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Business Insurance®

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## Updates

### Fugitive insurer exec arrested and may be extradited to U.S.

BALTIMORE—Federal authorities are moving to extradite fugitive insurance executive Martin Bramson from Liechtenstein, where he was arrested Jan. 19 as he tried to enter the country from Austria carrying Swiss currency and 16 kilograms of gold worth a total of about $3.5 million, federal officials say.

Mr. Bramson has been sought since 1991, when he fled house arrest while awaiting trial on federal fraud, money laundering and extortion charges in New Jersey. He

*Continued on next page*

# Quake destruction widespread

## Insurance industry unsure of its exposure

**By STACY SHAPIRO and KATE TILLEY**

KOBE, Japan—Light is beginning to shine on the massive damage caused by Japan's worst earthquake in more than half a century, but risk managers, brokers, loss adjusters and insurers are still in the dark about the extent of insured losses.

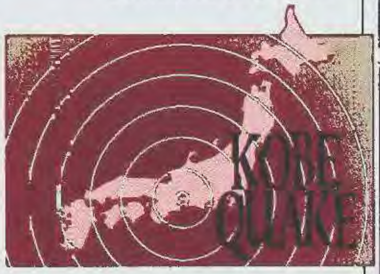
The financial and human toll is daunting.

So far, total economic damage estimates range between ¥3 trillion and ¥8 trillion ($30.2 billion to $80.5 billion). More than 5,100 people have died and another 26,000 were injured by the Jan. 17 quake—now officially called the Great Hanshin Earthquake—while more than 300,000 people are homeless. More than 50,000 buildings have been destroyed or damaged in the Zone 8 region of Japan, mainly in Kobe and the surrounding suburbs (*BI*, Jan. 23).

Insurance will cover only a fraction of the total loss.

Japanese non-life insurers will pay out ¥200 billion ($2.01 billion) in quake claims, the Marine & Fire Insurance Assn. of Japan estimated last week: ¥100 billion ($1 billion) on homeowners policies placed in the government program known as the Japan Earthquake Reinsurance Co.; ¥50 billion ($503.2 million) for commercial/industrial losses and small payments to homeowners through the Japanese Earth-

*Continued on page 21*




**Risk managers assess damage and aid employees in Japan....Page 22**

**Japan less prepared for quake than experts believed....Page 23**

AP/WIDE WORLD

**Total quake-related losses at Kobe's ravaged port could reach nearly $10 billion.**

# Vermont turns up heat on NAIC

**By RODD ZOLKOS**

MONTPELIER, Vt.—Vermont lawmakers will consider legislation in the next few months that would give the state leverage over the National Assn. of Insurance Commissioners and could provide a model for similar bills elsewhere.

As Vermont officials consider various methods of pressing their battle with the NAIC over the state's failure to win accreditation, the legislative route holds some possibilities, particularly in a provision requiring state approval of any fees the NAIC charges Vermont-domiciled insurers.

**Gov. Howard Dean has asked the Legislature to earmark $100,000 in the state budget to cover the costs of a proposed legal challenge to the NAIC.**

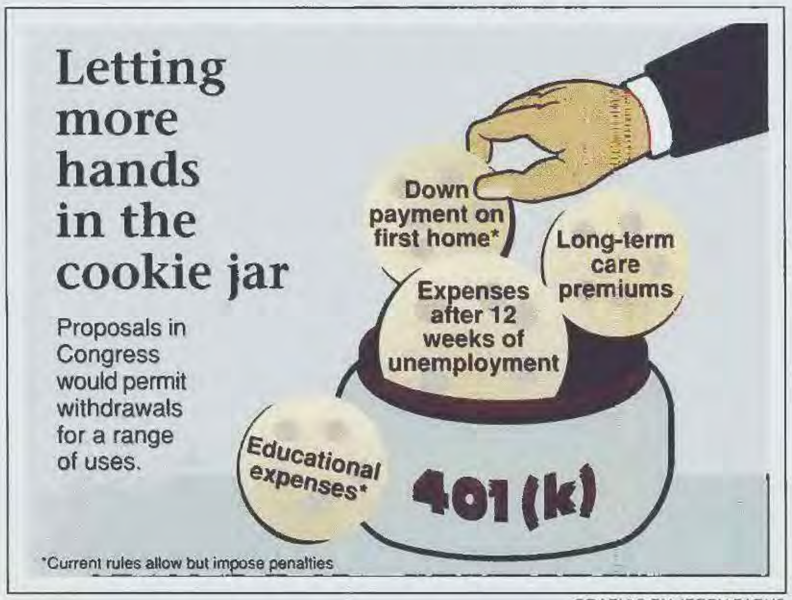
Vermont's accreditation bid foundered most recently when state officials withdrew it at the commissioners' December meeting after an NAIC examination team determined the state fell short of the accreditation mark (*BI*, Dec. 5, 1995).

A major sticking point continues to be Vermont's approach to regulating risk retention groups, in which it treats them like captive insurers rather than traditional property/casualty insurers as called for in the NAIC model.

Some provisions of a draft bill being circulated by Vermont lawmakers might fail to meet constitutional challenges. But, a requirement that any fees the NAIC charges Vermont-domiciled insurers be first authorized by the state's commissioner of banking, insurance and securities, would be within the state's jurisdiction, some observers say.

"If there was a constitutional

*Continued on page 16*




GRAPHIC BY JERRY FARKS

# Plans to widen access to 401(k) funds debated

**By JERRY GEISEL**

WASHINGTON—Are 401(k) plans retirement savings programs or multipurpose piggy banks?

That question will be debated on Capitol Hill in the coming months as legislators consider new proposals to give employees penalty-free access to the hundreds of billions of dollars that have accumulated in 401(k) plans.

In the Senate, William Roth Jr., R-Del., and John Breaux, D-La., introduced legislation this month that would remove the current 10% tax penalty on most hardship withdrawals, including funds used for down payments on a home and post-secondary educational expenses of the employee, a spouse or children. The withdrawn funds still would be subject to ordinary income taxes.

The measure, S. 12, also would significantly expand the list of hardship situations for which employees could take funds out of 401(k) plans before retirement. For example, penalty-free with-

*Continued on page 14*

# California COBRA law oversteps authority

**By JOANNE WOJCIK**

SACRAMENTO, Calif.—A little-known law that took effect this year requires California employers to extend COBRA health care continuation coverage for up to five years to employees age 60 and over.

However, it is unlikely S.B. 1910 can be fully implemented, because ERISA pre-empts state mandates that relate to employee benefit plans.

As a result, its sponsor, Sen. Leroy Greene, D-Sacramento, is working on a cleanup bill to exempt ERISA plans from the COBRA requirement.

A measure that would have extended COBRA for up to 15 years was proposed in the U.S. Congress in 1990, but the bill withered and died under a storm of employer protest (*BI*, July 30, 1990).

Now, California employers are just becoming aware of the existence of S.B. 1910, which was passed and signed by Gov. Pete Wilson with little fanfare back in August 1994.

"It was kind of a sleeper," said Barbara Creed, an attorney who heads the ERISA practice in Pillsbury Madison Sutro's San Francisco law office. "People are just now waking up."

Glynis Stewart, risk management administrator for Freedom Communications Inc. in Irvine, didn't learn of the new law until she received a call from a former employee claiming to be eligible for extended COBRA benefits after Jan. 1, 1995.

"I knew nothing about it," said Ms. Stewart, who handles welfare benefits for the publishing company.

And when Ms. Stewart called Sen. Greene's office to get a copy of the bill, "they weren't very cooperative," she said.

Fortunately, S.B. 1910 won't apply to Freedom since the company self-insures its employee health care coverage.

Because of its altruistic nature, the bill met little opposition when it was passed in August 1994.

In fact, none of the major employer lobbying organizations objected to it.

"I don't think anyone was concerned it would have any great impact," said Allan Zaremberg, se-

*Continued on page 14*

## Updates

### Bramson faces extradition

*Continued from previous page*

was separately indicted on similar charges in Maryland in 1992.

The indictments accused Mr. Bramson of defrauding medical malpractice and liability policyholders with a series of bogus offshore insurers, including International Bahamian Insurance Co., Professional Risk Insurers Management Exclusive Co., Casualty Assurance Risk Insurance Brokerage Co. and Trans-Pacific Insurance Co. (F.S.M.) of Micronesia (*BI*, Sept. 16, 1991; June 11, 1990).

The U.S. Attorney's Office in Baltimore said it planned to extradite Mr. Bramson, though questions arose last week about whether Liechtenstein's extradition treaty with the United States covers some of the white-collar crimes in the two indictments.

Mr. Bramson's brother, Leonard, and their father, Norman, have pleaded guilty to charges arising from the scheme.

### Executive Life payments begin

LOS ANGELES—The three liquidating trusts set up under the Executive Life Insurance Co. rehabilitation plan will pay $455 million to the insurer's estate in the first of several scheduled distributions.

Of the combined total, the trusts will pay $154.2 million to the beneficiaries of ELIC policies who decided not to participate in the rehabilitation plan, and $300.8 million will go to policyholders of Aurora National Life Assurance Co., ELIC's successor company.

The rehabilitation plan, which provided for the establishment of the liquidating trusts, was approved in 1993 by Los Angeles Superior Court Judge Kurt Lewin (*BI*, Aug. 23, 1993).

The payment is derived from the sale of investment real estate and securities held by ELIC, as well as the settlement of several lawsuits that were filed in connection with the company's 1991 insolvency, explained Richard Baum, chairman of the trustee group.

Former California Insurance Commissioner John Garamendi sued ELIC President Fred Carr, Michael Milken, Drexel Burnham Lambert Group Inc. and Deloitte & Touche, he said. While most of these suits have been settled, some payments are outstanding, he said. As a result, additional distributions are expected.

### Lockerbie payout nearer

LONDON—The families of 259 people who died when Pan Am Flight 103 exploded over Lockerbie, Scotland, are closer than ever to compensation from Pan Am's insurers, after the U.S. Supreme Court refused to review a lower court ruling and jury verdict that Pan Am was guilty of willful misconduct.

Letting stand the jury's 1992 verdict means that a $75,000 per passenger liability limit under the Warsaw Convention does not apply to the passengers on board the Pan American World Airways Inc. flight, which exploded in December 1988.

"We are now actively pursuing settlement possibilities," said plaintiffs' attorney Lee Kreindler of Kreindler & Kreindler last Friday.

Pan Am's insurers and lawyers for victims' families began settlement talks last month (*BI*, Dec. 5, 1994). United States Aircraft Insurance Group is the lead insurer on Pan Am's $750 million liability policy.

Three test cases have already been tried to the tune of $20 million, though two of them were slightly reduced following the 2nd U.S. Circuit Court of Appeals review of the jury verdict.

The 2nd Circuit's decision "has made a novel and new rule of law which—if followed by the other circuits—will have a disastrous effect not just in Warsaw but in all other types of cases," said Clinton H. Coddington of Coddington, Hicks & Danforth in Redwood City, Calif., who represented Pan Am in the jury trial.

### ACE profits off 98.6%

HAMILTON, Bermuda—Investment losses cut profits at Bermuda-based excess liability insurer ACE Ltd. 98.6%—to $1.4 million from $97.1 million in 1993—for the quarter ended Dec. 31.

Restructuring of its portfolio to increase equity holdings led to realized investment losses of $44.8 million compared with realized gains of $64 million in the same quarter of 1994.

Also, net excess liability premiums declined 3.4% to $65 million from $67.3 million after ACE took action in September to cut its exposure to integrated occurrence liabilities (*BI*, Sept. 26, 1994).

Total net premiums written for the quarter rose 15.8% to $110.9 million from $95.8 million a year earlier.

### Maryland Blues idea rejected

BALTIMORE—Blue Cross & Blue Shield of Maryland will have to come up with a new way to raise capital to compete with for-profit insurers.

Last week, Maryland Insurance Commissioner Dwight K. Bartlett III rejected a proposal by the Maryland Blues to create a for-profit enterprise that could sell stock to the public. The plan wanted to maintain a non-profit foundation while spinning off two for-profit enterprises—an indemnity plan insurer and a new insurance agency to market its five for-profit health maintenance organizations.

The plan sought approval to raise $40 million in an initial public offering, said William L. Jews, its president and chief executive officer.

But Mr. Bartlett rejected the idea, saying it was "riddled with conflicts of interest." In his Jan. 20 order, he suggested that BC/BS of Maryland simply convert to a for-profit corporation under Maryland law or propose a different reorganization plan.

Last year, the Blue Cross & Blue Shield Assn., which licenses the BC/BS logo to the more than 60 independently-operated Blues plans, reversed a tradition and began allowing plans to become for-profit companies that could sell stock to the public (*BI*, Aug. 15, 1994).

*Updates continued on page 22*

# Court bars popular defense for employment bias suits

**By MARK A. HOFMANN**

WASHINGTON—Employers are not automatically immune from job discrimination suits if they find out that an illegally fired employee had previously done something that would have justified termination anyway, the Supreme Court ruled last week.

But the unanimous ruling in *McKennon vs. Nashville Banner Publishing Co.* also contains an important limitation for such employees: Most often they will be unable to recover damages beyond a portion of back pay. Other remedies like reinstatement or future pay will generally not be available.

**The Supreme Court agrees to hear a punitive damages appeal.....Page 10**

Employment law specialists say the ruling eliminates an increasingly common employer defense in suits alleging discrimination.

Experts also say the Jan. 23 ruling could change somewhat the complexion of employment discrimination cases and make them harder for employers to defend. The focus is expected to shift from whether employers can produce evidence of earlier wrongdoing to whether employers can prove they actually would have fired a worker for that wrongdoing.

The case involved Christine McKennon, a secretary at the Nashville Banner Publishing Co. in Tennessee who was fired at the age of 62 in 1990. Ms. McKennon, who had worked there for more than 30 years, filed an age dis-

*Continued on page 10*

# Satellite rates may rise

## $160 million loss of Chinese orbiter puts pressure on market

**By ADRIAN LADBURY**

LONDON—International satellite insurance rates may continue to rise following last week's $160 million loss of an orbiter launched by a Chinese rocket.

The satellite, an Apstar-2 built by Hughes Aircraft Co. of Los Angeles, was owned by a Chinese-financed and Hong Kong-based company called APT Satellite. APT used a Long March 2E 601 series spacecraft to launch the satellite from a base in the southwestern Chinese province of Szechuan on Jan. 26. However, the rocket exploded a mere 45 seconds after takeoff, destroying the satellite.

APT had rented space on the satellite to a number of major U.S. and international television networks that were trying to break into the Asian market. Media experts say that the loss of the satellite is a major blow to the development of satellite television in the region.

The loss means that international satellite insurance rates will increase again, predicts a leading London space underwriter.

"This loss will affect rates generally across the board. It's difficult to say how much without all the details but they will certainly go up," said Simon Clapham, underwriter for the Marchant Space Consortium, a leading London space insurer that underwrites space business on behalf of 20 Lloyd's syndicates.

Satellite rates had already hardened before this latest loss. Underwriters and brokers predicted rate increases at the end of last year, following record losses in 1994 of about $760 million against premiums of only about $585 million (*BI*, Dec. 12, 1994).

Not everyone is certain rates will rise following last week's loss.

"It will certainly make underwriters think long and hard, but I don't see a need for further increases," said Roger Bathurst, associate director of Space Risks International in London, a unit of Aon Corp. "January 1995 saw the

*Continued on page 4*

# Warehouse cover dispute ends

**By RODD ZOLKOS**

CHICAGO—Allendale Mutual Insurance Co. and Alexander & Alexander Inc. will pay about $33 million to conclude the final phase of a bitter legal battle with the French computer firm Groupe Bull over a warehouse fire in 1991.

**The latest settlement resolves the coverage dispute between Groupe Bulle, Allendale Mutual and A&A.**

To settle the 1991 suit filed in U.S. District Court in Chicago, New York-based A&A will pay Bull and two operating units of Bull's Buffalo Grove, Ill.-based Zenith Data Systems subsidiary more than ƒ35.3 million ($6.7 million).

Johnston, R.I.-based Allendale, meanwhile, paid Bull and Zenith Data Systems ƒ138 million—about $26.3 million—of which ƒ108 million ($20.6 million) represents an indemnity payment while the remaining ƒ30 million ($5.7 million) is interest.

The phase of the dispute that came to trial before U.S. District Court Judge George M. Marovich earlier this month involved claims and counterclaims between A&A and Bull, and between A&A and Allendale.

A&A and Allendale both confirmed details of the settlements, but neither would comment further.

An earlier phase of the case focusing on the dispute between Allendale and Bull was resolved in September (*BI*, Sept. 19, 1994). Allendale and its FM Insurance Co. Ltd. unit reached a partial settlement in which they agreed to pay the full limits on an FM policy—ƒ248 million ($47.3 million)—plus interest.

The most recent settlement, which came after a week of trial, resolves the dispute between the computer maker and its insurer and broker.

Following the 1991 fire that destroyed the warehouse in Seclin, France, Bull claimed losses of more than $100 million to its computer inventory and said Allendale was liable for complete coverage.

Allendale denied the claim, arguing that the computer company and its two operating units—Zenith Data Systems Europe and Zenith Data Systems France—actually were responsible for starting the warehouse fire.

The earlier settlement included Bull's withdrawing its charge that Allendale and FMI acted in bad faith by not paying the insurance claim, while the insurer dropped its arson charge against the Bull units. BI

## Inside

- President Clinton's offer to work with the GOP is a good sign for incremental health care reforms, this week's editorial says. **PAGE 8**
- A Dutch reinsurer's negligence lawsuit against U.K. advisers could lead to similar cases in the future. **PAGE 17**
- An estimated $14.9 billion in insured catastrophe-related property damage made 1994 one of the costliest catastrophe years on record. **PAGE 21**

### Departments



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## Spencer fund sholarships are expanding

**By SARA MARLEY**

NEW YORK—The Spencer Educational Foundation Inc. is expanding its scholarship program in 1995.

In addition to 10 general fund scholarships of $10,000 to full-time undergraduate or graduate students studying risk management and insurance, the New York-based foundation will also award four $5,000 scholarships to college sophomores.

Those awards will be used in students' junior years after they have de-

*Continued on page 11*

# Preventing workplace violence

## Exec offers tips for defusing potential problems

**By ROBERTO CENICEROS**

LOS ANGELES—Lacking direction from lawmakers and facing courts that often side with workers, employers are often on their own when it comes to mitigating the growing problem of workplace violence, an employee assistance program director says.

According to available data, workplace violence cost U.S. employers $4.2 billion in 1991, and most literature on the subject says individual incidents of such violence usually cost $250,000 in legal fees and lost work time, said Jay Talkoff, assistant vp and clinical director for San Francisco-based Wells Fargo Bank's Employee Assistance Services. He added that he has seen the cost associated with individual workplace incidents often reach as high as $1 million.

The Managed Health Care Congress WEST

Mr. Talkoff described the bank's 2-year-old program to minimize workplace violence and offered steps employers can take to create a safer environment during a session at the Employer Summit of the Managed Health Care Congress West.

"A lot of people when we talk workplace violence say, 'Why bother? Why do we have to do anything? We're not the Postal Service. We're not some huge company where we have employees running amok. If the federal government isn't going to mandate anything, why should we bother?' " he said.

"We also kind of came to that conclusion, erroneously," Mr. Talkoff said. "But we also had to step back from that and ask, 'Well, if that is not the case, if we are as potentially at risk as anyone else. . .?' "

Wells Fargo created a Threat Management Team composed of legal staff, security personnel, the human resources senior manager, psychological experts, employee assistance workers and investigators.

The team's role is to clarify issues surrounding each case, predict and prepare for potential escalations, coordinate communications, provide ongoing support for employees and supervisors and monitor the resolution of the situation.

Merely terminating someone does not resolve the situation, Mr. Talkoff advised. It is resolved when the perceived risk is eliminated.

"And I want to stress *perceived*," he said. "Because in this day of litigious situations, perception is what will get you into court. If

*Continued on page 16*

# Ranks of working uninsured up only slightly in '93: Study

**By MARK A. HOFMANN**

As Congress and the president appear more inclined to support incremental health care reform rather than sweeping change, a new study shows the percentage of U.S. residents with health insurance declined only slightly between 1992 and 1993.

In fact, the total percentage of uninsured non-elderly individuals may not have changed at all during that period because the apparent increase from 17.8% to 18.1% was within the margin of error for the survey unveiled by the Washington-based Employee Benefit Research Institute last week.

The EBRI report, which drew its data from the federal government's Current Population Survey, also found that a slight decrease in employer-provided insurance for the non-elderly was partially offset by an increase in the number of workers reporting that they carry other private health insurance.

The survey found that 137.4 million people, or 60.8% of all residents, had employer-provided coverage in 1993, compared with 137.8 million people, or 62% of residents, a year earlier.

One reason that the percentage of people covered by employer-based health insurance has dropped is "because costs are so high, even though we've seen a leveling off of the increase in health care costs. In addition, health care costs have been increasing over a number of years," said Sarah Snider, research analyst at EBRI. Ms. Snider added that employment-based coverage still appears to follow the business cycle to a certain degree.


GRAPHIC BY MIKE GARVEY

The survey noted, however, that the number of non-elderly citizens who carry other forms of private health insurance jumped 9.5% to 20.8 million in 1993 from 19 million a year earlier.

EBRI noted that the study method used in the 1992 and 1993 samplings changed somewhat, which caused a restatement of some data.

Among all workers in the private sector aged 18 to 64, 18% reported having no insurance in 1993, the same as in 1992.

