

Business Insurance

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

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New York lawmakers negotiate end to hospital rate-fixing

ALBANY, N.Y.—New York Gov. George E. Pataki and legislative leaders have agreed on a plan that would allow insurance companies and self-insured employers to negotiate rates directly with hospitals.

The proposal, which is expected to be enacted shortly, would eliminate the state's decades-old policy of setting hospital rates. Currently, only managed care companies can directly negotiate fees with hospitals. The proposal is designed to reduce hospital fees.

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EMLICO approval not reopened

By DOUGLAS McLEOD

Massachusetts defers to Bermuda court

BOSTON—Massachusetts regulators will not reopen their approval of Electric Mutual Liability Insurance Co.'s bitterly contested 1995 move to Bermuda, Insurance Commissioner Linda Ruthardt ruled last week.

The ruling, however, is something less than a ringing victory for EMLICO and its sole policyholder, General Electric Co.

After hearing allegations that EMLICO knew it was insolvent before the move and plotted a Bermuda liquidation with GE in a

scheme to defraud reinsurers, Commissioner Ruthardt found "sufficient grounds to warrant inquiry" into whether EMLICO misled the Massachusetts Insurance Division.

"In the absence of other considerations, I would be inclined to reopen the redomestication proceedings immediately...based on suspected fraud," she wrote.

However, because a Bermuda court is already considering the fraud allegations raised by Kem-

Commissioner Ruthardt says she found 'sufficient grounds to warrant inquiry' into whether EMLICO misled regulators.

per Reinsurance Co. and others, "I decline, as a matter of discretion, to reopen (the proceeding) at this time," she concluded.

Instead, she added, Massachusetts regulators will pursue the allegations as part of an ongoing special examination of Electric Insurance Co., a Massachusetts-based insurer and former EMLICO subsidiary into which EMLICO's non-GE liability business was spun off.

Several former EMLICO officers

are now officials of EIC.

The players in the EMLICO drama expressed predictably mixed feelings about the ruling.

GE and EIC representatives said they were happy with the outcome but dismayed over the commissioner's comments on the fraud allegations.

"She pretty much looked at one side of the story," said Stephen D. Ramsey, GE's vp-corporate environmental programs. "When you hear one side of any story, you may reach an inaccurate and unjustified result."

See EMLICO on page 4

USAU, exec found guilty of fraud in allocation

By MICHAEL SCHACHNER

NEW YORK—A federal jury last week found U.S. Aviation Underwriters Inc. and its former chairman, John V. Brennan, guilty of criminal fraud charges relating to the allocation of settlements in an unusual 1987 commuter plane crash.

In what is believed to be the first case in which questions over the allocation of liability and insurance responsibilities led to the federal government pursuing fraud charges against a lead insurer, a jury in Brooklyn on July 1 convicted Mr. Brennan and USAU, the underwriting manager of U.S. Aircraft Insurance Group, on all 43 counts of mail fraud contained in a May 1995 indictment (BI, May 15, 1995).

Aviation and insurance industry lawyers who had been following the case were surprised by the verdict. They pointed out that disputes between policyholders, claims handlers and insurers over allocations of liability and insurance payments traditionally have been resolved in civil courts.

But, in this case, federal prosecutors who are still investigating USAU's handling of claims from the 1988 crash of Pan Am Flight 103 over Lockerbie, Scotland, expanded their probe to include USAU's management of claims from Pacific Southwest Airlines Flight 1771.

The PSA aircraft, which was en route to San Francisco from Los Angeles, crashed on July 17, 1982.

See USAU on page 23

General Re consolidates its lead

Acquisition of National Re seen as strategic move and a good fit for reinsurer

By JUDY GREENWALD

STAMFORD, Conn.—General Reinsurance Corp.'s plans to gobble up National Reinsurance Corp. in a \$940 million deal is seen as a good strategic move for both companies that could further spur consolidation in the reinsurance market.

The two companies announced last week they had reached a definitive agreement for Gen Re, the country's largest domestic reinsurer, to acquire National Re, which was ranked No. 17 by *Business Insurance* based on 1995 net premiums written (BI, April 1).

Although both companies are direct writers, Gen Re, with \$4.6 billion in policyholder surplus at year-end 1995, is more than 10 times the size of National Re, which had \$432 million in surplus.

The transaction is expected to be completed in the fourth quarter. Under its terms, National Re stockholders will have the option

Reinsurer reinforcement		
General Re, the largest U.S. reinsurer, has agreed to acquire National Re, which ranked 17th among U.S. reinsurers. Rankings based on 1995 net premiums written		
General Re		National Re
\$2.96 billion	Net reinsurance premiums written	\$334.4 million
\$4.6 billion	Policyholder surplus	\$432.3 million
\$621.1 million	Net income	\$51.7 million
99.0%	Combined ratio	98.2%
Source: Reinsurance Assn. of America; all data year-end 1995		

GRAPHIC BY LISA KRUSS

at closing of accepting either \$53 in cash or \$53 in value in General Re stock for each share of National Re. Gen Re plans to finance the cash component of the trans-

action internally.

The two companies have also agreed to a \$25 million breakup fee should the deal not go through.

Chatset predicts record Lloyd's profits

By SARAH GODDARD

LONDON—Lloyd's of London's profits for the 1993 underwriting year will be higher than expected when released later this week, a Lloyd's analyst says.

Names underwriting in 1993 will see a windfall payment of £400 million (\$621.2 million) because of syndicate over-reserving, on top of a record £1 billion (\$1.55 billion) in profits already forecast, according to Chatset Ltd. The previous record was for the 1986 year of account, which resulted in profits of £649 million (\$1.17 billion).

Charles Sturge, director of



Chatset, stressed that his figures were not final because individual syndicate results, usually pub-

lished by the end of June, are still to be released. But he said he was sure that the information was "reasonably accurate" and there would be just "a few changes."

Lloyd's 1993 account closed at year-end 1995 under the market's three-year accounting system.

Anticipated profits in the 1993 account would mark the first profitable year for the market since 1987. From 1988 to 1992, the market lost nearly £8 billion (\$12.4 billion).

Mr. Sturge estimates the 1993 global profit will be £1.18 billion (\$1.83 billion), taking into account investment income, a 1.5% special levy on names to bolster the fund-

ing for the reconstruction and renewal plan Central Fund, and managing agents' profit commission, but excluding members' agents' profit commission and fees.

In addition, Mr. Sturge predicted that the profits will be boosted an additional £400 million (\$621.2 million) from premium rebates to syndicates from Equitas Ltd., the run-off reinsurer that will take over Lloyd's 1992 and prior year liabilities later this year.

In previous years, Lloyd's global losses were sometimes attributable to significant reserve

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Updates

N.Y. hospital rate proposal

Continued from previous page

Maryland is the only other state that regulates hospital rates. The proposal also would establish a surcharge on health insurance policies to pay for training of medical residents and care for the poor. The previous 13% surcharge on hospital bills paid by commercial health insurers, which the U.S. Supreme Court upheld last year, would be eliminated under this proposal (BI, May 1, 1995).

Lead paint liability ruling

ALBANY, N.Y.—Landlords are not absolutely liable for lead paint poisoning when they fail to comply with laws requiring removal of lead paint, New York's highest court says.

The ruling in *Juarez vs. Wavecrest* last week will come as a relief to landlords and their insurers because it supports the common law position that landlords can be deemed negligent only if they are notified of a problem and then ignore it, an insurance lawyer says.

The case centered on a New York City apartment that had walls coated with flaking lead paint. Part of the apartment was illegally sublet to a mother with two infants, one of whom suffered lead paint poisoning.

The child's mother charged that the managing agent of the building, Wavecrest Management Team Ltd., and the landlord, Mayaghor Realty Inc., violated Local Law 1, which requires landlords to remove lead paint from dwellings inhabited by children under age 6.

Mayaghor Realty argued it did not know that Ms. Juarez and her children lived in the apartment. Lower courts ruled the landlord had a duty to inspect the apartments to ascertain whether it needed to comply with the law.

Reversing the decision, the New York Court of Appeals said, "Breach of a landlord's general statutory duty to maintain leased premises in a safe condition... does not impose liability without fault but requires a showing of those elements comprising common law negligence."

Landlords and their insurers in New York will welcome the ruling, said Joseph C. Kasouf, New York state claims counsel at Nationwide Mutual Insurance Co. in Syracuse, N.Y. Nationwide had filed an amicus brief in the case.

Louisiana enacts MSA law

BATON ROUGE, La.—Louisiana employers now can make annual tax-deductible contributions of up to \$2,500 for single coverage and \$3,500 for family coverage for employees who opt for medical savings accounts linked to high-deductible medical plans.

Employer contributions and interest earned on those contributions would not be added to employees' taxable income as long as the contributions were used to pay for uncovered health care expenses.

The MSA legislation was signed into law recently by Gov. Michael Foster Jr. and is retroactive to Jan. 1.

St. Paul buying Lloyd's agents

LONDON—In an effort to get closer to the Lloyd's of London market, The St. Paul Cos. Inc. is acquiring two Lloyd's underwriting agencies.

The St. Paul, Minn.-based insurer already has contributed £47 million (\$73 million) of 1996 capacity to Lloyd's through two corporate capital vehicles, Camperdown Corp. and Camperdown U.K. Ltd.

St. Paul is planning to buy Gravett & Tilling Underwriting Agencies Ltd. and Cassidy Davis Underwriting Ltd. through a sister company to the two Camperdown operations. Terms of the deal, which is subject to Lloyd's approval, have not been finalized.

Camperdown U.K. is already the sole member of parallel syndicates to Gravett & Tilling's two syndicates, writing £6.5 million (\$10.1 million) on aviation syndicate 2341 and £3.5 million (\$5.4 million) on non-marine syndicate 2227. Camperdown U.K. also underwrites on one of Cassidy Davis' two syndicates, contributing £8 million (\$12.4 million) of capacity to syndicate 582 for the 1996 year of account.

Camperdown Chief Executive Duncan Wilkinson said the acquisition would complement St. Paul's position as a niche player worldwide and give it access to expertise and to specialty property and liability business it otherwise would not have.

The announcement was made in advance of the 1996 Lloyd's capacity auctions, which start today.

Provider choice ballot initiative

TALLAHASSEE, Fla.—Chiropractors and some other health care providers in Florida want injured workers and others to have more freedom in choosing their doctors.

Several associations are gathering signatures in an initiative that could appear on the state's 1998 ballot as an amendment to the Florida Constitution. If passed as currently worded, the amendment would guarantee citizens unrestricted choice of health care providers and, as a result, would undo some of the restrictions that are in place in the state's workers compensation system.

The initiative's backers have gathered about 40,000 signatures, which is nearing the 42,500 necessary to trigger a state Supreme Court review of the initiative's language.

If the court decides the initiative is properly written, supporters will need 425,000 certified signatures to have it placed on the 1998 ballot.

Florida insurers and business groups are fighting the challenge. "It's a losing proposition for everybody except chiropractors and claimants attorneys," said a spokesman for the American Insurance Assn. in Atlanta. "It would damage the workers compensation system in Florida."

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Massachusetts lawmakers vote to repeal 'pay or play'

By JERRY GEISEL

BOSTON—Massachusetts' landmark "pay or play" health care law now is on the edge of repeal.

Last week, the Massachusetts Senate, on a 30-6 vote, joined the House to pass legislation, H.B. 6107, that would repeal the never-implemented 1988 law.

While Gov. William Weld is expected to veto the final bill because of a provision that would raise the tax on a pack of ciga-

rettes by 25 cents, the Legislature is likely to override the veto, business lobbyists say.

If that happens, it would put an end to the pay or play approach to expanding health care coverage.

Massachusetts captured national attention in 1988 when it passed its health care statute incorporating pay or play. The statute was so named because employers were to be automatically hit with an annual tax of \$1,680 per employee.

However, that tax was offset by

each dollar an employer spent on its group health care program. Employers who spent more than \$1,680 per employee on their health care programs were exempt from the tax.

When the statute was passed, state legislators anticipated that employers not offering health care plans would provide them rather than pay the tax.

At the time the statute was passed in 1988, it was considered by some as a model for other

See Pay or play on page 6

California ruling benefits policyholders

Court extends coverage trigger

By JOANNE WOJCIK

LOS ANGELES—A California appellate court has expanded the continuous trigger theory now applied in the state to coverage of defense costs to also apply to indemnification.

Policyholder attorneys praised the decision, saying it will expand protection while reducing litigation over coverage issues. Insurer attorneys predict more litigation, though, noting that the court did not resolve how losses would be

allocated among insurers.

Drawing from the California Supreme Court's ruling in *Montrose Chemical Corp. of America vs. Admiral Insurance Co.*, a three-judge panel of the California 2nd District Court of Appeal in Los Angeles unanimously ruled that any insurer with a policy in force during the period of a policyholder's "continuing injury" was liable to provide coverage.

And while the *Montrose* case involved a dispute over whether the insurers had a duty to defend, the

appeals court found it also applied to indemnification and awarded \$1.6 million in coverage plus interest to the city of Palos Verdes Estates, Calif., on June 19.

The court remanded the case to the trial court to determine how the amount will be allocated among insurers that had provided liability coverage to the city between 1971 and 1981, when the faulty design and maintenance of a city-owned storm drain caused a landslide that destroyed adjacent

See Trigger on page 6

PG&E to pay \$333 million to settle pollution claims

By JOANNE WOJCIK

SAN FRANCISCO—Pacific Gas & Electric Co. has agreed to pay \$333 million to settle a lawsuit filed by 650 residents of the desert community of Hinkley, Calif., who claimed they contracted cancer from chromium-contaminated well water.

The settlement supersedes an earlier \$131 million arbitration award to 39 plaintiffs, a company spokeswoman said.

PG&E's current commercial general liability coverage will not respond to the settlement, said Hudson Martin, risk manager for the San Francisco-based utility. PG&E is evaluating whether its older insurance policies would apply since the case alleges contamination dating back to 1951.

Mr. Martin declined to provide coverage details.

The leak occurred over a 15-year period when spent chromium, used in a gas cooling process, leached into ground water near a pumping station owned by PG&E. While PG&E accepted responsibility, the company still does not believe the contaminated ground water caused the illnesses that plaintiffs alleged, the spokeswoman said.

In their suit, residents and visitors to Hinkley alleged they suffered from a variety of illnesses, including lung, breast and stomach cancer, as a result of drinking chromium-tainted well water.

PG&E stopped using chromium at the station in 1966 and began treating the ground water to remove the chromium about 10 years ago.

Los Angeles subway project shuffles cover

By JOANNE WOJCIK

LOS ANGELES—The Los Angeles Metropolitan Transportation Authority is shaving \$7.5 million off general liability and workers compensation premiums for its subway construction project by increasing its self-insured retention to \$2.5 million per-occurrence from \$1 million.

In addition, New York-based American International Group Inc., which had been an excess insurer on the project, has agreed to drop down to be the primary insurer. AIG replaces Argonaut Insurance Co., which withdrew from the owner-controlled insurance program after the agency was hit with millions of dollars in claims filed by Hollywood business owners who claim their properties were damaged by construction (BI, April 3, 1995).

So far, the MTA has paid out just \$62,700 in claims related to the Hollywood Boulevard occurrence, according to Ronny Goldsmith, chief financial officer. The agency also has denied numerous claims filed by businesses outside of the affected area.

However, the \$1 billion suit filed by Hollywood Damage Control & Recovery Inc., an organization of business and property owners, is still pending. Since it was filed in 1995, the Argonaut coverage would respond, Ms. Goldsmith said.

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Inside

• Political wrangling over MSAs is holding up health care reform, one of this week's editorials says. **PAGE 8**

• The Council on Employee Benefits is moving to Washington. **PAGE 16**

• Liquidators of the KWELM companies have issued final payout estimates. **PAGE 17**

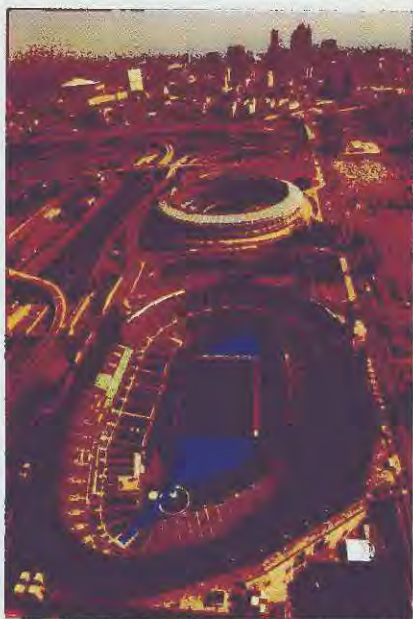
• An attorney in a Lloyd's of London fraud case has himself been accused of fraud. **PAGE 21**

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AP/WIDE WORLD PHOTO

During the Olympics, Atlanta employers are offering flexible hours.

Combating Olympic-size headaches

By ANNE HOLLYDAY

To help employees cope with work and family needs during the games, several Atlanta employers are helping workers by arranging added family care benefits, flexible scheduling and telecommuting.

NationsBank of Georgia N.A., with the help of a leading work/life consultation provider, has drawn up a comprehensive and innovative program that focuses on the child care needs of more than 9,000 employees that work in the Atlanta, Savannah and Athens, Ga., areas and those who are volunteering at the games.

"Our investment in this child care

See Olympics on page 10

No Owens Corning followers yet

Suit sparks interest from other asbestos producers, criticism from plaintiffs

By MICHAEL PRINCE

NEW ORLEANS—Asbestos manufacturers are taking a watch-and-wait approach rather than follow Owens Corning's lead in bringing suit alleging that thousands of asbestos claims against it are fraudulent.

The suit has generated interest among other asbestos producers and their insurers but also has sparked speculation among some attorneys and legal experts that Owens Corning may have other motives for filing suit.

The suit, filed June 19 in U.S. District Court for the Eastern District of Louisiana, alleges a scheme by three medical laboratories to manipulate medical tests to produce false results. These bogus test results, according to the complaint, were sold to attorneys who then sued Owens Corning. The company claims that thousands of suits

were based on these false medical tests, and that its ongoing investigation may reveal up to 40,000 tainted claims (BI, June 24).

"The purpose of the lawsuit is to address what we believe is massive fraud in the bringing of certain claims," said Christian Campbell, general counsel for Owens Corning in Toledo, Ohio. The company's suit, filed under the Racketeer Influenced and Corrupt Organizations Act, seeks unspecified damages, which would be trebled under RICO.

"We're monitoring the suit closely and we're evaluating all our options," said Larry Fitzpatrick of the Center for Claims Resolution, which was formed to settle claims on behalf of a group of 20 asbestos producers and does not include Owens Corning.

"I'm keeping an eye on the suit and waiting to see what happens," said Victor

Schwartz, counsel for the Arlington, Va.-based Product Liability Coordinating Committee, a business-backed tort reform advocacy group.

Insurers also are watching the case closely.

Bernard London of law firm London Fisher in New York, who represents insurers, said that some asbestos defendants and insurance companies may re-evaluate their cases in light of Owens Corning's allegations. "It may well stimulate a second close look at all medical backup," he said.

"All of the insurers will be closely following the case with a view toward seeing what evidence is adduced in the case and, depending on what is revealed, the insurance companies might take action or counsel their policyholders to take action," said Barry Ostrager with Simpson, Thatcher & See Asbestos on page 10

Cat reinsurers adapt to demands

By GAVIN SOUTER

HAMILTON, Bermuda—Things aren't what they used to be in the Bermuda catastrophe reinsurance market.

