

Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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Microsoft loses rehearing of contractor benefits case

SAN FRANCISCO—Microsoft Corp. improperly excluded workers wrongly classified as independent contractors from its 401(k) and stock-purchase plans, the 9th U.S. Circuit Court of Appeals ruled last week.

The decision generally upholds a ruling by a three-judge panel last year (*BI*, Oct. 21, 1996).

The class-action suit originally was filed by eight plaintiffs who worked for Microsoft in the United States between 1987 and 1990 as freelancers in the company's international division. The freelancers all had signed contracts that

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Mercer deal outsources outsourcing

ADP to assume control of most services in alliance

By JERRY GEISEL

ROSELAND, N.J.—William M. Mercer Inc. is turning over control of much of its employee benefits administration and outsourcing business to Automatic Data Processing Inc. as part of a new alliance with ADP, the payroll processing king.

Roseland, N.J.-based ADP will take over Mercer's call centers as well as defined contribution plan and health and welfare plan administration services, with Mercer's 600 employees involved in those areas shifting to ADP. Mercer will manage defined benefit plan administration for the al-



'Increasingly, companies want integrated systems—those that combine human resource administration, payroll and benefits,' says Timothy Lynch.

liance, which has not been named, as well as through its own offices. Mercer and ADP expect that the alliance will be in place by September. Mercer, though, has not yet decided what it will do with J&H/KVI, a Des Moines, Iowa-based benefits administrator, which was majority owned by Johnson & Higgins. Marsh & McLennan Cos. Inc. purchased J&H earlier this year in a \$1.8 billion transaction.

While neither Mercer nor ADP will disclose all financial details, the transaction, according to ADP, will give it more than 600 clients and swell revenues by more than \$50 million. ADP now has more than \$4 billion in worldwide revenues.

Mercer and ADP executives say clients will be the ultimate beneficiaries of the link between the world's largest employee benefit consultant and the world's largest payroll processor.

"We have done a lot of research, and increasingly, companies want integrated systems—those that combine human resource administration, payroll and benefits. Through this alliance, we can offer those kind of integrated services to clients," said Mercer Chairman Timothy Lynch in New York.

"This fills out a service line and adds significant critical mass to our growing business," added Tim Lamb, president of ADP's national accounts division in Atlanta.

See Outsource on page 10

Employer voices heard by framers of tax bill

By JERRY GEISEL

WASHINGTON—As congressional conferees hammer out a final tax bill, employer benefits lobbying is bearing fruit.

Conferees last week agreed to knock out a provision that would have required written spousal approval before an employee could take money out of a 401(k) plan in any form other than an annuity.

That provision, which had been attached to the Senate bill in executive session by Sen. Carol Moseley-Braun, D-Ill., became the target of a massive lobbying campaign by trade groups and individual employers.

Employers told legislators and congressional staffers that such a require-

ment not only would complicate and increase their own administrative costs, but that it also would reduce participation by employees concerned that they would lose easy access to their 401(k) account balances if they needed spousal consent to take money out of their accounts.

"The argument that worked the most was that it would make participation levels drop like a rock," said Lynn Dudley, director of retirement policy at the Assn. of Private Pension & Welfare Plans in Washington. The APPWP led the employer drive to knock out the provision, which was in only the Senate-passed and not in the House-passed bill.

While employers were celebrating their victory last week, Washington ob-

servers warned the 401(k) plan spousal issue is unlikely to go away.

"This won't be the end of it. I'm sure it will come back," said Ann Combs, a principal with William M. Mercer Inc. in Washington.

While employers triumphed on the 401(k) spousal consent provision, there were setbacks as Republican conferees continued working on settling differences between House- and Senate-passed tax bills and then presenting a package to the White House for more negotiations. Those setbacks included:

- Republican conferees agreed to drop a series of medical malpractice reforms, which were only in the House bill. Those reforms included a \$250,000 limit on non-economic damages in

See Tax bill on page 22

Judge convenes medical panel to assess breast implant claims

By DEBORAH SHALOWITZ COWANS

BIRMINGHAM, Ala.—The convening last week of a panel of four physicians to hear and assess scientific evidence on whether silicone gel breast implants cause illness or disease could herald a new approach to how evidence is presented in mass tort cases.

The panel, a neutral body of medical experts appointed by a federal judge rather than the parties to the litigation, includes an epidemiologist, an immunologist, a rheumatologist and a toxicologist.

Panelists met for three days last week before U.S. District Court Judge Sam C. Pointer Jr. in Birmingham to hear experts for both sides in the breast implant product liability litigation testify on whether silicone causes systemic illnesses and disease. The testimony did not address whether silicone causes localized problems, because that issue is not as contentious.

This type of panel "tries to reduce emotions governing outcomes on either side...and focus on what are really ques-

tions of scientific fact," commented Victor E. Schwartz, counsel to the Arlington, Va.-based Product Liability Coordinating Committee. The panel is "a new way to create information that juries ultimately can look upon and depend upon."



Judge Pointer

against silicone implant manufacturers, according to court documents.

There is no deadline for the reports.

See Implants on page 22

CGL policy requires defense of cleanup orders in California

Appeals court rules cleanup order is equivalent to lawsuit

By DAVE LENCKUS

LOS ANGELES—General liability insurers in California now must defend policyholders against cleanup orders by governmental environmental agencies.

In partially overturning a lower court's December 1995 ruling, a California appellate court on July 3 unanimously found that a pollution cleanup order by a state or federal environmental regulatory agency is equivalent to a lawsuit. As a result, a potentially responsible party is entitled to a defense from its comprehensive general liability

insurers against such orders.

The policyholder's insurers in the case argued cleanup orders are comparable to claims, not suits. Under CGL policies, claims do not trigger insurers' duty to defend policyholders.

While CGL policies typically distinguish between suits and claims, they do not define those terms. As a result, courts nationwide have been at odds over whether a cleanup order is equivalent to a lawsuit.

Although the California appellate court's decision is not groundbreaking, it is important for policyholders in California and in other states where courts

have not ruled on the issue, policyholder attorneys said.

"For environmental coverage in California, it's significant because it's the first reported decision on this issue," said policyholder attorney Barry J. Shotts, who represents the policyholder in the California appellate court case.

And, now that California, a leading state in insurance and environmental law, "has weighed in on the issue, it carries quite a bit of weight in other states, I think," said Mr. Shotts, a partner with Latham & Watkins in San

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Updates

Microsoft loses rehearing

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said in part that they were self-employed and responsible to pay all their own insurance and benefits.

But in 1989 and 1990, the Internal Revenue Service concluded the workers were not independent contractors but employees for withholding and Social Security tax purposes.

After learning of the IRS decision, the workers sought various employee benefits, including participation in the company's 401(k) and stock-purchase plans.

According to the 9th Circuit decision, Microsoft now has agreed that the workers were not independent contractors. Therefore, the court ruled, Microsoft's reasons for rejecting the workers' participation in these plans are invalid. The appellate court remanded the case to the district court to rule on remaining issues related to the stock plan and ordered the plan administrator to resolve additional pension plan issues.

The workers' attorney, David Stobaugh of Bendich, Stobaugh & Strong in Seattle, said as a "low ballpark figure," an estimated 800 to 1,000 workers are affected by the decision, though he could not estimate its financial impact on Microsoft. However, law and benefit experts have warned that the issue also could impact the growing number of other employers that hire independent contractors and temporary workers.

A Microsoft spokesman could not be reached for comment.

Court rejects AIG appeal

SACRAMENTO, Calif.—A California appeals court has rejected American International Group Inc.'s challenge to a lower court order awarding Golden Eagle Insurance Co.'s business to Liberty Mutual Insurance Co.

The California Insurance Department had initially picked AIG as the winning bidder for the troubled Golden Eagle, but San Francisco Superior Court Judge William Cahill later chose a revised bid from Liberty Mutual instead (BI, July 21; July 14).

AIG appealed the ruling, but the state Court of Appeal last week denied AIG's petition without further comment.

An AIG spokesman would not comment on whether the insurer will ask the court to reconsider its decision.

Meanwhile, Judge Cahill heard arguments for and against the Golden Eagle rehabilitation plan at a hearing last week. He gave interested parties until July 30 to file additional briefs before he rules on the plan.

N.J. allows fear-of-injury suit

TRENTON, N.J.—A woman claiming she suffered emotional distress from the fear of contracting HIV after pricking her finger can seek damages from the doctors who allegedly left the lancet in a trash can, the Supreme Court of New Jersey has ruled unanimously.

In setting a new standard for the state, the high court ruled that a person can recover for emotional distress without demonstrating either actual exposure to or a viable channel of transmission of the virus, if the emotional distress is based on the fears experienced by a reasonable and well-informed person.

The July 21 ruling in *Karen Williamson, et al. vs. Leonard Waldman, M.D., et al.* affirms an appellate court ruling. The case will now return to the trial court, which must use the new standard.

The case involves Karen Williamson, a cleaning woman who was pricked with a lancet in 1991 while cleaning a trash can in an examining room used by three doctors.

After becoming alarmed at the potential of contracting HIV, she began annual testing.

Despite continually testing negative for HIV, Ms. Williamson became depressed and has suffered lifestyle changes as a result of the incident, according to court papers.

She filed suit against the three doctors in 1993, alleging they breached their duty to use reasonable care to inspect and to make the premises reasonably safe.

The trial court ruled in favor of the doctors, holding Ms. Williamson had failed to demonstrate she was exposed to HIV and that given her negative test results, her continued fear was "idiosyncratic." On appeal, the court reversed and remanded the case, ruling that Ms. Williamson was not required to demonstrate actual exposure to HIV and could recover based on the reasonableness of her fears.

The New Jersey case stands in contrast to a U.S. Supreme Court decision handed down last month in which the justices unanimously ruled that a pipe fitter in New York could not recover damages for his fear of contracting asbestos-related illnesses (BI, June 30).

Insurers sue over Texas refund

AUSTIN, Texas—Texas insurers are suing to stop enforcement of a rule that would require them to refund to employers millions of dollars in surplus from the state's workers compensation residual market.

About 70 insurers filed a complaint July 18 in Travis County District Court in Austin, Texas, seeking a declaratory judgment that the rating rule issued by Insurance Commissioner Elton Bomer exceeds his authority and is unconstitutional. The suit names the commissioner and the Texas Department of Insurance as defendants.

The rule, adopted last month, requires insurers to refund a share of the \$718.5 million surplus they received from the Texas Workers' Compensation Insurance Facility for the years 1991 through 1994 (BI, July 14, July 7). The refunds would go to employers who bought retrospectively rated policies during those years.

The suit does not contest refunds ordered for the years 1993 and 1994, years the insurers have conceded the payments can legally be ordered.

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Congress relaxes freeze on ergonomics action

By MARK A. HOFMANN

WASHINGTON—Business and insurance groups are applauding a congressional attempt to block the Occupational Safety and Health Administration from issuing any ergonomics standard for at least another year.

But the bipartisan compromise, hammered out by Reps. Henry Bonilla, R-Texas, and David Obey, D-Wis., would not circumscribe OSHA's ergonomics-related activities as sharply as previous legislation.

ed activities as sharply as previous legislation.

For example, the OSHA appropriations amendment approved last week by the House Appropriations Committee states specifically that it does not limit OSHA "from issuing voluntary guidelines on ergonomic protection or from developing a proposed standard regarding ergonomic protection," a prohibition in effect throughout much of the last Congress.

The new approach, which won the approval of the Senate Appropriations Committee last week, also would not require that the National Academy of Sciences issue an ergonomics study before OSHA may impose a standard.

The one-year ban on issuing an ergonomics standard may have more of a symbolic than practical impact in many cases.

A spokesman for OSHA said that prohibition on issuing a standard.

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Swiss Re issues cat bond

Deal provides reinsurer with \$112 million for quake loss

By RODD ZOLKOS

ZURICH, Switzerland—Swiss Reinsurance Co. has made its first foray into transferring catastrophic risk to the capital markets with a bond deal tied to its purchase of \$112.2 million in California earthquake reinsurance coverage.

Much like the deal United Services Automobile Assn. used in June to acquire high-level Florida hurricane reinsurance (BI, June 23), the Swiss Re deal involves the use of a Cayman Islands facility in

issuing the catastrophe notes.

SR Earthquake Fund Ltd., a Cayman Islands reinsurance facility that Swiss Re created recently, sold the notes to investors, then sold Swiss Re \$112.2 million in single-event, high-level California earthquake reinsurance coverage.

Officials at Swiss Re declined to provide details on the arrangement.

Newly formed Swiss Re Capital Markets and Credit Suisse First Boston were the deal's placement agents, structuring and selling the privately placed securities.

In contrast to the USAA hurricane deal, which was based only on losses to USAA's book of business, investor repayment of the \$137 million worth of two-year SR Earthquake notes is tied to the index of industrywide California earthquake losses developed by the Property Claims Services division of the American Insurance Services Group Inc.

None of the deal's three tranches provides investors full protection of principal, and Swiss Re officials believe the deal's senior

See Swiss Re on page 4

Fee schedule change assailed

California workers comp costs would rise: CWCI

By ROBERTO CENICEROS

SAN FRANCISCO—Proposals to change the state's workers compensation medical fee schedule would unduly increase doctor compensation and employer and insurer costs, the California Workers Compensation Institute is warning.

The San Francisco-based CWCI aired its concerns in a July 16 bulletin in response to recommendations by California's Industrial Medical Council. IMC members maintain the CWCI bulletin is in error.

The CWCI represents insurers and self-insured employers; the IMC is a 16-member panel selected by the governor and legislative leaders to regulate workers comp physicians. The panel, a unit of the state's Department of Industrial Relations, consists of 15 doctors and one medical economist.

The IMC is proposing that the Division of Workers Compensation, which is also a unit of the Department of Industrial Relations, change medical fee schedule ground rules and instructions for medical service utilization, according to the CWCI. That would include changes to standards governing the use of physical medicine, which includes electrical stimulation, massage, cold packs and whirlpool baths.

See CWCI on page 4

P/C stocks cruise ahead of market

By JUDY GREENWALD

Commercial property/casualty insurance stocks have been flourishing in the stock market this year.

But some observers said they think the stocks, whose performance this year has been boosted by both actual and rumored consolidation, as well as a favorable, low-interest rate environment, are unlikely to maintain the same momentum the rest of the year.

Insurer stocks have done well along with an overall strong stock market so far in 1997. According to the BI Industry Stock Report of 93 insurers and reinsurers, through July 18 stocks advanced 22.77% year to date, though some analysts' own indexes based on the stocks they follow show even greater growth.

This compares with a 22.33% increase for the

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Inside

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• Lloyd's of London hopes to get a market security rating from at least one independent agency. **PAGE 17**

• Terrorist attacks on an oil export pipeline have caused a \$34 million loss for a consortium operating an oil field in Colombia. **PAGE 17**

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Air show organizers must navigate risks

But premiums for aviation insurers small

By STACY SHAPIRO

Although falling airplanes and injured spectators may seem the most obvious risks at air shows, organizers also must worry about other problems.

For example, "What happens if it rains and I'm hooked with \$75,000 in performer fees and five tons of potato chips?" said John Cudahy, president of the International Council of Air Shows in Gaithersburg, Md.

Indeed, a two-day air show at the Royal Air Force base in Waddington in the United Kingdom nearly was canceled recently because of a deluge during the wettest June on record.

The RAF Waddington show was insured for cancellation due to adverse weather, terrorist threats, a member of the royal

family dying, or an airplane crashing during rehearsals before the show opened, said Paul Byram, air show coordinator at the base.

The show went ahead despite the weather conditions but attracted only half the normal 120,000-person crowd, said Mr. Byram.

While air shows are big business for organizers, for aviation insurers they are small potatoes.

The air show market is not even "statistically significant," according to one underwriting executive. Often, governments or manufacturers cover liability losses.

There are 450 air shows annually in the United States, according to Mr. Cudahy of ICAS, a 1,500-member trade association. See Air show on page 16



The U.K.'s Royal Air Force Red Arrows perform. Air shows are big business for organizers, but they are not a major part of the aviation insurance market. Governments or manufacturers often cover liability losses.

Global insurers must grow

Concentration on core strengths, technology crucial: Executives

By GAVIN SOUTER

MEXICO CITY—International insurers must grow, not only to make more money but also to survive and meet their clients' needs, a group of senior insurance executives says.

In the future, if insurers don't meet policyholders' expectations, other financial institutions will take their place with innovative new products, they say.

To stay in the game, insurers must focus on their core strengths, make use of emerging technology, such as the Internet, and adapt to meet the changing needs of the business world, they say.

The consolidation in the insurance industry is due in part

to the need for insurers to establish a global reach to meet their customers' needs, said Dean R. O'Hare, chairman, president and chief executive officer of Chubb Corp. in Warren, N.J.



"Not having the ability to grow with your customers as they tap international

markets will constrain your own growth as customers look for new partners," he said at the annual International Insurance Society Inc. seminar held July 13-17 in Mexico City.

Within 10 years, about one-third of Chubb's premiums will come from policyholders' opera-

tions outside the United States, Mr. O'Hare said.

"And I don't mean only from Fortune 500 companies, but from mid-sized companies that are following their own international strategies into international markets," Mr. O'Hare said.

The need to grow international insurance operations goes hand in hand with the requirement for insurers to better understand their customers' needs, he said.

If insurers don't react to those needs, a growing number of eager financial institutions will offer alternatives to conventional insurance, he said.

Investment banks already are formulating insurance derivatives products and other arbi-

traging instruments, and unless insurers develop similar or better products, they will be elbowed out of their own business, Mr. O'Hare said.

"When someone comes up with a better deal, customers leap at it," he said.

An expanding array of financial institutions will offer those derivative and other deals, agreed Dennis H. Chookaszian, chairman and CEO of CNA Insurance Cos. in Chicago.

