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Updates

Safety agency found negligent in fatal construction accident

TUCSON, Ariz.—In one of the first cases of its kind, a state jury has found that Arizona's state-run workplace safety agency was partially at fault for the death of a worker at a construction site the agency inspected weeks before the accident.

The decision is one of the first times—if not the very first—that a state-run workplace safety agency has been held liable for a workplace accident, said an official with the U.S. Occupational Safety and Health Administration in Washington.

See **Updates** *on next page*

RIMS gears up to push liability reform in 1997

By MARK A. HOFMANN

NEW YORK—The Risk & Insurance Management Society Inc. plans to push for broad-ranging liability reforms at both the state and federal level after Congress and state legislatures convene later this month.

But in addition to pursuing such traditional goals, the risk management group also plans to give emphasis to certain issues not usually prominent on RIMS' agenda, such as health care and pension reform.

Issues that retain their long-standing spots at the top of RIMS' agenda this year include reform of Superfund's pollution cleanup liability system, creating uniform standards for product liability and reforming the operations of the Occupational Safety and Health Administration.

"I don't see any big changes in RIMS' wish list," said Louis J. Drapeau, RIMS president. "The same kinds of things we've been working on for the past several years we'll keep plugging away at," said Mr. Drapeau, who is also manager-insurance and risk management for The Budd Co., a Troy, Mich.-based automotive parts supplier.

"Obviously, we're hoping Superfund reform gets the attention of the leadership and the members," said Paul Brown, RIMS' director of government affairs. "And we are still hoping for repeal of retroactive liability, recognizing that we'll have to deal with the political realities when the issue arises."

Attempts to reform Superfund's liability system, particularly its imposition of retro-

See **RIMS** *on page 16*

Mellon Bank to acquire Buck

By ROBERT KAZEL

NEW YORK—Ending months of speculation, Buck Consultants Inc. has agreed to be acquired by Pittsburgh-based Mellon Bank Corp., marking the first time a financial services company has bought a major benefit consulting firm.

The planned acquisition of New York-based Buck by the diversified banking giant is intended to create an industry powerhouse in total benefits outsourcing, though some in the industry are questioning how Buck's traditional consulting services will fare under bank ownership.

Buck and Mellon executives announced last week that they had signed a letter of intent for Mellon to purchase Buck for an undisclosed amount of cash and Mellon stock. The announcement came after several weeks of rumors that Buck was talking with Mellon and other financial services firms about an acquisition (*BI*, Dec. 23/30, 1996).


Mr. LoCicero

Buck, which ranked eighth among benefit consulting firms with worldwide gross consulting revenues of approximately $225 million last year (*BI*, Dec. 9, 1996), is ending 80 years of independence for the chance to seize what it deems an opportunity to better compete against a crowded field of large benefit outsourcing operations.

Mellon, with a large portfolio of mutual funds and growing 401(k) plan administration programs, has balance sheet assets of more than $43 billion.

Buck President and Chief Executive Officer Joseph A. LoCicero emphasized that despite expansion in the company's outsourcing programs, clients would see no immediate large-scale changes in Buck services and that executive leadership and staff would remain largely intact. Buck, as a new Mellon subsidiary, would continue to operate under its present name and be directed by the present executive team, though some

See **Buck** *on page 28*

Insurer hopes third time a charm in court review of pollution clause

By DAVE LENCKUS

MONTGOMERY, Ala.—An insurer is asking the Alabama Supreme Court to review for the third time in the same case the meaning of the sudden and accidental pollution exclusion, after the court late last month reversed its own pro-insurer decision.

Relying on a policyholder's version of the pollution exclusion's drafting history, Alabama's highest court on Dec. 20 ruled that insurers assured regulators a quarter century ago the exclusion did not bar coverage for unintended gradual pollution. That 7-1 decision reversed the court's own Aug. 30 ruling (*BI*, Sept. 9, 1996).

On Dec. 30, though, Wyoming's high court ruled the exclusion bars coverage of gradual pollution.

New York court restricts cover for municipalities . . . . . Page 29
5th Circuit ruling may make Clean Water Act convictions more

The court decided not to consider the exclusion's drafting history and instead focused on the meaning of the word "sudden." Given the word's own significance and considering its context in the exclusion, the exclusion bars coverage for losses resulting from gradual pollution, the court ruled unanimously.

The Wyoming Supreme Court's ruling is remarkably similar to the decision the Alabama Supreme Court reversed on rehearing.

Twenty state supreme courts to date have interpreted the sudden and accidental exclusion, which was included in comprehensive general liability policies from the early 1970s until 1986, when insurers adopted the absolute pollution exclusion. Policyholders hold an 11-9 advantage at the state supreme court level. But, the top

See **Alabama** *on page 29*

Winter storms and flooding sock Northwest

By ROBERTO CENICEROS and AMY SLOTEMAKER

A costly series of storms and flooding are causing hundreds of millions of dollars in insured losses and wreaking havoc in several Western states.

Governors in five Western states declared 70 counties disaster areas following the storms, which downed power lines, closed retail stores, collapsed roofs and even forced casinos to close.

Damage from the storms—not including flood waters that overwhelmed Northern California last week—could cost insurers in California, Oregon and Washington between $125 million and $250 million, according to a spokesman for the Property Claims Services division of American Insurance Services Group in Rahway, N.J. However, he cautioned that those amounts were estimates and that claims reports were still coming in.

PCS did not estimate damage for Reno, where the Truckee River roared through downtown, causing the area's worst flooding in 40 years. The brunt of flood losses are borne by the federal government's National Flood Insurance Program, not commercial insurers.

Some of Reno's 24-hour casinos closed for the first time ever last week, mostly because of impassable roads and a loss of electricity, said Alex Kanwetz, senior vp of Sedgwick James of Nevada.

A spokeswoman for Harrah's Casino in Reno said the casino evacuated and stayed closed for 24 hours because of a loss of power.

The baggage claim area at the

See **Weather** *on page 31*


AP/ WIDE WORLD PHOTOS

A mixture of heavy rains and snow collapsed roofs and shut down businesses throughout five Western states over the last two weeks.

NEWSPAPER

Updates

Safety agency liable in death

Continued from previous page.

In August, a federal court in New Hampshire held OSHA liable for a 1979 workplace injury, which may have been the first time OSHA has been held responsible for a workplace accident, said Ann Rosenthal, an OSHA attorney. Shortly before the accident, OSHA had evaluated the worksite but did not inspect a machine that later malfunctioned and injured a worker.

The case against the Industrial Commission of Arizona's Division of Occupational Safety and Health was similar. In its Dec. 12 verdict, a Pima County Superior Court jury in Tucson found that Arizona OSH was 15%liable for the death of 62-year-old Rodolfo D. de la Cruz in a 1993 construction site accident. A chain link fence that secured a 16-foot dirt embankment above an excavation area gave way, burying the worker beneath the fence and three feet of dirt.

Mr. de la Cruz's family argued that a so-called "comprehensive" Arizona OSH inspection of the worksite 29 days before the incident should have detected safety problems with the embankment. But, the inspector did not evaluate the embankment or onsite files that revealed problems with the embankment security system, said plaintiff's attorney Michael Aboud of Aboud & Aboud P.C. in Tucson. The agency's own inspection shortly after the incident revealed several major safety violations with the embankment security system, Mr. Aboud noted.

Industrial Commission Director Larry Etchechury said the embankment area was not inspected before the accident because there was no ongoing work in the area. The agency routinely does not evaluate such areas, though he said it is considering either ending that practice or better annotating it in inspection reports.

The jury ordered Arizona OSH to pay Mr. de la Cruz's family $225,000.

The family previously settled with two contractors involved in the project for undisclosed sums. The Industrial Commission also previously fined those two contractors and a third one, Mr. de la Cruz's employer, a total of $120,000.

The state has not decided whether to appeal, said Assistant Attorney General Charles R. Pyle. But, he said there could be two grounds for appeal. One issue is whether the agency should have been held to a gross negligence standard, rather than a straight negligence standard, because the first inspection was random rather than the result of a complaint. The second issue is whether workers legally can rely on the agency's inspections.

Securities capitalize reinsurer

ST. PAUL, Minn.—The St. Paul Cos. Inc. has completed the sale of $68.5 million in securities that will provide reinsurance capacity for its St. Paul Re subsidiary for up to 10 years.

Proceeds of the transaction, one of the first by a U.S. reinsurer, will fund a retrocessional reinsurance company called George Town Re whose sole purpose is to reinsure St. Paul Re. The new company will reinsure five classes of property excess-of-loss and property catastrophe coverage under a 10-year proportional reinsurance treaty.

Although there is sufficient capacity in the property catastrophe market at the moment, "this is a 10-year deal" and there may not be enough capacity in the future if there is a catastrophe as large as or larger than Hurricane Andrew, said a spokesman for St. Paul.

Approximately $44.5 million was raised in a private placement through the issuance of notes that will mature in 10 years. Of that $44.5 million, $23.3 million is invested in zero-coupon securities to provide for the full return of the principal of the notes at maturity. Another $24 million was raised in preference shares redeemable in the year 2000. Returns are dependent upon the cash flows from the reinsurance treaty and investments.

This is the first major transaction executed by Goldman Sachs' Insurance Products Group, a newly formed joint venture of the fixed-income and investment banking divisions of Goldman, Sachs & Co.

HCFA mulls surety bond rule

WASHINGTON—The Health Care Financing Administration is considering requiring new durable medical equipment suppliers to post a surety bond as a way to help weed out fraudulent suppliers in the Medicare program.

HCFA plans to publish within the next six months a notice of proposed rulemaking establishing a surety bond requirement, HCFA Administrator Bruce C. Vladeck wrote in a letter last month to Rep. Fortney "Pete" Stark, D-Calif.

The National Assn. for Medical Equipment Services in Alexandria, Va., is "cautiously supportive" of a bond requirement to eliminate fraud and abuse, a spokesman said. The biggest problem is shell operators billing federal agencies for non-existent supplies, he added. However, the association is concerned that a surety bond requirement may make it more difficult for small suppliers to enter the market.

Suppliers expect that the HCFA proposal will call for a $50,000 bond, like that posted by Medicaid suppliers in a successful Florida program begun last year.

Site costs Phelps Dodge

NEW YORK—Phelps Dodge Corp. must pay $21 million to the U.S. Postal Service and take back a 37-acre polluted site it sold to the Postal Service 10 years ago, a U.S. District Court judge in Brooklyn has ruled.

The Phoenix-based mining and manufacturing company must now work with the New York State Department of Environmental Conservation to determine how it will clean up the site.

The original cleanup cost was estimated at $750,000, but if the original specifications are followed the cleanup would cost $275 million, said Judge John Gleeson of the Eastern District of New York.

Phelps Dodge has been in effective control of the site since 1875 and is currently determining whether its past insurance coverages will cover the pollution cleanup, a Phelps Dodge spokesman said.

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Academic medical centers launch new Vermont risk retention group

By RODD ZOLKOS

MONTPELIER, Vt.—The formation of a new risk retention group by five of the nation's top academic medical centers is strengthening Vermont's reputation as a domicile of choice for medical centers.

The risk retention group that started doing business Jan. 1 will provide professional liability and general liability coverage for a group of the top academic medical centers in the United States.

Creating the Vermont RRG will provide its members "coverage and operational flexibility," said Christopher D. Smith, president of MCIC Vermont Inc. (A Risk Retention Group).

The five members of MCIC Vermont include: Johns Hopkins Hospital & University in Baltimore; New York Hospital/Cornell University in New York; Presbyterian Hospital in New York; the University of Rochester Medical School and Strong Memorial Hos-

See **Vermont** *on page 27*

Herman's coalition-building skills lauded

Employers welcome new Labor chief

By MARK A. HOFMANN

WASHINGTON—President Clinton's selection of Alexis Herman as secretary-designation of the Labor Department is winning plaudits from employer groups.

The departure of Labor Secretary Robert Reich, one of the most highly visible members of President Clinton's cabinet, leaves a big void to fill. But Ms. Herman is expected to fill that void quite handily, employer groups and consultants say, despite a lack of recent involvement in the policy issues she'll face in the job.

Ms. Herman

That's owing largely to her track record as President Clinton's director of public liaison since 1993. In that post, Ms. Herman's responsibilities involved creating coalitions to back presidential initiatives, including the North American Free Trade Agreement. As public liaison director, she also won a reputation

See **Herman** *on page 4*

NAIC continues review of NCCI conversion

By MEG FLETCHER

ATLANTA—State insurance regulators continue to question the nation's largest workers compensation data-gathering organization on its proposed conversion to a for-profit entity.

Darla L. Lyon of South Dakota, chairwoman of the National Assn. of Insurance Commissioners' Workers Compensation Task Force, said last month at the NAIC's winter meeting that her committee is hoping to get an early look at the final version of the National Council on Compensation Insurance's plan for conversion. The NCCI may issue its proposal as early as the end of this month.

At that NAIC meeting, held last month in Atlanta, Alfonso Mastrostefano, insurance superintendent of Rhode Island, suggested that the NCCI provide state insurance regulators with its detailed conversion plan immediately after the NCCI's board votes on it but before it is mailed to NCCI members for a vote.

NCCI bylaws give the organization 15 days after board approval to alert members to the proposed conversion, though the NCCI would probably give them 30 to 60 days—from the time the proxy is mailed until the deadline for returning it—because of the importance and complexity of the issue, said Sally B. Nary, senior vp and general counsel of the Boca Raton Fla.-based NCCI.

"We agreed we will sit down with interested regulators to talk about the specifics of the board proposal," she said in an interview after the Atlanta meeting.

Those meetings are expected to

See **Notebook** *on page 21*

Ross named associate publisher

NEW YORK—Martin J. Ross III has been promoted to associate publisher/advertising director of *Business Insurance*, announced Kathryn J. McIntyre, publisher/editorial director.

Mr. Ross, who based in the magazine's New York office, had been advertising director, managing the 12-person sales staff based in New York, Chicago and Los Angeles.

Mr. Ross

"This promotion recognizes Marty's contributions to the success of *Business Insurance* beyond management of advertising sales staff," Ms. McIntyre said. "He has been very involved in our circulation efforts, our promotion programs, our conference activities, our Web site and new products, including our demographic section Global Focus and *Business Insurance*'s RIMS-TV."

In his new role, Mr. Ross will continue to manage sales and promotion activities at *Business Insurance*, in addition to working with Ms. McIntyre on other projects.

"I look forward to working with Marty in expanding *Business Insurance*'s advertising, circulation and new products in the coming years," she added.

Mr. Ross, 38, is a 1981 graduate of St. John's University in Jamaica, N.Y., where he earned a bachelor of science degree in business administration. He began his career in 1980 as an administrative assistant to the vp of the New York Mets, working on promotion activities and players' contract reviews. He moved to Lanier Business Products in 1983 as a national account representative.

He joined *Business Insurance* in New York City in 1985 as a district sales manager. Mr. Ross was promoted to Eastern advertising manager in 1988, overseeing the four-person New York sales staff. He was promoted to advertising director in 1990.

Mr. Ross can be reached at 212-210-0228. BI

Inside

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Rollover claimant to seek rehearing of overturned award

By DAVE LENCKUS

JEFFERSON CITY, Mo.—A woman paralyzed in a Suzuki Samurai rollover accident plans to ask the Missouri Supreme Court for a rehearing of its decision to overturn a $40 million product liability and punitive damages award against the sport utility vehicle's manufacturer.

In a 6-1 decision, the court on Dec. 17 overturned a 30-year-old state standard on when litigants in civil negligence cases stemming from auto accidents may introduce evidence that a driver involved in the accident was impaired by alcohol. The new standard permits such evidence in all cases.

Previously, such evidence was admissible only when other, independent evidence of erratic driving suggested a driver was physically impaired when an accident occurred.

The court then applied the new standard to the rollover product liability case, which Suzuki Motor Corp. was appealing. The court set aside the $40 million award and remanded the case for a new trial, ruling that a trial court erred in excluding such evidence in the case.

The Missouri court's new standard 'is way too broad,' says plaintiff attorney John Wallach.

The court also ruled that punitive damages can be awarded only if the plaintiff's case is supported by clear and convincing evidence. Previously, only a preponderance of evidence was necessary.

The plaintiff, who was a passenger in the vehicle, plans to seek a rehearing before the state's highest court on several grounds, said plaintiff attorney John Wallach of Hoffman & Wallach P.C. in St. Louis.

Referring to the new standard on the admissibility of alcohol consumption, Mr. Wallach said, "We believe that a retroactive application is inherently unfair when the case was tried under existing law."

He also complained that the court's new standard "is way too broad."

In its decision, the court complained that state courts inconsistently admitted and rejected evidence of drivers' alcohol consumption before accidents. That inconsistency stemmed from courts' varying interpretations of what constituted erratic driving.

"Now, the evidence (of alcohol consumption) is admissible under any circumstance, and that's not a good thing," Mr. Wallach said. "For example, if you're rear-ended at a stop sign and you've had one beer, what's the relevance" of how much you had to drink?

There is no consistent standard state to state on the admissibility of evidence of a driver's alcohol consumption prior to an accident, according to Larry E. Coben of

Regulators must keep pace with industry change: Muhl

By GAVIN SOUTER

NEW YORK—Insurance regulation has made considerable strides over the past five years but it will have to improve even more to keep pace with changes in the industry, says New York's former insurance superintendent.

Future industry developments will include fundamental changes in insurance, such as closer links between banks and insurance, that will test the ability of insurance regulators to adapt, said Edward J. Muhl, who resigned as New York insurance superintendent last month.

"It will take a very flexible regulator to deal with those things going forward," he said.

Mr. Muhl

It was flexibility and a willingness to make changes in the New York department that helped Mr. Muhl deal with several problems while in office, he said at a meeting hosted by New York law firm Stroock & Stroock & Lavan late last month.

Mr. Muhl left the superintendent's post on Dec. 30 to become executive vp and a member of the management board at Peterson Consulting L.L.C., an international consulting firm (*BI*, Dec. 16, 1996).

When he was appointed insurance superintendent by Gov. George Pataki in late 1994, Mr. Muhl found a department with many dedicated staff who had relatively little authority.

Consequently, Mr. Muhl decided to decentralize much of the decision making at the department and he "empowered the bureau chiefs," he said.

"There was absolutely no reason

See **Muhl** *on page 21*

Texas tort reform outlook improves

Alabama remains area of concern for businesses

By MICHAEL BRADFORD

AUSTIN, Texas—Texas companies are optimistic about holding on to hard-won tort reforms now that Republicans have a majority in the state Senate for the first time in 125 years and four conservative Supreme Court justices have reclaimed their seats.

In Alabama, meanwhile, there is an effort under way to end the election of judges after a bitter and expensive Supreme Court contest that saw Harold See, R-Tuscaloosa, unseat incumbent Associate Justice Kenneth Ingram, D-Montgomery.

Business groups have long been wary of the high courts in Texas and Alabama, perceiving them as pro-plaintiff and inclined toward large awards.

The situation has changed in Texas over the last few years, but the Alabama courts remain a source of concern.

The Alabama election means the state Supreme Court now has five justices perceived to be pro-plaintiff, while the remaining four justices tend to lean toward business interests.

The December runoff victory in Texas by Robert Duncan, R-Lubbock, in a vote for the spot left vacant by retired Sen. John Montford, D-Lubbock, gives the GOP 16 of the 31 Senate seats.

The majority is the first the Republicans have held since 1871. Democrats still control the House 82-68.

In this year's general election, Supreme Court Justice Tom Phillips, R-Houston, and three Republican associate justices were re-elected to the court.

The associate justices are John Cornyn, R-San Antonio; Greg Abbott, R-Houston; and James A. Baker, R-Dallas.

The Risk & Insurance Management Society Inc. supported the slate of Supreme Court candidates, reminding Texas chapters that the effort to preserve tort reforms "begins with maintaining a favorable Supreme Court" (*BI*, Oct. 14, 1996).

The court, made up of seven Republicans and two Democrats, has made important pro-business rulings in the past. In a ruling cheered by risk managers, it overturned a 1993 lower court decision and held that the state's Workers Compensation Act was constitutional.

"I think the court elections in Texas were very positive from a business standpoint," said Jim Green, risk manager at footwear manufacturer Justin Industries

See **Judges** *on page 20*

Insurer overhauls capital after losses on investments

By DOUGLAS McLEOD

SCOTTSDALE, Ariz.—Most insurers live with occasional losses on bad investments, but not many have had the kind of problems that International Casualty & Surety Ltd. has experienced yet continue to operate.

The New Zealand insurer—a small player in international marine, aviation and reinsurance markets—got its start in 1992 as an affiliate of First Assurance & Casualty Co. Ltd., an allegedly fraudulent insurer operated from Oklahoma that collapsed a year later.

Initially capitalized with First Assurance assets, IC&S ever since has regularly overhauled its capital base, trading in and out of obscure over-the-counter stocks and corporate notes, its financial statements show.

Some of these investments have fared disastrously: IC&S' largest investment until last year, for example, was in an affiliate of a company shut down by Texas insurance regulators for itself being capitalized with worthless assets. These included millions of dollars of "government bonds" issued by the fictional Dominion of Melchizedek.

Other assets in a 1995 IC&S financial statement included stock

See **IC&S** *on page 12*

Bermuda addressing limited office space

By GAVIN SOUTER

HAMILTON, Bermuda—The Bermuda government may make an exception to its strict property and land regulations to allow ACE Ltd. and Exel Ltd. to own their own office buildings.

The plan is one of several recent office developments involving international companies in Bermuda that are outgrowing their buildings and finding it difficult to locate alternatives in the island's limited commercial real estate market.

Centre Reinsurance (Bermuda) Ltd. is involved in a deal with a local company to build new offices in Hamilton, and Renaissance Reinsurance Ltd. recently moved into a new development on the Hamilton waterfront.

The moves reflect the growing international business in Bermuda and the limited office space in Hamilton.

ACE and Exel, the holding company for X.L. Insurance Co. Ltd., plan to build new offices in a joint venture on a prime spot in Hamilton now occupied by the Bermudiana Hotel building.

The Bermudiana closed more than 15 years ago. Since its closure, several plans to redevelop the site have been tried unsuccessfully, and the only occupants of the building have been homeless people.

Most recently, in 1994 the Bermuda Financial Centre Ltd. was formed to build a hotel, office and apartment complex on the site. The project was aborted after the company failed to raise enough money.

ACE and Exel plan to knock down the building and erect separate office buildings on the site in a project estimated to cost about $100 million.

The moves reflect the growing international business in Bermuda and the limited office space in Hamilton.

However, international companies are only allowed to have a 40% ownership stake in buildings on Bermuda, so a private act of parliament is needed to allow the companies to go ahead with the project.

The Bermudiana Site Rehabilitation Act 1996 is being considered by the Bermuda House of Assembly and is due to be discussed further when parliament reconvenes.

"We have a drop-dead date of March 31 because we need to know yes or no for our future planning," said Gavin Arton,

See **Building** *on page 20*

International companies, such as ACE Ltd. and Exel Ltd., are looking for a way to increase their office space in Bermuda.

Herman

Continued from page 2

for being particularly concerned about issues facing small business.

Ms. Herman had previously sharpened her consensus-building skills as chief of staff and vice chairman of the Democratic National Committee and as chairman of the Democratic Convention Committee in the early 1990s.

Ms. Herman's resume is not devoid of experience with employment-related issues. She began her career as a social worker, and President Carter named her head of the Labor Department's Women's Bureau in 1977.

As the youngest person to ever serve as director of the Women's Bureau in the Labor Department, Ms. Herman pressed for the establishment of more day care facilities in order to meet the needs of working mothers, teenage pregnancy programs, school-to-work transition programs and efforts to bring lower-income women into white-collar jobs. Her later work as head of her own consulting firm, A.M. Herman & Associates, also centered around matters such as job creation.

Ms. Herman gave a hint of the course she might follow as she accepted the president's nomination late last month.

"I want you to know that I have continued to believe that we must have a growing, innovative and entrepreneurial economy if the living standards of working men and women are to rise, especially in this era of global and technological change. Workers must be prepared for their jobs, rewarded for their work, secure in their retirement and able to freely organize," she said.

