

Business Insurance

Reporting Weekly For Corporate Risk, Employee Benefit and Financial Executives / \$4

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Orange County seeks \$2 billion in suit against Merrill Lynch

SANTA ANA, Calif.—Orange County, Calif., is seeking more than \$2 billion in damages from Merrill Lynch & Co. Inc., charging its former broker with "permitting and encouraging" the high-risk investments that recently forced the county into bankruptcy.

In a suit filed Jan. 12 in U.S. Bankruptcy Court, the county alleges that California law prohibits local governments from borrowing using reverse repurchase agreements to make long-term investments at floating interest rates, and bars them from investing

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London market competition is returning

By ADRIAN LADBURY and STACY SHAPIRO

London market report

The 's' word is back in the London market.

After several years of massive reductions in capacity, increased property catastrophe prices and stable casualty rates, the property/casualty market is again turning "soft," London underwriters and brokers agree.

Stable capacity at Lloyd's of London,

aggressive underwriting by London company underwriters and fierce competition from U.S. underwriters have ensured that rates were flat or down at Jan. 1 renewals.

New competition from U.S. underwriters and concerns about solvency cost London underwriters some new business.

Amid this environment, several oil companies have decided to increase their retentions or move their insurance programs for offshore property coverages from the London market (see story, page 32).

Property catastrophe reinsurance once again dominated the year-end renewal season in London.

Most major U.S. insurers writing na-

tionwide with exposures in California and Florida paid the same prices as last year. Rates did rise by as much as 10% for some insurers that had losses from the Northridge earthquake in Los Angeles a year ago. Regional U.S. companies, however, saw rate reductions of up to 15% for property catastrophe reinsurance.

Outside the United States, rate reductions were as high as 40% for cat cover in areas like Israel, where London encountered competition from Bermudian catastrophe reinsurers seeking to round off their portfolios. In general, smaller non-U.S. "second tier" insurers saw reductions in the 15% to 20% range.

The "Bermuda factor" had a smaller impact on U.S. catastrophe programs, for which the Bermuda market complemented rather than competed with London underwriters.

Meanwhile, stiff competition crept into London's casualty market during renewals one year after the shutdown of the leading liability syndicates at Merrett Holdings P.L.C. In particular, rates for casualty clash cover—reinsurance that covers an insurer when more than one policyholder suffers losses in one event—were down 10% in the past two years as a result of competition from U.S. underwriters.

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Prices flat or falling, buyers say

Exceptions to the rule remain cat exposures

By MICHAEL SCHACHNER and SARA MARLEY

If renewals resembled the terrain along Interstate 80, risk managers would be driving through Nebraska right now.

Words like flat, soft and stable pop up most often when discussing January renewals. Rates are even beginning to come down in some previously restrictive specialty lines.

The notable exception to the soft property/casualty insurance market is earthquake coverage, where double- and triple-digit increases contrasted sharply with flat rates in most other lines of business.

Property insurance premiums increased by 200% for The Dun & Bradstreet Corp.'s properties in earthquake-prone areas like California, Tokyo and Mexico City, said John F. Riley, director of corporate risk management.

"Obviously, these are the locations you don't want to be putting on an application, but you have to," Mr. Riley said. "If you've got only a million dollars of exposure in one of these areas, you may decide to take your chances. But with \$50 million or more, there are some things you just don't do."

Mr. Riley noted that even with the substantial premium hike in certain areas, the increases should drive up the New York-based business information marketer's overall premium outlay in 1995 only by about 1%.

On all other lines of coverage, he anticipates

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1995 JANUARY RENEWALS

Insurers foresee repeat of last year

By MARK A. HOFMANN and ROBERTO CENICEROS

The calendar may say 1995, but for insurance companies it's just as Yogi Berra put it: "Deja vu all over again."

As insurers complete year-end renewals, commercial property/casualty rates remain stuck in neutral, customers continue to demand more for the same price and capacity continues to outstrip demand except for a few exposures.

Amid this ongoing soft market, insurers are tentatively looking for some potential regulatory and legislative relief from the new Republican majorities in Congress and numerous state houses.

Some companies are also looking over their shoulders, wondering if they could be engulfed by what may be a continuing wave of industry consolidation.

Year end generally remains the heaviest renewal season, though renewal dates are spread more evenly throughout the year than they were a few years ago. The dozen or so insurers surveyed for this article reported an average of about 25% of their books of business renewing at year end, with the portions ranging from 13% to more than a third.

"It's going to be a 1994 all over again," summed up Ed Hancock, vp-commercial insurance services for Employers Insurance of Wausau in Wausau, Wis. "There is a lot of capacity going into the market. The large accounts are going to self-insure," taking premium out of the market."

The commercial property/casualty market

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Brokers keep eyes on mergers

Insurer consolidation high on clients' minds

By RODD ZOLKOS and SALLY ROBERTS

As renewal experiences continue to be shaped primarily by a soft property/casualty market, many risk managers' biggest concerns this renewal season relate to insurance company consolidations or other financial issues, brokers report.

Except for earthquake coverage in California or windstorm exposures on the East Coast, brokers report flat property rates and falling casualty rates.

But, the merger of CNA Financial Corp. and Continental Corp., the continuing saga of the Home Holdings Inc. buyout and A.M. Best's downgrade of CIGNA Corp.'s property/casualty pool were hot topics of broker-client conversations during the past month.

The recent bidding war for Home Holdings "has caused a decent amount of discussion" during renewals, said Joe Tarbell, executive vp at Willis Corroon Corp. of Massachusetts in Boston.

"In those cases, risk managers were scared by Best," he said, referring to Best's downgrade of The Home Insurance Cos. to B+ from A- (BI, Nov. 14, 1994). There were "a couple of situations where people asked to change insurers," he said, though overall Willis has taken a wait-and-see attitude.

"There has been enough publicity to imply The Home will be fine," he said, referring to either a proposed capital infusion by John J. Byrne or a more recent acquisition

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Risk manager report

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Orange County targets Merrill

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public funds in speculative securities.

The failed investment strategy of Robert L. Citron, the former county treasurer, relied on leveraging funds in the Orange County investment pool by using reverse repurchase agreements. He also had invested heavily in "inverse floaters," instruments whose value declined as interest rates went up (BI, Dec. 12, 1994).

The county claims that Merrill Lynch knew of the statutory debt and investment limitations and had a legal duty to ensure that county transactions were legal and appropriate. A failure to do so resulted in the \$2 billion loss to the county's investment pool, the suit contends.

Merrill Lynch officials continue to argue the company acted properly and professionally in its dealings with Orange County. The company says it warned the county as early as February 1992 about the volatility of its investment position, and had offered to buy back the interest-sensitive derivative securities in 1993.

Antitrust pact approval seen

SAN FRANCISCO—U.S. District Court Judge Charles A. Legge said he expects to give his preliminary approval to settlement of the insurer antitrust litigation on Tuesday (BI, Oct. 10, 1994).

Judge Legge was set to receive papers detailing the settlement between industry defendants and state and private plaintiffs Friday. At a status conference on Thursday, Judge Legge set March 29 as the date when he would give his final approval to the plan.

A letter of principle announced in October calls for, among other things, the restructuring of the Insurance Services Office and creation of a Public Entity Risk Institute to provide education, training and risk management services to public entities and small businesses.

Newark airport liability

NEWARK, N.J.—Both Hertz Corp. and the Port Authority of New York & New Jersey have substantial self-insured retentions that would apply to any liability claims from the shutdown last week of the Newark airport due to an accidental power outage.

The Port Authority, which runs the airport, has a \$4 million self-insured retention for liability, said Hugh Welsh, assistant general counsel.

Hertz Corp., which contracted for the electrical work that created the outage, self-insures the first \$5 million liability exposure, according to Mr. Welsh. Hertz officials would not comment. Companies working on airport jobs are required to carry \$5 million in liability insurance or self-insure that amount.

The outage occurred Jan. 9, when construction workers driving piles for a new Hertz parking facility hit electrical feeder cables. The loss of electricity closed the airport for more than 20 hours and led to the cancellation of 70% of the 1,200 flights Newark handles daily, a Port Authority spokesman said. The airport, airlines and airport shops lost considerable revenues, he said.

However, liability for the losses is not clear. Hertz's building contractors, Jos. L. Muscarelle Inc., had hired sub-contractors to carry out the pile driving. Muscarelle would not comment.

Huge satellite coverage deal

ROSSLYN, Va.—A new contract between the International Telecommunications Satellite Organization and International Space Brokers Inc. may be the largest contract ever for placing satellite insurance.

Under the deal, the Rosslyn, Va.-based broker will place coverage totaling \$2 billion for 10 future launches by Washington-based Intelsat between 1995 and 1997. Seven of the launches will be powered by Ariane rockets and three will be powered by Chinese Long March rockets.

The coverage, with a premium of \$185 million, is led by a group of French insurers headed by Assurances Generales de France and the Marchant syndicate in Lloyd's of London.

Intelsat, which represents 25 countries, formerly self-insured its satellite launches but returned to the insurance market in 1993 (BI March 22, 1993).

ISB is a consortium whose members are Groupe Le Blanc de Nicolas, Crawley Warren & Co. Ltd. and Frank Crystal & Co. Inc.

Confed Life GIC suit filed

GOLDEN, Colo.—A retiree of ACX Technologies Inc., a group of former Coors Brewing Co. units, is charging in a lawsuit that Boston-based Fidelity Management Trust Co. mismanaged investments by the ACX pension plan by purchasing Confederation Life Insurance Co. guaranteed investment contracts, and subsequently failing to notify the ACX plan of Confed's financial deterioration.

The Coors pension plan, from which the ACX plan was spun off, also held Confederation GICs, but a Coors official said no Coors employees or retirees are plaintiffs in the suit.

Another class action suit was filed last year by a retiree of California Casualty Insurance Co. of San Mateo, which held Confed GICs.

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Errors & omissions

• A Jan. 2 For the Record item incorrectly said that copies of a study, "Trends in Health Care Liability, Second Edition," are free. The cost per copy is \$49.50 plus \$4.50 shipping. For information, call LR² Publications, 800-341-7874, ext. 307.

• The Dec. 20, 1994, Managed Care Market Report contained incorrect figures for the Utah PPO listing of ADMAR Corp.'s Med Network. The correct figures are 24 physicians, 34 specialists and three hospitals.

Zurich deal moves ahead

Regulatory, legal hurdles may force changes to Home sale

By GAVIN SOUTER

NEW YORK—Zurich Insurance Group appears to have the edge in the attempt to take over the prime business of Home Holdings Inc.

The Swiss insurer still must overcome some obstacles in trying to complete the deal: Regulatory concerns could arise about the impact of a proposed runoff of The Home Insurance Co.'s old business on policyholders; Home Holdings bondholders are opposed to Zurich's plans and already are threat-

ening to demand payment immediately on their notes of over \$280 million; and a class action lawsuit was filed last week by minority shareholders.

To secure regulatory approval, Zurich may have to buy some form of excess coverage in case The Home's existing assets do not meet its future liabilities, regulatory experts say.

But, if the deal goes through, it could be a model for other insurance companies struggling with separating their current business

from old-liability problems, one analyst said.

What had been a two-horse race to take over Home Holdings seemed to end last week when John J. Byrne and his co-investors announced that they were letting their latest offer expire.

"We have not been able to talk with Home or Trygg-Hansa about our most recent proposal. Without direct discussions, it is nearly impossible to structure a complicated financial transaction like

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Employer concerns find a voice in FMLA regulations

Conditions for leave clarified

By DEBORAH SHALOWITZ COWANS

WASHINGTON—The new Family and Medical Leave Act regulations clarify for employers when workers may take leave for their own serious illnesses, among other issues under the law.

Employers have had to rely on interim guidance to comply with the family leave law since it generally took effect in August 1993.

The Labor Department's final

regulations, published in the Federal Register Jan. 6, cover a wide variety of issues, reflecting more than 900 comments that the department has received over the past two years (BI, Jan. 9).

Among other things, the new regulations contain: some new notice requirements; an explanation of how to determine leave retroactively; and clarification of a few retirement-related issues.

However, the "largest issue by far" that the rules deal with is the

definition of a serious health condition, stated Carol Sladek, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

The government did "a good job in responding to some of the concerns of some commenters" on what is or is not a serious health condition, observed Gerald Uslander, a principal with William M. Mercer Inc. in Washington.

The expanded definition of serious illness is "good because it's

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NAIC's wise counsel

Ex-prosecutor Lee Douglass known for fairness

By MEG FLETCHER

LITTLE ROCK, Ark.—Lee Douglass knows the importance of listening to all sides of an issue.

Listening to all sides helped him six years ago when he left his position as an Arkansas county prosecutor to become an insurance regulator. And it should help

even more in his new post as president of the National Assn. of Insurance Commissioners.

Among the issues that Mr. Douglass, who will turn 43 next week, wants the group to work on during his one-year term are insurer market conduct and alternative financing mechanisms.

"I'm tickled to death to be able to lead this organization," said the University of Arkansas-trained lawyer in an accent tinged by several youthful years in Texas.

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Lee Douglass

Insolvency drama nears end

By DOUGLAS McLEOD

LOS ANGELES—The liquidator and creditors of Mission Insurance Co. are preparing for a hearing next month on an ambitious plan to quantify the estate's remaining liabilities and make a final distribution of its assets to policyholders and state guaranty funds.

A Los Angeles judge last month entered a proposed order approving a "final liquidation dividend plan" for Mission and two affil-

Final Mission liquidation proposal pending

ates, Mission National Insurance Co. and Enterprise Insurance Co.

Under the proposed plan, claimants that filed contingent claims for undetermined long-tail losses by Sept. 12, 1987, must now amend those claims to quantify their projected losses.

Amended claims will have to be filed by a new date, probably sometime in August.

Creditors whose amended claims are approved by the liqui-

dator will then receive a proportional share of Mission assets in a final distribution from the Mission companies' trust funds.

The aim of the plan is to wind up the Mission liquidation early rather than keep the estate open as hundreds of pollution, asbestos, workers compensation and other long-tail claims run off over the next several years.

"The idea here is to minimize

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• Insurers that have invested in Mexico say its economic troubles are only a "bump in the road." **PAGE 47**

• Industry consolidation continues, as Zurich Reinsurance Centre Holdings Inc. buys Re Capital Corp., and USF&G Corp. acquires Discover Re Managers Inc. **PAGE 54**

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Pools not threatened by county's fund losses

By RODD ZOLKOS

SANTA ANA, Calif.—Self-insurance pools that have money invested by Orange County, Calif., appear to be paying claims as required and none appears to be threatened with insolvency.

Last week, the county sued Merrill Lynch & Co. to recover some of its losses (see Update, page 1).

On a dollar basis, the largest investment with the fund by a self-insurance pool is \$46.9 million by the Schools Excess Liability Fund.

Created in 1986 to provide excess liability coverage for California schools unable to obtain it in the commercial market, the pool's annual report for fiscal 1994 showed it had about 48% of its \$90.6 million in assets with the fund.

More than 90% of state school districts participate in the SELF pool.

Despite the size of its investment, the SELF pool seems likely to withstand any Orange County investment loss, said Greg Trout, a principal with risk management consultant ARMTech Inc. in Sacramento. But local self-insurance pools could pose a concern, he said.

"There are a number of school district self-insurance pools all within Orange County that, because of their nature, had all their money invested with the county treasury," Mr. Trout said. "We're aware of at least four."

Unlike the SELF pool, the local school pools are providing primary layers of coverage. "They have to

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Product liability back on the table

By MARK A. HOFMANN

WASHINGTON—Advocates of a uniform federal product liability code are finding a lot to like in the House Republicans' "Contract with America."

In fact, some business lobbyists are already calling the product liability provisions in H.R. 10, the "Common Sense Legal Reforms Act" introduced early this month by Rep. James Ramstad, R-Minn., better than those contained in earlier Senate reform measures.

In addition, H.R. 10's chances of passage may be better than ever for a product liability reform bill.

But other proponents of product

liability reform legislation have also begun cautioning that those who would benefit from reform must resist the temptation to get greedy. And, they are warning that any bill will have to have bipartisan support to pass the Senate, where opponents have successfully filibustered previous product liability reform measures, including a bill—S. 687, the Product Liability Fairness Act—defeated last year (BI, July 4, 1994).

The "Contract with America" is a 10-point program of legislative goals that House Republicans vowed to vote on within the first

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New bill based on "Contract with America" would grant tax breaks for long-term care benefits...Page 45

100 days of the 104th Congress. The contract served as the foundation for H.R. 10, as well as other legislation (see story, page 44).

Portions of H.R. 10 that pertain to product liability reform would:

- Require plaintiffs in product liability cases to establish by "clear and convincing evidence"—the

same standard of proof already required in about half the states—that the harm suffered was caused by malicious conduct.

- Limit punitive damages in product liability cases to \$250,000 or three times actual damages, whichever is higher.

- Eliminate joint liability in product liability cases, holding defendants responsible only for their own percentages of harm as determined at trial.

- Hold product sellers liable for product liability only for harm caused by their negligence in most

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California flood damage likely to grow

By JOANNE WOJCIK

LOS ANGELES—California property owners and their insurers took advantage of a brief respite from torrential rain and windstorms last week to begin assessing damage before another storm struck the West Coast.

The new storm was expected to dump substantial rain on Northern California Friday, while Southern and Central California were expected to be hit by moderate rain Saturday night and Sunday morning.

State officials estimated property damage at \$300 million late last week. The Property Claims Services division of the American Insurance Services Group Inc. in Rahway, N.J., had not yet declared the storms a catastrophe and had no damage estimates.

Some insurance industry sources predict the claims could be exacerbated by earlier earthquake damage that either hadn't been repaired or was being repaired when the driving rain began.

On a Los Angeles news show featuring Insurance Commissioner Chuck Quackenbush and Mary Crystal, executive director of the Western Insurance Information Service, a unit of the Insurance Information Institute Inc., a caller asked who would be responsible for paying for the water damage when heavy winds blew off a portion of her quake-damaged roof that was being repaired.

"If the work was started pursuant to the earthquake claim, then that's what it would go back to," suggested Ms. Crystal.

Mr. Quackenbush said perhaps the contractors' general liability insurer would pick up the tab.

But a spokesman for a major West Coast property insurer said most likely the new damage would trigger a new claim and a new deductible.

However, such a scenario should work to homeowners' and business owners' advantage, because the claim would be filed under the property policy, which has a much lower deductible than an earthquake policy. A typical Cali-



AP/WIDE WORLD

Hacienda was among the many California communities to incur damage after heavy storms led to widespread flooding in the state.

fornia earthquake policy has a deductible of 10% of the property's insured value.

Car dealers were among the

hardest hit by the weeklong storms, with several auto manufacturers reporting sizable losses.

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Employers taking new tack on buying health care cover

By CHRISTINE WOOLSEY

CHICAGO—Despite the slowdown in health care cost inflation, employers are moving forward with aggressive cost management strategies.

But, rather than focusing on new types of cost containment products or services, they are refining the health care purchasing process to save money.

Increasingly, employers are realizing health care is a "product" and should be selected and evaluated using specific criteria, specifications and norms, said Larry Boress, vp of the Midwest Business Group on Health. And, they are encouraging health care providers to act more as "suppliers" who recognize buyers' needs and expectations about health care.

Employer coalitions are becoming a major catalyst in bringing about this change in purchasing philosophy, Mr. Boress said during the opening session at a Jan. 10 symposium in Chicago. Sponsored by the MBGH, a Chicago-based employer coalition with members in eight states, the meeting was designed to educate providers about what benefit man-

agers expect from them.

"Employers don't want to be a manufacturer of benefits or health care. They don't want to do providers' jobs. But they are frustrated with rising costs and they are uncertain about quality," Mr. Boress told an audience of nearly 250 representatives from insurance and managed care companies, hospitals, physician groups and other health care providers. "Most employers have reached the conclusion that they must go beyond being merely a payer of bills."

To that end, employers are attempting to hold providers and other vendors accountable for the health care products they sell. But the first step in doing so requires collecting and analyzing standardized data on the quality and cost efficiency of different health care providers.

"One way employers can better understand how to deal with providers and develop performance measures is to join a coalition," Mr. Boress said.

Coalitions have been instrumental in moving employers from a passive, check-writing role to a

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Risk managers still coping with fallout from earthquake

By JOANNE WOJCIK

LOS ANGELES—Life for many Los Angeles risk managers has yet to return to normal a year after a 6.8 earthquake jolted them awake in the early morning hours of Jan. 17, 1994.

It may not have been The Big One, but the Northridge earthquake was certainly the biggest loss ever experienced by many Los Angeles area businesses, some of which are still haggling with their insurers over claims payments.

Part of the reason for the delayed settlement of claims is that the extent of damage to some structures was not immediately apparent. In other cases, risk managers are haggling with insurers over the extent of business interruption losses, which in some instances are greater than the property loss required to trigger BI coverage.

The Property Claims Services division of the American Insurance Services Group reported this month that the Northridge quake caused \$10.4 billion in insured damages—a far cry from its initial estimates of between \$1.5 billion and \$3 billion in damage (BI, Jan. 24, 1994).

For many risk managers, the Northridge earthquake has provided valuable lessons in risk financing, loss control and catastrophe preparedness. The experiences of three companies follow:

Butting heads

"We're butting our heads at the moment" over one such business interruption claim, said Barbara Sonstegard, director of taxation and cash management for Chatsworth-based Syncor International Corp.

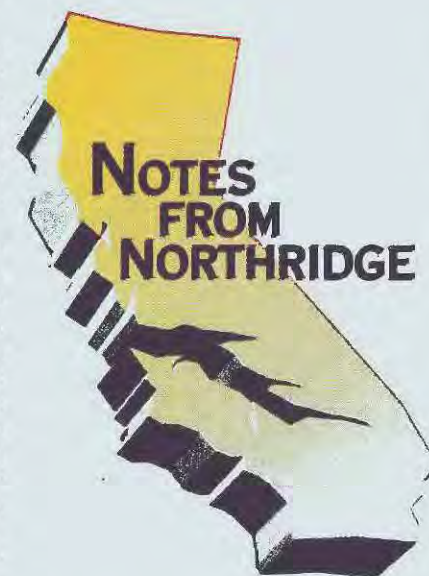
Insured property damage for the company, which distributes radioactive dyes used in medical diagnostic testing, was within its deductible, but "we had business interruption losses," she said.

"Our building was closed for a week and was only 50% operational for two weeks after the quake," as a result of internal property damage, Ms. Sonstegard explained. Syncor's Van Nuys laboratory was similarly operating at reduced capacity for about

three weeks, she added.

The company also paid to put up employees in local hotels when their commutes were disrupted by the Los Angeles area's several damaged freeways.

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Floods

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Garry Nelson, manager of operations services for Ford Motor Credit Co.'s insurance operations, said a Carson, Calif., car dealer, Don Kott Ford, sustained a \$3 million loss when floods destroyed 200 cars.

The insurance on the cars was written by Dearborn, Mich.-based American Road Insurance Co., another Ford Motor Co. unit. As part of a complex arrangement, the named insured on the unsold cars is Ford Motor Credit, though the claim will be paid to the Kott dealership.

Toyota Motor Insurance Services Inc. in Torrance reported more than \$2 million in damage claims by two Northern California dealers.

One claim for \$1.6 million came from a dealer in the San Francisco suburb of Dublin, where 92 vehicles were destroyed when a flash flood

spilled off a freeway onto the lot of the dealer below, according to Patti Connors, senior regulatory affairs administrator for the insurance subsidiary of Toyota Motor Sales U.S.A.

Another claim was filed by a Sacramento Toyota/Pontiac dealer who reported hail damage to 400 vehicles. The damage is estimated at between \$1,000 and \$2,000 per vehicle, according to Ms. Connors.

Toyota itself had 35 vehicles sustain flood damage at a Long Beach port processing facility, said David Sands, risk control manager.

In contrast, Honda North America, also based in Torrance, reported no flood or storm damage.

Risk managers for the Compton-based Ralph's Grocery Co. supermarket chain and the Los Angeles Metropolitan Transportation Authority were out inspecting area properties on Thursday afternoon, spokesmen reported.

In Laguna Beach, water and mud flowed through the coastal town's business district, causing shops and businesses to close for two days, according to the Laguna Beach Chamber of Commerce.

A string of disasters has made merchants there insurance-policy savvy.

Rene Battistone, a partner in a home accessories boutique named Areo, said that before the brushfires in Southern California (BI, Nov. 15, 1993), merchants did not know about business interruption coverage.

This time merchants will be sure to tap their policies for the two days they were closed, she said.

Ms. Battistone said her business, which is insured by Farmers Group Inc., suffered slight content damage and costs will mostly amount to the labor time required to bail out water.

The city's merchants also met and

discussed the possibility of filing damage claims with the state, which is constructing a freeway in the hills above the town. They think the flowing mud resulted from the construction.

"I think we're all in trouble because nobody had flood insurance and it was rising water," Ms. Battistone said. "That's the talk around town."

In Seal Beach Calif., a 6,608-unit retirement community suffered at least \$2 million to \$3 million in damage when a storm channel overflowed.

About 175 units suffered major damage, another 200 suffered minor to moderate damage and company vehicles were ruined, said Bill Narang, administrator and risk manager for Seal Beach Leisure World.

Days after the flooding, a pharmacy, medical center and church in Leisure World remained closed and

the sound equipment lay destroyed after 14 feet of water washed into a 2,500-seat amphitheater.

Mr. Narang said the 540-acre community did not have flood coverage, but he may file for windstorm damage for water that poured in through windows and doors.

Adjusters were still evaluating the damage and decisions about claims were still being assessed late last week.

Surveying it all, Mr. Narang had advice for other policyholders.

"People need to look over their insurance," he said. "People think deductibles and premiums are too high. But when something happens all of a sudden, the cost of premiums and deductibles is not the problem. It's kind of Monday-morning quarterbacking."

Some insurers received claims from policyholders as soon as there was a break in the weather, while others said it was too early to tabulate storm losses.

The three Factory Mutual System insurers had a combined total of \$1.2 million in losses reported as of Thursday morning, according to Wolfgang Friedel, senior vp for Arkwright Mutual Insurance Co. in Waltham, Mass.

Arkwright alone had net losses of less than \$500,000 from five Southern California claims, he said.

The claims were submitted by small businesses and facilities that suffered damage due to wind and surface water, said Mr. Friedel.

"Most of the losses that are occurring are in very rural areas and more in residential areas than they are in industrial areas," said Mr. Friedel.

However, he said he was concerned about two additional storms that were scheduled to hit California later in the week and over the weekend.

Dean E. Johnson, president and CEO of Protection Mutual Insurance Co. in Park Ridge, Ill., a Factory Mutual insurer, said the insurer has had only a few hundred thousand dollars in losses to date.

But "it's not done yet," said Mr. Johnson. "You get a couple of good mudslides and things can change real quick."

Allendale Mutual Insurance Co. had two losses, each under \$250,000, as of Wednesday afternoon, a spokeswoman reported.

As of midweek, Travelers Corp. had received 30 commercial lines claims and three personal lines claims, reflecting a mix of flood and wind damage, a spokesman reported.

Three of these commercial claims were in the \$100,000 range and these were wind related, with the remaining claims smaller, he said.

Ten of the claims came out of Traveler's San Francisco office, with the remainder out of its Los Angeles office, the spokesman added.

"We have to sort through the claims and look through the coverages," he said, adding, "We have people on standby ready to go in."

Other insurers hadn't received any claim notices as of late last week.

A Reliance National Insurance Co. spokesman said at midweek it has had "very little to no activity," and it is too soon to determine the extent of losses.

An American International Group Inc. spokesman said it also is too early to determine losses.

Aetna Casualty & Surety Co. also had no report as of Thursday, a spokesman said.

Reinsurers are not likely to take a big hit on the flood claims, since personal lines flood losses would be borne by the federal National Flood Insurance Program.

Judy Greenwald and Roberto Ceniceros contributed to this report.

Lawyers and Claims Professionals: Demand AAA/Aaa Backed Structured Settlements.



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Ford modifies salaried workers' benefits

DEARBORN, Mich.—Ford Motor Co. is implementing several new benefit programs for its 45,000 U.S. salaried employees.

Beginning in June, the giant automaker will introduce a flexible benefit plan that will allow employees to accumulate credits to buy health insurance and other employee benefits. The company also will offer salaried employees an additional credit, called Bonus Flexdollars, that will vary based on Ford's overall financial performance in any given year.

The additional flex credit is based on a return-on-sales formula, with the payout ranging up to \$600 per employee. The credit will enable the automaker to contribute more toward salaried employees' benefit programs in good times.

Benefit Beat

"The concept isn't new, but it isn't common," said Rosanne Milley, a principal with Apex Management Group Inc., a health care, actuarial and benefit consulting firm in Princeton, N.J. "It's a company's way of saying its ability to continue to offer comprehensive benefit plans is directly linked to the company's performance. And, it makes employees more sensitive to the fact that benefits account for a large percentage of their salaries and are very expensive for their employer to provide."

Jack Hall, Ford's vp of employee relations, said the new program will help the company better manage its health plan costs. "The cost of bene-

fits continues to represent an ever larger expense to the company and, in some cases, a competitive disadvantage," he said.

Ford decided to introduce the flexible benefit programs after conducting employee focus groups and surveying all 45,000 of its U.S. salaried employees in 1994. The automaker also studied the flexible benefit programs of other companies to identify the best practices.

Under the program, Ford will credit each employee with a fixed amount, plus the additional credit that fluctuates based on company performance. Employees will be allowed to spend those credits on health, dental and life insurance, as well as financial planning and legal services, long-term care insurance and vision care.

A variety of health plan options are available to Ford employees, including a self-insured indemnity plan and a number of health maintenance and preferred provider organizations. In addition, Ford introduced a new indemnity plan option, called the Ford Medical Plan, which has somewhat higher deductibles and out-of-pocket expenses, but no monthly copayments and a \$300 per family preventive care allowance.

Once an employee has selected a benefit plan, the cost of those benefits will be deducted from the flex credits supplied by Ford. If an employee chooses a medical plan that requires some premium sharing, the most an employee could pay would be \$45 per month for family coverage in the self-insured indemnity plan. If money remains, the em-

ployee may receive the difference in cash or may receive a credit to buy other benefits.

If there is a shortfall, the difference is made up through payroll deductions or paid with Bonus Flexdollars or cash from Ford's flexible compensation account.

Employees who elect to forgo health care coverage with Ford because they are covered under another employer's plan will receive \$1,140 in cash or in flex credits to purchase other benefits.

In other benefit plan changes, Ford introduced several new investment options in its employee savings and stock investment program. Under an agreement with Fidelity Investments, employees will be able to invest in six additional funds from Fidelity and in more than 50 other funds offered through Fidelity. Employees also will be able to make changes on a daily basis.

The new savings and investment program will be available to employees in the fourth quarter of 1995.

—By Christine Woolsey

More benefit options

NEW YORK—Although dependent care spending accounts are the most commonly offered dependent care benefit, their popularity is not growing like that of less common dependent care benefits, according to a new survey.

Some 78% of the 107 employers responding to a Towers Perrin survey offer a dependent care spending account. However, no additional companies said they plan to add the benefit.

The next most common dependent-related benefit, coverage for well-baby care, is offered by 73% of respondents. An additional 7% said they are planning to add or considering adding the coverage.

Growth will be much more substantial among the less popular benefits, according to the survey.

For example, while 40% of respondents said they currently offer child care resource and referral services, 15% said they plan to in the future. And while only 25% of companies now offer elder care resource and referral services, 20% said they are considering such programs.

"The (surveyed) companies' interest in testing and implementing innovative approaches in elder care and child care assistance demonstrates the recognition by business of some of the realities faced by this sandwich generation," said Pat Milligan, a principal in the Stamford, Conn., office of Towers Perrin.

The survey of 107 companies of all sizes, which was conducted late last year, found that companies offer a wide range of work/family benefits. However, the survey included in its list of work/family programs some health care coverage and personnel policies such as vacation day carryover.

The most commonly offered work/family benefits are unpaid personal leaves of absence, offered by 90% of responding employers; employee assistance programs, offered by 88% of respondents; coverage for routine gynecological exams, offered by 79% of respondents; dependent care spending accounts, offered by 78% of respondents; and coverage for well-baby care, offered by 73% of respondents.

Between 50% and 62% of employers offer personal days, vacation day carryover, closing cost assistance, wellness programs, paid time off for relocation, gradual return to work and on or near-site banking.

The survey, "Work/Life Programs; Supporting a New Employer/Employee Deal," is available free by calling 1-800-525-6741.

—By Deborah Shalowitz Cowans

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Opinions

Firms not sacrificing quality

LESS COSTLY managed health care does not automatically mean less quality health care treatment.

This truism was underscored by a recent study by researchers at Johns Hopkins University (*BI*, Jan. 9). The study, originally published in the *Journal of the American Medical Assn.*, found little variation in quality of care across a spectrum of different types of providers and among providers who used varying amounts of resources to treat patients.

"The lack of relationship between quality and costs has important implications for health system reform and managed care organizations," the study's authors wrote.

The study's conclusions should provide employers added fuel in their drive to sell managed care to workers as more than a cut-rate alternative to traditional indemnity plans.

