

Business Insurance

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III says industry earnings up, combined ratio improved in '91

NEW YORK—U.S. property/casualty insurers' earnings and combined ratios improved last year even though 1991 was the second-worst year in history for catastrophe losses, an insurer trade group reports.

Increased premium volume and an 8.3% return on capital enabled the insurance industry to boost aftertax income 9.3% to an estimated \$12.9 billion from \$11.8 billion in 1990, reports the Insurance Information Institute.

In addition, the III's 1991 assessment, *Continued on next page*

Flat rates dashing hopes of insurers

Most do not see signs of rate increases soon

By MARK A. HOFMANN and CHRISTINE WOOLSEY

Insurers who hoped that Santa Claus would bring significant year-end renewal rate increases realized weeks before Christmas that their stockings would again be empty.

The market is flat as last week's holiday punch, with no sign that it's going to get any better soon, insurers say.

Rate increases generally have been very modest, sometimes too modest to cover inflation, insurer executives say. And, in some cases, notably involving property insurance, rates have continued to slide.

In addition, competition from alternative markets has not subsided. As the workers compensation marketplace in some states has deteriorated beyond some insurers' greatest fears, clients have been turning increasingly to alternative risk financing mechanisms, they say.

The best-established of the alternative markets—Bermuda-based ACE Ltd. and X.L. Insurance Co. Ltd.—have been able to raise rates without losing many policyholders, a position that commercial insurers can only envy.

"We began the year with the belief that prices would at worst stabilize," said Robert J. Vairo, chairman, president and chief executive officer of Crum & Forster Inc. in Basking Ridge, N.J. But much to the company's chagrin, the market continued slipping and even now "is definitely trending downward," although not precipitously.

General liability and property rates are "flat to down slightly," said Roger Carlson, senior underwriting officer at St. Paul Fire & Marine Insurance Co. in St. Paul, Minn. Most hikes are inflationary or driven by acquisitions that add

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January 1992 renewals

Brokers see prices fall for best risks

But, insurers toughening stance on riskier lines

By MICHAEL SCHACHNER and LORI BLOCK

Insurers are still slashing rates for the most attractive property/casualty accounts without batting an eyelash, but high-hazard risks with poor loss experience are getting hit with moderate to substantial rate hikes, according to brokers.

Brokers say insurers still have the capacity to write almost any risk they want, though London-based capacity is shrinking in some lines (see related story).

And, underwriters are offering rate reductions on the business they want most, like accounts that generate more than \$25,000 in annual premiums as well as vanilla accounts.

Property accounts still generally are commanding 10% to as much as 25% rate reductions, brokers say.

General liability accounts can obtain similar cuts, while rates for riskier though non-hazardous liability accounts are falling 5% to 10%.

Some insurers, though, are beginning to

more closely underwrite accounts and impose some tighter conditions.

And, insurers are imposing rate hikes and tougher conditions on riskier lines, like the oil and gas industry, professional liability accounts and, of course, workers compensation insurance, most brokers say.

But these rate increases should not be taken as a definitive sign that the market is turning, brokers say. They predict the combination of positive insurer results, abundant capital and the burning desire for market share will likely cause the soft market to persist in 1992 for most lines of business.

Inconsistency between word and deed defines the market, most brokers say. Publicly, underwriters purport to be holding the line on rates. Yet, except for certain specialty lines, prices generally continue to fall.

John R. Lamberson, president and chief operating officer of Willis Corroon Corp. in New York, said insurer rhetoric and reality are two different things altogether.

Insurers claim they walk away from business that is priced too low, "but the realities of this world are that they're still going to protect their market share. Very few com-

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Aviation, marine renewals difficult

Most other lines stable, risk managers report

By MICHAEL BRADFORD

Risk managers with aviation insurance renewals are watching rates take off, but the cost of most other coverages remains grounded.

While risk managers are again reporting mostly good news—meaning stable or lower rates—this renewal season, some risk managers are facing higher insurance costs. In the aviation insurance market, for instance, heavy losses have prompted insurers

to push up rates. And risk managers report increases in marine, directors and officers liability and workers compensation insurance costs.

"The rate increases were tremendous" when Michael S. Scheinblum, risk manager at Carnival Cruise Lines Inc. in Miami, renewed aviation coverage in November.

Carnival operates Carnival Airlines, which mainly serves the Bahamas from a few U.S. cities. The cost of \$500 million of liability coverage for eight Boeing 727 and 737 jetliners jumped by more than 80%, he said.

Although the coverage was expensive, there was plenty of it to be found. "Capacity was no problem," he said.

Led by Lloyd's of London syndicates, Carnival's aviation coverage also is written by London insurers and others, said Mr. Scheinblum.

Volkswagen of America Inc. also has been hit with aviation rate hikes. The high limits it had last year were available only at greater cost, said Anita Warshawsky, supervisor-insurance at the Troy, Mich., automaker.

Although Volkswagen was renewing coverage for just one corporate plane, its broker, Larry Johnson & Associates in Pontiac,

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Specter of hard market looms over London

By STACY SHAPIRO and GAVIN SOUTER

LONDON—The prevailing wind of a hard market is blowing through London, bringing a lack of capacity in some areas that hasn't been seen in more than 20 years.

While Jan. 1 has come and gone, brokers still are struggling to complete property catastrophe reinsurance programs for major U.S. and U.K. ceding insurers. And they are not finding all the capacity they need, even

though rates are now 50% to 100% higher than a year ago.

Major oil and gas companies also are finding it difficult to buy enough property/casualty insurance at any price during year-end renewals.

These huge insurance packages—which require billions of dollars in capacity—are being carved up because reinsurers are insisting that non-marine and liability risks be excluded from marine-based insurance coverage.

As a result, oil and gas companies are having to buy separate insurance programs for offshore, onshore and liability risks. In some cases, this is tripling their insurance costs.

Also, the London marine market now is re-

fusing to offer the oil and gas companies liability coverage on an occurrence basis.

Meanwhile, London underwriters are unwilling to quote reductions on any U.S. industrial property insurance programs, though sufficient capacity is available.

Only one sector in the London market is experiencing a "standard" year-end renewal season: the North American casualty insurance market. Rates are flat for general liability coverages and small reductions are available for good risks. If any increases are quoted, it's mainly to take inflation into account.

Some London brokers and underwriters describe this renewal season as "a bloody shambles," "frantic," "crazy" and "tough."

Other observers are less dramatic and describe renewals as "uncertain," "mixed" and "like a curate's egg—good in parts."

"It's a hard market," said a leading energy insurance broker. "People who were broking in the '60s (after Hurricane Betsy) say that it's a much harder market now than it was then because more capacity is needed now. . . . It's the toughest market Lloyd's has ever seen."

This renewal season "is the worst since the '60s," Michael Harris, non-marine underwriter for Lloyd's syndicates managed by A.J. . . . & Co. Ltd., said before Christ-

mas . . . nowher . . . finishing our re-

London market says

Update

1991 P/C results improved: III

Continued from previous page

which estimates fourth-quarter results, reports that the industry's combined ratio was an estimated 109.1%, compared with 109.7% in 1990.

Earned premiums increased 3.5% last year to \$223.6 billion from \$216 billion in 1990. Insurers also increased their surplus 12.6% to an estimated \$155.8 billion at year-end from \$138.4 billion the previous year. Investment income increased 3.6% to an estimated \$34.1 billion from \$32.9 billion in 1990, according to the III.

III Senior Vp Sean Mooney said the industry posted a profit in 1991 despite having "close to a fire sale in most areas of commercial lines."

Last year also was the second-worst on record for catastrophic losses, which exceeded an estimated \$4.1 billion. Of that total, \$1.2 billion stemmed from the Oakland, Calif., fire (BI, Oct. 28, 1991).

No major property/casualty insurer became insolvent in 1991, though 22 small insurers had become insolvent by the end of the third quarter, reports the National Committee of Insurance Guaranty Funds.

Executive Life takeover OK'd

LOS ANGELES—Plans detailing how Executive Life Insurance Co. will be transformed into Aurora National Life Assurance Co. will be distributed to policyholders sometime this month, says the California Insurance Department.

The purchase of Executive Life Insurance Co. by a French investment group headed by Altus Finance and Mutuelle Assurance des Artisanale de France was officially approved late last month by Los Angeles Superior Court Judge Kurt Lewin.

Under the terms of the deal, Altus Finance will pay \$3.25 billion for the bulk of Executive Life's junk bond portfolio, and MAAF will infuse \$300 million more into Aurora National Life.

In addition, under an enhancement agreement with the National Organization of Life & Health Guaranty Assns., state insurance guaranty funds will contribute nearly \$2 billion to assure 100% payments to policyholders with accounts valued at \$100,000 or less. But, until the court approves the rehabilitation plan, the Insurance Department will continue making 70% payments to annuitants while making 100% death benefit payments to life insurance policyholders.

Poultry plant fined in N.C. fire

RALEIGH, N.C.—A poultry processing company still faces possible criminal charges after being hit with a proposed record fine by North Carolina's workplace safety agency for 83 violations at its Hamlet plant, where a tragic fire occurred last September.

North Carolina Labor Commissioner John C. Brooks last week fined Imperial Food Products Co. of Atlanta \$808,150, the largest civil fine ever proposed in a North Carolina workplace safety case. The fine stemmed from a Sept. 3 grease fire at Imperial's Hamlet, N.C., facility in which 25 workers died and 56 others were injured (BI, Oct. 7, 1991; Sept. 9, 1991). Locked exit doors prevented workers from escaping the burning plant. A carbon dioxide fire extinguishing system was not activated by the grease fire, and the plant lacked an automatic sprinkler system, though that was not a violation of state building codes.

In announcing the fines, Mr. Brooks noted that under a new schedule of fines that went into effect last week, the penalty for the 83 violations would have been more than \$4 million.

A Labor Department spokesman said Imperial has not indicated whether it will pay the civil fines.

Imperial Food Products was unavailable for comment. Telephones at its Atlanta headquarters have been disconnected.

Imperial also may face criminal charges following a state investigation that is expected to be completed within a few weeks. "We're looking at a variety of things, including manslaughter. We're looking at the whole incident," said Charles Dunn, director of North Carolina's Bureau of Investigation. However, Mr. Dunn stressed that the bureau is engaged only in "fact-finding" and that the decision about whether to press criminal charges rests with the district attorney in Monroe, N.C.

Florida OKs comp rate hike

TALLAHASSEE, Fla.—State Treasurer and Insurance Commissioner Tom Gallagher last month approved an across-the-board 24.9% workers compensation insurance rate hike.

The rate hike, which went into effect Jan. 1, also applies to rates charged by self-insurance funds regulated by Mr. Gallagher's office and the state's Department of Labor.

Mr. Gallagher also said he will hold hearings next month on a proposed state-mandated joint underwriting association that would provide less costly workers comp cover, particularly for small firms.

Mr. Gallagher said he rejected the 39.3% rate increase sought by the National Council on Compensation Insurance because the organization failed to justify a requested increase in expenses, to adequately reflect insurers' investment income and to adequately account for the savings expected to be generated by the workers comp reforms adopted 18 months ago (BI, July 2, 1990).

According to the NCCI, workers comp insurers writing business in Florida paid out \$1.35 for every \$1 of premium during 1991.

Dumping settlement appealed

LOS ANGELES—The state of California is appealing an \$8 million settlement of a lawsuit against the owner of a toxic waste dump near Riverside, Calif., brought by nearby residents who claim the dumping caused bodily injuries and property damage.

Between 1955 and 1972, 34 million gallons of acids, solvents and pesticides were dumped at the Stringfellow Acid Pits, a 20-acre site.

An attorney for the state asserts that the settlement, approved

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Errors and omissions

• Buck Consultants Inc. of [redacted] operates 33 benefit consult- incorrectly reported in the

Massachusetts ratifies comp reform package

By LORI BLOCK

BOSTON—Massachusetts employers received a valuable Christmas present late last month: a workers compensation reform package that should lower their costs while possibly dissuading insurers from fleeing the beleaguered Massachusetts marketplace.

Savings resulting from the measure—H. 6410, proposed by Gov. William F. Weld and Lt. Gov. Argeo Paul Celluci—will be created through reduction of some benefits; improved efficiencies in both the administrative and judicial processes; new vocational rehabilitation, fraud, medical treatment and insurance provisions; and restructured attorneys' fee

schedules.

Currently, Massachusetts ranks ninth in the nation in average workers comp benefit costs per employer and fourth in average cash benefits paid. The average cost of a workers comp case in Massachusetts is \$27,034, more than double the national average of \$11,347.

The reform measure was drafted after Massachusetts workers comp insurers in November requested a 46.5% rate increase for 1992, following four years of hikes ranging from 11.3% to 26.2%. Total workers comp costs in the state rose to \$2.5 billion in 1990 from \$800 million in 1985, according to the Associated Industries of Massachusetts, a Boston-based manufacturing trade as-

sociation (BI, Dec. 31, 1990).

At the time of the rate request, lawmakers were considering other, less comprehensive proposals, said Joseph DiGiovanni, the New England regional vp for the American Insurance Assn. in Boston. But "once it became known that the industry's need for rate relief was greater than originally thought," the focus was expanded.

"The governor's goal was to pass a bill that would obviate the need for the industry's rate request," Mr. DiGiovanni said.

Thomas Driscoll, legislative counsel for Liberty Mutual Insurance Co. of Boston, the nation's largest workers comp insurer, believes the reform package that was

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Employers feel the bite
COBRA claims outstrip premiums: Study

By LOUISE KERTESZ

The cost to employers of providing COBRA health care continuation coverage far exceeds the premiums they collect from beneficiaries, a new survey shows.

More than 60% of employers surveyed said they paid out at least \$2 in COBRA claims for every \$1 in premiums collected.

COBRA beneficiaries rack up whopping claims, the survey found.

Among employers tracking claims information, 74% reported that the size of the average health care claim incurred by a COBRA beneficiary exceeded the average

claim incurred by employees and dependents in the regular group health plan.

For 31% of employers that tracked claims data, COBRA claims, on average, were at least three times higher than the claims submitted by employees and their dependents covered by the plan.

These are among the findings of a survey of professionals with the Certified Employee Benefit Specialist designation conducted by the International Foundation of Employee Benefit Plans in Brookfield, Wis.

Sixty-one percent of the 235 respondents, representing a cross-section of American business and

industry, tracked COBRA claims expenses.

Under COBRA, short for the Consolidated Omnibus Budget Reconciliation Act of 1985, employers with 20 or more employees are required to extend group health care coverage to former employees and their dependents following events like termination of employment, death, divorce or marital separation.

Former employees can receive up to 18 months of coverage, while dependents like a divorced spouse or an employee's widow receive coverage for up to 36 months.

Employers can charge benefi-

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Parent may deduct \$3.2 million in Mentor premiums

Captive taxation victory

By DOUGLAS McLEOD

WASHINGTON—The parent of defunct Mentor Insurance Ltd. is entitled to tax deductions for premiums it paid to the Bermuda-based captive insurer in the mid-1970s, a U.S. Court of Claims judge has ruled.

Ocean Drilling & Exploration Co. may deduct \$3.2 million in premiums it paid to Mentor in 1974 and 1975 and is entitled to a refund of taxes it paid after the Internal Revenue Service disallowed the deductions, Judge Christine Cook Nettlesheim ruled last month.

Mentor wrote large volumes of business unrelated to ODECO, producing sufficient risk shifting

and risk distribution for ODECO's captive coverage to constitute valid insurance for tax purposes, Judge Nettlesheim found.

Losses from third-party business eventually triggered Mentor's collapse. The insurer was ordered liquidated in Bermuda in 1985 (BI, June 17, 1985).

The ruling follows a string of U.S. Tax Court decisions last year in which corporations were allowed deductions for premiums paid to wholly owned captive insurers (BI, Feb. 4, 1991).

The Tax Court rulings represented a major victory for captive owners against the IRS, which for two decades has disallowed captive premium deductions regardless of

the amount of third-party business the captive writes.

Officials of the Justice Department, which represented the government in the ODECO case, could not be reached for comment on whether Judge Nettlesheim's ruling will be appealed. However, the department is appealing the Tax Court rulings.

The exact amount to be refunded to ODECO has not yet been determined, according to Charles J. Lavelle, a lawyer with Greig, Lavelle, Doll & McDonald in Louisville, Ky., representing ODECO.

ODECO formed Mentor in 1968 to insure its offshore oil rig risks. Mentor later expanded into writing

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Inside

✓ Three central Florida municipalities and an aviation authority are banding together in an effort to slash millions of dollars from their health care costs. **PAGE 6**

✓ While Alfred Malecki's name is gone from the masthead of *Business Insurance* beginning with this issue, his inspiration remains with the staff, says this week's editorial. **PAGE 8**

✓ Aviation insurance companies from Taiwan to the United Kingdom face claims that could top \$100 million as a result of three airline crashes during the last days of 1991. **PAGE 11**

✓ In nine out of 10 cases of excessive legal bills, the problem can probably be identified as one of minimal, if any, communication between the client and the lawyer, says Steven O'Neill of Tarkington, O'Connor & O'Neill in Perspectives. **PAGE 23**

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Curbing runaway health care costs

Utah's managed approach saves state millions

By LOUISE KERTESZ

SALT LAKE CITY—By directly contracting with providers and establishing standard fees for services, the Utah Public Employees Group Health program has held health care cost increases to 6.6% in each of the past three years.

In fact, over just the past two fiscal years, which end June 30, the state's aggressive management of health care for 75,000 employees, dependents and early retirees who are not yet eligible for Medicare has saved the state at least \$10 million, according to Joan Ogden, a principal with Joan Ogden Actuaries of Salt Lake City.

Had the state not taken such measures, its medical cost hikes would have approached the 15% to 20% faced by other Utah employers in the last two years, she said.

Employers' health care costs nationwide increased an average of 18.6% in 1988, 16.7% in 1989 and 17.1% in 1990, according to consultant A. Foster Higgins & Co. (BI, Jan. 28, 1991).

Consultants say employers would do well to study and apply the techniques Utah uses to asser-

tively manage health care costs.

Utah's techniques include:

- Directly contracting with providers to participate in its managed indemnity plan, based on provider profiles developed in-house and—since mid-1990—with the help of statistical criteria used by its consultant.

- Establishing standard fees for most surgical and outpatient procedures, which inhibits costly "unbundling" of services.

- Encouraging competition among the state's health maintenance organizations.

And to reduce health care costs, Utah has developed programs like paying plan members in the managed indemnity plan for good loss experience and rewarding all employees for adopting healthier lifestyles.

Although not every employer can contract directly with providers, "where certain factors are present, it's worth serious exploration by every major employer," said Glenn Meister, a principal with A. Foster Higgins in Los Angeles.

"There's evidence here," as there is with other major employers that have directly contracted with pro-

viders, "that when an employer has enough market share in a given area to go directly to the providers and structure these arrangements," the resulting benefits are significant, Mr. Meister said.

Directly contracting with providers can "truly pay dividends not only from the fixed-cost standpoint" but also in the "philosophical change" in the way care is provided and obtained, he said.

"My one caution would be from a liability standpoint," Mr. Meister observed. When employers direct employees to certain providers based on specific information, "they need to be careful about the underlying information they're using," because if it is wrong, "it could come back to haunt them."

But that caution should not deter an employer with a strong market presence from exploring the possibility of directly contracting with providers, Mr. Meister asserted.

Many employers could make use of Utah's "information-based approach" to "assertive management" of provider behavior, agreed David Rinaldo, a consultant with TPF&C, the benefits consulting di-

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Health care spending to rise 10.7% in '92, government predicts

By MARK A. HOFMANN

WASHINGTON—U.S. health care expenditures in 1992 will reach more than \$817 billion, a record 14% of the estimated gross national product, a new U.S. Department of Commerce report predicts.

"1992 U.S. Industrial Outlook," which was released by the Commerce Department last week, estimates that the nation's total health care bill will increase by 10.7% this year from an estimated \$737.9 billion in 1991. The 1991 estimate accounts for roughly 13% of the 1991 GNP, according to the Commerce Department.

Meanwhile, the nation's largest employers are paying far more than their share of the country's health care bill because of cost-shifting from both public and private sources, a separate report suggests.

According to the Commerce Department, hospital charges are the largest component of the national health care bill.

The report projects that hospital costs will reach \$312.8 billion in 1992, a 10.8% increase from an estimated \$282.3 billion in 1991.

Charges for physician services constitute the second-largest cost component, which the Commerce Department estimates will jump 11.1% to \$155.3 billion in 1992 from an estimated \$139.8 billion in 1991.

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Peru to compensate for property seizure

By JUDY GREENWALD

NEW YORK—Enron Corp. and its insurers will receive about \$229 million from the Peruvian government over the next seven years in connection with the 1985 expropriation of Enron gas and oil wells.

A group of political risk insurers led by American International Group Inc. was told in 1988 to pay Enron \$162 million, one of the largest-ever insurance-related arbitration awards (BI, Dec. 26, 1988).

The wells, which were operated by Enron's Peruvian subsidiary,

Belco Petroleum Corp., were expropriated during the presidency of Alan Garcia Perez.

The agreement in principle reached last month was negotiated with the subsequent administration of President Alberto K. Fujimori, who was elected in 1990, said Douglas Paul, vp-strategic planning for AIG, who made numerous trips to Peru in connection with the negotiations.

The agreement in principle calls for the Peruvian government to pay \$184.8 million plus interest, which should amount to about

\$229 million, depending on when the final agreement is reached, said Mr. Paul, who was leaving today for Peru to continue negotiations.

Houston-based Enron will receive \$30 million of the \$184.8 million, plus a proportionate share, or 16.2%, of the accrued interest.

The insurers will divide the remainder based on their participation in the original 1983 three-year political risk insurance policies, which totaled \$200 million in limits.

AIG units had insured 64.3% of the risk, with National Union Fire

Insurance Co. of Pittsburgh, Pa., writing 54.3% of the risk and AIG Oil Rig writing 10%.

Two other essentially identical policies were written by St. Paul, Minn.-based Athena Assurance Co., a subsidiary of The St. Paul Cos. Inc. that insured 12.5% of the risk, and Lloyd's of London syndicates, which insured 8.9%.

In addition, there were several subscribers to the AIG policy that had small shares of the risk: New York-based American Offshore Insurance Syndicate, a syndicate of more than 35 insurers, 5%; Norwe-

gian insurer Storebrand Norden, now known as UNI Storebrand A/S, 5%; Arkwright Mutual Insurance Co. of Waltham, Mass., 2.5%; Warren, N.J.-based Pacific Indemnity Co., a unit of Chubb Corp., 1.25%; and Baltimore-based Maryland Casualty Co., 0.5%.

The agreement in principle calls for an initial payment of \$40 million upon finalization, plus seven equal annual installments over the next seven years.

The agreement in effect must be turned into a legal document, said

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AP/Wide World Photo

The entrance to the City College of New York gymnasium, where a Dec. 23 stampede led to nine deaths and injured several others

Charity event tragedy

N.Y. is self-insured for liabilities arising from stampede

By DOUGLAS McLEOD

NEW YORK—New York state and New York City are self-insured for any liabilities arising from last week's stampede at a charity basketball game at City College of New York that left nine dead and several others injured.

Lawyers for the event's promoters, meanwhile, said last week that the promoters had not arranged any liability insurance for the game, though their contract with a student group organizing the event called for them to do so.

The Dec. 28 basketball game, which featured several rap music stars, drew about 5,000 people to a CCNY gym that could hold only 2,700. As a crowd surged through the building's lobby and down a 12-foot-wide staircase, several people were crushed against the closed metal doors to the gym.

Eight people died immediately and one who lapsed into a coma died last Wednesday.

A subsequent stampede inside the gym—possibly triggered by false rumors of gunshots near the building—injured several others.

Several investigations were launched last week to pinpoint the causes of the tragedy and identify those responsible. These included inquiries by the New York City deputy mayor for public safety, the Manhattan District Attorney and the City University of New York,

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Workers value health benefit: Study

By DEBORAH SHALOWITZ

A majority of workers would be willing to trade some pension benefits for more health care coverage, according to a new survey.

And, most workers said that if they could choose only one benefit to be provided by their employer, that benefit would be health insurance.

"This finding may be telling us that most American workers are becoming aware of the high cost of health care and, consequently, they want to ensure they have the best possible health insurance coverage from their employers," said Dallas Salisbury, president of the Employee Benefit Research Institute, a Washington, D.C.-based think tank.

The survey, "Public Attitudes on Benefit Trade Offs, 1991," polled 1,000 adults nationwide and was conducted with The Gallup Organization.

"In light of this attitude and with limited benefit dollars, we may find more employers putting increased resources into health benefits and reducing spending on other employee benefits," Mr. Salisbury added.

"This data confirms what other data shows—that health benefits are the most important benefit for employees," agreed Frank McArdle, a consultant with Hewitt Associates in Washington, D.C.

"The most valuable benefit an employer can provide is a health care benefit," concurred Scott Gildner, a Wyatt Co. consultant in

Washington, D.C.

According to the survey, 60% of respondents would be willing to accept a reduction in employer contributions to a pension plan in exchange for increased health care benefits. Thirty-five percent said they would not make such a trade willingly and 5% did not answer.

Of those willing to trade lower pension benefits for better health benefits, 66% had an annual income of less than \$20,000; 65% were between the ages of 18 and 34; 65% were women; and 65% were minorities, according to the survey.

Conversely, 36% of respondents said they would be willing to accept a reduction in employer-provided health benefits for increased employer contributions to a pen-

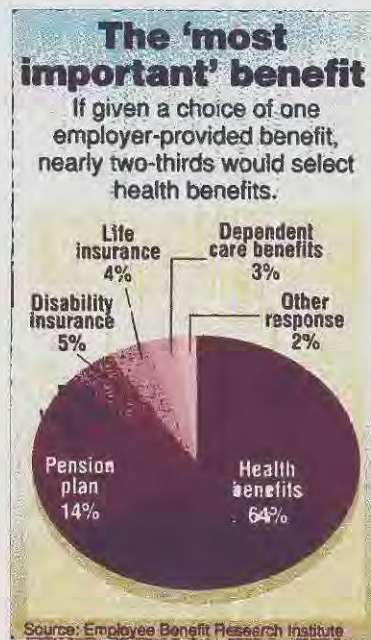
sion plan, while 58% said they would not and 7% did not answer.

Seventy percent of the respondents receive employer-provided group health insurance and 50% are covered by an employer-sponsored pension plan.

Asked what they would choose if they could select only one benefit to be provided by an employer, 64% said health insurance, 14% chose pension benefits, 8% chose paid vacation and sick leave, 5% chose disability insurance, 4% chose life insurance, 3% chose child care and parental leave benefits, and 2% did not answer.

Health insurance is the "most important" benefit because an employee "cannot provide for the possibility of a catastrophic health"

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Eight promoted on *BI's* editorial staff

Eight *Business Insurance* editorial staff members are starting the New Year with new titles.

Jerry Geisel is now editor-at-large; Paul D. Winston is managing editor; Dave Lenckus is news editor; Douglas McLeod is senior editor; Stacy Adler Gordon is New York bureau chief; and Karen Armaganian is assistant directory editor.

"With these promotions, *Business Insurance* has a fine leadership team that will ensure the finest coverage of risk management and employee benefit topics possible," *BI* Editor James M. Burcke said.

The staff changes follow the promotion of Kathryn J. McIntyre to publisher and editorial director from editor and associate publisher. She succeeds Alfred Malecki, who retired as *BI's* publisher at year end (*BI*, Aug. 12, 1991). Mr. Burcke, who had

been managing editor, succeeds Ms. McIntyre as editor.

Mr. Geisel, based in Washington, D.C., had been senior editor. In his new job as editor-at-large, Mr. Geisel will continue to head the Washington bureau. He also will play a greater role in directing the editorial page and overall news coverage.

"Jerry's promotion reflects his 15 years of inspired reporting at *BI*," Mr. Burcke said. "He will help guide the magazine in new directions while still digging up the scoops on benefit issues he is known for."

Mr. Geisel, 40, joined *Business Insurance* in 1977 as associate editor in the Washington bureau. In 1979, he was promoted to Washington editor and was named senior editor in 1988.

Mr. Geisel received a bachelor of arts degree in history from the University of Wisconsin at Madison and



Mr. Geisel



Mr. Winston



Mr. Lenckus



Mr. McLeod



Ms. Gordon



Ms. Armaganian

a master of science degree in journalism from the University of Missouri in Columbia.

As managing editor, Mr. Winston will be responsible for, among other things, the editorial production of the magazine, including direct supervision of the copy editing, graphics and directory staffs.

"Paul has proven his dedication to producing a quality magazine.

Business Insurance will become a better-edited magazine under his leadership," Mr. Burcke said.

Mr. Winston, 28, joined *BI* in 1985 as proofreader and was promoted to assistant copy editor in 1986 and copy editor in 1988. He was promoted to copy desk chief in 1990, and helped establish and coordinate *BI's* international section.

