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business insurance

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update

Guaranty funds seek to join suit against N.Y. fund

NEW YORK—Twenty-two state guaranty funds and associations are asking a New York judge for permission to join the Ohio Insurance Guaranty Assn. and Snyder Tank Corp. suit challenging the New York Insurance Department's position on coverage provided by the state's security fund.

The New York Property/Casualty Insurance Security Fund is the

Continued on next page

Appointments could tilt court toward business

By STEPHEN TARNOFF

WASHINGTON—President Reagan's Supreme Court nominations are raising hopes among some attorneys that the new court will be more sympathetic to the constitutional rights of businesses.

But other attorneys say the appointments do not portend major changes in the high court's decisions on business-related cases.

When the court convenes on the first Monday of October, conservatives William Rehnquist will be chief justice of the United States and Antonin Scalia will be a new associate justice if their nominations are confirmed, as expected, by the Senate.

Justice Rehnquist

Whether the court's decisions will become more conservative—and more pro-business—is open to speculation, because retiring Chief Justice Warren Burger is also a conservative, though perhaps not as ideological as Messrs. Rehnquist or Scalia.

Moreover, most court observers point out that it is overly simplistic to equate political or judicial conservatism with a pro-business philosophy.

Judge Scalia

Nonetheless, some attorneys say the new court could reconsider issues such as the constitutionality of punitive damages, uphold new state tort reform measures and restrict access—or at least not create new access—to federal courts by plaintiffs under federal statutes that open business and local governments to liability.

The McCarran-Ferguson Act, which deals with state regulation of insurance, and the Jones Act, which governs employers' liability for accidents suffered by maritime workers, also could be interpreted differently by a revamped Supreme Court, attorneys say.

But one business—publishing—may not fare well under the new court, which some speculate will limit publishers' protections against libel suits when Judge Scilia takes his seat. He has ruled against publishers in several libel suits, including one decision that was recently overturned by the current Supreme Court.

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Employers urge changes in COBRA health plan rules

By JERRY GEISEL

WASHINGTON—Employers are marching to Capitol Hill seeking amendments to a new law requiring most companies to extend group health benefits to former employees and widowed and divorced spouses.

The health care provisions in the Consolidated Omnibus Budget Reconciliation Act, which were ignored by most employers as they were passed by Congress without a single hearing, require companies to add possibly millions of new participants to their health care plans (*BI*, June 2).

Employers are discovering that compliance with COBRA—which began July 1 for some companies—could mean huge increases in administrative and health care costs.

And, employers charge some provisions are nothing short of outrageous.

For instance, under COBRA an employee can work only one day for a company, quit, pay the former employer a monthly premium for dental coverage, use all available benefits under the plan and then stop paying the premiums.

'We will press legislators to make changes needed to make COBRA a more reasonable law,' says ERIC's Mr. Ugoretz.

Benefits lobbyists concede there's no chance they can convince Congress to overturn the health benefit provisions in COBRA.

But they say they can successfully lobby legislators to accept so-called technical corrections that would delete the onerous provisions and make COBRA conform to what they believe was Congress' intent: to assure that employees, spouses or survivors have an opportunity to purchase reasonably priced group health coverage following a layoff, divorce or death of a spouse.

"There are some totally unreasonable provisions in COBRA," says Mark Ugoretz, executive director at the Washington-based ERISA Industry Committee, better known as ERIC, a benefits lobbying group primarily representing large employers.

"We will press legislators to make changes needed to make COBRA a more reasonable law," Mr. Ugoretz says.

Changes that ERIC has already presented to the House Ways and Means Health subcommittee include:

- Clearly limiting the benefits that employers must extend to former employees and spouses to traditional core medical and hospital benefits, not ancilliary programs like dental and vision care benefits.

Forcing employers to extend such benefits will inflate employers' costs, ERIC says.

"Since ancilliary programs are generally directed at specific kinds of medical problems, they are highly susceptible to adverse selection and thereby tend to shift the cost of continuation coverage from the beneficiary to the employer," ERIC noted.

- Denying extended health care coverage to employees who voluntarily resign.

"Since the purpose of health care continuation provisions is to protect beneficiaries against unexpected loss of coverage, it is inappropriate to apply the continuation provisions to employees who leave their jobs," ERIC said.

- Requiring a minimum service period of at least one year before an employee or his or her beneficiary could elect continuation coverage.

Extending coverage to an employee who only worked for a brief time at a company "seems highly inappropriate, and the statute may have the effect of discouraging the coverage of newly hired employees," ERIC says.

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M&M forming new excess E&O insurer

By DOUGLAS McLEOD

NEW YORK—Marsh & McLennan Cos. Inc. and Morgan Guaranty Trust Co. are organizing a third offshore insurance facility that will provide excess professional liability coverage to insurance brokers, accountants, lawyers and other professionals.

The new insurer, Associated Professions Excess Insurance Co. Ltd., known as APEX, has been incorporated in Barbados.

A holding company, APEX Ltd., has been incorporated in the Cayman Islands.

Like A.C.E. Insurance Co. Ltd. and X.L. Insurance Co. Ltd.—two other excess liability facilities organized by M&M and Morgan Guaranty—APEX will be capitalized by an initial group of sponsor corporations and will raise additional funds from other corporations that later become policyholders.

Twelve corporations, including M&M itself, have so far agreed in principle to become APEX sponsors and have agreed to contribute $25 million, according to Robert Clements, president of Marsh & McLennan Inc., the brokerage unit of M&M Cos.

Morgan Guaranty also will be a sponsor, according to Scott Levine, senior vp with the New York investment banking firm.

The new insurer will need $50 million in capital to begin operations, Mr. Clements said.

APEX, intended to write the uppermost excess layer of professional liability coverage, is expected eventually to provide limits of $50 million excess of at least $50 million in underlying coverage.

It also may match a lesser amount of underlying coverage with a minimum attachment point of $20 million. For example, if a company is only able to arrange $20 million in underlying coverage, APEX would provide limits of $20 million excess of $20 million.

APEX	
Coverage:	Professional liability
Form:	Claims-made
Target limits:	$50 million excess of at least $50 million
Sponsor contribution:	An amount equal to first year's premium

However, the limits actually available through the facility will not exceed 25% of APEX's capital and unearned premium reserves, and these limits will increase gradually as the facility's capitalization increases, Mr. Clements said.

Thus, with $50 million in initial capital, APEX will provide limits of $12.5 million. In order to reach the intended limit of $50 million excess of at least $50 million, APEX will need $200 million in capital and unearned premium reserves.

There will be three types of APEX policyholders, Mr. Clements said:

- Sponsors, which buy shares in the holding company, APEX Ltd., in amounts equal to their first year's annual premium for the full $50 million in coverage. Sponsor privileges include representation on APEX Ltd.'s board of directors and options to buy additional APEX Ltd. stock.
- Policyholder shareholders, which join the facility after it has reached its minimum $50 million capitalization but before total capital hits the $100 million mark. Although policyholder shareholders also will buy holding company shares in amounts equal to their first year's premium, they will not be represented on the APEX Ltd. board or be given stock options.
- Policyholders, which join the facility after capitalization reaches $100 million and the private placement of APEX Ltd. shares is

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Public entity pools consider 'debt' issues to build finances Page 3

More groups form captives to write D&O coverage Page 3

update

Guaranty funds seek to join suit

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only fund that limits coverage for claims against insolvent insurers to claims involving incidents occurring in New York (*BI*, June 16). Other state funds cover claims filed by their residents.

The lawsuit, pending in New York Superior Court, involves the state security fund's refusal to pay a product liability claim filed by Snyder Tank, a policyholder of the now insolvent Union Indemnity Insurance Co.

The claim is the result of an accident in California involving one of the Buffalo-based company's fuel tanks.

Six additions guaranty funds are expected to join the action before a July 24 hearing, said Sam Goldblatt, Buffalo-based counsel for Synder Tank.

The New York Insurance Department has asked that the case be dismissed, stayed or transferred to the liquidation proceedings.

NLC Mutual seeks domicile

WASHINGTON—The National League of Cities is preparing an application to form a captive in Tennessee after failing last week to gain approval to launch a workers compensation and liability reinsurer in Vermont.

Vermont regulators wanted the proposed captive, NLC Mutual Insurance Co., to secure a fronting company, but the league refused because it could not find one at an affordable price, said Donald L. Jones, special assistant to the league's executive director.

The Vermont captive was to begin operations this spring (*BI*, Feb. 10), Mr. Jones said.

The six pools sponsored by league members that sought reinsurance from the captive secured commercial coverage for their July 1 renewals.

Product liability bill opposed

WASHINGTON—Insurers say they will oppose pending federal product liability legislation unless an insurance data collection provision is deleted or amended before a full Senate vote.

The Alliance of American Insurers, the American Insurance Assn. and insurer Crum & Forster say the provision, tacked onto a product liability bill passed last month by the Senate Commerce Committee (*BI*, June 30), vests too much authority with the secretary of commerce.

Under that provision, the commerce secretary would have the power to collect from insurers all information he or she deems necessary about product liability premiums and claims.

"The amendment would empower a single federal bureaucrat to compel the casualty insurance industry to rewrite its data-gathering programs," said Les Cheek, vp-federal affairs for Crum & Forster.

Olla to acquire The Preserver

NEW YORK—Olla Industries Inc. has signed a letter of intent to buy The Preserver Assurance Co. from Preservatrice Fonciere TIARD of Paris for $11 million in cash.

The acquisition is part of Olla's push to establish itself in the reinsurance market. Olla will become Re Capital Corp. July 10.

The Preserver, a property/casualty insurer, will be renamed Reinsurance Capital Corp. and become the Re Capital flagship.

The purchase is expected to close within the next few months depending on regulatory approvals, said Charles Harris, chairman and chief executive officer of the Lexington Group Inc., which was instrumental in setting up Re Capital.

Re Capital will be headquartered in Stamford, Conn. A staff of 16, including three executives formerly with General Re's North Star Reinsurance Corp., is already in place, he said (*BI*, June 16).

In a related matter, Olla is planning a private stock offering that it hopes will raise an additional $18 million for its push into the reinsurance market. If successful, the offering would bring to $43 million the capital Olla has raised. The bulk of that will be put into Reinsurance Capital, Mr. Harris indicated.

Briefly noted

Liberty Mutual Insurance Co. is one of a pool of insurers that provided more than $25 million in liability insurance for **"Liberty Weekend,"** including coverage for the historic fireworks display. The program includes a $5 million primary policy, two $10 million excess policies and additional coverage placed late last week, according to an executive of CIGNA Corp., which participated in the coverage. . . .Attorneys representing 40,000 victims of the December 1984 **Union Carbide plant gas leak** in Bhopal, India, are appealing the transfer of the case to India. Plaintiffs' attorneys also are seeking a fairness hearing on Danbury, Conn.-based Union Carbide Corp.'s $350 million settlement offer, which a lower court judge refused to hold because the Indian government rejected the offer.

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Illinois business leaders urge governor to veto tort reform bill

By CAROL CAIN

SPRINGFIELD, Ill.—Business leaders, with the support of the insurance industry, are asking Illinois Gov. James R. Thompson to veto what they consider an inadequate tort reform bill passed by the state Legislature last week.

They want the governor to call the General Assembly, now adjourned, back into special session to reconsider the measure.

"It's not tort reform at all. It's a sham," charges Illinois Chamber of Commerce President Lester W. Brann Jr., in calling for the bill to be vetoed less than 24 hours after it was approved by the Legislature.

"Poor legislation such as this is worse than nothing," contends Arthur Gottschalk, president of the Illinois Manufacturers' Assn., which spearheaded the Illinois Coalition on the Insurance Crisis, a group of businesses and public entities that lobbied for tort reform to solve the liability insurance availability and affordability problem.

"Legislators are misleading the public that they solved the problem" with this bill, Mr. Gottschalk said.

"We've been working on something for weeks on end. . . .Now we have a bill out there with no impact," Mr. Brann said.

While the bill provides public entities with new protections from liability and alters some targets of tort reform—such as joint and several liability, punitive damages and the collateral source rule—the bill does not make the sweeping changes the coalition considered critical to state tort reform.

Missing from the bill, businesses leaders complain, are: outright repeal of the doctrine of joint and several liability; caps on attorneys' contingent fees; limitations on jury awards for non-economic damages and punitive damages; adequate recognition of recoveries from other sources; and new protections for hospitals.

But, Rep. Alan J. Greiman, D-Skokie, who helped craft the legislation, called it "significant tort change—very significant," and countered that business lobbyists are "wrapped up in rhetoric" and "too dumb to see that they've won a great victory, a sterling victory."

This is one of the few times in this year's drive for tort reform that business leaders have asked a governor to veto reform legislation. Earlier this year, business leaders in Minnesota requested a gubernatorial veto of legislation that was weak on tort reform while creating a joint underwriting association. The governor signed the legislation.

Business leaders in Illinois also probably face an uphill battle in persuading Gov. Thompson to veto the measure.

"I don't think a veto is likely. There are too many issues addressed in the bill that provide some relief," said the press secretary to House Speaker Michael J. Madigan, D-Chicago.

A spokesman for House Minority Leader Lee A. Daniels, R-Elmhurst, said securing a veto would be "tough politically."

Gov. Thompson's press secretary would say only that the governor is studying the bill, which he has 60 days to sign. Most of the provisions would take effect 60 days

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N.Y. seeks to liquidate Constellation

By DOUGLAS McLEOD

NEW YORK—Constellation Reinsurance Co. is expected later this month to answer a state judge's order that it show cause why it should not be liquidated.

New York State Supreme Court Justice Walter M. Schackman issued the show-cause order June 20 at the request of New York Insurance Superintendent James P. Corcoran.

In its 1985 annual statement, Constellation—a subsidiary of Santa Fe Southern Pacific Corp.—reported a policyholder surplus deficit of $28.7 million as of Dec. 31, according to court papers filed last month by the New York Insurance Department.

As reported earlier, the New York department had been reviewing a plan submitted by Constellation and its parent to correct the insolvency (*BI*, April 7).

However, the Insurance Department later found the rescue plan unacceptable after the plan's initial provisions were changed by Santa

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Benefit communication skills stressed at *BI* conference

Employers must effectively communicate benefit choices to employees so that they can make wise health care decisions in light of a constantly changing health care environment.

But, developing a communication program that will best serve the needs of employees is not an easy job.

The *Business Insurance* Employee Benefits Communication Conference, to be held Aug. 3-5 at the Marriott Marquis Hotel in New York, is designed to help benefit managers tailor their benefit communications to changes in the health care environment. Benefit managers can learn about benefit communication alternatives through informative sessions and presentations of communication programs developed by other companies.

The conference will open with registration and a cocktail reception on Sunday evening, Aug. 3.

The conferences' keynote address on Monday, Aug. 4, by John D. Moynahan, executive vp at Metropolitan Life Insurance Co. in New York, will focus on the changing health care environment and the alternative health care delivery systems now being developed.

Participants will learn about some award-winning communication programs developed by other employers at a special luncheon honoring the winners of the 14th annual Employee Benefits Communication Competition. *BI* Publisher Alfred Malecki will present the awards at the luncheon on Monday.

Other features of this year's conference include:

- Panel discussions highlighting suggestions for effective communication and specific examples of communication programs.
- Three informal case study sessions.
- Task force sessions dealing with specific communication problems. Participants can attend any one of six sessions in which they can discuss and evaluate problems with their colleagues.

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Insurers sue to block Florida freeze

By MICHAEL BRADFORD and CAROL CAIN

TALLAHASSEE, Fla.—The three major property/casualty insurance trade associations and 26 insurers are seeking a temporary injunction against implementation of Florida's new insurance rate regulation and tort reform law that was signed by Gov. Bob Graham June 26.

The plaintiffs charge that the new law—which freezes insurance rates, forces liability insurance premium refunds this year and authorizes a rollback in 1987 rates to 1984 levels—is unconstitutional.

In two lawsuits against Florida Insurance Commissioner Bill Gunter and the Florida Insurance Department, which were filed last week in Leon County Circuit Court in Tallahassee, the trade associations and insurers ask for a temporary injunction until the constitutional issues they raise are resolved, said Frederick B. Karl, a Tallahassee attorney representing the insurance industry in the litigation.

The new law violates both the U.S. and the Florida Constitutions because it impairs existing contracts and denies due process and equal protection, Mr. Karl said.

The plaintiffs also allege that the new law, portions of which took effect July 1, violates Florida's constitutional prohibition against combining several subjects into one piece of legislation, Mr. Karl said.

The new law, enacted by the Florida Legislature in the final hours of this year's session, covers more than 125 printed pages, adds more than 25 sections to statutes and amends an equal number of existing sections, he said.

Insurers are in doubt as to their rights under the law, Mr. Karl added.

Although the purpose of the new law allegedly is to make commercial liability insurance more available, it

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errors & omissions

Insurance broker Sullivan Co. Inc. incorrectly reported its revenues for the June 23 Agent/Broker Profiles issue of *Business Insurance*, transposing the columns for 1985 and 1984. Based on 1985 gross revenues of $4,897,000, the broker should have ranked 84th in the *BI* ranking of the Top 100 U.S. brokers.

Municipal alternatives

California public entity pools dive into bondlike financing

By MEG FLETCHER

BOSTON—Three California public entity self-insurance pools hope to issue "certificates of participation" to the public within the next few months to build their loss reserves and capital.

They are expected to be the first among public entity self-insurance pools in the country to raise capital for their pools by selling these bondlike instruments.

Issuing bond-type instruments is a novel idea for raising capital for group public entity self-insurance programs, which are continuing to grow in popularity.

More municipalities want to join existing pools or form new pools to transfer and share risk because they either cannot find or afford commercial insurance and they don't want to self-insure alone.

But, while more entities are looking for participation and high limits of protection, the pools are losing their commercial excess insurance. And, that creates the need for capital to finance the risk that will be pooled.

"For the last five or six months, the concept of using tax-exempt debt instruments for risk financing has become a very hot topic," said Gregory H. Berg, vp in the Darien, Conn., office of risk management consultant Tillinghast, Nelson & Warren Inc.

Insurance brokers are forming alliances with investment bankers to help their clients fund their risks, he commented.

prima

The interest in this capital-raising method was obvious from the large turnout for a panel discussion on using bondlike instruments to finance self-insurance programs at the recent Public Risk & Insurance Management Assn. conference in Boston.

Individual public entities routinely issue municipal bonds to raise money for projects such as new sewer systems, and some states permit individual public entities to sell judgment bonds to cover the cost of uninsured liability awards.

In addition, one California city—Compton—has earmarked $5 million of a recent $11 million offering to place in its self-insurance liability fund.

But, the concept of groups of municipalities using either tax-exempt or taxable bondlike instruments to raise capital to enhance their risk pooling capabilities is attracting growing attention around the country.

The proceeds of these offerings can be used for several different purposes, including building loss reserves, increasing the capital of the pool so that it can attract commercial reinsurance, stabilizing pool participants' annual payments to the pool and paying debt service on behalf of any member of the pool that defaults. How the proceeds can be used, however, depends upon the structure of the offering.

"Each deal that is being worked out has a different slant or structure because of the unique needs and state regulations," said James G. Smith, vp with broker Johnson & Higgins in Houston.

Participants' annual payments to the pool are priced to cover not only claims costs but also the front-end costs of the issue and the interest to be paid holders of the bondlike instruments.

The pools also are seeking credit ratings for their issues and hope to purchase credit enhancement insurance, which would lower their interest costs.

These issues cannot always be called bonds because state laws limit the authority of these groups or their members to issue debt. Indeed, in most states these pools or their members would need enabling legislation to issue the instruments, said Mark Northcross, a senior vp with Kelling, Northcross & Nobriga, an investment banking firm in San Francisco.

Already, Connecticut has enacted legislation that authorizes public entity pools to issue bonds or other obligations, and applicable legislation passed in Illinois is awaiting the governor's signature.

In California, however, the existing instrument of "certificates of participation," which resemble revenue bonds, is available to the pools. A COP is a pledge to a certificate holder of a proportionate share in a stream of payments to be received by the issuing entity or a trustee.

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Photo courtesy of the Greater Boston Convention & Visitors Bureau Inc.

The PRIMA conference ended with an outing at historic Faneuil Hall and Quincy Market.

Public sector pinch to persist

By MEG FLETCHER

BOSTON—The severely limited liability insurance market for public entities is likely to last well into 1987 for most communities, meaning that risk managers will face new and more difficult challenges in the year ahead, experts say.

"We are at least one year from any broad-based relief in the public sector," said D. Michael Enfield, managing director of broker Marsh & McLennan Cos. Inc. in San Francisco.

It will take time for public entities to see any change in "the worst market in the history of the world," he said. "The public sector seems to be the first affected by an adverse market and the last to be affected by a beneficial market."

However, he told a record-breaking number of attendees at the recent Public Risk & Insurance Management Assn. conference in Boston that for most risks "the worst has probably already occurred" and that there would be "random breakthroughs in the next eight months" of renewed insurance availability.

The public sector has endured no insurance at any price, or—where insurance could be found—rate increases that range from 50% to 1,500% of 1984 prices, Mr. Enfield said.

These conditions are caused by a drastic reduction in available capacity for excess liability insurance.

Mr. Enfield estimated that overall aggregate capacity of U.S. insurers to write excess liability insurance—including their treaty reinsurance but not facultative reinsurance—dropped 68% in the last two years to $198 million this spring from $614 million in about 1984.

Insurers withdrew from what they perceived to be loss-causing lines because "for every $1 the commercial liability insurance industry took in in terms of premium and investment income, it lost $1.12 in 1984 and $1.10 in 1985," he said.

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More buyers consider D&O captives

By ROBERT A. FINLAYSON

LOS ANGELES—Following the lead of some of the nation's largest commercial banks, a wide range of institutions—from manufacturers to universities—are setting up group captives to cover their directors and officers liability exposures.

The explosive growth of interest in D&O captives is fueled by conditions in the commercial insurance market: Few insurers are issuing D&O policies, and when they do write the insurance, the coverage is extremely restrictive and the limits are small, brokers and risk management consultants say.