Managed care plans are often criticized for focusing too narrowly on cost to the exclusion of other issues like quality of care and patient satisfaction. The Johns Hopkins study and research focusing on managed care plans shows this no longer to be true.

However, quality certainly is not a constant feature of managed care or other health plans that employers can take for granted. Employers must continue to monitor the health care plans they offer to ensure they provide appropriate care and meet the needs of employees.

Many employers that contract with health maintenance organizations already are doing this by requiring the plans to provide them with data on standardized quality performance measurements created by the National Committee for Quality Assurance, which accredits HMOs.



Other employers, as we report this week (see story, page 3), are striving to develop their own databases and benchmarks to assess the quality of their health plans.

While finding solutions to soaring health care costs remains critical, when employers and providers focus on quality, lower costs will result.

"We are trying to buy smart, not just buy cheap," sums up Sean Sullivan, president and executive director of the National Business Coalition on Health.

You can't go back again

AFTER YEARS of soft market conditions, the commercial insurance market appears to have finally stopped waiting for the other shoe to drop.

Recent renewals indicate that the days of a regular cycle of hard and soft, hard and soft markets has given way to what we have today: a competitive market for most lines of coverage, with only occasional and temporary spikes wrought by Mother Nature.

But the market is not characterized by competition alone; there is also evidence of a new flexibility and creativity in risk financing.

Much of the credit for this shift goes to risk managers and brokers for developing alternatives. In the last widespread hard market, many buyers decided to step off the

roller coaster and form their own risk financing vehicles. Others are working with insurers to restructure their coverage and develop long-term ties (*BI*, Jan. 9).

Change is also apparent in the consolidation occurring in the insurance industry, the reconstruction of Lloyd's of London and the creation of the Bermuda catastrophe reinsurance facilities, as well as in the growth of managed care options on the health insurance side.

For the buyers of insurance, it may mean an opportunity to take a fresh look at how much risk they are willing to bear and how to finance the rest.

Companies that are still waiting for the commercial insurance market to return to the old way of doing things may get left in the dust.

Letters

Story on builders risk cover ignorant of contractual reality

To the editor: I read with amazement the Dec. 12 article "Ignorance Not Bliss with Builders Risk Coverage."

Its total lack of understanding of the

contractual relationship between owners and contractors is pure ignorance.

The vast majority of owners transfer their project risks to the general contrac-

tor. The general contractor has risk of loss, delay in startup in the form of liquidated damages, offsite exposures, uninsured losses and operational testing risk.

This article seems to confirm what most corporate insurance and risk management professionals believe: Brokers do not understand the businesses that they are servicing.

Richard J. Rocheford Jr.
President
Star Risk Management
Consultants Inc.
Eden Prairie, Minn.

Ed Castellano
Assistant Insurance Manager
Raytheon Engineers
& Constructors Inc.
New York

Continental's capacity will be missed

To the editor: The CNA/Continental merger will bring benefits to the risk manager, broker and agent, as your Dec. 12 article, "Continental Deal Makes CNA Largest Commercial Insurer," points out.

However, this is a sad reduction of capacity in the industry at a time when the

alternative marketplace is making strong strides.

To the editor: I was pleased that you quoted my description of the task we are tackling at Lloyd's of London in your feature on the top newsmakers of 1994 (*BI*, Dec. 26, 1994).

In describing the wobbly plank and the chasm we are crossing to the haven on profits and prosperity on the other side, I spoke of the abyss being filled with ravening lawyers waiting to devour any who lost

their foothold.

Charmingly, you translated this in your copy to describe the lawyers as *rambling*, immediately giving a kindly and inconsequential feel to those I described rather differently. Would that it were so!

David Rowland
Chairman
Lloyd's of London
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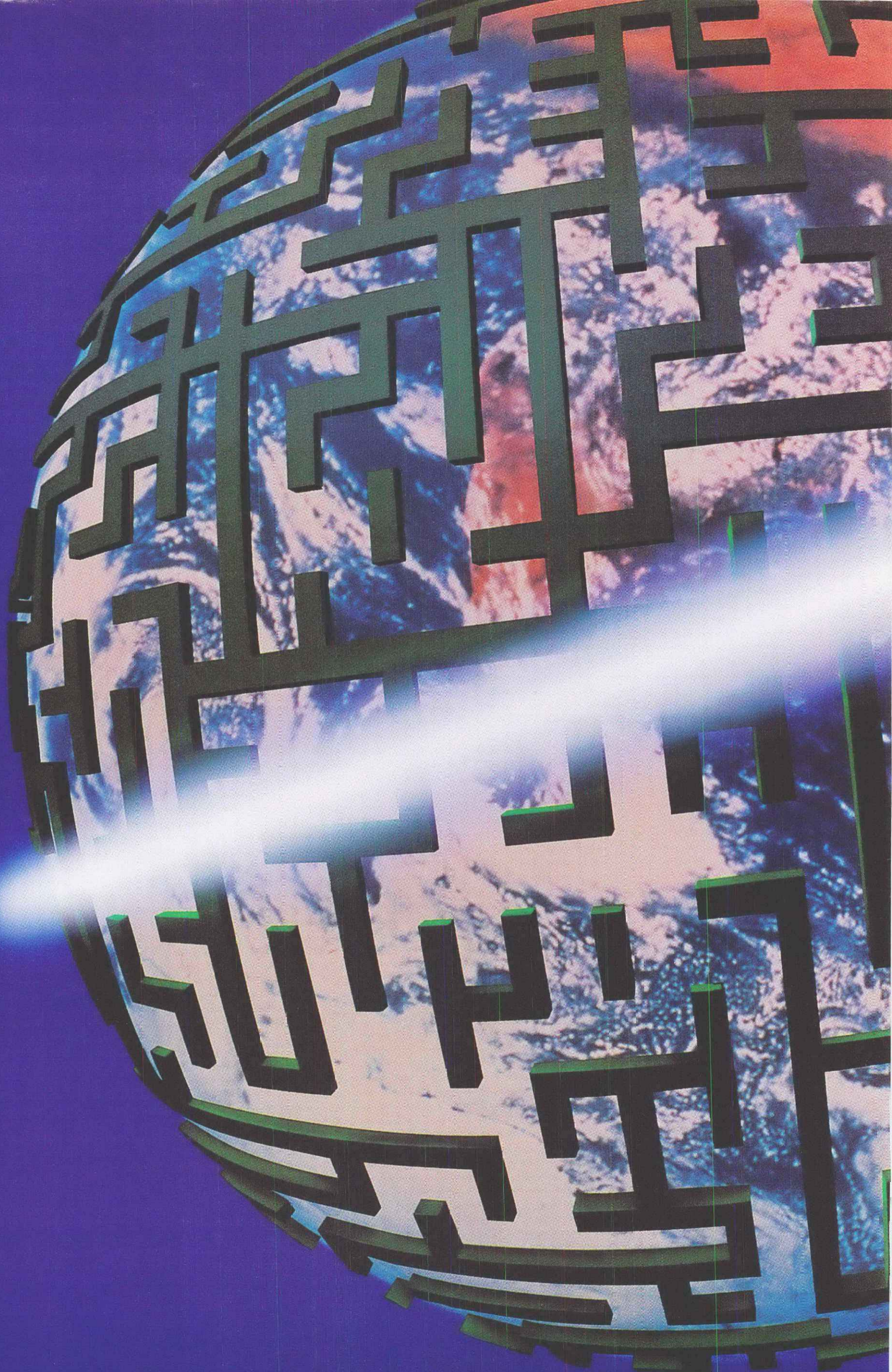
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Purchasing

Continued from page 3
 more active, purchasing role, said Sean Sullivan, president and executive director of the National Business Coalition on Health, a Washington-based umbrella for 90 business coalitions.

"It's been said the market has failed in health care" because it does not operate by the same principles as other markets, Mr. Sullivan remarked at the symposium. "The critical requirements of a functioning market are purchasing power, good information and the

right incentives," he explained.

Employer coalitions have dealt with the lack of purchasing power by banding together to create more buying leverage. Employers also are increasingly gaining access to provider information. "Sorting through the data is a big task itself. Now we have to determine what is credible," Mr. Sullivan noted.

And, to create the right incentives to supply quality, cost-effective care, employers are moving away from paying providers to do more things and toward paying them to do the right thing. "We are trying to buy smart, not just buy cheap," summed up Mr. Sullivan.

Minnesota Mining & Manufacturing Co. has been able to accomplish many of its health care cost management goals, both as a member of the Business Health Care Action Group and on its own as one of the largest employers in the Minneapolis/St. Paul marketplace.

"As a large employer, we have an interest in (employer) coalitions wherever we operate," said L. Joe Thompson, director of benefits for 3M. "By and large, employers are starting to think the same and have the same goals, even though we may go about it a little differently."

The main goal of employers—and employer coalitions—is purchasing

health care programs that feature quality care and efficiency, as well as low cost. In fact, many employers are applying modern management and re-engineering techniques to their health programs.

General Motors Co., for example, has been re-engineering its core business for a decade, ever since Japanese competition eroded U.S. auto sales in the 1980s. The company held 5,000 workshops for its core business, focusing on productivity improvement, inventory reduction, space reduction and lead time improvement, said Kevin Butler, director of health plans.

Now the company is asking

health care providers to do the same.

"At GM, we resolved to achieve substantial improvement in health care quality and cost," Mr. Butler said. "We spend more on health care than on steel."

GM provides health benefits to 1.7 million employees, retirees and dependents at an annual cost of \$3.5 billion in cash and \$5.6 billion in non-cash liabilities. That expense translates into \$1,400 per vehicle produced in the United States.

"Any organization or business that is based on the mass production model has built in over time a lot of bureaucracy and waste. I would submit to you that health care is such a system," Mr. Butler said.

GM wants its health care providers and vendors to apply the lessons the automotive industry learned to their own operations. Those include meeting customers' needs first and realizing that expended resources that do not provide tangible benefits to the customer are waste.

The company has held 25 quality improvement workshops with health care providers so far, with more planned. Each four-day workshop is designed to train providers to develop a systematic procedure for eliminating waste, improving quality and reducing costs. "Our greatest gains will come from process improvement and process control, which will make utilization management unnecessary," Mr. Butler explained.

GM has set an aggressive time frame to see results: short-term improvements should be realized within six months, while longer term improvements should be accomplished in six to 12 months. "If it can't be done in one year, it doesn't exist," Mr. Butler said.

"Absent sweeping government reform, change will only occur if it's driven by purchasers and customers," he commented. But, purchasers can only effect change if they have the right data. To that end, GM also has purchased a major data collection system marketed by EDS/Dun & Bradstreet to determine, among other things, why health care quality and price vary so much region by region.

GTE Corp. is also looking to data to help solve its health care cost and quality problems. Among other things, the company requires all the health plans with which it contracts to submit HEDIS data—a set of quality performance measurements created by the National Committee for Quality Assurance, which accredits HMOs—but GTE wants to go much further than that.

"The alternative to HEDIS is nothing, and HEDIS is definitely better than nothing," said George Crowley, a regional health care manager for GTE Laboratories in Dallas. "But HEDIS doesn't get to the basic truth and that is, if my son needs an (operation), who is the best doctor in town to do it?"

Northern Trust Corp. of Chicago has been collecting provider data for some time and is now trying to analyze comparative data on the different health plans with which it contracts, said Joyce Cook, vp and manager of benefits planning. Among other things, the company runs employee satisfaction surveys and collects data from all its health plans.

"The issue is less about identifying data elements and more about figuring out how to use the data once we get it—how to integrate and extrapolate it and use it for action," Ms. Cook said.

One thing is certain, though, she said. "There is no magic bullet and there is no finish line. We'll be dealing with this as long as we are alive and breathing."

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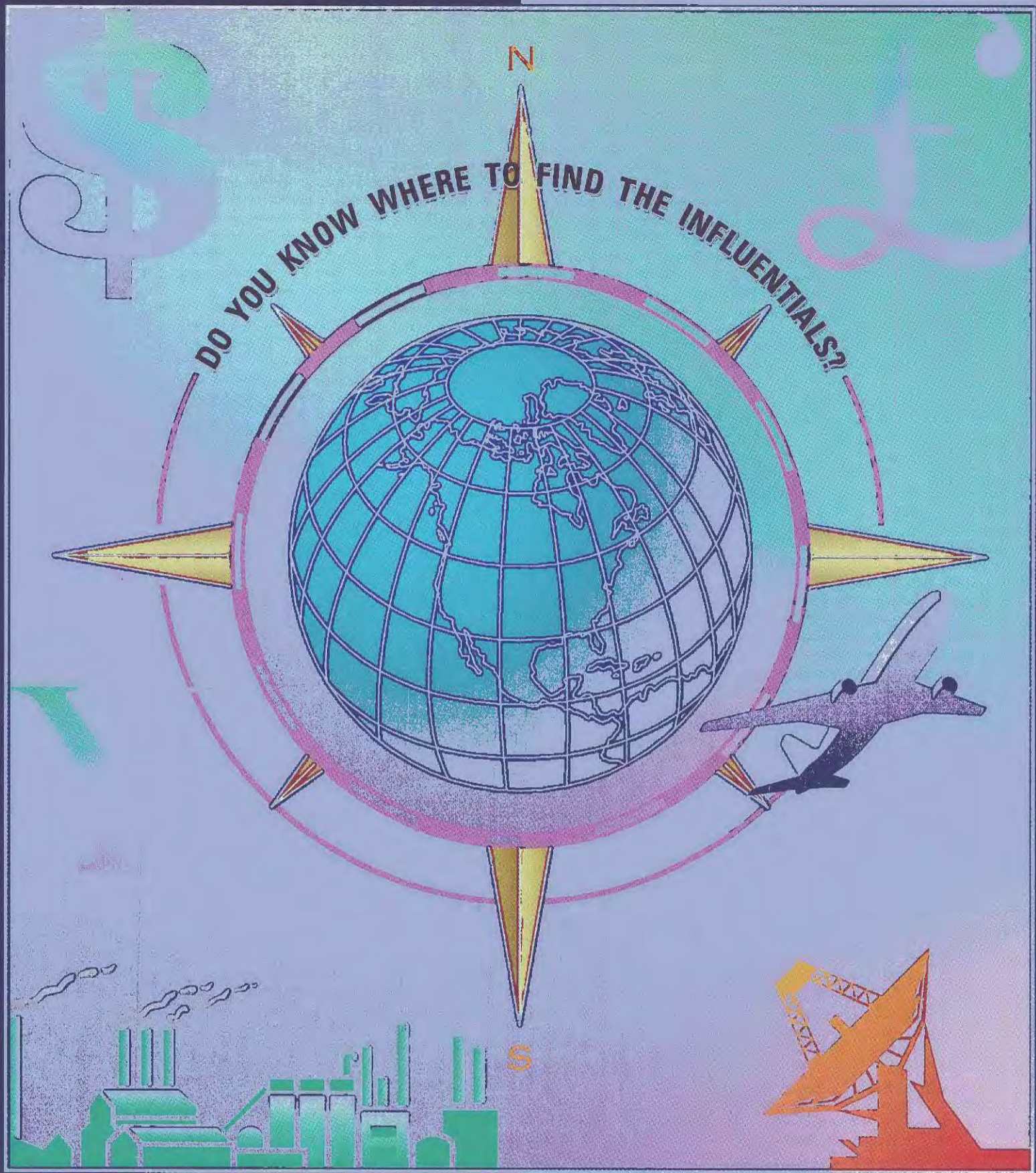
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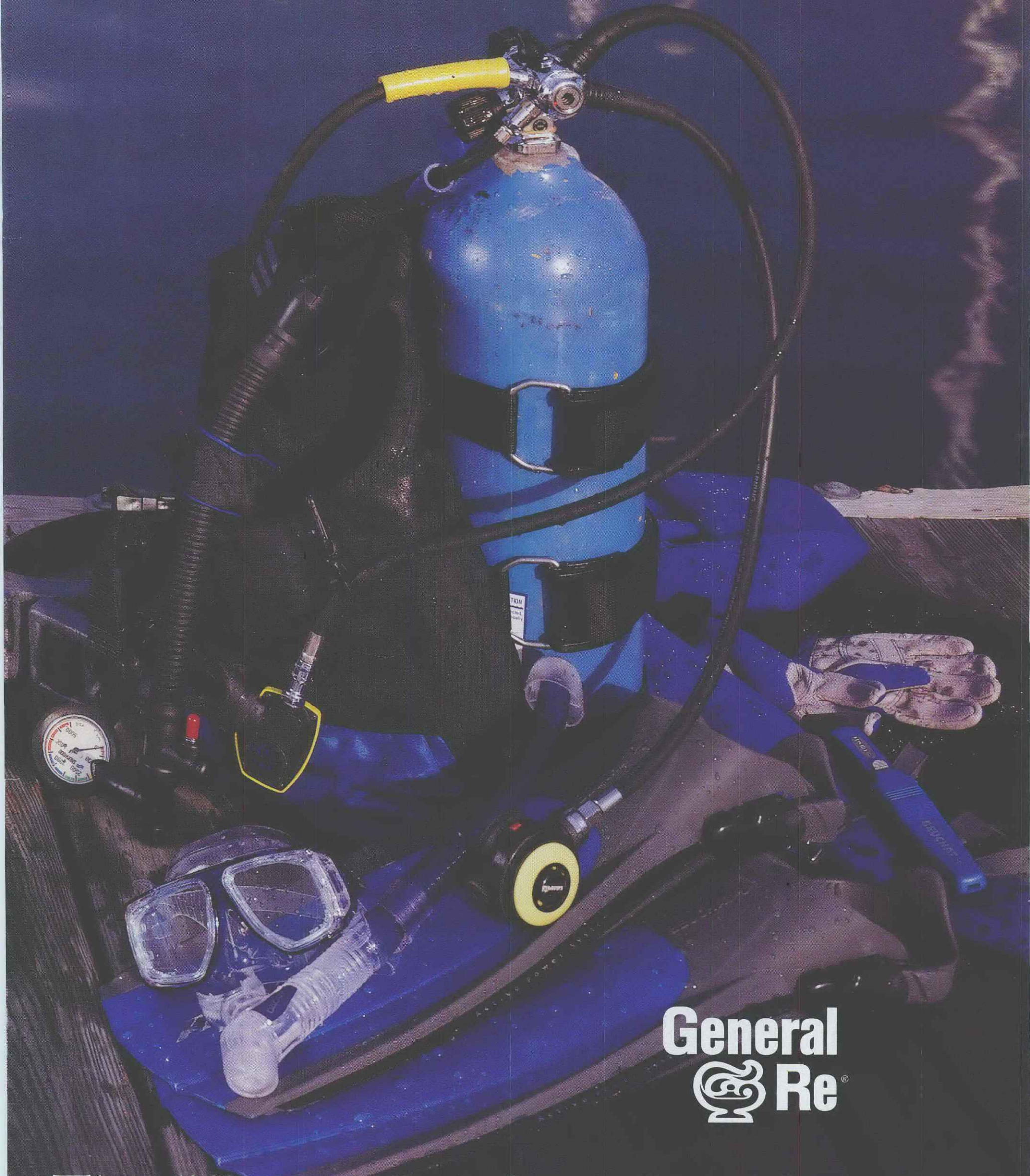
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Kwasha Lipton's Byrne to succeed Skovron as chief executive

Robert S. Byrne Jr., named chief executive at benefit consultant Kwasha Lipton in Fort Lee, N.J.

He succeeds **David Skovron**, who will serve as chairman until his retirement in June. In addition, **James T. Brickman** succeeds Mr. Byrne as chief operating officer.

In other supplier changes:

Harvey Sobel, named principal and consulting actuary in the Secaucus, N.J., office of Buck Consultants Inc.

Robert K. Burden named executive vp at The Alexander Consulting Group Inc. in Lyndhurst, N.J.

Robert F. Braun will succeed Mr. Burden as chairman and CEO of ACG's Canadian operation. In addition, **Peter A. Cole** named senior consultant in the Baltimore office of Alexander & Alexander Consulting Group, the U.S. consulting arm of ACG.

John Y. Loungway joined Lovett Associates, the Danville, Calif.-based claims consulting company, as senior claims consultant. Mr. Loungway, who was previously senior vp-claims for The Doctors' Co., is based in Napa, Calif. Also at Lovett, **Cassie E. Mebes** joined as a claims consultant and manager of its Southern California operations in San Dimas. Previously, Ms. Mebes was vp-claims for Alexis Inc.

Robert W. Stephens joined insurance consulting firm The Manhattan Group Inc. as managing director in New York. Previously, Mr. Stephens was chief operating officer of Herbert L. Jamison & Co.

David Kelley named president of Alden Risk Management Services Inc. in Miami, succeeding **Jim Tillett**, who was named senior vp of the parent company, John Alden Life Insurance Co. Also at Alden Risk Management, **Walter Marsh** joined as a vp-actuary. Previously, Mr. Marsh was vp and actuary for Associated Insurance Cos. Inc.

Robert C. Runge named to the new position of chairman and chief executive officer of the Tulsa, Okla.-based third party administrator, Insurers Loss Management. **Jerrold A. Whorton** named president and chief operating officer.

HMOs/PPOs

Richard C. Surles, New York State Commissioner of Mental Health, is joining Medco Behavioral Care Corp. as executive vp.

Charles Kanach named executive vp at Green Spring Health Services. Previously, Mr. Kanach was senior vp at CIGNA Corp. Also at the Columbia, Md.-based preferred provider network, **Charles Kiskaden** joined as chief marketing officer from FHP Health Plans International.

David G. Schmidt joined CareAmerica Health Plans as senior vp and general manager for the group services division in Woodland Hills, Calif. Previously, Mr. Schmidt was a vp at FHP/Takecare.

Nadine Yacos named director of health services for Preferred Health Professionals, an Overland Park, Kan.-based managed care organization. Also at PHP, **Roberta Suenram** named director of HMO/EPO product management.

Insurers

Jim McDonough, international director of Guardian Royal Exchange P.L.C., London, will retire May 31. Group Chief Executive

Comings & Goings: Industry

John Robbins will assume the duties of coordinating the insurer's major overseas divisions, including GRE Insurance Group in New York.

Charles LeDoyen named to the new post of president of Transamerica Life Cos.' structured settlements division in Los Angeles.

Tim Mooney named executive vp and managing director of C.E. Heath Compensation & Liability Insurance Co. in San Francisco.

Thomas G. Brown, president and chief executive officer of Duncanson & Holt Group, a subsidiary of UNUM Corp., has been named to the additional post of executive vp of UNUM Corp. in

Portland, Maine.

Also at UNUM, **Robert W. Crispin**, formerly vice chairman and chief investment officer of The Travelers Insurance Cos., named executive vp.

Debra Bowles named vp-change management of Blue Shield of California in San Francisco.

Pacific Mutual Life Insurance Co. in Newport Beach, Calif., made several announcements: **Glenn S. Schafer** named president, filling a spot vacant since 1989; **Larry J. Card** named executive vp-securities; **Daryle G. Johnson** named executive vp-pension investments; **Michael S. Robb** named executive vp-real estate

investments; **Raymond J. Lee** named senior vp-portfolio management; **John E. Milberg** named senior vp-marketing, pension investments; and **John D. Murray** named senior vp-financial, pension investments.

Jan Rose named vp-corporate information systems at Guaranty National Insurance Co. in Englewood, Colo.

Steven M. Rosenbloom named senior vp-chief investment officer at Florida Physicians Insurance Co. in Jacksonville. Previously, Mr. Rosenbloom was first vp-investments at Merrill Lynch.

Frederick O. Shafer named senior vp and chief underwriting officer of North American Co. for Life & Health Insurance in Chicago.

Ronald D. Wade named execu-

tive vp and chief operating officer of Ohio Hospital Insurance Co. in Columbus.

Kermit C. Smith named executive vp-insurance operations for the Atlantic Mutual Cos. in New York.

Joseph W. Jacobs named interim chief executive officer of the Gulf Atlantic Insurance Group in Tallahassee, Fla., succeeding **Robert L. Atkins**, who died of a heart attack in October.

V. Stanley Benfell is resigning as president of Security Life of Denver Insurance Co. due to health problems. **Bob St. Jacques**, CEO of Internationale Nederlanden Group, the parent company, is assuming his duties until a replacement is made.

Rod Ayer named vp-casualty underwriter in the brokerage casualty and umbrella department at Investors Insurance Holding Corp. in Red Bank, N.J. **BI**

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Continued from page 1

pates policies to renew as expiring. Mr. Riley said he is concerned about the financial security of the companies that are writing earthquake coverage in the United States. "I don't believe anyone is performing the due diligence to know whether companies writing this coverage can pay. A look at their surplus leaves me unsure."

Nevertheless, Dun & Bradstreet did place some coverage with these insurers.

"You have to go layer by layer, and although we have high standards, we can't get anyone to take all our coverage," he said.

Gillette Co. faced a similar problem, said Tom Welgoss, manager of corporate insurance with the Boston-based manufacturer.

Prior to Jan. 1, Allendale Mutual

Insurance Co. wrote property and some earthquake, with Royal Insurance Co. writing any of Gillette's outstanding earthquake coverage on a difference-in-conditions basis.

"This year, (both insurers) gave us all the capacity they could and we had to fill our requirements elsewhere. We had to go to several markets," Mr. Welgoss said. The result was about a 10% premium increase and substantial increases to Gillette's retention level on its global property program, "with all of the increase due directly to earthquake rates. But 10% overall isn't bad. If it would have just been California on its own, it would have been much worse."

Earthquake and other catastrophe coverages were also the sticking points for Lori M. Jorgensen, assistant vp-risk management with McCaw Cellular Communications Inc., a Kirkland, Wash.-based com-

pany bought by AT&T Corp. last year.

Ms. Jorgensen said the company's recent property renewal was tougher than expected, especially considering that most of the firm's property is rated as highly protected risks.

"I think the trouble companies like The Home and CIGNA are having with their ratings is constricting the market and making it tougher for us as risk managers to get favorable terms. Also, we have significant property exposures in Florida and California, which the underwriters feel are susceptible to windstorm and earthquake catastrophes," she explained.

Nevertheless, McCaw Cellular secured property coverage from The St. Paul Cos. Inc. and Aetna Casualty & Surety Co. "We got the limits we were looking for, but we paid a price that was a little higher than we had hoped. I guess that's

the price you pay these days for the comfort of being with a secure carrier," Ms. Jorgensen said.

Long-term relationships with insurers helped Monsanto Co. have its first favorable global property renewal in three years on Nov. 1, said Don Spurlock, manager of risk financing for the St. Louis-based diversified manufacturer.

The global property market had been difficult for a few years for certain classes of business that cover portions of Monsanto's risk, including chemical and pharmaceutical manufacturing.

"It is still a difficult market, but we've seen the worst of it, barring a major natural disaster," Mr. Spurlock said. "Our costs were down a little bit, as opposed to going up rather dramatically in the prior two years."

He attributes the improvement to developing long-term relationships with insurers.

"There is a higher comfort level on the part of insurers with Monsanto," Mr. Spurlock said. That familiarity also allowed Monsanto to obtain broader property coverage.

"For the first time I can remember, it's truly a global program," he said. "There's not an element of the program that applies to U.S. only. It's truly, 100% global. Key insurers were willing to increase the capacity they commit to the program."

Mr. Spurlock is prepared for a more hostile market when he forays into the California earthquake market later this year. Presently, Monsanto has little exposure in California, but in the first quarter of 1995 the company is expected to complete its acquisition of Kelco, a San Diego chemical division of Merck & Co. Inc.

Nestle U.S.A. Inc.'s only experience with market tightening during January renewals was for non-owned aviation, a minor coverage for Nestle.

"I've heard some carriers are looking for a 25% increase across the board," said Pam Rogers, director of corporate risk for the Glendale, Calif.-based company. "Whether or not they're getting it is another issue."

"We're seeing some hardening in lines like aviation liability, hydroelectric coverages and marine," said Robert Patzelt, risk manager with Scotia Investments Ltd. in Bedford, Nova Scotia. "That's about the only place where the insurers will get you, and that's because their reinsurers are driving the costs up."

In virtually all other lines of business, risk managers reported flat to slightly declining rates.

David Mair, risk manager with the United States Olympic Committee in Colorado Springs, Colo., said the association's general and excess liability programs came up for renewal Jan. 1, and both programs renewed at flat rates.

"We're a pretty standard general liability risk and the excess program is your basic low-layer program excess of \$1 million primary," Mr. Mair said. "It indicates that it's still a buyer's market with lots of capacity and plenty of carriers willing to write good risks."

For primary and excess casualty, the market was "pretty steady," agreed Nestle's Ms. Rogers. "There was a little price reduction but nothing significant."

She was told to expect an increase for crime coverage but actually experienced a slight decrease. She also reports some softening in the market for excess workers compensation coverage above a self-insured retention.

The casualty market is "buyer friendly," said Lynn A. Gaughan, director of risk management with Reebok International Ltd. in Stoughton, Mass.

Reebok's global primary general liability and auto liability program, which is written by Allianz A.G. Holding, is slated for renewal very soon.

"Anyone can get a policy based on price, but getting a good, secure carrier dedicated to service is what we're looking for," she said. "I'd gladly pay a little more for service, and that's why we want to keep Allianz. The casualty market has reached the point where getting a good price is much easier than finding a good market."

Scotia Investment's Mr. Patzelt echoed the idea that risk managers can negotiate around the moderate rate increases that insurers have been seeking for casualty risks.

"We tell them that times are tough and that no increases will be accepted. And, if your program

Continued on next page

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For McCaw Cellular, liability was "no problem," Ms. Jorgensen said. "It was very easy, almost a non-event. Our renewal price was up a little but only because our exposure base increased. The rating structure was unchanged."

Gillette's liability program was also unchanged. It did get more favorable pricing on the first \$25 million layer of its umbrella policy because it shopped the account.

"Basic umbrella business is still benefiting from a soft market. We got about a 40% decrease, but we were probably overpaying a little before," Mr. Welgoss said.

Texas Instruments Inc. renewed primary and excess casualty on Jan. 1.

Tom Henderson, corporate risk manager, found the market "very agreeable."

"Everything I did came in as expiring or less," he said. "By and large, the market is fairly soft. I did not see any aggressive pricing up or down. No one wanted to slash or charge an arm and a leg."

Where Dallas-based TI's overall cost of risk did increase, it was due to an increase in insurable values, not rates, Mr. Henderson said.

Experience led to a rate increase and restricted terms for the U.S. Olympic Committee's directors and officers liability program.

"Our organization is very different and the number of insurers that turned us away makes me believe that we're a unique risk that's not indicative of what's going on with D&O," Mr. Mair said.

Ms. Gaughan renewed Reebok's D&O policy late last year and found the market to be "very competitive. We bought higher limits this year for only a little bit more money than we paid a year ago."

Robert Alkire, risk manager and assistant treasurer with 21 International Holdings Inc., a conglomerate based in Saddle Brook, N.J., said his only recent renewal was on the D&O policy for its Foamex L.P. operating unit, which makes polyurethane foam products. He said 21 International obtained favorable terms on that unit's 1995 D&O program because its broker was able to persuade National Union Fire Insurance Co. of Pittsburgh, Pa., to write a six-month policy for the company based on only five month's worth of premium.

"It was a good deal for us because it was a rollover policy and it allows the operating unit to come up for renewal at the same time the holding company does," Mr. Alkire explained.

The good news continues for workers compensation, where many risk managers report favorable renewals after several years of skyrocketing rates.

While "it's premature to say the crisis is over," workers comp costs will remain about the same for Hazar Inc., a San Francisco-based employee leasing firm, said Robert Nio, vp-risk management.

Hazar renewed its nationwide workers comp policy with National Union Fire Insurance Co. of Pittsburgh, Pa., on Nov. 15, 1994.

Hazar's loss-incurred program covers 20,000 employees in 400 classifications, from garment and clerical workers to trucking and heavy manufacturing. Because the number of employees varies, pre-

mium will be based on quarterly payroll audits.

Mr. Nio considered other insurers but found that with National Union, "We receive good service and the cost is still very competitive with the rest of the industry."

Reebok's workers comp insurance program came up for renewal on Jan. 1. Although the sportswear company self-insures its workers comp exposure in Massachusetts and operates nationwide on a large-deductible, payroll-based plan, Reebok was able to secure lower rates from its insurers on the fixed-cost portion of the program, Ms. Gaughan said.

She also considered purchasing employment practices liability insurance but said the product is too new and there isn't enough history behind it to warrant buying it at this point.

"We looked at it briefly and my

'If there's any tightening of capacity, I haven't seen it,' David Mair says of the property/casualty market.

gut reaction was that it's overpriced and not many employers are buying it. I'm waiting for some history to develop. I want to see if carriers pay on the claims or not. These losses aren't cut and dried like a property loss," Ms. Gaughan said.

Risk managers predict little change in the market in 1995 in the United States and in Canada.

Canadian risk managers are seeing good capacity from their insurers, Scotia Investments' Mr. Patzelt said.

"The whole North American market is pretty healthy. I don't distinguish Canada and the United States as different. It's all the same to me."

He said property coverages are renewing "on par, depending on how bad they want you. Otherwise, it's experience that determines renewal pricing."

Mr. Patzelt said he moved Scotia Investments' coverage from Lloyd's of London in the late 1980s.

