

Business Insurance

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Product liability reform debate is scheduled by full Senate

WASHINGTON—The full Senate is expected to begin considering a product liability reform bill on June 24, with a vote to cut off debate on June 28, setting the stage for a final vote.

Bill Fay, executive director of the Arlington, Va.-based Product Liability Coordinating Committee, noted that several senators who have opposed product liability reform in the past—including Sens. James Sasser, D-Tenn., and David Pryor, D-Ark.—have said they will support the current bill,

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A&A emerges a stronger force with big investment, new CEO

By GAVIN SOUTER

NEW YORK—Clients of Alexander & Alexander Services Inc. will be dealing with an insurance brokerage with a much brighter future after American International Group Inc. invested \$200 million in the troubled firm.

A&A's new top executive, Frank G. Zarb, will be dealing with a demanding investor in the form of AIG Chairman Maurice R. Green-

berg, even though AIG will not have a representative on the A&A board of directors, brokerage industry observers point out.

Despite that influence, risk managers who are clients of A&A—the world's second-largest insurance broker—do not expect their business to automatically flow to AIG.

Mr. Zarb, 59, was named A&A's chairman, president and chief executive officer on Tuesday. He

succeeds Robert E. Boni, who has been acting as interim chairman and CEO and will continue as non-executive chairman of the brokerage.

Mr. Zarb replaces as president Michael K. White, who has taken an increasingly smaller role in the company since earlier this year. It is widely speculated that he will eventually leave A&A.

AIG's investment in A&A allows that brokerage's executives

to focus on the services they provide instead of the uncertainty surrounding the company, said Richard M. Inserra, risk manager for Union Carbide Chemicals & Plastics Corp. in Danbury, Conn., and an A&A client.

"I'm delighted that AIG stepped up to the plate and helped them out... It should help A&A turn the corner," Mr. Inserra said.

Clients generally will benefit

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Frank G. Zarb

Absolute pollution exclusion weakened by ruling

By DAVE LENCKUS

BATON ROUGE, La.—In a stunning policyholder victory, the Louisiana Supreme Court says the commercial general liability policy's absolute pollution exclusion does not bar coverage for non-environmental claims as well as some environmental claims arising from unintentional pollution.

Disturbed by cases of CGL insurers invoking the exclusion to deny coverage for routine business accidents that only incidentally involve contaminants, the court ruled in a split decision that the exclusion is ambiguous.

Overtaking an appellate ruling,

The Supreme Court restricts polluters' recovery of some legal costs. Page 2

The court said the exclusion does not bar coverage for non-environmental third-party claims stemming from unintentional pollution incidents, including non-pollution claims stemming from leaking underground storage tanks.

Further shocking insurers, the court ruled that a CGL insurer loses its right to enforce the exclusion against third-party environmental claims if it breached its fiduciary duty to a policyholder when it first included the absolute pollution exclusion in the policyholder's coverage. That duty is breached if the insurer did not cut

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More costs shifted to employers

Corporate health plans are primary payers for retirees with kidney ailment

By JERRY GEISEL

WASHINGTON—James Cole, manager of health programs for Franklin Electric Co. Inc., feels like he's been blindsided.

Recently, a retiree who suffers from end-stage renal disease was told by his kidney dialysis center that Franklin Electric's retiree health care plan—and not Medicare—must pay the bulk of his medical bills for the next 18 months.

Mr. Cole was incredulous. He contacted both his third-party claims administrator and benefit consultant to see if the billing information provided by the kidney dialysis center was correct.

"I just couldn't believe it," he recalled.

Many benefit managers, like Mr. Cole, are

in for a rude surprise because of an obscure provision buried in the 1993 federal budget law that shifts tens of millions of dollars of medical costs to employers' retiree health care plans from Medicare.

The provision involves a complex, shared responsibility between employer health plans and Medicare for primary payment of medical bills for end-stage renal disease, or ESRD, an impairment of the kidneys for which there is no cure, only expensive treatment.

Under a law passed more than 20 years ago, Congress expanded the Medicare program to provide coverage for ESRD for people under age 65, the normal eligibility age for Medicare.

Legislation later was enacted so that em-

ployer health care plans would be the primary payer—for an 18-month period—of medical bills for employees or retirees under age 65 who developed ESRD. After 18 months—or when an individual with ESRD turned 65—Medicare would assume primary responsibility for these costs.

In the case of retirees who developed ESRD after turning 65, Medicare was the primary payer.

But under a provision in last year's budget law, which took effect Aug. 10, employer-provided retiree health plans now are the primary payers for 18 months for retired workers who develop ESRD after they become eligible for Medicare at age 65.

However, an employer plan that previously

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Employers cry foul over new pitch

Gibbons plan would collect \$117 billion

By JERRY GEISEL

WASHINGTON—Employers now offering generous health care plans would lose billions of dollars in potential savings under the first reform proposal prepared by the new chairman of the House Ways and Means Committee.

The proposal by Rep. Sam Gibbons, D-Fla., radically alters a measure passed by the Ways and Means Health Subcommittee that would have shaved billions of dollars in costs for employers now providing family coverage to working couples with children.

Under the earlier proposal, the couple would decide which employer would provide coverage. That employer would pay 80% of the premium for family coverage, but it would have its costs partially offset by the other employer, which would pay an amount equal to 80% of the in-

dividual premium.

But under Rep. Gibbons' proposal, the federal government would hold onto percentages of the offset payments for the next several years. The money would go to subsidize health care coverage for poor people who currently lack insurance.

Late last week, the Congressional Budget Office estimated that the federal government would keep \$116.7 billion in contributions that otherwise would have gone to employers between 1988 and 2002.

Rep. Gibbons' offset payment proposal outraged business groups. "It's pilfering from those employers that are now providing coverage," said Mark Ugoretz, president of the Washington-based ERISA Industry Committee, which represents large employers on benefit issues.

Businesses stand to lose in other

ways under the proposal by Rep. Gibbons, who formally took over the committee after Rep. Dan Rostenkowski, D-Ill., was indicted on corruption charges.

For example, a new excise tax on health insurance premiums, including expenses incurred by self-insured plans, would total 2% between 1996 and 1999 and then would drop to 1%.

Rep. Gibbons' proposal makes several significant changes to a bill approved earlier by the Ways and Means Health Subcommittee (BI, March 28). It reduces to 250 from 1,000 the number of employees needed for a company to self-insure, drops a 1% payroll tax on self-insured employers and provides special tax credits to small firms to help offset health care costs.

The Gibbons proposal was unveiled amid a swirl of other health care reform developments last week on Capitol Hill as time ticks

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AP/Wide World photo

Rep. Sam Gibbons formally took over leadership of the House Ways and Means Committee after the indictment of Rep. Dan Rostenkowski.

Updates

Product law reform vote set

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S. 687. Mr. Fay noted that proponents of the previous Senate bill, S. 640, in 1992 fell only two votes short of the 60 required to invoke cloture, which is a parliamentary maneuver to cut off debate and move a bill to a vote (*BI*, Sept. 14, 1992).

The bill, unveiled last year by a bipartisan group of lawmakers led by Sen. John D. Rockefeller IV, D-W.Va., would abolish joint and several liability for non-economic damages in product liability cases; eliminate product liability lawsuits involving workplace capital goods more than 25 years old; and make it more difficult for plaintiffs in product liability cases to recover punitive damages (*BI*, April 5, 1993). Unlike previous bills, S. 687 makes clear that plaintiffs who refused pretrial settlements would face no penalty if they lost in court.

S. 687 currently has 45 sponsors, and a companion bill in the House, H.R. 1910, has 152, said Mr. Fay. If the Senate moves swiftly, there is a chance that a House subcommittee will hold a vote on H.R. 1910 before Congress adjourns for its July 4 recess, he said.

Insurer to cease quake writing

WOODLAND HILLS, Calif.—Loss-riddled 20th Century Insurance Co. will stop selling earthquake policies immediately and will phase out all homeowners coverages over the next two years.

In the interim, the insurer received authorization from Insurance Commissioner John Garamendi to raise homeowners rates 17%. 20th Century had sought a 172% rate hike statewide (*BI*, May 16).

The move is likely to further constrict the state's already tight personal lines earthquake insurance market. 20th Century insured some 240,000 policyholders, mostly in the Los Angeles Basin, though homeowners coverages accounted for only 8.7% of its total 1993 net written premium of just over \$1 billion.

"It has become increasingly clear in recent weeks that the company's reduced surplus level is insufficient to consider insuring against earthquake on an ongoing basis," said Chairman Neil H. Ashley.

Approximately \$600 million in claims from the Jan. 17 quake wiped out two-thirds of the insurer's surplus (*BI*, April 18).

Standard & Poor's Insurance Rating Services has lowered 20th Century's claims-paying ability rating to BB from B. The insurer remains on CreditWatch with negative implications. S&P said the downgrade was based on the insurer's "weakened surplus base, limited financial flexibility and continued exposure to catastrophes."

Meanwhile, the Property Claim Services division of the American Insurance Services Group Inc. has increased its estimate of insured property damage from the Los Angeles earthquake by \$1 billion to \$5.5 billion. About 75% of the claims have been closed, PCS said.

Interest in Cologne Re

COLOGNE, Germany—Employers Reinsurance Co. and General Reinsurance Co. are among potential bidders for a controlling stake in Cologne Reinsurance Co., a spokesman for the German reinsurer confirmed last week.

Although Cologne Re said it currently has no plans to sell or merge with another company, the reinsurer is interested in raising additional capital. Under one financing proposal, Colonia Group and Nordstern Allgemeine, which together own 75% of Cologne Re, would put shares into a holding company and make them available for purchase. That plan would open the way for an outside investor to acquire a controlling interest.

Colonia Konzern A.G. Chief Executive Claas Kleyboldt said the concept is "interesting."

Employers Re and General Re declined to comment.

Data reporting delay sought

WASHINGTON—The Clinton administration last week formally sent to Congress legislation that would delay by 18 months a requirement that employers compile and report group health care coverage information to the government.

Under the current law, which went into effect Jan. 1, employers are supposed to collect the information and send the reports to a new data bank maintained by the Health Care Financing Administration. The first reports, covering 1994, would be due Feb. 28, 1995.

Under the administration's legislation, which was awaiting introduction last week, employers would not have to begin collecting the information until July 1, 1995. The first report, due in 1996, would cover the last six months of 1995.

The information is supposed to be used by HCFA to prevent the government from paying employees' health care claims for which employer plans—not Medicare and Medicaid—are responsible. Employer groups say the requirement is unworkable and that the information is available to the government through already existing programs.

Work comp talks break off

WASHINGTON—The American Insurance Assn. and unions representing the building trades have broken off talks regarding workers compensation's place under a reformed health care system.

The talks were aimed at drafting a proposal to replace the section of the Clinton health care reform plan that would fold the medical portion of workers comp into the group health care system. Now, the AIA will try to have the workers comp proposal stricken from the bill, said Debra T. Ballen, senior vp-policy development and research (see story, page 2).

The AIA had proposed leaving the state-based workers comp system intact while permitting workers to collectively bargain over arrangements that "specify binding obligations and procedures" in the

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Legal costs unrecoverable from other PRPs: High court

By DAVE LENCKUS

WASHINGTON—In blocking polluters from pursuing one type of Superfund lawsuit last week, the U.S. Supreme Court may have uncorked a geyser of new litigation among polluters, insurers and the federal government.

The high court ruled 6-3 that a polluter that sues other potentially responsible parties for their share of the cost of cleaning a waste site cannot recover its litigation costs from those other parties.

The June 6 decision resolves conflicting rulings by several federal appellate courts.

But attorneys predict that additional litigation among polluters, insurers and federal officials likely will erupt as polluters try jumping through some loopholes in the decision to avoid being stuck with those litigation costs.

"I think we're going to wind up seeing litigation in the lower courts to sort that out, at least in the short run," said insurer attorney Russell R. Eggert, a partner with Mayer, Brown & Platt in

Chicago.

In the case, computer keyboard manufacturer Key Tronic Corp. of Spokane, Wash., agreed to contribute \$4.2 million to clean a landfill in Washington where it and other polluters dumped liquid chemicals during the 1970s. Among the other polluters was the U.S. Air Force, which agreed to pay the U.S. Environmental Protection Agency \$1.45 million.

Key Tronic then sued the federal government and other parties in an effort to recover \$1.2 million

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Insurance investment fund

M&M-backed operation opens doors with \$650 million

By DOUGLAS McLEOD

GRAND CAYMAN, B.W.I.—An insurance and reinsurance investment vehicle formed by Marsh & McLennan Risk Capital Corp. and three partners is ready to begin operations with roughly \$650 million in capital.

In addition to M&M Risk Capital, the general partners of Trident Partnership L.P. include J.P. Morgan & Co., Mid Ocean Ltd. and The Byrne Partnership,

headed by John J. Byrne.

Together, the four general partners will contribute 17%, or roughly \$110.5 million, of the fund's minimum \$650 million in capital. The balance of the money is being contributed by a group of institutional and individual investors.

The Cayman Islands-based partnership will focus on investing in existing and start-up property/casualty insurance and reinsurance ventures, its backers say.

The formation of Trident was first disclosed last year in a prospectus for the initial public offering of Mid Ocean, parent of the Bermuda-based catastrophe reinsurer organized by M&M and Morgan in 1992 (*BI*, July 5, 1993).

The Trident partnership was expected to close last Friday, with M&M Risk Capital and Morgan each contributing roughly \$36.6 million of the minimum \$650 million in initial capital and Mid

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Self-insurers must pay part of residual market debt

Maine comp costs mount

By MEG FLETCHER

AUGUSTA, Maine—The ghost of Maine's workers compensation woes continues to haunt employers in the state.

Self-insured employers that had bought commercial workers comp insurance between 1988 and 1991 will receive bills by the end of this month for their share of the state's lingering residual market deficit. Insured employers have been assessed surcharges for several years

now.

The billing is part of the state's "fresh start" program to pay off the residual market deficit. The deficit is now estimated at \$214.4 million by insurance regulators and more than \$300 million by the National Council on Compensation Insurance.

Maine lawmakers in 1987 enacted the fresh start program as a way to relieve workers comp insurers of the state's residual market deficit and encourage them to

write more coverage in the voluntary market. Essentially, the program called for Maine employers to fund the residual market's entire 1988 deficit. For the 1989-1992 period, insurers would have to share in efforts to reduce the deficit if the state determined they had not made a good faith effort to write voluntary market risks. Based on their assessment of insurers' conduct, regulators have determined that insurers must contribute

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Directory of reinsurers approaches

Business Insurance will publish its sixth annual directory of the world's largest reinsurers in the Aug. 29 issue.

The issue also will include a ranking of the largest reinsurers based on their worldwide consolidated reinsurance premiums.

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

To qualify, your company's consolidated worldwide net reinsurance premium volume (both property/casualty and life/health coverage) must exceed \$100 million.

Companies eligible to be listed that have not yet received a *BI* questionnaire should request one from Directory Editor Kathy Welyki at 312-649-5279; fax: 312-649-7801.

The deadline for returning completed questionnaires is July 22.

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To testify or not: A costly question for execs

By MEG FLETCHER

Corporate defendants may pay a heavy price if their executives refuse to testify in tort litigation against their companies.

An Illinois appellate court last month let stand a \$10 million verdict against an Ohio asbestos manufacturer that disobeyed a judge's order that four high-level executives testify during a 1992 trial (BI, May 23).

While a plaintiffs attorney in the case says that the executives'

testimony was necessary, defense attorneys commenting on the case say the demand was unwarranted.

Attorneys also point out that the case is unusual because the Illinois rule that required the executives to appear before an out-of-state court is much broader than other states'. In addition, the Illinois county court in which the trial was held is notorious for favoring plaintiffs.

Still, the case provides a lesson for corporations around the country whose executives are called to

testify in court cases pending against their companies.

In the Illinois case, Madison County Circuit Court Judge George Moran Jr. stripped Owens-Corning Fiberglas Corp. of its defense and rendered a default judgment against it after the executives failed to appear. A jury later awarded four former asbestos workers more than \$10 million, including \$7.5 million in punitive damages.

Owens-Corning plans to appeal the decision, which prompted

strong reaction from other attorneys and corporations.

"This case is unusual because things like this usually never go this far," said Gordon Nash, a corporate litigator with Gardner, Carton & Douglas in Chicago.

"That's an extraordinary penalty," said Bowen Tucker, senior litigation counsel for FMC Corp. in Chicago. "It is clearly a very onerous punishment to find a company liable and strike your defenses for someone's failure to appear."

The decision is "extremely draconian," said Lawrence Fitzpatrick, president and chief executive officer of the Center for Claims Resolution in Princeton, N.J., a facility set up to settle personal injury claims related to asbestosis.

"This case is hopefully an isolated aberration," said Stuart Rickerson, president of Peregrine Solutions, a division of Keene Corp., and a former vp and general counsel of that asbestos de-

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Keene seeks to void existing settlements with asbestos victims

By MICHAEL SCHACHNER

NEW YORK—In what bankruptcy experts say is an unorthodox but grounded legal maneuver, Keene Corp. is suing 27 law firms that represented plaintiffs in asbestos injury cases, alleging essentially that the firms duped Keene into paying \$165 million in settlements.

"The crux of this suit lies in the fact that Keene has been victimized by this group of attorneys," said Edward Weisfelner of Berlack, Israels & Liberman, the New York firm that serves as Keene's bankruptcy attorney.

Keene filed for reorganization under Chapter 11 of the Federal Bankruptcy Act in December.

"As a debtor in possession, it is our fiduciary duty to seek this money on behalf of all Keene creditors, including those impaired who may actually be represented by these lawyers," said Mr. Weisfelner.

However, an attorney at one of the firms named in the suit called Keene's claims "a load of garbage," echoing the sentiments of

other defendants.

In the lawsuit filed June 2, Keene states that it has paid more than \$500 million since 1975 to resolve asbestos-related personal injury and wrongful death claims. Approximately \$165 million of that was paid to clients of the 27 firms, which retained at least \$55 million in contingency fees, Keene asserts in the lawsuit.

The lawsuit, filed in U.S. Bankruptcy Court in New York, charges the defendant law firms with bringing a large number of claims against Keene that they knew were not meritorious. Specifically, Keene claims the firms pursued cases largely on behalf of clients who has suffered no injuries as well as clients that were not exposed to products for which Keene was responsible.

In addition, Keene alleges that the law firms actively solicited and screened clients for the purpose of filing non-meritorious claims and sought false or intentionally misleading medical support for the claims.

Lastly, the suit alleges that the

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Insurers square off on Superfund reform

Merrett, AIG official differ over EIRF

By SALLY ROBERTS

COLORADO SPRINGS, Colo.—Differing philosophies of how Superfund should be reformed are dividing the insurance industry.

Some insurers see the administration's current proposal as the most realistic chance for reforming the pollution liability law, though the proposal would mean new taxes on insurers and would leave the system of retroactive and joint and several liability intact.

Others support an alternative reform measure that would abolish retroactive liability in favor of publicly funded cleanups, though such an approach is unlikely to be seriously considered this year.

These positions were the subject of a spirited debate between Stephen Merrett, chairman of Merrett Holdings P.L.C. in London, and L. Oakley Johnson, vp-corporate affairs for American International Group Inc. in New York, during the National Assn. of Insurance Brokers' annual meeting in Colorado Springs last week. The administration proposal

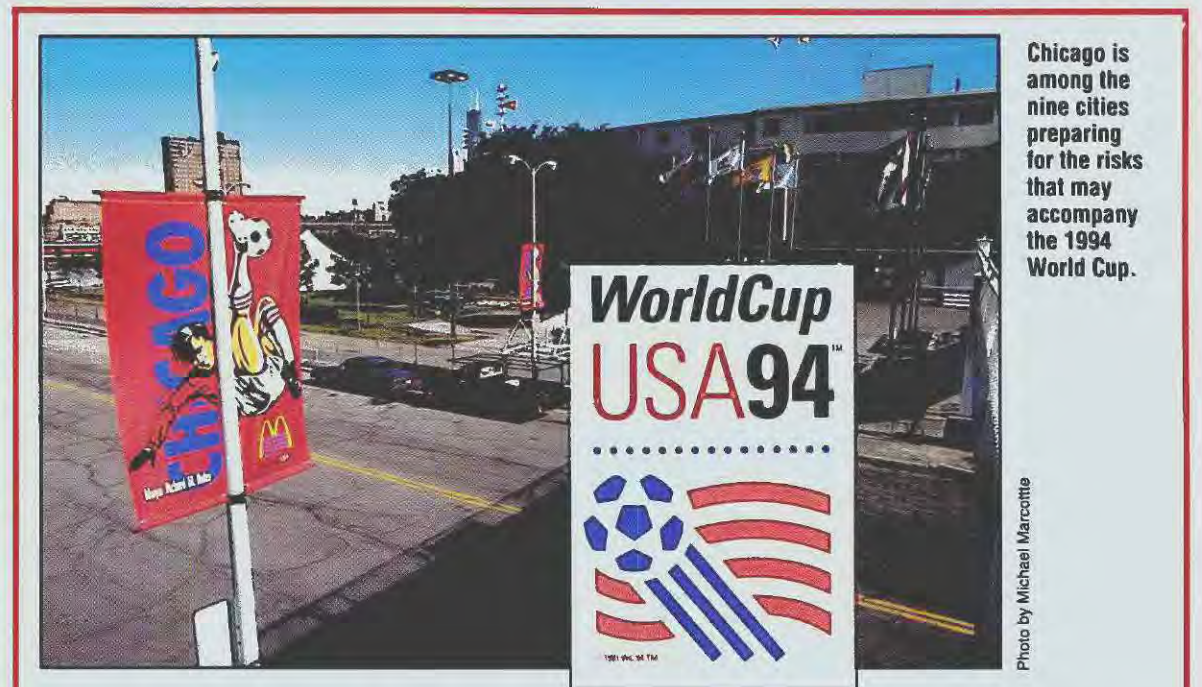
seeks to raise \$3.1 billion over a five-year period through special taxes on property/casualty insurers. The taxes, 70% of which would be assessed retroactively, would be used to finance an "environmental insurance resolution fund." The EIRF is designed to reduce transaction costs by providing policyholders with a portion of their cleanup costs in return for an agreement not to sue their liability insurers for coverage (BI, June 6).



"It is time that we all recognize that there is no hope at all of consensus behind any other reform than that which is proposed by the administration," asserted Mr. Merrett, who also is chairman of Lloyd's of London's Superfund Working Party.

"Without the efforts of Hank Greenberg over the last several years, we would not be where we are today" with Superfund reform efforts, said Mr. Merrett, referring to AIG Chairman Maurice R. Greenberg. "But we don't need

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Chicago is among the nine cities preparing for the risks that may accompany the 1994 World Cup.

Photo by Michael Marcotte

Loss control kicks in

Risk managers ready to meet World Cup challenge

By DEBORAH SHALOWITZ COWANS

Despite the nationalistic fervor and hooliganism associated with fans of some World Cup soccer teams, many risk management and security officials preparing for the month-long tournament in the United States coolly claim it's just business-as-usual.

Others, though, acknowledge that the specter of hundreds of thousands of people attending 52 games and numerous special events in nine cities around the country generates some unique risk management and security challenges.

One thing is certain, though: If security problems do occur, it won't be because of a lack of planning.

The nine venues that will host the games are: the Rose Bowl Stadium in Pasadena, Calif.; Stanford Stadium in Palo Alto, Calif.; the Cotton Bowl in Dallas; Soldier Field in Chicago; the Silverdome in Pontiac, Mich.; Foxboro Stadium in Foxboro,

Mass.; Giants Stadium in East Rutherford, N.J.; RFK Memorial Stadium in Washington; and the Florida Citrus Bowl in Orlando, Fla.

Most public officials said they have been working on security arrangements for the games for nearly two years.

The Los Angeles-based World Cup USA 1994 organization has placed a multi-layered liability insurance program covering the venues (see story, page 30).

World Cup officials met in October 1992 with representatives of federal, state and local law enforcement agencies from the nine venue cities to start devising a security plan. Members of English, Swedish, German and Italian law enforcement agencies also attended that meeting, lending their experience with international soccer tournaments.

The Chicago Park District has been working on security arrangements for the World Cup's June 17 opening ceremony and five subsequent games that

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Employers hope to strike plan to fold comp into health system

By MARK A. HOFMANN

WASHINGTON—Although the Clinton administration's plan to integrate workers compensation medical care into a reformed health care system is unlikely to be approved this year, employers must remain on guard for any attempt to combine the two systems.

"I wish we could say comp's not going to be in it, go home and don't worry about it," said Mark Stuart, executive assistant with Washington-based UBA, an association specializing in workers comp issues.

But, Mr. Stuart told an audience of risk and benefits managers in Washington last week that his gut

feeling is that an attempt to bring workers comp under the aegis of health care reform could pop up again.

Mr. Stuart was a member of a panel providing "The Perspective on Workers Compensation From Inside the Beltway," a symposium sponsored by the National Assn. of Manufacturers and underwritten by Berwyn, Pa.-based Intracorp.

Tom O'Day, associate vp-federal affairs for the Alliance of American Insurers in Washington, said businesses that disagree with the White House's vision of workers comp's role in a reformed health care system had inundated the Capitol Hill offices of key

Democratic lawmakers with letters and mailgrams last week, with about 2,100 messages arriving on Monday and Tuesday alone.

"The momentum is on our side. The issue should go away. It won't go away easily, but we have them on the run," Mr. O'Day said.

Even a consultant to the Democratic National Committee said the administration's workers comp proposal is not likely to be included in its current form in any health care reform legislation passed this year.

The issue is simply "too hot" to deal with right now, said Democratic consultant Steven Passin,

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Insurer hit with bad faith judgment

SAN FRANCISCO—Allendale Mutual Insurance Co. will have to pay \$12.5 million plus legal fees after a federal jury found it acted in bad faith on a fire loss on a building where asbestos was being removed.

Legal fees could total another \$2.3 million, said Craig M. J. Al-ley, an attorney with Patton, Boggs & Blow in Denver. An Allendale attorney could not be reached for comment.

Mosten Management Co. of San Francisco was in the process of removing asbestos from a building when fire broke out in 1988 and spread through the building, making the building unusable by tenants.

Mosten spent about \$7.3 million to clean up the damage, and lost \$5.1 million in rental income.

Allendale agreed to pay \$647,000 in property damage under its policy, which covered direct physical damage. But the insurer refused to pay for lost rental income, despite a rental income loss endorsement to its policy.

At trial, the two sides disputed which of the costs were associated with fire, and therefore covered, and which were associated with renovation work.

The \$12.8 million award, which followed a four-week trial in April, includes the \$5.1 million in lost rental income.

Superfund

Continued from previous page

Hank any longer to tell us that reform on the proposed basis cannot be allowed to proceed."

However, Mr. Johnson said, "We believe a bad bill is worse than no bill. We at AIG hold fast to our view that broad, fundamental reform of the retroactive liability system is more important than ever.

"I would argue that time is on our side," he said. "The longer Congress deliberates on a range of more attractive options than the administration's proposal, the less likely momentum will be sustainable for the wrong type of reform this year."

He suggested that a one-year extension of Superfund could "ensure there are no delays in the current program while real reform

is debated."

Mr. Merrett, though, sees 1994 "as the vital year." If no reform is passed this year, insurance litigation will continue to cause delays and add to the overall costs of cleanups, he said.

While Mr. Merrett supports the Clinton administration's Superfund reform proposal, Mr. Johnson backs a reform plan drafted by the Alliance for a Superfund Action Partnership.

ASAP seeks to replace the current site-specific retroactive liability financing system with an expanded trust fund, supported primarily by broad-based business taxes, to finance cleanups (BI, May 16).

"ASAP is undoubtedly the most diverse coalition ever assembled to advocate Superfund reform," said Mr. Johnson. The group is chaired by Benjamin Chavis, executive director of the National

Assn. for the Advancement of Colored People, and also includes community activists, environmental and public health professionals, small and large businesses, local governments, as well as insurers like AIG, Continental Corp and Fireman's Fund Insurance Co.

ASAP, which was formed in January, is promoting an eight-point plan that addresses such concerns as: public health and environmental protection, prompt cleanup, lower legal costs, fairness, community participation and sound waste management incentives, Mr. Johnson explained.

"The eight-point plan is the only reform plan that truly attempts to address the priority concerns of all major Superfund stakeholders," Mr. Johnson said.

However, Mr. Merrett contends that "ASAP is the most dangerous strategy we could adopt" because it would delay meaningful reform of Superfund.

"The great likelihood, as has happened last time (Superfund was reauthorized) and the time before, is that we will not get meaningful reform and, indeed, the insurers' ability to delay the cleanup process will be substantially interfered with. And the cost of it all will fall entirely or much more substantially (on insurers) than it would under the fund proposal," he explained.

Mr. Merrett instead favors the administration's EIRF plan, which would keep retroactive and joint and several liability intact but "take away" the worst aspects of it, he contends. For example, in cases where a potentially responsible party accepts its allocation of a share of the responsibility for a cleanup, insurers would be relieved of joint and several liability.

"There is no reason to suppose why that process of administrative determination of responsibility should not affectively make a very radical change of the amount of litigation that exists between one PRP and another and between the EPA and the PRP," Mr. Merrett said.

The administration's bill would result in substantial savings on litigation, an estimated 25% reduction in total cleanup costs, a substantial quickening of indemnification, and an increase in the speed and certainty of cleanup, Mr. Merrett contends.

But Mr. Johnson was not swayed.

"Having seen how the details of the EIRF play out, we can analyze its high cost, its modest benefits, and its hopelessly complex and bureaucratic character," he rebutted. "Despite the best of intentions, the EIRF approach does not bring our industry together. Divided, we face the prospect that either the EIRF will be adopted in some further diluted form, or dropped altogether from a reform bill that will leave the industry saddled with virtually all of the same burdens of the current law.

"The only real solution is fundamental retroactive liability reform," Mr. Johnson contends.

"Yes, we are willing to pay our fair share, along with other businesses and stakeholders who will benefit from such reform," he said. However, if a tax is placed on insurers only, it must be retroactive rather than based on current market share, he said.

One of the few areas on which Mr. Johnson and Mr. Merrett agreed is that the NAIB must take a stand on the issue of Superfund reform. Both agree that the brokerage association's neutral position can be viewed as indifference.

A Global Perspective...



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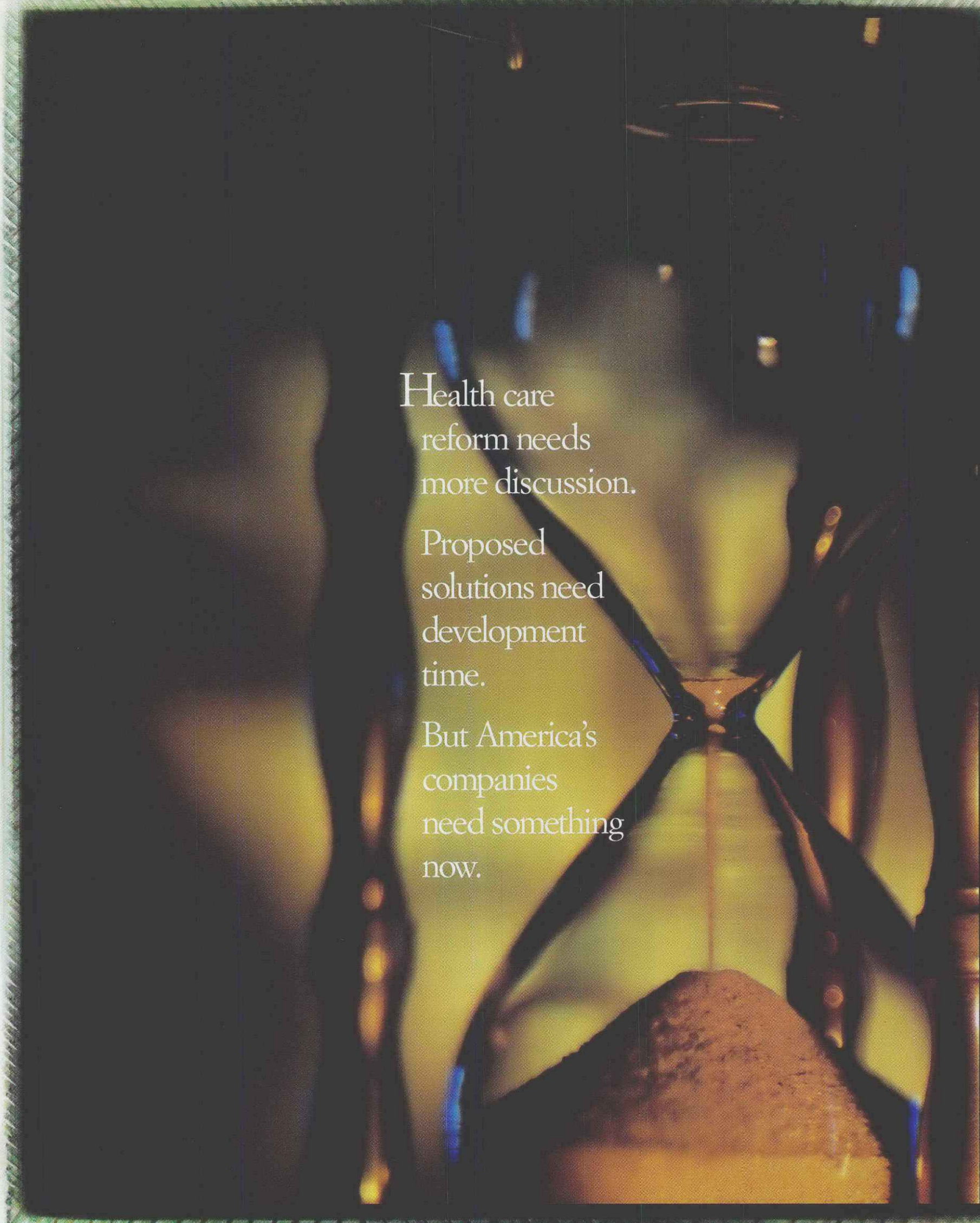
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San Diego offers domestic partner benefits

SAN DIEGO—Gay and heterosexual unmarried domestic partners of San Diego city employees who do not already have coverage will be entitled to health care benefits under a measure approved by the city council.

Two of the city's unions—the Municipal Employees Assn., which represents white-collar workers, and Local 127 of the American Federation of State, County & Municipal Employees, which represents blue-collar

Benefit Beat

workers—already have offered the coverage over the past year, said Cruz Gonzalez, director of San Diego's risk management department. Fewer than 50 employees have participated, he noted.

The vote means the benefit will now be extended to the approximately 2,500 to 3,000 of San Diego's 9,000 employees who are not

members of the two unions, said Mr. Gonzalez.

He said he has no estimate as to how many employees are likely to participate in the extended benefit program, which takes effect Aug. 1. However, he noted that the city's insurers, Kaiser Foundation Health Plan Inc. and Blue Cross of California "don't expect it's going to have an actuarial impact on the plan at all."

"It's not that much of an issue," said Mr. Gonzalez. "We are just

offering it as a fairness to all employees. It's a fairness issue."

Mr. Gonzalez said employees who wish to extend coverage to an unmarried partner must sign affidavits asserting they have been living with someone in a committed, non-platonic, family-style relationship for at least 90 days. Both partners must be over 18, unmarried and jointly responsible for living expenses. They cannot be related by blood any closer than would preclude marriage in

California.

The city council measure, which was approved by a 5-4 vote, had been sponsored by Councilwoman Christine Kehoe, who is gay. Mr. Gonzalez noted, however, that while the plan would extend benefits to same-sex partners, traditionally most of those who have taken advantage of similar plans elsewhere are in heterosexual relationships.

—By Judy Greenwald

Extended benefits

FAIRFAX, Va.—As part of a corporatewide restructuring plan, Mobil Chemical Co. is offering up to 18 months' of salary, full health benefits and life insurance coverage to employees that leave one of the company's three divisions either voluntarily or by forced layoffs.