Among the major D&O captives in the works are:

- A facility under development by Smith Barney, Harris Upham & Co. Inc. and broker Alexander & Alexander Inc. that would offer primary coverage limits up to $25 million.

A&A declined to release any other information about the project, which is tentatively named "Plus." Sources familiar with the facility say it may be open by August.

- A captive being formed by several major manufacturing companies and financial institutions with the help of Chicago-based consultant The Wyatt Co.

Tentatively called "CODA," for Corporate Officers & Directors Assurance, the captive will write D&O coverage for companies with net worths of more than $250 million. The project is being spearheaded by Chase Investment Bank of New York; Dart & Kraft Inc. of Northbrook, Ill.; Squibb Corp. of Princeton, N.Y.; Warner-Lambert Co. of Morris Plains, N.J.; and Pfizer Inc. of New York. None of the participants would comment on the project.

- A captive for colleges and universities being developed by the University Risk & Insurance Managers Assn. with Wyatt's help.

The captive would offer primary limits of $1 million and perhaps as much as $5 million, with a deductible ranging from $25,000 for smaller institutions to as much as $100,000 for larger universities.

- A project under development by the National Assn. of College & University Business Officers and broker Marsh & McLennan Inc. to examine the feasibility of a captive to provide excess D&O coverage to institutions of higher education.

In addition to these proposed D&O captives, a major captive for electric and gas utilities that opened its doors July 1 will offer its members D&O coverage in addition to general liability coverage.

Energy Insurance Mutual, which began operations with initial funding of $75 million from 35 electric and gas companies, will offer D&O coverage, according to a spokesman for broker Fred S. James & Co., which helped set up the Barbados-based captive.

EIM provides policyholders with general liability coverage of up to $50 million per occurrence and $100 million annual aggregate and D&O coverage of $25 million per occurrence and $50 million annual aggregate. Both coverages attach over a primary $25 million layer. Policyholders have the option of interchanging the limits of coverage (*BI*, April 21).

The mutual expects to increase its funding to $100 million over the next three months, James said.

In addition, Primex, a Barbados-based captive for 16 small to midsized chemical companies, which began issuing general liability policies to its members in late June, is considering offering D&O coverage as well.

Shaun Reape, a vp with Johnson & Higgins (Barbados) Ltd., which is managing the captive, says Primex members plan to discuss the possibility of offering D&O coverage at a board meeting in the near future.

Primex, with $17 million in capital, currently offers policy limits of $15 million excess of $1 million for general liability insurance and excess of $2 million for automobile liability insurance. Both coverages are written on a claims-made basis.

Mr. Reape says Primex hopes to have 25 to 30 members by year-end, each of which must put up $500,000 of the capital contribution:

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Two *BI* staffers promoted

Two members of the *Business Insurance* editorial staff in Chicago have received promotions, Editor Kathryn J. McIntyre has announced.

Joanne Wojcik, 28, is now a copy editor, promoted from assistant copy editor, and Paul Winston, 23, has been promoted to assistant copy editor from proofreader.

Before joining *BI* in December 1985, Ms. Wojcik had been assistant news editor at The Daily Sentinel in Grand Junction, Colo., a 33,000-circulation newspaper.

Ms. Wojcik, a 1979 graduate of the University of Illinois at Urbana, had been graphics/editorial assistant at *BI* in 1981. She can be reached at 312-649-5282.

Ms. Wojcik

Mr. Winston

Mr. Winston, who also joined *BI* in December 1985, had been an intern for Rolling Stone magazine in New York City. He received a bachelor of arts degree in English composition from DePauw University in Greencastle, Ind., last year.

Mr. Winston can be reached at 312-649-5442.

E&O captive

Continued from page 1

closed. Policyholders will be required to pay a reserve premium equal to their first year's annual premium, but will have no equity interest in the insurer's holding company.

This structure differs slightly from the structures of A.C.E. and X.L., which are composed simply of sponsor and non-sponsor policyholders and which require non-sponsor policyholders to buy shares in the insurers' holding companies.

While A.C.E. and X.L. sponsors were required to contribute capital of $5 million or $10 million each, APEX sponsors' contributions will be smaller, Mr. Clements added. He explained that a large initial investment would be too burdensome for many potential APEX sponsors.

"A large number of the firms involved are partnerships and they do not really retain capital," he said.

Like A.C.E. and X.L., APEX will be open to submissions from brokers other than M&M and will offer coverage on a claims-made form currently being developed by M&M and the sponsors with the New York law firm of Cahill, Gordon & Reindel.

The facility is intended to provide professional liability coverage "for professional service firms in a variety of fields, including insurance brokerage," Mr. Clements said.

Insurance brokers' errors and omissions coverage has become both scarce and expensive, and large brokers have seen significant reductions in their E&O limits (*BI*, Feb. 18, 1985).

The formation of APEX also comes at a time when brokers—faced with shifting client insurance programs to claims-made from occurrence liability policy forms—are especially worried about potential errors & omissions claims (*BI*, June 23).

Other APEX policyholders will include accounting and law and actuarial consulting firms. In addition, banks and insurance companies could buy coverage from APEX for certain service-related operations.

Insurance companies, for example, might buy coverage for claims and loss control servicing operations.

APEX will not offer coverage to hospitals, doctors or other professionals exposed to the possibility of bodily injury liability, Mr. Clements said.

APEX organizers expect to attract a "cross-section of leadership firms" in the targeted fields, according to Mr. Clements, who added that such a cross-section exists among the 12 corporations that have already agreed to become sponsors.

Mr. Clements would not identify any of the 12 sponsors other than M&M itself, though he did say that the group includes other insurance brokers.

Officials at several large brokers—including Alexander & Alexander Inc., Frank B. Hall & Co. Inc., Corroon & Black Corp., The Crump Cos. Inc. and Bayly, Martin & Fay International Inc.—said their companies are not among the 12 committed sponsors.

Johnson & Higgins—which is working with M&M on another excess liability facility, American Excess Insurance Assn.—would not comment on whether it is sponsoring APEX.

Some of these brokers, however, say they may still join.

A&A is looking at the facility and may become a shareholder, according to a spokesman who said he didn't know when a decision would be reached.

APEX has not yet selected the companies that will provide underwriting management, investment or legal services, according to Mr. Clements. However, Leslie Dew—former deputy chairman of Lloyd's of London and former president of Insco Ltd., Gulf Oil Co.'s Bermuda-based captive—has been retained as an underwriting consultant to give premium indications to initial APEX sponsors, Mr. Clements said.

In return for helping to organize the facility, M&M will receive a fee of 2% of APEX's gross premiums for five years in addition to the brokerage commissions it will earn on business placed with the insurer.

M&M will also receive warrants, good for 10 years, to purchase 4.9% of APEX Ltd.'s shares at the initial offering price of $100 per share.

Morgan Guaranty will also receive warrants to purchase 4.9% of the holding company's shares in addition to a fee of 1.5% of the money raised in the private placement.

Hurricane damage tops $21.3 million

DALLAS—Hurricane Bonnie caused an estimated $21.3 million in insured property damage when it slammed ashore late last month, according to figures gathered by the Insurance Information Institute.

Bonnie, the first hurricane to develop in the Gulf of Mexico this hurricane season, was responsible for two deaths and several injuries as it raked parts of Texas and Louisiana with winds up to 85 miles per hour.

The III's figures show an estimated $17.9 million of the damage was in Texas, with around $3.4 million in Louisiana. The damage totals include both commercial and residential property.

The figures do not include damage caused to ocean marine risks, oil and gas drilling equipment, crops or utilities equipment. Flood damage is not figured in the III figures, either.

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Airline mutual insurer may open by November

By STACY SHAPIRO and JOHN PARRY

GENEVA, Switzerland—The International Air Transport Assn. says its proposed mutual insurer could begin writing hull and liability risks for airlines by November.

The IATA's executive committee, representing 25 of the group's 126 member airlines, last month approved a plan to establish Airline Mutual Insurance Ltd. in Bermuda. AMI will "provide an insurance facility for airlines which will be run by airlines," according to a written proposal (*BI*, June 9).

According to an IATA spokesman, AMI must meet several criteria before it begins writing:

- Twelve to 15 member airlines must make a commitment to participate. The exact number of airlines needed will depend on how much premium each airline pays.

Under the IATA proposal, AMI will write 5% of participating airlines' total hull and liability coverage and receive 5% of the premium. If AMI can attract airlines whose aggregate premiums total $150 million, the mutual would then write $7.5 million in premiums, which would make it "economically viable," the spokesman said.

- A manager must be chosen. "Several groups will be bidding for the management of the mutual. . .including Thomas R. Miller & Son (Bermuda)," which prepared the original proposal, the IATA spokesman said.

- Adequate reinsurance must be arranged. "We will be looking at several markets," said the spokesman, noting that some reinsurers, including West German underwriters, have expressed interest in writing reinsurance for AMI.

"Once a sufficient number of commitments have been received (from airlines), it will be possible for the captive to make the necessary reinsurance arrangements," Dr. Guenter Eser, director general of IATA, told the association's executive committee.

"When such arrangements are in place, the captive will be in a position to commence business. If the commitments are readily forthcoming, this process could be completed before the next meeting of the executive committee" Nov. 1.

Airlines currently are studying the proposal to set up AMI, the IATA spokesman said.

Capitalization would be provided by IATA member airlines.

The $250,000 in capital required by Bermuda authorities and an estimated $150,000 in initial working capital would be financed through loans from airlines.

In addition, policyholders would contribute additional capital based on the amount of premium they pay. According to an example included in the proposal distributed to airlines, policyholders could be asked to contribute an amount equal to 25% of premiums paid until the AMI board decides the insurer is sufficiently capitalized.

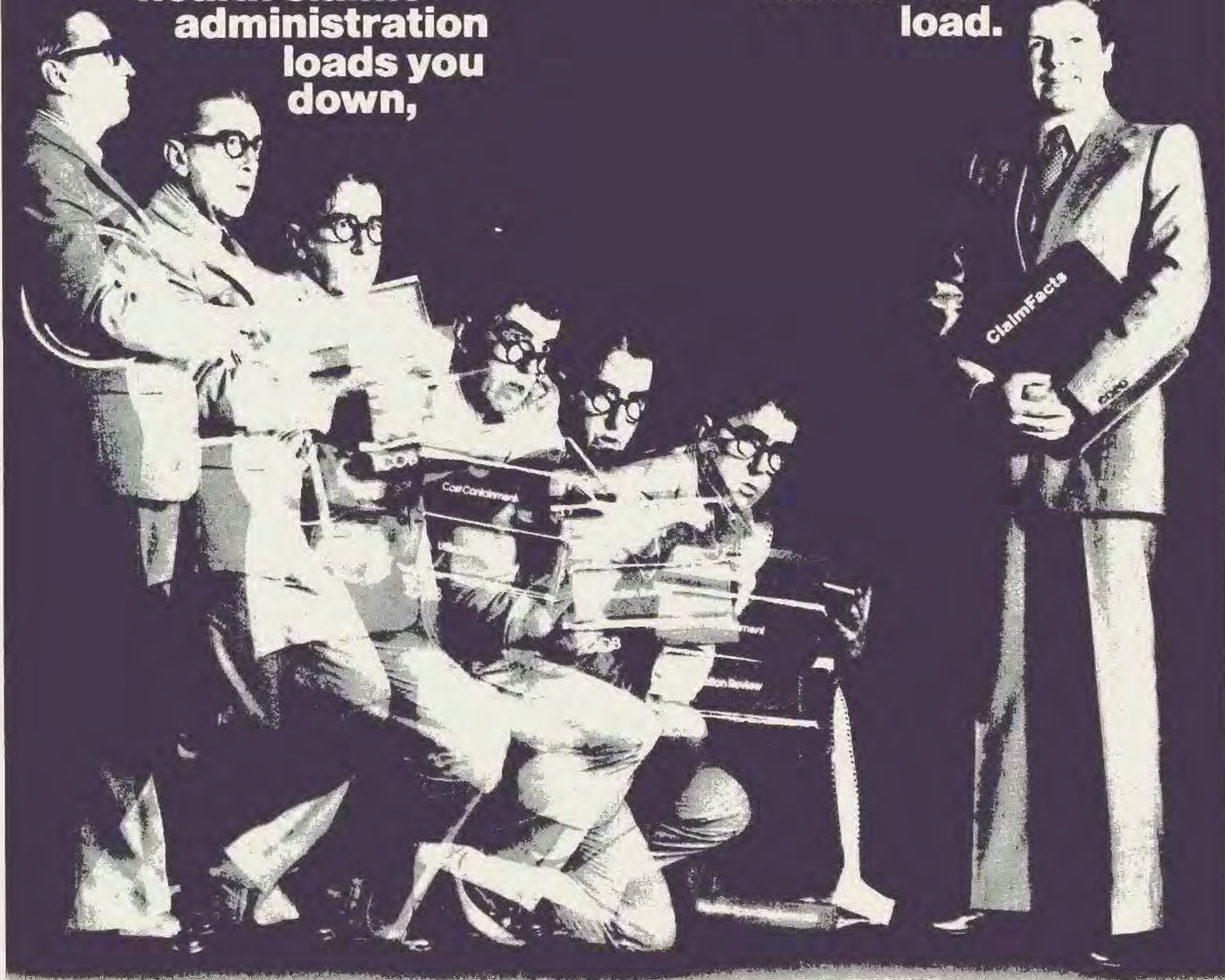
The AMI board will consist of a maximum of 25 elected directors from member airlines, two Bermuda resident directors and a representative of the IATA.

Initially, AMI will follow commercial aviation underwriters' terms, conditions, rates and deductibles, the IATA spokesman said. However, the proposal notes that participation in AMI may lower airlines' insurance costs, either through policy dividends or through future rate reductions.

"With growing finanical strength, AMI can enlarge its capacity, thereby exerting influence on the insurance market and improving the benefits to participating airlines," the proposal says.

Any rate relief AMI can provide will be welcomed by the participating airlines. Hull insurance rates were expected to rise about 10% during July 1 aviation insurance renewals, while liability rates were expected to increase 25% or more, depending on loss experience (*BI*, June 23). Most airlines were hit with similar rate hikes last year.

The IATA decided it would be easier to establish a new mutual insurer than revive one of the two dormant IATA captives in Bermuda, the spokesman said. The captives were set up in the early 1970s when aviation rates started to rise, but the market softened before the captives could be activated, he



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opinions

Another fine mess

SADDLED WITH A broad new mandate to extend health care benefits to former employees and employees' widowed or divorced spouses, employers are at least entitled to straight-forward answers to their questions on how to comply with the mandate.

But, true to form for federal laws governing employee benefit issues, the mandate is riddled with holes on important policy issues and has taken effect before employers have been provided with the critical regulations implementing the law (see story, page 1).

Any employer whose health plan year begins July 1 is now required to satisfy this new mandate, which was tacked onto the Consolidated Omnibus Budget Reconciliation Act that was signed into law April 7.

Mass confusion reigns among employers and employee benefit plan advisers as to what employers are to do. They are asking important questions to which there are currently no answers.

For example, what if a former employee or spouse does not pay the premium for extended coverage on time? When can the employer cut off benefits?

Employers are told in the law they can deny the extension of coverage to employees dismissed for "gross misconduct," but what constitutes gross misconduct?

Clearly, Congress needs to reconsider the law to answer these policy questions and pass the needed technical corrections.

In doing so, Congress also should reconsider the wisdom of certain provisions of the bill, since the bill was never subject to the debate that it deserved.

For example, should this extension of health plan coverage encompass more than the basic, major medical and comprehensive health care plans to include vision and dental benefits? We think not.

In addition, should this extension of coverage apply to every employee, widow and former spouse, even if the employee worked only one day, one week, one month? We think not. A reasonable minimum service period of at least three months should be adopted.

In addition, the three agencies charged with issuing regulations to implement the law should get cracking. The Labor Department needs to supplement its model statement on communicating the benefit with more definitive regulations. The Internal Revenue Service needs to establish how employers should calculate the premiums to be charged for the extended coverage. And the Department of Health and Human Services needs to define how the act applies to state and local employers.

This whole mess is just another example of what chaos Congress creates when it passes employee benefit legislation with little thought.

A running start

IN CONTRAST TO the health plan provisions under COBRA, the product liability legislation passed by the Senate Commerce Committee late last month was the subject of months of debate and hearings.

Never before has the Commerce Committee, which twice has reported product liability bills in the last four years, given such extended consideration to the issue.

Proponents of a broad federal product liability bill can complain that the committee's bill was gutted of important reforms like caps on punitive damages and lawyers' contingent fees. A return to a fault-based system with defenses for product misuse, alterations and adequate warnings also was rejected by the panel. And, awards for pain and suffering are capped only if settlement offers are made.

But, the current bill does include significant reforms, like the repeal of joint and several liability for non-economic damages, stronger defenses against liability for wholesalers and distributors and stricter guidelines on when punitive damage awards are appropriate.

The current bill is not a wish list for business and, as such, is the first product liability bill to be taken seriously by the full Senate.

We urge the Senate to consider the bill now, since the House is waiting for the Senate to act. However, we recognize there is only a slim chance for Senate action since time is running out for the 99th Congress.

Therefore, at the very least, we are encouraged that the dedicated efforts of the Commerce Committee this year will give the 100th Congress a running start.

letters

The times they are a changin' for insurers

To the editor: I am completing my 37th year in the insurance industry, having worked in underwriting, production and claims.

In the past, it was customary for the insurer to receive notice of a claim from the producer or the policyholder. Now, it is more frequent to receive the first notice of a claim from an attorney informing the insurer how terrible the policyholder is and how seriously hurt the third-party plaintiff is.

Invariably attached to the demand for immediate imdemnification is a copy of a recent bad-faith claim the plaintiff's attorney has read or keeps in his file for the expressed purpose of intimidating the insurer.

I am sure the local bar association will dispute this, but I also recall that when my wife was taken to a hospital after a slip and fall in a supermarket, we received unsolicited calls from two attorneys volunteering to represent her.

Hermann P. Schlander
Broker
Pasadena, Calif.

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611.

Litigious American society limits freedoms

To the editor: A few weeks ago in Europe, my wife and I spent two days in Lienz, Austria, and, while sightseeing, drove by a playground containing several trampolines.

I was struck by the freedom the children (and possibly some adults) had on those trampolines, which are no longer a privilege we enjoy in this country thanks to our out-of-control legal system.

Apparently in Europe one does not have to be a plaintiff to benefit from a trampoline; just a child or a grown-up looking for some fun.

Jay Lavinson
President
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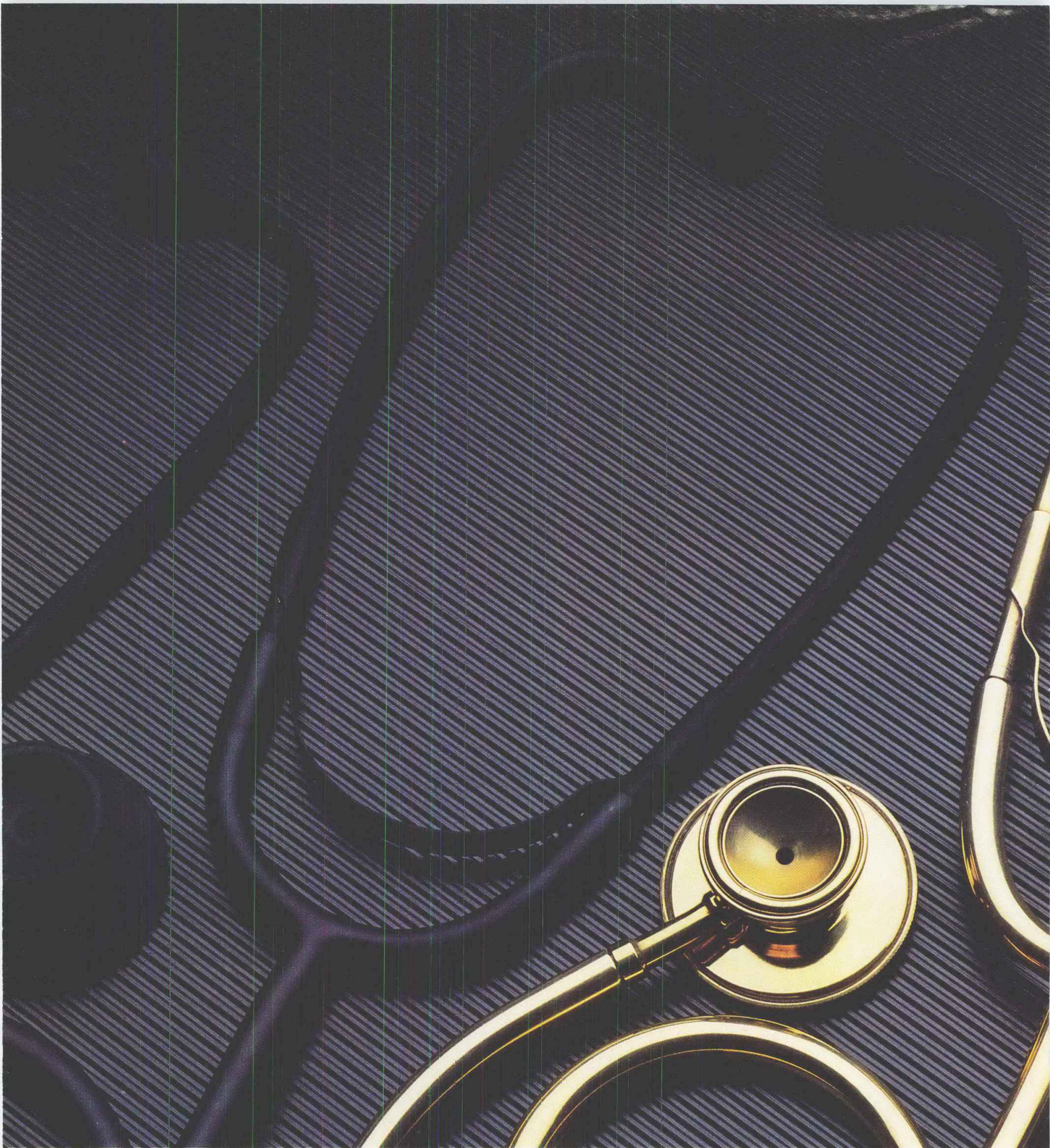

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Chatset predicts $225 million Lloyd's profit

By STACY SHAPIRO

london

LONDON—A group of Lloyd's of London members estimates that Lloyd's will report profits of about 170 million pounds ($255 million) when it releases its 1983 global results in September, excluding losses from syndicates once managed by PCW Underwriting Agencies Ltd.

