

Business Insurance

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\$86 million bad faith award is overturned by Alaska court

ANCHORAGE, Alaska—The Alaska Supreme Court has overturned one of the largest insurance bad faith awards ever.

The Jan. 29 decision voids an award of \$86.2 million—including \$60 million in punitive damages and nearly \$25 million in legal fees—against Lloyd's of London underwriters.

But the bad faith verdict itself still stands. Now a lower court will determine how much the underwriters owe on the \$280,000 claim by the owners of a Ketch-
Continued on next page

Judge scuttles surcharges on N.Y. hospital bills

By MICHAEL SCHACHNER

NEW YORK—How hospital rates are set in New York could be thrown into chaos after a federal judge last week voided state hospital bill surcharges on commercially insured and self-insured health care plans.

While employer representatives expect confusion following the ruling, they believe elimination of the surcharges could permit employers to more easily negotiate rates with hospitals, which in turn would lower costs.

The surcharges voided by U.S. District Judge Louis J. Freeh on Wednesday were designed to subsidize the state's Blue Cross & Blue Shield plans, which are required to take on all applicants, regardless of age or health.

However, the surcharges actually gave the Blues an unfair competitive advantage, Judge Freeh ruled. And, by requiring health care plans to pay for services provided for non-members, the surcharge system ran afoul of ERISA, he said.

The Employee Retirement Income Security Act of 1974 requires employee benefit plans to act in the "sole and exclusive"

interest of their participants.

New York levies surcharges of 24% on hospital bills paid by commercial insurers; 13% on those paid by self-insurers; and 9% on those paid by health maintenance organizations. The Blues, along with the state's Medicaid system, are exempt.

Those surcharges, Judge Freeh wrote in his ruling, "increase the cost of obtaining medical insurance through any source other than the Blues to a sufficient extent that customers will switch their coverage to and ensure the economic viability of the Blues."

And even if they don't prompt employers to switch insurers, the surcharges cause at least "indirect increases in plan costs... and impose requirements on the use of plan resources," the judge wrote. "In fact, they divert a not-insignificant amount of resources to a state-specified use which is unrelated to the health care of plan participants."

This is the second time in nine months that a federal judge effectively dismantled a state's hospital reimbursement system because it violated ERISA's "sole and exclusive" benefit clause.

U.S. District Judge Alfred
Continued on page 21

Many make an offer . . .

About two-thirds of employers offer unpaid medical and family leave in at least some situations.

- 72% for serious illness of a family member
- 65% for birth or adoption of a child, either parent*
- 65% for serious illness of an employee
- 28% on discretionary basis only
- 12% for birth or adoption of a child, mothers only*
- 7% only in some locations, when required by state law
- 7% no family or medical leave

. . . that few accept

Only rarely do more than 5% employees take medical or family leave in a given year.

- 55% said less than 1% of employees took leave
- 39% said 1% to 5%
- 4% said 6% to 10%
- 2% said more than 10%

Source: Hewitt Associates * beyond disability for childbirth



GRAPHIC BY CHRIS ROY

Family leave law signed

Cost impact on employers could be small

By JERRY GEISEL

WASHINGTON—Tens of thousands of employers either will have to add or upgrade their medical and family leave programs when the new federal family leave law takes effect.

While the legislation, which President Clinton signed last week, will affect a huge number of employers and expand benefit eligibility for 44 million employees, its impact on most employers will be minor.

Economically, the cost of providing unpaid job-protected leave is likely to be modest. The

General Accounting Office estimates the cost for employers that will be covered by the legislation at about \$674 million annually, or about \$15 per employee.

The impact also is likely to be limited for other reasons. Many previous benefit requirements, like COBRA's health care continuation provisions, were buried in huge, broad bills that caught employers by surprise. But family leave legislation has been introduced in each congressional session since the mid-1980s and its provisions and progress through Congress have been well-publicized.

"This is something that employers have been aware of and has been discussed for a long time," said Francesca Bruno, a managing consultant with A. Foster Higgins & Co. Inc. in New York.

In addition, many employers, either because they were required under state law or because they responded to demographic changes in workforce, already have family and medical leave programs as well as administrative procedures in place.

"For many employers, especially larger firms, the changes
Continued on page 22

Secondhand smoke report lights fire under employers

By SARA MARLEY

Employers are taking a second look at secondhand smoke in the workplace since the Environmental Protection Agency designated it a "known human carcinogen" responsible for 3,000 deaths per year.

Currently, many companies restrict smoking to designated areas and private offices. However, such a restriction may prove to be inadequate to protect workers if air from smoking areas is recirculated to the rest of the building, according to the EPA.

In response, some employers are changing policies to completely ban smoking in the workplace.

"Clients are moving very quickly to no smoking in their buildings altogether," said David Fortossis, a consultant with Hewitt Associates in Lincolnshire, Ill. "The EPA report is so clear that secondhand smoke is a risk and a carcinogen."

"We expect employers will rethink their policies," said Patricia Wiley, managing consultant with A. Foster Higgins & Co. Inc. in New York. "The EPA report is giving credit to secondhand smoke as a liability in the workplace the employer has control over."

Prior to the EPA report, "there was a question whether you needed to clear (smoke) out of the ventilation systems."
Continued on page 14

Going cold turkey

Here are some tips on going smoke-free from companies that have done it and the experts who advised them.

Give plenty of notice

Announce the policy at least six months ahead of time.

Offer resources to help smokers quit

But don't be heavy-handed and alienate or condemn smokers.

Remember, you're in this together

Promote the policy as a safety and health benefit for all employees.

Make no exceptions

Visitors and clients should have to play by the same rules.

GRAPHIC BY A. TRANCHITA

Lloyd's may post gigantic loss for '90 accounts

By STACY SHAPIRO

LONDON—Lloyd's of London may be moving precipitously closer to announcing another 2 billion pound (\$3.03 billion at appropriate exchange rate) loss, in light of growing losses at defunct syndicates formerly managed by Gooda Walker Ltd.

An announcement last week that Gooda Walker's syndicate results have deteriorated by 325 million pounds (\$492.4 million) is "very discouraging," said Charles Sturge, syndicate analyst for Chatset Ltd. in London.

Mr. Sturge last month had predicted Lloyd's will report losses of more than 1.6 billion pounds (\$2.42 billion) when it announces its 1990 results in June (BI, Jan. 25). "It shows that we're moving toward the 2 billion pounds mark" for Lloyd's losses, he said.

Lloyd's has confirmed that the market's 1990 losses will total at least 1 billion pounds (\$1.52 billion). Under Lloyd's three-year accounting system, the 1990 underwriting year closed at year-end 1992.

Andrew Duguid, director of Lloyd's marketing services, said
Continued on page 6

Update

Huge bad faith award struck

Continued from page 1

ikan, Alaska, restaurant that burned in 1989.

A state court jury had found that the underwriters acted in bad faith when they rejected the restaurant's proof of loss and contents inventory. The risk was led in Lloyd's by syndicate 1031, managed by Janson Green Management Ltd.

Jurors awarded nearly \$62 million—including the punitive damages and \$1 million for emotional distress (*BI*, Feb. 4, 1991). Later the trial judge added the legal fees and other damages (*BI*, June 17, 1991).

On appeal, the entire award was set aside. Although the underwriters were not "free from blame," the lower court failed to consider lighter sanctions, the state Supreme Court ruled. Appeals of civil suits in Alaska go directly to the high court.

Oregon '24-hour' study funded

SALEM, Ore.—Oregon expects to be the first state to test a 24-hour coverage program after receiving a \$336,658 grant from the Robert Wood Johnson Foundation for an 18-month pilot project.

"Employers pay for workers compensation coverage of job-related accidents and illness. Then they pay another company for health insurance coverage for other medical care. The 24-hour coverage project will show the extent to which we can eliminate the duplication, simplify paperwork and reduce litigation," said Oregon Department of Insurance and Finance Director Gary Weeks.

Several states, including Florida, have passed laws allowing pilot 24-hour projects, but none has yet been implemented (*BI*, Sept. 28, 1992).

The number and identity of participants in the pilot have not yet been decided, state officials said.

GM takes largest FAS 106 hit

DETROIT—General Motors Corp. is taking a whopping \$22.2 billion aftertax charge in 1992 to account for its retiree health care obligations under Financial Accounting Standard 106.

Most of that—\$20.8 billion—reflects obligations accumulated before 1992. GM expected to report a so-called transitional obligation of \$16 billion to \$24 billion (*BI*, Nov. 18, 1991).

GM's FAS 106 hit is expected to be the largest for any company. The charge is nearly three times greater than the next-largest transitional obligation reported so far: \$7.5 billion by Ford Motor Co. (*BI*, Dec. 21, 1992).

GM also is reporting a hefty \$1.4 billion charge in 1992 to meet the other FAS 106 requirement to accrue its retiree health care obligations as an expense against earnings each year. GM's 1992 accrual charge alone dwarfs the transitional obligations many large firms have reported.

GM's FAS 106 charges reflect the 1988 health care cost-sharing requirements the automaker imposed on retired salaried employees, who have filed suit over those changes (*BI*, Aug. 14, 1989). The charges also reflect a new flexible benefits plan that went into effect Jan. 1 for retired salaried employees.

GM's retiree health plan covers about 365,000 retirees and spouses. The company has about 362,000 active U.S. employees.

Defensive medicine tab studied

WASHINGTON—Eliminating "defensive medicine" could cut U.S. health care costs \$35.8 billion over the next five years, a new report says.

Consulting and research firm Lewin-VHI Inc. conducted the study for medical malpractice insurer MMI Cos. Inc.

Doctors are said to practice defensive medicine by ordering extra tests and services to avoid malpractice suits. Researchers examined practices in anesthesia, obstetrics and emergency medicine and found unwarranted services including lab tests, continuous electronic fetal monitoring and skull X-rays.

Health costs also are increased when unneeded services are done for other reasons, including financial incentives, patient expectations and pressure to use more current technology.

The National Medical Liability Reform Coalition, a group of businesses, insurers and medical providers, and the American Medical Assn. have endorsed the study.

GM hit with \$105 million award

ATLANTA—General Motors Corp. will appeal a state court jury award of more than \$105 million to the parents of a teen-ager killed in a fiery crash in his GMC pickup truck.

The award includes \$101 million in punitive damages, which are insurable in Georgia, and \$4.2 million in actual damages. The trial court judge may lower or raise the jury award.

Shannon Moseley, 17, was killed in 1989 when a drunken driver hit his 1985 pickup. GM argued that he was killed on impact, not in

Continued on page 22

Errors & omissions

• A Dec. 21 article on German health care system reforms referred to 1992 cost figures. Those figures actually were from 1990.

• A headline in the Jan. 18 issue erroneously reported that Gerling Group is refusing to renew industrial risk policies. While Gerling Global Reinsurance Group will not renew some industrial reinsurance business, Gerling Group is not refusing to renew its book of primary industrial risks.

Governors seek permission for state health experiments

By CHRISTINE WOOLSEY

WASHINGTON—Critics of the health reform policy proposal approved by the National Governors' Assn. last week charge that it lacks specifics and is nothing more than "stale wine in a new bottle."

And, the critics point out, while President Clinton spent hours last week listening to the governors' concerns and recommendations, he alone does not

have the authority to grant many of the changes they seek.

However, others argue that because health care is delivered locally, it makes sense to allow the states to take an active part in health care system reform.

While the nation's governors have waited years for the federal government to act on health care, they are now asking President Clinton to let them move ahead with health care system reform.

The governors' policy says

states "should be encouraged to move ahead in advance of full implementation of national reforms and should be given the tools necessary to be successful" in their own efforts to control health care costs and expand access to services.

The policy, officially adopted by the NGA on Tuesday, supports "a managed competition approach to health reform that includes state-organized pur-

Continued on page 4

Aetna boosts loss reserves

Travelers to take charge tied to real estate investments

By DAVE LENCKUS

HARTFORD, Conn.—The \$80 million that Aetna Life & Casualty Co. is adding to its environmental loss reserves in 1992 is raising some eyebrows among insurer analysts.

Analysts also were surprised Aetna indicated it will strengthen reserves for casualty business not related to pollution and asbestos risks.

Meanwhile, Travelers Corp.

last week announced it would add \$735 million to its mortgage loan and real estate reserves as it steps up its efforts to shed foreclosed real estate investments.

In a special announcement last Tuesday, about a week before it is scheduled to release its 1992 earnings, Aetna said it would report a fourth-quarter aftertax loss from continuing operations of \$155 million to \$165 million. It said the loss is largely due to the addition to environmental liabil-

ity loss reserves and a not-so-surprising \$100 million addition to asbestos loss reserves.

The additions come on top of another \$115 million of reserve additions throughout 1992, an Aetna spokesman said. He could not say how the \$115 million was allocated.

Insurer stock analysts had expected Aetna to report \$100 million in earnings for the fourth quarter when the insurer re-

Continued on page 23

Large employers eagerly greet new comp law

Texas firms seek to self-insure

By MICHAEL BRADFORD

AUSTIN, Texas—Large Texas employers are taking advantage of a new law that allows them for the first time to self-insure their workers compensation exposures.

State regulators have received about two dozen completed applications from private employers since the law became effective Jan. 1. Hundreds of additional employers have re-

quested applications.

The self-insurance regulations, contained in the sweeping 1989 workers compensation insurance reform law (*BI*, Dec. 18, 1989), bring Texas into the fold of 47 other states that allow private employers to self-fund the exposure. Only Wyoming and North Dakota still do not allow the practice.

Despite the interest employers have shown in Texas' law, there are some concerns with the

legislation.

For example, the law requires employers to use an outside contractor to administer claims.

That requirement forces employers to "throw the employee into the hands of a stranger," said Douglas Stevenson, the Chicago-based executive director of the National Council of Self-Insurers.

High thresholds for determining eligibility and a hefty secu-

Continued on page 16

Muni bond insurers optimistic

Clinton emphasis on infrastructure may boost market

By JUDY GREENWALD

The Clinton administration is likely to give municipal bonds—and indirectly municipal bond insurance—a psychological, if not an actual boost.

A clarion call for infrastructure repair rang throughout Bill Clinton's campaign, with a figure of \$20 billion in needed infrastructure spending frequently mentioned.

In addition, the possibility of higher federal income taxes could make municipal bonds a more attractive instrument to investors seeking tax relief.

Many things are said during a campaign, but after an election

"many of those things go by the wayside," observed Michael J. Djordjevich, president and chief executive officer of Capital Guaranty Insurance Co. in San Francisco.

However, he added, "President Clinton would have a much better understanding about the difficulties in municipal finance and the need for improvement in the infrastructure than, let's say,

Continued on page 16

Inside

✓ PacifiCare Health Systems Inc., a California-based preferred provider organization, is building a child care center for employees' children. **PAGE 6**

✓ The administration's health care task force must consider all reform options and solicit employers' views, this week's editorial says. **PAGE 8**

✓ Control and communication are crucial to operating a risk management program in a foreign location, an expert told attendees at a conference sponsored by the Atlanta chapter of RIMS. **PAGE 10**

✓ Lloyd's members have new stop-loss coverage options. **PAGE 17**

✓ An environmental activist group says property insurers must do more to help save the planet from global warming. **PAGE 17**

Departments

Advertiser index.....	14
Ask a benefit manager.....	15
Benefit beat.....	6
Classifieds.....	18
Comings & goings: buyers.....	19
Global briefs.....	17
Insurance services guide.....	19
International.....	17
Letters.....	8
Perspectives.....	15

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Photos by Brian Tregaskis/The Daily Herald

The liquidator charges that Victor Borchers, right, channeled insurer money to the Provo Excelsior Hotel.

Utah seeks millions from former owner of failed insurer

By DOUGLAS McLEOD

SALT LAKE CITY—The liquidator of Southern American Insurance Co. is trying to recover millions of dollars in assets it says were improperly channeled into resort developments controlled by former owner Victor Borchers.

The liquidator charges in a lawsuit that Mr. Borchers, his wife and other Southern American officers used the insurer's assets for their own benefit and to support the Borchers' other businesses, including a hotel, water slide park, golf course and ski resort.

A Utah judge last week appointed a receiver for the hotel, a move a Utah Insurance Department official says is the first step in the department's effort to foreclose on the property.

Meanwhile, an affidavit filed by a liquidation auditor details a number of questionable transactions at Southern American in the four years after Mr. Borchers acquired it in 1988 from The Crump Cos. Inc., a unit of Sedgwick Group P.L.C.

The insurer—which has been notified of billions of dollars in potential claims by Fortune 500 policyholders—entered voluntary liquidation in Utah last year (BI, March 30, 1992).

Along with details of Southern American's loans to the Borchers' resort developments—more than \$3.2 million of which the insurer later wrote off—the affidavit alleges that:

- Mr. Borchers and his wife, Suzanne K. Borchers, received millions of dollars in compensation and dividends from a Southern American "shareholder advance" account between 1988 and 1992. The insurer also paid for a number of their personal expenses, including Mr. Borchers' Rolls Royce and Ms. Borchers' Mercedes-Benz.

- Southern American officials ignored a recommendation by a claims adjuster that the insurer establish a \$17 million reserve to cover asbestos claims by Owens-Corning Fiberglas Corp., a Crump brokerage client insured by Southern American from 1979 to 1982.

- Southern American held off its insolvency for five months

Continued on page 21

ATRA talks reform

Rule requiring loser to pay all legal costs may not work in U.S.

By MARK A. HOFMANN

WASHINGTON—The so-called "English rule" that requires the loser in a lawsuit to pay the winner's legal fees wouldn't translate well into U.S. jurisprudence, tort reform advocates say.

Differences in the legal systems and in custom make the application of the rule to U.S. civil cases undesirable, generally agreed a panel of legal experts during a symposium sponsored by the American Tort Reform Assn. in Washington last week.

ATRA is a coalition of business, government and non-profit groups advocating changes in the civil justice system. Some—but by no means all—tort reform advocates promote the English rule as a means of discouraging frivolous lawsuits.

"Some members thought it was downright silly," while others enthusiastically support application of the English rule and still others think its adoption would be dangerous and could backfire, summed up Martin F. Connor, president of Washington-based ATRA.

The English rule "has strong initial appeal to many people on fairness grounds," said Thomas D. Rowe Jr., a professor at Duke University School of Law in Durham, N.C.

The rule helps protect defendants from groundless suits because would-be plaintiffs don't want to be hit with the costs of the defense, he said. Conversely, the rule encourages the filing of strong

Continued on page 12

State chief justices express an interest in bifurcated trials

By MARK A. HOFMANN

WASHINGTON—The nation's top judicial officers are more receptive than ever to change in punitive damage laws, says the president of the American Tort Reform Assn.

Martin F. Connor said he discovered this receptiveness after addressing a meeting of the Conference of State Chief Justices in Williamsburg, Va., late last month.

Mr. Connor made his report during ATRA's annual meeting in Washington last week. The lobbying group is a Washington-based coalition of businesses, associations and nonprofit groups promoting changes in the civil justice system.

Many of the state supreme court chiefs were surprisingly agreeable to the bifurcation of civil trials, he said. A handful of states currently allow the practice.

In bifurcated trials, a jury determines a defendant's liability and awards compensatory damages in one proceeding and then determines punitive damages separately. This excludes potentially prejudicial evidence that might be relevant to determining punitive damages, such as a defendant's wealth, from the first phase of the trial.

