

Business Insurance

Kemper turns onshore to INEX to securitize earthquake risk

CHICAGO—The market for obtaining insurance-linked catastrophe bonds is broadening geographically following completion of the first onshore deal by the Chicago-based INEX Insurance Exchange.

Previous transactions have used special-purpose offshore reinsurers to issue notes to investors as a way to avoid tax and regulatory problems, though U.S. insurance commissioners are working to create a more favorable climate within the states for capital markets risk financing (BI, Feb. 15).

See Updates on next page

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

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PBGC surplus sets record of \$5 billion

By JERRY GEISEL

WASHINGTON—Aided once again by a booming economy, strong investment returns and no terminations of big, underfunded pension plans, the Pension Benefit Guaranty Corp.'s surplus now is a record \$5 billion.

The PBGC's surplus—the difference between assets it holds and benefits it must pay to participants in failed corporate pension plans it has taken over—climbed to \$5.01 billion last year, up from \$3.48 billion in 1997 and \$869 million in 1996, according to the agency's 1998 annual report, which will be released today.

"Obviously, we had another good year. Financially, we have never been healthier. We have made an incredible turnaround here," said PBGC Executive Director David Strauss.

The PBGC's robust health is certain to rekindle calls from business groups that Congress pass legislation to cut the PBGC premium rate.

But Mr. Strauss, comparing the PBGC's three-year consecutive run of racking up surpluses to the 21 prior years of annual deficits, says cutting premiums now would be unwise.

"With 21 years in the red and three years in the black, it would not be prudent to take this three-year snapshot and use it as the basis for making a long-term decision like premium relief," he said.

And while a \$5 billion surplus may appear large, it is dwarfed by the PBGC's most significant exposure: the \$15 billion to \$17 billion in unfunded liabilities in pension plans maintained by financially weak companies—those with below investment grade bond ratings. That large exposure and an almost-certain future downturn in the economy reinforce the importance of maintaining a cushion, Mr. Strauss said.

"The terminations of just a few large underfunded plans can have a significant impact on our bottom line," Mr. Strauss said.

See PBGC on page 26

Court extends limits on expert testimony

By MARK A. HOFMANN

WASHINGTON—Tort reform advocates praise a U.S. Supreme Court decision that expands federal judges' ability to screen expert witnesses in product liability cases.

The unanimous ruling is expected to sharply limit the admissibility of so-called junk science in federal courts.

However, some tort reform advocates caution that the ruling could spark an increase in product liability

suits brought in state courts that lack similar limits.

Others warn that having federal judges determine the admissibility of expert testimony does not necessarily mean they will rule in a manner favored by business defendants.

The unanimous ruling in *Kumho Tire Co. Ltd. et al. vs. Patrick Carmichael et al.* holds that federal trial judges should act as "gatekeepers" in determining whether to admit



expert testimony in product liability cases. The question before the court was whether the standards regarding the admissibility of scientific expert testimony set by the Supreme Court's 1993 decision in

Daubert vs. Merrell Dow Pharmaceuticals Inc. should apply to other forms of technical and specialized testimony as well.

The *Daubert* standards include See Witnesses on page 21

SIIA seeks self-insurer voice

New privacy bill lobbying

By MEG FLETCHER

WASHINGTON—A new business alliance is forming to lobby Congress about self-insurers' concerns with pending medical records privacy legislation.

Such legislation could greatly restrict the ability of self-insured employers to track the treatment of injured employees, hampering cost-control efforts as well as return-to-work initiatives.

The Self-Insurance Institute of America will announce today the for-

mation of the SIIA Alliance for Sensible Health Privacy Legislation.

The alliance is needed because "current legislative proposals do not fully recognize the



unique need for workers compensation and property/casualty self-insurers to have unrestricted access to health informa-

tion in the course of performing necessary claims management functions," said James A. Kinder, chief executive officer of the SIIA in Santa Ana, Calif.

The 1,000-member SIIA represents self-insured employers as well as the alternative risk financing industry, including third-party administrators and stop-loss and excess insurers.

The SIIA's new alliance will join several other employer and insurer groups that have voiced concern about three comprehensive federal

See Privacy on page 4

10 YEARS AFTER

EXXON VALDEZ

A sea change in safety

By ROBERT KAZEL

Ten years after the Exxon Valdez oil tanker ran aground in Alaska's Prince William Sound, leaking 11 million gallons of crude oil into a previously pristine environment, leaders in the oil transport industry assert that the risk of a similar spill has been reduced tremendously.

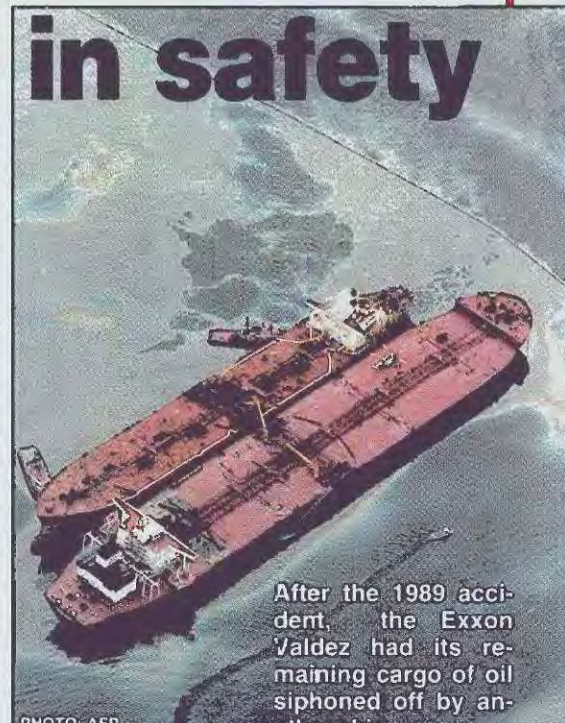
The worst oil spill in U.S. history occurred shortly after midnight on March 23, 1989, when the Valdez, carrying 53 million gallons of oil, drifted from tanker lanes and hit a shoal on the sea bottom, breaching its hull. Winds soon drove the oil over 1,300 miles of coastline, resulting in the deaths of whales, hundreds of seals, thousands of

sea otters and hundreds of thousands of birds.

While devastating to the local environment, the accident had another effect: Procedures and rules were put into effect—some mandated by law and others voluntarily by industry—to reduce the chances of a catastrophic spill from occurring again.

The oil spill and preventive legislation that followed "were more than an alarm clock (for industry); it was as though someone put a nuclear bomb under your bed," said Richard T. duMoulin, chairman of INTERTANKO, the international association of independent tanker owners. Mr. duMoulin also is chairman and chief exec-

See Valdez on page 25

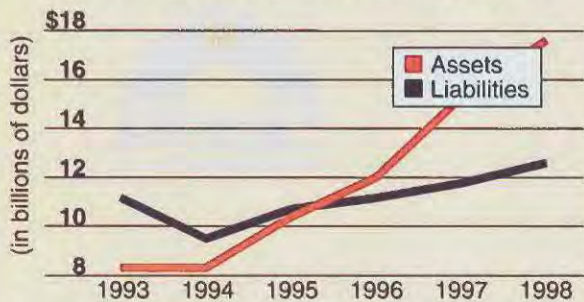


After the 1989 accident, the Exxon Valdez had its remaining cargo of oil siphoned off by another ship.

PHOTO: AFP

Another strong year

Results for single-employer insurance program



Source: Pension Benefit Guaranty Corp.

GRAPHIC BY MIKE GARVEY

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Updates

INEX used to issue cat bonds

Continued from previous page

Under the deal, Kemper Insurance Cos. will obtain \$100 million in coverage for Midwest earthquake losses for 37 months beginning May 1, according to James E. Tait, INEX president and chief executive officer. The triggering event for the INEX coverage is an earthquake of 5.0 or greater with an epicenter in one of seven covered states: Arkansas, Illinois, Indiana, Kentucky, Mississippi, Missouri or Tennessee. The fully collateralized reinsurance agreement will protect both commercial and personal lines policies.

The notes, which were rated Ba2 by Moody's Investors Services Inc., were issued by Domestic Inc., a Delaware corporation, and involved two INEX syndicates affiliated with Kemper.

U.S. tax problems were avoided by structuring the offering as 80% interest-bearing notes and 20% equities in Domestic Inc., Mr. Tait said. In the event of a loss, both the interest and principal of the notes may be at risk.

"Completion of this transaction through INEX marks a new milestone for insurers seeking efficient sources of fully collateralized reinsurance capacity and for investors seeking portfolio diversification," Mr. Tait said.

The transaction was structured, underwritten and distributed by Aon Capital Markets, the investment banking affiliate of Aon Corp.

Superfund reform introduced

WASHINGTON—The House of Representatives last week revived Superfund reform efforts with a bill that would provide liability relief for small businesses, recyclers, municipalities and waste cleanup contractors.

Rep. Sherwood L. Boehlert, R-N.Y., chairman of the House Subcommittee on Water Resources and the Environment, introduced the bill, which also targets the cleanup and redevelopment of "brownfields," or abandoned urban industrial sites.

Superfund reforms proposed by the measure, H.R. 1300, include:

- Providing an "innocent landowner defense" to public and private owners and developers who acquire property after the disposal of toxic waste at the site by other parties. Innocent landowners could include those acquiring property through inheritance or charitable donation, contiguous property owners, or government entities gaining property through involuntary transfer or eminent domain.

- Providing liability relief for small businesses that disposed of ordinary garbage at a site where others dumped hazardous waste.

- Capping the liability of municipal landfill owners and operators.

- Clarifying the liability of cleanup contractors.

- Eliminating liability of those who sent scrap plastic, glass, metal and batteries to recycling facilities. Service station owners who collected used oil for recycling also would be freed from liability.

The bill also would create grant programs for brownfields assessment and remediation efforts, to encourage wider redevelopment of these sites than has been undertaken with money from the Superfund Trust Fund.

By last Friday, the bill had attracted 33 co-sponsors—15 Democrats and 18 Republicans—along with the backing of the American Insurance Assn., the National Federation of Independent Business and others.

