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Update

Aerojet will appeal state ruling denying it coverage for cleanup

SAN FRANCISCO—Attorneys for Aerojet-General Corp. say the company will appeal a ruling that it cannot tap its general liability insurance policies to pay for a multimillion-dollar pollution cleanup.

After a three-month jury trial, in which 39 witnesses testified and more than 600 documents were viewed, a San Mateo County Court last week found that Aerojet, a GenCorp Inc. unit, "expected or intended" the pollution in every policy year from 1956 to 1979.

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Lloyd's overhaul proposed

Task force offers radical plans to increase market's capital

By STACY SHAPIRO

LONDON—Lloyd's of London is considering a radical upheaval of its system of unlimited liability, including establishing limited liability corporate membership, under long-awaited proposals released last week.

The 235-page report from a Lloyd's task force suggests revolutionary changes to help boost the market's capital to 17 billion pounds ($28.75 billion at current exchange rates) by 1997 from 10 billion pounds ($17.5 billion) this year. These proposals include allowing corporations to become Lloyd's members—with limited liability—and possibly allowing syndicates to evolve into corporations or limited partnerships, thus limiting their liability.

Meanwhile, the report, "Lloyd's: A Route Forward," proposes a variety of ways to attract new members to the 304-year-old market soon and to retain existing names. For example, the task force suggests retaining unlimited liability for individual members for now but providing them some relief from huge losses.

Starting in the 1993 underwriting year, members whose losses exceed their premium limit in any one year will receive payments from a new stop-loss fund for any losses over that limit. Should that fund be depleted, though, members would again be liable for their losses.

The task force offers no relief for thousands of members who already face losses from the deficit-riddled 1988-1990 underwriting years, an omission criticized by some (see story, page 39).

For the immediate future, the task force also proposes that Lloyd's:

- Provide new rights for members, including the right to approve major syndicate transactions and the right to obtain information about the syndicates on which they participate.
- Change the structure of the Council of Lloyd's. The report recommends splitting the top governing body into a Market Board, which would set business policy, and a Regulatory Council.

This proposal already has been rejected by the current council.

- Offer members a way to resign from Lloyd's even if they are members of syndicates with open years of account.

Among the report's 65 recommendations is that Lloyd's again allow brokers to own syndicate managers, thus reversing a provision in the Lloyd's Act of 1982 that

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Bush floats health care tax proposals

By JERRY GEISEL

WASHINGTON—The Bush administration is considering a limit to employer tax deductions for health care contributions, as well as a cap on the amount of tax-free health care coverage highly paid employees can receive, Washington observers say.

In addition, as part of a broad health care reform package to be unveiled over the next few weeks, the administration also may propose changes in the health insurance polices available to small employers, offer tax breaks to help the poor buy health insurance and link Medicare Part B premiums to retiree income, according to observers.

In meetings with business groups and insurers last week, President Bush and other administration officials reaffirmed their opposition to two widely discussed reform proposals: a single-payer, Canadian-style national health insurance system and a "play-or-pay" approach to expanding access to health care coverage. Under the play-or-pay approach, employers must either offer a health care plan or pay a new payroll tax.

The exact features of the administration's health care reform proposal, some of which Mr. Bush will outline next week in his State of the Union address and proposed 1993 federal budget, aren't known yet.

But in an almost timeless January ritual that precedes the release of the federal budget, administration officials are sending out signals—floating trial balloons—to gauge public reaction to various proposals.

These deliberate "leaks" occur in various ways. For example, lobbying groups are brought to the White House where administration officials discuss various proposals under consideration.

In other cases, administration officials brief reporters on options being considered.

The reaction that the ideas receive after wide circulation is a factor in whether the administration decides to adopt them and then present them to Congress for action.

Under one option now being considered, according to observers, employers could not take a tax deduction for health care contributions that exceed a certain level, perhaps $4,000 or $5,000 per em-

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10th Circuit says disposal of toxic waste voids cover

By DOUGLAS McLEOD

DENVER—In a setback for policyholders, a federal appeals court has ruled that placing hazardous waste in holding ponds triggers the pollution exclusion of its general liability policy even before any damage from the waste disposal has occurred.

Overturning a lower court decision, a 10th U.S. Circuit Court of Appeals panel ruled 3-0 this month that Broderick Investment Co.'s placement of waste in holding ponds constitutes a "discharge, dispersal, release or escape" of pollutants.

Since this discharge was not unexpected or unintended, the pollution exclusion in Broderick's primary liability policy bars coverage for cleanup costs, the appeals court ruled.

The panel rejected the lower court's finding that the actual "discharge" was the subsequent migration of the waste onto neighboring property, resulting in third-party property damage that Broderick neither expected nor intended.

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Ensuring free and fair trade

AIG chief views Far East trip as a success

By STACY ADLER GORDON

Maurice R. Greenberg, chairman and chief executive officer of American International Group Inc., was one of 21 business leaders who accompanied President Bush on his recent trip to Australia, Japan, Singapore and South Korea to discuss improved trade relations.

Mr. Greenberg, who attended all but the Australia meetings, was invited in his role as chairman of the U.S.-ASEAN Council for Business & Technology. The council consists of U.S. chief executive officers who work to promote U.S. investment in the member nations of the Assn. of South East Asian Nations. Those nations are Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand.

Upon returning to the United States, Mr. Greenberg discussed his impressions of the trade mission with Business Insurance.

AIG is the largest U.S. insurer operating in Japan, with 10,000 non-life agents and 80 branch offices throughout the country. AIG entered Japan just after World War II, initially to serve the insurance needs of the U.S. military occupation troops.

What do you consider as the biggest accomplishment of the trade mission?

President Bush certainly sent a message that free and fair trade are the rules to which all nations must adhere. It is the first time that a president of the United States—any president—took a business group with him, and that in itself sends a very strong and important signal.

Many of the leaders and business people in the ASEAN nations believed that the U.S. was disengaging from the region. President Bush certainly pointed out that we clearly and unequivocally remain involved and committed to the region.

Were any specific achievements reached during these meetings?

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MAURICE R. GREENBERG

Update

Court denies cleanup cover

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The trial comes after a 1989 California appellate court ruling that interpreted several terms in the comprehensive general liability policies purchased by Aerojet, including that the term "damages" encompasses cleanup costs (*BI*, Sept. 18, 1989; May 1, 1989). The California Supreme Court refused to review the ruling.

To date, La Jolla, Calif.-based Aerojet has spent $75 million to remove the chemical trichloroethylene, or TCE, from the ground water at its facility near Sacramento, Calif. The solvent was used to clean rocket parts. The company estimates the total cleanup could cost more than $500 million.

"The purpose of insurance is to insure against liability for damage resulting from accidental events," said insurer attorney Richard Seabolt of Hancock, Rothert & Bunshoft in San Francisco. "When you discharge chemicals into the ground for 23 years, that's not accidental."

Hartford completes program

HARTFORD, Conn.—Hartford Group Inc. placed $260 million excess of $50 million in catastrophe reinsurance before Jan. 1, despite the doubts of some property reinsurance underwriters and brokers that such a program could be put together.

In fact, Hartford initially had sought $250 million excess of $50 million in catastrophe reinsurance for 1992 (*BI*, Nov. 18, 1991). But the program was oversubscribed by mid-December, a spokesman said.

Both London and domestic reinsurers increased their commitments, the Hartford spokesman said.

Executive Life settles tax lien

LOS ANGELES—Executive Life Insurance Co.'s $643 million federal tax lien was reduced to $73 million under an agreement the California Insurance Department has reached with the Internal Revenue Service.

Because Executive Life has paid $67 million in estimated taxes to the IRS, only about $6 million in new cash payments will be required under the settlement, said Insurance Commissioner John Garamendi last week. The $6 million will be paid within 30 days.

In a related move, the department submitted to Los Angeles Superior Court Judge Kurt Lewin a rehabilitation plan that implements the sale of the company to the French investor group led by Altus Finance and Mutuelle Assurance des Artisanale de France. The submission also contains details of the legal mechanisms necessary to transfer Executive Life policyholder obligations to the new Aurora National Life Assurance Co. (*BI*, Jan. 6).

The rehabilitation plan also provides for holders of guaranteed investment contracts used to back municipal bonds to be paid on an equity basis reflecting the amount paid for the contracts. This was done to ensure that the bondholders do not receive windfall profits, Mr. Garamendi said. Many muni-GICs were purchased for a fraction of their face value after Executive Life was seized by regulators.

The department is waiting for the state appellate court to set a date to hear the department's appeal of Judge Lewin's decision that muni-GICs should be treated the same as all other Executive Life policyholders. The department says the insurance code identifies holders of muni-GICs as general creditors, who have lower priority than policyholders.

Bank insurance law stands

WASHINGTON—The U.S. Supreme Court has let stand a federal appeals court decision that will allow subsidiaries of banking giants Chase Manhattan Corp. and Citicorp to underwrite and sell insurance nationwide under a Delaware law.

But a 1991 federal law prevents other banks from taking advantage of the Delaware law and other states from passing similar laws.

The Supreme Court refused to review a 2nd U.S. Circuit Court of Appeals ruling that subsidiaries of state-chartered banks could sell and underwrite insurance nationwide if the state in which they are based allows such sales (*BI*, June 17, 1991). The ruling overturned a Federal Reserve Board decision that the Delaware law ran afoul of federal banking law (*BI*, Sept. 10, 1990). The appeals court concluded that state-chartered banks are beyond the scope of the federal bank act and the Fed's regulatory authority.

"The Supreme Court continues a disturbing federal pattern of walking away from deciding the limit of bank insurance powers," said Patricia Borowski, chairwoman of the Alliance for Separation of Banking & Insurance, a coalition of insurance trade groups.

A spokeswoman for Chase Manhattan, which has obtained a license to establish an insurance unit in Delaware, said the bank will now "proceed expeditiously" with its plans to provide property and casualty insurance. The coverage will be offered through Chase USA, a direct-mail and telemarketing operation based in Wilmington, Del. The spokeswoman could not say when the unit would begin operating.

Citicorp may not take advantage of the ruling, a spokesman said. "We have basically stopped moving ahead with (Delaware insurance) operations for well over a year. The country has changed during that year, and now we have to step back and decide what we may or may not want to do from a marketing standpoint."

Asbestos settlement axed

SACRAMENTO, Calif.—The California Supreme Court has refused to review a state appeals court decision rejecting a $142 million asbestos liability coverage settlement between Pacific Indemnity Co. and Fibreboard Corp.

Fibreboard and Pacific Indemnity, a Chubb Corp. unit, settled their coverage dispute over asbestos personal injury and property damage claims last March (*BI*, March 11, 1991). Under the terms of the

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Errors and omissions

• A Jan. 13 Comings & Goings: Industry item gave an incorrect title for Richard A. Simon. He is chairman and chief executive officer of GAB Business Services Inc.

Regulators must focus on solvency: Economist

By MEG FLETCHER

CHICAGO—Insurance regulators can best help consumers by focusing on insurer solvency rather than restrictive rate controls, an economist says in a new report.

However, state solvency regulation will not be truly effective unless changes are made that would permit regulators to promptly take control of a financially troubled insurer, unimpeded by the insurer's legal challenges, the report says.

And, a limited federal role in the process may be warranted, it adds.

Insurance industry executives, participating in an unrelated panel discussion last week, agreed with the gist of these findings (see story, page 3).

The report, "Back to Basics: Solvency as the Primary Objective of Insurance Industry Regulation," was prepared by Robert E. Litan, a senior fellow in the economic studies program of the Brookings Institution in Washington, D.C., based on an analysis of the thrift industry's financial problems.

Mr. Litan, who also is director of the institution's new Center for Law, Economics & Politics, presented the report last week during a Union League Club luncheon in Chicago. The report reflects his personal views, though State Farm Mutual Automobile Insurance Co. paid him $25,000 to $30,000 to undertake the project, he said following the luncheon.

After reviewing financial institutions' problems, Mr. Litan concluded that solvency regulation is necessary to prevent huge losses to be paid by insurance guaranty funds. Solvency regulation also is needed to prevent the potentially huge misallocation of resources, like the "$200 billion-plus" wasted by failed thrifts in the 1980s, he said.

"Inadequate solvency supervision and late regulatory intervention have been important contributors to both the rising numbers of failures and the losses they have imposed," although fraud and mismanagement also have played a role, he noted in the report.

While the insurance industry generally has escaped the rash of insolvencies that plagued thrifts, it should not be overconfident, Mr.

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Opinions differ on whether court will hear case

Antitrust review debated

By JUDY GREENWALD

WASHINGTON—The massive antitrust suit against insurance industry defendants is of such compelling importance that chances are good the U.S. Supreme Court will hear the case, some legal observers say.

But others say the odds against the Supreme Court hearing the case are just too great.

And, other factors, including that there has not been discovery in the case, make it unlikely those odds can be overcome.

Even those who believe the high court will hear the case generally agree it's impossible to predict which way the court will rule.

Most of the domestic insurance and reinsurance entities named in the suit petitioned the Supreme Court on Jan. 10 to review the unanimous June 1991 ruling by a three-judge panel of the 9th U.S. Circuit Court of Appeals overturning an earlier dismissal of the suit (*BI*, Jan. 13; June 24, 1991; Sept. 25, 1989). Three additional petitions by remaining defendants were filed last week (see story, page 35).

The 20 state attorneys general and private plaintiffs have 30 days to respond to the defendants' petitions, but this period could be extended another 30 days.

The Supreme Court is expected to decide whether to hear the case by the spring.

In their original lawsuit in 1988, the state attorneys general allege that 32 defendants engaged in a boycott to manipulate the U.S. liability insurance market. The defendants include major U.S. insurers and reinsurers, the Insurance Services Office Inc. and the Reinsurance Assn. of America, as well as several London underwriters.

The boycott forced ISO to rewrite its commercial general liability policy form to exclude coverage for pollution incidents and include a retroactive date in the claims-made version of the form, the suit alleges.

The antitrust immunity granted

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Coverage is not barred by existing claims: Ruling

By SARA MARLEY

NEW YORK—The fact that a company has been named in asbestos property damage lawsuits when it purchases insurance does not shield its insurers from liability for future claims, a federal magistrate has ruled.

In a decision that could affect roughly $400 million of insurance coverage, U.S. District Court Magistrate Leonard Bernikow found that insurers of National Gypsum Co. should be required to defend and indemnify the asbestos producer in property damage lawsuits.

The insurers had argued that under the "known loss doctrine" they are not liable for losses the policyholder knew would occur.

Dallas-based National Gypsum countered that the presence of asbestos did not constitute an automatic loss.

The magistrate's decision serves as a recommendation to U.S. District Judge John S. Martin, who can approve, reject or modify the ruling, which was issued Dec. 31. The insurance companies have until Jan. 21 to file an objection with Judge Martin.

"The evidence shows that the insurers had almost as much knowledge concerning the dangers of asbestos as the manufacturer had," Magistrate Bernikow wrote. "The evidence also shows that NGC sought coverage for asbestos-related claims and the insurers provided it."

The motion was brought by Constitution State Insurance Co., a Travelers Corp. unit based in Hartford, Conn. Constitution State issued excess liability policies to National Gypsum in 1983 and 1984. The 1983 Constitution State

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Inside

✔ The Bush administration has shown the problems with play-or-pay proposals; now it must show that it has a better idea, says this week's editorial. **PAGE 8**

✔ The Risk Management Information Resource section is a compilation of informational and educational materials on topics of interest to risk managers. **PAGE 10**

✔ USF&G Corp. may reverse its withdrawal from the Mississippi workers comp market if the state enacts meaningful reform legislation. **PAGE 28**

✔ The ability of state insurance regulators to monitor the insurance industry came under attack when the U.S. Supreme Court heard oral arguments in a title insurance antitrust case. The high court also heard a second round of arguments in a case that attempts to hold cigarette manufacturers liable for injuries caused by smoking. Stories begin on **PAGE 37**

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Headaches at home and abroad

Political ploys endanger U.S. insurance solvency, warns joint meeting panel

By JERRY GEISEL

WASHINGTON—Politically inspired rate rollbacks and other regulatory restraints could imperil the solvency of insurers, a panel of insurance industry experts says.

In addition, the ability of insurers to provide affordable coverage is directly threatened by the failure of the nation to tame soaring health care costs and reform the tort litigation system, they add.

"Rate suppression, coupled with a requirement that you must write X% of the market," threatens the solvency of any insurer, said Frederick H. Jarvis, chairman, president and chief executive officer of Selective Insurance Group Inc. of Branchville, N.J.

"We're getting to the point where we can't take any more hits, where we can't play the game anymore. Many companies are there already," Mr. Jarvis said.

When rates are so restricted that insurers cannot generate acceptable returns, they will react by withdrawing from markets like workers compensation and private passenger auto insurance, Mr. Jarvis said last week at a panel session on regulation at the joint meeting of the American Insurance Assn., the Insurance Information Institute and the Insurance Services Office Inc. in Washington, D.C.

Other issues taken up by the panelists included whether the industry should be regulated at the state or federal level, the future of the McCarran-Ferguson Act and the likelihood of substantial civil justice reform.

Other insurers say the insurance market will work well if politically inspired regulators do not hold down rates.

"The system works if it is allowed to work," said John P. Mascotte, chairman and chief executive officer of Continental Corp. of New York.

A big chunk of the public continues to believe that the industry is a "bottomless pit," warns Peter B. Walker, a director of McKin-

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U.S. tort liability system is an unwelcome export, overseas executives say

By MARK A. HOFMANN

WASHINGTON—The U.S. liability system is a definite "liability" for international insurers doing business in the United States, agreed a panel of insurance executives discussing the globalization of the property/casualty insurance market.

In fact, one European panelist expressed fear that the U.S. liability system may become an unwelcome export to his homeland, adding that he hopes tort reforms are enacted in the United States soon.

Some panelists also were against another form of export—in this case, managerial talent—contending that the most efficient way for an insurer to compete in a global market is to staff foreign offices with local managers and then to grant them a great deal of autonomy.

Five panelists representing four countries offered their observations on the global insurance industry during the joint industry conference of the American Insurance Assn., the Insurance Information Institute and the Insurance Services Office Inc., held last week in Washington, D.C.

III President Gordon C. Stewart, who moderated the discussion, asked the panelists whether the U.S. liability system is a "liability" to international insurers.

Like all the other panelists, Ian L. Rushton, vice chairman of Royal Insurance Holdings P.L.C. in London, agreed that it is.

Every major nation in Europe has removed liability cases from jury trials, he noted. Ireland, he said, was the last to do so.

Mr. Rushton pointed out that taking the decisions in liability cases out of juries' hands hasn't meant that awards are necessarily smaller than those a jury might make. But removing juries from the liability legal arena has led to greater consistency, he said.

Mr. Rushton also advocated applying a bit of British tort law to U.S. procedures. He noted that British law requires the loser in a

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Workers want say in benefits, new study says

Over 60% would pay more for choice

By MARK A. HOFMANN

WASHINGTON—U.S. workers would be willing to pay more for their employee benefits if they had a greater say in deciding which benefits they receive, according to a new survey on employee attitudes on health insurance.

Virtually everyone responding to the "Workplace Pulse National Survey" said that having a choice in deciding which benefits to receive was to some degree important to them.

And, workers covered by employer-sponsored benefit plans think that they, rather than either their employers or the government, should "have the major voice" in deciding which benefits they receive.

The survey of 1,000 employees who worked at least 30 hours a

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Over 90% say health system changes needed

Most happy with own coverage: Survey

By JERRY GEISEL

WASHINGTON—Most Americans are satisfied with their health care coverage, but believe nevertheless that the nation's health care delivery system should be overhauled, according to a new survey.

Seventy-six percent of individuals surveyed said they were satisfied with the coverage offered by their health care plan, while 65% also said they were satisfied with the cost of their coverage.

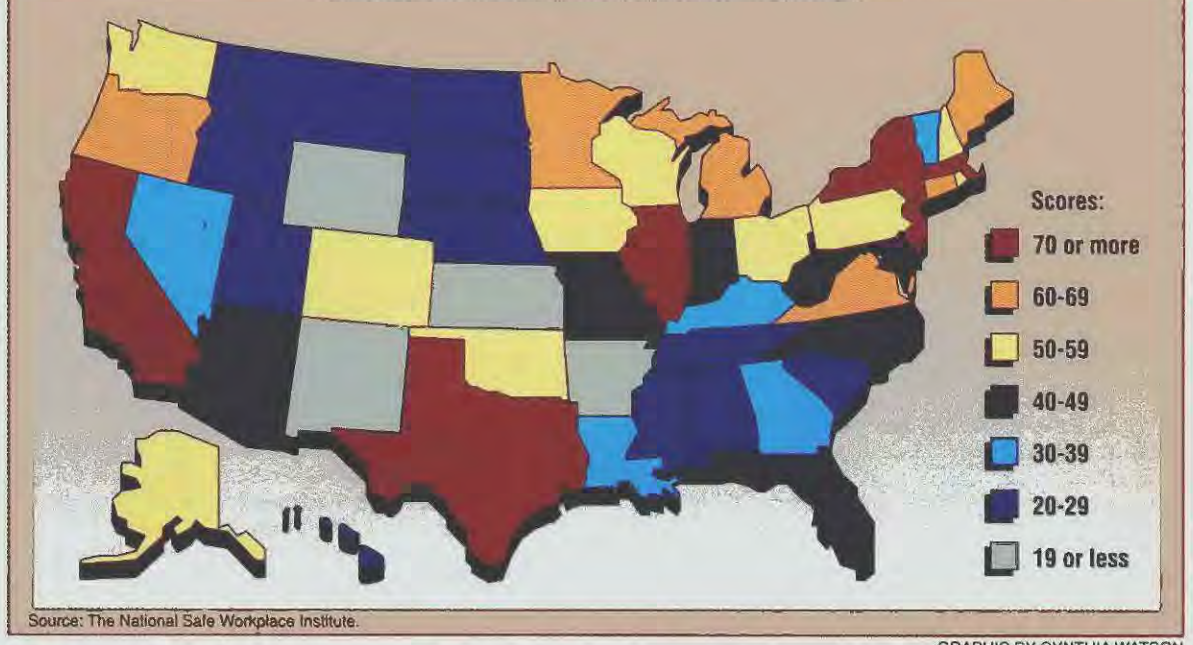
At the same time, 41% of respondents said the health care delivery system needs significant changes, 26% believe the system is beyond repair and 24% say the system needs some changes. The remainder either believe the system needs minor changes or don't know if changes are necessary.

This disparity—general satisfaction with one's own coverage but support for changing the broader health care delivery system—puts policymakers in a difficult position when they are considering

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Poor grades on workplace safety

A study that ranks how well states ensure workplace safety finds that even the highest-scoring states fall short of a perfect grade (a possible 116 points).



Source: The National Safe Workplace Institute.

GRAPHIC BY CYNTHIA WATSON

California leads states in safe workplace poll

By JOANNE WOJCIK

California may have the safest workplaces in the nation, but it is still far from being the ideal place to work, concludes a study to be released this week by the National Safe Workplace Institute.

California's score—81 out of a possible 116 points—is less than 70% of perfect, noted Joseph Kinney, the institute's director.

However, 22 states earned fewer than half the points California earned in the study for accident prevention, safety law enforcement and workers compensation benefits to injured workers. And 38 states earned less than three-fourths of California's total.

"We're not saying whether California is good or that any other state is bad," according to Mr. Kinney.

But, California's score reflects the fact that it has made workplace safety a priority, according to Mr. Kinney. "California has addressed the components of occupational injury and illness prevention more than any other state."

In particular, the study noted that a 1991 state law, S.B. 198, requires employers in California to establish and implement formal workplace safety programs or face fines ranging from $1,000 to $2,000 for each violation (*BI*, June 17, 1991). The law took effect in July 1991.

Other states with scores of 70 or more were New Jersey, 80; Illinois and New York, each with 76; Massachusetts, 73; and Texas, 72.

At the other end of the spectrum were Arkansas, which had the lowest total, 11 points; New Mexico and Wyoming, each with 14; Kansas, 15; and North Dakota, 21 (see chart, page 3).

North Carolina, which faces an April deadline imposed by Labor Secretary Lynn Martin to bring its state-run workplace safety program into compliance with federal standards (*BI*, Jan. 13), scored 47 points to tie Indiana and West Virginia for 24th place. The North Carolina program has come under intense criticism for failing to inspect a poultry processing plant at which 25 workers died in a fire last year (*BI*, Jan. 13; Sept. 9, 1991).

The workplace safety study, the first of its kind by the NSWI, includes a state-by-state analysis and profile. It was designed to identify "the interplay between prevention, compensation and enforcement," Mr. Kinney said.

The weighting of points for each category—50 points for prevention, 41 points for workers comp benefits and 25 points for enforcement—reflects the greater importance that the study places on prevention. But, a mix of all three go into making a prevention climate for each state, he explained.

States earned points in each cat-

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Bush proposals

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ployee.

The concept is that the proposal would prompt employers to offer health care plans with more cost-sharing features, thereby making employees more discriminating consumers of health care.

The proposal could encourage employers to expand their offerings of managed care programs, which have the greatest long-term potential to hold down health care expenses, observers say.

And, limiting employer tax deductions for health care expenses is seen as less politically damaging than another option the administration is considering: capping the amount of tax-free health coverage employees and dependents can receive from employers.

"Who would want to tax employees on their health care benefits in an election year?" asks Frank McArdle, a consultant in the Washington, D.C., office of Hewitt Associates.

By contrast, employers' objections to a ceiling on their own deductions for health care expenses might be muted by other tax breaks the administration may offer businesses to stimulate the economy, Mr. McArdle notes.

However, a ceiling on employer tax deductions for health care expenses could result in inequities for companies, observers point out.

For example, an employer could exceed the cap simply because it is located in an area with high health care costs. In addition, the cap could be exceeded because of the demographics of the company's workforce: Employers with generous health care plans but a young workforce might not exceed the cap, while a company with a with a generous health care plan but a high proportion of older workers would exceed it.

At the same time, employers that cover a high proportion of employees' dependents in their health care plans could exceed the cap, but employers with few dependents in their health care programs might not.

'Who would want to tax employees on their health care benefits in an election year?' asks consultant Frank McArdle of Hewitt Associates, commenting on the administration's consideration of placing a cap on tax-free health coverage.

The latest proposal for taxing employees on employer health care contributions that exceed a certain level is somewhat different from proposals that were discussed widely in the mid-1980s, which generated outcries of protest.

Under the earlier proposals, which triggered overwhelming opposition from employers, insurers and unions, employees would have been taxed on employer-paid health care contributions over a certain level, regardless of their income.

For example, as part of its first tax reform proposal in late 1984, the Reagan administration proposed including employer health care contributions that exceeded $70 a month for individual coverage and $175 a month for family coverage as taxable income to employees.

The option being considered by the Bush administration only would impose a limit on tax-free health care coverage for higher-income employees, perhaps those with annual incomes exceeding $100,000.

By linking a tax cap to employee income, much less opposition would be triggered. However, not much revenue would be generated compared with a tax cap unrelated to employee income.

Meanwhile, the administration may propose several changes to make health insurance more available for small employers and their employees. One option under consideration would make it easier for small employers to band together to buy health insurance on a group basis.

Another option would be recommend that states pass legislation to prevent insurers from excluding employees with pre-existing medical conditions from coverage.

The intent of that proposal would be to remove an impediment —fear of losing health care coverage for a current health care problem—that may make employees reluctant to change jobs, said Hewitt's Mr. McArdle.

To further expand health care coverage and reduce the ranks of the nation's 35.7 million uninsured, the administration also is considering offering tax credits and so-called refundable tax credits to make it easier for individuals to buy coverage. The size of the tax credits would decrease as income increased.

In addition, to help the middle class, the threshold above which individuals can take tax deductions for medical expenses could be lowered, observers say. Currently, taxpayers can deduct medical bills only if they file itemized returns and only if the medical bills exceed 7.5% of adjusted gross income.

"There is a perception that health care has to be made more affordable to the middle class," said Stuart J. Brahs, vp-federal government relations in the Washington, D.C., office of The Principal Financial Group.

In the Medicare program, observers expect the administration to resurrect a proposal made in 1991 that would link the amount of Medicare Part B premiums, which cover physician services, to retirees' income.

Under last year's proposal—not acted on by Congress—retirees earning at least $125,000 a year would have had to pay 75% of the Part B program's cost; the Part B premium, now $31.80 a month, only covers about 25% of the cost. As a result, retirees earning at least $125,000 would have had to pay about $95 a month.

Business and insurance executives who met with President Bush last week in the White House said the president is definitely opposed to national health insurance or a play-or-pay approach to expanding health care coverage because of the cost and possible loss of jobs.

In addition, President Bush said that while health care access and costs are problems that have to be dealt with, solutions must be based on common sense rather than rhetoric, according to Dirk Van Dongen, president of the Washington, D.C.-based National Assn. of Wholesaler-Distributors.

President Bush also gave an indication that incremental change is more appropriate than drastic changes, said Robert O'Brien, president of CIGNA Corp.'s employee benefit division.

Other insurers who met with Mr. Bush last week gave their own views on how to address various health care problems.

For example, Gary L. Countryman, chief executive officer of Liberty Mutual Insurance Co., told the president in a meeting in Liberty's Dover, N.H., office, that both the government and private industry must do more in order to reduce administrative costs in delivering health care and that reform of medical malpractice laws is essential. ■

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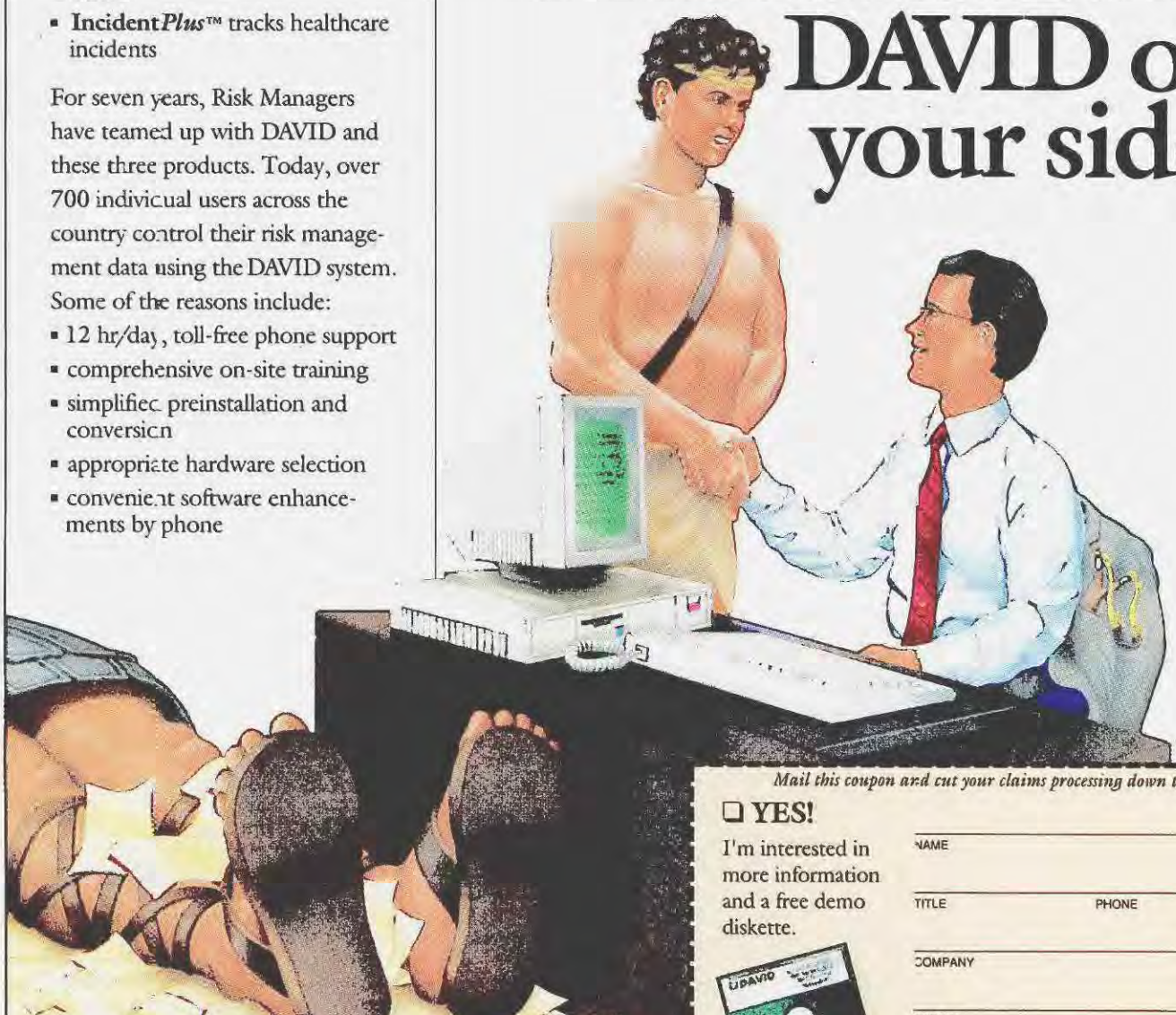
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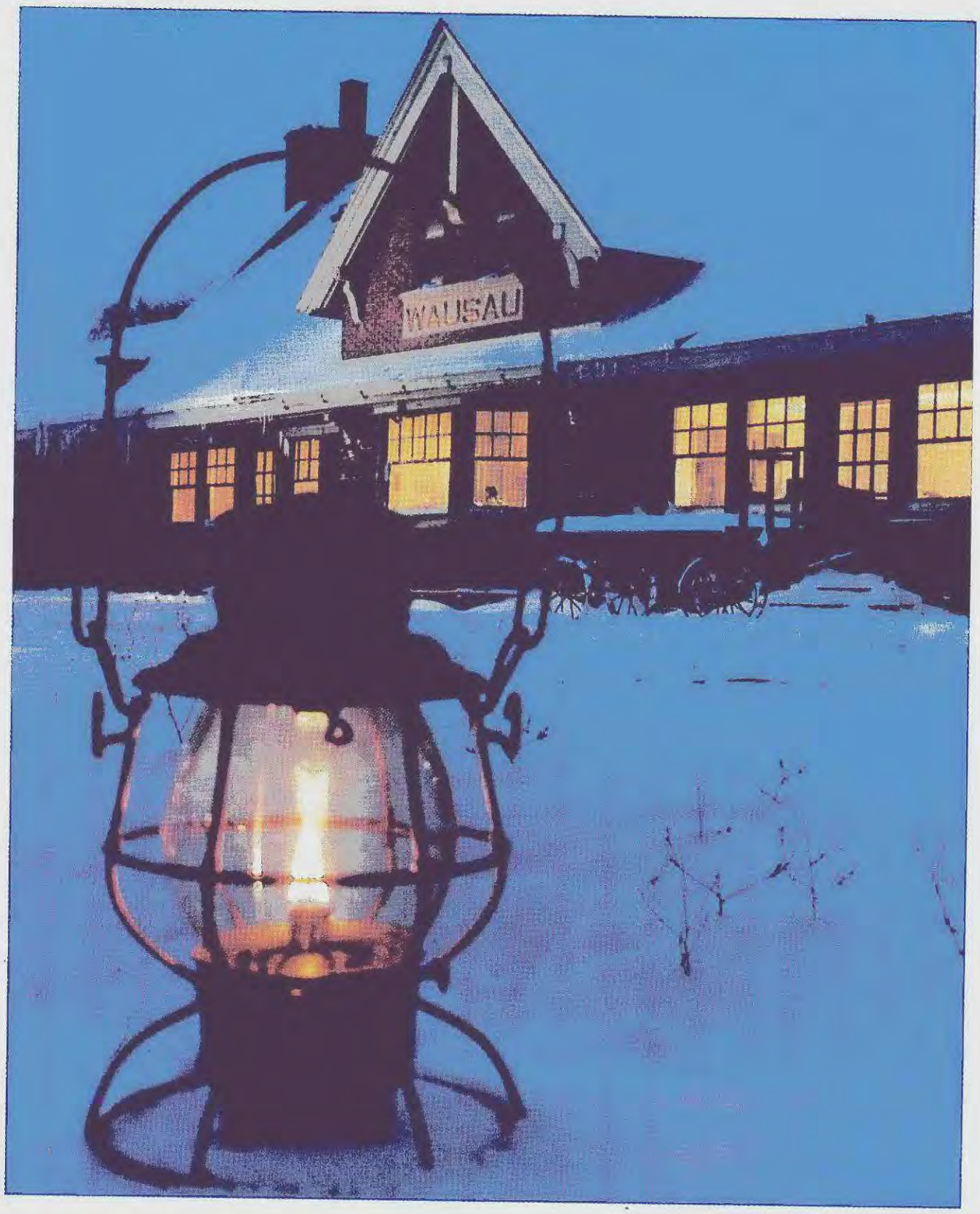
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N.Y. school districts coordinate drug benefits

Benefit beat

A self-insured consortium of 19 New York school districts expects to cut its annual prescription drug costs as much as 9% by requiring dependents of covered employees to receive reimbursement from their own group or private health plans before seeking drug benefits through the consortium.

The Putnam-Northern Westchester Health Benefits Consortium hopes to save between $400,000 and $450,000 this year by internally administering a coordinated prescription drug plan.

That projection is based on a six-month sampling of the claims activity of 150 school district-employee spouses who have medical and drug coverage elsewhere, explained David Stern, risk and benefits manager for the consortium.

The consortium, which has coordinated its medical plan for years, provides medical and prescription drug benefits to 9,500 active employees and retirees and their approximately 19,000 dependents.

The move is designed to alleviate the burden of paying for 100% of the drug benefits of about 3,000 dependents who have coverage elsewhere, Mr. Stern said.

"We have been spending about $5 million annually in prescription drug charges, which in itself indicates to me that there's room for dollars to be saved. For years we had been paying for all spouses and other dependents even when they had coverage elsewhere, which is conceptually wrong in my opinion," he said. "By doing this, we'll be paying much less than 100%, regardless of the portion their plan doesn't cover."

Under the new plan, which took effect Jan. 1, the consortium has instructed its prescription drug administrator, PCS Inc. of Scottsdale, Ariz., to deny all benefits to dependents who have coverage elsewhere.