Last year, the group, Chatset Ltd., predicted that Lloyd's global profits for 1982 would be about 64 million pounds ($103.7 million at the applicable exchange rate), including PCW losses, compared with the 57 million pounds ($92.3 million) of profit Lloyd's actually reported (*BI*, Sept. 2, 1985; Sept. 9, 1985).

Charles Sturge, a Chatset member, said that syndicate results for 1983, excluding the PCW results, look stronger than the 1982 results. Mr. Sturge estimated that last year an average Lloyd's member in 1983 would make 300 pounds in profit on every 10,000 pounds underwritten, while in 1982 the member would have shown a negligible loss.

Chatset also estimates that agency commissions will be about 64.2 million pounds ($96.3 million) this year, Mr. Sturge said. Without agency commissions, Lloyd's global profits will be about 105.8 million pounds ($158.7 million) in 1983. Chatset says Lloyd's would have suffered a 7 million pound loss ($11.3 million) in 1982 if agency commissions had not been included in Lloyd's profit.

Chatset bases its 1983 global estimates on figures that include about 90% of Lloyd's memberships, Mr. Sturge said.

Chatset derives its data from the Lloyd's syndicate registry office, members' agency reports and members' estimates.

Mr. Sturge admitted that Chatset's projections for 1983 may be distorted by the still-unknown losses at the PCW syndicates. Chatset has no estimate of these losses.

But sources at Lloyd's have said that PCW syndicate losses may total 200 million pounds for the years 1979-1983. The syndicates' current managing agency, Additional Underwriting Agencies No. 3 Ltd., is expected to announce the loss for 1983 at the end of July.

Last year, PCW members were supposed to pay 62 million pounds ($88 million) to cover PCW losses to pass Lloyd's solvency test. But most of the members refused to pay the cash call, and Lloyd's earmarked 54.6 million pounds ($77.5 million) from its Central Fund to cover claims owed by PCW members (*BI*, Oct. 7, 1985).

PCW syndicate members now are threatening to take legal action against a variety of parties, including Lloyd's, to recover the losses, but Lloyd's is hoping to negotiate a settlement with the PCW members and other parties to avert any litigation, Lloyd's chairman Peter Miller said recently.

However, PCW members will have to pass another solvency test by July 31 or Lloyd's will be forced to earmark more money from its Central Fund before it can receive a certificate of solvency from the Department of Trade and Industry.

Mr. Miller doubts that a settlement can be reached by the end of this month, so Lloyd's likely will make some kind of temporary arrangement for PCW members to meet the July 31 solvency deadline, he said at Lloyd's annual general meeting last month.

Mr. Miller stressed that such an arrangement is not a "financial lifeboat." PCW members will have to pay some losses, but the settlement will determine how much they will have to pay, he said.

"It is our aim to approach a settlement without the complication of adherence to a deadline inherent in the solvency test," Mr. Miller said.

"We believe that it will be possible to arrange for PCW names to pass the solvency test on a basis that will leave open the possibility of a settlement before the end of this year."

Despite the still-unknown amount of PCW losses, Mr. Miller said that Lloyd's will "be in the black, in my opinion" for 1983, though he would not predict what Lloyd's will report in September.

Tort reforms

Tort refom efforts in the United States are being applauded at Lloyd's of London, though Lloyd's Chairman Peter Miller says tort reform should not be linked to insurance rate freezes or cuts.

Mr. Miller told Lloyd's members at the market's annual general meeting June 25 that he is pleased with the "widespread realization in the United States of the necessity for a measure of tort law reform if the insurance of certain activities is not entirely to disappear."

But, he added, "Politically understandable though it may be, it is nevertheless in business terms quite unacceptable when such reform is allied with threats and demands that insurance rates should be halved if tort law reform is to be promoted within a given state legislature.

"Given the downward progress of insurance rates over the last decade and the absurdly small premiums at which heavy liabilities been written in the past, such suggestions are frankly unrealistic and unproductive.

"It might very well be that Lloyd's syndicates will say, 'Well, why should we trade under. . .that system?'" Mr. Miller observed.

Lloyd's non-marine syndicates already have posted huge losses from U.S. business because rates have been too low, he noted, adding that Lloyd's members are putting pressure on underwriters to increase rates and produce profits from U.S. business.

Other topic discussed by Mr. Miller at the general meeting include:

• Lloyd's capacity. Mr. Miller feels that Lloyd's capacity will not grow as much in the next few years as it grew in the last three years, when the market doubled its premium stamp capacity to 8.6 billion pounds ($12.9 billion) in 1986 from 4.3 billion pounds ($6.5 billion) in 1983.

This is "not so much because names are not coming forward, which they most certainly are, and existing members not wishing to increase their commitment, which they most certainly are, but rather because it is not yet possible to find the necessary underwriting outlets to attract them," Mr. Miller pointed out.

"It may be no bad thing if the previous rate of growth pauses for a moment while we consolidate our position," he added.

Continued on page 14

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london

Continued from page 12

In the past, Lloyd's greatest capacity has been in the marine market, he said. But because of the slump in the shipping, oil and energy industries, Lloyd's must now focus on non-marine insurance for "growth and profit," he said.

• The Neill inquiry. At the moment, Lloyd's is cooperating with the British government's investigation, headed by Sir Patrick Neill, into Lloyd's self-regulatory system (*BI*, Jan. 20). The Neill committee is expected to make its report to the secretary of state for trade and industry in the autumn.

Mr. Miller said Lloyd's is looking forward to the report. "We will pay the closest attention to whatever suggestions may be put forward."

• Lloyd's brokers. Lloyd's had hoped to update regulations governing Lloyd's brokers this year, but "unfortunately" this action will be postponed, Mr. Miller said. The Council of Lloyd's instead has focused on the Neill inquiry.

Mr. Miller said he hopes any broker regulations will include a code of conduct, a test to find out whether brokers are "fit and proper," and tighter rules for claims payments.

• Lloyd's underwriting agencies. Last year, Lloyd's passed an underwriting agency bylaw, forcing all underwriting agencies to reregister by July 1987.

"I estimate that when we complete this fundamental exercise we shall have perhaps some 240 underwriting agents," he said.

• The new Lloyd's building. Mr. Miller said there are still "teething problems" in the new building, which opened in late May. He noted there are complaints about lighting and elevator problems among other things (*BI*, June 2).

"I can assure those of you who work here that difficulties and shortcomings are being identified and will be resolved," he said.

Unauthorized insurers

A policyholder of an unauthorized insurer operating in Great Britain will either be entitled to claims payments or a return of premiums under a clause in the Financial Services Bill that is expected to be approved by Parliament later this year.

Clause 113 attempts to resolve a string of contradictory court decisions concerning the 1974 Insurance Companies Act.

Under the clause, a contract of insurance signed by an unauthorized insurer shall be unenforceable and the policyholder will be entitled to "recover any money or other property paid or transferred by him under the contract, together with interest on such money."

Insurance lawyers believe this means that the original policyholder can either accept claims payments or a return of the premium paid.

Also under the clause, a British court may deem a contract with an unauthorized insurer enforceable if the court is satisfied that:

• The unauthorized insurer did not realize that it was violating the Insurance Companies Act.

• The unauthorized insurer had "substantially complied with its obligations" as an insurer.

• The policyholder was not induced into accepting the contract by any statement or other conduct that may have violated the act.

The clause is buried in the Financial Services Bill, which is designed to regulate public investments in Britain, including the London Stock Exchange and life insurance companies.

The clause is expected to pass unchanged, said a government official.

The clause is expected to resolve contradictory rulings by British High Court judges in three cases.

In 1983, Justice Roger J. Parker ruled that all insurance contracts made by an insurer conducting business in Great Britain without authorization are illegal and void. The decision, *Bedford Insurance Co. Ltd. vs. Instituto de Resseguros do Brasil*, rocked the London insurance market because it prohibited the payment of claims to policyholder but allowed the unauthorized insurers to keep the premiums (*BI*, April 30, 1985).

In April 1984, Justice Andrew P. Leggatt ruled in *Stewart vs. Oriental Fire & Marine Insurance Co.* that policies written by unauthorized insurers and reinsurers are not void and that those insurers must pay claims to their policyholders.

Last year, in *Phoenix General Insurance Co. of Greece S.A. vs. Halvanon Insurance Ltd.*, Justice J.P. Hobhouse held that contracts made by unauthorized insurers are not void in themselves but are enforceable only by innocent policyholders seeking claims payment (*BI*, Oct. 28, 1985).

This case currently is being appealed.

Syndicate shows loss

Lloyd's of London's largest non-marine syndicate has posted a loss for the year ending 1983, which closes this year under Lloyd's three-year accounting system.

Members of Syndicate 210/204, underwritten by H. Ralph Rokeby-Johnson, paid a loss of 1,500 pounds ($2,175) for each 10,000 pounds ($14,500) they underwrote, confirmed R.W. Sturge & Co., the syndicate's manager.

The losses stemmed from the "bottom of the non-marine underwriting cycle," said Peter Rawlins, managing director of Sturge Holdings P.L.C.

Also, the syndicate, like the rest of Lloyd's non-marine market, suffered from bad weather losses, particularly in the United States, satellite losses and "trucking in the U.S.," Mr. Rawlins said.

Heath stock price

Lloyd's of London broker C.E. Heath P.L.C. is asking the London Stock Exchange to formally investigate swings in the price of Heath stock.

Heath stock fell to a 12-month low of 515 pence ($7.70) per share last month after London newspaper reported information concerning Pinnacle Reinsurance Co., a Heath unit, and Motolease, a former Heath subsidiary.

Bermuda-based Pinnacle has been named in litigation with 10 other defendants filed in March in U.S. District Court in New Orleans by the liquidators of Mentor Insur-

Continued on next page

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Continued from previous page

ance Co. Ltd. (*BI* June 30; June 16).

The newspapers also reported on a dispute between Heath and a Gibraltar-based group known as Ceram that bought Heath subsidiary Motolease in 1982. Ceram owes Heath 6 million pounds ($9 million) for Motolease, which was due in 1985, confirmed Peter Presland, Heath's financial director.

"We started litigation immediately against Ceram when they wouldn't pay," he said.

"There is no new news in these stories at all," Mr. Presland added.

Stock Exchange sources say that a Heath shareholder, who is believed to be a Ceram director, had distributed information about the Pinnacle and Motolease disputes to several journalists and institutional investors.

Coincidentally, Heath's share price dropped shortly after Heath announced that discussions were under way to acquire Lloyd's broker Dewey Warren & Co. Ltd., Mr. Presland said. The share price drop had nothing to do with that announcement, he said.

Dewey Warren is known for marine insurance and reinsurance brokerage.

Reinsurance study

The Reinsurance Offices Assn. in London has asked the National Assn. of Insurance Commissioners to set up a task force to consider the role of the alien non-admitted reinsurer.

The ROA wants the NAIC to look at several issues in relation to the alien non-admitted reinsurer, said an ROA spokesman.

The ROA proposes that the NAIC set up an office to review alien reinsurers, the ROA spokesman said. Also, the ROA wants U.S. insurance commissioners to allow alien reinsurers to write in their states if the reinsurers are properly regulated by their countries' own regulators, he said.

The NAIC has not decided whether to set up a task force, an NAIC spokesman said. However, the issue may be studied by the current NAIC reinsurance task force, he said.

'85 results improve

The British insurance industry reported improved financial results in 1985 even though the industry was still in the red, according to the Assn. of British Insurers.

The 429 insurance company members of the ABI reported an aggregate 1985 trading loss of 9 million pounds ($13.1 million), down from a loss of 83 million pounds ($96.3 million) in 1984, the ABI reported.

The total underwriting loss for the companies operating in Britain held steady at about 2.2 billion pounds ($3.2 billion in 1985 and $2.6 billion in 1984 at year-end exchange rates). However, investment income rose to slightly more than 2.2 billion pounds ($3.2 billion) from about 2.1 billion pounds in 1984 ($2.4 billion), reducing 1985's underwriting loss.

Net premiums written by ABI members increased 9.8% in 1985 to 15.7 billion pounds ($22.8 billion) from 14.3 billion pounds ($16.6 billion) in 1984.

Injunction rejected

Former Lloyd's of London underwriter Ian Posgate failed to persuade a High Court to block the transfer of the management of three Lloyd's syndicates now managed by Posgate & Denby (Agencies) Ltd.

Mr. Posgate had filed for an injunction to stop the sale of the management of the syndicates to Posgate & Denby directors, arguing that the price was too low. Mr. Posgate and his family control 51% of the equity shares in Posgate & Denby, though Mr. Posgate only controls 25% of the voting stock.

However, the High Court threw out Mr. Posgate's application for an injunction last month, noting there had been no other offers.

If the directors of Posgate & Denby now sell the management of the syndicates as planned:

- Management of marine Syndicates 488/532 will be sold for 450,734 pounds ($677,903) to Baxter & Hall Ltd., a new company formed by the syndicate's underwriters and deputy underwriters.
- Management of Syndicates 609/736 will be sold for 152,310 pounds ($228,465) to a new company called Atrium Underwriting Ltd., of which Mark Denby, a Posgate & Denby officer, is one of the investors.
- Non-marine Syndicate 839 will be sold for 383,717 pounds ($575,576) to an existing company, Castle Underwriting, which is controlled by underwriter Alec Sharp and deputy underwriter David Marshall.

Meanwhile, Mr. Posgate is awaiting a decision by a former House of Lords judge on whether he will be allowed to resume underwriting at Lloyd's for a syndicate managed by R.L. Glover & Co. (Underwriting Agencies) Ltd. (*BI*, June 30).

Comings and goings

Paul Beattie, formerly chief executive of Jardine Insurance Brokers Ltd. in Hong Kong, was appointed chief executive of the newly formed Jardine Insurance Brokers Asia Ltd. Mr. Beattie will be replaced by **David Batchelor** as JIB's chief executive in Hong Kong. Mr. Batchelor was previously managing director of Jardine Insurance Brokers (U.K.) Ltd.

Meanwhile, at another Jardine subsidiary, Lloyd's reinsurance broker Jardine Thompson Graham Ltd., **John House** was appointed director and deputy chairman of the non-marine division. Mr. House had been managing director of Lloyd's broker Dewey Warren Holdings P.L.C.

Andrew Leslie was named chairman and chief executive of a Leslie & Godwin North America Ltd., a newly formed subsidiary of Leslie & Godwin (Holdings) P.L.C., which is a subsidiary of Frank B. Hall & Co. Mr. Leslie will continue as managing director of Leslie & Godwin Reinsurance Ltd.

Charles Flaxman, who is retiring as Lloyd's of London underwriter for Syndicate 990, will join Bowring Professional Indemnity Ltd. in August as a consultant.

Ray C. Pooley was appointed deputy chairman of Lloyd's of London broker C.E. Heath P.L.C. to replace **David J. Barham**, who is retiring. Mr. Pooley was a Heath director. ■

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Bethlehem boosts benefits to offset pay cuts

benefit beat

A new contract between Bethlehem Steel Corp. and 24,000 members of the United Steelworkers union includes employee benefit changes linked to wage reductions.

Under the agreement, scheduled to take effect July 1, the Bethlehem, Pa.-based steel maker will provide union members with a combination of preferred stock and profit-sharing benefits in return for other benefit and wage cuts totaling about $1.96 an hour, a company spokesman said.

The company will distribute to unionized employees 10% of annual profits up to $100 million and 20% of any profits in excess of $100 million, the spokesman said. If the payouts from annual profits do not equal the wage and benefit cuts, union members will receive shares of Bethlehem convertible preferred stock at a stated value of $32 a share. The shares pay a 5% annual dividend.

The agreement is similar to an earlier settlement between LTV Corp and the union.

Under the Bethlehem agreement, the deductibles under Bethlehem's self-insured major medical plan will double. Deductibles for individual coverage will increase to $150 from $75, while the deductible for family coverage will increase to $300 from $150. The lifetime maximum major medical benefit will increase to $250,000 from $50,000.

Coverage also will increase to $1,000 annually from $400 for diagnostic X-rays, ultrasound and other diagnostic procedures. Hearing aids and prosthetics will now be fully covered.

In addition, a mail-order prescription program will be implemented on Oct. 1, under which union members will pay only 20% of prescription charges, he said. The company has not yet decided who will administer the prescription drug plan, nor has it worked out the full details of other benefit changes.

For example, the company plans to implement a utilization review program Oct. 1 that will include pre-admission certification, concurrent review and a mandatory second surgical opinion program, the spokesman said.

Under the program, union members who do not obtain a second opinion for 12 specified procedures will pay a $300 penalty, he said. The cost of the second opinion and, if needed, a third opinion will be fully covered. Employees who do not have non-emergency hospital admissions reviewed will pay a penalty of $250, he added.

Bethlehem also is planning to launch a prepaid dental program for its unionized employees starting Oct. 1. Under this plan, members will pay only a $25 deductible for individual coverage and a $50 deductible for family coverage. Under the current plan, members pay a copayment on all services.

Early retirement

State employees in Iowa are being offered early retirement incentives under a new law passed by the Iowa Legislature last month.

Under the legislation, state employees who are age 62 or older as of Oct. 31, 1986, had until July 1 to take early retirement, explained Dennis Jacobs, deputy director of the Iowa Public Employees Retirement System in Des Moines. Employees accepting the offer must retire by Oct. 31, he added.

Employees accepting the offer could either receive a cash bonus equal to 10% of their annual salary in their last year of employment, up to a maximum of $5,000, or continuation of their health, dental and life insurance benefits until they reach age 65 at no expense, Mr. Jacobs explained.

The continued benefit option also would include payment of the full premium for employees enrolled in health maintenance organizations until age 65, Mr. Jacobs said.

However, early retirees who decide to collect their pension benefits before the normal retirement age of 65 would receive reduced benefits, Mr. Jacobs said.

The state offers employees three self-insured medical plans, for which Blue Cross/Blue Shield of Iowa administers claims, said Don McNerney, state payroll administrator:

- Under one plan, employees pay a $100 deductible for individual coverage plus 20% of the first $8,000 for a maximum out-of-pocket expense of $1,700. For family coverage, employees pay a $200 deductible and a copayment of 20% of the first $15,000. The maximum out-of-pocket expense is $3,200.

Employees must contribute $23 a month for individual coverage and $149 a month for family coverage.

- Under another plan, employees pay a $300 deductible for individual coverage, plus a copayment of 20% of the first $3,000. The maximum out-of-pocket expense is $900. Employees opting for family coverage pay a $400 deductible, plus a 20% copayment up to $4,000, for a maximum out-of-pocket expense of $1,200.

The full cost of individual coverage is paid by the state. Employees with family coverage must pay $34.84 a month.

- Under the third plan, employees pay a $100 deductible per person, no matter how many family members, plus a copayment of 10% of the first $5,000 in expenses per person. The maximum out-of-pocket expense is $600 per person, he said.

Again, the state pays the full cost of individual coverage, while workers with family coverage pay $57.76 a month.

The state also self-insures its group life insurance plan. Claims are administered by Bankers Life Co. of Des Moines.

Under the plan, employees are provided with basic life insurance coverage of $10,000 and can purchase an additional $5,000 with the cost depending on the employee's age. Employees can purchase another $5,000 of life insurance after obtaining a statement of satisfactory health.

The state's dental coverage is self-insured, with claims administered by Blue Cross/Blue Shield. Under the plan, employees do not pay deductibles or contribute to the premium for single coverage. However, they contribute $7.78 monthly to the premium for family coverage, Mr. McNerney said.

The plan covers the full cost of routine checkups and cleanings. Employees pay 50% of charges for fillings and tooth extractions. The plan does not cover orthodontia. The annual maximum benefit under the plan is $500 per person, he said.

The state estimates between 1,100 and 1,200 employees are eligible to accept the early retirement offer, Mr. Jacobs said.

"We estimated that somewhere around 250 —or 20%—would accept the offer, and so far we are right on course," he said.

"Following the enrollment period, there will be an evaluation by the governor's staff of how many employees participated," he explained. If the program does not achieve the workforce reduction desired, a second program will be implemented, Mr. Jacobs said.

Military pensions

Legislation reducing pension benefits for military personnel has been approved by both the U.S. House and Senate.

H.R. 4420, introduced in March by Rep. Les Aspin, D-Wis., proposes cutting the current retirement benefit payable to 20-year veterans to 40% of salary from 50%, said a House Armed Services Committee spokesman. The Senate version of the bill calls for a cut to 44% of salary, he said.

The bill is currently in conference and is expected to be completed by the end of the month, he said. If enacted, the cuts will apply only to persons entering the military on or after Aug. 1 and would not affect 30-year veterans, who currently receive pension benefits equal to 75% of salary, he said.

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Continental to form insurers in Barbados and Bermuda

Continental Corp. is creating two new insurers in Barbados and Bermuda, which together will write excess casualty insurance limits of $25 million excess of $25 million.

Barbados-based East River Insurance Co. Ltd. will be a subsidiary of East River Group Ltd., a Bermuda holding company. An unnamed Bermuda-based insurance subsidiary of East River Insurance also will be formed.

The two insurance companies together will have initial capital of $25 million, according to a Continental spokeswoman.

Continental decided to locate the companies in Bermuda and Barbados because their offshore location will allow them "greater flexibility" in developing products, the spokeswoman said.

The two insurance companies are expected to begin operations in the near future.

Reinsurance for the new insurers has been placed with "a number of large, international reinsurers," but the spokeswoman would not be more specific.

