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Update

Pan Am guilty of misconduct in Lockerbie disaster, jury rules

NEW YORK—Pan American World Airways Inc. is expected to appeal a federal court jury verdict that the airline was guilty of willful misconduct for not detecting that a terrorist had planted a bomb on board Flight 103, which exploded in December 1988 over Lockerbie, Scotland.

The ruling eliminates the $75,000 per person cap on the airline's liability set by the Warsaw Convention. A second phase of the trial will determine the amount of damages to be paid to the families of the 270

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A GUIDE TO POLICYHOLDER OWNED FACILITIES
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Employer-driven reform

Twin Cities coalitions stress quality, not discounts, in health care contracts

By CHRISTINE WOOLSEY

MINNEAPOLIS—Employers are blazing the trail for reform of the Minneapolis health care market with two innovative efforts aimed at changing the way health care providers are compensated.

The key to both strategies is setting up a reimbursement system that stresses the health outcomes produced by providers rather than fee discounts for the health services they deliver.

But, while participants in these efforts and other proponents agree that private sector buyers of health care are in the best position to lead health care system reform, others worry that the employer-based groups could end up pursuing their self-interests at the expense of the common good.

For example, members of health care coalitions that represent broader interests than employer-only coalitions are concerned that reform may be achieved for one or two employer groups, while the rest of the market will continue to be plagued with problems.

The two Minneapolis-area employer coalitions have undertaken aggressive, grass-roots efforts to improve both health care quality and efficiency, in large part by using their economic leverage to reform the delivery system.

"In the United States, we pay for most health care on a fee-for-service basis. Every service produces a fee to be paid by the patient," employer or insurance company, explained George C. Halvorson, president and chief executive officer of Group Health Inc., a Minneapolis-based health maintenance organization that is among the providers chosen by one of the coalitions to deliver care to its members' employees and dependents.

"Clearly, the incentive for the provider is to create volumes of services. The focus of the payment system now isn't on efficiency, efficacy or health, but on billable units of care," he said.

Employers in Minneapolis,

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Rate hikes still not in the wind

Risk managers see flat prices, smooth sailing

By MICHAEL BRADFORD

Risk manager report

Risk managers report that the only thing heating up this time of year is the temperature, as the commercial property/casualty market remains soft for yet another renewal season.

Property coverages are renewing without a hitch, and casualty insurance costs are creeping up only in certain lines, like directors and officers liability and high-level excess liability, risk managers say.

Except for these minor indications of insurance prices firming up, risk

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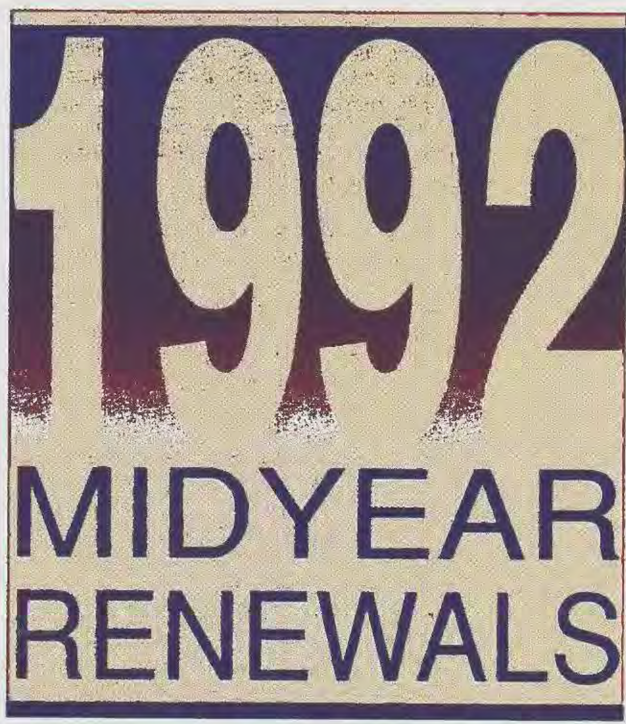

Market caught in doldrums, insurers say

By MARK A. HOFMANN and CHRISTINE WOOLSEY

Insurers report

The lazy, hazy, crazy days of summer aren't any reason for property/casualty insurers to kick back and relax.

The market is being lazy about correcting itself; the outlook for a significant rate increase is hazy at best; and insurers say the situation is driving them crazy.

In fact, a number of senior insurer executives think that the traditional property/casualty market cycle has been replaced by something that—while not completely

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Soft market now limited to North America

By STACY SHAPIRO and GAVIN SOUTER

London market report

LONDON—Mainstream North American property/casualty risks are the last bastion of the soft market as rates for nearly all types of personal and commercial insurance begin to rise around the world.

In North America, rates are rising only for specific classes of business, like property catastrophe reinsurance, energy, marine and aviation, and some types of professional liability insurance.

Rates not only are rising for these specific classes of coverage in the rest of the world, but also for more mainstream commercial property/casualty risks.

More renewal stories appear on pages 47, 57, 60 and 72.

"The only place not repricing is in America," summed up a Lloyd's underwriter. "In the United Kingdom, they're repricing like gangbusters. France, Germany and Australasia are moving; everywhere is moving other than America."

Rising commercial property rates outside of North America are not influencing the U.S. market, agreed John Wetherell, underwriter for syndicate 190 managed by Cater Allen Syndicate Management Ltd. He has taken over the syndicate from Lloyd's Deputy Chairman Richard Hazell, who retired as underwriter at the end of June.

"We are seeing rates up, particularly in France and South Africa, but in the United States, rates are still very low and inadequate," he said.

However, while London underwriters bemoan the competition in the United States, rates for mainstream North American risks in London generally are flat.

While London property underwriters want to increase rates, "when some of them hear even a whisper of competition from the United States, they drop their rates," Mr. Wetherell pointed out.

Elsewhere, a different story is being told.

Australian ceding companies recently paid increases of 250% and higher for reinsurance and were "scrambling to get capacity," said Lloyd's underwriter Michael Harris. Homeowners insurance rates are up in Australia as a result, he said.

In the United Kingdom, personal lines and property/casualty insurance rates for multinational companies

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Update

Pan Am loses Lockerbie case

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people killed on the flight. The plaintiffs are seeking $350 million in damages.

Pan Am's $750 million in liability insurance was led by United States Aircraft Insurance Group, which had offered to pay $100,000 per victim to settle the lawsuit. Only a handful of plaintiffs accepted this offer.

USAIG wrote 30% of the coverage. Pan Am's other liability insurers include Lloyd's of London's Ariel syndicate; La Reunion Aerienne in France; Associated Aviation Underwriters of Short Hills, N.J.; and CAMAT of France.

Mutual Benefit bailout plan

NEWARK, N.J.—State guaranty funds would play the leading role under a tentative Mutual Benefit Life Insurance Co. bailout plan, which also calls for major life insurers to act as a safety net.

However, the plan is contingent on approval of a bill by New Jersey lawmakers that makes policyholders priority creditors.

An attorney representing a group of Mutual Benefit's corporate pension creditors said that the insurer's rehabilitators, the National Organization of Health & Life Guaranty Associations and several large life/health insurers are close to reaching an agreement on a plan that would shift most of the $800 million cost to bail out Mutual Benefit to state life/health guaranty funds. Insurer contributions would ensure payment on policies that the guaranty funds are not legally required to cover.

Franklin Ciaccio, a lawyer with Orick, Herrington & Sutcliffe in New York who represents the Assn. of Mutual Benefit Life Insurance Contractholders, said negotiators are very close to reaching a deal that would pay all policyholders the full value of their contracts, plus a fair rate of interest over a lockup period.

During that period, policyholders would not be able to make withdrawals from policies and contracts without penalty except under special circumstances.

Under the tentative agreement, state guaranty funds would respond to all contracts they are legally required to cover, including tax-deferred annuities and personal death benefits. The insurance industry would be responsible for payment of all benefits not covered by the guaranty funds.

Mr. Ciaccio emphasized that Mutual Benefit's rehabilitators do not intend to file the proposal for court approval until the state Legislature reconvenes July 23 to consider passage of the Life and Health Insurers Rehabilitation and Liquidation Act, which would place policyholders above all other creditors in Mutual Benefit's rehabilitation (*BI*, June 22).

Humana Inc. considers split

LOUISVILLE, Ky.—Humana Inc. is considering splitting its hospital and health maintenance operations into two publicly traded companies by mid-1993.

Humana's initial strategy had been to direct patients from its HMOs to its hospitals. That strategy failed, in part because competing HMOs refused to send patients to Humana's hospitals. Humana board members expect the proposed split to bolster each operation's competitiveness, a spokesman said.

"Declining margins and earnings in the hospital business—not in the health plan business—are the reason behind this decision," said Ty Wilburn, vp of investor relations for Humana. Humana's hospital business declined 1% per year over the last five years, he said.

The change will not disrupt service to Humana health plan members, the spokesman said.

Humana owns and operates 78 hospitals in the United States and Europe and has about 1.6 million members in health plans for employer groups (*BI*, Dec. 18, 1991).

Following the July 9 announcement, Moody's Investors Service Inc. put Humana's single A-2 senior unsecured debt and Prime 1 commercial paper ratings on review for possible downgrade.

Superfund liability extended

CHICAGO—A company that emerges from bankruptcy reorganization can still face some pollution cleanup claims, the 7th U.S. Circuit Court of Appeals has ruled.

The Superfund act authorizes the U.S. Environmental Protection Agency to make two types of cleanup claims. Under Section 107, the EPA can sue the owner or operator of a waste site in an effort to force them to clean up the site. Under Section 106, the EPA can issue an emergency cleanup order if there is "an imminent and substantial endangerment to the public health or welfare or environment because of the actual or threatened release of a hazardous substance."

The 7th Circuit ruled pre-petition claims brought under Section 107 might be discharged in a bankruptcy, but post-petition claims brought under Section 106 are not discharged.

"This is a very disturbing decision for debtors and creditors," said bankruptcy attorney Bill Connolly of Hinshaw & Culbertson in Chicago. "It is very easy for the EPA to bring a 106 action," and any Superfund site "would qualify for Section 106," he said.

The ruling means that CMC Heartland Partners of Chicago is responsible for the cost of cleaning up a site in Janesville, Wis., that was used to store paint sludge and coal ash. If the responsible party can later show the site posed no imminent danger, it could seek reimbursement from the EPA.

CMC Heartland is reviewing the decision, its attorney says.

Updates continued on page 78

Arbitration clauses apply to liquidators: 9th Circuit

By STACY GORDON

SAN FRANCISCO—The liquidator of an insolvent insurer must abide by mandatory arbitration clauses that appear in most reinsurance policies, a federal appellate court has ruled.

The July 6 ruling by the 9th U.S. Circuit Court of Appeals is good news for reinsurers and bad news for liquidators, according to attorneys.

Reinsurers generally prefer to arbitrate coverage disputes, believing that arbitration is generally more fair, faster and less expensive than litigation.

On the other hand, liquidators prefer the "home court" advantage of litigating in their state courts. Because liquidators appear before state courts on a daily basis, these courts are perceived as a more favorable forum for liquidators.

The 9th Circuit's far-reaching ruling holds that the liquidator of an insolvent insurer stands in the shoes of the insolvent insurer. This means that the liquidator has no greater rights than the insolvent insurer and is bound by the insolvent insurer's obligations, including the arbitration clause.

Reinsurers often use this argument when seeking to negotiate offsets with insolvent ceding companies.

Another important aspect of the 9th Circuit ruling involves a determination that the act of liquidating an insurer is not the "business of insurance" within the scope of the McCarran-Ferguson Act.

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Delta America Re recovers from 18 retrocessionaires

$42.7 million settlement

By JUDY GREENWALD

NEW YORK—Delta America Re Insurance Co., which was ordered liquidated in 1985, will receive $42.7 million from 18 retrocessionaires under settlements reached in litigation brought by the Kentucky Insurance Department in federal court in New York.

But the bulk of litigation arising from Delta America Re's collapse continues, with suits still pending in five different federal and state courts in Kentucky and New York (*BI*, Sept. 10, 1990; May 15, 1989).

And, several defendants remain in the suit filed by the Kentucky department in federal court in New York. In addition to four retrocessionaires that have not settled, remaining defendants include former Delta America Re manager American Risk Management Inc., several ARM affiliates and several officers of ARM and related companies, including founder Frederic M. Reiss.

The retrocessionaires that settled the litigation are predominantly captive insurers owned by Fortune 500 companies that had participated in a quota-share treaty with Delta America Re in 1984 and 1985, according to Jim

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Reinsurers, administrators to be listed in directories

Business Insurance will publish its fourth annual directory of the world's largest reinsurers in the Aug. 31 issue, which also will include a chart ranking the largest reinsurers based on their worldwide consolidated reinsurance premiums.

There is no charge to be listed in the directory; however, to be included, reinsurers must fill out and return a questionnaire provided by *Business Insurance*.

To qualify, your company's consolidated worldwide net reinsurance premium volume (both property/casualty and life/health coverage) must exceed $300 million. The deadline for returning completed questionnaires is July 20.

Also, the fourth annual directory of 401(k) plan administrators will be published Sept. 7. Companies that provide enrollment services, daily maintenance of participants' accounts, account manipulation and similar services (regardless of whether the firm is responsible for investment management) are eligible. 401(k) questionnaires are due Aug. 3.

To receive either questionnaire, please contact Cindy Bloom, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590; 312-280-3195 or fax: 312-280-3174.

Law broadens firms' duties tied to pension distributions

By JERRY GEISEL

WASHINGTON—Employers face new administrative requirements and employees taking lump-sum pension distributions could be slapped with a new withholding tax under legislation signed by President Bush this month.

Included in a new law expanding unemployment compensation benefits to the jobless are provisions that require employers, at a terminated employee's request, to directly transfer pension distributions to the employee's Individual Retirement Account or to a defined contribution plan offered by the individual's new employer.

While these transfers would have to be requested by terminated employees, employers would have to inform employees of these options.

In addition, a terminated worker's new employer would not be required to accept a distribution to its defined contribution plan.

The new law also imposes a new 20% withholding

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- The insurance industry must raise society's ethical awareness, an ethics consultant says. **PAGE 35**
- The California insurance commissioner approved a workers compensation rate hike that is 70% less than the state rating bureau's request. **PAGE 67**
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Senate probe of Blues plans may influence health reform

By MARK A. HOFMANN

WASHINGTON—The information uncovered in a Senate subcommittee's investigation of Blue Cross & Blue Shield plans could help shape national health care reform, the panel's chairman says.

A report by the Senate Permanent Subcommittee on Investigations' staff "has uncovered a series of questionable practices and actions concerning the regulation of Blue Cross/Blue Shield plans," said subcommittee Chairman Sam Nunn, D-Ga.

The report on the solvency and management of BC/BS plans was issued as a prelude to subcommittee hearings scheduled for July 29 and 30 on the 1990 collapse of Blue Cross & Blue Shield of West Virginia. The West Virginia plan, which was insolvent by more than $37 million, was the first BC/BS plan ever to be ordered liquidated by regulators (*BI*, Oct. 29, 1990).

The "questionable practices and actions" cited in the report include inadequate solvency regulation of BC/BS plans, lack of sufficient regulatory oversight of some plans' for-profit subsidiaries and questionable management decisions.

Sen. Nunn also promised to use the hearings as a vehicle for examining the federal government's role in monitoring and supervising federal programs, like Medicare, which are partially administered by BC/BS plans.

"If we are in fact having problems with one of the most respected components of our current health care delivery system, then our policymakers must most assuredly be aware of this in order to create appropriate safeguards in any future national health care reform package," he said.

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Boosting jurors' awareness

A new survey of jurors in civil liability cases finds there are concerns about the social effects of high court awards.

- The threat of lawsuits interferes with new product development.
  57% agree 15% disagree 27% no opinion
- There are far too many frivolous lawsuits.
  83% agree 5% disagree 12% no opinion
- The money awarded by jurors in tort cases is too large.
  39% agree 23% disagree 38% no opinion
- By making it easier to sue, courts have made this a safer society.
  7% agree 69% disagree 24% no opinion

Source: University of Delaware

GRAPHIC BY A.TRANCHITA

Jurors tougher on plaintiffs

But survey still finds anti-business bias

By EILEEN P. GUNN

NEWARK, Del.—The insurance industry's late 1980s advertising campaign to make the public more aware of the "litigation explosion" is having an impact on the way juries decide civil liability cases, according to a recent University of Delaware survey.

However, some attorneys disagree with the findings of the survey, and some contend that when liability is unclear, juries tend to take sides against big business.

The survey, conducted by sociology professor Valerie P. Hans and research associate William S. Lofquist, concluded that jurors are aware of a "litigation explosion" and are concerned about the social effects of high jury awards.

As a result of this awareness, jurors are scrutinizing plaintiffs' deservedness and are awarding smaller verdicts, according to the study.

In the survey, which was published last month in Law and Society Review, a magazine published by the Law &

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Most employers ready to comply with ADA rules

But many want clearer guidance to follow the law

By MEG FLETCHER

Most large employers are willing to open their doors wider to hire and retain people with disabilities.

And most are altering employment practices like job interviewing to comply with the Americans with Disabilities Act. But employers are nagged by both vague wording in the antidiscrimination law and federal officials' incomplete efforts to clarify it.

Both administrative and court hearings will be needed to resolve thorny issues like the definition of a qualified person with a disability; how much an employer has to do to help them perform a job; and how to resolve conflicts between the ADA and other federal and state laws affecting unions, workers compensation, employee benefits and discrimination.

Some employers also fear that hiring disabled people will increase workers compensation and employee benefit costs, though companies experienced with employing the disabled discount this fear (see related story, page 25).

Offsetting possible cost increases are likely reductions in wage-loss benefits because the act encourages employers to put disabled employees back on the job. Employers also may be able to recover more from state "second injury" funds, which were designed to pro-

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Photo by Brooke Hummer

Allstate made accommodations for a senior computer programmer after an auto accident left him paralyzed.

Accommodations help all citizens: Public entities

By SARA J. HARTY

After six months of experience with the Americans with Disabilities Act, public entity risk managers generally have positive comments about the law as they continue their compliance efforts.

Most public entities were required to comply with ADA provisions last January. Private employers must comply this month.

Those in the public arena with compliance programs well under way advise other public or private organizations that are just beginning their efforts to focus on the benefits of the law, rather than on some of the stickier points that may—or may not—materialize in the long run.

This positive attitude does not mean that public risk managers are closing their eyes to problems. The costs for some entities to meet the ADA's accommodation requirements can be prohibitive. And, risk managers are wondering how many workers compensation claims will develop into ADA claims.

Still, for now, the good appears to outweigh the bad.

One positive development is that non-disabled people benefit from many accommodations that have been made for people with disabilities.

Given a choice between a ramp and stairs, many people will choose the ramp, even if they do not have a disability affecting mobility, said Lawrence J. Gorski, special assistant to the mayor and director of the Mayor's Office for People with Disabilities for the city of Chicago. And the ramps are certainly easier for people with emphysema or glaucoma, he said.

Wendell Phillips, director of equal opportunity programs for Colorado Springs, Colo., offered other examples of accommodations that benefit everyone. "Sure it's expensive to cut curbs, but look at how many people it helps—the elderly, which is a growing population, or the 25-year-old woman with twins in a stroller."Every day, developers with their arms full of papers use the automatic doors at the Colorado Springs City Council building, he said.

Another accommodation in Colorado Springs was made long before the advent of the ADA and has been successful for the city and one of its employees.

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The National Center for Medical Rehabilitation Research reports that people with physical disabilities in the United States include:

- **22 million people with hearing impairments. (Includes 2 million who are deaf.)**
- **180,000 people with vision impairments. (Two-thirds of whom are blind.)**
- **2 million people with epilepsy. (Four out of five do not have seizures because of medication.)**
- **1.2 million people who are partially or completely paralyzed.**
- **1 million people who require wheelchairs.**
- **9.2 million people with developmental disabilities, like cerebral palsy.**
- **2.1 million people with speech impediments.**
- **2 million to 2.5 million people with mental retardation. (Nine out of 10 cases are mild.)**

Former regulator tied to failed insurers

By JUDY GREENWALD

BATON ROUGE, La.—The Louisiana Insurance Department has filed suit in state district court seeking $88 million from a now-defunct holding company and 11 directors and officers of two insurance company units placed into liquidation last year.

The suit, filed June 26 in Baton Rouge, alleges that the defendants committed fraudulent activities, like reporting inflated or non-existent assets and engaging in complex financial transactions, to mislead regulators about the financial condition of the two insurance units.

Named in the suit are:

• Southshore Holding Corp. of Metairie, La. Southshore is no longer in operation, according to a Louisiana Insurance Department spokesman.

• Ten directors and officers of Southshore unit Midwest Life Insurance Co.: James A. Beauboeuf, J. Dennis Dismon, Dorothy J. Hinkley, Robert M. Lindsey, W. Alvin Owens, Diane A. Tabone, William S. Hindman, Bernard D. Mason, Steven A. Hailey and William T. Saxon. The suit also names John K. Richardson, who along with Messrs. Hailey and Saxon served as an officer and director of Southshore unit Fidelity Fire & Casualty Ins. Co.

• Agency Premium Assistance Corp., Coastal Loans Acquisition Co., I.S. Inc., Insurance Premium Acceptance Corp., Riverside Financial Corp. and U.S. Premium Corp., which had various dealings with Southshore and its two units.

The suit also mentions—but does not name as a defendant—former Louisiana Insurance Commissioner Hunter O. Wagner Jr. The suit describes Mr. Wagner as an owner of Southshore through his interest in Financial Associates Inc.

Mr. Wagner, who could not be reached for comment, was named acting insurance commissioner in April 1991 to replace Douglas Green, who was convicted of fraud and bribery stemming from his regulatory treatment of failed Champion Insurance Co. (*BI*, July 1, 1991; March 18, 1991).

Mr. Wagner, confirmed by the Louisiana Senate in July, resigned in August to become general manager of the Greater New Orleans Causeway Commission (*BI*, Sept. 2, 1991).

The department also is preparing two additional related suits, but the spokesman refused to provide any more details, including whether Mr. Wagner will be named a defendant in either of the new cases.

In the current litigation, the department is seeking $63 million on behalf of Midwest, which wrote mostly group and other accident and health, ordinary life and individual annuities business.

Midwest wrote $7.3 million in total premiums in 1990 but was put into liquidation in August 1991.

The department also is seeking $25 million on behalf of Fidelity, which specialized in substandard automobile insurance. Fidelity, which wrote $23.9 million in total premiums in 1990, was put into liquidation in September 1991.

The suit depicts Midwest in particular as the focus of numerous schemes by Southshore and Midwest's officers and directors to divert its assets, while the assets of both insurers were inflated in a variety of ways.

The lawsuit charges, for example, that:

• The defendants reported false assets to allow Fidelity to continue doing business and provide income to Southshore and its officers and directors.

Although Fidelity was insolvent, its reported capitalization was boosted through the use of worthless certificates of deposit and through complex real estate transactions that in part involved a complex ownership transfer of a heavily liened, abandoned and uncompleted building in San Antonio, Texas.

The suit also charges that to allow Fidelity to appear solvent, capital contributions and loans of $5.3 million were diverted to Fidelity from Midwest in 1990.

• Southshore unlawfully used Midwest's assets to acquire equity in Midwest in a complex transaction that involved non-existent corporations and false mortgages, according to the suit.

• Southshore unlawfully used Midwest's assets to acquire equity in Sandestin Corp. and related entities, which own and operate a luxury resort in Destin, Fla., in a transaction involving a "grossly undercollateralized" loan.

• Midwest made $6 million in illegal loans to Sandestin so Sandestin could acquire part of another Florida development company.

• Funds totaling more than $900,000 were transferred from Midwest to another company, not named as a defendant, purportedly to acquire an investment portfolio of "largely non-performing undersecured insider loans" from another insolvent Southshore subsidiary, Public Investors Life Insurance Co. Public Investors is now in liquidation as well.

• Midwest's assets were used to purchase worthless stock controlled by Southshore. The suit charges that to inflate Midwest's assets and mislead regulators in Minnesota, where the company was in danger of losing its right to write business, Midwest in 1989 reported $4 million in American British Enterprises Inc. stock as assets. But, the company's only "real" asset was $211, the suit contends.

• Midwest paid $1.9 million for stock in another insolvent Southshore subsidiary, Quality Security Inc., which was reported on Midwest's books as an admissible asset although it was not an allowable transaction under the Louisiana Insurance code.

Among other transactions cited in the suit was Midwest's purchase of $2.6 million in auto loans that Southshore would "launder" by transferring them to another Southshore unit, Master 98 Holding Co.

The suit also contends there were other questionable transactions involving Master 98 as well.

For example, Midwest loaned $8.3 million to Master 98 so the latter could buy a package of non-performing mortgages with a face value of about $16 million "that were in fact worth closer to $8 million," the suit says. "Half of these notes were then used as security for the Midwest loan," it says.

Defendants either could not be reached for comment or said they had not been served with the suit.

•

James. H. "Jim" Brown, Commissioner of Insurance for the State of Louisiana vs. Southshore Holding Corp., 19th Judicial District Court, Parish of East Baton Rouge; No. 382748 Division J.

JOHN MARTIN/THE IMAGE BANK

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PPO reduces Florida utility's health costs

By CHRISTINE WOOLSEY

Benefit Beat

ST. PETERSBURG, Fla.—Florida Power Co. has accomplished something few other employers have: The utility managed to cut its annual health care costs by 3% in 1991, while most companies continued to suffer from double-digit cost increases.

And, in the first 18 months after adding a preferred provider option to its four self-insured indemnity plans, St. Petersburg-based Florida Power says it has pruned $5 million off what it would have spent had it not offered the PPO.

The preferred provider network is offered by Blue Cross & Blue Shield of Florida Inc.

To sweeten the deal, BC/BS of Florida agreed to administer Florida Power's indemnity plan claims under a contract in which its payment is based solely on the amount of money it saves.

"Instead of setting a fee up front, we worked out a creative payment arrangement with BC/BS," explained George Rickus, vp of human resources for Florida Progress Corp., Florida Power's parent company.

"We don't pay them any administrative fee—they are only paid if they save us money. Then they are given a percentage of that savings as payment."

The reimbursement formula is proprietary, but Mr. Rickus said that it is based in part on the increase in the medical component of the Consumer Price Index, which many insurers use when setting health care cost trends.

The medical care component of the CPI in 1991 rose at an annualized rate of 7.9%, according to the Labor Department's Bureau of Labor Statistics (*BI*, June 8).

The arrangement seems to be working well for both parties. In 1991, Florida Power payed BC/BS about $1.4 million—a much higher fee than it would have been payed under a traditional fee per claim basis, Mr. Rickus said.

"We tried to find a way to pay a third-party administrator that would (give it an incentive) to do its best job," Mr. Rickus explained.

The two parties agreed to a three-year contract. However, BC/BS will annually renegotiate a clause in the agreement that currently provides that Florida Power's PPO health care cost increases will not exceed the medical component of the CPI minus two percentage points. For 1992, Florida Power is expecting a 2.3% increase in health care costs.

If Florida Power's costs increase more than the medical component of the CPI, BC/BS of Florida will still get paid, "but it will be a lot less than if they meet the contract target," Mr. Rickus said.

And if the utility's costs grow beyond a certain point, BC/BS will not be paid at all.

"Our theory is, if we see the same inflation rate with you as without you, why should we put this program in?" Mr. Rickus explained.

BC/BS is able to keep the utility's health care costs in check through provider discounts and utilization management, said Ken Otis, executive director of managed care programs for BC/BS of Florida in Jackson, Fla.

BC/BS of Florida contracts with cost-effective physicians—those who control utilization—and uses its leverage and volume to achieve discounts with hospitals, he said.

Mr. Rickus said he is confident the PPO arrangement is producing real savings for Florida Power.

"We know what our health care costs have been historically," he said, adding that total health care costs rose 16% in 1989 and 13% in 1990.

"BC/BS has shown us what the doctors and hospitals charge, what BC/BS pays as a discount and how much we save. And, we can audit their system whenever we want," he said.

Florida Power may have been able to achieve a 3% drop in its overall health care costs because most of its roughly 6,600 employees and dependents were formerly enrolled in traditional indemnity plans.

Under the utility's flexible benefit program, 80% of employees and dependents opted for indemnity plan coverage in 1989, while 15% were enrolled in four health maintenance organization and 5% selected no health coverage, Mr. Rickus explained.

Now, 64% of employees and dependents are covered by the indemnity plans with the PPO, 30% are covered by the four HMOs and 6% have no coverage, he said.

Employees and dependents who use the PPO must pay a 10% copayment, but they do not have to file claims forms.

Deductibles range from $200 to $600 per individual and $600 to $1,000 per family, based on the level of coverage chosen by an employee.

Employees and dependents who seek coverage from non-network providers must pay a 20% copayment and are responsible for any charges billed by providers that exceed usual and customary rates. The same deductibles apply.

Some consultants say it is not that unusual for an employer to save a bundle of money the first year it implements a PPO. That is especially true if a large proportion of employees had been enrolled in traditional indemnity plans with little cost management.

But Mr. Rickus strongly disagrees.

"I'm not sure I'd agree there is nothing new here. I have not read anything in the literature that says first-year savings in a PPO are 20%. If that were true, every employer would be putting in PPOs," he said.

And, he reiterated that the company's payment arrangement with BC/BS is unusual.

If the program proves successful, Florida Power could save as much as $60 million in 10 years, Mr. Rickus predicted. ■

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Opinions

Focus on ADA's benefits

THE AMERICANS with Disabilities Act can be viewed by risk and benefit managers as adversity or opportunity. Instead of complaining about the law, which is now a fact of business life, the smart executive will exploit its advantages while minimizing the problems it will cause.

We do not mean to sound like a Pollyanna: The ADA, which goes into effect later this month for most American businesses, will cost companies money. It will cause many problems: Hiring practices will have to be reviewed and changed, workers compensation and employee benefit plans will have to be reviewed to determine the ADA's effect on those programs and, most likely, companies will have to make "reasonable accommodations" to allow qualified disabled individuals to fill jobs.

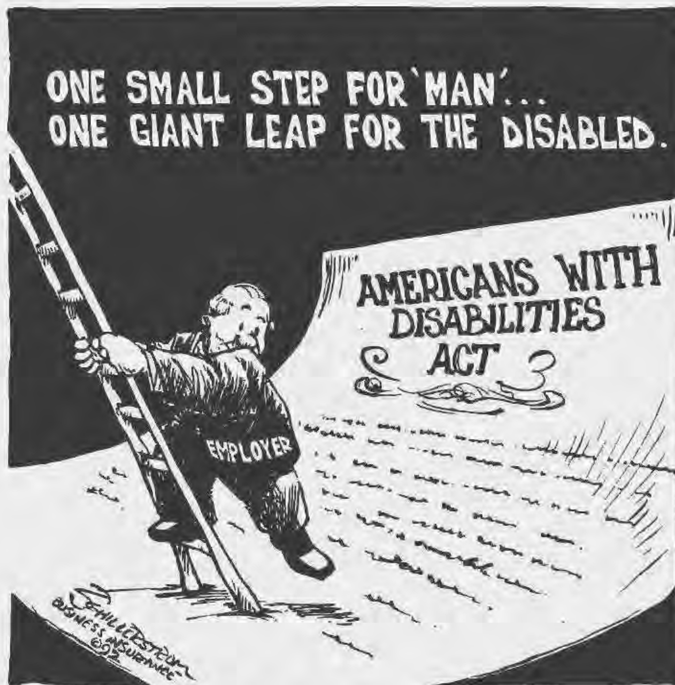
However, we think the goal of the law—giving the disabled greater opportunities to hold down meaningful jobs—may well be worth the cost. The unemployment rate among the disabled is nothing short of embarrassing: 67%. And while hiring the disabled may be the "right" thing to do from a moral standpoint, it also can make good business sense: DuPont found that 90% of its disabled employees were rated average or above average in the performance of their job duties.

Public entity risk managers, who have had to comply with all provisions of the ADA since January, for the most part report that the law has not caused the massive headaches that many have predicted. As one municipal official put it: "People with disabilities don't want lawsuits and litigation; they want access and jobs."

In fact, we wonder if dire warnings about problems created by the ADA were not exacerbated by the profit motive. Sponsoring conferences and selling handbooks to help employers comply with the ADA is big business. Few executives ask for this type of help if a "problem" does not exist.

Of course, many employers will need help to comply with the ADA. The law in many areas is vaguely worded, and some litigation is sure to result. However, companies must be as choosy when obtaining ADA advice as they are in selecting any other type of consultant or counselor.

If properly prepared to face the problems that will be spawned by the ADA, employers may be able to turn adversity into opportunity.



Letters

Advertising injury liability analysis challenged

To the editor: William M. Savino and Celeste M. Butera, the authors of the Perspective article "Advertising Injury Liability" (*BI*, June 15), present arguments advanced by counsel in the *Bank of the West* case before the California Supreme Court (*BI*, April 8, 1991; Dec. 3, 1990). The authors' analysis relies on assumptions about the scope of "advertising injury" coverage that are at odds with developing case law in California as well as other jurisdictions.

Contrary to the import of their arguments:

- Insurer intent is not controlling in construing the meaning of ambiguous terms in an insurance policy. Moreover, the drafting history of the comprehensive general liability policy form endorsement encompassing advertising injury reveals that the Insurance Services Office Inc. recognized that the undefined policy term "unfair competition" was broad enough to include a range of intentional business torts including patent infringement as well as antitrust violations.
- In arguments before the California Supreme Court, insurer's counsel admitted that the phrase "unfair competition" was broad enough to encompass virtually any form of misappropriation of commercial advantage between competitors, not mere "passing off" activity. Indeed, a broad reading of that phrase is supported by decisional law, dictionaries, legal essays and textbooks.
- The phrase "occurring in the course of the insured's advertising activities" can reasonably be interpreted to include a non-causal connection based on simultaneous activity occurring at the same time or place as the alleged offense. Similarly, the phrase "injury arising out of an offense" has been interpreted by various courts to be much broader than "caused by," including virtually any incidental connection between the offense and the injury alleged.
- The undefined term "unfair competition" has been interpreted to include the more narrow statutorily defined offense of patent infringement as has the undefined term "piracy."
- Following dictionary definitions, courts have construed "advertising activities" expansively in the policyholder's favor.
- Construing the terms "unfair competition" and "piracy" against the insurer that drafted the policy, two California courts have found that the direct infringement of a patent by "use" of the patented invention, as well as inducing and contributing to patent infringement, constitute an action that arose in connection with "advertising injury" and triggered a duty of defense.
- The logic of an unpublished copyright infringement case following New York coverage law on which the authors rely, *Jerry Madison Enterprises Inc. vs. Grasant Manufacturing Co. Inc.*, has been called into question by the highest state court in New York, which rejected wooden application of the "four corners doctrine" that limits the court's ability to consider facts brought to its attention that are not asserted in the pleadings.

David A. Gauntlett
Partner
Callahan & Gauntlett
Irvine, Calif.

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Underwriting needed in assigned risk pools

To the editor: It seems that high workers compensation assigned risk facility assessments usually are blamed on inadequate rates, rising medical costs and the litigious nature of our society. These are pertinent facts; however, the voluntary market faces these same obstacles, and the majority of insurers in the voluntary market remain profitable. The reason is the voluntary market is allowed to underwrite, thus utilizing loss-sensitive and deductible programs that shift some burden to the policyholder.

As long as these assigned risk facilities continue to write only guaranteed-cost policies for risks whose premiums cannot equal their losses and expenses, the voluntary market—and its policyholders—will continue to suffer.

Paul M. Perry
Assistant Vp
Johnson & Higgins of Connecticut Inc.
Stamford, Conn.

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ADA compliance

Continued from page 3

mote the hiring of people with disabilities.

The 1990 act, which is being phased in July 26 for most employers, was designed to encourage employers to view the 43 million Americans with substantial physical or mental disabilities as an underutilized talent pool and as potential customers.

Earlier federal laws encouraged government contractors and grant recipients to hire the disabled. State civil rights laws had similar aims.

But until the ADA, people with disabilities "were excluded from the workforce based on a lot of fear about their qualifications, their ability to meet performance standards and their overall ability to contribute," said Lana Smart, manager of the non-profit Industry-Labor Council for the National Center for Disability Services in Albertson, N.Y.

Borrowing from the vernacular of race relations, Eric Reisenwitz, vp-national accounts for CIGNA Special Benefits Cos. in Philadelphia, said: "The ADA will encourage employers to do the right thing."

The act will have a "two-fold social impact," said James E. Crockett, manager of risk and benefits for Denver Water, the city water authority. It will make disabled people into income-earning individuals and it will transfer to employers the cost of welfare payments now made to disabled people who can't find work.

But Jim Mortimer, president of the Midwest Business Group on Health in Chicago, downplays that cost burden. If the work done by disabled people adds value for employers, "it's not cost shifting," he said.

Although the ADA's goal is clear, how it will be applied on a case-by-case basis is not.

Grudging acceptance

At least publicly, reaction among most employers ranges from worry to acceptance.

One of the only executives contacted who would offer any criticism of the law was Patrick M. Schlifka, plant manager for Castle Metal Finishing Corp. in Schiller Park, Ill.

"The burden is incredible," said Mr. Schlifka, whose company has 50 employees.

Far more common was worry about the law's impact. The worry is prompted by hypothetical scenarios in which an employer's responsibilities under the ADA may increase its liability in other areas:

- Should a hospital allow a nurse with epilepsy to work at an operating table where an unexpected seizure could disrupt an operation and cause a patient to die?

What is the likelihood of an ADA lawsuit from a surgical nurse applicant compared with that of a wrongful death claim from a deceased patient's survivors?

- Should a school district allow someone with tuberculosis to teach a classroom full of children?

If such a teacher takes medication, he may be contagious for only two weeks, and giving him leave during that time could be the sort of "reasonable accommodation" the disabilities law requires employers to make.

But, what if he stops taking his medication because of depression or because he spent the money on something else?

Should the employer monitor his medication levels to ensure that he does not stop taking it and possibly infect the children?

With questions such as these, risk managers at first impression do not like the law.

"At first glance, risk managers perceive it as a burden," said Paul Brown, director of governmental affairs and general counsel of the Risk & Insurance Management Society Inc. in New York. "However, their second reaction is that it does provide vast opportunities to tap an unused pool of talent" to meet the goal of finding reliable employees, with or without disabilities.

What the law requires

The employment-related provisions of the ADA take effect July 26 for companies with at least 25 employees. Those with 15 to 24 employees have two more years to comply.

State and local governments had to comply by Jan. 26. And about 5 million non-governmental businesses that cater to the public—like restaurants and banks—also had to comply with the ADA's provisions designed to increase public access for people with disabilities (*BI*, Jan. 27).

Discrimination complaints are filed with federal agencies like the Equal Employment Opportunity Commission and the Justice Department. Agencies are directed to investigate the charges and try to resolve them through conciliation.

If that fails, an agency may file suit or issue a right-to-sue letter to the person who filed the charge. Such letters are typically granted upon request, and may be granted even if the agency judges the charges to groundless.

All this has been noted at great length in both the media and at business conferences.

"The ADA has already increased costs for employers just from traveling expenses and conference registration fees for employer representatives to attend ADA 'gloom and doom' conferences," said Allyn C. Tatum, an Arkansas official who is president of the International Assn. of Industrial Accident Boards & Commissions. "Hopefully, after July 26, we can begin to realize the positive impacts of the law."

The act is designed to protect from discrimination a "qualified" job applicant or employee who has the necessary educational background and skills to perform the "essential functions" of a job with or without "reasonable accommodation."

Specifically, the act requires that employers not discriminate against any individual:

- With a physical or mental impairment that substantially limits one or more major life activities.
- With a record of such an impairment.
- Who is regarded as having such an impairment, like a non-disabled person who is disfigured.

The law takes a new tack. It emphasizes that an employer should not discuss an applicant's disability but should instead ask how he or she would perform essential job functions, with or without accommodations.

"Reasonable accommodation" is a modification or an adjustment made to a job or workplace to enable a disabled person to perform essential job functions. It may include restructuring a job; adopting flexible work

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ADA compliance

Continued from page 10

schedules; modifying equipment; modifying examinations and training programs; or hiring readers, interpreters or travel attendants.

Employers are not required to make any accommodation that is "an undue hardship," or unduly expensive, extensive or disruptive.

That distinction is not always easy to make. "If hiring two for one—like a reader for a blind man—is reasonable (for a large employer), what would an average employer not be required to do?" Denver Water's Mr. Crockett asks.

The ADA essentially requires an employer to decide whether individuals are qualified for a job only at the time they apply. Employers cannot take into account whether their condition may deteriorate in the future, thus increasing workers comp and benefit costs (see stories, pages 17 and 20).

The act sets limits on employer screening of an applicant's medical condition and prior workers compensation claims history (see story, page 21).

The ADA's goal is for an employer to treat all employees uniformly, though health insurance benefits can be reduced with actuarial justification.

The compliance game

Initial reactions to the law were lukewarm at some companies, but most now appear to be trying to comply with it.

Some 44% of the 385 companies responding to a recent survey reported a favorable reaction to the law (*BI*, May 11).

But 20% reported an unfavorable reaction and nearly as many —18%—said they did not know yet. Thirteen percent had no opinion and 5% gave some other answer.

Many companies, the survey found, have begun to comply with the employment provisions by: designating a person as a compliance officer; modifying employment forms and processes; and providing substantial written information to supervisors concerning the law.

Taking such steps can help companies defend themselves when disabled job applicants or employees claim that they were not reasonably accommodated, according to the Equal Employment Opportunity Commission.

Another precaution is also available: "employment practices liability insurance," which would cover claims including wrongful termination and sexual harassment (*BI*, March 23).

Employers often seek guidance from a handbook, technical assistance manual and extensive resource directory available through the EEOC, which is charged with enforcing the ADA for all but the smallest public entities. Insurance company loss control staffs and outside consultants are also used.

Not all the advice available is uniformly regarded as reliable.

"There are quite a few people who are scaremongering in the consulting field," an EEOC spokeswoman said.

Employers, for instance, are being told they must prepare job descriptions for each position—though it is only recommended—or that they must retrofit an entire building rather than just specific areas used by the public, a disabled employee or a job applicant, she said.

On the opposite end of the spectrum are a few management lawyers. Their advice, according to Luellen Lucid, a Wyatt Co. consultant in Los Angeles, is to do nothing and wait to see to what extent the act is enforced.

At the very least, employers must let employees know that they are aware of the ADA and willing to comply with it, through a poster or other notice, EEOC spokesmen say.

Another step that all employers should take involves help wanted ads. Employment agencies should be told that all newspaper ads must be made accessible to deaf applicants. That can be done by including in the ad an address for written inquiries or a number for a telephone company service that will accept a deaf person's written computer message via telephone lines and transmit it verbally to the agency.

Job fairs are another source of potential problems. An employer can be held liable if its recruiters participate in job fairs that are inaccessible to people with different types of disabilities, according to the EEOC's technical assistance manual.

Resolving the ambiguities

Ironically, one thing hindering corporate efforts to comply with the ADA is the law itself.

"There is a ton of ambiguity in the ADA," says Jack Stewart, regional director for workers compensation with the Alliance of American Insurers in Schaumburg, Ill.

"The ADA doesn't provide any bright lines or safe harbors about what are the essential functions of a job or what would be a reasonable accommodation," said Eric Oxfeld, senior counsel with the American Insurance Assn. in Washington.

One other feature that sends risk managers scurrying for their compliance manuals: When the ADA conflicts with some other state or federal laws or regulations, the ADA itself sometimes requires that it be given priority.

Some state workers comp laws, for instance, would make a company liable for additional benefits if a worker was hurt because the company assigned him to a position likely to jeopardize his health or safety or exacerbate an earlier workers comp injury.