Three years after the summer that saw an eruption of property catastrophe capacity on the island, Bermuda's eight cat reinsurers have adopted different strategies as they try to make the best of a softening market.

While a few are sticking to their original plan of only writing property catastrophe reinsurance, others are diversifying into many different lines.

Marine, aviation, satellite and property excess coverages are among the variety of other coverages regularly written by the Bermuda reinsurers.

And as the business mix of the reinsurers is changing, so is the makeup of the companies themselves.

Six of the eight are now publicly traded entities, and a seventh has effectively gone public by being acquired by publicly held ACE Ltd.

The past year has tested the will of the Bermuda catastrophe reinsurers. When the reinsurers began operations in 1992 and 1993, they claimed that they would be disciplined in their underwriting and would try to achieve underwriting profits rather than large premium volumes.

Before the Bermuda facilities were created, many catastrophe

See Bermuda on page 21

Comparing Bermuda's cats

Bermuda catastrophe reinsurers ranked by gross premiums written. Figures in millions of dollars.

	1995	1994
1. Mid Ocean Reinsurance Co. Ltd.*	\$445.8	\$358.6
2. Renaissance Reinsurance Ltd.	289.9	269.9
3. Partner Reinsurance Co. Ltd.	230.9	184.1
4. LaSalle Re Ltd.	198.3	134.4
5. Tempest Reinsurance Co. Ltd.**	177.6	139.8
6. Global Capital Reinsurance Ltd.***	136.9	102.1
7. CAT Ltd.	121.5	83.5
8. International Property Catastrophe Reinsurance Co. Ltd.	104.1	85.6

* Fiscal year ends Oct. 31; ** Fiscal year ends Nov. 30; *** Fiscal year ends Sept. 30.

GRAPHIC BY TONY BUCCINI

Not all HMOs embracing capitation: Study

By ROBERT KAZEL

Capitated payment arrangements of some health maintenance organizations have ignited physician and consumer opposition recently, but a new study suggests that HMOs outside of the West Coast have yet to move en masse to capitation.

Capitated reimbursement, under which HMO members pay a

predetermined, fixed fee for essentially all their covered care, has been credited by many managed care organizations with driving provider costs down. But a new study by Minneapolis-based managed care research organization InterStudy Publications found capitation is prevalent mainly on the West Coast, where the first HMOs were formed.

An average of 45% of primary

HMO enrollment will continue to grow, a study says Page 20

services reimbursed by HMOs nationally is capitated, InterStudy found. But as HMOs become more common farther east, the new trend is for doctors to get a "hybrid compensation package" from their HMOs that is a mix of capitation, fee-for-service and "rela-

tive value units." Value units tie payment to the actual medical resources used, the training of the physician and the skills required for the procedure, and puts less of a burden on physicians to match their costs with rates negotiated with HMOs, the report said.

In the nation's capitation hotbed—the Pacific region of California, Oregon, Washington and Hawaii—61.4% of HMO services

provided by primary care doctors were capitated, according to the study. Alaska had no HMOs.

This contrasts with 40% for HMO services in New England—Maine, Vermont, New Hampshire, Rhode Island, Connecticut and Massachusetts; 43.2% for the Middle Atlantic region—New Jersey, New York and Pennsylvania; and 42% for the South Atlantic

See Capitation on page 20

Riding insurance roller coaster

By RODD ZOLKOS

Lowell Beck recalls thinking insurance was a boring business when he first joined the National Assn. of Independent Insurers in 1980.

From today's perspective, though, the career lobbyist said he realizes "There was nothing boring about it."

"This has been a roller coaster," he says today, as he retires from the property/casualty insurance trade organization's presidency. "Not only a roller coaster of years of high tension, but how could you want anything any more scintillating? And it touches the public's pulse so."

Critical issues confronted the insurance industry—and consequently insurance buyers—nearly from the start of Mr. Beck's tenure with the NAI, which is based in Des Plaines, Ill.

"It was the very year I came here, 1980,

Lowell Beck reflects on changes during tenure as NAI president

that the combined ratio started heading up," he recalled. "I didn't even know what a combined ratio was."

"Once it crossed over 100 it became a different kind of business when the companies looked to investments and that cash flow more than underwriting," Mr. Beck said.

On the heels of insurance companies' move to cash-flow underwriting, the commercial liability crisis hit.

"That then led to the tort reform crisis," Mr. Beck said. "Everything was a crisis. Companies were withdrawing from the markets because they thought the risks were too high."

The root cause of the hardening liability market was a "lawsuit crisis," Mr. Beck said, prompting the NAI to embark on an intense effort "to pull the industry together for tort reform."

Then California's rate rollback initiative, Proposition 103, "hit us like a ton of bricks," he said. Given the high cost of car insurance, "we should've seen that coming," Mr. Beck said.

Whether the industry should have seen it coming or not, the move to forcing rate reductions by ballot initiative was one that forced the NAI to drop everything else to address the issue, "because having rates rolled back by initiative without any concern paid to the cost of the product could have been devastating to the industry," Mr. Beck said.

Yet another issue was insurer insolvency. While the problems that emerged came

See Beck on page 16



PHOTO BY MICHAEL A. MARCOTTE

Watch Your Career Soar

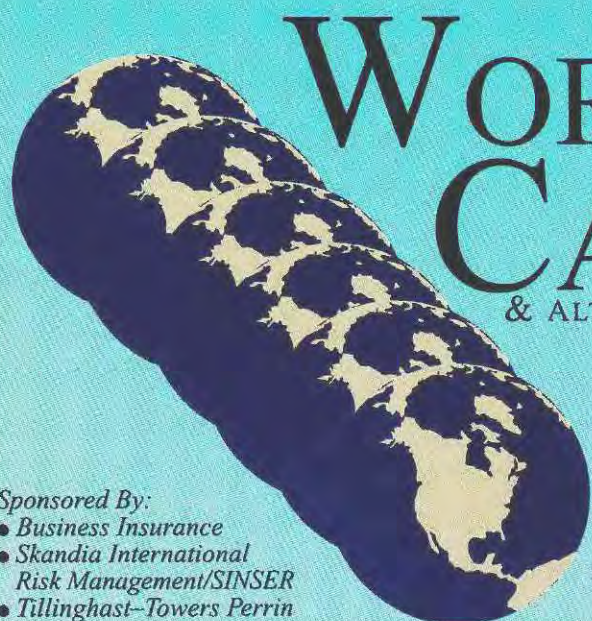
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Save The Date

EMLICO

Continued from page 1

"The memorandum appears to be based upon the unsupported allegations of the reinsurers," said John A. Nadas, an EIC attorney with Choate, Hall & Stewart in Boston.

"These comments heighten the concerns which led EIC to previously request the recusal of the Division of Insurance from these proceedings," he said.

Reinsurers, meanwhile, had the opposite reaction.

"The findings were encouraging. It's only the result we were disappointed in," said one reinsurer attorney who asked not to be named.

"We think it's very supportive of our position," added Christopher Grierson, a lawyer with Lovell White Durrant in London, representing Kemper Re. Commissioner Ruthardt "does think there were some grounds" for the charge of misrepresentation by EMLICO, he said.

Last week's ruling followed a contentious June 24 hearing on whether the Insurance Division should review its 1995 approval of a reorganization plan in which EMLICO—a longtime GE liability insurer—moved to Bermuda after spinning off to EIC all of its busi-

ness except loss-plagued GE liability policies dating back to at least 1952 (*BI*, July 1).

Nearly four months after the redomestication, EMLICO reported that it was underreserved for GE pollution and asbestos losses by about \$750 million and was insolvent by \$500 million.

EMLICO officials contend that the insolvency was triggered by events that occurred after the move, including an increase in asbestos claims and a change in its reserving method for pollution losses.

Several reinsurers, however, charge that EMLICO knew it was insolvent by the end of 1994 and concealed the fact from regulators in a conspiracy to dump GE's huge losses on reinsurers under Bermuda's creditor-friendly liquidation laws.

Kemper Re and three other reinsurance companies sued the Massachusetts division over its approval of the plan, and Kemper Re is separately trying to halt EMLICO's Bermuda liquidation and to have its corporate status there rescinded.

A Bermuda judge in April took the unusual step of allowing Kemper Re to intervene in the liquidation proceedings to present its fraud allegations, and hearings were held last week on whether the liquidation should be stayed for a full-fledged trial of the fraud issue.

Other reinsurers—Lloyd's of London underwriters and General Re Corp. units—also tried to intervene last week but were turned away by the Bermuda court, which ruled their filings came too late.

Separate hearings are scheduled for this week on whether the judge should overturn another April ruling granting Kemper Re extra time to challenge a series of

1995 Bermuda government orders that allowed EMLICO into the country.

The normal period for such challenges had passed by the time Kemper Re raised its objections, and EMLICO contends that the extension of time was improper.

Commissioner Ruthardt cited the Bermuda proceedings in refusing to reopen the EMLICO case, but gave EMLICO little comfort in the process.

While EMLICO argued that the law bars her from reviewing the case, the commissioner concluded that "I have authority to reopen the earlier proceedings and that there are sufficient grounds to warrant inquiry as to whether deliberate misrepresentations were made to the division."

The commissioner said she was specifically concerned that EMLICO financial statements and testimony affirming its reported \$230 million in surplus "might not have accurately reflected EMLICO's financial condition as understood by EMLICO's management"; and that EMLICO may have been planning its Bermuda liquidation at the time of the redomestication hearings.

If the hearings were reopened, Massachusetts regulators would investigate whether EMLICO officials knew or suspected the insurer was insolvent before the

move and whether they planned a Bermuda liquidation, the commissioner said.

The Massachusetts division asked Bermuda regulators in May to seek a delay in the Bermuda court proceedings while it considered reopening the case, the ruling notes.

In a May 23 letter, Assistant Insurance Commissioner Kevin McAdoo told Bermuda Registrar of Companies Kymn Astwood that a review of Bermuda court filings "has caused us to conclude that the extent of the disclosure made to the Bermuda Registrar...by officials of EMLICO prior to the redomestication may be significantly greater than the disclosures made by EMLICO to the division, particularly as respects the financial condition of EMLICO."

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Bermuda's solicitor general, however, said such a request would have to be made through diplomatic channels before Bermuda authorities could "act on behalf of" a U.S. agency like the Massachusetts department.

"At present, the Bermuda court has undertaken to inquire into questions of misrepresentation that might lead it to conclude the (redomestication was) improper, and the Bermuda authorities have declined to seek to postpone matters," Commissioner Ruthardt wrote. "Being respectful of the authority of other regulators...I decline as a matter of discretion to reopen the redomestication proceeding at this time."

EMLICO's shadow may now fall on EIC, though.

"Certain officers of EIC were officers of EMLICO," the commissioner wrote. "Given the seriousness of the allegations, I have determined that it is required of me as commissioner to examine these issues as they involve the management of EIC."

BI

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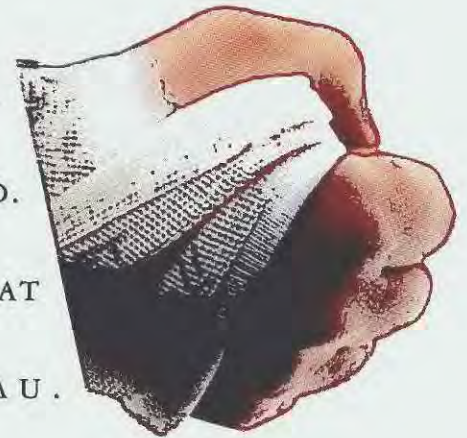
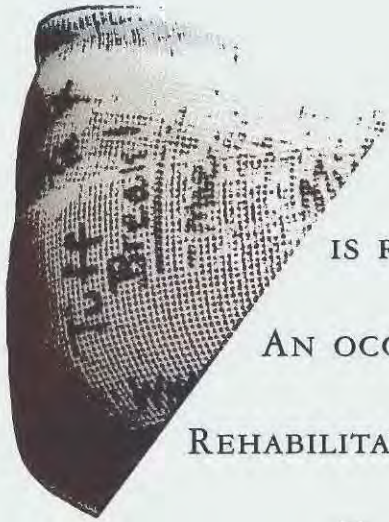
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Trigger

Continued from page 2
residential property.

The city settled the resulting property damage lawsuit for \$1.6 million, \$300,000 of which was paid by Jefferson Insurance Co. of New York, and \$950,000 by Stonewall Insurance Co.

When the city's other insurers refused to contribute to the settlement, it sued all the insurers that had issued either primary or excess liability policies between 1971 and 1983—the year a jury awarded the residential property owner damages for the landslide loss.

Stonewall also sued the other insurers and the city seeking to recoup its \$950,000 settlement contribution.

The trial court held that the city's liability was covered except for \$53,000 in deductibles and imposed liability jointly and severally on Jefferson and Admiral Insurance Co. As

an excess carrier, Stonewall was found not liable and entitled to full recovery of the \$950,000 from the other insurers, the court ruled.

Drawing from *Montrose*, the appellate court agreed with the trial court finding that "all carriers on the risk from inception of harm to the time the loss is no longer contingent cover the risk."

And while the *Montrose* opinion involved defense cost coverage specifically (*BI*, July 10, 1995), the appellate court found it equally applicable to indemnity costs because "the determination of whether there was a duty to defend necessarily involves whether there was a potential for actual coverage."

Policyholder attorneys applauded the decision.

"I think it's a landslide victory for policyholders," said William G. Passannante, a partner with Anderson, Kill & Olick P.C. in New York who filed an amicus brief in the case.

By applying the continuous trigger

theory to indemnification cases, policyholders may be able to avoid the type of protracted litigation that the city of Palos Verdes Estates endured to win coverage, said Michael Pearce, a partner with Wise, Wizeorek, Timmons & Wise in Long Beach who represented the policyholder.

The *Stonewall vs. City of Palos Verdes Estates* case spanned more than 15 years, he noted.

"This decision, along with the *Armstrong World Industries* decision, puts a stop to insurers' ploy of saying they only have to pay their share of a loss," Mr. Pearce said.

The *Armstrong* ruling came in a massive coordinate asbestos case, handed down by San Francisco Superior Court Judge Ira Brown Jr. from 1987 to 1989, and upheld by a state appeals court in 1983 (*BI*, Nov. 22, 1993). The ruling essentially granted a continuous trigger of coverage for asbestos-related personal injury claims and a broad "multiple"

trigger for property damage claims.

"Now, every policy that was triggered has to respond to the whole loss," he said of the current ruling.

"Policyholders should feel good about this decision because even though you have a group of insurers liable, you can go to one or two of them and say 'pay up,'" said Mr. Pearce.

Insurer attorneys were less enthusiastic.

"This was not a complete win" for policyholders, said Paul E.B. Glad of Sonnenschein, Nath & Rosenthal in San Francisco, who served as the insurers' lead attorney in the case.

"While the continuous trigger will be applied, how those losses will be allocated has yet to be determined," he pointed out. In fact, Mr. Glad predicts that the allocation issue may find its way to the California Supreme Court since the *Montrose* case also did not address it.

However, he did find it troubling that the court said that the insurers

should apportion the loss among themselves using other insurance clauses, rather than by taking the policyholder to court.

In contrast, Anderson, Kill's Mr. Passannante said it made sense.

"There is really no reason for policyholders to be involved in allocating losses among insurers," he said.

"Occurrence policies were designed to span several years," he said. And when a loss occurred, the insurer on the risk at the time was responsible for making the policyholder whole, he added, alluding to the "pay all sums" policy language.

Only after making the policyholder whole can the insurers allocate the loss among themselves.

Today, however, "they don't allocate," he said. Instead, "they play musical chairs."

Stonewall Insurance Co. vs. City of Palos Verdes Estates, C.A. 2nd, Nos. B023805 and B045183, June 19, 1996.

Chatset

Continued from page 1
strengthening for long-tail losses that Equitas is designed to assume.

Mr. Sturge said that 1994 is still on target for Lloyd's to report a £1 billion (\$1.57 billion) profit and, though "a little nervous" about 1995, Mr. Sturge still predicted it will be another good year with a bottom line result of around £750 million (\$1.16 billion) in profits.

For the 1993 year, the marine market will produce a profit of £664 million (\$1.03 billion), or 20.4% of its £3.26 billion (\$4.94 billion) in stamp capacity, Chatset projects. After the Equitas premiums-to-close from marine syndicates are taken into account, this segment will show a final result of £651.3 million (\$1.01 billion), or 20% of capacity. Many marine syndicates are showing profits of more than 25% of capacity, with syndicate 500 posting profits equal

to 39.6%, Chatset says.

Although the non-marine market showed a less spectacular 1993 profit of £3.59 billion (\$5.44 billion), or 11.8% of overall capacity, the rebate that these syndicates will receive from Equitas will improve its returns to £717.3 million (\$1.11 billion), or 20% of capacity, Chatset anticipates.

"The Equitas premiums have made a dramatic difference to the 1993 result," said Mr. Sturge.

The overall rebate from Equitas because of syndicate overreserving will total £540 million (\$838 million), after managing agents' profit commissions of about £86 million (\$133.6 million). But the net rebate will be £400 million because some syndicates are being asked by Equitas to add about £140 million (\$217.3 million) to reserves.

In his commentary to Chatset's preliminary 1993 results, Mr. Sturge ascribed Equitas' overall reserve reduction to "an optimistic view of pollution losses" and a more flexible

investment policy because of the long-tail nature of the majority of the claims Equitas will be facing.

Using names' indicative statements as a guideline to the Equitas figures, Mr. Sturge estimated that almost 90% of the Equitas exposures are directly or indirectly related to latent liability losses. However, he identified some inconsistencies in how Equitas is treating 1993 syndicates with liability exposures; some are receiving large rebates, others are footing large closing premiums.

"There seems to be considerable disparity in the way Equitas has treated syndicates," commented Mr. Sturge. "One does get the feeling that certain syndicate managers got on the wrong side of Equitas."

Mr. Sturge also raised questions about the fairness of Equitas distributing rebates only to members underwriting in 1993. The surplus in syndicate reserves "effectively belongs to 1992 and prior names," he argued, adding that there will be a

certain amount of ill will from names who were unable to underwrite for 1993 and therefore will not benefit from the release of funds.

He also rhetorically asked whether it is "prudent" of Equitas to release such large sums "when it would seem Equitas should be reserving to the maximum it possibly can."

A spokesman for Equitas said that the reinsurer felt its reserves were more than adequate, plus it has the benefit of a large solvency margin.

Mr. Sturge said he is confident that names will accept the revised Lloyd's settlement offer. He said that more than 90% of names have received improved figures in the most recent round of interim finality statements, and that the vast majority had "very significant" improvements. "When most names look at their indicative statements, they will determine it is the best way to go forward," he predicted.

Oliver Carruthers, a consultant to Chatset and a representative of the High Premium Group, comprising names that write £1 million of business or more each year, agreed that the settlement offer "is pretty attractive for most names."

But he cautioned that HPG names, which represent about 30% of this year's capacity, are dissatisfied with the 1.1% levy Lloyd's is charging all members underwriting in 1997 and

beyond to cover a £300 million (\$465.2 million) loan facility raised by the market. "Names can get pretty truculent," he warned.

Meanwhile, with the ongoing threat of legal action from U.S. state securities regulators, Lloyd's is considering other ways of dealing with U.S. members' liabilities, Lloyd's Chief Executive Ron Sandler said last week during a visit by several state securities regulators to Lloyd's.

In a statement given later, Peter Lane, Lloyd's managing director-North America, said: "Lloyd's and a task force formed by the North American Securities Administrators Assn. have been engaged in discussions in London in order to resolve outstanding issues between them. Progress has been made and both parties expect to resume discussions in the hope that an agreement will be achieved before Lloyd's ordinary general meeting on July 15, 1996."