The enhanced separation package is being offered primarily to Mobil Chemical's 6,000 employees in its plastics division, as well as certain staff, sales and administrative employees in its petrochemical unit. Mobil also is offering the benefits package to all 150 employees at its Macedon, N.Y., films plant, which is being shut down.

"We're closing the Macedon plant. Beyond that, we're seeking job elimination in employee relations, administration and field operations. The package has been offered to the entire plastics unit and to about 700 administrative employees in petrochemical," said a company spokesman.

Those volunteers that Mobil accepts as well as those the company designates for layoff will receive 2.5 weeks of salary and benefits for every year of service up to 15 years, and three weeks of pay and benefits for every year beyond 15 years, up to a total of 78 weeks. The Fairfax, Va.-based company is also providing outplacement counseling for those displaced.

Under Mobil Chemical's standard early retirement plan, employees receive two weeks of salary per year of service up to 52 weeks, but no health or life insurance benefits.

Mobil's spokesman said the company is still uncertain how many positions will ultimately be eliminated. He said it is possible that some cuts will be made in the company's employee benefits and risk management offices, "given that those are administrative positions."

—By Michael Schachner

Vision plan

ARMONK, N.Y.—Employees at International Business Machines Corp. now have access to a low-cost, managed vision plan as part of a revamped flexible benefits plan introduced earlier this year.

In an effort to save health care costs, IBM eliminated a standard \$500 vision care benefit and replaced it with Vision Service Plan's managed program, which provides comprehensive vision examinations and lenses every year and new frames every two years with no employee copayments.

Employees are free to go outside the Vision Service Plan network of eye specialists to obtain services, but those costs are reimbursed according to a fee schedule.

The vision plan changes are among the many that Armonk, *Continued on page 10*



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Opinions

Delay major health reforms

AS MUCH AS IT pains us to say it, we believe the wisest course of action for Congress would be to delay passage of comprehensive health care reform legislation until next year.

This isn't to say that the need to pass legislation is no longer absolutely essential. We continue to believe that until the health care delivery and financing system is reformed and all Americans are assured of coverage, medical care providers will continue to shift the costs of treating the uninsured onto employers that provide health care coverage to their workers.

Our belief that legislation should be delayed is based on one very pragmatic reason: It is simply too late in the session for Congress and the public to give such vital legislation the scrutiny it must receive.

Our fear—based, unfortunately, on past experience with benefits legislation—is that if Congress hastily enacts a comprehensive reform bill in the closing days of this year's session, many important provisions will be drafted behind closed doors by a conference committee. If that happens, neither legislators nor the public will have the time or opportunity to analyze the impact of those provisions before it is too late.

If legislators make a mistake—the odds of which increase geometrically as the congressional time clock ticks away—the consequences can be disastrous. With the nation now spending \$1 trillion a year on health care, there is no such thing as a little mistake.

Our plea for delay does not necessarily mean we are discouraged with the progress that health care reform legislation has made.

As the various reform proposals are discussed, the truly bad ideas—like mandatory health alliances—are discarded, while good ideas are further improved. That's the whole purpose of the legislative process, and it has worked well in this country for more than 200 years.

While comprehensive health care reform legislation should be delayed for this year, Congress should not go home this fall without passing any reform legislation. Certain reforms on which there is broad agreement—like eliminating, or at least narrowing, exclusions for pre-existing medical conditions and banning long waiting periods before coverage can begin—should be passed immediately. Such practices are a disgrace and reform in those areas is long overdue.

Letters

Health care problems do not constitute a crisis

To the editor: I wish to make two points concerning the current health care reform debate:

- There is no health care crisis. At most, there are health care problems.
- There are existing mechanisms and institutions that can solve these problems.

The intent of the health care reform bills being considered in the House is to provide those individuals who do not have coverage with an avenue to secure such coverage. The number of uninsured

most widely bandied about is 37 million. According to the Hoover Institute, 27 million of those people are between jobs and have had no coverage for less than a year. That leaves 10 million people, or 4% of the population, unable to find health insurance.

A great deal of time, effort and energy is being devoted by the president and Congress on ways to reform the health care industry that will change the way 96% of the population finance their health care coverage to assure that 4% is assured properly financed health care.

It is very frustrating to see this energy used in such a way when we already have the solution to these problems:

- COBRA. The 27 million people between jobs can, if they choose, continue their former employer's plan for 18 to 36 months. Other sections of COBRA prohibit emergency rooms from turning away patients for lack of an ability to pay.
- Non-profit hospitals. An IRS re-



•LAST MINUTE LEGISLATING•

We do see a danger, however, in delaying action on comprehensive reform: Delay could mean that major reforms will never be passed.

When President Clinton took office in 1993, health care, business and political leaders enthusiastically embraced the need to reform the health care system. National opinion polls indicated that the public was fed up with rising health care costs and the fact that about 15% of Americans had no health care coverage.

As reform has been delayed, enthusiasm has cooled. Most Americans now say that the health care system does not require major changes. Health care inflation has moderated, possibly because health care providers, pharmaceutical companies and others fear price controls and other stiff reforms.

Still, the time is right for health care reform. The health care problems in the United States are as real today as they were 18 months ago, and much of the groundwork already has been laid to make meaningful, constructive changes that will improve the quality of health care while lowering its cost.

To delay comprehensive reform until 1995 to give legislators time to analyze the various proposals is a good idea. To ignore health care reform because of a perception that the problems have passed would be a grave mistake.

quirement for these hospitals in order to maintain their tax status says they must prove they have provided health services to those who cannot afford those services.

- State-run health care pools. A majority of the states maintain health care pools to cover those who cannot get coverage in the commercial market.

- Medicaid. This program provides health care coverage to the economically disadvantaged.

- Medicare. This program covers older Americans or persons with certain disabilities.

- Public health centers. These provide preventive care for anyone wishing it.

- Veterans Administration hospitals. These facilities provide health care for veterans.

- CHAMPUS. This program provide health care financing for dependents of military personnel.

If half the energy that the president

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Benefit Beat

Continued from page 6

N.Y.-based IBM has made to its employee health care program in recent months.

Late last year, the company announced that for the first time it would begin requiring employees to contribute toward the cost of their health care coverage (*BI*, Nov. 15).

—By Michael Schachner

Preventive care

SAN FRANCISCO—A coalition led by the Bay Area Business Group on Health has issued preventive care guidelines for children and adolescents in an effort to establish uniform standards of care.

The coalition—composed of businesses, health plans and the California Department of Health Services—represents close to 15 million Californians, which include the 2.5 million employees of BBGH members.

The BBGH's Health Advisory Services Committee, which developed the guidelines, issued preventive care guidelines for adults last year, while guidelines for people 65 years and older are expected to be released by the end of the year, said BBGH associate director Tracy Rodriguez.

"In general, uniform guidelines decrease confusion among patients, providers and purchasers" so that everyone is clear about what is recommended, said Ms. Rodriguez.

"Employees can seek the care, physicians can provide the care and employers can provide for the care," she said.

Data gathered through the use of the guidelines will also help

Letters

Continued from page 8

and certain members of Congress are using to completely redesign the system were used to modify existing government programs, the solution to the problems would be easily at hand. For instance, by merely changing the eligibility standards for Medicaid, most of the 10 million mentioned above could be covered.

I have been in the health insurance business for 20 years. The employers with which I work choose either to self-insure or to partially self-insure and buy coverage for catastrophic losses. Self-insurance programs cover about 66% of all workers and dependents who receive health care benefits from their employers or unions.

A very real goal of these employers is to provide a cost-efficient and attractive health care plan for current, past and future employees. Through these efforts we have been able to lower the rate of health care inflation to the single digits, while at the same time allowing the development of new health care technologies, procedures and drugs.

I urge you to reject any health care reform proposal that does not preserve the employer's right, regardless of size, to self-insure. I further urge the rejection of any reform proposal that allows the federal or a state government to dictate how health care is to be delivered. The market is quite capable of doing so.

J. Allen Hall

President

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Indianapolis

employees select the proper health care plans, according to Ms. Rodriguez.

The guidelines cover issues including screening for various health problems, counseling in nutrition, exercise and injury prevention, and an immunization schedule.

The guidelines are based on recommendations provided by the U.S. Preventive Services Task Force and the federal Advisory Committee for Immunization Practices.

BBGH employers have agreed to cover the services recommended in the guidelines in their benefit packages, while participating health plans have agreed to follow the guidelines and measure against them.

The BBGH Advisory Committee has also mailed the guidelines to all pediatricians and family practice physicians in California with

a letter encouraging them to follow the guidelines.

—By Judy Greenwald

Prescription drugs

Prescriptions covered under managed care programs are continuing to account for a greater share of all prescriptions filled by retail pharmacists, according to a quarterly study.

Managed care prescriptions—those whose cost is covered by health maintenance organizations or Medicaid—accounted for nearly 54% of the more than 500 million prescriptions that were dispensed during the first quarter of 1994.

Managed care prescriptions accounted for 51.2% in the final quarter of 1993, said IMS America, a unit of Dun & Bradstreet Corp.

Meanwhile, cash prescriptions,

which either are not reimbursable or are covered by a traditional indemnity plan, were found to account for only 46% of retail prescriptions, down from 48.8% in the fourth quarter of last year (*BI*, May 23).

IMS attributed the growth in managed care prescriptions to increasing enrollment in managed care plans, primarily health maintenance organizations.

IMS also noted that the percentage of managed care prescriptions usually increases by a large amount in the first quarter, when most HMOs conduct new enrollment campaigns.

—By Michael Schachner

Malpractice costs

Medical malpractice insurance premiums are not as great a factor in health care inflation as many physicians and health care critics

say, according to a recent study by an insurance rating, research and actuarial firm.

Despite widespread belief that high medical malpractice premiums force medical costs skyward, insurers wrote only \$5.4 billion in direct malpractice insurance premiums in 1993, which translates to \$20.77 per capita annually or about 6 cents per day, according to the study by Demotech Inc. of Columbus, Ohio.

"If you compare malpractice insurance costs to the gross domestic product, which is roughly \$22,000 per person, they're negligible," said Joseph L. Petrelli, president of Demotech.

The fact of the matter is that medical malpractice insurance costs, when measured in a manner comparable to health care costs, are quite reasonable," Mr. Petrelli said.

—By Michael Schachner



Prop 103 takes too much, insurer charges

20th Century claims quake losses will prevent it from refunding premiums

By JOANNE WOJCIK

LOS ANGELES—If 20th Century Insurance Co. had paid the premium refunds originally ordered under Proposition 103, it would not have had adequate surplus to survive the Jan. 17 Los Angeles earthquake, the insurer's attorney says.

And because of its \$600 million earthquake loss, the Woodland Hills-based insurer will not be able to pay the \$120 million it will be required to pay if it loses its lawsuit challenging the Insurance Department's formula for calculating Proposition 103 rebates.

The California Supreme Court heard oral arguments in that law-

suit last week.

The 1988 voter initiative required a one-year, 20% rollback of property/casualty insurance "charges." But the California Supreme Court ruled in 1989 that an insurer could not be forced to refund 20% of premiums to its policyholders if the result would be "confiscatory."

After that decision—*CalFarm vs. Deukmajian*—Insurance Commissioner John Garamendi issued regulations that established an acceptable profit threshold for insurers. Only insurers that fell below that mark were allowed to not comply with the law.

The formula, which permits a 10% rate of return on equity, was

applied uniformly to the more than 400 insurers affected by Proposition 103.

But the formula, insurers argued before the state Supreme Court last week, should not be applied uniformly because doing so penalizes companies that are more efficient and thus more profitable.

For instance, 20th Century yielded a 32% return on equity in 1988.

Both sides emerged from an hourlong hearing predicting victory, but the justices did little to tip their hand, asking equally difficult questions of both sides.

Even though Tuesday was election day for the primary in which Mr. Garamendi was a Democratic

candidate for governor, the commissioner attended the hearing in person.

Although Mr. Garamendi lost his political battle with state Treasurer Kathleen Brown, the fate of his ability to enforce Proposition 103 still hangs in the balance.

"There's not enough money" to pay the premium rebate now, said Gary Fontana, a San Francisco-based partner with Thelen, Marrin, Johnson & Bridges who represented 20th Century in the oral arguments.

"There wasn't enough money back in 1988, and surely after the earthquake, there's not enough money today," he said following

the court hearing.

"Maybe the commissioner would say, 'Oh, don't worry. We'll let you write at 9 or 10 or 15-to-1.' But if he does that, it proves that he's a charlatan," Mr. Fontana asserted, referring to premium-to-surplus ratios. "One of his jobs is to protect the policyholders to ensure that there is capital there to pay claims when they come in."

Mr. Fontana also criticized the regulations for failing to take into consideration the fact that insurers' losses fluctuate from year to year, requiring them to build up surplus in good years.

For example, the formula disallowed \$5 million in premiums 20th Century paid for earthquake reinsurance in 1989 because no losses were paid that year.

"He said, 'Oh, don't worry about that, we didn't have an earthquake in 1989 so the money you spent is going to be disallowed,'" Mr. Fontana recounted. "We said it makes no sense to regulate earthquake rates based on one year's worth of experience," but the commissioner's staff was unmoved.

Essentially, the commissioner said that rates were too high in years without earthquakes, "but if

'This whole thing has unfolded the way it has in large part because of the egos' involved, says Patricia Lombard.

we did have an earthquake but it was reinsured, you'll get credit for all those losses that you didn't pay," he said.

"Reinsurance is a deal essentially between an insurance company and another insurance company that it takes on as a partner, and we don't care what happens to the premium after it goes to the insurance company," explained Michael Strumwasser of Strumwasser & Woocher, the law firm that has been representing the Insurance Department in some of the protracted litigation over Proposition 103.

Although reinsurance is used to enable insurers to write additional business, "that's not a transaction that the consumer cares about or knows about," according to Mr. Strumwasser. "It's not a ratemaking issue."

"The company gets \$100 in rates and that's all that matters. And that \$100 is enough to pay for assuming the risk," he said. "If it wants to share that benefit, that profit and the risk, it can, but that's a matter between it and its reinsurers," he said.

Because the Insurance Department does not have the authority to directly regulate reinsurers, he said, "we have to capture the transaction at the retail level."

It was surprising to many attending the proceedings that the two sides could still be so far apart even after four years of litigation.

"This whole thing has unfolded the way it has in large part because of the egos of the people involved, which have prohibited them from learning about the other's business," commented Patricia Lombard, former executive director of the Western Insurance Information Service, who has been following Proposition 103 since it was passed. **EB**

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Sound loss control key to finding high-layer cover: Reinsurer

By GAVIN SOUTER

NEW YORK—Risk managers searching for property catastrophe insurance might be able to find additional limits if they improve their loss control measures, a reinsurance executive says.

Since the Hurricane Andrew "wake-up call" two years ago, property insurers have put much greater emphasis on policyholders' catastrophe management strategies, he said.

The increased interest in loss prevention is just one factor in a marketplace that is becoming increasingly sophisticated as it faces huge increases in exposure levels, several

other executives said.

"The ability to attract capacity is tremendously underestimated at the client level," pointed out I. John Cholnoky, senior vp at General Reinsurance Corp. in Stamford, Conn.

Both direct insurers and reinsurers are keen to attract clients that are willing to spend time and money on loss control, and they are more likely to offer capacity to those clients that are actively trying to reduce their losses, Mr. Cholnoky said last week at a seminar sponsored by Rollins Hudig Hall Group Inc.

To a certain extent, the Los Angeles earthquake renewed interest in the potential of loss control. One

brewery in the quake area suffered no damage, said Mr. Cholnoky, while a similar facility in the vicinity suffered \$6 million of damage.

But what really sharpened underwriters' focus on loss control was Hurricane Andrew in 1992. "Andrew was that wake-up call that told us that we had become really sloppy in our trade," he said.

Prior to Hurricane Andrew, a truly devastating hurricane had not hit the United States for more than 20 years, and underwriters had become less stringent in their underwriting as a result of that hiatus, Mr. Cholnoky said.

Since Andrew hit, insurers and reinsurers have not only raised rates and tightened policy conditions, but they also have started to aggressively monitor their aggregate catastrophe exposures and collate data on catastrophe-prone areas.

Insurers have a greater perception of the amount of risk they are able to take on, added Joseph J. Dunn, senior vp at CIGNA Property & Casualty Cos. in Philadelphia.

"Insurers are not just thinking about how much they can afford in this year or quarter but how much they can put at risk as a percentage of their surplus," he said.

Also, underwriters are demanding more information on risks from policyholders, and they are using that information to underwrite on a risk-by-risk basis instead of opting for "one size fits all underwriting," Mr. Dunn pointed out.

In London, the reassessment of risks has led underwriters to demand that policyholders accept larger deductibles. This has led, in turn, to a reduction in insurers' losses, said Gary Sterling, international non-marine facultative underwriter for Lloyd's of London syndicate 362, managed by Harvey Bowring Ltd.

"It has led to an increase in the identification of risk and the management of it," Mr. Sterling said.

But as insurers are adapting to current changes in the marketplace, they will have to be ready to make still more changes as the worldwide insurance market continues to rapidly evolve, said Brian Duperreault, chairman and chief executive officer of American International Underwriters, a unit of American International Group Inc. in New York.

Huge increases in insured property values—especially in Asia, Latin America and Eastern Europe—will have to be taken into account as insurers increase operations in those areas, Mr. Duperreault said.

"And the properties may be being built in the wrong place, like on the coast or on a fault line," he noted.

In some areas, like Southeast Asia, these risks are compounded due to the poor infrastructure in many countries. "There's a building boom, but there is not the infrastructure to accommodate it," explained Mr. Duperreault. "That could be a lack of something like fire protection or water supplies."

Consequently, underwriters will have to take a much closer look at their exposures in those countries, he said.

Those exposures will grow considerably and the demand for insurance capacity from emerging markets could eventually match the demand currently available in the worldwide marketplace, Mr. Duperreault said. **BI**

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Tennessee officials dispute criticism of state health plan

By SARA MARLEY

NASHVILLE, Tenn.—A new managed care program in Tennessee that replaces the state's Medicaid program may be having a negative impact on low-income residents, charges a study by the National Assn. of Public Hospitals.

The hospital group contends that the program, known as TennCare, was implemented too rapidly, resulting in an insufficient number of primary care physicians, enrollment problems and inadequate funding.

State officials, though, counter that the NAPH study does not have a complete picture of the program.

The state received a Medicaid waiver last year to conduct the five-year pilot program (BI, Nov. 22, 1993).

Under the plan, the TennCare program negotiates with health maintenance organizations and preferred provider organizations to cover the 1 million people in the state previously covered under Medicaid. In addition, the program also provides coverage for 500,000 uninsured residents (BI, April 19, 1993).

"With less than six months of planning in a state with virtually no previous managed care experience, Tennessee has abandoned its Medicaid program to shoehorn the poor and uninsured into a hastily contrived, largely untested managed care scheme," said NAPH President Larry Gage.

TennCare aims to cover 25% of Tennessee's population in a managed care setting. Statewide enrollment in managed care programs at the time the program was proposed stood at less than 6%.

Tennessee Gov. Ned McWherter proposed TennCare in April 1993, the state applied for a Medicaid waiver two months later and received it in November of that year, six weeks before the program went into effect. This was an inadequate amount of time to develop administrative and management systems, for managed care organizations to be developed and enrollment to take place, NAPH claims.

But TennCare officials maintain that 227,000 working Tennesseans who previously could not afford health insurance were enrolled in the program by Jan. 1.

David L. Manning, commissioner

of the state's Department of Finance and Administration, which administers TennCare, also challenged NAPH's claims that TennCare is underfunded and offers too few physicians.

"In fact, TennCare will finish the fiscal year with a substantial surplus," he said in a letter to the NAPH's Mr. Gage.

Mr. Manning said the hospital group's report did not take into account thousands of doctors who joined the system in March and April. In some areas of the state, more doctors now participate in TennCare than participated in Medicaid, he added.

The NAPH study also charges that no one is monitoring whether Tennessee is complying with the conditions of the waiver and that the ambitious TennCare program was implemented too quickly to be thorough or effective.

"Many elements of TennCare remain ambiguously defined or only partially implemented, and this initial implementation period has been described as chaotic," according to the NAPH report. "Information is often hard to come by—even for HCFA, which has been charged with monitoring TennCare, and for the state, which is administering it," the report says, referring to the federal Health Care Financing Administration.

NAPH also claims that TennCare has missed several deadlines specified in the Medicaid waiver. For example, all contracts between managed care organizations and the state were to be approved prior to the delivery of services, and Tennessee was required to submit evidence of the adequacy of each MCO's delivery system to HCFA by Dec. 31.

The state's Mr. Manning said that although Tennessee did not set out to become a model for the rest of the country, "In TennCare we may have identified the future of managed care for much of the health care industry."

TennCare, Mr. Manning said, is based on several health reform concepts currently being considered for national application by Congress: global budgeting, a standard benefits package, pooling of purchasing power through managed care organizations and incentives for preventative care. **BI**



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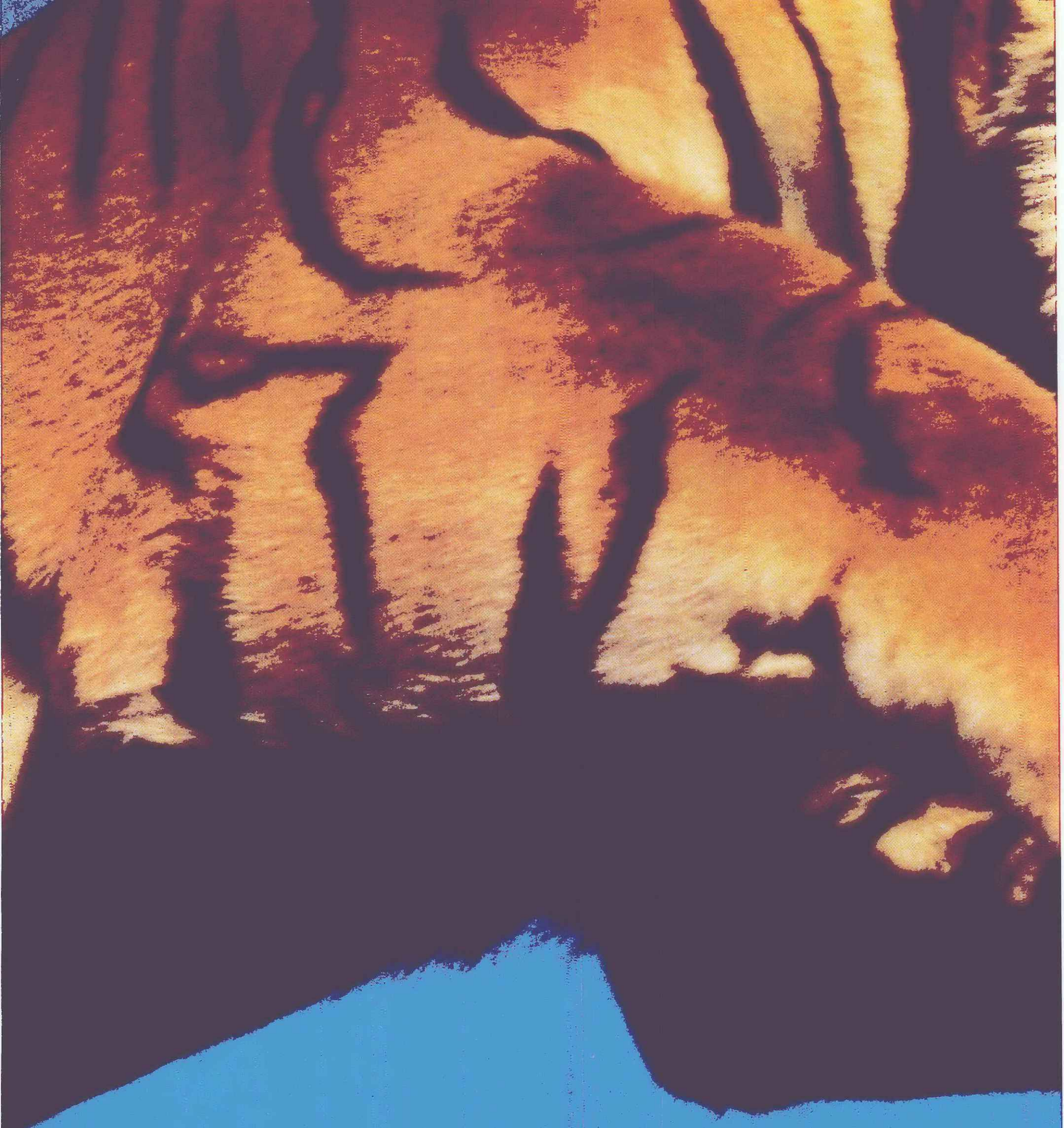
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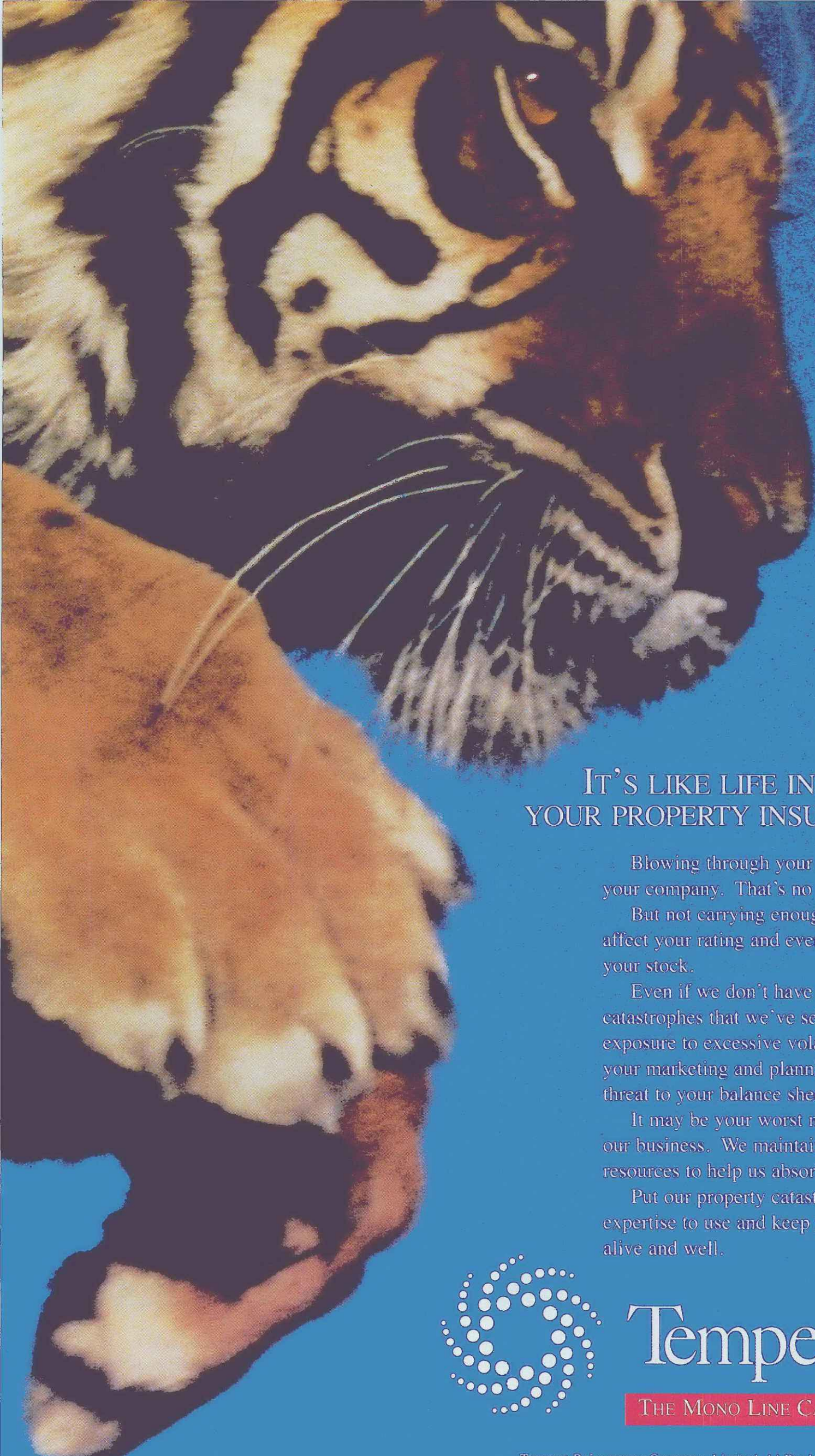
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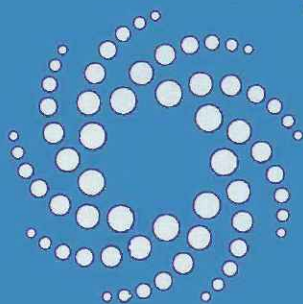
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Outlook cloudy for health reform in '94

By JERRY GEISEL

WASHINGTON—Comprehensive health care reform legislation will not be enacted this year unless a consensus between Democrats and Republicans is reached quickly, a congressional staffer predicts.

"Time is very much running out on the debate," warns Andrew Patzman, minority health policy coordinator on the Senate Labor and Human Resources Committee.

Speaking this month before a

Washington Business Group on Health

conference sponsored by the Washington Business Group on Health—held in conjunction with that organization's 20th anniversary—Mr. Patzman, said the outlook for health care reform legislation is, at the moment, bleak.

In the Senate, Labor and Human Resources Committee Chairman Edward Kennedy, D-Mass., is forging ahead with Clinton-like health care legislation that has no chance of winning passage on the Senate floor.

The Kennedy bill "will not attract significant, if any, bipartisan support," he said.

Some Senate Democrats, he suggested, run a grave risk if they continue to press for legislation that calls for a broad employer mandate and heavy government regulation of the health care industry that does not enjoy broad political support.

"Holding out for too much may result in getting nothing at all," Mr. Patzman said.

In addition, without a bipartisan agreement, congressional Democrats and Republicans will continue to "joust" on myriad provisions and slow down consideration of legislation when time already is running short, according to Mr. Patzman.

Changing public attitudes also are clouding the prospects for health care reform legislation.

"The public is bewildered and scared. Their anxiety (about the impact of legislation) may outweigh their worries" if legislation is not enacted, he said.

But some legislators are trying to break the congressional stalemate on health care reform legislation.

For example, Sen. John Breaux, D-La., recently floated a proposal that would exempt very small employers from offering and paying for a health care plan. Those employers—generally firms with fewer than 11 employees—only would have to pay a small payroll tax.

Laird Burnett, a legislative assistant to Sen. Breaux, said the proposal was made to keep the health care reform debate alive among members of the Senate Finance Committee, on which Sen. Breaux serves.

An employer mandate, he said, as much as any other issue, has the potential—if not resolved—to delay consideration of health care reform legislation for yet another year.

In fact, Mr. Burnett said, the current buzzword in the Senate is a "trigger"-type employer mandate.

Rather than mandating that all employers offer and pay for health coverage—a concept that currently appears to lack sufficient support to win congressional

approval—a mandate might only kick in if the ranks of the uninsured weren't reduced over time to some predetermined level.

Still, while there is a lot of discussion of triggers, which run the gamut of hard, soft and squishy, "No one has signed yet on the dotted line," he said.

Mr. Burnett believes that passage of health care reform legislation is possible, but only if congressional Democrats reject "an all-or-nothing approach."

Expressing somewhat more optimism about the prospects for reform, Christine Ferguson, deputy chief of staff and counsel for Sen. John Chafee, R-R.I., said some members of the Senate Finance Committee are considering taking up a scaled-back bill.

"It may make more sense to do one step at a time" than try to enact a broader bill, she said.

There is a very pragmatic reason for considering a limited re-

if the House and the Senate pass sweeping bills—assuming legislation goes that far—Ms. Ferguson said.

Currently, Finance Committee

Without a bipartisan agreement, congressional Democrats and Republicans will continue to 'joust' on myriad provisions and slow down consideration of legislation when time already is running short, says Andrew Patzman.

form bill.

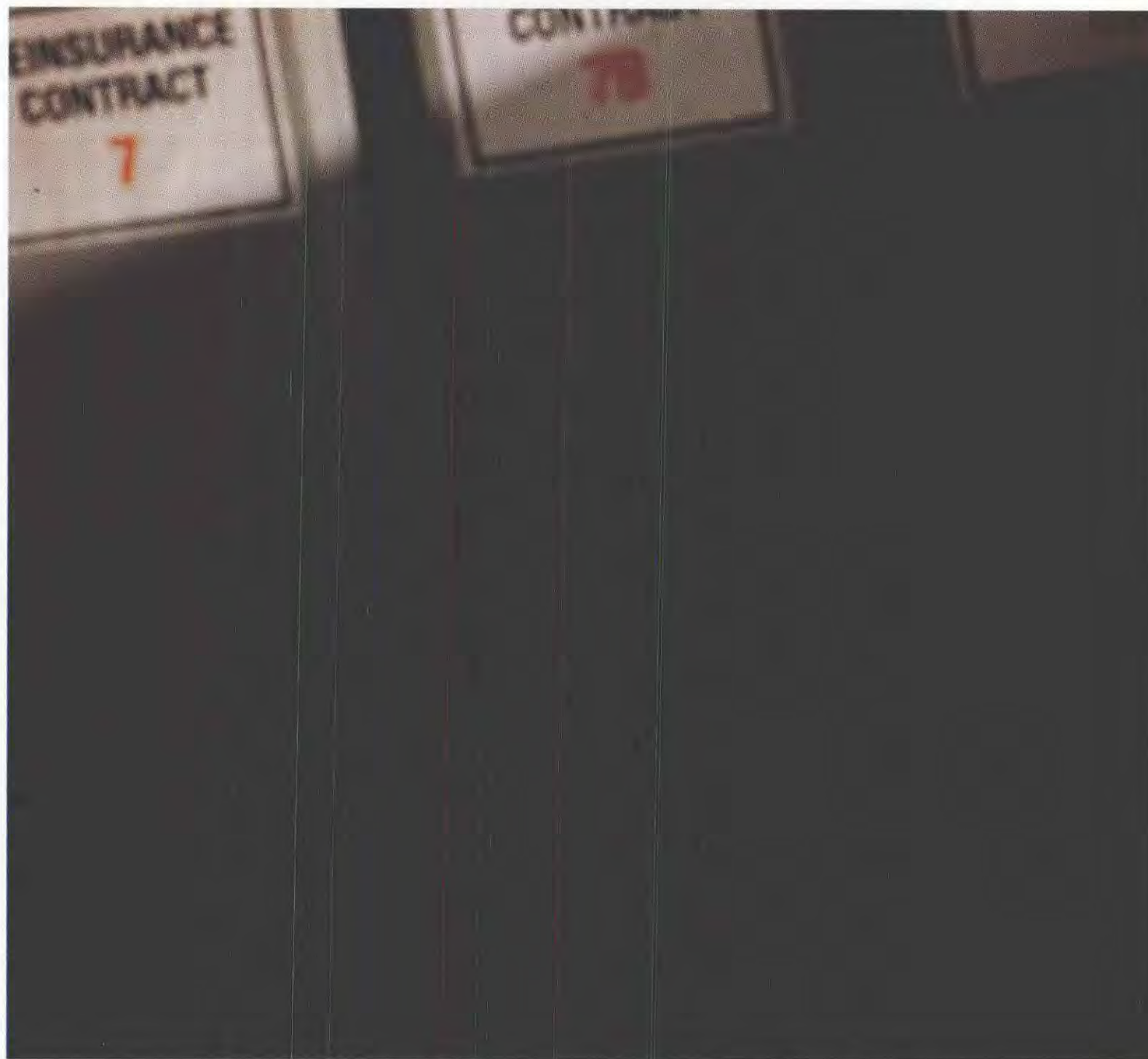
With so little time left in the session, legislators on a conference committee would have difficulty trying to resolve differences

Democrats and Republicans are meeting—without their staffs—to see if an agreement is possible on elements of a health care reform package, she said.