Business groups have long favored bifurcation. Mr. Connor found the chief justices warm to the idea, and said adoption of the system could be a "slam dunk" in many states.

Another ATRA proposal to reduce punitive dam-

Continued on page 12



Managed competition may not mean savings

By JERRY GEISEL

WASHINGTON—Overhauling the health care delivery system through managed competition, an approach favored by the Clinton administration, will not produce any short-term savings, the director of the Congressional Budget Office says.

In fact, health care costs initially would actually increase under managed competition as more people would become covered under health insurance plans, CBO Director Robert Reischauer told a House panel.

After several years, costs would be roughly the same as the current system, he said. While more people will have coverage, they increasingly will be in managed care programs, which cost 10% to 15% less than traditional fee-for-service plans, he explained.

"After a number of years, these savings could offset the increased cost resulting from extending access to those who currently lack access," Mr. Reischauer told the House Ways and Means Health subcommittee last week.

For example, he said, about 15 million of the 36.3 million people currently without health insurance would receive coverage under a managed competition bill introduced by Rep. Jim Cooper, D-Tenn.

Rep. Cooper's proposal, among other things, would pay for coverage for the very poor and subsidize premiums for those with incomes between 100% and 200% of the federal poverty level.

"We are getting something (more people receiving health care coverage) for no more" than

Continued on page 6

Aviation rates lifting off

Renewal quotes to include large premium jumps

By GAVIN SOUTER

LONDON—The world's major airlines should expect higher aviation insurance rates this year, underwriters and brokers agree.

The moderate increases charged in the last quarter of 1992 were a respite in a hardening aviation insurance market, they say.

Underwriters are keen to return to the large rate increases charged in 1991 and that they hope will cause total airline premiums eventually to pass the \$1 billion mark.

However, insurers will continue to spread the increases they

think are necessary over several years rather than attempt to force through one huge hike this year and risk attracting "innocent" capacity—or underwriters that do not really understand aviation risks—into the market. That extra capacity could, ironically, help drive down rates.

"I'm sure that everybody will pay more for their coverage in 1993," summed up one broker.

Already this year, USAir Group Inc. reportedly has paid more than a 100% rate increase for some of its coverage.

Last year, USAir paid premiums of about \$31.5 million for a portion of its coverage placed in the London market. This year the same coverage was renewed for premiums of \$70 million, brokers say.

USAir changed its London broker and leading underwriter this year. Previously, the risk was placed by Alexander How-

den Ltd. and was led in London by Lloyd's of London syndicate 48, managed by Methuen (Lloyd's Underwriting Agents) Ltd., better known as the Aerial syndicate.

This year, USAir's hull and liability coverage was placed by Sedgwick Group P.L.C. and was led by British Aviation Insurance Group Ltd., sources say. USAir's hull war risk coverage continues to be placed by Howden, sources say.

Officials at USAir could not be reached.

Another airline that received rate increases at the Feb. 1 renewal was Emery Air Freight, whose rates for hull and liability coverage increased more than 80%, sources say.

An Emery spokesman confirmed that the carrier's rates had increased.

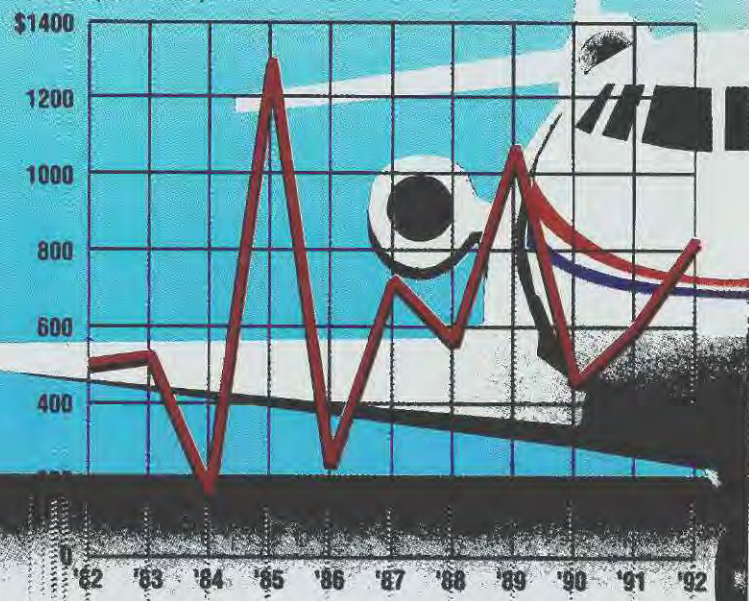
Viacao Aerea Sao Paulo S.A. in

Continued on page 20

Gaining altitude, again

Aviation losses climbed for the second consecutive year in 1992.

Total (in millions)



GRAPHIC BY A. TRANCHITA

Governors

Continued from page 2
chasing cooperatives and a core package of benefits."

The governors want the federal government to develop a "core benefits package" and minimum standards for regulating health insurance. But they also want the ability to exceed the federal benefits package and insurance standards. The states also want to apply their own variations to "non-traditional insurance mechanisms" like multiple employee welfare arrangements and other employer plans currently governed by the Employee Retirement Income Security Act.

In addition, the NGA recommends amending the federal tax code so that employers would not receive a tax deduction for benefits provided in excess of the standard federal package. The

NGA also favors taxing workers on employer-provided health benefits that exceed the federal standard package.

The NGA is the third major lobbying group to endorse taxing workers for health coverage that exceeds an "essential" level. The Health Insurance Assn. of America and the Assn. of Private Pension & Welfare Plans also favor taxing health benefits (*BI*, Dec. 21, 1992; Dec. 7, 1992).

The NGA proposal would run up employers' and employees' tax burden by billions of dollars and leave employers grappling with major administrative problems.

Also, limiting the deduction that private employers can take for health insurance costs is unfair because it "misses a whole segment of the economy"—namely tax-exempt organizations and government plans, said

Henry Saveth, a principal in the New York office of A. Foster Higgins & Co. Inc.

And, Mr. Saveth noted, taxing employees on health benefits is unfair because the cost of those benefits varies nationwide.

"Nobody escapes the nick of the blade on this one," said Mr. Saveth.

The Congressional Budget Office, though, has estimated that adding all employer-paid health care benefits to employees' taxable income would generate \$39.8 billion in federal revenues in 1992. Those revenues would increase steadily to \$96.3 billion by 2000.

For some employers, perhaps the most vexing aspect of the governors' proposal is their wish to require self-insured employers to adhere to whatever health reform schemes the states create. "States must have the ability to

include the current self-insured market in their state design," the NGA policy says.

"The exact implications of the meaning of that statement aren't yet clear," Mr. Saveth noted. "But it's a matter of great concern to multistate employers who desire to have a single health plan. And, it would raise administrative costs for employers that would have to meet different state requirements."

The governors "want to be able to tax self-insured plans in order to finance their health reform plans," charged Mark Ugoretz, president of the ERISA Industry Committee, a Washington-based lobbying group.

"States already have all the authority they need to pay for health reform by asking their state legislatures to raise taxes. But what they are trying to do is tax employers and employees in-

directly by levying a tax on employer plans to pay for what appears to be unlimited health insurance mandates," Mr. Ugoretz said.

"The proposal flies in the face of the principles the Clinton administration has been citing," including cost control and uniform national health system reform, he pointed out. "They say they endorse managed competition, but all they have done is taken their old demands—which include requesting more money to pay for expensive state mandates—and wrapped a ribbon of managed competition around them."

In order to meet the governors' demands, Congress would need to amend the section of ERISA the pre-empts state regulation of employee benefit plans. That, by all counts would be "a hard-fought change," Mr. Saveth explained.

But, "There already are a number of aspects of ERISA on the legislative agenda," he noted, including whether self-insured employers can limit health care benefits for specific conditions like acquired immune deficiency syndrome (*BI*, Nov. 16, 1992).

Other observers say the meeting between the governors and President Clinton is a step in the right direction.

"A very positive atmosphere is being created," said Jim Stutz, executive director of the St. Louis Area Business Health Coalition. "Clinton is interested in letting the states have a key role in implementing any health care reform and that makes sense because health care is a local issue."

"It's clear that because health care is purchased on a local basis, states need the flexibility to deal with it," agreed Chip Kerby, a principal in the Washington office of William M. Mercer Inc. "But you have to reconcile local interests with level playing field interests." **BI**

Risk-based rules debut in Texas

AUSTIN, Texas—Texas expects to be the first state to use risk-based capital standards for property/casualty insurers.

The standards, which are set to take effect June 30, precede standards being developed by the National Assn. of Insurance Commissioners.

Three ratios will be used to evaluate whether stock companies in Texas have adequate capital. Non-stock companies are not covered by the rules.

The "key ratio" is a measure of net premiums plus total liabilities to surplus, explained David Eley, special projects director at the Texas Department of Insurance.

Two other ratios measure risk related to reinsurance ceded to non-affiliates and investment risk related to "risky investments" like stocks and non-investment-grade bonds.

The ratios are then used to determine minimum capital standards for the state's insurers.

The Texas Board of Insurance, which developed the standards, will review the NAIC standards when they are complete, said Mr. Eley. "They will make the decision if they want to change to those standards."

The Texas standards were developed with input from insurers, said Mr. Eley.

—By Mike Bradford

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**FIRST
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SMILE.**

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DON GADDIS

Donald Gaddis
Co., Inc., Chicago, IL.

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Our HPR/Property
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performed so well
we've decided to give
them something.

Their own division.

For years, Wausau has been one of a handful of insurers capable of engineering, underwriting and servicing Highly Protected Risks (HPR) and Property Special Risk programs.

Now we have a determination to do it better than anyone else. We've formed a special division to service property coverages for large businesses.

HPR/Property Special Risk underwriters are located in offices around the country ready to focus energy and resources on programs like:

- Primary and excess layers,
- Global coverages, and
- Special service commitments for loss control and claim handling.

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vide consistent, high-quality service to your multiple locations. And Wausau has an A+ A.M. Best rating.

There should be no doubt that Wausau intends to be the premier business property insurer.

For more information about Wausau's HPR/Property Special Risk Division contact Paul Enos, senior vice president, (715) 842-6248, or your local Wausau Insurance office.



PPO to open employee child care center

CYPRESS, Calif.—PacifiCare Health Systems Inc. is building a new child care center for its employees in Orange County, Calif.

"We are the first corporate-sponsored child care center in Orange County," said Terry Hartshorn, president and chief executive officer of the Cypress-based health maintenance organization. Other corporate child care facilities in the region have been independently owned and operated, he said.

The center, slated for completion in October, will cost approximately \$2.5 million to build, Mr. Hartshorn said. It will be located near the company's Cypress offices, though not on-site.

When completed, the center will accommodate up to 120 children of PacifiCare employees between 6 weeks old and 5 years old.

PacifiCare decided to build the child care center in response to the needs of its employees, 75% of whom are women of child-bearing age, Mr. Hartshorn said.

Benefit Beat

PacifiCare employs 1,600 people in Orange County.

Offering a corporate child care center is in keeping with PacifiCare's image as a family-friendly company, Mr. Hartshorn added.

The HMO, which has offered child care assistance and family leave to its employees for several years, was named by "Working Mother" magazine in 1992 as one of America's 100 best companies for working parents.

PacifiCare eventually plans to seek accreditation for the center from the National Academy of Early Childhood Programs, a division of the National Assn. for the Education of Young Children (BI, Feb. 1).

To achieve this goal, the center will feature innovative educational and recreational programs for children, according to Mr. Hartshorn.

The 31,000-square-foot center will have two classrooms for in-

fants and youngsters up to 2 years old, and three classrooms for 3 and 4 year olds.

In addition, the center, which will be open 11 hours a day, will include a special room for mildly ill children.

Consulting on the project has been provided by Burud & Associates, a child care center design and management firm based in Pasadena.

An operator for the center has not yet been selected.

While fees for the center have not yet been determined, PacifiCare plans to offer it to employees for "slightly under the market rate," Mr. Hartshorn said.

PacifiCare also will continue to contribute \$15 per week to employees' flexible spending accounts to help pay for the cost of child care, he said.

PacifiCare self-insures its group health care plan, which is provided through its HMO, which has nearly 1 billion enrollees in five Western states (BI, Dec. 18, 1992).

—By Joanne Wojcik

Work/family benefits

The most prevalent work and family benefits allow employees to take time off from work for a variety of reasons, according to a new survey.

Some 89% of 450 organizations surveyed by New York-based Buck Consultants Inc. said they have a maternity leave policy, while 78% said they offer employees unpaid general leaves of absence. And, 55% of respondents said they offer employees unpaid parental or family leave.

Another popular work and family benefit is offering employees the option of permanent part-time work, offered by 56% of those surveyed.

"A major concern to employees is having greater flexibility and control over time," commented John Haslinger, Buck's director of flexible benefit services in Secaucus, N.J. "In our experience, we've found that this underlies many of the specific types of plans that are being introduced by employers."

The survey also found that many organizations—39%—offer employees family sick days, a limited number of days off for unpredictable medical needs. Slightly fewer employers—32%—offer flexible scheduling, such as allowing workers to start and leave work at times other than the traditional 9 a.m.-to-5 p.m. schedule.

A majority of those surveyed—60%—offer employees a flexible spending account for dependent care expenses, according to the survey.

The most common reason cited by employers for implementing work and family benefits is to remain competitive. Other frequently cited reasons included raising morale and enhancing recruitment efforts.

The survey, "Work & Family: A Survey of Employer Practices," is available for \$75 from Carolee Martin, Manager of Marketing, Buck Consultants Inc., 500 Plaza Drive, Secaucus, N.J. 07096-1533; 201-902-2555.

—By Deborah Shalowitz

Health care cost study

Continued from page 3

the current system costs, Mr. Reischauer said.

But the conclusions reached by the CBO—the research arm of Congress—present the Clinton administration with a dilemma.

A key promise President Clinton made during the campaign was to produce and win passage of legislation establishing a universal health care program.

He has promised to unveil such a plan, now being drafted by a task force headed by his wife, Hillary, within 100 days of his inauguration (BI, Feb. 1). But another campaign promise is to substantially reduce the federal budget deficit.

According to the CBO figures, it would appear impossible—at least under a managed competition approach—to do both.

Under managed competition, individuals, as well as small and midsize employers, would be organized into giant purchasing cooperatives in each state. These cooperatives would contract for health insurance from so-called accountable health plans that would have to meet certain standards set by a national board modeled after the Securities and Exchange Commission.

The national board would set the standard benefits package

that would have to be offered by health plans. The purchasing cooperatives then would seek bids from the accountable health plan.

Under Rep. Cooper's proposal, an employer could select an accountable health plan that was not the low bidder, but it would pay a penalty for doing so. The employer could only take the tax deduction if it would have been entitled to with the cheaper plan, not a deduction based on its actual higher costs.

Big self-funded employers—those with more than 10,000 employees—would not have to join the purchasing cooperatives. Those companies could receive a full deduction if their plans are certified as accountable health plans and the cost of their plan does not exceed the cost of the least expensive accountable health plan in their region.

Under other variations of managed competition, employees would be taxed if they selected a high-cost health care plan.

Some members of the Ways and Means Subcommittee expressed frustration with the CBO's methodology.

For example, Rep. William Thomas, R-Calif., said the CBO should have included long-term savings from managed competi-

tion in its initial cost estimates.

"Why should we care about five years? More important are savings over a long term," he said.

Rep. Thomas also said certain CBO assumptions are open to challenge. For example, he questioned the CBO's assumption that the standard benefit package offered by accountable health plans will be comprehensive rather than spartan.

But the CBO's Mr. Reischauer said several factors make such an assumption reasonable. For example, state legislatures have repeatedly added new benefits that commercial insurers must offer in benefit plans sold to employers and individuals, he said.

In addition, as a society, "We have a difficult time in this country saying that certain efficacious treatments should not be covered. This is a society with no brakes" on those seeking treatment, Mr. Reischauer said.

Turning to a broader issue, Mr. Reischauer said for those with good health insurance, the United States offers immediate access. "You have access at the drop of a hat and can choose from an array of providers." The trouble with the system is that it is unaffordable over the long run, he added. **BI**

Gooda Walker syndicates

Continued from page 1

it is too early for Lloyd's of London to speculate about its 1990 results.

Members agents are still tallying claims, and individual syndicate figures have not yet been collected by the market.

Other Lloyd's officials, though, say the the 1990 loss won't reach 2 billion pounds.

Lloyd's last June announced a record loss of 2.06 billion pounds (\$3.85 billion at applicable exchange rates) for the 1989 underwriting year (BI, June 29, 1992). Gooda Walker syndicates' 1989 losses accounted for nearly one-quarter of Lloyd's losses.

Meanwhile, overall losses for the seven Gooda Walker syndicates now are likely to top 1 billion pounds (\$1.46 billion at current exchange rates), according to an interim report from the syndicates' current manager, G.W. Run-Off Ltd.

The report says the 3,500 Gooda Walker members face 923.9 million pounds (\$1.36 billion) in losses through 1990, which include still-open 1989 accounts.

This does not include anticipated losses for 1991, the syndicates' last year of operation, but those losses are expected to be smaller than those of the previous two years.

Taken as a whole, losses are "creeping up toward 1 billion pounds," said Ken Randall, managing director of Randall Insurance Services Ltd., which is a consultant to G.W. Run-Off.

Gooda Walker members to date have been asked to pay cash calls totaling 598.3 million pounds (\$873.5 million), of which 403 million pounds (\$588.4 million) has been paid.

Of the 195 million pounds (\$284.7 million) outstanding, well over half is expected to be paid by Lloyd's Central Fund in the next few weeks because Gooda Walker members do not have the funds and have applied to Lloyd's hardship committee for assistance, according to Mr. Randall.

A minority of Gooda Walker members are refusing to pay their cash calls, he said.

The cash calls keep coming, however. **BI**

Members eventually will be asked to pay the 325.6 million pound (\$475.4 million) difference between the new 923.9 million pound loss estimate through 1990 and the 598.3 million pounds already called.

In fact, a 40.5 million pound (\$59.1 million) cash call was due Feb. 1, but it has been deferred indefinitely, G.W. Run-Off states in the interim report.

If the syndicates run out of cash to pay claims, the remaining 285 million pounds (\$416.1 million) would have to be called as early as July, confirmed Mr. Randall.

Claims filed with the Gooda Walker syndicates primarily stem from London market excess-of-loss reinsurance business and members' stop-loss coverage, which were the syndicates' specialties.

The loss on the still-open 1989 account has increased by 142 million pounds (\$207.3 million) from last year's estimate to 633.3 million pounds (\$924.6 million), according to G.W. Run-Off. This includes additional provisions for major claims arising from Hurricane Hugo and the European windstorms.

The preliminary loss estimates for the 1990 year of account, which is currently being audited, is 190 million pounds (\$277.4 million).

The cost to run off the Gooda Walker syndicates total about 6 million pounds (\$8.8 million) per year, including the payroll for more than 100 employees.

While the syndicates losses are huge, G.W. Run-Off last year collected more than \$700 million in reinsurance, according to Mr. Randall.