He previously was a columnist for

Lerner Newspapers in Chicago. He received a bachelor of arts degree in English composition from DePauw University in Greencastle, Ind.

In his new post as news editor, Mr. Lenckus will direct *BI's* news coverage and oversee the magazine's reporting staff. He also will have responsibility for Spotlight Reports.

"Dave's promotion reflects the fine job he has done in supervising *BI's* reporters. His promotion gives him new responsibility for ensuring that *BI* stays on top of the news," Mr. Burcke said.

Mr. Lenckus, 34, joined *BI* in 1985 as assistant managing editor. Previously, he was managing editor of Wood & Wood Products, published by Vance Publications Corp. of Lincolnshire, Ill. He also was a reporter for the Palos Regional News in Palos Heights, Ill., and the Joliet Herald-News in Joliet, Ill.

Mr. Lenckus has a bachelor of arts degree in journalism from Lewis University in Romeoville, Ill.

Mr. McLeod, who has been named senior editor, had been New York bureau chief. In his new job, he will concentrate on writing in-depth stories on insurance fraud and other topics relating to risk management and property/casualty insurance.

"Doug McLeod is a special type of reporter who is not scared away by the big, difficult stories," Mr. Burcke said. "In his new job he will be able to devote more time to special projects and investigative reporting."

Mr. McLeod joined *BI* as an associate editor in 1982 and has been New York bureau chief since 1984.

Mr. McLeod, 35, received a bachelor of arts degree in English and history from the University of Southern California in Los Angeles and a master of science degree in journalism from the Medill School of Journalism at Northwestern University in Evanston, Ill.

Ms. Gordon succeeds Mr. McLeod as New York bureau chief. She will manage the three-person bureau while continuing to report on legal issues.

"Stacy's promotion is recognition of her talents as a reporter and as a manager," Mr. Burcke said. "*BI* has made great strides since Stacy took over the legal beat."

Ms. Gordon, 27, joined *BI* in 1987 as an assistant copy editor in Chicago and was later promoted to copy editor. She has been an associate editor since 1988, working both in Chicago and New York.

Before joining *BI*, Ms. Gordon worked as a staff writer for Cahners Publications in Des Plaines, Ill. She received a bachelor's degree in journalism from the University of Florida in Gainesville, Fla., and a master of science degree in journalism from Medill. She now attends the evening division of Fordham University School of Law in New York.

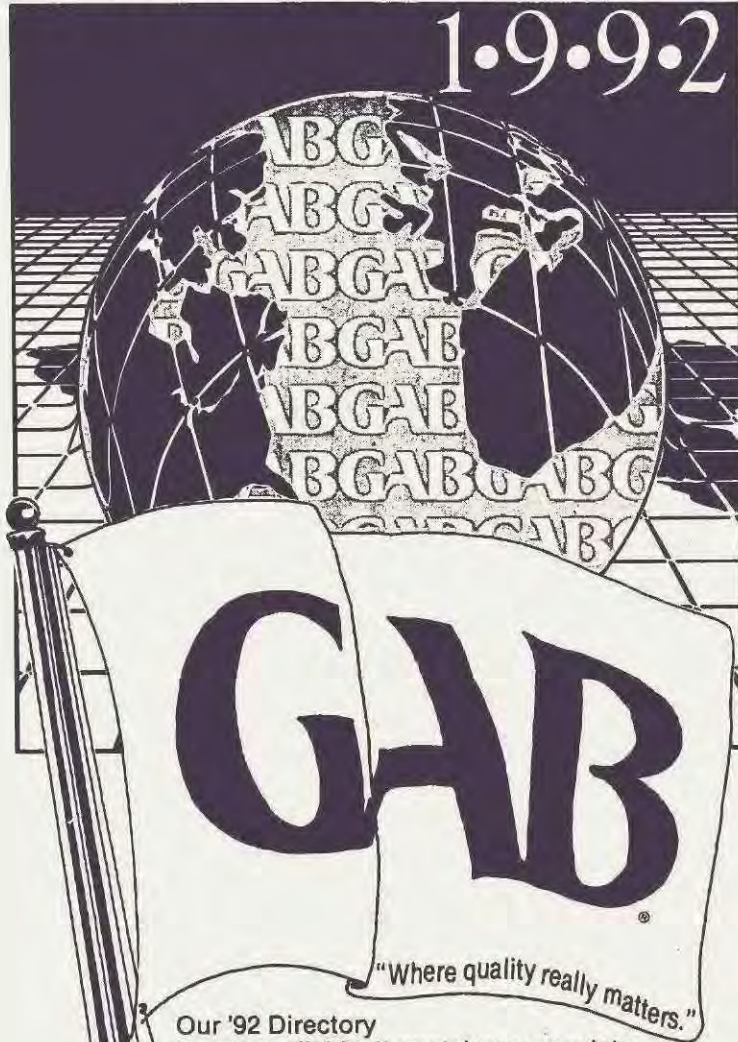
Ms. Armaganian, who was promoted to assistant directory editor from editorial assistant, will play an increasing role in organizing the directories published by *BI*.

"Karen's promotion is recognition of her hard work in making *BI's* directories complete and accurate," Mr. Burcke said.

Ms. Armaganian, 23, joined *BI* in late 1990. She previously worked as a public relations coordinator in Racine, Wis. She received a bachelor of arts degree in journalism and psychology from the University of Wisconsin at Madison.

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Public entities seek health care discounts

Benefit beat

Three central Florida municipalities and an aviation authority are banding together in an effort to slash millions of dollars from their health care costs.

"What we're trying to do is present to the medical marketplace a unified purchasing system," said Robert Siver, a senior consultant with Siver Insurance Management Consultants based in St. Petersburg, Fla.

Mr. Siver's firm produced a study for the four entities that concluded large savings could be gained by contracting with one of the area's hospital networks for discounted health care services.

The new alliance would be what is believed to be the largest effort in Florida to use mass purchasing power to buy discounted health care services, according to Mr. Siver.

While there are other managed care arrangements among employers in the state, there has been "nothing on this scale," at least "not that we're aware of," said Mr. Siver.

The arrangement would involve around 30,000 employees, dependents and retirees of the City of Orlando, Orange County, Seminole County and the Greater Orlando Aviation Authority.

Over the next three years, the exclusive provider organization that is being proposed is expected to save Orange County around \$10.6 million, Orlando \$6.6 million and the aviation authority \$1.5 million, according to Mr. Siver.

Projected savings have not yet been estimated for Seminole County.

Mr. Siver explained that each of the four public entities will establish new self-funded health care plans for their employees.

Employees who do not use a network physician or hospital would receive reduced benefits under the plans.

Each entity will use the same third-party administrator, utilization review firm, actuary and other service vendors, Mr. Siver said.

All of the entities currently offer a group health care plan underwritten by commercial insurers, according to Mr. Siver.

The projected savings are the differences in current premiums and employers' anticipated costs in the managed care program.

As for individual physicians, those who provide health care services to the four employers must be part of the hospital network and will have to "pass muster" on the cost and quality of care they provide, Mr. Siver explained.

Planners will know by early this year how many hospital networks are interested in competing to provide health care services to the government entities, he said.

Eventually, only one network will be selected to provide health care.

Mr. Siver said he expects the network to be in place by 1993 with a five-year commitment from the entities and health care providers to remain in the network.

He said there probably will be some resistance from employees once the plan is implemented.

"Any time you change a patient-physician relationship, you will have some objections on the part of employees," he said.

But monetary rewards could ease the discomfort, Mr. Siver added.

"We hope there will be sufficient money saved so that the employees can share in the savings," by gaining additional benefits, through salary increases or "whatever the case may be," he said.

—By Michael Bradford

health care benefits are still undecided as to how and when to implement Financial Accounting Standard 106, according to a recent survey.

"While employers are dealing with this issue, they simply can't give retiree health benefits their undivided attention right now," said Patricia Wilson, a principal and national director for retiree health care benefits consulting at A. Foster Higgins & Co. Inc. in Philadelphia.

Employers "also have other concerns, including global competition, weakness in the financial sector and an economic recovery that won't begin," explained the consultant.

The new accounting regulation, which goes into effect next year, will require employers to accrue as an expense against earnings non-pension retiree benefit liabilities from the date employees are hired until they become eligible for benefits (*BI*, April 1, 1991; Dec. 17, 1990).

Employers currently can expense their retiree health care costs on a pay-as-you-go basis.

In addition, FAS 106 will require employers to either fully recognize their accumulated retiree health care obligations by the end of the first year in which the rule takes effect or amortize them over a period of up to 20 years.

Employers with fewer than 500 employees have until 1995 to comply with FAS 106.

Fewer than one-fourth of the employers have decided how they

will recognize their retiree health care liabilities, according to Foster Higgins' annual Health Care Benefits Survey.

Among those that have decided, 57% will amortize the liability over 20 years; 27% will take a one-time charge; and 10% will spread it over the average length of employees' service.

The remaining 6% of responding employers said they would recognize these liabilities over some other period.

All of the mining, construction, health services and communications employers that had decided how they would recognize the retiree health care liabilities said they would amortize current retiree health care liabilities over 20 years.

However, while 29% of employers in the transportation services

industry that had decided said they would adopt this method, 43% plan to recognize retiree health care liabilities in a single accounting period.

More than half—54%—of the 1,100 employers surveyed still do not know when they will adopt the rule, according to the survey.

Among those employers that have decided, 57% are not adopting the rule until 1993, 31% will adopt the rule in 1992 and 12% adopted it in 1991.

The study found that only 35% of utility companies and 43% of financial services companies have not decided when they will adopt FAS 106.

But, 89% of government entities and 71% of educational employers have not decided when they will implement the rule.

—By Sara J. Hartly

Sunday Afternoon Workers' Comp

Access the Alternatives with

FAS 106 burden

Most employers that offer retiree

COBRA survey

Continued from page 2

ciaries a premium of up to 102% of the group rate. The additional 2% is supposed to cover an employer's administrative cost in extending the coverage.

The IFEBP survey, "COBRA: A Cross-Examination," is the second recent major survey to find that the cost of supplying COBRA coverage is outstripping premiums paid by beneficiaries.

Last year, the National Assn. of Manufacturers reported that half of surveyed employers paid out \$1.90 in claims for each \$1 in premiums they collected (BI, June 24, 1991).

According to the IFEBP survey, only 6% of respondents reported that COBRA premiums were about equal to COBRA claims expenses.

Roughly one-fourth of respondents—26%—reported that COBRA claims were about twice as much as premiums, while 19% said

claims expenses were about three times more than premiums.

In addition, 7% of respondents said COBRA claims expenses were about four times greater than premiums, and 9% said claims were about five times greater than premiums. The remaining 33% either didn't know how claims compared with premiums or measured expenses in other ways, the survey said.

What both recent surveys found—that COBRA premiums do not even come close to covering claims costs—is the result of adverse selection, benefit experts say. Those former employees and dependents who opt for COBRA coverage anticipate using health care services.

"The first person to sign up for COBRA is the one who knows he will have claims and does not have other coverage," said Bill Danish, a principal at benefit consultant Kwasha Lipton in Fort Lee, N.J.

"There's also a select population that takes a job simply for the ben-

'The first person to sign up for COBRA is the one who knows he will have claims and does not have other coverage,' says Bill Danish of Kwasha Lipton. 'There's also a select population that takes a job simply for the benefits.'

efits," Mr. Danish said. COBRA allows them to work for a period, leave their job and maintain coverage for the desired medical services, he explained.

"I'm not too surprised" at the results of the IFEBP survey, said Mary Lynn Eubanks, a consultant with Hewitt Associates in Lincolnshire, Ill. "They reflect adverse selection."

Melody A. Carlsen, associate director of research at the IFEBP, acknowledged the survey suggests adverse selection is occurring. But, she cautioned, conclusively demonstrating adverse selection

would require a "major review of medical records," and she questions asking whether beneficiaries would have sought medical services even if they were not covered by COBRA. The IFEBP neither asked those questions nor examined medical records, she said.

Still, the survey does indicate that COBRA claims on average are much higher than claims incurred by participants in employers' regular group health care plans.

For example, 44% of respondents said that an average COBRA claim was 150% to 250% higher than the average claim submitted by regular

plan participants. In addition, 23% of respondents said that COBRA claims were on average 300% to 500% higher than claims submitted by regular plan participants.

And 8% said COBRA beneficiaries' claims averaged more than 500% higher than regular plan participants' claims.

On the other hand, 8% of respondents said COBRA claims on average were either equal or less than regular plan participants' claims. The remaining 18% didn't compare claims submitted by COBRA beneficiaries to claims in their group health care plans.

Benefit experts say that former employees and dependents shelling out what could be hundreds of dollars a month for COBRA coverage will most likely do so only if they anticipate incurring big medical expenses.

In some cases, people will pay a COBRA premium for one month, rack up big medical expenses and then terminate coverage, according to benefit experts.

As an alternative to high COBRA costs, employers with a large enough population of COBRA participants could consider offering those eligible for COBRA a plan with reduced benefits in exchange for a lower premium.

"The objective would be to provide a product that may better suit the financial needs of an individual" while better managing COBRA costs, said Kwasha Lipton's Mr. Danish. However, COBRA requires that participants must always be offered the regular health plan, he cautioned.

The survey also showed that for most employers the costs of administering COBRA are higher than the 2% that the law allows employers to tack onto the premium. Only 7% of respondents said that their administrative costs represent about 2% of premium, while 8% said the costs were less than about 2% of premium.

Twenty-six percent said that administrative costs represent 3% to 5% of premium, and 22% said that those costs represent 6% to 10% of premium. Four percent said costs exceeded 10% of premium, and the remainder did not know.

"COBRA premium collection is among the most challenging tasks employers face in COBRA administration," the survey report states.

In fact, 26% of the survey respondents said that a late payment—other than the initial payment—automatically results in termination of coverage.

But 3% of respondents said that the employer would pay the premium if the beneficiary's payment is late.

In other survey findings:

- 61% of those surveyed said that it is rare for COBRA-eligible employees and/or family members to initially reject coverage and subsequently change their minds within the 60-day period they have to opt for the coverage.

- However, 41% said that COBRA eligibles either sometimes or fairly often elect coverage within the 60-day period but change their minds by virtue of not paying the initial premium within the required 45 days of election.

- 30% of respondents said employees have a "good understanding" of their COBRA rights, while 51% said employees have a fair understanding of those rights.

- But, 15% of respondents said that employees had a poor understanding of their COBRA rights. And, only 4% of respondents said their employees had a "clear understanding" of their COBRA rights.

Free copies of "COBRA: A Cross-Examination," are available from the International Foundation of Employee Benefit Plans, Public Relations Department, P.O. Box 69, Brookfield, Wis. 53008. 414-786-6700.

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While Al's name is gone from the masthead of *Business Insurance*, his inspiration is not. That inspiration will be most valuable in 1992 and beyond to the *Business Insurance* team, several of whom have been promoted to new positions starting with this issue (see story, page 4).

To Al's many friends in the business who have asked what he will do in retirement, he says he is going to travel, both in the United States and abroad, to see what lies between the cities and airports he visited during his 34 years with Crain Communications.

Happy trails, Al. We'll miss you.

Two who made a mark on Crain

By Rance Crain

AS CRAIN COMMUNICATIONS Inc. closes out its 75th anniversary year, I'd like to spend a few minutes talking about two people who have made a big and lasting contribution to our company: Al Malecki and Stan Cohen.

When Al Malecki got the call 25 years ago, he was down in Miami selling ad pages for Advertising Age. He flew up to Chicago, in his Florida clothes, right into the teeth of a raging snowstorm.

Sid Bernstein, then president of our company and now chairman of the executive committee, wanted to know if Al would consider becoming ad director of a new publication my dad had conceived but kept on ice for 50 years. It was to be titled *Business Insurance*.

Al thought it was a good chance for advancement, even though he didn't know anything about the insurance business.

Before we started *Business Insurance*, we did some research. The first two insurance people Al and I talked to thought it was a lousy idea. After we started publishing, a major advertiser canceled because of one of our stories.

But Al never doubted the eventual success of our new publication, and he established himself as somewhat of a prophet. When Al was given the ad director's job, Sid Bernstein said, "Congratulations, Al. Now, how many ad pages are you going to sell the first year?" That day, Al became a prophet because he said, "Maybe 400," and he came in at more than 440.

Al has never missed a budget since. Well, I guess he did last year: He's 50 pages over his ad page estimate, but we're willing to forgive him for that slight indiscretion.

Now, after 34 years with our company, Al Malecki is retiring.

Stan Cohen was my first boss. In 1960, Stan was Washington editor of Advertising Age, and I was fresh out of college and working for him as a reporter. When I joined our Washington bureau, I doubled the size of our staff. (Crain Communications now has about 30 journalists working in Washington.)

Stan was and is a very smart guy. He is of liberal persuasion, and you'd better have your arguments very carefully marshaled if you want him to acknowledge your point of view.

Stan taught me a lot of things about becoming a good reporter, among the most important of which was to "look for the dollar sign." That meant that if there were big bucks involved, chances are that it was a good story for us. He also was instrumental in helping Advertising Age develop and nurture its basic editorial position: What's good for the consumer is good for the advertising business.

In retirement, Stan continues to care about what is happening around him, and he believes his words and efforts have the power to help make change. I'm very lucky to have had him as my first—and maybe my best—boss.

Stan Cohen is missed; Al Malecki will be. Both men are big reasons why Crain Communications had lots to celebrate during its 75th anniversary year and why we owe so much to our people, current and retired, who have helped make this company so much larger and stronger than when they arrived.

Rance Crain is president of Crain Communications Inc., which celebrated its 75th anniversary in 1991. He was the founding editor of *Business Insurance*. This column first appeared in *Advertising Age*, *Crain's Chicago Business* and *Crain's New York Business*.

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Air crash costs could reach \$100 million

By GAVIN SOUTER

LONDON—Aviation insurers from Taiwan to the United Kingdom face claims that could top \$100 million as a result of three airline crashes during the last days of 1991.

The hull of a China Airlines freighter that crashed in Taiwan was insured for \$60 million.

The China Airlines 747-200 freighter was en route to Anchorage, Alaska, from Taipei Dec. 29 when it crashed into a hillside 13 miles north of Taiwan's Chiang Kai-shek airport, killing all five crew members.

The cause of the crash and details concerning the aircraft's

cargo were unclear late last week.

The hull was insured for \$60 million with local insurers led by Central Insurance Co. of Taiwan.

Lloyd's of London broker Nicholson Chamberlain Colls Aviation Ltd. placed the coverage for China Airlines.

Approximately 70% of the risk was reinsured in London, led by British Aviation Insurance Group Ltd.

The loss a few days earlier of a nearly new Swedish airliner that was torn apart in an emergency landing could cost \$35 million.

Liability claims for the Swedish aircraft will be capped at 100,000 special drawing rights (\$143,000) per person under the Warsaw Con-

All 123 passengers, mainly Swedes, survived the SAS crash, along with the six crew members.

vention, but actual payments are expected to be substantially lower, sources say.

All 123 passengers, mainly Swedes, survived the crash, along with the six crew members. Six passengers and two crew members were seriously injured, and 40 people were slightly injured, said a

spokesman for the airline, Scandinavian Airlines System.

The McDonnell Douglas MD-80 aircraft was en route to Warsaw via Copenhagen on Dec. 27 when its twin engines failed shortly after takeoff from Arlanda Airport near Stockholm.

The pilot carried out a controlled emergency landing in a forest in Gottrora, about 20 miles north of Stockholm, the SAS spokesman said. Both wings were ripped from the aircraft during the landing, but spare parts may be salvaged from the wreckage, he said.

The cause of the engine failure is unknown. Swedish government investigators are considering the possibility that ice from the air-

craft's wings flew into the engines, causing them to fail, the spokesman said.

However, the aircraft had been thoroughly de-iced before takeoff, he said.

The aircraft, delivered to SAS in April, was insured for \$35 million by Polygon Insurance Co. Ltd. in Guernsey. Polygon is an underwriting facility owned by a consortium of airlines. It is managed by Transglobe Underwriting Management (Guernsey) Ltd., a unit of English & American Group P.L.C.

The group of 54 airlines, known as the KSSAF group and headed by major European carriers, has a total fleet value of \$19 billion. At

Continued on page 14

Southeast Asian insurance regulation

ASEAN members striving to enhance regional markets

By REYNALDO A. de DIOS

CHIANG MAI, Thailand—Enhancing cooperation between Southeast Asian nations was the keynote of recent meetings among the nations' insurance regulators and insurer trade associations.

"Changes around the globe have made it more imperative for ASEAN to move closer together to become a viable economic grouping," said Thailand Deputy Minister of Commerce M.R. Pridiyathorn Devakula at the 17th meeting of the Assn. of South East Asian Nations.

Noting that ASEAN will be celebrating its 25th anniversary this year, he added that "we have yet to show to the world that we are truly a viable economic group."

At the November meeting held in Chiang Mai, a city in northwest Thailand, the insurance commissioners of the ASEAN nations—Brunei, Malaysia, Indonesia, the Philippines, Singapore and Thailand—met to discuss economic cooperation in Southeast Asia.

At the same time, the ASEAN Insurance Council, an association composed of all of the life and

non-life insurance company associations in the region, held its 16th annual meeting at the same venue, the Empress Hotel.

Thailand's Mr. Devakula said he hopes that the Fourth ASEAN Summit, to be held this month in Singapore, will be a turning point for ASEAN economic cooperation as a number of new measures are being developed.

He cited as an example Thailand's proposal to establish an ASEAN Free Trade Area within 15 years, under which all goods traded among ASEAN countries would be free of tariffs.

Mr. Devakula added that cooperation in insurance has been one of the most successful undertakings in the region due to the strong partnership between the commissioners and the ASEAN Insurance Council.

And he encouraged the commissioners to explore new avenues to strengthen cooperation.

At the insurance commissioners' meeting, regulators presented reports on their respective countries, highlighting the performance of the insurance industry, changes in insurance legislation and educa-

tion, as well as problems and prospects in the industry.

The group also elected new officers. Sanit Vorapanya, director general of insurance for Thailand's Ministry of Commerce, was elected chairman, replacing Philippine Insurance Commissioner Adelita A. Vergel de Dios. Law Song Keng, insurance commissioner and actuary for the Monetary Authority of Singapore, was elected vice chairman of the group.

In a special joint session between the Assn. of ASEAN Insurance Commissioners and the ASEAN Insurance Council, Dzulkifli Mohd Salleh, managing director for Malaysian National Reinsurance Berhad and chairman of the council, discussed the effects of globalization in the region's insurance market and warned of possible changes associated with trade liberalization when pushed to extremes.

What the insurance company group considers particularly alarming is that without adequate regulation, major insurance companies can use their resources and advanced technology to create price wars and other unfair competition that can lead to imprudent



GRAPHIC BY JOHN SMITHER

underwriting, he said.

Mr. Dzulkifli reiterated the council's endorsement of deregulation but not without some form of re-regulation.

During the joint session, the council also made a request to the insurance commissioners to treat the ASEAN Reinsurance Corp. as

an indigenous institution. The ASEAN Insurance Council in 1982 created a reinsurance pool that in 1988 became the ASEAN Reinsurance Corp. ASEAN Re has authorized capital of \$30 million Singapore (\$18.4 million), of which \$6 million (\$3.7 million) has been paid

Continued on page 14

Mentor liquidators shorten timetable

By ROGER SCOTTON

BERMUDA

HAMILTON, Bermuda—Charles Kempe is hoping to conclude the 6-year-old liquidation of Mentor Insurance Ltd. within the next five years.

Only two substantial matters remain outstanding—litigation and losses—and Mr. Kempe, one of two co-liquidators of the failed Bermuda insurer, said both could be resolved by the end of 1992.

Although Mr. Kempe is careful to stress that "could" is not the same as "will," the liquidator is optimistic that an end may soon be in sight to Bermuda's biggest liquidation.

"We're not doing a 90-degree turn; we're working on the next logical step in an evolutionary process," he said of the liquidators' projection.

That step, if it is taken, may be a "scheme of arrangement," put together by the liquidation team headed by Mr. Kempe in Bermuda and joint liquidator Nigel Hamilton in London. The scheme would be aimed at placing a present day value on the size of claims that have still to mature.

The scheme, a legally sanctioned

arrangement that allows the liquidators to depart from their regular practice of waiting for claims to mature, would need the approval of the Bermuda Supreme Court and the approval of creditors representing at least 75% of Mentor's liabilities.

"A scheme of arrangement for Mentor would mean that we don't have to sit here until well into the next century waiting for Mentor's claims to come in," said Mr. Kempe. "We'd be allowed to depart from the statutory scheme of liquidation, attaching a final value to contingent liabilities now, but with no right to question this value at a later date."

"We could end up declaring a full and final dividend in about five years," said Mr. Kempe. "We're at the stage of exploring our options and we may decide that this is an achievable objective."

Despite Mr. Kempe's cautious language, he said Mentor's actuaries and lawyers are inclined to give the plan a tentative thumbs

up. "We're in consultation with our professional advisers now and the indications are that this approach will be feasible, but it's too early to say for sure."

One reason Mr. Kempe is unable to say more about this process is that the liquidation team has few, if any, examples to follow of schemes that have worked in comparable insolvencies.

Another reason is that the liquidators have only just been able to "get a handle on Mentor's proportional book of liabilities and its reinsurance receivables," Mr. Kempe said. These liabilities, mostly from quota-share contracts, are believed to total about \$790 million and are made up of claims from 819 creditors.

However, the final claims figure for Mentor's proportional business is expected to come in closer to \$600 million, after weeding out "spurious claims," allowing for offsets and applying a 5% discount, to arrive at a calculation of net present value.

Mr. Kempe said the more "unfathomable" claims are those arising from environmental impairment, toxic tort and asbestosis losses on Mentor's portfolio of ex-

cess-of-loss contracts.

"We're looking at a gross figure of \$600 million in future claims from this excess-of-loss book of business. Our actuaries say that it is too early to tell, but they believe the figure will probably net out at about half of Mentor's liabilities, after taking account of reinsurances and after discounting claims. Right now, though, the extent of these is unfathomable and we've excluded them for the purposes of calculating the first dividend."

Mentor's legal affairs are also looking decidedly less complex these days, following an unexpected settlement with Bermuda-based financial reinsurer Pinnacle Reinsurance Co. Ltd. in September this year. The deal was described at the time as "facilitating" a \$63.7 million sale of Pinnacle's business to Bermuda's burgeoning Centre Reinsurance Holdings Co. Ltd. (BI, Sept. 23, 1991).

The proposed settlement with Pinnacle, which the liquidators had been suing along with Mentor's parent, Ocean Drilling & Exploration Co., and the accounting firm of KPMG Peat Marwick, was finally concluded in London on Dec. 4. It followed a formal signing

of legal documents in Bermuda on Dec. 3 between Pinnacle and Centre Re executives.

Yet Mr. Kempe insists that the Pinnacle settlement, details of which were not released, will not change the overall course of other Mentor liquidation. And he predicts that the liquidators' lawsuits could be adjudicated by the Bermuda Supreme Court in 1993.

"I see no reason why our main litigation against Mentor's parent and its auditors cannot run its course inside the next five years," said Mr. Kempe. "Both actions are in discovery and we are now seeking a timetable with the court so as to progress things further. We remain confident of the outcome of a trial."

The suit against ODECO alleges fraudulent trading and is based on provisions of Section 246 of Bermuda's Companies Act. Under this statute, those found guilty of fraudulent trading "shall be personally responsible, without any limitation of liability, for all or any of the debts or other liability of the company as the court may direct."

In addition, the liquidators are suing KPMG Peat Marwick, alleg-

Continued on page 14



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INTERNATIONAL

Air crash claims

Continued from page 11

the Nov. 1 renewal, the group's premium doubled to \$22.25 million (BI, Nov. 25, 1991).

The liability risk also was covered by Polygon, but the size of the loss cannot yet be quantified, a Transglobe executive said.

Although the payments will be capped at 100,000 SDRs under the Warsaw Convention, the Swedish government is expected to pay substantial compensation directly to the passengers, reducing the insurers'

own payout, sources say.

Nicholson Chamberlain Colls also placed the coverage for SAS.

The risk was reinsured in the London and international markets. The lead London reinsurer is The Orion Insurance Co. P.L.C., sources agree.

"Undoubtedly these losses will reinforce the desire of underwriters to increase premium rates still further as they attempt to recoup their losses of the past three years," said Jonathan Palmer Brown, chairman of NCC Aviation.

During the November 1991 renewal season, aviation insurance

rates were already increasing by 200% to 300%.

In another accident on Dec. 22, a chartered Douglas DC-3A crashed into a hill in foggy conditions just outside of Heidelberg, Germany, killing 28 of the 32 people on board. Twenty-five of those killed were passengers.

Colonia Versicherung A.G. of Cologne, Germany, wrote the liability coverage for charter company Classic Wings GmbH, which owned the 49-year-old aircraft, according to the Lloyd's aviation department.