Mary Ella Payne, an aide to Sen. John D. Rockefeller IV, D-W.Va., said it is still possible that the Finance Committee will approve a bill by July 4 and enable the full Senate to consider legislation by the end of the month.

Democrats, Ms. Payne concedes, have to do a better job of reaching out for Republican support, though she said there are certain basic aspects of health care reform on which some Democrats, like Sen. Rockefeller, cannot give ground. For instance, while Sen. Rockefeller is willing to discuss options to achieve universal coverage, universal coverage itself is not open to compromise.

"Everyone must be brought into the system... There is no way around that," Ms. Payne said. **BI**



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Colorado law expands coverages

DENVER—A new Colorado law requires health insurers to offer small businesses two basic benefit plans, limits premium increases and strictly limits insurer use of pre-existing condition exclusions.

H.B. 94-1210, signed into law June 2 by Gov. Roy Romer, will require insurers to offer firms with two to 50 workers both "standard" and "basic" policies.

Both cover the same services; the basic plan has higher deductibles and copayments. The law takes effect Jan. 1 and will be phased in over three years. Initially, it will limit premium increases only to 20%. After Jan. 1, 1997, the limit will drop to 10%.

It also expands rights to continuing coverage. Every employee and dependent has the right to pay to continue existing employer-based coverage for 18 months, up from six months under the current law.

H.B. 94-1210 also sets the maximum pre-existing condition exclusion for a person enrolled in a group plan at six months and the maximum for an individual at one year. Insurers will be barred from imposing pre-existing condition exclusions on people who have maintained continuous health insurance with a lapse of not more than 90 days.

The law will cover self-employed individuals starting in 1996.

Work comp

Continued from page 3

though he stressed that he agrees that workers comp medical care should be integrated with the overall health care system.

The administration plan calls for employers to continue to buy workers comp insurance or self-fund their workers comp risks. However, medical care for workplace injuries and illnesses would be administered through the regional health alliances that are a cornerstone of the Clinton health care reform plan. Those alliances would then bill the workers comp insurer or self-insurer for the care provided.

Employers contend they would lose control over the treatment of injured workers if the alliances are given responsibility for medical care for workplace injuries.

In addition, the White House wants to establish a national commission to examine whether the medical care component of workers compensation should be completely merged with the overall health care system.

Such an attempt will be vigorously opposed by Republicans, promised Gary L. Visscher, a GOP staff member of the House Education and Labor Committee, which currently is marking up a health care reform bill.

Republicans view workers comp as "obviously too complicated and too delicate" to be dealt with in the context of the president's bill and will propose an amendment to strike the entire section of the legislation that deals with workers comp, Mr. Visscher said.

Republicans also think that splitting the medical and wage-loss portions of the workers comp system would lead to "real problems"

and could possibly be the first step in federalizing the workers comp system, he said.

"Ultimately, workers compensation will be dropped from health care reform. But when it happens is an open question," Mr. Visscher warned. He noted that the Democratic leadership of both the House Education and Labor Committee and its Senate counterpart, the Labor and Human Resources Committee, favor including the workers comp provision in final legislation.

There is "some indication," though, that a few Democratic legislators could bolt and support the Republican move to strip the workers comp section from the bill, he added.

An employer questioned the rationality of creating a commission to study merging workers comp medical care with the overall health care system before health care reforms have been implemented. In fact, establishing a commission before knowing whether health care reform is successful is nothing short of "ludicrous," said Thomas DeOrio, vp and general manager of Ryder Systems Corp. in Miami.

He stressed that the Clinton approach would "exacerbate" cost shifting. If the workers comp provision is deleted from health care reform legislation, "we're no worse off than we are today."

Patricia Vaughan, assistant general counsel of the Risk & Insurance Management Society Inc. in New York, said that employers must retain the ability to perform three key functions under health care reform: The employers' role in selecting an occupational care provider must be preserved; employers must have a role in managing the cases of injured workers; and existing cost-containment strategies must be retained.

Bill Spencer, director of legislative affairs for Associated Builders & Contractors Inc., a Washington-based trade group, charged that the Clinton approach leaves unanswered whether employers could use their own case managers in workers comp cases.

Most employers want to keep the current state-based workers comp system rather than bringing it under a federal umbrella in the name of health care reform, he noted.

During a question and answer period, the Alliance's Mr. O'Day turned the tables by asking the audience whether anyone could think of any workers comp provision in the administration's bill that deserved to survive. The audience of risk and benefit managers responded with silence.

Apart from the workers comp provision, most of the panelists said there was relatively little chance Congress would pass major health care reform legislation this year. For example, Mr. Stuart assigned the likelihood of major reforms a 3 on a scale of 10, with 10 indicating certain passage. Mr. DeOrio alone rated the chances as better than 50-50, giving it a "5 or 6" on the same scale.

Both Mr. O'Day and Mr. Spencer said a bare-bones health care reform package, like that proposed by Reps. Roy Rowland, D-Ga., and Mike Bilirakis, R-Fla., could pass (BI, March 7).

Ms. Vaughan said she didn't know whether major health care reforms would pass this year, but she said there was "a good chance" that workers comp provisions would not be included in any bill that did pass, a sentiment shared by the rest of the panel.

Michael McNamee, Washington-based health correspondent for Business Week magazine, moderated the discussion. **BI**



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PRP fees

Continued from page 2
of its cleanup response costs.

According to David Powers, the firm's vp/general counsel and secretary, about \$150,000 of that amount represented fees the company paid attorneys for three services: identifying the landfill's other PRPs; negotiating its settlement with the EPA; and handling the current litigation in which it sought to recover those costs.

A U.S. District Court ruled that all of the fees are recoverable, but the 9th U.S. Circuit Court of Appeals overturned the ruling.

The Supreme Court, in a decision written by Justice John Paul Stevens, affirmed in part and reversed in part the 9th Circuit.

Justice Stevens noted that the Comprehensive Environmental Response, Compensation and Liabil-

ity Act, better known as Superfund, does not explicitly allow private litigants to recover the legal fees they incur to launch cost recovery actions. And, the longstanding "American Rule" legal doctrine does not permit such recoveries unless Congress explicitly authorizes them, he explained.

Justice Stevens conceded that lower courts have accepted and Congress has "arguably endorsed" the concept that attorneys' fees stemming from enforcement activities are necessary response costs that are recoverable from PRPs under CERCLA. But, he rejected Key Tronic's argument that the company's "kind of private cost recovery action" was such an enforcement activity.

The court also ruled the fees that attorneys charged Key Tronic for negotiating with the EPA are not necessary response costs under CERCLA and therefore are not re-

coverable from other PRPs.

But, the court did find that attorneys' fees attributable to identifying other PRPs are recoverable response costs. It reasoned that those identification efforts by Key Tronic's attorneys prompted the EPA to

The ruling could have a 'chilling effect' on the already glacial pace of cleanups, says Eric Gormsen.

seek cleanup costs from the Air Force and other PRPs, which helped facilitate the site's cleanup.

Policyholder and insurer attorneys foresee several potential problems because of the decision.

With comprehensive general lia-

bility insurers typically refusing to cover such litigation costs, the ruling removes an important safety net for policyholders seeking to recover such expenses.

And, those expenses can be sizable. The cost of bringing other PRPs to the bargaining table can amount to 10% or more of a policyholder's overall environmental costs, said policyholder attorney Robert M. Horkovich of Anderson Kill Olick & Oshinsky in New York.

"This decision makes recovering defense costs from insurers under comprehensive general liability policies even more important," he said.

As a result, coverage disputes between policyholders and insurers may be further stoked, attorneys agree.

Policyholders likely will argue more forcefully that the legal costs they incur in pursuing cleanup cost

contributions from other PRPs are damage mitigation efforts that insurers require and, therefore, are covered, observed Mr. Eggert, the insurer attorney.

The ruling also could have a "chilling effect" on the already glacial pace of hazardous waste cleanups, according to Eric Gormsen of Anderson Kill in Washington.

Polluters facing a substantial liability for cleanup costs will have greater difficulties persuading polluters with much smaller liabilities to contribute, he said.

The smaller polluters now may gamble that the larger polluters will not want to incur the legal costs to sue them and balk at contributing, Mr. Gormsen said. Even if the larger polluters do sue and win, the smaller polluters no longer face the prospect of having to pay the other side's legal fees, he explained.

Large polluters may even begin letting the EPA pursue all PRPs, rather than going after those parties themselves, Mr. Gormsen added.

But, insurers could "hold it against you if you fail to mitigate damages" by not pursuing other polluters, Mr. Horkovich cautioned.

Attorneys also pointed that the Supreme Court raised several questions that lower courts will now have to answer.

For example, the court's explanation of why a polluter's litigation against other PRPs cannot be considered an enforcement activity could mean that a polluter could not recover costs for identifying PRPs if the polluter does not face an EPA cleanup order or the threat of one, said policyholder attorney Mark Rosenberg.

"That will be something that will be litigated as we go forward," predicted Mr. Rosenberg, a partner with Sullivan & Cromwell in New York.

Mr. Eggert, the insurer attorney, questions how to classify attorneys' fees that are attributable to lawyers' efforts in identifying a PRP while preparing litigation against another PRP.

To help polluters recover more of their attorneys' fees from their insurers or other PRPs, some attorneys may begin building the liability cases against other PRPs as much as possible as part of their PRP identification services, observed Mr. Rosenberg, the policyholder attorney.

"You'll have the same overall costs, but I think you'll see some shifting of the characteristics of the costs," he said. "Whether trial courts will allow people to get away with this is another question."

And, even more Superfund litigation may start germinating because of language Justice Stevens sprinkled in the opinion regarding the EPA's right to recover its litigation expenses from PRPs.

After a grudging note that Congress "arguably endorsed" the concept that the EPA could recover its legal fees as part of its "enforcement activities," Justice Stevens wrote that the court offers "no comment on the extent to which that phrase forms the basis for the government's recovery of attorneys' fees."

The court could have said that the EPA's attorneys fees clearly are recoverable as part of its enforcement activities, Mr. Rosenberg pointed out. "But, it didn't say that," he said. "That may reopen an issue that was once thought settled."

Key Tronic Corp. vs. United States, et al.; U.S. Supreme Court; No. 93-376.

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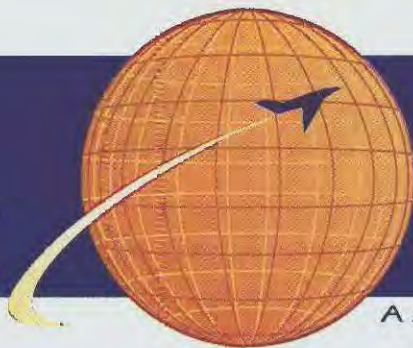
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A special section sent exclusively to readers outside the U.S.

Landscape of risk is changing in developing countries

Exposure warrants proactive stance on environment

By MARIA KIELMAS

Multinationals investing in developing countries in Latin America, Africa and Asia must be alert to increasing liability risks arising from environmental awareness and activism, which likely will add to the cost of doing business in these countries.

Businesses are accustomed to including environmental protection or remediation costs in the budgets for their operations in North America and Europe. But executives say that most companies investing in the developing world are ignoring the potentially massive liabilities they will face with the mushrooming of special interest groups promoting environmental issues.

"Typically, multinationals tend to see more the opportunity than the threat," said Nick Chipman, managing director of environmental services at Sedgwick Group P.L.C. in London. Investors must be forward-thinking about these exposures, Mr. Chipman said, and not be "blinded by opportunities."

"Companies must look at their liability positions five and 10 years from now," said Wayne Tusa, president of New York-based consultant Environmental Risk & Loss Control Inc.

What should concern them most are technological advances and stricter environmental rules brought on by local organizations in foreign countries. Companies operating abroad early on should address the pollution concerns of local groups—such as people who live near a mine or factory—rather than wait until tempers flare and political bridges are burned.

"Most of these decisions should be made not for moral or ethical reasons, but for business reasons," said Mr. Tusa.

Before setting up operations in developing nations, companies should identify the major concerns of environmental groups in the region, consult with community representatives, set operational standards that exceed minimum requirements under current environmental standards, and plan their approach to financing the risk of potential environmental liability.

Companies in the oil, mining, chemical and timber industries have become the prime targets of local environmental interest groups in de-

Continued on page G8

Smoking out an environmental plan

By ADRIAN LADBURY

BRUSSELS—Signaling its desire to make quick, concrete progress on remedying environmental damage, the European Parliament is asking the European Commission to develop a directive to implement a pan-European pollution liability system.

Although European businesses and insurers are worried that environmental groups may succeed in pressing for a system that would rival Superfund in the United States, recent statements from the European Parliament should quell those fears.

The commission a year ago issued the "Green Paper on Remedying Environmental Damage," a discussion document on pollution liability. The May 1993 document explored questions concerning civil liability for pollution cleanup, how to remedy environmental damages for which no responsible party could be found and whether various European pollution laws should be harmonized (*BI*, Nov. 15, 1993).

At hearings held on the green paper, business and insurance groups argued against a system of strict, joint and several, and retroactive liability, which environmental groups favor.

A green paper is meant to be a framework for debate. But European Union observers said in April that it appeared the European Parliament, using its authority under the Maastricht Treaty that went into effect in November, was intent on pressing on with the development of an E.U. directive based on the paper (*BI*, April 18).

While some say the commission could draft a directive by year-end, the commission directorate responsible for environmental policy refused to comment on either the proposed content of a draft di-

European Parliament anxious to move forward with rules governing pollution liability



Illustration by Michael Schwab/Image Bank

rective or a timetable. A spokesman did say, however, that the directorate is still open to industry comment.

Although few details are available about the likely content of a draft directive, an opinion submit-

ted by the Economic and Social Committee, an advisory panel to the European Commission, and a report prepared by the European Parliament provide evidence that the fears of the business community and insurers could well prove

groundless.

Neither the advisory panel nor the Parliament recommend retroactive or joint and several liability. Both reject compulsory insurance requirements on business, but they do advocate the availability of insurance coverage on the open market. And, they recommend that regional and industry-specific funds be created that would pay for pollution cleanups in cases in which the polluter cannot be identified.

Despite the high priority that the European Parliament has placed on this issue, political power struggles could slow the process. Even if the commission can draft a directive that is acceptable to all sides, the continued opposition of a number of national ministers on the E.U.'s Environment Council may prevent any directive from ever being implemented.

Disagreement over environmental policy is not new to the European Parliament.

The issue first emerged in 1984, when the Council of Member States asked the European Commission to create a civil liability system for dealing with cross-border transportation of hazardous waste.

The European Parliament delivered its comment on the commission's proposal in November 1990, but the Council of Ministers and the commission have yet to reach the agreement necessary to allow a second reading of the proposal and thus allow the legislative process to advance in the Parliament.

But the European Parliament at least believes the publication of the May 1993 green paper signifies stronger political will on behalf of the commission and the majority in the council.

"The appearance of the green
Continued on page G8

Limited demand for EIL cover in Australia

Little change seen unless general liability insurers restrict coverage of sudden pollution

By KATE McILWAINE

BRISBANE, Australia—Until Australian insurers eliminate pollution coverage from general liability insurance policies, demand for specialized environmental impairment liability coverage is expected to be light.

Coverage currently provided under general liability policies is limited to "sudden and accidental" pollution, though some insurers worry that courts could broaden the meaning of that wording, as has occurred in the United States.

Other factors that could increase demand for EIL coverage are government cleanup orders, pressure from reinsurers if pollution losses mount and heightened awareness of pollution risks by some industries.

The "big issue" currently being

debated in the Australian insurance industry is whether "sudden and accidental" applies to a gradual build-up of pollution of which the policyholder was unaware, said Mark W. Waller, a partner with the Brisbane office of law firm Clayton Utz.

"That's been considered sudden and accidental by some courts in the United States," he noted. "Companies faced with liability will bend over backwards to find someone to pay."

In Australia, insurers have taken the viewpoint, based on U.S. cases, that coverage for "sudden and accidental" pollution applies only to cases in which "the discharge, dispersal, release or escape of contaminants or pollutants happens quickly, without warning, is unexpected, abrupt and happens instantaneously."

But policyholders contend that the wording means there is coverage for pollution damage that was "unexpected and unintended," regardless of whether it was gradual or abrupt.

As long as this dispute over interpretation exists, Mr. Waller said risk managers should at least examine the cost of buying a separate EIL policy. "But the problem with EIL is the cost," he said.

Many risk managers say EIL coverage is too expensive. For example, a policy offered by underwriting manager Harbor Pacific Holdings Pty. Ltd. has a minimum premium of \$20,000 Australian (\$14,760 U.S.), with most policies costing more than the minimum (*BI*, Sept. 6, 1993).

Adding to the cost is the extensive environmental audits required by underwriters before coverage is

written.

Companies also are reluctant to buy the coverage because if an audit discovers contamination, a risk manager generally cannot then obtain EIL coverage. Even if the site is clean, some risk managers decide they do not want to pay the high premiums, insurers say.

"We will issue EIL coverage, but we want an environmental audit first and once that gets the green light, then we'll insure them. That doesn't help the client (with a pollution exposure), but no insurer will take on a risk if they know it exists. We find companies don't want to do audits, because they don't want to know," said Greg Brown, managing director, Sydney-based C.E. Heath Casualty & General (Professional Liability) Pty. Ltd., a unit of C.E. Heath In-

Continued on next page

Australia

Continued from previous page
International Holdings Ltd.

For now, no liability insurers want to be the first to change the wording of their general liability policy forms to exclude all forms of pollution, including sudden and accidental incidents.

"But some insurers are saying sudden and accidental cover's days are numbered, especially in industries like leather, plastics, oil and petrochemicals" that pose large pollution exposures, said Michael Dovey, a director of Sydney-based broker Heath Fielding Australia Pty. Ltd.

There have been only three major pollution coverage rulings in Australian courts (*BI*, Sept. 6, 1993), but none considered the full definition of "sudden and accidental," Mr. Waller said. However, the rulings did suggest that "sudden" could mean unexpected, not only instantaneous, Mr. Waller said. And many U.S. courts have come to the same conclusion, he said.

Mr. Waller predicted, though, that litigation over the pollution coverage wording will become more common in Australia, eventually forcing insurers to introduce an absolute pollution exclusion.

That, in turn, could fuel the growth of a market for EIL coverage, he said.

Other observers see different factors causing the EIL market to grow.

Mark Moyes, claims and contracts manager with Sydney-based Reinsurance Australia Corp. Ltd., said growth in demand for EIL coverage in Australia is more likely to arise from a state environmental authority using its powers to force a company to clean a polluted site.

Action by a state authority would be a more likely catalyst to fuel growth in EIL coverage than litigation over policy wording, Mr. Moyes said.

"I don't think they are obscure words," he said of the terms "sudden and accidental."

Australia's three most populated states—Queensland, New South Wales and Victoria—all have statutes that give state environmental authorities considerable powers to order site cleanups or do the work themselves and then bill the companies that own or occupy the site.

Karen Trainor, an environmental law partner with Clayton Utz in Brisbane, said Queensland lawmakers are soon expected to pass a new Environmental Protection Bill that would impose heavy fines on companies and fines or jail sentences on directors and officers found guilty of environmental breaches.

She said the legislation also would grant government officials the power to enter business premises and seize evidence when they suspect polluting or have other reasonable grounds to do so.

ReAC's Mr. Moyes said the current enforcement climate is that "the possibility of a cleanup notice may be quite remote unless there is a catastrophic event, in which case your general liability should respond." But he warned Australian risk managers that it is only a matter of time before state environmental authorities decide to use their powers to force a cleanup.

"Times are changing rapidly," Mr. Moyes said. "Once a manufacturing company gets whacked

with a cleanup notice for gradual impairment, risk managers will see the need for EIL. . . some risk managers don't perceive the risk as significant, but I don't necessarily agree with that."

Another factor that could popularize EIL coverage could be pressure from reinsurers, though observers agree it is not a problem at this time.

'Some insurers are saying sudden and accidental cover's days are numbered, especially in industries like leather, plastics, oil and petrochemicals' that pose large pollution exposures, says Michael Dovey.

Reinsurers generally have not been hit by big losses from sudden and accidental pollution claims in Australia, although they have paid some, Mr. Moyes said.

Ian Campey, liability manager in Sydney for Melbourne-based Australian Reinsurance Co. Ltd., a unit of Swiss Reinsurance Co., said reinsurers are not seeking to impose absolute pollution exclusions, "but one day we will have to focus on that."

Pollution coverage provided under general liability policies in Australia will be reviewed more closely by reinsurers only "when someone gets stung," he predicted. "Personally, though, I would prefer a separate product," he added.

Meanwhile, some industries may see a need for specific EIL coverage as they become more aware of their exposures.

In particular, ReAC's Mr. Moyes said financial institutions that take control of properties when borrowers default on loans are at risk. "They recognize the risk in a hazy, nebulous sort of way, but don't see it as a major potential liability."

A recent report by the Australia & New Zealand Environment & Conservation Council, a body that advises the Australian and New Zealand governments on conservation issues, recommends that a polluter, where solvent and identifiable, bear the cost of remediation of a contaminated site. But the report, "Financial Liability for Contaminated Site Remediation," adds that the owner or current occupant of a site should be held liable if the polluter is insolvent or unidentifiable. That would include lenders that take control of polluted property.

Recent legislation in some Australian states aims to limit lenders' liability for polluted sites.

For example, the South Australian Environment Protection Act, passed this year, limits lender liability, but says a mortgagee-in-possession is liable if it assumes active management of the property, as does an amendment to Victoria's environmental statutes. Both changes take effect July 1.

Carole-Anne Priest, manager-legal in the Sydney office of Melbourne-based broker Sedgwick Ltd., said Sedgwick began marketing an EIL policy for financial institutions a month ago.

It has not yet sold a policy, but it has supplied three banks with quotes.

Ms. Priest said the policy, underwritten in Australia by a team of insurers and reinsurers that she would not name, offers coverage for third-party liability claims, cleanup costs and legal expenses for banks' and financial institu-

tions' loan portfolios.

Ms. Priest said high-risk sites may require environmental audits before coverage can be bound, depending on the banks' monitoring of environmentally sensitive loans.

The product, which is primarily marketed in New South Wales and Queensland, was developed because financial institutions in-

creasingly are concerned about their exposure, Ms. Priest explained.

If Australian state governments adopt the recommendations of the conservation council, the EIL policy may become more attractive to banks because the report does not adopt an innocent lender exclusion, which banks had sought, she said.

Heath Fielding Australia also markets an EIL product for financial institutions.

Mr. Dovey said "two or three" policies have been sold to date. Heath Fielding began developing the product two years ago and it has been on the market for eight months.

Current capacity is \$20 million Australian (\$14.8 million U.S.), which will be increased to \$40 million Australian (\$29.6 million U.S.) by year-end, he said.

Mr. Dovey said financial institutions in Queensland are concerned about their liabilities under Queensland's Contaminated Lands Act and the product was developed for Queensland-based financial institutions, then marketed nationally. He said EIL coverage will be a more popular product in Australia if it is targeted to specific industries and sold for specific purposes, like the financial institutions package.

Another unforeseen exposure that could prompt demand for special EIL coverage is corporate executives' liability for pollution.

Australian Re's Mr. Campey noted that one reason companies are reluctant to undertake environ-

mental audits is because directors and officers could face liability if a site audit reveals that pollution existed.

Mr. Waller pointed out that D&O liability policies do not cover environmental liability nor the costs of defending a prosecution under environmental legislation.

On the other hand, he cautioned against companies believing that a clean bill of health from an audit means they do not need EIL coverage. "That's like saying I'm a good lawyer, so I don't need professional indemnity cover," Mr. Waller said.

Trevor R. Pearsons, marketing manager for Melbourne-based broker Willis Corroon Richard Oliver Pty. Ltd., said it offers a D&O legal expenses policy that would cover some litigation costs for environmental impairment. Mr. Pearsons would not say who is underwriting it. But he agreed there is little current demand for EIL coverage among Australian risk managers. Risk managers still consider sudden and accidental pollution as their greatest potential exposure and think they are covered under their general liability policies, he said. **BI**

Japan's EIL market grows slowly

By KATE McILWAINE

TOKYO—The growth of environmental impairment liability insurance products in Japan will be slow, but there is great potential for added interest, says the country's major EIL underwriter.

A growing awareness of environmental issues and potential changes to Japanese environmental legislation could prompt added interest in EIL coverage, the underwriter noted.

In addition, as Japanese companies become more familiar with risk management principles, interest in specialized products like EIL coverage could grow, says an executive with a risk management trade group.

Ross Matthews, regional vp of commercial lines-Far East for AIU Insurance Co. in Tokyo, said the insurer has seen slow growth since it began marketing an EIL policy in Japan in mid-1992 (*BI*, June 29, 1992).

AIU, a unit of American International Group Inc., markets the coverage in association with Japanese underwriters Nippon Fire & Marine Insurance Co. and Yasuda Fire & Marine Insurance Co.

Mr. Matthews would not say how many EIL policies have been written for Japanese companies, but said a "significant number of quotes are in progress." The coverage is patterned after its EIL product in the United States.

"We sold the first in 1992, and last year developed a few more accounts," he said. "It recently started to pick up. There's a lot of interest, but not explosive growth."

Significant interest has come from the waste management industry, landfill companies and recycling plants.

"There are inquiries from some very large companies, too, but it takes a lot of time to develop programs to suit their complex needs and they have a lot of sites," he said.

Many potential clients want the risk management advice that un-

Environmental issues coming to forefront with increased interest from risk managers

derwriters provide when conducting an environmental audit, he noted.

Mr. Matthews said Japan does not have stringent environmental protection laws, though the Japanese government has indicated some reform legislation may be considered in the future. Although no such legislation is currently under consideration, it is inevitable and companies should be prepared, he said.

Despite the lack of specific environmental legislation, some Japanese companies have faced common law claims in the courts to force them to clean up polluted sites.

For example, Mr. Matthews cited a Yokohama court that earlier this year ordered 12 companies, including Tokyo Electric Power, to pay 463 million yen (\$4.4 million) in damages to people with lung conditions from air pollution alleged to have been caused by the defendants' factories.

The Japanese are now more willing to take legal action against corporate polluters. "The trend is there," Mr. Matthews said. "More Japanese people are becoming environmentally conscious."

"Over the past year and a half, there has been community pressure on the government and there is strong growth in the awareness of environmental issues," he said.

Yasuhiko "George" Ushiba, president of the International Risk Management Society of Japan, said risk management is slowly spreading throughout Japanese industry. Until more Japanese corporations adopt the principles of sound risk management, it is unlikely they will buy specialized liability insurance products like EIL coverage, he predicted.

"Risk management is in its infancy in Japan," he said. His association has 45 members, but only eight are risk managers from cor-

porations, the others are individual members like brokers, consultants and academics. The IRMSJ is one of several risk management organizations in Japan, but is the only one affiliated with the International Federation of Risk & Insurance Management Associations.

"Corporations are becoming concerned about the environment, but the lack of risk management knowledge means it will be some time before risk management procedures are in place to deal with environmental concerns," said Mr. Ushiba, who heads a Tokyo risk management consulting firm, Ushiba International.

Alvin Dyson, regional risk control manager for Hong Kong-based Lombard General Insurance Ltd., a unit of Continental Insurance Co., agreed that many Asian businesses are not yet sophisticated enough to be concerned about environmental liabilities.

"Even markets we think are sophisticated often are not," when it comes to products like EIL, he said. For most Asian markets, such as China, Hong Kong, Indonesia, Malaysia, Singapore, Taiwan and Thailand, EIL is a product before its time, he said.

Lombard General does not write EIL coverage.

Mr. Dyson said production concerns come first for businesses in many Asian countries. The potential environmental impact of an operation is of a lesser concern. And, even in countries with environmental protection statutes in place, they are not always enforced, he said.

"There's no impetus for change; the overriding problem in Asia is that countries are trying to compete with each other for business. Power generation is the main problem and they will do anything to get it. They are prepared to destroy the environment, if necessary." **BI**



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Liability expands, coverage shrinks in Germany

Companies look for cost-effective EIL risk-financing options

By **DON LEWIS KIRK**

BONN—Environmental liability is a problem of enormous economic, legal and social significance in Germany.

Changes in German environmental law have led to the fundamental restructuring of coverage available in the German commercial insurance market. In fact, the Federation of German Industries claims that insurers have reduced the scope of environmental coverage by 80% over the past two years by eliminating old policies and limiting coverage under new ones.

And that restructuring has left German industry facing critical decisions about the most cost-effective approach to handling its wide exposure to environmental losses.

The German Parliament implemented the Environmental Liability Act in 1991, defining and expanding corporate liability for pollution. The law establishes civil damages for wrongful death, personal injury or property damage caused by air, soil or water pollution (*BI*, Nov. 19, 1990).

Companies can be sued by any citizen if companies don't comply with the act. By the government's own assessment, the full economic and legal effects of the law won't be known for several years until law-

suits reach the courts.

In addition to the Environmental Liability Act, the German government changed the penal code May 20 to provide for the world's toughest environmental crime penalties. Air, soil, or noise pollution or illegal waste disposal are punishable offenses subjecting corporate directors and executives to as much as 10 years imprisonment.

Most unsettling for companies and insurers are statutes that extend liability to personal injury or property damage caused in the course of regular operations.

Complying with the ordinances is not necessarily a defense. Even if a company's emissions comply with the current rules, the company could face liability if harmful effects of the emissions are discovered in future years. The law allows for compensatory damages of up to 160 million deutsche marks (\$95.5 million) for both property loss and personal injury.

The prospect of insuring a "non-quantifiable risk" has unnerved German insurers. According to Herbert Schilling, Gerling Group's liability insurance director, companies with factories emitting a toxic substance at various locations face the potential of accumulated damages reaching catastrophic proportions.

"Adapting corporate insurance to

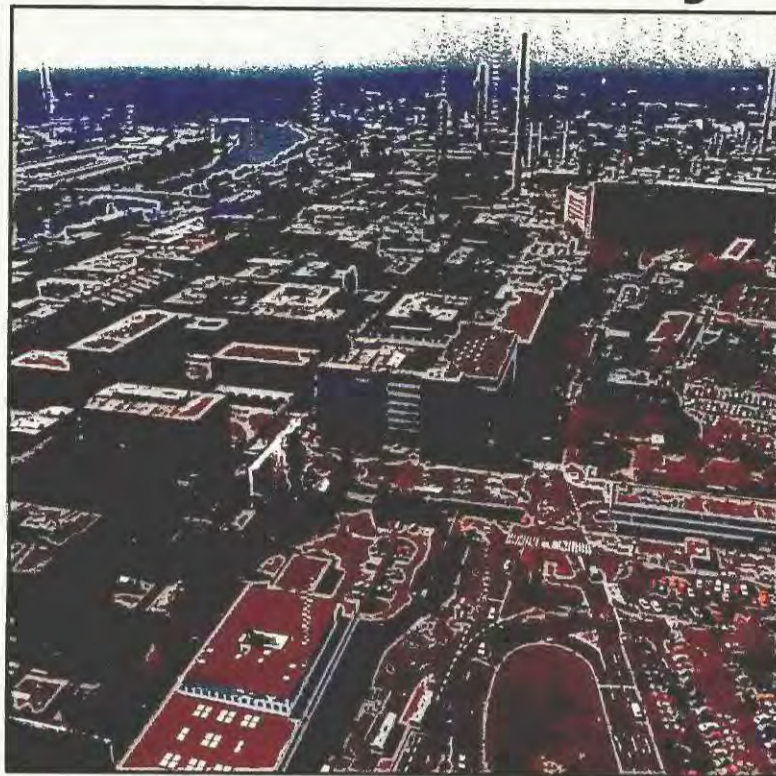
the demands of new legislation is nearly impossible," Mr. Schilling said. "How can an insurer calculate premiums without statistics or without experience? How can claims be projected?"

Despite their protests, insurers have made it possible to industry to insure such risks—for a price. Average premiums for pollution risks have shot up 20% to 25% since the new environmental impairment liability policy was introduced in 1992. Premiums for chemical producers like Bayer A.G., Hoechst A.G. and BASF A.G. jumped several million deutsche marks.

On top of higher premiums, companies face increased costs for implementing systems to monitor and control their environmental emissions.

Besides raising rates, insurers have taken other steps to reduce their exposure to large EIL claims:

- The introduction of a manifestation trigger in place of the existing occurrence trigger.
- A requirement for large companies to retain the risk of damage to their own facilities, while the insurer pays for damage outside the policyholder's facilities. Insurers also are requiring policyholders to accept higher deductibles.
- Excluding coverage for industrial sites known to be contaminated.



Rocked by EIL losses and escalating premiums, Hoechst joined two chemical manufacturers in forming a Luxembourg captive.

Many companies find themselves subject to increased retentions for cleanup expenses, said Hans Schermin, risk manager of international metal fabrication company Mannesmann A.G.

Mannesmann is currently negotiating its premium for 1994 with Zurich Versicherungs-Gesellschaft, Colonia Versicherungs A.G., HDI and Allianz Versicherungs A.G. "In the

Continued on page G6

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Continued from page G4

course of 1994, we have agreed to extensive insurance evaluation of our facilities, which will set the basis for a new premium".

Josef Loelsberg, liability insurance director of Colonia Versicherungs, said insurers and their clients start from scratch when determining EIL risk and premiums. "We are in the process of bringing industrial insurance into the present day. Companies are shocked by the high premium, but we have to tell them it's a whole new game," he said.

"In the past, water pollution was our only real consideration. Now we have air and soil pollution to worry about. If they listen, we can prove to our clients that rates were too low in the past."

"I do feel we're fairly treated, however," said Mr. Schermin. If we can't reach an agreement, then we have the option of canceling the policy." But he says other firms may not be so fortunate. "Premiums are so highly exaggerated, I feel insurers just don't know what premiums to take and go for the sky."

In the case of Bayer, Hoechst and BASF, the disagreement over EIL premiums was the breaking point in the insurer/buyer relationship. In January, those companies established a reinsurance captive in Luxembourg to cover their environmental liability risks (*BI*, May 16; April 18).

"We feel we can evaluate our own risk better than the insurers,"

pointed out Fritz-Juergen Cremer, who is risk manager for Hoechst and chairman of the insurance division of the Federation of German Industries.

Some companies contend that insurers bully them by narrowing the scope of coverage and raising rates.

"Environmental risks have been extracted from older liability insurance policies (and the coverage has been) replaced by costly EIL insurance," said Guenter Schlicht, managing director of Deutsche Versicherungs-Schutzverband DVS, a 4,200-member association of German insurance buyers. "Those companies which have tried to maintain older policies have little chance. In extreme cases, the insurer threatens to cancel the policy."

Insurers also have excluded coverage for some of the pollution liability that companies now assume under German law. "We have a case of companies being liable under the Environmental Liability Act, and not finding insurance," Mr. Schlicht said.

The policyholder's bargaining position is weakened by the difficulty in changing insurers.

"A new insurer would exclude liability for environmental impairments that have not been manifest," said Mr. Schlicht, who claims some companies find no insurance at all.

The lack of coverage is particularly critical for eastern German companies. Insurers still refuse to insure pollution risk, because of poor technical assessment and claim regulation. "Unchecked environmental pollution during 40 years of East German communist rule (is something) liability insurers are not will-

ing to accept," said Gerling's Mr. Schilling.

Insurers complain industry itself does little to solve the problem. Only 16% of German companies have professional risk management staffs, noted Manfred Illner, executive board member of Allianz Versicherungs A.G. "The deficit is apparent. Only 9% of the industrial complexes and facilities have automatic sprinkler systems and few more are protected by fire alarm systems."

As a result, Mr. Schilling says insurers have moved for higher rates or other alternatives to lower their exposure, which include asking policyholders to retain more of the losses. These moves by insurers are causing some companies to consider completely self-insuring these risks.

Meanwhile, a government ordinance could soon go into effect that would strengthen the Environmental Liability Act by requiring policyholders to prove they have a mandated amount of liability coverage for certain dangerous facilities.