"I'm sure they'd take us back, but they're in a world of hurt and we wouldn't want to go back. Pricing is high in order to make up for past losses and that three-year reporting remains a pain," he said.

In general, the USOC's Mr. Mair sized up the commercial property/casualty market as continually soft.

"If there's any tightening of ca-

capacity, I haven't seen it. I was in regular communication with all of our carriers while budgeting for 1995 and they said there is nothing to indicate that the market will change. Hopefully, they're straight-shooters," Mr. Mair commented.

Mr. Alkire of 21 International Holdings sees 1995 shaping up very similarly to last year.

"The word I'm getting is that there's so much capital out there that things won't change. But property could continue to be tougher. We renewed property for our 85 locations in 23 states in October at about a 20% increase, and that was driven by earthquake coverage on our West Coast properties.

"I think this will continue because my gut feeling is that an 8.5 quake would cause more damage" than the industry could insure, he said. **BI**

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Reinsurance market not yet firming up

By JUDY GREENWALD

Aside from some possible consolidation, another steady year is expected

One reinsurance intermediary says there is a way he can tell the reinsurance market continues to soften—at meals it's the reinsurers who are picking up the tab.

Reinsurer report

"That's a sure sign," says Albert P. Amato, senior vp at C.L. Frates Reinsurance Intermediary Inc. in Stamford, Conn.

Anyone who expected any dramatic new trends to emerge during the January reinsurance renewals was likely to be disappointed, as the market con-

tinues on much the same course of 1994.

"It doesn't sound like there's a lot of big moves as far as changes go," said Dan Eudy, executive vp with Hartford Re Co. in Hartford, Conn. "It's a continuation in property of a fairly stable market and in casualty of a fairly competitive market."

There is even some softening of rates in the property catastrophe area for regional insurers with no major catastrophe exposure. Such insurers are enjoying rate decreases of about 10% or more on property catastrophe reinsurance.

Assuming there are no catastrophes—natural or otherwise—in 1995, the reinsurance market is

expected to remain relatively unchanged this year.

"Barring any kind of cataclysmic event or some dramatic reversal of customary laws on the casualty side, I think it'll be a pretty undramatic year," said Wallace E. Winter, chairman and CEO of Intere Intermediaries Inc., who is based in Chicago.

But, not everyone sees a good year ahead for reinsurers.

"I think it's going to be a pretty ugly year on the underwriting side," said Steven Bolland, executive vp at reinsurance intermediary Gill & Roeser Inc. in New York. "I would imagine we're going to see the overall combined ratio of the industry going up a few

points this year. This might mean more consolidation. A couple of more reinsurers might exit the business. There is, I would say, definitely, some overcapacity in the market."

Reinsurers will pay more attention to the risks of insurers' individual programs, predicted John N. Gilbert Jr., president of the Holborn Agency in New York. "Absent any major catastrophe loss activity, we see a further willingness on the part of reinsurers to recognize the merits of the individual program and act accordingly. We do not expect to see major rate reductions, but we do expect to see further reductions where warranted."

Meanwhile, reinsurers say there has been a continuing emphasis on the quality of the reinsurance this renewal season.

"I think we're seeing more business and I would have to attribute that principally to our rising stature in the business," said Steven H. Newman, chairman, president and CEO of Underwriters Reinsurance Co. in Woodland Hills, Calif., which has just received a \$100 million capital infusion from its parent, URC Holdings Corp.

The reinsurance business overall, though, is still a struggle, say some observers.

"It seems most people are fighting very hard to maintain what they've got," said John Lombardo, president and CEO of New York-based Munich American Reinsurance Co. "Competition is very, very strong out there. There's not much market hardening, at least as far as what we can see."

"I think it's more a continuation of what has been happening in the last six months," said Ajit Jain, president of the reinsurance division of Berkshire Hathaway Inc. in Stamford, Conn. "It's a pretty dull renewal, quite honestly."

"We aren't seeing what I would interpret as any particular firming in prices other than those lines that are obviously catastrophe-prone or have unique exposure, such as heavy wind or earthquake," said Tom Case, president and CEO of Frankona America Cos. in Kansas City, Mo., which operates Frankona America Reinsurance Corp.

But, Chris L. Walker, chairman and CEO of Minneapolis-based intermediary E.W. Blanch Co., said the renewal season "went very well from our perspective. There's plenty of capacity" for insurance programs that have a handle on their exposures, he said.

One area that continues to see rate declines at renewal are catastrophe reinsurance lines.

"The cat lines have definitely shown almost an across-the-board reduction in rates," said Gill & Roeser's Mr. Bolland. Depending on the area and the coverage involved, this can be anywhere from a 5% to a 25% reduction, he said.

"I would say reinsurers are keying in on their target zones, which would be California and East Coast U.S.A., and those are the ones that are getting the smaller rate reductions, if any reductions at all," he said.

Those risks affected by the Northridge earthquake, though, might see rate increases, he added. But, "away from the key zones, there's pressure on rates and conditions, pretty much globally."

"Certainly on a strong loss-free program, for companies that don't have Florida or East Coast wind-storm exposures or California earthquake exposures, some rate relief in the neighborhood of maybe 15% has been pretty general, I think," said Intere's Mr. Winter.

"Everyone seems to want the regional (insurance) companies, but obviously that's difficult too because there aren't that many and the ones that are, aren't buying the large programs. They're coveted, but people aren't giving the business away, either," he said.

The biggest decreases are for Midwest insurance companies that did not incur any quake or hurricane losses. Those rate decreases "in many cases were de-

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Reinsurers

Continued from previous page served by their excellent experience," said Larry Doyle, CEO of Global Capital Reinsurance Ltd., a Bermuda catastrophe reinsurer. Mr. Doyle said rates are down about 8% in the United States, with decreases of up to 15% in the more competitive international market.

Bermuda's catastrophe reinsurance capacity, of course, has been a major factor.

"Bermuda is a big difference in the equation this year," said Mr. Bolland. "Basically, they are now writing a tremendous amount of business and this is adding capacity to the world market, so it's bringing the rates down almost across the board."

"If you're creating a new layer, especially a new top layer, Bermuda will be the place to go as long as you're pure property," said David Forrest, executive vp at the U.S. branch of Abeille Reassurances in New York.

But, he added that once casualty exposures are put into the layers, most of the Bermuda markets will not consider the business.

Indeed, some observers say the Bermuda market has not been overly aggressive in pursuing business.

While its reinsurers have had a significant impact because of the

additional capacity provided, they "did not significantly impact the rating either way," said Philip W. Mitchell, managing director and CEO of Towers Perrin Reinsurance in Philadelphia. "They seem to be in sync with the rest of the market with respect to rating."

Bermuda provided "an array of quotations that were not too dissimilar from other leading worldwide markets," agreed John P. Woods, president of reinsurance intermediary John P. Woods Co. Inc. in New York.

"I see them offering significant large capacity. I don't see them aggressively driving prices down," said Bill Munson, president and CEO of Mercantile & General Reinsurance Co. in Morristown, N.J. Bermuda is acting with "a lot more discipline than I would have envisioned when I heard of all the capacity going into Bermuda," said Frankona Re's Mr. Case. "I don't see reckless use of capacity or pricing."

Underwriters Re's Mr. Newman said, though, that catastrophe reinsurance risks continue to be oversubscribed. "We started to see a lot of oversubscription early on" and by the end of the renewal season "brokers were reporting heavy oversubscriptions."

However, "I partly think that some of it's caused not by pure market activity," he said, explaining that some reinsurance buyers that want 20% on line are asking

for 30% in the hopes of winding up with the 20% they actually want.

"There are covers that were struggling to get done at this time last year that are now being overplaced, even in areas such as Texas and other windstorm areas," said Abeille Re's Mr. Forrest.

One particular program that has been getting a "fair amount of attention" in the catastrophe reinsurance market involved a ceding company attempting to lock in a two-year program, said Mr. Forrest.

He said he also has seen one particularly large catastrophe treaty this year with a large U.S. exposure that was including liability coverage with the property coverage.

There has been some restructuring of catastrophe reinsurance business, as well.

Many insurance companies, particularly national companies, are increasing their retentions, then using the money saved to buy higher layers of coverage, said Paul Ingrey, president of F&G Re Inc. in Morristown, N.J., a USF&G Corp. unit.

"That's a process forced upon the cedants after (Hurricane) Andrew," said Michael A. Butt, chairman and CEO of Mid Ocean Reinsurance Co. Ltd. "It is a perfectly proper adjustment."

In addition, some of the five-layer cat programs are "now being

consolidated so we have these large cat programs that seem to be resurfacing again," added Mr. Forrest.

Even taking such restructuring into account, though, "the overall cost to the clients has gone down this year," he said.

Despite the increased property catastrophe reinsurance capacity, there is "still a finite limit to what is available in the marketplace," observed Intere's Mr. Winter.

About \$275 million to \$300 million of coverage is available "if you want to limit yourself to the really strong reinsurers, so if you're looking for \$400 million or something like that, you're really going to have to go to somewhere other than the traditional property cat covers," he said. These other sources could include some kind of financial reinsurance, "and those are only limited by one's imagination and the regulators' concerns, I guess."

Some observers believe the cat market can expect more significant rate reductions in the future. "It appears to me that there was a pent-up desire to secure more capacity once pricing stabilized. . . so I think this period there wasn't any type of significant price deterioration," said M&G Re's Mr. Munson. If the loss experience stays good, though, there likely could be attacks on the rates, he added.

"If there aren't many industry losses, there certainly would be more pressure next year, assuming capital and capacity stays in place," agreed Global Capital's Mr. Doyle.

Meanwhile, there has been little major change in non-cat property reinsurance business.

Non-catastrophe property business is essentially renewing as is, though "there may be a little bit more of an occurrence limit," said Paul R. Davies, chairman and CEO of Chicago-based Aon Reinsurance Agency Inc.

"I don't see much change at all," said Mr. Winter. "There's continued heavy competition for all but what we would call working-layer property risk programs, and for any property proportional business that's out there, there's a lot of competition for it, but in most instances it's being used to leverage larger cat lines where it can be."

Meanwhile, casualty reinsurance is "still very, very competitive," said John W. Smithson, chairman, president and CEO of PMA Reinsurance Corp. in Philadelphia. "There's a lot of capacity in the marketplace for casualty reinsurance," he added. "The buyers are in a position of getting very favorable rates and terms overall, so there's really no change in the casualty market."

At the same time, there have not been any dramatic rate cuts, observers note.

"I think they're pretty stable," Mr. Winter said of casualty reinsurance rates. "There's still competition in the low-layer, working casualty programs, but for most of the higher layers and the clash covers, the rates aren't necessarily dropping, but they're soft. They're not going up at all."

"They're staying soft, and that means that, depending on the cover, being negotiated downward if possible, but casualty depends more on experience, really, more than anything else," said Aon Re's Mr. Davies said.

"Rates did not go down so much as terms liberalized," said C.L. Frates' Mr. Amato. "It was easier to deal with reinsurers. They were more receptive to ideas, less likely to balk at things." **BI**



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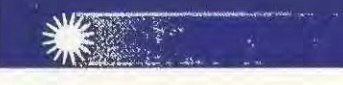
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Casualty lines competition lowering rates

Surplus lines underwriters vying with admitted market

By DAVE LENCKUS

Phone calls that wholesale broker Crump Insurance Services Inc. had expected from several risk managers with year-end renewals still hadn't come in by Dec. 15.

But, on Dec. 30, Dallas-based Crump was jamming the phone lines with calls to markets to pull together programs for many of those risk managers, whom a

Crump executive suspects were shopping their programs around until the last minute.

Other, though not all, surplus lines brokers and insurers reported similarly hectic days during the year-end renewal season, which is not the busiest renewal season of the year for most of them.

In retrospect, the extended window-shopping trip by risk managers—especially those with casualty risks—is not surprising, said Marcus Payne, president and chief operating officer of Crump, the largest unit of holding company Price Forbes North America.

Standard and surplus lines underwriters during year-end renewals were falling over themselves to write casualty risks, often cutting rates by 10% or more. Some surplus market executives said admitted markets were slashing rates by as much as 25%.

"Prices have gotten as low as they ought to be, compared to the exposure out there," said Paul Genecki, a senior vp with The Schinnerer Group Inc. of Chevy Chase, Md., the underwriting manager unit of Marsh & McLennan Cos. Inc.

And while rates for some risks aren't improving, coverage is expanding.

On the property side, risk managers—especially those with earthquake and windstorm risks—have little to cheer about. Rates for non-catastrophe exposures at best are flat, and some market executives report rates are spiking.

Meanwhile, surplus lines executives foresee a shot at more business because of some admitted market turmoil.

They also expect smoother legislative and regulatory roads ahead because of the Republican victory in the Nov. 8, 1994, elections.

The admitted market continues to compete with the surplus lines market for casualty risks—sometimes with surprising resolve.

"The standard market is writing risks we thought would come to us," particularly excess liability business, Crump's Mr. Payne said. "I thought most of that was over."

Surplus lines market executives agree that casualty rate increases are a rarity, but there is some disagreement over how good the news is for insurance buyers.

For example, Kevin H. Kelley, president of Boston-based Lexington Insurance Co., the largest U.S. surplus lines insurer, said rates are "pretty flat."

"I would characterize the market as having attained a steady state," agreed Seth D. Freudberg, president and chief executive officer of United National Insurance Co. of Bala Cynwyd, Pa.

But, some executives believe the

market is better than that for risk managers.

"It's tough to increase pricing and tough to hold pricing," observed Tom Mulligan, senior vp-underwriting and marketing for Western World Insurance Co. of Ramsey, N.J.

Warren S. Stanley, president and CEO of Los Angeles-based Swett & Crawford Group, the nation's largest wholesale broker, described the market as "fragmented."

With certain exceptions, "it generally remains competitive, and in some cases highly competitive," he said.

Underwriters are competing most for excess and product liability risk—cutting rates in many cases 10% to 20%, he said.

"The umbrella area is still the softest product line we have anything to do with," said Kevin P. Brooks, chairman and president of General Star Indemnity Co. of Stamford, Conn., a unit of General Re Corp.

Umbrella rates are dropping probably by as much as 25% for large risks and 10% for small risks, he said.

"It's very tough to hang on to renewals right now," he added.

"It's like a feeding frenzy" for the larger risks whose premiums are at least \$100,000, he said. The umbrella coverage is a profitable line with low expenses for insurers

since they don't need a large staff to underwrite risks far removed from a first-dollar loss, he explained.

The trend in rates suggests more good news for risk managers: Rates were softening more at the end of the year than at the beginning, Mr. Payne said.

Insurers' competition for business extends to coverages like directors and officers liability and errors and omissions liability for buyers that have run non-volatile businesses for a while and that have strong balance sheets, said Mr. Stanley of Swett & Crawford, a unit of The St. Paul Cos. Inc.

Surprisingly, insurers are chasing even E&O coverage for lawyers, police, public officials, school boards and insurance agents, Mr.

Brooks said.

Rates for those coverages are dropping 10%, unjustifiably in most cases, he said.

Many of the risk managers who aren't being offered lower rates are obtaining expanded coverage.

For example, Lexington, a unit of American International Group Inc., has developed a patent infringement policy for high-tech firms (BI, Jan. 2).

Standard exclusions in professional liability coverage for architects and engineers are falling by the wayside as well, said Schinnerer's Mr. Genecki.

Schinnerer's market, CNA Financial Corp., is dropping exclusions for claims for copyright violations, patent infringement and

Continued on page 24

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property. Indeed, we do everything in our

process has helped us further understand each

power to help you prevent losses, minimize

of our customers. This, in turn, allows

damage from them, and eliminate the

us to create cost-effective

disruptions they can cause.



Surplus

Continued from page 21
time delays, he said. Schinnerer has an exclusive underwriting management agreement with CNA for this business.

In addition, the "serious impediments" to coverage for architects that build as well as design should be dropping off, at least in file-and-use states, sometime this month, he said.

There are exceptions, though, in the generally soft casualty insurance market.

For example, even as coverage

expands under architects and engineers professional liability policies and claims frequency continues falling, policyholders in 14 or 15 states can expect single-digit rate hikes due to loss severity problems, Mr. Genecki said. Architects based in coastal states and in litigious inland states will face those rate hikes.

But, rates for architects and engineers in three or four states probably will fall, he said.

Surplus lines insurers also are pushing up rates for D&O liability insurance for high-tech firms, especially those with initial public offerings of stock, and employment

practices liability insurance.

Although competition is growing for that business, capacity has not caught up with demand, Lexington's Mr. Kelley explained.

In addition, finding liability coverage for home building contractors in California is tough because of recent court decisions expanding contractors' liability.

Health care facilities, including outpatient clinics and nursing homes, also face modest rate hikes because of their risk for severe claims and the admitted market's retreat from that business, Western World's Mr. Mulligan said.

Mr. Genecki also expects 10% to

12% rate hikes for California real estate agents' E&O coverage because of court rulings holding them liable for failing to discover and disclose problems with property to buyers.

The property market continues to be a tougher market, though not a bad one, for many buyers.

Swett & Crawford's Mr. Stanley said there is "not much price movement up or down" for property rates.

Because rates are so soft, "there is very little room to move down," explained Paul McCain, vp of Crump Insurance Services of Texas Inc. Rates are as soft as they have

been for the past year or two, he said.

But, Lexington's Mr. Kelley sees property rates headed up by 15% to 25%.

In addition, "In order to improve their margins, underwriters are having to increase their deductibles as well as rates," he said.

Mr. Kelley noted that rates are inching up as well for many international property risks—both purely foreign risks or those of domestic companies with overseas operations—due to shrinking capacity. The increases vary significantly from country to country. But, in particular, rates are headed upward in Latin American countries, he said.

Of course, property risks with earthquake and windstorm exposures face the toughest renewals.

Risk managers with earthquake exposures were rocked by rate hikes of 20% to 100%, market executives said.

"But, that kind of masks the bigger story there," Swett & Crawford's Mr. Stanley observed. "Deductibles are up, limits offered are lower and underwriting requirements are much tighter."

Deductibles have climbed to 10% to 15% of the insured value of the affected location from 5%, according to Crump's Mr. Payne.

Mr. Stanley noted that underwriting has tightened so much that "what was insurable 1½ years ago in many cases today is uninsurable."

Many underwriters already have reached their aggregate capacity in certain earthquake zones, Mr. Payne noted. That capacity is determined continuously, rather than on a yearly basis, he said.

Windstorm risks, depending on their location, fared only slightly better, Mr. Kelley said.

Rate hikes and a lack of capacity extend as far north as New England, according to Mr. Freudberg of United National.

Florida windstorm risks that had been written by the state's commercial joint underwriting association also are heading up due to a state appellate court ruling in November. The court struck down a Florida Insurance Department order allowing risks to obtain coverage from the JUA even when they have offers of coverage from surplus lines insurers.

Surplus lines insurers are boosting property rates in that area to the levels they were at before the JUA took over that business, according to Crump's Mr. McCain.

Market executives point to potentially significant factors that also could bolster non-admitted insurers' results despite the ongoing soft market.

Many executives expect to see more mergers of admitted insurers like CNA's planned acquisition of The Continental Corp. (BI, Dec. 12, 1994).

"With any consolidation, you find business being kicked out by the acquirer," observed Lexington's Mr. Kelley. "The surplus lines industry is in a great position to be that outlet" for risk managers who lose their admitted markets.

Market executives also were pleased with the Republican victory in Congress last November and the ouster of some "anti-industry" state regulators.

Market executives are looking forward to a better legislative atmosphere for reforming Superfund, tort and product liability laws.

And, while they do not expect the new commissioners to adopt a pro-industry attitude, they believe the new regulators will better balance consumers' and the industry's needs. **BI**

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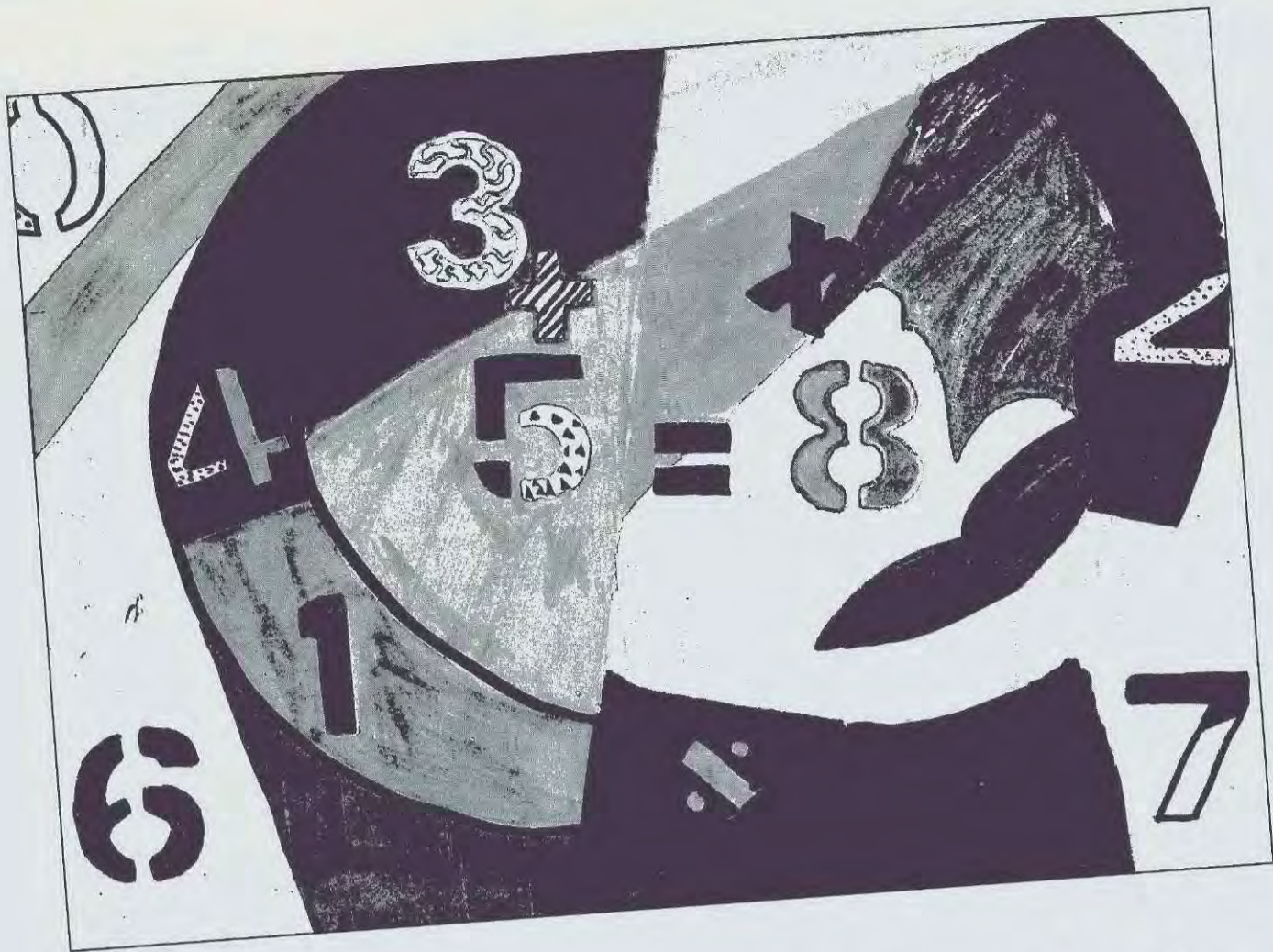
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Insurers

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ket is "soft and maybe even getting little softer," said Dick Wratten, president-commercial insurance services for CIGNA Property & Casualty Insurance Co. in Philadelphia. He said that's particularly true of Midwestern accounts, where prices for both property and casualty lines have fallen within the past 90 days.

"The market has been bumping and rocking along for the past year and a half. I don't see that changing. It's kind of soft with a slight upward trend. I think the market firmed about a year and a half ago and I think it will stay that way," said Jim Black, vp and director of operations for Protection Mutual Insurance Co. in Park Ridge, Ill.

The commercial property/casualty market is unchanged, said Robert Cooney, executive vp-underwriting operations for X.L. Insurance Co. Ltd. in Hamilton, Bermuda. "Renewal retention is still high and our rates are . . . holding plus or minus 5% depending on the individual risk."

With the exception of some catastrophe-exposed property risks, rate movement is pretty sluggish across the board.

Take liability lines, for instance.

Primary general liability rates, for example, have increased only modestly, perhaps 5%, said Dave McDonald, senior vp-corporate underwriting for Royal Group Inc. in Charlotte, N.C.

Primary liability rates are actually falling a bit for Zurich-American Insurance Group, said Joseph Basta, president-commercial insurance in Schaumburg, Ill. Decreases are not in the double-digit range, he said, but are making it difficult for insurers to stay abreast of loss costs, currently 6% to 8%, and inflation, which has been about 3%.

Multiperil and monoline liability are "extremely competitive," he added.

Terry Van Gilder, executive vp and chief underwriting officer of Chubb & Son Inc. in Warren, N.J., said that, overall, primary liability is underpriced by as much as 20%, with rates this year about 5% lower than last year. He said that such underpricing cannot be sustained for long.

Lower-layer excess liability pricing remains flat, said Royal's Mr. McDonald, though there are some signs of a possible increase ahead for high-level excess or catastrophe liability business.

"As some capacity is being used up for lower-layer umbrella, that which is left for the higher-hazard cat coverage . . . would tend to see an upward tick in price," he said.

X.L.'s Mr. Cooney said chemical, medical implant, pharmaceutical, oil and gas, manufacturing and auto industries could be facing general liability increases in the not too distant future, with medical implant makers facing the biggest increases. But generally increases will run 5% to 15%, he said.

Directors and officers liability, once one of the most volatile liability lines, is also quiet, noted Royal's Mr. McDonald.

"The D&O for non-profit is going to be flat and they'll see some increases in for-profit in the 5% range," he said.

D&O is "pretty stable," said Chubb's Mr. Van Gilder, adding that rates have dropped only a few points if at all.

Regarding excess professional liability insurance, such as that sought by attorneys and insurers, "rates are holding reasonably well. There doesn't seem to be that much change in the high excess area," said Mr. Cooney.

"We're seemingly doing OK" in

the municipal liability area, said Zurich-American's Mr. Basta, who noted that pricing was "holding well." On the other hand, the market for some specialized liability has tightened, he said. For example, there's not much capacity for gaming risks such as riverboat gambling operations, he said.

The surety market is stable in terms of both rates and participants, with insurers as a whole looking for a break-even year, said Chubb's Mr. Van Gilder. The bankers blanket bond market, however, has grown more competitive.

There's even competition for workers compensation casualty business in California, a state that underwriters once avoided as much as possible, said Mr. Basta.

Overall, workers comp rates are falling in many states due to improved conditions (BI, Jan. 9).

What action exists in the commercial market appears to be in the

property area.

For all-risk policies that include property as well as boiler and machinery, Hartford Steam Boiler Inspection & Insurance Co. expects single to low double-digit rate increases, said Michael L. Downs, senior vp of the Hartford, Conn.-based

'I think the market firmed about a year and a half ago and I think it will stay that way,' says Jim Black.

specialty insurer. In rare cases, such as those with significant quake or windstorm exposure, increases could be as high as 20% to 25%.

But more common increases will be between 5% to 10% for average

or better than average risks, he said.

There will be some firmer pricing of all-risks coverage for utility companies because of insurance industry consolidation, Mr. Downs said. In addition, some insurers have withdrawn from this market because of adverse experience. Rate hikes will be 10% to 15% at the upper end, he said.

Property rates continue "to be all over the place," said Wolfgang Friedel, senior vp-marketing of Arkwright Mutual Insurance Co. in Waltham, Mass.

Slight increases are expected in certain areas, particularly chemical, pulp and paper and utility companies. And larger increases are expected for business with earthquake and wind exposures, said Mr. Friedel. But for the most part, the property market remains as competitive as ever.

"Coastal property rates have already increased because of (1992's

Hurricane) Andrew. I wouldn't anticipate they're going to go up a whole lot more in '95," said Protection Mutual's Mr. Black.

California, though, remains a tougher property market, he added. "We're seeing major increases in re-insurance and, in turn, rate increases for the customer."

In general, "we are seeing a slight upward trend and we would expect to see that continue," said Mr. Black, stressing that a slight uptick in rates does not signify an industry turn.

In the highly protected risk area, some companies that had not written the business are entering the market, thus increasing competition and putting downward pressure on rates, said Mr. Black.

"I don't think non-HPR carriers can continue to do that, because if they are not going to provide HPR engineering they will have losses," he said.

Continued on next page



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Whether property or liability, commercial insurance seems more competitive in the Midwest than on either coast.

Mr. Van Gilder of Chubb attributes the difference to the relative lack of catastrophe exposures and the perception that the Midwest is less litigious than other regions.

On the Gulf Coast and in earthquake-prone areas, though, Wausau's Mr. Hancock expects to see property rate increases of 15% to 20%.

He called the increases "fair given the catastrophe risk. It's possible a lot of carriers were ignoring (the potential for catastrophes), hoping to get by for a few years."

Some insurers appear to be withdrawing capacity rather than attempting to raise rates when insuring commercial property in California, he said.

"We're seeing a lot of activity" in

high-excess property coverage, said X.L.'s Mr. Cooney. He said many customers are coming to X.L., which offers property insurance limits of \$100 million with a sublimit for quake losses of 10% of overall limits (BI, Oct. 18, 1993).

The Northridge earthquake has led underwriters to reconsider how they go about their business, said Royal's Mr. McDonald.

"All of us are trying to find ways to better understand what we have. Just how much exposure do you really have? The reinsurers are demanding that information so they can understand what they have."

Zurich-American's Mr. Basta agreed that with "reinsurance for property becoming scarce, it's forcing carriers to become a lot more conscious of how much business is being written in catastrophe-prone areas."

The impact of the catastrophes has made underwriters "watch very

carefully what we're underwriting" and also insist that property be better engineered, said Mike McIntyre, senior vp of Allendale Mutual Insurance Co. in Johnstown, R.I. For example, Allendale has pushed for better bracing of sprinkler systems in the buildings it insures in quake-prone areas to prevent ruptures and flooding, he said. The insurer also has been recommending that machinery be braced and bolted down better.

Concern about natural disasters is complemented by concern about liabilities that have yet to manifest themselves in full force.

Wausau's Mr. Hancock foresees more global settlements with insurers and policyholders jointly paying for damages from such things as breast implants, tobacco and asbestos. Some claims may not be legitimate, but still would be paid in the name of cost efficiency, he said.

Liability insurers are also con-

cerned about jury awards. "Liberal juries and jurisdictions (want) to continue rewarding plaintiffs beyond their injuries," said Mr. Hancock. "It seems like new plaintiff classes are emerging every day."

Breast implant problems that started as a minor underwriting concern could have a devastating impact on insurers, said X.L.'s Mr. Cooney. "I sense there are a lot of commercial insurers and their reinsurers who have not come to grips with the magnitude of the problem," he said.

Chubb's Mr. Van Gilder summed up a major looming liability for the insurance industry in one word: "lead." Allegations of lead poisoning will be a problem where there is older, inner-city housing because lead-based paint was used in many of them, he predicted.

John Donahue, senior vp-business development and corporate services at IIT Hartford Group Inc. in Hart-

ford, Conn., said conservative underwriting and a close watch on expenses will help insurers to weather unforeseen catastrophic liability losses.

"I guess the thing that worries me about '95 is the things we don't know about," he said.

Property/casualty insurers are looking to lawmakers for some general relief from known liability exposures.

"I think at the federal level Superfund is the critical piece of legislation that needs to be resolved," said Royal's Mr. McDonald, who said he hopes that Congress will reform both the Superfund law and nation's tort laws.

Regarding Superfund, Republicans "were not exactly world-class supporters of what was put forth last year. Maybe we were at fault for not providing a unified position," said Mr. Donahue.

At the state level, said Mr. McDonald, "We will continue to see a positive impact from the states that have enacted work comp reform."

Protection Mutual's Mr. Black also foresees progress on tort reform and expects a favorable legislative climate for insurers. "With the recent elections, I suspect a lot of the proposed legislation (that would have regulated insurers more tightly) will cool for a while," he said.

"We think federal liability reform at last has a chance of passage," said Wausau's Mr. Hancock. But, he also predicted that allegations of redlining will continue to receive a lot of attention and impact commercial insurers as regulators fail to distinguish between commercial and personal lines companies.

Mr. Wratten of CIGNA expressed some hope that Congress also would move on federal disaster legislation. "I think they'll kick it around for a while," though action on this legislation might not occur until another major catastrophe strikes, he said.

There are some challenges facing the commercial insurance industry, however, in which the government can play little role.

"The biggest challenge is to see that the business returns to the state where it's profitable," said Mr. McIntyre of Allendale.

Arkwright's Mr. Friedel pointed to corporate restructuring. "Continued restructuring of our customers and continued shifting of values of exposures will have a significant impact. Yesterday's way of analyzing exposures is no longer valid," said Mr. Friedel. "Companies are shifting new exposures to the insurance industry."

Insurers foresee the restructuring and consolidation that has shaken corporate America in general continuing apace among insurers.

As Mr. Friedel put it, "I think we've only seen the beginning. Europe has started and we have started here. That is also in recognition of the fact that the market is here to stay."