Ms. Herman's experience as a small businesswoman and as a social worker is an "interesting combination," said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

"There's potential there. Her experience in coalition-building in the liaison office combined with her apparent practicality seems to hold promise," said Henry Saveth, principal in A. Foster Higgins & Co. Inc.'s New York office.

"One of the interesting things for the benefits community is that this is a relatively new name and a new face, but the roots of this appointment really run pretty deep. Clinton had wanted to carve out a more centrist policy position, and this nominee fits that trend, whereas some of the other potential nominees did not," said Mr. McArdle.

He noted that the AFL-CIO had initially promoted former Sen. Harris Wofford, D-Pa., as its candidate for the job. As a senator, Mr. Wofford earned a reputation of being one of the chamber's most liberal members, particularly in regard to health care reform.

"This was not organized labor's first choice, and part of that stems from the debate over NAFTA," said Mr. McArdle.

But organized labor dropped its opposition to Ms. Herman after it became evident that the president would not appoint a candidate more to labor's liking.

"Alexis Herman is a wonderful choice for secretary of labor. She knows and understands working families' concerns, and we look forward to working closely with her to put their interests on the top of the national agenda," said John J. Sweeney, president of the AFL-CIO.

"At a time when so many working men and women are struggling against declining pay and growing disrespect from corporate America, we believe Alexis' experience—growing up in the rural South, advancing the interests of working women and minorities and dealing with the issues of a changing workforce—will be a tremendous asset. Over the years, she has had an excellent relationship with me and other union leaders," said Mr. Sweeney.

One of the country's largest employer groups shares this positive assessment.

"I think she will bring in the balance what is needed in a secretary of labor. I see Ms. Herman to maybe be that catalyst bringing the two groups—business and labor—together," said June D'Zurilla, associate director of employee relations for the National Assn. of Manufacturers in Washington.

"Working with a lot of small businesses, you would tend to have more hands-on experience. At the same time, she's been consulting for large corporations. At this point, we really welcome her as secretary of labor because of her vast experience," Ms. D'Zurilla added.

The National Federation of Independent Business is also pleased with the nomination, noted a spokeswoman for the Washington-based small-business group.

"Jack Faris, president of the NFIB, has had a good working relationship with Ms. Herman. She definitely had an open door policy in regard to inviting him to some meetings at the White House, and we hope to continue that relationship," said the spokeswoman.

One unanswered question is how Ms. Herman will compare to her outspoken and unusually visible predecessor.

Although the secretary of labor is generally not one of the political powerhouses in any administration, Mr. Reich's long friendship with Mr. Clinton and his previous prominence as an advocate for government activism gave him a prominent place in the administration.

"My sense is that she would maintain a lower profile than Secretary Reich. The outgoing secretary has maintained a high profile, and it's a very hard act to follow because of that," said Hewitt's Mr. McArdle.

Foster Higgins' Mr. Saveth cautioned against reading too much into Ms. Herman's record as prologue to what she would do as labor secretary.

"You never know how these people are going to turn out. They can go in like a Supreme Court justice one way and a couple years later go the other way," he said.

Nevertheless, the current composition of Congress will probably serve to put the brakes on any liberal initiatives Ms. Herman might be inclined to pursue, said Mr. Saveth. He pointed to the president's desire to expand the Family and Medical Leave Act as an example of something the Republican-dominated Congress would likely balk at, though he added that the administration could have better luck with pension reforms.

"Any broadening of the family leave is going to be very tough in this Congress. Pension issues tend to be so hyper-technical that they're not reviewed with a magnifying glass, so they may have an easier time," Mr. Saveth said.

Mr. McArdle pointed to another potential problem for Ms. Herman: "She's got close ties to President Clinton and helped with his re-election and the last two conventions. Her ties to the Democratic National Committee, it has been suggested, may raise some issues for her in the confirmation process.

"But members of the Senate Labor and Human Resources Committee will probably be hard pressed to come down hard on this candidate," he said. BI

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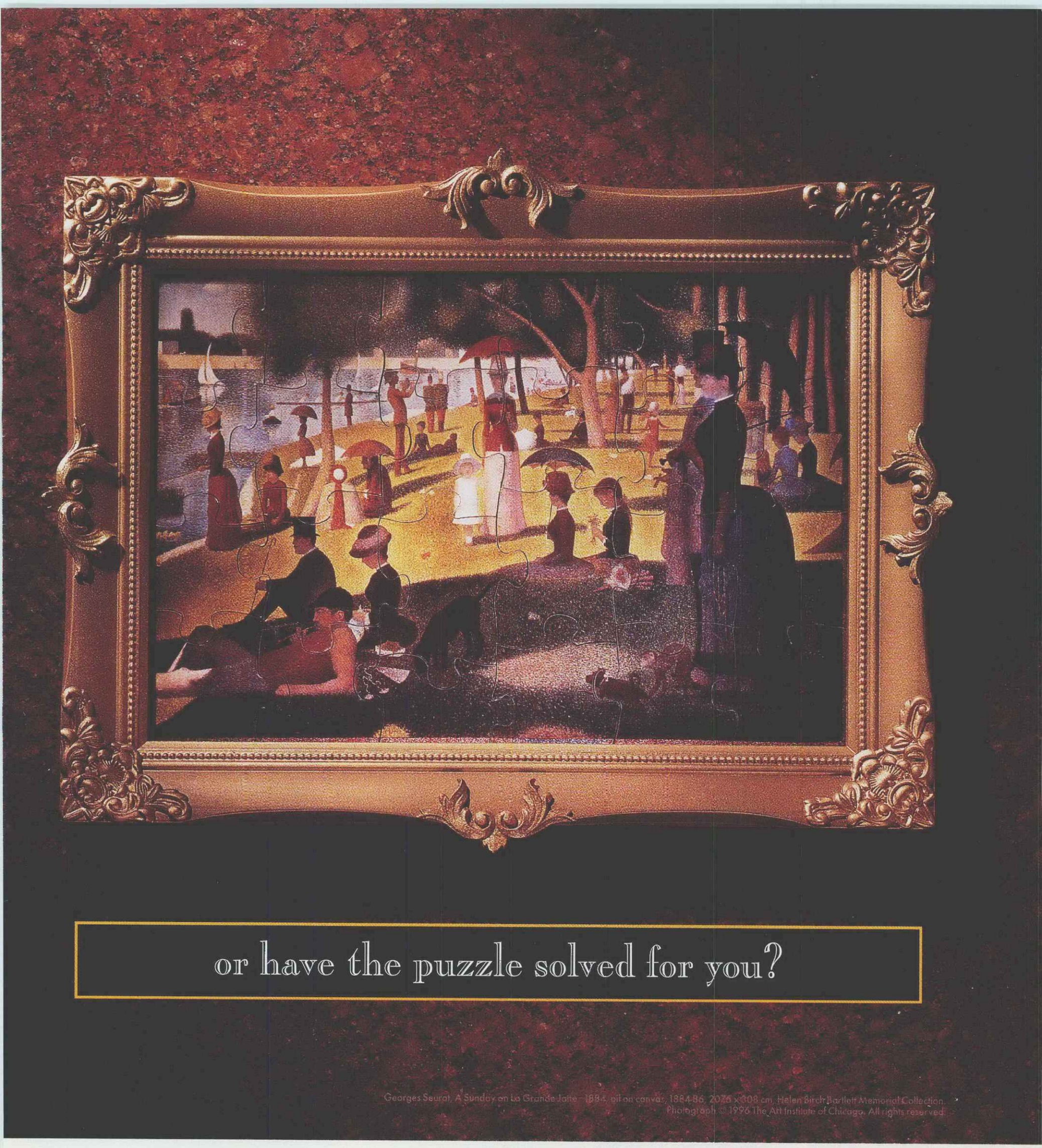

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Opinions

BI predicts trends for new year

IN KEEPING WITH TRADITION, we present our annual look at what will be "in" and "out" in the worlds of risk management, employee benefits and commercial insurance for the next 12 months.

Just like New Year's resolutions, some of which are kept and others quickly abandoned, our prognostications sometimes come true and other times are far off the mark.

Our hits in 1996 included predictions of: continued mergers and acquisitions in the property/casualty and managed care industries; the launch of Lloyd's of London's runoff reinsurer Equitas Ltd.; an end to pre-existing condition exclusions in health insurance policies; scrapping Warsaw Convention limits on airlines' passenger liability; and more rumors about the next broker to be bought by Aon Corp.

But we had our share of misses and near misses, too, including predictions of: passage of modest Superfund liability reform; more insurers segregating long-tail liabilities in separate runoff companies; no more opposition to CIGNA Corp.'s restructuring; greater awareness of earthquake risks outside California; and an end to paying premiums to brokers rather than directly to insurers.

The following is our 10th annual take on the ins and outs of the new year:

In: Consolidation in the property/casualty industry.
In: Consolidation among managed care companies.
In: Passage of incremental Superfund liability reforms.
In: More corporate underwriting in Lloyd's of London.
In: Employers offering domestic partner benefits.
In: Greater use of managed care in Medicare and Medicaid programs.
In: Benefit and risk management transactions via the Internet.
In: Anti-managed care legislation.
In: Agencies and banks teaming up to sell insurance.
In: Health care plan rate increases.
In: Expansion of pension simplification legislation.
In: Cash balance pension plans.
In: Mutual fund investment by retirement savings plans.
In: Legal battles over temporary worker benefits.
In: Greater variety of managed care report cards for payers.
In: Medical savings accounts.

Out: Litigation over old losses by Lloyd's of London names.
Out: Rumors of Aon Corp.'s next acquisition.
Out: Traditional indemnity health insurance plans.
Out: Passage of federal product liability reform.
Out: Big employee benefits departments.
Out: Major inroads in risk financing by capital markets.
Out: Comprehensive health care reform legislation.
Out: HMO gag rules.
Out: Chances for Social Security reform any time soon.
Out: Retirement savings in guaranteed investment contracts.
Out: Mergers and acquisitions among direct reinsurers.
Out: Cramped office space for Bermuda companies.
Out: State efforts to regulate risk retention groups.
Out: Junk science in the federal courts.
Out: Unrestrained growth of state second-injury funds.
Out: Inflexible National Assn. of Insurance Commissioners accreditation standards.
Out: Escalating retiree health care liabilities.

Letters

Mandate is needed to assure work safety

Your Dec. 16 editorial, "Ergonomic Lesson Not Learned," was the most ludicrous piece of pseudo-journalistic rhetoric I have seen in 20 years. Who is paying you to write this misleading information, Democrats, business, or are you bored with nothing better to do?

The sixth paragraph of this editorial says it all, and certainly validates your stand on the issue:

"We don't pretend that repetitive motion injuries are not a significant problem that needs solutions, but we don't think this should be the safety agency's top priority when more basic workplace safety problems continue to claim lives and injure workers."

Those "more basic safety problems" were regulated in the early '70s. The real problem isn't the basic issues, it's management accountability.

Regulations governing personal protection equipment, machine safeguarding and electrical lockout, among others, are all in place but management is not accountable for enforcement—responsible, yes, but not accountable. Workers continue to die because of management, not regulations.

Your editorial supports the premise that "We hope employers take steps to participate in those efforts and demonstrate that they are capable of leading the search for a solution to ergonomics ailments without a government mandate."

Please, business won't even do what's regulated, how do you expect it to proact on a voluntary basis?

A worker at a meatpacking plant in Nebraska died a few weeks ago because he stabbed himself in the leg, and severed his femoral artery. The poor man wasn't wearing his "regulated" personal protective steel mesh apron/leggings. Shouldn't management be held accountable for this tragedy?

You should attend one of my classes and see the results of students attempting to change careers, who try to take notes and can't because they have had bilateral carpal tunnel surgery from working in a turkey processing plant for a few years. I invite you and your staff to attend a class on ergonomics and repetitive motion, and get a real picture of how repetitive motion injuries can be eliminated or reduced, how cost effectively jobs and workstations can be redesigned.

And on a more aggressive note, I challenge you to get your facts straight. Ergonomics is not only an issue that should be mandated, it's an issue that must be mandated.

Ask the employees who are most affected, and those who have been crippled by the same businesses that are fighting and paying huge sums of money, when those same funds could have been directed toward solving their ergonomic problems.

Bryan Richards
Instructor—Occupational Safety & Health/Industrial Hygiene
Texas State Technical College
Waco, Texas

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Reporting weekly on corporate risk, employee benefit and managed health care news

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IC&S

Continued from page 3

in a company headed by First Assurance's former auditor, a man whose Texas accounting license was revoked last year because of his work for First Assurance and another client, government records show.

These and other of IC&S' 1995 assets in fact are either worthless or have only a fraction of their claimed value, according to a court filing by a former U.S. insurance regulator who examined the investments.

Meanwhile, IC&S is facing other problems, including a dispute over $2 million in reinsurance claims from a South Korean ceding insurer and a lawsuit filed last year by First Assurance's court-appointed bankruptcy trustee.

The suit charges that First Assurance assets were fraudulently transferred to IC&S in 1992 and levels civil racketeering charges against IC&S director Samuel B. Love and several other former First Assurance operators.

Mr. Love denies the lawsuit's charges, disputes the validity of the South Korean reinsurance claim and defends IC&S.

He conceded that some of IC&S' investments have turned out badly. But "if you hang around the business world long enough, you're going to make some bad deals," he said. "You just hope your good ones offset your bad ones."

"If I thought we had some problems, I would admit it," he added. But "we have survived, we've made money and we've gotten stronger."

Mr. Love also points out that the insurer has recently bolstered its balance sheet with new assets, including stock in a small Utah company that hopes to open a chain of skin care clinics.

The New Zealand insurer was set up by First Assurance owner Jesse Maynard and others in late 1992, as First Assurance was facing mounting claims from businesses damaged in that year's Los Angeles riots.

The following year, after California regulators had barred it from the state, First Assurance filed for bankruptcy in Oklahoma City, where riot victims have since been pursuing more than $6 million in unpaid claims (*BI*, March 7, 1994).

The Oklahoma bankruptcy trustee has charged that IC&S was set up as a First Assurance successor company, and in a 1994 interview Mr. Maynard confirmed that he planned to roll over First Assurance's California business into IC&S. The New Zealand insurer obtained a large part of its roughly $11 million New Zealand ($5.7 million) in initial capital from First Assurance, Mr. Maynard said.

These assets included cash transferred from First Assurance and stock and note investments that had also appeared on First Assurance's balance sheet, documents show. California regulators reviewing First Assurance later disallowed some of these same investments as having doubtful liquidity and value.

By 1993, Mr. Maynard and other original IC&S directors had resigned and been replaced by Mr. Love as sole director.

Mr. Love heads IC&S' Scottsdale, Ariz.-based management company, Premier Administrators Inc., which formerly managed First Assurance First Assurance promotional material also described Mr. Love as its financial officer, though Mr. Love denies this.

In 1995, IC&S wrote $7.8 million New Zealand ($5.1 million) in premiums, up from $4.8 million New Zealand ($3.1 million) in 1994. Premier Administrators collected $1.4 million New Zealand ($924,539) in management fees in 1995.

'If you hang around the business world long enough, you're going to make some bad deals,' Samuel Love says. 'You just hope your good ones offset your bad ones.'

When he took over IC&S, Mr. Love says it was an "empty shell" that no longer held any former First Assurance assets. That shell has since been filled, though, with a shifting variety of little-known stocks, some of which are not publicly traded and one of which Mr. Love concedes has turned out to have little or no value.

At year-end 1994, for example, IC&S reported total assets of $10.7 million New Zealand ($6.9 million).

One of the largest of these, valued at $3.1 million New Zealand ($2 million), was common stock of Lifeguard Financial Systems Ltd., a unit of New Zealand-based Lifeguard Reinsurance Ltd.

Lifeguard Re and several related companies were run until last fall by Houston businessman Leon Excalibur Hooten III, who died of a heart attack in Scottsdale in October 1996.

Texas securities regulators had raided Mr. Hooten's office in June and the Texas Insurance Department ordered him to shut down in September after finding that he had collected more than $150,000 in premiums from several policyholders for allegedly worthless Lifeguard Re bonds.

The Texas department also found that Lifeguard Re had claimed to own millions of dollars of worthless assets, including a $15 million certificate of deposit at a bank allegedly based in the non-existent Dominion of Melchizedek; $10 million in Melchizedek government bonds; and $20 million in bonds issued by "St. Charles University" and signed by Mr. Hooten himself as president of the purported university.

Mr. Hooten told a state securities regulator that he was president of Melchizedek in 1994. He also admitted that he had filed for personal bankruptcy in early 1995 listing net personal assets of $10,310, according to court records.

Melchizedek, which has figured in previous insurance swindles, has been variously located by different people in Antarctica, the South Pacific and on an island off the Colombian coast. Jeffrey H. Reynolds III was sentenced earlier this year to more than four years in prison on federal fraud charges stemming from his operation of California Pacific Bankers & Insurance Ltd., supposedly based in Melchizedek.

By year-end 1995, IC&S had disposed of all its 1994 investments except its Lifeguard stock, which remained on the balance sheet at roughly the same valuation. Of total assets of $11.7 million New Zealand ($7.6 million), the insurer also reported owning $2.5 million New Zealand ($1.6 million) in publicly traded common stock and non-public preferred shares of Phoenix Resources Technologies Inc.

Phoenix, formerly known as Hughes Resources Inc., has the same Scottsdale address as Premier Administrators and is headed by James R. Ray, former auditor for First Assurance, Securities and Exchange Commission filings show.

Mr. Ray was a Texas-licensed certified public accountant when he prepared First Assurance's financial statements for 1992. Last year, however, the Texas State Board of Public Accountancy revoked his license after finding numerous violations of accounting rules in his audits of First Assurance and another company. Mr. Ray is appealing the revocation.

SEC filings also show that Phoenix's assistant corporate secretary and legal consultant is Mar-

Continued on next page

Continued from previous page

vin Lewis, who is also claims manager for IC&S and was formerly claims administrator for First Assurance. Mr. Lewis, whose Texas law license has been suspended several times since 1990—was indicted in 1993 with insurance swindler Arthur A. Blumeyer III and others for allegedly using the defunct Bel-Aire Insurance Co. and a string of bogus offshore insurers to defraud policyholders of millions of dollars. He was acquitted after a jury trial in 1994 (*BI*, Feb. 14, 1994). Mr. Lewis denied acting as legal consultant to Phoenix.

Phoenix, formerly a wood products company and now an oil and gas producer, reported a $3.5 million net loss for its Oct. 31, 1995, fiscal year and its auditor expressed "substantial doubt about its ability to continue as a going concern."

The company reported a profit for the nine months ending July 31, 1996, most of it a one-time gain from the sale of discontinued operations, SEC filings show.

Mr. Love doesn't deny that several IC&S investments have been less than stellar performers.

The Lifeguard stock, for instance, turned out to be a total loss, Mr. Love conceded, adding that Premier Administrators also canceled a reinsurance management deal with Lifeguard Re last July.

He maintained, though, that he didn't suspect any of the Lifeguard misrepresentations cited by Texas regulators. He said he relied on Lifeguard's financial statement, which only described the company's assets as "bonds and CDs" without further identifying them or mentioning Melchizedek.

"There's no reason Lifeguard should have been a loss except for the darn fraud, or alleged fraud, involving Leon Hooten," Mr. Love said.

Meanwhile, IC&S has also sold its Phoenix common stock at a loss, receiving only about a third of what it paid, Mr. Love said. The insurer continues to hold Phoenix preferred shares, he said.

The Lifeguard debacle has caused Mr. Love to enter a new stock deal to "recapitalize" IC&S, he said.

In November, IC&S acquired 1.8 million shares of Wasatch Pharmaceutical Inc. in exchange for an interest in oil and gas leases held by Mountaineer Gas Transmission Inc., a Nevada corporation formed last April and headed by Mr. Lewis and Mr. Love.

Wasatch, described in its SEC filings as a "development stage company," owns a "proprietary technology" for the treatment of acne and other skin disorders and hopes to open a chain of skin care clinics, the filings say.

In a Sept. 30, 1996, quarterly filing, though, Wasatch reported only minimal revenue from two unprofitable prototype clinics and disclosed that lack of assets and working capital raised doubts about its ability to continue as a going concern.

Wasatch reported total revenues of $89,386 for the first nine months of 1996, along with total assets of $41,903 and a stockholders' equity deficit of $1.1 million.

David K. Giles, Wasatch's chief financial officer, said Wasatch may try to convert the Mountaineer assets to cash to finance the clinic expansion.

Wasatch's over the counter stock was priced at $2.75 bid and $4.63 offered in mid-December, according to one of the company's market makers. The stock's volume had ranged from 100 shares to 3,700 shares a week over the previous several weeks, the market maker said.

Meanwhile, IC&S faces potential claim and litigation problems.

The insurer's 1995 statements reports as a "contingency" about $3 million New Zealand ($2 million) in reinsurance claims from a South Korean ceding insurer—identified as Korea Foreign Insurance Co. by a broker involved in the placement—for a series of disastrous 1994 crop losses in South Korea.

IC&S' statement says it was improperly bound on the treaty, received no premium and does not acknowledge any liability.

However, Frank Sherman—an intermediary with Seawise Insurance Consultants Ltd. in Sudbury, United Kingdom, who was involved in the placement—said IC&S was bound under a valid agreement with a Belgian underwriting manager and that the insurer did receive premium on the risk.

Mr. Sherman said Seawise is now preparing final accounts on this and other IC&S business and will submit them to the New Zealand insurer shortly.

IC&S, Mr. Love and Mr. Lewis are also named in an amended lawsuit filed last April by First Assurance's bankruptcy trustee in U.S. District Court in San Diego. Two earlier complaints were dismissed.

The latest complaint charges that First Assurance fraudulently transferred about $500,000 to IC&S to get the insurer started. In addition, IC&S is effectively a First Assurance successor company and should be held liable for First Assurance losses, the suit alleges.

Mr. Love and Mr. Lewis were also part of a conspiracy to operate First Assurance as an "engine of fraud," capitalizing the insurer with worthless assets, looting it of premiums and leaving millions of dollars of unpaid claims, the trustee's suit charges.

IC&S, Mr. Love and Mr. Lewis have filed a motion to dismiss the complaint.

The lead defendant in the lawsuit, Paine Webber Inc.—which managed accounts for First Assurance—has agreed to settle the suit for about $7 million, according to lawyers involved in the litigation. An attorney for Paine Webber declined to comment.

IC&S, meanwhile, has filed a defamation suit in New Zealand against Robert Brace, a Santa Barbara, Calif., lawyer representing the First Assurance trustee.

Mr. Brace has denied defaming the insurer. To support his case, Mr. Brace last October filed an affidavit of a U.S. regulator asserting that most of IC&S' year-end 1995 assets, including the Lifeguard and Phoenix shares, were either worthless or substantially overvalued. The affidavit was sworn by William Smythe, former executive director of the National Assn. of Insurance Commissioners Securities Valuation Office.

Mr. Love dismissed the affidavit as "one man's opinion. . . .I've got my own documentation that the assets were valued at exactly as much or more" than the amounts reported in the 1995 statement.

He conceded that the Lifeguard and Phoenix stock proved to be worth far less than reported. But, he explained, "that balance sheet was as of 12/31, not the day after and as of 12/31 those numbers were all good."