"Industry and insurers are not only afraid of new laws, (they) also fear the dramatic change in public awareness," Mr. Schilling said.

"Environmental claimants, the media and politicians have produced a new enormous field for severe claims," Mr. Schilling said. Last year, a single incident at Germany's largest chemical producer Hoechst caused environment liability claims in excess of 50 million deutsche marks (\$30 million at current exchange rates) (*BI*, April 5, 1993).

"Ten years ago," he said, "the

same accident would have cost perhaps 2 million deutsche marks (\$1.2 million)."

The social, legal and economic significance of the change is immense, said Mr. Schilling.

"When a company accidentally emits a toxic chemical, it means (people might claim) that trees and bushes are removed, fields unearthened, gardens turned into a desert, asphalt stripped from the streets, roofs and building facades cleaned and objects outside—like garden furniture or canopies—treated as toxic materials." The result, said Mr. Schilling, is undefinable risk with losses not limited to big industry.

"We have many examples of million deutsche mark losses with smaller companies as well," he says. "Everywhere plastics are stored or processed there is a danger."

As a result, companies face claims of gigantic proportion. "Every toxic emission is subject to a claim," Mr. Schilling says. "Even if the toxic levels are below official limits, experts may claim (in the future) danger cannot be ruled out."

From an American standpoint, the German fear of EIL impact may be exaggerated. German insurers face much lower potential cleanup costs than their U.S. counterparts, U.S. legal sources say.

By introducing a the new manifestation coverage trigger in EIL policies, German insurers have also removed a major risk. The fundamentally altered approach, applying the new coverage trigger and other exclusions to water pollution losses,

will save them their major sources of losses in the past.

In addition, cost per site cleanup remains far below the excess-of-loss reinsurance attachment points for most German insurers.

Joachim Schmidt-Salzer, executive board member of German industrial insurers HDI, Haftpflichtverband der Deutschen Industrie, estimates 2 billion deutsche marks (\$1.12 billion) has been spent or reserved for decontamination of industrial sites. Insurers have paid 60%, while industry has paid 40%.

The manifestation trigger in the new EIL policies will likely reduce many of the severe incurred-but-not-reported losses insurers suffered in the past, especially since it eliminates the unrestricted inclusion of first-party damages.

German companies also operate in a different social climate. Litigation is more common in the United States than in Germany, where most cases are settled out of court.

Nevertheless Germany's environmental liability law is the toughest in Europe—and probably will not be weakened,

The German government approved recent efforts of the European Commission to tighten pollution controls in Europe (see story, page G1).

"While the German Environmental Liability Act is restricted to a catalog of facilities which are potentially dangerous for the environment, the legal development in the European Union is a causal liability for all environmental impairment, regardless of fault," explained Gerling's Mr. Schilling. BI

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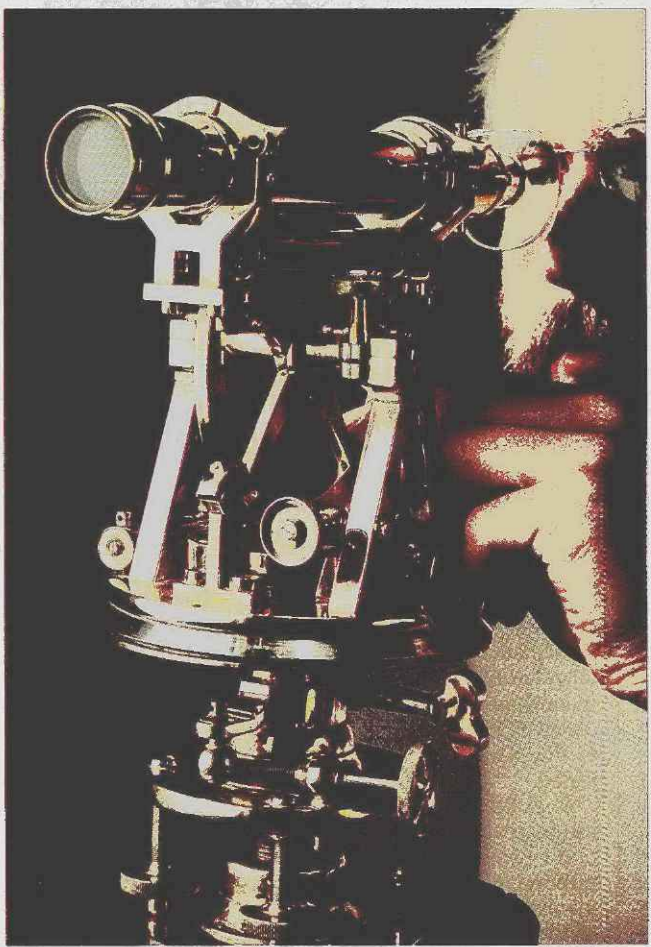
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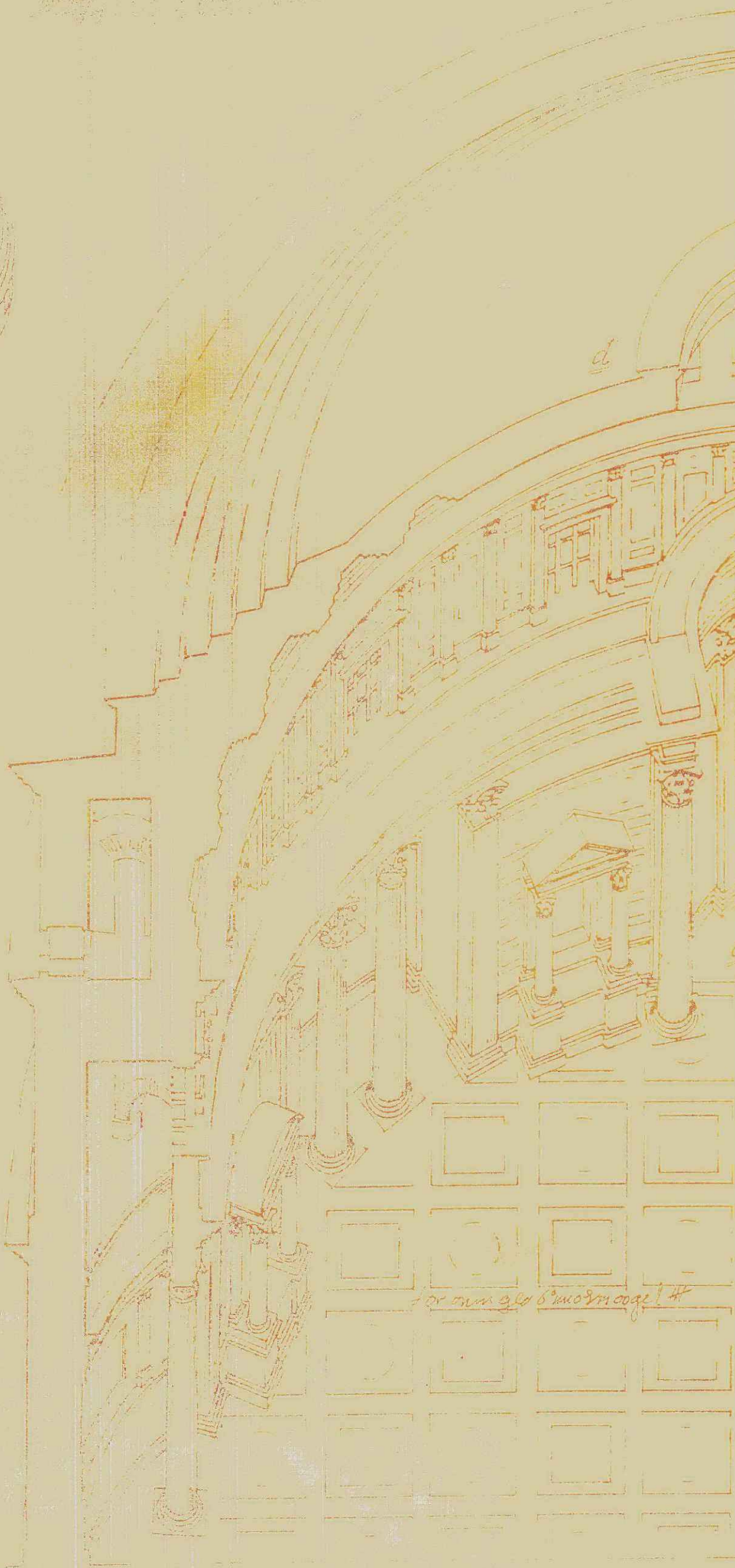
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Continued from page G1
veloping countries.

Environmental regulation differs markedly throughout Latin America. In Colombia, regulations are very strictly enforced by the environment ministry and a government agency, Inderena. When oil companies failed to comply with the law, for example, their operations were shut down by the agency until they passed muster.

In Ecuador, by contrast, environmental legislation is still being drafted and the question of enforcing environmental regulations has hardly arisen until recent years.

However, one U.S. oil company, Texaco Inc., is being sued in U.S. courts by a group representing a number of Ecuadorian Indian tribes for alleged environmental impairment during the 26 years during which it operated in Ecuador.

While executives, insurers and local politicians claim that many environmental protests have become highly politicized or represent other economic interests, such as tourism, the bottom line is that costs for multinationals will increase as a result.

"Whereas earlier a government in a country such as Pakistan would tell villagers in (the oil region of) Potwar that it was their patriotic duty to rebuild the dry stone walls which an oil company had demolished during its surveys, today the government tells the same people to send the repair bill to the oil company," said one London-based oil company executive.

The executive said that another little-appreciated but growing phenomenon in the developing countries is that it has now become "trendy" to be an environmentalist. "All the children of the upper classes want to be ecologists."

"Environmental pressure groups are skilled professional organizations who are working with scientists and politicians and are forcing multinationals to address these issues," said Mr. Tusa, the New York consultant.

As pressure groups gain in influence, he said, the epithet "NIMBY," meaning Not In My Backyard, is being replaced with "NOPE," which stands for Not On Planet Earth. The pressure groups "oppose every major project, and sooner or later there is a lawsuit. This is very important for the business community and the insurance community to be aware of," Mr. Tusa said.

The Ecuadorian Indians that filed

the \$1.5 billion lawsuit against Texaco last November are seeking compensation for alleged pollution in the Ecuadorian eastern jungles, known as the Oriente, which allegedly had been caused by the company's oil exploration and production operations between 1964 and 1992, when the company's lease on the area expired.

By suing the oil company in federal court in New York, the Ecuadorian plaintiffs are following a path taken by the victims of the 1984 poisonous gas leak from a Union Carbide Corp. pesticide plant in Bhopal, India (BI, Feb. 20, 1989).

Initially the Bhopal victims sued in U.S. courts, but then a U.S. court ruled that proper jurisdiction was the Indian courts. Union Carbide ultimately settled the Bhopal claims for \$470 million.

Had the Ecuadorian plaintiffs brought suit in their home country, they would not have gotten a fair hearing, their lawyers contend.

Texaco has countered that the Ecuadorian Indians' allegations are "outrageous." The oil company said that during its time in Ecuador, it was a minority partner in the oil production operations in question—holding 37.5% of the venture—with the remaining equity held by the state oil company of Ecuador, Petroecuador. Throughout its involvement there, the company always applied accepted industry standards of practice to its operations, a spokesman for the company said.

Meanwhile, under a prior agreement between Texaco and the Ecuadorian government, a Canadian company, HPT-Agra, is conducting an environmental audit of the former Texaco sites in Ecuador. Once this is completed, "the next step is to determine the amount of (environmental) impact and how to go about the process of remediation," the spokesman said.

The confrontation in Ecuador between environmentalists, activists advocating autonomy for indigenous tribes and the oil industry has been one of the fiercest of its kind in the world.

Some activist groups are calling for a 15-year moratorium on oil operations in order to salvage rain forests, while government officials, business executives and other environmental groups are claiming that the activists are deliberately misrepresenting the situation.

Energy Minister Francisco Acosta of Ecuador said that the poor health and endemic malnutrition of the rain forest Indian tribes is not due to

pollution caused by oil or mining operations, but to the lack of development in the area.

A similar confrontation has erupted in Nigeria where Royal Dutch/Shell, is a major oil producer.

Local groups for some time have attacked the company as responsible for devastating the environment. Exacerbating the situation are calls for political self-determination from local tribes, in particular the Ogoni people of the Niger Delta.

The local tribes have alleged that

Environmental groups can create new statutory and legal liability, says Nick Chipman.

Shell has built oil pipelines through villages, polluted fishing grounds because damage to installations was not repaired fast enough, and summoned special police forces who brutally put down local demonstrations.

In a May statement, Shell charged that the key issues here were "not environmental, but political and economic. There is a shortage of employment, a high population density and over-farmed land which has resulted in a lowering of living standards over a number of years."

The attacks on Shell have been motivated by groups that have their own political agendas and have difficulty in making the Nigerian government heed their demands, the statement said. "As a result, these groups have used Shell to raise the international profile of their campaign."

According to the company, civil disturbances in Nigeria last year cost Shell a loss of 1,431 project days, \$5.5 million in downtime costs and a deferred oil production of 13.5 million barrels.

Sedgwick's Mr. Chipman recognizes the varied aspects of the special interest groups and advises his clients accordingly on their specific backgrounds and practices.

"We have to take an apolitical stance but have to recognize the potential of these groups to create a statutory or a legal liability," he said.

Some corporations, such as U.K.-based mining conglomerate RTZ Corp., said that they are working with activist groups to improve their operations.

"We start out by dealing with the

government of the country and then we make sure that the special interest groups are involved," said Geoff Saunders, risk manager at RTZ Corp. in London. "We have a proactive policy of involving special interest groups."

Multinationals often consult with the most moderate of the environmental groups in the countries where they invest. But the environmental groups themselves are of two minds about cooperating with industry.

A spokeswoman for Greenpeace in London said that she could not see any possibility of her organization cooperating with industries like oil, timber and mining.

"There is no environmentally right way to have a mine or an oil field," the spokeswoman said. But she added that Greenpeace did cooperate with some companies to help eliminate materials that are environmentally harmful. She cited refrigerator manufacturers, which have long used CFCs though they are harmful to the planet's ozone layer when released.

A spokeswoman for the Washington-based Sierra Club said cooperation between industry and her organization depends on the company involved. "It depends on the history of the company, their approach and what kind of environmental awareness they have. We would not just turn our back on companies... but we are very vigilant."

Activists from indigenous land rights organizations who did not wish to have their organizations named in the context of this article said that to their knowledge no multinational corporations have ever approached them for any advice.

Some multinationals are beginning to take greater care in their investments in developing countries and are incurring greater costs than in the past, noted Mr. Tusa.

For example, he said, "Some multinationals who are investing in Mexico are planning to build plants according to U.S. standards—a more sophisticated standard than is required locally."

But the transfer of precisely the same environmental standards from a developed to a developing country is frowned upon by some executives.

"Much of the trouble which companies investing in the third world will face in the future will come about because of a bunch of half-educated people in countries such as the U.S. who have set up the most rigorous possible environmental

standards for a suburb of Los Angeles, then try to apply them to a province in Pakistan," said the London oil executive.

However, government officials in Latin America, African and Asian countries have said publicly that they expect foreign investors to follow the same rigorous standards in their countries as the companies do in their home environments.

But the same governments have also stressed that they regard attempts by environmental groups from North America and Europe to halt the development of industries such as mining, oil or logging, as an attack on their economic development and their sovereignty.

"But the environment is not an insoluble problem. The oil companies should set up a joint ecological group and create a manageable policy," the London oil executive said.

Many executives have been calling for the insurance sector to set up its own lobbying group to take seriously future environmental risks.

"The insurance industry has been incredibly naive in not pursuing an active environmental role," said Mr. Tusa.

But Sedgwick's Mr. Chipman reiterates the industry view that "insurance is for fortuity not for certainty." He said that non-insurance solutions to potential environmental liabilities must be sought.

Companies in Europe are exploring ways of making provisions for future environmental liabilities by establishing special funds to be administered by insurers, a new form of cooperation between insurers and policyholders.

According to David Davies, executive director of Hogg Risk Managers, a division of Hogg Group P.L.C., this approach aims to avoid the mistakes made by the U.S. Superfund law, in which of the half billion dollars spent each year by insurers, only 12 cents of every dollar are spent on remediation, while much of the remainder is spent on transaction costs like legal fees.

Mr. Chipman noted that some countries that are eagerly seeking foreign investment but have inherited a major environmental problem from earlier governments, such as the Czech Republic, have created a special tax-supported fund to address environmental liabilities.

Mr. Tusa said companies must look at the liability position in five and in 10 years from now and try to minimize their exposure through more long-term planning. ■

Europe

Continued from page G1

paper suggests that the commission and council now intend to take a radical overall approach to the problem of liability for environmental damage," stated the Parliament's recent report to the commission.

The commission wants pan-European action soon because individual states already have a growing body of environmental legislation on their books. The longer the commission delays framework legislation, the more difficult it will be to eventually harmonize differing national standards and ensure a level playing field in the single European market.

"Almost certainly this has led to cost discrepancies, particularly for those industries whose plants are potentially harmful to the environment. It is probable that the combination of social security costs and environmental regulations has led firms to relocate from one member

state to another or to third countries, particularly those of Central and Eastern Europe and Southeast Asia," said the Parliament's report.

But while the Parliament professes to be anxious for action, it has not backed up its request for the commission to quickly draft a proposal with an opinion as to how the new liability system should operate.

The parliamentary opinion has been delayed, in part, by jurisdictional arguments among parliamentary committees.

Siegbert Albert, a German Christian Democratic Unionist member of the Parliament and a member of the Environment Committee, was asked to formulate the parliamentary opinion and produce a report for the commission. This report was presented to the Environment Committee in late April, but its recommendations were deleted from the Parliament's request for a directive from the commission because the Committee for Legal Affairs and Human Rights decided the paper belonged

within its domain.

According to an assistant to Ken Collins, chairman of the Environment Committee, the two committees decided to compromise and presented the request for action last April without recommendations.

The European parliamentary elections, which were held last weekend, will shape the committees' thinking because committees must be reconstituted after the elections to match the political composition of the Parliament as a whole.

Mr. Albert's original report was not as radical as many employers and insurers had feared. It rejected retroactive liability and recognized the problems of attempting to deal with general and transborder pollution.

"European legislation on civil liability for environmental damage should relate only to future damage, and the time to which it applies should be clearly defined (e.g., from the entry into force of the directive)," the report said.

"There is no need for (Europe-

wide) legislation on damage from the past and general environmental damage, given that the levels of damage differ so precisely. To remedy such damage, economic interest groups and the state should conclude voluntary annual agreements specifying the amount of the joint contribution and the measures to be taken to remedy the damage," it stated.

The Albert report also rejected compulsory insurance and suggested the creation of voluntary, industry-specific funds to pay for damage caused by unidentifiable parties or those unable to pay.

"It would be entirely possible to graduate the contribution according to the risk involved in a firm's activities," the report said.

Mr. Albert, a judge himself, stated that such funds should not be used as an "opportunity to evade payment" and suggested that those not contributing to the fund should be required to buy insurance.

However, the report contained a

number of recommendations that would prove less palatable to businesses and insurers if they were to survive the reconstituted committee's actual report. For instance, the report proposes to:

- Shift the burden of proof onto the polluter if it can be identified and is solvent.

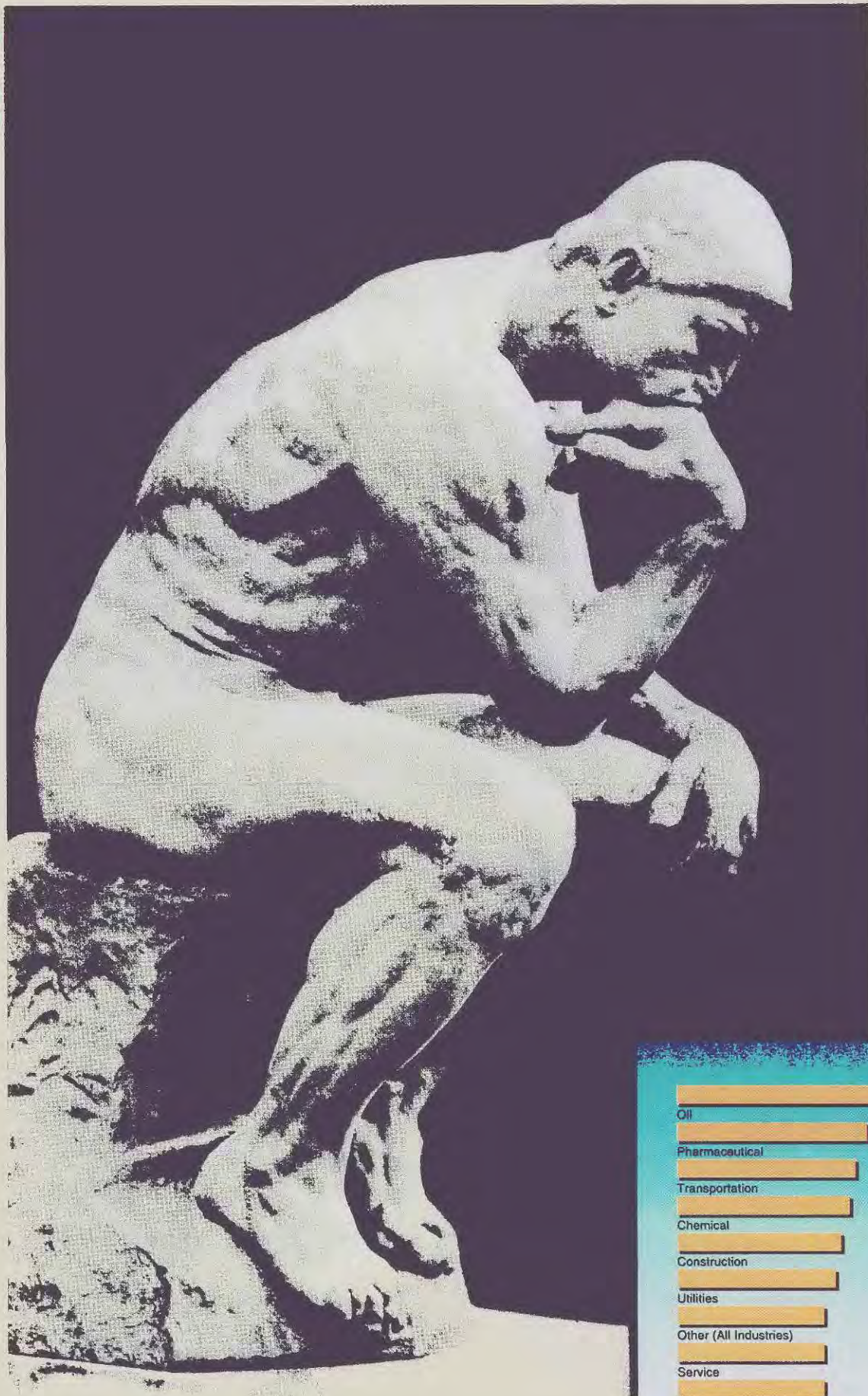
- Prohibit use of the state-of-the-art defense. The report suggested that government authorities responsible for imposing what subsequently prove to be inadequate standards should also be held liable.

"The polluter must still be liable when its activity was carried out in accordance with the technical standards using the latest technology or complied with legal rules and regulations... If, however, environmental damage does occur in spite of the above, the public authorities must also be proportionately liable," stated the report.

- Exempt polluters from civil liability "only in case of acts of God,"

Continued on page G10

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Europe

Continued from page G8

and then only if the action of the polluter was not negligent in incurring a risk of damage by act of God; e.g. anyone constructing an industrial building in an area particularly prone to earthquakes."

- To hold contractors liable for work performed by subcontractors "to prevent hazardous activities being contracted to small firms with a limited ability to pay with the deliberate intention of evading liability."

- Allow environmental interest groups to bring legal action in cases of environmental damage that is widespread or cannot be tied to a limited number of responsible parties.

The Assn. of Metropolitan Authorities in the United Kingdom, which represents local governmental authorities, supports placing the burden of proof on the polluter and the creation of industry funds to pay for the cleanup of past pollution.

"We are very much in support of the paper and what it's trying to achieve. We agree that the burden of proof should be with the polluter and not the reverse, which would make the system unworkable. We support the principle that the polluter must pay," said an association spokeswoman.

"For historical liabilities, retroactive liability as they have in the U.S. would have many problems because so many of the companies will have gone out of business. But

past pollution cannot be ignored and so we support an industrywide levy," said the spokeswoman.

The association was one of 63 associations, interest groups and major corporations that were consulted by the parliamentary committee.

As to the current availability of pollution coverage for U.K. metropolitan authorities, the spokeswoman said, "It's very difficult and becoming more difficult because of the uncertainty."

The only official published advice the European Commission has received so far was submitted in late February by the Economic and Social Committee, a standing E.U. committee representing employers, trade unions and other parties like academics and lobbying groups.

As with Mr. Albert's report, the committee's opinion focuses more on prevention of future pollution rather than identifying past polluters.

"Where future damage is concerned, the accent should be on prevention and on identification of liability; for past damage or where the liability is unsure, the real problem might be the containment and gradual reduction of damage until the original optimum conditions are restored, although an attempt to identify possible guilty parties should not be ruled out," the committee stated.

The committee criticized the legislatures of various European nations for restricting the scope of their laws to specific and high-risk industrial activities and stated that a

"non-exhaustive list of activities covered (by pollution laws) must be drawn up."

The Economic and Social Committee agreed with the European Parliament's opinion that certain third parties should be able to "seek legal redress in cases where there are no identifiable injured parties."

The third-parties that should be allowed to bring such actions against alleged polluters include: national and community public authorities, recognized national or non-profit making environmental protection and consumer groups, trade unions, professional associations, local ecological and consumer groups, as well as governments and private citizens.

The committee also agreed with Mr. Albert's opinion on the burden of proof.

"It is often difficult to establish a strict causal link in the case of environmental damage because of the multiplicity of sources of pollution and because damage may be spread over space and time. Placing the burden of proof on the victim thus makes his task very difficult, especially in cases of chronic pollution," the committee said.

"There might therefore be a case for easing the burden of proof by some form of presumption of causation. . . which instructs the court to take due account of the fact that certain dangerous activities carry an inherently greater risk of causing damage," it added.

The Economic and Social Committee also rejected compulsory insurance and the creation of a

cleanup fund for the entire European Union. It opted instead to call for continued availability of insurance coverage on the open market backed by regional and industry-specific funds.

"The enforcement of civil liability is directly dependent on (insurance and bank funds) being available, even if they are commensurate with the risk. Insurance companies and banks should therefore be safeguarded and not given inappropriate responsibilities, such as prior assessment of risks, which do not fall within their traditional sphere of responsibilities," the committee said.

"The committee also believes that no collective fund can be expected to replace civil liability, which must be retained, whatever the form. With due respect for the 'polluter pays' principle, the committee would support the establishment, as a backup measure, of funds based on shared liability for the risk, as these allow any costs to be shouldered jointly; provide contingency reserves which can be quickly used in emergencies; can make advance part-payments pending assignment of liability; and can compensate injured parties in cases where full costs cannot be recovered."

The Economic and Social Committee suggested that two forms of funds be created—general funds to restore past damage and specific funds for high-risk industry sectors. The latter, it suggested, would operate in the same way as standard insurance and would be given the right to take legal action to recover advance payments unless they were

expressly set up only to provide compensation. The latter fund "will be financed not only by the most directly involved sectors, but also by ordinary citizens through consumer prices or taxation," it said.

The Economic and Social Committee's opinions are not binding and the commission can choose to ignore its advice.

The third major source of influence on the European Commission as it drafts an environmental cleanup directive is the Council of Environmental Ministers, a group of cabinet-level officers from each European Union nation that meets on a monthly basis.

The council is reportedly divided on the scope of E.U. environmental legislation, but it is thought that opponents of a pan-European civil liability code currently hold enough votes to block implementation of any new legislation.

Britain, France and Portugal are opponents of a Europe-wide approach, and Britain is especially vociferous in defense of the adequacy of its own laws.

Meanwhile, Germany and Spain are strong supporters of the European Union-wide approach.

Under the qualified majority voting system established by the Treaty of Rome, which is the basis of the European Union, the United Kingdom, France and Portugal could block the implementation of the legislation. Out of a total of 76 ministerial votes, opponents of a directive must gather 23 votes to block it; Britain and France both have 10, while Portugal has five. ■

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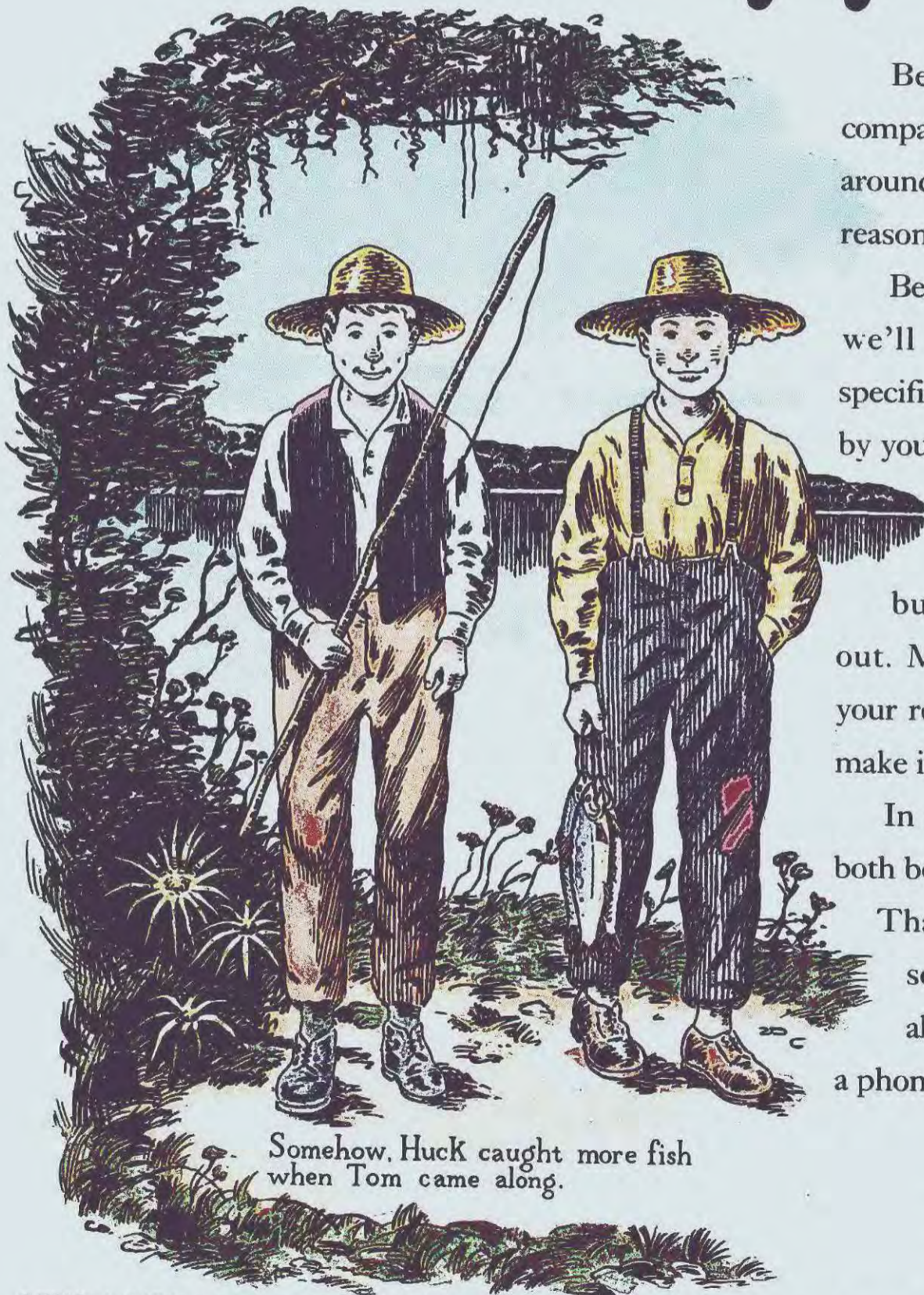
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ESRD cost

Continued from page 1

provided 18 months of health care coverage for an employee who developed ESRD would not have to provide an additional 18 months of coverage after a worker turns 65.

Employers' liability for ESRD is limited to a total of 18 months of coverage.

For example, in the case of an employee who developed ESRD at age 64, the employer's health plan would be primary for 12 months. After the individual turned 65, the employer's health plan would be primary for an additional six months.

It is easy to understand how Mr. Cole and most other benefit experts missed the ESRD provision. The provision comprises just a couple of vague sentences in the Omnibus Budget Reconciliation Act of 1993.

Except for a notice provided earlier this year to insurers and other organizations that administer Medi-

care, the Health Care Financing Administration has not provided any broad explanation of the provision.

The agency, though, does intend to issue regulations later this year, a HCFA official said.

While the provision is obscure, its effect on employers is clear: It shifts part of the cost of an extremely expensive medical treatment—kidney dialysis treatment typically runs in the range of \$30,000 to \$50,000 annually—to employers from Medicare.

"This is a very costly service. It is another costly exposure for employers and insurers," said Gary Grant, administrator of Part A field support for Aetna Life Insurance Co. in Middletown, Conn.

"It will come as quite a surprise," Mr. Grant said.

Mr. Cole of Franklin Electric, a Bluffton, Ind., manufacturer of electric motors, says becoming the primary provider of health care cover-

age for two retired workers with ESRD will boost its retiree health care costs by about \$100,000, or by roughly 10% of what it now spends on its entire retiree health care program.

"It is a big-time cost shift," said Francesca Bruno, a managing consultant with A. Foster Higgins & Co. Inc. in Detroit.

It is impossible to determine how much in ESRD costs will be shifted to employer-provided retiree health care plans from Medicare. But, the cost of ESRD treatment and the number of people with ESRD who are receiving Medicare coverage have been rising rapidly.

In 1990, the last year figures are available, Medicare spent \$5.2 billion on ESRD services, up 15.5% from \$4.5 billion in 1989 and a 92% jump over 1985 costs of \$2.7 billion. Enrollment in the program has been increasing by more than 9% annually with a total of 196,200 benefi-

ciaries in 1990.

The likelihood of developing ESRD increases significantly with age.

Of the roughly 46,000 new enrollees in the Medicare ESRD program in 1990, about 20,000 were at least age 65.

Another surprise for employers is that their retiree health care plans can again become the primary payer for a retiree with ESRD who may not have worked for the company for 10 or 20 years.

"There may not have been a work connection for a very long time," Frank McArdle, a consultant with Hewitt Associates in Washington, said of retirees with ESRD claims.

"It is provisions like this one that fuel employer fears that the government one day will try to make their retiree medical plans the primary payer for their retired workers," he said.

The new provision follows a series

of federal laws passed in the 1980s that shifted costs once assumed by Medicare to employer health care plans. Under those laws, for example, employer plans became the primary payer for workers who stayed on the job after 65.

Unlike the so-called working aged provisions, which apply to employers with more than 20 employees, the ESRD provision applies to all employers regardless of size.

And the provision is another example of how broad budget laws are used as vehicles by congressional staffers to shift benefit-related costs—with little or no public discussion—from government to employers.

Including such provisions in legislation like sweeping budget reconciliation measures makes it very difficult for employers to detect and lobby against them.

"I just wonder what comes next," said Mr. Cole. ■

High court takes bank annuity case

WASHINGTON—The U.S. Supreme Court has agreed to decide whether federally chartered banks can sell annuities.

The high court will review a 1993 ruling by the 5th U.S. Circuit Court of Appeals barring annuity sales by banks.

The case that led to the 5th Circuit ruling began in 1990, when the U.S. Comptroller of the Currency gave permission to NationsBank of North Carolina to sell fixed and variable annuity contracts through a subsidiary, NationsBanc Securities.

The comptroller concluded that a section of the National Bank Act granting banks the power to engage in "incidental activities necessary to the business of banking" gives them the power to write annuities.