The consortium will continue to pay any portion of a dependent's prescription drug charges not covered under the dependent's plan, like coinsurance, Mr. Stern said.

"People had said that because we have a discount plan that uses a card, it would be impossible to coordinate benefits. But it can be done if you do it internally," he said.

Mr. Stern said PCS is not willing to coordinate its plan with those of other employers, which would require processing benefits on a secondary basis.

However, the consortium, by tapping into the data held by its medical third-party administrator, has been able to identify which dependents have outside coverage. The consortium then forwarded a computer tape to PCS, which the administrator loaded into its system.

"Now, if covered dependents go to use their PCS card, the prescription is rejected. Dependents now have to go to their own carrier or administrator for primary coverage," he said.

Dependents then can submit claims to the consortium for unpaid balances. "We'll pay secondarily if there's any leftovers," Mr. Stern said.

All of the coordination is handled by one consortium staffer, according to Mr. Stern.

"Coordination of benefits is really simple. I'm surprised more employers aren't doing it. We get about 400 secondary claims per week, but they're far less complex than a medical claim. We're very excited about the plan because we're getting rid of the excess coverage (that dependents are receiving), but we're still keeping the card system, which gets us about a 5% to 10% discount off the top," he said.

Bill Danish, an employee benefit consultant with Kwasha Lipton in Fort Lee, N.J., called the consortium's initiative a "good idea that more employers should follow."

"They're going to reap a lot of savings by imposing a restriction like this. We have seen employers save a lot by coordinating medical benefits," Mr. Danish said.

—By Michael Schachner



Family leave favored

Employers should be required to provide an unpaid leave of absence for workers who adopt or have a baby, say most people responding to a recent survey.

More than three out of four people, or 76%, surveyed by the Gallup Organization Inc. say that such unpaid leaves should be mandatory.

The survey of 1,000 Americans age 18 and older was sponsored by the Employee Benefit Research Institute, a business-supported think tank in Washington, D.C. Thirty-two percent of those responding presently have children under the age of 13 living at home.

Mandatory leave was most popular among those aged 18-34. The survey found that 87% of this group would support such a requirement.

Other groups of respondents in favor of mandatory leave are those holding professional or managerial positions—with 83% supporting it—and those with incomes between $20,000 and $74,999—with 78% supporting it.

The survey also found that slightly more than two-thirds of the respondents, or 68%, thought that employers should play a role in providing child care assistance to employees.

Thirty-one percent did not think that employers should be involved in providing child care assistance to employers, and 1% did not know.

And, nearly two-thirds of the respondents, or 65%, believe the government should play a role in providing child care assistance for families.

Among those respondents, 79% also thought that employers should play a role in this area.

But, nearly one-third of respondents, 32%, did not think the government should play a role in child care assistance. Three percent said they did not know.

Among the respondents who thought the government should play a role in providing child care assistance, 48% said the employer should play the primary role.

But 38% thought the government should play the primary role in assisting with child care.

Eleven percent thought both the government and the employer should play the primary role, 2% did not know, and 1% said neither.

More than half of the respondents, or 57%, said that even if an employer must reduce other benefits or wages to provide child care assistance, the assistance should still be given.

However, more than one-third of the respondents, or 37%, said the benefit should not be offered if other benefits would be reduced.

Five percent said they did not know, and 1% did not answer.

—By Sara J. Harty

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Opinions

'Play or pay' doesn't pay

A NEW STUDY released this month by the Bush administration points out the problems that would be created if Congress enacts the play-or-pay approach to expanding access to health care coverage.

Advocates of play or pay—so named because employers would have to either "play" by offering a health care plan or pay new taxes to fund a government health plan for the uninsured—say the approach builds on the current employment-based health care system. But, according to an Urban Institute study commissioned by the Labor Department (*BI*, Jan. 13), a play-or-pay system would begin to supplant, not supplement, coverage from employers.

If employers were given a choice of offering a health care plan or paying a new 7% payroll tax, many employers would find it much less expensive to pay the tax rather than continue to offer a health care plan.

With a 7% payroll tax—the tax rate suggested by the Senate Democratic leadership in its health care reform legislation—the number of employees and dependents covered by employer-sponsored plans would decline to 104.7 million from the current 142.2 million, the study says. So many employers would terminate coverage that the new public plan for the uninsured would be larger than all employer plans put together and would be four times larger than the current Medicare program.

With a program of that size, a play-or-pay system would become, as Secretary of Labor Lynn Martin said, "backdoor national health insurance" with the government providing coverage to most Americans.

A 7% tax would not—as play-or-pay advocates often fail to note—cover the government's real cost to provide coverage to the uninsured, according to the study. As a result, additional taxes would have to be raised. In short, as Ms. Martin says, a play-or-pay system does become national health insurance: tax-financed and government-provided health care.



Of course, a play-or-pay system does not have to result in such a huge shift of people to a public plan from employer programs. If the payroll tax were set equal to the government's real cost in providing coverage, the tax would be high enough to discourage employers from dropping coverage.

We do not know how high that would be, but surely it would be well over 10%. Of course, play-or-pay advocates never use such figures. If they did, support for play or pay would evaporate.

While the Bush administration has demonstrated the problems with play or pay, it must go further. It must show that it has a better idea to provide coverage to the nation's 34.7 million uninsured.

Justice or jackpot?

CIVIL JUSTICE, Texas-style.

National Continental Insurance Co. and a Dallas trucking company have agreed to pay $3.5 million to settle a lawsuit filed on behalf of a teen-ager paralyzed in an auto accident—even though it's not clear that the trucking firm was at fault.

The teen was injured when the car in which she was riding struck a truck parked beside a freeway service road. Another passenger was killed (*BI*, Jan. 13).

On the surface, the case does not seem unusual. Defendants and their insurers settle all the time.

Several facts make this case stand out: The trucker received permission from a police officer to park on the side of the road, and the defense contends the driver of the car was "teasing" the passengers at the time of the accident by driving recklessly. And, the paralyzed teen already has received a $775,000 settlement from the parents of the car's driver.

Still, National Continental agreed to settle the case for a seven-figure amount rather than risk an even higher jury award. Possibly influencing that decision was a judge's ruling that the truck was parked illegally, even though the driver had received permission.

The power of the plaintiffs' bar in Texas courts—long notorious for jackpot judgments by juries—must be reckoned with. And, while we won't dispute the decision to settle, we hope the case serves as a reminder that our civil justice system is far from perfect.

At issue

What is your risk management resolution for the New Year?



Colleen Ostlund
Risk Manager
City of Arvada
Arvada, Colo.

To obtain more visibility and greater participation in projects planned for 1992. For instance, every month we have a safety meeting and videotaped session on a new topic. To encourage participation, we are sending everyone electronic mail and flyers on the topic. Also, I hope to see any new Occupational Safety and Health Administration regulations closely followed.



Jock Connell
Risk Manager
Gwinnett County,
Lawrenceville, Ga.

To make sure that our risk management program is as well rounded a program as possible. We want to make sure that we are applying all the risk management techniques in their proper proportions as they relate to our exposures. In 1992, we want to re-emphasize the basics of risk management. In my opinion, the basics make up 95% of all successful and effective programs.



Johnny Fontenot
Risk Manager
City of Beaumont,
Beaumont, Texas

To enable all employees within our corporation to be risk managers in their own workplace. Employees who are aware of risk exposures will be able to prevent losses before they occur and reduce both the incidence and severity of losses. Such a program will assure that the entire corporation meets its risk goals and objectives.

Compiled by Sara Harty

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Risk management information resource

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■ The Insurance Institute of America's three-course **Associate in Automation Management** designation, designed for insurance professionals who use computers in their work or supervise automated jobs, is described in a flier. Request item 101.

■ An information sheet from Agency Premium Resource Inc. details the MVR Data Center, a computer program that allows access to **current driving records** of licensed drivers directly from the state data bases. Request item 109.

■ The NADA Used Car Guide Co. offers a brochure describing how insurers can obtain immediate **access to vehicle valuations**, including average trade-in and average retail prices, among other data, using the NADA Dial Guide system. Request item 110.

AUTOMATED SYSTEMS AND SOFTWARE FOR INSURERS

■ A **multimedia claim processing program** that includes automated input of claims, payment of invoices and inquiry and response systems is explained in a flier from NRM Computer Systems Inc. Request item 201.

■ The president of Softouch Software Inc. has written an article discussing **computer systems for early determination of compensability for workers compensation claims**. Request item 202.

■ Information on a **medical and dental malpractice insurance system** for malpractice insurance companies is available from Insurance Data Processing Inc. The system's features include claims-made and occurrence policy rating in addition to claims administration. Request item 203.

■ A directory from the American Assn. of Insurance Services briefly describes **software vendors that support AAS personal and commercial lines insurance.** Hardware, software, type of support and names of reference companies are listed. Request item 204.

■ A fact sheet from ISI Systems Inc. on a **claims processing and management system** for property/casualty business in an online, real-time environment features automatic coverage verification and check printing and offers Wang image technology as an option. Request item 205.

■ Softouch Software Inc. has written a functional outline of four bill reporting systems that **analyze medical provider, claimant and treatment information**. Request item 206.

■ A summary package and videotape introduces a **real-time, integrated property and casualty insurance company system** from Insurance Data Processing Inc. The system supports claims administration, automated reinsurance and more. Request item 207.

■ The **direction of automation and research and development** in the 1990s for AQS Commercial Insurance Systems' commercial insurance policy processing systems is summarized in a brochure. Request item 208.

■ Medical Bill Advisor, a software system from Softouch Software Inc that **audits and reviews physician outpatient bills**, is outlined in a seven-page paper. Request item 209.

■ WLT Software of Florida Inc. provides a brief description of its **COBRA administration software system**, covering billing, premium collection, accounting and letter-writing capabilities. Request item 210.

■ A brochure from The Wheatley Group Ltd. describes its **insurance systems product line designed specifically for the IBM AS/400**. The brochure includes an insert on an information processing system for reinsurers. Request item 211.

■ Intro-Vision, a property and casualty system from Insurance Data Processing Inc., performs **rating, policy issuance and statistical code generation**. For a descriptive package and videotape, request item 212.

■ A functional outline of Medical Case Manager, a software **system that helps manage treatments and events involving individual medical claims**, is available from Softouch Software Inc. Request item 213.

■ Policy screening, underwriting,

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Continued from page 10

billing, customer service and other third-party administration services for **residual and specialty automobile insurance** are available through the Insurance Processing Center, a subsidiary of ISI Systems Inc. An information sheet is available. Request item 214.

■ The American Assn. of Insurance Services offers a reference booklet describing the **statistical reporting process**, from initial data submission to final rates or loss costs and how this process benefits companies that report statistics to advisory rating organizations. Request item 215.

■ A software system that **audits and reviews hospital inpatient bills** is outlined in a paper from Softouch Software Inc. Request item 216.

■ A brochure from Biven Software Inc. identifies 10 major applications in a **health insurance information system** and the five major functions of each of those applications. Request item 217.

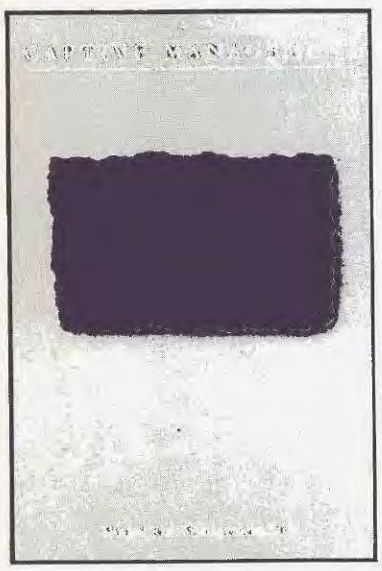
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■ A folder of information on **establishing a captive in Vermont** is available from Commonwealth Risk Management Inc. Request item 301.

■ William R. Storie & Co. Ltd. offers a discussion paper on **trends in alternative risk management.** Request item 302.

■ An outline of **Hawaii's captive insurance law** is provided by Pacific Captive Management. References to sections in the applicable statute and details of the statute are given. Request item 303.

■ A publication from Eastern Caribbean Investment Promotion Services gives background information on the **captive insurance and offshore banking industry in the British Virgin Islands.** It outlines how to form international companies, and the advantages of domiciling captives in the British Virgin Islands. Request item 304.



■ Management services available for **captives domiciled in Bermuda, Barbados, the Cayman Island and Dublin** are detailed in a pamphlet available from Commonwealth Risk Management Inc. Request item 305.

■ An article offered by Becher & Carlson discusses the infrastructure, tax implications, operating costs, regulatory perspectives and future stability of **captives domiciled in Bermuda, Hawaii and Vermont.** Request item 306.

■ International Risk Management Institute Inc. publishes information about a two-volume reference that addresses self-insurance and explains **how to set up and administer captives.** Risk financing alternatives, including retrospective rating plans, pooling, paid-loss retros, dividend plans and others are discussed. Request item 307

COMMERCIAL PROPERTY/CASUALTY INSURANCE

■ "Whose Dime Is It Anyway?: Are $1.2 Billion Worth of Illegal Telephone Usage Losses Covered Under a Policy of Property Insurance?" is a report from Clausen Miller Gorman Caffrey & Witous that provides a summary on a **new type of loss that is expected to affect property insurance policies.** Request item 401.

■ A kit from NAS Insurance Services Inc. contains information on **automobile dealers contingent automobile physical damage insurance**, explaining coverage, premiums and commissions and featuring a sample policy form and application. Request item 402.

■ A comprehensive **commercial insurance package for not-for-profit organizations** is explained in an information sheet written by

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The Risk Management Information Resource section is an editorial compilation of current informational and educational materials on topics of interest to risk management, financial and insurance executives.

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The materials, all of which may be obtained free of charge by *Business Insurance* readers, are organized under 15 headings.

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Continued from previous page
Berkley Risk Services Inc. The "Nonprofit Protector" includes property, inland marine, general liability, professional liability, directors and officers liability, automobile and crime coverages. Request item 403.

■ A four-page brochure published by Industrial Risk Insurers outlines TrueWorth, a new **property valuation service** for IRI policyholders. Request item 404.

■ A booklet from The London Underwriters Agency Inc. describes some of the coverages and classes handled by the agency, including **professional liability, commercial auto and physical damage.** Request item 405.

■ A newsletter by Media/Professional Insurance Inc. informs agents and brokers of **industry news, and changes in media law and underwriting of media risks.** Request item 406.

■ A description of liabilities created by federal and state environmental legislation and how new **environmental insurance coverage** designed to address these liabilities can protect property owners is available from ERIC Group Inc. Request item 407.

■ Trupin Insurance Services offers a reprint of an 11-page article evaluating the **recent changes in the Insurance Services Office Inc.'s commercial property program** and an analysis of how to provide adequate property insurance protection. Request item 408.

■ Clausen Miller Gorman Caffrey & Witous provides an extensive survey of 1990-1991 **developments and decisions in property insurance law**. Request item 409.

■ A brochure offered by Berkley Risk Services Inc. describes States Self-Insurers Risk Retention Group Inc., a risk retention group structured to provide **excess liability coverage for public entities.** Request item 410.

■ ERIC Group Inc. offers an article summarizing the dangers of asbestos exposure and the **underwriting criteria for asbestos contractors**. Request item 411.

■ Minet Professional Services offers "Inside Insurance," a three-article series of reprints from New York Construction News that looks at **professional liability insurance topics for architects, engineers, construction managers and design professionals**. Request item 412.

■ NAS Insurance Services Inc. offers an information kit that explains **terrorism coverage, premiums and commissions** and includes a sample policy form. Request item 413.

■ Mound, Cotton & Wollan produces a quarterly newsletter that discusses recent cases that are representative of **legal trends within the insurance and reinsurance industry**. Request item 414.

■ "Making a Difference—New Policy on Pollution," an article reprint from ERIC Group Inc., discusses **property transfer environmental insurance** and the failure rate of environmental audits. Request item 415.

■ Customized Worldwide Weather Insurance Agency Inc. supplies a folder with materials outlining **weather insurance, including underwriting guidelines and markets.** Request item 416.

■ Assurance Alliance Inc. offers a brochure outlining **alternative insurance mechanisms developed for long-haul trucking companies.** Request item 417.

■ A booklet from Continental Insurance Co. addresses the most often asked questions about **credit insurance**. Request item 418.

■ A kit from NAS Insurance Services Inc. explains **California managers criminal defense reimbursement insurance**, a form of coverage that arises out of California Criminal Liability Act A.B. 2249/S.B. 198). Sample policy form and application, as well as information on premiums and commissions, are included. Request item 419.

■ A description of **coverages needed by lessors that lease vehicles to others for one year or longer** is given in a Paige-Ruane Inc. information sheet. Request item 420.

■ A folder from Minet Insurance Brokerage Services describes a new coverage form designed to protect and insure an **executive committee member of a Superfund site** for managing the cleanup of that site. Request item 421.

■ Environmental Management Insurance Services Inc. created a brochure reviewing the options available to building owners when selecting **asbestos abatement project coverage.** Request item 422.

■ A kit containing information about **business legal expense insurance** is made available by NAS Insurance Services Inc. The information kit also includes a sample policy form and application. Request item 423.

■ A description of all **property and casualty insurance courses and programs** offered by the American Institute for Chartered Property Casualty Underwriters and the Insurance Institute of America is available from the institutes. Request item 424.

■ A brochure from Liberty Mutual Insurance Co. outlines a **property/casualty program for printing and graphic arts businesses**. The program includes loss-prevention and experienced claims-handling services and individualized coverages. Request item 425.

■ ERIC Group Inc. provides a reprint of an article on a **comprehensive asbestos liability insurance program.** Request item 426.

■ "Asbestos Exclusion Issues Complicate Risk Management," a report offered by Environmental

Continued on next page

E TODAY



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And obviously, risks like these don't stop at the water's edge.

Home Insurance

A NEW TEAM

Continued from previous page
Management Insurance Services Inc., reviews necessary coverages and critical exclusions of **asbestos abatement liability insurance policies**. Request item 427.

■ A broker kit from NAS Insurance Services Inc. on **employer's wrongful discharge, discrimination and sexual harassment legal expense reimbursement insurance** explains coverage terms, limits, premiums and commissions. Request item 428.

■ A booklet from Swett & Crawford Group outlines insurance programs for **traditional and alternative power generation utilities,** including cogeneration and independent power producers. Request item 429.

■ An information brochure supplied by the International Risk Management Institute describes its 1,300-page **professional liability insurance reference manual** that addresses liability exposures, policies and markets for directors and officers, accountants and miscellaneous other professionals. Request item 430.

■ A kit describing **tenant discrimination legal expense reimbursement insurance** is available from NAS Insurance Group Services Inc. The material explains coverage, limits, premiums and commissions. Request item 431.

FIDELITY & SURETY

■ An informative flier from Continental Insurance Co. discusses **contract bond coverage** guaranteeing the completion of construction contracts and the payment of related labor and material expenses. Request item 701.

■ Midwest Indemnity Corp.'s bond submission kit covers **contract and miscellaneous surety risks**. Simplified instructions and forms for preparing surety bond submission are included. Request item 702.

■ The Insurance Institute of America's five-course **Associate in Fidelity and Surety Bonding designation** program is described in a flier. Request item 703.

■ A series of fliers about **comprehensive coverage for financial institutions, directors & officers liability, trust department errors and omissions insurance, computer crime policy, employee benefits administration and ERISA fiduciary liability insurance** is available from Continental Insurance Co. Request item 704.

FINANCIAL SERVICES

■ The Insurance Institute of America's **Associate in Insurance Accounting and Finance designation program**, designed for technical accounting, statistical and financial personnel of insurance companies, is described in a flier. Request item 801.

INTERNATIONAL

■ Crawford & Co.'s **Canadian office locations** are detailed in this directory. Request item 902.

■ An article from Clausen Miller Gorman Caffrey & Witous explains problems an attorney faces when dealing with **international law issues.** Request item 903.

■ A brochure from Commonwealth Risk Services (Europe) Ltd. describes its Insurance Profit Centre, an **alternative risk financing program available in the United Kingdom and Europe.** Request item 904.

■ A guide from Crawford & Co. lists the **international network offices** of Graham Miller International. Request item 905.

■ Commonwealth Risk Services Inc. offers a pamphlet describing its Insurance Profit Center, **a rent-a-captive approach for Canadian policyholders.** Request item 906.



■ Crawford & Co. offers a brochure describing the **worldwide loss adjusting services** of Graham Miller International. Service areas include property/casualty, environmental pollution, aviation and security consultancy. Request item 907.

LOSS CONTROL/PEOPLE

■ A pamphlet from Crawford & Co. outlines the company's range of **industrial hygiene services,** including industrial hygiene management audits, environmental occupational health audits, comprehensive industrial hygiene surveys and indoor air quality evaluations. Request item 1001.

■ A summary book from Isotechnologies Inc. describes the reports generated by the **B-200 Back Testing and Rehabilitation Machine,** which assesses extent of low back injury, validity of effort and appropriate rehabilitation goals. Screening reports also compare an individual's low back function to work-related databases. Request item 1002.

■ A six-page article from Nova Office Furniture Inc. outlines the elements necessary to reduce the risks of **cumulative trauma disorders** in the workplace with proper computer equipment. Request item 1003.

■ "Indoor Air Quality: Increasing Costs and Pending Legislation Make it a Problem Management Can no Longer Ignore," an article from Crawford & Co., discusses ways to **curb indoor air quality problems and prevent "sick building syndrome."** Request item 1004.

■ A booklet from Liberty Mutual Insurance Co. discusses **the importance of effective loss prevention in helping companies control escalating workers compensation costs.** Pre-operational safety planning, management responsibilities, administrative controls and more are covered. Request item 1005.

■ A self-evaluation form created by Working Solutions Inc. helps companies determine the status of their existing safety programs in relation to selected aspects of the **Occupational Safety and Health Reform Act of 1991.** Request item 1006.

Continued on next page

AUTHORIZED AGENTS

Albany, NY	800-444-2215
Albuquerque, NM	505-255-9577
Anchorage, AK	907-562-4532
Atlanta, GA	800-875-8211
Auburn, ME	207-777-6233
Baltimore, MD	301-771-0400
Baton Rouge, LA	504-927-2208
Birmingham, AL	800-875-8211
Bismark, ND	800-323-0371
Boise, ID	208-345-4177
Boston, MA	800-999-6233
Buffalo, NY	800-724-8008
Burlington, VT	800-999-6233
Cherry Hill, NJ	609-596-7624
Cheyenne, WY	303-753-9461
Chicago, IL	708-982-9800
Cincinnati, OH	513-232-9600
Cleveland, OH	800-828-8391
Columbia, SC	800-348-8738
Columbus, OH	800-962-4718
Dallas, TX	214-250-0771
Denver, CO	303-753-9461
Des Moines, IA	800-323-0371
Detroit, MI	313-647-BOND
Great Falls, MT	800-823-3596
Hartford, CT	800-842-4459
Honolulu, HI	808-941-2307
Houston, TX	800-627-6474
Indianapolis, IN	317-580-7500
Irvine, CA	818-501-4385
Jackson, MS	504-927-2208
Jericho, NY	800-851-5116
Kansas City, MO	800-882-6630
Larchmont, NY	914-833-0111
Las Vegas, NV	702-388-4022
Lexington, KY	606-253-1561
Little Rock, AR	800-482-8841
Los Angeles, CA	800-457-7625
Manchester, NH	800-999-6233
Milwaukee, WI	414-781-4630
Minneapolis, MN	612-770-8325
Nashville, TN	800-348-8738
New York, NY	212-385-9200
Oklahoma City, OK	800-375-BOND
Omaha, NE	402-572-6000
Pasadena, CA	818-248-1399
Philadelphia, PA	800-662-7132
Pittsburgh, PA	412-921-3077
Plainview, NY	800-762-4547
Portland, OR	503-226-6444
Raleigh-Durham, NC	800-348-8738
Richmond, VA	800-552-5714
Sacramento, CA	916-927-0775
Salt Lake City, UT	801-566-7272
San Diego, CA	619-535-0500
San Jose, CA	408-452-4644
Santa Rosa, CA	707-546-4910
Seattle, WA	206-527-6624
Sioux Falls, SD	800-323-0371
Springfield, IL	800-228-3328
St. Louis, MO	314-842-0307
Tampa, FL	813-247-0118
Totowa, NJ	201-890-0900
Washington, D.C.	301-470-7317
Wilmington, DE	301-771-0400

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■ A report from Darrell Heppner Risk Management Services Inc. argues that **back injuries can be reduced** by using programs including employee awareness, employee participation, ergonomics, exercises and light-weight industrial back supports. Request item 1007.

■ A brochure from Crawford & Co. covers **assessing the effectiveness of risk control programs**, including safety program success, industrial hygiene, ergonomics as well as various property loss control issues. Request item 1008.

■ A 44-page paper from Beech Street of California Inc. examines whether **investment in health promotion and disability prevention programs** results in lower labor costs and an increase in productivity. Request item 1010.

■ An article from Crawford & Co. looks at **legislation in California, S.B. 198**, that is intended to beef up existing workplace safety laws in the state and introduce hefty fines and penalties for violations. Request item 1011.

LOSS CONTROL/ PROPERTY

■ "Advantages of Computer Estimating in Property," an article offered by Crawford & Co., discusses **alternative input methods and the future of cost data bases.** Request item 1101.

■ A magazine published by EQE International discusses issues in **risk, safety, seismic and structural engineering worldwide.** A sample copy includes articles on the Oakland fire and European earthquake hazards. Request item 1102.



■ A pamphlet provided by Crawford & Co. describes its program of **inspection monitoring, custom risk analysis and assessment.** Request item 1103.

■ The Institute for Crisis Management is offering a fact sheet to help managers and executives **assess a sudden, disruptive event in business** and determine how it should be classified and handled. Request item 1104.

■ A brochure from Industrial Risk Insurers describes the company's new **technical manual of loss prevention and control guidelines.** Subjects from aerosol storage to ventilation of fire pump rooms are addressed. Request item 1105.

■ Industrial Risk Insurers' management program for loss prevention and control is described in a manual written in French. It addresses topics like **impairments, maintenance, pre-emergency planning and hazardous materials.** Request item 1106.

■ "Positioning Insurers for Success in Environmental Cleanups," an article from Crawford & Co.'s *Risk Review*, looks at the **police powers of regulatory agencies in spill cleanups.** Request item 1107.

■ An article from Blackmon-Mooring-Steamatic Catastrophe Inc. titled "Don't Let Your Vital Records go up in Smoke," discusses **how to recover your critical business records from catastrophic loss.** Request item 1108.

■ A handbook from Crawford & Co. provides instruction in actively **controlling environmental pollution catastrophe claims and costs through efficient field operations management.** Step-by-step strategies outline measures to take before a spill occurs, during a spill response, during demobilization and after a spill is over. Request item 1109.

■ "The Sentinel," a magazine published by Industrial Risk Insurers, offers advice on **protecting and maintaining transformers.** Polychlorinated biphenyls and oil transformers also are discussed. Request item 1110.

■ Crawford & Co. has compiled a directory of **heavy equipment appraisers** in the United States and Canada. Locations, addresses, phone and fax numbers are included. Request item 1111.

■ A brochure from Crawford & Co. discusses issues companies should consider when **assessing their fire protection needs.** Included is a question-and-answer section. Request item 1112.

■ An article from Crawford & Co. discusses the **impact of misunderstanding debris removal provisions in commercial property policies** that relate to toxic materials and pollution cleanup expenses. Request item 1113.

■ Industrial Risk Insurers offers an issue of "The Sentinel" addressing **safe storage of aerosol products in manufacturing facilities, warehouses and mercantile occupancies.** Production supplies and how to determine the flammability of stored aerosol products also is discussed. Request item 1114.

■ "Risk Control Management Studies," a pamphlet from Crawford & Co., describes how managers can **control the costs of claims and insurance.** Request item 1115.

■ A catalog from Factory Mutual Engineering and Research lists property loss control seminars, booklets, videotapes and learning kits covering **emergency planning, fire protection systems, preventive maintenance, proper construction, natural disaster planning, risk management** and more. Request item 1116.

■ Crawford & Co.'s complete range of **catastrophe services** are covered in a brochure. Request item 1117.

■ The third-quarter 1991 issue of "The Sentinel" from Industrial Risk Insurers defines **four types of walls used to contain fires and explains their construction and fire resistance.** Fire doors are also discussed. Request item 1118.

■ A brochure from Crawford & Co. describes its **vehicle inspection appraisals.** Automobiles, as well as heavy over- and off-the-road equipment appraisals, are available. Request item 1119.

■ The Insurance Institute of America's **Associate in Loss Control Management designation** program, designed for insurance professionals responsible for controlling the accidental losses of their own or others' firms, is described in a flier. Request item 1120.

■ A Crawford & Co. booklet describes the company's **environmental pollution claim services,** including environmental disaster advance information exchange. Request item 1121.

■ The fourth-quarter issue of "The Sentinel," an Industrial Risk Insurers magazine, offers advice on the **proper adjustment, maintenance and installation of backflow preventers and pressure-reducing valves** to ensure proper operation of sprinkler or standpipe systems. Request item 1122.

■ An issue of a quarterly newsletter published by Crawford & Co. covers **risk control, safety and accident prevention.** Regular topics include industrial hygiene, environmental health, ergonomics, fire protection, boiler and machinery consulting and suppression/detection systems design. Request item 1123.

■ A copy of Industrial Risk Insurers' management program for loss prevention and control is available in **Spanish**. Request item 1124.

■ A pamphlet from Crawford & Co. lists its **property service standards,** a group of quality control standards used to ensure top quality property claims services. The pamphlet also covers service time requirements, quality control mechanisms, loss estimates and ethics. Request item 1125.

■ Liability and safety guidelines for **detecting and abating asbestos problems in commercial buildings** are outlined in an article supplied by ERIC Group Inc. Request item 1126.

MARINE

■ The Insurance Institute of America's **Associate in Marine Insurance Management designation** program, designed for anyone whose job duties or professional interests involve inland or ocean marine insurance, is described in a flier. Request item 1201.

REINSURANCE

■ Rodney-Smith & Partners is offering a paper describing the difficulties reinsurers may experience with **incoming treaties** and how they may be resolved quickly. Request item 1301.

■ A profile from North American



Reinsurance Corp. describes how the reinsurance company can help others manage **reserve analysis, toxic waste cleanup, professional liability and medical case management**. Request item 1302.

■ Insurance Data Processing Inc. offers an introductory package that describes its **facultative and treaty reinsurance management system**. Features include support of submissions, certificate production, location searches, claims administration, underwriting and a range of management information. Request item 1303.

■ A booklet from Pearson &

Continued on next page

Business Insurance **Information Resource**

NOTE: THIS COUPON WILL NOT BE SERVICED AFTER MARCH 30, 1992
All questions must be answered in order to have your inquiry processed.

Please check one item for each category:

1. My organization is best described as:
   A ☐ Mfg/Svcs F ☐ Ins Agent K ☐ Adj/Apprs
   B ☐ Association G ☐ Ins Broker L ☐ TPA
   C ☐ Union H ☐ Ins/Reins Co M ☐ Healthcare Inst
   D ☐ Government I ☐ Actry/Conslt
   E ☐ Educational Inst J ☐ Attorney N ☐ Other
2. Number of employees:
   1 ☐ 150 or less 2 ☐ 151-499 3 ☐ 500-999
   4 ☐ 1,000-4,999 5 ☐ 5,000 or more 6 ☐ Unknown
3. My title is best defined as:
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   B ☐ Financial Mgt E ☐ Loss Prevention Mgt
   C ☐ Risk Mgt F ☐ Other
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Georgi International Inc. describes the company's **international reinsurance broker services.** Request item 1304.

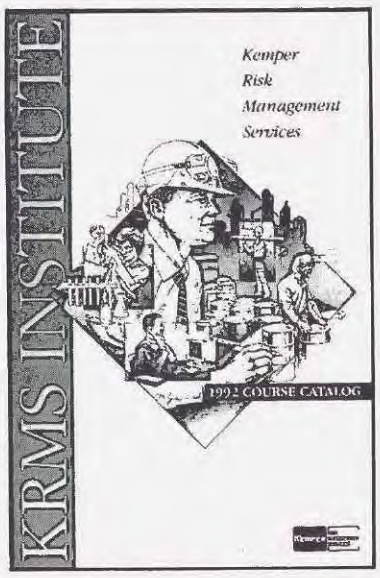
■ The Insurance Institute of America's four-course **Associate in Reinsurance designation** program, designed for employees of reinsurance companies, reinsurance intermediaries and primary insurers, is described in a flier. Request item 1305.

RISK MANAGEMENT

■ A directory from Crawford & Co. lists its **risk control services offices and principal officers.** Request item 1401.

■ A survey from Event Risk Management determines the **top 10 risk factors in determining the degree of risk for general events.** Request item 1402.

■ Courses offered by the National Loss Control Service Corp., Kemper National Services and Kemper National Insurance Cos. are listed in a brochure. Topics include **safety, industrial hygiene, ergonomics, environmental safety, fire protection engineering, claims and cost containment.** Request item 1403.



■ An article from American Credit Indemnity Co. explains the benefits of **business credit insurance** in a financially volatile economy. Request item 1404.

■ Crawford & Co. offers a description of correspondence courses covering **casualty, property and workers compensation training** for its employees and clients' employees. Courses are in either a self-study or video-based training format. Request item 1405.

■ Corporate Risk Management Inc. offers a three-part booklet that provides business owners with information on **evaluating insurance brokers and programs.** Request item 1406.

■ **"Risk Management Matters,"** a quarterly newsletter, is available from Gregory B. Bragg & Associates Inc. Request item 1407.

■ A two-volume guidebook from KPMG Peat Marwick covers topics like **broker selection, policy terms and conditions, renewal specifications and environmental impairment liability.** Request item 1408.

■ A brochure from Industrial Indemnity Co. presents **risk retention approaches for liability coverage** through a discussion of deductible and self-insured retention plans. Request item 1409.

■ Crawford & Co. offers a quarterly magazine, "Risk Review," covering **topics of interest to risk managers and claims personnel.** Request item 1410.

■ International Claims Litigation & Preparedness Services Group Inc.'s pamphlet gives an overview of its **litigation management program,** including steps that can be taken to save time and money. Request item 1411.

■ A booklet from Clayton Environmental Consultants Inc. describes its **technical seminars on topics related to managing environmental and occupational health risks.** Request item 1412.

■ "Globalrisk," a quarterly publication from Anistics, features **risk management services, strategies and concerns** in areas like risk financing methods, risk management information systems and environmental liability considerations. Request item 1413.

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Continued from previous page

■ A brief outline of the **basic concept of loss forecast,** a common forecasting methodology, is available from Specific Software Solutions Corp. Request item 1414.

■ A directory from Crawford & Co. gives a **comprehensive listing of its more than 800 offices.** Request item 1415.

■ American Specialty Underwriters identifies **financial risks faced by high-income professional athletes and entertainers** and includes criteria for selecting a special risk disability insurer. Request item 1416.

■ The **Clean Air Act amendments of 1990** are summarized in a six-page paper from Clayton Environmental Consultants Inc. Request item 1417.

■ Three-color schematics from Risk Sciences Group describe the company's **second generational risk management information systems** technology. Request item 1418.

■ A Crawford & Co. booklet lists 137 **questions to ask before you next renew.** Topics include claims management administration, vocational and medical rehabilitation, risk control, information systems and finance. Request item 1419.

■ An article reprint from Stone & Webster Management Consultants Inc. covers unique aspects of **utility risk management** and outlines the steps to protect a utility's assets from the risk of accidental loss. Request item 1421.

■ **Service time requirements, quality control mechanisms, reporting requirements and other vehicle service standards** of Crawford & Co. are outlined in a booklet from the company. Request item 1422.

■ Clayton Environmental Consultants Inc. publishes a technical newsletter featuring articles related to **managing environmental and occupational health risks.** For a sample copy, request item 1423.

■ A brochure offered by Commonwealth Risk explains "The Funding Application" program, a **cost-plus funding technique for insureds with hard-to-place or prohibitively priced coverages.** Request item 1424.

■ A six-page supplement describes Crawford & Co.'s **risk management services program,** focusing on objective program evaluation, information systems and program coordination. Request item 1425.

■ Solutions for **indoor air quality maladies** and resulting costs from reduced employee productivity, health care costs and litigation are recommended in a paper from Clayton Environmental Consultants Inc. Request item 1426.

■ Stone & Webster Management Consultants Inc. publishes a digest of **trends and developments in risk management and finance.** Request item 1427.

■ The Insurance Time Line, from Trupin Insurance Services, gives **step-by-step instructions in managing insurance programs.** A detailed explanation of the procedures to be followed throughout the year to prepare for hard or soft markets is included. Request item 1428.

■ In an article on **environmental risks of real estate deals,** Clayton Environmental Consultants Inc. explains which laws pose the greatest risk and how a small business can protect itself. Request item 1429.

■ Crawford & Co.'s eight-page brochure details seven ways anybody involved with risk management can effectively use **independent insurance adjusters.** Request item 1430.

■ A discussion on **environmental risk-funding alternatives,** like self-insurance, finite risk insurance and captive insurance is offered by Becher & Carlson. Request item 1431.

■ A **guide on errors and omissions claims** from Bishop, Barry, Howe, Haney & Ryder covers California law and includes examples and checklists. For a sample, request item 1432.

■ A microscopy specialist from Clayton Environmental Consultants Inc. describes several existing **analytical laboratory methods for asbestos** and touches on future improvements. Request item 1433.

■ A 24-page brochure describes Crawford & Co.'s **adjusters and appraisers classroom courses,** available to employees and employees of clients. Topics include casualty adjusting, workers compensation adjusting, vehicle services appraisal and property loss adjusting. Request item 1434.

■ A copy of "CRS Review," a semi-annual publication devoted to worldwide issues within the **alternative risk financing marketplace,** is offered by Commonwealth Risk Services Inc. Request item 1435.

■ The Insurance Institute of America's three-course **Associate in Risk Management** designation program, designed to teach risk management problem-solving techniques, is described in a flier. Request item 1436.