As has been the case in past EBRI surveys, size of employer played a key role in determining whether a worker would have health insurance.

Among employees working for companies with fewer than 10 workers, 33% had no insurance—a slight decrease from the 34% in the same category who had no insurance in 1992—compared with 12% of employees working for companies with 1,000 or more employees, which was the same as 1992.

At other-sized employers: 28% of those working for companies with 10 to 24 employees had no coverage, compared to 29% a year earlier; 21% of those working for companies with 25 to 99 employ-

*Continued on page 10*

AP/WIDE WORLD

**In his State of the Union address last week, President Clinton admitted his health care reform plan was too sweeping.**

## State of health reform reflects new politics

WASHINGTON—What a difference a year can make.

One year ago, President Clinton said he would veto any health care reform bill passed by Congress that did not assure universal coverage.

At the same time, Hillary Rodham Clinton ripped into interest groups and congressmen who didn't share the administration's vision on health care reform.

However, during his State of the Union address last week, President Clinton sounded Republican-like themes in discussing how health care reform legislation should be structured.

Health care reform, he said, should be done incrementally or, as he put it, "step by step."

The first steps, President Clinton suggested, would be health care coverage portability when workers change jobs. That would involve curbing pre-existing medical exclusions and long waiting periods for coverage. Those same reforms were advocated three years ago by the Bush administration.

President Clinton also said small employers and the self-employed should be able to obtain affordable health care coverage through voluntary purchasing pools.

In sharp contrast to the administration's prior reform efforts, in which no efforts were made to try to win Republican support, President Clinton now says he wants to work with the GOP.

"I want to work with all of you who have an interest in this. . .with the Republican leaders like Sen. Dole, who has a long-term commitment to health care reform," he said.

In so many words, President Clinton admitted that he goofed in his first shot at health care reform legislation.

"I know that last year, as the evidence indicates, we bit off more than we could chew," he said, making an obvious reference to the administration proposal that would have forced most employers into government-established or organized health care pools and taken away the ability of employers to design their own health care benefits programs.

One of President Clinton's health care remarks, though, was puzzling. In his address, he said workers who lose their jobs should be able to keep their health care coverage for at least one year while they are looking for a new job.

Under the Consolidated Omnibus Budget Reconciliation Act of 1985, employees terminating employment already can keep—for 18 months—their former employer-provided health care coverage by paying 102% of the group rate.

*—By Jerry Geisel*

# Choosing best attorney

## Choice of counsel key to winning case, insurer says

**By GAVIN SOUTER**

NEW YORK—Selecting the right attorney is crucial to winning a lawsuit—but it is far from a simple task.

Choosing an attorney is "the single most important decision you will make affecting the outcome of a lawsuit," says Peter Schwartz, counsel at Travelers Insurance Co. in Hartford, Conn.

That decision is an art—not a science, he said earlier this month at a seminar sponsored by the New York chapter of the Risk & Insurance Management Society Inc.

The starting point in any search for an attorney is to extensively review the case and decide what the objectives are. "An examination of the goals and strategy will dictate what kind of lawyer you will be looking for," he said.

For example, if the case is going to go to trial, then a good trial lawyer will be needed. But if the strategy is to try to end the case through a summary judgment, then other lawyers may be more appropriate, he said.

"The best trial lawyers are not necessarily the best writers," and often trial lawyers are not the best lawyers to use if a settlement is sought, he said.

"Some of them seem to think that it is beneath them to even discuss a settlement. What you need is someone who is a good negotiator and a good diplomat," Mr. Schwartz said.

In cases where the integrity of a company or a product is at stake, a lawyer that is skilled in handling extensive discovery issues should be used. "In those types of cases, everything that can be done, will be done, and discovery will go on for a long time," Mr. Schwartz said.

In cases that are sure to go to trial, great care is needed to select the right trial lawyer. "Lawyers tend to exaggerate what their trial experience is. You want to know how many verdicts they have and how many times they have gone to trial," Mr. Schwartz said.

But, their previous results need to be examined carefully. Good lawyers sometimes lose cases and bad lawyers win a few, he said.

The nature of the case is also

*Continued on page 20*

# Four staff promotions at *Business Insurance*


Ms. Wojcik


Ms. Fletcher


Ms. Greenwald


Ms. O'Brien

*Business Insurance* announces the promotion of several staff members.

Joanne Wojcik, 37, has been promoted to senior editor from bureau chief of the Los Angeles office of *BI*, a position she has held since April 1990.

She also covers legal liability, insurance coverage and health care benefit issues, including managed care.

From 1985 to 1990, Ms. Wojcik was a copy editor in *BI*'s Chicago office for three years, and the copy desk chief for two years. For four years before that, Ms. Wojcik worked as reporter and editor at two Colorado newspapers. Ms. Wojcik received a bachelor's degree in English in 1979 from the University of Illinois-Urbana-Champaign.

She can be reached in Los Angeles at 213-651-3710, ext. 117.

Meg Fletcher, 46, has been promoted to senior editor from associate editor, a position she has held since joining *BI* in 1984. Prior to joining *BI*, she was associate news editor and reporter at *The Herald-News* in Joliet, Ill., and a reporter for *The Argus* in Fremont, Calif.

Ms. Fletcher earned the Associate in Risk Management designation in 1986. She graduated from Northwestern University's Medill School of Journalism with a master's in journalism and graduated cum laude from Northwestern University with a bachelor's in sociology.

She is a member of the Society of Professional Journalists and the Chicago Headline Club.

Ms. Fletcher can be reached in the Chicago office at 312-649-5352.

Judy Greenwald, 43, has been promoted to senior editor from associate editor.

Since 1991, Ms. Greenwald has been running *BI*'s Northern California bureau, which she opened. She will continue to report on reinsurance and financial topics. Ms. Greenwald joined *BI*'s New York bureau in 1984 as associate editor.

Before that, Ms. Greenwald was an editor at *Supermarket News*, a weekly newspaper for food industry management. She graduated from Queens College, City University of New York, in 1973 with a bachelor's degree in English and sociology.

Ms. Greenwald can be reached in *BI*'s Northern California office at 408-379-1790.

Barbara O'Brien, 31, has been promoted to *BI*'s promotion coordinator in the communication services department in New York. She will continue to be responsible for the annual Employee Benefits Communication Awards competition, trade show activities, promotion and marketing projects.

Ms. O'Brien has been the special projects coordinator since 1990. She joined *BI* in 1987 as an assistant in the communication services department.

Ms. O'Brien graduated from Brooklyn College in 1986 with a bachelor's degree in television and radio. She can be reached in the New York office at 212-210-0780.



# Satellite

*Continued from page 2*

arrival of more capacity, up from about $500 million to $550 million, and with demand per launch not greatly exceeding about $200 million this is still a very competitive market," he said.

Mr. Bathurst pointed out that satellite insurance rates for most 1995 launches had already been agreed upon and if any changes were to be felt, it would most likely be in 1996.

The lost satellite is insured with China Pacific Insurance Co. of Shanghai, the largest private insurer in China. China Pacific retained 3% of the risk and ceded the remainder to worldwide markets.

The largest single portion of the risk is placed with Munich Reinsurance Co. of Munich, Germany. A spokesman for the German reinsurer said on Friday that its share is in line with its share of world satellite premiums, which is between 15% and 25%. This means it will have to pay between $25 million and $40 million for the Chinese satellite.

About $45 million of the coverage is placed in the London market. The Ariel syndicate, the specialist aviation syndicate at Lloyd's of London, leads the coverage. The Marchant consortium also has a large share.

The rest of the coverage is placed with underwriters in Australia, Japan, Italy, France, Bermuda, Sweden, the United States and Belgium. BI

## Reinsurer rating downgrades likely

NEW YORK—Standard & Poor's Corp. downgraded nine times as many reinsurers as it upgraded last year and the trend is expected to continue in 1995 as market conditions pressure earnings and loss reserves need strengthening, according to S&P Associate Director Thomas C. Walsh.

Reinsurers with large capital bases "have a better chance of surviving the vagaries of Mother Nature as well as competitive forces," Mr. Walsh wrote in an article in the rating agency's Focus magazine.

In fact, he wrote, "reinsurers in the lower tiers are more likely to be added to the growing list of runoffs."

S&P estimates the reinsurance industry posted a 108% combined ratio in 1994, a deterioration from 106.7% in 1993. BI

# Employers confirm leave worries

**Benefit Beat**

Employees who fear that taking leave under the Family and Medical Leave Act will jeopardize their job advancement potential may be wise to worry, a recent survey of U.S. employers says.

Most of the 108 members of the Conference Board's Work-Family Research and Advisory Panel said men and women who take family leave have at least some reason to worry about job advancement.

Of those polled by the New York-based employer group, 61% felt men have some reason to worry and 60% felt the same for women. Fourteen percent of employers indicated men have "substantial reasons to worry," while only 4% believed women have such concerns. The remainder—25% for men and 37% for women—said employees have no reason to worry.

But, 47% of respondents felt the FMLA improved their employees' ability to handle family needs. Thirty-nine percent felt the law fosters a more "family-friendly" culture, and close to one-quarter felt the FMLA has enhanced employee morale.

Only 37% of those surveyed felt the FMLA would improve women's career opportunities. And, 39% said the FMLA decreased differences in workplace opportunities available to men and women.

One benefit consultant sees employer attitudes toward family leave reflecting a balance between the bottom line and productivity and employees' family needs.

"On the one hand, if you're out for any length of time, you won't be advancing as fast as someone who's not. On the other hand, the positive benefit to these programs is the idea that if an employee needs this leave, it's there," said Carol Sladek of Hewitt Associates L.L.C. in Lincolnshire, Ill.

Separately, between 1% and 4% of the employers said they incurred "major new costs" from complying with the FMLA. And, 18% said they incurred moderate new costs, with the majority of respondents incurring either minor or no new costs.

Of all the difficulties cited in implementing the FMLA, administrative record keeping topped the list, with 35% of respondents ranking it among their top three troubles.

Some 27% cited lack of knowledge of the law or its purpose, and 24% listed managing intermittent and partial leaves among their top three.

The Work-Family Roundtable Family and Medical Leave report is available by calling the Conference Board's Customer Service department at 212-339-0345. The report costs $15 for Conference Board members and $60 for non-members.

*—By Kerry Dziubek*



## Health costs leveling

Group health care plan costs could rise by the smallest percentage in decades, a new survey says.

On average, the 145 employers—mainly Fortune 1,000 companies—responding to a survey by Towers Perrin say that group health care plan costs for employees and dependents will increase by less than 2% this year, while retiree costs will rise about 3%.

Projected 1995 cost increases, though, will vary by type of plan, employers said. For example, premiums charged by health maintenance organizations will generally fall 1% to 2%. By contrast, indemnity plan costs will increase by 2.7% for employee-only coverage and 3.6% for family coverage.

Such relative stability contrasts sharply the double-digit annual increases that were the norm only a few years ago. Towers Perrin attributes intense competition in the health care market as well as the growth of managed care with slowing health care inflation.

"This low rate of cost growth is remarkably good news for employers and shows the continuing positive effects of managed care and competitive forces in the health care industry," said Chief Actuary Richard Ostuw, who works in Cleveland.

Projected average 1995 monthly health care costs by plan type include:

- Indemnity plans: $199 for employee-only coverage; $391 for employee plus one dependent; and $554 for family coverage.
- Point-of-service plans: individual coverage, $182; employee plus one dependent, $360; family coverage, $486.
- Preferred provider organizations: individual coverage, $173; employee plus one dependent, $353; family coverage, $474.
- HMOs: individual coverage, $153; employee plus one dependent, $309; family coverage, $432.

Free single copies of "The 1995 Health Care Cost Survey" are available from Towers Perrin at 1-800-525-6741.

*—By Jerry Geisel*

## Non-qualified plans

The nation's largest employers are far more likely to sponsor non-qualified pension plans than smaller companies.

Eighty-nine percent of employers with at least 10,000 employees sponsor a non-qualified plan compared with 68% of employers with at least 1,000 employees and 37% of those with fewer than 1,000 employees, according to a survey of 374 employers by A. Foster Higgins & Co. Inc. of New York.

Sixty-nine percent of those surveyed offered a non-qualified plan to replace benefits lost to employees because of federal restrictions. For example, a 1993 law reduced to $150,000 from $235,840 the maximum amount of compensation recognizable in determining benefits and contributions to qualified plans.

Other cited objectives in sponsoring non-qualified plans include retaining key executives, 35%, and enabling participants to defer compensation taxes, 19%.

*—By Jerry Geisel*

# Allocation of liabilities upheld despite CERCLA

**By MICHAEL SCHACHNER**

NEW ORLEANS—Under both CERCLA and Louisiana law, indemnification agreements in leases signed before the Superfund law was enacted in 1980 can allocate all liabilities, including environmental ones, the 5th U.S. Circuit Court of Appeals has ruled.

The ruling comes even though the Comprehensive Environmental Response, Compensation and Liability Act generally holds previous landowners that contributed to pollution partly responsible for cleanup costs.

The ruling last month is a victory for Louisiana & Arkansas Railway Co., which owned one of two parcels of land in Bossier City, La., where raw creosoting chemicals contaminated nearby land and water.

L&A leased portions of its parcel in 1942 and 1949 to Lincoln Creosoting Co., which owned the second parcel.

In 1950, Joslyn Manufacturing Co. of Chicago bought Lincoln's parcel and assumed the terms of the previous leases on the parcel that Lincoln had leased from L&A. Joslyn leased land directly from L&A in 1955 and 1967.

Under the 1942 and 1949 leases, Lincoln held L&A harmless for all forms of damage to persons or property. In 1950, Joslyn accepted the liability terms of those leases.

In 1969, Joslyn sold the parcel it acquired to Koppers Co. Inc.

When contamination was found on the sites in 1986 and cleanup began in 1991, Joslyn attempted to hold L&A and Koppers jointly liable. Lincoln Creosoting had long been out of business, and its former primary shareholder was dismissed from the suit.

The court ruled the indemnity and liability agreements signed by L&A and Lincoln and assigned to Joslyn in 1950 held L&A harmless for any liability incurred by Lincoln, despite the fact that L&A was "clearly liable to Joslyn for response costs under CERCLA because L&A is a past owner of (one site) and owned the property at the time hazardous substances were disposed."

Any amounts L&A may have owed Joslyn under CERCLA were simply canceled out by the indemnity agreements in the leases, the court said.

Joslyn estimates that it has spent about $13 million on cleanup.

Koppers also was released from liability by the court, but only because the site was not further contaminated when Koppers owned it.

Jay Canel of Canel, Davis & King in Chicago, which represented Joslyn, said his client signed an agreement in 1967 with L&A that assumption of terms of the 1942 and 1949 leases was null and void.

However, the court said this issue was brought up only on appeal, and should not be considered by the court "merely because (Joslyn) believes that it might prevail, given the opportunity to try the case again on a different theory."

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*Joslyn Mfg. Co. vs. Koppers Co., No. 93-5553; 5th U.S. Circuit Court of Appeals, Dec. 28, 1994.*

# New RMIS software available

## Products & Services

LIVONIA, Mich.—Dorn Technology Group Inc. has released a new RISKMASTER/Win risk management program module for networked computers using the Windows operating system.

The RISKMASTER/Win NT Server program includes features aimed at better reliability, faster processing of claim files and improved system data integrity.

RISKMASTER/Win for NT Server is designed for Microsoft's NT Server Version 3.5 for Windows. It is integrated with other Windows-based products and is available for use by risk managers, third-party administrators and self-insured organizations that want Windows-based workstations utilizing client/server technology.

The program also utilizes Windows for Work Groups and MS-Office products for mail, scheduling and word processing and is compatible with the new NT Back Office products, including SMS, the software management system from Microsoft.

License fees for the RISKMASTER/Win for NT program start at $1,995 for the standard system and range as high as $5,995 for a larger corporate license. Costs for installation, support and training are separate.

The program will start shipping Feb. 15 for general client use. For more information, contact Mark E. Dorn at 313-462-5800.

### Workers comp book

BOSTON—Standard Publishing Corp. has released "Workers Compensation," a single volume covering every aspect of workers compensation, including exposures, the basic policy, common endorsements, alternatives, claims handling and an analysis of individual state laws.

Written by Dwight Levick and Barbara Grzincic, "Workers Compensation" sells for $155 and will be updated with quarterly replacement pages. For more information, call 617-457-0600 or write to Standard Publishing Corp., 155 Federal St., Boston, Mass. 02110.

### Workplace violence

NEW YORK—The Engineering and Safety Service division of the American Insurance Services Group has published "Workplace Violence and You," a resource to help employers reduce violence in the workplace.

The eight-page pamphlet is aimed at employees and discusses possible dangers and ways they can protect themselves from workplace crime and abuse. The pamphlet uses case studies of real-life situations and provides specific instruction on how to avoid becoming a victim of violence and how to recognize signals that a co-worker may become violent.

"Workplace Violence and You" is available through E&S's publications department at $40 per 100 for E&S subscribers and $60 per 100 for non-subscribers, plus $5.50 shipping (add appropriate tax for New York and New Jersey). To order, call 800-533-2474; write the E&S Publications Department, 85 John St., Ninth Floor, New York, N.Y. 10038; or fax: 212-669-0550.

### Training video

ROCKVILLE, Md.—BNA Communications Inc., a subsidiary of the Bureau of National Affairs Inc., has released "Sexual Harassment Plain and Simple," a two-module, video-based compliance and training program that explains different types of behavior that may be interpreted as sexual harassment and the steps employees can take to prevent and report unwelcome behavior.

The program includes two 25-minute videos, a comprehensive 24-page leader's guide and 20 pocket-size participant booklets to reinforce the video's message and serve as a reference for employees.

"Sexual Harassment Plain and Simple" is available in VHS, Beta and ¾-inch video formats for five-day previews for $40, with the preview cost applicable to license or rental. For more information, call 800-233-6067 or write BNA Communications Inc., 9439 Key West Ave., Rockville, Md. 20850-3396.

### Health care service

MINNEAPOLIS — United HealthCare Corp. has introduced an integrated total health care management service designed to give self-funded employers a single source for managing behavioral, medical, pharmacy and preventive care, as well as workers compensation and disability services.

The new service, Total Care Management, also helps employers manage health care and costs for employees in geographic regions that lack access to managed care options such as health maintenance organizations.

Total Care Management gives employers a single form for all medical and disability management services.

Meanwhile, Minneapolis-based United HealthCare establishes a shared-risk relationship with the employer by staking a portion of its administrative fees on the employer's total claims-cost experience.

Employees are given a single toll-free number for all medical, benefit and claims information, while primary care nurses, who serve as the first point of contact for employees, help educate and guide employees to appropriate health care resources.

For more information, call United HealthCare at 800-662-1264.

### Construction plan

UNION, N.J.—National Insurance Programs now offers brokers a complete insurance package designed for construction carriers.

The package program is underwritten by the Northbrook Property & Casualty Insurance Co. of Northbrook, Ill.

NIP, the Union, N.J.-based program administrator, will offer the following coverages: truckers auto, including liability and physical damage; general liability; property; equipment; and crime. It is available for operations with 30 or fewer vehicles in all states except Massachusetts, New York, Pennsylvania and Texas. The program is written on an admitted basis. Eligible operations include haulers of sand and gravel, blacktop, dirt, corn, grain and coal.

For more information on the program, call Rick Ness at 800-446-7647, ext. 1240.

### Non-slip floors

BEDFORD, Texas—The Traction Plus Floor Safety System, a non-slip floor maintenance program, may help employers reduce lawsuits, cut insurance claims and save insurance premiums.

Traction Plus Traction Treatment is a water-soluble, biodegradable solution that penetrates the pores of commercial-grade ceramic and quarry tile and leaves floors permanently slip-resistant without harming their appearance or structure. Traction Plus Slip Shield Floor Cleaner is a daily floor-cleaning product formulated to maintain the appearance and traction performance achieved with the Traction Treatment product.

The Traction Plus line surpasses Occupational Safety and Health Administration and Americans with Disabilities Act standards for slip resistance. The product line is distributed by McLane Co. Inc., Grocers Supply Co. Inc., Pollock Paper Distributors and Edward Don & Co. For more information, contact Russ Kendzior, Traction Plus Inc., 2350 Airport Freeway, Suite 222, Bedford, Texas 76022; or call 800-798-7968. BI

# Opinions

## Clinton's change of heart

A NEW, MORE conciliatory Bill Clinton was very much on display last week as he delivered his State of the Union address, and we like what we heard, especially as he discussed health care reform.

We like that he didn't try to blame Republicans or special interest groups, as some Democratic congressional leaders did last year, for the demise of his health care reform package.

The problem, as President Clinton put it bluntly but accurately, was the administration bit off more than it could chew.

Translation: A health care reform package that would have had the government control prices, decide which insurers could sell policies and force employers into purchasing pools was way out of touch with public opinion.

Now President Clinton says—quite sensibly—that health care reform should be crafted in a careful, incremental way.

The process should start, he says, with reforms for which there is nearly universal agreement: curbing of pre-existing medical condition exclusions and provisions for voluntary purchasing pools to give small employers and the self-employed more buying clout.

That incremental approach was foolishly rejected by President Clinton last year when he said he would not accept anything less than universal coverage. That was a vow that victimized millions of people who would have been helped by incremental reforms.

We're glad that President Clinton appears to have backed away from extremist, take-it-or-leave-it approaches.

The president also has recognized another political reality he chose to ignore during his first stab at health care reform: legislation of this importance and affecting so many people can only be enacted on a bipartisan basis.