Hartford buys part of Vesta

BIRMINGHAM, Ala.—The Hartford Financial Services Group Inc. has bought the \$150 million reinsurance business of troubled insurer Vesta Fire Insurance Corp. for an undisclosed sum.

Hartford, Conn.-based Hartford Re Co. will set up a Birmingham, Ala., office to manage the business. "This acquisition complements our portfolio and expands our reach in the South and Midwest," said Dennis Zettervall, chief executive officer of Hartford Re.

The deal will enhance Hartford's reinsurance operations and provide some short-term relief to Vesta, said Keith Buckley, senior vp at Duff & Phelps Credit Rating Co.

Vesta has been suffering financial problems since it revealed accounting irregularities last year.

The injection of capital from the sale of the reinsurance arm will strengthen Vesta in the short term. In the long term, however, the sale is less favorable, because reinsurance has been a major source of business for Vesta, Mr. Buckley said.

For Hartford, the deal will give its reinsurance arm greater critical mass and expand its field of operation, Mr. Buckley said.

Pension reform bill introduced

WASHINGTON—Bipartisan pension legislation unveiled last week would allow employees to contribute more to their retirement plans and would snip away at employers' administrative burdens.

Under the Pension Coverage and Portability Act, sponsored by Sens. Charles Grassley, R-Iowa, and Bob Graham, D-Fla., the maximum annual salary deferral an employee could make to a 401(k) plan would be lifted to \$12,000 from the current \$10,000.

In addition, the maximum benefit that could be funded and paid through a defined benefit plan would be raised to \$160,000 from \$130,000, while the limit on employee compensation that could be included in a pension formula would be boosted to \$200,000 from \$160,000.

Other provisions in the legislation—similar to one the two senators introduced last year—would eliminate rigid, mechanical pension non-discrimination tests in favor of looser facts and circumstances tests.

See Updates on page 26

Errors & omissions

• A March 22 update incorrectly identified South Dakota's governor, William J. Janklow.

OSHA head takes heat on ergonomics drive

By MARK A. HOFMANN

WASHINGTON—The controversy surrounding the Occupational Safety and Health Administration's proposed ergonomics standard does not appear likely to dissipate any time soon.

During an oversight hearing concerning OSHA's operations last week, the chairman of both the House Committee on Education and the Workforce Protections Subcommittee made clear that he thinks OSHA is going too far with the ergonomics proposal, even as he praised the agency for

some of its other initiatives.

Although cordial throughout the hearing to his fellow Tarheel—OSHA Administrator Charles Jeffress—Rep. Cass Ballenger, R-N.C., said OSHA's regulatory agenda is "a real disappointment."



Mr. Jeffress

Rep. Ballenger, who has long

been numbered among Congress' biggest advocates of OSHA reform, said he understood that Mr. Jeffress is under "some pressure" to promulgate an ergonomics standard.

A draft standard released earlier this year drew immediate fire from employers and lawmakers alike for being both too broad and too vague, as well as extremely expensive to implement (BI, Feb. 22). The outcry over the draft was so great that Rep. Roy Blunt, R-Mo., recently introduced legislation designed to ban OSHA from

See OSHA on page 27

California court OKs capping damages in dumping case

SAN FRANCISCO—California's Supreme Court unanimously ruled last week that the state's \$250,000 cap on jury awards for non-economic damages in medical malpractice cases protects hospitals even when they violate a federal act prohibiting so-called patient dumping.

The case had been closely watched because hospitals nationwide increasingly are finding themselves squeezed between the anti-dumping provisions of the federal Emergency Medical Treatment and

Active Labor Act and managed care plans that refuse payment for treating patients who obtain medical care at non-network facilities or without prior authorization (BI, Feb. 15).

In the California case, *Barris vs. County of Los Angeles*, justices ruled 7-0 March 25 that a claim alleging a hospital discharged a patient before stabilizing the patient's medical condition is necessarily based on professional negligence and thus within the scope of Cali-

fornia's Medical Injury Compensation Reform Act.

Under the court's ruling, a \$1.35 million jury award for pain and suffering against the County of Los Angeles will be sliced to \$250,000. The case stems from the death in 1993 of an 18-month-old girl. She died from an infection that could have been detected if a blood test had been administered before she was transferred out of a county hospital.

—By Roberto Cenicerros

Iowa RRG stops underwriting

By JOANNE WOJCIK

DES MOINES, Iowa—The soft insurance market is claiming yet another risk retention group: An Iowa-domiciled facility providing liability coverage for rental equipment dealers is closing down.

Des Moines, Iowa-based ARDI Exchange, a Risk Retention Group, licensed in 1987, has decided to stop writing new business effective Dec. 31, 1998, Iowa insurance officials confirmed last week.

The soft market is the reason for the decision to shelve the RRG, according to Phillip R. Kelling, president and chief executive officer of ARDI and also president of ARA Insurance Services, a Kansas City, Mo.-based managing general underwriter that provides management services to ARDI.

"We're a small organization, and we have to write at a profit. But it's hard to compete

when the market is offering the same coverage below cost. Loyalty only carries you so far," Mr. Kelling said.

Furthermore, "our surplus is still strong, and we want to keep it that way. If we tried to write below cost, it would hurt all of our members," he said.

ARDI's year-end 1998 surplus stood at \$2.4 million, up from \$2.2 million at the end of 1997, according to Mr. Kelling.

At its peak, ARDI had about 550 members, all of which were members of the American Rental Assn. But as of year-end 1998, membership had shrunk to just 400 member/policyholders. Gross written premiums were \$1.9 million in 1998, down sharply from \$2.6 million in 1997.

ARDI provided general liability coverage to ARA members in all 50 states, with combined single limits of up to \$1 million.

Mr. Kelling is working with Iowa regulators to develop a

runoff plan, which he expects to present to the Insurance Department by the end of March.

Meanwhile, Mr. Kelling has been working with a unit of Seattle-based SAFECO Corp. to assemble a comprehensive insurance program for members of the RRG and the association. The package would include workers compensation and property coverage in addition to the general liability coverage that had been written by ARDI.

The voluntary runoff of ARDI comes on the heels of a move by Vermont regulators to place Nonprofits' Mutual Risk Retention Group Inc. in rehabilitation, following several years of consistently declining premium volume (BI, March 1).

Another Iowa-domiciled RRG—Appliance Manufacturers Assurance Co. Risk Retention Group—entered voluntary runoff last year in light of soft market pressure (BI, May 11, 1998).

Inside

• Last week's Supreme Court decision clarified the role of trial judges to screen expert testimony, making explicit the high court's view of junk science, this week's editorial says. **PAGE 8**

• A group of multinational companies plans to file a European Court of Justice test case to stop tax discrimination that they say is preventing the creation of pan-European pension funds. **PAGE 19**

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Railroad invests in crisis management

By AMANDA MILLIGAN

ST. LOUIS—Although not every train disaster can be avoided, a Union Pacific Railroad initiative that relies on local community input to mitigate dangers could be the ticket to fewer accidents.

This initiative, called the Risk Management Communications Center, was created by Union Pacific about three years ago to manage critical incidents, such as fatal accidents, hazardous material spills and train derailments. After Union Pacific Railroad merged with Southern Pacific Railroad, the united entity became responsible for a 36,000-mile spidery expanse of tracks covering 23 states, said Dale Bray,

director of the RMCC for the Union Pacific in St. Louis.

The vast territory necessitated a standardization of the procedures for handling emergency situations, he said.

A "mile-by-mile and crossing-by-crossing" analysis of UPRR-owned track is key to the RMCC. Two mapping software programs are used to plot the entire track surface, and all emergency phone numbers are available for every area of the map, he said.

While the RMCC is able to prevent some losses, some accidents, such as last week's collision of a UPRR train and a Conrail Inc. train, may not be avoidable.

A spokesman for UPRR said there were indications that the



Last week's collision of Conrail and Union Pacific trains is covered on page 18

Conrail train ran a red signal and that if that was the case, the RMCC could not have prevented the crash. A spokesman for Conrail, however, would not confirm or deny that the Conrail train ran a signal.

The communications center, Mr.

Bray said, responds to approximately 31,000 telephone calls per month.

Most calls involve alerting the railroad to criminal activity, such as trespassing or break-ins into rail cars. Although a small number of the calls turn out to be un-

founded, every call is looked into.

"Until you investigate, how do you know if it's legitimate or not?" Mr. Bray said.

When an emergency call comes in, a communications center staff member can touch a button on the map's screen to alert the train dispatcher for that area. If the call comes from the public, another call is first placed to local emergency response teams, then UPRR's train management or hazardous materials personnel may be alerted depending upon the reported problem.

Each railroad company is responsible for handling its own critical incidents, Mr. Bray said, and many do have "help desk" See *Railroad on page 18*

Alternative markets view deregulation

By ROBERTO CENICEROS

SAN ANTONIO—The possibility that deregulation of financial services in Japan could spur growth in the alternative market was a hot topic at the 1999 International Alternative Insurance Symposium.

Also much-discussed was the deregulation of commercial lines insurance in the United States.

Additionally, an emerging strategy calling for the formation of single-parent captives, primarily to shift business taxation to the taxing of captive premiums, was among the topics presented by experts assembled at the symposium March 14-17 in San Antonio to discuss the future of the alternative market.

In Japan, a movement to deregulate insurance and financial services has encouraged the country's multinational companies to seek out risk transfer

alternatives that have long been used or discussed in the United States.

"We are seeing high levels of interest from the largest domestic (Japanese) corporations, and many of them are brand names we are all familiar with," said Paul Pinckney, a principal for Tillinghast-Towers Perrin in Irvine,

Calif. "Some already have captive insurance companies; we think we have identified 70 captives worldwide that are affiliated with Japanese parent companies.

But the large corporations are very interested in learning more and more about alternative transfer, captive insurance and other schemes to enable global integrated programs for their companies."

Currently, the Japanese market is highly concentrated among 26 non-life domestic insurers, Mr. Pinckney said. But those insurers now are showing great interest in strategies such as rental

See *Captives on page 10*



International Alternative Insurance Symposium

Stagnant P/C results hint at trouble ahead

By JUDY GREENWALD

As commercial property/casualty insurers close the books on a lackluster 1998, market analysts already warn of few prospects for improvement this year.

