

Business Insurance

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New Jersey sues ex-officials of failed Mutual Benefit Life

TRENTON, N.J.—New Jersey regulators are suing many former directors and officers of Mutual Benefit Life Insurance Co., as well as auditor Ernst & Young, blaming their alleged negligence and breach of fiduciary duties for the insurer's 1991 failure.

The suit, filed Thursday in state Superior Court, seeks unspecified damages. It claims a few "insiders" put company money into many risky ventures, mainly in commercial real estate, that "both on their face and after reasonable scrutiny, were inappro-

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Insurers battling increasing claims from lead paint

By JOANNE WOJCIK

Property owners and lenders are facing a looming liability threat from lead-based paint, which is found in more than 70% of all U.S. dwellings.

Most of the thousands of lead poisoning lawsuits now pending are directed at residential property owners, but the exposure is expected to shift to lenders if property owners default under the weight of lead paint liability claims. Statutes of limitation bar most suits against the paint manufacturers.

Few of these suits—which so far are concentrated in the East—actually make it to trial, but settlements average about \$500,000 for each person injured by low-level exposure to lead.

Anticipating the potential costs, insurers are stridently fighting claims from defendants and are specifically excluding coverage in current policies for lead-in-place claims. Such exclusions generally have been upheld in court, though some older policies contain no such exclusions.

Poisoning from lead paint is no longer considered an afflict-

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A third wave of asbestos litigation is seen on the horizon. Page 6

Few flood losses insured

U.S. insurers escape getting soaked by another catastrophe

By MEG FLETCHER and MARY E. PFLUM

Swollen by continued rainfall, Ol' Man River continues to knock at the doors of thousands of shopkeepers, farmers and homeowners in the upper Mississippi River Valley.

But commercial insurers won't be taking a bath in the Mississippi's muddy waters.

While economic losses to property and crops in the affected region are expected to reach into the billions of dollars, only a small fraction of those losses will be insured. And, farmers and homeowners that do have coverage are primarily insured by federal programs.

In fact, commercial insurers estimate \$100 million in weather

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A store owner surveys flooding in downtown Davenport, Iowa.

Coalitions agree Superfund in need of an overhaul

By MARK A. HOFMANN

WASHINGTON—Businesses and insurers seeking Superfund reform agree on at least one point: The worst that could happen is nothing at all, with the controversial law reauthorized in its current form.

As a result, in Washington—where the chief private-sector growth industry is trade associations and coalitions—it seems there's a business coalition behind every proposal to reform Superfund.

The reforms being discussed include eliminating retroactive liability for actions taken before the mid-1980s, modifying the system of joint and several liability, overhauling the way cleanups are financed and re-examining the cleanup standards imposed by the Environmental Protection Agency (EPA, June 21).

Environmental groups have not yet set up Superfund lobbying coalitions.

Superfund is widely criticized for wasting too much money on legal and administrative costs and not spending enough on cleanups. One recent study found

that such transaction costs eat up 88% of what insurers spend on environmental claims (BI, May 4, 1992).

"Our sense is very few people think Superfund works well," said Mike McGavick, director of the American Insurance Assn.'s Superfund Improvement Project.

Yet other issues, like national health care reform, threaten to overshadow Superfund reform.

"This town is choking on change. They know Superfund doesn't work, but when can they fit reform in?" said Dennis E. Eckart, a former Ohio congressman who now serves as a consultant to the AIA's Superfund Improvement Project.

"It's going to be tough to elbow any other major issue onto the stage" with the budget and health care reform dominating congressional attention, said Mr. Eckart, one of the authors of the 1986 Superfund reauthorization.

Coalitions designed to keep the focus on reform are gearing up for the upcoming congressional debate. Right now, most of their time is spent turning out studies and issuing position papers

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SUPERFUND LOBBYING: SOME EARLY PLAYERS

NATIONAL ENVIRONMENTAL TRUST FUND

Funded by AIG, other insurers; range of businesses

Favors replacing retroactive liability with broad-based trust fund.

SUPERFUND IMPROVEMENT PROJECT

American Insurance Assn. members, CNA

Favors broad reform but endorses no specific legislation yet.

COALITION FOR SUPERFUND

Dow, AT&T, Chrysler, GE, other businesses; Aetna, Hartford, Travelers, other insurers

Favors speeding up cleanups, easing remediation requirements, examining financing alternatives.

HAZARDOUS WASTE CLEANUP PROJECT

Trade groups representing automakers, chemical firms, electronics, others; AIA

Favors more efficient and cost-effective cleanup methods.



GRAPHIC BY CHRIS ROY

Containing high cost of problem births

SNET sees savings from prenatal wellness

By CHRISTINE WOOLSEY

Baby A was born on April 14, 1992, at 24 weeks gestation—approximately four months premature. At birth, Baby A weighed 1½ pounds, the equivalent of six sticks of butter. His skin was transparent. He was too fragile to be held, but if he could have been picked up, he would have fit perfectly in the palm of his parent's hand.

Medical care during a premature baby's first year of life can top \$1 million. And, many low-birth-weight babies suffer complications requiring expensive ongoing medical or special education needs.

Medical care for Baby A cost Southern New England Telephone Co. only \$289,000 during 1992. He spent 78 days in the hospital, after which he was released at a fighting weight of 5 pounds, 8 ounces. His future medical needs are yet to be determined.

The story of Baby A illustrates why New Haven, Conn.-based SNET became the first Bell unit in the nation to roll out a prenatal wellness program.

However, convincing senior management to buy into the pro-

gram wasn't easy.

"Our top corporate executives are almost all male, in their early 50s and have grown children," said Linda Stephenson, manager of health and welfare benefits at SNET. "How did we convince them babies are important? Let's just say, money talks."

The self-insured telephone company spent about \$65 million on medical benefits in 1992. "We told our officers that by putting in some wellness programs, we could decrease that," Ms. Stephenson said during a two-day conference on maternal and child health last month in New York.

Preventing premature babies and other complications at birth can save employers—and the nation—a lot of money.

According to the U.S. Public Health Service, every normal delivery that results from better prenatal care saves an average of \$21,000 in hospital costs during the neonatal period alone.

And according to a 1992 report by CIGNA Corp., employers in 1989 paid an estimated \$5.6 billion in health care costs associated with poor birth outcomes.

For many corporations, childbirth-related expenses are the largest single component of

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Update

Mutual Benefit officials sued

Continued from previous page

private." Mutual Benefit's holdings included several now defunct South Florida entertainment and condominium developments.

Named insiders include a former chairman, Henry Kates, and Ted Simmons, former vice chairman and board member. The suit also names as a defendant Leon Hess, an outside director who owns Hess Oil Co. and the New York Jets, and Sen. Christopher Bond, R-Mo.

New Jersey regulators charge that from the late 1970s through 1991, heavy real estate investments left the insurer overexposed to an economic downturn. Mutual Benefit said that for several years it had directors and officers liability insurance with \$20 million in limits from Chubb Corp.

"Engaging in such risky, speculative investments was particularly egregious (for) a mutual company that did not have stockholders with a strong motivation to watch over management," said Robert Ritter of Cole, Schotz, Bernstein, Meisel & Forman, a Hackensack-based law firm representing the state.

Mutual Benefit declined to comment on the lawsuit.

Meanwhile, a New Jersey state judge has indefinitely postponed ruling on a proposed Mutual Benefit bailout plan (BI, Aug. 10, 1992).

Pennsylvania work comp law

HARRISBURG, Pa.—A workers compensation reform law signed last week by Lt. Gov. Mark Singel caps medical benefits, establishes loss-cost rating and prevents injured workers from simultaneously collecting workers comp and unemployment benefits.

The package, which generated moderate support from employers and insurers, caps medical benefits at 113% of the Medicare rate. The law, effective Sept. 1, creates a loss-cost rating system and allows employers to select the physicians an injured worker must see for the first 30 days of treatment.

In addition, the law contains an unemployment compensation offset, under which injured workers are prohibited from collecting unemployment benefits and workers comp benefits while off the job.

The law, which was approved by the state Senate and House last month, culminates more than two years of negotiations over workers comp reform in Pennsylvania.

"The (law) incorporates many of the reforms AIA has promoted since 1991, but it is not as complete as insurers would have liked," said Taylor Cosby, Mid-Atlantic vp for the American Insurance Assn.

Hurricane Calvin hits Mexico

ACAPULCO, Mexico—Hurricane Calvin pummeled Mexico's Pacific coast last week, bringing 100 mph winds and heavy rains that caused flooding, mudslides and power outages to several resort cities.

Estimates of insured damages were unavailable, but there were no reports that any major Acapulco hotels closed their doors or suffered major damage, according to J.D. Dawson, president of Dawson y Correa, a brokerage with offices in Mexico City and Irving, Texas.

The storm sank boats, washed homes into the ocean and uprooted trees as it swept northwest along the coast through the resort cities of Acapulco, Puerto Angel, Puerto Escondido and Puerto Vallarta.

At least 28 people died in storm-related accidents, according to government reports.

Home threatened with big fine

TALLAHASSEE, Fla.—The Florida Department of Insurance is threatening Home Indemnity Co. with up to \$400 million in fines to stop it from non-renewing 20,000 homeowners insurance policies in the state.

Home is being fined \$20,000 per policy, the first fines levied by the department under a new state law freezing homeowners policies until November. The moratorium is designed to stabilize the market for the first three months of the hurricane season. Most insurers "have reluctantly gone along with the necessary moratorium," said Insurance Commissioner Tom Gallagher.

A Home spokesman said the company notified the department in October 1991—one year before Hurricane Andrew—that it was withdrawing nationally from the personal lines market to concentrate on commercial risks. From May 1 until last week, the company did not renew 3,000 mobile home and individual homeowners policies.

Jury finds CNA libeled doctor

HOUSTON—CNA Insurance Cos. was ordered to pay \$11.4 million, half of it in punitive damages, after a state court jury found that CNA employees libeled and slandered an orthopedic surgeon by spreading rumors of drug use.

In a 1989 suit, Dr. Eric Scheffey charged that Chicago-based CNA conspired with other insurance companies, lawyers, doctors and news organizations to ruin his practice.

In a retrial of that suit, the jury on June 18 awarded \$4.99 million to compensate him for damage to his past business relationships and \$713,000 for damage to prospective relationships. An earlier \$34 million award was overturned on appeal in 1992.

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Errors & omissions

• Average trend rates at Aetna Health Plans are in the upper teens for indemnity plans, 9% to 12% for HMOs, middle teens for PPOs and 12% to the lower teens for point-of-service plans. A story in the June 21 issue incorrectly reported these figures as average premium increases, which were not described by Charles T. Bell, senior vp-finance and risk management.

City's early retirement offer proves too good to pass up

By MARY E. PFLUM

HARTFORD, Conn.—City employees are taking early retirement benefits and running, leaving key city posts vacant and touching off a panic in this recession-hit municipality.

Last month, Hartford Mayor Carrie Saxon Perry signed into law an early retirement program designed to cut some 200 jobs and reduce the city budget by about \$2 million per year starting in 1993-1994.

The sweetened retirement offer touched off an unforeseen "brain

drain." Veteran employees in the police, health, personnel, parks and treasury departments are vacating slots that city officials contend are impossible to fill. Among those planning to leave are the police chief, labor negotiators and health directors.

Nevertheless, some city officials say the plan will ultimately revitalize the city's workforce.

About 220 city employees—including those in the city's supervisors' union—were offered the early retirement package. While workers have until the end of this month to make a decision,

many more than the roughly half of eligible employees that the city expected to accept the offer are planning to take it.

To encourage employees to retire, the city is offering eligible workers five years of free health insurance, including dependent coverage, and five years of pension cost-of-living increases. Hartford is also extending full retirement benefits to employees with five years' less service than is normally required for early retirement.

Normally, city employees must

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Dow Corning sues 73 insurers

Coverage denial for breast implant claims spurs massive suit

By JOANNE WOJCIC

LOS ANGELES—Defending thousands of silicone breast implant lawsuits alleging continuous injury, Dow Corning Corp. is suing 73 of its liability insurers whose policies date back to 1962, the first year Dow Corning manufactured and sold the devices.

The combined limits of coverage at issue total \$3.48 billion.

In its June 30 suit, Dow Corning says the insurers have stopped paying for defense and settlement

of breast implant claims.

Until 1991, Dow Corning's primary and first excess liability insurers had been paying implant claims based on the date the implant ruptured.

However, "the nature of the claims changed, with plaintiffs alleging a continuous, insidious disease," said John P. Olson, a partner with Hufstetler, Kaus & Ettinger in Los Angeles, who is representing Dow Corning.

"The change occurred about the time of the Hopkins verdict and

when the FDA hearings began," he said, referring to a 1991 award in a breast implant case in San Francisco and the Food and Drug Administration inquiry into the safety of implants.

With the changing nature of the damages alleged, insurers stopped paying claims, Mr. Olson said. Dow Corning and its primary and first layer excess insurers have not been able to resolve the coverage trigger issue, and as a result Dow Corning has sued all its insurers between

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Experts offer tips for detecting fraudulent schemes

Spotting insurance con artists

By DOUGLAS McLEOD

CHICAGO—It may not be easy, but international insurance con artists can be identified and the money they steal can be traced and recovered, a fraud expert says.

Con artists may cover their tracks using elaborate networks of shell companies and other techniques, but technology is making it easier for investigators to see through schemes and find hidden assets, according to Ed-

mund J. Pankau, chief executive officer of Intertect Inc. of Houston, a financial investigations firm.

"There is one way to do this kind of work: it is to investigate people, not companies," Mr. Pankau told an audience at a meeting of the International Assn. of Insurance Fraud Agencies Inc. in Chicago last month.

"Companies do not do good or bad. People do bad and they have a past... The very same people that did (savings and loan) fraud

or stock fraud went on to bank fraud and today are doing insurance fraud and pension fraud.

"These people rarely get convicted of criminal acts," Mr. Pankau added. "They know the law, they know the line and they use international boundaries as an extra layer of skin. The more layers they create, the more you have to peel back to get to them."

Mr. Pankau offered his own set of "rules" for identifying poten-

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Directory of 401(k) plan administrators coming up

Business Insurance will publish its fifth annual directory of 401(k) plan administrators in the Sept. 6 issue.

Companies that provide enrollment services, daily maintenance of participants' accounts, account manipulation and similar services are eligible to be listed. A company must offer 401(k) plan services directly to employers on an unbundled basis, but companies do not necessarily

have to be responsible for investment management to be included.

There is no charge to be listed; however, to be included, 401(k) plan administrators must complete a questionnaire provided by Business Insurance. To receive one, please contact Directory Editor Kathy Welyki at 312-649-5279.

The deadline for returning questionnaires is July 26.

Inside

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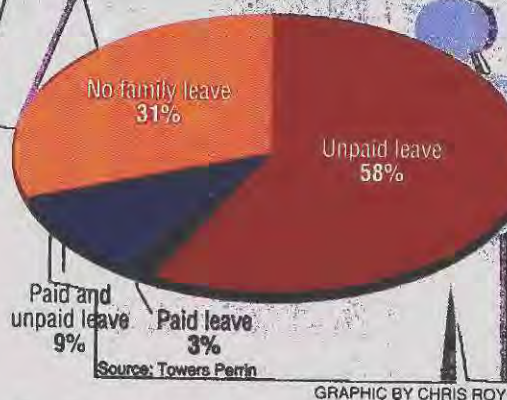
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Employers ahead of family leave law: Poll

By MARY E. PFLUM

What's the big deal

Seven of 10 companies already offer family leave of some sort, well before a federal mandate takes effect.



With the national Family and Medical Leave Act scheduled to take effect in just a few weeks, a new study suggests that most employers already have family-leave programs and the new legislation will not create the stir some smaller employers had anticipated.

The Towers Perrin study, which drew responses from 701 employers in 44 states, found that 70% of survey respondents already offer some form of family leave.

Of that group, 58% offer unpaid family leave, while 9% offer both paid and unpaid family leave. About 3% offer paid family leave only.

Only 30% of the surveyed companies have yet to establish a family-leave program.

"What these results show is that many employers already go well beyond what the new law requires," said Margaret Regan, a Towers Perrin principal in New York and regional practice

leader for human resource management. "Over half of the respondents who already provide family leave offer as much or more leave time than the new federal law requires."

The law, which takes effect Aug. 6, will require companies employing 50 or more workers to, among other things, provide employees with up to 12 weeks of family leave each year and continue employer-subsidized health coverage throughout the leave (BI, Feb. 8).

The study found that although 85% of companies with such policies already in place will be affected in some way by the new federal law, corporate America is not expected to suffer financially as a result of the legislation.

For example, less than 25% of employers surveyed expect that complying with the new law will pose significant additional costs or administrative burdens. Compliance costs and administrative burdens are expected to be insignificant despite the fact that the law will require about one-half of the sur-

vey group to offer leave to part-time employees for the first time and 36% of respondents to offer more weeks of leave than they currently offer.

Additionally, 90% of respondents with established family-leave programs reported that existing program costs have not been significant, even though 69% of those employers already subsidize health coverage for employees on leave—a key requirement of the new law.

"The financial scare concerning the law has been just that—a scare," Ms. Regan said.

"But it is true that not everyone is thrilled by the new law and that smaller businesses will be harder hit," she added.

According to Ms. Regan, businesses with fewer employees will suffer more by the temporary absences of key staff members. Large companies, on the other hand, can cover for the absences of workers through minor personnel

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Lloyd's critics lose steam

But poor EGM turnout doesn't stop acrimonious debate

By STACY SHAPIRO

LONDON—The public relations battle that disgruntled members of Lloyd's of London are waging against the establishment may have lost its momentum at last week's extraordinary general meeting.

Having heard it all before, nearly all of Lloyd's 30,000 voting members chose to stay away from the July 5 meeting, which was called in response to a petition-drive by one of the market's most vocal dissidents, Claude Gurney. Only about 600 external members and 500 working members attended the 2½-hour meeting in the Lloyd's building.

Last year, a similar EGM that also was called by Mr. Gurney, who had sought a vote of no confidence in the market's leaders, attracted 2,500 people and lasted nearly six hours (BI, Aug. 3, 1992).

All members, though, will vote by a postal ballot on three resolutions that were proposed and debated at last week's meeting.

Two resolutions were originally proposed by Mr. Gurney:

'We do not need extraordinary general meetings now. We need satisfactory solutions.'

Neil Shaw

One seeks to make Lloyd's and its executives liable for breaches of fiduciary duties to members; another seeks contributions from corporate investors that could help alleviate current members' problems.

A third resolution expresses confidence in Lloyd's business plan.

Votes on the resolutions will be

tallied by Aug. 10.

Many prominent Lloyd's members who did attend viewed the exercise as a waste of valuable time that Lloyd's could better spend turning itself around.

"We do not need extraordinary general meetings now," summed up Neil Shaw, chairman of the Assn. of Lloyd's Members. "We need satisfactory solutions."

As soon as debate on the proposed resolutions began, it was nearly derailed by Mr. Gurney's derogatory statements about Lloyd's Council members, which prompted angry responses from several people at the meeting.

Mr. Gurney had proposed a resolution that Lloyd's, its staff and the Lloyd's Council owe a fiduciary duty of care to members and should not be immune from liability, as they now are.

A British court ruled last year that Lloyd's does not owe a duty of care to its membership, and the Council is immune from prosecution by any member under Lloyd's Act 1982, except for bad faith.

Lloyd's Council member Peter

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Disability advocate giving Texas firms ADA wake-up call

By SALLY ROBERTS

AUSTIN, Texas—Employers in Texas that are not in compliance with the Americans with Disabilities Act may find themselves in court, thanks to a summer-long litigation campaign being waged by a disability-rights group.

In response to a number of discrimination complaints and a government report that concludes Texas employers are one of the largest groups of "non-compliers" in the country, Advocacy Inc. is setting its hooks in Texas businesses that it contends are not in compliance with the federal law and reeling them into court.

"There is no reason why businesses and public facilities throughout Texas should not be in compliance with the (ADA)," said Jim Harrington, regional litigation attorney for Advocacy, an Austin-based non-profit organization with 11 staff attorneys working on the project. The provisions of the ADA have been in effect for many employers since July 1992.

Since the campaign was launched on June 10, the group has filed lawsuits in state and federal courts against 15 employers, alleging violations of the employment, public services and public accommodations provisions of the act, Mr. Harrington said. An estimated 60 complaints are expected to be filed before Sept. 9. After that date, the group will evaluate the possibility of extending the effort.

An additional 75 employers have received "demand letters"

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Caution urged in use of drug formularies

By MICHAEL SCHACHNER

Methods of controlling prescription drug expenses, particularly formularies and therapeutic substitution, may lead to inadequate, adverse and unpredictable responses in minority patients, according to a new study by a drug industry trade group.

The National Pharmaceutical Council, in a report titled "Ethnic & Racial Differences in Responses to Medicines," asserts that extensive research conducted over the past 15 years clearly demonstrates that drug metabolism in ethnic and racial minorities differs greatly.

As a result, prescription drug cost management programs that dictate what drug or drugs must be prescribed for certain conditions are either wholly inappropriate or at least need to be broadened so rational drugs and dosages are made available to all patients, regardless of race or

ethnic origin, the report contends.

Richard Levy, vp-scientific affairs with the Reston, Va.-based NPC and author of the report released last month, said pharmacogenetic research begun in the 1970s has uncovered significant differences among racial and ethnic groups in metabolism rates, clinical drug responses and side effects.

For example, studies have consistently shown that Asian patients have a more difficult time metabolizing painkillers like codeine than do Caucasians. Asians have also demonstrated that they need much smaller dosages of antidepressants than whites for a desired clinical response.

In other case studies, Jews of European descent have displayed an approximate 20% susceptibility to the blood disorder agranulocytosis when taking schizophrenia drugs containing the

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Employers promoting use of generics: Study

By GAVIN SOUTER

More than half of the nation's employers offer financial incentives to encourage employees to use generic drugs instead of brand-name drugs in an effort to curb health care costs, according to a survey of benefit specialists.

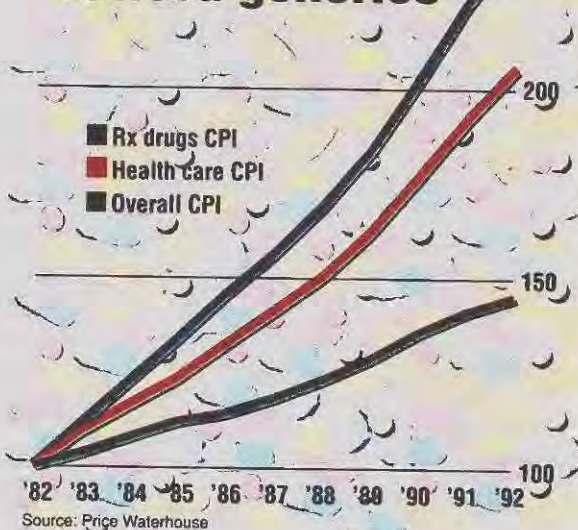
The push toward generic drugs follows an increase in the proportion of health care costs attributable to prescription drugs, most of the 620 survey respondents said.

Other attempts to reduce the cost of prescription drugs include using an approved list of drugs and reducing administrative costs, according to the survey.

"Rising prescription drug prices have become a growing concern for employee benefit managers," says the commentary to the survey released last month by the International Society of Certified

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Behind the push toward generics



Dow Corning

Continued from page 2
1961 and 1986 seeking a determination of its coverage, he explained.

The oldest primary policy listed in the suit dates back to 1963, while the oldest excess policy dates to 1962.

Dow Corning's dispute with its insurers is reminiscent of asbestos producers' litigation with their insurers over coverage for asbestos claims. In the broadest coverage rulings, courts have found coverage available from policies in effect from the time of a plaintiff's first exposure to asbestos until his death.

In the suit filed June 30 in Los Angeles Superior Court, Dow Corning accuses the primary and excess insurers of breach of contract and bad faith in refusing to defend and pay claims related to

silicone gel breast implants and other silicone medical devices made by Dow Corning and its Dow Corning Wright Corp. subsidiary.