During the last go-round, the Clinton administration had absolutely no interest in working with congressional Republicans.

But, President Clinton threw out an olive branch to the GOP last week and he even went out of his way to praise Senate Majority Leader Robert Dole for his commitment to health care reform.


Those kind of "We know we can work with you" words for the GOP would have been inconceivable last year when the administration spent more time trashing those with different approaches to health care reform than trying to fix its own botched plan.

But, even before the president's speech, there were other signs that the White House administration has learned from its mistakes.

Hillary Rodham Clinton, who took on the role of the administration's chief attack dog on health care reform, has moved on to other areas, while Ira Magaziner, the White House aide who developed the administration proposal, largely is out of the picture.

Those developments, combined with the words President Clinton delivered last week, give us new hope that the likelihood of enacting sensible health care reform legislation may now be better than ever.

# Letters

## Wisconsin comp rates lower for employers

To the editor: While the information about Wisconsin in your Jan. 9 article, "Maine Leads Comp Rate Turnaround," is technically correct, it misleads your readers into believing the Wisconsin employers will be paying more for workers comp insurance in 1995. The fact is, in 1995 they will pay an average of 8.6% less than they paid in 1994.

In the recent past, workers comp rates in Wisconsin have changed twice a year. The rate change effective Jan. 1 is based solely on the changes in benefits resulting from amendments to the state's Workers Compensation Act. The principal rate change, based on the program's experience, is effective July 1.

So, while it is true Wisconsin workers comp rates did increase 0.83% effective Jan. 1, 1995, the principal rate change effective July 1, 1994, resulted in an average decrease of 9.5%. The combined impact of these two changes results in an 8.6% average reduction in workers comp rates for employers in 1995. This means good news for Wisconsin employers.

**Josephine W. Musser**
Commissioner of Insurance
**Jo A. LeDuc**
Insurance Examiner-
Bureau of Market Regulation
State of Wisconsin
Madison, Wis.

## Story on U.K. ruling lacks useful conclusion

To the editor: Every once in a while, you publish something irritating enough that I have to reply. I read your Jan. 16 article, "U.K. Convictions May Alter Stakes for Safety Duty," about a verdict in the Winchester Crown Court holding a man and a corporation criminally liable for the deaths of four teen-agers, and what it means for risk managers. It strikes me that some principles of good reporting and editing were forgotten.

The first is the lack of specificity about the case. We don't know who, when, where, how or what happened on the canoe trip that led to the manslaughter charges. The second follows logically from the first and is a failure to make a convincing connection between the specifics and a general conclusion. To connect risk management with criminal liability is a stretch, and it doesn't quite work here.

There is some news in the article but it is after the page turn, by which time most readers will have given up. That news is what reads like an attempt by the Law Commission to invent new criminal actions against corporations, apparently by eliminating the need to prove guilty knowledge or *scienter*, which is the difference between crime and tort; thereby imposing criminal liability on much the same grounds as tort liability. That would be opening Pandora's box and is newsworthy.

The writer doesn't report it as a potential infringement of rights, nor does she speculate on how—if lower standards of foreseeability were applied to make risks of damage or injury criminally actionable without requiring *scienter*—the monetary portion of such risks might become transferable by contract and, thus, the proper subject of risk management. If public policy lets you insure risks of negligent behavior, then corporate criminality might also be insurable. That would be news indeed.

This is all speculation on my part, but the article invites speculation, reaching no useful conclusion.

Completing the speculation, I'll bet that the notion of broadened criminal liability will die aborning. I'll also bet that the House of Commons will throw such a notion out if it gets that far or, if it gets by them, that the Lords will rule it unconstitutional.

**John O'Neill**
Wheaton, Ill.

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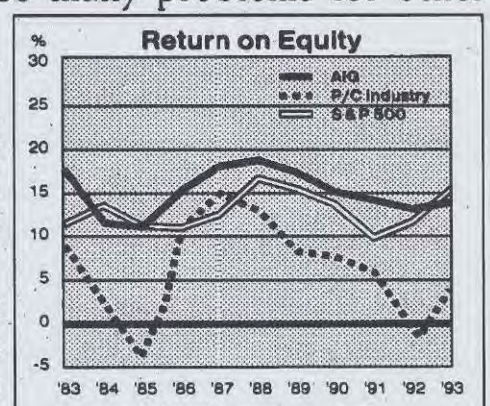

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# ADEA

*Continued from page 2*

crimination suit in the federal district court in Nashville, alleging violations of the Age Discrimination in Employment Act of 1967. She sought back pay.

During pretrial questioning by company lawyers, "she testified that, during her final year of employment, she had copied several confidential documents bearing upon the company's financial condition," Justice Anthony Kennedy wrote.

"She had access to these records as secretary to the Banner's comptroller. McKennon took the copies home and showed them to her husband. Her motivation, she averred, was an apprehension she was about to be fired because of her age. When she became concerned about her job, she removed and copied the documents for 'insurance' and 'protection,' " the justice wrote. "A few days after these deposition disclosures, the Banner sent McKennon a letter declaring that her removal and copying of the records was in violation of her job responsibilities and advising her (again) that she was terminated. The Banner's letter also recited that had it known of McKennon's misconduct, it would have discharged her at once for that reason."

The trial court threw out Ms. McKennon's suit, holding that her misconduct was grounds for termination and that she was not entitled to any remedy under the ADEA. The 6th U.S. Circuit Court of Appeals in Nashville later upheld the dismissal.

In reversing, the Supreme Court ruled that evidence of wrongdoing acquired after the fact that would have resulted in discharge does not preclude relief under the ADEA.

Writing for a unanimous court, Justice Kennedy said the age discrimination law is part of a "wider statutory scheme to protect employees in the workplace nationwide," a scheme that includes the Civil Rights Act of 1964, the Americans with Disabilities Act and other laws. He wrote that barring all relief in all instances for violations of the ADEA because of after-acquired evidence of wrongdoing does not square with the law's purpose of ending discrimination in the workplace.

Federal appeals courts had been split on the question of whether after-acquired evidence of employee misdeeds could preclude discrimination suits.

Justice Kennedy next turned to the proper remedy for an employee who suffered job discrimination but who also broke company rules. He offered a remedy, as well as a formula for determining how far that remedy should go.

"We conclude that here, and as a general rule in cases of this type, neither reinstatement nor front pay is an appropriate remedy. It would be both inequitable and pointless to order the reinstatement of someone the employer would have terminated, and will terminate, in any event and upon lawful grounds," Justice Kennedy wrote. Back pay is the appropriate remedy, he said, so the question becomes how to recognize that the ADEA has been violated and that the wronged employee is due compensation without unduly infringing upon the employer's rights.

"The object of compensation is to restore the employee to the position he or she would have been in absent the discrimination. . .but that principle is difficult to apply with precision where there is after-acquired evidence of wrongdoing that would have led to termination on legitimate grounds had the employer known about it.

**The Supreme Court ruling will make job discrimination suits more difficult for employers.**

"Once the employer learns about employee wrongdoing that would lead to a legitimate discharge, we cannot require the employer to ignore the information, even if it is acquired during the course of discovery in a suit against the employer and even if the information might have gone undiscovered absent the suit," he wrote.

Therefore, "the beginning point in the trial court's formulation of a remedy should be the calculation of back pay from the date of the unlawful discharge to the date the new information was discovered," the justice wrote. He added that the courts could take other "extraordinary equitable circumstances" into account in determining relief. But "an absolute rule barring any recovery of back pay, however, would undermine the ADEA's objectives of forcing employers to consider and examine their motivations, and of penalizing them for employment decisions that spring from age discrimination."

By reversing the lower court dismissals, the Supreme Court opened the way for a trial at the district court level.

Lawyers say the ruling will make job discrimination suits more difficult for employers in several ways.

"The litigation will continue, but the focus will be on whether employers can show that they would have terminated the employee for a non-discriminatory reason," said Quentin Riegal, deputy general counsel for the National Assn. of Manufacturers in Washington.

Mr. Riegal predicted that employers may have a harder time proving in court that they would have fired an employee for a particular act because companies often have an array of sanctions that stop short of termination to deal with employee misconduct. "The result may be that the employer will have to prove that they would not have used the lesser sanctions, which could be very difficult," he said.

"There will be at least as much litigation as before and probably more," said Doug McDowell, general counsel of the Equal Employment Advisory Council in Washington, a group that represents large businesses. He said parties won't be arguing over the theory of after-acquired evidence but, rather, how it is applied.

While Helen Norton, director-equal opportunity programs for the Women's Legal Defense Fund in Washington, said she didn't think the ruling would open the floodgates of litigation, she called it a big victory for victims of discrimination. The WLDF had filed a brief supporting Ms. McKennon.

"I think this eliminates an employer defense that has become standard practice in recent years. Up to now, this after-acquired defense has allowed them to keep serious discrimination charges away from a jury," Ms. Norton said.

Employers should now be forced to take a close look at their practices, she said.

Following the *McKennon* ruling, employers will no longer be able to go on "fishing expeditions" in employees' work conduct—and possibly personal lives—as a way of fending off discrimination suits, said William F. Sheehan, an attorney with Shea & Gardner in Washington. He filed a brief supporting Ms. McKennon on behalf of the American Civil Liberties Union and the American Assn. of Retired Persons.

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*McKennon vs. Nashville Publishing Co., U.S. Supreme Court; No. 93-1543, Jan. 23.*

# Punitive damages appeal to be heard by high court

**By MARK A. HOFMANN**

WASHINGTON—In a case the Supreme Court recently agreed to hear, the justices could provide their clearest guidance yet on what limitations, if any, govern punitive damages in civil suits.

The court could use the case—an appeal from the Alabama Supreme Court—to explain whether certain punitive awards are excessive, but the justices have tended to deal with the narrowest ground possible in such cases, said Victor E. Schwartz, a punitive damages and tort law expert.

Instead, the court is more likely to use the case to examine how far a state court can go in punishing a defendant's conduct that had only a minor impact on the state's citizens, said Mr. Schwartz.

The court is not expected to hear arguments this term in the case, which involves a car owner who won $4,000 in compensatory damages and $2 million in punitive damages from an automaker.

Ira Gore bought a new $40,000 BMW 535i in 1990 and found that its finish had been damaged and repaired before he bought it. He sued the automaker because he had not been told of the damage.

Germany's Bayerische Motorenwerke A.G. claimed it had a policy of not disclosing repairs worth less than 3% of a vehicle, saying the repair job cost only about $600.

An Alabama state court jury awarded Mr. Gore $4,000 in compensatory damages and $4 million in punitive damages. The punitive figure was determined after his attorney asked jurors to multiply the compensatory damages by 1,000, the number of cars BMW had refinished and sold as new nationwide over 10 years.

BMW appealed to the Alabama Supreme Court, which said the jury was wrong to base a punitive damage award on out-of-state transactions. The high court halved the punitive award.

Several times in recent years, the Supreme Court has disappointed businesses by failing to set clear boundaries or standards for punitive damages.

In other recent Supreme Court actions:

- The court ruled unanimously earlier this month that annuities are not insurance and therefore not subject to the National Bank Act prohibition on banks selling insurance.

In *Nationsbank of North Carolina N.A. vs. Variable Annuity Life Insurance Co. et al.*, the court reversed a 1993 decision by the 5th U.S. Circuit Court of Appeals and upheld the comptroller of the currency's policy of allowing national banks to sell annuities.

Justice Ruth Bader Ginsburg, writing for the court, said the comptroller's classification of annuities based on their investment features was reasonable and that annuities resemble insurance in some ways but are "functionally similar to other investments that banks typically sell."

The Independent Insurance Agents of America said the ruling will hurt not only insurers and agents but also consumers, who may believe the bank-sold annuity is insured by the Federal Deposit Insurance Corp., said Paul Equale, the IIAA's senior vp-government affairs.

- The court declined to review a 1993 ruling by the U.S. Court of Appeals for the District of Columbia that voided federal rules limiting lending institutions' Superfund liability (*BI*, Feb. 14, 1994).
- The court refused to review the felony convictions of two managers of a Hawaii sewage treatment plant for illegally dumping sludge into the Pacific. The two claimed a federal court had applied the wrong standard of conduct from the Clean Water Act. They argued that the 9th U.S. Circuit Court of Appeals had required prosecutors to prove only that the men had knowingly dumped the sludge rather than prove they knew dumping the sludge violated the plant's discharge permit.
- The high court agreed to review a case involving the right of a disabled dockworker to continue receiving disability benefits even though he accepted a higher-paying job after being disabled. Federal courts have disagreed on the issue. BI

# Uninsured

*Continued from page 3*

ees, down from 22% in 1992; 16% of those working for companies with 100 to 499 employees, the same as a year earlier; and 13% of those working for employers with 500 to 999 employees, up from 12% in 1992.

In contrast to the private sector, only 8% of the public-sector employees said they had no insurance in 1993, compared with 7% in 1992. And, 25% of the self-employed lacked health insurance coverage, up from 23% in 1992.

Not only the size of the firm but also the nature of the industry had an impact on the percentage of workers without insurance in 1993, the EBRI survey found.

Agricultural workers were the least likely to have coverage, with 43% reporting no health insurance. They were followed by: construction workers, 34% reporting no coverage; retail, 26%; services, 19%; and 12% for other industries, which include mining, transportation, utilities, finance, insurance, real estate, manufacturing and wholesale.

Where someone lives also plays a role in determining whether that individual will have health insurance.

Residents of the east north central states—Illinois, Indiana, Michigan, Ohio, Wisconsin—were the most likely to have direct or indirect employer-provided coverage, with 66.2% having such coverage in 1993. By contrast, residents of the west south central states—Arkansas, Louisiana, Oklahoma and Texas—were the least likely to have employer-provided coverage, with only 53.5% reporting having employer-provided coverage. Residents of that region were also the least likely to have any type of health insurance, with 25.5% reporting having no health insurance of any kind, a status shared by only 13.4% of the respondents in the east north central states and New England.

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*Copies of "Sources of Health Insurance and Characteristics of the Uninsured: An Analysis of the March 1994 Current Population Survey," will be available next month for $25. To order, call EBRI Publications at 410-516-6946 and request Issue Brief No. 158.*

# Spencer

Continued from page 3

clared a major or minor in risk management and insurance.

The new $5,000 scholarships "are given to help get their interest," said Anne M. Zug, associate vp-insurance and risk management at Main Line Health Inc. in Radnor, Pa., chairwoman of the Spencer Foundation board. "They're given during the time when (students) are looking around to decide their field."

The Foundation will also award the fourth annual Holwerda Award, an endowed scholarship in memory of Joseph G. Holwerda, a risk management executive at Premark International Inc. in Deerfield, Ill.

The Spencer Foundation was established in 1979 in honor of the late Robert S. Spencer, a former president of the Risk & Insurance Management Society Inc. In its first year, it awarded three $750 scholarships. In 1994, the Foundation awarded 10 scholarships of $10,000 each (*BI*, July 11, 1994).

Since 1991, the Foundation has administered a high school outreach program to promote awareness of risk management as a career.

In 1994, three RIMS chapters were awarded a total of $5,000 in grants for outreach proposals:

• The Central Illinois Chapter is using its grant to introduce risk management to minority high school seniors enrolling in Illinois State University at Normal.

This will augment outreach programs already in place at ISU, including a minority recruiting program and a summer program to educate high school teachers about the principles of insurance and job opportunities in the field.

• The Delaware Valley Chapter will use the outreach money to establish Project InVest at Germantown High School in Philadelphia.

Project InVest, which stands for Insurance Vocational Education Student Training, is a nationwide educational program. At Germantown High School, it is co-sponsored by funds from Spencer, the Assn. of Professional Insurance Women and the CPCU Society.

Currently 35 students are enrolled in three levels of the program, said Barbara McCreery, Project InVest coordinator and business charter coordinator for the high school.

Students attend class daily on the fundamentals of insurance and basic business procedures, she said. In the fall, as students at the school reach their fourth year in the program, she plans to place them in half-day internships in the insurance or banking industry.

"The Spencer Foundation grant has allowed us to buy a lot more books, which is good because the program keeps expanding," Ms. McCreery said. Spencer money also subsidizes students' field trips to the Insurance Institute of America in Malvern, Pa., and The College of Insurance in New York.

• The Western Michigan Chapter is using its grant to develop an introductory risk management program for high school math teachers and high school students.

About 1,000 students at a Grand Rapids, Mich., school will benefit from the pilot program. RIMS members will give presentations on risk management, risk financing and loss control in the school, said Carol Brocci, president of the chapter and risk manager for SPX Corp. in Muskegon, Mich.

Several fund-raising events for the Spencer Educational Foundation are scheduled during the 1995 RIMS conference in San Francisco.

The annual silent auction will be held on Sunday, April 23, from 5 to 7 p.m. during the opening reception. The fourth annual Spencer Golf Tournament will also take place on Sunday, as will a tennis tournament.

For more information on the Foundation, contact Angela Sabatino at 212-286-9292. BI

# Long Tail Risk Has Proven Fatal To Many Reinsurers.

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And the result can be fatal, not just for reinsurers, but also for the insurers who rely on them.

We know all about long tail risks. In fact, claims continue to appear from events that occurred over 50 years ago.

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# 401(k)

*Continued from page 1*

drawals could be made for education expenses for employees' grandchildren, parents and grandparents. Employees also could make penalty-free withdrawals from their 401(k) plans after collecting unemployment compensation benefits for 12 consecutive weeks.

Republican leaders in the House of Representatives take a different approach to improving employees' access to 401(k) funds: A provision tucked into the Republicans' "Contract with America" would allow employees to siphon funds out of their 401(k) plans—without paying taxes—to pay for long-term care insurance premiums.

These proposals, as well as others that are expected to surface in the coming weeks, are triggering an intense debate among benefit experts on exactly what the purpose of a 401(k) plan is.

"What we are beginning to see is a fundamental questioning of capital accumulation plans, like 401(k) plans," said Dallas Salisbury, president of the Employee Benefit Research Institute, a Washington-based benefit think tank.

"Should a 401(k) plan be just a retirement plan or a vehicle that helps individuals throughout their lives?" Mr. Salisbury asked.

That question is being posed as 401(k) plans have become a huge and tempting pot of money. 401(k) plans now hold more than $500 billion in assets, up more than fivefold in the last decade, estimates Access Research Inc. of Windsor, Conn. That growth in plan assets has occurred as 401(k) plans have become nearly universal at medium-sized and large employers.

But 401(k) plans are far more than a huge, growing pot of money. For employees working at companies that have terminated their defined benefit plans, their 401(k) plan savings may be their only source of retirement income, apart from Social Security benefits.

If 401(k) funds are significantly decreased during the course of employment, employees may stay on the job longer than employers anticipate, which could raise some benefit costs.

For lawmakers, there has been no question—until now—that 401(k) plans are retirement plans. The penalties and restrictions on preretirement withdrawals—included as part of the 1986 tax law and subsequent Internal Revenue Service regulations—have discouraged all but a relative handful of employees from taking money out of their 401(k) plans until they retire or terminate employment.

For example, at Long Grove, Ill.-based Kemper National Insurance Cos., just over 3% of 401(k) plan participants took a hardship withdrawal last year, reports Sally Bullen, vp of compensation and benefits.

But, at Hartmarx Corp., about 5% of participants take hardship withdrawals in an average year, said Michael Pikelny, corporate actuary and benefits consultant for the Chicago-based apparel manufacturer.

And even those employers may have higher-than-average numbers of withdrawal requests.

"If you have 5,000 participants in a 401(k) plan, 100 hardship withdrawals would be a lot," said Michael Sternklar, a partner with Kwasha Lipton in Fort Lee, N.J.

While statistics are not available on the average size of hardship withdrawals, it is rare for hardship withdrawals to exceed $10,000 or $15,000, said Richard Koski, a benefit consultant with Buck Consultants Inc. in Secaucus, N.J.

No one knows how many more employees would take hardship withdrawals from their 401(k) plans if penalties and restrictions on preretirement withdrawals were eased.

Some experts, like Stephen Friedmann, a vp at Sedgwick Noble Lowndes in Melville, N.Y., speculate that the percentage of employees taking hardship withdrawals could approximately double if restrictions were eased and special tax penalties waived.

Benefit managers and others are sharply divided on whether improving access to 401(k) plans is in the interest of employees or the nation.

Some benefit managers say hardship withdrawal penalties should be eased. They note that for certain employees—those who spend much of their working lives at one company and are covered by both defined benefit and 401(k) plans—removing some funds from a 401(k) plan for specific needs would have little impact on income available to them at retirement.

For those career employees, "taking money out before retirement for specific important life events will help them without unduly diminishing retirement income," said Pattie Duca, manager of worldwide benefits at Becton Dickinson Co. in Franklin Lakes, N.J.

Others, like Kemper's Ms. Bullen, say hardship withdrawal rules should be liberalized somewhat, but the rules should not be too flexible.

"I do have some concerns about employees not having enough money at retirement. The rules should be liberalized, but with caution," she said.

Other benefit managers, though, say the current hardship withdrawal rules serve an important purpose and should remain in place.

"The penalties make employees think twice before deciding whether or not to withdraw funds. If we make it easier for employees to get the money, that defeats the purpose of a 401(k) plan: saving for retirement," said Hartmarx's Mr. Pikelny.

Benefit experts say employees already are not saving enough for retirement. Every dollar taken out before retirement may mean one less dollar available at retirement.

"We aren't saving enough as it is. Too often money is withdrawn for non-retirement purposes. Proposals of those kind aren't going to help," said Ted Benna, president of The 401(k) Assn., a Langhorne, Pa.-based group that represents plan participants.