Such laws "may permit or require an employer to exclude a disabled individual from employment in cases where the ADA would not permit such exclusion. In these cases, the ADA takes precedence over the state law," according to the EEOC's technical assistance manual.

That handbook provides some guidance. But federal agencies like the EEOC are still drafting detailed guidelines about pre-employment inquiries and about how the ADA affects health insurance plans, workers comp system requirements and collective bargaining arrangements.

The advice that is available is helpful, but does not provide clear guidance about how the EEOC will enforce it in particular situations, observers say.

Without clear guidance, lawsuits likely will be filed over hiring and retention of the disabled.

It's "whole new virgin territory for litigation attorneys," said Steven M. Selan, an insurer attorney in Chicago.

"While most of the focus about this new statute has been on hiring new employees, most experts predict that the majority of ADA

Continued on page 16

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Etiquette tips fight discrimination

Much of the discrimination against the disabled stems from the uncertainty that the non-disabled feel when they first meet someone with a disability.

Many organizations, like the National Easter Seal Society, offer brochures with tips on proper etiquette for interacting with people with disabilities.

Language should emphasize the person first, the disability second.

For example, rather than refer to someone as an epileptic, say "person with epilepsy" or "John, who has epilepsy. . . ."

Avoid language that is negative and inaccurate. For example, people who use wheelchairs are not "bound" or "confined" to their chairs.

And, while a person may have spastic muscles, he or she is is not spastic.

Preferred language includes the use of:

- "Has" or "with" instead of "crippled with," "suffering from," "afflicted with." For example, say "John has epilepsy" rather than "John is suffering from epilepsy."
- "Congenital disability" rather than "birth defect."
- "Disability" rather than "handicap."
- "Non-disabled" rather then "normal," "healthy" or "able-bodied."
- "Condition" rather than "disease" or "defect."
- "Visually impaired" or "hearing impaired" rather than "blind" or "deaf" if a person is not totally impaired.
- "Little person" or "dwarf" rather than "midget."

Other offensive terms and phrases include "victim," "cripple," "crippling," "unfortunate," "pitiful," "poor," "deaf and dumb," "deaf mute," "mute," "deformed," "blind as a bat," "invalid," "moron" and "feeble-minded."

Stereotypes of individuals with disabilities as "courageous," "brave," "inspirational" or as "sensitive," "bitter" and "full of self-pity" also are offensive.

Other etiquette tips that might help interviewers, supervisors or co-workers are:

- Never help a person with a disability until you have asked if he or she needs or wants help and have received an affirmative reply. If the person does want assistance, ask for specific instructions on how you can be most helpful.
- Look directly at any person with a disability when talking to him or her, even if the person has an interpreter present.
- A speech impairment does not indicate that the person also has a hearing impairment or intellectual limitations.

Someone with a speech impairment should be allowed to finish his or her own sentences. But the non-disabled person might consider asking questions in a form that allows for short answers or a nod of the head.

- For extended conversations with someone using a wheelchair, get a chair and sit at eye level with the person.
- Keep hands, cigarettes and food away from your mouth while talking to a person who is lip reading. Use gestures and speak clearly, but don't exaggerate lip movements or shout.

An interpreter may be helpful for group meetings, even if the hearing impaired person reads lips.

- Avoid any tendency to shout while speaking to someone who is visually impaired. There is no need to avoid the use of verbs like "see."

When walking with a person who is visually impaired, allow that person to set the pace. If the person asks for or accepts your offer of help, don't grab his or her arm. It is easier for him or her to hold onto your arm.

—By Sara J. Harty

ADA compliance

Continued from page 14

cases will come from existing employees, not new ones. This has been the general history in the entire field of employment discrimination," said Douglas F. Stevenson, an attorney with Stevenson, Rusin & Friedman Ltd. in Chicago. Mr. Stevenson is executive director of the National Council of Self-Insurers.

Discrimination complaints filed with the EEOC are expected to grow 20% to 72,000 from 60,000 per year once the ADA takes effect.

But in the first six months that portions of the ADA were in effect, the Department of Justice has received only 29 employment-related complaints.

The EEOC, which investigates the complaints, says it will emphasize dispute resolution rather than litigation. The disabilities law "will be interpreted and enforced in a common sense way," says an agency spokeswoman.

Other factors, though, seem to encourage suits. Plaintiffs' attorneys may be lured by the availability of punitive damages for intentional discrimination under some of the act's employment-related provisions. Punitive damages are not available from state or local governments.

The total amount of punitive damages and compensatory damages for future monetary loss and emotional injury for each individual is limited based on the size of the employer. Damages cannot exceed $50,000 for a company with 15 to 100 employees; $100,000 with 101 to 200 employees; $200,000 with 201 to 500; and $300,000 with 500 or more.

Several bills pending in Congress would eliminate or reduce those caps.

In coping with the ADA, employers must "get beyond the myths and biases that we all deal with," suggested Terry T. Sullivan, vp of personnel for USA Today in Arlington, Va.

Negative attitudes will be "the biggest impediment to harmonious implementation of the ADA," Ms. Sullivan aid.

Employers trying to comply with the law must show "flexibility, sensitivity, creativity and an awareness about the resources that are available," she said.

Once employers begin to "concentrate on ability and not disability" it "can easily become a standard way of doing business," said Rosemary Kirwin-Alvord, corporate equal employment opportunity specialist for Tektronics Inc. in Beaverton, Ore. ■

It's hard to get through to some group LTD claims handlers.

ADA could have big impact on work comp

Disabilities law has the potential to cause legal headaches for employers

By MEG FLETCHER

The Americans with Disabilities Act is expected to have major repercussions on employers' workers compensation programs.

It will affect how employers screen job applicants, return injured employees to the job and settle some workers comp claims, among other things.

The disabilities law's "major implications appear to be in the work comp area," said Eric J. Oxfeld, senior counsel with the American Insurance Assn. in Washington.

The ADA has the potential to create legal problems for employers because it "supercedes any conflicting state workers compensation laws," acknowledges the Equal Employment Opportunity Commission, which oversees enforcement of the employment provisions of the law.

As an example, the EEOC offers the case of an employer charged with discriminating against a disabled job applicant. Such an employer could not cite in its defense state laws allowing it to refuse to hire a disabled applicant because the job could jeopardize the person's health or safety or could exacerbate an earlier workers compensation injury.

Employers could, however, be shielded from liability by some federal statutes or rules, which generally are not pre-empted by the ADA. For example, a Department of Transportation safety rule currently prohibits epileptics that require routine medication from driving trucks across state lines. The rule is being reviewed.

The ADA also bars an employer from asking about a job applicant's workers compensation claims history before making a conditional offer of employment (see story, page 21).

The law does allow employers to make post-offer inquiries about a person's workers comp history as part of a medical examination or as part of an inquiry administered to all applicants in the same job category. But this information generally must be kept in confidential files separate from other employee data.

However, the AIA's Mr. Oxfeld warns that there is "a very fine line" between appropriate and inappropriate uses of workers compensation claims history. This is especially true if the claims are not germane to the applicant's ability to perform essential job functions.

The law does allow an employer to refuse to hire or to fire "a person who knowingly provides a false answer to a lawful post-offer inquiry about his/her condition or workers compensation history," the EEOC says.

Such misrepresentations may be hard to detect, though. "I don't think it will be easy for an employer to determine that claims were fraudulent," said James E. Crockett, manager of risk and benefits for Denver Water, the city's water department.

In addition, the EEOC observes, "Some state workers compensation laws release an employer from its obligation to pay benefits if a worker falsely represents his/her health or physical condition at the time of hire and is later injured as a result. The ADA does not prevent use of this defense to a workers compensation claim."

The ADA also affects employers' return-to-work programs.

The EEOC cites the example of a telephone line repair worker who has broken her legs and fractured her knees in a fall. The worker may need at least nine months in a wheelchair before she can walk with crutches, according to her treating physician.

In the meantime, she could be placed in a light-duty job processing paperwork.

But the worker would meet the ADA's definition of a person with a disability. So that light-duty placement may require the employer to make "reasonable accommodation," like placing her in a wheelchair-accessible office or widening office doors, the EEOC points out. And the employer may also have to modify her work schedule so that she can attend weekly therapy sessions.

If workplace accommodations are needed, an employer will likely foot the bill, unless state workers compensation law can be interpreted as requiring the company's insurer to cover such worksite modifications, several consultant and insurer sources said.

For example, under Colorado law "an insurer would not be required to pay for reasonable accommodation for an injured employee," said Mr. Crockett of Denver Water.

Still, an insurer may want to pay the cost of a reasonable accommodation to reduce an injured employee's wage-loss benefit, he added.

"I would assume that most companies will figure out the most economical way of dealing with this," said Paul Brown, director of governmental and public affairs and general counsel of the Risk & Insurance Management Society Inc. in New York.

Employers may face some special problems under the ADA when a worker recovering from an injury does not wish to return to the job.

"If the employee is not motivated, it is very difficult to get them to want to go back to work," said Eric Reisenwitz, vp-national accounts with CIGNA Special Benefits Cos. in Philadelphia.

Mr. Oxfeld of the AIA observed that the law gives employers a strong incentive to bring employees disabled by injury back

Continued on next page

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Workers comp

Continued from previous page

to work: the threat of a discrimination lawsuit.

But it provides employees with no incentives to return, said Mr. Oxfeld, who argues that the "major shortcoming" in the act is that it is one-sided.

Furthermore, employees might be able to file both ADA and workers comp claims. "The EEOC has made plain its opinion that the filing of a workers compensation claim does not prevent an employee from filing a charge under the ADA with the EEOC or filing a complaint in federal court," the Workers Compensation Research Institute said in a research paper on the law to be published this month.

So-called double recoveries might also be possible. It seems "entirely likely," the WCRI said, that an employee who suffers a workplace injury could receive both compensation for his injury and damages for subsequent discriminatory treatment as a result of his disability.

This situation could prompt some employers to make higher lump sum settlements in states that allow them.

In California, for example, employers can to offer lump sum workers comp settlements through "compromise and release agreements," in which the worker agrees to accept the payment in return for relinquishing his or her employment and further compensation.

"There may be potential for abuse of the settlement negotiations. . .if an employee attempts to threaten an ADA claim before settling the worker compensation case and proceeds as though he or she desires a return to work. A subtle knowledge may exist on the part of the employee and the employer that a larger workers compensation settlement offer may be required in order to 'settle out' the workers compensation liability and attempt to make the ADA (liability) potential disappear," the WCRI contends.

Attorneys have raised questions as to whether such workers compensation claims settlements violate an individual's rights under the ADA.

But these settlements "would not be a violation of the ADA," says Robert Tate, special assistant to the EEOC's chairman.

At least one factor makes it unlikely that an injured worker could recover both ADA damages and a workers comp claim. The two types of claims require opposite types of proof, said Jack Stewart, a regional director of workers compensation for the Alliance of American Insurers in Schaumburg, Ill.

A workers comp claimant must show that he or she is unable to perform a job, which reduces his earning capacity, while an ADA claimant must show that he could perform the essential functions of a job with or without reasonable accommodation, Mr. Stewart explained.

Making both arguments credibly would be difficult, he pointed out.

The ADA's increased emphasis on allowing a disabled employee to return to the workplace may mean a radical change for many employers without early return-to-work programs.

"Traditionally, very few employers were interested or able to take injured workers back to work," said James F. Boyd, assistant director of vocational rehabilitation services for Rehabilitation Management Inc. in Chicago.

"They would just as soon cut their losses and consign the injured worker to their workers compensation insurers, who would then seek vocational rehabilitation counseling to obtain a new job for the employee," he said.

However, some large employers, especially those that self-insure their workers compensation losses, have relied for years on disability management programs to help recuperating workers return to the workplace, thereby reducing the employer's wage-loss costs.

"Employers that take seriously their obligation to return injured workers back to their job should realize a decrease in their workers compensation costs," pointed out Allyn Tatum, an Arkansas official who is president of the International Assn. of Industrial Accident Boards & Commissions.

"The overall impact of the ADA should be to reduce employers' work comp costs because it will reduce benefit expenditures," said AIA's Mr. Oxfeld. "A lot of medical care is probably consumed to establish how disabled you are."

In addition, employers may reduce their workers comp claims costs by making increased use of state "second injury" funds.

Designed to encourage hiring of disabled workers, these funds reimburse the employer for disability benefits that are partially or fully attributable to a prior disability. Most second injury funds only allow recoveries for employers that knew of a worker's prior disability before the worker was hired.

Despite confidentiality provisions in the law, the ADA does not bar employers from submitting medical information and records concerning employees to second injury funds or other workers compensation authorities in connection with a claim.

"I predict that states will broaden their second injury fund coverage," in light of the ADA, said Doug Crossman, director of South Carolina's second injury fund.

"It benefits employers and provides additional incentive to hire the handicapped, thus reducing the tax burden from providing unemployment and social services to qualified handicapped people." ■

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C. Lee Reeves, Esq.
Birmingham, AL 35255
(205) 933-7111
Adjusters
Georgia Adjustment Co.
Cliff Goodson
Atlanta, GA 30328
(404) 252-9001

Alaska
Attorneys
Peery, Hiscock, Pierson & Ryder, Inc., P.S.
Max Peabody, Esq.
Seattle, WA 98104
(206) 622-1264

Arizona
Attorneys
Ridenour, Swenson, Cleere & Evans
Harold H. Swenson, Esq.
Phoenix, AZ 85003
(602) 254-2143
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

Arkansas
Attorneys
Thorp & Fones
Allan B. Thorp, Esq.
Memphis, TN 38117
(901) 763-0460
Adjusters
Insurance Adjustment Services, Inc.
Floyd E. Myers
Richardson, TX 75080
(214) 669-4040

California
Attorneys
McKay, Byrne & Graham
John P. McKay, Esq.
Los Angeles, CA 90010-1578
(213) 386-6900
Brekhus, Williams, Wester & Hall
Peter Brekhus, Esq.
San Francisco, CA 94111
(415) 461-1000
Adjusters
Aaron Adjustment
William Hessler
Pasadena, CA 91101
(818) 449-7632

Colorado
Attorneys
Greengard, Senter, Goldfarb & Rice
James E. Goldfarb, Esq.
Denver, CO 80222
(303) 320-0509
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

Connecticut
Attorneys
Cotter, Cotter & Sohon
John J. Cotter, Esq.
Bridgeport, CT 06610
(203) 335-3131
Skelley, Vinkles & Rottner
Joseph Skelley, Esq.
Hartford, CT 06114-0890
(203) 246-6891
Adjusters
Paul C. Higgins, Inc.
Richard J. McKenna
North Haven, CT 06473
(203) 281-4554

Delaware
Attorneys
Morris, James Hutchens & Williams
Richard Galperin, Esq.
Wilmington, DE 19899-2306
(302) 888-6800
Adjusters
Raphael-Scala, Fell & Co.
Stu Raphael
Hackensack, NJ 07601
(201) 489-9165

Florida
Attorneys
Miller, Selig, Kelley & Assoc.
Peter A. Miller, Esq.
Miami, FL 33130
(305) 358-6767
Adjusters
Crittenden Adjustment Co.
Edward R. Crittenden
Fort Myers, FL 33901
(813) 332-1321

Georgia
Attorneys
Hurt, Richardson, Garner, Todd & Cadenhead
W. Seaborn Jones, Esq.
Atlanta, GA 30309-3999
(404) 870-6000
Adjusters
Georgia Adjustment Co.
Cliff Goodson
Atlanta, GA 30328
(404) 252-9001

Hawaii
Attorneys
Goodsill, Anderson, Quinn & Stifel
David J. Dezzani, Esq.
Honolulu, HI 96813
(808) 547-5600

Illinois
Attorneys
McKenna, Storer, Rowe, White & Farrug
Royce G. Rowe, Esq.
Chicago, IL 60601-1083
(312) 558-3900
Adjusters
J. Soukup & Co., Inc.
Joseph Soukup
Hinsdale, IL 60521-3197
(708) 920-0800

Indiana
Attorneys
Stewart & Irwin
Ron Smith, Esq.
Indianapolis, IN 46204
(317) 639-5454
Adjusters
J. Soukup & Co., Inc.
Joseph Soukup
Hinsdale, IL 60521-3197
(708) 920-0800

Kansas
Attorneys
Dysart, Taylor, Penner, Lay & Lewandowski, P.C.
Alex Lewandowski, Esq.
Kansas City, MO 64111
(816) 931-2700
Adjusters
Leamon, Peterson & Bello, Inc.
Patrick Bello
Overland Park, KS 66202-4123
(913) 362-1309

Kentucky
Attorneys
Boehl, Stopher, Graves & Deindoerfer
Edward H. Stopher, Esq.
Louisville, KY 40202
(502) 589-5980
Adjusters
Tenco Services, Inc.
Tom Moss
Nashville, TN 37203
(615) 292-0098

Louisiana
Attorneys
Sessions & Fishman
James Ryan III, Esq.
New Orleans, LA 70170-3500
(504) 582-1500
Adjusters
New Orleans Rosenbush Claim Service
Calvin C. Hoppmeyer
New Orleans, LA 70182-8320
(504) 283-3451

Maine
Attorneys
Posternak, Blankstein & Lund
Erik Lund, Esq.
Boston, MA 02114
(617) 367-9595
Adjusters
J. J. Duffy Adjustment Service
John J. Duffy
Marshfield, MA 02050
(617) 837-5151

Maryland
Attorneys
Gleason & Flynn
James P. Gleason Jr., Esq.
Rockville, MD 20850
(301) 417-0099
Adjusters
Crittenden Adjustment Co.
Archer B. Crittenden
Virginia Beach, VA 23462
(804) 490-2323

Massachusetts
Attorneys
Posternak, Blankstein & Lund
Erik Lund, Esq.
Boston, MA 02114
(617) 367-9595
Adjusters
J. J. Duffy Adjustment Service
John J. Duffy
Marshfield, MA 02050
(617) 837-5151

Michigan
Attorneys
Rutledge, Manion, Rabaut, Terry & Thomas
Alvin Rutledge, Esq.
Detroit, MI 48226
(313) 965-6100
Adjusters
Adjusting Services Unlimited
James R. Gabel
Okemos, MI 48805-0077
(517) 349-2212

Minnesota
Attorneys
Foster, Waldeck, Lind & Gries, Ltd.
Timothy W. Waldeck, Esq.
Minneapolis, MN 55402
(612) 375-1550
Adjusters
Kulis, Gummert & Associates
Frank Kulis
St. Paul, MN 55119
(612) 879-4749

Mississippi
Attorneys
Thorp & Fones
Allan B. Thorp, Esq.
Memphis, TN 38117
(901) 763-0460
Adjusters
New Orleans Rosenbush Claim Service
Calvin C. Hoppmeyer
New Orleans, LA 70182-8320
(504) 283-3451

Missouri
Attorneys
Dysart, Taylor, Penner, Lay & Lewandowski, P.C.
Alex Lewandowski, Esq.
Kansas City, MO 64111
(816) 931-2700
Adjusters
Leamon, Peterson & Bello, Inc.
Patrick Bello
Overland Park, KS 66202-4123
(913) 362-1309

Nebraska
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

Nevada
Attorneys
Thorndal, Backus, Maupin & Armstrong
Leland Eugene Backus, Esq.
Las Vegas, NV 89125-2070
(702) 366-0622
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

New Hampshire
Attorneys
Posternak, Blankstein & Lund
Erik Lund, Esq.
Boston, MA 02114
(617) 367-9595
Adjusters
J.J. Duffy Adjustment Service
John J. Duffy
Marshfield, MA 02050
(617) 837-5151

New Jersey
Attorneys
Methfessel & Werbel
John Methfessel, Esq.
Rahway, NJ 07065
(908) 382-4200
Adjusters
Raphael-Scala, Fell & Co.
Stu Raphael
Hackensack, NJ 07601
(201) 489-9165

New Mexico
Attorneys
Ridenour, Swenson, Cleere & Evans
Harold H. Swenson, Esq.
Phoenix, AZ 85003
(602) 254-2143
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

New York
Attorneys
Pagnani, Ruderman, & Semel
Frederick J. Pagnani, Esq.
White Plains, NY 10604
(NYC Area & Hudson Valley)
(914) 949-9800

New York (Continued)
Attorneys
Purcell, Fritz & Ingrao
Patrick J. Purcell, Esq.
Mineola, Long Island, NY 11501
(516) 248-6777
Damon & Morey
Andrew Feldman, Esq.
Buffalo, NY 14202
(716) 856-5500
Adjusters
Preferred Claim Service
Don Oberting
Floral Park, NY 11001
(718) 347-4800
Allied Claim Services, Inc.
Gregory J. Dendler
Buffalo, NY 14225-0488
(716) 631-9505

North Carolina
Attorneys
Kennedy, Covington, Lobdell & Hickman
Charles V. Tompkins, Jr.
Charlotte, NC 28280-8082
(704) 377-6000
Adjusters
Crittenden Adjustment Co.
Archer B. Crittenden
Virginia Beach, VA 23462
(804) 490-2323

North Dakota
Attorneys
Vogel, Brantner, Kelly, Knutson, Weir & Bye
W. Todd Hagart, Esq.
Fargo, ND 58107
(701) 237-6983
Adjusters
Kulis, Gummert & Associates
Frank Kulis
St. Paul, MN 55119
(612) 879-4749

Ohio
Attorneys
Reminger & Reminger
Douglas K. Fifner, Esq.
Cleveland, OH 44144-1273
(216) 687-1311
Adjusters
Adjusting Services Unlimited
James R. Gabel
Okemos, MI 48805-0077
(517) 349-2212

Oklahoma
Attorneys
King, Roberts & Beeler
Tom L. King, Esq.
Oklahoma City, OK 73102
(405) 239-6143
Adjusters
Insurance Adjustment Services, Inc.
Floyd E. Myers
Richardson, TX 75080
(214) 669-4040

Oregon
Attorneys
Blair, Schaefer Hutchison & Wolfe
James Mullins
Vancouver, WA 98666-1505
(206) 693-1777
Adjusters
Aaron Adjustment
William Hessler
Pasadena, CA 91101
(818) 449-7632

Pennsylvania
Attorneys
Rosenberg, Kirshner P.A.
Arthur Bloom, Esq.
Pittsburgh, PA 15219
(412) 281-4256
Sherr, Joffe & Zuckerman
Mark C. Schultz, Esq.
West Conshohocken, PA 19428-0800
(Philadelphia Area)
(215) 941-5400

Pennsylvania (Continued)
Adjusters
Curley Adjustment Bureau, Inc.
Frank Marx
Philadelphia, PA 19106
(215) 627-5900

Rhode Island
Attorneys
Rice, Dolan & Kershaw
John Kershaw, Esq.
Providence, RI 02903
(401) 272-8800
Adjusters
Paul C. Higgins, Inc.
Richard J. McKenna
North Haven, CT 06473
(203) 281-4554

South Carolina
Attorneys
Kennedy, Covington, Lobdell & Hickman
Charles V. Tompkins, Jr.
Charlotte, NC 28280-8082
(704) 377-6000

Tennessee
Attorneys
Thorp & Fones
Allan B. Thorp, Esq.
Memphis, TN 38117
(901) 763-0460
Broemel, Reeves & Baltimore
Dave Broemel, Esq.
Nashville, TN 37219
(615) 254-8324
Adjusters
Tenco Services, Inc.
Tom Moss
Nashville, TN 37203
(615) 292-0098

Texas
Attorneys
Fanning, Harper & Martinson
Robert A. Fanning, Esq.
Dallas, TX 75225
(214) 369-1300
Hirsch, Glover, Robinson & Sheiness
Marc A. Sheiness, Esq.
Houston, TX 77002
(713) 224-8941
Adjusters
Insurance Adjustment Services, Inc.
Floyd E. Myers
Richardson, TX 75080
(214) 669-4040

Utah
Adjusters
R.L. Gresham & Co.
Robert L. Gresham Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

Virginia
Attorneys
Rilee, Canter & Russell
Robert Brewbaker, Esq.
Richmond, VA 23219
(804) 644-1400
Woods, Rogers & Hazlegrove
William Poff, Esq.
Roanoke, VA 24038-4125
(703) 983-7600
Adjusters
Crittenden Adjustment Co.
Archer B. Crittenden
Virginia Beach, VA 23462
(804) 490-2323

Washington
Attorneys
Peery, Hiscock, Pierson & Ryder, Inc., P.S.
Max Peabody, Esq.
Seattle, WA 98104
(206) 622-1264
Adjusters
Aaron Adjustment
William Hessler
Pasadena, CA 91101
(818) 449-7632

Washington, D.C.
Attorneys
Gleason & Flynn
James P. Gleason Jr., Esq.
Rockville, MD 20850
(301) 417-0099
Adjusters
Crittenden Adjustment Co.
Archer B. Crittenden
Virginia Beach, VA 23462
(804) 490-2323

West Virginia
Attorneys
Rosenberg, Kirshner P.A.
Arthur Bloom, Esq.
Pittsburgh, PA 15219
(412) 281-4256
Adjusters
Curley Adjustment Bureau, Inc.
John Bagwell
Pittsburgh, PA 15120
(412) 461-9110

Wisconsin
Attorneys
McKenna, Storer, Rowe White & Farrug
Royce G. Rowe, Esq.
Chicago, IL 60601-1083
(312) 558-3900
Adjusters
J. Soukup & Co., Inc.
Susan Wisland
Milwaukee, WI 53222
(414) 475-6486

Wyoming
Attorneys
Greengard, Senter, Goldfarb & Rice
James E. Goldfarb, Esq.
Denver, CO 80222
(303) 320-0509
Adjusters
R.L. Gresham & Co.
Robert L. Gresham, Jr.
Las Vegas, NV 89125-2065
(702) 384-9700

CANADA

Ontario
Attorneys
Thomson, Rogers
Jeffrey Wm. Strype, Esq.
Toronto, Ontario M5H 1W2
(416) 868-3100
Adjusters - Including Atlantic Provinces
Adjusters Canada
Rex Stephenson
Toronto, Ontario M5C 2C5
(416) 364-6341
Kitchener, Ontario
Adjuster
Adjusters Canada
H.L. Sutherland, Pres.
N2B 3J8
(519) 578-5540

Quebec
Attorneys
Robinson, Sheppard, Shapiro
Michel Green, Esq.
Montreal, Quebec H4Z 1H6
(514) 878-2631
Adjusters
Adjusters Canada
André Gagné
Montreal, Quebec H4N 1C5
(514) 745-7300

Alberta
Attorneys
Parlee, McLaws
Kenneth F. Bailey, Q.C.
Edmonton, Alberta T5J 4K1
(403) 423-8500

British Columbia
Attorneys
Boughton Peterson Yang Anderson
Leslie R. Peterson, Q.C.
Vancouver, British Columbia
V7X 1S8
(604) 687-6789

CANADA

British Columbia (Cont.)
Adjusters
Province of British Columbia Alberta, Saskatchewan, Manitoba
Adjusters Canada
William Kerruish
Vancouver, British Columbia
V5Z 4J7
(604) 874-5677

EUROPE

Belgium
Attorneys
Lebeau et Humblet
Jaques Lebeau
Brussels
4000 Liege,
(011) 32 41 22 27 63

Denmark
Attorneys
Reumert & Partners
Finn Hjalsted, Esq.
1260 **Copenhagen**
(011) 33 1 933960

England
Attorneys
Elborne Mitchell
Andrew Pincott, Esq.
London EC3R 6DS
(011) 44 71 283-7281

France
Attorneys
Vaisse, Lardin et Associes
Daniel du Puch, Esq.
75008 **Paris**
(011) 33 1 43 59 39 66

Germany
Attorneys
Graf von Westphalen & Modest
Dr. Friedrich Gräf
Von Westphalen, Esq.
5000 **Koln 1**
(011) 49 221 208070

The Netherlands
Attorneys
Trenite Van Doorne
Frederick J. Rutgers
3012 CN **Rotterdam**
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Spain
Attorneys
Corvora & Hernandez Marti
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E. 46002 **Valencia**
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Limited impact seen on health plans

By MEG FLETCHER

Employers are becoming more relaxed about coordinating the Americans with Disabilities Act with their group health care plans because the law exempts them from discrimination for common underwriting practices.

Pre-existing condition exclusions, for instance, remain valid as long as they are equally applied to all employees. And plans can still limit payments for certain experimental drugs and treatments.

But some consultants say that the law's so-called underwriting exemption is unclear and could be subject to change.

And a survey finds most employers still do not fully know how the law will affect their employee benefit plans.

The ADA's goals are to provide a disabled employee or dependent with equal access to health insurance and other benefits, including life insurance and pensions.

"However, a lot of its goals are undercut by the specific provisions that follow," according to Jim Mortimer, president of the Midwest Business Group on Health in Chicago. "While employers should be concerned about how the ADA impacts employee benefits. . .a lot of things already in force would continue without respect to the ADA."

Employers are given "relatively broad" exemptions from the anti-discrimination law for health plan provisions as long as they are uniformly applied, agreed Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

Employers, though, can't deny insurance to a disabled person or subject him "to different terms and conditions of insurance based on the disability alone if the disability does not pose increased insurance risks" justified by actuarial data, according to the Equal Employment Opportunity Commission, which oversees enforcement of the employment provisions of the law.

At the same time, "The ADA permits employers to provide insurance plans that comply with existing federal and state insurance requirements, even if provisions of these plans have an adverse effect on people with disabilities, provided that the provisions are not used as a subterfuge to evade the purposes of the ADA," the EEOC says.

Similarly, employers with self-insured health care plans may provide coverage in a manner that is consistent with basic accepted principles of insurance risk classification, even if this limits coverage for the disabled, the EEOC says.

According to an EEOC technical assistance manual, acceptable health insurance limitations include those that:

- Exclude pre-existing conditions.
- Limit coverage for certain procedures or treatments to a specified number per year.
- Limit reimbursements "for certain types of drugs or procedures," like experimental drugs or surgical procedures. There is no EEOC-sanctioned list of drugs or procedures for which reimbursements can be limited.

Self-insurers' efforts to limit benefits for people with acquired immune deficiency syndrome are a particularly timely and thorny issue, given the ADA underwriting exemption.

The 5th U.S. Circuit Court of Appeals last year held that an employer did not violate federal benefits law when it restricted AIDS treatment coverage by switching to a self-insured plan with a $5,000 cap on AIDS-related benefits from an insured plan with a $1 million lifetime benefit (*BI*, Nov. 18, 1991).

Earlier this year, the U.S. Supreme Court asked the solicitor general to comment on that ruling, apparently to help it decide whether to hear the case (*BI*, April 6).

As AIDS-related discrimination cases become more frequent, "courts must resolve the conflict between the ADA's protections (for) AIDS victims and its expressed requirement to refrain from interference with ERISA," said John A. Nixon, an attorney with Saul, Ewing, Remick & Saul in Philadelphia.

Some consultants feel that the law still leaves other questions open.

"Consultants and employers alike have been waiting for guidance on the underwriting exception provided in the ADA," said Mary Lynn Eubanks, an attorney and consultant with Hewitt Associates in Lincolnshire, Ill.

Some people think that the EEOC ultimately will interpret the exception to limit the changes that can be made to benefit plans, finding such changes an illegal subterfuge rather than honest efforts to cut costs, said Foster Higgins' Mr. Saveth.

That belief is based on the EEOC's request for comment on whether employers must first consider the effect on people with disabilities before cutting benefits.

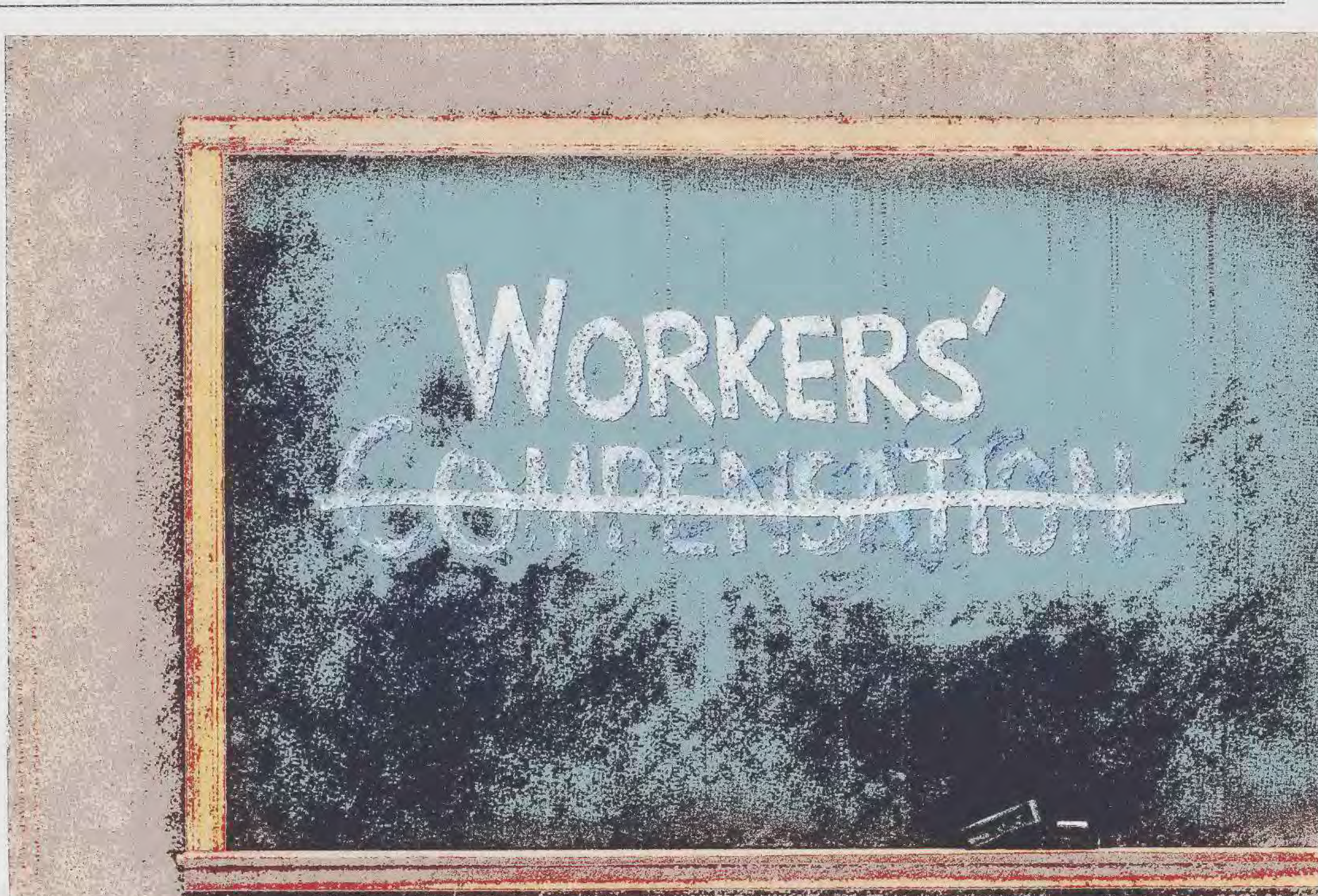
New EEOC limits on allowable benefit restrictions would "fundamentally change benefit design and costs by potentially invalidating nearly all plan limitations," which would result in court tests, Mr. Saveth said.

A new survey by the International Foundation of Employee Benefit plans finds few employers have a complete understanding of the ADA, and even fewer plan to change their benefits because of the law.

Only 7% of 1,136 benefit executives surveyed reported having a "very complete" understanding of the impact of the ADA. Fifty-seven percent had a "fairly complete" understanding, while 31% said their understanding was "not too complete" and 5% had an "incomplete" understanding.

Only 5% of the respondents had changed or planned to change their benefit plan because of the ADA, while 64% did not plan any changes and 31% did not know.

More than a third—36%—reported that their plans contain limitations or exclusions for specific conditions other than pre-existing conditions, the survey said. ■



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Hiring practices targeted

ADA limits ability of employers to prescreen applicants

By MEG FLETCHER

ADA Are you ready?

The Americans with Disabilities Act is increasing scrutiny of workers compensation and employee benefit programs, while limiting employers' scrutiny of job applicants and employees.

Among other things, the law will limit employers' ability to screen job applicants to uncover pre-existing health problems or a history of workers compensation claims until after an offer of employment is made.

The ADA protects from discrimination a qualified job applicant or employee who has a "disability," which is generally defined as a physical or mental impairment that substantially limits one or more major life activities.

The ADA prevents an employer from excluding an applicant whose condition is likely to deteriorate in the future or whose employment could drive up the company's workers comp or group health premiums.

But relatively few employers screen applicants in that manner, contends Jude Payne, senior policy analyst with the Washington-based Health Insurance Assn. of America. "Even pre-ADA, most employers are trying to get their employees healthy, not hire healthy employees."

Employers that do rely on such screenings often discriminate against persons with disabilities without justification, ADA advocates charge.

They point to several studies indicating that, as a group, people with disabilities are not necessarily more accident-prone or costly to employ than non-disabled workers (see story, page 25).

However, small employers are especially wary about the impact an individual's particular disability could have on the company's costs, especially if that person is later injured on the job.

"If an employee's back ailment—from birth—is aggravated at all by work, then the person comes under the ADA and the company winds up 'owning' the person," complained Patrick M. Schlifka, plant manager at Castle Metal Finishing Corp. in Schiller Park, Ill., which employs 50 people.

That concern has prompted his company to arrange for all job applicants to undergo a more comprehensive physical examination after a job is offered than was previously required. Even though this doubles the company's cost for the examinations to $100 from $50 per examination, it gives the company a more complete medical record, Mr. Schlifka said.

Such post-offer screening allows employers to establish a baseline record of an employee's health, which could help it defend itself against a workers comp claim if an employee subsequently claims a disability is completely work-related.

Under the act, medical screenings of a qualified job applicant with a disability can be performed only after an offer of employment is made. But the offer may be made conditional upon passing an examination, as long as such exams are required of all individuals seeking a certain category of job. All records must be kept confidential.

After employment, any medical examination or inquiry must be job-related, unless it is a voluntary examination or required by other federal laws.

Testing applicants for illegal drugs is not considered a medical examination and can be done anytime.

The act also requires that an employer may not base an employment decision on whether or not a qualified applicant with a disability may increase the company's workers comp or employee benefit costs in the future.

Despite employer and insurer concerns, Eric J. Oxfeld, senior counsel with the American Insurance Assn. in Washington, says: "My instincts tell me that fear of the problem dwarfs the economic reality."

Employers should look at the broader picture and factor in the lower costs to society of "transfer payments"—like unemployment compensation or Medicaid benefits—for competent disabled persons who previously have been barred from the workplace, Mr. Oxfeld said.

The ADA also allows employers to refuse to hire or to discharge people who cannot perform a job without posing a significant risk of substantial harm to the health and safety of the individual or other employees, as long as that risk cannot be eliminated or reduced by "reasonable accommodation."

Nevertheless, some insurers are waiting to see if increased employment of persons with disabilities will mean increased workers comp or group health claims, which could justify higher rates.

"To my knowledge, the ratemaking process wouldn't regard the ADA as a higher cost" at this time, says Mr. Oxfeld. In the future, though, workers comp underwriters might raise rates if employer losses increase because of the law, he added.

Meanwhile, in addition to ensuring that employers follow the law, numerous conflicts between the ADA and state and federal statutes need to be smoothed out.

For example, the Equal Employment Opportunity Commission cites a state law that requires school bus drivers to have a high level of hearing in both ears without use of a hearing aid. According to the commission, the law would violate the ADA if it could be shown that a driver could safely perform the job with a hearing aid.

"I think a lot of states are considering bringing their discrimination laws in line with the federal law to avoid conflict and confusion," an EEOC spokeswoman said. ■

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Public entities

Continued from page 3

The city accommodated an employee with a hearing impairment by giving her additional paperwork in exchange for assigning her telephone responsibilities to a colleague. Colorado Springs saved some money upfront by removing the unneeded phone line, and the system has worked very well for the last 12 years, Mr. Phillips said.

Public entities' perspective on the ADA is shaped in part by the fact that they have complied with portions of the ADA for years as a result of state laws or the Rehabilitation Act of 1973.

Also, government entities historically have focused on peoples' needs so it is natural for them to approach the ADA positively, suggested Dennis C. Doherty, risk manager for Travis County, Texas.

Private corporations, with their emphasis on profits, tend to be more intimidated, he added.

But they too need to approach the law positively. Rather than focusing on "bizarre possibilities" that may never become reality, Mr. Gorski suggested that managers address the broad issues of access and job opportunity. "People with disabilities don't want lawsuits and litigation; they want access and jobs."

Current unemployment rates for the disabled are "unconscionable," he said: 67% overall and 82% for racial minorities with disabilities.

The implementation of the ADA means that there are 9 million to 12 million employable people who want jobs that now have civil rights protections, Mr. Gorski said.

And that number is growing.

About one in six Americans has some disability. By 2010, that number will increase to about one in two. Aging baby boomers are one reason. Another is improved medical technology that extends lives and allows infants born prematurely—almost all of whom develop some disability—or with congenital disabilities to live normal life spans, Mr. Gorski explained.

The ADA, in essence, is "planning for the future," he said.

Risk managers—both public and private—who are just beginning that planning process can benefit from the advice of public entity risk managers who already are experienced in ADA compliance issues:

- "Target workers compensation first," urged Yvonne Norton Leung, risk manager for the state of Nebraska. It "will be the first challenge in most cases and is a logical place to start," she said.
- Hiring practices are the second-largest source of challenges, Ms. Leung said.

All employers need to review their application forms and job descriptions for questions or language that may be problematic under the law.

- Training that dissuades the inappropriate "cataloging of abilities and disabilities" is another priority, Ms. Leung said.
- Especially important for public entities, but also appropriate for private corporations, is a review of potential exposures under the ADA from "esoteric areas" like client populations and services provided, Ms. Leung said.
- Employers that are concerned about making accommodations should not fail to use the many educational resources that are available, Mr. Gorski said.

However, approach those resources with caution, he advised. For instance, while some ADA compliance training sessions conducted by law firms are well done, others tend to focus too much on how to avoid lawsuits.

Instead, look for training programs that focus on "how to make the law work," he said.

Employers with an accommodation decision can call an attorney, but the first call should be to people with experience—in many cases that means people with disabilities—who can help make an accommodation work, Mr. Gorski said.

Despite their receptiveness to the ADA, some public entity risk managers do admit to concerns about the law.

"My perception of the citywide reaction is an unusually strong willingness to comply with the ADA and an eagerness to move forward. But where are the details to give us direction to do that?" asked Jon M. Ingenthron, risk manager for the city of Oakland, Calif.

"No one knows what reasonable accommodations are," and the fear is that the law's ambiguity will result in a feeding frenzy for attorneys, he said.

So far, ADA seminars and conferences are disseminating the same old information over and over again, Mr. Ingenthron said.

"Where is the information on workers compensation and vocational rehabilitation?" he asked. That issue "continues to be a mystery," Mr. Ingenthron said.

Oakland has not seen any workers compensation-related ADA claims yet, although that is probably because of a "standard delay in the industry until new workers comp cases mature," he said.

Other risk managers shrug off the issue of workers compensation.

"I frankly doubt that either workers comp or our group health claims will be materially impacted by the ADA," Mr. Doherty said.

Increases in health care or workers comp costs are not expected in self-insured Colorado Springs, either, Mr. Phillips said.

However, Provo City, Utah, is concerned about how much it is going to cost the city to comply with the accommodations aspect of the law, said Jerry M. Howell, risk manager and ADA coordinator.

For instance, it will take $70,000 just to make the police building accessible, Mr. Howell said.

Travis County, Texas, expects to spend $250,000 in the next five to six years to come into compliance with the law, a figure that is reasonable for the county, Mr. Doherty said.

However, "We may still find something that will clobber us," he acknowledged.