In addition to seeking indemnification for settlements, awards and defense costs in underlying bodily injury claims, the company is seeking punitive damages for "willful, malicious and oppressive" conduct.

More than 6,000 bodily injury lawsuits are pending against Dow Corning and/or the subsidiary, and more than 750 of them are in California, according to the suit.

"The claims allege damages well into the millions of dollars," and Dow Corning/Wright expect more such indemnity claims to be brought in the future, the suit states.

Two juries already have rendered multimillion dollar awards

in breast implant suits against Midland, Mich.-based Dow Corning.

• In 1991, a federal court jury in San Francisco awarded \$7.34 million to a woman whose implant had ruptured and caused an immune system disease (BI, Dec. 23, 1991). The award is on appeal in the 9th Circuit.

• *Stern vs. Dow Corning*, also in San Francisco federal court, which was settled in 1986 for \$1.71 million.

Other manufacturers, distributors, hospitals, physicians and surgeons also have sued, seeking to recoup expenses from similar claims.

For example, Mentor Corp., which also makes implants, has sued Dow Corning, which supplied the silicone gel used in Mentor implants. Mentor, which is in coverage negotiations itself, filed the claim against Dow

Corning as part of a \$24 million mass settlement with implant victims earlier this year.

Dow Corning disclosed last year that it has \$250 million in claims-made commercial general liability coverage to respond to the mounting breast implant claims (BI, March 9, 1992). However, that was the company's coverage in 1992 alone.

The announcement was made after Corning Inc. stock plunged in response to the disclosure of documents suggesting that the company may have rushed a new breast implant product to market without sufficient safety tests.

The company withdrew from the breast implant business in early 1992 after the Food and Drug Administration restricted their use to controlled clinical studies.

Dow Corning also took a \$45 million pretax charge for ex-

penses related to the breast implant issue in the second quarter of 1992 (BI, Aug. 3, 1992).

Insurers contacted by *Business Insurance* declined to comment on either the suit or their reasons for denying coverage.

Among the insurers named in the suit are:

• American Surety Co., which provided primary general liability and product liability coverage when the company began commercial production of the gel implants from Jan. 1, 1963 to Jan. 1, 1964. American Surety later merged with Transamerica Insurance Co.

• Transamerica, which provided primary coverage between 1965 and 1967.

• Aetna Casualty & Surety Co., 1968 to 1971.

• Hartford Accident & Indemnity Co., 1972 to 1988.

• Zurich-American Insurance Group, which provided coverage from 1989 to the present.

From 1964 to 1985, the policies were written on an occurrence basis on standard Insurance Services Office Inc. forms. After 1985, the policies were issued on a claims-made basis.

The other insurers named in the suit are:

AIU Insurance Co.; Allianz Insurance Co.; Allianz Versicherungs A.G.; American Bankers Insurance Co. of Florida; American Centennial Insurance Co.; American Home Assurance Co.; American Manufacturers Mutual Insurance Co.; American Reinsurance Co.; American Surety Co. of New York; Arab Insurance Group (BSC); Argonaut Insurance Co.; Associated International Insurance Co.; Birmingham Fire Insurance Co. of Pennsylvania; Boston Old Colony Insurance Co.; California Union Insurance Co.; Centaur Insurance Co.; Centennial Insurance Co.; Central National Insurance Co. of Omaha; "certain underwriters at Lloyd's of London and London market entities"; CIGNA Property & Casualty Co.; Continental Casualty Co.; Dorintal Reinsurance Ltd.; Employers Insurance of Wausau; Employers Mutual Casualty Co.; European Cos.; European General Reinsurance Co.; Excess Insurance Co.; Federal Insurance Co.; First State Insurance Co.; First State Underwriters Agency of New England Reinsurance Corp.; Gibraltar Casualty Co.; Granite State Insurance Co.; Greenwich Insurance Co., formerly known as Harbor Insurance Co.; Haftpflichtverband der Deutschen Industrie; Highlands Insurance Co.; Home Insurance Co.; Inseo Ltd.; Insurance Co. of Florida; Insurance Co. of North America; Insurance Co. of the state of Pennsylvania; International Insurance Co.; International Surplus Lines Insurance Co.; Interstate Fire & Casualty Co.; Lexington Insurance Co.; Lumbermen's Mutual Casualty Co.; Manhattan Fire & Marine Insurance Co.; Mutual Fire, Marine & Inland Insurance Co.; National Casualty Co.; National Union Fire Insurance Co. of Pittsburgh, Pa.; Northbrook Insurance Co.; Northbrook Excess & Surplus Insurance Co.; North River Insurance Co.; N.V. Rotterdamse Assurantie; Pacific Employers Insurance Co.; Prudential Reinsurance Co.; Puritan Insurance Co.; Republic Insurance Co.; Royale Belge, I.R.; Royal Indemnity Co.; Safety National Casualty Corp., formerly known as Safety Mutual Casualty Corp.; St. Paul Mercury Insurance Co.; Seguros La Commercial; Stonewall Insurance Co.; Swiss Reinsurance Co.; Transamerica Premier Insurance Co.; Twin City Fire Insurance Co.; Unigard Security Insurance Co., formerly known as Unigard Mutual Insurance Co.; Unione Italiana Reinsurance Co. of America; and U.S. Fire Insurance Co.

Guaranty funds in California, Michigan and Texas were also named in the suit as successors to 13 insolvent carriers: Bercanus Insurance Co. Ltd.; Canadian Universal Insurance Co.; Colonial Assurance Co.; Ideal Mutual Insurance Co.; Integrity Insurance Co.; Midland Insurance Co.; Mission Insurance Co.; Mission National Insurance Co.; Pine Top Insurance Co.; Reserve Insurance Co.; Southern American Insurance Co.; Transit Casualty Co.; and Transport Indemnity Co. **BI**

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Lead paint

Continued from page 1
tion limited to poor areas.

"It's a myth that lead contamination stems primarily from starving inner-city kids who eat paint chips," said Laurence Molloy, president of Molloy Corp., a New York environmental consulting firm.

In fact, children of all classes are poisoned when dust from lead paint pervades their indoor environment.

One reason children are attracted to the paint is that lead tastes sweet, according to Mr. Molloy, who says he runs his index finger along a window sill and then tastes it as a way to initially check for lead.

Not all experts endorse that testing method. "It's sort of like being a food taster for a medieval monarch," said John Templin, a principal scientist with Las/Crandall Inc., an environmental consulting firm in Los Angeles.

"The real problem," explained Mr. Templin, "is ambient lead dust, which is invisible. And because the lead ions are negatively charged, they have a magnetic property and tend to stick to things."

Low levels of lead ingestion—as little as 10 micrograms—can cause learning disabilities, hearing loss, hyperactivity, slowed reaction time, delayed maturation, balance problems and reduced attentiveness.

Higher levels can produce maladies as severe as kidney and liver damage, mental retardation, high blood pressure, even death.

Lead-based paint was used widely in the building boom of the 1920s, mostly as a primer coat. Although lead paint was banned in residential construction in 1978, many building contractors kept using existing stocks from supply warehouses for years afterward.

Today, lead paint is used for covering non-residential exteriors, like bridges and vehicles, according to Mr. Molloy.

Property owners have been the main target of the lead suits so far. Most claims against paint manufacturers have been dismissed either because the statute of limitations had run or because manufacturers could not be singled out, said David J. Grais, a defense lawyer specializing in lead exposures.

Some states, like Massachusetts, hold property owners strictly liable for injuries caused by lead paint in their building, said Mr. Grais of Grais & Phillips in New York.

So far, damages in lead paint cases have been based on the cost of special education and care for injured children and on the amount by which their lifetime earning power is reduced by the injury.

Settlements average about \$500,000 per child, though in a recent New York case damages amounted to \$1.7 million per child, said Robert Boydston, a partner with Gladstein & Isaac, a New York insurance defense firm.

If claims on that scale force property owners to default on mortgages, injured children would probably turn next to lenders.

For example, in the New York case, the City of New York became the defendant when it acquired the property after the original owner failed to pay property tax. That decision has been upheld on appeal.

"The Court of Claims in New York has ruled that plaintiffs can sue lenders if the owner walks away," said Mr. Boydston.

Property owners whose insurance policies do not cover lead liability are faced with the risk that even a single award could mean losing an entire property, the New York Insurance Department concluded in a June 14 opinion paper.

New York Insurance Superintendent Salvatore R. Curiale explored

requiring the state's joint property underwriting authority to write lead paint liability insurance but decided against it after public hearings earlier this year.

The department also granted exclusions for coverage of lead liability to 21 commercial insurers based on adverse loss experience.

During testimony, the Community Housing Improvement Program Inc., along with other speakers on behalf of property owners, said coverage is inadequate to cover recent settlements and awards. Even if there is no liability, defense costs can be sizable, they said.

Other speakers argued that making secured lenders liable for the lead paint in foreclosed buildings could dissipate the funding available to investors and developers.

Insurers, too, could be seriously hurt. The aggregate claims from potentially lead-poisoned children in New York alone could amount to \$100 billion, or 60% of the property/casualty insurance industry's surplus, American International Group Inc. officials testified at the New York hearing.

In response to the hazard, Congress recently expanded the testing required of housing suspected of containing lead-based paint.

And, under the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the Lead Exposure Reduction Act of 1992, full disclosure of the presence of lead-based paint in a house for sale will be required by 1994.

Other provisions covering increased medical testing, monitoring, cleanup and removal of lead-based paint will be phased in over the next three years, added Alan K. Stazer, a pollution attorney with Cummins & White in Los Angeles.

Unfortunately, removing the lead paint—which often was used as a basecoat in construction—may do more harm than good. Mr. Molloy points out that carcinogens are often used to remove lead.

Furthermore, the cost of lead abatement, estimated at \$7,500 to \$15,000 per housing unit, can be prohibitive.

Based on an estimate by the New York Rent Stabilization Assn., costs for lead abatement in New York

City alone may approach \$1 billion.

Like asbestos, lead may not necessarily present a problem if it's in place. Lead can be safely managed if it has not yet migrated to the surface, Mr. Molloy said.

But managing lead-in-place may not be as easy as managing asbestos-in-place. As many as 20 coats of latex paint may not be sufficient to seal in a basecoat that contains as little as 30% lead, he said.

Property owners and lenders can get information on abatement costs and risks from the Office of Policy Development and Research at the Department of Housing and Urban Development in Washington.

Insurers are both fighting the claims in court and including exclusions in their policies.

For example, Scottsdale Insurance Co., a surplus lines insurer formed in 1982, has specifically excluded coverage for lead contamination from its residential and commercial liability policies since 1983.

Despite the exclusion, "we have received quite a few claims," several of which are currently in litigation, said Executive Vp Vickie F.

Kartchner, who directs the specialty underwriting division.

While most insurers will initially acknowledge coverage, during discovery they may try to pass off the liability to other insurers with earlier policies that did not exclude lead poisoning, Mr. Boydston said.

In the few cases that have gone to trial, courts have denied coverage based on the pollution exclusion. But not many coverage disputes have gone to trial. "I think the carriers are frightened" of a pro-policyholder outcome, he said.

Because of continuing controversy over the effects of lead contamination, defense costs have been substantial. "It's extremely expensive litigation" based on "the amounts we've spent on defense and fact finding," said Ms. Kartchner.

Adding to the controversy is the fact that new research has prompted the Environmental Protection Agency to lower the amount of lead exposure considered to be safe.

"This isn't just a Scottsdale insurance problem or a surplus lines problem," she said. "It's an industrywide problem." **BI**

Tide of asbestos claims keeps rolling

By JOANNE WOJCIK

"Maintenance worker awarded \$1 million for asbestos exposure in New York high-rise."

"Word processor wins \$2 million asbestos injury suit against property management firm."

"Class-action suit filed by office workers claiming asbestos in place made them ill."

These fictional headlines provide a glimpse into possible future outcomes of litigation associated with a new wave of asbestos claims—those filed by thousands of people who claim injury from unexpected exposure to installed asbestos products.

While the first torrents of asbestos bodily injury claims have come from workers in shipyards and construction sites who were directly exposed to the deadly substance, this third wave could entail claims from just about anyone:

- A maintenance worker exposed to crumbling asbestos insulation around leaky water pipes.

- A secretary who is exposed to friable asbestos fibers filtering through the office air-conditioning system.

- An auto mechanic who regularly inhales microscopic asbestos fibers while changing brake pads.

So far, more than 250,000 lawsuits have been filed by individuals exposed to asbestos, and at least 200,000 more are expected to be brought by the end of the decade, according to the Asbestos Litigation Information Bureau of Rockville Centre, N.Y.

"Asbestos litigation is no longer just an 'impending disaster' of national proportions," according to Ray Schumack, executive director of the bureau, which was established by Keene Corp., a former asbestos manufacturer facing 98,000 asbestos-related claims. "With 17 companies bankrupted so far, thousands of American jobs destroyed and, most shamefully, sick people now receiving only five cents to 10 cents of every dollar spent—the disaster has arrived!"

Indeed, the failure of many asbestos producers could trigger a landslide of asbestos bodily injury claims against building owners and property management firms as claimants seek the deepest pockets.

After finding "there's a finite reserve of funds available by suing manufacturers, the plaintiffs' bar will soon be looking for other deep

pockets" to tap, predicts Warren Hart, managing director of Polaris Management Co., a Stamford, Conn., firm that has developed a new asbestos liability insurance program.

Polaris Asbestos Insurance Corp., a risk retention group formed in 1992 and domiciled in Colorado, is one of a handful of liability insurers currently providing coverage to building owners and managers for third-party claims stemming from maintaining asbestos in place. It provides limits of \$2 million per occurrence and \$6 million annual aggregate on a per building basis.

Another asbestos-in-place coverage program is available through ERIC Group Inc. of Englewood, Colo. The program, launched last year, provides limits of \$1 million per incident/\$5 million aggregate on an occurrence basis. ERIC Group has been providing asbestos abatement coverage since 1989.

The ERIC program, insured by North American Specialty Insurance Co. and reinsured by North American Reinsurance Corp., both units of Swiss Reinsurance Co., was developed after a Denver-area shopping mall was contaminated by asbestos fibers released during remodeling in 1986.

More than \$10 million of porous materials had to be destroyed after asbestos fibers spread throughout the structure via the central air-conditioning system, explained Steve Hargreaves, vp-product development at ERIC.

Today, the ERIC asbestos-in-place program would have provided the mall's owner with coverage for such third-party property damage, as well as loss-of-use claims filed by tenants whose business was interrupted by the disaster, he said.

Polaris and ERIC both have entered this market because available scientific evidence indicates that asbestos in a non-friable state can safely remain in place.

"Even the EPA has taken the posture that managing asbestos in place can sometimes be better than removing it," said Polaris' Mr. Hart.

After several years of removing asbestos from public schools, the federal government found that the difference in the level of detectable asbestos between buildings in which asbestos had been removed and those in which it was maintained was "negligible, or sometimes worse," according to Laurence Molloy, president of environmental con-

sultant Molloy Corp. in New York.

Even where asbestos has been removed, there is residual exposure, Mr. Hargreaves said. "Completely removing asbestos from a building would be like getting all the dust particles out of your house."

The basic precepts for managing asbestos in place are outlined in the U.S. Environmental Protection Agency's so-called "Green Book." Published in 1990, the green-bound volume is actually titled "Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs for Asbestos-Containing Materials."

In response to the EPA guidelines, numerous environmental consultants have begun advising building owners and property managers how to safely maintain asbestos, much of which was installed during the 1950s and 1960s.

And there is no shortage of a market for their services. The Energy Department estimates the number of public and commercial buildings with asbestos in place at about 500,000.

While some insurers' risk management consulting arms have jumped into the act by offering services to help building owners and property managers trying to mitigate their asbestos liability exposures, few, if any, are willing to underwrite coverage indemnifying them for any asbestos-in-place claims.

Instead, "most property policies issued today contain asbestos exclusions," according to Jim Otto, a pollution attorney with Cummins & White in Los Angeles.

In addition, the pollution exclusion contained in commercial general liability policies specifically excludes coverage for third-party asbestos claims, he added.

"There hasn't been any coverage (for asbestos) since the late 1970s, when specific asbestos exclusions were added to CGL policies," concurred Polaris' Mr. Hart. As a result, U.S. building owners with asbestos in place have been forced to "stand there bare as a newborn babe."

But the need for some kind of protection is becoming increasingly evident, Mr. Hart said.

"The third wave, affecting maintenance and custodial workers, tradespeople, passive occupants and owners of asbestos-containing property, is just beginning," he said.

The "watershed" case came in 1988 when an Ohio district court awarded Geraldine Layne, a word

processor who was diagnosed with mesothelioma after working 12 years in a government building that contained asbestos, \$400,000 from asbestos manufacturer GAF Corp. Other defendants settled before trial.

Naming numerous defendants is "typical" in these third-wave asbestos injury claims because "tradespeople tend to be involved in many, many properties during their work life," Mr. Hart explained.

"When they suffer an asbestos-related disease, they will attack the owners of all properties in which they performed their job, often without regard for whether the building even has asbestos," he said.

Although the owners of most of the buildings targeted in such third-wave claims eventually will be exonerated, many may end up paying a settlement and/or significant defense costs, he said.

Because risk transfer is not always available, building owners and property managers need to adopt a strict risk management program that includes identifying asbestos that must be removed and managing asbestos that can remain safely in place, consultants agree.

"You've got to know exactly where your asbestos is," said Mr. Hargreaves of ERIC, which, like Polaris, requires an asbestos survey prior to binding coverage.

In addition, building maintenance workers should be trained in the use of protective equipment, the procedures for handling asbestos in place and health hazards associated with the fiber, according to John Templin, a principal scientist with Law/Crandall Inc., an environmental consultant based in Los Angeles.

"It's rather impractical to operate a large building without having someone on staff perform operations on parts of the building where asbestos is in place," Mr. Templin said. "It can get you in a lot of ways."

For example, "an employee may inadvertently touch the asbestos, or vibrations, accidents or preventive maintenance activities may have caused it to shake loose and fall onto the ceiling tiles," Mr. Templin suggested.

Although no loss-control program can completely shield building owners and property managers from a third-wave claim, it can help provide them with a defense by showing that a good faith effort was taken to reduce the asbestos exposure, he said. **BI**

Atlanta partners OK'd, but benefits vetoed

ATLANTA—While unmarried heterosexual and homosexual city employees in Atlanta can now officially register in domestic partnerships, they will not receive medical and dental benefits like married city employees.

Mayor Maynard H. Jackson vetoed a benefit measure late last month after City Council members voted 9-7 to permit domestic partners of city employees to receive the benefits.

"The real issue is whether the city can... throw open the money gates of city government before we know, not guess, how much it will cost... and how we will pay for the costs," Mayor Jackson said.

The estimated cost of the domestic-partner benefit program is \$2.3 million annually.

Mayor Jackson did approve establishing a registry in which any unmarried couple of the same or opposite sex could pay \$30 and sign a contract declaring their intention to remain permanent domestic partners. The partners have to prove they've shared a primary residence for at least six months, are not related, are at least 18 years old and share financial responsibilities.

Registration is expected to begin this fall.

According to a spokeswoman from the mayor's office, the mayor is hoping that after the registry is under way, a specific cost to the city can be determined and a benefit plan can be looked at more closely.

—By Sally Roberts

Benefit aid offer

SAN FRANCISCO—BankAmerica Corp. will help pay health benefits for employees in financial difficulty whose jobs disappeared as a result of its merger with Security Pacific Corp. last year.

Laid-off BankAmerica employees receive three weeks' severance pay for every year of service. If they elect to take their severance pay in installments, they can continue to receive health benefits under the active employee rate for a minimum of three months before receiving benefits under COBRA, said Bill Martens, vp and employee assistance program consultant.

A laid-off employee can receive health benefits under both programs for up to 18 months, he said.

Employees laid off as a result of the merger may receive help paying for their COBRA benefits—which can cost \$300 per month—by applying to a special private trust established by BankAmerica or to the EAP program, Mr. Martens said. So far, about 100 applications have been received and 20 have been approved, he said.

But it is too early to tell how many of the 10,000 employees who lost their positions in the merger will apply for help. "We feel the number will be quite small," since most of them have new positions at the bank or elsewhere, a BankAmerica spokeswoman said. At least 50% of the employees still work for BankAmerica, Mr. Martens pointed out.

—By Louise Kertesz

Security Pacific suit

SEATTLE—A class-action suit has been filed on behalf of 344 former Washington employees of Security Pacific Corp. charging that after its merger with BankAmerica Corp. the employees were terminated and denied benefits, including severance pay, under BankAmerica's merger transition program.

Washington state approved the

Benefit Beat

merger on condition that BankAmerica divest certain branches to West One Bank and Key Bank, and the employees were told they would be relocated there, according to the suit, which was filed June 11 in U.S. District Court for the Western District of Washington.

Although the employees did not receive benefits under the bank's merger transition program, "BankAmerica has paid MTP benefits to approximately 100 former employees in substantially similar circumstances now working for either West One Bank or Key Bank. BankAmerica's decision denying MTP benefits to the terminated employ-

ees was arbitrary, capricious, fraudulent and exercised in bad faith," the suit charges.

The suit charges that before the divestiture, BankAmerica led the employees to believe they would receive MTP benefits "to further BankAmerica's corporate goal to keep the terminated employees in place in their branches or divisions, along with the customers and revenue brought in by these terminated employees." The suit seeks a declaration that the employees are entitled to the benefits and unspecified damages.

A BankAmerica spokeswoman said, "Under our purchase agreement with Key Bank and West One, employees who did not receive severance pay and who did not take part in our merger transition pro-

gram were guaranteed an offer of a position with a purchaser.

"These offers, according to the terms of the purchase and the assumption agreement, required that employees be offered jobs essentially comparable to those at Security Pacific Bank Washington," she said. "The agreement also provided for participation in the benefits plan of the purchaser and for service credit for time worked at Security Pacific."

"The merger transition program was simply not designed to provide severance pay to individuals offered employment by acquiring institutions," she said.

—By Louise Kertesz

Warner extends benefits

BURBANK, Calif.—Warner Bros.,

a subsidiary of Time Warner Inc., will extend health insurance coverage to same-sex domestic partners effective Aug. 1.

Warner becomes the second major motion picture studio and fourth entertainment industry employer to extend domestic partner benefits. Warner joins MCA/Universal, Viacom International Inc. and Time Warner subsidiary Home Box Office in offering these benefits.

"Since our success as an entertainment company has been based on the contributions of (a) diverse population, we are pleased to recognize all our employees and to extend health benefits in this manner," said Adrienne Jeanne Gary, Warner Bros. senior vp-human resources.

—By Louise Kertesz

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Opinions

Collective voice gets heard

CAN EMPLOYERS influence the will of Congress on benefit issues?

Absolutely. There is no better evidence of that than the actions taken last month by Sen. Howard Metzenbaum.

The Senate Labor and Human Resources Committee tacked onto a tax bill an amendment proposed by Sen. Metzenbaum that would have exposed employers and their advisers to huge new penalties for violations of the Employee Retirement Income Security Act.

The amendment was a reaction by the Ohio Democrat and others to a recent Supreme Court ruling that said pension plan advisers are not liable for monetary damages to plan participants even if the advisers helped plan trustees breach their fiduciary responsibilities under ERISA (BI, June 7).

That bill, though, would have done much more damage than simply overturn *Mertens vs. Hewitt Associates*.

The proposal was highly objectionable on several grounds, not the least of which was sloppy and hasty drafting. Reading the amendment one way, it seemed that the proposal would have allowed punitive damages for certain ERISA violations. But the amendment also could have been read as not allowing punitive damages. The net result: years of litigation and uncertainty before courts gave their interpretations of the amendment.

Just as important: Why was such a far-reaching amendment—an overhaul of ERISA penalties is no small matter—attached to a massive tax bill? And why weren't hearings held to give employers a chance to comment before the Labor and Human Resources Committee voted on the proposal?

