

Captive tax plan criticized

JANUARY 22, 1996

# Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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## Updates

### U.K. jury acquits Maxwells and adviser of pension fraud

LONDON—Kevin and Ian Maxwell and adviser Larry Trachtenberg were found innocent Friday of defrauding employee pension funds of the media empire created by the late Robert Maxwell.

All three faced charges of defrauding Bishopsgate Investment Management Ltd., the company that managed the pension funds, of approximately £22 million (\$34.7 million) of shares it owned in an Israeli company, Teva Pharmaceutical Industries Ltd.

See Updates on next page

## Massive reinsurance program in place

### Nearly \$2 billion lined up for California earthquake facility

By DOUGLAS McLEOD

SAN FRANCISCO—The largest reinsurance placement in history is about to bring a proposed California earthquake insurance facility a step closer to reality.

A consortium of intermediaries is close to wrapping up a nearly \$2 billion reinsurance program for the California Earthquake Authority, a \$10.5 billion state-sponsored entity that would take over most homeowners earthquake exposures in the state.

Defying early doubts, the CEA by last week had already attracted more than \$1.5 billion in capacity, including commitments of \$100 million or more from several reinsurers (see chart).

The successful placement will fulfill one of three conditions set

by the state Legislature for the targeted April 1 start-up of the CEA. The facility's other conditions are securing participation of insurers representing at least 75% of the state's residential earthquake market, and gaining tax-exempt status from the Internal Revenue Service.

Observers expect the participation requirement will easily be met. California Insurance Department officials were still waiting last week for a ruling from the IRS, without which "the whole thing falls apart," a department spokesman said.

"We continue to have what I would term very positive conversations with them," said Greg Butler, deputy insurance commissioner. "They have been very responsive, if you can say that about

a government agency.

"I'm very confident that it's going to happen," Mr. Butler said.

Reinsurance brokers, meanwhile, expressed satisfaction and some surprise with the success of the placement of unprecedented scale.

"I thought that it was achievable but that there was a good chance it wouldn't happen," said John C. Graham, a San Francisco-based executive vp with E.W. Blanch Co., the lead intermediary on the program.

"Frankly, I didn't know capacity of that kind existed when we started this process."

"The reinsurance market has reacted very favorably to the fact that they would have all of their California personal lines earth-

See Quake on page 29

### Lead syndicate for proposed \$2 billion reinsurance layer



AP/WIDE WORLD

Reinsurer	Authorization (in millions)*
Partner Re	\$150
Centre Cat	100
AXA Re	100
Munich Re	100
Swiss Re	100
Mid Ocean	60
Renaissance Re	40
Lloyd's underwriters	27
<b>Total</b>	<b>\$677</b>

\*Assumes 100% insurance industry participation in California Earthquake Authority

## Exxon seeks more spill cover

### Oil giant reaches partial settlement with insurers

By DAVE LENCKUS

IRVING, Texas—Exxon Corp. still is seeking about \$1 billion from its cargo insurers to cover pollution and other damages stemming from the massive Exxon Valdez oil spill in Alaska—even after reaching a tentative \$300 million partial settlement with the underwriters.

The settlement for half of the policy limits, which the insurers are expected to accept by a Feb. 15 deadline, applies only to the portion of Exxon's manuscript global corporate excess policy that covers the Irving, Texas-based oil giant for physical damage to

See Exxon on page 30



AP/WIDE WORLD

Seven years after the Exxon Valdez oil spill, coverage litigation continues.

## Pooling resources for life

### Pool may write term life for members' workers

By JOANNE WOJCIK

SAN FRANCISCO—One of California's largest excess liability self-insurance pools may be adding a new line of coverage: life insurance.

The Schools Excess Liability Fund is exploring the feasibility of pooling the term life insurance of its 1,100 member school districts. The group is currently launching a study to investigate how much its members spend on term life coverage and how much could be saved by self-insuring.

If the program gets off the ground, SELF will be the first California fund—and one of only a handful of self-insurance pools throughout the country—to use its joint powers authority to pool life insurance benefits, said John C. Wilson, executive director of Sacramento, Calif.-based organization.

Generally, joint powers authorities—California public entities that by statute can pool the risks of their members—are used for liability and workers compensation coverage, he explained.

See Life on page 4

## Maine's Atchinson primed for NAIC challenge

By MEG FLETCHER

GARDINER, Maine—State insurance regulators are lucky that Maine Insurance Superintendent Brian Atchinson is used to facing challenges.

Whether it is reviving Maine's collapsing workers compensation market or facing a contested race for president of the National Assn. of Insurance Commissioners, Mr. Atchinson has demonstrated an ability to cope with problems that come his way.

The latest test emerged shortly after he was elected NAIC president in December.

Executive Vp David B. Simmons, the organization's top staff member, announced unexpectedly that he wanted new challenges after four years at the helm and tendered his resignation, effective March 15 (BI, Jan. 15).

"You always get thrown a few curveballs," said Mr. Atchinson, who turned 42 last week.

He then responded with his usual balanced approach.

While offering heartfelt praise to Mr. Simmons for his dedicated service, Mr. Atchinson and other officers were quickly working to isolate Mr. Simmons from regulatory policy matters, though Mr. Simmons is still handling management duties. That protects both a job-hunting Mr. Simmons and the NAIC from the appearance of impropriety.

It's "extremely important" to find the right person, Mr. Atchinson said. "The position is a very demanding one. A lot of people look to this person to carry a lot of water."

The NAIC will use "a very open and inclusive process" to find Mr. Simmons' replacement, including

a nationwide search, he said. Meanwhile, Washington Counsel Kevin Cronin will oversee regulatory issues and step in as acting executive director after Mr. Simmons leaves.

Mr. Atchinson followed NAIC tradition by moving up to the presidency after having served as vp. His main support came from reformist newcomers, who generally advocate openness and spending limits.

In campaigning, the Maine regulator emphasized his record of leadership as well as his ability to work with all sides on an issue and to forge consensus and mutual understanding.

Long-serving conservatives encouraged Robert Wilcox of Utah to challenge him, though a lack of support caused Mr. Wilcox to withdraw long before the final ballots were cast.

Mr. Atchinson's goals for his one-year term as NAIC president reflect his commitment to broad

regulatory concerns.

"Solvency will remain the chief

See Atchinson on page 26

'Solvency will remain regulators' chief focus, and the . . . accreditation program will remain our chief tool.'

Brian Atchinson



MEG FLETCHER

## Reserve boost may hurt Sphere Drake ratings

HAMILTON, Bermuda—The ratings of Sphere Drake Insurance (Bermuda) Ltd. and Sphere Drake P.L.C. of London may be downgraded following an announcement that the insurers will take a \$45 million fourth-quarter charge to strengthen reserves.

Sphere Drake Holdings Ltd., the parent of both companies, estimates it may post a net loss of up to \$50 million in the fourth quarter, due to the reserve strengthening and claims from Hurricane Marilyn, which struck the Caribbean last September. For the full year, the company expects a net loss of up to \$18 million.

The announcement follows the sudden departure of Ian Dean as president and chief executive officer of Sphere Drake last month (BI, Jan. 1). Mr. Dean, who resigned for "personal rea-

sons," was replaced by Michael Watson, formerly chief financial officer of Sphere Drake.

Mr. Dean's departure was followed shortly by the previously planned retirement of Jonathan J. Crawley as president of Sphere Drake Underwriting Management (Bermuda) Ltd. He was replaced by Bruce M. Jones, who had been senior vp (BI, Jan. 8).

Bold financial moves are common after management changes, noted David Anthony, an analyst at Standard & Poor's Corp. in London, which has placed Sphere Drake's BBB+ rating on CreditWatch with negative implications.

"We were a little surprised at the action, but new CEOs often do big housekeeping jobs when they come into the job," he said.

S&P will consult with Sphere Drake manage-

ment on why it is adding to what the S&P thought were adequate reserves, Mr. Anthony said. "But we have no reason to believe that there is any 'black hole,'" he added.

The reserve increase also led A.M. Best Co. to place its B++ rating under review with negative implications, said Selina Man, senior financial analyst in Oldwick, N.J.

"My concern is that it will affect their flexibility and their ability to raise additional capital if they need to in the next few years," she said.

However, the move was typical of Sphere Drake, Ms. Man said. "It is a company that stands out by always confronting bad news head-on so we never fear that they are hiding a much worse picture."

—By Gavin Souter

## Life

Continued from page 1

But life insurance is "fairly low risk by comparison," he said. With the actuarial tables now available, "it's probably the most predictable line of coverage."

"And there's no tail," pointed out Rollen Maski, senior vp of San Francisco-based Aaron Richardson Insurance Services Corp., one of two consultants working on the project.

SELF hired ARISCO and Menlo Park, Calif.-based Shepherd & Associates to conduct the feasibility study because of their experience in developing self-insurance programs, including the Southern California Physicians' Insurance Exchange and Program BETA, one of the nation's largest self-insurance pools in the health care field.

The first part of the project will include a survey to determine the scope of life insurance coverage SELF members currently provide to their 600,000 employees statewide. SELF members include public school districts, community colleges and the California State University campuses.

"We need to survey the school districts to see how much life cover they're buying and who's covered," explained Ronald W. Shepherd, president of Shepherd & Associates. "We need to assess the scope of the risk."

Based on preliminary estimates, "most of the schools don't provide a high degree of life insurance," Mr. Wilson said. "That's why this is a fairly low-risk" venture.

For example, most SELF member employees have less than \$50,000 in employer-paid term life insurance.

The consultants will also examine loss runs from SELF members' current term life insurers to develop rates and to determine reserves and the amount of aggregate excess coverage to buy, as well as to gauge appropriate administrative costs, Mr. Shepherd said.

Initially, a commercial life insurer will likely be contracted to provide the administrative services and excess coverage for the program. But the ultimate goal is to move to a totally self-funded and self-administered arrangement, he said.

"In designing the program, our objective is to minimize the overhead and expense loads associated with the commercial life insurance marketplace and tailor products to meet the particular needs of participating school districts," Mr. Shepherd said.

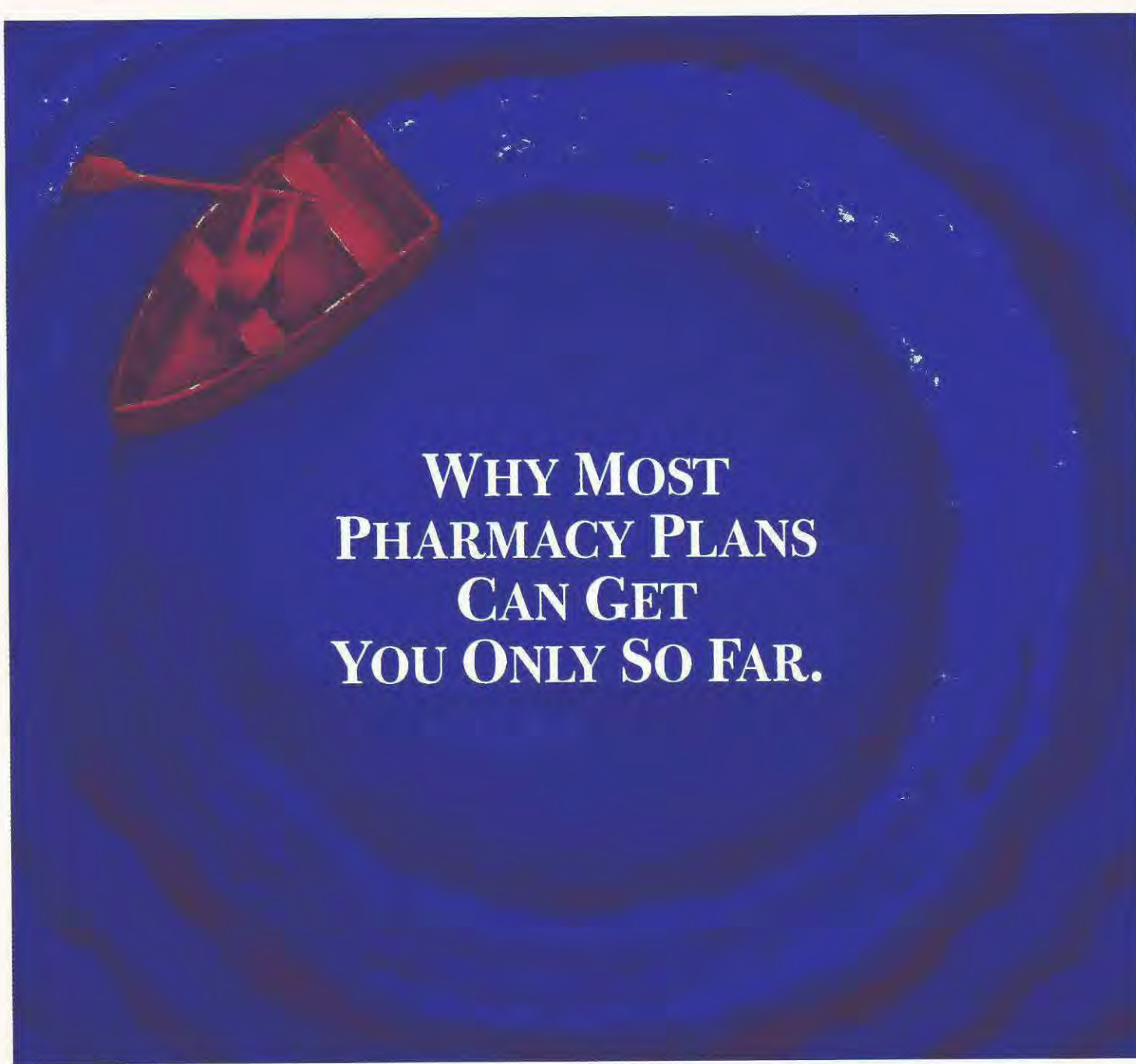
Other aspects of the feasibility study will look at possible tax consequences, Mr. Wilson said.

For example, current U.S. Treasury regulations leave in doubt whether group term life insurance must be fully insured to enjoy full tax advantages, according to the International Foundation of Employee Benefit Plans in Brookfield, Wis.

The SELF feasibility study is expected to conclude by April, but there is no deadline for a decision on when the program will start if its feasibility is determined.

"July 1 is the start of the government fiscal year, but I don't want the pressure of a deadline," said SELF's Mr. Wilson. "If we do it, we want to do it right."

SELF, established in 1986 to pool excess liability and workers compensation for participating California public educational agencies, is one of California's largest JPAs, with \$114 million in assets. **BI**



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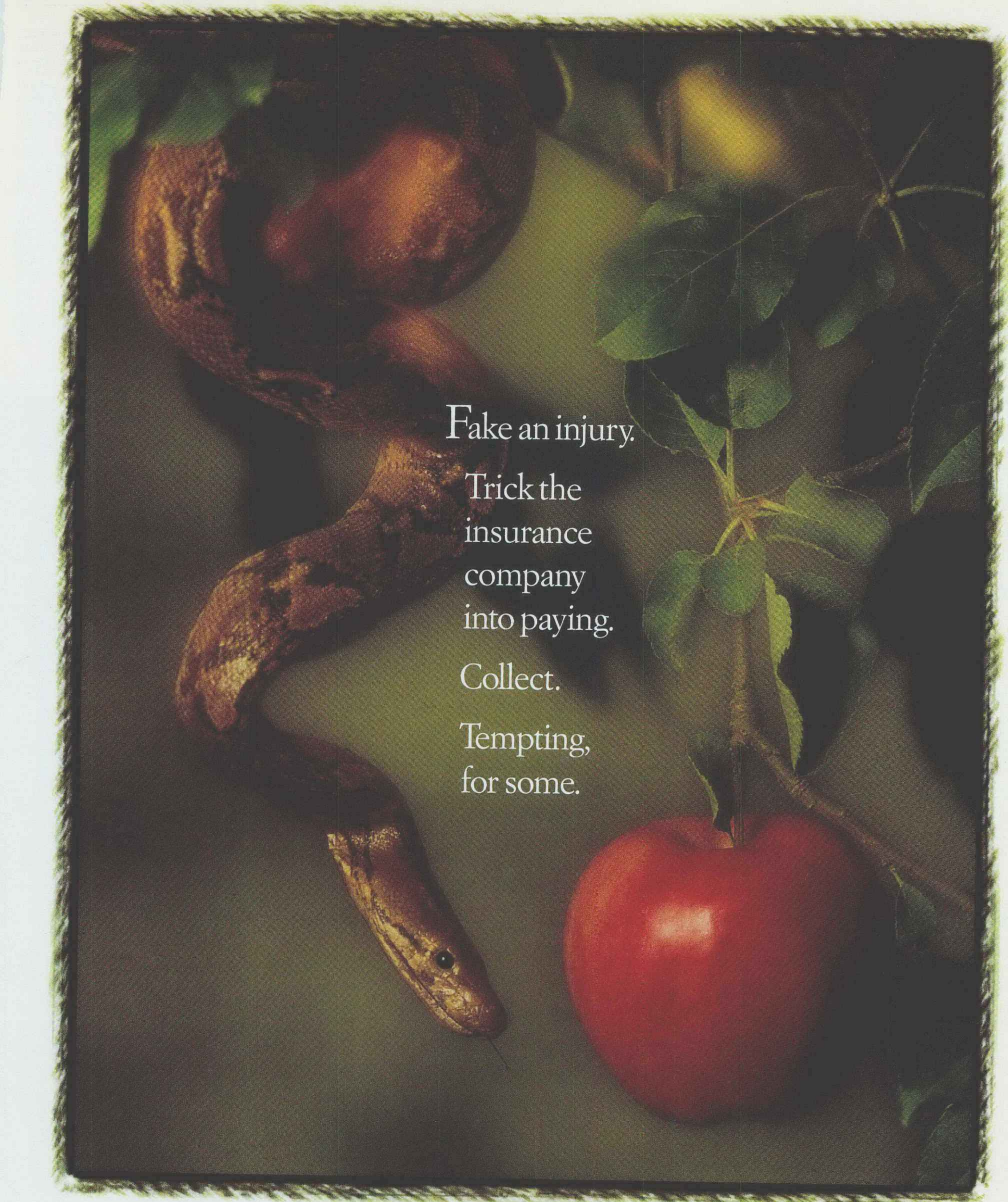
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# Health care credit card test marketed

DENVER—A non-profit health care cooperative this month is test marketing a credit card called "America's HealthCard" that can be used to charge medical expenses not covered by insurance.

JustCare, a Denver-based alliance of health care providers and consumers seeking to reduce health care costs and raise efficiency nationwide, has chosen Colorado as the test site for the card, which is being underwritten by Dial National Bank, a subsidiary of Norwest Financial Services of Des Moines, Iowa.

Although only a few hundred cards probably will be released initially, within a few months 20,000 to 30,000 are likely to be issued, said James A. Bryant, JustCare's vp of development.

In a few months, consumers in California, New Jersey and Texas are to be offered the card if the trial in Colorado rolls out as planned.

"It's sort of a managed growth scenario, to make sure we're successful here," Mr. Bryant said.

The card is usable at the 40 hospitals, 5,800 providers and 400 pharmacies in Colorado that participate in the JustCare network.

The card, which is independent of the major credit card associations, allows the health care recipient to pay for or charge any part of the expenses not reimbursed by health insurance, including coinsurance, deductibles and copayments.

It can be used only for medical-related expenses. For financed expenses, the interest rate is 1% per month, with an annual percentage rate of 12.96%.

A transaction fee of about 5% to 6% is added to the cost of each transaction to help defray the expenses of the cooperative, but this is more than offset by savings achieved by the group for its members through negotiated price discounts, Mr. Bryant said.

The card can also be used for routine identification when doing business with JustCare providers. It will inform them of the customer's credit status and plan eligibility. All transactions are reported on a single monthly statement to card holders.

—By Robert Kazel

## Refunds from MSAs

INDIANAPOLIS—Employees at Golden Rule Insurance Co. who are covered in the company's medical savings account program this month received \$823,022 in MSA refunds.

Golden Rule employees have received more than \$2 million in MSA refunds since the Indianapolis-based insurer, which writes personal and commercial lines coverages, launched its MSA program in May 1993.

Refunds in 1994 totaled \$734,037 and \$468,549 in 1993.

The average MSA refund was \$997 per employee in 1995, \$1,002 in 1994 and \$603 in 1993.

Under the MSA program, which more than 90% of eligible employees opt for, employees are responsible for paying the first \$2,000 of medical expenses for individual coverage and \$3,000 for family coverage. Golden Rule contributes \$1,000 to the MSA for those with individual coverage and \$2,000 to accounts for those with family coverage.

