

Business Insurance

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Insurance industry defendants seek review of antitrust ruling

SAN FRANCISCO—Most of the insurance industry defendants have asked the 9th U.S. Circuit Court of Appeals to reconsider a June 18 ruling that reinstates the massive insurance antitrust litigation.

The defendants have petitioned the court to reconsider the unanimous decision by a three-judge panel which overturns U.S. District Judge William Schwarzer's 1989 dismissal of the lawsuit (BI, June 24; Sept. 25, 1989; Aug. 7, Continued on next page

Recession prompting benefit changes

By MICHAEL SCHACHNER

About a quarter of the nation's employers are revamping their employee benefit programs as a direct result of the recession, according to a new survey. Twenty-two percent of the surveyed companies say they are changing their employee health care plans as a direct result of the recession. And five percent are changing their retirement programs, found a recent survey by the International Foundation of Employee Benefit Plans, a Brookfield, Wis.-based educational association.

Nearly all of the 352 responding companies employed more than 500 workers, the survey authors report, although the survey did not break down respondents by size.

Benefit consultants say the findings come as no surprise. Employee benefits account for a substantial portion of a company's operating expenses and are commonly targeted for cost cutting when profit margins slip, they say.

Of the 22% of the survey respondents who say they are changing or plan to change the design of their health care plan

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Mission wins ruling

Reinsurers told to pay

By DOUGLAS McLEOD

LOS ANGELES—Reinsurers participating in a defunct Mission Insurance Co. reinsurance pool may not rescind their contracts by claiming they were defrauded, a state judge has ruled.

The decision, if applied to other pending litigation, could allow Mission's liquidators to collect almost \$800 million in contested reinsurance recoverables.

Los Angeles Superior Court Judge Kurt J. Lewin ruled last week that California insurance law bars roughly 28 reinsurers partici-

pating in Mission's Pacific Reinsurance Management Corp. pool from rescinding their reinsurance treaties.

Reinsurers must first pay claims, then seek damages for fraud and misrepresentation against PRMC and the insolvent Mission as part of the Mission liquidation, Judge Lewin ruled. Reinsurers' fraud claims would thus take a back seat to claims of Mission policyholders, who are in a higher-priority claimant class.

"During the 'good years,' defendants appear to have taken an ostrich-like posture of 'Don't tell us

anything we don't want to know,' while they collected lucrative premiums," Judge Lewin wrote of the reinsurers' claims that they were misled by PRMC and Mission into participating in the pool.

"Defendants cannot be permitted to abdicate their obligations to the ultimate insureds by blindly delegating their respective underwriting determinations to PRMC or anyone else," the judge said.

The roughly 28 PRMC reinsurers owe the Mission estate about \$205 million in "present value" claims, including paid-loss recoverables, case reserves and reserves for incurred-but-not-reported losses, according to Kathleen McCain, a lawyer with Rubinstein & Perry in Los Angeles, representing the Cali-

fornia Insurance Department, which is supervising Mission's liquidation.

Judge Lewin's ruling "vindicates the position we have taken for a long time and demonstrates that the rights of policyholders come first," said Karl Rubinstein, a partner in the firm.

"Policyholders have no control over what companies do with their reinsurance and no control over what they do with their affiliates," Mr. Rubinstein observed. "To permit disputes between insurers and reinsurers to disadvantage policyholders would really be wrong and would undermine the very reason for insurance."

The PRMC reinsurers will petition

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Coleridge sees profits returning

By GAVIN SOUTER

LONDON—The worldwide property/casualty insurance industry, now climbing out of a deep trough, will soon enter more fertile territory and return to healthy profitability, says David Coleridge, chairman of Lloyd's of London.

Despite the soft commercial insurance market, the worldwide economic recession and changes forced on insurers by U.S. regulators and courts, opportunities abound for insurers throughout the world, he said.

Also, innovation by brokers will help pull the industry out of the current abyss, Mr. Coleridge said last week in the keynote address at



• Full coverage of the World Insurance Congress in London will be featured in the July 15 issue.

• Lloyd's plans global expansion. See page 10.

the World Insurance Congress, sponsored by Business Insurance and Lloyd's of London Press.

But British insurers need tax concessions similar to those given their competitors elsewhere in Europe to allow them to compete on equal footing, he added.

"One doesn't have to be an Einstein to realize that recessions, however painful, have finite lives, as do downward slopes in insurance cycles," Mr. Coleridge said.

Virtually nothing can be achieved without insurance and as economies grow over the next few years, so will the need for insurance, he said.

"If insurance is the price of people being able to sleep at night, we

at least as insurers have the right to charge premium rates which enable all of us to do the same," Mr. Coleridge said.

Major, and sometimes bizarre, changes in the U.S. market—which produces about one-third of Lloyd's volume—also are affecting insurers, he contended.

Concerned about growing numbers of insurer insolvencies, Congress is considering changes in the way U.S. insurers are regulated, Mr. Coleridge pointed out.

The limited exemption from federal antitrust laws that U.S. insurers now enjoy is being called into question and individual states have taken some "unusual" steps,

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New policy for space lab

Lenders covered if government grounds program

By MICHAEL BRADFORD

WASHINGTON—What do you call \$80 million in insurance to cover loans on a new space laboratory module?

You could call it political risk insurance, but that's not correct. Financial guarantee insurance is not accurate either. Force majeure? Sorry, but no.

Try "contingency policy."

When Glen Surles went shopping for coverage that would protect in-

vestors' financial commitments to produce SPACEHAB, a laboratory module scheduled to be launched aboard the space shuttle in 1993, he quickly learned that he was looking for something that wasn't available.

Mr. Surles, managing vp of Hall Aviation, a Washington-based unit of Frank B. Hall & Co. Inc., said political risk insurers and financial guarantee underwriters told him they didn't write the type of coverage he needed.

And while force majeure coverage—which generally covers acts of God or other events that could not have been avoided by the policyholder—had been written for similar projects, the insurance was not broad enough to fit all of SPA-

CEHAB's coverage needs. "So what we found," Mr. Surles recalled, "was that we needed to develop a whole new product" that contained elements of several different coverages.

With the help of London broker C.J. Coleman & Co. Ltd., "we were able to structure such a policy," he said. The \$80 million in coverage, written for three years on what became known as a contingency policy, is led by Lloyd's of London syndicates managed by R.W. Sturge & Co. and C.W. Rome (Un-

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SPACEHAB, a laboratory module, is scheduled to be launched aboard the space shuttle in 1993.



Law may bar bank D&O cover for administrative hearings
Page 3

Survey finds more employers extend benefits to part-timers
Page 3

California statute may force use of fronting arrangements
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Update

Antitrust rehearing sought

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1989). The defendants also suggest that an 11-member panel of the 9th Circuit should review the case.

The decision "presents issues of exceptional national importance to the functioning of the markets for general liability insurance and to the viability of well-established state regulatory schemes," say the defendants in their July 2 petition.

"This court should grant rehearing because the panel's decision: (a) is contrary to the antitrust teachings of the U.S. Supreme Court, decisions of this court and of other circuits; (b) will impair the debate and interchange among primary insurers, reinsurers, agents, brokers and consumers that is fundamental to state policy favoring collective development of insurance forms; and (c) will undermine state regulatory power," the defendants say.

If the petition for rehearing is denied, the defendants may seek U.S. Supreme Court review, attorneys say.

In their lawsuit, 19 state attorneys general allege the defendants—which include major U.S. and London insurers, reinsurers, the Insurance Services Office Inc. and the Reinsurance Assn. of America—engaged in a boycott to force ISO to rewrite the commercial general liability policy form to eliminate cover for pollution and to include a retroactive date in the claims-made version of the form (BI, March 28, 1988). The limited antitrust immunity granted to insurers under the McCarran-Ferguson Act does not extend to boycotts or coercion.

Few California quake claims

LOS ANGELES—Insurers are reporting a "minuscule" number of claims as a result of the June 28 Sierra Madre earthquake centered in a sparsely populated area 15 miles north of Los Angeles.

The quake caused an estimated \$34.1 million in total damages confined to Pasadena and three other cities in Los Angeles County and surrounding unincorporated areas, said Bill Masten, captain at the Los Angeles County Office of Emergency Management.

The Rahway, N.J.-based Property Claim Services division of American Insurance Services Group Inc. designated the quake Catastrophe No. 83, covering California "and possibly other areas" including Western Nevada, where shaking was reported, an AISG spokesman said. Estimates of insured damage were not available last week.

Based on a preliminary count, most of the 1,210 buildings damaged in the four cities were small businesses, Mr. Masten said.

Damage to public buildings in Pasadena—including an estimated \$1 million to its City Hall and \$500,000 each to two fire stations—is covered by insurance, said Diane Johnson, disaster services coordinator for the city. She could provide no coverage details.

Originally measured at 6.0 on the Richter scale, the quake was later downgraded to a 5.8 temblor by seismologists at the California Institute of Technology in Pasadena.

Two deaths were attributed to the quake, according to Los Angeles County officials.

Work comp rate hike in N.Y.

NEW YORK—The New York Insurance Department has approved a 15.3% workers compensation insurance rate increase, effective July 1.

The hike—far lower than the 25.1% hike proposed by the New York Compensation Insurance Rating Board, an advisory rating group—results from state-mandated workers comp benefit increases, higher hospital and physician costs, increased assessments on comp insurers and unfavorable loss experience, the insurance department said.

The New York Legislature last year increased maximum weekly payments for partially disabled workers to \$350 from \$280 and for totally disabled workers to \$350 from \$340 as of July 1, 1991 (BI, July 16, 1990).

Separately, the New York department has approved medical malpractice insurance rate reductions averaging 5% for about 25,000 individually insured physicians in the state. The new rates are in effect for the July 1, 1991, to June 30, 1992, policy year.

Surplus drop spurs suspension

INDIANAPOLIS—The Indiana Insurance Department has suspended American Commercial Liability Insurance Co. from writing new or renewal business in the state.

Indiana regulators suspended Michigan-domiciled American Commercial last month after reviewing the insurer's first-quarter statutory statement, which showed a sharp decline in surplus, said Mel Anderson, assistant chief examiner.

American Commercial reported surplus of \$2.5 million as of March 31, down from \$4.5 million at year-end 1990.

The Michigan Insurance Bureau, meanwhile, expects to finish its examination of Grand Rapids-based American Commercial within four to six weeks, according to Leon Hank, the bureau's director of financial analysis and examinations.

Mr. Hank declined to comment on whether state regulators have taken any action—like a supervision order—against American Commercial. Under Michigan law, supervision orders are confidential.

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Errors and omissions

• *Business Insurance* estimates Johnson & Higgins' retail insurance brokerage revenues grew 5% in 1990 to \$512.6 million from \$488.2 million in 1989. Both revenue figures are restatements of estimates that appeared in the July 1 issue. Based on the revised retail brokerage estimates, BI estimates that J&H's 1990 gross revenues of \$833.1 million break down as follows: 61% retail brokerage, 6% reinsurance brokerage, 2% wholesale brokerage, 25% services and 6% investment income.

• Several Marsh & McLennan Cos. Inc. international office locations were inadvertently omitted from the geographical directory of agents and brokers published in the July 1 issue. A list of the offices appears on page 28.

Maine budget a hostage for work comp reforms

By MEG FLETCHER

AUGUSTA, Maine.—An impasse over workers compensation reform in Maine stalled adoption of the state's budget last week, resulting in a virtual shutdown of most state government functions and a political showdown between the Republican governor and the leaders of the Democratic-controlled Legislature.

Gov. John R. McKernan Jr. cited the lack of a budget resolution when he declared a "civil emergency" early last Monday and ordered only 2,000 essential state employees, like police and key legislative staff, to report for work. About 10,000 non-essential employees were ordered to stay home without pay.

However, Gov. McKernan vetoed budget bills passed by the Legislature in order to force legislators to approve more major changes in the states workers comp system, aides to the governor conceded.

The reforms would cushion corporate tax hikes contained in the budget, said Joseph Di Giovanni, Northeast regional vp for the American Insurance Assn.

At the same time, the governor vetoed a Democrat-supported workers compensation bill, Legislative Document 1957, saying that the bill would not result in sufficient cost savings.

Negotiations were continuing as of the middle of last week.

"Maine is 171 years old as a state and this is the first time a governor has shut down government," which

is "totally inappropriate," said Senate President Charles P. Pray, D-Millinocket.

While Democrats hold a majority in both houses of the Legislature they do not have the two-thirds majority needed to override the governor's veto.

The political maneuvering underscores the fact that problems with the Maine workers compensation system have again become a top priority for state legislators to consider, despite reforms passed in both 1984 and 1987, employers and insurers say.

Those earlier reforms cut benefits and made many systemwide changes intended to convince insurers to continue writing workers comp coverage in the state

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Insurer not liable for agent fraud under ERISA: Court

Executive Life wins ruling

By STACY ADLER

LOS ANGELES—Collapsed Executive Life Insurance Co. is not responsible for allegedly fraudulent acts committed by one of its agents who helped form employee benefit plans for two California companies, a federal judge ruled.

This is good news for other policyholders of Executive Life, which is now under the conservatorship of the California Insurance Department. A ruling against the company could have further depleted its remaining assets (BI, May 13; April 22).

The ruling also could benefit

other insurers that have been sued by policyholders trying to hold them liable under the Employee Retirement Income Security Act of 1974 and state law for losses related to fraud by agents.

In a series of rulings last month, Judge Fern Smith of the U.S. District Court in San Francisco dismissed Los Angeles-based Executive Life from two separate lawsuits.

Judge Smith in a June 13 ruling held that ERISA pre-empts all claims filed under state law that seek to hold the insurer vicariously liable for the acts of its agents.

"Selling policies to an ERISA

plan does not turn an insurance company into a fiduciary to the plan, even if the insurance company's agent facilitated the sale," she said. "Nothing in ERISA suggests that Congress intended the wholesale importation of common law of agency and vicarious liability into the fiduciary provisions" of the law.

After finding that ERISA pre-empted the state law claims against Executive Life, Judge Smith went on to find that the plaintiffs did not allege an ERISA violation against Executive Life, leaving the plaintiffs without a

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Analysts reveal favorites among insurance stocks

By JUDY GREENWALD

NEW YORK—Several property/casualty insurance stocks stand out above the pack, insurance stock analysts say.

Among the top selections of analysts attending the 16th annual Assn. of Insurance & Financial Analysts' insurance symposium are American International Group Inc., Chubb Corp., Kemper Corp., The St. Paul Cos. Inc., W.R. Berkeley Corp. and Harleysville Group Inc.

Most of these companies, the analysts noted at last month's symposium, operate in specialty niches

that can best endure the continuing soft market and where rates could zoom when the market does harden.

Though willing to reveal their stock picks, most of the analysts say they cannot predict when the market will turn. Some, though, said they did not expect a change until next year.

Gloria Vogel, associate director at Bear, Stearns & Co. Inc. in New York, selected New York-based AIG as her favorite insurer stock, noting that it is a company that consistently performs well despite the market cycle.

Over the last 10 years, AIG's re-

turn on equity has exceeded 16%, Ms. Vogel noted. "That certainly is a record that's very hard to beat," she said, adding that "I see nothing out there that suggests AIG certainly can't outperform the industry as a group."

AIG is unique in terms of global perspective, she said, pointing out that 50% of its profits are generated overseas.

And when commercial rates finally begin to increase, the hikes should be readily apparent in the specialty lines that AIG writes, Ms. Vogel said. She noted that rates have already risen for some spe-

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Inside

✓ Companies that are suffering because of the recession should think twice before taking their budget-cutting knives to employee benefit programs, cautions this week's editorial. **PAGE 8**

✓ Lloyd's of London is setting its sights on increasing European business as trade barriers fall, says David Coleridge at the International Insurance Seminar. **PAGE 10**

✓ Employers that opt out of the Texas workers compensation system may still be shielded from unpredictable juries in the state due to a recent court ruling, say attorney John H. Eggertsen and consultant Richard H. Mościcki in Perspectives. **PAGE 23**

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Part-timers' benefits increase

But fewer firms pay full cost, study finds

By CARY ROBERTS

More employers are offering health care and other benefits to their part-time employees, but fewer companies are paying the full cost of these benefits, a new survey shows.

Generally, the more hours a week a part-time employee works, the more likely he or she will receive benefits and the more likely the company will pay at least a portion of the cost, according to the study by benefit consultant Hewitt Associates of Lincolnshire, Ill.

Tom Beauregard, a Hewitt consultant, says the findings are not surprising.

"They are very consistent with what we see on a daily basis," he said, explaining that not only are employers increasingly hiring part-time workers to control costs, more employees are seeking to work only part time.

The study is based on the responses of 435 companies, 412 of

which employ part-time workers. Twenty-one percent of the companies employ 10,000 or more workers, 16% employ 5,000 to 9,999 workers, 56% employ 1,000 to 4,999 workers and 7% employ fewer than 1,000 workers.

Employers, the survey found, are increasingly offering health care benefits to part-time employees who work from 20 to 29 hours per week: 61% in 1990, up from 49% in 1985.

Mr. Beauregard attributed this increase to the growing availability of job sharing, a work arrangement where two people jointly hold one full-time position, with each generally working 20 to 29 hours per week. Twenty-eight percent of the survey respondents offer job sharing, especially to working mothers, to increase productivity, he said.

A larger percentage of employers, 76%, offered health care benefits to part-timers working more than 30 hours per week in 1990, but that was only a slight increase

over 73% in 1985.

Only 20% of the companies offered health care benefits to part-timers working fewer than 20 hours in 1990, still an increase from 13% in 1985.

While employers are providing health care benefits to more part-time employees, they are paying less of the cost.

For example, only 18% of employers paid the full cost of health insurance for employees working more than 30 hours a week in 1990, down from 34% five years earlier.

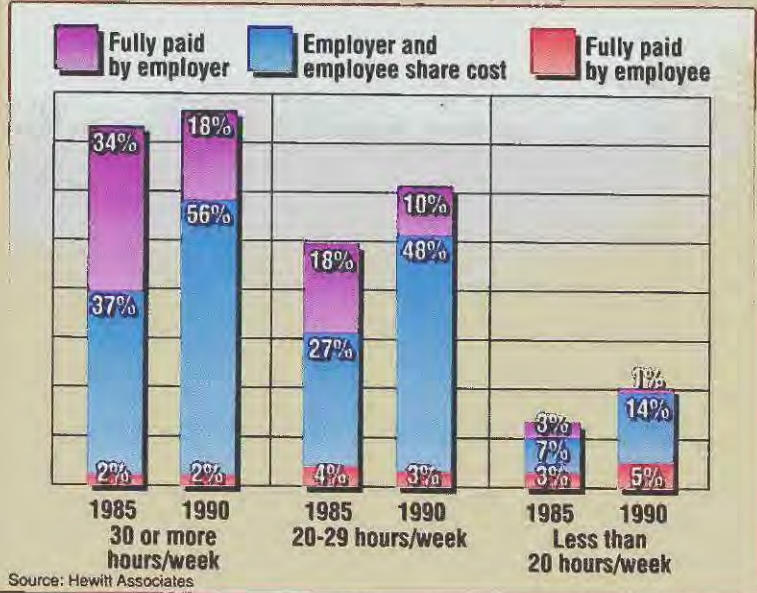
Likewise, only 10% of the surveyed companies paid the full cost of health care coverage for part-timers working 20 to 29 hours per week, down from 18% in 1985. And a mere 1% paid the full cost for those working fewer than 20 hours per week, compared with 3% in 1985.

By comparison, 33% of employers reported they paid the full cost of health care benefits for full-time workers last year, compared with

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Medical benefits for part-time employees

The percentage of employers offering health care benefits to part-time workers—especially those who work 20 to 29 hours per week—is growing.



GRAPHIC BY JOHN HALL

Law may curb D&O coverage for bank, S&L management

By COLLEEN JOHNSON

Financial institutions are awaiting federal regulations implementing a law that restricts directors and officers liability insurance for directors who are penalized following an administrative hearing.

The Crime Control Act of 1990, signed into law last fall, prohibits financial institutions and their holding companies from paying legal expenses or liabilities incurred by directors or officers who, as a result of an administrative proceeding or civil action by a federal banking agency, face a fine or are ordered to resign.

Another section of the law is being interpreted by many to say that directors who face sanctions following an administrative hearing cannot receive defense or indemnification from the financial institution's D&O insurer.

However, some observers say that such a director could receive proceeds from the portion of the D&O coverage that indemnifies directors, as opposed to the financial institution, while others say the directors could receive coverage if they pay at least a portion of the policy's premium themselves.

Attorneys and lobbyists for months have been expecting the Federal Deposit Insurance Corp. to issue regulations implementing the law, which applies to all financial institutions insured by the FDIC. But so far, the FDIC has not acted.

Even though the regulations have not been published, brokers, insurers and others are trying to determine how the law will affect D&O coverage.

The Crime Control Act doesn't prohibit D&O coverage for bank directors or officers who successfully defend themselves, noted James B. Wallace, senior vp of broker Johnson & Higgins in New York.

In addition, "it does not appear to prohibit the advancement of funds to a director facing a proceeding, pending a final order," said Brad G. Welling, associate federal administrative counsel with the American Bankers Assn. in Washington D.C. However, it's unclear whether an executive who is later found at fault would have to return to the institution or D&O insurer any money that was advanced, observers say.

Mr. Wallace said he doesn't believe the act was intended to prohibit financial institutions from buying D&O coverage for regulatory actions. "I think that it will ultimately be clarified that insurance can be purchased."

However, a "regulatory exclusion" in many D&O policies for financial institutions excludes payments of penalties or defense costs stemming from a federal administrative proceeding.

Mr. Welling noted that the indemnification provision of the Crime Control Act is similar to policies followed by the Office of the Comptroller of the Currency in the Treasury Department, which regulates about 4,000 federally chartered banks. That policy maintains that banks should not indemnify or defend a director who is penalized after an administrative action.

An OCC publication says directors "are not permitted to be indemnified against expenses, legal fees, penalties or other payments

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California rule includes restrictions on captives

By LOUISE KERTESZ

SACRAMENTO, Calif.—A new state regulation governing placement of coverage with offshore insurers may force some California companies participating in group captives to use fronting arrangements, brokers and consultants say.

The regulation, which took effect July 1 on a temporary basis, bars offshore group captives that are newly formed or that have modest capital and surplus from directly insuring California policyholders.

The insurance department now requires surplus lines brokers placing business with a non-admitted offshore insurer—including captives—to demonstrate that the insurer has a minimum capital and surplus of \$5.4 million deposited in a U.S. trust account.

Brokers must also show that the offshore insurer has been in business for at least three years.

In addition, brokers must file extensive documentation with the Surplus Line Assn. of California, a

self-regulatory organization composed of surplus lines brokers, concerning the insurer's operations and allow the insurance department full access to the documents.

The regulation, Section 2174, will not affect most companies with single-parent captives since these companies usually do not use a broker to place coverage with the captive. In addition, coverage written by a captive that is fronted through an admitted insurer will not be affected by the regulation.

Originally proposed by Roxani Gillespie, the former state commissioner, the rule is part of what the department calls Commissioner John Garamendi's "crackdown on insurers that operate on the fringes of the law."

"Too many California consumers have bought insurance from unlicensed insurers and have been left holding the bag when they try to make a claim. These regulations will ensure there's actually money in the bank when the policyholders need it," Mr. Garamendi said.

At a hearing on another regula-

tion last February, surplus lines brokers and admitted insurers called for the adoption of Section 2174 to curb abuses by offshore insurers (BI, Feb. 11).

Brokers at that hearing suggested the department adopt Section 2174—then called Emergency Regulation 15—in place of Section 2173, which would effectively bar surplus lines brokers from placing auto coverage with U.S. and offshore non-admitted insurers. Brokers and commercial auto policyholders said at the time that prohibiting brokers from placing auto coverage with non-admitted U.S. insurers would leave them without markets for specialized types of auto risks.

However, the department is implementing both Section 2173 and Section 2174, said Carol Fistler, senior staff counsel for the Insurance Department.

Section 2174 "is pretty much the same as what is required for (U.S.) non-admitted insurers, with added overlays that were warranted by

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Treating troubled teens

Programs focusing on adolescent mental health care

By SANDRA PESMEN

The suburban couple was terrified as they went to the police station at midnight to claim their 16-year-old daughter who was drunk, on drugs and had just smashed up the family car.

They previously had taken the girl to their clergyman, their family doctor and a psychiatrist, and they didn't know where else to turn.

Then they recalled seeing dramatic ads in the newspapers and on TV, touting a psychiatric hospital, and they hurried her there.

Both parents figured—correctly—that their employer-provided health insurance would cover the 28-day inpatient stay that the hospital routinely recommended—at a cost of about \$18,000.

This example, which represents real-life situations that occur all too frequently, shows how societal problems are combining with rising mental health care costs to spell double trouble for employers.

More teens today seem out of control to their parents, who in turn look for a "quick fix" to cure their children's problems.

"And they have no shame about trying to get that done, as they did 10 years ago," said Eugene Hill, president and CEO of Emeryville, Calif.-based U.S. Behavioral Health, a Travelers Corp. subsidiary that provides managed mental health care services.

"Many parents are just grateful to have those lengthy inpatient stays for finally giving them a chance to get some peace and quiet at home," he said.

In addition, many parents seek

out traditional inpatient mental health and substance abuse treatment programs for their troubled teen-agers because health care plans often provide more generous coverage for inpatient than outpatient mental health treatment, Mr. Hill noted.

Half of all the money spent on mental health and substance abuse treatment goes to treat adolescents between age 13 and 19, said Joan Pearson, a consultant with New York-based TPF&C, the benefit consulting unit of Towers, Perrin, Forster & Crosby Inc.

Indeed, some employers report that almost two-thirds of mental health costs are attributable to adolescent dependents (see story, page 19).

And caring for teen-agers "is more costly than adult care be-

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Coleridge

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like Proposition 103 in California, in which voters approved property/casualty insurance rate rollbacks, he said, adding "I would compare such exercises to asking turkeys their opinion of Christmas."

However, insurers have to take such decisions as they stand and adapt to the changes, Mr. Coleridge said.

One area of uncertainty for insurers is the U.S. savings and loan debacle. Claims stemming from S&L failures are sure to hit insurers hard, he said, but the extent of the oncoming financial battering is still unknown.

"This has not, however, prevented many commentators from making doom-laden pronouncements that the eventual bill will run into billions of dollars and will all come home to roost at Lloyd's. Neither confidently stated asser-

tion is true," Mr. Coleridge said.

Pollution cleanup and asbestos claims from the United States, though, already have cost insurers dearly, he added.

As an answer to these problems, Mr. Coleridge praised a proposal

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by Maurice R. Greenberg, chairman and chief executive officer of American International Group Inc., to create an "environmental trust fund" to finance cleanups (see story, page 10).

"What I feel this illustrates is a clear move toward imaginative solutions for dealing with problems

from the past, which affect probably every insurance company in the world, and distinguishing them from the problems of the present, which need to be handled by different mechanisms," according to Mr. Coleridge.

By their "remarkable adaptability," major U.S. brokers are already changing the way all types of risks are handled, said Mr. Coleridge. Rather than just selling insurance as in the past, the brokers now frequently work on a fee basis, organizing self-insurance programs and doing consulting jobs.

In Europe, the insurance industry is pre-empting government action, Mr. Coleridge asserted.

"While politicians of every hue are arguing their way toward some compromise in the creation of a single market, the insurance industry is getting on with doing just that. The large insurers in Britain, Germany, France and Italy are now flexing their muscles and looking beyond their borders for future op-

portunity and growth," he said.

One area for growth is in alliances between banks and insurers that are linking up to control distribution channels, Mr. Coleridge said.

British and U.S. brokers are also eagerly establishing themselves in

counterparts, Mr. Coleridge asserted.

"Both Lloyd's and the Assn. of British Insurers are anxious that we have the same opportunities as some of our continental counterparts to accumulate reserves for the future, without attracting ex-

Lloyd's Chairman David Coleridge says of the voter-approved property/casualty rate rollback contained in California's Proposition 103, 'I would compare such exercises to asking turkeys their opinion of Christmas.'

continental Europe where many of the markets are currently dominated by tied—or exclusive—agents, he added.

