

Business Insurance

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

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Royal & SunAlliance says it is in talks to buy Guardian Royal

LONDON—Royal & SunAlliance Insurance Group P.L.C. is in discussions over a possible acquisition of U.K. multiline insurer Guardian Royal Exchange P.L.C.

RSA said on Friday in a brief statement, "Further discussions are being held to explore the possibility of achieving an agreed offer, but there is no certainty that such an agreement will be reached."

If the insurers were merged, the combined entity would have combined annual premiums of almost £12 billion (\$19.8 billion), making

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The Home is out of cash

Zurich reinsurance kicks in

By GAVIN SOUTER

NEW YORK—The \$1.3 billion reinsurance program provided by Zurich Insurance Group for The Home Insurance Co. has kicked in, as The Home has run out of cash to pay claims.

In 1995, actuaries estimated that the reinsurance contract would not kick in until 2002. But soon after that, their estimate was revised to 1999.

The dependence on the Zurich reinsurance coverage is due, in part, to the early settlement of claims by policyholders seeking to secure payment from the defunct insurer while resources remain available, said David Nichols, the regulator supervising the runoff.

Executives running off The Home predict that there will be just enough resources to pay all claims, he said.

Opponents of the controversial original deal, which allowed Zurich to take over The Home's profitable business by providing the reinsurance program, dis-

agree. The triggering of the reinsurance earlier than the original estimate is further evidence that Zurich provided insufficient coverage for The Home's liabilities, said a lawyer representing policyholders.

Centre Reinsurance Dublin, a unit of Zurich, made its first payments to The Home's policyholders earlier this month. The contract was designed to kick in once The Home ran out of cash.

Since it went into runoff in June 1995, The Home has made gross payments of \$4.7 billion. The money to pay these claims came from The Home's assets and reinsurance other than the Zurich contract, Mr. Nichols said.

And although The Home has no more cash to pay claims, it still has other reinsurance it expects to recover, he said.

As of September 1998, The Home had an estimated \$1.4 billion in uncollected reinsurance, as well as the \$1.3 billion in reinsurance from Zurich, he said.

See Zurich on page 20

Caution urged in investigations by employers

By ROBERTO CENICEROS

LOS ANGELES—Conducting prompt and fair internal investigations of employee complaints is critical to minimizing a company's liability exposures, though such inquiries can also create new risks for employers, attorneys say.

Courts have ruled that, to avoid vicarious liability for the actions of supervisors and employees, businesses must take steps to immediately remedy claims of workplace harassment or discrimination. A prompt internal investigation of such claims can be part of corrective action that limits an employer's liability, attorneys say.

However, an investigation also can create a new exposure for an employer if it unjustly damages the reputation of an accused, particularly because plaintiffs attorneys are focusing on the quality of investigations in light of recent court decisions.

The California Supreme Court in 1998 ruled that an employer cannot be liable for wrongful termination of an employee who is suspected of misconduct—even if it is later proved that the misconduct did not actually occur—if the firing followed a good-faith investigation that found reasonable grounds for believing the mis-

See Investigate on page 19

Health cost jump may start trend

By JERRY GEISEL

Group health care costs are climbing again after a four-year lull, with the stage perhaps set for even greater increases to come.

With the migration of employees to lower-cost managed care plans from traditional indemnity plans coming to an end, and the cost of prescription drugs soaring, employers' total health plan costs for active and retired employees shot up 6.1% to \$4,164 per employee on average in 1998, according to a survey to be released this week by benefit consultant William M. Mercer Inc. in New York.

Total health care plan costs for active and retired employees at large employers—those with at least 500 workers—climbed 4.5% to an average of

\$4,567 per employee last year, while costs for smaller employers jumped 7.2% to an average of \$3,598 per employee.

Looking at only active employees, health plan costs among the 4,181 employers surveyed rose 6.2% in 1998 to an average of \$3,817 per employee.

Total health plan costs include employer and employee premium contributions for medical, dental, prescription drug, mental health and vision care.

These increases—the highest since 1993, when group health care costs leaped 8%—bring to an end a four-year run of relatively stable health care costs. Between 1994 and 1997, annual cost increases never exceeded 2.5% and actually fell

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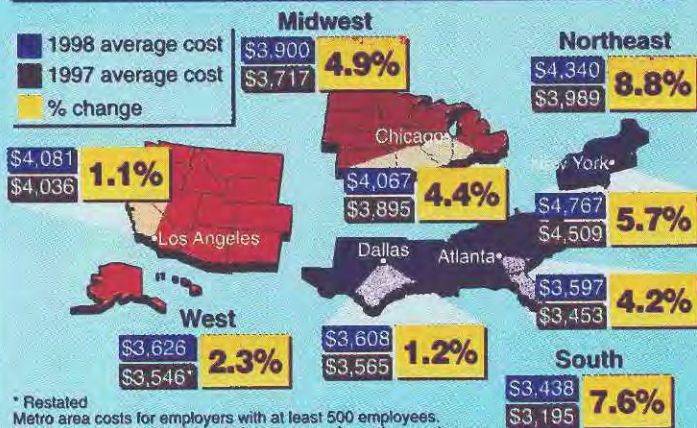
Health costs on the rise again

Total health care costs

1993	\$3,781	8.0%
1994	\$3,741	-1.1%
1995	\$3,821	2.1%
1996	\$3,915	2.5%
1997	\$3,924	0.2%
1998	\$4,164	6.1%

Source: William M. Mercer Inc.

Health care costs by region/metro area



GRAPHIC BY MIKE GARVEY

Greenberg designated to take helm of M&M

By SALLY ROBERTS

NEW YORK—Clients of Marsh & McLennan Cos. Inc. should expect no "sharp change in direction" as a result of changing leadership at the world's largest broker, according to Jeffrey W. Greenberg, who is poised to replace A.J.C. Smith at the helm.

M&M announced last week that Mr. Smith, 64, will retire as chairman and chief executive officer next year. In the meantime, Mr. Greenberg, currently chairman and CEO of Marsh & McLennan Capital Inc., will assume the additional duties of president of the parent company and will work closely with Mr. Smith.

At the end of 1999, Mr. Greenberg, 47, will become CEO and will add chairman to his title after Mr. Smith retires at an unspecified date in 2000.



Mr. Greenberg



Mr. Smith

"We're working on an orderly transition," said Mr. Smith, a 37-year veteran of M&M, who became CEO of the company in 1992.

During the medium term, "I'm looking forward to working closely with Ian. We work well together," said Mr. Greenberg, who came to M&M in 1995, after 17 years at American International Group Inc.

At the time he left AIG, Mr. Greenberg was seen as the heir apparent to his father, AIG Chairman and CEO Maurice R. Greenberg. His resignation, attributed to "personal reasons," stunned the insurance and investment communities (BI, June 12, 1995).

Since 1996, Mr. Greenberg has headed M&M Capital, which originates, structures and manages insurance industry investments.

In his new position, Mr. Greenberg will oversee all of

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Updates

RSA in talks with Guardian Royal

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ing it the largest U.K. insurance company.

RSA would not comment on its offer but issued its statement after a U.K. newspaper reported that RSA was poised to offer £3.5 billion (\$5.78 billion), based on a bid of 390 pence (\$6.44) per share. GRE shares closed last Thursday at 354.5 pence (\$5.85).

A GRE spokesman would only say the company has been talking to several interested parties and that it hopes to have examined all the options by the end of January. GRE said last November it was considering the possibility of selling all or part of the company (BI, Nov. 30, 1998).

Stephen Dias, an insurance analyst with Goldman Sachs & Co., said a bid of 390 pence per share would not be excessive when compared with GRE's asset value. However, retaining the right people and achieving savings through a merger of the two insurers would be a challenge, he said.

Previously, AXA Group of France was rumored to be the leading suitor after GRE disclosed its plans for a sale last year.

Exclusion upheld in Louisiana

NEW ORLEANS—Despite a pro-insurer ruling by Louisiana's Supreme Court, general liability insurers' use of the absolute pollution exclusion in the state still may be limited.

In a 4-to-3 ruling that reversed two lower courts, the state's high court last Wednesday said the exclusion bars coverage for a personal injury claim filed against the operator of an ammonia pipeline punctured in a September 1995 landscaping accident. The puncture released toxic ammonia fumes into the atmosphere.

The court ruled the exclusion clearly was not limited to "active industrial polluters" that intentionally pollute. In 1994, the Louisiana high court had ruled the exclusion did not bar coverage for non-environmental claims. But it vacated that ruling shortly afterward when problems surfaced over some legal technicalities.

The latest ruling is directly at odds with the Insurance Department's June 1997 warning to insurers not to deny claims that stem from incidents that did not cause environmental damage.

Despite the ruling, the department still is authorized to evaluate insurers' claims-handling practices, said C. Noel Wertz, a senior attorney for the department. That authority, she said, allows the department to look beyond policy language and consider regulators' understanding that insurers initially did not intend to apply the exclusion to claims stemming from incidents that did not cause environmental damage.

Insurer attorney Laura A. Foggan, who filed an amicus brief in the case for the industry-sponsored Insurance Environmental Litigation Assn., responded: "The decision makes clear that a total or absolute pollution exclusion means what it says and will be given full force and effect in Louisiana."

Ms. Wertz also said the department will continue rejecting policy forms that do not restrict the exclusion to losses from "ongoing pollution activity that causes damage to the environment."

RICO may apply in HMO case

WASHINGTON—The McCarran-Ferguson Act does not block claimants from suing for alleged insurance fraud under the federal Racketeer Influenced and Corrupt Organizations Act, according to a unanimous Supreme Court decision handed down last week.

Humana Inc. et al. vs. Mary Forsyth et al. began when a group of Nevada residents sued Humana Health Insurance of Nevada Inc. in federal court for alleged overcharging on their copayments for hospital stays. According to court records, Humana had agreed to pay 80% of the beneficiaries' costs over the deductible, while the beneficiaries were responsible for the remaining 20%. But because Humana had negotiated discounts with the hospital on its portion of the charges, it ultimately paid less than 80%, court papers say.

The plaintiffs filed suit, alleging a pattern of fraud and violations of RICO, which authorizes treble damages. The applicable Nevada law allows recovery of actual and punitive damages.

Humana sought summary judgment, citing the McCarran-Ferguson Act. That law reads, in part, "No act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance... unless such act specifically relates to the business of insurance." The district court granted summary judgment for Humana, but the 9th U.S. Court of Appeals reversed the lower court.

Last week, the Supreme Court unanimously upheld the appeals court decision. Writing for the court, Associate Justice Ruth Bader Ginsburg said the McCarran-Ferguson Act does "not preclude" the application of other federal laws when it does not "frustrate any declared state policy or interfere with a state's administrative regime."

"Because RICO advances a state's interest in combating insurance fraud and does not frustrate any articulated Nevada policy, we hold that the McCarran-Ferguson Act does not block the respondent policy beneficiaries' recourse to RICO in this case," Justice Ginsburg wrote.

Senator introduces Y2K bill

WASHINGTON—Sen. John McCain, R-Ariz., hopes to "provide for the orderly resolution of disputes" arising from Year 2000 computer problems through legislation introduced last week.

To achieve that goal, S. 96—the Y2K Act—would not allow a Y2K-related suit to go to trial until the plaintiff had notified the defendant in writing of the problem and had given the defendant an opportunity to fix the problem.

The bill also calls for limiting all damages other than economic damages—including punitive awards—to the greater of three times economic damages or \$250,000 in Y2K-related awards. In addition, punitive damages could be awarded only to plaintiffs who proved that the economic damages "resulted from conscious and flagrant disregard rather than See Updates on page 22

Second doctors group parts ways with Aetna

By JOANNE WOJCIK

At least two provider organizations would disagree with the old slogan "Aetna, I'm glad I met ya"—especially since its merger with U.S. Healthcare.



First, a group of doctors in Dallas canceled its contract with the national managed care firm, complaining that the group was not getting the data necessary to determine the amount of capitation

risk it was assuming. The Dallas group also objected to the insurer's all-or-nothing policy, which requires providers in one managed care plan to participate in all Aetna U.S. Healthcare plans (BI, Oct. 26, 1998).

Now an individual practice association in San Mateo, Calif., has said it would not renew its Aetna U.S. Healthcare contract, which expired at the end of December, alleging that the managed care giant is trying to break up the IPA by negotiating individually with the doctors.

The Chicago-based American Medical Assn. also See Aetna on page 21

Analysts cite some exceptions

P/C stock outlook poor

By JUDY GREENWALD

Continuing soft prices in the commercial property/casualty market translate into gloomy prospects for most insurer stocks this year.

Analysts anticipate the industry's poor fundamentals mean the stocks again will generally underperform the overall stock market this year.

While American International

Group Inc., The St. Paul Cos. Inc. and other multiline companies re-



main favorites, many analysts also are turning to niche specialty

stocks in their recommendations in anticipation that they will go against this general trend.

Wall Street's evaluation of insurer stocks can give risk managers insight into the quality of the insurers with which they deal. Furthermore, insurers' stock market performance can strongly influence companies' operations, including their pricing strategies, merger and acquisition activi-

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Reider new NAIC president

Congressional moves may influence regulator's tenure

By MEG FLETCHER

HARTFORD, Conn.—Ensuring consumer protection while preserving insurer solvency are the key goals of George M. Reider Jr., the new president of the National Assn. of Insurance Commissioners.

The 58-year-old Connecticut insurance commissioner is particularly concerned with health care-related issues, such as patients' rights and managed care reform, which the NAIC anticipates will be at the top of Congress' agenda. He plans to chair the NAIC's Special Committee on Health Insurance to help direct the organization's response.



Mr. Reider

He also is concerned with Congress' efforts to modernize the financial services industry, which has been a key issue for the NAIC.

"Our job as state regulators is not to protect our turf" but, rather, to protect insurance consumers and make sure they are treated fairly, Mr. Reider said. There is, however, a proper role for both federal banking authorities and state insurance officials to play in protecting consumers, he said.

Mr. Reider said he also supports the NAIC's progress in streamlining the regulation of insurance, especially commercial lines coverages. However, he expects such See Reider on page 21

Buyers' group limits rate hikes

Chicago group wants to expand program as cost-saving tool

By ROBERT KAZEL

CHICAGO—Nine Chicago-area employers who formed a fledgling purchasing coalition last year kept HMO premium increases to an average of 4% for 1999, about half of the rise in rates experienced by many local employers outside the group.

Calling its first year highly suc-

cessful, the Chicago Business Group on Health said it would try to significantly expand the program to more area employers for the year 2000 by promoting the coalition as a tool to stave off drastic HMO price hikes.

Employers participating in the business group's Health Purchasing Initiative used a common HMO rate bidding process to ne-

gotiate, a process that yielded 15% to 20% lower premiums in some cases, said Larry Boress, executive director of the Midwest Business Group on Health, the parent organization of CBGH.

"They (coalition employers) saw the writing on the wall that prices would be going up," Mr. Boress said. "Even the largest employer See CBGH on page 22

Inside

• If the Supreme Court rules that insurers become "state actors" when providing government-mandated coverage, the ensuing restraints will interfere with the efficient administration of programs and raise costs, this week's editorial says. **PAGE 8**

• Lloyd's of London is considering reforming its regulatory system, including a move that would subject names to differing levels of regulation, depending on whether they own the agencies through which they invest. **PAGE 15**

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Louisiana high-rises face vacating floors

Deadline approaching for sprinkler installation

By MICHAEL BRADFORD

BATON ROUGE, La.—Some Louisiana building owners are scrambling to meet a state deadline for installing sprinkler systems and could be forced to vacate parts of their properties if they can't get the equipment installed in time.

Owners of unsprinklered high-rise buildings built in Louisiana before 1975 may apply for a one-year extension of the deadline set at Jan. 1, 1999, under a 10-year-old

state law. Buildings constructed after 1975 were built under state codes that mandated sprinklers.

This month, the state fire marshal's office has been inspecting properties to determine how many of about 200 high-rises—buildings taller than 75 feet—in Louisiana are not in compliance.

Once a building has been found not to be in compliance, its owner will have 30 days to apply for the extension.

Requests for more time are not granted

automatically; the fire marshal's office will decide whether to grant extensions based partly on owners' plans for complying with the law.

Building owners who can't convince the state that the sprinklers will be in place on time will be ordered to vacate floors above the 75-foot level by June 11.

The law covers both privately owned and state-owned buildings. Businesses, hotels, apartments, hospitals and other facilities all fall under the mandate.

Some businesses are going to have trouble getting sprinklers in place by the end of the year.

Insulation Technologies Inc. in Harvey, La., is working to retrofit a 17-story building in downtown New Orleans. The project is "supposed to be finished by the end of the year; there's no way," said Ken Bonura, head of Insulation Technologies' Louisiana Fire Tech division.

According to Mr. Bonura, who declined to name the building or its owner, it will take six to eight weeks per floor to finish the project. "You do the math," he said.

Some retrofit projects have been slowed by the discovery of asbestos in the

See Sprinklers on page 12

Lloyd's Sandler to resign

By SARAH GODDARD

LONDON—A new phase in the management of Lloyd's of London will begin later this year, following last week's announcement that Chief Executive Officer Ron Sandler will step down.

He will be succeeded by Nick Prettejohn, managing director of Lloyd's business development unit and Lloyd's North America.

Both men joined Lloyd's in 1995, coming from executive positions outside the insurance industry. Eight months after joining the Corporation of Lloyd's as director of special projects, Mr. Sandler became CEO when Peter Middleton resigned abruptly in

November 1995.

Mr. Sandler, 46, and Mr. Prettejohn, 38, are committed to a "smooth and seamless" transition.

This means that Mr. Sandler will continue in his role for several months. He foresees this process taking until the summer but refused to be more specific. However, it is widely expected that he will preside at Lloyd's June 11 annual general meeting.

Mr. Sandler's decision to step down did not surprise members of Lloyd's or the market's observers last week.

His timing "is extremely sensible, on the basis that when he first came and took over from Peter Middleton, he had a very crucial role," said Mark Hewlett, manag-

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Mr. Sandler

Single insurance market no closer in Europe

By GAVIN SOUTER

MIAMI—The single European market for insurance still is more a dream than reality, a consultant says.

While the regulatory framework for cross-border buying and selling of insurance is in place, little transnational trade takes place other than large deals with large insurers, he said.

Policyholders rarely place business with small or medium-size insurers in countries other than their own, the consultant said.

The single market in insurance has existed since 1994, and policyholders are gradually

moving toward international placements. However, there still



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exist significant obstacles that prevent cross-border buying and selling of insurance, said Peter F. Reid, president of European American Inc., an insurance management and consulting firm in New York.

For instance, although laws promulgated by the European Commission and European Par-

liament generally govern the insurance industry, there have been only limited attempts to harmonize domestic laws, Mr. Reid said earlier this month at the Miami Insurance Rendezvous, sponsored by the International Insurance Council.

Differing local laws, procedures and cultures hamper cross-border insurance contracts, he explained.

Regional traditions also hamper international insurance, Mr. Reid said.

For example, in Germany much of the commercial market remains dominated by hundreds of regional specialty insurance companies that have

See Euro on page 12

Benefit reforms proposed

Clinton's State of the Union speech addresses Medicare, pensions

By JERRY GEISEL

WASHINGTON—In his State of the Union address last week, President Clinton unveiled a few new employee benefit proposals and recycled some old ones.

New ideas from President Clinton include expanding the federal Medicare program to cover outpatient prescription drugs. Such an expansion, if enacted, would be a financial windfall for employers providing prescription drugs through retiree health care plans that supplement Medicare.

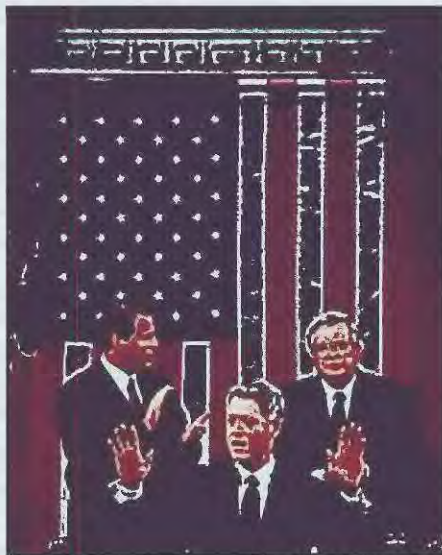
In 1988, Congress approved such an expansion. But Congress repealed it just one year

later amid a revolt by middle- and upper-income retirees who objected to the higher taxes they were asked to pay to fund the prescription drug and other new Medicare benefits the 1988 law added.