It's still not clear if the proposed structure of Equitas ownership—a trust with half the trustees being elected by Equitas reinsureds—would be acceptable in a U.S. securities context, confirmed a spokesman for the Lloyd's R&R program.

Among contingency options is the possibility of setting up a reinsurer parallel to Equitas that would just take over the liabilities of the 2,700 U.S. names. **BI**

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Pay or play

Continued from page 2
states to follow in expanding health care coverage.

But the "model" approach to expanding coverage itself ran into trouble only a year after enactment. In 1989, the Legislature voted to delay until 1994 from 1992 the implementation of pay or play.

That delay came as the state's economic climate worsened. As unemployment rolls expanded, the small-business lobby warned that more jobs would be lost if employers were effectively required to offer and pay for a substantial portion of health care premiums.

"Small business kept screaming, 'Jobs will be lost!'" with a health care mandate, said Jerry Lanoux, a principal with Buck Consultants Inc. in Boston.

"What once was the Massachusetts miracle ended. Jobs became much more scarce. The state economy changed dramatically," Mr. Lanoux added.

What also changed was a new attitude about pay or play at the gubernatorial level. Pay or play was the "great Dukakis dream," said Buck's Mr. Lanoux, referring to Michael Dukakis, who backed pay

or play when he was governor.

But Mr. Dukakis was succeeded by Mr. Weld, a Republican, who vowed to repeal it.

Several more delays in implementing pay or play followed. It is—in the absence of a final repeal vote—scheduled to go into effect on Aug. 1.

But no one expects that to happen. Support for pay or play has so dwindled that last week's vote to repeal the state was considered a non-event.

"Everyone expects (repeal) to happen," Mr. Lanoux said.

Massachusetts isn't the only state where employer health care mandates have gone astray. The state of Washington last year repealed a 1993 law that would have required employers to pay a substantial portion of employees' health insurance premiums, while Vermont—after initial interest—rejected an employer health care mandate.

Instead of costly mandates, states have scaled back their health care objectives. For example, about a dozen states this year have passed measures that require health care plans to offer at least 48 hours of inpatient coverage to a mother and infant after a normal delivery and 96 hours of coverage after a Caesarean section (*BI*, June 17). **BI**

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Opinions

Is doing nothing the right thing?

THE STRANGE circumstances of Electric Mutual Liability Insurance Co.'s 1995 collapse practically guarantee that any regulatory decision about the company will involve a Hobson's choice.

That was evident last week when Massachusetts Insurance Commissioner Linda Ruthardt decided not to re-examine her department's approval of EMLICO's move to Bermuda, despite charges that EMLICO knew it was insolvent beforehand and plotted the move to take advantage of Bermuda's favorable liquidation laws.

Her decision may have been the right one under the peculiar circumstances, but it leaves the troubling image of a regulator deciding she should do nothing in the face of suspected fraud by a regulated company.

The legal tangle now surrounding EMLICO grew from the Massachusetts division's June 1995 order allowing EMLICO to move to Bermuda after spinning off all of its business except decades of loss-plagued General Electric Co. liability policies. Once offshore, EMLICO claimed it discovered a \$750 million reserve shortfall for GE asbestos and pollution losses, and declared itself insolvent by \$500 million.

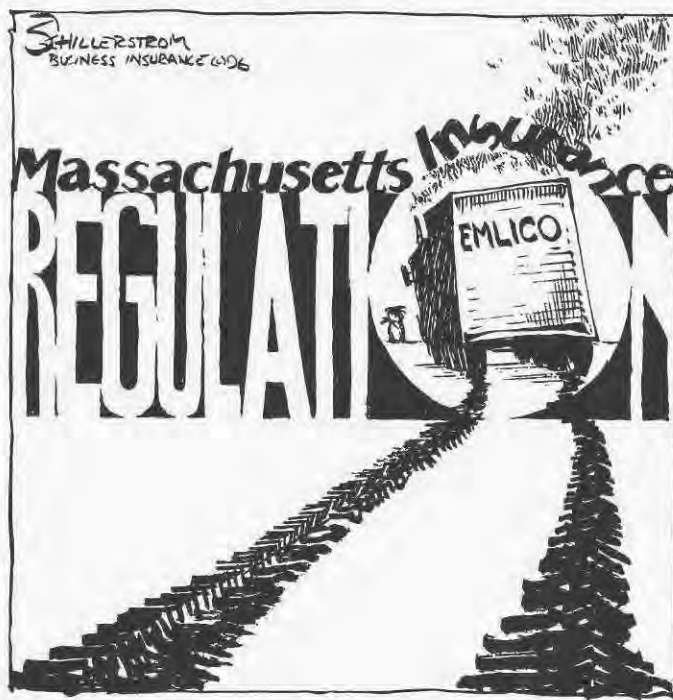
The situation quickly became dizzyingly complex: EMLICO reinsurers—facing larger liabilities in a Bermuda liquidation—sued the Massachusetts division for approving the move, and the division decided to hold a hearing on whether it should reconsider its approval. At the same time, Kemper Reinsurance Co. went to court in Bermuda to halt the liquidation pending a trial of its fraud allegations, and is separately trying to overturn the Bermuda government's orders allowing EMLICO's redomestication.

Not raised in any of these proceedings is a basic question for regulators: A growing body of evidence shows EMLICO knew from the early 1990s that it was facing huge GE pollution claims, yet the insurer never put up any reserves for these claims.

Despite EMLICO's insistence that the liabilities couldn't be quantified, one wonders how Massachusetts regulators could have given EMLICO a clean bill of health up to and during the redomestication process.

Also unanswered is the question—raised by reinsurers—of whether the commissioner had the power under state law to allow a U.S. insurer to move to a foreign country. EMLICO is apparently the first to do so, and the precedent is not a good one.

Those questions aside, Commissioner Ruthardt faced a no-win situation: either reopen the hearings against the wishes of powerful GE and face the prospect of repatriating a hugely insolvent company; or



decline to reopen and leave the problem in the hands of Bermuda.

Reinsurers' allegations of fraud and abuse of process by EMLICO are now before a Bermuda judge, who will decide whether to stay the liquidation process for a trial on the issue.

It would be a shame if the court decided to leave the charges to private arbitration between the liquidator and reinsurers. EMLICO's alleged conduct raises serious questions about the integrity of the regulatory system, both in Massachusetts and Bermuda. The charges of fraud deserve a full public airing.

Having moved too quickly to grant EMLICO's redomestication, though, Massachusetts regulators may have lost their chance to conduct such an inquiry.

Commissioner Ruthardt ruled that she would not reopen the case "at this time," leaving the inference that she might do so in the future.

The Bermuda court, however, could well decide against trying the fraud allegations and order EMLICO into liquidation. If this happens, it is hard to imagine Massachusetts reviving issues already decided by a Bermuda judge in a potential effort to reclaim an insolvent company already under Bermuda court jurisdiction.

The circumstances are unique. Commissioner Ruthardt may indeed be between the proverbial rock and a hard place. But the picture of insurance regulation painted by the EMLICO debacle is not a pretty one.

Don't let MSAs scuttle reform bill

SHOULD POLITICAL maneuvering in Congress over medical savings accounts hold hostage badly needed legislation that would allow workers to move from one job to another without fear of losing health insurance coverage for pre-existing medical conditions?

Of course not. Yet, Democratic and Republican leaders and the Clinton administration—through endlessly wrangling over MSAs—are endangering the chances that Congress will have time to enact a health care portability bill in the waning weeks of the congressional session.

A compromise is needed because the Senate version of the health care portability bill lacks an MSA provision, while the House measure would allow employers—if they so chose—to establish tax-favored MSAs linked to high-deductible medical plans.

Over the last two years or so, we've listened to the arguments made by both MSA advocates and critics.

The advocates say that by imposing high deductibles in medical plans, and giving employees the opportunity to collect unused employer contributions to their MSAs, employees will be more careful health care consumers.

Critics contend young, healthy employees would gravi-

tate toward MSAs, leaving older, sicker employees in other medical plans, driving up premiums in those plans. Critics also question whether individuals have the expertise and clout to find the best providers and negotiate fair prices.

We don't know which side is right; in fact, there may be some truth to what both camps are saying.

Meanwhile, the MSA debate is holding up action on an urgently needed piece of legislation whose core provisions have wide bipartisan support. We contend compromise shouldn't be so difficult for lawmakers to reach on MSAs.

Our approach: allow employers on a trial basis to establish tax-favored MSAs. Limit the experiment to three or four years and to employers with up to 50 employees—the market that seems most interested in MSAs.

After a few years, Congress should be required to revisit the issue. By then, enough evidence should be in for Congress to decide whether to expand MSAs or to end the experiment.

We urge legislators to quickly resolve the bickering on MSAs and enact the broadly supported and badly needed health care portability legislation.

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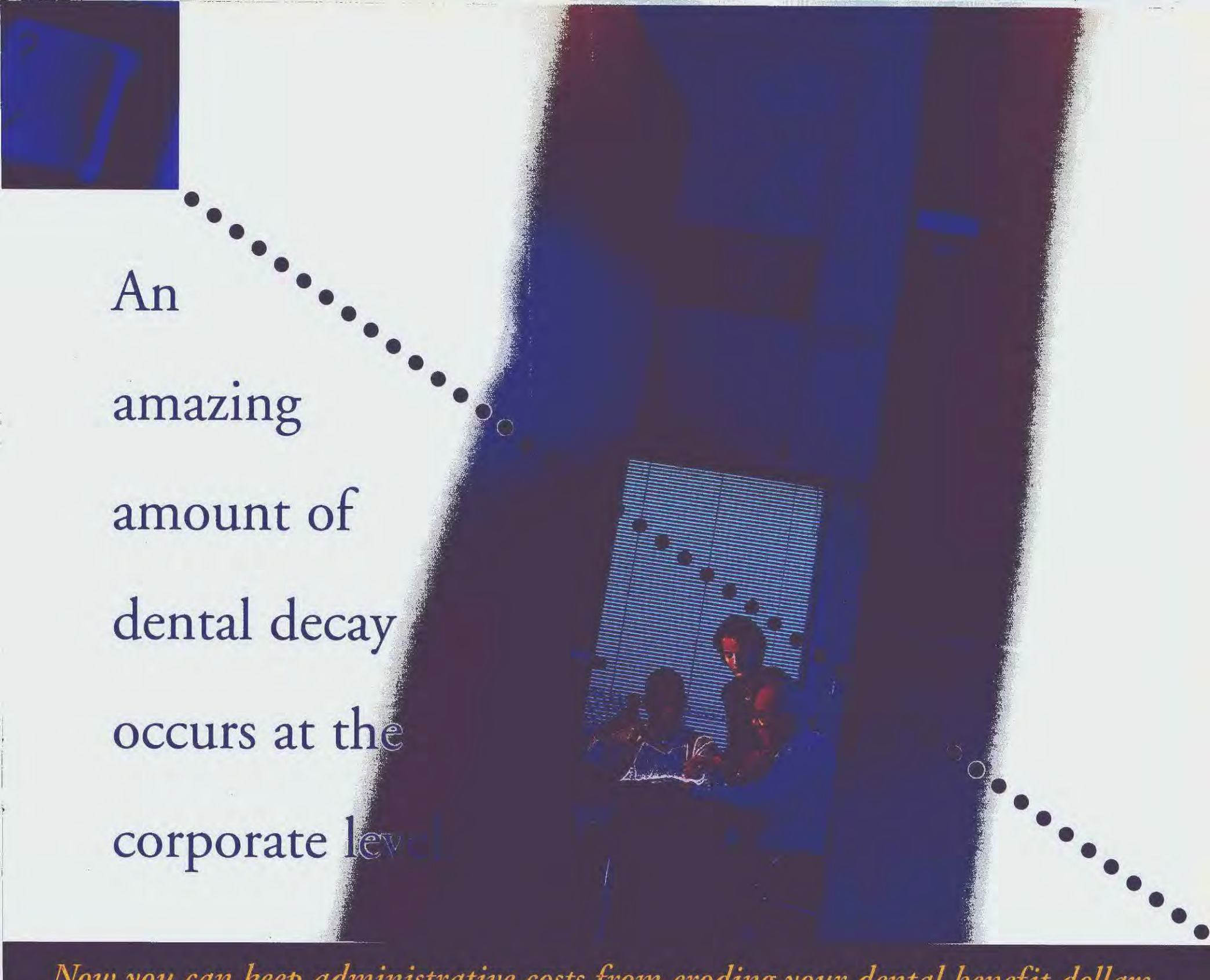
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Olympics

Continued from page 3

effort will enable our employees to focus on their jobs and serve our customers instead of worrying about how to pay for and find additional quality care for their children during the Olympic Games," said Jim Lientz, president of NationsBank of Georgia in Atlanta.

Kim Haynes, senior vp and director of the work and family program, added that the NationsBank work/family Olympics program is aimed primarily at assisting employees who are volunteering during the Games in Atlanta.

In preparation for the Olympics, "we have spent a year and a half planning for the logistics of just keeping the bank operating," said Ms. Haynes, who is based in Charlotte, N.C.

NationsBank's comprehensive child care effort includes a subsidy program, based on the number of children any employee has in child care, and provides funding increases in \$75 increments to employees for each child in day care between July 19 and Aug. 4. The program also offers child care provider bonuses of \$150 to \$200 for each employee served, as an incentive to provide extended hours at normal rates to accommodate scheduling problems such as commuting difficulties.

In addition, NationsBank has negotiated with several summer camps near worksites to extend hours to accommodate scheduling difficulties due to the Games and developed seminars to encourage employees to think about how the Olympics will affect their child care or elder care responsibilities and what resources are available.

The program also entails extending or changing employee hours to work around the summer Olympics, and therefore staffing banking centers during unusual time frames.

"We are the only financial institution within the Olympic ring where the Games are taking place. We have dedicated about 1,100 volunteers," Ms. Haynes said.

Two other major corporations—Armonk, N.Y.-based International Business Machines Corp. and AT&T of Basking Ridge, N.J.—are teaming up and providing more than \$40,000 to extend the hours and enhance the services of three Atlanta-area adult elder care centers. IBM and AT&T are funding the improvements as part of a joint effort with the American Business Collaboration for Quality Dependent Care, a national

Let the Games begin, for kids

As the world's attention turns to the Olympic Games this summer, more than a dozen employers nationwide are teaming up to provide fun and games for employees' children.

To capitalize on the excitement of the Olympics, 13 corporations are sponsoring the Global Games at 81 summer camps across the country for 10,000 school-age children. The Global Games will integrate learning with athletics through multicultural activities. Participating employers will contribute a total of \$629,000 to expand the camps' regular services.

Employers in the program are Allstate Insurance Co. in Northbrook, Ill.; AT&T; Amoco Corp. in Chicago; Bank of America in San Francisco; Bausch & Lomb Inc. in Rochester, N.Y.; Eastman Kodak Co. in Rochester, N.Y.; Exxon Corp. in Irving, Texas; General Electric Capital Corp. in Stamford, Conn.; Hewlett-Packard Co. in Palo Alto, Calif.; Armonk, N.Y.-based International Business Machines Corp.; Johnson & Johnson in New Brunswick, N.J.; and Xerox Corp. in Stamford, Conn.

The Global Games program is not designed specifically for Atlanta-based companies but is meant to piggyback off of IBM and other corporate sponsorship of the Olympics.

Creating a high-quality summer program enables employees to focus on their jobs instead of worrying about their children's safety, said Steve Hendricks, program manager-workforce diversity in IBM's Tarrytown, N.Y., office.

The Global Games project also is part of the American Business Collaboration for Quality Dependent Care, a national program to support child care and elder care needs in 56 cities nationwide, and will take place in summer camps at various sites, including Atlanta; Chicago; New Jersey; Northern Colorado; Oklahoma City; Raleigh-Durham, N.C.; Rochester, Minn.; Rochester, N.Y.; and Tampa, Fla.

—By Anne Hollyday

program to support child care and elder care needs in 56 cities nationwide.

"One of the major pressures faced by employees with elder dependents is knowing that their relatives are well cared for during the day," said Skip Schlenk, director of the family care development fund for AT&T in Basking Ridge.

On an everyday basis, Ms. Schlenk explained, the funding will help elder care centers open earlier and close later. For example, some will stay open until 10 p.m. during July and August. Expanded transportation services also will be provided for home pick-up and drop-off services for participants.

In return for their funding support, IBM and AT&T employees will receive priority enrollment opportunities from the elder care centers.

The American Business Collaboration is a national coalition led by 21 major corporations, which pledged a total of \$100 million through the year 2000 to support child care and elder care programs in areas where employees live and work.

The elder care programs are intended to continue operating long after the 1996 Olympics ends.

Another key component of overall

work/family programs during the Olympics is transportation, according to several Atlanta-based employers.

"The main problem is the com-

mute," said Ms. Haynes of NationsBank. "We have purchased an entire parking garage with regular monthly parking rights."

NationsBank is not the only company that has examined alternate routes for commuting.

"Everyone knows getting to work during the Olympics won't be easy; however, we have made several commuting options available to all employees," added Brett Hellenga, director of risk management for Turner Broadcasting System Inc. in Atlanta.

These options include a private shuttle bus service, special reimbursement arrangements with MARTA, the Olympic Games spectator transportation system, special fees for park-and-ride lots, and additional carpooling and biking options.

Moreover, Atlanta companies including TBS and NationsBank are urging employees whenever possible to telecommute from home.

Ms. Haynes explained that while 5,000 of the 11,000 NationsBank jobs based in Atlanta can't be done from home, "we have given people the opportunity to work from home, so thousands are telecommuting or taking their vacations."

NationsBank has arranged several technological changes, including increasing the security of personal computers used by telecommuting employees and enabling the bank payroll database to mail checks to workers' homes, she added.

"I anticipate gridlock everywhere

and expect people to spend as much time away from the office as possible," said Tony Rodolakis, vp of risk management and employee benefits for Holiday Inn Worldwide in Atlanta.

"The key to telecommuting is that employees have specially designated work hours at home," he said.

Holiday Inn launched a comprehensive telecommuting program before the Olympics, complete with workers compensation guidelines and technological innovations, he said, that will be more heavily used because of the Summer Games.

"We will provide everything from computers to furniture, and employees can work flex hours anywhere from 6 a.m. to 11 at night," Mr. Rodolakis added. Between 150 and 200 employees are expected to take advantage of Holiday Inn's telecommuting program, which emphasizes a four-day work week.

Separately, many Atlanta-based employers have stepped up their loss prevention and security programs indirectly because of their new work/family programs during the Olympics.

"We put on loss prevention and security seminars for all personnel who will not be telecommuting; we are making sure that all of our guests as well as our employees are as safe as possible," Mr. Rodolakis said.

In fact, some of the employees who will remain in the offices are on the Olympics security team, he added. **BI**

Asbestos

Continued from page 3

Bartlett in New York, who represents some insurers with asbestos coverage.

Asbestos plaintiffs attorneys contend however that Owens Corning may have other motives for bringing the suit.

"This is a new line of defense. They want to move the focus of attention away from their conduct to something else," said Joseph Rice of Ness, Motley, Loadholt, Richardson & Poole in Charleston, S.C., who represents asbestos claimants.

Mr. Rice also charges that Owens Corning's suit is intended to help show a rosier financial picture of the company. At the same time the suit was filed, Owens Corning announced its first shareholder dividend since 1986, and its expectation to reach a goal of \$5 billion in annual sales one year ahead of schedule. Mr. Rice contends these moves are designed to obscure less favorable news, such as an upsurge in asbestos suits against the company and the Supreme Court's recent refusal to hear its appeal of \$24 million in punitive damage awards.