■ The Riskletter, a new four-page quarterly from Crawford & Co., provides **timely analyses of risk issues.** Request item 1437.

■ The Traverse Group Inc.'s environmental risk management and advisory service is designed to **reduce a company's environmental risk exposure** through an evaluation of on-site hazardous materials, handling practices and applicable regulatory documentation. For more information, request item 1438.

■ A Becher & Carlson discussion paper answers eight of the most common questions about **finite risk insurance** and offers examples of its use. Request item 1439.

■ A new 200-page book from the International Risk Management Institute Inc. answers questions about **additional insureds,** including discussions of more than 100 court rulings. Request item 1440.

■ A 12-page booklet outlines Crawford & Co.'s **casualty service standards** from customer service to reporting requirements to quality control. Request item 1441.

■ Commonwealth Risk's Insurance Profit Center, **a non-owned captive approach** designed to return underwriting profit and investment income back to a policyholder, is described in a pamphlet. Request item 1442.

■ Keys to a successful **cost allocation program** are explored in a paper from Becher & Carlson. Tips include making company units accountable for results, equitably distributing cost of risk and making the program simple to understand. Request item 1443.

■ An eight-page pamphlet describes Crawford & Co.'s **heavy equipment appraisal services** for off- and over-the-road commercial vehicles, aircraft and boats. Request item 1444.

■ Continental Insurance HealthCare's quarterly newsletter addresses current issues in **clinical risk management** and suggests methods for decreasing medical professional liability risk. Articles are written by insurance professionals, clinicians and malpractice attorneys. Request item 1445.

■ A brochure provided by the National Loss Control Service Corp., a division of Kemper National Services, highlights risk management services including **claims administration, safety, industrial hygiene, ergonomics, environmental and medical cost containment.** Request item 1446.

■ Gallagher Bassett Services Inc.'s series of seminars examining **problematic liability issues affecting law enforcement agencies** is described in a flier. Topics include supervisory responsibility and liability management, pursuit driving, understanding and managing use of force and officer survival. Request item 1447.

RISK MANAGEMENT INFORMATION SYSTEMS

■ An article that answers 43 questions about the **development and operation of risk management information systems** is available from Crawford & Co. Request item 1501.

■ A brochure from Continental Insurance describes its **on-line information system,** which accesses current loss data, analyzes trends and develops action plans. Request item 1502.

■ A booklet from Crawford & Co. describes how to access its pool of experienced **property and casualty claims personnel for short- and long-term claims-related temporary assignments.** Adjusters, appraisers, examiners and supervisors are available. Request item 1503.

■ ESIS Inc. offers a series of brochures describing the **screen usage and advanced function** of its risk management information system. Request item 1504.



■ A pamphlet from Compwatch Corp. describes its updated **workers compensation management system.** Features include a diary system, breakdown of financial information into paid medical and indemnity, reserves and total incurred. Request item 1505.

■ Actual case studies of SIGMA System users are outlined in a Risk Sciences Group brochure. This system combines **risk management information system technology and risk management consulting support services.** Request item 1506.

■ A graphic depiction from Crawford & Co. shows how Canadian risk managers can utilize the company's loss runs for **a monthly picture of insurance claims reserves and payments.** Request item 1507.

■ NRM Computer Systems Inc.'s information system uses **risk management analysis, forecasting, trend analysis and various modules.** Linear regression, moving average and exponential smoothing are featured in a booklet. Request item 1508.

■ A pamphlet from Marshall & Stevens Inc. discusses important **questions to properly "insure your insurance."** Request item 1509.

■ A booklet from Mkands Inc. looks at the features of its Compensate data management system and describes criteria for selecting **a workers compensation claims management system.** Request item 1510.

SELF-INSURANCE SERVICES

■ A booklet from Conway Computer Consultants Inc. outlines the functions of its **property/casualty claims administration and risk management reporting system.** The system accommodates all aspects of in-house claims administration, including automatic check writing, diary and notes capability, and more. Request item 1620.

■ A guide to **Illinois court rules and procedures for claims representatives** and risk managers is offered by Clausen Miller Gorman Caffrey & Witous. Request item 1621.

■ "California Claims Quarterly," a newsletter published by Gregory B. Bragg & Associates Inc., provides advice on **liability, property and workers compensation claim issues in California.** Request item 1622.

Continued on next page

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Continued from previous page

■ A leaflet and demonstration disk from Insurance Data Processing Inc. details its **personal computer-based workers compensation claims tracking system** for self-insured companies. Request item 1623.

■ An 11-page questionnaire from Caronia Corp. is designed to help risk managers **evaluate an in-house claims management program**. Request item 1624.

■ A 14-page booklet from InPhoto Surveillance tells self-insurers how to assign and control **video surveillance operations.** Signs that a claimant is malingering, how to use video tapes in negotiation and legalities of video surveillance are covered. Request item 1625.

■ Insurance Software Packages Inc. offers a demonstration disk and information describing systems available to **administer workers compensation claims and property and casualty coverage.** Workers compensation medical cost containment systems and services are also described. Request item 1626.

■ A fact sheet from Frontier Los Angeles Risk Management outlines the importance of a **regional claims operation** and describes key services to look for in a regional claims administrator for property/casualty self-funded or insured programs. Request item 1627.

■ Akros Medicos Enterprises Inc. offers an informational pamphlet for **self-insurers in the medical and legal fields.** Trust account, management information and litigation management are among the areas covered. Request item 1628.

■ An outline of WLT Software of Florida Inc.'s **workers compensation claims administration system** covers claims payment, reserve changes, specific and aggregate tracking, fee schedule, PPO processing, premium calculation, cost containment and safety engineering reporting. Request item 1629.

■ A demonstration disk and description sheets on a personal computer-based **workers compensation claims tracking system for self-insureds** is available from Insurance Processing Inc. Request item 1630.

■ Cristovin Inc.'s brochure describes its **quality assurance reviews,** which are audits and examinations of the benefit administration services rendered for self-funded benefit programs, and their benefits. Request item 1631.

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■ The "Fishy Claims Expert Coloring Book" illustrates the **claim process** from the accident through to the claims department to final settlement or verdict. The coloring book, from InPhoto Surveillance, is suitable for ages 2 to 92. Request item 1632.

WORKERS COMPENSATION

■ Text from Crawford & Co. describes how **1990 revisions to Florida's workers compensation act** compromise the interests of third-party claims administrators. Request item 1701.

■ A brochure from the Walgreen Co. health services department describes its **workers compensation prescription program,** which is fully computerized to allow for flexibility and help manage costs. Request item 1702.

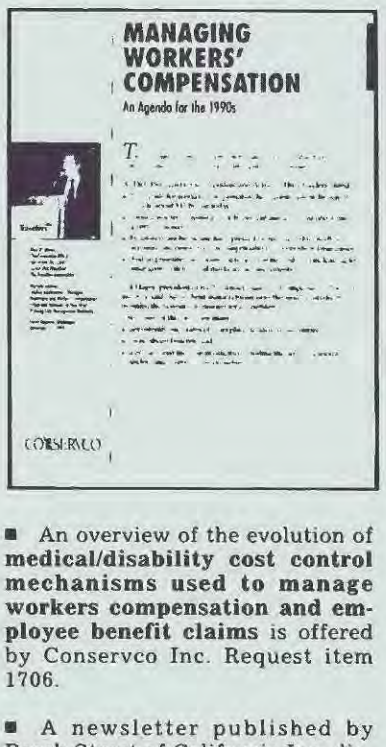
■ A brochure from Crawford & Co. details its FAST assessments, which are **evaluations of worker disability** using information from

Continued on next page

Continued from previous page
physicians, employers and claimants. Request item 1703.

■ "Employment of Minors: Facts California Employers Should Know," an article provided by Industrial Indemnity Co., highlights some of the key provisions of the federal and state **laws covering the employment and coverage of minors by workers compensation insurance.** Request item 1704.

■ A Crawford & Co. report examines the **newly revised Texas Workers Compensation Act** and attempts to determine whether it solves the state's problems or simply creates new ones. Request item 1705.



■ An overview of the evolution of **medical/disability cost control mechanisms used to manage workers compensation and employee benefit claims** is offered by Conservco Inc. Request item 1706.

■ A newsletter published by Beech Street of California Inc. discusses managed care issues for **controlling workers compensation medical costs,** among other cost control topics. Request item 1707.

■ A brochure from Crawford & Co. describes its **workers compensation medical case management process** for appropriate cost-effective treatment. Request item 1708.

■ "Cost Containment: Taking a Strategic Approach," a booklet from Continental Corp., looks at **the escalating costs of workers compensation and measures that can be taken to control these increases.** Request item 1709.

■ Working Solutions Inc. reviews 12 questions employers should be prepared to answer concerning the **impact of the Americans with Disabilities Act on workers compensation.** Request item 1710.

■ An article offered by Beech Street of California Inc. summarizes a paper presented to the California Legislature by twoconsultants that defines the **issues and options involved in 24-hour coverage.** Request item 1711.

■ A workers compensation information bulletin provided by GAB Business Services Inc. looks at the **alcohol and drug abuse crisis in the workplace** and resulting legislative activity. This piece reviews state statutes as they apply to alcohol, substance abuse and willful misconduct. Request item 1712.

■ A booklet detailing **quality control standards in workers compensation claims services** is provided by Crawford & Co. These standards deal with customer service, service time requirements, quality control, reserves and ethics. Request item 1713.

■ A guide to **computing workers compensation modification factors**, from Specific Software Solutions Corp., explains how to use both the new and old National Council on Compensation Insurance methods. Detailed step-by-step instructions are provided. Request item 1714.

■ An article from Beech Street of California Inc. summarizes a recently released study by the Minnesota Department of Labor and Industry to **evaluate medical benefits in the workers compensation system.** Results show that workers compensation medical costs are much higher than medical costs in the health benefits arena. Request item 1715.

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■ A model for assigning and controlling **video surveillance of workers comp claimants**, including strategies, legalities and red flags of malingering, is outlined in a 10-page booklet from In-Photo Surveillance. Request item 1716.

■ A leaflet from Crawford & Co. describes how its **return-to-work program gets injured employees back to work.** Medical assessment and care coordination, vocational assessment and planning, and job placement are discussed. Request item 1717.

■ "OnFile," a quarterly **newsletter for disability claims adjusters** is offered by Intracorp. The newsletter provides regular columns, including treatment approaches, a glossary of trade words and articles on compensation issues. Request item 1718.

■ Using data from a recent independent study, this report from Crawford & Co. looks at different methods of **evaluating the effectiveness of workers compensation provider bill audits.** Request item 1719.

■ "Workers Compensation Cost Containment. . .Is it Hopeless?" an article reprint from Beech Street of California Inc., points out the large **increase in medical costs in workers compensation claims** in the past 15 years. A structured medical delivery system is offered as a solution. Request item 1720.

■ A managed care services newsletter from Gallagher Bassett Services Inc. features articles on **containing workers compensation costs** through prompt claim reporting, managed care consulting services and cost containment solutions. Request item 1721.

■ A flier describing the new edition of **Classification Cross Reference**, a text that helps auditors, underwriters, producers and others cross reference commercial general liability codes with the National Council on Compensation Insurance's workers compensation codes, is available from the International Risk Management Institute Inc. Request item 1722.

■ A guide from Crawford & Co. lists more than 170 of its **health and rehabilitation office locations** throughout the United States and Canada. Request item 1723. ■

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Around the states

First 'living benefits' rules

LOS ANGELES—California is the first state to regulate the individuals and companies signing "living benefits" contracts with terminally ill people covered by life insurance.

A living benefit contract lets terminally ill people essentially sell their group or individual coverage for a portion of its face value, usually 55% to 80%. The money can then be put toward medical care or other expenses while he or she is still alive.

The state regulations took effect Jan. 1. They require the beneficiaries who buy the benefits to file license applications, including a $1,200 filing fee, by Feb. 28. These beneficiaries, known as viators, also must give details of their operating plan, financial status, living-benefits experience and how they get information on a policyholder's life expectancy.

While all 50 states permit life insurers to sell group and individual policies that provide accelerated benefits to the terminally ill, California is the first to regulate the companies that purchase these benefits from terminally ill policyholders, says the American Council of Life Insurance.

—By Joanne Wojcik

2 insurers liquidated

CHICAGO—Two life/health insurers will be liquidated following recent state court rulings in Chicago.

The Illinois Insurance Department said it will liquidate Inter-American Insurance Co. of Illinois in Chicago because of at least a $30 million shortfall in required capital and surplus.

Inter-American wrote nearly $91 million in 1990 premiums nationwide for products including life insurance, annuities and guaranteed investment contracts, and group accident and health coverages.

Regulators say they will also liquidate United Equitable Life Insurance Co. of Lincolnwood, Ill., because of at least a $9 million shortfall in required capital and surplus.

The insurer wrote more than $15 million in premiums annually in products including juvenile burial and individual accident and health coverages.

United Equitable changed its name last year in Illinois only to Lincolnwood National Life Insurance Co. It is not related to Lincoln National Life Insurance Co. or Lincoln National Corp.

Guaranty funds in Illinois and other states will be responsible, within statutory limits, for covered claims.

—By Meg Fletcher

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Workplace safety

Continued from page 3

egory based on how well their safety programs met several criteria established by the study.

For example, among the four criteria rated in the prevention category, a state could earn zero to 15 points based on the comprehensiveness of its occupational disease reporting requirements for doctors.

Even though California scored the highest in the NSWI ranking for workplace safety with 40 out of a possible 50 points for prevention, its workers comp insurance costs are the second-highest in the nation, the study showed. Employers there on average pay $3.08 per $100 of weekly wages for workers comp coverage.

Only employers in Montana were found to pay more: $4.20 per $100 of weekly wages. Ironically, Montana, with the highest cost of workers comp coverage, ranked 36th in the NSWI study.

Indiana, with the lowest cost of workers compensation at 65 cents per $100 in weekly wages, ranked 24th.

But the study was not designed to measure the adequacy of workers comp insurance premiums, Mr. Kinney explained. He pointed out that "countervailing factors," like the high number of stress claims and the litigious nature of claimants, contribute to high premiums in California.

"The state recognizes a lot more kinds of injuries compared with other states, which makes more kinds of injuries eligible for coverage," he said. "It's also a very litigious state."

In addition, because S.B. 198 became effective only last July, its impact on workers comp claims has not yet been measured, workers comp experts say. For example, 1990 experience was used to calculate the workers comp manual rate increase for 1992, explained Robert G. Mike, president of the Workers Compensation Insurance Rating Bureau in San Francisco.

"We use historical loss experience," he said. And, even if the bureau were to project future costs, "there's no way to quantify the impact of S.B. 198."

Stress claims and claimant litigation add to premiums in California, Mr. Kinney says.

The bureau's 1992 rate hike request of 11.9% was eventually trimmed to 1.2% by Insurance Commissioner John Garamendi (*BI*, Dec. 23, 1991). That increase, said Mr. Mike, also took into account medical cost inflation and increased benefits mandated by the state's 1989 Workers Compensation Reform Act (*BI*, Oct. 21, 1991).

As a result, any impact that S.B. 198 has on workplace injury experience will not be measured until late this year at the earliest, he said.

Eventually, California's strong emphasis on accident prevention should reduce the frequency and severity of work-related injuries, workers comp experts say.

"If the safety measures work, it should flatten out premium increases," said a spokesman for the insurer-supported California Workers Compensation Institute in San Francisco.

Mr. Kinney hopes that the NSWI study results will prompt other states to follow California's lead.

"Obviously we are very pleased with the findings," said John Duncan, deputy director of communications for the California Department of Industrial Relations, which oversees Cal/OSHA, the state workplace safety agency.

The findings were especially encouraging to Cal/OSHA. The agency resumed its role as the state workplace safety agency in May 1989 after it being inactive since July 1987 due to lack of government funding (*BI*, May 8, 1989).

"The goal is to make the workplace safer, which lowers workers compensation costs and makes businesses more competitive," he said.

Other states that earned high marks for loss prevention were Minnesota, which tied with California at 40; New York, 35; and Massachusetts, Michigan and New Jersey, each with 30.

Some 24 states earned 10 or fewer points for prevention. Eight scored zero points: Hawaii, Idaho, Montana, Nebraska, Nevada, North Dakota, South Dakota and Wyoming.

In the workers comp benefits category, Oregon earned a perfect score of 41. Next came Colorado and Connecticut, each with 38; New Hampshire, 36; and Oklahoma, 34. California tied for 28th place with Minnesota at 24.

The lowest-scoring states in the benefits category were New Mexico, with nine points; Kansas and Mississippi, each with eight; Tennessee, seven; and Arkansas, six.

Six states tied with a high of 20 points each for their efforts in enforcing workers comp laws: Connecticut, Illinois, Maine, New Jersey, Texas and Virginia.

California scored the next-highest, 17, and 11 states tied for third with 15: Alaska, Arizona, Delaware, Indiana, Nebraska, New Hampshire, Ohio, Pennsylvania, Rhode Island, West Virginia and Wisconsin.

Thirty states scored seven points or fewer, including 14 that did not score any points: Arkansas, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Nevada, New Mexico, South Carolina, Tennessee, Utah, Vermont and Wyoming.

The NSWI study also touched on federal safety regulation, noting that federal inspectors are much more likely to impose higher penalties than state safety officials.

In federally regulated states, the accident fines on average range from $600 in Arkansas to $5,360 in Maine. Where safety programs are under state control, though, fines on average range from $340 in Utah to $1,290 in Arizona.

The study also found that the federal government is proposing much stiffer penalties and that fines are less likely to be reduced through negotiation than they were just a few years ago.

For example, in 1989, the NSWI reported that the Occupational Safety and Health Administration typically reduced so-called "megafines"—those exceeding $100,000—by two-thirds.

But in recent years a megafine is considered to be $1.5 million or more and is likely to be reduced by no more than one-third, the study showed.

The NSWI study also found that:

- 7,000 to 11,000 men and women die each year as a result of workplace injuries, costing society about $42 billion.
- 70,000 workers become permanently disabled each year as a result of workplace injuries.
- About two out of five American workers can expect to experience a workplace injury or illness during their lifetime.
- Workplace illness and injuries cost society more than $200 billion each year.

The NSWI plans to expand the study next year to measure states' effectiveness in dealing with workers comp fraud.

Next year's study also will look at the distribution of the workers comp dollar. For example, it will attempt to determine how much injured workers receive and how much other players in the system receive, Mr. Kinney explained.

"We consider this both research and architecture," he said.

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Copies of "Basic Information on Workplace Safety & Health in the United States, 1992 Edition" are available for $28 apiece from the National Safe Workplace Institute, 122 S. Michigan Ave., Suite 1450, Chicago, Ill. 60603; 312-939-0690.

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A successful partnership

Insurers, consumers target areas of common interest

By MARK A. HOFMANN

WASHINGTON—After a little more than two years, a coalition that includes consumer groups and insurers has proved itself more than an opportunity to exchange warm fuzzies.

In fact, the Washington, D.C.-based Advocates for Highway & Auto Safety takes credit for significant legislative victories on both the federal and state levels.

And representatives of both consumer and insurer interests within the organization say that the coalition's achievements to date represent just the beginning of the group's effectiveness.

Many of them think that the type of cooperation Advocates has engendered between the two often-antagonistic groups can be extended into other areas of common interest. While there is no consensus yet on what those areas are, they may include workers comp reform, insurance fraud prevention and environmental cleanup.

The fact that Advocates exists at all represents a breakthrough in consumer-insurer relations. Following the 1988 passage of California's Proposition 103, a law that rolled back property/casualty rates and subjected insurers to extensive new regulations, many insurers and consumer advocates weren't even acknowledging each other's right to exist, let alone talking to one another.

On both sides, the emotions stirred by Proposition 103 were simply too strong for many to consider the possibility of any type of dialogue.

However, a few insurance industry leaders took a different view.

For example, in September 1988, Gerald L. Maatman, now president and chief executive officer of Kemper National Insurance Cos. in Long Grove, Ill., proposed a national effort to cut automobile insurance rates (*BI*, Oct. 10, 1988). Mr. Maatman said that every effort would have to be made to broaden the base of such an undertaking by involving people and groups not typically associated with the insurance industry.

Unbeknownst to Mr. Maatman, the Washington, D.C.-based American Insurance Assn., of which which Kemper was not a member at the time, had begun informal discussions with consumer groups on possible areas of common interest (*IT*, Jan. 15, 1990).

The groups eventually joined forces, and their combined efforts led to the creation of Advocates in the fall of 1989 (*BI*, Oct. 2, 1989). The coalition's agenda was to promote automobile and highway safety on both the state and local levels.

Mr. Maatman became the co-chairman of the group along with Joan Claybrook, president of Public Citizen, a Washington, D.C.-based consumer group affiliated with consumer advocate Ralph Nader. Judith Lee Stone, director of federal affairs for the National Safety Council in Washington, D.C., was named executive director.

Advocates didn't exactly get off to a running start.

"I was a little disappointed in its first year," said Mr. Maatman, whose term as co-chairman expired at year-end 1991 although he remains on the board. The effort seemed to gel very slowly, he said. That progress wasn't helped by a Public Citizen report that claimed that five major U.S. property/casualty insurers were financially vulnerable and potentially at risk in an economic downturn (*BI*, Oct. 22, 1990).

Public Citizen later retracted part of the report citing errors in its calculations, but the damage was done (*BI*, Oct. 29, 1990).

A few weeks later, Mr. Maatman said that a repeat of the incident would probably lead to an exodus of insurers—each of which pays $100,000 to sit on Advocates' board of directors—from the group (*IT*, Jan. 21, 1991).

"This was the best test of the value of Advocates we ever had, but I don't want to go through that type of test ever again," he said last January.

Mr. Maatman now makes clear that he thinks Advocates came through the test with greater strength than before.

"This second year has been a great year," he said earlier this month.

"There's no doubt" that Advocates won notable victories on the federal level, he said, culminating in the passage of the Surface Transportation Act of 1991 late last year. The measure reauthorized the National Highway Traffic Safety Administration, and called for the implementation of several of Advocates' goals, like mandatory air bags for both the driver and front-seat passenger in new cars five years from now.

"On balance, I think it probably exceeded our hopes," said Mr. Maatman of the group's performance during its first two years.

"I expect in 1992, we'll have a stronger full-court press at the state level," he added.

Other Advocates board members share that assessment.

"This represents one of the most successful consumer-insurance partnerships in the history of the

Continued on page 20C





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Safety coalition

Continued from page 20A

country," said Stephen Brobeck, executive director of the Consumer Federation of America in Washington. Mr. Brobeck called the Advocates' role in the passage of the Surface Transportation Act "critical."

"It's really been remarkable in terms of what it has accomplished," said Public Citizen's Ms. Claybrook. One of the coalition's most significant strengths is its ability to "centralize" the lobbying talent and expertise of the consumer and insurance industry groups and then target specific issues.

For example, Advocates played a critical role in California's adoption of a law requiring that motorcyclists wear helmets. Previous efforts to get such a law enacted had failed for both political and philosophical reasons, said Ms. Stone of the National Safety Council. Former Gov. George Deukmejian, a Republican, had previously vetoed such a measure and the motorcyclists' lobby considered a mandatory helmet law an unconscionable restriction of individual liberty.

Advocates succeeded because it was able to capitalize on a growing trend in the United States to hold individuals responsible for their own conduct, explained another board member, Patricia A. Borowski, vp-government and industry affairs for the National Assn. of Professional Insurance Agents in Alexandria, Va.

Helmet-law supporters have argued that riding without a helmet is not simply a matter of personal freedom. Care for brain-damaged or paralyzed riders often must be funded through private or tax-supported public health insurance mechanisms like Medicaid, Ms. Borowski pointed out.

As a result, the public's attitude has become "I don't want to pay for your irresponsibility," she said.

Ms. Stone of the National Safety Council said that the supporters of the helmet law ran into another, purely political roadblock when some legislators announced their opposition to the measure simply because it was supported by Gov. Pete Wilson, who succeeded fellow Republican Deukmejian in early 1991. Gov. Wilson's stand on unrelated issues like taxes had made him many enemies, and Advocates lobbyists had to work hard to garner the support of some of those lawmakers, she said.

The effort paid off. The bill passed the California Assembly by a 48-to-24 vote in early spring, won Senate approval on a 22-to-10 vote in early May and received Gov. Wilson's signature on May 20. The law took effect Jan. 1.

Ms. Stone said that Advocates also won a significant victory in Maryland last May, where Gov. William Donald Schaefer vetoed a bill that would have allowed a 65-mph speed limit on some Maryland highways. She said that Advocates' representatives had testified at a hearing on the need to defeat the measure and had organized a pro-veto rally.

At the federal level, Advocates testified and lobbied hard for the National Highway Traffic Safety Administration reauthorization, she said. The final highway bill, signed into law by President Bush in late 1991, calls for mandatory air bags protecting both the driver and front-seat passengers beginning with model year 1997; a special rule-making provision in order to prevent head injuries that could result from interior components of passenger cars; and rule-making for such matters as child safety seats and improved seat belt design.

This measure is the "strongest" safety legislation that the insurance industry and its allies have been able to pass in recent times, said D. Richard McFerson, who succeeded Mr. Maatman as co-chairman of Advocates. Mr. McFerson is president of the property/casualty units of Nationwide Mutual Insurance Co. of Columbus, Ohio.

Ms. Claybrook agreed with Mr. McFerson's assessment of the bill's importance.

"It's the most important bill since 'Unsafe at Any Speed,' " she said, referring to Ralph Nader's mid-1960s critique of automobile safety that led to numerous federal safety standards.

Mr. McFerson made clear, however, that the group's work regarding the matters contained in the surface transportation bill is far from complete.

"As we move into 1992 and 1993, we want to make sure that those issues are implemented," he said.

"It's really nuts-and-bolts work, but it's so important," he said.

"It's a big implementation job," Ms. Stone agreed.

Mr. McFerson said that while representatives of Advocates testify and offer their expertise during the rule-making process at the federal level, the organization will also be stepping up its activities in several target states, including those like Illinois that have no mandatory motorcycle helmet laws.

He said that Advocates would be working hard in the "whole area of speeding," seeking stiffer penalties for convicted speeders.

"We're not trying any rollback legislation" in states that have reinstated the 65 mph speed limit, but Advocates will fight against any further spread of the higher limit, said Mr. McFerson. Observers note that such rollbacks are politically very difficult to accomplish.

Another key issue is administrative license suspension, he said. Advocates is pushing hard at the state level to give law enforcement authorities the right to pull a driver's license on the spot if that motorist fails a blood alcohol test or refuses one.

Board members give a range of views for Advocates' success to date.

Ms. Borowski attributes it to the fact that the group is dealing with a rather narrow issue—highway safety. She added, however, "it's the first time insurance companies have worked with consumer groups on such a wide scale."

The Advocates group was successful because it allowed its members to marshal resources "in a focused manner," said Robert E. Vagley, president of the American Insurance Assn. in Washington, D.C., and a board member of Advocates. The group can call upon the strengths of all of its members while working to reduce the incidence of driving-related injuries and deaths, he said.

Mr. Vagley added that, in addition to the push for highway safety, the AIA had a "little more selfish and less altruistic" reason for being involved with Advocates: To bring insurers and consumers together.

"We're not inclined to attack someone when we're allied," said Mr. Vagley, who added that working in close proximity has made both sides respect the other's position more.

"I certainly have noticed a lessening of the rhetoric," he said.

"What's become obvious to me is that the consumer movement is no more monolithic than the insurance industry," observed Mr. Maatman. For example, some consumer organizations support no-fault automobile insurance while others steadfastly oppose it, he said.

Mr. Maatman said that his experience with Advocates has convinced him that the insurance industry can find common ground with at least some elements of the consumer movement on specific issues. He said that he is "optimistic" that the type of cooperation that has marked relations between insurers and consumer groups in Advocates can be transferred to other areas.

Mr. Maatman said that perhaps such a joint effort could promote workers compensation reform. Consumers "have a stake in it, too," because high workers comp costs can help decide whether or not jobs will exist.

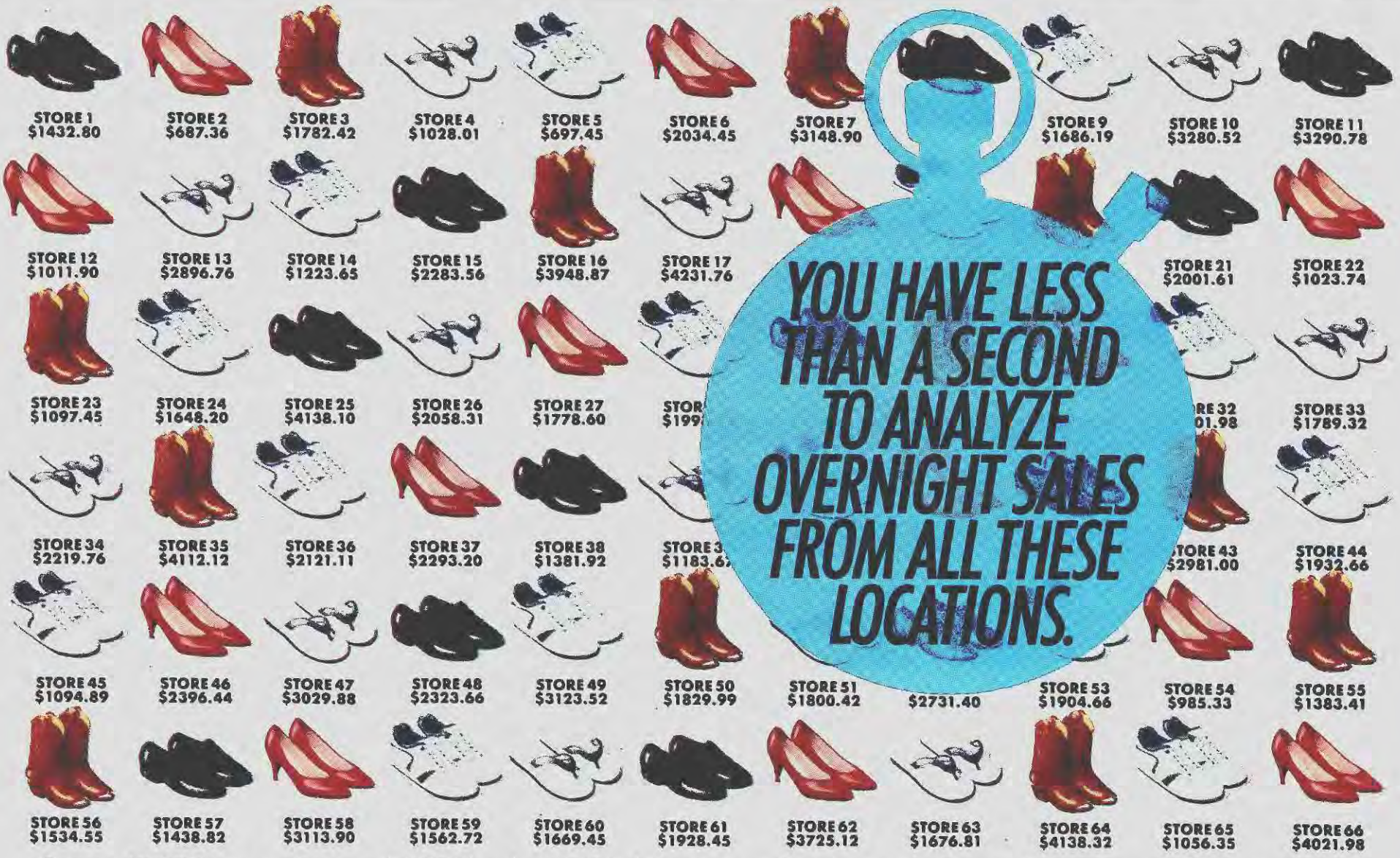
"I think loss prevention is an area in which consumers have tremendous interest," said Public Citizen's Ms. Claybrook. She predicted that insurers and consumer organizations would be working together on such matters as combating insurance fraud.

"Fraud and theft and the issue of highway safety are not partisan issues," agreed Nationwide's Mr. McFerson. He shared Ms. Claybrook's assessment that preventing insurance fraud would be an area where insurers' and consumers' interests converge.

An insurer/agent/consumer coalition might arise to tackle health care questions, said PIA's Ms. Borowski.

AIA's Mr. Vagley widened the possibilities of insurer/consumer cooperation even further, mentioning the possibility of finding common ground in regard to environmental cleanup.

"I think the model works in other areas. It doesn't have to be restricted to consumer and public interest groups," commented Mr. Vagley. ■



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Curbing insurance crime

Anti-crime group's debut features first-hand account of fraud

By MARK A. HOFMANN

WASHINGTON—A South Carolina carpenter sentenced to two 15-month jail terms for insurance-related crimes said he never thought he'd be looking at doing time for his illegal activities.

"I didn't think I'd be caught. I was too smart," said Louis Orlando of Myrtle Beach, S.C., who described his methods of insurance fraud at a recent press conference called to announce the formation of the industry-funded National Insurance Crime Bureau (*BI*, Jan. 13).

Unlike Mr. Orlando, a lot of people committing insurance fraud aren't getting caught, pointed out Arnold Schlossberg Jr., president and chief executive officer of the new group, which is based in Palos Hills, Ill. Citing estimates made by the Alliance of American Insurers, Mr. Schlossberg said that fraud and related offenses may cost property/casualty insurers about $17 billion a year. Automobile theft costs the industry another $8 billion annually, he said.

Mr. Schlossberg, a retired U.S. army major general, former deputy assistant secretary of defense for drug enforcement and principal deputy assistant secretary of state for political military affairs, took over as director of the Insurance Crime Prevention Institute last year.



Mr. Schlossberg

On Jan. 1, the ICPI merged with the National Automobile Theft Bureau to form the NICB. The new organization, which has an annual budget of roughly $30 million, is supported by about 700 property/casualty insurance companies.

"Our mission is to stop automobile theft in the United States and to stop (insurance) fraud," said Mr. Schlossberg.

Auto insurance fraud is a thriving industry and the techniques used are relatively simple, Mr. Orlando admitted.

The convicted felon was involved in a "good old boy" operation in which he did favors for friends who wanted insurance money.

For example, he said a friend had a boat that he couldn't use during the winter but which still required monthly payments. He asked Mr. Orlando if there was "anything he could do." Mr. Orlando and his friend loaded the boat onto a trailer and then "ran over it" with a truck, he said.

"I think my friend received $5,000 on his boat," Mr. Orlando noted.

Fraud didn't make him a rich man. The most he was ever paid—which was for his involvement in a staged automobile accident—was $1,050, Mr. Orlando said.

In another incident, "a guy had a new Daytona car," said Mr. Orlando. "He didn't want to make payments on it so he went out and rented a U-Haul truck." Then the two men rammed the car with the truck and collected the insurance money.

"There's people doing this out there for a living," said Mr. Orlando. "There's crooked doctors, crooked lawyers and crooked businessmen," he asserted.

But in his experience, the people likely to get involved in insurance fraud are "more like your neighbors" than highly organized professional criminals, Mr. Orlando said. "People got involved in this because they needed money," he said.

Mr. Orlando declined to speak of any particular profession whose members might have been involved in the incidents for which he was sentenced. Though he had given up insurance fraud some time ago, he was turned in to the authorities by perpetrators of insurance fraud who wanted to cut a deal with authorities.

He added that he had no intention of appealing his sentence, which he said could have been much worse—as high as 15 years.

'There's people (committing fraud) out there for a living,' says convicted felon Louis Orlando.

"The system didn't do this; I did it to myself," he said.

Some opinion polls have shown that a portion of the public doesn't regard bilking insurance companies as a very serious matter (*IT*, Dec. 16, 1991).

However, Mr. Schlossberg of the NICB stressed that "insurance crime and automobile theft are not victimless crimes."

All policyholders bear the cost of such crime, according to Mr. Schlossberg.

The new group will fight fraud by stressing public education about insurance fraud, Mr. Schlossberg said. As part of this effort, the group will operate a toll-free hot line that people can use to report suspicious claims (*BI*, Jan. 13). The information will be passed on to authorities, and callers providing tips that lead to convictions will be eligible for rewards of as much as $1,000, he said.

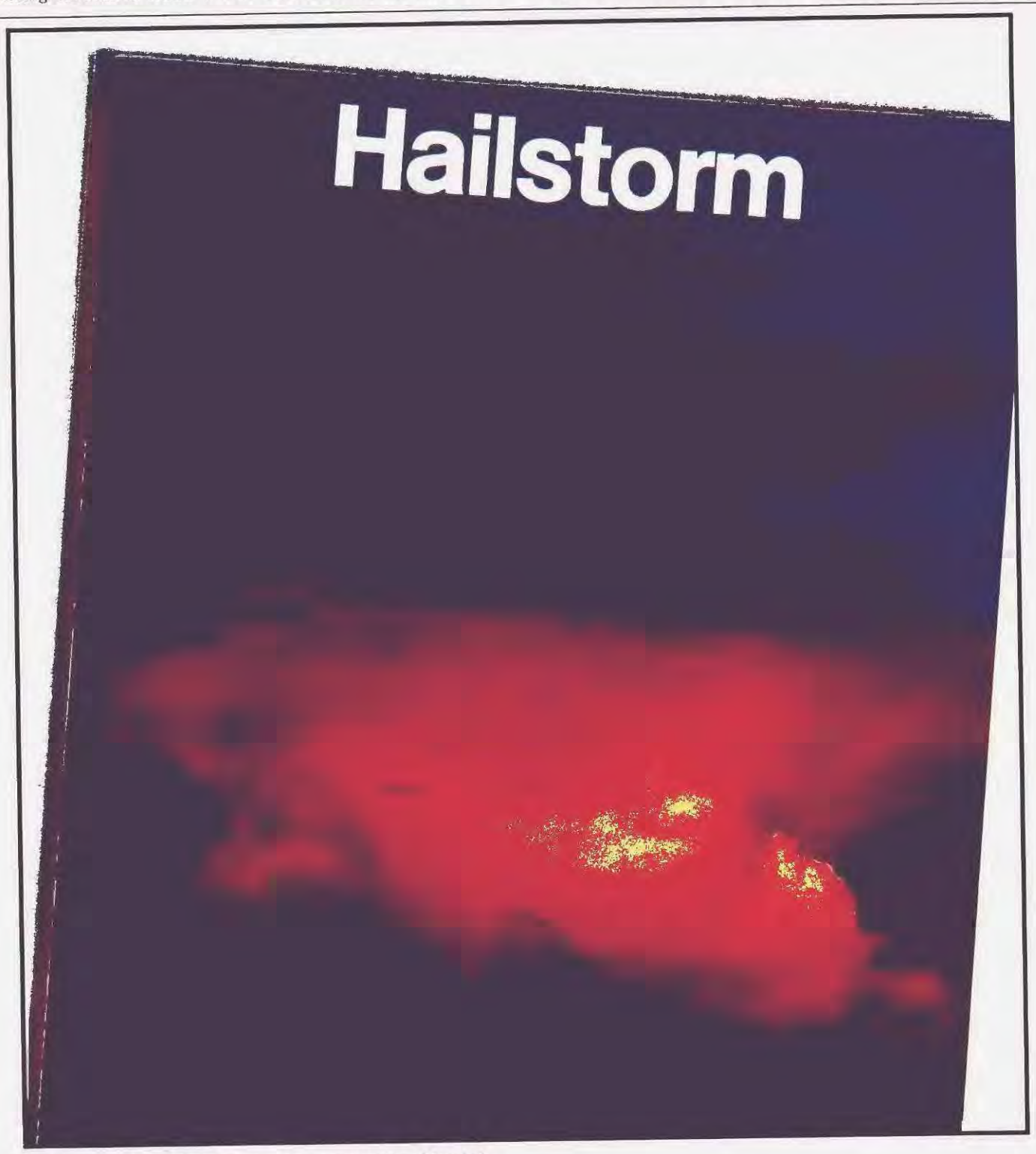
The new group's merged data base will provide industry and law enforcement personnel with a valuable new weapon in the battle against insurance-related crimes, Mr. Schlossberg said. The group will also conduct seminars at police academies and insurance companies on insurance crime and the techniques used by criminals.