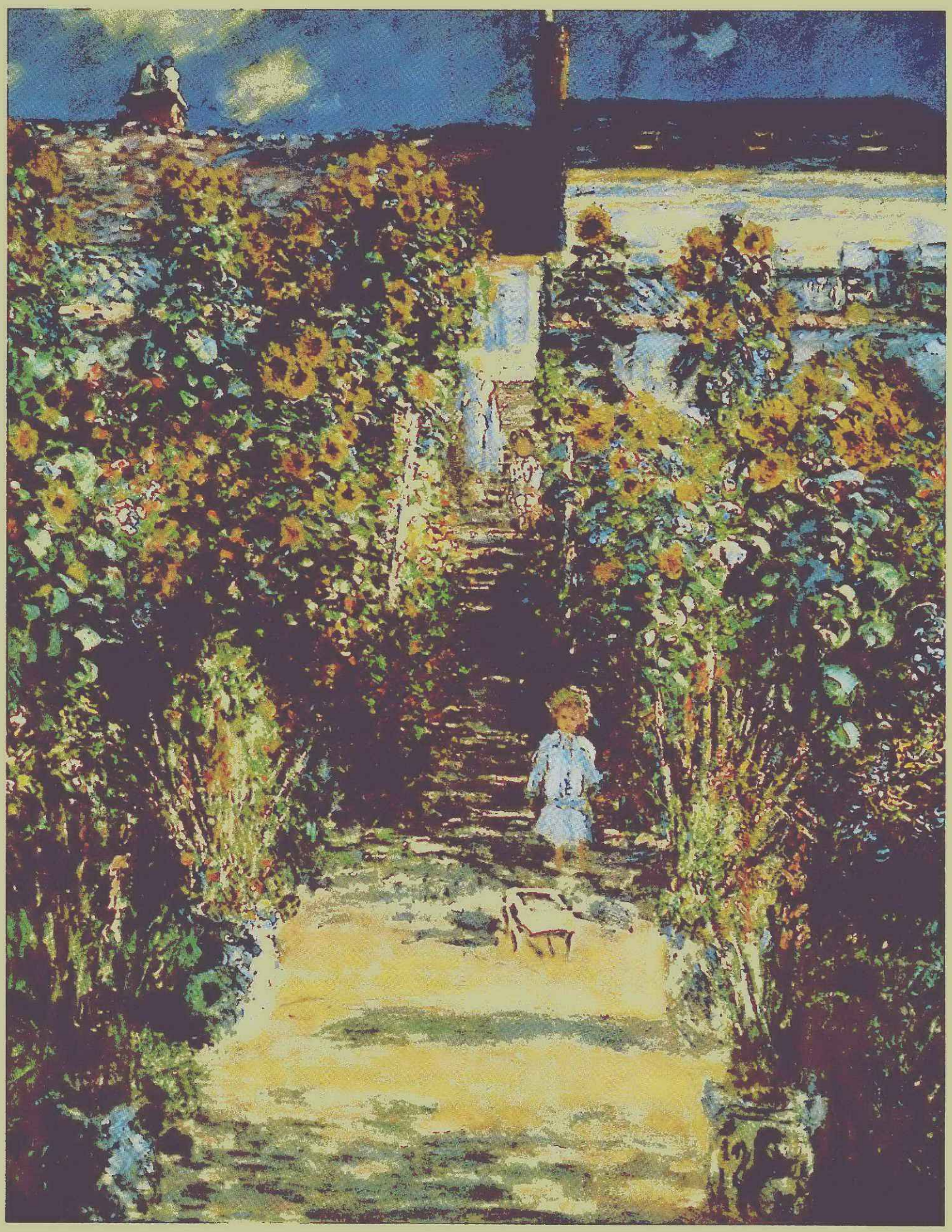
Despite IC&S' troubles, Mr. Love sounds confident about its ability to survive.

"I think we're much stronger this year than we were last year," he said.

IC&S doesn't assume big risks and has a solid reinsurance program, and that combination means "we'll be around next year and the year after and the year after." BI

It would be absurd for us to compare our insurance programs to the work of Monet.

They're clearly more reminiscent of Rembrandt.



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RIMS

Continued from page 1

active liability, foundered in the last Congress.

On the product liability front, RIMS perceives the political environment now as being more conducive to reform than it was prior to the 1996 elections, according to Mr. Brown.

"We're going to try to raise it," Mr. Brown said. "There's no pressure of election, no one's campaigning. I think the president might be a little receptive if the bill is tailored a little more toward what he wants. As far as we got last year, I think the president was the only stumbling block, so I think it might be a little less difficult."

President Clinton held that H.R. 956, the product liability reform bill he vetoed last year, did not provide consumers with adequate safeguards.

Dealing effectively with job safety concerns, particularly in regard to OSHA, also appears on RIMS' wish list.

"We still believe that OSHA reform has to be done legislatively," said Mr. Brown, adding that attempting to institute reforms administratively is inadequate. He cited a recent survey by the National Assn. of Manufacturers in which businesspeople criticized OSHA for a variety of shortcomings as proof that reform is needed (*BI*, Dec. 16, 1996).

For example, RIMS opposes OSHA's attempt to impose an ergonomics standard, a move that the Clinton administration revived after the election. Blocking a move toward setting a federal ergonomics standard "would be very high on our radar screen, obviously," said Mr. Brown.

RIMS also has advocated that OSHA work more closely with the industries it oversees to solve workplace safety problems, rather than rely on punitive measures, particularly for minor infractions like paperwork violations.

Other federal issues that RIMS will be watching include the shape of any natural disaster legislation that might emerge.

Although RIMS took no position on previous natural disaster bills in Congress, Mr. Brown said the organization is interested in seeing "what impact, if any" proposed legislation would have on commercial insurance.

RIMS also will track tax issues that come up, particularly those that affect captive insurers, said Mr. Brown.

Benefits-related legislation also will have RIMS' attention this year, said Pat Vaughan, RIMS' associate general counsel.

Ms. Vaughan noted that RIMS supported legislation sponsored by Sens. Edward M. Kennedy, D-Mass., and Nancy Kassebaum, R-Kan., that promoted the portability of health care benefits by removing pre-existing condition exclusions in medical coverage.

"We know in 1997 there's going to be more health care activity. With respect to Kennedy-Kassebaum, we're going to be keeping an eye out for the regulations that will be coming out of the Departments of Health and Human Services, Labor and Treasury to implement the law," she said.

"We're going to be monitoring pension reforms. Specifically, the president will propose legislation that will allow greater pension portability," added Ms. Vaughan.

"We need to see the legislation first, but as a policy matter, we certainly would be in favor of workers being able to take their pensions with them when they leave," she said. She added that RIMS always pays attention to legislation that could impact the Employee Retirement Income Security Act, but noted that she doesn't see anything in the near future that would threaten the law's pre-emption provisions, which protect ERISA plans from state benefit mandates.

In addition, RIMS will monitor Medicare and Medicaid reform proposals, said Ms. Vaughan.

As the federal government reduces its spending for these programs, the costs associated with the cutbacks are likely to be passed on to private businesses in the form of higher benefits costs, she said.

Benefit issues also are likely to command attention at the state level, said Ms. Vaughan.

"We think there's going to be a lot of state activity concerning managed care cost issues. For example, in California, lobbyists are expected to push legislation outlawing gag rules," she said.

RIMS will have to see exactly what such proposals say before deciding its position on them, she said.

"Regarding state issues, as they come up, we alert our members in that state," said Mr. Drapeau.

"The best thing you can do is keep your finger on the pulse and be ready to respond to whatever happens," he said.

RIMS will track tax issues as they come up, particularly those that affect captives, says Paul Brown.

One state where risk management-related legislation appears likely to be front and center is New York.

"There are a couple of big issues that have already cropped up. I think New York state will be one of our big states for 1997," said Anne B. Allen, RIMS' legislative counsel

Ms. Allen said Empire State lawmakers are expected to push to make New York a captive domicile. She said that RIMS "is very supportive" of the effort, though the group thought that there was a lot in the original captive bill that needed to be changed. For example, the initial captive law would not permit the use of captives for state-mandated lines of insurance like commercial automobile and workers compensation, noted Ms. Allen. RIMS would like those restrictions removed from any captive legislation.

New York lawmakers will also probably take another look at workers compensation reform, she said. "Even though there was some reform passed last year, we think we're going to see some more fine-tuning," said Ms. Allen. Lawmakers in New York may also introduce legislation dealing specifically with workers comp fraud.

Other states likely to deal with legislation of interest to risk managers include Texas, which Ms. Allen believes will be the site of further tort reform efforts, and Illinois, where recently enacted tort reforms are expected to come under legislative fire as well as continued judicial challenge.

Challenges to state-based tort reform "will be a huge defensive issue," she predicted.

In North Carolina, an Insurance Department-backed proposal that could saddle group captive reinsurers with onerous new regulations in the name of fronting disclosure also will be tracked closely by RIMS, said Ms. Allen. BI

Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers

Adding value to the menu

Offering extra services can help strengthen customer relations

Agent/Broker Topics

Going the extra step serves agents well

Agents, brokers can strengthen their relations with customers by providing services above and beyond obtaining coverage

By REGIS COCCIA

Maintaining good relations with customers isn't a frill for independent agencies and brokerages—it can mean the difference between staying in business or shutting one's doors.

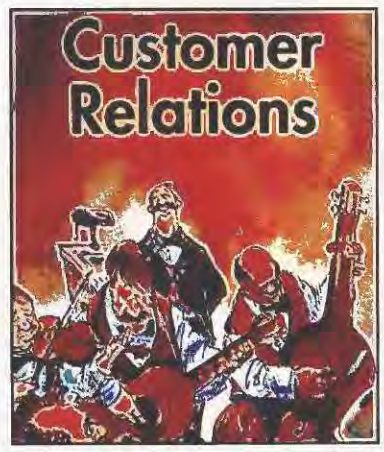
Agents and brokers needn't despair in the face of mounting competitive pressures and growing demands from increasingly sophisticated consumers, however. The insurance industry isn't alone in facing those challenges, and producers can take steps to improve their client relationships, consultants say.

"Clearly, the consumer today is more knowledgeable" about insurance, said Bobby Reagan, president and chief executive officer of Atlanta-based management consulting firm Reagan & Associates. And, "they're feeling some of the same pressures that agents are," like rising costs and pressure on profit margins.

"People are much more aware of the competitive nature of our industry, and they're willing to ask about it: 'Isn't there something you should be doing?' " said Ron Smith, president of Smith Sawyer Smith Inc., a Rochester, Ind.-based agency, and president of the Independent Insurance Agents of America.

"Agents and brokers have to be better attuned to who their customer is," however, said Mr. Reagan. "The whole problem-solving process begins with an understanding of your client and their needs and responding to them."

Responsiveness is an important consideration for customers, agreed Donald Weber, president of Shoemaker-Weber in Pismo Beach, Calif., a strategic consulting division of IR Group Cos. Before forming Shoemaker-Weber, Mr. Weber was chief operating officer at broker JIB Inc. in San Francisco, the former U.S. retail brokerage unit of JIB Group P.L.C.



"The consumer wants to know, 'How is my problem being handled?' That's where the rubber meets the road," he said. "Most agents have well-trained customer service representatives or account executives that are very responsive to customer needs."

"Agents can do a better job in the area of stewardship, knowing and providing what the customer needs," said Mr. Reagan, whose company conducts the annual Best Practices study of the nation's most profitable agencies for the Alexandria, Va.-based IIAA.

For example, a practice common among top agencies is midyear or even quarterly meetings with customers to exchange information and stay attuned to the client's needs throughout the policy period, not just at renewal time, Mr. Reagan said.

'The consumer wants to know, "How is my problem being handled?" That's where the rubber meets the road,' says Donald Weber.

Mr. Weber recommends that agents and brokers conduct a formal review of a client's account at least annually, to go over the customer's insurance program, analyze claims and report findings. Such meetings let customers know the agent or broker is looking out for them and are helpful in renewing accounts, he said.

Knowledge is power

In an environment where many agents and brokers are vying for business, specialized knowledge is a key to gaining a competitive advantage, Mr. Reagan said.

Policyholders today require a "combination of expertise," Mr. Reagan said. "Insureds expect their agents to know the insured's business" as well as be able to find appropriate solutions in the insurance market.

Toward that end, agents and brokers can assist customers through their knowledge of the marketplace. "It's making sure the agent or broker knows of the options available for the insured and keeps the customer abreast of them," according to Mr. Reagan.

Those options may not necessarily include buying insurance.

For example, if an insurance

See **Service** *on page 16D*

A lot of carriers talk about financial strength. But who has the resources? And the track record?

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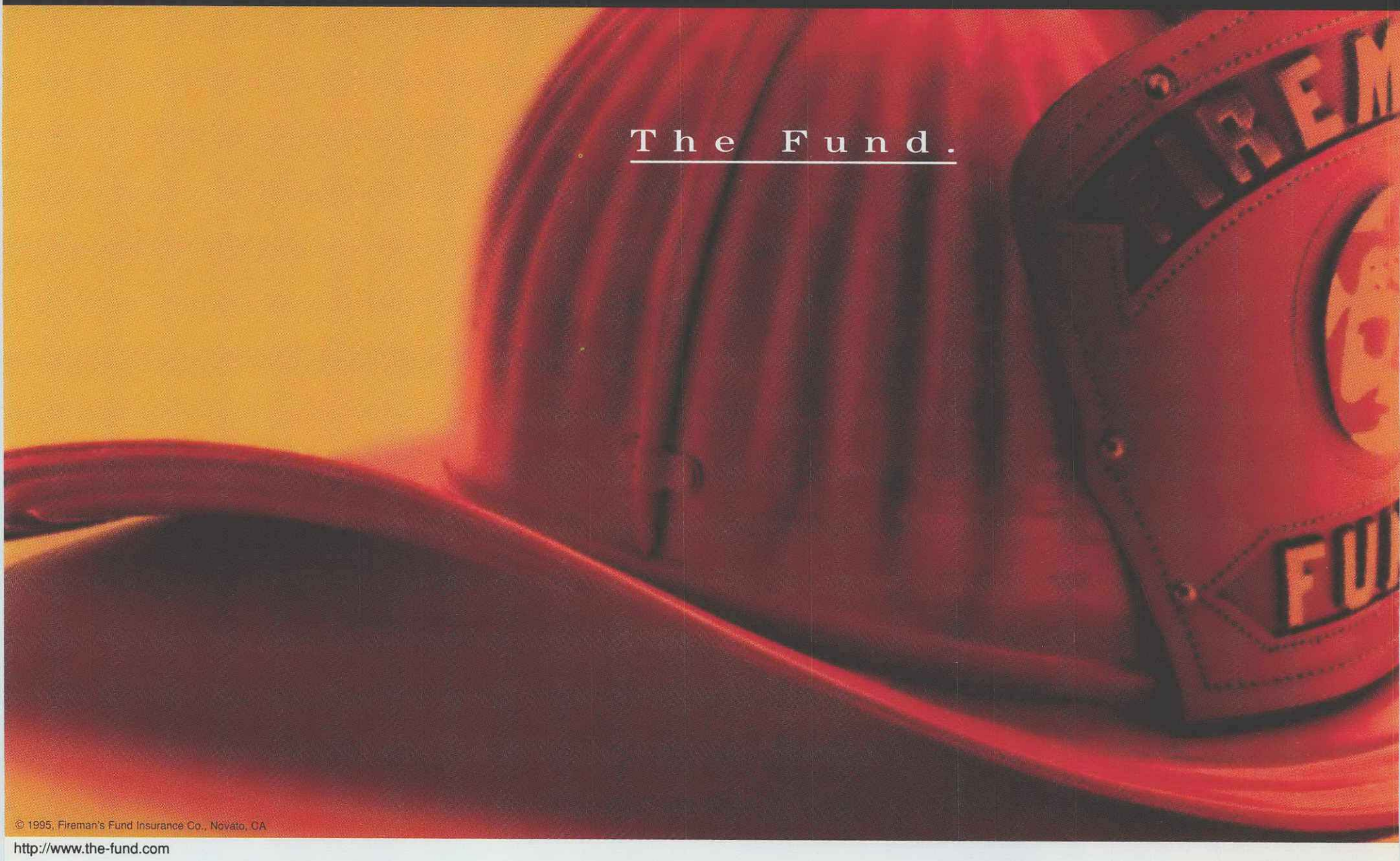

http://www.the-fund.com

Fireman's Fund

Service

Continued from page 16B

buyer is interested in forming a captive or some other risk financing arrangement, it's important for the agent or broker to be able to advise the client, said Mr. Reagan.

Another way to gain a competitive edge is to learn the ins and outs of a given industry. Midsize agencies and brokerages can become proficient in serving certain niche markets, like association clients, Mr. Weber said.

"They can get to know people (in those industries) personally and develop a rapport that's so strong a larger broker can't touch it," he said.

Whereas an account generating $100,000 in premium is important to a midsize broker, such an account would be small potatoes to a very large broker. As a result, "midsize brokers put a better team on serving that account. They can do a better job" than the bigger brokers, particularly if the middle-market brokers handle such clients on a regular basis, Mr. Weber explained.

"Insureds want their agents to be knowledgeable, proactive—anticipating their needs so there are no surprises—and creative in finding different ways to solve their problems and aggressive in the marketplace in representing their interests," Mr. Reagan said.

Commercial clients "are looking for us to be a resource for them in helping them find the best use of their insurance dollars," Mr. Smith said.

"We're trying to tell our agents that we do add value, and that value is our advice, our counsel, our risk management services," he said. "By and large, agents do those things without charge and they do that well."

New business vs. old

As agencies and brokerages of all sizes strive to grow, they sometimes can fall into the trap of not giving adequate attention to their existing customers.

"A lot of people get involved in the debate over what's more important, new business or renewal business," Mr. Reagan said. "I think that whole argument is like sitting in an airplane and saying, 'Which is more important, the right wing or the left wing?' "

New business is "vitally important" to an agency's growth, but it's also important to retain accounts, he said.

"The only way you can survive is to have those two areas balanced," Mr. Weber said. Account attrition and merger and acquisition activity each year result in diminishing returns for agents and brokers, requiring them to seek new business, he explained.

Achieving growth requires a plan, though, which relatively few producers have thought out. "Most agents and brokers are so busy just keeping the doors open every day, they're never really able to take the time to do long-term planning and decide where they want the business to go," Mr. Weber said.

"For most every agent, the way he gets new business is by taking it from other agents."

Successful agencies have good sales programs and long-term plans in place and are not only winning new business but also keeping their existing customers, he said.

Holding on to customers

Although most agents and brokers take pains to retain their clients, sometimes they can't prevent customers from walking out the door, consultants note.

Most often, customers change agents or brokers because of price, but occasionally it's due to receiving poor service, according to Mr. Weber.

"A good percentage (of clients) will leave because of price. That's the real world," he said. "You can't help losing (their business) from price sometimes. You can't fault yourself on that."

Producers can take responsibility, though, when they lose customers over bad service, according to Mr. Weber. But, some companies don't realize clients are dissatisfied until they leave, Mr. Weber added.

"If you have good relations with a client, it takes more than one act—it takes a multitude of acts—to make them become disenchanted," he said.

Finding out whether a customer is happy can be as simple as a periodic telephone call or as formal as a questionnaire. In either case, the important thing is to stay in touch with customers, Messrs. Reagan and Weber said.

"It could just be a phone call, a survey or stewardship meeting," Mr. Reagan said. "You're going to be most secure when you're doing the job."

Maintaining close ties with customers is critical, Mr. Smith agreed. "The more contact we can have with a client, the more effective" the agent can be, he said.

To cultivate strong relations, Mr. Reagan recommends agents and brokers take their relationship of acting as a consultant "to a higher level—as a partner, where the insured thinks of you as they would their lawyer or CPA, as another adviser."

Agents and brokers can do that by "building the insured's confidence that you have their best interest at heart," he said.

"To be a high-performing company, you have to go that extra step and provide the value-added services we hear about," like risk management and loss control consulting, Mr. Weber advised.

It pays to "make sure your clients know you provide services others don't," he added. BI

Profits from Asian markets may be worth the risk

To reap benefits, companies must get to know marketplace

By MICHAEL PRINCE

Simply because Christopher Columbus didn't reach Asia doesn't mean the insurance industry shouldn't.

With its huge population and growing economies, Asia represents a tremendous investment opportunity for the insurance industry, said Selina Man, regional manager-Asia and Pacific division of A.M. Best Co. in Oldwick, N.J. And despite the problems and apprehensions of doing business in Asia, she said the benefits outweigh the costs.

The real question, she said recently in New York at the 1996 Roundtable on Insurance Conditions in Asia sponsored by the International Insurance Council, is not if insurance companies should do business in Asia, it's if they can afford not to do business in Asia.

"Just remember: It's not a new market," she said. "It's been here a long time and it's here to stay."

Ms. Man divides insurance companies into three categories: proactive, reactive and fence-sitters.

The proactive ones are insurers and reinsurers of a reasonable size with an established international culture. They are active in Asia to strengthen their market presence.

Reactive companies are more recent investors in Asia that have followed their competition. "They have to jump on that bandwagon," she said.

Fence-sitters are companies that are making tentative investments. "They tend to focus on the negatives of the investment," she said.

As for the countries, she divides them into four zones: hot, getting hot, warm and cool. According to her scale, a hot country has a high level of foreign investment, a high cost of doing business, frequent visits by top business executives and the presence of brokers.

The "hot" areas include Japan, China, Singapore, Hong Kong and Thailand. She emphasized that Japan, with its large insurance market, and China, with its huge population, are prime targets for investment.

Taiwan, India, Indonesia, Malaysia and South Korea make up what Ms. Man describes as "getting hot" zones, with India and its nearly 1 billion people a standout market.

The "warm" zone contains The Philippines, Vietnam and Myanmar, while the "cool" zones include Pakistan, North Korea, Cambodia and Laos. She said these countries essentially are closed to foreign investment.

Ms. Man cautioned that investors must tailor their plans to each country.

"There is no one-size-fits-all investment strategy," she said. "When you decide to do business in Asia, your parent corporation will need to change. It's a two-way street. You cannot be successful in Asia without making fundamental changes in your own approach."

Despite attempts to open these markets, government regulations in Asia will not disappear, Ms. Man advised. "You should get used to it," she said. In many Asian countries, she said, the people trust big government and see it as benevolent.

Other items companies should keep in mind, according to Ms. Man, include:

- Long-term planning.
- The middle and low end of the market, focusing not on big dollars per sale but on the number of people.
- Investments in relationships and people along with education and the environment.
- Product development.

"This is not North America. Get used to being innovative," she said, such as offering bicycle insurance. In China, especially, bicycles are a widely used means

See **Asia** *on next page*

Errors & omissions

- A story in the Dec. 2 *Agent/Broker Topics* section incorrectly referred to newly formed, San Francisco-based Sable Insurance Co. as the first African-American-owned property/casualty insurer. AAI Syndicate #1 Ltd., a syndicate on the Illinois Insurance Exchange, has been majority-owned and controlled by African-Americans since 1995, according to AAI's chairman and chief executive officer, Thomas B. Mayo. The syndicate writes property and casualty coverage in 35 states.
- An item in the Dec. 2 *A/BT* section incorrectly listed the employer of Ramona R. Brown. Ms. Brown is manager of health care-related professional liability at TIG Insurance Co. in Irving, Texas.

Asia

Continued from previous page

of transportation.

• Marketing products to women and children.

Another possible boost is Japan's recent agreement with the United States to open its primary sector to competition in 1998. Other points in the agreement allow innovative rates and products for commercial fire, general liability and auto insurance.

China represents a tremendous opportunity for property/casualty companies, said Larry Simms, partner with law firm Gibson, Dunn & Crutcher in Washington. He said only a handful of the 83 companies that have applied for entry into the Chinese market are property/casualty companies.

China represents a tremendous opportunity for property/casualty companies, says Larry Simms.

Mr. Simms added that demand is high for foreign property/casualty insurers as foreign companies doing business in China look toward non-Chinese companies for insurance.

In another presentation on Asia, Gordon Cloney, president of the International Insurance Council, said the Indian government is committed to converting the country from a state-run to a private insurance industry. He anticipates the introduction of a privatization bill early this year with possible passage later in the year.

"The scenario is essentially a favorable one," according to Mr. Cloney.

As a result, he said, discussions are taking place between foreign insurance companies and Indian companies to form insurance joint ventures. BI

Agent files complaint against Nationwide

By MATT ROUSH
Crain News Service

A Michigan insurance agent is accusing Columbus, Ohio-based Nationwide Mutual Insurance Co. of telling him not to write business in Detroit, the latest of several complaints by agents of the insurer.

In the suit filed in Macomb County Circuit Court, Pasquale "Pat" Casasanta says Nationwide underwriters told him, "We don't want Detroit business."

Mr. Casasanta is suing Nationwide for breach of contract, breach of fiduciary duty, fraud, misrepresentation and other counts over the termination of his status as a Nationwide agent June 6.

Mr. Casasanta also is suing Nationwide for a violation of the state Whistleblowers Protection Act, which gives employees protection for reporting to state agencies suspected violations of law on the part of their employers. The agent said he complained about Nationwide's practices to the state Insurance Bureau after February, when Nationwide officials allegedly "suggested that (Mr. Casasanta) engage in insurance-sales practices which violated state insurance law."