In particular, more and more banks are going to enter the insurance business, he said: "They are going to be a larger and larger force in the insurance industry."

Banks are unlikely to want to set up their own underwriting. See Growth on page 12

Danny's flood claims at least \$22.5 million

Swollen rivers, creeks cause train derailment

Flooding from Hurricane Danny has caused at least \$22.5 million in claims from policyholders in several Southern states, according to the Federal Insurance Administration.

The majority of the 1,500 claims came from coastal Alabama, Louisiana and Mississippi, where Danny washed ashore last week and dumped 25 to 30 inches of rain July 18-19.

Jim Shortley, director of claims for the FIA in Washington, said last week that more claims could come from the Gulf states and North Carolina. The FIA administers the National Flood Insurance Program.

Early last week, Danny left up to 20 inches of rain on Georgia before heading to the Carolinas, said Josh McDowell, an oceanographer at the National Hurricane Center in Miami.

On Wednesday, the storm caused at least one death in North Carolina as it washed out roads in and around Charlotte. A 59-year-old motorist drowned after flood waters trapped her car.

Swollen rivers and creeks in North Carolina last week caused a train to derail. In Charlotte last Wednesday night, a CSX Corp. freight train with 90 cars of coal skipped its tracks as it crossed a stone cul-

vert weakened by a flooded creek.

The locomotive then slid down a river bank and into the creek.

CSX is self-insured for the loss, according to a CSX spokeswoman based in Jacksonville, Fla.

The Alabama Emergency Management Agency estimated Danny's winds and rains caused \$6.3 million in damage to roads, bridges and public buildings.

By the end of last week, the state agency had not released a damage estimate for private property.

Close to 650 Mobile-area businesses were damaged, and 200 homes were destroyed or severely damaged, an agency spokesman said.

On Thursday, Alabama Gov. Fob James asked President Clinton to declare three counties a federal disaster area.

The American Insurance Services Group's Property Claims Services division in Rahway, N.J., will release damage estimates this week for Hurricane Danny and the storm that ripped through the Upper Midwest and Detroit earlier this month, said Jim Welch, senior claims consultant.

He added that damages from the Midwest storm (BI, July 14) would be greater than those from last week's hurricane.

—By Bruce Kelly

Sabbaticals can reward loyalty

Benefit also used to recruit workers

By HOLLY SIMPSON

Some companies are recruiting, retaining and rewarding veteran employees by adding paid sabbaticals to their benefit packages.

Sabbaticals, which often are linked to academia and still a relatively rare benefit in the business world, also help combat employee burnout, a research consultant says.

Employee benefit managers say the advantages of offering sabbaticals outweigh disadvantages.

Sabbaticals "are a great tool in all instances," said Cindy Dorado, a benefits administrator with Nike Inc. in Beaverton, Ore.

Employees at Nike are eligible for five-week paid sabbaticals after working 10 years at the company. The company introduced the benefit in 1994.

Sabbaticals help the company find and keep employees, because those close to 10 years of service may choose to remain with Nike for the opportunity to take a sabbatical, Ms. Dorado said.

"It gives people something to look forward to and get excited about," Ms. Dorado said.

Most companies do not experience financial loss as a result of sabbaticals, except in cases where a temporary worker or contractor is required for the duration of the absence.

"It shows as a (paid time off) cost... it's paid like a vacation, so the company hasn't lost any money, but there is still the situation of determining who will pick up the slack," said Susan Hall, a benefits administrator at Adobe Systems Inc. of Mountain View, Calif.

While some companies specify how employees are to use their sabbaticals, be it educational or service-oriented trips, others encourage rest and relaxation.

"There are no guidelines; it's meant to be. See Sabbatical on next page

'Original thinkers' lead World Captive Forum

By RODD ZOLKOS

AVENTURA, Fla.—The Seventh Annual World Captive and Alternative Risk Financing Forum promises to help both experienced captive sponsors and those still exploring the notion in "Completing the Concept."

Set for Nov. 16 through 19 at the Turnberry Isle Resort & Club in Aventura, Fla., this year's forum will feature industry experts examining such issues as optimizing risk retention levels, selecting the right domicile, placing reinsurance effectively and structuring the best fronting arrangements.

And, beyond the formal program, conference-goers will find considerable opportunities for one-on-one discussions with panelists and peers during coffee breaks, meals and receptions. Completing the Concept

Co-sponsoring the conference, titled "Completing the Concept," are *Business Insurance*, Skandia International Risk Management/SINSER and Tillinghast-Towers Perrin.

Conference attendees will include risk managers, captive domicile regulators, captive managers and consultants, insurance and reinsurance brokers and company executives, accountants, lawyers and bankers.

"This conference brings together many of the most original thinkers on the use of captive insurers and other alternative risk financing options," said Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*. "From the formal sessions to the opportunities for networking, attendees will meet others from whom they can learn important information about this rapidly changing marketplace."

The conference will include a special two-hour introductory session Monday, Nov. 17, intended to allow those less familiar with captive concepts to benefit from the more sophisticated discussions to follow.

Simultaneous with the introductory session will be a "Risk Managers Round Table." The session is See Forum on page 14

Stocks

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Dow Jones Industrial Average and a 23.57% increase for the Standard & Poor's 500 for the same period.

Meanwhile, Federal Reserve Board Chairman Alan Greenspan's report to Congress last week, in which he gave no hint that an interest rate increase is imminent, provided a big boost to the stock market overall.

"I would expect that virtually all equities will realize some benefit from his upbeat, positive presentation," said John L. Ward, chairman of Cincinnati-based Ward Financial Group Inc.

Analysts are putting a wide range of property/casualty stocks on their "buy" lists, including old favorites, such as Chubb Corp., American International Group Inc. and General Re Corp.

Michael Lewis, senior insurance analyst with Dillon Read & Co. in New York, who said as a group property/casualty stocks have outperformed the S&P 500 this year, observed they have done so "despite the difficult commercial property/casualty operating environment."

Mr. Lewis pointed to the low-interest-rate environment, which is helping interest-sensitive stocks—including insurers—as well as the ongoing consolidation in the sector, "which is certainly having a positive effect on mid-cap property/casualty names."

"And finally, I would say the distinctly improved capital management being instituted in the sector is also enabling the industry to produce better operating results," said Mr. Lewis.

Said Ron Frank, an analyst with Smith Barney in New York, "I think the stocks' performance has been pretty good, or about as good as you could expect considering the fundamentals certainly

haven't improved any."

"You certainly had some excitement surrounding some of these stocks" regarding acquisitions, both actual and speculated, said Mr. Frank. The stocks also have benefited from a favorable bond environment, he said. "My own view is that to some extent you have seen these stocks catch up with the bank stocks," he said.

and has thus shunned the stocks, and in my view has created some very attractive investment opportunities."

Many observers say they do not expect the stocks to do quite as well relative to the overall stock market for the remainder of the year.

"It's tough to foresee these stocks matching the exceptional

'Through the first half of the year, insurance stocks had generally outpaced the S&P 500 by a lot if you were a property/casualty insurer,' says Michael Smith.

"Through the first half of the year, insurance stocks had generally outpaced the S&P 500 by a lot if you were a property/casualty insurer," said Michael Smith, an analyst with Salomon Brothers in New York.

And while reinsurer and bond insurer stocks trailed behind the market, they were "still up nicely," he said.

"It's interesting because the property/casualty stocks have been among the strongest performers this year, and yet that's where the earnings performance has not been as attractive, and in many cases the earnings quality is downright ugly, so basically Wall Street has been bidding up all the property/casualty stocks indiscriminately," said Mr. Smith.

"It becomes interesting when you contrast it with the continued mediocre performance of the reinsurance sector where the fundamentals are still reasonably attractive, and yet Wall Street has been waiting for the past two or three years for those fundamentals to deteriorate

performance we saw in the first half of the year," said Jay Cohen, an analyst with Merrill Lynch in New York.

"Interest rates have already come down significantly, and that has been a positive for the stocks. We may not get the same benefit from the movement in rates during the second half of the year."

Furthermore, the fundamentals, or the pricing environment, remains very competitive, said Mr. Cohen.

"I think a lot of the stocks have had a pretty good run. It's hard to believe that they can continue to run away from general market averages after having done as much as they have in both 1996 and 1997," said David Seifer, vp with Donaldson Lufkin & Jenrette Securities Corp. in New York.

"I think they can be market to above-average market from here, at least talking about the rest of the year, but I would suspect that most of the performance of the year percentage-wise has been achieved."

Mr. Lewis said, "I'm cautious in nature." He said he is concerned

about the group's ability to sustain its current level if interest rates or valuation expectations ever turn around.

"I think they're operating in a pretty optimum environment right now," he said. While the group has done very well, "I don't know what's going to bring them to the next level."

Mr. Smith also said, "I think the market will become much more discriminating, and there will be pressure on the stocks of those companies that turn in earnings disappointments, and I think the earnings disappointments are going to become more prevalent."

Mr. Frank said that if the stock market remains bullish, however, "I think it's possible to continue making money in the stocks," though investors may have to shift their strategies.

During the past 12 to 18 months, many of the top stock performers have been involved in either restructuring or acquisition activity, he explained. But, "you can't keep finding those forever, and at some point you're going to have to gravitate back to the steady performers, large and small."

"As far as how the group overall performs, I wouldn't be at all surprised, frankly, if interest rates call the tune to a large extent," said Mr. Frank. If rates are stable or favorable, the group could be either an average performer or modestly outperform the overall market, though it is unlikely the stocks will do well if interest rates increase, he said.

Assuming there is no major change in interest rates, "I think there's still some potential," agreed Gloria Vogel, senior vp with Advest Inc. in New York. "I mean, they're not grossly overvalued," she said.

Chubb Corp., General Re Corp., AIG, St. Paul Cos. Inc., Reliance Group Holdings Inc., and CIGNA Corp. are among the large domestic companies on analysts' recommended lists.

Chubb "has sold off its underperforming assets, and its core property/casualty insurance business continues to perform exceptionally well despite the challenging market conditions," said Mr. Cohen.

Gen Re's stock remains relatively cheap, though "certainly it's not the bargain it was just a month or so ago, but I still think there's some room in that one," said Mr. Frank.

Gen Re is the premier reinsurer in the United States, said Mr. Smith, who noted its acquisitions have helped its earnings.

AIG's global operations, both in terms of penetration and concentration, "have not really been appreciated in a marketplace that has done all its evaluations based on domestic U.S. conditions," but its stock performance this year "reflects some sensitivity toward their global growth and leading position relative to the competition," said Mr. Seifer.

Reliance's stock performance this year shows "people are beginning to believe that management is a capable, quality group," said Mr. Seifer, who also includes it on his recommended list.

In addition, he said, "They've taken six points off their combined ratio in a very, very difficult market environment in which to demonstrate underwriting improvement, and they're beginning to be rewarded."

Ms. Vogel, who also recommends Reliance, said, "If you look at the company for the last three years, they've shown better than 15% growth in earnings," as well as a better than 15% return on eq-

uity.

"A lot of the growth is coming from specialty lines, and I think if you look at their multiples vis-a-vis what I would call their peer group, the stock is still below what I think its potential is."

Ms. Vogel also recommends St. Paul, which she said has become "a lot more focused" since its sale of Minet Group (BI, April 22). "They now have bought Northbrook, Allstate's commercial book of business, and I think that should look good for them," (BI, July 29, 1996) said Ms. Vogel, who also noted that St. Paul has been "a good quality underwriter."

Mr. Lewis' recommendations include CIGNA, which is "evolving more and more into the health care arena and has delivered consistently superior, better-than-projected earnings growth over the last two years."

Bermuda companies analysts recommended include EXEL Ltd., Partner Re Ltd. and RenaissanceRe Holdings Ltd.

Mr. Cohen said he recommends EXEL because it "is diversifying its book of business, managing its balance sheet very well and, looks very reasonably valued given the company's strong balance sheet and strong cash flow."

EXEL is also recommended by Susan Spivak, vp at DLJ, who says its excess liability and directors and officers liability lines are able to maintain high retention ratios despite the very competitive market conditions. The company also has aggressive capital management and has been repurchasing its stock, she said.

Partner Re, which Mr. Frank recommends, is "entering a whole new phase of its development with the acquisition of the SAFR Re operation, and I think the market has begun to appreciate that, but I think there's still room for the benefits of that to become apparent in the stock price," he said (BI, April 7).

Mr. Smith, who recommends RenaissanceRe, said Wall Street has not yet adequately recognized the company's profitability in its trading price.

Small-cap companies recommended by analysts include Leucadia National Corp., which through its Empire Insurance Group subsidiary insures commercial taxi cabs, said Blair Sanford, an analyst with Hoefer & Arnett in San Francisco.

It is "one of the very few companies in my universe trading anywhere near book value, and the book value, here I think, has a high level of quality to it; i.e., there's a lot of cash beneath that book value," he said.

John Keefe, vp with Ferris Baker Watts in Richmond, Va., also recommends RLI Corp., which he said has had a below 100% combined ratio for 17 of the past 20 years and recently has been in the high 80s or low 90s.

"It appears to be a genuine value compared to other quality specialty insurance companies," he said.

Mr. Keefe's recommendations include Markel Corp., a Glen Allen, Va.-based niche market insurance holding company. "It's one of the most compelling specialty insurance stories that I'm aware of," he said. "It's a company with an obsession with underwriting profits and an extraordinary amount of investment leverage."

Other stocks analysts recommend include USF&G Corp., NAC Re Corp., HCC Insurance Holdings, Vesta Insurance Co., Mutual Risk Management Ltd., Fremont General Corp., MMI Cos. Inc. and Orion Capital Corp. **BI**

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Opinions

Hawaii bungles benefit law

ONCE AGAIN, lawmakers have demonstrated the problems of legislating benefits policy without thinking through the consequences.

Case in point: a new Hawaii law crafted to limit the impact of an anticipated state court ruling on the right of gay couples to marry in Hawaii. The law essentially requires employers to extend benefits for a new class of beneficiary, though it will be especially applicable to same-sex domestic partners.

Not only is this another example of state lawmakers encroaching on the federal Employee Retirement Income Security Act's pre-emption provisions, but it also is unconscionably broad, creating a duty for employers to provide benefits to nearly anyone an employee designates as a beneficiary.

The fact that the law is so ill-defined makes it one of the more inept pieces of benefits legislation we have seen in a while (and we've seen our share). We think employers have an excellent case that the Hawaii law violates ERISA and expect they will succeed in their suit to bid aloha to the provisions that expand benefits.

We hope lawmakers in Hawaii and elsewhere then take that lesson to heart when attempting future "fixes" of employment issues.

As we reported July 21, the Hawaii law requires employers with 20 or more workers to provide health care benefits to anyone an employee designates as a "reciprocal beneficiary." Under the law, to qualify for such status, a party need only be an adult and legally prohibited from marrying the person with whom they enter into a reciprocal relationship.

To qualify for a reciprocal relationship under the law, the parties must register with the state. However, the law does not require them to be in a financially or emotionally committed relationship, related to each other, live together nor even be residents of Hawaii.

Employers rightly fear that they could end up providing health care benefits for people all over the United States with no tangible relationship to covered employees in Hawaii. The task of administering such benefits alone is mind-numbing, not to mention cost prohibitive.

We regret that in their fight over the broad Hawaii law, employers are likely to be vilified as anti-gay, when their opposition has sound business reasons.

But the blame for this problem lies with state lawmakers who crafted the broad benefit mandate in their panic to nullify a pending state Supreme Court ruling that could give gay couples the right to marry.

Congress on two occasions has exempted Hawaii's universal health care law from ERISA, which preempts state laws and rules that relate to employee benefit plans. Congress provided that exemption because it



• HAWAIIAN LU'AU •

approved of a law that has resulted in more than 90% of Hawaii residents having health care coverage.

However, that exemption does not extend to passing other benefit mandates. Lawmakers' effort to mask the change by drafting it as an amendment to the insurance code is a sham.

We are not opposed to the concept of benefits for domestic partners, same sex or otherwise. But, as we have said so many times before, we think it should be an employer's choice to offer those or any other benefits—and there are compelling reasons to do so. Just like other benefits designed to fit with workers' lifestyles, domestic partner benefits can help an employer better meet the needs of a diverse workforce and remain competitive within its field.

Some gay rights advocates argue that without such government intervention, employers would never offer benefits to same-sex domestic partners. Therefore, they argue, gays are denied a "basic right" to which heterosexual couples are entitled.

Therein lies the heart of the debate: Are employee benefits a basic right? We don't think so.

Rather than push for benefit mandates, which are offensive even to employers that provide domestic partner benefits, gay rights advocates should work with business groups to demonstrate the value of providing these benefits vs. their relatively insignificant cost. Educating and communicating with employers will go a lot further in spreading these benefits than legislative mandates.

Letters

Golden Eagle conservation questioned

To the editor: In his July 7 letter to the editor, Karl Rubinstein was quite upset by your "inaccurate and irresponsible" editorial relating to Golden Eagle Insurance Co., which he now heads as deputy conservator of the company. His letter includes a list of accomplishments intended to rebut your suspicions about his takeover of the company. Unfortunately, however, every item on his list is false.

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611; fax: 312-280-3174; e-mail: pwinston@crain.com

Here is a list of true facts that may, appropriately enough, stoke your suspicions:

- The California Insurance Department early last year told John Mabee, owner of Golden Eagle, that the \$232 million surplus he reported in the company's 1995 annual statement was overstated by about a half-billion dollars and that his company was insolvent. John Mabee said, loudly and publicly, that the Insurance Department was wrong.

- The Insurance Department had a consulting actuary study the company's 1995 reserves and changed its half-billion dollar reserve shortage allegation to \$138 million. John Mabee still said, loudly and publicly, that the department was wrong.

- Karl Rubinstein took over Golden Eagle as deputy conservator, in spite of the fact that statutory surplus was ap-

proximately \$100 million, not to mention about one-quarter billion dollars of unrecognized reserve discount.