Mr. Clinton also renewed his backing of a year-old proposal that would allow retirees as young as 55 to purchase Medicare coverage. Except for those who are completely disabled or who have end-stage renal disease, Medicare is available only to retirees age 65 and older.

While details were not provided last week, the Medicare buy-in proposal likely is identical to one the administration

See Union on page 17



AP/WIDE WORLD PHOTOS

Benefit issues were part of President Clinton's State of the Union address.



This dental office in Jackson, Tenn., was among many buildings destroyed by a dozen tornadoes that swept across the state last week.

Tornado damage nears \$100 million

By MICHAEL PRINCE

Total property damage could top \$100 million in Tennessee after a dozen tornadoes ripped through mostly the western part of the state last week, though insured losses were unknown as of late last week.

Twisters touched down in 12 counties on Jan. 17, killing nine people, injuring more than 100 more and leaving more than 1,000 homes and hundreds of businesses damaged, said Cecil Whaley, director of natural hazards for the Tennessee Emergency Management Agency in Nashville.

Although both federal and state emergency officials are still evaluating the destruction, Mr. Whaley estimates the damages could top \$100 million.

In Jackson, Tenn., and surrounding Madison County, the hardest hit area of the state, tornadoes killed six and heavily damaged 50 to 60 businesses, with 10 destroyed, Mr. Whaley said.

Ten to 15 businesses suffered heavy damage in both Hardeman and Henderson counties, with two to three businesses destroyed in each. One death occurred in each of those counties, he said.

The majority of the damaged businesses were campgrounds, boat docks and fishing lodges. In Perry County, a boat dock and campground were destroyed and 50 boats sunk, Mr. Whaley said.

In addition, a 30-store shopping mall was "pretty much wiped out" in Columbia, Tenn., he said.

More than 1,000 homes in

Tennessee were damaged. Of those, 350 were demolished. Fifty mobile homes suffered heavy damage, with 25 destroyed, he said.

More than 25,000 customers lost electrical power throughout the state; most got their power back within a few days.

Vice President Al Gore, a native of Tennessee, visited the state Tuesday to evaluate the damage and check on relatives who live in Madison County.

President Clinton declared the state a major disaster area, making federal funds available.

Adding to the destruction, another powerful tornado ripped through three Tennessee counties early Friday morning, killing a person and causing an estimated \$10 million to \$12 million in damage in Clarksville, Tenn., Mr. Whaley said. The tornado, part of a bigger storm system, also injured 15 people.

Clarksville is "pretty well devastated," said Clayton Hartley, state manager for Tennessee operations for GAB Robins Inc., a claims adjuster.

The system that caused the Clarksville twister also spawned tornadoes that a spokesman for Arkansas Gov. Mike Huckabee said caused structural damage in at least 16 Arkansas counties Thursday. While no official damage estimates were available, "it is easy to say damage will be in the millions of dollars" when it is tallied, the spokesman said.

In 1998, tornadoes caused \$145 million in insured losses in Nashville and surrounding areas (BI, April 20, 1998).

Health care costs by plan type

	1998	1997	% change
Traditional indemnity	\$3,788	\$3,521	7.6%
Point of service	3,573	3,481	2.6
Preferred provider organization	3,494	3,321	5.2
Health maintenance organization	3,215	3,165	1.6

Group health care costs by employer size

	1998	1997	% change
All employers	\$3,817	\$3,594	6.2%
10-499	3,489	3,280	6.4
500-999	3,810	3,853	-1.1
1,000-4,999	3,924	3,733	5.1
5,000-9,999	3,917	3,898	0.5
10,000-19,999	3,954	3,889	1.7
20,000 or more	4,217	3,839	9.8

For active employees
Source: William M. Mercer Inc.

Costs

Continued from page 1
by slightly more than 1% in 1994. In 1997, costs rose a scant 0.2%.

As dramatic as 1998's cost increase is when compared with recent years, the increase may be mild compared to what could lay ahead: nearly three-fourths of respondents expect cost increases of 9% this year.

"My guess is we could be talking about 8% to 10% increases in 1999 and 2000," said Blaine Bos, a Mercer consultant in Chicago.

In view of those increases, "employers are going to have to take a hard look again at their health care plan strategy. This is an issue that needs attention," Mr. Bos added.

Indeed, several factors that have held costs in check over the last few years have about run their

course, increasing the likelihood that health care costs will move sharply up again.

For example, one reason for the years of health care cost stability was the massive migration of employees out of high-cost traditional indemnity plans and into low-

stayed even or even decreased as employees moved into cheaper health plans.

But with just 13% of employees—down from 15% in 1997—left in traditional indemnity plans, the opportunity for employers to achieve significant, albeit one-

'Employees may feel that a gatekeeper is more than an annoyance and, in fact, believe they are a barrier to care,' says Blaine Bos of Mercer.

er-cost managed care plans.

With a cost difference often of several hundred dollars per employee between traditional indemnity and managed care plans, employers' health care costs have

time, savings through shifting employees into managed care plans is virtually over.

In fact, according to the survey, the beginning of a new "reverse" migration in which employees leave health maintenance organizations and point-of-service plans and enroll in often more expensive PPOs, could be under way. If such a trend develops, that could make it even more difficult for employers to keep health care costs under control.

Last year, 40% of active employees were enrolled in PPOs, a five percentage-point increase from 1997. In the past four years alone, PPO enrollment has shot up 60%.

By contrast, HMO enrollment in 1998 fell by one percentage point to 29% of active employees, while enrollment in POS plans declined two percentage points to 18%.

This reverse migration, though small, may already be increasing costs.

For example, in the Northeast region, the percentage of active employees enrolled in PPO plans jumped to 31% from 23%, while POS plan enrollment slumped to 24% from 29%.

With PPO costs in the Northeast averaging \$4,048 per employee compared with POS plan costs of \$3,830, group health care plan costs for active employees in the Northeast rose by 8.8%—by far the biggest percentage increase of any region in the country.

This reverse migration is being triggered, at least in part, by employee dissatisfaction with HMO and POS plans and the way they are structured, especially their use of gatekeepers, Mr. Bos says.

"Employees may feel that a gatekeeper is more than an annoyance and, in fact, believe they are a barrier to care," Mr. Bos said. While employees in a POS plan can choose to bypass the gatekeeper, their costs for services outside the HMO's network are typically much higher.

Reverse migration also is occurring in areas of the country, such as the Midwest, where the costs of HMOs, PPOs and POS plans are fairly similar.

In those areas, "there is little incentive for either employers or employees to select the more restrictive HMO when they can find an open-ended product, typically with broader in-network access, for the same price," the Mercer survey notes.

A narrowing cost difference in some parts of the country between HMOs and other managed care plans "should tell HMOs they need to do a better job of controlling costs," Mr. Bos said.

HMOs still have the lowest costs among managed care plans, however.

Last year, HMO costs averaged \$3,215 per employee, up 1.6% over 1997. By contrast, PPO costs averaged \$3,494 per employee, up

See Costs on page 6

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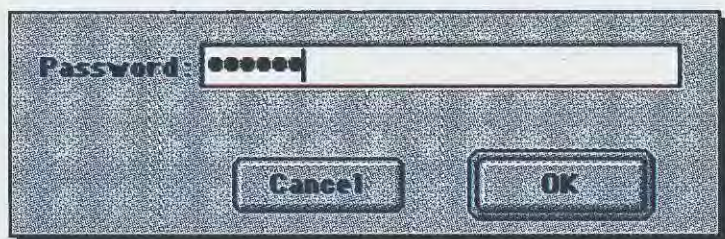
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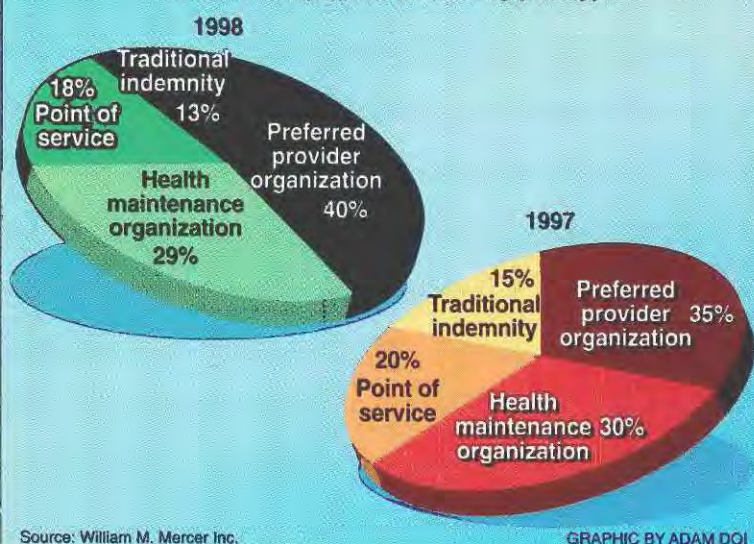
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PPOs growing as enrollment slips in other plans

Percent of employees enrolled by plan type



Source: William M. Mercer Inc.

GRAPHIC BY ADAM DOI

Costs

Continued from page 4

5.2%, while POS plan costs averaged \$3,573 per employee, up 2.6%.

HMO premiums this year are rising much higher after years of rate stability.

With many HMOs, as the report notes, "awash in red ink in several very visible markets," those years of cost stability may have been caused more by a willingness to accept losses to boost market share than by success in controlling costs.

Now, in an environment where mergers and acquisitions have reduced competition, HMOs are, as Mr. Bos puts it, "really cranking up rates."

HMO rates on renewal were up about 6% for the 1999 plan year—with even greater increases ex-

pected for renewals in 2000, he said.

Just as HMO costs likely will go higher, prescription drug costs—another big health care cost driver—will continue to increase sharply, Mr. Bos said.

In 1998, prescription drug costs jumped 13.8%, which is more than double the overall increase in health care plan costs and with no sign that cost increases will level off anytime soon, Mr. Bos said.

"You have many more drugs—with high research costs being passed to consumers—coming to market; more direct advertising, which has an impact on utilization; an aging population; and more 'lifestyle' drugs," Mr. Bos said, citing some of the reasons that prescription drug costs are climbing.

If the cost of prescription drugs continues to increase at a double-

digit rate, employers may implement some radical changes in their plan design, such as tying increases in employee copayments to the rate of cost increases, he said.

Other survey findings, all involving active employees at large employers with at least 500 employees, include:

- PPO costs averaged \$3,602 per employee last year, up 2.4% from 1997.

PPO costs were highest in the Northeast, averaging \$4,198 per employee, a 4.4% increase, and lowest in the South, averaging \$3,063 per employee, up 1.8%. PPO costs in the West averaged \$3,910 per employee, up 4.7%, while PPO costs in the Midwest averaged \$3,657, down 1.4%.

- POS plan costs averaged \$3,731 per employee, up 4% from 1997.

POS costs were highest in the Northeast, averaging \$3,840 per employee, up 4.6%, and lowest in the Midwest, averaging \$3,642, up 3%. POS costs among Southern employers averaged \$3,670, up 6.6%, while POS costs in the West averaged \$3,720, up 2.6%.

- HMO costs averaged \$3,379 per employee, up 2.2% from 1997.

Northeast employers had the highest HMO costs, which in 1998 averaged \$3,769, up 1.5%, while Southern employers had the lowest HMO costs, averaging \$3,021, a 1% decline. Midwest employers' HMO costs averaged \$3,652, up 8.7%, while HMO costs in the West averaged \$3,298, up 6.1%.

- Sixty-five percent of large employers offered a PPO in 1998, up from 64% in 1997, while 52% offered an HMO, down from 54% in 1997.

Last year, 33% offered a POS plan, unchanged from 1997, while 33% offered a traditional indemnity plan, down from 35%.

The survey also found—in looking at just employers that provided cost figures for both the 1998 and 1997 surveys—that health care costs for retirees under age 65 averaged \$4,984 per retiree last year, up 4.7%, while costs for retirees 65 and older averaged \$2,092, up 6.7%.

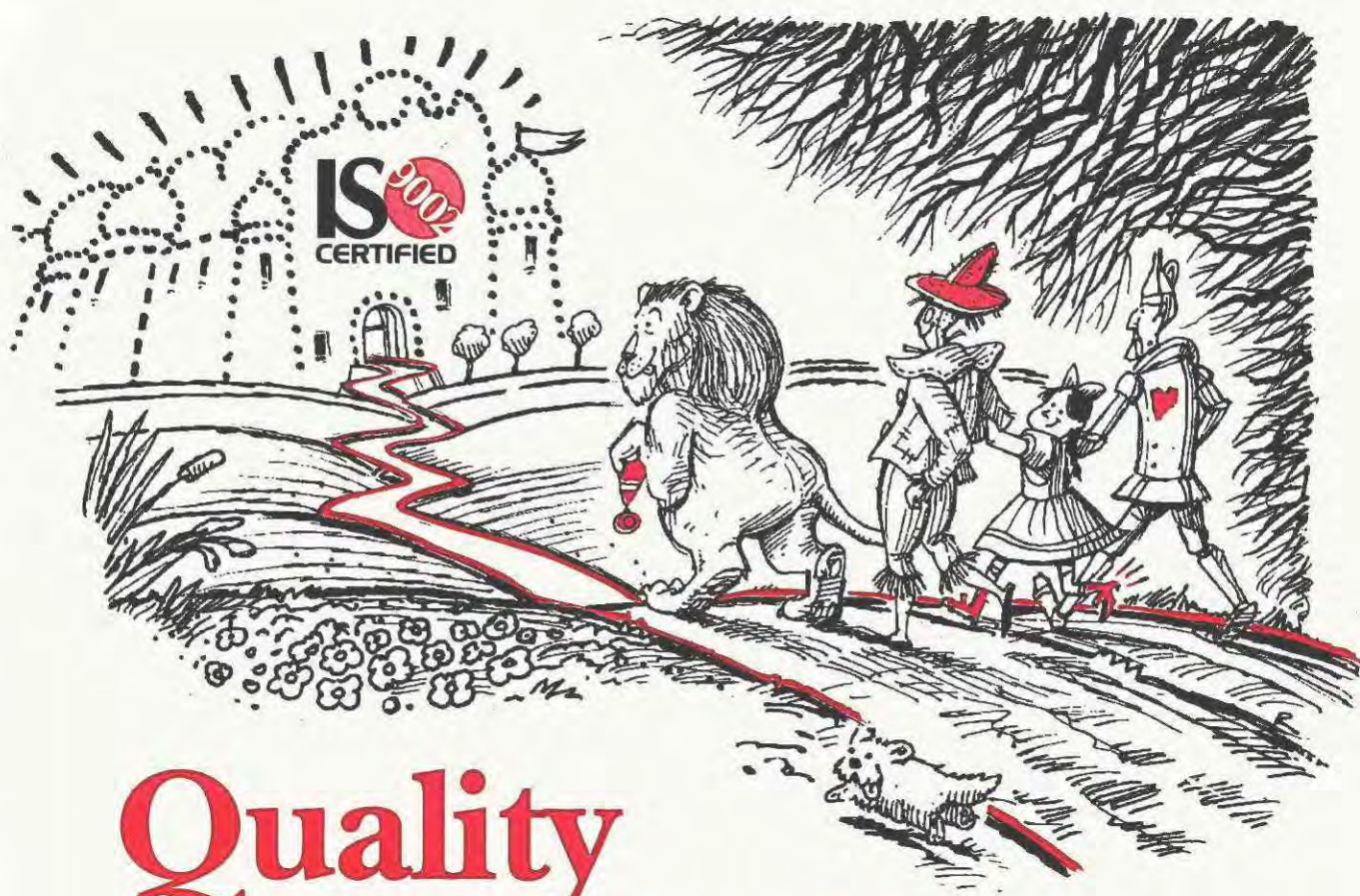
Seventy-six percent of employers with retiree health care plans provide prescription drug coverage to early retirees, while 72% provide it to retirees 65 and older. That latter group of employers would be able to cut their retiree health care expenses significantly if Congress approves a proposal by President Clinton last week to expand Medicare to cover prescription drugs.

In addition, according to the survey, the 1996 law that banned health plans from offering lower annual and lifetime dollar caps on mental health benefits than for coverage for physical ailments led many employers to redesign their plans to control costs in other ways.

For example, more than two-thirds of plans now impose an annual limit on the number of outpatient visits. The median number of covered visits for traditional indemnity, PPO and POS plans was 30, while the median number of visits for HMOs was 20 visits.

Just 1% of employers dropped their mental health care benefits programs because of the new law.

Copies of the "Mercer/Foster Higgins National Survey of Employer-Sponsored Plans" will be available in early March from Tara Lewis, William M. Mercer Inc., 1166 Ave. of the Americas, 28th Floor, New York, N.Y. 10036; 212-345-2451. The cost is \$500 and prepayment is requested.



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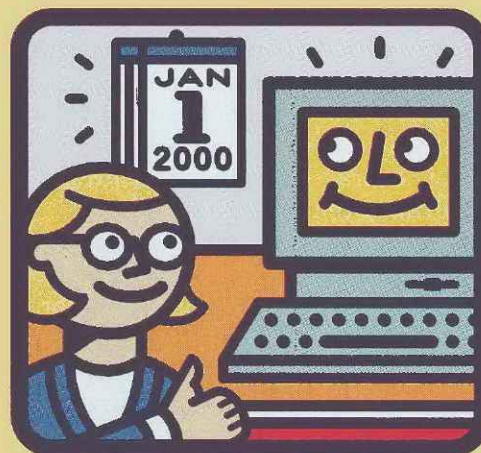
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Opinions

'State actor' argument weak

THE SUPREME COURT recently heard arguments in a case that, if not overturned, could set a terrible precedent for insurers and self-insured companies.

The case, *American Manufacturers Mutual Insurance Co. et al. vs. Delores Scott Sullivan et al.*, would create confusing and impractical restrictions on the ability of companies to administer lines of insurance that are mandated by the government. In addition, it could seriously weaken the ability of companies to use managed care techniques to hold down their medical costs.

The plaintiffs' argument in the case, which was upheld by the 3rd U.S. Circuit Court of Appeals, runs so contrary to common sense that, if followed to its logical conclusions, would become absurd.

The 3rd Circuit ruled in the case that insurers, under certain circumstances, act as "state actors" and, therefore, are bound by the same constitutional lines and requirements that apply to government officials carrying out their duties (BI, Jan. 11). The ruling held that, by providing state-mandated workers compensation coverage, insurers are agents of the state. The plaintiffs in the case allege that, as state agents, Pennsylvania insurers are violating their right to due process when they withhold medical care payments during the utilization review process, as allowed under state law.

If the Supreme Court agrees that insurers and self-insured employers are standing in the shoes of the state, it could have a chilling effect on how private companies administer any lines of insurance that are either mandated by a government or subject to government rules. It could also significantly raise the costs for companies providing these lines of coverage.

In addition to workers comp, other insurance that could also fall under this ruling includes auto insurance, certain environmental liability coverages, assigned risk pools, Medicare benefits provided by private health insurers and even state-mandated medical benefits, among others.

Subjecting insurers and self-insurers to constitutional restraints designed to protect private entities from government excess would seriously interfere with the ability of insurers and self-insurers to efficiently administer these programs and apply cost-control measures designed to hold down premiums. Costs, as a consequence, would go up.

Extending such constitutional restraints to private entities—especially in situations where they, and not the government, bear the risk—makes no sense and would lead to a host of confusing consequences. For



example, if an insurer or self-insurer is deemed a state agent, should it then not also enjoy the sovereign immunity from litigation that public entities enjoy?