Nationwide has denied the allegations. Its court papers say the agent's agreement gave the insurer the right to cancel the agency's appointment at any time for any reason.

Nationwide also accuses Mr. Casasanta of "unacceptable business practices," fraud and misrepresentation and says Mr. Casasanta, not Nationwide, may have violated state insurance laws.

The insurer's response neither admits nor denies the accusation of redlining.

However, Nationwide attorney Michael Schmidt, of the Troy firm Harvey, Kruse, Westen & Milan P.C., said: "We deny any redlining at all. It's completely off the wall."

A Nationwide spokesman said, "Pasquale Casasanta's contract with Nationwide was canceled in July and because the matter is in litigation, and because we treat contractor issues confidentially, Nationwide declines to discuss specifics of the suit.

"Nationwide has a clear-cut and firm corporate policy that prohibits the denial of insurance only because of the location of the property or because of race or ethnic origin."

According to the lawsuit, Mr. Casasanta began with Nationwide as an employee agent in 1987 and completed training to become an independent agent in 1990. He shared an office with another independent Nationwide agent in Utica until 1994, when Nationwide's management direction changed, the suit says.

Mr. Casasanta said the insurer decided it no longer wanted to do business with small agencies and wanted to move from commercial lines to personal lines.

In an interview last month, Mr. Casasanta said he came under pressure from the insurer to establish a big agency, though he'd been winning company awards and was posting about $2 million a year in premiums, of which about 90% was commercial lines and about 20% was in Detroit.

So Mr. Casasanta said he agreed to borrow $90,000 from Nationwide, pledged against his retirement account that, according to the suit, to

See **Nationwide** *on page 16H*

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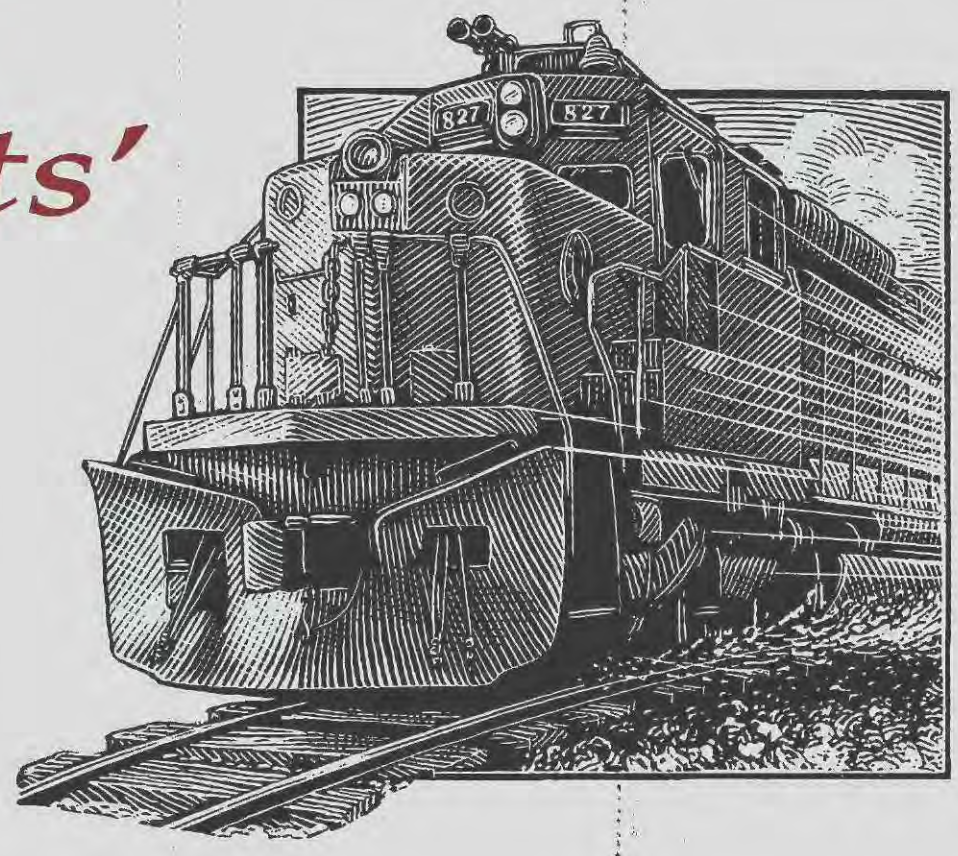

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Agent/Broker Topics

Nationwide

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tals $240,000, and went into business with his office mate as the LaCommare & Casasanta Insurance Agency, a partnership that eventually had 16 staff members and an annual premium volume of $4.5 million.

The agent's lawsuit says that in 1994, Nationwide representatives told him they didn't want Detroit business and quoted prices so high that the agency could not legitimately offer Nationwide coverage to Detroit customers.

The lawsuit charged that a Nationwide audit of his business in August 1995 "erroneously maintained that some of the insurance written by (the) agency was not in compliance" with Nationwide's policies and state law.

Eventually, Nationwide put such restrictions on Mr. Casasanta's agency that his sales staff quit, the suit says. After he complained to the insurance commissioner, Nationwide terminated Mr. Casasanta's agency agreement, according to the suit.

Mr. Casasanta has since established Casasanta & Associates in St. Clair Shores, Mich., an agency that handles commercial lines as well as auto and homeowners business.

Michigan Insurance Bureau Deputy Director Jean Carlson said Mr. Casasanta has no open complaints nor investigations on his enforcement record as an agent for accident, health, life and multiple-lines property/casualty insurance.

Two other former agents have sued Nationwide over the past 18 months in Wayne County Circuit Court, and another early this year in Oakland County Circuit Court.

The Oakland case, filed Jan. 16, 1996, by Lake Orion resident Jeffrey Harcourt, says he gave up a lucrative career as a health care business manager to become a Nationwide agent in 1993 but was caught in the squeeze as Nationwide moved from individual agents to larger agencies.

In cases filed in Wayne County, former agents Terry Novak of Redford Township and Linda Burnett of Brownstown Township say Nationwide "maintained separate and distinct practices, policies and requirements. . .based on geographical location and ethnicity."

Mr. Novak said his agency appointment was improperly terminated in 1993. Ms. Burnett's appointment was terminated Jan. 24.

The Nationwide spokesman reiterated the insurer's policy against the alleged discrimination. BI

Organizations seek nominees for award

The American Institute for CPCU and the Insurance Institute of America in Malvern, Pa., are currently accepting nominations for the 1997 Thomas S. Carpenter Leadership Award.

The award, in honor of Thomas S. Carpenter, former president of American International South Insurance Co. in Charlotte, N.C., is given to a field office manager for dedication to professional development of himself or herself and others. During his 32-year career as a field office manager, Mr. Carpenter promoted professional education.

An award selection committee will judge each nominee according to his or her accomplishments in these areas:

- Providing leadership in the development of others, such as staff or agents.
- Promoting, teaching or coordinating education programs.
- Service to others and affiliation with professional groups.
- Demonstrating his or her own professional growth through continuing professional education.
- Contributions to the insurance industry.

The winner of the award receives a $500 honorarium and commemorative plaque.

Nominations may be submitted through Feb. 1, 1997.

For more information or to request a nomination form, contact Karen Burger, 610-644-2100, ext. 7805; fax: 610-644-7629; e-mail: burger@cpcuiia.org.

Bankruptcy court ruling good news for agents

By Debra Lee Allen and Thomas R. Hill

A/BT Perspective

A RECENT bankruptcy court ruling is good news for agents, brokers and insurers that own premium finance companies.

In September, the U.S. Bankruptcy Court for the Northern District of Illinois issued a decision that significantly ameliorates the risk of financing premiums of a financially troubled company. In *Schwinn Plan Committee vs. AFS Cycle & Co. Ltd. (Transamerica Insurance Finance Corp.)*, Judge Jack B. Schmetterer held that payment of premium finance installments to TIFCO within the 90 days prior to the date that Schwinn Bicycle Co. filed for bankruptcy protection did not cause TIFCO to be preferenced over the unsecured creditors of Schwinn, and therefore TIFCO did not have to disgorge the $458,876 in installments it had received. The *Schwinn* decision provided the premium finance industry long-awaited relief to an adverse opinion decided in 1991.

Under U.S. Bankruptcy Code, certain payments made to a creditor within the 90 days prior to the bankruptcy filing date are considered preferential to the creditor that received the payment. Therefore, the payments can be recovered by the debtor or a bankruptcy trustee to be distributed with all other assets of the debtor's bankruptcy estate.

The rationale for the preferential transfer provisions is twofold. First, they are intended to discourage a creditor from pursuing collection of a debt that would prevent the company from working out a financial plan with all its creditors. Second, they are intended to ensure similarly situated creditors are treated equally. By requiring creditors to disgorge the 90-day payments, cash becomes available to be distributed to other creditors under the Bankruptcy Code scheme of priorities.

Under the Bankruptcy Code, the transfer must be made in payment of a debt that arose before the date of the transfer, and the transfer must benefit the creditor. The transfer must be made in the 90 days preceding the filing date, during which time the debtor is presumed to have been insolvent. Lastly, the transfer must in effect give the creditor more than it would receive under the liquidation provisions of the Bankruptcy Code without the transfer.

TIFCO finances insurance premiums, a common commercial transaction whereby a company or policyholder borrows money to prepay its premiums in full at the inception of coverage. The policyholder or borrower signs an agreement promising to repay the loan, with interest.

Repayment is secured by the policyholder's assignment to the finance company of all unearned and return premiums. The policyholder also appoints the premium finance company its attorney-in-fact to cancel the coverage in the event the policyholder defaults on its installment due under the premium finance agreement.

Premium financing lets a company buy coverage with a lump sum. It is attractive to businesses that have cash flow problems and may be likely candidates for bankruptcy protection. Thus, it is imperative that the terms protect the finance company's interest in the event the borrower/policyholder files for bankruptcy.

Typically, the loan is structured so there always is enough collateral, or unearned premium, to satisfy the outstanding balance due on the loan at the time of default. Depending on the statute, the finance company can cancel the coverage 15 to 20 days after default. Cancellation stops the daily earning of the prepaid premium. Therefore, premium finance typically is structured—and the monthly installments set—so that the unearned premium at any time will cover the outstanding balance. Usually, the finance company has enough collateral to remain secured for 30 days past the due date. If there is a default, coverage can be canceled, the prepaid premiums stop earning and the unearned premium satisfies the debt.

Generally, two kinds of risk are involved. One is receiving payment of the balance of the finance contract in the pending bankruptcy case. But, the rights of the finance company after the insured company files for bankruptcy protection have been well-established since 1986, when the U.S. Bankruptcy Court for the District of Connecticut decided *TIFCO Inc. vs. U.S. Repeating Arms Co.*

Unlike an insurer, whose claim in a bankruptcy case for premium payments is considered either unsecured or an administrative expense of the estate, a premium

See **Bankrupt** *on next page*

Bankrupt

Continued from previous page

finance company's claim is secured because the transaction is a secured loan. As long as the value of the company's collateral exceeds the balance due on the filing date, the finance company is a fully secured creditor.

There also is a risk of having to disgorge installments paid in the 90 days prior to a bankruptcy filing on a claim of preferential transfer. This has been a risk of premium finance since 1991, when the U.S. Bankruptcy Court for the District of Maine recharacterized a premium finance company's secured loan as unsecured for purposes of the Bankruptcy Code's preferential transfer provisions in *Paris Industries Corp. et al. vs. A.I. Credit Corp.*

Generally, payments to a secured creditor cannot be preferential because, in a bankruptcy case, a secured creditor is entitled to receive full payment of its claim. Payments to a fully secured creditor will only reduce the amount of that creditor's claim, at the same time freeing up an equivalent amount of the collateral securing the debt. Hence, the secured creditor cannot be preferenced in receiving payment. But, despite the secured nature of a finance company's claim, the court in *Paris Industries* held that a premium finance company was preferenced in receiving installments in the 90 days preceding the debtor's filing date.

Schwinn filed for bankruptcy protection Oct. 7, 1992. Prior to that date, Schwinn entered into two typical premium finance agreements with TIFCO. Under terms of the first agreement, dated March 5, 1992, TIFCO advanced $922,682 to pay premiums to various insurers. Schwinn was to repay the monies, plus finance charges, in nine monthly installments of $104,827.77 each, beginning April 1, 1992.

The second agreement was dated July 14, 1992. Under this agreement, TIFCO advanced $116,082 and Schwinn promised to repay the advance in nine installments of $13,188.31 each, beginning Aug. 1, 1992. Under both agreements, Schwinn assigned all unearned premiums to TIFCO and granted TIFCO power of attorney to cancel coverage in the event of default. In the 90 days preceding Schwinn's filing date, TIFCO received four installments due under the March agreement, totaling $419,311.08, and three installments due under the July agreement, totaling $39,564.93.

Nonetheless, the Schwinn Plan Committee, created under Schwinn's liquidating plan, sued TIFCO Oct. 3, 1994, claiming TIFCO had been preferenced in receiving the installments. Relying on the 1991 *Paris Industries* opinion, the Schwinn Plan Committee sought to recover the amount paid to TIFCO.

At issue was whether the finance company had received more with the pre-filing date installments than it would have received without the installments but with payment of its claim in a hypothetical liquidation.

In *Paris Industries*, the court hypothetically constructed the premium finance company's claim by taking the finance company's claim on the filing date, adding back all the installments received in the 90 days prior to the filing date and then comparing this total with the value of the creditor's collateral on the filing date. If the claim on the filing date plus the installments exceeded the value of the unearned premium on the filing date, then the finance company would be considered to have been preferenced to the extent of the difference.

While the *Paris Industries* construction might be a convenient test in most secured creditor cases, it produces an erroneous result in premium finance cases by finding that a lender that is otherwise fully secured is partially unsecured in the hypothetical liquidation. As a result, the lender must repay some or all of the installments.

Paris Industries Corp. paid two installments of $10,565 each to A.I. Credit Corp., a premium finance company, in the 90 days preceding Paris' filing date. On the date of the first installment, the total unearned premiums securing the loan, on a pro rata basis, were $35,133, compared with the total outstanding balance prior to payment of $21,135. After A.I. Credit subsequently received the last installment of $10,565, the loan balance was $10,565 and the value of the unearned premiums, on a pro rata basis, was $22,597. On both days that installments were received, A.I. Credit was fully secured. One month later, on Paris Industries' filing date, the value of the unearned premiums had declined to $11,118.15. A.I. Credit did not have a claim because the loan had been paid in full.

The court, however, constructed A.I. Credit's claim in a hypothetical liquidation. It started with a claim of $0 and added back the installments received, totaling $21,130. It then compared the claim with the value of the unearned premium of $11,118.15 on Paris Industries' filing date and concluded A.I. Credit had been preferenced in the amount of the difference. The court did not reconcile the fact that a fully secured lender became an unsecured claimant in the hypothetical liquidation.

Exceptions to the Bankruptcy Code's preferential transfer provisions exist, but such arguments have not been successful in premium finance cases.

For example, one exception is that a transfer made with a contemporaneous exchange of goods or services to the debtor exempts the lender from preferential transfer attack. Bankruptcy courts have held there is no such exchange under a premium finance agreement.

Another exception is the "ordinary course of business" exemption, which exempts transfers made in the ordinary course of business to the debtor and the creditor. The difficulty with this exemption, however, is the interpretation of "ordinary course of business" depends on the fact of a particular transaction. Further, evidence required to prove ordinary course of

See **Bankrupt** *on next page*

Bankrupt

Continued from previous page
business for the creditor, the debtor and ordinary business terms can vary by jurisdiction.

In the *Schwinn* case, Judge Schmetterer needed to reconcile the inconsistency created by the *Paris Industries* ruling. He relied on a 1986 ruling by the 7th U.S. Circuit Court of Appeals, which rested on the well-established "dimunition of estate" principle. Since the early 1900s, courts have held that payments to a creditor that do not diminish the value of the estate will not be preferential.

While the dimunition of estate requirement is not stated in the Bankruptcy Code's preferential transfer provisions, it is integral to a finding that a payment in the 90 days preceding a bankruptcy filing has preferenced a creditor. And bankruptcy courts consistently have applied this principle.

Therefore, the first step in determining whether a creditor has been preferenced is to determine the creditor's status on the date of the transfer or payment. If the creditor is fully secured on that date, payment can only reduce the creditor's claim and free a corresponding amount of collateral. If the creditor is partially or fully unsecured on the date of transfer, the court must compare the fluctuations of the value of the collateral with the debt and payments in the following 90 days to determine whether the creditor has become preferenced.

Judge Schmetterer distinguished the date on which collateral must be valued *for purposes of determining the status of the creditor* from the date on which collateral is valued *for purposes of constructing the hypothetical liquidation*. The hypothetical liquidation and what the creditor would have received is always constructed from the filing date. The creditor's status on the filing date determines what the creditor will be paid from the bankruptcy estate. However, when determining whether a creditor has been preferenced, the first step is to determine the value of the collateral on the date immediately preceding the transfer or payment in issue to determine the extent to which the creditor was secured.

In fact, the hypothetical liquidation in *Paris Industries* is widely used for other types of secured creditors. And, for a secured creditor whose collateral does not decline in value in the 90 days preceding a filing date, the construction may be accurate. But, for a secured creditor whose collateral declines in value within the 90 days, such a claim construction is unreliable.

The court in *Schwinn* noted that in premium financing the collateral diminishes in value throughout the term of the loan, as does the outstanding balance. But as long as the outstanding balance remains less than the remaining collateral, the premium finance company never becomes undersecured or unsecured. The amount by which the collateral diminishes is predictable, and the dimunition is accompanied by value provided to the estate.

Judge Schmetterer ruled the objectives of the Bankruptcy Code's preferential transfer provisions would not be served by a finding that TIFCO had been preferenced. The premium finance installments paid to TIFCO were scheduled for months prior to the beginning of the 90-day period. Payment of the scheduled installments to TIFCO was not an action to obtain additional assets of Schwinn to the detriment of its other creditors. Although the collateral value diminished over time, the installments did not deplete the Schwinn estate. Rather, Schwinn received coverage for every day the policies remained in place. In fact, a finding that TIFCO was preferenced and required to disgorge the installment payments would be a windfall for the Schwinn estate, as the debtor would have free insurance.

The *Schwinn* decision is now precedent in the Northern District of Illinois and likely will be followed by other districts in the 7th Circuit. It is hoped that other bankruptcy courts will follow Judge Schmetterer's lead in revising the *Paris Industries* court's analysis and conclude that a creditor that is fully secured throughout the term of its loan cannot somehow become an unsecured creditor in a hypothetical liquidation.

Debra Lee Allen is senior counsel, in charge of litigation and domestic transactions, for Transamerica Insurance Finance Corp. in Towson, Md.

Thomas R. Hill is a partner in Chicago with law firm Rooks, Pitts & Poust.

Agent/Broker Topics

ADVERTISER INDEX

Issue of January 6

A/BT Briefs

IIAA honors five

ALEXANDRIA, Va.—Four individuals and a group have been cited for their contributions to the industry by the immediate past president of the Independent Insurance Agents of America.

Each year, the outgoing president chooses people or groups that have demonstrated outstanding service to the organization, the industry and the president's mission, the Alexandria, Va.-based IIAA says.

Cited this year by immediate past President George R. Shaffer:

• Kathy Corbalis, director of customer research for ITT Hartford Group Inc. and chair of IIAA's Future One Research Task Force, was recognized for her work in making the 1996 Agency Universe Study more useful for the IIAA and the independent agency system.

• George T. Frazier, IIAA past president from Hope, Ark., was honored for his help in bringing IIAA issues to the attention of the Clinton administration. Mr. Frazier helped set up the association's meeting with President Clinton on the Kennedy-Kassebaum health care bill that passed last year and spoke with the administration on other issues affecting independent agents, including banks in insurance.

• David Bates, IIAA state national director from Rhode Island and president of A.N. Nunes Agency Inc. in Bristol, R.I., was cited for his role in Rhode Island banking legislation in the aftermath of the *Barnett* decision and his encouragement of company membership in Future One.

• Dick Poppa, former IIAA chief operating officer, was honored for leadership and efforts in moving the national association forward during his seven years there. Mr. Poppa now is the executive vp of the IIAA in New York.

• The IIAA Government Affairs Staff was cited for its "tireless" representation, especially on bank legislation. Mr. Shaffer cited Maria Berthoud, senior Washington representative, for her successes with health reform legislation, and Phil Anderson, director of federal affairs, for his efforts on banking and crop insurance issues.

InVEST directors

ALEXANDRIA, Va.—Four insurance industry professionals have been appointed to the board of directors of Insurance Vocational Education Student Training.

New members are: Eleanor Barnard, senior vp-distribution for CNA Insurance Cos. in Chicago; Michele Deml Johnson, an agency management consultant with The St. Paul Cos. Inc. in St. Paul, Minn.; Terry L. McDonald, agency principal of Welt-Ambrisco Insurance Inc. in Iowa City, Iowa; and Sherri Stein, assistant director of marketing at SAFECO Corp. in Seattle.

InVEST, celebrating its 25th anniversary, is a business and education partnership established to train high school and college students in insurance agency and company operations and encourage insurance careers. InVEST serves about 2,500 students in more than 200 U.S. high schools and colleges.

Nearly 75% of the students who complete the program wind up working in the insurance field, says Barbara Miller-Richards, the program's national administrator.

The Alexandria, Va.-based Independent Insurance Agents of America will continue to run the program.

Quality seminar

WASHINGTON—The Council of Insurance Agents & Brokers and the Quality Insurance Congress are cosponsoring a seminar on customer service later this month.

The seminar, "Unlocking the Voice of the Consumer," is the second to be offered by the Council/QIC. It will be held Jan. 31-Feb. 1 in Washington, D.C.

The seminar, aimed at agents, brokers, company executives and risk managers, will focus on a seven step plan to redesign a company's processes to provide customers with what they really want.

The registration fee is $495 for QIC and Council members and $595 for non-members.

For more information, contact the Council at 701 Pennsylvania Ave. N.W., Suite 750, Washington, D.C. 20004-2608; 202-783-4400.

IIAA honors Wood

ALEXANDRIA, Va.—C. Courtney Wood has received one of the Independent Insurance Agents of America's highest honors.

Mr. Wood, owner of Courtney Wood & Associates of Edmond, Okla., and a past president of the IIAA, recently was recognized with the Matthew A. Cantoni Jr. Technical and Risk Management Award.

The award is given to the individual or organization that demonstrates dedication to improving the products and services offered by independent agents and who has made a difference in their community.

According to the IIAA, Mr. Wood has worked for more than three decades with insurance companies, rating organizations and insurance regulators to improve policy coverages by eliminating exclusions, adding coverages and clarifying policy conditions. He also is an active member of his community's volunteer and disaster relief agencies.

Award program

BRYN MAWR, Pa.—A record 25 companies, with more than 2,600 agencies nationwide, are participating in the 1996 Professional Growth Award of The American College in Bryn Mawr.

The award program is designed to promote and recognize agency commitment to professional education and career development, the college said. It is presented annually to agencies that achieve outstanding performance in professional development through the college's Chartered Life Underwriter, Chartered Financial Consultant, Registered Health Underwriter, Registered Employee Benefits, Masters of Science in Financial Services and Masters of Science in Management courses.

Points are awarded to agency personnel for CLU, ChFC, RHU, REBC and/or master's degree activity—registering for a course, passing an exam or earning a designation or graduate degree from the college—and for membership in the American Society of CLU & ChFC.

Recognition is given to agencies that meet or exceed the program's established level of education throughout the year, the college said.

Participation has grown over the program's first four years, with a 19% increase in 1996 over 1995.

In other news from The American College, Sandra K. Stuckert has joined the senior management team as vp of information systems and chief technical officer.

Ms. Stuckert has more than 20 years' experience in information technology for various Fortune 500 companies and for the past 10 years was a senior manager with New York-based Loews Corp. She is a graduate of Temple University.

Recruiting Web site

CHICAGO—Insurance National Search, a network of recruiting professionals dedicated to the insurance industry, has launched a site on the World Wide Web.

The Insurance National Web Site—located at http://www.insurancerecruiters.com—is targeted to individuals exploring career opportunities in the insurance industry, as well as organizations seeking recruiters with expertise in insurance.

The network is made up of recruiting professionals representing insurance agencies, brokers, insurance companies, managed care organizations and others. BI

in a booklet and demo disk from PDP Corp. Request item **609**.

