695 S. Monaco St., Denver, Colo. 80237-3403; 303-220-1200.

For information on the CLU and ChFC designations, contact the American Society of CLU & ChFC, 270 Bryn Mawr Ave., Bryn Mawr, Pa. 19010; 215-526-2500. ■



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Business Insurance

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many obstacles in the Senate, including the continued opposition of Commerce Committee Chairman Ernest F. Hollings, D-S.C., and Majority Leader George J. Mitchell, D-Maine, Mr. O'Day said.

However, the active support of Rep. John D. Dingell, D-Mich. and the chairman of the House Energy and Commerce Committee, could boost the chances of a product liability reform bill moving ahead, he said. "Now that Clean Air (Act) is out of the way, hopefully he will devote some of his time to product liability as some of his constituents have asked."

Pension legislation

Legislation that would allow employers with fewer than 100 employees to create a new simplified defined contribution pension plan is expected to be introduced this month. Under the proposal, these plans would be exempt from the non-discrimination tests that would normally apply to a company's former plans.

The Private Retirement Incentives Matched for Employers—or PRIME—account would be similar to a plan with employer matching contributions. But, very few rules would govern the plan once it is established, said an aide to Sen. Bob Packwood, R-Ore., author of the bill.

To be eligible to establish a PRIME account, an employer must not already offer a pension plan.

Employees would have 60 days to sign up for the PRIME account, and employers would be required to fully explain the workings of the new plan. Employee pretax contributions would be limited to $3,000 annually, while employers would have to match 100% of the employee contribution, up to 3% of salary.

Many of the rules governing individual retirement accounts would apply. For example, employees would be able to invest their funds as they wish, the aide said. However, employees could change their contribution amounts or investment choices only once a year, he said.

Health care proposal

Employers would be required to pay a payroll tax of up to $800 per employee to help fund a proposed universal health care plan that was introduced in the House last month by Rep. Fortney (Pete) Stark, D-Calif.

And, employers that currently offer more than the minimum benefits outlined in the legislation would be required to continue to offer those benefits.

Rep. Stark hopes this bill will be used as a benchmark from which the debate over national health care can proceed, a spokesman for the congressman said.

"This bill has been introduced to help define the debate on where we are going to go with health care in this country," the spokesman said.

Under H.R. 650, most employees would pay a $200 monthly premium for coverage. However, those individuals with an annual income of less than $8,000 and couples with a combined annual income of less than $16,000 would not have to pay the premium.

There would be a single deductible of $500, while out-of-pocket expenses would be limited to $2,500 per person.

Basic benefits called for by the bill would be similar to those provided by Medicare.

The proposal also would mandate well-child care benefits and pregnancy-related benefits, like prenatal care, inpatient labor and delivery and post-natal care. No copayments and deductibles would be required for these services.

Low-income beneficiaries would receive additional benefits, like unlimited hospital care, outpatient prescription drug benefits, eyeglasses and hearing aids, without copayments or deductibles.

Besides the employer tax and the employee contributions, the program also would be financed by a 2% tax on gross income, which is expected to raise an estimated $30 billion annually. Those who earn less that 200% of the poverty level would be exempt from the tax.

The health plan has a $65 billion annual price tag, the spokesman for Rep. Stark said.

Higher OSHA fines

A friendly reminder from the Labor Department: Penalties for violating the Occupational Safety and Health Act are increasing sharply this year.

For each willful violation cited by the Occupational Safety and Health Administration, the maximum fine increases to $70,000 from $10,000.

And each willful violation will carry a minimum penalty of $5,000. Previously, no minimum existed.

Maximum fines for serious violations also are increasing: to $7,000 from $1,000 in 1990.

These changes, included in last year's budget agreement, will apply to inspections initiated after March 1.

The budget law gives OSHA the authority to levy the larger fines immediately. But, the agency still is developing policies to determine which violations warrant the larger fines, a spokesman said.

Penalties for repeat and other-than-serious violations also will increase. Officials said they have not yet determined the new penalties or the degree of infraction that will trigger the heavier fines.

Penalties for repeat violations now can run up to $10,000, while fines for other-than-serious violations are capped at $1,000. Neither type of violation carries a minimum penalty.

ERISA reports

Thirty-five benefit plan administrators that filed deficient annual reports in 1988 will be fined $50,000 to $90,000 each—the first penalties levied in a new Labor Department reporting compliance program, officials say.

Thirty of the incomplete reports covered pension plans; five covered health plans.

The compliance program was created to enforce the Employee Retirement Income Security Act of 1974. The law authorizes the department to assess fines of up to $1,000 a day against pension and health plan administrators that do not file complete and timely annual reports. Penalties vary depending upon the severity of violations.

Administrators receiving notices of the fines were given ample time to correct their reports without incurring any penalty, said David G. Ball, assistant secretary of labor and head of the Pension and Welfare Benefits Administration.

A computer system files the 900,000 ERISA annual reports received annually by the agency with the Internal Revenue Service and screens them for errors.

When mistakes are found, letters are sent to those plans, and most make the necessary corrections, the PWBA said.

Another round of letters is sent to those plans whose filings remain uncorrected, the agency said. Administrators that still do not comply are fined.

"Before we instituted this system, some plan administrators were not taking their responsibilities for filing timely and accurate reports seriously," Mr. Ball said. "These assessment notices are just the first in a series of notices to plan administrators who fail to comply with ERISA's reporting requirements." ■

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91-11-S1-2/4

ASK A BENEFITS ACTUARY

Window plans must heed non-discrimination rules

Q **What non-discrimination rules apply to early retirement windows?**

A This question comes from the benefits manager of a company that is considering offering an early retirement window benefit to its employees as a part of a program to reduce the size of its workforce. The early retirement window benefit would allow a group of employees to retire from the company during a limited period of time (the window period), and receive an increased pension benefit. The company sponsors an overfunded defined benefit pension plan and would like to fund the window benefits with assets held in the pension trust. But to do so, the window benefit must comply with the applicable non-discrimination requirements for qualified retirement plans. In order to design the window benefit, the benefits manager needs to understand the applicable non-discrimination requirements.

Window benefits are subject to the regulations under Internal Revenue Code Section 401(a)(4) concerning non-discrimination in the availability of optional forms of benefits from qualified retirement plans. These regulations encompass early retirement window benefits as one type of an optional form of benefit.

These regulations require that any optional form of benefit, including an early retirement window, be *currently* available to a non-discriminatory group of employees. In addition, the window benefit must be *effectively* available, based on the facts and circumstances, to a group that does not discriminate in favor of highly compensated employees.

Current availability is demonstrated by either satisfying the ratio/percentage test of IRC Section 410(b), or by satisfying the non-discriminatory classification component of the average benefits test. Both tests are based on the comparison of two ratios: the ratio of non-highly compensated employees eligible for the window benefit to all non-highly compensated employees (the NHCE percentage); and the ratio of highly compensated employees eligible for the window to all highly compensated employees (the HCE percentage). The ratio percentage test requires the percentage of non-highly compensated employees eligible for the window to be at least 70% of the percentage of eligible highly compensated employees.

The non-discriminatory classification component of the average benefits test requires that the group of employees eligible for the window benefit must be based on classifications that are reasonable under established business criteria. For example, the window benefit might be available to salaried employees who are age 55 or older and who have 25 years of service as of a specific date.

The non-discriminatory classification component also requires that the percentage of non-highly compensated employees eligible for the window must be "reasonable" when compared to the percentage of highly compensated employees eligible for the window. The relationship of the two percentages is reasonable if the NHCE percentage is at least 50% of the HCE percentage. Depending upon the concentration of non-highly compensated employees in the employer's workforce, the NHCE percentage can be as low as 20.75% of the HCE percentage and still meet the non-discriminatory classification component.

The window benefit must also be effectively available to a non-discriminatory group of employees. This test is based on the facts and circumstances, and is essentially a "smell test" for the IRS. If the window benefit smells bad, the IRS has a hammer to attack it.

Some of the implications of these rules for the design of window benefits are as follows:

- The current availability test is most easily satisfied under the non-discriminatory classification component of the average benefits test, since it allows more highly compensated employees to be eligible for the window than does the ratio percentage test. However, the price paid by the plan sponsor for this ease in compliance is that the group eligible for the window must be defined by objective criteria. For example, individuals cannot be excluded from the window benefit by name, nor can only selected individuals be made eligible. Consequently, employers wishing to include or exclude specific employees should consider the ratio percentage test in the design of the window since that will likely be the compliance standard.
- If the plan sponsor believes that the highly compensated employees accepting the window benefit will create a situation in which the window benefit will be viewed as effectively available only to highly compensated employees, then the plan sponsor should consider offering the window benefit to highly compensated employees outside of the qualified plan, through a non-qualified arrangement.

Unfortunately, the rules described above are not the only non-discrimination rules to which a window benefit from a qualified plan might be subject. Age discrimination rules certainly apply. In addition, it seems likely that window benefits are subject to the recently issued proposed regulations regarding non-discrimination in regard to benefit amounts. Notwithstanding the fact that these proposed regulations are intended to be comprehensive and run well in excess of 300 pages, the application of these non-discrimination rules to window benefits is not clear.

Treasury officials are promising some guidance regarding window benefits during the first quarter of 1991. But until then, the application of the proposed non-discrimination rules regarding benefit amounts is difficult and requires an analysis of more facts than can be presented in this column. ■

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

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

Mr. Miner

This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions.

Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month. Ms. Werner's column appears alternately on the second Monday of each month. Mr. Miner's next column will appear in April.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Variety abounds in Asian markets

By Douglas N. Smith

International issues

INTERNATIONAL ISSUES continues a two-part look at the distribution of insurance in several Asian and Pacific Rim insurance markets and what multinationals can expect to find there.

Last month we examined the markets of Japan, South Korea, Taiwan, Hong Kong and the Philippines (*BI*, Jan. 7). This month we will look at the markets of Thailand, Malaysia, Singapore, Indonesia, Australia and New Zealand.

• Thailand.

Thailand's insurance business is regulated by an Insurance Commission that has broad authority in the licensing and sale of insurance. About 50 insurance brokers tend to dominate the commercial market, and there are also 30 to 40 captive brokers owned by insurers for the purpose of competing on price by discounting commissions.

Thailand has a unique system whereby rebating is legal as long as it is done by brokers and agents, but illegal when done by insurers. Therefore, most insurers own a captive broker simply to be competitive and to provide for sub-agency commissions to their innumerable house agents.

Commissions may be as high as 25%. Most large commercial accounts are rebated 10% to 15%, except for automobile accounts, which generally are not discounted. With smaller agents the tendency is to pay even higher rebates to offset their inability to provide much service.

There have been calls for reform over the last few years, and it appears that a significant revision of the entire tariff and commission structure is finally in the works. Both premiums and commissions probably will be reduced.

There are some restrictions on the entry of foreign brokers, but most of the major international brokers are there on their own or through correspondents.

• Malaysia.

The insurance industry has recently been placed under the supervision of the Central Bank, which has issued numerous new regulations. Historically, there has been a tariff that was widely ignored. However, a new tariff that was promulgated a couple of years ago has been rather firmly enforced, admittedly at fairly low levels, since it was devised largely by freezing the existing fire rates for most industrial properties.

Market commissions are regulated and range from 10% for ordinary motor business up to a maximum of 40%; the average brokerage commission is under 15%. Individual agents are not permitted to represent more than two insurers, but this does not apply to brokers. Rebating on large accounts is uncommon. Most international brokers are represented by their own offices.

Recently a 60-day premium warranty for virtually all policies has been instituted, making brokers and agents liable for any premium not paid within that period. Since underwriters have difficulty in getting their policies issued within 60 days, particularly on commercial business, it puts stress on the distribution system.

Another recent development is the

Continued on next page

Asian insurance market

Continued from previous page
wide proliferation of direct mail campaigns by banks, credit card companies and others selling insurance policies by mail. The agent is usually a designated employee who in effect allows the financial institution to collect the commissions. This practice is not prevalent in commercial business.

- **Singapore.**

Singapore continues to be a market virtually free of tariff agreements. Underwriters have agreed to freeze rate reductions on current commercial property risks, but it is a fairly loose arrangement and can be "interpreted" to the advantage of a particular underwriter if the risk is large and attractive and international reinsurance is available. Even so, property rates are some of the lowest in the world, largely due to a very modern infrastructure and a remote natural catastrophe exposure.

However, while the market is very free, the Director General of Insurance has substantial authority to close down any insurance entity, particularly if there is any suspicion of inadequate finances or of fraudulent activity.

Effective Oct. 1, 1990, a 60-day premium warranty was initiated requiring that all premiums except marine and contractors all-risk be paid within 60 days of policy inception, but it is too early to judge its effectiveness. In addition, a serious effort is being made to register all insurance brokers and agents, requiring that they demonstrate professional ability as well as fiduciary responsibility for premiums.

Every major international broker is represented, as well as most major international underwriters, many of which use Singapore as their regional headquarters. Singapore is also an important regional reinsurance center.

Brokers handle about 30% of the total premium, including most of the large private commercial business. Commissions average 12.5% to 15%, except for benefits business, where averages are 10% to 12%. Small agents, including in-house agents, handle another 15% to 20%. At least 50% of the business is written directly by insurers.

- **Indonesia.**

The insurance market is made up of 70 underwriters, including two government-controlled companies and 12 foreign joint ventures. Wholly owned foreign companies are no longer permitted.

Since 1988, the property tariff has been largely eliminated, creating a much more competitive market. But, property premium levels remain relatively high for a variety of reasons, including the very small capital base of the great majority of local companies, which makes them totally dependent upon reinsurance for any meaningful capacity.

While brokers are rapidly increasing their total share of the market, in 1988 less than 25% of the business was placed through them. The remainder went through an endless variety of small agents—many part-timers—or was placed directly with insurers. In the oil and gas industry, insurance must be placed directly with one of two local companies closely associated with the government oil monopoly.

While commissions are nominally regulated in the range of 10% to 15%, they are often unofficially raised to as much as 35% for smaller agents, which rebate most of that amount.

Foreign entities cannot own insurance brokerages; they can only be represented by wholly owned Indonesian entities having an Indonesian name. But, the severe shortage of qualified Indonesians makes this impractical. Virtually every major international broker operates in Indonesia through a technical service agreement, which usually gives a resident expatriate technical adviser day-to-day operating control of at least the insurance end of the operation.

- **Australia.**

Comprehensive Australian legislation dating from 1984 codifies the activities of agents and brokers. There are few written qualifications for brokers, but they must provide professional indemnity cover, which is impossible to obtain without a proven track record. It is also illegal to vary the rate of remuneration based on business volume. A broker or agent also is required to divulge his commission or fee to a policyholder upon request.

Commissions payable to agents are much higher than those payable to brokers. The average commission paid to brokers is less than 15%, while agents average over 20%. It is estimated that more than 50% of the total premium in Australia is placed through brokers. Agents handle an additional 30% to 35%. Direct writing is legal but infrequent. There is virtually no tariff.

Australia is probably one of the most overshopped markets in the world, making it difficult for underwriters or brokers to operate profitably.

- **New Zealand.**

There is one underwriter for every 55,000 people—an even worse ratio than in Australia. The Accident Compensation Act, unique to New Zealand, removes liability for injury from the courts. The no-fault program covers automobile liability, medical malpractice, product liability and employers liability. An injured party has no recourse against a negligent party through the court system. Instead, all employers pay a levy to the Accident and Compensation Commission which provides 24-hour protection to injured parties. Payment is restricted to the cost of medical service, an ongoing living wage and pension for life if necessary, but only very small lump sum payments are provided. The net result is that a major portion of premium available to underwriters in other countries is eliminated.

For what business remains in a non-tariff market, commissions range from 10% to 15% for commercial brokers and from 20% to 25% for agents. Most international brokers are represented. ■

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

Loss of 'magnet' store can drain retailer's revenues

By The Insurance Institute of America

ARM exercises

The following question and answer are drawn from the curriculum for the Associate in Risk Management designation awarded by the Insurance Institute of America. They represent the type of question asked—and the possible answers—in one of the three examinations for the A.R.M. designation.

This month's question and answer, taken from a recent national examination in ARM 54—The Structure of the Risk Management Process—demonstrates that many of the risk management techniques usually associated with controlling property losses also are equally applicable to controlling an organization's net income losses; that is, the reductions in revenues and/or the increases in expenses following any accident that affects the organization.

Q: Picture Perfect is a small, one-location camera shop located in a suburban shopping mall that is also occupied by two major department stores. Each department store is a "magnet" that draws customers to the mall and, therefore, to Picture Perfect.

The proprietor of Picture Perfect recognizes that she would suffer a severe loss of business if either or both of these magnet department stores were to be shut down for a substantial period of time.

Describe four factors the proprietor of Picture Perfect should consider in estimating the extent of net income loss the shop would suffer if either of the magnet department stores were to shut down.

Explain how—if at all—the proprietor of Picture Perfect could reduce the severity of any such net income loss through each of the following: segregation of exposure units, exposure avoidance and contractual transfer for risk control.

For the two magnet department stores in the mall, assume that the probability of the first store being shut down is 0.15 and the probability of the second store being shut down is 0.12. If the two probabilities of shutdown are independent, what is the probability that both department stores will be shut down at the same time? Is it reasonable to assume that the probabilities of the two department stores being shut down at the same time are independent? Justify your answer.

A: One clearly important factor is the percentage of Picture Perfect customers who are attracted by the magnet department stores; the larger this percentage, the greater the revenue loss Picture Perfect is likely to suffer while a magnet is closed.

A second factor would be the duration of a magnet store's shutdown—the longer the shutdown, the more severe Picture Perfect's revenue loss would be.

A third consideration would be the timing of the shutdown of a magnet store; any closing during a peak season for Picture Perfect would cause greater losses than if a department store were shut down during Picture Perfect's slow season.

Fourth, Picture Perfect's management needs to consider its ability to reduce its operating expenses during the shutdown. To the extent these expenses can be controlled, so can the store's net income loss. (Note: Discussion of other appropriate factors also earned examination credit.)

To reduce the severity of Picture Perfect's net income loss, any loss control measure must either help maintain the store's revenue during a shutdown of a magnet store or reduce its expenses during this period.

If Picture Perfect operated stores at other locations that were not dependent on these particular magnet department stores, any shutdown of a magnet would have a less severe impact on Picture Perfect's overall revenues. Thus, segregation of exposure units by increasing the number of stores it operates would help reduce its net income loss.

Exposure avoidance requires reducing to zero the probability of loss from a given exposure, that is, making a loss impossible either by refraining from or by discontinuing the activity that creates the exposure. With respect to net income losses from the shutdown of a magnet store, exposure avoidance would entail Picture Perfect's not operating in any malls or shopping centers with a magnet store. This may not be possible, especially when virtually any large neighboring store serves as a magnet for surrounding retailers.