Employees can take the money out of the accounts during the year to pay for health care expenses. At the end of the year, employees are free to take in cash any remaining funds or roll them over into a special annuity.

Golden Rule Chairman J.

## Benefit Beat

Patrick Rooney says employees like the MSA program because it offers first-dollar coverage, the freedom to select their own health care provider and a chance to get their money back at the end of the year.

"With the MSA, the money is sitting right there in the employees' savings account for them to get medical care. Single mothers love this," Mr. Rooney said.

Golden Rule has been lobbying Congress to change tax laws so that employer contributions to MSAs would not be treated as taxable income to employees.

—By Jerry Geisel

## Savings education

Most employers could be better at educating workers about saving for retirement and how to invest in long-term savings plans, a new study by the Washington-based Employee Benefit Research Institute indicates.

According to the survey of 1,000 employees, three-quarters are confident about their financial futures in retirement but most have not developed specific plans for saving that will provide them with enough money in their later years.

Teaching workers about using

savings programs such as 401(k) plans can improve participation, the survey says. Eighty-five percent of those who had received educational materials or had been offered seminars by employers on retirement savings had read or attended them.

Employees may want to give special attention to educating workers with a high school diploma or less because 75% of those workers are likely to use the employer-provided information, compared to 89% among college graduates. Four out of 10 of those without college degrees said that when they did consult the educational materials provided, it resulted in them increasing their investment in the plan.

Often, employees surveyed had

shortcomings in their knowledge of basic savings plan investing strategy. Barely half of employees knew that U.S. government bonds in the past two decades have yielded a lower rate of return than stocks. Moreover, fewer than four out of 10 respondents said they know that it may not be "safer" to invest in employer stock rather than a diversified set of stocks.

One-quarter of those surveyed who said they were very confident or somewhat confident about their retirement incomes actually have yet to set aside any money for retirement. Workers earning less than \$25,000 a year are especially inclined to have no retirement savings.

Information on the EBR 1995 Retirement Confidence Survey is available from EBRI, 2121 K St. N.W., Suite 600, Washington, D.C. 20037-1896; 202-659-0670.

—By Robert Kazel

It's terrific on salads,  
great on pasta,  
and makes one heck  
of a fire.



# WCRB

Continued from page 2

and severity of claims that must be used by an insurer to calculate the employer's premium.

Some employers would have been helped and some would have been hurt by the fundamental change in experience modification.

For example, an employer with high frequency of claims under the proposed system could have to pay more in premium than an employer with fewer but more severe claims.

"Reserves for years have been a big issue," Mr. Bellusci said. "A lot of employers just don't like the fact that their reserve amounts are going in, and sometimes claims settle for less than the reserves and it is still being counted against (the employers). So this is

trying to address that. And in recent months, there has been quite a bit of litigation on this issue, too."

Among the noteworthy court cases is one in which a Los Angeles jury last fall ordered the State Compensation Insurance Fund to pay \$20.3 million to Joe Notrica Inc.

The jury found that the workers comp fund acted in bad faith and the Superior Court judge prohibited the fund from reserving claims for their "maximum probable potential" and instead ordered SCIF to return to its prior standard of reserving an amount the insurer reasonably expects to pay (BI, Sept. 4, 1995).

SCIF, which in September called the ruling a "miscarriage of justice," is appealing the decision and is one of the insurance companies that supported the WCRB's proposal.

The WCRB began developing its proposal long before the jury's decision in the Notrica case.

"At State Fund, we are in favor of it predominantly because it does address the larger issue of employer lawsuits over claims reserves," said Frank Floyd, communications and education center director for the San Francisco-based insurer.

"It's not the best solution, but it's one solution."

Insurers opposed to the plan have legitimate concerns, Mr. Floyd said.

For example, the American Insurance Assn. said the plan is flawed because it would not account for claim costs and would thus reduce employer incentive to provide a safe workplace.

Employers have been critical of insurer reserving practices and explanations of how the reserves are set, said Charles Bader, execu-

tive director of the Californians for Compensation Reform, a business group in Sacramento. But, in pitching its proposal to employer groups, the WCRB was not clear on how it would solve problems.

Additionally, "open rating kind of makes ex mods almost a passe issue," Mr. Bader said.

The advent of open rating brought rates tumbling down as insurers have fought for market share in the state. As rates dive, some employers have become apathetic about issues such as loss reserves.

The WCRB was itself divided on its proposal, according to observers. The organization's governing board split 5-4 on whether to pursue it.

The WCRB is a non-profit agency and licensee of the insurance commissioner, with governing board members who represent labor, employers and insurers. **BI**

# Hopes alive on product liability

## House, Senate accord predicted

By MARK A. HOFMANN

WASHINGTON—Of the risk management-related legislation now before Congress, a federal product liability bill has the best prospects, said a pair of insurer lobbyists.

"It's possible within the next month that the product liability bill could come out of the conference committee," Tom O'Day, associate vp-federal affairs at the Alliance of American Insurers in Washington, said during a briefing last week.

House and Senate conferees late last year began trying to resolve differences between a Senate measure limited to product liability and a House bill that would make significant changes to the entire civil justice system.

Mr. O'Day predicts the committee will report out a measure that looks much like the Senate bill—S. 565. But the compromise legislation will contain a few "bells and whistles" from the broader House bill, he said.

President Clinton has said he would not support the House bill, but may accept the more moderate bipartisan Senate bill. Mr. O'Day warned, however, that the president continued to say that he would sign a mild securities litigation reform bill almost until the measure reached his desk, and then vetoed it. Congress reacted by overriding a Clinton veto for the first time.

House supporters of the product liability legislation probably have enough votes to override a veto of H.R. 956, but the outlook in the Senate is far less certain, he said.

Besides product liability legislation, both a Superfund bill and legislation to create a natural disaster insurance fund have a chance of success in Congress, said David M. Farmer, the Alliance's senior vp-federal affairs.

"The next 90 days are critical" to the Superfund measure, he said.

It is still unclear just what shape the legislation finally will take. Both the House and the Senate are "still grinding" away at legislation and looking at how to handle the liability for old pollution where more than one party contributed. For example, senators continue to believe that acts committed after Superfund's 1980 enactment should not be the beneficiaries of whatever kind of retroactive liability reform is passed, while the House leaders continue to look at a 1987 cutoff, he said.

"We're hoping we're going to get a bill this year, but as you can see, there are a lot of variables," he said.

"We'd prefer to see things go forward on a bipartisan basis," said Mr. Farmer. The "go-it-alone" approach taken by the GOP leadership on some issues has not always worked, he said.

Mr. Farmer said that the House Commerce Committee may hold a hearing on the impact of environmental liabilities on insurer solvency. A spokesman for the committee said that no such hearing had been scheduled yet. **BI**

At Allendale Insurance, we believe that most property loss can be prevented. But that means asking some very tough questions, and looking for risk in some unlike-

ly places. For example, take vegetable oil in plastic bottles. Conventional wisdom has been that warehousing this very high flashpoint liquid presented no more of a hazard than storing ordinary combustibles.

Yet tests conducted through our ownership of Factory Mutual Research revealed that even sprinkler systems arranged for high hazard commodities could not control fires

of this type. Further tests revealed that this was no ordinary combustible. Once heated by the fire in their cardboard packaging, the plastic bottles leaked and the preheated vegetable oil burned with the intensity of a flammable liquid. And once the fire spread from the cardboard to the



liquid, the fire was uncontrollable.

This led to the development of a strategy aimed at replacing conventional in-rack sprinklers with the quick response model, and spacing

them closer together. As a result the fire is suppressed in its earliest stages when it's limited to the cardboard. This solution is easy to implement and uses the sprinkler piping and water supplies normally in place in grocery warehouses. Plus, it

doesn't interfere with normal warehouse materials handling.

The truth is, this is but one

example of how we never stop look-

ing at commodities and the hazards they pose. In fact, for over a century and a half, we've never stopped asking the kind of difficult questions that lead to the cost-effective solutions our clients need to minimize risk. Even if that means looking in places as surprising as, yes, a salad.



# Opinions

## Airing complaint with court

THE U.S. SUPREME COURT last week missed an opportunity to bring a little more sense into the U.S. tort system when it declined to review a New Hampshire case involving air bags.

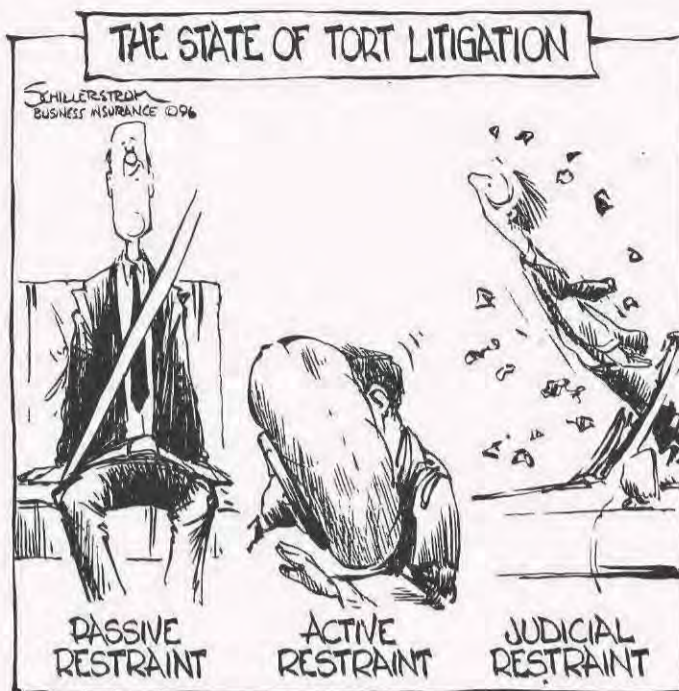
The case, *Ford Motor Co. vs. Tebbetts*, focuses on a lack of air bags in a 1988 Ford Escort and whether a product liability suit should be allowed to go forward in New Hampshire courts even though the federal government did not require that cars have driver's side air bags until 1990. Instead, the Escort had a motorized automatic shoulder belt and a manual lap belt, safety options that met federal standards when the Escort rolled off the assembly line.

It seems like common sense that a manufacturer should be able to protect itself against product liability exposures by complying with a federal safety standard.

But that isn't what happened to Ford Motor Co. after a young woman died in a single-car accident while driving her 1988 Escort. Her mother sought a damages trial, alleging that, under state law, a car without air bags was unsafe. Ford argued that the case should be dismissed because federal car safety laws pre-empt state common law and its car met the federal standards at the time of manufacture.

A lower court agreed, but the New Hampshire Supreme Court overruled the lower court. While not addressing the issue of safety, New Hampshire's highest court ruled unanimously that the trial should proceed (*BI*, Sept. 25, 1995). Ford appealed, but the U.S. Supreme Court declined without comment to hear the case.

What's particularly troubling about the court's inaction is that the Ford case is not unique. Only a few weeks ago, the Indiana Supreme Court allowed a similar case against General Motors Corp. to go forward. The case involves a truck made in 1986, four years before air bags



became mandatory (*BI*, Jan. 15).

There isn't a question that Ford complied with federal recommendations; it did. That the automaker still should face a product liability claim for complying with those regulations smacks of Franz Kafka. And to allow even one case to go forward in which a manufacturer faces a legal liability because it did what the federal government encouraged it to do is to open the litigation floodgates, which will work to virtually no one's benefit.

It is inevitable that the justices will get another chance to deal with the question raised in the Ford case. We can only hope they don't throw away the next chance to restore sanity to this corner of liability law.

## Letters

### More to Louisiana legislation than meets the eye

To the editor: In a Dec. 18, 1995, editorial, "Louisiana Putting RRGs at Risk," your publication took to task legislation enacted during the 1995 session of the Louisiana Legislature and licensing procedures of the Louisiana Department of Insurance.

It is important that your readers are made aware of certain facts relating to the licensing of risk retention groups in Louisiana in order that they understand the procedures involved. In your article, you refer to "an unusual application procedure." This statement is misleading.

Risk retention groups are required to complete and file with this department the same application as any other foreign or alien insurer seeking to do business in the state of Louisiana.

Applications for foreign and alien insurers are accepted from March 1 to Sept. 30 of each year.

The information required to be filed

with this department by insurers and risk retention groups seeking admission to this state is what would be expected of any prudent regulatory oversight and is necessary to protect the citizens of this state.

In your article, you further state that "risk retention groups have been a great success."

When I assumed office in November 1991, a Louisiana-domiciled risk retention group which issued medical malpractice policies was in receivership. At this time, we do not know what the final cost of the insolvency will be. However, in human terms it has been staggering. Claimants have been unable to recover for losses they suffered, and policyholders were left without adequate protection.

Since 1991, at least eight risk retention groups have been declared insolvent. Risk retention groups are prohibited from belonging to guaranty funds.

Claimants and policyholders are exposed to significant losses in the event of insolvency.

Your commentary fails to point out the inherent danger in allowing a newly formed insurance entity to operate in 50 states simply by filing a financial report with the respective regulator.

Furthermore, it is not practical to expect that a domiciliary regulator can monitor the activities of a risk retention group in each state in which it does business.

It is incumbent upon insurance regulators to know what entities are doing business in their state and what type of coverage the entity is issuing. The purpose of the Louisiana licensing process is to confirm and provide a record of this information.

**James H. Brown**  
Commissioner of Insurance  
State of Louisiana  
Baton Rouge, La.

### Gridlock or issue of principle?

To the editor: Regarding your Jan. 8 editorial, "Congress Can Stop Gridlock," it is not compromise vs. gridlock that we face. Rather it is compromise vs. principles.

It is "compromise" and end up with business as usual, or stick to principles and really reduce the size of the federal government before it is too late for our children.

Congress, keep up the good work. I'm proud of those of you who have decided to do the right thing—regardless of the polls.

**Walter R. Curtner**  
President

Curtner Risk Management Inc.  
Denver

### Bravo to Hunter's CIGNA critique

To the editor: I don't agree with Bob Hunter too often, but this time I most emphatically do.

Of course, I am referring to his masterful Jan. 8 criticism of the CIGNA Corp. restructuring plan: "CIGNA's Restructuring Plan Signals Trouble."

He told it like it should be told, and there is nothing I could add. Except "Bravo."

**Alfred J. Jaffe**  
Somers, N.Y.

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## Hospitals

Continued from page 2  
hospitals that band together and form these trusts could not—the judicial branch cannot undo the “imperfect” work of legislators, the appeals court said.

The ruling is a blow to the trust funds organized by several dozen Florida hospitals. With the trust funds considered taxable entities, that will mean that income earned by the trusts will be taxable.

Nationally, though, the impact will be only minor.

For example, the ruling would have no effect on the hundreds of tax-exempt pools organized by public entities to cover their property/casualty risks. Section 115 of the Tax Code gives favorable treatment to public entity pools, noted Tom Jones, a partner with the law firm of McDermott, Will & Emery in Chicago.

Pools formally organized as reciprocals by tax-exempt organizations also receive favorable treatment under Section 832(f) of the Tax Code, he said.

The appeals court ruling involves three Florida trust funds:

- The 23-member Florida Hospital Trust Fund, which provides coverage of up to \$250,000 per claim with an annual aggregate limit of \$1 million.

- The Florida Hospital Excess Trust Fund, which has 26 members that provide up to \$10 million of coverage with a minimum retention of \$250,000 per claim and an annual aggregate retention of \$1 million.

- The 31-member Florida Hospital Workers' Compensation Fund, which was established to cover workers comp claims.

The trust funds receive payments from members based on actuarial projections. Those payments are adjusted later, resulting in other assessments or a refund or credit to reflect the funds' actual experience.

In 1990, the funds applied to the Internal Revenue Service as tax-exempt hospital service organizations. In 1992, the IRS denied the requests, saying the trust funds' activities were not covered by the list of exempt activities of tax-exempt hospital service organizations.

In appealing to the Tax Court, the trust funds argued that when Congress in 1988 expanded the list of activities allowed by tax-exempt hospital service organizations to cover the purchase of insurance, legislators effectively were interchanging the words “acquisition” or “providing” with the word “purchasing.”

The trusts said the 1988 law broadens the scope of insurance activities that hospital service organizations could engage in and still retain their tax-exempt status.

The trusts argued that the 1988 law should be considered amid the backdrop of the 1980s, when insurance for hospitals was in a state of crisis “with no known method of acquiring primary or professional liability insurance.”

The court disagreed, though, and declined to view “purchasing” and “providing” as interchangeable.

The meaning of the term “purchase of insurance on a group basis” denotes a commercial transaction in which a cooperative hospital service organization negotiates and executes the purchase of insurance for its membership as a group,” the Tax Court said, adding that the trusts had taken on the role of insurers.

The 11th Circuit said it empathized with the trust funds, noting that no commercial insurer even wanted the smaller hospitals' business in the late 1980s. “By definition, therefore, there can be no overriding anti-competitive concerns about the trust funds' operation in the insurance marketplace as tax-exempt entity, enjoying an unfair advantage vis-a-vis their for-profit competitors,” the court said.

Nonetheless, the Tax Court's interpretation of the 1988 law was correct, the appeals court ruled.

“From a statutory construction standpoint, however, it is clear that included in (the Tax Code's) list of exempt activities is the ‘purchase of insurance on a group basis’ and omitted from this list is the ‘providing of insurance’” the court said.

“While we recognize the apparent need expressed in the position of the trust funds, we find the law, as written, does not grant them tax-exempt status. It is not the role or power of the judiciary to remedy a legislative statute by opinion,” the court said.

Attorneys for the trust funds did not return calls for comment.