Wayne H. Fisher, Continental's senior vp-special operations, brokerage and special operations group, has been named chairman of East River Group, while Bryan S. Reid III, Continental's vp and chief underwriting officer, was named president and chief executive officer of all three companies.

markets

Product liability

A new division of New York-based management consultant A.T. Kearney Inc. provides product liability consulting services to insurance buyers.

Through Kearney's risk avoidance and product liability division, manufacturers can obtain risk assessments, risk avoidance and safety programs and crisis management counseling, said Stuart M. Statler, a vp who heads the division. Mr. Statler is a former commissioner of the U.S. Consumer Product Safety Commission.

"Our job will be to get the companies to realize early on in the case of a new product—or the potential for a byproduct that may affect the environment—that they must pay as much attention to the downside and risks of their product as they do to the upside," he explained.

The consultant will help companies identify their risks and then utilize avoidance techniques such as product redesign, caution labels, disclaimers and advertising that focuses on proper use of the product, he added.

"Safety management tends to be left up to the third, fourth and fifth levels down from top management. There are factors that should be brought to the attention of top management, and that's where we come in," Mr. Statler said.

The risk avoidance and product liability consulting division is based in A.T. Kearney's office at 875 Third Ave., New York, N.Y. 10022; 212-751-7040.

Nationwide PPO

Partners National Health Plans, the joint venture between Aetna Life Insurance Co. and a subsidiary of Voluntary Hospitals of America, is forming a nationwide preferred provider organization aimed at clients with multiple locations.

Partners National Advantage is made up of around 550 VHA-affiliated hospitals in 45 states and the District of Columbia.

"The first product of the National Advantage program is a competitively priced, hospital-only PPO," said Dale Thomas, chairman of Dallas-based Partners National Health Plans.

He said the program will be expanded in the future to include physician providers.

Robert Goodby, vp of Aetna's employee benefits division in Hartford, Conn., said: "We now have the network in place. We expect to start marketing activities in late summer."

The plan's first clients should be enrolled by the end of the year, he said.

Mr. Goodby said most of the PPO's clients probably would be employers with more than 1,000 employees, although there are no size requirements for a business to become eligible for the plan.

While the plan's clients likely will be those with operations in more than one location, Mr. Goodby pointed out that the PPO would be available to "single-site companies" as well.

However, the network offers particular advantages to businesses with more than one location, he added.

"A national employer will be able to deal with one entity," he remarked, noting that the network would be able to provide a consistent method of billing and administrative activities for all locations. Claims administration will be provided by Aetna.

Services like utilization reviews and pre-admission certification will be handled through the Partners Health Resource Management program in Dallas.

Partners National Health Plans was formed last year by Aetna and VHA Enterprises, a VHA affiliate (*BI*, July 22, 1985).

Mergers/acquisitions

The Crump Cos. Inc., the nation's eighth-largest broker, has acquired **ISU/Chandler Insurance Agency** of Burlingame, Calif. The services and current operations of ISU/Chandler will be combined with Crump/Kindler & Laucci Insurance Brokers, Crump's San Francisco affiliate. ISU/Chandler, with 1985 commission revenues totaling about $1 million, provides retail brokerage and risk management services.

Alexander & Alexander Inc. has acquired **Hansen & Associates Inc.**, an Overland Park, Kan.-based actuarial services company. A&A Inc. is a subsidiary of Alexander & Alexander Services Inc., the second-largest broker in the United States. ■

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Glisson named Tallahassee's risk manager

Jimmy R. Glisson, 33, has been named risk and insurance officer for the city of Tallahassee, Fla. In this newly created position, he will be responsible for property/casualty and self-insurance programs for Florida's capital city, reporting to Robert B. Inzer, city treasurer/clerk. Prior to this appointment, Mr. Glisson was director of risk management and safety for the city of Gainesville, Fla. He received a bachelor of science degree in education from Troy State University in Troy, Ala., and a master's in safety education from Auburn University in Auburn, Ala. In addition, Mr. Glisson is a representative to the Public Risk & Insurance Management Assn. and the American Society of Safety Engineers.

* * *

L. Marilynn McCullough, 31, has been named manager of employee benefits at The Buckman Van Buren Group in Abington, Pa. In this position she will be responsible for administering the company's flexible benefits plan, maintaining records on group insurers and developing proposals and specifications. She replaces **Deborah Geer**, who left the company, and will report to Joseph T. Ellis., director of employee benefits. The Buckman Van Buren Group provides financial services that include the design, maintenance and implementation of property/casualty and group insurance and pension, profit-sharing and 401(k) plans. Prior to joining BVG, Ms. McCullough was a cost-containment specialist at Prudential Insurance Co. of America in Horsham, Pa. Ms. McCullough received an associate of arts degree in business administration from Florida Junior College in Jacksonville.

* * *

Cindy Miller, 41, has been named risk analyst for the Chula Vista City School District in California. In this newly created position she will be responsible for the school district's risk management program. Ms. Miller reports to John Linn, assistant superintendent of business services. Prior to this appointment, Ms. Miller was risk analyst with Rohr Industries, an aerospace subcontractor, in Chula Vista.

* * *

Roger E. Dailey, 52, has been promoted to vp of corporate insurance and benefit funding at Equifax Inc. in Atlanta. In this position he will oversee administration of employee benefits, including the design and funding of employee benefit programs; pension plan design and investments; property/casualty insurance and unemployment compensation; and risk management for various Equifax subsidiaries. Mr. Dailey reports to Ed Devaney, corporate vp-secretary. Mr. Dailey, who joined Equifax in 1955 as a field representative, was staff vp of the corporate insurance and benefit funding department prior to this appointment. Mr. Dailey received a bachelor of science degree in accounting from the University of Toledo in Ohio. He holds the Associate in Risk Management designation, is a member of the Southern Pension Conference and a deputy member of the Risk & Insurance Management Society.

Mr. Dailey

* * *

Pamela Ravanelli, 27, has been named corporate insurance specialist at Diversified Energies Inc. in Minneapolis. In this position she will complete applications and work with claims, while assisting David J. Hennes, director of risk management, with coordination of insurance programs for DEI and its seven subsidiaries. Ms. Ravanelli will report to Mr. Hennes. Prior to this appointment, she was an insurance specialist with S.J. Groves & Sons in Minneapolis. Ms. Ravanelli received a bachelor of science degree from Central Michigan University in Mount Pleasant and is a licensed insurance agent.

* * *

Donald A. Stryszko has been appointed loss control analyst at Cox Enterprises Inc. in Atlanta. In this new position, Mr. Stryszko will coordinate property and casualty loss control activities for Cox, including programs for employee safety, fleet safety and property protection. In addition, he will consult with locations on government safety regulations and assist with on-site loss investigations. Mr. Stryszko reports to Ted L. Young, corporate risk manager. Prior to joining the diversified communications company, which is involved in newspaper publishing, television, radio and cable broadcasting and auto auctions, he was a fire safety/design safety specialist at Georgia State Univerity in Atlanta. Mr. Stryszko received a bachelor of science degree in fire and safety engineering and industrial risk management from Eastern Kentucky University in Richmond. In addition, he holds a bachelor of applied science degree in forestry from Elon College in Elon College, N.C.

We'd like to report on staff changes in your company's risk management, safety or employee benefits department. Just drop a note to Paul Winston, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611, or call 312-649-5442. Please send a photograph, too.

comings & goings: buyers

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No winners

Problems pervade comp system in Australian state

By Jerome Karter

international issues

ALL BETS ARE off in the Australian state of New South Wales since the government declared no winners, only losers, in the worsening workers compensation market there.

Under pressure that was rising as fast as claims costs, the New South Wales government marked the first anniversary of its strict control of the state's workers compensation insurance system by announcing an average increase of 20% in "gazetted" or tariff rates, effective June 30.

The announcement, although anticipated, has rekindled the controversy between insurers that protest a 20% rate increase is inadequate and employers that contend that existing rate levels are too high (*BI*, Jan. 6).

Quarreling between insurers and employers is allayed only by their agreement that a rate increase of any size is ineffective without a concurrent cut in benefit costs. The insurance industry in New South Wales has severely criticized the government over the past year for controlling rates while failing to contain the escalating cost of benefits.

Since June 1, 1985, 20 underwriters—including CIGNA Corp., American International Underwriters, Royal Insurance P.L.C., Allianz Group, and General Accident Fire & Life Assurance Corp.—have withdrawn from the New South Wales workers compensation market.

In response to the announced rate increase, 17 additional insurers threatened to withdraw from the market by June 30. Insurers that failed to withdraw before that date would have been forced to write workers compensation insurance in the coming year.

The insurers' latest agitation was caused by the fact that the proposed rate hikes were substantially less than the 70% increase recommended recently in a study commissioned by the Insurance Council of Australia. The study supported the private insurers' position that increased funds are needed to offset the pattern of steadily inflating development costs.

A separate study, conducted concurrently, cited growing claims costs as the reason for a recommended 71% rate hike.

Current gazette rates for manufacturers in New South Wales not only are higher than workers compensation rates in any other part of Australia, but are, in fact, some of the highest in the world.

To make things worse, employers in New South Wales that paid tariff workers compensation premiums in excess of $2,000 Australian annually were forced to assume a $500 Australian deductible per claim when the government plan was inaugurated in June 1985. The government mandated the per-claim deductible as an incentive for employers to reduce claims costs by creating a safe work environment.

But, the combination of gazette rates and assumed deductibles pushed 1985-86 workers compensation costs for most New South Wales manufacturers significantly above the levels recorded in 1983—the year of the highest recorded workers compensation rates in New South Wales.

The 20% rate increases on June 30 are accompanied by a new experience rating formula that considers only the previous two years' wages and claims. The expiring formula used three years' wage and claims experience. While this change had the effect of removing prior adverse loss history for many employers, increases in industry classification factors are expected to offset any possible benefit.

While some contend the 20% rate increase was intended to weed out a large number of workers compensation underwriters, the New South Wales government appeared to show good faith by discussing counterproposals with the insurance industry.

The first counterproposal reportedly paralleled the WorkCare scheme adopted in Victoria. Under that system, insurers act as administrators of a government fund and premiums are levied by the government. All employers in Victoria with a total annual payroll of $5,000 Australian or more must register with WorkCare, and employers with an annual payroll in excess of $10,000 Australian must bear the claim cost of the first five days of earnings per claim.

Industry support for this scheme in New South Wales was insufficient to promote its passage.

The second counterproposal, a "managed fund" that would have allowed insurers to share in the comp system's surplus or deficit, also was rejected. Under this plan, all workers compensation insurers would have been required to establish a separate corporation, known as a fund, with paid-up capital and no existing business. Each fund would be required to maintain separate accounting books reflecting premiums, claims and expenses.

If inadequate premiums or adverse loss experience created a deficit in an insurer's fund, the State Compensation Board would levy future premiums against all funds to be distributed to the deficient fund. However, future levies would not be distributed to insurers that mismanaged a fund.

Insurers reacted negatively to this scheme because its provisions were considered too cumbersome to enable participants to realize a surplus.

As an example, individual funds would not have been allowed to write more than a 20% share of the state's workers compensation business. Under this provision, insurers that specialize in workers compensation would have been forced to unload a portion of their books, experiencing a dramatic decline in premium income.

Insurers also balked at a provision that would have required paid-up capital to equal 10% of outstanding liabilities, although it could not be treated as an asset until the fund was "wound up."

With a recent estimate of the industry's outstanding liabilities pegged at $2.5 billion Australian, insurers would have been required to raise approximately $150 million to $250 million Australian over a three-year trial period.

As expected, a shakeout in the number of workers compensation insurers followed the industry's rejection of the two counterproposals. As of July 1, probably only five insurers will be writing workers compensation insurance in New South Wales, including the Government Insurance Office.

The three remaining commercial insurers have agreed to renew their existing books of business and to write new business developed from the books of the withdrawing workers' compensation insurers, while a fourth insurer will renew its existing book of workers compensation business but will not accept new business.

In accordance with the government's request, the five remaining insurers will not compete with each other for business already on their books. Competition for replacement business also is expected to be mitigated because gazette rates will be the same among all underwriters.

All withdrawing insurers will be responsible for incurred-but-not-reported claims that occurred while coverage was in force.

It is rumored that the New South Wales government has achieved its goal of reducing the number of active workers compensation insurers prior to implementing a "managed fund" scheme on Jan. 1, 1987. Between now and then, the government will review recent recommendations from the State Compensation Board that would radically restructure existing benefit levels.

The proposed reforms, not yet released publicly, are expected to limit an employee's right to sue under common law, reduce the lump-sum benefits and change the procedure for medically assessing claimants.

A further recommendation rumored to be under review would merge the workers compensation scheme and the New South Wales accident compensation scheme with the hope of decreasing benefit costs.

The State Compensation Board is preparing a white paper on the proposed reforms to be circulated to any interested party, including workers, employers, insurers, brokers and attorneys.

While the government expects strong lobbying against the proposed reforms, itsmove to solicit popular opinion is viewed by some as proof of its intent to change the system to satisfy the majority.

Employers in New South Wales that expected to achieve cost savings under last year's government mandated plan have been disappointed.

In the Australian state of Victoria, it is too soon to assess whether public sector control of the workers compensation system is more cost-effective than private sector control.

The jury will be out until the WorkCare system celebrates its first anniversary Sept. 1.

One aspect worth monitoring is the cost of benefits paid to injured employees. Under WorkCare, employees in Victoria lost their common-law right to sue an employer for negligence that results in lost earning capacity. In exchange, the WorkCare system will make weekly payments to a totally incapacitated worker that equal the lesser of 80% of a worker's pre-injury average salary or $400 Australian.

Payments will continue at this benefit level during the period of total incapacity for work. While the provision was intended to reduce claims costs, critics of the WorkCare system contend that scheduled benefits will keep claim costs high while necessitating large premium levies.

WorkCare critics also point to problems in claims handling. The Victoria government initially licensed nine private rehabilitation providers as part of the WorkCare system. It is rumored that the existing centers are not working well and that the government plans to set up a commercial center to compete with the private providers.

The Victoria WorkCare work comp system, like that of New South Wales, deserves further monitoring in the coming months.

Other Australian states are making few, if any, changes in their workers compensation schemes. In Tasmania, private insurers write workers compensation insurance without government control and no change is expected.

In Queensland, the government has controlled the workers compensation market for many years and it is continuing to run smoothly. In Western Australia, licensed workers compensation insurers are offering renewals and writing new business.

In South Australia, three underwriters are entertaining new business, while other active workers compensation insurers are renewing their existing books but not accepting any new business.

Multinationals with subsidiaries in Australia should continue to pay strict attention to casualty loss control procedures to minimize losses and control claims costs.

While employers in New South Wales and Victoria have little control over government-mandated rates, they can work to reduce the frequency and severity of on-the-job accidents. ▪

Jerome Karter is vp and manager of the New York International Department of Johnson and Higgins. His column on international issues appears the first Monday of every month.

Tips for preventing errors & omissions suits

Agencies and brokerages can use a variety of devices to reduce their exposure to errors and omissions claims from clients and insurers, agency experts say. Such tips include:

- Develop set policies and procedures for dealing with clients, prospects and insurers, and make sure that all agency or brokerage employees understand and follow these procedures.
- Record every transaction and conversation with clients and insurers in writing and file them in clients' files.
- Never offer off-hand advice to a policyholder. If you aren't sure of what you are saying, tell the policyholder you will get back with him or her after you verify the information. This pertains equally to all employees, because each represents the agency or brokerage.
- Make sure producers' family members are aware of the importance of taking proper phone messages if a client calls the producer at home to report a loss. Also stress to family members that they should never assure clients that the loss will be insured until the producer verifies the coverage.
- Do not exceed the binding authority given to you by your insurers. Get company binding requirements in writing and maintain them in your files to protect yourself if the company later alleges that its binding authority has been exceeded.
- When binding coverage, always use a formal written binder form that gives the effective date of the binder, names the insurer and details limits, deductibles, conditions and exclusions. If no binder is issued, get the client's or prospect's signature on an "acknowledgment of no binder" form so that the policyholder will not later allege that he or she understood that the coverage was bound.
- Notify both primary and excess insurers immediately after a first- or third-party claim is filed. Also inform clients of their duties in the event of a loss, and keep them advised of the progress of their claim, notifying them promptly if it appears that the insurer will deny coverage.
- Submit all applications from clients and prospects as quickly as possible to avoid misplacing them.

When renewing a client's policies, explain any changes in policy forms or coverage and document in the client's file that the changes were explained to the policyholder. Also verify that policy information is still accurate.

Immediately after placing coverage for a client, send the client a letter verifying that the coverage you requested from the insurer was what the client had requested. Then, when the insurer issues coverage, make sure the policies are correct before sending them to the client.

- When quoting on an account, include a quote for every possible exposure the client might have at the limits you think are necessary.

If the client declines to insure an exposure for which you have recommended coverage, or requests limits that are lower than you feel are necessary for the exposure, thoroughly explain the additional exposure and have the client sign on the quote that they have declined coverage.

Then, as a further precaution against E&O claims, send the client a letter stating that you are sorry that he or she did not agree to the suggested coverage, explaining once more the added exposure.

- When renewing policies, explain any changes in policy forms or coverage and document in the client's file that the changes were explained. Also verify that policy information is still accurate.
- Never renew an account without checking for adequate limits, changes in operations, conditions or exposures or additional coverage requirements.
- Carefully explain language and coverage changes in the new commercial general liability policies, especially to those affected by the pollution exclusion. Clients in states that have approved use of the new claims-made form will be particularly affected. Afterward, have the client sign a statement saying that you explained these changes.
- Build a good in-house suspense file to monitor client expiration dates to make sure that coverages do not lapse.
- Never sign a policyholder's signature on an application. In most states, this is a criminal offense that voids coverage under an E&O policy.
- Never assure a client that you are providing him or her with "full coverage." If you make such a promise and the client later suffers an uninsured loss, your agency or brokerage stands a good chance of being held responsible for the loss.

In fact, avoid any sweeping generalizations suggesting that your product is the best or most comprehensive on the market. It may not be.

- When a client requests cancellation of all or a portion of his or her coverage, ask for the specific request in writing.
- Make sure the licenses of all producers in the agency or brokerage are current.
- Be extremely careful when working with coverages with which you are not completely familiar to make sure they cover what you want them to.
- When layering coverage, pay close attention to the way the different forms stack to make sure that unforeseen gaps do not occur between the layers that later could give rise to an E&O claim.
- Keep records of all correspondence with clients that might become useful in defending a future E&O claim.
- Carefully monitor the financial health of insurers with which you place business.

It has always been an agent's or broker's duty to place an account with a financially sound insurer. With the recent increase in insurance company insolvencies, however, clients have started filing E&O suits seeking that their agent or broker be held responsible for detecting that an insurer with which he or she places business may be having financial problems.

While several court cases are pending on this issue at present, to date there have been no adverse decisions holding agents or brokers responsible when an insurer has gone insolvent, agency experts say. But, because the potential for such a decision exists, this is an area that requires close attention.

Agencies and brokerages can use a variety of methods to help them monitor an insurer's financial health. Such methods include, but are not limited to: checking A.M. Best Co. reports; examining insurers' annual statements; watching the stock performance of publicly held insurers; observing changes in service or delays in claim payments; noticing withdrawal of insurers from geographic territories or lines of business; observing significant management changes; analyzing changes in the company's combined ratio; and checking the insurer's premium-to-surplus ratio.

- When placing a client's business with a surplus lines insurer, explain to clients that these insurers are not covered by state guaranty funds in the event they becomes insolvent. ■

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E&O threat

Continued from page 24A

Corp.'s Brokerage Services Group in New York.

Proper documentation is of the utmost importance in successfully defending E&O claims, sources stress.

"E&O claims often go back over several years. Documentation helps in refreshing us on the particulars of these cases.

"Some of the people involved may have even left the company by the time the claim is settled," said Bill G. Jenson, corporate vp with Arthur J. Gallagher & Co. in Rolling Meadows, Ill.

Mr. Holland suggests that agencies or brokerages confirm in writing all conversations with clients that initiate some action to make sure there has been no misunderstanding.

Such procedures do not have to be complicated, experts stress.

In fact, procedural changes aimed at reducing internal E&O exposure "can be as basic as redesigning telephone conversation note pads, handing out E&O checklists for employees to complete or having a procedures manual and following it," said Robert H. Moore, senior vp of corporate relations for Alexander & Alexander Services Inc. in Washington, D.C.

"Most of the claims we see are the result of just plain carelessness and lack of documentation. People are told or asked to do something and just forget to do it," said Eric G. Gustafson, chairman of Blake Insurance Agency Inc. in Portsmouth, N.H., and chairman of the E&O committee of the Independent Insurance Agents of America.

"E&O claims often come down to mistakes in documentation," Mr. Moore agreed. He added that not only does an E&O claim present an agency or brokerage with financial problems, "it is also a disaster to client relations."

Alexander & Alexander established a quality control department in late 1985 to increase employee awareness of E&O exposures. The department stresses the positive results of following proper office procedures, Mr. Moore said.

"Good office morale and a sense of self-worth are very critical" to reducing E&O exposures, Mr. Moore said.

Corroon & Black also accentuates the positive, according to Mr. Maxwell.

"We are not presenting the situation as an E&O problem. We feel we should emphasize professional standards. . .and we are looking for input from employees," Mr. Maxwell said.

Agents or brokers say they sometimes bring in outside authorities to address the E&O situation.

"We have retained the services of a large law firm. The lawyers come in and meet with our managers, agents and key support people to alert them to the types of situations that cause losses, and procedures we can use to hold losses down," said Martin L. Vaughan III, executive vp of retail operations with Poe & Associates Inc. in Tampa, Fla.

Of special concern to agents and brokers are the new liability policy forms—particularly the Insurance Services Office's claims-made commercial general liability policy—that are now being issued.

It is not yet clear how many potential E&O exposures may arise from the new forms.

While claims-made forms have been used for several years by companies to insure difficult lines of coverage such as medical malpractice and product liability, not all agency or brokerage employees have handled claims-made forms to any great extent.