To use contractual transfer for risk control to reduce its net income losses, Picture Perfect would have to make an agreement with another organization to operate its store and pay Picture Perfect a periodic rent or royalty that would not be dependent on this store's net income. It appears unlikely that Picture Perfect could negotiate such a guaranteed income for itself, although such an arrangement might be possible under some special circumstances. (Note: The practical significance of any measure to reduce the severity of losses often depends on the likelihood and/or the severity of those losses.)

The shutdown of both department stores would be a joint event. With the assumption of statistical independence, a joint probability of these two shutdowns is the product of their separate occurrence, computed as $0.15 \times 0.12 = 0.018$, or 1.8%.

For these probabilities of shutdown to be independent, the shutdown of one store must have no effect on the probability of the other store's closing. This seems unlikely—any major accident affecting the entire mall might well close both stores. Moreover, a general recession might close both stores without any accident occurring. Therefore, independence probably is not a reasonable assumption. ■

The sample questions and answers used in this column are taken from the Associate in Risk Management designation curriculum of the IIA. For more information on the content of the A.R.M. program, write Dr. G.L. Head, Vp, Insurance Institute of America, P.O. Box 314, Malvern, Pa. 19355.

Datebook

FEBRUARY

FEB. 11. Crane Management Awareness in Las Vegas, Nev., sponsored by the Crane Institute of America Inc., $195. **Also Feb. 18** in Hartford, Conn. and Long Beach, Calif.; **Feb. 25** in Orlando, Fla. and Philadelphia; **March 4** in Denver; **March 11** in Cincinnati; **March 18** in Houston; **March 25** in Chicago. Crane Institute, 1053 N. Orlando Ave., Suite 4, Maitland, Fla. 32751; 407-647-1800; 800-832-2726.

FEB. 11-12. Environmental Regulation Documentation Institute in San Francisco, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 11-13. Environmental Regulation Course in Cleveland, sponsored by Executive Enterprises Inc.; $1,045. **Also Feb. 19-21** in San Diego and New Orleans; **Feb. 25-27** in Dallas; **March 6-8** in Las Vegas; **March 11-13** in Washington, D.C.; **March 12-14** in Los Angeles; **March 18-20** in Chicago; **March 25-27** in Atlanta; **March 26-28** in Philadelphia. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 11-13. Accident Investigation seminar in Calgary, Alberta, sponsored by the International Loss Control Institute; $675 for ILCI members; $750 for non-members. **Also March 19-21** in Cleveland. ILCI, P.O. Box 1898, 4546 Atlanta Highway, Loganville, Ga. 30249; 404-466-2208.

FEB. 11-15. Modern Safety Management seminar in Atlanta, sponsored by the International Loss Control Institute; $855 for members; $950 for non-members. **Also Feb. 25-March 1** in San Francisco; **March 4-8** in Calgary, Alberta; Lexington, Ky.; and Atlanta; **March 11-15** in San Juan, Puerto Rico, and Salt Lake City; **March 18-22** in London and Los Angeles. ILCI, P.O. Box 1898, 4546 Atlanta Highway, Loganville, Ga. 30249; 404-466-2208.

FEB. 11-15. Accredited Safety Auditor seminar in Mexico City, sponsored by the International Loss Control Institute; $1,050 for ILCI members; $1,250 for non-members. **Also Feb. 25-March 1** in Vancouver, British Columbia; Cleveland; Madrid, Spain; **March 4-8** in San Francisco; **March 11-15** in Atlanta and Lexington, Ky.; **March 18-22** in San Juan, Puerto Rico. ILCI, P.O. Box 1898, 4546 Atlanta Highway, Loganville, Ga. 30249; 404-466-2208.

FEB. 12. Employers Council on Flexible Compensation Regional Conference in San Francisco, sponsored by the ECFC; $185 for ECFC members; $195 for non-members. **Also Feb. 14** in Phoenix; **Feb. 21** in Kansas City, Mo.; **Feb. 26** in Tampa, Fla.; **March 26** in Denver; **April 23** in Indianapolis; **April 24** in New York City; **April 30** in Chicago; **May 16** in Morristown, N.J. ECFC Conference Center, Dept. 5063, Washington, D.C. 20061-5063.

FEB. 12. Fleet Driver Improvement Program in Los Angeles, sponsored by Consolidated Service Corp.; $88; discounts for additional participants from same company. **Also Feb. 15** in San Francisco; **Feb. 19** in Seattle; **Feb. 21** Washington, D.C.; **March 12** in Fort Lauderdale, Fla.; **March 14** in Tampa, Fla.; **March 26** in Chicago; **March 28** in Milwaukee; **April 9** in Philadelphia; **April 11** in New York; **April 23** in Rochester; **April 30** in Atlanta. Ron Starr, CSC, 2500 Devon Ave., Elk Grove Village, Ill. 60007; 708-640-2666.

FEB. 12. Workers Compensation: Getting Results in the Changing Bureaucracy seminar in Cleveland, sponsored by The Ohio Manufacturers' Assn.; $130 for OMA members; $155 for non-members. **Also Feb. 13** in Columbus, Ohio, and **Feb. 14** in Cincinnati. OMA, 33 North High St., Columbus, Ohio 43215.

FEB. 12-15. Mobile Cranes and Rigging seminar in Las Vegas, Nev., sponsored by Crane Institute of America Inc., $595; 10% discount if two-four students from same company attend; 20% discount if five or more students from same company attend. **Also Feb. 19-22** in Hartford, Conn., and Long Beach, Calif.; **Feb. 26-March 1** in Orlando, Fla., and Philadelphia; **March 5-8** in Denver; **March 12-15** in Cincinnati; **March 19-22** in Houston; **March 26-29** in Chicago. Crane Institute, 1053 N. Orlando Ave., Suite 4, Maitland, Fla. 32751; 407-647-1800; 800-832-2726.

FEB. 13-14. State Filings—A Practical Workshop program in Columbus, Ohio, sponsored by the National Assn. of Mutual Insurance Cos.; $299. **Also March 20-21** in Kansas City, Mo.; **April 17-18** in Des Moines, Iowa; **May 21-22** in Chicago; **June 19-20** in Minneapolis; **July 30-31** in Harrisburg, Pa.; **Aug. 7-8** in Albany, N.Y. Tonya J. Berkley, NAMIC, 3707 Woodview Trace, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250.

FEB. 13-15. Regional Environmental Regulation Conference in Atlanta, sponsored by Executive Enterprises Inc.; $1,045. **Also March 4-6** in Dallas; **May 13-15** in Chicago; **June 3-5** in Boston; **June 10-12** in St. Louis and San Francisco. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 13-16. Third Annual Workers' Compensation Issues Forum in New Orleans, sponsored by the International Workers' Compensation Foundation Inc.; $195 for public sector representatives; $250 for private sector attendees. IAIABC, 1575 Aviation Center Parkway, Daytona Beach, Fla. 32114; 904-252-2915.

FEB. 14. Civil Procedures for Claims Personnel symposium in San Francisco, sponsored by The Society of Chartered Property & Casualty Underwriters; $140 for Society of CPCU Claims Section members; $160 for other society members; $180 for non-members. Mari Jennings, Session Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 215-251-2741.

FEB. 14. An Advanced Course on Business Income Exposures and Their Treatment workshop in Boston, co-sponsored by The Society of Chartered Property and Casualty Underwriters and the Boston chapter

Continued on next page

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Datebook

Continued from previous page

of the Society of CPCU; $100; $20 exam registration fee. Bonnie Kinsley, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 215-251-2735.

FEB. 14-15. The Second Annual Seminar on Opportunities in the Public Sector Excess and Reinsurance Market in Marco Island, Fla., sponsored by Tillinghast; $750; $650 for government entities. Eileen Callahan, Conference Director, Towers, Perrin, Forster & Crosby, 100 Summit Lake Drive, 3S, Valhalla, N.Y. 10595; 914-745-4611.

FEB. 14-15. Obtaining Insurance for Pollution Liabilities: The Ninth Annual Hazardous Substance Conference in Washington, D.C., sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 14-16. Environmental Law seminar in Washington, D.C., cosponsored by the Environmental Law Institute and The Smithsonian Institution; $435. Registrar, American Law Institute—American Bar Assn., 4025 Chestnut St., Philadelphia, Pa. 19104; 215-243-1661.

FEB. 19. Maximizing Coverage; Minimizing Costs seminar in Lansing, Mich., sponsored by The Society of CPCU; $105 for society members; $125 for non-members; add $15 after Feb. 5. Tricia Hogan, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2773.

FEB. 19-20. Successful Strategies for Resolving Insurance Claims Litigation conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 19-20. Eleventh Annual Employee Benefits Conference in New York City, sponsored by The Conference Board; $810 for Conference Board associates; $935 for non-associates; add $80 for optional workshops. The Conference Board Inc., P.O. Box 4026, Church Street Station, New York, N.Y. 10261-4026; 212-339-0290.

FEB. 19-20. Park & Recreation Risk Management & Safety Seminar in Orlando, Fla., sponsored by Risk Management Seminars; $275. **Also Feb. 21-22** in Denver. Risk Management Seminars, P.O. Box 1601, Sonoma, Calif. 95476-1601.

FEB. 19-20. Successfully Obtaining Permits Under the New 1990 Amendments to the Clean Air Act in Washington, D.C., sponsored by Executive Enterprises Inc.; $1,045. **Also March 27-28** in Orlando, Fla., and **April 8-9** in Denver. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 19-21. Training Course in Occupational Hearing Conservation in San Antonio, Texas, sponsored by Impact Hearing Conservation Inc.; $325. **Also March 13-15** and **June 5-7** in Kansas City, Mo.; **April 9-11** in Birmingham, Ala.; **April 17-19** in Lancaster, Pa.; **May 8-10** in Milwaukee. Impact Hearing Conservation Inc., 406 W. 34th St., Suite 400, Kansas City, Mo. 64111; 800-346-2139.

FEB. 19-22. Reinsurance Contract Wording seminar in Ossining, N.Y., sponsored by Robert W. Strain Seminars Inc.; $1,595. Robert W. Strain Seminars Inc., Box 1000, Wingdale, N.Y. 12594; 914-832-9384; 212-677-5974.

FEB. 20. Organizational Implications of Drug Abuse Programming: Making the Organization Work for You satellite teleconference, co-sponsored by California State University-Chico and the National Institute on Drug Abuse; $75; add $25 after Feb. 4. Regional and Continuing Education, California State University-Chico, Chico, Calif. 95929-0250; 916-898-6105.

FEB. 20-21. Health Care Cost Containment workshop in Los Angeles, sponsored by the Health Research Institute; $595. **Also March 12-13** in Atlanta, **April 9-10** in Dallas, **May 14-15** in Milwaukee, **June 25-26** in Honolulu. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

FEB. 20-22. Techniques of Risk Management course in Atlanta, sponsored by the Risk & Insurance Management Society Inc.; $495 for RIMS members; $595 for non-members; less than six weeks prior to course add $45. **Also March 25-27** in Ottawa, Ontario; **June 5-7** in Kansas City, Kan.; **Sept. 4-6** in Boston; **Dec. 4-6** in San Francisco. Education Dept., RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

FEB. 20-22. Claims Management course in Orlando, Fla., sponsored by the Risk & Insurance Management Society Inc.; $545 for RIMS members; $645 for non-members; less than six weeks prior to course add $50. **Also June 5-7** in San Francisco, **Sept. 25-27** in Boston, **Nov. 20-22** in New Orleans. Education Dept., RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

FEB. 21. Illinois Employment Laws and Regulations conference in Springfield, sponsored by the Illinois State Chamber of Commerce; $120 for Chamber members; $180 for non-members. **Also Feb. 28** in Chicago. ISCC, 20 N. Wacker Drive, Chicago, Ill. 60606-3083; 312-372-7373.

FEB. 21. Where are the Changes? In-Depth Review of the Commercial Property Policy workshop in Manchester, N.H., co-sponsored by The Society of Chartered Property & Casualty Underwriters and the New Hampshire chapter of the Society of CPCU; $85 for society members; $105 for non-members; add $15 after Feb. 7. Bonnie Kinsley, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 215-251-2735.

FEB. 21-22. Chemical Labeling and Regulation conference in Washington, D.C., sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 21-22. Employee Benefits in Bankruptcy and Lending Transactions institute in New York City, sponsored by the American Bar Assn.; $525 for ABA members; $550 for non-members; $495 for sponsoring section members. **Also April 25-26** in Chicago. ABA, Division for Professional Education, Dept. NI617/618, 541 N. Fairbanks Court, Chicago, Ill. 60611-3314; 312-988-6200.

FEB. 21-23. Qualified Plans, PCs and Welfare Benefits seminar in Scottsdale, Ariz., sponsored by the American Law Institute/American Bar Assn. Registrar, ALI/ABA, 4025 Chestnut St., Philadelphia, Pa. 19104; 215-243-1661.

FEB. 22. Advanced Cost Containment workshop in Los Angeles, sponsored by the Health Research Institute; $295. **Also March 14** in Atlanta, **April 11** in Dallas, **May 16** in Milwaukee, **June 27** in Honolulu. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320

FEB. 22. National Health Proposals workshop in Los Angeles, sponsored by the Health Research Institute; $295. **Also May 16** in Milwaukee, **June 27** in Honolulu. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

FEB. 24-26. Health Maintenance Organization Policy Conference in Washington, D.C., sponsored by the Group Health Assn. of America; $570 for GHAA members; $670 for non-members; add $85 after Feb. 1; $275 for government employees. GHAA/Registrar, 1129-20th St., N.W., Suite 600, Washington, D.C. 20036; 202-778-3236.

FEB. 25-26. Improving Reinsurance Collections conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 25-26. Insurance Regulation Course in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

FEB. 25-26. The New Clean Air Act From A-Z conference in Chicago, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333 or 212-645-7880.

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Municipal bond insurance

Continued from page 2

bond volume reaching 27% to 30%, compared with 26.1% in 1990.

"First and foremost, rising credit concerns will continue to result in a flight to quality and increased investor preference for insured issues," Mr. Elliott said. He noted that retail investors, the dominant buyers of municipal bonds, like the security that insurance offers.

The recession also could stimulate issuers' interest in obtaining insurance because it permits them to lower their borrowing costs, Mr. Elliott said.

In addition, credit ratings may be downgraded for many issuers faced with widening budget gaps, reduced federal aid and lower tax revenues. Triple-A ratings conferred by municipal bond insurers would help sell bonds to generate needed revenue, Mr. Elliott said.

"Our target market may expand as state credits like Pennsylvania and Rhode Island might, for the first time, benefit from bond insurance.

"The flip side of this is, of course, that some credits will further deteriorate and will therefore not be able to meet an insurer's underwriting criteria, but this universe will not, in my judgment, be nearly as large as the former one."

Mr. Elliott said that even if the recession deepens, he does not expect widespread defaults of insured municipal issues because they are for "bread and butter," or essential, services.

And, municipalities are under great pressures "to avoid the stigma of even a hint of default because eventually they will have to tap the capital markets again," he noted.

However, "there is no question that surveillance will continue to be a high priority for the industry in 1991," he said.

Mr. Elliott pointed out that there is a big difference between budget deficits and defaults. "Municipal credits have a demonstrated record of financial strength even during tough times," he said.

The retail buying trend also will help financial guarantee insurers, according to Mr. Elliott.

Uncertainty about the equity markets created by the war and almost certain increases in state and local taxes as municipalities try to close budget gaps will accelerate demand for high quality, safe, tax-exempt investments, he said.

"It is the individual buyer who most needs and demands insurance," he said.

In addition, during times of economic stress, insured bondholders who decide to sell their holdings before maturity find it easier and less costly than do those with uninsured bonds, Mr. Elliott said.

"In fact, there could have been no more happier holders of Philadelphia bonds during the panic that followed the September downgrading of Philadelphia than those whose bonds were insured," Mr. Elliott said.

Uninsured investors who sold Philadelphia bonds after the downgrading received about 18% less in value than insured holders, according to Mr. Elliott.

MBIA has insured some of the city's general obligation bonds (*BI*, Oct. 8, 1990).

"While our product doesn't guarantee market value, recent history reveals that protection against downgrading or potential downgrading is certainly an important unadvertised added benefit," Mr. Elliott said.

MBIA's success is not dependent on its portfolio remaining loss-free, according to Mr. Elliott. "Our success is dependent upon the resiliency of municipal issuers, the fact that we are obligated to pay principal and interest when due, and the likelihood that any insured default would be short-term and restoration would be repaid."

Bond insurers will weather the recession, Mr. Elliott predicted. "Bond insurers enter this period of economic stress with strong balance sheets, insured portfolios that are diverse and of high quality, investment portfolios of securities of double-A or better—clearly free of junk bonds and bad real estate loans—and the kind of growing earnings which add significantly to our capital strength."

David C. Clapp, managing director of Goldman Sachs & Co. of New York and the partner in charge of its municipal bond department, agreed that the municipal bond market will grow this year.

But Mr. Clapp predicted even greater growth: new issue volume of $140 billion in 1991.

Infrastructure must be repaired and municipalities cannot raise any more taxes, which means they must issue bonds, Mr. Clapp said.

Also speaking at the forum were:

• Sally B. Hernandez-Pinero, New York City's deputy mayor for financial and economic development, who discussed the city's fiscal outlook.

• Broker James A. Lebenthal, chairman of New York-based Lebenthal & Co., who said there is still a large, untapped market of retail investors in municipal bonds. ■

Tort reform

Continued from page 3

In addition, Washington, D.C.-based says in its 41-page "State Tort Reform Outlook for 1991," released late last month, that it expects tort reform bills will be introduced in at least 28 states and Washington, D.C., this year.

According to Diane Swenson, ATRA's vp-legislative affairs, such bills are expected to be introduced in Alaska, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Pennsylvania, Rhode Island, Texas, Vermont, Washington, Wisconsin and Wyoming.

Medical malpractice liability and product liability concerns are paramount, Ms. Swenson said.

Despite that ambitious agenda, "defense is absolutely key in 1991," Ms. Swenson stressed. She said that protecting earlier reforms will require extra vigilance this year.

Tort reform advocates expect challenges ranging from efforts by the trial bar and others in Louisiana to allow punitive damages under some circumstances to wholesale attempts to roll back many years' worth of tort reforms.

Kansas and Montana are likely key battlegrounds in 1991, said Ms. Swenson. In both states, anti-tort reform forces gained in the 1990 elections and tort reforms have not been effectively challenged in past.

In addition, Kansas has long favored tort reform, she said.

Results of the 1990 elections "have dramatically reinforced the need for a defensive effort" in Kansas, noted the ATRA report.

During the 1980s, Kansas capped non-economic damages at $250,000 and punitive damages at $3 million, among other reforms.

"As a result of these changes, liability insurance rates have stabilized and even declined. Most notably, Kansas physicians saw a 25% decline in professional liability insurance premiums," the report says.