"You can't have it both ways. You can't have the money now and then have the money later," said Sylvester Schieber, director of The Wyatt Co.'s Research & Information Center in Washington.

It's doubtful whether improved access to 401(k) funds would significantly increase the percentage of employees contributing to 401(k) plans or the amounts they contribute, consultants say.

A 1993 Hewitt Associates L.L.C. survey found that giving employees improved access to 401(k) contributions, such as loan provisions, did not have a major impact on plan participation.

For example, companies with loan provisions reported an average participation rate of 76%, just a bit higher than the 72% participation rate among companies not offering loan provisions as part of their 401(k) programs.

Rather than access, it is money—meaning whether or not an employer matches employee deferrals—that has the greatest impact on employees' decision to participate in a 401(k) plan.

On average, 77% of employees participate in 401(k) plans in which employers match a portion of workers' deferrals, compared with an average participation rate of 59% among employers that do not, Hewitt's survey found.

In laying down 401(k) rules, lawmakers have tried—with some success—to balance the need to give employees access to funds without making it too easy for workers to withdraw funds before retirement, notes Allen Steinberg, a Hewitt Associates consultant in Lincolnshire, Ill.

Liberalizing hardship withdrawal rules may upend that delicate balance.

Given the growing concerns that retirement income may be inadequate for many employees, "I'm concerned about upsetting that balance, especially because liberalization of withdrawal rules is not likely to result in increased participation," Mr. Steinberg said. BI

## Current hardship rules

The 1986 tax reform law and Internal Revenue Service regulations lay down the current rules and penalties for employees to take hardship withdrawals from their 401(k) plans. Currently, there are four bona fide reasons for taking the withdrawals:

- Uninsured medical expenses for the employee, spouse or dependents.
- Down payment toward purchase of an employee's principal residence.
- Post-secondary educational expenses, such as tuition, room and board for the employee, spouse or dependents.
- Preventing foreclosure or eviction from the employee's principal residence.

To qualify for a hardship withdrawal for these situations, an employee has to prove—typically through a signed statement—that he or she cannot meet the financial need from other sources.

For example, an employee could not take a hardship withdrawal to pay for educational expenses if reasonable loans are available from banks or other lenders.

Stiff penalties are imposed on 401(k) hardship withdrawals. Most are subject to a 10% excise tax, though not withdrawals used for medical expenses that are tax-deductible to the employee. Generally, those would be expenses that exceed 7.5% of an employee's adjusted gross income.

If an employee takes a 401(k) distribution after age 59½, the 10% excise tax is waived. In addition, distributions taken as a lump-sum can qualify for a favorable tax treatment known as five-year forward averaging.

# Contractors not liable in tank leaks

**By JOANNE WOJCIK**

SAN FRANCISCO—Contractors that install underground storage tanks cannot be sued 20 years after the tanks' installation even if the tanks are later found to be defective, a California appeals court ruled.

Contractor groups and fuel distributors that faced potentially catastrophic cleanup costs hailed the decision in *Chevron Co. U.S.A. vs. San Francisco Superior Court* as a huge victory.

"While environmental contamination is a problem we all face, contractors and distributors are already paying more than their fair share," said Santa Rosa attorney Hans Herb, who filed a brief in the case on behalf of contractors and distributors.

In his brief, Mr. Herb had argued that a state law limiting liability to 10 years is intended to keep contractors from having unlimited liability for their work.

The case arose from a lawsuit filed by DiSalvo Trucking Co. after the company discovered its underground petroleum storage tanks in Emeryville, Calif., were leaking.

Chevron had installed the tanks in the late 1960s under a corporate marketing program in which installation was provided free as long as the retailer promised to buy a certain brand and quantity of fuel from the company.

DiSalvo, seeking reimbursement of several hundred thousand dollars of cleanup costs, claimed the contamination was a continuing nuisance. Under common law, landowners faced with a "continuing nuisance" can sue repeatedly until that nuisance subsides, no matter how much time has elapsed.

At trial, Chevron argued that California has a specific statute protecting contractors from liability for defective work more than 10 years after a project is completed. However, the Superior Court disagreed and ruled in DiSalvo's favor.

On appeal, the 1st District Court reversed, ruling that all claims against Chevron were barred by the 10-year statute of limitations that Chevron cited.

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*Chevron U.S.A. Inc. vs. San Francisco Superior Court; No. A065454, 1st Appellate District, Superior Court; No. 951878, Dec. 22, 1994.*

# COBRA

*Continued from page 1*

nior vp of the California Chamber of Commerce in Sacramento.

The National Federation of Independent Business was equally unconcerned, because so few of its members are required to provide COBRA coverage. The average number of workers employed by NFIB-member companies is seven, said Shirley Knight, NFIB's assistant state director in Sacramento. COBRA only applies to companies with 20 or more employees.

Few large employers will be affected, since so many already provide generous retiree benefits, observed John Gardner, a principal in Hewitt Associates L.L.C.'s Newport Beach office.

"Besides, the bill is pre-empted by ERISA," said the Chamber's Mr. Zaremberg.

However, the authors of S.B. 1910 were "totally unaware" of the Employee Retirement Income Security Act of 1974, said Elva Raish, a legislative aide to Sen. Green.

"When the final version was worked out, we had help from some COBRA experts from HMOs," she explained. "Nobody here was an ERISA expert."

Now the senator's staff is feverishly working on cleanup legislation that would require insurers and health maintenance organizations, both of which are state regulated, to offer the five-year COBRA continuation to plan participants, she said.

Indeed, "they could have avoided pre-emption by directing the requirement (to offer extended COBRA coverage) to insurers," said Hewitt's Mr. Gardner.

Instead, "the bill is rather odd," he said, in that it directs the requirement not only to insurance companies and HMOs, but also to employers.

According to the legislative summary, S.B. 1910 requires employers that provide health or dental coverage to give any employee age 60 or older who has worked for that employer for at least five years, and their spouses, access to COBRA benefits at no more than 213% of the current applicable group rate until one of the following:

- The former employee turns 65.
- The employer ceases to offer any group health plan.
- The former employee is covered under another group health plan not maintained by the employer, regardless of whether that coverage is less valuable.
- The former employee becomes eligible for Medicare.
- In the case of a spouse, five years from the date employment ended.

Employers with fewer than 20 employees are exempt.

"The bill was intended to provide at least some stop-gap coverage to retirees" who lose their jobs before they become eligible for Medicare benefits at the age of 65, and to protect the dependents of those retirees, Ms. Raish explained.

Under current federal law, COBRA coverage extends to the employee for 18 months, and to the employee's spouse for 36 months in the case of death or divorce. Disabled employees can receive an extension for 11 months in addition to the 18.

Many widows with histories of breast cancer had difficulty finding coverage on their own after the COBRA benefits they received through their late husband's employer expired, Ms. Raish said.

At first, the state Department of Personnel Administration opposed the bill because under the federal COBRA rules, employers can only charge 102% of the group premium rate for continuation coverage and retiree health care benefits is more expensive than that, Ms. Raish recalled.

To gain the DPA's support, the drafters included language in S.B. 1910 permitting employers to charge 213%, she said.

The figure was extrapolated from the 50-to-65 age band applied to premiums charged by insurers through the voluntary Health Insurance Purchasing Cooperatives created by the state's recently enacted small-group reform legislation, explained Ms. Raish. BI

# ASK A RISK MANAGER

## Pro-employee workplace discourages comp fraud

**Q** **Our company, like many others, is very much concerned about the increasing number of suspected fraudulent workers compensation cases. How can we address and manage this exposure?**

**A** The element of fraud is certainly no stranger to the insurance industry. Just consider, if you will, the number of hours spent by the media in bringing this unfortunate phenomenon to the forefront of society. It is sad but true that a growing segment of the population is attempting to reap financial gain by filing false claims. Although your question and this response will focus on workers comp fraud, the offense pervades other areas as well; automobile liability claims are another prime example of such deceptive activity.

I'd like to take a moment to examine why someone would commit a fraudulent act against his or her employer in the first place. In a perfect world, everyone would live in harmony. There would be no reason to attempt to "put one over on the other guy" because all of us would strive to do the right things. Imagine an environment in which one's conscience actually prevented any wrongdoing!

How far the pendulum has swung and how seldom some of us listen to the inner voice that tells us right from wrong.

As society tends to condone a "me first" attitude, the notion of getting something for nothing becomes more important. You may call it instant gratification, but the end result sometimes spells fraud.

When an employee feels his or her employer places little value on the individual, the stage is set for fraud. It becomes a way of evening the score, so to speak, and a bit easier to justify.

Therefore, the employer must create a nurturing and stimulating environment for its workers. And I don't mean merely offering lip service but actually demonstrating a true concern for people through action. This concern generally results in an employee's willingness to view his or her position in the company as one of value. Isn't it fair to say we cherish what we value? Why would an employee want to jeopardize good standing in the company by attempting to cheat the system? In the "real" world, however, employer and employee relationships are less than ideal so the employer should also have in place an appropriate system of checks and balances to counter fraud.

The components of a fraud prevention/control system include a strong internal and external investigative process and stringent penalties to punish the offender.

Good claims management involves a thorough investigation by the employee's supervisor. Employers should mandate that a worker inform his or her supervisor of an "accident" as soon as it occurs. Immediately after this notification, the supervisor would be responsible for inspecting the area where the incident is said to have occurred and obtaining a statement from the employee and any witnesses.

Our company uses an "Employee Accident Statement" for this purpose that requires an employee to describe in his or her own words exactly what happened. The statement is signed by a witness and contains wording that if the accident is considered fraudulent, appropriate disciplinary action will be taken.

Any "suspect" claims are flagged before they are forwarded to the claims adjusting service for further investigation. We are careful to share any of our concerns with the claims adjusters and will recommend specific activities such as surveillance in certain instances.

Further, any employee who files a lost-time claim will be "indexed" through the central index bureau, which is a database established by self-insurers and insurers to verify any prior claims reported by that individual.

With regard to disciplinary action against those who attempt to file fraudulent claims, be up front with employees so they understand that such behavior is illegal and will not be tolerated. We make it clear that these individuals will be prosecuted. Dishonesty is seldom restricted to a single activity. Remember, the person who is inclined to cheat you through insurance fraud will not hesitate to steal from you in other ways.

Many companies, including ours, encourage employees to report dishonest co-workers through a confidential communication network such as a toll-free number.

If your company supports and fosters a "pro-employee" workplace, co-workers will not hesitate to report suspicious activity. After all, isn't it true that everyone pays for such dishonest acts? When a company's profitability suffers through such losses, it is less able to respond to important employee needs such as salary raises, health and retirement benefits or, in extreme situations, job security.

The term "fraud" brings with it a feeling of fear and suspicion. We should all work aggressively to eliminate it from our vocabulary. BI

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

*Ask A Risk Manager, Ask A Benefits Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefits management issues and actuarial problems.*

Ms. Werner

*This month's column on risk management issues is written by Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C. Dennis J. Nirtaut, managing director of compensation and benefits, worldwide, for Arthur Andersen & Co. in Chicago, answers questions on employee benefit plans.*

*William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.*

*Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*

# Severance plan amendments not limited by fiduciary duty

## Legal Briefs

While employers that provide a severance plan assume certain fiduciary duties in administering it, they are free under the Employee Retirement Income Security Act to unilaterally amend or eliminate such plans without considering employees' interest, the 9th U.S. Circuit Court of Appeals has ruled.

In 1989, The Foods Division of the Coca-Cola Co. sold its coffee business to Maryland Cub Foods Inc. At that time, the plaintiffs here were Coca-Cola employees who worked in the coffee business.

After the sale, Coca-Cola leased the plaintiffs' services to MCF for 60 days. Thereafter, their employment was terminated. On April 1, the plaintiffs started employment with MCF in positions that were similar to those they had held with Coca-Cola.

Prior to Jan. 1, 1989, Coca-Cola's severance pay policy provided certain benefits to the terminated employees. But, about Jan. 1, 1989, Coca-Cola amended the policy, adding an exception for terminated employees who are offered comparable employment by a buyer of a business or assets of Coca-Cola.

These employees sued Coca-Cola for wrongfully modifying its severance benefit plan to exclude them. The trial court ruled for Coca-Cola on the amendment.

The appellate court noted that most federal circuit courts had rejected the idea that ERISA's fiduciary duties attach to an employer's decision whether to amend an employee benefit plan.

"In short," the court said, "an employer does not owe its employees a fiduciary duty when it amends or abolishes a severance benefit plan."

The appellate court affirmed the decision of the trial court.

*Joanou vs. Coca-Cola Co.*, 9th U.S. Circuit Court of Appeals; June 7, 1994 (*BI*/01/Feb. $10).

### Merger is not termination

A merger of an employer with another corporation did not terminate employment of ERISA plan participants who continued to work for the merged corporation, according to the 11th U.S. Circuit Court of Appeals.

The individuals here were employed until Jan. 6, 1989, by Ignition Products Corp., a unit of Allied-Signal Inc.

The individuals all were participants in an Allied-Signal ERISA plan.

On Jan. 6, 1989, Ignition was merged into Unison Industries L.P. All of the individuals here who were Ignition employees continued their employment without interruption at Unison.

The plan in effect as of Jan. 6, 1989, allowed reduced pension benefits for plan participants who took early retirement.

Thereafter, Allied-Signal amended the plan, limiting those early retirement benefits.

The individuals here then applied for but were denied payment of the early retirement benefits.

They sued and lost in the trial court.

On appeal, the individuals argued that the amendment to the plan could not be applied retroactively so as to deny benefits to those who retired from the plan as of Jan. 6, 1989.

They argued that the merger of Ignition into Unison terminated their employment with Allied-Signal and, therefore, they were technically "retired" for purposes of the plan.

The appellate court said the benefits to which the employees were entitled had not been reduced or eliminated by the amendment.

Every participant who was eligible to retire and receive benefits before the merger date was still eligible for those same benefits after the merger, the court observed.

The appellate court affirmed the decision of the trial court.

*Dyce vs. Salaried Employees' Pension Plan*, 11th U.S. Circuit Court of Appeals; March 1, 1994 (*BI*/04/Sept. $10). BI

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*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.*

# Violence

*Continued from page 3*

you do nothing, if you allow the perception of risk to remain, the courts tend to side with the employees against the employer. They are holding the employer accountable, saying that it is basically your responsibility to ensure a safe working environment."

Having just one person handle threats of violence can be detrimental. A team approach with a variety of expertise is necessary, Mr. Talkoff said.

For example, an attorney with labor law knowledge needs to ensure the actions taken will not set the company up for a lawsuit. A senior personnel manager is needed for the authority to terminate someone, if necessary, he added.

Mr. Talkoff advised employers to document everything.

"You need to document. (Don't just) document the subjective data. You need to document the actual, factual data that has taken place," he said.

Facilitating communications is important so that employees and managers feel comfortable reporting threatening conditions they encounter. Otherwise, they will be reluctant to step forward and employers need to get the upper hand by learning about potential threats before they escalate into violence.

"If you go back and look at the literature that reviews situations of companies that have had violent episodes, what you find is the organizational structure tends not to allow communication," Mr. Talkoff said.

"Communication seems to be extremely limited and they tend to be top-down management styles and organizations. What we want is to get beyond that. We want to create an environment where any manager can bring forward their concerns," he explained.

Communicating the steps being taken to employees and supervisors—though confidentiality sometimes is necessary or legally required—can help alleviate concerns or keep fear-inducing speculation to a minimum.

Violence is unpredictable, Mr. Talkoff said, but "workplace violence never, ever just happens. There are always events leading up to an incident."

Among the warning signs that assistance should be sought: physical actions, intimidating behavior, paranoid behavior, bizarre behavior, easy provocation, prior assaults, domestic violence, verbal threats, financial problems, job loss, obsessions, mood swings, alcohol/drug abuse and ownership of weapons.

Getting the upper hand on violence is important to Wells Fargo because, as other companies have found, the workplace is not the safe haven it was once considered, Mr. Talkoff said. More often than in the past, domestic violence is following employees to the workplace.

"We at Wells Fargo have seen a significant increase in the number of reported incidents of domestic violence," he said.

Two or three years ago, it was more common for company supervisors to seek help when employees arrived at work with black eyes or broken arms sustained at home.

"Now what we hear are calls from managers saying, 'I picked up the phone and somebody's significant other said I'm coming down to the workplace. I'm going to get my wife, my lover, my whoever. And if you're there when I get there I'm going to get you also,' " Mr. Talkoff said.

"You can imagine the discomfort level that these kinds of situations engender."

In part because of high-profile cases around the country in which employees have shot and killed co-workers, Wells Fargo supervisors frequently call Mr. Talkoff, advising him they are about to discipline someone and want to know if the employee is the type of person who is likely to retaliate.

But the number of cases in which weapons are involved is small and focusing on the high-profile incidents can cause employers to lose sight of the fact that most workplace situations involve shoving, intimidation, destruction of property, sexual harassment and even rape.

Mr. Talkoff said later that there is no quantitative measurement of the success of Wells Fargo's approach.

"The fact that we have not had any incidents happen speaks to the approach," he said. "Most large employers are looking to adopt this method. It's what makes sense." BI

# Benefit cost-cutting keys

## Health care data provides insight, leverage in negotiations

By ROBERTO CENICEROS

LOS ANGELES—Information can help slash health benefit costs when employers use it to force managed care companies to meet buyer demands, advises a human resources manager.

In part, the savings opportunity arises because insurers face competition and are willing to negotiate, said Beverly J. King, director of human resources for the City of Los Angeles Department of Water & Power.

But significant savings also can be realized from paying careful attention to available data that describes the specific services managed care firms and pharmacies provide and the way they are delivered, she said last week during the employer summit at the Managed Health Care Congress West.

Ms. King said her department has pared $10 million from its 1995 health care bill, after spending about $70 million on health benefits in 1994. Water & Power uses four managed care companies to provide services for about 25,000 people, including 11,500 active workers and 8,000 retirees.

"In order to have it your way, you've got to know where your dollars are going," Ms. King said. "And most of us, very honestly, don't know. Even though we have been working at it for some time, it's very hard to get the data."

The available data Ms. King's department reviewed included diagnostic related codes used by managed care firms. That information provided valuable clues about employee use of benefits. When possible, the department also obtained HEDIS reports, a set of quality performance measurements created by the National Committee for Quality Assurance, which accredits HMOs.

The department also looked into providers' pharmaceutical records to get clues about what medications were being prescribed most frequently for employees. The information can help determine if there are more cost-effective alternatives such as mail-order prescription services for chronic users.

"A lot of the money you're putting out to carriers is for pharmacy," Ms. King said. "You probably don't even know exactly in a managed care setting how much money you are spending for pharmacy. And even if you do know how much money you are spending, it's probably not real accurate. There is probably some blending."

By studying the "Twilight Zone" of how pharmaceutical providers operate and set prices, Ms. King said she found one charged twice as much as other companies for the same medication.

She also found one pharmaceutical provider was not passing on manufacturers' rebates. The rebates typically amount to 20% to 30% of a brand-name drug's price when purchased in quantities.

"One of the things I learned is that I basically was not getting the manufacturer's rebate," she said. "They were getting them, but they were not passing them on to me."

Benefit managers may want to "carve out" pharmacy services to obtain a better deal, Ms. King told her colleagues.

"You might want to think about at least threatening to carve out, and use some comparisons of what would happen if you get out of the box of thinking that everything in managed care is about the same as it's always been," she said. "Because it's not the same."

Mr. King also advised carefully reading the formularies under which managed drug plans work.

"You'll be amazed to find there is a lot more in there than just drugs," she said. "One of the things that is typically in there is what is called step therapy, which means their plan for controlling the distribution and use of drugs. One of the things in demand-type management that you can do is start working with carriers about the total cost to your company."

Under "step therapy," doctors and pharmacists begin by providing drugs that may be less effective before trying more effective and more expensive treatments.

But that can cost an employer in days missed from work, because the drug treatment is not working as fast as it might otherwise.

Ms. King said her department is making another dent in health care costs by carefully examining dependent use of benefits. Dependents tend to drive up costs because less is typically known about them, she said.

In her organization, the average age of workers is 43, so she was shocked to find that the Department of Water & Power health plans were paying for many expensive pregnancies. Many of the newborns turned out to be the offspring of young dependents.

So Ms. King went to her insurers and asked that teen-wellness programs, including pregnancy programs, be available in decentralized locations.

"We actually required them to come up with programs that helped reach that segment of the population," she said.

The department also cut costs with plan-design changes such as moving seniors into government-subsidized Medicare risk programs.

Ms. King recommends participating in benchmarking studies with managed care firms. Those studies can provide insight into the services being provided and can give an employer an edge in negotiations and in demanding plan changes.

"Get the HEDIS data," she urged. "Some carriers have it. A lot of carriers don't have it. A lot of carriers will say 'Well we're working on it.' And so what you say is 'Good, I want to participate with you.' Get the data. Data is strength. It helps create your demand."

The Department of Water & Power is also big on demanding that its health care providers join in creative partnerships with pharmaceutical providers, home health care, wellness organizations and community groups.

"Go out and create a demand," Ms. King urges. "Go out to (your HMOs) and they will come through with ideas. Frequently not just ideas you have told them, but ideas that really work.

"When you meet with carriers you have to say, 'Hey what can you do for me today, because if it's not you, it's going to be somebody else.' There's lots and lots of carriers out there who will be more than glad to work with you." BI

# Vermont

*Continued from page 1*

challenge to that bill, the only provision that I would guarantee would survive would be the one that would allow the commissioner to promulgate any fees," said Lenora S. Marema, vp-legal and regulatory affairs for the Alliance of American Insurers in Schaumburg, Ill. "That's certainly within their jurisdiction."