The comptroller also decided that another section of the banking law allowing banks to act as insurance agents in towns of fewer than 5,000 does not limit them from doing the same in larger cities.

A Houston-based life insurance company, Variable Annuity Life Insurance Co., filed suit in federal court in Houston challenging the comptroller's action, but a federal judge rejected the challenge. That judge ruled that the court must defer to the comptroller's interpretation of federal banking law as long as the interpretation is "reasonable."

A panel of the 5th Circuit appeals court overturned that ruling in an August 1993 decision. Among other things, the appeals court found that:

- Annuity underwriting is not "necessary" to the business of banking and therefore is not the kind of incidental activity allowed under federal law.

- Congress clearly intended to prohibit banks from acting as insurance agents in towns of more than 5,000 people, since it specifically allowed it only in towns with fewer than 5,000 residents.

The 5th Circuit also rejected the comptroller's argument that annuities are investment products rather than insurance, finding that they are insurance products "both historically and functionally."

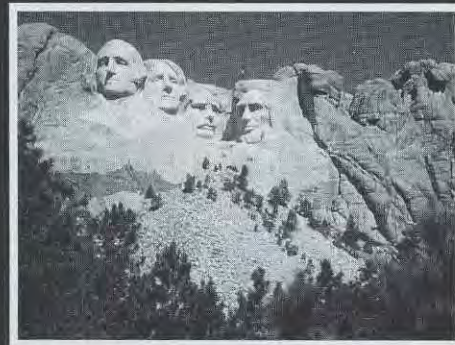
The appeals panel in January rejected the comptroller's request for a rehearing, setting the stage for Supreme Court review.

—By Douglas McLeod

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Insurer crusading against unfair competition

By LOUISE KERTESZ

WOODLAND HILLS, Calif.—A lawsuit filed by Crusader Insurance Co. last month charges that the Illinois Insurance Exchange, other non-admitted insurers and three surplus lines brokers have conspired to evade state law governing the placement of insurance with non-admitted insurers.

Crusader, an admitted insurer in California that has drawn praise for its efforts to provide

coverage for inner-city businesses, says the brokers and insurers have illegally funneled business to the non-admitted market without first seeking to place the coverage in the admitted market.

This has resulted in unfair competition as well as economic damages, the insurance company charges.

Woodland Hills-based Crusader, which wants a court order halting the insurers' and brokers'

alleged illegal practices, is also seeking at least \$20 million in compensatory damages plus an unspecified amount of punitive damages.

In addition to the Illinois Insurance Exchange, the lawsuit also names: Scottsdale Insurance Co. of Scottsdale, Ariz.; Admiral Insurance Co. of Cherry Hill, N.J.; Western Heritage Insurance Co. of Scottsdale; R.I.C. Insurance General Agency Inc. of Anaheim, Calif.; Canyon Pacific Wholesale In-

surance Service Inc. of Corona, Calif.; and Trans Cal Associates of Sacramento, Calif.

State insurance law "mandates that a surplus line broker may place insurance with a non-admitted insurer only if the insurance cannot be procured from an admitted insurer which actually writes the particular type of insurance in the State of California," according to Crusader's lawsuit.

The state insurance code "re-

quires that surplus line brokers make a diligent search among admitted insurers to place insurance prior to placing insurance with non-admitted insurers," the suit says.

"We have been on a campaign for a number of years to try to get the non-admitted companies and surplus lines brokers" to place coverage with admitted insurers "when insurance is readily available from Crusader and other admitted companies," said Roger H. Platten, Crusader vp and general counsel.

"No amount of testifying has done any good," he said, adding that "the Department of Insurance has been extremely good (in promulgating) tougher regulations to try and stop this."

In November 1992, the state Office of Administrative Law approved regulations known as Section 2174 that strengthened laws requiring surplus lines brokers to place coverage with financially sound companies and "to make a bona fide attempt to place coverage in the admitted market with companies that actually write the business," Mr. Platten said (BI, Dec. 7, 1992).

"But instead of taking the hint

'In truth, no effort is made by defendants to place insurance with admitted insurers,' the suit alleges.

and stopping, they're circumventing" the laws, he asserted. "We're mad as hell and we're not going to take it anymore."

Surplus lines brokers "are engaging in a sham procedure whereby they do not engage in a bona fide search to place insurance through admitted insurers. Rather, defendants maintain a list of admitted insurers who have purportedly refused the placement of insurance with them. In truth, no effort is made by defendants to place insurance with admitted insurers," the suit says.

"Defendant surplus line brokers and non-admitted insurers have conspired to fake compliance with the statutory scheme... such evasion was done with the knowledge of, participation by, and consent of the non-admitted insurer defendants," according to Crusader's suit.

Although none of the defendants had yet seen the suit, they were uniform in their rebuttal of its claims.

The suit is "defensible from our standpoint and totally without merit," said Jack King, vp and counsel at Scottsdale Insurance Co. "We're somewhat astonished and surprised that Crusader has taken that action."

"We have complied with the letter and the spirit of the (surplus lines) law and are prepared to prove it," said Mark Scott, a partner at surplus lines broker Trans Cal Associates in Sacramento.

"I don't know what the brokers are doing; as far as we know, we're in compliance with the law," said Robert Goren, vp and general counsel at W.R. Berkley Corp. in Greenwich, Conn., which owns Admiral.

James M. Skelton, president and CEO of the Illinois Insurance Exchange, was traveling last week and could not be reached. **BI**

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Insuring a good defense

By Stephen R. Goldstein

THE RISING COSTS of health insurance, the president's health care reform agenda and developments like the insurance company pullout from the automobile insurance industry in New Jersey have made all Americans aware of the insurance crisis that now looms over individuals. But the problems of uncontrollable, spiralling insurance costs, where the insurance industry either refuses to underwrite risk or will only do so at an unaffordable price, is a problem that American business has faced for quite some time.

Over the past two decades, businesses increasingly have come up with unique and innovative ways of addressing how their organizations can shift the risk of loss: Such companies have become self-insured.

Regardless of the form or structure of their program—be it a captive, self-insured retention, or a so-called "pure" self-insured—they have all selected a risk financing method as an alternative to purchasing traditional insurance policies. Such a choice aims to reduce costs of insurance and claims administration by increasing the company's control and increasing efficiency and productivity.

Unfortunately, along with these laudable benefits of self-insurance comes a large amount of additional administrative and legal burdens and responsibilities, which, if not recognized and properly dealt with, can result in the failure of the program. A poorly conceived or administered self-insurance program promotes inefficiency and thereby increases costs, defeating the reasons for choosing self-insurance in the first place. Some of the concerns that must be dealt with—and some of the pitfalls to avoid—in running a defense litigation program within the context of any of these innovative and non-traditional forms of insurance follow.

The defense litigation process

Let's assume that the company's tax accountants and lawyers, corporate officers, and in-house commercial attorneys have all given input to structure the self-insured program, which is up and in place. Now, how to set up a system to meet the initial objectives of lowering costs and tightening controls?

The next logical step for most companies is to implement a claims management program.

Some companies do this in-house, by hiring a risk manager or assigning the task to another employee. Lately there has been much fanfare about the various software programs that the in-house administrator can use to run a claims management unit, akin to those that have been provided for years by outside administrators, claims managers and adjusters. Some companies go this route, while others choose to contract with a third party administrator.

Whatever the claims management alternative selected, many companies have mistakenly failed to give any further thought to the defense litigation process.

Such an omission is easily understandable, since it is based upon following the same procedural steps that were taken for years when the business was covered by a traditional commercial general liability, errors and omissions or other such liability policy.

Typically, the initial legal papers (usually a writ, summons, petition or complaint) would be served or mailed to corporate headquarters. The papers would almost instantaneously be sent, sometimes after only a quick glance, to the company's broker or another representative at the insurance company. The policyholder, relieved that it had met its duty of giving "prompt and timely notice" to the insurer, would breathe a collective corporate sigh of relief and consider itself done with the matter.

Several months, and sometimes years later, an unknown attorney from an unknown law firm in a far-away city, would take a stab at making contact with the corporate counsel in an attempt to obtain information or locate a witness important to the

Litigation programs raise special issues for self-insurers

defense of the lawsuit.

The administrative process—the initial set of questions to be asked and then answered regarding confirmation of coverage, notifying excess insurers, responding to requests from co-defendants seeking defense and indemnity under your policy, making similar claims against a co-defendant's policy, evaluating the nature of the plaintiff's causes of action, and comparing that with the scope of insurance coverage your company purchased—most likely has been done without the knowledge, much less the input, of the policyholder.

Last but not least, if an insurance adjuster or claims manager handling this claim were unable to reach a quick settlement with the plaintiff, the matter would then be turned over to an attorney, and the litigation would move forward.

Typically, this last step is also taken without any knowledge or input from the policyholder. Under the terms of the typical commercial general liability insurance policy, the choice of counsel remains that of the insurance company exclusively. Sometimes there

It is important that your litigation attorney have the same level of awareness and knowledge as you concerning the 'unspoken' cultural intangibles which influence policy in any business.

may be some "boilerplate" language about conferring with the policyholder on this point; but typically, if the case is not handled by an insurer's own in-house attorneys, it is assigned, at random or on a rotating basis, to any one of a group of pre-approved outside law firms that the insurance company regularly assigns cases.

Under the self-insurance program, the company must hire an attorney to perform these insurance litigation tasks. This is the starting point for making decisions that will determine the expense, efficiency and degree of control over claims and suits that is the success or failure of self-insurance.

Your in-house counsel or law department, regardless of its strength and size, addresses day-to-day business matters. Contracts, labor problems, disputes over deliveries of goods, financial and governmental reporting requirements, are the areas of expertise of most corporate counsel. Similarly, outside counsel used for corporate affairs, financial transactions, mergers and acquisitions, or even for setting up the self-insured program in the first place, are likely to have little or no experience in the highly specialized area of insurance defense litigation.

Particularly in today's highly litigious atmosphere, with such pressing concerns as environmental law, toxic waste hazards and products liability—just to name a few, it is essential that retaining an attorney to work within the self-insured program be treated with the same degree of concern and scrutiny given to placing an attorney on retainer to counsel on corporate matters.

Litigation as a means of doing business

Surely no company wants to be sued, and litigation avoidance should remain of the utmost priority.

Given the realities of the present day world, though, litigation is as commonplace as the need for an

insurance program. How that litigation is handled, and the manner in which the attorneys litigate the case, will often be the single most important factor in whether the litigation is used as a means toward achieving the company's overall goals of efficiency and cost-savings for which self-insurance was selected in the first place. In this regard, *litigation should be part of the organization that it is intended to serve. If it does not help the business to move forward, it is wasteful and counterproductive.*

These general policy objectives can be used to construct a more specific checklist to guide risk managers in the task of selecting litigation defense attorneys. The following is a list of suggested criteria to be considered in the selection process:

- Choose an attorney knowledgeable about your field of business. One of the main reasons why companies elect to self-insure is that they know their overall business environment and the technical complexities of their field of business better than an insurer with clients in hundreds of different fields.

The advantage of self-insurance is that your company is better able to read the subtle changes, the dips and curves, that are taking place within your own industry and how, for example, changing loss patterns within the field may affect the decision-making process influencing settlement negotiations. It is important that your "partner" in the case—that is, your litigation attorney—have the same level of awareness and knowledge as you concerning the "unspoken" cultural intangibles which influence policy in any business.

Without this shared knowledge, there is no assurance that the litigation path will be a smooth and efficient one. Client and attorney must be on the same "wave length" and be able to work in tandem to implement the legal system to achieve the best possible result for the *business* of the company. This is vital for the company's best interests, even if such a result might appear to be a "loss" in the strict legal sense. Deciding whether or not to take a case all the way through jury verdict, stopping short during the middle of the trial, or to settle early must be based upon a full knowledge of the state of the industry, local economies and the uniquely individual interests of the self-insured.

- Choose an attorney familiar with the principles of self-insurance. When hiring for any position, we always ask, "How much experience do you have?" For the self-insured, the question is doubly important because it has two components. The company must ask the prospective attorney not only about the attorney's experience in handling the type of claim upon which the plaintiff is suing—i.e., premises liability, toxic exposure, engineering malpractice—but additionally, it is of the utmost importance to determine the level of experience the attorney has in handling such cases for *self-insured entities*.

How comfortable is the outside defense counsel with the notion of possibly supplanting his own reputation as a "courtroom lion" to further the business concerns of the self-insured?

As such, an attorney who is assigned cases by an insurer usually receives a variety of different types of cases, in a wide array of business environments. Because the livelihood of the attorney depends upon the "bottom line" in defense and indemnity costs to the insurance company when the case is completed, the traditional insurance defense attorney is only as good as the outcome of his last verdict.

This places undue emphasis upon courtroom prowess, which at best creates an "all or nothing" roll of the dice, and sharply increases trial costs in either event.

- Choose an attorney who can adapt and truly has the flexibility to meet *your* needs. The entire concept of self-insurance emphasizes the commitment of a company to place a personal stake in financing its own risks as opposed to merely paying premiums to a

Continued on next page

Workplace 'accidents' are no accident

Dr. Richard Kunnes

THE BIGGEST SINGLE cause of the risk of workers comp claims and claims dollars is *not* fraud, stress claims, unbundling, greedy providers, failure to use fee schedules, or failure to implement any particular managed care component.

Ameliorating the above negative elements and instituting an integrated managed care approach would certainly help. However, it would not get to the root cause, namely: There is virtually no such thing as an accident.

Almost every workplace accident has a demonstrable, definable, measurable and, more importantly, a *preventable* cause.

The next time an employer, manager, supervisor, employee or physician says the accident was caused by "human error," he or she is telling you that they have no idea why that accident occurred. Or, worse, doesn't care why it occurred.

Assigning or blaming "causes" such as human error is akin to saying, "The devil made me do it," "The dog ate my homework," or "Don't ask, don't tell,

don't pursue," which is the Clinton administration's policy on gays in the military.

While the administration's military policy is an understandable approach, "Don't ask, don't tell, don't pursue" in a workers comp context can literally result in unnecessary and *preventable* injuries, even death.

At the workplace, all accidents are a wake-up call that must be answered if similar accidents are to be prevented in the future.

The minimal requirement for accident control—and, better yet, accident prevention—is to establish a workplace culture and administrative system where:

- Safety is paramount.
- The best claim is no claim.
- A zero accident rate is perceived as attainable.
- Claim prevention is significantly recognized and financially rewarded on a focused and personal basis.
- All accidents are formally investigated and reported by a standing committee composed of management and staff.
- Claims reports must be sufficiently

data-intensive to allow detailed, definable departmental investigations.

- All employees receive formal and ongoing orientation on accident prevention, investigation and reporting.
- An accessible and confidential employee assistance program handles problems of substance abuse, stress and other mental health conditions *prior* to their resulting in an injury.
- Claim prevention and health promotion techniques are implemented. These should include: preventing unauthorized machine alterations; absence of alcohol at employer-sponsored functions; prohibiting smoking anywhere on the employer's premises; and preventive drug screening programs, among other things.
- A monthly health and safety newsletter/information sheet is produced.
- Emphasis on employer/employee mutuality, cooperation and employee advocacy is the rule.
- Ergonomic analysis is completed and results implemented on all major job categories.
- Safety and comfort suggestion

boxes are made available to all employees, with financial rewards for cost-saving suggestions.

- Pre-employment exams are performed that, at a minimum, include: fitness testing for a specific job; blood pressure; weight; automated health risk appraisals.
- All employees receive physical conditioning exercises (where relevant) for their specific job.

These could include, for example, back training for lifters, sitting exercises for drivers and wrist/hand training for PC operators.

With all these preventive approaches in place, accident arrogance, ignorance and passivity can be lessened and most accidents avoided. . . because workplace accidents are not accidents. **B**



Dr. Richard Kunnes is president of *Managed Speciality Products*, a division of *The Prudential Insurance Co. of America* in Roseland, N.J.

Litigation program

Continued from previous page

large insurance company and receiving a boilerplate insurance contract.

Achieving the objectives of tighter control, cost savings and efficiency can only be met by tailoring an administrative claims management program to meet your company's individual needs and requirements. Reporting procedures and formats, billing practices, setting reserves, case review and evaluation, budgeting and a myriad of other administrative aspects of the program will vary from one company to the next. The law firm hired must be flexible enough to respond and give personal attention to these individual characteristics of your self-insurance program.

Additionally, the self-insured should objectively look at the structure and characteristics of the law firm under consideration. While anyone who wants your company's business will offer assurances that they will conform to and comply with the individual particulars of your self-insured program, the company must be fully satisfied that the law firm has the structure and flexibility in its own internal organization to adapt to and satisfy the client's needs.

These are the types of questions that must be asked of a law firm: Is the firm too rigid and set up as a departmentalized or "corporate-like" entity? Do the attorneys handle cases for hundreds of different companies with the "common thread" being the insurer writing the insurance? Is the law firm small enough to respond to your individual needs? Are they too large to adapt themselves into your business culture (rather than you adapting to theirs) to better serve *your* bottom line?

Benefits of effective litigation management

If the foregoing guidelines are adhered to, a smooth and efficient case management program can result in financial savings not only on matters presently being litigated, but can in immeasurable ways reduce the costs and likelihood of litigation in the future.

A few practical examples serve as illustration.

The effective litigator for the self-insurer will come to know your organization and its players almost as well as you do. One telephone call by the attorney who knows and understands a company's operations should be all that is needed to have the proper

documents, blueprints, contracts pulled and appointments arranged for the attorney's staff to review the documents to comply with court-ordered discovery requests or arrange a discovery and inspection.

The job of the outside litigator for the self-insured is to minimize the time required by in-house corporate counsel and others to be devoted to case management efforts.

This means that the attorney who gets to know your company's policies, written and unwritten, and the various departments and chains of command, will be able to prepare the case or execute the legal task quickly and more efficiently, and cause less disruption to your valuable management staff.

Typically, corporate counsel conducts contract negotiations and preparation and, some years later, different attorneys assigned by the insurer use those contracts during the course of the litigation. Often, aspects of the contracts scrutinized in the litigation concern promises to indemnify or hold harmless, obligations to procure insurance for others, warranties, or a "scope of work/services" description.

Unfortunately, there is usually little or no communication between the outside defense attorneys (assigned by an outside organization) who litigate the language of the contract and the corporate counsel who drafted it years before. If a relationship exists between these two groups of attorneys, the language's impact on the litigation can be used as a cost-saving measure for the future.

A smart self-insured company geared to *pro-active* cost containment will have the defense litigation attorney review or assist corporate counsel in the development of contracts to protect the company from future liability claims, or mitigate potential damages or insurance obligations to others. A company that becomes self-insured needs to have its contracts, purchase orders, vendor agreements and all other such business documents reviewed with these issues in mind. Wholesale changes may be needed in standardized contracts and current contracts should be reviewed for potential "smoking guns" that might prove to be costly at some time in the future.

A metal stamping plant had been in business for decades. Its claims had been handled by an insurer that distributed the cases more or less to everyone's satisfaction. Premiums and legal bills were paid, and no one questioned the costs (except the plant's comptroller).

The company then became self-insured. Because the

details of each individual case were being closely overseen and managed intensively by the company's risk manager and outside counsel, a very subtle pattern regarding the claims became visible for the very first time.

While the factory floor consisted of no fewer than 15 different work stations, three of the stations generated 25% of the claims. These three stations were not located next to each other, and seemed to have little in common. Moreover, the disproportionately high amount of incidents at these particular stations was not so dramatic as to ever be noticed until the company went self-insured and began handling its own claims. If the high incidence of loss could be brought down to the norm, the savings would be obvious on this relatively small bottom line. To the large insurer that had previously provided the insurance, the impact was minuscule and the incidence of loss only served to increase the policyholder's premium charges.

In working on the defense of the different cases, the attorney hired under the self-insurance program viewed them in a "global" context and discovered for the first time that these three stations each employed a fabrication technique that called for the use of interchangeable dies that these three machines could not accommodate. While all of the machines in the shop apparently complied with all government and industry safety requirements, this subtle nuance was never discovered until the self-insured program was established. Retention of defense counsel familiar with the client's concerns and business culture made a significant difference.

Ultimately, the success or failure of the self-insured program depends as much upon the level of quality, skill and expertise that the people who work with the program bring to it, as it does upon the structure of the program itself. An effective self-insurance program must be staffed by risk managers, claims administrators and attorneys that have particular expertise in navigating the self-insured company through today's dangerous litigation mine field. **B**



Steven R. Goldstein specializes in *tort and insurance litigation, medical malpractice and construction matters*. *Goldstein & Associates* is in Jericho, N.Y.

Safety starts with getting enough sleep

"The Twenty Four Hour Society"

By Martin Moore-Ede, M.D., Ph.D.

Addison-Wesley Publishing Co., Reading, Mass.

617-944-3700

\$22.95

By Kevin M. Quinley

ARE YOU BLEARY-eyed from staying up late working on that spreadsheet? Were you burning midnight oil last night working on a key insurance renewal? Feeling jet-lagged from that trip to your European divisions? Join the club. The encroachment of work into personal lives exacts its toll in significant but often overlooked ways. The price is more than sleep deprivation. The long hours and stretched schedules raise safety concerns in a whole host of industry sectors where losses can be catastrophic.

Often overlooked is that society's most infamous industrial accidents—Exxon Valdez, Three Mile Island, Chernobyl, Bhopal, the fatal navigational error of Korean Airlines 007—all occurred in the middle of the night.

Fodder for the next Stephen King novel? Hardly. The causative factors share in common the factor of human fatigue, exacerbated by our technological breakthroughs and our penchant for around-the-clock service.

Common sense, along with millions of years of evolutionary history, shows that people are more error-prone when their natural sleep and waking cycles are disrupted. Yet our society, driven by the pace of high-tech communications and the financial pressure of international competition, increasingly tempts fate as we strive for around-the-clock performance.

Airline pilots fight drowsiness at jet controls while haggard executives race through multiple time zones. Securities traders get up in the middle of the night to

Books & Ideas

juggle huge sums on foreign markets, or to check the price of the yen on the Nikkei Stock Exchange. Medical residents make life and death decisions in the blur of 36-hour shifts.

Lawyers negotiate deals and make significant decisions in their struggle to hit their firms' quota of 2,500-billable hours per year. Truckers strain to make schedules and to maximize earnings by driving loads through the night. Faxes and modems keep us plugged into our work, night and day, everywhere we go.

The results: employee burnout, accidents, litigation and loss of life. Aren't these the types of risks which risk managers are supposed to manage?

Author Dr. Martin Moore-Ede offers a fascinating paradigm of risk assessment in his new book, "The Twenty Four Hour Society." The book's subtitle is, "Understanding Human Limits in a World That Never Stops." It is a thought-provoking book which should raise risk managers' consciousness of another corporate risk that merits attention and intervention. The human and financial costs of unmanaged fatigue can lead to catastrophic loss.

Insurance primers distinguish between a peril—a cause of loss—and hazard, an underlying condition making loss more likely. To the extent risk management aims to identify risks and factors which could give rise to loss, the hazard of mind-numbing fatigue must be addressed.

Dr. Moore-Ede is a Harvard Professor and Director of the Institute for Circadian Physiology. An international expert on the day-night ("circadian") cycles of human alertness and fatigue, he consults with businesses in providing solutions to enhance human alertness in the workplace.

Insightful in tracing the causes of the 24-hour society, Dr. Moore-Ede is more adept at opposing the

problem than in proposing solutions. On this turf he is on softer footing. For example, he suggests a "light visor" gadget for travelers to wear on long plane trips. (Try explaining that to the flight attendants.) Clearly Dr. Moore-Ede hopes that decision-makers will read this book and take steps within their own organizations to manage the rest needs of the human machine.

Dr. Moore-Ede shows managers how to rethink work schedules, manage information flow and travel demands, and how to create their own personal "time cocoons" to attain maximum efficiency. Taking an ergonomic approach to which risk managers and safety professionals can relate, he shows how to improve work environments to maximize alertness. These steps range from redesigned conference rooms to control centers that deter drowsiness.

One subplot in this highly readable and non-technical book is that engineers have more maintenance concern for machines and equipment than for the human operators of such hardware.

Many risk managers would not immediately consider this as a book with risk management relevance. That would be an unfortunate mistake, since it offers a thought-provoking paradigm of corporate safety which all safety and risk professionals can heed. Get a copy and read it, but don't stay up late to do so!

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Kevin M. Quinley is vp of risk services for MEDMARC Insurance Co. Inc. and subsidiary Hamilton Resources Corp., both of Fairfax, Va. Mr. Quinley holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Comp covers worker injured on drive home

Legal Briefs

An employee injured while being driven home from work in a company car by a fellow employee was entitled to receive workers compensation benefits, according to a Florida District Court of Appeal.

Johnny Couto Jr. was injured in a car accident while on his way home from work. At the time, Mr. Couto was a passenger in a company car being driven by a fellow employee. For over two years, since his own car stopped running, Mr. Couto had been driven to and from the job site every time he worked. He was charged a nominal fee by his employer for the transportation when he worked a normal shift. No charge was made when he worked overtime or an extra shift. On the day of the accident, Mr. Couto was being taken directly home from his job site; he was not running any personal errands in the company car and the driver was not running any business errand other than transporting Mr. Court. Mr. Couto filed for and was awarded benefits.

On appeal, the employer argued that under Florida law, when the employer provides transportation for the exclusive personal use by the employee, injuries incurred to and from work are not compensable. However, the court concluded that the transportation provided here was not for Mr. Couto's exclusive use since the employer decided when to send a car for Mr. Couto, decided which car to send and decided who should drive the car.

According to the court, Mr. Couto did

not have the exclusive use of the means of transportation. The award of benefits was affirmed.

Securex Inc. vs. Couto, District Court of Appeal of Florida, Dec. 7, 1993 (BI/05/July \$10)

Car accident covered by comp

According to a decision of the Court of Appeals of Virginia, an employee struck by an automobile while crossing a highway to get a soft drink, was injured during the course of employment and the accident arose out of employment for workers compensation purposes.

Kraf Construction Services Inc. was engaged in the landscape construction business. Its employees reported to work at the company lot at 6:30 a.m. and were then transported to various job sites and then back to the company lot at the end of the work day.

The employees left their personal vehicles at the company lot. The company provided transportation for the employees during the work day. Employees were paid from the time they arrived at the lot until they left the job site at the end of the day.

Prior to leaving the job site for the company lot, the employees customarily obtained refreshments on a regular, authorized basis at a nearby convenience store. Steven J. Ingram, a Kraf employee, was struck by an

automobile while crossing a highway to get a soft drink. Mr. Ingram applied for and was awarded workers comp.

On appeal, Kraf argued that the accident did not occur during the course of employment since Mr. Ingram was attempting to satisfy his thirst away from the employer's premises.

"Quenching one's thirst in a conventional manner at a place the employee is expected to be," the appellate court said, "is considered incidental to the employment and, thus, cannot be considered a frolic of the (employee's) own." The court emphasized that Kraf provided transportation to and from the work site away from the employer's premises. The award was affirmed.

Kraf Construction Services Inc. vs. Ingram, Court of Appeals of Virginia, Nov. 16, 1993 (BI/05/June \$10).

Twins are one pregnancy

An Employee Retirement Income Security Act Plan could reasonably be interpreted to provide only one maternity benefit for a Caesarean birth when a mother delivered twins, one by natural birth, the other by Caesarean section, according to the 10th U.S. Circuit Court of Appeals.

Sue Ann Rademacher was a covered dependent under an ERISA plan. She went into premature labor with twins and was transported by helicopter to a regional hospital. She delivered the twins, one by natural birth, the other by

Caesarean section. The plan provided for payment for charges in connection with her pregnancy and limited such payment to the maximum as set forth in the schedule of benefits. The schedule provided a maximum maternity benefit of \$1,500 for normal delivery and \$2,500 for Caesarean section. The plan paid the higher of the two based on their interpretation that the plan provided for one maximum maternity benefit per pregnancy. Ms. Rademacher sued and won in the trial court.

The appellate court concluded that the plan's interpretation of benefits was not arbitrary nor capricious. The court said the plan language referred to benefits payable "in connection with her pregnancy," and outlined a scheme by which a specified maximum benefit amount was to be paid. According to the court, the plan could be reasonably interpreted to provide only one maximum benefit payment per pregnancy. The trial court decision on this issue was reversed.

Rademacher vs. Colorado Assn. of Soil Cons. Medical Plan, 10th U.S. Circuit Court of Appeals, Dec. 29, 1993 (BI/04/July \$10).

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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.

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Rewards for stolen goods can backfire in hijackings

NEW YORK—Offering large rewards to retrieve goods stolen in truck hijackings may inadvertently encourage crime rather than reduce insured losses, law enforcement officials say.

A reward offered by a company or its insurer may actually encourage theft because a criminal can claim to have found a load and collect the reward rather than face the risk of being caught selling the merchandise.

"Whenever an award is offered, you have to offset it with that risk," says Richard Touw, a lieutenant in the cargo theft/robbery unit of the New Jersey State Police in Glen Gardner, N.J.

And that risk has grown in recent years, he said. In New Jersey alone, thefts from freight trucks cost \$27.3

million in 1992. Greater police resources helped reduce that toll by 41% in 1993, though \$16 million in goods was still hijacked in the state last year.

A better use of insurers' money might be to help finance sting operations that lead to the arrest of hijackers, says Robert F. DeBellis, special agent with the Federal Bureau of Investigation in Newark, N.J.

Well-run sting operations using undercover agents to conduct deals with hijackers are effective tools for trapping criminals, he said.

In one recent operation, the FBI set up a small boutique in New Jersey, which led to the recovery of \$18 million worth of merchandise and 20 arrests, Mr. DeBellis said.

However, the FBI budget is not large enough to fund many sting operations, he said.

Insurance companies that have to pay losses for hijacked goods can help finance the operations, Mr. DeBellis said.

"We can go to the insurance people, and if you give us the money to set up the undercover operation, we can get (the goods) back," Mr. DeBellis said. "Insurance companies have helped us with this."

CIGNA Corp. successfully recov-

There's Not a Shadow of a Doubt ...

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A better use of money is to finance sting operations, says Robert F. DeBellis.

ered all of the goods hijacked late last year from a Los Angeles company it insured, said Claire Jones, assistant vp at Recovery Services International Inc., a CIGNA subsidiary.

The client lost \$3 million of computer equipment in a hijack. CIGNA paid out a \$2 million claim to the client, and then funded a \$100,000 sting operation by local law enforcement authorities that recovered all of the equipment, she said.

CIGNA will only fund stings when they have information from law enforcement authorities that which shows that there is a good chance of recovery and if the goods are easily identified, Ms. Jones said.

Before insurers get involved, though, the companies that own the goods can take better security precautions to prevent cargo theft losses, said John M. Tichenor, senior staff surveyor for CIGNA Property & Casualty Loss Control Services in New York.

For example, companies should upgrade seals on containers from the conventional metal and plastic seals to high-quality bolt seals, he said.

These deter thieves from trying to enter a more secure container and divert attention to easier-to-enter containers, Mr. Tichenor said.

And, the numbers of the seals should be logged through the various stages of the transportation so that the integrity of the seal can be checked throughout the transit.

"You should have your people physically check the seals," Mr. Tichenor said.

Companies should also check delivery documents to see that the transit time between the trucking terminal or pier and the owners' facilities is consistent with mileage and traffic conditions, Mr. Tichenor said. "If your place is three blocks away and delivery takes over an hour, you can start to piece together how the theft occurred."

—By Gavin Souter

Trident

Continued from page 2

Ocean and the Byrne Partnership contributing roughly \$18.4 million each.

Overall, the four general partners will contribute 17% of Trident's total capital, the maximum they can invest and still maintain the partnership's status as a non-controlled foreign corporation for tax purposes, explained Robert Clements, chairman and chief executive of M&M Risk Capital.

Other investors include pension and university endowment funds, foundations, private companies, foreign government entities and individual investors, according to Mr. Clements, who declined to name any of the investors.

"It's a cross-section of people who can make an investment of this size that's not liquid," he observed.

The largest investment is \$100 million and the smallest \$5 million, with several investors contributing \$50 million, Mr. Clements said.

Trident will be looking at several areas for investment opportunities, according to a memorandum outlining the partnership's plans. These include:

- Existing insurance and reinsurance companies, in which Trident would take a majority or substantial minority interest.

Particularly attractive would be "turnaround" opportunities with companies that can be restructured by disposing of unneeded operations, refocusing underwriting and claims activities, effecting management changes and cutting costs, the memo notes.

Investments in this area could also include supporting "demutualizations" of mutual insurers into stock companies and privatization of foreign companies formerly controlled by their governments.

- Limited liability underwriting vehicles at Lloyd's of London.

- Start-up insurance or reinsurance ventures where there is a need for capacity in a particular line of coverage.

Although Trident theoretically could invest in life/health insurers or even health maintenance organizations, it likely will focus on property/casualty insurance and reinsurance, Mr. Clements said.

"I believe the property/casualty business is entering a stage of significant transformation," Mr. Clements said.

"The end point of this activity is that it will look much more like a global marketplace than at the present time, much more like the marketplace for other financial services."

The trend toward globalization and underwriting specialization—along with the need for insurers to operate more efficiently—is causing a restructuring of the industry, which in turn will create investment opportunities for Trident, Mr. Clements suggested.

Mr. Clements added that he sees the biggest opportunities in restructuring existing companies rather than forming new ones.

Until now, M&M and Morgan have made names for themselves with such start-up operations as Mid Ocean, ACE Insurance Co. Ltd. and X.L. Insurance Co. Ltd.

"Start-ups are absolutely splendid vehicles, but for it to be sensible to start a new company from scratch, you need a very specific set of circumstances," including a capacity shortage for a particular line of coverage and a product that will meet that demand, Mr.

Clements observed.

M&M Risk Capital and Morgan will work jointly to identify potential investments for Trident, and the Trident general partners will then either accept or reject the advisers' recommendations, he explained.

The partnership agreement calls for all of Trident's funds to be invested within five years; any money not invested within that period must be returned to the investors, Mr. Clements said.

In addition, Trident plans to sell its investment interests, through public stock offerings or private sales, when the timing appears

'The end point of this activity is that it will look much more like a global marketplace,' says Robert Clements.

right to do so, according to the memorandum.

Mr. Clements noted that the partnership is intended to be liquidated within 10 years. Once Trident sells off its investment in a particular company, the proceeds

will be distributed to the investors and will not be reinvested in new ventures, he said.

As organizers of the facility, M&M Risk Capital and Morgan will split a fee equal to 2% of the amount of capital raised.

Assuming \$650 million in total contributions, this would amount to \$13 million, with M&M Risk Capital collecting 60% of the fee and Morgan 40%, Mr. Clements reported.