But in 1990, the Kansas Coalition for Tort Reform turned its efforts to defending measures like a $100,000 cap on wrongful death claims.

"With the election of a new Democratic governor and a Democratically controlled House of Representatives, the new speaker of the House and the House judiciary committee chairman, outspoken critics of tort reform have declared their intention to dismantle the tort reform package enacted during former Gov. (Mike) Hayden's term," the report says.

Tort reform was not a major issue in the Kansas elections, which turned on an unpopular property tax measure (*BI*, Nov. 12, 1990).

Changes in the balance of political power could also make attempts to rescind tort reform measure likely in Montana. Both houses of the state legislature are overwhelmingly Democratic, and the ATRA report contends that a bill to repeal the state's 1987 limit on joint and several liability probably will be introduced.

Under the 1987 statute, defendants found less than 50% at fault would be liable for only their share of damages. ATRA predicts a bill lowering that to 10% will be introduced.

ATRA also expects tort reform opponents in Montana to introduce legislation calling for the repeal of a 1987 law allowing courts to consider collateral sources of monetary awards, like workers compensation, to reduce compensatory awards (*BI*, June 8, 1987).

Defending earlier victories could be difficult, says Ms. Swenson. "1990 was a difficult election year."

However, poor economic conditions in some states could help those either defending existing reforms or seeking new ones, Ms. Swenson said. Reformers will argue that existing or new reforms will help states retain business and compete for new business.

The economic outlook also will work against new tort reforms in some states, Ms. Swenson said. Lawmakers in those states will focus their attentions on balancing state budgets and dealing with the economic downturn, Ms. Swenson said.

ATRA's report notes that the "Rhode Island Legislature will be concerned about the state's economy, the banks and savings and loan institutions in the state and the budget deficit. These priorities will make it difficult to enact tort reform legislation in 1991."

And, in Mississippi, "due to the

Continued on next page

FEBRUARY CLOSINGS

SET YOUR DATES

issue:	February 18 — Reader Service
closing:	February 5
editorial feature:	Benefits: Health Care Cost Control — Directory: Utilization Review Providers
demographic section:	Insurer Topics: Combating Fraud
issue:	February 25
closing:	February 12
issue:	March 4 — Reader Service Bonus Distribution: ICRF
closing:	February 19
editorial feature:	Risk Management Services — Directory: Risk Management Consultants
demographic section:	Agent/Broker Topics: Agency-Insurer Relations
issue:	March 11
closing:	February 27

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Tort reform

Continued from previous page

worsening economic situation," the outlook for reforms like bifurcated trials in punitive damage cases "is not bright."

Meanwhile, various state tort reform coalitions will continue to press for reforms in more than half of the states, particularly in medical malpractice and product liability, Ms. Swenson said.

Medical malpractice liability reform bills are expected to be introduced in Colorado, the District of Columbia, Georgia, Maine, Massachusetts, Michigan, Nevada, New York, North Carolina, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington and Wisconsin.

New York will be a key state for possible medical malpractice reforms, according to Ms. Swenson.

Gov. Mario Cuomo's interest may indicate a chance for action this year, she said. She points out that he recently endorsed a no-fault compensation plan for neurologically impaired infants.

The governor also noted that while reforms enacted from 1985 to 1987 led to lower malpractice premiums for many physicians, obstetricians and gynecologists are still waiting for relief.

In addition, since 1985 physicians have supported legislation that would cap damages for pain and suffering at $350,000. The state Senate previously has passed such legislation, so doctors remain "hopeful that with the governor's call to action, legislation will be enacted in 1991," ATRA noted.

Other states in which medical malpractice liability reforms may be enacted are Massachusetts and Michigan, Ms. Swenson said.

The states expected to consider product liability bills are California, Florida, Hawaii, Illinois, Indiana, Michigan, Mississippi, New York, Pennsylvania and Texas.

Because of its size and the chances for success there, "the focus will be on Texas, Texas and Texas," Ms. Swenson said. Texas has "always been a priority" for product liability reform, she said.

In 1989, the Texas House passed a comprehensive product liability bill that was filibustered to death in the Senate, Ms. Swenson said.

A bill will be introduced this year to continue the effort, she said. The Texas Legislature did not hold a regular session in 1990.

The product liability reform bill that ATRA expects to be introduced in the Texas Legislature would require a separate trial for determining punitive damages, limit sellers' liability and establish a "state-of-the-art" defense, Ms. Swenson said.

New York and Pennsylvania also will be key states for product liability tort reform because of their size, she said.

According to ATRA's legislative outlook, legislation will be introduced in New York this year to, among other things:

- Modify the state's doctrine of joint and several liability so defendants found less than 50% responsible for damages cannot be held responsible for more than their individual share.
- To bar liability when a claimant has expressly assumed risk in using a product and has continued activity that caused exposure to the risk.
- Require plaintiffs contending that design defects were responsible for an accident to prove that manufacturers had a feasible alternative way of making the product that would have prevented the accident.

Reform efforts will proceed 'most expeditiously' in the courts, contends Victor Schwartz, a Washington lawyer and tort reform advocate. 'If the courts are more receptive to well-crafted defense arguments, that's good for tort reform.'

"The two states where something positive could happen are Texas and Pennsylvania," said product liability reform proponent Victor Schwartz, a partner with the Washington, D.C., law firm Crowell & Moring.

Mr. Schwartz pointed to the "very substantial effort" to enact product liability reform in Texas as a positive sign.

Another positive sign, he said: A renewed push for product liability legislation following the narrow defeat of a last year in Pennsylvania—a state ATRA considered one of the most difficult in the country for enacting tort reforms.

However, Mr. Schwartz added: "Where I see tort reform proceeding most expeditiously is in the courts." He said that courts appear more receptive to defense arguments now than any time in the last quarter century.

"If the courts are more receptive to well-crafted defense arguments, that's good for tort reform," he said. Rather than relying solely on precedent, tort reform advocates need to show why defense arguments represent sound public policy, he said.

In other areas of tort reform, states expected to consider changes in punitive damages statutes are Alaska, California, Florida, Indiana, Iowa, Maryland and Pennsylvania.

ATRA expects legislation dealing with joint and several liability in Delaware, the District of Columbia, Florida, Maine, Minnesota, New York, Oklahoma, Pennsylvania, Rhode Island, Washington and Wisconsin.

Legislatures in California, the District of Columbia, Pennsylvania, Rhode Island and Wyoming probably will deal with some legislation concerning collateral sources, such as allowing juries to learn of collateral sources of compensation when considering awards, according to ATRA.

ATRA also expects at least 18 states to consider some "generic" reforms, such as imposing penalties for filing frivolous lawsuits and expanding immunity for governmental entities.

ATRA expects generic reform legislation to be introduced in Alaska, Arkansas, California, Delaware, Florida, Indiana, Maine, Maryland, Minnesota, Missouri, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Washington, Wisconsin and Wyoming, as well as Washington, D.C.

Another area of increasing interest to the various state groups supporting ATRA is "protective order" legislation, said Ms. Swenson. Such laws limit the ability of parties settling a suit to keep settlement terms sealed.

ATRA has not taken a position on the matter, but many state coalitions are against opening such records, she said. The coalitions believe that opening those settlement records will invite additional lawsuits. Proponents of toughening the rules on sealing settlements say the records are a matter of public information and should be available.

Ms. Swenson said protective order legislation has been introduced or is expected to be introduced in at least 13 states: Alaska, California, Colorado, Delaware, Florida, Hawaii, Illinois, Mississippi, New Jersey, New York, Pennsylvania, Rhode Island and Washington. ■

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INTERNATIONAL

U.K. insurers ban gradual pollution cover

By GAVIN SOUTER

LONDON—Most major British insurers soon will introduce gradual pollution exclusion clauses into commercial general liability policies for U.K. companies.

The move to exclude gradual pollution incidents from British commercial general liability policies stems from an Assn. of British Insurers circular issued to members in July 1990.

The trade group suggested a new gradual pollution exclusion clause: "This policy excludes all liability in respect of pollution or contamination other than caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the period of insurance" (*BI*, Oct. 8, 1990).

Most major British insurers have said that they will introduce the clause or a variation this year.

"The world has become more environmentally conscious and it does seem clear that gradual pollution risks will become more and more of a problem for us," said a spokesman for Commercial Union P.L.C. in London. Commercial Union expects to include the clause in all of its new and renewal policies beginning this spring, he said.

Guardian Royal Exchange P.L.C. will be introducing the gradual pollution clause immediately for new business and for all renewals starting Aug. 1, a spokesman said. He blamed "liberal interpretation of the old wordings, particularly in the U.S. courts" for the change.

Royal Insurance P.L.C. introduced the clause on Feb. 1 for new business and will introduce the new policy wording on March 1 for renewals.

A Royal spokesman says its reinsurers are forcing it to introduce the clause. "Punitive action by reinsurers has meant that we have had to withdraw cover from our insureds because we can not get cover ourselves."

General Accident Fire & Life Assurance Corp. P.L.C. also will include the gradual pollution exclusion clause in new and renewal policies beginning March 1. And Sun Alliance Insurance Group P.L.C. expects to include the clause for all policies this spring.

Robert Robinson, general manager non-life at Swiss Reinsurance Co. (U.K.) Ltd. in London confirmed that reinsurers are refusing to cover gradual pollution risks, but said that the restriction had been agreed to by an ABI committee that met throughout 1990.

"Reinsurers have agreed with the direct offices on the sort of cover we should be providing in the U.K. and they agreed that they should only (provide) gradual pollution cover for innocuous risks. What has happened is that the big offices

Continued on next page

War exclusions bar cover for Gulf oil spill damage

By MARIA KIELMAS

LONDON—Although damage from the Persian Gulf oil spills is expected to take a heavy toll on business and the environment, insurers will pay few if any claims because of war risk exclusions, Middle Eastern insurers say.

Despite the lack of insurance, Saudi Arabia and other Gulf states are taking steps to minimize damage from what is the world's worst oil spill to date.

As of late last week, several separate oil spills in the Gulf had been identified.

The largest slick was caused by 8 million barrels of crude oil pumping out of Kuwait's Sea Island terminal that produced a slick 60 miles long by 12 miles.

The Iraqi forces occupying Kuwait reportedly began pumping the crude into the Gulf on Jan. 25. Last week, U.S. jets bombed pipelines that feed the offshore oil terminal in an effort to stop the flow of oil into the Gulf.

The crude oil was produced by the Kuwait Oil Co., a subsidiary of the state-owned Kuwait Petroleum Corp., a KPC spokesman in London confirmed.

Before the Aug. 2 Iraqi invasion, KPC was producing about 1.5 million barrels of oil per day, meaning losses up to the end of January are about 273 million barrels of oil. At an average oil price over the period of $25 per barrel, KPC's financial losses would total $6.83 billion.

The Kuwaiti crude did not include any oil produced by Texaco Inc. of White Plains, N.Y., which operated the Wafra oil field on the Kuwait side of the former Saudi neutral zone, a spokesman for the company confirmed.

Before Aug. 2, production from the Wafra field and adjacent South Um Gudair and South Fuwairis fields totaled 135,000 barrels per day. All the oil is pumped to the Mina Saud refinery in the former neutral zone, which is operated by Texaco subsidiary Getty Oil Co.

The Texaco spokesman said that Iraqi forces could have damaged 10 to 12 wells out of a total of 360 in the Wafra and other fields. "Looking at. . .photographs, we saw 10 to 12 wellheads destroyed. We don't know if they were shot off or detonated," he said.

Texaco has not yet assessed its financial losses related to the Gulf war, he said.

Continued on page 31

ILU marine losses

In the past three years, losses of bulk and combination vessels have begun to outstrip other classes of ships.

1988	Number	Gross metric tons
Tankers	13	144,371
Bulk & combination carriers	8	133,654
Other carriers	126	497,831
Total	147	775,856
1989	**Number**	**Gross metric tons**
Tankers	13	313,464
Bulk & combination carriers	16	306,337
Other carriers	127	458,276
Total	156	1,078,077
1990	**Number**	**Gross metric tons**
Tankers	14	224,884
Bulk & combination carriers	19	704,615
Other carriers	108	295,966
Total	141	1,225,465

Source: Institute of London Underwriters

GRAPHIC BY HOLLY SEGUINE

Australian storm losses

Insured claims estimated to hit $115 million

By KATE McILWAINE

BRISBANE, Australia—Losses from Cyclone Joy and subsequent flooding that hit Queensland in December and January have caused as much as $300 million Australian ($234.9 million) in damages, although insured losses are likely to be less than $15 million Australian ($12.5 million), insurers say.

In addition, a severe electrical and windstorm that blasted Sydney, New South Wales, last month is expected to produce insured claims of about $100 million Australian ($78.3 million).

Cyclone Joy circled off the north Queensland coast during the week before Christmas, bringing gale-force winds to the area before it moved out to sea on Dec. 25. The worst wind damage was sustained in Cairns, Queensland, about 930 miles north of Brisbane.

The cyclone was followed by rain that deluged Northern and Central Queensland for several weeks. Rockhampton, about 310 miles north of Brisbane, was isolated by flood waters for more than a week.

The region near the Gulf of Carpenteria in Far North Queensland was still isolated by floodwaters late last month, though food and supplies were being dropped to residents of the region by helicopters.

The Queensland government declared the north and central regions of the state a disaster area after assessing the extent of damages.

Livestock and crops, as well as roads and bridges sustained the most damage from the cyclone, but were largely uninsured. Coverage for flood damage is not commonly purchased in Australia.

Graham C. Jones, Queensland regional manager for the Insurance Council of Australia, says figures have not yet been collected from all underwriters, but he expects insured losses to be between $10 million and $15 million Australian ($7.8 million and $11.7 million), most of which will be for personal property damage.

The largest commercial claim Mr. Jones said he knew of was a $200,000 Australian ($156,600) claim for water damage to a hotel on the Cairns waterfront. He could not identify the hotel.

Suncorp, the Queensland government-owned insurer, has received 4,130 claims totaling more

Continued on next page

GRAPHIC BY CYNTHIA WATSON

ILU chairman sees rate hikes following 3 years of losses

By GAVIN SOUTER

LONDON—A combination of disastrous losses for the third consecutive year in 1990 and more expensive reinsurance will force marine and aviation underwriters in the Institute of London Underwriters to increase rates in 1991, says the ILU's chairman.

"We have come through a period of unprecedented gloom with all of us blaming each other for the reduced premium available but without many of us associating that reduced premium with the continuing liability—or maybe increased liability—that we have taken on board without adequate premium resources," Chairman Declan McMahon said at the ILU annual general meeting last week.

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

"I can tell you positively that all sections of the account—hull, cargo and aviation—showed a loss in 1990," said Mr. McMahon.

Underwriting results show a deteriorating record.

While premiums written by ILU members rose 3.7% to 1.68 billion pounds in 1990 ($3.24 billion at year-end 1990 exchange rates) from 1.62 billion pounds in 1989 ($2.61 billion at year-end 1989 exchange rates), claims increased 27.6% to 2.73 billion pounds ($5.27 billion) from 2.14 billion pounds ($3.45 billion) in 1989.

The figures are not precise indicators of losses, however, because the claims figures include reinsurance claims paid.

Predicting improved results in 1991, Mr. McMahon points to to reduced reinsurance capacity, which is around 50% of 1989 levels, and increased reinsurance rates (*BI*, Jan. 7).

But rate increases in the direct market may have to be spread over several years rather than follow the lead of the excess-of-loss market, which increased rates 200% to 300% during the 1990 year-end renewal season, said Tony Nunn, general manager of Scottish Lion Insurance Co. Ltd. and the ILU spokesman on marine hull insurance.

"The catastrophe market has in recent years had to pay a dispro-

Continued on next page

INTERNATIONAL

ABI exclusion

Continued from previous page

have found that this was difficult to put in to practice," said Mr. Robinson.

The principle that the polluter should pay has been at the center of the Environmental Protection Act 1990 and the Green Paper on the environment published in September (*BI*, Oct. 8, 1990).

Some risk managers reacted coolly to the introduction of the gradual pollution exclusion clause.

Brian Pountney, chairman of the Assn. of Insurance & Risk Management in Industry & Commerce and risk manager for Bass P.L.C., says the ABI should have acted in concert with the European insurance company association, Comite European des Assurances. That group has not yet decided whether gradual pollution should be excluded from commercial general liability policies.

"It has not been on the CEA agenda because most European countries take a different approach to this type of cover," said Mr. Pountney. "The risks are usually covered by pool arrangements and it is fairly common for the risks to be state-financed."

He said AIRMIC would take up the matter with the ABI at a meeting in March.

Some insurers are trying to soften the blow of the exclusion by offering alternative means to finance gradual pollution exposures or offering environmental impairment liability insurance, which includes coverage for gradual pollution.

"We are seeking to help insureds with the problem by setting up sinking funds to pay for the damage, but this is financial insurance not risk transfer," Swiss Re's Mr. Robinson said. He explained that under such an arrangement the policyholder pays into the fund regularly, which allows the policyholder to spread any losses over several years.

Zurich Insurance Co. is expected to launch a similar facility for European clients by July. The Swiss insurer excludes gradual pollution from is own Europewide general liability policy.

David Dixey, casualty manager for Zurich International in London, said the facility is currently being formulated but it may offer some form of coverage for gradual pollution.

"It could include some element of cover for gradual pollution but we are looking at an overall approach to gradual pollution. It could be done through risk transfer but it could also be done using other ways of financing the costs," Mr. Dixey said.

And, American International Underwriters (U.K.) Ltd., a London unit of American International Group Inc., has launched its U.K. Environmental Impairment Liability policy, which covers third-party claims for losses due to sudden and accidental as well as gradual pollution. AIU is offering up to $20 million in aggregate limits. ■

Australian storms

Continued from previous page

than $2 million Australian ($1.6 million), a spokesman in Brisbane said.

All were a direct result of damage from Cyclone Joy and the subsequent flooding, he added.

Chris M. Pobar, Queensland claims manager for Mercantile Mutual Insurance Australia Ltd., said the insurer would incur $1.5 million Australian ($1.2 million) in claims.

A total of 792 claims had been received as of late last month, including 100 commercial and industrial property loss claims, he said. The largest single claim for Mercantile Mutual was a $110,000 Australian ($86,130) claim for property damage at a trailer park in the coastal city of Mackay where flying debris had damaged trailers.

"We were fairly lucky," Mr. Pobar said of the volume of claims.

While flood coverage is rare in Australia, some homeowners have been able to claim coverage for water damage that occurred because of blocked drains, he said. Mercantile Mutual has received many water damage claims from Rockhampton policyholders, Mr. Pobar said.

Mercantile Mutual is also the lead underwriter of a property insurance program for Queensland grain growers. Laurie Scholl, who administers the program, estimated that claims from growers who incurred crop damage due to flooding are likely to reach $500,000 Australian ($391,500). He added, though, that this figure was "very rough, at this stage."