- The 1996 runoff of the 1995 reserves was favorable, according to the Insurance Department's consulting actuary, relative to the reserves used for the conservation order.

- John Mabee, an innovative if outspoken entrepreneur, has been driven out of the insurance business, but his investment in Golden Eagle has been protected in a judicial rebuke of the Insurance Department.

The Golden Eagle story is not about a failed insurance company, but rather about abuse of power by public officials. If this is untrue, why are so many insurance companies fighting so hard to take over Golden Eagle?

Frederick W. Kilbourne
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OSHA

Continued from page 2

dard before next fall should not have any great effect on the agency's ergonomics activities, because OSHA expects to spend at least another year dealing with the issue before any standard can be issued.

"It continues where we're heading. We've just begun the standards writing process, with the arrival of David Cochran."

Mr. Cochran, an ergonomics specialist from the University of Nebraska, is heading up OSHA's standards writing team, said the spokesman.

"It's sort of a relief to know that we don't have another rider hanging over our head," added the spokesman, referring to the attachments to previous appropriations bills that subjected OSHA's ergonomics activities to greater restrictions.

Another provision, however, could have some practical impact, because while the compromise does not ban OSHA from issuing voluntary ergonomics guidelines, it specifically bars the agency from issuing citations to employers that violate them.

Businesses have long contended that more research needs to be undertaken before OSHA even can consider imposing an ergonomics safety standard. A recent review of ergonomics studies by the Department of Health and Human Services' National Institute of Occupational Safety and Health concluded there was indeed a link between workplace conditions and certain repetitive stress injuries and ailments (BI, July 7). Although organized labor cheered the survey, many business groups expressed skepticism over its findings and urged that the NAS conduct its own study.

Despite the lack of an NAS requirement in the bill, business

groups hailed the ergonomics compromise as the best possible solution to the issue for the time being, particularly given that House and Senate leaders have repeatedly emphasized that this year's appropriations bills be free of any extraneous matters.

"I think it's a common-sense approach to the ergonomics issue. Let's give all sides an opportunity to evaluate the findings NIOSH came up with and pretty much allow whatever companies that are out there to evaluate their own programs. Companies are being given warnings from both labor and OSHA that they're not going

'We got half of what we wanted, but it's amazing we got anything at all,' says NAM's Margaret Menge.

to let ergonomics issues wither on the vine. I think company risk managers should make ergonomics one of their priorities during the coming year," said Lance Ewing, chairman of the New York-based Risk & Insurance Management Society Inc.'s health and safety committee and loss control administrator for the Philadelphia School District.

Mr. Ewing further noted that the health and safety committee is working on an ergonomics project by looking for success stories from RIMS' members so they can share their solutions with fellow risk managers. He said the committee hopes to have something in print in time for RIMS' annual conference next spring.

"This is the best we could have possibly gotten, because there is such an emphasis on keeping the appropriations bills clean. So it was extremely difficult given that

labor is strongly opposing the language that we wanted. We got half of what we wanted, but it's amazing we got anything at all," said Margaret Menge, associate director-employment policy for the National Assn. of Manufacturers in Washington.

"We're delighted, but this doesn't let OSHA off the hook, and the NAM will still emphasize that before OSHA goes forward with any ergonomic standards, they need to start with the facts. We're not walking away from the NAS study; we're still going to push for an NAS study," she added.

The Alliance of American Insurers would welcome "any unbiased study," said Tamera R. Velasquez, lobbyist and public affairs counsel in the insurer trade group's Washington office.

"It was welcome action by the Senate and House to include the ergonomics language in the appropriations bill. Right now there are too many unanswered questions about ergonomics to justify strapping businesses with a burdensome, costly regulation. The action stops OSHA from moving forward prematurely with ergonomics regulations. We hope OSHA takes this year to thoroughly review the science before it pushes an ergonomics regulation," she said.

In a related matter, NAM testified before the House Education and the Workforce Committee's Subcommittee on Workforce Protections that OSHA's efforts to "reinvent" itself have not gone far enough.

Speaking for NAM, Richard D. Schaible, director-global safety for Harrisburg, Pa.-based AMP Inc., said, "We have not seen any meaningful progress toward reinvention. OSHA continues to pursue promulgation of standards that would amount to super-regulation of the workplace, resisting calls for peer review and independent studies." **BI**

Outsource

Continued from page 1

Some independent observers applauded the new link, noting that each firm could benefit. The combination boosts ADP's position in defined benefit plan administration. It also provides more talent in other benefits administration areas, talent ADP has tried to bring in through several acquisitions, including the purchases of benefit consultant and administrator Williams, Thatcher & Rand of Bethesda, Md., and administrator Health Benefits of America in Salt Lake City. It also gives ADP a foot in the door to Mercer's huge client base.

For Mercer, the alliance not only gives its clients the opportunity to get an integrated package of benefit and payroll services from a single source, it also essentially gets Mercer out of several benefits administration areas in which observers say it has stumbled.

"This has all the earmarks of a necessary and outstanding move. It is a necessary move because Mercer has learned the hard way that its expertise is consulting, not outsourcing and other facets of benefits administration. It is an outstanding move because of the range of services—through the alliance—that Mercer can offer clients," said Donn Bleau, a principal of Global Resources Group, an executive recruiter in La Jolla, Calif., who has done recruiting for benefit consultants.

The new alliance comes as benefit consultants are caught in an outsourcing dilemma. On one hand, employers increasingly want to outsource administration of their employee benefit plans as a way to reduce overhead and concentrate on their core businesses. Consultants fear that if they fail to meet their clients' outsourcing needs, they will lose those clients to competitors.

On the other hand, the financial investment in technology has been so enormous that outsourcing generally has been unprofitable for consultants.

"I don't know if anyone is making money. The early players did not understand how much investment is required. It is very capital-intensive," said Jon Palmer, chief executive officer of benefits administrator and outsourcing firm Wellspring Resources L.L.C. in Jacksonville, Fla. Wellspring is a joint venture of Watson Wyatt Worldwide and State Street Global Advisors.

"Basically, all of the consulting firms have underestimated the in-

'The market is eagerly looking for world-class delivery of (outsourcing) services at affordable prices,' says Jon Palmer.

vestment required in technology," concurred Mike Hager, president of Hager Strategic Inc. in Washington. Hager advises employers on whether to outsource benefit administration as well as selecting outsourcing vendors.

Other problems consultants faced as they ventured into the outsourcing business have included far greater difficulty in organizing clients' benefit plan information so their call center staffers can provide quick answers when clients' employees phone with questions about their benefit plans.

"Pension plan data may be in boxes, and cleaning it up and organizing it, getting it into a database and in a form in which answers can be provided is a challenge," Mr. Palmer said.

From the beginning, Mercer faltered in benefits outsourcing, at least in part, observers say, because its early clients' benefits programs were so complex that the conversion to outsourcing proved much harder than expected.

"Mercer spent a lot of time and had a lot of resources tied up with one client. In a new area, you would not want your first clients to be so complex and tough," Mr. Hager said.

Mercer, like other consultants that have gone into outsourcing, may have invested in technological systems that were not well-suited for benefits outsourcing, some say.

"Basically, Mercer underestimated the need to take a completely different approach to technology," said Mr. Hager, a former Mercer consultant. Mercer's Mr. Lynch declined to comment.

While outsourcing has been, as Mr. Hager puts it, "a tough nut to crack," it is a business consultants say they can't walk away from because of competitive pressures as well as what they think is the opportunity over the long run to make it a very profitable business.

"It is a huge opportunity. The market is eagerly looking for world-class delivery of services at affordable prices," Mr. Palmer said.

"Employers want to focus on their own operations. There will be growth in this business and it can only grow larger," Mr. Lynch concurred.

But the cost of developing such a capability may be too great for any one firm to do alone.

"I see more alliances developing" as clients are looking for total solutions to benefits, HR and payroll administration, Mr. Palmer said. **BI**

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Growth

Continued from page 3

operations from scratch, so they are more likely to buy existing insurers, Mr. Chookaszian said.

And once they become involved in insurance, they will fundamentally change the distribution of some insurance products, he said.

Likewise, the Internet is set to change the way insurance is sold, Mr. Chookaszian said.

While buying products over the Internet raises security questions, those eventually will be solved and with those solutions will come a whole new way to buy insurance, he said.

Employee leasing is another change in the business world that will have a direct impact on insurance buying, he said.

"I believe that this is going to have a major impact on the way insurance products are distributed in the U.S.," he said.

Under employee leasing contracts, a leasing company becomes the employer of the staff at several smaller firms, takes on the human resources responsibilities and then leases the employees back to the original companies.

The economies of scale inherent in such a structure will reduce the costs of purchasing workers compensation coverage for the employees, according to Mr. Chookaszian.

Other insurance products will be sold on a payroll-deduction basis, he said.

The change in the business process is another change in the business environment that will affect insurers and their policyholders, Mr. Chookaszian said.

Like other businesses, insurers will need to focus on the things

Economies of scale in employee leasing contracts will reduce workers comp costs, says Dennis Chookaszian.

they do well and shift the other services they offer to outside providers, he said.

Part of that change in focus includes the liability restructuring being undertaken by insurers such as The Home Insurance Co. and CIGNA Corp., Mr. Chookaszian said. Under those restructuring arrangements, unprofitable old liability business is segregated from profitable new business, and separate pools of assets are established to back each segment.

Those restructurings have been controversial, and regulators still need to establish rules and standards by which those restructur-

ings can be carried out, he said.

"If that doesn't happen, then all firms will do it, and I don't think that will be very good for the insurance industry," Mr. Chookaszian said later in answering questions from the floor.

Focusing on core businesses has been a key aspect of Aegon N.V.'s international growth strategy over the past 10 years, said Kees J. Storm, chairman of the executive board of Aegon in The Hague, Netherlands. Aegon is a multiline insurer.

The non-core business Aegon has exited includes consumer lending, reinsurance, non-life insurance in the United Kingdom, health insurance in the Netherlands, and the Aegon vacation parks, he said.

"Also, we withdrew from countries where we were not able to realize satisfactory and sustainable profitability, like Greece, Belgium and a small life insurance company in the U.K.," Mr. Storm said.

But as well as cutting business, Aegon is growing, and much of that growth is through selective acquisitions, he said.

Successful acquisitions can improve expense ratios, increase market share, create economies of scale, attract high-quality managers and improve distribution, Mr. Storm said. And by expanding into new international markets, insurers can select markets that show the best opportunities for rapid

IIS draws over 400 to Mexico City

MEXICO CITY—About 465 insurance industry executives and academics attended the 33rd annual seminar of the International Insurance Society Inc. held in Mexico City July 13-17.



Registrants came to Mexico from 47 countries to attend the range of plenary sessions and discussion groups on the theme of "Strategies for Growth."

Many of the discussions centered on the consolidation of the global insurance industry and how it would impact the future growth of all insurance

companies.

According to John P. Meyerholz, president and chief executive officer of the IIS, the consolidation illustrated insurers' attempts to successfully reposition themselves in an increasingly international business world.

"Consolidations, joint ventures and partnerships reflect the positioning of insurers to be on the winning side of the global economic revolution," he said at the meeting.

The 1998 seminar will be held at the Regent Sydney Hotel in Sydney, Australia, July 12-16.

For more information, contact the IIS, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9291; fax: 212-815-9297.

growth, he said.

International insurers must have a distribution infrastructure and management techniques that suit all the countries in which the insurer has operations, he said.

And the parent company culture should not necessarily be forced on foreign subsidiaries and managers, Mr. Storm said.

"Personally, I like to view the Aegon group not as a symphony orchestra, but as a jazz band. Employees play their own tune, but we manage to make it swing through listening carefully to others while keeping a basic melody in mind," he said.

Mr. O'Hare served as chairman for the session. **BI**

Insurer execs share international strategies

By GAVIN SOUTER

MEXICO CITY—International insurers and would-be international insurers should focus on their core strengths when they expand their operations outside existing markets, an insurer executive says.

The overall success of an international expansion program is possible only if insurers are clear about their strengths and weaknesses and build an expansion model well-aligned to those features, said Gary L. Countryman, chairman and chief executive officer of Liberty Mutual Insurance Co. in Boston.

But insurers still can expand internationally into a variety of product lines as long as those product lines are related to the main business of the insurer, said Jose Manuel Martinez Martinez, chairman of the executive committee and chief executive officer of Corporacion Mapfre S.A. in Madrid.

Core competencies are aspects of businesses that set an insurance company apart from the rest of the market that competitors cannot easily replicate, Mr. Countryman said.

"Some examples of core competencies include Intel's ability to manufacture a superior computer chip, GE's ability to manage unrelated business units, and Fidelity's ability to sustain its marketing and distribution excellence," he said.

Companies face further challenges in maintaining the advantage in their core competencies when they expand internationally, Mr. Countryman said.

First, a company must be able to transfer its competency to another country in a faster and more effective way than the local competition is able to create it. Second, the target market must understand the value of the competency and be willing to pay a reasonable price for it, he said.

Liberty Mutual has tried to export what it sees as its core competencies, Mr. Countryman said.

For example, Liberty Mutual set up a workers compensation operation in

Argentina last year when the state compensation system was privatized.

"The skill and capability transfer was executed reasonably well. Developing a market understanding of and an appreciation for the unique skills we bring to the market has taken longer. The market clearly understands lowest price, but it has less understanding of value," Mr. Countryman said.

Liberty Mutual has successfully exported its occupational health and safety services to several other countries, he said.

"In the scale of Liberty Mutual, given the nature of the safety consulting business, it will never be a major revenue or profit source for the group. It will, however, serve a genuine need and serve as a first-step entry into selected emerging markets," he said.

The method used to expand those competencies also is important and can range from large acquisitions, through joint ventures with established companies, to setting up a new operation, he said.

While Liberty Mutual has set up some new operations, it usually chooses to enter a new country by acquiring an established insurer, Mr. Countryman said. The main reasons for this strategy are:

- An acquisition provides name recognition and a market position.
- In several emerging markets, barriers to foreign ownership are lifting, and this creates a unique and limited opportunity to buy well-established properties.
- Liberty Mutual is seeking to quickly build revenues and profits to take advantage of attractive markets ahead of its competitors.

In most cases, acquisitions provide early and superior returns on capital.

While Liberty Mutual largely has followed the strategy of exporting its core competencies to overseas operations, in some cases it has abandoned that business theory when opportunities arise, Mr. Countryman said.

"From time to time we have succumbed to the temptation of being opportunistic. More time will judge the wisdom of those off-strategy choices," he said.

For example, in December 1994 it

bought Ontario Blue Cross, a health insurer in Toronto. This took place about eight months after Liberty Mutual had sold its health insurance operation in the United States.

"Some Liberty Mutual employees were puzzled by that transaction," he said.

The reason for the purchase is that Liberty Mutual thinks Canada may eventually privatize its workers comp system, and if Liberty Mutual is to take advantage of that situation when it arises, it will already have health care resources in the country, Mr. Countryman said.

International expansion needs to be

conducted professionally and efficiently, but that need not limit an insurer to expanding in only a few directions, according to Mapfre's Mr. Martinez.

For example, since 1985, Mapfre has:

- Increased its range of insurance products to include health insurance, death and burial insurance, pensions and credit insurance.
- Offered financial services products, such as investment funds and banking services.
- Diversified geographically, mainly into Latin America.

An insurer must adhere to certain

fundamental business principles to successfully run such a diverse and international operation, Mr. Martinez said.

Some examples of Mapfre's business principles are independence; high-quality customer service; openness and easily accessible information; the maintenance of ethical conduct throughout the company; and the institution of an international vision throughout the management of the company, he said.

Roger J. Taylor, executive deputy chairman of Royal & Sun Alliance Insurance Group P.L.C. in London, chaired the session. **BI**

USAA deal sparks interest But future of securitization still unknown: Duperreault

By GAVIN SOUTER

MEXICO CITY—The insurance industry could be on the cusp of a new era in risk financing with the successful placement of a \$477 million catastrophe bond for the United Services Automobile Assn.

But then again, it might not, says Brian Duperreault, chairman, president and chief executive officer of Hamilton, Bermuda-based ACE Ltd.

While the USAA deal showed that a large securitized layer of reinsurance coverage could be placed in the capital markets, it also showed that securitization still is more costly than conventional reinsurance coverage, he said. And other questions about the feasibility of securitization remain unanswered, Mr. Duperreault said at the International Insurance Society Inc. annual seminar held in Mexico City earlier this month.

ACE has run up against problems in its own efforts to securitize insurance risks. Last year it failed to place a bond that would have securitized \$35 million in coverage.

The drive to securitize insurance

risks was started due to the large number of catastrophes that have hit the insurance industry over the past 10 years, Mr. Duperreault said.

Insurers have suffered increasing strains on their capital as a result of the losses, he said.

"We don't want large fluctuations in earnings from a single event. We need protection from the spikes. Insurance pricing cannot respond to these spikes, so a logical place to look for protection is where the real money is: the capital markets," Mr. Duperreault said.

Several attempts to tap the capital markets have been tried in recent years with varying degrees of success, he said. These include the Chicago Board of Trade's catastrophe options, the CATEX catastrophe risk exchange, and various successful and aborted attempts at small bond placements.

The USAA placement was the first large-scale, successfully completed cat bond placement (*BI*, June 23). Since then, Swiss Reinsurance Co. has placed bonds related to California earthquake risk (see story, page 2).

The USAA placement made up part of an otherwise traditional reinsurance program. USAA probably could have placed the securitized portion of the program in the tradi-

tional market as well, and at a lower cost, Mr. Duperreault said.

But the placement may spark an interest in the capital markets in securitized insurance products, so USAA and other insurers may benefit by placing future bonds in a market more comfortable with the concept, he said.

"(USAA) spent money to do it, but they had their insureds' interests at heart," Mr. Duperreault said.