Some smaller entities have unique problems.

For instance, in Vermont, there is a lack of qualified interpreters for the hearing impaired and alternative communication devices—especially for rent, said Deborah Markowitz, director of the Vermont League of Cities and Towns' Municipal Law Center.

In spite of the uncertainties, Mr. Phillips offers the following argument for those who question the positive impact of the law:

"I can guarantee a white male that he won't become African-American or a female or suddenly old. The only thing I can't guarantee him is that he won't become disabled in the next 24 hours." ■

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How doing the right thing is paying off

By MEG FLETCHER and SARA J. HARTY

Employers that have never hired a person with a disability may be encouraged by the experiences of those that have.

People with disabilities "desire an opportunity to be employed, to make a contribution and a difference just like everyone else," said Terry T. Sullivan, vp-personnel for USA Today, the Gannett Co. Inc. newspaper in Arlington, Va.

Hiring people with disabilities is an extension of "a core corporate value of tapping into all segments of society for the workforce," to which Gannett has been committed since the 1970s, Ms. Sullivan said.

Employers will find that "people with disabilities just want jobs and are a great resource," said Rosemary Kirwin-Alvord, corporate equal employment opportunity specialist for Tektronix Inc. in Beaverton, Ore.

"Most of these companies look on the employment of people with disabilities as a social responsibility. It's the right thing to do," says Lana Smart, manager of the Industry-Labor Council of the National Center for Disability Services in Albertson, N.Y.

About 175 of the nation's largest corporations and labor unions belong to the council and promote its efforts to develop and implement programs that advocate the hiring and advancement of people with disabilities.

Many employers have been encouraged to hire people with disabilities by state civil rights laws or federal laws for government contractors and grant recipients that require them to do so.

But employers also have been encouraged by the good results others have achieved from hiring people with disabilities.

"DuPont hires people with disabilities because it is the fair and right thing to do. But it's also good business," said E.S. Woolard Jr., chairman of E.I. duPont de Nemours & Co. in Wilmington, Del.

Employees with disabilities have achieved "impressive" performance levels, according to four DuPont surveys covering nearly 30 years of experience.

A 1990 sampling of DuPont's more than 3,000 employees with disabilities included a staff research chemist and a computer programmer who are blind, a systems analyst with muscular dystrophy, a deaf machine operator and an assistant store manager—and wheelchair basketball athlete—who lost a leg while serving in the military.

The survey found that 97% of employees with disabilities were rated average or above average in safety; 86% were rated average or above in attendance; and 90% were rated average or above in the performance of job duties.

In addition, a 1987 poll by Louis Harris Associates Inc. of 920 managers found that 19 out of 20 managers give employees with disabilities "good" or "excellent" ratings on their job performance.

"The great majority of managers say that disabled employees work as hard or harder than able-bodied employees and are as reliable and punctual or more so. They produce as well or better than non-disabled employees and demonstrate average or better than average leadership ability," Harris researchers found.

Employers are being warned in less-than-subtle terms about new hiring rules under the ADA.

However, Susan Berger, assistant vp with Metropolitan Life Insurance Co. in New York, warns employers to avoid stereotyping employees with disabilities as either more or less dedicated than other employees.

"Our experience has been that they contribute to the fullest, just as other employees do," she added.

Employers should realize that hiring a person with a disability will not necessarily increase the cost of employee benefits programs or workers compensation coverage.

The cost of hiring people with disabilities is about the same as for someone without a disability, according to more than three-quarters of the employers responding to the Harris survey.

Many people with disabilities have stable conditions like some hearing or visual impairments that do not require them to seek medical treatment for their disability, Ms. Smart emphasized.

And if the unknown additional health care costs associated with employees who have degenerative conditions—like muscular dystrophy—make employers uncomfortable, they should remember that offering health care coverage to employees and their dependants also is an uncalcu-

Continued on next page

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ADA rules may conflict with union pacts

Some light-duty jobs reserved for workers with seniority

By SARA J. HARTY

The Americans with Disabilities Act could cause some headaches for labor and management that have signed collective bargaining agreements that reserve light-duty jobs for workers with seniority.

For example, conflicts are inevitable for employers trying to comply with the ADA and the National Labor Relations Act, said attorney Jules L. Smith, resident partner in the Rochester, N.Y., office of Blitman & King.

Because of the ADA, "it may be necessary to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation" as well as with workers with seniority who are in line for those light-duty positions, said Mr. Smith, who represents unions in labor disputes.

Yet the NLRB and the courts "have held that it is an unfair labor practice for an employer to deal directly with the employees where the employees are represented by a union," Mr. Smith noted in a speech at an AFL-CIO lawyers conference.

In addition, an employer "is prohibited by the ADA from taking any action through a labor union contract that it may not take itself," notes the Equal Employment Opportunity Commission in its ADA technical assistance manual.

Elsewhere, though, the manual states that the terms of a collective bargaining agreement may be used as a defense by companies that fail to make a reasonable accommodation that would allow an individual with a disability to hold a job.

The technical assistance manual suggests one way to avoid ADA and bargaining agreement conflicts: Add a provision to collective bargaining agreements negotiated after July 26 "permitting the employer to take all actions necessary to comply with the act."

A paragraph that "in effect says, 'Management shall be entitled to take such steps as necessary to comply with applicable laws, including the Americans with Disabilities Act' " could be inserted into the management rights clause, suggested attorney David L. Weinstein.

Mr. Weinstein, the partner in charge of the labor and employment practice group at Rosenthal & Schanfield in Chicago, represents management in labor disputes.

The management rights clause is a catch-all provision in collective bargaining agreements that states nothing in the agreement gives a union the right to tell the company how to run its business, he said.

Unions that have good relations with management are more likely to agree to such an amendment, Mr. Weinstein said.

Still, he admits, unions may feel that it would give the company carte blanche to violate the labor agreement.

Such an amendment would be a "death knell" for the union, "giving the employer complete unbridled discretion to violate the collective bargaining agreement at any time" on the pretext of complying with the ADA, Mr. Smith argued.

"I don't think the ADA re-

Continued on next page

Hiring practices

Continued from previous page

lated risk, she said.

Apart from benefit-related costs, some employers face increased costs from hiring people with disabilities because the worksite must be modified to accommodate their physical limitations, such as by enlarging a doorway for an employee's wheelchair.

However, the cost of such accommodations is usually relatively small, according to the Job Accommodation Network at West Virginia University in Morgantown, W.Va., an information network and consulting service of the President's Committee on Employment of People with Disabilities.

JAN reports that 31% of accommodations reported over a 2½-year period cost nothing; 19% cost between \$1 and \$50; 19% cost between \$50 and \$500; 19% between \$500 and \$1,000 and 12% cost between \$1,000 and \$5,000.

However, according to JAN, "On average, for every dollar an employer put into making an accommodation, the company realized \$9 in benefits."

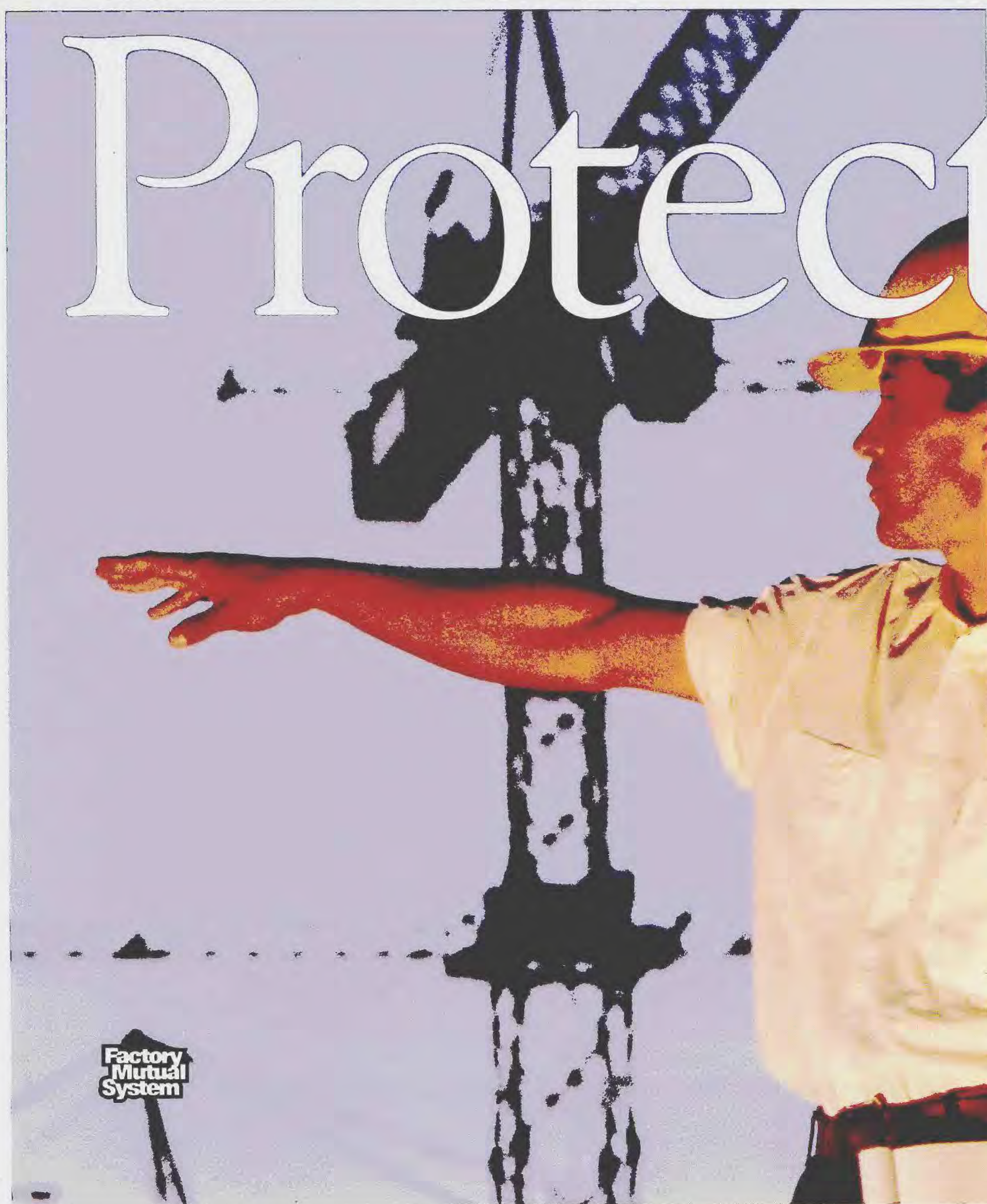
Benefits perceived by employers included: eliminating the cost of training a new employee, reducing workers compensation or disability insurance costs, creating a greater sense of job security among co-workers, increasing the worker's productivity and fostering greater acceptance and support from the community.

Benefits perceived by the employees with disabilities included: increasing productivity; making the work more enjoyable, easier to do and less tiring; helping with the attitudes of co-workers; and increasing the employee's self-confidence.

Putting cost issues aside, people with disabilities "bring to their jobs an outlook and a perspective that we think enhance the workplace, where diversity is now the norm," said DuPont's Mr. Woolard.

"Many employees with disabilities have really overcome many obstacles to being successfully employed and have shown lots of perseverance and creativity in showing how a job can be done," Ms. Smart said. "Perseverance and creativity are two strong attributes in today's workforce."

It also sets "a positive tone" that can make other employees proud of their employer's social responsibility, as well as reassured that they would likely have a job to return to if they ever became disabled. ■



Continued from previous page
quires that, and I think it would be a foolhardy thing to agree to," he said

The EEOC's technical assistance manual does suggest such a provision.

And that raises a question about the extent to which employers can use bargaining agreements negotiated after July 26 as valid defenses for not accommodating an individual with a disability, notes a Workers Compensation Research Institute report scheduled to be issued this month.

The EEOC and the NLRB are working together to develop collective bargaining guidelines, which may be ready by July 26, according to a spokeswoman for the EEOC.

Employers, though, can take various other measures to avoid ADA non-compliance problems regarding how they are required by collective bargaining agreements to fill light-duty positions.

One possibility is setting up a committee with an equal number of management and union representatives to handle ADA compliance problems caused by the language of a collective bargaining agreement.

Such a committee would have the authority to modify the agreement.

Using such a joint committee "may be preferable from the union power point," Mr. Weinstein said.

The American Federation of State, County and Municipal Employees suggests in a book distributed to its local units that such a committee also could help develop organizationwide ADA training programs, management and employee sensitivity, and sign language.

Another alternative to amending the management rights clause in collective bargaining agreements would be to include a provision under which employers agree to set aside light-duty or part-time jobs that will not be filled based on seniority, Mr. Smith suggested.

"Whichever side you're on, it ultimately will come down to cooperation," since taking the dispute to court would be very complex and risky for both sides, Mr. Weinstein said.

However, Mr. Smith predicted that this issue eventually will be resolved in the courts.

Possible results include:

- A decision based on the specific facts of a case that finds it would be an undue hardship for a company to deny a light-duty position to an employee with seniority in favor of an individual with a disability.

Such a decision would be limited in its influence on other cases.

- A decision based on the legislative history of the ADA that holds the ADA should not override seniority systems.
- A decision finding that the legislative history of the Rehabilitation Act of 1973—which preceded the ADA and affected public entities receiving federal funds and federal contractors—should be used to interpret the ADA.

Such a decision would defer to the collective bargaining process, leaving most seniority systems intact, an outcome Mr. Smith finds likely.

- A decision that finds that seniority systems will have to give way under the ADA.

The last decision, requiring seniority systems to give way, is one that "I've convinced myself at least should not happen and will not happen," Mr. Smith said.

With only two weeks before the ADA becomes effective, many unions and companies do not foresee problems or are waiting for them to appear before making contract changes.

"None of my clients has agreed to do anything other than talk about problems when they arise," Mr. Smith said.

Contract agreements are negotiated at the local level and then approved at the national level, said Everett W. Lehman, director of Human Services in Washington for the International Brotherhood of Electrical Workers.

No agreements addressing the issue have been seen at the national level yet, although such issues are "probably being taken care of at the local level," said Mr. Lehman. ■

'Whichever side you're on, it. . . will come down to cooperation,' says Mr. Smith.

Where to obtain more information about ADA

Following are resources that may help employers comply with the Americans with Disabilities Act:

- **Equal Employment Opportunity Commission**, Office of Communications and Legislative Affairs, 1801 L St. N.W., Washington, D.C. 20507; 202-663-4900; 800-669-3362.

Call for free copies of the ADA Handbook and Title I Technical Assistance Manual, fact sheets, posters and brochures. Or order copies from your local government bookstore. The ADA handbook costs $30; the technical assistance manual costs $25.

- **Job Accommodation Network**, 809 Allen Hall, West Virginia University, Morgantown, W.Va. 26509; 800-526-7234.

A national service of the President's Committee on Employment of People With Disabilities, JAN offers employers objective information on how to make reasonable accommodations.

- **Office of the Americans with Disabilities Act**, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; 202-663-4900; ADA hot line: 202-514-0301.
- **Workers Compensation Research Institute**, Publications Department, 245 First St., Cambridge, Mass. 02142; 617-494-1240.

Copies of a WCRI report, "The Americans with Disabilities Act: Implications for Workers' Compensation," WC-92-3 are $50 a copy; single copies are free to WCRI members. ■

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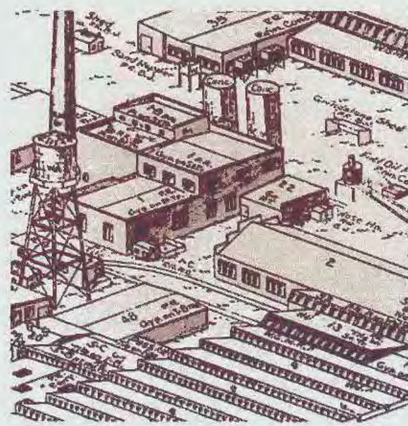

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Guide to policyholder-owned facilities

The soft commercial property/casualty insurance market refuses to die, according to risk managers and insurance industry executives (see stories beginning on page 1). However, that does not mean risk managers are turning their backs on policyholder-owned risk financing facilities.

The sixth annual *Business Insurance* survey of these facilities—which serve a broad range of corporations, public entities and professionals—lists a record 75 policyholder-owned facilities, up from 66 listed in the 1991 guide (*BI*, April 29, 1991).

Fifty-one of the facilities listed expect to write coverage for more policyholders in 1992 than in 1991.

The 75 facilities listed on the next six pages wrote coverage for more than 20,000 policyholders last year. The facilities reported premium volume of $2.16 billion in 1991. Their policyholder surplus totaled $12.15 billion at year end, while assets totaled $6.64 billion.

Some of the facilities—including ACE Ltd. and X.L. Insurance Co. Ltd.—no longer write coverage only for owners; non-shareholders can obtain coverage without even a deposit premium. However, the others generally require potential policyholders to invest funds before they can purchase coverage.

And at least one of the facilities is no longer totally policyholder-owned. The owners of EXEL Ltd., parent of X.L. Insurance Co. Ltd., have sold about 66% of the company's stock to the public (*BI*, April 13; March 30).

The facilities provide mainstream coverages to their owners/members, including primary and excess liability, directors and officers liability, property and workers compensation. Others, though, provide more specialized lines of insurance—like lenders liability, asbestos abatement, home warranty and political risk—to meet the specialized needs of policyholders.

The facilities hail from a wide range of domiciles. In the United States, facilities are domiciled in Arizona, Colorado, Delaware, Florida, Illinois, Hawaii, Minnesota, Montana, Tennessee and Vermont. Offshore domiciles represented by the facilities include Barbados, Bermuda and the Cayman Islands.

Each individual listing provides information about the facility's manager and the name, address and telephone number of the person to contact for additional information; the risks the facility underwrites; the limits it provides; the date the first policy was written and the type of policy form used; how potential policyholders can gain access to the facility; premium volume in 1991 and estimated volume in 1992; assets as well as capital and surplus at year-end 1991; the number of policyholders in 1991 and an estimate for 1992; and a description of the facility's policyholders.

The information on each facility was provided by the facility or its manager in response to a *Business Insurance* questionnaire. Although every effort has been made to report complete and accurate information, *Business Insurance* is unable to verify all the information provided.

Readers should contact the person listed for more information about each facility.

To be included in next year's survey, send requests to Cynthia Bloom, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-280-3195.

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
AAOMS Mutual Insurance Co., Risk Retention Group Self-managed Dr. Harold S. Firfer, 9700 W. Bryn Mawr Ave., Rosemont, Ill. 60018; 708-928-0041 Domicile: Illinois	Professional liability	$250,000 per occurence/$750,000 aggregate primary; $5 million/ $5 million reinsurance	June 1988 Claims-made	Specific brokers	$14.0 $22.0	$35.0 $7.4	1,750 1,850	Members of American Assn. of Oral & Maxillofacial Surgeons
AmHs Insurance Co. Risk Retention Group Johnson & Higgins Services Inc. James C. Jordan, 12730 High Bluff Drive, San Diego, Calif. 92130; 619-481-2727 Domicile: Vermont	Excess hospital professional liability, general liability and umbrella	$45 million excess	June 1990 Claims-made	Direct	$36.7 $38.0	$9.7 $2.0	28 30	Members of American Healthcare Systems
Accountants Liability Assurance Co. Ltd. Minet Risk Services (Bermuda) Ltd. Colin R. Newell, P.O. Box HM462, Hamilton HM BX, Bermuda; 809-295-0073 Domicile: Bermuda	Accountants professional indemnity	$5 million primary or $5 million excess	June 1986 Claims-made	Minet Group P.L.C.	$11.3 $10.4	$50.4 $34.9	31 30	Public accounting firms
ACE Insurance Co. (ACE Ltd.) Self-managed William J. Loschert, P.O. Box 1015, Hamilton HM DX, Bermuda; 809-295-5200 Domicile: Cayman	Excess liability and excess D&O	Excess liability: $200 million excess of $100 million; D&O: $50 million excess of $25 million	November 1985 Claims-made	Any non-U.S. broker	$257.4 $300.0	$1,610.6 $1,075.9	423 460	All classes of business
Affiliated Chemical Group Ltd. CFM Insurance Managers Ltd. Simon Scupham, Reid House, 31 Church St., Hamilton HM 12, Bermuda; 809-292-6424 Domicile: Bermuda	Commercial general liability, including products and completed operations	$1 million per occurrence/$3 million aggregate; or $2 million per occurence/$5 million aggregate	1977 Claims-made	Direct	$3.0 $3.0	$19.0 $6.0	35 35	Chemical distributors and manufacturers
Alembic Inc. Willis Corroon Advanced Risk Management Services Cathy Wedekind, 26 Century Blvd., Nashville, Tenn. 37214; 615-872-3346 Domicile: Grand Cayman	General liability, products, auto liability, workers compensation	$2 million primary	1980 Occurrence	Direct	$14.0 $13.0	$40.0 NA	28 28	Machinery and chemical manufacturers and contractors
Alexander Insurance Managers Ltd. Captive Reinsurance Facility Alexander Insurance Managers Ltd. Don Wiseman, Dorchester House, Church Street, P.O. Box 2020, Hamilton, Bermuda; 809-295-0265 Domicile: Bermuda	All-risk property	$100 million excess of captive retention	June 1973 NA	Direct	$28.0 $30.0	NA NA	20 22	Industrial companies worldwide
American Bankers Professional & Fidelity Insurance Co. Jardine Pinehurst Management Co. Ltd. Don Baker, 33-35 Reid St., Jardine House, Hamilton, Bermuda; 809-295-4864 Domicile: Bermuda	D&O, bond, trust department E&O, lenders liability, combined safe depository	D&O: $5 million, Bond: $6 million, Trust & lenders: $1 million, Safe: $2 million	1987 Claims-made	All brokers and direct	$21.7 $22.0	$35.7 $7.2	1,200 1,200	Commercial banks

Continued on Page 29

Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
American Safety Risk Retention Group Inc. Environmental Management Insurance Services Lloyd Fox, 1900 The Exchange, Suite 450, Atlanta, Ga. 30339; 404-916-1908 Domicile: Vermont	Asbestos abatement, environmental exposures combined with general liability	Highest limit: $5 million per occurrence/ $5 million aggregate	March 1988 Claims-made and occurrence	All brokers	$4.5 $5.0	$3.9 $1.9	38 60	Asbestos abatement contractors, professionals and building owners
Associated Electric & Gas Insurance Services Ltd. Aegis Insurance Services Inc. Norman L. Cocanour, 700 Plaza Two, Harborside Financial Center, Jersey City, N.J. 07311-3994; 201-915-7257 Domicile: Bermuda	Excess liability, workers compensation, D&O, fiduciary/ employee benefits liability	$35 million primary (minimum S.I.R. $200,000), minimum D&O S.I.R. for nuclear risks: $1 million	1975 Claims-made, occurrence for workers compensation	All brokers	$273.0 $280.0	$1,716.0 $398.3	292 300	Electric and gas utilities, gas and oil pipelines, telephone companies
Attorneys Liability Protection Society Inc., A Mutual Risk Retention Group Sedgwick James Management Co. Inc. Charles Steilen or Patricia Moore, P.O. Box 2151, Spokane, Wash. 99210-2151; 800-367-2577 Domicile: Montana	Professional liability	$100,000 per occurrence/ $300,000 aggregate to $5 million per occurrence/ $5 million aggregate	March 1988 Claims-made	Select brokers	$6.0 $7.5	$9.3 $4.0	2,500 3,200	Attorneys in private practice
Bankers Insurance Co. Ltd. International Risk Management (Bermuda) Ltd. Tony Coley, Belvedere Building, P.O. Box HM 660, Hamilton HM CX, Bermuda; 809-295-0713 Domicile: Bermuda	D&O liability	$10 million primary or excess	May 1986 Claims-made	Direct	$10.7 $12.0	$87.3 $34.5	21 27	Commercial banks
Beverage Retailers Insurance Co., Risk Retention Group Victor O. Schinnerer & Co. Inc. Richard J. Walk, 2 Wisconsin Circle, Chevy Chase, Md. 20815; 301-961-9800 Domicile: Vermont	Liquor liability	$1 million primary	August 1988 Claims-made and occurrence	All brokers	$4.1 $4.7	$11.8 $5.7	670 800	Restaurants, hotels, liquor stores, taverns and other alcohol beverage retailers
C.P.S. Insurance Co. Ltd. International Advisory Services Ltd. David Ezekiel, P.O. Box HM 1760, Hamilton HM HX, Bermuda; 809-295-3688 Domicile: Bermuda	Workers compensation, auto and general liability	$1 million per occurrence/$3 million aggregate	July 1980 Occurrence	Select brokers	$9.5 $9.0	$20.0 $2.3	38 38	Termite, pest control and sanitation consulting firms
California Hospital Insurance Co., A Risk Retention Group California Hospitals Affiliated Insurance Services Jeff Souza, 11060 White Rock Road, Suite 210, Rancho Cordova, Calif. 95670; 916-631-0333 Domicile: Hawaii	Medical malpractice	$5 million primary	April 1989 Claims-made	Management company	$10.6 $14.0	$8.1 $2.2	14 20	California Assn. of Hospitals & Health Systems members
Casting Manufacturers Insurance Ltd. Johnson & Higgins Rochelle Simons, P.O. Box HM 1826, Hamilton HM HX, Bermuda; 800-631-1124 Domicile: Bermuda	General liability	$1 million primary, $1 million excess of $1 million	1982 Claims-made	Direct	$1.8 $1.7	$6.0 $5.7	40 39	Casting manufacturers, predominantly in Michigan
Chariots of Hire Risk Retention Group The CIA Group E. Richard Crebs, 176 Main St., Suite C, St. Helena, Calif. 94574; 707-963-2400 Domicile: Arizona	Livery, commercial auto	$1 million primary	June 1989 Claims-made	Clients' brokers	NA NA	$10.0 $1.3	500 575	Taxi and airport vans
Clinic Mutual Insurance Co. Risk Retention Group Willis Corroon Carolyn L. Green, 26 Century Blvd., Nashville, Tenn. 37214; 615-872-3365 Domicile: Tennessee	Medical professional liability, general liability, non-owned and hired auto liability	$1 million per occurrence/ $3 million aggregate, $1 million excess of $1 million	January 1988 Claims-made	Exclusive	$3.4 $3.7	$6.1 $2.2	117 120	Non-profit community health care clinics
College Liability Insurance Co., A Risk Retention Group Sedgwick James Management Co. Inc. Jeffrey Kissel, 841 Bishop St., Suite 2125, Honolulu, Hawaii 96813; 808-545-2420 Domicile: Hawaii	Comprehensive general, auto and educators legal liability	$250,000 primary or $9.8 million excess of $250,000	May 1991 Claims-made and occurrence	All brokers	$0.8 $0.8	$3.8 $2.2	8 8	Private U.S. West Coast colleges
Colorado School Districts Self-Insurance Pool Self-Insurance Specialists Inc. Sally Perske Arnold, 600 S. Cherry St., Suite 1205, Denver, Colo. 80222; 303-393-0344 Domicile: Colorado	Property, general liability and auto	$500,000 primary, $500,000 excess of $500,000	July 1981 Claims-made	Direct	$6.2 $6.2	$14.0 $5.0	94 94	Public school districts
Consolidated Catholic Casualty Risk Retention Group Skandia International Risk Management (Vermont) Inc. George A. Chaffee, P.O. Box 64649, Burlington, Vt. 05406-4649; 802-658-1474 Domicile: Vermont	Excess and D&O liability	$25 million excess	July 1987 Claims-made and occurrence	Direct	$5.1 $5.5	$34.6 $16.0	11 12	Catholic multi-institutional health care systems

Continued on Page 30

Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
Corporate Officers & Directors Assurance Holding Ltd. ACE Insurance Management Ltd. Charles Smith, P.O. Box 1015, Hamilton HM DX, Bermuda; 809-295-5200 Domicile: Bermuda	D&O liability	Up to $25 million primary and excess of $5 million	October 1986 Claims-made	Any non-U.S. broker	$31.1 $35.0	$407.1 $208.1	172 185	All classes
Drayton Insurance Risk Retention Group Ltd. Johnson & Higgins Lawrence Cook, 70 Blanchard Road, Burlington, Mass. 01803; 800-462-8788 Domicile: Vermont	Primary and excess directors, trustees and officers liability	$1 million to $5 million primary, $1 million to $5 million excess	April 1989 Claims-made	All brokers	$2.6 $2.5	$3.4 $2.5	35 35	Federal or state-chartered financial institutions
ELSIP (Excess-of-Loss Self-Insurance Pool) RISKCAP Michael Murphy, 1571 Race St., Denver, Colo. 80206; 303-388-5688 Domicile: Colorado	General liability	$1 million primary	July 1990 Occurrence	Restricted	$0.2 $0.3	$0.3 $0.3	2 2	Colorado school districts
Energy Insurance Mutual Ltd. Self-managed Gene L. Weaver, 6200 Courtney Campbell Causeway, Suite 270, Tampa, Fla. 33607; 813-287-2117 Domicile: Barbados	General and D&O liability	General: $75 million excess of $25 million, D&O: $50 million excess of $25 million	July 1986 Claims-made	All brokers or direct	$38.4 $43.0	$244.5 $141.7	93 103	Electric and gas utilities
Engineers Liability Insurance Co. Ltd. IAS (Barbados) Ltd. William Tomlin, CGM Building, Collymore Rock, Barbados; 809-436-8296 Domicile: Barbados	Professional liability	$1 million (minimum S.I.R. $10,000)	December 1987 Claims-made	Direct or offshore brokers	$0.4 $0.5	$1.1 $0.6	21 25	Engineers (civil, electrical, mechanical, structural) and architects
Evergreen USA Risk Retention Group Inc. International Insurance Services Inc. Richard A. Hartford or Claire Marcoux, 655 Main St., Lewiston, Maine 04240; 207-784-4566 Domicile: Arizona	General and auto liability	$1 million primary	November 1989 Occurrence	Direct	$0.5 $0.8	$1.7 $1.0	124 190	For-profit, privately owned U.S. campgrounds
Exporters Insurance Co. Ltd. BF&M Management Ltd. Elizabeth Durrant, ACE Building, 30 Woodbourne, Hamilton HM 08, Bermuda; 809-292-6396 Domicile: Bermuda	Export credit and political risk	$5.7 million primary	March 1990 Occurrence	All brokers	$1.5 $2.4	$14.0 $12.5	14 20	Major multinational exporters and banks involved in trade finance
Financial Institutions Reserve Risk Retention Group Inc. Johnson & Higgins Rich Grayson, 191 Peachtree St. N.E., Atlanta, Ga. 30303; 404-586-0000 Domicile: Vermont	D&O liability	$20 million primary or $20 million excess	July 1988 Claims-made	Direct	$7.8 $4.0	$73.8 $58.0	17 16	Regional bank holding companies
Financial Services Mutual Insurance Co., A Risk Retention Group Insurance Equities Corp. Donna M. Pioppi, 490 California Ave., Suite 300, Palo Alto, Calif. 94306; 415-324-8880 Domicile: Vermont	Professional liability	$100,000 per occurrence/ $200,000 aggregate, $250,000/ $500,000, $500,000/ $1 million, $1 million/$2 million	May 1989 Claims-made	Direct	$1.2 $2.0	$1.7 $1.0	1,500 2,200	Financial planners, investment advisers and money managers
Florida Hospital Excess Trust Fund Sedgwick James of Florida Inc. Peter J. Brennan, P.O. Box 945155, Maitland, Fla. 32794-5155; 407-875-5900 Domicile: Florida	Excess hospital professional liability	$10 million excess	April 1985 Claims-made	Direct	$7.0 $8.5	$55.0 $20.0	28 32	Private, not-for-profit and government hospitals
Florida Hospital Trust Fund Sedgwick James of Florida Inc. Peter J. Brennan, P.O. Box 945155, Maitland, Fla. 32794-5155; 407-875-5900 Domicile: Florida	Hospital professional liability	$250,000 per occurrence/ $1 million aggregate	April 1975 Claims-made	Direct	$5.0 $5.0	$30.0 $12.0	23 25	Private, not-for-profit and government hospitals
Florida Hospital Workers' Compensation S.I.F. Sedgwick James of Florida Inc. Peter J. Brennan, P.O. Box 945155, Maitland, Fla. 32794-5155; 407-875-5900 Domicile: Florida	Workers compensation	Statutory	September 1977 Occurrence	Direct	$10.2 $11.0	$20.0 NA	32 32	Private, not-for-profit and government hospitals
Food Processors Risk Retention Group Johnson & Higgins Sandra R. Shoffner, 1401 New York Ave. N.W., Washington, D.C. 20005; 202-628-4435 Domicile: Vermont	Products liability	$10 million primary	April 1988 Occurrence	Direct	$1.4 $1.5	$1.4 $0.6	160 175	Food processors

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Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
Forest Insurance Ltd. International Risk Management (Bermuda) Ltd. Graham Brige, Belvedere Building, P.O. Box HM 660, Hamilton HM CX, Bermuda; 809-295-0713 Domicile: Bermuda	Excess umbrella liability	Maximum treaty capacity to $10 million per occurrence and in aggregate	January 1980 Claims-made and occurrence	ARM Corp.	$3.2 $3.0	$6.2 $3.8	8 9	Forest products industry
Hopewell International Insurance Ltd. International Risk Management (Bermuda) Ltd. Anna Summers, Belvedere Building, P.O. Box HM 660, Hamilton HM CX, Bermuda; 809-295-0713 Domicile: Bermuda	Property and marine insurance	Unlimited	1963 NA	Direct	$125.0 $135.0	$24.0 $9.0	52 55	Multinational companies, including petrochemical, food manufacturing, banking, pharmaceutical, metal working
Hospital Underwriting Group Inc. Hug Services Inc. Kenneth W. Smith, 25 Century Blvd., Suite 300, Nashville, Tenn. 37214-3688; 615-885-5333 Domicile: Tennessee	Hospital general liability and professional liability	$25 million excess of $5 million	June 1975 Claims-made	All brokers or direct	$20.2 $23.0	$124.3 $27.8	9 10	For-profit and not-for-profit multi-state hospital systems
Housing Authority Property Insurance Yankee Captive Management Co. John Salisbury, P.O. Box 189, Cheshire, Conn. 06410; 203-272-8220 Domicile: Vermont	Liability insurance coverages	Blanket	August 1988 Occurrence	Direct	$2.5 $2.8	$7.5 $4.6	91 110	Public housing authorities
Housing Authority Risk Retention Group Inc. Yankee Captive Management Co. John Salisbury, P.O. Box 189, Cheshire, Conn. 06410; 203-272-8220 Domicile: Vermont	Liability	$5 million primary	June 1987 Claims-made and occurrence	Direct	$17.6 $19.2	$55.8 $23.8	268 285	Public housing authorities
IARW Insurance Co. Ltd. Atlantic Security Ltd. Richard J. Witkowski, P.O. Box HM 2078, Hamilton HM HX, Bermuda; 809-295-5425 Domicile: Bermuda	Legal liability	$1 million primary	1973 Occurrence	Direct	$3.4 $3.5	$4.4 $2.0	145 150	Members of the International Assn. of Refrigerated Warehousemen
ISBA Insurance Risk Retention Group Inc. Self-managed David Taylor, 20 S. Clark St., Suite 910, Chicago, Ill. 60603; 312-726-4226 Domicile: Illinois	Professional liability	$100,000 per occurrence/ $300,000 aggregate to $ 5 million per occurrence/$5 million aggregate	November 1988 Claims-made	Direct	$5.0 $5.5	$13.2 $4.5	4,000 4,500	Members of the Illinois State Bar Assn.
Independent Laboratories Assurance Co. Ltd. International Advisory Services Ltd. David Pickering, P.O. Box HM 2274, Hamilton HM JX, Bermuda; 809-295-3688 Domicile: Bermuda	Professional liability	$1 million primary	1976 Claims-made	Direct	$0.6 $0.7	$2.3 $2.0	21 23	Independently owned testing laboratories in various disciplines
Ironworking Contractors Insurance Program Mutual Risk Management Ltd. Richard C. Holton, 1850 Craigshire, Suite 102, St. Louis, Mo. 63146; 314-469-2184 Domicile: Bermuda	Workers compensation, general liability and auto liability	$1 million primary	December 1988 Occurrence	Direct	$5.2 $6.0	$5.8 $0.5	14 16	Members of the Union of Ironworking Contractors
Joint School District Workers Compensation Self-Insurance Pool RISKCAP Michael Murphy, 1571 Race St., Denver, Colo. 80206; 303-388-5688 Domicile: Colorado	Workers compensation	Statutory	July 1986 Occurrence	Restricted	$4.6 $4.0	$6.8 $0.8	4 4	Colorado school districts
MPC Insurance Ltd. Johnson & Higgins Julie S. Boucher, 7 Burlington Square, P.O. Box 530, Burlington, Vt. 05402-0530; 802-864-5912 Domicile: Vermont	Professional liability	$10 million primary, $5 million excess of $10 million	September 1987 Claims-made	NA	$7.6 $8.8	$47.6 $17.7	13 13	Law firms
MEDMARC Insurance Co. Inc. Hamilton Resources Corp. Thomas Konopka or Caroline Thompson, P.O. Box 1190, Fairfax, Va. 22030; 703-273-1995 Domicile: Vermont	Product liability	$5 million primary	January 1979 Claims-made	All brokers	$30.0 $33.0	$108.5 $34.6	525 550	Manufacturers and distributors of medical devices and clinical laboratory products

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Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
Mental Health Risk Retention Group Inc. Skandia International Risk Mangagement Inc. George A. Chaffee, P.O. Box 64649, Burlington, Va. 05406-4649; 802-658-1474 Domicile: Vermont	General, professional, and D&O liability	$1 million primary	January 1988 Claims-made	All brokers	$3.2 $3.4	$3.5 $1.6	80 85	Members of Mental Health Council of America or National Council of Community Mental Health Centers
Midwestern Liability Insurance Risk Retention Group Lockton Risk Services of Colorado Steve Eginoire, 1900 W. 75th St., Prairie Village, Kan. 66208; 913-676-9150 Domicile: Colorado	General and auto liability	$1 million primary	May 1988 Claims-made and occurrence	Direct	$0.1 $0.1	$1.7 $1.3	4 4	Waste management companies
National Dental Mutual Insurance Co., A Risk Retention Group ALTIS Services Inc. Robert B. Linn, Shand Morahan Plaza, Evanston, Ill. 60201; 708-866-0872 Domicile: Colorado	Dental medical malpractice	Primary: $1 million per occurrence/ $3 million aggregate	January 1988 Claims-made	All brokers or direct	$0.5 $0.6	$3.0 $2.1	330 450	Dentists
National Guardian Risk Retention Group Inc. Willis Corroon/Advanced Risk Management Services Shane Knotts, P.O. Box 305024, Nashville, Tenn. 37230-5024; 615-872-3200 Domicile: Tennessee	Medical malpractice	Primary: $1 million per occurrence/ $3 million aggregate	January 1988 Claims-made	Direct	$2.4 $2.5	$5.3 $1.0	200 200	Emergency room physicians
New Providence Mutual Ltd. Allendale Management Co. Ltd. Jan Moniz, Skandia International, P.O. Box HM 2062, Hamilton, Bermuda; 809-295-2185 Domicile: Bermuda	All-risk property	$5 million primary	1980 NA	All brokers or direct	$4.0 $5.0	$24.0 $24.0	5 8	Commercial and industrial property business
Non-Profits Insurance Assn., An Interinsurance Exchange Berkley Risk Services Inc. Fred Mauck, 1401 W. 76th St., Minneapolis, Minn. 55423; 612-861-8600 Domicile: Minnesota	Non-profit 501(c) organizations	$1 million primary, $5 million excess of $1 million	December 1989 Occurrence	Appointed agents	$0.7 $1.8	$11.6 $9.6	144 400	Social service organizations
Nuclear Electric Insurance Ltd. Self-managed Quentin Jackson, 1201 Market St., Suite 1200, Wilmington, Del. 19801; 302-888-3000 Domicile: Bermuda and Delaware	Excess property and business interruption on nuclear power stations	$364 million business interruption; $1.25 billion excess of $500 million property	September 1980 Claims-made and occurrence	Direct	$173.0 $190.0	$1,700.0 $1,500.0	70 70	Electric utility companies
Nuclear Mutual Ltd. Self-managed Quentin Jackson, 1201 Market St., Suite 1200, Wilmington, Del. 19801; 302-888-3000 Domicile: Bermuda and Delaware	All-risks property for nuclear utilities	$500 million primary	January 1973 Occurrence	Direct	$80.0 $83.0	$700.0 $650.0	22 22	Electric utility companies
Oil Casualty Insurance Ltd. Oil Management Services Ltd. K. Doyle Stephens or Jon King, ACE Building, 30 Woodbourne Ave., Pembroke HM 08, Bermuda; 809-295-0905 Domicile: Bermuda	Umbrella general liability and D&O	Umbrella: $100 million excess of $20 million; D&O: $50 million excess of $20 million	June 1986 Claims-made	Bermuda brokers or direct	$18.1 $34.6	$246.5 $150.1	39 42	Petroleum industry
Oil Insurance Ltd. Oil Management Services Ltd. K. Doyle Stephens or Ronald C. Massey, ACE Building, 30 Woodbourne Ave., Pembroke HM 08, Bermuda; 809-295-0905 Domicile: Bermuda	Property, well control, pollution liability and marine hulls	$150 million excess of at least $1 million	January 1972 Occurrence	Bermuda brokers or direct	$212.5 $204.0	$1,389.5 $618.2	49 49	Petroleum industry
PAR Ltd. Program Mutual Risk Management Ltd. Chuck H. Stamey, Community Corporate Center, 445 Hutchinson Ave., Columbus, Ohio 43235; 614-888-4869 Domicile: Bermuda	Professional liability	$5 million primary	December 1986 Claims-made	Direct	$8.0 $9.0	$35.4 $20.0	121 140	Large, regional U.S. and Canadian insurance agencies and their affiliates
Primex Ltd. Johnson & Higgins Anderson Marshall, Alleyne House, White Park Road, Bridgetown, Barbados; 809-436-9929 Domicile: Barbados	Auto, general and employer liability, products and completed operations	GL, products & completed operations: $6 million; Employer liability: $10 million; Auto: $10 million excess of $7 million	July 1986 Claims-made	Offshore brokers	$13.0 $15.5	$46.0 $18.5	17 21	Chemical and allied industries