Gavin J. McCurley, Queensland claims manager for CIC Insurances Ltd., a unit of Norwich Winterthur, said the insurer had incurred claims of $1.4 million Australian ($1.1 million).

Only about 15% of the 700 claims received were for damage to commercial property, he said.

"Had the cyclone crossed the coast, claims could have been far more substantial," he added.

Joe Coppolecchia, claims supervisor in Brisbane for FAI Insurances Ltd., said that flood and cyclone claims so far incurred by the insurer reached $460,000 Australian ($360,180), most of which was for personal property damage.

"It's been an inconvenience, but from an insurance point of view the damage has not been severe," he said of the storms.

The only livestock that were insured were stud animals and no claims had been received, according to Bob Callaghan, Queensland claims manager for National Commercial Union Ltd. Stock that drowned due to flooding was uninsured herd cattle, he said.

"From our point of view, Cyclone Joy was not a destructive cyclone. The damage which did occur was mainly from water damage," Mr. Callaghan said, noting the insurer expected to incur claims totaling $500,000 Australian ($391,500).

Uninsured stock losses from the cyclone and flooding have been estimated at $100 million Australian ($78.3 million) and crop losses at $70 million ($54.8 million).

A spokesman for the Queensland Department of Primary Industries in Brisbane said the loss figures for grain and livestock farmers in the affected area are "very sketchy."

The DPI is conducting a telephone poll of farmers to obtain more accurate loss statistics, but the results will not be available until later this month, he said.

The coal industry, which has numerous open cut mines in Central Queensland that export 34 million metric tons of coal per year, suffered production delays but no losses, according to a spokesman for BHP-Utah Coal Ltd. BHP-Utah is a subsidiary of BHP-Utah International Inc. of San Francisco, which in turn is owned by Melbourne-based conglomerate Broken Hill Proprietary Co. Ltd.

The spokesman said open cut pits at BHP-Utah's eight Queensland mines were flooded and some coal stockpiles slumped because of the heavy rain.

A loss adjuster was expected from BHP-Utah's San Francisco headquarters, but the spokesman did not expect any tangible losses.

The spate of natural disasters in Australia continued late last month, when a freak wind and electrical storm hit Sydney, New South Wales, on Jan. 21, causing winds of up to 95 mph.

Allan Porter, government liaison officer for the Insurance Council of Australia in Sydney, said he expected 20,000 claims totaling $100 million Australian ($78.3 million) to be filed with insurers.

The claims were mostly personal property damage claims because the high winds primarily hit the upper north shore of Sydney, which is predominantly residential. In fact, most were a result of trees falling on houses, he said. ■

ILU 1990 results

Continued from previous page

portionately large amount of claims because we have been suffering major claims," Mr. Nunn said.

"And, because XL underwriters have taken such a pasting, many have said that enough is enough and have left the market. So capacity is tight and rates are increased," he said.

"The XL underwriters are being forced to do this because they have to pay the claims now, but as far as we direct writers are concerned, we may pay our claims in dribs and drabs over 10 years. So, if we need a 25% increase to pay our claims, we may have to settle for 15% this year and 10% the year after," Mr. Nunn explained.

Cargo underwriters also are strengthening their position in 1991, said Leslie Maton, underwriter and director of Andrew Weir Insurance Co. Ltd.

"As a market, we are controlling the level of discounts and commission, and I think that it is in this way that we can control the market," he said.

Cargo coverage is currently placed at rates between 25% to 27.5% below the basic rate because of increased brokers' commissions and cash discounts, Mr. Maton said.

"It is more difficult for us than for hull underwriters to pinpoint owners whose rate should be increased because ownership can change three to four times in one voyage," he said.

Direct cargo rates are remaining firm but underwriters are widening the terms of the coverage and consequently are not receiving the appropriate premium for the risk, Mr. Maton added.

Higher war risk rates prompted by the Persian Gulf war (see story, page 1) are having no effect on mainstream marine rates, said Roger Nixon, divisional executive-marine and aviation at Cornhill Insurance P.L.C.

"The market is hardening anyway because rates are being increased to pay for increased repair costs," he said.

Bulk carrier losses are growing rapidly, with bulk and combination carriers accounting for 57% of the 1.23 million total gross metric tons lost in 1990 (see chart, page 29), according to the ILU.

Bulk and combination carriers accounted for less than one-third of 1.09 million gross metric tons lost in 1989 and about one-eighth of the 775,856 gross metric tons lost in 1988.

Three bulkers disappeared without a trace and more 100 people were killed because of bulk casualties during 1990, the ILU reports.

"The merchant fleet is aging, and this is particularly affecting bulk carriers," Mr. Nixon said.

Underwriters and classification societies currently are pooling information in an attempt find a cause for the disproportionate amount of bulk losses, he said.

"We are now addressing the point where shipowners who have tempted the patience of one classification society move to another, tell a good story and get another six months" of certification, he noted.

Mr. Nixon said the classification societies are constructing plans to deal with the problem, but he would not reveal any details.

The aviation market is only now starting to see signs of improvement, Mr. McMahon said.

"Since the end of the year, the early indications of a hardening market have generally held firm, but there is a long way to catch up," he said.

"Many airline renewals do not fall due again for several months, and it would therefore be unwise to be too optimistic. Perhaps the best that can be said at the moment is that aviation insurers have seen the worst of the down cycle," he said.

Aviation claims experience improved during 1990, according to the ILU. Estimated claims costs dropped 28.7% to $742 million from $1.04 billion in 1989, total jet losses dropped 44.8% to 16 from 29, and passenger fatalities fell a whopping 69% to 347 from 1,118, the ILU reports.

Meanwhile, Mr. McMahon observed, premium payments to underwriters by brokers are still too slow, despite last year's introduction of an electronic settlement system, dubbed the Claims Management System.

"Although claims have been paid more quickly, many brokers have not kept to their agreement to pay us our premiums on due dates," he asserted. "Brokers overall have not cooperated, nor have they reacted responsibly to the initiatives that we have created in the market."

Underwriters are considering ways to encourage brokers to pay premiums more promptly, according to Mr. McMahon. These include penalizing brokers for tardy payments by, perhaps, reducing commissions, or rewarding prompt payments, he said.

CLAMS will be mandatory for all ILU companies and brokers effective January 1992. Currently, 70% of brokers use CLAMS and 30% of ILU business is settled through the system.

CIGNA Reinsurance Co. (UK) Ltd. and Colbourne Insurance Co. Ltd. pulled out of the marine, aviation and transport market in 1990 and left the ILU (*BI*, Nov. 12, 1990). There are now 114 companies in the ILU, and there are currently no applications to join the market. ■

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INTERNATIONAL

Gulf oil spill

Continued from page 29

The first reported oil spill was caused by the Iraqi bombing of the Khafji oil storage terminal. This oil was produced by the Arabian Oil Co., which is a consortium of Japanese electric and gas utilities.

Two later oil spills were reported by Saudi Arabian military authorities in Riyadh on Jan. 24, which have since joined the Sea Island oil slick.

The first spill was started when a U.S. military aircraft hit an Iraqi oil tanker in the Gulf that was suspected of intelligence gathering. The following week, U.S. authorities accused Iraq of emptying five of its oil tankers in the gulf.

And, late last week, British military authorities reported that the Iraqis had started pumping oil into the Gulf from an Iranian National Oil Co. storage facility at Mina al Bakr, just north of Kuwait's Bubiyan Island. No estimates of the slick's size were available late last week.

All insurance claims associated with the spills—including cleanup costs or damage to desalination plants—would fall under war risk exclusions in property/casualty policies, according to a Saudi insurer. "The proximate cause is war, so I do not believe insurance remains," he said.

Other Middle Eastern insurers concur.

"Should a desalination plant owner suffer plant and machinery damage caused by ingress of 'foreign materials,' he would look to his policy covering his plant and find a war and kindred perils exclusion," said Ian Sangster, assistant general manager of the Qatar Insurance Co. "Therefore, leakage as a result of a warlike act would not be covered for damage to a third party's property. . .under any liability cover."

Saudi Arabian desalination plants, the majority of which are located along the Gulf coast and provide nearly all of the kingdom's drinking water, are operated by the government-controlled Saline Water Conversion Corp. Almost 99% of the SWCC's insurance is written by the state-owned National Co. for Co-operative Insurance.

Other industries also could report losses on account of the spill.

The Western Persian Gulf coast, from Kuwait to the United Arab Emirates, has traditionally been known for its pearl crops.

Qatar's fisheries are also in danger, said Abdulaziz Al Mads'a, general secretary of the emirate's Environmental Protection Committee.

Of a total Qatari population of 70,000 to 80,000 people, some 20,000 depend on the fishing industry for their livelihood, he said. "Our diet depends on the sea."

The oil spill also is expected to take a heavy toll on the Gulf environment.

The Gulf's islands are major breeding grounds for turtles, while sea grass beds support a population of dugong, shrimp and other marine life. Dugongs are sea-going mammals that resemble manatees.

The slick is projected to reach the Qatar peninsula by Feb. 8 or 9, said Mr. Al Mads'a. He said he feared most that the coral reef around Qatar would be killed, as well as dolphins, turtles and sea birds.

Efforts to contain the slick and minimize its damage are being led by the Saudi Arabian government, said Yusef Al Wataid, field research director of the government's National Commission on Wildlife Conservation and Development.

"We are now trying to arrange rescue of as much wildlife as possible and then clean some beaches," he said.

Immediate attention will also be directed to protecting inlets for desalination plants and other facilities, he said.

"International assistance will be essential in dealing with a spill of this magnitude," said Abdul Abuzinada, secretary general of the NCWCD.

Saudi Aramco, the state-owned oil company, is one of 13 oil companies that belong to the Oil Spill Service Centre in Southampton, England. Members make a fixed contribution to the center and can avail themselves of its services when necessary, a spokeswoman confirmed.

Saudi Aramco has already arranged for the transport of about 90 tons of oil spill equipment, worth nearly $2 million. ■

LONDON

Casualty line slip formed in London

LONDON—Eight London-based brokers are offering a U.S. liability line slip led at Lloyd's of London by underwriter Stephen Merrett.

The claims-made slip, which offers $20 million of product, general, employers and automobile liability insurance excess of $5 million, is similar to the claims-made policy wording used by X.L. Insurance Co. Ltd. It was first conceived in April last year (*BI*, May 7, 1990), but was not available to policyholders until last November for 1991 renewals.

The line slip can be accessed through: C.T. Bowring & Co. Ltd., a Marsh & McLennan Cos. Inc. unit that put the slip together; Johnson & Higgins; Sedgwick Group P.L.C.; Minet Holdings P.L.C.; Alexander Howden Group Ltd.; Willis Corroon P.L.C.; Nicholson, Chamberlain & Colls Ltd.; Bain Clarkson Ltd.; and Lloyd Thompson Ltd.

The coverage offers clients continuity with the claims-made wording of X.L. and A.C.E. Insurance Co. Ltd. It also can be used in conjunction with $100 million in coverage excess of A.C.E. coverage that also is led by Mr. Merrett in the London market, according to John Tyndall, deputy chief executive of Bowring North America Ltd., a unit of C.T. Bowring.

The $20 million line slip is led at Lloyd's by Mr. Merrett's syndicate 1131, managed by Merrett Underwriting Agency Management Ltd., which writes the first 20%. The next 10% of the line slip is written by syndicate 1067, underwritten by Stephen Burnhope and also managed by MUAM.

According to information from the London brokers, all risks on the line slip must first be approved by Mr. Merrett and Mr. Burnhope, who have binding authority on behalf of all other insurers on the slip.

There are 18 other Lloyd's syndicates on the line slip, including those underwritten by Richard Hazell, Peter Chandler, B.G. Adams, Richard Outhwaite, Gale Coles and Michael Marchant. Altogether, Lloyd's syndicates write nearly 70% of the line slip, including the leaders.

Italian insurer Assicurazioni Generali S.p.A. underwrites nearly 14% of the line slip. Also participating on the coverage is Anglo American Insurance Co. Ltd. with 4%, and Trygg Hansa Insurance Co. with 8%.

The slip offers $20 million of products liability coverage subject to an annual aggregate, and $20 million of general and employers liability coverage with a separate aggregate for each cover. Automobile coverage, which is also available for $20 million, has no aggregate limit.

The slip's minimum attachment point is $2 million for automobile and employers liability insurance but $5 million for general and product liability. These retentions can either be self-insured or insured by other parties.

However, if underlying limits are exhausted by defense costs, a client may be able to negotiate to allow defense costs to apply toward the underlying retention.

The coverage, like most claims-made forms, is triggered when notice of an occurrence or a claim arising from an incident is first given during a policy period. It is the same policy trigger as that used in A.C.E. and X.L. policy wordings, brokers say.

Like A.C.E. and X.L. policies, the line slip also allows clients to buy open-ended discovery periods at pre-set premiums for as long as desired.

The new line slip also provides:

- Pollution liability coverage for losses that are discovered by the policyholder within seven days of commencement. Notice must be given to underwriters within 20 days. Gradual pollution and pollution which is expected or intended are excluded.
- Coverage for punitive damages where allowed.

—*By Stacy Shapiro*

Risk management curriculum advances

By STACY SHAPIRO

LONDON—A curriculum leading to a post-graduate certification in risk management recognized and available through risk management associations around the world is moving closer to reality.

An outline of such a program was first presented to the board of the International Federation of Risk & Insurance Management Assns. during the biannual 1989 Risk Management Forum in Monte Carlo, co-sponsored by the Risk & Insurance Management Society Inc. and the Assn. Europeene des Assures de L'Industrie (*BI*, Nov. 6 1989).

The final draft of the outline was approved last month by the European risk management associations that belong to AEAI, confirmed Gordon Dickson, the banking and insurance professor at Glasgow College in Scotland who designed the curriculum.

Details are now being worked out by Mr. Dickson following a meeting of some members of the IFRIMA educational committee, according to a committee member Dennis Farthing, retired risk manager of RTZ Corp. in England. Corporate bans on overseas travel kept several members, including a RIMS representative, away (*BI*, Jan. 21).

The committee is expected to recommend the final curriculum to the IFRIMA board for approval at a meeting during the RIMS conference in New Orleans in April, according to Mr. Farthing.

Mr. Dickson—who heads the only risk management curriculum in Europe that leads to a graduate degree—developed the proposal in 1989 with input from risk management associations around the world. The initial proposal included nine subjects, but later changes might reduce that number.

Five core subjects still will be included, according to Mr. Dickson: business finance, risk analysis, corporate risk management, physical control of risk and risk financing.

There will also be "a range of options covering a whole lot of aspects of risk management which will be geographically specific," said Mr. Dickson. Each option will fit the region where the course is offered, he said.

Meanwhile, Mr. Dickson and the AEAI educational committee are examining the best way to offer the course.

"It won't be through an international body, but through individual national risk management associations," he said. National groups will probably determine which optional courses to offer.

Each association also will likely determine what type of certification should be offered at the end of the post-graduate course, said Mr. Dickson.

For example, the Italian group can't offer a "diploma" unless the curriculum is approved by the Italian government, so its certification may be called something else.

The new curriculum will be especially important to risk management associations that do not already offer a course of study, including those in France, Italy and Switzerland.

Courses available now, like those in the United States, United Kingdom and Australia, could be altered to fit into the international curriculum, Mr. Dickson said. ■

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Cost of risk

Continued from page 3

dustries reported the highest cost of risk as a percentage of revenues, while the insurance and telecommunications industries had the lowest (see chart, page 32).

• Big companies paid far less than small companies for property and liability insurance and self-insured losses as a percentage of gross revenues: Premiums and self-insured losses represented 5.2% of revenues for companies with less than $30 million of revenues in 1989, while these costs represented only 0.33% of revenues for companies with more than $3 billion of revenues.

"The small guys pay a ton more than the big guys," Mr. Blinn said. "It's just clear that bigger companies have more clout in their insurance buying and are more sophisticated in managing" risk costs.

• Most companies used between one and three insurance brokers or agents to place coverage, and most paid their agents and brokers compensation amounting to between 6% and 10% of property and liability insurance premiums.

• The average risk management department consisted of roughly five professional and clerical employees, virtually unchanged from 1984. However, risk management department costs dropped dramatically as a percentage of premiums and self-insured losses.

The 1990 Cost of Risk Survey is the first conducted by RIMS and Tillinghast since 1985. Questionnaires for the latest survey were sent to 4,394 U.S. and Canadian RIMS members, with 809 companies, or 18%, responding.

The aggregate cost of risk for all respondents for 1989 was $7.7 billion, or about 0.52% of 1989 gross revenues of $1.3059 trillion and 0.22% of gross assets of $2.6957 trillion.

The 1990 survey does not compare aggregate 1989 cost of risk figures with those compiled in the 1985 survey because the definition of cost of risk changed: While the earlier survey included risk control and loss prevention expenses, the current survey deleted these costs because of "limited and unreliable data."

Thus, "great caution is needed in attempting comparison of this survey to prior Cost of Risk surveys," RIMS and Tillinghast warn.

However, the survey does compare the composition of the cost of risk dollar in 1989 with the breakdowns from the 1985 survey after eliminating risk control costs from the figures for the earlier year (see chart, page 3).

The latest survey found, for example, that property insurance premiums dropped to 12.1% of the respondents' cost of risk dollar in 1989 from 19.4% in 1984, while self-insured property losses dropped to 3.1% of risk costs in 1989 from 5.6% in 1984.

"Property is becoming less and less important as a component of what people are spending their money on," Mr. Blinn said.

Responding companies' total property risk financing costs—including property premiums and self-insured losses—were $1.09 billion, which represented 0.084% of revenues in 1989.

The electric utility industry reported the highest percentage of property premiums and self-insured losses to revenues: 0.25%. The insurance industry reported the lowest percentage: 0.03%.

Property risk financing costs included:

• Property damage, business interruption and extra expense insurance premiums, which represented 0.045% of the 1989 revenues of companies reporting this data.

• Flood and earthquake premiums, which represented 0.012% of revenues.

• Boiler and machinery direct damage and business interruption premiums, which represented 0.006% of revenues.

• Fidelity/crime insurance premiums, which represented 0.004% of premiums.

• Financial institution blanket bond premiums, which represented 0.029% of revenues.

• Other property insurance premiums, which represented 0.022% of revenues.

• Self-insured property losses, which represented 0.024% of revenues.

Self-insured property losses averaged $459,345 per respondent in 1989, a 17.3% increase from average self-insured losses of $391,551 in 1988, the survey found.

The majority of responding companies—58.2%—also maintained property deductibles of less than $50,000 in 1989, while 19.6% maintained deductibles of $50,001 to $100,000 and 14.5% maintained deductibles of $100,001 to $500,000, the study found.

The remaining 7.7% have deductibles of more than $500,000.