But if British insurers are to compete, the government must allow them to build up catastrophe reserves as do their European

counterparts. Not only is this good insurance practice, it makes sense if we all operate under the same game rules in what we are told is a single market," he said.

Eastern Europe will also offer huge opportunities as the new free markets stimulate the demand for insurance, Mr. Coleridge said.

The demand for insurance in Eastern Europe "won't arrive tomorrow and, initially, it won't be very great," he conceded. "But its potential is heartening for the future when it will offer an entirely new and growing market. I would suggest that there aren't too many of those in prospect 'round the world."

Insurance markets in the Far East are well protected and Western insurers have to access them through reinsurance but, in the future, the markets may become more open, according to Mr. Coleridge.

Great changes are afoot at Lloyd's, he said, noting that a task force now is reviewing Lloyd's practices and capital base.

However, any changes that task force recommends would have to allow Lloyd's to turn a profit, Mr. Coleridge said.

Only a week before Mr. Coleridge's address, Lloyd's announced its 1988 results—by far the worst in its 300-year history (BI, July 1). Huge losses are also projected for the 1989 and 1990 underwriting years.

The number of syndicates is falling, but this has not reduced market capacity, said Mr. Coleridge.

Syndicates have also started what is known as consortium underwriting, said Mr. Coleridge. Consortium underwriting resembles a line slip except that each underwriter agrees that he will write a certain percentage of each risk accepted by the consortium's lead underwriter.

The consortia can also include London insurance companies, he added.

Claims paying, too, is becoming more efficient as insurers and brokers employ electronic information systems, he said.

The new London Underwriting Centre, which opens next year to house members of the non-marine underwriters association—the London Insurance & Reinsurance Market Assn.—will not pose a threat to Lloyd's, he said.

"All the members of LIRMA already exist in the London market and grouping them under one roof—as are Lloyd's underwriters and the members of the Institute of London Underwriters—makes them more accessible, easier for brokers to reach and thus strengthens the London market. Anything which strengthens the London market is good for everyone here, including Lloyd's, so we applaud the move," he said.

All of the changes and opportunities should lead to a more profitable insurance industry, Mr. Coleridge said.

"I am certain that the coming years will see further growth in the economies of the world and a return to healthy profitability for the insurance industry," he said. ■

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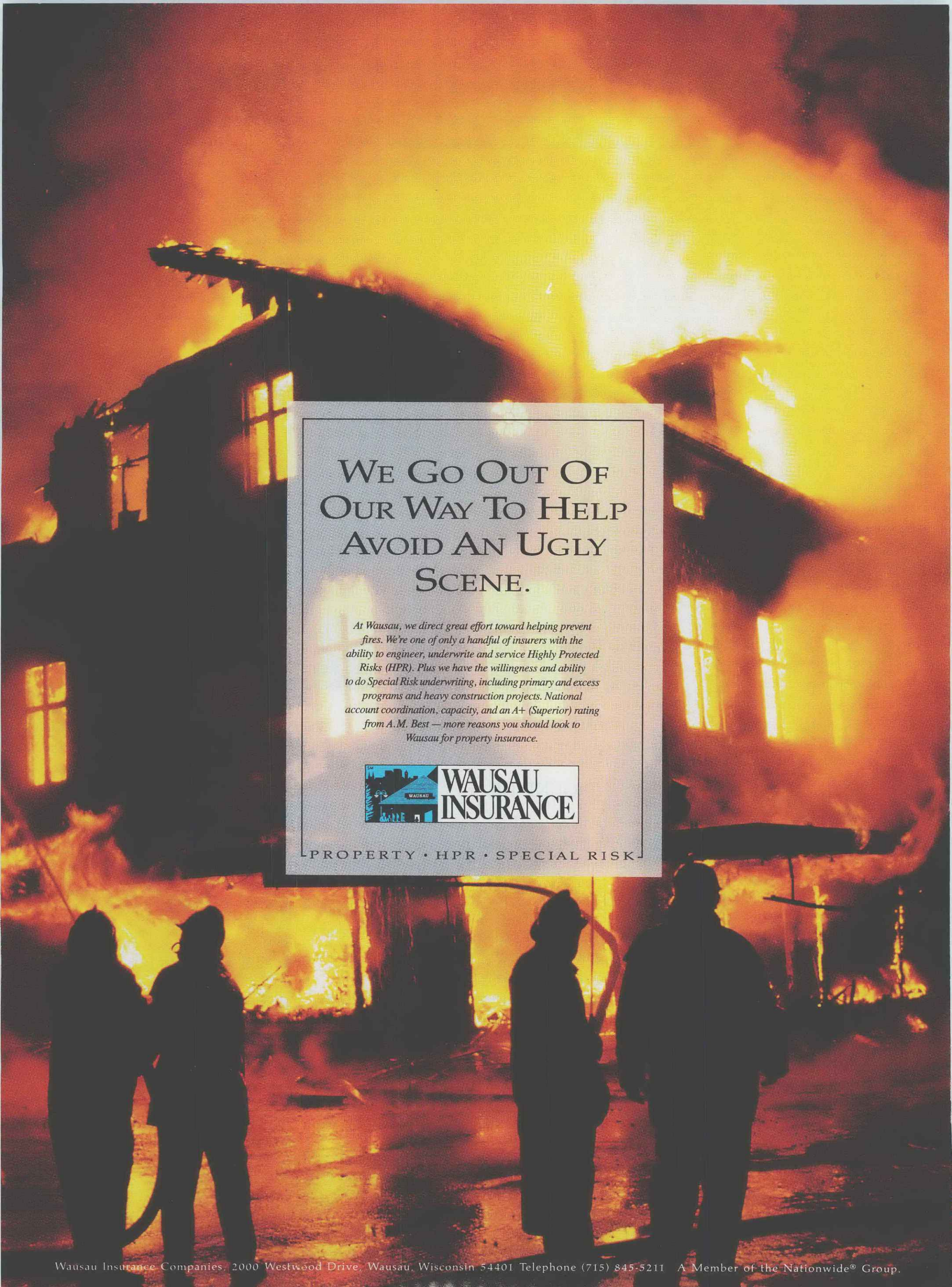
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PROPERTY • HPR • SPECIAL RISK

Motorola's prenatal care delivers savings

By MICHAEL SCHACHNER

Benefit beat

A voluntary prenatal care program introduced earlier this year by Motorola Inc. is already spotting potential high-risk pregnancies.

Of the 213 employees and dependents who participated in the program in the first quarter, 15 potential high-risk pregnancies were discovered, according to a spokeswoman for the Schaumburg, Ill.-based electronics company.

In addition, employees and spouses covered under Motorola's self-insured health care plan gave birth to no preterm babies during the first quarter of this year. Since 1987, the average has been 45 to 50 preterm births per year.

That difference, though, cannot necessarily be attributed to a prenatal educational and monitoring program provided by Irvine, Calif.-based Tokos Medical Corp. That program, "Special Delivery," was only introduced Jan. 1.

"We spent \$5 million on 48 preterm births in 1989. Obviously, that's a very high cost," said Richard J. Dorazil, Motorola's director of corporate benefits. "We were told by medical experts that 80% of preterm births can be prevented through proper education and pregnancy monitoring. That's why we investigated a prenatal program."

Special Delivery is a comprehensive program designed to safeguard pregnancy through health education, risk identification and early detection of pregnancy complications.

Employees and their spouses are encouraged to enroll in the program during the first three months of pregnancy. At a pre-screening session, participants discuss with a nurse various elements of prenatal care including lifestyle issues, risks and factors leading to problems and how to proactively avoid complications.

About four months later, prenatal nurses conduct follow-up assessments.

"This program is definitely working. It's the truest win-win situation I have seen. Everybody likes it and the only complaint we have heard is why didn't we have it before," Mr. Dorazil said.

Employees do not contribute to the cost of the Special Delivery program. Although Mr. Dorazil did not disclose Motorola's costs for the program, he said it is clearly "cost-effective" when compared to the overall expense of delivering and caring for a preterm baby.

In addition to the educational sessions, Special Delivery provides employees and spouses with three books that deal with various stages of pregnancy as well as a 24-hour hot line.

To encourage enrollment, employees or their spouses who participate in the program receive a \$100 U.S. Savings bond in their child's name and a Motorola baby blanket after delivery.

Communications

Employees at Levi Strauss & Co.'s San Francisco headquarters are obtaining information on all aspects of their benefit, compensation and training programs through a customized on-line software system accessible through personal computers.

Since April, 1,700 employees in the apparel manufacturer's home office have been gaining direct access to a wide range of personal benefits information through the On-Line Interactive Visual Employee Resource system, known as "OLIVER."

The system combines modern graphics with more than 500

screens of personalized benefit information. It is one of the most extensive workplace interactive computer systems providing human resource material to employees, according to Hewitt Associates, the Lincolnshire, Ill.-based benefit consultant that helped design the system.

Through OLIVER, which took more than a year to develop, Levi Strauss employees directly gather personal information ranging from savings account balances to models that forecast retirement income.

The program is currently being rolled out to the company's remaining 1,300 field employees and salespeople throughout the coun-

try, said Marti Beshore, a systems analyst with Levi Strauss in San Francisco.

The program also provides facts on training and development courses, investment options and bonuses, among other things. It is linked to users' personal computers through the company's mainframe system.

OLIVER allows employees to jump from information screens by directing a standard keyboard cursor.

"Employees are very enthusiastic about OLIVER. Before, they only received information twice per year and now they can check up on the progress of investments,

new benefits and plan balances almost whenever they want," said Ms. Beshore.

Employees access their personal menu of information by entering their Social Security number and a special personal identification number into a PC that is connected with the mainframe. Aided by a map of OLIVER's contents, employees are guided to their desired destination by a series of topical menus.

Throughout each area, OLIVER is individually tailored so that only those benefit and compensation programs for which the user is eligible appear on screen.

"OLIVER is so easy that even those not accustomed to using computers find it appealing," said Reese Smith, director of employee benefits. "Employees are simply

amazed at what OLIVER can do and how much fun it is to use."

To date Levi Strauss has not calculated how many employees access the system, said Ms. Beshore. "But it has been a time-saver for the benefits staff," she said.

"We chose to implement the program not for a cost benefit, but to address the accessibility question. It just answers so many questions that employees have and it's easy to follow," said Ms. Beshore.

"This is the wave of the future in terms of employee benefit communications," said Marguerite Oines, a consultant with Hewitt in Lincolnshire. "It's paperless and the programs can be customized for the employer. It's an extensive system that can be implemented in stages or all at once." ■

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At issue

Does your company have an EAP or are you considering contracting with one?



Marie Sheehy
Human Resources Manager
Reliable Corp.,
Chicago

We have had an EAP since 1984, covering employees and their families at four separate U.S. locations. We consider it to be an integral part of our managed care program although we do annually review utilization and vendor performance. Our employees tell us they find the counseling and referral services extremely valuable and much of our utilization is self-referral.



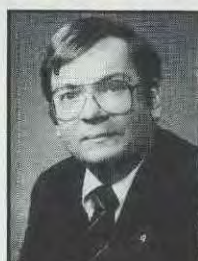
Gary Skarr
Human Resources Consulting Manager
McGladrey & Pullen,
Moline, Ill.

McGladrey & Pullen is considering adopting an employee assistance program. An EAP would benefit both the employees and management by providing a confidential and professional approach to dealing with sensitive personal or family issues. We feel an EAP is a very pro-active approach to positive employee relations.



Wanda A. Lee
Vp-Human Resources
FHP Inc.,
Fountain Valley, Calif.

Yes, all of our offices have or will have an EAP by next July. From past experience I know EAPs are a triple win. Employees feel we are recognizing the personal side of their lives, supervisors feel like good people and good managers when they can refer an employee for help instead of just coming down on performance, and management likes it because it makes bottom-line sense.



Richard W. Browne
Assistant Vp/
Benefit Manager
Signet Banking Corp.,
Richmond, Va.

We've had an EAP since 1987. We're planning to expand the EAP to a managed psychiatric/substance abuse network because we know that employees who go into psychiatric treatment through the EAP have much lower inpatient stays than employees who do not use the EAP. Employees would be required to access these benefits through the EAP.

Compiled by Sara Harty

Insider trading

Alexander & Alexander Services Inc.: Trimark Investment Management Inc., beneficial owner, indirectly sold 46,000 shares of Class A common stock between \$27 and \$30.38 per share from Jan. 31 to Feb. 15 and now indirectly holds 419,000 Class A common shares.

Benjamin P. Gill, vp, exercised an option for 134 shares of common stock at \$17.75 per share on April 22 and now directly and indirectly holds 2,033 common shares.

Union Life Insurance Society Norwich, beneficial owner, indirectly purchased 600 shares of common stock at \$26.63 per share on Feb. 19 and now directly and/or indirectly holds 600 common and 289,821 Class C common shares.

A&A stock traded at \$22.50 per share on June 28.

Argonaut Group Inc.: Michael J. Crall, vp, sold 4,000 shares of common stock at between \$94 and \$96 per share from April 16 to April 18 and now directly holds 4,000 common shares.

Argonaut stock traded at \$26 per share on June 28.

Hartford Steam Boiler Inspection & Insurance Co.: Donald M. Carlton, director, exercised an option for 22,100 shares of common stock between \$32.56 and \$27.50 per share on May 29, and now directly holds 33,352 common shares.

Hartford Steam Boiler stock traded at \$56.75 per share on June 28.

Hilb, Rogal & Hamilton Co.: Robert S. Ukorp, director, purchased 1,000 shares of common stock at \$16 per share on April 29 and now directly and indirectly holds 15,898 common shares.

Thomas B. Leitch, vp, sold 15,000 shares of common stock at \$15 per share on April 4 and now directly holds 16,975 common shares.

Hilb, Rogal stock traded at \$14.75 per share on June 28.

Ohio Casualty Corp.: Stephen S. Marcum, director, purchased 100 shares of common stock at \$30.50 per share on Sept. 28 and now directly and indirectly holds 79,252 common shares.

Jeffrey D. Lowe, director, sold 440 shares of common stock at \$45.25 per share on Feb. 14 and now directly and indirectly holds 77,303 common shares.

Ohio Casualty stock traded at \$47.50 per share on June 28.

RLI Corp.: John S. McGuiness, director, sold 2,000 shares of common stock at \$16.13 per share from April 18 to April 19 and now directly holds 750 common shares.

RLI stock traded at \$13.50 on June 28.

U.S. Healthcare Inc.: Jacob Getson, shareholder, purchased 300 shares of common stock at \$49.75 per share on April 19. Mr. Getson indirectly purchased 200 shares of common stock at \$49.75 the same day and now directly and indirectly holds 21,040 common shares.

Donald Wernsing, vp, sold 500 shares of common stock at \$49.75 per share on March 25 and now directly holds 500 common shares.

Jerome S. Goodman, director, disposed of by gift 8,400 shares of common stock at an unreported price per share from Dec. 24 to March 25 and now directly holds 24,600 common shares.

U.S. Healthcare stock traded at \$32.25 per share on June 28.

Insider Trading, compiled by Invest/Net Trading Group Inc. of Fort Lauderdale, Fla., from reports filed with the Securities and Exchange Commission, tracks stock transactions by insurance industry directors and officers. The column is distributed by Tribune Media Services Inc.



Opinions

Domino effect of benefit cuts

WHILE MEDIA REPORTS TRUMPET the news that the recession is easing, try telling that to the many companies that continue to watch their sales slump and their profits dry up. Corporate America remains committed to its cost-cutting crusade, scrutinizing expenses like compensation, travel and entertainment, research and development—and, yes, employee benefits.

In fact, almost a quarter of the companies responding to a recent survey by the International Foundation of Employee Benefit Plans say they have changed their employee health care plans in light of the recession. Far fewer—only 5%—have changed their retirement programs in light of the economic downturn (see story, page 1).

Some of these companies, especially some smaller firms, probably had no choice. To survive, they had to control the high cost of employee benefits—especially group health insurance.

But executives at other companies that are suffering because of the recession—but not in danger of going under—should think twice before taking their budget-cutting knives to the “fat” they believe they see in employee benefit programs.

Before redesigning health care and other benefit programs to control corporate costs, management must ask itself why it offers employee benefit programs. The reasons often include tax strategy and the ability to keep up with competitors in attracting qualified employees. While reducing the scope of benefits offered will allow the company to realize a “quick-fix” cash savings, will the company’s goals in these other areas be met with a scaled-down benefit plan? What will the company do to keep pace with competitors in the contest to attract and retain talented workers once the recession ends and the job market picks up?

Managers must also keep in mind what trimming benefits will do to employee morale. Pay increases are probably already being scaled down due to the recession. Passing along higher health care costs—simply because corporate performance is not what it was—will result in a double whammy that could trigger employee resentment, which in turn can



slow productivity—something no company can afford during hard times.

However, the recession may be a good time to introduce managed care elements into a health care plan if the plan has not already adopted these features. By carefully explaining how managed care can help the company contain costs in a recessionary period and still offer high-quality health care services for employees and dependents at little or no added out-of-pocket cost, employers can hold the line on health care cost increases without stirring employee resentment. But remember, properly explaining these changes is a must; don't skimp on the communication budget.

Employee benefit managers have an important role to play during a recession. Like all other corporate executives, benefit managers must identify expenses that can be cut to further the good of the corporation. However, benefit managers must also counsel their superiors that hastily cutting back on health care and other types of benefits could backfire in the long run.

Letters

Let individuals make own health care decisions

To the editor: I feel that your editorial of June 24, “Managed Care at Risk,” is based upon a faulty philosophical concept that is a major problem with our society as well as with group health care.

We have been led to believe that bureaucracies—whether government, insurance companies or employers—can make better choices than individual citizens. Your statement, “Employees who don't seek precertification will lose the opportunity to consider alternative methods of treatment for their illnesses,” implies that individuals are so incompetent that they cannot make proper decisions about their own health care.

If alternative treatment is not being considered, then it implies to me that the doctor is not functioning in a professional manner and that the patient has less concern or interest in his personal health care than I exercise in having my automobile repaired.

I must acknowledge that some people do not exercise the proper level of concern about their health care. Some do not try to learn as much about their condition and treatment as their doctors would be willing to explain. I feel this is a direct result of the patient not paying for the service. When people make direct payment from their own funds, they do exercise reasonable judgment.

Group health care became an employment benefit for basic economic reasons. The value of the benefit as perceived by the employee was greater than the value

of cash the employer paid for it. This is no longer the situation.

If employees were given the option of group health coverage or extra cash salary of equal value, they would select the cash. The result would be that the insurance industry would again offer viable individual health coverage the same as it offers individual homeowners coverage. And the individual consumer would regulate the rising health care cost in an open market.

T. Wesley Kersey
Atlanta

Texas comp reforms needed for ‘survival’

To the editor: As an active proponent of workers compensation reform in Texas, chairman of the Risk & Insurance Management Society's Risk Management Roundtable Workers Compensation Committee, and co-author of a text on workers compensation, I wish to respond to the AFL-CIO's James Ellenberger made in a letter, “Self-interest Cuts Both Ways in Texas ‘Reforms’ ” (BI, June 3).

When the Texas Legislature's Joint Select Committee on Workers Compensation published its findings in 1988, the business community sought to join forces with organized labor, assuming that comprehensive reform was impossible without labor's support. Unfortunately, the lines were drawn

early of labor continuing to let the plaintiffs' lawyers speak on their behalf, testifying before legislative committees to the effect that Texas does not have a workers compensation problem, if inflation is taken into account. They also said Texas workers compensation costs are merely cyclical, and Texas simply has an insurance (premium) problem and a safety problem.

The new Texas law increased maximum compensation 75% and minimum compensation 56%, with, for the first time, a 3% cost of living adjustment. The main reason some workers will get less under the new system is their inability to apply the old “300-day” rule, which assumed

Continued on page 15

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SUBSTANCE ABUSE IN THE WORKPLACE — THE VOICE OF EXPERIENCE.

Part of an ongoing series of conversations between Argonaut Insurance Company, our clients and their brokers, dealing with issues important to their business. The intent is to keep the lines of communication open. We invite your participation.

THE PARTICIPANTS: **MARK A. MARIANI**, Owner and President of Mariani Packing Company, a leading processor and distributor of dried fruits. **BOB APPLEBY**, with Woodruff Sawyer & Co., Mariani's broker. **STEVE LA SHIER**, Senior VP Safety Management, Argonaut Insurance Company. **JOE SILVA**, Executive Safety Management Consultant, Argonaut Insurance Company.

MODERATOR: We've been talking about how a substance abuse program has benefitted Mariani Packing Company in terms of dollars saved and increased productivity. On the flip side, is there a dollar figure you can put on what it costs to run your substance abuse program?

MM: I'd say our safety program, as a whole, easily costs us over \$100,000.

JS: \$100,000 seems high.

MM: It depends on how you want to define costs. That \$100,000 includes loss of productivity while we administer the program. It's like our stretching program that gets people off the line for a few minutes to give them a chance to stretch their muscles and take a break. Just that 6½ minutes of stretching costs the company \$65,000 in lost production time. And we take at least the same amount of time to talk about company policies during the toolbox meetings and so forth. So in real costs to the company from lost time, I would say the figure could easily be in excess of \$100,000.

MODERATOR: Can you turn that around and estimate what you've gained in productivity by people not having accidents, or taking time off, or filing claims?

MM: Well, just take our worker's comp. One year is a 100% return on our investment.

MODERATOR: That's an impressive return.

MM: Obviously every year is going to be less and less. But the big issue is the focus on your safety program. To make sure everyone's thinking about it, and believing in it, and wondering what they can do about it. You walk out to our facility and every department has a white board that says how many days they have gone without an accident. It's just focus and realization and awareness. And, as Joe said earlier, the substance abuse program is one component, but a very important component. I honestly believe you're not going to have a successful program unless you have a strong statement by the company on it.

MODERATOR: What would you tell another company about getting started?

MM: Well, if your only concern is for the bottom line you're going at it the wrong way. The bottom line improvement will come as soon as you're able to communicate to the employee base that you care. If they don't think you care, they'll give you every reason in the world why it's not going to work. And

I think it's the apathy in the workplace that's going to get you. You have to get the community members caring about what they're doing and caring for each other first.

MODERATOR: So it's the culture that has to be changed.

MM: Right. We had a difficult time at first because Joe here was really excited about the programs and wanted to get them implemented as soon as possible, and rightfully so. We felt we needed more lead-in time. We felt that we just didn't want to throw a bunch of programs on our people, a bunch of posters on the wall. We wanted to go into it slowly, because if you don't, people become suspicious of it.

MODERATOR: You mean gradually educate them?

MM: With a well laid out program. Say over a three to six month period. That questionnaire we handed out, I'm convinced we wouldn't have had that kind of response if we just handed it out one day without warning. Everybody would wonder if it was a salary review, or an appraisal. If you don't communicate with them, they're not going to understand what you're trying to do. You have to get them thinking in the same terms you are.

MODERATOR: But isn't that changing a corporate culture?



We're 225 people who spend nearly half of our lives together, and we'd better work as a community for the safety and well-being of all of us.

MM: And who's responsible for the culture? The CEO. If you leave this whole issue to your safety committee and think you don't have any impact on it, it's a waste of time. The CEO has to have the vision, the belief and the commitment to it. Because if you don't have the CEO and the senior management believing it, it's not going to happen.

MODERATOR: How does your community of employees know that you care, that you're involved? Do you spend time out on the floor?

MM: You have to. If there's an accident out there, I want to be one of the first on the scene. We have little calendars within the company, and if someone's worked, say, 112 days without an accident and it beats the record, you'll see my name and "Great job!" written on it. They also hear through our newsletters. And questionnaires—a questionnaire's a powerful tool.

SL: I think it's admirable the way you've gone about getting a mandate from your employees, especially with the equipment operators. Something you might consider is post-accident testing for accidents requiring off-site medical treatment. I'm not talking the hangnail-type claim, but the Monday morning injury, the weekend strained back that shows up on your insurance bill. These tend to disappear when any off-site medical treatment also requires a substance abuse screening test. Post-accident testing probably isn't going to come out in an employee questionnaire because they're not going to be thinking about that, except for the guy that may be abusing on the weekends who's filed a few claims.

MM: That's an interesting idea.

MODERATOR: But what would the impact be on your community?

MM: I'm not sure. We just want to make sure we don't come across as police.

SL: The other thing is, anything you do has to start from the top. If any of your senior staff teach driving or how to handle equipment, they're going to have to come under your safety policy. If they ever get on a forklift, even in an emergency situation, they had better be included in your routine and periodic tests.

MM: It isn't coincidental that our policy is worded "any operators of equipment and vehicles," and that all my management people drive company vehicles.

MODERATOR: Have you had any threats or projected legal challenges from prospective applicants in the last eighteen months stemming from your policy?

MM: Not that I know of.

SL: See, that's the other bit of misinformation that hits the papers. That you'll have trouble hiring, or you'll be sued. Yet none of your applicants cried

'foul! That's the kind of message we've been trying to get to customers. That a lot of what they read about substance abuse programs is not really the truth.

MM: You know what still tickles me, where did that 30% that failed our test go? Who would they go to work for?

SL: Let 'em work for someone else. Let some other company pay the cost. It's interesting that you based your discussion on productivity, which is really the way you should look at all of this. Because that's

Substance abuse is just one part of a company's safety program.

really where your major loss is: productivity. But hasn't your safety program paid for that productivity loss in direct savings in insurance dollars?

JS: It will. It's just a matter of time.

MM: Do you want me to quantify productivity? This last month, we had the biggest month ever in the history of the company. We did 32% more business with no new people, no new equipment, no new manager, no new techniques, no new racking, no new anything. And without any overtime or any accidents.

SL: Obviously, whatever your costs are for testing those applicants, it pays Mariani in the long run in increased productivity and better employees.

MM: No question.

SL: Substance abuse in the workplace is something you don't want to go into hastily. But I think what you talked about this whole session is what's going to be a buzzword of the 1990s: Total quality management. With no separation between productivity and safety. They're intertwined parts of the management scheme. If corporations are going to remain productive and profitable and ahead of the competition, they're going to have to have total corporate quality management. Look what it did for you, a 32% increase in productivity. You're getting a better product, a better employee, a better community, a better culture. That's outstanding. And that's what more companies are going to have to take a stand on and realize.

MODERATOR: Would you be willing to spend some time with another company that comes to you and says "I've heard about your program and the benefits you've derived from it. How can we get started?"

MM: Absolutely. If they were really serious about it, I'd be glad to. I love to talk about success stories. I'm convinced it works, because we've done it here.

We'd like to hear what you have to say about substance abuse in the workplace, and about our discussions on topics that concern your business. Send your comments to Mike Crall, President, Argonaut Insurance Company, 250 Middlefield Road, Menlo Park, CA 94025.

Argonaut

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Lloyd's plans expansion in E.C., says Coleridge

By JOANNE WOJCIK

SAN FRANCISCO—Lloyd's of London is setting its sights on increasing European business as trade barriers fall throughout the European Community.

While the United States remains an important market to Lloyd's, accounting for one-third of its annual premiums, "there are, of course, other parts of the globe to which we are looking in order to increase our market penetration," says Lloyd's Chairman David Coleridge.

In particular, Lloyd's is focusing on the European Community, where the per-capita expenditure on non-life insurance is 40% below that of the United States, he said during a speech at the International Insurance Seminar last month in San Francisco. The seminar was sponsored by the International Insurance Society Inc.

Mr. Coleridge said Lloyd's plans to take advantage of the European Community's Second Non-Life Directive, which among other things permits brokers to place non-life coverage for large risks in one E.C. member state with an insurer based in another member state.

"The significance of this from Lloyd's point of view cannot be overemphasized since, as a broker market, we are dependent on our intermediaries for every risk we underwrite," he said.

However, Lloyd's doesn't plan to disrupt domestic insurance markets

as it widens its reach throughout the European Community, Mr. Coleridge promised.

Rather, Lloyd's will act "more as a catalyst than a competitor," he said, "working assiduously to increase the overall size of the community's insurance cake."

Marketing efforts will not be limited to Europe. Lloyd's also plans to increase its presence in the Soviet Union, which shows considerable potential because of its liberalized political climate, according to Mr. Coleridge.