Most insurance executives do not regard consolidation as a bad thing.

Consolidation will help stabilize the industry and improve efficiency, said Mr. Basta of Zurich-American, which is playing a role in one of the more watched examples of consolidation: its parent's attempt to lead an acquisition of Home Holdings Inc. (BI, Jan. 9; Jan. 2).

"I think some companies will falter when their (underwriting) sins of the past catch up to them," said X.L.'s Mr. Cooney, adding that will lead to more consolidation.

"The marginal performers will not be able to stay in the game. My guess is you're going to see the type of consolidation you've seen in the last couple of years" continue, said Protection Mutual's Mr. Black.

New competitors such as banks and other financial institutions will

Continued on next page



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Insurers

Continued from previous page
be another spur to competition, said Chubb's Mr. Van Gilder. Like other executives, Mr. Van Gilder said he views consolidation as a positive development that will eliminate "apparent capacity," through which weak insurers underwrite risks at 20% below what they should.

Weak investment returns may have a further firming effect on the commercial insurance market, noted several underwriters.

"When you think of it in the aggregate, it does place pressure on rates. It has to," said Royal's Mr. McDonald. But, he added that it is increasing pressure to underwrite honestly and cautiously, rather than low-ball rates. "If we can't get the price we think we need to for a risk...we're going to walk away.

That's the message out there."

"It makes everyone be more honest in their underwriting," agreed Protection Mutual's Mr. Black.

X.L.'s Mr. Cooney says bond losses will inevitably affect underwriting. "You can't go through the worst bond year since the '30s and not expect companies to post some dismal returns," Mr. Cooney said.

"I think in the medium term the market will tighten somewhat. I don't know if it will be as dramatic as in the past or take a certain shape. Rates may not come up dramatically, but if you're comfortable with your pricing the rates will come up to meet you," he said.

Many insurer executives say that despite the chance of a tightening here or there, the days of a regularly cyclical market are over, at least for the foreseeable future.

"We're expecting this to be the market of forever. This boom or bust cycle we've been through may

never be a boom again," said Wausau's Mr. Hancock.

"I think it's the market of the 21st century. I think it's time for us as an industry to figure it out and live with it. If it turns, it's that much better, but I'm not counting on it," said Arkwright's Mr. Friedel.

"I think certainly the days of the market changing every two or three years, going up or down, those days are over," said Royal's Mr. McDonald.

The market is no longer price driven, he said. Instead, "it's claims handling, it's loss control. It's trying to provide a level of service the insured is now demanding. Generally, insurance buyers are far more astute in buying than they were 10 years ago."

"My sense is they are far more demanding in terms of what they want for their insurance dollars. They want more value added for

what they are paying," he added.

As a result of this trend, insurers wary of competing on price are responding with enhanced services or special policy arrangements.

For example, X.L.'s Mr. Cooney said, "We're not really lowering prices except for very favorable accounts. We're selling multiyear policies. Some buyers are thinking it's not going to go much lower, so maybe now is a good time to lock in multiyear pricing."

More Fortune 500 companies are looking at the three-year deals, he said, adding that "tailor-made loss-sensitive rating"—in which rates can vary based on experience—is proving attractive.

Customers generally are not demanding huge rate reductions, but they do want value, said Mr. Black of Protection Mutual. Manuscripted policies are becoming more prominent, he said. "Rather than trying to give everyone va-

nilla, we're trying to offer vanilla, chocolate and strawberry."

In addition, "we're seeing more customers willing to pay for value. They're recognizing service. Obviously they want good value for their money so you have to deliver a product. When you're down to the slim margins the industry is seeing right now, you can't low-ball," said Mr. Black.

"We're sitting down with our insureds and developing the plans they want. We're eliminating those things that have no value to them. In the past, I think the HPR industry developed the same products for all customers."

Mr. Hancock said he is not seeing customers test the market by excessively shopping their risks. "The customers are clearly demanding more for their premium dollar and that is fair. (They want) more service, quicker response, I guess greater insurance value." **EB**



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London

Continued from page 1

Some say buyers get a fairer deal from the newly competitive casualty market.

Others argue that Lloyd's and company market underwriters merely fuel the soft market with cutthroat competition for the business that previously had been written by Merrett.

Other liability underwriters and brokers believe, however, that conditions are ripe for a renewed hardening of the market.

For example, one leading London company underwriter said that conditions in the directors and officers liability market, in particular, are similar to 1983-1984 and he predicts rising rates by 1996.

As expected, the year-end renewal season ran late as buyers looked long and hard for bargains in London and elsewhere.

"It was late because of the expectations (of the buyer) that the longer you left it, the better the deal you would get," said Ronald A. Iles, chairman of Alexander Howden Group Ltd. and senior vp of Alexander & Alexander Services Inc. "Generally, it was a good renewal season for the buyer."

"It was a more difficult renewal season," said James Bogue, director of Sedgwick Energy Ltd. "Clients put brokers under a lot of pressure to achieve what couldn't be accomplished 12 months ago."

"It's not finished yet," added Benito Pagnanelli, deputy general manager of Assicurazioni Generali S.p.A. in Trieste, Italy. Year-end renewals could go on until Feb. 1, he said.

The renewal season is "very late," said Stephen Riley, deputy general manager of Swiss Reinsurance Co. (U.K.) Ltd. "I know we say this every year, but it has been true this year that a lot of buying decisions were left very late."

Mr. Riley believes some clients expected prices to come down more than they did and were waiting until the last minute in hopes of finding the price they wanted.

"The more cynical underwriter may say that the delay was a deliberate ploy by brokers to present underwriters with a *fait accompli* within, say, two days of the year end," added Christopher Burbidge, director of non-marine underwriting at Terra Nova Insurance Co. Ltd. "Some appear to have adopted something of a take-it-or-leave-it attitude, whereas two years ago they were wearing out the knees of their trousers begging for lines."

Indeed, on Dec. 29, two days before
Continued on next page

Insurer Topics

A special editorial section
sent exclusively
to insurers and reinsurers



Benefiting from advice

Aiding clients helps insurers, too

By GAVIN SOUTER

One way insurers can improve their relations with customers and reduce claims is to help policyholders avoid losses in the first place.

The more risk managers know about loss prevention, the less likely they are to file a claim.

For insurers that ascribe to that belief, distributing informative materials is often a key part of their attempts to educate policyholders.

While most insurers stress that face-to-face meetings with policyholders are the best way to communicate loss prevention information, printed material, computer programs and videos on loss prevention also play a key role in helping to cut claims, they say.

That information is supplied in numerous ways, from weighty technical tomes to low-tech newsletters as defensive driving.

At its best, the informative material is invaluable in helping to prevent losses. At its worst, it is scarcely worth a look, risk managers say.

The most effective way to control losses is for loss prevention engineers to meet with policyholders, said Ramon Padron, assistant vp in charge of the engineering department at Aetna Life & Casualty Co. in Hartford, Conn.

"The educational material we give to policyholders is the icing on the cake," he said.

Aetna has an extensive library of loss prevention pamphlets and booklets that are available to clients, Mr. Padron said.

And much of the information is designed to be used by line managers, he said.

For example, Aetna supplies ergonomics information in a workbook format that can be applied to different working environments, he said.

"We call it Ergonomics 101 and it contains the

basic principles of ergonomics. It gives examples and pictures of the right and wrong way to do things. It has been very successful because it goes beyond written information and it helps people through the processes when an engineer is not available," he said.

Informative material helps insurers encourage management to take loss control seriously, said Dean K. Wilson, director of loss prevention training at Industrial Risk Insurers in Hartford, Conn.

"The most important thing (for highly protected risks) is a management commitment to aggressive loss control," he said.

Face-to-face training is the best way to cut losses, but "leave behind materials" also play an important role ongoing in loss prevention efforts, Mr. Wilson said.

The principal loss prevention tool that IRI leaves with its policyholders is a 100-page manual—"Overview: A Total Management Program for Loss Prevention and Control." Mr. Wilson said, "It advises management on what it means to have a commitment to loss prevention."

The book divides loss prevention concepts into 14 areas: impairments to fire protection systems; smoking regulations; maintenance; employee training; new construction; insurance company recommendations; pre-emergency planning; hazardous materials evaluation; cutting, welding and other hot work; loss prevention inspection; fire protection and security surveillance; fire protection equipment inspection; hazard identification and evaluation; and proper housekeeping.

After stating a problem, the book provides a specific action plan that managers can follow.

For example, the section on smoking regulations advises managers to: establish regulations that include disciplinary action for violations; clearly mark "No smoking zones" and explain the need for them; establish smoking zones and proper disposal units for smoking materials; actively promote smoking regulations; and ensure that visitors to the building, particularly outside contractors, are aware of the regulations.

"We recommend that a manager of a facility create a written policy statement on loss control and we provide a sample for them to follow," Mr. Wilson said.

Other informative material that IRI supplies includes the quarterly magazine "Sentinel," which focuses on loss prevention techniques for individual industries, said Anson C. Smith, IRI's publications editor.

"We take the highly technical information from our technical departments and put it into language that managers can understand," he said. "By making it readable we get a wider readership, more people can glean information from it and maybe even enjoy it."

Arkwright Mutual Insurance Co. in Waltham, Mass., figures that 70% of all losses can be traced to human error, so it stresses loss prevention training, said Senior Vp Wolfgang Friedel.

The Factory Mutual system, of which Arkwright is a member, put a great emphasis on customer education, Mr. Friedel said.

On a combined basis in 1994, the Factory Mutual insurers conducted 134 educational programs with 2,500 customers and spent about \$2 million on policyholder education, he said.

"It sounds like a lot, but all we need to do is prevent one loss and we can get our money back," Mr. Friedel said.

One of the informational materials that Arkwright supplies is a board game, also available in a computer format, called "Fire at Mansfield."

The risk manager of a plant goes through the game making certain loss prevention and control assumptions. Those decisions determine if the facility will burn down or only suffer minor damage, Mr. Friedel said.

"The program can be used by customers themselves so it is self-teaching," he said.

Arkwright also publishes numerous brochures and pamphlets on loss prevention and emergency planning, he said.

Those publications are invaluable in helping

Continued on next page

Consumer
& Customer
RELATIONS

Advice

Continued from previous page
loss prevention, according to Mr. Friedel.

"In many cases we can point to actions that were taken as a result of our advice which have prevented multimillion-dollar losses," he said.

For example, one client improved its fire protection at a facility. Shortly thereafter, a transformer fire ignited at the plant but was prevented from spreading by the improvements, Mr. Friedel said.

"It could have been a \$20 million loss, but it ended up below the deductible," he said.

Liberty Mutual Insurance Group targets the information it gives policyholders, said David F. Melton, vp and assistant general manager of loss

prevention at the Boston-based insurer.

"We have technical bulletins that deal with specific issues, such as ethylene oxide as an exposure, and we give them to people after we have sat down with them and discussed what they need," he said. Ethylene oxide is a flammable toxic gas used in certain industrial processes.

Liberty Mutual also has an extensive video library of its own videos and videos made by other organizations, Mr. Melton said.

"They are provided at no charge and again it is intended that they are used as part of a full program," he said.

But not all of the informational materials are free.

For example, Liberty Mutual has a software package, available for less than \$200, called the Liberty Saving

Equation, which helps policyholders do a cost/benefit analysis of loss prevention methods, Mr. Melton explained.

The package allows risk managers to show senior financial managers how a loss prevention technique might produce long-term savings, he said.

For example, the program could show how the installation of fire walls and fire doors in a 10,000-square-foot facility might be expensive but in the event of even a small loss the cost can be justified, Mr. Melton said.

Much of the information that insurers provide is extremely useful for loss prevention purposes, said Anton Kronenburg, chief of insurance for the city of Jacksonville, Fla.

"The information we get is very useful. Some of it is so technical that

I pass it on to our engineers," he said.

The city places its property program with IRI, and the insurer has been very helpful both in terms of face to face advice and in providing informational material for engineers to keep, Mr. Kronenburg said.

"We are building a new football stadium (for the National Football League Jacksonville Jaguars) which we are having to design and build at the same time, and they have been very helpful and cooperative in terms of helping us with our fire protection systems," he said.

The direct writers tend to provide better information, said Dee Shaw Webster, associate vp at investment firm A.G. Edwards & Sons Inc. in St. Louis.

For example, some of the workers compensation and fire protection in-

formation supplied by the direct writers is of extremely high quality, she said.

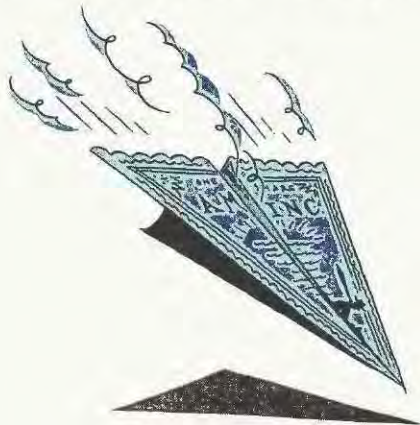
But not all insurers provide such quality material and A.G. Edwards has had to go to other sources to obtain training material, Ms. Webster said.

"For example, we use an outside physical therapist for training on avoiding back injuries. . . We would use our insurers more if they offered better products," she said.

Many of the training videos that insurers supply are too broadly based and outdated, Ms. Webster said.

"Some of the videos on ergonomics or back training that we've received from insurers have not been very helpful in our organization because they are too broad or too old. Some of them were made when I was a kid," she said. **EB**

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Empire faces tough call on policy

By MICHAEL SCHACHNER

Empire Blue Cross & Blue Shield has always maintained that its social mission is to be New York's health insurer of last resort.

But, with soaring underwriting losses due to adverse selection, the insurer faced some hard choices in living up to its charter, as well as a potentially huge consumer relations problem.

Empire determined as far back as 1991 that massive underwriting losses on its first-dollar, comprehensive insurance package would require it to eventually stop writing the program.

The program, which was purchased mostly by the state's neediest and most ill individuals, generated losses approaching \$100 million in 1994.

Empire late last year finally decided it had to make drastic changes to the money-losing comprehensive health insurance package, called Traditional Plus. Empire's management determined that the financially strapped insurer, if it was to turn itself around, couldn't go on renewing about 80,000 in-force comprehensive policies as well as write thousands of new ones knowing the program would continue producing losses.

But for cancer patients, hemophiliacs and those with AIDS who relied on Empire's product, any changes meant bad news.

The Empire package, though relatively expensive as health insurance goes—it most recently cost \$232 per month for individuals and \$497 per month for families—was the only semi-affordable program on the market that covered all medical care and prescription drugs without restrictions on access to care or providers.

For these reasons, it was the only coverage option for many of its policyholders.

Empire was acutely aware of how needed its coverage was, having taken the time to talk frequently with the various consumer groups that together form the umbrella group New Yorkers for Accessible Health Coverage.

As a result of these discussions, what Empire ultimately decided to

Continued on next page

Empire

Continued from previous page

do beginning this year was to implement a stop-sale approach, whereby no new Traditional Plus policies would be issued, but existing policyholders could renew their coverage.

But, an Empire spokesman acknowledged that had the company not listened to its consumers, another, harsher course might have been pursued.

Empire at first wanted to cancel the entire program due to the losses and the fact that it had no legal obligation to continue it, the spokesman admitted. But, because Empire representatives had participated in an ongoing dialogue with advocates for groups like Cancer Care, the Hemophilia Assn., ACT-UP and the Gay Men's Health Crisis, the health insurer realized how needed this program was and that to abandon the program would run counter to its own social mission.

"We told them about the losses and we asked for their suggestions. We think these groups understand that Empire cannot shoulder the entire burden of insuring the sickest people," Empire's spokesman said.

He said the groups and Empire compromised to a certain extent. Empire insisted that it could not afford to issue new policies but agreed to renew those that were written prior to this year.

"This program began as a pilot in 1986, but it became quite apparent by 1991 that adverse selection was devastating. One insurer can't do it all, but we still were the only carrier offering this type of program. The special-interest groups understood our predicament," he said.

Indeed they did, said Susan Dooha, a policy associate with the Gay Men's Health Crisis in New York. However, she added, "their mission statement says they are the insurer of last resort and they have benefited for years from this status."

Ms. Dooha said her group and others similarly situated stressed this point to Empire's representatives. She said the people who purchased these policies have done everything within their power to keep up with escalating premiums, "to the point of choosing their health coverage over buying food."

"They told us they'd either cancel the program or implement a stop-sale. We felt the latter was the lesser of two evils," Ms. Dooha said. "But I think it's incumbent upon the whole industry and the state to realize what the loss of access to this care will mean. It would mean more usage of Medicaid and greater amounts of indigent care being dispensed in hospitals."

For new coverage applicants who no longer can purchase the comprehensive indemnity coverage offered under Traditional Plus, Empire is introducing an open-ended managed care plan.

"Everyone needs to realize that managed care is the reality we're dealing with," the Empire spokesman said.

But Ms. Dooha said managed care plans, when sold to individuals, generally do not include a prescription drug benefit, which is of utmost importance to the very sick.

"If these HMO plans were adequate in that they don't carry inappropriate limitations on usage, they would be better. But they don't allow these people to get to a specialist at a fair price or without gate-keeping. It all says that the big picture is that the cost of caring for high-cost consumers must be spread among all markets, not just one," she said.

A policy that's easy to read?

By SARA MARLEY

When Chubb & Son Inc. developed its new package commercial insurance program, the insurer didn't guess what customers wanted. It asked.

The result is Customarq, an easy-

to-read policy written in plain English and laid out in a logical manner. It's a new approach for the insurer to handling customers' coverage needs.

Exclusions don't come first; how to file a claim does. Coverage is

broader. For example, coverage for boiler and machinery, applied technology and personal property of others is automatically included.

"Nobody reads a policy like a novel, nobody," said David Firstenberg, vp and package practice leader for Chubb & Son in Warren, N.J. He also served as the Customarq development team leader. Policyholders "need a reference source more than

something you read from Page 1."

"We need to figure out what are the customers' expectations," said Terry Van Gilder, chief underwriting officer for Chubb & Son. "We can't live up to them or surpass them in every situation, but we want to meet and exceed them in the maximum possible instances. It's what we have to strive for."

Customarq is the result of a four-year, \$7 million investment for Chubb. Twelve trainers, marketers, actuaries and underwriters with sig-

Continued on page 28F



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Customarq

Continued from page 28C
 nificant experience in technical issues worked on the final training and launch team.

They asked about 60 producers and a few dozen risk managers how they wanted a policy to look.

"Agents and clients said, 'We need to find it in the insurance policy, and we need to do it quickly and so it is easily understood. We want an insurance policy that is not convoluted and badly laid out,'" Mr. Firstenberg said. "We heard over and over again that (policies) are too confusing and difficult to get around in."

The policy is produced by a laser printer, so it's easy to read. The use of exclusionary terms like "but for this" and "but for that" are kept to a minimum, so it's easy to understand.

The Customarq package carries an automatic \$250,000 blanket limit on 10 specified coverages that were previously in Chubb's package but under separate limits. In this way, the client decides the allocation of its coverage after a loss occurs. For example, a policyholder could apply the full limit on an electronic data processing equipment loss or earmark a portion of it for another coverage area such as valuable papers or fine arts.

The key to Customarq's flexibility is its modular format. There is a module for every line of coverage—such as property, general liability or product liability—so customers and their agents and brokers can build a policy to meet their specific needs. Terms, conditions and definitions appear in the same place in each module.

Due to the repetition of definitions

and other essentials, Customarq policies may actually be somewhat longer than the package policies they replace, formerly known as Quality Commercial Coverage, or QCC.

"We may have added a couple sheets of paper, but we gained a quantum leap in clarity," Mr. Firstenberg said. "All (the members of the launch team) felt it was an excellent trade-off."

"It's a bulkier form, but it's broader coverage than the old QCC," said Kathryn Strobl-Missall, assistant vp with Johnson & Higgins in Seattle. She singled out the \$250,000 "grab-bag" limit and worldwide transit coverage as significant enhancements.

"Things are spelled out a lot clearer," Ms. Strobl-Missall said. "Accounts receivable is a four-page form where before it was a paragraph. There is no question about what's covered and what's not covered."

Chubb found that if an insurer is going to ask customers what they need, it must be prepared to listen.

When a group of 30 insurance producers from throughout the country gathered at Chubb's Warren, N.J., headquarters in 1993 to review the Customarq policy, they found some problems, particularly with the definition of bodily injury. So Chubb delayed the product launch to incorporate their suggestions.

Customarq was introduced throughout the country beginning in July 1994 and now has regulatory approval in nearly all states. At the end of 1994, \$30 million in written premium was in Customarq policies, amounting to a few hundred clients. About half of those are new business.

"Customarq was built with package business in mind," Mr. Firstenberg

said. "We will begin converting monoline property and marine into the format. It will be one standard vehicle for our first-party clients."

Customarq will be available for financial institutions in the first quarter, and monoline property and marine will be available June 1.

Chubb is in the process of converting previous package customers into Customarq at renewal time. The insurer has set a goal of 90% renewal retentions for most parts of the country, up from Chubb's record of about 85% and higher than many competitors' rates of 75% to 80%, Mr. Firstenberg said.

Next, Chubb will work on adapting Customarq for its monoline casualty clients.

Consistency of form is another big advantage of Customarq, he said.

Because it is so flexible, Customarq also lets Chubb expand what is considered package business. Traditionally, that was considered to be business with at least \$5,000 in premium.

"In 1995 and beyond, we want to reinvigorate applications for smaller commercial clients," Mr. Firstenberg said. "We can offer (Customarq) to virtually any size commercial client."

Customarq's modular format also speeds the insurer's response time in providing quotes and issuing policies.

Chubb says internal studies indicate that Customarq could reduce the time necessary to rate and create a policy by 70%. But, the time devoted to underwriting assessment has not been diminished, he stressed.

Chubb is also seeking performance consistency.

"The mechanics are set up to deliver at the same level," he said. "It's not hit or miss." ■

Computers help insurers satisfy clients in a hurry

By ROBERTO CENICEROS

Farmers Insurance Co. agent Louise Kwaiter of San Diego figures she's got a technological edge over agents selling policies for competing insurers, but one thing could speed up her already fast delivery: a laptop computer.



With a portable laptop computer she could walk into a prospective customer's office and deliver a quote on the spot. That is something she will be able to do soon, once she purchases one of the newspaper-size computers.

For now, she collects application information, drives it back to her office and works up a quote using her larger desktop personal computer, which is connected to the home office.

She can have the quote within an hour, much faster than when she had to send paper to Farmers.

"Before, we had to send something to the company and it would take three or four weeks, depending on the company's work load," she said. "You were at the mercy of underwriters. Now, once we get the loss runs, we can call the company and get a rate within an hour or less, depend-

ing on how fast I can type."

Farmers recently streamlined the task by issuing its software that gives agents guaranteed rates. Before, the company's agents used an outside software source that produced rate estimates that were not guaranteed.

All across the nation, insurers are rushing to catch up or stay ahead with technology that speeds the time it takes to provide customers with rates, contracts, claims reports and other information that used to take weeks to obtain.

Insurers and their customers say the technology plays a role in cost containment, and in some cases makes their relationship resemble a true partnership.

"This is something that is a hot growth area and what we are doing now or will be doing in six months or a year will change," said Dennis Anderson, vp and director of engineering for Protection Mutual Insurance Co. in Park Ridge, Ill. "We are going to do more and more."

For the highly protected risk specialist, safety engineering is an essential part of service and underwriting. Some Protection Mutual field engineers now use laptops, while others take notes they later feed into desktop computers.

Either way, reports detailing risks and risk-improvement areas and their impact on rates can be delivered to customers quickly after they

Continued on page 28H

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GLOBAL FOCUS

Global Focus will appear six times in 1995 as a regular section distributed exclusively to non-U.S. subscribers. It will address the specific risk management and employee benefits concerns of executives in countries other than the United States.

PUBLISHING DATES AD CLOSING DATES

February 13	February 1
April 10	March 29
May 29	May 17
August 28	August 16
October 2	September 20
November 6	October 25

Ignoring subrogation means lost opportunity

Improved claims investigations can lead to large recoveries

By John J. O'Brien

EXCEPT FOR natural catastrophes, most losses—whether they be automobile, property damage, personal injury, construction claims, workers compensation, fire damage or product liability—can be traced totally or partially to human error or negligence.

It is the business of insurance companies to compensate their policyholders or claimants of their policyholder for these losses.

However, often not enough attention is paid to how insurance companies can successfully recover these losses from negligent third parties.

If we accept the premise that accidents don't just happen, doesn't that mean that there is the potential for insurance companies to recover most of the money they pay out in claims?

Statistics show that some insurance companies only recover 1% of claims paid. Because of low recovery rates, management may mistakenly conclude that there is little potential for subrogation recovery.

However, early recognition of the possibility of a recovery, quality investigation and a commitment of talent and money to subrogation recovery will increase profits.

After having represented many insurance companies over the years in subrogation matters, I have drawn the following conclusions:

- Insurance companies that take subrogation seriously recover significant percentages of their claims from insured and uninsured entities, and this percentage will increase each year in direct relationship to the amount of effort expended.

A large portion of this cash is recovered from other insurance companies. If an insurance company does not take subrogation seriously, then it places itself in a situation where it will be paying out money to other companies but not taking in any money.

- The insurance companies that really excel in subrogation recoveries have adopted a philosophy of emphasizing subrogation at an early stage, and the claims adjusters they employ are fully aware of the subrogation goals.

Claims are adjusted fairly and promptly but always with attention paid to whom or what really is responsible for causing the loss.

Let's compare the treatment of the same claim by two different companies, one with a subrogation mindset and one without.

Mr. and Mrs. Smith leave their house one morning to go to work and both forget to turn off the electric coffee maker.

During the day, a fire occurs in the kitchen area and spreads throughout the house, causing \$90,000 in damage.

Insurance Company A, without a subrogation emphasis, would adjust this claim to its policyholder's satisfaction and close the file.

Insurance Company A has spent \$90,000.

Insurance Company B, on the other hand, employs a subrogation-oriented claims adjuster.

The claims adjuster is quickly on the scene conducting his investigation with the fire marshal as well as his home-office liability people.

They conclude that the likely origin of the fire was the coffee pot.

And while they conclude that the property owners were negligent in leaving the pot on, there is evidence of other causation.

The claims adjuster takes the badly burned coffee pot to an engineer, who conducts tests and concludes that the thermostat had failed and caused heat within the coffee pot in excess of 1,218 degrees Fahrenheit. This malfunction was the proximate cause of the fire.

This information is sent to the subrogation department of the Insurance Company B.

Company B immediately puts the coffee pot manufacturer on notice.

Through its outside subrogation attorney, Company B settles with

the manufacturer of the coffee pot for a compromise amount of \$70,000.

Unfortunately, there are many Company As and there are thousands of files sitting in storage today representing millions of subrogation dollars that were never pursued.

In the meantime, the Company Bs are moving solidly along, recovering more and more subrogation dollars each year—and a large amount of it from the Company As.

Not only the larger losses but also the smaller ones can be recovered through a subrogation program.

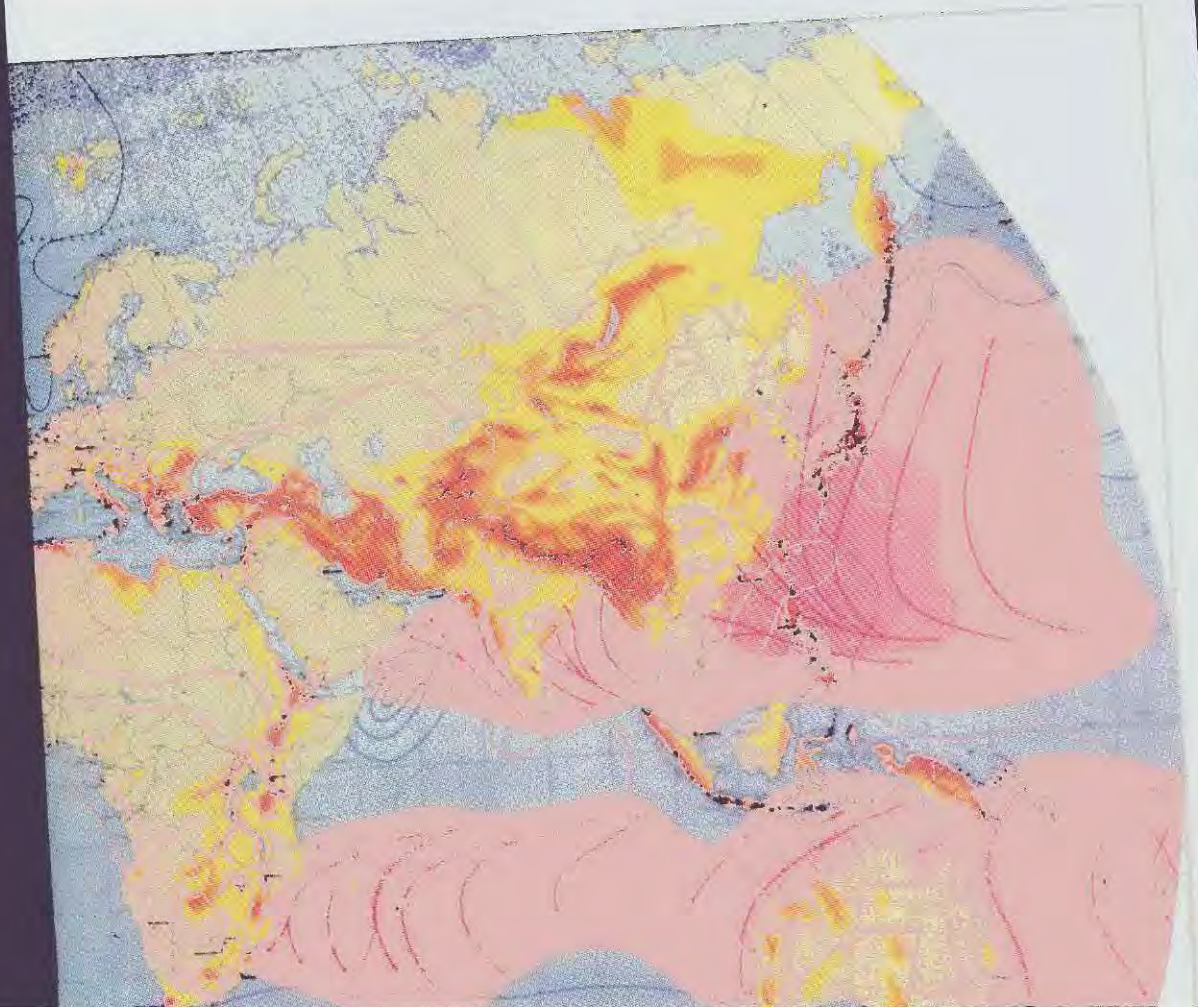
For instance, the cost of repairing a damaged automobile is skyrocketing and in almost every automobile accident the potential for recovery against the negligent party exists.

Sophisticated insurance companies in search of increased profits in this lackluster economy would do well to examine their subrogation positions. **BI**



John J. O'Brien is an attorney in private practice in West Chester, Pa. He specializes in subrogation matters.

World Map of Natural Hazards



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Insurers find their logos often add less than expected to image

By SARA MARLEY

Insurance consumers may miss Continental Corp.'s presence in the market after its buyout by CNA Financial Corp., but they won't miss its minuteman logo.

According to the 1994 Logo-Value Survey conducted by the Schechter Group, a New York-based

brand and corporate identity consulting firm, the percentage of consumers giving Continental Corp. their highest recognition rating dropped to 11% when shown the minuteman logo and the company name from 15% when shown the name alone.

The complete logos of most of the seven other insurers included in the survey did not fare much better.

The 1994 LogoValue Survey sur-

veyed 600 consumers to measure their attitudes toward 26 corporate logos. Only participants who were aware of the specific brand were interviewed.

One group of 150 consumers first viewed each company or brand name in plain black type, then ranked it on a five-point scale for each of four attributes:

- Trustworthy and responsible.
- Offering quality products and services.
- Having products and services for the 1990s.
- Offering a product or service the consumer would use.

The resulting score is derived from the percentage of consumers who "agree strongly" that the subject possessed each of those four attributes.

Another group of consumers was shown a company's full logo in color along with the company name, then ranked it on the same four attributes. The difference in scores between the group shown the name alone and the group that considered the full logo is the "image contribution" of the logo design, according to Schechter Group.

The 1994 survey added several insurers and managed health care firms because they are spending heavily to polish their images and at-

tract customers.

Insurers lagged behind other consumer goods and services companies in their public image, scoring on average the lowest of the 10 business categories in the survey.

Only 28% of consumers gave insurers their highest rating, compared with 64% for broadcasting companies and 52% for financial services firms, such as credit card companies and stock brokerages.

Only one of the insurers whose image was tested in 1994 experienced positive logo contribution.

New York Life Insurance Co.'s score increased to 16% from 15% with the addition of its logo.

By contrast, Allstate Corp. dropped to 35% from 44% when its "good hands" were shown; the Travelers' Group umbrella brought its rating down to 30% from 32%; and the inclusion of CIGNA Corp.'s tree logo caused a one-point drop to 18%.

The Prudential Life Assurance Co. of the United States had ranked highest among insurers in a similar 1991 survey, with its 49% rating increasing to 53% when its trademark rock was included.