Changes also have been made in other liability forms, including exclusion of nearly all types of pollution coverage, simplified policy language and the setting of aggregate limits.

Documentation is of utmost importance in defending E&O claims, agency experts stress.

Not only must agency personnel understand the changes in the forms and how they affect their commercial lines clients, they also must be prepared to explain those changes and the resulting exposures to those clients. Otherwise the agency or brokerage will leave itself open to E&O suits, observers agree.

While Mr. Hargrave said that he does not anticipate an en masse

Continued on next page

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E&O threat

Continued from previous page

switch by insurers to claims-made forms, he predicts that the many different forms currently available in the marketplace "will cause even more problems" with E&O claims, unless agents and brokers can properly explain how each form differs.

But Edward P. Hollingsworth, vp with Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y., admitted, "Right now we can't foresee all of the things that could possibly go wrong with the forms. All brokers are faced with the dilemma: How can we keep clients fully informed when we haven't had the losses yet?"

'Right now we can't foresee all of the things that could possibly go wrong with the forms. All brokers are faced with the dilemma: How can we keep clients fully informed when we haven't had the losses yet?' says Edward Hollingsworth.

Because of this uncertainty, many brokerages and agencies have designed training programs to teach employees about the changes and to alert them to potential exposures.

"We have developed a synchronized slide/tape show with a 36-page accompanying booklet that we distributed to 66 of our offices in the U.S. and abroad. We've provided these offices with the materials to conduct staff meetings to discuss these concerns," Mr. Hollingsworth said.

In addition, employees are encouraged to attend claims-made seminars and workshops conducted by local chapters of the IIAA, PIA and the Society of Chartered Property Casualty Underwriters, Mr. Hollingsworth added (see story, page 24H).

The Crump Co.'s Mr. Huffman said that his company has produced a videotape and information packet on the claims-made policy and distributed it to all of its branch offices.

The program is designed to inform all employees about the changes, he explained.

"The tape describes the new form, contrasts it with the old form, and calls particular attention to the increased E&O hazard, especially in layers of coverage and excess coverage. It explains how important it is for employees to make sure the forms line up," Mr. Huffman said.

Crump also furnished its offices with materials that explain to clients coverage changes under the claims-made form.

Fred S. James is in the process of filming an updated E&O tape to replace one that the brokerage designed for its employees 10 years ago, said Mr. Peterson.

The new tape, to be distributed to all James' offices in the fall, will explain procedures employees can use to guard against E&O suits, stressing the importance of documentation.

"The tape will present hypothetical events that can lead to an E&O suit and what employees should do if they suspect an E&O claim will be filed," he added.

It will be accompanied by an explanatory pamphlet, a summary of insurance forms and an insurance checklist.

In May, at the annual meeting of the National Assn. of Insurance Brokers at Pebble Beach, Calif., Mr. Peterson offered to make the E&O tape available to other brokers to show to their own employees.

James also began preparing its employees for the new claims-made form in 1985 through a series of training seminars, Mr. Ruoff said.

The seminars were held at the corporate, regional and local levels, he explained.

"We started early on telling our people about claims-made, from management down to claims people. This affects everybody who is even remotely involved in handling a client's business that involves liability insurance," he said.

The claims-made seminars discuss case examples as well as theory, and include course materials.

"We give examples of how we believe claims-made applies, although the courts may have the final interpretation as to what they believe the words say," Mr. Ruoff added.

For a number of years, Corroon & Black has been sending an instructional newsletter, "Pointers," to its field offices, explained Mr. Maxwell.

The newsletter, published about once a month, often features tips on reducing an office's exposure to E&O suits.

Corroon & Black also held CGL seminars in 30 cities for employees and clients during the last year. In addition, the brokerage "held four-day 'train the trainer' sessions to teach our trainers from each region about the forms," Mr. Maxwell said.

The trainers then returned to their respective regions to teach employees locally, Mr. Maxwell added, explaining that the "train the trainer" sessions involved three people from each of the broker's six regions.

"We designed a video to send back to the offices with the trainers. . .on the features of the CGL and what areas to watch out for. Checklists, the types of letters to write, etc., are all part of our training session on the CGL claims-made form," Mr. Maxwell said.

Corroon & Black's human resources department employs several people responsible solely for training the broker's employees, he added.

A&A's Mr. Moore said that since E&O suits are often simply the result of carelessness, "We are implementing a campaign to promote employee awareness of E&O exposures through videotapes, quarterly newsletters on quality control, workshops at the local level, posters, and at the annual management meetings.

"We are preparing the video and designing the newsletters now," he added.

A&A already has begun conducting the workshops, and the video and newsletters will be out by fall, Mr. Moore noted. These will be distributed to all of A&A's U.S. offices, he said.

Gallagher began using E&O checklists on client files more than 10 years ago, according to Mr. Jensen. Employees complete a new checklist for every commercial lines client at each renewal. But while employees are still using the E&O checklists, Mr. Jensen said that the brokerage now also audits client files.

A group of account managers performs the audits, and "if a file is not in good shape, it is returned to the producer to complete correctly," Mr. Jensen explained.

Besides the audit procedure, Mr. Jensen has "put together a complete presentation that I do a couple of times a year, or more often upon request."

"I discuss what is covered

Continued on next page

New E&O captive to target larger agents

By LINDA J. COLLINS

A new captive insurer may be one solution for large agents and brokers that have had a hard time finding errors and omissions coverage.

Assurex International, an agent-owned insurance and financial services organization, and the National Assn. of Casualty & Surety Agents have jointly announced plans to open a new agents' E&O facility later this year.

"We are targeting larger agencies that have trouble getting coverage through other trade association plans," said Robert P. Ashlock, president of Columbus, Ohio-based Assurex.

Only agencies or brokerages with annual commissions and fee revenues of $1.5 million to $2 million will be eligible to participate in the captive, which will be capitalized by its policyholders, Mr. Ashlock explained.

However, the facility will not be open to the major alphabet houses or publicly held brokerages, and only U.S.-based agencies and brokerages will be able to participate initially.

Assurex and NACSA don't plan to limit use of the E&O facility to their members. "We believe this problem is industrywide and needs an industrywide solution. It will be open to all agencies that fall under its underwriting criteria," Mr. Ashlock explained.

A board composed of Assurex, NACSA and insurance company representatives is developing underwriting and eligibility requirements for captive participants. Assurex will assume responsibility for managing the facility.

Program participants will assume self-insured retentions averaging about $50,000 per occurrence, although Mr. Ashlock explained that these retentions will vary by size of agency and types of exposures.

Larger agencies or brokerages will assume higher retentions, while smaller agencies might have retentions of as low as $35,000, he said.

The first layer of coverage above the SIR will be funded by the policyholder-owned captive. However, policies will be fronted by a major insurer admitted in all states, although the insurer has not yet been named. The risk will then be reinsured with the captive.

If the fronting insurer retains any of the risk, "it will probably be minor," Mr. Ashlock said.

The organizations also plan to organize a pool of 10 to 20 insurer participants that will provide the next layer of coverage, with limits of up to $5 million.

"Five major property/casualty carriers have expressed a strong interest" in participating in the excess facility, Mr. Ashlock said. "We are actively talking to another 15 or so insurers, and are very optimistic that the target range of 10 to 20 insurers will be met," he added.

Additional excess coverage will be provided by domestic and London underwriters, the organizations said.

Mr. Ashlock explained that the captive "plans to provide coverage for the things that larger agencies tend to do," such as benefit and risk management consulting, third-party administration and other support services.

"We hope to start taking applications by early fall and to be operational by the end of this year," said Bruce T. Wallace, executive vp of Chevy Chase, Md.-based NACSA.

Both executives stressed that response from insurers to the proposed captive has been positive.

"Response has been quite favorable and encouraging, considering how new the proposal is. Insurers recognize the need for it," Mr. Wallace said.

"Even companies that have not traditionally insured E&O risks are interested," Mr. Ashlock added. ■

E&O threat

Continued from previous page

under our E&O insurance and give examples of incidences of claims, using overheads, etc. I go through the audit procedure, the checklists and the whole shot."

Mr. Jensen also wrote and distributed a 20-page booklet to all Gallagher's branches that discusses E&O prevention techniques and includes a self-evaluation checklist for employees.

"It's my observation that this is something that has to be laid out up-front as part of the employee's every day activities.

"It has to be presented as a part of the job itself and as a part of the employee's performance review," Mr. Jensen said.

In addition, Gallagher insists that its employees attend continuing education courses and requires that employees in the production department complete the coursework for the Chartered Property Casualty Underwriter designation, Mr. Jensen explained.

Agents and brokers 'must keep documentation on everything,' stresses Willis Hargrave.

This focus on professionalism also works to reduce errors & omissions exposures.

Mr. Hargrave also conducts E&O educational programs for his agency employees.

"We'll show them a film or provide different examples to illustrate E&O exposures. I try to take case situations and show them how an E&O suit could have been avoided," he said.

And, to explain the claims-made form to his agency's clients, Mr. Hargrave includes examples of how to use renewal summaries to persuade clients to purchase additional coverage for exposures created by the new form.

"The examples are a permanent part of the summary that clients can refer to," he said.

"As part of the summary presentation, we ask the client to sign off that he understands the terms on our copy of the summary. This becomes a part of the client file," Mr. Hargrave added.

Such records are the most important defense when confronted with an E&O lawsuit, sources agreed.

"There will never be a paperless office," Mr. Anderson said, noting that "electronic records are not good storage for a period of over two years."

"We must keep documentation on everything," Mr. Hargrave added. ■

Agent associations offer E&O programs

By LINDA J. COLLINS

Although the market for agents' errors and omissions coverage is significantly restricted, the two largest U.S. agent associations offer E&O programs to their members.

In addition, both associations have developed educational materials to help agents reduce their exposure to possible E&O suits.

The National Assn. of Professional Insurance Agents, based in Alexandria, Va., has arranged an E&O program for its members through Evanston, Ill.-based underwriting manager Shand Morahan & Co. Inc. for more than 25 years.

And, the New York-based Independent Insurance Agents of America offers an agents' E&O insurance program to members in 46 states and the District of Columbia. The other four state IIAA affiliates—Florida, Mississippi, New York and Texas—have arranged their own E&O programs for members in their respective states.

New Hartford, N.Y.-based Utica Mutual Insurance Co. is the insurer for the PIA program in most states, while a few affiliates may offer alternative E&O markets.

Nearly 12,000 agencies participate in the E&O program, and the PIA expects the program to generate $40 million in premiums in 1986, said a PIA spokesman.

The Utica Mutual coverage is available with limits of $2 million per occurrence and $4 million aggregate for agencies that meet the insurer's underwriting criteria.

The PIA spokesman said that the Utica program "is not necessarily oriented to larger agencies," noting there are no size limitations for participation.

As a free service to members insured under its E&O program, the PIA publishes a quarterly Errors & Omissions Prevention newsletter. The newsletter is written by PIA staff members and outside contributors and is edited by Ronald T. Anderson, a Colorado agent who is also a lecturer and an author in the area of agents' E&O.

> **An interesting feature of the Independent Insurance Agents of America program is that agency representatives who attend errors and omissions loss-prevention seminars approved by Employers Re can secure a 10% gross premium reduction on their E&O coverage.**

The first issue, published in April, was four pages long, and the association plans to expand it to eight pages, the spokesman said.

In addition, two of Mr. Anderson's lectures are featured on VHS videotapes that the PIA filmed, then reproduced and distributed to its state affiliates.

In one 60-minute videotape, entitled "Preventing E&O in Your Agency," Mr. Anderson discusses the types of E&O exposures agencies face and methods for reducing those risks.

In the other videotape, "Analyzing the E&O Policy," Mr. Anderson provides a 22-minute, step-by-step discussion of what is and isn't covered under the association's E&O insurance program, detailing when that coverage comes into play.

"Preventing E&O in Your Agency" also has been reproduced on a 60-minute audio cassette tape.

PIA members can borrow any of the three tapes from their state associations without charge. The PIA also will make these tapes available to non-members upon requests to the association headquarters in Alexandria.

Mr. Anderson also has been conducting PIA-sponsored seminars on agents' E&O throughout the country.

In addition, the PIA has designed a 16-page brochure, "How to Protect Yourself," which provides tips on avoiding E&O exposures. Copies are available through the national office.

Employers Reinsurance Corp. in Overland Park, Kan., underwrites the IIAA-sponsored errors and omissions insurance program.

The IIAA first offered the national E&O program in September 1984, although some state affiliates have offered an E&O program underwritten by Employers Re to their members for several years.

Last year, the IIAA's E&O program had about 9,500 agency participants and written premiums of more than $20 million.

While statistics were not available for 1986, "We expect a substantial increase in participants and premiums in 1986, as agencies' old policies expire and they come into the program," said Eric G. Gustafson, chairman of the IIAA's E&O committee and chairman of the Blake Insurance Agency in Portsmouth, N.H.

Mr. Gustafson said that it sometimes is difficult to place agencies through the program if they have an annual premium volume in excess of $15 million, because agencies of that size generally are involved more heavily in lines of business that do not meet Employers Re's underwriting guidelines, such as medical malpractice or product liability coverages.

However, for members that do meet Employers Re's guidelines, the IIAA's program offers E&O coverage of up to $5 million per agency.

"We're working on a reinsurance program to go above that, and we are also working on developing a complete secondary market for people who are unable to get coverage under the Employers Re program," Mr. Gustafson added.

He estimated that about 85% of the IIAA members in states that offer the Employers Re program meet the insurer's underwriting criteria.

An interesting feature of the IIAA program is that agency representatives who attend E&O loss prevention seminars approved by Employers Re can secure a 10% gross premium reduction on their E&O coverage.

Employers Re has adopted an eligibility requirement designed to prevent E&O lawsuits that may be generated by the Insurance Services Office's new claims-made form for commercial general liability: IIAA members in states where the form has been approved must attend a CGL claims-made seminar before renewing or obtaining E&O coverage from Employers Re.

The minimum attendance requirements for eligibility into the E&O program in states that have adopted the claims-made form are the same as those that agencies must meet to qualify for the 10% rate reduction. They include:

- The owner or principal producer of an agency with one to seven employees must attend the seminars.
- An agency with eight to 20 employees must send the owner and one other principal or producer to the seminars.
- Agencies with 21 or more employees must send the owner and two principal producers to the seminars.

The IIAA and Employers Re have published a booklet listing seminars approved for the rate reduction and claims-made requirements.

Earlier this year, the IIAA trained 50 instructors, one for each state association, to conduct loss-control/risk management seminars on agents' E&O. Each state association is in charge of setting up dates, sites and a fee structure for the courses. ■

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Think like an insurer to avoid suits: Lawyer

By AVRA WING

NEW YORK—"I think we should have a violent revolution right away."

That's what one broker said after a discussion at a seminar in New York last month of the possible errors and omissions exposures stemming from use of the Insurance Services Office's claims-made commercial general liability form.

The speakers at the seminar—presented by the Philadelphia law firm of Harvey, Pennington, Herting & Renneisen Ltd.—repeatedly cautioned the audience, composed largely of agents and brokers, to keep detailed, written records of all their contacts with customers and insurers as a means of protecting themselves from possible litigation arising from misunderstandings about claims-made policies.

David Pennington, a member of the law firm, even advised the brokers to get 8½-by-11-inch phone message pads, instead of the tiny "while you were out" variety that, he noted, are more likely to wind up in the trash basket.

Brokers should not handle situations themselves that could lead to suits, says Mr. Pennington.

He also suggested that agents and brokers:

- Attend seminars that explain the form's complexities.
- Keep up-to-date on the subject by reading industry publications.
- Obtain information from insurers.
- Visit clients at their places of business.
- Develop checklists for client interviews.
- Take notes at conferences with clients.
- Maintain a diary system for renewals.

Mr. Pennington stressed the seriousness of possible lawsuits in which a client claims he thought he had a certain amount of coverage, based on information from the broker, when in fact he did not have sufficient coverage.

"Think of yourself as being in the same position as the insurer," Mr. Pennington said. "If you failed to obtain, for example, $100,000 worth of coverage with a $5,000 deductible, you could be liable for $100,000 with a $5,000 deductible."

Brokers should not attempt to handle situations themselves that could lead to lawsuits out of a fear the cost of their E&O coverage could go up, he advised. Instead, brokers should notify their E&O insurers immediately of any possible claim, he said. "You can't tell at the outset how large the ultimate award might be."

L. Oliver Frey, another attorney with Harvey, Pennington, Herting & Renneisen, said there could be further changes in the new CGL forms because of litigation concerning the forms, particularly in "consumer-oriented" states like New York.

Claims-made forms can differ from insurer to insurer and state to state, Mr. Frey said, urging agents and brokers to read each policy. That elicited groans from several members of the audience.

He reminded the audience to check the retroactive dates and reporting periods in each claims-made policy. In addition, he noted, agents and brokers must make sure that excess or umbrella coverage properly meshes with underlying claims-made policies.

Judith Reap, director of professional and legal liabilities for CIGNA Loss Control Services in Philadelphia, noted that agents and brokers are held by their clients—and by courts—to a high professional standard of conduct.

She added that of the lawsuits brought against agents and brokers about 35-40% were for failure to provide adequate coverage; 25-30% for failure to place or provide coverage; 10-15% for misrepresentation; 6-7% for cancellations; and 3-5% involved renewals.

Susan McLaughlin also spoke at the seminar. ■

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Agent groups settle controversy with FTC

By AVRA WING

> **Jeffrey M. Yates stresses that, despite the Federal Trade Commission allegations, 'boycotting did not take place' and that, following the decree, the IIAA's activities would 'not be different from what they had been before.'**

NEW YORK—The Independent Insurance Agents of America and two of its state affiliates say they will not encourage their members to take action against insurers that market products directly to policyholders.

The IIAA and its California and Montana affiliates last month signed consent decrees with the Federal Trade Commission to settle a 2-year-old investigation into certain actions by the organizations aimed against insurers' direct marketing activities.

The FTC had charged that the IIAA units had acted to deprive consumers of competition among sellers of insurance.

Jeffrey M. Yates, the IIAA's executive vp and general counsel, denied that the national and the state groups were guilty of any wrongdoing.

"We agreed to the consent decree, not the complaint," Mr. Yates said, adding that the IIAA settled the dispute with the FTC to avoid litigation that could drag on for years.

Under the terms of the decrees, the IIAA and its California and Montana affiliates agreed to "cease and desist from requesting, requiring, advocating, advising, recommending or publishing statements that recommend that independent insurance agents cancel agency contracts with, permanently or temporarily transfer or withhold business from, or otherwise refuse to deal with, any insurance company because of any direct marketing methods, practices or policies chosen by that company."

In addition, the groups agreed to refrain from "coercing, compelling, inducing or intimidating by means of threatened refusals to deal, or attempting to coerce, compel, induce or intimidate by means of threatened refusals to deal, any insurance company into abandoning or refraining from adopting any direct marketing method, practice or policy; or adopting or continuing any method, practice or policy of selling insurance through independent insurance agents."

The IIAA units also consented to stop "publishing or circulating surveys or other information on actual or threatened refusals to deal by independent insurance agents with any insurance company because of that company's direct marketing methods, practices or policies; or aiding or assisting any affiliate of IIAA or any member of IIAA in engaging in any of the acts prohibited."

Mr. Yates denied that the national organization had violated any laws when it had issued statements about Hartford Insurance Co.'s plan to directly market homeowners and automobile insurance at discounted rates to members of the American Assn. of Retired Persons, which was one of the actions that triggered the investigation by the FTC.

"IIAA encouraged the Hartford to provide equally competitive products for their agents to sell," Mr. Yates said, explaining the IIAA's action.

He added that the IIAA had been concerned that other agency system insurers would "follow suit" with similar direct marketing programs.

While the national IIAA and the Montana affiliate were charged with boycotting Hartford, the California unit was charged with allegedly urging its members to refuse to deal with Reliance Insurance Co., which had developed a plan to sell low-priced auto insurance directly to consumers through its United Pacific Insurance Co. subsidiary.

Mr. Yates stressed that, despite the Federal Trade Commission allegations, "boycotting did not take place" and that, following the decree, the IIAA's activities would "not be different from what they had been before."

The IIAA and the two state affiliates, however, will be required to file reports with the FTC concerning their compliance with the order and inform the FTC of any organizational changes that might affect compliance.

The decrees provide "a very clear statement of what we can and can't do under antitrust laws," Mr. Yates commented.

The group is not prevented by the decrees from:

- "Participating, in good faith, in any legislative, judicial or administrative proceedings.
- "Providing information or views to any insurance company or insurance company trade group.
- "Providing factual information to its members.
- "Adopting policy statements or expressing views on subjects relevant to the direct marketing of insurance, provided that none of the above-enumerated actions are undertaken to invite, initiate, encourage or facilitate any actual or threatened refusal to deal."

A spokeswoman for the Federal Trade Commission said the agency would not comment on its investigation of the IIAA, including when the probe began.

The spokeswoman also would not comment on whether the FTC is investigating any other agent groups.

According to a spokeswoman for the National Assn. of Professional Insurance Agents, the FTC in 1984 had requested the PIA to furnish extensive documentation of its activities.

The PIA retained counsel and asked the Federal Trade Commission to focus its inquiry.

The federal agency subsequently asked only for PIA records concerning "the marketing area between agents and insurance companies," which the group provided within six months of the initial inquiry, the PIA spokeswoman explained.

The FTC has not yet taken any further action concerning the PIA, she noted.

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California pools

Continued from page 3

Not everyone, however, endorses the idea of public entity pools raising capital through bondlike issues, contending that the cost of such pre-funding for losses is too high.

The three California-based public entity pools that hope to issue COPs in late summer or early fall are:

• The County Supervisors' Assn. of California Excess Insurance Authority in Sacramento.

The association has 29 of 31 member counties now committed to an estimated $35 million COP issue, although the size of the issue may increase with additional participants, said Vince Pisani, the authority's general manager.

The pool is interested in three of the advantages the COP offers: building loss reserves, building capital against big losses and building capital to attract reinsurers.