Gooda Walker's specialist stop-loss syndicate 387 also recovered about 1 million pounds (\$1.46 million) from a settlement of litigation between 987 members of syndicate 317/661 managed by R.H.M. Outhwaite Underwriting Agencies Ltd. and 81 members agencies (BI, Feb. 17, 1992).

The House of Lords ruled that members' stop-loss underwriters had an equitable lien on the money if stop-loss syndicates had already paid policyholders for Outhwaite losses. **BI**

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Opinions

The long and winding road

PRESIDENT CLINTON by now realizes that he has a long road to travel before he can fulfill his campaign promise to guarantee universal access to health care while at the same time corraling rising costs.

However, the president definitely has started down the road: By naming Hillary Rodham Clinton to head the task force that will design the administration's health care reform package, Mr. Clinton made the strongest possible commitment to health care reform. If his plan fails—either politically or in practice—he will not be able to shift the blame as he could if a Cabinet secretary or some other official were heading the effort.

While there will be immense political bickering once the administration's health care reform takes shape, the task force for the next three months must put politics behind it and make bold decisions if it has any hope of fulfilling the president's promises. Mr. Clinton reportedly was angered when his advisers told him last month that it may be impossible to widen access while holding down costs. That may be why he selected Ms. Clinton to head the task force.

While the administration's proposal likely will be based on managed competition, that health care model is coming under questioning. A federally funded study released last month said that some type of state regulation will be necessary for managed competition to be workable, especially in rural areas (*BI*, Feb. 1). And, managed competition likely will not produce any short-term health care cost savings, the head of the Congressional Budget



•THE COLD CALL•

Office said last week (see story, page 3).

In short, the administration task force must start with a clean slate and consider all alternatives to health care reforms, not just managed competition. And, while they are plotting the administration's health care course, Ms. Clinton and other task force members should be sure to ask for input from employers, which pay the bulk of the health care bills for more than half of the population.

The task force must for now deliberate behind closed doors, but it should not work in a vacuum.

Letters

Close loopholes on defined benefit abuse

To the editor: It appears that the suggestion in a letter from Murray P. Hayutin in your Jan. 11 issue may be appropriate: Make defined benefit plans illegal. It is apparent that the funding for defined benefit plans is being abused, and guess who is ultimately going to pay for this financial mess—the taxpayer.

If the federal government has been unable to monitor the problem of proper funding of defined benefit plans with the supposed reporting in 5500 forms by now, then it is never, ever,

going to be able to do so. And as long as corporations think they can get away with underfunding defined benefit plans, hoping the government will bail them out, the problem isn't going to go away.

Thus, Murray P. Hayutin is right! Make this type of pension plan illegal. Maybe we should freeze all current defined pension benefit plans at current levels, whether they are appropriately funded or not, and only allow plans such as defined contribution, profit-sharing, 401(k) and simplified em-

ployee pension plans. As these plans do not require that they be funded beyond the amount actually contributed, we would no longer have the problem of underfunding defined benefit plans and wondering who is ultimately going to pay for them.

As long as some corporations think they can take advantage of a tax loophole, they will do so. The answer is to close the loopholes.

Richard P. Duffy
Duffy Associates
Ridgefield, Conn.

Older players are ones resorting to predatory pricing

To the editor: I read with interest the article, "Medical Stop-loss Insurance Market Eases," in the Jan. 25 issue. Of particular interest were the remarks attributed to Robert Olsen regarding the "predatory pricing" of newer players to the stop-loss reinsurance ranks.

The practice of new players trying to buy their way into the market has been a problem in the stop-loss industry for years. The recent practice of some older, larger, well-established players resorting to a strategy of "predatory pricing" is the new phenomenon.

It appears that some people are con-

vinced that this is the year that the trend of an ever-increasing number of players will be reversed, and have set a corporate strategy of "predatory pricing" designed to gobble up market share and thin out the overall ranks of players.

This, as much as the practices of any new players, has led to the situation, which causes Mr. Olsen to observe that "the competition is irrational" and worse than in prior years.

Peter Sawyer
Windsor, Conn.

Legal profession admits it functions on its own planet

To the editor: A Dec. 14, 1992, article by Douglas McLeod on an appeals court discarding Manville Corp.'s asbestos payout plan, "Manville Payout Plan Back to Square One," says in part:

"U.S. District Judge Jack B. Weinstein noted the appeals panel had declared the restructuring 'unacceptable in the legal world, even if workable in the real world.'"

At last! The secret is out—and from the legal profession itself—there are two worlds: the "legal" world and the

"real" world.

Once the rest of us can grasp this concept, we can then appreciate why lawyers are so troubling.

They are really aliens from another world—a world completely separated from ours with its own environment and laws.

This is why "common law" and "common sense" are so often poles apart.

Douglas Warne
Insurance Consultant
Kailua, Hawaii

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Communication, control are crucial to managing risks of overseas units

By MICHAEL BRADFORD

ATLANTA—Staffing and training risk management personnel for newly acquired or expanded overseas operations can be a painstaking process for U.S. companies.

But that doesn't mean risk managers have to "reinvent the wheel," said Eugene R. Schoenleber, international risk manager with United Parcel Service of America Inc. in Atlanta.

"All you need to do is look within your own organization and see what you've got," he told risk managers at the 10th Annual Educational Conference earlier this month sponsored by the Atlanta chapter of the Risk & Insurance Management Society Inc.

"That's really the first step: See what you've got in-house that can be modified and then export it overseas," Mr. Schoenleber said.

UPS, which began its international expansion in 1976 in Germany, continues to export and modify its successful risk management procedures for locations in 180 countries, he noted.

A problem that U.S. companies will find is that many overseas operations lack personnel who have risk management experience, Mr. Schoenleber said.

UPS has had to go through a "lengthy education process" to train risk management personnel in some countries, he said, stressing that the education is necessary because an overseas risk management program cannot be run entirely from a company's U.S. headquarters.

"I will almost guarantee that if some of you find yourselves in the same situation, you're going to have to depend on other people in your organization to get your job done," Mr. Schoenleber told risk managers.

That means risk managers have to visit those foreign sites and "spend a lot of time educating people and working with them. It's going to be a big part of your job," he said.

Mr. Schoenleber said risk managers have to "control and communicate" to operate a viable risk management program in a foreign location. "If you can't get this down, you're going to be in a world of hurt. And it's extremely difficult, believe me, when you're dealing with a multinational environment, to get a good handle on controlling and communicating."

In order to maintain control of—and communication with—a distant risk management program, the U.S. risk manager must take several important steps, according to Mr. Schoenleber, including:

- Determining how international insurance policies will be handled.
- Working on relationships with personnel in foreign locations and defining the responsibilities of those involved in international risk management.
- Developing loss reporting

procedures and cost allocation systems.

- Establishing requirements for reporting to management.

- Developing claims control procedures.

- Determining staffing levels.

- Making periodic visits to foreign locations.

"This I can't stress enough," he said. "It's absolutely a must. You have to get out and visit with your people and the brokers and insurance people. You just can't do an effective job sitting behind your desk."

- Putting together an international risk management manual.

"This is an excellent way to communicate with your field people," Mr. Schoenleber said.

In addition to putting together a workable risk management program, U.S. companies have to be careful not to violate local customs or laws regarding insurance coverage, said Ariel Silva, assistant vp with broker Johnson & Higgins of Georgia Inc.

"Many countries overseas have compulsory insurance requirements," and such laws vary by country, he said.

For example, countries may require different limits for coverages like automobile insurance, while property insurance is compulsory in some parts of the world, according to Mr. Silva.

And, in most countries outside the United States, workers compensation insurance is controlled by the government as a type of social security arrangement, Mr. Silva noted.

Risk managers with international operations are faced with the task of purchasing some coverages from local insurers in countries outside the United States, as required by law in those countries.

In addition, companies may feel pressure in some countries to act as a "good citizen" and purchase additional insurance from local underwriters, Mr. Silva said.

However, he noted that purchasing admitted insurance in many countries leads to higher costs, a lack of uniformity among policies around the world, restrictive coverages and a lack of control over the international insurance program by the corporate office.

Mr. Silva suggested that multinational risk managers purchase a "controlled master program" to eliminate some of the gaps created when buying admitted insurance abroad.

This program allows risk managers to negotiate with one insurer to purchase insurance coverages for all operations around the world, he explained.

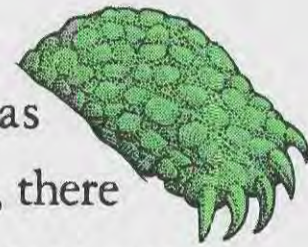
And any coverage needs that can't be met by the local insurer can be covered by a differences-in-conditions policy, Mr. Silva said.

The master contract allows the risk manager to put together a single program that is consistent with the company's risk management philosophy while meeting requirements for purchasing admitted coverage, he noted.

The discussion was moderated by Erin McMillan, analyst-risk management at Delta Air Lines Inc. in Atlanta. **BI**



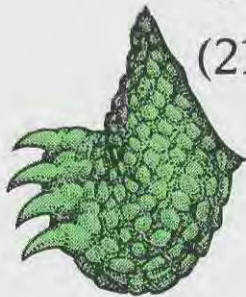
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English rule

Continued from page 3
suits that involve relatively minimal monetary damages because plaintiffs do not fear that legal fees will grow too high, he added.

But the English rule would also discourage plaintiffs from filing what may be justified—but not overwhelmingly strong—claims for fear that they would be required to pay huge legal fees, Mr. Rowe said.

In addition, there's no guarantee that a winner will be able to collect a cent from the loser, he noted.

"A lot of things work in England because of inertia—they've always had them, but that doesn't make them good," said William W. Schwarzer, a senior U.S. District judge who currently serves as director of the Federal Judicial Center in Washington.

Judge Schwarzer noted that under English law, very few civil cases are tried by jury. Such cases go before judges, who must follow legal precedent very strictly in rendering decisions. As a result, outcomes tend to be considerably more predictable in English courts.

Also, public, rather than private, legal representation is much more common in English civil suits than in the United States, he pointed out.

Someone who loses a case but is represented by a public attorney isn't required to pay the winner's fees, Judge Schwarzer noted. In practice, only about 65% of the winner's actual fees are awarded, he said.

Stuart M. Gerson, the acting U.S. attorney general, said he is not an "absolute supporter" of the English rule, even though tort reform recommendations he helped draft for the Bush administration did encourage the use of the English rule under some circumstances.

Mr. Gerson served the Bush administration as assistant attorney general in charge of the civil division and is acting attorney general until President Clinton fills the post.

Mr. Gerson added that there "might be some areas in which absolute fee-shifting" would have positive results, such as in child support cases.

But the current system isn't working, either, if the purpose of litigation is to foster the creation of a more just society, Mr. Gerson said.

"Litigation should, if it works, do away with itself over time" by encouraging justice and good behavior, Mr. Gerson said. Instead, the current system is slow, costly, not a particularly effective deterrent and random in its outcome, he said.

Judge Schwarzer called the current system "dysfunctional," saying that by examining the pluses and minuses of the English rule, "we are focusing on symptoms, not causes."

But even with a focus on symptoms, the English rule remains a "bad rule," he said.

Instead, U.S. jurists might consider adopting another system of fee-shifting that would encourage early settlement of disputes, said Judge Schwarzer. He emphasized that he was speaking solely as a private citizen and not as a representative of other judges.

Under a fee-shifting system, both defendants and plaintiffs would be encouraged to settle

disputes throughout the proceeding. If a party rejected a settlement and subsequently was awarded less than the offer, that party could be held liable for legal costs the other party incurred after the settlement was offered. In no case, however, could the legal fees awarded exceed the judgment.

"You can't make any general" assessment of exactly how such a system would work because of non-economic factors, such as the personalities involved in any particular case, said Judge Schwarzer. But the system seems guaranteed to encourage settle-

ment, particularly in cases where the litigation costs are disproportionate to the stakes involved.

Fee-shifting as practiced in most other legal systems "is not a winner-take-all, I won the pot" system, said Walter Olson, a senior fellow at the Manhattan Institute for Policy Research and author of "The Litigation Explosion." But rather the system attempts to apportion the awards in accordance with the case.

He predicted that "once courts begin awarding fees in both directions" in the United States, the awards will shrink. **BI**

Bifurcation

Continued from page 3
age awards is raising the standard of proof for punitive damage claims to "clear and convincing" from "preponderance of the evidence." This also enjoys support among chief justices, though not to the extent that bifurcation of trials appears to enjoy, said Mr. Connor.

But top state jurists seemed to have little interest in a third change ATRA backs: capping punitive damage awards. "The general reaction is that they think that caps, whether fixed-

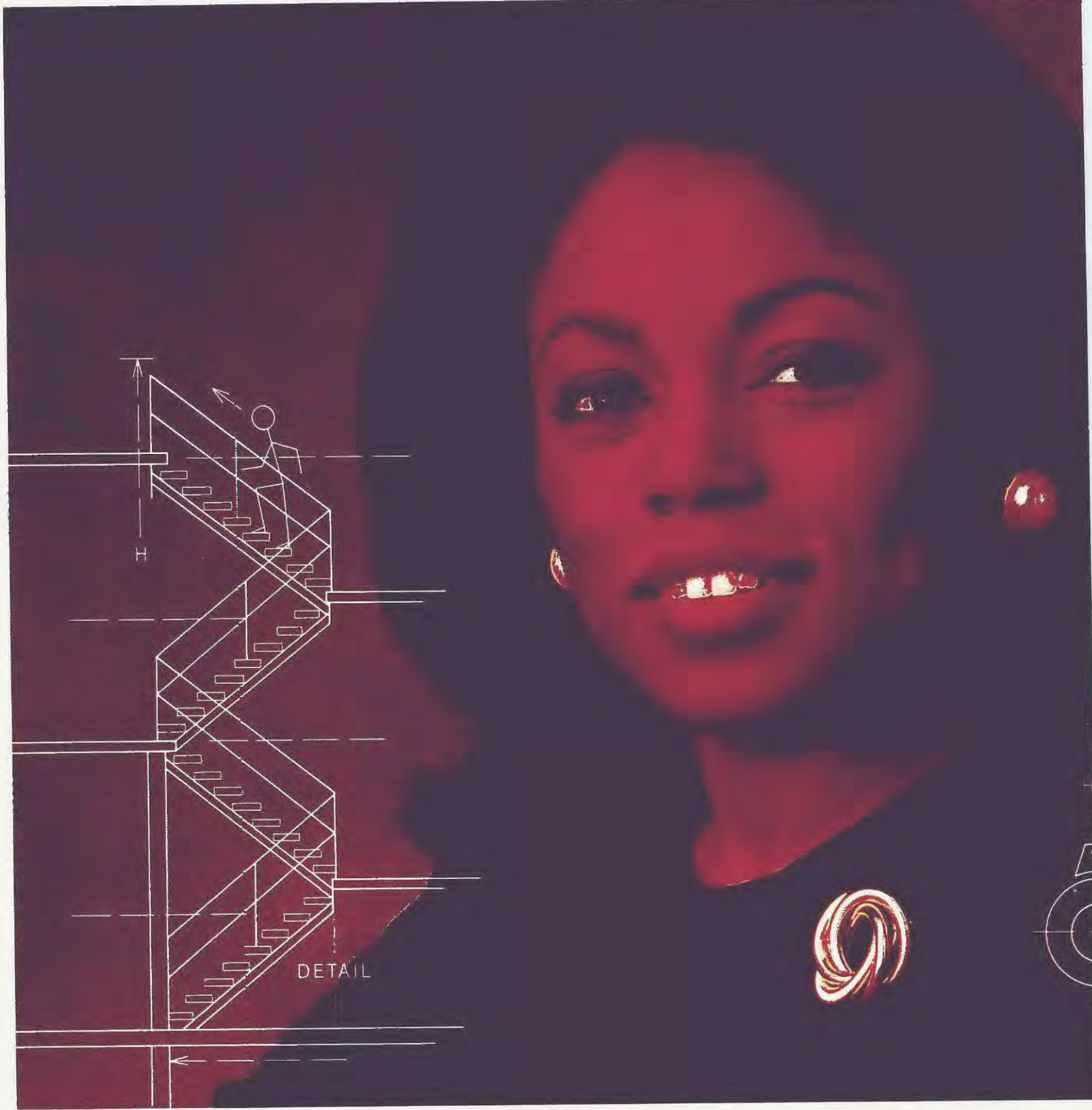
dollar or as a ratio of compensatory awards, was a very simplistic solution" to a serious and complex problem, he said.

Continuing to emphasize the judiciary's role in the punitive damages debate, tort law expert Victor E. Schwartz said, "We need to know what the plaintiffs' bar has known for decades:" that law can be made in the courts as well as in the legislatures.

As an example, Mr. Schwartz, a partner at Crowell & Moring in Washington, pointed to Tennessee. There the state Supreme Court set the stage for bifurcated

Continued on next page

THE HOM



OLD PROSON

Continued from previous page
 trials in punitive damages cases by ruling that a defendant was entitled to such a trial rather than waiting for the legislature to do so.

Mr. Schwartz also took issue with legal experts, including Supreme Court Justice Antonin Scalia, who resist limits on punitive damages awards because such limits weren't imposed by the drafters of the Constitution. Mr. Schwartz said that research into decisions from the late 18th century shows that punitive damage awards were extremely rare and generally were but a

fraction of the compensatory awards made.

Both Mr. Schwartz and Mr. Connor downplayed the influence that the plaintiffs' bar will have on the Clinton administration.

"The trial lawyers have been very blatant" in their contention that they elected President Clinton and that they will control his administration, Mr. Schwartz said.

But the trial bar has traditionally liked to fight one Washington battle at a time, such as when lawyers were able to block federal no-fault automobile insur-

'The trial lawyers have been very blatant' in their contention that they elected President Clinton and that they will control his administration, notes Victor Schwartz, who downplays the influence the plaintiffs' bar will have on the administration.

ance legislation in the 1970s; he said.

Now "there are a lot of submarines in the water," he said. Rather than fighting on one front, the trial bar may have to contend simultaneously with

bills to limit accountants' professional liability and the medical malpractice reform provisions that are likely to appear in any health care reform bills, he said.