These are precisely the questions employers raised as they flooded their senators with phone calls and letters. Their message got through. Sen. Metzenbaum with-



drew his amendment, undoubtedly aware that if he hadn't, other senators—alerted to the problems of the amendment—would have voted to strip the amendment from the tax bill.

Sen. Metzenbaum has promised that any future proposal to revamp ERISA penalties will be more narrowly focused and that he will hold hearings rather than trying to ram the bill through the committee. We'll be interested to see if the senator keeps that pledge.

Nevertheless, an important lesson can be learned from the incident—one that employers should remember as the health care reform debate heats up: If employers make their voices heard on Capitol Hill, they can—and will—make a difference.

Letters

NAIC chief defends states' efforts on detecting fraud

To the editor: Rep. John Dingell may have made his point, but *Business Insurance's* June 21 editorial is way off the mark.

Well over two years ago, the National Assn. of Insurance Commissioners proposed a federal bill to make white-collar insurance fraud a federal criminal offense. We have repeatedly said since then that state and federal laws are inadequate to deal with interstate and international schemes to defraud insurance companies, deceive insurance regulators and steal from consumers.

In fact, not only does the NAIC's proposal predate Rep. Dingell's own insurance fraud bill, but it proposes much tougher penalties for con artists than does Rep. Dingell's. We hope that this weakness will be corrected as the legislation moves through Congress.

Certainly, there is a need for state and federal regulators to tighten their oversight of financial services. However, state regulation has an admirable record of consumer protection to which federal regulation would well aspire. Further, with the dramatic response of

the states to the NAIC's accreditation program to improve that regulation, the record of excellence will only get better.

The point you missed is an obvious one: State regulators have been out in front of federal regulators every step of the way. We began developing the financial standards and accreditation program before any congressional committee even began to look at insurance solvency regulation. We developed a federal insurance fraud bill

well before any member of Congress drafted one. And, of course, we started regulating the business of insurance more than 140 years ago—decades before insurance regulation appeared on the radar screens of the U.S. Congress.

Steven T. Foster
President

National Assn.
of Insurance Commissioners
Commissioner of Insurance
Commonwealth of Virginia
Richmond, Va.

Court ruling is no 'setback' for PPOs

To the editor: Your June 14 issue contained a story, "Setback for Managed Care," about a 4th U.S. Circuit Court of Appeals decision. The ruling stated that Virginia's "any willing provider" law requires the inclusion in insurer-sponsored preferred provider organizations of "providers that are willing to meet the insurer's terms and conditions."

How is this a setback? Let's imagine that an insurer wishes to establish a network where the "terms and conditions" include a payment of \$500 for an appendectomy. If the insurer calculates that five providers would be ideal but 10 are willing to comply, the only loss to the insurer is the increased short-term administrative burden.

This is offset by the long-term benefit derived by changes (or refinements) to the terms and conditions in the next contract year. These changes may call for only \$300 or \$400 for an appendec-

tomy. Fee reductions continue until the payments constitute acceptable terms and conditions only to five providers (the insurer's "ideal" number).

Who benefits from this arrangement? The insurer achieves its "ideal" number of providers; patients and employers are only paying (through their premiums) \$300 for a procedure that otherwise would be \$500; and those providers who are able to provide cost-effective, high-quality care—the very providers whom we ought to prize most highly—are rewarded with patient volume that justifies their outcomes.

Far from being a setback, the ruling in this case is a large step forward in providing some common sense to the growing quagmire that managed care entities are creating for themselves.

James J. Nugent

Associate Director-Reimbursement
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Family leave

Continued from page 3 shifts.

"But they will find ways to survive. It's important to keep in mind that there are a lot of benefits all companies will enjoy (as a result of family-leave programs)," she said.

Many of these benefits are morale-related, Ms. Regan said.

According to the study, many survey respondents stated that family leave is a low-cost benefit that provides a big employee relations payoff—especially in employee morale and loyalty and in retention of valued employees.

"The leave plan helps me attract good people, keep good people, contributes to higher productivity and boosts morale," said Ted Childs, director of workforce diversity programs for International Business Machines Corp. in New York. "I'm talking about making a lifelong investment (in employees)," he said, noting that IBM has had a family-leave program since 1956.

Mr. Childs said that, on average, it costs IBM \$12,000 to \$14,000 to train a college recruit and costs up to \$100,000 to fully train some of its employees. To lose a trained employee because he or she is not afforded adequate time to care for loved ones, he said, is to lose a costly investment of time and money.

Richard Kroon, manager of employee relations for Johnson & Johnson in New Brunswick, N.J., noted that the new family-leave law is consistent with the changing trends in society.

"When we established (our latest family-leave policy), I think we were responding to a lot of things. Things in society are changing dramatically, and, to keep people productive, we knew we were going to have to do more to help employees balance this juggling act of life," he said.

More importantly, said a spokesman for Aetna Life & Casualty Co. in Hartford, Conn., family-leave policies send out a vital message to employees that translates into dollars.

"Employees often aren't out for a very long period of time. Family leave may provide just the extra period of time they need to balance home life with work life. We want them to be very productive when they're here, but we also want them to know we understand they have a life outside of work," he said.

The spokesman added that Aetna studies have shown the company's leave policy has saved the insurer time and money related to training new employees.

Everyone stands to benefit from the family leave law, concluded Renee Migdal, a principal with Towers Perrin.

"The new law is giving employers the opportunity to think about what makes sense. This is a point where companies are taking another look at workforce needs, which will benefit everyone in the end," she said.

Free copies of the study are available from Towers Perrin by calling Joan Titus at 800-525-6741.

Getting the right people key to daycare success

But a good staff isn't cheap, study says

By DEBORAH SHALOWITZ

Staffs can make or break a corporate-sponsored child care center, warns a new study.

Company-sponsored centers can often attract and retain well-qualified staff members more readily than other daycare centers, but the price is high.

In fact, good staff wages and benefits are one of the four staff-related indicators of quality cited in the study by Catalyst, a New York-based non-profit group that focuses on women's issues.

The other indicators are:

- Staffing patterns including the adult-to-child ratio, group sizes, and staff schedules and turnover.

- Credentials including education and ongoing training.

- An educational plan or philosophy that improves teaching.

Corporate facilities fare well in some of those areas—and poorly in others.

Of those corporate facilities that provided Catalyst with information about adult-infant ratios, 97% either met or exceeded the adult-to-infant ratio of 1-to-3 or 1-to-4 recommended by the National Assn. for the Education of Young Children.

But far fewer centers, 71%, met or exceeded the 1-to-3 to 1-to-5 ratio recommended for toddlers.

And, among centers that provided information, 40% had groups larger than the eight-infant maximum recommended by the NAEYC.

Corporations pay their daycare staffers much better than other

child care centers, the survey found.

Earlier research found that hourly wages in 1990 averaged \$7.49 for all care centers. Yet Catalyst found a \$10 average at corporate centers. Some 84% of the centers that provided wage information paid more than \$7.49 per hour.

On average, the corporate-sponsored child care centers devoted 74% of operating budget to staff, compared with the minimum of 60% recommended by the National Child Care Staffing Study.

"When a company establishes a child care center for its employees, it wants high quality and that requires an investment of time and money," said Marcia Brumit Kropf, Catalyst's director of research.

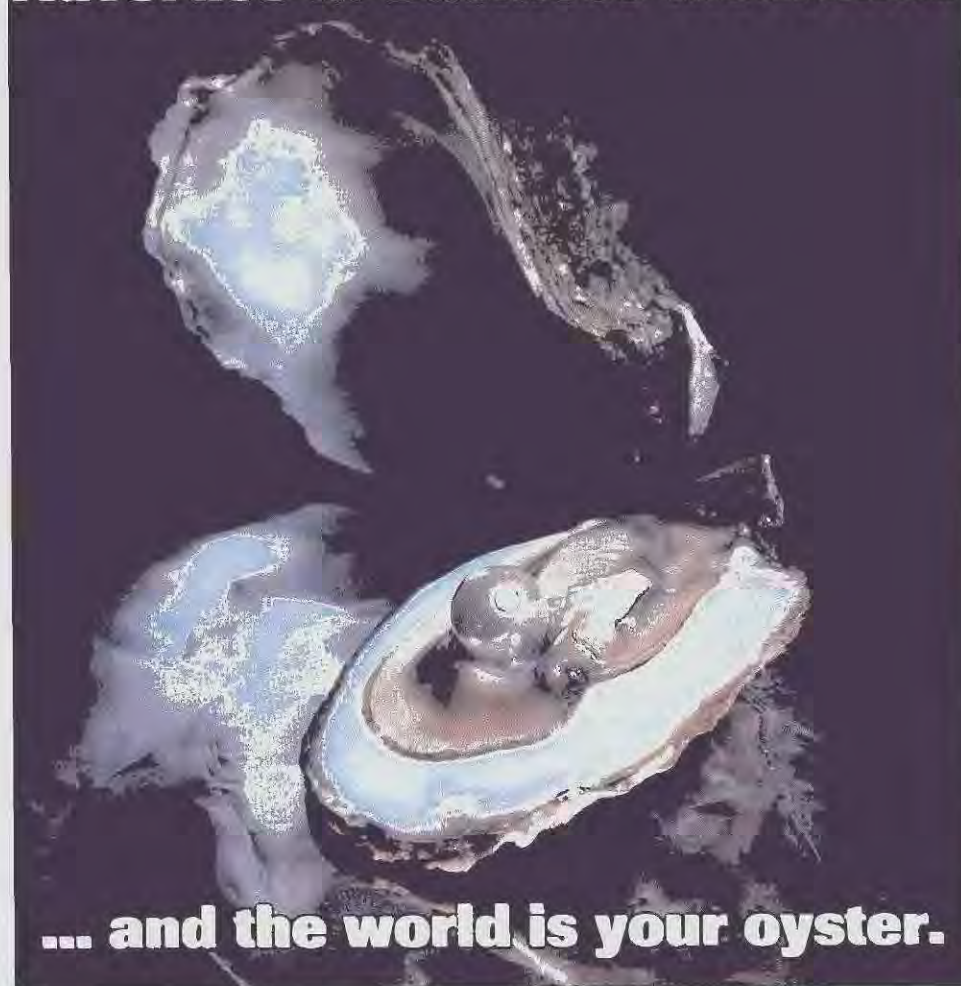
Among the companies that gave information about their subsidies for child care centers, the average subsidy was 39% of a center's annual operating budget, or \$282,210.

And direct subsidies are only part of the story. Many companies cover hidden costs like building and ground maintenance.

Starting a child care center costs an average of \$503,415, the study found.

"Child Care in Corporate America: Quality Indicators and Model Programs" is available for \$85 for corporations and \$70 for non-profit and Catalyst contributing companies. Contact Catalyst, 250 Park Ave. S., New York, N.Y. 10003-1459; 212-777-8900.

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Surplus Lines – *BI* will examine how the surplus lines marketplace has fared in the past year—considering the challenges presented by the soft U.S. commercial insurance market—and how it will react if the market ever hardens across the board. Issue highlights include: profiles of the largest surplus lines insurers and wholesalers; and *BI*'s annual Directories of Surplus Lines Insurers and Wholesalers.

Publishing: August 16 – Ad Closing: August 4

Reinsurance: International Markets – *BI* will look at the gargantuan problems Lloyd's of London faces and the market's chances for long-term survival. Issue highlights include: interviews with the market's leaders and harshest critics; and *BI*'s ranking and Directory of Leading Reinsurers Worldwide.

Publishing: August 30 – Ad Closing: August 18

Reinsurance: Rendez-Vous Report – Where will reinsurance rates and capacity likely be headed during year-end renewals? How will these renewals affect property/casualty insurance rates? The answers will unfold in this special issue, reporting on the Rendez-Vous de Septembre, the annual gathering of reinsurers and brokers from around the world.

Publishing: September 20 – Ad Closing: September 8

Marine Market Report – Insurance rates are rapidly climbing for most types of marine risks. *BI* will report on the latest trends in the marine insurance market with special coverage from the International Union of Marine Insurance conference as well as the Houston Marine Insurance seminar.

Publishing: September 27 – Ad Closing: September 15

International Benefits & Risk Management – What are market conditions like in overseas markets and what strategies can U.S. multinationals use to lower their costs? This issue includes information on insurers writing global property/casualty insurance programs and *BI*'s annual Directory of International Insurers & Benefit Networks.

Publishing: October 4 – Ad Closing: September 22

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Early retirement

Continued from page 2
be at least 55 years old with 10 years of service to retire early. But the sweetened early retirement plan will add five years to employees' age and years of service. So, city employees as young as age 50 with five years of service would be eligible to retire. For normal retirement, city employees must be at least 60 with 10 years' service or 55 with 25 years' service.

The retirement incentives are expected to cost Hartford's pension fund about \$29 million. Still, the city projects that reduced payroll will save about \$2 million per year even with the higher pension costs, said Howard J. Stanback, the city manager.

So far, the program appears to be a great success with employees—maybe too great.

Far more people are accepting the golden handshake offer than city officials had anticipated, said Dayl Peltzer, the city's principal administrative analyst.

"It was anticipated that half would take the offer. We still don't know what the response will be, but 95% of those making counseling appointments (with pension officers) are planning to retire," she said.

The unexpected response to the plan has received mixed reactions from city officials.

Mr. Stanback sees the response

as largely positive. "We had a projected \$35 million (budget) shortfall for the coming year. And we had to balance that somehow. Obviously, this is one way of doing it."

More early retirements will also mean fewer layoffs, Mr. Stanback said. Originally, 90 city employees were slated to be laid off in conjunction with the budget-trimming plan. But with the early retirement offer going so well, 25 of those employees will be able to keep their jobs.

In Hartford, where the average age of the city's 5,000 workers is 50, the early retirement plan could also help revitalize the government, he said. "You've got people working together for so long, and it's often difficult to see or accept anyone else in their position. But we have to provide opportunities for new blood."

But not everything has gone smoothly. Hartford has run into at least one problem that often plagues early retirement plans: the wrong people take the offer.

"There have been some people who have decided to take advantage of the plan who I didn't want to and vice versa," said Mr. Stanback.

He acknowledged that the city will have to refill some positions vacated due to the offer.

Althea Schwartz, a consulting actuary with Milliman & Robertson in Bloomfield, Conn., said Hartford's "brain drain" is not entirely uncommon.

"You have to offer early retirement programs in a non-discriminatory manner so that anyone can take them. But oftentimes the people you want to stay will leave and they'll quickly find jobs someplace else," she said.

All early retirement plans, Ms. Schwartz added, must be handled with extreme care in order to prevent costly repercussions. "There may be short-term savings involved, but it's likely that they'll be paying for the program for the next 30 years. You end up with a doubling of medical costs. These plans really have to be set up carefully in order to succeed," she said.

James Paradiso, the city's chief auditor, said he is largely pleased with the new plan. At age 60, Mr. Paradiso has already submitted his decision to accept the incentive offer.

"In my position, I felt it was to my benefit to do it," he said. "People need to remember that the manager may be losing some of his top people, but he has control and it's a chance for him to reorganize and streamline the city."

Ms. Peltzer, who will lose at least four key people on her staff of 15 thanks to early retirement, sounded a more cautious note. "People who are retiring think this is a great deal. Younger people can start all over and have a new life and older people can settle down. But those of us who remain are going a bit crazy." **BI**

ADA litigation

Continued from page 3
from the group, requesting that they come into compliance within 10 days, he said. If the employer does not comply to the group's satisfaction within the allotted time or fails to respond to the letter, Advocacy will file suit, he said.

Approximately 85% of the business that are sent demand letters come into voluntary compliance immediately, according to Mr. Harrington.

Advocacy becomes aware of businesses that allegedly are not in compliance with the law through complaints individuals file with the organization.

Each week throughout the summer-long campaign, Advocacy intends to target different types of businesses in Texas, Mr. Harrington said.

Among others, Advocacy has already focused on convenience stores and restaurants. Businesses to be targeted include pharmacies, clothing stores, movie theaters, state government offices, hospitals, video stores and lottery outlets. About 15 to 20 demand letters per week are sent to employers in each area of business.

Of the 15 lawsuits filed to date, two have been for alleged violations of the employment provisions of the act, which prohibits employers from discriminating against any individual strictly on the basis of a physical or mental disability.

Advocacy obtained right-to-sue letters from the Equal Employment Opportunity Commission before filing the two suits. The EEOC, which oversees enforcement of the ADA's employment provisions, must review complaints before litigation can be filed. Advocacy also is working with other federal and state agencies where appropriate.

One of these suits charges that Clayton Williams Jr. Co., an oil and gas company in Midland, Texas, wrongfully terminated an

employee who underwent voluntary treatment for a short time for mental illness.

The second case involves a former courtesy clerk at an Albertson's Inc. grocery store in Arlington, Texas, who alleges he was fired due to his mental retardation.

Neither company would discuss the case while in litigation. Mr. Harrington said he expects these two complaints to go to trial later this fall.

The rest of the complaints allege violations of the public accommodation and the public service provisions of the ADA, which prohibit discrimination on the basis of disability in public areas and facilities and which prohibit state and local governments from discrimination on the basis of disability in the services they provide.

For example, Advocacy on July 1 sued three companies, alleging violation of the public accommodation and public service provisions of the law.

One suit charges that Phoenix-based Circle-K Corp.'s south Texas stores lack accessibility for people with disabilities.

Another suit alleges that the Texas Mental Health and Mental Retardation Department and the Texas Department of Criminal Justice failed to provide proper mental health and mental retardation services for state prison parolees.

The third suit alleges that a San Antonio pediatrician failed to provide interpretive services to the hearing-impaired parents of a sick baby, resulting in improper treatment. The baby, who had a hernia, is doing fine now.

In late June, Advocacy filed lawsuits against two convenience store chains in the Rio Grande Valley in southern Texas. Convenience stores operated by Kerr-McGee Corp. in Pharr and McAllen, as well as a store in Edinburg operated by Coastal Mart Inc., were allegedly inaccessible

to people with disabilities, Advocacy contends in its lawsuits.

Convenience stores operated in the same area of the state by Economy Food Stores also received letters alleging non-compliance last month and have agreed to make their stores accessible to all customers, including those with disabilities, according to Mr. Harrington.

"We're well aware of the ADA and in full agreement of it," said Bob Byrnes, president of Fort Worth-based F.F.P. Partners L.P., owner of Economy Food Stores.

Making the convenience stores accessible to people with disabilities is an ongoing project for the company, he said. However, due to economic considerations, not every Economy Food Store was in compliance with the accessibility provision under the ADA, he said.

The demand letter from Advocacy "helped the cause along," said Mr. Byrnes. "We have no desire to get in a legal hassle, so we took care of the problem."

F.F.P. has 18 Economy stores in the Rio Grande Valley, all of which now are equipped with ramps and parking spaces designated for people with disabilities, he said.

With respect to accessibility requirements, businesses throughout the state have begun to sit up and take notice, said Advocacy's Mr. Harrington. "The law means what it says and Advocacy will do its best to bring Texas businesses into compliance."

Ted B. Roberts, vp-government affairs and general counsel for the Texas Assn. of Business in Austin, said the employer group is active in educating its members about the ADA.

He added that complaints like those pursued by Advocacy may be better handled through alternative dispute resolution mechanisms, but "apparently, this is not their method of choice." **BI**

Datebook

JULY

JULY 19-20. Provider Network Management conference in Boston, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research Inc., 437 Madison Ave., 23rd Floor, New York, N.Y. 10022; 212-826-1260.

JULY 20. Commercial General Liability Insurance seminar in Boca Raton, Fla., sponsored by the Florida Assn. of Insurance Agents; \$100 for FAIA members, \$170 for non-members. FAIA, Education Department, P.O. Box 12129, Tallahassee, Fla. 32317-2129; 904-893-4155.

JULY 22. Dog Bites: Minimizing Your Exposure seminar in Itasca, Ill., sponsored by The Center for Risk Management Training; \$135. Also **Aug. 23** and **Sept. 29**, The Center for Risk Management Training, Dawn Carlson, Registrar, The Gallagher Centre, 2 Pierce Place, Itasca, Ill. 60143-3141; 708-285-3586.

JULY 22-23. 19th Symposium on Directors & Officers Liability in New York, sponsored by The Wyatt Co.; \$795, discount available. Mary Maze, The Wyatt Co., 303 W. Madison, Suite 2400, Chicago, Ill. 60606-3308; 312-704-2483.

JULY 28. Managing a Changing Environment workshop in Cincinnati, sponsored by LOMA and Western Southern Life Insurance; \$375 for LOMA members, \$425 for non-members. Patty Brown, LOMA Meetings Department, 5770 Powers Ferry Road, Atlanta, Ga. 30327-4308; 404-984-6413.

JULY 28. Family Medical and Leave Act seminar in Rosemont, Ill., sponsored by the Illinois State Chamber of Commerce and the Greater O'Hare Assn. of Industry & Commerce; \$145 for ISCC members, \$195 for non-members. Illinois State Chamber of Commerce, 20 N. Wacker Drive, Chicago, Ill. 60606-3083; 800-621-4220 or 312-372-7373.

AUGUST

AUG. 2. Directors & Officers Liability seminar in Asheville, N.C., sponsored by The Society of Chartered Property & Casualty Underwriters and the Western Carolina Chapter; \$125 for Society of CPCU members, \$140 for non-members. Karen Willmann, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 215-251-2773.

AUG. 4. Basic Medical Malpractice program in New York, sponsored by the Practising Law Institute; \$125. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

AUG. 9-12. Fundamentals of Public Sector Benefits Management course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$900 for IFEBP members; \$1,000 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 10. Forklift Management Awareness seminar in Seattle, sponsored by the Crane Institute of America Inc. Also **Sept. 28** in Orlando, Fla.; **Oct. 5** in Houston. Leanne Mettel, Seminar Coordinator, Crane Institute of America, 1053 N. Orlando Ave., Suite 2, Maitland, Fla. 32751; 407-647-1800.

AUG. 12. The Best of PLUS forum in Long Beach, Calif., sponsored by the Southern California chapter of the Professional Liability Underwriting Society; \$60 for PLUS members, \$75 for non-members. Anthony LeClerc, 4248 Park Glen Road, Minneapolis, Minn. 55416; 612-927-9220.

AUG. 18-20. Basic Commercial Lines workshop in Wethersfield, Conn., sponsored by the Independent Insurance Agents of Connecticut Inc.; \$195 for IIAC members, \$225 for non-members. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 203-563-1950.

AUG. 19-20. Understanding ERISA: An Introduction to Basic Employee Retirement Benefits program in San Francisco, sponsored by the Practising Law Institute; \$495. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

AUG. 23-24. Employment Discrimination Litigation 1993 video presentation in New York, sponsored by the Practising Law Institute; \$395. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

AUG. 24. Accredited Adviser in Insurance program in Waterbury, Conn., sponsored by the Independent Insurance Agents of Connecticut Inc.; \$195 for IIAC members, \$225 for non-members. Also **Aug. 24** in Westport; **Aug. 25** in Wethersfield and **Aug. 26** in Norwich, Conn. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 203-563-1950.

SEPTEMBER

SEPT. 7-10. Reinsurance Contract Wording course in Ossining, N.Y., sponsored by Robert W. Strain Publishing & Seminars Inc.; \$1,845. Strain Publishing & Seminars Inc., P.O. Box 1520, Athens, Texas 75751; 903-677-5974.

SEPT. 8-10. Midwest Managed Health Care Congress in Chicago, co-sponsored by the Midwest Business Group on Health and the National Managed Health Care Congress. Sara Evangelous, MMHCC, Bay Colony Corporate Center, 1000 Winter St., Suite 4000, Waltham, Mass. 02154; 617-487-6723.

SEPT. 9-10. Health Care Law program in Los Angeles, sponsored by the Practising Law Institute; \$595. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

SEPT. 12-15. Occupational Safety Congress & Exposition in Lafayette, La., sponsored by the Acadiana Safety Assn.; \$180 for ASA members, \$230 for non-members. Occupational Safety Congress, P.O. Box 52784, Lafayette, La. 70505; 318-234-4640.