The hull was uninsured. ■

ASEAN meeting

Continued from page 11

up. Its shareholders are the insurance and reinsurance companies in the region. Singapore Re Management Services Pte. Ltd. underwrites on behalf of ASEAN Re and is responsible for the company's administration.

In an interview, Ms. Vergel de Dios, the Philippine insurance commissioner, said the meeting underscored the importance of cooperation between regulators and the private sector. She also cited several accom-

plishments of the regulators' association:

- Unified ASEAN insurance statistics.

Since 1981 the ASEAN insurance regulatory authorities have used a uniform reporting system to submit annual statistics on the performance of their respective national insurance markets. The data is processed by a technical committee headed by the Philippines delegation for distribution to the ASEAN insurance commissioners and other parties.

- Regional mortality studies.

This project prepares mortality tables for the life insurance industries in each of the participating countries. So far, the project has completed graduated mortality tables including tables of monetary values for each country based on the mortality experience for the years 1976 to 1983. A second set of graduated mortality tables based on a five-year period ending December 1988 is expected to be completed soon.

The group is now preparing to collect data on accidental deaths and total permanent disabilities.

Several of the ASEAN countries have already adopted the mortality tables formulated by the project for use in determining premium rates and reserving methods.

- Study of insurance laws and tax laws.

This project studied the possible harmonization of insurance legislation and supervision throughout the region. While the group doesn't seek to standardize laws or impose uniformity, it hopes to relax or remove existing legislative restrictions that now hinder the flow of insurance business among ASEAN countries.

The group has updated a comprehensive comparative table of insurance laws for the ASEAN countries.

- Education and training.

The group has set up specialized training and continuing education programs to cope with the increasing demands of the insurance industry. The program so far has offered six seminars that include specialized and short-term insurance courses.

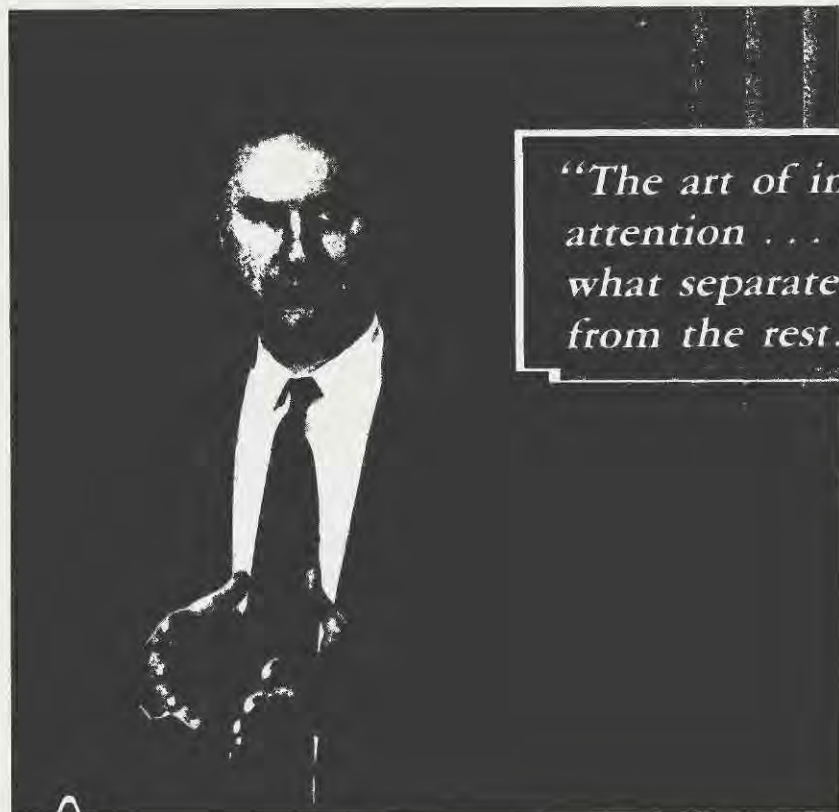
- The ASEAN Insurance Council.

The Assn. of ASEAN Insurance Commissioners played a major part in establishing the ASEAN Insurance Council, whose members are the various professional associations of private insurers in the region.

- Cooperation with other countries.

The ASEAN insurance community maintains ties with the United States, the European Community, Japan, Canada, Australia, New Zealand and South Korea.

The insurance commissioners and their senior staff recently studied regulatory and market practices of Canada and New Zealand as guests of those countries. ■



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BERMUDA

Continued from page 11

ing negligence. Mr. Kempe would not assess whether the Pinnacle settlement makes similar out-of-court deals with the other litigants more or less likely. He did concede, though, that actions similar to those the Mentor liquidators started against ODECO and KPMG Peat Marwick are often settled outside the courtroom rather than in it.


Mr. Kempe said he regards the proposed \$60 million minimum cash dividend, due to be paid to Mentor creditors on March 31, as a "constructive milestone" in the liquidation (BI, Dec. 2, 1991).

The hardest part, he says, was the "insurmountable problem" of defining Mentor's long-tail liabilities.

"This has been a highly complex liquidation," Mr. Kempe said. "If we're able to conclude it inside 12 years, Bermuda would have accomplished something to be quite proud of." ■

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Health spending

Continued from page 3

The report lists several factors that are contributing to the rising cost of health care.

These include "so-called defensive medicine; increasing reliance on sophisticated and expensive equipment; innovative treatment of such illnesses as heart disease, end-stage renal disease, AIDS and cancer; and an aging population."

The report cites medical malpractice suits as another factor.

Drawing upon estimates made by the American Medical Assn. in Chicago, the Commerce Department says that malpractice insurance premiums totaled almost \$6 billion in 1990.

However, the frequency of medical malpractice claims has dropped to about eight per 100 doctors in 1989, the last year for which the Commerce Department had data, from a peak of 17.8 claims per 100 doctors in 1985. In 1981, malpractice claims totaled 11.3 per 100 doctors.

And, the report points out that the price of medical malpractice insurance has declined in recent years.

The report notes that some states have capped pain and suffering awards stemming from medical malpractice cases and credits such tort reforms with leading to a reduction in the frequency of malpractice claims and medical malpractice premiums.

But, the rise in the number of medical malpractice suits during the 1980s still compels doctors to rely more "on defensive medicine, such as duplicate tests and diagnostic procedures; the use of consultants; more hospitalization; and extensive documentation," the report says. These defensive measures add about \$15 billion per year to the nation's health bill, the report says.

However, the report also noted some bright spots for employers.

For example, the report points out that both Congress and the Bush administration have been offering reforms to cut health care costs and expand access to care.

Many of the reforms "could lead to more efficient and effective services, expanded insurance coverage, wider availability of services and more alternative health care resources," according to the Commerce Department.

In addition, managed care, including health maintenance organizations and home health care, "now occupies an important place in the market and will undoubtedly play a major role in the future" in controlling health care costs, the report says.

The fastest growing component of the national health bill is home health care, a cost containment strategy that "is catching on fast," according to the Commerce Department. About \$10.7 billion will be spent on home health care in 1992, up nearly 23% from \$8.7 billion in 1991.

But, employers still face \$17.2 billion of cost shifting from both private and public sources, according to another recent report.

If all cost shifting were eliminated, total employer expenditures for health care for employees and dependents could be reduced more than 10% to \$153.9 billion from \$171.1 billion in 1991, according to the "Report on Employer Cost-Shifting Expenditures," by Lewin/ICF, a Washington, D.C.-based research organization.

Lewin/ICF based its estimates on government and private-sector statistics, including data from the Chicago-based American Hospital Assn. on uncompensated hospital care costs.

However, business does not shoulder the cost-shifting burden equitably, according to the report, which Lewin/ICF prepared for the Washington, D.C.-based National Assn. of Manufacturers.

For example, the nation's largest employers—those with 1,000 or more employees—paid about \$20.3 billion in extra health care costs in 1991 be-

cause of cost shifting. But, firms with 24 or fewer employees received an \$11.5 billion "subsidy," the report found.

The report also indicated that employers with 25 to 99 workers paid \$1.4 billion in additional health care costs because of cost shifting, employers with 100 to 499 workers paid \$5 billion and employers with 500 to 999 workers paid \$2 billion.

Of the net \$17.2 billion cost shift, the manufacturing industry's health care plans paid approximately \$11.5 billion, or 66.9%, the report found.

The next largest cost-shifting burden fell on state and local governments, which paid about \$5.2 billion, or 30.2% of the net cost shift.

The services sector received the largest net benefit from cost shifting: roughly \$5.4 billion in 1991, according to the report.

The major sources for the increased

burden on large employers and manufacturers include the cost of uncompensated care; the cost of private insurers and government insurance programs paying less than the cost of services for some plan members; and so-called inter-employer cost shifts, or the uninsured employees of firms being covered spouses under plans sponsored by larger firms, explained Don Moran, a Lewin/ICF vp.

One of the main reasons manufacturers feel the cost-shifting bite so sharply is that these employers are providing coverage to employees' dependents who are employed in industries that offer little or no health care coverage, said Michael Baroody, NAM senior vp.

"Of the \$10.8 billion in hospital uncompensated care, we estimate that approximately \$4.3 billion (40%) is attributed to workers and dependents whose employers do not pro-

vide insurance coverage," the report says.

Mr. Baroody noted that about 98% of NAM's members provide health benefits to their employees.

"Manufacturing tends to be a high-coverage industry. Consequently, we take up the slack for firms not providing coverage," Mr. Baroody explained.

"While no one was noticing, the nation's manufacturing community became a sort of national health care system" for much of the rest of the economy, Mr. Baroody said.

The manufacturing sector of the economy is "way ahead of the rest of America, providing health care coverage for the vast majority of its employees," he said.

Mr. Baroody also said manufacturers' increased burden from cost shifting has slowed investment and productivity.

Lewin/ICF also recently contributed to the report by the Advisory Council on Social Security that recommends improving access to health care by promoting employer-provided health insurance among small businesses (BI, Dec. 23, 1991).

Copies of "1992 U.S. Industrial Outlook" S/N 003-009-00597-3, are available for \$32 by writing to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pa. 15250-7954.

Copies of "Report on Employer Cost-Shifting Expenditures" are available for \$10 by writing to: National Assn. of Manufacturers, Attn: Publications Coordinator, 1331 Pennsylvania Ave. N.W., Suite 1500-North Lobby, Washington, D.C. 20004-1703; or by calling 1-800-637-3005 nationwide, or 637-3086 in Washington, D.C.

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		2	0	250000	3319	0
		3	1025	250000	3319	1635
		4	3307	250000	3319	4601

Utah health costs

Continued from page 3

vision of Towers, Perrin, Forster & Crosby Inc. in Valhalla, N.Y. Mr. Rinaldo helped Utah determine the most efficient providers for its preferred provider organization.

Linn Baker, director-public employee group insurance at the Utah State Retirement Board in Salt Lake City, said he has taken a "market-based approach" that focuses on price and competition in steering Utah's successful attack on health care costs.

"It comes as no surprise to me as an economist to know that the marketplace isn't working" in keeping health care costs down for most employers, Mr. Baker said.

"How can the marketplace work when the people who are ordering or purchasing the care—the doctors

—aren't paying for the care?" Mr. Baker said.

"Physicians purchase the majority of health care services; employers and the government pay for it," he explained.

However, physicians "don't know what the price of the care is and they don't care. We as consumers have no way of knowing before we have some major medical situation occur what the cost is going to be," he said.

Mr. Baker said he believes the elements of managed care, like preferred provider networks and utilization review, are "necessary" but added that "they don't seem to be controlling the costs."

"It seems to me people ought to be talking about why the marketplace isn't working and what we can do to make it work," he asserted.

Under the Utah Public Employees Group Health program, employ-

ees and retirees can enroll in a self-funded traditional indemnity plan, a self-funded managed indemnity plan with a PPO feature—at a lower cost—or two health maintenance organizations (see story, page 20).

Half the plan members are enrolled in the managed indemnity plan with the PPO feature, 41% in the traditional indemnity plan and 9% in the HMOs.

The first step in designing Utah's system was setting up a PPO eight years ago, Mr. Baker explained. That was done after studying provider profiles to screen out those who were inefficient, he explained.

A year and a half ago, the screening process for 1,700 primary care physicians was greatly enhanced by the use of statistical criteria known as Harrington Patterns, which are used to measure proper patterns of treatment.

The criteria were developed by a physician, Donald Harrington, who founded a company called Concurrent Review Technology Inc. in Shingle Springs, Calif., to license the criteria, TPF&C's Mr. Rinaldo explained.

The Harrington Patterns were developed by using a series of "consensus panels of board-certified, knowledgeable physicians" who agreed on certain treatment norms for various procedures, according to Mr. Rinaldo.

Mr. Rinaldo and TPF&C helped process the data on providers furnished by the state of Utah and, using the Harrington criteria, developed a set of reports and physician profiles for the state.

The Harrington Patterns not only helped Utah choose panels of physicians but also help the state continually review and adjudicate treat-

ment, Mr. Baker added.

For example, one Harrington criterion is the maximum number of office visits normally required for treatment of a specific illness as well as the tests normally prescribed for that condition. "A physician who routinely exceeds this maximum is identified as potentially aberrant," Mr. Rinaldo said.

The Harrington Patterns are "a very powerful screening tool that really allows you to identify the most questionable physicians in an area and does so using clinically validated criteria, so you can approach a physician on a professional basis and discuss the reasons why his profile is so far from the norm," Mr. Rinaldo said.

"We found that some physicians as much as 80% of the time were ordering lab tests that had nothing to do with the diagnosis," Mr. Baker explained.

In addition, TPF&C periodically provides Utah with updated information on the providers' Harrington Patterns. "We do the analysis and present the results on a continuous basis to ensure that the (physician's) behavior has in fact been modified," Mr. Rinaldo said.

In addition to more accurate provider selection criteria, the Utah plan also has negotiated standardized fees for bundled services—or so-called global fees—for 95% of surgical procedures.

A year and a half ago it expanded those fees to include a "facilities charge" and anesthesia charges for outpatient services.

"Eight years ago we found there were consultants out there who were increasing physicians' incomes by telling them how to unbundle their services," Mr. Baker explained.

"Then they come to the insurance companies and the claims payers and teach them how to bundle them back up. It's like a game we're playing," he continued.

"A la carting" has always been a problem, he said, but it recently has become much worse, with doctors "feeling the pinch" of managed care and greater competition for the health care dollar.

By negotiating global fees with providers, the Utah plan is assured of stable prices for procedures.

For example, "a normal delivery is \$1,000," Mr. Baker said. "Doctors are told, 'We don't care whether you do an ultrasound or other tests, the fee remains \$1,000,'" he said.

Global fees were developed in-house with input from the medical community. The state adopted as the fee it would pay the 50th percentile of physician charges for a group of services essential to a certain procedure, like child delivery.

Using the same method, Utah also has negotiated fees for office procedures, Mr. Baker said.

Once a physician completes a procedure, like a delivery, the physician receives immediate payment by depositing a medical claim draft into his or her bank account.

"Physicians have to call us when the baby is delivered, and we give them an authorization number for their draft" so the drafts can be deposited, Mr. Baker explained.

"Physicians like it because it's immediate cash—it eliminates the claim. We like it. It controls utilization, plus it gives us a very good price," he said.

Doctors attach a copy of the medical claim draft to the itemized bill when it's sent to the plan, and the bill is retrospectively reviewed for appropriateness.

The Utah plan also has negotiated global fee arrangements with University Hospital in Salt Lake City, which is affiliated with the University of Utah, and LDS Hospital in Salt Lake City for heart transplants and with University Hospital for bone marrow transplants.

The fee is the same regardless of whether the patient is covered under the state's traditional indemnity plan or the plan with the PPO option.

And, the fee structure places

Continued on next page

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Utah health costs

Continued from previous page
University Hospital at risk for part of the cost of bone marrow transplants. Under this arrangement, the plan pays a base fee of \$90,000, and the hospital is at risk for the next \$70,000, if those costs are incurred. Costs beyond that \$160,000 level are shared equally by the hospital and the plan.

Utah's preventive care program is also cost-effective in that it does not pay indiscriminately for a "generic" routine physical exam. "A routine physical exam can cost \$300 and include a lot of unnecessary tests," Mr. Baker explained.

"So we went to the health depart-

ment and found out what people were at risk for at different stages of their lives, and what we should be paying for that is cost effective," he explained.

For routine physicals, the plan pays for only those tests specified as appropriate for the member's age.

Other cost-containing elements in the Utah plan include:

- Partial premium rebates for members enrolled in the PPO with few claims.

Utah encourages employees to join its PPO—and to stay healthy—with its "Prevention Plus" program, which offers premium rebates of up to \$240 per family, \$160 for a family of two and \$120 for individuals with few claims.

The rebates decrease as a member's claims costs rise.

- Encouraging rural members of the traditional indemnity plan to ask non-PPO providers to accept preferred provider fees.

Those employees had been willing to drive long distances and use preferred providers for some outpatient services in return for lower co-payments.

But, rural hospitals were complaining that they were losing a great number of patients, Mr. Baker explained.

So plan members were encouraged to persuade rural providers to charge the preferred provider price.

- Paying employees to exercise, stop smoking and make other lifestyle changes to reduce their health risks.

Utah pays the cost of employees' attendance at a workshop on lifestyle changes and then pays them for making healthy changes to their lifestyle. For example, an employee can earn \$100 by giving up smoking and up to \$60 a year for exercising regularly.

What makes the program effective is "not the money—it's the incentive" to make changes that ultimately control the cost of health care for those employees, Mr. Baker said.

Last year, 4,067 employees attended the workshops. Of those, 1,476 received a bonus for exercising, 843 received at least \$30 for losing weight, 139 received a bonus for lowering their cholesterol level, 77 received the smoking cessation bonus and 57 received a bonus for lowering their blood pressure.

- Devising prescription drug reimbursement schedules that encourage employees to shop for the best price for drugs and immunizations.

Utah has set up its own drug card program, after unsuccessfully trying out a program from a large drug company.

That company "approached us several years ago and offered us a drug card for wholesale purchases, and the first year our costs went up 80%," because "it was too easy to use our drug card. After a \$3 to \$5 copayment, the consumer doesn't know what the drug costs. Even if he's using the more expensive drug, it still costs only \$5," Mr. Baker explained.

Since the large drug company could not make the changes the Utah plan wanted, "we decided to do our own drug card program. Currently, our preferred druggists will accept 90% of wholesale as payment in full. If our employees go to the preferred druggist, they have to pay 10% and the dispensing fee, so our cost is 80%," Mr. Baker said.

As for the dispensing fee, the druggists were told, "Set whatever fee you want, but our cardholders have to pay it, and we're going to tell them to shop around for the best dispensing fee," he continued. The result was "our average dispensing fee went down about 40%. The marketplace worked," he asserted.

The Utah plan also encourages its employees to be smart consumers when it comes to children's immunizations. "Some pediatricians are charging \$38, but the health department charges only \$16" for immunizations, Mr. Baker explained.

"So we said we'll give the employee \$15 and the employee will choose whether to make the large copayment," Mr. Baker said. "And, it's working."

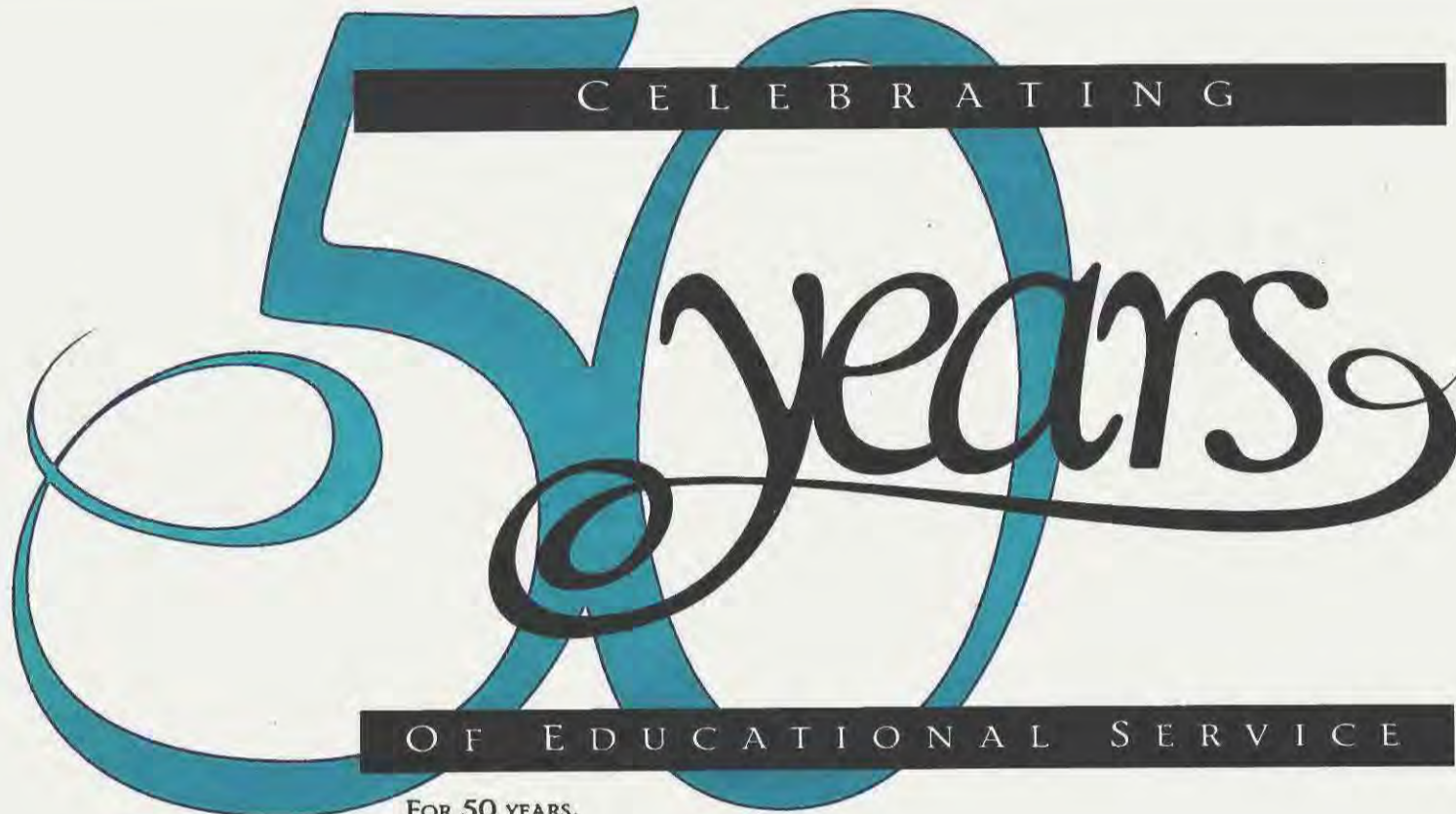
Even with all of these efforts, Utah believes its health care costs will increase by 10% in the fiscal year ending June 30, 1992.

Aggressive techniques can do so much, Mr. Baker said, "and after that, we're in the stream like everyone else."

So, beginning in July, the Utah plan will become even more aggressive in attempting to control rising costs by establishing a "Designated Service Plan."

Through this program, the state will designate the most efficient providers for 20 high-volume inpa-

Continued on page 20



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Utah health costs

Continued from page 18
tient procedures.

Initially, members of the PPO and the indemnity plan will be able to use the designated service providers and receive more generous benefits than if they used preferred providers, Mr. Baker explained.

The state envisions later expanding the designated service plan and making it a stand-alone plan, like its PPO. A lower premium for the designated service plan would be an incentive for employees to join.

The program will be phased in over the course of a year.

The plan is an attempt "to intervene before the selection" of providers, Mr. Baker explained. Employee health care booklets will feature categories of services with the designated providers listed in each category, he said. The booklet will be designed "as an educational tool for employees," with details and explanations of the costs of procedures,

Mr. Baker said.

Utah also is attacking cost increases in its HMO arrangements.

In its negotiations with its two HMOs—FHP Health Care of Fountain Valley, Calif., and Intermountain Health Care of Salt Lake City—Utah specifies that it wants a three-year contract and that annual premiums cannot increase more than the increase in the Consumer Price Index for medical care in Utah.

Utah also insists that there not be any provisions in the HMO benefit package—like a cap on the prescription drug benefit—that result in excluding high-risk individuals.

"We're also concerned that the HMOs selected have panels of physicians that don't overlap. We refer to that as a vertical system. We want these vertical systems to compete with one another, and if you're offering the same benefits and the same providers, I'm not sure you've really accomplished one of the reasons you're offering alternative plans," he explained. ■

Choice of two indemnity plans offered by Utah

SALT LAKE CITY—Utah self-funds and self-administers the two indemnity plans it offers the state government's 75,000 workers, early retirees and dependents.

An indemnity plan with a mandatory preferred provider feature, called Preferred Care, pays 100% of surgical costs. The employee pays a 10% "facility charge" copayment, which is capped at \$500, for hospital or outpatient surgical procedures.

Employees also must pay a \$10 copayment for office visits and laboratory fees if the patient uses a preferred provider. If lab fees exceed \$50, the employee has to pay 10% of the total.

There is no deductible.

As an incentive to enroll in the managed care plan, the Preferred Care plan has much lower premiums than a traditional indemnity plan. Individual coverage costs the employees \$3 a month, and family coverage costs \$8.11 a month.

Under the traditional indemnity plan, the state pays the reasonable and customary charges for surgery, and the plan member pays any costs above that amount.

Plan members also pay a 10% facility charge copayment for hospital and outpatient surgical procedures, which is capped at \$500.

For outpatient services, including physician office visits and lab tests, the state pays 70% of charges and plan members pay 30%.

Like the Preferred Care plan, there is no deductible under the traditional indemnity plan.

The state believes that the structure of its traditional indemnity plan is the same as imposing a 20% coinsurance requirement and a \$100 deductible, yet its plan is easier to administer.

Individual coverage costs the employees \$14 a month and family coverage costs \$40.40 month.

In addition, Utah has established a network of providers for certain outpatient surgical procedures that members of either indemnity plan can use in return for lower copayments. The state will waive half of the copayment for the facilities charge—or 5%—if a plan member uses these providers.

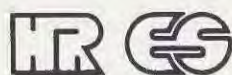
Health maintenance organization premiums and benefits are similar to those in the Preferred Care plan "by design," since that plan competes with the HMOs, said Linn Baker, director-public employees group insurance at the Utah State Retirement Board in Salt Lake City.

The state wanted a "level playing field" to make sure the HMOs' benefits were not better than the state's own plan, Mr. Baker explained.

—By Louise Kertesz



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Agent/Broker Topics

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Caught in the cross-fire

How agents make the most of front-line duty in the insurer-customer conflict

By SARA J. HARTY

While the insurance-buying public has not actually declared war on insurers, peace is not yet at hand, either.

And, when skirmishes flare up between the two sides, agents and brokers find themselves caught in the cross-fire.

But this precarious position has its advantages. As the intermediary between insurance companies and policyholders, agents "are probably the best link to provide an accurate perception of what the problems are and aren't," said Chuck Hembree, executive vp of the Clark-Lami-Hembree Agency in St. Louis and state president of the Professional Insurance Agents of Missouri.

Communication efforts are crucial to that role, agents report, and help improve their own image and that of the insurance industry in general.

Agencies use a variety of techniques to tailor their messages and get them out to customers, potential customers and the public at large. Among the options are educational seminars for policyholders, efforts to promote agents as sources for local reporters and agent-formed consumer-advisory groups.

Many policyholders harbor fewer ill feelings toward their own agent or broker than toward other agents or the overall insurance industry, several agents agree.

"The typical insured doesn't even know who their insurance company is; but they do know who their agent or broker is. It's easier to take potshots at someone you don't know," suggested George C. Hill, vice chairman of Rollins Burdick Hunter of Northern California in San Francisco.

Insurance companies seem to make an easier target for the public because they are further removed from consumer consciousness, agreed Thomas Corkhill, owner of the Thomas E. Corkhill Insurance Agency in Orlando, Fla.

Indeed, unless a policyholder is involved in a claim, he or

she may never have one-on-one contact with the actual insurer. But personal contact with the agent is a necessity.

This, Mr. Corkhill suggested, gives agents the chance to be there with a "front-line response" to client questions—sometimes even before they are asked.

Agents personally explain to policyholders the reason behind rate increases, or why the policyholder's coverage does not apply in a particular situation. But they also have an opportunity "to explain what we are doing for (policyholders)," explained Mr. Corkhill.

Still, negative public perceptions of the insurance industry are "absolutely a problem for agents" as well as for insurance companies, Mr. Hembree said.

"In many cases people don't know the difference between agents and the insurance company," pointed out Charles K. Hennessey, owner and president of Anderson & Watkins Associates Inc. in Portland, Maine. When asked who their insurance company is, many consumers first give the name of the agency, he said. And that can't help but reflect badly on agents, he said.