Mr. Connor also noted that

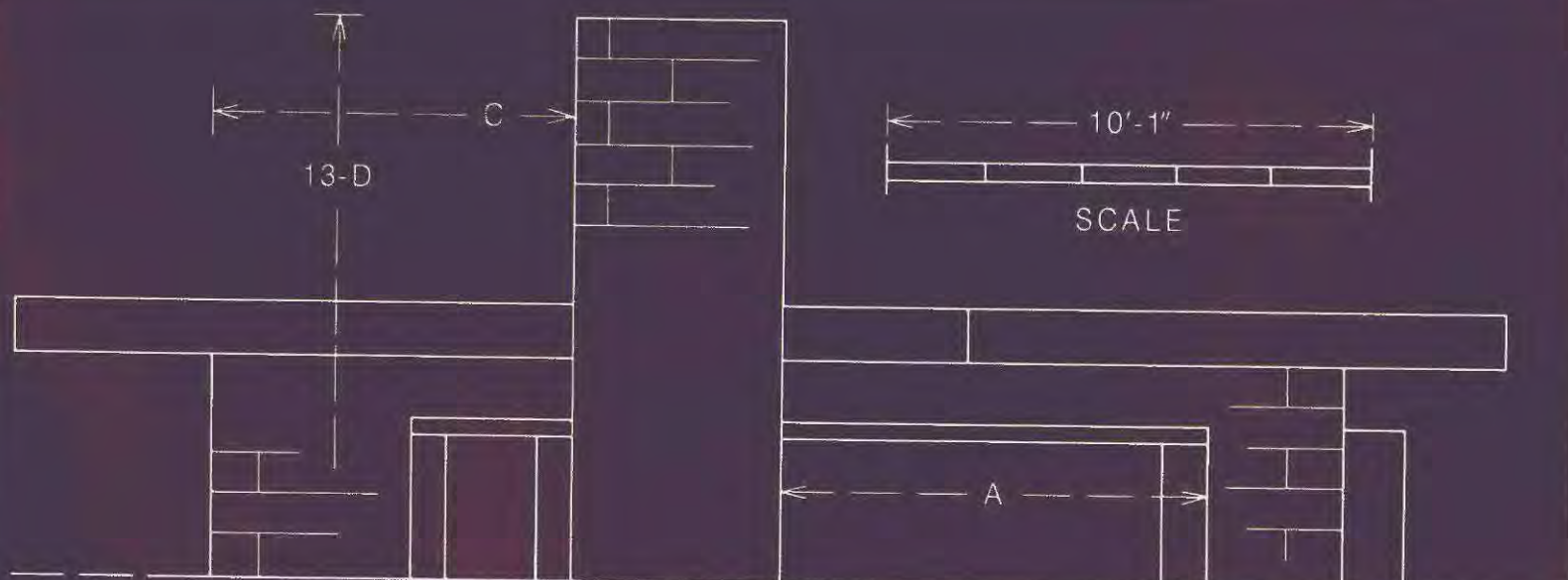
Sen. John Danforth, R-Mo., who recently announced his decision not to seek re-election in 1994, has vowed to revive his federal punitive damages reform bill, which was introduced in the last days of the 102nd Congress and then died without action.

Mr. Connor said that Sen. Danforth intends to attach his bill as an amendment to any piece of legislation to which it is germane. The bill would abolish punitive damages in some federal cases and replace them with a system of punitive fines determined in bifurcated trials.

But ATRA's efforts have by no means shifted entirely to Washington, said Diane K. Swenson, ATRA's executive vp.

"I want to talk about offensive action and talk about victory," Ms. Swenson told an enthusiastic audience. Although the group took defensive action to protect its lobbying victories last year, the group will push for changes in a number of states this year. She cited Mississippi and Texas in particular. Local tort reform coalitions that operate independently of ATRA are active in both states. **BI**

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A N E W T E A M

Secondhand smoke

Continued from page 1
said Dr. Jeffrey Harris, director of Alexander & Alexander Consulting Group Inc.'s health strategies group in San Francisco.

"The problem with smoking rooms is that they still pollute the ventilation system," Dr. Harris said.

Designating special smoking areas or allowing smoking in enclosed offices can also be perceived as discriminatory.

"What about those who don't have private offices?" Dr. Harris said. "That makes it a white-collar privilege. And they're still polluting the air."

Sixty-nine percent of 2,448 U.S. employers that responded to a 1992 survey by Foster Higgins said they in some way restrict smoking in the workplace, up from 65% in 1991. An additional 2% said they planned to introduce some type of restrictions by the end of 1993.

Health service companies like hospitals and health maintenance organizations have the highest percentage—89%—of workplaces with some type of smoking restrictions, the Foster Higgins survey found. They were followed by educational institutions with 82%.

Raytheon Corp. in Lexington, Mass., is among the companies taking another look at smoking in the workplace.

"We are looking at further restrictions and possibly banning" smoking in the workplace, a Raytheon spokesman said. "The EPA report is certainly a stimulus."

Currently, smoking is limited to certain designated areas like a section of the company cafeteria.

Foster Higgins' parent company, Johnson & Higgins, is also re-examining its smoking policy in the wake of the EPA report, Ms. Wiley said.

The broker is conducting a survey of employees in 50 branch offices to determine what current smoking policies are and what employees would like them to be, Ms. Wiley said.

A previous survey of J&H employees indicated many non-smokers did not feel strongly about smoking in the workplace, but the EPA report will change that attitude, Ms. Wiley predicted.

"I expect more militancy among non-smokers," she said. "You can't ignore something like the EPA report."

Employers, too, may become more aggressive.

Pharmaceutical manufacturer Abbott Laboratories in Abbott Park, Ill., is prohibiting smoking even outdoors on its premises.

At Southern California Edison Co., managers at more than 300 sites have developed policies concerning outdoor smoking, said Mary Ellen Courtright, manager of preventive health at the Rosemead, Calif.-based utility.

They were encouraged to ban smoking near ventilation intakes, near entrances and exits, and in areas visible to the public, she said.

Many companies have also designed broad policies that prohibit smoking in leased office space and automobiles.

Despite concern over the EPA report, employers are not likely to cut down on the advance notice they give employees before going smoke-free, Hewitt's Mr. Fortossis said.

Employers generally announce the policy eight to 12 months before implementation, Mr. Fortossis said.

Belz Enterprises announced to hotel employees last summer that a ban on workplace smoking will go into effect early this year, said Director of Risk Management Millicent W. Workman.

The real estate and hotel company's corporate offices in Memphis, Tenn., have been smoke-free since 1988.

"We wanted to give (employees) some warning," Ms. Workman said. The issue is particularly difficult in the hospitality industry, she noted, because guests may still smoke in designated restaurant areas and rooms.

But Ms. Workman does not anticipate increased liability as a result of the EPA's findings.

"There's not one employee who cleans the smoking rooms day in and day out," Ms. Workman explained.

Employees "are not exposed to smoke eight hours a day. They would have a hard time proving a claim," she said.

In addition to advance notice of any restriction on smoking, the tone of the communication is also important, A&A's Dr. Harris said.

"If you trumpet that smoking is evil and smokers are bad guys poisoning the air, it tends to alienate" those employees, Dr. Harris said. Employers that "didn't make much noise and just did it" tend to be successful at restricting smoking, he said.

Dr. Harris also warns against making the policy a condemna-

Basis for workers comp claims smoky

By MEG FLETCHER

Employers are likely to face more workers compensation claims from employees who claim illnesses caused by secondhand smoke in the workplace, though most will be unsuccessful, experts say.

A recent Environmental Protection Agency report designating secondhand smoke as a carcinogen "will provide some impetus for aggressive workers compensation lawyers to file more claims," said Stephen A. Bokart, vp and general counsel for the U.S. Chamber of Commerce in Washington.

"When new evidence comes out, you tend to see more filings at the beginning, until the law begins to settle," agreed Merton E. Marks, an attorney with Lewis & Roca in Phoenix.

Industries in which workers are regularly exposed to secondhand smoke are fertile ground for such claims, experts say.

"I suspect there will be more workers compensation claims from employees" like prison guards, said Dr. Kim Thorburn, president of the American Correctional Health Services Assn. in Honolulu.

The National Restaurant Assn. is seeking a legal opinion from outside counsel on the impact of secondhand smoke on workers comp claims, said Dick Johnson, the association's general counsel in Washington.

However, experts provide a range of reasons why most workers comp claims alleging secondhand smoke as a cause will be rejected.

"Some states are much less likely to accept such claims," said workers comp expert Peter Barth, an economics professor at the University of Connecticut at Storrs. Those include states in the conservative Southeast, Southwest and part of the Midwest, he said.

For example, the Nevada Supreme Court ruled last year that a casino "pit boss" could not re-

ceive compensation for a lung disease because Nevada's occupational disease law does not cover secondhand smoke claims.

The EPA report "doesn't make it any easier to get past the requirement of many states' occupational disease laws that the exposure is particularly related to the workplace," said Mr. Marks, the Phoenix attorney.

A worker may find it impossible to isolate his exposure to secondhand smoke on the job from his exposure elsewhere.

Claims related to indoor air quality and chemical sensitivity are "enormously difficult," and employers and insurers fight them "tooth and nail" because they fear a precedent-setting claim, said James Ellenberger, assistant director of the AFL-CIO's Department of Occupational Safety and Health in Washington.

However, Mr. Marks pointed out that if employees' workers comp claims for secondhand smoke ailments are denied, it could open the door to common law tort litigation against employers. He cited such a case in Washington state, where secondhand smoke claims are not allowed under workers comp statutes.

Meanwhile, the EPA's report prompted other developments.

Shortly before leaving office, former Secretary of Labor Lynn Martin directed the Occupational Safety and Health Administration to begin rule-making on the hazards of occupational exposure to secondhand smoke.

OSHA's Office of Health Standards is currently completing its analysis of information about indoor air quality.

In addition, attorneys for a Nevada state prisoner cited the EPA's findings in oral arguments last month before the U.S. Supreme Court. Plaintiff William McKinney claims his health was endangered and his constitutional rights violated when he was forced to share a cell with a prisoner who smoked five packs a day.

tion of smoking or smokers. Despite strong feelings by both smokers and non-smokers, smoking should not be singled out as a controversy, he suggested.

A smoking policy "is a communication issue," Dr. Harris said. "It doesn't need to be made into a special issue. It's just another work rule."

"It's for health reasons and it's a safety issue," Ms. Workman agreed. "People may have been smoking in unauthorized areas, such as storage closets."

Belz explains its smoke-free policy before an employee is ever hired.

"We are upfront when hiring that we are a non-smoking company," Ms. Workman said.

Dow Chemical Co. announced at the end of 1992 that it will become smoke-free on July 1, said Carol Humbyrd, a Dow communications specialist who

worked on developing the firm's campaign.

The campaign's message is not that you have to quit smoking, but "if you're not thinking about quitting smoking, you have to change your habits," Ms. Humbyrd said.

"Non-smokers are encouraged to increase their awareness of what fellow employees might be going through," Dow's announcement to employees noted.

Dow has restricted smoking since 1986, and the new policy is in response to employee inquiries and a task force of both smoking and non-smoking employees. The group looked at environmental information as well as what competitors were doing.

Nearly a month after the announcement, the communications department had received only one complaint from the 20,000 employees who will be affected by the policy, Ms. Humbyrd said.

The companies that are most successful in implementing smoke-free policies are those that assist employees in quitting, said Mr. Fortossis of Hewitt.

The assistance can take the form of classes, covering nicotine replacement therapies like chewing gum and transdermal patches under a health care or flexible benefits plan, and buddy systems with former smokers, Mr. Fortossis said.

Abbott, Belz, Dow and Southern California Edison offered either smoking cessation classes or aides when they implemented their non-smoking policies.

"A good side effect is that a significant number of employees quit (smoking) as a result of restriction in the workplace," Foster Higgins' Ms. Wiley said. That is a development that can reduce health care claims.

The number of smokers at Southern California Edison has dropped to about 15% of 17,000

employees from 17% before a smoke-free policy was implemented a year ago, Ms. Courtright said.

Information on how to quit was requested by 1,900 utility employees.

"Implementation was anticlimactic," Ms. Courtright said. "We were concerned about having it be disruptive and a big problem."

Ms. Wiley of Foster Higgins recommends that employers considering a smoke-free policy begin with an employee survey. Companies should then provide employees with the survey results and explain that any policy changes stem from employee responses.

"Employees feel they had some say in the development," Ms. Courtright said. "They feel someone represented their viewpoint, so they are more accepting of it." **BI**

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ADVERTISER INDEX

Issue of February 8

Advertiser	Page #
AAPC	6
Business Insurance	10
Commerce & Industry/AIG	11
Environmental Compliance	7
First State Management Group	4
Home Insurance Company	12-13
Industrial Risk Insurers	20
North American Reinsurance	9
Reliance National	24
Wausau Insurance Company	5

ASK A BENEFITS MANAGER

Regulatory compliance calls for extra attention to new, expected laws

Q

I'm working on benefit planning for the coming year. What advice do you have on compliance and other issues?

A

Besides the regulatory requirements of items already on the books, there are always new regulations we must comply with and new laws we should anticipate will be passed during the year.

Under the category of "new laws and regulations," those items you need to concentrate on in 1993 include: the Unemployment Compensation Amendments, Financial Accounting Standards 106 and 112, and the 404(c) regulations. Compliance with the UCA and FAS 106 is immediate, while compliance with FAS 112 and the 404(c) regulations can be deferred until late in the year.

The UCA applies to any retirement plan distribution after Dec. 31, 1992, that would qualify as a lump sum rollover. Plans are required to withhold 20% in federal taxes from such distributions unless arrangements have been made for a direct rollover to either an individual retirement account or to an employee's new defined contribution plan.

The key challenge is to provide employees with the required notification regarding the withholding

While meeting the many compliance requirements is absolutely necessary, your plans must also be designed to attract and retain the qualified employees your organization needs.

and direct rollover option in a timely manner. The notification must be provided to employees no later than 30 days and not earlier than 90 days prior to the distribution.

Also, make sure you have updated the notification. The 402(f) notice that was revised by the IRS is actually user-friendly and could be used with minimal or no change.

In addition, in light of the UCA you should probably review and/or change forms and procedures with respect to retirement plan distributions.

The requirements of FAS 106, which entails accounting for post-retirement benefits other than pensions, must be met by large employers during the first quarter of 1993.

Many employers modified their retiree medical plans as a result of FAS 106. If you have made changes, you need to ensure that all communication materials relating to retiree medical benefits have been modified.

Since one of the most common changes was to require retiree contributions for the first time or to increase retiree contributions, systems need to be modified to collect the correct amount of retiree contributions.

An annual valuation of retiree medical expenses and liability must be performed, and you need to ensure that your plan actuary is provided with the

necessary data on time.

Since many employers modified their retiree medical plans during 1992 in an attempt to reduce the FAS 106 expense, it would be useful to review the changes made by other employers.

You need to make sure that your retiree medical plan benefits are competitive and that your FAS 106 expense is not out of line when compared with that of your competitors.

The 404(c) regulations require changes in defined contribution plans if plan administrators wish to minimize their fiduciary liability for participants' investment decisions.

Changes may include adding investment fund options, increasing the frequency of fund transfers and providing adequate information on investment elections.

These regulations take effect after the first day of the second plan year beginning after Oct. 13, 1992 (Jan. 1, 1994, for calendar-year plans).

During 1993, you should be reviewing these regulations to determine the best approach for seeking protection from fiduciary liability as it relates to the investment vehicles in your defined contribution plan.

FAS 112 requires the same accounting treatment for benefits after employment—but before retirement—as FAS 106.

This will affect benefits such as workers compensation, short- and long-term disability, severance plans and other continued health or life insurance coverages.

This standard will become effective in 1994. During 1993, you will need to determine the potential liability and increased expense and possibly make plan changes.

Anticipating new laws and regulations is difficult, but we do have some direction from 1992.

The urban aid tax bill was passed by Congress but vetoed late in 1992. Some of the employee benefit-related provisions of the bill included technical corrections to the UCA, pension simplification provisions, revisions to IRA rules and extension of the exclusion for employer-provided education assistance. I am confident that many of these provisions will become law in 1993 in addition to a family leave bill.

With the new administration under Bill Clinton and a Democratic Congress, there is little doubt that health care reform legislation will be passed.

I expect the legislation will require employers to offer health care benefits to all employees. Additionally, it appears that employees will be taxed on health care benefits exceeding a basic level of coverage.

Two organizations—the Health Insurance Assn. of America and the Assn. of Private Pension & Welfare Plans—have both publicly supported such an approach to health care.

It's a good idea to explore how such requirements will affect your organization and how such programs can be implemented and administered on an ongoing basis.

In addition to complying with new legislative requirements, employee benefits administrators must comply with the regular ongoing requirements. Some of the standard filings include:

- Form 5500, which must be filed within seven months after end of plan year; for most plans, it is due July 31.
- Summary Annual Report (SAR), which must be filed two months after Form 5500 is due; for most plans, it is due Sept. 30.
- PBGC Form 1 ES, which must be filed by the end of the second month of the plan year; for most plans, it is due Feb. 28.
- PBGC Form 1, which must be filed 8½ months after the beginning of plan year; for most plans, it is due Sept. 15.

One requirement that may be easy to overlook is the notice of age 70½ distribution requirements.

Terminated vested and active vested participants who attained age 70½ in 1992 must be notified and have a portion of their retirement plan accounts distributed by April 1.

Another annual compliance requirement is that pension recipients are notified of the right to change current withholding status for taxes.

Other ongoing compliance items include maintaining up-to-date Summary Plan Descriptions or filing a Summary of Material Modifications notice with the Department of Labor for plan changes.

COBRA notices are required both when coverage

Those items you need to concentrate on in 1993 include: the Unemployment Compensation Amendments, Financial Accounting Standards 106 and 112, and the 404(c) regulations.

commences—for employee and spouse—and upon a qualifying event.

Other compliance related items that need to be monitored and which change each year include:

- 401(k) elective deferral maximum.
- Section 415 basic defined benefit dollar maximum.
- Annual compensation limit.
- Definition of highly compensated employee group.

While this list of items is not meant to be exhaustive, it should provide some direction for items to concentrate on.

Ensuring that plans meet the ever-changing legal requirements is an ongoing challenge, not to mention the increasing pressure to control employee benefit costs and to administer plans in the most efficient manner possible.

While meeting the many compliance requirements is absolutely necessary, your plans must also be designed to attract and retain the qualified employees your organization needs.

In the area of cost control, we all need to focus on our health care expenses.

In most organizations, health care is the largest single element of employee benefit expense and is increasing faster than any other benefit expense. We would be remiss in our responsibilities if we are not constantly monitoring and taking steps to control these expenses. **BI**

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

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This month's column on employee benefit management issues is written by Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers questions on risk management issues. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, president of Pacific Actuarial Resources (PAR)



Mr. Nirtaut

Excellence in Ashland, Ore., answers actuarial questions in the casualty field.

Mr. Nirtaut's next column will appear in May. 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.

Municipal bonds

Continued from page 2

President Bush, being the governor of a state very much under pressure in this area." He also is familiar with problems of public financing in the municipal sector, Mr. Djordjevich added.

Had President Bush been re-elected, "I would be less optimistic we would have some breaks," he said.

"I presume he will do what he can to encourage state and local governments to spend on the infrastructure," said Wallace O. Sellers, chairman and CEO of New York-based Enhance Reinsurance Co., a financial guarantee reinsurer.

"I think he's going to make good on his promise to rebuild America," said Robert Godfrey, executive vp of MBIA Inc. of Armonk, N.Y., a financial guarantee insurer, and municipal bonds "are probably the most efficient and low-cost way of getting that done."

Municipal bonds enjoyed a strong market last year, and President Clinton's initiatives "could keep a hot market moving ahead," said Robert Green, director at Standard & Poor's Insurance Rating Services in New York.

An estimated \$232.8 billion in municipal bonds were issued last year, up 36.1% from the \$171.1 billion issued in 1991. About half of total 1992 volume was in re-

fundings, though, in which municipalities replace their old debt with new issues at lower interest rates.

Of last year's municipal bond issues, 34%, or \$78.9 billion, was insured.

The nation's infrastructure "has been a pretty strong focus (of Bill Clinton), and that's a positive because there's been so much neglect," said Joan Solotar, an analyst with Donaldson Lufkin & Jenrette Securities Corp. in New York.

However, William F. DeSante, managing director at rating agency Moody's Investors Service Inc. in New York, said even though the administration "seems to be somewhat favorably more disposed" to infrastructure repair, this "is not something that will have a major impact on the market in terms of supply of paper."

