FEBRUARY 5, 1990

Business Insurance®

Reporting weekly for corporate risk, employee benefit and financial executives / $2.00 a copy; $75 a year

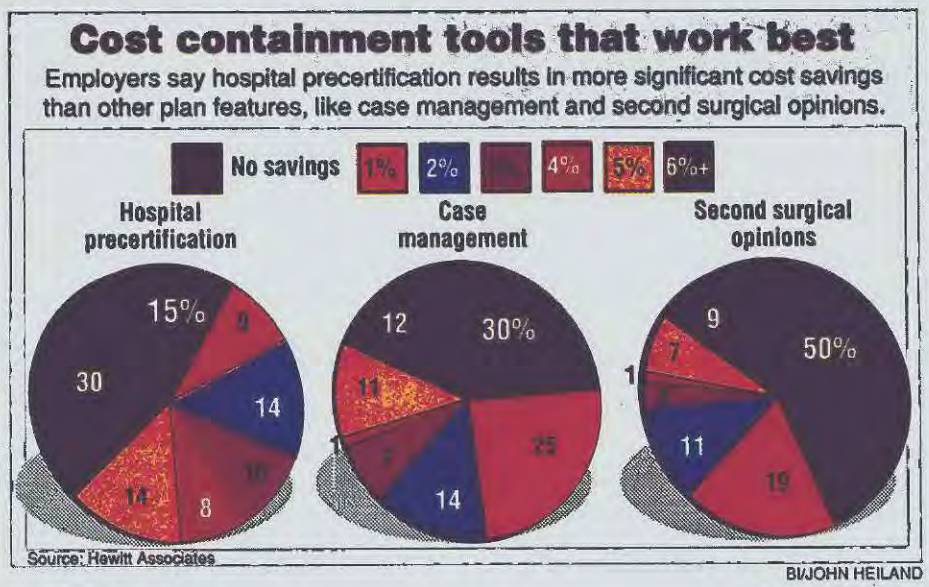
Update

Senate committee OKs bill to reduce RICO penalties

WASHINGTON—The Senate Judiciary Committee has approved a bill that would make the Racketeer Influenced and Corrupt Organizations law less attractive to most plaintiffs in civil litigation.

In an 11-2 vote, the committee last week reported out S. 438, which would prohibit most future non-governmental plaintiffs from seeking treble damages under RICO, limiting recoveries to actual damages, costs and attorneys' fees.

Continued on page 2



Firms assess value of cost control tools

By JERRY GEISEL

LINCOLNSHIRE, Ill.—Hospital precertification programs and case management of jumbo medical claims are among the most effective health care cost management measures, employers report in a new survey.

Eighty-five percent of employers with mandatory hospital precertification programs said the programs reduced medical care costs in 1988, according to the survey by Lincolnshire, Ill.-based Hewitt Associates.

And, about 70% report savings from case management of large medical claims.

But, only 50% of employers said mandatory second surgical opinion programs—once highly touted as a cost savings technique—resulted in medical plan cost savings.

And, while 64% of employers said offering employees incentives to have surgery performed on an outpatient basis—also a much-promoted cost containment method—produced medical care plan savings, some employers are growing disenchanted with this measure and are dropping it.

Results of the survey, "Managing Health Care Costs," are based on the responses of 976 employers with medical care plans covering salaried employees.

Continued on page 23

Parent is not liable for Superfund site of subsidiary: Court

By DOUGLAS McLEOD

NEW ORLEANS—A parent company cannot be held directly liable under the federal Superfund law for cleaning up pollution caused by a wholly owned subsidiary, a federal appellate court says.

In the first federal appellate ruling on the issue, the 5th U.S. Circuit Court of Appeals last week held that there is nothing in the Superfund law that extends the definition of a contaminated site's "owner or operator" to include the parent of a liable subsidiary.

Applying common law principles, the court separately refused to pierce the corporate veil separating the parent company in the case from a subsidiary liable for pollution cleanup costs. The court found that such action is warranted only in cases of fraud or where the subsidiary is a "sham" set up to avoid liability.

The Jan. 29 ruling—which runs counter to federal district court decisions in other circuits—affirmed a Louisiana federal judge's ruling that T.L. James & Co. Inc. is not responsible for cleaning up pollution at a Bossier City, La., plant run by Lincoln Creosoting Co. Inc., a former James subsidiary.

James was sued by Joslyn Manufacturing Co.—which bought Lincoln Creosoting from James in 1950 and operated the plant until 1969—in an attempt to force James to help pay for the cleanup.

Joslyn will appeal the ruling, either by asking for reconsideration by the three-judge appellate panel or by petitioning for a review by the U.S. Supreme Court, according to Mary S. Johnson, a lawyer with the New Orleans firm of Liskow & Lewis, who is representing Joslyn.

Attorneys for parent companies involved in pollution cleanup disputes and other observers say they are pleased the appellate panel refused to find a statutory basis to hold parent companies liable for cleanup

Continued on page 4

Six-year string of miscues

Sheriffs revise pool amid state scrutiny

By LINDA J. COLLINS

The National Sheriffs' Assn. is the last group you'd expect to find on the wrong side of the law.

But that's where some state regulators found an NSA-sponsored interstate self-insurance pool issuing police professional liability coverage.

After several years of runins with regulators—including six cease-and-desist orders and a demand to return funds—the NSA-sponsored Star Pool reformed last month as an Indiana-domiciled reciprocal risk retention group.

The pool was created in 1986, domiciled in Illinois and administered by an independent firm with an NSA-linked board that contracted with the sheriffs group. It has been in trouble with at least 12 insurance departments for writing insurance without authority.

The Star Pool directors last month reconstituted the pool as the American Justice Insurance Reciprocal (A Risk Retention Group) and hired a new administrator.

The sheriffs association hopes the change will close the books on a six-year string of miscues in sponsoring an insurance program for its members.

However, the rollover of The Star Pool into AJIR—including the pool's assets and liabilities—also is raising regulatory concerns, particularly in New York, one of at least three states still investigating the pool, and Vermont, which is seeking a return of $50,000 from the pool to five Vermont pool members.

And, some members of The Star Pool say they are frustrated by a lack of information from the NSA and the new administrator about AJIR coverage and limits. However, none of the members contacted by *Business Insurance* expressed any complaints about the coverage offered by the pool or how the pool pays claims.

Continued on page 24

States seek to recover asbestos damage costs

By STACY ADLER

WASHINGTON—A suit filed with the U.S. Supreme Court last week by state attorneys general seeking to recover the cost of removing asbestos from state-owned buildings is unlikely to be heard by the court, defense attorneys contend.

Attorneys general from 29 states filed the unusual suit Tuesday, naming 26 asbestos manufacturers as defendants.

The cost of removing asbestos from the nation's public and private buildings has been estimated at between $51 billion and $750 billion, according to the lawsuit. However, it does not estimate states' share of the cost.

While lawsuits are rarely filed directly with the Supreme Court, it is not unusual for state attorneys general to work together in filing a lawsuit.

For instance, 19 state attorneys general sued 31 insurance industry defendants in 1988 under the federal antitrust laws, alleging the defendants conspired to restrict the availability of liability coverage.

That complaint was dismissed last September by U.S. District Judge William Schwarzer (*BI*, Sept. 25, 1989). However, a similar suit filed in state court by the Texas attorney general is still pending.

John Ellis, Washington state's deputy attorney general and the organizer of the latest lawsuit, says the litigation against the asbestos companies was filed directly with the U.S. Supreme Court because there is no other forum where all the defendants could be sued in a consolidated action.

However, critics say it is highly unlikely that the court will hear the case and add that

Continued on page 30

Risk managers favor fees to pay for brokerage services
Page 2

Prop. 103 doesn't bar insurer from leaving state: Court
Page 2

Windstorm losses to buffet catastrophe reinsurers
Page 3

Update

Senate panel OKs RICO bill

Continued from previous page

The bill also would require a separate hearing to assess punitive damages after a finding of liability.

However, under the proposal by Sen. Dennis DeConcini, D-Ariz., federal, state and some local government plaintiffs could still seek treble damages. For example, state insurance departments could seek treble damages to recover losses from an insurer insolvency.

The bill also would retain the treble damage right for plaintiffs in cases in which a defendant has been convicted of a felony.

In addition, the bill also would allow punitive damages of up to two times actual damages for certain plaintiffs, including some local government entities, plaintiffs damaged by insider trading violations and consumers defrauded in certain transactions not already covered by securities or commodities laws.

The bill—which must still be approved by the full Senate—would apply only to lawsuits filed after its enactment.

J&J not insured for jury award

CHICAGO—Johnson & Johnson Products Inc. will appeal a $905,750 jury award in a toxic shock syndrome case.

The company probably would not have any liability insurance to respond to the award by a Cook Country Circuit Court jury if it loses the appeal, said a company spokesman.

The spokesman would not elaborate on the company's coverage.

The jury awarded the damages late last month to the family of Donna Marie Davis, who died in 1978 at age 31.

However, George Gore, a Cleveland-based attorney for Johnson & Johnson with the firm Arter & Hadden, disputed whether Ms. Davis had used the company's O.B. tampons as alleged and whether she had even died from toxic shock syndrome.

Ms. Davis' autopsy did not include any tests that could have determined whether she died from toxic shock syndrome.

But, plaintiffs' attorney John Bickley III of Bickley & Bickley in Chicago said no relationship had been established between toxic shock syndrome and tampon use at the time of Ms. Davis' death.

During the trial, a pathologist attributed Ms. Davis' death to the syndrome, Mr. Bickley said.

Delaware eyes bank bill

DOVER, Del.—Legislation in Delaware that would allow banks to use the state as a base to underwrite and sell insurance nationwide narrowly failed passage in the state Senate, but only one more vote is needed for the two-thirds majority necessary for approval.

The measure, already passed by the Delaware House, could come up for another vote between mid-March, when the Legislature reconvenes, and June 30, said a spokesman for Gov. Michael N. Castle, who supports the legislation.

A compromise bill also could emerge, but a new bill would have to be approved by the House, the spokesman added.

The measure, which would permit banks that have a state charter or own a state-chartered bank to market all types of insurance except title insurance, received a 13-7 vote in the Senate, with one abstention on Jan. 23.

Officials of the American Insurance Assn. and the American Council of Life Insurance object to the legislation, contending it enables banks to circumvent federal banking rules designed to restrict banks' insurance activities. They also argue the measure would give banks an unfair competitive advantage over insurers.

Many major banks—including Citibank, Manufacturers Hanover Trust, Chase Manhattan and Bank of New York—have operations in the state. And, a majority of them already have obtained state charters, qualifying them to sell insurance under the legislation, according to the governor's spokesman.

U.S. to review health system

WASHINGTON—Health and Human Services Secretary Louis Sullivan will lead a Domestic Policy Council review of recommendations on quality, cost and accessibility of the U.S. health care system, President Bush said last week.

"I am committed to bring the staggering costs of health care under control," Mr. Bush said in what is believed to be the first mention of the problem in a State of the Union address.

Mr. Bush also warned lawmakers who want to cut FICA tax rates not to "mess around" with Social Security.

In addition, the president repeated his earlier support for product liability law reform but offered no specifics.

Nuclear operators face suits

CINCINNATI—Suits seeking class-action status ask for more than $2.45 billion in compensatory and punitive damages from three former operators of nuclear weapons facilities for allegedly endangering workers and nearby residents.

Several divisions of the AFL-CIO as well as individual employees filed suit last week in U.S. District Court in Cincinnati against Houston-based NL Industries Inc. and subsidiary National Lead of Ohio, which operated the Fernald Nuclear Weapons Facility near Cincinnati from 1952 through 1985.

The suit seeks $1.9 billion in compensatory and punitive damages because of the "defective and unreasonably" dangerous conditions at the facility and the harm those conditions they may have caused workers, according to court papers.

A company spokesman could not be reached for comment.

Other AFL-CIO units also filed suit in U.S. District Court in Denver seeking unspecified damages from Midland, Mich.-based Dow Chemical Co. and Pittsburgh-based Rockwell International in connection with the companies' operation of the Rocky Flats Nuclear Weapons Facility near Denver.

A second suit against the companies was filed on behalf of community residents.

Continued on page 29

Insurer can withdraw from California: Court

By DONNA DiBLASE

SAN FRANCISCO—A California Supreme Court decision upholding an insurer's right to withdraw from the state will not lead to a mass exodus from the California market, observers say.

The court ruled last week that four property/casualty insurance subsidiaries of Travelers Corp. may proceed with an orderly withdrawal from the state, in spite of a provision in Proposition 103 that limits insurers' ability to cancel or refuse to renew auto insurance policies.

In addition, the court said the Travelers units or any insurers in the process of withdrawing from the California insurance market do not have to wait for approval from the state before it refuses to renew policies.

As a result, the four Travelers units will not have to renew or secure other coverage for some 22,000 personal auto insurance policyholders in California, which comprised the majority of their property/casualty business in California.

Other Travelers units will continue to write property/casualty business in California.

"The court's decision affirms one of the basic principles of free enterprise, and that is the right not to do business," said a spokesman for the Alliance of American Insurers in San Francisco.

"We think the decision is a fair one and it verifies the right of any one company to go out of business," said John G. Pryor, president of the Independent Insurance Agents & Brokers of California in San Francisco.

Larry Golub, an attorney with the Los Angeles firm of Barger & Wolen, which represented Hartford, Conn.-based Travelers, agreed that the court correctly upheld the fundamental right to cease doing business.

Travelers said in a statement that "while we are pleased that the California Supreme Court has agreed with us on this issue, we

Continued on page 31

Not all punitive cases affected

N.Y. ruling's impact muted

By STACY ADLER

NEW YORK—A recent New York Court of Appeals ruling that bars insurance coverage for a policyholder hit with an out-of-state punitive damage award is unlikely to have widespread impact, according to attorneys.

The decision will hurt New York-based corporations that litigate coverage disputes over punitive damage awards under New York law, attorneys say. But, they point out, the case will have no effect on New York policyholders that are able to adjudicate coverage disputes under other states' laws.

"I don't think the decision will have a sweeping effect," said policyholder attorney John Kazanjian of Anderson, Kill, Olick & Oshinsky in New York.

"Only where courts determine that New York law is applicable would the decision apply," he explained.

In the recent New York case, American Home Products Corp. of New York and its product liability insurer, New York-based Home Insurance Co., both agreed that New York law would apply to the dispute, even though the underlying punitive damage award was handed down in Illinois.

The only question before the court was whether New York common law, which bars insurance coverage for punitive damages, should apply to an Illinois punitive damage judgment.

In its Jan. 18 decision, the court decided that it should: "There is no question. . .that New York public policy precludes insurance indemnification for punitive damage awards."

An Illinois jury had ordered American Home Prod-

Continued on page 21

Risk managers favor fees to pay brokers' services

By COLLIN NASH

NEW YORK—In the long-running debate over whether brokers should be paid commissions or fees, risk managers for large corporations continue to argue that fees better reflect a broker's effort in providing diverse insurance-related services.

For their part, brokers say their prime concern is profitability, not whether they are compensated through commissions or fees.

The debate over how brokers should be compensated was aired at a seminar—"Brokerage Services Compensation: Fee or Commission"—sponsored last month by the Risk & Insurance Management Society Inc.

American Express Co. "is aggressively moving toward a fee-based compensation structure" for its brokers, said Marilynn A. Davis, Amex's vp-risk financing.

"Fees, we believe, are a truer reflection of the effort involved in developing and implementing a multifaceted program," she said.

She explained that insurance is only one of American Express's array of risk management tools. As it has grown, the company has increased its self-assumption of risk and buys insurance largely to cover catastrophic losses, she said.

Therefore, Amex relies on its brokers to provide a broad range of non-brokerage services.

Amex expects its broker to:

- Analyze of risk management options.
- Marketing savvy in placing insurance with traditional and non-traditional insurers.
- Tailor innovative alternative

Continued on page 13

Inside

Departments

Vol.24, No.6—*Business Insurance* (ISSN 0007-6864) is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. Second-class postage is paid at Chicago, Ill., and at additional mailing offices. Postmaster: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207; 800-992-9970 or 313-446-1611.

Safety conviction reversal may have limited precedent

By MEG FLETCHER

CHICAGO—An Illinois appellate court's decision to overturn criminal convictions in the 1983 death of a Film Recovery Systems Inc. employee will have little bearing on other criminal prosecutions of employers for workplace safety violations, observers say.

The 1st District Illinois Appellate Court last month overturned the murder and reckless conduct convictions of three Film Recovery executives and the involuntary manslaughter and reckless conduct convictions of Film Recovery and its sister company, Metallic Marketing Systems Inc., because it found the charges against the defendants were "legally inconsistent."

The three-judge panel, however, unanimously ruled that there is enough evidence to justify a new trial of the defendants in Cook County Circuit Court (*BI*, Jan. 22).

However, "the Illinois case was decided on a state procedural issue that won't affect our case," said Alia Moses, an assistant Travis County attorney in Austin, Texas.

Travis County prosecutors are awaiting the outcome of their appeal to the state's highest court in criminal cases in which they argue that federal workplace safety regulations do not pre-empt the state's right to criminally prosecute employers for workplace deaths and injuries (see story, page 22).

A lower court's ruling that the federal regulations pre-empt local prosecutors' rights to seek criminal convictions of employers overturned the convictions of two Houston employers—Sabine Consolidated Inc. and its president, and Peabody Southwest Inc.—on negligent homicide charges in the deaths of three workers in two separate trench cave-ins.

Likewise, Shulamit Rosenblum, deputy chief of the Kings County district attorney's appeals bureau in Brooklyn, N.Y., said the Illinois appellate court's Film Recovery decision "would have no affect" on a New York case.

A lower court last fall reinstated the criminal assault convictions of two owners of Pymm Thermometer Co. by ruling that federal workplace safety regulations do not pre-empt states from criminally prosecuting employers (*BI*, Oct. 30, 1989).

The Film Recovery decision "has a lot less national significance than Chicago Magnet Wire on the presumption issue," observed Stephen Bokat, vp and general counsel of the U.S. Chamber of Commerce and vp of its National Litigation Center, referring to another pending Illinois workplace injury case.

The U.S. Supreme Court last fall declined to review the Illinois Supreme Court's decision that Occupational Safety and Health Administration regulations do not bar local officials from criminally prosecuting Chicago Magnet Wire Corp. officials for allowing unsafe working conditions that led to employee injuries (*BI*, Oct. 9, 1989).

However, defense attorney Ro-

Continued on page 22

AP/Wide World Photo

The deadly windstorm—dubbed 90A—that swept across northern Europe Jan. 25, blasted St. Brandon's School in Bristol, southwest England.

European windstorm to batter reinsurers

By CAROLYN ALDRED

LONDON—The multibillion-dollar windstorm that devastated parts of Europe late last month could sock reinsurers with a one-two punch.

Underwriters say the catastrophe could force a further contraction of the catastrophe retrocessional market.

Several reinsurers may suffer heavy storm-related claims because they had not lined up all their retrocessional protection before the storm struck and because of higher retention and co-reinsurance levels imposed during the retrocessional market's recent renewal season.

The deadly windstorm—dubbed 90A—that swept across northern Europe Jan. 25 could cost insurers more than the "once-in-a-lifetime" $3 billion windstorm that belted southeastern England and northern France in 1987, some insurers believe.

About 100 people died as 90A barrelled through the United Kingdom, West Germany, France, Belgium, The Netherlands, Denmark, Holland and Luxembourg.

While British insurers sustained the brunt of the losses from 87J, the October 1987 windstorm, insurers in Continental Europe are expected to be hit with the bulk of claims from 90A.

For example, loss estimates for northern West Germany range from $200 million to $550 million.

The French market estimates damages in that nation at 2 billion to 3 billion French francs (between $340 million and $524 million).

Insurers expect losses in Belgium to reach $170 million.

Estimated insured losses in The Netherlands are 500 million Dutch guilders ($263.3 million), according to a Dutch broker.

And Denmark's insured losses will total about 175 million Danish krone ($29.9 million), says the Assn. of Danish Insurers.

However, British insurers expect to pay less than the 1.1 billion pounds ($1.85 billion) they paid for claims stemming from 87J.

Continued on page 29

Insurers take offensive in coverage disputes

By STACY ADLER

NEW YORK—Insurers are taking the offensive in attempting to bar policyholders from using liability policies to pay for hazardous waste cleanups, according to insurance attorneys.

With policyholders seeking indemnification for pollution cleanup costs in hundreds of pending state and federal cases, insurers are adopting complex and innovative defenses such as trying to prove policyholders knew they were polluting, attorneys said.

Insurers can no longer simply rely on the pollution exclusion, which bars coverage for all pollution that is not sudden and accidental, said attorneys at "Insurance, Excess and Reinsurance Coverage Disputes 1990," a Practising Law Institute symposium held Jan. 17-18 in New York.

"Insurers are engaged in a massive legal battle in an attempt to nullify their contractual obligations," charges policyholder attorney Eugene Anderson of Anderson, Kill, Olick & Oshinsky in New York.

"Insurers are in a rout," he said. "Decisions in the last three to four months have been almost exclusively in favor of policyholders."

Insurer attorney Thomas Newman of Bower & Gardner in New York staunchly disagreed, pointing to several recent victories for insurers.

In one, the New York Court of Appeals, the state's highest court, barred policyholder Powers Chemco Inc. from using its liability insurance to pay for a multimillion-dollar hazardous waste cleanup (*BI*, July 10, 1989).

The same New York court also ruled that New York-based American Home Products Corp. cannot tap its liability insurance to pay for a $13 million punitive damage award in Illinois (*BI*, Jan. 22).

One key strategy, used successfully by insurer attorneys in dozens of cases nationwide, said Mr. Newman, is proving policyholders knowingly polluted the air, water or land.

Liability insurance was not designed to cover intentional acts, and thus policies will not protect a policyholder who pollutes knowingly, explained Mr. Newman.

"By definition, insurance has to involve some type of risk or uncertainty," agreed insurer attorney Mary Kay Vyskocil of Simpson Thatcher & Bartlett in New York.

"By law, an insured cannot recover insurance for damages that do not result from a fortuitous event," she said. "Almost every court in the United States including the U.S. Supreme Court has recognized this fortuity concept."

Ms. Vyskocil represented Travelers Insurance Co. in the "first mega-case" concerning pollution insurance, litigation between Houston-based Shell Oil Co. and more than 250 liability insurers over up to $2 billion in

Continued on page 14

Insurer balks at Bulgarian spill award

BWJOHN HEILAND

By CAROLYN ALDRED

BURGAS, Bulgaria—The insurer of a Greek tanker is refusing to comply with a Bulgarian Supreme Court ruling that it must pay almost $4 million in compensation for a 1987 oil spill.

The insurer contends the damage award is far too high for the amount of oil that leaked from the ship. The award is based on a Soviet compensation system that does not take into account prior pollution in the area, the insurer claims.

Also, the Soviet pollution compensation system—known as the Russian Methodika—is not incorporated into Bulgarian law, according to the insurer.

As a result, Bulgaria now must try to enforce the judgment in a Greek court, said Ken Rankin, claims executive of Thomas Miller P&I, the London-based agents for The United Kingdom Mutual Steam Ship Assurance Assn. (Bermuda) Ltd., which insured the Greek shipowner.

"It is the club's intention to fight this claim to the end and it is currently obtaining legal opinion from specialists in international law in Greece—the country where an attempt may be made to enforce the award," Peter Wright, a director of Thomas Miller P&I, wrote in a letter sent to all involved parties on Jan. 18.

The oil spill occurred on Jan. 21, 1987, while the Greek-owned tanker Kriti Land was discharging crude oil to a shore terminal in Burgas, Bulgaria.

The municipality of Burgas "contended that between 110 and 130 metric tons spilled from the sea valve of the Kriti Land. It was the owners contention that this figure was excessive and the actual spill was in the region of 80 to 90 metric tons," Mr. Wright stated in the letter, adding that 65 tons of the spilled oil was recovered by skimmers.

"A representative from the International Tanker Owners' Oil Pollution Federation, an independent organization that investigated the spill shortly after its occurrence, was of the opinion that the recovery operation instituted by the terminal was most efficient.

"The balance of the oil was washed up in congealed lumps, due to very low sea temperature, onto beaches within a two- to three-mile radius of the port. . . .These factors also ensured that the actual area of pollution was kept to a minimum," the letter noted.

Continued on page 30

Superfund ruling

Continued from page 1

costs under the Comprehensive Environmental Response, Compensation and Liability Act, better known as the Superfund Act.

"Most cases in the last couple of years have expanded liability under CERCLA. This restricts liability," noted Deming Sherman, a lawyer with Edwards & Angell in Providence, R.I.

Mr. Sherman represented Providence-based Kayser-Roth Corp., which a federal judge last October found liable for pollution cleanup costs assessed against a subsidiary under CERCLA and common law standards governing piercing of the corporate veil (*BI*, Nov. 20, 1989).

"The fact that the court has said that there is no liability of a parent for any response costs attributable to environmental damage caused by a subsidiary unless there is fraud is a significant finding," Mr. Sherman said.

"It is a well-written, well-reasoned opinion. It correctly decides the case under the current state of the law," added Jon Schuyler Brooks, an environmental lawyer in New York.

"We are always glad to see interpretations which recognize traditional notions of corporate liability," said Quentin Riegel, deputy general counsel of the National Assn. of Manufacturers in Washington, D.C.

If Congress had intended to make parent companies directly liable under CERCLA for pollution attributed to their subsidiaries, the statute would have said so explicitly, Mr. Riegel observed.

"It's not up to the courts to change that. It's up to Congress to change it, if necessary," Mr. Riegel said.

O. Kirby Colson III, a lawyer with Hinshaw, Culbertson, Moelmann & Fuller in Chicago, agreed with the appellate panel's finding that the language of CERCLA does not explicitly provide for parent company liability.

However, noting federal district court decisions in other cases that run contrary to the 5th Circuit's ruling, Mr. Colson noted that a parent that exercises a high degree of control over a subsidiary's environmental activities still risks being considered a waste site "operator" under the Superfund Act, even though common law standards for piercing the corporate veil may not be met.

"I would not rely on this case to say that parents are home free," he warned.

In the case before the 5th Circuit, the Louisiana Department of Environmental Quality in 1986 and 1987 ordered Joslyn, James and other parties to clean up pollution at the Lincoln Creosoting plant site.

'The fact that the court has said that there is no liability of a parent for any response costs attributable to environmental damage caused by a subsidiary unless there is fraud is a significant finding,' says attorney Deming Sherman.

Joslyn has undertaken some remedial action at the site—cleanup of which is expected to cost several million dollars—but James refused to participate, according to court papers filed by Joslyn.

Joslyn sued James in 1987 in U.S. District Court in Shreveport, La., seeking an order that James must contribute to the cleanup effort.

Joslyn argued that James was an "owner or operator" of the site under CERCLA and the Louisiana Environmental Quality Act.

A federal judge, however, granted James' motion for a summary judgment dismissing the complaint.

The judge concluded—among other things—that Congress did not intend for CERCLA to override general rules limiting the liability of parent corporations for the actions of their subsidiaries.

The 5th Circuit appellate panel affirmed the lower court ruling in a Jan. 29 decision.

While noting that several other federal district courts have read CERCLA's definition of "owner or operator" broadly to include parent companies, the appellate panel specifically declined to follow suit.

"Joslyn asks this court to significantly rewrite the language of the act and hold parents directly liable for their subsidiaries' activities.

"To do so would dramatically alter traditional concepts of corporation law," the panel concluded.

"Appellants have pointed this court to little in the legislative history of CERCLA to indicate that Congress intended to make such a significant change in corporation law principles," the appellate court found.

"If Congress wanted to extend liability to parent corporations, it could have done so and remains free to do so."

Responding to Joslyn's argument that James should be considered an "owner or operator" because it dominated the operations of its subsidiary, the panel concluded that CERCLA provides for such a "control" test in certain pollution cases but not in cases like Lincoln Creosoting.

Where ownership of a waste site has been conveyed to a government body because of bankruptcy, tax delinquency or abandonment by its previous owner, CERCLA's definition of "owner or operator" is explicitly broadened to include "any person who owned, operated or otherwise controlled" the site immediately before conveyance.

However, no such control test appears in the section of the "owner or operator" definition applicable to Lincoln Creosoting, and the court said it would not imply one.

The court also found that the Louisiana environmental statute similarly does not impose direct liability on a parent of a company charged with polluting the environment.

Separately, the court ruled that Joslyn's effort to pierce the corporate veil separating James and Lincoln Creosoting is not supported by the facts of Lincoln Creosoting's relationship with James.

Lincoln adhered to formalities of corporate separateness, the court concluded, noting that:

- The daily operations of Lincoln Creosoting and James were separate.
- The top officers of Lincoln were not employed by James.
- Lincoln owned its own property, which was not used by James.
- Lincoln filed its own tax returns, paid its own bills and made its own arrangements for employee benefits.