Continued on Page 33

Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
Professional Liability Insurance Co. Hug Services Inc. Kenneth W. Smith, 25 Century Blvd., Suite 300, Nashville, Tenn. 37214-3688; 615-885-5333 Domicile: Tennessee	Medical malpractice	$1 million per occurrence/ $3 million aggregate primary	January 1988 Claims-made	Direct	$2.7 $3.2	$14.1 $7.3	500 600	Hospitals, physicians and surgeons
Quail Street Casualty Ltd. Quail Street Management Ltd. Mark G. Moffat, P.O. Box HM 1088, Hamilton HM EX, Bermuda; 809-292-2582 Domicile: Bermuda	Workers compensation, labor relations, ocean marine cargo and strike insurance	Various	1979 Claims-made and occurrence	All brokers or direct	$4.3 $5.0	$18.8 $7.0	150 160	Members of the Western Growers Assn.
Railroad Assn. Insurance Ltd. International Risk Management (Bermuda) Ltd. Margaret Turner, Belvedere Building, P.O. Box HM 660, Hamilton HM CX, Bermuda; 809-295-0713 Domicile: Bermuda	Railroad and transit operations excess liability	$50 million per occurrence excess of $50 million or applicable underlying insurance	May 1986 Notice of occurrence	Direct	$12.8 NA	NA NA	15 15	Railroad companies and mass transit operations
The Risk Exchange Assn. Skandia International Risk Management Ltd. Robert J. Rosser, P.O. Box HM 2062, Hamilton HM HX, Bermuda; 809-295-2185 Domicile: Bermuda	Property, casualty, marine	Property and marine: $2.3 million primary; Casualty: $2 million excess of $500,000	February 1984 Claims-made or occurrence	All brokers or direct	$2.0 $2.3	NA NA	12 14	Captive insurance companies that reinsure each other's parent-related exposures
Sargasso Mutual Insurance Co. Ltd. Johnson & Higgins Eugene Carmichael, P.O. Box HM 1826, Hamilton HM HX, Bermuda; 809-292-4402 Domicile: Bermuda	D&O liability	Primary or excess: $5 million, $10 million or $15 million	1986 Claims-made	Direct	$0.9 $1.0	$27.3 $25.7	16 18	Mutual life insurance companies domiciled in the United States and Canada
Sporting Arms Insurance Ltd. International Advisory Services Ltd. David Pickering, P.O. Box HM 1760, Hamilton HM HX, Bermuda; 809-295-3688 Domicile: Bermuda	Product liability for firearms manufacturers and importers	$1 million primary	June 1986 Claims-made	Direct	$3.3 $3.0	$6.0 $3.3	42 40	Sporting arms manufacturers and importers
States Self-Insurers Risk Retention Group Inc. Berkley Risk Services Inc. Timothy M. Habeck, 5555 Triangle Parkway, Suite 200, Norcross, Ga. 30092; 404-368-8848 Domicile: Georgia	Auto, general, public officials, law enforcement liability	$10 million excess of S.I.R. of at least $250,000	July 1988 Claims-made	All brokers or direct	$4.5 $6.4	$13.5 $10.4	90 110	Public entities: cities, counties and school districts
Structural Engineers Insurance Ltd. International Advisory Services Ltd. David Ezekiel or David Lampit, P.O. Box HM 1760, Chevron House, 11 Church St., Hamilton HM HX, Bermuda; 809-295-3688 Domicile: Bermuda	Professional liability	$1 million primary; $1 million excess of $1 million	1986 Claims-made	Direct	$2.6 $2.8	$7.6 $3.0	16 18	Structural engineering firms with more than $1.5 million in annual billings
Technologies Assurance Risk Retention Group Assn. Inc. Sedgwick James Management Co. Inc. Richard E. Schoneman, Route 100 at Colbyville Road, P.O. Box 480, Waterbury, Vt. 05676-0480; 802-244-5852 Domicile: Vermont	General liability, including products and completed operations	$1 million per occurrence/ $1 million or $2 million aggregate	November 1989 Occurrence	Direct	$1.2 $1.2	$3.6 $1.6	22 25	Members of the Assn. for Manufacturing Technology
Terra Insurance Ltd. CFM Insurance Managers Ltd. Simon Scupham, Reid House 31, Church Street, Hamilton HM 12, Bermuda; 809-292-6424 Domicile: Bermuda	Professional and environmental impairment liability	$1 million per occurrence/ $1 million aggregate	1971 Claims-made	All brokers or direct	$0.6 $0.8	$4.7 $4.4	8 12	Members of Assn. of Soil and Foundation engineers
Tortuga Casualty Co. International Risk Management (Cayman) Ltd. Roger Phelps, British American Tower, P.O. Box 69, Grand Cayman, B.W.I.; 809-949-0155 Domicile: Grand Cayman	Excess liability	$50 million excess of $25 million	January 1986 Claims-made	All brokers or direct	$7.8 $8.0	$34.4 $6.6	18 21	Various
Transportation & Railroad Assurance Co. Ltd. International Risk Management (Bermuda) Ltd. Margaret Turner, Belvedere Building, P.O. Box HM 660, Hamilton HM CX, Bermuda; 809-295-0713 Domicile: Bermuda	Railroad and transit operations excess liability	$50 million per occurrence excess of $50 million or applicable underlying insurance	June 1987 Notice of occurrence	Direct	NA $9.4	NA NA	11 11	Railroad companies and mass transit systems

Continued on Page 34

Guide to policyholder-owned facilities *(continued from previous page)*

Facility Management company Contact name, address and phone	Risks	Limits	First policy Policy form	Access	Premium volume (in millions) 1991 1992 (est.)	1991 assets/ Capital & surplus (in millions)	Number of policyholders 1991 1992 (est.)	Membership
United Educators Insurance Risk Retention Group Inc. United Insurance Management Co./Marsh & McLennan Cos. Inc. Arthur Broadhurst, 2 Wisconsin Circle, Suite 1040, Chevy Chase, Md. 20815; 301-907-4908 Domicile: Vermont	Educators legal liability, general excess liability and ERISA employee benefits liability	$10 million primary; $25 million excess of $1 million	June 1987 Claims-made and occurrence	All brokers	$21.9 $24.5	$16.2 NA	604 680	Educational institutions
United Insurance Co. International Risk Management (Cayman) Ltd. Roger Phelps, British American Tower, P.O. Box 69, Grand Cayman, B.W.I.; 809-949-0155 Domicile: Grand Cayman	Casualty	$1.5 million primary; $5 million excess	1976 Claims-made and occurrence	All brokers or direct	$115.0 $104.0	$215.0 $13.5	75 78	Various
The Water, Wastewater & Process Equipment Manufacturers Insurance Co. AIG Captive Management Co. Inc. John P. Giesen Jr., 1233 Shelburne Road, South Burlington, Vt. 05403; 802-658-9405 Domicile: Hawaii	General liabilty, product and pollution liability	$1 million CSL primary; $4 million excess of $1 million CSL	1989 Occurrence	All brokers	$0.6 $1.0	$1.5 $1.1	15 18	Manufacturers
Western Pacific Mutual Insurance Co., A Risk Retention Group RISKCAP Michael Murphy, 1571 Race St., Denver, Colo. 80206; 303-388-5688 Domicile: Colorado	10-year new home warranty	Home value	July 1990 Occurrence	Warranty administrator	$1.6 $2.2	$2.5 $0.9	1,500 NA	Home construction and sales
X.L. Insurance Co. Ltd. Self-managed Robert J. Cooney or James J. Ansaldi, Cumberland House, 1 Victoria St., Hamilton HM 11, Bermuda; 809-292-8515 Domicile: Bermuda	Excess general liability, D&O and professional liability	General liability: $100 million excess of $25 million; Professional: $25 million excess of $25 million; D&O: $20 million excess of $20 million	April 1986 Occurrence reported	Bermuda brokers	$406.0 NA	$2,730.0 $1,370.0	600 NA	Large liabiity exposures in all types of industries and financial institutions

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Insurance industry officials challenged to improve ethics

By MARK A. HOFMANN

PHILADELPHIA—The insurance industry must do more to help raise the ethical awareness of not only its own employees and agents but also of society as a whole, says a nationally known ethics consultant.

And, the American Institute for Chartered Property & Casualty Underwriters and the Insurance Institute of America have a key role to play in this effort, according to Gary Edwards, president of the Ethics Resource Center.

"If you don't make it happen, who will?" he asked during the annual meeting of the institutes' board of trustees in Philadelphia late last month.

Based in Washington, the Ethics Resource Center is a 15-year-old non-profit, non-partisan and non-sectarian education organization that develops materials for ethics education.

"How did we get to where we are now?" Mr. Edwards asked, citing problems like a surge in both violent and white-collar crime and ethical lapses in business manifested by problems like repeated cost overruns on government contracts.

He explained that before World War II, the United States consisted of numerous small communities. Whether rural villages, neighborhoods or ethnic enclaves within large cities, these communities reinforced moral values. Multigenerational families promoted traditional values, which were reinforced by churches and synagogues.

But now, "there is broad evidence of a decline" in ethics, he said.

"Foremost among the many causes of this decline is the dissolution of the moral community," Mr. Edwards said. Families have fragmented, religion has lost influence, schools shy away from values instruction and the shared values that marked an earlier America have disappeared.

"What can the insurance industry do about a problem whose roots lie in deep changes in our society?" Mr. Edwards asked his audience, which consisted largely of insurance company executives.

Groups like the Society of CPCU have held ethics awareness seminars and discussions during the past few years (*BI*, Oct. 8, 1990).

But despite that type of effort, Mr. Edwards said that many insurers may be sending another message unintentionally to their employees. Insurers may be inadvertently telling employees who find themselves confronted with ethical dilemmas, "You're on your own."

It is an inadvertent message stemming from the belief that if someone is a good person and a solid professional, that person will automatically know what to do when faced with an ethical question.

Formal ethics programs provide some help, including corporate codes of ethics and management educational programs about ethics, Mr. Edwards said.

'If you don't make it happen, who will?' Mr. Edwards asks insurance industry executives.

Simply staying within the law is not enough. "Think of the law as a floor in your industry. The floor provides minimal behavioral standards," he said, advising corporations to strive for a higher ethical ceiling.

Mr. Edwards cited as an example of this higher ethical standard the response by Johnson & Johnson Products Inc. to the Tylenol poisonings in 1982.

Hundreds of J&J employees had to make nearly instantaneous decisions about recalling millions of bottles of painkillers in the face of several deaths attributed to product tampering. Yet everyone involved decided that the product must be recalled, even when they could not reach senior managers to sign off on their decision, Mr. Edwards noted.

Company executives attributed this ethically correct response to the company's credo, which put the welfare of customers ahead of its own financial welfare, Mr. Edwards said. The credo, initially drawn up in religious language by the company's founder, had been restated in a secular but effective way by teams of employees all over the world, he said.

Mr. Edwards said that insurers also must get involved with their communities to improve the moral qualities of tomorrow's employees. This would include ethics education in the schools, he said.

"Only when we tend to the moral development of our children" will today's ethical problems be resolved effectively, he said.

Mr. Edwards suggested a special charge for the two insurance institutes: researching what are the most critical ethical problems facing insurance industry employees.

The research should try to answer questions like whether and why people "feel pressured to violate industry norms," he said.

He also called upon the institutes to prepare handbooks on ethical matters, educate insurance industry employees about the ethical issues they confront and develop "train the trainer" programs in which key employees would receive ethics education and then train others. ■

Record number of new CPCUs

By MARK A. HOFMANN

PHILADELPHIA—The 1992 graduating class of Chartered Property & Casualty Underwriters is likely to be the biggest in history.

Perhaps as many as 2,500 new CPCU designations will be conferred in 1992, said Norman A. Baglini, president of the Malvern, Pa.-based American Institute for Chartered Property & Casualty Underwriters, which confers the CPCU designation.

Mr. Baglini also is president of the Insurance Institute of America, which offers 17 certificate or designation programs in specialized areas of property/casualty insurance.

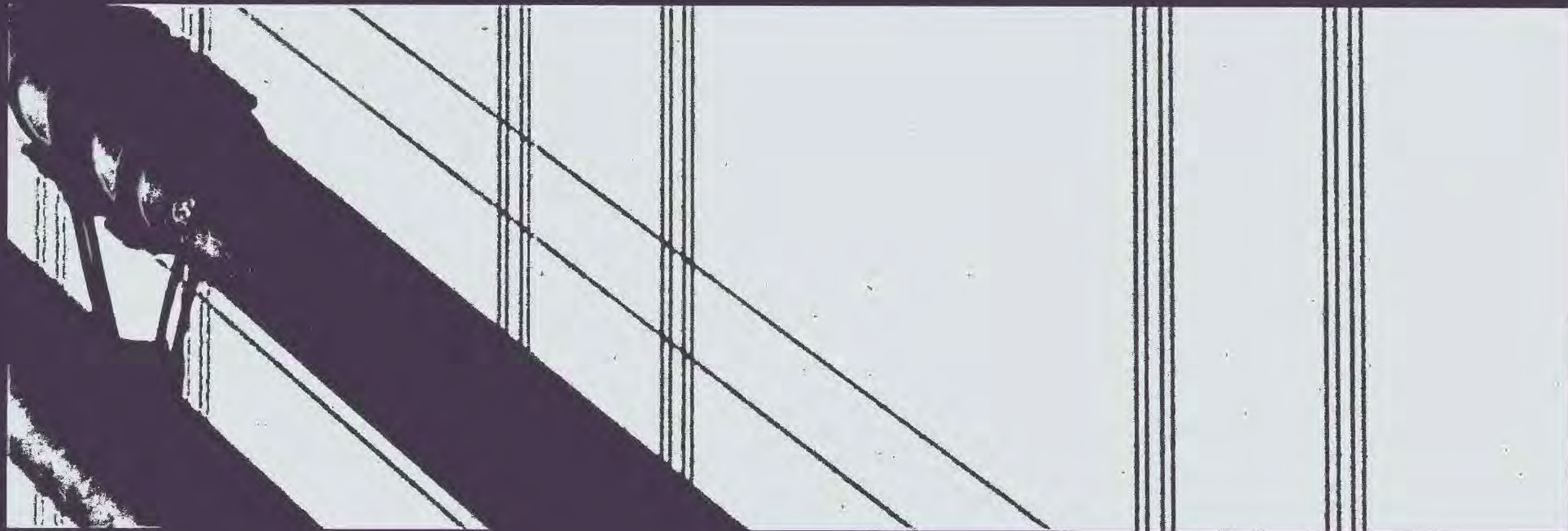
The previous record for new CPCU designees was 2,054, set in 1989.

The CPCU designation is generally recognized as the highest professional designation offered in the property/casualty insurance industry. Successful candidates must pass 10 national examinations dealing with different aspects of property/casualty insurance and adhere to a rigid code of ethics.

However, the institutes are not

Continued on next page

We bring into focus.



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Graduates

Continued from previous page

without their challenges this year, Mr. Baglini noted during the institutes' annual meeting in Philadelphia late last month.

Despite the probability of a record number of new CPCUs, one of those challenges is overcoming a "fear of failure" among insurance professionals who take courses offered by the institutes.

Mr. Baglini noted that more than 40,000 people last year received a failing grade on either CPCU or IIA examinations.

"It is impossible to estimate the number of individuals who dropped out of class or who terminated their independent study program prior to the examination," he said.

Fifty-three percent of the CPCUs who graduated between 1987 and 1992 failed at least one of the 10 examinations they must pass before receiving the designation. Since 1978, only 23% of the people who have entered the CPCU program have received the designation.

Rather than looking to the institute to lower its standards for conferring the CPCU designation, Mr. Baglini urged his audience "to help students to overcome the fear of failure. We must establish an environment that stimulates interest in, and guides progress through, various professional development programs."

Mr. Baglini also noted that during the institutes' academic year, which will end this month, the institutes expect they will have graded 136,355 essay examinations for all of the courses they offer. That represents a slight 0.6% decline from last year's all-time high. He attributed this drop to downsizing in the insurance industry.

The number of CPCU examinations graded will actually rise by about 5%. The number of examinations for IIA courses offered on a semester basis are projected to drop by only 0.5%. But the number of exams in IIA courses that do not have predetermined examination dates dropped by 17.5%.

"This most likely reflects the lack of new hiring in the industry—the source of most students in these programs," he said.

Mr. Baglini also offered a list of issues that the institutes should address in the future. These include:

- Whether courses should put more emphasis on loss prevention.
- What role the institutes should play in international risk management and education.

"If every employer here today set a higher standard of education, ethics and performance next year, and an even higher standard the year after next, our business's level of professionalism, knowledge, integrity and service would improve along with the reality," Mr. Baglini said.

"When any insurance people are less than professional, all of us appear to be less than professional. What each individual in the business does, or fails to do, reflects on the business as a whole."

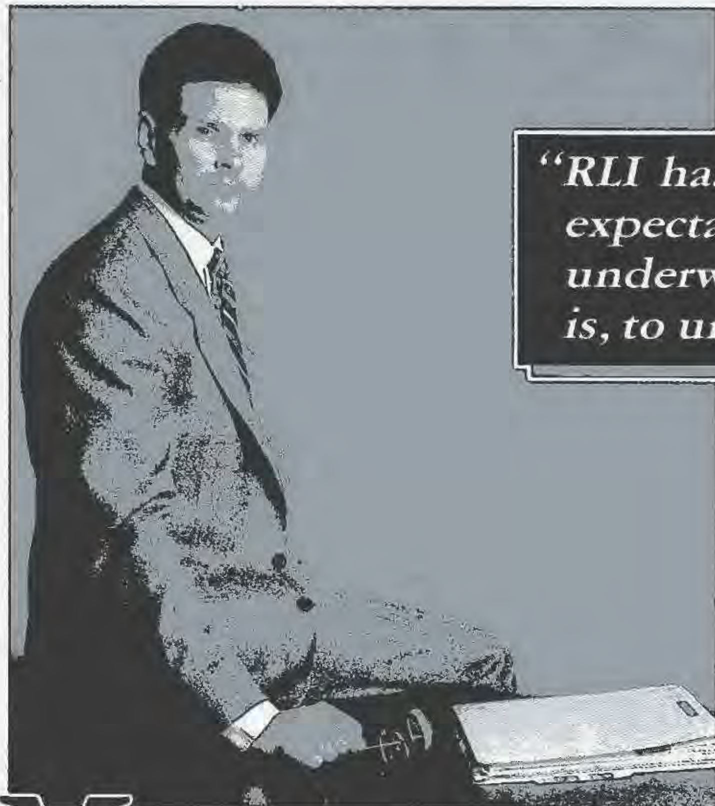
Mr. Baglini's remarks came during the 50th anniversary commemoration of the AICPU's founding. The non-profit educational organization was founded on April 11, 1942, at the University of Pennsylvania's Wharton School of Business in Philadelphia. It moved to its present location in 1973.

"The founding of the American Institute 50 years ago was perhaps the first successful joint effort of the entire property/casualty insurance industry, where the goal of professionalism caused stocks and mutuals, fire and casualty companies to join together. The CPCU designation is concrete evidence of the lasting impact of the power of people united for a cause," he said.

In addition to the CPCU program, the institutes offer 13 associate designation programs and four certificate programs. More than 160,000 individuals currently are studying for designations or certificates.

Mr. Baglini also called attention to a new program the institutes launched this spring. The four-week Advanced Executive Education Program, co-sponsored by the Wharton School, targets senior insurance industry executives.

Forty-four executives attended the first two-week session in March, and 95% of the participants said they would recommend the program to others, Dr. Baglini said. ■



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JULY

JULY 20-21. Total Quality in Financial Services program in Chicago, sponsored by the International Quality & Productivity Center; $995. Jean O'Toole, 201-783-4403.

JULY 20-22. Environmental Regulation Course in Minneapolis and Atlanta, sponsored by Executive Enterprises Inc.; $1,090. **Also Aug 3-5** in Portland, Ore., and Las Vegas, Nev.; **Aug. 10-12** in Charleston, S.C.; **Aug. 11-13** in Baltimore; **Aug 17-19** in San Francisco; **Aug 24-26** in Birmingham, Ala.; **Sept. 9-11** in Novi, Mich., San Diego, Chicago and Washington. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

JULY 20-22. Practical Environmental Regulation Course in Minneapolis and Atlanta, sponsored by Executive Enterprises Inc.; $1,090. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

JULY 20-24. Preventive/Predictive Maintenance for Facilities: The Infrared Solution course in Sacramento, Calif., sponsored by American Risk Management Corp.; $1,295 for five days; $1,195 for four days; $995 for three days. **Also Sept. 21-25** in Atlanta. American Risk Management, 1 Independent Place, Suite 500, 4807 Rockside Road, Cleveland, Ohio 44131; 216-447-1600.

JULY 22-24. Managing Member Services in the Customer Focused Health Maintenance Organization conference in San Francisco, sponsored by the Group Health Assn. of America; $595 for GHAA members; $695 for non-members. GHAA, Department 0612, Washington, D.C. 20073-0612; 202-778-3228.

JULY 22-24. Second Annual Colorado Assn. of Captive Entities Conference in Denver; $175 for CACE members; $225 for non-members; $350 for exhibitors; $135 for additional registrants or exhibitors from the same company. Colorado Assn. of Captive Entities, 1775 Sherman, Suite 1600, Denver, Colo. 80203; 303-863-7700.

JULY 23-24. 16th Symposium on Directors & Officers Liability in Chicago, sponsored by The Wyatt Co.; $795; $695 for each additional registrant from the same company location. Mary Maze, The Wyatt Co., 303 W. Madison, Suite 2400, Chicago, Ill. 60606-3308; 312-704-2719.

JULY 26-AUG. 7. The Executive Program in New York City, sponsored by the College of Insurance; $2,495 for college sponsors; $2,795 for others. The College of Insurance, Professional Programs, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

JULY 27-29. The 1992 Benefits Conference for Public Employees in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; $600 for IFEBP members; $675 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JULY 29-30. Fire Investigation Workshop in Des Moines, Iowa, sponsored by the National Assn. of Mutual Insurance Companies; $169 for NAMIC members; $199 for non-members; some discounts apply. Dawne Smith, National Assn. of Mutual Insurance Companies, 3707 Woodview Trace, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250.

AUGUST

AUG. 3. Workers Compensation—Issues into the 90's seminar in Asheville, N.C., sponsored by the Society of Chartered Property & Casualty Underwriters and the Western Carolina Chapter; $115 for society members; $125 for non-members. Bonnie Kinsley, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2735.

AUG. 3. Americans with Disabilities Act: Beyond the Law seminar in Des Moines, Iowa, sponsored by LOMA; $175 for members; $275 for non-members. **Also Aug. 5** in Cincinnati; **Aug. 7** in Minneapolis. LOMA Meeting Department, 404-984-3793.

AUG. 3-7. Insurance and Risk Management course in New York City, sponsored by the College of Insurance; $775 for college sponsors; $850 for others. The College of Insurance, Professional Programs, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

AUG. 10-11. Clinical Risk Management seminar in Chicago, sponsored by the American Society of Healthcare Risk Management; $345 for members; $465 for non-members. Bari Johnson, ASHRM, 840 N. Lake Shore Drive, Chicago, Ill. 60611; 312-280-6403.

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JULY CLOSINGS

SET YOUR DATES

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closing:	**July 8**
demographic section:	Insurer Topics: Marketing/Advertising & Sales Promotion
issue:	July 27 — Reader Service
closing:	**July 14**
editorial feature:	Risk Management: Systems & Analysis
	Directory: Risk Management Information Systems
issue:	August 3
closing:	**July 22**
demographic section:	Agent/Broker Topics: Marketing & Sales Promotion
issue:	August 10
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Continued from previous page

AUG. 10-13. The Fundamentals of Public Sector Benefits Management Courses seminar in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; $1,050 for IFEBP members; $1,175 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 10-14. Understanding Property/Liability Contracts course in New York City, sponsored by the College of Insurance; $775 for college sponsors; $850 for others. The College of Insurance, Professional Programs, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

AUG. 12-13. The Cents and Sense of Risk Management: Risk Financing, Workers Compensation, and Safety and Security seminar in Chicago, sponsored by the American Society of Healthcare Risk Management; $345 for members; $465 for non-members. Bari Johnson, ASHRM, 840 N. Lake Shore Drive, Chicago, Ill. 60611; 312-280-6403.

AUG 16. Annual Corporate Benefits Conference in Boston, sponsored by the International Foundation of Employee Benefit Plans; $460 for IFEBP members; $510 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 16-18. Third Annual National Conference on Treatment Initiatives in Bethesda, Md., sponsored by the National Treatment Consortium for Alcohol and Other Drugs; $335 for NTC members; $395 for non-members; add $35 after July 30. Jeff Kramer, National Treatment Consortium, Drawer J, Washington, D.C. 20013; 301-794-4827.

AUG. 17-18. Analyzing Insurance Company Financial Statements course in New York City, sponsored by the College of Insurance; $395 for college sponsors; $425 for others. The College of Insurance, Professional Programs, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

AUG. 17-18. 4th Annual Corporate Benefits Conference in Boston, sponsored by the International Foundation of Employee Benefit Plans; $460 for IFEBP members; $510 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 17-19. The 1992 Benefit Communication Institute in San Diego, sponsored by the International Foundation of Employee Benefit Plans; $600 for IFEBP members; $675 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 17-21. American Society of Non-Destructive Testing Level 1—Infrared Thermography course in Cleveland, sponsored by American Risk Management Corp.; $1,295. ARMC, 1 Independent Place, Suite 500, 4807 Rockside Road, Cleveland, Ohio 44131; 216-447-1600.

AUG 19-20. The 1992 International Benefits Conference in Boston, sponsored by the International Foundation of Employee Benefit Plans; $460 for IFEBP members; $510 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 27-28. Insurance Regulation Conference in Chicago, sponsored by Executive Enterprises Inc.; $1,090. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

SEPTEMBER

SEPT. 1. The Americans With Disabilities Act workshop in Springfield, Ill., sponsored by the Illinois State Chamber of Commerce's Center for Business Management; $135 for members; $195 for non-members. **Also Sept. 3** in Chicago. ISCC Center for Business Management, 800-621-4220.

SEPT. 8-10. International Institute on Managed Health Care in Washington, co-sponsored by the Group Health Assn. of America Inc. and the Group Health Foundation; $595; $695 after Aug. 10. GHAA/GHF, International Institute on Managed Health Care, 1129-20th St. N.W., No. 600, Washington, D.C. 20036; 202-778-3211.

SEPT. 8-11. Reinsurance Contract Wording seminar in Ossining, N.Y., sponsored by Robert W. Strain Publishing & Seminars Inc.; $1,845. Robert W. Stain, 903-677-5974.

SEPT. 9-12. The National Dialogue Conference on Mental Benefits and Practice in the Era of Managed Care in Chicago, sponsored by the Institute for Behavioral Healthcare; $545; $595 after Aug. 31. Institute for Behavioral Healthcare, Box 7226, Stanford, Calif. 94309; 415-851-8411.

SEPT. 9-12. The Self-Insurance Institute of America Inc.'s Annual National Educational Conference and Expo in San Francisco, sponsored by the SIIA; $625 for SIIA members; $895 for non-members. Self-Insurance Institute of America, P.O. Box 15466, Santa Ana, Calif. 92705; 714-261-2553.

SEPT. 10-11. Managed Care Solutions conference in New York City, sponsored by The Institute for Employee Benefits Training; $700. The Institute for Employee Benefits Training, Seminar Division, 1926 Arch St., Philadelphia, Pa. 19103; 215-567-4000.

SEPT. 13-17. Independent Insurance Agents of America's 97th Annual Convention in New Orleans, sponsored by the IIAA; $385 for member agents; $240 for spouses and family members. Virginia Carter, IIAA Conventions Department, 127 S. Peyton St., Alexandria, Va. 22314; 800-221-7917.

SEPT. 14-15. Managing the Workers Compensation Crisis: Effective Cost Reduction Strategies seminar in New York, sponsored by the American Management Assn.; $1,200 for members; $1,380 for non-members. **Also Sept. 21-22** in Los Angeles; **Oct. 29-30** in Chicago; **Nov. 16-17** in New York. AMA, P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

SEPT. 14-16. Fourth Annual Managed Care Law Conference in San Francisco, sponsored by the Group Health Assn. of America; $680 for GHAA members; $780 for non-members; less $85 if registered prior to Aug. 21. GHAA, Conference Office, 1129-20th St. N.W., Suite 600, Washington, D.C. 20036; 202-778-3236.

Continued on next page

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Continued from previous page

SEPT. 14-16. Fundamentals of Insurance seminar in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $650 for RIMS members; $750 for non-members; add $50 less than six weeks prior to course. **Also Oct. 26-28** in Denver; **Dec. 7-9** in Charlotte, N.C. RIMS Education Department, 205 E. 42nd St., Suite 1504, New York, N.Y. 10017; 212-286-9292.

SEPT. 14-17. American Society for Industrial Security's 38th Annual Seminar and Exhibits in San Antonio; $395 for ASIS members; $495 for non-members; add $50 after Sept. 2. ASIS, 1655 N. Fort Meyer Drive, Suite 1200, Arlington, Va. 22209; 703-522-5800.

SEPT. 15-18. Human Resources in a Global Economy conference in New York City, sponsored by William M. Mercer Inc.; $500; $600 after Aug. 1. Mercer International Conference Center, 214-220-3540.

SEPT. 16-18. Techniques of Risk Management seminar in Dallas, sponsored by the Risk & Insurance Management Society Inc.; $650 for RIMS members; $750 for non-members; add $50 less than six weeks prior to course. **Also Dec. 7-9** in Scottsdale, Ariz. RIMS Education Department, 205 E. 42nd St., Suite 1504, New York, N.Y. 10017; 212-286-9292.

SEPT. 17-18. Insurance Fraud and Suspicious Claims Seminar in Boston, sponsored by the Defense Research Institute; $375 for DRI members; $425 for non-members. DRI, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

SEPT. 17-18. Catastrophic Reinsurance—Cost Effective Coverage Today and Tomorrow seminar in New York City, sponsored by Infoline; $995. Infoline, 8 Pleasant St., Bldg. D, South Natick, Mass. 01760-5660; 508-650-4700; 508-653-1627.

SEPT. 18-23. 38th Annual Employee Benefits Conference in Montreal, sponsored by the International Foundation of Employee Benefit Plans; IFEBP members only, $570; $615 after Aug. 5. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

SEPT. 20-22. Managed Care Public Policy seminar in Las Vegas, Nev., sponsored by the American Assn. of Preferred Provider Organizations; $545 for AAPPO members; $645 for non-members; add $100 after Aug. 1. AAPPO, P.O. Box 809109, Chicago, Ill. 60680-910; 312-245-1555.

SEPT. 20-23. Society of Insurance Accountants Annual Conference in Palm Springs, Calif., sponsored by the SIA; $100 for members; $140 for non-members. Bob Bauer, Society of Insurance Accountants, P.O. Box 61, Hollowville, N.Y. 12530; 518-851-9780.

SEPT. 21-23. Techniques of Risk Control seminar in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $650 for RIMS members; $750 for non-members; add $50 less than six weeks prior to course. RIMS Education Department, 205 E. 42nd St., Suite 1504, New York, N.Y. 10017; 212-286-9292.

SEPT. 23-25. Claims Management seminar in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $700 for RIMS members; $800 for non-members; add $50 less than six weeks prior to course. **Also Nov. 18-20** in Philadelphia. RIMS Education Department, 205 E. 42nd St., Suite 1504, New York, N.Y. 10017; 212-286-9292.

SEPT. 24-25. Insurance Coverage for Environmental Claims seminar in Boston, sponsored by the Defense Research Institute; $375 for DRI members; $425 for non-members. DRI, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

SEPT. 29-30. Improving Quality to Reduce Costs Through Employer—Provider Partnerships conference in Rosemont, Ill., sponsored by the Midwest Business Group on Health; $385 for MBGH members; $495 for non-members; add $100 after Aug. 21; some discounts are available. Midwest Business Group on Health, 8303 W. Higgins Road, Suite 200, Chicago, Ill. 60631; 312-380-9090.

SEPT. 30-OCT. 2. Council on Employee Benefits' 46th Annual Conference in Boston; $400 for CEB member companies; $450 for non-members. Carl S. Lazaross, 1144 E. Market St., Akron, Ohio 44316; 216-796-4008.

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The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the price, if any, of the meeting and information on registration for interested readers. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed.

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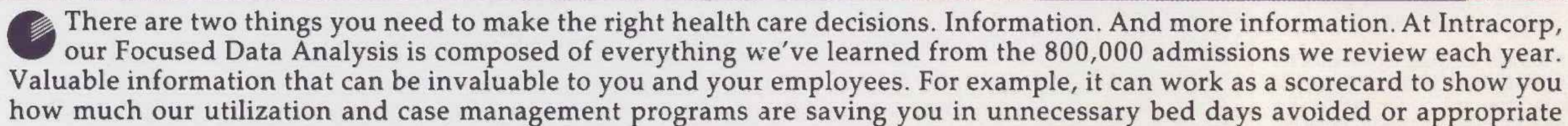

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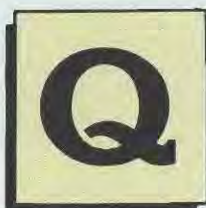
ASK A BENEFITS MANAGER

Communication boosts 401(k) plan participation



At my company, participation in the 401(k) plan has dropped off. What can I do to increase participation?

Many companies are interested in increasing 401(k) plan participation. There are two reasons for this.

The altruistic reason is to ensure that employees have adequate retirement savings. Although most employers view a 401(k) plan as a retirement program, many employees—particularly younger ones—do not view it as such. It is very difficult for a 26-year-old to see the need to save for retirement. It is equally difficult for a 35-year-old with a young family and monthly mortgage payments to use current income to save for retirement.

Another major reason for wanting to increase participation is to meet a more immediate and practical need: to make sure that participation by the non-highly compensated employees (as defined by the Internal Revenue Code) is at an adequate level to ensure that non-discriminations tests are passed and that highly compensated employees can defer the maximum amount to the plan.

Plan managers should take special care to avoid failing the non-discrimination test at the end of the plan year. If a plan fails the test, then a portion of the highly paid employees' pretax contributions must be refunded to them so the average deferral percentage (ADP) and/or the average contribution percentage (ACP) for those employees is adequate to pass the non-discrimination test. This means that the taxable earnings for those individuals will be increased.

Technically, you have the option to "recharacterize" these employees' pretax contributions to aftertax contributions. However, your plan must allow aftertax contributions, and most likely recharacterization will result in the plan not passing the test for the ACP.

Although I have not been in the situation where a plan failed the discrimination test at year-end, I know I would not want to explain to the highly paid workers that the plan must refund pretax dollars, that their taxable earnings will be increased and their income tax liability will be greater.

Overall, these refunds add significantly to the workload, are prone to errors and are very difficult to communicate.

To increase plan participation, you need to step up communication of the plan and its advantages. But before you go out to communicate, there are several questions that need to be answered:

✔ Which communication vehicle will work best for my organization?

There are many ways to communicate your 401(k) plan. Consider payroll stuffers, posters, tent cards on tables in common areas, general or personalized letters, brochures, electronic mail, broadcast messages on voice mail, employee meetings at which slides or video are used, interactive computers in kiosks and personal computer diskettes.

Payroll stuffers are inexpensive and are very effective in communicating short messages. The fact that the message is short and everyone is interested in their paycheck will ensure that most employees will read the stuffer.

Posters or tent cards are effective for general announcements. If you are rolling out a communication campaign for your 401(k) plan, you may consider a slogan or general theme for posters or tent cards. Everyone is familiar with many of the general advertising campaigns such as Nike's "Just Do It" and Avis' "We Try Harder." Find a slogan that gets across what you want to say.

Letters to employees and brochures are a staple of any communication effort. Personalized letters can give information about an employee's savings level in the 401(k) plan or demonstrate the impact of commencing contributions in the plan. For example, the letter can inform the employee what his or her account balance would be after one year, five years, and 10 years if he or she begins participation in the 401(k) plan today.

Meetings are very effective in communication because you have a captive audience and employees can have their questions answered. Generally, slides and overheads are effective in communicating specific information, while video is most effective in delivering an overall message or theme. Slides and overheads are inexpensive, but videos tend to be costly. A 10- to 12-minute video can cost $50,000. However, due to recent improvements in technology, videos can be produced using graphics on a personal computer at a much reduced cost.

Interactive computers in kiosks are an effective means of communication. However, because the employee must take the initiative to go to the kiosk, you generally will not reach a large segment of your population.

Because large numbers of employees generally have PCs available to them, communication using diskettes can be very effective. PC diskettes are useful to communicate 401(k) plans because employees can run simulations of different savings rates and determine how much a 401(k) plan can deliver.

Although most employers view a 401(k) plan as a retirement program, many employees do not view it as such. It is very difficult for a 26-year-old to see the need to save for retirement.

At Continental Bank, we have found that electronic mail is very effective for short messages because most employees actively use the system. The broadcast message option is effective for general reminders.

✔ With whom do you want—or need—to communicate?

Communication is most effective when a target audience is identified. If your communication objective is to increase participation in order to pass the non-discrimination test, then you should target your communication to lower-paid employees. If you decide to target this group, it may be helpful to identify some general demographic information about them: age, sex, marital status and family.

Since retirement income is generally a family matter, you may consider sending the materials to the employee's home.

✔ What do you need to communicate?

If you don't know why your employees aren't participating in the plan, consider conducting a survey or hold focus group meetings on the subject. Once you have determined why employees are not participating, you can focus on what to communicate.

In most cases, it is important to create a need to participate in the plan. The use of examples generally is very effective. One of the most compelling examples I have seen to participate in the 401(k) plan was in a training program presented by the American Compensation Assn.:

"An employee, age 28, commences participation in the plan at $2,000 per year and has an investment return of 8% a year. The employee stops contributing at age 35, but maintains the account in the plan and continues to earn 8% per year. A second employee, who is the same age, first commences participation in the plan at age 35 at $2,000 per year and also earns 8%. At what age will the savings plan accounts of these two employees be the same? The answer is 30 years later at age 65."

This example clearly demonstrates how important it is to not delay participation in a 401(k) plan.

General education about retirement planning can also be very helpful in encouraging employees to participate in 401(k)s and other voluntary plans. Employees should learn about the "three-legged stool" that symbolizes the three sources of retirement income: Social Security, company retirement plans and personal savings. A 401(k) plan with a matching contribution feature is actually the combination of a company retirement plan, because the company contributes, and personal savings, because the employee must contribute his or her own money to the plan.

Another means of increasing 401(k) plan participation is through plan design changes. Some changes you may consider are:

- Matching contributions.

One way to increase participation is to boost the matching contributions for the lowest level of participation. For example, if your plan is offering a matching contribution of 50 cents on the dollar up to 6% of salary, consider increasing the match to 75 cents or $1 on the first 1% or 2% of employee contributions.

Another approach would be to increase the company match by a specified dollar amount of contribution from the employee. For example, you might increase the matching contribution on the first $500 contributed to the plan.

First Chicago Bank recently modified its 401(k) plan to match the first $500 contributed to the plan dollar for dollar, then offering a match of 50 cents on the dollar up to 6% of salary. As a result of this change, 350 additional employees began participating in the plan.

- Plan loans.

Plan loans are a very attractive feature in 401(k) plans. A common reason employees give for not participating is that they are uncomfortable with the fact that they cannot access their funds in the plan. Hardship withdrawals are available but for limited purposes. Most employees will find a loan feature attractive, and thus a loan feature may eliminate a reason for not participating in the plan. Employees are generally more comfortable knowing they can—if necessary—access their funds through a loan.

Be warned, however, that a loan feature will add to your administrative burden and cost. Proceed carefully before implementing plan loans.

- Investment funds.

Employees will be more inclined to participate in the plan if they have an adequate choice of investment funds. According to a survey on 401(k) plans conducted last year by Buck Consultants Inc., the most common number of investment funds in a 401(k) plan is three (36.9%), followed by four (25.2%). Only 21.1% of plans offer fewer than three investment options.

The proposed 404(c) regulations will most likely affect the number of investment funds offered in 401(k) plans. These regulations will require a broad spectrum of investment fund choices in plans that want to be protected against poor employee investment choices. Therefore, whenever the 404(c) regulations finally become effective, plans are expected to offer additional investment funds.

A current trend in 401(k) plans is to offer mutual funds as investment options. In some cases, plan sponsors that are offering mutual funds as investment options have limited the number of investment options, while others have offered the

Continued on next page

Boosting 401(k) participation

Continued from previous page

full family of investment funds offered by a mutual fund organization.

Offering mutual funds gives employees adequate choice of funds, plus the ability to determine their account balance at nearly any time. And, many mutual fund organizations offer fund transfers on a daily basis.

- Earlier participation.

It is not uncommon for plans to have a waiting period prior to eligibility. According to the Buck Consultants survey, 81% of companies impose waiting periods, ranging from one month to one year. A one-year service requirement is the most common, named by 53% of respondents.

Most likely, the longer the waiting period, the less likely employees—particularly lower-paid workers—will participate in the plan. If immediate participation is offered, it is more likely an individual will participate, because the employee is starting a new job, possibly at a higher salary than the prior job. In this situation, it is more likely the individual will be agreeable to a payroll deduction. Six months to a year later, the employee has adjusted his or her standard of living, which will make it more difficult to swallow a reduction in take-home pay.

Once the program has been adequately communicated and plan design changes have been considered, the final step is for the employee to enroll. Be sure to keep the enrollment process simple and convenient. Consider these enrollment ideas:

- Send the enrollment form to the employee, rather than requiring the form to be picked up.
- Keep the enrollment form as simple as possible. Consider preparing personalized preprinted forms that include the employee's name and other pertinent information. With this approach, the only thing the employee has to do is to check a few boxes, provide a signature and mail the form.
- Consider enrollment by telephone. Voice response systems are now affordable and user friendly. What can be easier than dialing a number and pressing a few buttons in order to enroll in a plan?

These suggestions may help you attain your goal of increased participation in your 401(k) plan. However, the communication process cannot stop. There should be regular ongoing communication of the plan to constantly reinforce its value. Studies in behavioral science show that a message must be reinforced in order to change behavior. A one-shot effort won't do. ■

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

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

Mr. Nirtaut

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

Mr. Nirtaut's and Ms. Werner's columns appear on the second Monday of alternate months. Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month.

Mr. Nirtaut's next column will appear in September.

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.

Alternative market analysis

Taking the risk out of dealing with non-traditional underwriters

By Ronald R. Boggs

AN ACT OF FAITH—that's what participating in a new policyholder-owned insurer has often been.

But as these alternative market companies expand to include participants outside the "founding fathers," the need for objective techniques to evaluate them grows. Certainly, any contraction of the current, price-competitive commercial market will propel these organizations into the limelight and accelerate the need for scrutiny.

To our frustration, traditional techniques of analysis are neither appropriate nor adequate. Independent rating services focus on finances and the size of assets and net worth. Net worth of these insurers is often small and slow-growing as they focus on future security through reserve adequacy rather than short-term profits. There is often little with which to do any financial analysis. Regardless, these insurers must be evaluated. From my point of view, the keys to getting their measure are reinsurance, management, the quality of loss adjusting and their openness to qualified, independent professional review and audit.

The quality of a small insurer's reinsurance is perhaps the single most powerful feature when considering future claims-paying ability. Reinsurers' greatest concern is the insolvency of their primary client. They audit finances, claims, underwriting, marketing and other operations both before and while on the account. Thus, evaluating the reinsurer is a short-cut to evaluating the primary company. Knowing that a quality reinsurer has done a thorough review of the primary insurer is a real confidence builder.

It is imperative that the management team of an insurer—whether the individual members are employees or independent contractors—acts in the owners' best interests.

Among the issues to be considered:

- **Congruence.** Are the goals of the management team similar to the owners? As the owners of insurers that retained managing general agents in the mid-1980s discovered, commission-based independents may not have the same goals as the owners.

> **Reinsurers' greatest concern is the insolvency of their primary client. . . .Thus, evaluating the reinsurer is a short-cut to evaluating the primary company. Knowing that a quality reinsurer has done a thorough review of the primary carrier is a real confidence builder.**

- **Competence.** Insurance is a highly technical business and insurers, regardless of size, require technically trained and experienced staff.
- **Commitment.** Owners with an investment in the company are committed to its success. Employees have "voted with their feet" in favor of growth and continuity. Will an independent contractor devote sufficient time to the redevelopment of the program—not simply agree to manage it until something more profitable comes along?
- **Communication.** Communication between management and the owner is a major issue. The owners of alternative market insurers are not insurance experts, and they look to management not only to report what's going on, but to identify trends early and report them upstream. It's easy for managers to "run away" with the company on a technical basis, making all the important decisions, and leaving the board and other owners in the dark as to where their company is headed and why.

The engagement of independent advisers is another leading indicator. I am thinking of financial auditors, actuaries and corporate counsel. No independent professional wants to be associated with an insolvent venture. Changes in the cadre of outside professionals are always suspect. Forum-shopping by the management looking for professionals who will agree with them is a red flag signaling "hazardous conditions ahead."