"Owens Corning is trying to do something to boost or steady the stock price," said Martin Greitzer of Greitzer & Locks in Philadelphia, a prominent plaintiffs firm. "They want to put a very favorable spin on financial prospects of the company. They will give the financial community that idea that Owens Corning is getting tough."

Joseph Belluck, attorney with Public Citizen Congress Watch in Washington, said the suit "is another example of a company finding a creative strategy to attack the liability system."

Some legal experts say the suit could be used as leverage to get plaintiffs attorneys to settle.

Owens Corning currently is negotiating with 30 of the principal plaintiffs' law firms to reach a settlement. It is not known if any of these worked with the defendant medical labs. These firms have

agreed not to file any non-cancer suits against the company for the remainder of the year while negotiations continue.

This "standstill agreement" is "a temporary cease fire" with the plaintiffs firms so that Owens Corning may work out an agreement with all or some of these firms, said Owens Corning's Mr. Campbell.

John Coffee, a professor at Columbia University Law School in New York, said the suit and negotiations are linked because the suit does not name as defendants the law firms that worked with the medical labs. Mr. Coffee sees this as a shot across the bow of these firms to settle or else become defendants. "It sends a clear signal to plaintiffs bar that this suit can be amended to include some plaintiffs firms that do business with the medical labs," he said. They were not made defendants because that could "fatally poison the well," he added.

One RICO specialist, Thomas Potter, with Jones, Walker, Waechter, Poitevent, Carrere & Denegre L.L.P. in New Orleans, said that adding the law firms involved could be done without difficulty.

Owens Corning's Mr. Campbell, however, denied there is any ulterior strategy behind Owens Corning's suit to pressure plaintiffs law firms into settling. He said that the company does not have any evidence the firms were aware the claims were fraudulent, though he holds open the possibility that the firms might be added as defendants if such evidence turns up.

If Owens Corning did sue the law firms, it would not be without precedent. In 1994 another asbestos defendant, Keene Corp., sued 27 law firms that brought asbestos claims against the company (BI, June 13, 1994). That suit was dismissed last month, though, as part of Keene's bankruptcy reorganization plan.

The success of Owens Corning's strategy to reach a global settlement with plaintiffs likely will hinge on two recent court decisions.

The 3rd U.S. Circuit Court of Appeals recently struck down a global settlement between hundreds of

thousands of claimants and the asbestos producers that comprise the Center for Claims Resolution (BI, May 20). A motion for reargument was denied last month and an appeal to the U.S. Supreme Court is likely.

In addition, the 5th U.S. Circuit Court of Appeals currently is reviewing a global settlement involving Fibreboard Corp. A decision is expected sometime this summer.

If these courts ultimately reject the ability to use global settlements, Mr. Campbell said Owens Corning would still pursue settlements with each firm.

One plaintiffs attorney contends that those two cases on appeal are the reason for an increase in suits against Owens Corning in 1994 and 1995, not because of fraud as the company's suit alleges.

"This doesn't make a lot of sense," said Stanley Levy, of Levy, Phillips & Konigsberg in New York, whose firm represents hundreds of asbestos plaintiffs. Mr. Levy attributes the increase in claim filings to the fact that in 1994 and 1995 the two class action suits received a lot of publicity and many potential plaintiffs were sent notices of the suit. He said it is common in such circumstances for claims to dramatically increase.

Owens Corning acknowledged they played a role. "The class actions may have had a contributing factor, but that is not what caused the problem in our lawsuit," said Mr. Campbell.

Meanwhile, Owens Corning is plunging ahead and investigating a random sample of all 155,000 suits settled or tried by the company for any evidence of medical fraud.

"There is now grounds to look at all medical backup that support claims," said Mr. Campbell.

He predicted that the suit will stem the flow of asbestos suits by cutting down on false claims. And, the suit "will give a fuller perspective to courts and legislatures to what is occurring with asbestos litigation and will have a salutary effect so courts can focus on legitimate claims and understand there are abuses." **BI**

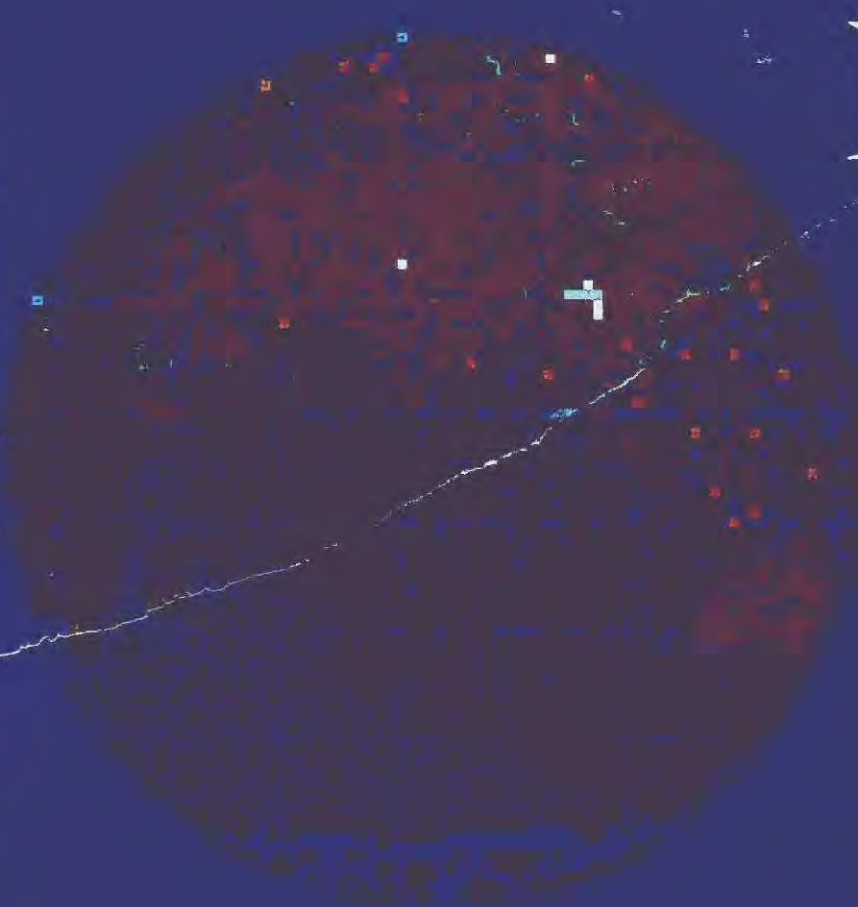
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- REGISTRATION AND CONTINENTAL BREAKFAST
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- POINT/COUNTERPOINT SESSION: INTEGRATING MANAGED CARE APPROACHES INTO WORKERS COMPENSATION
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 - ▶ U.S. AIR, INC. CASE STUDY: ALTERNATIVE COLLATERAL RAISES \$70 MILLION
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FRIDAY, NOVEMBER 8, 1996

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Hosted by GENEX Services, Inc.
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- COST CONTAINMENT PERFORMANCE MEASUREMENT
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Taking the sting out of comp costs

By Rebecca Shafer Bruce

SAVVY EMPLOYERS CAN CUT their disability and workers comp costs by 30% to 40%, and sometimes more. Achieving lasting cost reductions takes attention to detail and persistence. Though there are many complex issues, some straightforward guiding principles serve as beacons.

Injured or ailing workers often feel that the company doesn't give a damn about them. They can become bitter and resentful and may decide to "get even" by staying out as long as possible or hiring a lawyer.

The employer mistakenly believes that the worker is in the doctor's care and there's nothing it needs to do. Not true!

It doesn't take much to show you care. Small gestures such as get-well cards, flowers and concerned phone calls can make a big difference.

The employer should provide transportation to and from the doctor's office or clinic. Spending \$35 on cab fare might help save thousands of dollars in lost time or higher insurance costs.

Call injured employees once a week to find out how they're doing. Regular contact is crucial for workers who are out for more than a couple of weeks.

Otherwise, they can become "psychologically disemployed." Though employed, in their minds they feel unemployed and distanced from their employer.

Verify the extent of all injuries and illnesses and determine if they are work related. This information will let you plan the best course of action.

Some managers assume that only visible injuries, like bruises and fractures, are truly legitimate. But invisible injuries, such as repetitive stress injuries, depression and anxiety, are real and painful, and may be work related. A worker with a real but unobservable injury will only feel worse if the boss thinks he's faking it. And that will probably impede return to work.

However, being a concerned, humane employer doesn't mean being a pushover. Some points to consider:

- Remove incentives for staying out.

At one big publishing company, we found that employees on workers compensation in effect were earning 115% of their salaries. No wonder it had

Smart employers cut costs by carefully managing disability and comp claims

workers comp problems!

This may be an extreme case, but many employers unwittingly make it pay to stay out. You should carefully analyze your salary, compensation and employee benefit structures, identify any work disincentives, and eliminate them.

A common problem is allowing employees to collect both workers comp and company-provided disability benefits. Since workers comp benefits aren't taxed, if they collect both, employees can take home more pay than when working. Not needing to spend money on commuting, day care or dry cleaning puts them further ahead. The solution is simple: workers comp payments should be deducted from disability benefits.

To prevent it, offer injured workers transitional jobs they can do within their physical restrictions. Workers who refuse such jobs won't be considered unemployed.

Employers often let employees on workers comp keep earning vacation and sick time. Some even let employees "borrow" more sick time if they want to stay out longer.

No one who's already out needs sick days or vacation! Similarly, it doesn't make sense to let an employee who's out accrue seniority.

Travel passes and hotel privileges are common perks for airline, railroad and hotel employees. An airline employee on workers compensation could fly free to Florida for a midwinter vacation, and meanwhile the checks keep rolling in. Cut off perks to staff who are out for an extended period, unless they comply with your company's workers compensation and disabilities guidelines.

It's an employer's nightmare when a retiree collects both workers compensation and a pension. If your pension plan doesn't allow for offsets for workers comp, revise it ASAP.

- Don't let injured workers stay out longer than medically necessary.

Most employers tell their injured workers to stay out until their doctor says it's okay to go back to their usual job. But an employee who can't do demanding

physical work can usually do something else. Both the worker and the company come out ahead.

In a well-managed transitional work program, up to 90% of injured workers go back to work within four days of the injury, with most of them returning immediately. There are three types of transitional programs.

Alternate, or light-duty, programs, give workers less-demanding jobs. For example, someone with an injured back who can't lift heavy objects can usually answer the phone, do paperwork, or assist in courtesy follow-up customer service.

What if there aren't any suitable jobs in the company? Then think creatively. If you can't put an employee to work on your organization, send him or her to work at your favorite charity.

Under the second type of transitional program, called modified duty, employers go back to their usual jobs. But the job is changed so they can do it.

If an employee has back and wrist problems from sitting at a computer all day, the problem can probably be solved by buying a better chair, and installing foot rests and wrist pads. A truck driver with a sore knee making it impossible to depress a clutch pedal probably can drive a truck with an automatic transmission.

"Work hardening" is the third type of transitional approach. Under it, the employee goes back part time and gradually works up to being able to do his original job.

Whether your organization is small or large, it can slash its disability and workers compensation costs by taking a well-coordinated approach backed by top management. If no one in your organization has the expertise to set up the program, consider retaining a qualified consultant. **B**



Rebecca Shafer Bruce is senior vp and director of Glastonbury, Conn.-based Aon Management Institute, which provides consulting services to employers and offers an intensive course in workers compensation and disability management.

Injuries sustained at employer's home compensable

Is an employee injured while doing work for the employer's private benefit entitled to workers compensation benefits?

In a case of first impression in that state, the Oklahoma Court of Appeals ruled the employee was entitled to compensation.

Milton E. Vandiver was employed by City Business Machines as a field search technician.

Craig Scott managed CBM and supervised Mr. Vandiver. Mr. Scott's father owned CBM.

Mr. Scott had purchased a new residence and on four or five occasions sent Mr. Vandiver to his residence to do some remodeling of the garage and install electrical outlets.

In March 1992, Mr. Scott sent Mr. Vandiver to his residence to do some electrical work in the garage. While there, Mr. Vandiver accidentally reached into a live outlet. The shock knocked him backwards, where he struck a sawhorse with the back of his neck.

He sustained neck pain and severe headaches.

Mr. Vandiver filed for workers compensation benefits. The trial court

Legal Briefs

awarded him workers comp benefits, but was overruled by an appellate panel.

The Court of Appeals said that a majority of jurisdictions follow a rule favoring compensability for employees who have been directed, by a person in authority, to do some work outside the employee's normal duties for the private benefit of the person directing the work to be done.

Furthermore, the court said that the language "out of and in the course of employment" must be liberally construed in favor of the employee. Thus, the court reversed the appellate panel and awarded Mr. Vandiver compensation benefits.

Vandiver vs. City Business Machines, Oklahoma Court of Appeals, Sept. 26, 1995, *Rehearing denied* Oct. 23, 1995, *Certiorari denied* Jan. 9, 1996 (BI/02/Jy.-\$10).

Tire explosion compensable

A worker's injury caused by an

explosion of his spare tire when he was inflating it using his employer's air pump arose out of and in the course of his employment.

As a result, it was compensable under the Workers' Compensation Act, according to the Arizona Court of Appeals.

Juan Delgado commuted to work 16 miles using his own truck.

He was not reimbursed for traveling to work.

In July 1992, Mr. Delgado arrived at work, parked and clocked in. He immediately went to work.

About one hour later, Mr. Delgado returned to his truck, retrieved his spare tire and attempted to inflate it with his employer's air pump.

For an unknown reason, the tire exploded and injured Mr. Delgado.

The employer condoned the activity of employees using the air pump. Mr. Delgado filed for but was denied workers compensation benefits.

On appeal, Mr. Delgado argued that, because his employer condoned the use of the air pump and benefited from increased employee morale, his use of the pump was work related.

The appellate court concluded that

Mr. Delgado's use of the pump was within the course of his employment. "The injury occurred while claimant was using the Northwest's equipment, on Northwest's premises, and while claimant was on duty," the court said.

The court agreed that, by allowing its employees to use its equipment, the company received an indirect benefit.

The court also said that Mr. Delgado's deviation from his work duties was insubstantial.

Although the activity causing the injury was performed for a personal benefit, the court said that this fact alone was insufficient to render Mr. Delgado's claim non-compensable in this case.

Delgado vs. Industrial Commission of Arizona, Arizona Court of Appeals, Dec. 9, 1994, *Review denied*, Sept. 12, 1995 (BI/02/M.-\$10).

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

Beck

Continued from page 3

more from the life side of the industry than the property/casualty side, the insolvency issue that emerged in the early '90s fueled debate on where regulatory authority over the entire insurance industry should rest.

Fortunately, Mr. Beck said, the NAI had begun studying the issue even before Rep. John D. Dingell, D-Mich., began his congressional scrutiny of the question.

That work, which saw the NAI joining forces with a number of state insurance regulators, produced a report by the trade group that was mentioned positively in Mr. Dingell's report on insurance regulation, "Failed Promises."

"About the only good thing the Dingell staff had to say about the NAI was they liked and were very positive about some of the reforms mentioned in our report," Mr. Beck said.

Beyond that, the congressman's staff didn't have much good to say about the organization, the outgoing NAI president recalled, because the group was such a staunch defender of state-based regulation.

The NAI's role in fighting off threats by Rep. Dingell and others to a state-based system of insurance regulation is one of the things Mr. Beck is proudest of during his years with the organization, along with preventing the spread of rate rollback initiatives like California's Proposition 103.

"I don't find that I'm leaving here with an industry in crisis or an industry that's just on the brink of survival so that makes me feel pretty good, frankly," he said.

With the 62-year-old Mr. Beck's retirement from the NAI at the end of June, Jack Ramirez has taken the organization's reins as president.

Mr. Ramirez will take charge of the organization at a time in which the industry still faces serious issues, but in a less contentious, more proactive environment, according to Mr. Beck.

"We're in a situation where we want the legislation," Mr. Beck said, citing such proposed measures as a much sought national natural disaster act. "My time was spent fighting."

The natural disaster issue is one of the most critical ones facing the insurance industry in the years to come, the former president said.

"We've got to solve, and on my watch we didn't solve it...the natural disaster issue," he said. "The politicians' eyes seem to be totally closed."

Congressional leaders must be made to recognize the potential impact of two major catastrophes occurring simultaneously, Mr. Beck said. "It has to be dealt with or we could end up with not only a crippled insurance industry but also a financially devastated country."

He noted that 1989's Hurricane Hugo and the San Francisco area's Loma Prieta earthquake occurred within a month of one another. "We were able to handle both of them but as it turned out neither was as big as their potential," he said.

Insurance company consolidation is another issue the NAI will have to continue dealing with in the years to come, Mr. Beck said, though he's confident that the specific needs of customers will ensure an ongoing role for the small and mid-size insurance companies that make up the brunt of the NAI's membership.

"As long as this industry is not overly regulated...as long as it is allowed to function without a one-size-fits-all regulatory scheme you're going to continue to have innovation, new products coming out of these smaller companies," Mr. Beck said.

As for his own future, Mr. Beck, whose career includes stints with the American Bar Assn., the Urban Coalition Legislative Council and Common Cause before joining the NAI, may be retiring from the NAI, but he's not finished working.

"I honestly can say I feel like I'm 21 all over again," he said. "It's like I have a whole new life ahead of me."

He and his wife, Myrna, plan to split their year between a new home in Daulton, Ga., and the Chicago-area. During the winter months in the South, Mr. Beck will tap his lobbying experience in teaching a political science class at the University of Tennessee-Chattanooga. The class will focus on lobbying and how it's evolved since he first got into the business.

In addition to his teaching, Mr. Beck also will consult with Daulton College, a Georgia junior college, on developing public affairs programming for the University of Georgia's new telecommunications system, which connects the state's 12 junior colleges.

Back in Chicago, Mr. Beck will host a new television show, "First from Chicago," on local station WYCC, a station owned by the City Colleges of Chicago. The show, which will begin airing after Labor Day, will feature one-on-one conversations "with Chicago's most interesting people," Mr. Beck said.

Taping on the program starts at the end of July, and while living in Georgia during the winter months Mr. Beck will travel back to Chicago occasionally to tape programs.

As he embarks on a new career, Mr. Beck can look back fondly on the one he leaves behind.

"With all the tension and all the problems and all the difficult times we had, I haven't once said 'I wish I weren't in this job,'" he said. "It's just been a great, great time because of the nature of the people in the business."

"You're always a better advocate if you like the people you're working with and the people you're representing and you believe in your industry," he said. "And I do." ■

Changes underway for Council on Employee Benefits

WASHINGTON—The Council on Employee Benefits—the nation's oldest employer-sponsored employee benefits organization—will move later this year to Washington from Akron, Ohio, and hire its first full-time executive director.

In addition, the 160-member CEB—under a new agreement with the Washington-based Assn. of Private Pension & Welfare Plans—will have administrative support services performed by the APPWP. CEB's new office will be adjacent to the APPWP.

While the APPWP will provide administrative support services to CEB, which has been operating for 50 years, the two organizations will remain independent and retain

their separate focus and identity, officials say.

"Each organization will, of course, retain its own separate mission, governance and members. But, by tapping into the APPWP's administrative support and by hiring its own full-time executive director, CEB will be able to greatly enhance the services it provides to members," said CEB President Stuart Larimore, who also is manager of benefits planning and executive compensation at Boise Cascade Corp. in Boise, Idaho.