The appellate court also ruled that "veil piercing should be limited to situations in which the corporate entity is used as a sham to perpetrate a fraud or avoid personal liability."

"The facts in this case do not support a finding that Lincoln was designed as a bogus shell for James Co. to hide behind," the court ruled. ■


In his last act in uniform as commander-in-chief, General George Washington reviews the Western Army at Fort Cumberland in 1794.

In Cumberland, Maryland, they know what "service above and beyond the call of duty" means.

In "the Narrows" of western Maryland, they've seen it all. Colonial times. The Revolutionary and Civil Wars. The country's march west.

That makes the people at Walter N. Yoder & Sons, of Cumberland, hard to impress. At Wausau Insurance, we knew our service had to be exceptional to get and keep the business of this unpretentious, but booming $20 million firm.

John W. Yoder, President of this mechanical and electrical contracting firm, set the rules: "I want this business to go on for generations to come, so it's essential we keep our employees happy.

"When we ask Wausau to do something, it's not weeks or days to get it done. It's hours. We get fast, courteous response from everyone there. And Wausau handles 95% of our business, including our health insurance and pension plan.

"I've never had another insurer work so closely with us," Mr. Yoder says. "At a time when many employers have been cutting back their employee benefits, we've been able to increase ours."

Responsiveness. For companies like Yoder, it's one way Wausau answers the call.

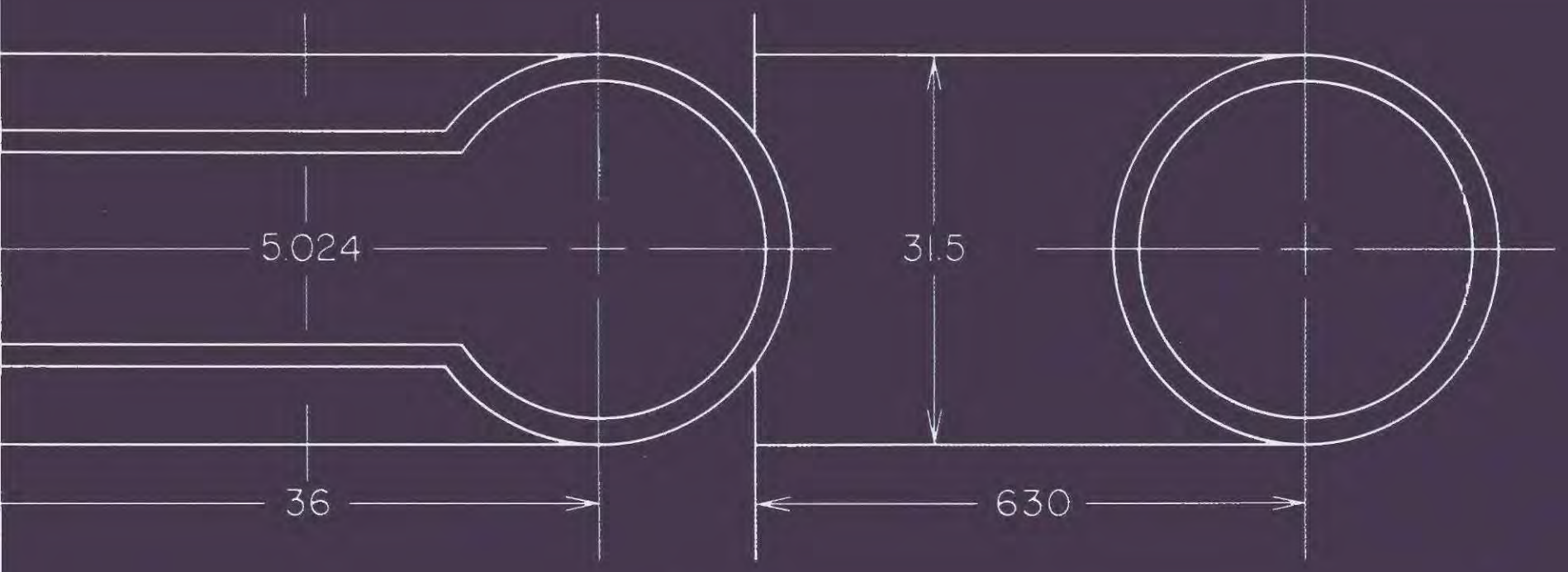
WAUSAU INSURANCE

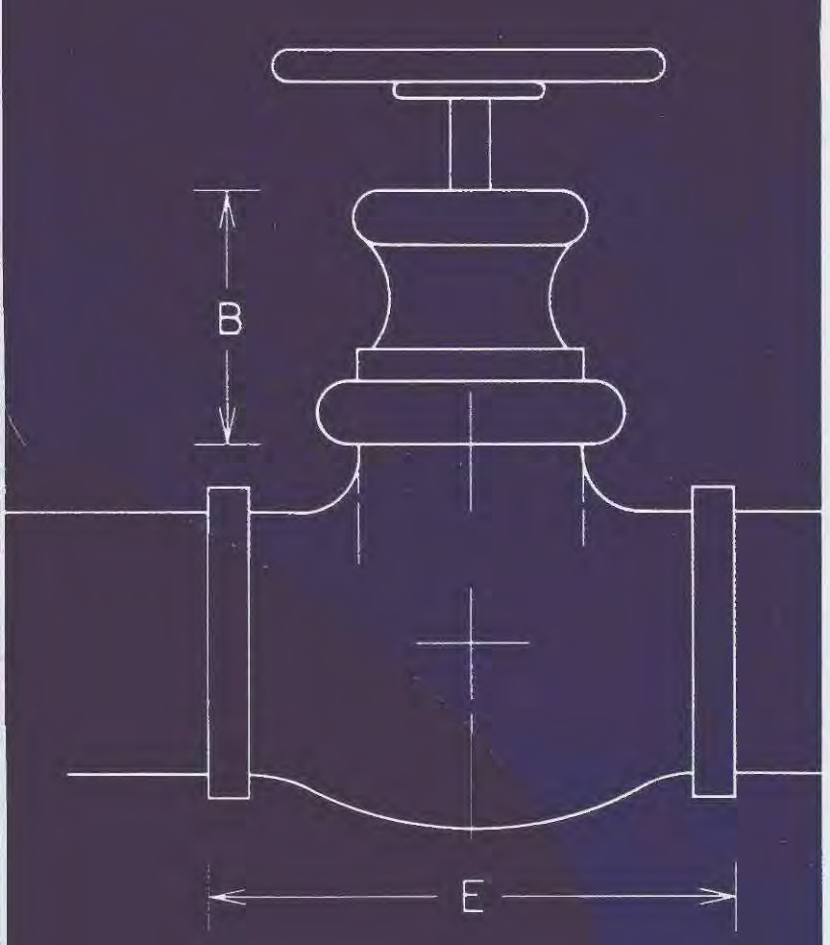
Wausau Insurance Companies, 2000 Westwood Drive, Wausau, Wisconsin 54401 Telephone (715) 845-5211 A Member of the Nationwide® Group.

THE HOM

OLD PROS ON

E TODAY





She earned her stripes in pipes.

When we made Jan Noll the head of our Jackson, Mississippi branch, it didn't catch anybody by surprise, exactly.

Trained to be a schoolteacher (in Latin and English, no less), she'd proven herself exceptionally good with people.

Indeed, Jan acquired a small army of admiring colleagues during her 15 years at The Home. And meantime, she managed to underwrite everything from pipelines to the world's largest catfish processor.

At The Home, we're building our entire business around people like Jan Noll. Whether they're Home veterans or newly recruited, they have talents and experience well beyond the ordinary.

You see, we've made a decision to concentrate on *larger, more complex risks.* To provide consistent, reliable coverage on such risks, for you and your policyholders.

And the only way we can guarantee you coverage like that is to have people like Jan.

The Home underwrites Commercial Lines, Major Accounts, Specialty Lines and upscale Personal Lines.

Home Insurance

A subsidiary of AMBASE CORPORATION

A NEW TEAM

Opinions

Crack down on benefit crooks

THIEVES CAUGHT burglarizing homes, stealing cars or robbing banks are arrested and prosecuted.

Is it too much to expect, then, that third-party administrators and others caught stealing from employee health care plans also face criminal prosecution?

We don't think so, and we applaud the recent announcement by the U.S. Justice Department and the U.S. Department of Labor that they are stepping up criminal investigations into the abuse of self-funded multiple employer welfare arrangements—also known as self-funded multiple employer trusts.

In announcing the indictment of an Atlanta TPA last month, federal authorities reported additional investigations are now under way in California, Florida, Texas, North Carolina, Pennsylvania and other states (*BI*, Jan. 29).

It's about time.

State regulators and law enforcement authorities have been stymied for too long in attempts to deal with unscrupulous MET operators.

A spate of self-funded MET scandals in the late 1970s and early 1980s produced amendments to the federal Employee Retirement Income Security Act of 1974, seeking to clarify the jurisdictional boundaries between ERISA and various state insurance laws.

However, state insurance departments attempting to regulate self-funded METs still routinely face claims by MET entrepreneurs that ERISA preempts state regulation.

Lacking resources and multistate jurisdiction, state authorities are also ill-equipped to pursue nationwide MET fraud investigations. Compounding the problem, the Department of Labor has historically offered little or no help to the states in their enforcement efforts.

This appears to be changing.

In congressional testimony last year, Raymond Maria, the Labor Department's acting inspector general, warned that unless MET fraud artists are stopped, thousands of workers will find themselves without health care benefits.

Mr. Maria described MET scams as "the classic Ponzi scheme," in which dishonest MET operators rake in benefit premiums as fast as they can while embezzling the funds in a variety of ways, including through offshore reinsurers they control. When premium income slows and the MET can't keep up with incoming claims, the plan collapses.

Mr. Maria offered several proposals for dealing with the problem, including more aggressive federal criminal enforcement efforts. Civil fines and penalties, long favored by the Department of Labor, are considered merely a "cost of doing business" for unscrupulous MET operators, he observed.

In addition, the Labor Department is preparing what it calls "plain English" materials to be given to state insurance departments explaining the department's and the states' roles in regulating self-funded METs. This should help states better understand that they indeed do have regulatory power to police METs.

The department also is considering requiring all METs to file reports or registration statements with the department. That would enable the Labor Department and the states to better regulate self-funded METs.

Following last month's indictment in Atlanta, Mr. Maria also said the Labor Department is questioning what he called an insurance industry practice of paying commissions to benefit plan fiduciaries for placement of stop-loss and other coverages.

All of these ideas are good ones, and can only reduce the risk that innocent working men and women might suddenly find themselves without health care coverage in the wake of a MET failure.

The best idea, though, is putting teeth into the threat of criminal sanctions.

"We want to send a strong signal to people who deal with employee benefit plans that we consider these funds to be sacred—inviolable," Mr. Maria said last month.

Fair enough. Common thieves face the risk of arrest and imprisonment; so should white-collar thieves in the employee benefit field.

Letters

Increased OSHA budget is 'encouraging' sign

To the editor: Thank you for your recent article, "Goals of New OSHA Leader: Fair, Firm and Consistent" (*BI*, Jan. 15). It really is encouraging to know that this esteemed branch of the bureaucracy has had its budget boosted and is about to descend on the private sector with renewed vigor.

Now, using the figures published in the article, which I assume were given to *Business Insurance* by the federal government, let's project how OSHA is going to spend it, predicated upon recent history.

The 1990 budget is stated as $267 million, and with the new hirings we now have 1,258 field inspectors. That is roughly $212,000 annually to support each man in the field. Since we know that last year 54,557 inspections were made, simple mathematics reveals that to be 43.4 inspections per inspector per year, assuming of course that they all do inspections.

At this point, we can speculate if the inspectors work 220 days per year (five days per week, with 30 days paid vacation and at least 10 government holidays), it appears that each inspector makes one inspection every five days. This also results in a whopping 3.4 violations for each visit when divided into the budget, resulting in a cost per violation written of $1,446.

The taxpayers should be thrilled that OSHA promises to aggressively increase their activities and collect more fines from employers. Think of how we would have to increase taxes to pay for this program if we couldn't collect the fines instead!

Thomas D. Mather
Senior Vp
Creative Risk Management Corp.
Mount Clemens, Mich.

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611.

Business Insurance®

Reporting weekly for corporate risk, employee benefit and financial executives

Publisher: Alfred Malecki *(New York)*

Associate Publisher/Editor: Kathryn J. McIntyre, A.R.M. *(Chicago)*
Managing Editor: James M. Burcke *(Chicago)*
Senior Editor: Jerry Geisel *(Washington)*
Assistant Managing Editor: Dave Lenckus *(Chicago)*
CHICAGO: Stacy Adler *(Associate Editor)*, Jeanne M. Bartels *(Graphics Editor)*, Karen Brown *(Assistant to the Editor)*, Linda J. Collins *(Agent/Broker Editor)*, Meg Fletcher, A.R.M. *(Associate Editor)*, Sara J. Harty *(Editorial Assistant)*, Mark A. Hofmann *(Associate Editor)*, Karen Huelsman *(Copy Editor)*, Marilou Jones *(Directory Editor)*, Laura Mazzuca *(Agent/Broker Topics Associate Editor)*, Roger Schillerstrom *(Editorial Cartoonist)*, Timothy Stanton *(Copy Editor)*, Paul Winston *(Copy Editor)*, Joanne Wojcik *(Copy Desk Chief)*, Christine Woolsey *(Associate Editor)*
DALLAS: Michael Bradford *(Associate Editor)*
LONDON: Stacy Shapiro *(International Editor)*, Carolyn Aldred *(Associate Editor)*
LOS ANGELES: Donna DiBlase *(Bureau Chief)*, Louise Kertesz *(Associate Editor)*
NEW YORK: Douglas McLeod *(Bureau Chief)*, Judy Greenwald *(Associate Editor)*, Collin Nash *(Editorial Assistant)*, Michael Schachner *(Associate Editor)*
WASHINGTON: Adrienne C. Locke *(Associate Editor)*

Advertising Director: Donald A. Walsh *(New York)*
Midwest Sales Manager: Robert L. Niesse *(Chicago)*
CHICAGO: Deborah D. Neale *(District Manager)*, Margaret Hikido *(District Manager/ Classified Sales)*, Elmer Kerstowske *(Production Manager)*
Eastern Advertising Manager: Martin J. Ross *(New York)*
NEW YORK: Charles A. Horvath *(District Manager)*, Jack Forrest *(District Manager)*, Kathryn Premetz *(District Manager)*, Cynthia Bykowski *(District Manager)*
LOS ANGELES: Michael J. Sharpe *(Western Advertising Manager)*

Director of Communications: Ronnie I. Drachman *(New York)*

EDITORIAL: Chicago: 312-649-5398; Dallas: 214-363-1066; London: 01-404-4228; Los Angeles: 213-651-3710; New York: 212-210-0140; Washington: 202-662-7200
ADVERTISING: New York: 212-210-0133; Chicago: 312-649-5276; Los Angeles: 213-651-3710
COMMUNICATIONS: New York: 212-210-0132
CIRCULATION: Detroit: 313-446-1611

Published by Crain Communications Inc., Chicago

G.D. CRAIN JR.
Founder (1885-1973)

MRS. G.D. CRAIN, Chairman
MERRILEE P. CRAIN, Secretary
S.R. BERNSTEIN, Chairman-executive committee
WILLIAM A. MORROW, Senior Vp-operations
RANCE CRAIN, President
ROBERT C. ADAMS, Vice president-production
KEITH E. CRAIN, Vice chairman
H.L. STEVENSON, Corporate editor
MARY KAY CRAIN, Treasurer
PENELOPE A. GEISMAR, Corporate communications mgr.

Published weekly at 740 Rush St., Chicago, Ill. 60611, Telex 6871241, Fax 312/280-3174, Cable CRAINCOM. Offices: 220 E. 42nd St., New York, N.Y. 10017, Telex 640207, Fax 212/210-0704, CRAIN COM NYK; 1 Northpark, East Suite 114, 8950 N. Central Expressway, Dallas, Texas, 75231, Fax 214/696-1936; Suite 814, National Press Building, Washington, D.C. 20045, Fax 202/638-3155; 6404 Wilshire Blvd., Los Angeles, Calif. 90048, Fax 213/655-8157; 20-22 Bedford Row, London WC1R 4EB, England, Fax 01/430-2176. $2.00 a copy. $75 a year in U.S. Canada and all other foreign add $32 for surface mail. Europe and Middle East only add $88 for air delivery. First-class mail to U. S., add $77; to Canada add $87. Bermuda only, $157 per year expedited delivery. WILLIAM STRONG, vp-circulation. SHEILA GORMLEY, circulation manager. LISA RIVERS, fulfillment director. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 965 E. Jefferson Ave., Detroit, Mich., 48207, or phone 800-992-9970 or 313-446-1611, Fax 313/446-1650. Microfilm copies are available from University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies available: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For information and rates to reproduce in general circulation media, contact: ART MERTZ, The Crain Syndicate, 740 Rush St., Chicago, Ill. 60611, 312-649-5303. For reprints or reprint permission contact: Reprint Department, Business Insurance, 220 E. 42nd St., New York, N.Y. 10017, 212-210-0229, Fax 212/210-0704.

Member of Business Publications Audit of Circulation

VBPA ABP

We picked up where he left off.

In 1492, Christopher Columbus discovered America. He also discovered that overseas expansion was no picnic. Something many American businesses are still finding to be the case.

Only nowadays, the perils aren't just high seas. But things like business interruptions and liability suits. And the difficulty of getting the right exporters' insurance can make you wish you'd stayed home.

Not only has it been tough choosing coverages, but you've often had to use several carriers.

Fortunately, the CIGNA companies now offer an individualized package of coverages from a single source.

One that's designed to overcome the complexities of handling insurance abroad and help you compete effectively overseas.

And with our worldwide network of local operations, you can expect nothing less than complete service.

For more information, write CIGNA Property and Casualty Insurance Company, Dept. R1, 1600 Arch Street, Phila., PA 19103.

And let us prove that the world is insurable. As well as round.

We get paid for results.℠ CIGNA

Illinois tracks results of wellness program

By MICHAEL SCHACHNER

Benefit beat

A three-stage wellness program for State of Illinois employees that began in 1987 has noticeably reduced the number of employees who smoke, consume large quantities of alcohol and use drugs, according to the state's Central Management Services department.

Three years ago, the state offered 14,000 employees in the Springfield area the opportunity to partake in a free wellness program that was provided by two local hospitals and the Springfield-area YMCA. A spokesman for the state said 7,160 workers participated in the program, which featured a medical segment, a physical segment and a counseling segment.

The medical component of the program consisted of measuring workers' height, weight, blood pressure and cholesterol level. During the physical phase, employees were tested for cardiovascular endurance, percentage of body fat, strength and flexibility. In the final segment, employees were counseled as to how they could improve their health.

Twenty-three percent of the employees who participated in the wellness program—known as Stepwell—smoked in 1987. However, during a follow-up testing period performed on 4,162 of the same workers in September 1989, only 17.6% smoked.

Only 6.3% of participants drank more than 14 alcoholic beverages per week in 1989, compared with 8.1% in 1987, and 4.7% admitted to daily drug use in 1989, compared with 6% in 1987.

The state is not currently forecasting exactly how much the lifestyle improvements among Springfield employees will save the state in annual health care costs. But the spokesman did say that savings are expected "down the road."

In addition, the state last year offered a similar free wellness program to some 25,000 state employees in the Chicago area. The spokesman said more than 6,000 participated and a follow-up examination to quantify results is scheduled for 1991.

Parkside Health Management Corp. of Park Ridge, Ill., and Swedish Covenant Hospital in Chicago provided the wellness services for Chicago employees.

Both the Springfield and Chicago screenings cost the state $355,000 last year. Illinois spent a total of $293 million on life, health and dental benefits in 1989.

Benefit continuation

A bankruptcy court judge has given two Campeau Corp. units permission to continue making contributions to several employee benefit plans that had been temporarily suspended after the company filed for Chapter 11 protection last month.

U.S. Bankruptcy Judge J. Vincent Aug on Jan. 25 authorized restoration of group benefits for employees and former employees of Federated Department Stores Inc. and Allied Stores Inc. Those benefits included long- and short-term disability, substance abuse assistance and education reimbursement programs, the companies' matching contribution to a 401(k) savings plan and the continuation of health benefits as stipulated under the Consolidated Omnibus Budget Reconciliation Act, a Federated spokeswoman in Cincinnati said.

The benefit restoration ruling was strictly a formality, however, since benefits under the companies' self-insured health plans had not really been discontinued between Jan. 15, when the company filed for Chapter 11 reorganization, and Jan. 25, the spokeswoman explained.

It is "standard procedure for the courts to set hearing dates for the continuation of spending," she explained. "The court continued payroll spending immediately and set a later date to determine whether we could continue to make payments to certain benefit plans."

"The court proceedings did not delay the delivery of any benefits. Nobody was denied coverage. This decision simply affirmed that we could continue to operate normally," she said.

UNUM fitness center

Employees at UNUM Corp.'s headquarters in Portland, Maine, now have free access to an on-site fitness center that features an aerobics room, numerous weight stations and cardiovascular exercise equipment.

The facility, which opened at the beginning of the year, occupies the basement level of UNUM's home office and is open to all 3,000 UNUM employees in Maine. The fitness center was created as part of a five-year ongoing focus on fitness, said Susan Olson, manager of employee wellness.

Ms. Olson said UNUM built the fitness center to "encourage physical health and well-being through regular exercise, with particular emphasis on cardiovascular health."

She said UNUM has made a conscious effort over the past five years to improve the overall health of its employees, which in turn leads to a reduction in both health care expenditures and lost productivity related to absenteeism.

UNUM has seen its health care costs for more than 4,000 employ-

Continued on page 12

INFLUENCE

Drop a pebble in the water,
And its ripples reach out far;
And the sunbeams dancing on them
May reflect them to a star.

Give a smile to someone passing,
Thereby making his morning glad;
It may greet you in the evening
When your own heart may be sad.

Do a deed of simple kindness;
Though its end you may not see,
It may reach, like widening ripples,
Down a long eternity.

In Loving Memory of
Bill Mangelsdorf

Co-founder of

The Mangelsdorf Companies

September 20, 1939 - January 24, 1990

Pollution cover

Continued from page 3

cleanup costs at the Rocky Mountain Arsenal near Denver.

Even that case "pales by comparison" to today's litigation, she said.

Shell and its insurers focused on a single waste site, while cases now often involve dozens of waste sites nationwide, she explained.

The Shell litigation, though, set the standard for how today's coverage cases are handled, according to attorneys. It marked the first time insurers convinced a jury that a policyholder knowingly polluted a site (*BI*, Dec. 28, 1988).

Another lesson learned by insurers in the Shell case and other less-celebrated litigation was that a Fortune 500 policyholder and a mom-and-pop bakery could be held to different legal standards.

California Superior Court Judge William Lanam ruled that Shell was a sophisticated policyholder that should not be given the benefit of common law rules which, when a policy is ambiguous and the intent of the parties unclear, interpret the contract against the insurer (*BI*, May 30, 1988).

This rule—known as contra preferendum—was developed in the context of personal lines cases, where a policyholder was presented with his insurance policy on a take-it-or-leave-it basis, explained Barry Ostrager of Simpson, Thacher & Bartlett in New York.

Recently courts have applied the rule in cases involving commercial insurance and major corporate policyholders, he said.

However, applying the contra-preferendum rule to a major company's purchase of business insurance is inappropriate, according to Mr. Ostrager, who also represented Travelers in the Shell litigation.

Excess insurance issues will become more important as cleanup costs rise, Mr. Newman says.

Courts examining the economic background of policy negotiations between major companies and insurers realize this, he said.

"When you are dealing with parties of equal bargaining power there is no need for the rule," said Mr. Ostrager. "Only in the rare case when one party drafted the policy, where there is a real ambiguity and the intent of the parties cannot be determined should these rules be applied."

In fact, the contra preferendum rule is being "very substantially eroded" and "will disappear" by the end of the decade, he said.

Attorneys also predicted increased coverage litigation involving excess insurance and reinsurance companies in the 1990s.

"The dollars in today's disputes are so large that they will eventually be played out in disputes between reinsurers and ceding companies and later between reinsurers and retrocessionaires," said Mr. Newman.

For example, the New York Court of Appeals is being asked in a pending case to decide whether telexes between a reinsurer and a cedant can form a binding contract even though the certificate or treaty has not yet been issued.

In addition, excess insurance issues will gain more prominence as pollution cleanup costs rise dramatically, said Mr. Newman.

Courts will have to decide:

- Was the excess insurer given adequate notice of the claim?

It is not clear now clear whether it is sufficient for a policyholder to notify its primary insurer alone or whether the policyholder has a greater duty to also notify excess insurers, explained Mr. Newman.

- Can excess insurers jointly hire counsel to monitor large coverage cases?

Often excess insurers have small claims departments and do not have the manpower to monitor these cases, explained Mr. Newman.

Moreover, could sharing counsel lead to a conflict of interest? And, what happens when one insurer wants to settle and the others do not, Mr. Newman asks.

Courts have not fully addressed any of these questions, he explained.

- Must an excess insurer drop down and pay claims when one primary insurer goes insolvent, but before other primary insurance has been exhausted?

The few decisions in this area have yielded no clear answer, according to Mr. Newman.

"Courts generally have been holding that excess carriers do not have to drop down when a primary insurer goes insolvent," he said.

For example, a California state court ruled in 1988 that Associated International Insurance Co. of Los Angeles did not have to drop down to pay long-latent product liability claims even though the underlying primary insurer and first-layer excess insurer on the risk during the same policy period had exhausted their limits (*BI*, May 16, 1988).

The other primary insurers must exhaust their limits by paying claims—even those that fall outside their policy period—before Associated has to begin paying clams, the judge ruled.

In coming years, courts must also rule on what event should trigger liability policies in the context of a hazardous waste cleanup.

Insurers that were caught in the quagmire of asbestos bodily injury claims litigation were split most deeply on this issue.

"The trigger of coverage issue in the early 1980s was the most litigated issue," said Ms. Vyskocil, noting that four basic trigger theories emerged from the asbestos litigation.

The first, known as the exposure theory, holds that insurance is triggered when a victim is exposed to the hazardous substance.

The second, known as the manifestation theory, holds that insurance is triggered when a victim manifests a disease stemming from exposure to a hazardous substance.

Under the third theory—the triple trigger—insurance is triggered continuously from a victim's initial exposure, through the exposure and until a disease manifests itself.

A fourth theory, known as injury in fact theory, holds that policies are triggered only when a victim

Continued on next page

Continued from previous page
displays an injury.

In hazardous waste litigation, no single theory has emerged as the majority view, said Ms. Vyskocil. "It is too soon to tell what or if there will be a majority rule."

The injury in fact theory is "is the truest to the policy language," according to Ms. Vyskocil. But "insurers are still all over the place" on which is the appropriate trigger, she said.

Attorneys have speculated that the failure of insurers to agree on an appropriate trigger in the pollution context could lead to another decade of insurance company in-fighting.

But, Ms. Vyskocil said this is unlikely, predicting instead that "insurers will work out on a consensual basis how to divide the pie."

"Insurers have learned to put disputes within the industry aside and focus on defenses where there is agreement between carriers," said Ms. Vyskocil.

For example, insurers agree that choosing the best possible forum to a litigate a lawsuit is critical. Both insurers and policyholders believe laws in some states favor insurers and in others, policyholders.

Discrepancies in state law can be "outcome determinative," meaning they could spell the difference between winning and losing a coverage battle, said Mr. Newman.

As a result, insurers and policyholders often fight tooth and nail to get litigation into a favorable forum. "Choice of forum is often a bitterly contested issue," said Mr. Newman.

For example, insurers in the Love Canal litigation are still battling over whether the case should be heard in California, where the parent of the policyholder is based, or New York, where the toxic landfill is located. This litigation over liability for claims stemming from the leak of hazardous chemicals from an old landfill began in 1978 (*BI*, Dec. 25, 1978).

Among the states that could be considered an appropriate forum for a hazardous waste coverage dispute are those where: the waste sites are located; the insurance company has its home office; the policyholder has its home office; or even the state where the insurance policy was last signed.

"There is definitely forum shopping," said policyholder attorney Mr. Anderson.

Insurer attorney Mr. Ostrager defends the practice, saying that an attorney who looks for the most favorable forum is only doing his job.

And, he added, "litigants are wrong as often as they are right."

For example, New Jersey for many years was considered a pro-policyholder jurisdiction. However, that image was shaken when a state judge in New Jersey ruled that Diamond Shamrock Corp. was not insured for Agent Orange claims (*BI*, Feb. 15, 1988).

Several speakers suggested policyholders and insurers would be better off working out a way to share pollution cleanup costs.

"More money is being spent on litigation by a factor of three than is on cleaning pollution and removing asbestos," said Mr. Anderson. Three out of every four dollars goes to lawyers and insurance companies and not to remediation efforts, he explained.