While his election will not have a negative impact, "I don't think it will be a major boost to issue bonds," he said.

The Clinton administration has "put a much more favorable light on municipal bonds" and on how much infrastructure needs should be addressed, said Robert Genader, senior executive vp at AMBAC Indemnity Corp. in New York, a financial guarantee insurer.

However, \$20 billion is "not a very large increase in municipal issuance," he said. For instance, it costs \$5 billion alone to build

an airport, and about \$200 million to build a highway, he said. "It's not going to change the shape of municipal bond issuance."

The question also remains how President Clinton can encourage state and municipal governments to boost their infrastructure spending.

"It will depend on what tack the Clinton administration takes," said Claire Cohen, execu-

President Clinton's initiatives 'could keep a hot market moving ahead,' said Robert Green.

utive vp, governmental finance, at rating agency Fitch Investors Service in New York. "I think it's a little bit early to tell," she added. "Nobody knows whether the Clinton administration is going to follow through."

Higher tax rates would be helpful because they would increase demand for tax-exempt municipal bonds, said Moody's Mr. DeSante.

In addition, over the past two decades, there has been a cut-back by Congress in the different categories of bonds that are tax-exempt, such as industrial development bonds, said Charles Sil-

verstein, managing director and senior underwriting officer for Finance Security Assurance Inc. in New York, a financial guarantee insurer.

The "general perception" is that the Clinton administration would be sympathetic to permitting tax-exempt issues for a broader array of bonds, said Mr. Silverstein.

This will enhance the value of municipal bond insurance, which occurs whenever the industry's buying patterns are reformatted, he said. The municipal bond insurance industry's role is to make investment in municipal bonds very easy, said Mr. Silverstein, adding that whenever there is an evolution in the business, this role takes on greater importance.

The president can also encourage municipal bond issuance by distributing a small amount of federal grant money, which the states could then leverage and issue municipal bonds against, said MBIA's Mr. Godfrey.

On the other hand, federal subsidies that fully finance infrastructure projects obviously will not lead to more municipal bond issuance, pointed out Ann C. Stern, president and CEO of Financial Guaranty Insurance Co. in New York, a financial guarantee insurer.

And municipal bond issuers are generally opposed to one suggestion by the Infrastructure Investment Commission, a fed-

eral agency created by Congress under the Intermodal Surface Transportation Efficiency Act of 1991.

In an interim report, the IIC suggested forming a partially government-backed insurance company to insure transportation issues that could not otherwise find private insurance. Its final report is scheduled to be released Feb. 23.

As a model for such an insurer, the interim report pointed to Washington-based Connie Lee Insurance Co., which specializes in higher education issues and is half-owned by the federal government and the Student Loan Marketing Assn., or Sallie Mae.

Private insurers, however, have complained that Connie Lee's close ties to the government give it an unfair competitive advantage (BI, Oct. 21, 1991).

Objections to a new "government-sponsored enterprise," as it has been called, include municipal bond insurers' fear that to be economically viable, the insurer will compete with the private sector to insure creditworthy issues, along with issues that cannot obtain private insurance.

On the other hand, as an insurer of lesser quality issues, such an enterprise could eventually lead to another savings and loan-type bailout, said FGIC's Ms. Stern, whose company has actively opposed the concept. **BI**

Texas workers comp law

Continued from page 2

ity deposit are other concerns Mr. Stevenson identified.

Despite concerns, regulators and others expect the number of applications to grow.

About 450 applications already have been requested by employers doing business in Texas, according to Edward D. Struck Jr., director of the Division of Self Insurance of the Texas Workers Compensation Commission.

The first applicants are those with Feb. 1 renewal dates on their workers comp policies, Mr. Struck explained.

"Most of the applicants are retailers," along with trucking companies, lumber companies and manufacturers, he added.

Business leaders and employers have long backed the legislative change, saying the ability to self-insure allows companies to save money while gaining control over the exposure.

"We've been very supportive of that provision," said Dane Harris, president of the Texas Assn. of Business in Austin. "We've worked for that for a number of years," Mr. Harris added, referring to the section of the 1989 law that allows self-insurance.

"It puts employers in better control of their own destinies," said Mr. Harris. "If they are insuring themselves, it encourages them to pay closer attention to their experience and safety in the workplace."

For the Texas Self Insurance Assn., implementation of the law was the culmination of a long struggle.

"Every once in a while I have to pinch myself," said Judy Roach, the association's executive director.

Ms. Roach said the association "started as a loosely held coalition in the mid-'70s" that filed self-insurance legislation during every legislative session through 1981. That year, the legislation failed by one vote to make it as

an amendment on another bill.

"We formed a permanent, legal organization in 1982 and filed a bill in every session since 1983," until the regulations appeared in the 1989 law, she said.

The ability to self-insure means employers have "more direct control of the distribution of benefits," Ms. Roach said.

In addition, she noted that "most of our membership is multistate. The law brings them in line with the rest of their operations throughout the nation" that self-insure workers comp risks.

And, Ms. Roach added, self-insuring the exposure allows businesses to avoid the high cost of the coverage in the traditional marketplace.

"We're self-insured everywhere else and to us it makes sense from the standpoint of administration and controlling our claims costs," said Jim Goss, insurance manager at Dillard Department Stores Inc. The Little Rock, Ark.-based retailer is one of the first businesses to seek permission to self-insure its Texas workers comp exposures.

Dillard's, with 13,000 employees in Texas, self-insures workers comp in the 19 other states in which it operates, Mr. Goss said.

It's difficult to pin down an exact amount Dillard could save on its workers comp costs, Mr. Goss said. Most of the savings will come from a reduced number of worker claims, he predicted.

"We have a very aggressive safety program," he added, and "we will increase involvement in training and safety compliance" by the Texas stores.

While employers can get a grip on their workers comp exposure by self-insuring, claims handling will not be within their reach.

The regulations mandate that claims must be administered by a "qualified claims servicing contractor" that "must be a sep-

arate business entity from the certified self-insurer."

Mr. Stevenson said he was unaware of any other state law that requires employers to use a third-party administrator to handle claims.

He pointed out that the requirement in Texas means self-insured employers with licensed claims adjusters on their staffs can't use those employees to administer claims.

'We're self-insured everywhere else and to us it makes sense from the standpoint of administration and controlling our claims costs,' says Jim Goss, insurance manager at Dillard Department Stores Inc.

Mr. Struck of the self-insurance division said he would prefer that the law allow employers to administer their claims.

"Self-administration in other jurisdictions works very well," he said. "The employer has more of an interest in the employee than a disinterested third party."

The Texas Self Insurance Assn.'s Ms. Roach said she expected the requirement would cause some problems among employers.

"We thought our people might be inclined to want it in-house," she said. "But we've heard no complaints."

Ms. Roach said workers comp claims primarily are handled by outside administrators, even in those states that allow employers to self-administer.

However, the minimum annual premium required to be able to self-insure seems unfair to some employers.

Under the law, only employers with unmodified annual premiums of more than \$750,000 are allowed to self-insure. The threshold drops to \$500,000 on

Jan. 1, 1994.

"We hope at some point the threshold will be lowered" even further, said Mr. Harris of the Texas Assn. of Business. "These thresholds are pretty high and that does limit the number of employers who qualify."

Mr. Harris said he understands that the high thresholds were set at first to allow only large, sophisticated employers to self-insure. "We need to give it ade-

quate time to work before considering any real changes."

The NCSI's Mr. Stevenson agreed that the premium thresholds are keeping some stable employers from self-insuring.

He pointed out, for example, that workers comp premiums for banks are very low although many are large, well-run companies. "Not many banks will reach that threshold."

The law also calls for a \$1,000 application fee, and the applicant must provide security equal to \$300,000 or 125% of its "incurred liabilities for compensation," whichever is greater.

The law defines those liabilities as "the sum of the estimate of liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported, plus the estimated amounts necessary to provide for the administration of those claims, including legal costs."

The deposit amount is unnecessarily high, said Mr. Stevenson. "They're demanding what amounts to 100% security for the contingency of a self-insured be-

coming insolvent, which is negligible. It's foolish to tie up that capital, which will have no productive use in our society."

"The emphasis should be on who is approved or disapproved rather than a huge security deposit... particularly when you have a guaranty fund that assures no claim will go unpaid," Mr. Stevenson said. Self-insured employers must belong to the Texas Certified Self-Insurer Guaranty Assn., which was created by the new law.

"The guaranty fund is different from most guaranty funds," said Mr. Struck. "Most funds are formed in a crisis after self-insureds have gone bankrupt and injured employees are not getting paid." Instead of waiting for trouble, "we're starting out fresh," said Mr. Struck.

The law calls for the guaranty fund to build up a \$1 million surplus over the next five years. The funds will come from assessments on members and will be based on income benefits paid by the employer or its workers comp insurer during the year preceding membership.

If an employer is unable to pay claims, the first step the association takes is to release the employer's security deposit to meet its obligations. If additional funds are needed, members will be assessed amounts according to a ratio that considers each member's income benefit payments.

Employers that self-insure in Texas also are required to purchase an excess policy with limits of at least \$5 million above their retentions.

Other expenses include a regulatory fee, based on income benefits paid, to cover the commission's administrative costs. Self-insurers must also pay a maintenance tax now paid by insurers to finance the operations of the state Workers Compensation Commission. For this year only, the tax is equal to about 0.6% of standard premium. **BI**

INTERNATIONAL

Stop-loss programs court Lloyd's members

By STACY SHAPIRO

LONDON—Thousands of Lloyd's of London members should be able to buy enough stop-loss insurance from various commercial facilities to limit 1993 potential losses to as little as 5% of their premium income limit.

Despite three years of severe losses for specialist stop-loss underwriters and the drying up of the conventional insurance market, underwriters and members' stop-loss mutual insurers are introducing coverage that will offer various layers above a 5% "excess point."

Among the stop-loss programs just announced is a members' stop-loss mutual known as Integer—The Underwriting Members Mutual Club Ltd., which was announced to

members agents Friday. The mutual is designed to provide coverage above 25% of each member's premium income limit and below Lloyd's mandatory stop-loss fund, which pays for losses in the aggregate in excess of 80% of each member's premium limit over a four-year period.

These new commercial stop-loss facilities, plus Lloyd's mandatory stop-loss fund, "would effectively remove unlimited liability," observed a Lloyd's members agent.

However, more than half of Lloyd's membership traditionally doesn't buy stop-loss coverage because it is expensive and complicated, and it cuts into their potential profits, pundits say. Many members do find comfort in buying the coverage, however, said the members

agent. "It's a very personal thing."

Over the past few years, members' stop-loss insurance coverage has created huge claims for the specialist Lloyd's syndicates that wrote the policies. These claims include big losses for members on defunct syndicate 387, underwritten by Derek Walker and managed by Gooda Walker Ltd. (see story, page 1), and defunct syndicates 134 and 184, underwritten by C.N. Mackinnon and managed by Mackinnon Hayter & Co. Ltd.

Specialist stop-loss broker Holman Wade Ltd. last year settled 7,500 claims totaling 200 million pounds (\$302.9 million at applicable exchange rate) from stop-loss policies for 1989. This year it is expecting to process at least 10,000 claims, sources say.

The company settled claims last year totaling 36 million pounds (\$54.5 million) on its estate protection plan business, which covers the liabilities of dead Lloyd's members, sources say.

Michael Wade, chairman of Holman Wade, recently left the company, partially because he opposed staff cuts ordered by the parent company in spite of the increasingly heavy claims processing workload from Holman Wade's stop-loss business, sources say.

Because of syndicates' losses from stop-loss coverage, many Lloyd's members have threatened to withdraw capacity from syndicates that write members' personal stop-loss coverage. This threat has forced a capacity crunch in the market.

"Stop loss is unpopular to un-

derwrite... and members don't want to be on stop-loss syndicates. So few people are prepared to write it," said a Lloyd's source. "Underwriters who will write it can set their own terms and put the price up."

Last week, three specialist stop-loss brokers banded together and announced probably the only conventional members stop-loss insurance policy available for this year and 1994. Coverage for 1993 is retroactive to Jan. 1.

Fraser Special Risks Ltd., Fenchurch Insurance Brokers Ltd. and Seascope Special Risks Ltd. are offering members' stop-loss coverage above 16% of each member's annual premium income limits, over a two-year period. The policy allows members to include their personal ex-

Continued on next page

Norway plans to ease limits on foreign investors

OSLO, Norway—The Norwegian government plans to ease restrictions on foreign investments in insurance companies.

In a letter from the Finance Ministry to the administrators of bankrupt insurer UNI Storebrand A/S, the ministry said the rules limiting foreign ownership in a Norwegian financial institution to 10% are too restrictive. The ministry said the rules will be changed to allow foreign investors "in certain circumstances" to acquire up to 33% of insurers and their parent companies.

Insurance analysts say that the new regulation will not be sufficient to attract foreign buyer interest in the UNI Storebrand operating companies.

—By Maria Kielmas

GLOBAL BRIEFS

Interest in Hafnia units

COPENHAGEN, Denmark—The deadline for submitting bids to acquire the operating companies of Denmark's Hafnia Holding of 1992 A/S is Feb. 19, after the company granted a second extension at the request of potential buyers, a company spokesman said. The first extension was Jan. 29.

Initially, two Hafnia operating subsidiaries were on the block, Hafnia Insurance Co. Ltd., a multiline insurer, and Hafnia Bank (BI, Sept. 21, 1992; Aug. 24, 1992). But interest has been expressed in all of the

holding company's assets, including its shares in Swedish insurer Skandia Group and Danish insurer Baltica Holdings A/S. Among other assets attracting interest are a lumber company and a football club.

Hafnia will not make any statements on the bidding process until the final sale is negotiated. Proceeds from the sale will go toward paying off the 6 billion Danish krone (\$950 million at current exchange rates) debt that had been accrued by Hafnia Holding A/S when it suspended payments on claims.

—By Maria Kielmas

Tankers called unsafe

HAMBURG, Germany—German marine insurers are calling for more

stringent international ship safety standards and demolition of obsolete vessels.

Three-fourths of the world's oil tankers are unsafe and should be replaced, according to a report released last month by the German Assn. of Marine Insurers.

The association based this figure on a survey of German ship builders.

The standards German marine insurers use to determine a vessel's fitness include whether a ship has double-wall construction and whether an oil tanker's cargo area is equipped with safety caps.

German marine insurers base their standards on those of the International Union of Marine Insurers.

However, the German association plans to press national and international regulatory authorities for stricter controls of construction regulations and more investigations by ship classification agencies in order to weed out older ships.

Obsolete ships were the primary cause of billions of dollars of losses incurred by world marine insurers, the report concludes.

Claims to German marine insurers in 1991 amounted to 600 million deutsche marks (\$396.6 million at applicable exchange rate).

German statistics show that among all oil tankers, 57.2% are at least 15 years old.

Between 1982 and 1991, German marine insurers lost 1,766 ships. Of

Continued on page 19

German unification leads to increased workers comp costs

By DON LEWIS KIRK

BONN—German unity will continue to boost the national workplace accident insurance system's costs and the amount employers must contribute to it, an official of a worker cooperative says.

Compensation paid to German workers for on-the-job accidents jumped to 18.7 billion deutsche marks (\$12.36 billion) in 1991, 20.3% over 1990's 15.6 billion deutsche marks (\$10.44 billion), according to a work-safety report released by the government last month.

A German Ministry of Labor study shows the number of work-related accidents increased 20% to 2 million in 1991 from 1.67 million a year earlier. The increase "largely reflects the 20% population increase resulting from German unity," according to Ministry of Labor work-safety expert Klaus Groeger.

However, work-related deaths from accidents dropped by 4% to 1,496 in 1991 from 1,558 in 1990.

German workers also reported more job-related illnesses than ever before. The number of employees applying for compensation for work-related illnesses increased 19.2% to 68,858 in 1991 from 57,767 a year earlier. Deaths from work-related illnesses jumped 21% to 333 from 275 during the same period.

Labor Minister Norbert Blum attributed the increases to the emergence of claims for asbestos-related illnesses stemming from exposure that may have occurred years ago.

The rise in work-related accidents and illnesses boosted the cost of the state-run public accident insurance system to 18.7 billion deutsche marks in 1991 (\$12.36 billion at applicable exchange rates), compared with 15.9 billion deutsche marks (\$10.64 billion) in 1990.

The accident insurance system, which is financed entirely by employer contributions, compensates workers for accidents and illnesses incurred on the job or while going to or from work.

The average employer contribution is about 2% of payroll, but varies according to the hazards of a particular business.

Twenty worker cooperatives administer claims and determine which are compensable.

"Safety standards in eastern Germany are our primary concern," said Joachim Breuer, administrative director of the Assn. of Worker Cooperatives. "Prior to unity, job-related accidents were going down. Now we confront a whole new situation. Some companies will be confronting a 30% increase in their premiums because of the risk involved." **B**

Greenpeace calls for teamwork

Property insurers must help save the planet: Report

By STACY SHAPIRO

LONDON—As property insurers take steps to shield themselves from the financial dangers of global warming, they can do more to help save the planet from climatic shifts, one of the world's leading environmental groups contends.

Property underwriters are beginning a "dramatic overhaul of the way business is conducted," Greenpeace said in its report, "Climate Change and the Insurance Industry," released last week. This includes substantially increased deductibles, a reappraisal of excess-of-loss reinsurance arrangements between insurers and reinsurers, increased use of coinsurance, and an attempt at "realistic rating," according to the environmental group.

However, these actions are not enough to save the planet, Greenpeace contends.

In particular, insurers should start lobbying industry, government, consumers and shareholders to cut greenhouse-gas emissions caused by the use of fossil-fuel energy.

Insurers could use their investment capital to promote alternative energy supplies, such as solar power, says Greenpeace's report.

The insurance industry could use other levers, such as hiking premium rates or not offering coverage "to encourage change if it chose," the report adds.

"As the world approaches the 21st century, the insurance industry, human communities, and ecosystems are all at risk from human enhancement of the greenhouse effect. It is time to expand one of the underpinning concepts of insurance: the solidarity of the risk community."

Property insurers are listening to what Greenpeace has to say about the effect of global warming on weather severity and rising seas, which may be causing increased claims.

But it's unlikely that underwriters will go be-

yond their normal course of business to bring about changes in energy supplies, they say.

"We are a trillion-dollar business and we're a natural ally of Greenpeace," said a Lloyd's of London underwriter. "We have prejudices that it's getting worse out there as carbon dioxide builds up... It makes hurricanes a lot more frequent."

But the Lloyd's underwriter said he wouldn't lobby for alternative fuel supplies to reduce carbon dioxide emissions that cause global warming. "We'll try to be a market for the product, but we'll have to put the price up. Greenpeace's report justifies this."

The warming of the climate "is bad for mankind, but not necessarily for insurers," added Alfred Bloch, manager of catastrophe and reinsurance research for Swiss Reinsurance Co. in Zurich, whose predecessor talked to Greenpeace for the report prior to his retirement. Insurers and reinsurers will continue to cover damage stemming from natural catastrophes, Mr. Bloch said.

There is no conclusive evidence that increased carbon dioxide emissions are causing more severe storm patterns, said Mr. Bloch. But "there is more flooding," so Swiss Re now restricts underwriting coverage for flood damage in certain parts of the world, he said.