In addition to the threat of a broad application of the "state actor" argument, the ruling also could have a very specific impact on the ability of insurance providers to rely on utilization review as a means of discerning valid from invalid claims. If the high court agrees that insurers cannot withhold payments from providers while determining the appropriateness of claims, then insurers will find themselves in court to recover improper payments after the fact.

Utilization review is the linchpin of the managed care system, providing a check not only against inappropriate or erroneous billing and treatment but also against outright fraud.

If, however, the court agrees that the Pennsylvania law is unfair, we can expect a torrent of legal challenges to the application of UR in health insurance cases, as well as other lines of insurance—such as workers comp and auto insurance—where managed care techniques increasingly are being applied.

We were heartened to see that the Supreme Court justices appeared skeptical of the original plaintiffs' "state actor" argument last week and can only hope that the law is overturned. However, insurers and risk managers should stand ready to lobby Congress for relief if this egregious argument is upheld.

Letters

Perspective painted a too-ugly picture of insurers

To the editor: I am writing to you regarding your Nov. 16, 1998, Perspectives article entitled "Let the Buyer Beware of Overcharges." I felt compelled to respond to the remarks Howard C. Alper made.

Mr. Alper expended a considerable amount of his energy painting a rather ugly picture of the insurance industry. If one takes his words literally, there isn't much we do

right. Although I support the notion that everyone has the right to their opinions, Mr. Alper has used this forum to singularly push through his agenda. His style of persuasive selling relies not on evidence but implication, so as to cause uncertainty and suspicion.

The truth of the matter is that our industry is not fraught with the chaotic activity that Mr. Alper describes. To the contrary, the workers compensation environment is quite structured and resolutely regulated. Insurance companies maintain a rather large infrastructure for the purpose not only of providing data to state regulators and bureaus but to track profitability. It would not make good business sense for us to act in the haphazard fashion described in his article.

Mr. Alper's remarks are provocative in that they fail to provide the important information that a risk manager needs to know, such as where companies like his get their facts. They do not have ready access to in-

dustry manuals and updates.

Industry support organizations such as NSIPA exist exclusively as an educational resource for the industry. We also either manage or participate in the furtherance of industry credentials, such as the Certified Insurance Premium Auditor designation and the Associate in Premium Auditing designation from the Insurance Institute of America. Risk managers should look for these credentials from anyone calling himself or herself a premium audit professional.

If there is one thing I do agree with Mr. Alper on, it is a portion of the title of his article. "Let the buyer beware" reminds me of the saying that goes, "If it sounds too good to be true, it probably is."

Antonio R. Gonzalez
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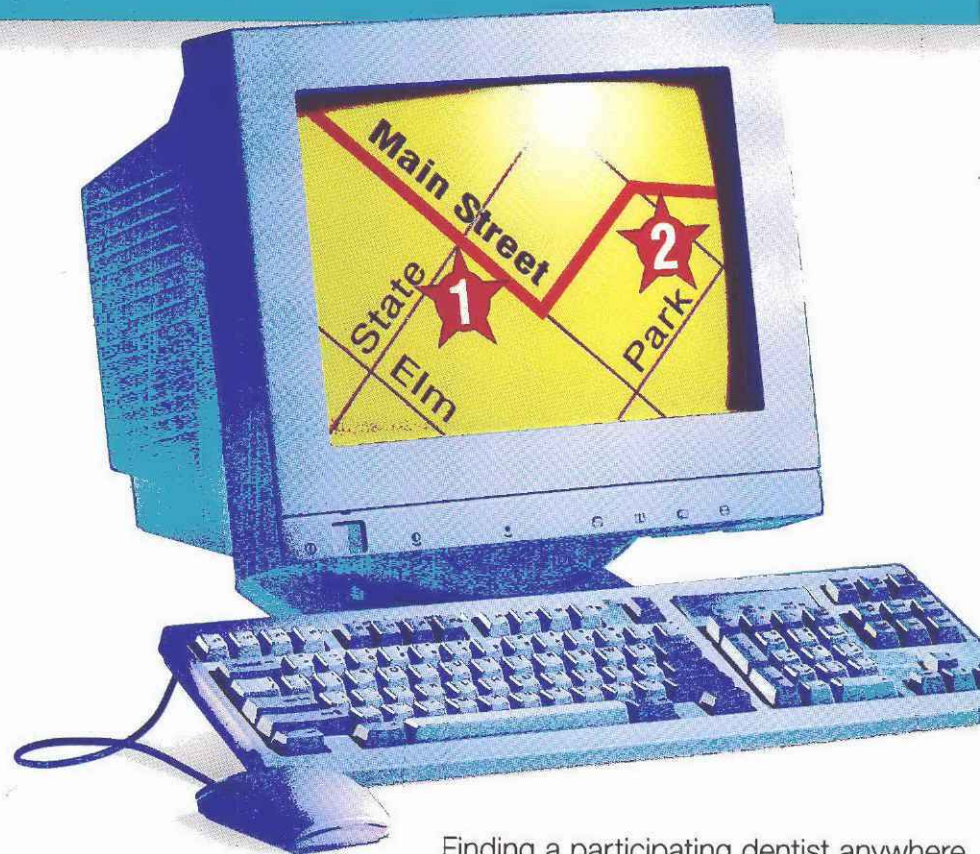
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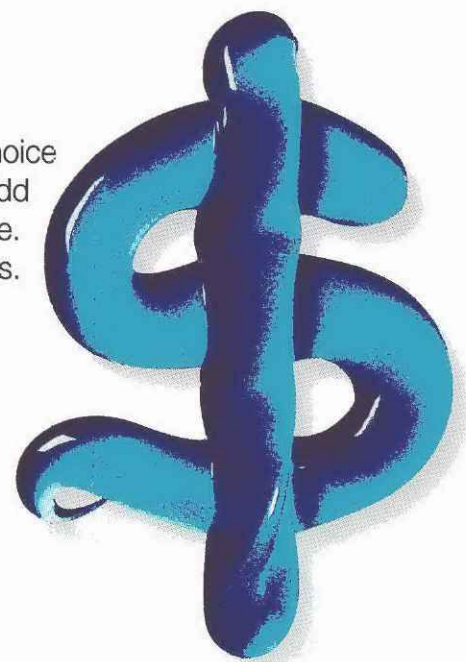
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Sprinklers

Continued from page 3

buildings, Mr. Bonura said. That makes the sprinkler job much more complicated, he explained, because state law requires that workers who handle or work near asbestos be specially trained for that type of work. Some sprinkler contractors don't have personnel certified to handle asbestos.

The fire marshal set the deadline for vacating parts of non-compliant buildings at June 11 to allow those who don't comply enough

time to empty their upper floors.

"Our legal counsel advised us that we could not reasonably order everybody to vacate overnight," said Jerry Jones, assistant state fire marshal. "We have to give them a reasonable period of time."

Orders to vacate may come soon. Owners of buildings ordered partially vacated must implement a number of interim safety measures within 10 days of their orders. One such measure is establishment of a "fire watch"—someone who will patrol the building and help alert occupants if there is a fire. Fire

alarms or some other system of alerting occupants also must be in place, and twice the number of fire extinguishers normally required by the state must be on the floors, the fire marshal's office said.

The interim measures allow the facilities to be occupied until the deadline, Mr. Jones noted. "We felt it was incumbent on us to require a minimum level of safety."

He said enforcement of the fire safety law is necessary in part because the state fears liability if there is a fire that causes injuries.

"Obviously, that's the potential," Mr. Jones remarked. "If we

don't enforce the law and someone is injured, we could be responsible" because the building owners were not held to the law.

"We can't ignore it because it's a tough law or it costs people some money," he added. "It's the law of the land."

Mr. Bonura of Insulation Technologies said high-rise owners who choose to retrofit their buildings should be prepared to spend some money on the job.

The owner of a 10-story New Orleans building is paying Mr. Bonura's company about \$600,000 for the design and fabrication of

sprinkler equipment. The building owner is handling installation of the system.

Mr. Bonura said owners can figure the cost of installing sprinklers at about \$2.50 per square foot of area to be covered, and only if there are no asbestos issues.

"You run into problems with these old buildings," he said, because they often have asbestos insulation. "Our people are trained to work around it," Mr. Bonura said, and the extra work and expertise required for that type of job makes it very expensive to complete. **BI**

Regulators must keep pace with industry: Panel

By GAVIN SOUTER

MIAMI—Insurance regulators throughout the world must strive to ensure that insurance laws and regulations keep pace with the international expansion of their industry, a panel of experts says.

Buyers and sellers alike require transparency and common ground rules, and such objectives are most likely to be achieved through informal dialogue between regulators and insurers rather than through time-consuming formal negotiations, they say.

The need for greater dialogue among financial and economic bodies in general has been highlighted by the financial crisis that began in 1997 in the Far East and then spread to other areas of the world, said Hanley C. Clark, insurance commissioner of West Virginia and chairman of the International Assn. of Insurance Supervisors.

"Now we are able to recognize the effect that weak systems in one part of the world have on

the rest of the world," he said earlier this month at the Miami Rendezvous, which was sponsored by the International Insurance Council.

And insurance regulators must be part of the



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growing dialogue among international bodies, Mr. Clark said.

The IAIS took part in financial services discussions at the G7 meeting in London late last year as part of an effort to participate in such dialogue, he said. One of the IAIS' aims is to develop a common accounting system for insurers throughout the world, Mr. Clark said.

Cooperation among regulators in financial services will be an increasing challenge as interaction among international economies grows,

said John R. Thompson, deputy superintendent of regulation at Canada's Office of the Superintendent of Financial Institutions in Ottawa. Regulators need to agree on common accounting, actuarial and capital standards, he said. Otherwise, an insurer that in one jurisdiction is regarded as well-grounded financially might be seen in another jurisdiction as being in a precarious position, he said.

"Regulators should not be fighting over whose recordkeeping system is to be preferred," Mr. Thompson said.

Regulatory trends also are affected by the privatization of insurance systems in many countries, said Gordon J. Cloney, chairman of the newly formed Institute for International Development, a consulting firm in Washington. Mr. Cloney formerly was president of the IIC. "There will be an increased level of responsibility placed on the insurance industry" to ensure the success of newly privatized markets, Mr. Cloney said.

And insurers need to work with regulators to achieve transparent and effective regulations to ensure that the system works and protects policyholders, he added.

Otherwise, if the regulations fail, governments will undo the deregulation and impose close state control of insurance markets again, he warned.

Common international standards will best be achieved by dialogue between regulators, governments and insurers, Mr. Cloney said. Although formal treaties between countries can establish common standards, they usually entail protracted, confrontational and inefficient negotiations, he said.

"That type of negotiated approach to improving conditions in markets is probably one of the least efficient means of attaining the objectives we all want to achieve," Mr. Cloney said.

Instead, all of the parties involved should strive to build conditions where they compare systems and share knowledge, he said. **BI**

Market growing in Latin America

By GAVIN SOUTER

MIAMI—The privatization of health and workers compensation systems in Latin America is increasing demands on employers and providing new opportunities for insurers in the region, participants in a panel discussion say.

As governments cut back social security programs in Latin America, employees increasingly are expecting employers to step forward with private insurance benefits, they say.

In an effort to maintain workers' productivity, some employers are taking steps to provide high-quality coverage for employees.

With the increased demand, international insurers have the chance to enter new markets. But each market must be carefully examined before resources are committed to the region, panelists said at a session of the Miami Insurance Rendezvous.

In many Latin American countries, responsibility for health and workers compensation coverage is being moved from the state to the private sector, said John H. Rooney Jr., an attorney at Rice Fowler L.L.C. in Coral Gables, Fla.

Typically, health care reforms in Latin America feature administrative or insurance companies that receive premiums taken via payroll deductions. Those companies are separate from health care providers, he said.

"In some countries (the administrator) is allowed to have specific relationships with providers, but in other countries, consumers can

choose their providers," Mr. Rooney said.

The exception to this separation is Peru, where administrators also can be providers, he said.

Whatever the system adopted, the move to private coverage is placing new demands on employers in Latin America, said Lawrence S. Brewster, president and chief executive officer of Health Resources & Technology Inc., a health care risk management company in Boston.

Employees are increasingly aware of extensive health care coverage provided in other countries outside of Latin America and, as the public coverage is reduced, they expect employers to provide an alternative system, he said.

For example, "in Mexico, (employers) are having to come up with supplemental coverage, as well as better services," Mr. Brewster said.

And often it is in employers' best interests to provide timely, high-quality care for their employees, he said. Productivity often is affected if employees and their families have to endure lengthy waits to receive public or low-cost private care, Mr. Brewster said.

The workers comp market in Latin America also is undergoing radical changes, with a move toward private coverage, said Beatriz Rodriguez, director-Latin America business development at Liberty International in New York, a unit of Liberty Mutual Insurance Co.

Chile privatized its workers comp system nearly 20 years ago and has achieved a marked decrease in accident rates, she said.

Over the past five years, several other govern-

ments in the region also have privatized their workers comp systems, she said.

While the privatization trend provides opportunities for international insurers to enter the region, they must tread carefully, Ms. Rodriguez said.

For example, when Liberty International entered the newly privatized Argentinian workers comp market in 1995, it expected to obtain a significant market share quickly, she said.

But many small local companies also were established, rates plummeted, and Liberty only managed to secure a 3% market share, Ms. Rodriguez said.

"We had to let business go because the rates were very low," she said.

And the low rates led to low profits for the insurers and prevented them from investing in accident prevention programs, Ms. Rodriguez said.

Also, loss ratios increased as employees became familiar with the new system and filed more claims, she said.

However, because of continued low rates, many of the small companies have become unsustainable, and Liberty International now has the opportunity to grow by acquisition in Argentina, Ms. Rodriguez said.

To successfully compete in the markets throughout Latin America, private insurers need to bring more than just capital to the markets, she said. They must also bring experience and knowledge of workers comp. And they must strive to obtain statistical data, which is difficult to find in Latin America, Ms. Rodriguez said. **BI**

IIC meeting draws 100

MIAMI—About 100 people attended the inaugural rendezvous sponsored by the International Insurance Council and held Jan. 6 to 8 in Miami.

The attendees, who traveled from all over North and South America, heard speakers discuss topics that included international arbitration, corruption, joint ventures, and technology in non-U.S. markets.

The conference also saw the presentations of two new awards by the IIC.

The Americas Insurance Awards were presented to Joao Elisio Ferrez de Campos, chairman of FENASEG, the Brazilian Insurance Federation; and John R. Thompson, deputy superintendent of regulation for Canada's Office of the Superintendent of Financial Institutions in Ottawa.

The awards recognize distinguished service in advancing the growth and development of the international insurance industry.

The January event was actually the postponed 1998 rendezvous, which was scheduled to take place last August. Like the industry it covers, the rendezvous is susceptible to sudden changes in weather patterns, and the original dates were canceled at the last minute as Hurricane Georges approached southern Florida.

The dates and location of the 1999 rendezvous have not yet been determined.

For more information, contact The International Insurance Council, 900 19th Street N.W., Suite 250, Washington D.C. 20006; 202-682-2345; fax: 202-218-7730; www.iicdc.org.

Euro

Continued from page 3

developed long-standing relationships with clients, Mr. Reid said.

"Up until recently, the German market was one of the most regulated and structured in Europe. An insurance cartel even existed for larger industrial business," he said.

Although the regulatory environment has relaxed somewhat, the German insurance market itself still has to change substantially, Mr. Reid said.

German insurance executives "are not known to be the most flexible and adaptive, and their management adjustment to a free-wheeling, less structured, untariffed insurance environment will be a special challenge to German mutual and middle-market insurers generally," he said.

Also, Europe has yet to see the full effect of the growth of alternative risk transfer techniques, Mr. Reid said.

"Captives, larger risk retentions and self-insurance are slowly but surely becoming a fact of life in Europe, just as they have become so in the U.S. . . . The demand for insurance in the manufacturing and industrial sector—traditionally, the largest buyers of commercial insurance—continues to fall," he said.

The introduction of the Euro in 11 European countries should, in time, nurture more cross-border insurance activity, Mr. Reid said.

"It will allow consumers to compare and will transform the market into a unified and open financial system," he said.

But the Euro will not remove all obstacles. Differences in language, local tax regulations and social security systems will remain, Mr. Reid said.

As the market begins to address the challenges of international trade, further consolidation is certain, he said.

"Merger and acquisition and consolidation activity will continue to increase in Europe, particularly among smaller reinsurers and domestic primary carriers that lack critical mass in their own countries and offer little added value or nothing unique to their policyholders," Mr. Reid said.

Numerous medium-sized multiline companies, in particular, will be under pressure to consolidate because they have neither the specialized services nor the capital to compete with their competitors, he said.

"Europe, which, by and large, has until recently enjoyed a somewhat uncompetitive, structured, labor-intensive and traditional insurance environment, will continue to find these changes quite difficult to manage," Mr. Reid said. **BI**

Service won't improve until prices rise

By Richard A. Archer

I was interested and intrigued when I read in the Jan. 12, 1998, issue of *Business Insurance* that a quality survey was to be taken by the Risk & Insurance Management Society Inc. and The Quality Insurance Congress. The purpose of the survey was to evaluate the quality of insurers, reinsurers, brokers and third-party administrators.

I can't say I was surprised with the results of the survey that appeared in a May 4, 1998, *BI* article, "Risk Managers Largely Dissatisfied with Insurer/Broker Service: Survey," but I am astonished at the almost-total non-response by brokers and insurance companies.

I am sure it is not from indifference, but from a recognition that it is pointless to get into a battle that cannot be won. An insurance company or broker that attempts to justify its performance will probably end up offending its customers. Who wants to do this? Criticism breaks down into subjective or relative issues, as well as specific areas of less-than-ideal performance. While one can deal with the specific areas, the subjective or relative issues are more difficult.

For 50 years I have been involved—mostly on a full-time basis and recently on a part-time basis—in insurance, principally on the brokerage side. Throughout, I have spent my share of time involved with both state and national insurance trade associations. In this period, much was attempted to improve quality. It is my hope that something of substance was accomplished.

With that history, I applaud the efforts of The Quality Insurance Congress. Over the years, much time has been spent recruiting more college graduates into the business. Great effort has also been expended encouraging improvement through continuing education.

However, as an industry—at least on the insurance brokerage side—insurance lacks the level of professionalism found in such fields as engineering, accounting and architecture. I think the fact that, as a percentage, only a minuscule number of brokers attain the Chartered Property & Casualty Underwriter designation confirms my assessment.

At the same time, I would like to take the side of the insurance broker and most insurance companies. Over the past 30 years, structurally, insurers and brokerages have changed substantially.

We are all aware of the consolidations, as well as the enormous increase in scale that has occurred. Who would have ever believed that most of the 50 largest brokers would have been consolidated into J&H Marsh & McLennan and Aon? In earlier days, the smaller firms were difficult to manage. I shudder to think of the management challenges of these megabrokers. What never seems to be mentioned is the substantially greater management skills that are now needed to boost service and profits.

On the insurance brokerage side 25 years ago, generating a pretax profit of 20% to 25% of revenue was expected and achievable. Back then, the business was not capital-intensive. Tangible capital of \$15,000 per employee was sufficient to operate a sound company. Based on the then-average revenue of about \$60,000 per employee, per-employee tangible capital would be about 25% of annual revenue. This capital could easily be generated internally from retained profits.

Since about 1980, the advent of computers and expensive communications and office systems has increased enormously the need for tangible capital. Now average revenue per employee is at about \$120,000. Based on capital at 25%, this works out to about \$30,000 per employee. However, I think the number is closer to \$45,000. While revenue per employee has doubled, the amount of capital per employee has probably tripled over the past 25 years. Add to this the capital that has been employed to purchase many brokerage firms, and it is apparent that the average capital per employee, both tangible and intangible, probably has gone up five to six times in that same period.

Ultimately, shareholders require an adequate return on capital employed; any management that fails to understand this won't be around very long. Of the so-called alphabet brokers of the 1970s, only a few have survived. This resulted from disastrous acquisition decisions and underwriting ventures that dried up what were, at one time, adequately capitalized firms.

I would describe the last decade in the insurance brokerage business as the "period of the squeeze." It is axiomatic for an industry that is people-intensive and that cannot control the pricing of its service to experience a profit squeeze.