*Florida Hospital Trust Fund et al. vs. Commissioner of Internal Revenue, 11th U.S. Circuit Court of Appeals, No. 94-3377.*

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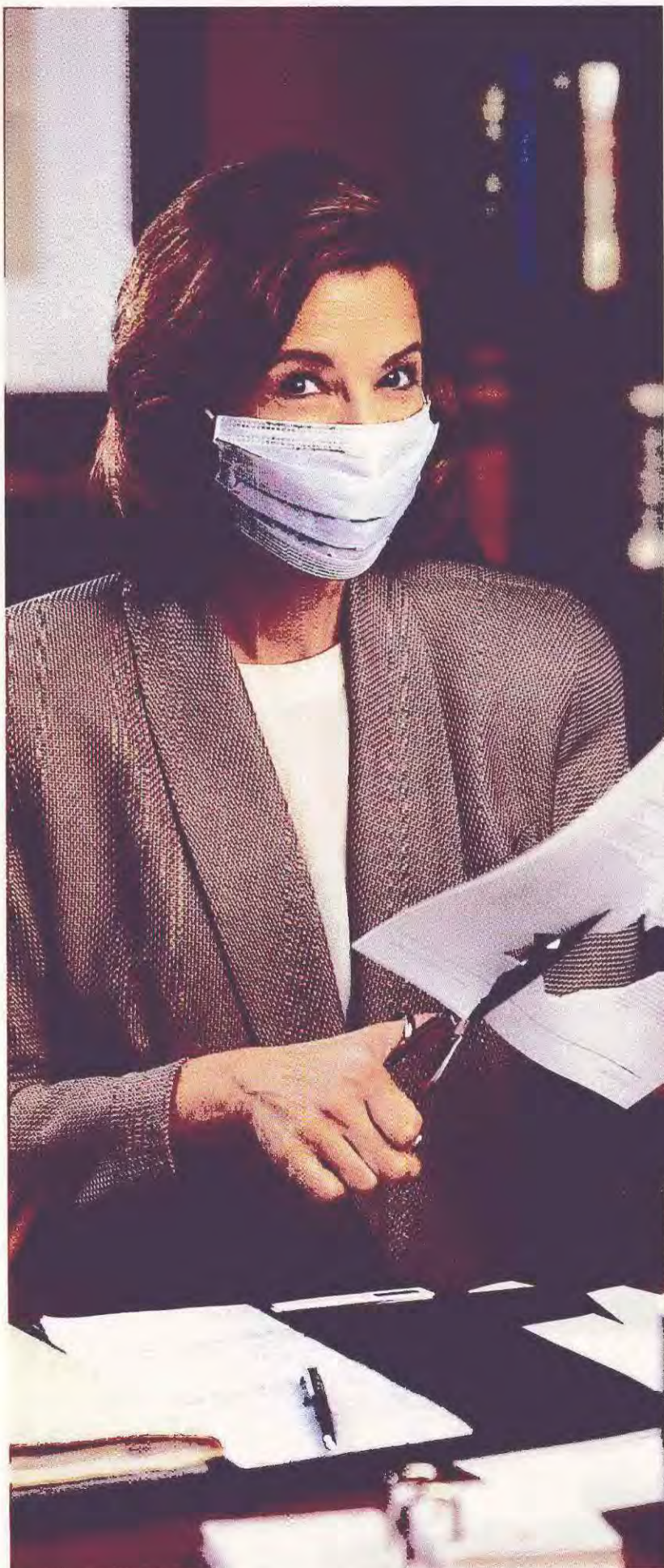
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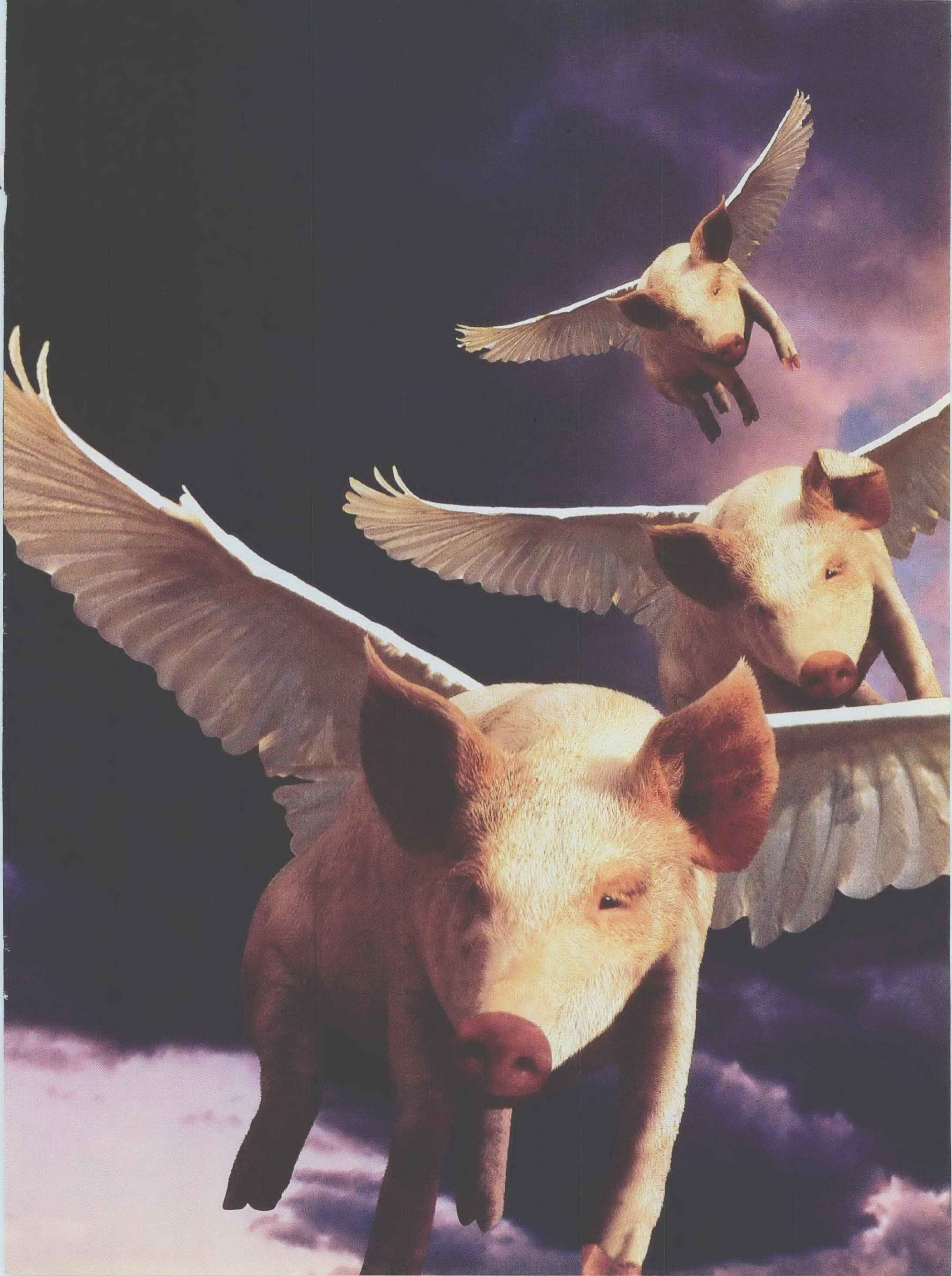
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Continued from previous page

■ Fact sheets provided by Meadowbrook Insurance Group Inc. discuss the **formation, management and benefit of captives**. Request item 304.

■ A comprehensive overview of **Vermont's captive insurance industry** is provided in an information packet. Request item 305.

■ Marsh & McLennan Cos. Inc. details the **role of captives** in a semi-annual newsletter. Request item 306.

■ A guide from Northern States Management Inc. describes the **necessary procedures for setting up a captive**. Request item 307.

#### COMMERCIAL PROPERTY/CASUALTY INSURANCE

■ Executive Risk Management Associates provides a summary of its findings from a survey conducted on **directors and officers liability** and D&O insurance. Request item 401.

■ Great American Insurance Cos. provides two brochures describing different types of **directors and officers** insurance coverage, including a middle-market program. Request item 402.

■ A chart with a financial analysis of the **surplus lines industry** is offered by the Illinois Insurance Exchange. Request item 404.

■ Hinshaw & Culbertson offers an essay addressing the extent to which an insurance broker will be treated as the agent of the insurer under **Illinois law**. Request item 405.

■ A brochure that explains the **directors and officers claims-handling process** is provided by Executive Risk Management Associates. Request item 406.

■ **Snow removal insurance** for corporations and public entities is detailed in a paper from Worldwide Weather. Request item 407.

■ Smith, Bell & Thompson Inc. presents a newsletter focusing on major areas of **liability for health care providers**. Request item 408.

■ Baldwin Sadler Corp. provides an information kit explaining various **commercial auto liability product lines**. Request item 410.

■ An article reprint discussing **directors and officers claims handling** for community banks is offered by Executive Risk Management Associates. Request item 411.

■ An Insurance Information Technologies Inc. paper traces the forces that have altered the **P/C marketplace**. Request item 412.

■ **Key issues and trends** affecting the P/C industry are discussed in a newsletter provided by Swiss Re America. Request item 413.

■ Hinshaw & Culbertson presents an article explaining the **obligations and legal liability** of an insurance agent or broker. Request item 414.

■ The American Institute for CPCU and the Insurance Institute of America supply a catalog of **property/casualty insurance courses and programs**. Request item 415.

■ Executive Risk Management Associates provides an article describing non-profit organizations' need for **comprehensive directors and of-**

**icers coverage**. Request item 416.

■ A Worldwide Weather paper explains different **contingency coverages** like prize indemnity, event cancellation and non-appearance. Request item 417.

■ CIGNA Property & Casualty Co./Baldwin Sadler Corp. provides information on a new commercial and personal services **professional liability facility**. Request item 418.

■ An introductory brochure to the **exposures faced by non-profit organizations** is offered by Executive Risk Management Associates. See Resource on page 18.

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.

The listings are published as an editorial service by *Business Insurance*; there is no charge to list materials in the section.

The materials, all of which may be obtained free of charge to *Business Insurance* readers, are organized under 17 headings.

Employee Benefit Information Resource listings appeared in the Jan. 1 issue of *Business Insurance*.

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| D <input type="checkbox"/> Government       | I <input type="checkbox"/> Actry/Conslt | Inst                                   |
| E <input type="checkbox"/> Educational Inst | J <input type="checkbox"/> Attorney     | N <input type="checkbox"/> Other       |

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# Resource

Continued from page 15  
Risk Management Associates. Request item 419.

■ The Illinois Insurance Exchange offers a **directory of syndicate profiles**, including preferred terms and conditions. Request item 420.

■ Tri-Arc Financial Services Inc. presents a paper with **coverages available for long-term auto leasing**. Request item 421.

■ **Insurance and loss control solutions** for members of the construction industry are described in an article by ECS Underwriting Inc. Request item 422.

■ Executive Risk Management

Associates provides a brochure examining a Harris poll on the risks faced by directors and officers. Request item 423.

■ An article that explores **errors and omissions insurance** coverages for real estate professionals is offered by Executive Risk Management Associates. Request item 424.

■ ECS Underwriting Inc. offers a fact sheet on **loss control solutions** for environmental service companies. Request item 425.

■ A state-by-state analysis on the **insurability of punitive damages** in the United States is available from Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 426.

■ **Reliance National Insurance Co.'s** products and programs are detailed in a comprehensive directory. Request item 427.

■ A fact sheet on **environmental exposures for industrial and commercial facilities** is offered by ECS Underwriting Inc. Request item 428.

■ Eagle International Associates offers a **directory of adjusters, attorneys and claims-related services** by state and country. Request item 429.

■ A fact sheet and packet on **home sellers insurance** for real estate agencies is offered by NAS Insurance Services Inc. Request item 430.

■ The Duncanson & Holt Group offers a book describing an approach to **underwriting individual long-term care insurance**. Request item 431.

■ An informational sheet describing casualty insurance for **hazardous waste and materials transporters** is offered by ECS Underwriting Inc. Request item 433.

■ NAS Insurance Services Inc. offers a packet of information on **tenant discrimination legal expense reimbursement insurance**. Request item 435.

■ ECS Underwriting Inc. provides a fact sheet on **pollution and remediation legal liability**. Request item 436.

■ A book analyzing the **unfair claims settlement practices prohibitions** is offered by Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 437.

■ NAS Insurance Services Inc. offers an information packet on **employment practices liability insurance** for wrongful discharge, discrimination and sexual harassment claims. Request item 438.

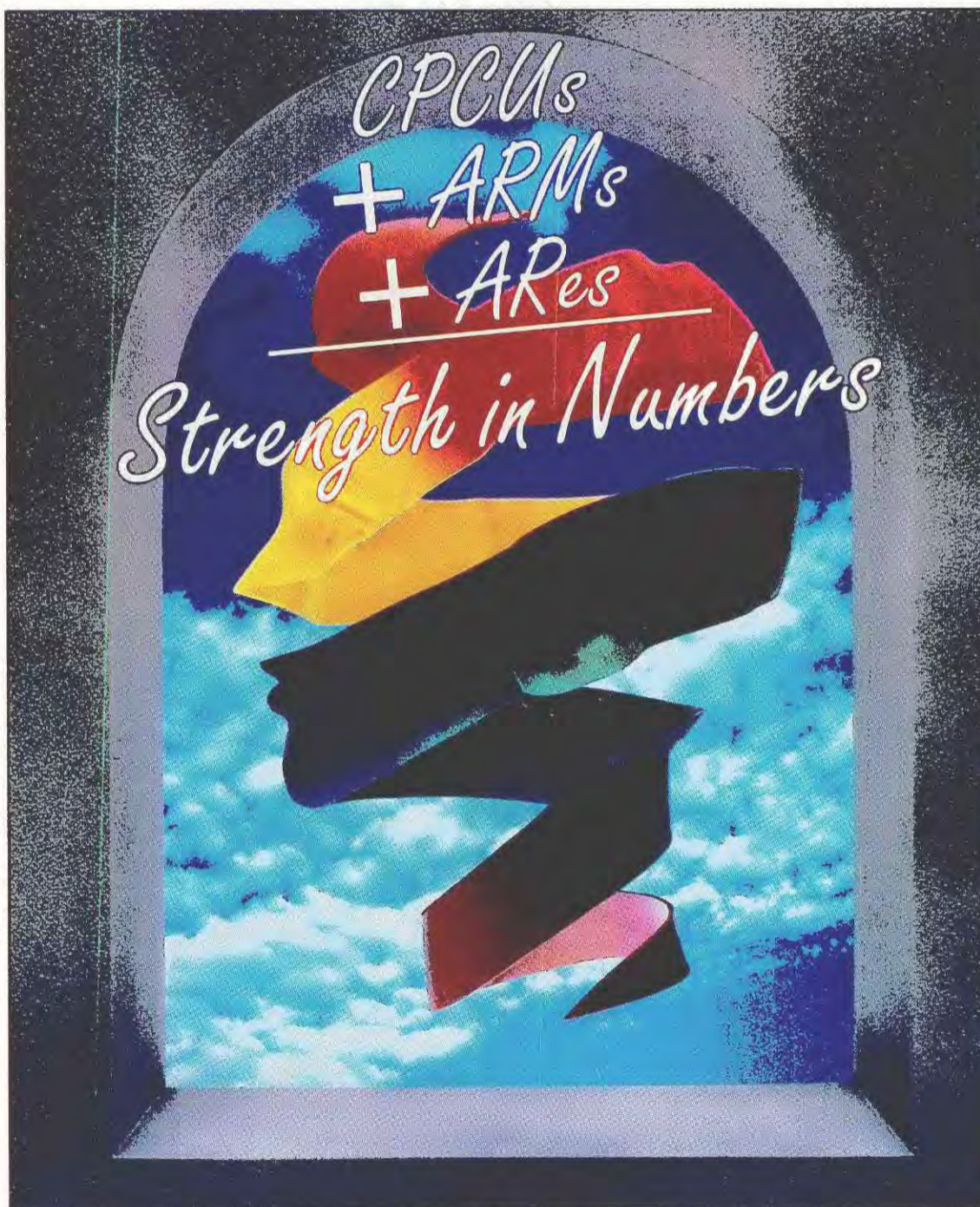
■ An assessment for using **wrap-up programs** to insure major construction projects is available in a booklet offered by CI-GNA Corp. Request item 439.

### FIDELITY AND SURETY

■ A survey of **fidelity law and crime coverage** is offered by Clausen Miller. Request item 701.

■ The American Institute for CPCU and the Insurance Institute of America offer a flier describing an **Associate in Fidelity and Surety Bonding** program. Request item 702.

Continued on next page



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Continued from previous page

## FINANCIAL SERVICES

■ The American Institute for CPCU and the Insurance Institute of America offer a flier explaining the Associate in Insurance Accounting and Finance program. Request item 801.

■ A newsletter from Price Waterhouse L.L.P. spotlights accounting and auditing topics such as generally accepted accounting principles for mutuals and risk-based capital disclosures. Request item 803.

■ A software product and performance measurement module for asset management, reporting and accounting is described in two booklets available from Securities Software & Consulting Inc. Request item 805.

■ The valuation and appraisal services of Kemper National Insurance Cos. are listed in a brochure. Request item 806.

## INTERNATIONAL

■ The Winter 1995 issue of a Rollins Hudig Hall Co. newsletter provides a synopsis of market developments in Germany, Switzerland and Mexico. Request item 901.

■ Recent events and opportunities in the international marketplace are summarized in a newsletter that is provided by GLOBEX International Inc. Request item 902.

■ Aon Management Institute offers a flier detailing workers compensation insurance coverage for employees that are traveling outside the United States. Request item 903.

■ Rollins Hudig Hall Co. examines political risk, export credit, trade disruption insurance and executive protection insurance in its Spring 1995 newsletter. Request item 905.

■ Actuarial, risk management and claims consulting services for international clients are described in an information kit from Coopers & Lybrand L.L.P. Request item 906.

## LOSS CONTROL/PEOPLE

■ Tips on air sampling and analysis for indoor environmental quality investigations are outlined in a manual from Kemper National Insurance Cos. Request item 1001.

■ Crisis Management International Inc. supplies a manual with strategies for preventing workplace violence. Request item 1002.

■ A drug-free workplace program is summarized in a brochure presented by Gallagher Bassett Services Inc. Request item 1003.

■ A flier prepared by Commonwealth Risk Services Inc. stresses ways to increase profits through the establishment of risk control and safety mechanisms. Request item 1004.

■ Kemper National Insurance Cos. offers a catalog that describes various loss control courses in areas such as highly protected risk, industrial hygiene and occupational health. Request item 1005.

■ A buying group for drug and alcohol testing for commercial

drivers is described in a pamphlet from Gallagher Bassett Services Inc. Request item 1006.

■ Practical solutions to indoor air quality problems are listed in a brochure from Kemper National Insurance Cos. Request item 1009.

■ Several techniques for an accident reduction program are outlined in a paper from The Reliability Group. Request item 1010.

■ Guidelines for preventing back injury are summarized in a pamphlet supplied by RISCORP. Request item 1012.

■ A paper presented by SIGMA Actuarial Consulting Group Inc. provides a benchmark to track improvement in loss experience due to an effective loss control program. Request item 1013.

## LOSS CONTROL/PROPERTY

■ Industrial Risk Insurers offers a newsletter addressing new loss prevention challenges facing retail stores. Request item 1101.

■ A state by state review of environmental coverage case law is presented in a book from American Re-Insurance Co. Request item 1102.

■ An Associate in Loss Control Management program is described in a flier provided by the American Institute for CPCU and the Insurance Institute of America. Request item 1103.

■ An article from Industrial Risk Insurers explains how the proper care of paper mills can help avoid large losses. Request item 1104.

■ InPhoto Surveillance supplies a pamphlet outlining covert surveillance in the workplace. Request item 1105.

■ A pocket guide for loss prevention is provided by Industrial Risk Insurers. Request item 1106.

■ Recent developments in the area of environmental law are reviewed in a newsletter from Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 1107.

■ ESIS supplies an informational packet summarizing its loss control services. Request item 1108.

■ An article presented by Industrial Risk Insurers outlines a new criteria for protecting rolling mills. Request item 1109.

■ Industrial Risk Insurers offers an article that reviews losses associated with metal-deck roof construction. Request item 1110.

## MARINE

■ Ocean marine coverages and programs are explained in a brochure offered by Reliance National Insurance Co. Request item 1202.

■ CIGNA Recreational Marine provides a videocassette in English that highlights the potential dangers of overseas shipping. Request item 1203.

■ CIGNA Recreational Marine provides a videocassette in Spanish that highlights the potential dangers of overseas shipping. Request item 1204.

■ CIGNA Recreational Marine provides a videocassette in French that highlights the potential dan-

gers of overseas shipping. Request item 1205.

■ CIGNA Recreational Marine provides a videocassette in Mandarin Chinese that highlights the potential dangers of overseas shipping. Request item 1206.

■ The American Institute for CPCU and the Insurance Institute of America supply a fact sheet describing an Associate in Marine Insurance Management program. Request item 1207.

■ CIGNA Corp. presents an information card on how to prevent container cargo theft. Request item 1210.

■ A comprehensive booklet on ocean cargo insurance is available from CIGNA Corp. Request item 1211.

■ CIGNA Corp. provides a guide on how to properly insure overseas cargo. Request item 1213.

■ Descriptions of the world's major ports are detailed in a cargo loss control book from CIGNA Corp. Request item 1214.

## REINSURANCE

■ A report from Guy Carpenter & Co. Inc. provides a global analysis of reinsurance markets. Request item 1301.

■ NAC Reinsurance Corp. offers a liability bulletin covering topics of interest to the reinsurance industry. Request item 1302.

■ A glossary of reinsurance terms is available from Gill & Roeser Inc. Request item 1303.

■ A quarterly newsletter presented by Mount, Cotton & Wollan discusses recent cases representative of legal trends in reinsurance. Request item 1304.

■ American Re-Insurance Co. supplies booklet describing post-judgment interest, prejudgment interest and punitive damages as applied by the various states. Request item 1305.

■ An Associate in Reinsurance program is outlined in a flier provided by the American Institute for CPCU and the Insurance Institute of America. Request item 1306.

■ Catastrophe exposures and the capital market are reviewed in a report from Guy Carpenter & Co. Inc. Request item 1307.

■ NAC Reinsurance Corp. offers a flier with information about major legal and regulatory developments affecting the reinsurance industry. Request item 1308.

■ A brochure outlines the reinsurance services of Kernan Associates Inc. Request item 1310.

## RISK MANAGEMENT

■ A risk management newsletter for the security and investigation industry is offered by Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 1401.

■ Risk Sciences Group presents an overview of retrospective rating plans and their impact on the construction industry. Request item 1403.

■ A brochure from Executive Risk Management Associates describes why small private organi-

zations need directors and officers liability insurance. Request item 1404.

■ A brochure from Protective Risk Management Services Inc. details the D&O protection available to cover securities litigation risks. Request item 1405.

■ Marsh & McLennan Cos. Inc. offers a quarterly journal focusing on civil justice reform in the United States and its impact on liability and securities litigation. Request item 1406.

■ A checklist for negotiating letters of credit and security requirements is provided by SIGMA Actuarial Consulting Group Inc. Request item 1407.

■ A guide on planning for business continuity after a disaster is available from Strohl Systems. Request item 1408.

■ Eagle International Associates Inc. provides several papers discussing liability defense issues. Request item 1409.