As for hurricane coverage, "if the price is correct, we can live with it," said Mr. Bloch.

He says lobbying is the job of insurers, whose clients are affected by natural disasters, not reinsurers.

However, it is not a viable solution for insurers to penalize the oil and gas industry with less coverage to force it to invest in alternative energy sources, he suggested. "The oil industry is so big they could get reinsurance by setting up pools themselves."

The Greenpeace climate campaign's scientific director, Jeremy Leggett, presented his report

Continued on page 19

INTERNATIONAL

Stop-loss

Continued from previous page
penses in calculating losses, which up until now were excluded.

Members can buy up to 100,000 pounds (\$146,000 at current exchange rate) in limits each year or 150,000 pounds (\$219,000) in the aggregate over two years, confirmed Giles Schofield, director of Fraser Special Risks. The premium ranges between 5,500 pounds (\$8,030) and 7,500 pounds (\$10,950), depending on the member's portfolio, he said.

Seascope also runs three members' stop-loss pools that provide coverage in excess of 5% of each member's premium income limit, explained Richard Godfrey, a stop-loss executive at Seascope's special risks division.

The pools, underwritten by Seapool Reinsurance Co. Ltd., offer three-year contracts and essentially provide three layers of coverage. A member can buy 25,000 pounds

(\$36,500) excess of 5% of his premium income limit for 750 pounds (\$1,095) in premium; 25,000 pounds excess of 25,000 pounds for another 750 pounds in premium; and 50,000 pounds (\$73,000) excess of 50,000 pounds for 1,300 pounds in premium (\$1,898), but only if more than 400,000 pounds (\$584,000) in premium income is written.

The Seascope pools, in their fourth year, are being underwritten on a claims-made basis starting in 1993. In the event that claims exceed the available pool limit—which is two times applicable premiums collected plus profit commissions and investment income—individual recoveries will be scaled down pro-rata to the amounts of claims by each member.

The Stop Loss Mutual Assn., a members' mutual managed by London-based Charles Taylor & Co., offers similar types of coverage to the Seascope pools, though it only accepts members from 22 selected

members agencies. Class 1 coverage offers 25,000 pounds excess of 5% of a member's premium income limit for a price of 1,000 pounds (\$1,460). The coverage, first offered in 1990, is over a four-year period.

Class 2, which began in 1991, offers members 100,000 pounds of coverage excess of 10% for a premium of 1,675 pounds (\$2,419), but with a maximum supplementary call of 2,322 pounds (\$3,353) when the underwriting year closes.

The mutual also scales down claims if the fund is smaller than the claims coming in. Because 1990 was a horrendous year at Lloyd's, "there certainly will be scaling down" for the 1990 Class 1 claims, aid John Rowe, a director of Charles Taylor.

Meanwhile, Integer, the new personal stop-loss insurance mutual, will provide coverage for aggregate losses over a four-year period above 25% of each member's premium-income limit up to the 80% threshold

when the Lloyd's mandatory stop-loss fund kicks in.

Put simplistically, if a member writes 1 million pounds per year (\$1.5 million) and has losses of 1 million pounds over four years, he retains the first 250,000 pounds (\$365,000) of loss; is paid 550,000 pounds (\$803,200) from the mutual; and receives the remaining 200,000 (\$292,000) from Lloyd's stop-loss fund.

The coverage is being offered by Lloyd's broker SBJ Harrison Stuart Ltd. The program has been spearheaded by retired Lloyd's underwriter Michael Payne, chairman of Oakwood Underwriting Agencies Ltd., who will be Integer's chairman.

"Our objective has been the construction of an insuring vehicle to provide cover directly below the Lloyd's central high-level stop-loss fund," states an internal memo from SBJ Harrison Stuart. The mutual's coverage doesn't exactly correspond,

however, because the four years covered by the Lloyd's fund is triggered when a name first experiences a loss-making year. Integer provides a fixed four-year coverage.

Members are expected to be charged between 1% to 1.5% of their premium-income limit for the mutual's coverage, said James Truscott, syndicate analyst for SBJ Harrison Stuart.

Part of that premium will finance an unusual reinsurance arrangement whereby reinsurers will pay the first 15% of the club's losses while the mutual fund pays the rest, according to Mr. Truscott.

The first 20% of the reinsurance will be led by Lloyd's underwriters, while the remainder will be retroceded to Centre Reinsurance Co. Ltd. of Bermuda.

It is expected that there will be 82.5 million pounds (\$119.1 million) of reinsurance coverage for every 550 million pounds (\$794.2 million) in the mutual, said Mr. Truscott. **B**

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Administrative:	
CEO's Presidents, and Owners	2,472
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Financial:	
Chief Financial Officers and Vice-presidents of Finance	2,637
Secretaries, Treasurers, controllers and other Financial Personnel	3,822
Risk/Employee Benefits:	
Vice-presidents, directors, managers, and other related department personnel of insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	14,998
Sub-total	28,089
Associations	416
Government, Unions and Educational Institutions	1,148
Commercial Consumers	29,653
Insurance Agents and Brokers	8,947
Insurance Companies	8,080
Accountants, Actuaries, Attorneys & Consultants	3,449
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,748
Others Allied to the Field	904
Single Copies	4
TOTAL	52,785

* Source Business/Occupational breakdown of qualified circulation, May 25, 1992 issue, as submitted to BPA for June 1992 BPA Publisher's Statement.

INTERNATIONAL

GLOBAL BRIEFS

Greenpeace

Continued from page 17

on climate change and the insurance industry to Lloyd's and other insurance company representatives at a seminar last week in London.

"There is a tremendous amount of governmental and business skepticism when it comes to climate change, but the insurance industry... is taking it increasingly seriously," said Mr. Leggett.

More than 150 governments, but not the United States, signed a Climate Convention at the Earth Summit in Rio de Janeiro last June that set the objective of stabilizing greenhouse gas concentrations in the atmosphere. To achieve that objective, however, requires a "fundamental rethink in the way the world uses energy," the report states.

"The global community would have to move, over a period of decades, away from economies based on fossil-fuel dependence and energy profligacy to a global energy infrastructure based on renewable supply and maximal energy demand-management."

In the meantime, the earth already may be feeling the effects of global warming, the report suggests.

It could just be coincidence, says Greenpeace, that the seven hottest years since records began have been in the last 10; that 1990 was the hottest year ever; that 1991 was the second-hottest only because the Mount Pinatubo eruption cooled the earth; and that Central Europe between 1987 and 1990 had the mildest and driest winters in seven centuries.

"There is a growing catalogue of circumstantial evidence that all may not be well with the climate," says the report.

Insurers know this only too well, according to Greenpeace. Between 1966 and 1987 no catastrophes topped the \$1 billion mark in insured value, the report states. However, in the five years between 1987

and 1992, there were 15 such catastrophes costing \$53 billion altogether, including Hurricanes Andrew and Iniki. Of these, 10 were windstorms costing \$45.9 billion, while earthquakes, oil spills, fire and explosions caused \$7.1 billion in insured losses.

Because the \$1.7 billion Oakland fires were connected to California's drought and three other catastrophes were oil industry-related, it is possible that only the San Francisco earthquake was not related to climate change, says the report.

The disasters have hit insurers hard. Andrew and Iniki alone toppled nine U.S. insurance companies. Lloyd's and the London company market also have been seriously affected, says the report. "The insurance industry, almost everywhere in 1992, is in greater-or-less degrees of trouble," says Greenpeace.

"Though the reasons for this state of affairs are manifestly compound, anomalously intense climatic events in recent years have much to do with it. These may or may not be the product of human enhancement of the greenhouse effect."

It is impossible to predict future loss experience by using historical records, Greenpeace and underwriters agree. However, it could be that the magnitude of catastrophes is rising just as insurance industry capital devoted to catastrophe coverage is falling.

Many underwriters are now examining the situation, especially Swiss Re and Munich Reinsurance Co., which are heavily quoted in the Greenpeace report.

"Around the corner, in the years to come, can only lie a paradigm shift in the type of insurance cover offered and the terms of that cover," says the report.

Copies of the study are available for 10 pounds (approximately \$14) from Greenpeace, Public Information Dept., Canonbury Villas, London N 2PN; fax: 4471-696-0012.

Continued from page 17

those, 168 were oil tankers. Ships built before 1976, including 114 oil tankers, accounted for 1,259 of the lost vessels. Complete losses amounted to 14.5 billion deutsche marks (\$9.58 billion). Partial losses were several times that amount, according to the report.

—By Don Lewis Kirk

Russia forms council

MOSCOW—A Russian Federation committee that manages state property is creating a Consultative Specialist Council that will monitor the quality of economic consultants.

The new council will include two insurance advisers. One of these is Cheshire, England-based consultant Howard Hill, managing director of General Commercial Services Ltd., who has been advising Lloyd's of London about the Russian insurance market (BI, Feb. 1).

The second insurance specialist has not been appointed, but Mr. Hill said the government might be interested in someone from the North American market.

The government was prompted to create the council because of the large volume and variable quality of advice it has been receiving from foreign consultants, Mr. Hill said. One of the council's tasks will be to select the best consultants.

—By Maria Kielmas

Iberoamerican study

MADRID, SPAIN—Updated statistics on the Iberoamerican insurance market have been issued by Fundacion Mapfre Estudios, an affiliate of Mapfre Mutualidad de Seguros, Spain's largest insurer.

The Iberoamerican community is defined as the 22 Spanish- and Portuguese-speaking countries of Latin

America and the Caribbean, as well as Spain and Portugal. The study is an update of a 1972 Mapfre report of legal, technical and statistical details of this insurance community.

According to the study released last month, limitations on foreign investment in the insurance sector exist in nine countries, including Costa Rica, Cuba and Uruguay, the three countries that still operate a total state monopoly in insurance and reinsurance.

Both Nicaragua and Brazil operate state-owned reinsurance monopolies, though they do allow private sector direct insurance. Brazil limits foreign investment to 50% of a company's equity or one-third of the voting shares.

The study reports Ecuador's limit as 49%, but this limit was abolished in mid-January.

Mexico maintains a 49% limit on foreign investment in insurance entities, while Peru and El Salvador limit foreign investment to 20%.

Although Bolivia has no limits on foreign investment, foreign investors wishing to take over an insurance company must pay twice the initial capital required of domestic insurers. Double capital is also required in Brazil.

El Salvador requires an unspecified deposit, and the Dominican

Republic requires initial capital of \$75,000.

Argentina, Bolivia, Mexico, Portugal and Spain permit mutual insurers.

Bolivia, Colombia, Panama and Paraguay require special authorization for reinsurers.

Insurers may set their own rates in Bolivia, Chile, Colombia, Mexico, Peru, Spain and Uruguay. In Ecuador, Portugal and Puerto Rico, insurers may set their own rates, but must have them approved by insurance authorities. Uniform or minimum rates are established in the Dominican Republic, El Salvador, Guatemala, Honduras, Panama and Venezuela. The government sets rates in the countries which operate state insurance monopolies.

Chile, Colombia, Peru and Spain require that policies are filed with regulators before they are marketed. Prior approval of policy wording is required in Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, Portugal, Puerto Rico and Venezuela.

Uniform policies for certain insurance lines are the norm in Argentina, Dominican Republic, Ecuador, Panama and Paraguay. Governments draft policy wording in the state monopoly countries.

—By Maria Kielmas

Cummins names benefits director

William Spievak, 50, joined Cummins Engine Co. Inc. in Columbus, Ind., as executive director-compensation and benefits. In this newly created position, he is responsible for the company's employee benefit and compensation programs. He reports to Brenda Pitts, vp-human resources. Previously, Mr. Spievak was director-compensation and benefit programs development at Ball Corp. in Muncie, Ind. He earned a bachelor of arts degree from Miami University in Oxford, Ohio. He is a member of the American Compensation Assn. and the Society for Human Resource Management.

Macy Wims Reid, 40, has been named director-employee benefits at The Stanley Works in New Britain, Conn. Ms. Reid, who reports to Barbara Bennett, vp-human resources, is responsible for qualified plans and group insurance benefits. She replaces Thomas Kempa, who has taken a similar position at Schneider National Inc., a trucking company in Green Bay, Wis. Previously, Ms. Reid was assistant vp-personnel at the Providence Journal newspaper in Providence, R.I. She also had operated her own benefit consulting business. Ms. Reid holds a bachelor's degree in history and a master's degree in business administration, specializing in finance and insurance, from the University of Rhode Island in Kingston. She is a member of the

Comings & Goings: Buyers

International Foundation of Employee Benefit Plans.

Pat V. Agudow, 35, has been promoted to second vp-human resources at Cologne Life Reinsurance Co. in Stamford, Conn. Ms. Agudow is responsible for strategic planning of human resources programs including employee benefits, among other duties. She joined Cologne Life Re in 1986 as manager-human resources and was promoted to assistant vp in 1990. She reports to Michael Magsig, president and chief executive officer. Prior to joining Cologne Life Re, Ms. Agudow was a personnel assistant with two ITT Corp. units in Hartford and Norwalk, Conn. Ms. Agudow earned a bachelor of science degree in management and industrial relations from the University of Bridgeport in Bridgeport, Conn. She currently is president of the Southern Connecticut chapter of the National Human Resources Assn. and serves on the board of directors for the Southern Connecticut chapter of the Society for Human Resource Management.

Nancy S. Patrick, 31, has been named claims manager at W.R. Grace & Co., a specialty chemicals and materials company based in Boca Raton, Fla. Ms. Patrick, who

reports to Jeffrey M. Posner, director-corporate risk management, is responsible for insured and self-insured property and casualty claims. She replaces Vicki Shaughnessy, who left the company. Previously, Ms. Patrick was a claims supervisor at the Hartford Insurance Co. in Hollywood, Fla. She holds a bachelor's degree in business from Butler University in Indianapolis and the Associate in Risk Management designation.

Patricia J. O'Donnell, 26, has been named claims representative-liability at The Walgreen Co. in Deerfield, Ill. In this newly created position, Ms. O'Donnell is responsible for reviewing liability claims. She reports to Robert Gas, casualty and property insurance manager. Ms. O'Donnell joined Walgreen in 1989 as a casualty claims assistant. She holds a bachelor's degree in psychology from Illinois State University in Normal.

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Airline rates

Continued from page 3

Brazil received rate increases of more than 100% when it renewed its coverage, sources say.

However, few major airlines renew their coverage on Feb. 1. Clearer indications of 1993 rates will emerge over the next few months as more airlines renew.

The majority of airlines renew their coverage in the last three months of the year. However, some of the airlines renewing over the next three months include: Alaska Airlines Inc., Air India, Air Jamaica, Iran Air and Southwest Airlines Co.

Airlines renewing their coverage throughout this year are not likely to see the 200% to 300% increases they were charged in 1991, but they should expect rates to increase more than the 10% to 12% they did in the last quarter of 1992, brokers and underwriters say.

"There were some increases in the last quarter of 1992, but it is only now that we are seeing substantial increases," said Richard Maylam, underwriter for syndicate 270 managed by A.J. Archer & Co. Ltd.

"There is a real determination among underwriters to increase rates this year," one broker said.

Underwriters will ask for in-

creases from all clients, and those with poor loss records will be hit the hardest, said David Trezies, chairman of aviation at Sedgwick Group P.L.C.

Airlines whose accounts have been profitable for underwriters could pay anywhere between 5% and 50% rate increases, Mr. Trezies said.

Average increases in 1992, on the other hand, slipped from approximately 40% to 45% in the first six months of the year to 25% to 30% in the third quarter, and then to between 10% and 12% in the fourth quarter, according to Bill Smith, managing director of aviation at

broker Leslie & Godwin International Ltd.

The increases were significantly lower than most buyers and brokers had expected, said Mr. Trezies.

"The market was expected to act in the same way as it had in 1991, but that didn't happen," he said.

The moderate increases in the third quarter can be attributed largely to continued ample capacity in the worldwide market, brokers and underwriters say.

Underwriters also set the scene for small rate increases early in the renewal season by only increasing Thai Airways's rates by 21% for hull coverage and 19% for liability cover-

age (BI, Oct. 5, 1992). The crash of a Thai Airways Airbus 300 in Nepal in July will cost insurers \$87 million (BI, Aug. 10, 1992).

"When Thai renewed, they got a good deal, so people with better loss records were able to argue that they should have even lower increases or no increase," according to Mr. Trezies.

About half of the airlines that renewed their coverage in the last quarter received no increase or a negligible increase in rates, sources say.

However, some more-substantial increases were imposed in the fourth quarter, underwriting and broker sources say.

El Al Israel Airlines' hull rate increased by 60% and its liability rate increased by 30% when it renewed in December. In October, an El Al jet crashed into an apartment complex in a residential area of Amsterdam (BI, Oct. 12, 1992).

Trans Brazil Airways' hull rate increased by 30% and its liability rate increased by 45% when it renewed in November.

American Airlines Inc.'s hull rate increased by 23% and its liability rate increased by 30% late last year. U.S. companies are generally regarded as being underpriced by insurers, brokers say.

However, U.S. airlines with good records still received low rate increases, they say.

For example, Delta Air Lines Inc.'s hull rate increased by only 4% while its liability rate increased by 26%.

The KSSAF group, the largest single insurance-buying fleet that includes 19 airlines, was hit with hull and liability rate increases of 40% when it renewed in November. The group suffered a \$35 million loss last year, brokers say.

KSSAF's coverage was formerly led by Orion Insurance Co. P.L.C., which stopped underwriting in September (BI, Sept. 7, 1992). Consequently, KSSAF's coverage is now led by the Aerial syndicate.

The departure of Orion was followed in November by the announcement that English & American Insurance Co. Ltd. was leaving the market (BI, Nov. 30 1992).

Several Lloyd's syndicates also have lost capacity this year.

"Although there is still enough capacity in the market, E&A did leave a hole that had to be filled," according to Mr. Smith of Leslie & Godwin.

However, there still are other underwriters that will be keen to increase their capacity in the aviation market as rates increase, said Mr. Trezies of Sedgwick.

Swiss and German professional reinsurers will increasingly release more direct and reinsurance capacity to the aviation market as rates increase, he predicted.

Underwriters currently in the aviation market should curb their rate increases this year to deter underwriters not normally in the market from entering it, said Jean-Michel Giquel, a director of insurer La Reunion Aeriennne in Paris.

"The overall premium level is not enough to pay for the losses, but any increases should be controlled. We do not want to attract innocent capacity in to the market with large rate increases. . . . We cannot multiply rates by three times in one year," he said.

But rates do need to increase significantly, said Mr. Maylam of A.J. Archer.

According to Mr. Maylam, the world's airlines currently pay premiums of about \$900 million annually. For underwriters to cover their losses and make a profit based on expected loss levels, the premium needs to increase to approximately \$1.5 billion, he said. **BI**

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Failed insurer

Continued from page 3
by collecting claims from reinsurers while delaying claims payments.

Mr. Borchers and others named in the department's complaint have not yet filed answers, but have moved to dismiss the suit and disqualify the liquidator's law firm. Those motions are pending.

Mr. Borchers could not be reached, but his lawyer, Thomas R. Karrenberg, with Anderson & Karrenberg in Salt Lake City, denied any wrongdoing.