However, other obstacles still may need to be overcome before securitization really takes off, he said.

For example, many policyholders buy complex, customized insurance products that might not easily be covered under the current broad-brush coverage supplied through securitized insurance products, he said.

Also, the insurance companies that buy the securitized products may find that the accounting methods are more favorable for conventional insurance and reinsurance than they are for capital markets products, he said.

But these problems may be overcome, and capital markets-based insurance products may flourish, Mr. Duperreault said. "There's a lot going on below the surface of capital markets, and some of it may have substance. Maybe a number of structures will emerge," he said. **BI**





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Forum

Continued from page 3

limited to captive owners and sponsors and will offer a chance to discuss critical captive insurance issues with one another and a panel that will include James Cameron, a partner at Baker & McKenzie in New York; George Chaffee, president of Skandia International Risk Management (Vermont) Inc.; and moderator Robert J. Rosser, senior vp of Skandia International Risk Management Ltd. in Hamilton, Bermuda.

Following opening remarks by Ms. McIntyre, the first morning general session begins with keynote addresses by Heidi Hutter, chairman, president and CEO of Swiss Reinsurance America Corp. in New York; and Patrick G. Ryan, chairman, president and CEO of Aon Corp. in Chicago.

Ms. Hutter and Mr. Ryan will discuss what risk managers should expect from insurance and reinsurance and the attributes characterizing the "complete" risk transfer company and the "complete" broker.

Monday afternoon will include two sets of breakout sessions. The first pair includes a discussion on selecting the right domicile. Moderated by Ms. McIntyre, the panel will include Paul Obolensky, president of the Captive Management Division of AIG Insurance Management Services in New York; Paul Pinckney, a Tillinghast-Towers Perrin principal in Irvine, Calif.; and Irene Ryan, a managing director with SINSER (Ire-

land) Ltd. in Dublin.

The simultaneous offering is a session examining issues associated with loss reserving. Moderated by D. Hugh Rosenbaum, a principal with Tillinghast-Towers Perrin in London, the reserving panel includes Frederick W. Travis, director of corporate safety and risk management for the Anheuser-Busch Cos. in St. Louis; and Susan Patschak, a principal/actuary with Tillinghast-Towers Perrin in Atlanta.

The final breakout pairing Monday afternoon includes a discussion of tax and regulatory issues moderated by Mr. Rosenbaum and with a panel of Baker & McKenzie's Mr. Cameron and Steve Eldridge, a Weston, Conn.-based consultant.

The parallel session on Latin American captive developments will be moderated by Skandia's Mr. Rosser and will include Stavros Costaragos, president of Q'Stion Managers Panama Inc.; and Manuel A. Eskildsen, general manager of Compania Internacional de Seguros S.A.

Tuesday, Nov. 18, begins with a pair of concurrent sessions. One on reinsurance accessibility, affordability and necessity will be moderated by Mr. Rosenbaum and will include panelists Mark W. Hinkley, executive vp of TIG Re in Stamford, Conn.; and Jean Stalcup, manager of Employers Reinsurance Corp.'s accident and health division in Overland Park, Kan.

The other early morning session Tuesday will explain the attractions and details of rent-a-captives. Moderated by Nicholas

Dove, president of Bermuda-based Skandia International Risk Management Ltd., the panel will include Michael Maglaras, principal with Michael Maglaras & Co. in Stamford, Conn.; Jeffrey R. Cole, assistant vp-risk management accounts underwriting at Wausau Insurance Co. in Wausau, Wis.; and Michael J. Burns, an attorney with Appleby, Spurling & Kemp in Hamilton, Bermuda.

The late morning concurrent sessions will include a discussion of risk financing issues in group health care. Moderated by Ms. McIntyre, the session will include John McCarthy, president of Harvard Risk Management Foundation in Cambridge, Mass., and Daniel Wolfson, president and CEO of the HMO Group in New Brunswick, N.J.

The other late morning session Tuesday will focus on multiyear, multiline programs and the issues associated with aggregating various risks in an integrated program. Mr. Rosenbaum will moderate the panel, which will include J. Brady Young, president of Alternative Risk Solutions Inc. in Lexington, Mass.; and Tom Regan, director of corporate risk management for Becton, Dickinson & Co. in Franklin Lakes, N.J.

Tuesday afternoon, the first of two pairs of concurrent sessions will include a discussion of fronting and workers compensation, moderated by Mr. Rosenbaum. Panelists at that session will include Arthur Koritzinsky, senior vp at J&H Marsh & McLennan Inc. in New York; Lois Fuchs, assistant treasurer of risk management at AlliedSignal Inc. in

Morristown, N.J.; and Hector Mendez, senior vp and chief operating officer of CNA Risk Management in New York.

The other early afternoon session Tuesday will examine the future of the alternative risk transfer markets. That session will be moderated by Skandia's Mr. Dove and will include Mitchell J. Cole, of Watson Wyatt Worldwide in New York, and Richard Hackenburg, CEO of Risk Management Services, National Practice Group, at Willis Corroon Corp. in Nashville, Tenn.

One of the two late afternoon sessions Tuesday will be a wrap-up of the conference. Moderated by Mr. Rosenbaum, the session will allow attendees to ask unanswered questions, revisit topics or discuss issues that weren't covered.

The simultaneous session in Tuesday's final pairing will feature tales of "Wheeling, Dealing and Stealing" in the alternative risk financing market from investigative reporter Douglas McLeod, a BI senior editor.

Closing the conference Wednesday, Nov. 19, will be a morning-long examination of risk financing case studies. Offering a glimpse of their experiences will be Richard C. Heydinger, director of risk management services at Hallmark Cards Inc. in Kansas City, Mo.; Douglas Hoffman, managing director of Bankers Trust Co. in New York; and Thomas Petersson, managing director of Erika Insurance in Stockholm, Sweden.

Besides the conference's educational sessions, there will be

recreational activities, including a golf tournament and barbecue luncheon Nov. 16 and a tennis tournament the afternoon of Nov. 18. In addition, receptions will be held each night and a dinner is planned Nov. 18.

An exhibit hall will be open during the opening reception and during the conference Monday and Tuesday.

Full registration for the World Captive Forum is \$1,200, with a \$975 fee for subsequent registrations from the same company or for risk managers. The exhibitor's fee of \$2,000 includes one full registration.

There is a \$100 guest registration fee, and the fee for the optional World Captive Golf Tournament is \$110.

Special conference room rates at Turnberry Isle are \$190 per night, plus a \$5 per day hotel staff service charge and taxes, with WCF attendees enjoying a \$10 discount on greens fees and a 50% discount on spa and tennis facility fees.

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For more information, contact the World Captive and Alternative Risk Financing Forum office at 4248 Park Glen Road, Minneapolis, Minn. 55416; 612-923-4659; fax: 612-929-1318. **BI**



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A non-adversarial claims approach

Delaying legal representation may avert unneeded litigation

By Clifton G. Andrews
and James P. Studdert

IN TODAY'S INSURANCE ENVIRONMENT, it is common for insurers to assign attorneys to represent their interests immediately upon notification of a third-party liability claim. In instances where there is likely to be immediate legal action by the third party, such as bodily injury or death to one of its employees, this action is fully justified.

There are instances, however, that involve only property damage and/or business interruption losses to a third party that has an ongoing commercial relationship with the policyholder. In these cases, it is important for the claim to remain in a "non-adversarial" mode, if possible.

Unfortunately, the introduction of an attorney for the policyholder tends to imply litigation is likely, and the third party typically responds by engaging its own counsel. The presence of attorneys at this juncture tends to push the matter toward litigation, no matter how benign the original intent of both parties.

It is important for risk managers and liability insurers to recognize that litigation or adversarial confrontation is not necessarily inevitable, even in complex third-party liability situations. Proactive positioning and timely usage of consulting intermediaries can preserve business relationships, reduce claim costs and ultimately reduce the expense of liability coverage.

A successful alternative strategy involves the use of an independent adjuster to "investigate" the circumstances of the loss. The assignment of this intermediary has a significantly different implication for the third party, provided the adjuster's actions are impartial and professional in nature.

The presence of the independent adjuster implies that the policyholder values the ongoing commercial relationship with the third party and is interested in resolving the claim without litigation. The third party therefore is compelled to act in kind, lest it be seen as unnecessarily contentious in its business dealings.

If carefully implemented, the independent adjuster's role evolves from "investigator" to "mediator." The adjuster has the benefit of an open investigation of the circumstances surrounding the incident. The adjuster also has the benefit of attorney input relating to inherent legal liability and the amount of third-party damage. With this information, the adjuster is in an excellent negotiating position on behalf of the policyholder—and its liability insurers.

A case history illustrates this claim handling strategy.

In the early 1990s, a customer of Houston-based Enron Corp., an international energy company with a primary focus on natural gas and electricity, claimed to suffer property damage due to an extraordinary "flare up" of natural gas in its boilers and other gas-fueled equipment.

The damage to this equipment was unusual; there was significant evidence of high temperature, including large volumes of slag from molten metal in key components.

Ultimately, it was alleged that a "slug" of natural gas condensate liquids from the Enron pipeline made its way into the customer's equipment. It was alleged that the heat content of the customer's fuel increased by approximately one thousandfold in a matter of minutes. This intense flash of heat melted and otherwise damaged a number of critical machinery elements, causing property loss and the partial interruption of business. No bodily injury occurred among third-party employees.

Enron immediately notified its liability insurers of the claim. The insurers, after discussion with Enron, assigned an independent adjuster to investigate the circumstances of the loss and develop a measure of the damage. If necessary, the adjuster was to advise of the necessity for legal representation.

The adjuster contacted the third party, carefully indicating his position as an independent entity assigned to investigate the circumstances and quantify the third-party loss. Although a non-waiver agreement was not requested, the adjuster clearly specified that the third party should not consider the adjuster's presence or investigative action to be an admission of liability. This prerequisite was accepted by the third party.

After several technical meetings to understand the circumstances of the loss, the adjuster requested that the third party provide documentation supporting the amount of its loss. Additionally, the adjuster requested and received authorization from Enron's insurers to assign legal counsel.

Counsel was instructed to provide a written opinion regarding the extent of damages owed, should liability be established. This written opinion provided the framework for the adjuster's analysis of the third-party claim.

The claim and related supporting documents added an element of complexity to the situation. The third party had been planning to replace the damaged equipment prior to the occurrence. The replacement equipment provided an enhancement to the third party's operation, and its cost significantly exceeded the strict legal measure of damage. Thus, the third-party claim included improvements for which the policyholder would not be held liable even if liability were established. The adjuster discussed this with Enron and presented the issue to the third party, indicating the claim was not a fair measure of the actual loss incurred.

At this point, the third party began to argue an alternative legal interpretation of the statutes and asked to bring its counsel into the discussion. Enron, however, advised that the discussions were not of a legal nature; rather, Enron and its insurers were acting on a "good faith" basis, without attorney representation. There had been no acceptance of liability; should the third party engage its attorney in the discussion, Enron would be forced to follow suit, and the mediation would become adversarial. When faced with this prospect, the third party reconsidered its position and entertained settlement discussions.

The adjuster then became the intermediary for

negotiation of the settlement and, after several weeks of negotiation, all parties accepted a compromise settlement. Although liability never was admitted, the commercial relationship between the parties was maintained in good order, and the claim against the policyholder was resolved for an amount significantly less than originally presented. Insurers benefited from the reduced claim as well as a shortened claim resolution period and a significant reduction in claim-handling costs due to the avoidance of litigation.

For this strategy to work, the situation must be one that lends itself to these tactics. The optimum occurrence is one where bodily injury is not a significant factor and an ongoing commercial relationship exists between the parties.

Notification of the liability insurer and engagement of the independent adjuster should be expeditious. Quick action in responding to the third party is vital to avoid a lawsuit.

Attorneys should be utilized initially to provide the legal framework for claim discussion. Should litigation become necessary, the attorney will be familiar with the situation and have a much shorter "learning curve."

Obviously, the adjuster must avoid prejudice in favor of the insurers. Although a non-waiver agreement would be best, the adjuster can achieve a similar effect verbally in meetings with the third party. In this fashion, all parties can remain focused on the details of the occurrence.

The adjuster must remain unbiased and professionally independent in his analyses. Only in this fashion can the third party be reassured that there is a good faith effort to resolve his loss. Further, the adjuster must establish a high level of credibility if there is to be a realistic chance for negotiation of the amount owed.

In addition, the policyholder must remain visible in the process. The third party needs to feel the importance of the commercial relationship with the policyholder as a motivating factor toward resolution of the claim. At the critical moment when litigation appeared imminent, Enron provided the impetus to refocus the discussion and keep the claim process moving.



Mr. Andrews



Mr. Studdert

Clifton "Rex" Andrews is managing director-energy at Crawford-THG, a loss adjusting company based in Houston. James P. Studdert is director of claims for Enron Corp. in Houston.

Court clarifies meaning of phrase: 'series of related acts'

The phrase "series of related acts" in a business insurance policy was not ambiguous, according to the Supreme Court of Minnesota.

American Commerce Insurance Brokers Inc., an insurance brokerage, was covered under a business insurance policy issued by Minnesota Mutual Fire & Casualty Co. The policy covered employee dishonesty but provided that all losses caused by one or more persons or involving a single act or "series of related acts" was to be considered one occurrence. The policy limited coverage to \$10,000 per occurrence less a \$250 deductible. An employee of American embezzled funds by two distinct methods:

- Pocketing payments received as insurance premiums, embezzling \$179,201.
- Issuing unauthorized payroll checks and petty cash checks to herself, embezzling \$13,443 by this method.

Legal Briefs

American submitted a claim to the insurer, which tendered payment of \$10,000 claiming the employee's acts constituted only one occurrence. American sued. The trial court found two occurrences and awarded American \$20,000. The Court of Appeals reversed, concluding the phrase "series of related acts" was ambiguous.

On appeal to the state Supreme Court, the insurer argued that the phrase at issue here was not ambiguous and, thus, there was only one occurrence, limiting coverage to \$10,000. American argued, in turn, that separate wrongful acts should not be deemed part of a "series of related acts" if, as here, they occurred on separate occasions, in separate transactions, and each resulted in a separate, measurable

loss to the policyholder. The court concluded the phrase was not ambiguous and was intended to encompass a continuous embezzlement in which the dishonest employee converts funds from an employer by a common scheme on a constant basis. But, the court also concluded that the two methods of embezzlement constituted two occurrences, entitling American to recover \$20,000.

American Com. Ins. vs. Minn. Mut. Fire, Supreme Court of Minnesota, July 18, 1996 (BI/01/My.-\$10)

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

Air show

Continued from page 3

representing air show performers and air show organizers in the United States and Canada. About 600 air displays take place annually in the United Kingdom, according to the Civil Aviation Authority in London.

The U.S. air shows attract up to 28 million spectators per year, compared with only 15 million who attend U.S. professional football games.

About two-thirds of the U.S. shows are held at civilian airports, and the rest take place at military bases.

The largest show in the United States is held in Oshkosh, Wis., where experimental aircraft are displayed. Oshkosh attracts 5.5 million people from all over the world. Another major event is Chicago's air and water show, which attracts 2.5 million people. But some shows can be in front of crowds of fewer than 30,000, said Mr. Cudahy.

All sorts of performances will take place at air shows, from precision military flying squadrons—such as the U.S. Navy Blue Angels and the U.S. Air Force Thunderbirds—to parachutists and balloonists. Also, attractions between the in-flight feats are a growing trend, said Mr. Cudahy. For example, he said, a tractor trailer equipped with a jet engine might race an airplane down a runway.

Some of the major air shows

outside the United States take place in Farnborough, England; Paris; Hannover, Germany; the Far East; and Abu Dhabi, underwriters say. Russian-built aircraft and pilots especially draw major crowds.

Safety is a prime consideration during the shows, particularly to protect the crowd. Air show producers worldwide do not want a repeat of the tragedy at the U.S. Air Force base in Ramstein, Germany in August 1988. During maneuvers, one Italian military jet collided with two other Italian jets and hurtled into a crowd of spectators. At least 70 people died, and hundreds were injured in what is considered the worst-ever air show accident.

There hasn't been a crowd fatality in the United States in 50 years, said Mr. Cudahy. That's because "the U.S. more than anywhere in the world has highly regulated airspace" to protect spectators.

In the United States, the Federal Aviation Administration's rules require that each air show have airspace boundaries in which there are no people. All other regulations govern how the display teams perform within those boundaries, said Mr. Cudahy.

For example, how close an aircraft can fly to the ground depends on the type of aircraft and the maneuver.

Pilots typically try to fly parallel to the crowd at air shows. But there also are specific regulations governing procedures for turn around and flying in the opposite direction after a display, too. They

can't perform another maneuver while turning around, for example.

Each pilot also has a "low level waiver" that indicates how low the pilot can fly depending on his or her experience and the maneuver he or she is performing.

For the past six or seven years,

turers, said Tony Medniuk, managing director of the British Aviation Insurance Group Ltd. in London.

If a military aircraft crashes, governments often indemnify the shows. Depending upon the cause of the crash of civilian planes, air-

Europe is held every other year in Paris and known as the Salon International de l'Aeronautique et de l'Espace. The show was held in June and attracted about 286,000 visitors and 1,850 exhibitors, said a spokesman. There were no aviation accidents.

To exhibit at the Paris show, each aircraft exhibitor had to buy a minimum 100 million French francs (\$16.3 million) third-party liability insurance policy to cover "damage which might be caused by the aircraft to all third parties and particularly to other exhibitors," the contracts stated.

The Paris air show organizer also agreed to buy a liability insurance policy to cover "damage which may be caused to visitors or third parties" during flight demonstrations, the contracts stated. A spokesman did not know the limit of the coverage.

The organizers also agreed to buy property insurance for the exhibitors for all risks except theft. The property policy covered damage "from fire, explosion, lightning, and falling aircraft" as well as flooding.