On June 30, the pool lost a $5 million excess of $5 million layer of liability insurance it had purchased commercially, but still offers its members a $10 million liability limit excess of a self-insured retention of $100,000 to $1.5 million.

Mr. Pisani noted that he had been "very uncomfortable" with the pool's reserves last year.

And, members liked the idea of being able to pay a large loss in the first year or two without having to have immediate assessments, Mr. Pisani said.

Also, when the market softens, the authority wants to be able to deal directly with reinsurers, which want adequate capital before providing reinsurance.

• The Independent Cities Risk Management Authority in Sherman Oaks.

The authority expects all of its 11 current members and about as many new members to participate in a COP issue of about $29 million.

The pool wants to create a liability loss fund to provide members with limits of $10 million per occurrence.

Since May 20, when insurance coverage expired, the pool has provided only $5 million in liability limits to participants.

• The Ventura County School Self-Funding Authority in Ventura.

The authority, which consists of a group of about 22 school districts in Ventura County, Calif., with an average daily attendance of 125,000 students, plans about a $10 million COP issue.

The authority will use the proceeds to fund loss reserves. The authority provides its members with $10 million in liability limits.

These three offerings are being organized by D. Michael Enfield, managing director with broker Marsh & McLennan Cos. Inc.; the law firm of Brown, Wood, Ivey, Mitchell & Petty; and Mr. Northcross.

The three programs are currently structured on a tax-exempt basis. In addition, taxable bondlike issues could be used elsewhere, if conditions in the bond market warrant it, Mr. Northcross said.

Mr. Northcross

The issues are awaiting routine validation of the COP contract forms by a California Superior Court, Mr. Enfield said. That validation will guarantee that a party to the contract cannot sue to break it, for example, should a participant want to leave the pool because another member has sustained a large loss that could result in assessments, Mr. Northcross explained.

In addition, the pools are seeking a letter from the Securities and Exchange Commission that COPs issued by public entity pools are exempt from SEC registration provisions because they involve public entities. SEC registration would be a "long drawn-out affair," said Doron Bar-Levav, an attorney with Brown, Wood in New York.

Mr. Bar-Levav

While the three pools say they want to build loss reserves, Mr. Enfield says he views these issues as a means of generating enough unencumbered capital to make the pools more attractive risks to reinsure in the eyes of reinsurance underwriters.

Mr. Enfield is now working on developing a line slip to offer reinsurance support to pools with a minimum of $20 million in unencumbered surplus.

The proposed program would

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California pools

Continued from previous page

offer qualified pools $7 million in reinsurance, excess of $3 million, with the pools each retaining a 10% quota-share participation of the excess limits, or $700,000. Mr. Enfield said four insurers have committed to provide $3.4 million of the $7 million layer, and he is seeking an additional $2.9 million in commitments.

Issuing bondlike instruments is being considered elsewhere around the country by public entity self-insurance pools.

A subcommittee of the Government Finance Officers Assn. in Chicago recently recommended in a draft report that pools use bonding proceeds to establish an excess loss reserve or to help capitalize a new pool. The subcommittee, however, indicated opposition to using bond proceeds to pay premiums or to make regular pool contributions, said Tillinghast's Mr. Berg.

The association has yet to act on the report.

And, broker Johnson & Higgins, for example, is working on four deals in states outside California, noted Mr. Smith.

Mr. Berg

J&H is working with Van Kampen Merritt Inc., a municipal bond underwriter based in Naperville, Ill., he said, but declined to provide any more details. Vam Kampen Merritt is a subsidiary of Xerox Financial Services Co.

Credit enhancement insurers say they know of a half-dozen investment banking firms working on raising capital for public entity risk financing.

Most of PRIMA panelists—including Mr. Enfield and Mr. Northcross—endorsed this new source of capital.

"By using this method, it is enabling the pool to share risk that it can't otherwise share," Mr. Enfield said.

"In the absence of this type of capitalization, the pool simply sits around and does nothing. It can put out all the paper it wants, but you and I both know that you can't put out a piece of paper securing $10 million of liability for each of 20 different entities in a pool with any credibility whatsoever if all you've got in your jeans is working capital based on expected losses."

Nonetheless, others criticize this approach, citing front-end expenses of 3% to 4% paid to brokers or other advisers, bond counsel, investment bankers and credit enhancement insurers as too high in addition to the interest expense.

"I can't find any advantage other than to the broker who sells the program," commented George Anast, manager of the 51-member Southern California Joint Powers Authority in La Palma, Calif., who listened to the panel and was interviewed later.

"This is hot because you have people who are losing business and this is an effort to recover lost business, create big profits and retain control of large groups of customers," he said.

The approximate five-year time lag between a large loss and a claim payment would allow for the assessment of members to generate sufficient monies, he said. There is no reason to borrow money until it is needed, he said.

And, he took issue with suggestions from one panelist that a pool could produce funds by issuing tax-exempt securities. He called it a "rip-off" of taxpayers.

Mr. Bar-Levav had said during the session it may be possible to reinvest some of the funds raised at a higher interest rate than the rate paid to bond buyers, which would create a "positive arbitrage."

However, the feasibility of that depends on the condition of the marketplace at the time of the bond sale and the legality under the terms of the bond issue, investment banking experts say.

"My firm takes the perspective that to the extent you have total funds in your pools in excess of the amount of obligations. . .you are able to arbitrage them in an unrestricted yield. You have a restricted yield on the amounts of monies in the pool up to the face amount of your obligation," he said.

Other legal counsel may disagree, he said.

Another critic of these issues by public entities is Jeffrey W. Pettegrew, risk manager for Contra Costa County Municipal Risk Management Insurance Authority in Northern California, who seriously considered the option and rejected it.

He is concerned, he said in an interview, that the provisions of some COPs that allow bond holders to require a public entity to repay the total proceeds of the bond sale in five years, eliminates much of the advantage of the bond issue in the first place.

In addition, some COPs restrict the ability of the pool to add new members, he said.

Mr. Pettegrew

Others also have rejected the option.

Some North Carolina public entities had been considering a program but changed their minds after obtaining some reinsurance, Mr. Bar-Levav noted in an interview after the panel.

PRIMA panel moderator Mr. Berg commented that it is "hard to determine the feasibility" of a bondlike issue in the abstract because it must be analyzed on case-by-case basis.

The California pools that are planning their COP issues, however, are enthusiastic about their projects.

"The authority is convinced the pros far outweigh the cons," said David Smith, a management consultant with Ken Spiker & Associates, which provides staff services to the Independent Cities Risk Management Authority.

The COP program is "a significant cost, but it is made up in the long run," said Dennis Corte, the Ventura County School Authority's executive director. In addition, the schools expect some "positive cash flow advantages" through the investment of some of the COP-generated related funds, he noted.

However, even proponents of bonding instruments admit that raising capital through bond-type instruments is not appropriate for all pools.

The pool must be of sufficient size and the issue long enough to justify the front-end costs, Mr. Northcross said.

In addition, public entities considering a bond issue must cope with a "big city, small city dichotomy" in which a pool needs a few large public entities to capture the attention and interest of credit enhancers, Mr. Northcross said. However, most pools work better with smaller public entities of about the same size, he added.

Another concern is the uncertain impact of pending tax legislation on bonding arrangements after Sept. 1, Mr. Bar-Levav said, referring to the earliest date the legislation would affect municipal bonds.

The House and Senate tax bills that will go before a conference committee are "rather onerous and restrictive on arbitrage" and both limit the kind of tax-exempt bonds that can be issued, he commented, although the Senate bill is less restrictive.

However, David Casnocha, a Brown Wood attorney based in San Francisco, said that the proposed California COP plans would not be affected by the pending tax legislation because they are not specifically municipal bonds.

Risk management consultant C.C. "Bud" Griffin, president of Warren, McVeigh & Griffin Inc. & Subsidiary Cos. in Newport Beach, Calif., and an expert on municipal risk financing, says that COPs "are controversial and unlikely to be adopted by most governmental pools."

But, he adds, "the COPs approach is a good example of how a crisis can stimulate an imaginative and cooperative effort." ■

Risk managers respond to PRIMA's 'call to arms'

BOSTON—A record-breaking 600 people heeded the Public Risk & Insurance Management Assn.'s "call to arms" and gathered at its seventh-annual conference.

PRIMA, whose membership has swelled to more than 1,200, held the conference, "Risk Management: Spirit of '86," June 8-11 in Boston. The central theme of its more than 40 concurrent sessions was dealing with the disappearing market for public entity insurance.

Risk management techniques other than risk transfer also were emphasized, highlighted by the presentation of the "Innovations in Risk Management Award" to Deerfield Beach, Fla., for its safety van program. The van brings 8- to 12-minute multimedia presentations on the safety topic of the month to each city work site.

Accepting the award for the city was Risk Manager David Amason, who proposed the idea and used ingenuity to overcome a lack of sufficient financing for it, a PRIMA spokesman said.

Mr. Amason "borrowed" a confiscated van from the Police Department and outfitted it with a removable inner shell of cabinets to house equipment, including a videotape player and slide and film projectors. The van also is equipped with loudspeakers and a fold-down awning to shield the viewing audience from the sun.

In addition, Mr. Amason and his staff have made some of the videos presented. They determine topics by periodic polling of the city's employees and accident control teams.

Mr. Ferraro

PRIMA also installed new officers, including Mark Ferraro, risk manager for Dallas, who will serve a one-year term as president.

Three new vps named to two-year terms were: Peter Potemkin, risk manager for Arlington, Texas; Sherry Puckett Rynders, risk management director for Collier County, Fla.; and Thomas Vance, risk manager for Anaheim, Calif.

PRIMA members also approved amendments to its bylaws that create a process for electing vps from six specific regions to ensure geographic balance. Another bylaw change increases the number of officers on the board to 11 from nine.

One seat was filled by the president of the pooling section. Elizabeth "Sue" Puddington, executive director of the New Hampshire School Board Insurance Trust, was elected to a one-year term as the pooling section's top officer. The other new seat, which will be filled next year, will be a "vp at large" to represent public entity employees who spend only part of their time as risk managers.

Other pooling section board officers elected included David Epps, executive director of the Missouri Intergovernmental Risk Management Assn., vp; and Julia Scott, director of insurance for the Kentucky School Board Assn., secretary/treasurer.

The pooling section also elected the following board members to two-year terms: Ms. Puddington; Celia Scott, risk manager for the Yolo County (California) Public Agency; and Bradley Harmes, assistant director with the Texas Municipal League. Also, Janis Scott was elected to a fill the one-year remaining in an unexpired board seat.

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Public sector

Continued from page 3

He derived these statistics from applying two assumptions to reports issued by A.M. Best Co.: that expenses equaled 35% of premium and net ultimate investment earnings on premiums totaled 31.6%.

Insurers blame increased losses from public entities primarily on the current civil justice system conditions, including higher awards and settlements; a propensity to sue; new liability theories; and erosion of governmental immunity, said F. Dean Hildebrandt Jr., vp with Travelers Insurance Co.

He cited a 1985 governmental liability survey by the All-Industry Research Advisory Council, which is sponsored by insurers and insurance trade associations.

Although the public entity liability insurance market is one of the hardest hit nationally, the degree of market constriction varies, primarily due to local court decisions, Mr. Hildebrandt said.

Insurers consider New Jersey, California, New York and Illinois the four most unfavorable states in which to insure government entities, the survey found. And, if the survey were conducted now, insurers would add Florida to the list because of recent legislation that includes premium rollbacks, he said. Insurers listed Iowa, Indiana, Nebraska and Wisconsin as the most favorable.

Despite the difficulties of finding and affording commercial insurance, Mr. Enfield labeled as "short-sighted" the movement of aggrieved buyers toward self-insurance alternatives like pools that may be insufficiently capitalized.

As the insurance crisis continues, risk managers are expected to keep growing in importance, noted Allen F. Hyman, former president of PRIMA's board and the Texas Municipal League's director of insurance services.

"The most important thing is that at last we have gained the recognition within our organization that we have a role to play and the services we provide the organization are, in fact, essential," he said.

Legislators considering tort reforms, local organizations needing insurance and the news media are turning to public sector risk managers for answers about the tight insurance market, he noted.

Insurance has become a major cost for public entities in Texas, Mr. Hyman said. Three Texas communities recently testified they were allocating anywhere from 16% to 80% of their property tax income to insurance costs, he said.

But this thrust into the spotlight makes it necessary for public entity risk managers to make hard decisions daily that can have a wide-reaching effect not only on the entities but also on the contractors and vendors that serve them, Mr. Hyman said.

Contractors and vendors are complaining about and legally challenging public entities' insurance requirements because they cannot find or afford the mandated coverages, Mr. Hyman said. A risk manager needs to review the limits and ensure that they are realistic "risk-driven" limits and not unnecessarily high ones set at a time when insurance was inexpensive and readily available, he added.

But, the insurance limits also need to be adequate, despite contractors' complaints, to protect a citizen's right to recovery and the public entity's fiscal integrity should it be named as a co-defendant with a contractor or vendor.

In addition, risk managers' decisions could result in litigation in years to come filed against public officials by contractors contesting the requirements, he stressed.

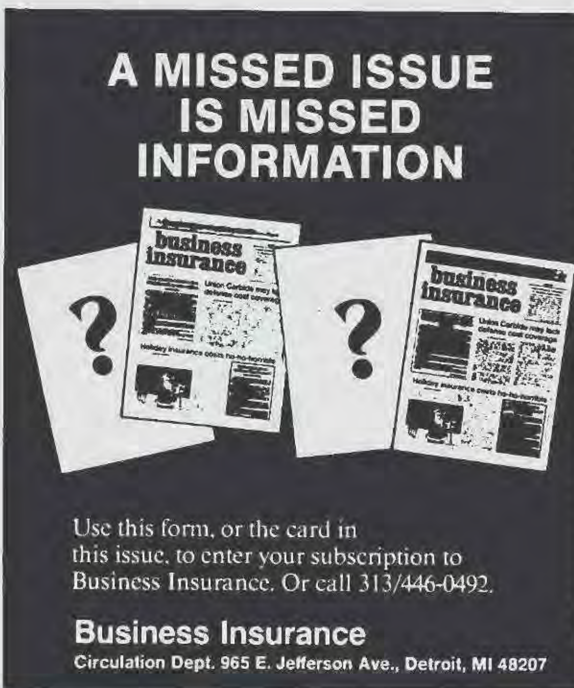
"Many of us are facing a new crisis that we never faced before," concurred Mary Lou Emmert, outgoing PRIMA president and panel moderator. She is the risk and employee benefits manager for Monterey County, Calif.

Public sector risk managers need to get used to facing problems of constricted markets, speakers said.

"Market cycles will continue to be more frequent and more violent as society continues to struggle with the basic philosophical question, and that question is: Do we seek a system of redress that is based on a system of fault, or do we seek a system of redress that is based simply on the idea of compensation?" Mr. Enfield said.

Speakers generally supported tort reform measures like Proposition 51, the California initiative that repealed the application of joint and several liability for non-economic damages (*BI*, June 9).

Richard B. Owles, managing director for Arthur J. Gallagher & Co. in London, also supported limiting damages for pain and suffering and lawyers' fees and using structured settlements. ■



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When entities should bend bidding laws

By MEG FLETCHER

BOSTON—State laws requiring competitive bidding for insurance policies may be temporarily suspended if market conditions warrant it, a state risk manager says.

But, competitive bidding should not be avoided all the time, advises Don LeMond, Missouri's risk manager.

Mr. LeMond addressed how to cope with competitive bidding requirements and their pros and cons during the Public Risk & Insurance Management Assn. conference.

Most public entities are required by law to announce that they are seeking bids on products and services above a certain value, including insurance policies. The laws generally require the entity to accept "the lowest and best bid."

When only one or two insurers will consider underwriting the public entity's risk, but they do not want to go through the bidding process, a public entity risk manager can cope by requesting a temporary stay of the competitive bidding requirement, Mr. LeMond said.

The risk manager seeking such a stay should review state law governing emergency procedures and then go through the administrative chain of command in his or her jurisdiction, which could include the purchasing agent, the commissioner of administration and even the governor's office.

In Missouri, before the state became primarily self-insured, Mr. LeMond worked out a memorandum of understanding with the state's purchasing agent that essentially allowed the risk manager, with the purchasing agent's approval, to declare an emergency and temporarily stay bidding requirements.

"Take advantage of the situation and use your own ingenuity," Mr. LeMond urged.

Risk managers also can cope with competitive bidding laws by sending out bid specifications that are either so tight or so loose that no seller will want to bid on them, he said.

Although that approach may raise ethical questions, it is sometimes useful in maintaining program continuity, Mr. LeMond said.

However, any steps to work through or around competitive bidding requirements should be done only when market conditions demand it and only with the approval of the public entity's purchasing agent and legal counsel, Mr. LeMond warned. In addition, all steps need to be documented, he said.

"There has always been a love-hate relationship with purchasing agents," he said, recalling one purchasing agent who refused to allow him to designate a broker of record until he hired a consultant who affirmed the idea.

Relationships with attorneys also are important, and their legal opinions prohibiting some common practices, like restricting sellers to local residents, can help a state risk manager.

The advantages of competitive bidding about equal the disadvantages, Mr. LaMonde said. Advantages include an ability to keep agents or brokers alert or to change unsatisfactory ones, lower costs and improve coverage. Competitive bidding also offers a "political" advantage because it allows a risk manager to avoid charges of favoritism and discrimination in buying insurance.

Bidding provides a record of sellers that do and do not respond to opportunities. That file can provide protection when an agent or broker complains to a state legislator that he was not allowed to bid on the state's insurance business, Mr. LeMond said.

Disadvantages of competitive bidding include the time-consuming task of developing specifications; the fact that specifications may inhibit creativity; loss of established relationships with agents and brokers; and fear of upsetting established markets.

Some of the disadvantages can be overcome if a risk manager adheres to the following guidelines in writing specifications:

- Include in the general instructions that the state intends to stay with the particular insurance program for three years, although it's technically allowed to allocate the funds only on an annual basis.
- Narrow the field of eligible sellers by listing conditions like the size or amount of experience brokers must have, or a minimum financial rating for insurers. In addition, require brokers to include certification that they have errors and omissions coverage.
- Stipulate a minimum 90-day notice before cancellation and the type and frequency of claims reports expected from insurers.
- Bid workers compensation separately and seek a company that specializes in it.
- "Sell" the risk with a statement of risk management goals and photographs of risks. Involve underwriters in loss reduction planning so they develop a personal interest in your program.
- Require final versions of draft policies to be delivered as soon as possible to avoid waiting for the finished policy.

Hard market teaches school districts lesson

By MEG FLETCHER

BOSTON—School system risk managers need to learn the ABCs of attracting insurers—or coping with self-insurance—if they want to help their districts during the hard market.

The lessons are crucial because of the shrinking insurance market for school districts, said Ronald Rakich, a consultant with Warren, McVeigh & Griffin in Newport Beach, Calif. He was speaking at the recent Public Risk & Insurance Management Assn. conference.

Some schools can't find a single insurer to write professional liability insurance to cover the district, elected officials and all professional employees, teachers and board members, Mr. Rakich said. In 1984, 14 insurers were offering the coverage, he said.

And, umbrella liability insurance for school districts is "flirting with extinction," he said.

Rates for schools' liability insurance are sometimes six times the previous year's rate, if available at all. Coverage limits are sometimes "fantastically" reduced. For example, limits were cut to a maximum of $1 million from $40 million to $50 million for a major Texas district some years ago. In addition, exclusions are widespread.

Even schools' fleet and property insurance programs have been affected, which he finds "almost incomprehensible," although fleet insurance has not been a profitable line for insurers in some states.

One medium-sized district in Texas saw a 500% increase in its property insurance premium even though it had no losses. Meanwhile, a major Texas school district was forced to take a $1 million per occurrence deductible on its property policy, according to Mr. Rakich.

Mr. Rakich

At the same time capacity in some areas is severely diminished, schools' exposure to federal civil rights suits could be increasing as plaintiffs flee state courts because tort reform measures there have limited potential recoveries there, he said.

School risk managers facing availability and affordability problems need to allow six months to collect loss data, review their district's reserves and take steps to market themselves attractively to commercial insurers.

Mr. Rakich urged them to use bidding only to select a single knowledgeable agent with good contacts. Yet, he acknowledged that pressure from agents' associations to deal only with local agents can be "a real problem."

Although the attorneys general for about 15 states have determined that using only local agents violates antitrust laws, it is still being done, Mr. Rakich said.

Session moderator Elizabeth "Sue" Puddington, executive director of the New Hampshire School Boards Insurance Trust Inc., said she has been "quite" successful in dealing with agent associations by showing them these legal opinions.

An agent selected to solicit insurers should be asked for a written list of markets he or she plans to contact within 90 days before the policy's expiration, Mr. Rakich said. That lets the risk manager know if the agent lacks sufficient markets.

In addition, risk managers may want to research markets themselves, and that search could be aided by a newly released guide to markets available through PRIMA, speakers said.

Some districts may want to explore alternatives, including soliciting insurers that write on a direct basis, surplus lines brokers or wholesalers, trade associations and mass marketing programs and self-insurance pools, Mr. Rakich said.

Risk managers also should personalize a well-documented submission by meeting with potential underwriters.

Districts fearing a possible cancellation notice should have a crash marketing program in mind and contact state regulators for any assistance they may be able to offer.

Mr. Rakich urged school districts to do everything possible to avoid going without insurance. However, they should have a contingency plan for emergency risk financing tools and evaluate an austerity program to build loss reserves.

Self-insurance pools are the best approach to obtaining excess coverage if commercial insurance is not available, Mr. Rakich said. However, a district should not join a pool if it would not want to remain a member during a competitive insurance market, he said.

Reducing a district's liability for sports injuries to students in both regular gym classes and extracurricular sports is particularly important, said Susan G. Smith, a Philadelphia-based broker with Alexander & Alexander Inc., who spoke at a related PRIMA session. She is an attorney and former coach.