■ **Social security practices** in more than 50 countries are examined in a

Judges

Continued from page 3

Inc. in Fort Worth and an active participant in RIMS and state and local business groups.

"I think what we have is a balance," he added. "I don't think the court is pro-business. I think they look at cases on a case-by-case basis rather than legislating from the bench. Those are the kinds of judges we need."

Mr. Green said newly elected Sen. Duncan was portrayed as a friend of insurance companies by opponents but supported a 1995 bill that was opposed by insurers and saved employers hundreds of millions in guaranty fund payments.

The bill clarified a provision of the state insurance code that allowed the guaranty fund to collect some payments retroactively. "Duncan was a great advantage in getting that bill passed," Mr. Green said.

Sen. Duncan, a former state representative, "has been very pro-business and worked closely with our association," said Bob Kamm, senior vp-governmental affairs and general counsel at the Texas Assn. of Business & Chambers of Commerce. "He was very helpful on tort reform and insurance issues. We think he will be a great senator and will be very receptive to our positions on different issues, particularly tort reform and insurance."

The race for the associate justice seat on the Alabama Supreme Court was "vicious and acrimonious," according to Warren Lightfoot, president of the Alabama Bar Assn.

The race for the associate justice seat on the Alabama Supreme Court was 'vicious and acrimonious,' says Warren Lightfoot of the Alabama Bar Assn.

"Here in Alabama, the stakes are so high that you have the plaintiffs lawyers on one side and business on the other," Mr. Lightfoot said of judicial races. "And they are spending money like crazy."

The stakes are high for trial lawyers and business owners because of Alabama's reputation for astronomical damage awards. Some of the well-publicized awards include one ordering General Motors Corp. to pay $150 million to a driver thrown from his Chevrolet Blazer and another that called for BMW of North America Inc. to pay a car owner $2 million for not disclosing that paint had been retouched on a new car. That award was ruled unconstitutionally excessive by the U.S. Supreme Court (*BI*, May 27, 1996).

The brutal and expensive nature of the race for the Supreme Court seat points up the importance tort reform has come to play in judicial and legislative elections in Alabama. The big dollars raised by the candidates show how serious trial lawyers and businesses are about getting their man on the bench.

Mr. See is said to have raised about $3 million to fund his victory, while Mr. Ingram spent about $2 million in contributions.

Mr. Lightfoot said it is part of his agenda as president of the state bar association to change the system that elects judges in the state to one that appoints them on merits. A committee he established, made up of eight plaintiffs lawyers and eight defense lawyers, is expected to have ready early this year a draft of a constitutional amendment that would make the change.

The proposed amendment could make it onto the 1998 ballot, Mr. Lightfoot said.

A merit system would call for nominations to be submitted to the governor by a statewide committee. The governor would appoint the judge from the nominations, and voters would later be able to decide if the judge is retained or dismissed.

The battle over tort reforms is expected to heat up during this year's Alabama legislative session. The state bar association is staying out of the fray.

"That's a volatile issue and I represent both plaintiffs lawyers and trial lawyers. I'm not about to take a position on that," said Mr. Lightfoot. BI

Building

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senior vp, investor relations and corporate planning at Exel.

Exel occupies much of Cumberland House in Hamilton and soon will occupy space in other offices nearby.

ACE has a 40% stake in its building, the ACE Building, which it shares with other companies.

If the two companies are successful, they will join American International Group Inc. as the only international insurers in Bermuda to own their own buildings. AIG owned land in Bermuda prior to the regulations restricting ownership.

In other developments in Bermuda, Centre Re will become 40% owner in a $65 million construction project near the Hamilton Princess Hotel.

The initial phase of the project will see two buildings constructed, but more buildings, including apartments, will be added later.

The partners in the project are Centre Re, Waterloo Properties Ltd. and Princess Hotels.

One of the buildings in the complex will be a 120,000-square-foot building to be called The Zurich Centre, which will house the Bermuda operations of Centre Re and other Zurich affiliates.

Centre Re now occupies offices in five buildings in Bermuda, including Cumberland House, said David Brown, president of Centre Re.

"We've been looking for new space for a number of years, but good quality, contiguous office space is very hard to find in Bermuda," he said.

Renaissance Re recently moved into a new rented office building overlooking the waterfront on the outskirts of Hamilton. The move reflects the rapid growth of the catastrophe reinsurance companies in Bermuda.

When Renaissance Re started in 1993, it occupied 200 square feet of office space, while the new Renaissance House provides the company with up to 18,000 square feet, according to Neill A. Currie, senior vp. "We've been very lucky to get into some A class space," he said. BI

Notebook

Continued from page 2

be held prior to the NCCI board meeting, the NAIC's Ms. Lyon said last week. During those sessions, NCCI representatives plan to outline the board's options.

Regulators also want timely information after the NCCI board actually votes on a proposal. As of last week, plans were for NCCI representatives to brief regulators in a conference call about the NCCI's final plan, shortly after the board votes on it, she said. Regulators are willing to exclude outsiders from participating in that conference call, she added. That responds to the NCCI's desire to shield the details of its plans from potential competitors.

However, holding a conference call after the board meeting is new to the NCCI, Ms. Nary said last week. The NCCI will continue discussing arrangements with regulators.

In other action, the NAIC:

- Adopted a budget of approximately $40 million for 1997, though they tabled for further discussion a companion resolution that would require the NAIC to change its budget policy by encouraging program budgeting and minimizing subsidies across programs.
- Elected new officers, including: Josephine W. Musser of Wisconsin, president; Glenn Pomeroy of North Dakota, vp; and George M. Reider Jr. of Connecticut, secretary/treasurer.
- Adopted a bylaws change to ban future past presidents from automatically serving as members of the Executive Committee beyond the first year after their presidency ends.

The Executive Committee consists of the NAIC's three top officers—president, vp and secretary/treasurer—the organization's immediate past president and three elected officers from each of four geographic zones.

Illinois Director Mark Boozell introduced the proposal at a special meeting in January 1996, so the committee would better reflect current members' views, but some commissioners viewed it as a personal attack and delayed action on the proposal.

When the proposal was first introduced, there were three former presidents on the committee, all from the NAIC's southeastern zone: Lee Douglass of Arkansas, the immediate past president; and former presidents Jim Long of North Carolina and Steven Foster of Virginia.

The motion was not passed, however, until the NAIC's meeting last month. The final version of the proposal grandfathered in participation by Mr. Long. The two other ex-presidents had left the NAIC by then or announced plans to do so.

- Rescheduled its Executive Committee meetings to Tuesday from Monday beginning with the 1998 spring meeting, while leaving the plenary voting session on Monday. The change is designed to enhance exposure of and deliberation on issues, which must first be passed by the Executive Committee before they are presented to the full membership for a plenary session vote, said NAIC's Ms. Musser.
- Established an "industry advisory committee" consisting of a representative of each major insurance trade association and a staff member to meet at NAIC spring and fall national meetings. NAIC leaders will participate and plan to use questionnaires to elicit discussion topics in advance of each meeting, which will focus on three or four topics.
- Rejected adoption of the "prudent person" model investment law for insurers and sent it back to committee for further work.
- Awarded five-year, second-round accreditation certificates to Kansas, Ohio and North Carolina.
- Awarded the Robert Dineen Award, the NAIC's highest personal honor for a career regulator, to Kevin Cronin, the NAIC's director of government and international relations.
- Heard the Financial Regulation and Accreditation Subcommittee vote 9-4 to recommend that the NAIC adopt new results-oriented standards for accreditation that reduce the number of model laws required for accreditation by recategorizing several as "supplemental."

The non-essential models include requirements relating to guaranty funds, the Risk Retention Act, producer-controlled insurers, managing general agents, reinsurance intermediaries and disclosure of material transactions.

Supporters of the change argue that it will allow for a more flexible program and enhance state legislative support for it.

Opponents fear that recategorizing some of the model laws, which were adopted to solve problems that caused insurer insolvencies and other market problems, will weaken consumer protections and be viewed negatively by representatives of Congress. BI

Muhl

Continued from page 3

why these folk should not have authority to make decisions," he said.

At the same time, the number of deputy superintendents was cut to four from nine as Mr. Muhl sought to make the department less bureaucratic.

After revising the structure of the department, the New York insurance regulations themselves needed to be radically changed, Mr. Muhl said.

"We had 150 regulations in New York and some of them were a monster size; a couple of them were over 125 pages long," he said.

Each of the regulations was reviewed in turn and, as a result, 35 regulations were rescinded, he said. "They didn't do anything in particular for consumers, solvency or the insurance industry in New York," he said.

Additionally, another 85 regulations were modified or are in the process of being modified, Mr. Muhl said.

"We brought the New York Insurance Department into a much more modern era," he said.

Mr. Muhl said another example of how he focused on simplifying regulations and concentrated on blending the interests of insurers and consumers is the rewriting of section 4228 of the New York insurance code.

Section 4228 deals with life insurance company expenses and agent compensation. The law has strict limits on how insurers can compensate agents and was burdensome to comply with, Mr. Muhl said.

Pending legislation will greatly simplify section 4228, he said.

In addition to internal changes, the New York Insurance Department also had many external problems to deal with, Mr. Muhl said.

One of the biggest problems, he said, was the near demise of Lloyd's of London.

"Lloyd's presented a very interesting experience. If it was not managed carefully and a successful solution was not found, the insurance world would have changed dramatically and it would have changed overnight," Mr. Muhl said.

The inability of U.S. insurers to fully recover reinsurance payments from Lloyd's could have led to the collapse of 51 insurers in New York state alone, he said.

As the Lloyd's American Trust Funds were deposited in New York, the state's Insurance Department played an important role in resolving Lloyd's problems in the United States, Mr. Muhl said. BI

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INTERNATIONAL

Global Briefs

Royal & Sun Alliance Insurance Group P.L.C., the United Kingdom's largest general insurer, is increasing its stake in Venezuelan insurance group **Royal Caribe** to nearly 100% from 20% by buying the Venezuelan government's majority holding in the company. . . .Marine liability reinsurers have cut the premium for the **International Group of P&I Clubs'** 1997 coverage by more than 40%, following reductions of 5% and 15% in the last two renewals. The International Group attributes the latest reduction to a softening marine liability reinsurance market and a good loss record. . . .General Accident P.L.C. is expanding in Indonesia with a joint venture, **PT Asuransi General Accident Ometraco**. The Jakarta-based insurance company will be 60% owned by GA and 40% by PT Ometraco Arthaguna, a subsidiary of PT Ometraco Corp., an Indonesian conglomerate with interests ranging from financial services to consumer products. The joint venture company will have paid-up capital of £4 million ($6.8 million). . . .Baltimore-based USF&G Corp., parent of United States Fidelity & Guaranty Co., has increased its presence in the London insurance market with the acquisition of 80% of Lloyd's of London underwriting agency **Ashley Palmer Ltd.** The transaction puts USF&G in charge of the capital of three specialty syndicates at Lloyd's and allows it to have about $300 million of Lloyd's underwriting capacity under management for 1997. . . . **Corporate capital** will dominate investment in Lloyd's within two years, at the expense of individual investors, according to 25 "key players" in the Lloyd's market—mainly managing agents—who responded to a survey commissioned by specialist-fixed interest manager Wittingdale Ltd. More than 80% of respondents believe Lloyd's individual names will eventually cease to exist, and an equal proportion believe the market will consolidate and form fewer, larger syndicates and managing agencies. More than 50% of respondents believe that only a small number of managing agencies will remain independent. . . .Following the U.K. Court of Appeal's decision in October that use of the actuarial **Ogden Tables** are not mandatory in calculating damages in personal injury awards (*BI*, Nov. 4, 1996), the union-backed plaintiff in *Page vs. Sheerness Steel P.L.C.* has petitioned the House of Lords for permission to appeal. Attorneys acknowledge that use of the Ogden Tables can substantially raise awards. . . . Lloyd's of London underwriters last week received the green light to start writing **land-based war risks**. An amendment to the War and Civil War Risk Exclusion Agreement means that from the beginning of this underwriting year, Lloyd's syndicates can write up to 2.5% of their capacity to cover foreign assets lost because of war or civil war. The policy is limited to assets held overseas to the insured's country of domain and includes a nuclear exclusion.

Underwriters watching Peru hostage crisis

By SARAH GODDARD

LIMA, Peru—Political risk underwriters show few signs of worry over the terrorist siege of the Japanese ambassador's residence in Lima, and little expectation that the kidnapping heralds a resurgence of terrorist activity in Peru.

But kidnap and ransom specialists are not so sure about the stability of the South American country, and Peruvian K&R premiums have been on the increase for more than a year.

Few losses are expected from the embassy compound siege that began in mid-December by left-wing guerrilla group Tupac Amaru.

Rob Davies, special risks underwriter for Hiscox Syndicates Ltd. in London, confirmed that the syndicate had had clients held within the embassy compound. They had all been released by the New Year, he said, and he expected the loss to be "negligible."

The insurance triggered by the situation is "malicious detention cover," paying out for the detained employees' salaries and legal and medical costs, plus any travel costs footed by the company to send replacement staff to resume work in the affected country.

None of the Japanese nationals held in the siege are covered by K&R insurance, because it is an illegal coverage in Japan.

Both Mr. Davies and Simon Gibbons, country risk underwriter for Trade Indemnity, agree that the Peruvian authorities are unlikely to storm the embassy, although local reports say that the Special Army Service is currently close to the situation in Lima. The SAS, a British paratrooper squad, was responsible for freeing hostages from the Iranian embassy in London in 1981.

"For the moment, the siege is not going to drastically change opinion on Peru," from the political risk underwriter's point of view, said Mr. Gibbons. Current information suggests there is no fundamental

See **Peru** *on next page*

AFP/ MATIAS RECART

Residents of Lima, Peru, display shirts calling for the release of the hostages.

Open E.U. market still in the works

By STACY SHAPIRO

BRUSSELS, Belgium—A single insurance market across Europe could affect some 5,000 insurance companies and their almost 400 million potential customers.

But further work by European Union officials must first be carried out to create a truly open market.

Insurance market structures are being altered. Cartel-like insurance markets in places like Germany and Italy are on their way out. Premium tariff structures are disappearing and a more competitive market is emerging which benefits the insurance buyer, according to a report released last month by Swiss Reinsurance Co.'s research unit SIGMA.

However, the European Commission and the European Parliament are still working to create a truly open market for cross-border insurance trading, officials allege.

Indeed, E.U. financial services commissioner Mario Monti said he does not believe there is a "truly open and competitive single insurance market."

"Insurance has been identified as an area where the expected fruits of the single market program have not yet been realized," said Mr. Monti in a speech to the Comite European des Assurances—the Committee of European Insurance Assns.—in Brussels late last month.

The European Union does not have a 'truly open and competitive single insurance market,' says Mario Monti.

Though some barriers have been completely removed—like discriminatory conditions between member states for insurance licenses—other barriers have only been "partially removed" such as restrictions on insurance marketing, he said.

And there are other dichotomies that need to be addressed to create a truly open single market, according to Mr. Monti's speech.

For example, some E.U. member states allow tax deductibility of premiums only on insurance contracts bought from domiciled insurers, said Mr. Monti, meaning that non-domiciled insurers can't compete on a level playing field. Other member states also say that insurance contracts must be written in the official language of the country.

The European Commission and Parliament are working on various projects to eliminate these restrictions to the single insurance market and are calling on insurance buyers and people in the insurance sector to make recommendations, said Mr. Monti.

"The European insurance industry (as well as) consumers has everything to gain from the benefits of a truly open and competitive single insurance market," Mr. Monti said.

Meanwhile, few E.U. member states have implemented a 1991 "recommendation" by the European Commission to introduce legislation to facilitate freedom of services for insurance intermediaries. The commission should now adopt legislation to force member states to impose such freedoms, states the Bureau International des Producteurs d'Assurances & de Reassurances. Brussels-based BIPAR represents 47 national insurance broker associations across the European Union.

Insurance buyers do not have access to a Europeanwide choice of insurance products and services at competitive conditions because some countries don't allow insurance intermediaries to trade across borders. "Professional insurance intermediaries have an important role to breathe life into the dormant single insurance market and can make it work for the greater good of (millions of) consumers," BIPAR states.

Despite these limitations, however, existing E.U. legislation has begun the ball rolling on deregulation and liberalization of the non-life

See **Market** *on page 26*

Damages in first U.K. work harassment case

By CAROLYN ALDRED

LONDON—In one of the first legal judgments of its kind, a London lawyer has been ordered to pay compensation to a former employee who alleged he was harassed at work.

The decision, made earlier this month by a London magistrate, underscores the findings of a recent survey by the Institute of Personnel and Development that shows that workplace harassment is a growing problem in the United Kingdom.

Legal clerk Joel Parkes sued his former employer, Robert Layton, claiming he was sworn at and struck by Mr. Layton for failing to photocopy some documents.

Although the compensation awarded was small—£30 ($51) in compensation and £785 ($1,342) for legal costs—Mr. Layton also faces possible disciplinary proceedings by the Office for the Supervision of Solicitors, a self-regulatory arm of the Law Society.

The office may decide to rebuke Mr. Layton or refer him to the Solicitors Disciplinary Tribunal, which, if it found him guilty, could impose one of several penalties including a fine or a suspension, said a spokeswoman.

Both Mr. Layton and Mr. Parkes were unavailable for comment. But a spokeswoman for Robert Layton & Co., Mr. Layton's Acton-based law firm, said Mr. Layton would not appeal the court ruling.

Meanwhile, a new survey found that one in eight people have been harassed at work in the last five years.

The IPD survey, which polled 1,007 U.K. workers during the fall of 1996, found that among those who have been harassed, more than half said that harassment is commonplace in their company. A quarter said the situation has worsened in the last year.

Most respondents pointed the finger at senior management for harassment, and most of those harassed are managerial and professional staff, according to the IPD, which is a professional association of personnel managers.

"These results confirm that bullying doesn't stop in the school playground, but it is a genuine problem in U.K. workplaces," said the IPD's Melissa Compton-Edwards, who led the research project.

According to the IPD, harassing behavior consists of unfair and excessive criticism; publicly insulting the victim; ignoring the victim's point of view; and constantly changing or setting unrealistic work targets.

Actual physical assault was less common, reported by 8% of victims.

Thirty-six percent of those surveyed said their company had a code or policy covering harassment at work, while 44% reported no policy and 20% did not know.

According to the institute, ways to combat harassment include:

- A published, well-promoted policy statement against harassment, supported by top management.
- User-friendly procedures providing formal and informal ways of resolving problems quickly and confidentially. All employees should know to whom they should make a complaint and an alternative person.
- Access to counseling, advice and support.
- Thorough, immediate investigation of any alleged incidents.
- Grievance and disciplinary procedures.

Peru

Continued from previous page
shift in the political and economic situation of the country, which has been improving since its debt situation was rescheduled in 1995.

As a result of the reschedule and strong political leadership from President Alberto Fujimori, the Export Credits Guarantee Department, the U.K.'s export credit agency, resumed writing Peruvian business in July 1995 after a 12-year hiatus. Upon resuming underwriting, Trade Minister Anthony Nelson said, "Peru has undergone a remarkable transformation, both economically and politically, under President Fujimori, and our project exporters can now look forward to a long and fruitful trading partnership."

A spokesman for the ECGD said that the agency had closely scrutinized the terrorism risk in Peru when it reviewed the country prior to resuming business. At the moment, "the ECGD will carry on as usual," said the spokesman.

But underwriters are looking to the Peruvian government to maintain its hard-line stance against terrorism, particularly because the terrorists attacked the Japanese Ambassador's residence. Japan is Peru's second-largest trading partner. "If Japanese companies think it is too dangerous, they could withdraw," warned Trade Indemnity's Mr. Gibbons. What's more, if the government backs down, it could spark a wave of similar terrorist activity across Latin America, he added.

Nevertheless, Mr. Gibbons views the siege as having a "short-term effect which will not affect profoundly the economic situation of the country."

Hiscox's Mr. Davies, however, saw the situation worsening as far as kidnap and ransom coverage is concerned. Rates have been on the increase for the past 14 to 15 months, he said, and he anticipated that kidnappings will rise in the short term.

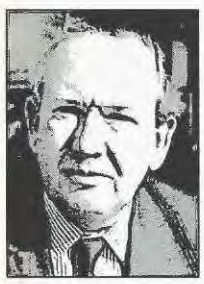
Most, though, will not be politically motivated, he said, and the embassy compound siege on its own will not affect rates for kidnap and ransom coverage. BI

Lloyd's broker FMW withdraws

By EDWIN UNSWORTH

LONDON—Lloyd's of London's confidence in its future may be slightly dampened by the rare withdrawal by a Lloyd's broker, which is leaving partly because it finds the market is no longer financially rewarding.

The decision of FMW International Insurance Brokers Ltd. to leave the exclusive market effective Feb. 1 marks the first time in recent years that a Lloyd's broker has decided to quit the market.



Mr. Nutting

The departure comes as a blow to the market's confidence, which was buoyed after the successful adoption of its restructuring plan in late 1996.

An additional embarrassment for Lloyd's is that FMW's chairman, Peter Nutting, was recently elected to the Council of Lloyd's.

Vincent Murphy, FMW's managing director, said that the broker's decision to leave Lloyd's of London was based primarily on financial considerations.

Among them, FMW's withdrawal means it will avoid having to contribute to brokers' share of Lloyd's financial reorganization, which would have cost the firm an estimated £300,000 ($508,500) over the next five years.

In addition, FMW estimates that it will have to pay only around £100,000 ($169,500) a year for professional liability insurance as a non-Lloyd's broker, rather than the £300,000 a year it pays for the coverage as a Lloyd's broker.

FMW's decision to quit Lloyd's was based mainly on financial considerations, says Vincent Murphy.

This is because underwriters regard Lloyd's brokers as having greater exposure to liability for underwriting decisions, partly as a result of Lloyd's brokers' binding authority to place business with underwriters, according to Mr. Murphy.

An additional consideration is that FMW does only around 1% of its approximately £8 million ($13.6 million) a year in brokerage revenues through Lloyd's, which it believes hardly justifies the £350,000 ($577,500) it pays in annual subscriptions and levies to Lloyd's.

The broker concentrates mainly on placing insurance for housing associations—groups that provide low-cost housing—and most of this business is placed outside of Lloyd's anyway.

Mr. Murphy said that what little business FMW may still want to place at Lloyd's—primarily coverage for motor fleets—can be done through one of the market's service companies.

Mr. Murphy also cited a survey of FMW's top 300 corporate clients in which 98% saw no advantage to them of FMW being a Lloyd's broker.

Furthermore, the client survey showed that there could be a disadvantage in that some FMW clients viewed being a Lloyd's broker as a link with the financial problems that beset Lloyd's in the past and led to its costly reconstruction.

Lloyd's only comment on FMW's withdrawal came from a press spokesman who said the move is "a decision which is up to them." BI

Liability rulings may penalize U.K. sports teams

By CAROLYN ALDRED

LONDON—Professional and amateur sports clubs in the United Kingdom may face greater liability exposures following two recent court rulings, though industry experts are split over whether they will lead to higher insurance costs.

The two court rulings, one against a professional soccer player and one against an amateur rugby referee, raise liability stakes for compensating injuries in both sports.

In the London High Court last month, Brian McCord, a former soccer player with Stockport County, became the first major league soccer player to win damages for injury against another professional player.

Mr. McCord's soccer career ended with a broken leg caused by a tackle by Swansea City captain John Cornforth during a game in March 1993.

The judge awarded Mr. McCord £50,000 ($82,450) plus his projected loss of earnings. The final amount of the award will be decided later this year. The Swansea City team was covered in 1993 by a group liability insurance program placed in the London market by Windsor Insurance Brokers Ltd. and led by Sun Alliance P.L.C. The program, which covers the public liability and employers liability of all clubs in England's top three divisions, excluding the Premier League, is currently led by Gerling A.G.

Football League Ltd., the company responsible for managing the league's three divisions, renews its policy in July.

Chris Griffin, the league financial controller, could not predict the ruling's impact on the program's rates. "A lot can happen between now and then," he said.

Gordon Taylor, chief executive of the Professional Footballers Assn., is more pessimistic.

"I would expect there to be an increase in premiums across the board," he predicted.