"This system stinks," he asserted. "It is time (for policyholders and insurers) to sit down and talk." ■

Guaranty funds not up to task: Hall

NEW YORK—The current insurance guaranty fund system may not survive the decade, according to a prominent reinsurance company attorney.

The system was not designed for and is not prepared to meet the burden of today's massive insurance insolvencies, said Robert M. Hall, general counsel and secretary at American Re-Insurance Co. in Princeton, N.J.

Mr. Hall discussed the problems plaguing guaranty funds at "Insurance, Excess and Reinsurance Coverage Disputes," a Practising Law Institute symposium Jan. 17-18 in New York. He later elaborated on his comments.

Some 238 insurance companies are in insolvency proceedings, said Mr. Hall, quoting figures from a June 1989 National Assn. of Insurance Commissioners report. According to A.M. Best Co., 43 insurers became insolvent in 1989 alone.

"The insolvencies will not stop anytime soon," he predicted. Problems such as pollution, AIDS, asbestos and latent injuries threaten to drain the financial resources of even more insurers in the coming decade, he said.

"Guaranty funds were designed to deal with smaller personal lines insolvencies," he said. "But today's problems are so massive that it is not realistic to expect the current guaranty fund system to handle them.

"I would be surprised if the guaranty fund system we have today survives the century."

Instead, Mr. Hall predicted either creation of a federal guaranty fund system or passage of federal bankruptcy laws applying to insurance companies in the 1990s.

A federal guaranty fund system would provide nationwide uniformity, said Mr. Hall.

State guaranty fund laws now provide for payment of different types of claims and limits of coverage, he explained.

"This patchwork of laws is not cost-effective," said Mr. Hall.

Applying federal bankruptcy laws to insurers might also create greater guaranty fund uniformity and allow liquidators to develop expertise in their field, he said.

"It is hard for today's liquidators to build expertise in the liquidation process when the laws differ from state to state," Mr. Hall said.

Historically, the insurance industry has opposed both a federal guaranty fund system and the application of federal bankruptcy laws to insurance companies, fearing that either would give the federal government a toehold into insurance regulation, he said.

Nonetheless, there is a 50% chance that there will be a federal guaranty fund system by the end of the 1990s, Mr. Hall predicted.

—By Stacy Adler

In 1851, when *America* won the first Cup Race, Allendale's

For nearly 60 miles, one sleek bow cut like a razor between sky and sea. Outnumbered by seventeen of Britain's best sailing vessels, *America* streaked across the finish line to victory. "Where is the second?" Queen Victoria asked. "Your Majesty, there is no second," the signalman replied. And when *America* crossed the finish line eighteen minutes ahead of its closest competitor, Allendale had been leading the property insurance industry with innovations in loss control engineering and coverage for 16 years.

In a changing world where events like this shape history, this is our way of reminding you of one progressive, stable company that's been in business since 1835.

ngineers had been charting a winning course for 16 years.

Today at Allendale, we continue to shape the history of loss control with engineering, training, research and testing, responsiveness and fairness in the way we do business.

Throughout the years we've been more than an ordinary insurance company. Commitment to our insureds goes well beyond the property coverages we provide.

After a century and a half, that part of our philosophy is not about to change. Allendale Insurance, P.O. Box 7500, Johnston, Rhode Island 02919.

Allendale Insurance/Factory Mutual System
Over 150 years of progress and stability.

CIGNA restructures European operation

By STACY SHAPIRO

LONDON—CIGNA Worldwide Inc. is moving executive management of its European, Middle East and African operations from Philadelphia to a new seven-member European Management Council.

Since December each member of the council has been in charge of an area or "cluster."

The new council and management structure in Europe "brings authority closer to the point of sale," explained explained Tony Lancaster, senior vp of United Kingdom and Ireland for CIGNA Insurance Co. of Europe S.A.-N.V. "The objective (is) to think globally and yet act locally."

CIGNA decided to develop a "collaborative" European operation with management spread over a wide area rather than centralized in one European city or Philadelphia, Mr. Lancaster said.

"Europe is going to evolve. Look at what's happened in Eastern Europe recently. As it evolves, we plan to evolve with it," he explained.

The structure was developed after a 1989 study on how to improve CIGNA's marketability in Europe in light of the Single European Insurance Market in 1992.

A study group that included executives from the home office in Philadelphia and some European offices was established to talk with brokers and customers to find out what the perceived strengths and weaknesses of CIGNA were in Europe.

"We found that we had a need to expand our product mix," he said. "And there's a need to emphasize an expansion on our casualty capabilities."

Previously, CIGNA divided its European, Middle Eastern and African operations into four regions: Southern Europe; Northern Europe; the Middle East & Africa; and the United Kingdom & Ireland. Mr. Lancaster headed up the U.K. and Ireland operations in London, and the other three regions were managed by executives in Philadelphia.

The new cluster managers are:

- Mr. Lancaster, who remains in charge of the United Kingdom and Ireland.
- Herman Niewenhuizen, country manager for Belgium and senior vp for Belgium, The Netherlands and Scandinavia.
- Gerhard Hornig, country manager for West Germany and senior vp for West Germany, Switzerland and Austria.
- Kirk Sinanian, country manager and senior vp for France.
- Paolo Rizzo, country manager and vp for Italy.
- Denis Johnson, country manager for Spain and cluster manager for Spain and Portugal.
- Bowdre P. Mays, vp in Athens, Greece, and cluster manager for Greece, the Middle East and Africa. The Middle East and Africa have been overseen by Mr. Mays in Athens for the last few years.

Nick Steffy, senior vp of base operations for CIGNA Worldwide in Philadelphia, will be chairman of the council.

Also attending council meetings are: one property/casualty underwriting representative; one special products representative; and Alan "Chip" Platow, senior vp of marketing based in Paris.

Monthly council meetings will be in different European cities, with the cluster manager from the host country running the meeting.

Initial council meetings in December and January focused on implementation of the cluster plan. Meetings are set Feb. 8 in London and in March in Madrid.

CIGNA—which has been active under the CIGNA-Europe name throughout the European Community for several years—has 48 branches in all European countries except Luxembourg, noted Mr. Lancaster.

The insurer specializes in commercial property insurance; claims and loss control services; and accident and health coverage. CIGNA also offers multinational corporations global insurance programs.

In addition, CIGNA plans to expand its casualty expertise.

CIGNA-Europe produced total 1989 premium volume of about $1 billion, 45% of which came from the United Kingdom and Ireland; 18% from France; 8% from West Germany; and 29% from other parts of Europe, Scandinavia and the Middle East and Africa. ■

One bad apple

Dishonest MGA is the exception

By Louis A. Williams

AS PRESIDENT OF THE American Assn. of Managing General Agents, I cannot resist protesting the subject of the article, "Insurance Fraud Tough to Spot: Ex-Con" (*BI*, Nov. 6, 1989). The AAMGA is a trade association of state, regional and national insurance managing offices with contractual authority to perform managerial functions on behalf of insurers through the American agency system. Our 250 member firms are governed by a code of ethics demanding the highest level of professional and ethical standards (see box).

Last year, our member firms provided insurance products to more than 200,000 subproducers for small commercial and personal accounts developed primarily from suburban and rural agents.

In addition, the AAMGA played an active role in working with the National Assn. of Insurance Commissioners in helping to develop an MGA model act to regulate the 2% or 3% of the MGAs possessing the authority to threaten the solvency of an insurer.

It seems quite appropriate that *Business Insurance* readers should be informed about the 97% to 98% of MGAs that provide important professional and ethical services daily, as a vital method of distribution.

The importance of the managing general agency system as an efficient and effective medium of distribution has been documented by all segments of the insurance industry.

In a 1989 article in Best's Review, David N. Grubb, special deputy commissioner of the New Jersey Department of Insurance, states: "Managing general agents perform a critical function that benefits both insurers and consumers. They increase the insurance buyer's choices by providing the kind of underwriting expertise that many carriers would have trouble duplicating."

In the same issue, Joseph M. Walsh, president of American Empire Surplus Lines Insurance Co. of Cincinnati, says: "The managing general agent, through subproviders, can provide insurers, large and small, admitted and non-admitted, expanded marketing and service capability. There tends to be a consistent demand for certain types of risks or classes of business that are not readily available from a broad base of companies."

Mr. Walsh further commented that MGAs have been successful in developing special expertise to both attract and underwrite these specialty lines of business.

In testimony before a hearing held last June by the NAIC's Managing General Agents Working Group, Tom Rohs, president of the American Modern Home Insurance Co. of Cincinnati, stated: "Companies such as ours would find it practically impossible to operate without the assistance of the managing general agency system. The American Modern Home Group specializes primarily in insuring mobile homes. In numerous states, the population base is inadequate to support our own field staff. The managing general agency system allows us to distribute our product successfully in many of the more sparsely populated and rural areas."

What are the specific value-added functions of the MGA that make their role so important in today's distribution system? Consider these facts:

- Managing general agents have established subprovider premium sources and staff expertise in product knowledge.

Additionally, the knowledge of their territories and their service capabilities provide the facilities to bring additional capacity into the marketplace. New, limited capital formations, or older small insurers with an interest in writing a new product line, would be unable to invest capacity in the marketplace without the support of the MGA network. Obviously important to any insurer is the ability to get a spread of risk made possible by the nationwide MGA network. The managing general agency system provides insurers with marketing, underwriting and policy services by providing those functions on their behalf. Thus, an insurer writing a very small volume is supported by the expertise and experience of MGAs writing large volume aggregates.

- The role of MGAs in offering retail agents an alternative market to service the needs of their policyholders is critical to most retail agents at all times. The real importance of the MGA's role, however, was never so visible as during the hard market cycle of the mid-1980s. During this cycle, the traditional market withdrew from many classes of risks for which there would have been no availability except for the markets reached through the MGA/wholesaler system.
- In today's marketplace, the MGA provides a "value-added" dimension by simply being present. The MGAs are a daily reference source tapped constantly by the retail marketplace. MGAs are usually able to market, on behalf of the retail community, risks that otherwise could not be handled by a given retail source, thereby extending the ability of that retailer to service his client. MGAs have the ability to seek and negotiate cover with multiple markets, thereby spreading the risk and making it acceptable to a multiple market where a single market represented by the retail producer has declined the exposure as too large, too broad or too risky for a single market.
- The MGA gives the small town and rural agents access to sophisticated markets that can provide specialty coverages to service the needs of the agency clientele with products of comparative security and a competitive price.

In addition to the MGA's specialty role, the managing general agency system is now helping to fill voids created for smaller agents by the withdrawal of standard contracts due to limited premium volume by offering alternative markets without imposing volume requirements.

The viability of the managing general agency system in the marketplace today is best evidenced by the fact that the member firms of the AAMGA alone wrote an estimated $5 billion in premium volume last year in their service to more than 200,000 retail producers. This does not include the large premium volume written by the excess and surplus wholesalers network.

Viable as the system is today, the managing general agents are being challenged through affiliation with their professional trade associations to be even better prepared to serve the marketplace of tomorrow through observance of the strictest standards of professional ethics and continuing professional growth in the services provided to retail agencies.

Louis A. Williams is president of the American Assn. of Managing General Agents. In addition, he operates Louis A. Williams & Associates Inc., an MGA based in Marshall, Texas.

AAMGA®

CODE OF ETHICS
AMERICAN ASSN. OF MANAGING GENERAL AGENTS

As entrepreneurs and business owners we, the membership of AAMGA, have certain obligations to each other, our industry, and our communities.

Our goals and obligations fall into six broad categories.

1. Financial
2. Intra-organizational
3. Relationships with our sub-producers
4. Relationships with insurance companies
5. Legal responsibilities
6. Community obligations.

Financial

As AAMGA members, we must meet all financial obligations (i.e., debts owed, premiums due companies, returns due sub-producers and insureds, etc.) on a timely basis.

Intra-Organizational

As AAMGA members, we must compete fairly and honorably in the marketplace, making no false statements or misrepresentations about other AAMGA members or competitors.

Relationships With Our Sub-Providers

As AAMGA members, we must serve our sub-producers to the utmost of our ability, and in so doing must:
- Research and remain current on the financial stability of companies with which we place business.
- Encourage continuing education and training for ourselves and our staffs.
- Make no misrepresentation of what coverage is being provided.

Relationships With Insurance Companies We Represent

As AAMGA members, we will faithfully execute the underwriting guidelines of the companies we represent.
As AAMGA members, we must act in the utmost good faith and gather all data necessary to make a proper underwriting decision before putting an insurance company at risk.
As AAMGA members, we are obligated to remain current on the laws affecting insurance companies, in those states in which we have authority, advising companies to the best of our ability on statutes and practices which affect them.

Legal Responsibilities

As AAMGA members, we are required to observe all insurance and other applicable state and federal laws.

Community Obligations

As AAMGA members, we will take an active part in the recognized civic, charitable and philanthropic movements which contribute to the public good of our communities.

It is a privilege, not a right, to belong to the AAMGA. Our AAMGA membership is a "badge of honor."

We pledge to conduct ourselves in a manner befitting the privilege of membership in the American Assn. of Managing General Agents.

ASK A BENEFITS ACTUARY

Using new regulations to calculate pensions

Q **How is the required minimum distribution from pension plans calculated?**

A This question comes from an employee benefits manager who is grappling with the Internal Revenue Service's lengthy proposed regulations regarding the minimum amounts required to be distributed under both defined benefit and defined contribution plans to certain plan participants who have turned age 70½. The manager recognizes that action is needed soon on this matter since distributions must be made on or before April 1, 1990.

Benefit payments from a qualified plan must begin to individuals who have turned age 70½ in 1989, *even if the individuals are still employed by the plan sponsor*. Benefit payments must also begin to individuals who turned age 70½ in 1988, are not owners of 5% or more of the plan sponsor and did not actually retire during or before 1988. (In 1989, the IRS delayed until April 1, 1990, distributions to these individuals.) Benefit payments should already have started to individuals who are 5% owners, and who turned age 70½ in 1988 or earlier.

Individuals who turned age 70½ before 1988—and who are not 5% owners—are not required to start payments until the April 1 following the calendar year in which they actually retire. Finally, individuals who made an election under Section 242(b) of the Tax Equity and Fiscal Responsibility Act of 1982 are required to receive payments based on the terms of their elections, and not based on the rules described above.

For an employee whose benefit is an individual account under a defined contribution plan, the amount that must be distributed by April 1, 1990, is at least equal to his or her account balance divided by a life expectancy.

The account balance is as of the last valuation date in 1988. This account balance is adjusted for contributions and forfeitures allocated to the account and distributions from the account, which occurred as of a date in 1988 after the last 1988 valuation date.

The life expectancy used in the calculation is either the employee's life expectancy or the joint and last survivor life expectancy of the employee and designated beneficiary. The ages used in determining the life expectancy are the ages of the employee and beneficiary on their respective birthdays occurring in 1989. The IRS has prescribed in proposed regulations the mortality tables to be used for determining those life expectancies.

In addition, if the designated beneficiary is not the participant's spouse, the distribution must meet the incidental benefit rules that require that at least 50% of the value of the benefit is expected to be distributed during the lifetime of the employee. Consequently, if a non-spouse beneficiary is significantly younger than the employee (generally, at least 10 years younger), then the life expectancy may need to be reduced (and the benefit amount increased) to meet the incidental benefit rules.

A second distribution will need to be made to the employee by Dec. 31, 1990, and the minimum amount required for this distribution will likely be different than the minimum amount for April 1, 1990, distribution. The account balance used for determining the minimum amount of the second distribution is the account balance as of the last valuation date in 1989, and this account balance is also subject to adjustment.

Assuming that the employee and a spouse beneficiary each survives through 1989, the life expectancy will be recalculated based on their respective birthdays in 1990. However, either the plan or a participant's election may provide for no recalculations, and simply reduce the prior year's life expectancy by one year.

For an employee whose benefit from a defined benefit plan is a life annuity (with a certain period less than 20 years), the amount of the benefit payment required on or before April 1, 1990 is the amount required for one payment interval. For example, if annuity payments are made monthly, one monthly payment is required by April 1. After that date, payments must continue at their regular intervals.

The IRS' proposed regulations are silent as to the date of which the accrued benefit is to be determined for the purpose of starting benefit payments. One approach might be to determine the accrued benefit as of the end of 1989.

While the employee is receiving benefit payments, additional benefits may also be accruing. If the individual is still employed at the end of 1990, any additional accruals must be determined at that time and all benefit payments in 1991 must be increased to recognize the additional accrual.

The IRS' proposed regulations provide additional detail on the rules for these distributions. Plan sponsors are well advised to consult these regulations now and begin the process of determining the amounts required for distribution. April 1 is just around the corner. ■

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. And, Joseph W. Duva, director of employee benefits at Allied-Signal Inc. in Morristown, N.J., answers benefits management questions.

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

Many actions can reduce damage costs

By The Insurance Institute of America

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.

Applying some basic risk management principles to a small firm with just one location—here, a dry cleaner—is the focus of this month's question and answer, drawn from a recent national examination in ARM 54—Structure of the Risk Management Process.

Q: Joe, the owner of a dry cleaning business, recognizes that any significant interruption in his ability to serve his customers could seriously jeopardize the survival of his business.

For each of the factors below, describe an appropriate action to minimize the financial impact of damage:

- Length of shutdown.
- Degree of shutdown.
- Expenses during shutdown.
- Time after reopening required to resume normal operations.

Identify three risk control techniques that Joe could use to reduce the severity of property losses to his store.

For each technique identified in your answer above, give one specific example of the technique that Joe could use.

A: Even though this is a small firm, it can still take many of the steps that larger organizations take to reduce the financial impact of premises damage.

- To reduce the time the store is shut down, Joe can either expedite repairs or make arrangements to use alternative facilities, perhaps by entering into a "mutual aid" pact with a similarly situated dry cleaner.
- To reduce the degree of shutdown from damage to his one store, Joe could—in the long run—operate with two or more stores. In the short run, he could strive to remain partially open while advertising that he is still in business and perhaps offering special inducements to attract customers.
- To control his expenses during shutdown, Joe could identify and strive to reduce any non-essential expenses, such as reducing payroll costs by laying off non-essential employees.
- To hasten the resumption of normal operations, Joe could make arrangements with his suppliers to expedite deliveries to him. Advertising the reopening also could facilitate rapid recovery. (As the question is phrased, this last answer would only earn credit if it had not been given earlier.)

Perhaps the three most readily applicable risk control techniques for reducing the severity of property damage to the store are loss reduction, segregation of exposure units and contractual transfers for risk control.

- Property loss reduction measures against, for example, fire could include installing an automatic fire detection/suppression system. As another example, the severity of theft losses could be cut by reducing the amount of cash or other valuable property in the store at any one time.
- Beyond operating several stores, Joe could segregate exposure units by, for example, maintaining duplicates of customers' accounts. Then the damage to any one set of records would not so severely impair revenue collections. As another example, duplicating key items of equipment could allow him to continue serving customers whenever one of these items was damaged or needed maintenance.
- Joe's clearest opportunity for contractual transfer of risk control for his store would be to lease his store, rather than own it, so that any damage losses to this real property would be borne primarily by the lessor. ■

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.

Punitive damages

Continued from page 2

ucts to pay $9.2 million in compensatory damages and $13 million in punitive damages for failing to warn about the dangers of Aminophylline, a drug used to treat respiratory problems.

The jury's verdict was upheld by a state appellate court in 1988 and is now on appeal before the Illinois Supreme Court.

To win punitive damages under Illinois law, a plaintiff must prove "fraud, actual malice, deliberate violence or oppression or when the defendant acts willfully or with such gross negligence as to indicate a wanton disregard or the rights of others," according to the state Supreme Court.

Under New York law, punitive damages can be assessed for either intentional conduct or unintentional conduct that amounts to "gross negligence, recklessness or wantonness," according to the New York Court of Appeals.

Finding "no relevant difference between the rules governing punitive damages in New York and the comparable rules in Illinois," the court saw no reason not to apply New York common law—which bars the insurability of punitive damages—to the American Home Products case.

"In New York, as in Illinois, punitive damages are intended to act as a deterrent to the offender and to serve as a warning to others," the court said.

"From our conclusion that willful and wanton conduct like that found to have been committed by AHP. . .could support a punitive damages verdict under New York law, it follows that insurance indemnification for the (AHP) punitive damages award would be contrary to our state's public policy," the court concluded.

The New York Court of Appeals was asked to determine if New York law barring punitive damages should apply to an out-of-state award by the 2nd U.S. Circuit Court of Appeals, where the litigation between American Home Products and Home is currently pending.

The 2nd Circuit is now expected to overturn a lower 1987 federal court ruling that Home "is liable under its excess insurance policy for the punitive damages awarded" against American Home Products.

Home wrote excess product liability coverage for American Home Products from July 1975 to July 1976. The insurer wrote $11.5 million in coverage excess a $3.5 million primary layer written by Liberty Mutual Insurance Co. of Boston.

One immediate affect of the ruling: Other New York policyholders using New York law in New York courts will not be able to use insurance to pay for punitive damages, said insurer attorney Thomas Brunner of Wiley, Rein & Fielding in Washington, D.C.

For example, W.R. Grace & Co. is litigating with its insurers over coverage for a $6.4 million compensatory award and a $2 million punitive damage award to the city of Greenville, S.C., for the costs of removing asbestos from buildings. This suit is pending in a New York federal court, which is applying New York law.

"The American Home Products decision will be binding on this dispute," said Mr. Brunner.

The ruling also will "coalesce stronger lobbying efforts by manufacturers to create a system of punitive damages that is fair," said Victor Schwartz, a product liability expert with Crowell & Moring in Washington, D.C.

Punitive damages are not restricted to cases in which the policyholder is guilty of "true egregious conduct," he explained. "Under current law, punitive damages can be awarded for a much lesser standard of conduct."

Mr. Kazanjian agreed: "The assertion of punitive damages in the product liability context has really become garden variety."

In many instances, punitive damages are awarded for conduct that is much closer to negligence than willful and wanton misconduct, said Mr. Kazanjian, who helped file an amicus curiae brief in the litigation on behalf of the Product Liability Advisory Council Inc., a non-profit advocacy group of more than 60 corporations.

Messrs. Schwartz and Kazanjian agreed that courts should allow policyholders to insure against punitive damages that are awarded for quasi-negligent conduct.

In fact, courts increasingly are allowing coverage for such damages, said Mr. Kazanjian.

However, insurer attorney Barry Ostrager of Simpson, Thatcher & Bartlett in New York pointed out that the nation's major commercial states—including New York, California, Ohio and Illinois—bar coverage for punitive damages.

•

The Home Insurance Co. vs. American Home Products Corp., New York Court of Appeals, No. 258.

Criminal charges

Continued from page 3

bert Stephenson, who represents Film Recovery, Metallic Marketing and one executive, says the Film Recovery decision is meaningful locally.

"The word is going out with this decision that the court won't allow easy convictions, although the prosecution may be publicly popular," said Mr. Stephenson, an attorney with Cotsirilos, Crowley, Stephenson, Tighe & Streicker in Chicago.

The appellate court's decision shows that verdicts must be consistent and that pre-established legal precedents must be observed, he said.

However, Cook County State's Attorney Cecil Partee, contending that prosecutors "firmly " believe that the appellate panel erred in its ruling in the Film Recovery case, said prosecutors will ask the Illinois Supreme Court to overturn the ruling.

The issue of workplace safety is "much too important" to surrender on the basis of a "hypertechnical" reading of the law, Mr. Partee said.

Primarily, the appellate court did not give sufficient weight to evidence from other corporate officers and did not acknowledge the difference among the charges, said Frank Parkerson, one of two assistant state's attorneys prosecuting the case.

The Film Recovery Systems case stems from the 1983 death of Stefan Golab, who a medical examiner determined died from acute cyanide poisoning by inhaling cyanide fumes in the plant air.

A grand jury returned indictments charging that defendants Steven O'Neil, president of Film Recovery and Metallic Marketing; Charles Kirschbaum, plant manager; and Daniel Rodriguez, assistant plant manager, knowingly created a strong probability of Mr. Golab's death because they failed to inform him that he was working with substances containing cyanide.

The defendants also failed to advise Mr. Golab about workplace danger, train him to anticipate those dangers and provide him adequate equipment to protect him, the grand jury charged.

In addition, the grand jury charged Film Recovery and Metallic Marketing with involuntary manslaughter.

The grand jury also charged both individual and corporate defendants with reckless conduct in exposing 20 other Film Recovery employees to hazardous working conditions from March 1982 through March 1983. Those charges—later amended to exposing only 14 employees—were based on the same conduct alleged in the murder indictment.

Following a joint bench trial, Cook County Circuit Court Judge Ronald J.P. Banks returned murder convictions against the three individual defendants. Each were sentenced to 25 years imprisonment and fined $10,000.

Each executive also was sentenced to 14 years imprisonment, to be served concurrently, and fined $14,000 on the reckless conduct charge.

The corporate defendants were fined $10,000 each on the involuntary manslaughter charges and $14,000 each for reckless conduct.

The defendants appealed the decision, alleging that the judgments were inconsistent and that the evidence was insufficient to support the convictions.

Defense attorneys also argued that federal workplace safety regulations pre-empt states' rights to prosecute employers in such cases.

However, the appeals court did not address the pre-emption issue after the U.S. Supreme Court refused to review the Illinois Supreme Court's decision in the Chicago Magnet Wire case that OSHA does not pre-empt states' rights to criminally prosecute employers.

In its ruling, the appellate court said it was "legally inconsistent" for each of the individual defendants to be guilty of both murder and reckless conduct, which require "mutually exclusive states of mind."

Murder is an intentional act, while reckless conduct is not, the court said.

In addition, the court said it was inconsistent for the trial judge to find the two corporate defendants guilty of involuntary manslaughter, which also requires a reckless state of mind, on the basis of the actions of its managers, who were found guilty of murder.

The court noted that "it is possible that the judgments against the corporate defendants for involuntary manslaughter could be consistent with the judgments for murder against the individual defendants," but that would have to be based on evidence of reckless and unintended conduct by other individual defendants. Such evidence was not presented, the court said.

"We were happy they had the courage to follow the law, which we thought was quite clear in this case," said defense attorney Margaret Paris, an associate of Mr. Stephenson.

However, current and former prosecutors contend the appeals court ignored evidence from other corporate officers supporting all the charges.

Prosecutors also point out that they sought only involuntary manslaughter rather than murder charges against the corporations because that was the most severe charge that a corporation—which cannot be jailed—could reasonably face, Mr. Parkerson said.

Meanwhile, both sides are concerned about potential problems in a retrial of the case seven years after Mr. Golab's death. Witnesses may be unavailable or their memories may fade, attorneys said.

The original trial lasted 24 days and included testimony from 59 witnesses, generating more than 2,300 in transcript pages.

The prosecution faces the greatest burden because it must present its case first and has the burden of proof, Mr. Parkerson acknowledged.

One defense that may be raised on retrial is that OSHA regulations pre-empt such local criminal prosecutions for workplace related injuries and deaths.

"It certainly is not dead," Mr. Stephenson said.

However, Elliot Samuels, who represented Messrs. Kirschbaum and Rodriquez on appeal, said it may be too early to commit to raising that issue during the rehearing.

Defense counsel in workplace injury cases are expected to raise that issue so they can seek a U.S. Supreme Court ruling on it, said several prosecution and defense attorneys.

Until the issue is resolved, local prosecutors are expected to continue investigating hazardous injury cases.

"We are not looking for people who are careless," Mr. Parkerson said. "I don't see a flood of litigation, but I see prosecutors picking the worst case."

However, getting convictions in such cases is not easy because courts are inclined to give businessmen more of the benefit of the doubt than they would give a defendant charged with a crime like armed robbery, he said.

Employer groups generally oppose local criminal prosecutions and favor enforcement of OSHA standards.

"We feel the charges by any states' attorney will be dangerous and politically motivated," said Thomas Reid, vp of education and environmental services for the Illinois Manufacturers' Assn.

The U.S. Chamber of Commerce fears that local prosecutions will result in a chaotic patchwork of state workplace safety standards, Mr. Bokat said. ■

Safety convictions sought in 4 states

By MEG FLETCHER and MARK A. HOFMANN

Local prosecutors in Illinois, Texas, New York and Michigan are seeking criminal convictions of six employers for the work-related deaths or injuries of employees.

Five of the six cases are on appeal, with three of the appeals focusing on whether federal workplace safety regulations pre-empt local prosecutors from filing criminal charges against employers for workplace safety violations.

In Illinois, officials of three companies—all in Elk Grove Village, a western Chicago suburb—as well as two of the firms face criminal charges for the death of one worker and injuries of others.

Most recently, an Illinois appellate court overturned murder convictions of three managers of Film Recovery Systems Inc. and a sister company, Metallic Marketing Systems Inc., as well as involuntary manslaughter charges against the two companies in the death of an employee (*BI*, Jan. 22). The employee died from cyanide poisoning at a plant that chemically removed silver from used film.

The appeals court ruled that the verdicts were "inconsistent" and sent the case back to a lower court for retrial (see story, page 3).