■ Recent developments in accountants liability law are explained in a newsletter supplied by Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 1410.

■ Samples of a monthly mailing with updates concerning subrogation law are available from O'Brien & Hennessy. Request item 1412.

■ The American Institute for CPCU and the Insurance Institute of America offer a flier describing an Associate in Risk Management program. Request item 1413.

■ A quarterly report offered by Clausen Miller includes analysis of insurance coverage litigation and other issues related to the practice of risk management. Request item 1414.

■ An actuarial checklist for the insurance and risk management professional is provided by SIGMA Actuarial Consulting Group. Request item 1415.

■ Clausen Miller presents an article addressing recent case decisions regarding destruction of evidence and the implications to subrogating insurers. Request item 1416.

■ A guide supplied by PRMS Inc. summarizes practical steps that a public company can take to reduce its securities litigation exposure. Request item 1417.

■ Law firm management and risk control is the subject of a newsletter offered by Executive Risk Management Associates. Request item 1418.

■ Wilson, Elser, Moskowitz, Edelman & Dicker provides a newsletter reporting on developments in medical malpractice law. Request item 1419.

■ The differentiation between true and false sex abuse allegations is examined in several articles from Eagle International Associates Inc. Request item 1420.

■ A newsletter from Liberty Mutual Insurance Co. discusses various risk management issues including creating a balance sheet risk management program. Request item 1421.

■ Hill Waliack offers an article

discussing New Jersey employers' right to hire and fire employees without fear of later legal action. Request item 1422.

■ The risk management services division of Reliance National Insurance Co. is detailed in an information kit. Request item 1423.

■ A brochure supplied by International Risk Management Institute Inc. contains information on a contractual risk transfer reference guide. Request item 1424.

■ Coopers & Lybrand L.L.P. offers an information kit on risk management consulting services, including organizational studies, alternative risk financing and risk retention options. Request item 1425.

■ Two fact sheets from ECS Underwriting Inc. review non-traditional insurance products for risk transfer. Request item 1426.

■ A newsletter from PENCO addresses topics such as the Americans with Disabilities Act and environmental exposures. Request item 1428.

■ The defense of lead paint poisoning claims is described in a newsletter supplied by Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 1429.

■ PRMS Inc. presents a securities litigation loss prevention guide. Request item 1430.

■ A structured settlement reference manual is available from Structured Financial Associates Inc. Request item 1431.

■ Eagle International Associates Inc. offers several papers focusing on cost containment in litigation and claims management. Request item 1432.

■ An article from Clausen Miller examines evolving employer liability for workplace violence. Request item 1433.

■ Topics such as risk assessment and financing are explored in monthly issues of Risk Management Reports. Request item 1434.

■ A booklet supplied by Coopers & Lybrand L.L.P. examines environmental challenges facing corporate America. Request item 1435.

■ Rollins Hudig Hall Co. presents a newsletter addressing topics including pollution liability and ergonomics. Request item 1436.

■ The components of a loss analysis are outlined in a paper from SIGMA Actuarial Consulting Group Inc. Request item 1437.

■ A quarterly journal provided by Hinshaw & Culbertson analyzes tort defense issues relating to risk management. Request item 1438.

■ Illinois 1995 tort reforms are outlined in a Hinshaw & Culbertson manual. Request item 1439.

■ Recent developments in premises security law are examined in a newsletter from Wilson, Elser, Moskowitz, Edelman & Dicker. Request item 1441.

■ Employment practices liability for health care organizations is reviewed in a brochure from Executive Risk Management Associates. Request item 1442.

See Resource on next page

# Resource

Continued from previous page

■ A survey and commentary on the various **investment policies and practices** of insurance companies is now available from Securities Software & Consulting Inc. Request item 1443.

■ AVERT Inc. provides a brochure discussing ways to control corporate losses arising from the **Americans with Disabilities Act**. Request item 1444.

■ Wilson, Elser, Moskowitz, Edelman & Dicker offers a newsletter that reports on recent developments in **employment liability law**. Request item 1445.

■ Various frequently asked questions about the **Americans with Disabilities Act** are answered in an article provided by Clausen Miller. Request item 1446.

■ An article supplied by Clausen Miller examines the decision to include **experts in the mediation process**. Request item 1447.

■ Liberty Mutual Insurance Co. offers a newsletter exploring such topics as **electronic data processing insurance** and disaster preparedness. Request item 1448.

## RISK MANAGEMENT INFORMATION SYSTEMS

■ DAVID Corp. profiles a **property and casualty claims administration and risk management system** in a literature kit and demo disk. Request item 1502.

■ A newsletter from Marsh & McLennan Inc. has information designed to help readers improve their effectiveness using **risk management information systems**. Request item 1503.

■ Practical Risk Management Inc. offers a nine-page chapter providing **advice and alternative resources** for risk managers who would like to improve their software systems. Request item 1504.

■ An integrated **asset and liability management and pricing software system** is outlined in a booklet from Securities Software & Consulting Inc. Request item 1505.

■ **Automated solutions** to the risk management timeline are showcased on an audio compact disc presented by Corporate Systems Ltd. Request item 1506.

■ A newsletter from Securities Software & Consulting Inc. covers the business of **insurance asset and liability modeling**. Request item 1507.

■ Price Waterhouse L.L.P. presents a manual with sample output reports for a **loss control software system**. Request item 1508.

■ A **loss analysis software system** is profiled in a brochure from Coopers & Lybrand L.L.P. Request item 1509.

■ Electronic Data Systems Corp. supplies an article exploring how **decision support systems** give decision-makers a competitive advantage. Request item 1510.

■ An information packet summarizing **claims management systems** is available from DAVID Corp. Request item 1511.

■ Securities Software & Consulting Inc. supplies a brochure de-

scribing how an **option pricing model** affects the performance of a CHALKE Inc. software product. Request item 1512.

■ A flier offered by Price Waterhouse L.L.P. outlines a system that combines **integrated actuarial software** with flexible data management. Request item 1513.

■ DAVID Corp. offers an information kit and demo disk for a **risk management and workers comp claims administration system**. Request item 1514.

■ A brochure and demo disk presented by The Apex Management Group Inc. showcase a system designed to improve the **management of health care plan costs**. Request item 1515.

■ A professional journal focused on **global risk management systems** and services is available from Anistics. Request item 1516.

■ DORN Technology Group Inc. supplies an article detailing **data conversion and data validation services**. Request item 1517.

■ The business advantages of **decision support and data warehousing technologies** are featured in a packet of information provided by Electronic Data Systems Corp. Request item 1518.

■ ESIS provides an informational brochure describing the benefits of its **risk management and claims information systems**. Request item 1519.

## SELF-INSURANCE SERVICES

■ Safety National Casualty Corp. presents a booklet discussing the **principles of workers comp self-insurance**. Request item 1602.

■ Court cases and **claims administration issues** pertaining to self-insurance are reviewed in a newsletter from Corbel. Request item 1605.

■ The Self-Insurance Exchange supplies an article describing **how to reach the self-insurance market**. Request item 1606.

■ Several brochures prepared by Johns Eastern Co. Inc. outline **self-insurance and workers comp administration services**. Request item 1607.

■ CIGNA Corp. provides an educational guide reviewing basic principles, considerations and **benefits of loss sensitive programs**. Request item 1608.

■ The Self-Insurance Exchange provides a paper that examines how risk managers can take steps to adapt to the **dramatic shift toward self-insurance programs**. Request item 1609.

■ A newsletter supplied by Management Services Inc. analyzes the **move toward self-insurance** and self-insured workers comp programs. Request item 1611.

■ A review of **risk funding and claims management solutions** for large companies is provided in a booklet from CIGNA Corp. Request item 1612.

■ Johns Eastern Co. Inc. provides a handbook describing its **self-insurance services**. Request item 1613.

■ A booklet from VISTA Administrators Inc. outlines **products, ser-**

# Business Insurance

## Information Resource

NOTE: THIS COUPON WILL NOT BE SERVICED AFTER APRIL 22, 1996

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 <input type="checkbox"/> Mfg/Svcs         | F <input type="checkbox"/> Ins Agent    | K <input type="checkbox"/> Adj/Apprs        |
| B <input type="checkbox"/> Association      | G <input type="checkbox"/> Ins Broker   | L <input type="checkbox"/> TPA              |
| C <input type="checkbox"/> Union            | H <input type="checkbox"/> Ins/Reins Co | M <input type="checkbox"/> Health Care Inst |
| D <input type="checkbox"/> Government       | I <input type="checkbox"/> Actry/Conslt | N <input type="checkbox"/> Other            |
| E <input type="checkbox"/> Educational Inst | J <input type="checkbox"/> Attorney     |   |

2. Number of employees:

- |   |  |                                    |
|---|--|------------------------------------|
| 1 <input type="checkbox"/> 150 or fewer | 2 <input type="checkbox"/> 151-499       | 3 <input type="checkbox"/> 500-999 |
| 4 <input type="checkbox"/> 1,000-4,999  | 5 <input type="checkbox"/> 5,000 or more | 6 <input type="checkbox"/> Unknown |

3. My title is best defined as:

- |   |  |
|---|--|
| A <input type="checkbox"/> Administrative Mgt | D <input type="checkbox"/> Benefits Mgt        |
| B <input type="checkbox"/> Financial Mgt      | E <input type="checkbox"/> Loss Prevention Mgt |
| C <input type="checkbox"/> Risk Mgt           | F <input type="checkbox"/> Other               |

4. My purchasing involvement for the requested products is to:

- |   |                                    |                                    |
|---|------------------------------------|------------------------------------|
| 1 <input type="checkbox"/> recommend only | 2 <input type="checkbox"/> specify | 3 <input type="checkbox"/> approve |
|---|------------------------------------|------------------------------------|

5. Do you now receive a personally addressed copy of Business Insurance?

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| A <input type="checkbox"/> Yes | B <input type="checkbox"/> No, please send Business Insurance subscription information |
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City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone ( ) \_\_\_\_\_

vices and claim payment methods for employers interested in establishing self-funded employee benefit and workers comp programs. Request item 1614.

■ An information kit from Coopers & Lybrand L.L.P. details **casualty claims consulting services and risk management consulting services** for self-insured entities. Request item 1615.

■ ESIS provides a booklet on **loss control services to self-insurers**. Request item 1617.

■ InPhoto Surveillance offers a guide to **video surveillance for companies that self-insure**. Request item 1618.

## WORKERS COMP

■ Hill Wallack presents an article on **private disability offsets against workers comp awards**. Request item 1701.

■ An essay from Aon Management Institute stresses how a more **vigilant hiring process** can produce valuable workers comp savings. Request item 1702.

■ American Re-Insurance Co. provides a state-by-state review of **workers comp claim settlements**. Request item 1703.

■ A quarterly newsletter containing **information pertinent to workers comp** is presented by The Frank Gates Service Co. Request item 1704.

■ Hill Wallack supplies a paper addressing the **occupational injury claim**. Request item 1705.

■ Successful methods for employers in **managing workers comp programs** are outlined in a paper offered by Buck Consultants Inc. Request item 1706.

■ A fact sheet from Commonwealth Risk Services Inc. offers **three approaches for HMOs** exploring entering the workers comp market. Request item 1707.

■ Aon Management Services presents a two-page flier discussing the importance of **medical bill review**. Request item 1708.

■ An article from Expediter Corp. compares four types of **employment programs** for those who are not able to utilize standard return-to-work programs. Request item 1709.

■ Workers comp issues in the **trucking industry** are explored in an article provided by Hill Wallack.

Request item 1710.

■ An examination of how **managed care arrangements** can be applied to workers comp is available from Health Benefit Management Inc. Request item 1711.

■ Celerity Technologies Inc. offers a newsletter examining the workers comp claims handling process via **electronic data interchange**. Request item 1712.

■ A flier from Aon Management Institute describes how employee benefit and compensation programs may inadvertently extend **workers comp absences**. Request item 1713.

■ An outline of 10 proven ways to **improve a workers comp program** is offered by Richard B. Frank & Associates. Request item 1714.

■ RISCORP supplies a pocket guide to the **rights and responsibilities of employers** concerning workers comp. Request item 1715.

■ A quarterly newsletter presented by Gallagher Bassett Services Inc. spotlights the **latest trends and services** in the workers comp arena. Request item 1716.

■ Hill Wallack provides an article addressing why **alternative dispute resolution** should be utilized for workers comp cases in New Jersey. Request item 1717.

■ Important aspects to consider when implementing a **return-to-work program in a union atmosphere** is the subject of flier prepared by Aon Management Institute. Request item 1718.

■ InPhoto Surveillance offers a **guide to video surveillance** for workers comp managers. Request item 1719.

■ Aon Management Institute describes a **hands-on training program** designed to reduce workers comp costs. Request item 1720.

■ **Shopping for a managed care program** and other solutions to workers comp are offered in a newsletter from United Wisconsin Services Inc. Request item 1721.

■ The advantages and **preparation of structured settlements**, which could be used in workers comp claims, are reviewed in a brochure available from Financial Settlement Services. Request item 1722.

■ United Wisconsin Services Inc. provides a flier with information on **determining wage replacement** in workers comp claims and the window of time for drug detection. Re-

quest item 1723.

■ A fact sheet from Aon Management Institute examines the ways **employees who are injured on the job** will receive more benefits than those who are injured off the job. Request item 1724.

■ The effects of **FAS 112 and GASB 10** on workers compensation are analyzed in a flier offered by SIGMA Actuarial Consulting Group Inc. Request item 1725.

■ Aon Management Institute supplies a flier with suggestions for **taking control of workers comp claim costs**. Request item 1726.

■ The **excess workers comp program** of Reliance National Insurance Co. is outlined in a pamphlet. Request item 1727.

■ International Risk Management Institute Inc. presents a brochure with information on **reference guides to workers compensation coverage, laws and cost containment**. Request item 1728.

■ An **early intervention phone system** for reporting workers compensation claims is described in a pamphlet provided by RISCORP. Request item 1729.

■ A brochure provided by Reliance National Insurance Co. summarizes a **workers comp alternative program**. Request item 1730.

■ RISCORP offers a pamphlet with tips for reducing business costs through **premium credits for workers comp**. Request item 1731.

■ **Claims consulting services for workers comp** are addressed in an information packet from Coopers & Lybrand L.L.P. Request item 1732.

■ Service Quality Surveys Ltd. provides a **sample methodology and survey** on workers comp claims service. Request item 1733.

## ADDENDUM

The following items were omitted from the Jan. 1 Employee Benefits Information Resource.

■ Vision Service Plan supplies a flier that explains the reasons for **adding vision care to an employee benefits package**. Request item 566.

■ A manual from BCS Insurance Co. shows how participation in **organ transplant pools** can protect a company's stop-loss coverage and self-insured retentions. Request item 1619. B1

# Stocks

Continued from page 2

that while interest rates may remain stable, they are also unlikely to continue to decline.

The stocks may benefit, however, should acquisition activity increase, say analysts.

But whatever the trends may be, careful stock selection is called for, they warn.

"We've a selective approach to 1996," said David Seifer, an analyst with Donaldson, Lufkin & Jenrette Securities Corp. in New York.

"We think that those that can show consistent underwriting and earnings capability will outperform the general stock market, and we feel that if interest rates and inflation remain at or near current levels and industrial earnings lag," then insurance companies that have a 10% to 15% earnings growth rate "should compare favorably with many industrial groups."

"I think increased selectivity will be important for picking stocks in 1996 vs. 1995," agreed Jay Cohen, an analyst with Merrill Lynch & Co. in New York. "In 1995, the yield on the long bond went roughly from 8% to roughly 6%."

"I can almost assure you it will not go from 6% to 4% in 1996, and therefore the stocks, which are interest rate-sensitive, will not benefit to the same extent from that drop in interest rates."

As a result, "I think it's increasingly important to pick those stocks that can grow their earnings despite the competitive environment," he said.

"I would say in general we have a somewhat more cautious outlook for 1996, although we do see selected opportunities," said Weston M. Hicks, an analyst with Sanford Bernstein & Co. in New York.

"In 1995, we had the twin benefits of declining interest rates and improving fundamentals in terms of margin trends, and in 1996 we're more likely to see stable interest rates, so that by itself I would say it's going to be tougher going."

"Basically, I would say that we would look for a quieter year in the marketplace on the property/casualty side of the equation," with no major trend in industry fundamentals, said Michael Lewis, first vp with Dean Witter Reynolds in New York.

"For starters, we believe that most of the catch-up has been accomplished by the multiline companies, and they were the real drivers last year."

With a favorable interest rate, though, he said, the stocks "should be able to perform at least in line with the marketplace."

Harry Fong, a director at C.J. Lawrence/Deutsche Securities Corp. in New York, said he is not clear how this year will shape up. "On the one hand, we have pricing off anywhere from 5% to 10% with commercial insurers. On the other hand, we have earnings that seem to be holding at relatively nice levels," if you can believe the numbers. "Bottom line, I think the outlook is mixed for the stocks," said Mr. Fong.

More optimistic was Carol Manning, vp with Prudential Securities Inc. in New York. While the industry fundamentals remain mediocre, "since the stocks do well when interest rates are declining, the stocks should do better than the market this year," Ms. Manning said.

Donald Franz Jr., vp and senior analyst with New York-based Advest Inc., said assuming interest rates remain stable, he generally expects insurance stocks to be "somewhat above average market performers, notwithstanding the continuation of heavy price-competition."

Gloria Vogel, managing director and senior insurance analyst at Ladenburg, Thalmann & Co. Inc. in New York, divided up the year for insurance stocks.

"I think the first half will be OK," she said. "I'm a little concerned about what happens in the second half of the year."

Third-quarter comparisons are "going to be tough this year" because interest rates "are going to mean investment income is going to be harder to come by," said Ms. Vogel.

In addition, right now the industry is benefiting from taking down reserves commensurate with its sluggish premium growth and the auto and workers compensation lines are doing very well.

"I'm just not sure how long the industry can rest on its laurels," added Ms. Vogel. Eventually, auto and workers comp lines will deteriorate and this will be reflected

in stock prices, she said.

Consolidation could boost stock prices next year, however, observers say.

"Our intelligence indicates there's a lot of acquisition activity that could be heating up and there's a lot of companies, including many strategic buyers as well as leveraged buyout buyers, looking for acquisitions," said Mr. Franz.

"That would certainly be a positive for the stock price actions for the coming year," he said.

"The obvious big ones have taken place," Ms. Vogel pointed out.

"It was speculated for most of '95 that Aetna was going to do something, and that's clearly now been announced, but there could be other things out there. We don't know," she said.

Aetna agreed to sell its property/casualty operations to the Travelers Corp. last year in a \$4 billion transaction (BI, Dec. 4, 1995).

"I would say that a wild card some companies may benefit from is a consolidation trend," agreed Mr. Lewis.

If that "picks up steam," it could help the stocks' performance, he said. **BI**

## This Is One Risk Manager Who Says "Don't Take A Risk On Surveillance"

**Thomas Langan** is the Corporate Risk Manager for Weeks Marine Inc., one of the premier marine contractor (dredging, towing, stevedoring, construction and equipment rental companies) in North America. He operates under some of the toughest claims jurisdictions in the world: The Jones Act and The Longshore & Harbor Worker's Compensation Act. He pays legitimate claims expeditiously.

But when Tom suspects a personal injury claimant is malingering (taking assets from Weeks and its employees), he calls on InPhoto Surveillance. According to Tom, "InPhoto has done a great job in assisting me with claims investigations. I can be assured that I am going to get expert professional service no matter where I'm going to conduct a surveillance. I do not have to go out and 'flip a coin' as I do with 'local' agencies."

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NEW ISSUE

December 19, 1995

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Conning & Company      Duff & Phelps Securities Co.      Fox-Pitt, Kelton Inc.  
Libra Investments, Inc.      Northington Capital Markets, Inc.      Paulsen, Dowling Securities, LLC

## Looking for growth in all the new places

Top performers may be small specialists

By JUDY GREENWALD

The blue chips may not be the best performers among property/casualty insurance stocks this year.

To find the top performers in the sector, some analysts are looking beyond the traditional top tier—Chubb Corp., American International Group Inc. and General Re Corp.—to smaller and specialized companies.

It's not that they are down on their long-time favorites, just that those stocks are so well-known that they may be fully valued.

"In terms of really standout performance, I think you're going to have to look... further beyond these kinds of household names," said Ronald Frank, an analyst with Smith Barney Inc. in New York.

As evidence, he cites recent performance. "A whole bunch of small to mid-cap and specialty names were among the top performers in a whole range of subsectors and niches, and there was no strong sector theme tying them together," he said. Lower profiles were all they had in common.