There has been a "steady increase in claims as the game has become more litigious," said Mr. Taylor, noting that several claims for sports-related injuries have been settled out of court.

Players can purchase disability insurance themselves through a package underwritten by syndicates at Lloyd's of London, but most players rely on insurance provided by their clubs, said Mr. Taylor.

Separately, London's Appeal Court last month upheld an award to a young amateur rugby player who was crippled during a match in 1991. The player, Ben Smoldon, is seeking more than £1 million ($1.7 million) from referee Michael Nolan, claiming he fell below the standards of a competent referee in failing to prevent the player's injury (*BI*, May 6, 1996).

It was the first case in which an English court has ruled that a rugby referee can be liable to a player for injuries caused by the referee's alleged negligence.

London-based Rugby Football Union, the association governing amateur rugby in England, has professional liability insurance for all referees overseeing Rugby Union matches in the country.

The RFU's insurance coverage is led by Sun Alliance P.L.C.

Insurance market practitioners, however, seem relaxed about the judgments.

Jonathan Ticehurst, head of the sports division at Windsor Insurance Brokers, said it is too early to predict the impact of the judgments on insurance rates or capacity for sports-related risks.

Both cases are unusual and involve a particular set of circumstances, he said.

"The Court of Appeal and the original judge in the Smoldon case stressed that there were exceptional circumstances and an additional duty of care owed because of the age of the players," agreed Phil Bell, technical manager of the global risks division of Royal & Sun Alliance P.L.C.

The rugby match was a game of Colts rugby, a special form of the game for junior players.

"The judge stressed that (the duty of care) wouldn't have been the same if it had been a senior game, so it is unlikely to have a significant impact on referees generally," said Mr. Bell.

However, the RFU said that the judgment had "extended the scope of potential liability for sporting officials" and that the decision "must have implications for the playing and refereeing of the game."

The soccer judgment in the High Court, meanwhile, involved a "particularly vicious foul and was ruled not to have been an accident," said Mr. Bell, noting that it is too early to tell whether it will lead to an increase in similar claims.

Rowland receives knighthood

Honor reflects his efforts at rescuing Lloyd's

By STACY SHAPIRO

LONDON—Several British insurance executives are among the people receiving knighthood and other honors in the Queen Elizabeth II's new year's honors list.

Lloyd's of London Chairman David Rowland was knighted, recognizing his achievements during a 40-year career in the London insurance market. Sir David, 63, has been credited with saving Lloyd's from the brink of disaster by spearheading passage of the market's reconstruction and renewal program. He also was named The College of Insurance's 1996 Leader of the Year in September (*BI*, Sept. 30, 1996).

Other Lloyd's chairmen have been knighted following their retirement, but that practice ended in 1988, when the market began posting tremendous underwriting losses. Sir David's knighthood reflects his efforts at rescuing Lloyd's from that downturn and restoring profitability. He has said he will retire at the end of this year.

Victor H. Blake, non-executive chairman of the London-based reinsurance operations of CNA Insurance Cos., was awarded an Order of the British Empire in the queen's honors list. The OBE reflects Mr. Blake's 19 years of involvement in various insurance organizations, culminating in the formation of the London International Insurance & Reinsurance Market Assn. and the opening of the London Underwriting Centre in March 1992.

In addition, Peter Davis, group chief executive of Prudential Corp. P.L.C., has been awarded a knighthood for his "services to training and industry." BI

CNA to start up Lloyd's syndicate

By STACY SHAPIRO

LONDON—CNA Insurance Co. is opening a new Lloyd's of London corporate syndicate and managing agency to begin writing this year.

CNA's interest in Lloyd's reflects the continued amalgamation of the London company market and Lloyd's. The group's London operations, CNA International Reinsurance Ltd., is one of the founders of the London International Insurance & Reinsurance Market Assn. which is based at the London Underwriting Centre.

However, there is room in London for more than one underwriting market, said Victor H. Blake, non-executive chairman of CNA's reinsurance operations and one of the founders of LIRMA and the LUC.

CNA decided to become a corporate member of Lloyd's several years ago because "we thought it was a worthwhile thing to do," said Mr. Blake.

But the membership lay dormant until the insurer decided to invest in various Lloyd's syndicates for the 1997 underwriting year, he said.

It was then decided that CNA would set up its own corporate syndicate 1229, which would be managed by CNA Agency Management Ltd. Capital is being invested by two corporate members: CNA Corporate Capital Ltd. for two-thirds of the capacity; and LaSalle Re Ltd. of Bermuda for the other third. Mr. Blake is the chairman and chief executive of LaSalle, whose shareholders include CNA.

CNA and LaSalle will each invest approximately $25 million in capital into the Lloyd's market over the next 12 months, which would provide $50 million each of market capacity, according to Mr. Blake.

Cell phone dangers require further study

By CAROLYN ALDRED

BRUSSELS, Belgium—The European Commission will decide within weeks whether to fund new research into potential links between cellular telephone use and health problems after a recent analysis of existing research found no proof of such linkage.

Commissioners are studying the analysis, which was issued in November by a group of European scientists who were asked to review research into the effects of radio frequency radiation on health. After reviewing results from studies conducted worldwide, the group concluded that "there is no evidence of any health risk emerging from mobile phones."

However, the scientists also pointed out that "the results of present research are inadequate to draw conclusions on this issue. Further research is therefore required."

'The results of present research are inadequate to draw conclusions on this issue,' scientists say.

Because the research is considered insufficient and mobile telephones are widely used, the European Commission is considering further investigation.

The group of scientists, which was led by Alastair McKinlay, an official with the U.K.'s National Radiological Protection Board, was made up of 10 experts in biology, neurophysiology, epidemiology, physics, radiation protection and telecommunications engineering from eight countries of the European Union.

The group's recommendations call for research studies on how cellular telephone emissions affect living tissue, genetics, cancer induction and immune and nervous systems.

"We are expecting to hear how the E.C. plans to proceed in December," said a spokesman from the National Radiological Protection Board in Oxfordshire, England.

The spokesman said, "Mobile telephones are going to be as common as umbrellas, and if there is a risk, it's better to know it in advance."

So far, "scientific data relating to cancer and exposure to electromagnetic radiation at the (microwave) frequencies used by hand-held radiotelephones are few and inconsistent," according to a statement issued by the NRPB.

"On the basis of current safety standards for radiofrequency radiation, the use of hand-held radiotelephones does not present a health hazard," the NRPB advised.

The cellular phone industry itself is confident that the devices do not present a danger to users' health.

"There simply is no evidence that they pose a health risk of any kind," according to the London-based Federation of Communications Services Ltd., a trade association for cellular telephone companies.

However, "mobile phone manufacturers and operators take issues of this kind seriously and therefore continue to fund and monitor major research to further assure safety," said Jonathan Clark, chairman of the FCS.

In the United States, a $25 million fund for research into health effects has been established by the cellular telephone industry, according to a spokeswoman at the Washington-based Cellular Telecommunications Industry Assn.

Meanwhile, some companies are taking risk management precautions against possible liability exposures relating to mobile phones.

German automobile manufacturer Volkswagen A.G., for example, issues a warning in its vehicle instruction manuals against the use of mobile telephones without a separate external aerial fitted to the vehicle.

Highlighted in the handbook and marked with the word "attention," is the following statement: "Mobile telephones and two-way radios operated inside the vehicle without a separate external aerial can be injurious to health due to the extremely high electromagnetic fields generated."

London-based luxury gift store Asprey P.L.C. is taking precautions to protect its employees against any possible side effects from mobile phones.

In June, Asprey issued 39 employees with a shielding device to be used with their mobile telephones, said a spokeswoman.

"We feel quite strongly that employees should be protected against any possible dangers," she said.

The Microshield, manufactured by Luton-based Microshield Industries P.L.C., is a leather protective telephone case that contains a shielding material made from woven polyesters.

U.S. neurosurgeons Henry Lai and N.P. Singh of the University of Washington in Seattle earlier this year reported damage to the brain cells of rats exposed to microwave radiation. They claim a "hot spot may develop in the brain, causing cell damage which could lead to Alzheimer's disease and cancer. BI

INTERNATIONAL

Market

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insurance industry, according to the SIGMA report.

The path to the single insurance market began back in 1957 with the signing of the Treaty of Rome setting out the criteria for the European Economic Community which is now known as the European Union. The treaty called for "freedom of establishment, freedom of services and freedom of capital movement."

E.U. legislation for the freedom of establishment—i.e., the right to establish subsidiaries, branch offices or agencies in every other member state—occurred in 1964 for reinsurance, and in the 1970s for non-life insurance.

E.U. legislation for freedom of services—the right to do business across borders without establishing a branch office—came into effect for reinsurance in 1964 and non-life insurance in 1988.

However, there were shortcomings in the first two generations of directives on non-life insurance which were addressed in the third generation of directives to allow the insurer's host country insurance commissioner to supervise and approve a single insurance license for all of the European Union. These became effective in July 1994 (*BI*, June 20, 1994).

The third generation of directives "represents a breakthrough," says SIGMA's report on "Deregulation and liberalization of market access: the European insurance industry on the threshold of a new era in competition."

"They have established a more liberal market access regime than in the United States, where there is neither freedom of services nor of establishment between the individual federal states," the report says.

But this is no cause for euphoria, according to the authors of the report. "As long as there are still serious fiscal and legal differences, there can be no talk of a fully fledged single market being already a reality."

Nevertheless, as the single insurance market gains strength, there will be major alterations to insurance market structures, the report states.

For example, there will be more foreign suppliers as obstacles to the formation of new insurance companies are dismantled.

There will be more rivalry and competition, especially in markets like Germany and Italy where premium tariffs have been in force and are now crumbling.

"Deregulation and liberalization of market access will increase the pressure to be more competitive, cut costs and rationalize," SIGMA's report states. "This will enhance the overall efficiency and productivity of the insurance industry—to the benefit of the insurance customer."

Insurance buyers must beware, however, according to the report. For with deregulation and liberalization also may come insurance insolvencies. There have been virtually no insurance company insolvencies across Europe in the last 10-15 years other than in the United Kingdom which has always been deregulated.

"We believe that the consumer will benefit from lower insurance prices in the long term," said the authors of the SIGMA report. Deregulation also "will lead to a greater range of innovative and customer-oriented insurance products."

However, "the consumer will have to face a rather less attractive development: the danger that insurance companies will become insolvent and will not be able to pay as promised."

Underwriters already are taking advantage of the existing directives to try and sell cross-border insurance and reinsurance products for the industrial market, added Dirk Lohmann, a member of the board of Hannover Re Group of Hannover, Germany.

Hannover Re, for example, has a U.K.-domiciled company that writes policies throughout the European Union, he said. And a client of Mr. Lohmann's plans to set up a company in one member state to write business throughout the European Union. But the move to a single insurance market is slow, Mr. Lohmann acknowledged.

Industrial accounts have always had access to various markets around Europe, but a single insurance market for all types of risks "does not exist and won't exist for years," said Jacques Blondeau, chairman of SCOR S.A. in Paris.

There are too many different cultures and languages and attitudes to bring about a single insurance market, he said.

What could change the situation and allow one policy to be sold across borders is the introduction of a single E.U. currency, predicted Mr. Blondeau. The E.U. council of ministers is working on the production of a single currency, to be called the "Euro," for the next millennium. BI

Control shifts to PBGC on Smith Corona plan

WASHINGTON—The Pension Benefit Guaranty Corp. will terminate and take over Smith Corona Corp.'s underfunded pension plan covering hourly employees and retirees as part of an agreement with the financially troubled manufacturer of word processors and electric typewriters.

Under the agreement, the PBGC would take over the plan, which is underfunded by $15.3 million, with $29.5 million in assets and $44.8 million in liabilities. The Smith Corona plan has 3,200 participants.

The agreement is part of Smith Corona's Chapter 11 bankruptcy case in federal bankruptcy court in Wilmington, Del. As part of the agreement, the PBGC will file a claim in bankruptcy court for an $8.3 million in underfunding in the hourly plan.

The agreement would end litigation that began in August 1996, when Cortland, N.Y.-based Smith Corona asked the bankruptcy court for approval to terminate both the hourly plan and an underfunded plan covering salaried employees.

Under the terms of the agreement, Smith Corona would continue the salaried plan, which is underfunded by about $14.5 million.

—By Jerry Geisel

Cruise line settles HIV case

MIAMI—Dolphin Cruise Line Inc. must pay $75,000 in compensatory damages to an entertainer it refused to hire after the man tested positive for HIV, under terms of a settlement with the Equal Employment Opportunity Commission.

In 1992, Dolphin forwarded a signed employment contract to a man that the company intended to hire to sing and dance on its cruise ships.

Among the terms of the contract was an AIDS test. When the man tested positive for the human immunodeficiency virus, the cruise line rescinded its offer of employment.

The EEOC filed a lawsuit on behalf of the man, claiming that Dolphin and a Columbus, Ohio-based employment agency the entertainer worked with violated the Americans with Disabilities Act.

The employment agency, American Entertainment Productions Inc., must pay the entertainer $15,000 in back pay and compensatory damages.

Insurance coverage information was unavailable.

The Equal Employment Opportunity Commission also prohibited both companies from requiring pre-employment HIV tests and ordered both companies to train manage-ment on the requirements of the ADA.

—By Deborah Shalowitz Cowans

IRS issuing guidance on 401(k) tests

Employers have two options for comparing employees' salary deferrals

By JERRY GEISEL

WASHINGTON—The Internal Revenue Service is giving employers limited guidance on how to take advantage of a congressionally ordered change in tax law that gives companies a new and easier option for running non-discrimination tests on 401(k) plans.

But guidance still is needed on how to account for certain matching and non-elective contributions by employers under the change.

Under a provision of pension simplification legislation that took effect Jan. 1, employers now can choose from two methods to run the tests. Those tests are used to compare 401(k) plan salary deferrals made by highly and non-highly compensated employees. Generally, average deferrals by highly compensated employees as a group cannot exceed deferrals by the rank and file by more than two percentage points.

The new testing method allows employers to compare the prior-year deferrals of non-highly compensated employees to the current-year deferrals of highly compensated employees.

Through this technique, an employer would know at the start of a plan year how much highly compensated employees could contribute to a 401(k) plan without violating non-discrimination rules.

This approach will reduce the constant monitoring and testing of plan contributions that many employers currently have to conduct to be sure that non-discrimination rules are not violated.

For example, if non-highly compensated rank-and-file employees contributed, for example, an average of 4% of salary to the company's 401(k) plan in 1996, an employer would know at the start of the year that highly paid employees as a group could defer no more than 6% of salary to the plan in 1997.

A new testing approach lets employers reduce constant monitoring of plan contributions.

Alternatively, employers can continue to use the conventional 401(k) plan testing method, in which current-year contributions of highly and non-highly compensated employees are compared.

For employers that intend to adopt the new testing procedure, the IRS, in Notice 1997-2, has provided answers to some nagging questions.

For example, the IRS has made clear that in calculating the average deferral percentage of non-highly compensated employees during the prior year, contributions should be included for:

- Employees, who, because of salary increases, now are highly compensated.
- Employees who left during the prior year.

"This is a common-sense answer to questions some people had been raising," said Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

But the IRS left unanswered in the guidelines how employers who match employees' salary deferrals or provide non-elective contributions can use the new technique. A non-elective contribution is one in which an employer agrees to kick money into the savings plan regardless of whether employees make their own salary deferrals.

The IRS said "further guidance will address the conditions" under which matching contributions and non-elective contributions can be taken into account when running the non-discrimination tests.

Benefit experts say the IRS is concerned about what they describe as "double-counting" of matching and non-elective contributions made on behalf of non-highly compensated employees.

In such a scenario, an employer in 1997 might automatically contribute an amount equal to 1% of pay to the plan for all non-highly compensated employees.

This employer contribution would effectively allow more highly paid employees in 1997 to increase their salary deferrals to the plan since the average deferrals of the rank and file—courtesy of the employer contribution—would increase.

Then, in 1998, through the new testing procedure, highly compensated employees also would be able to boost their contributions. That is because the prior-year contributions of rank-and-file employees and employer contributions made on their behalf would be compared to highly compensated employees' current-year contributions.

The IRS, benefit experts say, is not concerned about typical matching features, such as those in which employers match 50% of employees' 401(k) salary deferrals.

"Plain vanilla plans should be OK," said John Woyke, a principal with Towers Perrin in Valhalla, N.Y.

Instead, experts speculate, the IRS wants to prevent possible manipulation of the new testing procedure, such as could occur if an employer reverses a historic rate of contributions and suddenly increases contributions on behalf of lower-paid employees as a way to allow highly compensated employees to defer more in two consecutive years.

Until the IRS provides additional guidance, though, employers probably will want to continue to use the conventional non-discrimination testing technique in which current-year contributions of highly and non-highly compensated employees are compared, said Pam Scott, a principal with Kwasha Lipton L.L.C. in Fort Lee, N.J. BI

Vermont

Continued from page 2

pital in Rochester, N.Y.; and Yale-New Haven Hospital and Yale University's Medical School in New Haven, Conn.

The parent of the newly formed risk retention group is MCIC Vermont Holdings Inc. The risk retention group's members are the shareholders of the parent company.

In addition to insuring the member institutions, the new RRG will provide professional liability and general liability coverage for their employees, affiliates and approximately 7,500 physicians. The group anticipates it will write about $20.3 million in premium this year, which would rank it among Vermont's largest group captives.

The new risk retention group was capitalized with paid-in capital and surplus of $10 million cash, Mr. Smith said.

Johnson & Higgins Services Inc. in Burlington is managing the newly formed MCIC Vermont RRG, which was licensed late last year.

Before the formation of MCIC Vermont, the members' coverage was provided through Bermuda-domiciled Medical Centre Insurance Co. Ltd., which has been in operation for 18 years, Mr. Smith said. That group captive will remain in operation and will write some reinsurance for the Vermont-domiciled RRG.

Forming a Vermont domiciled RRG, though, "allows us an onshore presence, to have employees onshore," the RRG president said. "And with health care changing and going different ways, and as hospitals and medical schools start to affiliate themselves with other health care entities, this was just a natural fit for us—to move onshore."

Leonard D. Crouse, Vermont's director of captive insurance in Montpelier, said the health care group's decision to form a domestic operation made sense both for the RRG's members and for Vermont.

"They wanted to come onshore, and to us it made good business sense for them to do so," Mr. Crouse said.

"They've been very, very conservative," the Vermont captive director said. "There's a lot of money there."

'They wanted to come onshore, and to us it made good business sense for them to do so,' says Leonard Crouse.

He likened the MCIC Vermont RRG to Controlled Risk Insurance Co. of Vermont Inc. (A Risk Retention Group), formed in Vermont in 1995.

CRICO, formed by the Cambridge, Mass.-based Risk Management Foundation of the Harvard Medical Institutions to write hospital and general liability for the 13 Harvard-affiliated medical institutions, joined an existing Cayman Islands captive that the institutions' formed in 1976.

Recently, Bermuda has sought to position itself as an alternative to the Cayman Islands, which has long been a top domicile for health care captives.

Alan C. Cossar, president of the Bermuda Insurance Management Assn., said the formation of MCIC's Vermont-domiciled RRG isn't a case of the member institutions abandoning Bermuda.

Instead, Mr. Cossar said he believes it's a case of the member institutions taking advantage of a more cost-effective way of doing business that will continue to involve their offshore captive.

"It's not a redomiciling," Mr. Cossar said. "It's not been a change out of Bermuda. They'll still be operating here in Bermuda."

He said what he expects the MCIC Vermont members to do is follow "a concept that I've seen being put in place where, to save on fronting costs, a health care group may form a risk retention group someplace like Vermont and really what happens is that risk retention group passes most of the risk through to the Bermuda captive."

"It gives them a bit more control as well in terms of underwriting and things like that," Mr. Cossar said.

The model Mr. Cossar described fits the MCIC Vermont RRG "to a certain extent," Mr. Smith said. But, he added, "We felt if we were going to set up a U.S. company we really wanted to retain a significant amount of business. That's why we have the $20.3 million this year.

"We certainly didn't want to have just a fronting U.S. company. We wanted to have a real U.S. insurer," Mr. Smith said.

"We felt it would be more prudent to really put some risk in the RRG."

The Bermuda-based MCIC captive will provide some reinsurance for the Vermont RRG, Mr. Smith said. "Above that, we'll have some additional commercial reinsurance with Lexington (Insurance Co.), CNA and Employers Reinsurance Corp."

The MCIC Vermont RRG has five employees and will employ various consulting companies for support services, including Johnson & Higgins of Massachusetts Inc. as reinsurance broker, Tillinghast-Towers Perrin for actuarial services, Arthur Andersen & Co. for audit services and Caronia Corp. for claims consulting services. BI

Buck

Continued from page 1

Mellon representatives will be added to the Buck board of directors.

Mr. LoCicero has previously said it is necessary for Buck to gain access to the deep pockets of a large parent company to remain competitive.

Mr. LoCicero said he will remain president and CEO of Buck, and that Buck's 2,500 employees "should feel very secure" about their jobs. None of Buck's 65 offices will be closed, he said, and the headquarters will remain in New York.

Mr. LoCicero also will become a member of Mellon's senior management committee.

The "vast majority" of Buck employees are expected to stay with the firm, said W. Keith Smith, vice chairman of Mellon Bank Corp.

More than 300 Buck principals who are shareholders of the closely held, employee-owned firm will vote on the sale, and a definitive agreement is expected in about a month, Mr. LoCicero said. The deal is expected to close in the second quarter, he said.

The Buck principals will be offered either cash or Mellon stock for the sale, which Mellon is paying for out of cash on hand, a spokesman said.

Messrs. LoCicero and Smith said the deal makes sense because while Buck needs a greater capital stream to fuel its outsourcing operation, Mellon is pursuing a closely related goal: expanding its existing 401(k) plan outsourcing program into a total outsourcing initiative that also serves defined benefit plans and health and welfare plans.

A Mellon subsidiary, Dreyfus Retirement Services, in 1995 began offering investment products and administrative services to defined contribution plans, including 401(k), 401(a) and 403(b) plans, and generated $2 billion in assets that year. Mellon manages mutual funds for institutional clients in more than 50 countries.

Mellon determined that absorbing Buck's existing outsourcing facilities and expertise would be the most direct route to offering total outsourcing, Mr. Smith said. It will be simpler than hiring its own actuarial experts and other specialists, he said.

"We concluded it would be much quicker and much more effective to do this as a merger, as we are," he said. "If you're going to be in the (outsourcing) business without acquiring someone like Buck, you have to hire someone like Buck to your organization."

Buck might not be able to succeed in the outsourcing field without Mellon's assistance, Mr. LoCicero said. "We weren't sure we were going to be able to accomplish that, but with Mellon we'll accomplish that," he said. "We're excited about the resources Mellon brings to us. We believe this is a win-win situation for all parties involved."

Outsourcing represents about 25% to 30% of total revenues for Buck at present, Mr. LoCicero said.

Joining with Mellon will enable a new, integrated total outsourcing system to be set up this year, he said. A new configuration of outsourcing service centers will allow defined benefit, defined contribution and health and welfare plans to be serviced by a sole data base, whereas several data bases currently are used. The more streamlined and centralized system will make outsourcing a simpler process for plan sponsors, many of which are now using more than one contractor for various outsourcing tasks, he said.

Helping Buck to grow will eventually push the benefit consultant into the front row of those companies now vying for outsourcing clients, including such competitors as Lincolnshire, Ill.-based Hewitt Associates L.L.C. and Bethesda, Md.-based Watson Wyatt Worldwide, according to Mr. Smith.

"It's very clear to us it can be profitable to us, if we do it well," he said. And while he acknowledged there is risk inherent in all new ventures, Mr. Smith said he is confident the purchase "will make us an outsourcing leader."

The outright purchase of a benefit consulting firm by a bank is unprecedented, but it may make sense to both sides in this case, said A.W. "Pete" Smith, president and chief executive officer of Watson Wyatt. "If Buck wanted to be successful in this area, they had to be" acquired, said the Watson Wyatt CEO.

Wyatt took a similar course to Buck's in December 1995, when it agreed with State Street Boston Corp., a large servicer and manager of financial assets, to form a joint outsourcing company. The company was eventually named Wellspring Resources and, like Mellon's purchase of Buck, was designed to bring disparate benefits information into a common data base and attract customers seeking total outsourcing. The alliance was forged despite Wyatt's already having built a Florida-based outsourcing program that was managing benefits for 3 million workers, dependents and retirees.