Mr. Schlossberg made up for Mr. Orlando's reluctance to discuss the involvement of professionals like lawyers and doctors in insurance fraud.

While the overwhelming majority of those professionals are honest, the NICB is working with state medical licensing boards and bar associations to suspend the licenses of those convicted of insurance fraud, Mr. Schlossberg said. And he doesn't want to stop there.

"We think a great deterrent would be to put some of these doctors and lawyers in jail," he said. Sentences should be made harsher and should be well publicized, he added.

"The jail time given to professionals is inadequate," he contended. ■



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Insurer Topics

Video acts as policyholders' owner's manual

By MARK A. HOFMANN

LONG GROVE, Ill.—If a picture is worth a thousand words, then 15 minutes worth of videotape should go a long way toward explaining how an insurance policy works.

That's what the head of the personal lines units of Kemper National Insurance Cos. is betting on. The Long Grove, Ill.-based insurer recently began giving its combined homeowners/personal automobile policyholders something extra with their policy: a videotaped "owner's manual."

The insurer is following the lead of some car manufacturers, said Peter Standbridge, Kemper National's executive vp-personal lines. He said that some new cars, like Cadillacs, come with an audiocassette that explains highlights of the owner's manual.

Mr. Standbridge said the idea for the videotape emerged about two years ago in a planning conference discussion of technology and how to use it. During the conference, someone cited the use of the audiocassette car manual, and Kemper decided to explore its implications for insurance, he said.

The result was a 15-minute video designed expressly to explain the "Kemper Insurance Package" policy, Mr. Standbridge said. The videotape was tested in focus groups of agents and policyholders, he said. The response was overwhelmingly positive, he added.

And a few weeks ago, 2,000 tapes were sent to policyholders in about 20 states, he noted.

Near the beginning of the tape, the female narrator says that the video is provided to thank policyholders for purchasing the Kemper package and to "show we're standing behind" the package policy.

"Standing behind it means explaining it," the narrator adds.

Throughout the videotape, the narrator stresses that the insurer isn't going it alone in providing service. She emphasizes the role of the independent agents that sell Kemper products, saying, "If there's any way to help, your agent will."

She adds, however, that even with helpful agents, policyholders will want to find out on their own about some of the policy's features. And the video is designed to help them do that.

The narrator in effect walks the new policyholder through the package. She explains that while the policy is a legal document, it is also intended to be "user friendly." To make the policy more accessible, the Kemper video highlights specific lines on the policy's declarations page to explain just how the coverages would respond to a loss.

For example, on the homeowner's portion of the policy, the sample blanket limit of $300,000 is highlighted on a close-up of the declarations page. The narrator explains that this amount is all that Kemper would pay for damage to the sample property, which consists of a house, its contents and a backyard shed.

An inside shot of a freezer highlights the policy's coverage for damage to frozen foods. And the



Kemper's videotape explains the policy's coverage and gives tips on how to reduce losses.

explanation of the policy's debris-removal feature comes against the backdrop of a tree crashed through the roof of a house.

The narrator also explains exclusions, policy conditions and endorsements. For example, while the video shows a man mowing a lawn, the narrator notes that in California, homeowners must add a workers compensation endorsement to cover people hired to work on their houses and yards.

The explanation of medical payments under the package policy is accompanied by a shot of a visitor leaving the house and falling off the porch onto the sidewalk.

The auto portion of the policy is handled in much the same way, with action and still photographs illustrating the narrator's explanation. When the narrator lists the geographic regions covered by the automobile portion of the package, a map of North America appears with the United States, Canada and an enlarged insert of Puerto Rico highlighted in yellow, while the narrator explains that the policy does not apply to Mexico without additional endorsements.

The video deals with claims as well. The narrator stresses the role of the independent agent after explaining Kemper's commitment to claims handling. "Your agent will also be there to represent you if you need to file a claim," she says.

The video also serves to remind policyholders about how to file a claim, noting that a claimant should have the policy number ready when filing. Viewers then are shown where to find that number on the document.

Personal loss control techniques also are demonstrated in the video. For example, when the narrator urges policyholders to photograph or videotape their valuables, the video portion shows a person scanning property with a video camera.

Mr. Standbridge said that 10,000 copies of Kemper's videotape were prepared, and thousands more can be made as the demand arises. He noted that although the package policy first hit the market seven or eight years ago, it isn't available in all states yet, including two of Kemper's largest markets: North Carolina and Virginia.

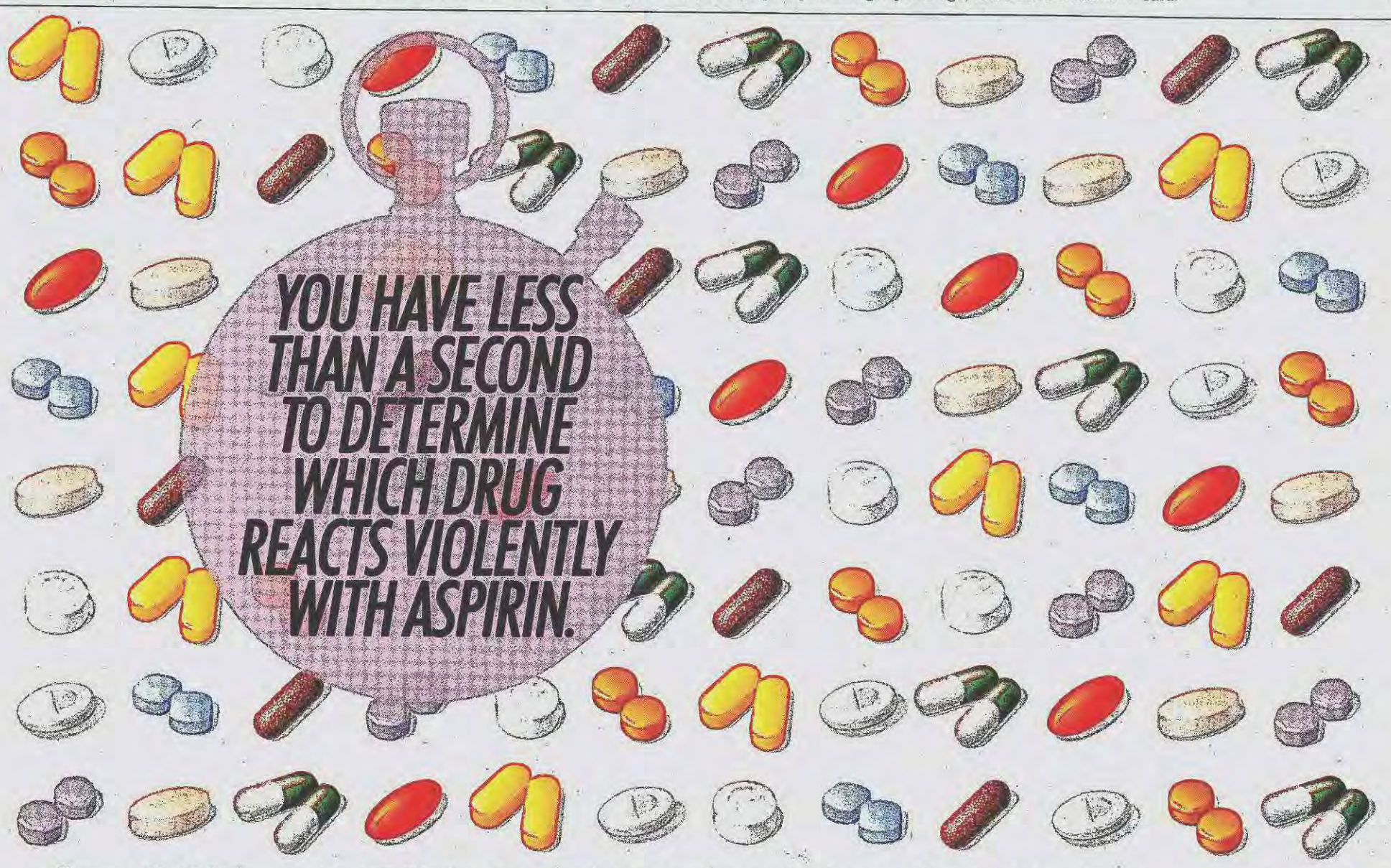
Video "owner's manuals" conceivably could accompany other types of insurance—like standalone automobile or homeowners policies—in the future, but only if they could be produced in a cost-effective way, Mr. Standbridge said. Any video that costs more than 1% of the premium would be too expensive, he said.

The tape was produced in-house, but copies were produced through an outside contractor. Each tape costs slightly less than $3 to produce, according to a Kemper spokesman.

Mr. Standbridge also said that with differing state laws on auto insurance, a video produced for all the states in which Kemper writes personal automobile coverage might have to deal with the subject more generally. He said that such a video would remind policyholders to check with their agents on the specifics of state requirements.

The video could have an impact beyond its primary purpose of helping policyholders understand the coverages contained in their policies, said Mr. Standbridge. He noted that a persistent criticism of the insurance industry—made notably by consumer activist Ralph Nader—has been that it makes little or no effort to educate its customers.

The video has "enabled us to answer Mr. Nader and some others' criticisms that we don't explain our policies," Mr. Standbridge said. ■



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Insurance program a success

'The Premium Dollar Today' wins accolades, a spinoff

By MARK A. HOFMANN

NEW YORK—Just as the television networks spin new programs off of successful shows, Reliance National Insurance Co. has introduced a spinoff of "The Premium Dollar Today," its insurance-oriented educational cable program.

The new show, "Lawyers and the Law," was launched last fall to further explore legal issues raised in "The Premium Dollar Today," said Rudolph Marinelli, vp-marketing/corporate communications at New York-based Reliance.

Although the legal program already experienced a sharp growing pain when its moderator, Richard Riordan, senior partner in the Los Angeles law firm of Riordan & McKinzie, resigned to run for mayor of that city, the show proved so successful that its initial 11-episode season was extended into this year.

"The Premium Dollar Today," which made its debut on cable television's now-defunct Financial News Network in 1990 (*IT*, June 18, 1990), now airs on the USA Television Network. The program has dealt with such issues as how a premium dollar is allocated and the future of the McCarran-Ferguson Act.

Reliance sponsors the program in association with the Malvern, Pa.-based Society of Chartered Property & Casualty Underwriters and KPMG Peat Marwick (*BI*, Jan. 13).

Reliance said in 1990 that it launched "The Premium Dollar Today" to "demystify" the industry and provide information to viewers.

Mr. Marinelli said that legal and insurance issues raised in "The Premium Dollar Today" were so entwined that Reliance began to consider sponsoring a program that deals more explicitly with legal questions. He said that Reliance approached Riordan & McKinzie, which specializes in corporate securities law, to assist in the project.

Mr. Riordan not only agreed to serve as the program's moderator but to co-sponsor it as well.

Taping of "Lawyers and the Law" began in September 1991 and the first segment, "Managing Lawyers" aired Oct. 14. Although the programs air early in the morning—6 a.m. Eastern time—they have drawn a considerable response from the public, said Mr. Marinelli.



Mr. Marinelli

The programs feature Mr. Riordan conducting a discussion with a panel of experts. For example, in the series' ninth program, "From Fault to No-Fault," California Insurance Commissioner John R. Garamendi argued the merits of a no-fault law for personal auto insurance with a panel that consisted of an insurance company attorney, a personal injury attorney and the president of the Los Angeles Trial Lawyers Assn.

Other topics dealt with during the program's first season included the civil justice system, employment law, choosing a lawyer and legal ethics.

But the show recently underwent some change when Mr. Riordan decided to seek the keys to the Los Angeles mayor's office, Mr. Marinelli said. The Reliance official said that for the time being, "Lawyers and the Law" will alternate with "The Premium Dollar Today." The legal shows will be repeats.

Mr. Marinelli said Mr. Riordan's decision to leave the moderator's chair gives Reliance the opportunity to seek a New York law firm as co-sponsor, which would be closer to Reliance.

"We've approached some heavy-name attorneys" in New York, he said. When a new co-sponsor is named, the show will resume new production, he added. ■

New chairman lauds AIA willingness to negotiate on issues

By MARK A. HOFMANN

CHARLOTTE, N.C.—The new chairman of the American Insurance Assn. makes clear he intends to continue the group's policy of negotiating on pressing national and state issues rather than refusing to consider any compromise.

"In the past, there's been a tendency in the insurance industry to circle the wagons," said William E. Buckley, chairman and chief executive officer of Royal Group Inc. in Charlotte, N.C.

He praised his immediate predecessors as AIA chairmen—Dean R. O'Hare, chairman of Chubb Corp., and Robert J. Vairo, chairman of Crum & Forster Inc.—for breaking with that tradition. Mr. Buckley said the association has "taken a proactive role rather than a 'Hell no, we won't go' approach."

Mr. Buckley, who succeeded Mr. O'Hare as chairman during the annual AIA meeting last week in Washington (see related stories, page 3), said the group's biggest national issues are insurer solvency and the McCarran-Ferguson Act's future.

Staff members of the AIA have been working with Rep. John Dingell, D-Mich., chairman of the House Energy and Commerce Committee, to determine what role the federal government will play in monitoring insurer solvency. Although insurers have long championed state regulation, "realistically, there is going to be a federal role," Mr. Buckley said.

"It's too early in the game to say whether there would be federal regulation or state regulation," he said. But AIA has proposed a two-tier approach, with firms choosing to submit to federal or state oversight.

"We still believe there is a place for state regulation. We're not talking about the elimination of state regulation," said Mr. Buckley.

He also said the AIA has worked with the staff of the House Judiciary Committee on McCarran-Ferguson reform legislation. Although the group opposes H.R. 9, the reform bill proposed by Judiciary Committee Chairman Jack Brooks, D-Texas, it has continued discussions with Brooks' staff on the matter.

The Brooks bill was sent to the House floor after receiving the approval of the judiciary committee (*BI*, Nov. 25, 1991; Nov. 28, 1991).

"1992 has a good chance of being a year in which Congress makes a decision in passing some legislation in these areas," said Mr. Buckley.

Another concern is federal environmental cleanup regulation and funding, particularly regarding the Comprehensive Environmental Response, Compensation and Liability Act, better known as Superfund. He said AIA "is doing an awful lot of basic work" in "trying to find mechanisms by which the true problem can be solved."

The "true problem" is actually cleaning up toxic waste sites rather than getting bogged down in endless litigation over who bears responsibility for doing so, he said. Noting that many proposals have been made for improving the process, he expressed a willingness "to work with all parties involved" to accomplish the cleanup.

On the state level, AIA is particularly concerned about workers compensation reform and automobile insurance issues. "Workers comp has to top the list," he said. "We tend to get more publicity on the federal level than on the state level, but our state activities are very strong." ■



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Insurer Topics

Workers comp costs spark new interest in workplace safety

79% of small firms reduced risks: Study

By SARA MARLEY

OAK BROOK, Ill.—Concerns about the rising cost of workers compensation coverage may mean a safer workplace for employees, a recently released survey indicates.

In a survey by the Insurance Research Council, a group supported by the property/casualty industry, 79% of small businesses said they had taken at least one step in the previous year to help reduce the risk of workplace injuries.

The steps taken most often included an investment in safer equipment, cited by 53% of the companies, and undertaking an inventory of workplace hazards, cited by 51%. Nearly 40% changed smoking regulations to reduce the risk of second-hand smoke, while 35% conducted safety training. A quarter of the companies changed work procedures to reduce risk.

In November 1990 and May 1991, responding companies were questioned about their attitudes on the cost and availability of insurance. Results are based on responses from representatives of 1,206 firms with two to 49 employees.

The cost of property/casualty insurance was considered a "major concern" by 58% of the firms, the same percentage as in a similar study in 1988. And 42%—up from 32% in 1988—listed the cost of employee benefits as a major concern. Workers compensation costs were listed as a major concern by 54% of the firms, up from 45% in 1988.

Employers cited several reasons for the increased cost of workers compensation coverage, including higher medical costs, increased attorney involvement, larger settlements, increased claims by employees and expanded court definitions of covered injuries (see accompanying chart).

Despite growing concern about the cost of insurance, small businesses reported less difficulty in obtaining coverage than in 1988. Nearly 70% said coverage was "very easy" to obtain when property, liability and workers comp coverages were purchased as a package.

Stephen Brennan, project manager for the Oak Brook, Ill.-based research group, said the insurance market for small businesses lags behind the general insurance market.

"In 1988, large businesses were not experiencing a hard market. Small businesses were," Mr. Brennan said. "There is a striking difference in 1991."

Nearly all of the companies, 99%, said they had liability insurance in 1991, compared with 92% in 1988. Property insurance was purchased by 93% in 1991, up from 89% in the previous study. In 1991, nine out of 10 of the small firms had workers compensation coverage, while only 84% of those in 1988 did.

All three types of coverage were bought by 84% of respondents in 1991, up from 76% in 1988.

Nearly half of the companies purchased the three coverages together. One-third bought property and liability insurance together and purchased workers compensation coverage separately. The three coverages were purchased separately by 16% of the respondents, a decrease from 26% in 1988.

When buying insurance, 95% of the companies turned to an agent or broker. Of those companies, 89% relied exclusively on agents or brokers, a jump from the 68% that did so in 1988.

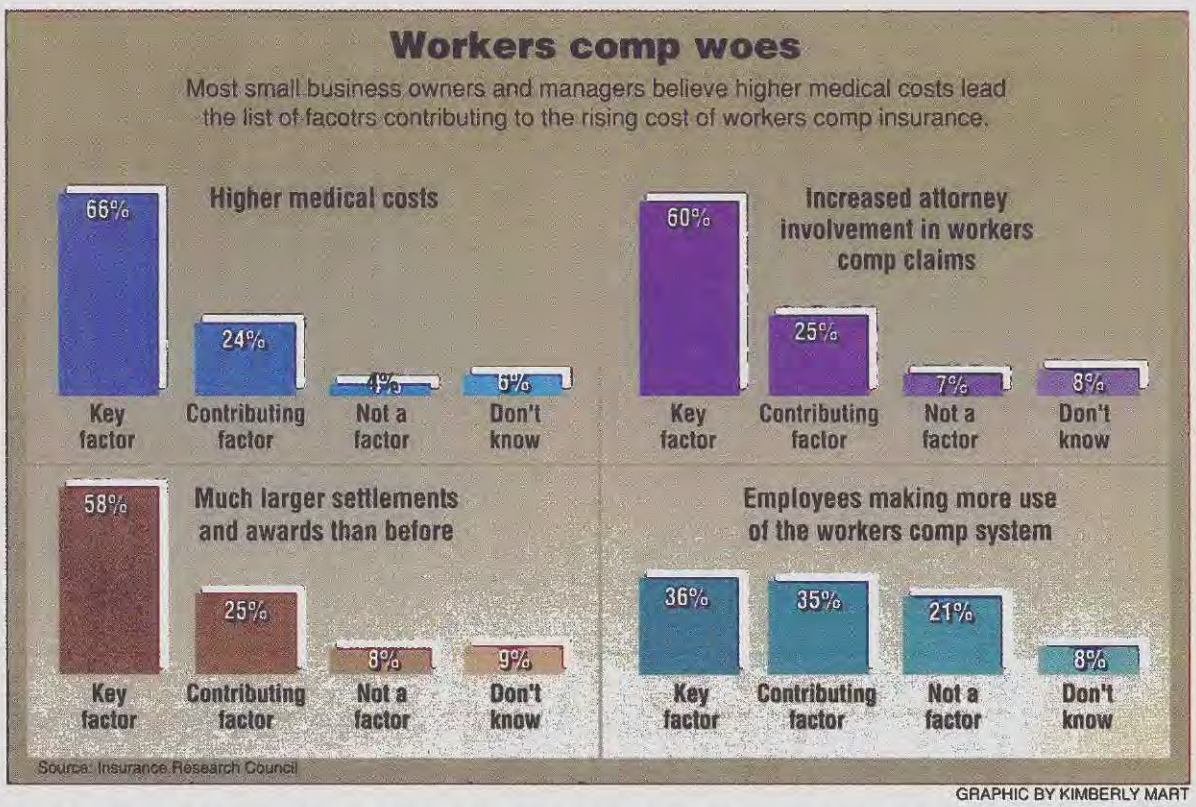
"In the hard market, small businesses were forced to seek nontraditional sources of coverage, like business or professional societies," Mr. Brennan said. The portion of firms purchasing coverage from societies dropped to 3% in 1991 from 14% in 1988.

In 1988, 17% of small businesses purchased coverage directly from the insurer, but in 1991 only 4% did.

Although 38% of the respondents reported shopping for a new property/casualty insurer, agent or broker in the previous 12 months, only 14% actually changed insurers and 10% switched agents or brokers.

The number of claims filed increased slightly since the 1988 survey. In 1991, 37% reported filing at

Continued on next page



GRAPHIC BY KIMBERLY MART



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Insurer Topics

Workers comp

Continued from previous page
least one property, liability or workers compensation claim in the past two years, up from 35% in 1988.

In both 1991 and 1988, workers compensation accounted for the most claims, with 28% of the companies reporting at least one claim in 1991, up from 26% in 1988. The number of property claims remained at 13%, while liability claims increased to 8% from 7%.

Of the companies that filed claims, 86% said they were very satisfied or somewhat satisfied with the insurer's handling of the claims. Some 13% said they were very or somewhat dissatisfied.

The survey also explored attitudes about insurance fraud. Small businesses considered workers compensation and auto insurance the most likely targets for fraud. Nearly one-third said both false automobile and false workers compensation claims are very common. In California, more than half of the businesses felt car insurance fraud was prevalent.

The study found that small businesses were poorly informed about insolvency arrangements. Only 15% knew that the state insurance department would require other insurers in the state to pay the claim of a bankrupt insurer, down from 18% in 1988.

In addition, 44% of the small businesses said they would "be out of luck" if their insurer went out of business, up from 30% in 1988.

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Copies of "Small Business Attitude Monitor 1991" are available from the Insurance Research Council, 1200 Harger Road, Suite 310, Oak Brook, Ill. 60521; (708) 572-1177. The cost is $5 a copy in the United States, $10 elsewhere.

'91 auto premiums flat: Study

By SARA MARLEY

SCHAUMBURG, Ill.—Auto insurance premiums for the average American household increased only slightly in 1991, and the cost of homeowners insurance remained steady, a study by the Alliance of American Insurers shows.

The average household paid $953 in auto insurance premiums in 1991, a 3.3% increase from $923 in 1990. According to the study, the cost of homeowners insurance remained relatively steady at $420 annually, compared with $418 in 1990.

The Schaumburg, Ill.-based insurer trade group has done annual surveys on insurance costs since 1989. The study, which was released last month, was based on data gathered between May and June 1991.

The Alliance mailed 20,000 surveys to U.S. households in all states except Alaska and Hawaii. A household was defined as one or more persons living in a house or apartment.

Major factors affecting premium levels included geography, a respondent's or family member's driving record, the car's value and the number of drivers insured.

Premiums varied from state to state, depending on factors like population density and per-capita income. New Jersey had the highest average, $1,467, and North Dakota the lowest, $515.

Households in areas with fewer than 50,000 people paid an average of $775 for auto insurance, 18.7% less than the national average of $953. In areas with 2 million or more people, households paid an average of $1,183, 24.1% more than the national average.

Auto premiums varied among the largest cities, from $851 in St. Louis to $1,456 in Los Angeles.

Most people think there is no "rational basis for what they paid," explained Brian W. Smith, research manager for the Alliance.

"There are places where people are spending an awful lot for insurance, but that's not typical of what people all over the country are spending," Mr. Smith said.

The price of homeowner's insurance also varied according to location, real estate value and frequency of tornadoes and hurricanes.

Texans pay the most for homeowners insurance, averaging $592 per household. In Wisconsin, the household average is the lowest: $274. The national average for homeowners insurance was $420.

Texas ranks first among the states in frequency of tornadoes, although the second- and third-highest premiums are paid by residents of Massachusetts and California, states with few tornadoes. The second most likely state to be hit by tornadoes, Florida, ranks 29th in the price of homeowners insurance.

The study also analyzed Bureau of Labor statistics on overall household spending in 1989, the most recent year for which statistics are available. That survey found that insurance accounts for 5.8% of total household spending. That portion was made up of auto, 2%; homeowners, 0.5%; health, 1.9%; life, 1.2%; and renters insurance and other non-health coverages, 0.1%.

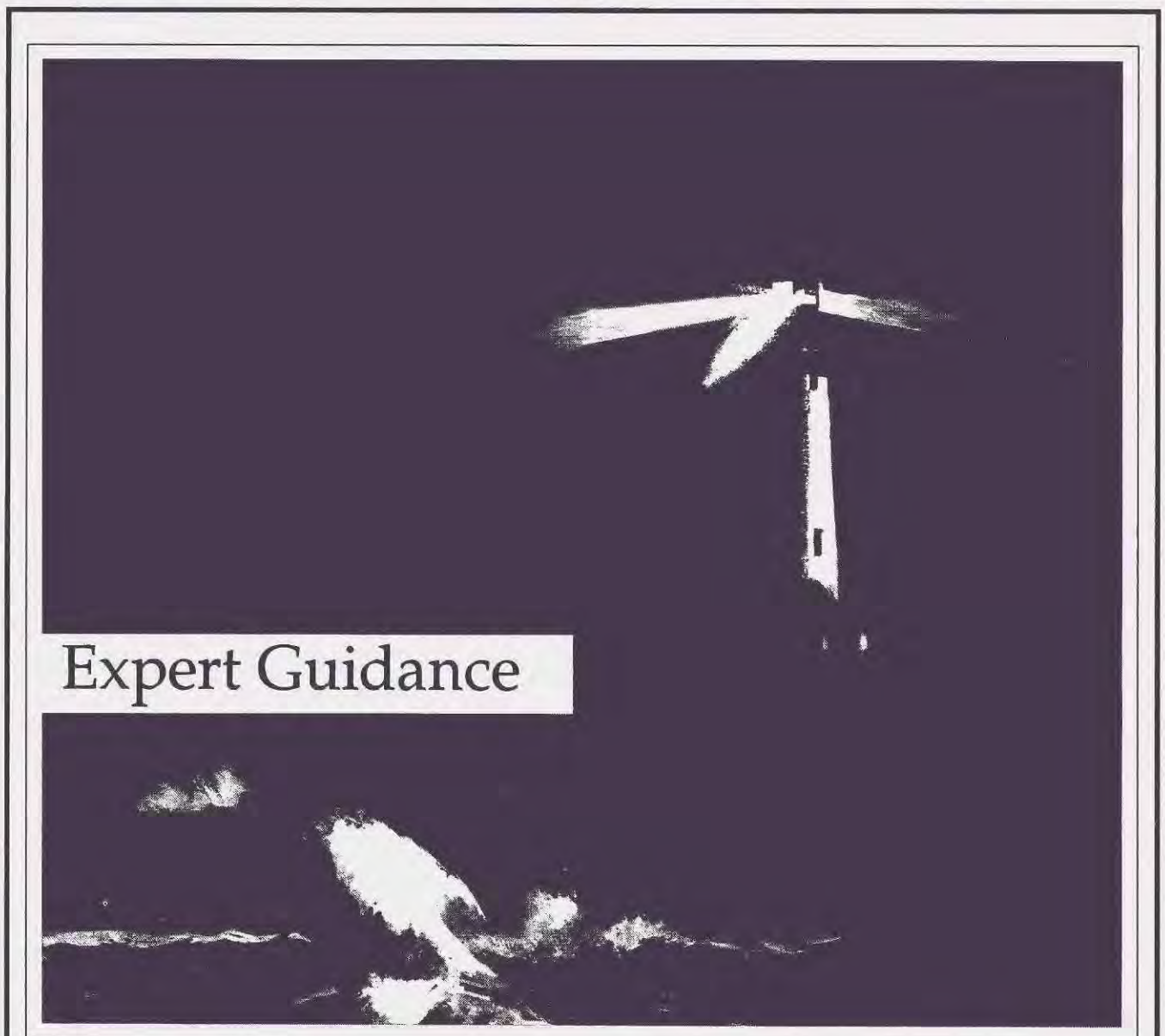
An additional 3.1% was spent on health care. Employer contributions to benefits were not considered.

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Single copies of "Household Insurance Expenditures in 1991," are available free from the Alliance of American Insurers, 1501 Woodfield Road, Suite 400 West, Schaumburg, Ill., 60173-4980; 708-330-8500.

IT errors and omissions

New York-based Home Insurance Co. has a reciprocal agreement with Tokyo-based KOA Fire & Marine Insurance Co. Ltd., not Tokio Marine & Fire Insurance Co. Ltd., also based in Tokyo, as reported in the Dec. 16, 1991, issue of *Insurer Topics*.



Members of The Society of Chartered Property and Casualty Underwriters identified four pivotal issues facing the insurance industry in the 1990s. The **CPCU MAJOR ISSUES FORUMS** offer in-depth analysis of these four topics.

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Calculating loss reserves

By Jay Kelly Wright

LOSS RESERVES, INTENDED to be estimates of the costs of disposing of claims in lawsuits, are increasingly themselves the subject of lawsuits.

When claims costs turn out to be greater than reserves—a phenomenon that has been widespread in the insurance industry in recent years—the estimates are criticized, along with those making them.

When an insurer's loss reserve inadequacy is accompanied by insolvency, it has become an increasingly popular tactic for state insurance regulators, as liquidators of an insolvent company, to sue former management and sometimes outside professionals on the theory that management and outsiders "must have known" of the inadequacy, or else were reckless or negligent in not knowing.

A recent decision of the 2nd U.S. Circuit Court of Appeals approaches loss reserves with reason, balance and reality. The decision is a rare instance in which judges—lay people when it comes to the intricacies of insurance accounting—have come to grips with the uncertainty and complexity of loss reserves.

Delta Holdings vs. National Distillers and Chemical Corp. involved National Distillers' 1983 sale of Elkhorn Re, a reinsurance company, to Delta Holdings (*BI*, April 16, 1990). Elkhorn Re originally was formed to insure captive risks of National Distillers, which now is known as Quantum Chemical Corp., but the reinsurer broadened its business to include long-tail liability risks.

Through the 1970s and early 1980s, techniques used by Elkhorn Re to calculate loss reserves were rudimentary, though quite common for companies of Elkhorn Re's size. Elkhorn Re had no in-house actuary and did not regularly employ consulting actuaries. A loss ratio method was used to calculate loss reserves.

Prior to the sale of Elkhorn Re, its loss reserves were examined by both an actuarial consulting firm and a major accounting firm engaged by the buyer, Delta Holdings. The accounting firm "certified" Elkhorn Re's loss reserves, but with the caveat that the loss ratio method used to set reserves would "understate (incurred-but-not-reported losses) due to management's optimism in making loss ratio selections."

Delta Holdings' acquisition turned out to be ill-fated. Within a year, state insurance regulators began a special investigation and eventually placed the reinsurance company in liquidation. The state regulators concluded that Elkhorn Re's loss reserves prior to the acquisition had been understated substantially and the company in reality had been insolvent.

The "inadequacy" of Elkhorn Re's loss reserves—i.e., the fact that they turned out, in hindsight, to be too low—was caused by several factors. One factor was industry trends and characteristics—developments in the law, inflation and changes in claimant and jury behavior—that took the entire industry by surprise.

But there also was a problem in Elkhorn Re's bookkeeping system. A quirk in the computer software Elkhorn Re purchased in 1982 when it computerized its bookkeeping caused claims data to be sorted according to the date a claim was reported to a ceding company, instead of the date the claim was reported to Elkhorn Re by the ceding company. This peculiarity caused a distortion—and a downward bias—when loss reserve analyses known as "triangles" were prepared from Elkhorn Re's computer records. Elkhorn Re did not use loss reserve triangles in the process of setting loss reserves, but at the time of the 1983 sale both the buyer's outside actuary and its accounting firm used triangles to assess Elkhorn Re's financial position. was discovered by Delta Holdings shortly after its purchase of Elkhorn Re, although the magnitude of the distortion was not immediately apparent. A lawsuit followed. The buyer accused the seller of federal securities law and RICO violations, common-law fraud and negligent misrepresentation, and breach of warranty in connection with the sale.

A court that grasped complexity of task

The buyer's lawsuit thus embraced a variety of theories. The breach-of-warranty theory, for example, was in essence a claim that the seller was strictly liable, a "guarantor" of the loss reserves. Other theories asserted that the seller had negligently or intentionally misstated Elkhorn Re's loss reserves or concealed information that would have led the buyer to discover the loss reserve inadequacy.

Delta Holdings cited National Distillers' failure to disclose two reports that had been prepared for Elkhorn Re by Tillinghast, Nelson & Warren, an actuarial firm. The Tillinghast reports had criticized the loss ratio method used to set Elkhorn Re's loss reserves as too subjective, and the reports contained appendices that the buyer alleged would have assisted a trained actuary in spotting the data-sorting error of Elkhorn Re's computer software.

Following a non-jury trial in federal court in New York, Delta Holdings won a $24 million judgment, prevailing on all but its RICO claims. A unanimous three-judge panel of the 2nd Circuit reversed the trial judge's decision. The 2nd Circuit ruled that the seller had not guaranteed Elkhorn Re's loss reserves, thus eliminating the breach-of-warranty claim, and further ruled that there had been no material misrepresentation in connection with the sale.

The 2nd Circuit concluded that given the inherent uncertainty that characterizes loss reserves—the opinion repeatedly uses such words as "conjecture," "judgment calls" and "informed guesswork"—the seller could not be considered to have guaranteed Elkhorn Re's loss reserves. Furthermore, given both the uncertainty of loss reserves and the buyer's own access to consultants and Elkhorn Re's books, the 2nd Circuit rejected arguments that there had been misrepresentation in the withholding of the Tillinghast reports in Elkhorn Re's possession. Finally, the court rejected arguments to the effect that it was wrongful for Elkhorn Re not to have had more sophisticated techniques for setting its loss reserves or for Elkhorn Re to have used imperfect computer software.

The result is remarkable. Here are appellate judges who immersed themselves in the complexity of loss reserves, delved into the evidence and grappled with the inferences that could be drawn. Many a case challenging loss reserves has been brought—and some have been settled—in the belief that judges lacking industry experience would balk at performing such a task. This appellate court's decision should puncture that myth.

The decision also stands for a number of important propositions in all litigation over loss reserves:

Loss reserve figures are not guarantees. The court refused to be mesmerized by the fact that loss reserve estimates are "certified." The decision repeatedly recognizes the uncertainty that is inherent in the estimating process. The opinion contrasts a balance sheet statement of principal and interest due on debt. A reader, however, cannot expect equivalent certainty when it comes to loss reserves.

There is no single "correct" method of estimating loss reserves. The court emphasized that generally accepted accounting principles do not specify a particular method of estimating loss reserves as the correct one. The opinion discusses several estimation techniques, but points out that there is no requirement of preferring one rather than another.

There is no requirement that the estimator use the highest or most "conservative" method, because "overly conservative loss estimates are no answer" to the difficulty and can themselves cause competitive injury and company failure. Finally, the court observes that "history may be an imperfect guide to the future," because "incidence of claims may change, the cost of defense may increase and inflation may lead to unexpectedly high losses per claim."

It is not fraudulent to employ a relatively unsophisticated technique for estimating loss reserves. Because there is no single correct method for estimating loss reserves, it is not fraudulent for an estimator to use techniques that are not the most sophisticated, the most complex or the "latest" technique in an evolving world. Elkhorn Re used a loss ratio method that was criticized by consulting actuaries. Nevertheless, the court ruled, there is no requirement that Elkhorn Re switch methods. Generally accepted accounting principles, the court observed, do not require a particular method, the use of an actuary or even the use of loss development triangles.

Use of imperfect data collection is not fraudulent. The computer software used by Elkhorn Re did not sort data to perform the sophisticated estimation methods recommended by consulting actuaries. And the software introduced the report-date error that distorted results. Nevertheless, Elkhorn Re's software was used by other insurance companies and had other bookkeeping benefits. Under these circumstances, the court ruled, it was not unreasonable for Elkhorn Re to use the software. Technological change repeatedly introduces new capability in loss reserve analysis. But it is not economical for some firms to switch to some improvement as soon as it becomes available, and it is seldom economical to invest in improvements repeatedly. Under the court's decision, it is quite justifiable for the company to lag behind the latest developments in data analysis.