The draft Vermont legislation also would require the NAIC to file a yearly report of its activities with the Vermont Legislature and the National Conference of Insurance Legislators.

That report would have to include: a summary of NAIC activities; a fiscal summary, including the compensation of the 20 highest-paid NAIC staff members; a list of NAIC standards; and a description of NAIC policies ensuring that states are accredited solely on the basis of regulatory effectiveness.

The draft legislation contained an additional provision that would require the NAIC to deposit funds in Vermont equal to the fees and assessments Vermont-domiciled insurers pay annually to the NAIC, and Vermont legislators would be allowed to use those funds to finance oversight of the organization.

Elizabeth R. Costle, Vermont's commissioner of banking, insurance and securities, expects an NAIC bill to come before the state Legislature, but thinks it will differ significantly from the draft that's been circulated.

"I think there will be a bill. It will want some kind of look at the NAIC fees and look at the NAIC," Ms. Costle said. "I think what our Legislature's interest is is they approve all fees for anything, and they want to make sure the fees are reasonable."

But, Vermont Rep. Oreste V. Valsangiacomo, D-Washington County, who will be a sponsor of the NAIC legislation, said the bill ultimately will resemble the draft.

And a bill definitely will be introduced this session, "once we get it finalized," said Rep. Valsangiacomo, who is also chairman of the Vermont House Ways and Means Committee.

The Alliance's Ms. Marema said because legislators crafting the Vermont bill are active in NCOIL, legislation like Vermont's could pop up elsewhere.

In an Alliance report she prepared examining the legislation, she noted that concerns over growth in the NAIC's staff and budget—concerns the Alliance shares—could be one motive for other states to take similar action.

"The NAIC has grown from a staff of 130 persons and a budget of $13 million in 1990 to a staff that will be 319 persons in 1995 with a budget of $40 million," Ms. Marema wrote. "If a provision were in place in Vermont and several key states, there may be some leverage against the continued growth of the NAIC staff and budget."

And Ms. Costle believes insurance commissioners in other states would welcome that leverage. "I think there are a number of commissioners who, though they would not support the bill, think the NAIC needs some oversight," she said.

The NAIC, meanwhile, is waiting until a bill is actually introduced to respond to its provisions.

Ms. Marema said the Alliance would take a neutral position on the Vermont bill, though the organization's legal committee will study the provision that would require state approval of NAIC fees to determine whether the group can support that portion.

She added that she doesn't believe pitched battles between the NAIC and Vermont or NCOIL are in the industry's best interest.

"Our interest in the issue is that we support state regulation and we would like to see that system work," Ms. Marema said. "It really isn't to anybody's benefit to have organizations like the NAIC and NCOIL fighting one another."

"My sense of it is the other states don't have a whole lot of sympathy for Vermont's position," she said. "But, on the other hand, they don't want to see Vermont get alienated from the NAIC."

Those sorts of battles could only strengthen those calling for federal regulation of the insurance industry, Ms. Marema added.

In Vermont's drive to win NAIC accreditation, the legislative avenue is just one possible way of getting there, said Ms. Costle. While no decision has been made on suing the NAIC over its accreditation process, Vermont Gov. Howard Dean has asked the Legislature to earmark $100,000 in this year's state budget to cover the costs of such a legal challenge.

Gov. Dean, chairman of the National Governors' Assn., also has suggested using the NGA as a forum to force changes at the NAIC, perhaps at the group's winter meeting in Washington this week. The issue wasn't on the meeting's agenda, however.

"Obviously there are lots of options out there," Ms. Costle said. "Obviously the lawsuit is one option, but negotiations are also an option."

The commissioner said she continues to believe the best way to resolve the issue would be to "reach a meeting of the minds."

"The process is continuing," she said. "Hopefully we will get to something." BI

# INTERNATIONAL

## NRG litigation may prompt similar suits

**By ADRIAN LADBURY**

LONDON—U.K. professionals may see an increase in litigation against them if a reinsurer succeeds in its lawsuit alleging negligence on the part of three financial advisers.

Trial began last Monday in the case brought by Dutch reinsurer Nederlandse Reassurantie Groep Holding N.V. against three firms it hired to advise it in its 1990 takeover of British reinsurer Victory Reinsurance Co. Ltd. (*BI*, June 15, 1992). NRG is suing auditor Ernst & Young, Swiss Bank Corp. and actuaries Bacon & Woodrow.

As a result of their alleged negligence, NRG and its parent company—Nationale-Nederlanden N.V., now known as Internationale Nederlanden Groep N.V.—were forced to "inject over £280 million ($445.2 million) into NRG Victory Re to keep it solvent and to meet liabilities that had largely been incurred before Victory Re was bought by NRG," said NRG barrister Richard Aikens. NRG contends the advisers should have warned it that the company's reserves were inadequate.

If the Dutch reinsurer is successful and recoups the £375 million ($599 million) in damages and interest it is seeking, it is expected that similar suits against professional advisers in insurance transactions could follow.

An increase in litigation could also add pressure on accountants to abandon their traditional unlimited liability partnership status and opt for a limited partnership instead.

The case has attracted a huge amount of attention within London professional liability circles, though a verdict against the defendants is not expected to have as much of an impact on accountants and bankers as it would on actuaries, which historically have had relatively small liability exposures.

Justice Colman, who is presiding over the case in the High Court, will be expected to plow through some 30,000 pages of evidence during the trial, which is expected to last six months.

Last Monday, NRG's barrister,

*Continued on next page*

### GLOBAL BRIEFS

## Rainfall may cause record flood losses

Flooding in parts of France and Germany is expected to generate thousands of claims for insurers and could rival the record flood losses recorded in late 1993.

The heavy rainfalls mirror conditions in December 1993, when severe flooding occurred in both countries and other parts of Europe. Those floods caused more than $2 billion in damage and produced insured losses of more than $500 million.

The recent flooding along the Rhine River in western Germany could produce total losses of $1 billion, German observers estimate.

A state of emergency was declared in northwestern France, where thousands of people were forced to flee their homes and hundreds of businesses closed or temporarily relocated.

The Federation Francaise des Societes d'Assurance, a French insurer trade association, had no information on insured flood losses but estimated it could exceed the 3.7 billion francs ($626.2 million) insurers paid out in the 1993 flooding in southern France.

A spokeswoman for AXA Insurance in Paris said the insurer could not make any early damage assessments because more flooding was expected this week.

Once the French government has declared the flooding a natural disaster, property claims will be paid from a central disaster

*Continued on page 20*

## Kansa insolvency alarms regulators

**By MARIA KIELMAS**

HELSINKI, Finland—Finnish regulators are vowing to tighten their oversight of insurers' solvency after another group of companies recently toppled.

Helsinki-based Kansa Reinsurance Co. Ltd. was declared insolvent earlier this month by the Insurance Department, a division of Finland's Ministry of Health and Social Resources. In addition, Kansa Pension Insurance Co. Ltd. and Kansa Life Insurance Co. Ltd. were declared insolvent late last year.

A primary reason behind the insolvencies was the deterioration of the group's real estate assets, as well as an economic recession in Finland.

"We are thinking of new regulations because of this experience," said an Insurance Department official, who could not elaborate.

The ultimate parent of the Kansa companies is Cooperative Eka Corp., a diversified holding company that has construction, retailing, insurance, hotel and fuel distribution interests. Cooperative Eka is the 100% owner of the insurance holding company, Kansa International Corp. Ltd. This holding company in turn owns 100% of Kansa Corp. Ltd., which has two wholly owned subsidiaries: Kansa Pension and Kansa Life.

Vahinkovuutus Kansa, which formerly was Kansa Corp.'s domestic non-life unit, was saved from insolvency because it was sold early last year to Sampo Insurance Co. Ltd., Finland's second-largest non-life insurer.

The insurance holding company, Kansa International, also owns 100% of Kansa General Insurance Co. KGIC in turn owns 39% of Kansa Reinsurance, an international reinsurer. The remaining 61% of Kansa Re is owned by Kansa International and Kansa Corp. Ltd.

The Kansa companies, excluding the pension unit, wrote 1992 gross premiums of $217.2 million,

*Continued on next page*

## Pursuing a dream to Vietnam

### Former risk manager begins a new journey

**By MICHAEL SCHACHNER**

**Mike Abadie is leaving behind his desk at Hoechst Celanese and making a long-awaited move.**

MICHAEL SCHACHNER

Twenty-three years ago, Mike Abadie figured the only way he'd spend time in Vietnam was as an enlisted soldier in the U.S. Army.

The year was 1972 and the Vietnam War was still raging. But luck was on the then-18-year-old's side: His draft lottery number turned out to be quite high and he was not called into service.

Now it is 1995, and fate and a change of heart have the former insurance manager for Hoechst Celanese Corp. embarking on a new career as a broker in Ho Chi Minh City, the burgeoning city formerly known as Saigon, which fell to the Communists 20 years ago.

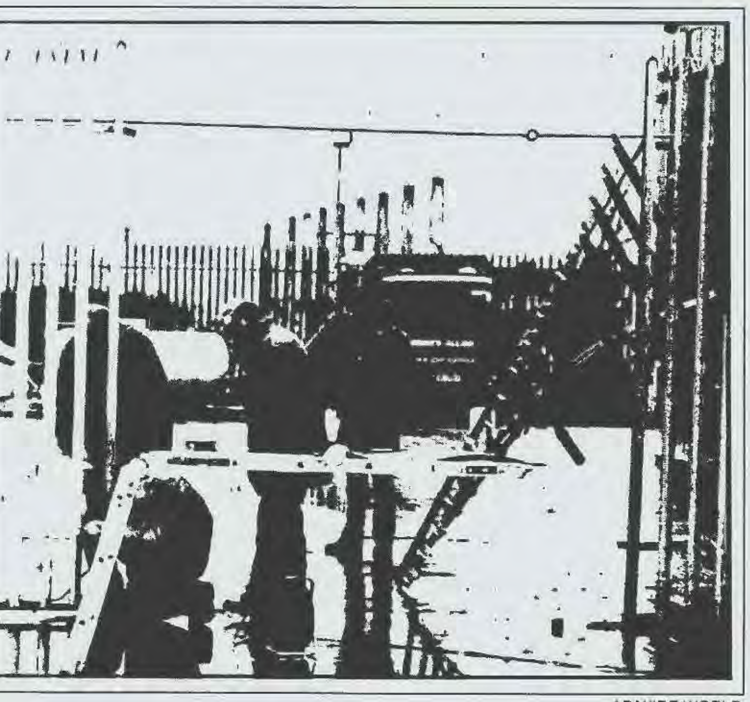
Mr. Abadie's recent move to Vietnam—made possible by last year's lifting of the trade embargo instituted by the United States—did not come overnight or by accident.

Since 1986, when the U.S. unit of German manufacturer Hoechst A.G. merged with Celanese Corp., Mr. Abadie made it clear to Hoechst management that his career goal was to transfer to Vietnam and start anew with his wife, Tuyet, a Vietnamese-born refugee whom he married in 1977.

With that dream in mind, Mr. Abadie took enormous steps to become proficient in Vietnamese during his 14 years at Hoechst Celanese in Somerville, N.J.

For example, he compiled an electronic learning program containing more than 12,000 of the most common words, phrases and idioms that exist in both Vietnamese and English, as well as a business vocabulary supplement that includes

*Continued on page 19*



AP/WIDE WORLD

**Thieves crashed a jeep through a gate to reach the security company.**

## Brink's insured for big Irish theft

**By ADRIAN LADBURY**

DUBLIN, Ireland—Five masked gunmen carried out a spectacular raid last week at the headquarters of one of Ireland's biggest security firms and made off with what is believed to be the nation's largest-ever cash robbery.

Dublin-based Brink's Allied Ltd. refused to talk to the press last week, but Irish police said that up to IR£3 million ($4.74 million) had been snatched. A police spokesman said the biggest cash robbery in the Republic until then had been IR£2.8 million ($4.5 million) stolen from a bank in the city of Waterford in 1992.

Brink's Allied is an affiliate of U.S. armored car company, Brink's Inc. of Darien, Conn.

London marine insurance sources say the raid is unlikely to worry underwriters of specie coverage, which insures currency, securities and precious metals.

"Compared to the sort of limits underwriters are asked to cover in this market, it's not a big loss," said one specie broker not involved with the placement of Brink's Allied's coverage.

Brink's Allied's cash-in-transit coverage is placed in the London market by Willis Corroon Ltd.

Sphere Drake Insurance P.L.C. confirmed that it is the lead insurer in the London company market. Colin Dingley, underwriter of Lloyd's of London syndicate 552 managed by Mander Thomas & Cooper (Underwriting) Agencies Ltd., confirmed that his syndicate leads the coverage in Lloyd's. The coverage is placed 100% in London.

Brink's headquarters is in a Dublin industrial park and surrounded by open fields. The thieves built a temporary bridge across a small river to reach the perimeter fence, which they smashed through at 6:35 p.m. last Tuesday in a stolen jeep.

Leaping from the jeep, the thieves fired shots in the air but no one was hurt.

They entered the loading area, grabbed about 70 money bags from the back of a security van that was being loaded and left the building on foot.

Waiting outside the building was a second stolen jeep in which the thieves sped away. The jeep was later found abandoned about two miles away.

"Late last night we picked up one man on suspicion (of involvement in the crime) in the North of the city center and are holding him for 48 hours. We are not ruling anything out at this stage. It is possible that it is a criminal gang or subversives, but we cannot say for sure at the moment," the police spokesman said. BI

# INTERNATIONAL

## NRG

*Continued from previous page*

Mr. Aikens, launched into opening arguments.

Mr. Aikens said that NRG paid £122 million ($195 million) for Victory in July 1990, but it turned out to be "less than worthless." Victory, which is now in runoff, currently has a "massive deficiency in its reserves" of some £254 million ($406 million), mainly incurred through its marine and aviation account and London market excess-of-loss business.

NRG claims that due to the ineptitude of its advisers, it should be awarded damages equal to the £122 million it paid to Victory, plus £133 million ($212 million) in "loss of value" and another £120 million ($198.8 million) in interest.

NRG asserts that the three advisers failed in their duties to assess and investigate the adequacy of Victory's reserves and exposure to future claims.

Mr. Aikens claimed that NRG was only persuaded to go ahead with the "disastrous" purchase because of poor advice of its advisers.

Mr. Aikens was especially critical of Swiss Bank. "Our expert witness came to the conclusion that the bank did not have the staff, experience or time to carry out the work required to give balanced advice on the transaction. . . .They did not have the advice of senior management. They sent boys to do a man's job," he charged.

The defendants are not expected to present their arguments in court for several weeks.

The three defendants each have professional liability insurance but refused to give details of their coverage.

Even if NRG emerges victorious, though, London professional liability market observers do not expect the defendants' losses to have a big impact on London professional liability rates and capacity.

"Any of these types of developments take an awful long time to reflect in any improved terms. These are long-tail claims and the gestation period is long. But generally I would not expect any dramatic change in either capacity or rating," said Derek Cooper, a professional liability specialist with Minet Ltd. in London.

Actuaries are most likely to suffer as a result of a decision against the defendants, according to other brokers, because the actuary market is much smaller than the other two, has a comparatively clean record and will be more vulnerable to a single loss.

"The big accountants have all been hit so hard by E&O problems in recent years and the insurance and deductibles are so high now that this would be just another blip for them," said John Sevastopulo, director of Firstcity Insurance Brokers Ltd. of London, a specialist in professional liability.

"For the actuaries it may be different, though, because there are not so many of them. Apart from B&W and one other, they are generally quite small, so there is a relatively small premium base generated. If (the defendants) lost, it could have a fairly big impact," he said.

"For actuaries, it probably has already had an impact because the actuaries market has until recently been one of the quieter professions and claims have recognized that fact," agreed Nancy Layton-Cook of specialist London brokerage Coleman Layton-Cook Ltd. "Advice in takeovers—where the actuary assesses reserves—is one area which carries risk and most of them don't do that. But, it is now recognized that they are in the front line," she added.

"The market has been aware of this case for some time now and it has already resulted in a tightening of what were very low rates and very broad wordings. For accountants, it's yet another area where they have come under pressure but it won't affect them nearly as much," Ms. Layton-Cook said.

"We have liability insurance to cover any loss," said Duncan Ferguson, senior partner with B&W. He said he is confident of his firm's defense and that even if the court decided against B&W, it would not be an "apocalypse."

"It's business as usual at B&W. There is no doubt that the sums involved are colossal and the whole case is extremely taxing and made worse by the fact it is the first time we have been in this situation. If it were to go against us, I don't believe it would be an apocalypse. We have the insurance coverage," said Mr. Ferguson.

"This is yet another instance of what has turned out to be a bad investment decision, where the investor is now attempting to recoup his losses from his (advisers). We have satisfied ourselves that our work was not negligent and we will defend the action vigorously," said Ernst & Young before the trial.

In another pretrial statement, Swiss Bank denied "that its advice was deficient in any way." BI

## Insolvency

*Continued from previous page*

according to Best's Insurance Reports International. At the beginning of 1992, the group of companies had a policyholder surplus of $139.3 million, according to Best's.

Finnish regulators would not disclose the amounts by which the companies are insolvent.

Policyholders in Kansa Pension will be fully compensated through a national guaranty system, the Insurance Department official said.

Life policyholders will have to wait for partial compensation until the exact amount of the company's liabilities is worked out. "We first have to know what is the value of the real estate" investments, he said, adding that it was unlikely that life policyholders would be compensated in full.

Regulators cite two key reason for the Kansa failures:

- The insurers had invested heavily in Finnish real estate, and the value of that real estate since has dropped, the Insurance Department official said.
- Finland has been in an overall economic recession since the late 1980s. The former Soviet Union had been Finland's chief trading partner.

When trade collapsed between the countries, Finland's economy entered a recession and Cooperative Eka Corp. was no longer able to subsidize the losses of the Kansa insurers, the Insurance Department official said.

According to Mike Wheelhouse, insurance analyst at Nomura International in London, another problem with the Finnish insurance market is the market's inexperience with international competition, which it now faces as a new member of the European Union. BI



## Business Insurance Circulation Breakdown

*Commercial Consumers*

| | |
|---|---|
| **Administrative:** | |
| CEO's, Presidents, and Owners, | 2,528 |
| Vice Presidents, General Managers and Other Administrative Personnel | 4,118 |
| **Financial:** | |
| Chief Financial Officers and Vice Presidents of Finance | 2,171 |
| Secretaries, Treasurers, controllers and other Financial Personnel | 3,335 |
| **Risk/Employee Benefits:** | |
| Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations | 16,157 |
| **Sub-total** | **28,309** |
| Associations | 369 |
| Government, Unions and Educational Institutions | 974 |
| **Commercial Consumers Sub-total** | **29,652** |
| Insurance Agents and Brokers | 8,408 |
| Insurance Companies | 8,181 |
| Accountants, Actuaries, Attorneys & Consultants | 3,611 |
| Managers & Health Care Providers | 1,903 |
| Others Allied to the Field | 849 |
| **TOTAL** | **52,604** |

★ *Source Business/Occupational breakdown of qualified circulation, May 30, 1994 Issue, as submitted to BPA for June 1994 BPA Publisher's Statement*

INTERNATIONAL

# Vietnam

Continued from page 17

1,500 words and expressions that are of specific use to business.

Mr. Abadie also traveled to Vietnam seven times since 1988, each time trying to learn about the culture and business climate in Vietnam.

The risk manager hoped that if the transfer came, he could serve Hoechst as well in Vietnam as he did in New Jersey, where he administered a U.S. insurance program that generated $75 million in premium annually.

Unfortunately, Hoechst and Mr. Abadie came to the conclusion that there would be no transfer in the immediate future.

"Roussel, Hoechst's Vietnamese unit, didn't sense an immediate opportunity," said Mr. Abadie. "I then began to concentrate on opportunities outside the company.

"I even considered going outside the industry. But (early last year) I was told that Jardine Insurance Brokers had started a Ho Chi Minh City operation and since we used Jardine quite a bit, I thought I'd approach them," Mr. Abadie said.

He first prepared a letter of interest explaining why he wanted to move to Vietnam and why he would be of value to Jardine's office there.

That letter apparently raised some interest.

After he met with David Batchelor, president and chief executive officer of Jardine Insurance Brokers Inc., in San Francisco last August, Mr. Abadie toured Hong Kong, Hanoi and Ho Chi Minh City with Jardine personnel several months later.

Shortly thereafter, he was offered the job in Vietnam.

"What struck me about Mike was his empathy for the culture and his linguistic capabilities. For us, these are key because quite a lot of business there is indigenous, as opposed to just servicing (English-speaking) multinationals," said Mr. Batchelor, who ran Jardine's Asian operations for nearly 10 years prior to assuming his domestic position.

In Vietnam, Mr. Abadie will work with James Whitelaw, a native of Scotland, who is Jardine's manager there but doesn't speak Vietnamese fluently.

"With an expatriate manager, it's imperative that we have someone there who can communicate with the local people and staff," said the Jardine CEO. "Mike's competence in Vietnamese will help.

"We knew of Mike from his days at Hoechst. Their risk manager had let us know that Mike was keen on working in Vietnam, so we looked into it. He seems very excited about the job there and we're looking for him and the office to succeed," Mr. Batchelor said.

Mr. Abadie started as an account representative in Ho Chi Minh City on Jan. 16, where his three basic responsibilities are: servicing Jardine's existing clients; working with the state-owned insurance company, Bao Viet; and procuring new business for the broker.