SEPT. 13. Providing Cost-Effective Maternal and Child Care Benefits conference in Chicago, sponsored Merck & Co.'s Vaccine Division; \$245 for Midwest Business Group on Health members, \$315 for non-members. Midwest Business Group on Health, 8303 W. Higgins, Suite 200, Chicago, Ill. 60631; 312-380-9090.

SEPT. 14-16. Fundamentals of Purchasing Reinsurance seminar in Dallas, sponsored by the Reinsurance Management Institute of the University of Dallas; \$595. Bruce D. Evans, RMI, University of Dallas, Irving, Texas 75062-4799; 214-721-5360.

SEPT. 15-18. Medical Case Management Conference V in Orlando, Fla., sponsored by the Individual Case Management Assn.; \$295 for ICMA members, \$345 for non-members. Joan Davis, ICMA, 10809 Executive Center Drive, Suite 105, Little Rock, Ark. 72211; 501-227-8362.

SEPT. 19-21. Global Insurance Capacity 2000: Demand and Supply conference in London, sponsored by the Society of Chartered Property & Casualty Underwriters; \$950 for Society of CPCU members, \$1,150 for non-members. The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2774.

SEPT. 19-21. Conference and Fellow, Life Management Institute conference in Toronto, sponsored by LOMA. Tim Kelley, LOMA, 5770 Powers Ferry Road, Atlanta, Ga. 30327-4308; 404-951-1770.

SEPT. 21. OSHA Process Safety Standard symposium in Schaumburg, Ill., sponsored by the Society of Chartered Property & Casualty Underwriters and the Loss Control Section; \$70 for Society of CPCU section members, \$95 for Society of CPCU non-section members, \$115 for non-members. Karen Willmann, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2774.

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Drug metabolism

Continued from page 3

ingredient clozapine. Other racial and ethnic groups have displayed virtually no ill effects from taking the clozapine-based drug Clozaril, which is made by East Hanover, N.J.-based Sandoz Pharmaceuticals Corp.

And, it has become well-documented that blacks with high blood pressure achieve significantly better results when treated by Cardizem, a calcium channel blocker made by Kansas City, Mo.-based Marion Merrell Dow Inc., as opposed to Capoten. Capoten, produced by New York-based Bristol-Myers Squibb Co., controls the amount of renin released by the kidneys to inhibit the production of angiotensin, which raises blood pressure.

With results from these clinical studies in hand, "any type of cost-containment plan that prevents the optimum medicine from being prescribed should be dropped or restructured," said Dr. Levy.

But the cost-management firms that help public and private entities craft cost-effective but sometimes restrictive prescription drug programs say they are keenly aware of the mounting research on ethnic and racial minorities' varied responses to medications.

"There's nothing earth-shattering in this article. Pharmacists, physicians and managed drug companies are well aware that certain drugs work better or not as well with different people," said Henry Blissenbach, president of Diversified Pharmaceutical Services Inc., a managed prescription drug unit of United HealthCare Corp. in Minneapolis.

Mr. Blissenbach insisted that Diversified's formularies, which are a list of drugs for which a benefit

plan will pay, as well as therapeutic substitution programs, are designed to take into consideration racial and ethnic responses to medication. Therapeutic substitution mandates interchanging one agent with another of the same pharmacological class, normally at a lower price.

"We try to ensure that every therapeutic option is available to everyone, regardless of size, shape or race. We know how drugs interact with different body chemistries, and I suspect other sophisticated managed care firms also know. Any formulary that doesn't account for how different ethnic groups respond to the various drugs for hypertension, schizophrenia or depression is schlocky and should be dropped," Mr. Blissenbach said.

Because genetic differences exist among racial and ethnic groups, and diets, cultural perceptions of illnesses and lifestyles vary, Dr. Levy highly recommends in his report that health care policy makers in the private and public sectors promote prescription drug plans that individualize drug therapy for special population groups.

"The key message here is not to homogenize patients. There is an optimal therapy for each individual that should be prescribed. Physicians should not be encouraged to apply cookbook drug therapy that doesn't take into account racial or ethnic origin," he said.

Other health care experts with specific knowledge of the role prescription drugs play in health care said cost-containment programs—like therapeutic substitution—run the risk of denying patients necessary treatment and can lead to much higher long-term costs.

"While I understand the need for formularies and other cost-management tools, clinical outcomes

will always remain more important than costs. It's not cost-effective to deny access to the best drug for an individual if it leads to more expensive care down the line," said Gary Erwin, senior director-pharmaceutical care management with the Philadelphia College of Pharmacy and Science.

Dr. Douglas Kay, a practicing psychiatrist and founder of CMG Health Inc., a managed mental health and substance abuse treatment firm in Owings Mills, Md., has extensive experience treating patients with clinical depression. He said, "Simply substituting one antidepressant for another because it's cheaper and believed by some to be equally effective is short-sighted and will probably lead to

greater expenses in the long run."

To achieve the best medical outcomes when prescription drugs are involved, the practice of therapeutic substitution should be monitored closely and restricted when necessary, according to Dr. Levy.

Mr. Erwin agreed. "The problem with therapeutic substitution occurs when substitutes are dispensed without the explicit approval of all involved in the prescription process. While most people fall within a bell curve, a few will need unique drugs, and they should be allowed to obtain them."

Health care providers, specifically physicians who write prescriptions, also need to be as aware as possible of atypical and unex-

pected drug responses among minority patients, said Dr. Levy.

For this matter, the NPC's article and reports like it are valuable even though the NPC report criticizes elements of managed care, said Diversified's Mr. Blissenbach.

"Everyone accepts the need to control costs. But lumping patients together without considering their ethnicity is only good economically. It's very poor therapeutically," Dr. Levy said.

Copies of the report are available by written request to Melinda Lee at the National Pharmaceutical Council, 1894 Preston White Drive, Reston, Va. 22091; fax: 703-476-0904.

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CEBS survey

Continued from page 3
Employee Benefit Specialists.

Medical advancements and the increased use of pharmaceuticals in treatment have increased the consumption of prescription drugs, the survey said.

Prescription drugs account for between 6% and 10% of total health care costs for 38% of the respondents; between 11% and 15% of health care costs for 16% of the respondents; 16% to 20% of health care costs for 4%; 21% to 25% for 3%; and more than 25% for 1%.

Prescription drugs constituted less than 5% of health care costs for 7%. Thirty-one percent of respondents did not know what proportion of health care costs were due to prescription drugs.

And the proportion of health care costs attributed to prescription drug costs is rising for 60% of the respondents. "For 76% of these respondents, the increase was either moderate or significant," the survey said.

To cut the cost of prescription drugs, 57% of employers offer financial incentives to select generic versions of prescribed drugs, the survey said.

Lower use of all drugs is encouraged by increasing deductibles, coinsurance and copayments, the survey said. Copayments are also used extensively to encourage the use of cheaper generic drugs rather than brand-name drugs.

"Most frequently, as indicated by 60% of respondents, the incentive to use generics is a lower copayment," the survey said.

And 75% of those using a lower copayment strategy reduce the copayment by only \$5 or less for using generic drugs.

"Yet whether a \$5 difference is

sufficient incentive is debatable: A higher percentage of respondents reporting differences of more than \$5 between generic and brand-name copayments also reported that the financial incentive was 'very effective,' the survey said.

Companies are also using "formularies" to help reduce costs, according to the survey. A formulary lists specific brand-name and generic drugs that are preapproved for coverage under the plan.

"The basis for selection is optimal effectiveness as judged by a panel of medical professionals. Once selected for use on a formulary, volume purchasing of the drug can achieve additional cost savings," the survey said.

Sixteen percent of the respondents had plans that used formularies, and another 24% are considering using formularies.

The survey respondents were almost equally split on imposing price controls on drug companies: 37% would support legislation that would penalize drug companies that raised prices faster than the inflation rate and 40% would not.

One quarter of the respondents are targeting the administrative costs generated through prescription drug use by plan participants. Claims processing costs are the largest factor in administrative costs, the survey said.

"In this regard, plastic card and mail-order programs are generally more efficient than traditional indemnity plans," the survey said.

For a free copy of the survey, contact the Public Relations Department, International Society of Certified Employee Benefit Specialists, P.O. Box 209, Brookfield, Wis. 53008-0209; 414-786-6700.

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FIRSTCITY

Well baby care

Continued from page 1

health care costs, ranging from 10% to up to 49% of a company's total health care bill, according to the Bureau of National Affairs.

The rapidly increasing number of women in the workforce is a key factor driving interest in corporate-sponsored maternity and family-care programs.

Equally important, however, is the knowledge that at least half of all infant deaths and many of the disabilities suffered from low birth weight are preventable. Often the causes of the two are linked to lifestyle factors of the parents, including poor nutrition, smoking, alcohol and drug use.

Companies that educate their employees about proper prenatal care and identify high-risk pregnancies early have much to gain, said Virginia Proestakes, SNET's manager of managed care programs.

"I think all employers would benefit" from such a wellness program, she said. Even companies with a predominantly male workforce should be committed to preventing premature babies, because most of their workers are probably married and eligible for dependent health care coverage.

After establishing a comprehensive prenatal program, one company's average cost per maternity case dropped to \$2,893 from \$27,242, according to a 1991 BNA report on corporate prenatal programs.

Despite the apparent advantages of such programs, only 36% of participants in health plans sponsored by employers with 100 or more workers were covered for well-baby care in 1991, according to the U.S. Department of Labor.

SNET launched its pregnancy wellness program in January 1992. The program—called Babytrac—is marketed by Healthtrac, a health promotion firm, and is administered by Blue Cross & Blue Shield of Connecticut.

SNET provides health insurance for about 40,000 lives and pays for about 400 to 500 births per year, accounting for the majority of the company's hospital admissions, according to Ms. Stephenson.

The Babytrac program is available to all employees and dependents, whether they receive coverage through SNET's self-insured point-of-service indem-

nity plan or through the company's health maintenance organization option. Prospective parents as well as parents with children 5 years old or younger can enroll in the voluntary program.

Babytrac has three phases:

- The preconception phase is designed for people who are thinking about having children. The program identifies potential high-risk individuals and encourages women to take an active role in their health status. The program also reinforces good health habits in low-risk individuals.

Among other things, employees or dependents complete a questionnaire that screens for previous problem pregnancies or other medical problems that could result in birth complications. Individuals at risk receive a letter providing specific information

High-risk mothers are referred to BC/BS of Connecticut's managed benefits group for case management.

- The postpartum phase is for employees who have children age 5 or younger. A book, called "Taking Care of Your Child," is distributed, and parents are generally educated about wellness habits that help young children get and stay well.

This type of education is an important strategy to control costly overutilization of dependent benefits, Ms. Stephenson noted. "It helps new parents keep from panicking and avoids unnecessary emergency room visits."

Recognizing that a wellness program is only effective if employees participate in it, SNET offers participants some innovative incentives.

To keep in touch with the mother-to-be during the last trimester, the father or other caregiver has free use of a pager serviced by SNET.

And, for a "graduation present," SNET gives each new parent in the program the choice of an infant car seat or a diaper bag filled with useful baby supplies.

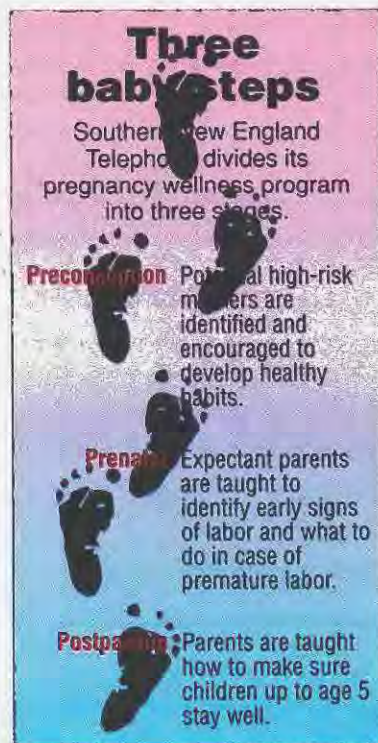
The incentives not only encourage employees to participate, they make good business sense, Ms. Stephenson said. The idea to provide beepers to expectant families gained publicity, and other companies in the area are now offering SNET pagers to their workers. And, the diaper bag emblazoned with the SNET logo provides free advertising for the company.

The perks are low cost: each car seat or diaper bag costs the company \$19.

The program costs SNET about \$300 per enrollee, Ms. Proestakes said. Employees pay nothing. "I'm never sure how much money I'm actually saving" as a result of the program, "but I feel I am averting costs," she said.

SNET plans to begin studying the impact of Babytrac this year by sending questionnaires to participants. "We'll ask them what they expected to get out of the program when they enrolled and whether or not they feel it was successful," Ms. Proestakes explained.

In addition, the company plans to begin tracking birth outcomes of enrollees, to see whether the program has lowered the number of premature births and other complications, and the ultimate result on overall health care costs, she said.



GRAPHIC BY CHRIS ROY

on those risks and a phone call from a health educator who makes recommendations on how to reduce the risks.

- The prenatal phase encourages parents to practice good prenatal care and educates them about identifying early signs of labor and what action to take in the event of premature labor. Parents also are taught how to build an effective doctor-patient relationship.

Materials supplied by the March of Dimes are distributed and one-hour seminars on good prenatal care are offered throughout the year.

Comings & Goings: Industry

Cullen named president of Continental Specialty

William P. Cullen has been named president of Continental Specialty & Excess Casualty, a subsidiary of Continental Corp. in New York.

Mr. Cullen previously was executive vp of Continental Excess & Select, responsible for underwriting and field operations of regional product lines and marketing for all Continental Excess & Select product lines.

In other excess/surplus line changes:

Thomas Rossi joined Montgomery & Collins Inc. as assistant vp/manager of the wholesaler's Columbus, Ohio, branch.

ties of **Edward D. Santos**, former senior vp and chief accounting officer, who left the company.

Dan L. Hale succeeds Mr. Pickett as chief financial officer of Baltimore-based USF&G.

Andrew L. Furgatch named president and chief operating officer of Public Service Mutual Insurance Co. and subsidiary Paramount Insurance Co. in New York.

Lynn C. Tyson named president and chief marketing officer of CCP Insurance Inc. in Carmel, Ind.

John L. Swedo joined Continental Corp. as vp-special investigations in the corporate claims division in New York.

Candace L. Sutcliffe named vp and manager of Liberty Mutual Insurance Co.'s new Boston environmental department in.

John J. Webb named vp of the Canadian operations of UNUM Life Insurance Co. of America in Portland, Maine.

Reinsurance

Zurich Reinsurance Centre Inc., the newly formed reinsurance unit of Zurich Insurance Co. and Centre Reinsurance Cos., has made several key appointments: **Melinda Hamilton** named senior vp-underwriting; **Gerald S. King** named senior vp and director-facultative operations; **Isaac Mashitz** named senior vp and chief actuary; **Mark D. Mosca** named senior vp and chief underwriting officer; **P. Britt Newhouse** named senior vp-business development; **Peter R. Porrino** named senior vp and chief financial officer; and **John D. Shuck** named senior vp and chief administrative officer.

ZRC also named: **Jess D. McCavitt** vp-claims; **Karen O'Connor Rubsam** vp and controller; **Elizabeth A. Richardson** vp-investor relations and corporate communications; and **Mark R. Sarlito** vp and general counsel.

North American Reinsurance Corp. recently announced: **Carla D. Shenkman** named senior vp and director of alternative markets; **William J. Trutt** named senior vp-business group manager; **Lee A. Willman** named senior vp-treaty marketing; **David K. Bradford** named vp-underwriting services; **Michael S. LaGreca** named vp-treaty marketing; **Karen M. Matrunich** named vp-treaty account executive; and **Michael J. Taxter** named vp-senior casualty underwriter.

William M. Allen named senior vp and manager of the Atlanta office of G.J. Sullivan Co., a reinsurance broker headquartered in Los Angeles.

James J. Powers named senior vp, corporate secretary and general counsel at Constitution Reinsurance Corp. in New York. Also at Constitution Re, **William F. Davis** named senior vp and controller.

Paul J. Brauner promoted to vp in the casualty unit and **Andrew Nosal** promoted to vp and counsel in the claims department of F&G Re, the reinsurance unit of USF&G Corp. in Morristown, N.J.

Insurers

Edwin G. Pickett, USF&G Corp.'s chief financial officer, is moving to TIG Holdings Inc., the holding company for Transamerica Corp.'s spun-off property/casualty division. Mr. Pickett was named senior vp and CFO, a newly created position, and will assume the responsibility

Brokers

Laurie A. Patterson was named a vp in the San Francisco office of Jardine Insurance Brokers Inc.

Patrick F. Carton joined Hobbs Group Inc., the brokerage subsidiary of Arkwright Mutual Insurance Co., as vp and regional manager of the New England region in Norwalk, Conn. Also at Hobbs Group, **Bryan M. Fitzpatrick** named district vp in Long Beach, Calif., and **Douglas B. Fay** named vp and manager of international operations in Shelton, Conn.

Gregory E. Dean promoted to executive vp and director of operations at Rollins Hudig Hall of Oregon Inc. Also at RHH of Oregon, **Donna M. Ghiorso** and **Bruce A. Oleszczuk** promoted to senior vps and **Michael T. Craddock** promoted to vp.

Thomas C. Madison joined Hall & Kennedy Inc. in Jackson, Mich.

Other suppliers

Robert D. Krinsky, president and chief executive officer of The Segal Co., based in New York, will become chairman of the employee benefits and compensation consulting firm on Jan. 1. Mr. Krinsky succeeds **Robert D. Paul**, who is retiring as chairman. **Howard Fluhr**, executive vp, succeeds Mr. Krinsky as president and CEO. **Dale B. Grant** becomes vice chairman and chief strategic planning officer.

At Segal's San Francisco office, **J. Tim Biddle** named office head, **Sidney L. Abrams** named senior vp and consultant, and **Steven A. Brannon** named vp and consultant.

Karol Rose named principal in the employee communications division at Kwasha Lipton in Fort Lee, N.J.

Kirk J. Bloede named vp in the merger and acquisition department of Russell Miller Inc., an insurance industry specialty investment bank located in San Francisco. Also at Russell Miller, **J. Keith Erikson** was named associate in the consulting department.

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ASK A BENEFIT ACTUARY

Retirement plan changes to have widespread effect

Q

Who will be hit by President Clinton's reduction in the qualified retirement plan compensation limits?

A

A benefit manager of a Fortune 500 company has started to develop a communications plan that would be necessary if President Clinton's proposed reduction in the qualified retirement plan compensation limit becomes law.

The benefit manager's employer sponsors a qualified defined benefit plan and a 401(k) plan, and the Clinton proposal would affect both.

Under current law, contributions or benefits under a qualified retirement plan can be determined by taking into account annual compensation up to \$235,840 in 1993. This amount is indexed for inflation. This compensation limit also applies to determining whether the contributions or benefits under the qualified plan are non-discriminatory.

President Clinton's budget proposal would reduce this limit to \$150,000 per year, producing a modest amount of revenue for the U.S. Treasury at the expense of high wage-earners.

This is among the benefit-related provisions contained in tax bills that last month passed both the House and Senate. A congressional conference committee is ironing out differences between both measures. Both bills contained the \$150,000 limit.

The benefit manager recognizes that this proposal has not been widely publicized in the press and will adversely affect some important people in his organization. Not wishing to surprise these key executives, the benefit manager has begun to think about his communication strategy, including which employee groups will require information, and what some of the main messages might be.

In trying to answer those questions, the benefit manager was startled when he realized that middle-income employees—not just those earning in excess of \$150,000 per year—would have their

retirement benefits curtailed under the proposal. It will be necessary to communicate information to this broad group of employees.

Employees earning in excess of \$150,000 per year also will be hurt. Virtually all employees in this group will earn lower future benefits under the company's qualified defined benefit plan. The bad news about the compensation limit can be softened if the company sponsors a non-qualified supplemental executive retirement plan that would make the executive "whole" if benefits are reduced because of the compensation limit.

However, middle-income employees earning \$65,000 per year will also see their 401(k) contributions reduced as a result of the Clinton proposal. In order to understand the reasons for this, an understanding of the 401(k) non-discrimination test is needed.

A 401(k) plan is non-discriminatory if the average deferral percentage for highly compensated employees does not exceed the ADP for non-highly compensated employees by too wide a margin. For example, the average deferral percentage for highly compensated employees can be as much as 4% if the ADP for non-highly compensated employees is at least 2%. For the purpose of determining who is a highly compensated employee, employees earning \$65,000 per year or more are generally considered to be highly compensated.

The average deferral percentage for highly compensated employees is calculated as follows. First, a deferral percentage is calculated for each highly compensated employee who is eligible to participate in the 401(k) plan. The deferral percentage is the ratio of the eligible highly compensated employee's pretax contributions to the 401(k) plan to the employee's overall compensation.

Under the Clinton proposal, compensation used in the denominator of this fraction would be limited to \$150,000 per year.

Second, the average deferral percentage for all highly compensated employees is then determined by taking the average of the deferral percentages for each highly compensated employee. An analogous calculation is made for all eligible non-highly compensated employees.

The benefit manager's company currently passed the 401(k) non-discrimination test by a narrow margin.

If Clinton's proposal becomes law, and highly compensated employees continue to make salary

reduction contributions at the same rate as they are making today, the deferral percentage of a highly compensated employee making in excess of \$150,000 per year will be higher. As a result, the average deferral percentage for all highly compensated employees will increase, and the plan will be discriminatory, unless corrective action is taken.

The likely approach for this company would be either to cut back salary reduction contributions of all highly compensated employees, or to reduce the contributions for only those who have the highest deferral percentages. In either case, some employees earning \$65,000 per year will see their salary reduction contributions reduced. This middle-income wage earner is hardly the taxpayer being targeted to shoulder the deficit reduction burden under the Clinton proposal. Nonetheless, this individual will have a deficit reduction burden to bear.

Perhaps the best communication strategy for the benefit manager might be to communicate now rather than later. If the proposed changes are communicated before the reduction in the compensation limit takes effect, employees might seek to influence their representatives in Congress on this matter.

B1

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

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

This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, president of Pacific Actuarial Resources (PAR) Excellence in Ashland, Ore., answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. Dennis J. Nirtaut, manager of



Mr. Miner

employee benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans. Mr. Miner's next column will appear in October.

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

Understanding D&O

Guide shows it needn't stand for 'difficult and onerous'

"The D&O Book: A Comparison Guide to Directors & Officers Liability Insurance Policies"

**Published by Griffin Communications Inc., 1420 Bristol St. N., Suite 220, Newport Beach, Calif. 92660
714-752-1058
\$125**

By Kevin M. Quinley

MANY RISK managers spend hundreds of thousands—often millions—of dollars to protect their corporate officers and directors from their own wrongful acts and mistakes. Many corporate buyers and execs have little idea, however, of coverage

Books & Ideas

limitations and fewer still have actually read these coverages. Good reading fare for insomniacs! Come to think of it, why should they read the policy? Isn't that the insurance broker's job? After all, they're the experts.

Alas, this is not always the case. D&O insurance is perhaps one of the most difficult, convoluted and misunderstood forms of insurance ever devised. Even insurance agents and brokers may not always be well-versed on the intricacies of this somewhat arcane form of coverage. In D&O insurance, the varied, tortuous and

often deceptive language of policies can create high anxiety over the scope of coverage provided.

For instance, the definition of "wrongful act" found in D&O policies often means "any breach of duty, error, misstatement, misleading statements, omissions, etc." committed or done by the insured director or officer. Quite sweeping, but many insurers slip in the word "negligent" in this definition. Such a stance may preclude claims for intentional acts. Because most actions of directors and officers are intentional in nature, the modified definition can be quite restrictive.

Subtle nuances and differences between policy forms can often spell

the difference between coverage for a major claim, or a coverage gap disaster. The ante is raised by virtue of the fact that industry surveys price the average D&O claim at more than \$3 million! In fact, D&O coverage has been likened to "Swiss cheese" protection. Hold up a policy, and it is so riddled with the holes of exclusions and disclaimers that corporate buyers scratch their heads and ask, "Just what would be covered?"