The litigation was stayed against Ms. Borchers and holding companies for the golf and water park operations after they filed for Chapter 11 protection last year.

Mr. Borchers, a Utah entrepreneur and self-described bankruptcy expert with no previous insurance experience, acquired Southern American from Crump for \$5.75 million. Until then, Southern American was an exclusive market for Crump brokerage clients, including many Fortune 500 companies. It had assets of roughly \$37 million and surplus of \$8.6 million at the time of the sale.

In a complex series of transactions, Mr. Borchers used the insurer's own money to pay Crump. The deal conflicted with the financing plan earlier submitted to regulators in Tennessee, where the insurer was then domiciled, and part of the arrangement violated the insurer's charter (*BI*, April 15, 1991).

Mr. Borchers denied wrongdoing at the time, saying any violations were mistakes and that details of the transaction were fully disclosed to regulators.

After moving Southern American to Provo, Utah, Mr. Borchers liquidated more than \$20 million of its portfolio of U.S. government bonds and reinvested much of the money in loans to the resort operations he controlled with Ms. Borchers.

However, Utah regulators ordered the insurer to replace these loans with more acceptable assets by year-end 1991. Unable to comply, Southern American consented to a liquidation order last March.

Southern American has so far been hit with claims totaling \$3.7

billion, said Anthony W. Schofield, deputy Utah insurance commissioner and a former partner of Ray, Quinney & Nebeker in Provo, which represents the liquidator.

Much of this amount, however, represents policy-limit claims by Fortune 500 companies facing asbestos and pollution liabilities, he said. Southern American's ultimate losses likely will be only a fraction of what is claimed, he added.

Southern American's reserves and other assets total between \$20 million and \$50 million.

The Utah department filed suit last April and amended the complaint Dec. 23. The suit names Mr. Borchers, the Provo Excelsior Hotel and other companies affiliated with the Borchers' Seven Peaks Resort operations.

The suit also names two other insurer directors and officers and several of the resort entities.

The suit seeks to pierce the corporate veil between Southern American and the other Borchers-controlled companies, charging that they operated as a single enterprise and that their affairs are "hopelessly intertwined and commingled."

The suit also seeks to foreclose on promissory notes issued by the resort entities in connection with loans from Southern American, including a \$6 million note from the water park, a \$3.5 million note tied to the hotel, a \$2.5 million note from the golf course and a \$2.5 million note from an entity formed to build a railway for the ski facility.

The Utah department is trying to force Mr. Borchers to honor an agreement to repurchase \$3 million in Southern American preferred stock that the insurer redeemed in 1988. Mr. Borchers used the \$3 million to pay off Crump, but agreed to repurchase the stock if Southern American's surplus fell below the statutory minimum.

The complaint also accuses Mr. Borchers and the two other directors of breaching their fiduciary duties. It charges they allowed the insurer to deplete its assets, allowed its operations to become entwined with their own personal and business affairs and provided themselves with benefits "outside the scope of reasonable compensation for ser-

vices rendered."

To support these allegations, the Utah department in November filed an affidavit of R. Todd Neilson, an auditor hired to examine Southern American.

Fleshing out the charge that Southern American and the other Borchers companies were a single enterprise, the affidavit says that the resort companies operated from

Ms. Borchers and others from 1988 to 1992, the affidavit says.

Of this total, \$172,037 was later reported as compensation to Mr. Borchers in 1988, \$818,672 in 1989, \$1.4 million in 1990 and \$843,005 in 1991, the affidavit says.

Another \$472,500 was treated as dividend payments to Mr. and Ms. Borchers.

The affidavit traces a convoluted



Photos by Brian Tregaskis/The Daily Herald

The insurer's holdings includes notes issued by a water park.

Southern American's offices, shared its receptionist and used its accounting staff to handle their own bookkeeping, all without charge.

A loan from Southern American allowed Ms. Borchers to buy the Excelsior Hotel without a down payment, and the water park and golf course entities had little financial support other than the insurance company until late 1991, the affidavit continues.

Southern American also covered many of the Borchers' personal and outside business expenses, including a \$3,000 lawn sprinkler system for their home; \$1,800 for kitchen utensils; a \$2,500 home satellite dish; a \$22,000 jewelry store bill of Mr. Borchers; an \$8,000 piano for the hotel; and furniture for entities other than Southern American, according to the affidavit.

Southern American also maintained a "shareholder advance" account, through which \$7.7 million was paid for the benefit of Mr. and

series of transactions in which Southern American transferred resort company notes to SKB Inc., another Borchers-controlled firm. SKB later returned the notes to Southern American, which then wrote off \$3.2 million of the debt.

The effect, Mr. Neilson alleges in the affidavit, was to give Southern American's directors and officers access to large amounts of interest-free cash while depriving the insurance company of amounts it was owed and forcing it to incur significant fees and expenses related to the transfers.

The affidavit also charges that:

- Southern American officials buried a claims adjuster's May 1991 recommendation to set up \$17 million in reserves to cover Owens-Corning asbestos claims likely to come in over the following three years.

Of the total, \$8 million was expected to be recoverable from reinsurers, with \$9 million of the anti-

pated loss retained by Southern American.

A Southern American employee told adjuster Rex J. Hess that he had been ordered to pick up all copies of the report after it had been circulated and turn over the Owens-Corning file to a Southern American claims vp, according to affidavits by Mr. Neilson and former Southern American employees.

The claims vp also ordered the Hess report deleted from Southern American's computer system, affidavits say.

After the insurer entered liquidation, Mr. Hess reviewed the Owens-Corning file. His reserve recommendation and several related documents had been purged.

- Southern American held off its insolvency by collecting \$5.8 million in reinsurance on claims filed by three policyholders, but then delayed payments to the policyholders or failed to pay the claims.

Without those reinsurance payments, the insurer would have been out of cash five months before it agreed to liquidation, Mr. Neilson says in the affidavit.

During that five-month period, he adds, Southern American paid \$403,205 through the shareholder advance account for the benefit of Mr. and Ms. Borchers and others.

A Utah judge last year appointed the insurance commissioner as receiver for nine Borchers-controlled companies, most of them resort entities. The day before this order, however, Ms. Borchers and holding companies for the hotel, water park and golf course filed for Chapter 11 protection.

While the Utah department's suit was stayed against Ms. Borchers and two of the holding companies, a bankruptcy judge in December refused to confirm a reorganization plan for the hotel's parent company and lifted the stay against it.

The Insurance Department last month filed a new complaint against the hotel's parent, Taragon Corp., and a judge last week appointed a receiver for the hotel. The liquidator will now try to foreclose on the property, estimated to be worth \$6.1 million, said Mr. Schofield, describing the hotel as the "linchpin" of the resort operations. **BI**

N.Y. hospital surcharge

Continued from page 1
Wolin of Newark, N.J., last May voided New Jersey's system, in which a 19.1% surcharge was added to all hospital bills to reimburse hospitals for some of the \$1 billion in uncompensated care they provide annually (*BI*, June 1, 1992).

That forced New Jersey lawmakers to set up a new way to fund indigent care (*BI*, Dec. 7, 1992).

The New York ruling does not go that far. But Judge Freeh's decision is a great blow to the state, its hospitals and troubled Empire Blue Cross & Blue Shield, the state's largest health insurer. Empire concedes its reserves are inadequate, a problem it attributes to being forced to cover the state's worst risks.

If the surcharges are eliminated, hospitals will lose about \$160 million per year, says the New York Hospital Assn.

And, eliminating the surcharges on other insurers could devastate the Blues. "The differential has been the leading component that has allowed us to write coverage for high-risk people," said a spokesman for the Conference of Blue Cross & Blue Shield Plans in Albany.

Beginning in 1983, New York levied a 13% surcharge on hospital bills paid by commercial insurers and self-insurers. This was designed to help balance payments from Medicaid, which total only 85 cents on the dollar, and to afford the

Blues a pricing advantage that would compensate the non-profit plans for having to accept all risks.

Last April, the Legislature tacked on an additional one-year 11% surcharge on insurers, which hospitals were required to forward to the state to help close a budget gap unrelated to hospital expenditures. A new 9% surcharge on HMOs was also to be forwarded to the state. But that money never did reach the state as insurers obtained a court injunction blocking the surcharges.

The state had hoped to receive \$90 million from the new surcharges this year.

It's not clear what Judge Freeh's ruling will mean to hospitals or employers.

"What exists now, assuming that the ruling is upheld, is a two-tiered rating system under which the state will set rates for the Blues and Medicaid, and the hospitals will charge commercial insurers what they feel is necessary," said a spokeswoman for the hospital association.

"If hospital costs exceed the Blues' rates, we may be forced to make it up by charging insurers more. We have a very unclear and complicated situation now," she said.

"This hacks away a significant part of our reimbursement methodology," added a spokeswoman for the New York Health Department. "We never looked at this system as

disadvantageous to commercial insurers. It was our way of allowing the Blues to take all risks while allowing the commercials to select who they wanted."

A law requiring commercial insurers to accept all applicants, like BC/BS plans do, takes effect April 1 (*BI*, June 25, 1992). It was this open enrollment law that prompted the insurers to go to court, said Chris Petersen, senior counsel with the HIAA.

"The Blues and the Legislature talked about a level playing field," he said. "But with a 24% pricing differential, that's far from fair. No one business should be afforded a state-subsidized advantage over another."

Employers may benefit from the ruling.

Donna Lynne, executive director with the New York Business Group on Health, an employer coalition, said that it is virtually impossible to gauge the short-term impact of Judge Freeh's ruling. Over time, though, it could lower hospital rates by permitting insurers and self-insurers to negotiate proprietary rates with individual hospitals.

"Hopefully, there'll be some market forces brought to bear as a result of this," Ms. Lynne said. "The current system prevents any negotiations with hospitals."

Edward Mistretta, employee benefits manager with New York State Electric & Gas Corp. in Bingham-

ton, N.Y., noted that "things are now even more confusing than they were before. We now have no idea what the true method of payment is. Is it a straight DRG, or the DRG plus 13% or the DRG plus 24%."

But in the long-run, Mr. Mistretta believes hospital costs will come down and that a more level playing field will be established.

Another New York hospital sur-

Wyatt reported 1992 loss

WASHINGTON—The Wyatt Co. lost nearly \$11 million in fiscal 1992, but turned a small profit during the first quarter of its 1993 fiscal year amid significant layoffs and other cost control efforts by the nation's third-largest benefit consulting firm.

Wyatt's \$10.8 million loss for the year ended June 30, 1992, is its first since its early years in the 1940s. Earnings over the last five years peaked at \$16 million in 1988 and have fallen sharply since. In 1991, net income was \$1.7 million.

Things turned around a bit for Wyatt in the quarter ended Sept. 30, 1992. It reported net income of \$1.3 million compared to a net loss of \$679,000 a year earlier.

This data was included in a Securities and Exchange Commission filing related to expanding employee eligibility for stock purchase. Wyatt is offering common stock for

purchase by employees who work at least 60% of full time. About one-third of Wyatt employees now participate in the stock plan.

During fiscal 1992, Wyatt reported that revenues fell to \$411.6 million from \$440.5 million. In the filing, Wyatt attributes that decline to higher-than-expected write-offs, accounts receivable and work-in-progress, much of them related to the recession.

During the last three quarters of fiscal 1992, Wyatt made what it described as "significant and targeted" staff reductions in offices including Atlanta, Chicago, Detroit, Los Angeles, New York, San Diego, Toronto and Washington. This cut Wyatt's workforce to about 3,400 from 3,700 and is expected to cut annual compensation expenses by \$23 million.

Wyatt officials would not comment, citing SEC rules. **BI**

Family leave

Continued from page 1

they will have to make will be more than tinkering, but far less than what they had to do for, say, COBRA. We are speaking for the most part of minor modifications," said John Hickey, a partner with Kwasha Lipton in Fort Lee, N.J.

At the same time, few employees are expected to actually utilize the new benefits.

In fact, few employees use the family and medical leave programs now in place. Fifty-five percent of employers with such programs said that less than 1% of their workers use the benefit in a given year, according to a new Hewitt Associates survey. Another 39% of employers said that only 1% to 5% of workers took leave.

And, in some cases, the percentages utilizing leave programs are much lower. At Aetna Life & Casualty Co., which has a comprehensive family and medical leave program similar to what the family leave law requires, the number of employees using the benefit each year has ranged between 175 and 330—out of a workforce of more than 40,000—since the program was set up in 1988.

"We are talking about a small number of employees," said Denise Cichon, a senior consultant with Aetna in Hartford, Conn.

Even though the family leave law will not affect employers nearly as much as other recent benefit laws, the new law will require employer action and analysis.

The first step for many will be to see whether existing leave

programs will meet the federal standards.

Many will not, benefit consultants say. Some employers, for example, may only offer maternity and not paternity leave, which the law requires. Others may only extend leave on an ad hoc basis or may provide leave only if an employee's supervisor approves.

"A very small percentage of employers have programs that meet all the requirements of the legislation," said Carol Sladek, a Hewitt consultant in Lincolnshire, Ill.

Another problem for employers with operations in multiple states will be comparing the requirements for family and medical leave programs with requirements in individual states.

The federal law only sets a floor for family and medical leave programs. It does not preempt more generous state laws, such as those that set longer leave periods or require smaller employers to offer family leave programs.

"Employers will have to deal with a patchwork of different requirements," said Diane Lotti, a consultant with Buck Consultants Inc. in New York.

Many employers also will have to set up new administrative systems to handle paperwork like health insurance premium payments made by employees on leave. Given the small number of employees on leave at any one time, this should be relatively easy, consultants say.

A bigger issue will be educating supervisors and employees on the benefits and requirements of the new law.

"You want to be sure that supervisors know and understand the law. And, a good communications program will minimize the potential for later misunderstandings," said Janice Stanger, an associate in the San Francisco office of William M. Mercer Inc.

Employers that now offer family and medical leave programs say they have been a boon to the company and workers.

"Our program has helped with recruitment and retention of valuable employees. The program diminishes stress and that is bound to boost employee productivity," said Michael Snipes, director of compensation and benefits at Allstate Insurance Co. in Northbrook, Ill., which has offered a comprehensive family and medical leave program since 1989.

Employers with family and medical leave programs also say that fears of employee abuse are overblown.

"The abuse argument is a smokescreen," said Allstate's Mr. Snipes.

Still, passage of the legislation came after years of opposition from business groups like the U.S. Chamber of Commerce and the National Assn. of Wholesaler-Distributors.

That opposition forced supporters of the legislation to make significant compromises to win more votes, said Mary Tavenner, the NAW's senior director of government relations. For example, earlier versions of the legislation would have applied to companies with as few as 15 workers, while up to 26 weeks of unpaid leave would have been allowed.

However, the law as passed still will result in reduced job opportunities and reduction of other benefits, Ms. Tavenner said. "You have money flowing right out of the economy." **BI**

Consultants answer questions raised by new family leave law

With the Family and Medical Leave Act of 1993 now law, benefit consultants say they have been flooded with questions from employers on requirements included in the legislation.

These are the most commonly asked questions and answers:

■ What situations will qualify for unpaid leave?

Employees can take up to 12 weeks of job-protected unpaid leave annually in the following circumstances: after the birth or adoption of a child; to care for a child, spouse or parent who has a serious health condition; or when a serious health condition prevents the employee from working.

During the leave, the employer must continue the employee's health care coverage on the same basis as prior to the leave.

For example, if an employer paid 80% of the health care premium before an employee took leave, the company would continue to pay 80% of the premium while the employee was on leave.

■ What service requirements can employers impose before employees are eligible for medical and family leave?

An employer can limit eligibility to employees who have been employed at least one year and worked at least 1,250 hours during the 12-month period preceding the start of the leave.

In addition, employers would not have to, in certain situations, protect the jobs of employees in the top 10% of payroll.

For those highly compensated employees, the employer would have to show that denying the employee his or her previous position "is necessary to prevent substantial and grievous economic injury to the employer's operations."

■ Are any employers exempted from providing leave programs?

The law applies to employers that have at least 50 employees within a 75-mile radius.

For example, if an employer had 40 employees at one location and 20 employees at a second location 25 miles away from the first worksite, the employer would have to offer family leave benefits to employees at both locations.

■ Can employers demand proof that an employee, child, spouse or parent is ill before approving leave?

Yes. The employer may require that a request for leave be supported with certification from the physician of the employee, spouse, parent, or child. That certification letter would include, among other things, the date that the medical condition began and the probable duration of the condition.

If the validity of the certification letter is in doubt, the employer can request that the employee obtain a second opinion—at the employer's expense—from a health care provider designated by the employer.

If there is a conflict between the two providers, the employer can request the employee to obtain, at the employer's expense, an opinion from a third provider jointly approved by the employer and employee. The opinion of the third provider would be binding.

■ Does the federal law pre-empt state family and medical leave laws?

The federal law only pre-empts state laws that are less generous.

For example, if a state law required up to 16 weeks of family leave, employers in that state would have to offer up to 16 weeks of leave rather than the 12 weeks as required by the federal law.

■ Can employees make retroactive contributions to their 401(k) plans when they return from leave?

While the law does not directly address this, benefit consultants say Internal Revenue Service 401(k) regulations bar retroactive contributions to the plans.

However, a returning employee could—if the plan allowed—increase his or her contributions for the remaining weeks of the year.

■ When does the law go into effect?

For most employers, the law will go into effect Aug. 6. In the case of a collective bargaining agreement, the requirements would go into effect at the expiration of the agreement, or Feb. 6, 1994, whichever is sooner.

Update

GM hit with \$105 million award

Continued from page 2
the ensuing fire.

Auto safety groups say because the gasoline tanks on 1973 to 1987 GM pickups are outside the trucks' internal steel frame, explosion is likely in side-impact crashes. Federal authorities are considering recalling the estimated 4.7 million pickups still on the road.

GM says it has found no safety defects in the trucks. It is estimated that GM has already paid more than \$200 million in claims from accidents involving the pickups (*BI*, Nov. 23, 1992).

Six other lawsuits have gone to trial and GM has prevailed in three. A total of \$7.5 million was awarded in the other three cases, which ultimately were settled on appeal.

GM moved the tank inside the steel frame beginning with the 1988 models, though it maintains the previous design was safe.

GM would not comment on insurance. However, during the 1980s GM retained large amount of liability risk and purchased excess coverage from Royal Group Inc.

Worker may sue for defamation

LOS ANGELES—Defamation by an employer is not a "personal injury" covered under workers compensation law, a California appeals court has ruled.

Continental Culture Specialists Inc. has not decided whether to appeal the 2nd District Court of Appeal ruling in *Davaris vs. Cubaleski*. A lower court had ruled that a former employee could not sue for defamation, as it was covered under workers comp law.

Wendy Davaris, a former office manager for the Glendale-based yogurt company, claimed her boss harassed her and spread rumors that she was stealing from the firm. Ms. Davaris, who was discharged without severance in 1989, sought damages for intentional and negligent infliction of emotional distress, wrongful termination in violation of public policy, breach of contract and defamation.

On appeal, the court affirmed a lower court's position that workers comp is the exclusive remedy for the emotional distress and violation of public policy claims. But it reversed the ruling that workers comp is also the exclusive remedy for defamation.

Although the company still is uncertain about an appeal, the state high court "has indicated that it would like to take up this issue" on its own, said defense lawyer Christopher A. Carr, with Marshall, Carr & Perrigue in Los Angeles.