On the other hand, the prospect of a bank owning the consulting side of the business may be troubling to clients, said Watson Wyatt's Mr. Smith.

"On the consulting side, I'm less sanguine about the opportunity to create value," he said, questioning if clients will wonder if the firm is truly independent from its parent in its analysis. He also questioned if Buck as a subsidiary would come under new pressure to earn increased profits for its parent, and how that would affect consultants.

Mr. LoCicero said that Buck's consultants would remain fully independent from Mellon as a condition of the deal and that doubts to the contrary are "typical reactions of competitors."

It is also unclear if clients of consulting firms want banking and benefits consulting services to be available within the same corporation, said Reed Keller, vice chairman of Coopers & Lybrand L.L.P.'s Human Resource Advisory Group in Atlanta. A Buck consulting client may not want to feel obligated to become a Mellon banking client, for example, he said.

"In terms of what the market wants, what the client wants, I'm not sure it necessarily wants all services bundled in one institution," he said. "Time will tell, but it doesn't necessarily seem like that's a real advantage."

Mr. LoCicero countered that because Buck would ensure that its consulting services remained independent of Mellon, clients would never be faced with the necessity of bundling their business together. Buck expects no loss in clients as a result of the acquisition, he added.

Ownership by Mellon will undoubtedly give Buck more cash to expand its outsourcing projects, Mr. Keller said.

"Whether that makes them one of the more formidable forces in outsourcing, we'll see," he said. BI

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Alabama

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courts in two influential states—California and New York—have not ruled on the issue.

State supreme courts rarely reverse their own decisions, but the Alabama court's turnabout marks the second reversal by a state's highest court on this issue.

The Florida Supreme Court in 1993 reversed itself and denied coverage after initially ruling 4-3 for policyholders in *Dimmitt Chevrolet Inc. vs. Southeastern Fidelity Insurance Corp.* (*BI*, July 5, 1993).

Attorneys were divided on the Alabama decision's potential influence on other courts.

"Courts will have ample information to go either way," said policyholder attorney William F. Greaney, a partner with Covington & Burling of Washington, who was not involved in the case.

Hackensack, N.J.-based insurer attorney Edward Zampino, who was not involved in the Alabama case but has filed amicus briefs for insurers in several other actions, including the Wyoming litigation, said: "Any time you get a supreme court ruling, you start playing the numbers game. It certainly helps the other side."

Insurer attorney Frank Winston Jr., who represented United States Fidelity & Guaranty Co. in the Alabama case, filed a request for a rehearing with the Alabama Supreme Court on Dec. 26.

"It's very disturbing" that the court's latest decision relies heavily on the exclusion's drafting and regulatory history in general but remains silent on the exclusion's regulatory history in Alabama, said Mr. Winston, a partner with Wiley, Rein & Fielding of Washington. He said a former Alabama regulator stated in an affidavit that the state's regulators understood that "sudden" meant abrupt.

The court also ruled that because coverage is not automatically excluded under the pollution exclusion, a jury now will have to determine whether the policyholder, metal finisher Alabama Plating Co. of Vincent, Ala., provided USF&G a late claim notice.

A state agency first ordered Alabama Plating in 1986 to clean up soil and ground water that were contaminated by the metals in the waste water the company dumped into containment ponds for decades under the direction of state and federal agencies.

Alabama Plating did not directly notify USF&G about its environmental liabilities until 1991. But, it did inform Glen Allen, Va.-based Hilb, Rogal & Hamilton Co., USF&G's agent, about its potential liabilities in 1985. HRH told Alabama Plating it was not covered and did not notify USF&G, according to court records.

Mr. Winston plans to ask the Supreme Court to rule that Alabama Plating's notice of a claim to USF&G was too late, because the policyholder was obligated to notify USF&G—not its agent—in writing of its potential liabilities.

That issue was not a factor in the Supreme Court's Aug. 30 ruling, because that decision upheld a lower court's summary judgments in favor of USF&G and two other insurers.

USF&G wrote primary coverage for Alabama Plating between 1955 and 1986, and Safety National Casualty Corp. and Ranger Insurance Co. wrote umbrella coverage for a few years during that period, said Alabama Plating attorney John Fried, a partner with Anderson Kill & Olick P.C. of New York. Alabama Plating's cleanup costs total about $3 million, much less than the limits the company purchased from the insurers, Mr. Fried said.

In its earlier decision, the Alabama Supreme Court said it would be rewriting Alabama Plating's insurance policies if it interpreted "sudden" as unexpected or unintended without attaching a temporal meaning to the word.

Despite the various definitions of "sudden," the context of its use in the pollution exclusion leads to the "inescapable conclusion" that insurers intended it to mean abrupt, the court ruled in August.

The court also said that Alabama Plating did not rebut affidavit testimony from the former Alabama deputy insurance commissioner.

But, in its Dec. 20 decision, the court ruled that "sudden" is ambiguous. The court then relied on the exclusion's drafting and regulatory history to determine the exclusion's intent. The Alabama court said several factors show that the exclusion was not intended to bar coverage for unintended gradual pollution. Most significantly, the court found:

- Insurer executives wrote in technical papers and informed agents, brokers and regulators that earlier policies covered property and bodily injury claims resulting from gradual pollution and that the "sudden and accidental" exclusion bars coverage only for expected or intended pollution acts.
- Before insurers adopted the pollution exclusion, courts already had ruled that the "sudden and accidental" clause in boiler and machinery policies provided coverage for gradual events.
- The overall structure of CGL policies provides coverage for "gradual, repeated conditions," so the policies provide a context for determining that the exclusion does not bar coverage for unintended gradual pollution.

After ruling that the "sudden and accidental" clause does not bar coverage for unexpected and unintended releases of pollutants, the court states in a footnote that the release does not refer to Alabama Plating's waste water disposal methods. Instead, it refers to the migration of contaminants from the containment ponds into the soil and ground water, the court said.

That is "one of the most important parts of the opinion," said Mr. Fried, Alabama Plating's attorney.

Mr. Zampino, the insurer attorney who specializes in the exclusion's history, said the decision is "riddled with problems."

Most significantly, he said, pre-1970s policies did not cover repeated gradual pollution incidents. The policies covered one unexpected gradual pollution incident. "If the incident became part of repeated business operations, you're not covered," Mr. Zampino said.

Mr. Zampino also said that court interpretations of the "sudden and accidental" language in boiler and machinery policies were not uniform.

For example, he said, the Massachusetts Supreme Court did not apply its interpretation of the boiler and machinery policy clause to the pollution exclusion. In siding with insurers on the pollution exclusion in 1990, the Massachusetts court said the boiler and machinery clause applies to the period during which equipment is damaged. It ruled that the pollution exclusion refers to the manner in which pollutants were discharged, Mr. Zampino said.

And, contrary to the Alabama court's footnote, the exclusion does not limit pollution discharges to the migration of pollutants from a containment pond to the ground, Mr. Zampino said.

In Wyoming, the state Supreme Court followed the same line of reasoning the Alabama Supreme Court did in August and ruled that "sudden" unambiguously has a temporal meaning. The Wyoming court refused to find that "sudden" and "accidental" have synonymous meanings in the pollution exclusion.

The decision came in the middle of a federal district court case pitting Sinclair Oil Corp. against Republic Insurance Co., Royal Insurance Co. of America and Safeguard Insurance Co. The district court asked the Wyoming Supreme Court for guidance specifically on whether the pollution exclusion barred coverage for gradual pollution and whether the exclusion is ambiguous.

The Wyoming Supreme Court said that because of those narrow questions, it refused to consider the pollution exclusion's drafting and regulatory history, which is being argued at the district court level. But, the court notes elsewhere in the opinion that it could have reviewed the district court's full record.

"That may tell you something about what it thought of that argument" from policyholders on the exclusion's drafting and regulatory history, said Republic's attorney, James C. LaForge, a partner with Chadbourne & Parke in New York.

Sinclair Oil's attorneys did not return phone calls.

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Alabama Plating Co. and J.M. Rowe Jr. vs. United States Fidelity & Guaranty Co. et al., Alabama Supreme Court; No. 1941753.
Sinclair Oil Corp. vs. Republic Insurance Co. et al., Wyoming Supreme Court; No. 95-62.

Court broadens take on pollution exclusion

By GAVIN SOUTER

ALBANY, N.Y.—Policyholders need not be the actual polluters of a property for the absolute pollution exclusion to bar coverage of cleanup claims, according to New York's highest court.

The Dec. 18 decision, which reverses a lower court ruling, is a major victory for insurance companies in a highly commercial state, said insurer attorney Thomas W. Brunner of Wiley, Rein & Fielding, in Washington.

In another municipal pollution case, the Court of Appeals rejected an insurer's effort to deny a defense, sending the case to a lower court for trial, but indicated a broad interpretation of what is considered pollution for purposes of the absolute exclusion, Mr. Brunner said.

The court's ruling in *Town of Harrison vs. National Union Fire Insurance Co. of Pittsburgh, Pa.*, is a more overt victory for insurers.

"The language of the pollution exclusions does not require that the insured be the actual polluter in order for the exclusion to apply. Therefore, defendant insurers properly relied on the unambiguous pollution exclusion to deny coverage to the insureds," the court ruled.

The town of Harrison, N.Y., was sued by the owners of residential property next to the town's landfill. The property owners alleged that the municipality had negligently failed to prevent and abate the illegal disposal of waste on their land in the 1980s by a contractor working in the contiguous landfill.

The property owners sought damages from Harrison for personal injury, property damage and environmental cleanup costs, court papers show.

Harrison ultimately settled with the claimants in 1993 for an undisclosed amount and sought more than $2.5 million in indemnification and expenses under its liability policies, which its insurers denied, citing the absolute pollution exclusion.

Harrison was covered by a public officials and employees liability policy written by National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc., and a general liability policy written by North River Insurance Co., a unit of Crum & Forster Corp.

Harrison argued that the town was due coverage because it was not responsible for the illegal dumping and that any alleged negligence did not involve conduct that caused pollution.

The trial court ruled in favor of the insurers, but an appellate court overturned the decision in favor of Harrison, ruling that the absolute pollution exclusion could not be invoked because the town was not responsible for the underlying acts of pollution (*BI*, Oct. 2, 1995).

The New York Court of Appeals' decision to deny coverage is important to insurers because it resolves a split among New York courts over whether the absolute pollution exclusion is limited to cases involving intentional industrial pollution, according to Mr. Brunner.

The case "conclusively establishes that the exclusion contains no such limitation," he said.

The decision contains too strict an interpretation of the absolute pollution exclusion, said John H. Kazanjian, attorney with Anderson Kill & Olick in New York, who represented Harrison.

"It's a decision that is unique to its facts and demonstrates that the New York court is more willing to look at the language of the exclusion itself rather than to other evidence that would suggest that the exclusion should not be broadly applied," he said.

In another municipal pollution case before New York's top court last month, *The Incorporated Village of Cedarhurst vs. Hanover Insurance Co.*, a majority of the court ruled that the insurer was obliged to defend the municipality from 1994 claims alleging damages from the backup of a city sewer system. The high court then returned the case to a lower court.

But the court's decision in the *Cedarhurst* case did offer insurers some comfort in its implicitly broad definition of pollution, according to Mr. Brunner.

The lower court judge in the case had ruled that the pollution exclusion did not apply because raw sewage was not a pollutant and that the insurer had a duty to defend (*BI*, Oct. 2, 1995).

But the majority of the New York Court of Appeals held that: "Since any risk of liability faced by the Village allegedly arose from the floodlike nature of the discharge rather than its 'polluting' character, the insurer is obligated to defend, but a trial is necessary before any determination on the issue of indemnification can be made."

The damage was not necessarily caused by the "irritating or contaminating nature of the sewage," the court said.

Thus, the state's top court implicitly recognized that many substances could be determined to be pollutants depending on the circumstances of a claim, according to Mr. Brunner.

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Town of Harrison et al., vs. National Union Fire Insurance Co. of Pittsburgh, Pa., and North River Insurance Co., New York Court of Appeals; No. 246.
The Incorporated Village of Cedarhurst vs. Hanover Insurance Co., New York Court of Appeals; No. 247, 248.

Appeals court overturns conviction in Texas water pollution case

By MICHAEL BRADFORD

NEW ORLEANS—If a recent federal appeals court ruling stands, corporate polluters may be less likely to be convicted for violations of the Clean Water Act if they don't have broad knowledge of the crime.

As of last week, U.S. attorneys were still reviewing the language of the ruling and the Justice Department will decide whether to appeal.

The November ruling by a panel of the 5th U.S. Circuit Court of Appeals comes in a case involving a Texas convenience store owner who in 1994 pumped about 4,690 gallons of gasoline into a city storm drain and sewer system. Some of the fuel ended up in a creek that feeds into the San Jacinto River, which feeds into Lake Houston. Gasoline also was found in the city sewage treatment plant.

The owner, Attique Ahmad did not deny discharging gasoline but claimed he intended only to pump out water that had seeped into an underground tank.

A U.S. District Court jury in 1991 sentenced Mr. Ahmad to 21 months in prison for the pollution. In overturning the conviction, the 5th Circuit said the lower court's interpretation of the Clean Water Act was incorrect and jury instructions in the trial were unclear as to what the defendant should have known about the pollution.

"What is significant is that the opinion is somewhat ambiguous as to what is required in the sense of government proof," said Michael Shelby, a Houston-based U.S. attorney who prosecuted the case. "One could argue that the U.S. will now have to prove that a polluter knowingly violated every element of the act."

That could mean proof would be required that, among other things, a defendant not only knowingly discharged a pollutant but also knew the pollutant would make its way to navigable waters, he said.

Mr. Shelby said, however, that he interprets the ruling to mean that only proof that a defendant was aware he was discharging a pollutant is required.

Mr. Ahmad's attorney, David Gerger of Foreman, DeGeurin, Gerger & Nugent in Houston, said the ruling means that "if you discharge a pollutant but didn't know you were discharging a pollutant, it's not a crime."

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United States of America vs. Attique Ahmad, 5th U.S. Circuit Court of Appeals; No. 95-20627, Nov. 27, 1996.

Suzuki

Continued from page 3

Some states require blood alcohol test results plus eyewitness corroboration of erratic driving before allowing in evidence of a driver's alcohol consumption. Some states rely on a standard similar to the one the Missouri Supreme Court changed, and others rely on a standard similar to the one the Missouri court adopted, said Mr. Coben, who specializes in automobile liability cases.

The Missouri ruling is "a bad decision," Mr. Coben said. Noting society's increasing sensitivity to the issue of drinking and driving, Mr. Coben said regarding such evidence: "You don't let it in and then explain it away. It's too late."

Mr. Wallach said the court's decision to require clear and convincing evidence before allowing punitive damages would not harm his case. If plaintiffs have any evidence supporting a punitive damages award, the evidence already is clear and convincing, he said.

The Missouri case, which permitted evidence of alcohol consumption, is 'a bad decision,' says Larry Coben. 'You don't let it in and then explain it away. It's too late.'

The plaintiff's argument that the court is applying the new evidence-admissibility standard retroactively is "a red herring," said George Ball, general counsel for American Suzuki Motor Corp. of Brea, Calif.

"This case would have been reversed without overturning the 30-year-old precedent," because the Supreme Court ruled the trial court erred in excluding evidence that witnesses to the rollover were impaired by alcohol, Mr. Ball said.

The case centers on the stability of the Suzuki Samurai sports utility vehicle during hard turns.

Consumers Union of the U.S. Inc. has long maintained the Samurai is "not acceptable." The Yonkers, N.Y.-based consumer advocacy group has reported that 1988 and 1988½ Samurai models showed a propensity to roll over during hard turns in accident avoidance tests that the group conducted.

Suzuki has been sued by at least 175 individuals involved in rollover accidents, according to Consumers Union.

Suzuki denies that the Samurai is prone to rollover. Suzuki earlier this year filed suit in a California federal court charging Consumers Union with libel and product disparagement.

The National Highway Traffic Safety Administration in 1988 concluded that the Samurai's rollover crash history was no worse than most other light utility vehicles' and that most of the crashes involved high-risk driving maneuvers, poor road conditions or alcohol-impaired drivers.

Elaborating on the high-risk maneuvers, the NHTSA said the Samurai's design may make the vehicle highly maneuverable, which may result in oversteering by inexperienced drivers during unexpected events. That oversteering could induce a rollover, it found.

The NHTSA also reported that the Samurai's stability "decreases significantly" as the vehicle's load increases.

In September 1996, the NHTSA rejected a petition to again consider whether the Samurai is defective. It said the Samurai's track width makes the model less prone than other SUVs to roll over. It also said that increasing vehicle payload does not affect the Samurai's stability as much as it does other SUVs'.

In the Missouri case, the plaintiff, Kathryn Rodriguez, was paralyzed in February 1990 when the 1988½ Samurai in which she and another woman were passengers rolled over in Warren County, Mo.

According to Mr. Wallach and court papers, the vehicle's right-side wheels veered off the right side of a highway, hitting a ditch and a 14-inch-high dirt headwall—the side of a cemetery driveway. The Samurai returned to the highway and crossed the center line. When the driver, Deborah Dubis, turned right sharply to return to the proper lane, the Samurai rolled over.

But Suzuki argued that the Samurai never returned to the highway. It said the collision with the cemetery driveway launched the vehicle into the air, causing it to roll over in the ditch.

Ms. Rodriguez sued Suzuki for product liability, negligence, breach of warranty and punitive damages. She also sued Ms. Dubis for negligence. Suzuki cross-claimed against Ms. Dubis, alleging negligence.

A St. Louis Circuit Court jury last year found that Suzuki was 100% at fault and ordered the company to pay Ms. Rodriguez $30 million of compensatory damages and $60 million of punitive damages. The trial judge later reduced each the award to $20 million.

The case went straight to the state's Supreme Court because Suzuki challenged the constitutionality of a state statute that appropriates half of punitive awards to the state. The Supreme Court, though, did not address that issue in its ruling.

Instead, it focused largely on the trial court's reliance on 1966 case law in its ruling to exclude evidence that Ms. Dubis had been drinking before the accident. The law was designed to prevent juries from being improperly inflamed against a driver who had been drinking before an accident when the driver's alcohol consumption was not a factor in the accident.

Such a standard made sense under a system of contributory negligence, the Supreme Court said. Under such a system, a plaintiff could not recover any damages if he or she was even minimally responsible for an accident.

But Missouri adopted a comparative fault system in 1983. Under that system, a court apportions liability to each party, and a plaintiff can recover damages based on a defendant's degree of liability.

"A comparative fault system can better accommodate alcohol evidence than a contributory negligence system," said the high court in a decision written by Justice Duane Benten.

The court also was troubled by what it called inconsistent application of the 1966 standard in state courts. For example, evidence of a driver's alcohol consumption was excluded in one case because a state court held that pulling into the path of another vehicle was not erratic driving. However, in another case, a driver's alcohol consumption was admitted because a court determined the driver displayed erratic driving by driving a motor scooter through a stop sign at 20 mph.

In addition, under the previous standard, there were unspecified "other circumstances" when alcohol consumption could be admitted into evidence even when the driver had not been driving erratically, Judge Benten noted.

Under the new standard, proper jury instructions would "diminish any undue prejudice" against a driver who consumed alcohol before an accident, the court ruled.

The court said Suzuki adequately supported its theory that alcohol consumption played a role in the accident that injured Ms. Rodriguez. Ms. Dubis, the driver, admitted drinking two full glasses of wine and three sampler glasses of wine before the accident.

The court also noted that the other passenger in the car said Ms. Dubis may have had even more to drink and that she probably could handle only "a couple of beers" before becoming impaired.

The court also pointed to evidence that there was no corrective steering or braking before the vehicle hit the headwall and that the road was dry.

Suzuki also argued that the trial court also erred in excluding evidence that Ms. Rodriguez had been drinking before the accident. Suzuki said her drinking contributed to her alleged negligent act of riding in a vehicle operated by an intoxicated driver.

Mr. Wallach, the plaintiff's attorney, said there was no evidence Ms. Dubis was intoxicated. The other passenger, who is much smaller than Ms. Dubis, later conceded that she herself could handle only a couple of beers, Mr. Wallach said.

"Regardless of what made the vehicle leave the road, a better designed vehicle would not have rolled over under those circumstances," Mr. Wallach said.

"What difference does it make if the driver had one or two glasses of wine?" he asked. If the accident instead had occurred when another driver who had not been drinking made the same maneuver to avoid a child in the road, the vehicle should not have rolled over, Mr. Wallach said.

He also noted that Suzuki's own sales and marketing memos mention the importance that advertisements show the Samurai with all four wheels on the ground and the need to develop a plan to deal with the roll factor.

Mr. Ball of Suzuki said NHTSA findings show the Samurai is not poorly designed. He also said the lower court did not admit crash replication evidence that showed the Missouri crash occurred as Suzuki contends it did.

Mr. Ball said the memos reflect Suzuki executives' decision not to copy the marketing plans that other SUV manufacturers had used previously—showing the vehicles leaving the ground in off-road maneuvers. The memos' reference to the roll factor referred to the already growing public sensitivity to SUV rollovers before the Samurai was introduced, he said.

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Kathryn Rodriguez vs. Suzuki Motor Corp. (f/k/a Suzuki Motor Co. Ltd.) and American Suzuki Motor Corp. vs. Deborah Dubis, Missouri Supreme Court; No. 78539.

Updates

Site costs Phelps Dodge

Continued from page 2

The site in Maspeth, Queens, had been polluted after years of use as an industrial site.

Phelps Dodge sold it to the Postal Service for $14.7 million in 1987 but agreed to clean up the site by removing the contaminated soil to a landfill in Ohio. However after the cleanup began, it was discovered that the ground water had been contaminated and a much more expensive and extensive cleanup was necessary, court documents say.

After discovering the true extent of the pollution, Phelps Dodge ceased cleanup operations and suggested capping the site with asphalt or clay, but the plan was rejected by the DEC after opposition from the local community, court papers say.

Phelps Dodge breached its contract with the Postal Service by failing to clean up the site "with diligence and continuity to completion," Judge Gleeson said. "It has engaged in dilatory tactics ever since it became clear that there may well be no solution to the environmental problems affecting the Phelps Dodge site," he said.

Judge Gleeson awarded the purchase price plus interest to the Postal Service. Phelps Dodge is considering whether to appeal the decision.

OSHA chief to step down

WASHINGTON—Joseph A. Dear will leave his job as head of the Occupational Safety and Health Administration at the end of this week.

Mr. Dear, the assistant secretary of labor credited with promoting a cooperative approach to solving workplace safety-problems, will become chief of staff to Washington state's Gov.-elect Gary Locke.

In announcing his resignation, Mr. Dear said that OSHA is "stronger and more focused on its mission." OSHA also is "more open to new ideas and better ways of working" than it had been previously, he said.

No successor to Mr. Dear has been nominated and no acting assistant secretary for OSHA has been named.

Doll maker warns of risk

EL SEGUNDO, Calif.—Mattel Inc. is attaching warning labels to its Cabbage Patch Snacktime Kids dolls following several incidents in which the doll's mechanical mouth munched on hair and fingers as well as its intended plastic food.

Despite passing a battery of safety tests, including those set by the Consumer Product Safety Commission as well as state and federal guidelines, the toy manufacturer said it was aware of at least 35 incidents in which a child's hair or finger was caught in the doll's mouth. No serious injuries have been reported, however, and a Mattel spokeswoman said she is unaware of any lawsuits filed.

The CPSC is investigating other possible safety risks posed by the doll, and has the authority to order a recall if the risks are deemed "a substantial safety hazard," according to a commission spokesman.

Mattel is pursuing its own investigation on a case-by-case basis, the company's spokeswoman said. "At this point, we both still feel (the Cabbage Patch doll) is a safe product," she said.

Mattel has distributed 700,000 Snacktime Kids since August 1996. The new warning labels will be affixed on all the dolls still on store shelves and on all future production. The label not only warns that long hair and fingers can get caught in the doll's mouth, but also how consumers can stop the doll's chewing action by removing its backpack.