The other major air show in Europe is held in Farnborough in the United Kingdom in years the Paris show isn't held. It usually attracts 130,000 industry visitors and about 150,000 members of the public, said a spokesman for the organizers, the Society of British Aerospace Companies.

Farnborough requires exhibitors bringing aircraft to the show to buy at least £50 million (\$84 million) in third-party liability insurance, "and we get a certificate to that effect," said the spokesman. SBAC will help arrange this coverage through its broker, Willis Corroon Group P.L.C., he said.

Many other risk management-related issues that air show organizers must deal with are outlined and discussed by the World Federation of Air Show Congress on a World Wide Web site.

The site, for example, offers a show plan checklist that includes whether the organizers have:

- An independent safety observer; security; emergency contingency and communications plans; emergency medical and fire rescue teams.
- Insurance policies, including for air show liability, accident, property theft, liquor liability, workers compensation and fire-works.

For more information, contact the World Federation of Air Show Congress via its Web page: <http://members.aol.com/kcaishow/index.html>.

Air show producers worldwide do not want a repeat of the tragedy at the U.S. Air Force base in Ramstein, Germany, in 1988, which killed and injured spectators.

ICAS also has administered a pilot safety program for the FAA known as the Aerobatic Competency Evaluation, said Mr. Cudahy. In this program, an experienced pilot evaluates another pilot to confirm that the pilot knows what he or she is doing. Since the program has begun, the number of pilot fatalities at air shows has dropped by two-thirds, according to Mr. Cudahy.

Outside the United States, safety regulations at military air shows and displays are governed by the Standard NATO Agreement, which lays down safety rules for aircraft and pilots, said Mr. Byram of RAF Waddington. They govern, for example, the separation needed between aircraft displays and the crowd.

Most safety regulations for air shows throughout Europe run along the lines of the NATO agreement, said Mr. Byram.

However, safety regulations in the United Kingdom for air shows on civilian property are governed by the individual organizers and the CAA.

"We have a book full of rules," said a CAA spokesman in London. The book is known as "Flying Displays: A Guide to Safety and Arrangements."

Some of these rules include making sure the aircraft is properly certified; pilots have adequate training and experience; and displays won't endanger the crowd, said the spokesman. "The primary concern is the safety at the air show, (for the) crowd and the participants."

No spectator has died at a U.K. air show since the 1950s, said the CAA spokesman.

Insurance coverage for air shows varies depending on the size of the show, the organizer and the performances.

"Air shows are not statistically significant" to track separately like airlines or aircraft manufac-

craft manufacturers might also incur losses under their product liability policies.

In the United Kingdom, the Ministry of Defense has a blanket third-party liability insurance policy of £40 million (\$67.2 million) for military aircraft wherever they display, said Mr. Byram. Aon Group Ltd. places the coverage with various insurers.

The premium for the coverage is recouped over the year by charging air show organizers for the military displays, said Mr. Byram.

Eastern European aircraft that flew at the RAF Waddington air show in June were added onto the Ministry of Defense policy for an additional premium, he said. Civilian aircraft at the show had to have a minimum of £7.5 million (\$12.6 million) in third-party liability insurance.

Aon also offers specific coverage for Eastern-built aircraft that fly at any air show, said Mikal Sanne, account handler at Aon in London. The coverage is led by Westminster Aviation Insurance Group.

Though air show organizers usually require display teams to buy liability insurance, there is no legal requirement for civilian aircraft to buy it, said the CAA spokesman.

The RAF Waddington air show also bought £25 million (\$42 million) of general third-party liability insurance for ground risks through broker Sterling Cooke International in London, said Mr. Byram.

In Europe, officials of each show decide what coverages display teams and exhibitors must buy, "and everyone goes out and buys them," said Mr. Sanne.

The third-party liability limits required vary from \$75 million to "the highest I've seen, which was 200 million deutsche marks (\$109.6 million) in Berlin last year," said Mr. Sanne.

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INTERNATIONAL

Global Briefs

Insurance regulation in the United Kingdom eventually will be moved to an expanded Securities and Investments Board, part of the Treasury Department, from the Department of Trade and Industry, a DTI official confirmed last week. In response to a question last week in the House of Commons, President of the Board of Trade and Industry Margaret Beckett said that once legislation is in place, the so-called "super SIB" will take over insurance regulation in the United Kingdom. DTI staff now responsible for insurance supervision would move to the SIB as an interim measure. Moving insurance regulation to the SIB will mean it is conducted by "an arm's length body," said Ms. Beckett. A timetable for the change has not been set, a Treasury spokesman said. . . . The United Kingdom Mutual Steam Ship Assurance Assn. (Bermuda) Ltd., known as the UK P&I Club, and Finnish P&I club Assurancesforeningen Gard have agreed to reduce overspill liability limits for catastrophes to 2.5% of each vessel's property damage limitation fund. Several other P&I clubs recently have moved to the 2.5% limit, some in response to a European Commission statement last month that the existing limits are far too high (BI, July 21). . . . **Ralph Jones III** has resigned as president and chief executive of Chubb Insurance Co. of Europe S.A. to join Hiscox Insurance Co. Ltd. and Hiscox Underwriting Ltd. as managing director. Mr. Jones will head the former Economic Insurance Ltd. operations, taking over from **Max Carruthers**, who has moved to insurance consultant Eastgate Group Ltd. as chief executive of insurance services. Economic was purchased by Hiscox P.L.C. last year to extend its niche U.K. domestic operations. At the same time, Hiscox P.L.C. has moved from being listed on the Alternative Investment Market to full membership of the London Stock Exchange. . . . Price Waterhouse, administrator of the scheme of arrangement for **Bryanston Insurance Co. Ltd.**, has announced that payments to Bryanston's creditors are to be increased to 20% of its debts. At the end of last year, Bryanston had £87 million (\$135.7 million) in assets, including £45 million (\$70.2 million) in reinsurance coverage, and agreed claims and gross reinsurance reserves of £223 million (\$347.9 million). The resulting net deficiency of £136 million (\$212.2 million) was £20 million (\$31.2 million) stronger than the previous year, mainly due to foreign exchange gains, investment income and a surplus on the insurance account. . . . The Lloyd's of London market will spend at least £40 million (\$67.2 million)—and possibly as much as double that—to become **Year 2000 compliant** by the end of 1998 to avoid any computer glitches at the turn of the century, said Michael Taylor, managing director of Lloyd's insurance services division. Lloyd's Policy Signing Office already has processed multi-year policies that end after the millennium and has had no problems, he added.

Losses mount as waters rise

Insured losses in Poland near \$300 million as flooding spreads to Germany

By MARIA KIELMAS

WARSAW, Poland—Polish insurers face estimated losses of 1 billion zlotys (\$289.6 million) in the wake of floods that have devastated the southwest portion of the country.

The losses are an initial estimate from the Polish government insurance regulator, Panstwowy Urzad Nadzoru Ubezpieczen, based on weekly and sometimes daily reports from insurance companies, said PUNU Director Danuta Walcerz.

"We won't know what the final figure will be until the water recedes. At the moment, the areas are still flooded," Ms. Walcerz said last week.

Meanwhile, the floods have spread to Germany, where dikes and flood control measures on the Oder River were demolished.

The losses have prompted the Polish government to review insurer solvency requirements, and the in-

surance industry has suggested that Poland in the future provide government-backed catastrophe reinsurance.

Munich Reinsurance Co. has estimated that total insured losses in Poland from the floods could be 300 million deutsche marks (\$164.4 million), while those in the Czech Republic may be 1.2 billion deutsche marks (\$657.7 million).

However, the Czech insurance companies have yet to publish their own estimates, said a spokeswoman for the country's largest insurer, Ceska Pojistovna.

Munich Re also has estimated 300 million deutsche marks in potential insured losses after the flooding in Austria. "But these were expected; it happens every year in the Alps," a Munich Re spokesman said.

Munich Re's own losses from reinsurance coverage it has written are expected to be "in the tens of millions of deutsche marks," the



PHOTO: AFP

High waters in Wrocław and elsewhere in Poland have led to suggestions that Poland should create a government-backed reinsurer.

spokesman said.

He said the company could not estimate potential losses in Germany.

"It has only just begun here," he said.

See Floods on page 21

Employers ponder pension changes

Defined benefit plans may be first to go

By EDWIN UNSWORTH

LONDON—The probable phasing out of defined benefit pension plans would be one of the most significant results of a series of recent pension developments in the United Kingdom.

These developments include a government review of pension arrangements with the goal of establishing a new plan, a call for a new defined contribution product called a designated personal pension, and an effort to publicize companies that have not compensated those wrongly steered into private plans.

The combined effects of the developments are likely to be more far-reaching than the 1995 Pension Act, enacted mainly to tighten the regulation and administration of employer-provided pensions.

The number of defined benefit plans, called final salary schemes in the United Kingdom, likely will

drop as a result of a provision in the new budget that eliminates the 20% credit on the advanced corporation tax, thereby eliminating the tax relief on stock dividends earned by pension funds (BI July 14).

That move, which took effect July 2, will cost all pension plans a combined total of £3 billion (\$5 billion); companies that have defined benefit plans would have to make up any shortfall to cover their commitments to retirees.

"It is possible the budget could be the nail in the coffin for final salary schemes. It will certainly accelerate the trend toward companies adopting money purchase arrangements," said Carol Woodley, a partner who leads the pensions practice in London at financial consultants Arthur Andersen.

Arthur Andersen surveyed 56 companies, most of them major

See Pension on page 19

Terrorists stop oil production at pipeline

By MARIA KIELMAS

BOGOTA, Colombia—A three-company consortium operating an oil field in Colombia has lost \$34 million after two terrorist attacks on its oil export pipeline earlier this month.

Los Angeles-based Occidental Petroleum Corp., which leads the consortium, has business interruption insurance coverage for such events, though this loss is not expected to meet its deductible.

Leftist terrorists from the National Liberation Army, or ELN, on July 6 bombed the pipeline leading from the Cano Limon oil field in eastern Colombia to the export terminal at Covenas on the Caribbean coast. The pipeline attack was coordinated with a separate attack on a helicopter

carrying Colombian army troops on surveillance duty in the area, killing 20 soldiers. The rebels also killed 10 other soldiers patrolling the area on foot. The ELN dynamited the pipeline again on July 10, just one hour after it was repaired.

Occidental declared force majeure—meaning all legal and fiscal terms of the contract for oil production between the consortium and the government stopped—on the field on July 10 and temporarily laid off about 200 of its employees at the site.

According to an Occidental spokesman in Bogota, production could not continue because all storage facilities at the field were full. Production resumed again on July 13, once repairs were complete. The Cano Limon oil field produces

See Occidental on page 20

Lloyd's seeks security rating

S&P or Best rating would allow comparisons with other insurers: Exec

By STACY SHAPIRO

LONDON—Lloyd's of London hopes that within three months it will have either a market security rating from one or more independent credit agencies or an explanation of why such a rating is not possible.

Lloyd's has been talking to A.M. Best Europe, Standard & Poor's Insurance Rating Services and other rating agencies to develop a methodology that would allow comparisons of the market's security with that of other insurers, said Roger Selleck, head of commercial policy at Lloyd's.

"We're still in the exploratory stage," he said. "But we hope to be in a position in (about) three months to have some answers. . . . Then we can announce either a rating or the conclusion that the agencies can't produce a compatible rating with our peers."

Lloyd's has never had a security rating for

the market as a whole or for individual syndicates, Mr. Selleck said. S&P has "ranked" syndicate financial performance since 1992,

Lloyd's will 'announce either a rating or the conclusion that the agencies can't produce a compatible rating with our peers,' says Roger Selleck.

but that ranking has not reflected each syndicate's ability to pay claims.

The S&P syndicate ranking also has been criticized for not foreseeing the demise of syndicates, such as 418, underwritten by Stephen Merrett (BI, Nov. 6, 1995).

However, S&P may make subtle changes its formula for ranking syndicates by the end of the year, a spokesman for S&P said.

S&P has expressed interest in publishing a market security rating with or without Lloyd's consent for a number of years. "They have persisted and we think that now it might be worthwhile," said Mr. Selleck, following the market's reconstruction and renewal last year that split pre-1993 liabilities into Equitas Ltd.

Lloyd's may ask more than one credit agency to rate its security, Mr. Selleck added.

Any market security rating would be based on Lloyd's chain of security for all syndicates, which includes members' deposits, corporation assets and the Central Fund. Lloyd's recently announced that it will strengthen its security by increasing in

See Rating on page 21

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The Virginia Association of Counties Risk Pool is soliciting proposals from qualified TPA firms to provide services for its property and liability pool. Services requested include general administration, marketing, risk control, claims administration and brokerage. The specifications will be released August 15, 1997. Requests for a copy of the specifications should be mailed or faxed to:

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IN THE PETITION OF ANTHONY JAMES MCMAHON AND PHILIP WEDGWOOD WALLACE, AS JOINT PROVISIONAL LIQUIDATORS OF ANGLO AMERICAN INSURANCE COMPANY LIMITED, Case No. 97-B-41556 (PCB)

NOTICE IS HEREBY GIVEN that on July 17, 1997, an order was entered by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in connection with the case filed with respect to Anglo American Insurance Company Limited (the "Company") pursuant to section 304 of the Bankruptcy Code (the "Order"):

1. Enjoining all persons and entities from (a) transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property, to third parties; (b) commencing or continuing any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever and any discovery in connection therewith) against the Company, or any of its representatives or agents, including run-off agents, or any of their property in the United States, or any proceeds thereof; (c) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award, and commencing or continuing any act or action or other legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) to create, perfect or enforce any lien, setoff or other claim against the Company, or any of its representatives or agents, including run-off agents, or any of their property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and (d) drawing down any letter of credit established by, on behalf of or at the request of, the Company, or withdrawing from, setting off against, or otherwise applying property that is the subject of any escrow agreement or similar arrangement in which the Company has an interest, in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, escrow, or similar arrangement has been established; except, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Petitioners or permitted by further Order of the Court;

2. Requiring all persons and entities that are beneficiaries of letters of credit established by, on behalf of or at the request of, the Company or parties to any escrow or similar arrangement in which the Company has an interest, are required to (a) provide notice to the Petitioners' United States counsel of any drawdown on any letter of credit established by, on behalf of or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioners to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any agreement pursuant to which such drawdown, withdrawal, setoff, or other application was made and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Petitioners for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, escrow or similar arrangement has been established;

3. Requiring that every person and entity that has a claim against the Company arising under a contract of insurance, reinsurance, retrocession or otherwise, written or entered into by the Company and that is a party to any action or other legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, is required to place the Petitioners' United States counsel on the master service list of any such action or other legal proceeding and to take such other steps as may be necessary to ensure (a) that such counsel receives copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding, and any and all correspondence, or other documents circulated to parties named in the master service list and (b) that copies of the foregoing are provided to Chadbourne & Parke LLP, 601 South Figueroa Street, Los Angeles, California 90017-5704 (Attention: Jonathan Bank, Esq.); and

4. Providing that, with respect to any action, arbitration or other proceeding that may be commenced or become known to the Petitioners in the future, or the entitlement or alleged entitlement of any beneficiary of any letter of credit established by, on behalf of or at the request of, the Company, or of a party to any escrow agreement or similar arrangement in which the Company has an interest that is identified by the Petitioners in the future (each a "Subsequent Claim"):

(a) when informed of a Subsequent Claim, counsel for the Petitioners shall serve upon the holder of such claim a copy of the Summons and Petition, and the most recent injunction order entered by the Court;

(b) the holder of a Subsequent Claim will have twenty (20) days from service of the Summons in which to submit a motion or answer to the Petition; and

(c) on such notice to counsel for the Petitioners as the Court may require, the holder of a Subsequent Claim may file a motion seeking an order of the Court vacating or modifying the injunction entered in this proceeding with respect to such Subsequent Claim. Such request shall be subject matter of a hearing as scheduled by the Court. Otherwise, the holder of a Subsequent Claim may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing in the future on the relief sought by the Petitioners in this proceeding.

The Order shall remain in effect pending a hearing scheduled to be held on October 14, 1997 at 2:30 p.m. before the Honorable Prudence Carter Beatty, United States Bankruptcy Judge, in Room 617 of the Alexander Hamilton Custom House, One Bowling Green, New York, New York. All papers submitted for the purpose of opposing continuation of the Order after October 14, 1997, shall be filed with the Court, with a copy to the Chambers of the Honorable Prudence Carter Beatty, and served on Cadwalader, Wickersham & Taft, so as to be received on or before September 30, 1997 at 5:00 p.m. New York time. Any party-in-interest that has not received a copy of the Petition and Supporting Papers and/or the Order should contact counsel for the Joint Provisional Liquidators in writing at the address below:

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INTERNATIONAL

Pensions

Continued from page 17

publicly traded companies, and 80% of respondents said they would review the structure of their pension plans because of the tax-credit elimination.

Two-thirds of the 56 respondents said that the changes would trigger a move toward money purchase—or defined contribution—plans.

In its survey a year ago, after the 1995 Pension Act was in place, only 20% of companies said they were planning to review their pension arrangements.

The National Assn. of Pension Funds has attacked the loss of the ACT credits for pension funds. Chairman Peter Murray called it the "biggest attack on pension provision" since World War II and said it would not only affect companies, but also millions of people.

"There can be few worse examples of short-termism than raiding people's long-term retirement savings in order to finance today's government expenditure," he added.

Another major pension event was the government's announcement earlier this month of plans to reform the pension sector, primarily by introducing a "stakeholder" group pension in the private sector as a compulsory addition to the basic state pension. The stakeholder pension programs would be targeted toward those who have neither an employer-sponsored plan nor an individual private pension.