**'What struck me about Mike was his empathy for the culture and his linguistic capabilities. For us, these are key,' says Jardine CEO David Batchelor.**

His insurance knowledge, combined with an intimate familiarity with the Vietnamese language and culture gained through traveling to Vietnam and years of hosting many of his wife's family members at their home in New Jersey, will help him get started and eventually prosper, he said.

Of Jardine's existing business, the Saigon Omni Hotel may be the broker's flagship account. Carlsberg A/S, a Danish beer company, is building a brewery that Jardine will service, "and there are many smaller clients" to serve, Mr. Abadie said.

His language capabilities should make him a natural to interact with Bao Viet. For example, how many non-natives know that in Vietnamese there are nine pronunciations of the three-letter word *ban*, depending on where you place the accent, with separate meanings including "to shoot," "a friend," "dirty" and "indigent"?

"Our goal is to provide them with insight on how the American insurance system runs. With that, they can hopefully become more efficient," he said.

And, new business should be plentiful since the U.S. government lifted the longstanding trade embargo with Vietnam in February 1994.

"The growth and building that's occurring there is amazing and exciting. Every time I went there, the level of growth was one step higher, and now with the sanctions lifted, the possibilities are endless," Mr. Abadie said. "Three years ago, that country was at the bottom rung of the economic growth ladder. Despite the fact that they are a hard-working people by nature, the embargo was a huge constraint. Now, the government wants growth. The sense of freedom to do business and come and go as one pleases is tremendous. It's a great time to enter the country."

Does a switch in careers at age 40 worry Mr. Abadie, who for the past decade has held a premier position in corporate risk management?

"There is a risk in changing careers and leaving the country, but we're looking at it as a long-term move. It has been my goal to live and work here for a long time, and this is a perfect opportunity to go exactly where I want and to stay working in a field I know.

"The greatest risk is that the potential for growth stops, but I'm not losing sleep over it. If it doesn't work out, I'll come back or try something else there," he said.

And the financial incentives make the move all the more attractive, he noted.

"Financially, it's about equivalent," he said of the compensation and benefit package he's getting at Jardine in Vietnam vs. the one he left behind at Hoechst Celanese. "But by Vietnamese standards, (the money he's making) is truckloads."

Culturally, he said at this point in his life there are no comparisons between Vietnam and the Northeastern United States.

"I grew up in New York City and was living in New Jersey. We can come back," said the current Ho Chi Minh City resident.

"But over there, the local people are fascinating and fun. They're so cheery, even the poor," he said. "And there's a growing expatriate community made up of people with some incredible stories to tell." BI

# Sphere Drake, Transatlantic captive deal

By GAVIN SOUTER

HAMILTON, Bermuda—Sphere Drake Underwriting Management (Bermuda) Ltd. is hoping a new arrangement with Transatlantic Holdings Inc. will enable it to reinsure more U.S.-domiciled captives.

The Bermuda-based captive reinsurance specialist is also increasing its capacity by $2 million to $5 million for all captive liability business, said Jonathan Crawley, president of Sphere Drake Underwriting.

The arrangement with Transatlantic Re will place Sphere Drake Underwriting on "a level playing field" with U.S. reinsurers, he said.

"The arrangement we have entered into enables us to offer Transatlantic Re paper on programs where captives and risk retention groups are domiciled in the U.S.," Mr. Crawley said.

Under U.S. regulations, U.S.-domiciled reinsurers can more easily cover domestic business than foreign reinsurers can.

Under the arrangement, Transatlantic Re and Sphere Drake Underwriting will share the liability and the premium will be shared on a proportional basis, Mr. Crawley said.

Sphere Drake Underwriting specializes in reinsuring small and medium-sized captives and risk retention groups and currently derives about 20% of its business from the United States.

New York-based Transatlantic Re would not comment on the arrangement.

Sphere Drake Underwriting is also increasing its capacity to $5 million for casualty business. When Sphere Drake Underwriting started in 1990 it offered $1 million in capacity, which was increased to $2 million in 1992 and to $3 million in 1993. The reinsurer's property capacity remains at $2 million.

Gross written premium income has also increased, rising 50% to $68 million last year from $45.2 million in 1993. The company aims to write $90 million in premiums in 1995, Mr. Crawley said.

The increase in capacity was made to maintain its ratio of premium-to-capacity, he said.

Over the past year, Sphere Drake Underwriting has also increased its underwriting staff.

Eric Keen, a casualty actuary, joined the company from KPMG Peat Marwick in Bermuda and Derek Ratteray, a former vp-underwriting at Belvedere Insurance Co. Ltd. in Bermuda, also joined as an underwriter.

Former claims consultant Ian Sawden also joined the company to head up its claims department, Mr. Crawley said. BI

## Safety training reduces fatalities

TORONTO—An increase in certified health and safety representatives among Ontario employers helped cut workplace fatalities in the province by 24% last year, according to Labour Minister Shirley Coppen.

Workplace fatalities in the province dropped to 41 in 1994, down 24% from 54 deaths in 1993.

The 1994 figure is more than 40% lower than the 71 workplace fatalities in 1992.

A huge increase in the number of people enrolling in a safety training program run by the province's Workplace Health and Safety Agency has helped eliminate safety risks, according to Ms. Coppen.

A spokesman for the Workplace Health and Safety Agency noted that 18,057 people completed the safety program in 1994, compared with 3,041 in 1993.

*—By Gavin Souter*

## Gerling sets sights on global expansion

COLOGNE, Germany—Gerling Konzern Versicherungs Beteiligungs A.G. has launched a major drive to expand its global presence.

Citing plans to raise 1995 gross premium volume by 10.9%, Adolf Kracht, chairman of the Gerling board, sees the Cologne-based industrial insurer increasing its presence in foreign markets substantially this year.

By acquiring or launching life/health or property/casualty companies in Eastern Europe, Australia and Sweden, Gerling expects to expand foreign business to more than 50% from 40% of its total book.

Last year, Gerling's group gross written premium volume reached 13.5 billion deutsche marks ($8.71 million), up 13% from 12.8 billion deutsche marks ($7.37 billion) in 1993. Gerling's aftertax group profits in 1994 rose 1.5% to 68.7 million deutsche marks ($44.3 million).

Gerling plans to increase its commercial lines business to become a leader in Europe, Mr. Kracht said. On other fronts, the German insurer is applying for business licenses in Argentina, Chile and Colombia, and is planning an office in China. Mr. Kracht said a capital increase will be needed to finance expansion.

Despite major 1994 claims, which burdened results, Gerling is becoming more flexible about rates and conditions, he said. Also last year, German insurers lost several major clients to foreign insurers.

By applying alternative forms of rate calculation, including highly protected risk concepts, Mr. Kracht said Gerling will rally to meet foreign competition.

Gerling also plans to introduce a commercial all-risks policy and will step up environmental liability consulting in the public sector, particularly in energy production.

*—By Don Lewis Kirk*

# Defense

*Continued from page 3*

important. If it is the beginning of a wave of litigation, the lawyer employed will likely stay with the case for several trials and will need to act as coordinating counsel, he said.

Outside lawyers should be skilled in communicating with in-house company lawyers, according to Mr. Schwartz.

"We need to know on virtually a day-to-day basis what is going on. If they don't return calls, they are no good to you," he said.

In addition to regular phone calls, in-house lawyers need regular status reports and early and realistic appraisals of the chance of winning cases.

"I've had experiences where at the beginning we're told early on the case is defendable and this goes on for years. Thousands, and sometimes millions of dollars are being spent, and just before the trial we receive a letter (from the lawyer) saying 'uh oh,'" Mr. Schwartz said.

Instead, risk managers should look for lawyers who are able at the outset to review a case and give a good assessment as to whether it is worth defending for several years, he said.

Size should not be the determining factor when selecting a law firm. Smaller firms that can "get the job done" are just as good as large firms that are likely to charge significantly more, Mr. Schwartz said.

"Size does not necessarily mean quality, but size does mean expense," he said.

When it finally comes to selecting a lawyer, let personal experience be the guide, advises Mr. Schwartz.

Risk managers or in-house counsel that lack experience should solicit advice from colleagues.

Risk managers and in-house counsel can also lock to their brokers for advice, said Dennis R. Connclly, principal and senior vp at Johnson & Higgins in New York.

"For example, in a toxic tort case we can give you a list of all the major law firms and their characteristics and you can choose," he said.

And brokers can be used to communicate in disputes with insurers.

"Brokers have a friendlier relationship with carriers than some lawyers do," he said.

Once a law firm is selected it should be closely monitored, said David Simon, vp and general counsel for the Federated Organization of Jewish Philanthropies, which provides risk management services for hospitals in New York.

"Monitor everything and be involved," he advised.

From the outset, for instance, a company should reach an agreement explaining fees and when they can be increased. And if an insurer is covering the case, the fees should be acceptable to it as well.

"Our contract says that the fees that are in the contract cannot be increased without my written consent," he said.

**Risk managers should look for lawyers who are able at the outset to review a case and give a good assessment as to whether it is worth defending for several years.**

Risk managers also should get a commitment from the selected law firm on which individuals are going to do most of the work on the case.

This helps to prevent important tasks from going to the least experienced associates and less important ones to senior partners who charge the most for their time, Mr. Simon said.

"Get them to agree in writing what tasks will be done by whom," he said.

In fact, an agreement that covers all billings, including what will be charged for faxes, secretarial overtime, travel and meals, should be worked out in advance, he advised.

"Establish what you will and won't pay for and put it in a written contract," Mr. Simon suggested.

And, billing codes that enable companies to see in detail how much work is being done should be used to help companies monitor what they are paying for, Mr. Simon said.

"If they say they did 15 hours of legal research, ask to see what they did it for. It helps you to assess quality as well as costs," he said.

Lawyers also should justify their actions in advance, Mr. Simon said.

"Prevent expensive motions that are unlikely to be successful by getting them to justify them in advance," he said.

However, companies should be prepared to pay for good lawyers if their existence is at stake, said Mr. Connolly of J&H.

For example, Dow Corning Corp. in Midland, Mich., a client of J&H, paid $205 million in defense costs to settle litigation with women who alleged that they were injured by defective silicone breast implants, according to Mr. Connolly.

Dow Corning officials could not be reached for comment.

"I think that was well spent, but you may want to think about that. You might be engaging a lawyer for $205 million," Mr. Connolly said. BI

## GLOBAL BRIEFS

# Floods

*Continued from page 17*

fund, which is administered by insurers and supported by a premium tax on non-life policies. Businesses that file claims to the fund must pay a minimum deductible of 4,500 francs ($858) or 10%, whichever is greater.

With more rainfall also expected in Germany as of last week, flooding there could become disastrous, observers say.

Estimates of insured losses were not immediately available and it was not known whether Germany's federal and state governments would repeat the emergency aid package enacted during the 1993 flooding.

In 1993, more than 500 communities along the Sauer, Saar, Mosel and Rhine rivers were damaged by floodwaters, despite attempts to contain the water level with sandbags.

Gerhard Berz, a meteorologist at Munich Reinsurance Co. in Munich, said Europe is experiencing a shift in climate that is producing rain in the winter and dry periods during the summer.

"This is evidence of global warming. As the climate warms, we get exactly this effect," he said.

"Unfortunately, there is very little that can be done about a situation like this," Mr. Berz said.

*—By Digby Larner and Don Lewis Kirk*

## Rates may stay up

Marine and aviation underwriters may choose to keep rates at the high levels of the past several years following the Japanese earthquake earlier this month, the chairman of the Institute of London Underwriters said.

Although aviation, cargo, hull and energy rates are generally easing, there were some increases even before the quake, noted Len Campbell, chairman of the ILU and director of Royal Insurance (Global) Ltd. "We still get rises depending on the short-term or long-term experience" of an individual policyholder.

Following the Kobe earthquake, however, marine underwriters will realize the potential losses they could suffer and may choose to keep rates high, he noted. "The idea of rates peaking suggests that they are about to go down. And I don't necessarily accept that this time around. Too many people have gone out of business and lost their jobs."

Mr. Campbell's message followed the ILU's annual meeting last week where he warned members: "Marine underwriting is not and should not be regarded as a tripartite competition between the insured, broker and underwriter, in which each seeks to pull the wool over the other's eyes. It is about, or should be about, the underwriter receiving a fair price for his exposure, the insured receiving a secure policy for his premium, and the broker exercising his skills in bringing those two parties together to their mutual satisfaction."

The ILU, like the rest of the London market, has gone through turbulent times in the past five years. Corporate membership has dropped to 65 from 74 last year and a high of 117 five years ago.

Gross premiums for the 74 ILU members at year-end 1994 totaled £2.1 billion ($3.28 billion), down from £2.4 billion ($3.55 billion) in 1993. Gross claims for the existing members and those in runoff totaled £3.1 billion ($4.85 billion), down from £4.2 billion ($6.21 billion) in 1993. These grim results are better than the loss ratio of 198% in 1992, when gross claims of £5.1 billion ($7.7 billion) were almost double gross premiums of £2.6 billion ($3.9 billion).

Marine losses worldwide were severe last year, as lives lost at sea rose sharply to 1,463 from 613 in 1993, according to ILU's 1994 annual report. The ILU says those marine losses include:

- The passenger ferry Estonia, whose sinking killed more than 900 people (*BI*, Oct. 3, 1993). Her insured hull and machinery value totaled $60 million with significant cargo and liability losses.
- The passenger ferry Achille Lauro (*BI*, Dec. 5, 1994), with a hull and machinery value of $17.5 million.
- The car carrier Magnolia Ace (*BI*, Nov. 28, 1994), with a hull value of $15 million and the loss of 4,600 cars totaling $57 million.
- The tankers Stolidi and Burak, each with a value of $15 million.

Last year's 22 losses on Western-built aircraft totaled $2.2 billion, the ILU said. General aviation claims also soared, including the $100 million in refueling liability claims from light aircraft engines damaged by jet fuel inadvertently mixed by Chevron Corp. And satellite losses amounted to $770 million, the ILU said.

*—By Stacy Shapiro*

# Quake

*Continued from page 1*

quake Fire Expense Pool; and another ¥50 billion for marine losses.

Insured losses on commercial property could be as low as $250 million, sources at Lloyd's of London estimated. Preliminary figures may be understated, though, because loss adjuster reports are not yet available from the devastated area.

In addition, as the 1994 Northridge earthquake showed, earthquake insurance losses tend to grow over time as losses are uncovered (see chart).

Insured marine losses at Kobe's ravaged port could be severe. Official estimates put the damage at ¥940 billion ($9.45 billion). Much of the government-owned infrastructure is uninsured, but international shipping companies and manufacturers that leased warehouses and major terminals may be insured, said Mitseu Kishimoto, the port's representative in London. Much of that coverage is placed outside the Japanese market.

Cargo losses could be immense, totaling $400 million to $500 million. Kobe is Japan's largest container port and is used for imports, exports and as a stopping point between destinations.

One London underwriter estimated that quake losses for the London marine market could be larger than the $1.4 billion Piper Alpha platform explosion in 1988.

"Marine underwriters are wearing much longer faces than non-marine underwriters," said John Wetherell, a non-marine underwriter at Lloyd's.

Outside Japan, risk managers also are considering filing business interruption claims for the failure of components to reach their factories.

Several British firms, for example, have contacted a loss adjuster because some component parts could not be shipped from Kobe.

"All the numbers quoted are about physical damages in Osaka and Kobe, but I'm not sure underwriters have thought about the claims on suppliers extension cover" in business interruption policies, said the adjuster. "No one has considered the (insured) values there."

Nobody, in fact, has a true picture of total insured losses because loss adjusters have not been able to examine the damage, said the loss adjuster, who has colleagues in Japan waiting to get into the Kobe region. "We can't go in to look yet (so) we can't tell what the damages are," he said. "But it is massive and it is serious."

"We believe it is absolutely impossible to say anything at this stage," added Fedor Nierhaus, a member of the board of management of Munich Reinsurance Co. in Munich, Germany. "The Japanese insurers can't tell us anything. The Japanese economy doesn't know. The (region) has no gas or electricity. Anybody who says how much it will cost him is taking numbers out of the air."

"Information to date, at this very early stage, is extremely unreliable and numbers are being talked about which would appear to be snatched from the air and not based on facts," a Lloyd's non-marine underwriter said.

Losses will not be easy to assess. Adjusters are finding few accommodations available in the affected region. Roads, railways and bridges are badly damaged and officials at the moment are concentrating more on helping the injured and homeless.

Individual insurers know little about their total losses. Of the more than 20 insurers licensed by the Japanese Ministry of Finance, only one of the smaller ones had released loss projections as of last week. Nissan Fire & Marine Insurance Ltd. estimates its losses at ¥1 billion ($10.1 million).

The Tokio Marine & Fire Insurance Co. Ltd., Japan's largest insurer, could be hardest hit because it writes 16% of Zone 8's homeowners coverage and a significant portion of marine policies. A Tokio Marine spokesman said it is too early to estimate the company's losses.

Tokio Marine's Kobe office was partially damaged and is now closed, but other offices in Zone 8 are open, he said. No employees were killed in the quake though some were injured and some lost relatives.

## Largest insured quake losses since 1960

| | |
|---|---|
| **1994 Northridge, Calif.** 6.9 Richter | **$10.4 bil.** |
| **1989 San Francisco** 6.9 Richter | **$900 mil.** |
| **1989 Newcastle, Australia** 5.5 Richter | **$870 mil.** |
| **1985 Mexico City** 8.1 Richter | **$275 mil.** |
| **1987 Bay of Plenty, New Zealand** 6.3 Richter | **$270 mil.** |
| **1990 Luzon, Philippines** 7.7 Richter | **$200 mil.** |
| **1990 Manjil, Iran** 7.7 Richter | **$100 mil.** |
| **1972 Managua, Nicaragua** 6.2 Richter | **$100 mil.** |
| **1985 Valparaiso, Chile** 7.8 Richter | **$80 mil.** |
| **1986 San Salvador, El Salvador** 5.5 Richter | **$75 mil.** |

Sources: Munich Reinsurance Co.; World Almanac

GRAPHIC BY MIKE GARVEY

Chubb Corp. does not expect major losses, said Taro Kiriyama, underwriting manager in Tokyo.

Winterthur Swiss Insurance Co. estimated its overall claims at Swf20 million to Swf25 million ($15.6 million to $19.6 million).

Marine and business interruption claims could be particularly high in the Port of Kobe, where 13% of Japan's exports and 11% of its imports flow. The port is one of the world's largest "transhipment" areas, where cargo is moved from one ship to another for ongoing voyages. Kobe also is Japan's largest and most modern container terminal. Thousands of ships were anchored in the harbor waiting to discharge cargo at the time of the quake.

Reports to London underwriters say that liquefaction of the sea bed has caused two manmade islands in the port to sink by up to 10 feet in places. Shipyards—including the large Mitsubishi Heavy Industries and Kawasaki Heavy Industries yards—have

KOBE QUAKE

sustained damage. Restraining walls have cracked and cranes, some insured for tens of millions of dollars, have collapsed.

A container vessel under construction by Mitsubishi for Royal Nedlloyd Groep N.V. of Amsterdam was damaged when two cranes collapsed on it, Nedlloyd said. Another nearly completed vessel suffered minor damage.

**One London underwriter estimated that quake losses for the London marine market could be larger than the $1.4 billion Piper Alpha platform explosion in 1988.**

All commercial container terminals in the area, meanwhile, are out of operation.

Among the cargo that brokers say is stored there or waiting to be shipped are: manufactured goods, motorbikes, automobiles, electronics, food, liquor, tobacco and refrigerated cargo such as kiwi fruit and fish.

An account heard from several market sources has a warehouse full of whiskey surviving the quake, but when loss adjusters decided to turn on the light to check the goods, the whole area blew up because of a gas leak. Insurers believe the loss is $24 million. It was not known how many people died in the blast.

Marine insurers are still trying to determine the extent of insured losses.

"Current estimates to the marine market in London are that the loss will be of the same magnitude as (the $1.4 billion) Piper Alpha," said one Lloyd's marine broker.

But leading Lloyd's marine underwriter Elvin Patrick disagreed. "The real loss looks to be in the cargo area, but no one knows," he said.

About 100,000 cargo containers pass through Kobe annually, each with an insured value of $30,000 to $50,000. If, for example, there were 8,000 containers in Kobe at the moment and each cost a maximum of $50,000, then the total cargo loss couldn't be more than $400 million, Mr. Patrick said.

"We're more pessimistic than most," he said. With the islands sinking, vessels won't be able to get into Kobe for months to pick up the containers. "So anything that can (rot) in those containers will."

"It's just too early for cargo information," added Len Campbell, chairman of the Institute of London Underwriters and director of Royal Insurance (Global) Ltd. "Kobe will have a material effect, simply by reminding people what is possible, not necessarily because it is a huge claim."

Similarly, Michael Harding, ILU cargo chairman and assistant marine underwriter for Eagle Star Reinsurance Co. Ltd., said the loss of warehouses and refrigeration units will generate sizable losses. But, he added, "we will have to wait and see what loss adjusters find."

Not all the cargo will be insured for quake, marine underwriters add. If the cargo was being exported, then it would be covered by Japanese "inland and coastal" cargo policies, which exclude earthquake. If cargo was being imported and had not been signed off by the shippers, then the cargo could be insured by non-Japanese "ocean" cargo policies containing the ILU cargo clauses, which cover earthquake.

If the cargo was waiting to be picked up for another destination, it also would be covered under ocean policies that include quake.