Part of the agent's job "is just to make people aware that things can happen," said Donna Haskins, vp of Parker-Haskins Insurance Inc. "They need to have a 'Plan B'—to imagine a worst-case scenario and what they would do if it arose."

In-house seminars are used to build consumer relations at

the Dodge City, Kan., agency. Eight to 10 policyholders are invited to hear an outside expert address a topic like workers compensation. The seminars are strictly educational; no effort is made to sell any additional policies.

At Cal Insurance & Associates in San Francisco, a consumer advisory panel is the "cornerstone" of an outreach program. The 18-member panel includes personal and commercial lines clients and "consumer-sensitive" community representatives who do not necessarily purchase their coverage through the agency, said Scott Hauge, president of the agency.

Twice yearly, the panel meets for 1½ hours to discuss general industry as well as agency-specific issues. And throughout the year the members receive material from Mr. Hauge updating them on industry news and new consumer legislation. Various members are also asked to review and comment on agency marketing brochures before they are sent out.

Panel suggestions are used in the agency's marketing. For instance, the suggestion was made—and adopted—to acknowledge that "insurance is a necessary evil" when marketing coverage.

To evaluate its service efforts, the agency also sends a "19th Hole Survey" to random accounts. Thank-you notes are sent to everyone who answers the 15-question survey, and those who give negative comments are called to further discuss their problems.

In addition, every policyholder who submits a claim receives a form asking how the claim was handled. Responses are compiled according to the insurance company handling the claim, and copies of the responses are sent to insurers.

Like insurers, agents find that they have the best opportunity to prove themselves when the insured submits a claim. Not only can the agent demonstrate good, prompt service, but the claims process provides another opportunity for the

Continued on next page

WHAT'S INSIDE

Lights, camera, action

What do Ted Koppel and Pat Buchanan have in common? The insurance agent that places coverage for their TV shows, Walter Coady. Far from the lights of Broadway or Hollywood, the Maryland agent is making his mark in show business.
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Customer relations

Continued from previous page
agent to resolve any issues bothering the insured (see story, page 20D).

Agents who fall short of customer expectations may or may not get the opportunity to repair the damage.

"The 80-20 rule applies here," said Mr. Hembree. Twenty percent of clients who have a problem with the service call to complain; 80% just never return, he explained.

"We generally take a complaint as a compliment," Mr. Hembree added. It means that the policyholder feels "tied closely enough to us that they want to see what the problem is and want to try to salvage the relationship," he explained.

Besides programs that agents set up on their own, formal programs established by trade groups can serve as a guide for agents that want to expand their own customer and community relations efforts.

The Agents and Community Together program sponsored by the National Assn. of Professional Insurance Agents has proven popular among agents.

Agents can purchase resource kits from the PIA that include tips on speaking in public, background materials, a sample speech that can

be adapted to suit the agent's needs and a list of questions and responses to help prepare for question-and-answer sessions.

The PIA has available kits that cover topics from workers comp to youth programs for agents interested in speaking to high school students about insurance.

"The ACT program is a great resource," Mr. Hembree said. The material provided "clarifies and helps us put in perspective" the topic being addressed.

By providing statistics and background material, the packets save agents a lot of homework time, he said.

The Key Contact program sponsored by the Independent Insurance Agents of America continues to expand. The program provides training to agents interested in acting as contacts to the press.

Currently, 147 agents act as contacts in 12 states, with agents in 10 additional states planning to join the program in 1992.

"The program is designed to help improve the image of the insurance industry," said Mr. Hennessey of Anderson & Watkins Associates.

Under one portion of the program, agents contact newspapers and explain the facts after stories with misleading information are published.

For instance, one local newspaper story indi-

cated that a woman involved in an accident was able to receive coverage for her car repairs under her uninsured motorists coverage.

Mr. Hennessey contacted the reporter and explained that uninsured motorists coverage only covers bodily injury, not property damage. The reporter checked her source and the paper ran a correction; the repairs had actually been covered by the driver's collision coverage.

Local reporters also use Mr. Hennessey as a resource, contacting him when they need clarifications or to get an insurance angle on a story.

Catching the eye of local reporters is not always so easy, though.

"Sometimes it's real hard to get anyone's attention at the newspaper office—that this is an issue that affects your readers," said Ms. Haskins, who has been a key contact in Kansas for just more than a year. The size of Dodge City—population 20,000—also makes it more difficult to attract attention to insurance issues, she said.

Many agents bypass the general media and send out their own newsletters. Most address topical issues of insurance or business for personal- and commercial-lines accounts. Frequency varies by agency: Some send their letters out monthly, others only quarterly.

Lately, though, budget constraints have forced some small agencies to cut back on

newsletters or other customer-outreach efforts.

Anderson & Watkins, for instance, used to spend about \$20,000 a year on monthly newsletters, advertising and other community relations work.

Times have changed. Now, instead of sending out monthly newsletters, the agency sends out informative letters when various issues seem to call for special attention—and then only to certain accounts.

For example, when the state began requiring car owners to show proof of auto insurance before they could register their cars, the agency sent an informational letter to its personal-line auto accounts.

One simple way for agencies to maintain a presence in the community is for agency employees to become active in various community organizations.

"I pride myself in doing more than just writing insurance policies," Mr. Hauge added. He is active in 23 business and community organizations, including the Small Business Council and a commission on juvenile-delinquency prevention.

Anderson & Watkins continues to donate time and money to non-profit organizations like the United Way. And Mr. Hennessey is a member of the Rotary Club, while another employee is a member of the Lion's Club. ■

Defusing fears on ratings, withdrawals

By SARA J. HARTY

High-profile insurance insolvencies and the uneasiness created by falling insurer ratings are causing agents potentially thorny customer relations problems.

In addition, agents can face a customer relations nightmare when insurers stop writing certain types of coverage or withdraw from individual states.

In both cases, agents and brokers say the problems can be overcome with prudent actions and customer confidence that has been built up over the long term.

For agents and brokers, customer faith was jarred most recently and most severely by the state seizures of Executive Life Insurance Co., the largest U.S. insurer ever to fail, and Mutual Benefit Life Insurance Co., an old, conservative blue-chip company.

In California, where Executive Life is based, "the issue of solvency of insurance companies is very important," said George C. Hill, a vice chairman with Rollins Burdick Hunter of Northern California in San Francisco.

Most of Executive Life's business was composed of individual life insurance policies and annuities and guaranteed investment contracts written for pension plans, but that was of little comfort to property/casualty insurance buyers.

"The consumer doesn't know the difference, especially since there were so many rank-and-file people whose employers had invested in Executive Life," Mr. Hill said.

And California consumers, he added, have not forgotten the spectacular 1987 liquidation of Mission Insurance Co., another California-based company (*BI*, Feb. 9, 1987).

"Most prudent brokers have always stressed the importance of solvency, now it is even more crucial to keep an eye on the ratings," Mr. Hill said.

At RBH, as at other major brokerages, a security committee produces an "approved market list" for its brokers by analyzing insurers' annual reports and ratings from A.M. Best Co., Standard & Poor's Corp. and Moody's Investor Service Inc.

Smaller agencies lack that sort of resource, but they still are growing more careful about insurer security.

"We don't sell policies for companies that we feel are on the edge," said Donna Haskins, vp of Parker-Haskins Insurance Inc., a

'We don't sell policies for companies that we feel are on the edge,' says Donna Haskins, vp of Parker-Haskins Insurance Inc. in Dodge City, Kan. If the insurance companies 'aren't going to be careful, then I have to be careful.'

Dodge City, Kan., agency with premium volume of \$2.3 million

If the insurance companies "aren't going to be careful, then I have to be careful," she explained.

Some agents counsel taking a pragmatic, "realistic" approach with customers who are uneasy over the latest reports from rating agencies.

An insurance company that drops "from an A+ to an A isn't really an issue," contends Tom Corkhill, owner of the Thomas E. Corkhill Insurance Agency in Orlando, Fla.

Brokers and agents can't "know about a ratings drop until it takes place," said Dell Van Gilder, president of Van Gilder Insurance Corp., a Denver agency with \$59 million in annual premium volume.

At that time, Van Gilder would contact the executives at the insurance company to see what their plans are, and if necessary, contact clients to discuss how to handle renewals, he said.

Concerned policyholders who call when their insurer has dropped in the ratings must be told the "reality" that not even an A+ company can be "guaranteed" not to go under, warns Charles K. Hennessey, owner and president of Anderson Watkins Associates Inc. in Portland, Maine.

As proof, he cites Mutual Benefit Life, which carried an A rating from Best until shortly before it was taken over in July by state regulators (*BI*, Aug. 5, 1991).

Mr. Hennessey points out what he considers another weakness of insurer rating services: their treatment of foreign companies. Anderson Watkins sells policies for a large foreign insurer that "has more money than most countries have," he said, but is rated B because the rating agencies do not take into account all its foreign holdings.

Agency clients are told the situation and offered the opportunity to choose an A-rated company, usually at a higher premium, Mr. Hennessey said.

On those occasions when a client asks him to do what's best, Mr.

holder with an A-rated company, even though he has confidence in the foreign insurer.

Mr. Corkhill, the Orlando agent, says he has not had to confront a significant drop in the ratings of the insurers that he represents. But he has not been so fortunate with market withdrawals.

In one sense, customer concerns over specific withdrawals may be easier to assuage than the more generalized concern with ratings

downgrades.

When an insurer plans to withdraw from a particular line of coverage, "we hope to know before the general public," said Mr. Corkhill. This gives the agency time to call its customers and let them know that the agency is aware of the problem and is working to find a new insurer.

"If a market doesn't want workers comp, we have other companies

Continued on next page

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Ratings, withdrawals

Continued from previous page

that do," he noted. When given proper notice, the agency can quote the new price to the client, who then can decide whether or not the new insurer is acceptable.

With only 30 days' notice before a withdrawal, a "rush job" is required. Sixty days' notice is "a little short" but not a crisis situation, and 90 days' notice is within the normal parameters of finding a new insurer, Mr. Hennessey said.

When an agency needs to find a replacement insurer, it helps to have satisfied, long-term customers, said James J. Cooke Jr., a

partner with Englehardt/Cooke & Associates in Metairie, La., which has premium volume of \$8 million.

Satisfied customers have confidence in the agency and are more likely to trust the agency's efforts to find a new market for their coverage, he said.

Receiving a non-renewal notice can be a traumatic experience, Mr. Cooke explained, and clients who haven't heard from the agency are likely to assume that the agent is responsible to some degree.

When a large multiline insurer recently pulled out of Maine, Anderson Watkins had about four months to replace its book of business.

"We notified our clients ahead of time and explained that the company had made a business decision that it could not make a profitable return on business in the state. We made it clear that it had nothing to do with them," Mr. Hennessey said.

Another insurer agreed to buy the entire book of business from the agency.

Van Gilder, the Denver agency, has fared well when insurers stop writing a certain line. Most accounts have been transferred, and most often the new insurer's prices and service are as good as the previous one's, said Mr. Van Gilder, the agency president.

"Those agents—and I'm sure there are a number—that are not able to transfer their

accounts for whatever reason, have a problem," he said.

Replacing coverage is not easy when the client purchased only auto insurance or is elderly, acknowledged Mr. Cooke. "Sometimes we just can't do it and refer the client to other markets."

"We're not so selfish as to try to retain a piece of business if it is to the customer's detriment," he said. But "we have to be very careful with our referrals to alternative markets" as well, since some substandard companies are in danger of becoming insolvent, he said.

"I'd rather advise them to use the assigned risk pool," he said.

Disasters test agencies' mettle

A chance for service to shine when customers need it most

By SARA J. HARTY

Natural disasters and other catastrophes test the strength of an agent's service capabilities.

But, agents who are prepared to act promptly and efficiently when catastrophe strikes can make a difference in how well their clients weather the storm.

When Hurricane Bob swept through Massachusetts on its way up the East Coast last August, it damaged or destroyed hundreds of pleasure and commercial boats. The tempest also wreaked havoc on the marinas and boat-repair shops in its path.

But Burr Brothers Boats Inc., a

Disasters require the agent to 'be prompt and honest in their response and to help these people,' says Clay Owen of Bay Insurance. 'They rely upon you for insurance advice, which is the role of the independent insurance agent.'

boat yard in Marion, Mass., which suffered an estimated \$70,000 to \$100,000 in insured storm damage, couldn't let the crisis prevent it from seizing the opportunities created by the natural disaster. The company, which services and repairs boats and provides winter

storage facilities, had to be operational in short order. And that required attentive service from its insurance agent.

Immediately after the storm hit Burr Brothers, Dennis Joaquin, controller of the boat yard, snapped dozens of Polaroid photos of the damage. A representative from his agency, Brewer & Lord in Braintree, Mass., was able to accommodate Mr. Joaquin's schedule to meet with him and tour the facility.

The two reached general agreement as to which damage was insured and which was not. The company does not carry flood insurance, so any damage caused by accumulated water rather than high winds was not insured, according to Mr. Joaquin. At that point, partial payment was made to enable the company to start repairs.

After the priority repairs were completed, other repairs were more or less placed on hold while the shop handled its onslaught of business, Mr. Joaquin said. Currently, about two-thirds of needed repairs have been made.

So far, Burr Brothers is satisfied with the way the claim has been handled. However, Mr. Joaquin reserves judgment until "we get down to the nitty gritty." But because he was pleased with the way the agent and the insurer—Commercial Union Insurance Co. of Boston—handled claims from Hurricane Gloria in 1985, he expects the process will run smoothly this time.

It was another disaster, the fires that ravaged a residential neighborhood in the hills of Oakland, Calif., in October, that allowed Bay Insurance Brokers of Dublin, Calif., to test its preparedness for wide-scale emergencies.

Although Bay Insurance is located about 20 miles from the scene of the fire, employees were able to figure out which customers could be affected by searching their computer files for ZIP codes that fell within the devastated region.

Agency employees then called these policyholders to see if there was a claim. "We found that if they were at work, that was usually a good sign," noted Clay Owen, a vp with Bay Insurance.

ZIP code searches allowed the agency to reach at least some policyholders before they had time to submit a claim. And the proper insurers could be notified that

much faster.

Disasters require the agent to "be prompt and honest in their response and to help these people," Mr. Owen said. "They rely upon you for insurance advice, which is the role of the independent insurance agent."

Much of that advice concerned issues that arose only after claims were submitted. And much of the advice was a function of the inferno, which was intense enough to melt cars and their engine blocks.

For instance, burned ground soil was crystallized eight inches deep, leaving toxins in the soil that had to be removed before homes could be rebuilt. Bay Insurance warned policyholders to obtain hold-harmless agreements from contractors who removed the toxins, so that the homeowner would not later face some kind of environmental claim.

Agency employees also encouraged policyholders to complete a detailed inventory of all items lost in the fire and mail it to their insurer—even after the value exceeded their policy limits. The inventory would provide documentation for a casualty claim tax deduction for damages in excess of insurance reimbursement.

In other instances, agency employees were able to speed up claims handling by acting as mediators between insurance companies and policyholders.

Agency preparedness prior to a disaster is key to a quick response. Something as simple as stocking plenty of loss forms so that a sudden rush of claims won't deplete the supply can be important, said Joseph I. Quin, president of Allan M. Walker & Co. Inc. in Taunton, Mass.

Mr. Quin also keeps a couple manual typewriters on hand so claims forms can be prepared even if the power is out.

Although his agency does not, many larger agencies in storm-prone areas do have emergency generators that could provide enough power to run electric typewriters, fax machines and photocopiers, he noted.

A communication plan for reaching affected policyholders is also important.

Because widespread areas can be without phones and electricity after an event like a hurricane, radio is a good way to reach policyholders, who are likely to have a battery-operated model available, Mr. Quin said.

"By and large our clientele seemed happy" with the service they received after Hurricane Bob hit Maine, said Charles K. Hennessey, owner and president of Ander-



Disasters like the Oakland fire, whose toll is shown here, challenge service abilities.

son Watkins Associates Inc. in Portland.

However, one area in which he and other independent agents were lacking, he said, was mass communication efforts.

While many agents for direct writers were prepared with radio and TV announcements featuring 800-numbers to call for claims information, "we as independent agents had no plans to run ads with our companies," Mr. Hennessey said.

Such ads, he said, would bolster the image of independent agents following a disaster.

Local agents in Maine are working with the Independent Insurance Agents of Maine to develop a general fund that could be used to finance such ads.

Generic independent-agent ads could tell listeners to contact their agent with questions, or if unable to reach their own agent, to contact any independent agent, who could then point them in the right direction.

Besides being prepared to handle a sudden influx in claims following a disaster, agents must also take steps to prepare their clients for catastrophes that could occur.

Every other year the Clark-Lami-Hembree agency sends out a mailing to remind clients that earthquake protection is available, said Chuck Hembree, executive vp. His agency is based in St. Louis, which lies on the New Madrid fault.

The agency periodically mails out pamphlets from the American Red Cross that discuss earthquakes, the Richter scale and actions to take prior to and after a quake.

The efforts "educate them and protect us" from clients who after a quake might claim they were never told of earthquake coverage, explained Mr. Hembree.

A "bad loss period is an opportunity for us to show them that this is what insurance is for," said Mr. Quin of Allan M. Walker & Co. ■

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Correspondents at Lloyd's of London

Transamerica adds to interface program

A/BT products & services

WOODLAND HILLS, Calif.—A new feature of the Transamerica Insurance Co. agency-interface program is designed to allow agents to provide timely confirmation of midterm changes, endorsements and declarations.

The "batch-back" feature will provide regular updates on Transamerica policy information. Agents can then use that information in their office computer systems to track policies locally and follow up with customers, said Jim Stallard, vp of personal insurance administration for the Woodland Hills, Calif.-based insurer.

"Interactive programs between agents and companies are quick, but they don't allow the agent to capture data locally and use it in his or her office computer system," said Mr. Stallard.

Transamerica uses the Insurance Value-Added Network Service to make data from its master files available to agents. When agents first come into the program, initial information is sent on tape or diskette. Once that is entered into an agency's computer system, updated information is made available through IVANS.

For more information contact Curtiss Olsen, Transamerica Insurance Group, 6300 Canoga Ave., Woodland Hills, Calif. 91367; 818-596-5918.

Property valuation

HARTFORD, Conn.—Industrial Risk Insurers is offering a new property valuation service to policyholders.

The insurer set up the program with American Appraisal Associates of Milwaukee in response to requests from brokers and agents as well as policyholders, said Gail P. Norstrom Jr., a senior vp at IRI.

Hartford-based IRI bills its program as "True Worth."

"Compared with other valuation services, (the program) offers faster turnaround, lower cost and more usable data—such as local prices of materials and labor; and segregated values by site, building and class of property," said Mr. Norstrom.

More information about the program is available from local IRI offices. A free four-page brochure is available from the IRI Library, 85 Woodland St., Hartford, Conn. 06102; 203-520-7412.

New PIA coverages

ALEXANDRIA, Va.—Five new group insurance programs are being offered to members of the National Assn. of Professional Insurance Agents.

All are underwritten by Principal Mutual Life Insurance Co. of Des Moines, Iowa, which also offers long-term disability and other coverages through the trade group.

The new coverages are:

- Term life. The program provides up to \$300,000 in term coverage.

- Dependent term life. The program provides up to \$100,000 in spouse coverage and \$3,000 for each dependent child.

- Disability income. The program provides up to \$1,500 per month after 30 days of disability.

- Accidental death or dismemberment. The program guarantees acceptance for up to \$320,000 in

accidental death coverage while under age 60.

- Hospital income. The program covers up to \$250 per day, from the first day of a covered hospital stay, and up to two years of each period of confinement.

The programs are not available in Connecticut, Hawaii, Michigan, New Jersey or New York.

For more information, contact the PIA Insurance Marketing Department, 800-742-6900.

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FEBRUARY Controlling Costs

Issue: February 3
Ad Closing: January 22

How do you hold the line in a recession?

BI's Agent/Broker Topics section will focus on what agents are confronted with in light of a recession coupled by soft market conditions. How have strategic plans been altered? What programs are being put on hold? Editors will talk to agents about the changes they're making in their business operations.

MARCH Agency-Insurer Relations

Issue: March 2
Ad Closing: February 19

As the property/casualty marketplace continues to squirm in the doldrums, are hostilities increasing between agents and their insurers? *BI's Agent/Broker Topics* section will look at the cost containment efforts put in place by insurers and how they are affecting independent agents. Editors will examine the major complaints that agents are leveling against their insurers.

APRIL Consulting Services

Issue: April 6
Ad Closing: March 24

In a competitive market agents are forced to look beyond the typical placement of insurance for their revenue. *BI's Agent/Broker Topics* section will look at the alternative fee based services agents are turning to. What services are agents providing for their clients? How do agents search out these non-traditional markets? How receptive are their clients? Are agents successfully increasing their revenues by offering consulting services?

Agent/Broker Topics

Agent/Broker Topics is a monthly demographic section published within the pages of *Business Insurance*, and sent exclusively to *BI's* agent/broker subscribers. Advertisers in *Agent/Broker Topics* are positioned within an unparalleled editorial environment and reach an undiluted audience representing a wealth of purchasing power for insurance products and services. With an average premium volume of \$14.91* million, 94%* of these influential readers take action as a direct result of the articles or advertisements they read in *Business Insurance*.

* An Audience Profile of the Business Insurance 'Agent/Broker' Subscriber, 1990.

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No business like show business

By LAURA MAZZUCA

CLINTON, Md.—In his 15 years in show business, Walter Coady has done it all—radio, television, video, filmmaking, publishing.

Without him, Ted Koppel's "Special Reports" might not be a TV viewing habit for millions; documentary producer Ken Burns may have never refought "The Civil War" over 13 hours on public television; and the ongoing bickering of "The McLaughlin Group" might be silenced forever.

Neither writer, producer nor director, Mr. Coady is an independent insurance agent. His specialty: developing and placing coverage for these and other media figures, primarily through association programs.

Such coverage ranges from basic commercial property/casualty to esoteric needs like protection against libel, faulty workmanship, third-party liability and cast appearance.

"Most agents don't have a clue as to what they need, but we speak their language," said Mr. Coady, whose Waltery Insurance Brokers began specializing in publishers' coverage in 1976 and now also covers independent video and filmmakers.

Today, those specialties comprise about 40% of the agency's book of business. Waltery, which has an annual premium volume of about \$7.5 million, has 11 employees and a department that does nothing but seek more specialty

Movies are the latest specialty for Waltery, a veteran of other media-related coverages

business through direct mail, referrals and other means.

By placing coverage through associations like the Corp. for Public Broadcasting, the National Newspaper Assn. and the Assn. for Independent Video & Filmmakers, Mr. Coady now counts among his clients more than 300 radio and television stations, 1,300 newspapers and about 125 independent film and video producers.

Understanding an industry

Waltery wins praise both for its service and industry knowledge.

"We get a very good response from them," said David C. Simonson, executive vp with the newspaper association in Washington, D.C. He has worked closely with Mr. Coady on the group's libel insurance.

"They understand the needs of the association and are very conscious of the needs of membership," Mr. Simonson added.

But Mr. Coady is quick to point out that his agency has no plans to compete for the business of big



Walter J. Coady has carved a unique niche.

ance Corp. was interested and initially wrote the coverage, which was later switched to CNA Financial Corp.

This initial foray into broadcasting convinced Mr. Coady that there was big potential for specialization in other media areas that needed libel coverage.

Two years later, he was working with community newspapers in the region and the National Newspaper Assn. to design a similar libel program for publishers. After writing the policy and calculating rates, he again convinced CNA to write the program.

As the insurance industry moved toward mass marketing in the 1980s, more small businesses began to secure their coverage through association programs and Mr. Coady's visionary thinking began to pay off.

How he got into movies

He got into the movies in 1990 by developing an improved insurance program—including libel, standard property/casualty and marine coverages—for the Association for Independent Video & Filmmakers Inc.

Unlike public broadcasters years earlier, filmmakers were already able to find libel coverage. But the coverage was based on the traditional annual policy, which did not take into account the needs of filmmakers who work on projects of variable length and don't always need a full year's coverage, Mr. Coady said.

By basing his policy on the project's budget or estimated length of a shoot, he kept premiums low for independent producers of television and cable TV programs and commercials. The policy covers the entire production period, but can be written for as short a term as 13 weeks, he added.

The policy also covers both the producer and the buyer against libel for the entire rights period—or the time that the buyer has the right to use the film—with no annual renewal.

His venture into filmmaking did not end there. After talking with people in the business, scouring the trade publications and attending conventions, Mr. Coady went on to develop coverage for other exposures specifically related to filmmaking, including faulty stock, third-party liability, film and negative coverage and cast appearance.

Waltery's libel coverage today is primarily underwritten by SAFECO Insurance Co.; and Travelers Corp., Hartford Insurance Group and CIGNA Corp. handle other property/casualty coverages, Mr. Coady said.

Although he primarily places coverage for filmmakers working in the region, Mr. Coady also has secured coverage for foreign producers shooting in the United States, and plans to begin working with associations on the West Coast.

"The local agent theory is not critical anymore," noted Mr. Coady, whose agency has always been in Clinton, a suburb about a mile outside Washington, D.C.,

that is dominated by small businesses.

When a producer, for example, wants to shoot a street scene in New York, the city requires that the producer have a certificate of insurance. Waltery can easily obtain the coverage and fax the certificate to the city in minutes. The agency also has an 800 number for increased accessibility, he added.

But all is not glitter and glamour. While loss ratios for specialty coverages like libel can be "wonderful" for years, Mr. Coady warns that when losses do hit, they can be catastrophic.

To illustrate the stakes involved, he points to a single year: 1986.

Media companies that year were hit with two multimillion-dollar, high-profile libel actions. Former U.S. Army Gen. William Westmoreland sued CBS Inc., alleging that he had been libeled in a news program. In addition, Ariel Sharon, former defense minister of Israel, sued Time Inc., alleging that he had been libeled in a Time magazine article. Gen. Westmoreland ultimately dropped his libel action, and Time prevailed in court.

Despite general insurance market softness, "rates (for libel coverage) went up 100% that year," Mr. Coady recalled.

A pair of 'really dumb' ones

Those megasuits had no direct effect on Waltery's association clients.

But these clients do not always emerge unscathed. "We've been fairly lucky, but we've had some big ones," he noted.

In one libel claim, a television station had flashed the wrong picture of a woman who was killed. The woman's mother saw her live daughter's photo on television and sued, he said. The station settled out of court.

Another "really dumb" suit began with a television station filming an Easter Seals telethon. Its footage was later sold to a producer who used excerpts in a film of his own.

"Unfortunately, it was Playboy Enterprises Inc. doing it, and some of the background footage ended up" in an adult movie, Mr. Coady said.

Ultimately, the television station won on appeal. But not before legal expenses climbed "into six figures," he recalled.

The atmosphere remains ripe for such libel suits, and, like the damages from the inevitable hurricane or earthquake, "you know it's coming, and when it comes you just hope it isn't too big," he said.

Because of this, Mr. Coady is keeping close tabs on the makeup of the Supreme Court, "because the First Amendment is what we insure." Many libel cases that are lost by the media in a local court level are reversed on appeal, he pointed out.

And in spite of the glamour and profitability of placing media coverage, Mr. Coady has not given up on his agency's Main Street business. Instead, he's looking for specialties there as well.

At an insurer's suggestion, the agency is now targeting upscale restaurants, using techniques similar to those it employs in its media specialties to develop accounts. It is looking to place not only general property/casualty coverages, but also coverage for special restaurant risks like food spoilage, credit card invoices, fine arts, exterior signs and customers' property.

"We see this end of the business expanding drastically," Mr. Coady added.



One client: TV's McLaughlin Group.

Hollywood studios or producers.

Instead, Mr. Coady is focused on meeting the needs of small filmmakers, a breed that is growing both in number and influence as the big studio system struggles with the economic realities of the '90s.

Technological advances, too, are making it possible for any creative person with a little money and some experience in video camera technology to make his or her own films, he said. These are the types Mr. Coady hopes to serve.

"There are probably more independents than big studios, but they pay smaller premiums," Mr. Coady said. "Alphabet houses aren't interested in three-, four- or five-thousand-dollar premiums. But independents are making bigger inroads as Hollywood becomes more fragmented."

Big potential, uncrowded field

That insight did not come overnight. When he started from scratch in 1968, Mr. Coady focused on setting up a simple Main Street insurance business, he recalled.

Then, in 1976, the risk manager of the Corp. for Public Broadcasting—a health insurance client at the time—approached him for information on libel insurance.

Anxious to oblige, Mr. Coady began researching the topic. He found that the only libel coverage broadcasters could then find—which based rates on the cost of ads per minute—was of little use to ad-free public stations. And insurers that wrote libel coverage didn't want to be bothered with creating a separate structure for them, he added.