In 1994, though, Prudential scored a 38%, with the logo bringing the score down by one point.

The drop is "due no doubt in part

to the unrelenting scandals that have plagued the brokerage subsidiary of this once rock-solid enterprise," according to the survey authors. "One can only assume that the company now wishes it had not replaced the original name of the brokerage firm, Bache, with its own."

The logos of three insurers—Allstate, Aetna Casualty & Surety Co. and U.S. Healthcare Inc.—ranked among the five poorest performing in the survey.

Aetna dropped to 24% from 33% with its white-on-black ligature.

"In Aetna's case, use of an archaic typographic treatment of the A and E, although distinctive, may put people off as evidenced by the fact that the plain typography scores almost 50% higher," said Alvin H. Schechter, chairman and CEO of the Schechter Group.

U.S. Healthcare's image dropped to 23% from 32% when the name was tested with its apple icon. The much better score for the unadorned name suggests the apple is an overused device, unless treated in a unique way, such as in the computer company's logo, the survey authors said.

Copies of the 1994 LogoValue Survey are available free of charge by contacting David J. Martin or Renee Malfi at the Schechter Group, 212 E. 49th St., New York, N.Y., 10017; 212-752-4400; fax 212-752-4503.

Technology

Continued from page 28F

are fed to the Factory Mutual Engineering Assn. From there, the reports are printed and routed to both a master database as well as the headquarters offices of Factory Mutual members. Reports can be sped electronically to customers that have the computer capability.

"There is a relatively small number of people taking advantage of (electronic report delivery), but I see it being an area where the number of requests will grow a lot," Mr. Anderson said.

Protection Mutual clients can also communicate with the insurer via electronic mail.

"If any broker or any customer has a desire to be in our directory we can do it easily," Mr. Anderson said. "In the last two years, more and more of our customers have the capability to do that."

Insurers have varying degrees of computer sophistication, but several companies consider improved service through technology to be a key competitive edge.

RLI Corp. of Peoria, Ill., is one company that has put more customer service in the hands of agents and brokers by introducing computer programs that help generate policies quicker while allowing its producers to track the policy as it goes through its formation.

"What we really have tried to do is provide (our producers) with the power to answer questions without the back and forth telephone calls," said Gregory J. Tiemeier, senior vp of RLI.

Insurers with new, but limited systems said so far they are pleased with results and expect to expand the programs.

Scottsdale Insurance Co., for instance, plans to expand a year-old policy rating and issuance system that about 20% of its 175 producers can now tap into from their offices.

"We can process the renewals in literally minutes," said John Zicarelli, vp and chief actuary for the Scottsdale, Ariz., surplus lines insurer. "This is a very key part of our strategy. Our primary issue is to look for ways to make the process work more efficiently for both the general agents and ourselves. What it translates to for the customer is a more economical price."

"We think we're in a leadership position," he added. "But we have no illusion: The rest of the market is going to catch up to us."

He is right. "We have a task force looking at agency-company interface right now to find ways we can improve communications between agents and the office," Donald Williams, senior vp and director of information systems for Selective Insurance Group Inc. in Branchville, N.J. "It will put the decision making right in the agent's office."

Wendy Hamigan, vp of corporate systems for Royal Group Inc. in Charlotte, N.C., said her company is committed to providing color-monitor

laptops that will allow underwriters, adjusters and agents to do much of their work at a customer site. About nine of the company's 28 commercial branches now have the laptops and the rest will have them by the end of June.

"Just doing this in '95 says we are a little behind, but we plan to be way ahead on this," Ms. Harrigan said, adding Royal has a new CEO who has committed the finances to increase technological capabilities.

Communication between producer and insurer is not the only link being upgraded.

Francis Hong, vp of information systems for Jardine Insurance Brokers in San Francisco, said his company has helped larger clients install terminals that allow them to directly access loss-claims information kept by the client's insurers.

The clients can use the information to generate a variety of reports. Such systems are not new, he said. Jardine is currently developing a system that allows for three-way editing of forms and documents. The policyholder, broker and insurer all have access and can update the same document. The system is being developed in conjunction with a client Mr. Hong would not name. But, he said the program soon will be ready for formal introduction.

Mr. Hong added that his company's programs rely on standard technology that requires relatively little maintenance. Others agree that such systems present little trouble.

"I would say the only pain is the initial setup," said Roger Plotkin, corporate risk manager for Beckman Instruments Inc. in Fullerton, Calif. Beckman e-mails information and documents to its broker and insurers. That makes Mr. Plotkin happy because he has less paper to track and speedier service.

"Technology has helped a lot," said Mr. Plotkin, who recalls the days when workers compensation claims review meant driving to an insurance company office. Now, he can access the claims—which are handled by a third-party administrator—anytime he wants.

"It helps form a partnership with the insurers and claims department," he said. "Some of that takes the burden off of (the insurer), actually."

With his own people performing Beckman's claims review, Mr. Plotkin figures his insurer needs fewer employees. But that translates into savings for Beckman at renewal time. "It helps us manage our claims a little better. It also helps us generate reports so we can focus on (loss prevention)."

Dolores Clancey, vp for group claims administration at Employers Insurance of Wausau in Wausau, Wis., said her company provides training for its TPA clients who choose to do their own claims review in the group health area.

Other customers still prefer to dial a toll-free number and ask questions telephonically. But those who choose to use a computer can get a close-up look at the review and investigation process as a claim winds its way through the system. **BI**

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Continued from previous page

fore renewals were due to close, a few U.S. property excess-of-loss reinsurance programs came into the market for the first time seeking a Lloyd's quote.

Unlike the past few years, however, capacity in London was plentiful.

As one underwriter put it, brokers could throw all their line slips over the railing of Lloyd's third floor and they would all be completed by the time they reached the bottom.

Capacity is up by 10% to 20% in London compared with last year, estimated Iain Denham, deputy managing director, property and contracts at the non-marine division at Sedgwick Group's Price Forbes Ltd.

"The domestic market is still fairly competitive, but we are still seeing a lot of opportunities. U.S. buyers are looking for larger limits. London appears to have increased volumes of business, especially at higher excess layers where there appears to be greater capacity available," said Mr. Denham.

There also is a feeling in London that the worst is over, the severe contraction has ended and those who survived will flourish.

The London market "must be stronger," said Mr. Riley. "There is more confidence around, and the market is more stable."

"Capacity in the London market was strong this year and completion of risks was easier," said Neil Woods, executive director of Nicholson Leslie North America.

Yet little new business is coming to London, mainly due to competition from U.S. and Bermudian underwriters.

"London's lost business to (U.S. underwriters) this year, but that is because (they) are more competitive," said Mr. Iles.

"If London had a share in a program, then it could increase its share on renewal," said Mr. Woods. "But there's no new business in the market."

Another factor is the bad publicity surrounding Lloyd's and the solvency concerns policyholders have about London insurers generally. But few London players say that is a major factor.

"Customers who know us have confidence in us and are looking more (at the security) of each syndicate than they did in the past," said a Lloyd's underwriter.

"Our old clients remain loyal, but it is difficult to get new business," added Lloyd's underwriter Richard Youell. Lloyd's must show policyholders that it is going forward with new capital and sound solvency, he said.

London also is losing business to Bermudian catastrophe reinsurers, though not as much as first feared, brokers and underwriters say.

"The (London excess-of-loss reinsurance) market is softer and there is less of (that business) about," said Phillip Marcell, chairman and chief executive of Union-America Insurance Co. Ltd. "Part of this is because people are buying coverage in Bermuda where they can get three-year deals. Overall, I'd say U.S. property business is about 5% to 10% cheaper."

Though Mr. Burbidge of Terra Nova credits the Bermuda companies with lowering rates and taking some business, he said their impact on London companies is not as significant as many claim.

"The Bermuda catastrophe market has not been particularly aggressive. But the buyers and the brokers have been able to use the existence of that capacity as a stick to beat the London underwriters with. With perhaps one ex-

ception, we haven't seen that market wishing to quote directly against London," he said, not mentioning the exception.

To take advantage of Bermuda's rising star, Terra Nova recently announced that it would set up a new reinsurance subsidiary on the island (BI, Dec. 26, 1994). John Riddick, managing director, says the Bermuda operation will not compete with London but will pick up business that is "finding its way to Bermuda instead of London."

In spite of the competition, some new business is coming to London.

For the first time in several years, Lloyd's saw a new homeowners reinsurance program from a major U.S. ceding company. And, a spokesman for brokerage R.K. Carvill & Co. Ltd. said educators liability reinsurance was placed in London during year-end renewals for the first time.

Generally, there was a "lot of competition" among underwriters for excess-of-loss reinsurance programs placed by regional U.S. ceding companies, said one leading Lloyd's catastrophe underwriter. These regional insurers found on average that rates reduced by 15%, he said.

For U.S. insurers that write coverage nationwide, though, rates were generally similar to those last year, the catastrophe underwriter said. Prices did rise for some insurers with California earthquake or Florida windstorm exposures, he added.

"The key is what effect the Northridge loss had on a company's program," said Cliff Simmonds, deputy underwriter for syndicates managed by Tower Managing Agents. "If a company had a Northridge loss at the bottom (layers) of a program, then rates probably went up."

For U.S. regional insurers that have "no Northridge involvement and the figures are good, then there have been some slight price reductions—not for every company by any means—which I feel is disappointing. Originally I set out for this U.S. renewal season to maintain the prices as they were at current 1994 levels," said Mr. Simmonds, who does not lead, but follows U.S. business. "To see one or two prices reducing (up to 10%) was disappointing for me."

"For nationwide companies, the general picture has been as before, with cedants paying roughly the same premiums in 1995 as in 1994," confirmed Mr. Burbidge of Terra Nova. "That is not the case with the smaller regional companies, unless they happened to have been badly hit by the earthquakes. Their reduction in rates appears to be about 10%."

Outside the United States, prop-

erty catastrophe reinsurance rates varied, ranging from soft to slashed.

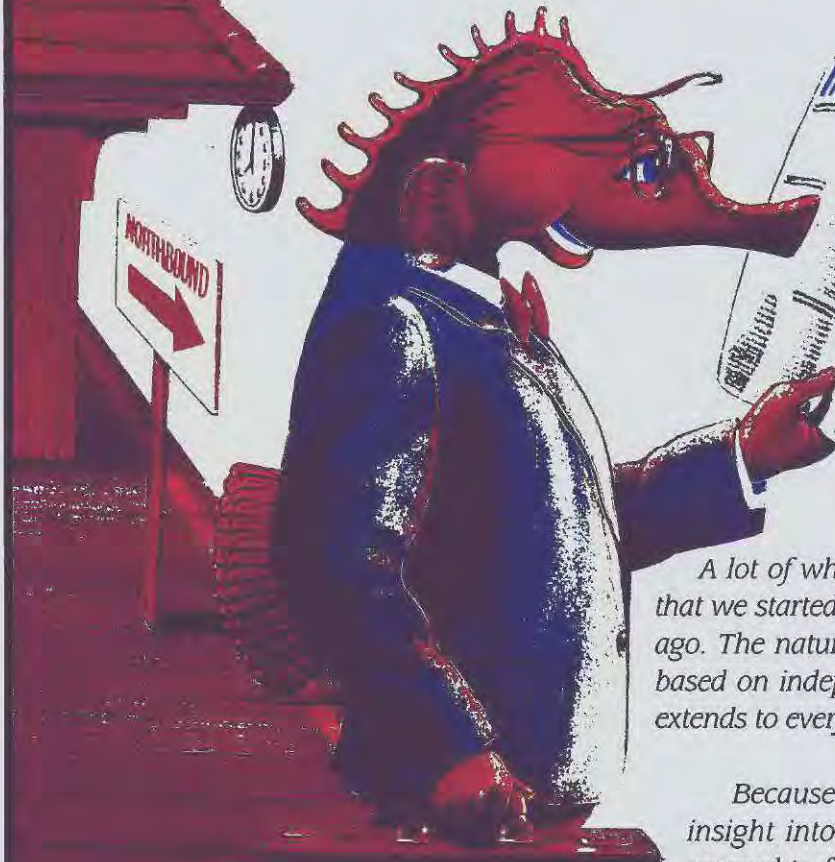
Some European ceding companies hoped that rates would drop up to 20%, but brokers and underwriters generally agreed that they dropped only 10% to 15%, if at all. U.K. insurers, for example, generally saw 10% price reductions, said Mr. Simmonds.

"There were probably 10% to 15% reductions for non-U.S. property cat, but that's better than I thought and it's selective," said Mr. Iles.

Those reductions were justified, he said, because in the past three or four years, underwriters charged higher prices to European and British ceding companies to pay back the \$8 billion worth of losses from the 1990 European windstorms. Now that reinsurers have been paid back, they can af-

Continued on page 32

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Congress raises revenue at retirees' expense

A

Why are qualified retirement plans tax revenue targets?

Q

Willie Sutton, the famous bank robber, was once asked why he kept robbing banks even though he kept getting caught. He responded that he robbed banks because "that's where the money is." Federal lawmakers seem to have learned at least part of the Willie Sutton story as they

proved once again last month.

Alphabet soup—PBG and GATT—has become the law of the land. The General Agreement on Tariffs and Trade, a major treaty designed to promote international trade and reduce tariffs, was enacted last month. Tacked onto GATT was the PBGC bill. This legislation raises revenue for the Pension Benefit Guaranty Corp. and the U.S. Treasury at the expense of qualified retirement plan sponsors. To be sure, the legislation does require employers to accelerate contributions to underfunded plans.

The passage of GATT continues the now well-established congressional tradition of raising revenue by curtailing the benefits to qualified retirement plan participants and/or the tax incentives for plan sponsors. The laundry list of legislation in this tradition is impressive: the Economic Recovery Tax Act of 1981, the Tax Equity and Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Pension Protection Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, the Revenue Reconciliation Act of 1990 and the Budget Reconciliation Act of 1993.

One often unnoticed aspect of these pieces of legislation is that they have been largely directed at private retirement plans with hardly any effect on public sector retirement plans. Why are private sector retirement plans the recipients of such frequent congressional attention? Because, within the Beltway, retirement plans are perceived to cost the U.S. Treasury more money than any other tax expenditure; and as we all know, perception is reality. Retirement plans are perceived to be where the money is.

In order to understand the dubious distinction attributed to qualified retirement plans as tax expenditure leader, one must first understand the concept of tax expenditures. The concept in its most cynical form presumes that every dollar earned in the United States can be taken by the U.S. government through taxation. A tax expenditure is then a reduction in the tax liabilities because of some provision in the Internal Revenue Code. For example, the tax deduction for mortgage interest on owner-occupied residences is a tax expenditure.

Last November, the Joint Committee on Taxation released estimates that the loss in federal tax revenues for the years 1995 through 1999 for retirement plan contributions and earnings would be \$391.6 billion, the highest of all tax expenditures. Home mortgage interest deductions were second at \$302.1 billion, followed by \$269.7 billion for the cost of excluding employer-paid medical care and medical insurance premiums. Both the relative size and the absolute magnitude of the retirement-related tax expenditures have been a major driving force behind the litany of legislative measures principally aimed at private sector qualified plans over the last 15 years.

The bitter irony to qualified plan sponsors and participants of privately sponsored retirement plans is that the tax expenditure estimates for employer-sponsored retirement plans overstate the tax loss to the Treasury. The Joint Committee on Taxation estimates include in tax expenditures "forgone" tax revenue on pension contributions by governmental employers and the military.

Of the \$391.6 billion in tax expenditures for retirement plans, \$223.21 billion is for public sector civilian retirement plans; \$56.78 billion is for military retirement pensions and only \$111.61 billion is for pension contributions of entities that pay taxes to the U.S.

Treasury. Note that some private sector employers are tax exempt.

So Congress' game has been this: Create the perception of large tax expenditures for retirement plans through an overblown estimate, and then focus revenue-raising efforts on private sector plans. A fairer approach would be for the Joint Committee on Taxation to remove public sector civilian and military plans from its tax expenditure analysis. I can't envision that Congress will ever raise revenues by "taxing" contributions to retirement plans sponsored by other governmental agencies—legal battles would abound since state and local governmental entities would likely challenge the federal government's authority to tax them. And "taxing" contributions to U.S. government civilian and military retirement plans is merely taking money out of one pocket of the U.S. Treasury and putting it in another. This approach will lessen the perception that retirement plans are where the money is, and perhaps that bank will be robbed a little less frequently. **BI**

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Mr. Miner

This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. Dennis J. Nirtaut, managing

director of compensation and benefits, worldwide, for Arthur Anderson & Co. in Chicago, answers questions on employee benefit plans.

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.

Employee's murder while at work not work related

The death of an employee killed at work by her former boyfriend did not arise out of and in the course of her employment, according to an Indiana appellate court.

Cherlyn M. Peavler was working in her employer's plant when her ex-boyfriend entered the plant and shot her to death.

The ex-boyfriend had entered Ms. Peavler's place of employment on an earlier occasion and had been escorted out of the plant by the employer's production coordinator.

At the time of the shooting, there were no security guards at the plant. In addition, the ex-boyfriend had not reported to anyone before entering the plant.

The representatives of Ms. Peavler's estate sued the employer for negligence, charging that they had failed to provide her with a reasonably safe place of employment. The employer sought to have the suit dismissed, arguing that the negligence claim was barred by the exclusivity provision of the Workers' Compensation Act. The trial court ruled in favor of the employer.

The appellate court reversed, concluding that no legitimate workers

Legal Briefs

compensation claims existed. The workers compensation act covers only those accidents that arise out of and in the course of employment.

Harms which arise from risks personal to an employee are universally uncompensable, according to the appellate court.

"If the employee has a mortal personal enemy who finds and murders that employee while the employee is at work," the court said, "the employment cannot be said to have any causal relationship to the death."

Peavler vs. Mitchell & Scott Machine Co., Court of Appeals of Indiana, Aug. 17, 1994 (BI/04/F. \$10).

Spousal benefits denied

Is a former wife, who was legally divorced from a worker, a surviving spouse under the Workers' Compensation Act?

Not according to a recent decision from the Supreme Court of Mississippi.

Mary Frances Yager was married to M.L. Yager in November 1954. That

marriage ceased when they were divorced on Aug. 28, 1980.

They never sought revocation of the divorce under Mississippi law, never obtained a new marriage license and never remarried.

However, many of the indications of a marriage were present.

They lived together and filed joint tax returns.

In addition, Ms. Yager listed Mr. Yager as her husband and beneficiary on her insurance at her job and collected life insurance benefits as his beneficiary.

Mr. Yager died from a head injury sustained while driving a truck on his sixteenth day as an employee of Gregory Cattle Co. Inc.

Ms. Yager claimed "surviving spouse" compensation based on the fact that they were living together as husband and wife at the time of Mr. Yager's death.

The Workers' Compensation Full Commission denied her compensation benefits. The trial court affirmed the commission.

The appellate court said that Ms. Yager did not meet the mandatory criteria to be deemed a "surviving spouse" under Mississippi's state workers compensation law.

According to the appellate court, to be the "surviving spouse," Ms. Yager, not the legal wife because of the divorce, had to prove that she entered into a ceremonial marriage with Mr. Yager at least one year prior to his death, and at his death, "stood in the relationship of a wife."

The court observed that Mary and M.L. Yager did not get a marriage license or enter into a ceremonial marriage after the 1980 divorce.

The appellate court affirmed the trial court decision.

Yager vs. Gregory Cattle Co. Inc., Supreme Court of Mississippi, June 16, 1994 (BI/02/F. \$10). **BI**

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

Exxon moves property/casualty lead from London market

By STACY SHAPIRO

LONDON—Major oil companies with offshore property/casualty coverage that renews Jan. 1 are severely cutting back on the amount of coverage they buy, brokers and underwriters say.

Some oil companies have cut back coverage for their offshore properties up to 50% this year, said leading Lloyd's of London energy underwriter Richard Youell. He said the companies are viewing the insurance from the eyes of their accountants rather than risk managers.

James Bogue, director of Sedgwick Energy Ltd., surmised that one factor in the reduced coverage may be steadily falling oil prices.

According to London news reports, Exxon Corp. is moving the insurance package that covers its offshore property and liability risks from a London lead to European and North American markets. At its peak volume in 1988, 22% of the Exxon program was placed and led in London. Over the past few years, Exxon and other oil

companies generally have been reducing their insurance package and retaining more risk in their captives.

Mr. Youell, who traditionally has led Exxon's package, confirmed that this year he quoted for the renewal but "the order was not received due to pricing considerations." He said he believes his quote was too high.

Exxon still buys some coverage in London. "For commercial reasons, the amount of insurance we buy from any insurance company may vary from year to year based on evolving conditions in the competitive insurance market," the company said in a statement.

The oil companies' move follows British Petroleum P.L.C.'s 1993 withdrawal from much of the traditional market when it discovered that while it had paid out \$1.15 billion in premiums from 1980 to 1990, it only had incurred two claims totaling \$250 million (*BI*, May 31, 1993).

Meanwhile, the International Group of Protection & Indemnity Clubs—which includes the oil

companies that own shipping fleets—is negotiating its Feb. 20 reinsurance renewal.

The program is expected to cost the same as last year, but the reinsurance program is being restructured, according to Mr. Youell, who has led the program in London. The International Group retains the first \$30 million as before. Then it buys a combined single limit of \$750 million of reinsurance instead of \$600 million. This portion of the reinsurance provides up to \$500 million for P&I risks only; and up to \$500 million for pollution, but only \$750 million in the aggregate. If P&I claims and pollution claims total \$1 billion in a single loss, a separate clash reinsurance program will pay the additional \$250 million.

For the first time, the International Group may retain 10% of the first \$500 million of losses. Separate layers of the reinsurance program bring the total coverage to \$1.5 billion, including a \$400 million excess of \$850 million placed in the Bermuda market.

London

Continued from page 29

ford to reduce rates slightly, he noted.

Reductions are slight, unlike what some had expected. Mr. Pagnanelli had predicted 15% reductions, but "the market is resisting that and offering the same levels as last year."

Nowhere does the property catastrophe market's rate cutting seem as intense as in Israel.

Underwriters say that 25% to 40% rate reductions on property cat programs for Israeli cedants could be due to Bermudian underwriters competing for the business to round off their portfolios.

"Israel has seen rates fall considerably, by about 30% for excess-of-loss business, which is justified," noted Graham Dimmock, managing director of Employers Reinsurance Ltd., which writes non-U.S. property/casualty business in London.

In 1993, Israeli insurers increased homeowners' deductibles by 10%, which reduced the maximum losses on reinsurance programs, explained Mr. Dimmock, who leads Israeli business. "Obviously these factors present a really aggressive argument for reductions."

On the casualty side, London underwriters competed for choice U.S. business following the demise of the Merrett group, and casualty clash underwriters lost business to newly aggressive U.S. reinsurers that were prepared to slash rates and relax conditions at renewal.

London underwriters also continued to avoid occurrence programs, so most general liability policies written on an occurrence basis remain in the U.S. market. The market does continue to lead many professional liability policies, such as errors and omissions, directors and officers and fidelity coverages, which are traditionally written on a claims-made basis.

"We are experiencing a fairly flat year largely as before," said Stephen Burnhope, Lloyd's underwriter for syndicate 1212, which is managed by Spreckley Villiers Burnhope & Co. Ltd.

Some rates have fallen, but overall the market appears stable, said Mr. Burnhope, a former Merrett underwriter who focuses on speciality lines, financial institutions, professional liability and D&O business.

"It's fair to say that it is difficult to win new business at the moment. But I don't think too many underwriters are currently worried about new business. The business will come in, but at the moment, the noises we are making on rates are not aggressive. We are happy to sit back and let the others fall over themselves for it," he said.

Similarly, David Foster, underwriter for Lloyd's syndicate 1145 managed by Janson Green Ltd., said, "The larger end of the D&O renewals have been relatively positive, but there is increased competition. The middle market business has been very aggressive with very tough domestic market competition. London has been forced largely into a holding pattern. There is sufficient capacity in London, but it's difficult to attract good new business."

Kenneth Barrett, Mr. Burnhope's former colleague at Merrett, and now the lead casualty underwriter with Zurich Re (U.K.) Ltd., said he is equally happy to "sit tight" and write less casualty business until rates pick up again.

Mr. Barrett predicted that the market could finally turn by the end of 1996.

"Looking ahead on the general liability side, I still see a soft market."

Continued on page 34


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London

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ket. D&O is particularly soft, in fact, it's as low as it was in 1983-1984 and we will be writing pretty flat volumes in 1994. But I do see a reaction and the market should turn in the next 24 months.

"Bankers bond business is pretty low at the moment, but I can see an upturn coming on the bankers' professional liability side. There have been a lot of new losses in the market and deteriorations on old losses, so logically there has got to be an increase in prices," said Mr. Barrett.

John Wetherell, underwriter for Lloyd's syndicate 190, which is managed by Cater Allen Syndicate Management Ltd., said he is "very disappointed" with new competition among London underwriters at a time when Lloyd's faces "abysmal" losses.

"Any Lloyd's underwriter looking to win business through rate reductions needs his head examined," said Mr. Wetherell.

Movement in capacity between syndicates, rather than aggregate increases, is the root of the problem, according to Mr. Wetherell. He said that much of the problem can be blamed on underwriters' fear that they will be unable to fill their stamp capacity.

Any 'underwriter looking to win business through rate reductions needs his head examined,' says John Wetherell.

"We are seeing business led by certain teams, which frankly do not have the experience to lead it. The loss of the Merrett syndicates certainly compounded this problem. There is an old saying: 'Why go to a tough leader when you can go to a pliable one with lots of capacity?'" said Mr. Wetherell.

One broker agreed the market has changed but thinks it's for the better.

"The long-established D&O client is probably more satisfied with London than for many years. That is a function of the market not being dominated by just one player," said George E. Davis, director Sedgwick North America, who specializes in placing direct North American D&O business into London.

"There are more characters involved which has led to greater choice and greater commerciality among underwriters," said Mr. Davis, referring to the new willingness to, for example, reduce rates to win and keep business. "The long-term clients have found this new way exciting and good news."

London is having to fight harder for U.S. casualty clash business.

Mr. Burbidge at Terra Nova, which leads this business, says new competition from U.S. reinsurers has forced rates down roughly 10% over the last two or three years and possibly 5% at this renewal.

Fierce competition from U.S. insurers, which offer less stringent conditions than London underwriters, has meant that casualty clash orders from Fortune 500 companies are "well down" for Mr. Barrett of Zurich Re (U.K.).

The E&O market is soft with premium rate reductions of 10% to 15%, according to syndicate

190 underwriter Mr. Wetherell. New U.S. and London capacity arriving on the back of improved rates last year is generally blamed for this heightened competition and the lower rates, especially for lawyers E&O business.

David R.H. St. John, a director of Sedgwick North America, says U.S. competition will be unable to maintain the pressure. "If you ask me whether the rates are sustainable, the answer would be most definitely no. An awful lot of people saw an opportunity, and they all saw it at the same time. They dived into the market at the same time and will probably all come out at the same time," he said.

Mr. St. John of Sedgwick North America laid more blame on U.S. competition for the soft rates. "London has been competitive, but they are not just following the rates down blindly for market share," he said. **BI**

Brokers

Continued from page 1

tion bid by Zurich Insurance Group (BI, Jan. 2; Dec. 12, 1993). Until then, though, "we have corporate directions to treat Home as a company that needs a risk manager's permission to deal with them," due to its Best rating below A-, Mr. Tarbell said.

The ongoing nature of The Home buyout, with Home Holdings most recently rejecting an offer from Mr. Byrne's Fund American Enterprises Holding Inc. in favor of a Zurich Insurance Group deal (BI, Jan. 9), is straining the patience of some clients, according to brokers.

"Not a majority, but some risk managers are saying, 'We went through this with AmBase, then Trygg-Hansa, then the deal with Byrne's Fund American. We're tired of looking at the situation, so place

us with someone else,'" said Charles Ruoff, senior vp at Sedgwick James Inc. in New York.

Alicia O'Donnell, senior vp and manager of global brokerage services at Johnson & Higgins in New York, said The Home situation wasn't as confusing for clients renewing coverages at the end of the year as it is for those working on renewals now.

"We do have a fairly large amount of business with The Home," she said. "As far as our year-end renewals, the situation wasn't really as clouded as it is today."

As the year ended, The Home was still providing coverage and clients were still doing business with the insurer, said Ms. O'Donnell, adding that she hopes the situation will become clearer in the next few weeks.

"I think right now there's a lot of uncertainty as to which way the company is going," she said.

Those concerns include which lines of business Zurich will choose to renew and which it will allow to be run off in a liquidation of The Home, and whether The Home will have sufficient funds to pay claims as it is liquidated.

"I think we were concerned because nobody has vocalized very clearly what books of business Zurich is interested in obtaining from The Home and retaining," said Suzanne Douglass, senior vp at Alexander & Alexander Inc. in New York.

"We have a lot of clients with money in the bank with Home," Ms. Douglass said. "We would hate to see that money go away."

What's more, the deal comes at a time when brokers have been stressing the importance of developing long-term relationships with insurers, she said. "But if that facility goes away, so does that long-

Continued on next page



Continued from previous page
term relationship."

According to Mr. Ruoff, Best's downgrade of CIGNA Corp.'s property/casualty pool to B++ from A-last month is "not as onerous" as The Home situation (*BI*, Dec. 26, 1994).

Best isn't sending a message that there are security problems with CIGNA, he stressed. Rather, "it's signaling difficulty in the profits of its property/casualty operations," he said.

"Risk managers recognize that CIGNA has reserves and access to capital markets to get money if deemed necessary. The Home is not in that position," Mr. Ruoff said.

Still, the CIGNA downgrade has been "a point of discussion" during renewals, said Teresa L. Pahl, executive vp at Rollins Hudig Hall International in Chicago, adding that there were "lots of quotes on CIGNA paper" during renewals.

"It's made the renewal process more time-consuming for risk managers" who have to explain to their superiors why they are renewing with the Philadelphia-based insurer, she said.

The CIGNA downgrade "is disturbing because CIGNA has had

the other hand, you've got clients talking about financial solvency and that kind of risk."

Market capacity is a concern brokers see emerging as an issue in insurer consolidations like The Home buyout or CNA Financial Corp.'s purchase of Continental.

'Any consolidation in the market results in change for the customers,' says Teresa Pahl. But it also presents 'opportunities and challenges' for the broker, she adds.

some very long relationships with a lot of clients," Ms. Douglass said.

"I do a lot of business with CIGNA. I want to see them get over their trouble," she said. "It's hard to try to replace that capacity and on

"I think anytime you take a company out of the market independently and combine it with someone else, you lose a competitive situation and ultimately it will affect pricing," said J&H's Ms. O'Donnell.

"Every time somebody drops out, even if it's \$5 million, it's hard to replace that capacity," Ms. Douglass said.

The fact that both CNA and Continental had moved away from major lines means that the deal's impact will be felt primarily by the middle and smaller markets, Ms. Douglass said. Perhaps the greatest significance, though, might be in the deal's impact on boiler and machinery coverage.

"Continental was one of the few boiler and machinery companies still around," Ms. Douglass said. "That's an expensive business to write."

"CNA runs a very lean and mean operation," she said, adding she wonders whether the insurer will choose to continue operating such an expensive book of business.

Insurer consolidation does appear to be the wave of the future, brokers agree.

"The real story is how the market will consolidate more in the years ahead," Mr. Ruoff said.

A potential downside for risk managers is that fewer players at renewals means less room to maneuver in, Mr. Ruoff said. But, if consolidation "means a more stable market, fewer choices isn't that bad."

William Zia, a vp in the Parsippany, N.J., office of J&H, has a similar view. "I see it as an advantage," he said. "These carriers at the end of the day will be stronger financially, stronger competitively."

But A&A's Ms. Douglass said she senses a concern among some clients that "conventional insurance as we know it is going to be ruled by a very few people." If the traditional insurance market runs out of options for risk managers, many may be forced to embrace alternative approaches to traditional insurance, she believes.

"Any consolidation in the market results in change for the customers," RHH's Ms. Pahl said. But it also presents "opportunities and challenges" for the broker, she said.

If Zurich's bid for The Home goes through, for example, "we are prepared to talk to Zurich on placement of international business," said Ms. Pahl, adding that The Home has become a more significant player in the international marketplace.

A clearer picture of the impact of the recent consolidations will be seen during midyear renewals, Ms. Pahl added.

Undoubtedly those effects will continue, including the effect on insurers, even some that aren't considered in play, said John F. O'Sullivan, managing director of Marsh & McLennan Cos. Inc. in New York.

And that particular consolidation fallout could have an indirect effect on policyholders, he said. As he sees the situation, underwriters that fear their companies might be susceptible to consolidation or takeover may tend to write coverage more conservatively, affecting capacity in the marketplace or pricing.

Even if the companies consolidated in recent buyouts reduce capacity, however, it won't have an impact on certain specialty lines like medical malpractice liability and legal malpractice, Mr. O'Sullivan said.

"The feeling is that there is significant capacity in these specialty lines right now and that if the consolidated companies reduce capacity it still won't produce constrictions in the marketplace," he said.

New players entering the specialty lines business have increased capacity in that market. Newcomers derive an advantage from entering the market fresh, Mr. O'Sullivan said, though he wonders whether they have the stomach to stay with those lines in the future.