Mr. Frank cites his top pick in 1996—**American Re-Insurance Co.**—"which we feel gives you a very good play on the sector at a relatively cheap valuation without having to trade down... in quality."

His other 1996 recommendations and those of other analysts, follow.

Mr. Frank recommends Marsh & McLennan Cos. Inc.-backed startup **Risk Capital Holdings Inc.** (BI, Sept. 18, 1995) and catastrophe reinsurers **Partner Re Ltd.** and **Mid Ocean Ltd.**

He predicts higher valuations for some catastrophe reinsurers because they've "acquired some credibility in the market" yet still "trade at a very sizable discount to the multiples (of traditional reinsurers)."

• Jay Cohen of Merrill Lynch & Co. Inc. in New York:

"While the property catastrophe operating environment is becoming more competitive, it still remains quite favorable, allowing **Renaissance Re Holdings Ltd.** to produce above-average returns," he said.

**EXEL Ltd.** is another favorite. "The company has been overcapitalized and has been buying back shares aggressively. Secondly, it is finding new growth opportunities outside of its core market, which is very competitive."

**Fremont General Corp.** is also on the list. "Essentially the story (is) very good results in the Midwest are offsetting the deterioration in the California workers comp environment."

• Michael Lewis, first vp with Dean Witter Reynolds in New York:

**AIG** is on his list, as is **Fremont**, which "should benefit from any improvement in the California workers comp market," he said.

Mr. Lewis also recommends **Meadowbrook Insurance Group Inc.** and **Mutual Risk Management Ltd.**—both "pure plays on the alternative risk market."

• Weston M. Hicks of Sanford Bernstein & Co. in New York:

**Chubb** as well as **TIG Holdings Inc.**, **Executive Risk Inc.**—"an undervalued growth company"—are on his list.

In some ways, TIG is "a play on growth in specialty lines and reinsurance" and "really has excellent earnings leverage from getting out of (the middle-market commercial businesses)," said Mr. Hicks.

He also continues to recommend **Aetna Life & Casualty Co.** and **CI-**

**GNA Corp.**

"They are sort of long-term turn-around stories, and I don't think they're over with yet," he said.

Mr. Hicks also recommends **Reliance Group Holdings Inc.** and **Old Republic International Corp.** both of which "have some exposure to the title insurance industry, which we believe will show strong earnings momentum in 1996."

• Gloria Vogel, managing director and senior insurance analyst with Ladenburg, Thalmann & Co. Inc. in New York:

"Clearly," she said, **Chubb** and **AIG** "are going to continue to grow and do quite well."

However, she added, "I still like some of the specialty companies, companies like **Allied Group Inc.** or **Orion Capital Corp.**, little niche companies that I think can do well."

• Donald E. Franz Jr., vp and senior analyst at Advest Inc. in New York:

The small-capacity stock specialist recommends **Acceptance Insurance Co.** After extraordinary reserving last year, the writer of specialty coverages "should have a very good year," he said.

He also recommends two surplus lines companies:

**Penn-America Group Inc.** has an improving combined ratio and redundant reserves. While it has an official objective of a 20% increase in revenues and profits each year, it has "done a lot better than that the past two years," he said.

And over the past 10 years, **GAINSCO Inc.** has had about the highest return on equity among companies its size, said Mr. Franz.

• Blair E. Sanford of Hoefer & Arnett in San Francisco:

**Gryphon Holdings Inc. Group**, **Navigators Group Inc.**, **Philadelphia Consolidated Holding** and **Capsure Holdings Corp.** are the recommendations of this small-cap specialist.

Gryphon stands to benefit from hardening rates in the California commercial earthquake property market, while Navigators had "very impressive" earnings for the past few quarters, said Mr. Sanford.

Philadelphia Consolidated Holding—which writes casualty-related products targeted to rental car consumers, non-profit organizations, health and fitness organizations, and specialty and training schools—is very well run, has "shorter-than-average liability tails, solid reserving and good growth prospects," said Mr. Sanford.

And Capsure, primarily a surety company, shows promise in light of its plan to integrate a recent acquisition, he said.

• David Seifer, vp with Donaldson, Lufkin & Jenrette Securities Inc. in New York:

His list includes **AIG**, **Gen Re** and **Chubb** as well as **Executive Risk**, **Vesta Insurance Group Inc.**, **Reliance**, **SAFECO Corp.**, **Progressive Corp.**, **Transatlantic Holdings Inc.**, **National Re Corp.** and **American Re.**

• Carol Manning, vp at Prudential Securities Inc. in New York:

She recommends **AIG**, **Chubb**, **Gen Re**, **American Re**, **The Travelers Inc.**, **ITI/Hartford Group Inc.** and **Prudential Reinsurance Co.**

• Harry Fong, director of C.J. Lawrence/Deutsche Securities in New York:

He recommends **The St. Paul Cos. Inc.** and **Chubb**, both of which have sold "at above average growth over the years, and sell at below-average industry multiples." ■

## INTERNATIONAL

## Lloyd's issues tougher regs

Regulatory board aims to implement array of changes this year

By SARAH GODDARD

LONDON—Tougher regulations unveiled by Lloyd's of London will require up to 6,000 executives in the market to pass muster as "fit and proper" individuals, with those short of the mark facing a range of penalties, including fines and expulsion.

The new regulations are a top priority of the Lloyd's Regulatory Plan 1996, which is the market's first attempt to pull the various elements of its self-regulation into one cohesive direction. The plan outlines a number of changes the Lloyd's Regulatory Board has committed to making this year, in what it describes as "a period of rapid and unprecedented structural change."

At the end of the year, the LRB will review its achievements against the stated objectives and set new goals for 1997.

Launching the board's plan last Wednesday, LRB Chairman Sir Alan Hardcastle admitted that Lloyd's strategy was heavily influenced by last year's Civil Service and Treasury Select Committee investigation into the adequacy of self-regulation at Lloyd's (*BI*, Aug. 28, 1995; July 31, 1995).

"We feel we have addressed the concerns raised," Sir Alan said.

The review of the current state of regulation at Lloyd's, which took most of 1995 to complete, was conducted under the aegis of Rosalind Gilmore, the then-director of regulation who unexpectedly quit her post late last year (*BI*, Oct. 9, 1995).

"There is a very heavy imprint of (Ms. Gilmore) in the document," said Sir Alan. Ms. Gilmore was involved right up to the board's agreement on the content of the plan late last year, "and we are hoping to retain her on the regulatory board," he said.

Lloyd's plan sets out a number of objectives for the market's new regulatory framework, with the aim of raising professional standards and providing greater protection for policyholders and investors. Those objectives include:

- Specifying security standards for policyholders.
- Having proper safeguards to protect members' interests.
- Promoting fair treatment for all members.
- Promoting transparency, or openness, in the market's operations.
- Promoting highly competent underwriting through codes of practice.

- Demanding that market professionals hold appropriate qualifications.

- Authorizing "only those individuals and entities that are fit and proper, meet standards of sound and prudent management and meet high standards of market behavior and practice."

Paramount to both the Lloyd's Council and the LRB is policyholder security, the plan states, and Lloyd's members "must be realistic in their expectations of what can be achieved through regulation."

It also warns names that "regulation cannot second-guess the commercial wisdom of underwriting decisions," though in its role as regulator of Lloyd's managing agents, the LRB does look closely at managing agency controls over syndicate underwriting.

As the market structure changes under Lloyd's Reconstruction and Renewal Plan, the LRB will constantly review the changes to ensure that "new types of business are regulated appropriately." Also, the developments in the market will be "quality-controlled" so that all providers of underwriting capital are treated fairly and to promote "the principles of sound and prudent management," according to the regulatory plan.

Over the coming year, the LRB will be prioritizing its input into the so-called R&R plan's changes. But it also will focus on ensuring high standards of market professionalism, improving the enforcement process for disciplinary measures, developing a risk-based capital project started last year, formalizing members' rights into a guide and looking at how regulation may have to be changed as corporate capital continues to increase its proportion of the market capitalization.

As the LRB's first task, between 4,000 and 6,000 market executives—including underwriters, agents and brokers—will have to go through an authorization process. Directors and certain senior managers of companies that fall under the Lloyd's regulatory banner will have to submit evidence proving they are "fit and proper." Although past tests have been conducted along these lines, they have looked at the overall composition of the board rather than at individuals.

Sir Alan said he expects that some of the people reviewed will not attain authorization, suggesting that

once they see the requirements they won't even apply.

The authorization process will make it a lot easier to punish wrongdoers, explained David Gittings, Lloyd's recently appointed director of regulation. Also, individuals still will be subject to Lloyd's disciplinary power even if they have been expelled from the marketplace in a worst-case scenario.

And the new tariff of penalties and fines will make the process "very much more streamlined," Mr. Gittings said. The individual will have a good idea of the penalty they face, he added.

By the end of the year, the LRB plans to introduce a system of vicarious liability that would hold Lloyd's companies liable for the actions of their employees, in addition to unveiling new rules on conduct and a more rigorous system of penalties.

As part of the drive to increase professionalism in the market, the report states the intention to publish "core principles of behavior," consistent with those required in the Financial Services Act 1986. There has already been consultation with the market, said Mr. Gittings, who said he hoped the requirements will be published later this month.

Other priorities for the LRB over the year are:

- Introducing criteria of sound and prudent management to be met by agents.
- Developing risk based capital in the light of last year's consultation.
- Refining the disaster scenario reports agents have been required to supply to their capital providers since last year.
- Moving to annual accounting, rather than the current three-year system.
- Reviewing the role of auditors to see whether they should have some statutory "whistle-blowing" requirements.
- Looking at reimplementing compulsory errors and omissions insurance for underwriting agents.

Compulsory E&O cover for agents was dropped in the early 1990s when the supply of agents E&O coverage dried up.

Sir Alan said the LRB thought that there should be some requirement for E&O cover but conceded that the cost of coverage—which would have to come from outside the Lloyd's of London market—would be "hideous." ■



A fire at NatWest Tower in London's financial district last week was quickly brought under control. Damage from the rooftop blaze, which is insured, did not appear to be extensive.

## Blaze breaks out at NatWest building

Only minor insured losses expected

LONDON—Insurers are expecting minimal claims from last Wednesday's fire in the NatWest Tower, a City of London landmark since it was completed in 1980 at a cost of about £150 million (\$225 million).

About 35 firefighters fought the blaze, which broke out in a cooling tower on the roof of the 42-story building and spread to some of the surrounding machinery.

"There was no major damage to the building itself," said a spokesman for retail bank National Westminster P.L.C., which built and owns the tower.

The NatWest Tower was the bank's headquarters until it was heavily damaged in an Irish Republican Army bomb attack in 1993.

During the rebuilding phase, the bank took the opportunity to upgrade the facilities. The refurbishment work started in September 1994 and continued last week. About 500 workers from John Laing Construction P.L.C. were onsite when the fire broke out in the building in the afternoon.

All the workers had been safely evacuated by the time six London Fire Brigade trucks reached the tower, said an LFB spokesman.

The fire was brought under control just over an hour after the initial alarm.

A spokeswoman for Laing said that the fire will not delay the refurbishment, which is scheduled to be completed in March 1997. "The damage was minimal," she said, adding that work resumed as usual on the next day.

London-based multiline insurer Commercial Union Assurance Co. P.L.C. leads the cover for all NatWest property, but, like the bank, would not provide any information on the policy.

The cause of the fire, although described as "not suspicious" by the LFB, was not being revealed by the property owner, insurer or contractor.

A spokesman for Commercial Union said the situation didn't look very serious.

Insurance market sources said that the coverage for the fire could not be identified until the cause of the fire had been isolated.

The NatWest building has been dogged by problems since it was first constructed, when it ran substantially over budget and schedule.

—By Sarah Goddard

## X.L. to cede part of risks

Reinsurance to aid growth

LONDON—X.L. Insurance Co. Ltd. is planning to use a quota-share reinsurance arrangement to help it diversify its business and achieve growth this year.

Brian O'Hara, president and chief executive officer of the Bermuda-based excess liability insurer, announced X.L.'s plans in London last week. Under the terms of the agreement, the company will cede to one European and four U.S. reinsurers 20% of general liability risks with total limits up to \$100 million and 25% of such risks with total limits in excess of \$100 million, he said.

Mr. O'Hara spoke shortly after X.L.'s parent, EXEL Ltd., reported a strong rise in net income to \$332.8 million for the year ending Nov. 30, 1995, up from \$144 million the previous year. Most of the growth

See X.L. on next page

## Generali takes direct stake in AXA

Move is part of plan for broader AXA restructuring, capital increase

By MARIA KIELMAS

After four months of negotiations, France's AXA S.A. and Italy's Assicurazioni Generali S.p.A. have agreed to restructure their cross-shareholdings in a way that will give Generali an 11% direct stake in the French insurance company.

The agreement has been under negotiation since September 1995, when Generali Chairman Antoine Bernheim publicly expressed his dissatisfaction at Generali's status as a passive shareholder in the French insurer.

In addition to the agreement with Generali, AXA announced that it will proceed with a 5.9 billion franc (\$1.18 billion) capital increase and restructuring program. Market analysts also expect AXA to complete a public of-

fering in the United States in the spring. AXA has said only that a U.S. listing is expected this year.

AXA and Generali said in a joint statement issued Jan. 16 that the companies signed a protocol extending the cooperative relationship that has existed between the two groups since January 1990. The new agreement also proposes changes in the joint control and development structures that the two insurers set up at that time.

Under that original structure, AXA subsidiary Midi Participations, which is not publicly traded, was 60% owned by AXA unit FINAXA and 40% by Generali. In addition, a holding company for Generali in France, Generali Midi Expansion, was owned 60% by Generali and 40% by AXA S.A. and its subsidiaries.

Generali first acquired the 40% stake in Midi Participations after AXA purchased the French insurer Cie. du Midi. For Generali, its stake in the unit was equivalent to 16% of the consolidated share capital of the AXA Group and is worth about 7 billion francs (\$1.39 billion). But the indirect holdings gave Generali no representation on the AXA board and therefore no clout as a shareholder. In a number of statements since last September, Mr. Bernheim said Generali wanted to have the same influence as other AXA shareholders (*BI*, Oct. 16, 1995).

The new structure calls for Midi Participations to be merged into AXA S.A. Since the sole assets of Midi Participations are ordinary shares of AXA, the merger of the two entities

See AXA on next page

INTERNATIONAL

**AXA**

Continued from previous page will be based on direct parity, the statement said. In addition, Generali Midi Expansion will be dissolved. The 40% interest held by the AXA Group in GME will be exchanged for a total of 10 million AXA S.A. ordinary shares.

This transaction is expected to give rise to a capital gain in AXA's consolidated financial statements. The amount of this gain will depend on the price of AXA shares when the exchange is completed.

AXA was the strongest performer on the Paris Bourse in December 1995, rising 33.4% during the month. But AXA shares fell

3.3% in one day this month when the capital increase and the agreement with Generali were announced. Stock market analysts said this was inevitable given the dilution due to the capital increase.

The joint statement went on to say that Generali will subscribe approximately 650 million francs (\$129.9 million) to the AXA S.A.

capital increase.

After these transactions, which are subject to regulatory approval, are finalized, the AXA controlling shareholder group will hold the following interest in AXA S.A.: FINAXA and the so-called AXA mutual companies will hold 35% of the share capital and 47.9% of the voting rights; other subsidiaries of AXA S.A. will hold 5.4% of the share capital and none of the voting rights for the AXA-related subsidiaries; and Generali will hold 11% of the share capital and 15.6% of the voting rights.

The statement said the two groups also agreed to finalize a new shareholder agreement by Feb. 15 that will "reaffirm the two partners' intention to seek joint development opportunities and, barring unforeseen circumstances, to maintain their respective holdings," the statement said. The agreement also will renew the two groups' mutual pre-emptive rights on AXA S.A. shares, after adjustments to take into account the new situation.

"Generali is over the moon with this deal," said one London insurance analyst who asked not to be identified. "They have a capital gain of 1.1 trillion lire (\$695.3 million), which is twice their annual earnings."

"This agreement is not a full lock-up," added the analyst. "If it wants to, Generali in the future

will be able to claim 'unforeseen circumstances' to dispose of the shares."

AXA said that from Jan. 26 until Feb. 8, existing shareholders will have preferential rights to subscribe to the new shares on the basis of one new share at 250 francs (\$49.97) for every seven existing shares held. The new shares will be retroactive to Jan. 1, 1995.

The statement went on to say that in reflecting this transaction, the conversion into ordinary shares of the convertible bonds issued by AXA S.A. will be suspended from Feb. 3 through Feb. 21, 1996.

If all convertible bonds outstanding were converted into ordinary shares, the total proceeds from the capital increase could be as high as 6.6 billion francs (\$1.32 billion).

AXA's controlling shareholder group will subscribe 3.02 billion francs (\$602.7 million) to the capital increase, of which Generali will buy 650 million francs (\$129.9 million) through Midi Participations.

The statement added that a portion of the shares purchased by the AXA Mutual companies, FINAXA and the Generali groups might be offered for sale in the U.S. market at the time of the AXA S.A. shares on the New York Stock Exchange. This is expected to take place in 1996, the statement said. **BI**

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**X.L.**

Continued from previous page came from property and specialty reinsurance, he said.

Although X.L. is predominantly an excess liability insurer, a "very good spread of business leads to stability in our ratings and our ability to meet claims," Mr. O'Hara added.

Competition in the main U.S. and European general liability markets has been a driving force in X.L.'s efforts to further diversify into other lines and markets, he added.

Important to this diversification are X.L. Reinsurance Co. Ltd., a Bermuda-based company set up by EXEL last year with \$250 million of capital "to take advantage of the restructuring of the U.S. insurance

market" (BI, Oct. 9, 1995).

In providing large, multiyear programs, X.L. Re will work closely with Risk Capital Holdings Inc. This company, in which EXEL has a stake, is part investment bank and part insurer, putting it in the favored position of insuring companies in which it invests, Mr. O'Hara said (BI, Sept. 18, 1995).

Another example of diversification is X.L. Insurance's decision this month to offer for the first time primary as well as excess directors and officers coverage (BI, Jan. 15). This diversification will include several new lawyers professional liability products, as well.

While this represents a niche sector of the market, it has been quite profitable over the past few years, Mr. O'Hara said.

—By Edwin Unsworth

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## INTERNATIONAL

## Major runoff manager created by mergers

LONDON—One of the largest insurance runoff managers in the world has been formed by the merger of Lloyd's of London runoff companies Syndicate Underwriting Management Ltd., Sturge Run-Off Ltd. and Run-Off Services Ltd.

SUM Chairman Anthony Hines said the newly merged company will continue to be known as Syndicate Underwriting Management Ltd.

Clearance for the merger came from Lloyd's Council late last month, paving the way for a runoff management company with capacity under management of £4 billion (\$6.16 billion) and dealing with 45 syndicate groups.

SUM is wholly owned by Lloyd's, though it will be under the Equitas umbrella when the runoff reinsurer is up and run-

ning. SUM will have particular responsibility for running off long-tail and asbestos, pollution and health hazard claims.

SUM has been divided into three operating divisions, along the lines of the original companies, to cope with the increased capacity and workload. Ian Barrett, financial director of SUM, will oversee the operations of former SUM business, while SUM directors Peter Howes and Ron Cleverley will be responsible for the Sturge Run-Off and Run-Off Services business, respectively.

All three will report to SUM Managing Director Alan Pollard.

Mr. Hines estimates the merger will result in potential cost savings of more than £20 million (\$30.8 million) over the next five years.

—By Sarah Goddard

## Broker network expanding reach

### Belgian's largest broker joins FDG

By DON LEWIS KIRK

Belgium's largest insurance brokerage, J. Van Breda & Co., has joined the Luxembourg-based international brokerage network Funk Diot GrECo, or FDG.

Membership in FDG will give Breda, a specialist in placing coverage for multinational organizations like the North Atlantic Treaty Organization and the United Nations, greater access to international business.

FDG's addition of Breda means the network's members together now represent more than 1,350 employees, 45 office locations in 14 European countries and combined net commission/fee income

main competitive, he said.

Mr. Funk expects further expansion in Eastern Europe. In November, FDG opened an office in Zagreb, Croatia, under the name Funk Diot GrECo Zagreb D.O.O., which is the first international broker registered in Croatia.

FDG expects growth of industrial insurance business in the war-torn region as rebuilding begins. "FDG Zagreb will have excellent opportunity to grow with the expected inflow of investment and liberalization of the insurance market," Mr. Funk said.