Meanwhile, liability risk financing costs represent a growing portion of companies' risk costs: Liability insurance premiums rose to 24.8% of risk costs in 1989 from 19.6% in 1984, while self-insured liability losses increased to 18.4% of risk costs in 1989 from 14.2%.

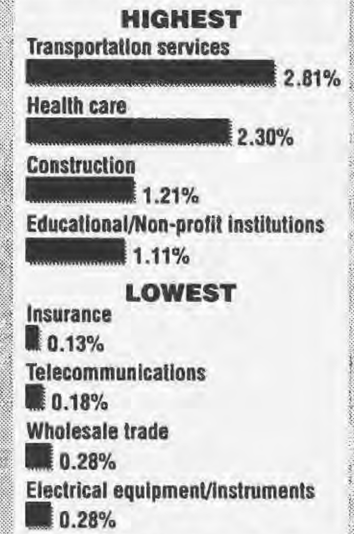
Responding companies' total liability risk financing costs—including liability premiums and self-insured losses—were $2.68 billion in 1989, or 0.206% of revenues.

The transportation service industry reported the highest percentage of liability risk financing costs to revenues: 1.63%. The insurance and telecommunications industries reported the smallest percentage: 0.07%.

Liability risk financing costs included:

• Primary general and auto liability premiums, which represented 0.07% of the 1989 revenues of companies reporting this data.

• Excess and umbrella liability



premiums, which represented 0.042% of revenues.

• Product liability premiums, which represented 0.076% of revenues.

Of 65 companies that reported buying product liability coverage separate from primary and excess general liability programs, 65% bought the coverage for aircraft products, the survey found.

• Professional liability premiums, which represented 0.044% of revenues.

Of 188 companies reporting professional liability programs, 29% bought health care-related professional liability insurance, 14% bought legal malpractice coverage and 11% bought architects and engineers errors and omissions coverage.

• Directors and officers liability premiums, which represented 0.02% of revenues.

More than half of all responding companies—63%—reported buying D&O coverage.

• Environmental impairment liability premiums, which represented 0.02% of revenues.

Fifty-three companies reported buying EIL coverage, 26% of which were mining industry firms.

One quarter of the respondents bought EIL limits of $1 million, though reported limits ranged from $860,000 to $260 million.

Respondents paid an average premium of $309,283 for EIL coverage, though the average was thrown off by three respondents: One transportation equipment industry respondent paid $5.7 million for limits of $100 million; one chemical, rubber and plastics industry respondent paid $2.5 million for $10 million in limits; and one utility industry respondent paid $1.5 million for $5 million of limits.

Without these three respondents, the average EIL premium would have been $134,000.

• Other liability premiums, which represented 0.012% of revenues.

• Self-insured liability losses plus claims adjustment fees and other expenses, which totalled $911.6 million and represented 0.127% of revenues.

The average respondent paid $3.3 million in self-insured liability claims and expenses in 1989, a 42% increase from $2.3 million in such costs in 1988.

A scant majority of respondents —50.2%—carried umbrella/excess liability limits of less than $40 million in 1989, while 32.2% carried limits of between $41 million and $100 million in excess liability coverage. The remaining 17.6% carried limits of more than $101 million.

Nearly 51% of the respondents also reported D&O liability limits of less than $15 million.

Liability deductibles and retentions varied with the size of the company, with the largest companies maintaining the largest deductibles.

The largest number of respondents—36.9%—maintained deductibles of between $100,001 and $500,000, with 13.9% maintaining deductibles of between $500,001 and $1 million and 13.5% maintaining deductibles of between $1 million and $5 million.

Workers compensation insurance premiums, meanwhile, dwindled as a percentage of overall risk costs while self-insured workers comp losses rose: Workers comp premiums declined to 22.7% of risk costs in 1989 from 25.2% in 1984, while self-insured losses jumped to 16.7% from 10.8% in 1984.

The increase in self-insured losses is not surprising "since health care costs and indemnity payments have grown astronomically in the last five years," the survey concludes.

Total workers comp premiums, self-insured losses and claims expenses were $2.88 billion in 1989, or 0.26% of revenues.

U.S. workers comp premiums alone represented 0.156% of respondents' revenues, or an average of $280.30 per employee, the survey found. Canadian workers comp premiums amounted to 0.105% of revenues, or an average of about $186.94 per employee.

Self-insured workers comp losses totaled $1.15 billion, or 0.196% of respondents' revenues in 1989.

The average employer paid self-insured workers comp losses of $3.8 million in 1989, an 8.2% increase from $3.5 million in 1988, the survey found.

The overall cost of risk varied widely among different industries, with the transportation service industry leading the pack with the highest cost of risk: 2.81% of 1989 revenues. The health care industry recorded the second-highest figure: 2.3% of revenues.

Industries with the lowest cost of risk were insurance, at 0.13% of 1989 revenues, and telecommunications, at 0.18% of revenues.

The survey also found that risk management department costs dropped markedly between 1984 and 1989 when compared with premiums and self-insured losses.

Responding companies reported risk management department costs totaling about $243 million, representing 5.7% of premiums paid by those companies and 3.5% of premiums plus self-insured losses. By comparison, risk management department costs in 1984 represented 9.64% of premiums and 6.44% of premiums plus self-insured losses.

Risk managers at the majority of companies—59.6%—report to finance or treasury department officials. Risk managers at 9.6% of the companies surveyed reported to the president or chief executive officer.

The survey found that the top risk management executive at 82.3% of the companies had general authority for purchasing property and liability insurance; 78.2% had general authority for selecting agents and brokers; 70.7% had general authority for purchasing workers comp insurance; 43.6% had general authority for property loss prevention; and 23.8% had general authority for employee/public safety.

Just more than 11% of risk managers had general authority for environmental affairs, while 12.3% had general authority for welfare employee benefit plans and 7.2% had general authority for pension/profit-sharing and deferred compensation plans.

Most responding companies have a full-time risk manager, but the job is full-time at only 40.5% of those companies with less than $30 million in revenues.

The majority of respondents—77.8%—used between one and three brokers or agents to place insurance, with 24.4% using one broker, 33.4% using two and 20% using three.

For property and liability coverages, the majority of companies paid compensation of between 6% and 10% to brokers and agents.

The method of compensation differed by type of insurance.

For property risks, 54% paid by straight commission, 32.3% by fixed fees and 13.7% by negotiated commission.

For liability risks, 46% paid by straight commission, 37.6% by fixed fee and 16.4% by negotiated commission.

For workers compensation coverage, 43.3% paid by straight commission, 42% by fixed fee and 14.7% by negotiated commission, the survey found.

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Copies of the 1990 "Cost of Risk Survey" are available for $250 each from Tillinghast Publications, Financial Centre, Suite 600, 695 E. Main St., Stamford, Conn., 06901-2138. 203-326-5400.

New acting commissioners in two states

Around the state

LANSING, Mich.—Dominic D'Annunzio has been appointed acting commissioner of the Michigan Insurance Bureau.

Incoming Gov. John M. Engler named Mr. D'Annunzio, 52, to the post last month.

Since April 1989, Mr. D'Annunzio was deputy commissioner for the bureau's Office of Financial Analysis and Examinations. During the last quarter of 1989, he was also acting manager of the Michigan State Accident Fund, the state competitive workers compensation fund.

Mr. D'Annunzio had been deputy commissioner for market standards from January 1987 to April 1989.

He replaces Acting Commissioner Dhiraj N. Shah, who was named acting executive manager of the state accident fund.

—By Meg Fletcher

Acting commissioner

BOSTON—Susan K. Scott is serving as acting commissioner of insurance in Massachusetts.

Ms. Scott, who was appointed first deputy of the department in December, became acting commissioner by virtue of her post as first deputy.

She replaces Timothy A. Gailey, who outgoing Gov. Michael S. Dukakis appointed to a circuit court judgeship in late December. His appointment came shortly before William S. Weld, a Republican, began his term as governor.

Since October 1989, Ms. Scott, 38, was director of the State Rating Bureau, which advises the commissioner in rate setting hearings and reviews and approves all policy forms.

She joined the Insurance Department as deputy general counsel in August 1986, following nearly four years as an attorney with Bowditch & Dewey in Worcester, Mass. Ms. Scott holds a law degree from Northeastern University in Boston.

Gov. Weld has the option of naming his own insurance commissioner.

—By Meg Fletcher

States' asset pact

SACRAMENTO, Calif.—California-domiciled insurers will be permitted to keep their assets in New York financial institutions under an agreement made recently between the California and New York insurance departments.

The arrangement is intended to help California-domiciled insurers reduce overhead costs and increase operating efficiency by allowing them to keep assets closer to East Coast financial centers, said James Holmes, senior staff counsel with the California Insurance Department.

Prior to the agreement, the assets of California-domiciled insurers were required to be deposited in California financial institutions.

The agreement also permits California authorities to seize those out-of-state assets if a domestic insurer is threatened with insolvency, Mr. Holmes added.

However, New York still has the power to take possession of the assets and deduct certain administrative expenses and secured claims before handing them over to California.

New York is the second state with which the California Insurance Department has established reciprocity.

The department forged a similar agreement with Massachusetts in 1989 and is currently studying Washington's state liquidation statute to determine whether it is compatible with that of California, Mr. Holmes said.

—By Joanne Wojcik

BC/BS suit

Continued from page 3

"We believe we have acted appropriately, and if this matter is litigated the courts will support that view," said Roger Wilson, senior vp and general counsel.

One plaintiffs' attorney counters that the national association is "far from being a distant and benign" party in the case. Because it "exercised oversight and financial control over the plans," it should be held accountable, contends Irene Keeley, of Steptoe & Johnson in Clarksburg.

A spokesman for the Cleveland BC/BS plan called the hospitals' suit "an attempt to blow smoke over a crisis, much of their own making." The real crisis, he claims, is that one of the state's largest health insurers failed while the 10 hospitals recorded huge profits.

Medicare data show the 10 plaintiff hospitals had combined profits exceeding $103 million between 1986 and 1989, the spokesman said. Meanwhile, the Charleston plan lost $49 million and became insolvent.

In addition, the Public Employees Insurance Agency—the state program that provides health coverage for state employees like teachers and police—has failed to meet its obligations, the spokesman for the Cleveland plan said.

"There is something seriously wrong in West Virginia when its two biggest health insurance providers—PEIA and Blue Cross—fail while these hospitals post huge profits," the spokesman said. The hospitals merely want to "preserve their own cartel-like pricing practices," he charged.

The hospitals charge that they were misled and defrauded by the national association. BC/BS Assn. knew the member plan would fail, and allowed it to operate even though it failed to meet association mandatory financial responsibility standards, the suit alleges. The national group should have taken responsibility for the unpaid claims, the hospitals say. In addition, the suit alleges that the BC/BS Assn. and the Cleveland BC/BS plan conspired to unlawfully deprive West Virginia hospitals of payment for their services and conspired to take over all Blue Cross plans operating in West Virginia.

According to the complaint, records show that the national association became aware of the Charleston plan's deteriorating conditions in 1986. Net losses from operations were $2.7 million in 1986; $22.7 million in 1987; $19.7 million in 1988; and $4.1 million in 1989. In addition, the plan's reserves showed a $32.9 million deficit by 1989, the suit says.

In late 1988, BC/BS Assn. officials assured state insurance regulators that those troubles were related to national trends and implied the Charleston plan's financial condition would improve, the lawsuit says. However, the lawsuit cites records that indicate the Charleston plan's membership in the BC/BS Assn. was put on conditional status in 1987, where it remained until its license was withdrawn.

BC/BS Assn.'s Guidelines for Membership Standards stipulate that a plan "shall maintain adequate financial resources to protect the interest of its subscribers." Local plans are not to be recommended for membership renewal if their financial performance is "extremely poor" for two consecutive years and they do not submit and implement an approved rehabilitation plan within agreed-upon time frames.

Plaintiffs' attorneys charge that the Charleston plan was allowed to continue operating because it was in the BC/BS Assn.'s best interests to do so until another BC/BS plan could be found to take over the business. Such a move would enable the BC/BS Assn. to avoid liability for a failed plan while maintaining its presence in West Virginia, according to the suit.

Hospital lawyers also say that by allowing the Charleston plan to continue to operate under its trademarks, the association was endorsing the plan as solvent.

"The public and hospitals were led to believe that the plans are part of a national plan of insurance with nationwide resources and integrated operations, and that covered serviced provided by hospitals to BC/BS subscribers would be paid as part of that plan," said Gregory M. Luce of Fulbright & Jaworski in Washington, D.C.

The suit further alleges that, in an effort to create a regional plan serving West Virginia, the BC/BS Assn. and the Cleveland plan conspired to take over the financially sound Parkersburg plan as well as the Charleston plan.

Other BC/BS plans were discouraged from competitively bidding for the failed Charleston plan's business, according to the complaint. In addition, the BC/BS Assn.'s decision to restrict the service area of the Parkersburg plan to nine counties as of Jan. 1, 1991, virtually guaranteed that the Parkersburg plan would not remain financially viable unless it agreed to participate in the planned restructuring, the complaint alleges.

Although 57 West Virginia hospitals were affected by the liquidation of the Charleston BC/BS plan, the 10 plaintiff hospitals account for about 57% of the plan's debt, said the spokesman for the Cleveland plan.

The hospitals that filed suit are:

- Charleston Area Medical Center Inc. in Charleston.
- Cabell Huntington Hospital Inc. in Huntington.
- City Hospital Inc. in Martinsburg.
- Fairmont General Hospital in Fairmont.
- Herbert J. Thomas Memorial Hospital Assn. in South Charleston.
- Monongalia County General Hospital Co. in Morgantown.
- St. Francis Hospital of Charleston Inc. in Charleston.
- St. Mary's Hospital of Huntington Inc. in Huntington.
- Stonewall Jackson Memorial Hospital Co. Inc. in Weston.
- United Hospital Center Inc. in Clarksburg.

Besides the suit by the hospitals, a class-action suit on behalf of about 250,000 individuals covered by the Charleston plan is pending against the plan and the BC/BS Assn. The suit alleges the defendants defrauded policyholders of the Charleston plan who had been led to believe they were insured by a large, financially solvent organization. ■

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Business Insurance Circulation Breakdown*

Commercial Consumers

Category	Count
Administrative:	
CEO's Presidents, and Owners	2,670
Vice-Presidents, General Managers and Other Administrative Personnel	4,438
Financial:	
Chief Financial Officers and Vice-presidents of Finance	3,149
Secretaries, Treasurers, contollers and other Financial Personnel	4,505
Risk/Employee Benefits:	
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	10,830
Sub-total	**25,592**
Associations	511
Government, Unions and Educational Institutions	1,289
Commercial Consumers Sub-total	**27,392**
Insurance Agents and Brokers	9,815
Insurance Companies	7,891
Accountants, Actuaries, Attorneys & Consultants	3,377
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,218
Others Allied to the Field	1,693
TOTAL	**51,386**

* Source Business/Occupational breakdown of qualified circulation, May 28, 1990 issue, as submitted to BPA for June 1990 BPA Publisher's Statement.

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War coverage

Continued from page 1

izing in oil and gas risks. "We have a lot of customers that have facilities" in the Gulf region.

Mr. Burns pointed out that war risk coverage is not available for fixed sites, like oil platforms, but owners of such installations are requesting information on insurance to cover terrorist acts (see related story).

Inquiries are not coming only from clients with Middle East facilities. There has been a great demand for information on insurance for U.S. locations, Mr. Burns said.

So far, inquiries have resulted in few policies being written or amended, he said. Most requests are for quotes and information on exclusions against terrorist acts.

"The best we can say is, 'Here's what the policy says and here are the various interpretations. This is what the market is willing to offer." The decision whether to buy is left to the purchaser, Mr. Burns noted.

Donald D. Batchelor, risk manager for Union Planters National Bank in Memphis, Tenn., said his staff is reviewing its insurance program to determine if it is adequate.

If any terrorist attack against the bank was interpreted to be linked to the war, coverage problems may surface, he acknowledged.

"It may mean getting interpretive letters," Mr. Batchelor noted, which would spell out what property insurance policies cover.

"And it may mean disagreeing with the companies and just crossing our fingers," he added.

"We certainly are looking at our policies," said the risk manager for a major restaurant chain. International difference-in-conditions coverage, liability and property policies are being scrutinized to make sure they will respond in the case of a war-related incident, she noted.

"We have a typical exclusion for war," she added, "and it's unclear whether a terrorist act would be covered. We've asked for an interpretation from our broker."

Nancy Scobey, assistant vp with Marsh & McLennan Inc. in Nashville, Tenn., said she sent information to Mr. Batchelor at Union Planters National Bank to remind him to review coverage in light of the war.

She called the information "a reminder that one of the first things you need to do is look at your coverage. . .not an attempt to interpret policies."

Ms. Scobey's advice was to review coverages including travel accident, aviation, general liability, workers compensation and property.

Most policies, she added, will not define "war." Included in the information sent to Union Planters was a definition to be used as a guideline in reviewing coverage.

Some insurers, she pointed out, will probably consider terrorist acts acts of war and therefore excluded from coverage. "The courts will decide this issue if anything happens," Ms. Scobey said.

At Kemper National Insurance Cos. in Long Grove, Ill., a spokesman said about a half-dozen callers asked whether property policies would cover terrorist acts.

"If we have evidence that a terrorist act was sponsored by a country at war, the loss would be excluded. Otherwise, we will consider the claim under the vandalism peril," he said.

Both policyholders and brokers are calling about terrorism, added Mike McIntyre, senior vp at Johnston, R.I.-based Allendale Mutual Insurance Co. "What people are looking for is a simplistic and favorable answer."

If terrorism-related claims arise, Allendale would consider them case by case. "Our approach is, what are the circumstances and what are the facts," he said.

General Cinema Corp. is confident that existing coverage will protect it against any increased exposure as a result of the war, says Anthony McGuane, corporate director of insurance and loss prevention.

The Chestnut Hill, Mass.-based operator of movie theaters felt its coverage "was adequate for what we could foresee," said Mr. McGuane. "We've looked at it and after analyzing it, it doesn't appear we'll have to make too many changes."

Theaters "could be a target like any public place where people are gathering," the chance of an attack probably is small, he said.

Mr. McGuane would not elaborate on liability insurance that could be triggered if movie-goers are injured in a terrorist attack, but said: "We feel like we've got some pretty good coverage."

Union Planters' Mr. Batchelor said the bank is reviewing the rest of its property/casualty program, including bankers blanket bond and fidelity coverages, to make sure the war has created no uninsured exposures.

Coverage for aircraft also is being checked, he added. "We have one corporate-owned plane but a number that we finance," so the bank is reviewing the war-risk coverage of customers who borrowed money to purchase the planes.

In addition, he noted, the bank has reviewed its techniques for dealing with extortion threats and reminded branch managers to go over those procedures "so we don't have to go to a manual if we're in a crisis" (see story, page 36).