He said Lloyd's already has established reinsurance links with many former members of the Soviet Bloc.

While Mr. Coleridge does not expect a sudden influx of business as Eastern Europe tries to catch up with its capitalist neighbors, "we shall endeavor, as the situation develops, to give a positive response producing, wherever possible, constructive answers to the many insurance problems that seem certain to arise."

Another potential growth area is the Pacific Rim.

"We are also looking afresh at such areas as Japan, South Korea, the Republic of China... and, in fact, the whole Pacific Rim, where the scope for increased participation will be immediately apparent," Mr. Coleridge said.

But Lloyd's focus on overseas business is nothing new, Mr. Coleridge said.

"Lloyd's, through its maritime traditions, has always adopted an international approach toward insurance and reinsurance, which, due to the

magnitude of present-day exposures, has now become the norm for the industry as a whole," he said.

In fact, the entire insurance industry has become increasingly interdependent, according to Mr. Coleridge.

"We have, whether we like it or not, become interdependent to a degree which would have been unthinkable 30 years ago, which means that we no longer stand to know 'for whom the bell tolls,' since we are all, to a greater or lesser extent, affected by the world's disasters."

For example, "a windstorm in, say, Louisiana could, metaphorically speaking, take the slates off the roof in insurance centers as far afield as London, Munich or Tokyo, while an earthquake in Australia or New Zealand could rattle the windows in Brussels, Hartford, Conn., or even here in California," Mr. Coleridge said.

While such disasters only serve as metaphors, other very real disasters have rocked the insurance industry in recent years, the Lloyd's chairman pointed out.

A series of catastrophes including the Piper Alpha North Sea oil rig disaster and Hurricane Gilbert contributed to Lloyd's unprecedented 509.7 million pound (\$983.7 million at appropriate exchange rate) loss for the 1988 underwriting year (BI, July 1).

Also contributing to the loss were liberal court decisions granting coverage for pollution and asbestos claims in the United States, Mr. Coleridge charged.

"To an industry based on a fine balance of probabilities, the danger

of policy wordings being re-written and the unpredictability of court awards is particularly acute and nowhere more so than in the field of pollution," he said.

"Intentional pollution, by which I mean the action of depositing toxic waste in a fashion likely to damage the environment, should never be the subject of an insurance claim," he asserted.

Despite his opposition to coverage for intentional pollution, Mr. Coleridge said that Lloyd's underwriters "stand ready to meet all claims arising from pollution accidents providing, always, that they are covered under the terms of the policy."

"Despite Superfund and the calls which are already being made on the industry to clean up America, pollution can and should, I believe, remain an insurable peril," Mr. Coleridge said.

In fact, he promised that Lloyd's "will always endeavor to make a market" for pollution coverage.

For example, a Lloyd's policy has been designed to provide coverage for owners of underground storage tanks. U.S. Environmental Protection Agency rules require owners to buy environmental impairment liability insurance or show assets to assure financial responsibility for damage caused by leaks from the tanks.

These rules require owners and operators of underground tanks to purchase minimum coverage limits of \$500,000 per claim/\$1 million aggregate (BI, Oct. 8, 1990).

"Despite the U.S. Oil Pollution Act of 1990 and the controversy it has aroused in shipping circles, coverage, within certain clearly defined limits, is still available for vessels transporting oil to and from American ports," Mr. Coleridge said.

The oil pollution law raises shipowners liability limits, expands the type of damages for which shi-

powners could be held liable and requires double hulls on all new tankers (BI, Aug. 6, 1990).

The availability of coverage despite the new law "illustrates the willingness of insurers to respond to an essential need and one, moreover, which transcends all frontiers since, as already stated, pollution, in one form or another, has become a matter of worldwide concern," he said.

Mr. Coleridge also endorsed an environmental trust fund proposed by Maurice R. Greenberg, chairman and chief executive officer of American International Group Inc. to finance the cleanup of the nation's hazardous waste sites (BI, March 6, 1989).

Under the proposal, all commercial property/casualty insurance policyholders, insurers and self-insured companies would be assessed a flat fee equal to 2% of premiums to finance cleanups.

Insurers would collect the fees—which would generate about \$3 billion annually—and turn them over to the EPA, which would manage the fund.

The money would not be used to pay for pollution-related third-party injury and property damage claims.

Mr. Greenberg's "imaginative suggestion" could be "well worth exploring," Mr. Coleridge said. And the program should be adopted on an international basis if it succeeds in the United States, he added.

"Europe would seem to be a prime target since it is already badly affected and if, as seems likely, the Eastern Bloc countries are eventually admitted to the European Community... some form of collective solution could become an urgent priority if, indeed, it is not one already," Mr. Coleridge said.

Presenting insurers with the entire bill for pollution cleanup would only serve to "add underwriters to an already long list of extinct species," he said. ■



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Lloyd's chief bemoans low rates

SAN FRANCISCO—Many underwriters will go out of business if insurance rates don't rise soon, asserts the chairman of Lloyd's of London.

"There isn't going to be a next year for many in the industry if something isn't done," David Coleridge said during a question-and-answer session following a presentation here at the International Insurance Seminar. The International Insurance Society Inc. sponsored the annual seminar.

And, pointing to attempts by U.S. regulators to limit premium hikes, Mr. Coleridge said: "I can't

believe that regulators want the industry to continue the way it is."

"Either we put our house in order or the responsibilities which we owe to the insuring public will be taken from us and this, I submit, would be not only to our own detriment but, more importantly, to the detriment of the policyholders we are in business to serve."

Mr. Coleridge blamed insurers' plight on two main causes: inadequate reserving for losses that occurred over the past 30 to 40 years, and inadequate premiums.

"I am amazed that companies are still underwriting at the rates that they are," he said.

Lloyd's itself has hardly escaped trouble. The week following Mr. Coleridge's speech, Lloyd's an-

nounced a record 510 million pound loss for the 1988 underwriting year (BI, July 1).

"We are the most incompetent operators," he said of the insurance industry. While other industries increase their profits year after year, "we make money for three years and then lose it for the next six."

During his speech, Mr. Coleridge criticized rate slashing.

"Blame for the present position must, in the first instance, lie with those who, ignoring the lessons of the mid-1960s, chased the rate downhill, elbowing lemmings out of the way in their rush for market share.

"We are all subject to the prevailing levels of premium which

seem to be determined more by available capacity, a significant proportion of which is of a temporary nature, than the actual risks that are being underwritten.

"It is this, rather than the number and scale of catastrophes, that has, I fear, reduced our industry to its present state, which, as I intimated at the beginning, is perilous indeed."

However, Mr. Coleridge did offer a ray of hope: The naive capacity that started the downhill slide of rates is beginning to dissipate, "at least in the reinsurance market," he said. In addition, underwriters are becoming increasingly more selective about the risks they underwrite, he said.

—By Joanne Wojcik

IIS seminar attracts 375

SAN FRANCISCO—A total of 375 insurance industry executives and academicians gathered here June 16-20 for the 27th annual International Insurance Seminar.

The seminar—sponsored by the Tuscaloosa, Ala.-based International Insurance Society Inc.—featured four plenary sessions, followed by four discussion sessions that were moderated by academicians from around the world.

A research roundtable capped off the four-day meeting with discussions on such topics as the implications of changing demographics on insurance and other financial services as well as the status of alternative risk financing facilities.

Featured speakers during the plenary sessions included David Coleridge, chairman of Lloyd's of London (see story, page 10) and Robin Campiano, the insurance commissioner of Hawaii.

Next year's seminar will be held July 5-8 at the Westin Harbour Castle Hotel in Toronto.

The International Insurance Society, a non-profit corporation founded in 1965 to bring together academics interested in insurance and financial services with insurance executives, has about 1,000 members from 82 nations.

For seminar information, contact Mary B. Silberberg, Executive Director, International Insurance Society Inc., P.O. Box 870224, Tuscaloosa, Ala. 35487; 205-348-8974.

New members in Hall of Fame

Munich Re exec, Australian scholar are both inducted

SAN FRANCISCO—A reinsurance company executive and an insurance professor are the newest laureates of the Insurance Hall of Fame.

Horst K. Jannott, chairman of Munich Reinsurance Co. of Munich, Germany, and Alfred H. Pollard, professor emeritus of actuarial science at Macquarie University in Australia, were formally inducted during an

awards dinner at the 27th annual International Insurance Seminar held June 16-20 in San Francisco.

The seminar and induction ceremony were sponsored by the International Insurance Society Inc., which is headquartered in Tuscaloosa, Ala.

Also during the ceremony, Thomas J. Wolff, chairman emeritus of Wolff-Zackin & Associates Inc., an insurance agency in Vernon, Conn., was awarded the John S. Bickley Founders' Gold Medal.

The medal is named for the International Insurance Society's founder, John S. Bickley.

Established in 1957, the Insurance Hall of Fame now includes 81 people from 13 nations. It recog-

nizes "major figures in the history of insurance," according to the insurance society.

The first official home of the Insurance Hall of Fame, located at the University of Alabama in Tuscaloosa, will be dedicated March 22-23, 1992, announced Odo Hattick, IIS chairman and former deputy chairman of Nationale-Nederlanden N.V. of The Hague, Netherlands.

Mr. Jannott of Munich Re was named to the Insurance Hall of Fame in recognition of his support of research that has led to numerous innovations in loss prevention and insurance company operations.

In addition, Mr. Jannott has established many scholarships for

students of insurance around the world.

Mr. Pollard was recognized for his creation of Macquarie University's internationally acclaimed actuarial science program, which is the model for similar programs being developed at universities worldwide.

Founders Gold Medal award winner Mr. Wolff invented the capital need analysis and financial need analysis systems that are used to measure individuals' life insurance needs.

The systems are taught in college courses on personal finance and are incorporated into numerous life insurance company training programs.

—By Joanne Wojcik



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Growing clients need global services

By JOANNE WOJCIK

SAN FRANCISCO—The insurance industry must change its marketing approach to respond to the needs of its internationally expanding clients, a German insurance executive says.



Few insurers now have international experience with the exception of those that underwrite marine insurance and reinsurance, according to Bernhard Fink, executive director of Gerling-Konzern Allgemeine Versicherungs A.G. of Cologne, Germany.

"Insurance companies have to react to basic market changes," Mr. Fink said.

"The liberalization of the insurance business in the European Community following the opening of the national markets by freedom of services... forces insurers to reassess their position," he said.

And, "where national borders are losing their constraining character, the local businesses eventually will be affected," Mr. Fink said during the International In-

urance Seminar held June 16-20 in San Francisco. The annual meeting was sponsored by the International Insurance Society.

While insurers in countries with strong foreign economic activities have found it necessary to provide worldwide service facilities for their corporate clients, "a significant number of insurance corporations are limiting their activities to either local or regional levels," Mr. Fink pointed out.

With the exception of the marine and reinsurance markets, "insurers in general have very little experience in international business," Mr. Fink said.

"The national character of insurance is still predominant. Even strong nationwide carriers have hardly developed any international operations," he said.

Only Switzerland, where the domestic market is too small to absorb the capacity available, and the United Kingdom, which has traditionally been a driving force of worldwide insurance activity, are truly global markets, he said.

However, some domestic insurers in countries with strong foreign business connections—like the United States, Germany, Japan, France and Sweden—have found it

necessary to provide international services to their clients, according to Mr. Fink.

Generally, internationally oriented insurers are "a small minority," he said. Fewer than 60 of the thousands of U.S. insurers have foreign operations, while fewer than 50 of Germany's 500 insurers do, according to Mr. Fink.

However, "things are changing," he stressed. "Walls are coming down and so are restrictions and obstacles."

For example, the opening of Eastern Europe has made those markets accessible to Western insurers, Mr. Fink pointed out.

And under the timetable set up for establishing a single European market, "industrial risks are now open to cross-border freedom of services," he said. "And, within the next three years we'll probably see a single license for all the E.C. governments."

"In other words, despite continuing differences in culture, in language, in traditions, but also in legal, administrative and social structures, a European insurance market is emerging," Mr. Fink said.

As a result, insurers will be forced to develop more global pro-

grams to meet the needs of corporate clients that are expanding internationally, he said.

As corporations' exposures expand beyond national borders, particularly in the areas of environmental risks and business interruption losses, "insurer solutions clearly have to take international operations and inter-related global risk management into account," he said.

International companies need access to global risk financing facilities, Mr. Fink said.

Insurers traditionally have used three strategies for developing international business, he said:

- Development of new products to suit the needs of existing clients that are expanding internationally.

- While such a strategy provides full product identification with the insurer, it requires "time, time, time," he said.

- Mergers and acquisitions.

Buying indigenous local insurers in the countries in which an insurer desires to expand or merging with another insurer that already has an international orientation are quicker alternatives, but there is a price to pay for speed, Mr. Fink warned.

"They are tremendously difficult

to integrate" with the rest of the insurer's organization, he said.

- Cooperative agreements with insurers in other countries.

While insurers unfamiliar with foreign markets often rely on cooperative agreements with local partners, they often are too informal to be effective, according to Mr. Fink.

"As loose cooperations have not proven very successful in the past, joint venture companies in certain cases may be a better alternative," he said. "Sometimes even mutual participation in equity has been established in order to facilitate the required local support."

Mr. Fink suggested that insurers abandon these three expansion strategies and choose from two new options:

- Development of international expertise within the organization.

- Linking up several foreign subsidiaries into a single, multinational insurance organization.

Both alternatives provide "global support combined with strong cooperation... which is difficult to achieve with the merger and acquisition route," according to Mr. Fink.

"For global marketing to corporate buyers, a total set-up has its advantages," he stressed. ■

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COVERAGE MAY NOT BE AVAILABLE IN ALL STATES

European banks move ahead in insurance sales

By JOANNE WOJCIK

SAN FRANCISCO—Barriers between banks and insurers have begun falling in Europe and will continue to do so throughout the world, according to a German



bank official.

After European banks' initial foray into personal lines insurance—usually selling individual life policies to depositors—there is movement afoot in commercial lines, said Sven-Michael Slottko, chief executive officer of Lebensversicherungs A.G. der Deutschen Bank, the life insurance unit of Deutsche Bank A.G. in Wiesbaden, Germany.

Deutsche Bank, for instance, started its life company in 1989. And the huge banking concern, recently founded a second company to underwrite group life and pensions, Mr. Slottko announced.

"From Australia to Europe, more and more banks and insurance companies are discovering the synergistic merits of linking themselves in one form or another," the bank official said at the International Insurance Seminar in San Francisco June 16-20. The seminar was sponsored by the International Insurance Society Inc.

Two terms already accepted in the financial services world demonstrate those links, said Mr. Slottko: "allfinanz," referring to cooperative agreements between insurers and banks; and "bancassurance," meaning bank-supplied insurance products.

"Where bancassurance is permitted legally today, more cooperation agreements will be concluded; and where bancassurance is not permitted legally yet, pressure will be brought to change legislation," he predicted.

"Furthermore, even before legislation is changed, unofficial contacts will be made."

Cooperation may mean simple distribution agreements or cross-shareholding and mergers and acquisitions. But both banks and insurers "recognize that consumers want a wider range of financial services, preferably from one source," he said.

Bank marketing of insurance has its advantages.

Banks, Mr. Slottko points out, provide sufficient capital to invest, an extensive network of branch offices connected on-line with the main office; and extensive information on numerous clients. Other advantages include frequent client contact and highly motivated professional employees who can advise customers according to their needs without regard to potential commission.

Mr. Slottko acknowledged, however, that banks may not be able to provide the expertise and specialized services that insurers can.

"Cultural shock does occur when the banker talks for the first time to his insurance counterpart," he said. "A good salesman, who is often found in insurance organizations, is accustomed to focusing on those elements of the product that are essential to promote his sale; and he is used to developing his own sales strategy, his own individual sales talk."

A banker, by contrast, "is certainly not a good salesman," said Mr. Slottko. "He has no experience in actively selling. His quality is to serve and to consult."

Because "life insurance products need to be sold actively, it is also essential to train the bank employees in sales techniques," he said.

In addition, training of bank employees must be more technical, detailed and more in the context of the surrounding products than it is for insurance agents, according to Mr. Slottko.

He admitted that his own organization provided only minimal training to bank employees assigned to sell life insurance to de-

Continued on page 15

Banks in insurance

Continued from page 12
positors.

"The first priority of the life company was to integrate its products into the existing bank products and to be accepted by bank employees and by bank management," he explained.

"This has been achieved by offering simple products with basic training, by making our product understandable to the intermediary and the client, by being competitive, by providing quality service and by remaining low-profile.

"The logo Deutsche Bank is what counts, not the life company," he stressed.

But now that bank employees have gotten their feet wet in personal lines, Deutsche Bank is expanding its insurance offerings, according to Mr. Slottko.

For example, the bank is developing insurance products linked with bank products, such as com-

binning mortgage credit and life coverages or by combining certain savings products with life insurance.

"The possibility of linking bank and insurance products is the best proof of the superiority of a bancassurance structure compared with cooperation between a bank and an insurance company," he said.

The German banking giant also plans to develop products to market to its 46,000 corporate clients, which comprise 28% of the German market, according to Mr. Slottko.

Deutsche Bank's formation of a group life and pension insurer is "significant," he said, "because only 15 companies provide group life and pensions in Germany."

Mr. Slottko also indicated that the bank eventually may enter non-life lines through its partnership with German property/casualty insurer Gerling-Konzern Allgemeine Versicherungen A.G. of Cologne.

JULY CLOSINGS

issue: July 15
closing: July 2
conference report: World Insurance Congress
demographic section: Insurer Topics: Lobbying/Government Relations

issue: July 22
closing: July 9
editorial feature: Risk Management: Mid-Year Market Report

issue: July 29 — Reader Service
closing: July 16
editorial feature: Risk Management: Systems & Analysis — Directory: Risk Management Info Systems

issue: August 5
closing: July 24
demographic section: Agent/Broker Topics: New Selling Opportunities

issue: August 12
closing: July 30
editorial feature: Surplus Lines — Directory: Surplus Lines Insurers & Wholesalers

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Business Insurance
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Letters

Continued from page 8

all employees work a six-day week and resulted in artificial inflation of the average weekly wage by as much as 15%.

Discrimination and inequitable distribution of benefits are precisely what the Joint Select Committee found was wrong with the old system.

Low maximum benefit levels, lump-sum settlements based on the nebulous "loss of future wage-earning capacity" and traded-away future medical care created windfalls for lower-paid workers with minor injuries and hardships for higher-paid workers with severe injuries.

Objective impairment ratings, supplemental income benefits and prohibiting restrictions of future medical care will ensure the right amount of money goes to the right people.

"Self-interest" on the part of employers and insurers in Texas must be defined simply as "survival," which is also why, as the authors of the reform bill stated, subscription must remain voluntary until the system's inequities are fixed.

Mr. Ellenberger states that the Texas reform bill "deserved" to be declared unconstitutional. Fortunately, there is an appeal process to a venue other than the ever-popular Eagle Pass, Texas, which will make that final determination. So far, one person (Judge Perez) has been convinced that two years of effort by the Texas Legislature was wrong.

It is interesting that the plaintiff could not produce even one example of a worker who was being discriminated against or unfairly compensated by the "onerous" new system. Also, a national workers compensation expert, who was approached by the plaintiff to testify against the reform bill, refused and in fact testified that he believes the new law is good and should be upheld because it promised more protection for injured workers and is a much more rational and efficient system.

In workers compensation, as in life, "all have sinned..." Mr. Ellenberger's description of the authors of RIMS workers comp report as "condescending" is perhaps best rebutted by the fact that the self-chastisement section of the report on risk managers was lengthier than that of all other parties.

Finally, who can disagree that "communication is a two-way street?" Is it not also true that communication won't happen unless all parties listen?

Mark T. Carter
Director-Corporate
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Malpractice arbitration system proposed

By ADRIENNE C. LOCKE

WASHINGTON—Finding arbitration—not the courts—would resolve most medical malpractice disputes under legislation introduced in the Senate this month.

Under the bill, S. 1232, introduced by Sen. Pete V. Domenici, R-N.M., employees of companies that claim a tax deduction for the cost of providing health care benefits would be required to use arbitration or other federally approved alternative dispute resolution mechanisms to settle medical malpractice claims.

In addition, federally sponsored and subsidized health care programs, like Medicare and Medicaid, would also require recipients to use binding arbitration to resolve malpractice claims.

The bill would cap non-economic damage awards in medical malpractice cases at \$250,000. However in states where damage caps are lower than \$250,000, the existing law would prevail.

In addition, awards would be reduced for collateral source payments for the same injury, and periodic payments—like structured settlements—would be required for awards above \$100,000.

The bill also would require that any punitive damage awards go to federally approved state agencies set up to monitor and discipline negligent health care providers.

Washington

Plaintiffs could file a malpractice claim with one of the approved alternative dispute resolution mechanisms from a list approved and maintained by the Health and Human Services Department. The plaintiff must give notice to the health care provider against which the malpractice claim is made.

The plaintiff would pay a nominal fee to cover the cost of arbitration, but the fee could be waived if a plaintiff who is not represented by an attorney can demonstrate inability to pay the fee.

However, any attorney representing a plaintiff on a contingency fee basis would be required to pay any costs applicable to that plaintiff.

Few decisions by arbitrators could be appealed to a court. Appeals would be allowed, for example, if there are allegations of misconduct or corruption by the arbitrator, or evidence of fraud or "other undue means" to win an award.

Mine safety fine

More than 800 coal mining operations face penalties totaling \$6.5 million in the largest aggregate fine ever assessed under federal mine safety and health law, the

Labor Department announced.

The companies are accused of tampering with coal dust samples, which are used to determine if the mines are in compliance with dust standards designed to protect miners from black lung disease.

The citations resulted from a 20-month investigation conducted by the Mine Safety and Health Administration. The investigation began after the discovery of a dust sample that was clearly tampered with, according to the MSHA.

Pumps are used to periodically collect airborne dust samples in mines. The samples are collected in a sealed, pre-weighed filter cassette which is submitted to the MSHA.

The MSHA said that during the investigation more than 120,000 coal dust samples were taken by approximately 2,000 coal mines. Of that group, MSHA found that more than 4,700 dust samples had been tampered with.

"The magnitude of the proposed penalties reflect the magnitude of the offense. We are fully committed to assuring the integrity of the sampling program and keeping dust levels below limits set by law," said Secretary of Labor Lynn Martin.

Coal mine operators hit hardest by the proposed fines include: E.I. du Pont de Nemours & Co. of Wilmington, Del., with \$777,200 in fines; Rochester & Pittsburgh Coal

Co. of Indiana, Pa., \$740,400; and Amax Inc. of New York, \$225,500.

Those three operators and several others are contesting the fines, according to the MSHA, which could not identify all those protesting fines.

ERISA pre-emption

The U.S. Supreme Court recently declined to review a case involving state pre-emption of federal employee benefit law.

In the case, the Texas Supreme Court upheld two lower court rulings that a Dow Chemical Co. worker cannot sue the Dow and its health care plan administrator under the state's Deceptive Trade Practices Act. The plaintiff, James Cathey, claimed that Midland, Mich.-based Dow's self-insured health care plan wrongfully denied 24-hour nursing care for his wife.

However, while upholding the lower court, three of the justices on the Texas Supreme Court said in a separate concurring opinion that the Employee Retirement Income Security Act unfairly penalizes plan participants who are denied benefits (BI, Feb. 25).

Health reforms urged

Certain health care reform measures—like promoting managed care, improving small employer access to health insurance coverage, and medical malpractice reforms—must be enacted before the 1992 elections, health industry executives say.

In a letter addressed to President Bush and congressional leaders, the Washington, D.C.-based Health Care Leadership Council

said that these and other immediate changes would slow the increase in the cost of health care while expanding access to services.

The council—made up of 50 chief executives of insurers, health care providers and corporations—said all sides of the health care reform debate agree these reforms are needed.

"Now what is needed is the unanimous will to enact these reforms. The American people should not have to wait on a debate of radical issues which will not soon be completed," G. Robert O'Brien, chairman and president of CIGNA Life Insurance Co. of Bloomfield, Conn., and chairman of the Health Care Leadership Council, said in a separate statement.

In the letter, Mr. O'Brien urged Congress and the president to:

- Expand government programs to provide income-related health care subsidies for those near the poverty level and basic health care coverage for those below the poverty level.

- Provide equitable reimbursement by all federally sponsored health care programs, like Medicare and Medicaid, to avoid cost shifting onto private health care payers.

- Emphasize additional research into outcomes and practice guidelines.

- Accelerate health promotion and disease prevention efforts.

"We urge that bipartisan negotiations begin immediately to translate these reforms into action. We must resist the temptation to politicize these issues or to promise radical change which will not work or cannot be enacted," Mr. O'Brien said. ■

RISK-MANAGEMENT Mid-Year Market Report

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Continued from page 2

cause of action against the insurer. "To be subject to equitable remedies (under ERISA), a party in interest must be involved in transactions prohibited by the act," said Judge Smith in a June 3 ruling. The plaintiffs' allegations that "Executive Life was a minor player in acts that ERISA prohibits is not enough to keep Executive Life in this lawsuit."

Specifically, she rejected the plaintiffs' allegations that paying commissions to the agent constituted a violation of ERISA's prohibition against excessive compensation.

While Executive Life was dismissed from the suits, the plaintiffs can still pursue their ERISA claims against the agent.

The rulings stem from two lawsuits involving Executive Life and agent Barry Schotz, who operated several financial consulting and planning firms in California.

According to the complaints, Mr. Schotz, who has since filed for personal bankruptcy, approached the senior executives of small companies to offer consulting and investment advisory services that he claimed would produce substantial tax savings and investment returns for the companies and the executives.

He advised the two plaintiff companies—Sante Mineral Waters Inc. and United Centrifugal Pumps, both based in the San Francisco Bay area—to form voluntary employee benefit associations, also known as 501(c)(9) trusts. Those arrangements allow money that is used to finance certain employee benefit programs to earn interest tax-free, subject to Internal Revenue Service requirements.

Mr. Schotz advised the companies to use the VEBAs to fund life insurance policies purchased on behalf of the companies' senior executives, according to court papers.

Those senior executives would be the named beneficiaries and, after retirement, would receive the cash value of the policies, court papers allege.

Mr. Schotz and others placed some \$20 million in premiums for such policies with Executive Life and another insurer, Pacific Standard Life Insurance Co., according to court papers.

Supported by large junk-bond portfolios, both insurers offered high yields during the mid-1980s, according to Executive Life attorney Douglas L. Hallett of Coudert Bros. in Los Angeles.

But the two companies' VEBAs may not pass muster with the IRS. According to court papers, they fail IRS requirements for tax-exempt status because they discriminated in favor of senior executives over other employees. Furthermore, Mr. Schotz and his colleagues allegedly misrepresented the terms of the life insurance policies, claiming that the VEBAs needed to pay only the first year's premium and that subsequent premium payments could be made by borrowing on the policies' cash value.

When the policies began lapsing after the second- and third-year, premiums went unpaid and the IRS started investigating the VEBAs, Sante Mineral Waters Inc. and United Centrifugal pumps filed suit against Mr. Schotz, his companies and others, including Executive Life.

In a series of rulings, Judge Smith said that the plaintiffs' fraud claims against Executive Life, filed under state law, were pre-empted by ERISA. In addition, the judge ruled that the plaintiffs did not show how Executive Life had committed an ERISA prohibited transaction.

The judge dismissed Executive Life from both lawsuits, but held that the plaintiffs could proceed

with their ERISA claims against Mr. Schotz and his employees.

ERISA attorney Glen Nager noted that Judge Smith's rulings "are in the mainstream" and reflect several U.S. Supreme Court decisions holding that ERISA pre-empts all state law claims (BI, Dec. 10, 1990; Dec. 3, 1990).

"The court rejects efforts of the plaintiffs to get around ERISA through artful pleading," said Mr. Nager of Jones, Day, Reavis & Pogue in Washington, D.C.

Most courts also have held that selling policies to an employee benefit plan under ERISA does not make an insurer a fiduciary under that law, explained ERISA attorney Robert Eccles of O'Melveny & Myers in Washington, D.C.