The two organizations perform very different functions. The CEB, whose members are senior employee benefit professionals at very large companies—typically those in

Philadelphia insured for award in bombing

PHILADELPHIA—The city of Philadelphia is self-insured for the \$1.5 million a federal jury last month ordered it to pay to the lone adult survivor and the families of two people killed when police firebombed a house in 1985 then occupied by the African-American group MOVE.

Unless the city appeals, something it is unlikely to do, the conclusion of the suit brought against the city of Philadelphia by Ramona Africa and the families of two of the 11 people killed in the firebombing brings to an end civil litigation against the city related to the May 1985 incident. To date, Philadelphia has paid out more than \$30 million to settle lawsuits with families of those killed and to rebuild homes on the West Philadelphia block that was largely destroyed by the bombing and resulting fire.

The jury also ordered former police commissioner Gregore Sambor and former fire commissioner William Richman to pay "symbolic" damages to the three plaintiffs of \$1 per week for 11 years.

Clinton seeks expansion of chemical reporting

WASHINGTON—The Clinton administration wants to increase by about one-third the number of facilities required to report releases of chemicals covered by the Toxic Release Inventory.

Vice President Albert Gore Jr. and Environmental Protection Agency Administrator Carol M. Browner announced the proposed expansion late last month. Currently, 20 categories of manufacturers are required to report release of the listed substances. Under the new proposal, seven additional industries—chemical wholesalers, commercial hazardous waste treaters, coal mining, electric utilities, metal mining, petroleum bulk terminals and solvent recoverers—would be added to the list of enterprises required to report toxic releases under the Emergency Planning and Community Right to Know Act and the Pollution Prevention Act. Ms. Browner said that change would add about 6,400 sites to the 2,500 or so that already must report releases.

Exxon loses appeal in 1989 Hawaii spill

WASHINGTON—The owners and manufacturer of a ship mooring system are not liable for the loss of an Exxon Corp. subsidiary's oil tanker that ran aground off the Hawaiian islands after the ship's mooring failed, the U.S. Supreme Court ruled.

In upholding two lower court rulings, the high court last month unan-

imously agreed that the ship captain's "extraordinary negligence" caused the grounding and the subsequent loss of the ship. Even though the failure of the mooring created the situation, the captain's unforeseeable failure to fix the ship's position after he maneuvered the ship into the open sea was the "sole proximate cause" of the grounding, the court found in an opinion written by Justice Clarence Thomas.

The company, SeaRiver Maritime Inc., formerly Exxon Shipping Co., sustained an \$18 million loss, which includes the loss of the ship and its cargo and SeaRiver's pollution cleanup costs. A SeaRiver spokesman could not confirm whether the loss fell under SeaRiver's self-insured retention. Exxon and its subsidiaries typically have maintained SIRs that far exceed such a loss.

The mooring system failed during stormy weather in early 1989 as the ship, the Houston, was delivering oil to the mooring owners' pipeline. A pipeline hose that remained attached to the Houston restricted the ship's maneuverability for nearly three hours. But, a small assist vessel then gained control of the hose, allowing the Houston captain to pilot the ship to deeper water.

At sea, the captain did not order a position fix for about 90 minutes as the crews of both vessels focused on disconnecting the pipeline hose from the ship. The captain ordered a position fix after he decided to return to port, but at that point he did not have time to steer the ship clear of a reef toward which it had drifted.

Ford to appeal verdict in brake asbestos case

BALTIMORE—Ford Motor Co. will appeal a Baltimore Circuit Court jury's verdict last month that it pay more than \$14 million to the widows of two mechanics who died of cancer that the jury determined was caused by their exposure to asbestos brake linings.

The automaker contends the two men—both of whom died of mesothelioma, a form of cancer linked to asbestos exposure—were exposed to asbestos while working on other jobs "recognized as presenting significant asbestos-exposure risks."

"That's a fact that was not called to the jurors' attention," a Ford spokeswoman said. "That was not allowed."

The company also argued that testing by Ford and others has shown that heat generated during braking transforms asbestos fibers in brake linings to a non-fibrous material "that no longer poses a health risk," a fact the automaker said the jury ignored.

A Ford statement called the verdicts "unjustified," adding that the company is confident they will be overturned on appeal.

The two mechanics' estates had sued dozens of other brake part manufacturers, but Ford was the only one that declined to settle.

Insurers' rate of return lags other industries

NEW YORK—Property/casualty insurers' return on net worth continues to lag behind that of other industries, a recent survey shows.

The New York-based Insurance Services Office Inc. reports that U.S. property/casualty insurers' rate of return on net worth was 8.2% in 1995, compared with 14.8% for the Fortune 500. Last year's rate of return also lagged behind the insurance industry's long-term average return of 10.7%.

According to ISO, the industry's

aftertax net income grew 86% to \$20.1 billion last year from \$10.8 billion a year earlier. Decreases in underwriting losses and increases in realized capital gains and investment income spurred that growth, the report said.

Illinois UST owners to get cleanup funds

SPRINGFIELD, Ill.—Petroleum underground storage tank owners and operators in Illinois this summer will begin to be reimbursed for cleanups because of a new state law that raises revenue for the UST fund.

Last summer, the Illinois UST fund was declared insolvent and the U.S. Environmental Protection Agency withdrew its approval of the fund as a financial assurance mechanism (BI, Oct. 2, 1995).

Under the new law, tank owners and operators in the state will be assessed an additional fee of 0.8 cents per gallon of fuel delivered to their tanks. A 1990 law already levies a fee of 0.3 cents per gallon, though two-thirds of that fee must be used for debt service and retirement.

The Illinois UST fund expects to collect approximately \$4 million per month with the two fees, according to a spokesman for the state's Bureau of Land at the Illinois EPA.

As of May 31, the fund had approved for payment 1,785 pollution cleanup claims totaling \$56.3 million, the spokesman said.

The new law has a checkered history. In November, the legislation passed after it, along with two other unrelated matters, was attached to a bill requiring police to notify residents when a convicted sex offender moves into their community. The UST law required the additional fuel fees to become effective Jan. 1, 1996. As a result, the federal EPA said tank owners and operators could use the fund as financial assurance mechanism as of the beginning of this year.

However, on May 7 a Cook County Circuit Court judge said the UST law was unconstitutional because it was passed as part of "Christmas tree" legislation covering several unrelated matters. On May 22, the Legislature passed the UST law again as a free-standing bill.

However, the circuit court judge has impounded the revenue generated by the UST law since January, noted Dan Creedon, director of governmental affairs for the Illinois Petroleum Marketers Assn. in Springfield. The Bureau of Land spokesman estimated the impounded revenue at \$14.5 million. However, money generated by the fees after May 22 will go into the UST fund.

London underwriters to pay Love Canal claim

BUFFALO, N.Y.—Lloyd's of London syndicates and other London insurers will pay an undisclosed amount for the cleanup of the Love Canal toxic waste site in an agreement reached with Occidental Chemical Corp. last week.

The settlement covers a significant part of the coverage dispute that Occidental began with its insurers in 1980, an Occidental spokesman said.

Disputes with other insurers are due to go to trial next year.

Love Canal was polluted in the 1940s and 1950s by Hooker Chemical Corp., which Occidental bought in 1968. The cleanup costs are expected to be in the hundreds of millions of dollars.

Occidental had \$320 million in liability insurance between 1963 and 1979 (BI, Jan. 21, 1980). ■

—By Jerry Geisel

INTERNATIONAL

KWELM offers new payment estimates

By DAVE LENCKUS

CHICAGO—The KWELM companies, five insurer subsidiaries of the failed London United Investments P.L.C., eventually could pay their creditors more than 50 cents on the dollar or as little as 29 cents, according to an administrator for the companies.

The latest estimates are "theoretical," although the administrators are "looking at them with an increasing level of confidence," said administrator Chris Hughes, a partner with accounting firm Coopers & Lybrand in London.

Factors like the future development of environmental, asbestos and breast implant claims could change the eventual payment, he said.

KWELM administrators have lowered their estimate of those liabilities—referred to as "special margin" liabilities because of their long-tail nature and the difficulty of estimating them—\$200 million since 1994 to \$4.4 billion.

Mr. Hughes discussed the figures during a June 26 U.S. creditors meeting in Chicago, which was attended by a small group of about 50 of the KWELM companies' approximately 100,000 policyholders.

He also commented on the impact of a recent House of Lords ruling on the companies and described the administrators' new environmental liabilities data base after the meeting.

The KWELM companies—Kingscroft Insurance Co. Ltd., Wal-

The latest estimates are 'theoretical' and could be changed by future developments, says Chris Hughes.

brook Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd., and Mutual Reinsurance Co. Ltd.—have estimated creditors' liabilities of \$9.7 billion.

Total liabilities at year-end 1995 were \$9.82 billion, resulting in a nearly \$6.87 billion net deficiency of assets.

Before they stopped underwrit-

ing and paying claims between January 1988 and May 1992, the companies carried on business mainly through H.S. Weavers (Underwriting) Agencies Ltd. and CR Driver & Co. Ltd., both of which are now in liquidation.

To provide for periodic payments to creditors, a scheme of arrangement similar to Chapter 11 reorganization under U.S. bankruptcy law was approved about two years ago (BI, July 18, 1994).

However, the scheme will not lead the companies out of bankruptcy to write new business again.

For the companies as a group, the "theoretical final payment" percentage to creditors ranges from 29 cents to 53 cents, Mr. Hughes said.

For each company, the percentages are:

- Kingscroft—32% to 55%.
- Walbrook—27% to 53%.
- El Paso—31% to 55%.
- Lime Street—33% to 53%.
- Mutual—25% to 50%.

Currently, including the \$219 million of funds recently set aside for creditors, the administrators have set aside funds to cover nearly 10%—or \$922 million—of creditors' estimated liabilities, according to the administrators.

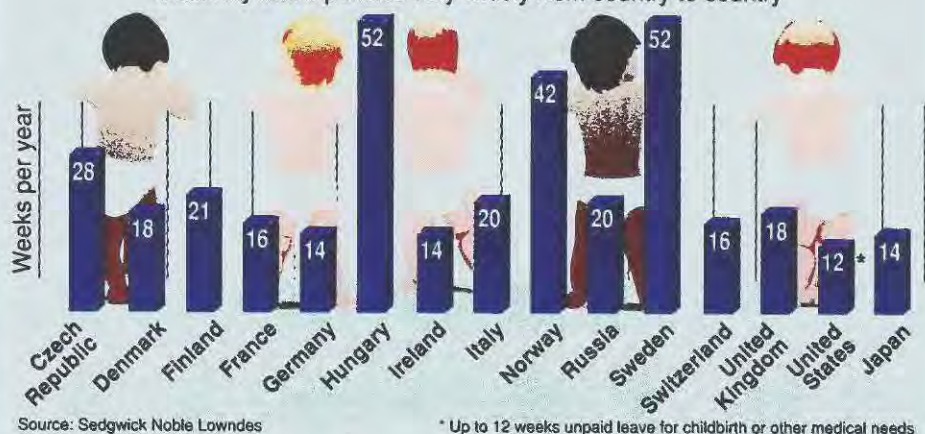
The breakdown by company is:

- Kingscroft—13%.
- Walbrook—8%.
- El Paso—13%.
- Lime Street—14%.
- Mutual—9%.

Mr. Hughes detailed several
See KWELM on page 19

Mothering workers

Maternity leave policies vary widely from country to country



GRAPHIC BY TONY BUCCINI

Benefits, contributions vary worldwide: Study

By CRISTAL CODY

U.K. employers contribute less to their employees' pensions than employers in almost any other European country, according to a recent survey.

The survey, conducted by benefit consulting firm Sedgwick Noble Lowndes, gathered information on benefits ranging from pensions to maternity leave and their relation to overall labor costs in countries in Europe and Asia as well as the United States.

Providing mandatory and voluntary benefits is a substantial part of labor costs for employers in all the countries surveyed. The survey compared employers' labor costs by using 100 units of gross pay in each local currency and then adding the percentage of costs for social security and mandatory and voluntary benefit plans.

The survey will enable employers to compare the overall costs of employment in various countries, said Jim McKay, an international consultant with Sedgwick Noble Lowndes in Chicago.

"If you only look at social security, or only look at mandatory costs or benefits, then you don't get a true picture of the total employment costs," he said. "So, you need to look at all the components of employment costs, and that is what this guide helps you to do."

The study found that European Union employers pay an average of 30% of gross pay in mandatory contributions, compared with Japan, which pays only 13%.

The average additional mandatory contribution in some emerging countries in

Southeast Asia is about 11% of pay, but these contributions are three times as high in Europe. Employers' mandatory costs in Belgium, France, Italy, Hungary, Poland and Russia are at least 35% of gross pay.

Employers in Denmark, the United Kingdom and Ireland pay the least in mandatory contributions, the survey found, at 3%, 8% and 12%, respectively.

British employers give a mandatory 8% of salary to pension funds, the survey found, but some employers do make voluntary contributions to occupational pension programs, raising the typical contribution level to 20%.

The survey also ranked the cost of benefits for employees in terms of mandatory paycheck deductions for income tax and other charges.

Sweden takes the biggest chunk from employees' paychecks: 39%. Germany and Hungary follow, with 38% each; Finland takes 36%; Denmark, 35%; and Belgium takes 33%. At the other end of the spectrum, Russian workers see deductions of only 10% from their paychecks; Portugal, 14%; Japan, 16%; Switzerland and the Czech Republic, 17%; and Poland, 18%.

Countries like Sweden and Germany that have generous benefits also have high deductions from employee paychecks. However, some countries with good benefits, like Italy and France, deduct less from employee checks because employers contribute more, according to the survey.

Multinational employers know that costs will not decrease unless there is a shift toward making employees pay more, but

See Benefits on page 19

Pension platform

By EDWIN UNSWORTH

LONDON—Britain's Labour Party, widely expected to win a majority of seats in the next general election, proposes a major overhaul of the country's pension system, including measures to create new pension plans and to stimulate greater competition between private pension providers.

In its June 28 document on pension policy, "Security in Retirement," the Labour Party says that while it remains committed to retaining a government-provided pension based on compulsory contributions, it also plans to create a new "second-tier" pension system as an alternative for people without access to occupational schemes.

Its proposal calls for these pensions, funded by individual contributions, to be developed in partnership with the private sector. A Labour government would invite employer and employee organizations, Chambers of Commerce, insurance companies, investment trusts and the state National Savings unit, which sells government bonds and saving schemes, to present proposals for the new funded schemes.

However, the proposal represents a step back from Labour's previously stated pledge to focus on increasing the real value of the state pension scheme.

If it takes control in the next election, Britain's Labour Party also intends to "strengthen and support" the regulatory framework for occupational pension plans while also encouraging more cost-effective private retirement plans for those without access to occupational pensions.

Claiming that around 25% of private pension benefits can be eaten up by fees and charges, the Labour Party plans to set a maximum levy that can be charged by pension fund managers.

It also aims to stimulate competition between private pension providers to ensure better pensions for the same level of contribution. It proposes encouraging this by cutting out the "high and unnecessary" compliance costs that have developed under the Conservative government, in particular by examining whether Inland Revenue tax regulations governing pensions can be simplified.

The proposals were broadly welcomed by private pension providers and by employee and employer groups.

The National Assn. of Pension Funds, which represents U.K. companies and organizations providing occupational pension plans in both the private and public sector, welcomed the proposal to develop a funded second-tier pension plan and to simplify pension regulations.

However, Ann Robinson, NAPF director

Labour Party wants private sector help with alternative plan

general, said the NAPF wants reassurance that the current tax system, which exempts pension contributions from income tax, would be maintained. "Otherwise there is no incentive for people to make this provision," she said.

Keith Bedell-Pearce, managing director of Prudential Corp. P.L.C., said, "We agree with the importance of funded provisions, the continuing partnership between the state and the private sector, and the need for major simplification of the pensions regime."

Standard Life Assurance Co. similarly welcomed the Labour Party's commitment to work with pension providers. John Hylands, its general manager of marketing, said Standard Life believes that both company and personal pensions must remain a key part of any future framework. While the policy document does not fully answer the question of compulsory pension contributions, it does recognize the necessity for higher levels of overall contributions, he added.

Tony Solomon, IFA market manager for Eagle Star Life, a unit of Eagle Star Holdings P.L.C., welcomed the Labour Party's commitment to working with the private sector to make affordable pensions more widely available.

"To achieve the objective of getting higher returns from the same contributions, we would recommend a thorough examination of the existing regulatory environment which, at present, imposes many costs," he said.

John Monks, general secretary of the Trades Union Congress, a labor organization, said the Labour Party is right to insist that the country can afford proper pensions.

He stressed that "the state retirement pension must remain universal and a central element of pensions provision."

The Labour Party's proposal also calls for the development of individual savings accounts, possibly linked to second-tier pensions, that would enable people to save for medium- and long-term needs on a tax-deferred basis. The proposals also will encourage plans that offer access to life insurance at competitive rates.

These proposals received a more cautious welcome from private pension providers.

Eagle Star's Mr. Solomon said that while combining pension planning with medium-term savings may encourage

See Pensions on next page

INTERNATIONAL

Pensions

Continued from previous page

more people to put money aside, he cautioned against making pension funds too easy to withdraw since pensions should be treated strictly as a long-term investment.

However, "linking the concept of individual pensions savings accounts with a simplified pensions regime will have significant benefits both for consumers and product providers," said Mr. Bedell-Pearce. He suggested that pretax contributions to

savings accounts could be deducted automatically from salaries.

Meanwhile, an employee benefit consultant has warned that many U.K. businesses face serious financial problems because they are failing to invest their pension funds properly.

Measures setting new minimum funding requirements in the Pension Act 1995, most of which become effective next April, may lead many pension plan trustees to take an "overly defensive" approach to fund investment, said Andrew Kirton, investment strategy consultancy director with Sedgwick Noble Lowndes

Ltd. in Croydon, England.

This is likely to produce a switch in plan investments into gilts, or government bonds, and away from equities, which traditionally have produced higher long-term returns.

However, a 20% shift to gilts could result in a 1% fall in average investment returns per year, which could raise employers' cost of a typical pension plan by 20%, or around 4% of pensionable payroll, warned Mr. Kirton.

He advised employers to consult now with their plan trustees to devise investment policies that provide

a balance between security and investment returns.

Also on the pension front, a report by the Carnegie UK Trust, which is a Dunfermlin, Scotland-based charitable trust specializing in arts, heritage and community services, warns that an increase in the number of people working part-time or on a contract basis is likely to create difficulties for them in funding pension arrangements.

"There are thousands of people in their 30s and 40s and over, and also many young people, for whom there seems much less prospect of full-

time, permanent employment offering reasonable job security and a pension at the end," according to the Carnegie report, "The Third Age: The Continuing Challenge."

The report warns that Britain will need to create 1.4 million new jobs to meet the projected increase in the country's working population during the next 11 years.

Copies of the Carnegie report are available for £15 from Shelving Ltd., 127 Sandgate Road, Folkestone, Kent CT 20 3BL. Tel: 44 1301 850 501.

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IN THE MATTER OF THE ACQUISITION
OF CONTROL OF MASSACHUSETTS
GENERAL LIFE INSURANCE COMPANY
NOTICE OF HEARING

Pursuant to Massachusetts General Laws, Chapter 175, Section 206B, an application has been made to the Massachusetts Commissioner of Insurance by Conseqco, Inc. and LPGA Acquisition Company for approval of a proposal to acquire control of Massachusetts General Life Insurance Company, a Massachusetts stock life insurance company ("MassGen"). Such acquisition of control will result from the merger of LPGA Acquisition Company, a wholly owned subsidiary of Conseqco, Inc., and Life Partners Group, Inc., the indirect parent of MassGen ("LPG"), pursuant to which LPG will become a wholly owned subsidiary of Conseqco, Inc.