Within several years, Mr. Coady devised a package coverage with rates based on the station's size and transmitter power, rather than commercial rates. He presented the coverage to several insurers for underwriting. Employers Reinsur-



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Heading off E&O claims with a paper trail

By LAURA MAZZUCA

CHICAGO—As their standing as "professionals" rises, independent agents and brokers are discovering one of the drawbacks to their hard-won status: errors and omissions lawsuits.

But much of their potential E&O exposure can be avoided by careful documentation.

That was the conclusion of experts speaking at a recent seminar sponsored by the American Bar Assn. and the Society of Chartered Property and Casualty Underwriters.

Back in the 1960s, an agent or broker was considered a mere policy salesman, and his liability exposure was small, said Stephen J. Paris, an attorney with Morrison, Mahoney & Miller in Boston.

That has changed markedly. Insurance has grown more specialized, clients are watching costs more closely and market conditions are changing rapidly. Those factors, together with a growing reliance on producers' increased knowledge about risk management and specific client needs, mean that producers will face increased errors and omissions exposures in the future, panelists noted.

"Brokers are professionals the way accountants and lawyers are professionals, and like them, can be found guilty of malpractice," said Barry R. Ostrager, a lawyer with Simpson, Thatcher & Bartlett in New York.

As policies grow more complex and specialized, clients more than ever need agents and brokers to steer them toward the right coverage. With that increasing responsibility comes the added risk that courts will hold producers to a higher "standard of care," said Howard M. Berg, an attorney with Berg, Bifferato, Tighe & Cottrell in Wilmington, Del.

And that risk is even more pronounced when agents and brokers use non-admitted insurers not covered by state guaranty funds, said Richard E. Mueller, an attorney with Lord, Bissell & Brook in Chicago.

Greater sophistication among policyholders is also putting agents and brokers at greater risk of an E&O claim, the experts said.

Popular misconceptions notwithstanding, the chances for an E&O lawsuit are not necessarily related to the complexity of the coverage, said Hoyt Wood, vp of underwriting for Employers Reinsurance Corp. in Overland Park, Kan., a leading agents and brokers E&O insurer.

About 40% of the agent E&O claims received by Employers Re stem from inadequate coverage, like insurance that is inappropriate for the exposure or the agent's failure to offer optional coverage, noted Mr. Wood. But about one-fourth of that 40% arises from private-passenger auto, four times the frequency of commercial auto E&O claims.

Another 12% to 15% of claims are related to agent misrepresentation, either by misrepresenting the coverage to the policyholder or the policyholder to the insurer; 12% are due to processing delays; and 10% due to cancellation errors.

So, all told, about three-quarters of Employer Re's E&O claims spring from "procedural issues" that can be avoided through adequate documentation of processes, said Mr. Wood.

Similarly, almost half the E&O claims seen by Russell E. Stevens & Co. in Bloomfield, N.J., which administers an E&O insurance program for New Jersey agents, are caused by alleged inadequate coverage, said President William H. Stevens.

Documentation is the best defense against these and other types of claims, Mr. Stevens agreed. Among the suggestions he offered are:

- Use a checklist to be signed by the client when placing both new

and renewal coverage.

- Create a similar method for proposals, which also should be reviewed and approved in detail by the client.

- Keep a telephone log of messages between agent and client.

- Keep agency employees informed of coverage changes; keep clients informed of new coverage availability through newsletters or other written information.

- If there are policy changes during a renewal, these should be reviewed with the client and documented in writing.

- Inform the client immediately upon hearing of any coverage inadequacies.

It's also vitally important that a

producer avoid "shoemaker's kid syndrome" by taking care of his own insurance needs in terms of E&O coverage, added Mr. Paris of Morrison, Mahoney & Miller.

Although premiums have risen considerably over the last 25 years, E&O coverage for producers is essential, Mr. Stevens said.

And not all policies are created equal, observed Mr. Paris. Agents should ask themselves the following when purchasing E&O coverage:

- How does the policy define "claim" and what are claim reporting requirements?

- Who does the policy cover?

- How does the policy respond if the agency purchases or merges with another entity, or if the agency's ow-

nership changes?

- How does the policy relate to the dishonest acts of employees?

- Are punitive damages and legal fees covered under the policy?

- Are claims related to insurer insolvency excluded?

Even when insolvency is not covered, agents have ways of protecting themselves, the experts noted.

If an agent is dealing with an admitted insurer that is solvent when the policy is placed, liability should not be a problem for the agent or broker, Mr. Wood said.

To prevent problems, he added, producers should combine their own "market understanding" with information from rating agencies A.M. Best Co., Standard & Poor's Corp.

and Moody's Investor Services. Overly aggressive pricing and slow processing and payment of claims could all be warning signs of solvency problems, he said.

Mr. Stevens also recommended creating a "paper trail" when tracking solvency. He suggested having clients sign an acknowledgment if any coverage must be placed with a non-admitted insurer or an insurer whose solvency is questionable.

Agents with specialized knowledge of an insurer, however, may find it more difficult to shield themselves from liability in an insolvency. For instance, agents who are stockholders in the failed company often could be found liable if they placed business with the insurer.

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Agent/Broker Topics

Medigap rules are tightened

WASHINGTON—Stricter new federal rules that include criminal penalties prohibit the sale of supplemental Medicare policies duplicating "any" coverage already held by a policyholder.

Before implementation of the Omnibus Budget Reconciliation Act of 1990, only sales that "substantially" duplicated existing coverage were prohibited.

Those rules were tightened after congressional investigators last year found evidence of widespread fraud by insurance agents in the sale of the supplemental, or Medigap, policies to the elderly (A/BT, Aug. 5, 1991).

The new rules, which became effective Nov. 5, also narrow the exceptions to the general ban on sales that duplicate coverage. Previously, group policies, policies that did not coordinate benefits provided by more than one policy and plans sponsored by labor unions or employers were all excluded. Now the rule will be enforced for policies that do not coordinate benefits.

The rules will be enforced by state insurance com-

missioners. Civil penalties for selling duplicative coverages include fines per offense of \$15,000 for agents and \$25,000 for insurers. Criminal penalties range up to five years in prison and \$5,000 in fines.

As it is currently worded, the law prohibits the sale of Medigap policies to anyone who already has another health insurance policy that provides coverage for any of the same benefits, according to a spokesman for the National Assn. of Insurance Commissioners. This could include coverage under a cancer insurance policy, employer-provided retiree benefits or another Medigap policy.

Prohibitions that broad appear to go well beyond what Congress intended, the NAIC said in a statement. And in fact, technical language corrections are expected to be passed by Congress.

Exactly what changes will be made and when they will pass is uncertain, the NAIC said.

—By Sara J. Hartly

Software firm Delphi buys rival Redshaw

WESTLAKE VILLAGE, Calif.—Delphi Information Systems Inc., one of the largest suppliers of computer software to independent insurance agents, last month bought rival Redshaw Inc. for an undisclosed price.

Redshaw, which had been a Hartford Group Inc. subsidiary, will remain in Pittsburgh, and Frank Grebowski, its president, will manage the new division—which now is known as Delphi/Redshaw.

Delphi, which operates under the name Delphi/McCracken, bought

A/BT briefs

Redshaw from Hartford and its fellow investors—St. Paul Fire & Marine Insurance Co., Crum & Forster Inc. and Kemper National Insurance Cos.

The merger will benefit the growing independent agents that work with the company, said a Hartford spokeswoman. Redshaw has traditionally worked with smaller agencies, while Delphi/McCracken's market has been the larger firms.

"Delphi/McCracken shares Redshaw's philosophy of superior customer service and has made a commitment to maintain that same level of service to the independent agents who use Redshaw systems," said William L. Harrison, senior vp of Hartford Group Inc. and the former chairman of Redshaw.

New post for lobbyist

WASHINGTON—Joel Wood, formerly an assistant vp and lobbyist with the National Assn. of Professional Insurance Agents, has been named vp for government affairs of the National Assn. of Casualty & Surety Agents.

Mr. Wood's appointment took effect Jan. 1. In this post, he will monitor legislative activities and direct NACSA's legislative program. Ken A. Crerar will remain executive vp.

Kansas merger talks

TOPEKA, Kan.—A joint resolution calling for "serious consolidation discussions" was approved by the boards of the Kansas chapters of the Independent Insurance Agents of America and the National Assn. of Professional Insurance Agents.

A steering committee met early last month to begin work on a consolidation plan. Once approved by the boards, that plan will be presented to the members.

The Independent Insurance Agents of Kansas has 600 member agencies statewide, representing approximately 2,700 employees.

The PIA of Kansas has 487 member agencies representing 1,980 employees.

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Mar 9	Feb 25	International Captive & Reinsurance Forum	Bermuda
Mar 30	Mar 17	Risk & Insurance Management Society	Anaheim
Mar 30	Mar 17	National Managed Care Congress	Washington, DC
May 4	Apr 22	National Association of Insurance Brokers	Pebble Beach
May 18	May 5	Public Risk Management Association	Anaheim
Jun 29	Jun 16	Society for Human Resource Management	Las Vegas
Jul 6	Jun 24	National Association of Insurance Commissioners	Washington, DC
Aug 17	Aug 4	American Risk & Insurance Association	Washington, DC
Aug 31	Aug 18	Monte Carlo Rendez-Vous de Septembre	Monte Carlo
Sep 7	Aug 25	Self-Insurance Institute of America	New Orleans
Sep 14	Sep 2	Independent Insurance Agents of America	New Orleans
Sep 21	Sep 8	Nat'l Assoc. of Professional Surplus Lines Offices	Chicago
Sep 21	Sep 8	RIMS Singapore	Singapore
Oct 5	Sep 22	Nat'l Assoc. of Casualty & Surety Agents & Executives	Greenbrier, WV
Oct 12	Sep 30	Chartered Property & Casualty Underwriters	San Francisco
Oct 26	Oct 13	National Association of Independent Insurers	Orlando
Oct 26	Oct 13	Baden-Baden Conference	Baden-Baden, W. Germany
Nov 9	Oct 27	National Association of Professional Insurance Agents	Orlando
Dec 7	Nov 23	National Association of Insurance Commissioners	Atlanta

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Legal bill horror stories

By Steven O'Neill

IN THIS ERA OF TIGHTENED BUDGETS and seemingly uncontrollable litigation, one of the hottest topics in the world of corporate insurance is the need for containment of legal fees and expenses.

The recent proliferation of legal auditing firms is testimony to the growing feeling, especially in the insurance industry, that law firms that have served companies for years are overcharging, either deliberately or through inefficiency. Many corporate general counsel, too, are for the first time casting a quizzical eye toward legal bills.

The growing tension between law firms and clients over legal bills has been the subject of increased attention and discussion. Much of it focuses on the changing (and not necessarily improving) relationship between the profession and the corporate and insurance community.

The client view, it seems, is focused on those instances of clear abuse which, though few, are suspected to be "the tip of the iceberg." The commercial and tort litigation defense bar, on the other hand, laments what it sees as the unfairness of castigating an entire profession for the indiscretions of a relatively small group of firms.

In many cases, the anger and frustration of corporate clients over the cost of legal services is understandable. Even the most reputable law firms can find themselves in the position of presenting a legal bill to a client who reacts with horror at the bottom line.

Many a long-term relationship has been soured by a runaway legal bill that the client feels reflects at the very least inefficiency, and possibly dubious billing practices.

The honest and well-intentioned lawyer, for his or her part, is inflicted first with embarrassment, then with hurt professional sensibilities at the suggestion

How to end them and restore old ties with the defense bar

that his or her bills could be anything less than "on the level." The fact is that most lawyers are hard-working and honest (lawyer jokes notwithstanding).

There are "defense" organizations of attorneys in nearly every state that devote great energy to educational and lobbying activities on behalf of their clientele. The point is that the vast majority of these professionals want to serve well and honestly, and their clients are well served by their skill, their defense and their industry-oriented attitudes.

If recognizing the problem is not in itself a solution, it is at least a first step. In nine out of 10 cases of excessive legal bills, the problem can probably be identified as one of minimal, if any, communication between the client and the lawyer concerning the result or goal desired by the client and the methods to be used by the attorney in achieving it. For those wishing to attack this problem at its root, the following suggestions could be made:

- **The client should have a clear understanding of what he or she seeks to achieve in a given litigated matter.**

If the self-insured or insurer views litigation as a "bottom line" problem—i.e. "resolve it for the least possible cost"—this should be expressed to the attorney. The corporate or personal attitude of the client needs to be made clear at the outset of the

relationship. Whether pragmatism or principle is paramount, the lawyer should know so that his or her approach can be tailored to the particular lawsuit.

- **The chances for success should be discussed early and frequently.**

The client, whether corporate or an insurer, should not view the lawsuit as being out of his or her hands once it is sent to defense counsel. Litigation, like any successful activity, needs to be planned, and the plan needs to be revisited and adjusted when conditions change.

Frequent dialogue gives the client the opportunity to question whether activities originally planned are truly in the best interests of the overall result, given the circumstances at any time during the life of the case. It also provides the client with the chance to restrain the hand of the hyperactive attorney if the activities under consideration are more costly than useful.

- **Know the attorney working on your case.**

Most clients don't want cases passed along from attorneys they know to those with whom they are totally unfamiliar. This is understandable, and most law firms can easily accommodate this preference by assigning a senior or lead attorney to the matter with one, or even two subordinates who will assist and be available to the client as the case progresses. Losing sight of the attorney working on the case is a symptom of losing sight of the case in general, and should be avoided by the client.

- **Agree on the scope of services and their cost.**

Recent articles in trade publications have cited instances of item charges by law firms for which clients did not expect to be billed. Law firms, hopefully, are profit-making businesses, and, like other businesses, want to defray overhead where

Continued on next page

Valuing property abroad

Too much discretion at local level can hinder uniformity

By Douglas N. Smith

WHILE MOST OF THE public looks forward to spending time with their families in a festive spirit during the holiday season, many risk managers, brokers and insurers are embroiled in the final negotiation of insurance programs.

Risk managers who opted to obtain competitive quotes for their international property/casualty insurance programs may have spent the holidays going through the complex process of comparing competitive rating and coverage proposals. It is essential in such cost comparisons that quotations use the same valuation base and exchange rate to allow meaningful comparison.

There is nothing more basic to insurance than the formula:

$$\text{Premium} = \text{Rate} \times \text{Value}$$

Whereas the insurance companies provide the rating, the policyholder is responsible for developing values. In the United States, the valuation issue can be difficult at best. For risk managers who select replacement cost property insurance, one must decide what index to use to escalate the values to keep up with inflation and

INDEXING ISSUES

other factors. Industrial Risk Insurers provides indexes applicable to most businesses, and the Handy-Whitman Index is available to utility owners.

However, although many countries have their own index methods, there is no single index applicable to overseas property.

Among their many objectives, centrally controlled international insurance programs often are implemented because of the ability to control insurance for subsidiaries and thereby achieve a constant approach to risk management. But the most basic element in insuring property—valuation—often is left to the discretion of local management. The basic guidance may be to report replacement values, but local managers may be given no other guidance in how replacement costs should be developed; which index, if any, is appropriate to corporate policy; and how to account for factors that could affect property values during the term of the policy.

At renewal time, when property value data is finally captured, the

analysis will provide a snapshot of the situation at a particular moment in time. The limits of the policy, which are based on the values at risk, may seem to be adequate at the time of renewal, but two significant factors may act to change this belief:

- Inflation.
- Devaluation.

The first factor affects valuation by increasing local costs beyond those factors on which the valuation was based. Domestic risk managers grappled with this problem in the mid-1970s. For international risk managers, the problem still exists in some foreign nations. Perhaps the primary area where inflation is still a problem is South America, but countries in other regions also can be severely affected.

Each country has its own methods for escalating property values; two cases illustrate the possibilities:

- In Argentina, there was an attempt to devise alternative currencies to the austral in order to take inflation into account. A government index based on a financial instrument called the Bonex was used to fix values on the basis of "hard" currencies. Later, an indexing system

called the Unidad de Cuenta de Seguros was offered as an alternative. Under this system, values reported in australs are converted using a frequently updated table issued by the superintendent of insurance that allows for the country's rapid inflation. Any subsequent loss would be re-converted to australs using the indexation at the time of the loss.

The inherent complexity and artificiality of such systems seems to be recognized in the growing trend of multinational companies to value their local Argentinian coverage in U.S. dollar-based policies.

- In Brazil, rather than artificial currencies, indexing was the accepted technique used to adjust property values during the policy period. However, earlier this year, the government decreed that along with freezing prices and salaries, it would eliminate Treasury bonds. The Treasury bond rate was the index of choice.

Instead, Brazil's Insurance Superintendency issued rules that require values—as well as limits, deductibles, etc.—to be converted to and expressed in cruzeiros and then

Continued on next page

Legal bill problems

Continued from previous page

possible. Most firms, on the other hand, charge directly for very few overhead items. The client should inquire of the firm what in-house expenditures he or she can expect to be billed for, and at what cost. Frequently, the clients have the negotiating power to arrive at reasonable and mutually acceptable overhead charges.

• Ask for reasonable specificity in billing descriptions.

The day of the lawyer's one-line entry "for services rendered" followed by the amount of the bill are obviously at an end. On the other hand, requiring exquisite detail and descriptiveness in time entries on computerized bills, as a rule, can create a billing nightmare for your law firm. Somewhere there lies a happy medium that should be discussed in advance with the firm. Firms using computerized billing often are forced to use generic code words in entries, which may have to be augmented to provide the level of specificity you want.

• Read your bills.

Most firms do a review of their bills before they are finalized and sent to the client. This should eliminate data entry errors or other problems. However, like everyone else, busy lawyers can miss an incorrect item on a bill, which can work to your detriment.

• Address billing problems quickly.

Whether it is a billing error, an entry on a bill that you don't understand or a charge you do not feel should have been incurred, address the situation quickly. Most lawyers are delighted to know that their clients have read the bill soon after its receipt, even if that knowledge comes in the form of a request for clarification or even elimination of a charge. This improves the mutual understanding of the billing process as well, and at a time when something can still be done to nurture the relationship.

• Ask about your firm's billing practices and do some comparative analysis.

If you take the time to learn what the customary billing standards are in a given legal community,

you will know whether you are getting the most cost-effective defense available. Building your own knowledge base also will reduce the need to employ costly outside services to analyze or make judgments about your bills from your law firm.

The defense firms serving the insurance industry and the corporate world are in it for the long haul. Most of them welcome the participation of the clients they serve in the design of the litigation plan and the dialogue concerning what it should cost. The sooner the dialogue begins, the more quickly the horror stories concerning outrageous legal bills will disappear. ■



Steven O'Neill is a co-founder of the law firm Tarkington, O'Connor & O'Neill in San Francisco.

Valuing property abroad

Continued from previous page

frozen. Loss payments, however, would be subject to a small correction using an index known as the Daily Referential Rate.

Whereas indexing is allowed for 12 months on policies issued after Feb. 1, 1991, that indexing is allowed at minimum intervals of six months. The situation leaves policyholders in the unfortunate position of having to update values at intervals and with indexes of their own discretion. Monthly updates using one of many possible indexes (the General Price Index of the Geulio Vargas Foundation, the foreign exchange rate, the National Index of Civil Construction or the Automobile Gazette Market Value Index) would be a conservative approach.

Argentina and Brazil are two countries that illustrate the difficulty in maintaining adequate limits in high-inflation economies.

Although inflation primarily affects the cost of services within a country, devaluation impacts the replacement cost of imported machinery, equipment and other needed property. Manufacturing is often located in lesser-developed countries to take advantage of a labor cost differential (among many other factors). However, in these countries, machinery, equipment and

other vital industrial tools may not be available in the local market. Thus if damaged or destroyed equipment must be replaced, the replacement property will come from outside the country and the purchase must be made in an acceptable currency.

For example, if a turbine must be purchased from an English manufacturer for the replacement of damaged property in Peru, then the purchase contract will require payment in British pounds (or other currency acceptable to the manufacturer). If the insurance indemnification is in the local currency, then conversion at an acceptable exchange rate will directly affect whether the policyholder has been truly indemnified.

Thus, at the beginning of a policy period, the value declared for such imported goods may eventually result in the underinsurance of the goods because of the devaluation of the local currency relative to other currencies. Although it may be possible to index the value of the local currency through other currencies, it may remain difficult for foreign managers to know what index to use.

Despite the inexact science of developing values and maintaining them throughout the policy period, some relief is available through master poli-

cies written for centralized global insurance programs. The principle remains that while usually 100% replacement values need to be reported, the master policies will function as "umbrellas" over local policies, acting as "difference in limits" as well as "difference in conditions" policies. Thus, should local policies fall short in providing total indemnification, there may be relief through the master policy.

There are two important clauses that risk managers should review and which can determine the adequacy of their international property insurance programs: coinsurance and devaluation clauses.

Coinsurance affects the claims payment if local policy limits inadequately reflect total values at risk. The requirement in the United States is typically that the policy limit be 80% of the value at risk, but this may vary overseas depending upon the country. If, because of inflation, coinsurance requirements are not met, then the master policy should respond to provide true indemnification.

Coinsurance clauses may have sublimits required by insurers and therefore should always be reviewed for potential deficiencies.

Devaluation is the policy provision

that makes up for indemnification shortfalls should currency exchange cause an inability to purchase imported goods and services.

Local managers typically have two requirements when a loss occurs:

- Receive 100% indemnification for the loss.

- Receive the indemnification as quickly as possible.

Loss scenarios may cause a protracted settlement process, but one issue that should be relatively easy is that the values reported or the insurance limit should not be a major issue in the claims process. Proper indexing of values at risk to ensure that true replacement cost is reported and constant monitoring of values in high-inflation countries, coupled with local indexing, can prevent many of the problems. ■

Douglas N. Smith is senior vp and manager of the International Department of Johnson & Higgins in New York. His column appears the first Monday of every month.



Court rules computer data is tangible property

Are computer tapes and data tangible property within the meaning of a property damage provision of a general liability insurance policy?

In a case of first impression in Minnesota, an appellate court concluded that they were and, thus, an insurer was required to defend a data processing consultant in a suit brought against it by one of its clients.

Retain Systems Inc. was a data processing consultant. It developed computer programs and processed data relating to voter preference for one of its clients, the Independent Republican Party of Minnesota.

The survey results for the Independent Republican Party of Minnesota were recorded on a computer tape that Retail processed. When not in use, the tape was shelved at Retail's office.

In August 1985, the computer tape disappeared during a period of remodeling in Retail's computer room. Retail carried a general liability insurance policy with CNA Insurance Cos. covering physical injury or destruction of tangible property. The general liability policy excluded coverage for

Legal briefs

property "entrusted" to Retail "for storage or safekeeping."

The Independent Republican Party of Minnesota sued Retail for damages resulting from the loss of the tape and its data. CNA refused to defend Retail.

Retail then brought this suit against CNA seeking a declaration that the insurance company had a duty to defend Retail in the suit. The trial court ruled for Retail.

The appellate court said that, at best, the general liability insurance policy's requirement that only tangible property was covered was ambiguous, and that it required a decision to be made in favor of Retail.

In addition, the court believed other considerations supported the conclusion that the computer tape and data were tangible property under the policy. "The data on the tape was of permanent value and was integrated completely

with the physical property of the tape," the court said.

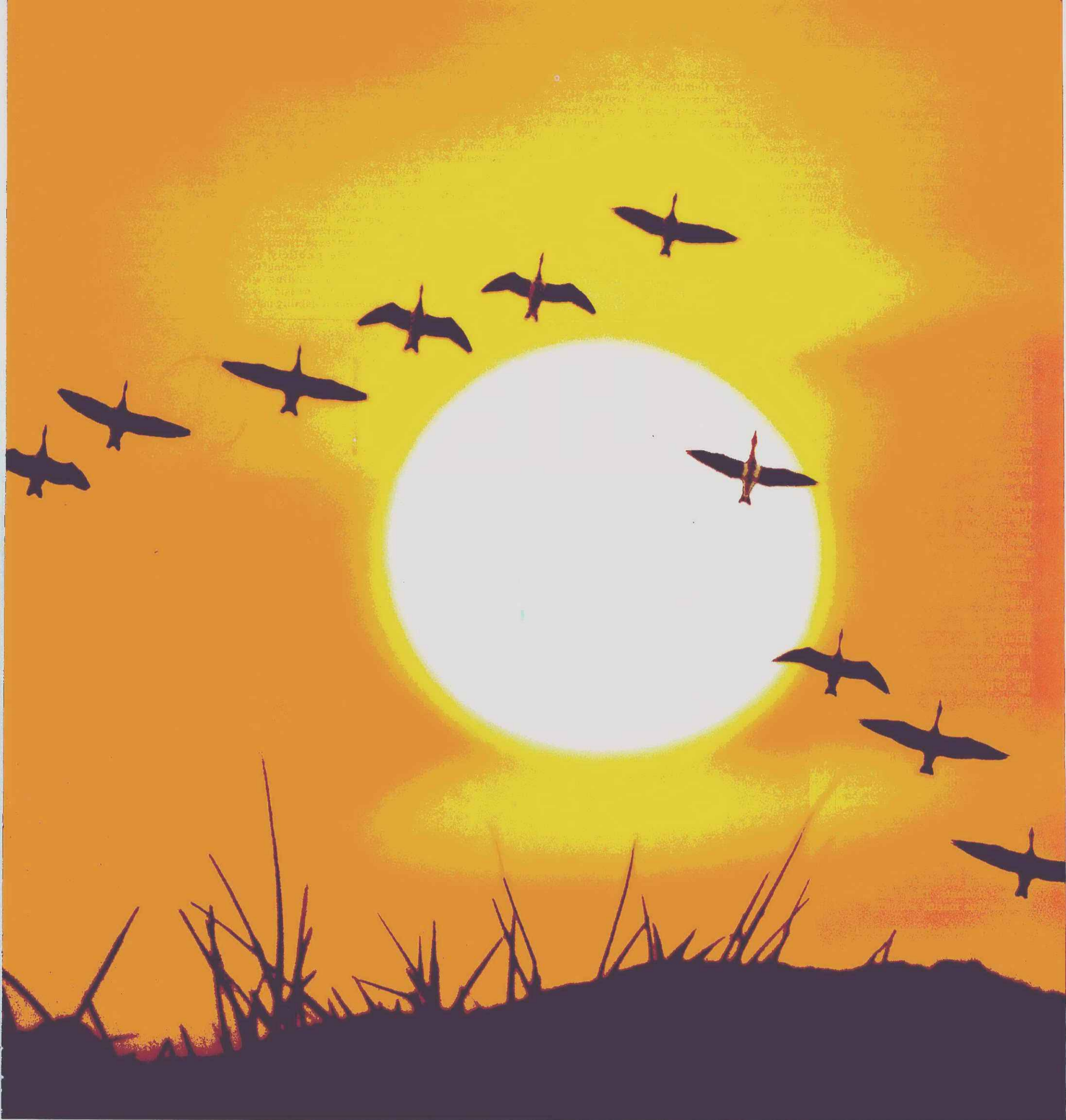
Furthermore, the court said that the mere possession of property does not indicate that the possessor was also holding the property for storage or safekeeping.

Here, according to the court, the general liability insurance policy exclusion for stored property did not apply because the computer tape was entrusted to Retail so that it could work on the tape and any storage of the tape was merely incidental to Retail's true reason for possessing it.

The trial court decision was affirmed.

Retail Systems vs. CNA Insurance Cos., Court of Appeals of Minnesota, May 21, 1991 (BI/05/F.-\$10).

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



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Insurers

Continued from page 1

new units to a policy and therefore increase the exposure, he said.

"We're not seeing any changes on the primary level, but we're not seeing any decreases either," said Richard W. Wratten, president of Transamerica Insurance Co.'s commercial insurance division in Woodland Hills, Calif.

"In both liability and property, rates have leveled out somewhat," agreed Bruce Smith, senior vp of Employers Insurance of Wausau, a Nationwide Mutual Insurance Co. unit in Wausau, Wis.

Primary liability rates are "flat," according to Thomas Kelsey, executive vp of Chubb & Son Inc. in Warren, N.J.

The rates for lower-level excess liability coverages are continuing to drop, said Rich Barbieri, vp of specialty insurance for Travelers Insurance Co. in Hartford, Conn.

"Of all the coverages, low layer has dropped the most in the last five years and it continues to drop," he said. Travelers isn't writing as much low-layer excess coverage as it did a few years ago, he added.

Premiums are decreasing more rapidly for accounts with more than \$100,000 in annual premiums, Mr. Barbieri said. He characterized large-account competition as a "feeding frenzy."

High-level excess coverages, however, present a hazier picture.

"We continue to see competition coming in at cheaper prices compared to a year ago—both from the primary and excess market," said Brian O'Hara, X.L.'s president and chief operating officer.

But the marine market in London has "tightened significantly," Mr. O'Hara said. "Premiums are going up and capacity is shrinking," he added.

As a result, X.L. is being asked to quote on more marine liability business than a year ago, Mr. O'Hara said. Marine business "started coming to us in the wake of Piper Alpha and then Exxon Valdez. Originally, we came in on top of insurance already in place, but now we are being asked to fill in at lower levels."