As Secretary of State for Social Security Harriet Harman acknowledged when she unveiled the wide-ranging pensions review earlier this month, the "form-

idable challenge" includes raising public awareness of pensions, improving the level of financial education so people understand the importance of saving for retirement, and overcoming their wariness about private pensions in light of ongoing problems with getting compensation for millions of British people wrongly advised from 1988 to 1994 to switch to underperforming private pensions from company pension plans (*BI*, Oct. 10, 1994).

eties, which are similar to U.S. savings and loans institutions, will be instrumental in distributing the stakeholder pensions to the public.

However, the government's desire to keep the costs of operating a stakeholder pension as low as possible, combined with possibly higher costs of complying with the tougher regulations likely to accompany it, have raised questions as to how profitable their operation would be for traditional in-

The loss of the ACT credits for pension funds is the 'biggest attack on pension provision' since World War II, says NAPF Chairman Peter Murray.

Given that the government has allowed interested parties until the end of October to submit to the Department of Social Security their views on the pension review, details of the stakeholder pension still are widely undecided. Final proposals are expected to be published in early 1998. Parliament would have to approve the proposals, and legislation is expected to be enacted within five years, while the current Parliament is seated.

All Ms. Harman has said is that the stakeholder pensions will offer "secure, flexible and value-for-money second pensions for those who cannot join an employer's occupational scheme, whose pay is low or intermittent, and for whom personal pensions are usually unsuitable."

Also, the government hopes bodies such as employers' groups, trade unions and building soci-

urers.

Nevertheless, the Assn. of British Insurers said it welcomes the review and hopes to participate in whatever form of new pensions emerge.

An ABI spokeswoman said traditional insurance companies might not necessarily be deterred from operating stakeholder pensions if the type of products and the number that can be sold make it worthwhile.

The NAPF supports the government's call for a pension review, and Tom Ross, an NAPF vp, is participating by chairing a group of pensions experts reporting on the current state of pension provision in the United Kingdom.

However, while the NAPF agreed "that it would not be wise" to continue with the current system, it expressed concern that the review could fail "if it is undermined by further attacks on the

tax system for pension provision."

The London-based Assn. of Consulting Actuaries, which represents Britain's pension advisers, welcomed Ms. Harman's call for a pension review, pointing out that it had shortly before set up a number of working groups to study pensions issues similar to those she raised. However, its chairman, Paul Thornton, said any eventual solution "must recognize the rising cost burden of pensions on businesses in recent years."

He added that because of the elimination of the tax credit, "some innovative and radical proposals will be required to put back some impetus into the public's perception of long-term retirement savings as something worth doing."

Nick Wheeler, marketing director of Sheffield, England-based Hartshead Solway Ltd., Britain's largest specialized pensions administrator, also welcomes the government's pension review but said he doubts whether industry-wide pension plans will flourish if pension savings remain largely voluntary.

Mr. Wheeler said he thinks that it will require a new legal and administrative framework, particularly as the real difficulty is holding down the costs of operating such plans if membership remains voluntary.

Geoffrey Pointon, chairman and chief executive officer of London-based pension consultant Pointon York Ltd., said the pensions review needs to focus on the pension problems of smaller enterprises and their employees.

He said that generally the pension contributions of smaller firms—the 98% of U.K. enterprises employing fewer than 100 people, totaling 40% of the country's

working population—"fall well below the level likely to produce adequate pensions."

Mr. Pointon said that this is particularly so in cases where firms operate defined contribution or group personal pension arrangements.

Last week, the London-based Consumers' Assn. issued pension reform proposals very similar to those the government is considering.

The Consumers' Assn. called for retention of the basic state pension and for a compulsory, second-tier pension at a contribution rate of 10%, shared between employee and employer on a basis to be decided by the government. It would be designed to deliver a pension of at least 40% of final salary.

The CA study said that most existing personal pensions are not suitable retirement planning vehicles, warning that the personal pension sales scandal could be repeated on a much larger scale if a compulsory system were to go ahead without proper supervision.

A couple days before Ms. Harman announced her pension review, the Office of Fair Trading issued a report on the pension industry that claimed that "consumer detriment is widespread in occupational and personal pensions."

The main problem with occupational pensions, according to the OFT, is that the majority of employees do not stay with one employer all their working life and thus find their pensions reduced, by up to 30% for someone who changes jobs several times.

Furthermore, the pension rights of employees retiring with defined benefit plans "are subject to a large degree of actuarial discretion, which can dramatically reduce their size." Currently available defined contribution plans suffer from inefficient and expensive selling methods, failure to achieve economies of scale and costly fund management, the OFT report adds.

The OFT recommends a new pension product, the designated personal pension.

This would be a genuinely portable, defined contribution plan, funded by the employer where an employee opted for a contribution in lieu of joining an occupational plan.

Economies of scale would keep DPP charges lower, helped by investing in a fund tracking a stock market index rather than actively trading shares, and there would be no penalties for changes in personal circumstances, according to the OFT.

Finally, this month has seen the government "naming and shaming" 24 companies that provide personal pensions that it says have not met targets for compensating people misold personal pensions from 1988 to 1994.

Most of the victims had been persuaded to move out of better-paying company pensions (*BI*, Oct. 10, 1994). In three years the companies have cleared up only 20,545 cases, whereas the government's timetable calls for 432,000 cases to be settled by the end of 1998.

About 1.4 million cases of persons who were ill advised on switching their pensions have been reported to date, according to the government.

The distrust in private pensions this has generated in the minds of many is one more obstacle the government faces in introducing its stakeholder pension. **BI**

NHS looks to cut insurance costs

U.K. government may pool risks or return to indemnifying claims

By CAROLYN ALDRED

London—The British government may reduce the amount of employers liability and property insurance that National Health Trusts buy from the commercial market in an attempt to reduce the National Health Service's insurance costs.

Health Secretary Frank Dobson announced in the budget debate earlier this month that the Department of Health is "examining what savings could be made, either by the Trusts pooling risk, or even by the return of Crown indemnity," under which the U.K. government would pay claims.

According to Mr. Dobson, the division of the NHS into "429 separate trusts has led to their spending more than £50 million (\$84.4 million) a year in insurance premiums to cover themselves, mainly against employers and third-party liability claims and damage to property."

The department believes that replacing commercial insurance with greater risk-retention, pooling or Crown indemnity could result in savings of about £20 million (\$33.8 million) to £30 million (\$50.7 million) a year, said Mr. Dobson.

Insurers, however, say the competitive commercial employers liability insurance market is giving the trusts a good deal and

that reducing insurance will end up costing taxpayers more money.

"I think they are focusing on the cost of insurance rather than the value of insurance," said John Mackenzie, product manager for medical services for St. Paul International Insurance Co. Ltd., which currently underwrites insurance for about 30% of all National Health Trusts in

ability," he said.

"I find it difficult enough trying to insure NHS Trusts and make some kind of profit margin," said Mr. Mackenzie, noting that the industry is seeing a "high frequency of EL claims such as nurses' backs and upper limb disorders."

NHS Trusts already are enjoying rates "substantially below the rest of industry," he said.

'It is easy to take a simplistic view that claims payments are far below premium spent, but that doesn't take into account the long-tail nature of the business,' says John Mackenzie.

the United Kingdom.

"Trusts are getting excellent value for money at the moment," he said.

"It is easy to take a simplistic view that claims payments are far below premium spent, but that doesn't take into account the long-tail nature of the business," he said, noting that the potential for industrial diseases, such as stress for medical care staff, is very high.

"From our experience, it is very difficult to keep loss ratios below 100%, bearing in mind the long-tail nature of employers li-

ability," he said.

Lloyd's of London employers liability insurance underwriter Tim Butcher agreed that the National Health Trusts are getting a good deal.

Syndicate 1156/1161, managed by Banks & Syndicates Ltd., no longer writes employers liability insurance for the trusts because rates are so low, said Mr. Butcher, deputy underwriter on the syndicate.

"All the government is doing is transferring the burden from the private sector to the tax payer," said Mr. Butcher.

Two years ago, the Depart-

ment of Health set up a pooling arrangement to insure medical malpractice claims incurred by the trusts.

Prior to the formation of the trusts in 1995, the National Health Service did not buy any commercial insurance to cover malpractice claims.

The Clinical Negligence Scheme, underwritten and managed by the government-funded National Health Service Litigation Authority, allows trusts to pool their claims to prevent any one trust from suffering a serious financial loss due to one or several medical malpractice claims.

"One of the objectives of the scheme was to increase the profile of risk management in hospitals, and this is being achieved," said David Marshall, a Bristol-based regional managing director of Willis Corroon Ltd., which consults on the program.

Mr. Marshall suggested that a similar form of pooling could be devised for employers liability and property claims.

St. Paul's Mr. Mackenzie, pointed out, however, that a "pay-as-you-go" program under which members contribute according to the amount of claims during any one year could result in ever-spiralling contributions for long-tail employers liability losses.

INTERNATIONAL

Occidental

Continued from page 17

173,000 barrels per day, about 27% of the country's total oil production of 630,000 barrels per day.

The Cano Limon-Covenas oil pipeline has been a regular terrorist target for the ELN rebel group—which is opposed to all foreign investment in the oil industry—ever since the field began operations in 1985. It has been attacked about 48 times a year. Terrorism in Colombia has escalated, and the line already has been bombed 38 times this year.

The Occidental spokesman said the terrorists are becoming ever more expert in their attacks. "They bomb the pipeline in the late evening so a repair team can't get access at night. Then the trans-

portation for the repair team is also a target."

Occidental and Shell de Colombia, a wholly owned subsidiary of Royal Dutch Shell BV, each hold a 25% stake in the Cano Limon field and operate it as joint venture partners. The Colombian state oil company, Empresa Colombiana de Petroleo, or Ecopetrol, holds the other half.

Despite the many past attacks, this was the first time that Occidental declared force majeure on the field. According to Ecopetrol, attacks on this pipeline have cost \$1.6 billion in lost oil exports, damage and repairs since 1985.

The Occidental spokesman was unable to give details of Occidental's insurance program. "There is a business interruption cover but it only goes into effect after an unheard of amount of days because of

past history of attacks."

Occidental's manager in Bogota, Stephen Newton, said in an interview with the local press in April that the company will pay \$20 mil-

Terrorists 'are becoming ever more expert in their attacks,' says a spokesman for Occidental Petroleum Corp.

lion in security costs this year in Colombia. This figure accounts for 10% of the company's overall expenses.

But insurance executives in Bogota note that most oil companies in the country self-insure their

pipelines due to the costs of insurance. "All the pipelines owned by Ecopetrol are self-insured. The only thing insured (in oil production installations) are tank farms and pumping stations," according to Rodrigo Fajardo, managing director of Johnson & Higgins Colombia S.A., a wholly owned subsidiary of Marsh & McLennan Cos. Inc.

Large oil pipelines are a major terrorist target because of the political impact and publicity associated with the attack, Mr. Fajardo said. "The most effective attack is on Cano Limon. Sometimes they (the terrorists) only use one stick of dynamite, which wouldn't break up the line but would weaken it and so oil production would have to stop," says Mr. Fajardo.

But oil multinationals working in Colombia have no problem in-

suring their other installations. "Where there is security, such as at storage tanks or pumping stations, you normally get cover. Ecopetrol has not suffered any losses on the property they are insuring," Mr. Fajardo said.

The state oil company has a statutory right to participate with a share of between 50% and 75% of all commercial oil production in the country that has been discovered and is being operated by foreign or private-sector oil companies.

Insurance industry sources in Colombia say that because of the current soft market, Ecopetrol was able to obtain a 40% to 50% reduction on its property damage insurance premiums at its last renewal. The company now pays a premium of between \$5 million and \$6 million annually. **BI**

Tragedy hikes work comp costs

Tasmania to help pay premiums

By YVETTE HIGGINS and KATE TILLEY

HOBART, Australia—A shooting spree at an historic site in Australia demonstrates why employers should plan for worst-case workers compensation scenarios.

As a result of the tragedy last year, which left 35 people dead, the Port Arthur Historic Site Management Authority is facing large workers comp claims from the estates of workers killed and from employees who suffered physical or psychological injuries.

The Tasmanian government recently agreed to pay at least part of the Port Arthur Authority's workers comp insurance premiums for the next three years.

Port Arthur, on the Tasman Peninsula, is home to the state's most popular tourist attraction, the ruins of a former prison. Every year, 216,000 tourists and Tasmanian residents visit the site. The authority is the area's major employer.

On April 28, 1996, a 30-year-old Tasmanian, Martin Bryant, shot dead the two owners of a Port Arthur guest house near the historical site before killing 20 tourists and residents and wounding 12 in the nearby Broad Arrow Cafe. He then killed 11 more outside the cafe, before driving a few hundred meters down the Arthur Highway, shooting dead a Sydney woman, and taking her boyfriend hostage. Mr. Bryant then returned to the guest house, where he wounded

four passing motorists and killed his hostage before setting fire to the guest house.

After his arrest, Mr. Bryant pleaded guilty to 35 murder charges and was imprisoned for the remainder of his natural life.

The authority is insured with a pool for government-owned enterprises, with premiums based on claims experience. Instead of its usual premiums of about \$15,000 (\$11,120) a year, the authority's premiums for the next three years

The site management authority will not have to pay costs 'over and above' normal business costs, according to a statement.

total \$800,000 Australian (\$593,040). The government has told the authority it will pay all or part of the premiums.

The pool, the Tasmanian State Services Workers' Compensation Committee, covers up to \$1 million Australian (\$741,300). Sydney-based property/casualty insurer MMI Ltd., which manages the pool, also has purchased excess-of-loss reinsurance layers, with no upper limit.

Brian Phillips, MMI's Tasmanian manager, would not say how many claims the insurer had received from the Port Arthur Authority, the Tasmanian police force or the State Emergency Service, which also are insured through the pool. Police and the Emergency Service were involved in chasing the gunman and getting victims to the nearest hospital, which is about 60 miles away.

The spokesman for Tasmania Tourism Minister Ray Groom said the government would not release details on what portion of the premiums it would pay.

Mr. Groom said in a statement that the authority would not be required to "bear any extraordinary costs which flow directly from the Port Arthur tragedy and which are clearly over and above the normal business costs of operating the site."

Mr. Groom also said the authority will not be required to pay back the contribution.

Philip Mussared, chairman of See Tragedy on next page

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INTERNATIONAL

Floods

Continued from page 17

In Poland, the three insurance companies that control about 80% of the market cover more than half of the insured losses to date.

The market leader, state-owned Powszechny Zakład Ubezpieczenia, has reported initial losses of 350 million zlotys (\$101.4 million), a figure that has not changed for two weeks.

The country's second-ranking insurer, Warta Insurance Co. Ltd., has reported initial losses of 160

million zlotys (\$46.3 million), and the third-ranking company, Polisa Insurance Co., reported initial losses of 9 million zlotys (\$2.6 million).

Polisa's losses are relatively small, as it writes little business in the southwest of the country, concentrating on the capital, Warsaw, and eastern Poland.

"Most of our losses are household and some commercial risks," Polisa Vp Jan Rytelewski said.

Small insurers cover the balance of the damage.

Poland's top three insurers reinsure about 30% of their portfolios, while the smaller companies cede about 60%, Ms. Walcerz said.

She is reviewing the reinsurance arrangements of Poland's very small insurers; they may have had difficulty obtaining catastrophe coverage and consequently may not be able to pay claims.

The government thinks the larger companies will have sufficient reserves to pay their liabilities, but the flooding has prompted government plans for a future review of solvency requirements.

"We thought there was no need for large catastrophe reserves. In the past, there have only been local floods. These present floods are a 500-year event," says Ms.

Walcerz.

The insurance industry has also floated the idea that Poland should establish a form of government-backed catastrophe reinsurance like that available through state reinsurers such as Caisse Centrale de Reassurance in France or the Consorcio de Seguros in Spain.

"There was a catastrophe fund in the 1980s when the PZU had a monopoly in the market. But in the transition to a market economy in the 1990s, all forms of government assistance against such events (as floods) was forgotten," Ms. Walcerz explained.

Total economic losses in Poland

could be more than four times the insured figure. "Only 25% of the population has household insurance. In Poland, people have taken more care of their cars than of their homes," Ms. Walcerz said.

According to official reports, the floods have killed at least 52 people in Poland as of July 23. About 140,000 people have been evacuated, and 62,000 people were waiting to return home.

Twenty-five provinces were seriously affected, and flood alerts still were in force in 12 of these. More than 250 towns and villages were flooded; of these, 17 were deluged, 568,100 acres of land still were under water, 135 bridges were damaged, and 860 miles of roads were closed.

Total economic losses in the Czech Republic to date range from 50 billion to 100 billion Czech korunas (\$1.45 billion to \$2.9 billion), according to government figures.

In the Czech Republic, the floods have killed at least 46. About 2,500 were injured; 80,000 people were directly affected by the flooding, while 10,000 were evacuated. The floods destroyed some 1,600 houses, while 10,000 homes have been damaged badly. Information on commercial losses was not available.

In Germany, about 3,500 people were evacuated from towns south of Frankfurt-an-der-Oder. Last week, 18,000 were evacuated from Slubice in Poland. The Oder River separates Poland and Germany.

Water levels in eastern Germany were rising above those of the last major flood in the region, which occurred in 1930. The German government has provided 20

million deutsche marks (\$11 million) in emergency aid to the area, while the state development bank, Kreditanstalt fur Wiederaufbau is to provide another 200 million deutsche marks (\$109.6 million).

The World Bank and the European Investment Bank have offered \$300 million in emergency loans to the Polish government for post-flood reconstruction. The

part includes reconstruction of all destroyed facilities and is expected to take years.

A low-pressure weather system over Central Europe caused the flooding, according to Munich Re geoscientists. This system originated in the Mediterranean at the beginning of July, where it took up large amounts of water vapor. It then moved north over the re-

'We thought there was no need for large catastrophe reserves. In the past, there have only been local floods. These present floods are a 500-year event,' says Danuta Walcerz.