"These new players have the opportunity of writing this claims-made business without the baggage of past bad experience," he said. The question is whether they're committed to those lines for the long term, however, and whether they'll remain in those markets once that claims-made business begins to age and their experience becomes more adverse.

Still, as the new players enter the specialty lines markets, including some offshore insurers, renewals in those lines have seen rates drop 15%, Mr. O'Sullivan said.

On the property coverage front, rate problems seem limited to exposures in some natural catastrophe-prone areas.

"The property rates for natural catastrophe exposures are hard and coverage is difficult to get,"

Continued on next page


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For the Record

Coverage denied in pollution case

PHILADELPHIA—A federal appeals court has ruled that a Delaware county cannot tap its general liability insurance policies to pay for the Superfund cleanup of contamination at a municipal landfill.

The 3rd U.S. Circuit Court of Appeals late last month found that pollution at the site of a landfill owned by Sussex County, Del., was both expected and intended, thus barring coverage for the county under the standard pollution exclusion.

As a result, Sussex County cannot

tap liability coverage written in the 1980s by several insurers including Harleysville Mutual Insurance Co. of Harleysville, Pa., and The Home Insurance Co. of New York.

The landfill pollution site was designated for cleanup by the Environmental Protection Agency under Superfund in 1990, when the EPA determined that a decade's worth of heavy metal contamination led to the presence of benzene and other toxic compounds in ground water.

The appellate court's decision affirms a 1993 ruling on the case by a federal district court in Delaware.

Harleysville Mutual Insurance Co. Inc. vs. Sussex County, Delaware;

3rd U.S. Circuit Court of Appeals; No. 94-7011.

Risk Retention Act doesn't pre-empt law

ATLANTA—The full 11th U.S. Circuit Court of Appeals last month declined to review and thus let stand an earlier ruling that could increase costs and make it more difficult for certain risk retention groups to operate nationwide.

A three-judge panel of the 11th Circuit had ruled last year that the federal Risk Retention Act does not pre-empt a 1992 Florida law requiring taxi and other passenger transportation firms to buy the first \$80,000 of liability coverage from insurers in the state guaranty fund

(*BI*, Nov. 7, 1994). Federal law bars risk retention groups from joining guaranty funds.

In its ruling, the three-judge panel said Congress did not intend the Risk Retention Act to pre-empt state financial responsibility laws, such as the Florida statute.

Such laws are a legitimate and rational exercise of state authority, the court said.

But risk retention group advocates say varying state financial responsibility rules, which are most common in the public transportation sector, would make it difficult and more expensive for the groups to try to operate across the nation.

The 11th Circuit Court's ruling applies in Alabama, Florida and Georgia.

care insurance plans and to individual patients."

Under the settlement agreement, filed in December 1994 in U.S. District Court in Washington, Vision Service Plan will adopt a new fee system based on a range of fees accepted by eye doctors.

"We have agreed to discontinue this policy to avoid long and expensive litigation with the Justice Department that could easily have cost thousands and maybe millions in legal fees," Roger Valine, the insurer's president and chief executive officer, said in a statement.

The Justice Department reached a similar settlement with Delta Dental Plan of Arizona Inc. in August 1994 (*BI*, Sept. 5, 1994.)

Information in brief

Front Royal Inc., a Cary, N.C.-based holding company, has completed its purchase of three property/casualty insurers from Willoughby, Ohio-based Figgie International Inc. (*BI*, Sept. 12, 1994). The three insurers—Cardinal Casualty Insurance Co., Hamilton Insurance Co. and Colony Insurance Co.—made up Waite Hill Insurance Group, a Richmond, Va.-based unit of Figgie. Terms of the sale were not disclosed. . . . **Charles Kahn**, executive vp of the Health Insurance Assn. of America, left the insurer trade association last week to become majority staff director of the House Ways and Means Health Subcommittee. . . . **The Blue Cross & Blue Shield Assn.** reports that aggregate reserves for its 68 independent plans reached an all-time high of \$15.8 billion for the nine months ended Sept. 30, 1994. The plans collectively reported revenue of \$53.7 billion for that period. **BI**

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Vision care insurer settles antitrust suit

WASHINGTON—The Department of Justice reached a settlement in a civil antitrust suit with the nation's largest vision care insurer.

As part of the settlement, Sacramento, Calif.-based Vision Service Plan agreed to discontinue its practice of using a "most favored nation clause" that in effect inhibited optometrists and ophthalmologists from reducing their fees.

The clauses, which are common in the health insurance industry, required optometrists and ophthalmologists to offer all patients covered by a vision plan the lowest prices the eye doctors offer to any of their patients. But, Justice Department prosecutors say that requiring the eye doctors to offer the same discounts to Vision Service Plan clients "inhibited doctors from reducing their fees to competing vision

THE STRENGTH

Atlanta

Chicago

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Dallas

FMLA

Continued from page 2

clearer," agreed Fran Bruno, a managing consultant in the Detroit office of A. Foster Higgins & Co. Inc.

Under the family leave law, companies with at least 50 employees must provide workers with up to 12 weeks of unpaid job-protected leave for a variety of family situations as well as for their own serious illness.

Earlier guidance on what constitutes a serious illness generated 88 comments, some of which said the definition was too broad, others that it was too restrictive.

The department responded in kind: It restricted the definition of a serious health condition in some cases but added other conditions that would qualify.

Under the new regulations, "a serious health condition entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves" either inpatient care or any subsequent treatment in connection with inpatient care; or continuing treatment by a health care provider.

The regulations establish five categories of what can such constitute continuing treatment:

- A period of incapacity—defined as an inability to work—of more than three consecutive calendar days that also involves treatment two or more times by a health care provider, or by a provider of health care services (such as a physical therapist) if referred by a health care provider.

Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Routine physicals or eye or dental exams are not included.

Alternately, continuing treatment

Q:
Who can take FMLA leave for their own "serious health condition"?

An employee with an illness, injury, impairment, or mental or physical condition that involves inpatient care, any subsequent treatment related to inpatient care or "continuing treatment" by a health care provider.

Continuing treatment includes any period of incapacity due to: pregnancy or prenatal care, multiple medical treatments, or treatments for chronic conditions.

GRAPHIC BY JERRY PARKS

can be construed as a period of incapacity of more than three days that also involves treatment by a health care provider on at least one occasion that results in continuing treatment under the supervision of the health care provider. Continuing treatment includes a course of prescription medication or therapy requiring special equipment. A prescribed course of over-the-counter medications or bed-rest would not be included.

- Any period of incapacity due to pregnancy or for prenatal care.

- Any period of incapacity due to a chronic serious health condition or treatment of such a condition. A chronic serious health condition is defined as one that requires periodic visits to a health care provider, continues over an extended period of time and may cause episodes of incapacity rather than a continuing period of incapacity. Illnesses that

might cause episodes of incapacity include asthma and epilepsy.

- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee must be under the continuing supervision of a health care provider but does not need to be receiving treatment. An examples of these conditions includes a severe stroke.

- Any period of absence to receive multiple treatments by a health care provider or by a provider of health care services. The treatments could be necessary because of an accident or other injury, or because of a condition that if untreated would likely result in a period of incapacity of more than three days. An example of this kind of condition is cancer, which could require multiple chemotherapy or radiation treatments.

The delineation of these categories will enable employers to "more

readily make a determination that what is certified in the medical certification will or will not fit the definition of a serious health condition," observed Mr. Uslander of Mercer.

In addition to laying out broad criteria to identify a serious health condition, the regulations also address some specific maladies.

For example, according to the regulations, the following illnesses should not be considered serious health conditions: common colds, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems and periodontal disease. Also,

most treatments for acne or plastic surgery are not considered serious health conditions unless they require inpatient hospital care.

Substance abuse may be considered a serious health condition in some cases. For example, it could be if an employee is treated in an inpatient setting, explained Steven Oberndorf, an attorney for Sedgwick Noble Lowndes in Roseland, N.J.

The regulations also impose several new notification requirements.

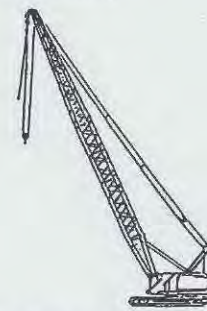
Employers are required to notify employees within two business days if a leave period, paid or unpaid, is

Continued on next page

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FMLA

Continued from previous page designated as FMLA leave and will be counted against an employee's annual FMLA leave entitlement, noted Hewitt's Ms. Sladek. The interim regulations set no specific deadline.

If an employer knows that an employee is taking FMLA leave and does not give the worker the necessary notification, the employer may not after the fact count the leave against an employee's FMLA leave entitlement, Ms. Sladek said.

The final rules also impose notification requirements for termination of coverage because of the employee's failure to pay premiums within 30 days of the due date. Employers must tell employees in writing 15 days prior to the expiration of that grace period that the coverage will cease unless the premium is paid.

For insured plans, coverage can be

dropped retroactively to the beginning of the grace period, explained Mr. Uslander. Self-insured plans must cover the employee until the end of the grace period.

The regulations also address several questions about whether it is permissible to count against an employee's annual family leave entitlement leave that was not originally designated FMLA leave.

In general, the regulations do not allow employers to designate non-FMLA leave as FMLA leave after an employee has returned to work, except in two circumstances:

- If an employee was absent for an FMLA reason and the employer did not learn the reason until the employee returned to work.

- Or, if the employer knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA.

However, if an employer learns while an employee is on a non-

FMLA leave that something has happened that could qualify the remaining leave as FMLA leave, it may count the remaining leave against an employee's allotment, if it follows proper notice procedures.

The rules give the example of an employee who has arranged for a two-week paid vacation for a ski trip. One week into the vacation he is hospitalized for an injury, so he

calls his employer and requests an FMLA leave to follow the end of his paid vacation. Here, both the second week of the vacation and the extended leave may be counted toward the FMLA leave entitlement.

Addressing the coordination of FMLA and pensions, the regulations state that employers do not have to credit workers with service time toward the vesting or accrual of a pen-

sion benefit while on FMLA leave, but the FMLA leave will not be counted as a break in service, pointed out Henry Saveth, a Foster Higgins principal in New York.

Also, if an employer is offering an early retirement plan, an employee on FMLA leave must be offered the chance to participate even if the election period officially closed while the worker was on leave. **BI**

Funds

Continued from page 3 pay claims daily, practically," Mr. Trout said.

As Orange County—currently under the protection of Chapter 9 bankruptcy—seeks to sort out its financial mess, it's distributing funds on an as-needed basis to investment pool participants (*BI*, Dec. 26, 1994; Dec. 12, 1994). So far that's pre-

vented problems at the local self-insurance pools.

The Western Orange County Self-Funded Workers Compensation Agency, for example, had all of its funds—more than \$8 million—invested through the county.

"To date it has not presented a problem for us," said Arlene Ito, risk manager for the Orange County Department of Education and treasurer for the workers comp fund. "We have been able to pay our benefits

without any problem."

That may change, though. "Who's to say what will happen in the next month, or the month after?" Ms. Ito added.

But so far, even bankrupt Orange County has been meeting its workers comp claims, said Mark Ashcraft, the state's manager of self-insurance plans. "There have been no other problems or failures to pay workers comp claims by any of the agencies invested in the pool."

If the SELF fund takes the 27% loss on its investment—the amount it's been suggested that Orange County pool fund participants could suffer—the fund would stand to lose more than \$12.7 million.

Coupled with the loss of interest earnings on that investment—reported at 7.74% in the 1994 annual report—that total loss could approach the pool's 1994 member contributions of \$16.5 million.

SELF officials have said losses would not threaten its solvency.

Several weeks ago, when Orange County fund investor losses were being estimated at 20%, SELF Executive Director John C. Wilson said that such a loss would not threaten the pool's solvency, according to Patrick Chladek, a manager in the California Department of Education and SELF board member.

"It was his opinion that at that time, the SELF's contingency reserve was enough to handle the write-down," Mr. Chladek said.

Mr. Wilson was out of town last week and did not return repeated messages at his office.

A loss in the 27% range, however, "probably starts to be significant," Mr. Chladek said, though even at that level the significance to SELF remains limited.

"That probably doesn't represent... more than one large claim," he said. "If this all happened in the early years, it would've been very significant. But the fund is pretty much mature now."

Still, the pool recently sued Merrill Lynch & Co., which advised the fund managers, a Merrill salesman, Michael G. Stameson, and Robert L. Citron, the former Orange County treasurer who managed the fund.

Seeking class-action status on behalf of other pool participants, that suit alleged federal and state securities law violations, fraud, negligence, negligent misrepresentation and breach of fiduciary duty.

While similar class-action suits had been filed on behalf of holders of bonds issued by Orange County or other jurisdictions with investments in the Orange County fund, the SELF suit was the first filed on behalf of fund investors themselves.

Merrill Lynch responded to the latest Orange County suit in the same fashion as it has to earlier filings. "We believe the suit is without merit and we will contest it vigorously," a spokesman said. "We are confident that we acted properly and professionally in all our business dealings with Orange County."

SELF's decision to invest such a large percentage of its assets in a single place may be something state education officials examine in the future, Mr. Chladek suggested. "It's probably something we would look into. After all the dust settles, I'm sure the department will want to re-evaluate what went on." **BI**



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Lawyer navigates retiree benefit minefield

By DAVE LENCKUS

CHICAGO—Employers have to get better at giving themselves the flexibility to offer retiree medical benefits that they can afford, since Congress and the business climate will likely pressure employers to shoulder more of that responsibility, an employer attorney says.

Right now, many employers lack even the most rudimentary safety nets to fall back on to modify retiree benefits, according to Mark A. Casciari, a partner with Seyfarth, Shaw, Fairweather & Geraldson in Chicago.

Congress is considering raising the Medicare eligibility age and phasing out Social Security for wealthy retirees, Mr. Casciari said last month at the Benefit & Employment Law Litigation conference, sponsored by the American Conference Institute in Chicago.

"So, you can expect to see government putting more responsibility for (retiree) benefits on employees," he said.

In addition, as companies continue restructuring, they often are reducing their workforces by offering older workers early retirement incentives that include generous medical benefits until they become eligible for Medicare.

"But, after the promises are made and the employees leave, the companies realize the expense and say they can't afford those levels of coverage to early retirees," he said.

The billable hours for attorneys on both sides begin ticking away after employers cling to a provision in their plan documents that suggests they can modify those benefits, which prompts the early retirees to howl that they were hoodwinked.

Of course, the facts in each case vary significantly. But, courts have focused on the representations that employers made orally as well as in their plan documents, Mr. Casciari said.

To that end, employers can take several measures to protect themselves, he said.

One of the most important areas in which employers should clearly spell out the duration of retiree medical benefits is in collective bargaining agreements.

The agreement should state that benefits are in effect only for the duration of the agreement, he said. Plan documents as well as collective bargaining agreements have to be "very, very specific" on this point, or courts will allow plaintiffs to introduce extrinsic evidence on what the employer promised, he added.

"It's amazing the number of plans without this language," said Mr. Casciari.

Many employers that failed to include such language in the agreements and were later sued by retirees facing benefit cuts have argued unsuccessfully that the benefits were subject to the same terms of the general contract, Mr. Casciari pointed out.

He also recommended providing equal medical benefits to retirees and active employees. "If you put them in the same plan as the actives, the implication is that the retirees' coverage ends when the actives' coverage ends."

Eliminating the suggestion that retiree medical benefits vest also is crucial, and all employers must address that issue on several fronts, according to Mr. Casciari.

He suggested that employers note in plan documents and in

other communications that retiree medical benefits do not vest.

Just as important, employers have to hold onto all such benefit communications for evidence in potential future litigation.

"The message is clear, and courts respect that," he said.

Employers should not establish any link between retiree medical benefits and pension benefits, he said.

And, if employers want to establish a minimum service eligibility requirement for retiree medical coverage, the wording should be significantly different from the eligibility requirement wording for pension benefits. That will demonstrate to a court that the employer intended to treat the two benefits differently,

he said.

The wording in financial statements also can work against employers' arguments that the benefits are not vested, if employers are not careful.

Retirees could argue that footnotes in the statements that employers must include to comply with the Financial Accounting Standards Board's rule on disclosing the company's retiree medical benefit liabilities means the benefits are vested.

To defuse that argument, employers should note in the footnotes that the disclosures are being made "due to accounting purposes, not legal purposes," Mr. Casciari recommended.

All employers must specify in plan documents which company

representatives may amend health plans and what procedures they will follow, he said, noting a case before the U.S. Supreme Court that threatens the myriad health plan modifications employers have made in recent years.

The high court is scheduled to hear opening arguments in that case, *Curtiss-Wright Corp. vs. Frank C. Schoonejongen et al.*, this week.

The Lyndurst, N.J.-based defense contractor reserved its right in plan documents to amend its retiree health plan. But, the 3rd U.S. Circuit Court of Appeals ruled the company's reduction of retiree health benefits violated federal benefits law because its plan documents did not contain the appropriate plan amendment

language (*BI*, Oct. 3, 1994; Jan. 10, 1994).

"Appellate courts have tremendous sympathy for retirees," Mr. Casciari said.

Other measures that will help ensure employers' plan changes will be upheld in court include:

- Not linking the benefits to Medicare.
- Specifying in unambiguous language what coverage and coverage levels are being provided.
- Including a statement in plan documents that plan interpretations by unauthorized personnel are ineffectual. "Some human resource people tend to overstate things."
- Adequately training personnel who are authorized to interpret plan documents. **BI**

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More employment practices claims seen

By **DAVE LENCKUS**

CHICAGO—A formal program for handling workers' employment-related claims is the best chance employers have to control costs in battling the next round of such complaints, an employer attorney says.

Avoiding or cost-effectively resolving those claims, which likely will center on alleged violations of federal benefits and disability laws, "deserves the same amount of attention as other employment issues," said attorney Thomas J. Piskorski, a partner with Seyfarth, Shaw, Fairweather & Geraldson in Chicago.

"You're looking for early signs—not spending \$200,000 on every lawsuit," Mr. Piskorski said

at the Benefit & Employment Law Litigation conference, sponsored by the American Conference Institute in Chicago last month. "Claims administration is the best area to focus on."

Employers already have had some success minimizing their costs for age- and pregnancy-related sexual discrimination claims by focusing on handling such claims internally, he noted.

During the next few years, employers can use the same process to successfully handle an expected growth in the number of claims that will allege violations of the Employee Retirement Income Security Act of 1974 and the Americans with Disabilities Act, Mr. Piskorski said.

To employers' advantage,

ERISA requires employers to establish a procedure to handle such claims, which must be exhausted before claimants can bring them to court.

ERISA gives employers great leeway in designing those procedures, he said.

And, courts will defer to a claims administrator's decision as long as it is not arbitrary and capricious, "which gives the employer an enormous advantage in getting out of a lawsuit quickly and cheaply and as a winner," Mr. Piskorski said.

An exception may arise if the claims administrator is a company executive who holds some responsibility for maximizing company profits. Especially in cases involving huge claims, some courts have

not deferred to the administrators' rulings because the courts believed there were conflicts of interest.

Still, employers should review claims procedures to discover where they should be fixed, Mr. Piskorski said, outlining a list of standards by which courts measure all claims procedures.

Topping the list is fairness, or ensuring the claimant "got a fair shake."

Courts want the procedures to produce what Mr. Piskorski called "a high-quality decision."

That means the claimant was given ample opportunity to explain his or her case and that the judgment was clearly explained to the claimant.

Giving claimants plenty of opportunity to file any and all evi-

dence in support of their claims not only demonstrates fairness to a court, it also could strongly weigh in the employer's favor if the claimant tries to introduce new evidence at trial, Mr. Piskorski said. In those cases, the court may not allow new evidence.

Before a decision is rendered, the claims administrator also should consider conducting a hearing. Although that may be costly and time-consuming in the short run, it further demonstrates to a court the fairness and quality of the claims administration process, Mr. Piskorski said.

However, he recommended that such hearings be held at the administrator's discretion and not automatically afforded to all claimants.

Mr. Piskorski also warned against failing to provide a claimant a formal written decision.

Employers should review claims procedures to discover where they should be fixed, says Thomas J. Piskorski.

Many claims administrators communicate their decisions over the phone or in one-line letters, he said.

"That's not quality," he stressed. "When that decision gets in front of a federal judge, your chance of having a decision giving deference to you is zero."

The claims administrator's decision instead should be a carefully thought-out explanation that the court is "very reluctant to second-guess and mess with," he said.

It should cite the plan provisions upon which the administrator relied to deny a claim against the employer and an explanation of why a claim is ineligible under those provisions.

The administrator also should cite prior decisions that support the current one.

Mr. Piskorski said that an employer he currently is defending for denying a claim provided the claimant a 35-page explanation that addressed every point the claimant raised.

That case still is being litigated. For disputes involving complicated issues, an employer should consider seeking legal advice, Mr. Piskorski suggested. If the case moves to the courts, the employer at least can argue it sought outside help to resolve the matter.

However, he stressed that legal counsel should be considered only on a case-by-case basis.

In addition, Mr. Piskorski emphasized that many courts do not consider legal advice in such cases as privileged communications, which means the claimant can use it as evidence. Those courts reason that the claims administrator cannot keep such legal advice confidential because the administrator is a fiduciary whose function is to act in the claimant's best interest.

"It's something you really need to be aware of," he said.

Even before a claim is filed, employers can bolster their chances of quickly and cheaply dispensing with claim disputes.

"I can't tell you the number of lawsuits I get (to defend) because a provision of an SPD is screwed up," said Mr. Piskorski, referring to summary plan descriptions.

Continued on next page

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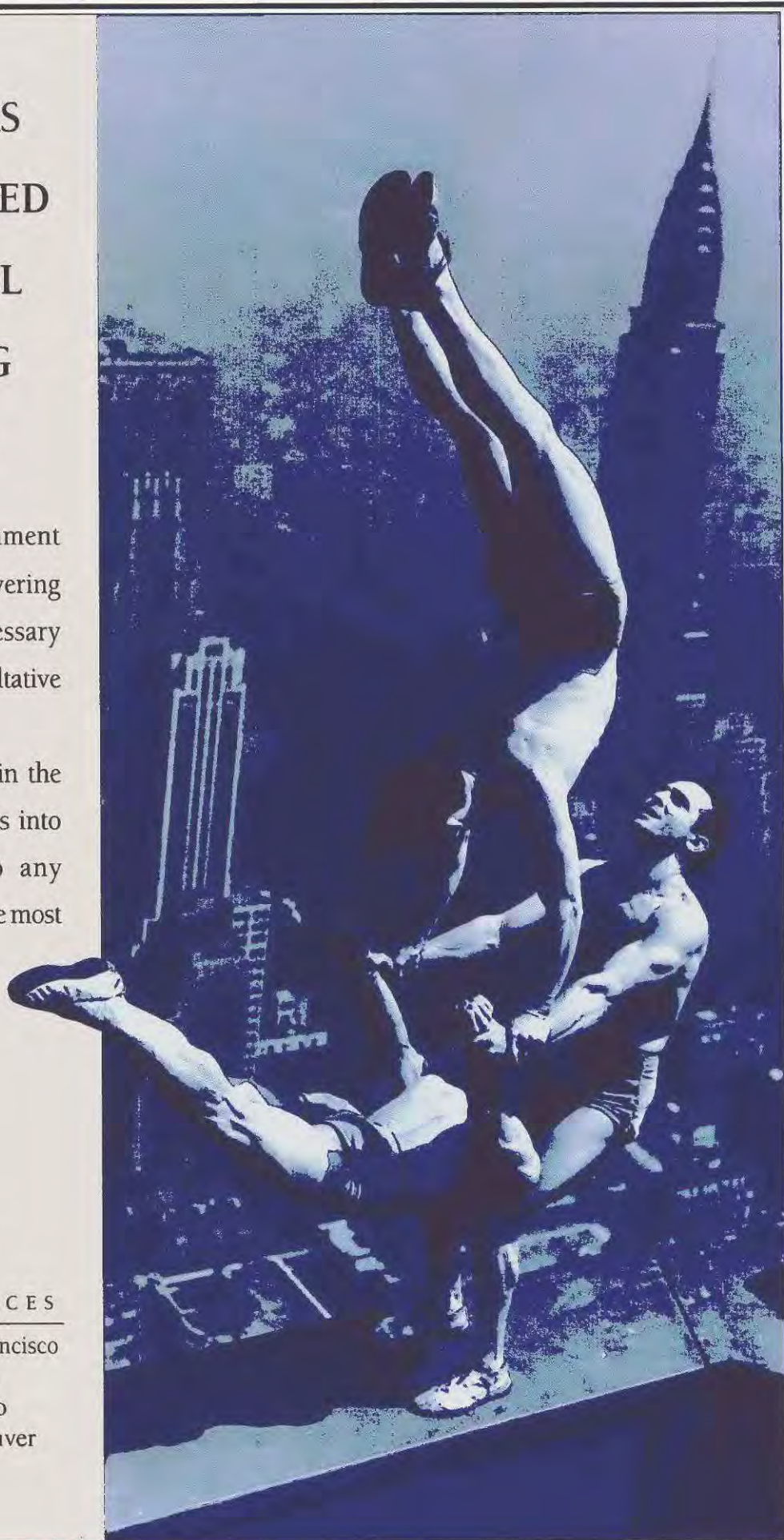
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Help on ADA compliance available to employers

By DAVE LENCKUS

CHICAGO—The Americans with Disabilities Act can be an inexpensive catalyst for employers to review and redefine jobs throughout their companies so they all add value to the organization, an employer attorney says.

The effort can be a kind of corporate cleansing process, though employers don't have to face it alone, according to William R. Sullivan Jr., a partner with Franczek Sullivan Mann Crement Hein & Relias in Chicago.

"It's very difficult for employers to get their hands around (the ADA) so they can understand it and comply with it," Mr. Sullivan said at the Benefit and Employment Law Litigation conference, sponsored by the American Conference Institute in Chicago last month.

But, the threat of not complying with the law is real.

ADA-related claims accounted for nearly 19,000, or about 20%, of the more than 91,000 new cases filed with the Equal Employment Opportunity Commission in fiscal year 1994, EEOC figures show.

The impairments most often cited in the 1994 claims involved:

- Back problems, which accounted for nearly 7,500 cases, or 19.6% of the total.
- Neurological problems, almost 4,700 cases, or 12.2%.
- Emotional and psychiatric problems, more than 4,300 cases, or 11.4%.

The number of such cases that moved from the EEOC hearing stage to the courts increased about sixfold last year to about 270 cases, Mr. Sullivan said.

"You, as an employer, are going to have to be somewhat imaginative in how you deal with disabilities," he said.

Among the concepts under the ADA that employers and the courts are struggling with in determining whether an employer has complied with the act is how to determine whether a disabled job candidate is qualified to perform what the act calls "the essential functions of a job."

Some situations, like a job candidate missing an extremity who is applying for an accounting position, for example, will be easier to deal with than others, like an insulin-dependent applicant for a

truck driving position.

An employer can fairly easily determine the accountant applicants' qualifications by, for example, requiring that the successful candidate have a certified public accounting designation, Mr. Sullivan said.

Federal regulations, though, prohibit insulin-dependent persons from driving commercial trucks, he said.

Employers have to determine the responsibilities the job holder will have and the physical, motor and mental capabilities they must possess "to get the job done."

"This act is going to make you pay attention to job descriptions," Mr. Sullivan said. "It doesn't require that, but it's smart to do."

Indeed, conducting such an exercise throughout the organiza-

tion to determine what each employee should be doing and what is wanted from each position could be enlightening, Mr. Sullivan said.

"It'll force you to look at jobs

ADA-related claims accounted for about 20% of the more than 91,000 cases filed with the EEOC in fiscal 1994.

and see if they're all adding value to the enterprise," he said.

Employers may find that many jobs have changed gradually over time and that they are substan-

tially different from the company's own description of those jobs.

While those efforts may help employers more clearly understand whether a disabled job candidate can perform the essential functions of a job and how such candidates should be accommodated in the workplace, employers still may need additional help.

A "very, very helpful" organization is the Job Accommodation Network, Mr. Sullivan said. The federal program is a clearinghouse of ideas on how to accommodate employees with disabilities (BI, Oct. 17, 1994).

The information JAN provides also includes names and addresses of employers using the various approaches.

"They don't always hit the nail on the head, but they are very

good and very forthcoming with ideas," Mr. Sullivan said.

The cost: "They want to know what you're doing," he said.

The toll-free number for JAN is 800-526-7234.

Mr. Sullivan also suggested consulting with medical experts, occupational therapists and industrial practices experts on how to accommodate disabled workers best.

"It's money well spent," he said. "Even \$1,000 is cheap compared with litigation costs."

And, the cost of making the accommodations generally is minimal, he said.

Half of the accommodations employers have made cost less than \$50, and 40% cost between \$50 and \$1,000, according to Mr. Sullivan. **BI**

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Claims

Continued from previous page

"Your SPD better have that claims procedure down perfect," including the time limits on filing claims and appeals to the program administrator's decision, he said.

In addition, to strengthen the employer's case in federal court that its claims administrator's decision was not arbitrary and capricious, the employer should state that the administrator has "discretionary authority to determine eligibility for benefits or construe the terms of the plan," he said.

Mr. Piskorski also advised employers to hire highly competent employees for their claims departments and to treat them well.

"That in the long run will produce the quality and fairness I've been talking about," he said.

Even though this department handles sophisticated and expensive issues, a claims administration position "is not a great job to have" because employers often treat these personnel badly, he said. **BI**

Reform

Continued from page 3 cases.

Although S. 687 would have abolished the imposition of joint and several liability in product liability cases, it would not have limited punitive damage awards. It did, however, contain one provision lacking in H.R. 10: a prohibition on product liability lawsuits involving capital workplace goods that were more than 25-years-old.

In addition to product liability, H.R. 10 also proposes a number of general civil justice reforms, including:

- Requiring the loser in certain federal civil cases to pay part of the legal costs of the winner. This would apply only to "diversity" cases, which involve state claims filed in federal court between parties from different states.

- Prohibiting the use of expert testimony that is not based on "scientifically valid reasoning." Expert testimony paid for on a contingency fee basis would also be prohibited, subject to judicial discretion.

- Asking states to require that attorneys in contingency fee cases reveal to clients the actual work performed and number of hours spent on that work.

The House Republicans' "Contract with America" also calls for curbs on certain securities suits, including encouraging the use of arbitration in such disputes, applying limited application of the loser-pays rule and limiting the right of "professional plaintiffs" to participate in class-action securities suits.

"To a lot of the business community, (H.R. 10) probably is preferable" to S. 687, said Lawrence Fineran, assistant vpre-sources, environment and regula-

tion for the National Assn. of Manufacturers in Washington. He added that NAM will support product liability reform measures when they are introduced in the Senate.

Mr. Fineran said the inclusion of limits, which he called "punitive proportionality," on punitive damages in product liability cases was perhaps the most important difference between H.R. 10 and the earlier Senate bill. He said that calling such limits "caps" was a "misnomer" because the punitive damages in cases where multimillion-dollar actual damages are awarded could still be

considerable.

"Uniformity is a key element, that goes without saying, but that cap on the damages is extremely important," agreed Peter Eide, manager-human resources, law and policy for the U.S. Chamber of Commerce in Washington.

"We'd like to remove the lottery mentality in this issue."

Mr. Eide declined to express a preference for one bill or the other. "We are very anxious that something get passed," he said, adding that the Chamber would like to get a "broad" product liability bill enacted.

The situation is much the same

at the Risk & Insurance Management Society Inc., said Paul Brown, the Society's director of government affairs. He noted that New York-based RIMS supported last year's Senate product liability reform bill and that the society hopes to release a white paper on product liability in the near future.

"If we could achieve even more reform this year, we'd be thrilled," he said.

While "the cap on punitives is obviously something" that many reform advocates want, the product liability reform measure has

Continued on next page

Odds of tort reform vote unknown: Risk managers

By JERRY GEISEL

WASHINGTON—Republican control of Congress improves the chances that tort reform legislation will be enacted this year, though a vote is by no means certain, risk managers say.

Despite a commitment by Republican leaders to push for substantive federal tort reform legislation—as expressed in their "Contract with America"—risk managers say there are significant obstacles to passage of such legislation.

The most significant obstacle: fierce opposition from the plaintiffs bar.

"I'm not very hopeful that we'll see meaningful tort reform at the federal level. The plaintiffs bar is too powerful," said Steve Finley, risk manager for the city of Lakewood, Colo.

While tort reform is part of the "Contract with America," some risk managers question if broad congressional interest can be sustained.

While "I think the chances of enactment have improved, I'm not sure tort reform is really that high on the congressional agenda," said Richard Inserra, assistant treasurer at Union Carbide Corp. in Danbury, Conn.

Others say congressional action may stall because the business community has not done enough to push for tort reform.

"I haven't seen enough of an effort being made on the part of business," said Harold Lang, director-insurance and risk management for the Kohler Co., a diversified manufacturer in Kohler, Wis.

Some risk managers also say that the soft liability insurance market will make it more difficult to pass legislation.

"Absent a crisis (in the insurance market), it is difficult to change things," said Mr. Finley.

Other risk managers, though, are more optimistic.

Some say the chances of federal legislation are improved because of growing public recognition of excesses in the tort litigation system.