However, the Cook County state's attorney plans to ask the state Supreme Court to overturn the ruling.

In addition a trial date is expected soon in the other case involving a third Illinois employer, Chicago Magnet Wire Corp.

A Cook County grand jury in June 1985 indicted five Chicago Magnet Wire executives on counts of aggravated battery and reckless conduct in the job-related injuries and illnesses of 42 workers at the facility.

An Illinois appellate court dismissed the indictments in June 1987, ruling that federal Occupational Safety and Health Administration regulations pre-empt state criminal prosecutions (*BI*, July 6, 1987).

However, the Illinois Supreme Court overturned that decision in February 1989 (*BI*, Feb. 6, 1989). The U.S. Supreme Court last October refused to review that ruling.

In Texas, Travis County prosecutors are awaiting a ruling by the Texas Court of Criminal Appeals, the highest state court in criminal cases, on whether OSHA pre-empts the state's right to criminally prosecute employers for workplace accidents.

The ruling would affect nearly identical cases in which two employers are charged with criminally negligent homicide in the deaths of three workers in two trench cave-ins.

Sabine Consolidated Inc. of Houston and its president were charged in 1986, and Peabody Southwest Inc. of Houston was charged in 1987 (*BI*, March 23, 1987).

The defendants did not contest the charges and were sentenced.

However, a lower appellate court, the Court of Appeals in Austin, reversed the convictions and acquitted the defendants, holding that OSHA pre-empts state prosecutors' rights to criminally prosecute employers.

Prosecutors appealed that decision to the criminal appellate court.

In New York, two owners of Pymm Thermometer Co. were recently given approval to appeal to the state's Court of Appeals, the state's highest court, the October 1989 decision by the Appellate Division of the New York Supreme Court that OSHA regulations do not bar state prosecution (*BI*, Oct. 30, 1989; Nov. 30, 1987).

That ruling reinstated convictions for criminal assault and other charges against the owners for exposing their workers to mercury in a windowless factory workshop.

In Michigan, Oakland County prosecutors plan to appeal to the state Supreme Court a lower court's dismissal of an involuntary homicide charge against a cable television company supervisor for the death of a co-worker (*BI*, Jan. 29).

The Michigan Court of Appeals recently dismissed criminal charges against a supervisor for Clayton, Ohio-based Jackson Enterprises, who had been charged with involuntary manslaughter in the case of an employee who died from carbon monoxide poisoning while working in a company-owned van in Oakland County (*BI*, July 17, 1989).

The supervisor's attorneys argued that the defendant had no duty to inspect the van or to take it out of service, and an Oakland County Circuit Court judge dismissed the charges.

The prosecution appealed, and the appellate court upheld the lower court, ruling that OSHA pre-empted state prosecution.

The prosecutors then appealed to the state Supreme Court, which ruled that criminal charges could be brought against the defendant. The high court held that OSHA did not pre-empt local criminal prosecutions and ordered the case returned to a lower court for trial.

However, the appellate court ruled Jan. 16 that because the supervisor was an employee rather than the owner of Jackson Enterprises, he had no duty to provide a safe workplace.

Charges against the owners of the company had been dismissed earlier.

And, last year, criminal charges against a supervisor at a Milton, Wis., fireworks plant were dismissed by a Rock County Circuit Court judge because the defendant "did not have the requisite degree of knowledge" about conditions at the plant to have committed a criminal act.

The defendant had been charged with criminal negligence after a worker died in a 1983 explosion at the plant (*BI*, May 23, 1988).

Defense attorneys moved for dismissal on the grounds that OSHA pre-empted state prosecution, but a trial court denied the motion.

The case went to the state Supreme Court, which remanded the case to an appellate court, which ruled in 1988 that OSHA does not pre-empt local prosecution.

The Rock County Circuit Court then then dismissed the case. Prosecutors have decided not to appeal. ■

Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers

No following

Franchisers lose favor after failing to adapt to agents

By LAURA MAZZUCA

Insurance agency franchising has virtually disappeared after only a few bites, much like a fast-food hamburger placed in front of a hungry teen-ager.

In fact, agency franchising has left a bad taste in the mouths of many of those who sampled it.

Former agents that held franchises and franchiser executives alike blame the demise on a combination of undercapitalization, overexpansion and a "Century 21 mentality," which led to attempts to graft franchise techniques used successfully in other industries onto an agency system that simply rejected them.

But two franchise operations still are open for business, and their members and operators are convinced that franchising is an idea whose time will come in the 1990s, as the insurance market hardens and consumers continue to demand improved delivery of products and services.

A decade ago, many insurance insiders saw franchising as the salvation of a troubled independent agency system. Franchisers' training, marketing and their sense of identity would enable local agents to thrive in an increasingly competitive marketplace, the experts said (*A/BT*, Aug. 6, 1984; *BI*, March 29, 1982).

More than a dozen systems were on the drawing board in the mid-1980s, though only five major franchise systems were operating in 1986. However, these franchisers—with a combined membership of almost 1,000 agencies—were flying logos featuring brooding eagles and fierce lions over agencies from Massachusetts to California (*A/BT*, Feb. 3, 1986).

But as agency associations, private consultants and insurers began offering similar training and marketing services on an as-needed basis, franchisers—which often started out undercapitalized and overextended—began to lose franchisees and eventually shut down.

"They just went bankrupt," said Clyde McMasters, president of McMasters Insurance Counselors in Sapulpa, Okla., a former Marketforce International Inc. franchisee.

In 1986, Marketforce, based in Kansas City, Mo., was the nation's second-largest franchiser with 308 franchises in 27 states. It folded in 1987.

Mr. McMasters' agency dropped out of Marketforce before it stopped operating, but not soon enough to avoid an errors and omissions claim. The suit charged that another agency referred to Mr. McMasters' agency through Marketforce committed an error in helping place the policyholder's coverage.

While the suit was eventually dropped, "the people from Marketforce weren't on top of it," Mr. McMasters complained. "We had to do it all ourselves," he said, referring to the defense of the claim.

One by one, other franchisers followed Marketforce into the grave. Of the franchise systems operating 1986, only San Francisco-based ISU Corp., a nationwide franchiser, and America One Inc., whose regional operations are based in Lansing, Mich., remain. ISU, which boasted 522 franchises in 41 states and Canada in 1986, now has only 125 franchised agencies (see story, page 22C).

Former operators point to undercapitalization and overambitious growth as the main culprits in franchising's failure.

"We opened our original region in Orange County, Calif., and expanded (in the West and Midwest); in retrospect, we shouldn't have done that," said Don Eve, former vp of the now-defunct PrideMark Corp., which was based in Costa Mesa, Calif.

"We went too far, too fast, and we simply ran out of seed money," said Mr. Eve, who now is president

Continued on next page

Agency clusters continue to thrive . . . Page 22F

ISU

Continued from previous page
are designed to increase productivity and market share while also maximizing quality control and back office administration."

Systems consist of methods, procedures, techniques, manuals and software, the sale and use of which are approved by ISU through the four new franchisee-owned regional corporations: ISU Central in Indianapolis; ISU East in Farmington, Conn.; ISU South in Atlanta; and ISU West in Pasadena, Calif.

On-site personnel training and consultation will be coordinated through the regional offices.

The geographic retrenchment is designed to address one of the problems that has brought many agency franchise systems to their knees: alienation from the home office.

It also will enable ISU to collaborate with major insurers on nationally offered products. ISU should thus be able to develop closer working relationships with regional and national insurers, Mr. Ryan said.

The company "learned the hard way" about overextension, he noted. ISU now plans to channel all its financial and other resources into its existing franchisees and may consider expansion after meeting its $100,000-per-employee revenue goal.

An experimental laboratory agency opened last August in San Francisco uses the full range of ISU products and services. With 17 employees, it already is generating $1 million in annual commissions, said Mr. Ryan. That fast start, he believes, can be duplicated in other franchises.

Some remaining ISU agents, already satisfied with the operation, are enthusiastic about the reorganization (see related story).

Because its main office often didn't know what franchisees needed, ISU's service has been "up and down," but the new focus on regional branches "gives us the ability to further refine ISU's services, because different people want different things," said Thomas Gilmartin, vp of the commercial lines division of ISU/Griffith-Prideaux Insurors in Morristown, N.J. The family-owned ISU franchise since 1982, generates $8 million in primarily commercial lines premium and employs 21.

Members want better marketing services, like improved contracts with insurers and access to markets, said Mr. Gilmartin. Reorganizing on a regional basis will help ISU franchisees improve relations with regional insurers, he agrees.

With more authority vested in the regional offices, ISU agents are already having more input through local council meetings, which are attended by the ISU East chief.

Agents are most impressed with ISU's systems as well as its "AnswerLine" Information system.

"We've gotten good, professional advice on how to run our business," said Joseph T. Daues, chairman of ISU/St. Charles Insurance Agency Inc. in St. Charles, Mo., a $10 million annual premium volume agency that has been an ISU member since 1987.

Mr. Daues' agency has almost tripled its annual premium volume since joining ISU, with some of this attributable to acquisitions made at the suggestion—and with the assistance—of the franchise.

Mr. Daues, chairman of ISU's Kansas City region, believes that the franchise's new regional emphasis will allow it to develop more name recognition through advertising.

This is not ISU's first reorganization, however. The franchise shifted its emphasis to marketing and franchise identity in 1986, to help its members ride out the approaching hard market (*A/BT*, Feb. 3, 1986). The program similarly stressed an increase in interface between ISU agents and insurers, as well as set up regional councils to act as a sounding board for members.

The major difference in the most recent reorganization is that ownership of the regional framework is now in the hands of member agencies, said Mr. Ryan.

Agents with existing franchise contracts with ISU automatically will become shareholders in their regional ISU branch, and have the option of purchasing additional stock with a minimum investment of $2,500, said Mr. Ryan. ■

Attitude influences success

How an agent views the concept of agency franchising can depend upon the franchise to which he or she belongs.

Joseph T. Daues, chairman of ISU/St. Charles Insurance Agency Inc. in St. Charles, Mo., held a Marketforce International Inc. franchise before the company folded in 1987. He subsequently joined ISU Inc. when it took over Marketforce's franchisee list.

While strongly critical of Marketforce, Mr. Daues is pleased with ISU.

"I just feel that we've become a much more professional shop" since becoming an ISU franchise in 1987, he said. "ISU has a way of managing a commercial department, personal lines and sales people. Systems are what business is going to be all about in the '90s."

Not so with Marketforce, according to Mr. Daues.

Marketforce sold itself to agents by promising to provide markets in the early 1980s "during the softest and longest market the industry ever saw," when insurers were writing freely anyway, said Mr. Daues.

"And that's not what franchising is all about, anyway," added Mr. Daues, who was looking for the services and networking abilities he says he found with ISU.

His agency withdrew from Marketforce even before the failure. "We felt they were no longer doing the job," he said.

Mr. Daues now praises ISU image enhancement program, networking capability and, especially, the training it offers his employees.

Each year ISU/St. Charles employees attend at least one of the franchise's regular regional programs in sales training, planning and customer service as well the regional and national ISU meetings.

"I've made more good, solid acquaintances through ISU with agents who have taught me a lot," he said. "I knew them as agents before, but it's just not the same as knowing them as partners in a franchise. They just open up."

Mr. Daues also disagrees with the truism that independent agents are "too" independent to pledge themselves to a franchise.

His agency uses ISU stationery, business cards, and brochures. Even the office colors and sign correspond to ISU's, he said. To further contacts with the franchise, ISU/St. Charles employees may soon be wearing the franchise uniform: blue blazer, gray skirt or slacks and striped rep tie.

Rather than feeling that the franchise is "compromising" the image of his $10 million premium volume agency, the connection is "complementing" it, said Mr. Daues.

"We couldn't be more pleased," he said. "And the only reason we're here is because of Marketforce."

—By Laura Mazzuca

We're behind this publication

Right now you're holding an incredible resource. *Business Insurance* is one of the 26 business, trade and consumer publications of Crain Communications—one of the world's largest privately owned publishing companies.

This publication, and all of its information, is backed by the news expertise of over 300 reporters and editors, plus the skills of technical and support people who work for Crain from all parts of the globe. Linked by state of the art communications, computerized editing and graphics systems, *Business Insurance*, in addition to its own staff of experts, draws upon the resources of all Crain publications and services.

Business Insurance, one of the resources of Crain.

Crain Communications Inc

Detroit	Chicago	Akron
Cleveland	New York	Florida Keys
Los Angeles	Dallas	Washington, D.C.
London	Nashville	Tokyo
	Frankfurt	

Advertising Age • Automotive News • AutoWeek • Business Insurance • Business Marketing • City & State
Crain's Chicago Business • Crain's Cleveland Business • Crain's Detroit Business • Crain's New York Business • Crain News Service
Detroit Monthly • Electronic Media • Florida Keys Magazine • Humm's Guide to the Florida Keys • Modern Healthcare
Pensions & Investments • Plastics News • Rubber & Plastics News • Tire Business • American Trade Magazines • WWUS-105FM
In Europe: Euromarketing • European Rubber Journal • Urethanes Technology

Agent/Broker Topics

Agency clusters: Humble survivors

Success attributed to sharing resources, retaining independence

By LAURA MAZZUCA

Agency clusters may lack the high-powered marketing and name recognition that franchising once promised, but clusters have one decided advantage over franchises: They survive.

Clusters offer members—especially small, rural agencies—access to markets, administrative support and perpetuation without robbing agency entrepreneurs of their autonomy member agents say.

Clusters gained popularity among small agencies about the same time franchises did, in the late 1970s and early '80s, but clusters have attracted far more agent loyalty: Of the five major agency franchise systems operating in 1986 (*A/BT*, Feb. 3, 1986), only one is still operating as a national franchise organization (see story, page 22A).

While no group tracks the number of clusters that have sprung up around the country, clusters have fared better than franchise networks, observers say (*A/BT*, March 7, 1988).

For instance, Iroquois Insurance Group in Olean, N.Y., has added 52 new agencies to its original 200 members from New York and Pennsylvania, by expanding into Virginia in 1988. Combined annual premiums for its 245 agencies is now about $150 million.

Great Lakes Group, a 65-agency cluster based in Worthington, Ohio, recently landed CIGNA Corp. and Transamerica Insurance Co. as new insurers and now is considering expansion into Michigan, Indiana and West Virginia.

And at Chicago's Rockwood Co., a cluster established nearly a century ago in 1896, 30 member agents—several of which are second- and third-generation members—work under one roof generating $50 million in annual combined premium volume.

Part of clustering's success lies in offering small agencies a way to meet increasing insurer demands for premium volume and automation.

Although franchising offered many of the same benefits, clusters succeed by allowing a stubborn breed of entrepreneurs to remain independent and still enjoy shared resources and expertise.

Three-quarters of clustered agencies belong to "center core" clusters, in which members typically retain ownership and control their books of business, while sharing offices, computer equipment and personnel, a recent survey found (see story, page 22G). The typical cluster also offers centralized administration and insurer contracts coordinated through the central cluster rather than through the individual agencies.

"We relieve the agent to do what he does best: sell insurance," said Denis I. Pruiett, president of Lakeland, Fla.-based Golden Eagle Group Inc., a cluster of 84 Florida and Georgia agencies.

Agencies' ownership of the cluster also curbs misunderstandings about the types of services a group offers, say agents. Misconceptions about the services available to members plagued franchises.

For example, last year Golden Eagle's agency members asked the cluster to provide them with low-value dwelling coverage for homeowners, said Mr. Pruiett. The cluster worked with an insurer to develop the coverage and has since created an association program for members of American Legion chapters in four states, he added.

"Not only is the cluster working, but we're offering a more varied market with the companies we've contracted with," he noted.

Best of all, say involved agents, clusters can offer agents access to the expertise of other members, whether they're connected by computer or under one roof.

"We have 30 different little egos here," said Norman J. Westerhold III, president of Rockwood. "One guy might not want to wear a tie to work because he deals with contractors, while the broker who specializes in churches might not feel comfortable on a construction site. But all the brokers are constantly collaborating."

Iroquois versatility and expertise were recently tested by the death of a member agency's principal and five of its staff members in a car crash, said William Branch, president and CEO of the cluster. After the accident, Iroquois partners shared administrative duties, sending out a partner and a staff member daily to run the agency and to assist in hiring replacements, he said.

Attorneys, accountants and the principal's widow could have handled some aspects of the business, Mr. Branch said, though none was experienced enough to successfully run the agency alone. But with cluster members pitching in, the agency only has lost one account since the accident, he said.

Another factor in clusters' success is simple geographic proximity. Individual members are far less likely to lose touch with each other than members of far-flung national franchises, agents say.

For example, Total Insurance Services of Pontiac, Mich., concentrates on "blanketing" Michigan rather than expanding to other markets, said President William N. Anderson. The cluster—the largest in the state—has 17 agencies in five counties writing about $20 million in combined premium volume.

Mr. Anderson learned about overextending the hard way. After establishing the cluster in 1981 and seeing the concept succeed in Michigan, he later attempted to nationally market his standardized format to agencies (*A/BT*, Aug. 5, 1985).

One year and almost $40,000 later, Mr. Anderson abandoned the project because the national focus was too broad, and because agents were simply leery of the word "franchise," he said.

While many franchisers attempted hasty coast-to-coast expansions, most clusters have grown slowly and deliberately.

For example, the Iroquois Group started clustering in 1977 to provide small rural agencies in New York and Pennsylvania additional leverage with insurers during the hard market (*A/BT*, Aug. 5, 1985).

Continued on next page

Continued from previous page

Iroquois' success launched a subsequent clustering boom in the state, which is now peppered with several small clusters, said Mr. Branch.

Finding its home state saturated, Iroquois decided to move into Virginia 18 months ago.

Most New York agencies "either joined a cluster or made a conscious decision not to," said Mr. Branch. "We wanted to grow, and we just did not see a growth potential in New York."

Iroquois singled out Virginia because of its profitability for insurers and lack of regulatory barriers to clustering, he said.

Beginning next year, Iroquois will consider expanding into the Carolinas, Georgia, Connecticut, Ohio and Indiana if insurers are willing, he said.

Like many clusters, Iroquois prefers rural, small-town agencies for their historically good loss ratios, lack of competition and a "friendly" legal and economic environment, said Mr. Branch.

One obvious exception to the rural focus of most clusters is Rockwood, which operates with a 75-member support staff from 25,000-square foot offices in the heart of Chicago's financial district.

Rockwood accepts only experienced producers—those owning their books of business and generating a minimum annual premium volume of $500,000.

A central staff handles marketing, underwriting, claims, engineering, accounting and general administration for Rockwood members. Individual producers only hire and pay personal secretaries.

In return, Rockwood takes 40% of an agent's commercial commission and 45% of personal lines commission, said Mr. Westerhold.

The diversity of member agents allows Rockwood to provide specialized services in areas like condominium insurance, church coverage, construction insurance, supplemental life and group coverages, as well as personal lines insurance, he added.

When Rockwood agents collaborate on an account, such as when the client of a commercial lines client wants to buy personal life coverage, they decide among themselves how to split the commissions.

Communication within most clusters is seldom as simple as at Rockwood, where agents can simply walk down a hall to discuss agency business.

But automation allows many clusters to take advantage of members' varied expertise even though they may not all be in a central location, members say.

Total Insurance Service's Mr. Anderson attributes part of his cluster's success to Real Time, a Canadian-made automation system that connects its 17 Michigan agencies. "We run it 24 hours a day," he said.

The system offers member agencies access to customer accounts and electronic mail service.

Although other clusters operate in Michigan, Mr. Anderson says TIS' automation advantage precludes any serious competitive threat from other groups. TIS, which is the largest cluster in the state, will not consider clustering with an agency whose automation system is incompatible, he said.

Advances in automation can also improve the relationship between clusters and insurers, said Iroquois' Mr. Branch. Iroquois members do not have electronic interface capabilities with insurers, but on-line underwriting with CIGNA, Transamerica and Great American Insurance Co. through the cluster's main office can give members added clout with the insurers, he said.

Another important element in the success of a cluster is perpetuation, mostly achieved through requiring a buy-sell agreement or right of first refusal sales contract as a condition of joining the cluster.

Rockwood's perpetuation system is one of the main reasons for the cluster's longevity, said Mr. Westerhold, himself a third-generation member.

Rockwood's strength comes from the fact that all retiring Rockwood principals are urged to sell their books of business to another Rockwood agent, and work closely with the new person before retiring, he explained.

"Perpetuation here is critically important; we want to make sure for the client that someone will be there for them," said Mr. Westerhold.

Rockwood is unique in that it will consider taking on agencies with older, ready-to-retire principals, if the business is strong and if a perpetuation plan is in place, said Mr. Westerhold. In fact, the cluster is now negotiating with two such Chicago area agencies, in addition to being on the lookout for small agencies, in general.

Iroquois also requires retiring principals to turn over their business to the cluster.

"The buy-sell aspect seems to make the difference" and is, in fact, the secret to cluster success, since it spurs both agent and cluster to make it work, said Mr. Branch. "Otherwise the agents are too independent."

Although Iroquois members continue to own their books of business, they are under contract to sell it to the cluster upon the principal's retirement, and in some cases there is already an ownership split between the two before the partner retires, said Mr. Branch.

Despite clusters' potential benefits, executives agree that serious problems can arise if the concept is not carefully thought out well in advance of formation.

Executives thus recommend a cluster have a formal mission statement, business plan and internal structure governing how member agencies should operate.

"It's very easy to put a loose cluster together that doesn't do anything. The guys might get together once a month to have coffee," said Mr. Branch. "But they're potential nightmares if they don't have quality control standards and rules, because otherwise they could wander off in any direction."

Iroquois, for example, maintains strict written rules of conduct concerning customer service and internal operations, he said.

For example, the rules set maximum response and turnaround times between the cluster and member agencies for policies and accounting, licensing and marketing questions.

Iroquois also sets strict goals for the cluster as a whole, with monthly goals for production and loss ratio, Mr. Branch added. "We've really broken our business down into fine units." ■

Many clusters lack business plans

While agents believe clustering can help them gain market share, streamline operations and aid perpetuation, it also can create management problems that affect planning, decision making and internal work flow, a survey finds.

To avoid these problems, agencies forming a cluster "must plan in advance, have a direction and know where they're going," said Robert A. Hershbarger, a professor at Mississippi State University in Mississippi State, Miss., who conducted the survey.

However, while most cluster groups responding to the survey operate with a written cluster agreement, the number of clusters with concrete business plans and objectives is much lower, the survey found.

The survey, contained in the June 1989 issue of The Journal of Insurance Issues and Practices, sought to investigate the advantages and disadvantages of clustering.

Of the 27 cluster groups responding, 85% operate with a written cluster agreement.

Among the respondents, such an agreement typically included: antisolicitation agreements; provisions for dissolving the cluster or the withdrawal of a member agency; allocation of service unit expenses and profits; ownership of expirations; rights to company contracts; assignment of responsibilities to each member; equal membership rights; and shared decision making.

While most respondents had a written cluster agreement in place, only 59% had written statements of their missions and objectives, and even fewer—48%—have a formal business plan for the next three to five years, the study found.

The majority of the respondents—75%—were members of a "center core" cluster, which typically is owned by its member agencies. In addition, administration, automation and personnel are provided from a centralized locations, whether from the agencies' individual offices, and insurers contract with the cluster rather than its member agencies.

Of the remaining 25% of respondents:

- 7% belong to a network cluster, which resembles a central core cluster except that separate locations and staffs are maintained by the members agencies.
- 7% are members of a service cluster, in which insurers contract directly with the member agencies, for which the cluster serves as a servicing organization.
- 4% belong to independent clusters, which is a cluster that is owned by principals of member agencies or other parties. The cluster, in turn, owns portions of the agencies. The other elements are similar to central core or network clusters.

Seven percent did not answer the question.

The survey also found that the "average" cluster is composed of five agencies, has a clerical staff of seven and has a $5 million premium volume placed with seven insurers, the study found. And, the "average" cluster's premium volume is split between about 40% personal lines business and 60% commercial lines, according to the study.

The majority of respondents, 62%, said their cluster operated as corporations. Twenty-six percent said their cluster was a partnership; 4% were proprietorships; 4% were Subchapter S corporations; and 4% did not respond.

Nearly half of the respondents—48%—are located in metropolitan areas, the survey found.

"Although clustering is thought to be a major tool of the small rural agency, it must be noted that just slightly less than half of the clusters are in metropolitan areas. Clustering appears to be an important concept used to meet competition in all market areas," the survey's author noted.

Among the remaining clusters, 26% are located in suburban areas; 11% are located in rural areas; 11% are located in a "combination" area; and 4% did not answer.

Most of the agents—18—said that access to markets was a factor that led to the creation of the cluster. In addition, nine mentioned economy of operation as a rationale behind clustering, while six pointed to agency perpetuation. Other reasons cited include survival, low volume, needed more clout, automation, shared knowledge and enhanced image.

—By Laura Mazzuca

Clustering does not guarantee insurer clout

By LAURA MAZZUCA

While insurers may appreciate the fact that agency clusters, franchises or networks can offer increased premium volume and more market share, insurers do not automatically confer a preferred status on agencies that are members of these groups.

Insurers may admire the entrepreneurial spirit of a clustered, franchised or networked agency, but they still continue to judge agencies on their individual merits, insurer and agency officials say.

While clustered or franchised agencies are composed of "high-level, professional people" who share a common denominator of entrepreneurship, quality results, profitability and efficiency, "we still look at the individual agent," maintained Gregory Georgieff, senior vp and managing director of the national marketing department of Chubb & Son Inc. in Warren, N.J., a unit of Chubb Corp.

"It all depends on the network," agreed Frederick G. Marziano, executive vp and president of Continental Corp.'s agency and brokerage group in New York.

For example, although Mr. Marziano observed that members of Assurex International Corp., a nationwide network of 62 independent agencies, are "very professional people all around the country," his caveat was that "I wouldn't look at each of them (individual agencies) in the same way."

Insurers are attracted to dealing with clusters or networks because they can be used to take administrative tasks off their hands and to penetrate markets to which the insurers otherwise might not have access, said William "Twig" Branch, president and chief executive officer of Iroquois Insurance Group.

Iroquois, a large cluster based in Olean, N.Y., contracts with national insurers like Aetna Casualty & Surety Co. of Hartford, Conn.; Travelers Corp. of Hartford, Conn.; and Hartford Insurance Group of Hartford, Conn.

And, the fact that the insurer deals mostly with the central cluster rather than each individual agency also is incentive to work with clusters, said Norman J. Westerhold III, president of The Rockwood Co. in Chicago.

The Rockwood cluster represents a preponderance of large insurers including Aetna, Chubb, Travelers, CIGNA Corp. of Philadelphia and Hanover Insurance Co. of Worchester, Mass.

Insurers recognize some of the benefits of working with clusters, including the ability to deal with experienced professionals and to achieve larger volumes of business, according to the results of a 1989 focus group published jointly by the National Assn. of Professional Insurance Agents and its Company Advisory Council.

However, insurers also noted their concern about certain elements of a cluster's structure, like whether the insurer contract is held by the individual agency or the cluster as a whole; how the cluster will be managed; and whether a cluster that includes one of an insurer's contracted agencies but not another may present increased and unfair competition for the unclustered agency.

Because of this, many insurers are reluctant to deal with clusters, said Robert C. Lecy, president of the America One Inc. franchise in Lansing, Mich.

And, he notes that the relationship between insurers and America One's franchised agents "has been a mixed bag."

"While some companies just love us, we make other companies very nervous," Mr. Lecy said.

Insurers don't like to feel like an agency is seeking "leverage" or clout by joining a cluster, franchise or network, said Continental's Mr. Marziano.

"If that's what they believe, the leverage (an agent is) going to buy is somewhat limited," especially since insurer branch office policies also can play a role, he said.

"We're not going to sit here in New York and tell our people (in other regions) that they have to do business with a networked agency" if the branch office does not want to conduct business with them, explained Mr. Marziano.

Although he declined to name them, Mr. Marziano commented that a few networks or cluster contracted with Continental have tried negotiate higher commissions from Continental by steering business to the insurer for an additional 5% commission, he said. "That didn't fly with us," he concluded.

In addition, a cluster, network or franchise that attempts to flex its combined agency muscle in negotiations can be particularly intimidating to a small regional insurer that fears it may develop a stranglehold on its markets, said Mr. Lecy of America One.

America One contracts with regional insurers like American States Insurance Co. of Indianapolis; Bituminous Casualty Corp. of Rock Island, Ill.; and SECURA Insurance Co. of Appleton, Wis.

Because of these fears, it often takes a while for networks, clusters or franchises to develop a close working relationship of trust with insurers, observers say.

However, these fears can be alleviated if the insurance company works closely with the network, cluster or franchiser to develop specialized products, according to William J. Travaille, chairman of Travaille Insurance Agency Inc. in Stockton, Calif.

Mr. Marziano of Continental believes that joint product development "is a terrific idea because then we're trying to match up expertise."