The key question for marine insurers will be which of the two types of cargo policy applies, Mr. Harding said.

Marine insurers also may be liable to pay extra expenses incurred to reroute some shipments that are waiting outside Kobe to be unloaded and now have to sail to other ports like Tokyo to unload.

Meanwhile, cargo owners and shipowners who planned to sail to Kobe must notify underwriters if they are sailing to other ports or else the cargo may not be covered, noted Ron Backhouse, chairman of the ILU and Lloyd's claims adjusters committee and marine claims manager for Sun Alliance Insurance International Ltd.

The ILU cargo clauses state that if, "owing to circumstances beyond the control of the assured," the shipment of cargo is terminated before the goods are delivered, the insurance coverage also terminates "unless prompt notice is given to underwriters." If underwriters are notified, the cargo coverage can be extended for another 60 days. Additional premiums may be charged, however, subject to individual policy terms.

Marine insurers in the United States expect much of the Kobe cargo loss to remain within the Japanese market.

"We have not been notified of any claims to date," said Arthur E. Moossmann, senior vp in the marine division of GRE Insurance Group in New York. "Although some claims probably will be made, the losses likely will not be significant, he said.

Most marine cargo risks will be covered by Japanese insurers, said James Zrebiec, chairman of International Marine Underwriters, a unit of Commercial Union P.L.C. in New York.

Large Japanese importers and exporters have business relationships with domestic insurers, so much of the cargo coverage is placed in Japan, he said.

"Often the large trading companies in Japan insist on arranging the insurance and often they have an insurer as part of their group who will cover the cargo business," Mr. Zrebiec said.

Some marine losses from the Kobe quake will be filed with U.S. insurers but "I don't think its going to be crippling in the same way that Hurricane Andrew was," said Thomas J. Prendergast, chairman and president of Marine Office of America Corp. in Cranbury, N.J.

"Most of the export market in Japan is covered in the Japanese market and then reinsured to London," he said. "We'll probably end up with a net loss but I don't think it will be painful."

What the earthquake will do to Japanese insurance companies' April 1 reinsurance renewals, however, is anyone's guess.

The renewals are "on hold" and it will be a few weeks yet before negotiations begin, said one Lloyd's underwriter. Reinsurers already planned to argue that the Japanese wind risk is underpriced, he said. The price for quake also should go up on excess-of-loss reinsurance policies, but the Japanese insurers may ask for a reduction in wind rates if the quake rates increase, the underwriter said.

Ron M. Matthews, a regional vp in Tokyo with American International Group Inc., said he expects reinsurers to push for more stringent building codes at renewals. He predicted an increase in demand for earthquake insurance but said there would never be sufficient capacity.

It is not clear when earthquake losses will increase Japanese property insurance prices, which are largely regulated by the government.

Already, the Ministry of Finance has broadened the scope of coverage in homeowners policies, a move that worries reinsurers. Windstorm is now fully covered under the policies, though earthquake is only covered under an extension that is limited and reinsured into the Japan Earthquake Reinsurance Co.

As of Feb. 1, the government's homeowners insurance premium tariff increases an average of 5% for the first time since 1948 to help pay for the $5 billion in insured losses from Typhoon Mireille in 1990.

The government also moved up from Feb. 1 its decision to allow homeowners to buy their earthquake extensions at any time during the policy period instead of only at renewal. Many policyholders were calling insurers to get these extensions last week.

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*Carolyn Aldred, Adrian Ladbury and Gavin Souter contributed to this story.*

## 1994 sees near-record cat losses

RAHWAY, N.J.—An estimated $14.9 billion in insured catastrophe-related property damage made 1994 one of the costliest catastrophe years on record, second only to 1992, when Hurricane Andrew hammered Florida, according to the Property Claim Services division of the American Insurance Services Group Inc.

1995 has gotten off to a rough start as well, with January's wind and rainstorms causing an estimated $360 million in insured property damage in California alone and an additional $110 million in insured property damage from the same storm system elsewhere on the Pacific and Gulf coasts, PCS said.

PCS released its 1994 estimate last week in conjunction with its estimate of catastrophe-related insured property damage for the fourth quarter of 1994, which stood at $820 million.

There were 38 catastrophes in 1994, according to PCS. Much of the year's near-record total is attributed to the Jan. 17, 1994, Northridge earthquake that ravaged sections of Los Angeles, causing an estimated $10.4 billion in insured property damage (*BI*, Jan. 16; Jan. 17, 1994).

1992, the year of Hurricane Andrew, registered total insured property losses of $22.9 billion.

# Companies aiding workers, starting to assess damage

**By ROBERTO CENICEROS**

KOBE QUAKE

KOBE, Japan—As details emerge about damage to North American firms operating in Japan, some risk managers breathe easier knowing company employees survived with minimum injuries, while others are still taking stock and wondering whether business interruption problems might arise from the massive Kobe disaster.

"We really feel we are fortunate," said Donald J. Sullivan, director of risk management for Baxter International Inc. of Deerfield, Ill., which has 1,200 workers in Japan, including 100 in Osaka and 10 in Kobe. "Obviously, with the number of people killed and injured, our biggest concern was that our employees were OK and that being in health care, we could continue to supply our product to people who need it."

Mr. Sullivan said that immediately after the Jan. 17 quake, Baxter workers were able to reach the company's facilities and make emergency distributions of medical supplies to clients. The company's offices in Kobe suffered slight damage and a larger facility in Osaka was unharmed.

Other companies were not so fortunate in the amount of damage their facilities sustained.

A factory owned by Procter & Gamble Co. near Kobe that produces diapers and feminine protection pads suffered damage, and the company's technical center and Japanese headquarters on Rokko Island in Kobe had to be evacuated to temporary headquarters in Osaka.

The company also will make interest-free loans to employees with quake losses.

Cincinnati-based P&G announced it will take a $50 million aftertax charge to earnings in the first quarter for costs associated with the earthquake. A P&G spokesman said the company will not recoup any of the $50 million.

The factory is already under repair with partial production expected to resume there in several weeks. The headquarters on Rokko Island could be reoccupied within months.

Throughout the region, underwriters have been notified of very few property losses so far, as loss adjusters still are having difficulty reaching the quake-damaged region.

Companies with losses include:

• Ciba Geigy Japan Ltd., a unit of Ciba Geigy A.G. of Basel, Switzerland, which employs up to 2,000 people in the region. Although there were no serious injuries, the company sustained damage to its office and laboratory complex in Takarazuko.

The extent of damage is not clear, said a spokesman in Basel. One of the buildings in the complex where medical development prior to marketing a product takes place is severely damaged, he said.

However, the damage "will not affect output," he said, though "there is a lot of work to do to bring it back to normal operation."

Insurance market sources believe Ciba Geigy may file a $116 million property claim, but the spokesman would not comment on its claim. Ciba Geigy "is insured for earthquake damage, so it will not have a financial loss," he said.

• The Japanese headquarters for Nestle S.A. "has been damaged quite severely," said a spokesman for the Swiss multinational company. Nestle employs 1,200 people in the Kansai area, including 300 in the head office in Kobe, all of whom are safe.

Essential staff are back at work at alternative Nestle sites in Japan. The company's output, meanwhile, was barely affected, though a factory that produces coffee and coffee creamers suffered slight damage.

However, "it is too early to say whether we shall have difficulties with distribution because of the disruption to infrastructure and the port," said the spokesman.

He would not comment on Nestle's insurance.

• Swedish engineering company Alfa Laval A.B. suffered minor damage to its plant in Kyoto and an office in Osaka, according to Hugh Loader, risk manager for the firm's parent company, Tetra Laval Group, in London. He would not detail losses to other parts of the company, other than to say that the group had not suffered "serious" losses.

• Rothmans International Tobacco (U.K.) Ltd.'s offices were not damaged, though several of its 14 employees in Japan are now homeless. "Our priority is to help our employees and the company is doing its best to help them," said a spokesman. Rothmans' sales office in Kobe "has sustained no material damage."

• Eli Lilly & Co. suffered structural damage and water leakage at its premises in Kobe. Despite those difficulties, the Indianapolis-based pharmaceutical company began shipping products from its distribution center in Seishin, a suburb of Kobe, within days of the earthquake, a spokesman said.

The news isn't so good when it comes to production, though. An adjacent laboratory and pharmaceutical manufacturing facility could be down for three months, the spokesman said.

The building suffered extensive internal damage, including broken pipes and sprinklers that led to water damage and damage to production equipment.

Antibiotics and human growth hormones are manufactured there, but they can be shipped from the United States if supplies in Japan dwindle. Most other Lilly pharmaceuticals distributed in Japan are produced elsewhere.

Lilly also leases two floors of an office building in central Kobe, which serves as the company's Japanese headquarters. Those offices have been moved to Osaka temporarily because the Kobe building has become inaccessible.

Lilly managers took to bicycles, posting notes on employees' doors and contacting shelters to locate all of its 250 Kobe-area employees, which it accomplished about a week after the quake.

Lilly offered employees financial assistance, help in finding shelter and paid out salaries in cash in cases where bank computers were down.

A spokesman for the Tokyo-based American Chamber of Commerce in Japan said it has heard from only two of its 200 member American companies, both of which have sustained structural damage to buildings in the quake zone. But he said neither company gave details about how serious the damage was, nor whether they had insurance.

Other companies in the region either have minor damage, or have not yet been able to assess the extent of quake damage.

Fujisawa Pharmaceutical Co. Ltd., which is based in Osaka, had minor damage to a single facility in the Kobe area, such as broken glass and inventory fallen from shelves, said a spokesman at its Fujisawa USA Inc. unit in Deerfield, Ill.

"Logistically things are still a mess, but as far as the facility was concerned there was no major setback," the spokesman said.

Japanese electronics giant Hitachi Ltd. has not suffered much damage because it had no manufacturing, warehouse or export facilities in the area, said Risk Manager Toshiro Kojima in Tokyo. Hitachi has a branch office in Osaka, which sustained only minor damage, he added. He had not yet checked the insurance policies to see if the minor damage would be covered.

"We're still trying to evaluate" any business interruption losses, said Daniel D. Arndt, director of insurance and international finance for Minnesota Mining & Manufacturing Co. in St. Paul, Minn.

3M had only a sales office in Kobe, though, so he does not anticipate major transportation troubles.

Meanwhile, assessing damage to transportation facilities and infrastructure remains the order of the day for many companies that ship goods to and from Kobe, one of Japan's largest ports.

Penske Corp. of Detroit, which owns several Toyota and Honda auto dealerships in the United States, does not have business interruption insurance should auto shipments become a problem due to the difficulty of parts leaving Japan, said Michael Niehaus, risk manager.

Several Japanese automakers have had difficulty shipping parts but have not halted production.

However, Toyota Motor Sales U.S.A. Inc. in Torrance, Calif., reported the company had a three-week inventory of parts and supplies and that parts manufacturers in Japan that suffered damage are already back in operation. Therefore, the company does not expect any disruption in manufacturing or auto deliveries.

Honda North America Inc., also in Torrance, said its auto facilities in the United States are unaffected.

Ford Motor Co. imports some engines from Mazda Motor Corp. of Hiroshima, as well as electronic parts from other Japanese suppliers.

A spokesman for Ford said the Dearborn, Mich.-based company was forced into making alternative shipping arrangements because of the destruction to Kobe's port. However, the situation is not expected to disrupt manufacturing at Ford's U.S. plants.

William Mather, director-risk management for Gillette Co. in Boston, said his company ships products from Europe into Japan.

"We're still sorting it out," he

*Continued on next page*

## Updates

### Hollywood group suing MTA

LOS ANGELES—A group of Hollywood business and property owners has filed a damage claim against the Los Angeles Metropolitan Transportation Authority, asserting that subway tunneling exacerbated damage caused by the Northridge earthquake.

The claim, filed on behalf of 125 property and business owners along Hollywood Boulevard, further alleges that MTA crews in 1994 "maliciously" caused streets and buildings to sink and crack.

Under state law, an administrative tort claim—a cross between a letter of intent to sue and an actual lawsuit—must be filed against a governmental agency before the agency can be sued in a California court. The MTA has 45 days to respond.

Hollywood Damage Control & Recovery Inc., the group that filed the claim, has said it plans to eventually file a multibillion-dollar lawsuit against the MTA and its contractors (*BI*, Nov. 21, 1994).

### U.S. alleges health scam

DALLAS—The U.S. Department of Labor is suing a self-described employer organization that sold workers compensation and health insurance in 20 states through allegedly phony labor unions it created.

The suit, filed earlier this month in federal court in Dallas, names Arlington, Texas-based Assn. of Trust & Guaranty; ATG President Lawrence D. Kenemore Jr.; Mr. Kenemore's wife, Sherry; and benefit plan trustees Chris Kellum, David Murphree, Pat Postle and Tim Congle (*BI*, Dec. 27, 1993).

The suit charges that Mr. Kenemore used sham unions to market benefit programs while siphoning out more than $1 million in contributions for himself and his wife. The trustees allegedly let Mr. Kenemore manage plan funds without any substantial oversight.

Mr. Kenemore denied the charges, saying he has "absolutely nothing to do with the unions" and that he and his wife have not diverted funds. "If we did, I'd like to know where (the money) is."

None of the plan trustees could be reached.

A federal judge earlier this month issued a temporary restraining order freezing the assets of ATG and the benefit plan and appointing an independent manager to oversee the operations.

### Health care liability reform plea

WASHINGTON—A coalition of health care providers, insurers and related trade groups wants House Speaker Newt Gingrich, R-Ga., to add medical malpractice reform to H.R. 10, the Common Sense Legal Reforms Act of 1995.

In a letter sent to the speaker a few days ago, the Washington-based Health Care Liability Alliance said its members are "extremely concerned" that H.R. 10 does not address health care liability reform.

Thus far, the Republican leadership has not indicated whether health care-related tort reforms might be added to H.R. 10 as an amendment or whether they could be dealt with in a separate bill.

The Health Care Liability Alliance's 27 members include the American Medical Assn. and the Health Insurance Assn. of America.

### Briefly noted

**E.I. du Pont de Nemours & Co. Inc.** said it would appeal a $23.8 million award by a Hawaii state court jury to two Hawaii growers who claimed their crops were damaged by Benlate DF (*BI*, Jan. 23; Dec. 12, 1994)....A federal bankruptcy court last week approved compensation of $4.25 million to Martin Shugrue, a court-appointed trustee who has been liquidating assets of failed **Eastern Airlines Inc.** The compensation will reduce the amount of the Eastern estate and potential recoveries for the Pension Benefit Guaranty Corp., which has a $565 million claim against Eastern for underfunding its pension program....**United HealthCare Corp.** of Minnetonka, Minn., signed a definitive agreement to purchase Group Sales & Service of Puerto Rico Inc., a San Juan-based HMO that serves 135,000 members....The Justice Department has begun looking into possible **anti-competitive practices by life insurers** in the sale of annuities through banks....The Environmental Protection Agency plans to issue rules within the next six months that would limit the **Superfund liability of lenders** that seize contaminated land after loan defaults....Minneapolis-based **The NWNL Cos.** completed its acquisition of United Service Life Insurance Co. (*BI*, Sept. 19, 1994). The aggregate value of the stock-for-stock exchange is $331 million, including $96 million of USLICO's convertible subordinated debt....**Patrick G. Hays**, 53, the former CEO of Sutter Health, a Sacramento, Calif.-based multihospital system, was appointed president and CEO of the Blue Cross & Blue Shield Assn. of Chicago. He succeeds Bernard Tresnowski, who retired last month....Citing strengthened underwriting and reserving, Moody's Investors Service last week upgraded the financial strength rating of the U.S. members of the **Royal Indemnity Co.** intercompany property/casualty pool to A2 from A3. The pool includes Royal Insurance Co. of America and Safeguard Insurance Co....**Mick Newmarch**, group chief executive of Prudential Corp. P.L.C. of London, resigned amid London Stock Exchange investigations into transactions involving his Prudential shares and persistent differences with U.K. regulators....The Illinois House voted 60-55 last week to repeal the **Structural Work Act**, which allows workers to obtain compensation beyond the workers comp system for certain work-related injuries....Keck, Mahin & Cate says it has insurance to cover its settlement of a **securities fraud and conspiracy suit**. In October, a federal jury in Texas found the Chicago law firm and several co-defendants liable for failed investments in more than $72 million in revenue bonds used to finance six private prisons....New Hampshire Deputy Insurance Commissioner **Robert M. Solitro** will join North American Specialty Insurance Co., a Manchester, N.H., unit of Swiss Reinsurance Co., as a senior vp concentrating on operations. The date of his move is uncertain and may be influenced by the department's review of the proposed sale of Home Holdings Inc.

# Quake shows need for better disaster plans

KOBE, Japan—One casualty of the Jan. 17 temblor in Japan is the widely accepted, but apparently overly optimistic, assessment of Japanese earthquake preparedness.

Some 50,000 buildings in or near Kobe, as well as major portions of the area's infrastructure projects, were destroyed or damaged in what was Japan's worst earthquake since 1923.

KOBE QUAKE

Several earthquake and engineering experts say they were surprised at just how vulnerable the critical industrial area was to severe quake damage.

Russell Blong, director of the Natural Hazards Research Center at Macquarie University in Sydney, Australia, said he was surprised at both the lack of earthquake preparedness and the amount of damage sustained in spite of strict building codes after World War II.

Widespread injuries and homelessness have strained the resources of the Japanese government and Mr. Blong said he was surprised that better emergency services were not in place.

The quake also highlighted the number of companies without disaster preparedness plans, Dr. Blong said. "How many companies stored (copies of) their records in another location? Very few, I expect."

Very few companies in the Kobe area probably had sound risk management plans in place, agreed Yasuhiki Ushiba, president of the International Risk Management Society of Japan.

He also criticized the government for not having an adequate risk management plan in place and faulted both government and business for what he called a lack of crisis management.

"I have been stressing the need for total risk management systems in Japan for 10 years, but the tendency here is to lock the door after the horse has been stolen," Mr. Ushiba said.

A more optimistic assessment came from Jack Rynn, research director of the Center for Earthquake Research Australia in Brisbane.

He noted that many modern buildings erected since more stringent construction standards were introduced in Japan survived the Jan. 17 quake, with the worst damage coming in older districts where buildings were constructed mainly of wood.

He added that Japanese engineers were not aiming to make buildings earthquake proof, but aimed to have them sustain minimal damage during a major quake.

"The Japanese are very technologically advanced in developing buildings which will receive minimal damage," said Mr. Rynn, who was a visiting professor at the University of Tokyo last year.

He also criticized speculation that "the big one" could still occur.

"This is bloody massive," Mr. Rynn said of the Kobe quake.

"Earthquakes are a natural phenomenon and there is no way you can predict whether another will happen in 50 years or tomorrow," he said.

"Although statistically a seismologist can say what a possible return period is, you can't use 1,000-year-old statistics for predictions when the world is billions of years old," he said.

—By Kate Tilley

AP/WIDE WORLD

**The collapse of buildings like this one in Kobe are prompting a rethinking of building techniques in Japan.**

# Disruption

*Continued from previous page*

said. "The general manager over there told us he expects business interruption because of infrastructure damage."

However, Mr. Mather said he expects any disruption to be light because the company's inventory stocks are spread around different facilities throughout Japan.

Dave Fisher, risk manager for Mitsubishi Electric America Inc. in Cypress, Calif., said parent company Mitsubishi Electric Corp. of Tokyo suffered damage to some of its facilities, though he was unaware of the extent of those losses.

"Our biggest concern is getting products out of port," he said, though most of Mitsubishi Electric America's supplies and raw materials are available in the United States.

But damages in Japan could create business interruption losses for the U.S. subsidiary in the manufacture of heavy electrical equipment for utility companies, said Mr. Fisher, declining to elaborate.

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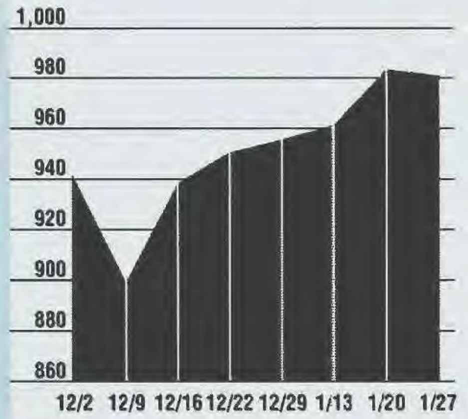
*Sara Marley, Carolyn Aldred, Adrian Ladbury and Kate Tilley contributed to this report.*

## BI Insurance Index




Base=100 on Dec. 29, 1978
Source: Nordby International Inc.

## Catastrophe insurance option call spreads

**As of Jan. 27**

| Call spread | Price bid/ask | Rate on line % | Call spread | Price bid/ask | Rate on line % |
|---|---|---|---|---|---|
| **Eastern September 1995** | | | **Western Annual 1995** | | |
| 45/65 | 5.8/6.1 | 29/30.5 | 20/30 | 0.5/3 | 5/30 |
| 50/70 | 5.3/5.5 | 26.5/27.5 | 30/40 | 0.3/1.8 | 3/18 |
| 60/80 | 4/5.5 | 20/27.5 | 30/50 | 0.5/2.5 | 2.5/12.5 |
| 100c | 8.5/12 | 8.5/12 | 50/70 | 0.6/1.8 | 3/9 |
| 150c | 4/5.5 | 8/11 | 60/80 | 0.3/3.5 | 1.5/17.5 |

**Total volume: 40 Total open interest: 4,857**

For quotes, call the CBOT trading floor at 312-341-3342. For general information, call 312-435-3674.