Good question. The fact that the D&O market is non-standard, with little uniformity from policy to policy, only compound the problems of the corporate risk manager who is looking to procure such coverage for his or her

Continued on page 15

A sound measuring rod

By Kevin F. Donoghue

It's important to determine the value that your insurance dollars really buy

COMPARED TO THE growth-oriented '80s, the '90s are likely to be more competitive, more constrained by limited resources, more demanding of long-term planning.

Success in this difficult business environment will hinge on a company's ability to determine the real value derived from every expenditure, whether that expenditure is devoted to new technology, advertising, training or insurance.

In the case of insurance, even sophisticated buyers often rely on rather crude measures of service and value.

At one extreme is the risk manager who accepts, on little more than faith, the cost proposal of a broker and insurer with whom his or her company has had a long-term relationship. The rationale? "They really know our company, so they can give us better service."

At the other extreme is the risk manager who argues that the purchasing decision should always be based on the lowest bid, even if this means going to the market every year. The reasoning here is, "As long as we go with a reputable supplier, we'll get just about the same level of service."

There is some truth in both of these positions.

A long-term relationship with your suppliers can produce significant benefits to your company, and those benefits are worth paying for.

On the other hand, adding a competitive element to your buying strategy can reduce overall costs, and those savings could connect directly to your bottom line.

The problem, of course, is that neither of these approaches constitutes an effective value-added measurement system.

In a value-added model, each component of an insurance program is clearly defined in terms of service, anticipated results and costs. Equally important, such a model includes a built-in tracking system that allows you to measure each of these subcomponents on an ongoing basis.

A value-added approach is essential to the development and success of an effective, long-term risk management strategy. Without such a long-term strategy, you will almost inevitably expend too much effort, pay too much in premiums and still not produce the optimal result.

To clarify how a value-added model works, let's break out the elements that make up your insurance costs.

• Claims handling.

Generally, an insurer or independent third-party administrator will charge from 8% to 12% of total claims for claims handling. In and of itself, however, this number is virtually meaningless. Worse yet, without an appropriate value-added component, this apparently "hard" measure of cost can be highly misleading.

Suppose, for example, that Insurer X charges 12% of total claims for claims handling, while Insurer Y charges 8%. On the basis of \$5 million in expected claims, the cost would be \$600,000 for X and \$400,000 for Y—a clear savings of \$200,000 by choosing Insurer Y.

Claims handling, however, is not a

strict science. The experience, know-how, and even the attitude of the personnel involved can make a significant difference.

In our scenario, for example, suppose that the claims personnel at Insurer X are far superior to their counterparts at Insurer Y. By managing your claims more effectively, they produce actual settled claims of \$4.5 million. Add 12%, or \$540,000, for claims handling and your total cost is \$5.04 million with Insurer X.

On the other hand, Insurer Y settles your claims for \$5.2 million. Add 8%, or \$416,000, for claims handling, and your total cost is \$5,616,000. So what looked like a \$200,000 savings by going with Insurer Y turns out to be a \$576,000 savings by going with Insurer X!

Unfortunately, this kind of comparative, quantitative analysis is impossible in the real world, where you have no way of knowing how your actual payout would have differed if another insurer had handled your claims. Nonetheless, it is crucial that you estimate the value-added aspects of a supplier's claims-handling expertise.

Start by asking who will actually be responsible for handling your claims. Will the key people be dedicated to your account? How experienced are these people in handling your types of claims?

Ask for a detailed, written set of claims-handling procedures, and a sample of claims handled by the individuals who will be working your account. Do a "what if" analysis: What will my overall cost be if this insurer can reduce my claims by 1%, or 5%, or 10%?

Even the most thorough analysis of this kind, however, will inevitably leave many questions unanswered. To counter this, in recent years more and more companies have pressed the major suppliers for a better way to predict claims-handling efficiency.

In response, some insurers now offer performance guarantees, by which they agree to reduce your average annual claims by some specified amount. In return, the insurer receives a share of the savings as an incentive bonus. Still in an embryonic stage, performance guarantees are a proactive approach that can produce significant results if properly administered. As a way of introducing more effective value-added measurement to the claims area, they are worth bringing to the negotiating table at renewal time.

• Loss control.

While effective claims handling can reduce your actual losses, the best way to cut down on losses is to reduce the number of claims in the first place, particularly those crucial three or four claims in every work area that typically account for most of your losses.

Most insurers and TPAs offer—and charge for—a variety of loss-control services. Loss control, however, is first and foremost an internal function. Your supplier may have the most sophisticated loss-control programs in the industry. It may have an army of safety experts and a trainload of training materials, but if your

own people are not fully committed to implementing the programs and using the materials, if your own corporate culture is not focused on loss control day in and day out, year in and year out, your losses will not drop.

In other words, you may not be getting much real value out of the loss-control services you are paying for. If you have an effective, in-house loss-control program, your supplier's services may not add much to the effort. On the other hand, if you don't have an effective in-house program, the supplier's services are even less likely to produce results.

The solution is to use your supplier's expertise to develop, implement and monitor your own program. Start with explicit, measurable, realistic goals, in terms of reducing particular claims. Then ask your suppliers for a detailed, written description of the services they will provide to help you meet these goals. Identify the supplier's specific responsibilities. Then, on an ongoing basis, monitor the results to determine whether or not your losses actually drop. And always remember the basic principle of value-added management: Never confuse effort with results.

In theory, the only reason to buy insurance is to protect yourself against the unanticipated, catastrophic losses—those rare, multimillion-dollar losses that cannot reasonably be funded by your company alone. This "pure" or excess insurance is the core of your insurance program.

The premium you pay for such coverage is determined by the insurer's actuarial analysis and experience and the competitive forces at work in the marketplace. Unfortunately, premiums for excess insurance tend to go up year after year, whether or not your company ever experiences a loss.

What you are actually paying for when you purchase excess insurance is a potential, unpredictable loss. In that sense, if you suffer no losses, you have really received no value from your excess insurance.

On the other hand, your premium dollars also pay for actual losses experienced by other companies. Thus, from the insurer's perspective, the value derived from excess insurance cannot be measured simply in terms of your own losses.

That's theory. In practice, you should track the premiums you pay for excess insurance and the losses you actually experience. At some point, perhaps after two or three years, if your premiums substantially outweigh your losses, you should at least be able to fix your premiums. In effect, you tell your insurer that you have already established a "pool" from which your future losses can be paid.

So what happens if you experience a significant loss? Typically, after any such loss, an underwriter will rate your premium in an attempt to recover at least some of the payout.

From a value-added perspective, there is no justification for such a premium increase, since it amounts to making you

pay again for something you—and many other companies—have already paid for. If you challenge it in those terms, most underwriters will respond appropriately—and you will save yourself what may amount to hundreds of thousands of dollars in rate increases.

Insurance-related fees may cover a wide variety of services, including risk analysis, coverage planning, working as a liaison with your insurers and various aspects of claims handling. These fees and services should be carefully scrutinized and evaluated using the same value-added approach discussed earlier with respect to other cost components. You need to know exactly what service you are getting, and you need to ask yourself, "Is this service worth what I am paying for it?"

Generally, brokerage fees tend to stay level or increase over time. Often this has relatively little to do with the services received by the client and much more to do with a process of industrywide consolidation that has created giant brokerage firms with a hefty appetite for income. Bear in mind that much of what a broker does for you only needs to be done once, when your program is established.

Consequently, it is not unreasonable to expect that your brokerage fees will actually decrease over time. To make this happen, however, you will need to insist on a detailed, written description of the services provided, the personnel who will be involved and the criteria by which the quality of those services will be evaluated. In our experience, the very act of providing such a document tends to sharpen a supplier's pencil.

This matter of fees highlights the importance of a long-term, value-added relationship with your suppliers. If your long-term goals are clearly spelled out, in measurable terms, and if your supplier's responsibilities and services and fees are similarly spelled out, and related in measurable terms to your goals, then a long-term relationship will serve the interests of all the parties involved.

In the competitive business environment of the '90s, a value-added management model is essential to achieving long-term success. Such a model is based on the following principles:

- ✓ Identify and monitor on an ongoing basis the services you receive and the benefits you derive from those services.
- ✓ Never hesitate to pay for quality services from which you derive measurable long-term benefits. Never pay for services you don't need, can't measure or can get more cost-effectively somewhere else.
- ✓ Always aim for a long-term relationship with your insurance suppliers.

A long-term relationship will enable you to implement an effective value-added model, and reduce costs without the need for constant competitive marketing. **[B]**



Kevin F. Donoghue is president of Kevin F. Donoghue & Associates, an independent risk management consulting firm in Boston.

D&O

Continued from page 13

firm. Where is a perplexed risk manager to turn for help? Such help has arrived in the form of "The D&O Book," a recent release by Griffin Communications.

The "D&O Book" puts a wealth of policy-form evaluation tools at risk managers' fingertips. Major policy terms, conditions, definitions and exclusions are explained in detail. Presenting material in as uncomplicated a style as possible, the "D&O Book" complements concise discussions with illustrations that clarify complicated D&O coverage features. Perhaps best of all, detailed,

easy-to-read policy comparison charts enable insurance professionals to compare hundreds of coverage features among dozens of different policy forms.

The book's publisher provides insurance books, manuals, seminars and newsletters. The book is unique, providing discussions, chart comparisons, sample policy forms and graphic illustrations that are likely unavailable between covers in any other single source. It represents a handy tool kit for busy risk managers and insurance professionals trying to get a handle on this hard-to-fathom line of coverage.

The book also includes a narrative of the nature and history of D&O

liability, the coverage format, along with many terms, conditions, definitions and exclusions found in D&O applications and policies.

Worth the price of the book alone are the easy-to-read charts, offering comparisons of many key terms and conditions of 50 different D&O policies. This helps corporate buyers make apples-to-apples comparisons, which are particularly important given the non-standardized format of D&O coverage products.

The "D&O Book" provides samples of the D&O policy forms and applications used by most of the active players in this market. The book is a useful desk reference for any risk manager or broker who works with

D&O coverage. Used wisely, the "D&O Book" can help transform even the most porous "Swiss cheese" coverage into a sturdier shield against calamitous loss. BI

Kevin M. Quinley is vp of risk services for MEDMARC Insurance Co. Inc. and subsidiary Hamilton



Resources Corp., both of Fairfax, Va. Mr. Quinley holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Pollution must be sudden and accidental

A release of hazardous waste had to be both sudden and accidental to come within a "sudden and accidental" exception to a pollution clause in a comprehensive general liability insurance policy, according to the Supreme Judicial Court of Massachusetts.

SCA Services, a refuse collector, was sued by the State of New York and the town of Tusten for damages caused by hazardous waste leaching out of a landfill to which SCA brought waste for disposal.

In 1973 and 1974, SCA had transported industrial and chemical wastes to the landfill. The site was proximate to private homes and property, a public well that provided water to the Tusten inhabitants, and to the Delaware River, which furnished public drinking water to communities in Pennsylvania and New Jersey.

SCA had been issued several CGL policies which, however, excluded property damages arising out of pollution except for "sudden and accidental" damage. SCA requested the insurers to defend the state and town suits. One of the insurers brought this action seeking a declaration that it was not obligated to defend or indemnify SCA.

The trial court ruled for SCA. The insurers appealed to the Appeals Court; however, the Supreme Judicial Court transferred the case on its own initiative.

The appellate court said that the pollution alleged here was not "sudden" in that it occurred in routine business activity lasting over several months. The court said that the alleged pollution was due to continuous waste disposal practices occurring over a protracted period of time.

"Such a situation," the court observed, "is within the pollution exclusion because it is not 'sudden and accidental.'" Furthermore, the court said that because the "sudden and accidental" exclusion is conjunctive, both conditions must be met for the exception to be operative. The trial court decision was reversed and the insurers held not liable.

Liberty Mutual Insurance vs. SCA Services, Supreme Judicial Court of Massachusetts, March 26, 1992 (BI/05/F.-\$10).

No cover for employment-related lawsuit

Do a general liability policy and a comprehensive catastrophe policy cover an employer's liability for an alleged age discrimination and emotional distress claim brought by an employee? The Supreme Court of New Jersey ruled that they do not.

Newell E. Whitcomb served as a vp of SL Industries Inc. Mr. Whitcomb alleged that in March 1984, the chief executive officer of SL told him that the company intended to eliminate his position. The CEO suggested that Mr. Whitcomb agree to a special early retirement proposal under which he would retire on his 62nd birthday.

Relying on that information, Mr. Whitcomb agreed to the retirement proposal. Several months before his departure, SL hired a new executive. Mr. Whitcomb alleged the new executive was his replacement and that the assertion that his position

Legal Briefs

was to be eliminated was simply a pretext to force his early retirement.

SL was covered under a general liability policy covering bodily injury and a comprehensive catastrophe policy covering personal injury arising out of an occurrence. Mr. Whitcomb filed a complaint against SL in federal court under the Age Discrimination in Employment Act alleging age discrimination.

SL then brought this action in state court seeking a declaration that the insurers had a duty to defend it against Whitcomb's suit. The trial court ruled for the insurers but the appellate division reversed. The case was then certified directly to the Supreme Court.

The Supreme Court said that recoverable damages under the act were limited to unpaid minimum wages, unpaid overtime compensation and, in the event of a willful violation, liquidated damages. Thus the court said that the Act did not allow the recovery of compensatory damages for emotional injuries caused by age discrimination.

Consequently, the court said neither insurance policy covered liability for any potential violations of the act. Furthermore, the court said that emotional distress, without physical manifestations, did not constitute "bodily injury" within the context of the liability policy. Because Whitcomb's emotional claim lacked physical manifestations, the court said that SL would not be able to recover for its liability to Mr. Whitcomb under the bodily injury policy.

SL Industries vs. American Motorists, Supreme Court of New Jersey, June 17, 1992 (BI/02/Ju.-\$10).

Exclusion ruled ambiguous

The 10th U.S. Circuit Court of Appeals ruled that the term "dental services" in an exclusionary clause of a group health insurance policy was ambiguous. Thus, the court concluded that the ambiguity had to be resolved in favor of the insured.

Lois Blair was covered under her employer's group health insurance policy issued by Metropolitan Life Insurance Co. The policy excluded dental services of any kind.

Ms. Blair incurred expenses totaling \$21,250 from her dentist for treatment of temporomandibular joint dysfunction. She submitted claims for that amount under the medical expense provision for insurance coverage. The insurer declined coverage. Ms. Blair sued but lost in the trial court.

The appellate court concluded that the term "dental services," as used in this plan, was ambiguous. "Looking at the policy," the court said, "there is no way for an insured to understand that dental services not only include a treatment directed at the teeth to correct a condition of the teeth, but also include a treatment for a dysfunction of muscles and joints, with teeth incidentally involved." Thus the court said it had to resolve the

ambiguity in favor of the insured, Ms. Blair.

However, the court did send the case back to the trial court for a determination of whether the charges were reasonable.

Blair vs. Metropolitan Life Insurance Co., 10th U.S. Circuit Court of Appeals, June 29, 1992 (BI/03/Jy.-\$10).

Total disability required for payment

The Employee Retirement Income Security Act did not require that a disability clause in an employer's group life plan be construed to mean that a participant only had to be disabled from his prior occupation, rather than totally and permanently disabled, to receive disability benefits, according to the 6th U.S. Circuit Court of Appeals.

Herbert VanderKlok, a man with a sixth grade education, worked as a laborer for Grand Rapids Manufacturing for approximately 24 years, when he was injured on the job, fracturing his clavicle. This resulted in a diagnosis of adhesive capsulitis to his right shoulder which limited his shoulder range of motion.

Mr. VanderKlok did not return to any form of work since the accident. He filed a claim for disability with Provident Life & Accident Insurance Co. Inc., which was denied because it was determined that Mr. VanderKlok was not totally and permanently disabled. Mr. VanderKlok then sued the insurer but lost in the trial court.

On appeal, Mr. VanderKlok argued that ERISA mandates that the total disability clause in the group life plan must be read to mean that for an employee to qualify for disability benefits, all that he must show is that he is disabled to such an extent that he cannot return to his prior position with the employer.

The court pointed out that this was a life insurance policy with a disability provision, and not a disability policy. According to the court, the policy clearly stated that it was only upon the occasion that one becomes totally and permanently disabled in general that one was entitled to accelerated payments on the life insurance policy in the form of disability benefits.

The court said that there was no authority for Mr. VanderKlok's argument that such a clause must be construed to mean that a claimant need be disabled only from his prior occupation.

The case was returned to the lower court, however, for further proceedings because the insurer had failed to give Mr. VanderKlok timely written notice of the denial.

VanderKlok vs. Protective Life & Accident Insurance Co., 6th U.S. Circuit Court of Appeals, Feb. 13, 1992 (BI/04/N.-\$10).

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

Scam artists

Continued from page 2
tial scam artists:

- "Anyone who travels outside their own country more than 10 times a year is a crook," particularly if domiciles with corporate secrecy laws are frequent destinations, he said.

Regulators and others dealing with these people should ask to see their passports, learn where they've traveled and try to find out more about their activities in those jurisdictions.

- "Anyone who owns a car worth more than \$50,000 is a crook," he said, adding that the same applies to other forms of conspicuous consumption like the purchase of large yachts or expensive jewelry.

Mr. Pankau warned against flashy operators who try to draw attention to themselves and divert it from the companies they represent.

- "Anyone who has a \$1 million piece of property with no mortgage is a crook," he said, advising independent appraisals of property that is being used to back up insurance or other transactions.

"If the value's not there, you are holding an empty bag," he observed.

- "Anyone who is an officer or director of 10 or more corporations is a crook," he said.

Con artists frequently set up large numbers of shell companies to use as needed, he explained. If a company's state corporate registration has lapsed for failure to pay taxes or make required filings, it may be merely a shell, Mr. Pankau observed.

While their schemes may differ, scam artists often use similar techniques for hiding money once they've taken it, he added.

Common money-laundering techniques include:

- Transferring funds to family members—for example, to accounts kept in a spouse's maiden name—or placing funds in family or children's trusts.

- Putting money into an expensive house, especially in states like Florida or Texas where homestead laws protect a person's home from creditors in a bankruptcy proceeding.

A con artist may prepay a home mortgage, then file for bankruptcy and later recover the cash by refinancing the house, he explained.

- Pouring cash into existing whole life or universal life insurance policies. Investigators should look beyond the face value of such policies to see if a con artist has built up substantial equity that can later be cashed out.

Group annuities can similarly be used to launder money, especially when they are cancelable for lump-sum distributions, audience members were told.

- Prepaying credit card accounts, creating "debit accounts" that investigators may not bother to check and that con men can tap later.

- Purchasing savings bonds, cashier's checks or travelers checks. All are readily negotiable and difficult to trace, Mr. Pankau noted. Investigators looking for such assets should check a person's bank records for regular withdrawals of even amounts of cash that might have been used to buy bonds or checks.

Investigators looking for information on a suspected scam artist have a wide variety of sources to tap, Mr. Pankau said.

One of the most fruitful is

court records, including: divorce actions spelling out assets and liabilities of a husband and wife; business litigation; personal injury or damage suits; and bankruptcy records.

"The record of civil lawsuits is the record of the white-collar criminal," he noted.

Other sources of information include voter registration files, marriage records, corporation filings, real property or deed records, probate records, financing statements required by the Uniform Commercial Code and data

bases of newspaper and magazine articles and credit histories.

"Everything can be tracked. There is no such thing as full financial privacy anymore," Mr. Pankau said. "Everything you do, every place you go is on a piece of paper somewhere."

Mark Bullock, an FBI agent specializing in financial fraud, reported that the bureau has made a priority of money-laundering cases.

Federal money-laundering statutes not only carry stiff sentences but also allow prosecution

of "peripheral players," such as the lawyers and accountants that aid con artists, and provide for asset forfeiture, which other criminal statutes do not, Mr. Bullock said.

Citing several warning signs of money laundering, he advised insurers to be wary of customers who: want to buy lump-sum contracts when they have previously bought only small regular-payment contracts; show little concern for the return on their investment but much concern for early cancellation provisions;

have accounts with several insurers; use cash for transactions that would normally be handled with checks; and use wire transfers to move money to financial havens like the Cayman Islands, Colombia, Hong Kong, Liechtenstein, Luxembourg, Panama or Switzerland.

Insurers should also watch out for employees or agents who: live extravagantly and do not take vacations; show dramatic, unexpected increases in sales; and report high levels of single premium business, he said. **BI**

'Audit, audit, audit, all the time'

Insurer's lack of oversight over MGAs led to loss of hundreds of millions

By DOUGLAS McLEOD

CHICAGO—Omaha Indemnity Co. still is picking up the pieces more than seven years after being hammered in one of the largest reinsurance frauds in history, two lawyers report.

The \$500 million in net losses inflicted on Omaha Indemnity by two of its managing general agents underscores several lessons for those who hope to avoid becoming victims themselves, according to John W. Bonds Jr. and Sheila J. Carpenter, both partners with Sutherland, Asbill & Brennan, which represents Omaha Indemnity.

"When something like this happens to you, it's literally unbelievable," Ms. Carpenter told an audience at a meeting of the International Assn. of Insurance Fraud Agencies Inc. in Chicago last month.

How, she asked rhetorically, could two MGAs in Kansas City, Mo., dump \$500 million in losses in a period of only a few years on Omaha Indemnity, a subsidiary of Mutual of Omaha Insurance Co. that had only about \$20 million in surplus?

The answers weren't immediately apparent when Omaha Indemnity first suspected trouble at one of those MGAs, Royal American Managers Inc., in 1985.

It took many months to find that RAM had written more than \$196 million in premiums but reported only \$61 million to the insurer; that RAM officials pocketed \$34.6 million of the money; and that much of the rest had been swallowed up in Byzantine transactions among a network of companies, several controlled by RAM principals James R. Wining and Willie A. Schonacher Jr.

Messrs. Wining and Schonacher pleaded guilty last year to conspiring to defraud Omaha Indemnity (*BI*, March 23, 1992).

Mr. Schonacher recently started serving a two-year term at the federal prison in Leavenworth, Kan. Mr. Wining was sentenced to five years' probation after arguing that he had to care for his mentally handicapped son, Ms. Carpenter reported.

Omaha Indemnity's troubles started in 1982, when it entered an MGA agreement with World American Underwriters, then a unit of Financial Guardian Group, led by Messrs. Schonacher and Wining.

After a year of apparently profitable operations that produced \$3.1 million in written premiums, Omaha Indemnity entered a new agreement with RAM, which the two men had formed after leaving World American Underwriters.

The RAM arrangement seemed attractive at first, generating a modest \$7.9 million in premiums and a slight underwriting profit in the first 15 months.

By late 1984, though, Omaha Indemnity had begun receiving in-

creasingly unsatisfactory answers to questions it put to RAM. By mid-1985, the insurer knew that RAM was not accurately reporting the business it had written, and by 1986 Omaha Indemnity realized it had uncovered "only the relatively pristine tip of what was otherwise a very dirty iceberg," Mr. Bonds said.

Omaha Indemnity sued RAM that year and, after obtaining a court order allowing it to take over administration of the RAM business, the insurer hauled away a tractor-trailer full of documents from RAM's Kansas City, Mo., office.

What it found as it reconstructed confusing masses of poorly kept records was that RAM had processed \$196.3 million in premiums, reported only \$61 million to Omaha Indemnity and actually remitted only \$7 million to the insurer. The rest was accounted for as commissions, loss payments and other off-sets, Mr. Bonds said.

The supposedly low-volume RAM program was to be reinsured by two syndicates on the now-defunct Insurance Exchange of the Americas in Miami, one of which was owned by RAM and both of which had combined surplus of only \$3.6 million.

Omaha Indemnity discovered, though, that much of the business was secretly retroceded by the syndicates to Fielding Reinsurance Co. Ltd., an undercapitalized Turks & Caicos Islands insurer owned by Messrs. Wining and Schonacher.