Bond issue for guaranty fund

NEW YORK—A unique insured tax-exempt bond issue raised \$472.3 million last week on behalf of Florida policyholders insured by companies that became insolvent after Hurricane Andrew.

The state Legislature last month approved a special 2% assessment on the premiums collected by insurance companies in Florida to pay debt service on the bond issue. In addition, the regular 2% guaranty fund assessment normally paid by insurers in Florida also will be available to pay debt service if necessary.

The Homestead, Fla., issue was insured by financial guarantee insurer Municipal Bond Investors Assurance Corp., which conferred its triple-A rating on it, said MBIA Executive Vp Robert R. Godfrey. The premium totaled \$4 million to \$4.5 million.

Nine insurers have become insolvent since Andrew, six as a direct result of the hurricane.

Briefly noted

A joint committee of the **Alliance of American Insurers and the National Assn. of Independent Insurers** will study whether two trade groups should merge. . . The U.S. Department of Justice is reportedly investigating allegations of **redlining by homeowners insurers in inner cities**. Inner-city redlining will also be the subject of hearings before the U.S. House Consumer Protection Subcommittee later this month. . . Total capacity for the 22 Lloyd's of London syndicates managed by **Sturge Holdings P.L.C.** has fallen about 30% to 725 million pounds (\$1.1 billion) for 1993 from 1.05 billion pounds (\$1.96 billion) in 1992. Capacity for the two largest Sturge syndicates, 210 and 206, has been cut by more than half. . . A federal judge in Seattle has ruled that **Federal Insurance Co. and Great Northern Insurance Co.**, both units of Chubb Corp., have a duty to defend Microsoft Corp. against patent and copyright infringement charges leveled in a 1988 lawsuit brought by Apple Computer Corp. . . **Cellular phone manufacturers** Motorola Inc. and Mitsubishi Electronic Corp. did not notify purchasers that they had not conducted tests to determine whether the phones threatened users' health, charges a suit filed in state court in Chicago last week. The suit seeks class-action status. . . Without reform of its termination insurance program, the **Pension Benefit Guaranty Corp.'s deficit**—now \$2.5 billion—could increase by tens of billions of dollars, Congressional Budget Office Director Robert Reischauer said last week. Growing PBGC losses could result in a costly bailout by taxpayers, he said. . . Wind, flooding and snow caused an estimated **\$175 million in insured property** damage to portions of California, Oregon and Washington Jan. 19-20, according to the American Insurance Services Group. The severe weather was assigned Catastrophe No. 42. . . Hearings are to begin this week before the California Assembly Finance and Insurance Committee to put together a **workers compensation reform bill** by March. Meanwhile, a petition drive to put work comp reform on the ballot (*BI*, Jan. 18) has been put on hold while the Legislature considers reform. . . California Insurance Commissioner John Garamendi last week proposed using surcharges on gasoline and license fees to pay for basic auto insurance for all California motorists. The **"pay-at-the-pump"** proposal, which would be combined with a no-fault system, was criticized by insurance trade groups.

Aetna reserves

Continued from page 2
leases its full results later this week.

The \$80 million addition to environmental reserves represents only claim adjustment expenses, primarily legal fees.

Gordon Luce, deputy manager of Brown Bros. Harriman & Co. of New York, was expecting Aetna to strengthen environmental loss reserves somewhat. "But, I was not expecting an amount that would require a special announcement."

"We're surprised. We didn't expect anything in environmental," said Michael Lewis, a senior vp with Dean Witter Reynolds Inc. in New York. "They must be defending against unusually large exposures."

While Aetna added more than \$81 million to environmental loss reserves in 1991, its 1992 year-end environmental reserve level could nearly triple to \$200 million from \$73.4 million at year-end 1991, analysts say. Aetna's environmental loss reserves totaled \$34 million at year-end 1990 and \$56.9 million at year-end 1989.

"That means they looked at something and found something has changed," Mr. Lewis said.

While the industry is being pressured by accountants and actuaries to recognize their "tail-end" asbestos liabilities, the addition to environmental loss reserves "was more of an optional charge," said John H. Snyder, senior vp in A.M. Best Co.'s property/casualty division.

But, he believes many insurers will boost their asbestos and environmental liability loss reserves in 1992 because results for the year already are poor (BI, Feb. 1).

"That was not a motivation for these actions," the Aetna spokesman said. The addition to environmental loss reserves reflects "trends in litigation based on our case load" and that of other companies.

He also said Aetna will boost its loss reserves for commercial casualty business not related to environmental and asbestos losses, but he would not say by how much.

The announcement surprised some analysts.

Noting that Aetna spends "so much time with analysts" explaining its reserving practices, Mr. Lewis said: "I'm surprised that Aetna found itself short in the fourth quarter, since there has been no indication that they weren't reserved adequately."

However, "I wouldn't be surprised to see some more companies do some catch-up reserving," he said. "That would add more fuel to the fire calling for rate increases."

Aetna is also adding \$100 million to asbestos loss reserves primarily because of the proposed class-action settlement of future claims by 20 former asbestos producers operating through the Center for Claims Resolution (BI, Jan. 25). "That, in effect, puts some boundaries around our exposure and lets us do what we've done," the Aetna spokesman said.

He also said part of the fourth-quarter loss reflects poor loss development on gen-

eral liability coverage written for building contractors in the 1992 accident year.

Aetna stock closed Thursday at a 52-week high of \$53 per share.

Separately, Travelers said Thursday that it would add \$735 million to its mortgage loan and real estate reserves.

Travelers intends to accelerate the sale of its foreclosed real estate investments. Under a new accounting rule, Travelers must account for almost all of these properties at fair value.

Travelers expects to report a \$589 million net loss for the fourth quarter and a \$658 million net loss for 1992.

"Clearly, this latest step indicates that Travelers has become one of the more realistic companies in dealing with its real estate and mortgage exposures," Mr. Snyder said.

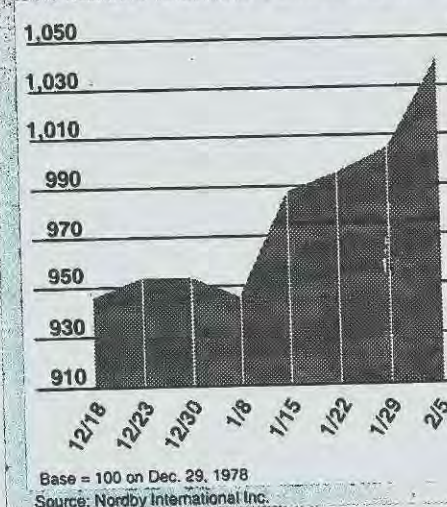
Best subsequently affirmed its A- ratings for Travelers Corp., Travelers Life & Annuity Co. and the property/casualty members of the Travelers Indemnity Pool.

If Travelers sells its troubled real estate and mortgage investments and replaces them with investment-grade instruments, the company would improve its risk-based capital level, Mr. Snyder noted.

That could allow Travelers to write more life/health business beginning next year, when regulators will begin applying the risk-based capital standard for life/health companies (BI, Dec. 14, 1992; Sept. 28, 1992).

Travelers stock on Thursday closed unchanged at \$29.87 per share. **BI**

BI Insurance Index



Insurance industry stocks surged ahead last week, as the Business Insurance Index climbed 40.8 points to 1,045.8 on Feb. 5 from 1,005.0 on Jan. 29. Advancing issues for the week were led by Zenith National Insurance, up 17.0%; Arthur J. Gallagher & Co., up 16.1%; and Allied Group Inc., up 15.5%. Declining issues for the week followed Gainsco Inc., down 4.1%; Selective Insurance Group, down 3.1%; and USLICO Corp., down 3.1%. The most active issue was U.S. Healthcare, with 6.4 million shares traded. The BI index was up 4.1%; the NYSE Composite was up 2.4%; the Standard & Poor's 500 was up 2.3%; and the Dow Jones 30 Industrials rose 4.0%.

For the Record

Two more insurers make refunds under Prop. 103

LOS ANGELES—Two more insurers have voluntarily agreed to comply with Proposition 103's rollback order and issue refunds to policyholders.

CalFarm Insurance Co. of Sacramento, and its affiliate Zenith Insurance Co. of Woodland Hills, Calif., will refund \$18.6 million to 110,800 policyholders.

CalFarm's 35,500 policyholders with farmowners multiperil insurance, 10,300 policyholders with commercial multiperil insurance and 28,000 private passenger auto customers will receive from \$160 to \$300 each, while

homeowners will receive smaller rebates. A second insurer, Oakland-based Western Pioneer Insurance Co., will refund \$1.9 million to 18,000 policyholders, or about \$100 each.

The refunds by both insurers covers policyholders with policies in force during the Nov. 8, 1988, to Nov. 7, 1989, rollback period stipulated by the voter initiative.

Other major insurers that have made refunds include: Automobile Club of Southern California, \$104 million refunded; Mercury Insurance Co., \$46 million; and Progressive Insurance Co., \$51 million.

Insurance commissioner to regulate Ohio MEWAs

COLUMBUS, Ohio—A new law in Ohio places regulatory authority for group self-in-

surance programs operated by multiple employer welfare arrangements in the hands of the insurance commissioner.

"There has been a lot of confusion (about self-funded MEWA regulation) because of federal Employee Retirement Income Security Act regulations," according to a staff attorney with the Ohio Legislative Services Commission.

H.B. 689, which goes into effect April 9, requires the insurance commissioner to individually review each self-funded MEWA's financial condition to determine whether it is adequately capitalized and protected with stop-loss insurance.

However, a self-funded MEWA's stop-loss deductible can be no more than 5% of the MEWA's annual aggregate premium up to \$1 million, and no more than 2.5% of its annual aggregate premium above that amount. **BI**

British Issues

Feb. 4 Companies	Price per share	P/E	Div. per share	Yield %	1 Week	
					High-Low	per share
Comm Union	620	NM	31.5	5.1	624-607	
Genl Accident	599	NM	35.7	6.0	606-588	
Gdn Royal Exch	178	NM	10.0	5.6	180-173	
Royal	276	NM	7.0	2.5	278-268	
Sun Alliance	337	NM	19.0	5.6	346-330	
Brokers						
Bradstock	145	17.1	6.8	4.7	147-145	
CE Heath	340	19.6	21.3	6.3	342-340	
Hogg Group	174	16.6	10.9	6.3	177-174	
JIB Group	185	14.1	10.0	5.4	185-185	
Lloyd Thompson	254	20.5	7.5	2.9	255-254	
Lowndes Lmbt	357	13.9	16.8	4.7	361-357	
PWS Holdings	63	9.4	5.3	8.4	63-63	
Sedgwick Grp	180	14.4	8.0	4.4	181-178	
Steel Brll Jones	246	12.0	17.7	7.2	258-246	
Willis Coroon	196	12.5	17.6	9.0	205-196	

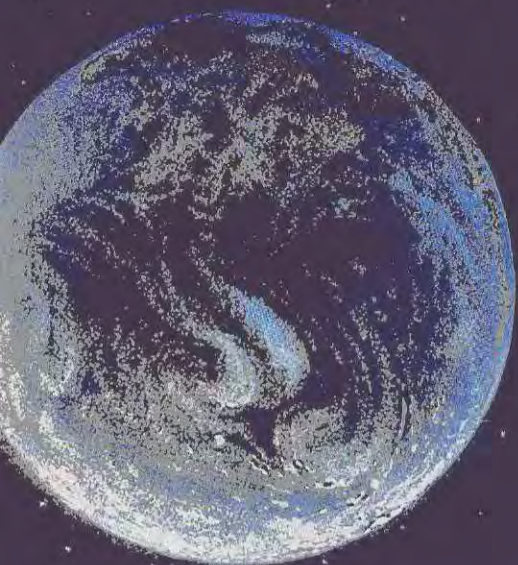
Source: Philip Olsen, London * Estimated

BI Industry Stock Report

FEBRUARY 1, 1993 THROUGH FEBRUARY 5, 1993

Company	Exchange	Price	Weekly % change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value		
					High	Low																			
BROKERS																									
Acordia Inc.	NYS	24.50	15.29	13.95	24.50	15.13	71	0.36	1.47	17	7.01	3.50	Lincoln National	NYS	75.38	3.43	3.08	76.13	50.50	1096	3.04	4.03	12	58.92	1.28
Alexander & Alexander	NYS	28.00	3.70	5.66	28.00	18.00	701	1.00	3.57	100	10.00	2.80	Market Corp.	OTC	34.25	0.74	9.60	35.25	23.00	49	0.00	0.00	8	15.44	2.22
Gallagher Arthur J. & Co.	NYS	32.50	16.07	15.04	32.50	21.00	532	0.64	1.97	20	6.35	5.12	NAC Re Corp.	OTC	42.75	-0.58	5.56	44.75	21.75	330	0.16	0.37	75	13.60	3.14
Hilt, Rogal & Hamilton	NYS	15.88	7.63	1.60	15.88	11.00	224	0.44	2.77	24	3.11	5.10	National Re Corp.	NYS	38.25	5.52	29.11	38.25	17.00	388	0.12	0.31	21	N/A	N/A
Marsh & McLennan	NYS	95.63	4.94	4.65	95.63	71.25	987	2.68	2.80	23	14.40	6.64	Navigators Group	OTC	30.75	7.89	-5.38	48.25	28.50	248	0.00	0.00	22	15.69	1.96
Poe & Associates	OTC	18.00	9.09	7.46	18.00	11.25	36	0.40	2.22	23	2.64	6.82	Nobel Insurance LTD.	OTC	7.00	-1.75	19.15	8.25	4.25	142	0.00	0.00	5	3.91	1.79
BROKERS AVERAGE																									
AVERAGE																									
CONGLOMERATES & HOLDING COMPANIES																									
Berkley W.R. Corp.	OTC	49.38	12.22	14.83	49.38	31.00	776	0.36	0.73	18	23.51	2.10	Old Republic Int'l	NYS	27.00	5.88	8.54	27.00	18.75	943	0.40	1.48	9	18.63	1.45
Berkshire Hathaway Inc.	NYS	12400.0			12700.0	8575.00	1	0.00	0.00	49	6437.25	1.93	Orion Capital Corp.	NYS	41.00	2.18	15.90	41.00	23.19	103	0.80	1.95	8	28.62	1.43
ITT (Hartford Group)	NYS	74.88	4.17	3.99	75.25	59.00	1601	1.84	2.46	18	68.23	1.10	Phoenix RE Corp.	OTC	22.88	15.09	45.24	22.88	8.88	502	0.20	0.87	-33	13.32	1.72
Sears (Aflac)	NYS	50.63	3.05	11.26	51.13	37.75	5087	2.00	3.95	-101	40.18	1.26	Provident Life	NYS	31.13	5.51	9.21	31.13	20.00	89	1.00	3.21	13	30.38	1.02
CONGLOMERATES AVERAGE																									
AVERAGE																									
INSURERS/REINSURERS																									
AEGON N.V.	NYS	45.00	1.12	8.11	45.25	33.00	41	0.68	1.51	8	34.06	1.32	Re Capital Corp.	ASE	15.50	5.98	-6.06	16.63	12.25	5	0.24	1.55	28	16.88	0.92
Aetna Life & Casualty	NYS	52.38	3.71	12.63	52.38	38.00	3072	2.76	5.27	17	67.08	0.78	Reliance Group Holdings	NYS	6.38	8.51	4.08	7.13	4.00	1038	0.32	5.02	3	2.94	2.17
Allied Group Inc.	OTC	37.25	15.50	17.32	37.25	18.50	341	0.64	1.72	10	11.29	3.30	RLI Corp.	NYS	27.00	4.85	9.09	27.00	17.75	35	0.52	1.93	12	17.92	1.51
Allmerica Prop. & Casualty	OTC	59.25	10.23	17.33	59.25	34.75	307	0.44	0.74	10	40.44	1.47	St. Paul Companies	NYS	82.25	6.82	6.82	82.25	66.50	798	2.80	3.40	-16	59.79	1.38
American General	NYS	59.63	5.07	4.61	59.75	40.25	1264	2.08	3.49	12	39.89	1.49	SAFECO Corp.	OTC	64.00	2.40	12.78	64.00	42.00	1536	1.64	2.56	15	35.37	1.81
American Heritage Life Ins.	NYS	32.75	7.82	8.26	32.75	24.88	9	0.84	2.56	15	16.51	1.98	SCOR U.S. Corp.	NYS	19.63	5.37	12.14	19.63	13.13	21	0.28	1.43	23	14.39	1.36
American Indemnity/Firv'l	OTC	8.25	3.13	37.50	9.00	4.75	16	0.08	0.97	5	14.43	0.57	Seibels Bruce Group	OTC	1.94	3.36	3.36	6.13	0.38	303	0.00	0.00	0	6.22	0.31
American International	NYS	125.38	5.80	8.08	125.38	82.00	2211	0.56	0.45	17	54.21	2.31	Selective Ins. Group	OTC	23.75	-3.06	7.95	25.75	16.75	376	1.12	4.72	10	20.22	1.17
Aon Corp.	NYS	55.25	8.60	2.31	55.25	39.75	486	1.68	3.04	14	27.17	1.35	Statesman Group Inc.	OTC	14.13	7.62	17.71	14.25	5.00	751	0.05	0.35	7	6.71	2.11
Argonaut Group	OTC	29.25	0.00	-4.10	31.25	25.50	185	0.84	2.87	9	21.70	1.18	Tokio Marine & Fire	OTC	49.13	4.80	2.34	52.63	32.25	3	0.00	0.00	98	70.93	0.69
Argonaut Group	OTC	29.25	0.00	3.74	28.00	21.00	12	0.40	1.65	30	7.33	3.31	Torchmark Corp.	NYS	82.50	3.09	10.13	82.50	36.00	432	1.04	1.66	17	14.87	4.20
AVEMCO Corp.	NYS	24.25	3.74	-0.68	24.25	18.50	4	0.48	1.32	9	30.85	1.18	Transamerica	NYS	50.50	1.76	5.21	50.50	39.75	845	2.00	3.96	23	35.86	1.41
Baldwin & Lyons Inc.	OTC	36.25	6.62	-2.63	36.50	26.50	10	0.00	0.00	21	8.63	0.54	Transatlantic Holdings	NYS	55.25	0.68	-1.56	56.75	29.38	152	0.28	0.51	19	21.85	2.53
Chandler Insurance	OTC	4.63	0.00	5.20	4.63	3.88	10	0.00	0.00	21	40.67	2.30	Travelers Corp.	NYS	28.25	-2.16	3.67	28.25	17.13	3420	1.60	5.66	-15	43.85	0.64
Chubb Corp.	NYS	93.50	5.35	11.73	93.50	62.38	1570	1.60	1.71	13	81.73	0.80	Trenwick Group Inc.	OTC	47.00	5.03	15.34	47.00	25.00	353	0.80	1.70	19	23.87	1.97
CIGNA Corp.	NYS	65.50	5.65	2.30	65.50	47.13	1845	3.04	4.64	11	81.73	0.80	United Fire & Casualty	OTC	41.75	0.00	0.60	43.00	31.24	0	1.00	2.40	17	28.47	-1.47
CNA Financial Corp.	NYS	100.25	5.11	7.44	34.75	20.00	1727	1																	

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