"A grayer area in the law" is whether insurers can be held liable under ERISA for the acts of their agents, he explained.

While Judge Smith' ruling is not the first to hold that an insurer cannot be held liable under ERISA

'These decisions reaffirm the broad pre-emptive impact of ERISA,' says Mr. Hallett.

for the acts of its agent, her decision will be "helpful" to insurers, Mr. Eccles said.

"More law is better," Mr. Eccles added.

"These decisions reaffirm the broad pre-emptive impact of ERISA," said Mr. Hallett. Furthermore, "Judge Smith has held that the absence of a state law remedy does not mean necessarily that ERISA will provide one," he said.

"Under ERISA, an insurer performing its normal insurance company functions cannot be dragged through the mud on elusive" state law tort theories holding it liable

for the acts of its agents, said Mr. Hallett.

Judge Smith found that "Executive Life clearly did not act as a fiduciary and could not be held liable for the fiduciary role of its agent," he explained.

Plaintiffs' attorney Dan Feinberg said the decisions reveal "the potential problem of a Catch-22" situation for plaintiffs who are denied remedies under both state law and ERISA.

However, he predicted that the decision would "not have broad application."

"Our claims are thrown out on a technicality," said Mr. Feinberg. "These are quite narrow decisions."

Mr. Feinberg says he will ask Judge Smith to reconsider her decision or, in the alternative, to allow the plaintiffs to amend their complaint to better state that Executive Life violated ERISA.

Court decisions that hold that plan beneficiaries' state law claims

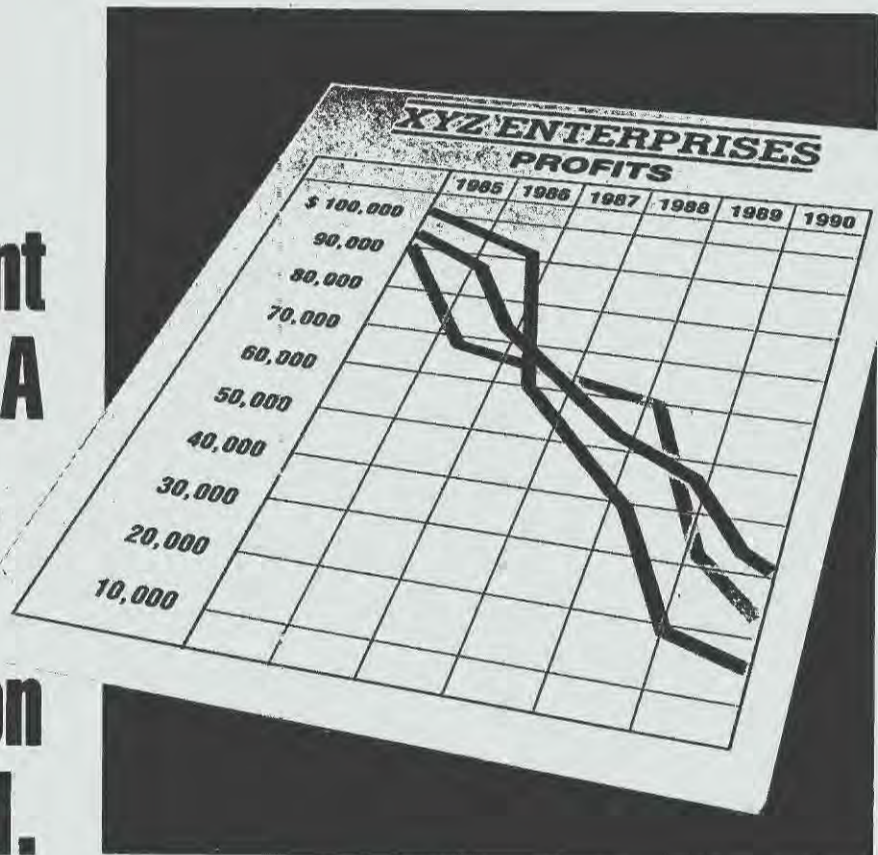
are pre-empted by ERISA and that their allegations of ERISA violations were not properly stated can create a situation for plan beneficiaries that Mr. Eccles, quoting a federal appellate ruling, called "betrayal without a remedy."

"This is a hot issue," he said, noting that "courts have gone different ways."

"This court allowed the ERISA claims against the agent; other courts leave the plaintiffs without a remedy against anyone," Mr. Eccles explained. "The case law on this issue is all over the place."

Sante Mineral Waters Inc., Employees Welfare Benefits Trust et al. vs. Barry Schotz et al., U.S. District Court for the Northern District of California; No. C-89-2292. United Centrifugal Pumps et al. vs. Barry Schotz et al., U.S. District Court for the Northern District of California; No. C-89-2291.

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Teen treatment

Continued from page 3

cause adolescents take longer to diagnose and treat. It's harder to know what's going on with them. They're still developing, so sometimes they're not very open," Ms. Pearson said. "There's probably a greater likelihood they have both psychiatric and chemical dependency problems, so it takes a while to get them off drugs and alcohol and see what's really going on."

Ms. Pearson agrees with Mr. Hill that some of these costs are created by parents who are unable to cope with their troubled children and are relieved to get them into an inpatient treatment program—and out of the house.

"It's sometimes also advisable for teens to stay in treatment longer to prevent chaos and possible psychiatric problems for the other children in the family," she added.

While nobody is blaming parents, spiraling mental health care costs caused by this phenomenon are forcing many companies to review how to approach mental health and substance abuse treatment for employees' adolescent and teen dependents.

The cost of providing mental health and substance abuse benefits rose 18% to \$244 per employee in 1989 from \$207 per employee in 1988, according to A. Foster Higgins & Co. Inc. (BI, Feb. 19, 1990).

Specialized programs are now being established to target adolescent mental health care costs.

Assured Health Systems Inc., for instance, is offering "an integrated program of managed care for employees' family members who are most often adolescents and teens," said Dr. Ronald Geraty, president of the Boston-based company.

Assured's strategy is to assign a professional psychologist to the case and confer with the troubled teen's entire family before an assessment is made.

That professional stays with the youngster, managing his care throughout three phases of treatment: primary, or inpatient care; secondary, or continuing outpatient care after discharge; and ongoing involvement in a self-help group.

The program stresses quality care along with cost containment, Dr. Geraty says.

"While most insurance companies just pay the bills, we make sure the teen is getting good care from the start that's managed effectively in a facility we've checked for quality beforehand," stresses Joseph Honor, Assured's vp in charge of its central and west division.

"Under normal conditions, some kids can be in the hospital two weeks before there's a treatment plan. We have one within the first few days of hospitalization. We evaluate how the teen's doing each step of the way, and begin working on discharge planning the first week. We transfer youngsters from intensive to outpatient treatment quickly, often as soon as 14 days, and continue to make sure they're progressing as they should. And the cost of that outpatient care is usually one-third the cost of inpatient care."

Dr. Geraty noted that often a teen admitted to an inpatient facility is not treated for 10 days while initial psychological tests are assessed.

"Psychiatric hospitals typically say they can't begin treating the youngster until they know those test results, and we as professionals know there's no reason a psychologist can't begin seeing the teen on day one."

After the inpatient program, he contends, the youngster can continue outpatient treatment for an unlimited length of time.

"There's no rule that says people have to sleep in the same place to

develop camaraderie," Dr. Geraty said. "A well-structured outpatient program with no residential component is still an intensive milieu."

An outpatient program that costs \$3,000 to \$5,000, and continues longer, can be at least as effective as an immediate inpatient program costing \$18,000, he said.

Many teen mental health and substance abuse programs lack follow-up outpatient care, experts say.

"Teen-agers are usually placed in the facility (unwillingly) by parents, the school or the courts, so they're less likely (than adults who volunteer for treatment) to continue conscientious outpatient therapy after discharge unless they're closely supervised," said TPF&C's Ms. Pearson.

One example of the way Assured

shortens expensive inpatient stays for children over 16 is its use of Choate Health Systems.

In addition to a 21-bed inpatient unit, this private psychiatric hospital in Woburn, Mass., also has a new four-bed sub-acute unit that can care for a teen-ager in crisis for anywhere from 24 hours to two weeks.

Still in its first year, the program has proven so successful that a similar sub-acute system for children under 16 is being developed and is expected to be in place by the end of 1991.

"If, for example, an employee comes to the EAP because a youngster seems depressed, and the family fears he'll do something drastic like take drugs or his life, they are all sent here for intervention before the crisis occurs," explains Margaret Moran, Choate's

vp of marketing and program development. "If the teen needs a structured setting and must be removed from the home, we do that immediately by placing him in sub-acute care instead of a full inpatient program."

The family is evaluated and monitored and help is provided before a major and more costly crisis develops, Ms. Moran said. "Also, if, during the youngster's stay in sub-acute, we find that he needs inpatient care, we can make that happen, too. But we start out with the lower level (lower cost) of care, with the entire family involved."

The facility's intensive treatment programs run from 9 a.m. to 3 or 4 p.m., so that parents of teens can visit their children in the afternoon or evening and also participate in long-term, ongoing treat-

ment programs with their children.

Some observers point out that teen-agers can be better off in treatment less intensive than traditional inpatient care. Yet sometimes long-term residential care is needed to keep a youngster from returning to a home setting that helped trigger mental health or substance abuse problems.

And some long-term residential facilities—like the Parkside Youth Center in Park Ridge, Ill.—offer special programs for troubled teens.

By the time a teen-ager gets to Parkside, we hope he has already learned in primary treatment that drugs and alcohol are causing problems in his life, said Mary Jane Bressler, director of the center, which is run by Parkside Medi-

Continued on next page

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Continued from previous page
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"We have to work on how to connect the drug use with their behavior and its consequences," she said.

But she too stresses no youngster will be magically "cured" in 28 days, or any other time frame set by an insurance company or an employer.

Ms. Bressler also believes family involvement is imperative to resolving the teen's problems, and her facility too encourages the family to continue working together under professional supervision—sometimes for as long as a year.

Most of the teens live at the center while going to school and work either full- or part-time to help defray costs.

In many cases, these kinds of ex-

tended care are proving to be very effective.

A recent study of 83 teens treated at Parkside found that after participating in a "full program" of primary inpatient treatment, continuing care after discharge and involvement in a self-help group, 55% of the youths contacted reported no alcohol or chemical use.

And an additional 10% said they had only slipped "off the wagon" once, says William J. Filstead, vp of research and evaluation at Parkside Medical Services.

"The remainder keep coming back for more treatment, causing recurring costs," Mr. Filstead claims. "So if you want to deal with costs, it means paying for longer-term care now or you pay more later." ■

Managed mental health plan paying off for Houston firm

A Houston-based engineering firm is reaching out to employees and their dependents with mental health and substance abuse problems—and controlling costs at the same time.

Brown & Root Inc. is stressing to employees the importance of mental well-being and is directing troubled employees and dependents to a managed care plan that has reduced the company's mental health care costs.

"In 1989 the company looked at its total Houston-area mental health substance abuse costs (for employees and their dependents)

and found they were twice the costs of other places in the country," said Michael Cadger, a principal with benefit consultant A. Foster Higgins & Co. in New York, which advised Brown & Root.

To help Brown & Root control these costs, "we carved out a program which was an exclusive provider arrangement," Mr. Cadger explained.

To receive coverage for mental health and substance abuse treatment, employees and their dependents must use a designated network of doctors and hospitals managed by Cambridge Interna-

tional Inc. in Houston.

"We also changed the plan design to reduce employee out-of-pocket expenses and to promote outpatient utilization," Mr. Cadger said.

The previous plan paid 80% of inpatient hospital stays after various deductibles and also provided 80% coverage for outpatient visits.

Under the new program, the plan provides full coverage for inpatient care with a \$100 a day copayment and a \$2,500 annual out-of-pocket maximum, Mr. Cadger said. Employees pay a flat \$20-per-visit copayment for unlimited outpatient visits.

John Schaeffer, director of employee assistance programs for Brown & Root, noted that the exclusive provider arrangement with Cambridge International provides employees with a choice of three hospitals and five outpatient clinics.

"We saved \$2.4 million in hospital stays in Houston during 1990," Mr. Schaeffer proudly reported. "We have 17,900 employees here and two-thirds of all the hospital stays were by children of employees."

While a goal of an EPA is to control unnecessary utilization of services, Brown & Root is encouraging employees to seek help for themselves and their dependents if they need it.

"In September 1989, before we began this program, we started a major communications program to let our employees know about the new resources that would be available," said Mr. Schaeffer.

The campaign began with a big fold-out brochure proclaiming, "Resource: Dedicated to Your Well-being." It explained in detail what services were available to employees and their dependents who had psychiatric or substance abuse problems.

That brochure was followed by question-and-answer flyers distributed through the office memo system and stuffed inside payroll envelopes. The company also developed a film about the resource program that included interviews with the professionals at Cambridge who would be available to help employees.

That gave employees an "identifier" to help them feel comfortable about bringing their children in to talk to those professionals, Mr. Schaeffer said.

"When we began the first awareness campaign in September 1989, our total EAP calls for help went up 10%, Mr. Schaeffer said. "I'd estimate that in 1990 they jumped to about 20%—and the greatest percentage of those included both psychiatric and substance abuse problems involving adolescents and teens."

While some employees may feel their employer is dictating the treatment they and their children must use when they are required to contact a specific panel of providers, Foster Higgins' Mr. Cadger insisted "it's important to communicate that this a benefit the employer is offering for the well-being of its employees and their families, and it's not mandatory for the company to do that."

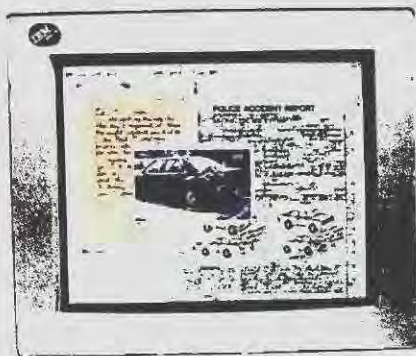
Employees must make their own decision about the type of treatment they want to receive, with the understanding that if they choose to use the company benefit, the company will offer a certain amount of coverage, he added.

"It should be made clear that the employer is not making a contract to cover substance abuse regardless of where somebody goes," said Mr. Cadger.

—By Sandra Pesmen

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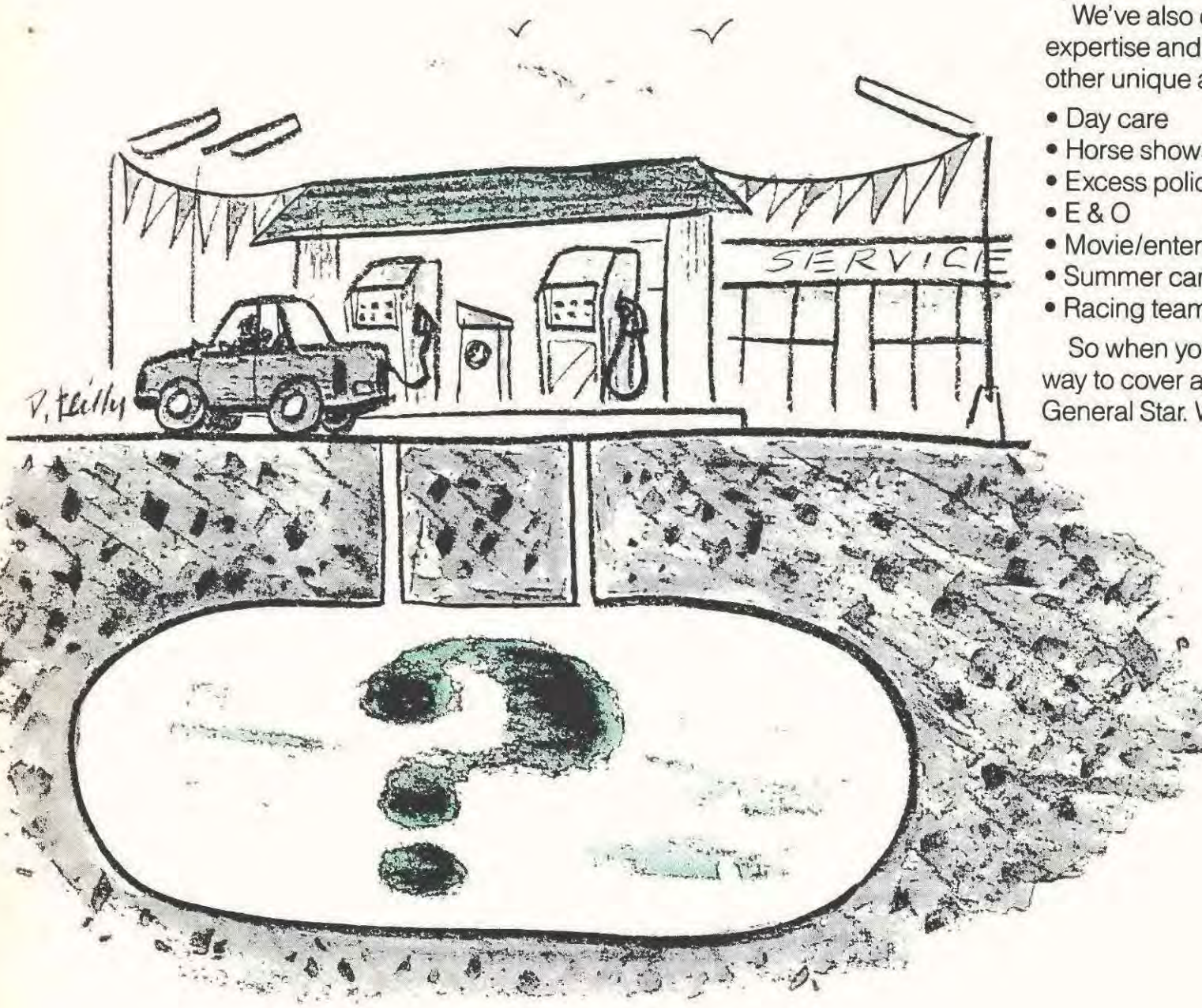
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ASK A CASUALTY ACTUARY

Consulting actuaries also offer management skills

Q

If you were in the client's place, how would you approach working with a consulting actuary? How would you go about finding a consultant?

A

My personal feeling is that risk managers and financial officers tend to view consulting actuaries as technical advisers with a fairly narrow perspective. Depending on the experience and capabilities of the consulting actuary, this may or may not be

the best way to approach the consulting relationship.

In many cases, consulting actuaries have significant experience in dealing with key management issues and could be viewed more broadly as management consultants who also have a specific area of technical expertise.

This change in perspective can transform the relationship into a much more beneficial one for the client.

My answer to the first question would depend on what internal resources were at my disposal. If there were no expertise internally, then obviously I would need to ask the consultant to perform the basic and necessary actuarial tasks needed to operate a sound risk management program. Such tasks would vary according to the structure of the program, but they would likely include the evaluation of funding needs for self-insured exposures, the design or review of cost allocation plans, or a review of the adequacy of loss and loss adjustment expense reserves.

If reasonable expertise was available internally, then the consulting actuary might be asked to review internal analyses performed to meet any of these basic tasks, as well as to advise the client on important management issues.

In either case, I feel that clients are often not fully utilizing the skills and experience of the consulting actuary.

Clients can take advantage of the consulting actuary's skills to address key questions that need to be explored in the proper management of a program. Such questions often include:

- What is the best retention for the program? What alternative of excess insurance or reinsurance would best meet the needs of the program?

Quite often, after a consultant performs one of the basic tasks of loss analysis, he or she is in an excellent position to advise the client on these questions.

To properly address these issues, it is important to be able to interpret the meaning and value of recent large claims experience and its relevance or lack thereof to questions about prospective experience in the higher layers.

Proper handling of these issues generally requires years of experience in working with a wide variety of different programs, and this is one area where the consultant's background can be of key value to the client.

- What is the best structure for the program?

After gaining familiarity with your recent loss experience and the nature of your exposures, the consultant may have some valuable insights regarding whether an alternative structure for the program might make good sense.

- How sound is the financial condition of the insurers with which current or prospective coverage is placed?

While there is no substitute for a thorough

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| Coopers & Lybrand | 34 | Atlanta (5); New York City (5); Newport Beach, Calif. (4); Boston (3); Chicago (3); San Francisco (3); Seattle (3); Toronto (3); Catonsville, Md. (1); Dallas (1); Hamilton, Bermuda (1); Morristown, N.J. (1); Philadelphia (1) |
| Ernst & Young/ Huggins | 23 | Philadelphia (8); Chicago (7); Atlanta (4); New York City (3); Boston (1) |
| The Wyatt Co. | 17 | Chicago (4); Toronto (3); Montreal (2); San Francisco (2); Washington, D.C. (2); Dallas (1); Detroit (1); San Diego (1); London (1) |
| William M. Mercer Inc./Marsh & McLennan | 16 | New York City (7); Columbus, Ohio (3); Deerfield, Ill. (2); Irvine, Calif. (1); Montreal (2); Chicago (1) |
| Peat, Marwick, Main & Co. | 9 | New York City (4); Atlanta (1); Columbus, Ohio (1); Dallas (1); Hamilton, Bermuda (1); Hartford, Conn. (1) |
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| Price Waterhouse | 6 | Hartford, Conn. (3); Atlanta (1); Chicago (1); Miami (1) |
| Willis Corroon | 4 | Nashville, Tenn (4) |
| Johnson & Higgins | 4 | New York City (2); Chicago (1); Los Angeles (1) |
| MLH & A Inc. | 4 | Toronto (4) |
| Balis & Co. Inc. | 3 | Philadelphia (3) |
| Conning & Co. | 3 | Hartford, Conn. (3) |
| E. W. Blanche & Co. | 3 | Minneapolis (3) |
| Liscord, Ward & Roy | 3 | Concord, N.H. (3) |

Source: Casualty Actuarial Society

analysis of internal information in the evaluation of market security, the consultant could be asked to review publicly available information and provide key observations. For example, the consultant could be asked to work up a set of questions to ask the prospective insurer that would assist in reviewing publicly available information.

- How could internal resources for actuarial analysis be enhanced? Would a training program make sense? Should computer software be purchased? Could current claims reports and management summaries be revised to provide more pertinent information?

- How should various contingencies be evaluated for decision-making purposes and for reflection in financial statements?

While it might not be difficult to estimate past or prospective loss costs on an expected value basis, it is often not easy to assess the degree of variation that can be reasonably expected in those loss costs.

Consideration of such variation can make the difference between wise and less-than-wise choices with respect to reserves, funding or the evaluation of alternative retentions or structures for the program.

As to the second question, the most common methods of consultant selection are through word of mouth, contacts at professional meetings and through other service providers like brokers, auditors or management consultants.

This may or may not be a good approach to selecting a consultant, since your source may only be familiar with the work of the prospective consultant in one type of situation that may differ markedly from your company's situation. For example, your colleague might be very impressed with a consultant who has extensive expertise in professional liability claims in Eastern states, but you need someone with a thorough background in California workers compensation.

If you are looking for a series of questions to ask the prospective consultant to find out the extent of his or her relevant experience, you might wish to

review the column I wrote on that subject in the July 4, 1988, issue of *Business Insurance*.

If you are looking for a good general source for finding consulting casualty actuaries located near you, consider obtaining a copy of the latest Yearbook of the Casualty Actuarial Society. It is available for \$20 from the CAS at 1100 North Glebe Road, Suite 600, Arlington, Va. 22201; 703-276-3100; fax 703-276-3108.

In addition, I have updated a chart of the largest casualty actuarial consulting firms. The chart previously appeared in the Sept. 22, 1986, and the July 4, 1988, issues of *Business Insurance*.

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

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

This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions in the benefits field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. And Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans.

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

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

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



Mr. Sherman

Caution urged as era ends

Nuclear plant revival may force review of liability coverage

By Douglas N. Smith

THERE ARE SIGNS that indicate the long-dormant era of nuclear power plant construction may be coming to an end. The pending activity is spearheaded by overseas initiations:

- The South Korean utility, KEPCO, recently ordered a nuclear reactor from Atomic Energy of Canada Ltd. Two additional units are being planned.
- The Swedish government recently suspended plans to shut down two existing nuclear reactors in 1995.
- There continue to be persistent rumors that the People's Republic of China will go forward with additional nuclear projects.

- Indonesia announced its intention to build a nuclear power station within the decade.
- Finland is entertaining proposals for a fifth nuclear unit from German/French joint ventures as well as from Siemens/KWU and ABB-Atom Sweden.

In addition to the apparent revival in nuclear reactor construction opportunities, there are 413 existing nuclear reactor units operated in 29 countries that require the goods and services of manufacturers. However, any company active in the nuclear industry should consider the associated potential for third-party liability.

While large reactor designers and manufacturers have an obvious nuclear exposure, many companies may not focus on or be aware of their nuclear activities. Reactor plants, like any industrial site, require a plethora of supplies, equipment and services that will either be specifically designed for nuclear use or have generic attributes that make them appropriate for nuclear as well as non-nuclear applications. Thus, manufacturers of any product intended for industrial use could have a "nuclear" exposure.

Liability for nuclear incidents is established by two international treaties and national legislation in

Reactor plants, like other industrial sites, require a range of supplies. So the manufacturers of any product intended for industrial use could have a 'nuclear' exposure.

every country that has or is contemplating building nuclear power plants.

The Convention on Third Party Liability in the Field of Nuclear Energy—commonly referred to as the Paris Convention—applies to the European Community (with the exception of Ireland), Sweden, Norway, Switzerland and Turkey. This convention was modified by the Brussels Supplementary Convention and adopted by most Paris Convention signatories.

The Convention on Civil Liability for Nuclear Damage—the Vienna Convention—was drafted under the auspices of the International Atomic Energy Agency and attempted on a worldwide basis what the Paris Convention has achieved in Europe. However, none of the signatories to the Paris Convention is also a signatory to the Vienna Convention.

An attempt known as the Joint Protocol was made in 1988 to reconcile differences between the two conventions. It also attempted to resolve potential problems when a nuclear installation located in a signatory country of one convention causes damage in a non-contracting state or vice versa. This latter difficulty was highlighted by the Chernobyl accident.

National legislation is usually based on these treaties. Such legislation generally:

International issues

- Designates the operator of the nuclear power station as solely and absolutely liable in the event of a nuclear incident (with no other party legally responsible).
- Provides a maximum liability limit for which the operator is responsible and requires the operator to demonstrate financial security in that amount.
- Holds the government responsible for a maximum amount of damages in excess of the operator's limit.
- Specifies the court in which victims of a nuclear incident must seek recourse.
- Sets a time limitation within which victims may bring action for damages.

Thus, for contractors and suppliers to many foreign nuclear installations, the primary protection from liability rests on the provision that the operator is solely and absolutely liable. However, the Paris Convention allows the operator relief from such strict liability in instances in which:

- It can be shown that the nuclear incident was caused by a party with the intent to harm.
- The nuclear incident is directly due to armed conflict, hostilities, civil war or insurrection.
- A grave natural disaster of an exceptional character is the cause of the nuclear incident.
- It is specifically allowed in contract provisions.

These provisions may vary from state to state, but what is important is that while the "channeling" of liability onto the operator of the nuclear installation is not absolute, there is no mention of who *would* be liable in circumstances in which the operator is not.

Contractors and subcontractors that provide equipment and material as well as personnel to foreign nuclear installations should think about their own on-site exposure as well. The Paris Convention and, therefore, many European national laws, absolve the operator from liability for on-site property damage, including all third-party property used at and in connection with the facility. Any nuclear incident is likely to cause on-site damage to the property and personnel of the operator and other contractors. Risk management planning must take all of this into account.

Providers of equipment to nuclear installations should also be concerned about the ultimate disposal of parts or equipment that have become radioactive through use in contaminated systems. The waste generated at a nuclear installation must be carefully disposed of in controlled sites. Many reactor sites continue to store high-level and medium-level waste products on the site and, therefore, the channeling of liability applies. It can be anticipated that radioactive waste disposal sites for high-level and medium-level waste will require licensing similar to that required of reactor operators. In such event, the operator of the waste disposal site will be absolutely liable for any nuclear-related damages and will be required to provide financial security in the form of insurance.