RAM officials then purported to bind Omaha Indemnity itself as the ultimate retrocessionaire on the business, in effect causing the insurer to reinsure itself, Mr. Bonds said.

Raising the question of how RAM could have generated such massive volumes of premium between 1983 and 1986, Mr. Bonds offered several explanations:

- "Classic economics."

"The lower the price, the more

you can sell," he explained.

RAM quoted whatever price it needed to attract large blocks of high-risk business, including taxi cabs, public transportation, long-haul trucking, restaurant and standard auto business, Mr. Bonds said.

- Unscrupulous producers who control large books of undesirable business and who flock to a dishonest MGA or a credulous market.

"We learned that there is, for lack of a better word, an underworld in insurance in the United States," Mr. Bonds observed. "Some of these people were buzzing around Wining and Schonacher from the very start."

- "Reputable" fronting insurers with MGA problems of their own that knowingly dumped underpriced, high-risk business on Omaha Indemnity when the opportunity arose.

"Unfortunately in Omaha Indemnity's case, we had several ceding companies that set out to find a sucker," Ms. Carpenter said.

- RAM's willingness to ignore the limitations of its MGA authority. For example, RAM got around a \$150,000 per-occurrence limit on its treaty reinsurance authority by labeling treaties as facultative agreements subject to a \$1 million limit, Mr. Bonds said.

Scam artists like Mr. Wining and Mr. Schonacher can improve the odds of escaping punishment by following a couple of simple guidelines, according to Mr. Bonds.

One is to make sure the insurer victim is buried under an avalanche of claims.

"Dead companies can't fight, and impecunious liquidators can't fight, either," said Mr. Bonds, noting that Omaha Indemnity would have been in such a position without the resources of its parent, Mutual of Omaha.

Other guidelines include leaving

a "tangle of cryptic, incomplete records" and cooking up "semi-plausible explanations for what you did," he said.

In RAM's case, Messrs. Wining and Schonacher tried to argue that they had used Fielding as a reinsurer to protect Omaha Indemnity, that premiums diverted into RAM accounts had been used to pay claims and that soft market conditions explained the spectacular unprofitability of its business.

In the end, none of these explanations held water.

Along with the criminal charges that would later be filed against them, Messrs. Wining and Schonacher lost a \$225 million arbitration case to Omaha Indemnity in 1989.

The insurer's actual recoveries haven't come close to covering its losses, though.

Ms. Carpenter reported that Omaha Indemnity has recouped about \$75 million in cash and saved about \$215 million through arbitration, litigation or settlement of ceding company claims.

Nevertheless, Mutual of Omaha has suffered a net drain to its surplus of about \$320 million because of the debacle, she said.

Ms. Carpenter offered a few words of advice to insurers dealing with an MGA:

- Maintain complete control over the terms of the MGA contract.

- Make sure the limits of the MGA's authority are clearly spelled out and require the MGA to provide copies of the MGA contract to prospective ceding company clients.

This way, a ceding company can't argue later that it was unaware of the limits of the MGA's authority.

- Require the MGA to deposit all premiums in a segregated trust account and never allow the MGA to arrange reinsurance protection itself.

- "Audit, audit, audit, all the time."

- Step in quickly at the first sign of trouble.

An insurer that is forced to sue its MGA can pursue a variety of charges ranging from negligence to misrepresentation, but Ms. Carpenter advised against charging violations of the federal Racketeer Influenced and Corrupt Organizations Act.

While plaintiffs are attracted by RICO's provision for treble damages, such claims are typically bogged down in endless pretrial motions and may cut off potential recoveries from MGAs' errors and omissions insurers, who could deny coverage of intentional wrongful acts, she observed.

In any case, the money to pay treble damages may have disappeared by the time an insurer catches up with a crooked MGA, she added.

"What good would a \$600 million judgment have been against Wining and Schonacher?" Ms. Carpenter asked. **BI**

1982: Omaha Indemnity Co. enters a managing general agency agreement with World American Underwriters Inc.

1983: The insurer enters a similar agreement with Royal American Managers Inc., a new MGA created by former WAU officials James R. Wining and Willie A. Schonacher Jr.

1986: Omaha Indemnity sues RAM, WAU, Messrs. Wining and Schonacher and several other companies, charging that they defrauded the insurer of tens of millions of dollars of premiums.

1989: Omaha Indemnity wins a \$225 million arbitration award against RAM and its two principals for negligence and fraud.

1991: Mr. Wining and Mr. Schonacher are indicted in Kansas City, Mo., on charges of defrauding Omaha Indemnity of more than \$20 million in reinsurance premiums. Federal prosecutors in Wyoming separately charge the two men with using stolen Omaha Indemnity premiums to form Laramie Insurance Co., a Wyoming insurer that subsequently failed.

1992: Mr. Wining and Mr. Schonacher plead guilty to charges in the Kansas City indictment.

1993: Mr. Schonacher is sentenced to two years in jail. Mr. Wining is given five years' probation.

GRAPHIC BY CHRIS ROY

INTERNATIONAL

Insurers covet state-run plans in Australia

BRISBANE, Australia—Australian insurers want a piece of the \$3.5 billion Australian (\$2.37 billion) in premiums that now goes to government-run workers' compensation and compulsory auto insurance programs.

A non-life insurer trade association, the Insurance Council of Australia, last month released the results of a study it commissioned on the potential benefits of privatizing some of these government-run insurance plans.

One benefit of privatizing compulsory coverages is that competition in the private sector may result in lower premiums and fewer claims, the study indicates.

Successful privatization already has occurred in several Australian states, according to accounting firm Ernst & Young, which conducted the study.

For example, the New South Wales government-owned insurer, now operating as GIO Australia, was privatized through a \$1.2 billion Australian initial public offering (\$898.1 million) in June 1992. GIO now is one of Australia's largest insurers in terms of premium volume, with net premiums of \$625 million Australian (\$467.8 million) for the year ended June 30, 1992.

The insurer was large prior to privatization, but its premium volume has grown because it is no longer subject to certain constraints that it was under as a government entity, and it has increased its capital base by acquiring the Victorian government's insurer.

Neil Summerson, Ernst & Young's managing partner-Queensland, said privatization of insurers can be successful if carefully planned and if governments do not in effect replace public monopolies with private ones.

Government-insured compulsory automobile liability coverage accounted for 55% of total automobile liability premiums written in Australia in fiscal 1991-1992, according to the report.

And government-provided workers compensation coverage accounted for 93% of workers compensation premiums in Australia in fiscal 1991-1992, the report said.

The New South Wales government also privatized a monopolistic automobile liability insurance program, the report noted. During the first year of privatized automobile liability insurance in New South Wales, premiums fell to less than \$200 Australian (\$135) per vehicle from \$345 Australian (\$234), the report said.

Fourteen approved insurers now provide competitive prices within a policy framework set by the Government Motor Accidents Authority. The rate of claims also dropped after the coverage was privatized, Ernst & Young noted. The study attributed the drop to the fact that private companies investigate claims more carefully before paying them than the government entities.

A spokesman for the Insurance Council of Australia contends privatization for workers comp and other coverages would reduce Australian employers' insurance costs, reduce the potential for fraudulent claims and stimulate the economy.

—By Kate McIlwaine

S&P downgrade prompts defection

Sumitomo is second Japanese insurer to withdraw from ratings

By GAVIN SOUTER

NEW YORK—Sumitomo Life Insurance Co., Japan's third-largest life insurance company, has pulled out of Standard & Poor's Corp.'s financial strength ratings.

Sumitomo is the second Japanese life insurance company this year to pull out of the ratings after receiving a downgrade from S&P Insurance Rating Services.

Sumitomo's decision comes four months after S&P lowered its claims-paying ability rating. In February, S&P lowered its financial strength ratings of Tokyo-based Sumitomo and Dai-ichi Mutual Life Insurance Co. to AA+ from AAA.

Dai-ichi withdrew from the S&P's ratings shortly after the downgrade, said Karla Newman,

associate director at S&P in New York.

The downgrades come during a period of lower investment returns in Japan, which have weakened the companies, said Ms. Newman.

Sumitomo was originally rated by S&P in 1987. S&P rates companies on financial data that is not always made public, and consequently it needs the cooperation of the company to provide the data, Ms. Newman explained.

Sumitomo is "having some problems with their assets.... The biggest problem has been the decline in the value of the stock market in Japan," Ms. Newman said.

In recent years, Japanese life insurance companies have benefited from high book values for

their stock portfolios. However, the decline in the value of the stock market has meant that their assets have had a lower value, she said.

"But the Japanese insurance industry is very highly regulated, and they have not had an insurance company failure for years," she said, stressing that Sumitomo and Dai-ichi are still financially strong.

Demands by S&P for more information from the companies may also have encouraged Sumitomo to withdraw from the rating agency, Ms. Newman said.

"We have been asking for more data on every level, which they then have to translate into English and it has become more burdensome for them," she said.

In addition to the impact of the

financial markets on insurance companies, political upheavals in Japan could also affect the insurance industry there by slowing down regulatory change, Ms. Newman said. Changes in regulation of the Japanese insurance market could take some time in coming, she said.

A new insurance law is being formulated and is due to be implemented sometime in 1994 or 1995, Ms. Newman said.

The new law is expected, among other things, to permit multiline insurance companies in Japan and to make the market more accessible to foreign insurers.

"We have been receiving conflicting information on when the new law will eventually be passed, and with the current political upheavals in Japan, it could be slowed right down," Ms. Newman said. **[B]**

Broker breaches Great Wall of China

By STACY SHAPIRO

BEIJING—Sedgwick Group P.L.C. has become the first international broker to have an official license to place coverages and offer risk management services in China.

Sedgwick has had a liaison office in China for the past 12 years, providing reinsurance brokering and risk management consulting to Chinese and foreign ventures. But last week, the People's Bank of China, which governs finance in the country, allowed Sedgwick to form an official subsidiary in Beijing.

The subsidiary's general manager will be John Williams, who has managed the group's liaison office for the past five years. Other directors include Sally Jones and Amy Zhu, Sedgwick's senior Chinese staff member in Beijing.

Sedgwick Insurance & Risk Management Consultants (China) Ltd. must now become registered by China's Administration for Industry & Commerce. The license will allow

Sedgwick to place coverage for foreign and domestic business throughout China and to expand its operations in the country.

Sedgwick plans to open an office in Shanghai, the base for The China Pacific Insurance Co., which is Chinese-owned, and American International Assurance Co. Ltd., a unit of American International Group Inc.; and in Shenzhen, home of Chinese-owned Ping An Insurance Co.

"China has long been in our targets, and it has taken a long time" to get the license, Sedgwick Group Chief Executive Sax Riley said at a press conference last week.

Asked about China's political stability, Mr. Riley pointed out that Sedgwick is already in Hong Kong, which will be passed over to the Chinese government in 1997 (*BI*, July 5). It is better to become involved in China now "on an apolitical basis" than "wait until they come over the hill" into Hong Kong, said Mr. Riley.

Continued on page 19

Chinese insurer sets sights on entering U.S., Europe

NEW YORK—The People's Insurance Co. of China wants to set up its own operations in the United States and Europe, said Li Yumin, chairman and president of PICC, while visiting New York recently.

During the visit, Mr. Li said he also sorted out problems with China America Insurance Co., the joint venture it has with American International Group Inc.

"PICC is interested in developing business in Europe, and if we are allowed to, we would like to enter the U.S. market as well," Mr. Li said at a reception held by the Chinese American Insurance Assn. PICC has some experience with the U.S. market through China America, which was set up in 1980 to insure trade risks between China and the United States.

But the joint venture "has not been very satisfactory for both sides," he said. CAIC has not generated enough profits for the owners, Mr. Li said. However, PICC and AIG managers reached agreements regarding China America, he said. He would not elaborate.

The talks led to a new business plan for CAIC, said Maurice R. Greenberg, AIG chairman. "The new business plan is much broader than just U.S.-China trade. It is... worldwide in scope, and will focus on all Asian trade and investment," he said.

—By Gavin Souter

Minimizing terrorism losses

By MARIA KIELMAS

LONDON—Managing the risk of terrorism presupposes one can control the event—and no business has such control, a loss adjuster says.

"Control rests very firmly with the terrorist, whereby invariably at his whim targets are chosen," said Roy Murray, managing director of loss adjuster Thomas Howell (Midlands) Ltd., who has spent years investigating terrorist damage in Northern Ireland.

Because of that lack of control, businesses must develop a detailed plan for coping with such a disaster if it strikes, Mr. Murray said at a seminar, "Managing Terrorism Risk, an Update," sponsored in London earlier this month by the Institute of Risk Management.

The disaster plan must be reviewed periodically to incorporate any changes to the business or to personnel, he said. Ideally, the contingency plan should include detailed specifications and drawings of the premises at risk and a major inventory of the facility's contents, Mr. Murray said.

Assessing building design is key: Expert

Analyzing the safety of a building so potential weaknesses can be corrected is also critical, he said.

Another speaker said U.K. companies that take steps to minimize their exposure to terrorism damage

should earn lower premiums.

Clive Richardson, associate director of consulting engineering firm RT James & Partners, said that effective risk management should be rewarded with lower property in-

surance premiums.

"Insurance premiums have risen in the wake of (the April 24 bombing at) Bishopsgate, and building owners and managers should be given the opportunity to negotiate premium reductions if they can demonstrate good blast-resistance of their buildings," he said.

Currently, U.K. insurers do not provide credits for security and risk management procedures designed to minimize terrorism losses.

Managers should ask themselves three things, Mr. Richardson said:

- How can bombs be kept away from buildings?

- What are the most vulnerable parts of a building and how can they be protected?

- Where are the strong points of the building for mustering occupants in the event of an attack?

Each building should be considered individually, Mr. Richardson said, offering tips on what to look for in analyzing a building's safety.

Ductile materials such as steel and reinforced concrete respond better than brittle glass, timber and

Continued on page 19



A terrorist bombing in London earlier this year caused heavy damage.

AP/Wide World Photo

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No request for proposals shall be received after July 30 unless mailed to the Public Entity Risk Management Administration for receipt at the designated time and place.

The form of proposal may be examined and obtained at the office of the Public Entity Risk Management Administration, 25 Main St., Hackensack, New Jersey, 07601-7015, phone 201/489-8861, during regular business hours upon payment of \$10.00 for each complete set of documents, said sum is not returnable.

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

The Minnesota Workers' Compensation Assigned Risk Plan (the "Plan") is seeking joint proposals, submitted by two partner entities, to provide general administrative and managed care services. General administrative services include but are not limited to: policy issuance and premium collection services; premium audit services; and loss control services. Managed care services include but are not limited to: medical management and disability management. Claims administration services, which have historically been provided to the Plan by the general administrative services vendors, may be provided by either vendor or a combination of both.

The complete official notice of this RFP is contained in the *Minnesota State Register* published on July 12, 1993. Interested parties may obtain the complete notice and a copy of the RFP by written request to Mark R. Sheehan, Plan Administrator, Minnesota Workers' Compensation Assigned Risk Plan, 4500 Park Glen Road, Minneapolis, MN 55416. Written requests will be accepted by fax at (612) 922-5423. Responses to the RFP will be due at 4:00 p.m., November 1, 1993.

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INTERNATIONAL

Terrorism risk

Continued from page 17

unreinforced masonry to a bombing. Windows, doors and service openings, such as loading docks, are vulnerable points for external blasts to penetrate, Mr. Richardson said.

And the bigger the blast, the more likely the structure itself will be affected. "All buildings can sway sideways, walls bounce in and out, and floors can be momentarily lifted. Blast pressures can also damage equipment and travel to the heart of plant rooms via air ducts," he said.

Mr. Richardson explained that an explosion is a very fast chemical reaction producing transient pressure waves. These blast waves can be magnified when they are resisted or reflected, he explained. He recalled the aftereffects in a London club after its lobby was bombed: "We found that the blast had gone out through the ground-floor windows, bounced off the opposite buildings and returned to push in the first-floor windows."

Window breakage is a main concern from an explosion because of the potential for appalling human injury, for documents being sucked into the street and for general loss of weather-tightness. Research has led to a new generation of blast-resistant windows, which are both affordable and conventional-looking.

Once the strong and weak points in a building have been identified, a "safe haven" must be determined and a safety drill established, Mr. Richardson advised.

After a terrorist attack, building owners should not rush into repairs before obtaining a structural survey to detect such damage as loosened beam ends and brick hearths, upward failure of floors, and the reversal of stress on the truss, he said.

Graham Trapnell, head of group insurance risk management at Standard Chartered Bank in London, cited his company's experience from the Bishopsgate bombing in late April. The bank's offices sustained approximately 1 million pounds (\$1.5 million) in damages from the

blast, and it will take about one year before the offices are fully repaired and reoccupied, he said.

Without the benefit of anti-shatter filming on windows, the losses could have been between 5 million and 10 million pounds (\$7.52 million and \$15 million), Mr. Trapnell said. The cost of fitting the anti-shatter plastic was about 40,000 pounds (\$60,160), he said.

The worst effects of the blast were felt in open offices. "There is no question that internal separation in the form of full-height partitioning

—and obviously the more solid the better—will diminish the effect of the blast," he said.

Mr. Trapnell also said that a "clean desk policy" should be strictly enforced, to prevent the scattering of vital documents.

Companies should appoint an emergency team to look for casualties and survey the damage after a blast. The team should be equipped with suitable clothing, footwear, gauntlets, hard hats, face covering and eye protection to guard against the worst of buried glass splinters.

Eyes have been injured from fine glass dust particles being blown into people's faces.

Also, Mr. Trapnell advocates in-house security teams.

"It is fashionable currently to contract out matters of security to external agencies, and this may provide some financial justification," he said. But then the security arm does not have a sense of being part of the corporate team with loyalty to their colleagues, Mr. Trapnell said.

Like Mr. Richardson, Mr. Trapnell also believes that all such con-

tingency measures should be taken into account when insurance premiums are calculated.

"What we should expect from Pool Re is recognition and consideration to companies that take all possible measures to mitigate the effects of terrorism and who have sophisticated contingency and business recovery planning in place, who invest in plastic anti-shatter filming of all windows, and as a result achieve a significant mitigation of their potential loss," Mr. Trapnell said. **BI**

Terrorism losses spark debate over responsibility

LONDON—Who should bear the burden of terrorism losses?

Insurance industry executive debated whether the U.K. government should shoulder a greater portion of these losses on mainland Britain at a seminar, "Managing Terrorism Risk, An Update," sponsored by the Institute of Risk Management in London earlier this month.

The British government's reluctance to involve itself directly in insuring terrorist losses on the U.K. mainland is more political than economic, says Chris Mounsey, assistant secretary at the Assn. of British Insurers. "There must be a threshold at which the government should assume that burden," he said.

Mr. Mounsey added that the government must approach the coverage on a practical basis, being prepared to underwrite at least short-term losses above a certain threshold.

In its current role as reinsurer of terrorism risks through Pool Re, the government has come under fire for proposing rate hikes for July renewals of up to 300% in central London (*BI*, June 7). In practice, the scheduled rate increases could vary between 6% and 600%, said Mr. Mounsey.

The rates should not change for the remainder of Pool Re's first year of operation so the premiums are not an unsustainable burden on commerce and industry at a time of

recession, he said.

Espousing a different view, Alan Fleming, executive director of the Assn. of Insurance & Risk Managers in Industry & Commerce, said that a feeling within certain sectors of the insurance industry that terrorism coverage is a government, not an industry, problem is dangerous.

"If the insurance market abrogates its responsibility in this area,

Ultimately, the cost of terrorism must be absorbed by the economy, says Alan Fleming.

where does it draw the line next?" he asked. "Potentially, insurers are creating an excuse for a future left-wing government to consider nationalization of the industry."

Mr. Fleming said ultimately the cost of terrorism must be absorbed by the economy. So if the cost is not covered through insurance, it will be through taxation. If the cost is borne by the government, claims administration is a problem, he said. "At least there is an infrastructure in place within the insurance market, and if the cost does escalate, then possibly some form of retroac-

tive rating system should be introduced," said Mr. Fleming.

Roy Murray, managing director of loss adjusters Thomas Howell (Midlands) Ltd., said it is necessary to understand the reasons behind the U.K. government's reluctance to become directly involved with terrorism insurance.

Losses from terrorist damage in Northern Ireland since 1968 total 695 million pounds (\$1.05 billion), he said. This total compares with U.K. commercial property fire losses in 1992 alone of 613.1 million pounds (\$928.5 million).

Mr. Murray said the government is right not to extend the Northern Ireland criminal damage legislation, under which business or citizens are compensated for losses from terrorist acts, to the British mainland for a number of reasons. The most important is political. "The government of the day could not admit a major political failure, i.e. the state's inability to protect Great Britain from the ravages of terrorism, by introducing a public compensation scheme. It could not hand the IRA a massive propaganda coup."

Mr. Murray listed other reasons for his position:

- Religious differences and national allegiances have for a few

hundred years resulted in malicious damage in both Northern Ireland and Ireland generally. In Great Britain, ethnic and religious groups have settled their differences enough to coexist.

- The government did not perceive that the present wave of terrorism within Northern Ireland would last 24 years and probably felt that the containment security policy, in which a government tries to control violence through containing it to its place of origin and adopting stricter policing procedures, would generally prevent major terrorist acts on the mainland.

- The government expects businesses to support and join it as partners in trying to find a solution to terrorism.

- The government did not want an annual drain on funds.

He stressed that the nature of the insurance could change with a government program. "What should be realized is that you are faced with a Civil Service paymaster and guardian of the public purse, and it has to be accepted that this may imply a lessening of the commercial considerations that would automatically follow from a contractual liability under an insurance policy."

—By Maria Kielmas

Sedgwick in China

Continued from page 17

Sedgwick already has 50 clients in 23 cities in China, serving as a reinsurance broker and risk management adviser, said David Brewer, chairman of Sedgwick Far East Ltd. in London. The client list includes the Daya Bay nuclear power station and the construction of the new Shanghai subway system.

Sedgwick has also become more and more involved in providing insurance and risk management advice to foreign ventures in China, said Mr. Brewer. Sedgwick will continue to pursue various kinds of business in the country, including risk management consulting for major infrastructure projects.

Insurance is still in its infancy in this giant Asian economy, added Max Lewis, director of Sedgwick Far East. While the Chinese economy is growing 10% per annum, in-

surance premiums still only account for 0.05% of the gross domestic product, said Mr. Lewis.

But this situation is changing. The People's Insurance Co. of China, the country's huge state-owned insurer, says its premium volume is growing 50% per year. It is now looking to expand into the United States and Europe (see story, page 17). Meanwhile, a number of insurance companies with substantial capital want to enter the Chinese market.

Aside from Ping An and China Pacific, a couple of other Chinese-owned insurers have applied to become licensed by the Bank of China, including Union Insurance Co.

Also, it is likely that a state-owned reinsurer will be set up, said Mr. Brewer.

In addition to AIG, foreign insurance companies are interested in China and many have set up liaison

offices in the country. Among them are 12 Japanese insurers, Continental Insurance Co., CIGNA Corp. and several U.K. insurers, he said.

Presently, the Insurance Law Drafting Group—made up of officials from the People's Bank of China, the PICC and foreign advisers like Sedgwick—is finishing its final draft of China's new insurance law. The draft is scheduled to be published in Chinese sometime this fall, though it probably won't become law for at least a year.

The law is unlikely to allow foreign insurers to become licensed for some time, to allow the indigenous insurance industry to grow, said Mr. Brewer. AIG would be the exception, since it is already licensed because of its 1919 origins in Shanghai. The law is expected to allow other insurance brokers to become licensed in the country. **BI**

1987, after paying 80% of its value. The traders' agent in Asuncion issued release warrants, but the supplier only delivered 500 bags and allegedly stole the remaining 42,100 bags.

FMC and CB&F made a theft claim under a \$35 million cargo insurance policy that was led by a Lloyd's syndicate formerly managed by H.G. Chester & Co. Ltd. But the underwriters refused to pay, saying the coffee was not stolen but rather had not been deli-

vered and therefore was not covered under the policy.