War concerns have prompted only slight changes in property/casualty coverage at Xerox Corp.

"The only thing we have done is put war-risk coverage on the rest of our aviation fleet," said Ron Grimm, manager of risk management administration for the Stamford, Conn.-based concern.

Two of Xerox's four aircraft were already covered for war-related exposures, he explained.

Mr. Burns of John L. Wortham & Son advised risk managers to look closely at any policies covering "specialty" exposures like war risks.

"All specialty policies have to be read very carefully," he said. "There's no such thing as a broad-form, all-risk terrorist policy."

H.J. Heinz Co. of Pittsburgh also made only minor changes.

"We took a look at all our policies and we're fairly comfortable with them," Edward A. Aiello, general manager-corporate insurance.

For a small additional premium, Heinz was able to eliminate an exclusion in an accidental death and dismemberment policy that would have denied coverage in cases of terrorism. The exclusion was also removed from a policy covering employee travel in Canada, Mr. Aiello explained.

Apart from Mr. Wortham, brokers whose clients aren't in the energy business report few inquiries from risk managers looking for advice because of the war.

"Things have been rather quiet," said Thomas V. Hallett, executive vp of Frank B. Hall & Co. Inc. in New York, though he did acknowledge that companies "have been talking about domestic terrorist coverage" for war-related acts.

Risk managers have been busy tightening security at U.S. operations and are restricting international travel. In most cases, he said, "they've done what they can do."

Benno Friedman, vp-financial services division of Alexander & Alexander of New York Inc., said no risk managers have requested changes or increased limits in his specialty areas, which include extortion, kidnap and ransom and professional liability insurance.

Risk management consultants also report relatively few inquiries.

Richard S. Betterley, president of Betterley Risk Consultants Inc., in Worcester, Mass., said he has received no inquiries about policy terms or security questions.

The story was much the same in the Midwest. After getting several inquiries in the first week of war, "it's really died down," said Steve Coombs, president of Park Ridge, Ill.-based Corporate Policyholders Counsel Inc." ■

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ARGONAUT

Bill mandates veterans' benefits

WAR in the GULF

WASHINGTON—A bill approved by the House last week would require employers to reinstate health insurance for employees when they return from military service.

H.R. 555, approved 414-0, also would allow doctors and other professionals in military service to suspend premium payments for malpractice insurance without endangering their coverage.

The bill, which the Senate is expected to act on shortly, generally would guarantee group health insurance for service personnel and their families when active duty ends as if they never had been called for active duty.

That means an employer generally could not impose a waiting period or exclusions for medical conditions that arose during active duty.

For example, assume an employee was called up for service and his family became covered under CHAMPUS, the federal health program for civilian dependents of military personnel. While he was in the armed forces, a dependent developed diabetes.

When the activated reservist returns to work, his employer could not impose a waiting period for coverage for the diabetes.

This provision provides that military personnel and their families "are entitled to the health insurance coverage which would have been provided if no period of military service had occurred," according to Rep. Sonny Montgomery, D-Miss., a sponsor of the legislation.

Many employers probably would extend health insurance to returning veterans without a waiting period or exclusions even without the bill, consultants say.

"Employers wouldn't want to penalize employees just because the employees were sent to Saudi Arabia," said Karen Pellegrini, a consultant with The Wyatt Co. in Wellesley Hills, Mass.

The bill does contain one exception to the general principle of reinstating health insurance: Employers apparently could exclude or impose waiting periods for medical conditions that veterans incurred as a direct result of military service.

"The underlying philosophy of this exception is that the public and not the employer should pick up the cost of the service-related injury," said Jerry Wunsch a legal consultant with Hewitt Associates of Lincolnshire, Ill.

In addition, the legislation would allow professionals called up for military duty to suspend premium payments for their malpractice insurance.

Professionals could have coverage reinstated when they leave active duty.

During this suspension, legal actions against them would be stayed until they leave active duty

—By Jerry Geisel

Automakers extend benefits

DETROIT—The Big Three automakers are paying reservists called to duty in the Persian Gulf War the difference between their military and civilian pay and are extending most benefits to which reservists and their dependents had been entitled.

Both partial pay and benefits are being extended for six months.

However, the automakers have stopped contributing to several voluntary personal savings plans in which reservists may have been participating.

In collective bargaining talks last August, the United Auto Workers union reached agreements to extend partial salary and benefits for 30 days in case of a Gulf conflict.

General Motors Corp. of Detroit, which was the first of the three to offer the extension, has about 300 union and non-union reservists on active duty in the Middle East, a spokesman said.

Chrysler Corp. of Highland Park, Mich., has about 80 reservists on active duty and Ford Motor Co. of Dearborn, Mich., has 90 reservists in the Middle East.

Reservists and their families are eligible for all employee benefits except accidental death benefits, which carry a war exclusion.

Union members are receiving partial salary payments through dislocated worker funds jointly administered by the car companies and the auto workers union. The GM spokesman said the automakers put about 19 cents per hour per union worker in the funds.

—By Michael Schachner

Firms still seeking travel advice

By MARK A. HOFMANN

Corporate America still is turning to security consultants when making travel plans, even as the Persian Gulf War enters its fourth week.

"We're getting the same level of calls as last week, maybe 12 or 15 a day," said Herb Clough, executive vp of Paul Chamberlain International, a consultant in Beverly Hills, Calif.

"There's still quite a bit of interest," said Mike Ackerman, principal of the Ackerman Group Inc., in Miami. The firm is on retainer to Chubb Corp. for companies that purchase kidnap and ransom coverage from the Warren, N.J.-based insurer.

Clients have been concerned about traveling to countries like Greece and Turkey, where there is a high risk of terrorism, Mr. Ackerman said.

In Greece, a domestic Marxist group, "November 19," has already struck U.S. targets.

Though urging caution, Mr. Ackerman advises not to ban travel even to Saudi Arabia and Israel. When trips to Israel are necessary, he recommends that travelers stay in Jerusalem rather than Tel Aviv, which has been a target of Iraqi Scud missiles.

Missile attacks so far have caused relatively little damage or loss of life in either Israel or Saudi Arabia.

WAR in the GULF

In fact, "we consider western Saudi Arabia a relatively safe area," he said.

"Our clients understand there are certain risks that you take in life even when you step into your bathtub," Mr. Ackerman said.

Chamberlain's Mr. Clough offered a more cautious assessment. "We're telling clients, unless it's absolutely necessary, to avoid international travel."

Americans should avoid travel to the Middle East, Africa and Europe for the time being because of the war, Mr. Clough said, adding that he's always been leery of unnecessary travel to parts of Latin America.

Mr. Clough favors "prudent security, not paranoia." There's no reason to avoid domestic travel or trips to Canada, Australia and New Zealand, he said.

Cancelling domestic travel plans, which some American companies have done, "is probably an overreaction," said Mr. Ackerman. No one knows where—or even if—large-scale terrorist acts will be directed against domestic targets, he said.

"Until they've actually done something and there's a pattern," a security consultant cannot advise about domestic travel, Mr. Ackerman said.

Most recent inquiries have come from companies smaller than those in the Fortune 200. Large companies already have sophisticated security programs, he said.

"The smaller companies are hustling to develop a comprehensive security program," he said.

The Gulf war should renew corporate interest in security, Mr. Ackerman said.

"A lot of companies really need a security overview. They think what was good five years ago is good now," Mr. Clough said. He pointed out that changes in personnel and the acquisition and divesture of facilities can render security plans obsolete.

"Now is a good time to get a security overview," he said. ■

'Super' security not tested

By MARK A. HOFMANN

TAMPA, Fla.—The possibility that winds of terror stirred by Operation Desert Storm would blow into Super Bowl XXV led to extraordinary security measures around Tampa Stadium.

Fortunately, say Tampa police, the measures were not tested. In fact, the largest single category of arrests at the Jan. 27 game was for ticket scalping, rather than any act remotely resembling terrorism.

The Super Bowl went "really smoothly" from a security standpoint, said a Tampa police spokesman.

Authorities had been prepared for considerably rockier conditions. They had installed metal detectors at all stadium gates, erected a special fence, restricted nearby air traffic and added surveillance of traffic in and around the stadium.

Concern over terrorism led officials to place—and test—metal detectors at all 68 stadium turnstiles three weeks before the game, noted Robert L. Smith, Tampa's public safety administrator.

The secured turnstiles were tested prior to the Super Bowl by a group of 3,000 to 4,000 attendees of a football clinic at the stadium, Mr. Smith said.

Further tests were done before practices and other times during the week before the big game, he said.

Security was even tighter at the two press gates, where X-ray machines scanned briefcases, packages and electronic equipment, Mr. Smith said.

The Gulf war also prompted special air traffic restrictions from noon to midnight on game day. The Federal Aviation Administration banned aircraft from flying lower than 3,000 feet within a five-mile radius of the stadium, except for takeoffs and landings. The flight restriction within a half-mile radius of the stadium was raised to 5,000 feet. Even the blimp was kept away.

Only law enforcement and FBI-authorized aircraft were not affected by restrictions. A single helicopter flying over the stadium provided aerial shots, said the police spokesman.

A 6-foot-high chain-link fence about 60 feet from stadium walls was designed to enhance security.

The Super Bowl went 'really smoothly' from a security standpoint, say Tampa police.

The security measures extended into the parking lot, where vendors hawked souvenirs inside huge tents patrolled by uniformed and plainclothes police.

About 74,000 people attended the game. But another 20,000 were in the parking lot during the game, said Mr. Smith, basing his estimate on the 1984 Super Bowl.

Officers in the parking lot were part of a contingent of more than 500 officers from 22 agencies—including some from other cities—assigned to the stadium. The number didn't include private security officers and agents from the FBI, the U.S. Customs Service and the Bureau of Alcohol, Tobacco and Firearms.

The stadium itself was placed under 24-hour surveillance, or "lock down," beginning Jan. 19. Anything going in or out was subject to security checks, Mr. Smith said. Vehicles entering the area were also subject to inspection.

But Mr. Smith said, the cost of the added security was far from astronomical. Although a final tally will not be available for some time, he said that contributions from the National Football League, the Tampa Sports Authority and other sources would help defray the costs to the city.

Even police overtime, one of the biggest costs, would only be about $40,000, he said. "The actual impact on the tax budget is not as great as one would assume."

Even had there been no threat of terrorism, security would have been tighter for the Super Bowl than that imposed during a regular season Tampa Bay Buccaneers game, said Mr. Smith. "There's no comparison."

For example, people were prohibited from carrying any electronic devices into the stadium on Super Sunday, Mr. Smith reported. In fact, just about every hand-held object other than binoculars was banned.

The forbidden items—including radios, cameras of all sorts and portable televisions—were added to a standard list that includes bottles, cans, other containers and umbrellas. The standing ban on umbrellas was initiated to prevent fans from blocking other people's view of the game.

Tampa Stadium purchased $10 million of primary liability insurance and a $5 million umbrella policy for the event, while the NFL purchased general liability insurance at undisclosed policy limits. The NFL also bought $30 million in cancellation and abandonment coverage for the event (*BI*, Jan. 28). American Broadcasting Cos., which televised the event, did not purchase cancellation coverage (*BI*, Jan. 21). ■

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War risk rates

Continued from page 1

The continued threat of bombing and sabotage outside the Persian Gulf area has prompted floods of inquiries about coverage from a variety of risks, ranging from domestic travelers in the United States to oil companies in the Middle East.

Leading Lloyd's of London war risk underwriter Christopher Rome last week confirmed that marine hull war risk rates in the Gulf had declined.

"Inevitably when there was an outbreak of hostilities, rates crystallized into one rate which was well known around the market. But as the situation developed, views change and the market becomes more competitive," he explained.

When the war began, all underwriters were charging the same rates, he explained, but by last week hull war risk rates varied "depending on the individual underwriter and many other factors, such as how long the vessel will be in the Gulf, exactly where it is going and is it the first time it has been in the region or has it been there for some time."

Competition also has been enhanced because there have not yet been any losses linked to the war, he said. Underwriters have now amassed enough additional war risk premiums to pay claims more easily should there be losses, he said.

But, Mr. Rome stressed, war risk rate reductions could rapidly reverse if a ship strikes a mine or is attacked from the air, he said.

"No one knows what Saddam Hussein's strategy might be, but in the Iran-Iraq War it was to attack shipping and there is no reason to think that he would not do the same in this war. And, if the Iraqi air force gets up into the air, it is much more likely to hit merchant ships than ships in the naval forces," he said.

One marine underwriter said additional marine hull war risk rates for vessels traveling in the Persian Gulf south of Kuwait City have dropped to 1.5% to 2% of insured value, down from 3% a week ago and 5% two weeks ago.

He added that few underwriters actually wrote any policies at the 5% rate because buyers thought it was too high.

The underwriter agreed that competition was forcing rates down, noting that the apparent air superiority of allied forces had convinced underwriters that air attacks on vessels were unlikely even though the Iraqis possess Exocet missiles. The Exocet missile is fired from aircraft and skims the surface of water until reaching a ship target.

The rate reductions include ships bound for Israel, where hull war risk rates have been cut to 0.5% to 0.75% of insured value from 1%, the underwriter said.

A large loss would have to hit the market for marine hull war risk rates to increase significantly, said David Lentaigne, managing director of the marine division of Alexander Howden Reinsurance Brokers Ltd. "If you lost a high value ship like a LNG carrier, of which there are a number in the Gulf. . . with a value in excess of $100 million, that could jolt the market up, but smaller losses would have little effect," he said.

Mr. Lentaigne estimated that around $50 million to $60 million in war risk premiums have flowed into the London market since Iraq invaded Kuwait.

Giving examples of how marine hull war risk rates had slipped since Jan. 23, Mr. Lentaigne said rates for seven days' cover valid for 24 hours have dropped to:

- 0.46875% of insured value from 0.625% to 0.46875% for travel in the Arabian Gulf around Dubai.
- 1.875% from 2.75% for a tanker visiting Saudi Arabia.
- 1% to 1.25% from 1.875% for travel to Bahrain.
- 0.3% to 0.375% from 0.3% to 0.5% for travel in the Red Sea.
- 0.125% from 0.3% for travel through the Suez Canal.

While hull war risk quotes normally are valid for only 24 hours, that period is extended to 48 hours over weekends. However, during the week, brokers must contact the same underwriters every day for new quotes, said Mr. Lentaigne.

An automatic reinstatement of war risk coverage following the automatic cancellation of coverage following a nuclear detonation can now be purchased in the London market where it is led by Mr. Rome, according to Richard Hilliard, managing director of Leslie & Godwin Marine Ltd.

"There is a limited amount of coverage available," he said. "But, you have to advise the underwriter in advance of all of your war book, the conditions are limited and the rate is 0.0125%. Also, the premium is payable in advance," he said.

And, the premium is not returned if no nuclear detonations take place, he added.

Previously underwriters had agreed to reinstate the business but insisted that they would first need to see a policyholder's broker, regardless of when the nuclear detonation took place.

Anthony King, liability war risk underwriter at Orion Insurance Co. P.L.C., justified the increases in cargo war risk rates since the beginning of the crisis.

'There is nothing worse than an underwriter who takes the risks at low rates, because when the losses come—and they will—we will find. . .a bankrupt underwriter,' says Anthony King, a liability war risk underwriter.

"When the losses come in, we must be able to pay them. There is nothing worse than an underwriter who takes the risks at low rates, because when the losses come— and they will—we will find that we have a bankrupt underwriter on our hands," he said.

Marine and aviation cargo war risk rates headed lower last week. The joint Lloyd's of London/Institute of London Underwriters war risk rating committee met only on Friday to set some new marketwide rates. In the previous week they met at least every 48 hours.

The following cargo war risk rate changes were cut last week:

- Iranian Gulf ports, places and offshore islands north of 27 degrees 30 minutes north latitude. Marine cargo war risk rates were cut to 0.75% of insured value from 2%.
- Persian Gulf ports and cities south of 27 degrees 30 minutes north latitude and west of 52 degrees east longitude. Marine rates were cut to 1% from 2%.
- Qatar and Bahrain ports and cities. Marine rates were cut to 1% from 2%.
- Saudi Arabian Red Sea ports, including Jeddah. Marine rates were cut to 0.125% from 0.25%.
- Israeli Mediterranean ports. Marine cargo war risk rates were cut to 0.25% from 0.5%, and aviation war rates were cut to 0.15% from 0.25%.
- Israeli Red Sea ports. Marine rates were cut to 0.25% from 0.375%. Aviation war rates were cut to 0.15% from 0.25%
- Jordan. Marine rates were cut to 0.25% from 0.375%.

Aviation hull and liability war risk rates for aircraft flying into the Persian Gulf region continue to fluctuate depending on the risk but there is a general moderation of rates, brokers say. However, the drop in insurance costs for Gulf-bound aircraft is offset by a general increase in war risk rates worldwide, said one broker.

"Most airlines have had notice given on them to review hull war rates," said William Farmer, associate director with Bain Clarkson Ltd. The reviews have led to increases of 10% to 30% depending on the risk, he said.

For European flights, the hull war risk rate now is generally at around 0.05%, although there are variations, Mr. Farmer said.

Aviation liability rates are also easing but the differences in additional premiums per passenger vary between $100 and $1,000, brokers say. One broker commented that unlike aviation hull underwriters who meet and agree to marketwide rates, the aviation liability market is much more chaotic because the underwriters act independently.

Various types of coverage against terrorist attacks are being written in the London market, Mr. Rome noted.

Before the war began, many liability policies excluded terrorist coverage, while in others it was written as an endorsement that could be canceled. And general liability policies that covered terrorist attack as a standard risk are not being renewed with the terrorist coverage intact, brokers say.

Mr. Rome said he is receiving numerous requests for personal accident and medical expense coverage that would cover terrorist acts. Inquiries come from risks ranging from hotel companies and public utilities to grain traders. Many of the risks are based in the United States, he said.

Ian Harrison, senior underwriter in the special services division of American International Underwriters (UK) Ltd., said he also has seen an increase in coverage inquiries.

Brokers say AIU has a loose definition of terrorism compared with the rest of the London market. AIU policies basically say that any loss caused by an act of aggression that is not done by the military will be considered terrorism and therefore will be covered by the terrorist cover that it sells.

"Unlike the Lloyd's 437 wording which excludes losses which are directly or indirectly the result of war, we count it as a "property terrorism sabotage" loss unless it has been proved that it resulted from a military attack. So although Saddam Hussein exhorts people to take up arms outside the Gulf, unless a loss is the result of military action, we cover it," Mr. Harrison said.

The volume of business underwritten by AIU has greatly increased since the outbreak of hostilities.

Giving examples of rates for $30 million in coverage against "property terrorism sabotage," he said: "Rates for risks near the Gulf are pretty high at 0.5% of value and for risks in Saudi Arabia and Jordan they are over 1% depending on the risk. But outside the region, rates are around 0.2% depending on the risk." ■

Catastrophes

Continued from page 2

ages.