FDG has traditional cooperation agreements with brokers in Europe, North America and Asia. The Austrian GrECo arm of the

**Networking provides a global dimension to information, which brokers must pass on to their clients to remain competitive, says Funk Group's Leberecht Funk.**

of \$200 million.

The three original partners—Funk Group GmbH, Diot S.A. and Gregor Eggers & Co. A.G.—are leading brokers in France and Austria, with partners in 72 countries worldwide.

Effective Jan. 1, Breda will assume a special role in promoting FDG's European employee benefit business, according to Funk Group Chief Executive Officer Leberecht Funk. Breda also will manage FDG's expansion into benefits and other industrial insurance business in the Netherlands.

FDG will continue its focus on international corporate risks, with particular emphasis on building construction insurance business. "The group plans to step up its specialty and risk management consulting service with information collected through the network," Mr. Funk said.

Networking provides a global dimension to data, which brokers must pass on to their clients to re-

broker network has been active in expansion into the Czech Republic, Slovakia and Slovenia.

Funk GmbH's central offices are in Hamburg, while Diot S.A. is in Paris and GrECo is based in Vienna. Each of the original partners have a share in FDG's Luxembourg-based holding company. Although Mr. Funk said Breda also will hold a substantial ownership stake in the network, the exact holding has not been disclosed. Some 25% of each broker's capital will eventually flow into the FDG.

The FDG network was launched July 1994. About 95% of FDG's business is commercial retail brokerage. Since 1994, the network has widened its focus on midsize corporate clients to large multinational corporations.

FDG commission/fee income figures do not include all FDG associated brokers, which are part of the network but not shareholders in the Luxembourg-based holding company. **B**

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# Atchinson

Continued from page 1

focus of state regulators in 1996, and the NAIC's accreditation program will remain our chief solvency tool," he said. Currently, 47 insurance departments hold that designation.

To become accredited, a state insurance department must adopt what the NAIC considers essential financial regulatory requirements and have adequate personnel and procedures to properly implement them. An independent review team evaluates each department and reports its findings to a subgroup of NAIC regulators, who then vote on whether the designation should be awarded. Subsequent evaluations are periodically required.

Critics fear a focus on results-oriented regulation will allow so much flexibility that the program will become weak and meaningless.

"We are working to ensure that the accreditation program remains strong as it matures," Mr. Atchinson said. He sees the program review launched last year as a way to ensure that the program grows in a "sensible" fashion. The review doesn't stop there.

The NAIC will be streamlining the committee system "to be sure we are not duplicating efforts or wasting precious resources" such as staff and money, Mr. Atchinson said. "I want to be sure committees are accountable, especially in this

time of tight finances."

NAIC committees are expected to discuss new issues this year, he said. For instance, state regulators must manage the change presented by the globalization of the insurance industry, said Mr. Atchinson, who previously chaired the NAIC International Insurance Relations Task Force.

"State insurance regulation must become more customer-friendly for those U.S. and non-U.S. (insurance) companies," he said. "Efficient multistate entry (into an insurance market) is key to this effort," as are new technological tools like the producer database that will help update regulatory compliance information.

In addition, Mr. Atchinson said he doesn't "inherently" see an interstate compact as a threat to the NAIC and says is willing to explore the use of such compacts to regulate multistate insurance matters.

As for risk retention groups, he supports "some thoughtful analysis" on their role.

Whatever the issue, "we need to continue to reach out to legislators, governors, and industry and consumer representatives, for they all have interest in the issues with which we are confronted," he said. He pledged that the NAIC will continue to keep them informed.

Already, Mr. Atchinson made significant progress by gaining the support of New York State Sen. Guy Velella, R-Bronx/Westchester, a strong critic of the NAIC's accreditation program. As chairman

of the state Senate's Insurance Committee, Sen. Velella bottled up legislation containing additional model law requirements. Blocking that legislation cost the New York Insurance Department its accreditation (BI, March 15, 1993).

Mr. Velella's support stemmed from discussions at two recent meetings, after which he said: "I am very impressed with Superintendent Atchinson. He is a voice of reason among the NAIC leadership and is the first person I have been able to talk to within the organization's leadership who recognizes, understands and appreciates the role of the state Legislature as it relates to the NAIC and its accreditation program."

"This marks an important turning point in the relationship between the NAIC and state legislators."

Mr. Atchinson's rise to national prominence as an insurance regulator is no surprise to those familiar with his background.

He graduated magna cum laude from the University of Massachusetts before earning a law degree from Syracuse University. He then spent 15 years in the private sector, specializing in legal and marketing work first for a health care facilities company and later for international soccer and baseball concerns, including Olympic committees.

He joined Maine's regulatory ranks in 1989 as general legal counsel to the Maine State Department of Professional and Financial

Regulation, which oversees the state's Bureau of Insurance. An Independent, he was appointed twice by a Republican governor, once to serve a portion of an unexpired term and then to his own five-year term, which expires in July 1998. A Democratic-controlled Senate confirmed both appointments.

The first challenge he faced as superintendent was a critical one. The state's workers compensation market was collapsing until com-

ployees alike," Mr. Leonard added.

He described the superintendent as a "multidimensional thinker who is 'very decisive' yet willing to explain his reasoning."

Proof that the workers comp reforms are working was seen in two subsequent workers comp rate reductions of 3.8% and 12.5%.

However, lingering problems in Maine include disagreements about funding the residual market's deficit (BI, July 17, 1995).

The Alliance of American Insurers filed a lawsuit last month challenging the state pool's plan to require contributions from minor insurers domiciled outside the state, though they did not write workers compensation insurance in Maine. (BI, Dec. 4, 1995).

Despite the lawsuit, Alliance Vp and General Counsel Richard Hefner said relations with Mr. Atchinson are good. "I find him accommodating and willing to listen and discuss issues, more so than any other NAIC president I can think of," he said.

Workers comp is not the only arena in which the Maine bureau is showing leadership under Mr. Atchinson's direction.

The Robert Wood Johnson Foundation has awarded a \$250,000 grant to the Maine Bureau to support the development of 24-hour coverage pilot projects in the state (BI, Jan. 15).

Mr. Atchinson lives in Cumberland, Maine, with his wife, Joan—who is also an attorney—and their two preschool-age children. **BI**

## 'Regulation must be more customer-friendly for U.S. and non-U.S. insurers,' the NAIC's Brian Atchinson says.

pensation reform law helped rebuild it (BI, Oct. 26, 1992).

Reforms included establishing an employer mutual insurance company and joint labor/management workers compensation board, deregulating the marketplace and reducing and restricting benefits.

"I certainly believe that Brian Atchinson was instrumental in re-creating the workers compensation market," said John Leonard, president and CEO of Maine Employers' Mutual Insurance Co. in Portland, Maine. "He took a prudent and balanced approach toward ensuring the vitality of the market and the interests of employers and em-

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other Financial Personnel .....3,053

**Risk/Employee Benefits:**  
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related department personnel of: insurance, risk,  
employee benefits, personnel, compensation,  
pension, safety, security, industrial relations,  
human resources and employee/  
labor relations .....16,931

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Associations .....355  
Government, Unions and  
Educational Institutions .....955

**Commercial Consumers**  
**Sub-total** .....31,553  
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Insurance Companies .....7,857  
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Attorneys & Consultants .....3,556  
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# Capital

Continued from page 3  
tional reinsurance and specialty catastrophe reinsurance to bear, he said.

There are several mechanisms that insurers can employ to access the capital markets, according to Mr. Sandor, including:

- Private or public equity capital, such as the money that poured into Bermuda to back the property catastrophe reinsurance facilities.

- Act of God bonds, which are debt instruments issued by insurers that, in the event of catastrophic losses, allow the issuer to forego part of the interest payments. Nationwide Insurance Group has issued such bonds (BI, May 29, 1995).

- Catastrophe futures and options, which have been traded on the Chicago Board of Trade for several years.

- Insurer "swaps," where insurers with different geographical exposures actually trade risk. For example, an insurer with California earthquake exposure could trade some of that for Florida windstorm exposure.

"The capital markets are already involved... they have been for some time," Mr. Sandor said.

But why would capital markets want any part of a potentially

**'The capital markets are already involved,' says Richard L. Sandor. 'They have been for some time.'**

crippling risk?

Guy Carpenter's Mr. Murphy answered that question simply: A strong rate of return. In addition, "insurance risk can be considered an asset class. And it's diversification for investors," he said.

However, Jack Weber, executive director of the Natural Disaster Coalition in Washington, said that capital markets have shown little interest in getting into a California earthquake facility that has been seeking a total of \$10.5 billion in capital. "That authority can't raise the money (from capital markets) because investors want a 30% to 40% return. The primary industry won't pay the necessary price to guarantee such a return," he said.

If capital from outside the industry proves to be unattainable in ample amounts, another possible solution is a legislative proposal for a national pool consisting of insurer-financed catastrophe funds that would have the federal government as a "back-

stop," said Mr. Weber.

"U.S. taxpayers have already paid out \$50 billion in the last few years for disaster relief, so we're at a crossroads. The only questions that need to be answered are how much of a role would this pool play and what would be the level of acceptable participation from the government," he said.

Mr. Weber said once those important questions are answered, "Congress will pass it."

But the idea of the federal government taking a sizable role in catastrophe reinsurance does not thrill Centre Financial's Mr. Sandor. "I'm worried about the government intervening. Centralization is not a great idea. I support a private-sector solution to a public problem."

Another suggestion offered by moderator Myron Picoult, managing director and senior insurance analyst with First Manhattan Co. in New York, is that insurers be allowed to set up catastrophe reserves on a tax-free basis.

But panelists pointed out that such a suggestion would never fly through Congress at a time when spending cuts and a balanced budget are such hot topics.

The net cost to the government would be \$15 billion to \$20 billion, which would lead to additional spending cuts, noted Mr. Weber. "It's politically unfeasible in this day."

# The fundamental problem

## Insurer executives bemoan low rates for high risks

By MICHAEL SCHACHNER

NEW YORK—The fundamental problem plaguing domestic property insurers is that premiums for catastrophe-prone property, primarily residential property, are inadequate compared to potential losses on those risks, several insurer CEOs say.

Congress may well put taxpayer funds into a reinsurance program to help pay losses. And capital markets may soon offer more protection. But until insurers address the fundamental problem of low prices, such remedies would be only Band-Aids, said one chief executive officer.

Low rates and premiums on houses in disaster-prone areas are the most obvious catastrophe-related problems for insurers, said Ronald E. Ferguson, chairman and CEO of General Re Corp. in Stamford, Conn., during a panel discussion last week at an Insurance Services Office Inc. meeting.

"We're not dealing with the fundamental problem," said Mr. Ferguson. "There's only about \$2.5 billion in property premiums coming out of Florida," where the exposure easily exceeds \$50 billion.

"Homeowners insurance isn't, and never has been, profitable," added William R. Berkley, chairman and CEO of W.R. Berkley Corp. in Greenwich, Conn. "But if you were to get the pricing mechanism right, you'll solve the problem. People won't build on the beach if they know they'd have to pay 10 or 12 times what they're paying now."

But simply hiking rates on coastal and California homes isn't an option, said D. Richard McFerson, president and CEO of Nationwide Mutual Insurance Co. in Columbus, Ohio. "Regulators won't let us... but they should. People who choose to live in a high-risk situation should pay for that choice."

Dennis H. Chookaszian, chairman and CEO of CNA Insurance Cos. in Chicago, reiterated what many have been saying for several years: Personal lines, not commercial lines, losses are killing the industry.

"If you could get homeowners pricing corrected, you'll solve most of the problems. But doing so is politically unpopular," he said.

But, "some would be happy to pay three times more, when it should be 10 or 12 times," Mr. Berkley said.

But image is still important, two executives said. "We can't be perceived as if we're gouging the public. There is a PR side to this," said Mr. McFerson.

Pushing for higher rates for disaster-prone areas will never be easy because the public perceives such business as far more profitable than it really is, said Douglas W. Leatherdale, chairman, president and CEO of The St. Paul Cos. Inc. in St. Paul, Minn. "We've failed to explain that this isn't a high-rate-of-return industry. Our margins can be small."

In an odd way, the recent losses may help the industry.

"Actuarially sound rates haven't been politically feasible, but we should still work toward that. With eight one-in-100 year events in the past five years, people may actually realize that there is a big risk," explained Robert T. Herres, chairman and CEO of United Services Automobile Assn. in San Antonio.

If higher rates are unattainable, higher deductibles and more mandatory self-insured retentions should be used, as they are on the commercial side, several executives said.

Another major factor affecting the industry is restructuring.

Mr. Chookaszian said restructuring will continue along three major lines: for financial reasons, for consolidation and for liabilities. "For the stock companies, more outside money that's geared toward quarterly results will continue to come in. You see it now with KKR, the Bass brothers and Insurance Partners. This is smart money," he said.

CNA's 1995 purchase of Continental Corp. and the more recent acquisition of Aetna Life & Casualty Co.'s property and casualty business by

Travelers Corp. signal that restructuring for consolidation is heating up after years in which the only buyers of U.S. insurers were foreign.

"Until last year, the consolidation price was too high for domestic companies. Only outside insurers were attracted," he said.

On the liability side, Mr. Chookaszian pointed to the Zurich Insurance Co. purchase of much Home Holdings Inc. business, Kohlberg Kravis Roberts & Co.'s deal for Talegen Holdings Inc., CIGNA Corp.'s desire to split into two companies, one a runoff company, and Lloyd's of London's creation of Equitas Ltd.

The CEOs differed on their major concerns for the near future.

Mr. McFerson said managing Nationwide's exposure base and making sure the company is protected from catastrophes is his prime concern. Another top concern is improving its distribution.

Mr. Leatherdale said figuring out a way to "get the prices I need to keep the gap between pricing and loss trends sizably apart." Beyond that, he said, reducing St. Paul's expenses and improving productivity concern him. "I can affect these things more than I can loss trends."

Mr. Berkley said communicating to people what low interest rates in 1996 will mean to his company's bottom line is a leading concern. "Investment income is going to drop this year without better investment strategies." He also cited keeping up with information technology.

Mr. Chookaszian said CNA will be dedicated to reducing and managing environmental liabilities as well as tackling computer problems.

And Messrs. Ferguson and Herres said maintaining pricing amid heavy competition will be their leading challenges.

And into the next century?  
"I want to be the consolidator, not the consolidatee," said Mr. Leatherdale. "We're here in an industry that is going to continue to get smaller. This industry will be totally global in 10 years and I still want to be around."

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# OSHA's Stanley joins AK Steel

## Comings & Goings: Buyers

James W. Stanley, former deputy assistant secretary at the Occupational Safety and Health Administration, joins AK Steel Corp. today as vp-safety and health.

Mr Stanley, 51, fills the newly created post at the Middletown, Ohio steel company after spending nearly 25 years with OSHA. His duties in overseeing health and safety at AK Steel are still being outlined.

He will report to Richard Wardrop, president and chief executive officer.

Mr. Stanley began his career at OSHA in 1971 as a maritime officer in the Philadelphia area. After moving through the ranks, he was named regional administrator in New York in 1987 and took the deputy assistant secretary post in 1994.

While at OSHA, Mr. Stanley conducted workplace safety training programs for organizations including the United Steelworkers of America, Western Pennsylvania Safety Council and the University of Pittsburgh School of Engineering.

Mr. Stanley holds a bachelor's degree in business administration from Elizabethtown College.

Mary B. Dopsloff, 28, is the new insurance and risk manager at Four M Corp., a Valhalla, N.Y.-based manufacturer of corrugated cardboard.

Ms. Dopsloff's responsibilities include property/casualty insurance programs, safety and claims

handling.

The insurance and risk manager position was spun off from another department within Four M.

Ms. Dopsloff will now report to Richard Stinner, financial manager.

Ms. Dopsloff previously worked as a risk management consultant at GE Capital Insurance Services and as a risk analyst at Service America Corp., both in Stamford, Conn.

Ms. Dopsloff holds a bachelor's degree in English from the University of Scranton and is a licensed insurance broker in Connecticut.

Ms. Dopsloff is a member of the Fairfield County, N.Y., chapter of the Risk & Insurance Management Society Inc.

\*\*\*

Michael J. Walsh has been named worldwide director of risk management for Paris-based Saint-Gobain and vp of risk management for its holding company, Saint-Gobain Corp. in Valley Forge, Pa.

Mr. Walsh, 52, previously was vp and treasurer at Saint-Gobain Corp.

Mr. Walsh joined CertainTeed Corp., a Saint-Gobain Corp. unit, in 1977 as director of financial analysis.

The new appointment means Mr. Walsh will be responsible for

Saint-Gobain's worldwide risk management program, including evaluating and locating insurance for property, products, health and environmental risks.

He also is responsible for risk management activities at Saint-Gobain Corp.'s North American facilities.

Risk management duties previously were handled by separate departments at the companies. Saint-Gobain is a manufacturer of building materials and Saint-Gobain Corp. is the holding company for U.S. and Canadian subsidiaries.

Mr. Walsh reports in Paris to J.F. Phelizone, director of finance at Saint-Gobain and in the United States to George Amoss, chief financial officer of Saint-Gobain Corp.

Mr. Walsh holds a bachelor's degree in business administration from Manhattan College and a master of business administration from New York University.

*We'd like to report on staff changes in your company's risk management, safety and employee benefit departments. Contact Michael Bradford, Associate Editor, Business Insurance, Suite 114, 8950 N. Central Expressway, Dallas, Texas 75231; 214-361-2295; fax: 214-696-1936. Please include a photograph.*

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# Quake

Continued from page 1

quake exposure in one entity and would know exactly what their exposure was," added Willis T. King Jr., chairman of Willcox Inc. Reinsurance Intermediaries in New York, another member of the broker group.

Reinsurers often have said they would put up substantial lines for exposures they could quantify, Mr. King noted. "They're really proving it in this situation."

Much of the capacity being committed to the CEA, moreover, is "new" capacity that will not drain reinsurance support for commercial earthquake and other catastrophe risks, brokers and reinsurers say.

"It's capacity that's been put into the business and capacity that's been created by (cat reinsurers) retained earnings over the last two to three years," Mr. King said.

While some participants—including Insurance Department officials themselves—express mixed feelings about government involvement in solving the earthquake coverage problem, they also acknowledge the CEA as a model of cooperation among policyholders, government and the private sector.

"The toughest day in my (career) with (Insurance Commissioner) Chuck Quackenbush was when I went in and told him it would have to be a state agency," Mr. Butler said of the CEA's development.

But "this is something that embodies the best of everything," he said.

The CEA has its genesis in a market crisis that followed a devastating string of losses from the \$960 million Loma Prieta earthquake in 1989 to the \$12.5 billion 1994 Northridge quake. Prompted in part by such losses, more homeowners bought quake coverage: 34.5% at year-end 1994 compared with 10% in 1985, according to CEA documents.

At the same time, insurers—required by law to offer the coverage with homeowners policies but facing uncapped liabilities—have been increasingly unwilling to write new and renewal business. Over 90% of the market is now closed to new business and insurers have said they would non-renew more than 1 million policies unless the problem is addressed, CEA documents say.

The Insurance Department and state Legislature responded with two bills signed into law last October: one created a new earthquake "mini-policy" that significantly re-

duced existing earthquake coverages and the other measure authorized creation of the CEA.

The mini-policy, a key to attracting support for the CEA, includes a deductible of 15% of the limit for structures, a \$5,000 limit on contents and a variety of other sublimits and exclusions. The policy covers earthquake "shake" damage only and excludes other perils.

Had the policy been widely used at the time of the Northridge quake, insured residential losses would have been cut to \$4.3 billion from \$8.2 billion, the CEA estimates.

As proposed, the CEA would issue policies through participating insurers, and existing policies would be converted to CEA coverage at renewal. The facility is structured to provide a maximum aggregate limit of \$10.5 billion in several layers funded by property insurers, reinsurers, the state government, policyholders themselves and possibly the capital markets.

The \$10.5 billion would consist of:

- An initial \$1 billion layer built with non-refundable capital contributions from participating insurers based on their market share. An insurer with a 10% market share, for example, would have to contribute \$100 million.

- A layer consisting of the CEA's retained earnings. Assuming no losses, the CEA estimates its retained earnings will grow from \$147 million at the end of this year to \$5.2 billion by the year 2004.