"High-layer facilities are raising prices," said Travelers' Mr. Barbieri. "The London marine market isn't writing incidental marine-exposure accounts. They are going back to true marine accounts," he observed.

Prices for high-hazard liability insurance have risen more than those for high-layer excess coverage "due to increased frequency and severity of losses in excess of \$100 million," said Walter Scott, ACE's chairman and chief executive officer. ACE is increasing prices for both high-layer and catastrophic excess business and high-hazard risks.

Mr. Scott would not provide specifics on the increases. "They fall in a very large range. Since July 2, we've increased prices on about one-third of our book of business, and as accounts renew, every account has received a price increase. There is no minimum, no maximum and no average. Our price increases so far have ranged from 3% to 54%," he said.

Increases are higher for higher-risk industries like chemical, pharmaceutical, oil and gas, he said. The July increases marked the first time ACE had raised excess liability rates since its founding in 1985 (BI, June 17).

X.L. also recently hiked rates. In 1990, it "selectively raised rates between 2% and 15%, and that has resulted in approximately a 5% to 6% increase across the board" on its book of business, Mr. O'Hara said. Rates were raised on longer-tail risks and for risks that had grown substantially or where exposures had changed, he explained.

Rates also are increasing for directors and officers liability insurance, said several insurers.

D&O rates are increasing as a result of litigation that was started in the 1980s and is now coming to fruition, said William Smith, president of National Union Fire Insurance Co. of Pittsburgh, Pa., an American International Group Inc. unit. That litigation is driving up loss costs and therefore rates are increasing, he said.

Financial institution D&O is "very difficult" with rates moving up between 20% and 25%, he said. With loss costs rising for Fortune 500 D&O accounts, rates are escalating on average 15%, he added.

"Banks are continuing to be

troublesome," said Stephen Sills, chief underwriting officer for Executive Risk Management Associates, a Simsbury, Conn.-based unit of Aetna Life & Casualty Co. Rates are rising only slightly, if at all, for the highest-quality banks, said Mr. Sills, but troubled banks could receive triple-digit increases.

High-tech sector D&O risks, like energy and gas, also are being hit with significant rate increases, said National Union's Mr. Smith. The increases range from 10% to as high as 40%, he said.

Meanwhile, medium to small accounts and non-profit D&O risks are undergoing modest rate increases, probably about 5%, Mr. Smith said.

"I've seen sporadic, minor increases" in D&O, said ACE's Mr. Scott. "ACE by and large has not been increasing its D&O prices because the increases we see... are relatively small. We won't follow the market up right away."

Chubb's Mr. Kelsey said that while rates remained generally flat through much of the year, the D&O marketplace seems to be "more and more breaking down into two" broad segments. Non-profit organizations and privately held companies are not experiencing increases, while publicly held corporations are increasing their retentions or contending with small rate increases, he said.

The professional liability market

defies easy characterization.

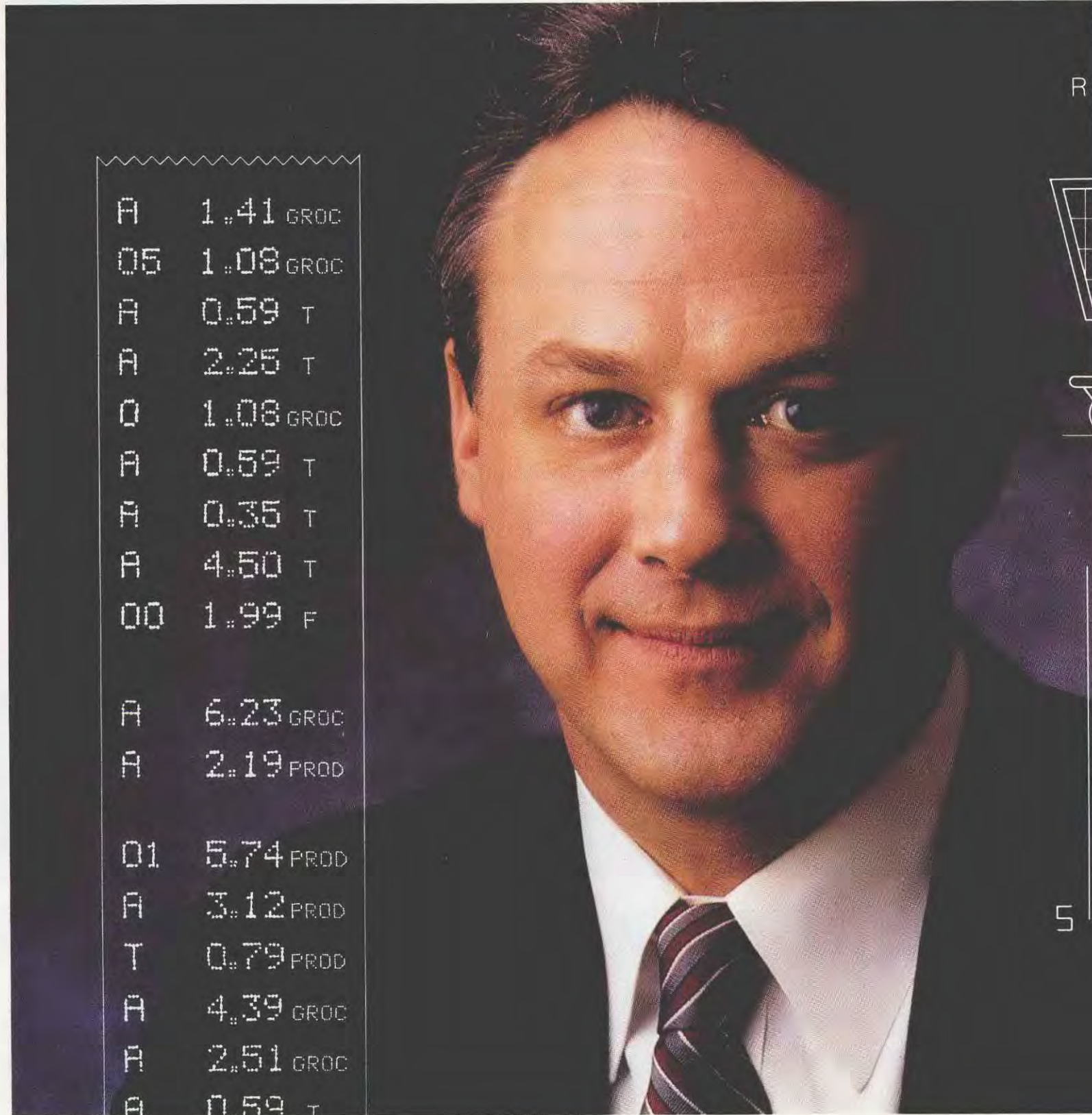
Travelers' Mr. Barbieri said that although medical malpractice rates remain soft, other areas of professional liability coverage, like real estate E&O, are experiencing "flat to small increases."

There are changes going on within the professional liability market, said National Union's Mr. Smith.

But, he pointed out, recent rate changes at National Union are primarily due to the fact that some categories are changing coverage forms. For example, in October the insurer changed psychologists professional liability to a claims-made form from an occurrence form, he

Continued on next page

THE H O M



OLD PROS ON

Continued from previous page said. Mr. Smith said claims-made professional liability coverage for psychologists "is a more straightforward approach from an underwriting standpoint. And, it creates a greater market."

Rates for lawyers professional liability, the largest segment of professional liability that National Union writes, vary depending on the size of the firm and its involvement in litigation for troubled financial institutions.

"A one- to five-person law firm that is not involved in (Securities and Exchange Commission) work usually buys about \$500,000 in coverage. Rates are declining for that type of risk because it hasn't

been hit with major losses," Mr. Smith said. But for large firms, especially those involved in litigation for financial institutions, rates are rising 35% to 40%, Mr. Smith said.

Meanwhile, "there is a fair amount of competition" in the municipal liability marketplace, said Mr. Smith. Policyholders "won't see a lot of change" in rates at renewal, he predicted.

"Bankers bond market continues to be soft except for banks with major losses. Bankers blanket bonds are renewing as is or with modest decreases," Mr. Smith pointed out.

The surety market, on the other hand, "is becoming very difficult,"

'If you had to single out the worst single market in the U.S., that's workers comp,' says Mr. Wratten.

he said.

But, Mr. Smith noted, the difficulty does not necessarily have to do with rates as much as it has to do with large European surety losses.

"You'll see more careful underwriting in surety in the next 12 months," he predicted. National

Union is not cutting back on writing such risks, but is very selective about the accounts it will take and typically takes only very large ones, Mr. Smith said.

The boiler and machinery insurance marketplace is "stable to slightly rising," said Keith Hynes, senior vp at Hartford Steam Boiler Inspection & Insurance Co. in Hartford, Conn. "We are able to get greater premium increases on higher-exposure accounts," like chemical, oil and gas; California earthquake risks; or high-value accounts, he said.

But, he said, while high-exposure accounts are firmer, "when you average it all in, we're still getting small, single-digit premium

increases. It's nice, but it's not good enough."

"We are getting premium increases, not rate increases," Mr. Hynes explained. In other words, "we are getting inflationary increases—our average is below 5%—but that's not a price increase. It's the same rate being charged for a higher exposure, so it's not an adequate increase."

Such increases are especially inadequate given that they come on the heels of four years of premium decreases. "The question becomes, does it serve us well to get these small increases after four years of decreases?" Mr. Hynes asked.

Policyholders are paying some "very low single-digit" increases of 2% to 3% for boiler and machinery coverage, said Chubb's Mr. Kelsey.

Insurers point to workers comp as the line of business that worries them most, although some jurisdictions have been allowing significant rate increases for workers comp.

Rates have gone up 10% to 12% in many jurisdictions, said George Ramsdell, senior vp and chief underwriting officer for the agency group at Continental Corp. in Cranbury, N.J.

Crum & Forster's Mr. Vairo also said that workers comp rates have risen in some areas, but added that the modest increases are not nearly enough to cover losses.

"If you had to single out the worst single market in the United States today, that's workers comp," said Transamerica's Mr. Wratten. Regulators are suppressing rates, he said, adding that California Insurance Commissioner John Garamendi's recent action granting only a 1.2% rate increase after insurers requested a 11.9% increase was "best described as irresponsible," (BI, Dec. 23, 1991).

But, Mr. Wratten said, recent reforms in Colorado (BI, July 1, 1991) and Oregon (BI, Sept. 23, 1991) could serve as models for other states. If significant reforms aren't made soon, "I think we'll see a continued withdrawal by companies" from troubled jurisdictions, he predicted.

"Comp is the only area I see where there is no light at the end of the tunnel," said Wausau's Mr. Smith.

Caleb Fowler, president of CIGNA Corp.'s property/casualty insurance units in Philadelphia, said one of his wishes for the new year was a "fix" for the workers compensation system. He predicted that the situation in some states would get so bad that reform would be inevitable.

Workers comp woes, however, appear to be generating additional business for some insurers.

"We're getting a lot of inquiries" about alternatives to the existing workers comp system, said Transamerica's Mr. Wratten. He noted that Transamerica provides services to captives and self-insureds.

"We're into that quite heavily," said Wausau's Mr. Smith. Interest in alternatives seems unlikely to abate anytime soon, he added.

The situation on the property side of the property/casualty market has remained relatively stable, which is to say underpriced, insurers say.

"Rates are flat and cruising that way," said Michael McIntyre, senior vp at Allendale Mutual Insurance Co. in Johnston, R.I.

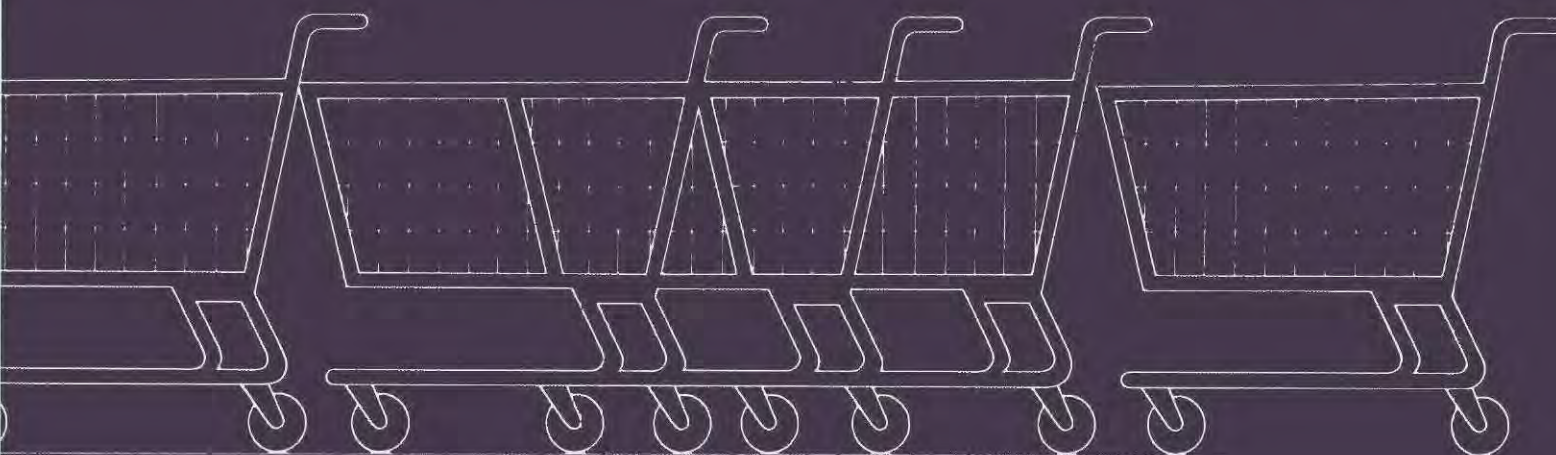
"The pricing level on property continues to be soft," said William E. Moriarty Jr., vp and staff officer-marketing for Arkwright Mutual Insurance Co. in Waltham, Mass. Mr. Moriarty said that he has observed some tightening for chemical risks, which Arkwright does not write, "but that seems to be the only industry."

Property rates are flat to lower, said Chubb's Mr. Kelsey. The big-

Continued on next page

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Home Insurance

A N E W T E A M

Insurers

Continued from page 28

from an occurrence form to a very restrictive claims-made form" for certain risks, he said.

Despite a surfeit of capacity overall, there are certain lines of coverage some insurers are wary of underwriting.

"We are cautious about long-tail and pollution risks," explained St. Paul's Mr. Carlson.

And, "we shy away from workers comp in problem states," he said.

While St. Paul will write workers comp coverage in those states, it typically imposes rules on local underwriting teams that require accounts to be written on a retrospective premium basis or to purchase the insurer's risk management services package.

Insurers report that they're taking numerous steps to cut losses and to increase their competitive edge.

Chubb's Mr. Kelsey said that the New Jersey-based insurer is "constantly restricting terms" in California because of the state's legal climate.

"We are reducing coverages and increasing deductibles—especially in circumstances where the customer wants a premium decrease," said Hartford Steam Boiler's Mr. Hynes.

"We've been successful in doing this" while retaining those accounts, said Mr. Hynes.

In addition, "problem accounts with high loss ratios are either getting meaningful coverage or premium changes, or we are withdrawing from the accounts," Mr. Hynes said.

And, he noted, the insurer is "backing away from coverage enhancements." For example, "we are less inclined to do guaranteed rate programs or to provide exotic business interruption programs."

Over the last five years, Travelers has made investments in workers comp loss prevention and claims handling abilities, which are now "having a material impact on claims," said Mr. Barbieri.

Travelers, though, is not increasing deductibles for any lines, nor is it changing its policy form wording. "We think improved services are the way to deal with losses."

In order to compete, Travelers is broadening coverages in isolated cases for customers with good experience and loss controls, Mr. Barbieri said.

ACE also has made some changes to its policy form, Mr. Scott said, although he explained that the changes are not a response to increased competition. "We just felt it was the appropriate time to make a revision."

The new form, released in November, marks the first time that ACE has changed its policy form wording.

The new policy will be used for all new accounts and is optional for renewing accounts. It clearly defines how it will attach at multiple attachment points for multiperil risks, Mr. Scott explained.

In addition, ACE "liberalized the notification provision under sudden and accidental pollution," he said.

Previously, ACE required policyholders to notify (primary insurers) in seven days and ACE in 20 days following an incident. The new notification provision gives policyholders 40 days to inform ACE of an incident.

Overabundant capacity remains the chief culprit in the continuing soft market, say insurers. "Too much capacity, obviously," is the cause, said Wausau's Mr. Smith. "There's too much surplus to support price increases."

Arkwright's Mr. Moriarty said that capacity problems are exacerbated by the recession. Recessions put pressure on risk managers who are in "a position of having to do more for less," he said.

As a result, they want insurers and brokers to provide more support without paying more for it, he said.

Investment income and return on equity haven't reached the point where insurers have to raise prices, either.

"If the investment income rate declines, insurers would have to seek relief in rate increases," said Allendale's Mr. McIntyre.

Crum & Forster's Mr. Vairo called returns on equity "anemic," but not so anemic that rates will go up.

"Our recognition that we can't make money at current pricing levels" is driving Hartford Steam Boiler's activities, according to Mr. Hynes.

"We'd rather write less business than more business at the current price levels. There is lots of insurance capacity out there, so I'm not optimistic that we'll see meaningful price increases next year. I expect modest increases in 1992—but

they won't be enough to turn this around," he said.

However, ACE's Mr. Scott said there is not an overabundance of capacity in the high excess layers.

"A lot of large corporations want to buy higher limits than are available today. But, there aren't enough corporations asking for those higher limits to warrant offering them," he said.

Because of the recession, "the size of the marketplace is not increasing, really it's decreasing," said Travelers' Mr. Barbieri. The amount of business available has shrunk, he said.

'When I look at the excess rates, while they have dropped significantly in the last several years, they still are multiples of what we saw in the 1980s,' says Mr. Barbieri of Travelers. 'And that tells me the market can go down further.'

He added that the rates could go down further. "It has not bottomed out. When I look at the excess rates, while they have dropped significantly in the last several years, they still are multiples of what we saw in the 1980s—and that tells me the market can go down further."

Even more optimistic observers don't see any market turn on the horizon.

"There's very little in sight that says 1992 will cause a price adjustment," said Crum & Forster's Mr. Vairo. Like other insurers, Mr. Vairo pointed out that while catas-

trophe reinsurance rates "are going to go up tremendously," that alone won't turn the market.

"We're not looking for the market to change very much in the next year," said Transamerica's Mr. Wratten. "Waiting for a turn is a false hope."

"To make plans predicated on a market turn is living in a bit of a fantasy land," agreed Chubb's Mr. Kelsey.

Mr. Vairo said that a "major correction" eventually will have to occur. "The more that adjustment is postponed, the more severe it will be," he said.

Mr. Vairo ticked off a list of problems that should be driving the market upward, including: claims cost inflation, questions about reinsurance recoverables, political and regulatory pressures, and the workers compensation crisis.

But the turn doesn't seem to be in the offing, he said. "It just blows your mind," he commented. ■



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Risk managers

Continued from page 1

Mich., sought bids because of the hardening market.

The coverage was written in 1990 by United States Aircraft Insurance Group, an insurer consortium based in New York.

Volkswagen is expecting to end up purchasing lower aviation liability limits at a higher rate when it finally places the coverage, Ms. Warshawsky noted.

Like aviation insurance, marine insurance also is commanding higher rates. Carnival is watching coverage costs go up for its "fun ships" as well as its planes.

"Our blue-water marine account typically requires worldwide capacity," Mr. Scheinblum noted. "Some of the vessels are valued at \$300 million."

Rates for the nine cruise ships now operating are up 50% to 100% from last year's levels, Mr. Scheinblum said.

The blue-water marine coverage includes insurance for a vessel's hull, business interruption while the ship is at sea and hull war risks, among other coverages, he explained.

Like its aviation coverage, Carnival's blue-water marine account is led by Lloyd's syndicates.

Mr. Scheinblum pointed out that insurance prices have hardened considerably in London as underwriters there continue to reel from recent catastrophes. "The London market is much tougher," he commented.

Another line of coverage that's going to be a little more expensive this year in some cases is traditionally troubled directors and officers liability coverage. Rate increases, however, are nowhere near those for aviation risks.

"The market has hardened a little bit," said David Jeroski, insurance manager at General Nutrition Inc. in Pittsburgh. The retailer of nutritional supplements expects its

'In my 25 years in this business, this is the first time I can remember the London market being substantially harder than the U.S. property/casualty market,' says Michael S. Scheinblum of Carnival Cruise Lines.

D&O rates to rise about 10% to 20% at this year's renewal, he said.

Mr. Jeroski did not reveal General Nutrition's D&O limits, but said the company plans to renew the coverage with National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc.

Although the firm's other coverages renew later in 1992, Mr. Jeroski said he sees no threat of a market hardening. "I don't see anything in sight."

In fact, the horizon remains clear for companies renewing most other types of property/casualty cover-

age, risk managers report.

In fact, Mr. Scheinblum said that he doesn't foresee any problems when Carnival's domestic property/casualty coverages are renewed in April.

"I see another year of soft property/casualty rates domestically. There's no pressure to raise rates yet," he said. "In my 25 years in this business, this is the first time I can remember the London market being substantially harder than the U.S. property/casualty market."

Some risk managers find that the most efficient way to handle their renewals is to restructure their po-

licy expirations to avoid the Jan. 1 renewal date.

Most of Volkswagen's coverages apart from aviation have been moved away from Jan. 1 renewal dates to avoid the year-end crunch, said Ms. Warshawsky. "The brokers are overwhelmed around Jan. 1."

A crime policy covering losses from employee dishonesty is up for renewal in February, Ms. Warshawsky noted.

The coverage, which is placed by the Detroit office of Marsh & McLennan Cos. Inc., is written by National Union. "We don't expect much change" in rates or coverage terms, she said.

Hay & Forage Industries in Heston, Kan., also has moved away from year-end renewals to calmer dates throughout the year, said Eugene Diller, risk and benefit manager at the farm equipment manufacturer.

However, Hay & Forage still renews its workers comp coverage on Jan. 1, and this year its premium rose 33%. "Kansas is in bad shape according to the insurers" who write coverage there, said Mr. Diller.

A handful of quotes "varied radically," he said, and Hay & Forage finally settled on coverage written by Transamerica Corp.

Diebold Inc. still has a couple of months before its casualty insurance renewals, but Mark Tucker, risk manager at the Canton, Ohio, company, is getting a head start.

The manufacturer of banking and security equipment will renew general liability, commercial auto liability and other "miscellaneous" casualty coverages at a projected maximum cost increase of about 10%, according to Mr. Tucker.

He added that Diebold is renewing at the same limits: \$1 million in primary coverage with an undisclosed amount of excess insurance.

Like other risk managers, Mr. Tucker said he hasn't seen any signs of hardening in the commercial market.

"It may be a good time to lock them into a three-year policy," Mr. Tucker said. But the actual chances of negotiating such a contract, he added, are probably "nil."

"We have renewed with no difficulty—maybe a little bit of an increase" in price, said Gregory L. Itnyre, risk management analyst with Washington Gas Light Co. in Springfield, Va.

The public utility renewed its \$35 million in excess liability coverage with Bermuda-based industry captive Associated Electric & Gas Insurance Services Ltd. The coverage lies above a \$300,000 self-insured retention.

Washington Gas Light has participated in AEGIS since 1976, according to Mr. Itnyre.

The utility also renewed a \$65 million layer excess of the AEGIS layer with Scandinavian insurers and Lloyd's syndicates.

Prices for the \$65 million layer rose 12% since last year, Mr. Itnyre said. He speculated that "poor underwriting results" led to the price hike.

"They've been tagged lately," he said of the excess markets.

Energy Insurance Mutual Ltd., another Bermuda-based industry captive, writes the next layer of \$75 million and ACE Ltd. provides an additional \$80 million in coverage above that layer.

Altogether, the utility has \$255 million in liability coverage excess of its retention.

"Property coverage is renewing at pretty much the same premium as expiring," said Mr. Itnyre.

At last year's renewal, the cost of Washington Gas Light's property insurance fell 3%. The company renewed the \$25 million in coverage with units of Arkwright Mutual Insurance Co. and \$75 million with Scandinavian and Lloyd's underwriters, Mr. Itnyre said. ■

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Brokers

Continued from page 1
panies are actually letting business go," he said.

"Most lines are still down in terms of rates, with the biggest concessions being made on large accounts. Insurers talk about holding the line, but when the rubber hits the road, somebody's still willing to maneuver," observed Charles L. Ruoff, senior vp with Sedgwick James Inc. of New York, a unit of Sedgwick Group P.L.C.

"At the home office level, they're all holding the line. But in reality, forget it," said Donald R. Bell, chairman and chief executive offi-

cer of Frank B. Hall & Co. Inc. in New York.

"It's the size of the account that's driving the market," said John Van Osdall, chairman of Anco Corp., a Houston-based brokerage.

"Small accounts suffer from lack of options, while the large accounts are still highly sought after," he said.

Tom Arney, executive vp-property/casualty in the New York office of Jardine Insurance Brokers Inc., called the current market "two-tiered."

"Middle to high-end commercial accounts with no product or long-tail exposure can name their price. Large accounts with a couple ex-

otic exposures are also competitive. But anything to do with petroleum, chemicals or marine is hardening as we speak. Capacity in this area is shrinking," he said.

Insurers cannot enforce across-the-board rate hikes, which they say they need and desperately want, because they are not willing to risk losing the market share they have built up over the past several years, brokers say.

"The buzzword is to keep market share. Insurers need to keep their volume up. So, for example, if a carrier is steering clear of workers comp, it has to replace that volume with something else," said Bruce C. Dunbar, chairman and chief execu-

utive officer of McGriff, Seibels & Williams Inc. in Birmingham, Ala.

"Management wants profitable business, but then it sets aggressive production goals. The two aren't compatible," observed Daniel Batonick, a vp in the property division at New York-based Johnson & Higgins.

"There's either very little integrity in the statements coming out of the offices of CEOs, or else the branch offices aren't getting the message," surmised Kenneth Held, president of Joseph Held Co. Inc. in New York, which specializes in placing coverage for commercial real estate accounts.

"I just think that nobody wants to put out a stockholders report with lost market share," Mr. Held said.

Insurers still are competing through rate reductions to position themselves for the future, said Elliott Jones, vp-marketing with Alexander & Alexander Inc. in Chicago.

"I think there's a feeling among insurers that the market may change soon, so they're gambling now in hopes that when it does turn, they'll have the business set up for the hard market," he said.

"But it's a vicious cycle when you try to offset losses that result from reduced premiums by writing more. Something's going to give," Mr. Jones observed.

In addition, property/casualty insurance capacity "still appears strong, although underwriters are asking more questions and selecting risks more carefully," Anco's Mr. Van Osdall said.

Excess capacity is one of the main driving forces in the property/casualty insurance market, said Andrew Marks, president of MLW Services Inc. in New York.

"A lot of foreign-based capital entered the market in the last couple years, and they paid a lot to get in so they want a piece of the action," Mr. Marks explained.

Many brokers called the property insurance market a "disaster" and a "horror show" for insurers and themselves, with rates still being cut by 10% to 25% without hesitation.

"The property market is so soft that the lines that normally divide classes of risk have been blurred to the point that you can't see them anymore," said M. Renwick Severance, vp-specialty services with Republic Hogg Robinson Inc. in Boston.

"I have seen prices being cut just in the last couple weeks," Mr. Held said.

"One would think that after Hurricanes Gilbert, Hugo and Bob, insurers would say to themselves that they can't afford the risk of

being hit by a major storm. But the rates are even more depressed now than last year," he said.

Rates are heading down for "juicy" property accounts for which there is some room for movement, but rates for some accounts have already been cut so low during previous renewals that there simply is no more room for rate reductions, said J. Patrick Gallagher, president of Arthur J. Gallagher & Co. in Rolling Meadows, Ill.

"There used to be distinctions between HPR and non-HPR, but not so much any more," he said, referring to highly protected risks. "Only in the petrochemical industry does HPR make a difference."

Brent LaGere, chief executive officer of LaGere & Walkingstick Insurance Agency Inc. in Chandler, Okla., also noted that the differences in rates for HPR and non-HPR risks have all but evaporated.

"I think HPR accounts are always desirable, but property rates are so depressed that it doesn't

'At the home office level, they're all holding the line. But in reality, forget it,' says Donald R. Bell.

make much difference. If the risk is large, the competition will be intense. You're going to be able to find someone to swing on the large risks," Mr. LaGere said.

"Most interestingly, terms and conditions have shifted in favor of the buyer" when there is little room for substantial rate reductions, said Joseph L. Lombardo, executive vp of U.S. brokerage operations for Hall. For instance, some risk managers and brokers are seeking non-cancellable policies and broader coverage terms in lieu of further rate cuts.