Judge David Edelstein of the U.S. District Court for the Southern District of New York ruled late last month that the policyholders had an insurable interest in the coffee and were covered by the policy. The judge ruled that the underwriters should pay FMC and CB&F the highest market value at the time of the loss, plus 9% interest a year.

—By Gavin Souter

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Lloyd's must cover loss from alleged coffee caper

NEW YORK—Lloyd's of London underwriters will have to pay more than \$9 million after a court found they did insure 42,100 bags of coffee lost in an alleged scam in Paraguay.

Farr Man Coffee, a New York coffee importer, and CB&F Interamerica, a Miami coffee trader, entered a joint venture in 1986 to buy the coffee from suppliers in Asuncion, Paraguay.

FMC and CB&F requested delivery of the coffee in February

For the Record

Bribery allegations under investigation

SAN FRANCISCO—A detailed report is expected later this month from the California Department of Industrial Relations on bribery charges against workers compensation judges in Southern California.

However, "many of the allegations appear to be baseless," said John Duncan, deputy director of the DIR, which oversees the Division of Workers Compensation.

In March, Casey L. Young, administrative director of the workers comp division, sent a memo to division employees, stating he was "receiving an increasing number of allegations of unethical, and even illegal, activities" by division employees.

The charges, which involved judges accepting expensive gifts from attorneys seeking insurance settlements, triggered the DIR investigation.

Meanwhile, the California Assembly late last month passed and sent to the Senate a bill, A.B. 1252, that would require the administrative director of the workers comp division "to adopt regulations necessary to ensure that the activities of workers compensation judges are consistent with the Code of Judicial Conduct, and with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974."

Assemblyman Richard Mountjoy, R-Arcadia, introduced the bill before the investigation was launched.

Illinois insurance law to govern HMO windup

CHICAGO—An insolvent health maintenance organization will be liquidated under Illinois insurance law, rather than under federal bankruptcy law, the 7th U.S. Circuit Court of Appeals has ruled.

The appeals court ruling will allow enrollees to receive guaranty fund protection and higher priority for claims payment than under bankruptcy law.

"This is certainly the highest-level court to address the issue, so it will be a significant precedent," said Barry Gross, an attorney with Shefsky & Froelich Ltd. in Chicago, who represented Illinois insurance regulators.

Until now, courts have split on the issue of how financially troubled HMOs should be handled. In this case, a bankruptcy court judge had ruled Medcare HMO, licensed in 1985 as Medcare Inc. in Maywood, Ill., was not an insurer, though that ruling was overturned by a district court.

The three-judge appeals panel ruled "the classification of an entity should generally follow the law of the state of its incorporation," if not expressly classified by the bankruptcy code.

Medcare HMO, which had 54,000 enrollees when it sought bankruptcy court protection in June 1992, now faces more than \$100 million in unverified claims with about \$20 million in assets, Mr. Gross said.

Asbestos firm relieved of liability in minitrial

BALTIMORE—Porter Hayden Co. will not have to pay any damages to the families of four former steelworkers who claimed they were injured by cancer-causing asbestos on the job, a jury has ruled. The June 9 verdict resolved the

first minitrial in the massive Baltimore consolidated asbestos case involving some 8,555 plaintiffs that sued Porter Hayden and five other companies for selling, distributing or installing products containing asbestos. Porter Hayden supplied Bethlehem Steel with asbestos cement and insulation products made by Johns Manville Corp. from 1956 through the early 1970s. The other defendants—AC&S Inc., MCIC Inc., Pittsburgh Corning Corp., Keene Corp. and GAF Corp.—all settled before the first minitrial.

Although the jury found that all four plaintiffs were exposed to Porter Hayden's products, they did not believe the exposure was a substantial contributing factor in their illnesses and deaths.

Texas names TPA, bank in employee leasing suit

AUSTIN, Texas—Texas Attorney General Dan Morales has filed a lawsuit in U.S. District Court in Dallas alleging that Hartford Life & Accident Insurance Co. and Bank of America units participated in a fraudulent insurance scheme with an employee leasing company.

The Texas-based leasing company, American Workforce, allegedly defrauded 300 small businesses and their 5,000 employees before seeking bankruptcy, according to Mr. Morales' complaint, which was filed late last month.

Hartford administered a self-insurance program to handle health insurance claims for the leasing company, though the contract lasted only 16 days in early 1991, a spokesman for insurer said. Hartford also wrote group life and disability insurance for the leasing company.

Bank of America units provided various services to the leasing company, including acting as a trustee.

The suit alleges that Hartford and Bank of America should have known the leasing company's arrangement was fraudulent and should not have become involved with it. Mr. Morales wants both companies to help pay some of the leasing company's \$20.3 million in outstanding taxes and debts, including \$7 million in health insurance claims.

Representatives of both Hartford and Bank of America deny any wrongdoing or liability.

Information in brief

A new **Kansas workers compensation law** is expected to slash workers comp costs by up to 11.2%. The law caps medical and legal fees, restricts some benefits and streamlines administration. . . **Hartford Life Insurance Co.** is assuming \$600 million in life and annuity policies from Pacific Standard Life Insurance Co. under a rehabilitation plan approved last month by a California state court. The insurer has been in conservation since December 1989. . . **Georgia Pacific Corp.** has been fined \$205,500 by the Oregon Occupational Safety and Health Division for **safety violations** resulting in an explosion last February that killed two workers and seriously injured four others. . . **American International Group Inc.** says it will pay a \$750,000 fine for rating and underwriting violations uncovered by the California Insurance Department. . . The 3rd U.S. Circuit Court of Appeals has affirmed a lower court dismissal of racketeering claims against KPMG Peat Marwick by policyholders of the insolvent **Mutual Fire, Marine & Inland Insurance Co.** **[B]**

Lloyd's releases proposed guidelines for corporate investment in 1994

By ALINE SULLIVAN

LONDON—Lloyd's of London's plans to admit corporate investors beginning next year came under attack last week at a sometimes acrimonious extraordinary general meeting of Lloyd's members.

The EGM was called to debate three resolutions that are being submitted to a postal ballot of more than 31,000 existing and recently resigned names (see story, page 3).

Two out of three resolutions pertained to the introduction of corporate capital: one criticized the plan and calls for corporate names to help current members shoulder the burden of existing losses; the other endorses corporate capital and asks Lloyd's to "ensure that the membership terms offered to corporate capital are as favorable as possible to existing names."

The third resolution seeks to impose a fiduciary duty of care on Lloyd's executives.

The meeting came several days after Lloyd's Chairman David Rowland on July 1 unveiled a consultative document, "Requirements for the Admission of Corporate Members," that outlines the terms by which corporate capital will be admitted to the market.

According to Mr. Rowland, corporate names will have to show net

tangible assets of at least 1.5 million pounds (\$2.26 million) each. They will be able to underwrite up to twice the funds they have pledged to Lloyd's. This contrasts with guidelines for individual names, who can underwrite three or even four times the amount of funds they have pledged to Lloyd's.

The difference reflects the fact that individual names accept unlimited liability for losses, whereas corporate names will have limited liability.

The document also sets limits on the percentage of a syndicate's capacity that can come from corporate names. For 1994, no syndicate will be able to allocate more than 50% of its total premium limit to corporate names without the consent of the Lloyd's Council.

Corporate names will have to pay a non-refundable application fee of 10,000 pounds (\$15,040), plus an annual subscription of not more than 0.5% of allocated premium capacity in that year. For a corporate name with allocated capacity of 3 million pounds (\$4.5 million) in 1994 this would total 15,000 pounds (\$22,560).

Corporate names also will have to make an annual contribution to Lloyd's Central Fund, which serves as the final link in Lloyd's chain of policyholder security. The Central

Fund fee in 1994 will be 1.5% of names' allocated capacity, which would total 45,000 pounds (\$67,680) for a corporate name underwriting 3 million pounds.

An important innovation included in the proposal for corporate capital is a suggestion that Lloyd's introduce a system of risk weighting for the different classes of business it underwrites. The idea, which would apply to individual as well as to corporate names, is that investors should be required to put up more money to write high-risk business, like excess-of-loss catastrophe reinsurance, than for low-risk business, like auto insurance.

Robert Hiscox, Lloyd's deputy chairman, said on July 1 that it is "clearly ridiculous" that the same amount of money has to be pledged as security to underwrite equal amounts of such different risks.

Mr. Hiscox led the Lloyd's working party that drafted the new proposals on the introduction of corporate capital. Lloyd's hopes to confirm the proposals, now open for discussion in the market, in August.

The mood among senior Lloyd's underwriters over the prospects of Lloyd's attracting corporate capital was summed up by Mr. Hiscox: "There is a lot of interest, but of course nobody has put a pound note on the table yet." **[B]**

Members voice concerns

LONDON—Lloyd's of London members question whether their interests will be pushed aside in the market's push to attract much-needed corporate capital.

But speakers at the Assn. of Lloyd's Members national conference July 1 tried to convince current members that their fears are unjustified.

"The old Lloyd's really couldn't continue," said David Jarvis, managing director of Salomon Brothers Inc. in London, which is examining the availability of corporate capital for Lloyd's. "Lloyd's really needs a new start. It needs new capital and a new operating environment."

Lloyd's is still one of the top five underwriters in the world today, said Mr. Jarvis.

But Lloyd's capital base—essentially its current membership—has been eroded by more than 6 billion pounds (\$8.96 billion) in losses during the four-year period from 1988 to 1991. The market also has been hit by higher expenses than its competitors, a lack of professionalism by its underwriters and a failure in self-regulation, according to Mr. Jarvis. If Lloyd's continues in this fashion, there will not be enough capital to sustain it, he said.

Indeed, there could be a 3.6 billion pound to 4 billion pound (\$5.37 billion to \$5.97 billion) drop in capacity next year if corporate capital is not attracted to Lloyd's, warned David Reid Scott, managing partner of Phoenix Securities Ltd. in London.

Lloyd's financial strength has come from its "credibility" and "stability," which must be regained to attract new investors, said Salomon's Mr. Jarvis.

"Institutional investors will be looking for a fresh approach," he added. This includes more professional management and much more documentation and information to investors, said Mr. Jarvis.

However, association members were still skeptical about the impact of corporate capital.

One association member who's been a name at Lloyd's for 40 years

asked Mr. Jarvis how current members will be able to avoid "being relegated" to the worst syndicates in the market while leaving the best for the corporate members.

Mr. Jarvis explained that all members—which he divided into "natural" and "incorporated" members—should benefit from the better performance corporate investors will require. Syndicates will also be required to provide more information to institutional investors, making the market "more transparent" for everyone, he said.

Another association member said Lloyd's may have adopted too short a timetable for introducing corporate capital by January 1994. He said it would be better to delay the introduction of corporate capital until 1995, which would allow current members to benefit from better underwriting results in 1994.

But Mr. Jarvis warned against such a delay.

At the moment, "We're in a market that's favorable to raising equity," he said. And investors currently are particularly interested in financing insurance/reinsurance operations like Lloyd's, he added.

—By Stacy Shapiro

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Superfund reform

Continued from page 1
rather than actively lobbying.

Take the National Environmental Trust Fund. This insurer-funded group advocates an idea first broached by American International Group Inc.'s chairman, Maurice R. Greenberg: replacing the current liability system for cleaning up Superfund priority sites with some sort of broad-based trust fund.

According to NETF Director Jan Edelstein, the group currently has about 1,500 members representing a broad cross-section of business, though funding comes solely from a small group of insurers.

Although creating such a trust fund would probably require some sort of broadly levied tax, Ms. Edelstein doesn't think a new tax would stand in the way of reform. Too many people see the current liability-based system as a failure, she said.

A few blocks away is the Coalition on Superfund, a six-year-old organization consisting of manufacturers, insurers, chemical companies and environmental services companies. The coalition focuses on reforms like improving priority-setting to speed cleanups, developing "reasonable" cleanup standards, and examining alternative ways to finance Superfund.

Less than a five-minute walk away from the Coalition on Superfund is the Hazardous Waste Cleanup Project, which represents manufacturing trade associations and the AIA. This group stresses the need to improve cleanup programs "by focusing on actual risks to human health and the environment rather than hypothetical risks." The project recently issued three reports faulting the current cleanup system.

"Priority No. 1 is to fix cleanup standards, and priority No. 2 is to make sure nothing gets in the way of priority No. 1," said Mike Steinberg, an attorney with the Washington law firm Morgan, Lewis & Bockius, who represents the project.

A block to the east is the AIA, which teamed up with non-AIA member CNA Financial Corp. this spring to launch the Superfund Improvement Project. "Retroactive liability is the single greatest issue (for the group)," said the AIA's Mr. McGavick.

Another group is the Superfund Forum, a coalition of coalitions representing more than 20 business and insurance trade associations. The forum is an offshoot of the Ad Hoc Superfund Working Group, which was formed to oppose proposals for "municipal carve-out" in the law, which would provide local governments with an exemption from cleanup liability.

One veteran insurance lobbyist said he doesn't consider the number and variety of special interest coalitions a weakness. Multiple memberships are needed because there are so many pieces to reform, said Peter Lefkin, vp-federal affairs for Fireman's Fund Insurance Co. in Washington. Fireman's Fund belongs to the trust fund, the Superfund Improvement Project and the Ad Hoc Working Group.

"We believe cleanup standards are necessary, and we'll support industrial America, but we expect the same," he said.

No reform is possible without support from the broader business community, insurance lobbyists say.

"The business community and insurers must find common ground in order to avoid a repetition of the 1986 (reauthorization) debacle," said Les Cheek, senior vp-federal affairs in Crum & Forster Inc.'s Washington office.

In 1986, business interests fought bitterly among themselves over taxes and paid no attention to the question of how clean is clean, said Mr. Cheek, referring to the debate over remediation standards. He said it will be possible to find some com-

Nationwide cleanup efforts stall



GRAPHIC BY JOHN HALL

mon ground on liability reform, but the key is a package of broad-based taxes that treats all parties fairly and appropriately. Crum & Forster is a member of the NETF.

"The worst thing would be a reauthorization of the statute in current form," he said.

He was far from alone in that assessment.

"Nothing would be the worst thing (to do)," said Susan Vogt, a former EPA official who serves as co-director of the Coalition on Su-

perfund.

"The biggest risk is somebody saying, 'All we have time to do is whatever everybody agrees to,'" said Bill Bresnick, senior federal environmental representative in Texaco Inc.'s Washington office and director of the Ad Hoc Superfund Working Group. Environmental groups, he explains, might agree to nothing, thus leaving the law intact.

Then there's the risk that Superfund will be pushed aside as Congress grapples with other issues.

Health reform, for one, looks like it could hold center stage for months.

But the chairmen of key congressional panels dealing with Superfund are already warning the Clinton administration to move quickly or risk having the reauthorization debate run into the next Congress (see story, page 22).

Business lobbyists say it is too early to assess what is politically doable.

"The educational process is still going on and I think will be stepped up," said Ms. Edelstein of the NETF. "We want to see the 1993-1994 debate to be a practical debate rather than an ideological debate" like the 1984-1985 discussion.

Ordinarily lobbyists would have a pretty good sense of what was politically palatable at this point, said Mr. McGavick of the AIA. With more than 100 new members of Congress, though, that's not the case.

But "anytime you have an old program that's working this poorly" it could be viewed as an opportunity rather than a headache, said Mr. McGavick.

"I think there's growing recognition that the liability system is the heart of the problem," but whether that's enough to forge a

Continued on next page

Financing, liability, cleanup standards are key reforms

WASHINGTON—Superfund—officially known as the Comprehensive Environmental Response, Compensation and Liability Act of 1980—is up for reauthorization next year.

The law was last reauthorized in 1990, and has revenues adequate to extend it through 1995.

Although the Environmental Protection Agency has more than 1,200 sites on its National Priorities List slated for cleanup, only 155 sites have been tended to during the past decade. Meanwhile, about 100 additional sites are being added to the priorities list each year.

Several issues are expected to dominate the Superfund reauthorization debate. Three of the most significant are:

- Financing. The program is now financed

through cleanup costs levied on those deemed responsible for dumping at a particular site and through four taxes paid into the Hazardous Substances Trust Fund: a petroleum tax, a chemical feed stock tax, an imported chemical tax and an environmental income tax.

- Liability. Under the current system, strict, joint and several and retroactive liability are all imposed to ensure that those responsible for dumping pay the cleanup costs, to bring as many dumpers as possible into the liability system and to encourage prompt settlement.

- Cleanup standards. The EPA dictates how clean is clean for a given site. Critics charge that the standards are often too high for the site's future use.

—By Mark A. Hofmann

Lloyd's extraordinary general meeting

Continued from page 3

Nutting argued that the Council members could not do their jobs if they constantly had to look over their shoulders for possible lawsuits.

But rather than press his case for the resolution, Mr. Gurney began criticizing the quality of some individuals now serving on the Council.

He praised the work of Lloyd's Chief Executive Peter Middleton, whom he said corporate investors and members alike respect.

But Mr. Gurney called for the resignation of Lloyd's Chairman David Rowland because he was a Council member and chairman of broker Sedgwick Group P.L.C. at the time that disastrous LMX business was being underwritten in the market.

"The best thing we can say about him is that he stood idly by while evil triumphed," Mr. Gurney said to applause.

Mr. Gurney also called for the resignation of Lloyd's Deputy Chairman Stephen Merrett, whose syndicates 421 and 418 are embroiled in litigation by members with losses. "I am prepared to believe that Mr. Merrett is not in fact a crook. But he's clearly associated in so many people's minds with so much that is and was wrong about Lloyd's, it is downright stupid for

him to be deputy chairman," Mr. Gurney charged.

Mr. Merrett, who was near the rostrum where Mr. Gurney was speaking, did not respond.

Mr. Rowland, though, did attempt to cut off Mr. Gurney's tirade, telling him his time was limited, while a round of people in the audience shouted to let him speak.

Mr. Gurney continued, this time attacking Brian Garraway, Lloyd's head of regulation.

"Corporations will not put money into a market that is not properly regulated," Mr. Gurney said. "Yet what does the Council give us? A part-time regulator who comes in two or three days a week who I'm told can't walk without a stick and recently suffered a heart attack."

"Mr. Gurney!" interrupted Mr. Rowland. "Your level of conduct goes below even your own," he said to great applause and cheers. "Mr. Garraway is someone of the highest repute. If there are any questions of health at a public meeting like this, then I have absolutely no time for you," Mr. Rowland said.

Mr. Gurney also attacked the ALM, labeling the members' association "Lloyd's poodle." He called for members to vote against an ALM-sponsored resolution that expresses support for the Lloyd's

Council.

The ALM's resolution states that:

- It is in the best interest of members that Lloyd's continue to operate, and the business plan represents the most feasible means of securing Lloyd's future.

- The new management of Lloyd's should have the opportunity to implement the business plan.

- The introduction of corporate capital has "a critical role to play in ensuring the society's future."

The ALM resolution also strongly urges the Council to ensure that corporate capital enters the market at terms that are "as favorable as possible" to the current membership.

In introducing the resolution, Mr. Shaw rebutted Mr. Gurney's comments about the ALM. Mr. Shaw claimed that the association's influence prompted Lloyd's to take several steps in recent years: issuing the first Rowland report into the market's operations in 1992; making changes on the Lloyd's Council; and criticizing the business plan's failure to address marketwide litigation.

Other people criticized Mr. Gurney's comments, though some favored the fiduciary duty resolution he proposed.

Syndicate analyst John Rew, one of Lloyd's biggest critics, specifically disassociated himself from Mr. Gur-

ney's personal remarks before he introduced one of the meeting's resolutions. That resolution states that members welcome corporate capital, provided that:

- A prospectus is issued indicating how members will be fully compensated for the goodwill and assets that belong to current members.

- Two-thirds of the membership approve of this prospectus.

In opposing Mr. Rew's motion, Anthony Pinsent, chairman of broker Leslie & Godwin Ltd., suggested that this proposal makes "undue demands on new capital, which Lloyd's needs."

What Mr. Rew proposes would entail "another voluminous document" and a delay while members vote, which would hold up the arrival of the corporate capital proposed for next year, Mr. Pinsent said. Corporate capital must enter the market, and the timetable should not be prejudiced, he said.

At the end of the debate on the three resolutions, Mr. Middleton took exception to Mr. Gurney's comments.

"I was a bit disturbed by some suggestions at the early part of this meeting that I was going to be left alone to work here while everyone else would be pulled out," he said. "I don't think that any one person

could attempt to do the things that need to be done to reform this society and return it to profit. . . . What you need is a team, and you need the present chairman.

"Please, would you let us have some space now to get on, to deal fairly with the problems of the past and to get into a future where everyone benefits from serious profitability," Mr. Middleton said.

"Above all," Mr. Rowland added, "we've been open to you. Wherever I've been talking about the business plan, I have said that it's a plan for action. We've not got time, ladies and gentlemen. We need to get on with the job. But never have I implied that we do not listen to what other people say."

Several alternatives to the business plan have been introduced, which some members in the debate suggested are preferable to Lloyd's business plan.

"We're selfish. We're cannibalizing them. We want the information. We want the ideas. We want to improve what we've done. We want to do what's best for this society," Mr. Rowland said of these alternative suggestions.

"Listen to what we say, watch what we do. I will be extremely happy to be judged by that," Mr. Rowland concluded. **BI**

Update

Jury finds CNA libeled doctor

Continued from page 2

Dr. Scheffey was arrested in 1985 when he was found disoriented and hyperactive. Police officers later found 30 grams of cocaine in his car. Dr. Scheffey said the gossip continued after he quit using drugs.

Because of this arrest—and because some insurers considered Dr. Scheffey too liberal in disability assessments of workers compensation cases—"the insurers thought they would single him out and run him out of business," said James Spradlin, a Houston attorney who represented Dr. Scheffey.

"We don't think the decision reflected the evidence presented," said a CNA spokesman, who declined to comment on a potential appeal.

Non-network hospitals sue plan

TRENTON, N.J.—Nine hospitals excluded from Blue Cross & Blue Shield of New Jersey Inc.'s new health maintenance organization are suing the plan, claiming the 56-hospital network violates antitrust laws by diminishing competition and access to health care services.

In the suit, filed July 7 in federal court in Trenton, the hospitals contend that BC/BS of New Jersey's hospital network, which does not include 29 of the state's acute care hospitals, violates antitrust laws because it prohibits network hospitals from charging other insurers less than the network rate unless the hospital automatically gives BC/BS of New Jersey the same lower rate.

In addition, the suit challenges the plan's promise to reimburse network hospitals within 48 hours while waiting up to 60 days to reimburse non-network hospitals.

The lawsuit, which seeks unspecified damages, also charges BC/BS of New Jersey with attempting to create a monopoly of the state's non-government health care market by selecting 5,800 of New Jersey's 17,000 doctors to be "network" physicians and inducing them to direct patients to network hospitals.

A BC/BS of New Jersey spokesman called the suit "an act of desperation by a few hospitals that aren't willing to accept the reality of managed care."

St. Paul's ratings under review

NEW YORK—Moody's Investors Service has placed its Aa2 senior debt rating of The St. Paul Cos. Inc. under review for possible downgrade. The Aaa financial strength ratings of The St. Paul's property/casualty insurance units also are under review.

Moody's said the review was prompted by the St. Paul, Minn.-based insurer's acquisition of Economy Fire & Casualty Co., a Kemper Corp. subsidiary that specializes in personal lines, particularly private passenger auto insurance. The transaction was valued at \$420 million.

"Moody's will consider how the acquisition will fit into St. Paul's existing property/casualty operations. The rating agency (also) will review broad trends in the market for medical malpractice insurance, one of St. Paul's principal business lines."

Meanwhile, Standard & Poor's Corp. affirmed its AA- rating of St. Paul's senior debt, A-1+ commercial paper, and St. Paul Fire & Marine Insurance Co.'s intercompany pool AAA claims-paying ability ratings after the acquisition.