A few analysts see promising signs of rate stabilization as well as a greater willingness on the part of some major insurers to walk away from unprofitable business.

Others say, however, that with reserve redundancies running out and no indications of a general hardening of prices, insurer results this year are likely to be worse than 1998.

As a result of tough market conditions, plus a resurgence of catastrophe losses, the 18 property/casualty insurers surveyed by *Business Insurance* that report net income posted a scant 0.9% increase in profits last year to \$13.45 billion.

"The results do not look good, and there's nothing on the horizon to suggest that they're going to improve," said Barbara Stewart of Stewart Economics in Atlanta.

"There's a lot of foolish talk about price

increases, but there hasn't been any evidence that increases are sticking or that the rates are holding stable," said Ms. Stewart.

"Operations results-wise, you're going to see more of the same," said Michael Lewis, senior insurance analyst with Warburg Dillon Read in New York.

However, he added, "there are some positive signs that the industry's being a little more responsible when it comes to pricing some of the more inadequately priced lines in the business."

Some companies, for example, are declining to write coverages that have had poor accident-year results, "such as workers comp, medical malpractice and some professional liability lines," Mr. Lewis said.

Even with those efforts, however, results in 1999 are still likely to be poor because "you're still dealing with distinctly inadequate rates," he said. Results also will be hurt "as the industry runs out of prior year reserve releases to offset the poor current accident-year results," he added.

As a result, property/casualty insurers for See *Results on page 24*



Hines looks to future

CHICAGO—This year's Harold H. Hines Jr. Memorial Symposium will offer a futurist's view of what the new millennium holds for business and society, along with expert analysis of what it means for risk management and commercial insurance.

Titled "Journey into the Next Millennium," this year's symposium will be held May 18 at the Union League Club of Chicago.

The program, designed to help attendees prepare themselves to maximize the opportunities and minimize the risks associated with coming events and changes, will begin with futurist Edward D. Barlow Jr. offering his predictions for the economy, business and social trends in the new century. Mr. Barlow is a member of the graduate school faculty at the University of San Francisco with executive-level experience in business, health care and education. Following Mr. Barlow's presentation, a panel of risk management and insurance industry experts will offer their views on what the predictions mean for risk managers and the commercial insurance business.

Among the panelists will be James V. Davis, chairman and chief executive officer of the Advanced Risk Management Services Division of Willis Corroon in Nashville; and William J. Kelly, manag-



ing director of J.P. Morgan in New York and chief operating officer of the company's Corporate Services Group.

Also on the panel will be Dan R. Anderson, the Leslie P. Schultz Professor of Risk Management and Insurance in the department of actuarial science, risk management and insurance in the school of business of the University of Wisconsin-Madison; and William D. Smith, president and chief operating officer of Long Grove, Ill.-based Kemper Insurance Cos. and a member of Kemper's board of directors.

The event honors the late Harold H. Hines Jr., former president and chief executive officer of Rollins Burdick Hunter Co., now Aon Group Inc. It is presented by the Chicago and Chicago Suburban chapters of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*.

Registration for the event will begin at 3:15 p.m., with the program beginning at 3:30 p.m. and a reception following immediately at 5:30 p.m.

There is no charge to attend. For an invitation, contact The Insurance School of Chicago, 175 W. Jackson Blvd., Suite 2200, Chicago, Ill. 60604; 312-427-2520; fax: 312-427-8528. BI

Play to win: Consultant Change management focus of recent seminar

By JOANNE WOJCIK

PASADENA, Calif.—Risk managers need to stay alert to safely navigate their organizations through today's permanent white water business world, a change management consultant says.

Speaking to a roomful of approximately 350 risk managers, benefit managers and chief financial officers attending a seminar hosted by Aon Consulting Inc.'s Los Angeles office, Larry Wilson likened today's fast-changing business climate to a white water rafting trip.

"You can't control the water, so you try to control the raft. The raft is you and your organization," he explained.

"How fast do we have to go to control the raft?" he queried. "Faster than the water. And if we have to go faster than the water to control the raft, then how fast do we have to go to handle change? Faster than the change!"

Unfortunately, most people have an unconscious urge to go back to what's comfortable when confronted with a situation that makes them uncomfortable, said Mr. Wilson, founder of Pecos River Learning Centers of Eden Prairie, Minn. Aon acquired his company in 1994.

Aon brought Mr. Wilson's presentation to

the Huntington Library in Pasadena on March 12 as part of the broker's commitment to provide more than just traditional insurance brokerage services, according to Douglas B. Brown, president of Aon Risk Services Inc. of Southern California in Los Angeles.

"We're finding a lot of our clients are looking to their brokers to provide more proactive risk assessment and analysis, including areas previously considered non-traditional risk," he said.

Research finds most people play not to lose See *Seminar on page 12*



Mr. Willson

Privacy

Continued from page 1
health privacy bills introduced in the 106th Congress.

Two privacy bills have been introduced in the Senate—S. 573 and S. 578—and a companion bill to S. 573 has been introduced in the House of Representatives as H.R. 1057. In addition, pending federal patient rights legislation also contains privacy-related provisions.

The privacy legislation broadly aims to limit unauthorized and inappropriate use of private medical information.

Because the "legislative staffers responsible for drafting health privacy legislation have not been fully educated on how health information is used for workers compensation purposes, the resulting legislative proposals would have a significant adverse impact" on self-insured em-

ployers and insurers, according to an SIIA briefing paper.

The new alliance's mission, therefore, is to educate lawmakers and others about "why restrictions on the disclosure and use of health information must be done in a way that balances the need for privacy with the legitimate needs of those who are responsible for providing benefits," Mr. Kinder said.

The SIIA alliance generally supports health privacy legislation that would address legitimate consumer concerns, though it did not elaborate. In addition, the alliance would not oppose provisions creating criminal or civil penalties for companies or individuals that illegally use or disclose personal health information, according to a statement.

Employers and insurers seeking to retain access to information are facing off in the privacy debate against consumer groups and labor unions, as well as the National Assn. of In-

surance Commissioners, which is on record as wanting such legislation to apply to property/casualty insurers that write workers compensation coverage as well as life/health insurers (*BI*, Sept. 21, 1998; April 27, 1998). Supporters of privacy legislation argue that workers injured on the job should not have less protection than other workers.

Employers and insurers are particularly concerned about a proposal common to health care privacy legislation that would allow individuals to completely block access to their health information.

This would be "significantly disruptive," because workers compensation self-insurers often need access to a worker's health information to determine whether or not a claim is work-related or possibly fraudulent. In addition, such information is necessary to determine appropriate return-to-work programs, according to the SIIA statement.

"An employee who files a workers compensation claim has no incentive to provide access to their health information, while at the same time the employer is required to pay benefits and lost wages, which may or may not be appropriate," the SIIA said.

Other concerns include new administrative burdens that the proposed laws would place on employers and insurers. The bills generally would require documentation of each review of an employee's medical file as it moves through the typical chain of claims handlers and processors. An additional concern of the SIIA is whether reinsurers would have access to such data and whether they would be considered an employer's agent.

"Employers need to pay closer attention to the federal level," said Stan Smith, director of risk management for Las Vegas-based Boyd Gaming Corp. and a member of the SIIA. The casino operator self-insures and self-

administers workers comp claims for its 16,000 employees in four states.

If federal privacy legislation is enacted, employers would lose the ability to manage medical claims, and that would lead to significant cost increases, Mr. Smith said. For example, he estimated that his company's annual medical costs for 10,000 Nevada employees would be five times higher if federal privacy bills blocked his ability to scrutinize medical payments to providers to ensure appropriate billing and treatment.

In addition to its current membership, the SIIA is soliciting additional companies to join the alliance.

Several other employer groups have similar concerns about the privacy legislation.

The National Assn. of Manufacturers and several other business and insurer groups have been involved in the debate over medical records privacy for the past few years, said Neil Trautwein, the NAM's director of employment policy.

The SIIA's creation of a new alliance representing self-insurers is "likely a welcomed development," he said.

The National Council of Self-Insurers also is concerned about medical records privacy legislation, said Larry Holt, executive director. The organization, based in New Providence, N.J., previously joined with other employer groups to oppose medical records privacy legislation that would impede the management of workers comp claims.

"The laws require companies to make medical and indemnity payments to employees who experience work-related injuries. In order for us to do this, we require a free flow of information between employer, employee and medical provider," Mr. Holt said. "Without this free flow of medical information, benefit checks to injured employees will be delayed," he added.

Groups concerned about health care privacy legislation must make their impact felt soon, because a deadline is looming.

Congress has until August 1999 to enact privacy rules, or the job will fall to the secretary of Health and Human Services, according to the 1996 Health Insurance Portability and Accountability Act (*BI*, April 27, 1998). **BI**

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BI promotes Delany

NEW YORK—Blake Delany has been promoted to Eastern advertising manager of *Business Insurance*.

In his new position, Mr. Delany, 34, oversees *BI*'s four-person New York sales staff.

Mr. Delany joined *Business Insurance* in 1993 as a district manager in New York. Prior to that, he was a publisher's advertising representative at W.G. Holdsworth & Associates Inc. and was an assistant manager at Christie, Manson & Woods in New York.

He previously worked as a sales representative/marketing specialist at Seltel Communications in New York and as a research analyst at Katz Communications Inc.

Mr. Delany has a bachelor of arts degree in speech communications from Ithaca College in Ithaca, N.Y.

Mr. Delany can be reached at 212-210-0134.





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New liability policy for online businesses

KANSAS CITY, Mo.—Media/Professional Insurance has a new insurance program for those who conduct business via the Internet, intranets, databases, World Wide Web sites and online bulletin boards.

The new product, CyberLiability Plus, protects companies from both content and service exposures with one comprehensive coverage plan.

CyberLiability Plus targets companies doing business in the electronic realm, including e-commerce ventures, Web site designers, Internet service providers, bulletin board operators, Web site hosts, cyberspace software developers and online content providers.