However, it is a situation that must be monitored by risk managers for any changes when the disposal problem is solved.

Potential for environmental damage from radioactive waste products must be adequately anticipated and provided for in risk management programs.

While the exposure to loss resulting from nuclear liability is real, the insurance solution may seem somewhat limited. It is common for foreign comprehensive general liability policies to have a nuclear exclusion attached. The exclusion is identical or similar to the Insurance Services Office Inc.'s wording of the Broad Form Nuclear Exclusion that is attached to domestic CGL policies.

This exclusion, however, is drafted to respond to

U.S. legislation like the Atomic Energy Act of 1954 and not to the Paris or Vienna conventions. Thus, definitions of such terms as "hazardous properties," "nuclear material" and "byproduct material" may not have exact matches in legislation overseas. Careful analysis would be needed in each country in question to determine the extent of the exclusion in the conventional policy.

As in the United States, nuclear industry suppliers benefit from the insurance policies purchased by most nuclear installations to comply with the financial requirements of the national legislation.

However, unlike the omnibus wording of the U.S. Facility Form, which includes as a policyholder any person or organization involved with the facility in

A nuclear power plant is a complex web of technical systems, operational procedures and legal requirements. The same can be said of nuclear liability insurance.

any way, foreign liability forms usually cover only contractors and only by extension of policy conditions.

Overseas policies commonly combine conventional and "nuclear liability" coverage at a nuclear installation in one policy form rather than separate them into two separate forms, as is the practice in the United States. Thus, any conventional injury and "nuclear" injury resulting from a nuclear incident are covered by one insurer, which simplifies the potential litigant's action.

The only nuclear liability insurance available in the United States is provided by the nuclear insurance pools, American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters. The Foreign Suppliers and Transporters policies have available limits of \$15 million for ANI and \$10 million for MAELU. Thus, a combined program could achieve a maximum of \$25 million per occurrence in limits.

While both policies exclude on-site property damage, there may be coverage for other third-party liability actions for which the operator is not liable.

In addition, these policies may provide some limited relief from any "ultimate disposal" exposure for contaminated parts and equipment.

Because of the limited availability of insurance, risk managers must rely on the national legislation and principle of "channeling" liability onto the operator for primary protection. It is prudent to incorporate contractual hold-harmless and exculpatory agreements in supply contracts to supplement and buttress national legislation, particularly if the financial requirements of a country for a nuclear installation are unrealistically low.

A nuclear power plant is a complex web of technical systems, operational procedures and legal requirements. The same can be said of nuclear liability insurance, so suppliers and contractors are well advised to review with care any contractual agreements they may have with nuclear installations and operators. ■



Douglas N. Smith is vp and manager of the International Department of Johnson & Higgins in New York. His column appears the first Monday of every month.

New angle in Texas comp

By John H. Eggertsen
and Richard H. Moscicki

EACH MONTH, THOUSANDS of Texas employers are electing to opt out of the Texas workers compensation system by becoming "non-subscribers" and thereby potentially subjecting themselves to negligence lawsuits by current and former employees who suffer on-the-job injuries.

The Texas Workers' Compensation Commission estimates that 40% of state employers are already non-subscribers.

These employers have decided that the unknown risks of the Texas jury system are preferable to the known and escalating cost of staying in the Texas workers compensation system. Many of these non-subscribers are providing benefits for work-related injuries under accident and health plans that are subject to the federal Employee Retirement Income Security Act. By doing so, these employers may have both avoided the excessive costs of the Texas workers compensation system and minimized their exposure to unpredictable Texas juries that are often generous to plaintiffs in negligence lawsuits. At least that is what a recent decision of a federal court in Dallas would seem to indicate.

In *Eurine v. Wyatt Cafeterias*, U.S. District Judge Barefoot Sanders held in May that ERISA precluded a plaintiff from bringing a negligence and breach of contract suit against her employer in a Texas state court. The plaintiff, who was injured while working on the premises of her non-subscribing Texas employer, had sought past and future medical expenses; compensation for pain and suffering; lost earnings; and payment for physical impairment and permanent disfigurement. The case had previously been removed from state court to federal district court because the plaintiff was covered by an ERISA plan that was maintained by the defendant-employer "for the purpose of providing medical, surgical or hospital care and other benefits (including wage replacement), in the event of an injury."

Judge Sanders held that ERISA pre-empted all of the plaintiffs' state law claims because of the overlap between the type of benefits the ERISA

ERISA may provide employers' defense for workers' injuries

plan provided and the compensation the plaintiff sought. According to Judge Sanders, this overlap made it clear that the plaintiff's state law claims "related to" an ERISA plan and were thus invalid. Apparently, the plaintiff's sole entitlement was to the benefits under the ERISA plan that she was already receiving.

The key holding by Judge Sanders was that the workers compensation exclusion found in ERISA did not apply to the non-subscribing employer's benefit plan. The plan in question, which only covered on-the-job injuries, was clearly subject to ERISA. What was not clear was whether the ERISA exclusion for plans "maintained solely for the purpose of complying with applicable workmen's compensation laws" would carve out workplace injury claims from ERISA and, thus, from ERISA pre-emption.

Three earlier federal court rulings had found the workers compensation exclusion in ERISA precluded the defendants from invoking ERISA pre-emption. Judge Sanders declined to follow these cases.

There appears to have been only one critical factual difference between *Eurine* and the three previous decisions. The employer in *Eurine* was a non-subscribing employer, while all of the previous employers had purchased workers compensation insurance and were subscribing employers. The establishment of the on-the-job injury ERISA plan by the *Eurine* employer had no legal significance under the Texas Workers Compensation law because the employer was a non-subscriber. The purchase of workers compensation insurance by the subscribing employers in the three previous cases, on the other hand, entitled those employers to the protections of Texas law. Therefore, those policies were separately administered programs established solely to comply with the Texas workers comp law, whereas the ERISA plan in *Eurine* did not meet these criteria.

The decision is an important new development that Texas employers should consider in deciding how to deal with their exposure for work-related injuries. If a Texas employer is a non-subscriber that extends its medical and disability ERISA plan or plans to work-related injuries (or creates a new ERISA plan that provides coverage for work-related and other injuries), it appears the employer will have the legal defense of ERISA pre-emption available in state negligence actions brought by injured workers. It may also be possible for the employer to avoid having to face a state court jury by removing the case to federal court.

In addition, by covering most, if not all, of an injured worker's economic losses under an ERISA plan or plans, such an employer will go a long way toward removing the incentive of an injured worker to bring a state suit. Further, any trier of fact, including a Texas jury, may be more favorably disposed toward such a "responsible" employer. Finally, it might be possible to design a non-subscribing employer's ERISA plan or plans in such a way as to require injured employees to choose between receiving benefits under the ERISA plans or suing.

It is expected that *Eurine* will be appealed. Irrespective of the outcome, an increasing number of medium-sized to large Texas employers will continue to consider non-subscription for a variety of other reasons.

If *Eurine* is upheld, the potential legal advantages presented by ERISA will be added to the savings that may be achieved by eliminating the administrative cost of maintaining the two systems to pay for the same type of claims. ■

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Mr. Eggertsen



Mr. Moscicki

Honigman Miller Schwartz & Cohn in Detroit. Richard H. Moscicki is a consultant in Dallas at Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc.

'Damages' covers EPA cleanup costs

A Georgia appellate court held that a landowner's liability insurance policies providing coverage for "damages" covered the costs incurred in undertaking such remedial pollution measures as are mandated by the Environmental Protection Agency.

Atlantic Wood Industries Inc. was informed by the EPA that its Virginia woodtreating facility had been determined to be a hazardous waste site. Atlantic Wood carried primary and excess liability insurance policies with Lumbermen's Underwriting Alliance, Insurance Co. of North America, Continental Casualty Co. and Ranger Insurance Co. The policies provided coverage for "damages."

Atlantic Wood notified the insurers of the EPA's determination, but they denied coverage for the cost of any cleanup measures. Atlantic Wood brought a suit seeking to have the court declare that the policies did afford such coverage. The trial court held that only the Ranger Insurance Co. policy provided coverage.

The appellate court, noting that this

Legal briefs

was a case of first impression in Georgia, concluded that the better reasoned decisions find that the term "damages" as used in the coverage provisions of the liability policies include the type of expenditures under consideration. The court said that since the policies did not limit the definition of "damages," then they intended to use its original meaning. The trial court decision with regard to Lumbermen's, Insurance Co. of North America and Continental Casualty Co. was reversed.

Atlantic Wood Industries vs. Lumbermen's, Court of Appeals of Georgia, July 12, 1990, rehearing denied July 25, 1990, certiorari denied Sept. 4, 1990 (BI/04/My.-\$10).

'Beeper' employee's comp claim

An employee established that she was in the course and scope of employment when injured in an automobile accident based upon use by her employer of a beeper to notify

her of a possible change in work assignment, according to the Commonwealth Court of Pennsylvania. Thus, the court upheld an award of workers compensation benefits.

Lissa A. Scott worked about 32 hours a week out of the office investigating claims for her employer. She used her own automobile and carried a beeper so that her employer could contact her while she was in the field. She was required to report to the office prior to starting her work each day. On at least two occasions, Ms. Scott's employer had contacted her on her way to work to have her go directly to an investigation scene rather than report to the office. Ms. Scott was injured in an automobile accident that occurred while she was on her way to work. She filed a claim for workers compensation benefits. A referee awarded her benefits and was later affirmed by the Compensation Appeal Board. The employer appealed.

The appellate court concluded that Ms. Scott's employment was analogous

to that of the traveling salesman because most of her time was spent out of the office investigating claims. The court noted that Ms. Scott's employment contract required her to use her own car to perform her job responsibilities and that her employer reimbursed her monthly in a fixed unvouchered amount for the use of her car. Furthermore, she was required to use a beeper for contact by the employer while she was in the car. Based on these facts, the court was satisfied that Ms. Scott's injuries occurred in the course and scope of her employment.

Septa vs. W.C.A.B. (Scott), Commonwealth Court of Pennsylvania, Nov. 7, 1990 (BI/02/My.-\$10).

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

Part-time benefits

Continued from page 3
57% five years earlier.

Employers' medical costs are increasing 20% to 22% annually, and "employers cannot absorb it all," explained Mr. Beauregard.

Most employers that offer health care coverage to part-time workers also offer coverage for those workers' dependents.

Seventy-four percent of the respondents offer dependent coverage to part-timers working more than 30 hours per week; 58% offer it to those working 20 to 29 hours per week; and 19% offer it to those working fewer than 20 hours per week.

However, very few companies pay the full cost of health care coverage for part-time workers' dependents.

Six percent of employers foot the entire bill for dependents of part-timers working more than 30 hours per week, while 2% pay the full

cost for those working 20 to 29 hours per week and fewer than 1% pay the full cost for those working fewer than 20 hours per week.

Most surveyed companies offer the same number of medical plan options to their part-time employees as they do to their full-time employees.

Only 6% of employers offer fewer options to part-time employees working more than 30 hours per week than to full-time workers, while 11% offered fewer options to part-timers working 20 to 29 hours per week and 31% offered fewer options to part-time employees working fewer than 20 hours a week.

Similarly, 97% of employers offer the same level of coverage—including coinsurance and deductible requirements—to part-timers working more than 30 hours a week.

This percentage drops to 94% for part-time employees working 20 to 29 hours per week and to 76% for

Medical costs are up 20% to 22% a year, and 'employers can't absorb it all,' says Tom Beauregard.

those working fewer than 20 hours per week.

Employers are following the same trend when offering dental benefits to part-timers: They are more willing to offer the benefits, but are less willing to pay the full cost.

Again, the biggest jump affected part-timers working 20 to 29 hours per week.

Fifty-three percent of surveyed employers offered dental benefits to these workers last year, up from 40% in 1985. Sixty-eight percent of surveyed employers offered dental benefits to part-time employees

working more than 30 hours per week in 1990, compared with 59% in 1985. And, 17% offered dental benefits to employees working fewer than 20 hours a week in 1990, up from 10% five years earlier.

But fewer companies say they are providing fully paid dental coverage.

In 1990, 23% of employers paid the entire cost of dental coverage for part-timers working more than 30 hours per week, down from 33% in 1985. The percentage of part-timers working 20 to 29 hours per week who received fully paid dental coverage dropped to 13% in 1990 from 19% five years earlier, while only 2% of those working fewer than 20 hours per week received fully paid dental coverage in 1990, down from 3% in 1985.

Among other survey findings:
• Sixty-seven percent of employers offered employer-paid life insurance to part-timers working more than 30 hours a week in 1990,

while 61% of employers offered these employees life insurance on a contributory basis.

The percentage of employers that offered fully paid life insurance in 1990 drops to 49% among part-timers working 20 to 29 hours per week and 15% for those working fewer than 20 hours a week. And, only 45% of employers offered contributory life insurance to part-timers working 20 to 29 hours per week and only 17% offered contributory life insurance to those working fewer than 20 hours per week.

The survey only tracked life insurance benefits in 1990.

• The percentages of employers providing long-term disability benefits has remained fairly constant over the five years covered by the surveys.

Fifty-two percent of respondents offered LTD benefits to those working more than 30 hours per week, up from 49% in 1985. For those working 20 to 29 hours per week, 32% of employers provided LTD benefits in 1990, up from 25% in 1985, while 9% of respondents provided LTD benefits for those working fewer than 20 hours per week in 1990, up from 6% in 1985.

• Paid sick leave was offered by 65% of companies to part-timers working more than 30 hours per week in 1990, while 56% offer it to those working 20 to 29 hours per week and 28% to those working fewer than 20 hours per week.

• Eighty percent of employers said part-time employees were eligible to participate in defined benefit pension plans, while 77% allowed part-timers to participate in defined contribution plans.

• Just more than one-half of the companies surveyed said they offer part-time employment in order to accommodate their employees' work and family needs. Nine percent of respondents rated this consideration as the most important reason why they offer part-time work.

• Thirty percent of the companies said they offer part-time work in order to reduce employee benefit costs, with 13% rating this factor No. 1 in importance.

Copies of "Survey of Benefits for Part-time Employees" are available for \$35 from Diane Schuett, Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60069; 708-295-5000.

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Business Insurance

INTERNATIONAL

ECGD's intention to privatize unit comes under fire

By MARIA KIELMAS

LONDON—Doubts about the capacity of the private U.K. political risk insurance market have increased over the last two years, and the government must continue to play a role in the marketplace, a consultant says.

The call for continued government involvement was made by Robert Kemp, an independent consultant and non-executive director of Sedgwick James Credit Ltd., who spoke at a recent conference in London on the future of U.K. credit export insurance.

The conference was called to discuss moves by the British government to privatize the Insurance Services

Group, formerly the short-term division of the state-owned export credit insurer, the Export Credit Guarantee Department.

Last week in a letter to Parliament, Britain's trade secretary confirmed that Netherlands Credit Insurance Co. Ltd. of Amsterdam filed the winning sealed bid for ISG. Britain's largest credit insurer, Trade Indemnity P.L.C., and Italy's Assicurazioni Generali S.p.A. were among the six bidders for ISG.

The price offered by NCI was not disclosed, but the sale of ISG has been expected to net the government anywhere from 50 million to 100 million pounds (\$80.5 million to \$161 million).

The implications for the future of foreign trade have made the privatization issue the subject of an increasingly heated debate between Britain's Conservative government and opposition politicians, insurers, brokers and exporters.

No other country has placed its entire state-owned short-term credit insurance business in the private sector.

Previously reinsured by the government, ISG is now placing its 14 billion pound (\$22.54 billion) reinsurance treaty in the private market.

In addition, underwriting practices will be revamped in the state-owned export credit insurer's remaining long- and medium-term divisions. Few details have been released about the new system, called the Portfolio

Management System.

The insurer now runs a 3 billion pound (\$4.83 billion) deficit; interest rate subsidies amount to about 500 million pounds (\$805 million) annually; and claims are eight times premium income.

The new system, says Malcolm Stephens, chief executive of the ECGD, does not aim to recover those losses.

Sedgwick James' Mr. Kemp is a director of the state insurer and wrote a 1989 government study on the ECGD. That report examined the future status of the ECGD in light of government plans for the civil service, the coming single market in Europe, Third World debt problems and changes in demand for export and political risk coverage.

The Kemp report recommended making changes to the state insurer but retaining government support for political risk coverage. The French practice—having a state insurer work together with the private market—was deemed inapplicable. This led to the recommendation that the insurer be split up and the ISG established.

But that recommendation, Mr. Kemp stressed at the conference, did not necessarily imply privatization. The short-term division could have been set up as a government-owned company or a statutory corporation, he said, though he conceded that doing so would not have been a "politically feasible course at the time."

Outright privatization, without continuing government guidance on policy and support in areas in which private-sector interest was thought to be lacking, was seen as a high-risk strategy, he added.

Although the introduction of private capital was envisaged, it was suggested that the government should retain a portion of the stock. Another option would have been a "golden share," which would give the government a voting right for, say, five years, even though it did not own stock. That device had been used in earlier privatizations to protect against hostile takeovers.

"Permanent reinsurance from the government through the ECGD was seen as essential to support political risk and national interest operations. It was suggested that to avoid selection against it of all the worst risks, the government might take a share in the general reinsurance treaty," said Mr. Kemp.

Soon after the government pub-

Continued on next page



The College of Insurance says the influx of foreign students will provide global exposure to Americans.

College of Insurance hosts French students

By AMY KATZ

NEW YORK—The College of Insurance will become the New York campus this fall for students from the Institut Supérieur de Gestion, a business school in Paris.

About 200 French students will study U.S. management techniques at The College of Insurance, which will administer the American program of the ISG's international business management curriculum.

"The large influx of international students coming into the college will give our students the opportunity to be exposed to students from other cultures," said Mary Alice Landis, dean of professional programs for The College of Insurance.

According to Ellen Thrower, the college's president, foreign students already make up 20% of the student body.

The agreement also benefits the French students by providing them "with a more American setting while they are doing their studies in New York," said Peggy Silva, academic programs manager for ISG in New York.

ISG is an educational institution that specializes in providing global curricula for undergraduates and

for master of business administration degree candidates.

The United States is just one semester-long stop for the French students. Next they will study business in Paris and Tokyo.

The ISG curriculum at The College of Insurance will be structured to demonstrate to the French students how U.S. management works.

"It will make it a more American experience because the classes will be run by an American university," said Ms. Silva.

Classes, which are taught in English, will be offered in financial management, budgeting, computer skills, strategic planning, organizational behavior and the legal and governmental influences on U.S. businesses.

Other students at The College of Insurance will not participate in the classes.

This fall, the program will only be available for undergraduates. Ms. Landis said that next fall graduate students will also be taking part.

The program will last one semester, or about 18 weeks. Approximately 200 students will participate each semester. They will arrive in staggered blocks of 50

students, Ms. Landis said. Two blocks of students will arrive in September, two in October, two in February and two in March.

The College of Insurance's agreement with ISG is quite different from other agreements the college has with other colleges and universities abroad, said Ms. Landis.

"The students (from ISG) will be those admitted in France, as opposed to students transferring from another college," she said.

She said that The College of Insurance's other agreements involve the college accepting credits from other universities and granting those students a degree from the college. She noted that enrollees in the ISG program still will receive their degrees from that institution.

Previously, ISG had rented space from the college and administered the program on its own. ISG will now pay The College of Insurance to coordinate the program and hire additional faculty for the classes, said Ms. Landis. All other aspects of the program will be handled by ISG itself, Ms. Silva said.

Because of the large number of students and the college's limited housing, the college will work with an ISG coordinator to arrange housing for the students.

Texaco captive makes unusual investment

By ROGER SCOTTON

HAMILTON, Bermuda—Heddington Insurance Ltd., the Bermuda-based insurance subsidiary of Texaco Inc., has paid a record \$125 million dividend to its parent.

Heddington also has committed roughly \$400 million to investment over the next six years in oil and gas exploration activities.

"We're on the move, and we're excited about the future," said President and Chief Executive Officer Robert Golden, as he explained the insurer's financial strategy contained in the annual report for its 20th year of operation.

"We're not getting out of insurance, but we are going to be actively seeking a better return on funds that are surplus to our operat-

BERMUDA

ing requirements."

According to its 1990 report, Heddington has entered into what it says is an "aggressive program" of investment in oil and gas exploration. Last year, it acquired 70 of Texaco's Liberia-domiciled oil and gas drilling subsidiaries, collectively valued in the insurer's latest accounts at \$232,000—a value given to the companies at their date of transfer to Heddington and accounted for as paid in capital contribution.

The investment initiative produced a \$31.2 million loss in 1990, the annual report says, but Heddington adds, "It is believed these investments will provide our shareholders

with greater returns while maintaining financial security for the insurance operations."

A total of \$35 million was invested in the Texaco drilling subsidiaries last year with a further \$50 million earmarked for them in 1991. During the next four years, Heddington said it intends to use Texaco expertise to invest between \$250 million and \$330 million in exploration activities it described as "strategically placed to ensure a strong competitive position."

The Heddington report also said: "The new opportunities which these investments represent will generate significant returns. In 1991, it is anticipated that approximately \$50 million will be expended, acquiring 16 new plays (oil fields) and wildcat drillings of eight wells to evaluate an

additional six plays."

The report added that the investment would take place worldwide and would include ventures in the Pacific Rim, Latin America, West Africa and the United States.

Mr. Golden said that the \$50 million investment planned for this year has to be viewed in its proper context. He described it as "oil seed money" and said that it "cannot be considered overly excessive" when seen against a backdrop of Heddington's financial strength—with shareholders equity of \$693.8 million in 1990—and the kind of comparative returns it could expect from putting its money in securities.

"We're very profit center-oriented and we view things in terms of the financial rate of return we can expect," he said. "When you consider

that you're going to be earning 8% or 9% on the surpluses by investing in traditional markets, the 45% return that we could stand to get on one well looks extremely attractive. It's a high-risk investment with the opportunity of a high reward from a finite number of opportunities. But this is not unknown territory for us. We know the oil business."

Mr. Golden, who joined a Texaco exploration committee that reviews oil and gas developments worldwide, said Heddington "lobbied Texaco to get into the oil and gas business." He pointed out that Heddington was insuring the exploration subsidiaries anyway, "so why not get involved in financing them?"

And, strategies aimed at putting surplus funds to better use are now

Continued on next page

Export credit

Continued from previous page
lished its proposals for ECGD, a Sedgwick James Credit survey found that many major U.K. exporters were worried. They feared that the government was moving faster and farther than other governments in curtailing export credit, leaving U.K. exporters uncompetitive in world markets. Mr. Kemp said. They also feared that a privatized ISG would not provide enough reinsurance for political risks, he said.

"One does wonder whether enthu-

siasm (for privatization) may have overrun the more pragmatic considerations... and, if so, with hindsight, whether this has been for the best," he said.

The ECGD's Mr. Stephens vigorously defended the government agency. Dubbed "the Prince in Hamlet" by Jack Gill, the conference chairman and his immediate predecessor at the export credit agency, Mr. Stephens responded that he felt more "like Hamlet's skull."

Contending that the ISG sell-off was not politically inspired, Mr. Stephens said the sale grew out of busi-

ness sense, E.C. directives and the need to provide a new product range. Greater use of the private insurance market would reduce risks to the government, he argued.

Taking issue with suggestions that only the British government is turning more toward private markets, Mr. Stephens pointed out that all E.C. nations use some private capital in export credit coverage arrangements.

The ISG sell-off does not mean that government support for exporters' medium-term risks is being withdrawn, he said.

Responding to criticism that the

U.K. plan would make the nation's exporters uncompetitive in Third World markets, Mr. Stephens said, "The debt crisis is not over. After debt relief, it is still difficult to see a country as a good credit risk."

He argued that "it's not a good idea to provide support to exporters that are not going to be paid."

Nor is it true, he said, that the private market is losing its appetite for political risk. ISG's basic reinsurance treaty had been oversubscribed in the market, said Mr. Stephens. "Supplementary cover against catastrophic losses has also been over-

placed," he noted.

The sale of ISG was not the privatization of a monopoly but the sale of a high-volume, low-margin, cyclical business in which stock flotation was never an option, he said. Potential foreign ownership was also not seen as a problem. "How many exporters know the nationality of their freight insurer?" asked Mr. Stephens.

Widespread criticism over selling the unit in a recession was misplaced, he contended. Whoever buys ISG will have to adopt a long-term view, so there was neither a right nor a wrong time to sell it, he said. ■

Safety record faulted in Australia

SYDNEY, Australia—Five hundred Australians are killed in workplace accidents every year, according to the National Occupational Health and Safety Commission.

Dr. Ted Emmett, chief executive of the commission, said Australia's workplace health and safety record is "relatively poor."

"It is time employers at all levels—whether large organizations or small businesses—realized that good occupational health and safety pays off in human and economic terms," he said.

"What we need is a cultural change in the workplace, a move to the management culture which considers the health and safety of workers a key priority and which regards high rates of accidents or disease as totally unacceptable," Dr. Emmett said.

Of the roughly 500 deaths from workplace accidents or illnesses last year, about 300 were due to asbestos-related mesothelioma, he said.

Figures from private and government-run workers compensation insurers showed there were also more than 160,000 occupational injuries that required at least five days off work, he said.

The direct cost of workers compensation claims in the 1990 fiscal year was \$4.8 billion Australian (\$3.7 billion U.S. at current exchange rates), he said.

Dr. Emmett said data on workplace accidents from all the Australian states is being compiled and will be available in August.

—By Kate McIlwaine

New Portuguese insurer

PORTO, Portugal—Recently privatized Allianca Seguros S.A. is the linchpin in a newly merged group of insurers that is expected to be a leader in the Portuguese market.

The as-yet-unnamed group has emerged as a result of a complex series of acquisitions and only partly successful privatizations over the last two years.

Union des Assurances de Paris, France's largest insurer, holds 40% of the new group and effectively controls it. The other shareholders include the Portuguese state holding company, Investimentos e Participacoes de Estado, and Mague, a Portuguese subsidiary of Swiss/Swedish engineering conglomerate ABB Asea Brown Boveri Ltd.

According to Dominique Bazy, finance executive at UAP in Paris, the French insurer acquired a 1.5% stake in Porto-based Allianca early last year after the Portuguese government privatized 49% of the company. The remaining 51% of Allianca was sold off at the end of May 1991, at which point UAP increased its stake to 11.77%, Mr. Bazy said.

Since then, UAP bought another 20% of Allianca and also acquired control of Portugal's seventh-largest insurer, Cia. de Seguros Garantia. That company, together with the French insurer's two Lisbon-based subsidiaries—UAP Portugal and UAP Portugal Vida, a life insurer—will join forces with Allianca in the new holding company, Mr. Bazy said.

Stock market analysts in Lisbon, Paris and London have been following Portugal's privatization program

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for the last two years. They say UAP is widely believed to have acquired up to 30% of Allianca, board representation and management control after its initial partial privatization in 1990, even though government rules cap foreign ownership at 10%. The government has since indicated it will relax those restrictions.

UAP reportedly bought its extra Allianca stock through Portuguese nominee companies and controversial purchases from Allianca employees.

Mr. Bazy said he is aware of the stock market's beliefs but would not comment on them.

Privatization of the remaining tranche of Allianca stock in May proved a disappointment, and the government was obliged, through its IPE holding company, to buy back its own shares in Allianca as well as to persuade UAP to increase its stake to 40%, the stock market analysts say.

"Privatization of Portuguese companies is not so much about ownership as about control," said one London analyst. "And once the pre-revolutionary owner of a company or a foreign bidder has gained control, no one else is interested in buying the stock, which the government had overpriced anyway."

Mr. Bazy reiterated that he would not comment on market rumors.

Some of the future strategy of the enlarged Allianca has already been finalized.

"The new entity will form part of the UAP general group and will benefit from UAP's underwriting capacity," Mr. Bazy said. He added that industrial insurance is "one of the major points to develop."

He also noted that UAP, through the new insurance group, is concluding an agreement with the Portuguese government-owned bank, Banco de Fomento Exterior, to market life and financial products.

—By Maria Kielmas

Export credit assistance

PARIS—Industrial nations' governments, which are considering cuts in interest subsidies on export finance and strict new rules on aid credits, should make their export credit insurance facilities more flexible and their financing terms more attractive to commercial lenders to boost trade with poor nations, a banking institute says.