Most insurers fail because of underreserving for claims. Claims payment is the raison d'etre for all insuring enterprises. It's easy to fool oneself into believing that losses are lower than they will ultimately become. Losses won't settle themselves, nor will defense firms settle liability claims economically. It takes active management by experienced adjusters to resolve claims quickly and keep indemnity and expense payments down. An independent evaluation of the claims function and reserve setting speaks highly of the importance which the company places on reserve adequacy.

The above four points will not guarantee that the company will ever sell a policy, but they do give a basic template for evaluating the security of existing alternative markets. Evaluating start-up ventures, however, is more of an intuitive process:

- Are the other participants in the group similar to yourself?
- Do you share the similar vision for the enterprise?
- Is one group member with an inordinate loss history looking for others to subsidize its program?
- Are the managers experienced and competent?
- Who are the real promoters? Why are they doing it? Where does the financial risk lie? Ultimate control and financial risk usually go hand in hand.
- Just what is the purpose for setting up the group? (Lowering insurance costs has proved to be an insufficient motivation for most start-up ventures.)
- Does the group have some unique coverage feature, or cost-reduction technique which will set it apart from the general market?
- What's to keep the members from wandering back to the commercial market once the organization is up and running (and the market conditions change)?
- What is your financial obligation in the event of a failure?
- How much voice will the owners really have in the operation of the company?

Analyzing alternative markets undoubtedly takes more time than evaluating commercial insurers, but there is a payoff. Alternative markets provide needed coverages, stability, specialized underwriting and an opportunity to save money on premiums in the long run. The alternative market is becoming more a part of the mainstream. ■

Ronald R. Boggs is president of First Nonprofit Management Inc. in Chicago.

Risk managers

Continued from page 1

managers aren't looking for any drastic changes as the market heads into the second half of 1992.

"It's continuing soft," noted Charlene Lucy, risk manager at The O'Brien Corp., a South San Francisco, Calif.-based paint manufacturer. "We are seeing even more markets opening up."

O'Brien doesn't plan to take advantage of the continuing competition to shop its property/casualty coverages, which renew in a couple of months. "We want the preliminary numbers to be completed by July 31, and we expect to be basically where we were last year," Ms. Lucy said.

For most risk managers, it has been a quiet renewal season.

"It went as expected," said Paul West, risk manager at United Van Lines Inc. in Fenton, Mo. At renewals completed in June, the moving company secured excess liability coverage at about the same price as last year, while directors and officers liability insurance premiums increased, he said.

The moving company's excess liability coverage, led by Zurich American Insurance Group, even featured some minor expansions of coverage terms, he noted.

Its D&O insurance was renewed with a 10% to 12% premium hike for the same limits purchased in 1991, he noted. Chubb Corp. writes United Van Lines' D&O coverage.

The company's property coverage, which renewed earlier this year, saw no increase in rates, according to Mr. West.

Gibson Greetings Inc. in Cincinnati also saw its D&O coverage costs rise, but that was only because of changes in coverage terms, according to Carol A. Fox, corporate risk manager for the greeting card company. "Additional coverages pushed the price up 9.5%," she said. "If we had renewed the same as last year, the price would have been flat."

Ms. Fox, who declined to make public her company's D&O limits, said primary D&O coverage is written by National Union Fire Insurance Co. of Pittsburgh, Pa., an American International Group Inc. unit, with an excess layer written by Chubb.

Caterpillar Inc. is seeing the cost of its high-layer excess liability coverage rise at renewals as two Bermuda insurers institute price hikes.

The construction machinery manufacturer expects to pay 15% to 20% more for excess liability insurance written by ACE Ltd. and X.L. Insurance Co. Ltd., according to Gail Baldes, coordinator of corporate insurance at the Peoria, Ill.-based company.

Ms. Baldes said the coverage is renewing at the same limits written last year, although she did not disclose that figure.

X.L. generally writes $100 million of general liability coverage excess of $25 million, while ACE will write up to $200 million excess of $100 million.

Caterpillar also inks renewals this summer on hull and liability coverage for its four planes. Ms. Baldes said costs may rise slightly for the coverage, which is written by United States Aircraft Insurance Group in New York.

The company also renews its automobile liability coverage, which has been put out to bid this year, she added.

"We believe in relationships and partnerships with insurers," she said, but Caterpillar periodically invites bids from insurers to ensure it getting the best price on the best coverage.

Property and liability coverages renew at other times during the year.

Summer renewals are a breeze, said Ilona Melstrads, insurance manager at Washington-based defense contractor Frank E. Basil Inc. of Delaware.

Frank E. Basil renews its crime and boiler and machinery coverages at this time of year. "These are no problem for us. The horror show every time" is the renewal of workers compensation, general liability and umbrella coverages later this year, she said.

National Union writes Frank E. Basil's crime coverage, to which the defense contractor is making some changes.

Late last month, Ms. Melstrads

Continued on next page

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D&O/E&O MARKETS: AN UPDATE

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Risk managers

Continued from previous page

was waiting on a quote from National Union on limits of $2 million, down from $5 million purchased in 1991.

"When we set our original limits some time ago, we had many large projects outside the United States," she explained. With cutbacks in defense spending, those overseas projects—and the crime exposure—have been considerably scaled back, she said.

"We should have changed it last year," Ms. Melstrads said of the limits, "but last year we still had one contract abroad that was pretty sizable. Now that's not around."

Helping relieve some of the anxiety of upcoming liability renewals is the "nice little reduction" of 10% Frank E. Basil secured on its $20 million of boiler and machinery coverage written by Hartford Steam Boiler Inspection & Insurance Co., Ms. Melstrads said.

Commercial Metals Co., a Dallas-based metal manufacturer and processor, renewed its $280 million in replacement cost property coverage with Allendale Mutual Insurance Co. last month with "virtually no changes," said Bob Caperton, corporate risk manager. The price and coverage terms closely mirrored those of 1991, he said.

Although some risk managers are seeing rising prices for certain casualty coverages, most don't fear a drastic hardening of the market in the near term.

"I expected it to have tightened up by now," said Ms. Lucy of The O'Brien Corp., but she added that she doesn't expect a repeat of the mid-1980s liability crisis. "That was horrendous."

Even so, she said it pays to be ready in case there is a market shift.

"We're maintaining good relationships with our insurers," Ms. Lucy said, so that they will be available if capacity becomes scarce and prices rise.

Despite the expected increase in excess liability insurance costs at Caterpillar, Ms. Baldes said she doesn't see "any serious hardening" of the market. Rates appear to be adequate for buyers and insurers, she added.

Lloyd's of London's huge 1989 loss and rising loss ratios among domestic insurers could provide a combination that will lead to some tightening, Ms. Baldes suggested. "There is a chance things will change. I just hope it will happen the way it ought to: slowly."

While the past year has seen several disasters that have been expensive for insurers, those calamities haven't yet drained insurers' capacity, Ms. Melstrads noted. "If you have a $5 billion or $10 billion disaster, it doesn't mean much for an industry with $140 billion or more in policyholder surplus."

"Nobody seems to be detecting much hardening," said Mr. Caperton of Commercial Metals.

In fact, he added, some insurers have become more aggressive in writing large-deductible workers comp programs, he noted. "If anything, there seems to be a slight softening."

Meanwhile, the sluggish U.S. economy hasn't derailed insurance buying plans in many risk management departments.

"The recession has hit us and we're looking at all our costs," said Mr. West of United Van Lines. But in the current soft market, the moving company has been able to keep its insurance costs under control, he added.

It wasn't the recession, but cuts in defense spending that forced Frank E. Basil to make some risk management changes, Ms. Melstrads observed.

With U.S. involvement abroad being scaled back, the number of the defense contractor's projects also has been sliced, she explained. The resulting loss of revenue has curtailed some safety planning, she said.

Specifically, Frank E. Basil decided to indefinitely delay hiring a corporate safety executive, Ms. Melstrads said.

"We have safety people on every project, but that is different from someone who would be overseeing" safety planning and projects for the firm, she explained. ■

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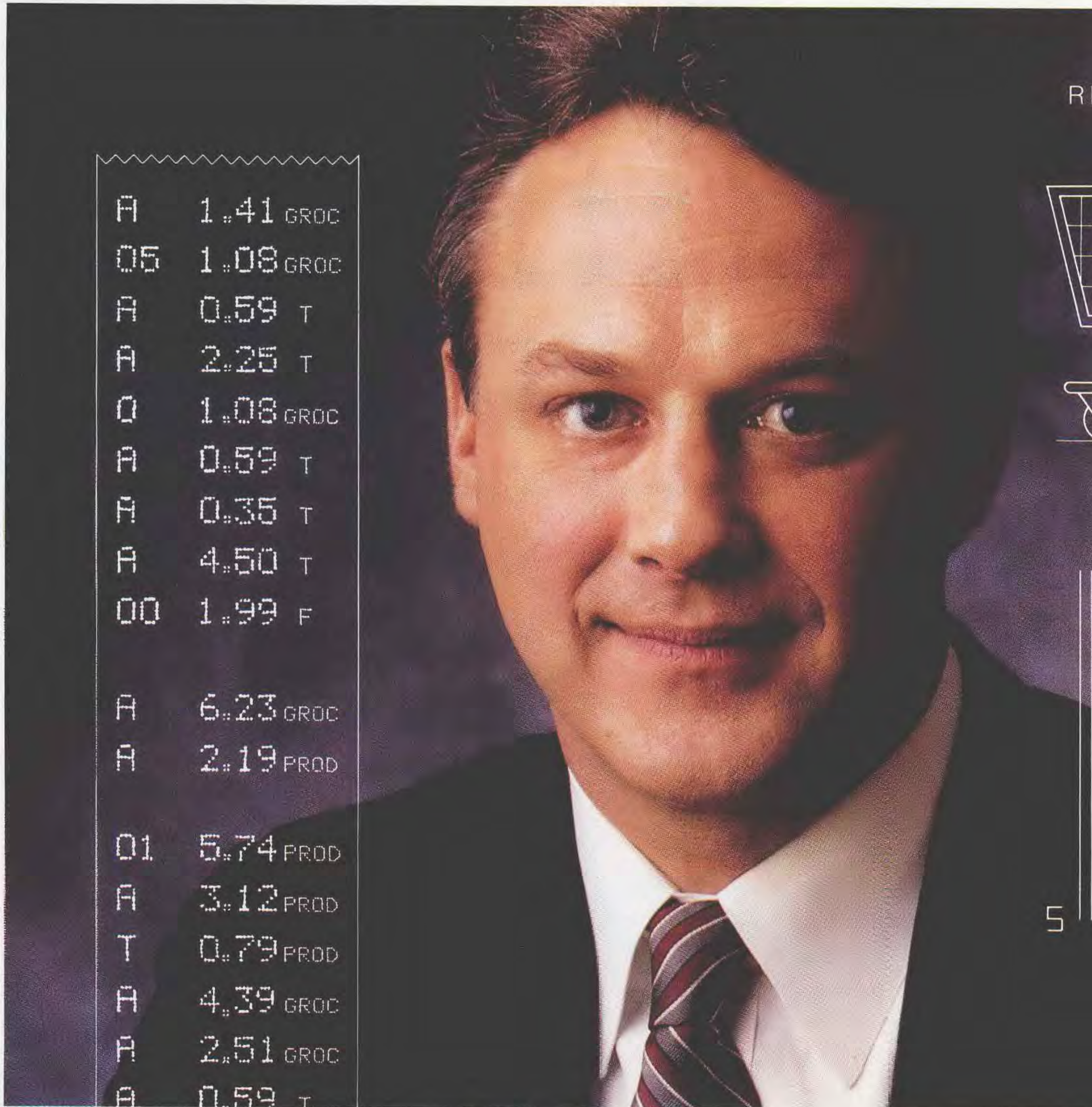

OLD PROS ON

No news is good news for reinsurance buyers

By JUDY GREENWALD
and DOUGLAS McLEOD

1992 MIDYEAR RENEWALS

Reinsurer report

NEW YORK—If it's a curse to live in interesting times, many reinsurance buyers must feel blessed.

With few exceptions, the market for July 1 reinsurance renewals is described by intermediaries and reinsurers in similar terms: static, uneventful, even dull.

Retrocessional coverages, property catastrophe reinsurance, and marine and aviation risks continue to be the toughest to place, with rates rising and capacity dwindling for many ceding insurers.

But, for the broad range of property and casualty treaty renewals, the market is flat, capacity is plentiful and rates are moving little in either direction.

"To be honest, the market is incredibly boring," summed up Steven K. Bolland, senior vp with intermediary Gill & Roeser Inc. in New York.

"It really has been—I hate to say it—almost a boring year," agreed Paul R. Davies, chairman, president and chief executive officer of Aon Reinsurance Agency Inc. in Chicago.

"Unfortunately, things are about the same as they've been. There's no change in the market," said Tom Gallagher, senior vp at Prudential Reinsurance Co. in Newark, N.J.

"We just seem to be in a position of treading water," said Paul Hawksworth, president and chief executive officer of The Mercantile & General Reinsurance Co. of America in Morristown, N.J. "But we're not sinking any deeper."

The retrocessional market, providing reinsurance to reinsurers, remains as tight for those renewing July 1 as it did for those who renewed contracts on Jan. 1, market observers say.

Property retrocessional coverages are proving more difficult to place than casualty retrocessions, and rates for the available property retrocessional capacity are up between 15% and 25% over the same time last year, according to Michael Rothpletz, executive vp with G.L. Hodson & Son Inc. in New York.

"It's across the board. I don't think anyone is getting a break on retro," Mr. Rothpletz said.

"Everyone is buying less (retrocessional coverage) by virtue of the fact that the capacity is not there," he added, estimating that retrocessional market capacity may be down 30% to 40% since July 1991.

While the retrocessional market has tightened since last July, it is not much worse than it was for the Jan. 1 renewals, Mr. Davies said, suggesting that the tightening of the market at year end is merely catching up with those who renew midyear.

The property catastrophe reinsurance market, meanwhile, continues to aggravate many ceding insurers.

"London is dictating pretty unreasonable prices, but if people want the capacity, they have to pay for it," Mr. Rothpletz said.

July 1 catastrophe renewals actually may be a little tougher in some cases than the Jan. 1 renewals, because many underwriters have committed much of their capacity to the earlier renewals and have less available now, Mr. Bolland observed.

This capacity squeeze in turn has contributed to slightly higher rates than were typical six months ago, agreed Philip W. Mitchell, chief executive officer of TPF&C Reinsurance, a Philadelphia-based unit of Towers Perrin.

For example, a program renewing with a 60% rate increase July 1 may have suffered only a 50% increase if it had renewed on Jan. 1, he explained.

Overall, Mr. Mitchell said he has seen rate hikes ranging from 25% for ceding insurers that have suffered no catastrophe losses to 80% for those that have.

Rate increases and available capacity vary widely depending on the ceding company's perceived exposure to catastrophe losses and reinsurers' own requirements for the business, Mr. Bolland and others note.

Many reinsurers, Mr. Bolland added, have stopped writing "non-supported business," meaning that they will not assume a piece of a ceding insurer's catastrophe program unless they also are offered part of the ceding company's non-catastrophe property reinsurance business.

One of the few glints of competition for catastrophe business is coming from direct writing reinsurers, which are assuming catastrophe risks at reductions of 20% or more from broker market rates, several brokers say.

"They have been very competitive with their capacity," Mr. Davies observed.

Not all ceding insurers are suffering through the renewal season, though.

One East Coast insurer is close to completing the July 1 renewal of a $110 million catastrophe

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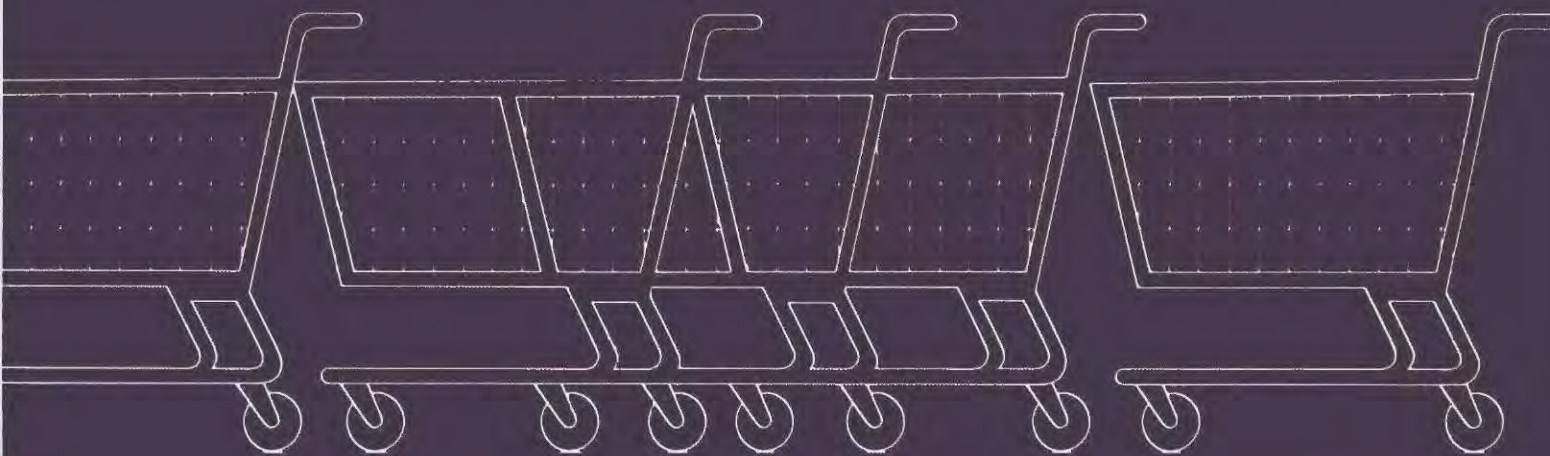

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A NEW TEAM

Reinsurer views

Continued from previous page

program with the same rate on line that it has paid for the last two years, according to an official of the insurer.

About $44 million of the coverage had formerly been placed in London, but the insurer was able to line up only about $34 million from London markets this year.

Most of the shortfall has been made up with U.S. markets, and the insurer expects to fill out its program, the official said.

Several reinsurers on the program offered to renew on the condition that they get pieces of the ceding company's non-catastrophe property program, he added.

More ceding insurers, meanwhile, are turning to funded programs and other forms of financial reinsurance to make up for the shortage of traditional catastrophe capacity.

Fewer than 5% of TPF&C Re's clients have opted for funded programs, but this compares with less than 2% last year at this time, Mr. Mitchell said.

"They are starting to move," Mr. Rothpletz agreed of the alternative coverages.

While the catastrophe market remains tight, the market for most other property/casualty reinsurance coverages is still competitive, brokers and reinsurers agree.

"Nothing much is changing or has changed," said Bard Bunaes, president of Constitution Reinsurance Corp. in New York. "The catastrophe market is firm. The rest of it is not firm."

"We don't see anything very dramatic happening, if anything at all," concurred James F. Dowd, chairman and chief executive officer of New York-based Skandia America Reinsurance Corp.

Skandia is renewing its property/casualty reinsurance business "by and large" at expiring prices, Mr. Dowd said.

"The July renewals are pretty tough (for reinsurers). We're spending lots of time, lots of negotiations going back and forth on rates and terms and conditions," said Steve Tirney, senior vp at PMA Reinsurance Corp. in Philadelphia.

"At the end of the day, we're going to need to resign ourselves to renewing as expiring," he said.

But, several reinsurers contend that they still will walk away from business they consider underpriced.

"We're asking for price increases where it's called for, and we're turning down renewals that are underpriced," said A. Edward Gschwind, president and chief executive officer of American Royal Reinsurance Co. in New York.

As a result, "we continue to lose business," he said.

Premium volume at F&G Re, a Morristown, N.J.-based unit of USF&G Corp., is down 60% to 70% from its 1988 level, according to Paul Ingrey, the reinsurer's president.

"We are renewing what we can, and we still do a fair amount of casualty and a lot of property excess," but F&G Re will not stay with business it feels is underpriced, Mr. Ingrey said.

Marine and aviation risks are about the only lines that remain tight in the generally soft property/casualty reinsurance market, brokers and reinsurers agree.

Mr. Ingrey said he was surprised, though, to see rates in the upper layers of some marine programs falling by about 30%.

However, he noted, "That's after a tremendous increase a year ago."

"Otherwise, things are going along pretty much without any change," with other business renewing as is, Mr. Ingrey said. "It's almost like waiting for something to happen."

How long the wait will be remains unclear, and several reinsurers say the market will probably not turn until 1993 at the earliest.

Reinsurer results will have to deteriorate further before the market tightens, PMA Re's Mr. Tirney said. Current results, unacceptable as they are, are too stable to trigger a change, he suggested.

"It doesn't look like it's going to be 1992, and I'm not so sure about 1993, either," Mr. Tirney said.

Mercantile & General's Mr. Hawksworth joked that he has predicted since 1988 that the market will turn in 1992, so he is "fast running out of time."

"It looks like it will probably still be another year away," he said.

Most optimistic was American Royal's Mr. Gschwind. "I think there's anecdotal evidence it's turning right now insofar as the commercial multiperil and general liability markets are concerned," he said.

"I think that the change is upon us, but it's infinitesimally small, and it's going to be slow," Mr. Gschwind added.

While the economic recession has cut into the premium volume of primary insurers, it has had relatively little impact on reinsurance volume or pricing so far, observers say.

Ultimately, the recession may affect reinsurance volume, Mr. Bolland observed.

However, reinsurers in recent years have shifted to writing excess contracts rather than proportional contracts, meaning that the premium they receive is less directly tied to primary insurer rating practices, he noted.

This practice insulates reinsurers somewhat from recession-related changes in primary insurer pricing, Mr. Bolland said.

An economic recovery, meanwhile, could create problems for reinsurers that are subsidiaries of primary insurers, he speculated.

If a primary insurance company whose surplus has been drained by insurance and investment losses wanted to expand its underwriting in an improving economic climate, it might actually take capital out of the reinsurance unit to support its own business, according to Mr. Bolland. ■

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AAU Raising Your Expectations

London market

Continued from page 1

started to rise recently for the first time in several years, said David Cowley, managing director-corporate division of Jardine Insurance Brokers Ltd. "Big companies with June 30 renewals saw big meaty increases."

There also are more demands for sprinkler installations, with one U.K. insurance buyer denied property coverage if it did not install sprinklers, said Mr. Cowley. And restrictions are being made on casualty coverages, with pollution exclusions becoming commonplace.

"This has only started happening across the board," said Mr. Cowley. "The reasons are obvious: the poor results of (U.K.) insurance companies and Lloyd's."

London underwriters, hit hard by catastrophe and other losses in the past few years, are baffled at their North American counterparts' stamina for reducing rates.

"U.S. results are still good, which is remarkable," said a London reinsurer. "There will be no change until the red ink starts to flow."

In the mid-1980s, a contracting London reinsurance market forced U.S. property/casualty rates to harden, but that is unlikely to happen this time around, says investment analyst Conning & Co.

In London, Lloyd's capacity has fallen to 10.16 billion pounds this year ($19.1 billion) from just over 11 billion pounds ($17.7 billion) last year, and is likely to fall even further, to as little as 7 billion pounds ($13.16 billion) next year. The market recently posted a record loss of 2.06 billion pounds ($3.85 billion) for the 1989 underwriting year (*BI*, June 29).

Meanwhile, a number of insurers have either shut down, stopped underwriting or are seeking new capital to stay afloat. In the year ended July 1, mergers and closures reduced the Institute of London Underwriters to 99 insurance company members from 115.

Also, British non-life insurers recently posted a record combined underwriting loss of 6.8 billion pounds ($12.72 billion) in 1991.

London underwriters believe this massive contraction has frightened some U.S. ceding companies away from London for security reasons, rather than competitive reasons, though no one can cite specifics.

However, the contraction is not likely to affect the mainstream U.S. property/casualty cycle, said Peter Stanhope, analyst for Conning International Inc. in London, a Conning & Co. division.

The losses that London insurers and reinsurers have paid, including the $8 billion in claims from 1990 European windstorms, are not having the same impact on U.S. underwriters, he said. "Insurance stocks in the United States are very strong."

A recent Conning analysis, "Too Much Ado About Lloyd's of London," echoed the view that Lloyd's huge 1989 loss will not lead to a cycle change. "Instead, the Lloyd's loss has much narrower implications by affecting certain classes of business, such as marine and catastrophe reinsurance."

Some London underwriters, however, think the U.S. risk managers' rate honeymoon is about to end.

"We will see a response in the United States in the third and fourth quarters this year," predicted Mr. Harris, the Lloyd's underwriter. He also foresees a insurer insolvencies in the United States because of inadequate reserves.

"Everybody's awakened to the fact that there's an exposure to writing (property) insurance—from Norway to Newcastle (Australia) to Japan where they had their biggest typhoon last year to Los Angeles and their earthquake," added Mr. Harris. "To get a good spread, underwriters must have increases (for risks) all over the world."

Meanwhile, two classes of business being affected by the contraction in the London reinsurance market are energy and property catastrophe coverages.

During July 1 renewals, premiums continued to rise and capacity remained tight for energy business worldwide.

"It was tough renewing in January, and the market has not relented since. There is no such thing as a straightforward renewal," said Edward Moss, managing director of the oil and gas division of Willis Corroon P.L.C.

Continued on next page

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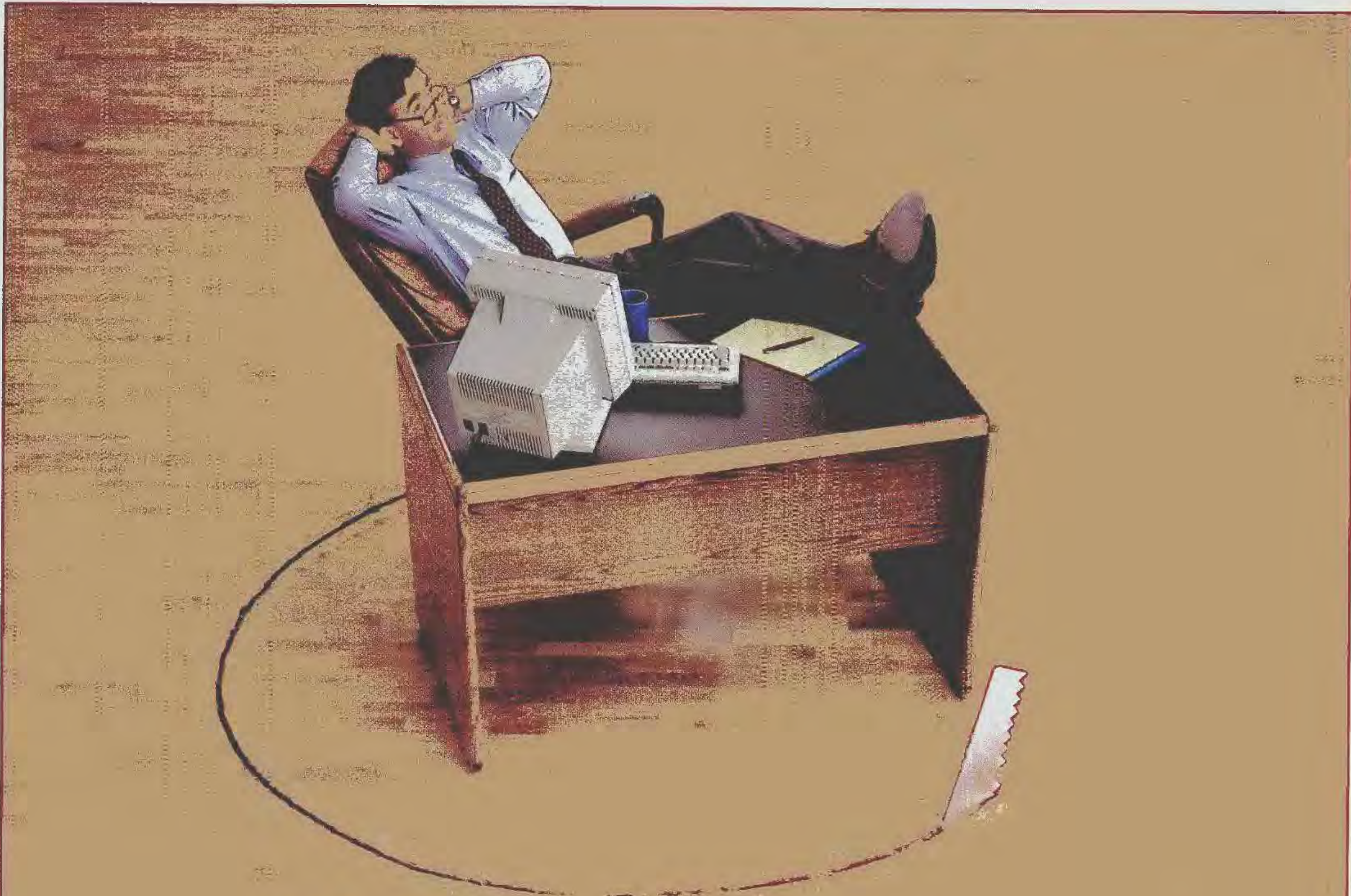

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London market

Continued from previous page

in London.

Rate increases have been as much as 100% for policyholders with poor loss records, said Mr. Moss. Even for "reasonable accounts" that have been in the market for a long time, increases are running 15% to 20%.

Reduced capacity has led to late renewals for energy risks. "The market is very difficult and tight, and a lot of programs have not been finished yet," said Philip Hallett, executive director of oil and gas at C.T. Bowring & Co. Ltd.

For those that have been finished, prices have risen substantially, Mr. Hallett said. Increases vary greatly, but average about 25% among energy underwriters in the marine market, he said.

Rates for energy risks placed in the non-marine market bear a comparison to the high rates of 1985, which was the last time energy risks were placed on a large scale in the non-marine market, said Alan Lee, North American underwriter for Sturge Non-Marine Syndicate Management Ltd. "There seems to be a general tightening up of capacity for non-marine energy risks in London," he said.

Some major oil companies seeking large amounts of capacity have been unable to complete their programs, Mr. Lee said.

Lately, London brokers have had to work harder to place business due to the demise of the London Master Energy Line Slip, which provided up to $650 million in coverage.

Last year, brokers could place only 60% of the slip, said Bruce Garrett, development director for Sedgwick Energy Ltd. This year, the slip is gone because "everyone's agreed that underwriters don't want to write facilities anymore and want to write only facultative placings," he said.

In the meantime, many syndicates and London insurers have withdrawn from the energy market, including syndicates managed by F.L.P. Secretan & Co. Ltd. and Andrew Weir Insurance Co. Ltd. and Bishopsgate Insurance Ltd.

As a result, worldwide capacity for each energy risk is down to between about $1.8 billion and about $2 billion from up to $2.25 billion two or three years ago, said Mr. Garrett.

Capacity, though, has not declined much in the last year. "Some (underwriters) that are still here have increased their capacity to take advantage of the higher prices being charged. So there is not much difference in terms of capacity between this year and last year," explained Mr. Hallett.

Among those increasing their capacity, he said, were: syndicates managed by Hayter Brockbank (International) Ltd., Charman Underwriting Agencies Ltd. and Wellington Underwriting Agencies Ltd.

By year end, Sedgwick Energy believes that capacity will contract even further, making it hard to place coverages without gaps, according to Mr. Barrett.

This shortage has prompted Sedgwick Energy and Price Waterhouse to set up a European oil and gas policyholder-owned facility (*BI*, June 1). Sedgwick says final details of the facility are due out soon.

"The oil industry's in a recession, and they're not prepared to pay further price increases. That's why we're looking at alternatives," said Mr. Barrett.

Bermuda-based Oil Insurance Ltd. also is currently considering setting up a policyholder-owned facility for North Sea rig risks, Mr. Hallett said.

An OIL official said some OIL policyholders are examining the feasibility of such a facility.

"It would not surprise me if we had more mutuals setting up, because clients are being asked to pay more and more for their insurance costs, and they will be looking for ways to reduce those costs," Mr. Hallett said.

Meanwhile, brokers are flying to continental Europe to find new capacity to cover energy insurance packages, especially the non-marine portion of risks that have been unbundled in London.

European markets, particularly France, Switzerland and Germany, are being used "significantly more" than they were a year ago," Mr. Moss said.

"We're catching planes to Europe a lot more often than we used to," said Richard Keeley, director of North American property at Alexander Howden Ltd.

Worldwide, the cost of property catastrophe reinsurance also is on the rise.

U.S. ceding companies buy a total of $8.5 billion of property catastrophe coverage excess of $1.5 billion annually, with many insurers renewing programs their at midyear. Among them: Aetna Casualty & Surety Co., Chubb Corp., CNA Insurance Cos., CIGNA Corp., Employers Insurance of Wausau; Farmers Group Inc.; Kemper National Insurance Cos.; Prudential Insurance Co. of America; Travelers Corp.; and USF&G Corp.

At midyear renewals for these companies, property catastrophe excess-of-loss reinsurance premiums rose an average of 34% and rates an average of 32%. That follows average mid-year increases of 22% in 1990 and 1991, London underwriters say.

At Jan. 1 renewals, U.S. Ceding companies fared slightly worse: premiums rose an average of 39%, rates an average of 33%.

With limits averaging $150 million to $200 million in London, rates for U.S. ceding companies ranged from a 236% increase to a 5% reduction during mid-year renewals this year, underwriters said.

North American catastrophe reinsurance rates are continuing to surge, added Colin Murray, chairman of R.J. Kiln & Co. Ltd.

"The bottom layers of catastrophe covers are experience-rated, so they vary a lot. But the higher layers are up between 20% and 30%," he said.

Worldwide catastrophe rates have risen about 10% for lower layers and 25% to 30% for higher layers, Mr. Murray said.

Price increases for U.S. property catastrophe reinsurance average 45% to 50%, said Lloyd's underwriter Mr. Harris.

With prices rising, Marsh & McLennan and J.P. Morgan & Co. Inc. are trying to raise at least $300 million in capital to form a property catastrophe reinsurer, Mid Ocean Reinsurance Co. Ltd. in Bermuda (*BI*, June 22).

"Deja vu," said Mr. Harris when hearing about Mid Ocean. He recalls that after Hurricane Betsy in 1965, M&M helped set up British Insurance & Reinsurance Group for the exact same reason. It eventually was merged into Terra Nova Insurance Co.

Continued on next page

When Lisa was born her kidneys didn't work. So we helped Lisa's mother learn to care for her.

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Continued from previous page
Ltd., in which M&M still is a shareholder.

In the meantime, rates for other types of the North American property/casualty insurance and reinsurance remain generally flat in London, with occasional rate increases and decreases depending on the class of business.

In London, rates are rising and capacity shrinking for property coverages for some North American business like mining and pulp paper, said Mr. Lee of Sturge.

But most North American property rates are standing still. "We are seeing a very stable market with increases in rates where the loss experience makes them applicable," said Mr. Keeley of Alexander Howden.

Reduced rates for property business are rare, but underwriters are still wary of the extremely competitive domestic U.S. market, he said.

"Accounts with a past are being looked at very carefully, but the underwriters do not want to lose business," Mr. Keeley said.

And new accounts are receiving microscopic attention. "Underwriters don't want to rape and pillage new business, but they are looking at the details of the risks much more carefully," Mr. Keeley said.

U.S. property rates need to at least double if they are to reflect the risks insurers are covering, added Mr. Wetherell, the Lloyd's underwriter. However, in some cases, North American property insurance rates are slipping in London, he said.

Mr. Wetherell said he is declining U.S. business being offered to London underwriters when he believes that the rates are inadequate.

'Accounts with a past are being looked at very carefully,' explains Howden's Mr. Keeley.

"We are declining a lot of commercial fire business. Most of it is remaining in the United States, but some of it is being written in London now," Mr. Wetherell said.

Most increases in U.S. property rates are inflation-driven increases of 2% to 7%, "unless there is a story to tell," said George Lloyd-Roberts, chairman of Lloyd's Underwriters' Non-Marine Assn.

Meanwhile, new capacity and personnel changes might spark competition in the North American casualty market in London.

Lexington Insurance Co., an American International Group Inc. unit in London, has increased its capacity to $20 million from $15 million. By year end, that capacity should rise to $25 million, said Keith Peacock, general manager of Lexington in London.

Additionally, Lexington has lured Chris Horton and Karen Williams away from rival Zurich Re U.K. Ltd. Mr. Horton will underwrite general casualty business at Lexington, and Ms. Williams will underwrite professional liability accounts.

In addition to taking on Zurich Re personnel, Lexington also has begun using Zurich Re's general liability policy form, said Mr. Peacock.

After the demise of the H.S. Weavers (Underwriting) Agencies Ltd. line slip in 1990, Zurich Re became the leading North American liability underwriter in London. All of the main following companies in London followed the Zurich Re form except Lexington, which instead offered its own form.

Lexington will continue to offer its own form in addition to the Zurich Re form, Mr. Peacock said. "The dust has now settled after Weavers, and we believe that it is important to give our clients a choice."

However, Lexington's larger capacity and aggressive hiring will not lead to a rate-cutting war with Zurich Re, said Mr. Peacock. "That would be a war which no one would win."

And other companies in London would not join in the battle, said Marcus Brown, underwriting director for Anglo-American Underwriting Management Ltd.

"We are not going to follow prices down. If that means we get left off business which we were writing before, then so be it," he said.

In fact, despite the increase in capacity, Mr. Peacock expects the liability insurance market to harden a little in London over the next few months.

"Clients are coming here for the market, not just because of us. The brokers here have a lot of ingenuity and ideas. The added flexibility our extra capacity will provide should help them in their job," he said.

However, the move by Lexington could develop into battle of the giants in the London casualty market, said John Holford, deputy chairman of Sedgwick Non-Marine Insurance Ltd.

"Zurich was beginning to take up a more dominating position at Lexington's expense, and now Lexington is fighting back," he said.

For brokers and clients, that could present new opportunities, said Mr. Holford. "There will be more choice and more capacity and more good things generally."

Already there is plentiful capacity in London, Mr. Holford said. "If you have all your ducks in a row, you should be able to place the first $100 million in London."

Lexington's move came too late to affect midyear renewals, in which casualty rates were little changed from a year ago, Mr. Holford said. London underwriters once again had little luck raising rates, he noted.

"Medical malpractice underwriters, for example, have put increasing pressure on brokers to jack up rates, but they have had only marginal success," Mr. Holford said.

London underwriters also are managing to achieve some increases in directors and officers liability insurance and professional liability insurance rates, said Mr. Brown of Anglo-American.

"The increases are quite small, but brokers are a lot more interested in what we have to offer," he said.

However, there is still intense competition from domestic writers in the United States, despite those insurers' falling investment income due to lower interest rates, Mr. Brown said.

"There must come a time when loss ratios become so high that investment will not be enough to cover the deficit, but I think it will come later rather than sooner," he said. ■

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Insurers

Continued from page 1
different—doesn't look very familiar (see story, page 55).

The market is not responding in traditional ways to traditional market-turning forces like natural catastrophes, and some insurers predict that only a major insolvency or two will cause rates to rise. And no one is willing to hazard a guess as to when—or even if—that long-awaited event will occur.

And, for once, other executives in the marketplace, like brokers and surplus lines officials, concur (see stories, pages 57 and 60).

"We think there may be some early signals of change, but the crystal ball is still pretty cloudy," said Karl W. Uban, vp-commercial product management for American States Insurance Co. of Indianapolis. Most of the Lincoln National Corp. unit's commercial property/casualty clients are "small to mid-size," meaning their annual premiums are $25,000 to $100,000.

"The market has been pretty static over the last few years, but we've seem some further softening for mid-size accounts," Mr. Uban said. "It could go down further, but I don't think it will."

Market conditions are "essentially the same" as they were in the spring, said Thomas Kelsey, executive vp of Chubb & Son in Warren, N.J.

"If there's any tendency, I'd say it's a tad softer—that's a function of the fact that the total pie is smaller," said George Ramsdell, senior vp and chief underwriting officer of the agency group for Continental Corp. in Cranbury, N.J.

Companies are moving to protect existing books of business, said Mr. Ramsdell.

"We've seen little change at all over the past year. I think it's still soft," said Joseph Basta, president of Zurich-American Commercial Insurance in Schaumburg, Ill.

"Right now two things are going on," said Charles J. Clark, president of the property/casualty commercial lines division at Travelers Insurance Co. in Hartford, Conn. "Insurers are talking one game and playing another. We talk as though today's market is normal. We are at the bottom of rate inadequacy, and we say it's something we have to adjust to. At the same time, we believe or hope the market will turn dramatically in the next 12 to 18 months.

"Nobody is writing business today for its profitability. We believe in a turn."

"In general, things are beginning to firm. I don't want to overstate it; it's still a soft market," said Bruce Smith, senior vp of Employers Insurance of Wausau, a Nationwide Mutual Insurance Co. subsidiary in Wausau, Wis. Mr. Smith added, however, that he was "optimistic" because even in soft casualty lines of coverage, rates are not dropping on a "wholesale" basis.

The recession is also hampering insurers' attempts to increase prices, noted Richard W. Wratten, president of Transamerica Insurance Co.'s commercial insurance division in Woodland Hills, Calif. The recession has cut into the business available, and insurers don't want to lose renewals, he pointed out.

"I think there are some desperate people out there," said Mr. Wratten.

And they're not all insurers. Employers, he said, are reporting lower payrolls than they really have in order to reduce the premiums they pay. And, as individual companies institute layoffs, there are increases in both the frequency and severity of stress-related workers compensation claims, he said.

At American States, which specializes in smaller retail and service companies, the recession has hit hard, said Mr. Uban. "Lots of our customers have canceled policies because they've gone out of business. And, our new business is down."

Collections are also getting tougher, he added, particularly from companies that owe additional premiums after their policies expire.

"I can never remember a cycle where financial underwriting has been as critical as it has been in the past couple of years," said Wausau's Mr. Smith.

"Our exposures are down by 5% and our pricing is off by 5%," said Mr. Clark of Travelers. "What drives our premium base is payroll, so if companies are selling less, making less and paying less, our premiums go down."

But Travelers has not been hurt by accounts receivable problems or by bankruptcies resulting from the recession, according to Mr. Clark. "That is amazing to me."

In fact, Mr. Clark said Travelers' overall premium volume is down not because of the recession, but because more employers are turning to self-insurance and some accounts have moved to alternative facilities.

"The demand for coverage hasn't been dropping. If anything, they want more at the same price," said Michael McIntyre, senior vp at Allendale Mutual Insurance Co. in Johnston, R.I.

"We traditionally have seen lower frequency and severity of losses during a recession. When businesses are working seven days a week, three shifts a day, there's a greater chance for accidents and machinery breaking," said William E. Moriarty Jr., vp and staff officer-marketing for Arkwright Mutual Insurance Co. in Waltham. Mass.

Chubb's Mr. Kelsey said the recession has led to a "modest" drop in demand for coverage. Claims also seem to be "flattening" except in Texas and California, he said.

"Maybe 1% of our policyholders—for us that means four or five—have reduced the amount of limits they are purchasing," said Walter Scott, president and chief executive officer of policyholder-owned ACE Ltd. in Hamilton, Bermuda.

Other than that, the recession has not affected ACE, he said.

Most insurers said that they're not doing anything significantly different now than what they were doing a year ago to generate business.

"We're not out deliberately offering better terms or conditions," said Wausau's Mr. Smith. He said that Wausau will walk away from business "if the price doesn't make any sense."

"We are not happy with our numbers, and we're trying to improve them," said Mr. Uban of American States. "We've established some pricing floors."

"We are focusing more on renewals than new business: It's the devil you know rather than the devil you don't know."

"In certain classes, we're try-

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Continued from previous page
ing to say to the client, 'Barring some monumental change in exposure, we'll try to maintain a price equilibrium for three years,' " said Chubb's Mr. Kelsey. That would mean that the price would shift only within certain percentage bounds, he said.