The program provides protection against claims of libel; inva-

Products & Services

sion of privacy; copyright and trademark infringement; errors, omissions and negligent acts; unauthorized access; data tampering and more. The minimum premium is \$1,000, which pays for a coverage limit of \$250,000 or split limits of \$100,000/\$300,000. Minimum self-insured retention is \$2,500 for each loss.

CyberLiability Plus is written on an occurrence form and offers a maximum of \$10 million in coverage. Coverage territory is universal.

Media/Professional Insurance, an underwriting and claims manager, provides media liability and miscellaneous E&O insurance for

service-oriented businesses. CyberLiability Plus is written through Gulf Insurance Group and other insurers for domestic policies, as well as Lloyd's of London.

For more information, contact Marcia Jenson, marketing coordinator, Media/Professional Insurance, 816-471-6118.

Y2K legal guide

NEW YORK—"Law of the Year 2000 Problem: Strategies, Claims and Defenses" is a new book that details the legal issues arising from Year 2000 computer prob-

lems.

The book is a compilation of research and legal analysis by Richard D. Williams and Bruce T. Smyth, both nationally recognized experts and seminar leaders on the Y2K computer crisis. Drawing on their experience in complex civil litigation and extensive research on the legal aspects of the Year 2000 problem, the co-authors present a systematic framework for understanding what the Y2K problem is, where the problem is headed, and how corporations need to respond to avoid potentially devastating liability costs.

"Law of the Year 2000 Problem" opens with the co-authors' assessment of the likely implications of Y2K failures and then outlines essential steps to take

prior to Jan. 1, 2000. These include: creating corporate awareness of the Y2K problem; establishing an organization to address it; evaluating internal technology functions, as well as outside interfaces; reporting on failures already occurring; documenting the Year 2000 problem with a formalized document retention program; and performing the legal audit.

The book is available for \$160 from Aspen Law & Business and comes with a 30-day trial examination. To request a copy, call 800-638-8437 or fax 800-931-9075.

Product recall policy

NEW YORK—American International Underwriters, the international property/casualty organization of American International Group Inc., has introduced Crisis Recall, a policy that provides coverage for product recall costs for consumer product manufacturers.

Crisis Recall is designed for manufacturers of finished products, such as consumer durables, children's products and toys, clothing, office equipment and sporting goods. It provides coverage for losses associated with a product recall, including communications, transportation, warehousing, overtime and expenses for employees, product disposal, costs to replace or restore the recalled product or redistribution of a replaced or restored product. In addition, it provides coverage for the costs to replace a recalled product that has been destroyed, is unfit for resale, or unfit for its original use with a different product of similar value.

The policy also covers the fees of Kroll O'Gara Associates, an international crisis management and investigative consulting firm, and the public relations firm of Hill & Knowlton Inc. for services related to covered events. No deductible applies to consultant costs.

The policy is available on a worldwide basis with limits of liability of up to \$10 million.

For more information, contact 800-950-8773 or 212-770-2704.

London market guide

LONDON—Evandale Publishing Ltd. recently released the 1999 edition of Evandale's London Insurance Market Directory.

The directory lists active operations in the London market, including insurers, Lloyd's syndicates, brokers, underwriting agents, contact offices, loss adjusters, lawyers, accountants and consultants.

Each organization has its own entry in the directory, which is arranged in sections by type of operation. For each company, the listing includes up to 20 key officers. Complete phone and fax numbers are given, along with areas of specialization and financial data.

Other sections include a listing of key insurance media contacts, as well as a register of nearly 300 operations that either have left the London market in recent years or have had a change of name or ownership. The directory is cross-indexed by both organizations and individuals.

Evandale's London Insurance Market Directory is available for £155 (\$265) each for one to four copies, and £130 (\$220) each for five or more copies.

For more information, contact Evandale Publishing Ltd. at 44-171-242-2500. **B**



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Captives

Continued from page 3

a-captive schemes, so that they can reconcile their marketplace with the new demand by Japanese corporations.

Japanese corporations have been bound up so long by tariff-driven regulation that they now want to accelerate their use of various insurance mechanisms, Mr. Pinckney said.

"We are spending more time talking about multiprograms and blended risk in Japan than we are in the United States," he said.

The situation presents vendors and consultants with an opportunity to help those corporations in the early stages of developing risk-transfer programs, rather than those in the advanced stages.

A change in Dublin, Ireland's taxation of captives domiciled there also is expected to force changes in cap-

tive strategies for Japanese corporations, to the benefit of other domiciles, such as Hawaii and Guam. Dublin has been a preferred domicile for Japanese companies.

Although European companies are pleased Dublin is reducing its corporate tax from 26% to an eventual 12.5% in 2005, this is unfortunate news for Japanese companies.

According to Japanese law, if a captive domicile offers a tax rate of more than 25%, then the captive insurer pays that tax rate and the domicile is not declared a tax haven by Japanese tax authorities, Mr. Pinckney explained.

However, if a domicile's tax rate is 25% or lower, it is deemed a tax haven, in which case earnings from an offshore company are consolidated with the parent company's tax liability and the parent company must pay an applicable Japanese corporate tax of more than 50%.

While changes afoot in Japan

could benefit U.S. alternative market operators, state-by-state deregulation of commercial lines insurance in the United States is seen as a potential, but not likely, threat.

Several states have, in varying forms, deregulated commercial lines insurance. Other states are expected to follow, with a "potential" impact on group captives and risk retention groups, said Charles E. "Edd" Erickson, chairman of the National Risk Retention Assn. and president of Signet Star Reinsurance Co.'s Alternative Markets Division in Florham Park, N.J.

"There seems to be a certain segment of the industry that thinks this would be a way to draw business back out of captives and risk retention groups and into the standard commercial lines arena," Mr. Erickson said.

But that would depend on all 50 states adopting uniform deregulation measures, he said. If all 50 states

adopted similar qualifying standards for deregulation, then there would be less need for RRGs. That follows because the Risk Retention Act was initially passed, in part, to help certain businesses circumvent the need to comply with insurance regulations that vary by state.

Currently, most states' intended deregulation qualifications are vastly different, Mr. Erickson said. In some states, a business might qualify for exemptions to regulation if it pays \$25,000 in annual premium. In others, the premium requirement might be \$250,000. Other qualifying factors also differ considerably from state to state, such as the number of employees working for a company or whether the company has a risk management staff.

"Once again, the National Assn. of Insurance Commissioners has been unable to impose any kind of uniformity, even though they have now adopted their model act and it, too, is different," Mr. Erickson said.

There is much agreement that a uniform "50-state change en masse will not happen," added Peter C. Hunter, vp for Munich-American Risk Partners in Princeton, N.J.

Yet the NAIC's ongoing accreditation process for state insurance departments is creating headaches for the insurance market. As states seek to meet accreditation standards, there is a greater filing burden being placed on market players, Mr. Erickson said.

"It seems, in some states, to be impossible to get a simple rate and form review done; and in other states, it's

impossible to sit in the (insurance) department. Sooner or later, I think the commercial lines insurance community, including captives and risk retention groups, are going to stand up and say, 'We are not going to take any more of this.'"

Meanwhile, savvy alternative market representatives continue developing new risk financing strategies.

Mr. Pinckney said he foresees an "emerging market" of companies forming captives, primarily to shift their tax burden. Although the formation is financially motivated, real risk transfer does take place.

"Some of the more creative kinds of captives we are seeing today are taking advantage of captive premium tax schemes for assets and for cost of risk, as opposed to having those assets or cost of risk taxed according to state taxes or excise taxes or business taxes," Mr. Pinckney said.

The practice can make a dramatic difference in a corporation's tax rate, he said. Citing an example, he said one company is forming a captive for property/casualty risks and for excess limits coverage.

The corporation can "recharacterize" franchise taxes on certain assets it holds, put those assets in a captive as capitalization, and pay captive premium taxes of less than 1%.

"The (company's) financial managers have listened to their auditors, their captive managers, their brokers and their actuaries and have said this is a way to save," Mr. Pinckney said. **BI**

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Captive can spark risk dialogue: Exec

By ROBERTO CENICEROS

SAN ANTONIO—One often-overlooked advantage of forming a captive is that doing so can help reduce the cost of risks not insured through the facility, says one executive in the field.

Those savings can come about because of better communication among the involved parties. That communication, however, is not always spontaneous and needs to be fostered, according to captive experts discussing "The Nuts and Bolts of Captives" at the International Alternative Insurance Symposium, held March 14-17 in San Antonio.

Increasing discussions among a company's corporate leaders about all the risks facing their organization—not just those insured by the captive—is one of the largest benefits of forming a facility, said J. Brady Young, president and chief executive officer of Alternative Risk Solutions Inc., a Waltham, Mass.-based unit of Winterthur International.

"I have seen it many times with single-parent captives—the fact that you can get the chief legal counsel, the CFO, the CEO and other people away from the office and get them to Vermont, Bermuda or wherever, where they are seeing what the losses mean," Mr. Young said. "It's a way to engage them in a whole risk management process."

A similar phenomenon occurs in group captives.

"Where you have smaller group captives... where there are 20 or 30 participants, it surprised the heck out of me that more people were not involved in talking to

each other about how to deal with their risks outside of the captive or augmenting the captive," said P. Bruce Wright, a partner at law firm LeBoeuf, Lamb, Greene & MacRae in New York. "And then they started having sessions every time they had a board meeting to discuss those things. They found they were reducing costs that had nothing to do with their captive."

Not only does membership in a group captive increase the communication within a company, it brings out the competitive nature in all its members, Mr. Young said.

"They don't want to be the one who is generating all the losses," Mr. Young said. "There is peer pressure, and they can band together to drive down claims."

The most successful and well-supported captives are those whose owners or members get the word out about the facility's ongoing success, added Kathryn A. Westover, chief operating officer for ARS Management, a Colchester, Vt.-based unit of Winterthur International.

Some captive operators rely on a technique called "annual captive value-added analysis," Ms. Westover explained. It is a "very simple" plan to determine how they will record the value contributed by their captive and how they will regularly report that information throughout their company.