PHOTO: AFP

Two firemen were part of a disaster relief effort in the main square of Czepielowice, Poland. Total economic losses in Poland could be more than four times the insured figure.

government has launched a three-part plan to tackle the catastrophe. First, money from the state budget will be made available to the worst-affected families for immediate needs and rehousing.

The second part, expected to take some six months, will include the construction of new family homes and the repair of gas and electricity supply lines. The third

regions of former Yugoslavia, Austria, Slovakia, the Czech Republic and Poland, where it stayed.

A second low-pressure system moved over the Czech Republic and Poland from the eastern Alps to the west. The resulting inflow of cold air caused heavy rains to fall and the flooding of the rivers, Oder, Neisse, Opava, Morava and Vistula.

ers included both U.S. and European investors, among them financial institutions, life insurance companies, money managers and investment brokers.

Rating the earthquake notes was particularly challenging, Mr. Efrat said.

"This was the hardest we've worked

Rating

Continued from page 17

individual members' capital ratios to 50% of premium capacity by the year 2000 from the current 20% to 30%, in line with corporate membership.

The rating also would take into account:

- The strength of Equitas to continue paying claims—its demise could mean that members would again have to pick up the tab for long-tail liabilities.

- The 44 orphan syndicates that stopped underwriting after the Equitas cut-off date.

- Runoff of the old PCW Un-

derwriting Agencies Ltd. syndicates by Lloyd's-owned Lioncover Ltd., which have not been reinsured into Equitas.

Meanwhile, Lloyd's syndicate analyst Syndicate Underwriting Research Ltd. has revised its syndicate "qualitative" rating this year to make it easier to understand the ratings. SURL's recently published, 415-page "Lloyd's Syndicate Rating Guide and Market Review" for 1997 gives each syndicate a long-term performance rating using letters for the first time rather than numbers. The highest rating is A+ for excellent, and the lowest is C, or below average.

The performance rating is

Mike Geeves, Port Arthur Authority employee services manager, said the authority was unable to pay the premium hike because "we never imagined that sort of cost could evolve."

"We have probably never had

'The question is, are people looking at the worst-case outcome as part of their cover?' asks Philip Mussared.

much more than a turned ankle or a cut hand (from site employees)," he said. The site has 150 employees.

Mr. Phillips would neither confirm nor deny media reports that claims would reach at least \$30 million Australian (\$22.2 million), nor would he name the pool's reinsurers.

Pool members have varying de-

ductibles. The Port Arthur Authority's deductible is the first five days an employee is off work with a compensable injury, Mr. Geeves said.

For employees killed on the job, their families or others receive lump-sum payments that vary according to the number of dependents the deceased had.

Mr. Mussared said the Port Arthur case illustrates the need for risk managers to think beyond traditional workers comp injuries to worst-case scenarios.

Most organizations consider a flood, cyclone or fire as the worst thing that could happen to their business but must think about protecting against catastrophic events, he said.

"A lot of public bodies only see a catastrophe in terms of the west wing burning down, or workers comp in terms of someone slipping over."

"The question is, are people looking at the worst-case outcome as part of their cover?" Mr. Mussared asked.

based on facts such as:

- The make-up of the underwriting team and its performance, both now and historically, compared with peers.

- The syndicate's portfolio of business and its strategy based on its 1997-1998 business plans; as well as its reinsurance protection.

- Management controls for underwriting and claims.

- The stability of the capital backing the syndicate.

SURL's guide is available for £250 (\$420) by contacting Mark Hewlett, Syndicate Underwriting Research Ltd., Latham House, 16 Minories, London, EC3N 1EX; 44-171-702-1234; fax: 44-171-702-4062.

on any deal," he said. "It's the first earthquake deal that's ever been rated, so needless to say, we had to know a lot about earthquakes."

"We certainly have to know much more than perhaps what the average investor would, because they certainly look to us in this very new market," Mr. Efrat said.

Rating last month's USAA deal was "a similar sort of thing," Mr. Efrat said. "We had to learn a great deal about hurricanes."

"It would be fair to say that when these deals were first brought to us, we weren't sure whether we would be able to rate them because we hadn't analyzed the data sufficiently yet," Mr. Moyer said.

Actuarial research firm EQECAT provided assistance in quantifying investor risk in the earthquake deal, and the rating agencies also relied on internal analysis and additional independent research in rating the notes.

Mr. Efrat emphasized that Moody's Baa3 rating on the earthquake notes' senior tranche is comparable to a similar rating on a more conventional investment. "It's not a Baa3 rating with 'earthquake' attached," he said.

As with the USAA deal, investor demand was considerable, with the deal upsized to its final \$137 million size from a planned \$115 million because of that demand. The notes' buy-

ers included both U.S. and European investors, among them financial institutions, life insurance companies, money managers and investment brokers.

Rating the earthquake notes was particularly challenging, Mr. Efrat said.

"This was the hardest we've worked

Swiss Re

Continued from page 2

tranche is the first such catastrophe-linked deal to get an investment-grade rating without full principal protection.

That first tranche, which included \$42 million in floating-rate notes and \$20 million in fixed-rate notes, received an investment grade Baa3 rating from Moody's Investors Service Inc. and BBB- from Fitch Investors Service Inc. The second tranche of \$60.3 million in fixed-rate notes was rated Ba1 by Moody's and BB by Fitch.

The third tranche was not rated and was tied to lower trigger points. "We presume it was structured for one or two particular investors," said Isaac Efrat, vp and senior analyst in the derivatives group of Moody's in New York. The only differences in the structure of the first two tranches is that investors in the first can lose no more than 60% of their initial investment, while investors in the second tranche could lose all their principal.

Each of those two tranches has trigger points at industry losses from a single California earthquake of \$18.5 billion, \$21 billion and \$24 billion. Investors lose one-third of their principal at risk at each of those trigger points. Those trigger points are considerably beyond the \$12.5 billion in insured losses caused by California's 1994 Northridge earthquake.

"In essence, the losses would have to be notably higher than the Northridge losses in order to have a default event," said Dan Moyer, a senior director and manager of the insurance group at Fitch Investors Service Inc. in New York.

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Tax bill

Continued from page 1

medical malpractice suits.

- Conferees dropped provisions in the House-passed tax bill that would have allowed trade associations to offer members health care programs that would have been exempt from state regulation. Those provisions, supported by a broad coalition of small-employer groups, drew the ire of state regulators and health insurance trade associations, who warned that opening the door to such programs would lead to a sharp increase in health insurance fraud.

Other actions conferees took, though, could aid employers. For example, conferees tentatively agreed to provisions that could expand the availability of Medicare risk health maintenance organizations. Employers can significantly cut their retiree health care costs when retirees obtain coverage through Medicare risk HMOs and move out of the traditional Medicare program and drop employer-provided plans that supplement Medicare.

Under the tentative agreement, HMOs that become so-called risk contractors and take the responsibility of providing health care coverage to retirees eligible for Medicare would be entitled to a minimum payment rate of \$367 per month per retiree signing up for coverage.

Currently, Medicare payment rates to HMOs in some parts of the country are less than \$250 a month per retiree. The higher payment rate would allow HMOs to move into new parts of the country where payment rates are now so low that it is fiscally impossible for HMOs to become

Medicare risk contractors.

Conferees also were working on a slew of provisions to expand individual retirement accounts. Agreed-on IRA provisions include those that would:

- Eliminate the 10% excise tax on pre-retirement distributions from tax-deductible IRAs used to pay for educational expenses and a down payment toward a first-time home purchase.

- Allow people without pension coverage to qualify for tax-deductible IRAs regardless of household income or whether their spouses are covered by a pension

Congressional conferees were working on provisions to expand individual retirement accounts.

plan.

Currently, a person without pension coverage is ineligible to maintain a tax-deductible IRA if the person's spouse is covered by a pension plan and income is above a certain level.

- Gradually increase the amount of money people with pension plan coverage can earn and still make tax-deductible contributions to an IRA. Under current law, the full \$2,000 tax deduction for IRA contributions only is allowed for those with adjusted gross incomes of less than \$25,000 and joint filers with adjusted gross incomes of less than \$40,000.

The \$2,000 tax deduction under current law is reduced, based on a sliding scale, for individuals with adjusted gross incomes of from

\$25,000 to \$35,000 and joint filers with adjusted gross incomes of \$40,000 to \$50,000.

Under the conferees' agreement, the income threshold for making the full \$2,000 tax-deductible IRA contribution would increase in 1998 by \$10,000 for joint filers and by \$5,000 for single filers. The limits would rise by \$1,000 annually beginning in 1999. It wasn't immediately clear last week when the annual \$1,000 increase in income limits would cease.

- Continue the tax-favored status of employer-provided educational assistance benefits through May 2000.

Conferees earlier this month, as reported, agreed to a number of non-controversial pension-related changes. Those changes include allowing employers to remove from their pension rolls former employees whose accrued benefits have a present value of up to \$5,000. That's an increase of the current \$3,500 cash-out limit. Conferees, though, decided the new \$5,000 limit would not be indexed to inflation.

Other changes agreed to earlier include requiring the Labor and Treasury Departments to issue guidance by Dec. 31, 1998, on which documents and benefit notifications employers can distribute electronically to employees, such as through company e-mail systems.

The conferees also agreed to a permanent repeal of a 15% excise tax on large pension distributions, such as lump-sum payments exceeding about \$800,000. But, benefit lobbyists said they were concerned that the White House might object to the repeal on the grounds that it was a "special interest" provision because it would only benefit a relatively small number of people. **BI**

Implants

Continued from page 1

After receiving the reports, the litigants will be able to conduct an informal discussion or discovery-type deposition of the panel members, which will be followed by a videotaped deposition of the panelists by a court-appointed official. Litigants also will be allowed to cross-examine the panelists. The panel members will not testify in person at any of the trials.

Although litigants will be allowed to call their own expert witnesses during trial, the reports may be used by trial courts in determining the admissibility of other expert testimony.

In the future, "there probably is going to be increased consideration of the use of neutral experts" because it is so hard for judges and juries to evaluate expert testimony, said defense attorney Timothy Dyk, a partner with Jones, Day, Reavis & Pogue in Washington.

Midland, Mich.-based Dow Corning Corp., one of the major defendants in the breast implant litigation, is "all for it," a spokesman said. The panel "should be able to sift through the junk science and look at the real picture."

The spokesman said Dow Corning is confident the experts will determine there is insufficient evidence to conclude that silicone breast implants cause disease or illness.

This approach "makes a great deal of sense," stated Thorn Rosenthal, a partner with Cahill Gordon & Reindel in New York. "This panel will know how the preponderance of the scientific community comes down" on the question of whether silicone causes systemic illnesses. It is a "fundamentally fair way to proceed."

"This would be a great approach in situations... where tens of thousands of cases go after the

rell Dow Pharmaceuticals Inc., new rules for determining the admissibility of scientific expert testimony were established. The *Daubert* decision requires district courts to exclude from trial unreliable or unscientific expert testimony. This can be difficult, however, because each side in a trial interprets the *Daubert* decision to support its expert testimony choices.

By creating the scientific panel, Judge Pointer has "set forth a reference point that everyone can use that has some credibility," Mr. Rosenthal noted.

One limitation to this approach, however, is that "it ages quickly" as scientific knowledge changes, he added.

The four members of the panel are: Dr. Betty A. Diamond, a professor in the department of microbiology and immunology at the Albert Einstein College of Medicine in New York; Dr. Barbara S. Hulka, a professor in the department of epidemiology at the University of North Carolina's public health school in Chapel Hill; Dr. Peter Tugwell, chairman of the department of medicine at the University of Ottawa in Ottawa, Ontario; and Dr. Nancy I. Kerkvliet, a professor and toxicologist in the department of agricultural chemistry at Oregon State University in Corvallis.

John M. Kobayashi, a Denver attorney, was appointed to advise panel members as needed about their responsibilities. **BI**

In the future, 'there probably is going to be increased consideration of the use of neutral experts' because it is so hard for judges and juries to evaluate expert testimony, says Timothy Dyk.

same scientific evidence," Mr. Rosenthal said.

The panel was created by Judge Pointer, who recently was appointed to hear all federal breast implant product liability cases against Dow Chemical Co. and Dow Corning Corp. (*BI*, July 7). Judge Pointer is well-known in legal circles for his knowledge of complex litigation.

Judge Pointer last year was asked by the national plaintiffs steering committee in the breast implant litigation to convene a panel of independent medical experts "to evaluate and critique pertinent scientific literature and studies" relating to the litigation, according to a district court order. On May 30, 1996, he outlined the panel approach.

Under a 1993 U.S. Supreme Court decision, *Daubert vs. Mer-*

Updates

Brokers release deal specifics

LONDON—Willis Corroon Group P.L.C. said last week that it plans within 12 years to take a majority shareholding in Gras Savoye S.A., France's largest independent French insurance broker.

Earlier this month, Willis announced it would buy a one-third stake in Gras Savoye.

Under the sale agreement, existing shareholders have the right to sell shares to Willis Corroon three years after it completes the acquisition of the initial stake, and if it has not already done so, the London-based broker can exercise options to increase its interest in Gras Savoye to more than 50% after 12 years.

In the initial purchase, Willis Corroon is paying 453 million French francs (\$73.6 million) for Gras Savoye shares representing 33.36% of voting rights. Most of the shares are being bought from members of the Gras and Lucas families, which had held a combined 70% of Gras Savoye, though Willis Corroon is also acquiring the entire 10% shareholding held by French insurance company Assurances Generales de France.

Two other French insurers, AXA-UAP and Athena Assurances, each are retaining their 10% shareholdings. Members of the Gras and Lucas families will hold 43.36% after Willis acquires its stake and GS Euro Finance, a Belgian subsidiary of Gras Savoye controlled by the families, will hold 4.9%.

John Reeve, Willis Corroon executive chairman, said taking a stake in Gras Savoye is "a major step in our strategy of achieving leadership positions in chosen market segments." He particularly cited the "combination of Willis Corroon's global expertise in specialty insurance and Gras Savoye's leading position in the French market" as important for brokers to attract and service multinational clients and international clients based in France. Willis also hopes to retain business Gras Savoye now cedes to other intermediaries.

However, the link raises questions about the future of the UNISON brokering network, of which Gras Savoye is a member. Patrick Lucas, chairman of Gras Savoye, said continued UNISON membership is "something to be examined." Willis Corroon, which left UNISON in 1990, says it has no plans to rejoin.

Diocese hit with abuse judgment

DALLAS—The Dallas Catholic Diocese is facing a \$119.6 million verdict in the largest sexual abuse judgment of its kind.

A state court jury in Dallas last week leveled the award, which includes \$18 million in punitive damages, against the diocese for gross negligence and concealing information related to sexual abuse by former priest Randolph "Rudy" Kos. Mr. Kos faces criminal charges.

The former priest was accused of sexually abusing boys from 1981 to 1992. Under Texas' rule of joint-and-several liability, the diocese will be responsible for the entire award because Mr. Kos is unable to pay the portion assigned to him. The jury ordered Mr. Kos to pay varying amounts in connection with the allegations of each victim.

Windle Turley, a Dallas attorney who represented eight of the 11 plaintiffs, said insurance coverage for the diocese has been "a matter of great dispute and controversy... For some victims they say yes; for some they say no."

Mr. Turley said he is unaware of a larger judgment in a clergy sexual abuse case.

In a statement, Bishop Charles Grahmann said it would abide by the final outcome of the case but that the verdict may be appealed. He also said in the statement that the diocese would continue to help with therapy and counseling. Diocese officials were unavailable to comment Friday.

OPIC confirmation progressing

WASHINGTON—Assistant Treasury Secretary George Munoz appears likely to win swift approval as president of the Overseas Private Investment Corp.

"The description of OPIC as 'corporate welfare' is a case of mistaken identity," Mr. Munoz, who President Clinton nominated a few weeks ago to take OPIC's helm, said in testimony before the Senate Foreign Relations Committee last week.

OPIC, which writes up to \$200 million in political risk insurance for U.S. companies doing business in selected developing nations, has been attacked from both ends of the political spectrum as an example of a government handout to corporations. Mr. Munoz emphasized that OPIC does not compete with private insurers but rather "fills a void" by providing long-term coverage the private market will not underwrite.

Sen. Chuck Hagel, R-Neb., who chaired the confirmation hearing, agreed with Mr. Munoz about OPIC's value and promised that "we intend to move very quickly" to confirm Mr. Munoz as head of OPIC.

Mr. Munoz would replace Ruth Harkin, who resigned earlier this year.

Sen. Hagel also said he will hold hearings on OPIC's operations later this year.

Briefly noted

The Bermuda liquidators of Electric Mutual Liability Insurance Co. have commuted EMLICO's reinsurance agreements with General Reinsurance Corp. and two General Re affiliates. Terms of the deal were not disclosed. General Re, one of four reinsurers that originally sued Massachusetts regulators over EMLICO's 1995 move to Bermuda, will withdraw from EMLICO-related litigation in Massachusetts and elsewhere... A New York federal judge earlier this month dismissed a discrimination lawsuit against Morgan Stanley & Co. Inc. that stemmed from racist jokes sent via company e-mail. The judge is allowing the plaintiffs to file an amended complaint, and Howard E. Shafran, the plaintiff's attorney, confirmed he plans to do so... Carolyn L. Murphy, 52, senior vp of CNA Insurance Cos. and president of its commercial operations, is retiring from the company effective Oct. 1. At that time, CNA's commercial operations will be split into two operating departments: CNA Risk Management, headed by Peter P. Conway; and CNA Commercial Insurance, headed by Michael S. McGavick.

Defense

Continued from page 1
Diego.

"You don't want to have a decision where you have a state taking a formal administrative position against a policyholder and the policyholder being left without a defense because of some fiction by an insurance company attorney" that a cleanup order is not a legal action by the government against a policyholder, said policyholder attorney Robert M. Horkovich, a partner with Anderson Kill & Olick P.C. in New York. Mr. Horkovich was not involved in the case.