Briefly noted

The Securities and Exchange Commission is expected to require several insurers and reinsurers to restate 1992 results to reflect liabilities arising from **funded catastrophe reinsurance covers** (BI, April 5). The names of the companies are not yet publicly known. . . **PepsiCo Inc.** expects to announce this week that its soft drink sales dropped about 3%—or \$10 million to \$15 million—because of a product tampering scare in June. PepsiCo, which does not purchase malicious product tampering coverage (BI, June 21), also spent at least \$1 million in additional advertising in response to the scare. . . Legislation, H.R. 2610, introduced this month by Rep. Pete Stark, D-Calif., would establish a **universal health care program** funded through new payroll taxes and new taxes on physicians and other medical providers. . . Shareholders of **EXEL Ltd.** have approved a provision allowing X.L. Insurance Co. Ltd. to write or invest in companies writing various classes of insurance and reinsurance. Among other things, the change will allow X.L. to invest in the public offering of Mid Ocean Ltd. without seeking specific shareholder approval. . . Duff & Phelps Credit Rating Co. has assigned an AA rating to **Aon Corp.**'s \$150 million public offering of 6.7% notes due June 15, 2003. . . California has banned **Greater Indemnity & Casualty Co. Ltd.**, based in the Turks & Caicos Islands, from doing business in the state for not meeting minimum financial standards. The commissioner also revoked the license of surplus lines broker Michael Kwiatkowski, and his firm Excess & Surplus Insurance Services, which allegedly collected premiums from a truckers association but did not place the coverage with Greater Indemnity. . . JTT Hartford Life Insurance Co. has **rejoined the Health Insurance Assn. of America** more than five years after resigning. Hartford Life is the 12th insurer this year to join the HIAA. . . A federal judge in Denver last week dismissed the Colorado AFL-CIO's constitutional challenge to the state's **1991 workers compensation law**. The labor group says it will appeal. . . The New Jersey Superior Court approved a liquidation petition filed against the Morris Plains-based **Warwick Insurance Co.** by New Jersey's Insurance Department. . . **Lloyd's of London** is seeking to reduce its three-year accounting term to two years, said Chairman David Rowland. He also said he wants the number of syndicates at Lloyd's to fall to about 100 from the present 228. . . **Minnesota Commerce Commissioner Bert McKasy**, the state's top insurance regulator, will resign Aug. 1 to run for the U.S. Senate seat held by Sen. Dave Durenberger.

Flood losses

Continued from page 1

related losses, due to wind, hail and tornado damage June 17-19 in the affected region, said Gary Kerney, director of catastrophe services for the Property Claim Services division of the American Insurance Services Group in Rahway, N.J.

This storm, dubbed Catastrophe No. 58 by PCS, was one of the more severe storms to hit the Mississippi River Valley in June and precipitated much of the flooding.

Those insured loss estimates are relatively light—compared with \$17 billion in claims from 1992's Hurricane Andrew—because most commercial property policies exclude flood coverage (see story, page 23).

"Primarily, flood is an excluded peril" in insurance policies, pointed out James E. Mooney, president of the Inland Marine Underwriters Assn. in New York.

"We've had only a few flood insurance claims," mostly from homeowners, said Mike Manis, a claims manager with Bartlett Agency Inc. in Moline, Ill. "Everything is waiting until the water goes down and things dry out," he said.

Overall, the U.S. insurance industry will not be hurt by the flood losses.

"The impact of weather-related claims will be minimal on private insurers because flood loss to homeowners and businesses is generally excluded and their exposure for crop-related losses is small (about 10%)," said Sean Mooney, senior vp and economist with the Insurance Information Institute in New York.

Meanwhile, shopkeepers, homeowners and others had filed 105 claims as of last week seeking unspecified damages under some of the 15,000 flood insurance policies in force in the affected areas of Illinois, Iowa, Minnesota, Missouri and Wisconsin, said Don Collins, assistant administrator of the Federal Insurance Administration. The number of claimants, though, is expected to grow as flood waters recede and losses become known.

Flood insurance is written directly by the National Flood Insurance Program, which also reinsures 100% of flood policies issued by commercial insurers.

Farmers' crop losses are estimated at \$712 million on seeded land from the prolonged wet weather and subsequent flooding, said a spokesman

for the Federal Crop Insurance Corp., an agency of the U.S. Department of Agriculture.

However, less than 40% of the acreage devoted to primary crops is federally insured in the hard-hit states of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota and Wisconsin.

In addition, farmers will lose another \$1 billion in income from crops that could not be planted because fields are underwater, according to a spokesman for the Agriculture Department. Basic crop insurance policies do not cover losses unless a crop has actually been planted.

Heavy storms beginning in mid-April were the start of an unprecedented rainy season that has caused significant flooding along the upper Mississippi River Valley. And weather forecasters say the wet weather is not over yet.

"This is the highest the Mississippi River has ever been since records have been kept," said Jack Burns, hydrologist for the National Weather Service in St. Louis.

Flood stages, the levels at which significant flood damage begins, have been exceeded at numerous points along the Mississippi River, he noted.

The largest city along the upper stretch of the river, St. Louis, is currently of primary concern. The flood stage in St. Louis is 30 feet, while water levels last week were higher than 38 feet and are expected to crest at 43½ feet.

"We are experiencing some of the most severe flooding in the past 20 years on the upper Mississippi River," an Army Corps of Engineers spokesman agreed.

National Guard troops have been called in to help shopkeepers and homeowners in flooded riverfront communities protect their property with sand bag levees and guard water-soaked property.

Thousands of acres of farm land are still underwater in several states, keeping farmers from planting soybeans and other crops.

"In areas that were flooded, 100% of the crops were destroyed. Close to half the state has been declared a disaster state. Things are saturated to the point at which any time it rains, we're going to lose still more," said Bob Watson, assistant section chief of Dam Safety and Flood Plain management with Wisconsin's Department of Natural Resources.

Up to 33 of Wisconsin's 72 coun-

ties will qualify for both state and federal disaster relief assistance, while up to 30 of Minnesota's 86 counties will also qualify for relief, state officials said.

Officials in Illinois last week declared nine counties—encompassing the northwestern corner—disaster areas.

Iowa has declared 45 counties disaster areas, and seven or eight more were potential disaster sites.

In Missouri, the state department of agriculture is assessing the entire state for potential disaster status. In addition to the flooded Mississippi, Missouri River levels are high.

While crop insurance and low-interest loans through the U.S. Department of Agriculture will help some farmers, not all disaster-stricken farmers will recover their losses.

According to John Regnier, agronomy manager of the Marshall, Minn.-based Harvest States Co-op, the federal crop insurance program is currently considering lifting the stipulation that only losses to planted crops will be covered.

Bob Senton, manager for the Federal Crop Insurance Corp., an arm of the Agriculture Department in Washington, said, at this point, the restriction has not been lifted. However, the question of lifting the restriction has been raised in the past, he noted. Ultimately, though, that move would be up to Congress, he said.

Even if the restriction is lifted and the farmers are able to recover the basic costs of unused seed and soil from the federal program, devastating losses will remain.

"In rural areas, there just isn't a whole lot we can do. It's been devastating. The damage is probably as bad here as it's ever going to get. The crops are completely gone," Mr. Regnier said.

In addition to the farming industry, the grain and shipping industries have suffered in the flood.

Huge barges loaded with harvested grain, farm crops and chemicals have been stranded on the river for up to two weeks because the Army Corps of Engineers closed 15 of 29 locks along a nearly 400-mile-long stretch from Dubuque, Iowa, to St. Louis.

That shutdown led to U.S. Coast Guard orders shutting down the river to all watercraft, including pleasure boats, because their wakes threaten to topple already-saturated

Continued on next page

Superfund reform

Continued from previous page

reform consensus isn't clear yet, he said. Fireman's Fund's Mr. Lefkin is far more optimistic. "I think everything's doable—the facts are just so startling that the program has failed," he said.

Distinguishing the Superfund debate from conflicts over product liability laws, Mr. Lefkin said that reasonable arguments could be made in favor of the current product liability system—but not the Superfund program.

"Intellectually, that gives us the upper hand," he said.

No formal risk management group is as of yet backing a specific proposal, but several experts said that risk managers' participation is critical to the success of any effort.

Risk managers know first-hand how Superfund hurts the economy and they should get that message across to legislators, said Mr. Lefkin.

"One thing I strongly suggest is they have to explain to their local member of Congress what doing nothing means to them as a business," said Mr. Eckart. "They have

to localize that national discussion."

There's no way risk managers can sit back and let the law be reauthorized in its current form, warned

Lawmakers seek Superfund proposal ASAP

WASHINGTON—Businesses and insurers advocating Superfund reform are not the only people in Washington concerned that Congress might not have time to give the act a thorough review before reauthorization.

On June 30, House Energy & Commerce Committee Chairman John D. Dingell, D-Mich., and House Transportation and Hazardous Materials Subcommittee Chairman Al Swift, D-Wash., sent a letter to Environmental Protection Agency Administrator Carol M. Browner calling for submission of the White House's Superfund proposal as soon as possible.

"The current schedule for producing an administration proposal early in 1994 will not provide this Congress with an opportunity to enact comprehensive reauthorizing legislation," wrote the two congressmen.

"With multiple committees in the House of Representatives asserting

Mr. Lefkin. "The enormity of the liabilities is frightening—not only for us but for our customers as well."

BI

joint or sequential jurisdiction, the Superfund statute in the best of circumstances must travel a difficult procedural path. As this Congress enters the second session and faces mid-term elections, the fact that so many members have Superfund facilities in their districts can only exacerbate the political difficulty of resolving the complex legislative issues in this program.

"A decision by the administration not to submit reauthorizing legislation by Labor Day effectively is a decision not to reauthorize Superfund until the next Congress," warned the congressmen.

"If the administration does not intend to submit legislation in the timeframe we believe is necessary for action in the 103rd Congress, we seek your commitment that the administration will join us in actively opposing piecemeal changes that others might propose," they added.

—By Mark A. Hofmann

Continued from previous page
earthen levees.

The shipping industry stands to lose several million dollars as a result of the flood, according to Jerry Tinkey, vp-operations for Ingram Barge Corp. in Paducah, Ky.

Since June 25, 137 of the company's barges and three tugboats, which were destined for grain loading on the upper Mississippi, have been stalled as a result of the river's swollen condition, Mr. Tinkey said. The ships are expected to remain idle until conditions are deemed safe to resume upper Mississippi travel, he said.

While the boats represent only 10% of Ingram's fleet, Mr. Tinkey said that the flood is having "definite effects" on the entire company.

"Like farmers, we're pretty much subject to the whims of Mother Nature. This impacts the efficiency of the whole fleet, the whole operation," he said, noting that Ingram Barge carries no business interruption insurance and stands to lose a substantial amount of revenues as a result of the flood.

Grain terminals along the upper Mississippi

stand to lose from the flood as well.

According to Chuck Piper, terminal manager for Didion Inc. in Prairie du Chien, Wis., grain terminal operations have been shut down since June 23 and will remain down indefinitely.

Didion, which buys primarily corn and soybeans from local farmers before selling it to large exporters like Cargill Inc., stands to lose a substantial amount in coming weeks.

"Generally, at this time of year, we ship 30,000-40,000 tons a month. We probably lost 25%-30% of our opportunity. We will make up for some of the loss. But a lot of it will be lost forever," Mr. Piper said.

Riverboats used for sightseeing and entertainment also are suffering financial setbacks as a result of the mighty Mississippi's wrath.

Many dinner and excursion boats—including riverboat casinos—that sail up and down the river have been docked for several weeks and will remain docked indefinitely.

According to Jim Bonnet, assistant to the president of Roberts River Rides in Dubuque, Iowa, the flood has had a lasting, "traumatic" effect upon the entire riverboat industry.

"We've been out a week and will probably be out 3-4 weeks of the prime season. It's been a disastrous season for us," he said, noting that his company owns and operates two excursion boats in addition to one casino riverboat.

With no business interruption insurance, Mr. Bonnet said his company faces around \$100,000 in lost revenues. "This is pretty detrimental to the tourist industry in general. It's hurting everyone in related areas," he said.

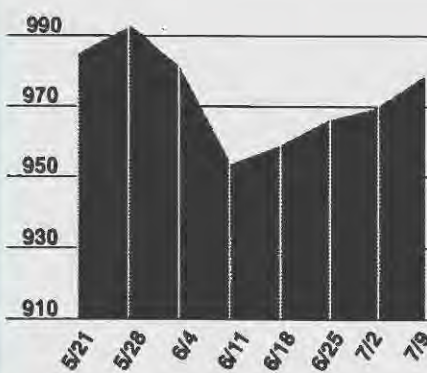
But even rain clouds can have silver linings.

While Roberts River Rides' two excursion boats remain incapacitated, the Mississippi Belle II, its casino riverboat, is doing a booming business at its Clinton, Iowa, port, Mr. Bonnet said. According to state law, gambling boats are required to sail at any time that it is safe to do so. With the river conditions so bad, however, the boat remains docked and is attracting people who otherwise dislike the sailing part of the gambling experience, Mr. Bonnet said.

Over the Fourth of July weekend, business aboard the Mississippi Belle II was up 70% from last year at the same time when the boat was traveling on the river, he said.

BI Insurance Index

1010



Base = 100 on Dec. 29, 1978

Source: Nordby International Inc.

Insurance industry stocks continued to climb last week, as the *Business Insurance Index* increased 9.1 points to 978.5 July 9 from 969.4 on July 2. Advancing issues for the week were led by: Chandler Insurance, up 15.2%; Wellpoint Health Networks, up 9.5%; and US Facilities Corp., up 8.1%. Declining issues for the week followed: Seibels Bruce Group, down 8.3%; AVEMCO, down 8.1%; and Gainsco Inc., down 8.1%. The most active issue was U.S. Healthcare, 3.6 million shares traded. The *BI Index* was up 0.9%; the NYSE Composite was up 0.4%; the Standard & Poor's 500 was up 0.5%; and the Dow Jones 30 Industrials increased 1.1%.

British Issues

July 8 Companies	Price	P/E	Div.	Yield	1 Week High-Low
Comm Union	612	N/M	32.5	5.3	613-608
Genl Accident	623	N/M	35.7	5.7	623-620
Gdn Royal Exch	197	N/M	9.3	4.7	197-190
Royal	315	N/M	6.7	2.1	318-312
Sun Alliance	361	N/M	19.0	5.3	361-353
Brokers					
Bradstock	137	16.0	6.8	5.0	138-137
CE Heath	353	17.0	20.5	5.8	353-351
Hogg Group	216	18.9	10.9	5.0	218-216
JIB Group	208	20.6	10.0	4.8	211-208
Lloyd Thompson	315	25.4	7.5	2.4	319-315
Lowndes Lmbt	399	14.2	18.8	4.7	399-397
PWS Holdings	64	9.6	5.3	8.3	64-62
Sedgwick Grp	194	23.4	8.0	4.1	201-194
Sat Brl Jones	248	14.5	17.7	7.1	248-248
Willis Coroon	218	20.3	8.8	4.0	226-217

Source: Philip Olsen, London

Federal programs fill commercial coverage gap for flood losses

Most property owners facing losses caused by the Mississippi floods will not be covered for property loss or business interruption under commercial insurance policies.

The Insurance Services Office Inc.'s standard commercial property policy excludes coverage for damage caused directly or indirectly by "flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not."

In addition, policyholders typically cannot collect for business interruption losses unless they also are covered for the physical loss that interrupts operations.

Automobile insurers typically provide coverage for flood damage as part of a comprehensive insurance package, but few claims are expected because the flooding was gradual.

The primary source of coverage for losses from Mississippi River flooding will be federal insurance programs.

Specifically, property owners can access the National Flood Insurance Program directly or through 86 property insurers that participate in a joint venture with the federal insurer, said Don Collins, assistant administrator of the Federal Insurance Administration in the Federal Emergency Management Agency.

Although those insurers write on their paper and settle their own claims, the policies are 100% reinsured by federal government, Mr. Collins said.

Farmers can obtain coverage from the Federal Crop Insurance Corp., although this arm of the U.S. Agriculture Department insures less than 40% of primary crops nationwide. However, most farmers purchase the basic policy, which requires that seed be planted in the field for a claim to be paid. Unless it contains a rider, the basic policy does not cover a farmer's losses when crops are not planted because a field is under water.

Some farmers can also purchase a special preventive planning policy, available only until April 15, that covers losses up to 35% of the expected yield, whether or not the seeds were planted. However, very few farmers purchase the coverage, FCIC officials say.

The FCIC also reinsurers private insurers that sell crop insurance according to a complicated formula that results in private insurers paying approximately 10% of any large loss, according to the Insurance Information Institute.

Apart from those programs, private flood insurance may be available through difference in conditions contracts.

"That's a fairly small line of coverage," which amounted to about \$100 million in premium in 1990, said James E. Mooney, president of the Inland Marine Underwriters Assn. in New York.

He has not heard of one DIC claim being triggered by the recent flood, he said. While some may surface, Mr. Mooney said he would be "very surprised" if DIC losses amounted to even \$50 million.

Barge owners, whose operations are stalled because of closed locks along the Mississippi, typically buy: hull coverage; protection and indemnity coverage to cover injury to passengers, crew or others; pollution liability insurance; and cargo insurance.

After the water recedes and river traffic resumes, more hull-related claims are likely because river bottoms will have shifted due to debris pileups and currents, said Ward Mauck, president of the American Institute of Marine Underwriters in New York.

However, barge owners typically do not buy "loss of hire" coverage—which would provide protection similar to a business interruption policy—because it is considered too expensive, an industry source said.

—By Meg Fletcher and Sara Marley

BI Industry Stock Report

JULY 6, 1993 THROUGH JULY 9, 1993

BROKERS													INSURERS/REINSURERS													HEALTH MAINTENANCE ORGANIZATIONS																				
		Price	Weekly % change	Year to Date % change	Annual High	Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value			Price	Weekly % change	Year to Date % change	Annual High	Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value			Price	Weekly % change	Year to Date % change	Annual High	Low	Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value								
Accordia Inc.	NYS	22.63	1.69	5.23	24.75	15.13	48	0.44	1.94	14	7.01	3.23	Mutual Risk Mgmt. Ltd.	NYS	36.00	-0.69	-11.11	46.00	26.25	28	0.28	0.78	20	7.51	4.79																					
Alexander & Alexander	NYS	27.13	-0.46	2.36	28.88	22.13	129	1.00	3.69	23	10.00	2.71	NAC Re Corp.	OTC	35.38	-0.35	-12.65	44.75	27.25	151	0.16	0.45	50	13.60	2.60																					
E.W. Blanch Holdings Inc.	NYS	18.00	-2.04	N.A.	20.00	16.50	92	0.00	0.00	22	10.00	1.80	National Re Corp.	NYS	35.13	3.89	18.57	39.63	17.63	66	0.12	0.34	13	N.A.	N.A.																					
Gallagher Arthur J. & Co.	NYS	31.88	0.39	12.83	37.38	21.88	62	0.72	2.26	20	6.35	5.02	Navigator Group	OTC	34.00	4.62	4.62	36.00	28.50	11	0.00	0.00	25	15.69	2.17																					
Hiltz, Rogal & Hamilton	NYS	13.63	2.83	-12.80	16.88	11.75	64	0.44	3.23	19	3.11	4.38	Nobel Insurance LTD.	OTC	6.88	1.85	17.02	8.25	4.25	45	0.00	0.00	3	3.91	1.76																					
Marsh & McLennan	NYS	86.38	-0.72	-5.47	97.63	76.88	415	2.68	3.10	20	14.40	6.00	NWNL Companies	NYS	30.88	-0.80	21.38	32.44	18.13	165	0.80	2.59	14	22.94	1.35																					
Poe & Brown	OTC	18.75	-1.96	11.94	21.25	11.25	12	0.40	2.13	33	2.64	7.10	Ohio Casualty Corp.	OTC	63.63	0.20	0.79	68.75	55.75	121	2.84	4.46	12	43.08	1.48																					
BROKERS AVERAGE			0.0	2.3					2.3	22			Old Republic Int'l	NYS	23.88	1.06	-4.02	27.38	19.50	196	0.44	1.84	8	18.63	1.28																					
													Orion Capital Corp.	NYS	38.63	0.65	9.19	46.38	28.41	73	0.80	2.07	8	28.62	1.35																					
													Phoenix RE Corp.	OTC	30.88	0.00	96.03	34.00	9.00	169	0.20	0.65	-67	13.32	2.32																					
													Provident Life	NYS	27.38	-1.35	-3.95	31.50	23.00	103	1.04	3.80	11	30.38	0.90																					
													Re Capital Corp.	ASE	14.38	0.00	-12.88	16.63	12.25	0	0.28	1.95	29	16.88	0.85																					
													Reliance Group Holdings	NYS	7.00	0.00	14.29	8.50	4.25	180	0.32	4.57	3	2.94	2.38																					
													RLI Corp.	NYS	26.25	0.96	6.06	28.63	18.75	14	0.52	1.98	12	17.92	1.46																					
													St. Paul Companies	NYS	83.50	3.41	8.44	83.50	67.88	528	2.80	3.35	-13	59.79	1.40																					
													SAFECO Corp.	OTC	59.13	-0.21	4.19	66.75	48.38	1180	1.80	3.04	15	35.37	1.67																					
													SCOR U.S. Corp.	NYS	16.25	-2.99	-7.14	20.75	13.13	63	0.32	1.97	203	14.39	1.13																					
													Seibels Bruce Group	OTC	0.69	-8.27	-63.31	6.13	0.38	94	0.00	0.00	0	6.22	0.11																					
													Selective Ins. Group	OTC	26.25	2.44	19.32	26.25	19.00	639	1.12	4.27	15	20.22	1.30																					
													Statesman Group Inc.	OTC	11.38	0.00	-5.21	16.50	6.50	227	0.20	1.76	6	6.71	1.70																					
													TIG Holdings	NYS	25.13	-1.47	N.A.	26.50	22.88	282	0.00	0.00	-20																							
													Tokio Marine & Fire	OTC	59.75	2.80	24.48	64.50	37.88	30	0.00	0.00		70.93	0.84																					
													Torchmark Corp.	NYS	53.88	3.36	-5.07	64.75	45.00	283	1.04	1.93	14	14.87	3.62																					
													Transatlantic Holdings	NYS	54.25	-2.91	-3.34	56.75	32.00	31	0.28	0.52	18	21.85	2.48																					
													Traveler's Corp.	NYS	31.38	3.29	15.14	33.00	17.13	1766	1.60	5.10	-4	43.85	0.72																					
													Trenwick Group Inc.	OTC	42.75	0.00	4.91	49.75	28.25	80	0.88	2.06	16	23.87	1.79																					
													United Fire & Casualty	OTC	37.50	-1.32	-9.64	43.00	34.75	10	1.00	2.67	87	28.47	1.32																					
													Unifrin	OTC	43.88	-1.40	2.63	46.75	34.50	392	1.20	2.74	14	36.51	1.20																					
													UNUM Corp.	NYS	54.75	-2.01	3.30	58.38	38.50	268	0.80	1.46	14	21.83	2.51																					
													US Facilities Corp.	OTC	10.00	8.11	0.00	11.50	6.50	225	0.00	0.00	12	9.64	1.04																					
													USF&G Corp.	NYS	19.13	2.68	54.55	19.63	9.88	1335	0.20	1.05		10.29	1.86																					
													USLICO Corp.	NYS	18.25	0.69	1.39	20.00	15.00	44	0.24	1.32	-6	29.80	0.61																					
													USLIFE Corp.	NYS	41.50	3.43	14.48	42.63	29.34	219	1.20	2.89	13	64.90	0.64																					
													Washington National	NYS	23.13	2.21	0.54	28.00	19.25	66	1.08	4.67	12	30.27	0.76																					
													Zenith National Ins.	NYS	23.75	-1.04	20.25	29.25	16.38	59	1.00	4.21	20	14.81	1.60																					
													Zurich Reinsurance Cent.	NYS	32.63	1.16	N.A.	36.38	30.00	214	0.00	0.00		23.99	1.36																					
													INSURERS/REINSURERS AVERAGE			0.6	6.4					2.0	14.6																							



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