Information about the proposed acquisition of control is available for public inspection at the Division of Insurance, 6th Floor, 470 Atlantic Avenue, Boston, Massachusetts 02210 under Docket No. F-96-6.

The commissioner will conduct a public hearing pursuant to Massachusetts General Laws Chapter 175, Section 206B, to determine whether to approve the proposed acquisition of control. The hearing will commence on July 15, 1996 at 10:00 a.m. at the Division of Insurance, Hearing Room A, 470 Atlantic Avenue, Boston, Massachusetts 02210.

The purpose of this hearing is to afford all persons whose interests may be affected by the acquisition of control to present evidence, examine and cross-examine witnesses and offer oral and written arguments and in connection therewith to conduct discovery proceedings in the same manner as in the superior court department of the trial court. All discovery proceedings shall be concluded no later than 3 days prior to the commencement of the public hearing.

Any person who wishes to testify or to participate in the hearing in any manner may do so by submitting a Notice of Intent to Participate, specifying whether he or she intends to make an oral statement, present evidence or to cross-examine, to the Division on or before July 10, 1996. All other persons will be heard subsequent to those who submit such notice. Written argument may be submitted at any time prior to the conclusion of the hearing. All submissions must be sent to the Docket Clerk, Ms. Jennie Coax, at the Division of Insurance, 470 Atlantic Avenue, Boston, Massachusetts 02210 and must refer to Docket No. F-96-6.

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November 27, 1995 Issue, as

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INTERNATIONAL

KWELM

Continued from page 17

other points about the status of the runoff during the creditors' meeting, including:

- Of the \$9.7 billion of estimated creditors' liabilities, 31% was reported by year-end 1995, which is a nearly 7% increase from year-end 1994.

- Of the \$9.7 billion of estimated liabilities, \$1.2 billion have been agreed upon, up from \$1 billion in 1994; \$1.7 billion are outstanding, unchanged from two years ago; \$2.4 billion represent incurred-but-not-reported claims, \$100 million more than in 1994; and \$4.4 billion represent difficult-to-estimate special margin claims that have not yet, but are expected to, develop.

- 12 cents of each dollar of KWELM assets collected in 1995 went to pay the cost of running off the companies, compared with 16 cents in 1994. A 50% reduction in so-called infrastructure costs, like technology, largely accounted for the cost reduction last year.

After the meeting, Mr. Hughes noted that the KWELM reinsurance companies in the 10 days prior to the creditors' meeting released to the companies' administrators \$12 million that the reinsurers had placed in escrow pending the outcome of a House of Lords case.

The House of Lords' May 23 decision in *The Charter Reinsurance Co. Ltd. vs. Patrick Feltrim Fagan* was eagerly awaited by the

KWELM administrators as well as by other financially impaired U.K. insurers that had been stonewalled in their efforts to recover billions of dollars of reinsurance for claims that the insurers have been unable to pay. Five law lords agreed that reinsurance policyholders can collect their ceded claims before making payments to their own claimants (*BI*, May 27).

Of the KWELM companies' 700 reinsurers, roughly one-third are based in the United Kingdom and, therefore, subject to the ruling, he said.

Many of the reinsurers, though, still are not paying their obligations despite the ruling, Mr. Hughes said.

And, of the total group of reinsurers, about 100 are insolvent. The KWELM administrators do not plan to use resources to pursue claims against the insolvent ones.

The KWELM companies seek to recover a total of between \$2 billion and \$3 billion of reinsurance. The wide range is a factor of how many long-tail liability claims are filed eventually against the companies, Mr. Hughes said.

To date, the administrators have recovered \$592 million of reinsurance.

So far this year, more than three-fourths—or \$63 million—of the administrators' \$80 million reinsurance recovery target has been reached, Mr. Hughes said.

Reinsurance recoveries accounted for 64% of the KWELM assets recovered in 1995 and 62% in 1994.

Mr. Hughes also dismissed comments by an attorney in the Charter Re case that the decision may apply only to retrocession business.

"We think it's absolutely clear" that the ruling also applies to in-

administrators and the company established to manage the runoff's day-to-day operations, provides information on known pollution sites, pollutants at the sites, estimated site cleanup costs and pollution liability case law in those

those sites, explained Ian Sleeve, managing director of KWELM Management Services Ltd. of London, which manages the runoff.

Mr. Sleeve said the administrators and KMS developed a better data base at less cost than if they had taken a more traditional route of hiring outside parties, like U.S. law firms, to develop the data base. The KWELM runoff would have incurred fees by hiring a contractor to develop the data base, and the data base would have looked similar to what was developed anyway, he said.

A shortcoming in the data base, though, is that it does not help the administrators establish what their environmental liabilities may be as a result of writing treaty reinsurance. **BI**

'Probably the biggest area of uncertainty' in reserve setting involves environmental liability claims, says Chris Hughes, administrator for the KWELM companies.

surers and their reinsurers, he said.

Mr. Hughes also was excited about the administrators' new U.S. pollution data base for the KWELM companies. He said the data base would help administrators set reserves in the short term and process claims in the long term.

Long-tail, or special margin, liabilities by far account for the greatest portion—about \$4.4 billion—of the companies' \$9.7 billion of estimated liabilities to creditors.

And, "probably the biggest area of uncertainty" in reserve setting involves environmental liability claims, he said.

Mr. Hughes estimated that between 1,600 and 2,000 KWELM policyholders may eventually file environmental claims, though none have so far.

The data base, developed by the

jurisdictions.

The administrators and management company then try to identify whether any KWELM policyholders dumped wastes at

Benefits

Continued from page 17

then workers may pressure employers to make up the difference through higher pay, the survey authors said.

The survey also ranked vacation time and maternity benefits.

When it comes to time off, U.K. employers have no statutory holiday provisions other than the country's eight annual bank holidays, but most give an additional 23 days' leave.

German employers are more generous with time off, giving 27 days of public holidays and statu-

tory vacations and usually 15 days of leave, the survey found.

The survey also found that working parents get the most relief from Swedish and Hungarian employers, which offer a full year of maternity leave, while other European employers allow an average of 16 weeks.

Every European country surveyed grants some paid maternity leave.

Copies of "The Guide to Employee Benefits and Labour Law in Europe 1996/97" are available for \$75 from Amy Glynn at Sedgwick Noble Lowndes in Chicago, 312-683-7913; fax: 312-683-7661.

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Capitation

Continued from page 3

region—Delaware, the District of Columbia, Florida, Georgia, North Carolina, South Carolina, Virginia and West Virginia.

Also, 24% of HMO services were capitated in the East South Central region—Alabama, Kentucky, Mississippi and Tennessee; 55% in the West South Central region—Arkansas, Louisiana, Oklahoma and Texas; 43.1% for the East North Central region—Illinois, Indiana, Michigan, Ohio and Wisconsin; 48.3% for the West North Central region—Iowa, Kansas, Minnesota, Missouri, North Dakota and South Dakota and Nebraska; and 43.1% for the Mountain region—Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming. All statistics were from 1995.

The relative slowness with which capitation is being embraced in the eastern and central parts of the nation is even more apparent for specialty medical services. Specialists were reimbursed by capitation only 12.2% of the time nationwide, the InterStudy report said, compared with 42.6% for specialty medical

services in the Pacific region.

The use of capitation by HMOs has become controversial as it has been cited in the general media and by consumer advocates as proof that HMO doctors must limit care to maximize profits. In cases where potential customers already are wary of joining an HMO, publicity about capitation may hasten employees' move out of HMOs and into organizations like point-of-service plans, which offer the choice of non-capitated providers.

"There are an awful lot of people that are looking for an alternative to HMOs in the provider community and the consumer community," said Richard Hamer, InterStudy director.

One HMO, Trumbull, Conn.-based Physicians Health Services, flirted with capitation last year but last month called off the romance by placing its capitated primary care physicians back on fee-for-service reimbursement contracts.

The main reason for the shift was fear of alienating physicians in a competitive and expanding market, said Mickey Herbert, president and chief executive officer.

PHS in 1995 had introduced a cut-rate HMO product with a primary care gatekeeper and ulti-

mately capitated reimbursement for the provider. As soon as a doctor had 100 patients using the low-cost HMO product, capitation would kick in. Sales went well, Mr. Herbert said, so well that PHS started worrying about the hundreds of doctors who likely would require conversion to capitated status within a year.

As PHS turned more into a creature of capitation, he said, PHS worried that customers and doctors both might turn away.

"If we were going to risk an image problem with the customers, and the doctors didn't like it, either, and we couldn't prove it was going to save us any money, it didn't seem like it made sense at this time," Mr. Herbert said.

In addition, legislators in other states recently had begun questioning whether capitated payments led to substandard medical care—a "perception problem" not grounded in reality but capable of spawning public relations problems, he said.

The network tried to avert the potential problem, by not only canceling capitation but also issuing news releases portraying its decision as a quality of care issue and assuring patients "their health care will not

be compromised (by capitation)."

But PHS, which has 330,000 members in Connecticut, New Jersey and New York, may again offer products with capitated payments when the mood of the market is right, Mr. Herbert said. "We have never said that we are anti-capitation," he said.

Mr. Herbert, who last month became chairman of the Washington-based American Assn. of Health Plans, an HMO trade group, cautioned that capitation's death warrant should not be written. During the next five years, the industry will see HMOs using "wildly divergent" forms of physician reimbursement, he said, but in 10 years' time capitation may spread to enough markets to prevail as the most common method of payment

How HMOs pay

Percent of primary care services reimbursed, by method



GRAPHIC BY LISA KRUSS

from coast to coast.

The study may be purchased for \$350 by calling 800-844-3351.

INTERNATIONAL

Global premiums on the rise: Survey

By MICHAEL SCHACHNER

Gross premiums written throughout the world in 1994 totaled nearly \$2 trillion, with 57%, or \$1.12 trillion, of premiums coming from the life insurance sector, according to a recently released survey by Swiss Reinsurance Co.

Swiss Re, in its annual study of insurance in 69 countries, reports total global premiums for 1994 of \$1.96 trillion. Of that figure, \$847 billion was related to property/casualty underwriting, up 2.3% from \$828 billion in property/casualty premiums in 1993.

Total global premiums increased 3.5% in 1994, the most recent year for which figures are available, from \$1.89 trillion the previous year.

In the property/casualty market, North America generated more premiums than Europe or Asia.

The United States and Canada together produced \$360.2 billion in property/casualty premiums in 1994, compared with \$261.6 billion by Europe and \$161.6 billion by Asia.

The U.S. market by itself pro-

duced \$342.8 billion in property/casualty premiums, a figure equal to more than 40% of the world share.

In Europe, the five largest countries in terms of property/casualty premiums were, in descending order, Germany, \$77.1 billion; the United Kingdom, \$42.2 billion; France, \$40.7 billion; Italy, \$22.8 billion; and the Netherlands, \$14.3 billion.

In Asia, the five largest property/casualty premium producers were: Japan, \$129 billion; South Korea, \$10.4 billion; Taiwan, \$4.1 billion; China, \$3.3 billion; and Hong Kong, \$2.6 billion.

In Latin America, the five largest countries in 1994 for property/casualty premiums were: Brazil, \$10.4 billion; Mexico, \$4 billion; Argentina, \$3.9 billion; Colombia, \$1.3 billion; and Venezuela, \$1.1 billion.

Other countries worldwide with significant property/casualty premiums in 1994 were: Australia, \$11.9 billion; South Africa, \$3 billion; New Zealand, \$2.1 billion; and Israel, Thailand, India and Malaysia, each with more than \$1 billion in premiums.

Of the countries that experi-

enced large-scale market growth in 1994 compared to 1993, Brazil was the largest with a 103% increase.

Russia, though still fairly small in terms of property/casualty premiums for its size, experienced a 23.9% increase in property/casualty premiums in 1994 to about \$2 billion.

As an entire market, Latin America experienced the greatest property/casualty growth in 1994, climbing 34.2% to \$23.7 billion, from \$17.6 billion in 1993.

Hong Kong, South Korea, Taiwan, Thailand, Malaysia, Indonesia and Singapore all experienced double-digit premium growth in 1994 over 1993, but as a whole market, the Asian region's premiums grew only 3.3% in 1994.

Europe, meanwhile grew 2% and Africa, fueled by premium growth in countries like Egypt and Zimbabwe, posted property/casualty premium growth for 1994 of 3.2%.

A free copy of the study can be obtained from George Chimes, Swiss Re America, 237 Park Ave., New York, N.Y. 10017; fax: 212-907-8111.

By JERRY GEISEL

Enrollment in health maintenance organizations, which last year increased at its fastest clip in a decade, is likely to maintain its high growth rate, a new survey suggests.

During the first nine months of 1995, HMO enrollment leaped 14%, rising to 58.2 million from 51.1 million at the beginning of the year, according to a survey by the American Assn. of Health Plans, a Washington-based managed care trade group. The results, based on a survey of 124 HMOs, were released at the AAHP's conference last month in New Orleans.

The rapid growth in HMO enrollment is continuing this year. By the end of 1996, HMO enrollment could hit the 70 million mark, according to the survey.

The enrollment surge comes as employers recognize that HMOs have clear cost advantages over most other types of health care plans, especially traditional indemnity plans.

Last year, for example, group HMO costs averaged \$3,255 per employee, or about \$400 less per employee than traditional indemnity plans, whose cost averaged \$3,650 per employee, according to a study by A. Foster Higgins & Co. Inc. (BI, Jan. 29).

To continue their rapid growth, HMOs are targeting new markets. Surveyed HMOs predict that enrollment in the South—an area of the country where managed care generally has lagged—will rise by 26% this year. That compares with predicted enrollment increases of 18% in the Northeast, 14.1% in the West and 13.3% in the Midwest.

HMOs also are expanding their point-of-service options. About 75% of HMOs now offer a POS option, a figure that likely will increase to 80% next year. Under a POS plan, an enrollee can decide—on a service-by-service basis—whether to receive care from the HMO's network of providers or go outside the network but be liable for a greater amount of the charges.

More HMOs also are entering the Medicare risk market. More than 20% of surveyed HMOs have a Medicare risk contract and about one-third say they intend to develop a Medicare risk product this year.

Medicare risk HMOs contract with the Health Care Financing Administration to provide Medicare benefits to retirees. HCFA, in turn, pays the HMOs 95% of what HCFA thinks it

would cost the government to provide Medicare benefits to the retirees.

In some areas of the country, HMOs can provide Medicare benefits for much less than what the government pays them. To attract enrollees, those HMOs typically will offer additional benefits.

Other survey findings include:

- Enrollment in preferred provider organizations increased 14.9% in 1995 to an estimated 91 million from 79.2 million at the end of 1994. The survey did not project PPO enrollment growth for this year.

- The most important state legislative issue for HMOs and PPOs alike is "any willing provider" legislation. Nearly 80% of HMOs cited any willing provider legislation as very important, as did 68% of PPOs.

While any willing provider proposals vary, they often stipulate that managed care networks must accept any provider who can meet network criteria.

HMOs and PPOs oppose any willing provider proposals because, among other reasons, they fear they could be forced to accept providers they don't need and that providers would not operate well in a managed care environment.

Requests for free single copies of the "1995 AAHP HMO and PPO Trends Report," should be faxed to Alexis Edwards at 202-331-7487.

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Bermuda

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reinsurers had been forced out of the business by a combination of large losses from catastrophes in the late 1980s and early 1990s and low rates.

The resulting shortage of capacity amid continued high demand for the coverage drove up cat reinsurance rates and led to the formation of the new, highly capitalized specialist reinsurers in Bermuda.

For more than two years, the catastrophe reinsurers were able to maintain the high rates. However, over the past six months, catastrophe reinsurance rates have begun to weaken.

During January renewals, cat reinsurance rates were often cut more than 10% (BI, Jan. 15). Similar decreases were reported during midyear renewals and, in some areas of the world, rates dropped by more than 30% (BI, July 1).

Some of those rate decreases are being led by the Bermuda cat reinsurers, brokers say.

"The market is falling, and they are following the market down—and one or two of them are helping to lead the market down," said Steven Bolland, senior vp at Gill & Roeser Inc. in New York.

But, he added, the rate decreases often are being made to obtain business that provides a greater geographic spread of risk rather than simply to increase premium volume.

The problem for the catastrophe reinsurers is that they are all striving to achieve that spread at the same time, Mr. Bolland said.

"All of sudden they might say that they need to write more business in Latin America. Well, there isn't that much business there, so the competition is pushing the prices down. They are getting the spread, but they are getting it at a price," he said.

In some cases, the reinsurers are adjusting their portfolios in light of the price decreases in some areas of the world.

For example, Partner Reinsurance Co. Ltd. is writing more business in the United States and less in other areas of the world because rates in the U.S. market have held up better than other areas, said Herbert Haag, president and chief executive officer.

"In view of the weakness in rates

at this renewal, we decided to shift more capacity to the U.S. and to reduce our writings in weaker markets," he said.

In 1995, 46% of Partner Re's premium volume came from U.S. business, but in 1996 it is likely to approach 50%, Mr. Haag said.

Despite that shift, Partner Re's premium volume is not expected to grow much in 1996 due to the decrease in U.S. rates, he said.

However, while U.S. rates are decreasing, they are coming down from very high rates after Hurricane Andrew in 1992, and the lower rates are often still high enough to make good profits, Mr. Haag said.

Most rates offer a profit margin above good technical rates, agreed Guy D. Hengesbaugh, executive vp at LaSalle Re Ltd.

"We must get over a technical

of the world is often significantly less than the United States, Mr. Dowling said.

And, since there have been few large insured catastrophes over the past four years, most cedants have paid back reinsurers through higher rates for any large claims they made, he said. "You can't have payback forever," he said.

IPC is also striving to improve its geographic spread. Toward that end, it made an unsuccessful bid last month to acquire rival catastrophe reinsurer Tempest Reinsurance Co. Ltd.

Tempest Re had arranged to sell to excess liability insurer ACE Ltd., but two weeks prior to the closing date IPC jumped in with a \$943 million offer for Tempest Re (BI, June 10). ACE eventually won the bidding battle, though, after improving its original offer (BI,

'The market is falling, and they are following the market down—and one or two of them are helping to lead the market down,' says Steven Bolland.

rate and we are doing that, but we have a lower margin than we had before," he said.

The lack of large catastrophe losses in recent years is allowing cat reinsurers to achieve good profitability despite competitive rates, said Paul Hasse, chief executive officer of CAT Ltd., which changed its name earlier this year from Centre Cat Ltd.

Although 1995 saw a large number of catastrophes, many of them were not large enough to impact the insurance market or, in some cases, to generate a reinsurance claim, he said.

"People are buying catastrophe reinsurance for the \$5 billion to \$50 billion loss, and we have not had any of them," Mr. Hasse said.

The lower rates have not caused a crisis among catastrophe reinsurers, said John P. Dowling, president and chief executive officer of International Property Catastrophe Reinsurance Co. Ltd.

The reinsurance pricing equation contains three main components, he said: exposure, pay back, and supply and demand.

The cat exposures in other areas

July 24).

"We had good geographic spread, but with Tempest we wanted to achieve a more perfect geographic spread more quickly," Mr. Dowling said.

IPC will now consider suitable takeover opportunities but believes that it can attain adequate growth on its own, he added.

IPC, along with Partner Re, focuses almost entirely on catastrophe reinsurance business.

However, other cat reinsurers are aggressively pursuing other lines of business.