The third most costly catastrophe also struck California earlier in the year. The state was hard hit June 27-July 2 by fires in Santa Barbara County that caused an estimated $265 million of property damages.

None of these insured property damages include crop losses, which were heavy in California. Those losses were covered by the Federal Crop Insurance Program, the PCS said.

The insured property damages also do not include flood-related losses, which are covered by the National Flood Insurance Program, the PCS said.

In addition to these major catastrophes, six other storms each caused more than $100 million of insured damages.

Storm-related property damage in Europe, though, far eclipsed losses in the United States, the PCS reports. Severe windstorms in the United Kingdom and on the continent last year caused $8.2 billion of insured losses, or almost three times the total U.S. catastrophe losses, according to the PCS.

While U.S. catastrophes were lighter in 1990 than 1989, their number and severity still hurt the insurance industry's profits last year, according to Sean Mooney, senior vp and economist at the Insurance Information Institute in New York.

Mr. Mooney estimates that the industry's rate of return would have been about 10%, or 23% higher than the actual 8.1% rate of return, without the catastrophic losses.

There had been only one catastrophic loss in 1991 as of late last week: a $25 million insured property loss resulting from windstorms, hail and tornadoes that struck parts of Texas, Louisiana and Florida from Jan. 18-20.

But, the number of catastrophes usually accelerates by the end of February, with the onset of spring storms, noted Edward Hermanson, vp of the PCS. ■

Benefit plans often exclude war claims

By COLLEEN JOHNSON

Non-military employees of many of the nation's largest companies would not be covered by their group benefit plans for injuries or death caused by acts of war, according to a recent survey.

In addition, some of the employers' group benefit plans exclude coverage for injuries or death resulting from acts of terrorism, reports the survey by Buck Consultants Inc. of New York.

The survey also found that many of those firms have implemented special travel policies and security measures.

"It is interesting to see that the majority of the respondents have already reviewed their benefit plans to determine if they have exclusions for a loss suffered because of an act of war or terrorism," said Frederick W. Rumack, director of tax and legal services at Buck.

"While the terrorism risk in the U.S. might appear to be remote, it is still very important that all companies review their benefit plans to determine exactly what their insurance policies cover and what action they will take if a loss occurs," Mr. Rumack said.

The results of Buck's survey, "Operation Desert Storm—War and Terrorism Exclusions in Benefit Plans," are based on a phone survey of 56 Fortune 1,000 companies conducted shortly after the Persian Gulf war began.

Not all companies answered all questions on the survey, which was released last week.

Twenty-three companies—or 41%—of the 56 survey respondents said they have checked to determine whether benefits plans exclude both war- and terrorism-related losses.

Seventeen respondents, or 30.4%, said they checked their plans only for war exclusions, while two others said they checked only for terrorism exclusions.

The survey found that among survey respondents':

- Accidental death and dismemberment plans, 26 of 53—or 49%—contained war exclusions, and eight of 49—or 16%—contained terrorism exclusions.
- Group health plans, 19 of 52—or 37%—contained war exclusions, and seven of 48—or 15%—contained terrorism exclusions.
- Long-term disability plans, 18 of 52—or 35%—contained war exclusions, and six of 48—or 13%—contained terrorism exclusions.
- Business travel accident plans, 17 of 53—or 32%—contained war exclusions, and seven of 49—or 14%—contained terrorism exclusions.
- Short-term disability plans, 15 of 52—or 29%—contained war exclusions, and five of 47—or 11%—contained terrorism exclusions.
- Group term life plans, 12 of 53—or 23%—contained war exclusions, and five of 49—or 10%—contained terrorism exclusions.
- Group universal life plans, three of 52—or 6%—contained war exclusions, and one of 48—or 2%—contained terrorism exclusions.

However, the survey noted: "On the issue of terrorism, many organizations don't know if plans have an exclusion, either because the issue had not been sufficiently addressed or because in reviewing the plans this was found to be an 'extremely gray area.' "

Among 37 companies that responded when asked whether they would compensate an employee for a war or terrorism loss excluded from a plan, 18—or 49%—said they would not be compensated; eight—or 22%—said they would be compensated; and 11—or 30%—were undecided.

Fifteen of 52 responding companies, or 28.8%, have implemented special travel policies because of the threat of terrorism, the survey found.

Fourteen employers have restricted international travel—with six employers prohibiting all international travel—and five employers have restricted domestic travel —with two firms restricting all such travel, the survey found.

"My own sense is. . .the insurance claim would be the least" of employers' concerns if an employee were injured or killed while on a business trip, said Henry von Wodtke, a benefit consultant with Buck. "They're restricting (travel) where they can, because they don't want to have employee losses."

The survey also found that eight —or 14.5%—of 55 companies said they are providing "additional assistance programs to employees who are troubled by the crisis in the Middle East."

However, none of those respondents developed an EAP specifically because of the war.

●

A copy of "Operation Desert Storm —War and Terrorism Exclusions in Benefit Plans" is available for $25 by contacting Carolee Martin, Manager of Marketing at Buck Consultants Inc., 500 Plaza Drive, Secaucus, N.J. 07096-1533.

Captive ruling

Continued from page 1

monly understood.

What this test boils down to is that if "it looks like a duck, quacks like a duck and waddles like a duck, it's a duck," said attorney J. Patrick Whaley of Musick, Peeler & Garrett in Los Angeles.

Applying this test, the court ruled 12-3 that premiums paid by three different parent companies to their wholly owned insurance subsidiaries purchased "true insurance" and, therefore, are deductible.

The three cases involved:

- Los Angeles-based AMERCO, the parent of an affiliated group of corporations that comprise the U-Haul rental system, and AMERCO's Phoenix-based insurance subsidiary, Republic Western Insurance Co. Fifty percent of Republic Western's business is unrelated to AMERCO.
- San Francisco-based Harper Group and its Hong Kong captive, Rampart Insurance Co. Ltd. About 30% of Rampart's business is unrelated to Harper.
- Sears, Roebuck & Co. of Chicago and its Allstate Insurance Co. unit. Some 99.75% of Allstate's business is unrelated to Sears (*BI*, March 13, 1989).

The Tax Court in each of the cases emphatically rejected IRS arguments that the corporations cannot deduct premiums paid to wholly owned insurance subsidiaries because they are part of the same "economic family."

The IRS officially unveiled its "economic family" theory in Revenue Ruling 77-718 in 1977 and has been vigorously pressing for it ever since.

The "economic family" theory states that since a corporation and a wholly owned captive subsidiary are part of the one "economic family" and the corporation ultimately bears the profits or losses of the captive, the transaction between parent and captive does not constitute insurance for tax purposes.

The IRS maintains that premiums paid to wholly owned insurance subsidiaries are equivalent to additions to self-funded loss reserves and, therefore, cannot be deducted.

In 1987, the IRS further strengthened its position by issuing Revenue Ruling 88-72, which explicitly states that corporations cannot deduct premiums paid to a wholly owned insurance subsidiary regardless of how much unrelated business the captive writes (*BI*, Nov. 28, 1988).

In its Jan. 24 rulings, the Tax Court said the IRS' "economic family" argument does not hold water.

"The 'economic family' approach to this question has been uniformly rejected by this court," the Tax Court stated in the U-Haul decision.

"We have repeatedly rejected (the IRS') economic family theory," the court reiterated in the Harper case.

Attorneys say that the strong language means the "economic family" theory is dead in the Tax Court.

"This was a thorough defeat for the Service and its economic family theory," said Jamie Cameron, a tax attorney with Baker & McKenzie in New York.

But, they caution that this theory could be revived by appellate courts.

And, if the IRS is unsuccessful in persuading a court to reverse these rulings on appeal, the IRS may ask Congress to pass tax legislation that includes the "economic family" theory, attorneys say.

Because such legislation would stem the loss of revenue in an era of huge budget deficits, there is a possibility Congress would be receptive to an IRS request, attorneys say.

However, Congress also is aware of the problems that businesses face during a recession, they note.

Furthermore "if the IRS remains successful in denying tax deductions in the single-parent, pure captive situation, there may not be a need to go to Congress," said Patrick Heffernan, an attorney with Hopkins & Sutter in Chicago, who represented Sears.

Currently, the American Bar Assn.'s Tort and Insurance Practice Section is working on a counter-legislative proposal that would create a safe harbor for companies that pay premiums to wholly owned captive subsidiaries in certain instances, said Kevin Outterson of McDermott, Will & Emery in Chicago. No details are available because the project is in its infancy, he explained.

In addition to rejecting the "economic family" theory, the Tax Court explained what constitutes insurance risk, risk shifting and risk distribution. These are the key elements of the court's three-pronged test to determine "true insurance."

"Basic to any insurance transaction must be risk. An insured faces some hazard; an insurer accepts a premium and agrees to perform some act if or when the loss event occurs. If no risk exists, then insurance cannot be present," said the court in the U-Haul decision.

Risk shifting and risk distribution also must be present for there to be insurance, according to the Tax Court's rulings.

Technically, risk shifting occurs when the policies are written, premiums transferred and losses paid, the court said in the U-Haul decision.

However, a more substantial aspect of risk shifting centers on the separation between the parent company and the insurance subsidiary, the court explained. To constitute insurance, the parent company must transfer its risk to a separate company that is financially capable of paying losses, according to the court.

The insurance subsidiary must be a "separate viable entity, financially capable of meeting its obligations," said the court in the U-Haul and Sears decisions.

"The concept of risk distributing emphasizes the pooling aspect of insurance," the court said in the U-Haul decision.

In the Harper case, the court said that "the relatively large number of unrelated insureds (that) comprise approximately 30% of Rampart's business. . .constitutes a sufficient pool of insureds to provide risk distribution."

In an earlier case involving Gulf Oil Corp., the court said there is no risk distribution when only 2% of a captive's business is generated by unrelated policyholders (*BI*, Nov. 30, 1987; Jan. 18, 1988).

In the three recent cases before the Tax Court, at least 30% of the insurance subsidiaries' business was unrelated to the parent company.

What remains unclear is how the court would view a situation in which between 2% and 30% of the captive's business is unrelated to the parent, attorneys say.

A captive achieves risk distribution when the amount of unrelated business reaches 10% to 20%, suggested Paul J. Sax, an attorney with Orrick, Herrington & Sutcliffe in San Francisco, who represented Harper.

"Below 10% and you're asking for trouble," predicted Mr. Outterson of McDermott, Will & Emery.

The court's rulings also "beg the question of what happens when one or two insureds represent 30% of the captive's unrelated business," observed Lucien P. Laborde Jr., president of Wills Corroon Research & Development in Nashville, Tenn.

"These decisions give the impression that the court might reach a different result if two policyholders share the risk 50-50," he said.

"The court appears to be focusing not only on the dollar amount of the unrelated risks, but also on the number of unrelated insureds," Mr. Laborde said.

Another question that remains unanswered after these three rulings is whether the Tax Court would view premiums paid by brother/sister subsidiaries to the captive insurance subsidiary to be unrelated business.

The issue was recently addressed by the 6th U.S. Circuit Court of Appeals in a case brought by the hospital chain Humana Inc. (*BI*, Aug. 28, 1989; Aug. 7, 1989).

In this case, the 6th Circuit Court reversed the Tax Court and held that premiums paid by a parent corporation to a wholly owned insurance subsidiary are not deductible, but premiums paid by subsidiaries to the captive can be deducted. Only 7% of the business written by the Humana captive, Health Care Indemnity Inc. in Colorado, was unrelated to Humana or its subsidiaries.

The appellate court found there was no risk shifting or risk distribution between the parent and the captive, because when a wholly owned captive suffers a loss, it will appear on the parent company's balance sheet as a reduced asset.

However, since brother/sister subsidiaries are not financially impaired when the captive pays a loss, there is risk shifting and risk distribution, according to the court.

The IRS did not seek review of this ruling to the U.S. Supreme Court (*BI*, Nov. 6, 1989).

In a footnote in the Harper case, the Tax Court said: "We need not consider whether brother/sister corporations are to be characterized as unrelated parties for we believe that when 30% of the captive insurer's income is received from a relatively large number of unrelated insureds, there is a sufficient pool for the occurrence of risk distribution."

Tax attorney Bruce Wright of LeBoeuf, Lamb, Leiby & MacRae in New York interpreted this footnote to mean that the issue of a brother/sister relationship is moot when at least 30% of a captive's business is unrelated to the parent or its subsidiaries.

However, Mr. Cameron of the law firm Baker & McKenzie pointed out that the recent Tax Court cases do not "say anything about how the court will deal with the brother/sister situation when there is no unrelated business."

The most immediate impact of the three rulings from the Tax Court will be seen in how captive insurance companies are operated, according to captive insurance experts.

While the rulings suggest there could be significant tax advantages to writing large blocks of unrelated business, it is unlikely "there will a wholesale move to write third-party business just to boost up numbers," said Art Koritzinsky, vp-North American captive management operations for Johnson & Higgins of New York.

"It will be a controlled move to write select unrelated business," Mr. Koritzinsky predicted.

The reason for the hesitation to write large blocks of unrelated business stems from the experience of some captives in the late 1970s and early 1980s that wrote large blocks of third-party business that turned out to be disastrous. This caused several large captives, including Mentor Insurance Ltd., to become insolvent and forced other captives to stop writing third-party business.

"Let us not fall into the mistakes of the past where volume of premiums and unrelated risks were pursued for deductibility reasons," cautioned D. Hugh Rosenbaum, a principal with Tillinghast in Darien, Conn., a division of Towers, Perrin, Forster & Crosby Inc.

Arthur H. Deters, chief executive officer of International Risk Management Group Ltd. in Bermuda, described the early experience of captives that wrote large blocks of unrelated business as "an unmitigated disaster."

As a result, captives today will be careful not "to jump from the frying pan and into the fire," Mr. Deters said.

Further, "the economics of today are such that the kill isn't worthy of the chase," he said. In today's recessionary economy, companies are more interested in bigger problems that in the tax deductibility of premiums paid to captives, he explained.

Because of the fear of going to the open market to write third-party risks, captives are more likely to be interested in pooling arrangements to achieve deductibility of premiums, according to captive experts.

Mr. Rosenbaum said he is a "dyed-in-the-wool" supporter of captive risk sharing pools and would encourage companies to join pooling arrangements.

However, "pools must be designed so that there is a potential for real loss-risk sharing," he cautioned.

"There is a greater possibility of interest in captive pooling because the experience of 10 to 12 years ago showed (it) did not produce the disastrous results of entering the open market," said Mr. Deters, whose firm manages Hopewell International Insurance Ltd., a property reinsurance pool in Bermuda.

The experts also note that it is unlikely that the three Tax Court rulings will cause corporations that were not already interested in forming captives to form captives.

"Companies should not enter into any transaction solely for tax benefits," said Mr. Laborde of Willis Corroon.

However, for companies that were already considering setting up a captive, these rulings could "push them over the fence," Mr. Koritzinsky said.

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AMERCO vs. Commissioner, No. 5100-88, 96 T.C. No. 3; The Harper Group vs. Commissioner, No. 33761-85; 96 T.C. No. 4; Sears, Roebuck & Co. vs. Commissioners, No. 2165-89, 96 T.C. No. 5.

Update

Court denies Transit E&O cover

Continued from page 2

finding that, among other things, Transit's receiver sued the two men in their capacities as directors of Transit, not DMT.

"Covering Bowie and Gregory for errors and omissions committed as Transit officials was not the nature or kind of risk that the Home and New England policies assumed," the court ruled.

Receivership officials are still discussing settlement of their suit with various parties, including National Union Fire Insurance Co. of Pittsburgh, Pa., which wrote Transit's D&O coverage.

Miners' pension benefits hiked

WASHINGTON—Up to 347,000 members of the United Mine Workers of America will receive improved pension and other benefits under a "reopener" collective bargaining agreement the union reached with the Bituminous Coal Operators' Assn. Inc.

The agreement covers 50,000 to 60,000 union members employed by coal producers and 120,000 retirees. Another 167,000 pension plan participants who have not retired but are not working for coal mining companies also would be covered if they ever return to the industry.

In December, the mine workers' union informed the 13-member BCOA that it was exercising its right to reopen its current five-year collective bargaining agreement to seek better benefits.

Under the agreement, pension credits for union members working on or after Feb. 1 will be increased $2.50 per month for each year of service. Pension credits vary depending on length of service.

Retirees are also to receive one-time lump sum payments: $500 for current retirees; $375 for surviving spouses; and $290 for disabled retirees. And the retiree death benefit for survivors will increase 42.9% to $5,000 from $3,500.

The BCOA has limited authority to negotiate for all employers that contribute to the union pension plan.

Alaska oil spill settlement talks

WASHINGTON—Alaska Gov. Walter J. Hickel and U.S. Interior Department officials are scheduled to continue talks here this week with Exxon Corp. on settling Alaska's civil suit and federal criminal charges related to the massive 1989 oil spill in Prince William Sound.

While details of a possible settlement were not released, a spokeswoman in Gov. Hickel's Anchorage office said the governor is seeking $1 billion to transform Prince William Sound into a wildlife sanctuary.

Similar meetings were held Jan. 16 in Juneau, Alaska, and Jan. 29 in Washington, D.C., she said.

Exxon has already settled claims by seven major seafood processors in Seattle. Terms were not disclosed and about 170 other suits against the company are pending in state and federal courts.

Meanwhile, in papers filed in federal court in Anchorage last week, Exxon claimed it should be immune from criminal prosecution because it voluntarily reported the spill. If convicted, the company faces fines of more than $600 million. Exxon officials would not comment.

Toxins law spurs Dow action

INDIANAPOLIS—DowBrands Inc. has removed a suspected carcinogen from its K2r Spot-lifter rather than label the spot remover harmful as required by California's Proposition 65.

The Dow Chemical Co. unit also confirmed that it agreed to donate $50,000 to a new fund to pay for citizen enforcement actions under the 1986 anti-toxins law.

Environmental groups notified the company in July 1990 that it was violating the law by not labeling K2r as containing perchloroethylene, which is included on a list of known carcinogens (*BI*, July 9, 1990).

Violators of Proposition 65 face fines of up to $2,500 a day for each individual user who has not received a clear warning about the cancer risks. Midland, Mich.-based Dow wasn't prosecuted because it was "reformulating" the product, the state attorney general said.

The change, which has taken several years to formulate, was prompted when the Environmental Protection Agency placed perchloroethylene on its list of possible carcinogens in 1985, Dow said.

Dow would not say how much it spent to alter the product.

Briefly noted

Congress last week adopted a bill that President Bush is expected to sign approving payment of government disability benefits to veterans suffering from two forms of cancer and a skin disease associated with the Vietnam war-era defoliant **Agent Orange**. . . .Sen. Robert Kasten, R-Wis., last week introduced a bill, S. 315, to allow self-employed individuals to take a 100% **tax deduction for health insurance premiums**, up from the current 25%. . . .Sen. William Cohen, R-Maine, last week introduced a bill, S. 314, to make clear that **long-term health insurance** is a tax-deductible benefit. Through this clarification, employers would be able to take tax deductions for group LTC premiums, and the coverage could be offered through flexible benefits programs.