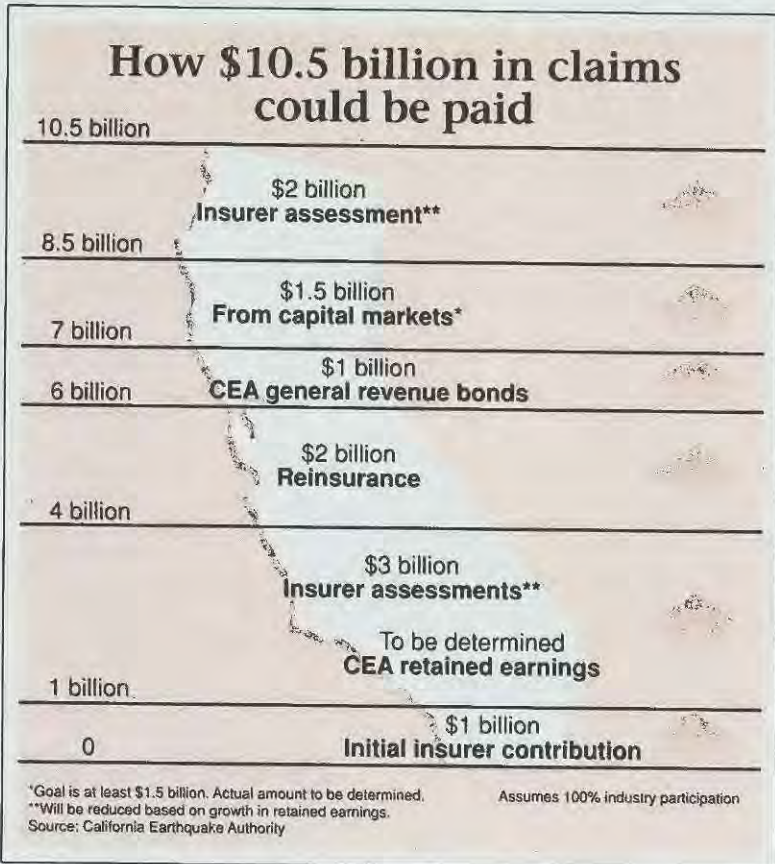
- A \$3 billion layer funded by assessments of participating insurers based on market share. The total amount of this layer will be reduced yearly as the retained earnings layer grows, and will be cut to zero after 10 years, the CEA projects.

- The \$2 billion reinsurance layer.

- A \$1 billion layer funded by a state general revenue bond issue. Principal and interest payments would be covered by a surcharge to CEA policyholders of up to 20% of their annual premium.

- A layer of at least \$1.5 billion funded with the sale of an investment product. The California department is still discussing the form this product will take with Morgan Stanley & Co. and other advisers, and a decision should be made this week, Mr. Butler said.

- A second industry assessment layer of \$2 billion, again based on insurers' market share. This layer will also be reduced yearly after the initial capital and retained earnings layers surpass \$6 billion, and could



be eliminated by the year 2006, the CEA projects.

The total aggregate limit offered by the CEA will depend on the degree of insurer participation: The \$10.5 billion limit would require participation by all the state's earthquake insurers. At the minimum required 75% participation level, the total limit would be \$7.86 billion and the amount of each layer would be proportionally reduced. The reinsurance layer, for example, would be \$1.5 billion at 75% participation.

The Insurance Department has received verbal commitments from about 84% of the market, according to Blanch's Mr. Graham, who said actual participation will be in the 75% to 82.5% range.

Many smaller insurers—those with \$50 million or \$60 million in surplus, for example—won't participate because they can't afford the required CEA capital contribution, he said.

Before the CEA could get a green light from the Legislature to start operating, though, it had to put its reinsurance program in place.

Apart from its sheer size, the placement was unusual because reinsurers were being asked to commit to a facility that might never get off the ground if other conditions

weren't met, brokers note.

Knowing that global capacity would be needed, the California department assembled a team of brokers and divided the market geographically: Blanch acted as coordinating intermediary while Willcox took Bermuda, most of Europe and the Far East; Sedgwick Re took the United States and Canada; G.J. Sullivan Co. of Los Angeles approached direct writing reinsurers; and London broker Ballantyne, McKean & Sullivan took Lloyd's of London and the United Kingdom market.

The CEA decided early on to market the program as a single \$2 billion quota share layer in which reinsurers would all get the same price and terms, Mr. Graham said. Breaking the program into layers, he explained, would have risked infighting among reinsurers.

The reinsurance layer will also respond on an aggregate basis, meaning that as losses exhaust the underlying limits, the reinsurers move closer to having to respond on a first-dollar basis to the next loss.

On Dec. 6, the brokers, accompanied by Mr. Quackenbush, embarked on a road show to sell the program to reinsurers, finishing the tour Dec. 16 in Zurich, Mr. Graham said.

In the process, a select number of targeted lead reinsurers were asked for quotations and other terms. By Dec. 29, the leads had come back with quotes ranging from \$470 million to \$600 million for the two-year term of the deal. On Jan. 4, the CEA approved a two-year premium of \$575 million, equating to a 14.4% annual rate on line for the reinsurers, Mr. Graham reported.

Within two weeks, a syndicate of lead reinsurers and several following markets had committed a total of more than \$1.5 billion to the program (see chart, page 1).

Several following markets have also committed large lines, including Zurich Insurance Co. and Centre Reinsurance Co. Ltd. of Bermuda, \$150 million; units of American International Group Inc., \$100 million; IPC Re Ltd. of Bermuda, \$20 million; and Transatlantic Reinsurance Co. of New York, \$15 million.

Mr. Graham projected that total commitments could hit \$1.8 billion by the time the placement is wrapped up this week, an amount that should be enough to handle expected participation in the CEA.

If the total limit falls below \$2 billion, each reinsurer's line would be reduced proportionally.

Mr. Graham said he had expected the gigantic placement to drain catastrophe market capacity. For one thing, many of the largest California homeowners insurers—like State Farm Mutual Automobile Insurance Co. and Allstate Insurance Co.—buy little or no reinsurance, meaning that it was not a matter of simply transferring capacity to the CEA, he said.

In addition, California property insurers are still exposed to risks not covered by the CEA, like fire following a quake, and may reinsure them. In the first year of the CEA's operation, participating reinsurers will also have "dual" exposure, transferring some policies to the CEA while remaining liable on others until renewal, Mr. Graham said.

It appears, though, that the CEA capacity is new capacity reflecting increased appetite for risk and rising surplus following two years of favorable cat experience, according to brokers.

"This is mostly new capacity, additional capacity created for this purpose," agreed Herbert N. Haag, president of Partner Reinsurance Co. Ltd. of Hamilton, Bermuda. Partner Re's own equity has grown to \$1.3 billion from \$950 million over the last two years on the strength of good loss experience, he noted. **BI**

## HMO premiums cut in collective approach

SAN FRANCISCO—A recent study provides new insight into the Pacific Business Group on Health's approach to saving member employers millions of dollars through collective negotiations with HMOs.

The study, published in the Winter 1995 issue of Health Affairs, reveals that in 1994, before collective negotiations, 11 member employers made payments to HMOs ranging from \$1,544 to \$1,958 per employee.

But analysis showed that differences in benefit packages, risk mix and volume of purchasing accounted for only one-third of the premium variation. The rest was unexplained, said James Robinson, a University of California at Berkeley professor of health economics and the study's author.

"What was going on is there is a lot of variation in what employers are paying for health insurance," he said. "It is not based on any kind of data or cost information. It's simply that health plans are charging what the market will bear, and what the market will bear is based in large

## For the Record

part on purchaser ignorance. In collective alliance, the first thing (PBGH members did was) they put their prices side by side."

Through comparison and collective negotiations, the employers were able to eliminate the discrepancies between their payments to the same HMOs, Mr. Robinson said. For 1995, negotiations for the 11 employers resulted in 9% savings in premiums, or \$161 per person covered, which totals \$36.5 million for all the employers.

Pacific Business Group on Health is a non-profit organization that represents 28 health care purchasers, which provide benefits for more than 2.5 million people. The PBGH realized an additional 4.3% in savings for 1996, or \$17 million.

## Supreme Court ruling roundup

WASHINGTON—The Supreme Court earlier this month ruled in one narrow product liability case and declined to review two others

of interest to risk managers.

In a product liability case, the court held in *Yamaha Motor Corp. vs. Calhoun* that lawsuits over certain watercraft accidents—those that do not involve professional mariners and occur in state territorial waters or less than three miles offshore—are governed by state tort law, not federal maritime law.

Separately, the court declined to review a ruling from the 7th U.S. Circuit Court of Appeals in *Employers Insurance of Wausau vs. Browner* that parties must comply fully with Environmental Protection Agency cleanup orders before seeking reimbursement from the government.

Also, the court without comment declined to review a 10th U.S. Circuit Court of Appeals ruling in *Robinson vs. Audi* that an attempt to invalidate a product liability ruling on the basis that defense lawyers had defrauded the court required proof that deliberate fraud had occurred, not simply proof of a "reckless disregard for the truth." **BI**

## Pharmacy

Continued from page 2  
 wholesalers that are defendants, said John Rector, general counsel of the Washington-based National Assn. of Retail Pharmacists.

The amount of money involved here could prompt regulators to more closely scrutinize drug pricing, regardless of the trial outcome, said Mr. Rector. "The surfacing of offers like \$600 million will put pressure on federal and state antitrust agencies to do something."

Those companies that are settling are likely realizing that jury bias against big corporations and institutions could work against them, as would jurors' interest in low-cost health care, said Anne Pramaggiore, an antitrust lawyer and partner in Chicago-based McDermott, Will & Emery. Also, treble damages can be imposed in an antitrust case.

Even if discounting ends, employers would still have reasons to contract with pharmacy benefit managers, said Todd Swim, health actuary and capitation practice leader for Buck Consultants in Chicago.

"There are other inducements be-

yond pure discounts," Mr. Swim said. "If no one receives discounts from managers, there would still be significant value they (PBMs) would add to the product."

For example, effective use of formularies and databases that track drug interactions, as well as plan designs for drug programs that are tailor-made for specific employers, would still be attractive to employers, he said.

The proposed settlement is likely to lead to fewer and smaller discounting arrangements, he said.

The effect of the suit could be either to boost discount drug prices to retail levels or push retail prices down to current discount levels. More likely, an equilibrium will be reached, said Mark Pilkington, executive director of the Illinois Pharmacists Assn. in Chicago.

Mr. Pilkington added that he thought such an equilibrium would come about by the drug companies' changing their pricing philosophy—not a court order. He said, he believed the remaining defendants would agree on a settlement, as well, to avoid going through a trial and being forced to release years of confidential pricing data. **BI**

# Exxon

Continued from page 1  
cargo it owns.

A jury trial on a coverage dispute over a section of the policy covering Exxon's pollution liabilities as a cargo owner is set to begin in Texas state court in April.

After the Texas litigation ends, the two sides will arbitrate their dispute over a third section of the policy that covers non-marine third-party liability claims.

However, a federal appellate court decision earlier this month raises questions about the remaining coverage dispute.

The 2nd U.S. Circuit Court of Appeals in New York has reversed a lower federal court's decision that deferred to the Texas state court and dismissed the insurers' motion for a declaratory judgment that Exxon is not covered.

The Texas trial would begin seven years after the nation's worst oil spill fouled the waters, aquatic life and shoreline of Alaska's pristine Prince William Sound.

About 11 million gallons of heavy crude oil poured into the sound from the crippled Exxon Valdez after the oil tanker ran aground on March 24, 1989, while under the command of a captain with a history of alcohol abuse.

Exxon says its spill costs total about \$3.8 billion: \$2.5 billion in cleanup costs; \$1 billion to settle state and federal civil charges (BI, Oct. 7, 1991); and \$300 million to settle claims by 12,000 fishermen and other claimants.

Exxon took a \$1.35 billion after-tax charge in 1989 for spill-related costs.

Exxon also has asked a federal court judge in Alaska to set aside the \$5 billion of punitive damages a jury ordered it to pay to 15,000 plaintiffs (BI, Sept. 19, 1994).

Exxon contends that various sections of the cargo policy cover its pollution cleanup costs and third-party claims.

But, Exxon has sought nearly \$3 billion from its cargo insurers—well above its \$600 million of

property limits and \$250 million of liability limits under the policy, said attorney Harry Reasoner, managing partner with Vinson & Elkins in Houston, who represents the insurers.

An Exxon spokesman would not comment, but Mr. Reasoner said the company sought \$2.15 billion of damages for bad faith, trebling of damages under Texas law, interest and attorneys' fees.

More than 150 insurers participated in the cargo insurance program, which is written above a self-insured retention that sources say totals between \$200 million and \$250 million.

The coverage is led by Lloyd's of London syndicate 79/650, managed by Janson Green Ltd. Underwriters at Lloyd's; London and Scandinavian companies; Allianz International Insurance Co. (Ltd.); and units of American International Group Inc., CIGNA Corp. and Continental Corp. participated in the program.

Marsh & McLennan Inc. of New York and London affiliate C.T. Bowring & Co. (Insurance) Ltd. placed the coverage.

Besides the cargo coverage, Exxon had \$400 million of pollution liability limits from the International Tanker Indemnity Assn., a Bermuda protection and indemnity club (BI, Sept. 6, 1993).

The cargo insurers denied coverage for several reasons.

The cargo policy, they said, excludes pollution liability coverage because Exxon already had such coverage from the P&I club.

The insurers also argued in court papers that the spill resulted from "Exxon's willful, wanton, reckless and/or intentional misconduct."

The National Transportation Safety Board concluded, in part, that the ship's captain was impaired by alcohol when the spill occurred.

And, the jury that ordered Exxon to pay punitive damages found that, because of Capt. Joseph Hazelwood's drinking problems, Exxon and the captain were reckless (BI, June 20, 1994).

In addition, the cargo insurers

argued that Exxon, as a cargo owner, had no legal duty to clean up the spill and that it undertook cleanup measures only to bolster its sagging public relations image.

But, the \$300 million settlement is one "which I support, as do the other market leaders," said Richard Youell, director and underwriter at Janson Green.

Exxon's remaining cargo insurance claims exceed \$250 million, plus interest and punitive damages, the spokesman said.

Mr. Reasoner, the insurers' attorney, said the remaining damages sought by Exxon are less than \$1 billion.

But, the 2nd Circuit's Jan. 12 decision that a lower federal court should not have backed away from the insurers' case could have one of numerous possible implications for the coverage dispute.

The case raises the issue of "whether maritime losses caused by an insured's recklessness are fortuitous" and therefore uninsurable, the 2nd Circuit said. That "is a novel issue of federal admiralty law" that a federal court should review, the 2nd Circuit said.

The appeals court reached the same decision last year under a different standard of review, which the U.S. Supreme Court overturned last fall (BI, Oct. 9, 1995).

The Texas litigation could influence the federal court case in New York, or the federal court could reach a conflicting decision, said insurer attorney Travis Broesche, another partner with Vinson & Elkins.

And, there is no telling how the two court cases may influence the arbitration discussions, Mr. Broesche said.

Meanwhile, wrapping up the final phase of its oil spill liability litigation with thousands of plaintiffs in federal court in Anchorage, Alaska, Exxon has agreed to a \$3.5 million settlement. However, the amount is fully offset by previous payments to the plaintiffs, the Exxon spokesman said.

Sarah Goddard contributed to this report.

# Captives

Continued from page 3

or capacity to monitor solvency, and captives with a large amount of unrelated business are less able to predict and control future losses, it also could lead to more captive failures," Gov. Dean added.

In addition, Gov. Dean wrote, the administration's proposal would undermine group captives, such as risk retention groups, by making it difficult for policyholders owning more than 10% of the captive to be able to deduct their premium contributions.

Sens. Leahy and Jeffords told President Clinton that raising the threshold level for premium deductibility to 50% unrelated business from 30% would have a devastating impact on the domestic captive industry.

The current threshold, the two senators said, is based on "widely accepted judicial precedents and expert evidence on the nature of insurance.

The administration's proposal, in contrast, is wholly arbitrary. It is not based on any expert judgment or evidence," Sens. Leahy and Jeffords wrote.

It isn't clear yet how much of an impact the letters from Sens. Leahy and Jeffords and Gov. Dean have had on the administration. An aide to Sen. Leahy said

no official confirmation has been received on whether the administration continues to support its captive tax provision.

The provision, though, was not included in a brief summary of a more recent administration budget proposal, which some captive supporters say is encouraging.

"It is a positive development that it isn't in the latest draft," said Jeffrey Johnson, a partner with the law firm of Primmer & Piper in Montpelier, Vt., and a former commissioner at the Vermont Department of Banking, Insurance and Securities.

Others say the administration might withdraw the captive tax provision because of concerns of antagonizing Sen. Leahy, a Demo-

crat, and Sen. Jeffords, a moderate Republican.

"The last thing the administration needs to do is incur the ire of two senators" who could be—except for the captive provision—potential supporters of its budget package, said Jon Harkavy, vp and general counsel in the Arlington, Va., office of USA Risk Group, a captive management company.

But Mr. Harkavy notes that summaries, by their very nature, don't necessarily include all provisions in a broader package and that the fate of captive tax provision still is not clear.

"I'm not sure that this issue has yet been put to bed," Mr. Harkavy said. ■

## American Airlines retirement offer costly

DALLAS—An early retirement program offered last year to some employees cost American Airlines Inc. \$332 million on a pretax basis, according to fourth-quarter financial results released by the company last week.

In addition, losses stemming from an accident in Colombia last month cost the airline \$42 million pre-tax (BI, Dec. 25, 1995), which also was recorded as a charge against fourth-quarter earnings.

AMR Corp., the parent company of American Airlines, recorded a total restructuring charge of \$533

million for the fourth quarter of 1995.

This charge included costs associated with two early retirement programs, the accident in Colombia and other losses and write-downs.

Some 2,150 Transport Workers Union employees accepted an early retirement offer American made last year and 350 flight attendants accepted a separate early retirement offer (BI, Oct. 16, 1995).

—By Deborah Shalowitz Cowans

## Updates

### 1995 storms among costliest

Continued from page 2

That estimate does not include claims from a second snow storm that hit the Northeast on Jan. 12.

Still more storms caused extensive damage to the Midwest late last week and appeared likely to receive catastrophe designation.

The costliest winter storm was the "Blizzard of 1993," which caused \$1.75 billion in insured property damage (BI, March 22, 1993).

### Court limits KAL damages

WASHINGTON—International airlines scored a victory last week when the U.S. Supreme Court ruled that under the Warsaw Convention plaintiffs cannot collect loss of society damages related to a death on the high seas.

In the suit, *Zicherman et al. vs. Korean Air Lines Co. Ltd.*, brought by the mother and sister of an American woman killed when Korean Air Lines Flight 007 was shot down in 1983 by a Soviet jet, the Supreme Court ruled that the Warsaw Convention permits compensation only for legally recognizable harm, which is determined by the applicable domestic law. In this case, the court ruled that since the plane was shot down over water the appropriate U.S. law is the Death on the High Seas Act, which allows only economic damages. As a result, the plaintiffs cannot receive \$98,000 in damages they were awarded by a trial court for loss of society.

That award was first set aside by the 2nd U.S. Circuit Court of Appeals. The Supreme Court affirmed the decision, clarifying what law should apply under cases brought under the Warsaw Convention's Article 17, which governs compensation in international air crashes.

"This ruling is a major case," said Lee Kreindler of Kreindler & Kreindler in New York, a plaintiffs attorney involved in other aviation litigation. "The Supreme Court has said it will be a choice-of-law rule governing these Warsaw Convention cases, and if the law is the Death on the High Seas Act, no loss of society damages will be awarded."

### KKR deal ends Xerox plan

SEATTLE—With the announced \$2.7 billion sale of Talegen Holdings Inc. to a group led by Kohlberg Kravis & Roberts Co. and Talegen management, Xerox Corp. will complete its long-sought exit from financial services.

The deal is to be done in two parts. First, the investors will pay \$2.1 billion for four Talegen units: Coregis Group Inc., Crum & Forster Holdings Inc., Industrial Indemnity Holdings Inc., and Westchester Specialty Group Inc. The payments will consist of \$1.3 billion in cash, \$450 million in preferred stock in a new company formed by the KKR group and \$360 million in debt.

Secondly, the group will pay \$612 million for The Resolution Group Inc., the unit that manages Talegen's runoff businesses. The payments will consist of \$150 million in cash and \$462 million in performance-based securities issued by another company formed by the KKR group.

Joseph W. Brown Jr. will remain chairman of Talegen and the runoff management unit, and each operating insurer will remain separate business entities.

Xerox's Bermuda reinsurance unit, Ridge Reinsurance Ltd., will continue to reinsure Talegen. Xerox will take a \$1.5 million charge for the fourth quarter to increase Talegen's loss reserves.