The most extreme example is also the domicile's first catastrophe reinsurer, Mid Ocean Reinsurance Co. Ltd., which today is a much more diverse reinsurance company.

In 1995, 46% of Mid Ocean's premiums were derived from property catastrophe reinsurance, but in 1996 that proportion is likely to fall to between 30% and 35%, said Michael Butt, president and chief executive officer.

"We are growing up and growing out," he said.

Much of the diversification has been achieved through Mid

Ocean's purchase of a majority stake in Brockbank Group P.L.C., a Lloyd's of London managing agency. Mid Ocean bought 51% of the shares for \$78 million and plans to buy the remaining shares if Lloyd's reconstruction plan goes through.

Mid Ocean will greatly increase its non-catastrophe business through the investment, Mr. Butt said.

The investment is ironic, since it was partly the collapse of the Lloyd's reinsurance market that created the market conditions that prompted the formation of Mid Ocean and the other Bermuda catastrophe reinsurers.

Investing in a market whose future is still in question is an opportunistic move that typifies many of the moves made by investors in the cat market, Mr. Butt said.

"We are intentionally counter-cyclical. If we move counter-cyclically and we are right, we are more likely to get good value," he said.

If Mid Ocean waited until Lloyd's future was ensured, then the best managing agents and syndicates would likely be snapped up by other investors, Mr. Butt said.

By moving early, Mid Ocean also has been able to increase its spread of business and increase the depth of its management by taking on more than 20 new underwriters, he said.

Mid Ocean also may open a Far East office later this year, Mr. Butt said. The company currently has offices in Bermuda, London and Munich.

Another Bermuda cat reinsurer that intends to take advantage of opportunities in Lloyd's is LaSalle Re.

The reinsurer last month formed LaSalle Corporate Capital, which will invest in Lloyd's syndicates, said Mr. Hengesbaugh.

"There's a tremendous amount of expertise in London, and any syndicate we invest in will be one that has a specific expertise in the area in which they play," he said.

Renaissance Reinsurance Ltd. is taking another route to diversification. Earlier this year, it established Glencoe Ltd. to write primary property coverage on a surplus lines basis (BI, March 25).

The insurer will begin by writing California business but may expand to cover risks in Florida and Japan where there is demand for coverage, said Neill A. Currie, se-

nior vp at Renaissance Re.

Renaissance Re is also expanding into the retrocessional reinsurance business.

"We write retro business only where there is extremely good underwriting data," Mr. Currie said.

By selecting reinsurers that use sophisticated computer modeling to analyze their books of business, Renaissance Re is able to assess risks on a county and ZIP code basis even for retrocessional business, he said.

CAT Ltd. has always sought to differentiate itself from the other catastrophe reinsurers by writing coverage on a different basis, said Mr. Hasse of CAT.

About 60% of CAT Ltd.'s business is non-traditional reinsurance, and many of the contracts are written on a multiyear basis, he said.

CAT Ltd. is also distinct from the other Bermuda reinsurers as it is the only one not to go public.

Mid Ocean led off the pack in August 1993, when it launched an initial public offering. Five of the other reinsurers followed suit and Tempest will become part of publicly traded ACE.

The IPOs gave the initial investors in the cat reinsurers an opportunity to cash in on their investments in the companies, and the recent Tempest deal shows the value of that investment, says Mr. Bolland of Gill & Roeser.

Given the market cycles that are now bringing pressure to bear on cat reinsurers, the companies will have a hard time surviving simply as cat specialists, Mr. Bolland said.

"They will have to start writing other insurance or be acquired by someone else who already is," he said.

The Bermuda reinsurers themselves do not necessarily agree.

"I'm not sure that the Tempest deal signals anything. There were certain strategic decisions and that does not mean that they are driving forces effecting anything else," said Mr. Butt of Mid Ocean.

There may be future mergers and acquisitions among Bermuda catastrophe reinsurers, but the purpose of those deals will be to gain efficiencies rather than to increase capital or to diversify, said Mr. Hengesbaugh of LaSalle.

"There is room for eight reinsurers but maybe there are economies of scale where more mergers or acquisitions would make sense," he said. **BI**

MTA

Continued from page 2

As the new primary carrier for the project, AIG will provide \$3 million excess of the \$2.5 million SIR and \$15 million in excess coverage—the same amount of excess insurance it had written previously.

Lloyd's of London underwriters will provide the next \$80 million layer, also the same limits as before.

The larger SIR reduces the MTA's premiums for both workers compensation and general liability coverage for three segments of the subway under construction to just \$3.5 million in 1997 from \$12 million in 1996, according to Ms. Goldsmith.

However, the MTA's self-insured portion under the new program also increases to \$9.7 million from \$2.5 million.

As a result, "it's a wash" when the savings on the premium side are deducted from the increased SIR, Ms. Goldsmith acknowledged.

But the MTA decided it could handle a larger SIR because the

next and future phases of construction will be less risky than the first leg was, Ms. Goldsmith said.

Subway contractors will be tunnelling through hard rock when they bore through the Hollywood Hills north of downtown Los Angeles, which is less likely to trigger earth movement than digging through the alluvial soil under Hollywood Boulevard, she explained.

The MTA's self-insured retention has been steadily increasing since 1994, when it was just \$500,000. In July 1995, its retention was increased to \$1 million.

The MTA also is expecting to announce a new risk manager for the subway construction project later this week, Ms. Goldberg said.

The new risk manager will assume the position left vacant since Abdoul Sesay, the project's former risk manager, was forced to resign after a criminal investigation found he had accepted bribes (BI, July 31, 1995).

Mr. Sesay, who has since been cooperating with authorities in the ongoing investigation, has yet to be sentenced. **BI**

Lawyer charged with mishandling funds

MIAMI—A special counsel appointed by the Florida Bar to bring a fraud complaint against another attorney for overbilling Lloyd's of London has himself been accused of ripping off an insurer.

Jack Taffer, a private attorney who also accepts cases from the Florida Bar, misappropriated funds he handled for Commonwealth Land Title Insurance Co. and other clients, according to a complaint filed by the Florida Bar in the Supreme Court of Florida late last month. The complaint follows an emergency suspension order granted in May that prevented Mr. Taffer from practicing law.

As a result of suspension, Mr. Taffer has been removed as special counsel from a case in which he represented the Florida Bar in a civil complaint against another Miami lawyer, James F. Dougherty.

Mr. Dougherty also faces criminal charges that he overbilled Lloyd's syndicates by nearly \$2 million while he was investigating a \$6 million claim for stolen coffee filed by Munther Bilbeisi, a Jordanian coffee trader (BI, July 29, 1991).

Lloyd's paid \$9.1 million in fees to Mr. Dougherty before dismissing him for overbilling in April 1992.

Mr. Dougherty countersued Lloyd's for more than \$25 million in fees and damages and, as part of his complaint, accused Lloyd's of insuring illegal arms shipments, including Iran-Contra missile shipments (BI, Jan. 1).

The civil complaint brought by the Florida Bar has been suspended pending the outcome of the criminal trial, which is not expected to be heard until 1997.

—By Gavin Souter

Florida insurance fraud law now in effect

TALLAHASSEE, Fla.—Florida insurers are taking a tougher stance against insurance fraud under legislation that took effect July 1.

The law, passed during the state's 1995 legislative session, requires all insurers that write \$10 million or more in annual premiums to establish special units to

investigate suspicious claims or contract with an outside company for that service.

Smaller insurers must file with the Insurance Fraud Division of the Florida Department of Insurance plans that detail their anti-fraud procedures.

The law applies to all property/casualty insurance companies,

health insurers and managed care plans.

A portion of the law that went into effect earlier provides civil immunity for an insurance company investigating a suspicious claim to request information from other insurers without fear of a lawsuit.

—By Michael Bradford

Reinsurer

Continued from page 1
complements and solidifies General Re's position as the leading U.S. reinsurer and augments our position as the premier global reinsurer," Ronald E. Ferguson, Gen Re's chairman and chief executive officer, said in a statement.

"National Re's business philosophy and culture are very similar to that of General Re, and the added account portfolio will be an excellent fit with our own," he said.

William D. Warren, National Re's chairman, CEO and president, said the deal "will provide us with the opportunity to expand our scope and better utilize both companies' expertise and resources."

"I think this is a good deal for both sides," said Steven A. Gavios, managing director at Bear, Stearns & Co. Inc. in New York. "General Re gets one of only six direct-market reinsurance companies and a high-quality client base and an underwriting culture similar to their own," he said. "National Re is able to affiliate with a much larger company which should be able to offer their clients a broader array of products."

It is a good deal for both companies, agreed Michael Smith, an analyst with Salomon Bros. in New York. "When you look at National Re's business mix and, of course, factor in that it's a direct writer, probably the only partner out there that made sense is Gen Re," he said.

Both market to the same type of client—small to medium-size insurers—and both write casualty business on an excess-of-loss basis.

"There just aren't too many companies out there that write the same profile business and the fact they're both direct writers is extremely important. National Re brings a good client base to the table, and the numbers work for General Re," Mr. Smith said.

Craig Elkind, an analyst with Standard & Poor's Insurance Ratings Group in New York, noted that National Re has been the "smallest of the direct reinsurance companies by far. There were five giants and this was the littlest kid on the block."

Analyzing this, Mr. Elkind noted that National Re "chose not to pursue a high growth strategy, which means it didn't push for international expansion, it didn't widen its line of product offerings, and it didn't enter non-insurance, fee-based services," such as management consulting, as other reinsurers have done.

It chose instead to focus on its profitable, domestic regional treaty clients, which are its bread and butter and provided it with relatively high margins in terms of pricing and returns, Mr. Elkind said.

The reinsurer, though, also has a 95% retention rate of clients with excellent, profitable results, which Gen Re would not have been able to lure away without the acquisition, he said.

At the same time, given the consolidations in the broker reinsurance market, the direct market has been ripe for consolidation, Mr. Elkind said.

The acquisition is a "brilliant move" because it makes Gen Re stronger in the market for midsize and smaller insurance companies, "which is where most of the growth, in my view, will take place in the coming years," according to Russell Miller, chairman of Russell Miller Inc., a San

Francisco-based specialty insurance industry investment bank.

"It also adds some specialty companies that are growing faster than the industry and hence should enhance General Re's business," said Mr. Miller.

Unlike some other mergers and acquisitions in the industry that are driven by cost cutting and operational consolidations, those factors "had little if anything to do with this transaction," observed John L. Ward, CEO of the Cincinnati-based Ward Financial Group.

"I would suspect it was more motivated by a strategic interest on the part of Gen Re toward making a big investment in the small to medium-size marketplace," he said.

Partly because of this, observers say the deal could lead to some layoffs, but they are not expected to be massive. "I think there are some cost efficiencies to be had, but not a significant amount," said Bear, Stearns' Mr. Gavios.

This will encourage other small reinsurers to sell 'because reinsurance is becoming a big-company game more than it ever was,' says Alice Schroeder.

"It seems to me that General Re intends to keep most of the (National Re) underwriting and marketing staff," though there may be some consolidation in the back office operation, he said. "This merger was not about cost savings. This merger was about growth opportunities," Mr. Gavios said.

"When you're a direct writing operation, then the personalities are very important in the marketing and underwriting relationships, and so... it's important that the key people on the key accounts remain in place," noted David Seifer, an analyst with Donaldson, Lufkin & Jenrette Securities Corp. in New York.

Gen Re is paying a premium for National Re, though several observers say it is not paying too much.

Gen Re is paying \$53 a share, while National Re stock was trading only in the \$30s the week before the deal, closing at \$37.75 on Friday, June 28.

"That's one of the bigger premiums over market value that we've seen recently," said Gary Ransom, senior vp at Conning & Co. in Hartford, Conn.

"I think they paid a fair price for it given the high-quality company they were acquiring," said Mr. Gavios.

"They didn't get it on the cheap, but it is worth the price that they paid for it, and General Re is able to add synergy to the merged organization so it will be accretive to their earnings in 1997," Mr. Gavios said.

Ms. Morrissey agreed. "It's a premium price, no doubt about it." But, she added, National Re fits perfectly with Gen Re's existing operation, so there will be no need to "regroup."

"It'll be business as usual," she said.

General Re would be only the latest in a series of owners of National Re in recent years. Continental Insurance Co. sold the reinsurer to Lincoln National Corp. for \$74 million in 1984.

In 1990, Lincoln resold the company to Robert M. Bass Group Inc. and other investors, including management, for \$390.6 million.

In 1992, National Re Holdings Corp., the reinsurer's parent, completed a \$207 million initial public offering of common stock (BI, June 15, 1992).

National Re had other suitors besides Gen Re.

Swiss Re "was very much interested in acquiring National Re," said Heidi Hutter, chairman and chief executive of Swiss Reinsurance America Corp. in New York. "The strategic fit, we thought, would have been really perfect. Culturally and for a whole bunch of reasons, we thought it would have been a great match."

Although Swiss Re suggested a "non-binding indication of interest" selling price that Ms. Hutter said was within a "good range" of Gen Re's offer, National Re chose to deal with Gen Re on an exclusive basis instead. "It's hard to feel a little bit left out of the process," she said.

As to whether this will spur Swiss Re to look for other acquisitions instead, Ms. Hutter said,

"That's really hard to say. This one had such tremendous strategic fit. I don't know if there's anything else that would meet that criteria."

Employers Re also was interested in acquiring National Re but was put off by the deal's asking price, according to market observers.

Kaj Ahlmann, chairman, president and CEO of the Overland Park, Kan.-based reinsurer, had no comment on National Re. However, he said Employers Re is always on the lookout for deals.

National Re's acquisition could encourage even more consolidation in the industry.

"I think there's some speculation that this may trigger a wave of mergers within the reinsurance segment," said Mr. Ward. Because there are a limited number of good reinsurance companies, this trend could manifest itself mostly among primary insurers that operate reinsurance departments or units, he said.

A reinsurer of National Re's size "folding the tent this way has to raise some questions in the minds of other similarly sized and smaller reinsurance companies as to how long they can remain viable in this market, and I think what you'll see is a search with a greater sense of urgency for merger partners," said Salomon Bros.' Mr. Smith.

This will encourage other small reinsurers to sell "because reinsurance is becoming a big-company game more than it ever was," agreed Alice Schroeder, vp with Oppenheimer & Co. in New York.

"It furthers the need for midsize reinsurance companies to merge with larger reinsurers given the need for critical mass in the reinsurance industry," added Mr. Gavios. "Reinsurance buyers are shortening their approved list and wanting to do business with fewer, larger companies, and as the market share has shifted to these larger companies, some will consolidate into larger reinsurance organizations, so I believe that this could be the gate-opener to other transactions like this in the future." **BI**

Updates

Provider choice ballot initiative

Continued from page 2

"It isn't just a chiropractor initiative. There are several medical associations involved," said Paul Watson Lambert, the Tallahassee, Fla.-based general counsel for some of the associations. "The restrictive choice of doctors has guided this more than anything else."

Judge approves GM settlement

A Louisiana state court judge will hold a November hearing on the fairness of General Motors Corp.'s settlement with the owners of 1973-1987 full-size pickup trucks with side-mounted fuel tanks.

Judge Jack T. Marionneaux of the 18th Judicial District Court of Louisiana gave preliminary approval July 3 to the settlement, under which about 5 million owners would receive \$1,000 certificates toward the purchase of any GM light truck or passenger car except for Saturn models and electric vehicles.

The gas tanks on the trucks involved in the settlement are located outside the frames, which safety experts say makes the tanks more susceptible to rupturing and causing fires in side-impact collisions.

The agreement gives owners more choice and more time to use the certificates than an earlier proposal that a federal appeals court rejected last year (BI, April 24, 1995). Under the new agreement, certificates would be valid for as long as 33 months, though the value declines to \$500 after the first 15 months, and can be transferred to another person who could use it for a lesser amount off the price of a new vehicle, a GM statement said. The agreement also provides a \$4.1 million GM contribution to fund a vehicle fire research project.

"Because of the increased transferability of these new certificates, every truck owner now has the ability to receive some compensation for their truck," Don Barrett of Barrett Law Offices in New Orleans, lead counsel for the plaintiffs, said in a release.

GM defended the safety of its trucks and said it settled to bring the issue to a close.

Briefly noted

Alpine Insurance Co. won a temporary restraining order July 3 that blocks the California Insurance Department from barring surplus lines brokers from placing business with the Chicago-based insurer, which the department claims is technically insolvent (BI, July 1). ... **State securities commissioners** are willing to resolve problems with Lloyd's of London before Lloyd's annual meeting July 15, Colorado's securities commissioner said in a statement last week. ... **The Assn. of Lloyd's Members** has recommended its 9,000 members accept the Lloyd's settlement offer. A report to be released today by Market & Opinion Research International says more than 80% of names are likely to support the plan. ... An Indiana state court judge on July 3 upheld a ruling that Ford Motor Co. was negligent in designing its **Bronco II sport utility vehicle** but slashed a \$58 million punitive award and rejected Ford's motion for a new trial. Basing his decision partly on what it would have cost Ford to make design changes, the judge reduced to \$13.2 million the amount awarded to two sisters who were injured in a 1991 accident (BI, Nov. 6, 1995). A spokeswoman said Ford still objects to the punitive award.

Multistate outage a mystery to utilities

LOS ANGELES—Utility companies in several states were not immediately able to determine damages they or their business customers might have suffered from sudden power outages last week.

The cause of a Tuesday outage that knocked out electricity in several Western states was still under investigation last week. But, three transmission lines linking California and the Southwest with hydroelectric dams and nuclear power plants in the Pacific Northwest were knocked out.

Another outage occurred Wednesday when power was lost on the same lines, disrupting service to 170,000 Idaho Power customers, a utility spokesman said. The cause of that outage also is still under investigation.

Claims against utilities are possible after any outage, said Hudson T. Martin, manager of insurance for Pacific Gas & Electric in San Francisco. He said such claims have never pierced PG&E's undisclosed self-insured retention.

Also, legislation in several states protects power companies from liability related to outages that are not foreseeable or under the utility's control.

"Oftentimes these things are not caused by anything that you can make a determination that there was definitely fault on anybody's behalf," said C.K. Ferguson, director of risk management for PacifiCorp, a Portland, Ore.-based utility. In such cases, utilities probably still would not be liable, he said.

While many PG&E customers lost power for less than an hour, PacifiCorp customers escaped the problem altogether. Less lucky were customers in other states and regions, including Idaho, Colorado, Wyoming, Montana and Utah.

Employees at some locations left work early as machinery and company cooling systems stalled. But some companies were prepared.

"Our (backup) generators kicked on almost instantly, so we didn't have an interruption," said Mary D. Taylor, vp and risk manager for First Security Corp. in Salt Lake City. "In Idaho and in New Mexico we had no impact to our customers and we are able to maintain the same level of service."

Idaho Power in Boise said electricity was out for about 2 hours Tuesday.

"Obviously we had some inconveniences, but other than that I don't think there is anything of significance," said Robert Shosted, risk manager for J.R. Simplot, a Boise-based agriculture and food processing company.

In Los Angeles, Southern California Edison reported customers lost power for about 20 minutes. But, by Wednesday afternoon, the utility company in Rosemead, Calif., had not received any claims for damages.

—By Roberto Cenicerros

USAU

Continued from page 1

Angelos, crashed on Dec. 7, 1987, after a disgruntled former USAir Inc. employee who had smuggled a gun past Los Angeles International Airport security shot his former supervisor and both pilots before fatally shooting himself.

The crash killed all 39 passengers and resulted in an approximately \$53 million settlement with the families of those killed aboard the plane. Participating in the settlement were USAir, the Los Angeles Airport Authority and Ogden-Allied Corp., the ground checkpoint security firm.