It is not fraudulent to fail to disclose all analytic observations underlying an estimate of loss reserves. The trial court drew inferences of fraud against National Distillers because of the failure to disclose two reports prepared by actuarial consultants for Elkhorn Re during 1982. The appeals court determined that these reports were immaterial to the 1983 sale of Elkhorn Re to Delta Holdings, at least given Delta Holdings' own investigation with its own actuarial firm and its own outside accountants. The process of estimating loss reserves can involve false starts and brainstorming. A "devil's advocate" may critique a method or a result eventually judged on further reflection to be reasonable. Under the court's decision, if the financial statements reflect a reasonable estimate, then antecedent reasoning is immaterial, at least if the user of the financial statements has an opportunity to make its own assessment.

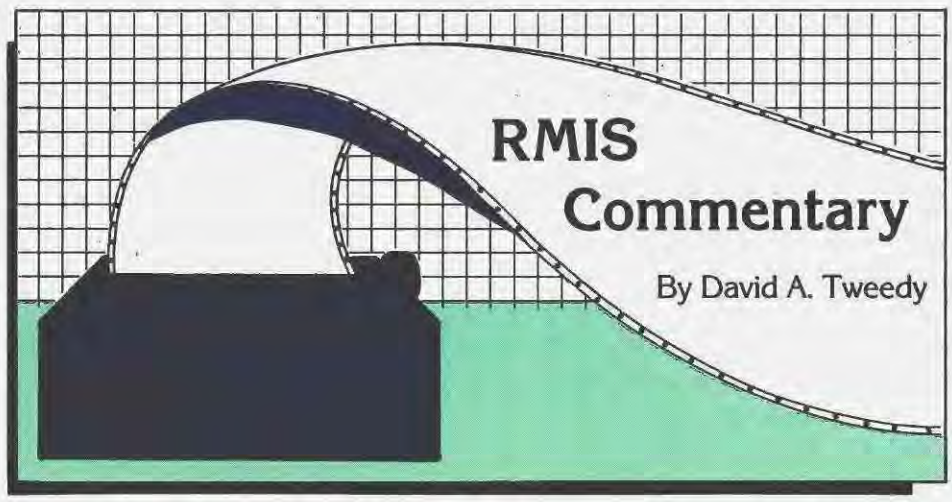
Stale loss reserve estimates are immaterial. The sale of Elkhorn Re closed Sept. 30, 1983. Balance sheets as of Sept. 30 and June 30 of that year had been prepared, and they included estimates of loss reserves. The trial court had drawn an inference of misrepresentation from the seller's failure to disclose reports of actuarial consultants prepared during 1982, addressed to Elkhorn Re's 1981 loss reserves. The court ruled that such information was stale and, therefore, immaterial in the 1983 sale. An assessment of an insurance company's financial position is most naturally and reasonably based on the latest loss reserve estimate available. If the current estimate is reasonable, information casting doubt on earlier estimates usually is inconsequential.

The court's review of the facts, its statement of the law, but most of all its immersion in the intricacy of loss reserving—all these give comfort to anyone defending a judgment call in the harsh light of hindsight. ■



Jay Kelly Wright is a partner in the general litigation and appellate practice groups of the law firm Arnold & Porter in Washington, D.C.

Expert systems worth the wait



WITH EACH PASSING year we are bombarded by new jargon from the computer industry: imaging, case technology, artificial intelligence, electronic data interface, expert systems, neural networks, and multiplatform interface. Risk managers have traditionally regarded such jargon as irrelevant, viewing it with foreboding and suspicion.

Much has changed over the past few years. Today, computers are not only an indispensable part of the insurance industry, but the end users are increasingly demanding the technology.

However, it seems that the end user's demand or interest in advanced computer technology is being met with the same degree of indifference or suspicion that once greeted now familiar forms of automation.

Let's look at "expert," or knowledge-based, systems, which are all part of what is called artificial intelligence. An expert system attempts to explicitly represent a methodology of a particular expert or field of expertise. Underwriting and claims functions, for example, are starting to be turned over to expert systems. Speed, efficiency and quality have all greatly improved.

However, of the $950 million spent across all industries on expert systems technology, the insurance industry's portion is about 15%. Most of insurers' attention has been focused on underwriting and claims processing applications and is designed to forestall errors, filter applications and to catch the easy mistakes. Fraud detection through neural networks, which are a type of expert system, is another application of the computers. Medical bill review systems and patterns of treatment are other uses for expert systems that have been designed to assist in identifying questionable or unusual billing or utilization practices.

Despite these applications, neither insurers nor risk managers have widely embraced this technology. Why haven't the larger property/casualty insurers built any major underwriting or claims management systems? Why have some of the larger insurance and risk management information system vendors not developed products with this technology?

Clearly, there is considerable expense in developing these systems and the vendors may be unsure of the market demand.

Another major reason for industry reluctance may be basic management resistance to changes that definitely will be brought with large underwriting or claims systems, which may threaten not only entry-level claims or underwriting positions but also fundamentally change how these departments have worked.

While it is useful to discuss artificial intelligence as a technology that certainly will affect the coming decade, that is the topic of a different article. This month, I'll examine expert systems applied in today's industry. In particular, I'll look at two major disciplines: claims management and underwriting.

For illustrative purposes, I'll discuss current products available to the risk management community in both underwriting and claims. One product is a personal computer-based expert system for underwriting financial institutions and the other is a claims management system. I'll discuss the underwriting product in this column.

SOFINE is a PC-based underwriting information system designed by Frasin b.v., a Dutch firm that operates in a joint venture between GHC Financial Institutions Insurance Services Ltd. of London; Computer Security Consultants "COSECO" International b.v. of Rotterdam, the Netherlands; and Price Waterhouse Management Consultants of London. The acronym stands for Security, Organization/Structure, Financial data, Insurance coverage, Nature of operations, and Exposures. It is oriented to the non-computer literate person, which requires the system to be extremely user friendly. Using a question and answer format, the system guides the user through a series of technical questions regarding those six areas of the acronym, leading to a variety of data and benefits, like: identification of potential exposures and required insurance coverages; reduced time and expense visiting and gathering data from each financial institution about activities and exposures; and increased awareness of adequacy (or inadequacy) of security systems at various locations.

The beauty of this system is that it is simple to use. What belies this simplicity is the basis on which the system was designed. The foundation of any expert system lies with an important individual known as a "knowledge engineer." He or she is responsible for interviewing the expert (in this case, a knowledgeable risk manager for a financial institution). More than 8,000 questions specifying every conceivable aspect of security were later refined to about 1,200 questions covering the key concerns of most institutions. After these questions were developed, the designers then constructed the expert system in a logical format that would be familiar to users at underwriting and financial institutions.

The nature of SOFINE is based on logic and familiarity to the user. The initial questions it asks are designed to define the nature of the particular bank: name; ownership; management structure; details of location (whether it is a home office, branch, subsidiary, or electronic data processing center); and key data like phone numbers, addresses and contacts.

Next, SOFINE addresses the specific business activities of that particular bank, such as computer equipment or any systems used by the bank. It continues to ask detailed questions on the nature of business activity, moving down in quite a detailed fashion to customer accounts, credit cards, automatic teller machines and electronic transfers, among other things.

To address the entire functionality of SOFINE would be beyond the specific purpose of this column. However, I do want to point out that the system will ask increasingly detailed questions about areas of the bank that have more complex risks, exposures or activities.

At the conclusion of data entry, SOFINE will provide recommendations on issues ranging from security to insurance procurement. It is geared to upper level management.

An important point to make here, not only for financial risk management types, but for risk managers in general, is that an expert system is not intended to replace their thinking process. Rather, it utilizes the power and accuracy of the computer, mimicking many of the thought processes that go into making a subjective decision in the underwriting arena. The results produced are not intended to be obeyed blindly. Rather, the senior managers using this tool will be able to make more intelligent decisions based on the recommendations provided by the expert system. And, in fact, they will augment their value to the organization.

This is a strong endorsement of expert systems within the risk management and insurance industry. In a future column, I plan to address these forms of artificial intelligence in the industry's other major area involving subjective decision making: claims management.

Meanwhile, I'm still awaiting feedback on the survey I discussed in my December column—a review of risk management information system vendors (*BI*, Dec. 23, 1991). ■

David A. Tweedy is a senior consultant for Betterley Risk Consultants Inc. in Worcester, Mass. He is the editor of Betterley Risk Management Commentary and the author of RMIS Update, a yearly publication analyzing



major risk management information systems and vendors. Mr. Tweedy's column on risk management information systems appears the third Monday of the month.

Texas court limits health benefit to life of policy

A Texas appellate court held that a group health policy covered charges incurred when a service or supply was furnished. Thus, the policy did not cover expenses incurred after the policy was terminated.

Amy Miller was covered under a group health policy issued to her father's employer by Aetna Life Insurance Co. The policy covered medical expenses incurred, which it defined as the charge for a service or supply on the date furnished.

An auto accident in March 1985 rendered Ms. Miller a quadriplegic. Aetna paid her expenses submitted pursuant to the contract until April 29, 1986. The employer had terminated the contract with Aetna on April 30, 1985, but an extension of benefits clause in the contract required Aetna to pay the expenses incurred for another year.

Legal briefs

After a successor insurer stopped paying benefits, Ms. Miller sued the employer and Aetna claiming breach of contract for not paying benefits after the policy was terminated. A jury awarded her $283,000 in past damages and $2.5 million in future damages.

Aetna appealed. On appeal, Ms. Miller argued that the policy insured against the contingency of injury and not just "incurred" damages. Since the injury was sustained during the life of the policy, Ms. Miller asserted that Aetna was liable for covered medical expenses even after termination of the policy.

However, the court found that the ambiguous language in the contract meant that Aetna agreed to pay for covered medical services or supplies furnished while the policy was in effect. According to the court, nothing in the policy obligated Aetna, once an injury was sustained, to pay any and all covered medical expenses incurred after termination of the policy. The jury award was reversed.

Aetna Life Insurance Co. vs. Forbau, Court of Appeals of Texas, April 23, 1991, Rehearing overruled, June 5, 1991 (*BI*/04/F.-$10). ■

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.*

Regulation

Continued from page 3

sey & Co., a management consulting firm based in New York.

Until the industry becomes more aggressive, fights back and says, " 'We're not going to take it anymore,' the hits will continue," Mr. Walker said.

Clearly, insurers have to do a better job of educating the public and regulators about how they operate.

"I'm a little stunned at the naivete of some people at how the industry works. We have to educate people," Mr. Mascotte said.

But state regulators defend their record.

"I don't know of a single regulator who doesn't view solvency as the No. 1 goal of regulation," said William McCartney, director of the Nebraska Department of Insurance and president of the National Assn. of Insurance Commissioners.

"I don't know of any regulators who would view insurance as a bottomless pit," Mr. McCartney said.

Mr. Mascotte asked Mr. McCartney and his follow regulators to "let the market decide" what rates insures should charge.

But Mr. McCartney defended regulators' actions in determining rate levels, noting that regulators must follow the laws enacted by state legislatures. "You can't blame regulators for enforcing the laws they are given."

While the solvency of insurers is of concern, threats to the industry pale in comparison to threats to other financial service companies, panelists said.

McKinsey's Mr. Walker noted that the number of insurance company failures has been tiny compared to the number of banks and savings and loan associations that have failed. Some observers estimate that bailing out federally chartered S&Ls ultimately could cost taxpayers $500 billion.

"The industry is remarkably resilient. . . .Capital has increased over time," Mr. Walker said, noting that investment return measured over the long term has been steady.

Some panel members foresee a greater federal role in insurance regulation.

George L. Priest, a professor of law and economics at Yale University Law School, said that as the business of insurance becomes more international, a greater federal regulatory role is likely.

There is "no reason for the current form of regulation," Mr. Priest contends. For instance, he noted that no one would force banks or the security industry to participate in residual market mechanisms whereby, for example, banks would be ordered to make loans to parties with bad credit ratings.

"We accept solvency regulation, but let's do it economically and efficiently. Let's get rid of everything else," he said.

But Mr. McCartney disagreed with the attack on state regulatory practices, arguing that federal regulation is far from a certainty or a panacea.

Some 9,000 people regulate the industry at the state level, he noted. It would be "naive" to believe that regulatory talent at the state level could be replicated at the federal level in a short time, he said.

At the same time, those who complain about politically inspired rate regulation at the state level might find even more to complain about if the industry were regulated by Washington, Mr. McCartney said.

"If you have a national regulator, you will have the same problem in 51 jurisdictions rather than in only a few states, Mr. McCartney said.

However, Mr. McCartney said concerns about the quality of the state regulatory system, like those offered by House Energy and Commerce Committee Chairman John Dingell, D-Mich., have had a beneficial effect.

"The pressure from Rep. Dingell has been healthy," Mr. McCartney said, adding that governors and state legislators have been pressured to upgrade insurance departments.

"I think that (state regulation) is better, more sophisticated, and is on an upward curve," said the Nebraska regulator, noting that regulators' increased data handling capabilities, the computerized filing of financial information and the NAIC's program to accredit state insurance departments have improved state regulation.

Meanwhile, the insurer executives on the panel said they believe the McCarran-Ferguson Act may need to be modified, even though some industry organizations, like ISO, warn that changing McCarran-Ferguson could lead to disaster for the insurance industry (see story, page 27).

Mr. Jarvis of Selective Insurance said a change in the McCarran-Ferguson Act would be "very much in order," although a new law would have to include safe harbors to ensure the continuation of certain collective activities.

The insurance industry seems to want it both ways, says the Justice Department's Mr. Rill. On the one hand, it argues for less regulation; on the other, it insists that it needs protection from antitrust laws, he says.

"We have to deal with McCarran," said Mr. Mascotte of Continental.

Mr. Priest, the Yale law professor, says the benefits of the McCarran-Ferguson Act are far outweighed by the political price attached to the law.

"I don't think having McCarran on the books is worth it. The protection offered is small. The law ought to be abandoned," he said, adding that the "threads of protection" it offers are not enough to offset the political antagonism the law inspires.

Meanwhile, a top Justice Department official says the department continues to view the McCarran-Ferguson Act with skepticism. The administration, however, opposes H.R. 9, a reform bill that would remove most key antitrust exemptions. It is now awaiting a House floor vote.

James F. Rill, an assistant attorney general in the antitrust division, says the department is naturally skeptical when an industry says it needs special exemptions from antitrust laws.

In particular, the insurance industry seems to want it both ways, said Mr. Rill.

On the one hand, it argues for less regulation; on the other, it insists that it needs protection from antitrust laws, he said.

However, the administration will not sign onto H.R. 9, which was introduced by Jack Brooks, D-Texas, the chairman of the House Judiciary Committee. Among other things, Mr. Rill said, the bill lacks safe harbors for certain collective activities.

Earlier, in a letter, the Justice Department warned that the structure and language of the Brooks bill could "have an unwarranted deterrent effect on appropriate collective activity among insurers" (*BI*, Nov. 25, 1991).

Turning to another area, Mr. Priest said substantial civil justice reforms could still be years off.

Tort reform faces substantial roadblocks because state legislatures often are dominated by former trial lawyers who have enormous clout, he said.

Still, there are encouraging developments, Mr. Priest said. Today's law school students, for example, are much more aware of the costs imposed by an expansive tort litigation system, he said. However, "it is going to take some time for students to become judges."

"Real reform won't come for another 15 years," he said.

The panel was moderated by AIA President Robert E. Vagley. ■

International panel

Continued from page 3

civil suit to pay the legal costs of the victor.

American tort reform advocates have cited this as a means of reducing the incidence of meritless cases.

Mr. Rushton said that Americans also might want to pay attention to a corollary of the "loser pays" rule. Under British custom, a lawyer who brings too many frivolous cases to court faces possible disbarment.

The spread of American tort law to Europe is a "potential time bomb," said Rolf F. Hueppi, president and chief executive officer of Zurich Insurance Co. in Zurich, Switzerland. Mr. Hueppi noted that Switzerland, for example, has already adopted the American concept of strict liability in product liability cases.



Mr. Hanway

U.S. legal fashions take a decade or so to reach Switzerland, he said. "The more quickly we see some changes" in the U.S. civil justice system, the better things will be in Switzerland 10 or 15 years from now, he said.

Mr. Hueppi cited early 20th century U.S. Supreme Court Justice Oliver Wendell Holmes' admonition that the purpose of law should be to narrow uncertainty. This principle should guide the resolution of liability disputes, Mr. Hueppi said.

Royal's Mr. Rushton jokingly said that when someone once asked him what he would do if asked to run a liability insurer in the United States, he replied "The first thing I'd do is emigrate."

The only American to serve on the panel said Europeans likely have less of a feeling of entitlement than Americans, which he said may explain the differences in attitudes toward liability.

H. Edward Hanway, president of CIGNA Worldwide Inc. in Philadelphia, added that even if awards are high under the U.S. system, an insurer can adjust prices upward to make up the difference, as long as there is consistency in the interpretation of policy language.

Inconsistent interpretation of insurance policy language by U.S. courts is the "bane" of U.S. insurers, he said.

The U.S. system of insurance regulation also came under some criticism from the panel.

When asked whether state regulation constituted a trade barrier to non-U.S. insurers, Mr. Rushton noted that the European Community contains within itself a wide range of approaches to regulation, ranging from minimal pricing regulations in the United Kingdom to very comprehensive regulations in Germany. However, he said, in most countries "insurance is not a political matter."



Mr. Hueppi



Mr. Rushton

Insurance becomes political in countries where regulation is handled on the state level, like the United States, Canada and Australia, he said. While Germany is a federal republic, insurance regulation is handled at the national level, he noted.

Mr. Rushton added, however, that the heavy hand of German regulation "has stultified innovation," whereas the U.S. system hasn't.

On another matter, Mr. Rushton said he would advocate the establishment of national health care systems so that plaintiffs would not be able to reap huge awards by suing private health care providers for injury-related damages.

His fellow panelists did not share his view.

"I'd be very slow to invite government in," cautioned W. Nelson Robertson, chief general manager of General Accident Fire & Life Assurance Corp. P.L.C. in Perth, Scotland.

"I am always very much against" getting the government involved in economic matters unless necessary, said Jacob J. van Rijn, chairman of the Internationale Nederlanden Group of The Hague, Netherlands.

Meanwhile, CIGNA's Mr. Hanway and Zurich's Mr. Hueppi both stressed the importance of decentralized decision-making as part of a successful strategy of competing in a global marketplace.



Mr. van Rijn



Mr. Robertson

Mr. Hueppi noted that about 80% of Zurich's business comes from outside Switzerland. He said that in most cases, Zurich does business on a local basis. He added that at least 75% "of our strategy is giving control to local management."

Mr. Hanway said CIGNA, which operates in more than 70 countries, follows the fundamental premise that it should function as a local operation in the markets it serves.

"Centralized decision-making can paralyze an operation," he said.

"The days of U.S. companies having huge armies of expatriates" running their operations have long gone, Mr. Hanway said. CIGNA focuses on grooming local talent, he said, noting that only 40 or so of CIGNA's 4,500 overseas employees are expatriate Americans.

During an interview, Mr. Hanway noted that finding local talent isn't always easy. In particular, CIGNA is having trouble finding local talent in Eastern Europe. ■

Industry trade groups elect new directors and officers

WASHINGTON—Three insurer trade organizations elected new directors and officers at their joint annual meeting in Washington last week.

New officers and board members were elected by the Insurance Services Office Inc. and the Insurance Information Institute, both of New York, and the Washington-based American Insurance Assn.

ISO elected Peter Lardner, president and chief executive officer of Bituminous Fire & Marine Insurance Co., as its new chairman.

Mr. Lardner succeeds Walter E. Farnam, chairman and chief executive officer of General Accident Insurance Co. of America.

Gerald A. Isom, president and chief executive officer of Transamerica Insurance Co., was elected vice chairman, succeeding Mr. Lardner.

Elected to ISO's board for three-year terms were Ramani Ayer, president and chief operating officer of Hartford Group Inc.; Philip Engel, executive vp at CNA Financial Corp.; J. David McDonald, senior vp and chief underwriting officer at Royal Insurance Group; F. David Rolwing, president of Montgomery Mutual Insurance Co.; and Robert B. Sanborn, president of Orion Capital Corp.

A new public non-insurer member was also named to the ISO board (see story, page 27).

III, meanwhile, elected Donald R. Frahm, chairman and chief executive officer of Hartford, as its chairman. He succeeded Mr. Isom.

D. Richard McFerson, president and chief operating officer of Nationwide Mutual Insurance Co., succeeded Mr. Frahm as III chairman-elect. Mr. Lardner was elected vice chairman.

Member companies elected to serve on the III board for three-year terms expiring in 1994 are: Aetna Life & Casualty Co., Chubb & Son Inc., Continental Corp., Employers Reinsurance Corp., General Accident, United States Fidelity & Guaranty Co. and the United Services Automobile Assn.

The AIA elected William E. Buckley, chairman and chief executive officer of Royal, its new chairman. He succeeded Dean O'Hare, chairman and chief executive officer of Chubb Corp., who was elected to a two-year term on the AIA board of directors.

Robert B. Sanborn, president and chief operating officer of Orion Capital, succeeded Mr. Buckley as chairman-elect. John P. Mascotte, chairman and chief executive officer of Continental, was elected vice chairman.

Elected to three-year terms on the AIA board of directors were Norman P. Blake Jr., chairman, president and chief executive officer of USF&G; Joseph C. Eanes Jr., president and chief executive officer of Fidelity & Deposit Co.; Mr. Farnam; Caleb L. Fowler Sr., president of CIGNA Corp.'s property and casualty companies; Mr. Frahm; Douglas W. Leatherdale, chairman, president and chief operating officer of The St. Paul Cos. Inc.; Maynard R. Stufft, president and chief executive officer of PHICO Insurance Co.; and Victor M. Yerrill, chairman and chief executive officer of GRE Corp.

Morgan Davis, president of the commercial insurance division of Fireman's Fund Insurance Co., was elected to fill the unexpired term of Joseph W. Brown Jr., who recently resigned as CEO of Fireman's Fund (*BI*, Dec. 16, 1991).

And elected to a two-year term was Gerald L. Maatman, president and CEO of Kemper National Insurance Cos., which joined the AIA at the meeting. ■

AIA unveils a broad agenda for 1992

By MARK A. HOFMANN

WASHINGTON—The American Insurance Assn. will continue working with Congress to find "an appropriate role for the federal government" in regulating insurer solvency, its president told members last week.

The trade group has been discussing the issue with John Dingell, D-Mich., the chairman of the House Energy and Commerce Committee, and hopes to present a formal proposal to the committee next month, AIA President Robert E. Vagley said at the group's annual meeting last week.

Also calling for better solvency regulation, Dean O'Hare, the AIA's outgoing chairman, said a federal role is needed. During the annual meeting, Mr. O'Hare, who is chairman and chief executive officer of Chubb Corp. in Warren, N.J., was succeeded in the AIA chairmanship by William E. Buckley, who is chairman, president and chief executive officer of Royal Insurance in Charlotte, N.C.

Mr. Vagley said other pressing items on the AIA federal agenda are resolving the future of the McCarran-Ferguson Act, which grants insurers several exemptions from federal antitrust laws, and reforming the Comprehensive Environmental Response, Compensation and Liability Act, or Superfund law.

On the state level, the Washington, D.C.-based group will be pushing for workers compensation and automobile insurance reform.

And, the AIA president vowed the group would seek to stave off any tax increases affecting insurers, either on the federal or the state level.

The insurance industry "needs a system that creates an incentive for companies to manage themselves well while avoiding the burden of costly, redundant dual regulation," said Mr. O'Hare.

Keeping solvency regulation at the top of the AIA agenda is vital, according to Mr. Vagley. "It's essential that we take action to restore any hint of eroding public confidence in our industry in the wake of well-publicized life insurance company insolvencies and downgradings by rating organizations," he said. He added that AIA will continue to seek the passage of model solvency regulations on the state level.

"But there is compelling evidence that solvency regulation is not a job the states should do alone," he said.

"We see an appropriate role for the federal government in improving insurance regulation. We will continue to work with Congress this year to craft a legislative solution that will provide property/casualty insurers with a more rational regulatory system and one that gives real meaning to insurer solvency."

In an a later interview, Mr. Vagley said the "ripeness" of the solvency issue prompted the AIA to break with the industry's traditional opposition to any federal oversight. While noting that the AIA still is working on its proposal, he said that the federal role might involve the creation of a federal guaranty fund of some sort and could entail some variation of federal chartering of insurers.

Mr. O'Hare, in his speech to AIA members, said that the industry has to unite to improve solvency regulation. A uniform standard regarding solvency must be set, he said.

Under the current system, strong companies suffer twice when an insolvency occurs, he said. First, they lose business to "fly-by-night" operators with unrealistically low prices, he said. Then, when an insolvency occurs, strong companies must "pick up the tab" of state guaranty fund assessments to protect policyholders, he said.

"Personally, I favor a system that would allow insurers to choose a system of federal or state regulation," said Mr. O'Hare.

Mr. O'Hare also stressed the importance of maintaining underwriting profitability. Calling for an end to short-term thinking among insurance company managements, he noted that investment income—which for years has offset underwriting losses— is drying up.

Regarding another major AIA federal initiative, Mr. O'Hare said that the organization will continue to work for a compromise with those in Congress who favor amendments to the McCarran-Ferguson Act.

"It's time to put an end to an unproductive debate," Mr. O'Hare said. He noted that the AIA had discussed the modification of the law with the staff of House Judiciary Chairman Jack Brooks, D-Texas, last year. However, talks broke down in November, a day before the Judiciary Committee approved H.R. 9, Rep. Brooks' McCarran-Ferguson reform bill, which insurers contend would gut the act (*BI*, Nov. 25, 1991). But talks resumed in December.

'There is compelling evidence that solvency regulation is not a job the states should do alone,' says Robert Vagley, president of the AIA. 'We see an appropriate role for the federal government in improving insurance regulation.'

"We succeeded in keeping the doors open," said Mr. O'Hare.

On another front, Mr. O'Hare claimed a victory on a bank-related bill. Lobbying by the AIA helped eliminate a provision in a bank reform bill that would have expanded the authority of banks to underwrite insurance, he said.

On the subject of Superfund Mr. Vagley said the AIA is attempting to draft proposals to reform the federal Superfund law so that the financial responsibility for the cost of cleaning up waste sites is more equitably proportioned.

Mr. Vagley said later that the effort was being made to "take the controversy" out of environmental claims that predate 1980.

"Our intention is not to gut the program," Mr. Vagley said. He said that about 88% of the money spent to date under Superfund has gone toward transaction costs, like litigation, rather than toward cleanup costs. The AIA's aim is to put the money to its proper use, actually cleaning up the sites, he said.

He added, however, that this was not an endorsement of a proposal by Maurice R. Greenberg, chairman and chief executive of American International Group Inc. in New York. Mr. Greenberg has suggested financing cleanups through a premium tax on all companies purchasing liability insurance and equivalent assessments on self-insurers (*BI*, March 6, 1989).

While some sort of broad tax might be necessary to fund environmental cleanups, said Mr. Vagley, "I'm not sure taxing insurance products is a good way to raise the money."

In fact, "continuing fiscal pressures at both the state and federal levels guarantee that AIA will remain vitally interested in tax issues this year," Mr. Vagley said.

"Our federal tax plan is simple: defeat any moves to increase our industry's tax burden, which is already more than sufficient. Part of that effort will be to educate Congress on the effect of tax policy on solvency and our competitiveness as an industry.

"At the state level, we'll strongly resist efforts to increase premium taxes, accelerate collection of insurer taxes and use insurers as surrogate tax collectors for the government."

However, "working to relieve stress on the workers compensation system will continue to be our top state priority," said Mr. Vagley.

"We've targeted more than a dozen states where we will advance major reforms this year. In other states, we will lay the foundation for future legislative action. In addition, our reform agenda will test elements of the current system to assess their ongoing viability and to explore alternatives," he said.

Mr. Vagley acknowledged that the AIA's other major area of concern regarding the states is one that might not be of equal concern to all members.

"Some AIA members are curbing their involvement in auto insurance, but it's still a priority issue for us," he said.

Mr. Vagley said that auto insurance represents "a key link" to consumer and minority communities and promised to "continue to work with those communities to solve the problems of affordability and availability of auto insurance, as well as to advance highway and auto safety."

He added that the health of the auto insurance business also shapes attitudes about insurance in many states, citing particularly New Jersey, where the personal auto insurance market is in turmoil.

"We will respond this year by launching an ambitious campaign to improve the state's political environment for auto insurance reform. We are now developing a strategy to achieve a system that in time will yield more reasonable rates for consumers and a more competitive environment for insurers," he said. ■

Audience, at least what's left of it, cringes at Clancy

WASHINGTON—About 275 property/casualty insurance industry executives gathered last week for the annual meetings of the American Insurance Assn., the Insurance Services Office Inc. and the Insurance Information Institute.

The event—informally called the joint industry conference—was held Jan. 14-15 at the J.W. Marriott Hotel.

While the business agenda of the conference centered around important issues like solvency regulation, the McCarran-Ferguson Act and the workers compensation crisis, most of the executives were buzzing about the after-dinner speech delivered by best-selling novelist Tom Clancy.

Mr. Clancy, author "The Hunt for Red October" and a former insurance agent, set his audience on edge by calling the insurance industry "stupid" and labeling his former job as "boring." He then made remarks that many considered offensive to women, minorities and others. Many left the room before Mr. Clancy completed his remarks.

On the other hand, ABC News analyst David Brinkley received a warm ovation during a luncheon address in which he ridiculed—in his familiar jocular manner—the nation's tax system.

A third featured speaker, Martin Feldstein, an economics professor at Harvard University and chairman of the President's Council of Economic Advisers during the Reagan administration, said that the economy would probably start to recover this summer without the need for a tax cut.

Mr. Feldstein, who stressed the need for increased savings to stimulate the economy, said the insurance industry is an important vehicle through which Americans can boost their savings.

Next year's joint industry conference is tentatively scheduled for Jan. 12-13 in New York. Attendance is by invitation only.

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III to view industry's public image

By MARK A. HOFMANN

WASHINGTON—The Insurance Information Institute's goal for 1992 is to "try to get to the bottom" of the property/casualty insurance industry's deteriorating relationship with the public, according to the group's president.

To do so, the New York-based III is undertaking several major initiatives, said Gordon C. Stewart, who succeeded Mechlin Moore as president of the insurer-supported communications organization last year (*BI*, May 6, 1991).

Those initiatives include:

- Putting together a task force of insurance company chief executive officers to examine how the industry as a whole, not just the III, conducts its communications.
- Strengthening the III's core communications program.
- Helping state and regional insurance organizations communicate their positions on insurance issues.
- Continuing to publish monographs aimed at decision makers through the new III Press.

Mr. Stewart also noted that the III is stressing several key industry issues in its communications efforts. These include the problem of insurance fraud, tort reform questions and communications with policyholders.

III's outgoing chairman, Gerald A. Isom, described the success of two ongoing III efforts aimed at enhancing communications with consumers.

"More than 400,000 consumers requested III's brochure 'Nine Ways to Save on Auto Insurance' from the U.S. government's Consumer Information Center in Pueblo, Colo.," in 1991, said Mr. Isom, who is president and chief executive officer of Transamerica Insurance Co. in Woodland Hills, Calif.

Mr. Isom pointed out that the brochure was the federal consumer information center's most requested publication on any subject last year.

He also singled out as an example of successful consumer communications the National Insurance Consumer Helpline, which III operates in conjunction with both the life/health and property/casualty industries.

The toll-free telephone helpline fielded about 100,000 calls during 1991 regarding questions about home and automobile insurance, Mr. Isom said.

Most callers didn't understand their insurance policies, he said. But "others had real problems with how they had been treated by our industry," he said. Helpline staff helped solve most of the problems, he added.

"No one company, no matter its size or resources, can deal with the issues" by itself, he said. Only a united industrywide organization can do the job effectively, he added.

Mr. Isom noted that III plans this year to join in the communications efforts of the Manhattan Institute for Policy Research in New York and the Washington, D.C.-based American Tort Reform Assn. to make the public aware of the "intolerable costs" of the civil justice system.

III also plans to bring business, labor, government and insurance leaders together in a meeting to discuss the workers compensation system at the John F. Kennedy School of Public Affairs at Harvard University, he said.

Mr. Isom said other III activities planned for 1992 include issuing a "white paper" regarding the impact of legal costs on environmental cleanups; preparing a book addressing the insurance needs of small businesses; and introducing a new study of insurance fraud.

He noted, however, that the III is financially supported by insurers that represent less than 40% of the property/casualty industry's total premium volume. III has been plagued by the withdrawal of several major insurers during the past two years (*BI*, April 1, 1991). The group reorganized and closed several regional offices late last year (*BI*, Nov. 4, 1991).

"This must change," said Mr. Isom. The current members of III cannot be expected to bear by themselves the costs of running an organization that benefits the entire industry, he said.

He said that to survive, the III must expand its membership base.

"We are a unique institution, and there never really has been a greater need" to communicate the property/casualty insurance industry's story, said Donald R. Frahm, chairman and chief executive officer of Hartford Group Inc., who succeeded Mr. Isom as III chairman at the meeting. ■

McCarran reform could trigger litigation

By JERRY GEISEL

WASHINGTON—Modifying insurers' limited immunity from federal antitrust law could open the floodgates of litigation, warns the president of the Insurance Services Office Inc.

If major changes are made to the McCarran-Ferguson Act, battles will be fought—case by case—as courts try to determine what type of collective activity the new law does and does not allow, said Fred R. Marcon, president of the New York-based group.

"A change, if any, to McCarran should be made with the utmost care, or a torrent of litigation will be unleashed to define what is permitted under a revised law," Mr. Marcon said last week at the property/casualty insurance organization's annual meeting in Washington, D.C.

Although the McCarran-Ferguson Act was enacted nearly half a century ago, ISO continues to have to defend challenges—most recently by state attorneys general (see related story, page 2)—against joint industry activities that are clearly permitted by McCarran-Ferguson, Mr. Marcon said.

If litigation continues over such clearly permitted activities as developing standard policy forms, imagine the attacks from industry critics that would result unless a new law's "provisions are clearly delineated," he said.

"It's only prudent to consider the litigation that will ensue as—case by case—the courts try to sort out what a new law promotes, permits or proscribes," Mr. Marcon said.

Possible changes to the McCarran-Ferguson Act remain a real possibility.

In November, the House Judiciary Committee approved legislation, H.R. 9, that would essentially gut the McCarran-Ferguson Act (*BI*, Nov. 25, 1991).

The measure's chief sponsor, Judiciary Committee Chairman Jack Brooks, D-Texas, said last year that he would try to bring the measure to the House floor for a vote in February.

Mr. Marcon said that the many benefits of McCarran-Ferguson for consumers and insurers—including ISO's tremendous economies of scale in providing a range of services to the industry that no single insurer could do as efficiently—demand a strong defense against efforts to gut the law.

"I suggest we remember the proven economic benefits flowing from ISO's economies of scale. If we negotiate those economies away, we'll merely add further costs to an already overburdened system," he said.

Defending challenges to the McCarran-Ferguson Act is just one of many hurdles the property/casualty insurance industry faces in the future, warned outgoing ISO Chairman Walter E. Farnam.

If the market abruptly tightens, public reaction could be even more negative than the wave of anger that was directed against the industry after the price and availability crunch in the mid-1980s, he said.

"The result: Insurance companies and our activities would become an even greater issue, threatening our industry's ability to achieve our public-policy objectives," said Mr. Farnam, chairman and chief executive officer of General Accident Insurance Co. of America in Philadelphia.

Debate continues over developing new solvency standards for insurers to reduce the risk of failures, Mr. Farnam said.

The National Assn. of Insurance Commissioners, for example, is studying how to assess the adequacy of individual insurers' capital based on factors like the riskiness of the types of policies a company writes, its investment mix and its reinsurance program (*BI*, Dec. 9, 1991).

Developing a single coherent set of standards for assessing capital will be a difficult project for the NAIC, but research should continue, Mr. Farnam said.

"A lot of healthy debate will take place over what the standards should be and how those standards should apply. But there's really no question that varying degrees of risk do exist and no question that it makes sense to take account of risk in assessing the adequacy of companies' capital," he said.

While not taking a direct position on solvency proposals that have been made at the federal level, like those offered by Rep. John Dingell, D-Mich., and Sen. Howard Metzenbaum, D-Ohio, Mr. Farnam said it's time for the industry to "thread" through such proposals.

"We need an approach that avoids burdensome duplication and diffusion of responsibility. Our industry needs to contribute constructively to the process of improving solvency regulation," Mr. Farnam said.

How the industry meets these challenges will depend on how effective it will be in communicating its beliefs and arguments, he said.

"When our industry has spoken with consistency and unity, we have been successful in getting our message across, and when we haven't spoken with consistency and unity, we have not been successful, Mr. Farnam said.

ISO is completing a series of actions to eliminate perceptions held by its critics that it was a price-fixing organization with little interest in the opinions of consumers.

For example, the group is in the last stages of phasing out the publication of advisory rates and instead is providing advisory prospective loss costs on which insurers can base their own rating decisions.

This change eliminates "once and for all any misperception that the ISO advisory rate was, in effect, price fixing," Mr. Marcon said.

At the same time, ISO has placed more independent decision-making authority with its staff, a change that addresses adverse perceptions about insurance pricing and ISO's role in the process, Mr. Marcon said.

"Today, it's more clear than ever that ISO is an information provider, an organization that supplies staff-developed information to insurers and others for their independent use," Mr. Marcon said.

Finally, ISO is giving the public a chance to be part of the organization's decision-making process.

Last week, ISO elected John Lehman, a former secretary of the U.S. Navy during the Reagan administration, to become the third non-insurer member of its board of directors.

Non-insurer members, like Mr. Lehman, underscores that ISO's perspective is broad and its activities "can stand up to the scrutiny of independent, distinguished public members of unquestionable competence and integrity," Mr. Marcon said. ■

Kemper National joins AIA

WASHINGTON—Kemper National Insurance Cos. is the first large mutual insurer to join the American Insurance Assn.