Only petrochemical-related property risks are experiencing any hardening of rates, brokers say.

"Heavy petrochemical property rates are up as much as 20%," said William A. Quinn, senior vp with Willis Corroon.

"Capacity is definitely shrinking for high-hazard risks, and the rates are going up," said Frank Dougan, president of Morris & Mackenzie Inc. in Toronto. When combined with a bad loss ratio, the rate increases for a high-hazard property account can be as much as 25% to 60%, he said.

All energy-related companies that purchase property coverage in the London market are experiencing rate increases because of "some loss in capacity," said Larry R. Sorensen, senior vp and director of corporate marketing at Rollins Burdick Hunter Co., the retail brokerage unit of Aon Corp. in Chicago.

Liability rates also remain soft, though not quite as soft as property, brokers say.

"Competition is keen for primary levels of general liability because this is where the bulk of the premiums are located," said Sedgwick James' Mr. Ruoff. "Pricing appears to have stabilized somewhat for high-level excess coverage, but only because it's governed by minimum premiums. Otherwise, you know it would go lower."

"Low levels of primary general liability are almost as soft as property with rate reductions of 10% to 15%," said A&A's Mr. Jones.

"There's also a lot of capacity at the excess level, both for high and low layers," he said. "The rate cuts here can be very dramatic, though it takes some work to get the concessions."

M&M's Mr. O'Sullivan pointed out that there's a new wave of
Continued on next page

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Continued from previous page competition in the excess liability insurance marketplace. "Companies offering significant blocks of excess coverage are getting more competitive, and there are a number of different players."

Even pulp and paper companies are able to negotiate on rate and conditions when renewing liability coverage, according to RHR's Mr. Severance. In tighter markets, these companies find it tough to secure coverage because of the fire-related risks they pose.

However, William A. Quinn, senior vp with Willis Corroon, said the excess liability marketplace is stable.

"With the exception of oil and gas risks and aircraft risks, the liability market is steady to slightly down," said James Hatch, senior vp in the Philadelphia office of Johnson & Higgins.

Rates for many professional liability lines have stabilized, though the rates for a few lines are going in different directions, according to brokers.

For example, medical malpractice rates for hospitals and physicians are dropping by 5% to 10% in most cases, according to brokers.

Mr. Ruoff of Sedgwick James said professional liability rates are "generally firm," except for medical malpractice, where rates are falling by about 10%.

"In the mid-'80s, the industry's combined ratio on medical malpractice was between 120% and 130%. Now it's about 110%," Mr. Ruoff explained. "It's allowing underwriters to be more flexible."

However, the opposite trend holds true for professional liability insurance for lawyers, architects and engineers, according to Mr. Ruoff. "Pricing is stable at best, and rates are increasing if the account has had any negative activity in the past year."

Nelson Green, vp with Poe & Associates Inc. in Tampa, Fla., said an influx of new underwriters is forcing medical malpractice rates down but that rates for nearly all other professional liability coverage are "up slightly."

Brokers say that rates for directors and officers liability and lawyers professional liability insurance are increasing about 10%.

And, professional liability accounts that "have had difficult loss experience are seeing increases of 10% to 15%," said Edwin L. Overmyer, president and chief executive officer of Berwanger Overmyer Associates in Columbus, Ohio.

Underwriters simply do not have the capacity to competitively price D&O coverage, said A&A's Mr. Jones.

"Capacity for D&O and lawyer's professional liability is slim. Otherwise capacity is a non-issue," he said.

While the London-driven marine insurance market is showing signs of tightening, there are U.S.-based insurers willing to pick up some of what London underwriters are unwilling to write.

Marine business is "tightening up" in London, but U.S. insurers may be willing to pick up the slack, said Mr. Severance.

"We hear Lloyd's is losing its marine capacity," said Robert Hilb Sr., president of Hilb, Rogal & Hamilton Co. of Glen Allen, Va. "London marine rates are up 10% to 100%, but there's usually a domestic carrier waiting to step in and write the business at flat rates," he said.

However, Daniel Donahue, executive vp-marine with Jardine, said that the marine side of Jardine's business "is hardening noticeably."

"A good fleet with favorable loss experience is now looking at up to a 25% rate increase, while a fleet with poorer experience may find that both hull and liability coverage will cost as much as 125% more than last year."

Aviation hull and liability rates also are increasing, according to several brokers.

"It's a tough market now," said Willis Corroon's Mr. Quinn. "There's still capacity, but when losses get to two and three times your book of business, obviously you're going to raise prices."

Late last year, airline risk managers and brokers estimated that airline industry premiums may double in 1992 after several years of severe price cutting (BI, Nov. 25, 1991).

Shrinking capacity in the London market will mean rate hikes for all aviation risks this renewal season, according to Scott Heldfond, president and chief executive officer of DSI Insurance Services in San Francisco.

Brokers also agree that workers compensation capacity is shrinking dramatically, especially in states with problematical workers comp systems like California, Florida, Maine, Massachusetts, Pennsylvania and Texas. Brokers say the workers comp systems in those states face rate inadequacy and fraud, among other things.

In addition, the poor economy has caused many employers to downsize, which in turn leads to reduced payroll-based workers comp premiums.

Thus, insurers are looking to reduce their workers comp exposure, according to brokers.

"Only in workers comp and D&O is capacity a problem. In these two areas, it's very tough to get the limits and prices our clients want," Mr. Ruoff said.

"Workers comp is bad and getting worse in some states," said RHR's Mr. Severance.

"Louisiana, Maine and Texas are still very poor states for insurers, and things are getting worse in Massachusetts, where it seems as though insurers are preparing for a stampede toward the door," he said.

However, the Massachusetts Legislature has hammered out a workers comp reform law (see story, page 2).

Mr. Severance said the emergence of a few monoline workers comp insurers in California may revitalize that market.

In addition, employers in California are beginning to realize that insurers and regulators are not the whole problem, he said. "I think they're reviewing their claims much better these days, and they may be starting to catch up with some of the fraud that surrounds workers comp," he said.

Rates for surety bonds are stable, but brokers point out that underwriters are getting much stricter in terms of the collateral they seek from buyers.

"What's changing is what supports the underwriter's willingness to take the risk," like the policyholder's loss experience, sales and payroll, said Hall's Mr. Lombardo, referring to collateral.

J&H's Mr. Hatch said surety underwriters are now "acting like bankers."

"The coverage is there, it's available and the price is not a problem. But you should see the hoops you have to jump through to get coverage. The underwriters are being very picky," he said.

DSI's Mr. Heldfond also said surety is being underwritten "more stringently."

Poe & Associates' Mr. Green said surety underwriters are now "a little more picky." But he does not fault them. "I think they're asking the right questions. What's catching everyone is that over the last few years they didn't ask the questions they should have. They just wrote it," he said.

Brokers also say that commercial automobile insurance rates for some accounts are creeping up by about 5% to 10%. But, they say they would not cite this as a trend yet.

In general, brokers report no major differences in market conditions by region.

J&H's Mr. Batonick labeled the market nationwide as "one big blah" in which conditions in all regions are "pretty uniform."

Meanwhile, persistent soft market conditions and widespread doubt that the market will turn radically—if at all—have put alter-

native risk financing initiatives on hold for the most part, brokers say.

"The basic attitude is as long as the commercial marketplace is willing to sell it cheaper, I'll wait," explained RHR's Mr. Severance.

"But the sophisticated buyer that may be expecting a change in conditions knows reinsurance is cheaper now, so why not get started in a captive or self-insur-

ance and get an inexpensive education."

Mr. Jones of A&A said his company is seeing a little momentum toward self-insurance, but mostly for workers compensation risks. "And, I suspect this move may be short-lived when employers begin to see that states want them to pay residual market loading assessments, too." ■

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Stubborn market puzzles brokers

Brokers are divided over if and when the property/casualty insurance market will turn, what will trigger a turn and how severe it will be.

Most brokers feel insurer results and the string of natural disasters, like the major storms that have hit the East Coast the past three years and the Oakland fire, should have already forced a turn in conditions.

"There is no logical explanation for what is going on. None of this should be happening," said Donald R. Bell, chairman and chief executive officer of Frank B. Hall & Co. Inc. in New York.

Red ink will have to show up on insurers' financial statements before there will be any major turn in the market, agreed John F. O'Sullivan, a managing director with Marsh & McLennan Cos. Inc. in New York.

"Acceptable profit levels and increases in insurer surplus tell me that no change is on the horizon," said Larry R. Sorensen, senior vp and director of corporate marketing at Rollins Burdick Hunter Co., a retail brokerage unit of Aon Corp. in Chicago.

Current market conditions are what brokers and buyers should expect for the near future, said Kenneth Held, president of Joseph Held Co. Inc. in New York, which specializes in placing coverage for commercial real estate accounts.

"I think this is the market," he said. "We just have to learn to operate in it as is."

"Our planning is based on the assumption that this is how we'll be operating for the foreseeable future," said Bill Dolan, eastern regional manager for Jardine Insurance Brokers Inc. in New York.

But, "if this goes on much longer, the turn could

be severe, especially if it doesn't happen until the end of 1992. By then the industry will be functioning at a \$40 billion to \$45 billion reserve deficiency," said Charles L. Ruoff, senior vp with Sedgwick James Inc. of New York, a unit of Sedgwick Group P.L.C.

"I think there is going to be a violent change in the market," and the longer the market remains soft, the more violent the eventual turn will be, said J. Patrick Gallagher, president of Arthur J. Gallagher & Co. in Rolling Meadows, Ill.

But, Elliott Jones, vp-marketing with Alexander & Alexander Inc. in Chicago, said that any turn will be moderate "because the industry remembers all the bad publicity it got the last time."

M. Renwick Severance, vp-specialty services with Republic Hogg Robinson Inc. in Boston, agrees. "If the market swings like it did in 1984, that could be the straw that breaks the public's back. They don't think much of us now as things stand."

Nelson Green, vp with Poe & Associates Inc. in Tampa, Fla., predicts "a slow, moderate turn, which may already be occurring. But that could change overnight if poor reserves cause insurers to dip into surplus."

Andrew Marks, president of MLW Services Inc. in New York, said he anticipates some hardening in the second and third quarters this year. "But it won't happen with a bang like last time. It'll probably be slow at first with some snowballing thereafter. We won't see 100% across-the-board increases."

—By Michael Schachner
and Lori Block

Catastrophe cover difficult to locate for ceding insurers

By JUDY GREENWALD
and DOUGLAS McLEOD

The property catastrophe reinsurance and retrocessional markets are once again turning into a New Year's nightmare for ceding insurers, according to brokers and insurers.

Ceding companies hitting the market for Jan. 1 renewals of catastrophe programs are being hit right back with double-digit rate increases and continued capacity shortages, largely because of continuing chaos in the London market.

Many insurers are likely to end up with gaps in their catastrophe programs, prompting some to consider alternatives to traditional catastrophe coverage like so-called "funded covers" and other forms of financial reinsurance, market observers say.

While the market remains miserable for catastrophe coverage, though, most other property and ca-

sualty treaty reinsurance renewals in the United States are going smoothly, with rates holding steady or moving only modestly up or down. And, capacity is plentiful, brokers and reinsurers say.

Reinsurers say

Aside from property catastrophe business, "everything's slipping and sliding like it has been for the last two to three years," observed A. Edward

Gschwind, president and chief executive officer of American Royal Reinsurance Co. in New York.

The only other exceptions to this general rule are marine, energy and aviation risks, for which the market remains tight, reinsurance officials agree. However, many reinsurance renewals are running late this year because of the chaos in the London market.

"I don't think the renewal season is going to be over until Jan. 15,"

Continued on next page

The professional marketplace

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NOTICE IS HEREBY GIVEN pursuant to an Order of the High Court of Justice made on 4 October 1990 under the provisions of Section 112 Insolvency Act 1986, that the creditors of the above named company, which is being voluntarily wound-up, are required to submit their Proofs of Debt showing their names, addresses and providing details of their claims against the company and of any security held by them, to Ian Douglas Barker Bond, Joint Liquidator of the company, at Shelley House, 3 Noble Street, London, EC2V7DQ, and to establish any entitlement they may have to priority on or before 31 March 1992.

Notice is also given pursuant to the aforementioned Court Order that creditors whose claims were agreed by the company during the period 1 March 1981 to 1 March 1986 may be entitled to a distribution out of certain trust funds held by the company and such creditors must submit details of any such agreement of their claims to the Joint Liquidator at 3 Noble Street, London, EC2V7DQ on or before 31 March 1992.

Creditors who do not submit their Proof or details of their claim in respect of the trust funds on or before 31 March 1992 will be excluded from the first and final distribution to creditors in the liquidation and/or from any distribution to beneficiaries of the trust funds.

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Continued from previous page
said Albert P. Amato, senior vp at C.L. Frates Reinsurance Intermediary Inc. in New York. "Every year the renewal season starts earlier and ends later. This year is no exception."

But the immediate focus of attention this renewal season—just as it was last season—remains the catastrophe retrocessional and reinsurance markets (BI, Jan. 7, 1991).

The retrocessional market has been nearly squeezed out of existence, several reinsurance sources report.

"It's barely there," and it's questionable whether as much as \$12 million to \$15 million in total retrocessional capacity is available for catastrophe risks, said John N. Gilbert Jr., president of the New York-based Holborn Agency Corp., a reinsurance intermediary.

"For all practical purposes, there is no retrocessional market (compared) to what the marketplace looked like two to three years ago," said Philip W. Mitchell, managing director and chief executive officer for TPF&C Reinsurance in Philadelphia. "It's more a matter of whether you could buy it at any price. Most of our clients are buying very little retrocessional capacity or none at all."

"The real problem is capacity," agreed Jeremy Wallis, president and chief executive of English & American Insurance Corp. in Chatham, N.J. A lot of people are withdrawing from the London market "and it's just chaotic," he said.

"We're just letting the dust settle a bit at this point," he added, noting that English & American's retrocessional covers are not up for renewal until July, which gives the company "a bit of a window."

Belvedere America Reinsurance Co. is writing no new catastrophe reinsurance business because it knows "the retrocessional capacity isn't there," said Robert M. Huggins, chairman, president and chief executive.

Instead, the New York-based reinsurer is just renewing old business, Mr. Huggins said. "We just don't

think we're in a position to assume liabilities that we can't protect beyond our existing net lines," he said. "I would not want to be a broker with a large catastrophe program to try to complete."

And, pricing on the available retrocessional capacity is "up in the stratosphere," noted Bard E. Bunaes, chairman and CEO of Constitution Reinsurance Corp. in New York.

Steven J. Bensinger, president and chief operating officer of Skandia America Reinsurance Corp., estimated that there has been a 25% to 50% reduction in retrocessional capacity since last Jan. 1, and "what is available is probably 50% to 100% more costly."

The catastrophe reinsurance market is only slightly easier for buyers to deal with than the retrocessional market, reinsurance sources say.

"There is certainly no abatement in the trend toward higher prices and tighter capacity," observed Mark D. Mosca, vp with NAC Reinsurance Corp. in Greenwich, Conn.

Many ceding insurers with Jan. 1 renewals "will have substantially less traditional catastrophe (coverage) in place than last year, almost regardless of the price they are willing to pay," Mr. Mosca said.

"The property catastrophe market has contracted significantly, dramatically, to the point where some of our clients can't buy all the capacity they need at a price they can afford to pay," said Mr. Mitchell of TPF&C Re.

Observers differ on precisely how much catastrophe reinsurance capacity is actually available.

Michael Rothpletz, executive vp with G.L. Hodson & Son Inc., a New Hyde Park, N.Y.-based reinsurance brokerage unit of Willis Corroon P.L.C., said that while the U.S. domestic market has increased its catastrophe reinsurance capacity in response to the drop-off in the London market, the net effect is still a reduction in worldwide capacity.

Theoretically, up to \$250 million in coverage is available, but "that would be a stretch," Mr. Rothpletz

said. He added that he does not believe anyone has actually completed a \$250 million program so far this year.

Roger Espe, president and chief executive officer of Seattle-based Sullivan Payne Co., agreed that \$250 million is available in theory. However, "I doubt if it really is there, and I think \$175 million to \$200 million is a lot more realistic."

TPF&C Re's Mr. Mitchell estimated that \$100 million to \$150 million of catastrophe reinsurance capacity is available. "And it's a range, because we find the market is contracting almost daily. I'd have a hell of a time putting together \$200 million today," he said.

"Anything over \$100 million is going to require severe dollars to be thrown at it," Holborn Agency's Mr. Gilbert said.

Mr. Rothpletz said rate hikes for catastrophe business are running from a minimum of 20% up to as high as 50%.

Mr. Espe also said that rate increases for catastrophe programs generally are in the 20% to 25% range—depending on the ceding insurer's size and exposure—but some companies are being hit with increases of as much as 60%.

Small, regional ceding insurers are seeing increases of 15% to 20%, while larger companies with greater exposure and heavier losses are seeing hikes ranging from 30% to 70%, Mr. Mosca said.

Thomas J. Gallagher, senior vp with Prudential Reinsurance Co. in Newark, N.J., agreed that insurers with relatively slight exposures and a good loss history may see increases of only 10% to 15%, while other companies generally are seeing 25% to 30% increases.

One reinsurance company official said that the catastrophe rate hikes are being dictated largely by the London market, where fewer and fewer Lloyd's of London syndicates are willing to write the volume of business they had previously.

"The fewer of them there are, the

more powerful they are," the official noted.

Some ceding insurers that cannot find enough capacity or will not pay the price for what is available are instead considering some form of financial reinsurance to fill the gaps, reinsurance sources say.

This might take the form of a "funded cover," in which the ceding insurer pays a premium and is guaranteed certain future payments plus a profit commission if losses are smaller than expected.

Skandia's Mr. Bensinger observed that the capacity crunch is resulting in "forced retention" of catastrophe exposures by ceding companies. While this has produced an increase in inquiries about financial reinsurance, it is unclear how many ceding insurers actually will buy the contracts, he added.

Reinsurers also are on the lookout for ceding companies trying to "camouflage" catastrophe risks in property proportional treaty reinsurance programs, Mr. Bensinger added.

For example, a ceding insurer that previously bought \$200 million in catastrophe limits excess of \$100 million may now try to get the same coverage by arranging a \$300 million proportional property program with reinsurers assuming a \$200 million share, he explained.

"You still have the exposure and you've still got to protect yourself on the back end" with retrocessional coverage, Mr. Bensinger observed.

Meanwhile, the aviation, marine and energy sectors—all the subject of large losses over the past several years—are about the only exceptions to continuing softness in property and casualty reinsurance markets, reinsurers and brokers report.

Aviation business is seeing rate hikes on top of increases that already have been introduced, said Willis T. King Jr., chairman of Willcox Inc., the reinsurance brokerage unit of New York-based Johnson & Higgins. "You've got a compounding effect there."

Mr. Rothpletz said that rates are

rising 10% to 40% for both aviation and marine business.

However, other working layer property and casualty reinsurance programs are essentially stable.

"It's not getting better, and it's not getting worse," said Paul Hawks-worth, president and chief executive officer of The Mercantile & General Reinsurance Co. of America in Morristown, N.J.

"The rates on property per risk and casualty are about where they were last year," said TPF&C Re's Mr. Mitchell. "They're not up or down. They've leveled there."

Furthermore, "there's sufficient capacity for both," Mr. Mitchell said.

"There continues to be an appetite for (property) business, and it's fairly competitive. The rates aren't going up there at all. The direct writers seem to be very aggressive at trying to go in and use their catastrophe capacity" to obtain the entire account, said Sullivan Payne's Mr. Espe.

Meanwhile, rates on some casualty treaty renewals are down 10% to 15%, said Steve Tirney, senior vp at PMA Reinsurance Corp. in Philadelphia.

"We're still in the soft market. It is still tough out there," he said.

Some casualty clash covers are seeing modest rate increases of less than 10%, while rates for other casualty treaty business are "still bumping along the bottom," Pru Re's Mr. Gallagher said.

Observers say there is no immediate turn in the market in sight.

"The reinsurance market has probably bottomed out, and the primary business, I think, has too," but it will run along on the bottom for quite a while, predicted American Royal's Mr. Gschwind.

"I don't anticipate much change in the market for another six to nine months," Mr. Rothpletz said. "I think it'll be a slow comeback."

"It doesn't look like '92 is going to be the year," Mr. Tirney said.

"Is it going to be '93? I have no idea," he said. ■

Surplus lines rates expected to stay low

By DEBORAH SHALOWITZ

Overabundant capacity and admitted companies' voracious appetite for premium volume will continue to push most surplus lines insurance

rates down through most—if not all—of 1992, surplus lines insurers and brokers report.

Most surplus lines insurers and brokers say

rates for many types of property and liability coverages still are dropping 5% to 20%.

But, in an effort to halt that trend, some surplus lines insurers are offering broader coverage terms and lower deductibles for the same premium.

While the surplus lines market generally is softening, some coverages are being renewed at the same rate as a year ago with no policy changes, and rates for a few types of coverages are rising slightly, brokers and insurers report.

For example, rates seem to be stabilizing or rising for professional liability and directors and officers liability coverages.

And, the market for California earthquake insurance continues to be stable, several experts said.

In general, though, year-end surplus lines renewals followed the trend of the past few years: low rates and abundant capacity.

The surplus lines insurance market is "interminably bouncing along the bottom" of the cycle, said Douglas Dolan Jr., senior vp of The Schinnerer Group Inc., an underwriting management unit of Marsh

& McLennan Cos. Inc. in Chevy Chase, Md.

"The market remains intensely competitive," said Warren Stanley, president of broker Swett & Crawford Group in Los Angeles.

"What we are finding in the area of surplus lines is we are running about flat on premiums," said Janet Nelson, president and chief executive officer of St. Paul Surplus Lines Insurance Co. in St. Paul, Minn.

There seems to be a consensus among surplus lines officials that the market will not harden until late 1992, at the earliest.

Rates will not rise until insurers are reporting operating losses, predicted Kevin Brooks, president of General Star Indemnity Co., a subsidiary of General Reinsurance Co. in Stamford, Conn.

He explained that if the gap between underwriting losses and operating income is not severe in insurers' forthcoming 1991 financial results, the pressure to raise prices will not be strong.

However, if companies show operating losses, "the pressure will increase significantly for changes in corporate underwriting policy," he noted.

Some surplus lines insurers and brokers think a market turn could be many years away.

Bruce Harrell, executive vp and chief operating officer of Alexander Howden North America Inc. in Atlanta, a subsidiary of Alexander & Alexander Services Inc., said the company's three- to five-year "strategic plan assumes the market will not turn."

"We're just operating as though this is the marketplace we're likely to see for a while," agreed David Thompson, chairman of Crum & Forster Managers Group and president

of International Surplus Lines Insurance Co., both of Chicago.

"There's nothing in the wind at the moment to suggest the end is in sight," agreed Ralph Palmieri, president and chief operating officer of Boston-based First State Insurance Co., the surplus lines insurance unit of Hartford Group Inc.

Excess capacity is one of the major factors driving the market, insurers and brokers agreed.

There is "excess capacity chasing after limited premium opportunity," Mr. Dolan said.

Meanwhile, underwriters are scrambling to maintain market share, the experts said. Surplus lines insurers are competing with each other as well as with the admitted market, which is increasingly writing business traditionally handled by surplus lines insurers.

The market is being driven by "standard insurance companies' appetite for business and they're trying to get more premiums because rates are low," observed Marcus Payne, executive vp and chief operating officer of Crump E&S Group in Dallas, a unit of Sedgwick Group P.L.C.

Nicolas Yuschenskoff, senior vp of CIGNA Corp.'s Excess and Surplus Division in Los Angeles, noted that the company last year lost 35% of its renewal business, 60% to 70% of which went to the admitted market.

And, of the new business for which the company competes, it is winning only 10% to 20%, while 80% of what it does not win is being written by the admitted market, he said.

First State's Mr. Palmieri noted that "the definition of what is a surplus lines risk right now is quite limited."

For example, in the property area, insurance for vacant buildings and earthquakes formerly was written al-

most solely by the surplus lines market, he said. Now, admitted companies handle these types of risks.

And, Mr. Harrell of Alexander Howden pointed out that traditional surplus lines risks—for example, long-tail product liability exposures

like punch presses and medical products—now are underwritten by admitted insurers.

This competition is continuing to push rates down for almost all lines. Rates for many property risks still

Continued on next page

Surplus lines market says

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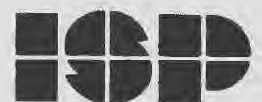
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Surplus lines

Continued from previous page
written in the surplus lines market are falling 5% to 20%, according to several experts.

Mr. Yuschenkoff said that low-layer excess property coverage is being renewed at 5% to 10% less than the previous price. And high-layer, catastrophic property coverage also is being renewed at 5% to 10% less than the expiring premium.

Excess property coverage starting at attachment points of \$1 million is being written at 10% to 15% less than a year ago, Mr. Palmieri said.

However, rates for catastrophic coverage attaching at \$20 million are not declining by as much because

rates already are so low that underwriters will refuse to write the business rather than slash rates even more, he said.

Rates are not declining for all types of property coverage, though.

For example, high-layer property coverage is being renewed at existing prices when the coverage includes California earthquake coverage, Mr. Yuschenkoff noted.

And, property coverage for energy and petrochemical risks also is stable because of the erosion in capacity for such coverage in the London marketplace, Mr. Stanley noted.

On the liability side, many prices also are falling, though rates for some types of coverage are stable and rates for a few types of coverage are rising.

General Star's Mr. Brooks said that liability insurance rates have fallen as much as 25% for smaller accounts that generate an annual premium of approximately \$25,000. However, rates are down 25% to 40% for larger accounts, or those generating an annual premium of more than \$50,000.

The market for municipal liability coverage remains intensely competitive, several experts noted.

For example, rates are down as much as 33% in some cases for municipal liability coverage, said Swett & Crawford's Mr. Stanley.

Rates for high-hazard liability risks, like chemical and pharmaceutical manufacturers, are declining but not as much as rates for some other types of liability coverage, sev-

eral experts said.

"That end of the business has held up much better in the market than a lot of the other casualty areas," said Kevin Kelley, president of Boston-based Lexington Insurance Co., a unit of American International Group Inc.

Of the four specialty liability programs that Schinnerer offers, two are down in price and two are priced approximately as they were a year ago, Mr. Dolan noted.

Rates for errors and omissions coverage for real estate agents with limits of between \$100,000 and \$2 million are down 10% from a year ago, he said. In addition, rates are down 10% to 12% for up to \$25 million of hospital excess liability cover-

age that attaches at \$1 million.

But, rates for professional liability insurance for architects and engineers with limits of between \$100,000 and \$15 million generally are the same as last year, though rates are down 8% to 10% in a few states, Mr. Dolan said.

And, rates have been stable over the past year for up to \$25 million of excess liability coverage for colleges and universities that attaches at \$1 million, he said. Mr. Dolan added that he expects rates for this coverage to increase 5% during the next year.

Rates for other types of liability insurance also are either stable or rising.

Rates for errors and omissions liability coverage and directors and officers liability have remained stable or risen slightly, several experts noted.

Most professional liability and D&O rates have remained relatively flat, but there have been price increases of 5% to 10% for any coverage related to a financial institution, said Thomas Bloom, president of Willis Faber Holdings Inc., the Grand Rapids, Mich.-based wholesale brokerage unit of Willis Corroon P.L.C.

In addition, rates for blood banks' malpractice coverage have remained stable, Mr. Bloom said.

But, lawyers professional liability rates are increasing, in some cases more than 15%, Lexington's Mr. Kelley noted.

Similarly, prices for long-haul trucking liability coverage are rising 10% to 15%, according to Jim See, senior vp-casualty division for Alexander Howden.

Several insurers and brokers also pointed out that coverage has been broadened in some cases to attract or keep buyers.

For example, some insurers are writing sudden and accidental pollution coverage and high-hazard product liability coverage on an occurrence basis rather than on a claims-made form, said CIGNA's Mr. Yuschenkoff.

And, some errors and omissions coverage for public officials also is being written on an occurrence form, noted Roger Quigley, senior vp of underwriting for Crum & Forster Managers.

Some insurers also are offering buyers coverage with lower self-insured retentions and deductibles than last year at the same premium, Mr. Bloom noted.

And some are offering multiple-year policies that allow buyers to lock in low rates, several market officials said.

Liability and property rates generally are consistent throughout the country, according to surplus lines insurers and brokers.

However, competition is especially keen in California because many admitted companies' personal lines business suffered in the aftermath of Proposition 103 and they have focused their efforts on the commercial lines sector, noted Crump E&S Group's Mr. Payne.

Surplus lines experts were split over whether the turn in the market—whenever it finally arrives—will be moderate or severe.

Several maintained that the longer the soft market continues, the more abrupt any eventual market turn will be.

"If this soft cycle continues through 1992, this correction will be every bit as severe as 1985," predicted Joseph Walsh, chairman of American Empire Surplus Lines Insurance Co. in Cincinnati.