"The average American is sick and tired of what has happened with the judicial system. People are fed up. There is less tolerance for nuisance-type claims and flagrant awards," said Susan Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C.

Other risk management executives are optimistic about tort reform's chances in Congress because they believe Republicans are anxious to prove that they can fulfill campaign promises.

"Republicans want to show that they can govern and fulfill a promise," said Frank Locke, administrator of risk and insurance at Oklahoma Natural Gas Co. in Tulsa.

Some risk managers say the likelihood of congressional action on tort reform legislation will depend on how much of an effort employers put into lobbying Congress.

"Our job is to educate legislators and get them up to speed on this issue. I'm optimistic that, once educated, Congress will pass tort reform legislation," said Cheri J. Hawkins, assistant treasurer and director of insurance at Tacoma, Wash.-based wood products company Weyerhaeuser Co.

Regardless of their opinions on the likelihood of congressional action, risk managers agree that the No. 1 tort reform measure should be the elimination of joint and several liability for non-economic damages.

"Even if you are 1% liable, you can be held liable for the entire amount. The party with the deepest pocket gets stuck," said Ms. Werner.

Some would like to see congressional action focus on curbing what risk managers describe as the flood of costly-to-defend nuisance suits.

"I'd like to see more done to stop or discourage frivolous suits," said Mr. Inserra, adding that plaintiffs attorneys should pay at least a portion of defense costs for suits found to be frivolous.

Mr. Inserra also said the area of punitive damage awards is ripe for reform.

He suggested, for example, barring plaintiffs attorneys from sharing in punitive damage awards, which he said are a punishment for the guilty party, "not a reward for those who file suit."

Others say legislators need to channel suits involving smaller accidents and injuries away from the courts.

"We need more mediation. Not everything should be thrown into the court system," Ms. Werner said.

Finally, risk managers believe caps—at least in the case of non-economic losses—need to be imposed on damage awards.

"The lack of limits encourages attorneys to sue rather than settle cases. People go for the big score," Mr. Finley said.

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to be looked at as a "package," said Melissa Wolford, director-federal affairs for the American Insurance Assn. in Washington. When reforms such as restrictions on admissible expert testimony are taken into account, the AIA views H.R. 10 as a stronger piece of legislation than S. 687, she said.

Victor E. Schwartz, a partner in the Washington law firm of Crowell & Morning and a longtime advocate and lobbyist for a uniform product liability code, predicted that reform proponents would also push for some limitations on punitive damage in an upcoming Senate product liability bill sponsored by the same bipartisan group that shepherded S. 687 last year.

"Meaningful tort reform is something that provides meaningful predictability," such as a specific statute of repose or some limits that can be stated on the amount of punitive damages, said Mr. Schwartz. In contrast, juries can "speculate all over the place" as to what constitutes clear and convincing evidence, he said.

He predicted that the "loser pays" provision of H.R. 10 would prove to be the most controversial part of the bill, adding that it would have extremely limited application. He also predicted Congress will be more willing to take up other civil justice reform measures, such as a ban on multiple

punitive damages, as the session progresses.

Mr. Schwartz called the odds of passage "good" but with three provisos: "that the business community stay united; that the appetite for reform remain reasonable; and that people watch the calendar. If the calendar slips away, and if we're discussing these things in similar vague terms a year from now, there will be a problem."

Another longtime advocate of product liability reform had similar caveats.

Tom O'Day, associate vp in the Alliance of American Insurers' Washington office, said there is a "much higher probability that we can get something through Congress" if the bill has strong bipartisan support and it is seen "as reasonable and fair to both manufacturers and consumers." He added that if the bill is not seen as good public policy, "I don't think it can make the 60-vote cutoff" necessary to end a filibuster.

To win approval, the bill must not be viewed as something that will deprive people of their legitimate rights but rather as a measure that will make the "system more predictable and fair," he said.

"We still need that hurdle of 60 votes," agreed NAM's Mr. Fineran. "There's a perception that it's a done deal, which it isn't."

Although the Chamber's Mr.

Product liability reform: why and how



Source: The Administrative Office of the U.S. Courts

▶ Punitive damages only when claimant shows by "clear and convincing" evidence that harm was caused by malicious conduct.

▶ Punitive damages capped at three times actual damages or \$250,000, whichever is higher.

▶ No joint liability for non-economic losses; each defendant responsible only for its portion of actual harm.

▶ Product sellers can be held responsible if proved negligent or if negligent manufacturers can't be found or can't pay.

Eide said he thinks there's an "excellent chance" that a product liability bill would gather enough support to override any presidential veto, Mr. Fineran wasn't quite as optimistic.

"The administration has never said where they are on this issue. The business community would like to submit a bill to the president that he could sign," he said.

No lobbyist could hazard a guess as to how many additional product liability cases would end up in the federal courts if H.R. 10 becomes law. According to the Administrative Office of the U.S. Courts, 18,959 product liability personal injury suits were filed in

federal district courts during the 12 months that ended Sept. 30, 1993, the last period for which data is available. That repre-

sented a more than 52% increase from the 12,437 such suits filed during the same period a year earlier.

GRAPHIC BY KIM ROME

BI

Bill would offer tax break on long-term care

By JERRY GEISEL

WASHINGTON—Group long-term care coverage—a small but rapidly growing market—would receive an important new tax break under legislation introduced by Republican leaders in the House of Representatives.

Provisions tucked into the "Contract with America," would clarify tax law to make clear that employer-provided group long-term coverage is a tax-deductible benefit.

Specifically, the Republican proposal, H.R. 8, would allow employers to deduct as a business expense the premiums they paid for long-term care insurance policies that provide benefits to workers of up to \$200 a day, while employer-paid premiums would not be included as taxable income to employees.

The \$200-a-day maximum, which is well below the limits typically offered through commercial policies—would be indexed beginning next year to annual increases in the medical care components of the consumer price index.

In addition, employees would be allowed to remove—without paying taxes—funds from 401(k) plans and individual retirement accounts to pay for long-term care premiums.

Currently, the tax status of long-term care coverage is murky.

Because of this uncertainty in the tax status,

employers making the coverage available typically require employees to pay the full premium with aftertax dollars.

Most long-term care programs are financed solely by employees through payroll deductions or direct billing. Even without any tax breaks, employer-provided long-term care coverage is rapidly growing.

A survey by the Health Insurance Assn. of America in Washington found that in 1992, the most recent year for which complete information is available, slightly more than 500 employers offered long-term care coverage to employees. In 1992 alone, 218 employers began to offer coverage, up from 153 organizations in 1991 and only 81 in 1990.

Despite the growth in the group long-term care market, typically when an employer offers coverage only a relatively small percentage of its employees—generally 5% to 10%—opt for the program.

Variables that affect employee participation include the affluence of an employers' workforce as well as the effectiveness of its communications program, said Malcolm Cheung, general director of group long-term care at John Hancock Mutual Life Insurance Co. in Boston.

Employees purchasing coverage through employer-provided plans on average are 42 years old, according to the HIAA study.

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Tom Moore (l) and "Barney" Runcie at the 19th Hole at Southward Ho Country Club

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Douglass

Continued from page 2

Mr. Douglass was appointed Arkansas' commissioner of insurance in 1990 by then-Gov. Bill Clinton. His election to NAIC president last month quickly follows a six-month stint as vp of the insurance regulators' group.

His predecessor as president of the NAIC, David Walsh of Alaska, calls him a fast learner who absorbed the intricacies of the NAIC in half the usual time.

Mr. Douglass says that in several areas the NAIC has scored recent successes that he hopes to build on this year.

First, he wants to coordinate state regulatory reaction to marketplace misconduct by insurance companies. It will be "quite a challenge because market conduct laws vary substantially from state to state," he said.

The NAIC last year coordinated an agreement in which Metropolitan Life Insurance Co. paid \$20 million in fines and made full restitution to customers who had been misled by its agents in several states.

On the accreditation front, Mr. Douglass said he does not think a market conduct standard will be developed soon.

But he does hope that the Arkansas Insurance Department will succeed in its first attempt to join the 44 already accredited.

The "true measure" of the program's widespread acceptance is that fact that even non-accredited states—including Arkansas—have passed laws to move them closer toward accreditation, he said.

The NAIC's accreditation review team is expected to visit Arkansas early this year, said Mr. Douglass, who held off requesting a review until department analysts had more experience.

Though a booster of the accreditation program, Mr. Douglass has demonstrated a willingness to listen to its critics, too.

Supporters of Vermont's stalled effort to become accredited, for example, complain that the NAIC does not understand alternative risk transfer entities like captives and risk retention groups and is not flexible enough in dealing with them (BI, Oct. 3, 1994).

Mr. Douglass supports assigning a subgroup to specifically study alternative risk financing this year.

State legislators and a few insurance regulators prefer interstate compacts to achieve more uniform regulation rather than the accreditation program, which has rapidly expanded in recent years.

Mr. Douglass also has demonstrated a willingness to keep an open mind about interstate compacts, though their widespread use could diminish the NAIC's role.

"It is an interesting concept and worth looking into," Mr. Douglass said, though "a lot of questions remain."

As the only commissioner with an ex-boss in the White House, Mr. Douglass keeps an especially sharp eye on the 104th Congress.

The Republican election victories last fall in Congress and the statehouses created an unusually favorable time for states to act on interstate compacts (BI, Dec. 12, 1994).

In addition, the diminished role of Rep. John Dingell, D-Mich., is expected to decrease pressure for federal solvency regulation and increase support for state-based solutions like compacts.

Republicans' anticipated distaste for federal insurance regulation is considered especially good news by state insurance regulators.

Other top federal legislative priorities remain, though, including major changes in Employee Retirement

Income Security Act. "ERISA is one of the largest roadblocks to effective health care reform," Mr. Douglass said.

In a 1994 position paper, the NAIC found "weaknesses and gaps" in ERISA's treatment of employer-sponsored health plans, especially those plans claiming to be federally governed (BI, Sept. 19, 1994).

As for health care reform in 1995, he urges watchers to keep their eyes on the states, though Congress may provide some incremental reform.

The NAIC has had some successes on Capitol Hill, notably lobbying for federal insurance fraud provisions that ended up in the crime bill the president signed into law last year. The bill primarily focused on internal fraud, in which criminal acts like embezzlement could threaten a company's solvency, rather than policyholders' fraud (BI, Aug. 8, 1994).

Another emerging national issue is the appropriate role for state insurance regulators to play in major insurance company mergers and acquisitions, such as the Zurich Insurance Group-led deal for Home Holdings Inc. (see story, page 2).

Speaking generally, Mr. Douglass said a regulator must make sure protections are in place primarily for current policyholders and secondarily, for unsophisticated individual stockholders. A regulator needs to assess the acquiring company's track record and goals and may have to require the parent company to provide guarantees or reinsurance to ensure solvency, he said.

Mr. Douglass also has goals for the NAIC's own internal operations.

He plans to continue Mr. Walsh's commitment to harmonization of state insurance laws and automation changes that will reduce cost and increase efficiency for insurers and regulators alike.

New automation changes include testing a producer database and development of an automated system for rate and form filings, dubbed SERFF. The NAIC also is moving away from heavy dependence on a mainframe computer to a more flexible client/server system to help state regulators communicate better with each other and the NAIC.

Mr. Douglass also said he plans to ask NAIC regulators to re-evaluate its current use of informal technical resource groups, which replaced more established advisory groups. Some regulators have complained that the new arrangement is too cumbersome and may involve too many people.

He also favors the NAIC's recent emphasis on openness in developing its budget and pledges to continue it. He does not, though, favor modifying the group's by-laws to ensure open budget meetings in the future, as urged by A.M. Best Co., among others.

Mr. Douglass gets high marks from employers and insurers in his state, in addition to his regulator colleagues.

"Lee Douglass is a very competent and capable individual," said Ron Russell, executive vp of the Arkansas State Chamber of Commerce and Associated Industries Inc. in Little Rock.

He played "an extremely important role" in helping the state Legislature renovate its workers compensation system two years ago, Mr. Russell added. "He's a fair individual who pulls no punches. I think he is respected equally by management and labor, which is a pretty tall order."

Mark Skinner, regional senior counsel for the American Insurance Assn. in Austin, Texas, praised Mr. Douglass and his department staff for their willingness to listen. "If we make our case, he is very reasonable in addressing our concerns." **BI**

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INTERNATIONAL

Art theft increase blamed on organized crime

By ADRIAN LADBURY

LONDON—Art collectors, police and insurers are increasingly blaming organized crime for the rapid growth in fine art theft in Europe.

In the United Kingdom, for instance, 60 valuable artworks were stolen in the second half of 1994 alone—the average annual number of thefts from 1989 to 1993 was only 80—according to the U.K. Museums and Galleries Commission. The agency had no figures on the value of those works.

The most recent theft occurred Jan. 7, when a 16th century masterpiece by Tiziano Vecellio, or Titian, was taken from the stately Wiltshire home of Lord Bath.

Worldwide, some \$3 billion worth of art and valuable objects

currently are missing, according to the Art Loss Register, a database in London set up specifically to register fine art and antiques. The data base is used by international police agencies, insurers, dealers and owners to trace stolen goods.

Caroline Wakeford, general manager of the register, said experts blame much of the recent spate of thefts in the United Kingdom and Europe on ransom hunters, political groups and especially organized crime.

"The Federal Bureau of Investigation in Washington recently asked for access to our database so they could link organized crime and the laundering of money via art. There is certainly a link between art thefts and drugs," she said.

A spokeswoman for the FBI said

it has long recognized the connection between art theft and organized crime and has established links with many U.S. and international art agencies and foundations to help fight art theft. It has also set up its own database, called the National Stolen Art File, "to help law enforcement agencies resolve this ever-increasing problem."

The number of art theft cases dealt with by the FBI has increased steadily since the early 1980s. In 1983 it dealt with only 18 cases, compared with just under 60 in 1992. The bureau also calculates that in 1992 almost \$50 million worth of art was stolen in cases it dealt with in the United States, compared with less than \$10 million in 1983.

The insurers of the latest high-

Continued on next page



AP/WIDE WORLD

Lord Bath displays a copy of the Titian painting stolen Jan. 7 from his home.

P&I club makes ferry disaster settlement offer

By MARIA KIELMAS

Survivors and relatives of the victims of the "Estonia" ferry disaster in the Baltic Sea have been offered an estimated \$53 million to \$67 million in compensation by the Norwegian protection and indemnity club, Assuranceforeningen Skuld, which insured the vessel's third-party liabilities.

The 400 million to 500 million Swedish kronor settlement offer is higher than the maximum 275 million Swedish kronor (\$36.6 million) that the company is legally obligated to pay under Swedish maritime law, but is considerably smaller than the compensation that might have been

offered for a similar disaster in some countries, like the United States.

"There is a different tradition in Scandinavia," said Espen Komnaes, an Oslo, Norway-based lawyer who represents many of the victims and survivors. Scandinavian laws do not include compensation for pain and suffering or punitive damages, he explained. "There is a strong belief that life is not substituted by money."

The compensation, which would apply to more than 80% of the potential claimants, was hammered out by a "negotiating group" of eight plaintiffs' lawyers representing the various national classes of claimants, including

Swedes, Estonians and Norwegians. This group then reported to a "reference group" of 20 plaintiffs' lawyers.

Most of the other claimants consist of crew members, who are represented separately.

The settlement offers have been mailed out to approximately 3,200 people, who have until March 20 to respond.

The Estonia, a German-built roll-on, roll-off ferry, capsized and sank within five minutes on a nighttime voyage on the Baltic Sea, resulting in the deaths of more than 850 of the nearly 1,000 passengers and crew (BI, Oct. 3, 1994).

Compensation offers have been

divided into 10 categories: one for the survivors and nine categories of family relationships for the victims' relatives.

Swedish and other Western European national survivors would be paid a lump sum of 150,000 Swedish kronor (\$19,950) on average. Estonian survivors would be paid 65% of this total, or about \$13,000, reflecting the lower cost of living in Estonia.

The passengers aboard the Estonia represented 17 different nationalities, though none were U.S. citizens.

Lawyers for some Estonian survivors have argued that Estonians should receive the same compensation as Swedes and other na-

tionalities. They were expected to file claims for the higher compensation with the P&I club in Sweden on Jan. 11. The average annual wage in Estonia is the equivalent of 20,000 Swedish kronor (\$2,660).

The largest of the nine levels of compensation to survivors would be for children orphaned in the disaster. They would each receive an average lump sum payment of 500,000 Swedish kronor (\$66,500)—325,000 Swedish kronor (\$43,225) in Estonia—and approximately \$500—about \$350 in Estonia—monthly until they reach the age of 19.

The lowest compensation level

Continued on page 51

Insurers regard plummeting peso as a temporary 'bump in the road'

By ROBERTO CENICEROS

Never mind that the peso's steep tumble could trigger a severe retraction of Mexico's economy.

Insurers that invested heavily in recent years, anticipating an expanding Mexican economy, are continuing with their long-term plans to offer new products for indigenous companies and multinationals operating south of the border.

The peso's nearly 40% decline as of last week, which caused stocks to tumble and some manufacturers to hold off on expansion plans, is merely a temporary problem that does not wipe out the long-term potential for reaping premiums, insurers operating in Mexico say.

"We are not frightened," said Jose Antonio de Sousa, chief executive officer of Zurich Insurance Co.'s operations in Mexico City. "In fact, we anticipated a certain devaluation because we knew the peso was overvalued. What we didn't anticipate was the intensity (of the peso's decline). But we will not change any of our plans to expand."

Had Zurich guessed how intense the decline would be it could have fared better when it recently moved in start-up capital for a new group life insurance unit, Mr. de Sousa said.

But the fact that it moved the capital, even after the peso began to tumble, is a sure sign the insurer is committed to the market, he added.

"1995 in economic terms will be a lost year," Mr. de Sousa said Thursday after hearing a Mexican economist state the country faces a severe recession. "But we are not planning for 1995. Our strategic planning is for five years."

Aside from the group life subsidiary Zurich is developing in Mexico, the insurer also owns a 51% stake in a commercial property/casualty unit

called Zurich Chapultepec. Mr. de Sousa said Zurich currently is talking with shareholders and the Ministry of Finance for approval to eventually buy the remainder of the company.

Mr. de Sousa also predicts growth and expansion of a Zurich representative office in Mexico City offering reinsurance for Mexican and Latin American insurers.

Despite dashed hopes for immediate growth in Mexico's economy, several insurers remain devoted to prospects in Mexico.

"We're comfortable and confident the (Mexican) market and all its potential still exists," said Joseph Graziano, executive vp and director of the international division of Reliance National Insurance Co. in New York. "We're devoted to developing the same niche markets (in Mexico as) we have in the United States."

To develop a market share, Reliance National in 1993 bought a partnership in a small Mexican auto insurer, now called Seguros Renamex (Reliance Nacional de Mexico). Last October, Reliance National increased its ownership to 100% and could eventually drop consumer auto insurance, Mr. Graziano said.

The company has bigger plans.

Any day now, Mr. Graziano expects to receive permission for Reliance National to become the first foreign insurer to offer directors and officers liability coverage in Mexico, he said.

"It's a Mexican product," he added. "It's not a translation of a U.S. policy."

Reliance National also plans to offer professional liability coverage for attorneys and physicians and risk management services in Mexico.

Mr. Graziano called the peso devaluation disap-

Continued on page 51

U.K. convictions may alter stakes for safety duty

By CAROLYN ALDRED

HAMPSHIRE, England—Companies and their directors may face a greater exposure to corporate manslaughter charges following the first corporate manslaughter conviction by a British law court and proposals to revise the law on manslaughter.

British legal history was made last month in Winchester Crown Court in Hampshire when leisure company OLL Ltd. and its managing director, Peter Kite, were convicted of manslaughter after four teenagers died during a canoe trip planned by OLL Ltd. Mr. Kite was jailed for three years and his company was fined £60,000 (\$93,786).

Although the case does not change the law on manslaughter, it is expected to alert companies and directors to corporate responsibility for safety.

"It changes things in that it is the first successful conviction," said Jonathan Wood, a partner with London-based law firm Clyde & Co. "Directors and shareholders should be on their guard."

Mr. Wood, who used to practice criminal law in Manchester and

now specializes in insurance law, said he expects prosecutions to remain rare because it is difficult to convict companies.

Companies can be convicted only if prosecutors prove that one employee did everything necessary to constitute manslaughter. And that is often difficult to do, especially with large companies.

Meanwhile, the Law Commission, which is reviewing the law of manslaughter, is expected to publish proposals early this year that would make it easier to secure a conviction by removing the onus on prosecutors to prove that one employee was fully responsible for the company's actions, lawyers say.

Any changes in the law would of course be of interest to risk managers.

"I don't think that there's a lack of awareness of the potential for imprisonment for (corporate) criminal negligence, but it hasn't been an issue" that British executives and risk managers have had to confront, said Alan Fleming, executive director of the Assn. of Insurance & Risk Managers in Industry & Commerce.

Continued on page 51

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INTERNATIONAL

Art theft

Continued from previous page
profile U.K. loss, the stolen Titian painting, say there is mounting evidence that this and other recent heists could be the work of organized gangs affiliated with eastern European gangs that have started to move in to western Europe.

"It is very difficult to speculate at the moment on who may be responsible for this robbery, but there are a lot of people who now make a connection between the great increase in art thefts in the United Kingdom and continental Europe and the rise of organized crime, especially in Eastern Europe," said David Scully, London market manager for Nordstern Art Insurance Ltd., the London subsidiary of Nordstern Allgemeine Versicherungs A.G. in Cologne, Germany.

Nordstern, which along with Lloyd's of London syndicate 33, managed by Hiscox Syndicates Ltd., the leading London and international fine art insurer, fully insures Lord Bath's Longleat estate in West England.

Mr. Scully said that he was unable to give a true value for the Titian, "Rest on the Flight into Egypt," but said that most sources

shire police on the case.

Shortly before Christmas, a painting by Dutch master Rembrandt, of his mother, was stolen from the home of Lord Pembroke, near Salisbury, also in Wiltshire. It has not been recovered yet.

The chances of retrieving the Titian painting were improved last Monday by the decision of the Scotland Yard fine arts and antiques squad to assist Wiltshire police with the case.

The specialty squad, which is well-regarded throughout the world for its expertise in art retrieval, was instrumental in the recovery of Edvard Munch's "The Scream," which was stolen last February from Oslo, Norway (BI, Feb. 21, 1994).

Mr. Scully said that the cost of fine art insurance will certainly increase as a result of the recent spate of thefts and also predicts that insurers will look much more closely at the way they value the artifacts covered.

"You will probably find that insurers will be more particular and analyze each risk a lot more carefully. Probably (fewer) risks, especially in Lloyd's, will be placed on a sum-insured basis where underwriters really have no knowledge of the true risk. I think we will see a trend toward underwriters in-

'I think we will see a trend toward underwriters insuring (art) on a full-value basis and so the premium will go up, if not necessarily the rate,' says David Scully.

"appear to agree" on about £5 million (\$7.82 million).

The thieves also took two other paintings, which Mr. Scully described as a "contemporary copy of a minor Dutch artist" and a painting by "a minor Venetian artist." He was unable to give full values for these paintings, but said neither exceeded "five figures."

Soon after the robbery was discovered, the insurer offered a reward of £100,000 (\$156,380) for the return of the paintings. Mr. Scully believes that the reward will greatly increase the chances of retrieving the paintings.

"You can usually be certain that those that scaled the wall will not be the final recipients of the paintings, and so the reward could be useful. People do let things slip over a pint in the pub," he said.

The underwriter said that Lord Bath's security measures are as good as any installed at a country mansion in the United Kingdom. He said the thieves, who broke in through a window after smashing a security light, set off the house alarm system. Security guards made it to the scene of the crime quickly, but not soon enough to prevent the thieves' getaway.

Mr. Scully said that loss prevention measures are constantly monitored and improved at country mansions and museums with valuable collections. However, he said that it will always be difficult to protect such houses, because they are usually so remote and large, have many access points and are often open to the public during the day.

On Sunday, Jan. 8, hours after the Titian robbery, burglars broke into the house of writer Auberon Waugh near Taunton, Somerset, less than 100 miles west of Longleat. Local Somerset police said the two raids may be connected and are working with Wilt-

shire police on a full-value basis and so the premium will go up, if not necessarily the rate," he said.

Ms. Wakeford also believes insurers will tighten up risk assessment methods.

"I think insurers will look at getting really good details about each object insured. Many more insurers and policyholders have been looking at and using professional photographers over the last few months. The better information you have prior to the robbery, the better your chances of recovery," said Ms. Wakeford.

One leading fine art underwriter said that loss prevention is constantly being improved in this area, but added that each time defenses are improved, the thieves find a way of overcoming them.

"There has been an increase in thefts across Europe. Most museums are relatively well protected, and there is an increased awareness of the need for physical protection. But most of these buildings are big and have weak spots. Some of them are clearly inside jobs, such as the theft of 'The Scream,' and are difficult to prevent," said Robert Read, fine art underwriter with Hiscox Syndicate 33.

"You tend to find it moves in a cycle," continued Mr. Read. "As protective measures are improved and claims decline, the criminals catch up and up go the thefts again."

Mr. Read added that two paintings by English painter J.M.W. Turner, stolen from the Schirn Kunsthalle in Frankfurt, last July, have not yet been recovered. The combined value of those paintings, insured by syndicate 33, is estimated to be \$30 million (BI, Oct. 21, 1994).

He said that it is unclear whether or not organized crime is involved with these thefts. **BI**

INTERNATIONAL

U.S. a leader in reinsurance: Study

By STACY SHAPIRO

LONDON—Ten countries dominate the world's \$150 billion non-life reinsurance market, a recent Swiss Reinsurance Co. report says.

The United States leads the world in reinsurance demand and its reinsurers collect the most premium of any country, the report shows.

The German reinsurance market is the second-largest in the world, followed by the United Kingdom and Switzerland, respectively.

Bermuda plays an important role, too, in that it is a larger market for U.S. cessions and retrocessions than London, Germany or Switzerland.

Surprisingly, auto insurance is the most ceded business in the world, followed by property, marine, aviation and liability insurance.

These conclusions stem from Swiss Re's SIGMA report on "Reinsurance 1992: A Stocktaking of Ten Countries," recently published in English. The study includes data from non-life insurance and reinsurance departments and associations published in the Canada, France, Germany, Italy, Japan, South Korea, Spain, Switzerland, the United Kingdom and the United States.

Together, these 10 countries accounted for 80%, or \$113.1 billion, of the world's total non-life reinsurance premium volume in 1992, the most recent year for which complete statistics were available.

Based on 1992 figures, the U.S. insurance industry leads the world in reinsurance demand with \$43.3 billion in premiums for cessions and retrocessions, which is 28.9% of worldwide non-life reinsurance premiums.

The United States also is the key supplier of reinsurance, with professional markets accounting for nearly half—\$30.6 billion—of the total

\$64.4 billion in 1992 premiums supplied by professional reinsurers in the 10 nations.

"Due to the home market's immense size of \$240 billion in premium income, encompassing 35% of the world's market in the non-life segment, America's insurance industry is primarily a nationally oriented business sector," Swiss Re's report said. "Surprisingly, the same also applies to the American reinsurance industry," though European-owned reinsurance subsidiaries in the United States account for 35% of the total U.S. market share.

Total premiums ceded in the United States were \$160.4 billion in 1992, though more than \$120 billion of this amount is so-called "intra-group" reinsurance. Of the \$40 billion in premiums actually ceded, a further \$12.4 billion goes to insurance pools and similar structures rather than professional reinsurers.

"These consist primarily of the compulsory pools in the lines of motor insurance and workers compensation but also include the government's harvest insurance and flood insurance programs as well as nuclear and aviation pools," said Swiss Re, crediting the Reinsurance Assn. of America for much of the U.S. information.

Of the \$11.9 billion that the U.S. market cedes abroad, Bermuda takes first place, receiving \$4.4 billion. This surpassed London, the leading reinsurance center in 1991. "A full half of this income, though, is intra-group business between U.S. insurers and reinsurance subsidiaries domiciled on Bermuda," the report said.

"In contrast to the boom in the early '80s, recent years have seen the establishment of first-rate companies that are financed by large insurers or brokers and are staffed by

experienced personnel," Swiss Re said of Bermuda.

There were 1,324 insurers with combined gross premiums written of \$15.1 billion registered in Bermuda at the end of 1992. At year-end 1993, the market had \$25 billion in capital, of which \$11 billion was held by captives and \$4.2 billion was held by catastrophe reinsurers. Catastrophe reinsurers' premium volume is expected to reach \$1 billion for year-end 1994, accounting for 15% of the world's catastrophe reinsurance, Swiss Re said.

Germany and Switzerland remain the key net suppliers of reinsurance, Swiss Re's report added. Of the 10 largest specialized reinsurers, five are German and one is Swiss.

German reinsurers' international dominance is in part attributable to the fact that its domestic insurance market has existed for some time and has been conducive to reinsurance, the report said. The German market's reinsurance demand is second only to the United States', accounting for \$23.8 billion, or 15.9% of worldwide non-life reinsurance premiums in 1992.

German underwriters cede more reinsurance than underwriters in any other country. German insurers retain 70.5% of their premiums,

while companies in the other nine countries retain an average of 80.6%. Germans, in fact, cede almost double that ceded by Japanese insurers, even though both markets have the same level of premium volume, the report noted.

Germany and Japan are alike, however, in that auto business is the "main pillar of the reinsurance business," the report said.

Germany is also a key supplier of reinsurance, accounting for \$27.2 billion of worldwide non-life reinsurance premiums, making it second only to the United States.

The United Kingdom is the third-largest supplier, with gross reinsurance premiums written totaling \$19.1 billion in 1992.

Domestic U.K. companies, however, retain 85.6% of their business, resulting in a low domestic demand for reinsurance. London market companies only retain 66.6%, however. "The majority of reinsurance placed in London comes from abroad," the report said, chiefly from the United States.

A total of 19 reinsurers in Switzerland showed gross premiums written in 1992 of \$7.9 billion, making it the fourth-largest supplier of reinsurance.

Japan accounts for 7.9%, or \$11.8

Key reinsurance markets

Gross premiums written (in thousands)

United States	\$30,643
Germany	27,236
United Kingdom	19,113
Switzerland	10,508
France	8,783
Japan	7,623
Italy	4,956
Canada	1,686
Spain	1,658
South Korea	910
Total	\$113,116

Source: Swiss Re

billion, of the world's non-life reinsurance demand in terms of premiums ceded in 1992. Japan's auto liability dominates cessions, primarily because the Japanese government assumes 60% of the ceded premiums on a quota-share basis. The remaining 40% flows into a pool that retrocedes the coverage to insurers.

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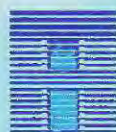
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INTERNATIONAL

Belgian hotel is insured for New Year's Eve fire losses

By DIGBY LARNER

ANTWERP, Belgium—Both property and liability exposures for the Switel Hotel—where a New Year's Eve fire killed six people and injured more than 150—are covered under policies from Sun Alliance & London Insurance P.L.C.

The Antwerp, Belgium, hotel is wholly owned by Queens Moat Houses, a U.K. property management company based in Romford, Essex, and is managed by the Bilderberg Group of Renkum, The

Netherlands.

Authorities are still sifting through the debris in the hotel's ballroom. Early eyewitness reports said the fire first took hold of Christmas decorations hanging in the ballroom and quickly swept through a crowded party at about 11 p.m. Some blamed lighted candles on a Christmas tree.

Martena Van Thello, wife of the Switel's manager, said she thought it was unlikely that the candles caused the fire.

She added that because assessors had only just moved in to ex-

amine the ballroom, it was still too early to pinpoint the exact cause or to say what the final bill for the damage may be.

The hotel has £3 million (\$4.7 million) in property insurance and £12.17 million (\$19 million) in public liability coverage, a Sun Alliance spokesman said. He added that 100 property claims had already been filed.

Sun Alliance may have to settle claims from the fire much sooner than would have been the case in Belgium only a few years ago. A 1992 law regarding fire and other

perils made two major changes aimed at speeding up Belgium's previously slow public liability claims procedure.

First, the law stated that the owners of any places that have public access must carry public liability coverage of at least 500 million Belgian francs (\$15.8 million). More important for insurers—the law established a principle of "objective liability," making it unnecessary for anyone injured in a public area to go through the lengthy process of proving responsibility before fil-

ing a claim against the insurer.

"Before 1992, there were three elements to any liability claim," explained Xavier Remy, a senior assistant in Brussels with London law firm Clifford Chance. "First, you had to prove someone was at fault. Second, you had to prove an injury occurred. Finally, you had to show the link between the two."

Under the new law, claimants need only prove they were injured through no fault of their own. This allows them to file a liability claim without waiting for the conclusion of an often drawn-out legal battle to determine who was responsible. **BI**

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Vice Presidents, General Managers and Other Administrative Personnel 4,118

Financial:

Chief Financial Officers and Vice Presidents of Finance 2,171
Secretaries, Treasurers, controllers and other Financial Personnel 3,335

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 16,157

Sub-total **28,309**

Associations 369
Government, Unions and Educational Institutions 874

Commercial Consumers

Sub-total **29,652**
Insurance Agents and Brokers 8,408
Insurance Companies 8,181
Accountants, Actuaries, Attorneys & Consultants 3,611
Managers & Health Care Providers 1,903
Others Allied to the Field 849

TOTAL **52,604**

★ Source Business/Occupational breakdown of qualified circulation, May 30, 1994 Issue, as submitted to BPA for June 1994 BPA Publisher's Statement

INTERNATIONAL

Ferry

Continued from page 47

would be for the grandchildren, grandparents and siblings of victims. This level would pay 40,000 Swedish kronor (\$5,320) on average to all but Estonian survivors, who would receive 26,000 Swedish kronor (\$3,458) on average.