School districts have legal duties that include maintaining facilities and supervising, instructing and providing first-aid to injured students, she said.

School districts should be especially mindful of their liability for non-teachers hired to coach students. They should be insured and properly trained, she said.

Schools should prepare a handbook detailing relevant district operations, including equipment use and transportation policies. The part-time coaches also should be trained in first-aid, and the training session documented.

In addition, Ms. Smith urged school district risk managers to check that parents, and not students who are legal minors, sign waivers of legal liability for sports participants.

And, a local attorney should review the wording of a waiver to ensure that they are clearly written and reflect state law.

A waiver may reduce a district's liability in some cases, but not situations where negligence is involved, Ms. Smith said.

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Public entity losses worse than other lines, ISO says

By MEG FLETCHER

Public entities produced the worst nationwide loss and loss expense ratio for insurers of four highly publicized difficult liability insurance lines over a recent five-year period, according to data released by the Insurance Services Office to its members and affiliates.

Liability policies issued to public entities across the country produced a 188.6% loss and loss adjustment expense ratio for the five years ending Dec. 31, 1984, according to ISO's "Chief Executive Circular," a copy of which was obtained by *Business Insurance*.

That loss and loss expense ratio was significantly worse than the comparable loss and loss expense ratio of day-care nurseries at 126.7%, and recreational classes at 115%. However, all of those loss ratios are "horrendous," an ISO spokeswoman said.

Liquor liability insurance, meanwhile, produced only a 61.2% loss and loss expense ratio during the same period, according to the ISO report. But, the liquor liability ratio reflects only a small portion of the market and includes better risks, the spokeswoman said.

Results of surplus lines insurers, which don't report to ISO, are excluded.

ISO tallied insurers' loss experience for four classes that have been identified as "experiencing availability and affordability problems," according to the 23-page report.

ISO issued the reports on nationwide loss trends in the four classes in response to pressure from governmental study groups and the media for statistics. ISO also has promised to provide individual state summary exhibits to regulators and other interests "as requested and appropriate."

The loss and loss expense ratios in the ISO report, issued in April, reflect reports from insurers that write about 80% of all primary general liability insurance premiums in the United States. And, they generally reflect rising ratios for each class during each of the five years.

The loss and loss expense ratio compares incurred losses and loss adjustment expenses with total premiums earned for the policies in the five years since Dec. 31, 1979. Losses were adjusted to the ultimate settlement using nationwide loss development factors.

Excluded from the statistics are investment income or underwriting expenses.

An ISO spokesman said the statistics "certainly" are representative of trends, but the report notes that the number of claims even on a nationwide basis "is often quite limited so the credibility...must be carefully examined."

The statistics on the selected liability classes, except for liquor liability insurance, are drawn from claims experience under the owners, landlords and tenants coverage provided under general liability insurance policies. OL&T includes coverage for liability claims for bodily injury and medical payments arising out of the ownership, maintenance or use of the covered premises and incidental operations.

All OL&T classes produced a five-year loss and loss adjustment expense ratio of 123.5%, rising to a high of 154.8% in 1984 from a low of 90.9% in 1980. Incurred claims during the period totaled 444,399, rising to a high of 106,307 in 1984 from a low of 57,680 in 1980.

Insurers earned $3.4 billion in premiums during the five-year period and incurred basic limit losses of $2.8 billion, which include the first $25,000 of each loss and all loss adjustment expense. During the same period, insurers also incurred excess limit losses of $1.4 billion, which include that part of each loss excess of $25,000, excluding loss adjustment expenses.

The OL&T municipal class, however, produced an average annual loss and loss expense ratio over the five-year period of 188.6%, rising to a high of 257.7% in 1984 from a low of 133.1% in 1980.

Incurred claims during the period totaled 43,132, rising steadily to a high of 12,125 in 1984 from a low of 4,390 in 1980.

Premiums earned during the five years totaled $304.5 million, while basic limit losses incurred totaled $345.1 million and excess limit losses incurred totaled $229 million.

The ISO report further breaks down the municipal OL&T experience, showing that streets and roads produced the biggest losses. Within the municipal OL&T class:

- Streets and roads produced a 394.1% loss and loss expense ratio for the five-year period, rising to a high of 542.5% in 1984 from a low of 221.2% in 1980.

Incurred claims during the period totaled 8,568, but the number of claims each year was below 2,000, fluctuating to a high of 1,921 in 1983 from a low of 1,307 in 1980 and falling to 1,868 in 1984.

Premiums earned during the five-year period totaled $34.1 million, while basic limit losses totaled $76.9 million and excess limit losses totaled $57.3 million.

- Public schools, which include educational facilities up to and including two-year community colleges, produced a 187.7% loss and loss expense ratio during the five year-period, rising to a high of 261.6% in 1984 from a low of 113.8% in 1980.

Incurred claims during the period totaled 17,452, growing rapidly to 5,100 in 1984 from just 1,807 in 1980.

Premiums earned during the period totaled $99.4 million, while basic limit losses totaled $122.2 million and excess limit losses totaled $64.3 million.

- Governmental subdivisions produced a 149.2% loss and loss expense ratio over the four-year period 1981-1984, rising to a high of 216.4% in 1984 from a low of 107.1% in 1981.

Incurred claims during the period totaled 9,828, rising rapidly to 2,236 in 1982 from just 886 in 1981, to a high of 3,627 in 1984.

Premiums earned totaled $95.6 million, while basic limit losses totaled $83.7 million and excess limit losses totaled $58.8 million.

Excluded from the municipal class but reported separately were claims in the municipal-related class, which includes private and municipal policyholders involved in municipal functions such as bus stations, airports, toll bridges and firehouses. This class produced a 141.1% loss and loss expense ratio during the five-year period, with the annual ratio ranging from a low of 97.9% in 1982 to a high of 162.1% in 1984. In 1980, however, the loss ratio was 154.3%.

Incurred claims during the period totaled 2,396, rising to 619 in 1984 from 308 in 1980.

Premiums earned totaled $16.9 million, while basic limit losses totaled $14.4 million and excess limit losses totaled $9.5 million.

Continued on next page

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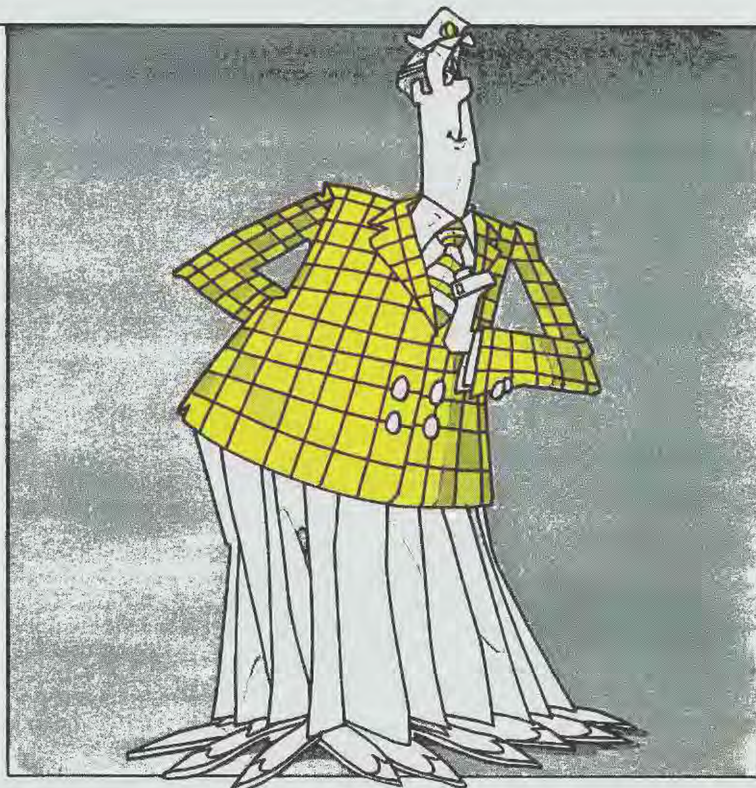

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Five-year losses

Continued from previous page

Next to the municipal class, the next highest loss and loss adjustment expense ratio was produced by institutional day-care operations, excluding services operating from an individual's home, which produced a 126% loss ratio during the five-year period, rising to a high of 169.8% in 1984 from a low of 71.8% in 1980.

Claims incurred during the period totaled 2,504, rising steadily to 840 in 1984 from 254 in 1980.

Premiums earned during the five years totaled $16.3 million, while basic limit losses totaled $11.8 million and excess limit losses totaled $8.8 million.

The recreational classes produced the next highest loss and loss expense ratio—115% over the five-year period, rising to a high of 148.1% in 1984 from a low of 90% in 1980. This class includes risks like recreational facilities, amusement parks, fireworks demonstrations and municipal and private ski lifts.

Claims incurred during the period totaled 36,717, rising to 8,284 in 1984 from 5,367 in 1980.

Premiums earned during the five years totaled $264.7 million, while basic limit losses totaled $205.1 million and excess limit losses totaled $99.2 million.

The liquor liability class produced the lowest loss and loss expense ratio over the five years, 61.2%, rising to a high of 82.5% in 1984 from a low of 43.1% in 1980. Claims incurred during the period totaled 1,293, rising to 396 in 1982 from 127 in 1980 and falling to 302 in 1984.

Premiums earned during the five-year period totaled $63.7 million, while basic limit losses totaled $18.2 million and excess limit losses totaled $20.7 million. ▪

Tap prior liability policies to fund EIL exposures, experts advise

By MEG FLETCHER

BOSTON—Most public entities trying to finance their environmental impairment liabilities will find that savvy negotiating with prior insurers can reduce their out-of-pocket defense and cleanup costs, experts say.

Many public entities look to previous insurers to pay claims for EIL losses because they cannot find available or affordable commercial coverage in today's tight market.

Some public entities cannot even get fire insurance on the scales used to weigh garbage because underwriters fear the insurance contract may be interpreted to provide broader coverage, said David J. Dybdahl, director of environmental risk management services at Corroon & Black of Wisconsin Inc.

He and other speakers discussed public entities' EIL exposure at two seminars sponsored by the Public Risk & Insurance Management Assn. at its recent conference in Boston.

Most liability insurance policies written in prior years provided lower deductibles or self-insured retentions and broader coverage than more recent policies, either on their face or as the result of court interpretations, said Larry W. Mitchell, an attorney with Los Angeles-based Cotkin, Collins, Kolts & Franscell.

"Financing environmental impairment liability requires that we have to be creative," Mr. Dybdahl added. The idea, he said, is to go after old policies—as long as the insurers have money.

Public entities face EIL exposures especially from landfills and underground tanks, said Michael H. Tiller, president of the environmental risk division of the Tiller Consulting Group in Corona del Mar, Calif.

However, their multifaceted operations include a wide range of potential EIL risks including the storage of pesticides or salt for roadways, indoor garage operations and even contractual responsibility for some nuclear decontamination costs at a local utility, public entity sources say.

Public entities face liability from federal statutes like the Toxic Substances Control Act, some state "Superfund" laws and private lawsuits charging negligence, strict liability, nuisance and trespass, Mr. Mitchell said.

Damages under federal and state statutes can include cleanup expenses, injury to natural resources and punitive damages and criminal fines. Damages under private lawsuits can include property damage, bodily injury, emotional distress, punitive damages and sometimes the cost of future medical monitoring, Mr. Mitchell said.

To describe the scope of the problem, Mr. Dybdahl said total cleanup of all 22,000 identified hazardous waste sites may exceed $100 billion, according to conservative estimates. Fewer than 10 of the 750 priority sites have been cleaned up, he added.

Regardless of the ultimate liability, public entities face a potentially large exposure for pre-litigation and litigation defense costs and fees for technical inspections. The technical inspection costs can exceed pre-litigation defense costs by 3-to-1, Mr. Mitchell said.

If a risk manager is concerned that his or her public entity may have a pollution problem, it should have an attorney hire an environmental consultant to assess the problem. That will ensure that the consultant's reports are protected by the attorney-client privilege and cannot be used against the public entity at a later date, Mr. Mitchell said.

An assessment of a public entity's EIL risk should entail a systematic review starting with a public entity's physical operation, the related hazards, the potential effect of natural perils, the path of environmental pollution and its effects on people, Mr. Tiller said.

That kind of assessment will help prepare a risk manager if and when notification comes that the public entity is being sued or receives a letter from a federal or state regulatory agency stating the problem and inviting the public entity to negotiate.

To determine the amount of potential insurance, the risk manager needs to identify, gather and analyze copies of all primary and excess policies that could possibly provide coverage during the relevant period, which is "the first date of generation, transportation or ownership to the date of last release," Mr. Mitchell said.

A risk manager should first turn to policies covering environmental impairment liability and comprehensive general liability exposures. The risk manager should not be discouraged by pollution exclusions in policies, especially between 1970 and 1985, because subsequent court interpretations have voided much of their effect, he said.

Previous policies covering bodily injury and property damage under premises and operations coverage gives "pretty broad coverage," Mr. Dybodahl said.

"If a public entity transported pollutants, it may also be able to get some coverage under its automobile liability policies," he said.

And, if a public entity has to break up a basement floor to get to an underground source of contamination, it may be able to get some coverage under first-party property policies that cover appurtenaces to the land.

A risk manager may have to be a "private eye" to locate policies that span several years, Mr. Mitchell said, which will entail questioning previous brokers and public employees. The public official may even have to ask attorneys in previous cases which insurer paid their legal fees, he added.

The risk manager should next notify relevant primary and excess insurers of the potential claim. "This is where many entities break down," Mr. Mitchell said.

A public entity should not hesitate because federal or state regulators have not filed a lawsuit or because the entity does not want to upset relations with an insurer in today's often-constricted market with its recent high deductibles and self-insured retentions.

Attorneys can help public entities decide which policies should be considered for filing claims. Those will be the policies containing broad coverage, high limits or low deductibles.

The targeted insurers, however, probably will want to bring in insurers that issued more recent policies, he noted.

The insurers often ask for a list of all other insurers, but Mr. Mitchell suggested that list not be released until the insurer provides a complete, written explanation of its position.

The public entity can refuse to cooperate with the insurer's request, Mr. Mitchell said. An insurer cannot avoid its duty to defend a public entity because of the public entity's failure to cooperate, he added.

When dealing with the insurers, "make a record with your insurance carriers and force them to ar-

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EIL coverage

Continued from page 30

ticulate in writing their exact positions and the facts, law and policy provisions that they are relying upon in support thereof," Mr. Mitchell suggested.

Risk managers who try to establish such a record likely will encounter one of several responses from insurers, he noted. These may include:

- Volunteering to "monitor" the situation and then listing several reasons why they believe they do not owe the policyholder any coverage.

"This is a non-response. Be aware of it," Mr. Mitchell said.

- Offering to provide a negotiated partial defense under a strong reservation of rights provision for indemnification. This means if a court later decides that the insurer had no responsibility to provide coverage, the insurer will not have to pay indemnification costs.

- Offering to provide a total defense under a strong reservation of rights clause, which often includes an attempt to reserve the right to of recover from the policyholder defense expenditures as well as indemnity costs, he said.

Mr. Mitchell prefers negotiating an insurer's coverage responsibility to litigating it.

A public entity's right to designate its own defense counsel generally depends upon the position taken by the insurer, Mr. Mitchell said. If an insurer is defending under a reservation of rights clause, a public entity probably may hire its own defense counsel.

It can make an even stronger case for hiring its own defense counsel in cases where the insurer lacks an economic motive to present a vigorous defense—for example, when it is not required to provide indemnification, he said.

If the insurer suggests that the public entity pay for separate personal counsel, "that may be bad faith in and of itself," Mr. Mitchell said. As such, it could provide grounds for the public entity to recover from the insurer.

An insurer's duty to indemnify for the cost of cleanup can be reduced by an exclusion that says an insurer will not cover contamination a public entity caused to property it owns, occupies or rents. However, an insurer may be indirectly forced to pay for on-site cleanup because that may be the only way to stem the flow of contaminants onto neighboring property, for which it is responsible.

Mr. Mitchell said he prefers negotiating an insurer's coverage responsibility to litigating it. However, in negotiating settlements, public entities should understand the differences between technical costs associated with providing a defense and the technical costs associated with indemnification for cleanup before agreeing to assume any of either costs, he advised.

Public entities have other alternatives for funding EIL losses besides seeking payments from previous insurers, Mr. Dybdahl said.

Among them is using risk-sharing pools, which he said are "very new" and may be the only alternative in the future.

He had proposed a statewide pool for landfill liability in Minnesota and Wisconsin, but it was rejected.

James Blackburn, staff counsel for the North Carolina Assn. of County Commissioners, said in a separate interview that the organization plans to establish on Sept. 1 what may be the first intergovernmental pool exclusively for pollution liability.

But apart from risk financing measures, an even better alternative is to develop "environmental foresight" and control EIL risks before they become claims, Mr. Miller emphasized.

A public entity risk manager needs to develop a systematic approach to controlling EIL risks so he or she has a framework for asking the right questions and keeping needed information, he said.

He cited one public entity that does not know where all its sewers are located because it has not kept sufficient records of the work a variety of engineering and construction companies over the years. He didn't identify the entity.

He also suggested consolidating the clinics used to provide medical services to employees injured on the job to ensure that needed records are kept about the protective clothing or equipment employees were using at the time of the injury.

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Missouri law authorizes pool for public entities

By MEG FLETCHER

JEFFERSON CITY, Mo.—Public entities in Missouri are awaiting the startup of a newly authorized statewide pool that by law must offer them coverage.

The Missouri Public Entity Risk Management Fund was established by legislation, H.B. 1435 and H.B. 1461, signed June 20 by Gov. John D. Ashcroft.

The pool, which is expected to begin operating in the late fall, will provide liability coverage, says Don LeMond, the state's risk manager, though the statute allows the fund's board of trustees to offer other lines of coverage.

The enabling legislation establishes initial limits of $800,000 per occurrence, which is the maximum liability faced by a Missouri public entity in state tort cases.

Missouri public entities and their employees are immune from most tort claims except when operating a motor vehicle or knowingly allowing public property to remain in a dangerous condition.

The pool will also provide coverage for federal civil rights violations up to the $800,000 limits, said Gary Markenson, executive director of the Missouri Municipal League.

However, the statute is broadly written and allows the fund's board of trustees to increase the limits offered, Mr. LeMond said.

"We think it is a great step the state is taking to help the cities," said Mr. Markenson. Many of Missouri's 3,000 to 4,000 public entities are operating without liability insurance, he noted.

Some public entities have closed jails and curtailed activities and at least one is spending 50% of its budget on insurance, Mr. LeMond pointed out.

Mr. Markenson said he expects several hundred public entities to join the pool when it becomes operational in the late fall, although no date has been set yet for startup.

Public entities' contributions to the pool are expected to be "substantially" less than the premiums they would pay to commerical insurers because of the absence of commissions, profit factors and premium taxes, he said.

The annual contribution for each public entity will be based on its loss experience, said Mr. LeMond.

The feasibility of the pool was highlighted by responses from 700 of more than 2,000 public entitities surveyed during the pool planning process, Mr. LeMond said.

These entities paid between $7 million and $8 million in premiums during a 12-month period, while claims totaled only about $1 million, he said.

Under the legislation, the pool will not be responsible for:

- Fines or penalties for violation of any civil or criminal statutes, administrative regulations or county or municipal ordinances.
- Attorneys' fees and expenses for defense of charges that criminal statutes or county or municipal ordinances were violated.
- Claims against a participating public entity or its employee or officers that were brought by or rendered in favor of any participating public entity, employee or officer acting in an official capacity.
- Claims against independent contractors servicing a member public entity, its officials or employees.

Establishment of the voluntary pool is not expected to affect the Missouri Intergovernmental Risk Management Agency, an existing pool, according to Mr. Markenson.

MIRMA offers higher limits of liability coverage, $1 million instead of the $800,000 available through the fund, as well as other types of coverages, said David C. Epps, MIRMA's executive director. In addition, the pool's membership is handpicked to ensure only good risks are included.

The insurance industry generally opposed the legislation because it feared the loss of market share and questioned the proposal's financial soundness, according to Mr. Markenson.

Linda Laurich, an attorney with the government affairs department of the Alliance of American Insurers, said she is concerned about a provision that allows the pool's board to assess member public entities for their proportionate share of unfunded losses. ■

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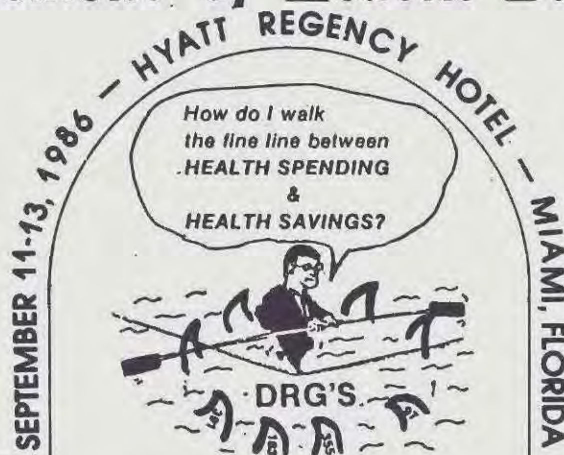

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Illinois reforms

Continued from page 2

after his signature.

While the IMA and the chamber are committed to seeking a veto, the Illinois Municipal League and the Illinois Assn. of Park Districts, as well as other public entity groups in the coalition, have yet to decide if they will support businesses' call for a veto, since the new legislation gives them some relief.

General reforms included are:

- An exemption from joint and several liability for non-medical damages for defendants in negligence actions who are less than 25% liable. All defendants will be jointly and severally liable for plaintiffs' medical expenses.

This reform does not apply to environmental liability and medical malpractice cases.