To revitalize trade in the aftermath of the 1980s debt crisis, the poor nations need better policies. But there is also a need for greater cooperation between private and government creditors, said Horst Schulman, managing director of the Washington-based Institute of International Finance, in a recent letter to Jean-Claude Paye, secretary general of the Paris-based Organization for Economic Cooperation and Development.

Mr. Schulman did not list specific countries, but political risk insurers say the nations are Brazil, Nigeria, India, Egypt and Bangladesh.

He cited two ways to improve the

prospects for restoring short-term trade credits to these countries. First, bank regulators should adopt a flexible attitude to provisions for such credits as countries emerge from debt problems. And second, export credit insurance agencies should be ready to insure a greater portion of the risk where private capacity is lacking.

Commercial banks are generally well-positioned to assess the risks of medium-term trade projects. But that is not enough, said Mr. Schulman. Banks also need assurances from host governments that they will not undermine the viability of projects through domestic policy changes and coverage from official export credit agencies against sovereign default.

His letter followed an IIF statement earlier this month urging banks and official export credit agencies to cooperate more to ensure that adequate insurance facilities are available for Third World trade.

"Agencies' ability to shoulder risk could be improved by the introduction of pooling or reinsurance facilities between agencies. This would help utilize individual agencies' unused limits for particular borrowing countries. It also would help agencies spread their present concentrated risk more evenly, although it would require a change in agencies' current concentration on national exports. Pooling would improve the insurance characteristics of their portfolios," the IIF wrote.

The IIF, whose 170 members are primarily international commercial banks, serves as a center for the dissemination of information, focusing on middle income countries, and as a forum in which its members can communicate with the debtor countries, international financial institutions and regulatory agencies, said a spokeswoman for the group.

—By Maria Kielmas

RIMS/AEAI meeting

NEW YORK—The final program is set for the International Risk Management Conference to be held in Monte Carlo Oct. 13-16.

The conference, sponsored by the Risk & Insurance Management Society Inc. and the European Assn. of Risk Managers, will view risk management issues and trends like globalization and the emergence of a unified European market.

Four plenary sessions will address: the changing insurance market; megatrends affecting risk management; the risk manager of the future; and Eastern Europe.

A series of concurrent seminars will cover a range of international topics. All seminars feature risk managers from major corporations and key executives from insurance service firms and organizations.

Registration fees are 5,400 French francs (\$872.50 at current exchange rates) for risk managers and 7,600 francs (\$1,228) for others. Academics and students pay 2,500 francs (\$404). Payment is acceptable only in French francs, by check or bank transfer.

A conference program and registration materials are available from Sally Greene, RIMS Monte Carlo Conference, 205 E. 42nd St., New York, N.Y. 10017. ■

BERMUDA

Continued from previous page
common corporate practice, he added.

Heddington's new investment plans overshadowed a \$17 million drop in underwriting income to \$3.7 million. According to the company's 1990 results, net premiums earned fell to \$56.7 million from \$72.9 million in 1989, while underwriting expenses remained flat at \$52.9 million, including a \$44.3 million provision for losses and loss expenses. Investment income dropped to \$83.6 million last year from \$92.1 million to produce total operating income of \$88.6 million, down from \$114.9 million in 1989.

Stockholders equity fell to \$693.8 million in 1990 from \$761.2 million the previous year, while total assets declined to \$1.11 billion from \$1.19 billion in 1989.

The company blamed the lower premiums on a restructuring of Texaco units that had accounted for 80% of Heddington premium income, but predicted that the volume would stabilize in 1991.

Mr. Golden said that although Heddington's profits tumbled by 50%, its net income of \$57.3 million "remained sound."

"The reduction (in earnings) was due to the impact on reserves for environmental claims, the new oil and gas exploration expenditures and decreases in investment yields and a lowering of the investment base," the insurer's annual report said. It added that after allowing for the \$125 million dividend to Texaco and the new oil and gas investments, Heddington's "average investment base" fell by about \$185 million.

And, the report observed, "despite many difficult conditions and a volatile market which saw the insurance market capacity of limits shrink in size and prices harden and even increase, Heddington was able to hold its position and capacity and achieve a decrease in the overall insurance premiums for Texaco."

GTE Re pays dividend

GTE REinsurance Co. Ltd., the property/casualty unit of telecommunications giant GTE Corp., has announced its first cash dividend payment since 1983.

According to its 1990 financial statement, the Bermuda-based subsidiary paid its parent \$19 million last year. The figure compares with \$8.5 million in 1983 and ends a seven-year dividend dry spell which the reinsurer used to help build up capital and surplus during the early 1980s when it needed a strong balance sheet to attract non-related commercial reinsurance business.

Fred J. Finley, managing director and chief operating officer at GTE RE, said that since the company stopped underwriting non-related risks in 1989 and now reinsures only the property, casualty and life risks of GTE Corp. and its affiliates, "we don't need as much capital and surplus on our books."

Even allowing for the 1990 dividend to the Stamford, Conn.-based parent, the Bermuda company still finished the year with total shareholders equity of \$104.6 million,

down from \$113.8 million in 1989 and \$127.2 million in 1988.

According to Mr. Finley, the company policy was not to show a steady stream of dividends back to the parent and that future payments would be made only when GTE RE's financial condition was "appropriate."

The dividend was unveiled in a financial statement showing that GTE RE was able not only to reduce its underwriting losses—to \$31.4 million last year from \$55 million in 1989—but also to turn a record \$13.3 million net loss into a \$9.7 million profit.

The primary cause of the underwriting improvement, Mr. Finley wrote in the report, was "the absence of a special charge recorded in 1989, in light of confirmed deterioration in old underwriting years, to strengthen reserves."

Net premiums earned in 1990 were \$74.2 million, down from \$100.1 million in 1989. Property and casualty premiums were \$68.2 million of the 1990 total, with life premiums making up the remaining \$6 million.

Claims and benefits paid fell to \$84.8 million last year from \$122 million in 1989. Investment income from a \$481 million securities portfolio fell marginally to \$41.1 million.

Claims and benefit reserves declined to \$401 million from \$420.9 million in 1989 "primarily as a result of a prepayment on a loss portfolio contract," according to the annual report. A breakdown of reserves in the report shows case reserves of \$161.4 million and reserves for incurred but not reported losses of \$160.4 million.

"The decision to cease writing third-party business was the key driver in the decline in premium income," the annual report said.

During 1990, GTE RE continued to manage the runoff of its non-related reinsurance book, which includes the liabilities of insurers worldwide, but primarily in the United States, according to the annual report. "This year we developed a means of monitoring loss development of our contracts to give us warning of problems which need early investigation."

Other developments last year grew out of GTE RE's dissatisfaction with the traditional methods of setting premiums for GTE Corp.'s primary casualty risks.

"The challenge," wrote the managing director, "is to determine the premium that will equal losses plus expenses year after year. In the past, we have (set premiums by) traditional experience rating methods of the insurance industry. They have not proven entirely satisfactory because of the uncertainty of decisions in U.S. courts and the dynamic and diverse nature of GTE. To address this problem, we have developed a way to identify and quantify risks that have not, as yet, resulted in losses."

Mr. Finley noted that total assets declined by \$37.1 million last year to just under \$594 million.

Mr. Finley blamed this on the runoff of the company's third-party business and a resulting 43.2% drop in reinsurance balances receivable—\$41.2 million last year against \$72.6 million in 1989. ■

Stock picks

Continued from page 2
cialty lines of business.

From a balance sheet standpoint, AIG has good cash flow and is "a company that is well-capitalized," Ms. Vogel said. "I'm going to stick with the one I think has a proven record."

AIG stock was trading at \$84.25 on June 28.

Michael Lewis, first vp for Dean Witter Reynolds Inc. in New York, selected Chubb as his favorite insurer stock.

"The feeling is we're taking a cautious approach in (selecting) Chubb," Mr. Lewis explained. While insurance stocks have performed well over the past several months, either the soft market must turn or something else must occur to boost commercial rates for the prosperity to continue.

And "we cannot see the end of the soft market in sight," he said.

In light of these conditions, Chubb won't "trip over itself" and is a "relatively safe stock" to own and hold pending a turn in the market—unless the stock becomes ridiculously overpriced, cautioned Mr. Lewis.

Over the last four years of the soft market, Chubb's growth—compound earnings growth of 13% and a return on equity in the mid-teens—has been "quite impressive," he said, adding that its return could jump to 20% once the market turns. He also projects double-digit earnings growth in its property/casualty business.

With a 2-to-1 premium-to-surplus ratio, the Warren, N.J.-based insurer has enough capital funding to take advantage of market conditions once rates finally begin to increase.

"Obviously," Chubb's move to be a specialty writer has "paid off quite well," with this segment now accounting for about 70% to 75% of its business, up from only about 15% in the mid-1970s, Mr. Lewis said.

Junk bonds and non-performing securities only account for 1% of its investment portfolio, about the same portion as real estate, he pointed out.

Chubb stock was trading at \$69.75 on June 28.

Thomas V. Chohnoky, vp at Goldman, Sachs & Co. in New York, selected Kemper Corp. as his top insurance stock pick.

Among the reasons for his selection is the recent sale of 25% of its junk bond portfolio, which, he said, has not fully been reflected in the company's stock price. The Long Grove, Ill.-based insurer also has an "extremely diversified portfolio," with 125 different issues.

Mr. Chohnoky also pointed to Kemper's property/casualty business, which includes personal lines and small commercial lines in the Midwest, and its reinsurance operations as among the reasons he recommends the company's stock.

"Both segments should do very well in '91 off a depressed base in '90" because of catastrophe losses, said Mr. Chohnoky.

Reinsurance is a "very opportunistic business," said Mr. Chohnoky. "I think this segment is very well-positioned to take advantage of a turn in the cycle when it does turn, and in the meantime still provide pretty good earnings."

Kemper stock was trading at \$33 on June 28.

Harry Fong, senior vp with Conning & Co. in Hartford, Conn., selected St. Paul, which he said is the nation's largest writer of medical malpractice insurance.

"Medical malpractice is an extremely long-tail business," said Mr. Fong, who noted that he continues to believe St. Paul's reserves "are in excellent shape."

"We do believe the company is still redundant," he said of St. Paul's reserves.

The St. Paul, Minn.-based in-

surer's success in medical malpractice insurance has enabled it to expand other segments of its commercial lines business, Mr. Fong said. Conceding that St. Paul has been criticized for this strategy, he reasoned that it is the same strategy that has been successfully followed by Chubb and AIG and will prove to be successful for St. Paul as well. Its brokerage operations, he added, have not done as well, but are poised to take advantage of a turn in the market.

St. Paul's stock was trading at \$62.75 on June 28.

A. Michael Frinquelli, managing director of Salomon Bros. in New York, selected Berkeley. He selected the Greenwich, Conn.-based company not for its strength in the soft market, but for how well it will perform once the market turns.

"Berkeley, put simply, is a cycle player" and the property/casualty insurance cycle must eventually turn, "we just don't know when," Mr. Frinquelli said. If the market does turn next year, Berkeley will be a "great 1992 stock," he noted.

Berkeley's earnings potential following a market turn is one reason to purchase the stock, Mr. Frinquelli said. Assuming that premium rates rise to two-thirds of their 1984 to 1986 levels, Berkeley's earnings per share could reach close to \$8 compared with \$3 now, he said.

Berkeley is a "nice, clean, straightforward play in the underwriting cycle," said Mr. Frinquelli.

Berkeley's business is divided into three segments, Mr. Frinquelli explained: regional property/casualty, which accounts for about 25% of its business; specialty lines, which accounts for 60%; and its insurance services or the management of self-insurance plans, which accounts for the remaining 15%.

Berkeley's balance sheet also is "clean," he said, referring to junk bonds.

Berkeley was trading at \$29.50 on June 28.

Ira Malis, vp at Alex. Brown & Sons in Baltimore, recommended Harleysville Group Inc. of Harleysville, Pa. Mr. Malis, who said he is more optimistic than others that the market would turn in the next 12 months, said he selected Harleysville as a company with proper leverage to benefit from a property/casualty market turnaround.

Harleysville was trading at \$31 on June 28.

The performance of the overall stock market could have a bearing on when the insurance market will harden, analysts noted.

A flat or slumping stock market could limit insurers' surplus growth, prompting a quicker market turn, Mr. Frinquelli said. "When statutory surplus goes down, prices will go up."

Mr. Lewis commented that if the stock market had continued to "go south" last October, rather than rally, the insurance market would have already hardened.

However, Mr. Lewis said he is currently looking for the insurance market to continue to bump along the bottom of the cycle—perhaps for a long time.

Ms. Vogel commented that the insurance market will turn when conditions get so bad that top executives "begin to worry about losing their jobs." If forced to make a prediction, she said she thought the market would probably harden late next year.

Mr. Chohnoky said that although he thinks insurance market conditions are bad enough that the cycle should turn today, he does not expect a turn until 1992.

Moderators for the session were G. Alan Zimmermann, first vp for Prudential Securities Inc. in New York, and Amy de Rham, vp for Massachusetts Financial Services in Boston. ■

Capacity seen delaying market turn

By JUDY GREENWALD

NEW YORK—Abundant capacity may delay a turn in the commercial property/casualty market for another 12 to 18 months, warns an insurance executive.

Although a market hardening could come earlier if the industry's capacity shrinks, that is unlikely, said Dennis R. Busti, president and chief executive officer of New York-based Reliance National Insurance Co.

"Right now, we just don't see it. We just see too much capacity," Mr. Busti said during a session at an annual insurance symposium sponsored by the Assn. of Insurance & Financial Analysts last month in New York.

In fact, Mr. Busti noted that insurers' returns on equity are "still not horrendous," which could delay a market turn.

The market still is very competitive, Mr. Busti said, adding that the property/casualty industry's true combined ratio likely is higher than the 108% to 109% reported for the first quarter because of questionable asset quality, including reinsurance recoverable problems.

There are also questions about whether insurers' cash reserves are adequately keeping up with inflation, said Mr. Busti.

"We're now a very soft market," particularly for commodity-type business, he summed up.

Mr. Busti said for rates to turn, insurers' cash flow must "really dry up." There must also be the re-

alization that combined ratios are actually a lot worse than have been reported. In addition, insurers' returns on equity must plummet, which certainly will not happen in 1991, barring a major catastrophe, he said.

Mr. Busti predicted a shakeout of the insurance industry over the next few years. It has already happened in other industries, he said, and "insurance is not all that different."

There are too many insurers now in the market, Mr. Busti contends, which results in too much supply for the given demand.

Following an industry consolidation, companies will re-emerge with a long-term strategy and identify their place in the market, he said.

Reliance National, for example, has identified specialty lines as the "wave of the future" and is focusing on them, he said.

Reliance National has positioned itself well to capitalize on changes in the industry, Mr. Busti told the analysts, but he warned that other insurers still have to make changes.

Mr. Busti also noted that the controversy over regulators' role in the insurance industry is one way this soft market differs from its predecessor in the early 1980s.

State regulators and the National Assn. of Insurance Commissioners are now nervous about federal intervention, he said, something that was not suggested 10 years ago. Mr. Busti predicted

that "overzealous" state regulators will try to stop insurers from raising rates sharply once the market does turn.

"I think some federal intervention is inevitable," said Mr. Busti, especially when you consider that each state has a different solvency statute. There should be some uniform oversight, perhaps in the form of federal guidelines that states would follow, he said.

However, the next several years will see a hodgepodge of legislation and regulation hampering what insurers can do, Mr. Busti said.

Also speaking at the session was Paul Ingrey, president of F&G Re, a unit of USF&G Corp. in Morristown, N.J., who said there are no impending changes in the market. "We're limping along. Nothing is really happening today; nothing substantial that is."

Mr. Ingrey also questioned predictions that the next turn will resemble a gentle, U-shaped curve, as opposed to a sharp V-shaped curve the symbolized that market turn of the mid-1980s.

"I've never seen a U-shaped recovery. I don't know what one looks like," he said. The insurance industry may be capable of producing such a recovery, Mr. Ingrey added, but he said he did not know how it would come about.

The session was moderated by Gloria Vogel, associate director of Bear Stearns & Co. in New York, and by Rosalie M. Holowinsky, assistant vp at Bank of New York in New York. ■

Excessive punitive awards to haunt public: Insurer

'The litigation lottery'

By JUDY GREENWALD

NEW YORK—Insurers must make the public aware that it will ultimately bear the cost of high punitive damage awards, says an insurance company attorney.

Punitive awards serve two purposes, said Samuel E. Upchurch Jr., vp, general counsel and secretary at Torchmark Corp. of Birmingham, Ala.

First, they redistribute wealth from insurers "to the trial lawyers of the world" who represent plaintiffs, he said.

Secondly, rather than being conservative and fair, as they were in the "old days," they act as a "litigation lottery" for outrageous awards, Mr. Upchurch said at a session during an annual insurance symposium sponsored by the Assn. of Insurance & Financial Analysts last month.

Multimillion-dollar awards, which lead to liability insurance rate increases as well as coverage restrictions or elimination, peaked in the mid-1980s, said Mr. Upchurch.

At that point, he said, trade associations joined with doctors and business groups to press for tort reform.

They were by and large successful.

In 1986 and 1987, 33 states had approved some sort of tort reform, and by 1990, the number had increased to 45, he said.

But, just as industry became complacent on the issue of tort reform, trial lawyers have "counterattacked" in both state legislatures and the courts. In addition to convincing courts that some tort reform laws were unconstitutional, plaintiffs' attorneys have also filed many new suits, with new theories to support punitive damages, said Mr. Upchurch.

Now, the number of large judgments has started to rise again. In 1989—the last year for which com-

plete data is available—the number of awards of at least \$1 million nationwide had increased by 22.4%, to 588, said Mr. Upchurch.

Recent cases that have resulted in big awards include a \$21.5 million Missouri jury award against Chesebrough-Pond's USA Co. and a potential \$39 million settlement by Johnson & Johnson in the 1982 Tylenol deaths (BI, May 20).

The "litigation lottery" and the fear of high awards puts pressure on insurers to settle cases that they once would have taken to trial, Mr. Upchurch said. Insurers also must use more experienced—and expensive—attorneys to defend against these claims.

For the present and future, said Mr. Upchurch, "the fight continues." He noted that the American Law Institute, whose members include judges, law professors and practicing lawyers, has recently suggested sweeping changes in the tort system to make awards more predictable (BI, April 29).

In addition, the Bush administration has proposed that states cap awards for pain and suffering in medical malpractice cases at \$250,000, said Mr. Upchurch (BI, May 20).

The proposal would also encourage states to eliminate pain and suffering liability for non-economic damages, eliminate the collateral source rule and encourage alternative dispute resolution in medical malpractice cases, said Mr. Upchurch. Under the proposal, states that failed to enact these reforms would lose 1% of their federal Medicare and 2% of their federal Medicaid funds.

Meanwhile, new torts will continue to evolve, said Mr. Upchurch. He warned that jury awards could remain large as long as juries retain the discretion to set the size.

The only way out, he said, is for state legislatures to limit punitive damages and to introduce other safeguards, he said. And in-

surers must make the public aware that "they will bear the ultimate cost" of high awards, said Mr. Upchurch.

Also speaking at the session was Christopher J. Cavallaro, treasurer of the ARC Consulting Group, based in Mineola, N.Y., which specializes in directors and officers liability coverage.

Mr. Cavallaro noted that D&O rates today still are much higher than they were "when the market hit the wall" in 1985.

Quality insurers writing D&O coverage include Chubb Corp., which is interested in writing only "clean, pristine" business, and American International Group Inc., which writes "across all lines."

Mr. Cavallaro noted that where once an insurer would write a \$20 million D&O policy and retain \$13 million of that risk, insurers today want to cede more of their D&O risk to reinsurers.

Rates may move up or down 10%, he said, but generally he sees no significant changes in D&O insurance in the near future.

Financial institutions are the one exception; rates there are likely to increase significantly, he said. Mr. Cavallaro also pointed to the accountants professional area, where, he said, nobody has made money in the past 10 years, nor is anyone likely to make money in the next 10.

Mr. Cavallaro warned that with plaintiffs' attorneys becoming more sophisticated, among other factors, the costs associated with D&O insurance will not go down, but are "going to go up."

Also speaking at the conference was Peter I. Sheft, an attorney with Sheft & Sheft in New York.

Moderators were Norman Rosenthal, a principal with Morgan Stanley Group Inc. in New York, and Terry Shu, managing director of J.P. Morgan Investment Management in New York. ■

Recession survey

Continued from page 1
because of the recession, 62% said they were requiring employees to share in the cost of health insurance premiums or were increasing employees' share; 53% said they were adding managed care elements; 42% were implementing or increasing deductibles; 32% said they were increasing employee coinsurance; 24% they were making other unspecified changes; and 5% said they were limiting eligibility for new employees.

"I wouldn't say that the changes being made are particularly shocking," said Craig J. Davidson, a research associate with the IFEBP and author of the study.

"I think this study documents what many people have thought—that cost-shifting and a recession go hand-in-hand. Employers seem to feel that a recession is a good time to cut back on benefits. Employees tend to be more receptive to changes because they're aware of the tough times the company is going through," he said.

Mr. Davidson added that the reported health insurance cutbacks usually were not decided upon overnight.

"Most of these moves have been in the works for a number of months. Managers realize that this is a good time to cut back," he said.

Robert Eicher, a principal in the

New York office of A. Foster Higgins & Co. Inc., agreed. Managed care has been on the minds of employers for the past decade, he said. But many companies have held back, afraid of angering workers and unions.

"Until recently, companies were making tons of money and saw no reason to incur negative employee feedback by restricting coverage. Now, the benefits departments at many companies are being told to cut their budgets by 15% and managed care can do that by itself,"

sponse to cyclical economic changes," he explained.

"The most frequently stated changes involved 401(k) plans—particularly the reduction or discontinuation of employer matching contributions," Mr. Davidson noted.

Benefit experts agree that a recession is a practical and predictable time to redesign employee benefit plans and that scaling back employee benefits may improve the balance sheet in the short-term. Over the long-term, however, cut-

'Employers seem to feel that a recession is a good time to cut back on benefits. Employees tend to be more receptive to changes because they're aware of the tough times the company is going through,' says Mr. Davidson, the survey's author.

Mr. Eicher explained.

The survey found, however, that only 5% of the respondents have changed or plan to change their retirement plans because of the recession.

"For the most part, the recession has not affected the design of retirement plans," Mr. Davidson said.

"Common wisdom suggests that most plan sponsors consider retirement plan changes with a long-term perspective and not in re-

turning back can prove to be a disadvantage, they pointed out.

"I'm not surprised that a significant number of employers are seeking to better manage the bottom line at a time when profits are dipping," said Bryan Lane, a principal with TPF&C, the benefit consulting unit of Towers, Perrin, Forster & Crosby Inc. in Stamford, Conn.

That maneuver can prove dangerous down the road. "Assuming the economy recovers, employers that cut back now strictly because of the recession could be faced with playing catch-up in a shrinking labor pool in future. There will likely come a day when they'll have to compete for employees with benefits," said Mr. Lane.

"Benefits are an enormous expense, but it doesn't make sense to look at cost-containment only when times are bad," said Martha Clark, manager of benefits and compensation with Wells Fargo Bank N.A. in San Francisco. "Unless it's a matter of business survival, we wouldn't make a plan design change as a result of a recession. You have to look at the long-term perspective and realize that changes should be made because of health care cost inflation. Also, a recession is when employees need benefits the most."

Catherine Corse Wooster, vp-

Recession's impact

22% of employers have changed, or plan to change, their health care plans due to the recession.

62% Introduced or increased employee share of premium

53% Added managed care concepts to plan

42% Introduced or increased deductible

32% Increased employee share of coinsurance

5% Limited benefit eligibility for new employees

Source: International Foundation of Employee Benefit Plans

GRAPHIC BY HOLLY SEGUINE

benefits plan management with Jacksonville, Fla.-based Barnett Banks Inc., noted that if a company is "struggling for its very existence, I can see how benefit changes would become necessary, especially if the company was maintaining a rich plan."

Benefits are used most frequently during a recession, she pointed out. "Employees fear being laid off. Thus, they tend to get the teeth worked on or have that surgery that they may have been holding back on."

While the IFEBP survey did not specify the size of its respondents, one expert said benefits at smaller firms have suffered the most during the recession.

"I would hypothesize that most firms making benefit changes because of the recession are smaller companies with fewer than 500 employees. These companies operate on thinner margins and are more reliant on working capital," said R.T. Whitman, a partner with benefit consultant Kwasha Lipton in Fort Lee, N.J.

"They also have been more paternalistic in past years. They have tried to hold off on cutting benefits, but now the economic realities have become too great," Mr. Whitman said.

The IFEBP survey also looked at the benefits extended to non-union workers who were temporarily and permanently laid off as a result of the recession.

Twenty-eight percent of the respondents had temporarily reduced their workforce during the

past nine months due to the recession, while 72% had not made temporary cutbacks, the survey found.

During a temporary layoff, 40% did not extend any non-mandatory benefits to laid-off, non-union employees; 24% subsidized health care coverage; 23% subsidized COBRA coverage; 21% provided group life insurance; and 14% provided some other, undefined benefit.

A larger percentage of respondents—34%—had permanently reduced their workforce within the past nine months due to the recession, while 65% had not and 1% did not respond.

Of those that had permanently cut their payrolls, 84% provided severance pay to terminated non-union employees; 64% provided outplacement support and counseling; 32% subsidized health care coverage; 25% subsidized COBRA coverage; 25% also provided group life insurance; 12% provided some other, undefined benefit; and another 12% provided no non-mandatory benefits.

The IFEBP survey did not address benefits provided to laid-off or terminated employees covered by collective bargaining agreements.

A free copy of "The Economic Recession and its Impact on Employee Benefits" is available from the International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6700.

M&M offices omitted from directory

Several Marsh & McLennan Cos. Inc. international office locations were inadvertently omitted from the geographical directory of agents and brokers published in the July 1 issue.

Besides the offices listed in that issue, M&M offices are located in:

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Mission ruling

Continued from page 1

tion the California Court of Appeals for an immediate review of Judge Lewin's ruling, according to Bruce Friedman, a lawyer with Kroll & Tract in New York, representing six of the reinsurers.

"I do not feel there is any legal support for the position he cites in his ruling," Mr. Friedman said.

He added, however, that the decision in favor of the Mission estate was "no surprise."

In a 1989 ruling, Judge Lewin severely restricted Mission reinsurers' ability to offset amounts they owe the estate against amounts Mission owed them under reciprocal reinsurance agreements (BI, May 29, 1989).

A state appeals panel later overturned that ruling, and the issue is now pending before the California Supreme Court (BI, Jan. 8, 1990).

Mr. Friedman also argued that the latest ruling can be interpreted as blaming the reinsurers for Mission's insolvency because they were not diligent enough in tracking the insurer's condition, a conclusion Mr. Friedman said puts reinsurers in the position of regulators.

Regulators' duties "should not be delegated to reinsurers, and that's exactly what this ruling does," he said.

Meanwhile, Mr. Rubinstein said he will ask Judge Lewin to similarly bar recision attempts by another roughly 160 Mission reinsurers involved in separate litigation brought by the California department.

These 160 companies—which reinsured Mission directly rather than through the PRMC pool—owe a total of about \$567 million in present value claims, according to Ms. McCain.

If those reinsurers are also barred from rescinding their contracts—and the rulings are not overturned—Mission's liquidator stands to collect a total of about \$772 million from the PRMC reinsurers and the direct reinsurers.

Lawyers for Mission's direct reinsurers, though, are unsure whether Judge Lewin's ruling can be applied to their clients.

"The ruling as it is, without additional findings, really cannot be logically extended to" Mission's direct reinsurers, said Edward Boyle, a lawyer with Wilson, Elser, Moskowitz, Edelman & Dicker, a New York law firm which represents more than two dozen Mission reinsurers.

Judge Lewin found that PRMC acted as an agent for the pool's reinsurers and that the reinsurers therefore cannot claim fraud by PRMC as a basis for recision, Mr. Boyle noted.