In fact, Continental is currently collaborating with Assurex on "a property/casualty insurance product targeting a specific industry," said Mr. Marziano, declining to elaborate.

Continental has invested both time and capital in the project, he said.

"We end up taking the underwriting risk ourselves, but we're glad to do it when we feel there is a commitment made by the network," Mr. Marziano said. ■

Agent/Broker Topics

Independent agents forming multiline insurer

By LAURA MAZZUCA

California insurance agents soon will be able to buy stock in and participate in the management of a multiline insurance company being established by an independent agent.

At least 51% of American Classic Insurance Co. of Campbell, Calif., will be owned by about 100 independent agents, said Ted De Breau, president of Classic Holdings Inc., the insurer's holding company, which is being formed concurrently.

The insurer is being formed to write business placed by small agencies—those with annual premium volume of between $1 million and $10 million—that typically "gets no help" from larger insurers, said Mr. De Breau, a licensed agent whose 18 years' experience in the insurance industry also includes adjusting, marketing and other positions with insurance companies.

Referring to the logos of other insurance companies, Mr. De Breau said: "No one buys a policy from an umbrella, a stag or a hat. People buy policies from agents, and I think that carriers in the agency system are making a significant error by advertising their logo instead of their distribution system."

Although the formation of an agent-owned insurance company is unusual, it is not unique, Mr. De Breau said.

He cited the successes of Cincinnati Financial Corp. of Fairfield, Ohio, and Southern Heritage Insurance Co. of Atlanta as examples of how well agent-owned insurers can work.

Cincinnati Financial carries an A+ rating from A.M. Best Co., while Southern Heritage holds an NA-3 rating, which reflects an insufficient number of operating years to merit a rating.

American Classic will underwrite standard small to medium-sized "Main Street" commercial property/casualty risks, some workers compensation coverage and surety bonds, Mr. De Breau said.

In addition, American Classic plans to offer agents exclusive association insurance programs written through a wholly owned managing general agent. These programs would include insurance for accounts like contractors, dry cleaners and trucking firms, Mr. De Breau said.

The insurer initially will write only in California, but Mr. De Breau hopes to eventually expand nationwide.

The insurer also plans eventually to offer investor agents educational programs. For example, it plans to offer programs on cross-selling techniques for customer service representatives, counseling on investments and tax shelters, and advice on the Tax Reform Act of 1986.

Classic Holdings already has received a permit from the California Department of Corporations to sell shares of American Classic to California investors.

The holding company also has filed a request for a certificate of authority to write commercial insurance, which Mr. De Breau expects the Insurance Department to approve by June. American Classic hopes to have an initial capital and surplus of $4.6 million.

The holding company is offering 2.5 million shares in Classic Insurance for $2 each. The minimum investment in American Classic will be $25,000 and the maximum investment will be $250,000, but no agent will be able to hold more than 5% of the total shares, Mr. De Breau said.

An investor may deposit 20% of its investment into an interest-bearing escrow trust account at Security Pacific National Bank in San Francisco.

The remainder will be due when American Classic receives its license from the California Insurance Department.

If the company does not receive a licensed, the deposit will be returned with interest.

Agents or agencies investing in the venture are required to commit 5% of their business to American Classic per year for five years. However, American Classic will not require a minimum premium volume for investor agents, Mr. De Breau said.

"We want the kind of agent who knows this is an investment first and a market second," he said.

Mr. De Breau would like to see at least 100 agencies buy shares in American Classic to give the insurer a broad premium base.

In addition to the smaller investors, Concord General Corp., a diversified insurance and financial services holding company based in Concord, Calif., has invested $1 million in American Classic and will hold 20% of American Classic stock.

American Classic has elected M. Berri Balka, president of Concord Risk Services Inc. of Concord, Calif., and former director of insurance for the Nebraska Insurance Department, chairman of its board of directors.

It has elected as directors James H. Ryan, director, president of Classic Syndicate Inc. on the Illinois Insurance Exchange and former director of financial services for the National Assn. of Insurance Commissioners; Anthony Petillo, president of Petillo & Associates Inc. of Pleasant Hill, Calif.; Bob Roy, president of JRL Realty Fund Inc. of Concord, Calif.; Carol Haynosch, chief financial officer of the Lambert Fund Inc. of Concord, Calif.; and Mr. De Breau.

Classic Holdings and American Classic are located at 2105 S. Bascom Ave., Suite 350, Campbell, Calif. 95008; 408-879-1370.

However, the companies probably will relocate to Walnut Creek, Calif., to be closer to their outside computer service vendor, Mr. De Breau said. ■

Satellite conference on business strategies planned for agents

By LAURA MAZZUCA

BROOMALL, Pa.—Independent property/casualty insurance agents will be able to participate in an industrywide, interactive satellite broadcast March 21.

The video conference featuring a panel of insurance industry speakers is a collaboration between the Insurance Television Network, based in Broomall, Pa., and Insurance Marketing Services of Santa Monica, Calif.

Speakers will be George Nordhaus, chairman and chief executive officer of IMS; agency consultant John Jaques, president of John H. Jaques Inc. in Novato, Calif.; and Larry Marsh, president of consultant Marsh, Berry & Co. Inc. in Mentor, Ohio.

The 3½-hour broadcast—"Strategies for Building and Preserving Your Business"—will cover a variety of subjects using interviews, panel discussions and live questioning of attendees via a live phone hook-up.

Topics will include marketing mix, measuring agency value, compensation methods and employee motivation.

It will be aired to at least 100 satellite dish-equipped agencies and other facilities in the country's "Top 65 markets," including Atlanta, New York, Chicago, Los Angeles, Dallas and Philadelphia, said Jeanne G. Thomas, vp of ITN.

Registration to view the conference is projected at 4,000 to 6,000, said Ms. Thomas.

The cost to view the seminar is $95 before March 1 and $110 after. On-site licensing for a satellite dish-equipped agency is $550.

ITN was launched in August 1988 and produced two life insurance-oriented programs last year, but this will be its first for property/casualty agents, she said.

To date, ITN has presented only single-event broadcasts, but it plans to offer full subscription service to satellite-equipped insurance agencies this fall at a monthly cost yet to be determined, Ms. Thomas said.

"There seems to be a real demand for it. Everyone we're talking to seems to be very impressed with what we've done and they have a real need for this type of education," said Ms. Thomas, who has worked as an insurance producer and a coordinator in the continuing education and marketing departments of the Certified Life Underwriter and Chartered Financial Counselor programs for eight years.

ITN's subscription service for agents will offer about 40 hours of both life/health and property/casualty programming per week, and will feature shows such as round-table discussions of industry topics by insurance leaders; a news journal "on any hot topics in the industry;" and "On-Line Live," an interactive program with a "Nightline" format, said Ms. Thomas. The subscriber service will also feature review courses for professional designation programs, she said.

Within its first three months, the subscriber service should have a base of about 150 agencies, she said.

ITN's planned format is the latest in an increasing number of satellite-broadcast events for the insurance industry. For instance, a satellite-broadcast panel discussion sponsored by the National Assn. of Casualty & Surety Agents in November 1988 drew more than 2,500 viewers (*BI*, Nov. 21, 1988).

For more information, contact Insurance Television Network, 450 Parkway, Suite 104, Broomall, Pa. 19008; 800-468-2855.

Agent information service unveiled

The Professional Insurance Agents of California & Nevada are unveiling a personal computer-based communications service to provide insurance news and industry information to insurance professionals beginning March 1.

The "PIA Spectrum" system was developed by the association in conjunction with PRODIGY Business Services, a unit of Prodigy Services Co., which markets similar services to a variety of other industries.

Among other things, PIA Spectrum will offer subscribers industry news; association information; PIA product, service and education information; on-line product ordering capability; electronic bulletin boards; and "provider pages," which will list insurance markets.

In addition, agents, insurers and other businesses can advertise on the system.

Spectrum will cost PIA members $300 and non-members $450 annually.

Subscribers will receive a start-up kit, personalized entry code and the necessary software.

For more information, contact Ted Huntington at the Professional Insurance Agents of California & Nevada, 14114 Victory Blvd., Van Nuys, Calif. 91401; 800-448-0300.

Solvency rating

Insurance Solvency International of America Inc. in Hartford, Conn., has introduced a solvency rating service for independent agents concerned about the financial stability of insurers.

"Selective Rating Reports" are available for any of 350 U.S. and 750 foreign insurance and reinsurance companies. Insurance Solvency International developed the ratings.

Each six-page report contains an overall opinion and letter rating of the insurer; analytical commentary and financial data on its underwriting exposure, ceded reinsurance, assets and liquidity, earnings and reserves; and background information on ownership, subsidiaries, lines of business, geographic mix and capital history.

The reports, which previously were available only to alphabet house brokers, are available for $150 each.

For information, contact Insurance Solvency International of America Inc., 1 State St., Suite 2330, Hartford, Conn. 06103; 203-247-5901.

A/BT products & services

PC rate calculator

"The Wheel," a new IBM-compatible personal computer program designed by an insurance agent, calculates earned, unearned, pro-rata and short-rate premiums on screen.

Roger E. Lipman, president of R.E. Lipman Insurance Brokers Inc. in Benicia, Calif., was inspired to design the product after discovering that his customer service representatives did not have the technology to make the calculations of pro-rata and short-rate premiums easily and "on screen."

The Wheel enables the CSR to perform these calculations directly on the computer terminal and immediately print out the results.

The product is available for $37.95, plus $4 shipping and handling, for individual computer usage. A site-licensed version of the product costs $59.95, plus shipping and handling.

To order The Wheel, contact R.E. Lipman Insurance Brokers Inc., P.O. Box 725, Benicia, Calif. 94510-0725; 707-746-1211.

Property forms guide

The "Property Insurance Account Handling Guide," which outlines major changes in the Insurance Service Office Inc.'s commercial property insurance forms, has been published by the Independent Insurance Agents of America and International Risk Management Inc.

The guide provides insurance producers with a form-by-form analysis of each of the new ISO forms and endorsements as well as a complete list of all of ISO's commercial property forms and endorsements.

In addition, it provides information on determining proper coverage for clients.

The "Property Insurance Account Handling Guide" costs $39.95 for IIAA or IRMI members, and $49.95 for non-members.

For more information, call the Independent Insurance Agents of America at 800-221-7917.

Finding top producers

More than 55% of current sales professionals do not know how to sell, 25% know how but are selling the wrong product, and only 20% are capable sales people who are selling the right product, according to a new book.

The book, "What It Takes to Succeed in Sales: Selecting and Retaining Top Producers," is written by Jeanne and Herb Greenberg of Caliper Corp., a Princeton, N.J.-based human resources consulting and psychological testing firm.

The authors reached their conclusions on the state of the sales market based on empirical research with more than 750,000 job candidates and employees.

The book also examines high turnover, ineffective promotions, and how to build a winning sales team.

The book, published by Dow Jones-Irwin of Homewood, Ill., lists for $22.50.

For more information, contact Dow Jones-Irwin at 1818 Ridge Road, Homewood, Ill. 60430; 708-206-2700.

Market profiles

Marketing Data Systems Inc. of Fairfield, N.J., has developed a series of reports to help agencies plan, target and implement direct mail or sales programs.

The "Profile Series" provides both market information and targeted prospect lists based on an analysis of the user's specific marketplace.

Three types of profiles are available:

- The Market Profile, which provides a breakdown of businesses in a given geographic area.
- The Industry Profile, which gives local, regional and nationwide breakdowns of the companies in any industry or group of industries.
- The Territory Profile, which uses either the market or industry profile format to analyze the prospects in each client-defined sales territories.

Each profile costs $150.

For more information, contact Kevin Sheridan, MDS, 7 Daniel Road, Fairfield, N.J. 07006; 201-882-3384. ■

Cost containment

Continued from page 1

"Employers are doing a lot of different things to manage health care costs, but there wasn't a body of data out there to show the prevalence of certain techniques as well as which techniques were working the best," explained Kenneth Sperling, a consultant in Hewitt's Rowayton, Conn., office.

Many employers have added hospital precertification programs only within the last three years but are racking up significant cost savings, the survey found. Indeed, 62% of employers reported cost savings of at least 3% from their hospital precertification programs, including 17% that reported savings of between 10% and 19%. Twenty-three percent more reported savings of between 1% and 2% (see chart, page 1).

Under a hospitalization precertification program, an employee's physician generally must contact the employer's insurer or utilization review company and explain the employee's medical problem and reach an agreement on the necessity of hospitalization and the length of stay. Typically, employers will reimburse hospital charges for a certified admission at a higher level than they will for a non-certified admission.

Hospital precertification programs are effective for several reasons, Hewitt's Mr. Sperling said.

"There is the 'sentinel' effect. A doctor isn't going to try to keep someone in the hospital for days on end if he knows that an excessive length of stay will be questioned by a precertification program," he said.

Already, 67% of employers include a hospital precertification program in their medical plan, according to the survey.

In addition, 14% of employers said they are considering adding a hospital precertification provision to their medical care plan, while 19% are not and less than 1% have dropped such a provision.

A precertification program also "allows an employer to know what will happen before it happens," Mr. Sperling said. Through precertification programs, employers and insurers are warned of the potential of very expensive claims. They then can take steps to ensure that a patient receives quality, but less expensive, care.

Indeed, employers also are giving high marks to medical case management programs as an effective cost containment weapon.

While medical case management programs are relatively new—78% of employers with the programs added them within the last three years—31% of respondents reported savings of at least 3%. And, 39% said the program saved them between 1% and 2%.

Under a medical case management program, catastrophic claims—generally claims exceeding $10,000—are identified, often through a hospital precertification program. Then planning immediately begins for the most cost-effective treatment.

For example, medical personnel managing a case might recommend and help to arrange for home health care services provided by visiting nurses.

"That might speed the recovery with a much lower cost than lengthy hospital care. Medical case management is almost a no-lose situation," Mr. Sperling said.

Sixty-two percent of employers now deploy case management of large medical claims, while 18% of employers are considering adding such a provision, the survey found.

But, 20% of the responding employers are not considering implementing case management programs, and less than 1% of employers have dropped medical case management provisions from their health care plans, the survey found.

By contrast, 8% of employers have dropped mandatory second surgical opinion provisions from their medical care plans, according to the survey.

Fifty-nine percent of employers still have such a provision in their plans, and 8% are considering adding a mandatory second surgical opinion provision, while 25% are not.

Among employers that dropped mandatory second surgical opinion, about half did so after finding that it did not save money, while 14% of employers said the provision actually added to their medical plan costs.

"Second surgical opinion can add to costs if, in an overwhelming number of cases, the second opinion confirms the first opinion," Mr. Sperling said.

Employers also are becoming somewhat disenchanted with cost management programs that give employees financial incentives, such as a higher level of reimbursement, for undergoing surgery on an outpatient basis.

In fact, 7% of employers said they dropped an outpatient surgery incentive provision from their medical care plan.

Fifty-five percent of employers said they offered such a provision, and 8% were considering adding an outpatient surgery incentive, while 30% were not.

Outpatient surgery incentive programs have fallen in disfavor as employers question whether outpatient surgery really saves money, Mr. Sperling said.

Thirty-six percent of employers reported no savings from outpatient surgery incentive programs, while 42% said they achieved savings of at least 3%.

In fact, certain surgical procedures, such as cataract removal, may be as expensive on an outpatient basis as in a hospital, he said.

"If certain types of procedures cost as much on an outpatient basis, employers now question whether it makes sense to provide a financial incentive," he said.

Mr. Sperling also noted that encouraging employees to have services done on an outpatient basis may be inappropriate at a time of growing concern that providers are jacking up outpatient charges to make up for revenue losses at hospitals, where services traditionally have been scrutinized more carefully.

"Historically, there has been less control on the outpatient side. You see things like 'upcoding,' " in which a physician bills for a procedure that commands a higher fee than the procedure actually performed, he said.

Thirty-six percent of employers reported no savings from outpatient surgery incentive programs, while 42% said they achieved savings of at least 3%.

The survey also reveals that employers continue to pass more health care costs on to workers.

For example, just 3% of employers last year offered deductibles less than $100 for individual coverage in their medical care plans, the survey found.

By contrast, an earlier Hewitt survey—tracking changes in major employers' medical and other benefit programs since 1984—found that 16% of companies offered an annual deductible of less than $100 for individual coverage in 1984.

Similarly, while 29% of employers last year offered a $100 deductible for individual coverage, 35% did so in 1984.

But, 6% of employers last year required a $250 individual deductible and 4% set a deductible of at least $300.

By contrast, in 1984, just 1% of employers required employees to pay a $250 individual deductible, while another 1% set an individual deductible of more than $250.

However, most employers—92%—limit the maximum amount of out-of-pocket medical expenses an employee can incur.

For example, about two-thirds of employers last year capped employees' annual out-of-pocket expense for individual coverage at $1,500 or less.

Only 5% of employers' stop-loss provisions capped employees' out-of-pocket expense at $2,000, while 10% of employers had a stop-loss provision exceeding $2,000.

In addition, more than half of the employers—54%—required employees to pay part of the premium for individual coverage.

Among companies that imposed premium contributions, 9% required employees to pay a monthly premium of less than $10, 20% required a premium contribution of between $10 and $19.99, while 15% set the premium contribution at between $20 and $29.99. In addition, 8% set the employee premium at between $30 and $49.99, and 2% required employees to pay a monthly premium of at least $50 for individual coverage.

Employers, though, are more likely to require employees to pay for family coverage, and the premium contributions also are higher.

Seventy-nine percent of employers required employees to pay part of the premium for family coverage, according to the survey.

Thirty-four percent of employers required employees to pay a monthly premium of less than $50 for family coverage, 17% asked employees to pay a monthly premium of between $50 and $74.99, and 28% asked employees to pay a monthly premium of at least $75 for family coverage.

Other survey findings include:

- Among employers offering health maintenance organizations, 24% decreased their HMO offerings last year, 57% said there was little or no change in the number of HMOs offered and 19% added HMOs.

Mr. Sperling said more employers are likely to prune their HMO offerings. "Employers have discovered that it takes a lot of time to manage HMOs. If you have 50 HMOs, then you have 50 HMO contracts to manage. That creates a significant administrative burden," he said.

- Forty-four percent of employers reported that employee enrollment in HMOs stayed about the same last year, while 39% said HMO enrollment rose and 17% said enrollment decreased.
- Fifty-nine percent of employers said they contributed the same dollar amount to their HMO as they contributed to their indemnity plan. Twenty-one percent said their HMO premium contribution was the same percentage as the premium contribution to their indemnity plan. Seven percent of employers said their premium contribution was based on their HMO plan experience, while 13% used other methods to determine premium contributions, such as a specific dollar amount.
- Employers were almost evenly split over whether HMO or indemnity plan costs were rising faster. Thirty-four percent of employers said HMO costs increased faster last year than their indemnity plans costs, while 35% reported higher indemnity plan increases.

The remaining employers said either there was no difference in cost increases last year or that they lacked sufficient data to determine if there was a difference.

- Just 5% of employers said HMOs provide them with sufficient utilization data.
- Seven percent of employers said they are considering basing employee medical plan premium contributions on lifestyle factors, such as smoking habits.
- Medical plan expenses, including both employer and employee contributions, averaged $2,536 per employee in 1989, up 13.4% from $2,236 in 1988.

By contrast, benefit consultant A. Foster Higgins & Co. Inc. recently found that indemnity plan costs rose 20.4% to $2,600 in 1989 from $2,160 in 1988 (*BI*, Jan. 29).

However, the Foster Higgins survey included union plans, whose costs tend to be higher because of lower deductibles and coinsurance features. The Hewitt study only surveyed employer medical plans covering salaried employees.

In addition, Hewitt asked employers to include all of their medical care plans, including HMOs, in determining their medical plan expenditures. Foster Higgins asked employers to separate their indemnity plan costs from HMO costs.

•

Copies of "Managing Health Care Costs" are available for $75 from Catherine Schmidt, Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60609; 708-295-5000.

Administrator defends 'claims-paid' policies

SOUTHFIELD, Mich.—While the National Sheriffs' Assn. and Star Pool directors tout their new risk retention group's claims-made coverage as superior to the pool's claims-paid coverage, The Star Pool's administrator says claims-paid was the best coverage available at the time.

In 1986, when the sheriffs group sought ARPCO's help in securing police professional liability coverage for its members, many of those agencies could not find conventional insurance and the NSA had no capital to form a captive, said J. Michael Feeney, president of American Risk Pooling Consultants Inc. in Southfield, Mich.

ARPCO is one of the few pool administrators using "claims-paid" policy forms and has, in fact, copyrighted its method of administering the programs.

"With what we had to work with to provide these public entities with coverage when they had no funding for a captive, it was the very best coverage available to them," Mr. Feeney said.

"When they came to us, they didn't have any money in the bank and no markets," agreed ARPCO corporate counsel Larry J. Spilkin of Spilkin & Shapiro in Southfield.

"If self-insurance is viable, then claims-paid is viable," he added.

Simply put, with a claims-paid approach, a group of similar risks put money into a bank to finance the group's expenses and pay claims as they come along, Mr. Feeney explained.

A member considering leaving the pool must carefully weigh its decision, because, under the claims-paid concept, a member's pending claims and IBNR claims become its own responsibility.

"This provision guarantees the solvency of the pool because members cannot abandon their unfunded liabilities to the pool," he said.

Thus, a member should analyze its loss history and current claims status to determine its total claims exposure, he said.

Under ARPCO's paid-loss pooling program, members' annual contributions are allocated to two separate funds. One is used to pay each member's pro-rata share of the pool's collective claims. The other is a bank account accessible if the pool's estimate of paid losses in the year is insufficient to pay claims, according to Mr. Feeney.

Money in the bank account accrues in much the same way it would in a savings account, and all or a portion of it can be withdrawn by a departing member, depending on the length of time it was with the pool. Thus, a member who decides to leave can use those funds to pay pending or IBNR claims.

The Star Pool also was able to provide broader coverage than conventional police professional liability policies, Mr. Feeney said.

For example, The Star Pool covers jail-related liability claims, civil rights violations and use of dogs, horses and watercraft in police work—all often excluded by conventional police professional liability policies, Mr. Feeney said. In addition, The pool extends coverage to the county or municipality that controls the police or sheriff's department.

The six claims-paid pools that ARPCO now runs are "all working very well," Mr. Feeney said.

ARPCO also administers a reinsurance pool, the American Public Entity Excess Pool, which provides reinsurance for all six pools.

The excess pool "acts as a loss-leveling mechanism for all the pools in the event that one pool develops adverse loss patterns. It spreads the loss among the participants," Mr. Feeney said.

APEEP provides coverage in excess of $250,000 per loss up to $1.75 million, according to Mr. Feeney. He added that APEEP currently has more than $12 million in available cash.

In addition, in the event APEEP's funds are exhausted, it has $5 million of aggregate stop-loss coverage underwritten by National Reinsurance Corp., a subsidiary of Lincoln National Corp., he noted.

Audited financial statements are provided for all of the pools and American Public Entity retains an outside consultant to monitor claims and do any necessary planning, Mr. Spilkin noted.

Mr. Feeney added: "When we had access to all the funds and we knew where all the money was, there were enough funds in The Star Pool to fully liquidate all of the claims on an occurrence basis."

"It becomes harder and harder to determine this as we have less knowledge about the funds," Mr. Spilkin added.

The Star Pool board began withholding member contributions from ARPCO and depositing them in a separate bank account after ARPCO filed suit against the NSA and the board last May (see story, page 27.)

—By Linda J. Collins

Star Pool

Continued from page 1

Meanwhile, The Star Pool's board and its designer/administrator are embroiled in litigation over the formation of AJIR.

"I think somewhere down the line this thing is going to end up in court in a nasty fight and the members will be the ones who will lose," said Oliver McCord, risk manager for the cities of Cheney and Airway Heights, Wash., both pool members.

In its 3½ years, The Star Pool has insured about 550 sheriffs and police departments in 39 states and amassed accumulated reserve funds of about $10 million. Before AJIR was formed, it was operating in about 32 states.

Neither ARPCO nor an attorney for The Star Pool could say precisely in how many states the pool could write insurance without violating regulations. AJIR ultimately intends to issue policies in all states.

"It became very apparent, because The Star Pool was running into regulatory difficulties in many states, that The Star Pool could no longer operate," said Robert A. Fineman of Honigman, Miller, Schwartz & Cohn in Detroit, an attorney for the pool directors.

With The Star Pool's reformation as AJIR, all pool members became members of AJIR effective Jan. 12, according to a Jan. 23 memo to members and agents from Richard L. Germond, the pool's chairman.

AJIR now covers about 490 sheriffs and police departments employing 19,000 to 20,000 sheriffs and police officers in about 32 states, according to Thomas C. Dickman, vp of Indianapolis-based J.W.F. Specialty Co., the new administrator of AJIR.

In creating AJIR and hiring a new administrator, the pool's board also has instructed The Star Pool's organizer and administrator, Southfield, Mich.-based American Risk Pooling Consultants Inc., to cease administering the pool and to turn over the pool's books, records and money.

However, ARPCO is "between a rock and a hard place," says J. Michael Feeney, president of the pooling consultants. "I have a fiduciary responsibility to The Star Pool members. Do they or don't they exist?"

In a suit, ARPCO challenges methods by which The Star Pool board established AJIR and say ARPCO wants to protect the assets of The Star Pool (see story, page 27).

But, with the declared reformation of the pool as AJIR, Mr. Feeney says, "if they gave us a release of our fiduciary responsibility, we would love to turn the files over."

"They have made it impossible for us to continue as administrators," he added.

The Star Pool board began withholding member contributions from the pool administrator and depositing them in a separate account after ARPCO sued the NSA and pool directors last May.

In October 1989 the board told ARPCO its administration agreement would be terminated.

Directors blame ARPCO for not informing the board that The Star Pool would violate some state insurance laws and accuse ARPCO of setting up an insurance program that would compete with the NSA-sponsored pool.

ARPCO denies both charges.

The pool's origins

Forming AJIR last month is only the latest episode in a six-year effort by the Alexandria, Va.-based NSA to sponsor a nationwide police professional liability insurance program for its members.

A sheriffs program with Ideal Mutual Insurance Co. was canceled in 1984 just months before New York-based Ideal was declared insolvent. A subsequent program was abandoned in 1986 after wholesale broker Markel Service Inc. rejected more than half the NSA members that sought coverage because they failed to meet underwriting standards.

That failure cost the association commission income and potential members.

Since June 1986, The Star Pool, sponsored by the NSA and administered by ARPCO, has provided up to $2 million in aggregate limits in police professional liability insurance.

After less than a year in operation, however, the pool was prohibited from issuing coverage in some states. Forced out of its original Michigan domicile, it is still under investigation by other states for issuing insurance without proper authorization (see story, page 28).

The administrator of the new Indiana-based risk retention group says it will obtain approval to operate nationwide under the aegis of the federal Risk Retention Act.

AJIR's conventional claims-made police professional liability insurance policy will satisfy coverage needs of both former pool members and new policyholders, said Thomas A. Flynn, executive vp of J.W.F. Specialty.

The Star Pool had issued a claims-paid policy, which only covered claims paid while a department was a member of the pool.

The claims-paid concept is not approved in New York.

But a 1988 review by Missouri authorities noted that while the policy language was unconventional, it protected the financial strength of the pool since under the claims-paid concept the pool did not incur long-tail liabilities.

In contrast, AJIR can assess members additional premiums to maintain the surplus of the reciprocal.

The Star Pool first attempted to switch to a risk retention group in 1988. Its directors originally used $1.25 million in pool funds to capitalize an American Justice Insurance Reciprocal in Missouri in February 1989, but abandoned its plans before any business was written in favor of domiciling the reciprocal in Indiana.

The Missouri reciprocal would have resolved regulatory problems regarding interstate pooling of risks, but the reciprocal would have still employed the same claims-paid concept as The Star Pool, explained Mr. Flynn of J.W.F. Specialty.

In addition, AJIR's certificate of insurance in Missouri was contingent upon "economic development issues," such as the reciprocal employing a specified number of people within the state, he added.

"Once we became involved, it did not make any sense for them to be domiciled in Missouri. We then began the process of filing in Indiana," he said.

With another $1.25 million in pool funds, the Indiana reciprocal was capitalized in December 1989, according to Mr. Dickman of J.W.F. Specialty.

Indianapolis-based insurance agency J.W. Flynn Co., which already had provided services to the NSA, formed J.W.F. Specialty to handle AJIR's business. J.W. Flynn had placed the NSA's commercial insurance and had transferred a book of public officials errors and omissions liability insurance business from a self-insurance pool to a fully insured program written by Crum & Forster units early in 1989.

J.W. Flynn had no experience with risk retention groups or police professional liability insurance, but J.W.F. Specialty hired people with the needed experience, said Mr. Dickman.

After the board completes its current merger of the reciprocals, it will recover the $1.25 million used to capitalize the Missouri reciprocal, Mr. Fineman said.

AJIR in Indiana offers members two options:

- A rollover to the claims-made contract at any time prior to expiration, for an additional premium reflecting the additional coverage, which will include prior acts coverage.