But The Hartford Steam Boiler Inspection & Insurance Co. no longer will guarantee rates for more than one year, said Robert W. Trainer, senior vp at the Hartford, Conn.-based specialty insurer.

"We aren't trying to put a lot of high-hazard property business on the books. We are anxious to put low- and moderate-level boiler and machinery business on the books—but at our prices," said Mr. Trainer.

"We continue to try to find terms and conditions that meet the needs of our customers and don't put us out of business," said Arkwright's Mr. Moriarty.

"Travelers never makes anybody's top 10 list for aggressive pricing," Mr. Clark said, noting that the insurer continues to lose market share except with very large accounts—those with more than $1 million in annual premium.

"We play the pricing game defensively, but not aggressively," he said.

The alternative markets are also assuming a more defensive stance. For example, ACE is no longer offering three-year policies to new chemical, pharmaceutical, petrochemical or large energy accounts, Mr. Scott said. All have to renew annually.

ACE is also "scrutinizing financial institution directors and officers risks more closely," he said.

Asked which direction various rates were moving, insurance executives agreed on little except that the movements weren't terribly significant.

For example, Mr. Uban of American States reported that for primary general liability, commercial auto and umbrella coverages, the insurer is securing "modest" increases over last year in the 5% to 10% range.

But Travelers' Mr. Clark cited decreases of 2% to 3% for primary and lower-layer excess liability coverage.

"Exposures also are down by about 10%, and when you combine that with loss costs inflating by 10% to 15% in some lines, the dollars become significant," Mr. Clark explained.

Rates for all "traditional coverages"—like general liability, commercial auto and property—have dropped by 2% to 10% during the past year, said Zurich-American's Mr. Basta. In addition, municipal liability is "getting extremely competitive," he said.

Professional liability coverages and directors and officers liability are more of a mixed bag.

D&O is "relatively flat," said Jim Ansaldi, senior vp-D&O and professional liability underwriting for X.L. Insurance Co. Ltd. in Bermuda. X.L. is not increasing prices unless the account grew or its experience worsened, he said. "If it's an 'as is' risk, it'll get an 'as is' renewal," Mr. Ansaldi explained.

Most manufacturing D&O rates are flat, though rates for financial institutions are still rising, said Mr. Kelsey.

U.S. professional liability insurers are cutting back their coverage for law firms, Mr. Ansaldi noted, particularly those with financial institution clients.

Premiums for most classes of errors and omissions insurance are stable, Mr. Ansaldi said. But, premiums for law firms continue to soar, he said, noting that X.L. is seeking 5% to 8% increases for law firms. There has been a "contraction of limits" in the marketplace, he pointed out.

X.L. is no longer offering new law firm professional liability accounts the facility's full $50 million in limits, Mr. Ansaldi said. Rather, new accounts are being offered limits of only $25 million in excess of $50 million.

Law firms can find $40 million to $50 million in professional liability coverage in the London market and most firms can purchase limits of up to $70 million, without tapping X.L., Mr. Ansaldi said. "A law firm could still put together $100 million if it needed to."

X.L is gaining new D&O and professional liability clients formerly insured by Reliance National Insurance Co. in New York, Mr. Ansaldi said.

Worried about the financial security of Reliance, these companies are turning to X.L., according to Mr. Ansaldi. Reliance has downplayed concerns over its 1991 results and several rating agencies indicated that no downgrades are planned (*BI*, June 22).

A Reliance spokesman said last week: "Our D&O renewal retention rate is running about 90%, which is our normal retention rate. Our overall D&O book of business is 15% above last year and slightly ahead of budget."

Meanwhile, rates for excess general liability are "slightly ahead of last year—increasing by roughly 4.5% on average—for risks that did not change attachment points or suffer large losses," said Bob Cooney, senior vp-excess and general liability at X.L. Insurance Co. Ltd.

Higher-layer accounts are increasing at 10% to 15%, while accounts with exposures that have improved or scaled down are decreasing by 5% to 10%, Mr. Cooney said.

Mr. Cooney said an average risk could put together $300 million in coverage just between ACE Ltd. and X.L. Another $200 million may be found by tapping other facilities, he said.

The property market remains soft, said several insurers. Property rates, for both highly protected risks and non-HPR risks, are still heading south, by 5% to 10% according to the risk, said Chubb's Mr. Kelsey.

Travelers' Mr. Clark also estimated that property rates had dropped about 5%, and Continental's Mr. Ramsdell called the HPR market "soft."

Hartford Steam Boiler has not been able to obtain rate increases exceeding 5% for its HPR accounts, said Mr. Trainer.

"We're in much the same place we were two months ago," said Arkwright's Mr. Moriarty.

"There's nothing that's changing," said Allendale's Mr. McIntyre.

Hartford Steam Boiler raised prices 5% to 10% on new and renewal small and mid-size accounts earlier this year, said Mr. Trainer. The specialty insurer also raised prices, again 5% to 10%, for high-exposure accounts like pulp and paper companies and utilities, he said.

But, some high-hazard market segments, like utilities, are so competitive that price increases are not possible "even though

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Market turn

Continued from previous page

managing the soft market.

"The reinsurance market is more stable; you don't see a lot of shifting sands—offshore reinsurance mutuals," he added.

In addition, the regulatory atmosphere has changed, Mr. Uban explained. "We all know we can't do the dumb things we did last time," like canceling coverage or raising prices in the middle of a policy period. That knowledge may help restrain market volatility, he said.

"We will not see a repeat of 1985-86. The regulators will say, 'You did it to yourselves, guys,'" and refuse to grant large rate increases even in areas in which insurers did not do it to themselves," like workers compensation, said Richard W. Wratten, president of Transamerica Insurance Co.'s commercial insurance division in Woodland Hills, Calif.

"In the last market, the capital bases shrunk. Now there's plenty of capital," said Chubb's Mr. Kelsey.

"Capital markets are still supporting growth in surplus," said William E. Moriarty Jr., vp and staff officer-marketing for Arkwright Mutual Insurance Co. "Basically, companies are making money."

Mr. Kelsey also credited a technological, rather than financial, factor for changing the dynamics of the current soft market. Most insurers have much better management information systems now than they did six or seven years ago, he said. Insurers are thus able to measure rate levels against a standard, whether it be last year's rates or some other yardstick, Mr. Kelsey said.

Given the nature of the current soft market, a market turn might literally take an earth-shattering event, suggested Charles J. Clark, president of the commercial lines division of Travelers Insurance Co. in Hartford, Conn.

"It would take (something like) a huge earthquake in the United States to correct this market. The fact that the London or reinsurance market gets hit doesn't really drive" the U.S. property/casualty market, according to Mr. Clark.

'You can only Mickey Mouse with reserves so long,' says Transamerica's Mr. Wratten.

"This cycle isn't reinsurance-driven," he said.

When the market does turn, it will be "significant but not dramatic," Mr. Clark suggested. "We are in a deep hole, so it'll take quite a reversal, but it won't be a quick turn, and it won't be characterized by loss of (insurance) products," he said.

Other insurers offered less dramatic potential catalysts for an eventual upturn in prices.

Unless significant capital leaves the market, the stock market plunges or a significant player goes bankrupt, it is unlikely insurers will "get religion" anytime soon, Hartford Steam Boiler's Mr. Trainer said.

"What could turn the market over time is the impact of investment income on insurers' results," said American States' Mr. Uban. He added that if insurers' investments continue to perform poorly and company results deteriorate, "we may see some changes."

"There would have to be some company failures of significant magnitude" to turn the market, said Zurich-American's Mr. Basta.

Transamerica's Mr. Wratten was more blunt.

"I think you're going to have to have some companies go down. You can only Mickey Mouse with reserves so long," he said. Drawing down reserves when executives know the company is going to need them is nothing less than "irresponsible management," he added.

"I think we somehow have got to bring some order into the market we're dealing with. It's time that we run this thing like a business," said Mr. Wratten. ■

Insurers hungry for business, brokers say

By MICHAEL SCHACHNER and SARA MARLEY

1992 MIDYEAR RENEWALS

An overabundance of capacity, ample reinsurance and healthy earnings for insurers are combining to keep the bulk of the U.S. commercial property/casualty insurance market soft, according to brokers.

Competition remains as stiff as ever for property accounts and for multiline accounts for mid-sized businesses.

However, lines of business that are primarily written by the London market—like aviation and marine coverages—and high-level excess liability coverage are experiencing some firming both in pricing and terms.

In addition, directors and officers liability coverage and professional liability insurance for large law and accounting firms—lines that have been hardening over the past few renewal periods—continue to experience rate increases, brokers report.

But these are the exceptions rather than the rule, brokers say.

Insurers are hungry for new business and are generally willing to do whatever it takes as far as cutting rates and relaxing coverage terms in order to hang onto existing accounts, they say.

With investment income dipping, insurers continue to rely on premium dollars to fuel growth, brokers explain.

Thus, the U.S. commercial insurance market generally remains highly competitive and shows no sign of turning as a whole, according to brokers.

Only when insurer profits tumble significantly will underwriters put an end to the competition, they say.

"Insurers are posting record earnings, their surplus is high and their reserves are relatively low. Basically, the companies are making money and they see no reason to back away from what has gotten them there," said John O'Sullivan, managing director with Marsh & McLennan Inc. in New York.

"There's no evidence that we have hit bottom," said Don Weber, chief operating officer with Jardine Insurance Brokers Inc. in San Francisco. "Insurer profits are up, despite questionable reserving practices. As far as we can see, both the corporate and branch managers still want business and are willing to be very competitive on risks that fit their desires."

Brokers say the appetite for new business is high in order to increase revenues, especially since investment returns are lower than in previous years.

"It's pure economics, what I'd call Business 101, that's driving the market," noted M. Renwick Severance, vp-specialty lines with Hogg Robinson Inc. in Boston. "Investment income is low, so the underwriters have no other choice but to bring in the premiums and go after new business."

"The property/casualty companies just aren't hurting," said Chuck Weisblum, chairman of MLW Services Inc. in New York. "The catastrophes are all stuck in the reinsurance market. The real estate and junk bond market crashes hit the life industry. And with the influx of European capital, the name of the game is premiums. Things are as soft as they have ever been, and it's going to get worse before it gets better."

Insurers report

Another factor keeping rates down is plentiful reinsurance capacity for most lines.

And for lines for which the reinsurance market is not as favorable, insurers are simply retaining a larger portion of the risk in order to write coverage at the same terms, brokers say.

"When the last soft market turned, it was because reinsurance became less available. Since that time, companies have been taking higher retentions and haven't been relying as heavily on reinsurance," pointed out Bill Quinn, senior vp with Willis Corroon Corp. in New York.

The recession also has fueled the continuation of the soft market, according to brokers.

Policyholders "are looking to cut costs," said Daniel Batonik, a vp in the property division of Johnson & Higgins in New York. "When their program is up for renewal, they're willing to shop in new markets. Risk managers are under pressure to cut all the fat out. Loyalty goes out the window during a recession."

Brokers also note that recessionary periods lead to businesses downsizing, and smaller insurance buyers need less insurance.

"So insurers are collecting fewer premiums, not only because they are cutting rates, but because our clients are smaller," explained Mr. Batonik.

MLW's Mr. Weisblum observed that the current environment not only is keeping prices soft, but

Continued on next page

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Brokers

Continued from previous page

terms are soft as well. "The ease at which we can place what would normally be considered marginal business is incredible."

And, incumbent underwriters are continuing to display a willingness to do whatever is necessary to retain the business.

"Insurers are pricing new business more conservatively," said Elliott Jones, vp-marketing with Alexander & Alexander Services Inc. in Chicago. On the other hand, "They're very competitive on existing business. It's not like the insurers are volunteering rate reductions, but when the competition comes calling, they have to respond."

Brokers unanimously report that property business continues to be the hottest source of competition among commercial insurers.

"Property continues to drive the market. Most insurers are willing to jump at a good property risk. Highly protected risks are very soft, especially among the well-known HPR writers. Rate cuts of 15% to 20% are not uncommon," said Nelson Green, a vp with Poe & Associates Inc. in Tampa, Fla.

But it's not just HPR business that insurers are pursuing.

"A nice piece of Main Street property business can produce a surprising quote on any given day, and there doesn't seem to be any difference between small and large accounts. All property is attractive these days," Hogg Robinson's Mr. Severance pointed out.

A few brokers, though, claim property rates have been driven so low during previous renewals, that there's simply no room for further cuts. But property accounts that have been driven to rock bottom prices are simply renewing at expiring rates, which is still advantageous to insurance buyers, the brokers add.

"Most of our property accounts are seeing flat renewals, with an occasional reduction," said Robert Hilb Sr., president of Hilb, Rogal & Hamilton Co. in Glen Allen, Va.

"Large accounts seem to be holding their own, while the middle-market accounts are still soft, with 5% to 10% price reductions on average," added Mr. Weber of Jardine.

Brokers note that at a time when premiums are the main vehicle to offset low investment returns, property insurance is the most lucrative business for insurers. Property insurance's short tail makes it a perfect line of business to make quick profits, they say.

"Premiums are the way to stay afloat, and with risk managers fully aware of how cheap coverage is, it's property where an insurer can get away with coming in real low," said Charles Fiske, group marketing director with Sedgwick James Inc. in Memphis, Tenn.

Although insurers have been hit by a string of catastrophes over the past two years, causing more than $4 billion in insured damage claims, these losses have had virtually no impact on the commercial property insurance market.

Brokers also report no upturn in the primary general liability insurance market. They say rates are stable in most cases, or slightly lower if the account is being chased by more than one insurer.

"General liability has become rather static over the past nine months," said Mr. Green of Poe & Associates. "The incumbent carrier tends to make the final offer—it's usually the lowest—and that's where the risk stays."

"Middle-market casualty accounts are still soft, with 5% to 10% rate reductions, but every once in a while we'll witness a real horror story. When a property manager's premium for GL drops to $700,000 from $1.2 million, it tells you pretty much all you need to know," said Mr. Weber of Jardine.

David McGurn, president of International Special Risk Services, a unit of Arthur J. Gallagher & Co. in Itasca, Ill., said a 10% to 15% increase in a risk manager's liability exposure often slips by with a flat rate on renewal.

And Bill Bolton, chief executive officer of Bolton & Co., a regional broker based in Pasadena, Calif., said liability accounts generally are renewing at between 10% to 25% below expiring rates.

Richard Miller, chief executive officer of Willis Corroon Group P.L.C., who is based in Nashville, Tenn., labeled the municipal liability market "as competitive as anything in the business."

High-level excess liability rates, however, are firming, brokers report. They explain that insurers have realized that these policies need to at least bring in a minimum premium to justify the higher limits to which they're exposed.

"High-level excess is getting more expensive. The layer below that is pretty stable, but competition is even starting to get those premiums down," said M&M's Mr. O'Sullivan. "For limits below $25 million, the competition has become stiff."

"Only asbestos and risks with huge pollution exposures are off limits," said Mr. Weisblum of MLW Services. "All other lines of business are being actively solicited. Excess coverage is routinely going for minimum premiums."

"Capacity is there for all classes of excess liability," agreed Sedgwick James' Mr. Fiske. "The only change that's noticeable is that for limits above $30 million there is now a minimum premium."

Mr. Severance of Hogg Robinson agreed that insurers appear to be taking a firmer stand on pricing for high-level excess liability insurance.

"Underwriters seem to have found religion on high-level excess and high-hazard coverage," he said. "They now believe in minimum prices, which is an improvement."

Insurers continue to impose tougher terms and higher prices on most forms of professional liability coverage, brokers say. In some cases, however, terms for medical malpractice insurance are loosening.

"Professional liability always seems to be a moving target," said Mr. Severance. "Average prices are up 5% to 10% except for medical malpractice, which is loosening because of improved loss results and also because it's rebounding from a period when the underwriters overreacted."

"Accountants and lawyers are definitely seeing their premiums go up," said Mr. O'Sullivan of M&M.

"The severity of lawsuits against big firms has had an impact on this type of coverage."

"Accountants' coverage is al-

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most unavailable," agreed Mr. Severance.

Mr. O'Sullivan said smaller firms, though, are still able to obtain ample coverage because they are less susceptible to large damage awards.

Directors and officers liability coverage also is "tight," with the bulk of D&O capacity—over $100 million—resting offshore in alternative facilities, Mr. O'Sullivan said.

Mr. Jones of A&A also reported that D&O renewals are experiencing rate hikes of about 10%, but he stopped short of saying the D&O market is going through a "dramatic upswing."

Savings and loan institutions, according to Mr. O'Sullivan, cannot find D&O coverage in the standard domestic market.

"Financial institution bond renewals are being scrutinized more closely, and rates are rising," added Mr. Miller of Willis Corroon.

However, an exception is insurance for banking operations in the Southeastern United States, according to Poe & Associates' Mr. Green.

"There are about five insurers I know of lining up to write banks including their D&O," he commented.

And in California, bankers bonds are being issued with greater flexibility, specifically broader coverage terms and lower rates, according to Mr. Bolton.

The surety bond market overall remains fairly competitive, especially for smaller and midsized contracts, according to Brent LaGere of LaGere & Walkingstick Insurance Agency Inc. in Chandler, Okla.

"New carriers are getting into surety. There is definitely more competition for market share," he said.

Workers comp 'leads the list' of problems in the marketplace, says James Hatch of Johnson & Higgins.

Meanwhile, liability coverage for airline risks has been hardening for more than a year and is continuing to do so, according to Mr. Quinn of Willis Corroon. But the rate increases are smaller than they were a year ago, he said, pegging them at 5% to 10% in most cases.

U.S. airlines, he said, are experiencing even greater rate hikes—up to 60% on liability and 20% on hull coverage.

Joseph Lombardo, executive vp with Frank B. Hall & Co. Inc. in New York, commented that rate increases in aviation may be a repercussion of a dwindling buyer base.

Mr. Quinn agreed, noting that many military and defense contracts are hitting hard times. "But the corporate aircraft market is still soft," he said.

Brokers agree that coverage for petrochemical risks and any other type of industry with a high pollution exposure is now less available and more costly than at midyear 1991 renewals.

"Rates for marine, aviation and anything in the energy field are increasing, but not by as much as they should be," said Mr. Weber of Jardine.

The one line that continues to be a sticking point for most buyers is workers compensation.

"There are some problems in the marketplace, and workers comp leads the list," said James Hatch, senior vp of Johnson & Higgins in Philadelphia. "The main culprit is medical costs, which continue to increase at 10% per year."

Because of this trend, "the chance of getting 'real' insurance is getting dimmer all the time," said Mr. Hatch. "Any small employer that really needs to buy workers comp insurance is now in a very difficult situation."

Mr. Quinn agreed that many insurers simply want no involvement in voluntarily writing workers comp coverage on a stand-alone basis. "It's a very regulated class of business. Monoline comp is virtually impossible to find."

Regionally, workers comp is at its worst in states like California and Florida. Currently, only 25% of the Florida workers comp market is insured in the traditional market, with the remainder of employers either self-insuring or buying coverage in the residual market, said Mr. Green of Poe.

As long as the majority of the commercial property/casualty market remains soft, though, interest in alternative risk financing mechanisms like captives and self-insurance will remain relatively low, brokers agree. However, they say some clients are doing some early legwork in preparation for an eventual market hardening.

"People seem to be getting their stores in order in terms of captives and risk retention groups," said Mr. Fiske of Sedgwick James. "I don't anticipate one-third of the market going for alternatives this time, but people are getting ready."

For the market to turn significantly, insurers' profits will have to plummet, brokers agree. But if and when that happens, it is unclear exactly what form a market swing would take. Some brokers feel the market will turn dramatically, while most believe that it will turn gradually.

However, "We'll have to see a major outflow of cash before anything's going to change," said HRH's Mr. Hilb. "Something has to cut into that asset base the companies have been building. If the carriers increase their surplus by 20% again like they did last December, it'll be that much tougher to convince them that something needs to give."

Hall's Mr. Lombardo, like many insurers (see story, page 1), has resigned himself to operating in current conditions for the near future. "I don't even call this a soft market anymore. This is the market. It has been going on too long for it to be considered a cycle."

If the market does turn, it'll be a far more moderate hardening than during the mid-1980s, several brokers assert.

"I think carriers are far more likely to fine-tune their pricing and coverage limits. Certain lines will be corrected so that they're adequately priced. There won't be an overall unavailability of coverage like the last hard market," said Mr. Hatch.

"I sure hope the market turns gradually. The threat of government intervention is there," added Mr. Batonik of J&H.

"Underwriters will probably just make line-by-line corrections," said Larry Sorensen, director of corporate marketing with Rollins Burdick Hunter Group Inc. in Chicago. "I don't foresee broad-based changes." ■

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Surplus lines insurers see soft market as 'status quo'

By DEBORAH SHALOWITZ

1992 MIDYEAR RENEWALS

The persistent soft state of the surplus lines insurance market is prompting some surplus lines executives to rethink their definition of "normal."

They see no imminent end to the soft market, though a few isolated lines show signs of tightening.

For example, many surplus lines insurers and brokers said prices are rising for directors and officers coverage for troubled financial institutions and companies planning initial public offerings. In addition, rates are increasing for isolated professional liability policies.

Surplus lines market report

Rate increases also were cited for California earthquake coverage and for property risks in the Caribbean.

For the most part, however, rates for surplus lines coverages either are dropping or holding steady. Surplus lines executives say that generally liability rates are falling an average of 5% to 15% from a year ago. Most property rates are falling an average of 5% to 10% from a year ago.

To be competitive, surplus lines insurers are sometimes offering longer policy periods and dropping exclusions.

"The market is essentially the same as it's been over the past several years," said Marcus Payne, executive vp and chief operating officer of Crump E&S Group in Dallas.

"It is a rarity to renew an account on an as-is basis with no reduction in premium," said Ed Casey, president and chief executive officer of Stewart Smith Group Inc. in Los Angeles, the wholesale brokerage subsidiary of Willis Corroon P.L.C.

"I don't see any hard evidence to support a bottoming out, and most exposures are being renewed for less than the prior year," said Warren Stanley, president of Swett & Crawford Group in Los Angeles.

Several surplus lines executives said that, at the earliest, they expect the market to turn at the end of 1993. Many others refused to even speculate on when the market will turn.

"I've given up forecasting," said Kieran Burke, president of Tri-City Insurance Brokers in New York.

Several people suggested that a soft market may become the operating norm, rather than a cyclical marketplace.

The insurance cycle is "changing to an overall soft market with flashes of hardening from time to time," said Joseph Walsh, chairman of American Empire Surplus Lines Insurance Co. in Cincinnati.

"The market conditions we've been in for the past several years are what the normal cycle is," said Mr. Burke. This kind of cycle could continue through the 1990s, with the possible exception of a one-to-two-year spike in the market, he explained.

And, some commented that a "normal" insurance cycle may not exist anymore.

"I don't know that any of us has a vision of what's normal anymore," said Andrew Frazier, president of Western World Insurance Co. in Ramsey, N.J.

"I honestly feel that there are different circumstances that drive different cycles and there is no such thing as a typical cycle," said Ralph Palmieri, president and chief operating officer of Boston-based First State Insurance Co., a unit of ITT Hartford Group Inc.

When the market does turn, few expect it to be a wrenching reversal of fortune.

"The last time we had a soft market, we had a weak standard market and an even weaker surplus lines market," noted Mr. Frazier.

In 1984, admitted insurers' combined ratios averaged about 116%, while surplus lines insurers' combined ratios were even higher, he said.

"This time, the standard market is weak but the specialty market is strong, so the turn may be

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less wrenching because of this," he said. Many admitted insurers' combined ratios averaged 116% today, while specialty insurers are reporting much lower combined ratios, he said.

The primary force driving the market is excess capital, surplus lines experts unanimously agree.

"Clearly, (capacity) is, without any question, the major issue right now," said Kevin Brooks, president of General Star Indemnity Co., a unit of General Reinsurance Co. in Stamford, Conn.

As in the past several years, the appetite of the standard insurers for what have traditionally been surplus lines risks is still great. Surplus lines companies continue to lose premium to the admitted market, although many executives noted that there isn't much business left that can move from the surplus lines market to the admitted market.

For example, premiums at American Empire Surplus Lines have dropped from $356 million in 1986 to an anticipated $52 million at the end of 1992, said Mr. Walsh. Most of American Empire's lost business has moved to the admitted market, he said.

Only one of the executives interviewed could cite a risk that recently returned to the surplus lines market that had been written by the admitted market.

Mr. Frazier said he has seen the return to the surplus lines market of some large, frequency-driven risks with a lot of claims, like liability coverage for a chain of retail stores or supermarkets with lots of slip-and-fall claims. "These are administratively difficult to handle and the losses are fairly measurable," he noted.

To remain competitive, some surplus lines insurance companies are occasionally offering policyholders longer policy periods and dropping previously standard exclusions.

Mr. Burke said he has seen some two- and three-year policies written for umbrella liability and excess liability risks.

Crump's Mr. Payne said sudden and accidental pollution coverage in some cases is not automatically being excluded from policies.

He also said coverage for athletic participants, traditionally excluded from a school's umbrella liability policy, is now being included in some cases.

Still, insurers said in most cases they are not willing to change policy terms and conditions to entice buyers.

"If we have restrictions in policy forms, they exist as a result of painful lessons," commented First State's Mr. Palmieri.

Rates are continuing to drop or hold steady for most types of surplus lines coverage. Capacity is holding steady or is even increasing in some lines.

Rates for property coverage still are falling in most cases, though the declines are not as steep as in previous renewal seasons because prices are so low already, several executives said.

Rates for both low-layer excess property coverage—up to $10 million excess of $1 million—and high-layer excess property coverage—excess of $10 million—are dropping 5% to 10%, according to Paul McCain, senior property broker with Crump E&S in Dallas.

Tri-City's Mr. Burke estimated that with the exception of California earthquake coverage and Caribbean property coverage, rates for both low- and high-layer excess property coverage are dropping 10% to 20%. Rates for California earthquake coverage are holding steady, while rates for Caribbean property coverage are increasing, he said. Caribbean property coverage is "probably the only tight market in the universe," Mr. Burke quipped, pointing out that rates are up 20% to 100% and capacity is down 50% to 60% for these hurricane-prone risks.

Rates for boiler and machinery coverage generally are holding steady, with some large accounts seeing rate reductions of up to 20%, Mr. McCain noted.

Rates for both low-layer excess liability coverage—up to about $10 million excess of $1 million—and high-layer excess liability coverage—excess of $10 million—are dropping between 5% and 25%, say several executives.

Generally, rates for product liability coverage are falling and capacity is increasing as more companies, especially admitted insurers, enter the market.

For example, rates for primary product liability coverage—up to $1 million—are dropping 5% to 20% on accounts that generate annual premiums of more than $100,000, noted Mr. Austin. Rates for smaller accounts are more stable, he said.

Municipal liability rates are dropping slightly—5% to 10%—and in some cases stabilizing, the experts said.

Western World's Mr. Frazier said municipal liability rates have bottomed out and will start to rise soon. He explained that rising loss costs, due to police liability and wrongful termination suits, will soon begin to push rates up.

Generally, rates for errors and omissions coverage are holding steady or dropping 5% to 10%, most executives said. However, First State's Mr. Palmieri said he has seen rates for some E&O renewals rise 5% to 10% from a year ago.

Similarly, rates for directors and officers coverage generally are holding steady or dropping only 5% to 10%, the experts said, with the exception of D&O coverage coverage for financial institutions and for companies contemplating initial public offerings. Rates for those two specialized risks are increasing, in some cases dramatically.

Kevin Kelley, president of Lexington Insurance Co., an American International Group Inc. unit in Boston, said rates for directors and officers coverage for banks and other financial institutions are rising 15% to 50% in some cases.

Capacity for most types of professional liability risks is holding steady or increasing.

For example, capacity has quadrupled over the past year for professional liability coverage for environmental consulting engineers, remedial action contractors, asbestos removal contractors and lead removal contractors, according to American Empire's Mr. Walsh.

And, while the market for professional liability coverage in London is tightening, more admitted companies in the United States are offering coverage which is replenishing capacity, said Steve Conner, president of Crump E&S of Dallas.

Rates for high-hazard or long-tail liability risks, like chemical and pharmaceutical manufacturers, are stable, though competition for the larger accounts is fierce, according to several experts.

Rates for environmental impairment liability coverage are still high and holding steady, but General Star Vp Ron Austin pointed out that capacity is increasing due to consumer demand, which could push rates down in the future.

"A lot of people have lost some of the fear that they had of the EIL market," agreed Mr. Payne.

Rates for recreational, sporting events or entertainment liability coverage are dropping between 10% and 40% from a year ago because of increased capacity.

Overall, the rate cutting seems to be consistent nationwide, surplus lines executives say.

In addition to declining premium revenue, the fortunes of surplus lines insurance companies are being wracked by several other factors.

For example, although the surplus lines industry has not been hit hard by the recession, a few executives said the recession has had some effect on their companies' business.

The recession has hurt contracting risks, noted Western World's Mr. Frazier.

Although few experts cited alternative risk financing mechanisms—like self-insurance, captives and other offshore facilities—as having a great impact on the surplus lines market, a few noted that these alternatives are increasing competition in an already competitive market.

These programs put "fuel on the fire," commented General Star's Mr. Brooks. ■

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Jury awards

Continued from page 3

Society Assn. of Amherst, Mass., 141 jurors in 18 tort cases were interviewed. Plaintiffs prevailed in 14 of those cases.

Four out of five jurors believe people are too quick to sue instead of seeking an alternative resolution, the study found.

But, one-third of the surveyed jurors believe that most people who sue have legitimate grievances.

The survey also reports that 39% of jurors believe that jury damage awards have been too high.

The survey found that jurors were generally skeptical "about the profit motives of individual plaintiffs rather than of business defendants" and that the jurors were "committed to holding down damage awards."

"The message about the litigation explosion is getting through," said defense attorney J. Ric Gass of Kravit, Gass & Weber in Milwaukee. "Juries appreciate that deep pockets get sued because they're deep pockets."

However, others disagree with the survey's findings.

While jurors generally believe too much litigation is filed, they still give in to sympathy when confronted with individual cases, said F. Thomas Harrison, editor of the Boston-based newsletter Lawyers Alert, which is directed at plaintiffs' attorneys.

"The insurance industry has done a very good job of convincing people that there is a lawsuit crisis," Mr. Harrison said. "But general opinion about the litigation explosion does not translate into jury verdicts."

Mr. Harrison cited a survey conducted by Metricus Inc., a Palo Alto, Calif.-based trial consulting firm, that found that although about 66% of jury-eligible Americans believe jury awards are too high, 60% still believe a $1 million verdict is "just a slap on the wrist" to a big company.

In the face of this perceived anti-business sentiment, a group of corporate attorneys are trying to fight back—with a training video for defense attorneys.

'The message about the litigation explosion is getting through,' says Mr. Gass.

The Federation of Insurance & Corporate Counsel, a nationwide association of defense attorneys as well as insurance and corporate executives, recently developed a videotape that provides defense attorneys with strategies for making jury members conscious of their sympathies for injured plaintiffs.

The video suggests ways that defense attorneys can persuade jurors to put sympathy aside and decide the case more objectively.

The video urges defense attorneys to make jurors aware that decisions based on stereotypes toward big business and emotional appeals from the plaintiff are not fair and just.

It suggests strategies like making sure jurors are aware of the nature of the plaintiff's injuries or handicap and having a representative from the defending corporation in the courtroom to humanize the company.

The video also advises defense attorneys to openly discuss with jurors the issue of plaintiff sympathy.

"We are beginning to get different verdicts because we take that time to bring to a conscious level the subconscious tendency to award people damages out of sympathy," said Mr. Gass, who is a member of the Federation of Insurance & Corporate Counsel.

The point of the video is to get attorneys to "handle sympathy directly by saying, 'Of course people will be sympathetic, but don't let it interfere with your objectivity,' " said Mr. Gass, who appears in the video.

The tactics suggested in the video play off warnings of a litigation explosion and insurance crisis, which were spread through ad campaigns by Aetna

Continued on next page

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Casualty & Surety Co. of Hartford, Conn., and New York-based Johnson & Higgins in the late 1980s.

The ads, which ran in national magazines and newspapers, warned that damage awards in tort cases were putting obstetricians and surgeons out of business and jeopardizing high school athletic programs.

Other ads contended that the cost of the "litigation crisis" is being paid by consumers. Other ads gave examples of frivolous cases that clog up the court system.

The ad campaign "spoke to peoples' deepest-held values," commented Mr. Harrison of Lawyers Alert.

And apparently people heard.

About three years ago, jurors were not aware of a "litigation crisis," according to Mr. Gass. But about 20% of the jurors with whom he now deals have read something about it. And those people tend to lead the jury, he said.

Ms. Hans of the University of Delaware pointed out that the survey showed no correlation between jurors' attitudes toward business and the size of awards.

However, the more that jurors believed a litigation explosion exists, the lower the awards, she said.

The survey shows that jurors were receptive to defense attorneys who used strategies similar to those shown in the video, Mr. Gass said. He believes these attorneys were successful because mass media exposure of "shockingly high" jury awards has made the public wary of unnecessary litigation.

"The survey is consistent with my experience in the courtroom," Mr. Gass said.

"The discovery that jurors will find for the plaintiff but will limit damages corroborates what we all knew: that sympathy can be put aside by the jury," he explained.

However, another attorney who appears in the video said that when liability is unclear, a natural cynicism toward big business emerges.

"If the jury is sitting there torn, and the case is between Mr. and Mrs. John Smith and GM, the jury is going to worry a lot less about GM," contended Jack Daniels, senior partner of Daniels, Barrata & Fine in Los Angeles.

Sympathy is going to play a big role when the facts of liability are ambiguous, Ms. Hans agreed.

But, she added, the same holds true of any "extralegal" factors.

One "extralegal factor" that was uncovered by the survey that surprised Ms. Hans was the respondents' level of hostility toward the plaintiff.

Mr. Daniels concurred on the trend toward jurors' reduced sympathy for plaintiffs. He recalled a case he defended, *Von Beltz vs. Stunt Man Inc.*, in which stuntwoman Heidi Von Beltz sued for damages after she sustained injuries during a car accident on the set of the movie "Cannonball Run."

The accident left Ms. Von Beltz a paraplegic. But, because she had chosen not to wear a seat belt while filming the scene, the jury found her 35% responsible for her injuries and reduced the verdict proportionately.

Ms. Hans said this 1989 trial is an example of the concern about individual responsibility expressed by jurors in the survey.

'The survey is consistent with my experience in the courtroom,' says Mr. Gass. 'The discovery that jurors will find for the plaintiff but will limit damages corroborates what we all knew: that sympathy can be put aside by the jury.'

"Jurors frequently penalized plaintiffs who did not meet high standards of credibility and behavior, including those who did not act or appear as injured as they claimed. . .those with pre-existing medical conditions and those who did not do enough to help themselves recover from injuries," according to the survey authors.

•

For more information on the survey, "Jurors' Judgments of Business Liability in Tort Cases: Implications for the Litigation Explosion Debate" contact Valerie Hans at the Department of Sociology and Criminal Justice, University of Delaware, Newark, Del. 19716, 302-831-1236.

For a copy of the Federation of Insurance & Corporate Counsel video, which costs $150 including shipping and handling, contact J. Ric Gass, Kravit, Gass & Weber, 757 N. Broadway, Suite 600, Milwaukee, Wis. 53202; 414-271-7444.

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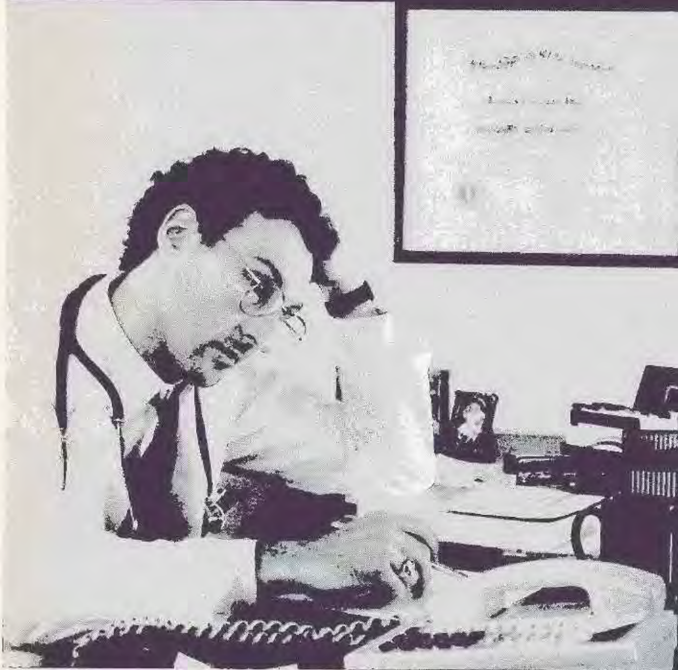

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Business Insurance

Benefit bills

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tax on distributions to terminated employees if the distributions are not directly transferred by the employer to an IRA or to another defined contribution plan.

While the new law imposes new administrative requirements on employers, those burdens will not be overwhelming, benefit consultants say.

"I'd call it a nuisance, not a monumental or troublesome issue," said Frederick Rumack, director of taxes and legal services at Buck Consultants Inc. in New York.

Under the new law, if a terminated employee takes a distribution and rolls it into an IRA or his or her new employer's pension plan within 60 days after leaving his or her former job, the 20% withholding tax still would apply.

But, an employee could later receive a refund of the amount withheld from the government.

To avoid the 20% withholding tax, the distribution must be made directly by the employer, or the employer's plan administrator, in a so-called trustee-to-trustee transfer.

The 20% withholding tax would not apply to distributions

'I'd call it a nuisance, not a monumental or troublesome issue,' Mr. Rumack says of a new benefits law.

to the employee in the form of equal periodic payments, like a monthly annuity.

These new requirements, which generally will apply to distributions made after Dec. 31, are a significant change from current law.

Currently, lump-sum distributions are subject to a 10% withholding tax. However, pension plan participants can elect not to have any withholding taxes taken out of the distribution by filling out an Internal Revenue Service form.

Employers will have to provide a written explanation to employees that they can elect to have the distribution directly transferred to an IRA or their new employer's defined contribution plan. The legislation directs the secretary of the Treasury to develop a model notice that employers can use.

An employer, or its pension plan administrator, can require employees who elect a direct trustee-to-trustee transfer to provide "adequate information" about the retirement plan to which the distribution is to be transferred.

Benefit consultants suggest that employers ask employees to provide information that shows that the new employer's pension plan is tax-qualified and that the new employer will accept a direct transfer.

"You have to tell the employee the information you feel you need," said Gerald Uslander, a principal with William M. Mercer Inc. in Washington.

However, the new employer is not required to independently verify the information provided by the terminated employee, noted Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

The Labor Department estimates that about 1 million workers last year received about $12 billion in pre-retirement pension distributions, most of which, it says, was spent by the worker and not rolled over into IRAs or employer-sponsored retirement plans.

Benefit consultants say revenue as well as public policy considerations were behind the passage of the 20% withholding tax and the direct transfer provisions.

The new withholding tax will raise roughly $2 billion in 1993, which will help pay for other provisions in the legislation, including a one-time 20- to 26-week extension of unemployment benefits.

That gain will occur because taxes that would have been paid in 1994 on 1993 distributions

Continued on next page

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MARKET STIMULUS: Market changes have caused insurers to take a cautious approach to many energy risks.

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Benefit bills

Continued from previous page

now will be withheld in 1993, when the distributions are made.

Aside from snaring more revenues, legislators also hope that giving employees the option of having their employers directly transfer pension distributions to IRAs or to their new pension programs will discourage employees from spending their distributions, according to benefit experts.

"Policymakers want to encourage workers to save for retirement," said Frank McArdle, a consultant in Hewitt Associates' Washington office.

"It is important for workers changing jobs to save their pension funds instead of spending lump sums they may receive when they leave. This will encourage the direct transfer of funds into a new retirement plan or an IRA," said David Ball, assistant secretary for the Labor Department's Pension and Welfare Benefits Administration.

Meanwhile, legislation, H.R. 11, passed by the House earlier this month and awaiting Senate action would somewhat ease 401(k) administrative burdens for employers.

The legislation would create two new safe harbors for 401(k) plans. Plans qualifying for either safe harbor would not be subject to IRS non-discrimination tests, which are used to determine whether contributions made by high-paid employees exceed contributions by lower-paid employees by legally prescribed amounts.

Under the proposed safe harbors, an employer would have to either:

- Provide matching contributions equal to 100% of employees' elective contributions, up to 3% of employee compensation. It also would have to provide matching contributions equal to 50% of employee contributions between 3% and 5% of employee compensation.
- Automatically make contributions equal to at least 3% of employee compensation, regardless of whether employees contribute to the plan.

Employer contributions would have to be immediately vested under either safe harbor.

Benefit experts say that most employers would have to beef up their 401(k) matching contribution formulas to qualify for the safe harbors.

In addition, under another change, employers with 401(k) plans would be allowed to compare salary deferrals made by lower-paid employees during the previous year with the contributions made by high-paid employees in the current year.

By contrast, current IRS regulations now require employers to compare the current year contributions of the two groups when running the non-discrimination tests.

By using lower-paid employees' prior-year contributions, employers could know at the start of a plan year how much high-paid employees could contribute to the plan without failing the non-discrimination tests.

These provisions are contained in legislation that would also allow employees who return to work after military service to make retroactive contributions to 401(k) plans while their employers—if they offer a matching feature—would have to match the veterans' contributions (*BI*, July 6; June 29).

The legislation would be retroactive to August 1990. That would allow thousands of reservists called to active duty during the Persian Gulf crisis to make retroactive contributions to 401(k) plans.

According to the Defense Department, 216,871 reservists were called up during the Persian Gulf crisis. However, it is not known how many were covered by 401(k) plans and how many returned to work at their prior employers.

The legislation, though, would apply not only to reservists whose military units are activated but also to employees who voluntarily quit a company, enlist in the military and eventually return to their old jobs.

The legislation also makes several modest changes to simplify pension plan administration. ■

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Garamendi cuts comp rate request

By LOUISE KERTESZ

SACRAMENTO, Calif.—Insurance Commissioner John Garamendi has approved a workers compensation rate hike that is 70% less than the increase proposed by the state rating bureau.

At the same time, Mr. Garamendi called on Gov. Pete Wilson and the Legislature to crack down on workers comp fraud and "put the brakes on the fundamental costs driving the workers compensation system," which he identified as stress claims, medical and legal costs, and the cost of vocational rehabilitation.

"We must stop the special interests from unjustly profiting from an increasingly costly workers compensation system," Mr. Garamendi said.

While insurance companies and the state's independent rating bureau warn of the dangers of what they deem inadequate rates, insurance companies also are hailing Mr. Garamendi's emphasis on curbing workers comp abuses.

"We're hopeful, because we think that just as he saw the light with no-fault (auto insurance), he's beginning to see the light in workers comp reform," according to a spokesman for the Sacramento-based Assn. of California Insurance Cos.

The 6.7% increase in workers comp rates that went into effect immediately after Mr. Garamendi's July 2 approval "will both keep costs to employers as low as possible and ensure that workers compensation insurance companies are adequately funded," according to the Department of Insurance.

But the Workers Compensation Insurance Rating Bureau of California is not convinced that Mr. Garamendi's rate increase is adequate. In April, the San Francisco-based WCIRB proposed a 23.1% rate increase.

"We looked at the loss experience being reported by insurance companies, and it was clear that premium rates were grossly inadequate," said Robert G. Mike, president of the San Francisco-based WCIRB.

Insurers' workers comp loss costs in 1991 "were about $1.8 billion greater than anticipated" in the rate structure, he noted.