"I know this sounds elementary," she said. "We are not talking rocket science, but it is important."

Some captives, Ms. Westover said, might only distribute a *See Dialogue on page 12*

Business Insurance, were simply sloppy about defining which vocabulary term was meant by "plan."

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Dialogue

Continued from page 10

financial statement every month or quarter. "That is great; you have to do that," she said. "But that is not the whole story. There is a lot of other captive information that people do not capture because they don't realize how important it is, so therefore they are not able to communicate throughout their (parent company) what the captive is doing."

That information is mostly subjective, such as how a captive was

able to help one of its parent company's operating units with a business problem, Ms. Westover explained.

Holding performance reviews at a captive's annual board meeting is another practice among the best captives, Ms. Westover said. "Otherwise, that type of information gets buried," she said.

"You have to realize that a lot of people, CEOs, CFOs, see captives as just a boondoggle, a way to serve on a board, go to a nice place, and have a meeting," Mr. Young added. "The fact is, some captives do operate that way.

Those are the ones, when they get discovered, they quickly get shut down."

Performance reviews at the annual board meeting is a practice of the best captives, Kathryn A. Westover says.

But serious alternative market participants continue to find plen-

ty of legitimate reasons for forming a captive.

For example, one association that sponsors a national insurance program—including property, general liability and workers compensation coverages—for its members recently formed an insurance facility, Mr. Young said.

The soft insurance market forced the association to search out a way to reduce costs while maintaining a viable program. Additionally, the association wanted to unbundle insurance services, instead of buying them all in a package from one insurer, so that it could con-

tract with the best providers of those services.

Under its previous insurance program, "frictional" costs such as administration, loss control and claims services accounted for 45% of expenses. By forming a captive, the association immediately reduced those costs by 5%, and it aims to reduce them by another 10%.

The organization used the cost savings to boost its marketing position. In addition, it can offer members the benefits of investment income derived from its capital. **B**

Collaboration to continue

SAN ANTONIO—The Captive Insurance Companies Assn. Inc. and the National Risk Retention Assn. continue to be encouraged by their collaboration, CICA President Judith McDonald said during the Second Annual International Alternative Insurance Symposium, held earlier this month in San Antonio.

Consequently, the CICA and the NRRA will sponsor a third symposium to serve as the main

annual conference for each organization.

The third symposium will be held March 19-22, 2000, at the Westin LaPaloma in Tucson, Ariz.

For more information, call 612-928-4665.

About 350 people attended the San Antonio symposium. Leaders for both associations agreed to continue collaborating on other issues of common interest.



Seminar

Continued from page 3

rather than play to win, but in almost every discipline the reward is directly proportionate to the risk, Mr. Wilson pointed out. He promoted his book "Play to Win" during the seminar.

Instead of reverting to the old ways of doing things, "we must learn to become comfortable being uncomfortable," he said. "Take a risk; if it doesn't work, it's not a tragedy. It's not the end of the world. You're not going to die. It was merely inconvenient."

Mr. Wilson also urged his audience to look at their work more positively. "Don't say, 'I have to go to work,' because this automatically conjures up negative emotions. Instead, say, 'I choose to go to work,'" he suggested.

"Ask yourself, 'What benefit can I derive from this?' then focus on that benefit. This is how we motivate ourselves," Mr. Wilson explained.

Stephanie McCracken, director of risk management and safety at Young's Market Company in Orange, Calif., came away from Mr. Wilson's seminar considering other types of risk-financing beyond traditional insurance.

"He's saying don't be afraid to take a step in a direction that you haven't gone in before," Ms. McCracken observed. "To me that means to try to explore more risk financing avenues than I've looked at before. I know there's a lot more out there," she said.

Applying another piece of Mr. Wilson's advice, she added: "If I fail, so

what? I'll just try something else."

Robert Meza, director of credit at ViewSonic Corp., a computer monitor manufacturer in Walnut, Calif., said the "Play to Win" seminar motivated him to "be a little more creative" in seeking solutions to his company's customers' problems.

For example, "we can't get anyone to underwrite a credit risk for a customer in Brazil because of the currency devaluation there," he explained.

"In the past, I may have said, 'I'm sorry, but we can't work with you.' But now I'm going to try to work something out, think outside the box," Mr. Meza said, adding that it would be a good strategic move for his company to enter the Brazilian market since it hasn't sold its products there before.

Nancy Mayer, director of corporate risk management for Ventura, Calif.-based Affinity Corp., the parent company of numerous outdoor recreational service organizations, said the "Play to Win" seminar was a reminder that the business world is changing so rapidly that it's dangerous for risk managers to become complacent.

"You can't describe anything anymore," she said. "Everything is changing. What was true of a certain subsidiary in Peoria five years ago may not apply anymore."

The rapidly changing business environment must especially be considered when renewing insurance policies, Ms. Mayer said.

For example, multiyear policies may not always be appropriate.

"How do I know what I'm insuring two years from now?" she said, pointing to Affinity's 1997 acquisition of Camping World as an example. "We acquired Camping World two years ago, and before that, we weren't in retail."

"The reality is that most businesses are faced with rapidly increasing complexity and fickle customers," Mr. Wilson agreed during his presentation. "If there is a business where simplicity and profitability reign, it is short-lived; in today's instant information marketplace, competitive pressures for the niche are swift and sure. Sometimes this competition comes from across the street, sometimes from across the globe."

Regardless of where it is coming from, risk managers and benefit managers must be prepared, he said.

"For most organizations, the struggle to thrive has almost Darwinian overtones. An intensely competitive environment favors those who can continually adapt, learn, adapt and learn again—and continue that cycle quickly and efficiently," Mr. Wilson said.

Unfortunately, few, if any, of us have ever taken a course in learning how to learn, he pointed out.

"Maybe our curriculum hasn't prepared us for what we need to know to succeed in life," he suggested.

But "we have to look at things in a different way, reconceptualize it, see the world through a different pair of glasses," he said.

"That's what leaders do." **B**



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Inside:

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spreads as risk managers
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Multinationals discovering
perceptions of risk vary
by country, culture **page G4**

Risk management information
systems are catching on
in Europe **page G6**

Risk managers strive to translate and communicate their goals

By MARIA KIELMAS

Risk managers who have the same specialized background as other managers in their organizations may be able to get their messages across more easily, European risk managers say.

This is more likely to be the situation in technical industries, in which many companies demand their managers have specialized knowledge, than in less technical businesses.

But even with technical know-how, communication can be a challenge for risk managers, who still may be seen as outsiders by operational managers, according to risk managers.

In the United Kingdom, as in most of the English-speaking world, risk managers typically have financial or legal backgrounds.

Elsewhere in Europe, however, risk managers are more likely to have training in engineering, which can help them when addressing technical loss control issues within their organization.

Risk managers are qualified engineers at UPM-Kymmene, the product of the merger of Helsinki, Finland-based pulp, paper and wood products manufacturer Kymmene Corp. and United Paper Mills, a division of Finish forestry company Repola, said Henrik Diesen, the head risk manager.

That specialist training enables them to communicate more effectively at the operational level, he said.

Mr. Diesen noted the importance of a risk manager knowing the business of the company.

"If you go into a paper mill to see the operations manager, you can't talk about things you don't know," said Mr. Diesen. A common technical understanding of the business helps foster communication between the risk manager and other departments, he explained.

In the oil industry, most risks typically are managed by specialists and professionals, says Ramon Alvarez Pedrosa, group risk manager at Madrid, Spain-based oil company Repsol S.A.

Risks arising from exploration and production are typically handled by geologists and reservoir engineers, he noted. In addition, people other than the risk managers are in charge of such areas as health, safety, security and the environment.

As a result, Mr. Pedrosa said, his role as the risk manager is to "coordinate between the division dealing with the risks in terms of financial exposure and with the (underwriters and brokers) handling the policies."

The oil company risk manager talks directly to the general managers of various divisions, be these exploration and production, refining or marketing, and reports directly to the chief financial officer. Mr. Alvarez is the central coordinator for risk analysis in the company, but responsibility for risk management of specific areas lies with the managers in those areas.

In addition, at Repsol the risk management department has direct access to the

board, as the main board of directors and the main audit committee are based in the same building as the group holding company.

But not all risk managers enjoy such easy access or influence within their organizations.

Mike Madden, risk manager at John Menzies Ltd., a newspaper, stationery and confectionery retail chain that operates only in the United Kingdom, has struggled to convey to other departments the importance and mechanics of risk management.

In order to coordinate the various risk

importance of a claims database has proven itself in an ability to target unsafe drivers who may generate more claims.

The database has allowed the company to implement a policy of cautioning drivers who have more than two fault accidents within 12 months. "This is something I've needed for many a year," he said.

UPM-Kymmene's Mr. Diesen also is a strong proponent of good databases. "We maintain a loss database, and we have a pretty good idea of what has happened in the group. It is a real asset when we are buying insurance," he said.



"If you go into a paper mill to see the operations manager, you can't talk about things you don't know."

— Henrik Diesen

It may be difficult for operational line managers to accept that the risk manager knows anything about those managers' part of the business.

— Mike Madden



management functions of his company, Mr. Madden has to communicate with senior managers in eight divisions. He said he sometimes accomplishes this with varying degrees of success.

"We have gone from being ignored to occasionally managing to show that something we are doing saves money," he said.

The other Menzies divisions sometimes view the risk management department as a competitor, and it may be difficult for operational line managers to accept that the risk manager knows anything about those managers' part of the business, speculated Mr. Madden.

Even Mr. Diesen of UPM-Kymmene acknowledges that his involvement is not always welcome.

During the merger of the two forest products companies, operational executives were often unwilling to listen to suggestions from the risk manager, he said.

One tool that can help risk managers to communicate the importance of risk management is loss and claims databases, risk managers agree.

Risk managers can use risk management data to show management that their programs can save money and add value.

For John Menzies' Mr. Madden, the im-

portance of risk management communication also depends upon each party's understanding of the word "risk."

Accountants, risk managers and underwriters, for example, all have different understandings of the word, Mr. Madden said.