I have asked a number of brokers their opinions of the relative revenue for an account in 1988 and for an account last year. The consensus is that the 1998

figure is about 50% that of 10 years ago. I will be conservative and say it is 60%, or a 40% reduction in revenue for approximately the same unit of effort.

There is no doubt that efficiencies have resulted from scale and improved electronic data processing systems. However, this would not account for even 20% of reduced expenses. The balance has been made up in longer hours worked by employees for the same percentage of compensation, resulting in spreading more business over fewer people.

This hardly is an environment that lends itself to improved quality.

This situation would not have evolved if revenues and profits had risen at the same growth rates as that needed for capital. Actually, the reverse has occurred with the soft markets of the 1980s and thus far in the 1990s. It has required far greater management skill to produce adequate profits as per-unit revenue has dropped.

The surviving major brokers seem to understand this; they provide services commensurate with their ability to generate adequate return on capital and remain solvent. While quality is the goal of any professional brokerage organization, solvency and adequate return on capital employed are even more pressing aims.

As previously stated, I believe that service efficiencies have been achieved through consolidation and automation. This, clearly, has benefited the buyer. But I do not think this efficiency has kept pace with the needed profit margins and the required increase in capital to operate. If higher pricing, either through fees or increased commissions occurs, then I would expect to see improved service and greater client satisfaction.

Frankly, if that does not happen, I expect things to remain pretty much as they are now. **BI**



Richard A. Archer is principal of Richard A. Archer & Associates in Santa Barbara, Calif. He is a former chairman of Jardine Insurance Brokers Inc.

Definition of 'accident' key in CGL coverage ruling

A commercial general liability insurance policy issued to the City of Atlanta did not cover the city's willful and intentional entry and trespass by instructing a contractor to clear private property, a Georgia appellate court ruled.

Atlanta contracted with John D. Stephens Inc. to clear, grade and obtain fill dirt from several parcels in connection with the construction of a new concourse at the international airport. Stephens had to obtain CGL insurance and name the city as an additional insured. St. Paul Fire & Marine Insurance Co. issued the policy.

Stephens performed the work as directed. In some cases, the city directed Stephens to work on some parcels of property before the city acquired proper title. Those property owners sued the city to recover damages, and the city requested coverage to defend those claims, but St. Paul refused. The city then brought this suit, seeking a declaration that the insurer had a duty to defend and indemnify the city. The trial court ruled for St. Paul.

On appeal, the insurer argued there was no duty to defend or pay because the policy provided coverage for damage caused by an "event" defined as an accident. The court said the landowners' complaints did not allege that damage was caused by any unexpect-

ed happening but from the city's willful and intentional entry and trespass on their property. Thus, the court said that St. Paul had no duty to provide a defense or to indemnify the city in these lawsuits. The trial court decision was affirmed.

Atlanta vs. St. Paul Fire & Marine Insurance Co., Court of Appeals of Georgia, March 13, 1998 (*BI*/02/O.-\$10).

Restitution available to insurer under ERISA, court rules

In a case of first impression in that circuit, the U.S. Court of Appeals for the District of Columbia Circuit ruled that restitution is an available remedy for an insurer under the Employee Retirement Income Security Act.

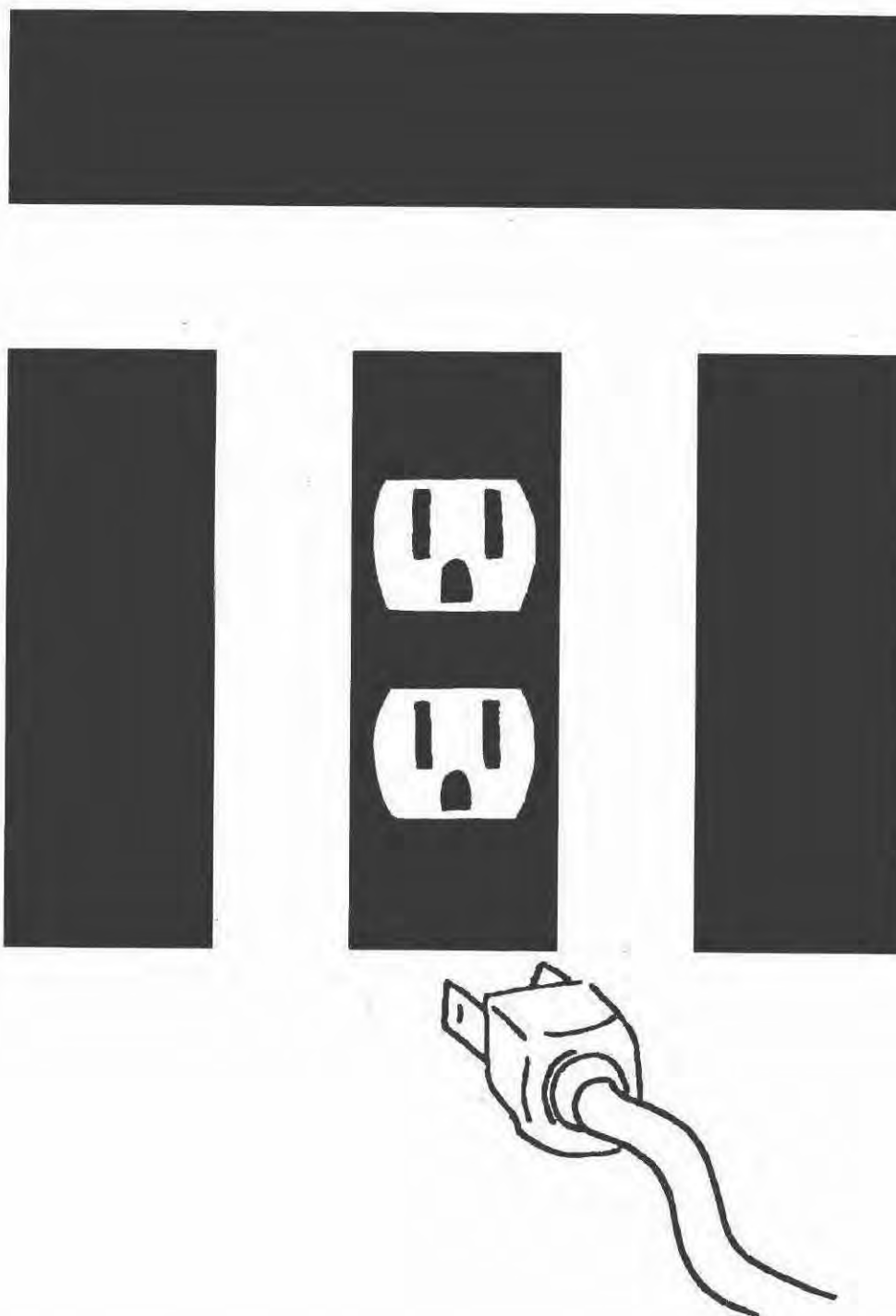
Andrea Heller sued Fortis Benefits Insurance Company, alleging that the insurer improperly denied her disability benefits and breached its fiduciary duty in violation of ERISA. The insurer, in turn, countersued for restitution of benefits erroneously paid to Heller after her fifth year of receiving bene-

fits. The trial court approved the termination of benefits and further ordered Heller to reimburse the insurer for disability payments for which she had not actually been eligible. Heller appealed.

The appellate court said that although ERISA itself does not explicitly provide a statutory right of restitution, it is clear that Congress intended federal courts to fashion a federal common-law under ERISA, and this permits application of a federal common law doctrine of unjust enrichment. According to the court, permitting ERISA fiduciaries to seek restitution of money wrongfully or mistakenly paid furthers the goal of ERISA to safeguard the corpus of funds set aside under the plan. The trial court decision was affirmed.

Heller vs. Fortis Benefits Insurance Co., U.S. Court of Appeals for the District of Columbia Circuit, May 1, 1998 (*BI*/03/D.-\$10). **BI**

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available by sending a \$10 check payable to Mayo H. Stiegler, to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.



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INTERNATIONAL

Global Briefs

Lloyd's may revamp regulations

By SARAH GODDARD

LONDON—Investors at Lloyd's of London could find themselves subject to different levels of regulation, depending on whether or not they own the agencies through which they invest.

At the same time, tough market conditions are forcing regulators to ensure that market professionals show a high standard of competence.

Looking back on the achievements of 1998, John Young, chairman of Lloyd's Regulatory Board, said regulators in 1999 will be focusing less on rule-making and more on "top trouble spots," such as new areas of systemic risk, he said. Systemic risks threaten

a number of market entities—such as the London market excess of loss spiral—and thus undermine the security of the market as a whole.

More than 70% of Lloyd's 1999 capacity is being provided by corporate investors, said David Gittings, director of regulation at Lloyd's.

And with moves toward the integration of capacity with agency ownership, the regulators need to take a look at the relevance of the current agency basis of the market.

LLOYD'S

In "Lloyd's Regulatory Plan for 1999 and Regulatory Report for 1998," published earlier this month, Mr. Gittings writes that Lloyd's regulation is moving to a less-prescriptive regime, relying more on compliance at the company level than strict involvement by the regulators. "The Regulatory Board believes that the market is now sufficiently professional to take this step," he said in the report.

At the same time, Mr. Gittings questions whether agency law is relevant as the basis of Lloyd's business relationships.

"Given the changing capital structure, with a tendency emerging for the integration of managing

See Lloyd's on next page

Siberians say 'da' to risk management

By SARAH GODDARD

SAYANAGORSK, Russia—Risk management is becoming a truly global industry, and insurers follow where risk managers lead.

In one of the most remote places on Earth, international insurers and brokers have found a thriving risk management culture, one that Western European and U.S. risk managers could be justifiably proud of.

Sayansky is a large aluminum processing plant in Siberia, Russia, on the

outskirts of a town named Sayanagorsk. Of the town's 50,000 or so inhabitants, around 6,000 work at the plant. Sayanagorsk's climate is extreme, ranging from 58 degrees below zero Fahrenheit in the winter to 100 degrees above zero Fahrenheit during the height of the summer.

Before the Soviet Union collapsed in 1989, Sayansky, now part of the AO Sayansky Aluminum Group, was a state-owned and state-run enterprise. Because other group operations were dependent upon Sayansky's produc-

tion, its risk management practices were relatively good "out of necessity," explained Paul Merlino, chief executive officer for Russia, FSU (Former Soviet Union) and Lithuania at broker J&H Marsh & McLennan Ltd. in London.

Because it is located in such a remote corner of the country, Sayansky had to fix its own problems, rather than relying on outside contractors

for maintenance or trouble-shooting, particularly because it can be snowed in for several months of the year.

Good risk management was, and remains, "absolutely necessary in this company, because otherwise it couldn't operate properly," said Andre Denissor, deputy country manager for Russia with J&H Marsh & McLennan in Moscow. The factory keeps on hand

See Sayansky on next page

Spanish insurers take on state benefit liabilities

By MARIA KIELMAS

MADRID, Spain—In Spain's largest-ever insurance placement, a group of insurers recently agreed to take on nearly \$9 billion in liabilities for former state workers' pensions and other benefits.

The Spanish government agency Sociedad Estatal de Participaciones Industriales late last year began transferring 1.267 trillion pesetas (\$8.83 billion) of liabilities for 914 billion pesetas (\$6.37 billion) in total premium to six private-sector insurers and one state-owned insurer. Details of the insurers' assumption of the liabilities have not been disclosed.

The insured sum represents the government's determination of cumulative unpaid benefit liabilities for about 68,000 employees of formerly state-owned companies, SEPI said in a statement. Benefits payable include pensions for about 38,000 of these former state workers and life insurance and educational support for the remaining 30,000.

"These are the obligations of state-owned companies dating from the 1980s, when a process of restructuring began," a SEPI spokesman said. The companies include mining, defense and manufacturing companies. Some, such as steel producer Ensidesa, no longer exist as enterprises but just as shell companies with liabilities to former employees, he said.

Between 1988 and 1996, these employee liabilities cost the government 2.35 trillion pesetas (\$16.38 billion at the current exchange rate), according to SEPI.

SEPI turned to insurance to clean up the companies' balance

sheets and remove the liabilities from the government's budget, the spokesman said.

The participating companies are: state-owned, Madrid-based Musini Cia. de Seguros y Reaseguros; Mapfre Vida, the life insurance company affiliate of Madrid-based Mapfre Mutualidad; Madrid-based Euroseguros S.A., the life insurance affiliate of Bilbao-based bank Banco Bilbao Vizcaya S.A.; Barcelona-based Vida Caixa, the life insurance division of Catalan savings bank La Caixa; Madrid-based Argentaria Vida, the life insurer affiliate of Madrid-based bank Argentaria S.A.; Caja Madrid Vida, the life insurance affiliate of Madrid-based savings bank Caja Madrid; and Madrid-based Santander Seguros, the life insurance affiliate of Banco Santander S.A.

Each insurer's share of the total liabilities has yet to be determined, the SEPI spokesman said.

A Musini spokeswoman in Madrid said her company also was acting as an adviser to the government on the deal in addition to participating in the transaction.

The insurance deal is equivalent to 15% of the total Spanish market in life insurance and 30% of the total Spanish pensions market.

Plans call for the premium to be paid in three separate tranches: 670 billion pesetas (\$4.67 billion) paid at the end of 1998, 55 billion pesetas (\$383.4 million) in the first half of 1999, and 189 billion pesetas (\$1.32 billion) in 2001.

SEPI chose the private-sector insurers from a larger group that bid on the deal individually, the spokesman said.



AP/WIDE WORLD PHOTOS

Police display stolen works by Goya, Picasso, Rembrandt and others that were allegedly to be exchanged for cocaine.

Drug bust leads to stolen art

VALENCIA, Spain—Police in southern Spain have recovered a stolen art collection that Spanish authorities estimated was worth about \$35 million.

According to police in Valencia, the art collection had been stolen in November 1997 from a private Swiss collector.

Insurance information was unavailable last week, but the loss was registered with the London-based Art Loss Register in February 1998, confirmed Sarah Jackson, historical claims director at the ARL.

Fine arts insurers that have paid a claim typically offer owners a chance to buy back their recovered property, Ms. Jackson said.

Ms. Jackson said the ARL was informed of the theft through Interpol but did not receive any details on the value of the collection or whether it was insured.

According to a statement by the Valencia police, the collection belonged to Anne Marie Graf, a resident of Celigny, Switzerland. The recovered items included paintings attributed to Goya, Rembrandt, Chagall, and Picas-

so; lithographs attributed to Miro, Picasso and Braque; a sculpture attributed to Giacometti; and 32 pieces of pre-Columbian pottery. All of the artwork had been reported to the ARL.

Attempts to contact Ms. Graf in Celigny were unsuccessful.

Robert Reed, fine art underwriter at Lloyd's underwriters Robert Hiscox, said that, in general, fine arts insurers do not comment on specific losses without the express permission of their owners.

The police statement said three people had been arrested in connection with the theft: a woman who was responsible for transporting the works from Switzerland to Spain, a known tobacco smuggler from Valencia who was acting as an intermediary in disposing of the works, and his daughter. The art was to be exchanged for a shipment of cocaine being transported to Spain by foreign drug traffickers, the statement added.

The Valencia police would not comment further.

—By Maria Kielmas

INTERNATIONAL

Sayansky

Continued from previous page
a complete set of spare parts, he said, as well as workshops equipped to cover any eventuality.

Mr. Denissor, who also is the account manager for Sayansky, explained that such facilities are essential to the plant because, until recently, it carried all its own risk exposure. The understanding of risk was "totally different from the Western style and not that cost-effective," he said, "but if something goes wrong, they are prepared for it."

After the fall of the Soviet Union,

Sayansky passed into private ownership. With the new managers came a new approach to business, particularly as Western companies became increasingly interested in entering into business deals with Russian organizations. But potential business partners often wanted some kind of guarantee that the Russian companies had some stability. In some cases, this meant auditing by Western accounting firms. In others, coverage by highly rated insurance companies provided the security the potential partners sought.

J&H Marsh & McLennan was introduced to Sayansky by a large Russian bank for which it had provided

cash-in-transit coverage. As part of its contractual requirements, the bank insisted that its loan customers purchase insurance, and one particular client in Siberia with assets that probably approached \$1 billion needed coverage.

The initial meetings between J&H Marsh & McLennan and Sayansky were like "pulling teeth," said Mr. Merlino. This, he said, was in part because Sayansky's previous experience with insurers was from the Communist era, when state insurers were not noted for their claims-paying ability. In addition, the company's overall experience with insurance was very limited, he said. However, once the J&H Marsh & McLennan representatives convinced the Sayansky management of the healthy state of Western insurance, the brokers were impressed with how quickly the Sayansky staff picked up the principles of coverage.

Of particular interest to Sayansky was the prerequisite for publicly traded companies in the West: to have insurance coverage, said Mr. Merlino. Sayansky is aiming for a New York Stock Exchange listing, he added.

The next stage was for J&H Marsh & McLennan to inspect the premises. Because assets are valued at minimum book value according to Russian accounting practices, a more accurate figure was needed before coverage could be written. Once the broker and the factory's management agreed

upon the asset value, J&H Marsh & McLennan approached the international markets to place the risk, with coverage including property, machinery breakdown and business inter-

Brokers were impressed with how quickly the Sayansky staff picked up the principles of coverage.

ruption. Compared with earlier Russian industrial placements, many fewer underwriters were needed to complete the \$2 billion program, explained Andrew Chester, the J&H Marsh & McLennan senior broker responsible for risk management who was charge of the Sayansky placement.

The placement was fronted by Russ-AIG and Ingosstrakh, with the majority of the program ceded to London, France and the Continental markets.

The insurance program proved so popular that it ended up overplaced, said Mr. Chester.

He has noted a growing interest in Russian business, and the good loss record of Russian property business is making it particularly attractive, he said.

Much of this low loss experience is due to the self-sufficiency of Russian manufacturers, he explained. Russian businesses "don't run things down... because they can't afford a break in production," he said.

And they take other preventive measures. For example, despite the presence of the large local hydroelectric facility, Sayansky uses four different electricity suppliers.

In spite of last year's economic upheavals in the former Soviet Union, the Sayansky coverage was extended late last year to include two other Sayansky group operations, Rostar Holding Inc., a canning factory outside Moscow valued at \$85 million, and Sayanal Rolling Mill, adjacent to the Sayansky plant and valued at \$110 million.

In fact, Mr. Merlino was quietly confident that 1999 will see an increase in business emanating from Russia. "There is the beginning of a potentially positive trend," he said, and Western organizations have been sniffing around the market to see if they could pick up a bargain or two while the prices remain low.

"What we're seeing is the realization that if (a Russian company) wants a Western partner, it has to have a Western-based type of insurance program," he said. "After the initial shock of the crisis, organizations are now starting the process and putting these programs in place." **BI**

Insurers may seek oil-spill payback

LONDON—Hull and liability insurers may seek compensation for payments they made after the tanker Sea Empress grounded and spilled its cargo of oil while berthing at a port in Wales three years ago.

Insurers believe they and the tanker's then-owner may be due compensation after the Milford Haven Port Authority, which was in control of the vessel when the grounding occurred, admitted liability for the spill. The admission came during a trial earlier this month in Cardiff Crown Court. Over 70,000 metric tons of crude oil spilled when the Sea Empress grounded in February 1996 (*BI*, Feb. 26, 1996).

The then-owner's liability insurer, Assuranceforeningen Skuld, an Oslo, Norway-based protection and indemnity club, and its hull insurers, led by UNI Storebrand A/S, also of Oslo, have both said they and the former owner are consulting with their lawyers over whether to seek compensation from MHPA. Their decision depends, in part, on an examination of the legal documents from the court case. At the time of the accident, the Sea Empress was owned by Alegrete Shipping Co., a unit of Norwegian-owned Sea Tankers.

Sea Tankers has consulted London law firm Ince & Co. about seeking compensation. The law firm said in a statement that the shipowner and its insurers have not yet decided on their

next step.