However, any claims that are known and unreported, or that are late-reported after the rollover, will continue to be handled under the claims-paid contract, according to the Jan. 23 memorandum to members of The Star Pool.

- Remaining with the claims-paid contract until its policy expires, at which time the member will be renewed under the claims-made contract.

Claims subject to the claims-paid contract will continue to be handled under that format, according to the memorandum.

However, if a member buys prior acts coverage, it will have coverage

Continued on next page

Advertiser Index

Issue of February 5

Business Insurance

Continued from previous page

for incurred-but-not-reported claims, said Mr. Dickman.

"Please be assured that as long as an entity remains a member of AJIR, there will be continuity of coverage," the memo says. "Your claims will continue to be handed under the claims-paid or claims-made contracts as they may apply."

The memo continues: "Upon the date a member is issued an AJIR claims-made contract, those incurred-but-not-reported claims, as well as future reported claims during the contract period, will be handled in a claims-made manner. Should a member choose to withdraw from AJIR, those claims will remain the responsibility of AJIR. The member then has the additional benefit of purchasing an extended reporting period."

An extended reporting period under the claims-made policy generally provides coverage for claims reported after the policy period, subject to the length of the extended reporting period.

However, the memo also points out: "Any existing Star Pool claims will remain subject to the claims-paid format until resolution. At any time in the future, should a member choose to withdraw from AJIR, those existing Star Pool claims shall become the sole responsibility of the withdrawing member, as they would have under The Star Pool contract."

This means that even if a member buys prior acts coverage, claims reported under The Star Pool claims-paid policy become the withdrawing member's responsibility, Mr. Dickman said.

A copy of AJIR policy that Mr. Flynn had promised to send *Business Insurance* was never made available.

"AJIR will initially make available coverage of up to $1 million per occurrence/$2 million aggregate, with lower options available," said Mr. Flynn. Higher limits may be available later, he said.

AJIR is protected by reinsurance, which was "placed 100% in the London market," some through Lloyd's syndicates and some with London insurers, Mr. Flynn said.

E.W. Blanch of Minneapolis was the U.S. reinsurance broker and Carter Wilkes & Fane Ltd. was the Lloyd's broker.

"We are now in the process of notifying state insurance departments" about AJIR and complying with state regulations, he added.

Regulatory questions

At least two insurance departments, however, question whether AJIR will meet their requirements.

The New York department is concerned about how claims reported to The Star Pool will be paid, said Richard Hsia, deputy superintendent.

"It seems they are saying that they are taking certain capital from The Star Pool and still leaving certain liabilities with The Star Pool," he said. "What are they paying for and what are they not paying for?"

Another possible sticking point, said Mr. Hsia, is "whether or not capital from The Star Pool can freely be used to capitalize the reciprocal when there is the issue of pending claims and pending litigation. A portion of the reserves has been dedicated to a new purpose."

Mr. Fineman said: "My understanding is that the reciprocal is in a position to operate, having assumed all the liabilities of The Star Pool. And they have satisfied Indiana's requirements."

Mr. Hsia also points out that "according to the municipal law prescribed by the state of New York, a risk retention group, even properly chartered, does not apply to municipalities in this state."

He rejects the J.W.F. Specialty suggestion that the federal Risk Retention Act would pre-empt New York's ban on interstate pooling of municipal risks. "If a state legislature has instructed municipalities that they should not share their financial responsibilities with each other or entities outside of the state, except as proscribed by the state," state law would not be pre-empted, he said.

Mr. Hsia said he remains unconvinced that AJIR offers a viable alternative to members of The Star Pool or other New York municipalities that seek to join AJIR.

In a Nov. 14, 1989, letter, Jeffery Johnson, then-deputy commissioner of insurance and banking in Vermont, wrote to the AJIR's attorneys—Klineman, Rose, Wolf & Wallack in Indianapolis—that before AJIR is allowed to operate in Vermont, it must return $50,000 in capital contributions owed to pool members in that state.

Previously, Mr. Johnson, who is now the Vermont commissioner, also had expressed concern about the appropriateness of using pool funds to capitalize AJIR.

Assuming The Star Pool liabilities is "a major change in the AJIR's plan of operations," said Mr. Johnson in an interview. "The Indiana Insurance Department will have to check to see if The Star Pool had been reserving properly.

"From a regulatory standpoint, we would like a nice, clean balance sheet," he added.

Before licensing the Missouri reciprocal, that state's department examined the rollover. Based on the claims-paid policy, "the only adjustment to the balance sheet, on an interim basis, which would be necessitated by loss development, would occur in the event that the paid losses for the subject year exceeded or were projected to exceed the anticipated paid losses which were prefunded in the budgetary fund," it said.

"Although the accounting is clearly unconventional. . . it should be noted that with a total fund balance of $7.5 million, current funding of this pool is considered ultraconservative by this examination."

Mr. Johnson also expressed concern about the use of a reciprocal risk retention group, which Vermont prohibits.

Because decisions are made by an attorney-in-fact, reciprocals do not offer participants the same measure of control they would under another structure, he explained.

Among state regulators, he is not alone is his misgivings about using reciprocal risk retention groups, Mr. Johnson said.

But, he added, the structure would not preclude AJIR from doing business in Vermont if all other issues were resolved.

In New York, Mr. Hsia said reciprocal structures are acceptable if allowed by the risk retention group's home state. Indiana does allow reciprocals.

Members' frustrations

Meanwhile, some members of The Star Pool say they are frustrated by the lack of information given them about AJIR.

"The city has been given no information on new coverage, limits or reinsurance," complained Mr. McCord, the risk manager for the Washington cities of Cheney and Airway Heights.

Mr. McCord also said he has not been able to determine how members' funds will be distributed when they withdraw from The Star Pool.

Bickering between The Star Pool directors and ARPCO has prompted the city of Cheney to withdraw from the program upon its March renewal, he said.

Unless his questions are answered, Mr. McCord predicts that Airway Heights also will leave the program.

Ralph Harper, Greene County administrator in Xenia, Ohio, said he is "confused" and has "a lot of unanswered questions. I'm not getting a really good handle on why they want to change it."

While The Star Pool has "served us really well, I don't want to get caught in the middle" of the bickering, he said.

Greene County is "seriously considering leaving AJIR," he said. "When you whip the dog long enough, he's going to look for a comfortable place to lie down."

'From a regulatory standpoint, we would like a nice, clean balance sheet,' says Mr. Johnson.

"I have been told nothing about the" rollover of The Star Pool into AJIR, said Gary Mahannah, city administrator for Sac City, Iowa. "I want to see what hoops they want me to jump through before I decide what hoops I will jump through."

Sac City "is in its fourth year with The Star Pool, and from our city's standpoint, it has operated quite well," said Mr. Mahannah.

Other pool members are less alarmed by The Star Pool reformation.

"I go out to bid every year," and a change in administration is no cause for concern, said Francis Senkowsky, municipal clerk for the city of Rahway, N.J.

"In the long run, claims-made coverage will be a lot better for members. I think membership should also grow with this program," said Shappley Harris, principal of Fire & Casualty Consultants in Jackson, Miss., and risk manager for the Mississippi counties of Rankin and Hinds.

However, Mr. Harris, a member of AJIR and The Star Pool boards since last June, said the two counties have had no problems with the pool.

When the pool was formed, he said, claims-paid "was probably the only approach they could take." Rankin and Hinds counties had no other coverage options when they joined, he said.

Terry Sinclair, risk manager for Johnson County, Kan., said she looks forward to the extra coverage provided by changing from claims-paid, but is still waiting for details of the new coverage to decide whether the county will remain a member of AJIR.

While members of The Star Pool contacted said they were satisfied with the pool's coverage and service, several regulators reported that members withdrawing from the pool have complained they were not recapturing all their contributions.

The withdrawal provisions, however, are clearly stated in The Star Pool contract: A member withdrawing in the first year, for example, will receive 50% of its share of the cumulative reserve fund—the banked funds not needed to pay anticipated claims and expenses. It was anticipated that a member leaving after six years would receive its entire share of these banked funds.

Indiana regulator's role

The formation of AJIR has raised another controversy: a business relationship between recently appointed Indiana Insurance Commissioner John Dillon Jr. and J.W.F. Specialty's affiliate J.W. Flynn.

Immediately before becoming commissioner, Mr. Dillon had been an account executive and special products coordinator at Flynn.

Mr. Dillon, however, rejects suggestions of a "legal conflict of interests" in his department's approving AJIR. Mr. Dillon said he was "merely a producer" at J.W. Flynn and had no financial interest in the company.

The commissioner "deliberately stayed out of the approval process," said Dave Reddick, deputy commissioner of Indiana Insurance Department's Public Information/Market Conduct Division.

Mr. Flynn of J.W.F. Specialty agreed.

"Because of his (former) relationship with us, the watchword at the department was no concessions and no special favors, so that the entire application would withstand regulatory scrutiny," Mr. Flynn said.

Mr. Reddick said that prior to is-

Continued on page 27

The professional marketplace

RATES AND CLOSING TIME:

Rates: *Display classified is $108.50 per column inch, minimum of one inch. Straight classified is $9.00 per line, minimum of 5 lines. Count 34 characters per line (include each space and punctuation as a character). Additional $17.50 charge for all blind box ads. Only those reponses which fit into a business size envelope will be forwarded. Responses are forwarded daily.*

Closing: *Published every Monday. Copy must be in typewritten form by noon Tuesday, 6 days preceding publishing date. No verbal phone copy accepted. Prepayment required for straight advertisements. Mail ads to Margaret Hikido, Classified Advertising, 740 N. Rush St. Chicago, IL 60611. For more information call 312-649-5340. FAX 312-280-3189.*

MIDWEST BROKERAGE

Prestigious commercial P&C brokerage seeks first quarter addition to expanding sales team. Responsibilities will include some servicing but main thrust will be in the development of commercial accounts in the premium range of $250,000 & larger. Direct writing backgrounds will draw considerations with proven commercial sales experience. Starting salary OPEN to include BONUS incentives.

GIBERT-HAFNER & COMPANY
6060 N. Central # Dallas, TX 75206
AC214-361-9341
Insurance Staffing Consultants

TRUCK AGENTS

Stop Wasting Your Time
Improve Your Hit Ratio
Increase Your Market Share
We Sell Truckers X-Dates
"NATIONWIDE"
800-288-XDATES (9328)
Not Available In All States

GET RESULTS!
Advertise in the
PROFESSIONAL MARKETPLACE

LOGIC ASSOCIATES, INC.

Risk Management Executive Search Consultants

Celebrating Our 12th Year Of National Service
To The Risk Management Community

Telephone 212-227-8000
Fax 212-766-0188

170 Broadway Suite 1208
New York, New York 10038

"The Original and #1 Choice in Risk Management Recruiting"

CARRIERS NEEDED!

Administrative manager of several associations seeks front/participating carrier(s) for large, profitable blocks of commercial casualty business. Please respond to:
Box 2564, Business Insurance, 740 Rush St., Chicago, IL 60611-2590
All responses will be contacted.

Want to move into international insurance?

U.S. representative of large European life insurance company is seeking bright, articulate person with 2-5 years experience in insurance. Unique opportunity to move into marketing and serve large international accounts. Excellent salary and benefits. Please send resume to:

SWISS LIFE N.A. SERVICES, INC.
1200 E. Ridgewood Avenue
East Wing
Ridgewood, NJ 07450

RETAIL PRODUCERS WANTED

SPECIALTY PROGRAMS ARE NOW AVAILABLE

Target States

AL. DE. GA. ID. IL. IN. KS. MI. MO. MS.
NE. OH. OK. SD. TX. WA. WI. WV. WY.

Target classes for Liability Coverage

Campgrounds
Contractors' Bonds
Day Care Centers
Go Kart Tracks
Insurance Agents
Limousines
Mini Golf Courses
Real Estate Agents
Refuse Haulers
Restaurants & Bars (Liquors)
Riding Academies & Stables
Roofers
Service Stations (Pollution)
Rental Car Agencies
Special Events
Strategy Games
Taxi Cabs
Trade Contractors
Water Parks & Water Slides

For more information regarding these Programs call:

Toll Free 1-800-272-7230
In Missouri 1-314-997-3666

Or Write To:
A. B. Carter Inc.
10420 Old Olive Rd., P.O. Box 66842
St Louis, MO 63166

RISK CONTROL CONSULTANTS

Crawford & Company is building the best Risk Control Service Company in the world. Current openings exist in all regions of the U.S. If you are a proven performer with at least 3 years professional experience in casualty or property loss control, good interpersonal skills, can communicate effectively and would like to join the best in the business, send your resume and salary history to:

Jim Sybert, Vice President
Risk Control Services
Crawford & Company
5620 Glenridge Dr., N.E.
Atlanta, Georgia 30342

An Equal Opportunity Employer (Please, No Reply From Search Firms)

RISK MANAGEMENT SUPERVISOR

Midwest retailer seeking Risk Management Supervisor to administer claims and loss control program, purchase insurance, allocate losses and premium costs, establish and maintain risk management information system, and prepare risk management report. Position requires college degree with 5 years' experience in field of safety and risk management. Insurance background preferred.

Qualified candidate should direct resume including salary history and requirements to: **Box 2581, Business Insurance, 740 Rush St., Chicago, IL 60611-2590.**
An Equal Opportunity Emplcyer M/F

HELP WANTED

EMPLOYEE BENEFITS CONSULTANT/MANAGER

Salary Dependent Upon Qualifications The City of Oklahoma City has a full-time position available for an individual with skill in the design and administration of diversified benefit programs including health, dental and life insurance, stop loss insurance, retirement, flexible benefits, flexible spending accounts, employee assistance, cost containment for self-funded programs, incentive and wellness. Prefer experience within a unionized public personnel environment and a minimum of five years closely related experience at the management and/or consultant level. Resumes, applications, and supplemental questionnaires will be accepted until a selection is made. Reply to: **The City of Oklahoma City, Personnel Department, Room B-8, 201 Channing Square, Oklahoma City, OK 73102 (405) 297-2861.** EOE

ACCOUNT EXECUTIVE
MARINE INSURANCE
SOUTHEAST FLORIDA

Leading Florida Marine Insurance Broker has growth opportunity for candidate with background in servicing Commercial Marine Accounts to assume servicing and marketing responsibilities.

Prefer college graduate with 3 years experience company or agency. Excellent salary and comprehensive benefit program.

Send resume to:
Frank B. Hall & Co. of Florida
P.O. Box 143800
Coral Gables, Fl 33114
Att: Personnel Dept.
Equal Opportunity Employer

MANAGER OF RISK MANAGEMENT/ LOSS CONTROL SERVICES

N.C. League of Municipalities. Professional staff position to provide supervision and technical assistance in the areas of risk management and loss control services for successful self-funded municipal workers compensation and property/casualty insurance programs totaling $15 million in annual premiums. Assists the Director of Risk Management Services in overall administration of these programs. Graduation from an accredited college or university with major course work in business administration, safety engineering or related field. Minimum 5 years experience in the development and administration of insurance programs with emphasis on risk management and loss prevention. ARM certification and/or CPCU designation desirable. Salary range $35,682-$53,524 depending upon experience and qualifications. Reply to Director of Risk Management Services, P.O. Box 3069, Raleigh, N.C. 27602 by 2/28/90. EOE

P&C ACCOUNT EXECUTIVE

Atlanta independent broker seeks experienced P&C account executive to service existing book of clients whose individual premiums range from $100,000 - $2,000,000. Heavy casualty orientation necessary. CPCU or ARM desired. Excellent remuneration. Contact Fran Millar, Group Vice President, Hamilton Dorsey Alston Co., Riverwood, 100 Cumberland Circle, Atlanta, GA 30339 (404-850-0500).

FORM A PURCHASING GROUP?

Let's say.....
.....You think you want to form a Purchasing Group
.....You are unsure about forms, agent licensing and state requirements
.....You don't have the research resources for the answers you need
.....You don't know where to start

Start here

Use Us To.....
.....Analyze your situation
.....Recommend courses of action
.....Define costs involved
.....Develop a business plan for carriers, brokers or your association

We are experienced and operate on a consulting basis. Let us meet with you to discuss your concept, give an opinion on its feasability and describe our services. No charge for the initial visit.

If you are interested, please send a description of your group or concept and we will respond immediately. Write to:

MG Commercial Services
P.O. Box 6104
Chicago, IL 60680

CORPORATE RISK MANAGER

The selected candidate will establish and implement Risk Management policies, procedures and systems. Primary responsibility will be to preserve and protect company assets.

Bass Pro Shops is a rapidly expanding privately held company with diverse operations including retail, mail order, hospitality and manufacturing in multi-state locations.

For the qualified person we offer a friendly and fast-paced corporate atmosphere, as well as a competitive benefit package. Plus the quality lifestyle of Springfield with its exceptional educational opportunities and excellent recreational options.

Forward resume or letter of interest to:

BASS PRO SHOPS
Personnel Department
Att: Manager-
Professional Staffing
1935 S. Campbell
Springfield, MO 65898

Bass Pro Shops
An Equal Opportunity Employer

INVITATION TO BID

INVITATION FOR BIDS

The Housing Authority of the City of East St. Louis will receive bids for Property, Liability and Flood insurance for a two year term, on Low Income and Elderly Housing Projects, Office Buildings, Maintenance Buildings and Homeownership single family units.

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

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

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

Stephanie A. Stafford, Acting Director of Operations

POSITIONS WANTED

INSURANCE AGENCY UNDERWRITER/MARKETER

Property-Casualty background, thoroughly experienced; desires downtown Chicago or Western Suburbs. Reasonable Salary. Reply to: **Box 2493, Business Insurance, 740 Rush St., Chicago, IL 60611-2590**

RISK MANAGER

Old Kent Financial Corporation, an $8 Billion dollar bank holding company headquartered in Grand Rapids, Michigan seeks an experienced Risk Manager. Under the direction of the Department Senior Vice President this position is responsible for the administration of both insured and self insured programs in the areas of risk management, insurance and employee benefit plans. The incumbent is responsible for negotiating insurance contracts with brokers, agents and insurance companies and is expected to evaluate and monitor plans in these areas to ensure the Corporation is protected against loss and that employees are properly covered.

Successful candidates should possess 3 plus years of professional experience in insurance and 2 plus years of risk management experience. A bachelor's degree in Business with a minor in Insurance is preferred. Banking experience is a plus but not essential. Candidates should be proficient on Lotus.

Qualified candidates should submit resumes and salary history to: **Laura A. Sabo, Assistant Vice President, Human Resources**

OLD KENT
FINANCIAL CORPORATION
One Vandenberg Center, Grand Rapids, Michigan 49503

An Equal Opportunity Employer M/F/H/V

S&A S&A Restaurant Corp.

CLAIMS MANAGER

S& A Restaurant Corp., headquarters of Steak and Ale and Bennigan's restaurants, currently has an excellent opportunity available for a highly motivated individual.

Qualifications include
- College degree, preferably in Business
- Progressive experience in claims handling and claims management of general liability and workers compensation losses
- Supervisory experience
- Working knowledge of PC; Lotus 1-2-3 and Risk Management Systems a plus
- CPCU & ARM a plus
- Strong oral and written communication skills
- Initiative and flexibility

In this newly created position, you will be responsible for management of general liability and workers' compensation claims losses, reviewing reserve adequacy, auditing carrier claim files and offices to ensure claims handling agreements.

We offer excellent benefits plus a great working environment in Park Central.

Send your resume with salary requirements to:

TAMMY PAYNE
S&A Restaurant Corp.
12404 Park Central Drive
Dallas, TX 75251
equal opportunity employer, m/f

Pool's administrator litigating with NSA

By LINDA J. COLLINS

SOUTHFIELD, Mich.—The Star Pool's designer and administrator is embroiled in litigation and arbitration with the National Sheriffs' Assn. over the restructuring of the pool as a reciprocal risk retention group.

In the past year, The Star Pool board and the sheriffs' association formed two risk retention groups, using a quarter of the pool's $10 million reserve as surplus without the knowledge or consent of the administrator, American Risk Pooling Consultants Inc., according to ARPCO President J. Michael Feeney.

Only one of those groups—Indiana-domiciled American Justice Insurance Reciprocal (A Risk Retention Group) is operating. A Missouri operation using the same name never wrote any business and is being merged with the Indiana group.

AJIR replaces the police professional liability insurance program written by The Star Pool.

Ten states either have ordered the pool to cease insuring municipalities or have warned that the pool is unauthorized to operate. And, three states are investigating the pool for allegedly issuing unauthorized coverage.

Pool directors accuse ARPCO of mismanagement—for forming a pool that would run afoul of regulations in some states—and for allegedly using an ARPCO-managed Mississippi risk retention group to compete with the NSA-sponsored program.

The board also ordered the administrator to turn over funds and records to AJIR's administrator.

Citing its fiduciary duties to pool members, ARPCO charges in a May 1989 suit that the new risk retention groups "will cause irreparable harm to The Star Pool and/or the individual Star Pool members in that it will reduce the economic stability and assets of The Star Pool."

ARPCO, which has been excluded from The Star Pool's board meetings since mid-1989, also is suing to enforce its contract to manage the pool and alleges that it, not the new administrator, performed preliminary work for the formation of the Missouri risk retention group.

"We made all the initial contacts with Missouri," Mr. Feeney said.

However, ARPCO would be willing to walk away from The Star Pool if ARPCO received a written release from its fiduciary obligations by the Star Pool Board and the NSA, Mr. Feeney said.

Until June 1989, four of five members of The Star Pool board were current or former sheriffs and current or former NSA executives, officers or board members. The other was the mayor of a city insured by The Star Pool.

Its six-member board now includes four current or former NSA officers, the former mayor and an insurance consultant who is risk manager for two municipal members of the pool.

ARPCO, a Cover-X Corp. subsidiary based in Southfield, Mich., filed suit in Circuit Court in Oakland County, Mich., naming the NSA, two NSA affiliates and 35 people who are either current or former Star Pool board members or sheriffs' association executives or both.

ARPCO alleges improper use of The Star Pool funds in setting up the two risk retention groups, and also charges that the defendants improperly denied the administrator access to Star Pool funds to pay claims.

The administrator also accuses the NSA of breaching its administrative contract and says the NSA and other defendants used documents prepared by ARPCO to set up a risk retention group in Missouri.

Although the Indiana-domiciled AJIR has assumed The Star Pool's assets and liabilities, that apparently was not the plan when the pool formed the Missouri risk retention group in early 1989.

The Missouri group was set up as an independent entity, rather than as a successor to the pool, according to a letter to Mr. Feeney from attorneys for the reciprocal.

"You stated that The Star Pool is 'converting' into the new reciprocal. I am sure you understand that this is not the case," wrote John W. Crews of Crews & Hancock in Richmond, Va., in a Feb. 20, 1989, letter.

"The reciprocal is an independent entity which will receive a license in the State of Missouri and which will be entitled to conduct insurance business regardless of any relationship with The Star Pool and regardless of the continued existence of The Star Pool," the letter stated.

"We had to bring suit," said Mr. Feeney of ARPCO. "As administrators, we had a fiduciary obligation to try to recover those funds," since the Missouri group was not set up as a successor to the Star Pool. "By definition, the Missouri AJIR was a competitor to The Star Pool."

ARPCO is unsure where it stands now that The Star Pool board says the pool's assets and liabilities belong to AJIR in Indiana, he said.

After the ARPCO suit was filed in May 1989, The Star Pool board tried unsuccessfully to get all members to send contributions directly to the sheriffs' association. About 20% of pool members sent money to ARPCO, Mr. Feeney says. ARPCO has been using those funds to pay claims, he said.

Premiums sent to the NSA were not sent to the pooling consultants, he said. "They are only remitting our administrative fees. They are withholding the remaining funds and refusing to make them available to us" for settling claims.

The NSA is "withholding no funds. All funds that have been received from members that belong to The Star Pool have been deposited to an account in The Star Pool's name in the Sovran Bank in Alexandria, Va.," said Robert A. Fineman, a Detroit attorney representing the pool's directors.

"ARPCO receives its administrative fee under the agreement and the sheriffs' association receives a fee as a subcontractor to ARPCO. Apart from those fees to ARPCO and the NSA, the monies received go to The Star Pool account and are administered by the board of directors of The Star Pool," he said.

Mr. Fineman said he presumes directors also use that money for legal fees and other expenses.

Crews & Hancock, the Virginia law firm, was paid $320,000 for setting up the Missouri AJIR, Mr. Feeney said. He views this fee as excessive and said that ARPCO did much of the research, initial paperwork and legwork for the Missouri reciprocal.

"We find it peculiar that anyone would spend $320,000 for advice on a $1.2 million company," said Bill Weaver, ARPCO's chief financial officer.

ARPCO has unsuccessfully sought an explanation of these charges from pool directors since learning that an initial $270,000 payment was made to Crews & Hancock in the spring of 1989, Mr. Feeney said.

ARPCO "had offered to perform most or all of the services necessary to form the reciprocal without additional cost or charge to The Star Pool members," said Mr. Feeney in an Aug. 25, 1989, letter to Richard Germond, chairman of The Star Pool board and secretary of the NSA.

"In fact, in an earlier attempt to form a reciprocal, we retained outside counsel who prepared for filing all necessary documents for the cost of approximately $25,000," the letter continued. "Those documents together with our own work product were turned over to Crews & Hancock. It appears that the final submission made by Crews & Hancock used much of that documentation."

Crews & Hancock no longer represents the pool directors.

The ARPCO suit further alleges that the NSA violated the terms of its contract by cutting ARPCO out as administrator.

ARPCO copyrighted its claims-paid pooling concept, through which losses are funded on a pay-as-you-go basis, and marketed that concept to municipalities that couldn't find coverage elsewhere. The Star Pool was formed using this copyrighted pooling method (see story, page 24).

A 1986 contract with the sheriffs group identifies ARPCO as the pool's administrator. The NSA was to act as ARPCO's subcontractor in marketing the pool to prospective members, receiving and processing applications, invoicing and collecting member contributions, and remitting them to ARPCO within 30 days.

The agreement was to "provide a relationship" between the pool administrator and the NSA "so long as either party is involved in the general business of promoting a pool for" U.S. law enforcement agencies.

"In the event that the existing Star Pool is re-formed or re-constituted due to a change in domicile either foreign or domestic, both parties agree and acknowledge that this subagreement shall continue," the contract reads.

Should modification of the risk mechanism or a complete reformation prove necessary, the contract said, the sheriffs group and ARPCO "agree to make every effort possible to continue this subagreement and to make certain that administrator (with NSA as subcontractor) is retained by the new insurance risk sharing mechanism."

Mr. Weaver, ARPCO's chief financial officer, also said that agreement "requires that the administrator attend every board meeting. The last board meeting we attended was in May of 1988."

Since then ARPCO has not been informed of board meetings and has been refused copies of the minutes, he said.

According to Mr. Fineman, portions of the lawsuit have been stayed while two arbitrations are pending before the American Arbitration Assn. in Southfield, Mich.

ARPCO initiated one arbitration with the NSA in which it seeks to remain administrator of The Star Pool, Mr. Fineman said.

Pool directors initiated the second arbitration, in which they seek a determination of breach of duty by ARPCO, a declaration that the administrative agreement with ARPCO was terminated and unspecified damages, Mr. Fineman explained.

ARPCO is "in possession of some of The Star Pool files—including claims records—and they refuse us access to them. They are also in possession of certain assets belonging to The Star Pool," Mr. Fineman asserts.

"We have a dispute with them over their alleged right to continue to receive commissions from the" pool after its board notified ARPCO that it intended to terminate the administrative agreement, Mr. Fineman said.

Mr. Feeney said that first notice of the intention to terminate the contract came in an Oct. 13, 1989, letter from The Star Pool's Mr. Germond.

Mr. Fineman also accuses ARPCO of using The American Governmental Reciprocal Insurance Exchange, a Mississippi reciprocal risk retention group that also uses ARPCO's copyrighted claims-paid coverage approach, as a competitor to AJIR.

Some of ARPCO's 10 or so municipal vehicles—either pools or reciprocals—"write police professional liability business, but we have always attempted to direct police professional business to The Star Pool," said Mr. Feeney.

American Governmental, which had been an Indiana pool, "was just converted to a reciprocal" in Mississippi, but the administrators had offered in September 1989 to let the sheriffs association use that reciprocal as a successor to The Star Pool, Mr. Feeney said. ARPCO has "never solicited Star Pool members" to join the Mississippi reciprocal, he added.

In addition, Mr. Feeney noted, ARPCO in September 1989 notified The Star Pool board that a commercial insurer had agreed in principle to provide a fully insured conventional occurrence liability insurance program with retroactive coverage to all pool members.

The Star Pool board never responded, he said. ■

Star Pool

Continued from page 25

suing AJIR's certificate of insurance, the Indiana Insurance Department surveyed "about 20" states and found that 17 would have allowed AJIR to domicile.