Kemper was elected to membership at the trade group's annual meeting here last week.

Traditionally, AIA members have been stock companies, although a few smaller mutuals have belonged to the organization during its history.

"Both in terms of mix of business and positions on public-policy issues, the AIA and Kemper are a good fit," said Gerald L. Maatman, president and chief executive officer of the Long Grove, Ill.-based insurer.

Kemper last year said it was reserving its right to withdraw from the Alliance of American Insurers, a Schaumburg, Ill.-based association which represents mostly medium-sized mutual insurers.

Meanwhile, two member companies have notified the Insurance Information Institute, which jointly held its annual meeting with the AIA and the Insurance Services Office Inc. last week, that they intend to quit later this year.

Basking Ridge, N.J.-based Crum & Forster Corp. plans to withdraw on Sept. 30, 1992. Aetna Life & Casualty Co. in Hartford, Conn., is scheduled to leave on Dec. 31.

"We decided to withdraw after re-evaluating the cost-benefit relationship of membership as part of an effort to reduce expenses and increase profitability," said a spokeswoman for Crum & Forster.

An Aetna spokesman said that although the insurer had supported the III's activities for years and has "great respect" for the organization, "after careful deliberation, we concluded that we're no longer able to commit the financial resources and time necessary to continue our membership."

Over the past two years, III membership has dropped significantly (*BI*, April 1, 1991). Insurers have cited cost savings as the reason for leaving the group.

—By Mark A. Hofmann

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Far East trade

Continued from page 1

The purpose of the trip was not to come back with a bunch of specific achievements; that would be an unrealistic expectation. In three days in Japan and a day and a half each in Korea and Singapore, the purpose was more to set the stage for future discussions based on free and fair trade.

There were a number of agreements reached in Japan that were embodied in the Tokyo Declaration. *(Editor's note: The Tokyo Declaration is a sweeping statement of global partnership that was signed by President Bush and Japanese Prime Minister Kiichi Miyazawa.)*

One of those agreements sets up a bilateral committee to hasten the removal of structural impediments that affect financial services businesses, including insurance.

Is there more that you would have liked to have seen accomplished during the Far East meetings?

No. I think that what was accomplished was very important. Quite frankly, the expectation of some of the writers on the trip demonstrated a lack of internationalism. The president sent a very clear message about what free and fair trade was.

The trade negotiations were often described by the media as "long and bitter." Is that true and can you elaborate?

No, I would not say the meetings I attended were long and bitter; they were frank exchanges of views. Obviously, there are some differences of opinion. It's unfortunate that the automobile industry seemed to dominate the press reports. The automobile industry did not dominate the discussions.

How do you feel the U.S. delegation was received by the Japanese people?

By and large the Japanese welcomed President Bush quite enthusiastically. Like all missions of this kind, there are always some who feel otherwise. Some Japanese feel that the United States may have pressed them too hard on market access.

The problem, I think, is that free and fair trade as we define it may not have the same definition in all countries. The president had the mission of making certain that if there are differences of interpretation that they be clarified. The world trading system is designed so that countries that are in surplus should voluntarily purchase goods and services that are better produced in countries other than their own, rather than inefficiently producing products and services within their own country. In other words, if you get the benefits of the trading system, you must take the responsibilities of it as well.

The domination of domestic Japanese insurers in Japan largely results from a network of impediments, including the regulatory process, powerful industry associations and inter-industry links between Japanese industry and Japanese insurers. Do you foresee changes in this landscape?

In any country, the domestic insurance industry normally dominates the market; that's not an unusual phenomenon. In the Japanese insurance industry, which approximates $300 billion (in premiums) between life and non-life, the total foreign participation is about 2%, which seems low. In the industrial insurance sector, the foreign market has very nominal participation because of the cross-holding links between insurers and industry. That is something that is cultural in Japan. Disassembling that, quite frankly, is going to take a very long time. It is part and parcel of the Japanese system.

Do you think some of these impediments to trade in Japan will eventually be dismantled over time?

Those impediments over time are expected to be removed. But don't look for them to be removed overnight; it's a long process. If the world trading system is to survive, with the definition as we know it of free and fair trade, countries are going to have to play by similar rules and voluntarily import goods and services that are better produced and more efficiently produced elsewhere.

Not all countries view it that way. Many countries think it's their obligation to pile up the largest trade surplus they can. They view it more as a corporation trying to increase profits rather than working toward a balance.

Does Japan hold this view of balanced world trade?

Japan is not there yet. They have the view that building a surplus is nationally what they should be doing.

Do you think "managed trade," whereby the market share for U.S. insurers is predetermined, is the answer?

No, I don't believe in managed trade. I don't believe in quotas for trade. I think countries should be voluntarily moving toward balancing their trade. (Managed trade) will lead to protectionism faster than anything I can think of.

How do you think U.S. insurers need to adapt to be more successful in Japan?

If you're going to do business in Japan, you have to understand the country, you have to understand the people and you have to have a distribution system. Most importantly, you have to make a long-term commitment. You don't build in Japan based on a couple of years; the staying power has got to be very, very long. Very few companies have had that quality.

The barriers to trade in Japan are very subtle, and it takes a great deal of experience in Japan to understand both the impediments and how you can or can't work around them.

What is the advantage to AIG, which is already the largest U.S. insurer in Japan, of opening the market for other insurers?

That's our history. We are always out in front opening markets for others. We don't fear competition.

What predictions do you have for the future of trade relations between the United States and Japan?

I would like to see Japan take on the same interpretation of free and fair trade that we do and that the rest of the world is moving toward. There is no such thing actually as free trade anyplace; it only is a matter of degree. We in the United States have fewer barriers than any other country. And, we are trying to move the world toward freer trade all the time.

If we fail in this objective, we unquestionably will move toward a world of more regionalism and protectionism. That would be negative for everybody.

We at AIG have been working in this area for many years to try and broaden concepts and move away from nationalism toward more internationalism.

I am optimistic that there is enough knowledge and experience now and the world is essentially so small and integrated that everybody shuns the thought of protectionism. That's a no-win situation for everybody.

What are your impressions of meetings held in Singapore?

My concern has been, from my discussions with both political leaders and business leaders in the ASEAN nations, that they more and more believe the United States was more concerned with Europe, Eastern Europe, what was the Soviet Union, Japan and China, but that Southeast Asia was very low on our priority list. I am confident that the president disabused them of that feeling. He was very, very direct about not only our commitment but the necessity of our commitment to the region, both from a security point of view and a business point of view. Moreover, there are some barriers in ASEAN nations. I believe the president's message on free and fair trade was important to them, as well.

Finally, what message would you give to *BI* readers about trade in the Far East?

From your readership's point of view—the American industry that is international in scope—I would urge them to explore business opportunities in Asia and throughout the region. We at AIG are very bullish on Asia, and I think more American presence is needed. We should not abdicate the region to any other country. Southeast Asia, for example, is the fastest-growing economic region in the world. And, we should be major participants in that region. ■

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USF&G says it may not drop workers comp in Mississippi

JACKSON, Miss.—United States Fidelity & Guaranty Co. says it may reverse its decision to withdraw entirely from the voluntary workers compensation market in Mississippi if the state Legislature passes meaningful reform legislation this session.

The Baltimore-based subsidiary of USF&G Corp., which is the state's largest workers comp insurer, recently announced that as of Jan. 1 it would stop writing new business in the state's voluntary workers comp market. USF&G also said it would not renew existing business as of April 1 in response to the Legislature's failure to reform the cost structure of the system. A new legislative session began Jan. 8.

USF&G says it has suffered substantial losses in Mississippi's voluntary market over the past few years, but would provide no details. It also cited increasing assessments to the state assigned risk pool.

The assigned risk pool now comprises 35% of the state's workers comp market, according to Harold Cross, executive director of the state Division of Workers Compensation.

USF&G is the largest single workers comp insurer in Mississippi, with 17% of the market.

"Leaving a market in which we have such dominance is, most assuredly, a difficult decision," said Norman P. Blake Jr., chairman and chief executive officer of USF&G.

"We sincerely hope that the Mississippi state Legislature will address the cost structure of the line for the sake of the people and businesses of the state, as well as the insurers," he said. "USF&G has a strong desire to be able to return to a Mississippi workers comp market that has a realistic opportunity for profit."

In an unrelated move, the troubled insurer has withdrawn from the personal lines market in six states as of Jan. 15. Those states are: Arizona, Delaware, Hawaii, Michigan, Rhode Island and South Carolina.

A spokesman would give no reason for the withdrawals.

—By Joanne Wojcik

Asbestos ruling

Continued from page 2

policy provided excess umbrella coverage of $10 million per occurrence/$40 million aggregate excess of $35 million, according to court papers.

Other companies that insured the manufacturer between 1980 and 1985 joined in the motion, including: Stonewall Insurance Co., a subsidiary of American Financial Corp.; American Motorists Insurance Co., a subsidiary of Kemper National Insurance Cos.; Republic Insurance Co., a subsidiary of Winterthur Swiss Insurance Co.; two Hartford Group Inc. units—First State Insurance Co. and Twin City Fire Insurance Co.; Old Republic Insurance Co.; American Centennial Insurance Co., a subsidiary of Consolidated International Insurance Group Inc.; International Insurance Co., a unit of Crum & Forster Inc.; and Employers Insurance Co. of Wausau, a subsidiary of Nationwide Mutual Insurance Co.

H.S. Weavers (Underwriting) Agencies Ltd. and syndicates at Lloyd's of London also issued excess policies to National Gypsum between 1980 to 1984, but did not join in the motion for a ruling on the known loss issue.

The insurers claimed that because National Gypsum was already named in seven asbestos property damage lawsuits by Jan. 1, 1983, future losses were anticipated by the company.

National Gypsum had been named in approximately 235 asbestos property damage complaints as of October 1990, when the company filed for Chapter 11 bankruptcy protection. Most of the suits were filed by school districts, including a class action on behalf of all schools in Pennsylvania and a national class action on behalf of all non-profit schools.

In all, $400 million in coverage issued between 1980 and 1985 was at stake in the magistrate's ruling, said Jill M. Douthett, of Hoyle, Morris & Kerr in Philadelphia, who represents National Gypsum. The entire lawsuit concerns between $650 million and $700 million in coverage.

"We are very happy with the ruling," she said. "We are confident that Judge Martin will accept it."

The magistrate's ruling limits a known loss to a lawsuit that has already been filed or notification that the policyholder will be named in a suit.

"This ruling leaves very narrow room for application of the doctrine," said insurer attorney Wilson M. Brown III of Drinker, Biddle & Reath in Philadelphia. "We think there ought to be broader room."

Mr. Brown said his clients, American Motorists Insurance Co. and Republic Insurance Co., had not yet decided whether to appeal.

Policyholder attorneys agreed with Magistrate Bernikow that insurance is intended to cover the risk of a loss.

"Just because you put asbestos in a building doesn't mean you expect damage to occur," said Jerry Oshinsky of Anderson, Kill, Olick & Oshinsky in New York, who has represented other policyholders in asbestos litigation. "The fact that you have a risk doesn't mean that you lose your coverage when the risk occurs."

Attorneys say the known loss doctrine is used often in environmental damage litigation, such as the court papers show.

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Stonewall Insurance Co. vs. National Gypsum Co., et al, U.S. District Court for the Southern District of New York, 86 Civ. 9671 (JSM).

City of Johnstown vs. Bankers Standard Insurance Co., which is cited throughout Magistrate Bernikow's ruling. In that case, the 2nd U.S. Circuit Court of Appeals, interpreting New York law, rejected the doctrine and ordered the insurer to repay New York state for cleaning up Johnstown's landfill,

'Just because you put asbestos in a building doesn't mean you expect damage to occur,' says Jerry Oshinsky, a policyholder attorney. 'The fact that you have a risk doesn't mean that you lose your coverage when the risk occurs.'

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Employee choice

Continued from page 3

week was conducted by Pulse Surveys of America Inc. for the Employers Council on Flexible Compensation and Colonial Life & Accident Insurance Co. of Columbia, S.C.

Employees were interviewed by telephone between Oct. 23 and Nov. 6, 1991, said Kenneth E. Feltman, executive director of the flexible compensation council, which is based in Washington, D.C.

Company owners and self-employed individuals were excluded from the survey, which was released last week.

According to the survey, 63.1% of the employees said they would be willing to pay a larger part of the total cost of their benefits if they had a greater say in deciding what benefits they received.

A far smaller portion—28.6%—said they would not be willing to pay more for a greater choice of benefits.

Only 8.1% of the employees were uncertain.

Percentages do not add up to 100 due to rounding.

In response to the question, "How important is it that you have a choice in deciding which particular employee benefits you receive?" 80.8% deemed personal choice "very important."

And, an additional 17.7% called it "only somewhat important."

Choice was "not at all important" to 1.3%, while 0.2% did not know.

The overwhelming majority of surveyed employees—66%—said that employees—rather than employers or the government—should decide which benefits they receive.

But a full one-fifth—20.2%—said that decision was the employer's to make.

Only 7.3% supported the idea of the government making the decision, and 6.3% were uncertain.

One-third of the surveyed employees said their employers currently offer flexible benefit plans or flexible spending accounts.

Another 37.1% whose employers do not offer such plans said they would like their employers to do so.

Mr. Feltman said survey results indicate that solutions to the nation's health care problems should focus on flexibility and choice, not just who pays.

Noting that 91.9% of the employees surveyed said that their employers provide a health plan of some sort, Mr. Feltman said that so-called play-or-pay legislation would help relatively few workers. Those proposals would require employers to either offer workers a minimum level of health care benefits or pay a payroll tax to pay for health care for the uninsured.

"The employee is the missing link" in discussions about improving health care, Mr. Feltman commented.

He said that the survey demonstrates that "one-size-fits-all" benefits plans proposed as solutions to health care problems will not work. The survey shows that employees clearly favor having a say in deciding what benefits they receive, he said.

The problems of the uninsured and the problems of the unemployed who lack health insurance should be dealt with as the significant problems that they are, not as questions involving the shape of employer-provided benefit plans, he said.

But, the survey found that employees generally were satisfied with their own health insurance, even though they think the nation's health care system must be reformed.

More than two out of five employees surveyed, or 41.9%, said they were "very satisfied" with their employer-provided health plan. Another 37.2% said they were "mildly satisfied."

Only 4.7% said they were "very dissatisfied," and 13.2% said they were "mildly dissatisfied." Some 2.9% did not express an opinion.

More than three-quarters of the respondents, or 75.6%, said they had "no problem" obtaining "quality, affordable health insurance."

But 15.4% said that obtaining such coverage was a major problem, and 8.3% cited it as a problem. Some 0.7% said they were uncertain.

Nine in ten employees surveyed, though, said there is a health care crisis in America.

More than half of those—57.9%—said that the high cost of health care was the single most important problem with the current system.

The cause of high health care costs cited most often is medical-related lawsuits, cited by 23.7% of the surveyed employees. Next was hospitals charging too much, mentioned by 20.7%.

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Copies of "Workplace Pulse National Survey" cost $45 and can be ordered by calling the Employers Council on Flexible Compensation at 202-659-4300.

Health care attitude survey

Continued from page 3

reform proposals, say the survey's co-authors, Public Opinion Strategies and Mellman & Lazarus, two Washington-area political pollsters.

Policymakers are confronted by a public that says it wants change at a macro level, but also maintains that it is satisfied with coverage on a personal level, said Mark Mellman, president of Mellman & Lazarus.

The survey, "National Attitudes Towards Health Care Financing Reform," is based on telephone interviews with 800 individuals conducted earlier this month by the two firms for the Health Insurance Assn. of America, a Washington, D.C.-based industry trade group.

The survey was undertaken in the wake of a stunning political upset last November. Underdog Democratic candidate Harris Wofford defeated former Bush administration Attorney General Richard Thornburgh to fill the unexpired term of the late Sen. John Heinz (*BI*, Nov. 11, 1991).

Sen. Wofford's strong support for national health insurance was credited by many political observers for his come-from-behind victory. Mr. Thornburgh failed to stake out a strong position on health care issues.

But, at least according to the HIAA survey, the public is decidedly ambivalent about the impact of a government-run health care program. For example, 50% of respondents say a government-run national health insurance program would improve access to the medical care they require, while 30% say their access would decline, 16% were neutral and 4% didn't know or declined to answer.

Asked whether a government-run national health insurance system would be fairer than the current system, 43% said yes, 23% said it would be "worse than now," 28% were neutral and 6% didn't know or did not answer.

On the other hand, 53% of respondents said a government-run national health insurance program would result in less freedom of choice in selecting physicians, while 12% said it would result in more choice, 32% were neutral and 3% didn't know or did not answer.

In addition, 47% said a national health insurance program would result in more delays in receiving care, while 13% thought there would be fewer delays, 35% were neutral and 5% didn't know or declined to answer.

While the survey found most respondents would be willing to pay additional taxes to ensure that all Americans have health insurance, the amount they would be willing to pay is relatively small.

For example, 30% said they would be willing to pay between $50 and $100 annually in new taxes to fund universal coverage, while 19% said they would be willing to pay between $100 and $200 and 9% said they would pay between $200 and $400 in new taxes.

Just 4% of respondents said they would be willing to pay between $400 and $800 in new taxes to fund universal coverage, while another 4% would pay more than $800.

Thirty-one percent said they were not willing to pay additional taxes to fund universal coverage, while the remainder didn't know or declined to answer.

If a government policy were established to ensure that everyone would be covered for medical expenses, a majority—59%—favor a system in which public plans were maintained for the elderly and the poor, while a choice of private health insurance plans would be available for other segments of the population. Just 34% of those surveyed said they favored a government-run national health insurance program in which the entire population would be enrolled, while 7% didn't know or declined to answer.

"Clearly the American public is, at best, hesitant to adopt yet another big government program that would earmark hundreds of billions of dollars in new taxes and inevitably reduce the quality of care," said HIAA President Carl J. Schramm.

Meanwhile, the survey found that satisfaction with the current health care system is directly related to income and somewhat less directly related to race.

For example, 73% of white respondents earning more than $40,000 annually said the health care system met their needs, but just 46% of white respondents and 36% of minority respondents earning less than $20,000 a year agreed. Responses of minority respondents earning more than $40,000 were not listed.

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Copies of the survey are not available to the public.

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INTERNATIONAL

N.F.L. liquidators seek $14.5 million in suit

By ROGER SCOTTON

BERMUDA

HAMILTON, Bermuda—The liquidators of insolvent N.F.L. Insurance Ltd. are suing 14 National Football League teams, the league, its commissioner and the NFL Management Council for more than $14.5 million.

In their suit, liquidators David Lines and Peter Mitchell charge that the 14 teams, which were all members of the mutual insurer, are jointly and severally liable for the as-yet-undetermined cost of winding it up and for the insurer's debts and liabilities of more than $14.5 million.

Their 17-page civil complaint, which was filed last month in U.S. District Court in Manhattan, also names the league, Commissioner Paul Tagliabue and the management council as defendants.

The mutual's members, all of which are named defendants, were: the Chicago Bears, the Dallas Cowboys, the Indianapolis Colts, the Kansas City Chiefs, the Los Angeles Rams, the Miami Dolphins, the Minnesota Vikings, the New England Patriots, the Philadelphia Eagles, the Phoenix Cardinals, the Pittsburgh Steelers, the San Francisco 49ers, and the Seattle Seahawks.

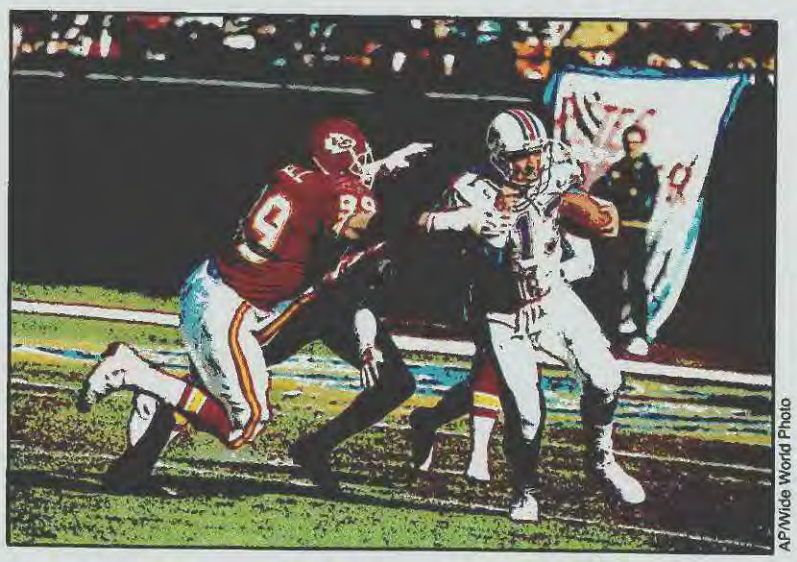
The joint liquidators, who were appointed by the Bermuda Supreme Court in September (*BI*, Sept. 16, 1991), are asking the federal court "to compel N.F.L. Insurance's members to contribute $14.5 million plus interest and costs to N.F.L. Insurance in accordance with their agreements and the laws of Bermuda."

The suit also charges that N.F.L. Insurance's directors breached their fiduciary duty to the insurer by failing to act in its best interests.

According to the suit, the Bermuda mutual was set up in 1984 after the defendants decided to self-insure their workers compensation coverage. N.F.L. Insurance was capitalized with a reserve fund of $250,000. The 14 teams, the league and the management council all contributed. Reserves were later increased to $314,000.

Policy issuance arrangements were made initially with The Home Insurance Co. of New York, with N.F.L. Insurance acting as reinsurer. In August 1986, Home was replaced by Travelers Insurance Co. of Hartford, Conn., which issued policies, and administered claims until the insurer ceased underwriting in 1988. Travelers last year petitioned the Bermuda Supreme Court to wind up the insurer after finding the insurer "was no longer able to fulfill its obligations."

Shortly after N.F.L. Insurance was set up, the liquidators allege, the company was paying out more in claims than it was receiving in premiums. They say that by June 30, 1987, its balance sheet showed reserves of $432,000 and a members' deficit of $1.5 million. By June 1988, "N.F.L. Insurance was statutorily insolvent under the Bermuda Insurance Act of 1987."



AP/Wide World Photo

The Miami Dolphins and the Kansas City Chiefs are two teams named in the suit filed by the liquidators of N.F.L. Insurance Ltd.

The suit also charges that "an extensive proportion of the management of N.F.L. Insurance's affairs took place in New York," where N.F.L. Insurance's directors met on "an irregular basis" after scheduled meetings of the management council.

In addition, those directors breached their statutory fiduciary duties by "failing to observe even a minimal level of accepted corporate management practices."

Directors failed to keep adequate records and board minutes and annual general meetings of members were not held, the liquidators allege. "Indeed, N.F.L. Insurance has not held an annual general meeting since Nov. 5, 1986," the suit charges. "Such actions constitute a breach of defendant directors' statutory fiduciary duty of care."

Local management of the Bermuda company was handled by James (Bermuda) Ltd., an affiliate of Fred S. James & Co. Inc. that now is a unit of Sedgwick Group P.L.C. called Sedgwick James (Bermuda) Ltd.

According to the suit, "in or about May 1988, Warren Sproule of James (Bermuda) informed the defendants that without a $2 million infusion of capital, N.F.L. Insurance would be in default under Bermuda insurance regulations. Over the course of 1988, in response to calls, defendant members contributed (nearly) $2 million to N.F.L. Insurance in an attempt to avoid such a default."

On Feb. 3, 1989, independent consultant Arthur Andersen & Co. advised that N.F.L. Insurance had a deficit of $3.7 million in statutory capital for the year ended June 30, 1988, according to the suit.

Six days later, Phillip Cracknell, assistant vp at James (Bermuda), wrote to the NFL and the management council. He said that N.F.L. Insurance needed some $4.6 million in capital to make the insurer whole as of June 30, 1988, and to keep it in compliance as of June 30, 1989, the suit says.

But the liquidators' complaint says that on March 2, 1989, the island's registrar of companies ruled that the

Continued on next page

Motion injury court award is first in U.K.

By GAVIN SOUTER

LONDON—For the first time, a British court has awarded damages to office workers who suffer from repetitive strain injury, known as repetitive motion syndrome in the United States.

In what unions and lawyers hail as a precedent-setting case, a British court on Dec. 16 awarded 6,000 pounds damages plus 600 pounds interest ($11,800 at current exchange rate) to two data processors who suffered from RSI during the course of their work.

The damages claim brought against British Telecom P.L.C. by the two data processors could open up the floodgate to claims by office workers, said John Couch, a senior partner at the law firm Pattison & Brewer of Chatham, Kent, which represented the plaintiffs.

"There have been cases before where damages have been awarded to industrial workers, but this is the first time that office workers have been awarded damages for RSI," he said.

However, the idiosyncratic nature of the recent case may lessen its effect on future cases, a leading employers liability insurer said.

BT is appealing the decision, a company spokeswoman said.

The case began in the High Court in 1985 but eventually was heard in the Mayor's and City of London Court before Judge John Byrt.

The two BT employees, Angela McSherry, 48, and Denise Lodge, 51, worked in data processing departments. Their work involved sitting at a video display terminal and keystroking telephone numbers into the computer system. Their work rate was measured, and they were expected to type a minimum of 10,000 characters an hour. Higher speeds were rewarded with higher pay, court papers say.

Both women had old chairs that were difficult to adjust. Additionally, Ms. Lodge positioned her chair sideways to the terminal because this made a more comfortable position and was not warned that this was poor posture, court papers say.

Ms. McSherry worked at BT without suffering any physical problems between 1979 and 1983. She positioned her chair sideways to her terminal in order to have more leg room. But late in 1983, she began to feel pain in her thumbs. Over the next year, the pain progressed through her wrists, arms and neck.

In September 1984 she was diagnosed as suffering from bilateral tenosynovitis, known as tennis elbow, and was given paid disability leave for two months. When she returned, she was given a position that did not involve data processing, court papers say.

Two medical experts at the trial agreed that the pain was caused by the nature of the work and the injury could be classified as RSI, the papers say.

Continued on next page

Reinsurers to negotiate asbestos, pollution claims

GLOBAL BRIEFS

COLOGNE, Germany—A group of 41 international reinsurers have joined forces to negotiate U.S. asbestos and pollution claims with London market insurers.

Called the International Alliance of Asbestos & Pollution Reinsurers, the organization was first suggested last June by Cologne Reinsurance Co. in a letter to 130 insurers and reinsurers with claims from the London market (*BI*, June 17, 1991).

The non-profit group, which officially was launched Jan. 1, is administered by Cologne Re staff members, according to the letter sent to potential members by Wilhelm Zeller, an executive director at Cologne Re.

Known as Intap, the group is "an alliance for self-help among international insurers and reinsurers who have U.S.-asbestos, U.S.-pollution or other U.S.-latency loss exposures stemming from reinsurance claims from the London market," Mr. Zeller said.

Many of the companies facing claims have only minor percentages of the risks and others lack the experience and the expertise to handle the complex claims themselves, he said.

"For such companies, Intap will facilitate a coordination of information and a consolidation of claims services so that these losses may be processed with far higher efficiency and at far lower cost than would have been possible previously," Mr. Zeller said. Negotiations with London underwriters will be conducted in a "non-confrontational manner."

The principal service Intap will provide will be the analysis of the London Asbestos Reinsurance Information profiles of the approximately 800 accounts insured or reinsured by the London market.

The organization also will, for an additional fee, handle claims for its members, he said.

The analysis will be conducted mainly by the six founding members of Intap: Cologne Re; Netherlands Reinsurance Group N.V. of Amsterdam; SCOR S.A. of Paris; Skandia International Insurance Corp. of Stockholm, Sweden; Toa Fire & Marine Reinsurance Co. Ltd. of Tokyo; and Unione Italiana di Riassicurazione of Rome.

Six other reinsurers also will participate in the analysis: Abeille-Paix Reassurances of Paris; Agrippina Ruckversicherung A.G. of Cologne; Compagnie Transcontinentale de Reassurance of Paris; Hamburger Internationale Ruckversicherung A.G. of Hamburg; Les Mutuelles du Mans of Le Mans, France; and Preservatrice Fonciere TIARD of Paris.

Of the 41 members, 16 are German and nine are French. Other Intap members come from Austria, Belgium, Brazil, India, Italy, Japan, the Netherlands, the Philippines, Sweden and Switzerland.

The first board of directors is: Mr. Zeller as chairman; Ulrich Jaeger of Cologne Re as an executive member; Cor Coffeng of NRG, Per Lundblad of Skandia and Dominique Saccalais of Preservatrice Fonciere as non-executive members.

The start up costs totaled 1.5 million deutsche marks ($989,000 at current exchange rates). The initial membership fee is 35,000 deutsche marks ($23,100), and the annual fee is 6,000 deutsche marks ($4,000).

If more members join, any excess contributions will be credited to all members.

The London Market Claims Service has agreed to supply the LARI profiles to Intap.

By doing this, London underwriters' claims with smaller reinsurers will be settled quicker, said Robin Jackson, chairman of the Asbestos Working Party, in a letter to London underwriters with asbestos claims.

"On the understanding that Intap will review these claims in a positive and helpful manner, that it will expedite settlements, preserve the confidentiality of the information received, we would extend our co-operation to this organization by way of providing them with copies of LARI questionnaires," Mr. Jackson said.

—By Gavin Souter

German EIL policy

HANNOVER, Germany—A new liability policy from this country's largest mutual industrial insurer is designed to cover businesses' wider environmental impairment risk in Germany.

The policy is offered by Haftpflichtverband der Deutschen Industrie, or HDI, which is based here. No rates have been set.

Announcement of the new policy follows months of debate over a new Environmental Liability Act, which is arguably the most far-reaching environmental law yet in Europe. The law provides for civil damages for wrongful death, personal injury or property damage caused by pollution of air, water or soil. The act imposes strict liability on companies (*BI*, May 20, 1991). Although the law took effect Jan. 1, 1991, businesses were unable to purchase insurance covering their new liability until insurers agreed

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INTERNATIONAL

BERMUDA

Continued from previous page

Bermuda mutual was "statutorily insolvent" and gave it two weeks to present its intended course of action to the registrar. In the same month, a meeting of the insurer's directors in New York determined that all members of the mutual must contribute a total of $4.7 million in new capital.

"This action," argues the suit, "constituted a valid and binding call upon the members (of N.F.L. Insurance)."

Both the N.F.L. Insurance bylaws and the Bermuda Companies Act of 1981 provide for the use of "calls" and "retrospective premium adjustments" to satisfy deficits in members' accounts.

But the liquidators say that only the Patriots, Eagles, Cardinals and Seahawks responded to the 1989 call, paying a total of $595,773 to the Bermuda company.

The liquidators' suit maintains that the teams still liable to pay just over $4.1 million under what the liquidators describe as the "March 1, 1989, call" include: the Colts, the Chiefs, the Rams, the Patriots, the Eagles, the Cardinals, the Steelers, the 49ers and the Tampa Bay Buccaneers.

According to the suit: "By the middle of 1990, it became apparent that no further contributions would be forthcoming from the members," the suit says. "N.F.L. Insurance ceased meeting its obligations and informed The Home and Travelers that it had insufficient funds to pay claims."

Based on accounts maintained for every member of the mutual insurer, the liquidators have calculated each team's share of the $14.5 million deficit at the start of the winding up. Among the biggest, they contend, is the Vikings, $3.6 million; the Eagles, $2.1 million; the Patriots and the Buccaneers, each $1.9 million; the Rams, $1.5 million; and the 49ers, just over $1 million.

The liquidators say they have already issued a call for these amounts, but none has been paid.

They argue that the defendants are obligated under the mutual's own bylaws to pay N.F.L. Insurance all funds due to Home and Travelers. They add that the bylaws created a contract among and between the members. And, they allege that the March 1989 cash call by N.F.L. Insurance's directors "constitutes a binding and enforceable contract between the defendant teams and N.F.L. Insurance."

For its part, the league disputes the level of reserves on the mutual insurer's books.

"We think the reserves are too high, and we base this view on an independent professional evaluation" by risk management consultant Interisk Corp. of Tampa, Fla., said Tom Sullivan, the NFL treasurer.

"We will certainly be contesting this suit," Mr. Sullivan said. "We've done nothing wrong, and we do not believe that (the liquidators') position is tenable."

EXEL 1991 results

EXEL Ltd., the Cayman Islands-based parent of excess liability insurer X.L. Insurance Co. Ltd., is asking nearly 50 shareholders who did not sell their stock in the company's initial public offering last July whether they now wish to do so.

The shareholders own nearly 19 million stock options and about 18 million shares, which is less than half of the company's privately held stock. They have until the end of the month to indicate whether they want to participate in a second public offering.

If all 50 decide to sell, the offering could be worth hundreds of millions of dollars at current market prices, and easily could exceed the $600 million raised in the initial offering last year.

EXEL has been traded on the New York Stock Exchange since June 1991 (*BI*, May 27, 1991).

"Assuming there is sufficient interest from such remaining shareholders and depending on market conditions and other relevant factors, the (EXEL) board of directors has authorized the company to proceed with a second public offering," EXEL stated in a press release.

The move follows the release of the company's financial results for fiscal 1991.

Underwriting profits dropped 19.4% to $25 million for the year ending Nov. 30, 1991.

Despite the decrease in underwriting income, EXEL's net income climbed more than 51% to $267 million in fiscal 1991, spurred by gains in realized investment gains.

EXEL reported that net written premiums rose 3% to $398.8 million in fiscal 1991, from $387.3 million in 1990, while losses and loss expenses rose 6.8% to $300.3 million from $281.2 million. Acquisition costs and administrative expenses totaled $63 million, up 29.6% from $48.6 million a year earlier.

"This is a good result," said President and Chief Executive Michael J. Kevany. "We've had some marginal growth in what was certainly our toughest year yet, having come up against more competition than we've ever seen before on both price and coverage."

EXEL's 1991 underwriting loss includes $140 million in new case reserves and about $154 million in provisions for incurred-but-not-reported losses.

The holding company's total balance sheet provision for unpaid losses is $957.3 million, including about $180 million in case reserves, about $773 million in IBNR and about $4 million in loss expenses. That compares with a $799.2 million provision for losses in 1990.

EXEL's aftertax net income increased 51.3% to nearly $267 million, or $4.83 a share, in 1991, compared with $176.5 million, or $3.30 per share, in 1990.

Net investment income rose 21.7% to $171.6 million in fiscal 1991 from $141 million the previous year. Meanwhile, realized investment gains

Continued on next page

U.K. workplace injury claims

Continued from previous page

They also agreed that the condition was peritendinitis rather than tennis elbow, and it was caused by high-speed typing and poor posture.

"Both experts were satisfied that, on the basis of their clinical findings, Ms. McSherry's symptoms were genuine and directly or indirectly work related," court papers say.

Ms. Lodge had been a data processor with a variety of employers at different intervals between 1956 and 1979, when she started work at BT.

Late in 1982 Ms. Lodge began to feel pain in her right hand, arm and shoulder. In November 1983 she was diagnosed with capsullitis of the shoulder and occupational pain in her fingers, court papers say. After taking two weeks off work, she was given clerical duties.

Ms. Lodge returned to data processing in May 1984. The pain continued and, in February 1985, she retired with a disability pension.

The two medical experts at the trial said she suffered from peritendinitis and real tenosynovitis of the right wrist and fingers, caused by the pressure of high-speed key stroking and poor posture.

"Both were satisfied that Ms. Lodge's symptoms were genuine, were contracted through her work and came within the broad band of disablement called RSI," the judge noted.

Judge Byrt concluded that the two women suffered from RSI as a result of unsupported arms and hands while typing.

"I have found that that strain has been substantially added to by the strains which arose from the working systems in place and poor posture due to poor ergonomics of the work station, unsuitable chairs and. . .the uncorrected bad habits of the operator," the judge said.

Judge Byrt found that although there was insufficient evidence of RSI due to key stroking for the company to have changed its work environment, BT should have known that the postures of the operators would lead to musculoskeletal injury.

"I am satisfied that the defendants were in breach of their common law duty to the plaintiffs by reason of their failure to ensure correct posture was maintained," the judge said.

This contributed to the RSI problem, the judge added. He awarded each woman 6,600 pounds ($11,800) compensation, including interest.

BT is appealing because "we do not see why we should be held liable for injuries the nature of which could not have been foreseen at the time and the causes of which are still subject to medical controversy," a company spokeswoman said.

As "a gesture of goodwill" the company has offered to make a "substantial contribution" to the women's appeal costs, the spokeswoman said.

"We realize that it is in the interests of many other companies and claimants to get the issue settled so we have offered to contribute to their appeal costs which could be quite substantial," she said.

The women's union, the National Communications Union, said it is considering the offer.

BT has a large self-insured retention for employers liability coverage, the company spokeswoman said.

However, to conform with employment law the company has an employers liability insurance bond, which is held by Iron Trades Employers Insurance Assn. Ltd., she said. She would not comment further on the insurance arrangements.

Although the judge ruled that BT was not liable for pain suffered due to typing on a keyboard, future claims for RSI damages stemming from such work still will be able to cite the case, said Mr. Couch, the plaintiffs' attorney.

"The judge said that the keyboard work did cause pain, but in these cases it happened before there was sufficient information available for BT to know about this. However, claims that stem from work carried out later in the 1980s will be able to claim for (pain caused by) keyboard work because the information was available," he said.

Mr. Couch said he is involved in 100 other RSI compensation claims.

If the appeal is unsuccessful, the women will sue for loss of earnings and future loss of earnings, said Simon Sapper, health and safety officer at the National Communications Union.

"We are expecting to make claims of around 30,000 pounds ($54,000 at current exchange rates) for loss of earnings," Mr. Sapper said.

If the case is successful, BT immediately will face RSI claims from about 80 other data processors, he said.

Also, 140 people who are not employed by BT but are members of the National Communications Union have approached the union about seeking damages against their employers, he said.

The National Union of Journalists also is preparing to sue four publishing groups on behalf of members it claims suffer from RSI.

The four flagship cases, which currently are being prepared for trial, will be brought against: the Financial Times in London, being sued by 10 employees; the Yorkshire Post in Leeds, being sued by five employees; the Evening Gazette in Middlesbrough, being sued by two employees; and Reuters in London, being sued by one employee, said Bob Norris, assistant secretary at the National Union of Journalists.