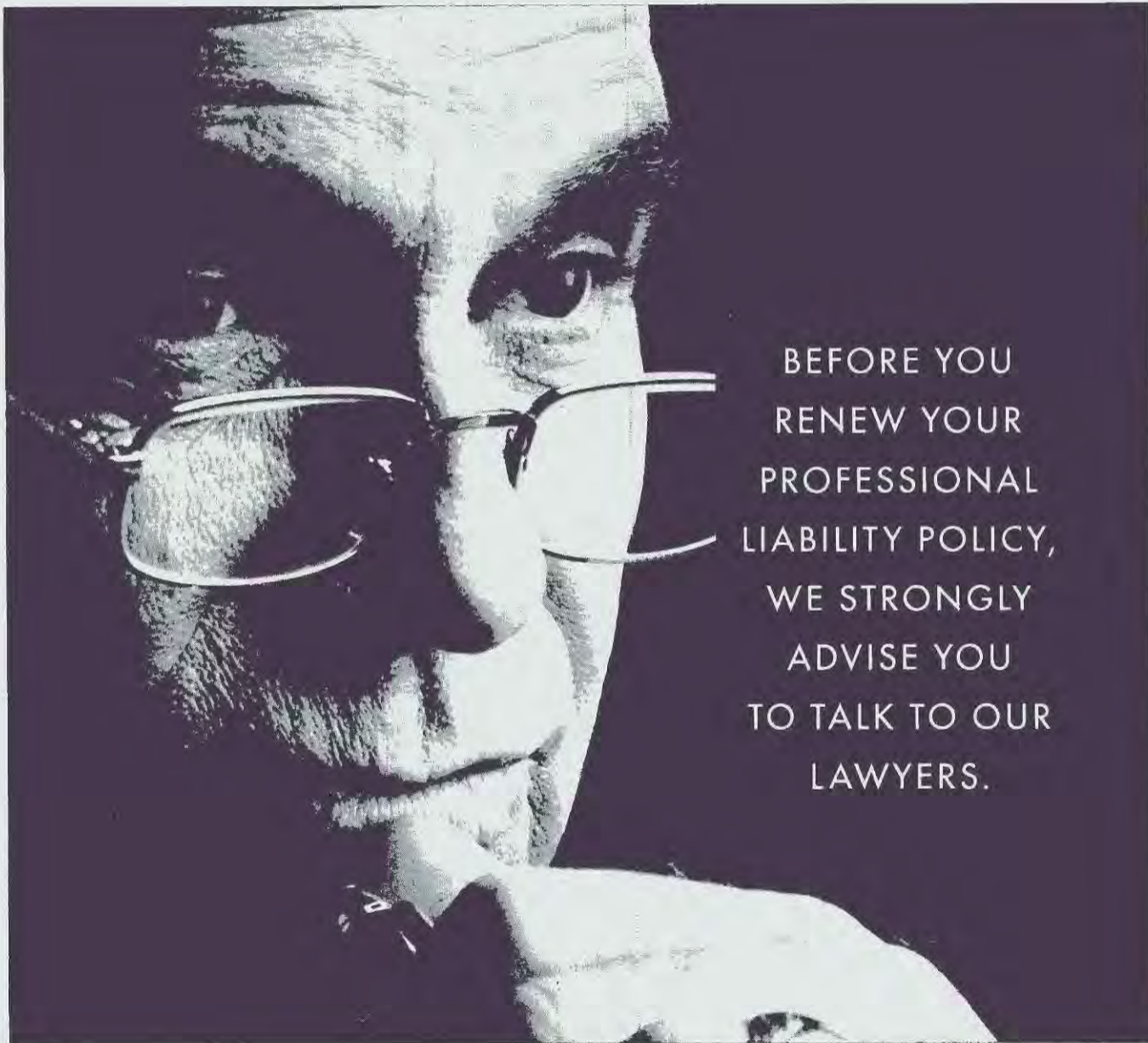
The partnership agreement also includes a profit-sharing arrangement for the four general partners, Mr. Clements said. That provision would be triggered if Tri-

dent investments achieve a 13% annual rate of return; once triggered, the provision will pay the general partners 20% of Trident's profits, with M&M Risk Capital receiving about 40% of the profit-sharing total and the remaining 60% divided among the other three general partners, he explained.

Trident backers expect the partnership to benefit from business generated by M&M's worldwide brokerage network, though Mr. Clements said it is "exceedingly unlikely" that any Trident affiliate would operate as an exclusive M&M brokerage market. **BI**

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Testify

Continued from page 3

pendant (see story, page 3). "Here, the plaintiffs' lawyers, who stand to make millions of dollars in fees, were interested in theatrics, harassment and coercion."

However, other attorneys see the decision as upholding Illinois' unusual—but not unique—rule that compels the appearance of out-of-state witnesses at a trial.

"Hopefully these companies will pay attention to (the decision) and we won't have to go through such battles all over again," said Michael J. Brickman, a plaintiffs attorney from South Carolina who served as national counsel in the case.

Other attorneys for both the plaintiffs and the defense, including attorneys for Owens-Corning, declined to comment.

Providing a high-profile witness to testify "live" energizes a trial, attorneys generally agree.

As Mr. Nash explains, "If I represented a corporation and I had a corporate officer who was bright and articulate, I'd want that person to come and give live testimony. He would be much more persuasive."

If the corporate officer was less polished, but at least "knowledgeable and truthful," Mr. Nash said he'd probably still want an in-person appearance, though perhaps with more preparation.

In most states, an executive of a company based in the state where the trial is being held can be required to appear and testify. An executive of a corporation based in any other state usually submits to a deposition in his or her state, which is then read to the jury during the trial.

It's usually "very boring" for a

jury to hear testimony read into the record, said Mr. Brickman, an attorney with Ness, Motley, Loadholt, Richardson & Poole in Charleston, S.C., who specializes in the medical and liability aspects of product liability cases. A videotaped deposition is only a little better because a juror still can only see and hear the witness respond to questions instead of hearing a full exchange with the questioning attorney, he explained.

Judges in some jurisdictions consider the mere fact that a corporation is doing business in a state sufficient grounds for exercising jurisdiction over out-of-state executives, attorneys say.

In California, "it's a little questionable whether they can do it," said Tom Freeman, an attorney with Brobeck, Phleger & Harrison in San Francisco who represents corporate policyholders in insurance coverage litigation.

The Illinois rule, known as 237(b), "is atypical as it's applied in Illinois," said CCR's Mr. Fitzpatrick.

The rule says: "If the party or person is a non-resident of the county, the court may order any terms and conditions in connection with his appearance at the trial that are just, including payment of his reasonable expenses."

A party that violates that can be subject to a variety of sanctions, including the striking of pleadings and the entering of a judgment, as was done in the Owens-Corning case.

"There are very few states that compel out-of-state executives to come in and testify," Mr. Fitzpatrick said, though some state courts in Texas have taken similar actions.

"I think it is becoming routine in Illinois because plaintiffs always want to get leverage over the defendant in settlement negotiations," Mr.

Fitzpatrick said. For example: "My demand is \$100,000 or you'll have to bring in your corporate president on the day of his annual meeting."

"Plaintiffs attorneys think it gives them a leg up in negotiations" and "it does," especially in run-of-the-mill product liability cases where a plaintiff is seeking \$50,000 to \$100,000 in recoveries, he said.

The Illinois rule is hard to challenge because it provides broad latitude for making corporate executives testify, attorneys say.

"The range of relevant and material information which is discoverable includes not only what is admissible at trial but also that which leads to what is admissible at trial," the appeals court noted.

Of course, that leads to another question: whether top executives really are knowledgeable about "relevant" matters at issue during a trial.

Taking the plaintiffs attorney perspective, Mr. Freeman said he sees no problem going up the chain of responsibility to reach the person, like a home office claims manager, who might have received reports about a claim. "But if I gratuitously say I will take the deposition of the chairman, that is going too far."

"There is a certain unfairness in bringing out the head of a company to put them through the ringer unless that person has something meaningful to contribute," he added.

In most asbestos cases, "To require a corporate defendant to bring high-level corporate executives out of state to testify is ridiculous," the CCR's Mr. Fitzpatrick said. Current corporate executives were not employed by the company years ago, when asbestos injuries were incurred, he said.

Also, high-level executives should be spending time running the com-

pany, not testifying in court, he said. "I don't think it serves society's interests to have these people's attention diverted. Let's keep them making money and keeping people employed."

In the Owens-Corning case, attorneys disagree about whether the executives were knowledgeable enough for their in-person testimony to be relevant.

Plaintiffs contended that it was appropriate to ask Owens-Corning's chief financial officer as well as its chairman and chief executive officer to testify about the company's net worth, financial status and other issues related to punitive damages.

Owens-Corning attorneys argued that the plaintiffs failed to show good cause for requiring the executives to appear at trial and contended that compelling them to appear would subject them to "undue harassment, prejudice and hardship," court papers note.

The company pointed out that the plaintiffs did not attempt to seek the information from a lower-level employee. Also, the company questioned the appropriateness of requiring Chairman and CEO Glen H. Hiner to testify in person because he had not been previously deposed by the plaintiffs attorneys and he had been CEO for only a month before receiving the notice to appear.

Owens-Corning's attorneys said providing published annual reports and proxy statements should be sufficient.

In addition, the plaintiffs attorneys sought to question Owens-Corning's senior in-house counsel and another company attorney about the truthfulness of interrogatories they previously answered under oath on issues like their knowledge of asbestosis-related workers compensation claims,

court papers said. Specifically, plaintiffs attorneys wanted to question them about whether the company should have known from worker health claims that asbestosis was a problem nearly a decade earlier than it did, Mr. Brickman said.

The appellate court essentially agreed that the executives should testify and upheld Judge Moran's warnings and ultimate decision, while it faulted the company's "unwarranted disregard of the court's authority."

The Owens-Corning case offers some lessons for corporate defendants, attorneys say.

"When the Center for Claims Resolution is faced with a similar situation, we do produce a corporate witness only because the sanctions for not producing a witness can be extremely draconian, as they were in this case," said CCR's Mr. Fitzpatrick. "When push comes to shove, I've never had an exec refuse to do it," he said.

"The situation is like Russian roulette: The corporation is often going to lose and the reason why is that the judge who is responsible for managing these kind of things is only going to be reversed on an abuse of discretion standard, which is a very high standard and difficult to overcome," said defense attorney Mr. Nash.

The case also may clash with mainstream justice simply because of its venue: Madison County, Ill., just east of St. Louis. Courts in Madison County and neighboring St. Clair County, both of which are heavily blue-collar, have long been regarded as havens for plaintiffs attorneys (BI, Oct. 15, 1984).

"Is it plaintiffs' heaven? I wouldn't say that, but it is not as conservative as other areas in this country such as North Carolina," said Mr. Brickman, the plaintiffs attorney in the Owens-Corning case. "It's a working-class area, but we've not had 100% success there." **BI**

Maine

Continued from page 2 through 1991.

Employers are cautiously optimistic at the progress being made in scaling back the deficit and in radically changing the state's workers comp culture so that employers, employees and insurers work together to prevent—rather than pay for—losses, said Christopher Hall, acting president of the Maine Chamber of Commerce & Industry in Augusta.

However, all parties say the state's program has an uncertain future because of pending litigation in which insurers are challenging regulators' estimates of the size of the deficit and the amount of surcharges needed to offset the shortfall. The insurers argue that both are too low and also say current deficit funding

arrangements are unfair and inadequate.

Meanwhile, calculating self-insurers' past liabilities is "a tremendous headache and a tremendous administrative task, especially for group self-insurers," said Alison Jones Webb, executive director of the Maine Council of Self-Insurers in Hallowell.

About half of the state's workers comp market is self-insured. Group self-insurers, which range from about six to more than 160 employers, constitute less than a quarter of the state's total market.

She declined to predict the reaction of her members to the bills, except to say, "I anticipate that my phone will ring a lot."

Self-insured employers face up to a 25.5% surcharge, depending upon how they calculate their insured premiums paid during 1988-91.

Until now, only employers that continued to purchase commercial workers comp insurance have had to pay annual surcharges on their premiums. They have been hit with a total of 28.5% in surcharges since 1988.

Insured employers currently face a new 9.5% premium surcharge, effective July 1, according to a May 27 order from Brian K. Atchinson, superintendent of the state's Bureau of Insurance. That's up from a 7.5% surcharge in 1993.

"There is no painless way to accomplish this task. However, Maine's employers clearly cannot afford the surcharges that would be necessary to retire their full share of the deficit this year," Mr. Atchinson said in a statement.

"We are paying for the sins of past practices when we were not as actively focused as we should have

been," said Mr. Hall of the state Chamber of Commerce.

However, Maine's workers comp market recently has seen definite signs of improvement. For example:

- The NCCI's most recent lost cost filing called for a 3.8% decrease in workers comp rates.

"That was the first reduction that was not ordered by legislation in 35 years," said Richard Johnson, the Bureau of Insurance's property/casualty actuary.

- Calendar-year workers comp loss ratios dropped to a five-year low of 80% last year, compared with a high of 187% in 1991.

- Maine Employers' Mutual Insurance Co., which replaced the state's former residual market, is having a positive impact on the market in several areas.

The mutual insurer had a 95% loss ratio for 1993. Although 25 to 30 insurers now are licensed to write workers comp in the state, the mutual is writing most new business, Mr. Johnson said.

"A lot of the cultural change flows from the company's approach to reducing claims," Mr. Hall said. "It provides hands-on risk management, not (just) a claims service."

- First reports of injuries were down 6% to 18,112 in 1993 compared with the previous year.

Meanwhile, lawsuits filed by the NCCI and several insurers that challenge the superintendent's 1992 and 1993 "fresh start" orders are still pending in state court, said Howard Pachios, outside counsel for the NCCI with Preti, Flaherty, Beliveau & Pachios in Augusta.

The lawsuits allege the superintendent's orders violated the intent of the "fresh start" legislation by placing too much of the deficit burden on insurers. They also claim the superintendent unfairly docked insurers \$40 million for imprudent investments and poor servicing from 1988 to 1990. **BI**

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JUNE

JUNE 17. Reinsurance Litigation and Arbitration seminar in New York, sponsored by the Practising Law Institute; \$395. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 17. Warehouse Hazards and Protection seminar in Grand Rapids, Mich., sponsored by Factory Mutual Engineering & Research; \$295. Also Nov. 2 in Pittsburgh, Nov. 10 in Baltimore and Nov. 17 in Norwood, Mass. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

JUNE 17. Congress on Natural Disaster Loss Reduction in Boston, sponsored by the Insurance Institute for Property Loss Reduction; \$50 for I-PLR members, \$100 for non-members. Insurance Institute for Property Loss Reduction, Conference Registration, 73 Tremont St., Suite 510, Boston, Mass. 02108-3910; 617-722-0200.

JUNE 17. Reinsurance Litigation: Current Issue and Strategies seminar in New York, sponsored by the Practising Law Institute; \$355.50 for PLI members, \$395 for non-members. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 19-20. Ergonomics, Creative Strategies and Practical Applications seminar in Las Vegas, sponsored by the American Society of Safety Engineers; \$450 for ASSE members, \$525 for non-members. American Society of Safety Engineers, 1800 Oakton St., Des Plaines, Ill. 60018-2187; 708-692-4121.

JUNE 19-21. The Pacific Rim: Strategic Issues 2000 conference in Singapore, co-sponsored by the Life Office Management Assn. and the Life Insurance Marketing & Research Assn.; \$500. Cherie Mosely, LOMA, 404-951-1770, ext. 694.

JUNE 19-23. International Insurance Society 30th Annual Seminar in Madrid, Spain; \$1,250. Nancy J. Allen, Operations Assistant, International Insurance Society Inc., Box 870223, Tuscaloosa, Ala. 35487-0223; 205-348-8974.

JUNE 20. Environmental Litigation study course in Boulder, Colo., sponsored by the American Law Institute-American Bar Assn.; \$900. Alexander Hart, Director-Courses of Study, ALI-ABA, 4025 Chestnut St., Philadelphia, Pa. 19104-3099; 215-243-1630.

JUNE 20. Professional Liability: The Legal Aspects for Safety Professionals seminar in Las Vegas, sponsored by the American Society of Safety Engineers; \$350 for ASSE members, \$425 for non-members. American Society of Safety Engineers, 1800 Oakton St., Des Plaines, Ill. 60018-2187; 708-692-4121.

JUNE 20. Pension Policy and Regulation in British Columbia seminar in Vancouver, sponsored by LEXIUM Educational Services; \$529.65 Canadian (\$385.90). LEXIUM, 615 Mount Pleasant Road, Suite 185, Toronto, Canada M4S 3C5; 416-483-7297.

JUNE 20-21. Reinventing Managed Care: New Strategies for a Changing Marketplace in Washington, sponsored by Managed Care Week; \$525. Atlantic Information Services Inc., 1050 17th St., N.W., Suite 480, Washington, D.C. 20036; 1-800-521-4323 or 202-775-9008.

JUNE 20-25. 1994 American Society of Safety Engineers Professional Development Conference and Exposition in Las Vegas; \$595 for ASSE members, \$730 for non-members. ASSE Conference Registrar, 1800 E. Oakton St., Des Plaines, Ill. 60018-2187; 708-692-4121.

JUNE 21. Taxation of Employee Benefits and Perquisites seminar in Vancouver, sponsored by LEXIUM Educational Services; \$529.65 Canadian (\$385.90). LEXIUM, 615 Mount Pleasant Road, Suite 185, Toronto, Canada M4S 3C5; 416-483-7297.

JUNE 21. The Environmental Liability Executive Workshop in New York, sponsored by The College of Insurance and Sedgwick James Inc.; \$265 for sponsors of the College, \$295 for others. The College of Insurance, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

JUNE 22. Overview of Real Estate-Related Professional Liability Claims and Insurance Coverage seminar in New York, sponsored by Frenkel & Co. Inc.; no change. Irene Barsotti, Frenkel & Co., 123 William St., New

York, N.Y. 10038; 212-238-0477

JUNE 22-23. Insurance Runoff conference in New York, sponsored by Executive Enterprises; \$1,195. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6990; 1-800-831-8333.

JUNE 22-29. Ergonomic Analysis of the Workplace workshops in Atlanta, sponsored by Work Injury Management; \$645 for Section I, \$365 for Section II. Also July 20-27 in Las Vegas. Work Injury Management, 1430 Wilamette St., No. 213, Eugene, Ore. 97401-4049; 503-484-5853.

JUNE 23-24. China: Scaling the Great Wall seminar in New York, sponsored by NYNEX and World Congress Inc.; \$1,050. World Congress Inc., 1000 Winter St., Suite 3600, Waltham, Mass. 02154; 1-800-767-9499.

JUNE 23-24. Insurance Coverage and Practice Symposium in Seattle, sponsored by Defense Research Institute; \$425 for DRI members, \$475 for non-members. Defense Research Institute, Insurance Coverage and Practice Symposium, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

JUNE 23-24. National Breast Implant Litigation Conference in New Orleans, sponsored by Mealey Publications Inc.; \$535; \$465 each for three or more registrants from same firm; \$85 for conference handbook only. Mealey Publications Inc., P.O. Box 446, Wayne, Pa. 19087; 800-632-5397 or 215-688-6566.

JUNE 23-25. Annual Conference of the American Hospital Assn.'s Section for Psychiatric & Substance Abuse Services in Washington; \$390 for AHA members, \$565 for non-members. AHA Registration, P.O. Box 825, Deerfield, Ill. 60015; 312-280-6451.

JUNE 24-25. The Ergonomics Revolution: Optimizing Human Performance symposium in Las Vegas, sponsored by the American Society of Safety Engineers; \$450 for ASSE members, \$525 for non-members. American Society of Safety Engineers, 1800 Oakton St., Des Plaines, Ill. 60018-2187; 708-692-4121.

JUNE 25-29. Society for Human Resource Management 46th Annual Conference & Exposition in St. Louis; \$650 for SHRM members, \$850 for non-members. SHRM '94 Conference, 606 N. Washington St., Alexandria, Va. 22314-1997; 800-283-7476 or 703-548-3440.

JUNE 27-28. Catastrophe Reinsurance conference in New York, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research Inc., 708 Third Ave., New York, N.Y. 10017; 1-800-345-8016 or 212-661-8740.

JUNE 27-29. Environmental Regulation Course in Minneapolis, sponsored by Executive Enterprises; \$1,195. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6990; 1-800-831-8333.

JUNE 27-29. Moving in New Directions: Benefits Conference for Public Employees in Lake Tahoe, Nev., sponsored by the International Foundation of Employee Benefit Plans; \$640 for IFEBP members; \$715 for non-members. IFEBP, 18700 Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6710, ext. 257.

JULY
JULY 5-14. Summer Insurance Institute in Burlington, Vt., sponsored by the Vermont Insurance Institute; \$1,100. Larissa Vigue, Vermont Insurance Institute, Champlain College, Burlington, Vt. 05402-0670; 802-860-2700, ext. 2595.

JULY 15-17. National Conference of Insurance Legislators' 1994 Summer Seminar in Burlington, Vt.; \$250 for legislators, staff of NCOIL members; \$275 for legislators, staff of non-members; \$650 for industry non-members; \$50 for spouses. NCOIL, 122 S. Swan St., Albany, N.Y. 12210; 518-449-3210.

JULY 17-20. Eighteenth Annual National Symposium on Workers' Compensation in East Lansing, Mich., sponsored by Michigan State University; \$595. School of Labor and Industrial Relations, Michigan State Uni-

versity, 422 South Kedzie Hall, East Lansing, Mich. 48824-1032; 517-355-9591.

JULY 18-19. Accountability & Performance Measurement for Health Care Payers conference in Boston, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research, 708 Third Ave., New York, N.Y. 10017; 1-800-345-8016 or 212-661-8740.

JULY 18-19. Liability & Litigation Management for Managed Care conference in Boston, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

JULY 18-19. Eleventh Annual Illinois Conference: Personnel Law Update 1994 in Schaumburg, Ill., sponsored by the Council on Education in Management; \$495. Council on Education in Management, 325 Lennon Lane, Walnut Creek, Calif. 94598-2418; 510-934-8333.

JULY 18-20. Team Based Competition conference in Dallas, sponsored by the International Quality & Productivity Center; \$1,095. International Quality & Productivity Center, 209 Cooper Ave., P.O. Box 43155, Upper Montclair, N.J. 07043-7155; 1-800-882-8684 or 201-783-3712.

JULY 20-22. Understanding Managed Care conference in Boston, sponsored by the Group Health Assn. of America; \$675 for GHAA members, \$775 for non-members. GHAA, Department No. 0612, Washington, D.C. 20073-0612; 202-778-3236.

JULY 25-26. Re-engineering for Insurance Operations conference in New York, sponsored by the International Quality & Productivity Center; \$1,195. International Quality & Productivity Center, P.O. Box 43155, Upper Montclair, N.J. 07043-7155; 800-882-8684 or 201-783-4403.

JULY 28-29. Electronic Pharmacy Benefits Management conference in Chicago, sponsored by International Business Communications; \$1,195. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

AUGUST

AUG. 1-3. Dental Managed Care Congress in San Francisco, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research Inc., 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

AUG. 3-4. PLUS Day in Long Beach, Calif., sponsored by the Professional Liability Underwriting Society. Derek B. Hazeltine, PLUS, 4248 Park Glen Road, Minneapolis, Minn. 55416; 800-845-0778.

AUG. 8-12. Fundamentals of Employee Benefits Management course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$1,125 for IFEBP members; \$1,250 for non-members. IFEBP, 18700 Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008; 414-786-6710, ext. 257.

AUG. 13. Advanced Case Management seminar in Rolling Meadows, Ill., sponsored by the Foundation for Rehabilitation Certification; \$125. Helen Carpenter, FRC, 1835 Rohlwing Road, Suite E, Rolling Meadows, Ill. 60008; 708-394-2104, ext. 129.

AUG 15-16. How to Audit Your Insurance Program: Getting Your Money's Worth seminar in Washington, sponsored by the American Management Assn.; \$1,050 for AMA members, \$1,210 for non-members. The program will also be held Sept. 12-13 in Chicago, Oct. 6-7 in San Francisco, Oct. 24-25 in Atlanta, Nov. 3-4 in Phoenix and Nov. 14-15 in New York. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

AUG. 15-17. Eighth Annual Conference for Risk Retention Pools in Dana Point, Calif., sponsored by Advanced Risk Management Techniques Inc.; \$425. Sandra Dick, ARM Tech, 23701 Birtcher Drive, Lake Forest, Calif. 92630-1783; 714-472-8324.

AUG. 16-19. Vermont Captive Insurance Assn. 9th Annual Conference in Burlington, Vt.; \$295 for VCIA members, \$495 for non-members. Diane Leach, Executive Director, Vermont Captive Insurance Assn., P.O. Box 763, Stowe, Vt. 05672; 802-253-2263.

AUG. 29-31. Benefit Plan Professionals Institute in San Francisco, sponsored by the International Foundation of Employee Benefit Plans; \$595 for IFEBP members, \$670 for non-members. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

SEPTEMBER

SEPT. 1-2. Disaster Planning and Preparedness Workshop in Atlantic City, N.J., sponsored by Factory Mutual Engineering & Research; \$495. The program will also be held Oct. 13-14 in Norwood, Mass., Dec. 8-9 in Santa Clara, Calif., and Dec. 12-13 in Los Angeles. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

SEPT. 11-14. Behavioral Healthcare Tomorrow conference in Washington, sponsored by the Institute for Behavioral Healthcare; \$595; \$695 after Aug. 12. IBH, 4370 Alpine Road, Suite 108, Portola Valley, Calif. 94028; 415-851-8411.

SEPT. 18-20. Public Risk Management Assn. Midwestern Miniconference in Itasca, Ill.; \$175 for PRIMA members, \$225 for non-members. Lynne Armstrong, PRIMA, 1117 N. 19th St., Suite 900, Arlington, Va. 22209; 703-528-7701.

SEPT. 25-27. CPCU Society Annual Meeting in Chicago; \$350 for CPCU Society members only. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

SEPT. 29-30. Second Barbados Information Services Conference in New York, sponsored by the Barbados Investment & Development Corp.; \$495. John Mills, Business Development Officer, Barbados Investment & Development Corp., 800 Second Ave., New York, N.Y. 10017; 212-867-6420.

OCTOBER

OCT. 4-7. Fourth Asia-Pacific Risk Management Conference in Singapore, sponsored by the International Federation of Risk & Insurance Management Assns., the Risk & Insurance Management Assn. of Singapore and Asia Insurance Review; \$1,550 Singapore for RIMAS members, \$1,650 Singapore for non-members. Conference Secretariat, IIR Pte. Ltd., Suite 08-03, Golden Wall Centre, 89 Short St., Singapore 0718; 65-338-3521.

OCT. 16-18. Public Risk Management Assn. Eastern Miniconference in Asheville, N.C.; \$175 for PRIMA members, \$225 for non-members. Lynne Armstrong, PRIMA, 1117 N. 19th St., Suite 900, Arlington, Va. 22209; 703-528-7701.

OCT. 16-19. Medical Case Management Conference VI in San Diego, sponsored by the Individual Case Management Assn.; \$325 for ICMA members, \$380 for non-members. ICMA, 10809 Executive Center Drive, Suite 105, Little Rock, Ark. 72211; 501-227-5553.

NOVEMBER

NOV. 1. Preventing and Controlling Fire Losses seminar in Pittsburgh, sponsored by Factory Mutual Engineering & Research; \$295. Also Nov. 9 in Baltimore and Nov. 16 in Norwood, Mass. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

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Soccer

Continued from page 3

will be held at Soldier Field for about two years, according to Celeste Watts, who was director of risk management for the park district until a recent reorganization.

For the most part, though, risk management and security arrangements for the World Cup games at Soldier Field are similar to those employed for other big events held at the stadium, like Chicago Bears football games, she said.

"We're treating (the games) from a risk management standpoint very much like... a very major event," said Ms. Watts. The only difference is "we're doing things with greater intensity."

Also, "security is extremely tight," she noted, explaining that all Soldier Field workers have to show special identification for admittance to the stadium.

Personnel from the Chicago Park District's risk management department will inspect the stadium before and after each game looking for basic premises hazards, like debris and uneven surfaces, Ms. Watts said. This is standard practice to address "basic liability exposures that come with a stadium this size," she added.

Chicago's Soldier Field seats 66,000 people, although some of the seats have been removed for

the World Cup games to make room for visiting dignitaries and the international media.

Each of the five World Cup matches to be played at Soldier Field is sold out.

"We're handling this as just another event," stated Chicago Police Lt. Dennis Rayl, who is working with the Chicago Park District as director of security. "Anything that can happen in a soccer match is something that can happen in any of our regular events at Soldier Field."

"We're a big city; we're used to big events," agreed Bill Utter, director of communications for the Chicago Host Committee for the World Cup.

For example, last year some 2.7 million people converged on Chicago's Grant Park for the city's week-long Taste of Chicago festival, according to the Chicago Convention and Tourism Bureau. And, Chicago's annual Auto Show draws 950,000 visitors, according to the bureau.

The city is making some special arrangements in preparation for the World Cup games, though.

Because many fans are expected to walk from the lakefront stadium to downtown hotels after the games, the city is building a temporary pedestrian overpass over Lake Shore Drive, a major thoroughfare next to the stadium, Mr. Utter noted.

The city of Pasadena, home of

A good defense: Cup insurance in place

The World Cup USA 1994 organization has placed a multilayered liability insurance program with total limits for some venues of approximately \$100 million, according to one source familiar with the program.

World Cup officials declined to discuss the insurance program, as did several risk managers for the host cities. While information gleaned from market sources in some cases conflicts, a general picture of the coverage emerges.

According to the risk manager for one venue, Fireman's Fund Insurance Co. is underwriting the first \$2 million layer, which covers general liability and commercial auto liability. Fireman's Fund also is underwriting workers compensation and event cancellation coverage for the organization.

A spokesman for Novato, Calif.-based Fireman's Fund confirmed that the insurer is underwriting some of the World Cup's coverage but declined to discuss specifics.

The risk manager said that National Union Fire Insurance Co. of Pittsburgh, Pa., is writing the next layer of liability coverage: \$25 million excess of \$2 million. National Union's parent, New York-based American International Group Inc., would not confirm its participation in the World Cup program.

According to the risk manager, Fireman's Fund underwrites the next layer of \$25 million excess of \$27 million.

Above that, a final \$50 million excess liability layer is shared by Transamerica Insurance Co. and Aetna Casualty & Surety Co., the risk manager said.

A spokeswoman for Aetna confirmed that the insurer is writing some excess liability coverage for the games. A spokeswoman for Transamerica declined to comment.

Marsh & McLennan Cos. Inc. is the World Cup organization's broker.

A risk manager for another venue noted that the World Cup's liability limits are nationwide aggregates; the risk manager said he negotiated with the World Cup organization to have dedicated limits of \$1 million per occurrence/\$2 million aggregate for his venue.

A risk manager for a different venue said he negotiated with the World Cup organization for excess liability limits of greater than \$100 million.

All of the risk managers spoke on the condition of anonymity.

Arranging property coverage for the events is left up to the local venues, several sources said.

—By Deborah Shalowitz Cowans

the 102,000-seat Rose Bowl, also expects little out of the ordinary from the World Cup games that will be played there, said Robert Hays, liability claims coordinator for the city.

"We've done so many Rose Bowl events that (risk management) is

kind of second nature to us," he said.

Mr. Hays said that the city receives only one or two liability claims per year from accidents in the Rose Bowl.

"I don't anticipate any difference for the World Cup," he added.

Nine sold-out World Cup games will be played at the Rose Bowl, including the tournament's final match on July 17.

The city typically stations police officers and firefighters on top of the Rose Bowl press box, has police officers on patrol and requires event promoters to hire private security guards to work during special events, Mr. Hays explained.

The Rose Bowl also has revised some of its emergency evacuation procedures in anticipation of the games, according to Dave Jacobs, a police lieutenant and general manager of the stadium.

When the stadium widened the playing field for the soccer tournament, it also reopened two evacuation tunnels that had been sealed for 70 years, Mr. Jacobs said.

In the event of an emergency, everyone seated above the tunnels would leave the stadium through the new tunnels, while those seated below would go out through exits at the end of the field, he said.

Rose Bowl officials also have conducted disaster training sessions for local law enforcement personnel, Mr. Jacobs added.

The international flavor of the World Cup games adds another element to security considerations.

Approximately 35% of the tickets sold to the World Cup games have been sold to foreigners, according to the Zurich-based Fédération Internationale de Football Assn., or FIFA, which governs the competition.

Therefore, "it would be an international incident if something happened at the World Cup," commented Mr. Hays. For this reason, the U.S. Defense Department is lending the city of Pasadena some anti-terrorist equipment, he said, declining to elaborate. And, surveillance equipment has been built into the area, he said.

Caroline Cogtella, risk manager for the city of Chicago, said that the Defense Department, Federal Bureau of Investigation and the Central Intelligence Agency all

have all been involved in security arrangements in Chicago. She also declined to elaborate.

Officials at the headquarters of World Cup USA 1994 declined to discuss security or risk management issues.

"It's just a World Cup policy—we don't talk about security. The more you talk about security, the less secure you are," said the press officer for the Chicago Organizing Committee for the World Cup.

Although foreign soccer fans have a rowdy reputation, risk

'We're a big city; we're used to big events,' says Bill Utter of the Chicago Host Committee.

managers are not too worried.

"I don't anticipate a lot of trouble," said David Brandt, risk manager for the city of Orlando. The city's Florida Citrus Bowl, which seats 70,000, will host five sold-out World Cup matches.

"The people that are going to fly over here from other countries are going to be very affluent," he pointed out. "I just don't see doctors and lawyers and people skelling out big bucks charging the stadium."

Tickets for World Cup games at the nine venues range from \$25 to \$475, with the average ticket costing \$58.

Observers also pointed out that the English soccer team, which is known for attracting rowdy fans, will not be competing in the tournament.

A total of 141 nations entered the 1994 World Cup. After two years of qualifying matches, 24 teams will play 52 games at the nine U.S. venues.

The real World Cup trophy is a solid 18-carat gold sculpture of two athletes and the world. It is 14 inches tall and weighs 11 pounds.

However, the champion receives a gold-plated replica of the trophy; FIFA retains permanent possession of the original sculpture. The defending World Cup champion is Germany.

The 1990 World Cup games were held in Italy and the 1998 games will be held in France. **BI**

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INTERNATIONAL

Walker faces Lloyd's charges

By CAROLYN ALDRED
and STACY SHAPIRO

LONDON—Former leading Lloyd's of London underwriter Derek Walker is facing disciplinary charges by Lloyd's in connection with four time-and-distance policies bought for his syndicate in 1991, according to testimony delivered in London's High Court last week.

And while Mr. Walker acknowledged that his syndicate engaged in underwriting practices that members charge were imprudent, he took no responsibility for the demise of syndicate 290, formerly managed by Gooda Walker Ltd.

But investigation by Serious Fraud Office dropped

Although Mr. Walker faces a Lloyd's disciplinary panel, an investigation of his use of time-and-distance policies by the Serious Fraud Office has been dropped (BI, July 19, 1993).

Time-and-distance policies are a type of financial reinsurance that guarantees the policyholder specific payments on specific future dates, effectively allowing the underwriter to discount loss reserves.

Mr. Walker, former underwriter of syndicate 290 and former managing director of Gooda Walker Ltd., took the stand last week as a

key witness for 71 members agents being sued for more than 620 million pounds (\$935.9 million) by 3,095 Lloyd's members.

The members allege that losses on the Gooda Walker syndicates, which so far total more than 800 million pounds (\$1.21 billion), were caused by negligence.

The disciplinary investigation was revealed during an attempt by Mr. Walker's counsel, Claire Montgomery, to limit the plaintiffs attorney's questioning of Mr. Walker on the grounds that he could incriminate himself in the disciplinary proceedings or cause

the reopening of the SFO's investigation.

Justice Phillips agreed to consider ruling out any questions by the plaintiffs relating to time-and-distance policies.

Details of the Lloyd's disciplinary charges were not revealed in court as they are confidential and also include a further, undisclosed, defendant. Mr. Walker refused to answer *Business Insurance's* questions on the Lloyd's charges.

Meanwhile, in a prepared statement for the trial, Mr. Walker,

Continued on next page

Speculation
over buyer
continues as
Suez nears
Victoire deal

By MARIA KIELMAS

PARIS—French financial services conglomerate Cie. de Suez may finalize a deal as early as this week for the sale of its wholly owned insurance subsidiary, Groupe Victoire.

Insurance sources say the deadline for the deal is June 15, though there is speculation that it may be delayed.

The potential spinoff of Groupe Victoire comes on the heels of the French government's privatization of the nation's largest insurer, Union des Assurances de Paris.

State-owned Assurances Generales de France, the nation's second-largest insurer, will be the next insurer to be privatized by the government (BI, June 7, 1993). Insurers and analysts have said that privatization of the country's government-owned insurance companies may foster competition and lower premium rates (BI, Dec. 20, 1993).

According to a spokeswoman for Suez, the financial services company has received four offers for its Victoire subsidiary. Speculation on the French and British stock markets narrows this number down to two potential buyers: Commercial Union P.L.C. of the United Kingdom and Italy's Assicurazioni Generali S.p.A.