Mr. Dillon also said that work for AJIR by Klineman, Rose, Wolf & Wallack, a law firm that has represented Mr. Dillon's family, was unrelated to department approval of AJIR.

"It's a large law firm," he said.

Indiana, said Mr. Flynn, is a "good regulatory state with up-to-date directors and officers liability laws, which was important."

The NSA's role

"The NSA's involvement in the AJIR will be different from its involvement in The Star Pool. They are now properly licensed and we have worked with them to enhance their level of professionalism," Mr. Flynn said.

For example, the NSA had been performing some insurance functions without an agent or broker license.

"State regulators had problems with the NSA marketing The Star Pool directly" to its members, "and we did too," said Mr. Flynn.

Now, the NSA has formed a Virginia-licensed agency, National Services Associates Inc., located at its Alexandria, Va., headquarters, said Mr. Dickman.

Mr. Flynn noted that "our program design is to use the local independent agent as much as possible. However, under the Risk Retention Act, it will allow the NSA to market AJIR directly" to its members and prospective members, he added.

Mr. Flynn said that J.W.F.'s administrative agreement with the NSA has also "materially altered the scope of (the NSA's) duties," but he would not elaborate.

In the future, J.W.F. "will look very closely at converting the group to a surplus lines carrier, but timing-wise, with respect to all of the states we want to operate in, it would have slowed us down" to have pursued that option at this time, Mr. Flynn said. Compliance with state licensing laws for a surplus lines insurer is a time-consuming process, he noted. ■

Pool reforming after state investigations

By LINDA J. COLLINS

In its nearly four-year history, a self-insurance fund writing police professional liability insurance for National Sheriffs' Assn. members has run into problems with regulators in at least 12 states.

Ten states either have ordered The Star Pool to cease insuring municipalities or have warned that the pool is unauthorized to operate. And, three states are investigating the pool for allegedly issuing unauthorized coverage.

In Michigan, which has barred the pool, regulators have had problems with the sheriffs' association "on various insurance programs it has sponsored dating back 15 years," said Harry Iwasko, general counsel for the state Insurance Bureau.

"I don't know that the sheriffs' association are bad guys. It's just that their insurance practices are flaky and weak," said Mr. Iwasko.

The sheriffs' association and Star Pool directors blame the pool's organizer and administrator, American Risk Pooling Consultants Inc. of Southfield, Mich., for organizing a self-insurance pool rather than a risk-retention group or captive.

But ARPCO President J. Michael Feeney contends that the NSA sponsored The Star Pool beginning in mid-1986 with full knowledge that it might run into regulatory problems.

A 1987 letter to Mr. Feeney from an attorney then representing The Star Pool confirms this and notes that the NSA said it was prepared to "use its influence" to get exemptions or waivers from state regulators should the need arise.

Star Pool directors formed a risk retention group last month to carry on the pool's business because "it became evident that another form of doing business had to be entered into," said Robert A. Fineman of Honigman, Miller, Schwartz & Cohn in Detroit, an attorney for Star Pool directors.

In a Dec. 1, 1989, letter to all Star Pool members and agents, the board discusses its run-ins with regulators and lays out grievances against ARPCO, including the choice of a pool and ARPCO's forming an insurer which would compete with the NSA-sponsored group.

We "embarked upon a course based upon bad advice, and in retrospect, that was a mistake. We acted in your best interests and had been misled," the letter said.

"We took a deep breath, stepped back, and upon reliable advice, decided to redomicile the reciprocal in Indiana, and to change the coverage to a standard, more conventional 'claims-made' form. In addition, the funding structure of this new reciprocal will be based on sound actuarial principles and in accordance with standard insurance accounting practices," the letter added.

The pool had issued claims-paid coverage, which covers members only for claims resolved while they participate in the pool. Members leaving the pool are financially responsible for all pending claims and incurred-but-not-reported losses.

However, The Star Pool program provided some refund of accumulated reserves to members that left.

The Star Pool board also distributed copies of this letter to regulators at an informal Dec. 5 session at the National Assn. of Insurance Commissioners' Winter Meeting in Las Vegas, Nev.

"The tone of the letter is, 'Golly gee, we're having regulatory problems,' with the implication being that they were not aware of the situation," said ARPCO's corporate counsel, Larry J. Spilkin of Spilkin & Shapiro in Southfield, Mich.

ARPCO's Mr. Feeney maintains that in early 1986, the NSA "came to us to ask for a solution to their problem. We suggested that a pool could be the answer."

At that time, "there was no question in our minds that a pool was going to run into problems in some jurisdictions. We told the NSA that the ideal solution would be a captive, but they didn't have the money to form a captive," Mr. Feeney added, referring to the capitalization of an insurance company in a domestic domicile permitting captive insurers (see story, page 1).

The pooling consultants "met with the Vermont Insurance Department, as early as late fall of 1986, to discuss the reformation of The Star Pool into a risk retention group," said Mr. Feeney.

Vermont did not permit use of a reciprocal as a risk retention group, but regulators there told ARPCO about states that did, he said.

Star Pool directors confirmed that they "were aware of the fact that regulatory inquiries might arise," according to a May 1987 letter to Mr. Feeney from attorney Michael J. Mullen of Crowell & Moring in Washington, who then represented The Star Pool. "But they were willing to accept these risks in order to serve the insurance needs of their members," he wrote.

Mr. Mullen wrote that he had been told that the pooling consultants, the sheriffs' association and The Star Pool had agreed that "if regulatory questions were to arise, the National Sheriffs' Assn. would use its influence and the influence of its state members to obtain an exemption or waiver of state insurance regulations."

ARPCO has "been recommending for three years or more" that the NSA and The Star Pool board convert the pool into an insurance company or risk retention group, said Mr. Feeney.

And after ARPCO instructed the NSA "not to solicit business in some states, they did so anyway," he said.

NSA scrambles for cover

The NSA sought an administrator to set up a self-insurance pool for its members in 1986 when other markets for coverage dried up.

From 1979 until late 1984, the NSA had sponsored a police professional liability program underwritten by Ideal Mutual Insurance Co.

Only months before Ideal would be placed in rehabilitation, the New York-based insurer canceled the program and withdrew from the police liability insurance market. Ideal was placed in rehabilitation in December 1984 and declared insolvent in February 1985 (*BI*, Jan. 21, 1985).

With the cancellation of the Ideal program, the NSA asked Richmond, Va.-based Markel Service Inc., a wholesale insurance brokerage specializing in police and law enforcement liability risks, to take over the program.

The sheriffs' 'insurance practices are flaky and weak,' says a Michigan regulator.

Markel was managing general agent for a police professional liability program underwritten by St. Louis-based National Casualty Co. (*BI*, Feb. 10, 1986).

"As it turned out, we found that a number of their sheriffs departments would not qualify for our program. We are known as a tough underwriter," said James W. Chapman, senior vp of Markel's governmental programs division.

Sheriffs and police departments that failed to meet Markel's underwriting criteria did so "primarily due to lack of internal policies and procedures, both for road patrol and jails," he explained.

"Often very little was given (law enforcement officers) in the way of written instructions," he said.

"The training was also a little loose. Often they didn't train officers, and when they did, they didn't document it," Mr. Chapman said.

Unacceptable medical standards, safety procedures and legal standards prevented some jails from meeting underwriting criteria. Some were also denied coverage because they failed to separately classify prisoners within holding cells, in violation of federal laws requiring jails to protect inmates from each other, he said.

Markel required risks to meet individual underwriting criteria, but Ideal Mutual had charged sheriffs and police departments nationwide a flat fee based on size and number of law enforcement officers, without requiring individual underwriting.

Because many members did not meet Markel's underwriting criteria, the brokerage was not "able to provide the NSA with the same insurance revenues that Ideal Mutual had," Mr. Chapman said.

Of those that received coverage through Markel, at least 20% to 30% stayed with the Markel for two to three additional years, Mr. Chapman said. However, Markel later lost many of those accounts to The Star Pool after the NSA urged them to join the pool.

The NSA received about $600,000 in compensation in 1989 from The Star Pool, according to ARPCO. Gross Star Pool contributions in 1989 were more than $3.5 million and the sheriffs group received about 16.5% of the gross contributions.

The sheriffs association was "very dependent" upon the income generated by that program, Mr. Chapman said. "A large percentage of the NSA's budget comes from their police professional liability program."

States act against pool

Star Pool directors and the administrator of the new Indiana risk retention group—called American Justice Insurance Reciprocal (A Risk Retention Group)—contend that when the pool was formed in 1986, the NSA was not aware it would be barred from insuring members in some states.

"Why would the sheriffs enter into an agreement like this when they knew there were going to be regulatory problems?" asked Thomas A. Flynn, executive vp of J.W.F. Specialty Co. Inc. in Indianapolis. "They fully expected they weren't going to be violating any federal or state laws."

The Star Pool has not been accused of violating federal laws.

ARPCO formed The Star Pool under an intergovernmental pooling law in Michigan, and the NSA began to promote the pool to its members.

Within a year, the plan began to unravel.

The sheriffs association "does not come within (Michigan's) definition of a municipal corporation" and "cannot form a pool under the Michigan law," Attorney General Frank J. Kelley wrote in May 1987.

"Even a valid intergovernmental pool under Michigan law could not engage in insurance outside the boundaries of the state of Michigan," wrote Mr. Kelley. "Star Pool is an illegal, unauthorized insurer, both within and without the state of Michigan."

ARPCO and the sheriffs group plodded on, reforming, reconstituting and redomiciling The Star Pool in Illinois in April 1987.

Several months later Mr. Kelley informed the NSA that the redomiciled Star Pool was still not authorized to enter into intergovernmental insurance contracts in Michigan.

The pool reorganized under Illinois' Intergovernmental Cooperation Act, which allows local government units to pool their losses without regulatory supervision.

"According to that act, they can share risks and they have to report to no one," said Etta Mae Credi, assistant deputy director in the Corporate Regulations Department of the Illinois Insurance Department.

However, the pool has run into regulatory difficulties in other states, particularly those that expressly prohibit interstate pooling of municipal risks:

- New York regulators are investigating Star Pool activities in the state, which "precludes municipalities from sharing risks except where authorized by Legislature," explained Richard Hsia, deputy superintendent of the state Insurance Department.

New York also prohibits use of The Star Pool's "claims-paid" policy.

"Claims-paid is not a meaningful coverage. It causes conflicting opinions on how the claim should be resolved," said Mr. Hsia. He described claims-paid coverage as "immobilizing, pernicious and untenable."

ARPCO defends the "claims-paid" policy as viable and as the only option then available to the NSA (see story, page 24).

Mr. Hsia and other New York insurance regulatory officials will discuss these problems with the NSA and The Star Pool/AJIR board of directors Feb. 7 and with ARPCO on Feb. 9.

- The Star Pool is also being investigated in Vermont, where the state Department of Banking and Insurance issued a cease and desist order against the pool in August 1988 because it was not authorized to do business in the state.

At the time, regulators also ordered the pool to refund $50,000 in capital contributions made by five Vermont municipalities, but the money has not yet been recovered, said Jeffrey P. Johnson, commissioner of banking and insurance.

- Late last week, after a six-month investigation, the Maine Bureau of Insurance ordered The Star Pool to immediately cease doing business in the state. The pool also was ordered to either defend and pay claims until municipal members can secure retroactive coverage from authorized insurers or allow members to withdraw vested reserves from the pool.
- In Ohio, where the pool has generated its largest premium volume, authorities are investigating the pool after learning that it was operating in the state last fall, despite a 1987 attorney general's opinion that interstate pooling of municipal risks is not authorized in Ohio, said Kurt Weiland, general counsel for the Ohio Insurance Department.

These are not the only states where The Star Pool has floundered.

Ohio, Iowa, South Dakota and Mississippi together account for 40% of the pool's premiums, according to the materials NSA recently distributed to state insurance regulators.

But, Mississippi authorities notified The Star Pool "almost three years ago" that "in order to write municipal business in this state, they had to meet certain reserve requirements," said Deputy Insurance Commissioner Charles Pace.

Regulators say they have heard nothing from the pool, which was never authorized to write coverage in Mississippi. Star Pool directors, however, released documents showing that The Star Pool wrote business in that state.

Iowa "did look into" The Star Pool, but regulators lack jurisdiction over its operations because state law allows municipalities to self-insure liability risks, according to an executive assistant in the Iowa department.

South Dakota has taken no administrative action against the pool, officials there said.

Texas insurance regulators would not discuss their investigation of The Star Pool.

"Under state laws, information from an open investigation is not public," said Sandra Autry, director of the Unauthorized Insurer Investigation Department for the state Board of Insurance.

Georgia issued a cease and desist order against the pool in January 1987 for "transacting the business of insurance without a subsisting cer-

Continued on next page

Continued from previous page
tificate of authority."

And, while "they were supposed to have divested themselves of all their Georgia members" at that time, regulators recently discovered that The Star Pool was still operating in the state because "they haven't found someone else to insure the members," said an Insurance Department spokesman.

Anticipating that AJIR, the Indiana risk retention group, will obtain Insurance Department approval, Georgia has not taken any action against The Star Pool, a department spokesman said.

In July 1987, the Kansas Insurance Department advised The Star Pool that it "should do nothing further to transact business in the state," and that it should not renew any Kansas members it had on its books, said Ray Rathert, Fire and Casualty Division supervisor.

In 1987 the Kansas Legislature clarified a state statute concerning interlocal agreements to permit only intrastate pooling of municipal risks, he explained.

Authorities in Nebraska and Colorado issued cease and desist orders against The Star Pool in 1988 because it was not licensed or approved in those states.

Colorado also found "underlying problems with the contract and with the pool's settlement provisions and benefits," said an Insurance Department spokesman.

And, the pool reached an agreement with the Virginia Bureau of Insurance in 1988 not to do business in that state, according to a bureau spokeswoman.

Today, at least eight commercial insurers are writing police professional liability insurance, according to Mr. Chapman at Markel.

While the sheriffs departments that were rejected for insurance by Markel in 1986 still would not meet its underwriting criteria, they might be accepted by other insurers or by a number of municipal pools that have since been formed, according to Mr. Chapman. ■

Windstorm losses

Continued from page 3
The result, underwriters say, will be further pressure on a retrocessional market already tightening from the series of billion-dollar losses last fall: Hurricane Hugo, the earthquake in California and the Phillips Petroleum Co. refinery explosion in Pasadena, Texas.

The retrocessional market provides coverage for reinsurers in the event of major losses. Reduced capacity in that market would force reinsurers either to pay much higher prices for catastrophe protection or to retain more of their exposure.

This in turn could lead to an overall tightening in the catastrophe insurance market, some underwriters say.

With capacity in the retrocessional market already down sharply during the renewal season, several reinsurance companies and Lloyd's of London syndicates failed to place all their reinsurance before 90A hit, according to several sources.

"A lot of reinsurance hadn't been placed" because the excess-of-loss reinsurance on excess-of-loss reinsurance market "is already in a state of disarray," said Tony Dodd, treaty underwriting manager for British & European Reinsurance Ltd., a subsidiary of Commercial Union Assurance Co. P.L.C.

The retrocessional market will tighten further as insurers rush to buy additional reinstatement protection for their catastrophe coverage, he predicted.

Catastrophe reinsurance usually protects a ceding company for one disaster, plus one reinstatement for another disaster, though some insurers have negotiated two or three reinstatements for the coming year.

However, companies and syndicates scrambling to purchase third and fourth reinstatements now are paying increased prices, underwriters say.

The impact of 90A will be felt during the July renewal season, particularly in the retrocessional market, said Patrick Martin, vp of French broker V.A.P. d'Entreves & Co. S.A. in Paris.

Prices are moving up "very rapidly" in the retrocessional market, and it will only be a matter of time before increases occur in the primary reinsurance market, said one Lloyd's underwriter.

And, increased retentions and co-reinsurance throughout the LMX market that were negotiated during January renewals will mean some Lloyd's syndicates and London reinsurance companies will suffer severe storm losses, noted a Lloyd's LMX broker.

Following the January renewals, non-marine underwriters must retain 20% of their wind-related and catastrophic exposures for the first two major losses in the year, underwriters say.

However, the increased retentions and co-reinsurance requirements mean that windstorm losses will not spiral through the LMX market as long as other major losses have, several brokers and underwriters agree.

The spiral is created by underwriters reinsuring each other many times on different excess-of-loss layers, which often passes losses around the market for years.

For example, claims stemming from Hurricane Alicia in 1983 still are being settled by some LMX underwriters.

British insurers expect U.K. claims stemming from the storm will not exceed the 1.1 billion pounds ($1.85 billion) in claims they paid out after the October 1987 storm.

"The first indications are that the loss is serious, but that it is not going to exceed" 87J's toll, said an Assn. of British Insurers spokesman.

Some underwriters expect smaller losses.

For example, one Lloyd's of London reinsurance underwriter estimated U.K. losses at 700 million pounds ($1.18 billion).

"The loss in the U.K. likely will be between 50% and 75% of the 87J loss judging from the claims that have come in so far," said Mr. Dodd of British & European Re.

But 90A was a "classic European windstorm," with much greater damage throughout northern continental Europe than the 1987 storm, he said.

Reinsurers are comparing 90A with a 1976 windstorm named Capella that swept across northern, western and central Europe, killing 82 people and causing an estimated $1.3 billion in insured damage, according to figures from Swiss Reinsurance Co.

West German insurers expect 90A losses to exceed the estimated 5.4 billion deutsche marks ($3.2 billion) in insured losses from 87J.

Munich Reinsurance Co. A.G. of Munich, West Germany, expects that total insured damage across Europe to exceed $3 billion and says the storm will cost Munich Re more than the 100 million deutsche marks ($59.4 million) the reinsurer has paid in 87J-related claims.

One reason for the higher 1990 loss is that several large U.K insurers in 1987 had little reinsurance protection, but since the 1987 storm they have purchased more coverage, resulting in a larger loss to Munich Re.

As a result, the January windstorm will be nearly as costly to Munich Re as Hurricane Hugo, which battered the Southeastern United States last September. Munich Re expects to pay at least 150 million deutsche marks ($89.1 million) in Hugo-related claims.

Estimates of Hurricane Hugo's insured damage range upwards from at least $4 billion (*BI*, Oct. 2, 1989; Sept. 25, 1989).

Munich Re expects that the January windstorm also will be costlier than Hurricane Gilbert, which blasted the Caribbean and the Gulf of Mexico in September 1988.

Munich Re has paid about 100 million deutsche marks ($59.4 million) in Gilbert-related losses. The hurricane caused an estimated $600 million to $1 billion in total insured damages (*BI*, Nov. 14, 1988).

A Munich Re spokesman cautions that gathering loss data after a catastrophic storm is time-consuming work and notes that his company took three years to obtain accurate loss figures after the 1983 Hurricane Alicia.

In the northern region of West Germany—the area of the country hit hardest by 90A—there was less than 1 billion deutsche marks ($593.8 million) of total insured damage, according to Allianz A.G., which controls 16% of the market in the region.

While most of the damage was to homes and automobiles, the insurer has received a claim from a commercial policyholder for more than 300,000 deutsche marks ($178,140) and several claims from other commercial policyholders that range between 30,000 and 100,000 deutsche marks (between $17,814 and $59,380).

French insurers also expect heavy losses.

Property damage there probably will "equal at least the 3.3 billion French francs ($577 million) figure for the 1987 storm, since first reports indicate seemingly more important damages," said Catherine Roques, a claims evaluator for the Assemblee Pleniere des Societes D'assurances Dommages (Plenary Assembly of Property Insurance Companies) of Paris.

However, Mr. Martin of V.A.P. d'Entreves said the French market is estimating that the windstorm caused about 2 billion French francs ($349.7 million) of insured losses in France.

Paris-based insurer Union des Assurances de Paris anticipates it will receive 10,000 claims totaling 30 million to 40 million French francs ($5.2 million to $7 million), said Robert Froidefond, claims manager.

UAP processed 60 claims from commercial policyholders last week.

In Northern France, which was hit hard by 90A, the Lille office of Paris-based Groupe des Assurances Nationales already has received about 4,000 claims from shop owners, farmers and private individuals, said Monique Masset, office manager.

Paris-based Assurances Generales de France last week had received more than 30 claims from large corporate clients—those with more than 250 employees—mainly for storm-damaged roofs.

AGF estimates the total loss will be smaller than those generated by 87J because the January storm damaged mostly personal property.

Belgian insurers say last month's storm caused two to three times more insured damage than the last two major storms to blast the country—or up $170.4 million of insured damages.

In each of those storms—in November 1983 and November 1984—insured damages totaled about 2 billion Belgian francs ($56.8 million). The country was not hit hard by 87J.

Although the January storm could spell a "major loss" for the Belgian insurance market, "in the past years we have been relatively spared from disasters so insurance companies have been able to make reserves to compensate for this kind of loss," said a spokesman for the Union Professionnelle des Entreprises d'Assurance in Brussels.

The spokesman denied reports in the national press that no one would be covered under their insurance policies because the winds exceeded a 170 kilometers per hour (105.4 mph) standard in Belgian policies.

Very few policies contain such an exclusion, said the UPEA spokesman.

And, under a 1988 law, insurers are required to cover up to 100% of damage caused by storms when policies do not contain windstorm damage exclusions.

Previously, insurers indemnified policyholders only 10% of their windstorm damage.

Meanwhile, European Community has given $2.6 million to victims of the January storm—more than half of its emergency disaster fund for the entire year.

Britain received the lions' share —$900,000. The remainder was divided among storm victims in The Netherlands, France, Belgium, West Germany and Denmark.

EC officials admitted that the aid was more of a "symbolic gesture" and did not expect it would seriously help repair all the damage.

The EC puts aside a special emergency fund every year—set at $4 million for 1990—to help victims of floods, earthquakes, and other natural disasters.

●

Freelance reporters Denise Claveloux in Brussels, Belgium; Isabelle Berglas in Paris; and Miriam Widman in Frankfurt, West Germany, also contributed to this story.

'A lot of reinsurance hadn't been placed' because the excess-of-loss reinsurance on excess-of-loss reinsurance market 'is already in a state of disarray,' says Tony Dodd of British & European Reinsurance Ltd.

Wit weathers deadly storm

LONDON—Reinsurers, caught off guard by the January windstorm in Europe, have not lost their sense of humor.

Among the terms they have coined for their colleagues:

- "Charlie Chaplins" or reinsurers "stuck in the 20s," meaning only 20% to 30% of their retrocessional program was placed when the storm hit.
- "Rock 'n' rollers" or reinsurers are "stuck in the 50s," referring to those with just over half of their retrocessional programs placed.

—By Carolyn Aldred

Update

Nuclear operators face suits

Continued from page 2
Dow operated the plant from 1952 to 1975, while Rockwell operated it from 1975 to the end of last year, the AFL-CIO says.

The community residents seek $250 million in compensatory damages on behalf of property owners and businesses in the area and $300 million in punitive damages.

A Dow spokeswoman said that under terms of the contract Dow had with the Atomic Energy Commission, since absorbed by the Department of Energy, the AEC would be responsible for defense and indemnification of certain claims. But it still must be determined whether that agreement applies to these lawsuits.

A Rockwell spokesman could not be reached for comment.

Pipeline workers not certified

TRENTON, N.J.—Two Exxon Corp. workers operating the pipeline that leaked about 500,000 gallons of heating oil into a waterway between New Jersey and New York last month were not properly certified, contends a New Jersey state agency.

New Jersey already is suing Exxon on behalf of the agency for unspecified damages for allegedly violating several environmental laws (*BI*, Jan. 22).

John Racz, manager of the Exxon Bayway refinery near the spill site, confirmed the workers were not certified but said Exxon was checking whether the workers required such certification.

Briefly noted

The U.S. Supreme Court late last month refused to review an 8th U.S. Circuit Court of Appeals ruling that Iowa can impose licensing requirements on Arizona-domiciled **Swanco Insurance Co.** if it sells insurance to risk purchasing group members who reside in Iowa (*BI*, July 24, 1989). . . .The United Auto Workers union last week asked the U.S. Supreme Court to review a 7th U.S. Circuit Court of Appeals ruling that Milwaukee battery maker **Johnson Controls Inc.** may prohibit all fertile women from holding jobs that pose a significant lead poisoning hazard to unborn children (*BI*, Oct. 16, 1989). . . .Employees can defer up to $7,979 to their **401(k) salary reduction plans** this year, up from the 1989 limit of $7,627, the Internal Revenue Service announced. In addition, the maximum annual benefit that can be funded through a qualified defined benefit pension plan will be $102,582 this year, up from $98,064. However, the current $30,000 per-participant limit on annual contributions to defined contribution plans remains unchanged. . . .The liquidator of insolvent **Mission Insurance Group Inc.** last Friday asked the California Supreme Court to review an appellate court ruling allowing reinsurers to offset amounts they owe Mission units against amounts the units owe them. The California Court of Appeals earlier last week refused to reconsider its ruling (*BI*, Jan. 8). Separately, a Los Angeles Superior Court judge has scheduled a March 30 hearing on an MIG reorganization plan. . . .A federal judge has set aside a $17.5 million **legal malpractice award**—the largest ever—against the Houston-based firm of Sewell & Riggs and ordered a new trial (*BI*, Jan. 15).

Asbestos damage

Continued from page 1

the litigation is being used to promote the political ambitions of the attorneys general, 11 of whom are up for re-election this year.

"This is an attempt by the attorneys general to create publicity," said Irene Warshauer, an attorney with Anderson, Kill, Olick & Oshinsky in New York, who represents asbestos manufacturers.

"This will capture a lot more headlines" than a lawsuit filed in a state court or U.S. District Court, agreed Chuck LaGrave, senior litigation counsel with Fibreboard Corp. in Concord, Calif., one of the defendants named in the attorneys general's lawsuit.

However, Mr. Ellis said filing the lawsuit with the Supreme Court "was purely a strategic consideration."

"We looked at filing in federal district court," Mr. Ellis explained. "But it is very uncertain a federal district court would have jurisdiction." He noted that the lawsuit does not raise any federal issues.

The only alternative for the state attorneys general would be to file individual state actions.

This would result in a "race to the courthouse," said Renea Hicks, special assistant attorney general for Texas.

And, a spokesman for the New York Attorney General's Office pointed out that "none of the alternative forums would provide the states with an opportunity to sue all the defendants" in a single court.

State attorneys general were able to file their antitrust litigation against insurance industry defendants in U.S. District Court in San Francisco because the suit was based on federal law. The attorneys general's allegations against the asbestos manufacturers are based on state tort laws.

Washington's Mr. Ellis candidly admitted that he is not convinced the Supreme Court will hear the litigation, noting: "It is not clear-cut."

In fact, legal experts and defense attorneys say there is very little chance the U.S. Supreme Court will agree to hear the attorneys general's suit.

"The Supreme Court tends not to hear such cases. The court's disposition is to farm out such cases" to lower courts, said Akhil Amar, a professor at Yale University Law School in New Haven, Conn.

While the Supreme Court has, on occasion, accepted original jurisdiction, those cases have tended to involve disputes between states, like controversies involving borders or water rights, rather than legal actions involving states and private parties, pointed out Edward Lazarus, a research scholar at Yale.

"I sincerely doubt the Supreme Court will honor the petitions because there are other courts more appropriately staffed to handle this litigation," said Fibreboard's Mr. LaGrave.

"The chances of this case being handled in the U.S. Supreme Court range from slim to none," said Andrew Berry, an attorney with McCarter & English in Newark, N.J., who has been involved in asbestos litigation for more than a decade.

Product liability expert Victor Schwartz of Crowell & Moring in Washington, D.C., agreed: "The Supreme Court is simply not going to take on this type of case."

Mr. Schwartz pointed out that the questions involved in any asbestos property damage action are very fact-specific, including: what type of asbestos is in the building, what condition the asbestos is in and who manufactured the asbestos.

"The Supreme Court is not going to get into a massive fact-finding investigation, and that's what these cases are all about," he said.

The lawsuit was filed directly with the Supreme Court under a 1948 federal rule that allows the high court to share jurisdiction with lower federal courts over lawsuits involving disputes between states and citizens of other states.

However, the Supreme Court is very reluctant to exercise its original jurisdiction, explained Mr. Schwartz.

"The prior precedents (in which the court has exercised its original jurisdiction) all involve disputes between states," he said. "The court only invokes its original jurisdiction when there is a significant dispute between two states that cannot be resolved by any other court.

"This lawsuit is pure hokum," he said. "This is the recasting of an ordinary tort claim in order to fit it into the court's formula for original jurisdiction."

Ms. Warshauer agreed: "There is no jurisdiction in the U.S. Supreme Court."

She said the litigation would have been more appropriately filed by each attorney general in his own state court.

In fact, seven state attorneys general who did not join this lawsuit have commenced similar litigation in their respective state courts. These states are: Kentucky, Maryland, Minnesota, Mississippi, South Carolina, Virginia and West Virginia.

Attorneys predict the high court will either dismiss the litigation or send it down to a lower federal court for review.

"I think they will dismiss it," said Mr. Schwartz.