An insurer attorney said the decision unfairly burdens insurers.

"This is a decision which tortures the definition of the word 'suit' to reach results which the court wants," said Bernard London, who was not involved in the case.

"Rather than look up the word 'suit' in Webster's Dictionary and afford it its logical common-sense meaning, the court undertakes an extremely lengthy analysis which concludes that a PRP (letter) is indeed a suit," said Mr. London, of London Fischer in New York. "This court's reasoning rewrites the insurance contract and forces a cost not underwritten and for which no premium was paid to the insurer."

In the case, pesticide and fertilizer wholesaler Foster-Gardner Inc. of Coachella, Calif., has incurred hundreds of thousands of dollars in defense costs since 1992, according to Mr. Shotts. That is when California's Environmental Protection Agency ordered the company to investigate and remediate pollution at its Coachella site.

The company is seeking a defense from the insurers that wrote its CGL insurance from 1970 until 1986. Those insurers, which Latham & Watkins estimates wrote a total of at least \$5.5 million dollars of limits, are National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of American International Group Inc.; Fremont Indemnity Co., a subsidiary of Fremont General Corp.; Pacific Indemnity Co., a subsidiary of Chubb Corp.; and Ranger Insurance Co., a subsidiary of Fairfax Financial Holdings Ltd.

The insurers' attorneys at Sinnott, Dito, Moura & Puebla in Los Angeles did not return calls.

Including the California appellate court ruling, courts in at least 15 states have determined that a pollution cleanup order amounts to a lawsuit, according to court papers and attorneys.

The 2nd U.S. Circuit Court of Appeals, interpreting New York law, also has ruled such actions are the equivalent of lawsuits. A New York state court reached the same finding.

Courts in at least seven states and the 6th Circuit, which interpreted Michigan law, have sided with insurers on the issue. However, the Michigan Supreme Court later rejected the notion that cleanup orders are not lawsuits. It sided with policyholders in 1994.

In the California appellate court's 3-0 decision, written by Justice John Zebrowski, the court examined many of those rulings—including dissenting opinions—at length.

Justice Zebrowski summed up that the rulings can be categorized in three ways.

Courts that have rejected the notion that cleanup orders are lawsuits have adopted the "literal meaning" approach. Those

Courts in at least 15 states have determined that a pollution cleanup order amounts to a lawsuit, while seven states and the 6th Circuit side with insurers.

courts find that cleanup orders and related pre-lawsuit proceedings do not trigger a duty to defend because they are not literally suits in court.

Those courts generally also have found remediation costs are not covered damages under CGL policies.

Other courts have adopted a "functional approach" in determining that cleanup orders and proceedings that precede remediation lawsuits are equivalent to lawsuits. Those courts have found that the term "suits" in CGL policies is unclear and that the legal procedures created by environmental protection statutes have functional attributes and ultimate consequences of lawsuits.

Those courts also have determined that cleanup costs are covered damages under CGL policies.

Still other courts have taken a hybrid approach. Some have determined that the earliest notification from environmental agencies is not tantamount to a suit, though subsequent cleanup orders are. Other courts have found that even the earliest notifications are equivalent to suits.

In adopting the so-called "functional ap-

proach," the appellate court cited several factors, including:

- The lack of definitions for "suit" and "claim" in CGL policies. Therefore, the term "suit" must be construed to mean what the policyholder reasonably could have expected, Justice Zebrowski wrote.

- The California Supreme Court's unanimous 1990 decision to adopt the "functional approach" in determining that cleanup costs are covered damages under CGL policies. "There is no principled basis on which a non-technical functional analysis could properly control the 'damages' issue in (the 1990 Supreme Court case), while a strictly technical and literal analysis controlled the 'suit' issue," Justice Zebrowski wrote.

- The nature and irrevocable consequences of California's environmental cleanup statute, which take place before a traditional lawsuit is filed in court, lie "somewhere between a traditional lawsuit in a court and a traditional claim," Justice Zebrowski wrote. The 1990 California Supreme Court decision "teaches" the appellate court that such an ambiguity—produced by the combination of unclear policy language and "new schemes for remediating pollution"—must be "construed against the insurer," the judge wrote.

Even with its court victory in hand, Foster-Gardner still must clear another legal hurdle before it can recover the legal costs it says it has incurred in defending against the cleanup order.

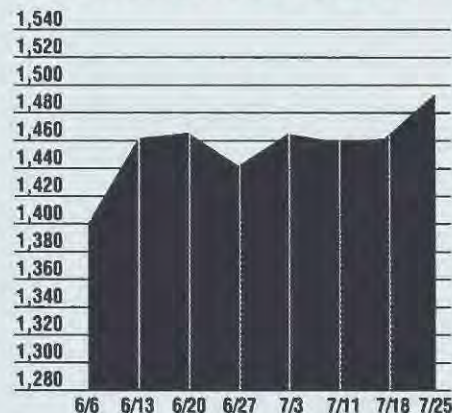
The appellate court upheld the lower court's decision to reject the company's summary judgment motion to compel its insurers to reimburse it for its defense costs. The appellate court ruled that Foster-Gardner has not provided a detailed accounting of those costs. The company's insurers argue that at least some of those costs are not defense-related, said Mr. Shotts, Foster-Gardner's attorney.

But, Mr. Shotts said all of Foster-Gardner's costs were defense-related, because they were incurred in, among other things, responding to demands for information, raising available defenses, searching for other PRPs, trying to convince Cal-EPA it was not responsible and preparing a pollution remediation plan.

The court included those activities in the defense cost standards it outlined in both published and unpublished portions of the decision, Mr. Shotts said.

Foster-Gardner Inc. vs. National Union Fire Insurance Co. of Pittsburgh Pa., et al., California Court of Appeal; No. B099340.

BI Insurance Index



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

PCS catastrophe options

As of July 25			
Call spread	Price bid/ask	Call spread	Price bid/ask
Eastern September 1997			
40/60	3.2/3.9	California	
60/80	2.1/3.5	40/60	4/1.6
80/100	1.5/2.5	80/100	—/1.3
National Annual 1997			
80/100	3.6/4.5	Western Annual 1997	
120/140	—/5.0	40/60	6/1.8
Southeastern September 1997			
40/60	2.5/3.6	70/90	—/1.6
60/80	2.2/2.5		
80/100	5/2.0		

Total volume: 132 Total open interest: 16,159

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	Price	P/E	Div.	Yield	52 week
	pence		pence	%	high—low
Comm Union	702	10.7	30.3	5.5	764—578
Genl Accident	910	6.5	34.3	4.7	978—618
Gdn Royal Exch	300	6.3	10.0	4.1	311—233
Independent	875	10.9	13.3	1.9	898—456
Royal & Sun	498	15.1	19.0	4.7	529—366
Brokers					
Bradstock	86	12.0	6.4	9.8	90—54
CE Heath	140	9.1	1.5	1.3	143—74
Lmbrt Fenchurch	125	11.7	8.4	8.8	133—101
Lloyd Thompson	184	NA	NA	NA	206—163
Nelson Hurst	178	16.4	8.6	6.0	192—121
Sedgwick Grp	123	10.5	8.9	7.2	144—115
Steel Bri Jones	28	9.7	1.5	6.7	40—22
Willis Corroon	134	11.4	6.6	6.2	165—117

Note: Prices are July 25 closings; other numbers from July 24.

Source: Nordby International Inc.

BI Industry Stock Report JULY 21, 1997, THROUGH JULY 25, 1997

BROKERS

BROKERS		Price	Weekly		Year to date		Year to date		Vol.(000)
			% change	% change	High	Low			
Aon Corp.	NYS	53.69	2.26	29.63	54.88	31.75	1033		
E.W. Blanch Holdings Inc.	NYS	29.38	-0.42	45.96	30.63	17.75	59		
Gallagher Arthur J. & Co.	NYS	36.63	-0.34	18.15	37.75	29.13	140		
Hibb, Rogal & Hamilton	NYS	16.81	1.13	26.89	17.25	12.13	72		
Kaye Group Inc.	NDO	5.38	2.38	2.38	7.00	4.38	2		
Marsh & McLennan	NYS	74.00	5.34	42.31	75.50	44.38	1626		
Poe & Brown	NDO	37.00	1.37	39.62	38.50	23.50	22		
Sedgwick Group PLC	NYS	10.38	-2.35	0.00	10.88	10.13	5		
BROKERS	AVERAGE		1.01	25.04					

INSURERS/REINSURERS

ACE Ltd.	NYS	80.56	5.57	33.99	80.56	42.75	723
Acceptance Insurance Cos.	NYS	23.94	4.08	21.20	24.13	17.00	177
AEGON N.V.	NYS	76.88	1.32	21.54	78.88	42.25	593
Aetna Life & Casualty	NYS	112.63	7.97	40.78	115.88	57.63	2915
AFLAC Inc.	NYS	56.00	6.67	30.99	56.44	28.38	1057
Allied Group Inc.	NYS	44.25	3.06	35.63	44.25	22.38	117
Allstate Corp.	NYS	77.69	4.19	34.23	78.88	41.13	3912
AMBAC Indemnity Corp.	NYS	83.88	3.55	26.37	84.56	47.00	259
American Bankers Ins.	NDQ	65.31	-2.25	27.75	69.13	39.50	114
American Financial Group	NYS	46.00	4.25	21.85	46.69	28.63	423
American General	NYS	51.38	4.85	25.69	52.63	34.00	2396
American Heritage Life Ins.	NYS	35.94	0.00	36.90	37.25	19.00	50
American Indemnity/Fin'l	NDQ	12.25	-2.49	19.51	14.00	9.50	9
American International	NYS	154.13	3.18	42.38	157.19	90.38	3580
Argonaut Group	NDQ	32.25	2.79	4.88	32.50	26.75	40
Baldwin & Lyons Inc.	NDQ	19.75	-1.25	7.48	22.63	17.38	9
Berkley W.R. Corp.	NDQ	57.13	-2.14	12.56	60.50	40.25	675
Berkshire Hathaway Inc.	NYS	47700.00	2.80	39.88	48600.00	30000.00	0
Capital RE Corporation	NYS	54.44	-2.57	16.76	56.38	33.00	53
Capital Transamerica Corp.	NAS	26.88	0.00	-12.60	27.50	12.75	19
CapMac Holdings Ltd.	NYS	28.50	-5.39	-13.96	36.88	22.50	314
Capsure Holdings Corp.	NYS	13.56	2.84	17.93	18.88	8.00	65
Centris Group Inc.	NYS	23.38	2.75	19.11	23.38	14.88	59
Chartwell Re	NYS	31.75	-0.39	18.69	32.88	21.25	88
Chubb Corp.	NYS	68.88	3.57	28.14	69.19	40.88	2222
CIGNA Corp.	NYS	191.00	2.69	39.80	191.00	105.50	906
CNA Financial Corp.	NYS	115.31	-0.66	7.77	117.25	95.88	220
EMC Insurance Group Inc.	NDQ	13.50	4.85	12.50	13.50	10.50	33
Enhance Financial Services	NYS	47.94	1.46	31.34	49.19	26.75	121

		Price	Weekly % change	Year to date % change	Year to date		
					High	Low	Vol.(000)
Everest Reinsurance	NYS	35.69	-1.55	24.13	40.25	22.63	401
Executive Risk Inc.	NYS	50.13	-4.30	35.47	56.38	33.38	86
EXEL Ltd.	NYS	53.69	0.12	41.75	56.38	31.75	373
Fremont General Corp.	NYS	40.88	0.31	31.85	41.75	21.63	275
Frontier Insurance Group	NYS	30.75	0.41	60.78	33.00	16.38	480
Gainsco Inc.	NYS	9.31	-1.32	-3.25	10.88	8.13	340
General RE Corp.	NYS	199.25	4.77	26.31	201.00	140.75	811
Gryphon Holdings	NDO	17.13	0.74	21.24	17.75	12.00	124
Guaranty National Corp.	NYS	25.13	6.63	50.00	25.75	13.50	40
Harleysville Group	NDO	37.56	-1.80	23.16	38.38	24.50	213
Hartford Steam Boiler	NYS	54.25	0.58	16.98	55.13	42.75	91
HCC Insurance Holdings	NYS	31.44	6.12	30.99	32.75	21.50	555
IPC Holdings Ltd.	NDO	30.25	5.68	35.20	30.25	19.50	496
ITT Hartford Group	NYS	87.00	4.04	28.89	88.63	50.50	2286
LaSalle Re Ltd.	NDO	33.88	4.43	15.81	34.50	21.00	200
Lincoln National	NYS	67.44	4.96	28.45	70.00	41.88	1928
MAIC Holdings Inc.	NYS	44.63	7.21	31.73	44.63	28.25	41
Market Corp.	NYS	143.00	3.25	58.89	143.00	83.00	18
MBIA Insurance Group	NYS	119.25	4.38	17.78	122.00	73.50	609
Meadowbrook Insur. Group	NYS	25.56	-0.49	21.73	29.63	15.25	31
Mid Ocean Ltd.	NYS	59.94	2.24	14.17	60.00	39.00	170
MMI Cos. Inc.	NYS	27.25	1.63	-15.50	33.38	20.75	113
Mutual Risk Mgmt. Ltd.	NYS	49.00	1.29	32.43	49.63	26.88	331
NAC Re Corp.	NYS	48.56	1.70	43.36	49.50	31.25	461
Navigator's Group	NDO	18.50	0.00	1.37	20.63	15.75	65
Nobel Insurance Ltd.	NDO	14.38	-2.54	14.43	15.38	11.00	8
NYMagic Inc.	NYS	21.88	0.86	21.53	21.88	17.00	4
Ohio Casualty Corp.	NDO	46.50	0.27	30.99	47.50	31.75	370
Old Republic Int'l	NYS	31.50	0.40	17.76	32.13	20.63	434
Orion Capital Corp.	NYS	41.31	8.18	35.17	41.31	24.00	292
Partner Re Ltd.	NYS	41.38	1.22	21.69	42.50	26.75	256
Penn-America Group Inc.	NDO	17.63	2.92	63.95	18.25	9.63	1030
Philadelphia Cons. Holding	NDO	40.25	1.26	73.12	42.25	16.75	230
PXRE Corp.	NYS	30.75	-2.57	24.24	31.88	22.25	85
Reliance Group Holdings	NYS	13.63	4.81	49.32	13.88	7.38	741
Reliastar Financial Corp.	NYS	77.06	0.90	33.44	78.38	41.50	712
RenaissanceRe Holdings Ltd.	NYS	43.50	5.78	31.82	43.50	26.75	163
Risk Capital Holdings	NDO	21.75	0.58	12.26	22.13	15.88	87
RLI Corp.	NYS	36.94	-3.11	10.67	39.63	23.50	114
St. Paul Companies	NYS	81.50	3.90	39.02	82.00	50.63	1559

		Price	Weekly % change	Year to date %change	Year to date		
					High	Low	Vol.(000)
SCOR	NYS	44.50	4.55	29.45	44.50	34.00	37
SAFECO Corp.	NDO	45.81	-0.81	16.16	49.38	32.00	3511
Seibels Bruce Group	NDO	8.63	2.99	4.55	11.25	5.88	145
Selective Ins. Group	NDO	52.88	-1.86	39.14	54.00	31.00	3
Sphere Drake Holdings	NYS	8.75	0.72	-1.41	10.50	8.13	255
TIG Holdings	NYS	30.13	-3.02	-11.07	38.00	26.38	2372
Titan Holdings, Inc.	NYS	22.81	1.39	38.26	24.25	12.75	66
Tokio Marine & Fire	NDO	64.13	2.40	37.53	66.00	42.00	50
Torchmark Corp.	NYS	78.50	4.49	55.45	80.00	40.50	909
Transatlantic Holdings	NYS	72.00	2.43	34.16	72.00	43.38	172
Travelers Property	NYS	41.31	2.64	16.78	43.56	24.50	773
Travelers Corp.	NYS	69.69	4.69	53.58	70.94	29.50	6552
Trenwick Group Inc.	NDO	38.25	-3.16	24.05	39.63	30.75	412
Unico American Corp.	NDO	11.00	-1.12	1.15	11.50	7.13	9
Unionamerica Holdings	NYS	22.25	2.59	25.35	22.56	14.75	16
United Fire & Casualty	NDO	39.25	0.64	11.35	40.25	29.75	8
Unitrin	NDO	61.75	-0.20	10.76	64.75	44.75	339
UNUM Corp.	NYS	46.06	1.80	27.51	48.44	28.88	1527
USF&G Corp.	NYS	24.81	2.58	18.86	25.50	15.38	2243
Vesta Insurance Co.	NYS	52.56	1.94	67.53	54.00	24.50	218
Washington National	NYS	28.50	-1.08	3.64	30.75	26.50	135
Zenith National Ins.	NYS	27.31	1.86	-0.23	28.50	24.63	25
Zurich Reinsurance Centr.	NYS	39.31	0.00	25.80	39.50	28.38	19
INSURERS/REINSURERS		AVERAGE	1.62	25.16			

Risk manager Theresa Baer was not only impressed by how we reduced her insurance cost by 15%, but by how we gave her the courage to take another risk. A two-week vacation.



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Liberty Mutual has a history of helping our customers reduce their cost of risk, saving over \$1 billion in medical costs alone since 1993. We start with Liberty Paragon™, our comprehensive risk management process audit. Then we apply the hundreds of ways we have to reduce your overall cost of risk, including integrating our loss prevention, claims and managed care programs. And with RISKTRAC®, you'll have direct access to claims information so you can watch your costs go down. And just like Theresa, you'll watch your level of confidence go up.

➤ *There's more information we'd like to share. So please call John Ryan at (617) 574-5842 or visit our website at <http://www.libertymutual.com>*

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