In the indictment, federal prosecutors alleged that USAU used its position as the lead insurer for both PSA's parent, USAir, and Ogden-Allied Corp., to criminally defraud USAir, several major aviation insurers and numerous reinsurers by settling the PSA liability trial before it went to the jury and then allocating full liability to USAir.

USAIG was the lead insurer for USAir's layered liability program and also wrote the first \$10 million of coverage for Ogden-Allied. As dual lead insurer, USAU, on behalf of USAIG, also had been given responsibility by its co-insurers to manage any civil liability claims against USAir or Ogden-Allied.

Prosecutors argued that by apportioning 100% of liability to USAir, USAU successfully shielded USAIG from paying any of the \$53 million settlement. While USAIG did insure the first 29% of USAir's coverage, that layer was fully reinsured. Conversely, USAU had only reinsured 25% of the \$10 million it wrote for Ogden-Allied. Thus, had as little as 20% of liability been apportioned to the ground security firm, USAIG would have been required to pay \$7.5 million.

But, according to the indictment, USAU and Mr. Brennan fraudulently concealed from USAir's other insurers material facts indicating potential liability of Ogden-Allied and affirmatively misrepresented USAir's liability to avoid paying any of Ogden-Allied's share of the settlement. Specifically, Mr. Brennan and USAU withheld the fact that USAIG had reinsured all of the coverage that it wrote for USAir, prosecutors charged.

After a seven-week trial, the jury found that Mr. Brennan, who retired in 1994, and USAU, did defraud USAir and other insurers by apportioning full liability to USAir for the crash.

Of note, the defense offered no witnesses for testimony, including Mr. Brennan.

"This case was far more than just a disagreement or business dispute. It was intentional fraud designed to deceive USAir and other insurers out of millions of dollars," said

Alan Vickery, the assistant U.S. attorney who prosecuted the case. "Behind all the complexities, this was your garden-variety fraud. That is why there weren't civil lawsuits."

In a statement, USAU Chairman Harold J. Clark said the company is "shocked and dismayed" by the trial's outcome and an appeal will be prepared as soon as possible.

"This verdict has criminalized routine, good faith business decisions. It's clearly an example of the system gone wrong," he said. Mr. Clark faulted the government for basing its case on the testimony of former USAU employees who were admitted liars or intended to damage USAU and Mr. Brennan.

Mr. Clark was referring to John Papageorge, a former vp-claims with USAU who admitted misrepresenting his education and military service to improve his career, and Robert Alpert, former director of claims for USAU, who was one of the government's chief witnesses, who has charged USAU with self-dealing in the handling of claims from Pan Am Flight 103 (*BI*, Dec. 5, 1994).

Mr. Vickery contended, however, that Mr. Papageorge's testimony was corroborated by other witnesses and documentation.

Mr. Alpert, who runs his own aviation claims company, ICOM Group, said he left USAIG because of how the PSA settlement was handled.

"At the time this occurred, I didn't agree with 100% allocation to USAir and neither did lawyers for USAir or Ogden. To me, it's simply impossible to represent two insureds and to assign unilateral responsibility to one," he said. "The government proved that Mr. Brennan directed claims personnel to obtain and submit misleading and false reports to the insureds and insurers to support his and his company's attempts to shift financial responsibility to insurers other than USAIG."

Aviation lawyers and insurance attorneys were surprised the government was able to make its case considering insurance disputes and disagreements over allocations of liability have never been the domain of criminal courts.

"I can see the civil wrong here. Taking the lead on this claim when there was obvious competing interests was wrong. They should have dropped the claims handling on behalf of one or both parties," said Franklin Bass, an attorney in New York with Rosenman & Colin, which handles insurance and reinsurance cases. "But I'm hard pressed to see the criminal conduct."

Other attorneys said this case indicates that there now will be an increased level of scrutiny in cases where lead insurers have claims-handling responsibility.

"The message here is that companies should be scrupulous in their allocations, but I don't

think the federal government is now going to be any more interested in allocation controversies unless they're very egregious. Cedants or lead carriers should not expect a knock on the door in the dead of night from the local U.S. attorney. This is still the first case I know of where there has been a criminal element," said David Grais of Grais & Phillips, a New York-based insurance law firm.

Lee Kreindler of Kreindler & Kreindler in New York, which has been representing plaintiffs in the Lockerbie case, said he was shocked by the verdict.

"Lead insurers have always had the authority to allocate, even in cases where there's a conflict of interests. But here, the question involved their fiduciary duty to other insurers, and 43 guilty counts says persons in the position to allocate liability must be very careful," he said.

Sentencing is scheduled for Sept. 23 before Chief Judge Charles P. Sifton. Mr. Brennan faces a maximum of five years in prison and a \$250,000 fine for each count. USAU faces a maximum fine of \$500,000 for each count.

United States vs. John Brennan and United States Aviation Underwriters Inc., U.S. District Court for the Eastern District of New York: CR-95-0420 (CPS).

Stock chart's format changes

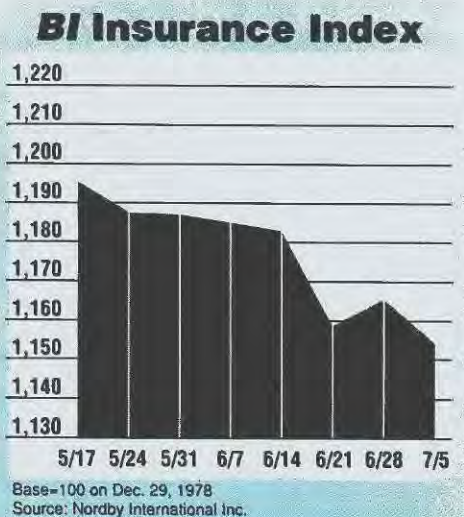
Business Insurance is changing the format of its weekly stock chart.

Beginning this week, the stock chart will feature more than a dozen new companies. To accommodate the new listings, some of the information previously reported for each of the listings will be deleted.

New to the stock index are commercial insurance and reinsurance companies, including more Bermuda catastrophe reinsurers and financial guarantee underwriters, as well as new health maintenance organizations.

Criteria for inclusion remains that a company must be a commercial insurer, reinsurer, broker or HMO of relevance to a broad cross-section of our readers.

The information that no longer will be provided is dividend, yield, price-to-earnings ratio, book value and market-to-book value. Much of this information is available in the financial pages of daily papers, and from the companies themselves.



PCS catastrophe options

As of July 5			
Call spread	Price bid/ask	Call spread	Price bid/ask
Easten September 1996		California Annual	
40/60	4/5.5	40/60	.8/1.6
50/70	3.0/5	80/100	.5/1.4
80/100	2.5/3.2	200/250	.5/3
Southeast Sept. 1996		Western Annual	
40/60	2.5/4	40/60	1.0/2
80/100	1.5/2.7	80/100	.6/1.6
Texas Sept. 1996		Northeast Sept. 1996	
40/60	1.2/2.2	40/60	1/1.6
80/100	.5/2.0	80/100	6/2.0

Total volume: 804 Total open interest: 4,303

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

British Issues

July 4 Companies	Price pence	P/E	Div. pence	Yield %	1 week high—low
Comml Union	579	11.1	35.3	6.1	585—576
Genl Accident	646	9.7	38.8	6.0	660—646
Gdn Royal Exch	248	9.1	11.3	4.5	254—247
Independent	461	8.6	14.1	3.0	461—461
Royal	400	7.6	20.0	5.0	400—394
Sun Alliance	376	8.6	21.6	5.7	376—370
Brokers					
Bradstock	71	11.8	7.1	10.0	71—71
Fenchurch	96	6.5	10.6	11.0	97—96
CE Heath	98	11.6	6.3	6.4	102—98
JIB Group	114	11.3	9.4	8.2	114—114
Lloyd Thompson	182	11.1	11.3	6.2	182—181
Lowndes Lmbt	137	9.0	10.5	7.7	137—137
Nelson Hurst	203	12.5	9.8	4.8	205—203
Sedgwick Grp	137	10.7	8.1	5.9	137—135
Steel Bri Jones	42	5.4	5.6	13.3	44—42
Willis Corroon	151	13.6	8.3	5.5	151—150

Source: Philip Olsen, London

Source: Philip Olsen, London

BI Industry Stock Report JULY 1, 1996, THROUGH JULY 5, 1996

BROKERS										BROKERS										BROKERS										BROKERS									
		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)																
Accordia Inc.	NYS	33.25	-1.48	11.76	33.75	23.50	5	Everest Reinsurance	NYS	24.625	-4.83	5.35	26.50	18.50	593	SAFECO Corp.	NDQ	34.25	-3.18	-0.72	39.75	28.13	746																
Alexander & Alexander	NYS	19.375	-1.90	1.97	25.50	17.88	143	Executive Risk Inc.	NYS	35.875	-6.21	23.71	38.25	18.38	219	Selbels Bruce Group	NDQ	2.5625	5.13	70.83	4.25	0.44	34																
E.W. Blanch Holdings Inc.	NYS	19.75	-0.63	-15.51	25.50	16.50	62	EXEL Ltd.	NYS	70.75	0.35	16.22	73.63	51.75	240	Selective Ins. Group	NDQ	32.875	1.15	-7.39	38.75	30.75	31																
Gallagher Arthur J. & Co.	NYS	31.75	-0.78	-14.77	39.50	30.00	24	Fremont General Corp.	NYS	23	0.00	-6.12	26.25	16.13	103	Sphere Drake Holdings	NYS	10.25	0.00	-26.79	19.13	9.75	i																
Hibb, Rogal & Hamilton	NYS	13.5	-2.70	0.93	14.38	12.60	18	Frontier Insurance Group	NYS	33	-4.35	3.13	38.00	25.25	21	TIG Holdings	NYS	29.5	1.72	3.51	34.25	22.25	513																
Kaye Group Inc.	NDQ	6.125	2.08	-23.44	9.25	5.00	0	Gainsco Inc.	ASE	9.9375	0.63	-12.64	12.38	8.31	177	Titan Holdings, Inc.	NYS	14.875	6.25	3.48	16.63	11.75	50																
Marsh & McLennan	NYS	95	-1.55	7.04	101.63	76.63	450	GCE Holding Ltd.	NDQ	26.5	0.00	NA	27.25	19.75	37	Tokio Marine & Fire	NDQ	65	-2.44	-1.52	69.25	50.88	5																
Poe & Brown	NDQ	25	1.01	0.50	25.50	22.75	104	General RE Corp.	NYS	149.75	-1.64	-3.39	158.25	129.50	620	Torchmark Corp.	NYS	41.5	-5.14	-8.29	49.88	36.75	357																
BROKERS	AVERAGE		-0.7	-3.9				Gryphon Holdings	NDQ	14.625	-2.50	-24.03	20.25	14.38	68	Transatlantic Holdings	NYS	58.5	-2.14	-6.64	75.25	62.38	752																
INSURERS/REINSURERS										INSURERS/REINSURERS										INSURERS/REINSURERS										INSURERS/REINSURERS									
												Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)						
ACE Ltd.	NYS	46.875	-0.27	17.92	50.38	28.50	240	Guaranty National Corp.	NYS	15.875	-11.81	3.25	19.00	13.38	112	Transnational Re Corp.	NDQ	24.5	-0.51	0.00	27.25	20.00	79																
Acceptance Insurance Cos.	NYS	18.125	5.84	21.85	18.25	13.13	87	Harleysville Group	NDQ	29	-1.69	-10.42	30.00	24.25	16	Travelers Aena Property	NYS	28.75	-5.73	NA	28.50	26.00	503																
AEGON N.V.	NYS	47.125	2.17	7.10	50.38	33.25	20	Hartford Steam Boiler	NYS	47.625	-3.05	-4.75	52.50	42.63	140	Travelers Corp.	NYS	44.5	-2.47	6.59	47.25	29.38	2684																
Aena Life & Casualty	NYS	69.875	-2.27	0.90	78.75	60.25	2834	HCC Insurance Holdings	NYS	24.125	7.22	30.41	25.50	10.25	150	Trenwick Group Inc.	NDQ	51.5	3.00	-8.44	57.50	42.75	299																
AFLAC Inc.	NYS	30.25	1.26	4.31	33.13	24.38	639	IPC Holdings Ltd.	NDQ	20.125	0.00	NA	22.25	19.00	189	Unico American Corp.	NDQ	7.5	3.45	20.00	7.75	5.13	28																
Allied Group Inc.	NDQ	39.875	-7.80	10.76	44.25	27.50	151	ITT Hartford Group	NYS	53	-0.47	9.56	54.75	44.50	979	Uniamerica Holdings	NYS	16	5.79	NA	18.13	14.75	22																
Allmerica Prop. & Casualty	NYS	26	-3.70	-3.70	24.25	21.88	26	LaSalle Re Ltd.	NDQ	22.375	-0.56	NA	26.63	19.50	157	United Fire & Casualty	NDQ	33.5	9.84	19.64	40.00	18.63	2																
Allstate Corp.	NYS	44.5	-2.47	8.21	46.75	29.25	2857	Lincoln National	NYS	44.75	-3.24	-16.74	57.00	39.75	504	Unitrin	NDQ	46.25	-1.60	-3.65	51.75	44.50	153																
AMBAC Indemnity Corp.	NYS	51.625	-0.96	10.13	55.25	39.50	133	Market Corp.	NDQ	89	-4.30	17.88	94.50	56.25	35	UNUM Corp.	NYS	62	-4.00	12.73	63.13	43.75	419																
American Bankers Ins.	NDQ	42.75	-2.01	9.62	44.25	30.75	176	MBIA Insurance Group	NYS	77.125	-0.96	2.83	80.88	63.25	335	US Facilities Corp.	NDQ	17.25	-0.72	-19.30	23.38	16.00	44																
American Financial Group	NYS	30.125	0.00	-1.63	34.50	25.25	161	Meadowbrook Insur. Group	NYS	29.25	-4.88	-12.69	34.13	24.00	44	USF&G Corp.	NYS	16	-1.54	-5.19	19.50	14.25	918																
American General	NYS	36.75	1.03	5.38	39.13	31.00	1332	Mid Ocean Ltd.	NYS	41.25	0.61	11.11	43.00	30.88	222	USLIFE Corp.	NYS	31.5	-4.18	5.44	33.25	26.25	441																
American Heritage Life Ins.	NYS	21.125	-3.43	-7.65	24.25	18.88	4	MMI Cos. Inc.	NYS	31	0.40	29.17	31.50	18.88	13	Washington National	NYS	25.75	0.00	-6.79	30.50	20.50	49																
American Indemnity/Fin'l	NDQ	12	-0.24	20.00	13.38	9.00	3	Mutual Risk Mgmt. Ltd.	NYS	30.125	-3.60	-12.20	34.88	25.04	157	Zenith National Ins.	NYS	27.625	0.91	29.24	28.88	20.00	49																
American International	NYS	94.5	-4.18	2.16	103.38	71.00	2210	NAC Re Corp.	NYS	32.5	-2.99	-9.72	39.00	28.50	237	Zurich Reinsurance Centr.	NYS	31.25	-0.79	2.88	32.63	27.88	127																
American Re Corp.	NYS	45.5	1.39	11.31	46.38	34.00	371	National Re Corp.	NYS	50.75	34.44	33.55	51.75	30.00	3356	INSURERS/REINSURERS	AVERAGE		-0.4	2.5																			
Aon Corp.	NYS	50.375	-0.74	1.00	56.00	36.25	255	Navigators Group	NDQ	17.25	-2.82	-2.13	20.25	13.50	41	HEALTH MAINTENANCE ORGANIZATIONS																							
Argonaut Group	NDQ	31.25	0.00	-3.85	35.00	28.88	8	Nobel Insurance Ltd.	NDQ	11.25	-3.23	-1.10	12.75	10.13	13	FHP International	NDQ	27.875	1.83	-2.19	34.25	22.25	524																
AVEMCO Corp.	NYS	14.625	8.33	-8.59	18.00	11.75	31	Ohio Casualty Corp.	NDQ	33.75	-2.88	-12.90	40.00	31.25	81	Healthsource Inc.	NYS	15.375	-5.76	-54.51	40.88	16.38	2750																
Baldwin & Lyons Inc.	NDQ	20	-3.03	23.08	20.75	14.25	40	Old Republic Int'l	NYS	22.625	5.23	-4.40	24.38	16.88	542	Humana Inc.	NYS	17.25	-3.50	-36.99	28.88	17.25	1656																
Berkley W.R. Corp.	NDQ	42	0.60	-21.86	55.50	35.50	30	Orion Capital Corp.	NYS	49.125	-3.68	13.26	51.00	38.38	33	Oxford Health Plans	NDQ	39.875	-3.04	7.95	55.25	23.00	4370																
Berkshire Hathaway Inc.	NYS	31000	0.98	-3.43	38000.00	23400.00	0	Partner Re Ltd.	NDQ	30	0.42	9.09	31.88	23.75	247	Pacificare Health Sys.	NDQ	70.25	6.44	-19.25	98.75	49.75	219																
Capital RE Corporation	NYS	36.5	-0.68	18.70	38.25	25.50	35	Penn-America Group Inc.	NDQ	16.3125	-1.88	14.47	16.75	9.50	5	Safeguard Health Enter.	NDQ	18.25	0.00	56.99	19.25	10.50	4																
Capsure Holdings Corp.	NYS	18.125	1.40	2.84	18.75	13.00	84	Philadelphia Cons. Holding	NDQ	19.5	0.00	20.00	22.50	14.13	4	Sierra Health Services	NYS	31	-1.59	-2.36	36.00	23.00	90																
Chartwell Re	NDQ	22.875	3.39	NA	24.75	10.00	23	PXRE Corp.	NDQ	24.5	1.03	-7.55	29.75	22.75	21	United Healthcare Corp.	NYS	48.5	-3.96	-25.81	69.00	40.00	4387																
Chubb Corp.	NYS	47.875	-4.01	-1.03	52.25	28.50	801	Reliance Group Holdings	NYS	7.75	3.33	-10.14	9.25	6.25	1808	U.S. Healthcare	NDQ	54.75	-0.45	17.74	55.88	29.88	4462																
CIGNA Corp.	NYS	114.125	-3.18	10.53	125.50	77.50	489	Reliastar Financial Corp.	NYS	44.125	2.32	-0.56	51.63	36.00	459	Wellpoint Health Networks	NYS	31.125	-0.40	-3.11	39.13	26.00	204																
CNA Financial Corp.	NYS	102.5	-0.49	-9.69	123.25	86.00	81	RenaissanceRe Holdings Ltd.	NDQ	30.875	0.41	1.65	33.13	20.72	85	HMOs	AVERAGE		-1.0	-6.2																			
EMC Insurance Group Inc.	NDQ	11.75	-6.00	-14.55	15.25	10.13	3	Risk Capital Holdings	NDQ	19.25	-1.91	-17.65	23.38	19.00	428	ALL COMPANIES	AVERAGE		-0.7	-2.5																			
								RLI Corp.	NYS	24	-1.54	-4.00	25.88	21.75	3																								
								St. Paul Companies	NYS	53.5	0.00	-3.82	60.50	46.13	844																								

Top advancing issues: National Re Corp., Harleysville Group, Allied Group Inc. Leading decliners: United Fire & Casualty, Mutual Risk Management Ltd., AVEMCO Corp. Most active issue: Oxford Health Plans. The BI index fell 0.9%; the Dow Jones 30 Industrials lost 1.2%; the S&P 500 dropped 2%, and the NYSE Composite declined 1.7%.
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