Writs issued a year ago by the seven employees and three former employees of the Financial Times are yet to be heard in court, said Alan Pike, the union representative at the Financial Times.

If the court case against the Financial Times is successful, the company could face a rash of compensation claims by journalists, he said.

"The keyboards we use now were brought in about five years ago and people started to complain about pains about four years ago. . .now around 150 of the staff have complained about pains in the arms," Mr. Pike said.

The Financial Times' managing editor, David Walker, said the company now has the problem under control.

"We have brought in new equipment such as adjustable desks and foot rests, and we have tried to give people more control over their own functions," he said.

Any compensation claims successfully made against the company will be met by the Financial Times' employers liability insurers, Guardian Royal Exchange Assurance P.L.C., Mr. Walker said.

The largest group of U.K. office workers waiting to file claims against their employers for RSI injuries are employees of local authorities who are represented by the National & Local Government Offices union.

Three NALGO members currently are preparing to take their claims to the High Court and, if they are successful, 1,000 additional members—mainly secretaries—will bring claims against local authorities, a NALGO spokesman said.

Meanwhile, Steven Walker, claims manager at Britain's leading local-authority insurer, Municipal Mutual Insurance Ltd., said the BT case may not be as groundbreaking as the unions and labor lawyers think.

"We are talking about very specific employees with very specific demands made on them, and any other cases may be determined on very different facts," Mr. Walker said.

"I do not think that every keyboard operator who says that they are suffering from RSI will be successful in their claim," he added. ■

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INTERNATIONAL

Continued from previous page
jumped to $71.5 million from $4.3 million in fiscal 1990.

EXEL's total investment portfolio grew to $2.49 billion in 1991, compared with $1.87 billion a year earlier, while shareholders' equity finished the year at $1.36 billion, up from $1.09 billion in 1990.

The 1991 results were released shortly after the company revealed that for the first time it had purchased $250 million in aggregate excess-of-loss reinsurance coverage excess of expected loss ratios.

EXEL said that the primary function of the reinsurance is to "assist the company in protecting the results of its underwriting operations against unusual and/or catastrophic losses."

EXEL previously had only purchased catastrophe clash cover—excess-of-loss reinsurance that covers losses from two or more policies caused by the same event—of $100 million excess of $150 million.

Chief Operating Officer Brian O'Hara said that EXEL had studied its reinsurance options for more than a year before deciding to enter into the arrangement. "We need cost-effective reinsurance in order to produce stable coverage," he said. ■

GLOBAL BRIEFS

Continued from page 31
to coverage terms (*BI*, Oct. 21, 1991).

In October, the HUK-Verband, a national association of liability insurers, presented the first model policy for environmental impairment risk. HDI characterizes its policy as in tune with that model.

According to an HDI spokesman, predetermined rates will not be charged; rather, rates will be adapted to the individual risk.

Setting rates is one of the "major problems" in underwriting EIL coverage, he said. Among the most important factors are the type of facility and the risk involved. HDI has developed 12 different danger classifications for facilities.

Some 10,000 existing HDI policies will be adapted to fit the model EIL requirements, he said. The insurer estimates that it will take about three years to complete that process.

Other insurers—notably Colonia Versicherung A.G. and Gerling-Konzern Versicherungs Beteiligungs A.G. —have plans for similar policies.

Colonia says it is now negotiating similar deals with its policyholders. "It's still too early to talk about rates," said a spokesman. "Any rate requires official approval and no one is that far yet."

Even HUK-Verband, the liability insurer group that worked out the first model, has not yet recommended rates.

As of Jan. 1, 1991, some 25,000 potentially dangerous facilities faced compliance with government requirements to have liability insurance.

The most controversial point for insurers was the extension of coverage for damage caused by "normal operations." Under the proposed model policy, the policyholder must prove he "could not recognize any possibility of loss using the best standards of technology."

To contain the extent of that risk, insurers have now introduced a new definition of the claims trigger, in which environmental impairment losses take place at the moment of manifestation and not—as in the past —at the moment a loss occurs.

—By Don Lewis Kirk

Best modifies rating structure

By MICHAEL SCHACHNER

OLDWICK, N.J.—In an attempt to "simplify" its rating system, A.M. Best Co. will add six new rating classifications and eliminate its contingency modifier and two other classifications from its 1992 ratings.

The Oldwick, N.J.-based rating agency said that by increasing the total number of ratings to 15 from nine, and by dropping the contingency rating, individuals who rely primarily on Best's letter rating to gauge an insurance company's strength will have an easier time assessing an insurer's financial condition.

The company said the rating changes have been under consideration since September, after Best and other major rating agencies came under severe criticism for failing to accurately assess the financial condition of many major life insurers (*BI*, Aug. 5, 1991).

Beginning with this year's ratings, Best will assign insurer ratings that range from A++ to F.

Best emphasized that companies currently rated A+, which is the agency's highest rating, that do not receive an A++ rating under the new system should not be considered downgraded.

The revised rating structure considers companies with either an A++ or A+ rating as "superior."

An A or A− company is "excellent," while B++ and B+ companies are to be considered "very good." An insurer rated B or B− is in "good" condition, while a C++ or C+ company is "fair." Any C or C− insurer is in "marginal" condition, and an insurer receiving a D rating is "below minimum standards." Companies designated as E are under state supervision, and F-ranked companies are in liquidation.

The E and F ratings replace Best's old NA-10 rating, which used to signify that an insurer was under regulatory supervision with no differentiation between regulatory rehabilitation and regulatory liquidation. The old NA-7 rating, which signified that the insurer was below minimum standards, is being replaced by the new D rating.

Best also has added an NA-11 rating, which means that the company's rating has been suspended.

Paul Wish, a vp with Best, said the new rating structure will be "more clear and useful." He said internal studies have shown that most people who use Best's ratings "simply glance at the rating and are confused by contingencies and modifiers."

However, William O'Neill, a vp with Standard & Poor's Corp. in New York, said the announcement of impending rating changes without "concrete attachment to specific companies is bizarre."

The announcement creates confusion for agents and brokers who only have permission to place coverage with "top-rated" companies, he said.

"An A+ company today may not be top-rated in three months. This announcement implies that there are going to be changes, but nobody knows what they're going to be," he said.

Myron M. Picoult, managing director and senior insurance analyst with Oppenheimer & Co. in New York, said the only remedy for the lack of confidence in the rating agencies is "tackling this problem head on." He said the change in ratings is a "further obfuscation" of what needs to be done. "Frankly, I don't think it's a step in the right direction at all," he added.

Other observers were less critical of the announcement.

A. Michael Frinquelli, an insurance-stock analyst with Salomon Bros. Inc. in New York, said that in light of the paranoia many buyers and investors have about the insurance industry, "any company that receives an A++ rating could see its value go up, at least for a short while."

However, Mr. Frinquelli also said he is unclear about what the new ratings will mean for a company that currently is rated A+.

Paul Brown, director of governmental affairs for the Risk & Insurance Management Society Inc. in New York, said the rating changes can't hurt, given the apprehension most risk managers and brokers have about putting too much faith in ratings.

"This is by no means a bad move, but I think all the raters will have to do more than just change their rating structures to gain back the buyers' trust," he said.

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Business Insurance
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Pollution ruling

Continued from page 1

The 10th Circuit is the first court to find that the mere disposal of toxic waste triggers the pollution exclusion, said Brooke Jackson, a lawyer with Holland & Hart in Denver who represented Broderick.

The court applied Colorado law, so the ruling may not necessarily be followed in the other states in the 10th Circuit: Kansas, New Mexico, Oklahoma, Utah and Wyoming.

Still, it could have a "huge impact" if it is followed in other cases involving, for example, waste disposal in landfills, Mr. Jackson said.

In several landfill cases, state and federal courts have found that the pollution exclusion applies only when the policyholder expects pollution to occur, he noted.

The 3rd U.S. Circuit Court of Appeals last year ruled that the pollution exclusion—which bars coverage for pollution that is not "sudden and accidental"—applies only if pollution is expected by the policyholder (*BI*, May 6, 1991).

In addition, the Wisconsin and Georgia supreme courts ruled in 1990 and 1989, respectively, that the pollution exclusion does not bar coverage for waste cleanups (*BI*, July 2, 1990; July 3, 1989).

"Under the reasoning of (the Broderick) decision, all those decisions would have gone the other way," Mr. Jackson observed.

The 10th Circuit ruling also follows a Colorado Supreme Court decision that limited the pollution exclusion by finding that a policyholder has coverage as long as the discharge of pollutants is unexpected and unintended (*BI*, June 17, 1991).

But, unlike the Colorado court in *Hecla Mining Co. vs. New Hampshire Insurance Co.*, the 10th Circuit concluded that the initial placement of waste in ponds—rather than its later leakage onto neighboring property—constituted the discharge.

Under the 10th Circuit ruling, a knowing discharge of pollutants—like the placement of waste in landfills—can trigger the pollution exclusion before any pollution has created cleanup liabilities, Mr. Jackson noted.

"It's just ass-backwards," he said. "To say something is excluded before it's even caused a problem doesn't seem fair."

Broderick plans to ask the 10th Circuit to reconsider its ruling, Mr. Jackson said.

Lawyers representing insurers applauded the ruling.

"It makes clear that even in a state that has ruled against insurers on the interpretation of 'sudden and accidental,' courts are going to bar coverage for long-term pollution activities of the type involved in the Broderick case," observed Thomas W. Brunner of Wiley, Rein & Fielding in Washington, D.C.

"The effect is to deflate the balloon of a lot of policyholders that engaged in long-term, knowing pollution," said Mr. Brunner, who represents the Insurance Environmental Litigation Assn., an insurance industry group that filed a friend-of-the-court brief in the Broderick case.

The 10th Circuit ruling arose from a dispute between Broderick, formerly Broderick Wood Products Co., and its general liability insurer, Hartford Accident & Indemnity Co., a Hartford, Conn.-based unit of the Hartford Group Inc.

Broderick sought coverage for the cost of cleaning up pollution at a wood treatment plant it operated between 1947 and 1981. The company treated telephone poles, railroad ties and other wood products with creosote and other toxic chemicals, then placed the waste chemicals in holding ponds on its plant site.

One pond was lined with raw cement, while others were unlined, and chemicals from the ponds ultimately contaminated groundwater and third-party property.

The U.S. Environmental Protection Agency ordered Broderick to clean up the pollution under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, more commonly known as Superfund.

Broderick then sought coverage from Hartford, which wrote Broderick's primary and umbrella liability coverage between 1976 and 1984.

A jury decided the coverage dispute in Broderick's favor after a federal judge had interpreted several disputed terms of the Hartford policies, including the pollution exclusion.

Among other things, the trial judge ruled for Broderick in interpreting the exclusion for any "discharge, dispersal, release or escape" that is "sudden and accidental." The judge found that the "discharge" was the seepage of waste into the groundwater, not Broderick's placement of the chemicals in holding pits.

The judge also ruled that "sudden and accidental" means "unexpected and unintended." She found that coverage could not be barred unless Broderick expected and intended the pollution to occur.

Hartford appealed this and other rulings on the disputed terms, and the 10th Circuit panel reversed the lower court's findings and ordered a judgment in Hartford's favor in an opinion filed Jan. 8.

"We conclude that, applying any reasonable interpretation, the phrase 'discharge. . .into or upon the land' describes (Broderick's) placement of waste into the ponds," the appeals panel concluded. "Any other interpretation of the phrase. . .runs counter to common sense, plain meaning and ordinary usage."

Broderick "argues that it intended to contain the waste in the ponds and that the subsequent release or escape that contaminated the groundwater was not intended or expected. With this argument, (Broderick) tries to shift the focus to the second discharge and attempts to graft an intent requirement related to damages onto the unambiguous language of the policy's exclusion clause," the panel wrote.

"However, whether (Broderick) intended the waste to seep into groundwater and cause damage after the initial discharges into the land is not relevant. 'The pollution exclusion clause focuses on whether the discharge of pollution was unexpected and unintended,' " the panel noted, quoting the Hecla ruling.

"We cannot torture the unambiguous language of the exclusion provision in order to create an intent requirement that applies to the damage caused by the pollutants," the panel said.

Separately, policyholders were dealt another blow in a New York appeals court ruling on the pollution exclusion.

The Appellate Division of the New York Supreme Court ruled Jan. 9 that long-term pollution at 19 sites by Borg-Warner Corp. was not "sudden and accidental" and that coverage is therefore barred by the pollution exclusion in policies written by Aetna Casualty & Surety Co. and Continental Casualty Co.

The intermediate state appeals court affirmed a lower court ruling that Borg-Warner bore the burden of showing that the pollution was both "sudden" and "accidental."

"By acknowledging that 'sudden' and 'accidental' are independent requirements, the court necessarily rejected the argument urged by (Borg-Warner) that 'sudden' simply means 'unexpected' and is therefore synonymous with accidental," the appeals panel wrote.

"Only by allowing 'sudden' to retain its temporal aspect does the term attain independent significance. Thus, for a release or discharge to be 'sudden' within the meaning of the pollution exclusion, it must occur abruptly or quickly or 'over a short period of time.'

"The record demonstrates that the discharges alleged in the underlying proceedings occurred over long periods of time and do not even remotely qualify as sudden," the court concluded.

The pollution also was not "accidental," since Borg-Warner intentionally deposited wastes in landfills, the court found. The panel rejected Borg-Warner's argument that the pollution qualified as accidental because it was unexpected. ■

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Sub-total	**25,117**
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Commercial Consumers Sub-total	**26,809**
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Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,392
Others Allied to the Field	1,518
TOTAL	**50,599**

* Source Business/Occupational breakdown of qualified circulation, May 27, 1991 issue, as submitted to BPA for June 1991 BPA Publisher's Statement.

Antitrust action

Continued from page 2

to insurers under the McCarran-Ferguson Act does not extend to boycotts or coercion.

The U.S. Supreme Court agrees to hear only about 3% of the thousands of cases that come before it.

But some observers—both those involved in the litigation and others with no direct involvement—believe that the odds of the court agreeing to hear the case are better than average.

Geoffrey Miller, a University of Chicago law professor who has studied insurance regulation and is not involved in the case, believes the chances of the Supreme Court reviewing the case are good.

"This is not your run-of-the mill case. This is a blockbuster" that represents fundamental issues that go to the heart of the McCarran-Ferguson Act, Mr. Miller said. "That's the kind of case the Supreme Court likes."

Furthermore, no sticky factual issues are involved, he noted. For purposes of the initial stages of the litigation, both the federal district court and the appeals court rulings were based on the assumption that the factual allegations made by the states are true.

"The Supreme Court much prefers to have clear factual cases than messy ones. This is clear," Mr. Miller said.

"I think that it's extremely likely" the court will either take the case or hold onto it until it rules on *FTC vs. Ticor Title Insurance Co.* and then either take the case or send it back to the 9th Circuit for reconsideration in light of its Ticor decision.

The Supreme Court last week heard oral arguments in the Ticor case, which involves related albeit somewhat different issues, (see story, page 37).

The Ticor case centers on whether cooperative pricing by title insurers for title searches and examinations is protected by the state action doctrine because that activity is supervised by state regulators. The state action doctrine provides immunity from antitrust laws for anticompetitive restraint of trade that reflects a state policy and are actively supervised by the state.

That doctrine was part of the basis for the trial court's dismissal of the insurance industry antitrust litigation. The court ruled that promulgation of policy forms is part of the business of insurance and is state-regulated. However, the 9th Circuit overturned the trial court's ruling on appeal.

Another reason the court is likely to hear the case is the importance of the parties involved: the attorneys general of 20 states and most of the important players in the insurance industry, Mr. Miller pointed out. In a case like this, the Supreme Court "would have to have a very good reason not to take the case."

"I don't think they're likely to hold this one for the Ticor decision," said Stephen M. Shapiro, an attorney with Mayer, Brown & Platt in Chicago, which prepared the review petition filed by most of the U.S. defendants.

While there is "'some connection" between the cases, the issue in the Ticor case was how intense state supervision had to be before the state action doctrine is operative. In the state attorney general suit, there was no doubt that state regulators looked carefully at the insurance forms.

In fact, the high court often does grants review of cases that have some relationship to another pending case, said Mr. Shapiro, a former deputy U.S. solicitor general who represented the federal government before the Supreme Court in antitrust matters.

The similarity between the attorneys general's suit and the Ticor case might actually improve the chance the court will review the case, he said.

"I think there's a good chance" the court will decide to hear the case, agreed Michael F. Brockmeyer, now an insurer attorney with Piper & Marbury in Baltimore. When the suit was initially filed, Mr. Brockmeyer was an assistant attorney general and chief of the antitrust division for Maryland, one of the plaintiff states.

"It has been almost 15 years since the court has had to address the boycott exemption to McCarran-Ferguson," he said.

Mr. Brockmeyer said he is not aware of any substantial conflict between the lower courts on this issue, which is one criterion the high court uses to select cases it will hear. But, the fact that the court has not dealt with the boycott issue for so long means it "has a very good chance" of being heard, he said.

Another attorney who believes the court will hear the antitrust case is Page Austin of Vinson & Elkin in Houston. Vinson & Elkin has worked on the related Texas state antitrust litigation, which has been settled, but not on the federal litigation (*BI*, April 1, 1991).

"My feeling would be that the issues raised by it are important enough, and the 9th Circuit position is novel enough, that there's a fairly good chance the Supreme Court might hear it," Ms. Austin said.

"I think the chances are quite good," said Paul R. Haerle of Thelen, Marrin, Johnson & Bridges in San Francisco, which represents Terra Nova Insurance Co. Ltd. of London in the case.

"I think all of the petitions are quite strong" and point up "pretty glaring weaknesses" in the appellate ruling, Mr. Haerle said.

"Statistically, of course, the chances are always slim" that the Supreme Court will agree to review a case, acknowledged Molly Boast, an attorney with LeBoeuf, Lamb, Leiby & MacRae in New York, which represents Lloyd's of London underwriting agencies.

However, she said there is a "better than average" chance the court will agree to hear the case.

"I think it's certainly a worthy case," said defense attorney Robert Mitchell, who represents the Reinsurance Assn. of America.

"It has tremendous impact on the insurance industry, and I think the 9th Circuit conflicts with other courts" and departed from what many consider to be antitrust law, said Mr. Mitchell, who is with Seyfarth, Shaw, Fairweather & Geraldson in San Francisco.

But, other legal observers doubt that the Supreme Court will hear the case.

Among them are William F. Baxter, now an attorney with Shearman & Sterling in San Francisco, who was assistant U.S. attorney general in charge of antitrust under the Reagan administration.

Any time a petition for review is filed with the Supreme Court, the odds it will be granted are very small. This is particularly true in a case—like the antitrust litigation—that involves an interlocutory decision, or when a trial has not yet been held, Mr. Baxter explained.

"I don't think the chances are very good," he said.

Lawrence Sullivan, an antitrust specialist and professor at Southwestern School of Law in Los Angeles, said that he also does not expect the Supreme Court to accept the case.

But, he added, "I wouldn't really be startled if they did."

The Supreme Court agrees to take few cases, and "its criteria for deciding when to take a case for review and when not to have to do with things like settling issues where various courts of appeal seem to be in disagreement," he said.

"It doesn't just take a case because it's important" to either business or commercial interests, Mr. Sullivan pointed out.

The high court takes a case to "clarify, preserve and protect development of the law," he said.

To that end, the antitrust case is not a good candidate for Supreme Court review, according to Mr. Sullivan. "I don't think there's anything strikingly new in antitrust concept in this case," he said. At least in concept, "it's a very straightforward antitrust case."

John Flynn, a professor at the University of Utah law school in Salt Lake City and an antitrust specialist, said he believes the Supreme Court will not hear the case before it reaches a decision on Ticor.

If the issues are similar, "I don't see why they'd take them on both at the same time."

Once the high court reaches a decision in Ticor, it will look at the antitrust case again and remand the case if necessary in light of its Ticor ruling, Mr. Flynn predicted.

Kathleen E. Foote, deputy attorney general for California, which is one of the plaintiff states in the antitrust litigation, said, "I tend to think they will not hear it."

Ms. Foote said she believes the court would be reluctant to issue a ruling in the case before discovery could be conducted. "There are so many issues of disputed fact."

In light of this, she said, the case is "just kind of manifestly unripe for any kind of review by the Supreme Court. I think it's unlikely they would take it."

There also is no consensus among observers on how the Supreme Court will likely rule if it decides to take the case.

One attorney not associated with the case said there is a good chance the appellate court's decision would be reversed if the high court hears the case. The court would not take the case unless at least four justices felt there was something wrong with at least one of the issues raised by the appellate court in its decision, the attorney said.

Mr. Baxter, the former U.S. assistant attorney general, noted that while Congress in the McCarran-Ferguson Act permitted certain kinds of agreements among insurers that other businesses are not permitted to make, insurers have used up 100% of their "room" and maybe more.

But, whether the defendants clearly exceeded those limits is a "little hard to say," he said.

Mr. Shapiro of Mayer, Brown & Platt said there is a "real likelihood" the court will rule in favor of the insurance industry if it hears the case. The Supreme Court usually decides to hear a case because there is "something questionable" about the lower court decision, he said, noting that the court overturns two out of every three lower court rulings it examines.

"It's very difficult to predict," how the court might rule, said Mr. Miller. 'No one can make a fair prediction on how it will come out." ■

Non-U.S. parties seek court review of separate issues

By JUDY GREENWALD

WASHINGTON—Insurance industry defendants in the antitrust litigation are asking the Supreme Court to consider three additional petitions seeking the high court's review of the case.

The additional petitions were filed by the foreign defendants in the case, including Lloyd's of London defendants, London market reinsurers and Winterthur Reinsurance Co. of Switzerland.

Most of the domestic insurance and reinsurance entities named as defendants in the action petitioned the court for review on Jan. 10 (*BI*, Jan. 13).

All four petitions are asking the Supreme Court to review the unanimous June 1991 ruling by a three-judge panel of the 9th U.S. Circuit Court of Appeals overturning a lower court's dismissal of the antitrust suit (*BI*, June 24, 1991; Sept. 25, 1989).

Molly Boast, an attorney with LeBoeuf, Lamb, Leiby & MacRae in New York, which represents Lloyd's of London underwriting agencies in the litigation, said each defendant can file its own petition.

One advantage to filing additional petitions is that it frees defendants from a Supreme Court limit of 30 pages per petition, she said.

Continued on next page

A&A to take $75 million pretax charge

NEW YORK—Alexander & Alexander Services Inc. expects to report a $75 million pretax charge and a $48 million aftertax charge for the fourth quarter of 1991 due to expenses incurred in restructuring its insurance brokerage operations and other nonrecurring expenses.

The company said the charge would result in a net loss for the fourth quarter and for 1991, though its other operations were profitable and in line with expectations.

The company was not more specific about its expected earnings for the year, which will be reported next month.

Michael Smith, an analyst with Shearson Lehman Bros. in New York, estimates A&A will report a $41 million net loss for the year. The brokerage reported $54.9 million in net income in 1990.

An A&A spokesman said that 50% to 60% of the pretax charge, or about $37.5 million to $45 million, is related to the restructuring of brokerage operations.

Twenty percent, or about $15 million, is in connection with intangibles. This includes expenses in connection with its plan to sell or wind down Strategis, its property tax consulting business, which has been losing money.

The remaining 20% to 25%, or $15 million to $18.8 million, is related to the writedown of notes receivable, reserve increases and miscellaneous other items.

The spokesman explained that A&A has been reorganizing its brokerage business into three tiers: global accounts; regional or national accounts; and smaller commercial accounts.

As part of its U.S. reorganization, the brokerage is consolidating its small commercial accounts business to improve efficiency in areas like computer operations, the spokesman said. In connection with this, A&A expects to close "fewer than 10" offices over the next several months, he said.

An estimated 200 staff could be gradually laid off as part of the reorganization, said Ron W. Forrest, chairman, chief executive officer and president of Alexander & Alexander Inc., the U.S. retail brokerage unit.

"It's very difficult to be precise on this," he said, noting that final decisions have not been made.

The biggest expense items are in connection with unexpired lease obligations, fixture and fittings write-offs, and severance, he said.

A&A says its restructuring and related charges are expected to reduce costs by $18 million this year and by more in subsequent years.

A&A still plans to issue its regular quarterly dividend of 25 cents per share, which is payable March 31 to shareholders of record as of March 2, 1992.

The brokerage also said that it plans to sell during the first quarter certain "non-core" operations for $57 million, which will generate net aftertax proceeds of $40 million, if the sales are completed as anticipated.

Definitive agreements have been reached to sell two Dutch underwriting agencies, B. Franco Mendes B.V. and Schermer Assuradeuren B.V.

In addition, an agreement in principle has been reached to sell Lakeland, Fla.-based Summit Consulting Inc., which primarily administers workers compensation self-insurance funds.

—By Judy Greenwald

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Antitrust appeal

Continued from previous page

Furthermore, some issues were of interest only to particular defendants, she noted.

For example, the Lloyd's agencies focused on the issue of comity, or a reciprocal respect for foreign law, but "didn't file anything on McCarran," Ms. Boast said.

In their petition, the domestic defendants argue that they did not violate the boycott provision of the McCarran-Ferguson Act. The limited antitrust immunity granted to insurers under the McCarran-Ferguson Act does not extend to boycotts or coercion.

Ms. Boast also pointed out that the Supreme Court will not necessarily decide to review all of the issues in the litigation. It can choose whichever issues it wants to review, or even frame its own questions for consideration, Ms. Boast said.

Even if the Supreme Court decides to review only one issue in the case, all of the defendants can participate, she noted.

The defendants are not introducing new arguments, but are trying to persuade the justices to hear the case.

Petitions by the foreign defendants concentrated on two key issues:

- Comity.

The federal district court and the appellate court have ruled differently on this issue, which is the focus of the Lloyd's underwriting agencies' petition.

U.S. District Court Judge William Schwarzer dismissed the case for several reasons, including the difficulty of exercising jurisdiction over the foreign defendants.

'Neither Winterthur nor any of the other "reinsurer" defendants is alleged to have sold or refused to sell insurance to any of the plaintiffs,' the petition states. 'Nevertheless, plaintiffs were deemed to have antitrust standing to sue.'

But the appellate court reversed this decision for several reasons, including the presence in the case of the U.S. plaintiffs, many U.S. defendants and some U.S. subsidiaries in London.

In their petition to the Supreme Court, the Lloyd's agencies state: "This court has never addressed the question whether and to what extent the extraterritorial reach of this nation's economic regulatory laws is restrained by considerations of international law and comity.

"The court's teachings in related areas, however, strongly demonstrate that those concerns should play a vital role and that the interests of foreign nations deserve far greater respect than they received from the 9th Circuit in this case.

"In the absence of guidance from this court, conflict and confusion have developed among the circuit and district courts and commentators."

The petition also states that the case presents the high court with "the opportunity to halt the proliferation of conflicting rulings. The claims from which it arises involve wholly foreign actors and conduct, an acknowledgment of both the district and circuit courts that application of U.S. law to that conduct will result in serious conflict with English law and policy, and a circuit court analysis that not only ignores the respect for foreign law and customs this court has shown in other contexts, but also adds more confusion by misconstruing a federal statute in order to restrict principles of international comity.

"If the decision of the court below is allowed to stand, the settled expectations of generations of foreign traders in foreign regulated markets will be upset, and the considered judgments of Parliament regarding the regulation of an important British industry will be overruled."

- Standing.

Petitions from the London companies and Winterthur focus on whether the state attorneys general had standing to bring the antitrust suit.

Judge Schwarzer concluded that they did have standing (*BI*, Aug. 7, 1989), and his ruling was upheld on appeal.

But with that ruling, the appellate court "has diverged fundamentally from both this court's teaching and the decision of other courts of appeals as to antitrust standing," says the petition from the London companies, led by Unionamerica Insurance Co. Ltd. and Continental Reinsurance Corp.

The appellate court's approach "promotes inefficient and random private enforcement of the antitrust laws," the London companies claim.

In its petition, Winterthur argues that the states lacked standing concerning the "reinsurer" defendants.

"Neither Winterthur nor any of the other 'reinsurer' defendants is alleged to have sold or refused to sell insurance to any of the plaintiffs," the petition states.

"Similarly, no plaintiff is alleged to have purchased or attempted to purchase reinsurance. Nevertheless, plaintiffs were deemed to have antitrust standing to sue Winterthur and the other reinsurer defendants."

Meanwhile, the Jan. 10 petition filed by the domestic defendants said the Supreme Court should review the appellate ruling because:

- Contrary to the appellate court decision, domestic insurers and reinsurers do not forfeit their antitrust immunities by participating with foreign reinsurers in the business of insurance.
- Agreements among insurers and reinsurers on policy terms do not constitute a prohibited boycott under the McCarran-Ferguson Act.
- The 9th Circuit's refusal to dismiss the suit on the grounds of a state action doctrine—which provides immunity from antitrust laws if an anticompetitive act reflects a state's policy and if a state supervises the anticompetitive practices—"defeats principles of federalism by allowing federal antitrust courts to second-guess the state regulatory process." ■

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'Other' antitrust litigation

Justices' opinion in Ticor case closely watched by P/C industry

By STACY ADLER GORDON

WASHINGTON—The ability of state insurance regulators to monitor the industry came under attack last week when the U.S. Supreme Court heard oral arguments in a title insurance antitrust case.

The issue in this case, which involves Los Angeles-based Ticor Title Insurance Co. of California and other title insurers, is whether cooperative pricing of title searches and title examinations is supervised by state regulators and is exempt from antitrust laws by the state action doctrine.

That doctrine provides immunity from antitrust laws for anticompetitive restraints of trade that reflect a state policy and are supervised actively by the state.

The Ticor case has attracted industrywide attention, because the state action doctrine is part of the basis for the trial court dismissal of the massive antitrust suit against 32 insurance industry defendants by 20 state attorneys general who claim the defendants engaged in a boycott to manipulate the U.S. liability insurance market. The defendants earlier this month asked the Supreme Court to review a decision by the 9th U.S. Circuit Court of Appeals to reinstate the litigation (see story, page 2).

Many of the defendants in the insurance antitrust litigation and 36 state attorneys general filed amicus curiae briefs in the Ticor case, believing that the court's decision in the case could influence the insurance antitrust litigation.

Under the state action doctrine, joint pricing activity by an industry is exempt from federal antitrust laws if:

- The activity is undertaken pursuant to a clearly articulated state policy to displace competition with regulation.
- The state "actively supervises" the conduct.

At issue in the Ticor case is whether insurance regulators in Arizona, Connecticut, Montana and Wisconsin "actively supervised" the charges set by title insurers for title searches and examinations.

Insurers named in the case are: Ticor and SAFECO Title Insurance Co., both of which have since merged with Chicago Title Insurance Co.; Lawyers Title Insurance Corp.; and Stewart Title Guaranty Co.

The insurers filed rates for title searches and examinations in the four states through rating bureaus. In those states, filed rates can be used immediately, without any further action by the insurance department.

The Ticor case only concerns the charges set by title insurers for title searches and examinations; it does not involve rates for title insurance. An attorney for the Federal Trade Commission said the agency did not challenge title insurers' ability to set rates for title insurance because the McCarran-Ferguson Act protects from antitrust scrutiny activity that is the "business of insurance."

Instead, the FTC argued that regulators in the four states did not actively supervise the rates filed by title insurers for title searches and examinations. For example, Wisconsin officials checked only the mathematical accuracy of the filing, the FTC says.

However, the title insurers argue that any "second-guessing" by the FTC as to the diligence of the insurance regulators would be intrusive and burdensome.

In January 1991, the 3rd Circuit Court of Appeals found that the regulatory system established in the four states was sufficient to be considered "active supervision."

Specifically, the court held that there is active supervision where the state's program "is in place, is staffed and funded" and there is "some basic level of activity directed toward seeing that the private actors carry out the state's policy and not simply their own policy."

The FTC sought review of this ruling by the U.S. Supreme Court. The agency argued that it is not enough for an insurance department to prove that it is staffed and funded or that it is carrying on "some basic level of activity." Rather, the agency said, it must be proved that each rate submission was carefully reviewed.

In effect, the FTC argues that the file-and-use system used in the four states is insufficient.

Arguing for the FTC, Lawrence Wallace, deputy solicitor general for the U.S. Justice Department, told the high court during oral arguments last week that title insurers have the burden of proving that regulators substantively reviewed their rate filings before they can use those joint rates.

And Mr. Wallace suggested that a signature of the insurance regulator on the rate filing would not be conclusive proof that the filing was substantively reviewed.

Placing such a steep burden on title insurers seemed to trouble many of the justices during the oral arguments.

Justice Sandra Day O'Connor asked Mr. Wallace: "Under your standard, how would a regulated entity or a business ever know if its activity would be subject to (antitrust) immunity?"

Mr. Wallace answered that, in this case, insurers would need proof from state regulators that their filings had been substantively reviewed. He did not specify what type of proof would be conclusive.

Justice John Paul Stevens had similar concerns: "How does a company that has to employ a rate know how to operate?"

Chief Justice William H. Rehnquist also seemed disturbed: "This puts title insurance companies in an extraordinary position. They have to call the agency and ask if they really did mean to approve the rate? It seems you are suggesting that they interrogate the people responsible for approving their rates."

Title insurance attorney John C. Cristie Jr., who argued for the defendants, praised the justices for picking up on how difficult it would be for title insurers and regulators to operate under the FTC's standard.

"The members of this court have recognized the problems entities would face if the FTC's interpretation became the law," said Mr. Cristie of Bell, Boyd & Lloyd in Washington, D.C. "The FTC's position is an inappropriate standard for active supervision. It is intrusive into the prerogative of the states."

In urging the court to affirm the 3rd Circuit decision, Mr. Cristie said all that is necessary is to show that there was an insurance regulatory system in place.

Justice Antonin Scalia seemed concerned that the current system of state insurance regulation allows regulators to review only some—but not all—rate filings.

"This means that an area will go unregulated," said Justice Scalia.

Justice Stevens answered that concern by suggesting that free-market forces will regulate the area that goes unsupervised by the state.

The Supreme Court's decision is expected later this year.

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Federal Trade Commission vs. Ticor Title Insurance Co. et al., U.S. Supreme Court; No. 91-72.

Cigarette liability case again before high court

By STACY ADLER GORDON

WASHINGTON—The U.S. Supreme Court heard a second round of arguments last week in a case that attempts to hold cigarette manufacturers liable for injuries caused by smoking.

The high court, apparently deadlocked after the first round of arguments, ordered a new round so that newly confirmed Justice Clarence Thomas could participate (*BI*, Oct. 28, 1991). The newest justice, however, was the only one who did not ask any questions during the Jan. 13 oral arguments.

At issue is whether the Federal Cigarette Labeling and Advertising Act pre-empts state tort lawsuits charging tobacco companies with failure to warn or misrepresentation of the dangers of smoking (*BI*, Oct. 14, 1991).

Federal law now requires all cigarette manufacturers to include one of four specific health warnings on their packages and advertisements, such as: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health."

The law, which took effect in 1966, also forbids the imposition of any health-related "requirement or prohibition. . .under state law" on cigarette manufacturers beyond the specific warnings.

Plaintiffs' attorney Laurence Tribe told the high court that in passing this law, Congress did not intend to give cigarette manufacturers blanket immunity from all tort claims alleging failure to warn or misrepresentation.

The law is not "an iron-clad guarantee that cigarette companies can do no wrong," said Mr. Tribe, a professor of constitutional law at Harvard Law School.

The protections afforded by the law are limited to tort claims based on cigarette labeling and advertisements, he said. However, there are other ways for tobacco companies to communicate the dangers of smoking to the public, he suggested.

"The statute does not establish a cigarette communications act, but it is a cigarette labeling act," Mr. Tribe said.

"This is an attempt by the cigarette industry to persuade the judiciary to give it something Congress did not," argued Mr. Tribe.

But H. Bartow Farr III, an attorney representing the tobacco industry, argued that the purpose of the law was to create uniformity and that allowing individuals to sue under state tort law for failure to warn or misrepresentation would contradict the purpose of the statute.

"The specific tort claims at issue here are well within the boundaries of the act," said Mr. Farr of Klein, Farr, Smith & Taranto in Washington, D.C. "Congress' intent was to create an area exclusively regulated by federal law."

The Supreme Court is reviewing a 1990 decision by the 3rd U.S. Circuit Court of Appeals that found that the federal act pre-empts state law tort claims that challenge the adequacy of the warnings on cigarette packages or advertising (*BI*, Jan. 15, 1990).

The dispute stems from a lawsuit filed in 1983 by Antonio Cipollone and his wife, Rose, against three tobacco companies: Liggett Group Inc. of Durham, N.C.; New York-based Philip Morris Inc.; and Lorillard Inc., a unit of New York-based Loews Corp.

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Thomas Cipollone vs. Liggett Group Inc. et al., U.S. Supreme Court; No. 90-1038.

Solvency regulation

Continued from page 2

Litan said.

For example, he said, policyholder runs on troubled life insurance companies can force regulators to assume control over solvent but temporarily illiquid insurers, as was the case with Mutual Benefit Life Insurance Co. (*BI*, July 22, 1991).

In addition, property/casualty insurers face "significant" threats to solvency from a range of other possible events, including catastrophic earthquakes and "confiscatory" state regulation of insurance rates, he said in the report.

Based on his research, Mr. Litan concluded that solvency regulation could be enhanced by:

- Providing for more prompt regulatory action instead of the regulatory approach of "forbearance" that allowed many banks and thrifts to fall further into debt.

Mr. Litan acknowledged that because an insurer's reserves for future claims can only be estimated, it is difficult for a regulator to know when a property/casualty insurer is insolvent.

To facilitate earlier intervention by regulators, it may be necessary to impose liquidity requirements as well as limits on the ability of troubled insurers to use legal challenges to forestall regulatory action, he said.

Mr. Litan also suggested changing the laws affecting most guaranty funds so insurers are assessed prior to an insolvency rather than after one occurs. Currently, only the New York guaranty fund is prefunded.