Broker growth on the horizon

By LEONARD M. WILSON

Special to Business Insurance

BUDGET TIME HAS once again arrived in the world of insurance brokerages. Before launching into this year's profit plan for Risk Adverse Associates, our fictional surrogate for the typical public broker, we pause for a backward peek at last year's predictions.

Mr. Wilson

The crystal ball for 1990 operated with unusual clarity. Our forecast did not count out the soft market. We allowed for rate reductions of around 4% to 5% across a full book of business. Revenues were forecast to rise roughly 6%, a little stronger than actual performance. Last year's budget contemplated a 6% to 7% advance in earnings, also not too far from the mark. Overall, we correctly did not anticipate much relief from the rigors of a soft market in 1990.

Now for 1991. The economic outlook is not rosy. Many indicators already confirm that a recession is impending. The war in the Middle East has also put a damper on economic activity. Consequently, the budget incorporates gross national product growth of less than 1% for the entire year. Inflation ought to be reasonably well contained at about 4%, with weakening commodity prices a constructive factor. Short-term interest rates have recently declined as the Federal Reserve has begun to ease credit. We believe that yields on invested funds will slip roughly 1% from last year's average return.

Pricing on commercial lines seems close to bottoming. Some contacts already characterize rates as flat, with most renewals on an "as is" basis. We are not yet certain that the soft market has run its course. Therefore, we are building into the budget rate reductions of 3% to 4% on average, enough to prevent complacency about the environment from diluting efforts to restrain costs or slacken the new business effort.

We discussed the new business outlook extensively in our last column (*BI*, Dec. 17, 1990). For the profit plan, new business is held to a 10% to 12% rise, clearly a deceleration compared to the experience of the past few years. As we have already indicated, the movement toward stability has diminished client willingness to shift from one broker to another. Contingent commissions should again decline moderately in 1991.

Lost business is expected to remain at 5% of commissions. Measures to retain clients have worked well for several years. The dictum that a dollar of existing business is more profitable than a dollar of new business continues to be a guiding principle.

Commissions from retail brokerage, capturing the effect of pricing and net new business, should rise 7% to 8% for the year. This gain is in line with our forecast for last year, but exceeds the actual results of most brokers. Clearly, mid-single-digit gains cannot provide strong impetus to earnings comparisons.

Reinsurance brokerage is not easy to gauge. Crosscurrents in the marketplace abound. Catastrophic coverage has become expensive. Liability, we hear, is an arena of ongoing competition. Yet, despite a competitive environment, 1990 witnessed reasonably good performance from reinsurance brokerages, partly buttressed by reinstatement premiums. For 1991, we envision commission growth of 5% to 6%. Primary insurers are not yet reducing their retentions, a sign of adequate capacity at that level.

International brokerage is also difficult to forecast because of the diversity implicit in a variety of geographical markets. In addition, currency fluctuations influence comparisons. We believe the dollar will strengthen as the year progresses. Hence, local commission growth of 7% to 8% may be watered down to 6% to 7% upon translation into dollars.

Benefit consulting is likely to slow in 1991 for several reasons. Clients facing recession may postpone or stretch out employee benefit reviews. In addition, benefit consulting has grown markedly for several years, and the base of consulting revenues is appreciably greater. It should, therefore, be more difficult to sustain revenue growth at the annual rate of 15% or so that prevailed during recently. Risk Adverse's budget, as a consequence, incorporates only 10% revenue growth for benefit consulting in 1990.

Investment income is a function of premium throughput and the level of short-term interest rates. Lower interest rates are the corollary of a recession, given monetary policy designed to contain the economic downtrend. With yields shifting downward by at least one percentage point, Risk Adverse anticipates that investment income will drop 5% in 1991.

Weighing the forecasted revenue components, an aggregate rise of about 6% to 7% in total revenues seems attainable for 1991. This is not a particularly satisfying rate of gain, but it recognizes the stubbornness of the competitive market and serves notice that the firm must be managed for another year of relative austerity.

Not much breathing room is left for expenses. For the duration of the soft market, units of insurance have grown faster than headcount. Improved productivity has enabled Risk Adverse to maintain the desired level of client service. In 1991, new business will be sufficiently robust to challenge the efforts of the staff. In the interest of preserving profit margins, and at the same time keeping clients satisfied, headcount may increase 2% over the course of the year. Keeping employees' raises even with inflation should add another 4% to cost, for a total rise of 6%.

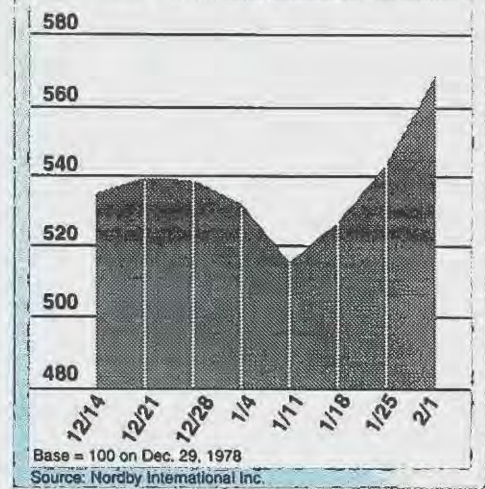
With both revenues and expenses expected to increase 6% for the year, Risk Adverse should achieve a 6% advance in pretax income. This gain follows a similar rise in 1990. As a result of stress on cost control, earnings have posted a gentle rise over the period of the soft market, a gratifying contrast to the erosion of results in the last soft market. Forecasted 1991 results, on balance, are not so bad in the context of a prolonged soft insurance market.

The budget is a management tool as well as a forecast. It educates managers and prepares staff for the realities of the marketplace. By adopting the premise of a continuing soft market, costs can remain under strict control. If an upturn in premium rates materializes in the second half of 1991, then staffing restrictions can be eased without endangering financial goals for the year.

From our vantage point, then, 1991 is shaping up as still another year of competitive rates, but perhaps moving toward stability. Strong earnings growth for insurance brokers is over the horizon, presumably in 1992. ■

Leonard M. Wilson is a senior vp with Lazard Asset Management Inc. He is a member of the New York Society of Security Analysts.

BI Insurance Index



Insurance industry stocks shot up last week as the *Business Insurance* Index went up 26.1 points to 569.7 on Feb. 1, from 543.6 on Jan. 25. Advancing issues for the week were led by Pacificare Health System, up 40.9%; U.S. Healthcare, up 32.0%; and HMO America Inc., up 28.0%. Declining issues for the week followed Nobel Insurance Ltd., down 8.0%; Belvedere Corp., down 4.6%; and CNA Financial Corp., down 3.5%. The most active issue for the week was U.S. Healthcare, with 5.6 million shares traded. The *BI* Index was up 4.8%; The Standard & Poor's 500 went up 2.1%; the Dow Jones 30 Industrials were up 2.7%; and the New York Stock Exchange Composite rose 2.2%.

British Issues

Jan. 31 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	480	21.9	28.7	6.0	480—455
Genl Accident	497	15.0	33.4	6.7	497—477
Gdn Royal Exch	192	16.7	15.3	8.0	192—186
Royal	403	21.4	34.0	8.4	403—388
Sun Alliance	344	12.2	16.7	4.9	344—333
Brokers					
Bradstock	250	14.1	12.0	4.8	250—250
CE Heath	454	13.1	34.5	7.6	454—441
Hogg Group	156	10.2	9.7	6.2	156—154
Lloyd Thompson	304	20.3	10.0	3.3	304—303
PWS Holdings	82	9.9	4.7	5.7	82—82
Sedgwick Grp	237	17.7	16.0	6.8	237—226
Steel Brrl Jones	258	15.3	14.7	5.7	258—258
Willis Corroon	266	19.7	16.0	6.0	266—258

Source: Philip Olsen, Insurance Industry Analyst London

BI Industry Stock Report

JANUARY 28, 1991 THROUGH FEBRUARY 1, 1991

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	24.00	4.35	3.78	28.88	16.13	250	1.00	4.17	20	9.18	2.61
Gallagher Arthur J. & Co.	NYS	23.25	6.90	0.00	25.00	19.75	119	0.64	2.75	17	5.33	4.36
Frank B. Hall	NYS	3.13	4.17	-13.79	4.25	2.00	45	0.00	0.00	-4	-2.80	-1.12
Hilb, Rogal & Hamilton	OTC	13.50	0.00	-8.47	16.50	11.25	43	0.36	2.67	18	4.60	2.93
Marsh & McLennan	NYS	72.50	-3.01	-7.05	81.00	59.75	559	2.60	3.59	17	10.56	6.87
Poe & Associates	OTC	8.00	0.00	0.00	13.00	7.75	0	0.40	5.00	11	1.93	4.15
BROKERS	AVERAGE		1.8	-3.6					2.6	11		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	38.75	3.33	3.33	44.75	28.50	72	0.44	1.14	11	25.06	1.55
Berkshire Hathaway Inc.	NYS	7557.00	7.96	13.21	8900.00	5675.00	1	0.00	0.00	24	2869.00	2.63
ITT (Hartford Group)	NYS	52.75	4.98	9.90	60.88	40.25	1050	1.72	3.26	6	56.33	0.94
Sears (Allstate)	NYS	29.25	5.41	15.27	41.88	22.00	2854	2.00	6.84	9	37.75	0.77
CONGLOMERATES –	AVERAGE		5.4	10.4					2.8	12		
INSURERS/REINSURERS												
Aetna Life & Casualty	NYS	43.88	11.43	12.50	54.38	29.00	1502	2.76	6.29	8	58.11	0.76
Ambase Corp.	NYS	0.38	9.01	19.81	9.63	0.16	285	0.00	0.00	0	29.08	0.01
American General	NYS	34.00	-1.81	10.57	50.63	23.50	1836	3.20	9.41	7	34.68	0.98
American Heritage	NYS	20.88	0.60	-0.60	24.63	19.63	3	1.00	4.79	10	22.60	0.92
American Indemnity/Fin'l	OTC	4.50	-2.70	38.46	7.50	2.75	4	0.08	1.78	-14	17.38	0.26
American International	NYS	83.75	3.88	8.94	82.75	57.00	1117	0.44	0.53	12	41.92	2.00
Aon Corp.	NYS	32.13	0.00	-7.55	41.38	26.75	382	1.52	4.73	9	19.62	1.64
Argonaut Group	OTC	70.75	-0.35	10.55	78.00	53.00	16	1.60	2.26	7	36.83	1.92
AVEMCO Corp.	NYS	26.25	3.96	3.96	30.13	21.13	3	0.44	1.68	18	9.52	2.76
Baldwin & Lyons Inc.	OTC	19.00	0.00	1.33	21.88	17.00	1	0.28	1.47	7	20.80	0.91
Belvedere Corp.	ASE	2.63	-4.55	5.00	5.38	1.75	5	0.04	1.52	-4	8.03	0.33
Chandler Insurance	OTC	3.75	25.00	-45.45	10.00	2.75	166	0.00	0.00	2	9.53	0.39
Chubb Corp.	NYS	59.88	5.74	10.37	60.75	34.63	1829	1.32	2.20	11	55.49	1.08
CIGNA Corp.	NYS	44.50	2.59	8.87	55.50	33.25	784	3.04	6.83	11	66.64	0.67
CNA Financial Corp.	NYS	75.50	-3.51	10.02	84.88	49.50	114	0.00	0.00	13	54.87	1.38
Continental Corp.	NYS	25.75	2.49	3.52	31.38	15.75	339	2.60	10.10	9	41.36	0.62
Durham Corp.	OTC	26.50	-1.40	-5.36	34.00	23.00	17	0.92	3.47	11	26.32	1.01
Fund American Corp.	NYS	53.88	2.62	3.86	53.50	29.50	571	0.68	1.26	135	32.74	1.65
Fremont General Corp.	OTC	14.75	1.72	1.72	21.13	10.13	617	0.80	5.42	4	19.09	0.77
Frontier Insurance Group	NYS	19.25	5.48	1.32	33.00	14.38	8	0.00	0.00	8	7.29	2.64
General RE Corp.	NYS	90.00	-0.14	-3.23	93.25	69.00	952	1.52	1.69	13	29.04	3.10
Hanover Insurance Co.	OTC	27.50	1.85	3.77	31.00	21.00	57	0.44	1.60	12	32.03	0.86
Harleysville Group	OTC	22.00	2.33	-3.83	26.50	13.50	12	0.64	2.91	7	18.94	1.16
Hartford Steam Boiler	NYS	49.38	-3.19	1.28	62.13	43.50	155	1.80	3.65	13	18.94	2.61
Kansas City Life Ins.	OTC	31.00	0.81	0.40	36.50	30.00	2	1.20	3.87	7	39.22	0.79
Kemper Corp.	NYS	25.75	22.62	8.42	43.13	17.13	910	0.92	3.57	92	29.97	0.86
Lawrence Insurance Group	ASE	6.63	0.00	-5.36	9.13	6.38	0	0.36	5.43	11	4.40	1.51
Liberty Corp.	NYS	45.25	5.85	10.03	50.25	39.00	22	0.92	2.03	10	31.82	1.42
Lincoln National	NYS	45.00	6.51	4.65	56.50	30.75	156	2.72	6.04	9	49.19	0.91
NAC Re Corp.	OTC	35.25	-0.70	6.82	37.25	25.50	146	0.20	0.57	15	22.81	1.55
Navigators Group	OTC	37.00	2.78	12.98	36.00	24.75	13	0.00	0.00	14	15.22	2.43
Nobel Insurance LTD.	OTC	2.88	-8.00	-4.17	3.75	1.63	17	0.00	0.00	-288	7.76	0.37
NWNL Companies	NYS	21.38	6.88	26.67	34.50	11.75	435	1.32	6.18	4	37.50	0.57
Ohio Casualty Corp.	OTC	44.25	8.59	7.93	50.75	26.75	459	2.32	5.24	10	33.30	1.33
Old Republic Int'l	NYS	25.13	2.55	9.84	27.00	19.00	105	0.76	3.02	6	30.70	0.82
Orion Capital Corp.	NYS	19.13	-0.65	9.29	23.00	13.00	104	0.92	4.81	6	19.72	0.97
Phoenix RE Corp.	OTC	8.50	7.94	9.68	12.50	5.00	18	0.20	2.35	-11	12.99	0.65
Protective Life Corp.	OTC	15.00	12.15	0.84	16.75	10.25	348	0.76	5.07	8	14.54	1.03
Provident Life	OTC	18.25	0.00	4.29	26.25	12.00	267	0.92	5.04	5	23.24	0.79
Re Capital Corp.	ASE	13.25	-1.85	2.91	14.75	11.50	7	0.00	0.00	10	14.43	0.92
RLI Insurance Corp.	NYS	13.88	-2.63	-4.31	14.88	8.88	84	0.44	3.17	6	12.42	1.12
St. Paul Companies	OTC	63.50	2.01	1.20	66.00	47.00	896	2.40	3.78	7	43.47	1.46
SAFECO Corp.	OTC	37.38	9.52	13.69	39.38	25.13	858	1.36	3.64	10	24.87	1.50
SCOR U.S. Corp.	NYS	12.38	-1.00	0.00	12.63	8.38	6	0.20	1.62	11	10.61	1.17
Seibels Bruce Group	OTC	5.50	2.33	29.41	11.75	4.25	71	0.36	6.55	-1	13.75	0.40
Selective Ins. Group	OTC	14.13	8.65	6.60	19.00	12.50	145	1.04	7.36	5	15.72	0.90
Statesman Group Inc.	OTC	1.81	11.57	15.99	2.88	1.25	425	0.00	0.00	3	4.19	0.43
Tokio Marine & Fire	OTC	48.75	-1.52	3.17	67.25	34.50	15	0.26	0.53	29	70.93	0.69
Torchmark Corp.	NYS	50.25	-0.99	2.81	51.38	38.00	249	1.40	2.79	12	13.23	3.80
Transamerica	NYS	32.75	0.38	0.38	41.00	23.25	943	1.96	5.98	8	34.63	0.95
Travelers Corp.	NYS	18.50	0.68	11.28	34.88	11.50	1315	1.60	8.65	-9	44.85	0.41
Trenwick Group Inc.	OTC	23.50	1.08	1.62	25.25	16.25	70	0.48	2.04	10	16.91	1.39
United Fire & Casualty	OTC	36.00	0.00	2.49	36.00	28.75	1	1.32	3.67	8	22.56	1.60
USF&G Corp.	NYS	8.50	7.94	13.33	30.13	7.00	1701	1.00	11.76	6	22.87	0.37
UNUM Corp.	NYS	52.38	10.85	12.33	57.13	32.13	470	0.80	1.53	10	31.20	1.68
USLIFE Corp.	NYS	31.50	3.28	12.50	42.00	23.25	77	1.48	4.70	8	54.34	0.58
Unitrin	OTC	33.25	-1.12	8.13	34.75	24.50	204	0.80	2.41	14	33.99	0.98
Washington National	NYS	12.38	6.45	13.79	25.75	9.38	99	1.08	8.73	52	32.90	0.38
USLICO Corp.	NYS	17.13	3.79	7.87	23.00	14.75	23	1.00	5.84	6	27.73	0.62
Zenith National Ins.	NYS	12.75	3.03	-6.42	18.13	9.88	50	1.00	7.84	9	13.81	0.92
INSURERS/REINSURERS	AVERAGE		3.3	6.0					3.8	7.4		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	17.00	25.93	11.48	22.00	9.75	4131	0.00	0.00	15	3.54	4.80
HMO America Inc.	OTC	8.00	28.00	23.08	7.88	4.25	1116	0.00	0.00	11	1.12	7.14
Pacificare Health Sys.	OTC	23.25	40.91	43.08	26.00	12.00	652	0.00	0.00	16	6.35	3.66
Safeguard Health Enter.	OTC	4.75	2.70	0.00	8.00	4.00	91	0.00	0.00	11	2.99	1.59
Sierra Health Services	ASE	16.50	12.82	20.00	17.50	5.50	395	0.00	0.00	206	0.62	26.61
United Healthcare Corp.	OTC	28.75	12.75	23.66	28.75	9.00	3028	0.12	0.42	29	0.34	84.56
United Medical Corp.	ASE	8.50	6.25	6.25	11.38	6.50	13	0.20	2.35	12	5.70	1.49
U.S. Healthcare	OTC	36.63	31.98	24.68	37.88	10.13	5573	0.36	0.98	32	3.07	11.93
HMOs	AVERAGE		20.2	19.0					0.5	41		
ALL COMPANIES	AVERAGE		5.0	6.5					3.2	11		

System design: Nordby International Inc.

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