He explained that if insurers are facing insolvency, officials "think they have to save the company, not placate consumer advocates and regulators."

Several others, though, said regulators and legislators will not tolerate a severe market turn.

An abrupt change in rates and capacity "would bring the wrath of Congress around our shoulders," Mr. Payne said.

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London renewals

Continued from page 1
"in 1994," he said jokingly.

Indeed, the contraction in the London market delayed the start of this renewal season, which typically starts in mid-November, as many underwriters in the market were still scrambling to place their own reinsurance and retrocessional coverage.

"This is the latest renewal season I can ever remember," added Ron Iles, chairman of Alexander Howden Reinsurance Brokers Ltd., the reinsurance arm of Alexander & Alexander Services Inc.

The market was still hectic late last week, he noted. "We are still placing orders and we are getting new orders where other brokers have been unable to place them," he said, predicting the renewal season will continue well into January.

"It's the latest I can remember and we are all hoping that a major European storm doesn't happen this month because that will really throw everything up in the air" for uncompleted programs, he said.

Energy underwriters are already preparing for a substantial loss that hit the market in the middle of the renewal season.

"There have been gale-force winds in the North Sea which have damaged rigs, ships and some Norwegian fish farms. Although its too early to say how large the loss will be, it looks like it could be substantial," he said.

Since the winds began on Dec. 31, it will probably be counted as a 1990 loss, he said.

The London market—on which insurers and direct policyholders around the world depend, particularly for hard-to-place risks and huge amounts of capacity—has contracted dramatically since last year's renewals.

The slew of large natural and man-made catastrophes between 1987 and 1990 that caused at least \$32 billion in insured losses has finally come home to roost in London's spiraling reinsurance market, costing many underwriters their jobs as companies and syndicates withdraw from the market.

The toll from the catastrophes was only compounded in 1991 by events like the \$4 billion Japanese typhoon—the second largest natural disaster ever (*BI*, Dec. 2, 1991; Oct. 7, 1991)—and the \$1.2 billion fire in Oakland, Calif. (*BI*, Oct. 28, 1991).

At least 14 insurance companies in the London market have stopped writing international business altogether. Others are dramatically cutting back their underwriting. (*BI*, Dec. 9, 1991; Nov. 4, 1991).

More than 70 Lloyd's syndicates also have either shut down or merged in the past few months, moves that are expected to reduce the market's capacity to around 10 billion pounds (\$18.7 billion at year-end 1991 exchange rate) this year, from 11.1 billion pounds (\$21.4 billion at year-end 1990 exchange rate) in 1991.

The contraction within the Lloyd's market—which collectively is the third-largest reinsurer in the world—also means that many leaders in certain classes of business have now disappeared, particularly in London market excess-of-loss reinsurance.

Of those syndicates that remain, some are reducing the amount of business they write.

Leading U.S. property/casualty syndicate 190, for example, managed by Three Quays Underwriting Management Ltd., has decreased its capacity to 110 million pounds (\$205.7 million) in 1992 from 175 million pounds (\$337.8 million) in 1991, confirmed underwriter Richard Hazell, who also is a deputy chairman of Lloyd's. The syndicate only used 48% of its capacity in 1991, though, so the reduction will not be crucial, he said.

Syndicate 1145, managed by Wetherell Non-Marine Division (Managing Agency), also is reducing its capacity to 30 million pounds (\$56.1 million) in 1992 from 50 million pounds (\$96.5 million) in 1991, confirmed un-

derwriter John Wetherell.

The contraction at Lloyd's meant a sombre mood in the market during Christmas, in spite of decorations that included a Santa Claus perched atop the Lutine Bell in the middle of the underwriting room.

The virtual disappearance of the LMX market has meant that London underwriters are paying much more for much less retrocessional capacity, forcing them to retain more of their risk.

"Prices have become ridiculous," said one Lloyd's marine underwriter about his syndicate's reinsurance and retrocessional program. The syndicate's reinsurers also insist that non-marine and liability risks be excluded from major oil company insurance packages it writes, the underwriter said.

But rather than bow to the reinsurers, "we'll run it ourselves," he said, explaining that his syndicate still will offer oil company insurance packages and retain the non-marine and liability coverage it writes.

Archer's Mr. Harris said he has paid double last year's price for some of his syndicate's catastrophe reinsurance with a one-loss deductible. By mid-December, though, he still didn't know if his syndicate's LMX reinsurance was in place. So, like many underwriters, Mr. Harris decided to write renewal business conservatively as if his syndicate had to retain the risks without reinsurance.

"I am bashing on with the sublime feeling that I won't have any (LMX) reinsurance," he said. "But if I do get the coverage, it will relieve the load."

The contraction in the market has also meant that brokers have had to re-market many insurance and reinsurance programs to fill in capacity that's been lost, adding to the delay in renewals.

In addition, the lack of retrocessional coverage has forced reinsurers to limit the volume of catastrophe coverage they write, despite the attractive prices they are now able to charge, said Philip Heitlinger, general manager-non-marine at English & American Group P.L.C.

Some U.S. property catastrophe reinsurance programs that have not suffered losses have seen rate increases of more than 50%. And ceding companies hit by losses from the Oakland fire have seen even larger increases, he said.

"We feel happy with the rating level, but the problem is capacity. You cannot write all of the business you would like to because you have to think about your own exposures," Mr. Heitlinger said.

Catastrophe reinsurance rates will continue to rise in 1992, said Colin Murray, chairman of R.J. Kiln & Co. Ltd.

"One must expect rates to go up rather than down because a large part of the insurance industry is losing money and if catastrophe capacity is to return, underwriters need a greater prospect of profit," he said.

In addition, catastrophe losses last year have made underwriters more cautious, according to Mr. Murray. "Losses have emphasized that substantial losses will come along even in comparatively good years, so you must have the money to pay for them."

As a consequence of the LMX market's contraction, direct reinsurance rates for non-marine catastrophe risks have increased by around 50% and marine catastrophe rates have increased by more than 100%, said Brian Rothwell, commercial director at broker E.W. Payne Co. Ltd.

Underwriters are also imposing stricter terms on ceding insurers, he said.

"People want their money quicker and they are trying to impose a 'no coverage without premium' rule, which requires that premiums be paid at the inception of coverage," Mr. Rothwell said.

Although brokers and ceding insurers are currently resisting these terms, a few programs have been

written on this basis already and next year it may gain wider acceptance, he said.

U.S. ceding companies this year will pay on average about 45% more for their property catastrophe reinsurance programs than they did last year, said one Lloyd's leading property underwriter.

Overall, however, U.S. ceding companies in 1992 will pay double what they paid in 1989 for less coverage, he said.

U.S. ceding companies will pay a total \$1.2 billion in premium in 1992 for \$8 billion of property catastrophe reinsurance coverage excess of \$2 billion in retentions, the Lloyd's property underwriter said. In 1989, they paid \$600 million for \$8 billion in coverage excess of \$1.5 billion, he said.

This is still far less than the quadrupled prices that U.K. ceding companies are paying for property catastrophe reinsurance this year compared with 1989, according to the underwriter. U.K. insurers have collected 3 billion pounds (\$5.61 billion at current exchange rates) in reinsurance recoveries for catastrophic losses in the past few years, he said.

U.K. ceding companies will pay a total of 600 million pounds (\$1.12 billion) in premium this year for 4 billion pounds (\$7.48 billion) of coverage excess of 600 million pounds (\$1.12 billion), he said. That compares with paying 160 million pounds

'It's the toughest market there's ever been in the energy market,' one London energy broker says.

(\$257.6 million at year-end 1989 rates) for 2 billion pounds (\$3.22 billion) in coverage excess of 400 million pounds (\$644 million) in 1989.

While U.S. ceding companies are receiving better terms, they may find that they have holes in their property catastrophe reinsurance protections during January until the programs are completed, said the property underwriter. For example, he said, it is doubtful that Hartford Group Inc. will find the \$250 million in capacity that it's been seeking since early November (*BI*, Nov. 18, 1991).

"I imagine that major (U.S.) cat programs won't be able to finish," said the underwriter. U.S. ceding companies will be able to finish their first layer of \$20 million excess of \$5 million, but will probably have a 20% shortfall on the middle and upper layers, he said.

Three Quays' Mr. Hazell, however, believes that U.S. property catastrophe reinsurance premiums are only increasing by 15% to 33.3% and can be completed "if you are a direct writer" and not a reinsurer looking for retrocessional capacity.

Some executives think that this contraction in the property catastrophe reinsurance market will mean that property insurance prices will start to rise in the United States in the first quarter of this year.

"It will be a knee-jerk reaction," said Archer's Mr. Harris.

But others, like Mr. Wetherell, say the U.S. property market will not contract this year because U.S. insurers will retain the added cost rather than pass it on to policyholders.

"London is not so important now" in prompting a hardening of the U.S. property insurance market, said Dennis Mahoney, chairman of Alexander Howden Ltd. "What is important is the financial strength of U.S. insurers... that's the real issue," he said, adding it will take the insolvency of a major U.S. property/casualty insurer to raise premiums in the United States.

"I don't think that buying catastrophe coverage in London will have any effect" on U.S. property insurance prices, added Mr. Iles.

The premium increases are not that

high and some large U.S. insurers, like State Farm Mutual Auto Insurance Co., don't buy catastrophe reinsurance anyway, he said. "There's nothing to charge back to the client."

But while property insurance prices remain soft in the United States, London underwriters are refusing to offer any premium reductions for U.S. property business.

"In London, there are no premium reductions at all for North American property (insurance) and the underwriters are sticking to that rigidly," said Stephen Matanle, executive in charge of worldwide property insurance for Bowring Worldwide Insurance Brokers Ltd.

Some London leaders are also revising property insurance forms, he said. This includes asking for a list of the properties that are to be insured, which "they have never done before," Mr. Matanle said. "The intent is to make everything in the property policy better described."

London is not losing business by making this stand, he said, "but we are being pressured here. We have to either re-layer or re-market" the business to get it placed.

The U.S. property insurance market is "extremely depressed," added Mr. Wetherell. "I wouldn't renew any U.S. property business with rate decreases," even if it meant losing business to U.S. insurers.

Some brokers also are having to be creative in placing property insurance in London.

"We are having to come up with different ideas and it is taking longer to place the business because we are having to visit more underwriters more than once. It's no longer a question of getting a price and placing an order," said Richard Keeley, a non-marine director for Alexander Howden Ltd.

For example, to find coverage for a Mexican manufacturer, Mr. Keeley had to obtain a 15% line in Paris before asking underwriters in London for a quote. And, the first \$1 million of coverage had to be split into three layers before the French underwriters offered to write 15% of the risk, he said.

The coverage previously had been placed entirely in London with the first \$1 million written in a single layer, he said.

Meanwhile, chaos in the marine reinsurance market has produced near panic during the oil and gas insurance renewal season in London.

The marine retrocessional market's capacity has contracted by 50% in the past year and many underwriters are offering coverage for one loss with no or only one reinstatement, said Howden's Mr. Iles.

In the meantime, marine reinsurers are insisting that London ceding underwriters buy separate reinsurance programs for water-based risks and land-based risks. Liability coverage on an occurrence basis has also been excluded. This means that London underwriters that write oil and gas insurance packages must unbundle the packages and place the marine, non-marine and liability reinsurance separately.

Although non-marine underwriters are being asked to quote on the non-marine element of energy packages for the first time since the mid-'80s, those underwriters are refusing some of the business, said Alan Lee, North American underwriter for Sturge Non-Marine Syndicate Management Ltd.

"The non-marine element is now being shown back to the non-marine market, but some of the business is going unplaced because the prices are still not high enough," he said.

If policyholders are prepared to pay higher prices, there is enough capacity available in the non-marine market, Mr. Lee added.

Some non-marine casualty quotes suggested by brokers are 40% too low, agreed Chris Horton, casualty underwriter for Zurich Re U.K. Ltd.

"The brokers are having to take the business back to Lloyd's and the U.S. . . we haven't really taken much

of it, he said.

Energy companies affected by the unbundling of energy insurance programs include Phillips Petroleum Co., Mobil Corp., Exxon Corp. and Texaco Inc. in the United States and Belgium's Petrofina S.A.

Phillips, for example, is paying \$16.5 million this year for onshore business interruption insurance with limits of \$250 million excess of \$50 million, compared with a premium of \$6.5 million last year, underwriters say. However, Phillips has incurred losses of \$1.3 billion from a 1989 Texas explosion and another \$50 million to \$60 million in losses from another Texas fire in April 1991.

The most difficult types of energy risk to place are onshore energy risks like oil refineries, which are receiving 300% to 400% premium increases, added a Lloyd's energy broker.

However, "the capacity problem is the issue," said the broker, adding there "may be no capacity at any price."

Risk managers are "stunned" by this contraction, the broker said. But the prices are basically back to what they were five years ago in 1986, he said. "Certainly it's the toughest market there's ever been in the energy market."

The market for North American casualty risks remains flat. Although underwriters have long wanted to push up rates, increases above the rate of inflation are still some way off, according to John Holford, deputy chairman of Sedgwick Non-Marine Insurance Ltd.

"Some underwriters have worn out the knees in their trousers praying for a hard market but there are still few increases," he quipped.

London underwriters must compete with the soft U.S. market and in some cases they are losing casualty business to U.S. underwriters, said Zurich Re's Mr. Horton.

"There is tremendous competition from the likes of American International Group in the U.S. and some business that was being written in London on a claims-made basis is going back to the States where it is being written on an occurrence basis," he said.

U.S. risks can also obtain lower premiums in the domestic market, Mr. Horton said.

"The worst case I have heard of is 60% down and back to occurrence in the U.S.," he said of a risk previously placed in London.

However, London is retaining around 85% of its U.S. liability renewal business, he added.

Any casualty rate increases in London are moderate, Mr. Horton said.

Some hospital malpractice rates are up 10%, while some general liability and professional liability rates are up by 5%, he said.

Directors and officers liability rates also are rising in some cases, said Marcus Brown, underwriting director at Anglo-American Underwriting Management Ltd.

"On some programs, we are quoting increases and although we are not always getting firm orders, in the past we would not even get a response," he said.

However, underwriters in London are beginning to compete with U.S. underwriters for occurrence business as well as claims-made policies, said Sedgwick's Mr. Holford.

He said a market for short-tail risks has returned to London and is growing.

"By the end of 1992 there will be a lot more (occurrence) capacity in London because underwriters are seeing that if they want to compete with North American market, that is the way they must go," he said.

A market for occurrence coverage is beginning to emerge, agreed a broker for Willis Corroon P.L.C. "The coverage is for fairly small lines and only for certain risks. . . I wouldn't say that there was substantial occurrence capacity."

"We are looking for opportunities to write occurrence business but only where there is no long-tail," said Mr. Brown of Anglo-American.

Captive taxation

Continued from page 2
third-party business and by the early 1980s had become one of the largest underwriters of commercial insurance and reinsurance in Bermuda.

In its 1974 and 1975 consolidated tax returns, ODECO deducted \$1.4 million and \$1.7 million, respectively, for premiums paid to Mentor.

The IRS later disallowed these deductions, maintaining that the Mentor coverage amounted to self-insurance for which deductions could not be taken. If the deductions were allowed, the IRS alternatively argued that ODECO drilling rigs on the outer continental shelf in the Gulf of Mexico were U.S. property, and that \$2.6 million in premiums Mentor earned from insuring these U.S. risks for the two years had to be reported as taxable income of a controlled foreign corporation.

ODECO paid federal income tax on the basis that the premium deduction would be disallowed, then filed suit for a tax refund in U.S.

Claims Court.

Judge Nettlesheim's Dec. 18 ruling threw out both IRS arguments, allowing ODECO the deductions and tax refunds for 1974 and 1975.

In concluding that ODECO's captive coverage was valid insurance, Judge Nettlesheim broke with rulings in *Stearns-Roger Corp. vs. U.S.* and *Mobil Oil Corp. vs. U.S.* In both cases, courts had ruled that risk is not transferred from a parent to an insurance subsidiary, because the parent's assets are diminished when the subsidiary pays a loss.

"To follow *Stearns-Roger* or *Mobil* would be to ignore the effect that unrelated business underwritten by Mentor has on the level of risk," the judge wrote. Unrelated risks represented 44% of Mentor's business in 1974 and 66% of its business in 1975, and Judge Nettlesheim concluded that this third-party business significantly reduced ODECO's exposure to losses from Mentor.

The parent "shouldered a level of risk significantly lower than the level of risk that it initially transferred to Mentor," the judge wrote. "Conse-

quently, . . . (its) premiums constituted the transfer of risk."

The third-party business also resulted in enough risk distribution for the captive coverage to be considered true insurance, the judge ruled.

Judge Nettlesheim did not specify the amount of unrelated business needed to insure deductibility.

However, she noted that Mentor's percentages of unrelated business fall within the ranges established in last year's Tax Court rulings in *The Harper Group vs. Commissioner of Internal Revenue* and *AMERCO vs. Commissioner*. Premium deductions were allowed Harper, whose captive wrote 30% unrelated risks, and AMERCO, whose captive wrote between 52% and 74% unrelated risks in the years at issue.

Judge Nettlesheim also rejected the IRS's argument that oil rigs over the Gulf of Mexico's outer continental shelf are U.S. risks, and that premium for insuring these risks must be considered taxable income of a controlled foreign corporation like Mentor. He found that the oil rigs are not U.S. property for tax purposes. ■

Enron recovery

Continued from page 3
Mr. Paul. "It's just a matter of documenting it officially and finally," he said.

The \$184.8 million settlement reflects the value of the properties, interest and the settlement of various tax claims, Mr. Paul said.

Several issues still must be negotiated before a final agreement can be reached, including guarantees of payment. In addition, titles to the properties still are legally held by Belco, and these eventually will be transferred to other private parties.

Enron is not interested in resuming operation of the properties, explained Mr. Paul, adding that AIG has agreed to help the Peruvian government privatize them, including finding a new investor.

When seized, the properties included 625 active wells, 92 platforms, 288 miles of subsea pipelines and 109 miles of onshore pipelines.

Mr. Paul said AIG has been in

"constant negotiation" with Peruvian governments since the expropriation. The negotiations were first with the Garcia government, then with the Fujimori government, he said.

"It was not possible to make any real progress in those discussions with the Garcia government," said Mr. Paul.

Discussions with the Fujimori government began in August 1990, he said. "Those discussions were much more positive."

But it took time to settle the matter because of the administration's other pressing concerns, including its relationship with the World Bank and hyperinflation in Peru, said Mr. Paul.

The entire case stems from Peru's 1980 reinvestment tax credit law, which allowed foreign oil companies to deduct a portion of their reinvestments in the country from their Peruvian income taxes. The law was opposed by Peru's American Popular Revolutionary Alliance Party and one

month after their presidential candidate, Mr. Garcia, was elected in July 1985, the law was retroactively canceled.

The foreign oil companies then were assessed for the amounts they had deducted under the defunct reinvestment law and were informed that their operating contracts with the government had to be renegotiated. Although negotiations proceeded, the government in December 1985 informed Belco that its allotted time to renegotiate its contract had expired, and troops seized its facilities.

A coverage dispute then developed between AIG and Enron, with AIG arguing, among other points, that it had not been advised when it issued its policy that Mr. Garcia would likely cancel the law if elected.

An arbitration panel under the auspices of the American Arbitration Assn. heard evidence for 70 days before awarding Enron the \$162 million. ■

Charity event disaster

Continued from page 3
CCNY's parent.

Blame was cast in several directions last week, with CCNY accused of lax oversight; the event's organizers accused of providing inadequate security and of misleading CCNY officials about the event; and city police and emergency medical service personnel accused of failing to provide adequate assistance.

The basketball game, billed as a celebrity event to benefit AIDS education, was organized by CCNY's Evening Student Government, which signed a promotion contract with a representative of Sean Combs, a rap promoter known as Puff Daddy.

The contract called for the student group to arrange security and for the promoters to provide insurance, said William M. Kunstler, a

lawyer for Dwight Meyers, a rap star known as Heavy D who was featured in the game and a partner in the promotion.

In a press conference last week, Mr. Kunstler conceded that the promoters did not arrange any insurance, but faulted CCNY for failing to check on the coverage and the adequacy of security arrangements.

About 20 guards had been hired from Pinkerton's Inc., a New York-based security firm under contract to CCNY, while a number of additional guards were reportedly supplied by the "X-Men."

Mr. Kunstler identified the X-Men as a branch of the Nation of Islam, a Chicago-based Muslim organization. A Nation of Islam official denied providing security for the game.

A CCNY official, meanwhile, was

quoted in news reports last week as saying that the student government misled college officials by failing to report that the game would feature rap stars, contending that had they known rap stars were involved, the game would have been canceled.

Meanwhile, Mr. Kunstler and others accused city police and emergency medical services personnel of mishandling their duties. EMS canceled an initial call for an ambulance after police concluded that reports of gunshots at the gym were unfounded. The first ambulance arrived 14 minutes after the first call went out.

CCNY is funded by the state, which would be responsible if the college were found liable for the deaths or injuries. The city is responsible for liabilities relating to police and EMS actions. ■

EBRI survey

Continued from page 3
problem, said Wyatt's Mr. Gildner. To supplement inadequate retirement funds, he pointed out, an employee can work longer, rely on family or increase savings.

Furthermore, workers have retirement-income sources other than an employer-provided pension plan, such as Social Security, said Mr. McArdle of Hewitt.

Although a majority of workers prefer health insurance over other employee benefits, it appears that many do not realize the full value of employer-provided coverage, according to the survey authors.

For example, when asked how much more money an employer would have to give a worker each year before the worker was willing to give up employer-provided health insurance, 26% said \$3,000 or less

and 29% said they did not know.

Six percent said they would require between \$3,001 and \$4,000 and 9% said they would require between \$4,001 and \$5,000. Some 22% said they would require \$5,001 or more, 4% said no amount of money would suffice and 4% did not answer.

Yet, according to a survey by A. Foster Higgins & Co. Inc., group health care costs in 1990 averaged \$3,217 per employee (*BI*, Jan. 28, 1991).

When asked how much more money an employer would have to give a worker each year before the worker would willingly give up pension benefits, 20% said \$3,000 or less; 2% said between \$3,001 and \$4,000; 10% said between \$4,001 and \$5,000; 26% said more than \$5,001; 4% said no amount of money would suffice; 31% said they did not know; and 7%

did not answer.

Employee benefits issues are important to people when considering whether to accept a job, the survey found.

Seventy-four percent of respondents said employee benefits are "very important" and 19% said benefits are "somewhat important" factors in deciding whether to accept a job. Only 4% said employee benefits are not important and 2% did not answer.

"Public Attitudes on Benefit Trade Offs, 1991," is available from Kim Thorpe, Employee Benefit Research Institute, 2121 K St. N.W., Suite 600, Washington, D.C., 20037-1896; 202-775-6315. A summary costs \$25 for EBRI members and \$75 for non-members. The full report is \$75 for EBRI members and \$275 for non-members.

Update

Dumping settlement appealed

Continued from page 2

recently by the Riverside County Superior Court, represents only a fraction of the insurance available to respond to those damages.

Based on a "multiple-occurrence" theory, James B. Stringfellow's \$14.2 million of occurrence-based commercial general liability coverage could translate into hundreds of millions of dollars, said Paul Alvarez of Breidenbach, Swainston, Crispo & Way in Los Angeles. Numerous insurers wrote the coverage, which dates back to 1956, court papers show.

But California courts have not accepted the multiple-occurrence theory, said Mr. Stringfellow's attorney, Christopher Bisgaard, a partner with Lewis D'Amato, Brisbois & Bisgaard in Los Angeles.

To date, settlements in the 1984 lawsuit have totaled \$34 million. Among the remaining defendants are the state, Riverside County and 12 firms that dumped waste into unlined ponds on the site.

Meanwhile, the state is awaiting a federal district court ruling on how much it must contribute to the cleanup. The court is expected to assign the state's percentage of fault this April after it was found partially liable three years ago (*BI*, June 12, 1989).

Lynch hid insolvency: Suit

JACKSONVILLE, Fla.—In a lawsuit seeking \$300 million of damages, Florida regulators charge that one of several defendants—Merrill Lynch & Co. Inc.—aided a now-insolvent life insurer in fraudulent securities deals that concealed its financial problems.

Merrill Lynch helped conceal the insolvency of Guarantee Security Life Insurance Co. through "phantom" trades that involved moving the insurer's junk bond portfolio off its books for a few days at the end of 1984, 1985, 1986 and 1988, alleges the suit, which was filed in state court in Jacksonville, Fla. last month. At one time, junk bonds comprised 70% of the Jacksonville-based insurer's assets, regulators say.

Regulators further allege that the trades were documented by fraudulent broker confirmations and that account statements issued by Merrill Lynch enabled Guarantee to misrepresent its condition.

The Florida Department of Insurance took over Guarantee's operations last August and payments are being made to about 57,000 policyholders and individual annuity holders. In 1990, the company collected \$5 million in premiums.

A spokesman for New York-based Merrill Lynch said the transactions the broker handled for the insurer were "at all times ethical and legal."

The suit also charges law firm Shereff, Friedman, Hoffman & Goodman in New York and Coopers & Lybrand, the insurer's outside accountant, with professional malpractice and breach of fiduciary duty.

"The insurance commissioner has decided to blame someone other than the insurance commissioner for Guarantee's demise, so he's suing everybody he can think of," said Andy Levander, an attorney with Shereff, Friedman. "We had nothing to do with it."

A spokesman for Coopers & Lybrand declined to comment.

Also named as defendants are former Guarantee senior managers Mark C. Sanford, William B. Blackburn and Robert C. Sanford.

AXA buys space underwriter

BETHESDA, Md.—AXA Group and International Technology Underwriters signed a letter of intent last week for AXA to acquire the space insurance specialist for \$15 million.

Pending a due diligence study of Intec, the deal will be completed by the end of January, said a spokeswoman for Paris-based AXA.

Bethesda, Md.-Based Intec is a privately owned underwriting manager with premium volume of \$62 million and a staff of 18. The company places its risks with CIGNA Corp., which cedes some of the risk to reinsurers worldwide. AXA already reinsures 12% of the business written by Intec, the spokeswoman said.

No decision has been made yet on future underwriting arrangements, and the CIGNA arrangement may continue, she added.

Intec's existing management will remain with the company, she said.

Briefly noted

Charleston, W.Va.-based **Ashland Oil Inc.** is facing a retrial of a pollution liability suit after the West Virginia Supreme Court reversed a \$10.3 million jury award to four plaintiffs claiming that air pollution from Ashland's Catlettsburg, Ky., refinery caused injuries and property damage (*BI*, June 4, 1990). . . . The U.S. Environmental Protection Agency has extended the compliance deadline for financial responsibility requirements to Dec. 31, 1993, from Oct. 26, 1991, for petroleum marketers owning one to 12 **underground storage tanks** at more than one facility, marketers with fewer than 100 tanks at a single facility and non-marketers with less than \$20 million in net worth. The extension is intended to give states more time to develop and implement financial assistance programs to assist tank owners (*BI*, Oct. 21, 1991). . . . High winds and flooding, designated Catastrophe No. 92, caused about **\$30 million of insured property damage** to parts of Texas Dec. 18-22, according to a preliminary estimate from the Property Claim Services Division of the American Insurance Services Group. . . . The rehabilitator of **Mutual Fire, Marine & Inland Insurance Co.** last week paid an additional 20%, or about \$28 million, to direct insurance policyholders with settled claims against the estate. The Pennsylvania Insurance Department, Mutual Fire's rehabilitator, made initial 20% payments to direct claimants in December 1990. . . . **Connecticut** has approved a rate increase of 9.2% for the state's voluntary workers compensation market and an 8.9% increase for the state's assigned risk pool. The National Council on Compensation Insurance had sought increases of 9.9% for voluntary insurers and 9.6% for the pool. . . . **North Carolina** approved a 15.8% workers comp rate increase last week, far less than the 41.8% increase sought by the state's rate bureau (*BI*, Dec. 2, 1991). . . . **Pennzoil Co.** will recognize \$49 million of accumulated retiree health care liabilities, retroactive to the first quarter of 1991, to comply with Financial Accounting Standard 106. . . . The city of New York still will be able to pursue a fraud action against companies that made **lead paint** used in city housing projects after a state trial judge dismissed negligence and product liability claims against the companies, which include Sherwin-Williams Co., NL Industries Inc., Glidden Co. and Atlantic Richfield Co.

Performance Without Consistency Isn't Enough. Any group insurance company

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turnaround time. We're comfortable offering this guarantee because we routinely exceed industry standards in turnaround time of claims processing. Our resources include an advanced cost-management technology in processing systems -- a Personalized Claims Administration system which provides flexible, adaptable administration of any benefits program. ♦ Clients who depend on your advice want to know what group insurance companies promise. Now you can tell them what we *guarantee*. For more information, call Patrick Moeschler at 1-800-877-1052.



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