The direct reinsurers did not do business with PRMC, though, and this argument for denying recision does not exist, he said.

"We don't have that situation here," Mr. Boyle observed. "There are no agents; there are only two parties."

Mission, which was ordered into liquidation in February 1987, has been estimated to be insolvent by more than \$1.5 billion.

The insurer's liquidator has already collected about \$700 million from Mission reinsurers that com-

mutated their contracts, including PRMC participants and direct reinsurers, according to Ms. McCain.

About 28 of the PRMC reinsurers have continued attempts to rescind their participation in the pool, though, arguing in litigation in Los Angeles Superior Court that PRMC and Mission officials misrepresented the pool's business to induce them to join and remain participants.

The liquidator filed motions to

"They cannot be interposed as bases for recision of defendants' reinsurance agreements or as a defense to the (liquidator's) actions to enforce those agreements," he wrote.

Judge Lewin also concluded that sections of the California insurance code dealing with insolvency forbid the reinsurers from rescinding their contracts because recision would create an unfair preference for reinsurers against Mission's policyholders.

Although the reinsurers presented evidence of the alleged misrepresentations 'in excruciating detail,' the reinsurers may not use the misrepresentations to deny liability, says Judge Kurt J. Lewin.

bar the recisions, and Judge Lewin granted the motions in his June 25 ruling.

Although the reinsurers presented evidence of the alleged misrepresentations "in excruciating detail, much of it in technical esoteric industry terms," Judge Lewin ruled that the reinsurers may not use the misrepresentations to deny liability.

"PRMC was in the posture of agent to defendants as principals and acting within the scope of its authority. Any fraud or breach of the participation agreements may be asserted by defendants against PRMC or Mission, but only in the context of an action between a principal and his agent," Judge Lewin wrote.

"The actual and inevitable effect of Mission's and PRMC's procurement of reinsurance from these defendants enabled Mission to write policies far in excess of those it could have written if limited to its own reserves," Judge Lewin wrote.

"Thus, in the most real terms, every insured of the Mission companies is an innocent third party whose rights would be directly, substantially and adversely affected by granting of the remedy of recision.

"Recision is not included in the statutory scheme because it would create a preference wholly inconsistent with the priorities carefully articulated" in the state insurance code, Judge Lewin wrote.

"Under these circumstances,

'justice' requires that defendants first perform their obligations as to claims made and IBNRs as a condition to the granting of any 'relief based upon recision,'" the judge found.

After honoring their treaties, PRMC reinsurers may pursue their fraud allegations in claims against the Mission estate, where they will stand behind the higher-priority Mission policyholders, Judge Lewin wrote.

If the reinsurers prove their case, their claims could "be paid pro rata with all the other claims by others injured by any machinations of the principals of Mission and/or PRMC," the judge concluded.

Any recovery probably wouldn't amount to much, observers note.

The PRMC reinsurers "won't be getting much, if anything" if they are forced to seek damages against the Mission estate, noted Jonathan Bank, a lawyer with Buchalter, Nemer, Fields & Younger in Los Angeles, which represented the Mission estate in an arbitration with some of the reinsurers.

The arbitration—involving the reinsurers represented by Kroll & Tract—resulted in a \$94.5 million award in favor of the liquidator in 1989. Motions by the liquidator to confirm the award and by the reinsurers to vacate it are still pending in U.S. District Court in Los Angeles.

The reinsurers initially contested the right of the arbitration panel to hear the dispute, and while the jurisdictional issue was pending, the liquidator named the same reinsurers in its suit against the PRMC participants, which resulted in Judge Lewin's decision. ■

Financial institution D&O

Continued from page 3

incurred in an administrative proceeding or action that results in a final order assessing a (civil money penalty) or requiring payments to the bank."

An OCC spokesman said banks are allowed to help a director facing an administrative proceeding to help pay legal expenses during the proceeding, but the money must be repaid if the director is penalized.

If a bank chooses not to pay a director's legal bills during the proceeding and the director is cleared, the bank or a D&O insurer may then pay the expenses, he said.

Ronald R. Glancz, partner with Drinker, Biddle & Reath in Washington, D.C., said that, after talking to FDIC staff members, he believes the FDIC is likely to adopt regulations similar to those of the OCC.

Meanwhile, Dan A. Bailey, a partner with Arter & Hadden in Columbus, Ohio, said that he interprets the provision in the Crime Control Act to bar coverage of legal expenses for a financial institution director or officer penalized following an administrative action if the coverage was purchased by the institution.

However, he added, the Crime Control Act "doesn't, as I read it, prohibit an individual from purchasing insurance to cover the loss."

"Someone, arguably, could pay a small portion of D&O premium himself, so that coverage bought by the financial institution would be valid," Mr. Bailey said.

Having directors and officers pay for part of the insurance covering them is common in Australia and Canada, but "rather radical thinking in the U.S.," said Mr. Bailey.

While the provision in the Crime Control Act could reduce the number of claims that D&O insurers have to pay, it's not likely that rates will drop because of the crime law.

Since the act only restricts a "relatively narrow part of D&O cover-

age" it isn't likely to affect rates, Mr. Bailey said.

Underwriters generally are taking a wait-and-see position regarding the provision in the Crime Control Act, said Tim Metke, a consultant with the national resources division of Willis Corroon Corp. in Nashville, Tenn. "In general I think it's safe to say we don't expect any changes soon."

"I don't really see any immediate effect on the availability of insurance or the cost of insurance," J&H's Mr. Wallace said.

Noting that interpretations of the act vary, Mr. Metke said, "It's going to take a while to sort out in the courts what was meant by it."

'I don't really see any immediate effect on the availability of insurance or the cost of insurance' because of the provision in the Crime Control Act, says James B. Wallace of Johnson & Higgins in New York.

Betsy Headd, vp of D&O and specialized liability at Continental Corp. in New York, said her company is waiting to see the FDIC regulations.

She noted that since criminal acts are not covered by D&O policies, one could argue that "anything brought under the Crime Control Act is a prima facie case for no coverage."

"Our position is we will wait to see when the first claim comes in," said Joseph Monteleone, vp and claims counsel at Reliance National Insurance Co., which is based in New York.

Financial institution D&O policies issued by Reliance National over the past few years have contained regulatory exclusions, Mr. Monteleone said. Across the industry, the "overwhelming majority" of policies written in the last two years have contained regulatory exclusions, he said.

And, in late 1990 and early 1991, "courts have almost uniformly upheld the regulatory exclusion," Mr.

Monteleone said.

Rulings upholding the exclusion have been made recently in Texas, Minnesota, California and Oklahoma, he said.

That support is not unanimous, though. A state court in Maryland last year ruled that D&O insurers cannot deny coverage based on the regulatory exclusion (BI, May 14, 1990).

Financial institution D&O policies written by Continental Corp. do not contain a regulatory exclusion, though the insurer only writes coverage for "strong banks," Ms. Headd said.

Industrywide, Ms. Headd said she believes good-quality financial

institutions can generally obtain the D&O policy language they want—including policies without regulatory exclusions.

"Roughly 30%" of Chubb & Son Inc.'s D&O policies for financial institutions contain regulatory exclusions, said Thomas F. Taylor, a Chubb vp in Warren, N.J. Chubb also concentrates on "top-tier institutions," he said.

Mr. Taylor estimated that, industrywide, about 50% of D&O policies for financial institutions contain regulatory exclusions.

National Union Fire Insurance Co. of Pittsburgh, Pa., uses regulatory exclusions in states where they have been upheld by federal courts, said William D. Smith, president of the American International Group Inc. unit.

Stephen Sills, chief underwriting officer for Executive Risk Management Associates, a subsidiary of Aetna Life & Casualty Co. in Simsbury, Conn., estimated that roughly half of his company's financial institution D&O policies

have regulatory exclusions.

Earlier this year, Executive Risk Management Associates introduced a D&O policy, designed for superior risks, that contains no regulatory exclusion and specifically states that it provides coverage for the cost of administrative proceedings, according to Mr. Sills.

He said he believes that, despite the Crime Control Act, directors can still receive coverage for legal costs incurred in administrative proceedings through the portion of the D&O policy that indemnifies individual directors, rather than the corporation.

The policy will not pay fines or penalties, but will pay legal expenses of directors as long as they are not found to have acted dishonestly or for personal profit, Mr. Sills said.

The policy has been approved in 26 states so far, Mr. Sills said.

J&H's Mr. Wallace noted that while some other insurers' policies do not contain regulatory exclusions, they do not specifically say they will cover the defense costs for administrative proceedings. "Aetna's doing it kind of upfront, so it's real obvious."

"Aetna's being a little bit innovative and I compliment them on that," said Mark Charron, senior manager with the risk management consulting division of Deloitte & Touche in Hartford, Conn. "If anything, I'm seeing other companies continue the restrictive trend that has been occurring."

"There aren't many companies offering a D&O policy without a regulatory exclusion on it for financial institutions," Mr. Charron opined.

The law creates new types of felony offenses that can be committed by financial institution directors and officers. For example, officials who obstruct bank examinations or conceal assets from bank conservators can be fined and sentenced to up to five years in prison.

Chubb's Mr. Taylor noted that the new criminal offenses give regulators "the power to put (direc-

tors and officers) between a rock and a hard place." Directors and officers may have no choice but to settle a civil action at a higher cost than they may have otherwise if they are threatened with criminal prosecution, he said.

Overall, the Crime Control Act "substantially increased the risk of being a director and officer" of a financial institution, said Mr. Glancz of Drinker, Biddle & Reath.

Federal agencies, for instance, could ask a court to freeze the assets of a director who is the target of an administrative or civil action. "This is really draconian," Mr. Glancz said.

The director's or officer's problems could be compounded if, after assets are frozen, he or she is unable to obtain indemnification for legal costs from the financial institution or its D&O insurer.

The law also allows private citizens to file declarations alleging banking law violations with the attorney general and to recover rewards for information leading to a criminal conviction or a share of any civil money penalties. In some instances, if authorities do not act on the declarations, private citizens can file suits alleging bank law violations on behalf of the United States.

Also, if a director or officer is ordered to pay a civil penalty or make restitution, he or she can't discharge that amount in a bankruptcy proceeding, Mr. Glancz and Mr. Charron said.

The effect of the Crime Control Act will be determined partially by whether it is used against only troubled institutions, predicted Brian Smith, a senior vp at Alexander & Alexander of New York Inc.

If its use is restricted to troubled institutions, "I think there are some bank managers of the very healthy financial institutions who are going to say, 'more power to them, go to it,'" Mr. Smith said.

But, if authorities use the crime act against healthy institutions, directors may be driven off the boards of financial institutions, he said. ■

SPACEHAB

Continued from page 1
derwriting Agency) Ltd.

If the module is delayed on its way to the launch pad, the \$30 million in primary insurance will cover SPACEHAB Inc.'s obligations, including operating expenses and debt interest.

"The rationale was, in the event of a delay, the most that SPACEHAB would be at risk for would be somewhere in the neighborhood of \$24 million to \$27 million. So we rounded it off to \$30 million," he said.

A \$50 million excess layer covers debts, accrued interest and expenses if they exceed \$30 million as a result of termination of the project or if Congress decides not to appropriate sufficient funds for continued development of SPACEHAB.

The primary coverage defines a delay that extends to 24 months as a "constructive termination" and "the full debt amount would be paid off" if such a termination occurs, Mr. Surles explained.

Elements of the coverage also provide payment to creditors if payments cannot be met because of a completion delay due to subcon-

tractors McDonnell Douglas Corp. and Air Italia not making timely equipment deliveries.

Richard K. Jacobson, president of SPACEHAB Inc., pointed out that "the issue of government funding was a critical element in the development of this whole thing."

Originally, Lloyd's was not willing to write coverage that would apply if Congress failed to appropriate funds, Mr. Jacobson said.

To overcome that hurdle, Mr. Surles arranged for representatives of Lloyd's to discuss the government's commitment to SPACEHAB with members of Congress.

After talks with congressmen and officials of the National Aeronautics and Space Administration, the Lloyd's representatives were convinced that the government is committed to the project and made the decision to write coverage that would come into play if a lack of appropriations scuttled the project.

Altogether, 150 insurers participate in the SPACEHAB coverage, with 80% written by Lloyd's syndicates and London insurers and the remainder spread throughout the United States, Japan and Europe.

SPACEHAB is paying about \$16

million for the three-year primary and excess coverages.

A separate three-year launch insurance policy, led by Lloyd's underwriter Michael Marchant, provides limits of \$55 million, which includes \$15 million of coverage for damage to laboratory equipment and \$40 million of coverage for damage to the module. The cost of that coverage amounts to about \$2.4 million per flight, Mr. Jacobson said.

Mr. Jacobson describes the module as an "augmentation of the shuttle's mid-deck area," which quadruples the area available for laboratory experiments aboard the space shuttle.

"The shuttle is very restricted in the amount of pressurized volume available to it in its normal flight operations," Mr. Jacobson explained. "SPACEHAB augments that by providing a pressure module that fits in the cargo bay but connects by a very short tunnel to the mid-deck."

SPACEHAB's major customer is NASA, and the space agency has requested two-thirds of the laboratory's capability during its first six flights.

While it took 2½ years to piece together the coverage for SPACE-

HAB, it will have been 10 years from the time development of the module began to the time it is first launched into space in 1993, Mr. Jacobson said.

Financing for the module was arranged with "great difficulty," according to Mr. Jacobson.

The project got off the ground in 1983, and initial funding was provided by a group of private investors. But additional investments were hard to come by after the 1986 explosion of the space shuttle Challenger (*BI*, Feb. 3, 1986).

"Shuttle flights were suspended, and everybody was down on space" and the potential for commercializing space, said Mr. Jacobson. "It became impossible to get private financing and, in addition, it was absolutely impossible to go out on the street and sell stock in a space company in those days."

SPACEHAB Inc. now has equity of around \$40 million and has arranged a \$64 million line of credit with Chase Manhattan Bank NA. In addition, payments from the U.S. government over the next four years will total \$184 million.

In lining up its financing, SPACEHAB Inc. found there was a need for insurance to cover its obligations because of the way banks

and the government feel about each other.

"One finds that there is suspicion at best and distrust at worst between banks and the U.S. government," Mr. Jacobson remarked. "There is concern, specifically in the space area, about what the government will do," he noted, particularly because the government retains the right to terminate any contract at its convenience.

Because government commitments can change, U.S. banks are skittish about lending money for space projects, said Mr. Jacobson.

Banks insisted that "we provide insurance that would cover them in the event the government delayed us or terminated us. Without that, there would be no bank financing available for a space activity," he said.

The result of the SPACEHAB efforts to obtain coverage could make it easier for other space ventures to get off the ground, Mr. Surles and Mr. Jacobson agreed.

"I think it's going to set a precedent in the insurance industry," Mr. Jacobson said. "It is really unique, and to get the coverage for everything, including lack of appropriations, from my experience is an amazing thing." ■

Datebook

JULY

JULY 15-17. Introduction to Strategic Employee Benefits Planning Conference in Brookfield, Wis., sponsored by the International Foundation for Employee Benefit Plans; \$630 for IFEBP members; \$705 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JULY 15-17. The Investments Institute seminar in White Sulphur Springs, W.Va., sponsored by the International Foundation for Employee Benefit Plans; \$555 for IFEBP members; \$675 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JULY 15-17. Environmental Regulation Course in Washington, D.C., sponsored by Executive Enterprises Inc.; \$1,045. Also **July 17-19** in Minneapolis and Dallas; **Aug. 5-7** in Charleston, S.C.; **Aug. 6-8** in Baltimore and Las Vegas; **Aug. 13-15** in Baltimore; **Aug. 14-16** in San Francisco. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

JULY 16-19. Reinsurance Claims and Liquidation seminar in Ossining, N.Y., sponsored by Robert W. Strain Seminars Inc.; \$1,595 including lodging and books. Robert W. Strain Seminars Inc., Box 1000, Wingdale, N.Y. 12594; 914-832-9384; 212-677-5974.

JULY 17-18. 13th Symposium on Directors & Officers Liability in Chicago, sponsored by The Wyatt Co.; \$795; \$695 for additional registrants from the same company and for 1990 Wyatt D&O Survey participants. Mary Maze, The Wyatt Co., 303 W. Madison St., Suite 2400, Chicago, Ill. 60606-3308; 312-704-2719.

JULY 18. Participant Recordkeeping and Administration for Defined Contribution Plans seminar in New York City, sponsored by the Institute for International Research; \$895; some discounts available. IIR, Conference Administrator, 437 Madison Ave., 23rd Floor, New York, N.Y. 10022-7001.

JULY 18. Tools and Technology Impacting the Insurance Industry seminar in Dallas, sponsored by Infomart; \$129. Infomart, 214-746-3500.

JULY 19-21. Health Care and Health Insurance seminar in Manchester, N.H., sponsored by the Na-

tional Conference of Insurance Legislators; \$150 for legislators and staff; \$25 for spouses; no charge for insurance department personnel. NCOIL, P.O. Box 217, Brookfield, Wis. 53008-0217; 414-782-6669.

JULY 21-25. ATLA Annual Convention in Toronto, sponsored by Assn. of Trial Lawyers of America; \$350 for ATLA members in practice for less than one year; \$475 for ATLA members in practice less than five years; \$600 for ATLA members in practice more than five years; \$350 for paralegals; \$350 for spouses. \$50 for law student members; \$125 for children; no fee for judicial members, law professor members, state TLA staff or guest. ATLA's 1991 Annual Convention, P.O. Box 3717, Washington, D.C. 20007.

JULY 22-23. Managed Healthcare & Workers Compensation conference in Irvine, Calif., sponsored by Infoline; \$895; some discounts available. Infoline, 8 Pleasant St., Building D, South Natick, Mass. 01760.

JULY 22-24. Corporate Benefits Management Conferences in San Francisco, sponsored by the International Foundation of Employee Benefit Plans; \$645 for IFEBP members; \$765 for non-members. IFEBP, Registration Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JULY 22-26. Level 1-Infrared Thermography course in Dallas, sponsored by American Risk Management Corp.; \$1,295, discounts are available. Also **Aug. 12-16** in San Francisco and **Sept. 23-27** in Atlanta. American Risk Management Corp., One Independence Place, Suite 500, 4807 Rockside Road, Cleveland, Ohio 44131; 216-447-1600.

JULY 22-26. Fundamentals of Employee Benefits Management training course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$1,050 for International Foundation members; \$1,175 for non-members. Also **Aug. 12-16, Sept. 23-27** in Brookfield, Wis. Registrations Department, IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JULY 23-25. The Secrets of Successful Managed Care Programs workshop in Chicago, sponsored by Infoline; \$1,095. Infoline, 8 Pleasant St., Building D, South Natick, Mass. 01760; 508-650-4700.

JULY 24. Retiree Medical Costs: Strategies for Survival conference

in Columbus, Ohio, co-sponsored by the Employers Council of the Coalition for Cost Effective Services, TPF&C and Lifestyle Communications Inc.; \$20 for coalition members; \$30 for non-members. The Health Coalition, Retiree Medical Program, 285 E. Main St., Columbus, Ohio 43215; 614-221-1381.

JULY 24-25. Reinsurance Dynamics—The Global Market seminar in Philadelphia, co-sponsored by the Society of Chartered Property & Casualty Underwriters and the Reinsurance Section; \$315 for section members; \$335 for Society members; \$410 for non-members. Mari Stambaugh, Sections Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2741.

JULY 24-26. Pension and Welfare Plans: The Big Picture seminar in Chicago, sponsored by TPF&C Professional Development Institute; \$950. Also **Oct. 16-18** in Philadelphia. TPF&C, 800-253-8732.

JULY 25. ABCs of 401(k)s seminar in Marina Del Rey, Calif., sponsored by The National Institute of Pension Administrators; \$145 for members; \$160 for member firm employee; \$200 for non-members. Also **Aug. 22** in Rosemont, Ill. NIPA, 714-731-3524.

JULY 25-26. Claims Management and Legal Issues for the Health Care Risk Manager seminar in Chicago, sponsored by the American Society for Healthcare Risk Management; \$345 for ASHRM members; \$465 for non-members. Bari Johnson, ASHRM, 840 N. Lake Shore Drive, Chicago, Ill. 60611; 312-280-6403.

JULY 25-26. The Colorado Assn. of Captive Entities conference in Denver, sponsored by CACE; \$125 for members; \$150 for non-members. CACE, 1560 Broadway, Suite 2000, Denver, Colo. 80202; 303-863-3234.

JULY 26. The Globalization of the Insurance Industry seminar in New York City, sponsored by The Society of Chartered Property & Casualty Underwriters International Insurance Section; \$75. Mari Stambaugh, The Society of CPCU, 720 Providence Road, Malvern, Pa. 19355-0709; 215-251-2741.

JULY 28-31. National Symposium on Workers Compensation in New Brunswick, N.J., sponsored by the Center for Management Development of Rutgers University; \$495. CMD, Janice H. Levin Building, Rockefeller Road, P.O. Box 5062, New Brun-

wick, N.J. 08903-5062; 908-932-5526.

JULY 30-31. State Filings—A Practical Workshop program in Harrisburg, Pa., sponsored by the National Assn. of Mutual Insurance Cos.; \$299. Also **Aug. 7-8** in Albany, N.Y. Tonya J. Berkley, NAMIC, 3707 Woodview Trace, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250.

AUGUST

AUG. 5. Reviewing Possible Gaps in Umbrella/Excess/CGL Coverage seminar in Asheville, N.C., co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Western Carolina Chapter; \$110 for Society of CPCU members; \$130 for non-members; after July 22 add \$15. Tricia Hogan, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2773.

AUG. 5-7. Retiree Health Care Benefits conference in Beverly Hills, Calif., sponsored by the International Foundation of Employee Benefit Plans; \$600 for IFEBP members; \$675 for non-members. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 5-8. Annual Statement Preparation—Property & Casualty seminar in Newport Beach, Calif., sponsored by Boone & Co.; \$1,295. Also **Aug. 26-29** in Winston-Salem. Boone & Co., Insurance Co. Services, 919-748-1120.

AUG. 5-9. Annual Statement Preparation—Life seminar in Newport Beach, Calif., sponsored by Boone & Co.; \$1,495. Boone & Co., Insurance Co. Services, 919-748-1120.

AUG. 6-7. Plant-Level Environmental Compliance Course in Orlando, Fla., sponsored by Executive Enterprises Inc.; \$1,045. Also **Sept. 30-Oct. 1** in Houston, **Nov. 13-14** in Pittsburgh, **Dec. 10-11** in San Francisco. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

AUG. 8-9. Life and Accident & Health Concepts seminar in Newport Beach, Calif., sponsored by Boone & Co.; \$895. Boone & Co., Insurance Co. Services, 919-748-1120.

AUG. 8-9. 401(k) Plans: A Technical and Practical Analysis seminar in Chicago, sponsored by TPF&C Professional Development Institute; \$750. Also **Oct. 3-4** Cleveland, **Nov. 7-8** in Philadelphia, **Dec. 5-6** in Dallas. TPF&C, 800-253-8732.

AUG. 8-15. American Bar Assn.'s Annual Meeting in Atlanta, sponsored by the ABA; \$295 for associates; \$200 for young lawyers; \$35 for law students; \$500 for non-ABA members; \$150 for judges. ABA/TTS, 104 Wilmot Road, P.O. Box 825, Deerfield, Ill. 60015-0825; 800-621-1083.

AUG. 12-14. Benefit Communication Institute in Toronto, sponsored by the International Foundation of Employee Benefit Plans; \$600 for IFEBP members; \$675 for non-members. International Foundation of Employee Benefit Plans, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 14-15. Commitment to Wellness conference in Canton, Ohio, sponsored by the Northeastern Ohio Wellness Committee; \$220; discounts available for additional registrants from the same company. Commitment to Wellness, Stark County Health Care Coalition. The Whipple Centre, 2878 Whipple Ave., N.W., Canton, Ohio 44708; 216-478-8277.

AUG. 15-16. Wind Effects on Buildings and Structures course in Kansas City, Mo., co-sponsored by the Department of Civil Engineering at the University of Missouri-Columbia and by the Kansas City Section of American Society of Civil Engineers; \$580; \$610 after July 24. Linda Rodden, 314-882-3088.

AUG. 19-20. Third Annual Corporate Benefits Conference in Colorado Springs, Colo., sponsored by the International Foundation of Employee Benefit Plans; \$460 for IFEBP members; \$510 for non-members. International Foundation of Employee Benefit Plans, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

AUG. 19-21. Reinsurance—Property & Casualty workshop in Winston-Salem, N.C., sponsored by Boone & Co.; \$1,095. Insurance Co. Services Division of Boone & Co., 919-748-1120.

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N.M. shields small firms from health rate swings

By CHRISTINE WOOLSEY

SANTA FE, N.M.—A new law in New Mexico will protect small employers in the state from dramatic health insurance premium increases while still allowing them to benefit from good loss experience.

Gov. Bruce King signed into law recently S.B. 504, which restricts the amount of premium increases each year that can be imposed upon employers with 25 or fewer employees.

Under the law, which is based on a National Assn. of Insurance Commissioners model, health insurance renewal increases will now be based upon a formula that takes into account an insurance company's premium trend over the last year. Also factored into the renewal rate formula is the experience of the individual small employer group. However, premium increases based on the prior year's experience are limited to 15%.

Changes in a small employer's coverage, like deductible increases, also are taken into account.

The sum is an annual maximum increase that must fall within a range in which the highest premium and the lowest premium of all groups vary by no more than 50%, explained Jerry Fickes, a life and health insurance actuary with the New Mexico Department of Insurance.

The new law also discourages group health insurers from dropping coverage for small groups or individuals within those groups for reasons related to health status and loss experience, Mr. Fickes said.

More than 80% of the businesses in New Mexico have 25 or fewer employees, Mr. Fickes said. "We've seen group health increases of 700% and even 1,100%."

Companies that employed a worker with severe health problems often encouraged the employee to apply for individual health insurance coverage, which typically is denied. As a result, the individual ends up seeking coverage in New Mexico's Comprehensive Health Insurance Pool.

The pool was created in 1988 to serve as "insurance of last resort" for individuals who could not find coverage elsewhere because of their health status. It is funded partly by the state and partly by a premium tax charged to group health insurers.

The pool lost \$2.4 million last year, Mr. Fickes noted.

"We want to make sure some insurer doesn't come in on the market, write some bad risks and then dump them into the Comprehensive Health Insurance Pool," he said.

As a result, the new law prohibits an insurer that declines to renew a group based on an individual's health status from writing any new small group business for five years.

Exceptions will be made for insurers that can prove to the Insurance Department that they are in danger of going out of business if they continue to cover a specific group, Mr. Fickes noted.

"It doesn't do us any good to drive insurance companies out of business," he explained. However, he said the department does "want insurance companies to better manage the small employer market."

The new law is not expected to lower overall health care premiums, Mr. Fickes pointed out. "Employers will not see lower health care premiums—especially in the first year"—because initial rates should now be more realistic. "In-

surers can no longer use 'bait and switch' tactics" on employers by charging artificially low premiums the first year to get their business and then charging unaffordable renewal rates, he said.

"Employers will see truer rates and they won't have to fear the large increases if someone in the group becomes very ill," he explained.

The new law also requires insurers to include a disclosure of rating and renewal practices in their sales and solicitation materials. And, insurers must file an actuarial certification of the rating practices annually with the insurance superintendent, showing the current mean rate of each class of business.

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AUGUST 1
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Business Insurance
 a publication of Crain Communications Inc

Maine

Continued from page 2
Nov. 30, 1987). However, those reforms failed to revive the voluntary market for workers compensation insurance, which now makes up only about 10% of the total Maine workers compensation market.

"Workers compensation system costs have reached a crisis point where they have placed the economy of the state in jeopardy," said a spokesman for Bath Iron Works, the state's largest private employer.

The Insurance Information Institute, an insurance industry-supported public relations and research organization, believes the situation in Maine is "very serious," said William D. Kickham, the III's regional manager for the Northeast.

The Democratic workers comp bill that was vetoed by Gov. McKernan called for the creation of a state fund to replace the state's residual market, which currently is administered by the National Council on Compensation Insurance. It also called for minor changes, including limiting coverage for certain illnesses and injuries, limiting the duration of some benefits and implementing medical cost containment steps.