In its own statement, the port authority said it is insured for civil liability but would consider making counterclaims against any company that filed a claim against the port. The port authority noted that while it had admitted liability on a "no fault, strict liability basis," the judge emphasized the authority was not negligent.

The hull insurers declined to reveal how much they paid to Sea Tankers, but repairs to the tanker, which has since been resold, are estimated to have cost \$30 million. Skuld paid out £11.5 million (\$19 million) in cleanup costs and compensation, mainly to local fishermen.

The port authority, a public trust, pleaded guilty to one charge under the Water Resources Act of allowing the discharge of pollutants. The Environment Agency, which brought the case, charged that the port authority had put the pilot in a position to make a navigation error, which caused the grounding. The court fined the authority a record £4 million (\$6.6 million) and ordered it to pay £825,000 (\$1.4 million) toward prosecution costs.

An MHPA spokesman said last week that the authority had not been notified of any pending legal action against it by the tanker's former owner or insurers.

—By Edwin Unsworth

Lloyd's

Continued from previous page
agents and corporate members, we urgently need to re-examine this subject to ensure that our regulations are not imposing an undue burden and damaging Lloyd's competitiveness in the capital markets," he writes. Regulators have determined that regulatory arrangements different from those that apply to individual names may be appropriate for corporate investors because of differences in their respective relationships with their agencies. Consultation on the matter is due to start in the next two or three months, Mr. Gittings said.

The regulatory division also is consulting the market on charging for regulatory costs on a "user pays" basis, following the example of a number of areas of the Corporation of Lloyd's. "There is a desire that costs are allocated where they arise," said Mr. Gittings, which could mean that traditional names will receive proportionally higher bills than their corporate counterparts.

At the same time, market conditions are "tough," said Mr. Gittings, and some syndicates will suffer losses.

The report states that last year saw

"some of the worst underwriting conditions for at least a decade," both at Lloyd's and in the wider insurance market. As losses start permeating the Lloyd's system, it will "have an effect on the behavior of market firms, which we will continue to monitor to ensure that the interests of policyholders and capital providers are not put unduly at risk."

"There is too much capacity chasing business," said Mr. Gittings. "It affects the way people behave," and the regulators must be alert to ensure that "underwriters are not doing things which will place the system at risk."

He also highlighted regulators' concerns over reinsurance security and collectibility, though he was content that the London market excess of loss spiral did not seem to be rearing its head again.

Just three brokers are now providing almost half of Lloyd's premium income, the report states. Although brokers in general have a stronger negotiating position in the current difficult market conditions, smaller brokers are finding the situation particularly tough.

"This has required, and will continue to require, stringent oversight to ensure that insurance monies are pro-

tected for the benefit of policyholders," states the report.

The new Business Conduct Review Department is keeping a close eye on the financial position of Lloyd's brokers, particularly because about half had operating losses last year, relying on investment income to make their profits. "However, continuing low interest rates will reduce these returns," states the report. "Pressure built up during 1998 will continue in 1999 as the soft market worsens." Brokers that appear to be experiencing difficulties have been required to report monthly—and sometimes more frequently—to the Lloyd's regulators or to have reporting accountants appointed to carry out reviews of management controls and solvency. Currently, 50 of the 170 registered Lloyd's brokers must report monthly, and an additional 10 are required to report on a quarterly basis.

Overall, Mr. Gittings said he is confident that standards in the market have improved in recent years. "The new corporate owners are more demanding on the management of syndicates and agencies and are bringing with them a more controlled formal environment," he said. This has been reflected in the year-on-year 50% fall in regulatory breaches, he added. **BI**

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INTERNATIONAL

Sandler

Continued from page 3
ing director of Moody's Investors Service Ltd. "Now the market is back on its feet."

After its reconstruction and renewal plan was finally guided through by Mr. Sandler and the chairman at the time, Sir David Rowland, in 1996, Lloyd's reached a more even keel. Since Max Taylor took over from Sir David at the beginning of last year, Mr. Sandler has had a higher-profile role than be-

'Nick Prettejohn can step into Ron Sandler's shoes—he is very competent,' says Bill Loschert of ACE.

fore—including causing an uproar last year when he suggested to a meeting of names that the days of unlimited liability investors at Lloyd's were numbered (*BI*, April 27, 1998). His departure means Lloyd's will have a new management team to match the market's new structure after the R&R plan.

"When I came to Lloyd's... it was in a state of crisis," commented Mr. Sandler. "I am delighted with the success of R&R and for the reforms which have been unfolding at such a pace."

The handover is now the main priority in discharging his duties as CEO, said Mr. Sandler. "It is the role of the chief executive to ensure proper transition," he said.

"I see the first responsibility of the chief executive to lead the Corporation," said Mr. Prettejohn, while the second responsibility is "to support the chairman in his role as leader of the Society and chairman of the Council."

Prior to joining Lloyd's, Mr. Prettejohn was director of corporate strategy at NFC P.L.C., a transportation company.

He is clearly excited about the opportunities still opening up to the Lloyd's market, despite the current soft trading conditions. "I have an extremely strong belief in the future of the market," he said, citing last week's announcements by CGU P.L.C. and Danish Reinsurance Co. Ltd. to set up operations at Lloyd's as examples of the continuing attraction of Lloyd's. "This is a market that is the center of gravity of the London market, if not the international insurance market," he said.

Mr. Prettejohn's appointment has met with approval from various members of the market.

"He is a very, very competent man," commented a spokesman for the Assn. of Lloyd's Members.

Mr. Prettejohn's work on the R&R plan, particularly the Equitas reversing project, and his subsequent roles in leading Lloyd's North America and the business development unit, brought praise from several senior market figures.

"Nick Prettejohn can step into Ron Sandler's shoes—he is very competent," said Bill Loschert, chairman of ACE Global Markets Ltd. in London.

Michael Carpenter, managing director of LIMIT P.L.C., said Mr. Prettejohn is "clearly bright" and well liked around the market.

In addition, Mr. Prettejohn has a clear understanding of the mechanics of the Corporation. He was instrumental in reorganizing the Corporation into business units and bringing in the concept of providing central services on a "user pays" basis.

Mr. Sandler plans for the future are not yet clear, although few anticipate he will have any problems finding a position. Before joining Lloyd's, Mr. Sandler was the CEO of Exco P.L.C., a financial services group. **BI**

Mobile phone risks studied

By CAROLYN ALDRED

As both the use of and concerns about mobile telephones accelerate worldwide, research into the health effects of exposure to radio frequency magnetic fields is increasing.

Later this year, a major study to determine whether a link exists between the incidence of brain tumors and the use of mobile telephones will begin. The study, coordinated by the World Health Organization, will be conducted in nine countries.

Meanwhile, Wireless Telegraphy Research, a research group funded by member companies of the Washington, D.C.-based industry group Cellular Telecommunications Industry Assn., over the next few months will publish initial results from a \$25 million research project.

And in the United Kingdom, a major study to investigate occupational exposure to radio frequency is under way this year.

The ongoing health concerns have led many cellular telephone companies to fund research programs in an effort to demonstrate that their products are not dangerous. Fears about health risks, including cancer, brain tumors and other brain conditions, have increased even though research has not yet come up with evidence for such concerns.

Because of those fears, however, some employers have gone so far as to institute precautionary measures to help protect their employees.

Virgin Group P.L.C. recently advised all employees to use protective headpieces while using mobile phones. The headpiece is a small plug for the ear attached to a cord so the phone is not so close to the ear.

The advice from Virgin follows the death of Michael von Clemm, a close friend of Virgin Group Chairman Richard Branson, from a brain tumor. Mr. von Clemm, a banker, had

used mobile phones extensively during his career.

Leigh Day & Co., one of the leading plaintiff law firms in the United Kingdom, has several potential clients who want to sue mobile phone companies because of brain tumors and other health problems they believe are linked to their use of mobile telephones.

Just such moves have prompted U.K. companies such as British Telecommunications P.L.C. and Vodaphone Group P.L.C.; Finland's Nokia Corp.; Sweden's L.M. Ericsson Telephone Co.; U.S. manufacturer Motorola Inc. and other large cellular phone manufacturers and service providers to provide millions of dollars to fund research projects.

"We believe there is no medical evidence to suggest there is a problem, but we have a duty to our consumers, employees and shareholders to make sure that research is done. This is an industry issue," said a spokeswoman for British Telecommunications.

"The global industry so far has provided up to \$60 million for research into possible health problems," said Tom Wills-Sandford, director of information and communications technology for the London-based Federation of the Electronic Industry. In the past five years, 78 studies into radio frequency exposure have been conducted, according to Mr. Wills-Sandford.

The cellular telecommunications industry "welcomes good-quality scientific research," he said.

A spokesman from Nokia also confirmed that the Finnish manufacturer was committed to helping fund high-quality research into the issue.

However, in light of growing public concern and increasing media attention on the issue, the companies stress the lack of evidence showing mobile phone use as dangerous.

"Using a mobile phone is one of the least damaging activities of modern life," according to a statement issued by Vodaphone. "There is no evidence at all, anywhere in the world, which suggest that there is any cause for concern," the statement said.

The W.H.O., however, recognizes that any adverse effect, however small, could be a major public health problem due to the increasing use of mobile phones.

"The rapid increase in use of mobile telephone handsets and construction of their base stations have triggered concerns about the possible adverse health effects of cellular technology, including cancer, headaches and memory loss," according to a fact sheet on mobile telephones prepared by the WHO.

"With an estimated 190 million mobile telephones in use worldwide today, even small adverse effects on health could have major public health implications," the information sheet continues. **BI**

As a result of these concerns, the W.H.O. began an international project in 1996 to assess existing research and fund further work into the possible health effects of electromagnetic fields, including radio frequency.

Scientists agree that part of the problem is that health studies may not provide sufficient data to show any links between cellular technology and health because of the relative youth of the industry. However, last September a group of scientists from 10 countries who met at the International Agency for Research on Cancer in Lyon, France, agreed that an international study to determine whether mobile phone use causes brain cancer in humans is now feasible.

There has now been enough use of mobile phones in the nine countries that will participate in the W.H.O.-coordinated study for an effect on cancer risk—should one exist—to become apparent, the scientists agreed.

The countries to be studied are Australia, Canada, France, Germany, Israel, Italy, New Zealand, Sweden and the United Kingdom.

The scientists working with the IARC, a W.H.O. organization funded by 18 countries, say there should be enough brain tumor cases in those countries to show whether even a small correlation with mobile phone use exists.

"There is some evidence that people exposed occupationally to high levels of radio frequency energy from other sources may have an increased risk of leukemia and brain tumors. (But) there is currently no direct evidence of a link between mobile phone use and cancer," the IARC said.

Because there is no evidence of a correlation, "people should not be concerned that increasing rates of brain tumors that are now being observed worldwide are linked to mobile phone use," said Dr. Bruce Armstrong, chairman of the IARC group of scientists and director of the Cancer Control Information Centre in Sydney, Australia.

Increases in the prevalence of brain tumors, "which are most marked in people over 60 years of age, generally began before mobile phone use" became widespread, Dr. Armstrong said. Thus, even though the prevalence is increasing, the rise cannot be attributed to mobile phones before research is conducted.

Research also is continuing in the United Kingdom, where a national study is examining exposure to radio frequency electromagnetic fields and radiation generated by equipment used in the broadcasting and telecommunications industries.

Research also is being conducted in the United States, sponsored by member companies of the Cellular Telecommunications Industry Assn. in Washington, D.C. **BI**

Smokers asked to work longer

ESSEX, England—In a novel approach to prevent subjecting non-smoking employees to secondhand smoke, a British employer plans to ask employees who wish to smoke during office hours to extend their working week by two-and-a-half hours.

Signing a contract to work 39.5 hours a week rather than the standard 37 hours would allow office-bound workers to go outside—and away from the office buildings—to smoke, according to the employer, Thurrock Council, a municipal authority in Essex.

The proposal aims to "safeguard the health and safety of all our employees and to minimize our legal liability. We do not want to be hit by claims for injuries due to passive

smoking," according to a spokesman from the council.

Like many British employers, the council banned smoking from its offices several years ago but provided smoking rooms for those wishing to smoke during office hours. Management now has decided, however, to institute a total no-smoking policy in office buildings. The additional hours would allow smokers to take two 15-minute breaks a day in order to smoke well away from the offices, a spokesman explained.

Meanwhile, the Health and Safety Commission, a government-funded agency responsible for setting workplace health and safety standards, plans to consult employers later this year as to whether it should implement an Approved

Code of Practice on secondhand smoke at work.

If an Approved Code of Practice were implemented, employers could face prosecution if they failed to comply.

After that, the HSC would decide whether it wanted to introduce legislation or change its existing regulations. Under the current guidance from the Health and Safety Executive, an employer should introduce a specific policy on smoking in the workplace that should give priority to the needs of non-smokers who do not wish to breathe tobacco smoke. The policy also should take special care of those who have health conditions that might be worsened by tobacco smoke.

—By Carolyn Aldred

Union

Continued from page 3
proposed last year. Under that proposal, employees age 55 and older who lose their jobs and exhaust their health care benefits could purchase Medicare coverage by paying monthly premiums of \$400 until age 65.

Observers noted that such a proposal, if enacted, could encourage employers to terminate their health care plans for early retirees. In many cases, employers would find it much less expensive to subsidize part of the Medicare premiums for retirees than to maintain their own programs.

President Clinton also proposed ex-

panding the Family and Medical Leave Act to cover all employers. The 1993 law, which requires employers to provide workers with up to 12 weeks of unpaid job-protected leave for medical problems and other family situations, now applies only to organizations with at least 50 employees.

President Clinton also renewed his call for patient protection legislation, which, among other things, would give, for certain medical conditions, managed care plan enrollees direct access to specialists. The proposal also would allow a patient to retain full coverage for a physician throughout the course of a treatment, such as chemotherapy, even if the physician were to leave the plan's provider net-

work after the treatment began.

The president also offered some retirement savings proposals.

One new proposal would add a 401(k) feature to the Social Security program, allowing employees to designate portions of payroll taxes, plus matching contributions from the government, to go to various investment options.

Another proposal would divert a portion of the federal government budget surplus to establish new universal savings accounts for employees. Employees also could contribute to these accounts with the government matching part of those contributions.

All these proposals would require congressional approval. **BI**

Aviation insurance pool is launched

ST. PETER PORT, Guernsey—An aviation insurance consortium with projected gross premiums of more than \$100 million in 1999 has been set up in the London market.

Members of the consortium are Polygon Group of Guernsey, whose Polygon Insurance Co. subsidiary will have a 45% share; Greenwich Insurance Co., a subsidiary of NAC Re Corp., with 25%; Gerling-Konzern Allgemeine, with 10%; and Lloyd's of London syndicates 102 and 2021, with 14% and 6%, respectively.

Polygon Group is owned by KLM Royal Dutch Airlines, Scandinavian Airlines System, SAir Group, Austrian Airlines and Finnair.

Le Marchant Underwriting Management Ltd., a Polygon Group subsidiary set up last year, will manage the consortium's underwriting of all classes of aviation business. The consortium also will underwrite personal accident coverage, which Polygon said would largely involve airline employees, and yacht business.

—By Edwin Unsworth

The Professional Marketplace

RATES AND CLOSING TIME:

Rates: Display classified is \$180.00 per column inch, minimum of one inch. Straight classified is \$16.00 per line, minimum of 5 lines. Count 34 characters per line (include each space and punctuation as a character). Additional \$25.00 charge for all blind box ads. Only those responses which fit into a business size envelope will be forwarded. Responses are forwarded daily.

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Company contemplating expansion of current operations and is interested in 1) acquiring existing practices; 2) hiring professional Risk Control consultants with 10 years experience; 3) hiring Loss Management Representatives with 15 years experience handling Property/Casualty claims. Please forward business specifications and/or resumes in confidence to Business Insurance, Box 3097, 740 N. Rush Street, Chicago, IL 60611-2590.

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HELP WANTED

Legal VP/Chief Counsel, U.S. Division Atlanta, Georgia

Large life insurance company seeking top legal executive to direct the legal/compliance function. Life insurance corporate legal experience with senior management responsibility and SEC regulatory experience required. Contact: Hallie Travis, Email: htravis@tylerandco.com, Tyler & Company, 1000 Abernathy Road, Suite 1400, Atlanta, GA 30328. Phone (704)672-1662 or FAX (770)396-6693.

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Insurance group seeks a credit analyst with knowledge of the life/health/annuity or property/casualty insurance industry. Candidates will have strong analytical, written, verbal and computer skills and an interest in securities analysis. Some travel required. Knowledge of GAAP and statutory accounting, an MBA and the CFA designation, or progress toward both, are preferred. Minimum five years work experience. Send resume, cover letter, and salary history to: Martha Butler, Duff & Phelps Credit Rating Co., 55 E. Monroe St., Suite 3500, Chicago, IL 60603.

INSURANCE AGENCY DIRECTOR

Insurance agency desires motivated candidates for the position of Agency Director. MLM Insurance Agency, Inc. is a subsidiary of Michigan Lawyers Insurance Company. We specialize in offering a full line of insurance products custom tailored for attorneys and other professionals in Michigan and other Midwestern states. Challenging opportunity requiring successful track record in agency sales, administration and program marketing and development. Responsibilities will include electronic marketing with computer databases, computer skills, L&H, P&C licenses are essential. Surplus Lines License, CIC, CPCU and/or CLCU preferred. Career path may lead to executive officer position. Compensation and benefits package commensurate with ability, experience and background. Send cover letter, resume, salary history and references to: Personnel Director, Michigan Lawyers Mutual Insurance Company, 161 Ottawa, NW, Suite 607, Grand Rapids, MI 49503.

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REQUEST FOR PROPOSALS

ATTENTION: THIRD PARTY ADMINISTRATORS

REQUEST FOR PROPOSAL (RFP) NO. 99000

The Chicago Housing Authority (CHA) Invites Qualified Businesses To Submit Sealed Proposals For:

THE PRIVATE MANAGERS INSURANCE PROGRAM THIRD PARTY ADMINISTRATOR TO HANDLE GENERAL LIABILITY AND AUTO LIABILITY CLAIMS.

Proposals shall be made in the format included in the Request for Proposal packet containing instructions, specifications and detailed submission requirements. Packets may only be obtained by calling CHA's Insurance Broker: Near North Insurance Brokerage, 875 N. Michigan Avenue, Chicago, IL @ (312) 280-5662, Mr. John Carmody. All inquiries for additional information regarding the Request for Proposal are to be directed in writing to Mr. John Carmody.

RFP documents describing specific requirements of the Authority will be available on Monday, January 25, 1999.

RETURN COMPLETED PROPOSALS TO:

JOHN CARMODY

NEAR NORTH INSURANCE BROKERAGE
875 N. Michigan Avenue
Chicago, IL 60611

Pre-Proposal Conf. Date/Time:

Proposal Due Date/Time

TUESDAY, FEBRUARY 2, 1999 @ 9:00AM CST

FRIDAY, FEBRUARY 26, 1999 @ 4PM CST

PROPOSALS ARE NOT PUBLICLY OPENED

The subsequent contract shall be subject to the applicable compliance standards and procedures of Executive Order No. 11246, as amended, Equal Opportunity and other provisions as specifically set forth in the Specification.

The Authority encourages participation by joint ventures and qualified minority and women owned businesses.

ATTENTION: INSURANCE CARRIERS

REQUEST FOR PROPOSAL (RFP) NO. 99001

The Chicago Housing Authority (CHA) Invites Qualified Businesses To Submit Sealed Proposals For:

THE PRIVATE MANAGERS INSURANCE PROGRAM CONSISTING OF GENERAL LIABILITY, AUTO LIABILITY, CRIME/FIDELITY & WORKERS COMPENSATION COVERAGES FOR ALL PRIVATE MANAGERS OF CHA PROPERTIES. RESPONDENTS ARE INVITED TO QUOTE ALL OR PART OF THESE COVERAGES.

COVERAGES ARE TO BECOME EFFECTIVE 4/1/1999.