- A bar to recovery by plaintiffs who are more than 50% at fault and a reduction of other plaintiffs' damages by the amount they are at fault.
- Deductions for amounts recovered from collateral sources, such as medical insurance payments paid to or payable to plaintiffs, if an award exceeds $25,000. However, the reduction will not apply to payments that are subject to recoup and it cannot exceed more than 50% of the total award. In addition, the award will be increased by the amount that the plaintiff has paid in insurance premiums for two years prior to injury.
- Sanctions against parties, attorneys or insurers for frivolous pleadings and motions. Penalties may include reasonable expenses incurred and attorneys' fees.
- A limitation on punitive damages, permitting them only where the defendants are guilty of willful and wanton conduct and where the damages would serve to punish them or deter others from such conduct.
- Authorization for the court to distribute punitive damage awards among plaintiffs, their attorneys and the state Department of Rehabilitation Services.

Public entities won far more reforms, although not everything they wanted. For them, the bill:

- Bars punitive damages against public officials acting in official executive capacity.
- Bars liability for damages resulting from hazardous recreational activities where the plaintiff knew or should have known it was a hazardous activity and for injuries occurring in a body of water adjacent to land owned or maintained by a local public entity if that body of water is not owned or maintained by the public entity.
- Provides new immunity from liability for damages allegedly caused by failure to detect or solve crimes, identify criminals or provide rescue or emergency services; inadequate warning signs, barriers and traffic devices; and failure to upgrade streets and traffic controls to meet changing standards.

The bill does not limit liability for failure to maintain streets and traffic controls in proper condition.

- Provides new immunity for officials and employees from liability for the negligent operation of a vehicle when responding to an emergency call. Willful and wanton conduct in the operation of such vehicles, however, is not exempted from liability.
- Decreases the statue of limitations to one year from two.
- Specifically authorizes participation in a self-insurance pool.
- Abolishes the local government immunity waiver now triggered by the purchase of insurance.
- Permits a court to order payment of a judgment in up to 10 equal installments, with interest, where a single payment would impose unreasonable hardship.
- Allows local public entities to issue general obligation or revenue bonds without a referendum to create reserves for tort judgments that also may be transferred to a pool.
- Allows all school districts to use tort liability levies to pay all costs, including attorneys' fees, for self-insuring.

"Unfortunately, it doesn't solve the insurance crisis. That will still be with us," said James Ryan, mayor of Arlington Heights, Ill., and president of the Illinois Municipal League.

The league's board will meet soon to decide whether to support a veto, but, he said, he believes "half a loaf is better than none."

Illinois business leaders stress that they are confident that a veto of this bill would not scrap tort reform in Illinois entirely this year.

"The General Assembly wants to pass something this year," says Mr. Gottschalk.

Besides addressing tort reforms, the measure also includes several insurance related provisions, all of which were supported by the Illinois Insurance Department. The legislation requires insurers to:

- Provide loss information for the preceding three years upon policyholder request or with notification of cancellation or non-renewal.
- Give 90 days' notice to the Insurance Department of termination of any commercial line of insurance in Illinois, accompanied by data supporting the decision and information regarding whether the insurer will continue the line in other states.
- Give 60-day notice of cancellations, non-renewals and premium increases exceeding 30%. If the insurer gives 30 to 60 days' notice, the policy automatically is extended for 60 days. If the insurer fails to give at least 30 days' notice, the policy is extended a year.
- Allowing policyholders whose claims-made policies were canceled by liquidation order to purchase an extended discovery period where the policy contains such an option with the intention that claims would be covered by the state guaranty fund.

The bill also creates the Illinois Insurance Cost Containment Act to require the Insurance Department to monitor the insurance market and recommend ways to hold down insurance costs.

The bill does not include authority for the Insurance Department to roll back rates, a provision that had been included in an earlier version.

The bill was the product of a conference committee composed of senators and representatives who listened over several months to all parties, including business groups, insurers and trial attorneys. It was adopted by the House in a 76-41 vote June 30, and passed the Senate later that evening by a 30-23 vote. The vote was split across party lines, with Democrats in control.

Proponents of the bill, including House Speaker Madigan and Senate President Philip J. Rock of Oak Park, both Democrats, say the measure will result in lower liability rates and more available insurance. But insurance industry spokespersons disagreed.

"We just feel the tort reform (measure) is so insignificant it will not remedy the situation," said Morag Fullilove, vp-government affairs for the Alliance of American Insurers in Schaumburg, Ill.

"It's not the kind of tort reform we needed in Illinois," she added. "It's sad that everyone worked so long for a package of meaningless legislation," Ms. Fullilove said.

"The insurance industry, like the rest of the business community, is disappointed that the Illinois Legislature did not pass strong tort reform," said Robert G. Schultz, executive vp of the Illinois Insurance Information Services in Chicago.

"We're not in any position to say (rates will drop). We have no way of knowing," Mr. Schultz said, adding that if the provisions reduce the cost of losses, then that would be passed onto policyholders. ■

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Supreme Court appointments

Continued from page 1

"There is a possibility the court will be more sensitive to business and the application of constitutional doctrine in the punitive damages area," points out Ellis Horvitz, an attorney with the Encino, Calif., firm of Horvitz, Levy & Amerian.

Mr. Horvitz had filed an amicus brief on behalf of insurer groups challenging the constitutionality of punitive damages in a case brought before the court during its most recent term.

In that case, *Aetna Life Insurance Co. vs. Lavoie*, the court heard arguments on whether punitive damages violated the excessive fines clause of the 8th Amendment and the due process clause of the 14th Amendment (*BI*, Dec. 2, 1985).

Although the case was returned to trial on another issue, Chief Justice Burger, in the 8-0 decision, said that arguments regarding the unconstitutionality of punitive damages "raise important issues which, in an appropriate setting, must be resolved" (*BI*, April 28).

While Mr. Horvitz does not expect "a broad fundamental change," he said "the court might have a little sharper eye for the constitutional doctrine of due process not heretofore applied in favor of defendants in punitive damage cases."

"In terms of getting an ear more receptive to constitutional rights of the business community, the appointments are a step in the right direction," he said.

Bruce Fein, a constitutional scholar at the conservative American Enterprise Institute in Washington, said that while the high court cannot be characterized as pro- or anti-business, Judge Scalia is more apt than most of the justices to defer to state legislatures.

Thus, Judge Scalia, who was a visiting scholar at the AEI in the 1970s, would be less likely to overturn new state laws placing caps on non-economic damages in liability awards or limiting plaintiffs' attorneys' contingency fees, Mr. Fein predicted. Challenges that these reforms are unconstitutional are expected.

However, a court swayed toward states' rights presumably could work against business as well, if the case involves state legislation detrimental to business.

An early test of this will come early in the court's term this fall when it hears Burlington Northern Inc.'s challenge of an Alabama statute that automatically assesses a 10% penalty on judgments against defendants if they lose a case on appeal.

Burlington Northern is arguing the statute denies it equal protection and violates due process rights under the 14th Amendment. A conservative court could reason a ruling for or against his client, speculates an attorney for the company.

Another area in which the court may be more favorable to business is in restricting discrimination suits brought against businesses and local governments under federal laws.

Judge Scalia, sitting on the U.S. Circuit Court of Appeals for the District of Columbia, dissented in an 1984 opinion holding that sexual harassment of an employee by a supervisor violates Title VII of the Civil Rights Act of 1964.

While the Supreme Court last month upheld the lower-court ruling, permitting the employee to sue her supervisor and her bank employer, Justice Rehnquist wrote in the opinion that companies are not always automatically liable for sexual harassment by supervisors.

An attorney who defends private employers against discrimination suits brought by federal agencies, however, considers the potential impact of the appointments "a mixed bag."

If courts become more conservative on affirmative action and less likely to enforce civil rights legislation, the federal government may bring fewer cases against employers, says Robert L. Jauvtis, with the New York firm of Epstein Becker Borsody & Green. However, he predicts individuals could pick up the slack and bring such suits, he said.

Local governments, often the target of civil rights suits, could win more protection from the new court.

The court will be far more conservative in interpreting Section 1983 cases, named for the section of the Civil Rights Act that permits suits against government officials for deprivations of constitutional rights, predicts Richard J. Puchalski, with the Chicago firm of Doss, Puchalski & Keenan. That would result in limitations on plaintiffs' ability to bring suits and recover damages against local governments, he said.

Justice Rehnquist generally has sided with local governments defending these types of cases and has limited plaintiffs' remedies, he noted.

Attorney James R. Schirott, who represents municipalities, agrees that there "probably will be some benefit to local governments" following the appointments, noting the high court may tend to restrict cases brought under Section 1983 and the 14th Amendment.

A more conservative court will limit the kinds of cases that are considered by the court under the guise of civil rights actions, said Mr. Schirott of the Itasca, Ill., firm of Schirott & Associates.

However, Mr. Schirott is looking forward to one more Reagan appointment to the court. "If the Supreme Court picked up one more vote, local government will be in the best position they've been in since the turn of the century," added Mr. Schirott. "Better days are definitely ahead for local governments as far as their treatment by the Supreme Court."

In general, and regarding issues broader than civil rights actions, a more conservative court also may be more restrictive in creating new remedies, tolerating concepts of private rights of action and permitting individuals to have standing, predicts Theodore B. Olsen, with the Washington office of the firm of Gibson, Dunn & Crutcher.

There's little agreement on how the new court will treat two other issues, one involving insurance regulation and the other employers' liability.

The new court might "stop nipping away" at the exemptions from federal antitrust laws granted the insurance industry under the McCarran-Ferguson Act, said Richard Seligman, with the Chicago firm of Katten Muchin, Zavis, Pearl, Greenberger & Galler.

"I'd expect a more conservative court to broaden the exemptions of the insurance industry. More activities of the insurance industry will be protected under McCarran-Ferguson," he said.

But, Robert H. Myers, a partner with the firm of Heron, Burchette Ruckert & Rothwell and Washington counsel for the National Assn. of Insurance Commissioners, suggested a more conservative court advocating a free-market philosophy would act to narrow the exemption rather than expand it, because this would have the effect of fostering competition.

However, he suggested it's more logical to assume that any changes in the McCarran-Ferguson Act would come through the legislative process rather than Supreme Court rulings.

The court may also consider issues arising from maritime and admiralty cases, said Robert W. Murdoch, with the Pittsburgh firm of Grogan, Graffam, McGinley & Lucchino.

For example, under the Jones Act, which allows injured seamen to sue ship owners in federal court for negligence, a lesser standard is required to prove negligence against defendants than in ordinary negligence cases, he said.

That protection may not be as necessary today as it was many years ago, and a more conservative Supreme Court may be more inclined to interpret congressional intent under the Jones Act differently to make negligence more difficult to prove, Mr. Murdoch said.

But another attorney who practices admiralty and maritime law did not think changes on the court would have much impact.

"I would question whether the changes will have any significant impact on admiralty law practice," said Theodore C. Robinson, who is on the American Bar Assn.'s Standing Committee on Admiralty and Maritime Law.

Mr. Robinson, with the Chicago firm of Ray, Robinson, Hanninen & Carle, said federal maritime law is well-established, noting he sees little impetus for change in court interpretations.

While some attorneys say the new court may more often favor business, there is at least one issue on which Judge Scalia is likely to favor plaintiffs that sue businesses: libel cases and lawsuits brought against the media.

In various decisions since he was appointed to the appellate court in 1982, Judge Scalia has sought to limit the media's First Amendment rights.

In *Ollman vs. Evans and Novak* and *Tavoulareas vs. Washington Post*, he took positions favoring plaintiffs. And just recently, the U.S. Supreme Court overturned by a 6-3 vote a 1984 decision written by Judge Scalia in a case against The Investigator magazine that some say would have made it easier to pursue libel suits. Judge Scalia had ruled the case should not have been dismissed on a summary judgment because it was up to a jury to determine if actual malice was shown in the articles.

However, Justice Byron White said that when considering a motion for summary judgment, the trial judge should consider "whether the evidence presented is such that a reasonable jury might find that actual malice had been shown with convincing clarity."

Mr. Fein of the American Enterprise Institute predicts that the landmark *New York Times vs. Sullivan* decision, which requires proof of "actual malice" against public figures, will be dented by the new court, although it may not be immediately overhauled.

"Justice Scalia doesn't believe the media deserves protection from false statements," he pointed out.

In the final analysis, most legal scholars and court observers caution against equating a conservative court with a pro-business court.

"Generally from decisions we've followed over the past five years, a conservative bias of an appointee doesn't have that great an effect on business issues," said Quentin Riegel, assistant general counsel for the National Assn. of Manufacturers.

Many business issues—such as questions of congressional intent, statutory interpretation and whether states can impose tax or regulatory controls on interstate business—aren't affected by a conservative bent of the justices, he added.

"It's very difficult to characterize Justice Rehnquist's opinions as pro-business," observed A.E. Dick Howard, White Burkett Miller professor of law and public affairs at the University of Virginia.

"Some decisions may be favorable to business, but it would be simplistic to say that there is a pro-business philosophy behind it," he said.

Moreover, there is often the problem of defining what "pro-business" means, especially if there is a dispute between businesses.

Late last month Judge Scalia supported a unanimous opinion that granted broad insurance coverage to Eli Lilly & Co. in a dispute with insurers over coverage for DES claims.

The June 24 decision affirmed an order by the U.S. District Court for the District of Columbia granting summary judgment in favor of Lilly and holding that any insurer on the risk between the time of ingestion of DES and the manifestation of DES-related symptoms has a duty to indemnify Lilly.

The decision by the three-judge appellate panel came after it had referred the case to the Indiana Supreme Court to determine the scope of coverage including the trigger of coverage for DES-related diseases under Indiana law (*BI*, Oct. 7, 1985). ■

BI Industry Stock Report

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Baldwin & Lyons Inc	OTC	24.00	4.3	60.0	0.16	0.7	24.00	20.00	0.5
Corroon & Black Corp	NYSE	41.13	3.1	22.0	0.65	1.6	41.13	39.25	55.7
Crump E H Cos Inc	OTC	28.75	4.5	24.4	0.25	0.9	28.75*	27.50	85.2
Gallagher Arthur J & Co	OTC	51.00	4.1	22.0	0.40	0.8	51.00	50.00	15.6
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Company	Exch.	Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol.(000)
American Express(Fireman's Fd)	NYSE	61.88	0.4	14.5	1.36	2.2	62.50	61.38	3,111.6
Anderson Clayton(Ranger/PanAm)	NYSE	55.88	-9.3	31.9	0.00	0.0	0.00	0.00	0.0
Armco Inc	NYSE	9.25	-3.9	0.0	0.00	0.0	9.63	9.25	436.4
Berkley W R Corp	OTC	39.75	5.3	30.8	0.24	0.6	40.00*	38.50	235.7
CIGNA Corp	NYSE	63.75	1.8	0.0	2.60	4.1	63.75	62.75	724.9
CNA Finl Corp (CNA)	NYSE	65.63	5.6	20.7	0.00	0.0	65.63	63.38	135.9
General Re Corp	NYSE	60.50	-2.0	37.3	0.88	1.5	62.50	60.50	742.4
ITT (Hartford Group)	NYSE	53.00	7.3	28.8	1.00	1.9	54.38*	52.38	8,299.1
Sears Roebuck & Co. (Allstate)	NYSE	48.63	1.3	14.1	1.76	3.6	48.63	48.50	3,881.7
Teledyne Inc (Argonaut)	NYSE	335.25	-0.4	8.1	0.00	0.0	338.00	335.25	44.1
Transamerica Corp (Occidental)	NYSE	36.00	0.0	17.2	1.68	4.7	36.00	35.00	821.8
CONGLOMERATES/HOLDING COS.	AVERAGE			16.9		1.1			

Insurers

Company	Exch.	Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol.(000)
Aetna Life & Cas Co	NYSE	61.38	-0.8	13.5	2.64	4.3	61.63	60.63	2,561.4
American General Corp	NYSE	42.00	5.3	12.7	1.12	2.7	42.13	39.63	1,505.3
Amern Heritage Life Invt Co	NYSE	42.50	0.6	15.6	1.32	3.1	42.50	42.25	1.6
American Indty Finl Corp	OTC	19.25	4.1	0.0	1.12	5.8	19.25	18.50	14.7
American Intl Group Inc	NYSE	128.50	1.4	23.9	0.44	0.3	128.88	126.25	488.0
Aneco Reins Ltd	OTC	2.75	-4.3	0.0	0.00	0.0	2.75	2.75	5.8
Avemco Corp	NYSE	28.00	2.8	15.6	0.50	1.8	28.00	26.50	6.3
Business Mens Assurn Co Amer	OTC	29.25	0.9	17.6	1.10	3.8	29.25	28.75	44.0
Chubb Corp	NYSE	70.50	3.3	138.2	1.56	2.2	70.50	67.63	383.1
Combined Intl Corp	NYSE	61.00	0.4	12.2	2.24	3.7	61.00	60.00	90.0
Continental Corp	NYSE	48.38	2.4	0.0	2.60	5.4	48.38	46.88	548.0
Crown Life Ins Co	OTC	390.00	11.4	3.9	0.00	0.0	390.00*	350.00	0.0
Durham Corp	OTC	46.50	1.1	12.5	1.36	2.9	47.00	46.00	10.8
Farmers Group Inc	OTC	42.00	0.0	15.1	1.00	2.4	42.00	41.50	1,088.1
Fairmont Finl Inc	AMEX	32.25	3.6	24.2	0.00	0.0	32.25*	30.75	49.7
Fireman Fd Corp	NYSE	37.75	7.9	0.4	0.30	0.8	37.75	35.25	979.7
Fremont Gen Corp	OTC	27.88	1.4	0.0	0.48	1.7	27.88	27.25	142.3
Great West Life Assurn Co	OTC	850.00	1.2	8.5	18.00	2.1	850.00	840.00	0.0
Home Group Inc	AMEX	26.75	1.4	58.2	0.00	0.0	26.75	26.13	448.5
Hanover Ins Co	OTC	62.00	2.9	33.2	0.56	0.9	62.00	61.00	93.7
Hartford Steam Boiler Insptn	OTC	98.00	4.8	15.6	2.40	2.4	98.00*	93.75	17.9
Kans City Life Ins	OTC	36.25	0.7	14.3	0.87	2.4	36.25	36.00	9.5
Kemper Corp	OTC	32.50	3.2	103.2	0.60	1.8	32.50	32.25	1,096.6
Liberty Corp S C	NYSE	43.00	0.9	18.1	0.72	1.7	43.00	41.00	68.5
Lincoln Natl Corp Ind	NYSE	53.00	3.9	12.0	2.00	3.8	53.00	51.25	370.8
Mission Ins Group Inc	PAC	3.00	0.0	0.0	0.00	0.0	4.38	2.88	250.0
Monumental Corp	OTC	54.63	0.5	19.4	1.40	2.6	54.75*	54.50	24.2
Nac Re Corp	OTC	35.00	-2.4	0.0	0.00	0.0	36.00	35.00	35.1
Nobel Ins Ltd	OTC	17.00	0.0	22.4	0.25	1.5	17.25	17.00	138.6
Northwestern Natl Life Ins	OTC	31.13	7.8	13.7	0.86	2.8	31.25	29.00	1,884.1
Ohio Cas Corp	OTC	84.50	1.2	19.6	3.00	3.6	84.50	83.13	160.3
Old Rep Intl Corp	OTC	36.75	-1.7	13.5	0.78	2.1	36.75	36.25	169.6
Orion Cap Corp	NYSE	34.75	-2.5	0.0	0.76	2.2	35.63	34.75	35.6
Protective Corp	OTC	24.25	-1.0	13.3	0.70	2.9	25.00	24.25	213.6
Provident Life & Acc Ins Co	OTC	29.63	4.9	10.3	0.84	2.8	29.63	28.63	156.7
St Paul Cos Inc	OTC	45.75	0.0	27.7	1.50	3.3	46.00	45.25	459.9
SAFECO Corp	OTC	59.00	1.7	15.9	1.68	2.8	59.00	57.75	182.2
Sri Corp	OTC	22.38	-1.6	0.0	0.80	3.6	22.50	22.25	24.5
Seibels Bruce Group Inc	OTC	19.25	0.0	0.0	0.80	4.2	19.25	18.75	13.8
Statesman Group Inc	OTC	5.50	0.0	39.3	0.05	0.9	5.50	5.38	33.7
Tokio Marine & Fire Ins Co	OTC	401.00	-2.6	75.5	1.05	0.3	406.00	393.50	5.2
Torchmark Corp	NYSE	37.25	0.3	16.2	0.60	1.6	37.25*	36.88	513.7
Travelers Corp	NYSE	49.75	0.3	12.6	2.16	4.3	50.00	49.25	1,876.6
Trenwick Group Inc	OTC	24.25	0.0	0.0	0.00	0.0	24.50	24.25	364.8
United Fire & Cas Co	OTC	28.25	2.7	22.4	0.80	2.8	28.25	27.75	22.4
United States Fid & Gty Co	NYSE	40.25	1.9	0.0	2.32	5.8	40.50	39.88	796.8
Uslife Corp	NYSE	49.50	9.4	13.2	1.12	2.3	49.50*	46.25	241.8
Washington Natl Corp	NYSE	34.75	0.7	15.3	1.08	3.1	34.75	34.50	29.9
Zenith Natl Ins Corp	OTC	29.25	1.7	146.3	0.80	2.7	29.25	28.25	160.9
INSURANCE COMPANIES	AVERAGE			9.3		1.9			

System design: Altman Information Systems

BI Insurance Index

The *Business Insurance* stock index closed at a record 536.0 on July 2, up 10.4 points from 525.6 on June 25. A total of 44 stocks advanced, eight posted losses and eight remained unchanged. Stocks with the largest gains were: Crown Life Insurance Co., up 11.4%; USLIFE Corp., up 9.4%; Fireman's Fund Corp., up 7.9%; and Northwestern National Life Insurance Co., up 7.8%. Stocks posting the biggest losses were: Aneco Reinsurance Co. Ltd., down 4.3%; United Fire & Casualty Co., down 2.7%; Tokio Marine & Fire Insurance Ltd., down 2.6%; and Orion Capital Corp., down 2.5%. The *BI* index outpaced the other major indicators, advancing 2.0%. The NYSE composite rose 1.4%; the Standard & Poor's 500 index climbed 1.2%; and the Dow Jones 30 Industrials gained 1.0%.

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