However, those changes would

have netted only an estimated 17% to 25% savings in system costs, instead of the 35% savings the governor has targeted.

The vetoed bill represented the view of the Democratic members of a joint legislative committee and contained some proposals similar to those put forth in legislation, H-689, that Republican legislators had proposed.

The vetoed bill "would increase the cost of workers compensation for Maine employers when these costs are already too high" and are forcing some employers to leave the state, Gov. McKernan said.

While he acknowledged that the bill would produce "modest" savings in the workers comp system, the governor said they would be "more than offset by an expansion of benefits for some individuals" as well as the creation of a state fund.

"Maine's workers compensation system is already more than twice as expensive as the national average. The result is that Maine workers are paying for our expensive system through lost jobs, lower wages and fewer benefits as employers struggle to cope with exorbitant comp costs," he said.

Gov. McKernan said an effective workers comp reform package should:

- Substantially reduce employer

costs.

- Speed up the payment of benefits to injured workers.
- Return injured employees to work more quickly.
- Encourage employers to hire injured workers.
- Focus compensation on work-related injuries and illnesses.
- Curb overutilization of medical services while ensuring appropriate care for injured workers.
- Reduce litigation and attorney involvement in the workers comp system.
- Promote workplace safety.
- Improve the administration and predictability of the system.

The legislation that had earlier been proposed by Republican legislators would have: defined compensable injuries and illnesses more strictly; reduced the statute of limitations on claims to 3 years from 10 years; created an independent medical examiner position with authority to resolve medical disputes; limited attorneys' fees; prohibited lump sum payments in excess of \$5,000; and restructured the workers compensation commission.

However, the governor is more interested in achieving the 35% cost savings rather than enacting all of the changes proposed by the Republican legislators, sources say.

Contributions allowed for plan shortfalls

By ADRIENNE C. LOCKE

WASHINGTON—The Treasury Department does not oppose letting employers make additional contributions without penalty to offset losses to pension plans that hold annuities or guaranteed investment contracts from failed Executive Life Insurance Co.

"We have no policy objection to providing...relief here," Thomas D. Terry, the department's benefits tax counsel, said last week.

However, Mr. Terry added, if employers make further tax-free contributions to plans, budget constraints may require "an appropri-

ate offset" to cover any lost tax revenue.

Executive Life, First Executive Corp.'s California life insurance unit, was put into conservatorship in April. It is now paying only 70% of the monthly annuity payments it owes (BI, May 13).

Some employers that purchased Executive Life annuities after terminating their defined benefit pension plans are concerned about whether they can provide make-up payments to retirees without violating tax law.

Employers have also asked whether they can make additional payments, without penalty, to de-

financed contribution plans to offset losses from Executive Life guaranteed investment contracts.

Mr. Terry said the Treasury Department would consider allowing these contributions "on a case-by-case basis."

Meanwhile, the department is reviewing a bill in the House of Representatives that would allow such additional contributions from employers if a portion of a qualified plan benefit is unavailable for distribution because the insurer is in receivership.

Rep. William Archer, R-Texas, introduced that bill, H.R. 2708, last month.

Risk retention groups face more regulation

Missouri laws enacted

JEFFERSON CITY, Mo.—Missouri Gov. John Ashcroft has recently signed a slew of new laws related to insurance regulation.

Among the measures were laws that will:

- Impose new regulations on risk retention and risk purchasing groups in the state.

Under the law, H.B. 385, risk retention groups will be required to submit a plan of operation or feasibility study to regulators before operating in Missouri. Also, risk retention groups chartered and licensed in another state but seeking to do business in Missouri will have to comply with Missouri laws regulating the groups.

Risk retention groups will be required to pay premium taxes, and the groups and their members will not be permitted to participate in the state guaranty fund.

In addition, under H.B. 385, insurance obtained by a purchasing group from an insurer not authorized to do business in Missouri will not be covered by the state guaranty fund, and the purchasing group will have to inform its Missouri members of this fact.

If the coverage is obtained from an authorized insurer, risks located in Missouri will be protected by the fund.

• Adopt a handful of model laws proposed by the National Assn. of Insurance Commissioners.

The model laws, under H.B. 385, will: regulate the acquisition of insurers; require an annual audit of

all insurers by a certified public accountant; regulate the purchase of junk bonds by insurers; regulate reinsurance intermediaries; and set guidelines for the supervision, rehabilitation and liquidation of insurers.

Adoption of the NAIC model legislation is a step in the Missouri Insurance Department's quest for accreditation by the NAIC (BI, Dec. 3, 1990).

- Require an insurer to refund any premium it did not earn when a Missouri policyholder dies before the end of a health insurance policy term.

H.B. 561 will affect individual policies, group health insurance in which the policyholder pays the full premium directly to the insurer, health services corporations or health maintenance corporations and self-insured health benefit plans, except as pre-empted by federal law.

Premiums are to be refunded to the dead policyholder's spouse; to the primary insured person under the health insurance contract if the deceased was unmarried and was covered as a dependent; or, if neither of these applies, to the policyholder's estate.

All of the new laws will become effective Aug. 28.

However, another bill proposed by the Senate still awaits Gov. Ashcroft's signature. S.B. 352 would:

- Require health insurers in the state to provide coverage to

adopted children of policyholders.

Under S.B. 352, all individual and group health coverage provided through an insurer, a non-profit health services corporation or a self-insured group plan would be required to cover adopted children of the policyholder on the same basis as other dependents.

The coverage would have to be effective from the date the dependent is placed in the home of the policyholder and would continue as long as he or she is a dependent unless the child is removed prior to legal adoption.

However, H.B. 385, which has been signed, makes health insurance coverage for an adopted child not mandatory if the adoptive parents knew or should have known that the child had an illness related to acquired immune deficiency syndrome or human immunodeficiency virus at the time of placement.

- Require that utilization review firms that approve or deny payment for medical services be certified by the state Insurance Department. The bill also would establish procedures that UR firms must follow.

- Require that a committee be appointed to review statutes and regulations governing professional malpractice pools and report on its findings by Dec. 31.

If signed by Gov. Ashcroft, S.B. 352 also will become effective Aug. 28.

—By Colleen Johnson

Update

Surplus drop spurs suspension

Continued from page 2

Stephen M. Tuuk, a lawyer representing American Commercial, declined to discuss any Michigan regulatory action, saying he is subject to a confidentiality order.

Mr. Tuuk said the insurer has had "extensive discussions" with regulators and that he expects "matters will be resolved."

American Commercial—headed by Wade Waterman and owned by Waterman Investments Inc.—wrote \$4.5 million in gross premiums and \$4 million in net premiums in the first quarter of 1991, mostly for auto liability coverage. Net premiums in 1990 amounted to \$12.8 million.

Mr. Waterman is also president of Governmental Risk Managers Inc. of Livonia, Mich., which provides risk control and underwriting services to the Michigan Municipal Risk Management Authority, a municipal pool (BI, Feb. 16, 1987).

American Commercial has never provided coverage to the MMRMA, said Rufus L. Nye, the pool's executive director. However, American Commercial has provided general liability and property reinsurance to three other municipal group insurance plans: the Michigan Township Participating Plan, the Ohio Government Risk Management Plan and the Ohio Fair Participating Plan.

All three plans dropped American Commercial and moved to Kemper Reinsurance Co. as of their July 1 renewal dates, according to Broderick Donaldson, executive vp with G.B. Kenrick & Associates Inc. of Pontiac, Mich., the plans' administrator.

Mr. Waterman did not return calls.

Libel settlement negates award

DALLAS—A \$58 million jury award against a Dallas media company was dismissed last month when it settled for an undisclosed amount a libel suit by a former district attorney.

The settlement was reached late last month between the A.H. Belo Corp. and Vic Feazell, a former McLennan County district attorney. The company would not say whether insurers are funding the settlement.

A state court jury in Waco, Texas, found that A.H. Belo subsidiary WFAA-TV in Dallas defamed Mr. Feazell in a 1985 series that accused him of taking payoffs in exchange for dropping charges in drunken driving cases (BI, April 29).

Mr. Feazell was indicted but acquitted on bribery and racketeering charges and in 1986 he sued A.H. Belo and a WFAA reporter.

Chevron settles pension flap

SAN FRANCISCO—Chevron Corp. has agreed to pay a \$245 million lump sum to beneficiaries of former Gulf Oil Corp. defined benefit pension plans to settle a lengthy dispute over the ownership of hundreds of millions of dollars in surplus assets held by two overfunded Gulf plans.

The settlement, reached late last month, followed an April ruling by a U.S. District Court judge in Houston that had awarded plan participants the \$190 million in surplus held by the two plans because plan language indicated that Gulf had intended any surplus assets to be distributed to participants. Chevron had said it would appeal that ruling (BI, April 15).

Under the settlement, the 19,000 plan participants will receive \$150 million in accrued benefits in a lump sum, plus half—or about \$95 million—of the surplus. Chevron, which acquired Gulf in 1984, will retain the other \$95 million, a spokesman said.

Not affected by the settlement is another portion of the April ruling that held that Chevron is entitled to \$620 million in surplus assets contained in another Gulf pension plan, the spokesman said. That plan made it clear that any surplus assets would revert to the employer, the court ruled.

The participants in the plan are contesting that portion of the ruling, the spokesman said.

Attorneys for the employees could not be reached.

Industry's return tumbles

NEW YORK—Return on net worth fell to 8.4% in 1990 from 10.1% a year earlier for the U.S. property/casualty insurance industry, according to a new report by the Insurance Services Office Inc.

While the industry's operating income increased 11.3% to \$11.5 billion in 1990 from \$10.4 billion the previous year, its return on net worth declined because of lower realized capital gains, higher federal income tax obligations and increased surplus, ISO said.

Property/casualty insurers' realized capital gains fell 39.3% to \$2.8 billion in 1990 from \$4.6 billion in 1989, according to ISO, while federal income tax obligations increased 17.6% to \$3.3 billion from \$2.8 billion. Those two factors caused net income to fall 9.4% to \$11.1 billion from \$12.2 billion. Meanwhile, the industry's surplus—which under statutory accounting is equivalent to net worth—increased 3.4% to \$136.8 billion in 1990 from \$134 billion the previous year.

The 8.4% return on net worth in 1990 was the lowest reported since 4% in 1985, which marked the beginning of the last hard market.

Briefly noted

General Re Corp. has ended negotiations to acquire London-based Royal Reinsurance Co. Ltd. and its U.S. subsidiary, American Royal Reinsurance Co. (BI, April 22). . . **Great Republic Insurance Co.** of Santa Barbara, Calif., was placed in conservatorship last week. California regulators say they will seek buyers for blocks of its life and health business if the insurer cannot be rehabilitated. The insurer, which writes major medical insurance for small businesses in California, has a surplus deficit of \$454,000, including a debt of \$620,000 to its parent, Great Republic Life Insurance Co. of Seattle, according to the California Insurance Department. . . **Benefit consultant A. Foster Higgins & Co. Inc.** is closing its offices in Boston, Chicago, Houston and Parsippany, N.J., by the end of the summer. Those offices, which have a total of 35 employees, are among the firm's smallest. Of the nearly two dozen consultants in those offices, about 10 will be offered positions in other offices or with the firm's parent, broker Johnson & Higgins. Foster Higgins closed four other small offices last year (BI, Dec. 17, 1990).

California statute

Continued from page 3

the nature of alien insurers," said Ms. Fistler, referring to offshore insurers.

However, Section 2173, which applies to non-admitted U.S. insurers, would only pertain to auto coverage, while Section 2174 applies to all lines of property/casualty coverage.

"We feel that there are certain benchmarks an insurer must have—including capital and a track record" and that "there are no exceptions for captives," Ms. Fistler said in explaining the need for Section 2174.

Although "a sophisticated purchaser" that purchases insurance coverage from an offshore captive may not need the protection that Section 2174 affords, "the claimant may not always be" sophisticated, she said.

While Section 2174 took effect July 1 on a temporary basis, the regulation will not become permanent until the California Insurance Department holds a public hearing, Ms. Fistler said.

No date has been set for the hearing.

While offshore single-parent captive insurers would be largely unaffected by Section 2174, offshore group captives that write direct business through brokers may now have to use a fronting insurer when insuring California risks, brokers and consultants say.

However, the average fronting cost for coverage written by an association captive is 10% of limits for the first \$1 million in coverage and \$10,000 per \$1 million in limits beyond that, according to Michael O'Brien, senior vp at Johnson & Higgins in Los Angeles.

Therefore, it would cost an additional \$140,000 for a fronted limit of \$5 million, not including the costs of the letters of credit that would be required by the fronting insurer, Mr. O'Brien said.

The question posed by Section 2174 is: "Are you punishing the sophisticated buyer?" Mr. O'Brien said. "While guised under consumer protection, in the end such regulation really hurts some of the major self-insured clients."

Switching to a fronting arrangement would be "time-consuming and expensive," said Paul Brown, director of governmental affairs for the Risk & Insurance Management Society Inc. in New York.

In addition, while the California regulation

would force some policyholders that purchase coverage from group captives to use fronting insurers, a draft model law by the National Assn. of Insurance Commissioners proposes to ban many such fronting arrangements.

A revised version of the NAIC proposal would generally bar fronting arrangements for captive insurers unless the policyholder maintains a net worth of at least \$50 million and agrees to indemnify the fronting insurer for any losses the captive is unable to cover.

Fronting arrangements for captives also would be permitted if the arrangement is approved by the appropriate state insurance commissioner, as long as the state is accredited by the NAIC (BI, April 15; April 8; Dec. 10, 1990).

The question posed by Section 2174 is: 'Are you punishing the sophisticated buyer?' Mr. O'Brien says. 'While guised under consumer protection, in the end such regulation really hurts some of the major self-insured clients.'

RIMS' Mr. Brown said the California rule "is not an irrational or overly taxing regulation," especially when compared with the NAIC's fronting proposal, since the California rule would not "sweep in" many single-parent captives as the NAIC proposal would.

"We're trying to get the language of the NAIC proposal changed so that the definition of alien reinsurer will not include a company writing business for a parent or an affiliate," Mr. Brown added.

Meanwhile, the minimum capital requirement spelled out in Regulation 2174 could also affect California policyholders that purchase coverage from offshore group captives.

"The larger alien group captive that's been around for awhile will have a lot more net worth than \$5.4 million," observed Hugh Rosenbaum, a principal with Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc. in Stamford, Conn.

However, newer group captive insurers may have difficulty meeting those minimum capital and surplus requirements, Mr. Rosenbaum noted.

Consequently, "as they did for fledgling risk retention groups, the agent and broker community will have to devise a surrogate financial security" for small group captives

that wish to continue writing without a fronting insurer, he said.

Such security can take the form of "guaranteed loans that look like capital" that can be deposited in trust accounts, he explained.

However, Mr. Rosenbaum also noted that the regulation "may make it clearer to owners of offshore captives that they need to move ahead even faster to self-management," eliminating the need to market their coverage through a broker.

Other consultants say yet another requirement in Regulation 2174 could stymie offshore group captives.

"It seems that the financial and reporting requirements of the regulation are not onerous," said Paul Pinckney, vp and principal at Tillinghast in Irvine, Calif. But he objects to the requirement that an offshore insurer be in business for three years in order to do business in California.

In addition, provisions in Section 2174 pertaining to regulatory review of offshore insurers' operations would give the Insurance Department "the opportunity to be pretty capricious and exercise an extreme level of discretion," said Mr. Pinckney, who currently is assisting an association seeking to form a group captive insurer.

The regulation also requires that brokers that want to continue marketing coverage by an established offshore captive file documentation concerning the captive's operations with the California Surplus Line Assn. by Sept. 1.

That deadline is too early considering the "stiff penalties" for missing it, warned Allyson Simpson, a partner in the insurance regulatory practice of Musick, Peeler & Garrett in Los Angeles.

Under the regulation, "the insurer will automatically be deemed unacceptable" if the filing deadline is missed, she said.

"If I were an employer now, I would definitely submit comments at the hearing on Section 2174 urging the department to carve out exceptions for captives," Ms. Simpson asserted.

Although captive insurers that reinsure fronting insurers are technically exempt from Section 2174, one broker cautioned that Mr. Garamendi may intend "to extend the law beyond what currently exists."

"God knows what he thinks he's doing," said the broker, who would not speak for attribution. "The language of the regulation is confusing at best."

BI Insurance Index

700

690

680

670

660

650

5/17 5/24 5/31 6/7 6/14 6/21 6/28 7/3

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

Insurance industry stocks climbed slightly last week as the Business Insurance Index rose 6 points to 671.5 on July 3, from 665.5 on June 28. Advancing issues for the week were led by Statesman Group Inc., up 10.8%; Baldwin & Lyons Inc., up 5.4%; and Pacificare Health System, up 5.1%. Declining issues for the week followed Fremont General Corp., down 11.3%; RLI Insurance Corp., down 5.6%; and Nobel Insurance Ltd., down 4.9%. The most active issue for the week was U.S. Healthcare, with 1.7 million shares traded. The BI Index was up 0.9%; the Standard & Poor's 500 climbed 0.6%; the Dow Jones 30 Industrials were up 1.0%; and the New York Stock Exchange Composite rose 0.5%.

British Issues

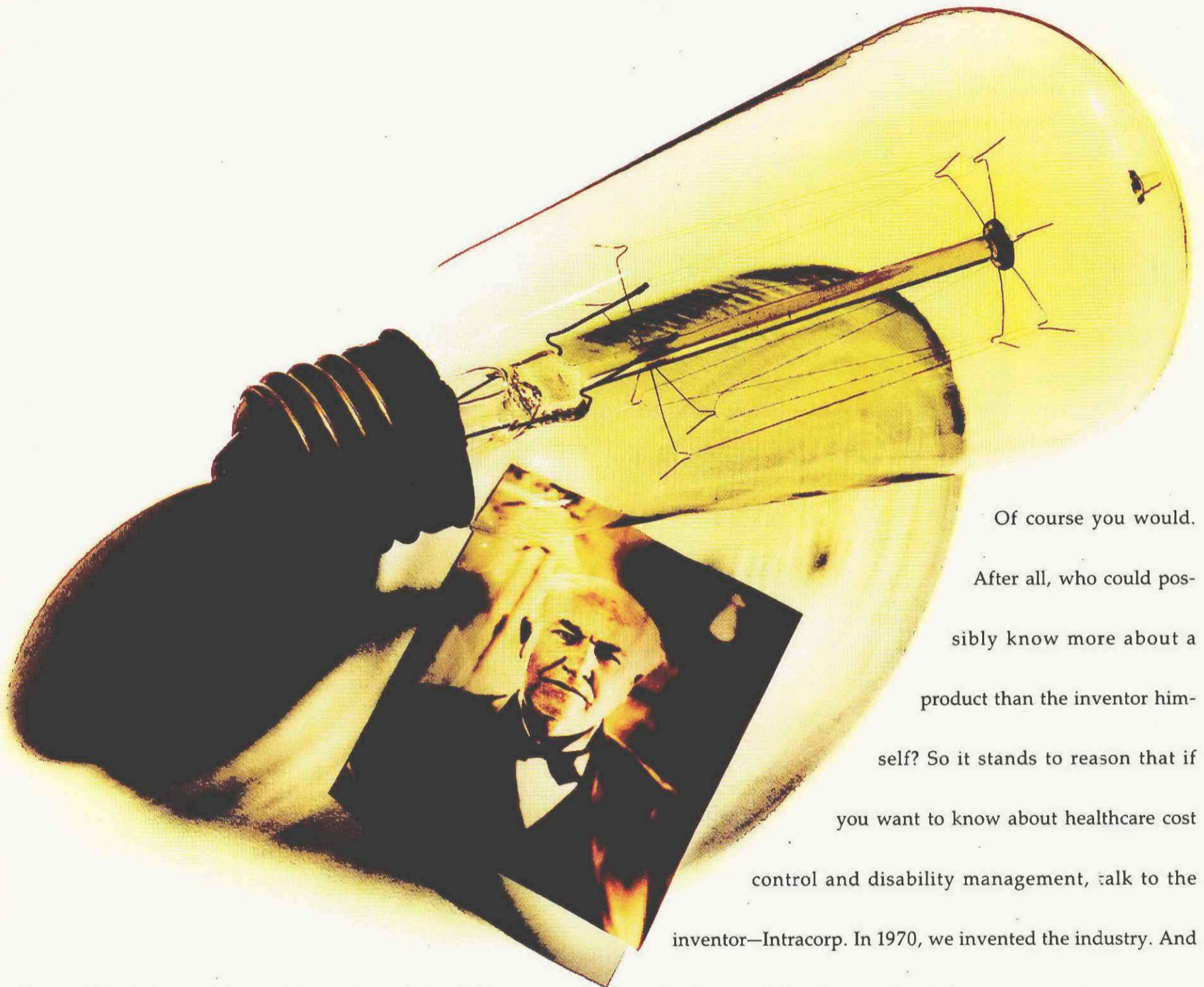
| July 2 Companies | Price | P/E | Div. % | Yield % | 1 Week | |
|------------------|-------|------|--------|---------|----------|--------|
| | | | | | High-Low | Change |
| Comm Union | 497 | N/M | 30.7 | 6.2 | 497-486 | |
| Genl Accident | 534 | N/M | 35.7 | 6.7 | 534-523 | |
| Gdn Royal Exch | 188 | N/M | 15.9 | 8.4 | 193-188 | |
| Royal | 419 | N/M | 34.7 | 8.3 | 419-406 | |
| Sun Alliance | 369 | N/M | 18.7 | 5.1 | 369-363 | |
| Brokers | | | | | | |
| Bradstock | 150 | 17.1 | 6.0 | 4.0 | 151-150 | |
| CE Health | 428 | 15.0 | 34.5 | 8.1 | 428-420 | |
| Hogg Group | 200 | 12.1 | 10.7 | 5.3 | 201-200 | |
| Lloyd Thompson | 373 | 24.8 | 10.0 | 2.7 | 373-368 | |
| PWS Holdings | 81 | 9.9 | 4.7 | 5.8 | 81-81 | |
| Sedgwick Grp | 267 | 25.6 | 16.0 | 6.0 | 267-265 | |
| Steel Brl Jones | 297 | 15.7 | 16.3 | 5.5 | 298-295 | |
| Willis Corron | 305 | 16.2 | 17.6 | 5.8 | 312-305 | |

Source: Philip Olsen, Insurance Industry Analyst
London

BI Industry Stock Report

JULY 1, 1991 THROUGH JULY 3, 1991

| BROKERS | | | | | | | | | | | | CONGLOMERATES & HOLDING COMPANIES | | | | | | | | | | | | INSURERS/REINSURERS | | | | | | | | | | | | HEALTH MAINTENANCE ORGANIZATIONS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Company | Price | Weekly % change | Year to Date % change | Annual High | Annual Low | Vol.(000) | \$ Div. | % Yield | P/E | Book value | Mkt/Bk value | Company | Price | Weekly % change | Year to Date % change | Annual High | Annual Low | Vol.(000) | \$ Div. | % Yield | P/E | Book value | Mkt/Bk value | Company | Price | Weekly % change | Year to Date % change | Annual High | Annual Low | Vol.(000) | \$ Div. | % Yield | P/E | Book value | Mkt/Bk value | Company | Price | Weekly % change | Year to Date % change | Annual High | Annual Low | Vol.(000) | \$ Div. | % Yield | P/E | Book value | Mkt/Bk value | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Alexander & Alexander | NYS | 22.00 | -2.22 | -4.86 | 27.63 | 16.13 | 220 | 1.00 | 4.55 | 17 | 9.77 | 2.25 | Liberty Corp. | NYS | 42.63 | 0.89 | 3.65 | 50.25 | 39.00 | 11 | 0.92 | 2.16 | 14 | 23.86 | 1.79 | Lincoln National | NYS | 45.50 | -0.82 | 5.81 | 55.50 | 30.75 | 178 | 2.72 | 5.98 | 10 | 45.16 | 1.01 | Berkshire Hathaway Inc. | NYS | 8425.00 | 0.30 | 26.22 | 8900.00 | 5675.00 | 0 | 0.00 | 0.00 | -27 | 4612.00 | 1.83 | St. Paul Companies | OTC | 38.25 | 4.08 | 15.91 | 42.50 | 25.50 | 43 | 0.00 | 0.00 | 14 | 18.90 | 2.02 | ITT (Hartford Group) | NYS | 56.00 | -0.44 | 16.67 | 63.00 | 40.25 | 508 | 1.72 | 3.07 | 7 | 64.01 | 0.87 | SAFECO Corp. | OTC | 32.50 | 0.00 | 48.85 | 34.00 | 16.50 | 8 | 0.00 | 0.00 | 18 | 13.52 | 2.40 | Sears (Atstate) | NYS | 38.25 | 6.66 | 50.74 | 40.88 | 22.00 | 1429 | 2.00 | 5.23 | 13 | 37.38 | 1.02 | SCOR U.S. Corp. | NYS | 12.25 | -2.00 | -1.01 | 15.25 | 8.38 | 7 | 0.24 | 1.96 | 8 | 11.19 | 1.09 | Seibels Bruce Group | OTC | 8.00 | -3.03 | 88.24 | 10.25 | 4.25 | 16 | 0.36 | 4.50 | -160 | 7.35 | 1.09 | Statesman Group Inc. | OTC | 4.50 | 10.76 | 187.91 | 4.88 | 1.25 | 556 | 0.00 | 0.00 | -45 | 2.48 | 1.81 | Tokio Marine & Fire | OTC | 41.75 | 0.60 | -11.64 | 56.50 | 34.50 | 2 | 0.00 | 0.00 | - | 70.93 | 0.59 | Torchmark Corp. | NYS | 47.75 | -1.04 | -2.30 | 58.50 | 38.00 | 292 | 1.60 | 3.35 | 11 | 16.70 | 2.86 | Transamerica | NYS | 32.25 | -0.39 | -1.15 | 39.63 | 23.25 | 425 | 1.96 | 6.08 | 10 | 36.56 | 0.88 | Travelers Corp. | NYS | 22.38 | 2.87 | 34.59 | 29.88 | 11.50 | 327 | 1.60 | 7.15 | -12 | 41.44 | 0.54 | Trenwick Group Inc. | OTC | 28.38 | 0.44 | 22.70 | 30.00 | 16.25 | 94 | 0.60 | 2.11 | 11 | 21.71 | 1.31 | United Fire & Casualty | OTC | 48.00 | 1.05 | 36.65 | 58.00 | 28.75 | 1 | 1.32 | 2.75 | 9 | 35.39 | 1.36 | USF&G Corp. | NYS | 8.63 | -4.17 | 15.00 | 27.25 | 7.00 | 492 | 0.20 | 2.32 | -1 | 11.96 | 0.72 | UNUM Corp. | NYS | 62.75 | -1.76 | 34.58 | 69.00 | 32.13 | 99 | 1.04 | 1.66 | 11 | 37.25 | 1.68 | USLIFE Corp. | NYS | 42.00 | 2.13 | 50.00 | 42.38 | 23.25 | 164 | 1.64 | 3.90 | 11 | 60.34 | 0.70 | Unilin | OTC | 33.75 | -0.74 | 9.76 | 41.50 | 24.50 | 365 | 0.80 | 2.37 | 12 | 30.70 | 1.10 | Washington National | NYS | 14.88 | 1.71 | 36.78 | 21.53 | 9.38 | 34 | 1.08 | 7.26 | -8 | 26.86 | 0.55 | USLICO Corp. | NYS | 19.88 | 1.27 | 25.20 | 21.88 | 14.75 | 4 | 1.00 | 5.03 | 9 | 29.44 | 0.68 | Zenith National Ins. | NYS | 16.75 | 3.08 | 22.94 | 18.50 | 9.88 | 9 | 1.00 | 5.97 | -70 | 13.14 | 1.27 | INSURERS/REINSURERS AVERAGE | | | | | | | | | | | | INSURERS/REINSURERS AVERAGE | | | | | | | | | | | | INSURERS/REINSURERS AVERAGE | | | | | | | | | | | | INSURERS/REINSURERS AVERAGE | | | | | | | | | | | |



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