Proposals shall be made in the format included in the Request for Proposal packet containing instructions, specifications and detailed submission requirements. Packets may only be obtained by calling CHA's Insurance Broker: Near North Insurance Brokerage, 875 N. Michigan Avenue, Chicago, IL @ (312) 280-5662, Mr. John Carmody. All inquiries for additional information regarding the Request for Proposal are to be directed in writing to Mr. John Carmody.

RFP documents describing specific requirements of the Authority will be available on Monday, January 25, 1999.

RETURN COMPLETED PROPOSALS TO:

JOHN CARMODY

NEAR NORTH INSURANCE BROKERAGE
875 N. Michigan Avenue
Chicago, IL 60611

Pre-Proposal Conf. Date/Time:

Proposals Due Date/Time

TUESDAY, FEBRUARY 2, 1999 @ 11:00AM CST

FRIDAY, FEBRUARY 26, 1999 @ 4PM CST

PROPOSALS ARE NOT PUBLICLY OPENED

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DIVISION PRESIDENT

National Third Party Administrator is seeking a Division President for its Benefit Services Division.

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pension, safety, security, industrial relations,
human resources and employee/
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Sub-total 32,926

Associations 259
Government, Unions and
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Commercial Consumers

Sub-total 34,116

Insurance Agents and Brokers 7,735
Insurance Companies 6,668
Accountants, Actuaries,
Attorneys & Consultants 2,520
Adjusters, Appraisers, TPA's, Captive Managers
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Storms hit New York, Pennsylvania

BUFFALO, N.Y.—Winter storms that hit Pennsylvania and New York last Monday caused considerable property damage, a claims adjuster says.

In "Western New York down through the middle of Pennsylvania, we've had quite a bit of activity, a number of claims as a result of the snow," said Jim McGee, executive vp of insurance company services at GAB Robins North America Inc. in Parsippany, N.J. "Both large and small stuff and a lot of it big stuff, shopping center-types of things, roof collapses."

Damage from the storm has resulted in claims activity two to three times greater than would typically be seen this time of year in New York or Pennsylvania, absent a major winter storm like this one, Mr. McGee said.

Among the damaged buildings in the area was one housing a Marine Midland Mortgage Corp. office in Depew, N.Y.

James S. Randolph, vp and manager of corporate insurance and risk management at Buffalo, N.Y.-based Marine Midland Bank, said the company leased the Depew space and still is assessing damage.

Workers at the Depew location were sent to alternative sites under an existing disaster plan, he said, and the business is "up and operational."

"We're going good. It's just a matter of determining what the loss is," Mr. Randolph said, adding it's too early to determine whether any insurance coverage would be triggered.



AP/WIDE WORLD PHOTOS

Two construction workers survey demolition work on the Marine Midland Mortgage Corp. building in Depew, N.Y. The roof of the building collapsed because of a winter storm earlier this month.

Berkley restructuring 10 units

GREENWICH, Conn.—W.R. Berkley Corp. is restructuring the management and back-office operations of its 10 regional insurance companies.

The operations will be handled by four insurers in geographic segments based on the markets served by W.R. Berkley insurance units. W.R. Berkley estimates the consolidation, which is expected to be completed before year end, will result in aftertax savings of \$10 million to \$15 million.

W.R. Berkley Corporation "It is our judgment, shared by our advisers, that in the face of increasingly aggressive competition, restructuring offers the best route to improved financial returns and enhanced value for our shareholders," William R. Berkley, chairman and chief executive officer, said in a written statement.

W.R. Berkley said it expects to take a one-time aftertax charge of \$9 million to \$13 million in first-quarter 1999 to cover costs related to the consolidation.

The four companies that will handle back-office and managerial operations are: Acadia Insurance Co. in Westbrook, Maine; Firemen's Insurance Co. of Washington, D.C.; Continental Western Insurance Cos. in Urbandale, Iowa; and Union Standard Insurance Co. in Irving, Texas.

NAIC releases top five salaries

KANSAS CITY, Mo.—Annualized salaries for the five highest-paid staff members of the National Assn. of Insurance Commissioners ranged from \$142,000 to \$191,483 in 1998.

Catherine J. Weatherford, the Kansas City, Mo.-based executive vp of the NAIC, was paid \$191,483 for serving as the organization's chief executive.

Kevin T. Cronin, Washington counsel and director of governmental and international affairs, was paid \$168,501.

Robert Carcano, acting director of the Securities Valuation Office in New York, was paid \$152,496.

Kansas City, Mo.-based employees Mark Peavy, a life and health actuary, and General Counsel Caroline Scott were paid \$142,746 and \$142,000, respectively.

NAIC members decided in 1994 to release top staff members' salary information annually.

Kemper forms E&O team

LONG GROVE, Ill.—Kemper Insurance Cos. has established a professional liability underwriting unit in New York, led by Senior Vp Reina Gregorio.

Ms. Gregorio, formerly executive vp at CNA Pro, the professional liability unit of CNA Insurance Cos., will serve as president of the new operating unit. The team of 20 to 25 professional liability professionals will work nationally, with offices on the East Coast and in the Midwest, distributing coverage through Kemper's existing regional branch network and via brokerages.

Kemper.

20 to 25 professional liability professionals will work nationally, with offices on the East Coast and in the Midwest, distributing coverage through Kemper's existing regional branch network and via brokerages.

Treatise on D&O liability

COLUMBUS, Ohio—The sixth edition of "Liability of Corporate Officers and Directors," a treatise on D&O liability and indemnification, is available from LEXIS Law Publishing.

The two-volume set essentially is a complete overhaul of previous editions because of the large amount of recent court rulings and legislation in that area, according to co-author Dan A. Bailey. Mr. Bailey is an insurer attorney and a partner with Arter & Hadden L.L.P. of Columbus, Ohio. Other attorneys at the law firm co-authored and contributed to the resource.

The resource costs \$165, not including tax and shipping costs. It can be ordered from LEXIS Law Publishing by calling 800-562-1215.

Information in brief

Kaiser Permanente plans to sell its 38,000-member Charlotte, N.C., operation to focus on its growing presence in the Raleigh-Durham-Chapel Hill "Triangle" area, where it now has 80,000 members. Kaiser said it intends to complete the sale by midyear and has entered into negotiations with several interested organizations. . . . A new **commercial lines deregulation bill** was introduced in the Colorado General Assembly earlier this month. H.B. 133 would exempt insurance products sold to certain qualifying commercial policyholders from rate and form filing requirements. . . . Kemper Insurance Cos. has created a new subsidiary, **Milestone Insurance Co.**, to underwrite and market commercial lines and specialty coverages in Ohio and Kentucky. Milestone will be based in Columbus, Ohio, and headed by Chief Executive Officer W. Mick Taylor, formerly chairman, president and CEO of Grange Mutual Casualty Co. . . . A group of employers opposed to the Occupational Safety and Health Administration's proposed workplace safety and health program rule has adopted the name the **Alliance for Workplace Safety**. The group, chaired by the U.S. Chamber of Commerce and the National Assn. of Manufacturers, stresses that it does not oppose such programs, but believe OSHA's current draft proposal is impractical, vague and likely to lead to open-ended employer liability (BI, Jan. 4).

Investigate

Continued from page 1

duct did occur, said Eric C. Sohlgren, an employment law defense attorney for Payne & Fears L.L.P. in Irvine, Calif. Mr. Sohlgren spoke at a recent seminar sponsored by the Walnut Creek, Calif.-based Council on Education Management.

That 1998 California Supreme Court decision, *Cotran vs. Rollins Hudig Hall International Inc.*, stemmed from harassment allegations that led to a supervisor's firing (BI, Jan. 12, 1998).

State supreme courts in Alaska, Nevada, New Mexico, Oregon and Washington have reached similar conclusions, according to Tom Klein, an employment defense partner with Orrick, Herrington & Sutcliffe in San Francisco who has written about the issue.

In addition, the 8th U.S. Circuit Court of Appeals in Minnesota and the 6th U.S. Circuit Court of Appeals in Ohio have also ruled similarly, said Sheryl Willert, a partner in the Seattle office of Williams, Kastner & Gibbs and a board member of the Chicago-based Defense Research Institute.

As a result of those court decisions, plaintiffs in wrongful-termination litigation have in some cases shifted their focus to the quality of an employer's investigation rather than on disproving the claims that gave rise to termination, Mr. Klein said. Plaintiffs attorneys today frequently attempt to steer juries into awarding damages by attacking the fairness and thoroughness of an employer's investigation, he said.

Under the California Supreme

Court decision, an adequate employer investigation includes notifying the targeted employee of the allegations of misconduct and providing a fair opportunity for him or her to respond, according to Mr. Sohlgren.

Courts have held that the key components of a good faith investigation, he said, include cases where:

- Investigations were carried out by unbiased human resource representatives.
- The investigators was trained on how to conduct the investigation by in-house counsel.
- The investigator asked open-ended and non-leading questions.
- The investigator gave witnesses several opportunities to clarify, correct or challenge information provided by other witnesses.

One employer that won legal and regulatory affirmation of its investigation process is Las Vegas-based utility Southwest Gas Corp.

In a 1995 ruling, *Southwest Gas Corp. vs. Vargas*, the Nevada Supreme Court upheld the adequacy of the utility's investigation of claims of sexual harassment that led to the firing of an employee, who denied the harassment charges and sued the company. The fired plaintiff won a \$365,000 judgment against the company, which was overturned by the high court on appeal.

The Nevada high court held that juries should not be able to trump the good faith effort an employer makes in pursuit of legitimate business interests.

In spite of its legal victory, Southwest Gas has further refined its method of investigating sexual harassment complaints and now requires that a female employee in its

human resource department be the first to interview women who voice complaints about a hostile environment, said Greg Janson, the company's associate general counsel.

A female is chosen for the initial interview to help put the alleged victim at ease, Mr. Janson said. Just as in rape cases, victims of sexual harassment may be reluctant to talk if they are not at ease, he added. After beginning with open-ended questions, the interviewer will ask the victim to write out comments if the interviewer determines the complaint has merit.

"We are just not going to go to the harasser if the people are not willing to go on the record," Mr. Janson said. "There is some sensitivity out there for the rights of the harasser," particularly if you encounter jury members who think "boys will be boys."

Eventually, a termination review board, whose members are not involved in the investigation and collection of documentation, evaluates all investigation findings. As a result, there are two levels of due process, Mr. Janson said.

"It gives us a lot of insulation, and our record has been pretty good with that one-two punch," he said.

Mr. Sohlgren of Payne & Fears reviewed other steps to minimize employers' liability exposure from internal investigations.

Conducting an internal probe of allegations of workplace problems requires an employer to remain objective, Mr. Sohlgren advised. The employer should not decide what the outcome will be in advance and then look for facts to support it, he added.

"That can be very dangerous," he said.

Courts increasingly are looking at how an employer conducts an investigation of workplace complaints. A lack of objectivity can lead to accusations that the investigation was not conducted in good faith and did not give the accused an appropriate opportunity to respond, Mr. Sohlgren said.

Employers should keep investigation interviews separate from termination interviews, Mr. Sohlgren advised. Interviewers also should not have an employee's final paycheck ready to hand over when he or she is first questioned about the allegations, because that shows obvious bias for the outcome of the interview, he said.

Mr. Sohlgren also advises that employers should take precautions to limit the details of the fact-gathering from leaking to anyone who does not need to know about it. This includes limiting the publication of reports regarding the investigation.

The attorney recommended that employers document everything. If tape recording the interview, an investigator should have the recorder in plain view and never hide it, Mr. Sohlgren advised. Ask permission of the witness at the outset to record interviews and record the request and response, he added.

Employers should be aware that those investigation documents can be discoverable in a lawsuit against the company, another attorney said at the same seminar as Mr. Sohlgren.

While an employer's investigation can uncover details that might thwart a claim against it, interview notes and documentation also can be used against the employer and even presented to a jury, said Tere-

sa R. Tracy, an employer defense attorney in the Los Angeles office of Baker & Hostetler L.L.P.

Don't doodle on any interview notes or use them to compile a grocery list, she advised.

"It just makes it look like you weren't focused, like you weren't taking the witness seriously," she said.

And don't admit wrongdoing in your investigation documentation by reaching a legal conclusion that harassment or other misconduct has occurred, the attorneys said. The facts can be summarized, but legal conclusions should be discussed with legal counsel before entering them into documentation, attorneys advised.

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Zurich

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And as of year-end 1997—the latest year for which figures are available—The Home had a statutory surplus of \$55 million, which is the amount executives running off the insurer predict it will have left once it has paid all of its claims. The Home has a significant amount of long-tail claims, including asbestos and environmental claims, which are expected to take many more years to run off.

The Home went into runoff in June 1995 after New Hampshire regulators

approved a controversial deal that allowed Zurich to take over the profitable business of the troubled insurer without actually taking over the company and standing behind the liabilities.

Instead, Zurich provided the reinsurance contract, which, at the time, actuaries appointed by the New Hampshire Insurance Commissioner predicted could cover all the outstanding liabilities of The Home (*BI*, April 10, 1995).

However, the actuaries, Milliman & Robertson Inc. in Radnor, Pa., did caution that it was extremely difficult to successfully estimate the extent of

future claims payments. Nevertheless, in 1995 they predicted that the Zurich reinsurance payments would not be needed until 2002, Mr. Nichols said.

Soon after The Home was placed in runoff, it became clear that the reinsurance would be needed sooner, and the prediction for the triggering of the reinsurance was brought forward to sometime in 1999, he said.

"The original projections were made before the company went into runoff, and in the first year a lot of issues were discovered and changes were made. . . . The money was going out faster than anticipated," Mr. Nichols said.

The trigger of the reinsurance could

be beneficial to The Home if it means they are settling claims for lower amounts than policyholders would normally seek from a healthy insurer, said Matt Mosher, managing actuary at A.M. Best Co. in Oldwick, N.J.

In one high-profile settlement, The Home paid \$60 million, plus possible future payments, to settle a claim of more than \$270 million from the National Council on Compensation Insurance (*BI*, Aug. 18, 1997).

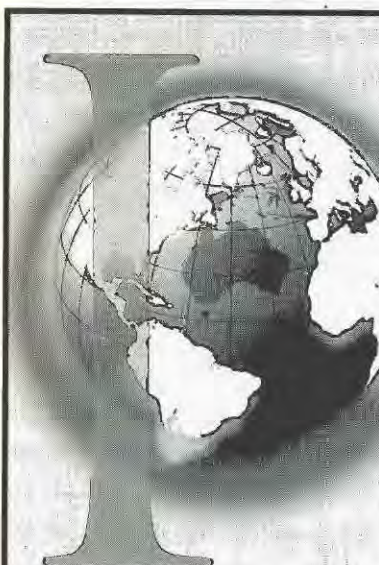
However, most other settlements have not been for such dramatically reduced amounts, Mr. Nichols said.

Since The Home was placed in runoff it has faced several significant problems. In March 1997 it was

placed under formal supervision of the New Hampshire Insurance Commissioner. In June of last year its holding company, Home Holdings Inc., went into bankruptcy in a deal to settle with its bond holders.

The reinsurance trigger is further evidence The Home's policyholders are unlikely to receive full payment under the deal, said Frank C. Welzer, an attorney at Zevnik Horton Guibord McGovern Palmer & Fognari L.L.P. in New York, who represents a group of policyholders suing Zurich.

In addition, it proves "that Zurich is the real party in interest and should be held responsible for Home's obligations and liabilities," he said. **BI**



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INTERNATIONAL UNDERWRITING ASSOCIATION

Court hears 'state actor' claim

By MARK A. HOFMANN

WASHINGTON—Insurers do not act as agents of the state under Pennsylvania's workers compensation law and therefore should not be subject to the same constitutional due process obligations as governmental entities, a government lawyer says.

An assistant to the U.S. solicitor general, Malcolm Stewart, offered that argument to the Supreme Court last week as the justices heard arguments in *American Manufacturers Mutual Insurance Co. et al. vs. Delores Scott Sullivan et al.* The case, which centers around insurers' ability to withhold payments from medical providers during utilization review of claims, has drawn considerable attention from risk managers and insurers because of its potential impact (*BI*, Jan. 11).

Ten injured workers had sued a number of workers comp insurers as well as state agencies over the UR provision of Pennsylvania's 1993 workers comp reform, claiming that they were being unconstitutionally denied medical benefits because insurers were permitted to suspend payments to providers during the review. They claimed that private insurers actually were working as

"state actors" when administering workers comp and should thus be subject to the same constitutional constraints of requiring due notice and an opportunity to air their grievances.

A federal court in Philadelphia rejected their claims, but the 3rd U.S. Circuit Court of Appeals reversed the lower court.

Mr. Stewart joined Michael McConnell, special counsel to the Chicago-based law firm of Mayer, Brown & Platt who represented the insurers, in arguing for a reversal of the appeals court. Mr. McConnell said insurers often withhold payments while reviewing claims, adding that such review isn't subject to due process guarantees.

"This case doesn't involve a traditional public function in any sense," he said.

Mr. McConnell repeated the contention contained in the insurers' initial brief, that "the only reason that the provider would not continue treatment is that he has some doubt" about its effectiveness and whether it would withstand review. The brief noted that Pennsylvania law requires the insurers to pay a 10% annual interest on any claims that UR upholds.

The insurer brief also said that at

least five of the original plaintiffs had continued to receive the disputed treatment "months or even years after a request for (UR)" and at least one other had paid for the treatment himself. Under sharp questioning from Justice Stephen Breyer, who asked if insurers should be required to pay a "clearly fraudulent" bill, the attorney for the injured workers, Loralyn McKinley, responded that they should ask for UR but be required to pay the bill during the UR process.

Ms. McKinley, a partner in the Philadelphia law firm of McKinley & Zonier, called the workers comp system "a public benefit system." That drew skeptical—and sometimes argumentative—responses from the majority of the justices. At one point, Chief Justice William Rehnquist, appearing frustrated at Ms. McKinley's responses to other justices' questions about why the case involved a due process question, told her to "try to answer the question."

The justices refused to review the 3rd Circuit's decision in *Krell vs. Prudential Insurance and Johnson vs. Prudential Insurance*, in which the appeals court approved a \$2 billion settlement that covered about 8 million policyholders who may have been deceived by agents. **BI**

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Commentary

'Disaster Diary' makes reader erupt in laughs

Every new year I receive an assortment of diaries and calendars from business contacts. One of my favorites is a hysterically funny pocket "Disaster Diary" sent by reinsurer TIG Reinsurance.

What could be so funny about a Disaster Diary?

Everything, if the diary is the product of TIG Re Executive Vp Mark Hinkley.

Mark Hinkley is the Mark Russell of the reinsurance business. His witty commentary on the reinsurance business and its celebrities, often sung to familiar tunes, delights attendees of the Angus Robinson Jr. Memorial Golf Tournament every year. He's also been persuaded by reinsurance crowds to take over a piano bar to share his songs. I've never been able to report on these performances, as they are strictly off the record.

But Mark annually goes "on the record" with the TIG Re Disaster Diary, which is sent to brokers, clients and others who appreciate irreverent commentary on the business of reinsurance and inside jokes.

This year's Disaster Diary is vintage Hinkley.

The "Special Securitization Edition" opens with a dedication to "you pioneers of the sure-fire, supercool and inescapable convergence of old-fashioned reinsurance and high rollin' high finance. It's particle physics meets the motor heads.

It's Revenge of the Nerds Part II (Part I was e-mail)."

Under "Warning," the TIG Re Disaster Diary advises: "DO NOT TRY THIS AT HOME or with YOUR OWN MONEY. Leave it to the professionals who know how to discount, compound and obfuscate with other people's money. They're the ones smoking the cigars before the deal is closed."

Fittingly, the Disaster Diary recalls the Reinsurer's Prayer: "God, grant me the knowledge to understand the gross, the

patience to calculate the net, and the wisdom to know the difference. Amen." God's reply is reported as: "Let me check with Aon and get back to you."

The Disaster Diary is so named because the dates of major disasters are noted, from the Dec. 28, 1908, earthquake in Messina, Sicily, to the Jan. 7, 1996, blizzard that struck the Northeastern United States, as well as the wind, hail and tornadoes that hit Denver on July 11, 1990, to name just a few.