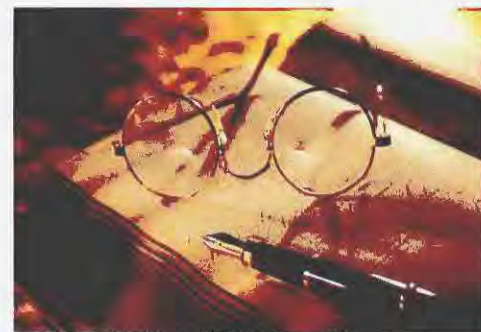
Senior management executives do sometimes need convincing that risk management adds value, said Neil Campbell, director-risk management at Risk Insurance Services, a division of London-based pharmaceuticals company Zeneca Ltd.

Risk managers can show their value in many ways: through costs, profits, cash flow, knowledge allocation of capital and even through comparison with peer groups, he said.

For his company, the communication of risk management issues to senior management is relatively easy. "We do not perceive any problems in communication. This is a risk-driven business," said Mr. Campbell.

Perceptions of risk, however, move to the opposite end of the spectrum at John Menzies.

"The secret in communicating is: Don't use the words 'risk management.' When you do, you see peoples' eyes dull over," said Mr. Madden, noting that many positions in U.K. organizations these days



claim to have something to do with managing risk.

"A proper risk manager needs a new name, something that no one else has," he said.

Mr. Madden said he would like to see a title that conveys to everyone in an organization the importance of the risk manager's role.

One change in the risk management function that could pose added communication challenges is the rapid convergence of the insurance and capital markets.

Many European multinationals, like their U.S. counterparts, are developing risk management departments that coordinate all of a company's potential risk exposures.

"We no longer distinguish between financial risk, operational risks and the more traditional risk management," said Thomas Aln, president and group risk manager of Skanska Financial Services, a division of Stockholm, Sweden-based construction, engineering and real estate company Skanska A.B.

SFS coordinates all the risk management for Skanska units. The chairman of the SFS board of directors also is Skanska's chief financial officer, making communications with the company's highest echelons a relatively straightforward matter.

SFS, created about one year ago, was the product of some six to 12 months of analysis. Mr. Aln explains that, before the analysis, his department had handled all the risk management and had been working with the usual traditional and alternative methods of risk transfer when the commercial reality of the insurance and financial sectors converging of risk exposure became apparent.

"We came to the conclusion that the risks might be different, but it's still the same discipline (to deal with them)," because of the convergence between the insurance and capital markets, Mr. Aln said. Convergence is "no longer just a trend, but it's here to stay," he said.

This means that a company whose business is multimillion-dollar international projects is able to start putting together packages that combine project finance with risk management financing, he said.

Employing specialists in the various finance, engineering and asset management fields gives Skanska the ability to double-check suggestions that come from outside the company, according to Mr. Aln.

"We have the ability to be critical of things suggested not so much by the insurance industry as by the banking sector and consultants of various types," he said.

There are also new challenges facing the company, such as its media coverage.

"For a large multinational group like Skanska, something that happens in Australia or Brazil may have a real effect on our results in Sweden. So we have to look at it on a broad scale," Mr. Aln said. **B**



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Globals face cultural challenges

Differences in attitude can complicate risk management efforts

By SARAH GODDARD

Mergers and acquisitions can expand an organization's international reach—and risks—overnight.

This expansion creates not only new exposures to identify and manage, but also new attitudes toward risk that must be learned.

Cultural perceptions of risk vary widely from country to country, and even within countries can change dramatically in a relatively short period of time, experts say.

Vladimir Akimov, deputy head for sciences of the Russian Ministry of Civil Defense, Emergencies, and the Elimination of the Consequences of Natural Disasters in Moscow, describes in a recent paper, for example, how the safety culture in the former Soviet Union changed along with the nation's political shift from communism to democracy.

Before the Soviet Union disintegrated, government policy had been to ensure "absolute" safety from both natural and man-made disasters, he wrote in the paper, which was delivered at the Society for Risk Analysis' annual conference in Phoenix last December.

"Under the circumstances, in our country there were no valid incentives, at least economic and legislative ones, for carrying out

research involving quantitative assessment of risk created to the population and the environment by some kinds of hazard, as well as for developing the appropriate provisions to be taken in advance to mitigate the impact of a hypothetical disaster," Mr. Akimov wrote.

However, as communism was replaced with a democratic system, the government realized that efforts to attain absolute elimination of risk were uneconomical and no longer reflected the best practice.

Russia therefore embarked upon a program of identifying "acceptable" risk levels, balancing potential hazards with potential profits, alongside social priorities, Mr. Akimov wrote.

Attitudes toward risk also can change from country to country, which underscores the benefit to multinationals of having uniform risk management approaches worldwide, according to Liz Taylor, an independent risk management consultant in Birmingham, England, and former chairman of the Assn. of Insurance & Risk Managers.

For example, she said, in Spanish society, it is almost considered correct to take a risk. As a consequence, Ms. Taylor said, Spanish risk managers may have difficulty implementing risk control programs and are more likely to function as insurance buyers.

"Organizations with Spanish operations

as part of a multinational spread would be well advised to have consistent standards around the world" rather than leave responsibility for risk management to local operations in Spain, she suggested.

"As the world is getting smaller, maybe programs will get more standardized," said Philip Wray, underwriter with Brockbank Syndicate Management Ltd. in London.

Centralized risk management standards are a growing trend, noted Mr. Wray, who said that the degree of centralization depends on the organization's headquarters. For example, he said, U.S. companies tend to be much more centralized than companies that are based in European countries, though that is changing.

Martin Stone, head of research at London-based consultant Control Risks Group, agreed. "The standardization of risk perception is definitely happening," he said. And as multinationals spread around the globe, they take their risk attitudes with them, he added.

To avoid differences among local risk management standards, most multinationals tend to strive for "best practices" worldwide, said Deborah Durkin, managing director with Aon Global Risk Consultants' corporate consulting practice in London. "With the very largest organizations, there is much more consistency on a global basis"



in their risk management programs, she said.

As corporate governance issues increasingly come to the fore around the world—as well as factors such as social accountability and ethical responsibility—the home offices of many multinationals are taking more interest in what is happening in local operations and demanding higher standards, Ms. Durkin said.

Implementing those higher standards takes time, according to a risk management consultant. Ms. Taylor cited her experience with efforts to improve the health and safety standards of a company with Malaysian operations.

"You bring them round to understanding that everybody is responsible for health and safety," she said of the Malaysian operation. "You have to spend time with the people, talk to them, read about the culture, and do your homework."

Ms. Taylor said the ideal is to adapt best risk management practices to the resources and abilities of the local environment, rather than demand the attainment of unrealistic standards. **BI**

Convergence nears for networks

LIMNET, RINET, WIN seek common standards, business rules

By CAROLYN ALDRED

Tens of millions of commercial insurance claims and reinsurance transactions are now processed electronically, little more than a decade since the first electronic networks were established in the industry.

However, the much-hailed technology has thus far failed to radically change the way risks are placed or underwritten.

This, in part, has been due to the networks' need to keep pace with both the rapid globalization of the insurance industry and the continual changes in communications technology, while at the same time persuading the industry's traditionalists that electronic commerce has a vital role to play.

Three major networks plan to accelerate the process by working closely together—possibly even merging their operations—to create common standards and business rules. This would allow brokers, insurers and reinsurers in the United States, London, Europe and elsewhere to easily and quickly exchange information, place and underwrite risks, and process claims.

Convergence talks between the London Insurance Market Network (LIMNET), the Reinsurance & Insurance Network (RINET) and the World Insurance Network (WIN) are at an advanced stage, and an announcement is expected to be made in the next few weeks, said a LIMNET spokesman.

"We need a single set of standards and protocols. If we are all speaking the same language, we will have a global network," said Max Taylor, chairman of Lloyd's of London, who also is a board member of LIMNET and part of the convergence steering committee.

"There's a real will in the global insurance marketplace for convergence to happen," said Colin Fitzgerald, acting chief executive of WIN.

"With the changes in technology and attitudes in the marketplace, everything is heading toward convergence," agreed Bill Oram, a director responsible for electronic commerce initiatives at Aon Group Ltd.

With convergence among networks, "the

pace will start to pick up," predicted Mr. Fitzgerald, who said he believes that the change to electronic commerce will be "very fast moving."



Even without the convergence of the three networks, continued development of the Internet will result in "much greater use of electronic transfer of information," said Mr. Fitzgerald.

The advent of Web technology has created a "different world" during the last five years, and the creation of standard protocols could make the insurance industry accessible on a global basis, according to Lloyd's Mr. Taylor.

Mr. Taylor expects that this convergence inevitably will lead to an open global network that will be used for all types of insur-

ance transactions. "It will be a single organization, owned by its members—the network's users," he predicted.

Although he admits that the industry has embraced the information revolution more slowly "than we would have hoped," he believes that most people now recognize the benefits offered by information technology.

"Look at the processing of claims and outwards reinsurance. This is now done 100% electronically in London," he noted.

But, working with rapidly advancing technology in an industry that can be reactionary has been a hard juggling act, as LIMNET, the oldest of the three networks, has discovered.

LIMNET was established in 1987 and is jointly owned by Lloyd's of London, the Lloyd's Insurance Brokers' Committee, the London International Insurance & Reinsurance Market Assn. and the Institute of London Underwriters.

It was formed to provide a technological infrastructure that would allow the London market to "improve its competitive position" at a time when the market's costs were rising dramatically and it was facing stiff competition from other markets, including emerging markets such as Bermuda, the LIMNET spokesman noted.

LIMNET's objective was to make the London market "faster, more efficient and to bring down costs."

LIMNET currently processes more than 30 million transactions annually, including



most non-marine and marine claims in the London market, according to the LIMNET spokesman.

In 1992, LIMNET began a major initiative to place risks electronically via the network.

"London is the biggest coinsurance market in the world and, traditionally, brokers physically go from underwriter to underwriter to place the risk," which is what makes London different from other markets and more expensive, explained the LIMNET spokesman.