Source: Chicago Board of Trade

## British Issues

| Jan. 26 Companies | Price pence | P/E* | Div.* pence | Yield % | 1 week high—low |
|---|---|---|---|---|---|
| Comml Union | 506 | 16.[illegible] | 31.0 | 6.1 | 506—473 |
| Genl Accident | 523 | 10.4 | 34.4 | 6.6 | 523—502 |
| Gdn Royal Exch | 173 | 11.1 | 9.5 | 5.5 | 173—161 |
| Independent | 270 | 8.8 | 10.4 | 3.9 | 270—257 |
| Royal | 262 | 11.4 | 9.4 | 3.6 | 262—253 |
| Sun Alliance | 300 | 13.5 | 13.4 | 6.1 | 300—278 |
| **Brokers** | | | | | |
| Bradstock | 97 | 10.9 | 7.1 | 7.3 | 97—97 |
| Fenchurch | 157 | 11.0 | 10.0 | 6.4 | 157—157 |
| CE Heath | 238 | 8.5 | 20.0 | 6.4 | 239—238 |
| JIB Group | 122 | 10.7 | 9.4 | 7.7 | 122—122 |
| Lloyd Thmpson | 148 | 10.3 | 9.8 | 6.6 | 149—147 |
| Lowndes Lmbrt | 147 | 9.2 | 9.4 | 6.4 | 147—147 |
| Nelson Hurst | 175 | 17.2 | 7.0 | 4.0 | 175—175 |
| PWS Holdings | 24 | N/M | 0.8 | 3.3 | 25—24 |
| Sedgwick Grp | 149 | 16.6 | 7.5 | 5.0 | 149—148 |
| Steel Brl Jones | 118 | N/M | 11.3 | 9.6 | 118—118 |
| Willis Corroon | 139 | 12.8 | 8.3 | 6.0 | 142—139 |

Source: Philip Olsen, London    * Latest actual year

# BI Industry Stock Report JAN. 23, 1995, THROUGH JAN. 27, 1995

| | | Price | Weekly % change | Year to date % change | Annual High | Annual Low | Vol.(000) | $ Div. | % Yield | P/E | Book value | Mkt./Bk. value |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **BROKERS** | | | | | | | | | | | | |
| Acordia Inc. | NYS | 31.50 | -2.33 | -5.97 | 33.63 | 23.00 | 17 | 0.60 | 1.90 | 16 | 13.24 | 2.38 |
| Alexander & Alexander | NYS | 20.00 | -1.23 | 8.11 | 22.75 | 14.00 | 302 | 0.10 | 0.50 | -154 | 6.08 | 3.29 |
| E.W. Blanch Holdings Inc. | NYS | 20.88 | -1.18 | 1.21 | 23.00 | 15.75 | 52 | 0.32 | 1.53 | 18 | 4.55 | 4.59 |
| Gallagher Arthur J. & Co. | NYS | 33.00 | 4.76 | 3.13 | 37.13 | 28.13 | 91 | 0.88 | 2.67 | 17 | 6.48 | 5.09 |
| Hilb, Rogal & Hamilton | NYS | 11.25 | 1.12 | -7.22 | 13.38 | 11.00 | 70 | 0.56 | 4.98 | 14 | 4.72 | 2.38 |
| Marsh & McLennan | NYS | 77.88 | 1.14 | -1.74 | 88.75 | 71.25 | 524 | 2.90 | 3.72 | 15 | 19.40 | 4.01 |
| Poe & Brown | NDQ | 20.50 | 0.00 | -5.75 | 22.75 | 17.00 | 5 | 0.48 | 2.34 | 14 | 4.49 | 4.57 |
| BROKERS | AVERAGE | | 0.3 | -1.2 | | | | | 2.5 | -9 | | |
| **INSURERS/REINSURERS** | | | | | | | | | | | | |
| ACE Ltd | NYS | 24.13 | 8.43 | 3.21 | 28.88 | 20.75 | 440 | 0.44 | 1.82 | -8 | 22.45 | 1.07 |
| Acceptance Insurance Cos. | NYS | 16.50 | 3.13 | 10.00 | 18.00 | 11.13 | 173 | 0.00 | 0.00 | 12 | 9.83 | 1.68 |
| AEGON N.V. | NYS | 64.25 | -1.15 | 1.18 | 66.13 | 49.38 | 14 | 2.94 | 4.57 | 11 | 43.84 | 1.47 |
| Aetna Life & Casualty | NYS | 49.50 | 1.02 | 5.04 | 65.75 | 42.25 | 1145 | 2.76 | 5.58 | -7 | 57.21 | 0.87 |
| Allied Group Inc. | NDQ | 24.13 | -4.93 | -2.53 | 31.00 | 22.00 | 107 | 0.60 | 2.49 | 6 | 23.43 | 1.03 |
| Allmerica Prop. & Casualty | NYS | 18.50 | 1.37 | 9.63 | 20.38 | 14.25 | 141 | 0.16 | 0.86 | 11 | 19.45 | 0.95 |
| Allstate Corp | NYS | 23.88 | 0.53 | 0.53 | 28.63 | 22.63 | 1383 | 0.72 | 3.02 | 19 | 19.60 | 1.22 |
| American General | NYS | 29.00 | 0.87 | 2.65 | 30.50 | 24.88 | 1123 | 1.16 | 4.00 | 19 | 20.39 | 1.42 |
| American Heritage Life Ins. | NYS | 18.50 | 0.00 | -2.63 | 19.50 | 16.50 | 31 | 0.66 | 3.57 | 11 | 12.42 | 1.49 |
| American Indemnity/Fin'l | NDQ | 11.75 | 6.82 | 16.05 | 14.50 | 10.00 | 37 | 0.24 | 2.04 | 3 | 15.92 | 0.74 |
| American International | NYS | 105.25 | 5.12 | 7.40 | 105.63 | 81.75 | 3642 | 0.46 | 0.44 | 16 | 49.75 | 2.12 |
| American Re Corp. | NYS | 30.75 | 3.36 | -4.65 | 35.75 | 23.50 | 263 | 0.00 | 0.00 | 16 | 16.85 | 1.82 |
| Aon Corp | NYS | 32.63 | -1.14 | 1.95 | 35.75 | 29.25 | 269 | 1.28 | 3.92 | 11 | 21.96 | 1.49 |
| Argonaut Group | NDQ | 31.00 | 8.77 | 9.73 | 31.75 | 26.25 | 320 | 1.16 | 3.74 | 10 | 29.80 | 1.04 |
| AVEMCO Corp | NYS | 15.38 | -0.81 | 0.00 | 18.25 | 13.38 | 18 | 0.44 | 2.86 | 13 | 6.30 | 2.44 |
| Baldwin & Lyons Inc. | NDQ | 17.63 | 2.17 | 19.49 | 17.63 | 13.75 | 17 | 0.24 | 1.36 | 10 | 13.56 | 1.30 |
| Berkley W.R. Corp. | NDQ | 37.91 | -3.42 | 1.08 | 42.00 | 32.50 | 57 | 0.44 | 1.16 | 23 | 36.47 | 1.04 |
| Berkshire Hathaway Inc. | NYS | 23700.00 | 1.50 | 16.18 | 23950.00 | 15150.00 | 1 | 0.00 | 0.00 | 30 | 9157.79 | 2.59 |
| Capital RE Corporation | NYS | 24.63 | -1.01 | -10.05 | 27.38 | 18.50 | 18 | 0.20 | 0.81 | 12 | 21.48 | 1.15 |
| Capsure Holdings Corp. | NYS | 12.88 | 0.00 | -11.97 | 16.13 | 12.13 | 33 | 0.00 | 0.00 | 13 | 13.72 | 0.94 |
| Chubb Corp. | NYS | 80.00 | 0.16 | 3.39 | 83.13 | 68.63 | 2292 | 1.84 | 2.30 | 13 | 48.40 | 1.65 |
| CIGNA Corp. | NYS | 68.00 | 1.49 | 6.88 | 74.00 | 57.00 | 782 | 3.04 | 4.47 | 9 | 80.98 | 0.84 |
| CNA Financial Corp. | NYS | 68.50 | 1.48 | 5.59 | 82.25 | 60.00 | 51 | 0.00 | 0.00 | 180 | 73.83 | 0.93 |
| Continental Corp. | NYS | 19.13 | 0.66 | 0.66 | 28.50 | 12.00 | 2851 | 0.00 | 0.00 | -3 | 29.69 | 0.64 |
| EMC Insurance Group Inc. | NDQ | 9.88 | -5.95 | 3.95 | 10.75 | 8.50 | 42 | 0.52 | 5.27 | 8 | 10.77 | N.A. |
| Emphesys Financial Gr. Inc. | NYS | 32.13 | 0.39 | 1.18 | 38.50 | 21.25 | 155 | 0.60 | 1.87 | 9 | N.A. | N.A. |
| EXEL Ltd. | NYS | 39.25 | 0.64 | -0.63 | 45.13 | 36.00 | 452 | 1.32 | 3.36 | 15 | 31.62 | 1.24 |
| Fremont General Corp. | NYS | 22.38 | -2.72 | -4.28 | 26.00 | 21.50 | 228 | 0.76 | 3.40 | 6 | 22.90 | 0.98 |
| Frontier Insurance Group | NYS | 23.00 | -0.54 | 5.14 | 37.50 | 16.75 | 48 | 0.48 | 2.09 | 19 | 14.94 | 1.54 |
| Gainsco Inc. | ASE | 8.50 | -1.45 | 3.03 | 9.41 | 7.63 | 52 | 0.04 | 0.47 | 12 | 3.79 | 2.24 |
| General RE Corp. | NYS | 127.50 | 1.90 | 3.24 | 130.88 | 101.75 | 823 | 1.92 | 1.51 | 17 | 57.17 | 2.23 |
| Guaranty National Corp. | NYS | 17.00 | 1.49 | -7.48 | 18.50 | 13.75 | 15 | 0.50 | 2.94 | 11 | 11.84 | 1.44 |
| Harleysville Group | NDQ | 24.31 | -2.26 | 0.26 | 28.50 | 19.75 | 17 | 0.68 | 2.80 | 17 | 20.18 | 1.20 |
| Hartford Steam Boiler | NYS | 42.25 | 0.90 | 5.96 | 53.38 | 35.88 | 178 | 2.20 | 5.21 | 17 | 14.62 | 2.89 |
| HCC Insurance Holdings | NDQ | 23.50 | -3.09 | 11.90 | 24.50 | 15.00 | 33 | 0.00 | 0.00 | 16 | 10.75 | 2.19 |
| Home Holdings Inc. | NYS | 8.38 | -2.90 | -10.67 | 18.25 | 3.00 | 120 | 0.00 | 0.00 | -3 | 22.36 | 0.37 |
| ITT (Hartford Group) | NYS | 89.25 | -1.65 | 0.71 | 95.97 | 77.00 | 1022 | 1.98 | 2.22 | 12 | 49.95 | 1.79 |
| Kemper Corp. | NYS | 44.75 | 3.17 | 18.15 | 65.00 | 35.75 | 3266 | 0.92 | 2.06 | 12 | 28.68 | 1.56 |
| Lincoln National | NYS | 35.75 | 0.00 | 2.14 | 43.88 | 34.63 | 564 | 1.72 | 4.81 | 13 | 31.99 | 1.12 |
| Markel Corp. | NDQ | 42.50 | 3.03 | 2.41 | 44.50 | 37.50 | 37 | 0.00 | 0.00 | 11 | 25.15 | 1.69 |
| Mid Ocean Ltd. | NDQ | 27.75 | 0.91 | 1.83 | 30.50 | 22.25 | 80 | 0.00 | 0.00 | 12 | 20.24 | 1.37 |
| Mutual Risk Mgmt. Ltd. | NYS | 26.00 | 0.97 | -0.95 | 29.00 | 21.13 | 30 | 0.32 | 1.23 | 15 | 9.11 | 2.85 |
| NAC Re Corp. | NDQ | 33.50 | 2.29 | 0.00 | 34.00 | 24.00 | 322 | 0.16 | 0.48 | 17 | 19.75 | 1.70 |
| National Re Corp. | NYS | 27.63 | -3.91 | 5.24 | 31.75 | 22.25 | 172 | 0.16 | 0.58 | 17 | 17.31 | 1.60 |
| Navigators Group | NDQ | 15.25 | 5.17 | 5.17 | 30.50 | 13.75 | 13 | 0.00 | 0.00 | -4 | 10.21 | 1.49 |
| Nobel Insurance Ltd. | NDQ | 8.13 | -0.76 | -1.52 | 8.75 | 7.63 | 19 | 0.20 | 2.46 | 4 | 3.81 | 1.19 |
| NWNL Companies | NYS | 31.75 | 0.40 | 9.48 | 34.50 | 27.00 | 480 | 0.90 | 2.83 | 10 | 24.81 | 1.28 |
| Ohio Casualty Corp. | NDQ | 31.25 | 0.81 | 10.62 | 32.50 | 26.50 | 234 | 1.46 | 4.67 | 11 | 24.63 | 1.27 |
| Old Republic Int'l | NYS | 22.25 | -0.56 | 4.71 | 24.50 | 18.88 | 274 | 0.48 | 2.16 | 8 | 24.60 | 0.90 |
| Orion Capital Corp. | NYS | 35.88 | 3.24 | 1.77 | 35.88 | 28.13 | 52 | 0.80 | 2.23 | 9 | 25.85 | 1.39 |
| Partner Re Holdings Ltd. | NDQ | 19.81 | -0.31 | -4.52 | 22.25 | 18.50 | 1133 | 0.40 | 2.02 | 10 | N.A. | N.A. |
| Penn-America Group Inc. | NDQ | 7.50 | 7.14 | 1.69 | 8.38 | 6.50 | 5 | 0.00 | 0.00 | 10 | 5.21 | 1.21 |
| Phoenix RE Corp. | NDQ | 24.56 | -1.75 | 13.05 | 29.25 | 18.50 | 225 | 0.60 | 2.44 | 5 | 22.85 | 1.07 |
| Provident Life | NYS | 23.25 | -1.06 | 6.90 | 31.88 | 21.50 | 84 | 1.04 | 4.47 | 7 | 27.03 | 0.86 |
| Re Capital Corp. | NDQ | 17.88 | 0.00 | 45.92 | 18.00 | 12.00 | 62 | 0.32 | 1.79 | 14 | 17.63 | 1.01 |
| Reliance Group Holdings | NYS | 5.50 | 0.00 | 6.02 | 7.63 | 4.88 | 225 | 0.32 | 5.82 | 13 | 3.43 | 1.58 |
| RLI Corp. | NYS | 21.25 | 1.19 | 3.66 | 25.50 | 19.88 | 44 | 0.60 | 2.82 | -25 | 20.51 | 1.04 |
| St. Paul Companies | NYS | 46.75 | 2.75 | 4.47 | 47.13 | 37.69 | 888 | 1.50 | 3.21 | 10 | 31.83 | 1.47 |
| SAFECO Corp. | NDQ | 52.25 | 1.21 | 0.48 | 59.75 | 46.75 | 1227 | 1.96 | 3.75 | 11 | 45.91 | 1.14 |
| SCOR U.S. Corp. | NYS | 8.63 | -1.43 | 2.99 | 12.38 | 7.50 | 20 | 0.36 | 4.17 | -39 | 13.60 | 0.63 |
| Seibels Bruce Group | NDQ | 2.69 | 0.00 | 7.50 | 3.50 | 1.25 | 28 | 0.00 | 0.00 | 11 | 1.05 | 2.56 |
| Selective Ins. Group | NDQ | 26.06 | -2.57 | 3.22 | 29.50 | 23.00 | 51 | 1.12 | 4.30 | 10 | 23.33 | 1.12 |
| Sphere Drake Holdings | NYS | 13.75 | 0.92 | -0.90 | 17.88 | 10.75 | 85 | 0.16 | 1.16 | 6 | 13.15 | 1.05 |
| TIG Holdings | NYS | 20.00 | 1.27 | 6.67 | 22.00 | 17.00 | 706 | 0.20 | 1.00 | 25 | 17.25 | 1.16 |
| Titan Holdings, Inc. | NYS | 9.88 | 1.28 | 1.28 | 11.38 | 7.75 | 35 | 0.28 | 2.84 | 8 | 9.31 | 1.06 |
| Tokio Marine & Fire | NDQ | 52.63 | -3.86 | 13.37 | 66.00 | 52.50 | 10 | 0.41 | 0.77 | 46 | 57.72 | 0.91 |
| Torchmark Corp. | NYS | 39.13 | 5.03 | 13.41 | 49.50 | 32.38 | 608 | 1.12 | 2.86 | 10 | 17.43 | 2.24 |
| Transatlantic Holdings | NYS | 54.75 | -0.23 | -2.01 | 57.38 | 45.38 | 42 | 0.40 | 0.73 | 13 | 32.43 | 1.69 |
| Transnational Re Corp. | NDQ | 19.81 | -2.16 | 15.69 | 26.50 | 17.25 | 287 | 0.00 | 0.00 | 9 | N.A. | N.A. |
| Travelers Corp. | NYS | 36.25 | 5.07 | 11.97 | 43.13 | 30.38 | 3366 | 0.80 | 2.21 | 9 | 24.25 | 1.49 |
| Trenwick Group Inc. | NDQ | 41.63 | -0.30 | -1.77 | 43.88 | 33.25 | 10 | 1.00 | 2.40 | 14 | 29.20 | 1.43 |
| United Fire & Casualty | NDQ | 28.00 | 4.67 | 1.20 | 29.81 | 24.00 | 1 | 0.80 | 2.86 | 10 | 28.95 | 0.97 |
| Unitrin | NDQ | 46.75 | 1.63 | 8.72 | 51.50 | 38.50 | 5685 | 1.60 | 3.42 | 16 | 38.64 | 1.21 |
| UNUM Corp. | NYS | 42.88 | 2.06 | 13.58 | 58.00 | 35.13 | 842 | 0.96 | 2.24 | 18 | 27.73 | 1.54 |
| US Facilities Corp. | NDQ | 11.50 | 8.24 | 15.00 | 14.63 | 8.25 | 536 | 0.00 | 0.00 | 14 | 11.07 | 1.04 |
| USF&G Corp. | NYS | 14.88 | -1.65 | 10.19 | 16.13 | 11.69 | 1752 | 0.20 | 1.34 | 7 | 10.04 | 1.48 |
| USLIFE Corp. | NYS | 34.75 | -0.71 | -0.36 | 41.38 | 30.88 | 64 | 1.32 | 3.80 | 8 | 40.82 | 0.85 |
| Washington National | NYS | 19.63 | -1.26 | 3.29 | 25.38 | 18.38 | 50 | 1.08 | 5.50 | 7 | 23.61 | 0.83 |
| Zenith National Ins. | NYS | 21.88 | -0.57 | -3.85 | 27.38 | 20.63 | 25 | 1.00 | 4.57 | 10 | 17.54 | 1.25 |
| Zurich Reinsurance Centr. | NYS | 28.88 | 0.87 | 0.00 | 29.25 | 24.25 | 35 | 0.00 | 0.00 | -28 | 22.25 | 1.30 |
| INSURERS/REINSURERS | AVERAGE | | 0.6 | 3.4 | | | | | 2.4 | 12.9 | | |
| **HEALTH MAINTENANCE ORGANIZATIONS** | | | | | | | | | | | | |
| FHP International | NDQ | 26.00 | 3.46 | 0.97 | 31.00 | 20.25 | 565 | 0.00 | 0.00 | 15 | 12.22 | 2.13 |
| Humana Inc. | NYS | 22.38 | 1.13 | -1.10 | 25.38 | 15.88 | 1824 | 0.00 | 0.00 | 23 | 6.04 | 3.70 |
| Pacificare Health Sys. | NDQ | 64.50 | 0.00 | -0.96 | 79.50 | 44.25 | 76 | 0.00 | 0.00 | 21 | 14.21 | 4.54 |
| Safeguard Health Enter. | NDQ | 8.69 | 0.72 | -6.08 | 15.50 | 8.25 | 13 | 0.00 | 0.00 | 20 | 6.15 | 1.41 |
| Sierra Health Services | NYS | 29.25 | -5.26 | -7.51 | 33.50 | 21.25 | 73 | 0.00 | 0.00 | 18 | 6.04 | 4.84 |
| United Healthcare Corp. | NYS | 44.00 | -3.83 | -2.49 | 55.38 | 37.25 | 2912 | 0.00 | 0.00 | 29 | 6.57 | 6.70 |
| U.S. Healthcare | NDQ | 42.75 | -3.80 | 3.64 | 49.00 | 33.75 | 4469 | 0.84 | 1.96 | 18 | 5.04 | 8.48 |
| Wellpoint Health Networks | NYS | 27.63 | -0.45 | -5.15 | 37.00 | 24.25 | 203 | 0.00 | 0.00 | 13 | 12.73 | 2.17 |
| HMOs | AVERAGE | | -1.0 | -2.3 | | | | | 0.2 | 17 | | |
| ALL COMPANIES | AVERAGE | | -0.0 | -0.0 | | | | | 2.5 | 14 | | |

**Top advancing issues: Argonaut Group, ACE Ltd., US Facilities Corp. Leading decliners: EMC Insurance Group Inc., Sierra Health Services, Allied Group Inc. Most active issue: Unitrin. The BI Index fell 0.3%; the Dow Jones 30 Industrials fell 0.3%; the S&P 500 increased 1.2% and the NYSE Composite gained 1.0%.**

System design: Nordby International Inc.