Prefunded guaranty funds would create a pool of capital that could be used to help negotiate takeovers that would benefit policyholders of financially shaky insurers, he said.

- Enact a variety of federal measures to enhance the solvency of property/casualty insurers.

These would include "federal earthquake insurance and reinsurance, a non-tort system for cleaning up existing hazardous waste sites and liability law reform that would significantly narrow much of the uncertainty that now exists over liability law exposure," he said.

- Eliminate rate regulation, which he said in the report is "not only unnecessary, but potentially counterproductive to solvency goals."

There is "abundant" evidence that the insurance industry is competitive, he said, pointing to Illinois' healthy marketplace, in which rates are not regulated.

- Consider supplementing the existing state-based rate regulatory system with a stronger federal presence in solvency regulation.

The National Assn. of Insurance Commissioners' recent efforts to improve solvency regulation—which include an accreditation program for states with adequate laws and operations—promise to improve state regulation but are still "too narrow," the report concludes.

The report recommends a dual regulatory system in which insurers that meet strict solvency criteria could choose to be regulated for solvency purposes by a national regulatory body and participate in a national guaranty fund.

Insurers choosing this option would be exempt from state rate regulation, though states still would regulate them over issues of consumer protection and information disclosure.

However, under his proposal, those insurers could not take advantage of some antitrust exemptions afforded by the McCarran-Ferguson Act. While they could still develop common forms and collect data jointly, they may not be allowed to trend the data, Mr. Litan later explained.

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Copies of the report are available free of charge from State Farm, Public Relations Department, A-4, 1 State Farm Plaza, Bloomington, Ill. 61710.

Lloyd's report

Continued from page 1

forced Lloyd's brokers to divest their managing agencies.

By 1997, however, the task force recommends a three-legged approach to ensure sufficient capital: traditional wealthy individual members; members of lesser means who could invest in a pool of syndicates resembling a mutual fund; and corporate members with limited liability.

The task force—headed by Sedgwick Group P.L.C. Chairman David Rowland—went so far as to suggest that someday "Lloyd's can also secure the option of moving to a fully incorporated basis of trading."

Under English law, individual traders must bear unlimited liability; corporations and limited partnerships can limit their liability.

The aim of the proposals is to guarantee Lloyd's future and allow its capacity to grow to between 15 billion and 17 billion pounds ($26.25 billion and $29.75 billion at current exchange rates) by 1997 from 10 billion pounds ($17.5 billion) this year.

Council members are moving quickly to implement many of the recommendations, Lloyd's Chairman David Coleridge said. Six new working parties are considering the proposals, and other standing committees also will be involved.

"The Council of Lloyd's welcomes the report," Mr. Coleridge said. "We are unanimous in endorsing the thrust of the report that we, the Council, should commit Lloyd's to a steady real growth in capacity, income and profits through the rest of this decade and beyond."

He called the task force plan to make the changes in two stages "practical, pragmatic and prudent."

Many of the long-term proposals in the report would require Parliament to pass a new Lloyd's Act or amend the 1982 law. Mr. Coleridge last week said it would take at least four or five years to get a reform bill introduced in Parliament.

The Assn. of Lloyd's Members, to which 40% of members belong, welcomed both the task force report and the council's pledge to make many of the changes by next year.

"Provided (the report) is implemented urgently, it will contribute to Lloyd's profitability," added Roger Pascall, the ALM's administrator.

Members already facing large losses, he admits, will not be helped.

Lloyd's last year posted its largest deficit ever: a 509.7 million pounds ($983.7 million at applicable exchange rates) market loss for the 1988 underwriting year. Losses for 1989 are expected to be at least 1 billion pounds ($1.75 billion), while the 1990 marketwide loss could total 500 million pounds ($875 million).

Members last year received notification to pay cash calls of 602.4 million pounds ($1.05 billion) for the 1988 through 1990 underwriting years, as well as 218 million pounds ($381.5 million) for 89 earlier syndicate accounts that have not closed (*BI*, Sept. 2, 1991).

"The losses have fallen where they have," Mr. Coleridge said. "There is no way that the task force could produce some financial assistance for those names."

What Lloyd's really needs is to attract new members soon by becoming profitable again, Mr. Pascall said. "It is the broadly held view that unless Lloyd's returns to profit, we can't see

Continued on next page

Lloyd's report

Continued from previous page
new names coming forward."

The Council of Lloyd's received the report just two weeks ago. It was unveiled last week amid fanfare and a round of market meetings chaired by Lloyd's Chief Executive Alan Lord, Mr. Coleridge and Mr. Rowland.

"It's a long report," Mr. Rowland said last week. It provides only "*a* route forward" and not "*the* route forward," he said.

Real problems face Lloyd's, the report acknowledges: Expense ratios are too high. Strong leadership and clear decision-making are needed. Lloyd's is growing less competitive. There are structural weaknesses and concerns about underwriting competence.

And the market's future is overshadowed by scores of lawsuits by thousands of members against members agencies over past year losses. This litigation may break the "agent/principal" relationship upon which Lloyd's is based, warns the report.

This may make it difficult to attract new members with badly needed capital.

Some believe that Lloyd's should let market forces reduce its overall capacity, making it a "small niche of excellence" where profits would be the sole concern, the report points out. Membership fell this year by 4,000 to 22,500, while capacity fell 10%.

But, the report noted "further retrenchment would be damaging to Lloyd's long-term prospects" and might weaken its reputation for security.

Instead, the task force recommended a strategy for "steady real growth in capacity and income."

To raise capital to between 13 billion and 17 billion pounds by 1997, the task force recommends a two-stage program. Short-term proposals aim to pacify current members, attract new ones soon and restore profitability. Long-term, radical ideas also are proposed to provide new capital if Lloyd's traditional membership is unable or unwilling to provide needed growth.

Among the proposals the task force favors implementing as soon as possible are:

- Capping members' losses at an amount equal to 100% of their overall premium limit in any underwriting year through establishment of a "compulsory mutual stop-loss" insurance fund. Once a member's losses exceed the cap, losses will be paid from the fund, though losses would revert back to the member if the fund is depleted.

The council already has endorsed the proposal and plans to implement the new stop-loss program for the 1993 underwriting year as recommended by the task force, Mr. Coleridge said.

To finance the stop-loss fund, all members annually will pay 0.25% of their annual premium limit to Lloyd's. Members already pay a 0.6% annual fee to Lloyd's Central Fund and 0.5% annually to finance the market's operations. Thus, members will pay a total of 1.3% of their premium limit.

Based on current capacity, the stop-loss assessment would raise 25 million pounds ($43.75 million) per year. However, while members would start paying the levy in 1993, the fund would not make its first payments until 1996, when 1993 losses are fully known.

"We believe this is a viable scheme," Mr. Rowland said last week. It should provide "a sensible comfort to names."

While 0.25% seems modest, very few members would get any payments. For example, only 69 of the 32,433 members trading in 1988, the record-loss year, sustained losses equal to their premium limits.

- Allowing members to resign if they belong to a syndicate unable to close their accounts.

Right now, such members cannot resign because it is impossible to determine how much they owe.

Open years of account, largely caused by huge unknown liabilities for U.S. asbestos and pollution claims, are "the gravest threats to the future health of the society," says the report. U.S. latent liability losses written on an occurrence basis in prior accounting years have cost Lloyd's 1.6 billion pounds ($2.8 billion) over the past four years, the task force noted. The total loss to the market from these liability policies written between 1945 and 1985 is unquantifiable.

Largely because of this uncertainty, 53 syndicates had left open a combined 97 years of account as of the end of 1990. About 17,500 members belong to syndicates with one open years.

The task force also foresees a "sharp upturn" in the number of syndicates that will not be able to close accounts for 1989 and 1990.

Many names have ceased underwriting because of these losses and wish to resign—but cannot. "The task force thinks this is completely unacceptable. . . .Unless the Society can demonstrate that names can resign if they wish, it will be hard to persuade new names to join."

The task force report suggests CentreWrite Ltd., the runoff reinsurance company formed by Lloyd's in an attempt to close open accounting years, should shift its focus covering entire syndicates to covering individual members at "a commercial price."

CentreWrite should aim to provide quotes within three years to members wishing to settle open years of account up to and including the 1988 year of account. From 1989 on, CentreWrite should set a target for issuing quotes within three years from the time an account is left open.

The council also should continue to negotiate with the Inland Revenue to allow members to establish tax-free "equalization reserves" so they can set aside profits to pay future unknown losses, the task force suggests.

Meanwhile, the council should allow syndicates to discount reserves for long-tail liability claims, a practice not now allowed, and allow syndicates to keep their accounts open rather than forcing them to close, the report says.

- Strengthening the internal organization of the Lloyd's market to allow it to operate more profitably.

For example, the task force favors giving members more power, including the right to hold regular meetings of syndicate members and the power to replace a managing agent if a certain number of members agree.

While managing agents would be allowed to continue to own members agents, separate boards and non-executive directors would oversee the remuneration of underwriters and senior agency directors.

The task force also recommends that the forced "divestment" of managing agents by Lloyd's brokers, as required in Lloyd's Act of 1982, be repealed. This would further enhance the relationship between brokers and syndicates and reduce syndicates' marketing costs. However, Parliament must amend the Lloyd's Act to implement this proposal.

The most controversial organizational proposal, however, is related to "governance."

Lloyd's currently is now governed by the 28-person council, composed of 12 Lloyd's members who work in the market, eight members who work outside the market and eight non-Lloyd's members. The council is headed by the chairman, who is a working member.

This structure, however, doesn't give those working in the market the feeling they are in control of their business, the task force notes.

The report recommends that Lloyd's business activities be governed by a Lloyd's Market Board made up of members elected by businesses that participate in the market—like managing and members agencies—rather than the membership. Lloyd's brokers would be excluded from joining the board, though they could be advisers.

The board would be led by the chairman of Lloyd's, who would serve on a full-time basis. The board would also be supported by a full-time chief executive officer.

Setting up the board would not require an act of Parliament.

In addition, the report proposes setting up a Regulatory Council, similar in makeup to the present Lloyd's Council but with fewer members. The council would set and oversee the compliance with market rules.

The new council, however, would be chaired by a nominated non-Lloyd's member, who would work on a part-time basis. This would require changes to the Lloyd's Act.

The governance proposals have already been rejected by the council, which agreed only to review its current structure.

The council, said Mr. Coleridge, believes reforms could be better implemented under the present system.

- Introducing "Members Agent Pooling Arrangements," whereby smaller investors can pool their investments to participate in a larger spread of syndicates.

The council decided not to pursue such a plan early last year, mainly because of lack of interest. "The task force believes that this was an unfortunate decision and that, given recent events, there would now be much greater interest in this scheme."

Members with larger amounts invested tended to buffer themselves against catastrophic losses by investing in a larger spread of syndicates, the task force found. This generated larger returns for these members.

Under the MAPA scheme, members' agents would establish a portfolio of syndicates, much like a mutual fund. Members could join the MAPA and share in its return.

Besides these short-term ideas, the task force suggests more radical ways to bolster Lloyd's capital if enough investors do not return to the market.

"If names return to the market in sufficient numbers, it will not be necessary to look to other sources of capital," the report says. "However, there is a risk that names' capital alone will not be able to support the long-term growth of the market."

Every 1 billion pounds of capacity requires 2,000 new names writing 500,000 pounds each. Increasing capacity to 15 billion pounds by 1997 could require 5,000 new names. Looking for these new members outside the United Kingdom will "place considerable demands on the members agency system," says the report.

Also, litigation between members and members agents raises question about the current "agent-principal" basis of trading. "If at any point there were successful legal challenges which threatened the agent-principal relationship, Lloyd's would need to move quickly to a new framework for its capital structure," says the report.

The task force suggests that the future capital structure of Lloyd's be three-pronged: members participating in MAPAs; "super"-wealthy members, much like the current members; and "corporate members" that invest on a limited liability basis.

Corporate members would have to abide by all Lloyd's rules and regulations, including those requiring contributions to the Central Fund and toward market operations.

Corporations also would have to deposit with Lloyd's the entire amount they wish to underwrite. Members now only have to deposit 30% of their premium limit since they have agreed to be unlimitedly liable for their losses, though the report suggests that these deposits be increased to 40%.

Whether they are insurers or not, corporate members would set up subsidiaries approved as authorized insurers by the Department of Trade and Industry. These subsidiaries "could only underwrite via Lloyd's syndicates, to ensure that the security of Lloyd's is not impaired by other underwriting activities."

If, as a limited liability company, a corporate member was liquidated, the Central Fund—which now pays losses of any members who are unable to pay—would protect policyholders.

If corporate membership is approved, the report notes Lloyd's could someday become "fully incorporated" —and thus institute limited liability— by:

- Allowing syndicates to become registered insurance companies.
- Incorporating syndicates. Individual syndicates or a group of syndicates managed by one agency could become registered insurance companies.
- Allowing syndicates to become limited partnerships, where members would become partners whose liability would be limited to the amount of cash invested. The report notes limited partnerships would offer individual partnerships tax advantages that incorporated syndicates would not.
- Allowing managing agents to act on behalf of insurance companies, effectively turning Lloyd's into an insurance exchange like the Institute of London Underwriters or the London Underwriting Center.

In addition, a new commodity-type market could be established based on "value for syndicate participations," according to the report. This not-so-new idea would allow Lloyd's members to place a value on their participation at Lloyd's. When members wished to resign, they could "sell" their membership on syndicates at a price to new members.

This would allow a continuity of membership on each syndicate, the report says. The mechanics of the proposal, however, are "complex in practice," the report says.

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Copies of "Lloyd's: A Route Forward," are available for $40 from Lloyd's Gift Shop, 1 Lime Street, London EC3M 7HA, England; 011-4471-327-6073; fax: 011-4471-623-8238.

Coming next week

Next week, *Business Insurance* will cover other recommendations contained in the Lloyd's of London task force report, including:

- How to control costs and better manage the underwriting agency system.
- How Lloyd's can attract more business.
- How syndicates can increase their capacity.
- How to improve the security behind Lloyd's policies.

Update

Asbestos settlement axed

Continued from page 2
settlement, which was subject to court approval, Fibreboard would have received a $35 million reimbursement for bodily injury claims and defense costs. In addition, the insurer would have paid $107 million into a trust fund to cover future costs, including property damage claims.

The settlement was contingent, though, on the California Court of Appeal reversing a state court jury verdict that a 1956-57 general liability policy written for Fibreboard did not include an aggregate limit. A reversal was necessary to ensure that Pacific Indemnity would not remain exposed to claims under that policy.

However, the appellate court struck down the settlement last year without explanation. The state's high court denied a petition for review.

Both Fibreboard and the insurer said they would continue to negotiate.

Fibreboard now will "aggressively defend the trial court judgment in its favor," the company said. If Fibreboard cannot reach a new settlement or "obtain additional insurance resources from another source," it will run out of funds to pay its asbestos claims during the first half of 1992.

Chubb said that "Pacific Indemnity will continue to aggressively pursue its appeal to reverse" the trial jury's ruling.

Briefly noted

A Texas state court judge is giving Eli Lilly & Co. until Friday to provide a plaintiff's attorney all documents and medical studies pertaining to its **anti-depressant Prozac** or face a default judgment of up to $25 million. Lilly plans to appeal the ruling. . . .Dow Corning Corp. has shut down its **silicone breast implant** production lines in response to a Jan. 6 request by the Food and Drug Administration for a moratorium on the product because of safety concerns (*BI*, Jan. 13). Meanwhile, Dow Corning, one of several silicone breast implant makers named in nearly 400 product liability lawsuits, has asked a California court for a protective order that would prevent public disclosure of internal documents. . . .Idaho has approved a 7% increase in **workers compensation manual rates** for 1992 over objections by the State Insurance Fund. The competitive state fund, which writes 75% of the state's workers comp coverage, claimed the hike was excessive, even though insurers sought a 9.9% increase. . . .CIGNA Corp. is withdrawing from the **Health Insurance Assn. of America**. . . . The California Insurance Department has resubmitted emergency regulations to implement the insurance "charge" rollback provision under **Proposition 103**. The regulations, rejected earlier, contain only technical changes. The Insurance Department expects the rules will be approved by Tuesday, when hearings resume on a Proposition 103 refund order (*BI*, Oct. 21, 1991; Sept. 9, 1991). . . .Employees will be allowed to defer a maximum of $8,728 to their **401(k) plans** this year, up from $8,475 in 1991. . . .UAL Corp., McDonnell Douglas Corp., General Electric Co. and Aluminum Co. of America reached a settlement with nine plaintiffs in a case stemming from **the 1989 crash of a United Airlines DC-10** in Sioux City, Iowa. More than 50 related cases are pending in state courts. . . .The IRS is challenging tax deductions by employers for contributions made to **Voluntary Employee Beneficiary Assns.** in one year to cover the entire medical liability of current retirees. The IRS also is challenging the size of deductions for reserves established to pay for incurred but unpaid medical claims. . . .Citicorp plans to sell its remaining 49.7% interest in municipal bond insurer **Ambac Inc.** through a public offering.

13 served on Lloyd's task force

LONDON—The members of the task force were:

- David Rowland, chairman of Sedgwick Group P.L.C. and chairman of the task force.
- Ronald Artus, retired chief investment manager for Prudential Corp. P.L.C.
- Andrew Beazley, underwriter for A.F. Beazley & Others.
- Andrew Duguid, head of market services for the Corporation of Lloyd's.
- John Gordon, retired chairman of members agent Sedgwick Lloyd's Underwriting Agents Ltd.
- J. Antony Haynes, former chairman of the Assn. of Lloyd's Members.
- Robert Hiscox, chairman of underwriting agency Roberts & Hiscox Ltd.
- John Kay, professor of economics, London Business School.
- David Mann, chairman of underwriting agent D.P. Mann Underwriting Agency Ltd.
- Stephen Merrett, chairman and chief executive of Merrett Holdings P.L.C.
- Matthew Patient, partner of accountant Coopers & Lybrand Deloitte.
- Elvin Patrick, chairman of underwriting agent Bankside Underwriting Agencies Ltd.
- Michael Wade, chairman of broker Holman Wade Insurance Brokers Ltd. ■

Lloyd's report receives high marks from many

By GAVIN SOUTER

LONDON—Market professionals and onlookers alike welcome the Lloyd's of London task force report.

Opinions range from blanket approval to qualified agreement, with senior London market figures saying Lloyd's should implement most of the 65 recommendations.

Few last week had managed to wade through the report's 235 pages, yet most agree that the proposals would help staunch the flow of members from Lloyd's and strengthen its capital.

But approval was not unanimous.

At least one dissenter, a lawyer for Lloyd's members suing over their losses, warns that the report's much-heralded stop-loss proposal could be too little, too late.

Other experts say the task force should have recommended the divorce of members and managing agents rather than allowing brokers and managing agents to again trek to the altar.

And, the Council of Lloyd's has been widely criticized for immediately rejecting the call to set up two new ruling bodies within Lloyd's.

Despite those criticisms, many comments echoed those of David Robertson, chairman of Cater Allen Syndicate Management Ltd.: "It's the best report ever to have been written on Lloyd's." Mr. Robertson called it comprehensive, realistic and positive for all of the market.

"It shows people that there is a will to change the things that are wrong with Lloyd's and that—coupled with the market going back into profit—will secure its future," said Paul Archard, chairman of the Lloyd's Underwriting Agents Assn.

The report reflects the interests of all parties, said David Tudor Williams, joint managing director at managing agent A.J. Archer P.L.C. "It's good for the names, the managing agents, the members agents and the brokers."

Brokers, too, welcomed the report.

Alan Colls, chairman of the Lloyd's Insurance Brokers Committee, called it balanced and well-argued. "What I like about it is that they (the task force) have considered all of the options available and then bothered to explain why they have accepted some and rejected others."

But, the task force recommendations alone will not safeguard the future of Lloyd's, warned Michael Freeman, senior partner at Michael Freeman & Co., a London law firm representing some members who are suing Lloyd's. "It is a good start, but it will only secure a good future for Lloyd's if the major recommendations are applied to past years."

The task force proposes reducing individual members' liability for huge losses through a mandatory high-level stop-loss insurance fund to be financed by all members.

When members face unlimited liability, they cannot predict how much they could have to pay, Mr. Tudor Williams said. But "with a cap on the losses, a name can see the worst that can happen, assess his assets, his income and cash flow and decide his underwriting limit."

While the fund "caps" members' liability, they are liable for losses if the stop-loss fund is exhausted. "This is important because it means that there is still unlimited liability, and this is a good selling point for Lloyd's," said Mr. Archard.

The stop-loss fund would kick in when a member's losses in a given year reached 100% of his or her premium limit. But some suggest the fund should be triggered at a lower level.

"There are people having difficulties paying losses now, and their losses would not have reached the proposed limit," said Nigel Rogers, managing director of Octavian Syndicate Management Ltd.

In fact, only 0.2% of the members on the 1988 underwriting year—69 of 32,433—would have benefited if the stop-loss proposal were in effect.

Nevertheless, Mr. Freeman, the lawyer handling some members' suits, says the stop-loss fund should be applied retroactively.

Unless it is applied to the 1988 underwriting year—the worst ever at Lloyd's—and to the 1989 and 1990 years, which could be even worse, "Lloyd's just won't have the capacity to take advantage of the hardening rates that will come through over the next few years," he said.

Few others, though, favor applying the proposal retroactively.

While Mr. Tudor Williams concedes that members will quit Lloyd's because of the disastrous losses in 1989 and 1990 if the stop-loss proposal is not applied retroactively, plenty of others will remain, he said.

And, the members who leave will tend to be those writing smaller lines, said Alex Kininmonth, a director of members agent P.W. Kininmonth Ltd. "Those members who leave will leave because they are uncomfortable with the market. . . .The members who are confident enough and big enough to stay will see that there are profits coming."

Stop-loss protection is expected to encourage more investors to join Lloyd's.

"If you do away with all of the bad aspects of unlimited liability, you will attract more capital to the market," said Peter Nutting, a Lloyd's Council member and chairman of the group of names litigating with members agencies over the huge losses sustained by underwriter Richard Outhwaite's syndicate in 1982.

A stop-loss facility, combined with a return to profitability, also may make it unnecessary for Lloyd's to seek limited-liability capital from corporations, as was proposed, Mr. Colls said.

Still, other market professionals say corporations will be needed.

"I don't think that we will get the growth in capacity we need without corporate members," said Mr. Rogers of Octavian.

Mr. Archard said he has long advocated corporate membership. "If we look at the long-term growth aims of the report, we will have to have corporate membership to achieve that."

Lloyd's professionals were divided over the wisdom of the task force's refusal to recommend the separation of members and managing agents while suggesting that brokers again be allowed to own managing agents.

"I don't think there is any problem with managing agents owning members agents," Mr. Tudor Williams said. If a member is unhappy that a members agent is owned by a managing agent, he can select an independent agent, he said.

He also favors broker ownership of managing agents. "A marketplace is a marketplace, and there are always going to be conflicts of interest," he said.

And, as the role of brokers at Lloyd's became smaller after they were forced to sell managing agencies in the early 1980s, brokers lost interest in Lloyd's, he said.

Other market members were more critical of the task force for not suggesting that managing and members agents be separated.

"We were very disappointed with the report in this respect," said Mr. Kininmonth of independent agent P.W. Kininmonth.

Mr. Freeman noted that members have suffered when members agents have placed them on loss-riddled syndicates managed by affiliates. "You cannot avoid the conflicts, and the task force had the opportunity to undo the problem."

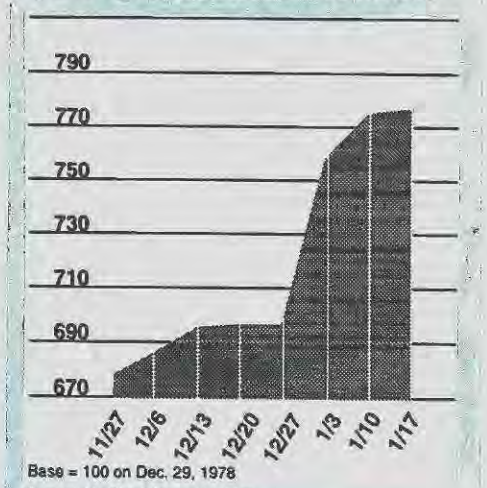
The Council of Lloyd's also was severely criticized for immediately rejecting the task force recommendation to separate the supervision of regulation and marketing.

"It was insensitive of the council, because it had been hoped that everybody would look at the report with an open mind and take time to come to any conclusions," said Mr. Rogers.

"There is no reason why they could not have considered it in the long term," Mr. Archard said.

Mr. Nutting, a council member, defended the decision. "If you look at the task force's recommendations about governance, it's a bit of a dog's breakfast." Too many people already are involved in regulation and marketing at Lloyd's, he said, noting the proposal would have meant that more people from outside the insurance industry would be involved in Lloyd's. ■

BI Insurance Index



Base = 100 on Dec. 29, 1978

Source: Nordby International Inc.

Insurance industry stocks halted their climb last week as the *Business Insurance* Index rose 1.1 points to 776.2 on Jan. 17 from 775.1 on Jan. 10. Advancing issues were led by Phoenix RE, up 15.8%; Selective Insurance Group, up 15.4%; and Alexander & Alexander, up 8.6%. Declining insurance issues followed Nobel Insurance Ltd., down 15.0%; HMO America Inc., down 11.6%; and Berkshire Hathaway Inc., down 10.2%. The most active issue for the period was U.S. Healthcare, with 5.1 million shares traded. The *BI* Index was up 0.1%; the New York Stock Exchange Composite was up 0.9%; the Standard & Poor's 500 was up 0.9%; and the Dow Jones 30 Industrials was up 2.1%.

British Issues

Jan. 16 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence	pence
Comml Union	464	N/M	30.7	6.6	468—463	
Genl Accident	450	N/M	35.7	7.9	452—443	
Gdn Royal Exch	135	N/M	15.9	11.8	135—123	
Royal	252	N/M	34.7	13.8	252—241	
Sun Alliance	279	N/M	18.7	6.7	279—276	
Brokers						
Bradstock	167	18.8	6.3	3.8	167—153	
CE Heath	469	16.4	34.5	7.3	469—459	
Hogg Group	184	10.9	10.7	5.8	185—182	
JIB Group	204	17.0	10.0	4.9	204—196	
Lloyd Thompson	238	23.9	6.0	2.5	238—237	
Lowndes Lmbrt	321	16.0	15.3	4.8	321—320	
PWS Holdings	78	8.5	5.3	6.8	80—78	
Sedgwick Grp	217	20.6	16.0	7.4	217—205	
Steel Brrl Jones	311	16.5	16.3	5.2	311—309	
Willis Corroon	254	13.2	17.6	6.9	254—235	

Source: Philip Olsen, Insurance Industry Analyst, London

BI Industry Stock Report

JANUARY 13, 1992 THROUGH JANUARY 17, 1992

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	22.13	8.59	7.93	27.63	18.00	588	1.00	4.52	20	9.77	2.26
Gallagher Arthur J. & Co.	NYS	23.00	2.22	2.79	28.38	19.00	53	0.64	2.78	20	5.88	3.91
Frank B. Hall	NYS	4.13	-2.94	-2.94	5.50	2.88	75	0.00	0.00	-6	-5.24	-0.79
Hilb, Rogal & Hamilton	OTC	12.88	-0.96	-2.83	17.50	11.25	229	0.40	3.11	22	3.56	3.62
Marsh & McLennan	NYS	78.75	-0.94	-3.23	87.25	70.00	630	2.60	3.30	19	14.77	5.33
Poe & Associates	OTC	12.00	1.05	0.00	12.50	6.50	13	0.32	2.67	13	2.52	4.76
BROKERS	AVERAGE		1.2	0.3					2.3	13		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	32.00	0.39	4.92	32.25	23.50	461	0.32	1.00	13	23.89	1.34
Berkshire Hathaway Inc.	NYS	7900.00	-10.23	-12.71	7900.00	210.94	0	0.00	0.00	-34	4612.00	1.71
ITT (Hartford Group)	NYS	59.25	5.33	2.60	63.00	48.50	1929	1.72	2.90	9	64.01	0.93
Sears (Allstate)	NYS	40.63	3.50	7.26	43.50	25.75	4500	2.00	4.92	14	37.38	1.09
CONGLOMERATES	AVERAGE		-0.2	0.5					2.2	1		
INSURERS/REINSURERS												
AEGON N.V.	NYS	70.13	-0.36	0.18	71.75	54.75	9	2.30	3.28	7	N/A	N/A
Aetna Life & Casualty	NYS	44.63	1.71	1.42	49.13	31.88	1133	2.76	6.18	9	64.23	0.69
Allied Group Inc.	OTC	18.50	7.25	8.82	21.50	12.25	25	0.56	3.03	6	11.50	1.61
American General	NYS	43.25	-2.26	-2.81	45.63	30.75	563	2.00	4.62	11	37.14	1.16
American Indemnity/Fin'l	OTC	4.75	0.00	0.00	7.75	3.75	5	0.08	1.68	14	12.93	0.37
American International	NYS	96.38	0.39	-2.03	102.00	77.00	1610	0.48	0.50	13	45.34	2.13
Aon Corp.	NYS	42.63	3.02	7.57	42.75	29.75	438	1.60	3.75	12	18.50	2.30
Argonaut Group	OTC	26.50	6.00	11.58	33.38	21.75	55	0.68	2.57	8	48.26	0.55
AVEMCO Corp.	NYS	26.00	4.00	4.00	27.25	16.00	101	0.40	1.54	19	9.55	2.72
Baldwin & Lyons Inc.	OTC	26.00	4.00	0.97	27.50	19.00	3	0.28	1.08	8	24.29	1.07
Belvedere Corp.	ASE	3.63	-3.33	11.54	3.88	2.63	4	0.04	1.10	15	7.65	0.47
Chandler Insurance	OTC	4.38	2.94	34.62	4.75	2.13	45	0.00	0.00	-2	5.95	0.74
Chubb Corp.	NYS	72.75	1.04	-5.52	78.00	55.25	1127	1.48	2.03	11	35.19	2.07
CIGNA Corp.	NYS	59.75	0.00	-2.25	61.75	39.00	805	3.04	5.09	11	73.15	0.82
CNA Financial Corp.	NYS	97.00	-4.79	-1.02	104.50	73.50	107	0.00	0.00	14	70.23	1.38
Continental Corp.	NYS	27.50	-2.22	-0.45	30.63	23.25	784	2.60	9.45	12	37.83	0.73
EXEL Ltd.	NYS	37.13	-1.98	-1.00	40.25	27.38	376	3.60	9.70	8	N/A	N/A
Fund American Corp.	NYS	66.88	-3.08	-4.29	70.25	51.25	154	0.68	1.02	11	36.11	1.85
Fremont General Corp.	OTC	25.00	2.04	2.56	26.00	14.13	362	1.00	4.00	7	19.13	1.31
Frontier Insurance Group	NYS	28.50	6.05	5.56	28.88	16.03	131	0.00	0.00	11	11.20	2.54
Gainsco Inc.	ASE	13.75	-1.79	-1.79	14.63	4.75	31	0.04	0.29	17	3.37	4.08
General RE Corp.	NYS	98.88	0.25	-2.94	104.75	85.00	719	1.68	1.70	14	37.50	2.64
Guaranty National Corp.	NYS	16.50	7.32	13.79	16.50	12.63	286	0.00	0.00	13	N/A	N/A
Hanover Insurance Co.	OTC	36.50	-0.68	2.10	42.75	26.25	64	0.44	1.21	15	37.44	0.97
Harleysville Group	OTC	20.00	-6.98	-5.88	23.25	14.00	20	0.64	3.20	9	22.99	0.87
Hartford Steam Boiler	NYS	51.50	2.49	-10.43	63.75	46.13	130	2.00	3.88	14	17.05	3.02
Kemper Corp.	NYS	45.63	3.11	19.67	45.63	20.00	615	0.92	2.02	11	34.20	1.33
Lawrence Insurance Group	ASE	10.13	-2.41	-8.99	11.13	6.50	3	0.48	4.74	16	4.71	2.15
Liberty Corp.	NYS	22.63	-1.09	2.26	24.00	19.50	15	0.48	2.12	14	23.86	0.95
Lincoln National	NYS	59.63	3.02	8.90	59.63	39.88	689	2.92	4.90	11	45.16	1.32
Markel Corp.	OTC	21.75	4.82	-1.14	22.00	10.50	230	0.00	0.00	10	3.22	6.75
Mutual Risk Mgmt. Ltd.	NYS	36.50	1.39	3.91	36.50	17.00	866	0.20	0.55	31	-	-
NAC Re Corp.	OTC	30.75	-5.38	2.38	33.00	21.75	303	0.16	0.52	15	18.90	1.63
Navigators Group	OTC	42.50	7.59	3.66	42.50	22.50	33	0.00	0.00	23	13.52	3.14
Nobel Insurance LTD.	OTC	4.25	-15.00	6.25	5.25	2.75	19	0.00	0.00	6	7.76	0.55
NWNL Companies	NYS	34.50	-5.15	10.84	37.25	17.13	1060	1.40	4.06	9	42.73	0.81
Ohio Casualty Corp.	OTC	54.50	4.81	10.10	54.50	40.00	329	2.48	4.55	10	36.38	1.50
Old Republic Int'l	NYS	36.38	1.75	2.46	36.88	20.75	164	0.72	1.98	8	33.09	1.10
Orion Capital Corp.	NYS	33.75	4.25	6.72	33.75	18.13	93	0.92	2.73	9	20.42	1.65
Phoenix RE Corp.	OTC	11.00	15.79	4.76	11.25	7.63	157	0.20	1.82	16	13.30	0.83
Provident Life	OTC	23.75	1.06	2.15	24.50	14.38	153	1.00	4.21	8	25.88	0.92
Re Capital Corp.	ASE	14.88	3.48	3.48	18.63	13.00	17	0.20	1.34	12	15.05	0.99
Reliance Group Holdings	NYS	4.00	-3.03	-3.03	7.50	3.75	95	0.32	8.00	3	5.61	0.71
RLI Insurance Corp.	NYS	16.88	1.50	2.27	17.13	11.88	38	0.48	2.84	9	14.41	1.17
St. Paul Companies	NYS	70.88	-1.05	-2.74	75.25	57.13	290	2.60	3.67	8	52.00	1.36
SAFECO Corp.	OTC	45.75	-0.27	-6.15	50.00	32.13	399	1.48	3.23	11	31.50	1.45
SCOR U.S. Corp.	NYS	16.63	-0.75	8.13	16.75	11.63	33	0.24	1.44	10	11.19	1.49
Seibels Bruce Group	OTC	5.38	-4.44	-2.27	8.88	4.75	67	0.36	6.70	-77	7.35	0.73
Selective Ins. Group	OTC	18.75	15.38	11.94	18.75	13.00	164	1.04	5.55	9	18.91	0.99
Statesman Group Inc.	OTC	6.00	7.86	4.35	6.38	1.63	802	0.00	0.00	18	2.48	2.42
Tokio Marine & Fire	OTC	48.50	-3.48	-5.83	56.50	40.50	119	0.00	0.00	-	70.93	0.68
Torchmark Corp.	NYS	60.88	1.88	5.18	60.88	46.50	339	1.60	2.63	14	16.70	3.65
Transamerica	NYS	40.75	8.31	2.19	40.75	31.25	955	2.00	4.91	16	36.56	1.11
Transatlantic Holdings	NYS	38.63	-0.32	-0.64	39.63	25.75	25	0.24	0.62	13	18.38	2.10
Travelers Corp.	NYS	22.75	2.25	5.20	25.38	17.25	2070	1.60	7.03	6	41.44	0.55
Trenwick Group Inc.	OTC	30.00	0.84	5.26	30.50	22.00	232	0.72	2.40	11	21.71	1.38
United Fire & Casualty	OTC	46.50	-1.06	3.33	58.00	34.50	3	1.32	2.84	10	35.39	1.31
USF&G Corp.	NYS	8.13	0.00	12.07	12.50	5.63	1569	0.20	2.46	-1	11.96	0.68
UNUM Corp.	NYS	80.00	-0.16	-1.23	81.25	44.50	288	1.04	1.30	13	37.25	2.15
USLIFE Corp.	NYS	45.25	-2.95	-5.48	47.88	27.88	135	1.64	3.62	10	60.34	0.75
Unitrin	OTC	35.50	2.16	-0.70	41.50	31.00	744	1.00	2.82	14	30.70	1.16
Washington National	NYS	18.00	3.60	13.39	18.00	10.00	97	1.08	6.00	-8	26.86	0.67
USLICO Corp.	NYS	19.00	-2.56	2.70	21.00	16.00	122	1.00	5.26	-90	29.44	0.65
Zenith National Ins.	NYS	16.25	1.56	-3.70	18.50	12.25	31	1.00	6.15	135	13.14	1.24
INSURERS/REINSURERS	AVERAGE		1.1	2.8					3.3	11.0		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	16.50	4.76	15.79	29.75	9.88	2080	0.00	0.00	13	5.44	3.03
HMO America Inc.	OTC	19.00	-11.63	13.43	22.00	5.38	1697	0.00	0.00	20	0.61	31.15
Pacificare Health Sys.	OTC	40.25	-1.23	1.90	42.50	14.50	874	0.00	0.00	18	6.55	6.15
Safeguard Health Enter.	OTC	10.38	-1.19	10.67	10.63	4.25	175	0.00	0.00	24	3.53	2.94
Sierra Health Services	ASE	22.00	-8.33	18.92	29.50	12.38	774	0.00	0.00	11	1.78	12.36
United Healthcare Corp.	NYS	81.75	-1.36	9.73	85.75	23.75	1207	0.06	0.07	39	3.76	21.74
United Medical Corp.	ASE	7.75	-1.59	10.71	10.88	5.88	11	0.20	2.58	13	8.79	0.88
U.S. Healthcare	OTC	46.63	-1.84	12.35	50.25	16.50	5134	0.44	0.94	24	3.38	13.79
HMOs	AVERAGE		-2.8	11.7					0.4	20		
LL COMPANIES	AVERAGE		-0.2	3.8					2.8	11		

System design: Nordby International Inc.

Webster wasn't kidding

Daniel Webster said, "The past at least is secure." But we know the future is another matter.

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