Benito Pagnanelli, deputy manager of Trieste-based Generali, confirmed the insurer is looking at Victoire but would not comment further.

A spokesman for Commercial Union in London would not comment.

The other two offers have come from Germany's Allianz A.G. Holding and New York-based American International Group Inc., according to French press reports.

The Suez spokeswoman declined to comment on how large a share in Victoire would be sold.

"Suez is probably not interested in selling less than 50% of Victoire," said Mike Wheelhouse, insurance analyst at London-based stockbroker Nomura International.

Mr. Wheelhouse believes that Victoire will eventually go to Generali because the asking price, between 18 billion and 20 billion francs (\$3.17 billion to \$3.52 billion), would be too much for Commercial Union to pay.

Victoire, the seventh largest French insurer, is valued at 18 billion French francs (\$3.05 billion). Non-life gross premium volume in 1993 was 7 billion francs (\$1.18 billion). Life gross premium volume was 14 billion francs (\$2.37 billion). The company wrote 4 billion francs (\$676.9 million) in reinsurance.

In 1989, Suez bought 65% of Victoire and UAP bought the remaining 35%. Victoire was valued at 44 billion francs (\$7.62 billion) at the time.

Continued on page 33

Reinsurer
bullish on
cat marketBermuda facilities
will thrive: Haag

By ADRIAN LADBURY

VIENNA, Austria—Bermuda's property catastrophe reinsurance facilities will not only survive in the future, they will thrive, a reinsurer executive predicts.

According to Herbert N. Haag, president and chief executive officer of Bermuda-based Partner Reinsurance Co., gross premium volume of the eight Bermuda property cat facilities will total \$1.2 billion this year.

In addition to Partner Re, those catastrophe reinsurers are: Centre Cat Ltd., Global Capital Reinsurance Ltd., International Property Catastrophe Reinsurance Co. Ltd., LaSalle Re Ltd., Mid Ocean Reinsurance Co. Ltd., Renaissance Reinsurance Ltd., and Tempest Reinsurance Co. Ltd. The eight facilities had capital and surplus at year-end 1993 of \$3.94 billion (BI, April 18).

Mr. Haag made that premium volume prediction and gave the new market a vote of confidence for the long term during the 23rd annual gathering of clients and colleagues of International Risk Management Group Ltd. held last month at the Marriott Hotel in Vienna.

The event was held in memory of Frederick Reiss, IRM's founder, who died last year. Mr. Reiss was instrumental in helping to make Bermuda a captive insurance domicile in the early 1960s.

Mr. Haag defended Partner Re's promise of an average annual 15% return on equity to investors, which he said should be possible to achieve over a long-term period of about 50 years—a period much longer than many observers have predicted Bermuda's new cat market will last.

Partner Re's investors are: Swiss Reinsurance Co. Ltd., Mr. Haag's former employer; Head Investors III; Head Partners; and institutional investors (BI, June 6).

Mr. Haag also rejected suggestions that rapidly fluctuating levels of supply, demand and price in the worldwide cat reinsurance market will force Partner Re to diversify into other, less profit-

Continued on page 33

Crash claims won't hurt reinsurance markets



AP/Wide World photo

LONDON—International aviation insurers are not expecting major claims from the crash of a Chinese passenger plane in central China, even though the crash could be China's worst aviation disaster ever.

China Northwest Airlines Flight 2302 was reported to have exploded in mid-air June 5, after pilots reported trembling wings while en route to Guangzhou from Xian. All 146 passengers and 14 crew aboard the Russian Tupolev 154 aircraft were killed, including several foreign tourists.

Chinese airlines are insured under an aviation hull and liability insurance program written for the Civil Aviation Authority of China by the state-owned insurer, The Peoples Insurance Co. of China. PICC reinsures the liability coverage on the international market.

The reinsurance is led by Lloyd's of London syndicate 824, managed by Murray Lawrence & Partners Ltd. Willis Corroon Group P.L.C. is the reinsurance broker for the liability coverage.

Liability claims, though, are expected to be low. Payments to foreign passengers killed in the crash would be governed by the Warsaw Convention, but would be limited to about \$20,000 per individual because it was not an international flight, aviation attorneys say.

This is the fifth crash of a Chinese airliner since July 1993. Aviation experts say that the frequency of air accidents in China could be due to the rapid expansion of air transport, which may be exceeding the capacity of the country's infrastructure and air traffic control system.

—By Maria Kielmas

Derivatives may spur new products
among U.K. life insurers: Study

By RODD ZOLKOS

LONDON—The number of life insurance companies in the United Kingdom that use financial derivatives for investment purposes should grow significantly in the second half of this year, according to a recently released study.

And, as their use of derivatives grows, U.K. life insurers could begin offering some new types of products to policyholders.

Of a group of approximately 50 U.K. life insurers surveyed, half are currently using derivatives, said Rupert Yardley, the study's author and a manager with KPMG Peat Marwick in London.

"I think that's not surprising," Mr. Yardley said. "You'd expect

life companies to use them if only for tactical asset allocation reasons."

The real surprise, Mr. Yardley said, was that more life insurers in the United Kingdom weren't using derivatives in connection with their investment strategies. Government regulations account for much of the inactivity, however, he said.

Department of Trade and Industry regulations limit the financial instruments that can be included in calculating an insurance company's solvency ratio to those approved by the government.

Because the current list of approved investments was created some time ago, Mr. Yardley said, it does not include derivatives, which are largely unregulated in-

vestments that "derive" their value from underlying assets, like securities or currencies, or from movements in indicators like interest rates or stock indexes.

"That's a serious discouragement for U.K. companies to use them because although (derivatives) may give them value, they can't contribute to the solvency ratio," Mr. Yardley said.

For that reason, investments in derivatives has been limited largely to larger life insurers, which can make such investments without damaging their solvency margins, he said.

That scenario will change on July 1, however, when the United Kingdom adopts the broader European list of approved invest-

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INTERNATIONAL

Walker

Continued from previous page
once Lloyd's most profitable underwriter, claims he and his family have lost all of their wealth as a result of the Gooda Walker collapse.

In his testimony last week, Mr. Walker refused to take responsibility for the collapse of syndicate 290, claiming the decision by Gooda Walker Ltd. to close the syndicate had been a "bad decision" caused by the collapse of the London excess-of-loss reinsurance market.

"I don't want to be the lone person in this" taking the blame, Mr. Walker said. "There were other people around."

The Gooda Walker members allege that the underwriters—including Mr. Walker—did not understand how their syndicates would be affected by catastrophes. They claim the underwriters did not calculate what their probable maximum losses would be when a loss occurred; did not have parameters for what their maximum aggregates would be in any particular region; overwrote their premium income limits; and bought inadequate reinsurance.

Mr. Walker admitted during questioning by plaintiffs' barrister Geoffrey Vos that most of these allegations were true of syndicate 290. Mr. Walker said he didn't calculate probable maximum loss until after a loss occurred because he didn't believe it was necessary for an LMX syndicate.

He agreed that he did not draw parameters for what his syndicate's aggregates would be at the beginning of the year, but he always knew what they were then and throughout the year. And he admitted that he overwrote his premium income limits—but only because of reinsurance reinstatement premiums—in 1983, 1987, 1989 and 1990.

Mr. Walker denied allegations that his syndicate had been inadequately reinsured, leading to its collapse. He said he had been content with syndicate 290's reinsurance programs during 1988 to 1990, arguing that it was the best cover "I could put together at the time."

Additional reinsurance coverage "would have reduced the profitability (of the syndicate) because of the cost of reinsurance," he added.

Mr. Walker said his syndicate's losses were actually caused by a spate of catastrophes between 1988 and 1990, which made specialist excess-of-loss underwriting at Lloyd's unsustainable.

He noted that the October 1987 windstorm in the United Kingdom, which cost insurers more than 3 billion pounds (\$5.66 billion at the appropriate exchange rate) was "a totally unique loss" that no underwriter had ever dreamed of before. "It was the largest sterling loss there had ever been" and the first hurricane to hit Britain in 200 to 300 years, said Mr. Walker.

The high frequency of catastrophe losses from 1988 to 1990 indicated that writing exclusively excess-of-loss business was not sustainable and syndicate 290 had planned to change its underwriting policy away from LMX business, according to Mr. Walker.

However, Anthony Gooda and "certain directors of the Gooda Walker Group decided—presumably because of adverse comments in the Lloyd's market" concerning LMX syndicates—to close the syndicate, Mr. Walker told the court.

"I was promptly asked to stand down for the good of the group," Mr. Walker said. "I didn't stop to argue at the time, although I felt it was a bad decision." Mr. Walker left

the Gooda Walker in June 1991.

When asked by Mr. Vos whether he took any responsibility for the collapse of his syndicate, Mr. Walker answered, "No."

On leaving the agency, after the syndicate's closure, "My last words to Anthony Gooda were: 'You have now made the worst mistake you have ever made,'" Mr. Walker told the court.

In a written statement prepared for the court, Mr. Walker said that since leaving Gooda Walker, he has "effectively lost everything that I have earned and saved as a result of 47 years of work at Lloyd's."

Mr. Walker had the largest investment in syndicate 290 and substantial lines on all the loss-riddle Gooda Walker syndicates. "My wife was also a name on Gooda syndicates. Between us, we have lost well in excess of 1.5 million pounds (\$2.3

million). In addition, my son Barrie, who was my deputy on syndicate 290 and to whom I wanted one day to hand over as underwriter, was also a member who has sustained substantial losses and further lost his job," he stated.

Mr. Walker said syndicate 290 was a consistently high-performing syndicate, and it was the top-performing syndicate during the 1980 accounting year. This attracted members to his syndicate, especially after Chatset Ltd. started publishing market results in the early 1980s.

However, Mr. Walker said he always warned potential members of the risks. "Whenever I was introduced to meet a prospective name, I would always say that the nature of the account that I wrote was such that in good times, the syndicate could be highly profitable, but in bad times, there was the possibility

of a 200% or even higher loss."

Mr. Walker said the major cause of the collapse of the Gooda Walker Group and its remaining syndicates 299, 290 and 164 stemmed from the collapse of Gooda Walker syndicate 298. He told the court that 298's losses "were a major factor" to the eventual closure of the group's underwriting activities.

Marine XL syndicate 298, underwritten by Stan Andrews, incurred massive losses following the loss of the Piper Alpha North Sea oil platform in 1988, but the scope of the losses were not revealed to members until the end of 1989.

Mr. Walker admitted that he had been surprised at the huge impact Piper Alpha had made in the marine excess-of-loss market. "I was aware personally, and thought that the North Sea, with so many rigs in a small area, was a very dangerous

position for the market. I was very surprised that the marine market could give cover on such high values," he told the court.

Mr. Walker admitted after persistent questioning by Mr. Vos that he had the details of Mr. Andrews' underwriting as early as March 1989, and realized there would be a substantial loss from Piper Alpha. However, Mr. Andrews was not asked to resign until November 1989, after members agents stopped supporting the syndicate.

Mr. Walker didn't do anything about his misgivings before the end of 1989, he said, because "I still accepted Mr. Andrews' word, because he understood his business and I didn't."

Mr. Walker disagreed with the members' suggestion that Mr. Andrews was dishonest, but he agreed

Continued on next page

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INTERNATIONAL

Suez

Continued from page 31

Suez gained total control of Victoire's French business in late 1993, when UAP swapped its 35% stake in the company for Suez' stake in German insurer Colonia Versicherungs A.G., Germany's third-largest insurer (*BI*, Nov. 15, 1993). Suez held its stake in Colonia through Victoire and a complex series of holding companies.

At the end of the 1993 deal, UAP acquired the foreign holdings of Victoire in Italy, Belgium and the Netherlands, as well as control of Colonia, while Suez was left with 100% of Victoire's French business.

There are mixed feelings among analysts about the current prospects for the French market.

Graham Warren, insurance analyst at the London office of Goldman Sachs, believes that in the past there were two main problems for new entrants. "The biggest problem has been (competition) with the mutual insurers that effectively sell directly to customers, and secondly, the state-owned companies that have found it acceptable to operate on a slim profit margin."

Mr. Warren said that situation is changing. The mutuals are facing financial difficulty. And the French insurers being privatized will have to make a larger profit margin in the future to satisfy shareholders at the expense of keeping rates low, he said.

Victoire is a sound insurer and that the French market should show a definite upturn by 1995, he said.

Nomura's Mr. Wheelhouse disagrees, though, with this scenario. He said that any foreign entrant into the French market will continue to face very tough competition.

The large state-controlled insurers like UAP and AGF have been becoming more efficient for a long time, Mr. Wheelhouse said. "These companies are not inefficient, and they have been preparing for privatization since 1986 and cutting expense ratios."

The efficiency of these insurers, together with their huge hidden assets—accumulated because of favorable tax treatment like an 18% capital gains tax—makes the insurers formidable competitors that could launch and win any price war in the market, Mr. Wheelhouse said.

"UAP could price everyone out

of the market if it wanted," he said.

Analysts agree that once a French government gives the go-ahead for private pension plans, the life and pension market in France will soar. "But you do not buy a traditional insurer to compete in the life market," noted Mr. Wheelhouse.

Italy's Generali has emerged as the front-runner to acquire Victoire because it has long been looking for a major French acquisition and has the financial clout to compete with the French insurers.

"Generali probably thinks that they can play the same game as the French insurers," Mr. Wheelhouse said. **BI**

Haag

Continued from page 31

able lines to make such margins. However, he did not entirely rule out the prospect of writing other lines, if the margins are right.

"My experience of reinsurance is that other areas are not profitable. Property reinsurance has not seen profits in the last 10 years. Casualty business, we all know, may make a profit today, but it hasn't for 20 years on the reinsurance side. It may look attractive, but are the margins big enough?" he asked.

The recovery in catastrophe reinsurance capacity levels and rate stabilization in London and the continental markets can largely be attributed to the influx of \$4 billion in capital to Bermuda since 1992, said Mr. Haag. But he said he still believes there is plenty of scope for cooperation between London, Europe and Bermuda.

"As soon as all eight companies were in place, something happened in the eyes of buyers and holding reinsurers. There was a sudden strength in capital, and existing companies stepped up their efforts. Lloyd's raised capital to protect itself and the continental reinsurers failed to reduce their commitments as they had previously promised the brokers, and apparently some reinsurance was even overplaced in some cases."

But Mr. Haag believes that current global demand for cat reinsurance still outstrips supply and that this should enable the major world markets writing this coverage to achieve stable pricing and profits by working together.

He said, for example, demand for U.S. wind risk cat cover is currently about \$20 billion, and that world capacity, including about \$2 billion in Bermuda, is "between \$10 billion and \$11 billion."

Mr. Haag said the "godfather" method of underwriting in London, with the majority slavishly following the lead, is certainly not the way forward for Partner Re, nor should it be for its competitors in the new market. Indeed, he denied the existence of a market in Bermuda at all.

"The Bermuda market does not exist. There is no lead underwriter in Bermuda as in Lloyd's, and there are no clones. Each Bermuda company is a strong independent company with its own philosophy and strategy; it could be located anywhere. This is not a market where a godfather takes the lead. I believe professionalism is the highest in the world in Bermuda."

Mr. Haag supported his contention by pointing out that the collection of companies had managed to grab 20% of the world catastrophe reinsurance market within only six months. **BI**

r examinations?



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Business Insurance Circulation Breakdown Commercial Consumers

Administrative: CEO's, Presidents, and Owners,	2657
Vice Presidents, General Managers and Other Administrative Personnel	4005
Financial Chief Financial Officers and Vice Presidents of Finance	2359
Secretaries, Treasurers, controllers and other Financial Personnel, 3700	
Risk/Employee Benefits: Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	15,138
Sub-total	27,859
Associations	371
Government, Unions and Educational Institutions	986
Commercial Consumers	
Sub-total	29,216
Insurance Agents and Brokers	8,607
Insurance Companies	8,258
Accountants, Actuaries, Attorneys & Consultants	3,576
Managers & Health Care Providers	1,941
Others Allied to the Field	1,351
TOTAL	52,949

★ Source Business/Occupational breakdown of qualified circulation, November 29, 1993 Issue, as submitted to BPA for December 1993 BPA Publisher's Statement.

INTERNATIONAL

Broker seeks more flexibility from D&O insurers

By KATE McILWAINE

SYDNEY, Australia—Australian underwriters should change directors and officers liability coverage to make it more responsive to commercial buyers' needs, a broker says.

Making the D&O policies portable, covering legal expenses and other tangential exposures, and making underwriting more flexible were among his suggestions.

L. Frank Earl, managing director of Sydney-based Minet Professional Services Ltd., said D&O coverage as it is now written in Australia does not work "as well, or as often" as it should.

"While a D&O policy was never designed to be a guarantee to take out all risks of doing business, nor to indemnify directors and officers

who do not discharge their duties in an honest manner... the present standard form of coverage can be greatly improved," he said.

Angus Maciver, liability manager for Sydney-based FAI General Insurance Co. Ltd., agreed with some of Mr. Earl's criticisms, but said underwriters have "taken a battering" on D&O claims and that has made them more conservative.

Mr. Maciver said last year's *Compass* decision, while ultimately overturned, shocked D&O underwriters and has caused them to be more conservative, (*BI*, Oct. 25, 1993). In that case, an Australian appeals court overturned a lower court decision that ordered a D&O insurer to cover a claim even though the policyholder had withheld relevant financial information when applying for coverage.

Mr. Earl suggested that underwriters develop portable D&O coverage for individual directors. The suitability and qualifications of the director would be the major underwriting criteria, instead of the company's financial records, he said.

Mr. Maciver said that approach has been tried in the past, but was too time-consuming from an underwriter's perspective, which also made premiums too high for individual directors.

And, he said, because of a recent change to the Australian Companies Code that allows a company to pay for the entire D&O policy covering its directors means it is less likely a director will be seeking individual coverage. Previously, the premiums for D&O liability and company reimbursement policies

were split between a company and its directors.

Mr. Earl also suggested that D&O underwriters develop a legal expenses insurance policy that would dovetail with D&O to provide cover for shareholders' derivative actions, defense costs and compliance costs when representing the company at official inquiries like Australian Tax Office or Australian Securities Commission inquiries.

Mr. Earl, who has specialized in professional liability insurance for the past 15 years, suggested special D&O underwriting guidelines be developed for newly developing and entrepreneurial companies.

He said optional extensions or parallel insurance products could be used to cover risks that are commonly excluded from D&O coverage, like pollution damage or bodily injury claims.

Currently D&O is one of the more controversial long-tail liability insurance products in the Australian market because shortcomings in the policies allow insurers to avoid liability for claims, Mr. Earl said. He said those shortcomings include: no guarantee of automatic advancement of defense costs if there are allegations of fraud and dishonesty against directors and officers; failure of the policy to respond where "wrongful acts" have been committed but were not directly related to the company's management; no legal costs covered when directors and officers must attend official inquiries; the exclusion of coverage for claims arising from pollution damage, bodily injury, illness or death claims; and adequate indemnity

limits are generally only available on an aggregate basis.

Mr. Earl said some directors and officers do not understand the claims-made basis of the insurance. He suggested development of a D&O policy with occurrence wording, but conceded that would be difficult. "You're dealing with an industry that has its own views about what it wants to provide," he said.

FAI's Mr. Maciver, who also is a director of the publicly traded insurer, said, "As a director of a public company, I don't think the policies are completely satisfactory either."

But, he said FAI, a major underwriter of D&O in Australia, is trying to address some of the issues Mr. Earl had raised.

For example, Mr. Maciver said FAI is looking at providing some coverage for directors and officers for liability arising from pollution, but this risk is "not easy to tackle."

And he agreed that coverage of legal expenses should be an important part of the D&O policy. FAI does advance directors legal expenses under some D&O policies, as do other D&O underwriters in Australia. And, brokers are often able to negotiate coverage arrangements for this risk.

FAI currently is revamping its D&O policy and it will be reissued in July with improvements, including limited pollution coverage and legal expenses coverage for some companies.

But Mr. Maciver said directors themselves have to "behave better," noting that the actions of some corporate boards have produced "massive D&O claims. Directors must learn to comply with the regulations and then they can expect better cover." **BI**

Derivatives

Continued from page 31

ments, which includes derivatives, Mr. Yardley said. He noted, though, that while U.K. life insurers are increasing their use of derivatives, they are doing so in a relatively conservative fashion.

"Life companies aren't going to be dealing with derivatives in a speculative way," he said. "They're going to be using them for hedging and for tactical asset allocation and to match certain products."

Of the companies currently using derivatives, all but two indicated they use them for hedging, while significant numbers also use them for asset allocation purposes,

the "best exercise of investment ideas" or to match specific products like stock index-linked bonds.

"The big use in the U.K., something that has become very popular in the past 18 months or so, are investment products that are linked to our share index," Mr. Yardley said.

Often, insurers dealing in stock index-based products will buy options that match their product, the study's author said. "It provides a better match than actually buying the share," he said, noting that while it's difficult to create a portfolio of shares that exactly matches the index, options can be used to craft a perfect match.

Mr. Yardley's survey shows two potential new product areas stemming from U.K. life insurers' use

of derivatives.

"One is a product which gives investment guarantees," he said, noting that the trend over the past 20 years was for U.K. life insurers to offer products that pass all the investment risk to policyholders.

In order to maintain adequate solvency ratios, in the past insurers would've been forced to match products offering guaranteed returns with large reserves. Derivatives may offer ways to offer those guarantees without requiring those reserves.

"The other area, which is in an even earlier stage, is ways of offering more flexible annuities for retirement plans," Mr. Yardley said. U.K. tax restrictions, though, have slowed development of those types of products. **BI**

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Comings & Goings: Buyers

State university system appoints risk manager

Charlene Minnick, 45, has been named to the newly created position of risk manager for the California State University system. She reports to the director of auxiliary planning and bonds, part of the department of business and finance, in the system's Long Beach Chancellor's office. Ms. Minnick is responsible for risk management at the system's 20 campuses. That responsibility will expand when California State University-Monterey Bay opens in the fall of 1995 on the site of the former Fort Ord, and the California Maritime Academy in Vallejo joins the system in July 1995. Prior to joining the university system, Ms. Minnick was the risk manager of the City of Livermore, Calif., for five years. Before that, she was risk manager of the City of Alameda, Calif. Ms. Minnick, a member of the Public Risk Management Assn., earned her Associate of Risk Management designation in 1985 and is pursuing a Chartered Property Casualty Underwriter designation. Ms. Minnick received a bachelor's degree in science from Louisiana State University in Baton Rouge, La.

Floyd E. Brady, 48, has been named senior vp of human resources at CNA Insurance Cos. in Chicago. He is responsible for all aspects of CNA's human resources department, including, benefits, compensation, training and employee relations. He reports to CNA Chairman and CEO Dennis H. Chookaszian. Mr. Brady replaces David W. Koester, who retired after heading CNA's human resources department for 13 years. Prior to joining CNA, Mr. Brady spent 14 years with INROADS Inc., a national minority career development organization headquartered in St. Louis. Most recently, he was a corporate vp of the organization. Earlier in his career, he worked at Dartmouth College in Hanover, New Hampshire, as regional director of "A Better Chance," a scholarship program for inner-city high school students, and as a special assistant to the deputy commissioner of the Department of Mental Health in New York. Mr. Brady holds a bachelor's degree in political science and business administration from Hope College in Holland, Mich., a master's degree

in social work from Rutgers University in Camden, N.J., and a master's degree in divinity from Princeton Theological Seminary in Princeton, N.J.

Thomas Hadderman, 48, has been promoted to senior vp-human resources for World Color Press Inc. Mr. Hadderman oversees employee benefits, compensation and investment programs for the New York-based printer's 6,500 employees nationwide. He reports to Robert G. Burton, chairman, president and CEO. Mr. Hadderman had been vp of human resources since he joined World Color Press in January 1993. Previously, he was vp-human resources at the Chilton Co., a division of Capital Cities/ABC Inc. Mr. Hadderman is a member of the Society for Human Resource Management. He earned a bachelor's degree in industrial and labor relations from Cornell University in Ithaca, N.Y.

Helene Klappert, 35, has been promoted to director of benefits and compensation for the A&E Networks, a New York-based cable television broadcaster. She joined the company in 1989 as employee benefits manager and was promoted to manager of benefits and compensation in 1991. In her new position, she will assume additional general human resources responsibilities. She reports to Annette Zimand, vp-human resources. Prior to joining A&E, Ms. Klappert was manager of benefit administrative services for Capital Cities/ABC. The A&E Networks—which include the Arts & Entertainment Television Network, The History Channel, History TV Network Productions, A&E Home Video and A&E Monthly—are a joint venture between the Hearst Corp., Capital Cities/ABC and NBC. Ms. Klappert holds a bachelor's degree in sociology from Hofstra University in Hempstead, N.Y.

We'd like to report on staff changes in your company's risk management, safety and employee benefits departments. Just drop a note to Sara Marley, Associate Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-5313. Please send a photograph, too.

Keene

Continued from page 3
firms are guilty of unjust enrichment by diverting to themselves excessively high contingency fees, money that could have been used to compensate current and future asbestos injury claimants.

The 66-page suit—which accuses the law firms of fraud, breaching antitrust laws and violating the Racketeer Influenced and Corrupt Organizations Act—seeks compensatory and punitive damages in excess of \$130 million, which under RICO could be trebled.

Mr. Weisfelner pointed out that much of the suit centers around the defendant firms' collection of exorbitant, and possibly illegal, contingency fees.

"In pursuing so many cases on behalf of unimpaired individuals with high contingency fee agreements, many legitimate claimants were placed at the rear of the line arbitrarily," he said.

"These firms should have known that procuring settlements for certain clients at high contingency fees would occur to the detriment of others."

For their part, several lawyers whose firms are named as defendants assailed Keene's lawsuit, labeling it a "stunt" devised by a desperate, bankrupt company.

Keene still faces more than 100,000 asbestos-related claims stemming from its 1968 acquisition of Baldwin-Ehret-Hill Inc., which manufactured insulation products containing asbestos.

"While I haven't seen it yet, from what I've heard and from what I read in Keene's press release, this is a load of garbage. It's further proof that you cannot expect anything conventional or sensible from Keene or Glenn Bailey," said Gene Locks of Greitzer & Locks in Philadelphia, referring to the company's chairman.

Another defendant, Fred Baron of Baron & Budd in Dallas, said the suit doesn't bother him because "there's little chance the bankruptcy court or any court" will allow the litigation to go to trial.

"We're actually pleased with this. In the shape Keene is in financially, Glenn Bailey has no business using Keene's limited funds for something like this. It's the coup de grace of all their publicity stunts and should lead to a Rule 11 fine for a frivolous suit and may force the court to appoint a trustee for Keene, which would be a good move at this point," Mr. Baron said.

"It seems like Glenn Bailey has committed himself to liquidating the company via lawsuits rather than see another dime go to plaintiffs. This is the last act of a desperate man who is seeing his mistakes come home to roost," said Stanley Levy of Levy, Phillips & Konigsberg in New York.

"I've read this complaint and there isn't one shred of legitimacy in it. We've never done claimant screenings and we're bound by New York's rules on contingencies. All fees and settlements we've entered into with Keene have been approved by various state and federal court judges," Mr. Levy said.

Meanwhile, bankruptcy experts were mixed in their assessments of whether Keene will be able to prove its allegations, but were unanimous in their evaluation of the suit as unorthodox and outside the realm of standard operating procedures for bankrupt companies.

"While it may be standard and beneficial for creditors for a company to re-examine what was going on prior to filing for bankruptcy, it's certainly not standard to go back and challenge the settlements it entered into voluntarily," observed Barry Zaretsky, a professor of bankruptcy law at Brooklyn Law School and an attorney with Kelley Drye & Warren in New York.

"The suit also doesn't appear to be grounded in bankruptcy laws. They're not trying to undo the settlements, but instead are seeking damages, claiming they were wronged. As a debtor in possession, they can do that," Mr. Zaretsky noted.

Paul Singerman, a bankruptcy specialist with Stroock, Stroock & Lavan in Miami, also called the suit "unorthodox and uncommon," but he did not agree with the defendant law firms' assessment of the suit as frivolous and a sign of desperation.

"One can't automatically equate (Keene's) bankrupt status with desperation. If these settlements were procured through fraud, there may be grounds (for damages)," he said.

Thomas Potter, a RICO specialist with Jones, Walker, Waechter, Poitevent, Carrere & Denegre in New Orleans, said Keene will probably face an uphill battle in attempting to prove that it was fraudulently induced into thousands of settlements.

"But if they can prove there was a knowing conspiracy among the firms, doctors and patients, they might have a case under RICO," Mr. Potter said.

However, Dean Gloster of Farella, Braun & Martel in San Francisco, questioned whether any court, be it the bankruptcy court or another court, will want to revisit final settlements.

"It's very unusual for someone to sue the party with whom they settled. What does this say about finality? Keene is a big boy. They weren't some poor orphan or widow that didn't know what they were doing," Mr. Gloster pointed out.

Mr. Gloster added that for Keene to get its day in court, it will have to show U.S. Bankruptcy Judge Stuart M. Bernstein or another judge "a smoking gun."

"It's easy to argue that a settlement was procured through fraud, but convincing a court that they were, in essence, tricked or railroaded into the majority of these settlements will be difficult," said Mr. Gloster.

This is exactly what Keene will try to prove, according to Mr. Weisfelner.

"People will naturally question why Keene settled with these firms in the first place. The reason why is the asbestos litigation monster. When you're the target of hundreds of claims from one law firm and your insurers see the prospect of defending those claims, you're forced into settling or you expose yourself to lottery judgments, possibly to people with no impairment at all."

"This was the whole strategy of the plaintiffs' lawyers—to overwhelm Keene with complaints, and once the pool of legitimate claimants dried up, they went after anyone they could find," said Mr. Weisfelner.

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Updates

Work comp talks break off

Continued from page 2

delivery of medical care to injured workers (BI, April 25). The plan was based on a 1992 pilot project run by the Pioneer Valley Building & Construction Trades Council and Bechtel Construction Co. in Massachusetts (BI, May 31, 1993).

A stripped down version of the Clinton proposal was included in the health care reform bill approved by the Senate Labor and Human Resources Committee last Thursday (see story, page 1).

"The political pressure on everything involving health care reform made it difficult" for the Building & Construction Trades division of the AFL-CIO to reach agreement with the AIA, said Ms. Ballen. "Although we are disappointed this agreement failed to jell, we are confident that (the proposal) will not be enacted into law."

A spokesman for the unions could not be reached for comment.

Florida health plan dies

TALLAHASSEE, Fla.—Florida lawmakers adjourned a special session four days early last week without passing a version of the Florida Health Security program. In fact, none of the nearly 100 bills proposed during the three-day session was passed.

The Florida Health Security proposal was never even proposed because it faced certain defeat in the state Senate, where Republicans and Democrats are split evenly.

Gov. Lawton Chiles, a Democrat, charged that statewide and national politicking impeded the process. Gov. Chiles is up for re-election in November. Among those vying for the Republican nomination are Insurance Commissioner Tom Gallagher and Jeb Bush, son of former President George Bush.

"The single most successful lobbying group in this special session was the Republican National Committee," charged Ken Jenne, D-Broward, chairman of the Senate Appropriations Committee. Democrats also said Republicans in Washington feared passage of the Florida law would give momentum to the Clinton health care reform plan.

But Florida Republicans say the real stumbling block was income eligibility for insurance subsidies, which Democrats set at 250% of the federal poverty level while Republicans insisted on 150%.

Gov. Chiles said he would call another special session no earlier than August and possibly after the November election.

Wyatt forms link with Watsons

WASHINGTON—The Wyatt Co. and R Watson & Sons, a major British employee benefit consulting and actuarial firm, are forming a global alliance.

Through the new alliance, to be known as Watson Wyatt Worldwide, the two firms will share resources to improve services to clients, a Wyatt spokesman said.

While each firm will make a modest investment in the other, Washington-based Wyatt will remain an independent corporation owned by employees, Watsons will continue as a partnership.

Watsons, which was founded in 1878 and is especially known for its actuarial services, has about 800 employees, including 750 in the United Kingdom. It has 14 offices, including seven in the United Kingdom and the remainder in Ireland, continental Europe, the Caribbean and Africa. It does not disclose revenues. Wyatt is the world's third-largest benefit consultant with 1993 benefit consulting revenues of \$349 million and 3,500 employees worldwide.

CU negotiating for Victoire

LONDON—London-based Commercial Union P.L.C. announced Friday that it has entered into exclusive negotiations with Paris-based Cie. de Suez to acquire the majority of Groupe Victoire's insurance operations for about 12.5 billion French francs (\$387.9 million).

Speculation over potential Victoire buyers had continued as late as Thursday (see story, page 31). Benito Pagnanelli, deputy manager of Assicurazioni Generali S.p.A., had said Wednesday that the Italian insurer was looking at Victoire; in fact, some analysts considered Generali the likely buyer.

Commercial Union, which declined to comment midweek, said Friday that it hopes to finalize an agreement by Sept. 30.

Briefly noted

Democratic state Sen. Art Torres and Republican Assemblyman Chuck Quackenbush will compete for the California insurance commissioner post in November elections after winning their respective primaries last week. . . Centre Reinsurance Holdings Ltd., which is acquiring Anglo American Insurance Co., said the London-based insurer will not accept new business and will be placed in runoff. Selected portions of Anglo American's business are expected to be underwritten by Centre Re affiliate Zurich Reinsurance (U.K.) Ltd. . . The District of Columbia agreed last week, as part of a settlement with the district's Retirement Board, to resume scheduled contributions to a pension program covering public employees. The suit had challenged the district's planned deferral of a \$74 million contribution. . . Moody's Investor Service Inc. raised the financial strength rating of Farmers Insurance Group to Aa3 from A2, reflecting its four insurers' "solid balance sheets and adequate profitability". . . A.M. Best & Co. has raised A from A- the financial strength ratings of: Industrial Indemnity Group, Coregis Group, Westchester Specialty Group, all units of Talegen Holdings Inc., and Evanston Insurance Co., a unit of Markel Corp. Separately, Best upgraded Blue Cross & Blue Shield of Illinois' financial rating to A+ from A. . . John J. Kinsella was named president and chief executive officer of Admiral Insurance Co., the excess/surplus lines unit of W.R. Berkley Corp. Mr. Kinsella succeeds Michael J. Snead who will remain chairman.

CGL ruling

Continued from page 1

the premium to reflect the reduced pollution coverage and failed to tell the policyholder that the coverage was available through endorsements.

"That's a remarkable pro-policyholder holding," said policyholder attorney William Passannante of Anderson, Kill, Olick & Oshinsky in New York.

Courts nationwide are split over whether the absolute pollution exclusion in the post-1985 CGL policy form applies to claims from routine business accidents, like a slip-and-fall injury caused by a leaky can of motor oil on a store shelf.

But, attorneys say no other court has weakened the pollution coverage barrier by making a distinction between intentional and fortuitous spills and by holding insurers to the fiduciary standard that the Louisiana court established.

The May 24 decision directs the CGL insurer for a now-bankrupt convenience store to cover the cost of repairing underground phone cables that were damaged when gasoline leaked from an underground storage tank into the company's adjacent easement in September 1986.

It could cost \$50,000 to \$100,000 to repair the cables and the manhole access to the lines, says an attorney for South Central Bell Telephone Co. of Birmingham, Ala., which owns the lines.

State Farm Fire & Casualty Co. of Bloomington, Ill., insured the store, Ka-Jon Food Stores of Louisiana Inc. The policy's limits probably are adequate to cover the damage, a State Farm attorney said.

State Farm sought a rehearing last week. A lower court still has to determine whether the company violated its fiduciary duty to Ka-Jon.

Policyholder and insurer attorneys disagree over how influential the decision will be in other jurisdictions.

But they expect that policyholders will cite the decision widely, especially because the case centers on damage caused by a leaking underground tank.

Insurer attorneys say the decision is an overreaction by a court concerned that insurers may be abusing the exclusion to deny coverage for benign claims.