Last October, the WCIRB proposed a rate increase of 11.9% (*BI*, Oct. 21, 1991). But the Department subsequently allowed only a 1.2% increase.

"Without a rate increase (beyond the 1.2%), we were projecting $1.7 billion in losses" to workers comp insurers in 1992, or 86% of total premium, Mr. Mike said.

The WCIRB requested a 23.1% rate increase "based on the legislatively mandated provision that losses be no more than 67.2% of premium," he explained. That loss-ratio cap was established by workers comp reform legislation enacted in 1989, according to Mr. Mike.

With only a 6.7% rate increase, "our prediction is that losses will be significantly greater than 67.2%" of premium, he said.

"I don't think we will see any catastrophes occur within the next year or two because of this, but in the long term, inadequate rates can lead to serious availability problems," Mr. Mike warned.

"The commissioner has granted rate increases of only 1.2% and 6.7% over the past two years. The real possibility exists that continued rate suppression and rising costs may launch a downward spiral that could result in serious damage to a system designed to protect employers and injured workers," agreed Thomas F. Conneely, the ACIC's president.

"The state insurance code requires that workers comp rates provide enough return to allow insurers to cover skyrocketing cost increases and remain solvent. We hope that the commissioner's rate-setting today proves over time to comply with that law," he said.

Mr. Conneely emphasized, however, that the ACIC "is pleased that the commissioner. . .recognized (that) runaway legal and medical costs threaten the workers compensation system and that reform legislation is urgently needed."

The ACIC backs employer-supported reform legislation, A.B. 3167, introduced by Assemblyman Jim Brulte, R-Los Angeles, that cracks down on legal and medical abuses (*BI*, March 23).

Although A.B. 3167 currently is deadlocked in the Assembly Insurance Committee, its major sections will be incorporated into a new omnibus workers comp reform bill by the end of the summer, the ACIC spokesman said.

Meanwhile, Mr. Garamendi is still backing A.B. 2380, sponsored by Assemblyman Burt Margolin, D-Los Angeles, which would give regulators greater discretion in ratemaking by no longer permitting insurers to build a standard expense ratio into rates. (*BI*, Feb. 10).

A.B. 2380 was scheduled to be taken up by the full Assembly last week. ■

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For The Record

Mayors seek federal earthquake program

WASHINGTON—The U.S. Conference of Mayors has adopted a resolution calling for the establishment of a federal earthquake hazards reduction program.

The program would "prepare emergency management systems at the local level" to help save lives and mitigate earthquake-related losses, the resolution says.

The federal program also would ensure that earthquake insurance is "affordable and available," according to the resolution.

The resolution was submitted at a June 24 meeting during the Mayors Conference in Houston by the mayors of Los Angeles, Pomona, San Francisco and San Bernardino, Calif.; Seattle and Tacoma, Wash.; Portland, Ore.; Jefferson City, Mo.; and Elkhart, Ind.

"Scientists conclude that (a) catastrophic earthquake is as likely to occur east of the Rocky Mountains as it is in the western states," according to the resolution.

If such a catastrophic earthquake struck a major metropolitan area, it could cause more than $60 billion in damages and devastate public infrastructure, the resolution says.

CNA comp clients to get managed care

NASHVILLE, Tenn.—FOCUS Healthcare Management Inc. has contracted to provide CNA Insurance Cos. with workers compensation medical cost management in an eight-state region.

The Nashville-based cost management company will provide CNA's workers comp policyholders in Alabama, Arkansas, Louisiana, Mississippi, New Jersey, Oklahoma, Pennsylvania and Tennessee with a preferred provider network and utilization review services.

FOCUS estimates managed care will save CNA more than $1 million annually in workers comp medical expenses in the eight states, said Bill Piper, executive vp for FOCUS in Nashville. In 1990, CNA's combined workers comp written premiums were $287 million for the eight states, he said.

Travelers to assume Revere's small groups

HARTFORD, Conn.—The Travelers Corp. as of June 1 is insuring the entire small group medical insurance business of Worcester, Mass.-based Paul Revere Insurance Group.

The business, which generates $25 million in annual premium, covers 15,000 employees and dependents.

The agreement covers only the group medical business written by Paul Revere, which will continue to provide group life, dental and disability coverage to policyholders.

Benefit administrator Consolidated Group Trust Inc., of Framingham, Mass., is administering the coverage.

At renewal time, Travelers and Consolidated Group Trust will offer each employer covered under the new arrangement the option to covert to Travelers' preferred provider network and other managed care products where available.

Medicare now pays for preventive care

WASHINGTON—New Medicare regulations allow the federal program to pay for a variety of preventive services as long as the services are performed by designated federally funded health centers.

The expansion of benefits, which took effect June 12, was mandated by the Omnibus Budget Reconciliation Act of 1990. The expanded benefits include routine physical examinations, vision tests, hearing tests and certain vaccinations.

AAMGA taps Steves as its new president

HOUSTON—Fred Steves, managing director for property and casualty insurance at Myron F. Steves & Co. in Houston, is the new president of the American Assn. of Managing General Agents.

Edwin J. Calabrese will replace Mr. Steves as president-elect. Mr. Calabrese is senior executive vp of Hull & Co. Inc. in Fort Lauderdale, Fla.

The new officers took their posts at the AAMGA's annual meeting at White Sulphur Springs, W.Va.

Ohio State receives $100,000 from insurer

COLUMBUS, Ohio—Travelers Group is donating $100,000 to Ohio State University in Columbus, Ohio, for research to minimize the risk of job-related injuries of the lower back, as well as cumulative trauma disorders of the arms and hands.

Such injuries account for more than 50% of workers compensation medical costs, the National Safety Council says.

Low back injuries alone cost U.S. businesses $30 billion in lost time and medical benefits, according to the National Institute for Occupational Safety and Health in Washington.

Law firm told to find if client is fraudulent

SAN FRANCISCO—A law firm's "duty of care" to a client includes an obligation to protect the client from liability and to conduct its own investigation to verify pertinent information, the 9th U.S. Circuit Court of Appeals has ruled.

"A lawyer has to act competently to avoid public harm when he learns that his is a dishonest client," a three-judge panel decided June 29 in *Federal Deposit Insurance Corp. vs. O'Melveny & Meyers*.

O'Melveny & Meyers had been hired by American Diversified Savings Bank to assist with two real estate syndications in 1985. The savings and loan association was taken over by the FDIC in 1986. The FDIC that same year filed suit against two American Diversified officials, charging both with breach of fiduciary duty and one with violation of the federal Racketeer Influenced and Corrupt Organizations act.

In the 1989 suit against the law firm, the FDIC charged the firm with professional negligence, negligent misrepresentation and breach of fiduciary duty in connection with its legal services and advice to American Diversified.

O'Melveny's position is that "a lawyer owes no duty to uncover a client's fraud nor to advise the client and the world of that fraud," the court decision notes. However, the court said the firm should have made a "reasonable, independent investigation" of the facts.

The ruling overturns a district court decision granting O'Melveny & Meyers a summary judgment in the case and returns it to the district court for trial.

A spokesman for the law firm could not be reached.

Texas coverage rules for leased employees

AUSTIN, Texas—Employee leasing firms are facing a renewed attack by the Texas Department of Insurance over how the companies pay workers compensation insurance premiums.

The department is proposing a rule that would require employee leasing companies that buy coverage for workers who are leased back to clients to pay workers comp premiums based on the clients' loss experience.

The rule could be adopted by the three-member State Board of Insurance later this month, after a public hearing is held July 23.

If adopted, the rule would replace one that prohibits leasing firms from purchasing workers comp coverage for employees leased back to client companies. Enforcement of the current rule, however, has been blocked by a temporary injunction issued by State District Court Judge Pete Lowry in January (*BI*, Feb. 3).

"This new rule is a sensible and defensible way to get us out of the courthouse," said Claire Korioth, chair of the State Board. "Prolonged litigation could have delayed a solution, and that is something the Texas workers compensation system cannot afford."

Judge Lowry has postponed a July 20 hearing on whether to make the temporary injunction permanent, pending the board's consideration of the new rule.

The new rule was drafted along the lines of model legislation adopted by the National Assn. of Insurance Commissioners, said John Moore, an attorney with Rentea & Whitehead, an Austin, Texas, law firm that represents 16 employee leasing firms that sought the injunction (*BI*, Sept. 30, 1991).

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Comings & goings: Buyers

Marshall heads BHP's group risk management

Charles R. Marshall, 57, has been appointed BHP Petroleum Pty. Ltd.'s group risk manager, based at the company's Melbourne, Australia, headquarters. Mr. Marshall is responsible for the identification and evaluation of risk exposures, establishment of risk management procedures and programs, and management of insurance not provided through other corporate sources. He reports to Tony Barnes, group general manager-finance. Mr. Marshall moved to BHP from the position of corporate risk manager for Denver-based Hamilton Oil Co., an international oil and gas exploration and production company that BHP acquired in 1991. Before that, he was risk manager for City Services, a former Tulsa, Okla., oil company that was merged into Occidental Petroleum Corp. Mr. Marshall holds the Chartered Property & Casualty Underwriter designation and is a member of the Society of Fellows, Australian Insurance Institute. He earned a bachelor's degree in science, business and economics from Illinois Institute of Technology in Chicago.

Mr. Marshall

* * *

Samuel Y. Fisher Jr. replaced Mr. Marshall as risk manager for Hamilton Oil Co. Mr. Fisher, who handles all regional risk management activities, manages the company's membership in Oil Insurance Ltd. in Bermuda and is vp of H.B. Insurance Ltd., a Bermuda captive. He reports to Chairman Fred Hamilton. Mr. Fisher previously was Hamilton's insurance manager. Previously, he was a risk management consultant for Saline Water Conversion Corp. in Riyadh, Saudi Arabia. Mr. Fisher in 1990 founded the Colorado Assn. of Captive Entities. He holds the Associate in Risk Management and the Chartered Property & Casualty Underwriter designations, and a bachelor's degree in psychology from Memphis State University.

* * *

Dale L. Schultz, 42, has joined Samaritan Health Services in Phoenix as vp-risk management. Mr. Schultz is responsible for risk financing; safety and risk control; the workers compensation, professional and general liability insurance programs; and claims. He also is responsible for a captive, Samaritan Insurance Funding Ltd., domiciled in the Cayman Islands. Mr. Schultz reports to Dr. Dan Dearen, executive vp of Samaritan, which is part of The Samaritan Foundation, an Arizona health care provider that includes nine acute-care hospitals and four psychiatric facilities. Mr. Schultz had been administrator of risk management for Samaritan from 1981 to 1985. A nationally recognized leader in risk financing and control, Mr. Schultz is known for work in hospital-assisted physician insurance programs and physician peer review programs. He developed nine programs in seven states while vp-risk management for The Daughters of Charity National Health System, headquartered in St. Louis. Mr. Schultz, a deputy member of RIMS, holds the Associate in Risk Management designation and a bachelor's degree in business management from Arizona State University in Tempe.

* * *

We'd like to report on staff changes in your company's risk management, safety and employee benefits departments. Just drop a note to Roseanne White, Copy Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-7785.

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Info

• Jury awards are often twice as much for back injury cases in which the defendant is a business or government agency as they are for cases in which the defendant is an individual, according to **"Cervical, Lumbar and Thoracic Strains,"** a report published by LRP Publications. Copies of this report are available for $29.50 plus $3.50 for shipping and handling. LRP Publications, 747 Dresher Road, P.O. Box 980, Horsham, Pa. 19044-0980; 800-341-7874, ext. 343.

• **"Ergonomic Seating: Improving Efficiency, Comfort and Health in the Workplace"** presents an introduction to the science of ergonomics and ergonomic seating principles in video form. Available from Ajusto Equipment Co., the videotape also discusses the features of Ajusto's ergonomic chairs. The 20-minute video is free to Ajusto customers; $14.95 for others. Contact Ajusto, P.O. Box 348, Bowling Green, Ohio 43402; 800-543-4996.

• A book explaining the **current legal trends in agent/broker liability** is available from the National Assn. of Casualty & Surety Agents. The book, titled "Agent/Broker Liability for Insurer Insolvency: Planning for the Best, Preparing for the Worst," is now available for $25 per copy. Contact NACSA, 316 Pennsylvania Ave. S.E., Suite 400, Washington, D.C. 20003; 202-547-6616.

• The Insurance Information Institute has published a book offering information to **small and midsize business owners on how to get the best insurance** for their business. "Insuring Your Business" discusses the types of coverage that all business owners should be aware of, as well as specific coverages needed by certain types of businesses. Copies are available for $22.50 each plus $2.50 for shipping and handling. Contact the Insurance Information Institute, 110 William St., New York, N.Y. 10038; 212-669-9200; fax: 212-791-1807.

• Employees and employers can learn about the **risks of occupational exposure to bloodborne pathogens** from four booklets recently published by the Occupational Safety and Health Administration. "Occupational Exposure to Bloodborne Pathogens" explains the risks of diseases like hepatitis B and acquired immune deficiency syndrome and how those risks can be reduced; "Bloodborne Pathogens and Acute Care Facilities" is designed to help health care workers understand and comply with the regulations; "Controlling Occupational Exposure to Bloodborne Pathogens in Dentistry" is for dental workers involved in clinical procedures; and "Occupational Exposure to Bloodborne Pathogens: Precautions for Emergency Responders" is aimed at law enforcement officers, firefighters, paramedics and others who can expect to come in contact with blood in the course of their work. Each booklet discusses a range of subjects including exposure control plans, communicating hazards to employees, preventive measures, methods of control, what to do if an exposure incident occurs and additional sources of OSHA assistance. A single, free copy of each book is available by sending a self-addressed label to the OSHA Publications Office, 200 Constitution Ave. N.W., Room N3101, Washington, D.C. 20210; 202-523-9667.

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INTERNATIONAL

U.K. buyers' rates are rising

Employers liability, motor fleet liability see biggest hikes

By GAVIN SOUTER

LONDON—It's the end of the line for rate cuts in the British commercial insurance market.

Most policyholders are seeing some increases in rates across most lines of coverage in 1992. And those that have escaped with unchanged terms this year are expecting harder times next year.

The two areas that are seeing the largest increases are employers liability insurance and motor fleet liability coverage.

"We are looking for increases of between 25% and 30% for both employers liability and motor fleet business," said Peter Foreman, managing director of Sun Alliance Insurance International Ltd., a unit of Sun Alliance Group P.L.C. in London.

All of the major British insurers are increasing their employers liability rates by at least 20%, concurred Hamish Ritchie, chairman and chief executive of Bowring Marsh & McLennan U.K. Ltd.

"Decreases in rates have dried up everywhere, and we are seeing the largest increases in employers liability and motor fleet business," he said.

Employers liability insurers are reacting to the large increase in claims they have experienced in recent years, he said.

Current and former employees of companies are becoming more aware of employers liability payments and are making more claims, Mr. Ritchie said.

"And even if the claims are unfounded, you still have to defend them," he said.

Companies are expecting rate increases of up to 30% for employers liability coverage, said Geoffrey Saunders, risk management adviser to RTZ Corp. P.L.C., a mining company.

This is partially to offset an expected increase in claims from repetitive strain injuries, like carpal tunnel syndrome, he said.

"Underwriters are expecting their claims experience from RSI claims to deteriorate, and they are anticipating this by pushing through increases at the moment," Mr. Saunders said.

Underwriters realize that RSI claims will be a significant problem in the future, but since there have been few court awards in the United Kingdom made to employees suffering from RSI, they cannot make accurate estimates for reserves, he said.

"There is so little experience of what the courts will award that we cannot come up with a ballpark figure," Mr. Saunders said.

Insurers are becoming more wary of RSI claims from office workers, observed Peter Anscomb, London development director at Bain Clarkson Ltd.

"In the past, insurers have faced RSI claims from manual workers, but now they are seeing that there is more and more likelihood of claims from office workers," he said.

Last December, a British court for the first time awarded damages to office workers who suffer from RSI (*BI*, Jan. 20).

Some major insurers are not writing new employers' liability business.

"We are taking a low profile on employers' liability, and we are not actively competing for it," said Nigel Lister, assistant general manager-U.K. at General Accident Fire & Life Assurance Corp. P.L.C., in London.

Rates to cover the risk of industrial disease claims have long been too low, he said.

"There are so many problems with long-tail diseases that even if you get 100% increases, in

Continued on next page

Mixed reviews of report on Lloyd's handling of LMX losses

By STACY SHAPIRO

LONDON—Despite some major criticisms of the recent Lloyd's of London report on the cause of the LMX spiral losses, a lawyer acting for many of the members of LMX syndicates thinks the report is fair.

Earlier this month, a committee headed by Sir David Walker, former chairman of the Securities and Investments Board, strongly criticized the current Council of Lloyd's for what he called lax regulation of the market that resulted in huge losses on 10 London market excess-of-loss reinsurance syndicates.

The report also criticized the standards of professionalism, care and diligence of a number of members, managing agents and active underwriters (*BI*, July 6).

Sir David's report says his committee was "unimpressed by standards of performance achieved by some managing agents and believes that what proved to be seriously flawed underwriting judgments might have been constrained if active underwriters had been subject to more effective control by their managing agents."

The report recommends a mandatory peer group review through managing agents of the plans, policies and performance of every active underwriter.

However, the Walker report stopped short of accusing LMX underwriters and others of fraud.

The three-member committee did not "find the development of the LMX spiral to have been improper or to have been distorted by conspiracy or misfeasance."

The committee also did not find any "fraud or conspiracy to disadvantage a particular group of names or to advantage others."

There were 87 syndicates writing "significant" LMX business in either 1988 or 1989, but 95% of the LMX losses fell on 12 syndicates in 1988 and 79% fell on 14 syndicates in 1989, the report noted.

Participants in the LMX business genuinely believed that they could improve their profit potential by writing LMX business. However, only those syndicates that monitored their aggregate exposures very closely made money, according to the Walker report.

The day after the report was published, Labor Member of Parliament Peter Hain filed a motion in Parliament criticizing the Walker report and

Continued on page 73

Danish insurer hit by problems as it attempts to raise capital

By MARIA KIELMAS

LONDON—Hafnia Holding A/S is maintaining a confident public stance about the prospects of a planned $375 million capital increase, despite a criminal investigation into irregular dealings by a former executive, the temporary suspension of its offering and continuing uncertainty about its stake in two other Nordic insurers.

The company concedes that it had "negative capital" of about 450 million krone ($78.5 million) as of July 2. However, it says that when investments in other insurers and real estate are considered, the company has a "total added value" of an estimated 2 billion to 3 billion krone ($349 million to $523.5 million).

The Danish insurer's confidence is not shared with industry analysts, who last week downgraded its claims-paying rating. And some analysts say the proposed capital increase will be insufficient to revive Hafnia's finances and business reputation after the fiasco of its aborted attempt to take over Skandia Holding A.B. of Sweden and its 1991 purchase of a large stake in fellow Danish insurer Baltica Holding A/S.

Under a deal reached earlier this year, Hafnia and Norwegian insurer UNI Storebrand A/S agreed to drop their thwarted bid to jointly acquire Skandia. Although they held a 43% stake in Skandia, its shareholder voting rules denied them control of the company.

In return for relinquishing their stake, Skandia offered to acquire 100% of Hafnia, while selling its reinsurance operations to UNI Storebrand (*BI*, April 20; April 13).

But a month later, institutional investors in Hafnia rejected this offer, unraveling the entire arrangement (*BI*, May 11).

Skandia, meanwhile, is continuing talks with other Nordic insurers to try to find a way out of the mess. But the acrimony between it, Hafnia and UNI Storebrand is apparent.

"The Norwegians said that Skandia was run in such a bad way that they should come and take over. Thank God they didn't," said Bjorn Wolrath, chief executive of Skandia.

To buoy its finances and relieve some of the debt from its acquisitions, Hafnia Chairman Holger Lavesen on June 17 announced the insurer's board had authorized a 2.15 billion krone ($375.2 million) capital increase by issuing new shares. The company's institutional investors had pledged to subscribe to approximately 1.5 billion krone ($261.8 million) of the shares, a statement from Hafnia said.

The shares were to be listed July 2 on the Copenhagen stock exchange and applications were also made for listings on the London and Frankfurt exchanges, the statement said.

But on July 1 Mr. Lavesen issued another statement saying the discovery of irregular dealings earlier this year by an unnamed deputy general manager would force the suspension of the offering. Hafnia later identified the manager as Jesper Hansen,

Continued on next page

France's AGF, Germany's AMB end stalemate

By WILLIAM PITT

PARIS—A surprise deal with a German insurer has made Assurances Generales de France Group the first state-owned French insurer to make a major incursion into the German market.

Until last Wednesday, AGF had been at loggerheads with AMB Aachener & Muenchener Beteiligungs A.G. The French insurer was suing over the refusal of the German insurer's management to grant AGF voting rights commensurate with its 25% stake.

Under German law, the management of companies can reserve the right to register or refuse to register shares held by other companies or individuals. Registered shares carry full voting rights; unregistered shares do not.

AMB's management had refused to register more than 9% of its shares in AGF's name. The French insurer was pressing for registration of the remaining 16%. It already had lost its first lawsuit in the commercial court in Aachen, where AMB is based, and was planning to appeal (*BI*, May 25, Feb. 24).

An Aachen judge agreed with AMB's contention that the fact that AGF was a state-controlled company could produce conflicts of interest if it acquired too much influence at the German insurer.

But then AGF and AMB struck a complicated deal. A key element is AGF's assisting the French state-owned bank, Credit Lyonnais, in acquiring a majority stake in AMB's loss-ridden banking subsidiary, Bank fuer Gemeinwirtschaft.

A spokesman for Credit Lyonnais said the bank has not yet agreed to buy control of BfG from AMB, although negotiations are progressing well. "We still have to agree on the price," he said.

At a press conference in Paris last Wednesday, AGF Chairman Michel Albert said AMB would receive payment for selling its current majority stake in BfG, not in cash but in AGF shares. He did not say how many AGF shares AMB will receive in return for ceding control of BfG to Credit Lyonnais.

As part of the deal, either Mr. Albert or AGF General Manager Yves Mansion will acquire a seat on AMB's board. In return, AMB Chairman Helmut Gies, will acquire a seat on the board of AGF.

The two companies stressed that the latest agreement will not affect the existing joint venture between AMB, Italian insurer La Fondiaria Assicurazioni S.p.A. and Royal Insurance Holdings P.L.C. of London.

In February AMB, La Fondiaria and Royal established Luxembourg-based EPIC (European Partners for Insurance Cooperation), capitalized at 177 million pounds ($342.1 million at current exchange rates), to invest in European insurance markets outside the partners' home territories. The move was widely interpreted at the time as an attempt by AMB to fend off the advances of AGF. ■

INTERNATIONAL

U.K. renewals

Continued from previous page

some cases that is still not enough," Mr. Lister said.

Motor fleet liability insurance rates also are increasing for U.K. companies, mainly due to the large increases in injury compensation awards, he said.

Companies are finding that their past reserves are falling well short of the compensation awards currently being made, Mr. Lister said.

The 20% to 25% increases being charged for motor fleet rates this year will have to be repeated next year to bring them up to an adequate level, he said.

Other liability rates are increasing by about 10% to 15%, Mr. Lister said.

Those rate hikes are lower because underwriters have largely been able to control their reserves more effectively in other liability areas, he said.

In addition, "the claims experience in public liability has not been as bad as employers' liability," Mr. Lister said.

However, underwriters are examining the wordings of all liability insurance policies more carefully, said Mr. Ritchie of Bowring. "Public liability and product liability have not been as badly affected (as employers' liability), but underwriters are looking very closely at policy wordings, and in some cases they are rewriting policies which they renewed before."

There are few reductions in public and product liability rates, added Mr. Anscomb, of Bain Clarkson.

"We've been successful in putting forward restructured packages for clients, which have given them coverage at better terms than they had before, but on a like-for-like basis there are no reductions," he said.

Property insurance rates are up, but increases are less spectacular than in some of the liability areas, said Mr. Foreman of Sun Alliance.

"The property increases are more selective, with the heaviest increases falling on accounts with poor claims experience, but we are even applying increases to clean business," he said.

Sun Alliance is losing some property accounts as a result of the rate increases, but generally all of the major British insurers are raising rates, Mr. Foreman said. "Everybody is saying that we can't continue with the inadequate rates we have charged in the past."

Insurers and policyholders are also keen to increase deductibles, Mr. Foreman said.

"We are not restricting cover per se, but many clients are saying to us, 'We can't afford to pay any more' " so we have them take a higher self-insured retention instead, he said.

Property insurers have suffered few large property catastrophes over the past year, so they do not need to impose huge increases to pay for past losses, said General Accident's Mr. Lister.

'The market doesn't really yet know whether it is hard or soft,' says Bass' Mr. Pountney.

"We haven't had a big windstorm since 1990, so there is not so much of a need to increase rates to fund catastrophes," he said.

The Irish Republican Army bomb explosion in London which caused between 700 million pounds and 800 million pounds ($1.35 billion and $1.54 billion at current exchange rates) of damage was not enough on its own to significantly boost commercial property rates, Mr. Lister said.

Property rates are generally stable with few reductions or extreme increases, said John Crisford, a director at Lowndes Lambert U.K. Ltd.

However, rates for warehouses and multi-tenant properties are increasing significantly, he said.

"There has been poor claims experience in these areas, and insurers have found that their reinsurance coverage has been restricted, so they in turn are increasing rates," he said.

Warehouse owners also have had to install more loss control equipment at the insistence of insurers, Mr. Crisford said.

"They are having to put in sprinkler systems in order to buy their insurance. In the past, the underwriters weren't always so strict," he said.

Some property rates also are increasing to take into account recession-related claims, like claims for arson and vandalism, according to Mr. Crisford.

However, the increased claims are in part being offset by decreasing levels of sums insured due to the depressed commercial property market in Britain, he added.

In the marine market, U.K. buyers are seeing rates continue to harden, said RTZ's Mr. Saunders.

And if a company is a substantial user of overaged vessels, it can expect increases in excess of 100%, he said.

"The effect of this is that charterers are becoming more discriminatory against over-aged vessels, so it is having a beneficial risk management effect," Mr. Saunders said.

At both its Jan. 1 property renewal and its July 1 general liability renewal, RTZ obtained the same terms and conditions as last year. However, it expects to have to pay more for most of its coverage at the next renewal, Mr. Saunders said.

Bass P.L.C., a brewer based in West Bromwich, England, also expects to face increased insurance costs when its coverage is renewed Oct. 1, said Risk Manager Brian Pountney.

"We are not expecting to renew on last year's terms, but we don't believe that we will fare too badly," he said.

The company's good loss record should fight off any large rate increases, Mr. Pountney said.

However, insurers will probably insist on more exclusions, tighter wordings and tougher disclosure details, he said.

"But if we can get our act together in these areas, that may go some way toward ameliorating rate hikes," Mr. Pountney said.

During the next few months the state of the market will become clearer, but at the moment it is difficult to predict whether a hard market is developing, he said.

"The market doesn't really yet know whether it is hard or soft. Some elements, such as employers' liability, are hardening, but it is not yet clear whether this is going to spread throughout the rest of the market," Mr. Pountney said. ■

Hafnia investigation

Continued from previous page

who was fired.

In February and March, Hafnia acquired two options to purchase shares in Copenhagen investment banker Interbank A/S, the statement reported.

The share purchases were evidently intended to secure loans made by financial houses to Brondbyernas I.F. Fodbold A/S, a Danish professional soccer club listed on the Copenhagen stock exchange, to finance its takeover of the investment bank. The soccer club made a tender offer to buy Interbank earlier this year.

However, "the said options to purchase shares. . .were not recorded in the books of Hafnia Holding and neither the board of directors nor the auditors were aware of their existence," the statement said.

Hafnia is still trying to sort out whether the option is binding on the company. "It has not been possible to demonstrate any business rationale for Hafnia Holding to commit itself to these options to purchase shares, for which there seems to have been no agreement as regards payments," according to the statement.

Hafnia's board has asked the police to investigate the matter; at the same time it asked the Copenhagen stock exchange to suspend its offering.

However, the soccer club matter is not the first time that irregular business transactions have been uncovered at Hafnia.

Skandia's Mr. Wolrath said a due diligence investigation of Hafnia's finances, one of the conditions of its April offer to acquire the Danish company, revealed some dubious transactions. However, he could not reveal details because of a confidentiality agreement between the companies.

"But it had nothing to do with the criminal investigation because that was not on the books," he said of the soccer club probe.

In addition, Hafnia auditors in April discovered an irregular transfer of 470 million krone ($82 million) to Hafnia Holding from its Hafnia Life Insurance subsidiary. Denmark's insurance regulations prohibit a life insurer from making loans to a parent. After the transfer was discovered, the funds were immediately returned, a Hafnia spokesman said. Former Hafnia Chief Executive Per Villem Hansen was held responsible for the transfer and was subsequently fired.

A July 3 statement from Hafnia said that after accounting for its potential losses on the Interbank/Brondbyernas transaction and adjusting its investment portfolio to market value, the company has "negative capital" of about 450 million krone ($78.5 million) as of July 2. At the end of 1991, the company's market capitalization was 3.2 billion krone ($558.4 million).

The statement also said Hafnia's "total added value" is estimated at 2 billion to 3 billion krone ($349 million to $523.5 million). A Hafnia spokesman explained that this figure is derived from its stakes in Baltica, Skandia and various real estate holdings.

An internal investigation of Hafnia transactions was concluded on July 5, when the company announced that no new irregularities were uncovered. Trading in Hafnia shares resumed the following day, with the planned capital increase to follow.

The Hafnia spokesman said the insurer intends to dispose of the Skandia and Baltica stock as soon as possible. "We will need a big buyer. If we can find the buyer, we will get added values."

Jonathan Lawlor, an analyst with Kleinwort Benson Securities Ltd. in London, said he thinks it is unlikely Hafnia will easily find such a buyer. In addition, there now is little—if any—international interest in subscribing to the Hafnia stock offering, he said.

Besides, he added, because Hafnia has "next to no capital" the planned 2 billion krone increase will be insufficient.

And late last week Standard & Poor's Corp. downgraded the claims-paying ability rating of Hafnia to BBB from A. The rating will remain on S&P's CreditWatch "pending the successful implementation" of the share offering.

"The potential for Hafnia to try to improve the performance and efficiency of insurance operations and raise capital through the disposal of non-core operations is limited. Only the resolution of the strategic impasses will bring any lasting stability to the Hafnia group, though this may be at the expense of its independence," S&P said.

Institutional investors have to be more 'hard-nosed' in defense of shareholders' interests rather than nationalistic interest, Mr. Lawlor says. 'Institutional investors in Hafnia definitely would have been better served by selling to Skandia,' he adds.

Meanwhile, Norwegian insurance authorities granted UNI Storebrand a one-year extension until July 1, 1993, to reduce its 28% holding in Skandia to 10%.

UNI Storebrand denies charges that it is in financial trouble because of the Skandia mess.

In fact, Standard & Poor's says UNI Storebrand's "ability to meet its obligations is satisfactory despite the negative effect of its investment in Skandia."

But insurance analysts say that it is only because Norwegian accounting rules allow its Skandia stake to be posted at 150 krone ($25.67) per share. Last week, Skandia stock was trading at around 98 krone ($16.77), while most of the UNI Storebrand's acquisition was made at 200 krone ($34.22) per share.

On this basis, UNI Storebrand's solvency margin, which Norwegian authorities calculate as shareholders funds (share capital plus reserves) to total assets, is 4%. Insurance regulations stipulate that it must reach 4.5% by 1993 and 8% by 1997.

To achieve this, analysts say UNI Storebrand will have to raise capital in addition to selling the Skandia shares.

Kleinwort Benson's Mr. Lawlor says UNI Storebrand will probably need 1 billion krone ($171.1 million) more in capital this year and another 1 billion krone next year, which together equals the amount analysts estimate it has lost on the Skandia acquisition.

The Hafnia/UNI Storebrand raid on Skandia demonstrates a need for greater management accountability and tougher regulations in the Nordic insurance sector, according to Mr. Lawlor. In addition, institutional investors have to be more "hard-nosed" in defense of shareholders' interests rather than nationalistic interest, he added. "Institutional investors in Hafnia definitely would have been better served by selling to Skandia," Mr. Lawlor said.

Skandia's Mr. Wolrath said the current situation at Hafnia and UNI Storebrand could have been avoided if they had been prepared to talk with Skandia last year rather than mounting a hostile bid.

"If you talk to them now, they will say that they should have talked to us. We offered enormous opportunities for talks in autumn 1991, but they said, 'We don't want to,' and said a lot of stupid things," Mr. Wolrath said.

Referring to comments made by London stock market analysts to *Business Insurance* last December, when the takeover was launched, in which the chief executives of Hafnia and UNI Storebrand where characterized as "little Napoleons," Mr. Wolrath said: "I don't want to play Napoleon. What made Napoleon a fool was that he created an empire and then couldn't control it."

Although he said Skandia is not interested in forging cross-shareholding alliances with other insurers or banks, Mr. Wolrath agrees with a London stock analyst's suggestion that Skandia should change its restrictions on shareholder voting rights.

Hoare Govett Ltd. said that resolution of the Skandia-Hafnia-UNI Storebrand deal should also lead to modification of Skandia's voting rights. Hoare Govett said this change is unlikely to occur before a core of friendly shareholders is in place, but said it ultimately will add to the value of Skandia's shares.

"We are prepared to change our articles of association. If we ever continue to combine our forces into bigger operations, it is quite obvious we have to change them," Mr. Wolrath said. "But you benefit from them when you have a hostile bid. In no way were we going to put our money in the hands of people who would waste it." ■

INTERNATIONAL

Walker report

Continued from page 71
certain Lloyd's underwriters.

His motion—which is barred from libel prosecution because it was filed in the House of Commons—calls for a "full public and independent inquiry into Lloyd's, together with its proper regulation by statute."

Mr. Hain's motion—one of many he has filed criticizing Lloyd's—said that the Walker report "does not reveal the extent to which five members of the Lloyd's Council, who manage syndicates, used the LMX dustbin syndicates for their own reinsurance to the tune of 623.5 million pounds" ($1.20 billion at current exchange rates).

The Walker report also does not show that Lloyd's underwriter Stephen Merrett had losses on his syndicate 418 totalling 230.8 million pounds ($445.4 million), which he "unloaded on the LMX dustbin syndicates to the extent of 229.8 million pounds ($446 million)," according to Mr. Hain's motion.

Mr. Merrett has written to Mr. Hain to ask him where these figures come from because they can't be found in syndicate 418's accounts, said Dennis Purkiss, chief executive of Merrett Holdings P.L.C.

Syndicate 418, Lloyd's largest syndicate, places a percentage of its reinsurance program in Lloyd's, but that reinsurance placement is no different than placing reinsurance with a company like Munich Reinsurance Co., said Mr. Purkiss. "All its reinsurance is entirely above board" and available to see, he said. "I'm not sure what point is being made (by Mr. Hain)."

The Walker report also doesn't show that former Lloyd's deputy chairman Alan Jackson had a loss of 93.5 million pounds ($180.7 million) and claimed 122.5 million pounds ($236.7 million) from his reinsurers, said Mr. Hain's motion.

Mr. Jackson was unavailable for comment last week, but he told Lloyd's List that his syndicate 735 paid gross claims of 157 million pounds ($303.4 million), paid 31 million pounds ($59.9 million) for its reinsurance program and made claims recoveries of 122 million pounds ($235.8 million).

Mr. Hain also said the Walker report does not reveal that the companies of two members of the Walker committee "had themselves claimed millions of pounds on the LMX spiral." They are John Lock, retired general manager of the Mercantile & General Reinsurance Co. Ltd., and Leslie Lucas, director of Norwich Winterthur Reinsurance Corp. Ltd. Neither were available for comment or returned phone calls.

However, an M&G spokesman noted that while claims were made for LMX losses, claims were also paid for LMX losses by M&G. In fact, M&G lost millions from the LMX-related claims. "No one gained on this at all," he said. The motion "underlines how little Mr. Hain knows about the insurance business."

In the meantime, David Tiplady, a lawyer with D.J. Freeman in London who represents several members action groups including the Gooda Walker Action Group, said he is not surprised by the findings of the Walker report.

"It says exactly what I expected it to say and bears out with my feelings. . .that the LMX market wasn't fraudulent" but there were players who mismanaged their businesses, said Mr. Tiplady. The report "is encouraging not just to Gooda Walker members but to other names." However, members will be able to seek compensation for mismanagement from members and managing agents who didn't control the LMX business properly, he said.

In order to sue Lloyd's Council for compensation, the members would have to establish a duty of care and then prove negligence and breach of contract, which would take a long time, said Mr. Tiplady.

It is easier to pursue the agents for negligence and breach of contract, he said. ■

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Commercial Consumers

Category	Count
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Vice-Presidents, General Managers and Other Administrative Personnel	4,175
Financial:	
Chief Financial Officers and Vice-presidents of Finance	2,811
Secretaries, Treasurers, contollers and other Financial Personnel	4,204
Risk/Employee Benefits:	
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	11,995
Sub-total	**25,683**
Associations	442
Government, Unions and Educational Institutions	1,261
Commercial Consumers Sub-total	**27,368**
Insurance Agents and Brokers	9,090
Insurance Companies	8,128
Accountants, Actuaries, Attorneys & Consultants	3,340
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,529
Others Allied to the Field	1,580
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* Source Business/Occupational breakdown of qualified circulation, November 25, 1991 issue, as submitted to BPA for December 1991 BPA Publisher's Statement.

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Executive Director

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THE INTEGRAL INSURANCE COMPANY IN REHABILITATION

By Order of Judge Preston Dean of the Circuit Court of Jackson County, Missouri dated June 19, 1992, a Plan of Rehabilitation of this Company was approved. Following is a summary of that Plan:

> The Revised Plan of Rehabilitation filled and approved by the Court of May 19, 1992, the Court has ordered certain limitations and restrictions on the payment of claims and judgements.
>
> Any settlements or judgements to be paid by Integral Insurance Company in Rehabilitation are expressly subject to the following provisions of the revised rehabilitation plan.
>
> > Settled claims, judgements and all loss adjustments and all loss adjustment expenses (defense attorney fees, adjustment expenses, etc.) will be paid monthly at a rate not to exceed Six Million Dollars ($6,000,000) per quarter through 1992, Five Million Two Hundred Fifty Thousand Dollars ($5,250,000) through September 30 1993 and Four Million Five Hundred Thousand Dollars ($4,500,000) per quarter thereafter.
> >
> > The payment of individual claims shall be limited to the coverage limit that a claimant would be entitled to receive from the applicable state insurance guaranty fund if Integral were placed into receivership for liquidation. For those claims which exceed that applicable guaranty fund limit, the amount of the claim above the guaranty fund limit will be reserved for future payment. Barring unforeseen circumstances and provided there are sufficient funds at the conclusion of the rehabilitation to pay all policy claims in full, the portion of an individual claim in excess of the guaranty fund limit will then be paid, unless otherwise ordered by the Court for the protection of Integral's policyholders, creditors and general public.

Subject to the foregoing limitations, payments made by Integral pursuant to the Revised Plan of rehabilitation will be paid on a chronological basis and a settlement will be placed in line for payment when the claim or settlement agreement giving rise to Integral's obligation is fully and finally executed and, if necessary, approved by a court of competent jurisdiction.

Unless and until otherwise ordered by the Court, all payments made by integral are subject to the guaranty fund limitations set forth in the plan and limited to the extent that Integral has not made aggregate quarterly payments in excess of the limits set forth in the plan.

This communication recites the current restrictions and limitations of the Revised Plan of Rehabilitation. There is no assurance that these restrictions and limitations will remain the same. Through periodic accounting and actuarial analysis, the rehabilitator will review the status of Integral and the effectiveness of the Revised Plan, and thereafter the Court may adjust the quarterly limitations, impose further restrictions or cease payment of settlements and judgements. The Revised Plan of Rehabilitation does not assure Integral Insurance Company will not be placed in liquidation by the Court.

For a complete copy of the Plan, please contact Mr. Hugh Setterfield, Agent for the rehabilitator, at The Integral Insurance Company in Rehabilitation, Post Office Box 2051, Milwaukee, Wisconsin, zip 53201-2051, phone (414) 784-7780 or 1-800-558-9257.

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BC/BS report

Continued from page 3

The subcommittee staff drew the same conclusion in its statement offered during a subcommittee hearing on July 2.

"No matter what the outcome of the final investigation, it is certain to propel this subcommittee into the arena of national health care reform and the ultimate debate over those programs that will best ensure internal controls against fraud, waste and abuse," said the statement.

The staff statement stopped far short of a blanket condemnation of the solvency or practices of the BC/BS plans as a whole.

"At this time, the subcommittee has no evidence to make it believe that the vast majority of plans are not being run in a proper and fiscally sound manner," said the staff report. The subcommittee staff reiterated the "long-held belief that the vast majority of state regulators are diligent in their dedication to combating fraud and abuse in their states, including potential problems with their Blue Cross/ Blue Shield plans."

In a statement issued after the subcommittee hearing, the Chicago-based Blue Cross & Blue Shield Assn. pointed to the staff's assertion that most plans appear to be run in a proper and fiscally sound manner.

"Nonetheless, the preliminary findings of the subcommittee's investigation raise many questions. We are just as intent on answering these questions as is the subcommittee, and we are cooperating with the subcommittee," said the BC/BS statement.

But the association had some questions of its own about the staff's basis for questioning some plans' solvency. The staff relied on ratings by West Palm Beach, Fla.-based Weiss Research Inc., the only national rating service that rates more than a handful of BC/BS plans (*BI*, July 6).

Weiss Research gave only one of the 73 BC/BS plans an "A"—or "excellent"—rating. Weiss gave four plans ratings of "E-minus," which is the lowest rating other than "F," which signifies "failed and under the supervision of state insurance commissioners." Weiss Research assigned 20 of the plans grades in the D and E range.

"We are concerned that those ratings do not take into account the differences that distinguish BC/BS plans from commercial insurance companies," the BC/BS Assn. statement said.

"For example, these ratings do not weigh the unique and important role plans play in their communities. Plans often serve as a safety net for those not accepted by commercial insurers. We believe Weiss Research's methods of rating insurers generate extremely conservative ratings that do not reflect the legislative and regulatory constraints to which many plans are subject. These ratings may not give the consumer a clear, thorough analysis of (his or her) insurer's health," said the BC/BS Assn.

But there is "ample evidence to believe that the solvency problems faced by the West Virginia plan were not isolated," said the Senate subcommittee statement.

The subcommittee staff noted a number of alleged irregularities at various BC/BS plans, though it did not identify the plans involved.

For example, the report said that at least one BC/BS plan was holding "junk bonds in its portfolio, including some from Lincoln Savings & Loan Assn.," the failed Phoenix, Ariz.-based savings and loan association headed by Charles H. Keating Jr.

Other irregularities stemmed from the non-profit BC/BS plans' rights in some states to operate for-profit subsidiaries.

"In these cases, the staff has learned that many state regulators have no or little jurisdiction to regulate the for-profit subsidiaries," said the staff statement.

"One plan has an Irish insurance subsidiary and (the staff) has little detail on what it does. This same plan has a Jamaican subsidiary and Caribbean affiliate which remain, to some extent, a mystery to regulators," said the report. Some plans also operate money-losing for-profit computer subsidiaries, according to the investigation.

"One plan even created a subsidiary which was involved in a very risky 'arbitrage' business. In this case, the insurance regulator was not given prior notice of this activity and was basically faced with a Hobson's choice of either approving this illegal activity or forcing the plan to lose millions of dollars it had invested in this risky endeavor," said the statement.

The staff statement also contained a litany of instances of alleged mismanagement at individual plans. The report noted that similar allegations arose in the early 1970s, when the Senate Subcommittee on Antitrust and Monopoly looked into the plans.