By developing an electronic placing system, LIMNET hoped to make the market more efficient and less costly. But the "market was not ready to change the way it did business," forcing the network to rethink its position, said the spokesman.

As a result, LIMNET changed its tack, deciding that "our role was to improve existing procedures, rather than force new applications on the market," he said.

Last March, LIMNET launched a new business plan that aimed to streamline its operations; achieve international compatibility; provide more services and reduce inefficiencies.

"Because of globalization, consolidation and technology, London can no longer behave as though it were oblivious to the rest of the world," said LIMNET Chief Executive Kevin Ashby in a recent company newsletter.

"It is this underlying principle of See **Networks** on p. 11"

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Networks

Continued from page G4

securing global compatibility which lies behind the thrust of the LIMNET business plan," Mr. Ashby explained; a key element in the plan was LIMNET's support for convergence with RINET and WIN.

In November 1998, LIMNET launched the Ring Main, an enhanced network based on the cable television concept of an initial installation and an ongoing subscription. The subscriber would receive a core set of services, and additional, optional services also are available. The main technological improvement was the use of the internationally standard Internet transport protocol, which enabled LIMNET to connect efficiently with other networks, such as Brussels-based RINET and U.S.-based IVANS.

In the new Ring Main network, LIMNET users also need only one connection, and they contract to access a range of informa-

tion services and trading applications.

RINET was formed in 1988 and is owned by its 540 international broker, insurer and reinsurer members, most of which are European companies.

The network was established to allow members to use electronic commerce technologies to reduce costs and improve operational efficiencies, said a RINET spokesman.

The spokeswoman confirmed that RINET was in convergence talks with WIN and LIMNET, but did not elaborate.

In 1995, the world's largest brokers formed another network—called the World Insurance Network, or WIN—for electronic risk placement and other information exchange. Due to consolidation among the original founding group of brokers, WIN now is jointly owned by Aon Corp., Marsh & McLennan Cos. Inc. and Willis Corroon Group Ltd.

RINET and LIMNET were successfully handling "back-office" processing, but no one was adequately addressing electronic

risk placing, which was seen by brokers as a vital cost reduction measure, said WIN's Mr. Fitzgerald.

WIN also saw itself as a more global network, compared with the London-centered LIMNET and the predominantly European RINET.

In a highly competitive market with falling rates, brokers saw the electronic exchange of information via WIN as an effective way to reduce costs, said Mr. Fitzgerald.

"There is already genuine trade being done across the WIN network," said Mr. Fitzgerald.

Indeed, Lloyd's managing agency Brockbank Syndicate Management Ltd., in conjunction with Aon Group Ltd., announced March 17 that it has initiated the first reinsurance recovery using WIN (*BI*, March 22). It now plans to use WIN for all its reinsurance recoveries through Aon.

"Having underwritten the first Lloyd's risk over WIN, we are now delighted to be able to utilize the system for reinsurance

recoveries. We believe that WIN has a great deal of potential which has not been exploited to date," said Mark Brockbank, CEO of Brockbank, in a statement.

Although "there is business being done, there is not yet a huge amount of business," said Aon's Mr. Oram, noting that technology has changed a great deal since the networks were established.

"I don't think any of the networks have totally achieved their objectives, partly because technology is changing too quickly," said Mr. Fitzgerald.

However, once the networks adopt Internet standards and convergence widens the membership, "there will be an accelerated growth," predicted Mr. Oram of Aon.

"Success is only going to be achieved through convergence. Our cost structures in the insurance industry—particularly in London—will only support one network," Mr. Oram said.

"Life is going to be much easier if we are all working together," said Mr. Fitzgerald. **BI**

Systems helping risk managers track exposures, reduce costs

By DON LEWIS KIRK

European risk managers are turning to sophisticated risk management information systems to keep track of corporate data worldwide and to help reduce risk-financing costs.

Such systems are helping not only to identify loss exposures and analyze claims, but also to provide crucial information to company management, risk managers say.

"Good information systems do more than gather facts about different classes of business. They are a learning tool," says Lothar Riedle, captive broker director and risk manager at VEBA A.G., Germany's third-largest industrial conglomerate.

VEBA's RMIS last year showed Mr. Riedle enough about the company's risk structure that he was able to obtain the lowest rates on all of its insurance coverages in company history. Based on its new analysis of exposures, VEBA cut its insurance costs by more than 30%.

"We found out we had an average of 85 million deutsche marks (\$47 million) in claims a year and asked ourselves why it was necessary to transfer that to someone who puts it on their balance sheet and then raises the cost by 30% to 40%," Mr. Riedle said.

The rest is history. Rather than pursuing a plan, the company struck a deal with a consortium of insurers early this year instead to use alternative risk financing and a high self-insured retention of 140 million deutsche marks (\$78 million).

"We had a model, based on our data, with three scenarios. We knew we would suffer (a loss of) at least 83 million deutsche marks (\$46 million)," he said. The analysis showed a 127 million deutsche mark (\$71 million) loss was the average, and the projected maximum loss was 140 million deutsche marks. "We knew our calculations were correct, and we were willing to accept a 140 million deutsche mark deductible based on that," Mr. Riedle explained.

That was before German insurance rates plummeted in an ultra-soft market, said Mr. Riedle. The consortium that is now in-

sure VEBA offered rates below its worst-case cost scenario, making insurance more attractive than the model indicated.

Still, Mr. Riedle insists a RMIS was essential for the deal, and he believes the learning process will open the way for other applications. "Our subsidiaries will look to us to develop new solutions for total risk, not just insurable risk. We see our future role as a consultant," he said.

Mr. Riedle added that he would like to develop the system to track currently uninsurable risks, such as those associated with product development and certain safety issues.

The task is formidable. In 1997, the Dusseldorf, Germany-based conglomerate reported sales of 83 billion deutsche marks. With more than 130,000 employees, the energy, chemical, oil and telecommunications giant represents a risk manager's nightmare. Mr. Riedle is enthusiastic, however, saying he has put together a team of experts to develop his company's RMIS further.

Modeling is a key element of risk management. The interconnectedness of global economies and supply lines means companies can be hurt by events on the other side of the world. "Spotting potential trouble and managing such risk is exactly what a risk management information system should do," said Jeremy Meyrick-Jones, director of group risk management at British Aerospace P.L.C. in London.

"Our system gives us the ability to know what part of our business will be ramped up in a year's time," Mr. Meyrick-Jones said. "With this information, you can actually calculate a year ahead to see what impact that will have on a particular business and examine the loss scenario it generates."

Mr. Meyrick-Jones contends that one of the main benefits of British Aerospace's RMIS is that it keeps his company's risk profile up to date. "That's important when you have a fast-changing world and a fast-changing business. It's just not possible these days to keep up using a paper system, particularly for a complex compa-

ny like British Aerospace," he said.

British Aerospace employs 43,000 people, and its annual sales exceed £8 billion (\$13 billion). About 89% of its revenue is earned internationally. The company, a major Airbus Industrie partner that manufactures a wide range of large commercial aircraft, has subsidiaries in North America and Australia.

To tame the company's risk, Mr. Meyrick-Jones and his staff devised an in-house system it calls TamaRisk, which uses the input of operating companies. "We can collect the data for claims, policy register, everything we need, including engineering surveys. We can extract information and do some basic analysis, comparing data," he said.

In addition to its high-tech design, development and production operations with Airbus Industrie, British Aerospace also produces military aviation equipment.

"We had to take our risk management system one step further. Every year we were going to the insurance market with a big bundle of papers that comprised our renewal document. We thought about doing it electronically. We would be giving them better-quality data and more up-to-date data. As it was, most information was out of date by the time they got it," Mr. Meyrick-Jones said.

British Aerospace decided to give all its key insurers access to TamaRisk data. "They have access 24 hours a day, 365 days a year, if they want it. What it did was eliminate the renewal processes. If an insurer has live data, it really doesn't need the renewal process," Mr. Meyrick-Jones said. Instead of the traditional, in-person renewal negotiations, policy renewal now is done electronically, he said.

The system also allows him to track the frequency of claims. "We can average it over five or 10 years and tell what parts of the business are more volatile than the others. It has made us sufficiently confident to take higher levels of retention," he said.

A similar view led Germany's largest industrial corporation, Siemens A.G., to de-



velop its own RMIS, an intranet system with additional Internet links to brokers. Stefan Sigulla, head of insurances and risk manager at Siemens' Munich, Germany, headquarters, said the company's RMIS has made him an information source for company management. "It's my duty to get pertinent information to the chief financial officer," he said. "Our databases are integrated. We share data and discuss corporate risk management. Our goal is to avoid a lack of information, which could affect shareholders."

An intranet link to various corporate divisions allows information about claims, production and even finances to be sent to Munich, where it is further analyzed. Mr. Sigulla admits that an information system is only as good as the data flowing into it. "In Latin American and Asian countries, the key is training people to understand what we mean and what information they have to send. As they say, 'Garbage in, garbage out.'"

The link of global economies and supply lines can heighten companies' risks. For example, the 1995 earthquake in Kobe, Japan, interrupted the transport of raw materials that many software manufacturers needed. As a result, many companies lost revenue and faced higher production costs.

Risk managers such as Mr. Sigulla are using technology to spot potential trouble and manage such risks. "We have all the commercial information available for the company around the world. In Asia, we looked at our production procedures and locations and found our interdependencies were not as big as we thought. It helped us reduce cost and premium."

In some of its Asian plants, Siemens was able to find alternate suppliers. For Mr. Sigulla, an ideal information system is an intelligent system that allows Siemens to collect and evaluate all essential data. "Information is more than connecting statistics," he said. "You have to recognize **See RMIS on next page**

RMIS

Continued from previous page

what is behind them. If you ask these questions, it is easy to see what is important and what isn't."

Herb Harrell, a New York-based consultant who created a forum of U.S. and European insurers and risk managers known as the M200 Forum, believes a central task for many companies is compiling information that is already available. "Ninety-nine percent of all information in a company is outside the risk management department. It's all over the company and owned by other departments. It is outside the company and maintained by brokers and insurers. The important thing for companies to understand is that data is now accessible. Given the cooperation of the owners of the data, the technical barriers to the accessibility of data are very low."