According to Mr. Komnaes, in the case of a "breadwinner" victim, these sums were calculated according to a formula that, among other things, considered actual lost income and an annual inflation increase.

The formula was applied to vic-

tims with annual incomes ranging from 150,000 to 1 million Swedish kronor (\$19,950 to \$133,000).

In those cases where a victim's annual income exceeded 1 million Swedish kronor, the compensation has been calculated on an individual basis, said Mr. Komnaes. There is no upper limit to the compensation. The same compensation would be paid regardless of whether the breadwinner was male or female.

Mr. Komnaes said that the compensation offer from the Estonia's insurer was an improvement on maximum compensation available under Swedish maritime law.

Skuld, the P&I club, was able to

make a higher compensation offer by proposing a single, global settlement for all claimants, which would save on both administrative and legal costs.

The alternative would have been for all claimants to file individual claims that would be paid from a pool of 275 million Swedish kronor (\$36.6 million), as stipulated under the law, Mr. Komnaes said. "And then claimants would have had to divide that amount between themselves."

The offer has been sent out by Skuld to some 3,200 people, said a Skuld spokesman. These have until March 20 to reply. The offer will be binding if accepted by

90% of the claimants, the Skuld spokesman said.

According to the latest figures received by Skuld, there were 857 deaths and 137 survivors on the Estonia. A complete passenger list has not been available.

The Skuld spokesman said that the Swedish authorities have been left to decide on the veracity of claims for compensation made by victims' relatives.

Compensation to the Estonia's crew is not included in this offer. Both Swedish and Estonian crew members will receive compensation calculated according to collective wage and benefits arrangements negotiated with the ship's

owner, Estline.

Mr. Komnaes said that the crew's compensation will be smaller than the passengers', though negotiations on this have just begun.

This and other ferry disasters—such as the 1987 capsizing of the "Herald of Free Enterprise"—are causing some in the marine industry to re-think the wisdom of using ro-ro ferries in the open sea, said Mr. Komnaes.

These disasters also have raised the issue of making P&I club liability coverage mandatory for vessels in Scandinavia. At present, purchase of such coverage is voluntary. **BI**

Mexico

Continued from page 47

pointing and said the government has much work to do to improve market conditions. Nevertheless, he remains optimistic, fueled by the knowledge that Mexico has a population of 80 million, abundant natural resources such as oil and gas, and is a neighbor to the United States.

"We're pushing ahead with the plans as we originally intended," he said. "(The peso's decline) may slow things down in some areas, but that is what you are prepared for anytime you are in a foreign country."

To meet its reserve requirements, the insurer imported capital after the peso fell and placed it in tesobonos, or peso-denominated government debt that pays

returns tied to the U.S. dollar.

Because the Mexican government is attempting to attract and retain foreign capital, it increased the tesobonos' yield to 20%.

"If we lost anything at all on the devaluation, we should be able to make it up on the unusual rich returns the government is offering," Mr. Graziano said.

At Chubb de Mexico Compania Seguros S.A. in Mexico City, underwriting manager Eduardo Gutierrez said its Warren, N.J.-based parent, Chubb Corp., now owns 30% of the property/casualty unit that services commercial accounts.

Chubb recently obtained approval to buy out a Mexican surety unit and will continue with plans to purchase full ownership of the property/casualty unit.

"Our target is midsize industry in Mexico, accounts with \$25,000

In British legal history, OLL Ltd. is only the third company prosecuted for corporate manslaughter.

to \$200,000 in annual premiums," he said. "Chubb is here to stay and we are looking forward to 100% in '96."

However, there are some concerns and some adjustments to be made.

"(Devaluation) affects the country, it affects the economy," Mr. Gutierrez said. "We have to be careful because of the effects on our clients and because (of the potential for client) bankruptcy. We have to keep track of this, but we

are here to stay."

Mr. Gutierrez said brokers have swamped his operation's telephone lines requesting an increase in limits for their commercial clients whose policies are in pesos.

With pesos devalued, it now takes larger amounts of them to provide the same coverage. But not all commercial accounts are in Mexico's currency.

"We don't have problems at this point because of the devaluation," said Louis Felipe Huacuja, a risk manager for Colgate Palmolive in Mexico City.

The company's larger policies, such as business interruption and property, are in dollars, Mr. Hua-

cuja said. Policies with lower premiums and limits, such as the company's money and securities coverage, which protects against money and securities theft, and auto insurance are written in pesos.

As for Mexico's growth potential, insurers are not the only ones that think it is worth their while to stay the course.

"It's like a bump in the road, but it doesn't mean change directions," said Leon Smith, an actuary and partner in Deloitte & Touche's Dallas office, who monitors Latin American financial markets. "There are going to be bumps in the road." **BI**

Ruling

Continued from page 47

Imprisoning company officials "highlights the importance of risk management," since there is no way to take out an insurance policy that protects against a custodial sentence, observed David Thomas, technical director of liability for London-based Willis Corroon Ltd., and chairman of the British Insurance and Investment Brokers' Assn. liability committee.

In British legal history, OLL Ltd. is only the third company prosecuted for corporate manslaughter.

The most recent previous prosecution was against P&O European Ferries (Dover) Ltd. after 188 people died when a ferry boat capsized in 1987 (*BI*, March 16, 1987). Charges against the company and several former employees were later dropped after a judge concluded that the evidence was insufficient to establish that most of the corporate defendants had been grossly negligent (*BI*, Oct. 29, 1990).

In that earlier case, the High Court ruled against adopting into British law the principle of "aggregation." This would have combined the faults of a number of different individuals, none of whom would individually be guilty of manslaughter, to permit the company to be convicted of manslaughter.

This inability to aggregate fault presents one of the greatest difficulties in securing a corporate manslaughter conviction, particularly against a large company, according to Gary Slapper, a senior lecturer in law at Staffordshire University.

"If several directors are each aware of a few jigsaw pieces in the overall picture of an obvious

risk,' the company cannot be blamed," he wrote in an opinion piece published in *The London Times* last month.

Mr. Slapper, who is currently researching corporate manslaughter at the London School of Economics, pointed out that the Lyme Bay case was not typical of corporate manslaughter cases partly because the company was small and it was easy to find a director who knew the whole picture.

"My own research during the past three years suggests there may be as many as 80 cases suitable for consideration (for corporate manslaughter) each year," Mr. Slapper said. "The main ob-

With pesos devalued, it now takes larger amounts of them to provide the same coverage.

stacles arise from the problem of proving that at least one director had full knowledge of the risks."

However, "such evidential difficulties would be overcome were the law to change in accordance with a recent proposal of the Law Commission to revise the law of manslaughter and to introduce a special regime applying to corporate liability," he wrote.

The Law Commission published a paper on involuntary manslaughter in April 1994, inviting comments and criticism by last October.

The commission will publish final proposals this spring. The government will then decide whether or not to implement legislative changes. Clyde & Co.'s Mr. Wood agreed that the Law Commission proposals would

make it easier to prosecute corporations.

Under the proposals suggested by the Law Commission, a company would be guilty if it should have been aware of a significant risk that its operations could result in death or serious injury and if "the corporation's conduct fell seriously below what could reasonably have been demanded of it in dealing with that risk."

Once the problem of identifying a responsible individual is abandoned, the structure of the inquiry "becomes comparatively simple," according to the Law Commission's report.

"The basic premise is that the company is required to arrange its affairs in a way which is reasonable granted the presence of the risk. This requires investigation of how the company operates to prevent death or injury," it stated.

"If a corporation has chosen to enter a field of activity, it has a clear duty to those affected by that field of activity to take steps to avoid the creation of serious risks," the consultation paper suggested.

However, a new regime that stresses the liability of a corporation as opposed to its individual officers would not excuse any officers guilty of negligence, the consultation paper noted.

"We would expect a conviction for manslaughter to lead to the most searching inquiry by the (convicted) company and its owners as to the responsibility for it, and its owners by their association with it being implicated in the serious offense of homicide," the paper said.

"We are confident that no respectable company or organization would leave in place systems or the people responsible for the operation of systems which had been condemned by a jury," the Law Commission said. **BI**

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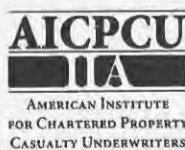
- Oct. 31, 1985:** California regulators place Mission Insurance Co. in conservation after finding it insolvent by \$169 million.
- Feb. 2, 1987:** Regulators give up efforts to save Mission and move to have it liquidated. The size of the insolvency would later be estimated at \$1.5 billion, making it one of the largest property/casualty failures ever.
- February 1990:** Mission is focus of Rep. Dingell's inquiry into state regulatory shortcomings.
- April 1991:** Mission estate makes a \$100 million early distribution to state guaranty funds. Three distributions for a total of \$342 million ultimately will be made.
- July 1991:** Los Angeles Superior Court Judge Kurt Lewin bars Mission reinsurers from rescinding their contracts by claiming they were defrauded.
- Nov. 30, 1992:** The California Supreme Court allows Mission reinsurers to offset mutual credits and debts, costing the estate between \$100 million and \$200 million.
- Dec. 28, 1994:** Judge Lewin enters a proposed final liquidation dividend plan to distribute most of Mission's remaining assets.

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Retirement has been a breeze for Doris Staley, CPCU, of Houston, Texas. This 71-year-old dynamo just finished a 150-mile bicycle ride to raise money to fight multiple sclerosis. She cycled 192 miles from Houston to San Antonio for the American Lung Association in two days flat. She is a founder of the CPCU Society's Alaska Chapter, teaches driving for AARP, and serves as treasurer of the Houston CPCU Chapter.

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B195

Mission

Continued from page 2
the continuing administrative expense of running the receivership and bring this to a fairly rapid conclusion," said Karl Rubinstein, a partner with Rubinstein & Perry in Los Angeles, which is representing the California Insurance Department, Mission's liquidator.

As of last Oct. 31, the Mission estate held assets with a projected liquidation value of \$980 million, according to Geoffrey Nicholls, chief executive of the Mission Insurance Cos. Trusts.

That total does not include \$342 million already paid out to state guaranty funds in three earlier distributions, he said.

The estate's liabilities included \$1.3 billion in claims from creditors known as Class 5 creditors, including direct policyholders and guaranty funds; and \$1.1 billion in claims from more junior Class 6 creditors, including ceding insurers.

It is uncertain how many cents on the dollar policyholders and guaranty funds will ultimately recover from the estate; Mr. Rubinstein and others noted that it will depend partly on the volume of amended claims.

Class 6 creditors are unlikely to recover anything, those familiar with the liquidation agree.

The plan's success will hinge partly on the ability of the liquidator and claimants to agree on actuarial projections of long-tail losses.

The California Insurance Guaranty Assn., Mission's largest Class 5 creditor, continues to receive 35 new workers comp claims a month and faces difficult-to-quantify environmental, medical product liability and construction defect claims, noted its executive director, Lawrence Mulryan.

CIGA has already incurred \$620 million in losses from the three Mission companies, he said.

Mr. Nicholls conceded that there may be disputes with some claimants—probably direct policyholders—over whose loss projections are most accurate.

However, "we have settled with 300 reinsurers, so these things can

be resolved," he said.

Claimants who dispute the liquidator's assessment of a given claim can still go before the Los Angeles judge overseeing the liquidation to settle the matter.

Mr. Mulryan and other guaranty fund officials say they generally support the effort to wrap up the liquidation quickly.

"I think the concept is great. It makes sense to wind down the receivership early if we can," said Paul Gulko, president of Guaranty Fund Management Services in Boston, which manages eight state funds. "There's no sense in waiting until the last dollar is spent."

Los Angeles Superior Court Judge Kurt J. Lewin has set a Feb. 16 hearing for objections or other comments on the plan.

Meanwhile, the liquidator is planning to fight an alternative dispute resolution panel's ruling absolving about 25 reinsurers from liabilities to the Mission estate. Mission was trying to recover \$140 million from the reinsurers, which participated in Mission's Pacific Reinsurance Management Corp. pool.

The panel of three retired judges last month found that PRMC misled the reinsurers about the nature of the business they assumed through the pool, Mr. Rubinstein confirmed.

The panel also concluded that the pool participations were securities and were void because they were not registered.

Mr. Rubinstein said he will object to the decision during a comment period provided by the panel, and will separately ask Judge Lewin to overturn it.

Regardless of how the matter is ultimately decided, Mission's actual recoveries will be governed by a "high-low" agreement with the reinsurers, lawyers familiar with the case say.

The agreement set a ceiling for payments by the reinsurers if they lost the case, while setting a floor for Mission's recoveries if the liquidator lost, lawyers say.

Mr. Rubinstein and R. Gaylord Smith, a San Diego lawyer representing the reinsurers, would not confirm the agreement's existence or provide any details. **EI**

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Lessons

Continued from page 3

"These are additional expenses covered under our business interruption coverage," she explained.

Syncor also lost several weeks of sales because "a lot of hospitals in the area were damaged and weren't doing the kind of diagnostic testing that requires our product," according to Ms. Sonstegard.

Syncor's negotiation with insurers has come down to whether to use a one-year or a three-year trend to calculate lost revenues, which are covered under its business interruption policy, she explained.

Ironically, the company's next meeting with its primary property insurer, Pacific Mutual Marine, a unit of New York Marine & General Insurance Co., is scheduled for today—just one day shy of the Jan. 17 anniversary of the Northridge quake.

Even though this is the longest lasting claim in Syncor's history, Ms. Sonstegard is confident that the claim will finally be wrapped up within the next few months.

And she's grateful to her broker for some assistance in the negotiations. "We use Marsh & McLennan as a broker, and they've provided someone to help with the claim," Ms. Sonstegard added.

Unfortunately, this year's June 1 renewals did not go so smoothly for Syncor, given its recent loss experience.

"Our premiums more than doubled," Ms. Sonstegard recounted. "We also changed our primary underwriter. Pacific Mutual Marine stopped writing earthquake. Now National Union is our insurer."

Ms. Sonstegard says the earthquake taught her some important loss control lessons.

"Now all of our file cabinets are anchored to the walls, and we've replaced vertical file cabinets with lateral file cabinets," she said. And, file cabinets that could fall and block exits have been moved clear of doorways.

The company also has replaced large glass window panes with several smaller panes, which are less likely to shatter during an earthquake, according to Ms. Sonstegard.

Quick response helps

The claims resolution process was much smoother for Dennis D'Oca, risk manager for broadcaster CBS Inc., whose Studio City administration building and production studios were severely damaged by the quake.

While reconstruction of the facilities is only about 90% completed, the claim was closed by September, he said.

Mr. D'Oca, who is based in New York, gives Horizon Public Adjusters much of the credit, not only for expediting claims payment, but for mitigating the company's earthquake loss.

When some of the walls of studio stages that date back to as early as 1918 started to crumble, Horizon, which has a Los Angeles office, was at the scene arranging for "cherry-picker" cranes to brace the walls.

This quick response not only saved the studio walls from collapsing, but also reduced CBS' potential business interruption losses by allowing television production to recommence quickly after the quake.

"There was some loss of business, but we really kept the shows that were in production going," such as *Roseanne*, *Evening Shade*

and *Seinfeld*, by doing repairs between production schedules, Mr. D'Oca explained.

However, CBS did lose some potential new tenants of the studios because of its earthquake damage, he said.

The greatest damage was to CBS' eight-story administration building, which had to be gutted and reconstructed after the penthouse heating and air conditioning unit exploded, causing severe water damage.

The claim for this loss grew substantially because local and federal laws required CBS to bring the structure, which was built in the 1960s, up to the current building codes as well as comply with the Americans with Disabilities Act.

Not only did this mean installation of new electrical wiring and overhead sprinklers, it also meant

that elevators, restrooms and even doorways would have to be enlarged to permit wheelchair access.

"They really didn't know the extent of the damage from the initial walk-through," Mr. D'Oca recounted.

"Fortunately, Dennis has what we call a 'pretty policy,'" said John Morrongiello, Horizon vp. "Dennis has a lot of bells and whistles" on CBS' property insurance, he said.

CBS is insured under a deductible program that is part of a manuscript global policy that covers losses from earthquake, property and contingent business interruption expenses.

Underwriters include Phoenix Insurance Co. of Hartford, Conn.; Navigators Insurance Co. of New York; Lexington Insurance Co. of Boston; and The Home Insurance

Co. of New York.

But, the earthquake loss became a thorn in Mr. D'Oca's side at renewal time in May.

"The premium for our DIC doubled and we had to take a bigger deductible," he said. "But at least they didn't walk away, even though it was a greater than \$10 million loss."

Using Horizon's expertise to develop loss estimates backed up by documentation and engineering reports, "we made it easier to isolate the 'gray areas' which complicate claims negotiations," Mr. D'Oca explained.

While "some risk managers may feel that using a public adjuster is one way to get all they can, that's not what this is about," Mr. D'Oca asserted. "It's not an ambulance-chasing situation."

In the end, "we settled our losses amicably, in less than nine

months," he said.

An ounce of prevention

While some risk managers are still picking up the pieces after last year's disaster, others, like the Getty Museum's Linda Whitehead, artfully minimized potential damage using their loss-control procedures.

Some rare books suffered minor water damage when the quake set off a sprinkler in Getty's Santa Monica headquarters, but none of the priceless artworks in its hillside museum just off the Pacific Coast Highway were damaged.

Despite rumors to the contrary, "the museum sustained absolutely no damage to its art collection," Ms. Whitehead, Getty's risk manager, confirmed.

"When I filed the claim (for the water damage), London asked, 'Did you forget some zeros on this?' and I said 'No,'" she recounted.

She declined to identify Getty's property insurers or the amount of the claim.

"Some of the things we do traditionally" saved Getty's collection from damage, according to Ms. Whitehead.

For example, large statues are placed on base-isolation tables that move with the earthquake. The system operates like shock-absorbing base isolation used in building construction, "but on a smaller scale," Ms. Whitehead explained.

It was this base-isolation system that kept the museum's 7½-foot limestone and marble statue of Aphrodite from budging.

All vases and smaller statues are secured in some way, either by being fastened to shelving, with strings of catgut holding them in place, or with dental wax, Ms. Whitehead said.

"Sometimes we fill vases with lead shot or sand," she added.

Finally, all of the Getty Museum's paintings are double hung on closed hooks with rubber bumpers protecting them from damage should they swing on the wall. Getty's modern art collection is secured with double-faced velcro in addition to being double-hung on closed hooks, she added.

Because news reports called into question the safety of steel-frame structures, Getty worked with its engineers to retrofit its new building, which is under construction near the 405 freeway northwest of downtown Los Angeles.

"We found some minor stress fractures in six of the steel welds," Ms. Whitehead said. "Our structural engineers inspected all the welds in the new complex, and they were retrofitted with new technology."

All of this was done at Getty's expense, which did not add to the museum's water damage claim, according to Ms. Whitehead.

But Getty's earthquake recovery prowess hasn't made its risk manager complacent.

"You learn from every quake," she said, adding that she already is implementing additional loss-control measures.

For example, now Getty employees make sure to lock the file cabinets in their office credenzas since the force of the quake caused them to open.

In addition, the museum is changing its overhead sprinkler system from a "wet-pipe system" to a "pre-action system," which emits pressurized air before it releases water.

"This will allow enough time for our control room to stop the discharge" in the event of another quake, Ms. Whitehead said. **BI**



The Northridge earthquake that rocked Los Angeles a year ago caused widespread damage to roads and buildings and disrupted many businesses' operations, resulting in an estimated \$10.4 billion in insured losses. Complicating property losses were structural injuries that at first went unnoticed by inspectors after the temblor. Risk managers not only had to deal with their organizations' property and business interruption losses but also had to address concerns about employees getting to work. Several of Los Angeles' freeways were closed, forcing workers to find alternate routes to their employers. Overall, the quake taught risk managers some important lessons on loss control and risk financing.

Home

Continued from page 2

Home requires," Mr. Byrne said.

Mr. Byrne's Fund American Enterprises Holding Inc., Trident Partnership L.P. and Hellman & Friedman in San Francisco had offered to inject \$420 million in Home Holdings on condition that Home Holdings' majority shareholder, Trygg-Hansa SPP Holding A.B., forgive a \$170 million loan to Home (BI, Dec. 12, 1994).

However, Trygg-Hansa opted for a subsequent bid by Zurich, in which the Swedish insurer would not have to forgive the loan, would receive at least \$7 million in cash and would strike up a strategic alliance with Zurich (BI, Jan. 2).

Mr. Byrne, who planned to become chairman of Home Holdings, tried to sweeten his offer, but Trygg-Hansa stuck with Zurich's deal (BI, Jan. 9). Under terms of the Zurich deal, Home Holdings could not discuss other offers unless they represented a higher value for Home.

"From the beginning, our intention was to strengthen Home Insurance so it could remain healthy and independent. Trygg-Hansa said they would contribute to that outcome. Now they are apparently not willing to do so," Mr. Byrne said.

Mr. Byrne said he remained interested in The Home and would follow the Zurich deal to its conclusion.

Mr. Byrne added that outside of an investment in Home Holdings similar to his proposal, the Zurich offer is likely to be good for policyholders.

The ceding commissions that Zurich will pay The Home for its ongoing business will add several hundred million dollars to The Home's statutory surplus, Mr. Byrne noted.

Also, an organization with Zurich's resources will add to The Home's ability to obtain reinsurance recoverables, he said. How-

ever, Zurich will probably have to amend its offer to add some form of reinsurance backing to the old Home business being run off, he said.

"I do think the Zurich will need to add just a little something more," Mr. Byrne said.

But the Zurich deal may face opposition on other fronts.

A group of Home bondholders that own more than 67% of \$280 million in Home Holdings Inc. senior notes have formed a committee to oppose the Zurich deal. The bondholders raised the specter of forcing Home to repurchase the notes at a premium over par.

In a letter to Zurich, the committee says its deal with Home Holdings is "a change in control" and involves a transfer of "substantially all of" the company's assets. Under the terms of the notes, Zurich is obligated to immediately repurchase all of the Home notes, the committee contends.

"Given the distinct possibility of the Zurich deal leading to an acceleration to the notes, we question the long-term viability of a combined Zurich-Home enterprise," said Lawrence Kill, a senior partner at Anderson Kill Olick & Oshinsky P.C. in New York, who represents the bondholders.

That financial instability is harmful to the creditors and policyholders of The Home, Mr. Kill said.

The bondholders also question whether Home Holdings has been even-handed in its assessment of the Byrne group and Zurich offers, Mr. Kill said.

"The board is obliged to carefully evaluate the Zurich proposal, while also maintaining a level playing field so that other investment proposals are not choked off for lack of information or reasonable company cooperation," he said.

The committee met with Zurich last week and Mr. Kill said that the insurer seemed willing to start a dialogue with the bondholders.

Zurich also faces opposition

from minority shareholders in Home Holdings.

Walter J. Goldmann, a private shareholder, last week filed a class action lawsuit in state court in Wilmington, Del., alleging that Home Holdings and its directors are ignoring the interests of minority shareholders.

"The director defendants have agreed to a transaction with Zurich and rejected a financially superior offer by Fund American for self-interested reasons that are at odds with the interests of the public shareholders," court papers say.

The sweetened Byrne offer would have paid 50 cents more per share than the Zurich offer. The directors are breaching their fiduciary duty to maximize the value of the company for all shareholders, court papers say.

At least two other minority shareholders are preparing to file suit against Home Holdings and the three cases will likely be consolidated, according to Jeffrey Smith, a partner at Wolf, Halderstein, Adler, Freeman & Herz in New York, who represents Mr. Goldmann.

Insurance regulators in New Hampshire, where The Home is domiciled, also might have objections to the Zurich deal as it stands.

Under the deal, Zurich would take on a block of The Home's business that generates approximately \$1 billion of its more than \$2 billion in premiums, liquidate The Home and put the remaining business into runoff.

Zurich has not committed to make any more funds available to cover claims on the runoff business should there be insufficient funds available from the Home's assets. Zurich has said that it feels The Home is adequately reserved for these losses.

However, regulators may insist that Zurich buy some form of excess coverage in case The Home runs out of money to pay policyholder claims in full, said James P. Corcoran, a partner at Donovan Leisure Newton & Irvine in New York, and former insurance superintendent for New York.

"The regulators will look into it to make sure that policyholders are protected. I presume that the regulators will be asking for some kind of excess cover just in case," he said.

Zurich would then have to decide whether the deal was still worthwhile, given the added costs, Mr. Corcoran said.

Zurich met with regulators last week, but would not comment on those discussions.

New Hampshire Deputy Insurance Commissioner Robert M. Solitro said, "regulators are reviewing the transaction but have not yet drawn any conclusions."

One analyst said that if the Zurich deal goes through, it could become a model for other insurers with long-tail liabilities.

The deal is structured to segregate the "bad" runoff business from the "good" current business, Thomas D. Sargent of Conning & Co. said in a company bulletin.

"Approval of such a structure by insurance regulators may have far-reaching implications to the industry as a whole," Mr. Sargent said.

The structure is favorable to public shareholders and the new owner, he said.

"Those in a weaker position are the policyholders of Home Insurance and debt holders of Home Holdings," Mr. Sargent said.

Other insurance companies with environmental exposures might use the precedent to segregate their past liabilities from current business, he said. ■

Updates

Draft annuity proposal

WASHINGTON—Employers purchasing annuities to replace pension benefits generally would be expected to select the "safest available" annuity, under a draft Labor Department proposal.

But, an employer's obligation to buy the safest available annuity does not require it to pay large increases in premiums for "de minimis" increases in safety, the draft proposal says.

In determining the safety of an annuity provider, the department said there is no "bright line or mechanical" test. Instead, employers should consider a number of factors, including the investment quality and diversification of the issuer's portfolio, the size of the issuer relative to the proposed contract and the issuer's claims-paying ability as measured by rating agencies or qualified independent experts.

Pension fraud indictments

CHICAGO—Two men face 10 counts of federal wire fraud, accused of playing key roles in an allegedly fraudulent scheme that cost the Chicago Housing Authority pension fund more than \$13 million.

A federal grand jury last week indicted Joseph Polichemi of London and Fort Lauderdale, Fla., and Lyle E. Neal of Hi Hat, Ky. The two promised to put the pension money in investments that would earn returns of 25% to 75%, the indictment charges. Those investments, in fact, did not exist.

Not named in the indictment was John D. Lauer, the CHA's director of risk management and benefits, who placed the authority's funds in the investments (BI, June 27, 1994). The indictment charges, however, that Messrs. Polichemi and Neal paid substantial sums of money to an unnamed CHA employee to induce that employee to invest the CHA assets in their "trading program" and to refrain from demanding prompt return of the CHA funds.

EXEL fourth-quarter loss

HAMILTON, Bermuda—Investment losses have forced EXEL Ltd., the holding company that owns excess liability insurer X.L. Insurance Co. Ltd., into the red for the fourth quarter of fiscal 1994.

EXEL reported a \$3.5 million net loss for the quarter ended Nov. 30, compared with net income of \$88.6 million for the quarter in 1993.

For all of fiscal 1994, EXEL's profits fell 62.1% to \$143.9 million from \$379.3 million in 1993.

Operating income, excluding investment losses, actually rose 9.6% to \$239 million in 1994 compared with \$218 million in 1993. But, bond market losses realized in the fourth quarter overshadowed those gains.

About 85% of EXEL's investments are in fixed-income securities and the portfolio was substantially restructured in the fourth quarter, an EXEL spokesman said.

Briefly noted

Ernst & Young L.L.P. is cutting staff by fewer than 100 people and consolidating and closing several offices in its Actuarial, Benefits & Compensation Consulting Services division—which now will be known as Human Resource Consulting—as part of a restructuring. . . **McDonnell Douglas Corp.** can go ahead and terminate its company-funded lifetime health coverage for non-union retirees after a federal judge in Los Angeles last month dismissed a class-action suit on behalf of 7,000 retirees (BI, Dec. 1, 1992). . . **The U.S. Supreme Court** this week will hear oral arguments in two important employee benefit cases. One involves the procedures companies must follow before they can cut retiree health benefits (BI, Oct. 3, 1994), while the other centers on whether the Employee Retirement Income Security Act pre-empts state surcharges on hospital bills (BI, Oct. 10, 1994). . . **The Council of Lloyd's of London** re-elected David Rowland as chairman for 1995. Robert Hiscox remains the deputy chairman and Richard Keeling has stepped down as the other deputy chairman, to be replaced by John Stace, managing director and co-founder of Stace Barr Underwriting Agencies Ltd. . . **Aon Corp.'s** U.S. benefit consulting unit, **Godwins Boeke & Dickenson**, has acquired HRStrategies Inc. of Grosse Pointe, Mich., a human resources consulting firm with about 200 employees. . . **Sorema N.A. Reinsurance Co.** now has total capital and surplus of \$155 million after a \$43 million capital infusion from its majority shareholder, **GROUPAMA** of France. . . **The medical care component** of the Consumer Price Index rose 4.9% in 1994, down from 5.4% in 1993. The overall rise in the CPI last year was 2.7%, unchanged from 1993. . . A group of a dozen Senate Republicans and Democrats has asked the General Accounting Office to study the ramifications of loosening the **Employee Retirement Income Security Act** prohibition on state regulation of benefit plans. . . A **Lloyd's of London** bylaw passed last week sets out for the first time the requirements to license syndicate runoff companies. One existing runoff company, **G.W. Run-Off Ltd.**, said that losses from six of the seven syndicates formerly managed by **Gooda Walker Ltd.** were on target not to exceed £1.1 billion (\$1.7 billion). . . **Anthem Life Insurance Co.** of Indianapolis acquired **Business Men's Assurance Co.** of America's \$100 million block of health insurance business, 60% of it group business. Terms of the deal were not disclosed. . . **Sturge Holdings P.L.C.** shareholders will vote tomorrow on whether they want the **Lloyd's of London** managing agency to establish a new holding company (BI, Dec. 12, 1994). Three-quarters of the shareholders must approve the plan. . . **A.M. Best** downgraded its ratings of members of the **Vik Brothers Insurance Group** to B+, citing poor operating results stemming from first-half catastrophe losses. The insurers affected by the action are **LMI Insurance Co.**, which was downgraded from A-; **State Capital Insurance Co.**, downgraded from B++; and **American Professionals Insurance Co.**, which was downgraded from an A-. . . **Health Systems International Inc.** is preparing to evaluate potential new suitors after **Foundation Health Corp.** and **FHP International Corp.** both withdrew takeover bids (BI, Jan. 9).

Reinsurers on consolidation bandwagon

Two reinsurance deals announced last week offer further evidence that bigger is becoming better in the property/casualty industry.

Zurich Reinsurance Centre Holdings Inc. said it will acquire Re Capital Corp. in a transaction valued at about \$200 million.

Separately, USF&G Corp. said it will acquire Discover Re Managers Inc. for about \$78.5 million in USF&G common stock and options.

Under a definitive agreement approved unanimously by Re Capital's board, New York-based ZRC will pay Re Capital shareholders \$18.50 per common share and will assume obligations for any of the \$69 million in Re Capital 5½% convertible debentures not converted to common stock before the closing.

As part of the deal, John Deere Insurance Group has given ZRC the option to acquire its 43.8% holding in Re Capital common stock at \$18.50 per share, and to vote its shares for the deal.

The deal is expected to close in the first half of 1995.

Through the third quarter of 1994, Re Capital reported \$102 million in net premiums and \$165 million in capital and surplus; and ZRC \$207 million in net premiums and \$614 million in capital and surplus.

It has not been decided whether Re Capital will be merged into ZRC, a ZRC spokeswoman said.

ZRC Chairman Steven Gluckstern noted in a statement that Re Capital's business is "fundamentally compatible" with ZRC's. Both are lead underwriters in the broker reinsur-

ance market, and Re Capital's short-tail casualty book complements ZRC's long-tail business.

"I believe that the combination of these companies will serve to further strengthen the broker distribution channel," said Re Capital President James E. Roberts.

Meanwhile, Baltimore-based USF&G has reached a definitive agreement to acquire all the outstanding equity of Discover Re of Farmington, Conn., which provides insurance, reinsurance, excess insurance and advisory services to the alternative risk transfer market.

The proposed buyout would give USF&G access to the growing ART market, said Norman F. Blake Jr., USF&G's chairman, president and CEO. "It also provides the opportunity to capitalize upon USF&G's expertise in workers compensation and excess property insurance outside its core property/casualty middle market business."

He added that "this acquisition is consistent with our interest in developing high-value operations. . . that augment our core insurance operations."

Mr. Blake said that Discover Re Managers will continue to operate under its current name and management in Farmington.

The proposed acquisition "complements USF&G's risk transfer business and is an effort to diversify into niche business," said Charles Titterton, director of Standard & Poor's Ratings Group.

—By Doug McLeod and Mark Hofmann

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