However, asbestos attorney Mr. Berry said, "I think the litigation will end up in some U.S. District Court somewhere."

Fibreboard's Mr. LaGrave predicted the litigation "would spend many, many years in the federal court system—if it is not initially dismissed."

Even if the lawsuit is heard by some court, asbestos manufacturers believe the allegations in the suit are "very defensible," Mr. LaGrave said.

The attorneys general allege in the suit that the defendants "knew, or should have known, of the link between exposure to asbestos fibers and disease at the time of the manufacture, distribution and marketing of their asbestos-containing products to the states."

The complaint also alleges the asbestos manufacturers failed to warn the states of the dangers of asbestos and "thereby breached their duty to provide safe products to the public."

The lawsuit says that asbestos in public buildings is causing "a national health asbestos problem."

"A disturbance or deterioration of asbestos-containing products can cause the release of asbestos fibers into the air where fibers may be inhaled by building occupants and workers," the suit alleges. "Once these asbestos fibers enter the lungs, disease may ensue."

"The products installed in state buildings simply were not safe and the states must expend significant sums of money to provide a safe environment," said Washington Attorney General Ken Eikenberry, who filed the lawsuit.

"We are hoping the Supreme Court will agree that the companies should be held liable for the costs of abating the asbestos hazard," said the spokesman for the New York Attorney General's Office.

However, Mr. LaGrave said the claims raised by the states in the lawsuit are similar to claims raised in many of the asbestos property damage actions already filed by public entities. And, "very few of the property damages cases have gone against the manufacturers," he said.

In fact, many observers point out that recent medical and scientific evidence shows that asbestos in buildings should be left undisturbed, because a greater health hazard is created by moving the material than by allowing it to remain in place.

"The trend of the medical evidence seems contrary to the states' litigating position," said Mr. Berry. "Unnecessary rip-out may create a more dangerous situation than simply maintenance."

"Recent medical articles continue to show there is just no hazard here," agreed Ms. Warshauer. "I don't think the lawsuit has any merit."

Mr. LaGrave pointed to an article in the January 1990 issue of Science magazine, which states that the dangers of asbestos in buildings have been greatly exaggerated.

However, the spokesman for the New York Attorney General's Office maintained that "the use of asbestos-containing materials in buildings can be a hazard to public health."

"The fact that the asbestos is undisturbed today does not mean it won't be disturbed in the future," added Washington's Mr. Ellis.

"Courts in property damage actions generally have held that asbestos constitutes a health hazard if it is friable or can become friable," said Mr. Ellis.

Putting aside the merits of the claims raised in the lawsuit, Mr. Schwartz questioned the legal soundness of the states' allegations.

"A lot of things placed in buildings 30 years ago must be replaced or they will create a health hazard, such as electric wiring," said Mr. Schwartz. "If the manufacturers of these products are going to be held liable in tort law, it would be a vast change from existing law.

"There is no actual damage in many of these cases," he said. "These claims are seeking to recoup the costs of what is essentially upkeep costs."

In their lawsuit, the states attempt to invoke a seldom-used legal theory of "restitution." Their premise is that the asbestos manufacturers have a duty to remove the asbestos, and also that any amounts paid by state governments to remove asbestos were paid with the expectation of reimbursement.

'This lawsuit is pure hokum, This is the recasting of an ordinary tort claim in order to fit it into the court's formula for original jurisdiction,' says product liability expert Victor Schwartz of Crowell & Moring in Washington, D.C.

"Courts are very reluctant to award restitution costs," noted Mr. Schwartz. "I know of no holding where a restitution claim was allowed in this context."

Texas' Mr. Hicks and several other observers noted that the states may have been motivated to file this lawsuit out of fear that the federal government may soon force public entities to remove asbestos from all public buildings.

In the lawsuit, the attorneys general note that the federal government is considering extending the Asbestos Hazard Emergency Response Act of 1986, which applied to shcool buildings, to require the removal of asbestos from all public buildings.

However, Fibreboard's Mr. LaGrave said suing asbestos manufacturers is not the answer to the states' problems.

"The lawsuit is really misplaced," he said. "The first thing the states should do is attempt to repeal these (asbestos) regulations if they are worried about them."

Ms. Warshauer agreed: "The states would be better advised to spend their money improving public services."

Officials of the major insurance industry trade organizations and of several large property/casualty insurers declined to comment on the suit.

London underwriters also generally declined comment, though one leading Lloyd's of London casualty underwriter noted that "a lot of the (asbestos) companies don't have any insurance left, or very little anyway, because most of it has gone toward bodily injury claims."

Meanwhile, at least two state risk managers said last week that they beleived the attorneys general acted correctly in attempting to recover damages from asbestos producers.

A serious asbestos removal problem at a library in Augusta, Maine, a few years ago prompted Timothy Smith, the state's risk manager, to encourage the Maine attorney general to seek joint legal action against asbestos manufacturers.

"If there is any money to be had, states shouldn't fight among themselves for it and they should share the cost of the lawsuit, too," said Mr. Smith, who is the immediate past president of the State Risk & Insurance Managers Assn.

Bond issues approved by Maine taxpayers have helped generate at least $27 million to finance asbestos removal from the library and other public buildings, and "very conservative" estimates show that at least another $100 million is needed to complete the job, he said.

"The state has a fiscal responsibility to taxpayers to look at all options beyond tax dollars when it comes to paying" for asbestos removal, added Yvonne Norton Leung, Nebraska's risk manager.

The attorneys general's lawsuit originated from cooperation among states seeking to recoup money from the Manville Property Damage Trust Fund, explained the spokesman for the New York Attorney General's Office.

That trust was established by the bankruptcy court handling Manville Corp.'s Chapter 11 reorganization to settle property damage claims pending against the company.

"Out of that developed organically a feeling that Manville may be the largest asbestos manufacturer, but not the only one, and it would be appropriate to work together to seek compensation from the other companies," the spokesman said.

In addition to Washington, New York and Texas, other states that are plaintiffs in the lawsuit are: Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont and Wyoming.

In addition to Fibreboard, other defendants named in the action are: W.R. Grace & Co., National Gypsum Co., United States Gypsum Co., USG Corp., American Biltrite Inc., Armstrong World Industries Inc., Azrock Industries Inc., Basic Inc., Carey-Canada Inc., The Celotex Corp., Certainteed Corp., Crown Cork & Seal Co. Inc., Eagle-Picher Industries Inc. and The Flintkote Co.

Also, GAF Corp., Georgia-Pacific Corp., H.K. Porter Co. Inc., Keene Corp., Kentile Floors Inc., Owens-Corning Fiberglas Corp., Owens-Illinois Inc., Pfizer Inc., Raymark Industries Inc., Sprayed Insulation Inc. and Turner & Newall P.L.C. ●

Alabama et al. vs. W.R. Grace et al., U.S. Supreme Court, No. 116 Original.

Bulgarian oil spill

Continued from page 3

However, the tanker's master and chief officer were detained by the Bulgarian authorities until a court bond for $3 million was provided by the protection and indemnity club on behalf of the ship's owner.

"The wording of this guarantee was specific in that it provided that payment would only be made for real and documental economic losses," the letter explained.

Early in 1988, a summons was sent to the vessel's Greek agents, Vardinoyannis Group of Piraeus, detailing a claim of $3.9 million. This included economic damages from tourism of $1.3 million and sanctions of $1.1 million.

However, "the ITOPF representative who attended the site of the spill shortly after it occurred was of the opinion that cleanup costs of the beaches should not exceed $30,000-$40,000," Mr. Wright said in the letter.

In addition, the club obtained evidence that there was "no risk whatsoever to the health of the population. The beaches were not closed and remained open for tourists and in fact 1988 was declared a record year for tourism. . . .There was no decrease in the level of fish catches (and) no material evidence of damage to the flora and fauna," the P&I club's letter claimed.

Meanwhile, in the fall of 1988 "the municipality advised the club's lawyer that the original claims had been withdrawn and a fresh summons was issued on the basis of the Russian Methodika. This is a notional calculation based on a volume of the allegedly polluted area and the amount of time it takes to return to its natural condition," wrote Mr. Wright.

Using the Methodika calculation, the Burgas Regional Court awarded damages of 3.15 lev ($3.7 million). This figure was affirmed by the Bulgarian Supreme Court in Sofia.

"No consideration was given to an allowance for the previously polluted condition of the Black Sea waters which has concerned bordering countries for many years," Mr. Wright said in his letter.

In addition, "the Methodika, in order to be incorporated into the law of Bulgaria, should be published in the State Gazette. No such publication has been made," he said.

"In summary, this is a relatively minor oil spill which at its source was well-contained and resulted in minimal pollution in the vicinity of the terminal. The club's position has always been that it is willing to pay for any quantified damages and costs associated with this pollution.

"However, this is a blatant attempt by the municipality to obtain hard foreign currency by a method which has no legal precedent or recognition in Bulgaria but is being upheld by the judiciary," Mr. Wright concluded. ■

California

Continued from page 2

regret that it is necessary to continue the withdrawal of certain subsidiaries from the California market, consistent with the position we have taken since November 1988."

The Travelers units now plan "to pursue an orderly withdrawal" from the state.

California Insurance Department officials, who are still studying the decision, were not surprised, said senior staff counsel James W. Holmes.

The decision "seems to say that between the time an insurer files an application to withdraw and the time the commissioner consents to the withdrawal, that the insurer can non-renew policies," Mr. Holmes said.

The court's "one major error" is allowing "insurance companies to cancel or non-renew upon application to withdraw," rather than making companies wait until their withdrawal is approved before beginning to not renew coverage, said Harvey Rosenfield, chairman of Voter Revolt, the Los Angeles-based group that sponsored Proposition 103.

"I don't think insurers will withdraw because it's too lucrative. But the issue is whether we will throw them out" if they fight Proposition 103, he said.

While the department has not yet decided how it will respond to the decision, it could: simply abide by the ruling; seek a rehearing; or seek some sort of legislation to block other insurers from withdrawing, Mr. Holmes said.

Other insurers say they do not expect the decision to trigger a flood of withdrawals.

"This will have no effect on State Farm's position in the California market. We have a very large investment in the state and a large share of the market," said a spokesman for the Bloomington, Ill.-based insurer.

Los Angeles-based Farmers Group Inc. has no plans to withdraw, said a company spokesman. "This has been our home and will continue to be."

Even Mr. Holmes of the Insurance Department said there would not be a "great effect on the market because of the assurance of a fair rate of return for insurers, as was included in the Supreme Court's earlier ruling on Proposition 103. Plus, other conditions in the California market. such as its size, will limit the number of withdrawals."

The decision stems from a case involving November 1988 action by five Travelers subsidiaries in response to voters approval of Proposition 103 (*BI*, Nov. 14, 1988).

On Nov. 7—the day before voters passed the measure—the companies filed applications to withdraw with the Insurance Department.

The companies were: The Travelers Indemnity Co., The Charter Oak Fire Insurance Co., The Travelers Indemnity Co. of America, The Travelers Indemnity Co. of Rhode Island and The Phoenix Insurance Co. (*BI*, Dec. 19, 1988; Nov. 28, 1988).

The filings were accompanied by a letter stating that the applications were conditioned upon the passage of Proposition 103 and that Travelers reserved the right to withdraw the applications if the initiative did not become law, according to court papers.

The filings also stated that each insurer had entered into a contract with The Travelers Indemnity Co. of Illinois under which Travelers of Illinois would assume the liabilities and obligations of the California policies.

State law requires withdrawing insurers to have all policies that are not subject to cancellation either reinsured or assumed by another insurer. However, the law allows the commissioner to waive this requirement if, after examining an insurer's books, the insurer is found to be in solvent condition and capable of running off the existing business itself.

In conjunction with the withdrawal filings, the Travelers subsidiaries also announced that they would begin issuing non-renewal notices to their approximately 22,000 auto policyholders in the state. The companies began mailing the notices on Nov. 9, 1988, the court papers say.

On Nov. 17, 1988, the insurers sent a letter to the Insurance Department outlining their proposed withdrawal plan. The letter said that the companies intended to run off all of their business with the exception of group disability business, which they said would be reinsured and assumed by Travelers Insurance Co.

The letter also asked the commissioner to waive the requirement that the insurers find another insurer to reinsure or assume their unexpired policies, since they intended to meet the obligations of those policies until their expiration dates. At that time, the insurers would not renew the policies, the papers say.

However, the department responded with a letter stating that it could not permit the companies to withdraw as long as they themselves intended to run off the policies, instead of having another insurer assume the business.

The department further argued that since a runoff would mean the companies were still in the business of transacting insurance in the state after their withdrawal, this would constitute the illegal transaction of business by a nonadmitted insurer.

Travelers then decided that one of the insurers—Travelers Indemnity Co. of Rhode Island—would not withdraw from California and would assume all of the subsidiaries' existing policies, but would not renew the policies when they expired, according to court papers.

However, in December 1988, the department served the insurers with notices of non-compliance, alleging that the non-renewal notices sent to their approximately 22,000 auto insurance policyholders were in violation of a mandatory renewal provision contained in Proposition 103.

The provision prohibits insurers from cancelling or not renewing an auto policy unless there has been non-payment of premium, fraud or a substantial increase in the nature of the risk.

At a January hearing, the Travelers subsidiaries argued that they were not subject to the mandatory renewal provision in Proposition 103 because that provision applied only to policies issued or renewed on or after the Nov. 8, 1988, the effective date of the law.

Insurers also argued that the provision did not apply to companies that had submitted applications to withdraw from the state's insurance market and that had tendered their certificates of authority, court papers say.

The department, however, argued that the mandatory renewal provision applied to all auto policies in force on or after Nov. 8, 1988, whether or not the insurer had commenced the statutory withdrawal process.

Insurance Commissioner Roxani Gillespie ruled that the mandatory renewal provision applied to all auto policies in force on Nov. 8, 1988, regardless of any steps taken by an insurer to withdraw and that the Travelers subsidiaries had violated this provision by issuing the non-renewal notices.

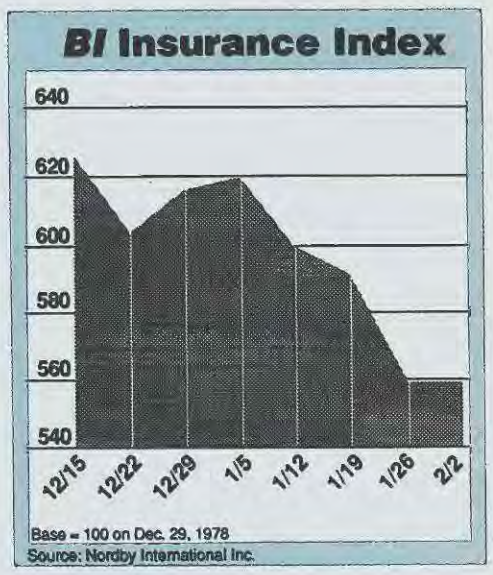
However, the commissioner did note that a withdrawing insurer could eventually be released from the renewal obligation when its existing policies were reinsured or assumed by another insurer.

Travelers then petitioned the state's Supreme Court to review the case.

In the January decision written by Justice Marcus M. Kaufman, the court ruled that Proposition 103 does not prevent insurers from discontinuing business in the state, "and since non-renewal and cancellation are the only methods by which a withdrawing insurer can terminate existing automobile policies, the conclusion is inescapable that the mandatory renewal provision does not apply to insurers that withdraw from the California market."

Meanwhile, in other activities related to Proposition 103, Ms. Gillespie asserted in documents filed in administrative hearings concerning Proposition 103 that the department will continue to press for its original benchmark 11.2% rate of return for all property/casualty lines governed by the law, said Reid McClaren, an Insurance Department attorney.

Although an administrative law judge last November upheld the insurance commissioner's use of the rate-of-return benchmark, insurance industry attorneys say portions of the ruling are vague (*BI*, Nov. 27, 1989). ■



Insurance industry stocks turned up only slightly last week, as the *Business Insurance Index* rose 0.2 points to 559.4 on Feb. 2, from 559.2 on Jan. 26. Advancing issues were led by Safeguard Health Enterprises, up 22.5%; FHP International, up 14.5%; and CNA Financial Corp., up 7.0%. Decliners followed Kemper Corp., down 10.7%; HMO America Inc., down 9.8%; and Orion Capital Corp., down 9.4%. The most active issue during the week was U.S. Healthcare, 3.9 million shares traded. The *BI Index* gained 0.05% for the period; the Dow Jones 30 Industrials were up 1.7%; the Standard & Poor's 500 climbed 1.6%; and the New York Stock Exchange Composite grew 1.4%.

British Issues

Feb. 1 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence	pence
Comml Union	509	29.23	29.0	5.7	513—	497
Genl Accident	1158	17.5	68.0	5.9	1168—	1131
Gdn Royal Exch	257	21.4	15.3	6.0	257—	245
Royal	522	30.7	34.0	6.0	528—	522
Sun Alliance	322	11.9	17.0	5.3	325—	315
Brokers						
Bradstock	236	16.6	10.0	4.2	236—	233
CE Heath	525	14.8	34.5	6.6	525—	518
Hogg Robinson	173	12.1	9.7	5.5	174—	173
Lloyd Thompson	274	18.3	9.3	3.4	276—	273
PWS Holdings	66	10.3	3.3	5.1	66—	66
Sedgwick Grp	295	21.9	16.0	5.4	305—	295
Steel Brri Jones	285	17.8	15.3	5.4	305—	295
Willis Faber	275	19.4	15.3	5.6	275—	274

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

BI Industry Stock Report

JANUARY 29, 1990 THROUGH FEBRUARY 2, 1990

		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	26.50	3.92	-15.87	34.00	23.13	425	1.00	3.77	16	9.18	2.89
Corroon & Black	NYS	33.88	0.74	-11.44	41.00	31.00	99	1.24	3.66	16	12.73	2.66
Gallagher Arthur J. & Co.	NYS	22.25	-3.26	-10.10	26.50	17.13	45	0.52	2.34	16	5.33	4.17
Frank B. Hal	NYS	2.75	-4.35	-8.33	4.63	2.63	49	0.00	0.00	-1	-2.80	-0.98
Hilb, Rogal & Hamilton	OTC	15.13	0.83	-18.79	20.63	11.00	10	0.28	1.85	17	4.60	3.29
Marsh & McLennan	NYS	76.38	1.83	-2.08	89.75	56.50	420	2.48	3.25	19	10.56	7.23
Poe & Associates	OTC	11.75	-6.00	-11.32	12.75	8.00	5	0.40	3.40	11	1.89	6.22
BROKERS	AVERAGE		-0.9	-11.1					2.6	13		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	36.25	-3.33	-12.91	46.50	29.25	159	0.40	1.10	8	25.06	1.45
Berkshire Hathaway Inc.	NYS	7650.00	2.68	-11.30	8900.00	4625.00	4	0.00	0.00	-27	2869.00	2.67
ITT (Hartford Group)	NYS	53.75	-0.23	-10.23	64.50	51.00	1143	1.60	2.98	9	56.33	0.95
Sears (Allstate)	NYS	38.63	2.32	-0.32	48.13	36.50	3810	2.00	5.18	13	37.75	1.02
CONGLOMERATES	AVERAGE		0.4	-8.7					2.3	1		
INSURERS/REINSURERS												
Aetna Life & Casualty	NYS	50.00	1.52	-13.79	62.50	48.50	1189	2.76	5.52	8	58.11	0.86
Ambase Corp.	NYS	8.50	1.49	-32.67	16.38	8.25	496	0.20	2.35	3	29.08	0.29
American General	NYS	28.63	-1.72	-12.60	38.50	28.25	1838	1.48	5.17	9	34.68	0.83
American Heritage	NYS	31.50	-0.79	10.53	32.00	25.38	2	1.20	3.81	12	22.60	1.39
American Indemnity/Fin'l	OTC	7.00	0.00	-12.50	13.00	6.75	7	0.56	8.00	-2	17.38	0.40
American International	NYS	93.13	-0.40	-11.73	112.00	69.38	1625	0.48	0.52	11	41.92	2.22
Aon Corp.	NYS	37.63	0.33	-11.21	43.25	28.13	418	1.40	3.72	11	19.62	1.92
Argonaut Group	OTC	66.00	0.00	-4.17	71.50	49.50	82	1.60	2.42	8	36.83	1.79
AVEMCO Corp.	NYS	24.13	1.58	-1.03	27.50	20.38	36	0.40	1.66	14	9.52	2.53
Baldwin & Lyons inc.	OTC	20.50	-3.53	-4.65	24.00	15.25	63	0.28	1.37	6	20.80	0.99
Belvedere Corp.	ASE	4.63	2.78	-15.91	6.50	4.25	0	0.04	0.86	14	8.03	0.58
Chandler Insurance	OTC	9.75	-9.30	-17.02	13.25	7.00	147	0.00	0.00	5	9.53	1.02
Chubb Corp.	NYS	91.75	3.97	-4.30	99.50	63.25	837	2.32	2.53	10	55.49	1.65
CIGNA Corp.	NYS	48.88	-1.51	-18.88	66.75	48.63	756	2.96	6.06	11	66.64	0.73
CNA Financial Corp.	NYS	83.63	7.04	-16.38	108.75	57.88	239	0.00	0.00	8	54.87	1.52
Continental Corp.	NYS	27.38	1.39	-12.75	38.63	27.38	1477	2.60	9.50	51	41.36	0.66
Durham Corp.	OTC	29.75	0.00	-3.25	34.75	29.00	3	0.92	3.09	19	26.32	1.13
Fireman's Fund	NYS	31.38	2.87	-10.99	40.75	31.13	476	0.60	1.91	11	32.74	0.96
Fremont General Corp.	OTC	19.75	3.27	-1.86	22.50	13.38	213	0.80	4.05	18	19.09	1.03
Frontier Insurance Group	NYS	15.75	-1.56	-14.86	21.75	11.13	51	0.00	0.00	8	7.29	2.16
General RE Corp.	NYS	81.38	-1.36	-9.58	96.25	59.13	1119	1.36	1.67	13	29.04	2.80
Hanover Insurance Co.	OTC	27.75	-0.89	-9.02	33.00	25.75	85	0.44	1.59	6	32.03	0.87
Harleysville Group	OTC	24.63	3.68	-10.45	28.75	18.63	89	0.60	2.44	8	18.94	1.30
Hartford Steam Boiler	OTC	52.50	2.94	-3.23	59.25	38.00	256	1.60	3.05	14	18.94	2.77
Kansas City Life Ins.	OTC	35.25	0.71	-1.74	36.00	32.75	18	1.12	3.18	10	39.22	0.90
Kemper Corp.	NYS	34.50	-10.68	-26.98	51.88	29.00	843	0.92	2.67	8	29.97	1.15
Lawrence Insurance Group	ASE	7.00	-1.75	-1.75	8.13	6.50	1	0.28	4.00	15	3.29	2.13
Liberty Corp.	NYS	45.88	3.67	7.94	45.88	32.50	49	0.80	1.74	19	31.82	1.44
Lincoln National	NYS	54.50	0.00	-10.66	62.88	46.75	175	2.60	4.77	10	49.19	1.11
NAC Re Corp.	OTC	32.75	0.00	-9.66	41.00	21.38	165	0.20	0.61	14	22.81	1.44
Navigators Group	OTC	30.00	6.19	9.09	30.00	21.00	49	0.00	0.00	11	15.22	1.97
Nobel Insurance LTD.	OTC	1.63	-7.14	-18.75	5.00	1.50	12	0.00	0.00	0	7.76	0.21
NWNL Companies	OTC	33.13	-7.34	-16.14	44.13	26.88	1291	1.20	3.62	8	37.50	0.88
Ohio Casualty Corp.	OTC	42.25	-2.31	-11.52	52.50	38.50	1245	2.08	4.92	9	33.30	1.27
Old Republic Int'l	OTC	23.38	-0.53	-8.78	30.38	22.50	222	0.72	3.08	12	30.70	0.76
Orion Capital Corp.	NYS	19.25	-9.41	-17.20	28.50	19.00	153	0.84	4.36	5	19.72	0.98
Phoenix RE Corp.	OTC	12.25	-2.00	-5.77	15.50	8.75	97	0.20	1.63	10	12.99	0.94
Protective Life Corp.	OTC	12.63	6.32	-11.40	16.25	10.88	163	0.68	5.39	24	14.54	0.87
Provident Life	OTC	20.75	-7.26	-19.81	30.13	20.63	333	0.80	3.86	7	23.24	0.89
Re Capital Corp.	ASE	12.25	-4.85	-15.52	15.25	9.13	7	0.00	0.00	11	12.60	0.97
RLI Insurance Corp.	NYS	9.00	5.88	1.41	9.50	6.88	29	0.40	4.44	6	10.71	0.84
St. Paul Companies	OTC	57.25	3.15	-4.58	63.50	46.00	1305	2.20	3.84	8	43.47	1.32
SAFECO Corp.	OTC	37.38	0.00	-5.97	42.38	25.63	848	1.20	3.21	9	24.87	1.50
SCOR U.S. Corp.	NYS	12.00	3.23	-15.79	14.50	7.50	48	0.40	3.33	12	10.61	1.13
Seibels Bruce Group	OTC	10.50	1.20	-3.45	13.63	10.00	54	0.80	7.62	-50	13.75	0.76
Selective Ins. Group	OTC	18.00	-1.37	-5.88	20.25	14.50	303	0.96	5.33	6	15.72	1.15
Statesman Group Inc.	OTC	2.50	5.26	-9.09	3.63	1.88	67	0.16	6.40	7	4.19	0.60
Tokio Marine & Fire	OTC	70.25	2.55	-6.80	95.50	66.00	18	0.92	1.31	30	70.93	0.99
Torchmark Corp.	NYS	48.88	-2.49	-14.63	58.75	31.50	342	1.40	2.86	13	13.23	3.69
Transamerica	NYS	38.13	-1.61	-14.57	48.00	32.75	1118	1.92	5.04	9	34.63	1.10
Trenwick Group Inc.	OTC	21.00	3.70	-13.85	26.88	13.75	153	0.36	1.71	10	16.91	1.24
United Fire & Casualty	OTC	32.25	0.00	-2.27	34.50	29.00	17	1.20	3.72	9	22.56	1.43
USF&G Corp.	NYS	29.00	4.98	-2.11	34.00	26.88	1096	2.80	9.66	45	22.87	1.27
UNUM Corp.	NYS	44.38	-6.58	-7.07	51.38	27.88	1239	0.60	1.35	12	31.20	1.42
USLIFE Corp.	NYS	41.63	0.30	-8.01	48.13	36.13	307	1.48	3.56	9	54.34	0.77
Washington National	NYS	25.38	0.50	-10.18	29.13	24.00	13	1.08	4.26	-	32.90	0.77
USLICO Corp.	NYS	21.50	-4.44	-9.47	25.38	21.00	138	1.00	4.65	8	27.73	0.78
Zenith National Ins.	NYS	16.88	-3.57	-10.00	21.50	15.88	80	0.84	4.98	8	13.81	1.22
INSURERS/REINSURERS	AVERAGE		-0.2	-9.5					3.4	10.5		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	19.75	14.49	-7.06	26.38	8.38	2243	0.00	0.00	18	3.54	5.58
HMO America Inc.	OTC	5.75	-9.80	-25.81	10.63	1.06	332	0.00	0.00	-25	1.12	5.13
Pacificare Health Sys.	OTC	19.75	0.00	-24.04	30.38	7.38	1716	0.00	0.00	20	6.35	3.11
Safeguard Health Enter.	OTC	7.50	22.45	-11.76	12.50	4.75	135	0.00	0.00	12	2.99	2.51
Sierra Health Services	ASE	7.13	-1.72	-19.72	9.63	1.88	138	0.00	0.00	-7	0.62	11.49
United Healthcare Corp.	OTC	9.25	-1.33	-24.49	12.63	5.38	1805	0.00	0.00	19	0.34	27.21
United Medical Corp.	ASE	6.50	0.00	8.33	7.25	5.38	18	0.00	0.00	22	5.70	1.14
U.S. Healthcare	OTC	11.13	-3.26	-21.93	15.50	7.00	3944	0.20	1.80	26	3.07	3.62
HMOs	AVERAGE		2.6	-15.8					0.2	11		
ALL COMPANIES	AVERAGE		-0.2	-8.7					2.9	9.1		

System design: Nordby International Inc.

Who Has An Account Team That Covers You From A to Z?

Zurich-American. We're committed to providing you with creative approaches to better insurance.

Like your Zurich-American Account Management Team. This group of decision-makers is specifically responsible for all your risk management needs. From loss control to claims. From underwriting to marketing.

So you're assured of getting direct answers and prompt, personal service, at home or abroad.

To make sure you're covered from A-Z, just ask about Z-A. Zurich-American.

ZURICH-AMERICAN INSURANCE GROUP

American Creativity. Swiss Dependability.

Zurich Insurance Company • American Guarantee and Liability Insurance Company • Executive Offices, Schaumburg, IL 60196

A MEMBER OF THE WORLDWIDE ZURICH GROUP