Upon closer reading, other notable events are recorded in the fine print: "Jan. 1, 1937: First Reinsurance Transaction. Jan. 2, 1937, First Reinsurance Transaction canceled mid-term."

For Elvis Presley fans, his death on Aug. 16, 1977, is noted, as is: "Aug. 23, 1978, Elvis spotted pumping gas in Mobile, Ala.," and "Aug. 30, 1980, Elvis spotted eating cheeseburgers in Los Angeles."

And there is more in the back of the diary. Where other diaries offer metric conversion tables and other such reference material, the TIG Re Disaster Diary offers such useful information as "TIG Re Rates the Rags." I'm proud to report that "Business Endurance" obtains the highest rating of four owls, for its "sizzling ambush journalism." I won't report on the other ratings, in case other publishers lack a sense of humor.

The diary also offers a glossary. A few of my favorite definitions are:

- Accident Year: A year like 1997, when satisfactory results were published accidentally, because no one checked the math.
- IBNR: I buy no reinsurance.
- Net: Amount of money left after everyone else has leased a Mercedes car and joined a club.
- Nett: English spelling, whereby even less money is left.
- Reinstatement: Hit me again.

There's more than I have room to report in this column to tickle the funny bone, including, "The Renewal Song," to be sung to the tune of "Cabaret."

If you aren't lucky enough to be on the mailing list for the TIG Re Disaster Diary and I've whetted your appetite for more, write to TIG Re in Stamford, Conn. There are still some copies available.

I'm desperately hoping that this is not the final TIG Re Disaster Diary, following the purchase of TIG Holdings Inc. this spring by Fairfax Financial Holdings Ltd. and the subsequent merger of TIG Re into Fairfax's Odyssey.

If the Disaster Diary dies, that would be a real disaster.

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly.



Kathryn J. McIntyre

Aetna

Continued from page 2

has stepped into the fray by attempting to stop Aetna's plan to merge with Prudential HealthCare. In a letter to the U.S. Justice Department, the AMA asserts that the merger could lead to price-fixing by creating a health care monopoly (BI, Jan. 5).

The potential for doctor-insurer conflicts has grown dramatically in recent years as providers feel squeezed by health plans trying to maintain profit levels without sharply raising employer premiums, industry experts say.

However, Aetna U.S. Healthcare stresses that the disputes with the two physician groups have nothing to do with reimbursement issues and instead focus on different contractual issues.

Aetna U.S. Healthcare also rebuts the physicians' complaints, contending it is simply trying to provide the best coverage and service to its customers and that it has recently implemented a number of initiatives that are both physician-friendly and consumer-friendly.

For example, in June 1998, Aetna U.S. Healthcare launched "E-Pay" in northern New Jersey and New York. E-Pay guarantees payment to specialists within 15 days if primary care physicians electronically submit referrals and specialists electronically submit claims to the insurer.

The insurer also recently announced a new external review program, in which it will pay for HMO enrollees to obtain external reviews of health care coverage denials in states where such reviews are not already mandated (BI, Jan. 18).

Aetna U.S. Healthcare also asserts that the San Mateo contract cancellation bears no similarity to the Dallas doctor exodus.

In San Mateo, Aetna U.S. Healthcare is meeting resistance from the IPA "umbrella" group that traditionally has negotiated on the doctors' behalf. However, close to 80% of the

doctors in the San Mateo IPA already have individual contracts with the insurer, according to Aetna U.S. Healthcare.

Meanwhile, in Dallas, the issues were data dissemination and its all-products strategy.

An Aetna U.S. Healthcare spokeswoman explained that the objective of this strategy is to help maintain continuity of care while also providing members more flexibility in plan choice.

For example, under that strategy, if employees change from a PPO to an HMO or vice versa, they would keep their primary care physicians, she explained.

"We believe that all-products is patient protection. We think consumers want broad choice," she said.

The disputes between Aetna U.S. Healthcare and providers are not unique, experts say.

"This is not just an Aetna phenomenon," observed health care industry analyst Arun Kumar, a director at Standard & Poor's Corp. in New York.

However, he acknowledged that Aetna U.S. Healthcare is getting a lot more attention, most likely because of its size. It is one of the three largest managed care firms in the United States and will likely become the largest when its proposed merger with Prudential HealthCare is completed.

But Mr. Kumar said that eventually the doctor groups are likely to cave in to the insurer's demands because, "at the end of the day, it's hard not to do business with a company like Aetna."

In fact, already some 130 doctors of the original 540 that withdrew from Aetna U.S. Healthcare in Dallas have agreed to contract either directly with the insurer or through another IPA.

"In addition, we are having very high-level discussions with the management of Genesis, and we hope there will be a resolution and we will be able to work with them as a group," the Aetna U.S. Healthcare spokeswoman said, referring to the

Dallas IPA involved in the original walkout.

Some industry sources liken the situation to union-busting, as providers have increasingly turned to collective bargaining tactics in their negotiations with insurers.

"They wanted the doctors to sign individual physician agreements and eliminate the IPA's leverage," said a spokeswoman for the 600-member San Mateo County Individual Practice Assn. Medical Group Inc.

However, the contracts with the individual providers were in place long before the San Mateo IPA served Aetna U.S. Healthcare with its notice of termination last October, a spokesman for the insurer said.

In fact, Aetna U.S. Healthcare regularly contracts directly with providers.

"If something happens to the IPA, we don't want to lose every one of those docs. We want the ability to maintain relationships with those doctors if the IPA goes bust. We think that's another patient protection," the Aetna U.S. Healthcare spokeswoman said.

Like the Dallas group, the San Mateo group also claims Aetna is not providing the accurate and up-to-date data needed to make capitation risk calculations.

"We could never seem to get information on admissions, bed days, etc.," the spokeswoman for the doctors group said.

An Aetna U.S. Healthcare spokesman acknowledged the insurer did have some data-sharing problems after the merger, but he said those problems have since been solved.

"They believe that we have not been able to give them appropriate data. We have been meeting with them, and we don't believe data is an issue at all. We've been able to give them significant data to manage their practice," the Aetna U.S. Healthcare spokeswoman said.

Coincidentally, the 20-year-old IPA sold its HMO, the Bay Pacific Health Plan, to Aetna in 1991. **BI**

Reider

Continued from page 2

efforts to continue in a way that ensures that less-sophisticated insurance buyers are protected.

When making such changes "you don't want to be slow about it and sluggish about it. On the other hand, you don't want to hit a speed at which you give up what you really shouldn't give up," he said.

Additionally, Mr. Reider said he endorses the consolidation of some NAIC committees, which will go into effect on Jan. 1, 2000. "There is an interest within the NAIC to be sure that we're doing things as smartly as we can," he said. "That should be expected from us."

Mr. Reider also plans to serve as chairman of the International Insurance Issues Committee, although he has asked Glenn Pomeroy, NAIC's immediate past president, to continue chairing the NAIC's subgroup dealing with Holocaust issues. In addition, the Connecticut Insurance Department also will chair a property/casualty actuarial subgroup, although Reider's chief actuary will usually represent the department.

Mr. Reider said the three decades he spent working for an insurer are a help in leading the NAIC. A native of Steelton, Pa., he learned the industry's language and issues by holding various claims and management positions with Aetna Life & Casualty Co. starting in 1963. He retired in 1994 as acting vp of the insurer's property and casualty group claim operations.

Mr. Reider also worked briefly as executive vp of claims for the now-defunct The Home Insurance Co. be-

fore being appointed in May 1995 by Gov. John G. Rowland as Connecticut's insurance commissioner. Mr. Reider has been reappointed to a four-year term, subject to legislative approval.

"I find that background is very, very helpful—particularly with rapid change and having to grasp issues quickly," Mr. Reider said.

That same background also helped him move up quickly in the NAIC's leadership ranks. Mr. Reider served as secretary-treasurer in 1997 and vp in 1998.

However, his ownership of Aetna stock options in a blind trust was a hurdle to doing his job as Connecticut's insurance commissioner in 1996. A coalition of labor and consumer groups alleged that Mr. Reider would have a conflict of interest in deciding whether to authorize Travelers Corp.'s \$4 billion purchase of Aetna's property/casualty operations (BI, March 25, 1996; March 18, 1996).

Mr. Reider decided to recuse himself from deciding the matter. He allowed his deputy to make the ruling, although the Connecticut Ethics Commission voted 4-to-1 that he had no direct conflict and was free to rule.

The Insurance Department's handling of the entire matter was upheld by the Connecticut Supreme Court, Mr. Reider said. He also recused himself from approving Aetna's subsequent purchase of U.S. Healthcare (BI, Dec. 16, 1996).

Mr. Reider tries to balance his insurer background by maintaining familiarity with consumer concerns. He has held town meetings around his state, and each week he takes two calls from Connecticut residents seeking departmental assistance.

"We are really trying to stay in touch," he said. "It keeps your feet on the ground."

He also continues a tradition of public service, including having served as a chairman of the town council of Farmington, Conn., and on the board of trustees of his alma mater, Lebanon Valley College in Annville, Pa. He holds a bachelor's degree in business administration and economics.

Mr. Reider was a popular choice to lead the NAIC this year, both among regulators and the representatives of major trade associations.

"Connecticut Insurance Commissioner George Reider is an easy person to talk to; he is approachable, listens attentively and responds thoughtfully and fairly," Phillip Schwartz, vp-financial reporting and associate general counsel with the Washington-based American Insurance Assn., said in a statement. "He doesn't flaunt his authority, but his leadership skills are clear to those who work with him."

"Not only is his background an asset in understanding the business of insurance, he is a gentleman with a great deal of integrity," said Patty Parachini, legislative director for the Washington-based American Council of Life Insurance. "He has worked hard on several issues of importance to ACLI members, including the NAIC codification project," which sought to provide greater uniformity in insurers financial statements. In addition, "he also has the ability to reach out to people in a thoughtful and inclusive manner," she said.

George Reider and Carol, his wife of 37 years, have four grown sons and four grandchildren. **BI**

Greenberg

Continued from page 1

M&M, including: J&H Marsh & McLennan Inc., the risk and insurance services arm; William M. Mercer Cos. L.L.C., the consulting arm; and Putnam Investments Inc., the investment management arm.

In terms of strategic positioning, Mr. Greenberg expects no drastic changes to the company.

"I feel our strategy will continue with what we've been implementing up until now," he said. "Clients shouldn't expect to see any sharp change in direction."

Part of that direction will be a strong focus on medium-size clients, those defined as Fortune 5000 com-

panies, Mr. Greenberg said.

"We think we're good at servicing the needs of the large client. We certainly do business with a lot of them, and their needs change all the time as the world gets more complex," Mr. Greenberg said. However, "we've not been using all the advantages with the mid-sized clients that we can. There are lots of strengths we deliver to large clients that are very useful to medium-sized clients."

Large acquisitions, on the other hand, will take a back seat among Mr. Greenberg's strategic goals.

While the acquisitions of Johnson & Higgins in 1997 and Sedgwick Group P.L.C. in 1998, brought "great people and great presence" to M&M's risk and insurance and consulting segments, "we think strategi-

cally, we are well positioned," Mr. Greenberg said. "We don't have to make acquisitions to fulfill our goals."

Analysts from at least one rating agency view the appointment as a means to energize the broker.

"Jeff will offer the opportunity for a strategic assessment of the business and perhaps a different perspective of the business," said Alan M. Levin, managing director at Standard & Poor's Corp. in New York. "We believe he's a strong, energetic executive. He didn't get where he is simply because of his last name."

Mr. Greenberg's appointment "adds to the positive momentum of the company," agreed Darin Feldman, associate director at S&P. **BI**

CBGH

Continued from page 2

is small peanuts in an HMO's book of business."

Employers taking part in the first year of joint negotiations were ABN AMRO North America Inc. (LaSalle Bank), Bank of America, Commonwealth Edison Co., Ford Motor Co., Harris Trust & Savings Bank, the state of Illinois, the Jewish Federation of Metropolitan Chicago, Navistar International Transportation Corp. and the Northern Trust.

The nine employers put out requests for bids to HMOs using a common benefit design, along with 42 variations reflecting the preferences of the nine employers.

Coalition members adjusted these base rates as they wished to fit their demographics, experience and their own particular benefit designs. The process allowed coalition participant the freedom to negotiate their own contracts with their HMOs while being able to use a model HMO contract for guidance.

The HMOs serving coalition employers had asked for an average rate increase of 9.9% over 1998, well over twice the average rate increase obtained through the negotiation process, Mr. Boress said. Many employers outside the coalition in the Chicago area have reported rate increases of 8% to 10%, he said.

The first year of the coalition proved to be "extremely successful" in keeping insurance rates from spi-

ralling excessively, said Lynn Zehnder, manager of the bureau of benefits for the state of Illinois. The overall HMO rate increase negotiated for the state's July 1, 1999, contracts was kept to 4.26% for the Chicago market, while 8% increases are the norm for state workers elsewhere in Illinois, she said.

"If I could have that (4.26% increase) throughout the rest of the state, I'd be extremely happy," she said. "Given the variability among all the (coalition) employers that were participating, I think the process worked very well." About half of the state's 50,000 employees and retirees are enrolled in HMOs, she said.

Chicago-area HMO costs for Commonwealth Edison, the region's electric utility, will be roughly flat compared to last year, said Joyce Cook, vp of benefits planning. Without participation in the coalition, HMO costs probably would have risen "8% to 10%, minimum," she said.

All the founding members of the coalition were determined to maintain their freedom to negotiate their own HMO contracts and not unite in a common benefit plan and contribution structure, according to Louis Lazovsky, vp of human resources for the Jewish Federation of Metropolitan Chicago. Sixty-five percent of the 1,850 employees who work for the federation and its allied agencies are covered by HMOs and are likely to experience approximately 4% HMO premium increases when con-

tracts are renewed in July, Mr. Lazovsky said.

CBGH plans to meet with more area employers next month to persuade them to join the coalition, Mr. Boress said. Currently covering 100,000 HMO members, the coalition's long-range goal is to cover 10% of all HMO members in the Chicago market within five years, he said.

Several benefit managers said they were equally impressed with quality initiatives, introduced by CBGH last year, that aim to supply employers and workers with easy-to-understand comparative data on their HMOs. CBGH gathered information on clinical, management and customer service issues, graded the HMOs, and released the data to employers and HMOs. Report cards were made available for distribution to workers.

"There was leverage," said Jim Foreman, managing principal in the Chicago office of Towers Perrin, which advised CBGH on rate negotiation and performance data. "There was a collaboration of best practices (among HMOs) and a greater focus by the employers on quality than there ever would have been individually."

The Jewish Federation considered raising HMO quality standards to be an even more pressing issue than holding rates down, Mr. Lazovsky said.

"It's not just prices for us, and if it was just pricing I'm sure we wouldn't be in it," he said. **BI**

HMOs lack comp data: Survey

By ERIN DIGGS

Most health maintenance organizations could improve the efficiency of their workers compensation injury treatment programs, according to a recent survey.

A survey conducted by actuarial consulting company Milliman & Robertson Inc. found that while most HMOs offer or are planning to offer workers comp networks, few track workers comp treatment data.

Of the 26 HMOs that responded to the survey, 63% said they offered or planned to offer workers comp health networks or services. Only 9% of those, however, could provide data on the average length of lost-time claims.

Inability to track patients and their return-to-work results could be attributed to a lack of adequate hardware and software, said William L. Granahan, senior consultant for Milliman & Robertson. Mr. Granahan co-authored the survey, "HMO Managed Workers' Compensation Strategies and Products," along with consultants Patrick A. Gallagher and Christine L. Morgan.

"More and more companies are getting databases that have a

managed care piece. But many don't have them, and those that do are often inadequate," Mr. Granahan said.

A key shortcoming is the inability to track medical treatment data. Mr. Granahan said that most workers comp HMOs follow only the cost of claims but could pinpoint the best ways to treat specific injuries based on experience from prior cases if they monitored medical treatment data.

Despite these difficulties, HMOs continue to benefit by offering workers compensation health services. Retention of current group health clients and increased revenue are the main benefits listed in the survey, followed closely by increased group health enrollment among existing clients and the ability to attract new employer groups for group health coverage.

The survey also reports a substantial shift in which HMOs with more than 250,000 group health members were more likely to offer workers comp health services.

When shopping for workers comp health services through an HMO, employers should look at not only the services provided but also who provides them, Mr. Granahan said. "Make sure the

HMO understands workers compensation, state laws, and also understands the need for injured workers to be treated with respect to what they do for a living," he said.

Mr. Granahan also recommended that employers make sure the HMO has a sufficient number of certified occupational injury physicians and orthopedists. He said that orthopedists are important because the majority of on-the-job injuries tend to be such injuries as sprained ankles and broken legs.

According to the survey, HMO reimbursement is being achieved through fee-for-service and state fee schedules at an increasing rate. At the same time, there has been a steady decline in incentive-based measures such as case rate reimbursement and employer savings.

Overall savings for employers that use HMOs to treat workers comp injuries were estimated to be 30%, an increase of 5% from four years ago, the survey found.

Free copies of the survey are available from Milliman & Robertson by calling 508-798-4787, by fax at 508-798-5037, or e-mail at william.granahan@milliman.com.

Updates

Senator introduces Y2K bill

Continued from page 2

mere negligence." The measure also would eliminate joint—but not several—liability in cases involving more than one defendant. Small businesses and "information product technology" sellers, renters and lessors also would enjoy special limits on their liability.

The measure would not apply to personal injury cases involving physical injury.

In a statement accompanying the bill's introduction, Sen. McCain said, "My goal is to provide incentives for fixing the potential Y2K failures before they happen, rather than create windfalls for those who litigate." Sen. McCain is chairman of the Senate Commerce, Science and Transportation Committee and a likely contender for the Republican presidential nomination.

Aon to acquire McKenna

CHICAGO—Aon Risk Services Cos. Inc. has agreed to acquire Irvine, Calif.-based managed care insurance broker and consulting firm McKenna & Associates Managed Care Insurance Inc.

Under the agreement, Frank McKenna, president of McKenna & Associates, will join the Aon Corp. subsidiary as head of the company's West Coast health care practice and will chair the managed care initiative of the Aon Alliance steering committee.

McKenna has provided brokerage and consulting services to the managed care industry since the mid-1980s. In addition to its Irvine headquarters, the company has regional offices in Los Angeles; Miami; St. Louis; San Diego; and Scottsdale, Ariz.

"The first priority is to identify common client opportunities and new business opportunities that exist between current Aon producers and the McKenna producers," Mr. McKenna said. "We're really attempting to bring an all-lines insurance and consulting flavor to the health care industry."

Class granted in Sears suit

CHICAGO—About 85,000 retirees of Sears, Roebuck & Co. whose company-provided life insurance benefits may be drastically cut, obtained class-action status for a suit against the retailer this month, but the judge also handed down a ruling Sears is happy about.

U.S. District Judge James B. Moran decided the retirees can sue as a group in their claim that Hoffman Estates, Ill.-based Sears violated the summary plan descriptions for group life insurance policies. In 1997, Sears stunned retirees when it announced that, to trim expenses, it would gradually cut life insurance policies—some of which provided as much as \$100,000 in coverage to retired workers—to \$5,000 across the board over 10 years (BI, Nov. 17, 1997).

Retirees, who filed suit in 1997, accuse Sears of violating the Employee Retirement Income Security Act.

Judge Moran did rule in favor of Sears on another point, deciding that retirees as a group had not proved they were misled by Sears through "a finite package of materials" that promised them retirement benefits that would not change. Such evidence is needed to indicate that Sears violated its fiduciary responsibility to retirees, the judge said.

A spokeswoman for Sears said the company considered the ruling an early victory, but an attorney for the retirees, Charles R. Watkins, said Judge Moran "may have left the door open" for an additional class-action certification based on the fiduciary responsibility claim.