Steelcase payment not insured

KALAMAZOO, Mich.—Steelcase Inc.'s $211.5 million payment that ends a 17-year patent infringement dispute with Haworth Inc. is not covered by insurance.

The payment, ordered by a special master in U.S. District Court in Kalamazoo, Mich., has been paid from cash reserves, a spokesman for Grand Rapids, Mich.-based Steelcase said last week. The judgment consists of $96.8 million in damages and $114.7 million in interest.

The dispute first arose in 1978 when Holland, Mich.-based Haworth claimed Steelcase copied its design for movable office panels that allow electrical routing. After settlement attempts failed, Haworth filed suit in 1985 and a federal court ruled in Steelcase's favor in 1988. An appellate court reversed that ruling in 1989 and the Supreme Court refused to review the case.

Briefly noted

W. Marston Becker was named chairman and CEO of New York-based **Orion Capital Corp.**, succeeding Alan R. Gruber, who remains chairman of the executive and investment committees. Mr. Becker previously was president and CEO of DPIC Cos., Orion's professional liability unit. . . .Dutch insurer **AEGON N.V.** is buying the insurance operations of Louisville, Ky.-based Providian Corp. for $3.5 billion. A banking unit, Providian Bancorp, was spun off prior to the Aegon acquisition. . . .The U.K. Director General of Fair Trading is reviewing **Aon Corp.'s acquisition of Bain Hogg Group P.L.C.** under the Fair Trading Act 1973 and is inviting comments on the deal until Jan. 15. Once comments and other information have been reviewed, the director general will decide whether to recommend that the deal be referred to the Monopolies and Mergers Commission for investigation. . . **James M. Skelton**, who resigned late last year as president of the Illinois Insurance Exchange, and his son recently formed Equity Insurance Managers of Illinois L.L.C. Equity Insurance Managers purchased and plans to expand the operations of Irland & Rogers Inc., a 40-year-old wholesale agency in Chicago that will continue to do business under that name. . . **Humana Inc.** will eliminate 700 to 900 jobs this year from its U.S. workforce of 18,000. The cuts, which will result in a charge of about $15 million before taxes for the fourth quarter of 1996, are needed to boost efficiency and cut administrative expenses, the company said. . . **Gregory V. Serio**, first deputy superintendent and general counsel of the New York Insurance Department, has been named acting superintendent following the resignation of Edward Muhl last month.

Weather

Continued from page 1

Reno-Tahoe International Airport suffered damage and several planes were grounded as water rushed over their landing gear.

Mr. Kanwetz said he expects commercial insurance claims to be minimal as there was limited damage and many accounts forego flood coverage because it is often written with deductibles equivalent to 2% of the insured property value.

By late last week the downpour in the Pacific Northwest had slowed following a series of winter storms that began just after Christmas day. But the cleanup was still underway.

"As far as we are concerned the storm is not over, we still have customers that are without power," a spokeswoman for Puget Sound Power & Light Co. in Bellevue, Wash., said Thursday afternoon. About 13,000 customers were without electricity.

The previous Friday, Dec. 27, about 225,000 of the utility's customers lost power, the spokeswoman said. Sleet and ice weighed down power lines and also caused trees to crash down on them. Crews later restored power to some of those customers only to have another storm cause more outages the next day.

The destructive combination of snow, warm temperatures and rain delivered by the storms caused roofs to collapse throughout western Washington.

"It was a fairly unusual snowfall," explained Tom Pruitt, risk manager for Tacoma Boatbuilding Co. in Tacoma, Wash. "We had a foot of snow which is real unusual. We don't see that very often, and then a heavy rain followed it and just saturated that snow with water. That gets to be real heavy stuff. The snow normally is not much of a problem here."

Tacoma Boatbuilding Co. did not suffer damage or business interruption losses, he added.

However, in Bremerton, Wash., a spokeswoman for the city's Chamber of Commerce said about 30 business in the area, including several large retailers, suffered damage from collapsed roofs.

Grocery store chain Albertson's Inc. evacuated one of its stores in Bremerton before a portion of the roof caved in.

"When that happened we sent out a team of architects and engineers, both in-house and out of house, to ensure the safety of our other stores in the Washington area and make sure they were safe to have open," said an Albertson's spokeswoman in Boise, Idaho.

Albertson's did not have a damage estimate from the collapsed roof late last week, but the spokeswoman said the company is self-insured for the loss.

A spokesman for Washington Insurance Commissioner Deborah Senn said insurers were reporting immediately after the storms that they were receiving more telephone calls concerning potential claims than after a previous benchmark storm in 1993.

"It lightens up for a while and then we get hit with another deluge," the spokesman said.

Storm damage in the Portland, Ore., area was not as substantial as in Washington, said Ross Dwinell, risk manager for United Grocers Inc. in Portland. The area suffered worse damage from a storm last February, he said.

"Most of the damage down here in Portland is flooding. There were some power outages we had the day after Christmas and some people have been without power. Most of the problems we are going to have now will be with flooding," he said.

The day after Christmas an icy storm swept across northern Oregon knocking out electricity to much of Portland's downtown area and the city's airport. Many retail establishments closed their doors on the normally busy shopping day.

In Northern California, tens of thousands of residents evacuated the towns of Yuba City and Marysville due to the threat of flooding last week. In addition, crop damage in the region was evident. For example, the Napa Valley County Agriculture Commissioner reported more than $4 million in damage to wine grapes and other crops.

Much of the flooding in California came just as the governor's Office of Emergency Services reported only $119 million in property claims losses related to natural disasters in 1996. It was the first time in six years the figure was under $1 billion dollars. BI

Interest in snow coverage is accumulating

By MICHAEL PRINCE

Nothing sells better than success, except maybe snow.

Last year's record snowfall in the Northeast has greatly increased the demand for snow insurance, with sales of policies far exceeding the pace of a year ago.

Generally, the coverage is sought by municipalities facing large snow-removal expenses or by businesses fearing weather-related losses. Last year, Massport, the agency that runs Boston's Logan International Airport, bought a policy that paid out limits of $2 million (*BI*, Jan. 15, 1996).

This year, the Metropolitan Washington Airport Authority purchased a policy covering Washington Dulles International Airport and Washington National Airport from the Frederick E. Penn Insurance Agency in Needham, Mass., which also sold the Logan policy. Penn is one of only a few agencies that offer snow insurance.

The Washington coverage will pay $25,000 for each inch of snow above 40 inches that falls on Dulles, up to $1 million, while the trigger at Washington National is 35 inches. The policy costs the authority $35,000 and is underwritten by Reliance National Insurance Co., the underwriter for most of the Penn Agency's policies.

Richard Penn, chief executive officer of the Penn Agency, said this year his agency has sold 20 to 25 snow policies, whereas last year it sold only the Logan policy. Interest in the policy is higher still. Many businesses, he said, were interested but did not buy it.

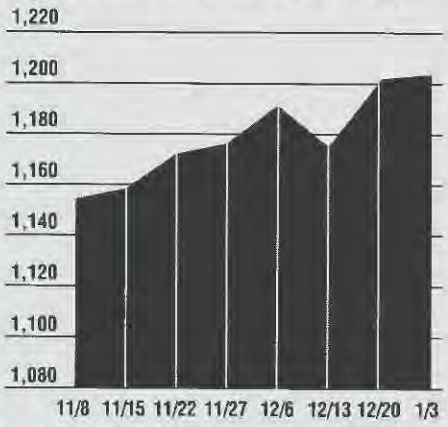
In the next few years, however, Mr. Penn anticipates these businesses will take the plunge into the snow coverage. "You need a couple of more years of severe weather and people will include it in their regular coverage," he said. "It takes time for people to buy into something new."

Another agency, Customized Worldwide Weather Insurance Agency, has tripled the number of policies sold this year, said Pat Sleicher, director of special events for the Manhasset, N.Y.-based agency. Worldwide Weather sold about 60 policies this year, triple the 20 it sold last year. The main buyers are municipalities, condominium associations and restaurants, but it is available "for anyone with snow removal exposure," Ms. Sleicher said.

Like Mr. Penn, she attributes the heightened interest to last year's snowfall in the Northeast.

The policy's form has not changed from last year. One policy pays when the number of storms exceeds a specified figure—generally four—of a certain intensity. The most popular type of snow policy, however, pays when seasonal snowfall exceeds a specified level, or snowfall on a specified day exceeds a certain amount.

BI Insurance Index



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

PCS catastrophe options

As of Jan. 3

Call spread	Price bid/ask	Call spread	Price bid/ask
Eastern September 1997		**California Annual 1997**	
40/60	3.2/3.9	40/60	—/4
60/80	2.5/3	80/100	1.6/1.9
80/100	2.2/2.5		
National Annual 1997		**Western Annual**	
80/100	6.5/8.4	40/60	2.2/3.9
120/140	5/5.5	80/100	1.9/2.1
June Midwestern 1997			
10/20	1.2/2		

Total volume: 316 Total open interest: 10,417

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

British Issues

Jan. 3 Companies	Price pence	P/E	Div. pence	Yield %	52 week high—low
Comml Union	688	11.5	29.0	5.3	698—550
Genl Accident	730	8.2	31.7	5.3	774—612
Gdn Royal Exch	278	4.4	9.3	4.3	282—218
Independent	596	10.8	12.0	2.5	613—360
Royal & Sun	442	9.0	19.0	5.3	463—349
Brokers					
Bradstock	62	10.6	5.7	11.7	76—54
Fenchurch	50	N/A	5.5	15.7	159—46
CE Heath	87	10.1	4.5	6.8	115—74
JIB Group	142	N/A	9.8	7.5	142—97
Lloyd Thmpson	191	N/A	10.0	7.0	194—162
Lowndes Lmbrt	105	11.9	8.4	10.2	153—102
Nelson Hurst	153	10.2	8.1	6.6	206—143
Sedgwick Grp	136	12.0	9.8	7.1	152—114
Steel Brl Jones	31	6.8	3.8	16.2	48—28
Willis Corroon	138	20.3	6.6	5.7	169—117

Source: Nordby International Inc.

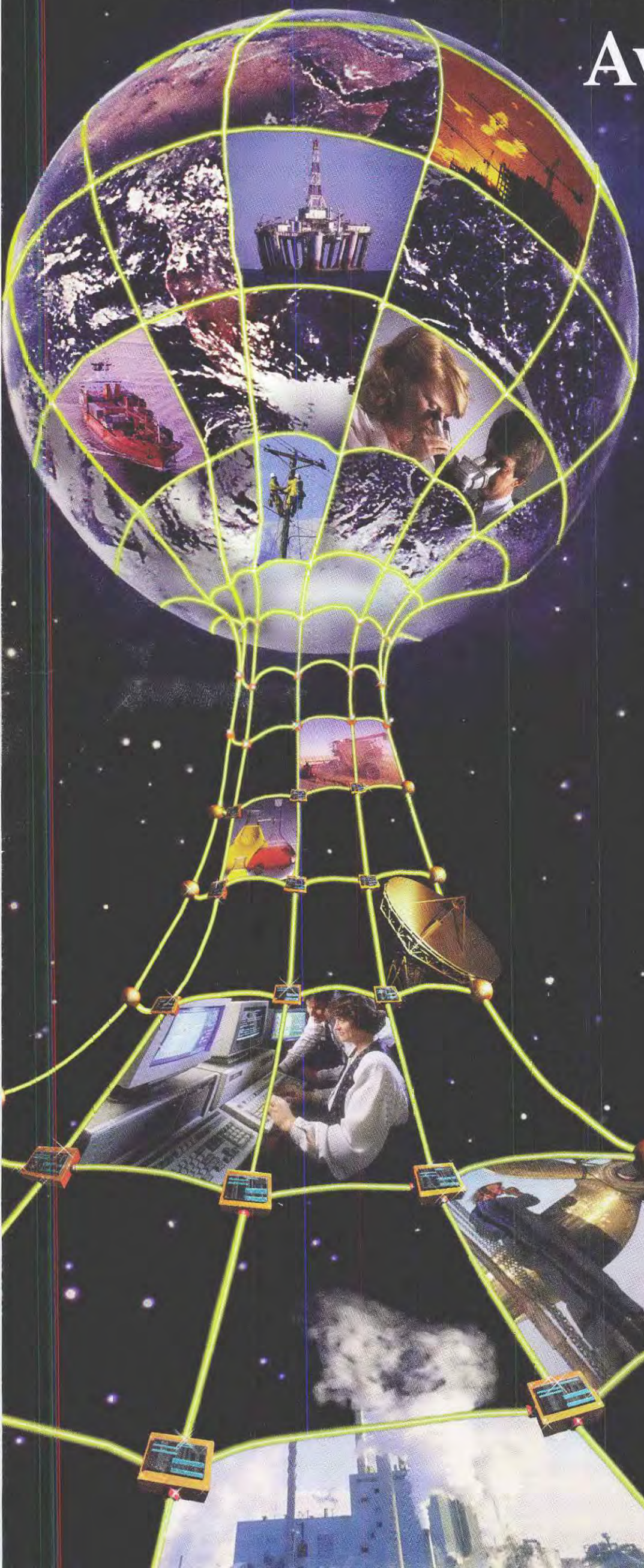
BI Industry Stock Report DEC. 30, 1996, THROUGH JAN. 3, 1997

BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Acordia Inc.	NYS	28.875	-1.28	-0.43	33.75	27.75	16
Alexander & Alexander	NYS	17.375	0.00	0.00	21.63	13.63	2871
E.W. Blanch Holdings Inc.	NYS	20.125	1.26	0.00	25.50	17.75	152
Gallagher Arthur J. & Co.	NYS	30.25	-2.81	-2.42	39.50	29.13	51
Hilb, Rogal & Hamilton	NYS	13.125	-1.87	-0.94	14.00	11.38	34
Kaye Group Inc.	NDQ	5.125	2.50	-2.38	8.00	4.63	53
Marsh & McLennan	NYS	105.25	-0.36	1.20	114.88	84.25	497
Poe & Brown	NDQ	27	0.47	1.89	27.50	22.75	8
BROKERS	AVERAGE		-0.3	-0.4			
INSURERS/REINSURERS							
ACE Ltd.	NYS	59.75	5.75	-0.62	60.25	37.75	672
Acceptance Insurance Cos.	NYS	20	-1.84	1.27	22.50	13.88	56
AEGON N.V.	NYS	64.375	12.94	1.78	64.38	41.13	90
Aetna Life & Casualty	NYS	80.625	0.62	0.78	82.50	55.38	3354
AFLAC Inc.	NYS	43	-0.58	0.58	44.00	28.25	927
Allied Group Inc.	NDQ	32.375	-2.63	-0.77	33.25	22.38	246
Allmerica Prop. & Casualty	NYS	30.75	1.65	1.23	30.75	24.25	279
Allstate Corp.	NYS	59	-1.46	1.94	60.88	37.38	2971
AMBAC Indemnity Corp.	NYS	63.625	-2.12	-4.14	69.50	45.50	235
American Bankers Ins.	NDQ	51.375	3.79	0.49	52.38	32.50	535
American Financial Group	NYS	37.125	-1.00	-1.66	38.88	28.50	301
American General	NYS	41	-1.20	0.31	41.75	32.88	1181
American Heritage Life Ins.	NYS	25.875	-0.96	-1.43	27.75	19.00	33
American Indemnity/Fin'l	NDQ	10.25	-6.82	0.00	13.38	9.38	2
American International	NYS	108.5	-2.36	0.23	116.38	88.13	2489
Aon Corp.	NYS	62.125	-1.97	0.00	64.75	47.50	498
Argonaut Group	NDQ	30.5	2.74	-0.81	35.00	27.25	101
AVEMCO Corp.	NYS	16	3.23	2.40	16.50	11.75	38
Baldwin & Lyons Inc.	NDQ	19	1.00	3.40	20.75	14.25	36
Berkley W.R. Corp.	NDQ	50.875	0.25	0.25	53.75	40.25	204
Berkshire Hathaway Inc.	NYS	33700	-2.60	-1.17	38000.00	29800.00	1
Capital RE Corporation	NYS	45.5	-0.55	-2.41	46.88	28.38	108
CapMac Holdings Ltd.	NYS	32.375	-0.77	-2.26	36.88	22.00	27
Capsure Holdings Corp.	NYS	11.375	2.25	-1.09	18.88	8.00	266
Chartwell Re	NYS	26.5	-0.93	-0.93	28.38	19.88	30
Chubb Corp.	NYS	56	0.90	4.19	56.25	40.88	1975
CIGNA Corp.	NYS	135.5	-2.52	-0.82	143.38	100.75	863
CNA Financial Corp.	NYS	104.5	-3.58	-2.34	117.50	95.75	201
EMC Insurance Group Inc.	NDQ	12	1.05	0.00	14.50	10.13	4
Everest Reinsurance	NYS	28.125	2.27	-2.17	29.50	20.13	365
Executive Risk Inc.	NYS	36.375	7.27	-0.34	42.38	26.13	72
EXEL Ltd.	NYS	37.325	0.00	-0.66	40.25	29.88	913
Fremont General Corp.	NYS	30.5	-1.21	-1.61	31.63	21.50	253
Frontier Insurance Group	NYS	38	0.00	-0.65	41.13	28.25	85
Gainsco Inc.	NYS	9.75	1.30	1.30	11.75	8.75	60
GCR Holding Ltd.	NDQ	22.375	1.13	0.56	27.25	21.50	297
General RE Corp.	NYS	154.375	-3.36	-2.14	170.25	138.75	738
Gryphon Holdings	NDQ	13.375	2.78	-1.77	20.25	12.00	127
Guaranty National Corp.	NYS	16.625	0.00	-0.75	18.00	13.38	25
Harleysville Group	NDQ	30.0625	-0.62	-1.43	32.75	24.50	30
Hartford Steam Boiler	NYS	46.625	-1.06	0.54	52.50	42.75	252
HCC Insurance Holdings	NYS	24.875	2.05	3.65	32.75	14.50	325
IPC Holdings Ltd.	NDQ	24	6.08	7.26	24.00	19.00	468
ITT Hartford Group	NYS	67.375	-2.00	-0.19	69.88	44.50	810
LaSalle Re Ltd.	NDQ	28.625	-1.29	-2.14	29.50	19.75	119
Lincoln National	NYS	52.5	-0.47	0.00	57.00	40.75	480
Markel Corp.	NDQ	89	1.14	-1.11	94.50	72.50	15
MBIA Insurance Group	NYS	99.625	-4.32	-1.60	104.63	70.00	483
Meadowbrook Insur. Group	NYS	20.75	-6.74	-1.19	34.13	15.25	89
Mid Ocean Ltd.	NYS	51.75	-0.48	-1.43	55.38	35.50	219
MMI Cos. Inc.	NYS	30.75	0.82	-4.65	33.38	22.00	63
Mutual Risk Mgmt. Ltd.	NYS	37.125	2.77	0.34	37.25	26.88	484
NAC Re Corp.	NYS	33.875	0.37	0.00	40.63	28.50	142
Navigators Group	NDQ	18.25	1.39	0.00	20.25	15.63	39
Nobel Insurance Ltd.	NDQ	12.5	0.00	-0.50	12.75	10.88	82
NYMagic Inc.	NYS	18.375	2.08	2.08	22.00	16.38	20
Ohio Casualty Corp.	NDQ	34.875	-0.36	-1.76	40.00	30.00	134
Old Republic Int'l	NYS	25.75	-0.47	0.00	27.75	20.13	446
Orion Capital Corp.	NYS	51.5	0.61	0.61	63.00	42.50	70
Partner Re Ltd.	NYS	33	-2.94	-2.94	34.50	25.63	313
Penn-America Group Inc.	NDQ	15.9375	-0.39	-1.16	16.75	11.50	41
Philadelphia Cons. Holding	NDQ	22.875	0.00	-1.61	24.25	16.25	29
PXRE Corp.	NDQ	24.25	0.00	-2.02	28.00	22.25	98
Reliance Group Holdings	NYS	9.125	0.00	0.00	9.25	6.50	399
Reliastar Financial Corp.	NYS	57.125	-1.08	-1.08	58.38	40.00	343
RenaissanceRe Holdings Ltd.	NYS	32.625	-0.76	-1.14	36.00	26.75	47
Risk Capital Holdings	NDQ	13.75	1.35	-3.23	23.25	15.88	157
RLI Corp.	NYS	33.75	0.75	1.12	33.75	22.38	51
St. Paul Companies	NYS	58.125	-2.52	-0.85	60.75	50.13	1152
SAFECO Corp.	NDC	39.125	-2.34	-0.79	42.25	30.88	1239
Seibels Bruce Group	NDC	2.1875	2.94	6.06	4.25	1.56	81
Selective Ins. Group	NDC	37.75	-1.95	-0.66	38.75	31.00	87
Sphere Drake Holdings	NYS	9	0.00	1.41	14.00	8.13	63
TIG Holdings	NYS	33.375	-1.43	-1.48	34.38	26.00	981
Titan Holdings, Inc.	NYS	16.375	0.00	-0.76	16.63	12.50	25
Tokio Marine & Fire	NDC	46.625	0.27	0.00	69.25	45.38	11
Torchmark Corp.	NYS	51	-0.97	0.99	52.13	40.25	561
Transatlantic Holdings	NYS	78.375	-2.64	-2.64	81.25	62.38	75
Travelers Aetna Property	NYS	36.125	2.12	2.12	36.13	23.13	530
Travelers Corp.	NYS	45.125	-2.17	-0.55	47.50	26.38	4968
Trenwick Group Inc.	NDQ	46.25	-1.07	0.00	56.75	46.00	46
Unico American Corp.	NDQ	10.125	-4.71	-6.90	11.00	6.00	70
Unionamerica Holdings	NYS	18.25	7.35	2.82	20.75	14.75	15
United Fire & Casualty	NDQ	35.25	5.22	0.00	40.00	27.38	11
Unitrin	NDQ	55.25	-1.78	-0.90	56.38	44.25	123
UNUM Corp.	NYS	72.625	-0.68	0.52	73.50	54.75	716
US Facilities Corp.	NYS	19.125	-2.55	-2.55	21.38	14.88	66
USF&G Corp.	NYS	21	-1.75	0.60	21.75	14.25	1368
USLIFE Corp.	NYS	32.875	-0.75	-1.13	33.50	26.88	304
Washington National	NYS	27.875	1.83	1.36	30.75	25.13	184
Zenith National Ins.	NYS	27.5	-0.90	0.46	28.88	21.13	38
Zurich Reinsurance Centr.	NYS	30.75	-4.65	-1.60	32.75	28.38	42
INSURERS/REINSURERS	AVERAGE		-0.1	-0.3			
HEALTH MAINTENANCE ORGANIZATIONS							
FHP International	NDQ	36.5	-0.68	-1.68	37.75	21.75	676
Healthsource Inc.	NYS	12.875	-3.74	-1.90	40.88	9.75	1814
Humana Inc.	NYS	19	-3.80	0.00	28.88	15.00	3819
Oxford Health Plans	NDQ	59	1.94	0.75	62.25	27.69	4860
Pacificare Health Sys.	NDQ	80	-1.84	-1.54	98.75	59.63	235
Safeguard Health Enter.	NDQ	18.25	5.80	4.29	22.50	11.25	19
Sierra Health Services	NYS	24.875	0.51	1.02	36.00	22.38	147
United Healthcare Corp.	NYS	46.5	1.36	3.33	69.00	30.00	2770
Wellpoint Health Networks	NYS	34.25	-0.72	-0.36	39.13	23.38	340
HMOs	AVERAGE		-0.1	0.4			
ALL COMPANIES	AVERAGE		-0.2	-0.1			

Top advancing issues: Gainsco Inc., Mutual Risk Mgmt. Ltd., Nobel Insurance Ltd. Leading decliners: Kaye Group Inc., Safeguard Health Enter., Capsure Holdings Corp. Most active issue: Travelers Corp. The BI Index fell 0.2%; the Dow Jones 30 Industrials fell 0.3%; the S&P 500 decreased 1.2% and the NYSE Composite lost 1.0%. Average P/E: Brokers, 15.2; Insurers/reinsurers, 31.7; HMOs, 33.8.

System design: Nordby International Inc.

A Web Can Be A Trap...Or An Avenue To Success



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The world is changing at a rapid speed so we continue to strive to not only keep pace, but stay ahead. We are even equipped to review limited submissions via our *Internet* home page.

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