The new allegations of mismanagement include:

- A "nearly insolvent" plan that still paid its chief executive officer a $350,000 salary plus other perks, including country club memberships and a chauffeur-driven limousine.
- A plan that paid legal fees totaling $200,000 to the law firm of a plan director.
- A plan that awarded a construction contract to the chairman of its board of directors, even though his bid was not the lowest.
- A plan that bought box seats at a sports stadium at the same time it was raising rates.
- A plan that used premiums to help pay damages stemming from a paternity suit against its chief executive officer, even though the man had admitted paternity.

The subcommittee's examination of the BC/BS plans is part of its ongoing investigation of the insurance industry.

The subcommittee recently issued recommendations to strengthen regulation of insurers and reinsurers, although no legislation has been drafted to institute the reforms (*BI*, May 11). ■

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Coalitions

Continued from page 1

which has one of the nation's largest concentrations of managed care vendors, want to change that system. The two groups—the Business Health Care Action Group and Employers Assn. Inc. of Minnesota—hope their reform efforts can be transported to other communities.

The Business Health Care Action Group, a coalition of 14 large, self-insured employers in the Twin Cities area, has contracted with the GroupCare Consortium, a collection of local health care providers and HMOs, to provide care for 125,000 employees and dependents.

The BHCAG's philosophy is that quality care will result in optimal health outcomes, which will reduce unnecessary care and therefore better control health care costs.

Unlike other group purchasing efforts, the BHCAG approach focuses on continually improving the quality of health care rather than on negotiating provider discounts and financial performance standards through insurance companies or other intermediaries.

By requiring providers to adhere to a set of clinical practice guidelines—designed to reduce or eliminate unnecessary care—BHCAG members will be able to measure how effectively those providers are caring for patients.

Once outcomes data is available, the employers will be able to identify which providers deliver the best health care most cost-effectively. And, the group will use the information to help other providers improve the quality of the services they deliver.

"Buyers should know which health plans give their employees the best chance of surviving a heart attack, for example," explained Group Health's Mr. Halvorson. "We will not reduce the amount of waste, inefficiency and inappropriate care that occurs in our society until buyers start demanding outcome data and rewarding providers who provide cures—not the providers who deliver great quantities of expensive, but sometimes useless, high-tech care," Mr. Halvorson said.

As the quality of care delivered in the Minneapolis area improves, the BCAHG members expect their health benefits costs to decrease since, among other things, complications resulting from poor quality medical care will be reduced.

Payments to providers will be based on the employers' estimates of their annual claims costs, plus an administrative fee. The providers will base their rates on a uniform fee schedule. The total amount paid by employers will be reconciled with actual costs at the end of the plan year.

BHCAG members will offer their employees and dependents an identical point-of-service health care plan administered by GroupCare. Initially, the employers will offer the POS plan along with other plan options, but "the intent over time is to try to promote the POS plan as the main source of care," said Dr. Bryan Bushick, a consultant in the Minneapolis office of Towers Perrin, which helped the BHCAG develop the program.

Employees and dependents will be enrolled in the plan starting Jan. 1. Although the plan design will be the same for all employers, employee contributions may differ within each company, Dr. Bushick said.

Those who use the network will pay a $10 physician office copayment and a $100 hospital admission copayment, after which 100% of expenses will be reimbursed. Those seeking non-network care must pay $30 for office visits and $300 for hospital admissions, after which 70% of health care expenses will be paid.

The plan will be administered using MedCenters Health Plan and some Aetna Health Plan administrative systems.

MedCenters of Minneapolis also is one of the providers in the GroupCare Consortium. Other providers are Group Health Inc. and GroupCare Inc., two Minneapolis-based HMOs; the Mayo Clinic in Rochester, Minn.; and Park Nicollet Medical Center in Minneapolis.

Other physicians, clinics and hospitals may join the network.

To cut administrative costs, the system will use a single claims form and standardized processing.

In addition, electronic links will be established so the claims system can communicate directly with a data analysis system and with employers' in-house employee benefit information systems to automatically retrieve eligibility and other employee information, Mr. Halvorson said.

BHCAG member companies expect to see their health benefit and administration costs drop between 10% and 20% initially, with further gains to come, Dr. Bushick said. These first-year savings were estimated by comparing what the employers now spend on HMOs to the projected administrative and targeted claims costs under their POS arrangement with the GroupCare Consortium.

To meet the BHCAG's quality and outcomes measurement objectives, the provider consortium has formed the Institute for Clinical Systems Integration to design and implement medical practice guidelines intended to reduce unnecessary care. Group Health and MedCenters have committed so far to contribute a total of $10 million toward the development of the system.

The providers are responsible for developing their own practice guidelines, rather than having to adhere to guidelines developed by some outside source, Mr. Halvorson said.

Right now, the consortium is consolidating 36 guidelines that have already been developed by provider members. Another 10 guidelines, primarily for high-cost procedures like coronary bypass operations, will be developed next, he said.

The protocols eventually will be incorporated into a fully automated medical record that will contain employees' benefit information and medical histories, among other things. The system should help to reduce paperwork and speed up patient admissions because all of the information will be available online, Mr. Halvorson said.

In addition, the protocols will help facilitate medical necessity judgments at the time a patient is being admitted, he said. For example, if a clinician suggests a magnetic resonance imaging test for a patient with carpal tunnel syndrome symptoms, a "protocol prompt" may say MRIs are not appropriate diagnostic tools for carpal tunnel syndrome, Mr. Halvorson explained.

A major criticism of managed care is the inherent hassle factor that is built into some of its most effective components, like utilization review, said Fred Hamacher, vp of compensation and benefits for Dayton Hudson Corp., a BHCAG member.

Providers, administrators and employers often are bogged down by the process of precertifying and reviewing hospital and physician services.

"Many people understand how inefficient the health care system is. We want providers to practice medicine like they have been trained to, not spend 15% of their time on paperwork—that's absurd," Mr. Hamacher said.

Continuous quality improvement is another central goal in the BHCAG project. The idea is to measure a provider's clinical performance and try to improve it.

For example, an HMO may find that it is administering childhood disease vaccinations to only 75% of the children in its plan who need such vaccinations.

By referring to the guidelines, the provider can first find out why it is missing 25% of the children and how it can reach the 100% immunization goal.

If a provider falls short of practicing perfect medicine, the information will not be used as the basis for punishment, Dr. Bushick stressed. Rather, the provider will be given the opportunity to assess the problem and then work out a plan to make improvements.

"If you use data to punish providers—either by firing them or publishing the data to embarrass them publicly, providers have every incentive to hide their true performance and game the system," Dr. Bushick said.

The Employers Assn., a group of 363 small and midsize employers in Minnesota, also wants to improve the quality of health care that providers deliver.

Working with benefit consultant William M. Mercer Inc., the group negotiated a three-year agreement with Prudential Insurance Co. of America, in which the insurer agreed to establish a network of preferred providers for the employers' 160,000 employees and dependents.

Each employer will replace its existing provider network, if it has one, with the Prudential network on Jan. 1.

Prudential selected providers for the network who agreed to use clinical guidelines developed by the providers themselves and by other sources.

Some association members self-fund their health care plans, but they will purchase stop-loss coverage from Prudential. Some other members are insured by companies other than Prudential. The insurer is meeting with all 363 employers to determine whether they want to participate in the Prudential program, which would mean dropping current insurers.

The program on average will save each insured employer member 34% and each self-funded member more than 20% of their projected health care costs over the three-year period, said Tom Ebert, president and chief executive officer of the Employers Assn.

The largest amount of savings produced by the program will result from a three-year health care cost trend guarantee, pointed out George Morrow II, a senior consultant in Mercer's Minneapolis office. Insurers use health care cost trends—which are based in part on the medical component of the Consumer Price Index—to help set premium increases.

Under the program, the trend factor used by Prudential to set rates will increase by a maximum of 10% in both 1994 and 1995.

But, Mr. Morrow stressed, a trend guarantee is not the same as a rate guarantee.

"We learned early on that a rate guarantee or cap was not in our best interest, and we probably wouldn't be able to get it anyway," he said.

Mr. Morrow explained that rate caps typically encourage providers to suppress utilization and rates often skyrocket later.

Mercer and the Employers Assn. instead decided that controlling both utilization and the health care trend—which essentially is an inflation rate—would result in real savings over time.

Information sharing is a critical factor in the Employers Assn. project, Mr. Morrow noted. Providers are being asked to collect data on their performance and share it with Prudential, the association and its employees.

Patient satisfaction information will be collected and disseminated to patients, employers, providers and Prudential as well, he said.

But, some observers worry that the gains these two employer groups make may come at the expense of others.

Multiple single-interest coalition projects "may be counterproductive in the long-run," said Patricia Drury, former executive director of the Minnesota Coalition on Health, a Minneapolis-based health care coalition that dissolved late last month.

"The intention of the coalitions is to drive the market toward competition and increase quality, but many of these projects are untried and unproven," she said.

And, "As buyers consolidate into large blocks and each buys the same thing rather than offer employees choices, there may be a problem if it doesn't work out. How will they move that whole big block of business again?"

MCH members came from a wide range of disciplines, including employers, labor unions, health insurers, HMOs, physicians, hospitals and other health care providers, consumers and state government. Ms. Drury attributed the demise of the MCH, which was formed in 1980, in part to the evolution of employer-only coalitions in the Minneapolis market.

"The market had evolved to the point where employers wanted employer-only organizations to carry forward their ideas," she said.

However, she noted in the MCH's final newsletter that when creating reform, it is "very tempting to pursue various self-interests at the expense of the common good."

Instead of fixing things for one or two groups, the whole structure of the marketplace needs to be reformed, including Medicare and Medicaid, Ms. Drury said.

Neither the Employers Assn. nor BHCAG wants its gains to come at the expense of others in the community, Mr. Ebert said.

"We hope to get structural reform in the health care system, not just cost-shifting against those in the community who lack our bargaining clout," he explained. "In effect, we are change agents, acting on behalf of the entire community."

Both coalitions are sharing information about their projects with other employers and communities.

In fact, a group of small and midsize St. Louis-area employers is considering adopting the Employers Assn. program, pointed out James Stutz, executive director of the St. Louis Area Business Health Coalition.

The Minneapolis coalitions "are giving us a vision of the future which intricately involves the providers and holds them accountable for outcomes," he said.

And, he noted, sometimes working in employer-only groups is the only way to get something accomplished. "Each of the stakeholders in this reform has to have positions well-articulated, and we in the business community find it easier to form an agenda (by ourselves) than with a mixed group."

However, he acknowledged, "Then it's harder to convince other groups that yours is the right agenda." ■

U.S. professionals covered by guaranty fund: U.K. court

LONDON—North American accountants, doctors and lawyers likely will have a large majority of their claims paid by a British guaranty fund on behalf of four insolvent subsidiaries of London United Investments P.L.C.

The Court of Appeal of England and Wales last week overturned a lower court decision that barred "contingent" claims from being paid by a British guaranty fund administered by the Policyholders Protection Board (*BI*, June 22; April 13). Contingent claims, which are defined as losses that are not known or not yet finalized at the time the insurer is liquidated, are valid claims, the appeals court said.

The court's interpretation of the Policyholder Protection Act also found that claims made by North American professionals should be covered.

The act authorizes the board to pay "private policyholders" with "U.K. policies" 90% of all valid claims.

The decision is likely to be appealed to England's highest court, the House of Lords, by the PPB and the Assn. of British Insurers, whose members pay a levy to fund losses paid by the board.

The decision also "is likely to hasten" changes to the act, which have been the subject of discussion between the ABI and the Department of Trade and Industry, an ABI spokesman said.

On another front, the same four insurers, each of which wrote coverage on the H.S. Weavers (Underwriting) Agencies Ltd. line slip, won a battle last week to recover $98 million held by Weavers.

The insurers—Kingscroft Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd. and Mutual Reinsurance Co. Ltd.—sucessfully argued last week in U.K. Commercial Court that the deposits represented premiums and reinsurance recoveries held by Weavers on their behalf.

Weavers had argued that the deposits represented a charge, which it planned to use to pay creditors.

Also last week, another LUI subsidiary—Walbrook Insurance Co. Ltd.—held meetings with creditors in Chicago in an effort to avoid insolvency.

The directors of Walbrook, which has had a moratorium on the payment of claims since May, reported last week that its balance sheet deficit at year-end 1991 was 170 million pounds ($317.9 million). Gross liabilities total more than 900 million pounds ($1.68 billion), they say.

The company has an extension until the end of the month to file its returns to the Department of Trade and Industry. During this time it is trying to develop a financial rescue plan with creditors and policyholders (*BI*, June 29; June 8). A similar meeting will be held in London this week.

—By Gavin Souter and Stacy Shapiro

Delta America Re

Continued from page 2

Dickinson, assistant special deputy liquidator for the Louisville, Ky.-based reinsurer. "A lot of the settlements are in the $2 million plus-range."

According to the department, the $42.7 million represents the full recovery of balances due Delta, plus an agreed amount to cover possible future adverse loss development. The settlements will increase Delta's assets to $180 million.

All the retrocessionaires, and in some cases their parents or affiliated companies, are shareholders of Delta Holdings Inc., an insurance and reinsurance company formed by captive management clients of the former Reiss Organization, the parent of ARM.

Delta Holdings in 1983 acquired Delta America Re, which was formerly known as Elkhorn Re Insurance Co., from National Distillers & Chemical Corp., which was one of the captive management clients.

Delta America Re was set up to act as a U.S. fronting company for business ceded to the Reiss-managed captives, which were looking to expand their involvement in third-party underwriting.

The Reiss Organization's captive management units, including ARM and several affiliates, were sold to Swiss Reinsurance Co. in 1988. National Distillers has since changed its name to Quantum Chemical Corp.

Soon after Swiss Re bought the company, Delta America Re was found to be insolvent.

Mr. Dickinson said a major factor leading to the settlement was an October 1991 decision by the 2nd U.S. Circuit Court of Appeals that overturned a ruling by a lower court in New York. The appellate court said that National Distillers did not omit or misrepresent material facts or commit breach of warranty in selling Elkhorn Re.

That reversed the federal district court's order that Quantum Chemical, National Distillers' successor, pay Delta $37.3 million in damages (*BI*, April 16, 1990).

The U.S. Supreme Court subsequently refused to consider the case.

Mr. Dickinson said the decision was relevant to the Kentucky action because the retrocessionaires had sought to rescind their treaty because of the allegation of fraud.

Now, Mr. Dickinson said, "They can't use the fraud argument successfully."

He said another factor in the move to settle was a July 1990 decision by U.S. Magistrate Kathleen A. Roberts that the retrocessionaires must comply with a New York law to post as security the amount of money they would be required to pay in damages if the Kentucky Insurance Department prevailed.

The third factor encouraging settlement, according to Mr. Dickinson, was information revealed since April in depositions of people involved in the operation of the captives.

But Thomas R. Newman, a partner with Newman & Bower in New York who represents 16 of the 18 retrocessionaires who settled, disputed Mr. Dickinson's comments. The decision to settle was a "business consideration," he said. Mr. Newman also represents three retrocessionaires who have not settled.

Mr. Newman added that many of the retrocessionaires have reserved the right to pursue claims against Delta America Re's former management, "which misrepresented the facts and concealed material facts, which induced them to sign onto treaties in the first place." No final decision on whether to pursue these claims has been made, he said.

Meanwhile, other litigation involving Delta America Re includes a suit brought by the Kentucky department in 1988 against about 30 foreign retrocessionaires that participated on Delta America Re treaties prior to 1984, when Delta Holdings took over the reinsurer's operations and shifted retrocessions to the Reiss-managed captives. About $120 million is at issue in the case, which is being heard in U.S. District Court in New York, according to Mr. Dickinson.

Ceding insurers are also involved in litigation with the department over Delta America Re, said Mr. Dickinson. This includes a suit brought by Kentucky regulators against several insurers and reinsurers, among them American Home Assurance Co., an American International Group Inc. unit, that ceded reinsurance to Delta in 1984 and 1985.

About $10 million is at issue in the case, said Mr. Dickinson. This case also is being heard in U.S. District Court in New York.

Owners of the captive insurer retrocessionaires that settled with the department are: Inco Ltd., C.H. Robinson Paper Co., Thomas J. Lipton Inc., Petrofina S.A., Brunswick Corp., Consolidated Foods Corp., Eli Lilly & Co., Celanese Corp., American Cyanamid Co., Scott Paper Co., Genstar Corp., Aluminum Co. of America, Kellogg Co., Kaiser Aluminum & Chemical Corp., Revco D.S. Inc., Eaton Corp. and Weyerhauser Co. In addition, United Insurance Co., a Cayman-based policyholder-owned insurer managed by a former Reiss Organization unit, settled. ■

California AIDS report

Task force seeks end to coverage discrimination by insurers

By LOUISE KERTESZ

LOS ANGELES—A report by the California Insurance Department's Task Force on HIV/AIDS Insurance Issues makes sweeping recommendations to end alleged discrimination by health insurers and self-insured health plans against people with AIDS.

Insurance Commissioner John Garamendi said he would review the recommendations, which urge him to exert authority over all health care plans covering Californians.

Meanwhile, he stressed that he wholeheartedly supports the task force's recommendation that "California must implement some form of universal access to health care. Giving access to health care to the entire population would solve most of the problems identified by the task force."

"It's not impossible in this election year" that some form of a national universal health care plan could gain significant ground, according to Mr. Garamendi.

Legislation establishing a commission to design and implement Mr. Garamendi's own proposal for universal coverage for Californians was introduced in March by state Sen. Art Torres, D-Los Angeles, (*BI*, Feb. 17).

And Mr. Garamendi said he supported the task force's recommendation to make small-group health insurance reform an immediate priority while awaiting more comprehensive changes in the state or national health care system.

Such reform would "bring uniformity to pre-existing conditions limitations, underwriting standards, insurance applications and marketing literature, thereby protecting consumers from discriminatory underwriting practices, huge rate increases and cancellations," according to the Insurance Department.

The department's 33-person task force is composed of representatives of AIDS service organizations, activist groups, physicians, attorneys, representatives from the health insurance industry and department staff.

Among the report's recommendations to help the commissioner extend his regulatory powers are:

- That the commissioner continue his support of legislation to repeal pre-emption of state laws regulating benefit plans by the Employee Retirement Income and Security Act of 1974.

Repealing the ERISA pre-emption is necessary because "self-funded plans and labor union welfare plans," which are exempted from state regulation by ERISA, "can and do put restrictions on coverage for AIDS and HIV," the report says.

While repealing the ERISA pre-emption will admittedly be difficult, the Insurance Department can and "should bring administrative actions against insurance companies that engage in unfair insurance practices either as insurers of ERISA plans or as administrators of self-insured plans," according to the report.

"The authority for the administrative action. . .is grounded in the fact that insurers, seeking to operate in the California market, have consented to the jurisdiction" of the department, the report says. As such, the department "has the authority to revoke or suspend (an insurer's) certificate of authority" on the grounds of engaging in unfair practices, the report says.

- Withholding or revoking the licenses of agents and brokers who market health plans that discriminate against persons with HIV-related illness.
- That the commissioner take steps to obtain "extra-territorial jurisdiction over all insurance plans or policies marketed within California," including plans offered by non-admitted insurers and out-of-state multiple-employer trusts.
- That all health benefit plans be regulated by the Insurance Department. Currently, health maintenance organizations and Blue Cross/Blue Shield plans are regulated by the state Department of Corporations. ■

Update

Work comp antitrust claim fails

BANGOR, Maine—Employers in Maine plan to appeal a federal judge's ruling that workers compensation insurers do not violate antitrust laws when they collectively lobby to lift caps on rates.

Thirteen Maine employers last fall charged that the National Council on Compensation Insurance and 14 workers comp insurers conspired in 1987 to coerce the Legislature to repeal a 1985 law that limited rate increases (*BI*, Sept. 23).

U.S. District Court Judge Morton Brody granted summary judgment to the defendants last month, ruling that "federal antitrust laws neither prohibit private actors from collectively seeking favorable rate legislation from states nor provide relief to persons proximately injured by legislation passed by the states."

NCCI President William Hager hailed the judge's decision as a "gratifying and significant victory."

"Everything about the Maine law and rate filings was not only done openly, but amid great debate," he said. "To show up in court four years after the fact and call the open workings of a modern democracy a conspiracy is simply not reasonable."

N.Y. risk manager bill dies

ALBANY, N.Y.—Barring last-minute approval by the state Assembly, New York will not have a stand-alone risk management department this year.

Before adjourning for the summer earlier this month, the Assembly determined that a risk management bill approved by the state Senate needs further study by the state's Division of Budget.

New York will have a risk manager during the 1992 fiscal year only if the Assembly reconvenes later this summer and approves the bill. However, that scenario is unlikely, according to a spokesman for Assembly Insurance Committee member Howard Lasher, D-Brooklyn.

The measure was steered through the Legislature by Republican lawmakers after Gov. Mario Cuomo authorized $500,000 of the state's budget to finance a risk management program (*BI*, May 11).

The spokesman for Assemblyman Lasher added that if the bill is not passed, there is no guarantee that funding for a risk manager will be included in the state's 1993 budget.

Currently, nominal risk management responsibilities are handled by the New York Office of General Services' Bureau of Insurance.

$17 million D&O judgment

SHREVEPORT, La.—A federal judge has ruled that a Crum & Forster Inc. unit must cover a $17 million directors and officers liability award involving a failed bank.

The U.S. District Court judge in Shreveport, La., found Crum & Forster owed coverage but shaved $12 million from the original $29 million jury award against the insurer late last year. The judge agreed with the insurer's contention that some of the bank's claim was not covered, said a Crum & Forster spokeswoman.

The Bank of Commerce in Shreveport sued Crum & Forster unit International Insurance Co. after it refused to cover a judgment against bank officers stemming from a lawsuit filed by the Federal Deposit Insurance Corp. The jury in the underlying case found the bank's directors and officers were grossly negligent in approving $29 million in loans that were not repaid.

Crum & Forster contends the claims were not properly filed with the insurer and the claims are outside the intent of the D&O policy, said Leslie Thurston, Crum & Forster's head of corporate planning.

Briefly noted

Lloyd's of London's official global results for the 1989 underwriting year, which were released Friday, confirm the market's earlier announcement of a record loss of 2.06 billion pounds ($3.85 billion at year-end 1991 exchange rates). The non-marine and marine markets each suffered losses exceeding 920 million pounds ($1.72 billion), while the motor market reported a profit of 47.2 million pounds ($88.3 million) and the aviation market reported a profit of 38.6 million pounds ($72.2 million). . . .The California Supreme Court last week agreed to review two cases that challenge the constitutionality of the state's **punitive damages** system. The court requested briefs on whether the awards made in those cases were consistent with the 1991 U.S. Supreme Court decision in *Pacific Mutual Life Insurance Co. vs. Haslip* and whether those awards were excessive under California law (*BI*, March 11, 1991). . . .Missouri **workers compensation insurers** are seeking an overall 23.8% rate increase beginning Sept. 1, due to higher-than-average increases in hospital costs and lost workdays, the National Council on Compensation Insurance says. Meanwhile, New York regulators last week approved a 15.6% workers compensation insurance rate increase. The New York Compensation Insurance Rating Board had requested an 18.4% increase. The new rating is now in effect. . . .Moody's Investors Service is lowering **Aetna Life & Casualty Co.'s** senior debt rating to A1 from Aa3. It also lowered the financial strength ratings of its principal subsidiaries. The rating changes reflect the vulnerability of Aetna's large mortgage portfolio to ongoing deterioration of commercial real estate markets, which is expected to affect the company's earnings and capital formation, Moody's said. . . .Several insurance producer organizations and **six large regional banks** last week struck an agreement in which the producers would support federal legislation permitting banks to branch across state lines, as long as national banks are prohibited from underwriting insurance and selling title insurance.

9th Circuit ruling

Continued from page 2

Therefore, state insurance laws do not preempt the Federal Arbitration Act, which establishes a federal policy favoring arbitration, the court held.

Attorneys say this portion of the ruling will further fuel the debate on whether McCarran-Ferguson, which provides insurers with limited immunity from antitrust laws, should be repealed by Congress.

"Liquidators will perceive (the 9th Circuit) ruling as a setback," said attorney Lawrence Greengrass of Mound, Cotton & Wollan in New York. "But the insurance industry has generally believed that arbitration clauses should be enforced."

"With all of its faults, arbitration is still faster and less expensive than litigation," said Mr. Greengrass, who represented reinsurer Liberty National Fire Insurance Co. of Birmingham, Ala., in a dispute with Montana liquidators in the 9th Circuit case. "Furthermore, arbitration leads to results that conform to standard industry custom and practice," he said.

"In litigation, you are addressing complex insurance or reinsurance issues before a judge or a jury that lacks experience in these matters," added Mr. Greengrass. "In arbitration, the dispute is heard by experienced, knowledgeable industry people."

"Substantial justice tends to get done more often in front of an industry panel than a state court," agreed reinsurance attorney Vincent Vitkowsky of Buchalter, Nemer, Fields & Younger in New York.

"This is a very significant decision," he added, noting that "this is the only federal circuit court to squarely address this issue in the liquidation context."

"The 9th Circuit's decision upholds a federal policy favoring arbitration," said Paul E. Dassenko, senior officer for defunct Transit Casualty Co. of St. Louis.

Furthermore, the decision makes clear that only certain types of disputes should be arbitrated, he pointed out.

"The decision limits arbitration to pre-liquidation contracts and pre-liquidation disputes," Mr. Dassenko noted.

While reinsurers generally prefer to arbitrate, liquidators prefer to litigate coverage disputes. Liquidators also resent being told by federal courts how to handle a liquidation.

"This case was wrongly decided," said Dana Carli Brooks, an attorney with Rubenstein & Perry in Los Angeles, who serves as special counsel to the California Insurance Department in liquidation proceedings.

"The state court has the bigger picture in mind and understands the full assets and liabilities," said Ms. Brooks. "An arbitration panel can reach an isolated result that doesn't take into account the bigger picture."

In addition, the decision could mean that an insurer that did business in all 50 states could be forced to arbitrate disputes nationwide, rather than arguing the entire liquidation in a single state court, said Ms. Brooks. "This would result in the expenditure of tremendous amounts of money."

Ms. Brooks represents the California Insurance Department in the Mission Insurance Co. liquidation. To date, Mission has been successful in avoiding arbitration, she said. Ms. Brooks does not believe the 9th Circuit ruling will affect the Mission case, because the Mission case is being handled in state court and this is a federal ruling.

Reinsurance attorney Dean Hansell of LeBoeuf, Lamb, Leiby & MacRae in Los Angeles believes the 9th Circuit ruling will be particularly helpful to reinsurers that seek to offset amounts they owe to an insolvent insurer by unpaid premiums the insolvent insurer owes the reinsurer.

Because the 9th Circuit held that the liquidator of an insolvent insurer "stands in the shoes" of the insolvent insurer, reinsurers will argue that there is a right to offsets, he explained.

"This ruling gives credence to the arguments raised by reinsurers seeking offsets," agreed Mr. Hansell.

The California Supreme Court is now reviewing an appellate court decision that allows Prudential Reinsurance Co. to offset debts it owes to Mission by amounts that Mission owes to Prudential (*BI*, Jan. 8, 1990, Jan. 1, 1990).

In addition, attorneys say the portion of the ruling that determined that a liquidation does not fall under the "business of insurance" within the McCarran-Ferguson Act may further fuel debate on whether the law should be repealed.

"The court's ruling may spark further debate on the McCarran-Ferguson Act," said Mr. Greengrass.

The U.S. Supreme Court has agreed to review the issue of whether or not liquidation falls under the "business of insurance" within McCarran-Ferguson in *Fabe vs. United States Department of Treasury*.

This case involves a claim by the federal government seeking between $7 million and $9 million from American Druggists' Insurance Co., a Blue Ash, Ohio-based unit of Armco Insurance Group. The insolvent surety company was ordered liquidated in 1986.

The 6th U.S. Circuit Court of Appeals held that the Ohio scheme for liquidating insurers pre-empts federal law that gives the federal government priority in liquidations. The court reasoned that the liquidation of an insurer is "the business of insurance" within the McCarran-Ferguson Act (*BI*, Aug. 19, 1991).

The 4th Circuit and the 9th Circuit have each issued contrary holdings, finding liquidation is not the "business of insurance" within McCarran-Ferguson, creating a split in the federal appellate courts on this issue.

"Obviously, the Supreme Court feels this is a very important issue," said Mr. Greengrass.

In its decision, the 9th Circuit held that Andrea Bennett, Montana's insurance commissioner and liquidator of Glacier General Assurance Co., must arbitrate coverage disputes with reinsurer Liberty National Fire Insurance Co. and managing general agent Gordon Gaines Inc. of Birmingham, Ala. Gaines wrote automobile physical damage coverage nationwide on behalf of Glacier.

The contracts that Liberty National and Gaines had with Glacier contained mandatory arbitration clauses.

Mandatory arbitration clauses appear in 99% of all treaty reinsurance policies and a majority of facultative reinsurance policies, according to attorneys.

When the liquidator demanded payment from Liberty National and Gaines, both refused to pay, alleging that the liquidator sought to recoup substantially more money than Glacier would have been due if solvent. Liberty National and Gaines then demanded arbitration, but the liquidator sued.

Reversing a trial court, the 9th Circuit said the arbitration clauses should be upheld.

"These arbitration clauses focus on contract interpretation and performance," said the court. "Because the liquidator, who stands in the shoes of the insolvent insurer, is attempting to enforce Glacier's contractual rights, she is bound by Glacier's pre-insolvency agreements."

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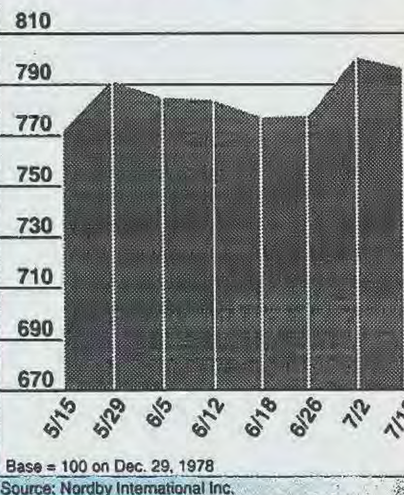
Andrea Bennett, State Auditor and Commissioner of Insurance for the State of Montana and Liquidator of Glacier National Assurance Co., vs. Liberty National Fire Insurance Co. and J. Gordon Gaines Inc., U.S. 9th Circuit Court of Appeals; No. 91-35292.

BI Insurance Index



Insurance industry stocks dropped slightly last week, as the *Business Insurance* Index fell 4.4 points to 795.7 on July 10 from 800.1 on July 2. Advancing issues for the week were led by Chandler Insurance, up 27.0%; Statesman Group Inc., up 14.3%; and Gainsco Inc., up 8.8%. Declining issues for the week followed Reliance Group Holdings, down 7.3%; Mutual Risk Management Ltd., down 6.3%; and NAC Re Corp., down 6.0%. The most active issue for the week was Sears, Roebuck (Allstate), 3.6 million shares traded. The *BI* Index was down 0.5%; the NYSE Composite fell 0.7%; the Standard & Poor's 500 was up 0.7%; and the Dow Jones 30 Industrials remained flat.

British Issues

July 9 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	464	N/M	31.5	6.8	475—464
Genl Accident	430	N/M	35.7	8.3	450—430
Gdn Royal Exch	138	N/M	10.0	7.2	142—137
Royal	201	N/M	15.0	7.5	208—200
Sun Alliance	266	N/M	19.0	7.1	276—266
Brokers					
Bradstock	130	14.6	6.3	4.8	133—130
CE Heath	332	19.2	34.5	10.4	347—332
Hogg Group	155	9.4	10.9	7.0	158—155
JIB Group	159	11.7	10.0	6.3	163—159
Lloyd Thompson	204	20.4	6.0	2.9	204—204
Lowndes Lmbrt	289	11.2	16.8	5.8	289—283
PWS Holdings	43	4.7	5.3	12.3	43—43
Sedgwick Grp	181	14.1	16.0	8.8	183—180
Steel Brnl Jones	230	11.5	17.7	7.7	244—230
Willis Corroon	202	12.8	17.6	8.7	210—202

Source: Philip Olsen, Insurance Industry Analyst, London

BI Industry Stock Report

JULY 6, 1992 THROUGH JULY 10, 1992

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	22.88	5.17	11.59	23.38	18.00	303	1.00	4.37	143	13.10	1.75
Gallagher Arthur J. & Co.	NYS	24.50	8.29	9.50	25.25	19.00	124	0.64	2.61	19	5.88	4.17
Frank B. Hall	NYS	3.75	0.00	-11.76	5.50	3.13	85	0.00	0.00	-3	1.95	1.92
Hilb, Rogal & Hamilton	NYS	11.50	0.00	-13.21	15.50	11.00	50	0.40	3.48	19	3.56	3.23
Marsh & McLennan	NYS	77.13	0.49	-5.22	83.75	70.00	501	2.68	3.47	18	28.00	2.75
Poe & Associates	OTC	13.75	-0.90	14.58	16.00	11.00	82	0.40	2.91	16	2.82	4.88
BROKERS	AVERAGE		2.2	0.9					2.4	30		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	34.00	1.49	11.48	36.25	23.50	198	0.36	1.06	12	36.95	0.92
Berkshire Hathaway Inc.	NYS	9350.00	0.00	3.31	9350.00	254.69	0	0.00	0.00	30	7270.00	1.29
ITT (Hartford Group)	NYS	66.13	1.93	14.50	70.63	50.00	1595	1.84	2.78	11	112.05	0.59
Sears (Allstate)	NYS	39.25	-0.63	3.63	48.00	32.50	3625	2.00	5.10	11	34.50	1.14
CONGLOMERATES	AVERAGE		0.7	8.2					2.2	16		
INSURERS/REINSURERS												
AEGON N.V.	NYS	37.25	3.47	6.43	37.25	27.38	30	1.14	3.06	7	N/A	N/A
Aetna Life & Casualty	NYS	43.00	-0.86	-2.27	47.00	31.88	1512	2.76	6.42	8	87.60	0.49
Allied Group Inc.	OTC	24.75	5.32	45.59	24.75	16.25	62	0.64	2.59	9	19.85	1.25
American General	NYS	49.38	2.60	10.96	49.88	38.13	601	2.08	4.21	11	60.00	0.82
American Heritage Life Ins.	NYS	31.63	0.00	3.27	32.25	20.06	3	0.84	2.66	16	N/A	N/A
American Indemnity/Fin'l	OTC	6.25	-3.85	31.58	9.25	4.50	1	0.08	1.28	5	12.93	0.48
American International	NYS	90.25	2.12	-8.26	99.38	78.63	1471	0.56	0.62	12	99.30	0.91
Aon Corp.	NYS	47.88	1.86	20.82	47.88	34.75	415	1.68	3.51	12	39.70	1.21
Argonaut Group	OTC	28.25	5.61	18.95	30.25	21.75	633	0.84	2.97	8	20.96	1.35
AVEMCO Corp.	NYS	27.63	2.79	10.50	28.00	19.63	11	0.40	1.45	24	9.55	2.89
Baldwin & Lyons Inc.	OTC	29.50	-1.67	14.56	31.75	22.75	0	0.28	0.95	8	24.29	1.21
Belvedere Corp.	ASE	6.13	0.00	88.46	6.25	2.88	0	0.04	0.65	17	7.65	0.80
Chandler Insurance	OTC	7.25	26.09	123.08	7.25	2.13	2314	0.00	0.00	66	5.95	1.22
Chubb Corp.	NYS	74.63	1.36	-3.08	78.00	60.75	1226	1.60	2.14	12	72.95	1.02
CIGNA Corp.	NYS	56.88	2.02	-6.95	61.75	41.25	688	3.04	5.35	11	117.15	0.49
CNA Financial Corp.	NYS	86.50	0.14	-11.73	104.50	76.25	101	0.00	0.00	9	70.23	1.23
Continental Corp.	NYS	31.88	8.51	15.38	31.88	23.25	988	2.60	8.16	27	40.00	0.80
EXEL Ltd.	NYS	37.00	4.96	-1.33	40.25	27.38	379	0.92	2.49	8	N/A	N/A
Fund American Corp.	NYS	68.88	-0.54	-1.43	70.50	62.00	81	0.68	0.99	30	36.11	1.91
Fremont General Corp.	OTC	21.25	0.00	-12.82	26.00	17.00	220	1.00	4.71	5	45.55	0.47
Frontier Insurance Group	NYS	32.13	-3.38	18.98	37.63	19.91	43	0.56	1.74	12	26.65	1.21
Gainsco Inc.	ASE	17.00	8.80	21.43	17.00	10.00	42	0.04	0.24	19	3.37	5.04
General RE Corp.	NYS	85.25	-0.73	-16.32	104.75	77.50	755	1.80	2.11	11	78.65	1.08
Guaranty National Corp.	NYS	15.50	0.00	6.90	17.00	12.63	7	0.48	3.10	11	N/A	N/A
Hanover Insurance Co.	OTC	36.50	2.10	2.10	42.75	27.13	9	0.44	1.21	9	37.44	0.97
Harleysville Group	OTC	19.50	2.63	-8.24	23.25	16.75	68	0.64	3.28	8	22.99	0.85
Hartford Steam Boiler	NYS	57.00	1.79	-0.87	58.75	45.13	58	2.00	3.51	17	35.50	1.61
Kemper Corp.	NYS	25.63	-1.44	-32.79	46.13	23.25	625	0.92	3.59	7	50.00	0.51
Lawrence Insurance Group	ASE	7.25	-3.33	-34.83	11.13	7.25	3	0.48	6.62	16	4.71	1.54
Liberty Corp.	NYS	31.25	4.17	41.24	32.00	19.50	78	0.48	1.54	14	29.35	1.06
Lincoln National	NYS	63.63	3.46	16.21	63.63	45.38	235	2.92	4.59	11	81.00	0.79
Markel Corp.	OTC	23.00	-3.16	4.55	28.25	17.50	102	0.00	0.00	6	15.59	1.48
Mutual Risk Mgmt. Ltd.	NYS	28.13	-6.25	-19.93	37.75	21.13	39	0.12	0.43	19	-	-
NAC Re Corp.	OTC	27.25	-6.03	-13.49	33.00	21.75	64	0.16	0.59	12	18.90	1.44
National Re Holdings Corp.	NYS	18.00	-2.04	N/A	23.63	17.00	403	0.12	0.67	9	N/A	N/A
Navigators Group	OTC	33.00	0.00	-19.51	48.25	29.50	2	0.00	0.00	19	13.52	2.44
Nobel Insurance LTD.	OTC	4.88	-2.50	21.88	6.00	3.38	21	0.00	0.00	3	7.76	0.63
NWNL Companies	NYS	39.13	4.33	25.70	39.13	18.63	211	1.48	3.78	12	62.65	0.62
Ohio Casualty Corp.	OTC	56.00	2.75	13.13	58.25	43.50	154	2.68	4.79	9	18.00	3.11
Old Republic Int'l	NYS	21.50	-1.71	21.13	22.50	14.63	381	0.40	1.86	8	33.09	0.65
Orion Capital Corp.	NYS	36.50	3.91	15.42	36.50	27.25	180	0.92	2.52	6	43.50	0.84
Phoenix RE Corp.	OTC	11.50	4.55	9.52	11.75	8.50	18	0.20	1.74	28	13.30	0.86
Provident Life	OTC	23.75	6.74	2.15	24.25	17.75	442	1.00	4.21	10	39.50	0.60
Re Capital Corp.	ASE	12.63	0.00	-12.17	17.50	12.63	22	0.24	1.90	13	15.05	0.84
Reliance Group Holdings	NYS	4.75	-7.32	15.15	5.88	3.50	73	0.32	6.74	3	6.40	0.74
RLI Insurance Corp.	NYS	19.50	-1.27	18.18	21.25	11.88	3	0.48	2.46	9	14.41	1.35
St. Paul Companies	NYS	76.88	-3.91	5.49	80.75	57.13	674	2.72	3.54	8	86.60	0.89
SAFECO Corp.	OTC	50.38	0.50	3.33	52.50	35.50	967	1.64	3.26	12	51.65	0.98
SCOR U.S. Corp.	NYS	16.25	-4.41	5.69	18.88	12.75	24	0.28	1.72	9	11.19	1.45
Seibels Bruce Group	OTC	5.88	2.17	6.82	8.75	4.00	70	0.36	6.13	-3	10.60	0.55
Selective Ins. Group	OTC	20.75	0.00	23.88	21.50	14.50	226	1.12	5.40	8	30.75	0.67
Statesman Group Inc.	OTC	7.00	14.29	21.74	7.00	4.13	1608	0.00	0.00	4	2.48	2.82
Tokio Marine & Fire	OTC	40.25	0.00	-21.84	55.25	32.25	7	0.00	0.00	-	70.93	0.57
Torchmark Corp.	NYS	67.50	2.27	16.63	69.25	47.75	613	1.60	2.37	14	40.95	1.65
Transamerica	NYS	44.63	0.56	11.91	46.75	31.25	355	2.00	4.48	30	55.00	0.81
Transatlantic Holdings	NYS	31.88	-2.67	-18.01	39.63	29.00	284	0.24	0.75	10	18.38	1.73
Travelers Corp.	NYS	21.25	3.03	-1.73	23.75	17.25	1017	1.60	7.53	8	59.00	0.36
Trenwick Group Inc.	OTC	28.50	1.79	0.00	30.75	23.00	122	0.72	2.53	10	21.71	1.31
United Fire & Casualty	OTC	38.75	-0.64	29.17	41.34	28.00	2	1.00	2.58	11	35.39	1.09
USF&G Corp.	NYS	13.63	0.93	87.93	14.75	5.63	2175	0.20	1.47	-9	12.30	1.11
UNUM Corp.	NYS	41.13	-2.08	1.54	44.00	28.81	708	0.64	1.56	13	37.70	1.09
USLIFE Corp.	NYS	52.13	3.99	8.88	52.13	38.50	234	1.68	3.22	10	84.55	0.62
Unitrin	OTC	34.75	3.73	-2.80	38.50	31.00	260	1.00	2.88	14	37.23	0.93
USLICO Corp.	NYS	17.50	0.00	-5.41	21.00	17.00	36	1.00	5.71	-14	33.15	0.53
Washington National	NYS	20.63	2.48	29.92	20.63	13.50	306	1.08	5.24	-36	33.50	0.62
Zenith National Ins.	NYS	18.38	-0.68	8.89	19.50	13.75	64	1.00	5.44	8	13.14	1.40
INSURERS/REINSURERS	AVERAGE		1.3	9.8					3.2	12.5		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	16.25	-5.80	14.04	27.00	9.88	881	0.00	0.00	15	15.50	1.05
HMO America Inc.	OTC	12.25	7.69	-26.87	24.88	9.63	286	0.00	0.00	13	0.61	20.08
Pacificare Health Sys.	OTC	28.25	-4.24	-28.48	31.25	10.75	158	0.00	0.00	20	28.25	1.00
Safeguard Health Enter.	OTC	10.00	0.00	6.67	14.75	5.38	14	0.00	0.00	15	3.53	2.83
Sierra Health Services	ASE	19.13	4.08	3.38	27.50	12.38	37	0.00	0.00	10	1.78	10.74
United Healthcare Corp.	NYS	86.50	0.29	16.11	93.00	40.25	835	0.03	0.03	33	43.60	1.98
United Medical Corp.	ASE	7.25	0.00	3.57	9.75	5.88	1	0.20	2.76	28	8.79	0.82
U.S. Healthcare	OTC	54.50	6.34	31.33	57.75	21.25	3569	0.56	1.03	24	20.55	2.65
HMOs	AVERAGE		1.0	2.5					0.5	20		
ALL COMPANIES	AVERAGE		1.3	5.4					2.7	15		

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