"In many ways, the industry has been asking for it," acknowledged David M. Spector, a partner with Mayer, Brown & Platt in Chicago. Although many insurers have used the exclusion "carefully," others have used it "in situations where the exclusion was never intended to apply," Mr. Spector said.

But, the ruling "is a grossly excessive way to control a few overly enthusiastic claims specialists," he said.

"The language of the pollution exclusion, as any number of federal appellate courts have recognized, doesn't deal with how a pollutant gets released," said Barry Ostrager of Simpson Thacher & Bartlett in New York. "It just deals with whether there is pollution. It doesn't have an exception for active or passive pollution."

Even more unsettling for insurer attorney Thomas Brunner is the court's finding that the exclusion may be completely voided if insurers do not follow certain procedures.

"The action of the court's substitution of its after-the-fact judg-

ment for the regulatory process is very troubling," said Mr. Brunner of Weiley, Rein & Fielding in Washington, which represents the Insurance Environmental Litigation Assn. The trade association of major property/casualty insurers filed a brief in the Louisiana case.

Insurance regulators in the state did not require insurers to take those steps, confirmed an attorney with the Louisiana Insurance Department.

Insurers began widely using the absolute pollution exclusion in the new CGL policy in the mid-1980s to bar coverage for all third-party damage arising from any pollution incident. At the time, insurers were facing mounting cleanup-related costs under the comprehensive general liability policy, which did not exclude coverage for damage from pollution that was "sudden and accidental" or was not "expected or intended."

In its 3-2 decision, the Louisiana Supreme Court noted that the decades-long history of the pollution exclusion reveals abuses by insurers that have unfairly denied coverage and by intentional polluters that have compelled insurers to pay for cleanups.

In interpreting how the absolute exclusion was designed to function, the court first considered the coverage that a policyholder expects.

"CGL policies protect against the premises, operation, products, completed operations and independent contractor hazards of the insured," explains the decision written by Justice Revis Ortique Jr.

Although the language is clear, the exclusion, if applied literally, "leads to absurd consequences and is at odds with the policy's nature," according to the.

"The all-inclusiveness of the

EPA proposal would ease lender liability

WASHINGTON—The Environmental Protection Agency is taking steps to clarify language in underground storage tank regulations to exempt lenders from responsibility for repairing leaking tanks.

Under current federal regulations, lenders are treated like partial owners of underground storage tanks at businesses in which they have a financial interest—such as a gas station to which they have made a business loan—and may be treated as full owner and operator if the property is foreclosed, an EPA spokeswoman said.

The proposed changes would exempt lenders from regulations covering leaking underground storage tanks and corrective action requirements if the tank is empty or if the lender empties it within 15 days of foreclosure and then temporarily or permanently closes the storage tank.

Lenders meeting the specified criteria also would be exempt from a current requirement that they demonstrate financial ability to take corrective action on leaking tanks, the spokeswoman said.

A lender continuing to operate an underground storage tank on a foreclosed property would not be eligible for the exemptions.

The changes will be published in the Federal Register this week and, after a period of public comment, could be implemented in about a year.

—By Rodd Zolkos

words used in the exclusion are adverse to both the policy's nature and its primary purpose, which is to insure Ka-Jon against fortuitous accidents and incidental business risks of running its convenience store," the court says. "No reasonable insured would intend for a pollution exclusion to basically eviscerate this coverage."

Therefore, the court ruled, "The 'absolute' pollution exclusion in Ka-Jon's policy is not triggered by non-environmental, routine accidents merely because they involve spills, leaks, discharges (etc.) of items that can be considered contaminants or pollutants."

In addition, in cases of fortuitous spills "not involving prohibited pollution-causing activities" that result in comprehensive environmental damage, the absolute pollution exclusion bars coverage for only damage to the environment, not other types of damage, the court said.

But, State Farm may have forfeited its right to deny even third-party environmental damage claims by not meeting its fiduciary responsibility to the convenience store.

First, the court said, there is no evidence that State Farm reduced Ka-Jon's premiums to reflect the store's reduced pollution coverage under its April 1986 renewal policy.

The insurer was obliged by public policy to cut the premiums, the high court ruled.

Second, State Farm did not show that it told Ka-Jon that its policy contained the exclusion; that it explained how the exclusion would function; and that it advised Ka-Jon about the availability of or necessity to obtain endorsements, according to the court.

State Farm was obligated to disclose such information to Ka-Jon because the policy terms were not subject to negotiation and because the insurer had greater "insurance expertise," the court said.

The decision probably will have its greatest immediate impact in trial courts nationwide, predicted Mr. Passannante, the policyholder attorney.

Trial court judges in coverage disputes now will be more reluctant to grant insurers summary judgment based on the absolute pollution exclusion, he said.

"This gives them the ammunition they need to get by the front-line insurer defense," he said.

State Farm will challenge the Louisiana ruling, chiefly arguing that the insurer's fiduciary liability to Ka-Jon was not litigated in the case.

"We never had a chance to talk about it," said Mark Wells, the insurer's claims counsel.

Mr. Wells said the premium Ka-Jon paid was regulated by Louisiana's ratemaking commission. "It's their responsibility to inquire about the adequacy of rates."

In addition, the state did not require insurers to advise policyholders about changes in pollution coverage and what pollution endorsements were available and advisable, he said.

He added that an unintentional effect of the decision could be higher rates, because the pollution coverage that policyholders won under the decision will drive up claims costs.

South Central Bell Telephone Co. vs. Ka-Jon Food Stores of Louisiana Inc. and Broadmoor Service Center Inc., Supreme Court of Louisiana, No. 93-CC-2926.

A&A

Continued from page 1

from dealing with a stronger broker, said Donald J. Sullivan, director of risk management at Baxter International Inc. in Deerfield, Ill., another A&A client. "It will be a stronger company and it will enable them to accelerate their development, which is another good thing from my point of view."

Clients should draw comfort from dealing with a more financially secure broker, agreed Michael A. Smith, senior vp at Lehman Bros. in New York.

"The second worst thing that can happen to you is for your broker to go under. The worst thing is for your underwriter to go under," he said, noting that brokers often provide claims handling services as well as many other administrative and advisory services for risk managers.

The capital injection also could help A&A win new business, according to Michael T. Lops, director of risk management at Jack Eckerd Corp. in Clearwater, Fla.

"We use Marsh & McLennan in New York, who we are very happy with, but we like to keep in touch with other brokers. This deal makes A&A more stable, so if we ever did decide to change, they would be considered more seriously," he said.

But it is not just the capital injection that should help turn around A&A.

The appointment of Mr. Zarb is also bound to help the brokerage rebound, said John L. Ward, CEO of analyst Ward Financial Group in Cincinnati.

"A&A would have become a better company with either of these events, and the two together are a powerful combination," Mr. Ward said.

Mr. Zarb resigned as vice chairman and group chief executive of Travelers Inc. to accept the A&A post. It is rumored that Sanford I. Weill, chairman and CEO of Travelers, sought to invest in A&A when he learned of Mr. Zarb's new role. Neither Mr. Zarb nor Mr. Weill would comment. Travelers said it will reassign Mr. Zarb's responsibilities.

During the 1970s, Mr. Zarb served in several posts with the federal government, including positions in the Labor Department, the Office of Management and Budget, and as the federal energy "czar" in the Ford administration.

He is best known in the business community for his work at Smith Barney, Travelers' brokerage and investment banking subsidiary, which he joined in 1988. Analysts credit Mr. Zarb with turning around Smith Barney's lagging performance.

"He has a reputation for being very decisive and very analytical, and so I expect he will come on board and analyze the strengths and weaknesses and take decisive action," said Mr. Ward.

Likely actions will include cutting expenses and withdrawing from unprofitable areas of business, Mr. Ward said.

In particular, the axe might fall on A&A's personal lines division, Mr. Ward predicted. "It does not have a critical mass and I think he will want the company to get back to its core business."

Mr. Zarb would not comment on whether A&A would withdraw from specific business areas.

However, "when you build a business, you take resources from where they are not supporting real production and move them to where there is real production,"

Mr. Zarb said in an interview.

He would not rule out layoffs. "I would not preclude the possibility of reducing the headcount, but it will not be mindless."

Besides possibly eliminating some current employees, Mr. Zarb said he also will bring in new faces. In particular, he said he plans to recruit a lot of new marketing personnel.

One of the main attractions of Mr. Zarb is that he will bring a new perspective to A&A, said Mr. Boni, the former chairman and CEO of Armco Inc. who has presided over the company since Tinsley H. Irvin resigned as chairman and CEO in January (BI, Jan. 24).

"We felt that it was necessary to bring in an outsider who would bring new insight into the insurance brokerage business," Mr. Boni said.

Most observers agree that A&A needed to do something radical to turn the company around. For more than 10 years, the company has faced a chain of problems, the most noted of which stem from the 1982 acquisition of U.K. broker Alexander Howden Group P.L.C. and its troubled insurance underwriting subsidiaries.

"Ever since the purchase of Alexander Howden, it has been a tough 10 years for A&A. It's had its problems that have been badly managed and everyone hopes that

decision by the A&A board, but outsiders widely believe that he was pressured to step down due to the poor performance of the company.

Mr. White, long Mr. Irvin's No. 2 at A&A, was overlooked as his replacement. In April, Mr. White stepped down from his post as chief operating officer and later as a member of the broker's board of directors (BI, April 25; April 18). Mr. White is meeting with Mr. Zarb this week to discuss his future with the brokerage, an A&A spokesman said.

Although most observers see everyone involved with A&A benefiting from AIG's investment and appointment of Mr. Zarb, it is AIG that got the best part of the deal, they say.

Under the terms of the deal, AIG will invest \$200 million in a new issue of convertible preferred stock with an annual dividend of 8%. The dividend will be paid in kind through Dec. 15, 1996, and at A&A's option for an additional three years.

The new preferred stock is convertible in to A&A common stock at \$17 a share. On conversion, AIG would have 21% of A&A's non-voting common stock. AIG can exchange the non-voting stock for up to 9.9% of A&A's common stock, though AIG has said that it does not intend to do

'A&A would have become a better company with either of these events, and the two together are a powerful combination,' analyst John L. Ward says of AIG's \$200 million investment and the appointment of Frank G. Zarb as CEO.

the new CEO will change all that," said John H. Snyder, senior vp at A.M. Best Co. in Oldwick N.J.

Shortly after the Howden acquisitions, A&A discovered that a group of Howden executives, including former Chairman Kenneth V. Grob, had misappropriated nearly \$50 million of underwriting funds. A&A later accused Mr. Grob and four other ex-Howden officials of establishing Panamanian companies to accept retrocessional premiums from Howden-owned reinsurers, including Sphere Drake Ltd.

In addition, A&A has paid out hundreds of millions of dollars to build reserves for long-tail liability business written by Sphere Drake and other former Howden underwriting units. While A&A sold Sphere Drake in 1987, it guaranteed the insurer's loss reserves and reinsurance recoverables (BI, March 1, 1993).

More recently, A&A has been plagued by poor operating results and has had to restate revenues because of mismanagement at its benefit consulting unit, Alexander Consulting Group Inc. (BI, Nov. 8, 1993).

In the first quarter of this year, A&A reported a \$4.4 million net loss, compared with a \$13.2 million profit during the first three months of 1993 (BI, May 9).

Also the brokerage has suffered tumultuous management changes in recent months.

In November, Ron Forrest, chairman and CEO of Alexander & Alexander Inc., A&A's U.S. retail unit, resigned unexpectedly. Mr. Forrest recently was named CEO of the newly merged Bain Hogg P.L.C. in London.

Then, in January, Mr. Irvin retired as chairman and CEO after 40 years with A&A. The retirement was described as a mutual

this.

A&A stock was trading at \$17.125 per share last Friday, up from \$16.38 before the deal was announced Tuesday. Trading of A&A stock was suspended last Monday pending the announcement of the latest developments.

AIG will not have a seat on the A&A board, and the two companies have a standstill agreement that bars AIG from buying additional stock in A&A for eight years.

"We believe this investment, along with the other elements of the program announced by A&A today, will enable A&A to strengthen its position in its industry and maintain that position in the future," said Mr. Greenberg.

Others note that the deal also will strengthen AIG as well as A&A.

"The only way that stock is going is up, so in five years time this will be seen as a great investment" for AIG, said Mr. Ward.

Part of the reason why A&A stock rebounded this week is the name of AIG and the amount of money it poured into A&A, said Mr. Smith of Lehman Bros.

"If it had been anything less, I think the market's response would have been continued uncertainty. And if it had been anyone else, with maybe the exception of General Electric, it would not have worked," he said.

Mr. Greenberg has a reputation for being a shrewd investor and for making his investments work, Mr. Smith said. So if Mr. Zarb's turnaround measures do not work, he can expect some advice from Mr. Greenberg, the analyst noted.

"There is no standstill agreement on him providing advice and whatever other resources he might be able to bring," Mr. Smith said.

AIG also may offer some capacity to a reinsurance program A&A currently is putting together to cover Sphere Drake's long-tail liabilities or may help A&A secure reinsurance capacity from other sources, Mr. Smith said.

The reinsurance program will cover the asbestos and pollution liabilities of Sphere Drake, said Dan R. Osterhout, chairman and CEO of Alexander Underwriting Services.

The reinsurance program comes on top of a \$157.5 million charge against 1992 earnings related to A&A's former underwriting operations (BI, Feb. 15, 1993).

A&A expects that its current reserves for the underwriting operation will be sufficient to cover future claims. However, the reinsurance contract should ensure that the company will not be forced to take additional charges against earnings should the claims deteriorate further, Mr. Osterhout said.

The reinsurance contract currently is being negotiated and, at present, AIG is not included in the program.

AIG's investment is not expected to prejudice A&A into placing business with AIG, observers agree.

"Any employee that does not put the interests of the client first will not be working here," said Mr. Zarb.

Risk managers would ensure that their coverage is placed with the most appropriate underwriter, said Claude Boudreault, manager of insurance and risks at The SNC Group Inc., a construction company in Montreal that is an A&A client.

"Brokers are invited to make suggestions to me but they act on my instructions. I don't count on my broker to solve my problems; I use him to gain access to the market," he said.

The AIG investment in A&A should be taken into account by A&A clients but it should not affect their accounts, said Eckerd's Mr. Lops. "You would look to see just how tough they are being at renewal, but it would not deter you from using them."

Most brokerage competitors view AIG's investment in A&A as positive, though some question how well the insurer's "non-voting, passive" agreement will work.

While it is unknown at this point what AIG's intentions are for A&A in the future, the deal will solidify the significant amount of premium A&A produces for AIG, brokers say.

"It's a hell of a move," Donald K. Morford, president of Sedgwick James Inc. in San Francisco, said of AIG's investment.

"My reaction is that (Mr. Greenberg) is a brilliant strategist" but has more than "passivity" in his long-range strategic thinking regarding A&A, Mr. Morford said.

The AIG investment is "a positive move" for A&A when one considers its other options, including being acquired or making an agreement with less "liberal" terms, said J. Bransford Wallace, vice chairman of Willis Corroon Corp. in Nashville, Tenn.

Lawrence L. Drake, managing director of Marsh & McLennan Cos. Inc. in New York, also views AIG's capital infusion as a "very good economic investment." He also noted that his first reaction was that Mr. Zarb is a "highly regarded able executive. . . The brokerage community is delighted that A&A was able to attract this person to lead them."

Sally Roberts contributed to this article.

Gibbons

Continued from page 1

away on the congressional calendar. Those developments include:

- The Senate Labor and Human Resources Committee passed a Clinton-like reform bill.

The proposal, advanced by Committee Chairman Edward Kennedy, D-Mass., does not include mandatory health care purchasing alliances and would exempt very small, low-wage employers from the requirement of paying 80% of premiums for workers. Instead, those firms would be liable for a payroll tax of 1% to 2%.

The bill also would scale back the Clinton workers compensation proposals. The Kennedy bill would require health plans to report claims data to federal authorities and would keep in place a proposed workers comp-health reform study group.

But it would eliminate a requirement that injured workers seek care from their health plans and retains the right of employers to choose providers in workers comp cases.

The approval of the Kennedy bill is largely symbolic since the proposal stands little chance of passing the full Senate.

- In another symbolic gesture, the House Labor Management Relations Subcommittee approved in principle a single-payer health care system.

- Sen. Daniel Patrick Moynihan, D-N.Y., chairman of the Senate Finance Committee, unveiled a "draft outline" of his health care reform proposal.

Sen. Moynihan would require larger employers to pay 80% of premiums, but only would extend the requirement to small firms if national health care coverage goals were not met (see story, page 39).

Employer attention was largely focused on the Gibbons proposal, because of the reduced savings employers with generous family coverage would realize. Under the Gibbons proposal, the Internal Revenue Service would hang onto several billion dollars in transfer payments between the employers of working couples with children.

While the numbers were being revamped and expected to change, under an early version of the Gibbons proposal the government would retain 60% of the transfer payments in 1998 and 1999, 45% in 2000 and 35% in 2001. The government would stop collecting the transfer payments in 2002.

Big companies, typically the ones that offer the best benefits, would be hit hardest by the Gibbons proposal. Logically, a working couple with children would select the employer offering the best benefits package as the provider of coverage.

In fact, under the Gibbons proposal, employers offering benefits that exceed the basic, federally specified benefit package could not cut those benefits for five years.

"It adds insult to injury," said James Klein, executive director of the Assn. of Private Pension & Welfare Plans in Washington.

"Legislators see big business as a deep pocket," added Kenneth Feltman, executive director of the Employers Council on Flexible Compensation in Washington.

The proposal, though, would be a more politically palatable way of raising revenue to help fund universal health care coverage than a general tax increase or taxing workers on employer-paid health care premiums. **BI**

Final shape of health care reforms remains cloudy

MIAMI BEACH—Congress will manage to pass health care reform this fall, but the scope and type of reforms remain uncertain, several benefit experts say.

Managed care guru Paul Ellwood says the final reform bill will likely resemble the version that comes out of the Senate Finance Committee.

Chaired by Sen. Daniel Patrick Moynihan, D-N.Y., the committee is likely to produce something that will appeal to a broad cross-section of Congress, said Dr. Ellwood, leader of the Jackson Hole Group, which advocates the concept of "managed competition."

"The entire future of reforms certainly could falter. But I feel the whole thing depends on the actions of the Senate Finance Committee," Dr. Ellwood told more than 2,000 managed care executives gathered in Miami Beach at a Group Health Assn. of America annual meeting. "If there is to be any legislation to your liking that satisfies the public, the White House and Congress, the Senate Finance Committee will take the lead."

"My impression is they are trying to combine" several bills "to come up with a bipartisan consensus," he said.

Dr. Ellwood also noted that Sen. Moynihan's experience trying to craft welfare reform will help the committee create an acceptable health care reform proposal. "He

conducts the hearings like seminars, which says to me he's actually trying to learn. Also, he's had prior experience with welfare reform. He knows how hard this is to do. He won't jump into anything based on long-range assumptions."

The future 'of reforms certainly could falter. But I feel the whole thing depends on the actions of the Senate Finance Committee,' says Paul Ellwood.

The House of Representatives "is in a chaotic state" and won't have much luck gaining a consensus, he said.

"The House has to please 90 advocates of a single-payer system, so the result will be a largely partisan set of proposals," Dr. Ellwood said.

In fact, the House Labor Management Relations subcommittee passed a single-payer proposal on a voice vote last week.

The House Ways and Means Committee likely will pass a proposal that favors all-payer rate setting and anti-managed care provisions. "Education and Labor will pass a Clintonesque plan with voluntary alli-

ances. And, Energy and Commerce is hopelessly deadlocked," Dr. Ellwood said.

President Clinton's plan will probably not survive because the White House erred in choosing to "lay out their plan in too much detail and make assumptions about how players would behave in the future," Dr. Ellwood suggested. "They failed to recognize the scale and complexity" of health care reform.

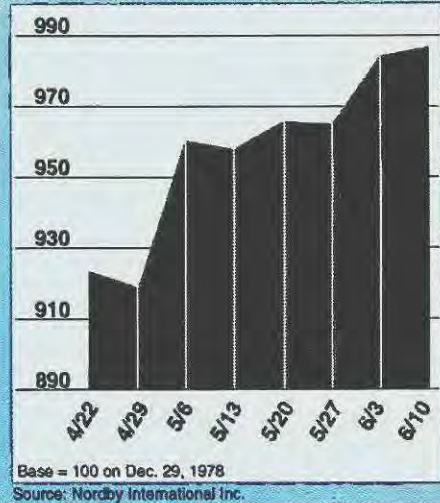
Senior White House Adviser Walter Zelman, who helped craft President Clinton's Health Security Act, insists his boss's plan is alive and well and is the "breeding ground for consensus" among policy makers. During a keynote speech, he encouraged managed care executives at the meeting to support the plan and to keep their sights on the 80% of Clinton's proposal they agree with and not get hung up on the 20% with which they don't agree.

Princeton University's political economics professor Uwe Reinhardt, another conference keynote speaker, likened Congress' struggle to solve the health care crisis to a gaggle of geese stuck in a pond, furiously beating their wings but failing to get off the ground.

Whatever makes it out of committee and onto the House and Senate floors will not adequately address questions about financing universal coverage, he predicted.

—By Christine Woolsey

BI Insurance Index



Insurance stocks fell last week, as the *Business Insurance Index* dropped 1.5 points to 983.0 on June 10 from 984.5 on June 3. Advancing issues for the week were led by: American Indemnity Financial Corp., up 9.1%; Emphesys Financial Group Inc., up 6.8%; and Home Holdings Inc., up 6.5%. Declining issues for the week followed: National Re Corp., down 6.1%; Nobel Insurance Ltd., down 5.9%; and Mid Ocean Ltd., down 5.1%. The most active issue was U.S. Healthcare, 9.4 million shares traded. The *BI Index* fell 0.2%; the Dow Jones 30 Industrials lost 0.03%; and the NYSE Composite and the Standard & Poor's 500 both fell 0.3%.

Moynihan health care proposal uses trigger approach

WASHINGTON—A new health care reform proposal released last week by Finance Committee Chairman Daniel Patrick Moynihan, D-N.Y., is the first to incorporate the much-discussed "trigger" approach to expanding health care coverage.

Under the proposal, employers with more than 20 employees would be required to pay 80% of the premiums for individual and family coverage.

But firms with fewer than 20 employees would not be required to do so. Instead, employers with between one and 10 employees would have the option of paying a 1% payroll tax instead of paying 80% of employees' premiums, while firms with between 11 and 20 employees could pay a 2% payroll tax.

However, an employer mandate would be imposed on small employers at the end of 1998 if 97% of all employees and dependents did not receive employer-provided coverage, or at the end of the year 2000 if 98.5% of employees and their families did not receive employer coverage.

In 1993, 76% of employees reported working for a firm offering employer that provided health care coverage, according to the Labor Department.

Other provisions in the Moynihan proposal include:

- Eliminating health care benefits offered through flexible spending accounts.
- Imposing a 1% payroll tax on employers with at least 500 employees.
- Barring employers with fewer than 500

employees from self-insuring their health care benefits program.

- Establishing and gradually increasing a new federal excise tax on health insurance premiums until the tax hit 2.5% in 1999.

- Eliminate health insurance companies' immunity from most federal antitrust laws now provided under the McCarran-Ferguson Act.

Sen. Moynihan suggested that his bill features provisions "most of us seem to have agreed to."

Sen. Malcolm Wallop, R-Wyo., differed with that statement. The measure "takes the worst of Kennedy, the worst of Clinton and the worst of Chafee and puts them all together."

—By Jerry Geisel

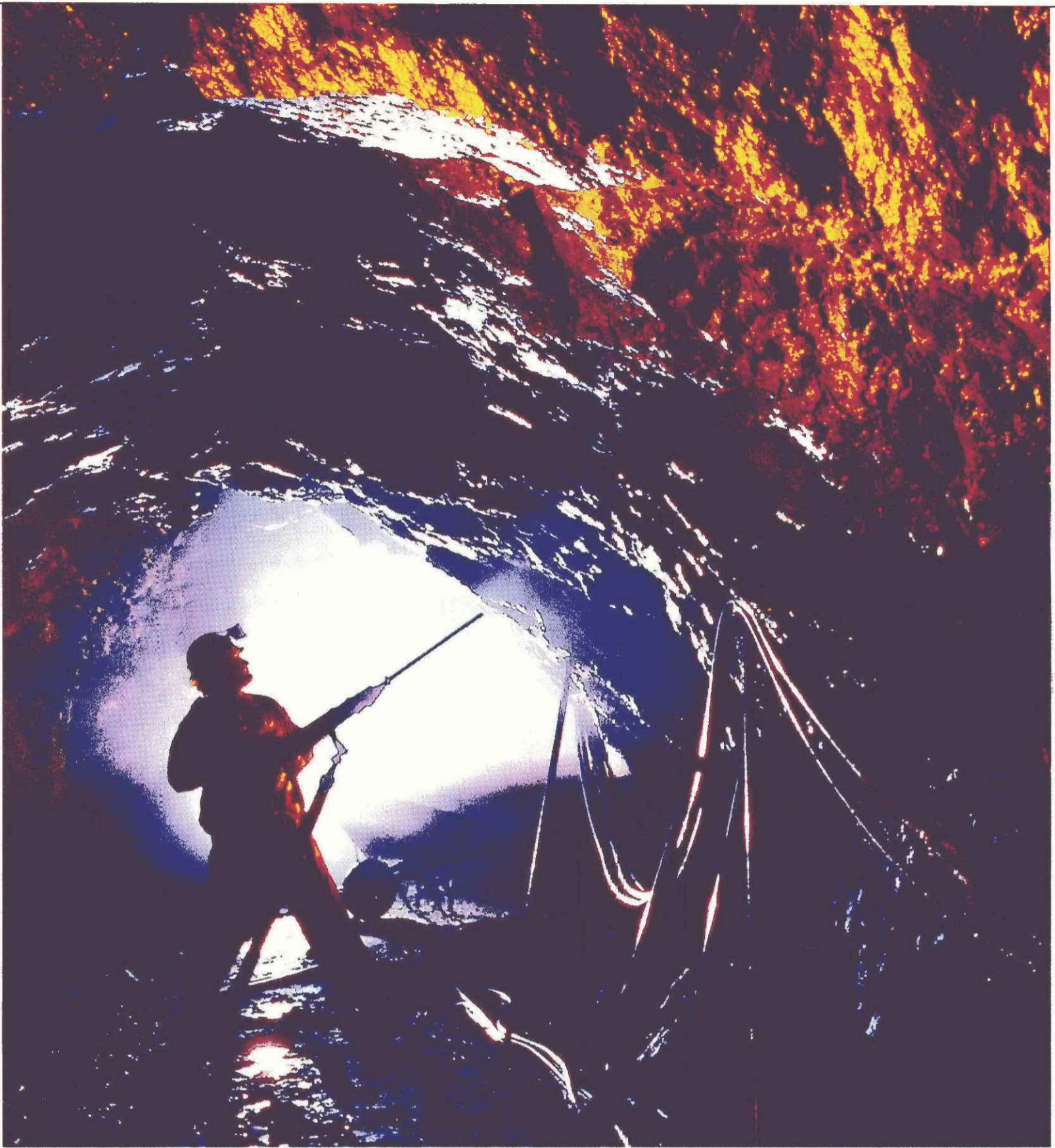
British Issues

June 9 Companies	Price pence	P/E	Div. pence	Yield %	1 week high-low
Comml Union	538	17.1	31.0	5.8	561-538
Genl Accident	567	11.4	34.4	6.1	593-567
Gdn Royal Exch	170	11.0	9.5	5.5	180-170
Independent	251	7.1	10.3	4.1	252-251
Royal	257	11.2	9.4	3.7	273-257
Sun Alliance	313	14.0	18.4	5.2	313-313
Brokers					
Bradstock	114	13.0	6.9	6.0	114-114
Brinchurch	150	13.2	9.1	6.1	151-150
CE Heath	339	13.0	20.5	6.0	366-339
JIB Group	177	15.5	9.4	5.3	179-177
Lloyd Thompson	248	16.7	8.4	3.3	2E2-248
Lowndes Lmbrt	408	12.6	18.8	4.6	408-408
Nelson Hurst	170	17.0	7.0	4.1	170-170
PWS Holdings	57	N/M	2.5	4.4	E7-57
Sedgwick Grp	178	19.7	7.5	4.2	179-172
Steel Bri Jones	124	N/M	11.3	9.1	124-124
Willis Corroon	158	14.5	8.3	5.2	162-156

Source: Philip Olsen, London* Estimated; others actual 1993

BI Industry Stock Report JUNE 6, 1994, THROUGH JUNE 10, 1994

BROKERS	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	
				High	Low										High	Low							
Accordia Inc.	NYS	28.38	0.44	15.23	28.75	20.13	7	0.60	2.11	14	10.22	2.78	0.00	-21.67	32.75	21.16	89	0.28	1.19	14	5.71	4.12	
Alexander & Alexander	NYS	17.13	4.58	-13.84	28.00	14.00	2515	1.00	5.84	190	6.73	2.54	1.64	6.44	38.25	24.00	642	0.16	0.52	14	9.24	1.61	
E.W. Blanch Holdings Inc.	NYS	20.50	1.86	17.99	23.50	15.75	66	0.32	1.56	20	4.10	5.00	-6.12	-6.12	37.13	26.88	121	0.16	0.56	9	7.51	1.64	
Gallagher Arthur J. & Co.	NYS	32.25	-0.77	-9.79	37.13	28.13	21	0.88	2.73	16	7.52	4.29	-2.63	-47.14	39.00	16.50	51	0.00	0.00	-11	6.99	1.09	
Hilt, Rogal & Hamilton	NYS	12.75	0.99	-2.86	15.13	11.13	54	0.48	3.76	19	4.51	2.83	-5.88	4.92	8.50	6.63	51	0.20	2.50	5	6.84	1.17	
Marsh & McLennan	NYS	88.00	0.57	8.14	91.88	77.00	274	2.70	3.07	18	16.76	5.25	-0.74	3.85	38.75	27.00	357	0.90	2.67	12	23.97	1.41	
Poe & Brown	OTC	20.25	2.53	12.50	20.75	16.88	10	0.40	1.98	16	3.02	6.71	4.11	-10.59	36.00	26.50	405	1.46	5.12	13	47.68	0.60	
BROKERS AVERAGE			1.5	3.9					3.0	42													
INSURERS/REINSURERS																							
ACE Ltd.	NYS	25.75	-4.19	-15.57	36.00	24.50	290	0.44	1.71	5	28.74	0.90	0.00	-3.64	38.25	18.50	289	0.30	1.13	9	19.96	1.39	
Acceptance Insurance Cos.	NYS	12.38	-1.00	6.45	15.63	11.13	19	0.00	0.00	15	9.65	1.28	-0.46	-14.23	31.88	24.38	298	1.04	3.83	-13	26.38	1.03	
AEGON N.V.	NYS	53.25	1.91	-2.74	58.50	43.25	11	2.95	5.53	10	34.71	1.53	0.00	-8.26	15.50	12.25	0	0.32	2.56	-	16.86	0.74	
Aetna Life & Casualty	NYS	56.25	-2.39	-6.64	66.25	49.75	1100	2.76	4.91	-9	71.84	0.78	2.17	-24.19	10.38	5.00	488	0.32	5.45	8	4.22	1.39	
Allied Group Inc.	OTC	25.63	-1.44	2.50	32.75	21.34	144	0.60	2.34	7	10.45	2.45	0.58	-19.16	27.75	21.38	49	0.56	2.59	-35	22.91	0.94	
Allmerica Prop. & Casualty	NYS	16.38	3.15	-23.98	22.16	15.00	80	0.16	0.98	9	56.97	0.29	0.63	-10.86	49.00	37.69	442	1.50	3.75	9	57.84	0.69	
Allstate Corp.	NYS	26.38	3.94	-11.34	34.25	22.63	622	0.72	2.73	16	18.43	1.43	4.45	7.32	65.75	48.50	666	1.96	3.34	11	41.50	1.41	
American General	NYS	28.75	0.88	0.88	36.50	24.88	1315	1.16	4.03	23	22.09	1.30	0.00	-11.88	17.00	10.13	41	0.36	3.24	62	16.06	0.69	
American Heritage Life Ins.	NYS	18.88	0.00	1.34	25.13	16.75	25	0.60	3.18	12	12.42	1.52	0.00	0.00	2.13	0.31	55	0.00	0.00	-2	1.96	0.92	
American Indemnity/Fin'l	OTC	12.00	9.09	-7.69	16.25	11.00	25	0.24	2.00	4	16.18	0.74	0.00	-19.01	31.00	23.00	31	1.12	4.57	12	23.1	1.06	
American International	NYS	95.25	1.46	8.09	100.25	81.75	1874	0.46	0.48	16	45.25	2.10	0.00	0.76	16.63	14.63	18	0.12	0.72	7	12.1	1.37	
American Re Corp.	NYS	34.63	2.21	22.57	37.50	23.50	422	0.00	0.00	18	14.80	2.34	0.00	19.00	15.25	10.00	337	0.10	0.67	6	8.65	1.72	
Aon Corp.	NYS	33.88	-1.45	5.31	39.00	30.00	206	1.28	3.78	13	33.10	1.02	0.00	-11.05	28.00	17.25	387	0.20	0.99	-15	18.49	1.09	
Argonaut Group	OTC	27.13	-3.13	-11.07	35.50	26.25	69	1.16	4.28	8	27.65	0.98	1.32	-11.08	13.38	9.00	10	0.25	2.63	8	8.93	1.08	
AVEMCO Corp.	NYS	16.13	2.38	-14.00	22.00	14.50	82	0.44	2.73	13	8.13	1.98	0.79	18.75	67.00	49.25	26	0.38	0.53	-	57.72	1.11	
Baldwin & Lyons Inc.	OTC	14.00	-5.08	-5.88	16.25	12.66	0	0.24	1.71	9	12.59	1.11	-0.60	-6.70	59.75	36.75	455	1.12	2.88	10	17.35	2.41	
Berkley W.R. Corp.	OTC	40.00	0.95	22.14	48.00	32.00	107	0.44	1.10	17	28.12	1.42	1.16	2.34	61.50	45.38	35	0.36	0.66	14	29.60	1.85	
Berkshire Hathaway Inc.	NYS	16450.00	0.61	0.77	17800.00	14000.00	1	0.00	0.00	25	8115.29	2.03	1.00	-13.83	49.50	31.88	3828	0.60	1.79	8	33.35	1.00	
Capital RE Corporation	NYS	21.13	4.97	-17.96	28.50	18.50	45	0.20	0.95	8	21.66	0.98	0.00	10.32	47.75	33.25	190	1.00	2.34	16	26.00	1.64	
Casura Holdings Corp.	NYS	16.00	4.07	18.52	19.38	12.75	23	0.00	0.00	15	13.08	1.22	1.28	9.72	44.00	34.75	3	1.08	2.73	10	28.95	1.36	
Chubb Corp.	NYS	81.50	-0.91	3.66	93.38	70.75	722	1.84	2.26	26	46.59	1.75	0.58	-2.94	46.75	38.50	107	1.40	3.39	26	38.90	1.06	
CIGNA Corp.	NYS	69.00	-2.82	9.09	73.75	56.50	1137	3.04	4.41	16	78.23	0.88	2.70	-9.52	60.13	44.50	1298	0.96	2.22	12	27.55	1.72	
CNA Financial Corp.	NYS	64.88	-1.33	-17.62	96.75	62.50	157	0.00	0.00	-31	77.92	0.83	0.00	16.84	14.63	8.25	253	0.00	0.00	15	10.48	1.32	
Continental Corp.	NYS	17.25	-2.13	-37.56	34.63	16.88	1041	1.00	5.80	19	38.99	0.44	0.00	-14.05	19.63	11.69	777	0.20	1.54	14	10.60	1.23	
EMC Insurance Group Inc.	OTC	9.00	0.00	-5.26	10.50	8.50	2	0.52	5.78														



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