Briefly noted

Aetna U.S. Healthcare says it will appeal a \$120.5 million jury award—the largest judgment ever against a health maintenance organization—to a widow whose husband was denied coverage for an experimental cancer treatment. A San Bernardino, Calif., jury awarded the plaintiff, whose husband died, \$4.5 million in compensatory damages and \$116 million in punitive damages. . . **Fireman's Fund Insurance Co.** is purchasing the renewal rights to a \$50 million book of **entertainment insurance business** from a unit of CNA Financial Corp. Aon/Albert G. Ruben Insurance Services Inc., a Los Angeles-based entertainment insurance specialist of Aon Corp., will continue to serve as broker for the business. CNA said it was exiting the line to focus on more profitable core operations. . . **Marsh & McLennan Cos. Inc.** has filed a \$2.7 billion shelf registration with the Securities and Exchange Commission. The move enables the broker to replace the short-term debt used to finance the 1998 acquisition of Sedgwick Group P.L.C. with a mixture of long-term debt and other equities, explained A.J.C. Smith, M&M's chairman and chief executive officer. . . **The American Assn. of Health Plans** has reversed its position and said it will consider supporting legislation that allows outside appeals of health plans' treatment decisions. A bill that would have permitted external review, among other provisions, died last year in Congress. Congress is expected to consider similar legislation this year. . . **Elton Bomer**, former Texas Commissioner of Insurance, will serve as secretary of state under Texas Gov. George W. Bush. Mr. Bomer, 63, was commissioner of insurance from January 1995 until his new appointment this month. . . **The Los Angeles County Board of Supervisors** voted unanimously last week to create the position of independent inspector for risk management in an effort to help reduce county expenditures on litigation claims and settlements. Final creation of the new position will require one more board vote. The risk manager will report to the county's Department of Auditor Controller. . . The remaining plaintiffs suing **Valujet's** successor company can seek punitive damages in their litigation over the May 1996 Valujet crash in Florida's everglades, ruled a Florida state court judge, interpreting federal regulations and common law. . . The new head of the Minnesota Commerce Department, which oversees insurance and banking, is **David Jennings**, a former Minnesota legislator. He was appointed recently by Gov. Jesse Ventura. . . Ohio's new interim insurance director is staffer **David Meyer**, the former assistant director of the Insurance Department's office of financial regulation. Gov. Bob Taft appointed him as Hal Duryee's replacement earlier this month.

Stocks

Continued from page 2

ities, and even the tenure of their top executives.

Last year was tough for many property/casualty stocks, and the trend apparently is continuing this year. According to the *Business Insurance* stock index, insurer and reinsurer stocks declined 3.02% through Dec. 30, while the Standard & Poor's 500 advanced 26.7% for the year, largely fueled by growth in technology stocks. As of Jan. 15, insurer and reinsurer stocks dropped off 0.74%, while the S&P 500 advanced 1.14%.

"In 1998, the only thing I did wrong was not downgrade stocks fast enough," said Ronald Frank, an analyst with Salomon Smith Barney in New York.

Michael Smith, an analyst with Bear, Stearns & Co. in New York, said that until last year, insurers "could almost turn lead into gold" by taking down previous years' reserves and not putting up as much as in previous years.

"That was allowing them to show some very decent earnings growth despite the poor underlying fundamentals of slow premium and slow investment income growth," he said. "That seemed to catch up with the industry in 1998," said Mr. Smith, noting that "earnings disappointments generally tend to translate into mediocre stock performance."

There currently is a "very negative bias" against commercial lines stocks on Wall Street, said Jay Cohen, an analyst with Merrill Lynch in New York. "In fact, the property/casualty group as a whole has underperformed the overall market since November of 1997. And given the continued pressure on earnings and given the unlikelihood or relatively low probability of a turn in the cycle, we wouldn't expect any significant outperformance in the near-term either—certainly for the next six months," said Mr. Cohen.

John L. Ward, chairman of the Cincinnati-based Ward Financial Group, said, "The (stock) market tends to give a lot of weight to the uncertainty of catastrophes and the difficult pricing cycle, and that tends to add an element of uncertainty to property/casualty insurance industry performance, which...tends to hurt the performance of the insurance industry stock."

Also affecting the industry's stock performance is uncertainty surrounding the Year 2000 computer problem—both in terms of

its impact on the insurers' own business and in terms of claims in light of policies that may have extended coverage in this area, said Mr. Ward.

"I think 1999 is going to be a difficult year to make money buying the commercial underwriters as a group, and I'd probably recommend that investors be very selective," said Ken Zuckerberg, an analyst with Keefe, Bruyette & Woods in New York.

Mr. Zuckerberg pointed to last week's announcement by Chubb Corp. that its 1998 earnings are expected to be \$3.80 per share before a 15-cent first-quarter restructuring charge, compared with \$4 per share for 1997. Dean O'Hare, chairman and chief executive officer for Chubb, said inadequate pricing in standard commercial lines continued to undermine profitability in the fourth quarter.

Mr. Zuckerberg said, "We'd argue that the continued underpricing of business in

'I think 1999 is going to be a difficult year to make money buying the commercial underwriters as a group,' says analyst Ken Zuckerberg.

the commercial marketplace is really starting to take a toll on commercial lines carriers, so we are emphasizing some caution in our investment posture."

Not everyone will do poorly, however, said Mr. Ward. Although insurers, on average, will tend to lag slightly behind the major stock indexes, "there will be some shining stars within the insurance industry. The real outstanding performers that are decisive in their implementation of their strategies will continue to do very well," said Mr. Ward.

AIG continues to be the most frequently recommended insurance industry stock. AIG is "highly diversified," said Weston Hicks, an analyst with Sanford Bernstein & Co. in New York, who recommends it. "It's able to grow due to its global life business and its asset accumulation business, and its exposure to commercial property/casualty insurance is fairly modest."

Mr. Cohen, who recommends AIG and ACE Ltd., said, "We are generally favoring stocks where we have a higher degree of confidence in the earnings, so a name like AIG, ACE Ltd., both fit into that category."

Mr. Hicks recommends ACE and EXEL Ltd. Both "are virtually completely in the specialty segment of the market and, we think, have the ability to produce moderate earnings growth in 1999, with consolidation opportunities as well. They're both very well-capitalized companies."

Mr. Frank, who also recommends ACE and EXEL, pointed to their Bermuda domicile. It "represents a competitive advantage, both directly and indirectly, insofar as it can be used creatively to structure both products and acquisitions," he said.

Mr. Frank's other recommendations are specialty companies that "we're attracted to primarily on the basis of historically depressed valuation levels." He said his favorites now include Reliance Group Holdings, HCC Insurance Holdings Inc., CNA Surety and Orion Capital Corp.

St. Paul was recommended by Mr. Smith and Michael Lewis. St. Paul is "pretty much selling close to book value, with a superior yield and below-industry valuations," said Mr. Lewis, a senior insurance analyst at Warburg Dillon Read in New York.

St. Paul "is something of a change story, where product line diversification over a longer period of time will reduce earnings volatility. That, in turn, should result in stronger stock valuations," said Mr. Smith.

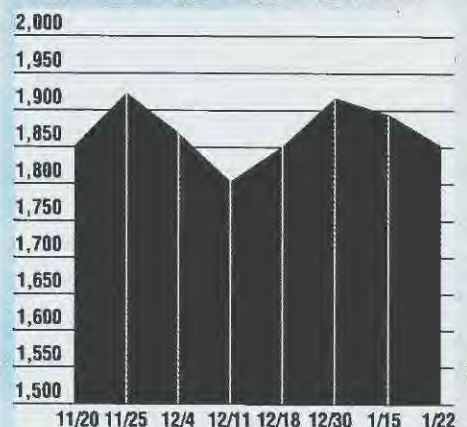
John Keefe, vp with Ferris Baker Watts in Richmond, Va., who specializes in small-cap stocks, recommends Markel Corp. and Executive Risk Inc. Markel, a specialty commercial insurer, had a 16% increase in its stock price last year and consistently reports combined ratios of under 100%, said Mr. Keefe. This has helped the company generate returns on equity of more than 20%, he said.

And Executive Risk is cheap on a price-to-earnings basis, he said. "The stock is penalized currently because half of its business is D&O liability insurance, which is presumed to be at ground zero when it comes to Y2K exposure."

However, said Mr. Keefe, "we think that Executive Risk's liability as it pertains to Y2K is greatly overstated," in part because it represents only a small percentage of its total business.

Among the brokers, Mr. Zuckerberg recommends Marsh & McLennan Cos. Inc. His reasons include the stock's liquidity and its "transparency," he said. "You know what you're buying. They essentially operate in three relatively easy-to-understand businesses"—insurance brokerage, asset management and consulting, said Mr. Zuckerberg. **B**

B/I Insurance Index



Base=100 on Dec. 29, 1978

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

PCS catastrophe options

As of Jan. 22	Call spread	Price bid/ask	Call spread	Price bid/ask
National Annual 1999				
40/60	12.0/16.0		California Annual 1999	
60/80	6.0/12.0		60/80	1.2/2.3
80/100	4.0/8.0		80/100	1.0/1.9
150C	4.3/6.0		150C	0.5/2.5
200/250	2.8/4.0		Western Annual 1999	
			80/100	0.5/2.2
Southeastern September 1999				
40/60	2.6/—		Midwest June 1999	
60/80	2.1/3.0		10/20	1.0/1.4
80/100	1.6/2.4		Florida Sept./Dec. 1999	
Eastern September 1999			100/150	2.6/—
40/60	1.5/—			

Total volume: 0 Total open interest: 10,997

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Gdn Royal Exch	369	5.5	13.4	3.8	495-227
Legal & Gen	841	24.4	13.3	2.0	855-500
Royal & Sun	465	14.2	23.6	4.8	825-437

Brokers

Lmbt Fenchurch	84	10.7	4.2	6.1	121-78
JLT	183	11.1	10.5	7.2	236-152

Note: Prices are Jan. 22 closings; other numbers from Jan. 21.

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

B/I Industry Stock Report JAN. 18, 1999, THROUGH JAN. 22, 1999

BROKERS																											
		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)				
Aon Corp.	NYS	52.31	-6.17	-6.69	75.56	48.25	800	EMC Insurance Group Inc.	NDQ	12.44	-0.75	-2.45	15.88	9.00	16	SCOR	NYS	53.19	-20.62	-18.17	72.75	49.00	26				
E.W. Blanch Holdings Inc.	NYS	53.00	15.06	13.52	53.75	33.31	340	ESG Re Limited	NDQ	18.00	-17.71	-9.15	28.88	12.75	393	SAFECO Corp.	NDQ	40.88	-2.10	-3.82	56.00	38.25	2586				
Gallagher Arthur J. & Co.	NYS	43.88	-1.54	0.29	46.75	34.75	261	Enhance Financial Services	NYS	25.06	-10.29	-17.15	37.56	17.31	559	SCPIE Holdings Inc.	NYS	28.63	-0.87	-4.78	38.38	26.63	NA				
Hibb, Rogal & Hamilton	NYS	18.06	-5.56	-3.02	19.88	15.38	21	Everest Reinsurance	NYS	33.63	-10.63	-8.35	45.25	28.75	504	Seibels Bruce Group	NDQ	3.50	0.00	0.00	8.38	3.06	342				
Kaye Group Inc.	NDQ	7.38	3.51	1.72	8.06	5.13	8	Executive Risk Inc.	NYS	48.44	-9.88	-10.09	75.75	35.50	197	Selective Ins. Group	NDQ	19.25	-9.41	-4.94	29.25	16.69	190				
Marsh & McLennan	NYS	57.94	-5.02	-2.01	64.31	43.38	2776	EXEL Ltd.	NYS	64.00	-7.25	-10.57	83.25	61.38	2146	Terra Nova Insurance Co. Ltd.	NYS	25.38	10.63	4.10	35.00	22.50	58				
Poe & Brown	NYS	35.06	3.13	0.36	42.50	29.31	18	Fremont General Corp.	NYS	22.00	-12.67	-8.81	31.06	18.00	398	TIG Holdings	NYS	16.00	1.19	3.23	33.75	11.63	768				
BROKERS	AVERAGE		1.60	1.81				Frontier Insurance Group	NYS	15.06	11.06	20.50	25.69	11.06	944	Tokio Marine & Fire	NDQ	59.81	2.57	1.59	61.38	39.00	55				
INSURERS/REINSURERS								Gainsco Inc.	NYS	6.00	-3.03	-4.95	10.00	5.56	109	Torchmark Corp.	NYS	33.06	-5.87	-4.86	49.81	31.81	1675				
ACE Ltd.	NYS	29.00	-12.62	-11.28	43.00	24.38	4107	Gryphon Holdings	NDQ	18.63	-0.33	-0.33	19.38	11.38	7	Transatlantic Holdings	NYS	74.50	-0.91	-1.49	94.50	70.50	152				
Accel International Corp.	NDQ	2.88	-4.17	-4.17	3.50	2.13	21	Harleysville Group	NDQ	22.25	-3.26	-12.75	28.50	17.25	80	Travelers Property Casualty	NYS	28.50	-8.80	-6.94	45.94	24.13	1819				
Acceptance Insurance Cos.	NYS	18.00	-6.49	-9.43	25.75	16.75	39	Hartford Steam Boiler	NYS	37.13	-7.76	-7.62	59.56	34.75	379	Trenwick Group Inc.	NDQ	33.25	-3.62	5.14	41.75	26.75	52				
AEGON N.V.	NYS	111.00	-7.55	-8.97	130.13	46.13	221	HCC Insurance Holdings	NYS	19.50	-1.27	15.13	23.94	16.06	403	Unico American Corp.	NDQ	11.13	-1.93	-3.52	18.13	8.88	12				
Aetna Life & Casualty	NYS	82.00	-8.70	2.74	90.63	60.19	2710	ING Groep N.V.	NYS	58.38	-12.05	-4.30	76.75	36.06	336	United Fire & Casualty	NDQ	32.50	-3.70	-2.35	44.50	30.75	3				
AFLAC Inc.	NYS	41.88	0.75	-4.83	45.31	24.19	1745	IPC Holdings Ltd.	NDQ	21.56	-1.43	-5.22	33.25	19.00	245	Unirun	NDQ	72.00	-2.70	1.59	75.47	55.56	360				
Allmerica Financial Corp.	NYS	56.06	0.79	-0.99	75.25	38.38	684	Hartford Financial Services	NYS	48.31	-12.95	-13.44	60.00	37.63	1694	UNUM Corp.	NYS	59.25	-4.24	-1.15	62.50	41.75	2640				
Allstate Corp.	NYS	35.25	-11.88	-8.44	52.38	35.25	12315	LaSalle Re Holdings Ltd.	NYS	20.00	-8.57	-3.03	42.94	19.50	134	Vesta Insurance Co.	NYS	6.50	-7.96	13.04	64.75	5.00	343				
AMBAC Indemnity Corp.	NYS	55.19	-9.16	-7.92	65.94	40.88	980	Lincoln National	NYS	79.00	-5.60	-4.68	98.88	67.00	870	Zenith National Ins.	NYS	21.25	-7.61	-8.11	30.50	20.31	31				
American Bankers Ins.	NDQ	48.31	0.52	1.18	66.06	30.13	2389	MAIC Holdings Inc.	NYS	30.00	-9.09	-6.25	33.13	23.25	64	INSURERS/REINSURERS	AVERAGE		-4.83	-2.81							
American Financial Group	NYS	36.50	-12.18	-11.38	45.75	30.50	122	Markel Corp.	NYS	166.50	-6.85	-7.63	187.00	132.00	7	HEALTH MAINTENANCE ORGANIZATIONS											
American General	NYS	66.94	-10.08	-14.46	79.00	52.38	4035	MBIA Insurance Group	NYS	64.88	-7.98	-2.17	80.94	46.06	1404	Foundation Health Systems Inc.	NYS	9.25	-16.38	-15.91	32.63	5.88	1324				
American Heritage Life Ins.	NYS	24.25	7.78	0.78	26.69	17.06	163	Meadowbrook Insur. Group	NYS	17.44	5.88	6.90	35.00	14.94	57	Humana Inc.	NYS	19.38	-0.96	2.31	32.13	12.25	2705				
American Indemnity/Fin'l	NDQ	10.63	-6.59	0.00	15.38	9.50	0	MMI Cos. Inc.	NYS	17.06	-3.53	2.25	26.00	13.75	104	Oxford Health Plans	NDQ	18.81	-6.08	34.38	21.75	5.81	4846				
American International	NYS	98.19	-8.40	0.83	107.94	64.88	8394	Mutual Risk Mgmt. Ltd.	NYS	38.00	1.00	0.16	39.94	25.38	301	Pacificare Health Sys.	NDQ	61.50	-11.19	-13.99	88.88	53.50	47				
American Safety Insurance	NDQ	9.13	-8.41	-3.95	15.06	6.75	25	NAC Re Corp.	NYS	48.56	3.46	4.02	55.88	43.69	175	Safeguard Health Enter.	NDQ	3.56	-17.39	0.00	11.75	3.25	73				
Argonaut Group	NDQ	25.06	-4.52	4.43	37.50	21.25	129	Navigators Group	NDQ	15.38	-1.20	0.82	20.75	13.25	47	Sierra Health Services	NYS	19.13	-10.79	-8.38	27.63	15.88	224				
AXA-UIAP Group	NYS	72.50	-5.84	1.31	80.25	38.25	159	NYMagic Inc.	NYS	17.38	-9.74	-16.77	34.25	16.00	21	United Healthcare Corp.	NYS	44.00	-3.30	-1.26	73.94	29.56	3244				
Baldwin & Lyons Inc.	NDQ	22.00	-12.87	-5.88	26.00	18.50	9	Ohio Casualty Corp.	NDQ	43.13	4.70	4.86	51.75	33.75	226	Wellpoint Health Networks	NYS	74.75	-10.68	-12.95	87.88	46.19	1100				
Berkley W.R. Corp.	NDQ	28.69	-11.39	-15.00	49.88	25.25	385	Old Republic Int'l	NYS	19.13	-10.53	-10.79	32.25	17.94	1461	HMOs	AVERAGE		-9.60	-1.98							
Berkshire Hathaway Inc.	NYS	63600.00	-2.60	-6.88	84000.00	49200.00	3	Orion Capital Corp.	NYS	35.63	-7.92	-9.09	59.25	28.00	388	ALL COMPANIES	AVERAGE		-4.28	-0.99							
Capital RE Corporation	NYS	18.81	-6.52	-3.83	38.69	14.75	679	Partner Re Ltd.	NYS	45.44	0.55	0.55	52.50	33.63	392												
Capitol Transamerica Corp.	NAS	17.75	-8.97	0.35	22.75	15.00	16	Penn-America Group Inc.	NYS	9.50	1.33	2.70	23.00	8.13	14												
Centris Group Inc.	NYS	13.94	31.18	48.67	14.81	7.94	411	PMA Capital Corporation	NDQ	17.88	-4.03	-8.63	23.75	16.25	80												
Chartwell Re	NYS	24.94	-1.48	7.26	34.56	21.94	54	Philadelphia Cons. Holding	NDQ	23.63	1.61	11.18	24.50	17.88	120												
Chubb Corp.	NYS	57.63	-11.52	-11.26	88.81	55.38	4261	PXRE Corp.	NYS	20.94	-12.53	-17.08	35.25	20.00	175												
CIGNA Corp.	NYS	78.06	-5.95	0.40	86.44	55.94	3017	Reliance Group Holdings	NYS	11.31	-14.22	-12.56	19.81	10.75	1937												
Cincinnati Financial Corp.	NAS	34.50	-6.76	-3.33	45.63	30.50	1523	Reliastar Financial Corp.	NYS	41.25	-8.84	-7.82	52.44	29.00	537												
Citigroup	NYS	51.63	-10.80	2.10	73.50	28.50	37938	RenaissanceRe Holdings Ltd.	NYS	34.81	-1.24	-3.63	50.75	33.50	105												
CNA Financial Corp.	NYS	35.63	-11.63	-8.38	53.25	34.50	278	Risk Capital Holdings	NDQ	20.88	-1.76	-1.18	25.50	18.81	40												
CNA Surety	NYS	13.44	-2.71	-10.04	16.75	12.56	112	RLI Corp.	NYS	32.81	-0.57	-1.69	45.63	30.69	31												
								St. Paul Companies	NYS	30.06	-14.87	-14.11	47.19	28.06	4087												

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