Both A.M. Best Co. in Oldwick, N.J., and Standard & Poor's Corp. in New York said that the increased leverage could lead to downgrades for the insurance units. All the companies have various A level ratings.

### Briefly noted

Stephen Merrett recently stepped down as Lloyd's of London's representative in Superfund negotiations, following the announcement of possible Lloyd's disciplinary actions stemming from losses on syndicates he managed (BI, Nov. 6, 1995). Sir Peter Miller, chairman of Lloyd's from 1984 to 1987, has taken over... The California Supreme Court will hear an appeal of an appellate court decision in *West American Insurance Co. vs. Freeman* that upheld a \$12 million punitive damages jury award against an Ohio Casualty Corp. unit in a bad faith action. The award is the highest punitive damages award to be upheld by a California appellate court in a published decision, and will be the focus of the state Supreme Court's decision... The U.S. Supreme Court let stand a New Hampshire Supreme Court ruling that Ford Motor Co. can be sued under state product liability law for selling a car without an air bag, even though federal law did not require bags in the 1988 Ford Escort involved in a fatal crash (BI, Sept. 25, 1995)... New York Gov. George Pataki is expected to sign legislation that would require health insurers and HMOs to pay for at least 48 hours of hospital care for newborns and their mothers. Maryland, New Jersey and North Carolina already have such laws... Clinton administration officials last week said a pension simplification package will be included in the administration's next budget package... Most employers with cash balance pension plans would be able to use their current methods of crediting employees' account balances with interest, under Internal Revenue Service Notice 96-8 issued last week... U.S. District Court Judge Helen Ginger Berrigan will preside over a major class-action suit against cigarette manufacturers in New Orleans following the death of Judge Okla Jones II earlier in the month. Judge Jones last year had certified the class action, which alleges cigarette makers increased nicotine levels to addict smokers (BI, Feb. 27, 1995)... The U.S. Supreme Court Friday agreed to review two cases of interest to risk and benefit managers: *Gasperini vs. Center for Humanities*, which concerns the power of federal judges to reduce monetary awards by juries; and *Spink vs. Lockheed Corp.*, which found an early retirement program offering older employees increased pension benefits in exchange for a waiver of their right to sue the company for employment discrimination violated ERISA (BI, Sept. 18, 1995).

# Fiduciary liability shield questioned

By PATRICIA B. LIMBACHER  
Crain News Service

PHILADELPHIA—Employers may have less protection from fiduciary liability for employee investment decisions than many think, a federal appeals court decision suggests.

The decision—involving a Unisys Corp. defined contribution plan that purchased guaranteed investment contracts from Executive Life Insurance Co.—also suggests that employers have to review the work of consultants who work for plans and supplement their work where necessary.

In particular, employers will need to scrutinize investment options for defined contribution plans and the information given to employees about the investments.

The 3rd U.S. Circuit Court of Appeals ruling is one of the first to consider Section 404(c) of the Employee Retirement Income Security Act and related rules from the Labor Department.

Section 404(c) limits employer fiduciary liability for investment decisions made by those in defined contribution plans. But that protection depends on meeting the conditions in the 1992 regulations, such as describing the investment alternatives, including objectives and risk and return characteristics (BI, Oct. 12, 1992).

The appeals court reversed a U.S. District Court's January 1995 summary judgment on the case and sent it back to the district court for trial.

In *Meinhardt vs. Unisys Corp.*, the 3rd Circuit questioned whether fiduciaries to Unisys' plan breached their duties of prudence, disclosure and diversification in buying more than \$200 million in GICs from ELIC before California regulators seized the company in 1991.

In defense, Unisys lawyers said even if the company failed to comply with pension law by purchasing Executive Life GICs, Section 404(c) protected the Blue Bell, Pa.-based company from liability because the participants had control over their investment choices and therefore were responsible for their own losses.

But the appeals court said there was enough evidence to show the district court erred in dismissing the suit. The appeals court also said there were genuine issues concerning whether Unisys breached its fiduciary duties and whether Unisys could use 404(c)'s protections.

## Court says employers must exercise more care on investment options

Because of the summary judgment, those issues hadn't been addressed in the lower court.

Meanwhile, experts say the decision will send employers scurrying to look at their own defined contribution plan descriptions.

This case is "indicative of how slippery 404(c) really is. You may think you are under 404(c)'s protections, but with 20/20 hindsight, you really aren't," said Dennis Coleman, a principal at Kwasha Lipton L.L.C. in Fort Lee, N.J. "Companies need to look at this case closely and see how they can protect themselves so they don't get into the same position that Unisys is in," he said.

To meet the 404(c) standards, many employers would have to add investment options and information to participants.

What's more, following the 3rd Circuit ruling, companies will try to protect themselves by making "a paper trail that describes all the things that they should be doing" to comply with the 404(c) regulations, said Mr. Coleman.

What's key is the process plan sponsors use to select and monitor investments, and the procedures used in communicating to participants, said David Wray, president of the Profit Sharing/401(k) Council of America in Chicago.

"It's critical that the sponsor goes through a thorough process of choosing managers and crafting investment options," Mr. Wray said. "Then if they go into a court of law, the prudence protection will be there for them."

Labor Department Associate Solicitor Marc Machiz said plan sponsors should be fine if they comply with the 404(c) regulations.

"I don't think there is anything in the (appeals court) opinion that changes or calls into question the legal framework set out in the DOL's regulation," Mr. Machiz said.

The appeals court said Unisys could use 404(c) as its defense but must show where it applies in the case. The court said it didn't have enough evidence to decide whether participants had control of their investments.

In questioning Unisys' degree of prudence, the appeals court said Unisys did not act pru-

dently when it invested in five-year contracts with Executive Life.

According to the decision, Unisys relied on its consultant, Johnson & Higgins, to analyze ELIC's creditworthiness. But Murray Becker, a GIC consultant at that time with J&H, said in his deposition that J&H was not a credit-rating agency and recommended companies that Standard & Poor's Corp. had rated AAA.

And J&H had recommended three-year contracts; Unisys bought its first of three five-year contracts in 1987 and soon afterward terminated J&H.

Writing for the appeals court, Judge Carol Los Mansmann said "a reasonable fact finder could conclude that Unisys passively accepted its consultant's positive appraisal of Executive Life without conducting the independent investigation that ERISA requires."

In addressing diversification, the appeals court said because the risk of loss was only among the GIC contracts, it was appropriate to decide whether the fixed-income and insurance contract funds—which held the Executive Life GICs—were adequately diversified. But, that decision was left for the district court to make.

In the disclosure issue, the court said that in previous cases it has held fiduciaries cannot mislead participants, and while 404(c) protects fiduciaries from investment decisions participants make, it doesn't relieve them from disclosing information to participants.

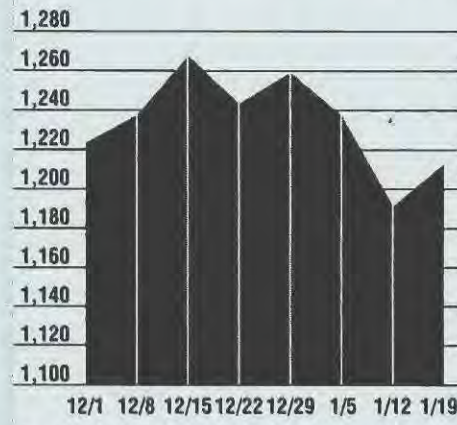
While the appeals court said it could not decide whether Unisys was obligated under 404(c) to tell participants about the risks involved and Executive Life's financial condition, it did say there were a number of disclosure issues that needed sorting out.

The court said: "While Unisys was not obligated to share with participants everything it knew about GICs and Executive Life, it was obligated to impart to participants material information of which it had knowledge that was sufficient to apprise the average plan participant of the risks associated with investing in the fixed income and insurance contract funds" that held Executive Life investments.

No trial date has been set.

*John P. Meinhardt et al. vs. Unisys Corp., 3rd U.S. Circuit Court of Appeals; Nos. 95-1156, 95-1157, 95-1186, Jan. 4, 1996.*

## BI Insurance Index



Base=100 on Dec. 29, 1978  
Source: Nordby International Inc.

### PCS catastrophe options

As of Jan. 19		Call spread bid/ask		Price	
Eastern September 1996	40/60	5.4/6	9.4	Northeast Sept. 1996	40/60
50/70	4/6	8.0	13.8	80/100	1.5/1.8
80/100	2.5/4	8.0	13.8		8/11.5
Southwest Sept. 1996	40/60	4/4.6	9.4	Texas June 1996	10/20
			13.8		1/1.4

Total volume: 220 Total open interest: 1,072  
For information on PCS cat options, call 312-435-3674.  
Source: Chicago Board of Trade

### British Issues

Jan. 18	Price	P/E	Div. Yield	1 week	
Companies	price	price	%	high—low	
Comm Union	619	12.4	35.0	5.7	619—610
Genl Accident	658	9.4	38.8	5.9	658—638
Gdn Royal Exch	274	9.1	11.3	4.1	274—256
Independent	400	8.9	13.8	3.5	405—400
Royal	397	8.1	18.8	4.7	397—384
Sun Alliance	376	8.2	21.3	5.7	376—366
Brokers					
Bradstock	70	11.7*	7.1*	10.1	72—70
Fenchurch	149	10.0*	10.6*	7.1	150—149
CE Heath	151	9.4	12.5	8.3	152—151
JIB Group	105	11.1	9.4	9.0	105—105
Lloyd Thompson	164	10.1*	11.3*	6.9	169—164
Lowndes Lmbert	151	8.2	11.0	7.3	151—151
Nelson Hurst	164	10.9	9.5	5.8	164—160
Sedgwick Grp	129	11.3	8.1	6.3	130—128
Steel Bri Jones	43	5.4	5.6	13.0	43—43
Willis Corroon	148	13.5	8.3	5.6	148—147

Source: Philip Olsen, London \*Actual. Others estimated

## BI Industry Stock Report JAN. 15, 1996, THROUGH JAN. 19, 1996

BROKERS											INSURERS/REINSURERS											HEALTH MAINTENANCE ORGANIZATIONS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Company	NYS	Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value	Company	NYS	Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value	Company	NYS	Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Accordia Inc.	NYS	28.75	0.00	-3.36	34.50	23.50	23	0.72	2.50	16	14.00	2.05	National Re Corp.	NYS	37.125	1.71	-2.30	38.13	26.75	20	0.2	0.54	19	17.05	2.18	Alexander & Alexander	NYS	19	2.00	0.00	26.44	18.00	372	0.1	0.53	-15	19.17	0.99	Navigation Group	NDO	17.25	-3.50	-2.13	19.75	12.75	31	0.00	0.00	17	10.21	1.69	E.W. Blanch Holdings Inc.	NYS	21.875	4.79	-6.42	23.38	16.50	50	0.4	1.83	17	4.93	4.44	Nobel Insurance Ltd.	NDO	12.375	8.79	8.79	12.38	8.13	164	0.2	1.62	6	6.84	1.81	Gallagher Arthur J. & Co.	NYS	36.5	1.04	-2.01	38.00	30.63	30	1.16	3.18	14	6.48	5.63	Ohio Casualty Corp.	NDO	35	0.72	-9.68	39.25	29.00	437	1.52	4.34	19	23.64	1.48	Hib, Rogal & Hamilton	NYS	13.5	-1.82	0.93	14.98	10.50	31	0.6	4.44	16	1.21	11.16	Old Republic Int'l	NYS	33.5	1.52	-5.63	35.50	22.13	304	0.52	1.55	11	25.79	1.30	Kaye Group Inc.	NDO	7.25	0.00	-9.38	10.75	6.75	2	0.1	1.38	8	NA	NA	Orion Capital Corp.	NYS	43.625	0.87	0.58	45.25	34.25	41	0.92	2.11	9	26.00	1.68	Marsh & McLennan	NYS	86.875	1.02	-2.11	90.13	76.13	752	3.2	3.88	16	19.95	4.35	Partner Re Ltd.	NDO	26.625	2.90	-3.18	28.38	19.00	3202	0.00	0.00	0	20.37	1.31	Poe & Brown	NDO	24.25	-2.02	-2.51	25.25	20.50	53	0.48	1.98	15	5.15	4.71	Penn-America Group Inc.	NDO	13.875	-2.63	-2.63	15.50	6.50	32	0.12	0.86	12	6.40	2.17	Philadelphia Cons. Holding	NDO	20	11.89	23.08	21.88	12.00	644	0.24	1.20	17	9.05	2.21	PXRE Corp.	NDO	26.5	7.07	0.00	29.75	21.00	91	0.72	2.72	5	21.27	1.25	Provident Life	NYS	28.375	0.00	-2.16	29.75	20.50	0	0.72	2.54	13	22.34	1.27	Prudential Reinsurance	NYS	21.75	-2.79	-6.95	23.50	18.50	1280	0.12	0.55	13	NA	NA	Reliance Group Holdings	NYS	8.375	6.35	-2.90	9.25	4.88	1191	0.32	3.82	12	3.42	2.45	Reliastar Financial Corp.	NYS	42.75	1.18	-3.66	44.50	31.00	364	1	2.34	11	24.53	1.74	Renaissance Re Holdings Ltd.	NDO	31.25	3.31	2.88	33.13	20.72	71	0.00	0.00	0	NA	NA	Risk Capital Holdings	NDO	21.375	-3.39	-8.56	23.38	19.88	24	0.00	0.00	0	NA	NA	RLI Corp.	NYS	24.5	0.51	-2.00	25.38	16.63	31	0.52	2.12	33	20.51	1.19	St. Paul Companies	NYS	57.625	3.36	3.60	59.38	44.63	1390	1.6	2.78	10	32.46	1.78	SAFECO Corp.	NDO	34.125	1.87	-1.09	39.25	25.38	1483	1.06	3.11	11	44.95	0.76	Selbels Bruce Group	NDO	2.125	13.33	41.67	2.81	0.44	382	0.44	20.71	-1	0.04	53.13	Selective Ins. Group	NDO	37	8.47	4.23	38.38	25.75	161	1.12	3.03	10	23.23	1.59	Sphere Drake Holdings	NYS	12.375	-4.81	-11.61	19.13	12.13	168	0.00	0.00	0	13.86	0.89	TIG Holdings	NYS	26.875	-3.15	-5.70	29.50	18.88	793	0.2	0.74	16	16.62	1.62	Titan Holdings, Inc.	NYS	13.25	-1.85	-7.83	15.75	9.38	33	0.3	2.26	10	9.04	1.47	Torchmark & Fire	NDO	62.375	0.40	-5.49	69.25	49.88	7	0.4	0.64	22	57.72	1.08	Torchmark Corp.	NYS	44.875	3.76	-0.83	46.00	36.75	1040	1.16	2.58	12	17.37	2.58	Transatlantic Holdings	NYS	72.25	-2.36	-1.53	75.25	54.25	239	0.48	0.66	13	33.30	2.17	Transnational Re Corp.	NDO	24.375	0.52	-0.51	27.25	18.75	23	0.00	0.00	7	18.84	1.29	Travelers Corp.	NYS	61.375	4.03	-2.00	63.88	34.00	5126	0.8	1.30	11	24.77	2.48	Trenwick Group Inc.	NDO	55.75	0.90	-0.89	57.50	40.75	101	1.12	2.01	13	29.23	1.91	United Fire & Casualty	NDO	29.25	2.63	4.46	29.50	17.88	3	0.9	3.08	11	28.96	1.01	Unitrin	NDO	48.625	0.00	1.30	50.50	43.50	68	2	4.11	13	37.51	1.30	UNUM Corp.	NYS	58.375	1.74	6.14	58.75	39.88	1121	1.06	1.82	16	26.45	2.21	US Facilities Corp.	NDO	19.125	-1.29	-10.53	23.38	10.00	523	0.2	1.05	8	11.66	1.64	USF&G Corp.	NYS	16.5	4.76	-2.22	19.50	13.38	2561	0.2	1.21	9	10.86	1.52	USLife Corp.	NYS	32.625	6.10	9.21	33.13	22.88	355	0.93	2.85	11	38.45	0.85	Washington National	NYS	27.625	-1.78	0.00	30.50	17.75	64	1.08	3.91	11	25.13	1.10	Zenith National Ins.	NYS	22.375	4.68	4.68	24.63	19.38	83	1	4.47	30	16.35	1.37	Zurich Reinsurance Centr.	NYS	29.625	-0.84	-2.47	30.88	27.88	70	0.00	0.00	34	21.64	1.37

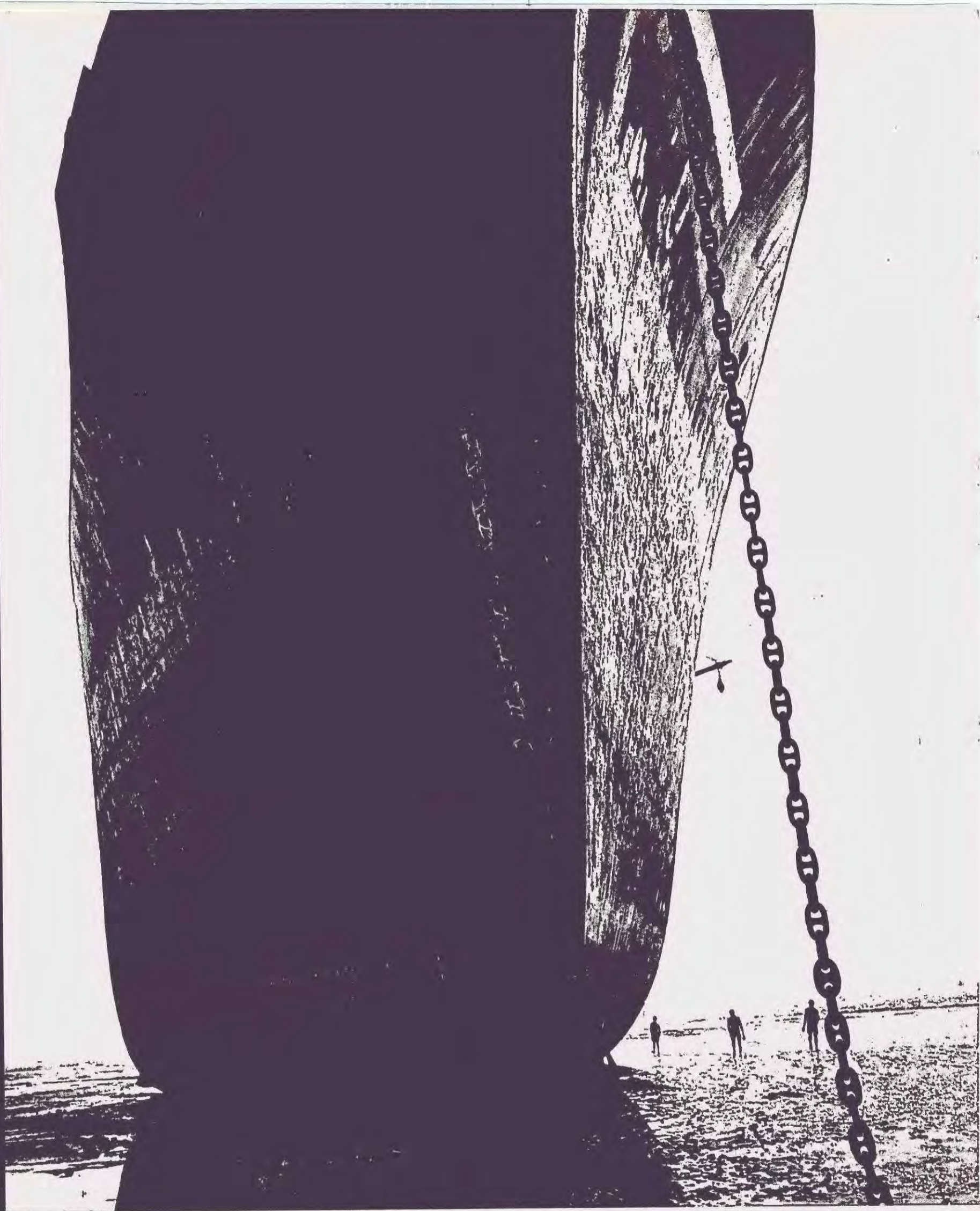
Top advancing issues: Selbels Bruce Group, ITT (Hartford Group), Philadelphia Cons. Holding. Leading decliners: Pacificare Health Sys., American Indemnity/Fin'l, Sphere Drake Holdings. Most active issue: U.S. Healthcare. The BI Index rose 1.9%; the Dow Jones 30 Industrials rose 2.4%; the S&P 500 increased 1.7% and the NYSE Composite gained 1.5%.

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