The future will see a great increase in the use of RMIS, he said. "Even today, a risk management information system is seen as a way to access data. Companies should begin to think of it as an intelligent agent in that it is able to access data on its own and access and combine data from multiple sources."

Companies often have to make decisions very quickly, especially when it comes to mergers, said Mr. Harrell. "A company like Colgate has operations in all kinds of countries, and due diligence is very difficult. There is a lot of information in the public

domain that is difficult to pull together. But you would imagine with the Internet, this would be much faster."

Information systems of the future will consider diverse aspects of risk management, from legal factors to potential media responses. "It's something companies are not yet geared to do," Mr. Harrell said.

Legal, economic and social change in Europe is driving RMIS development, say risk managers. In May 1998, Germany implemented new legislation aimed at making corporate risks clearer to investors. An amendment to German corporate law known as "KonTraG" requires companies to treat risk management information like financial information, reporting both to shareholders.

Mr. Sigulla said KonTraG forces companies to account to shareholders for risk management steps. As a result, Siemens' RMIS has a new and important function in gathering information. "Companies are compelled to make corporate governance more transparent," he said. "As a result, the interconnectedness of the company has become a legal necessity."

Germany's KonTraG was paralleled by a similar move in the United Kingdom last year.

Richard Reddaway, group insurance manager of U.K. pharmaceutical giant Glaxo-Wellcome P.L.C. of Greenford, England, and former chairman of the Assn. of Insurance & Risk Managers, said pending legislation is driving companies to develop risk management information systems further.

"The primary benefit of a RMIS is the dissemination of information that is held in a company that may not be known or interpreted," he said. "I see the big push for RMIS coming from corporate governance requirements for better reporting."

Mr. Reddaway sees a wide effect in the United Kingdom, resulting from the government's 1998 Hampel Report, which proposed that publicly held companies should report on material issues, including financial and risk management matters.

"What it is doing is forcing companies to treat their risk management information like their financial information," he said. "They have to know it internally and disseminate it, like financial statistics, the idea being that shareholders need that information in the financial report."

As a result, Glaxo-Wellcome is stepping up development of its RMIS, said Mr. Reddaway. The company's intranet links all of its global subsidiaries, and far-flung subsidiaries use the system to communicate information, such as occupational health and safety, and loss prevention.

Through the intranet, the company makes accessible extensive manuals, such as guides to directors and officers liability issues for the use of company executives. Additionally, claims details are stored in the system, he said.

"We are always pushing for more loss prevention information as we monitor our supply chain," he said. Glaxo-Wellcome conducts risk assessments of its chemical and non-chemical suppliers, and hopes to put

this information on its risk management information system, Mr. Reddaway said.

The information is also available to insurers. Glaxo-Wellcome is online with Factory Mutual, which receives all its reports. The electronic bridge allows the two-way exchange of data. The system channels users to guides and other loss prevention materials.

The company records the number of visits to its Group Risk Management intranet site to gauge its use. Subsidiaries and departments, including its research division, have sites on the intranet where Mr. Reddaway can call up policy information on various risks, for example. "It's a huge information databank," he said.

The RMIS has become a valuable tool in preparing shareholder information, said Mr. Reddaway.

Key information on work-related illnesses, material damage and business interruption claims is readily available. Glaxo-Wellcome can interpret this information and take up issues as necessary, he said.

Should a fatality or serious incident occur, the system would give Mr. Reddaway the necessary information about the occurrence. The company does loss runs and triangulations that allow it to improve its models, he said. Other models, including those for catastrophe risk exposures to weather events, are not yet integrated. The company does work closely, though, with EQE International of Oakland, Calif., which publishes studies on earthquakes and other natural disasters. **BI**

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RMIS vendors seek to carve out niches

By David A. Tweedy

THE GLOBAL CAPITALISTIC system is a fascinating mechanism to watch. During recent months, we've seen the stock market plummet and reverse itself. Financial markets overseas teeter-totter. We've seen the largest proposed merger in history, that of Exxon Corp. and Mobil Corp. We're witnessing an apparent attempt by the U.S. Department of Justice to do some unpleasant things to Microsoft Corp. And Y2K looms in less than a year.

That same dynamism and uncertainty is mirrored to some degree in the insurance industry—mergers, consolidations, the advent of new technologies, natural disasters.

Yet, for providers of risk management information systems, things are seemingly less volatile. It seems to be a mature marketplace with few new major entries providing full-scale system solutions.

But underneath the surface of complacency, there are rumblings. For example, technological advancement is a given. Continued development in areas such as browser-based technology, database duplication and improvements in expert systems all contribute to a more dynamic environment. Also, there is the potential expansion of risk management as an industry itself.

The expansion of risk management beyond its traditional boundaries, espoused by many industry mavens, such as retired Microsoft risk manager Scott K. Lange, will have an impact upon the industry. Integrated 24-hour systems are becoming more common. Finally, many industry leaders in brokerage houses, third-party administrators and insurers are convinced that fully embracing well-designed automated tools is the key to success and growth.

Yet there are few new major entries, due to the extremely high dollar investment required to put a comprehensive claims management/risk management system into the market.

Therefore, in a mature yet potentially explosive marketplace, how do outsiders enter?

By exploiting chinks in the industry's armor.

These outsiders become specialty or niche vendors; their focus is on improving or augmenting one or a few key aspects of the risk management process, pre- and/or post-loss.

Vendors of comprehensive systems, on the other hand, concentrate on providing their core specialty capabilities, typically some type of claims adjudication and analysis software with increasingly user-friendly software. Because today's system architectures are more compatible with other applications (i.e., "plug and play"), vendors are able to market more easily their smaller, niche-oriented applications.

So it is with many provider/vendors in the RMIS industry today. A large percentage—at least one-third—of those on the annual *Business Insurance* list of RMIS providers can be defined as niche players. So can larger firms with demonstrated success in other markets—such as health care or benefits—that also desire to carve out their own niche in a new functional area.

Here are several niche firms that serve as examples of this notion:

- Certificates Management Solutions, Near North National Group, Chicago (www.nnng.com). Focus area: certificates of insurance and bonds tracking and issuance.

The mission of CMS, which is part of Near North National Group of Chicago, is to provide risk managers with an in-depth, comprehensive tracking and issuance tool, in both Web-enabled and desktop versions, for certificates of insurance (and bonds).

There are several certificates-tracking systems for a variety of technical platforms with varying degrees of functionality. Yet CMS is unique in two

ways: First, it is extremely detailed and technically robust—combining scanning, browsing and database technologies—while maintaining ease of use. Second, CMS is a specialized division within a large insurance brokerage firm and has single focus: providing a technical tool to a mundane—yet critical—task of a risk management department.

- Industrial Health Strategies Inc., Providence, R.I. (www.industrialhealth.com). Focus area: claims profiling and job site work assessment.

IHS is a workers compensation consulting firm specializing in disability management. It has developed an expert system called ACES (Accelerated Case/Claim Evaluation System), which automatically profiles claims for potential "delayed recovery" by analyzing more than 100 claim variables. Claims are ranked in order of potential significance, from 1 to 3, with 3s—the high-risk claims—typically being the ones targeted for ultimate adverse development. Once identified, such cases can be given early attention.

On the other side, ACES identifies claims that do not show a tendency to adversely develop, allowing adjusters and case managers to confidently expedite

Because today's system architectures are more compatible with other applications (i.e., 'plug and play'), vendors are able to market more easily their smaller, niche-oriented applications.

such claims. Combined with a comprehensive claims management/adjudication system, ACES could assist claim professionals and risk managers to gain an early focus on the right things. It's already in place at Beacon Mutual Insurance Co. in Warwick, R.I., the state's largest workers comp insurer, with favorable results.

- MiddleFork Technologies Inc., Chicago (www.middleforktech.com). Focus area: interactive/expert medical system for claims and case management professionals.

MFT is a new software firm that is launching a series of interactive expert medical systems aimed at providing desktop training for claims and case management professionals. The software series is called "Essential Medicine for Insurance-Related Claims." The first module centers on herniated discs. The basic premise is that claims professionals frequently are in need of medical expertise in order to understand injuries, disabilities, procedures and the like. Typically, they would rely on staff or expert physicians who would come by on a regular basis to discuss cases and the medical issues that help adjusters understand the medical implications of disability.

Based on my experience as a former adjuster, it would have been great to have a radiologist, neurosurgeon, orthopedic surgeon or other health specialist at my beck and call to answer specific questions. Enter "Essential Medicine." The goal of the system is to supplement/supplant the role of the expert medical adviser who teaches these critical items to adjusters. As part of a comprehensive claims adjudication system, this type of product can aid in reducing claim operating expenses and improving the ultimate reserving process.

- OCI, Cheyenne, Wyo., part of UNUM Corp. (www.ociwyo.com). Focus area: custom construction of enterprise-specific data warehouses for comprehensive risk management analysis.

OCI is yet another example of a larger company that specializes in the group benefits area entering the property/casualty arena with a niche product. OCI provides a total-cost-of-risk figure by integrating data from group medical, disability and property/casualty information into one source. Essentially, the firm designs unique data

warehouses for each client and uses the Internet as a report and analysis delivery vehicle. It does not matter what the data source or provider is; OCI combines all the data into one data warehouse and builds a custom reporting package for each client.

- Software Technologies Corp., Monrovia, Calif. (www.stc.com). Focus area: database integration, consolidation and conversion technology.

This firm provides data and systems integration for companies with diverse systems and databases. Although the company already has successfully built a solid client base in the group health benefit insurance arena, it is beginning to enter the property/casualty side. Its tool, called "DataGate," integrates data of disparate sources and types. With so many different data layouts, cost-efficient and accurate data conversion is perhaps the biggest challenge in the RMIS industry. STC seeks to provide that silver bullet for effective data conversion. Time will tell whether it succeeds in this difficult environment.

- Walker, West, Wong & Associates, Boston (www.walkerwestwong.com). Focus area: Internet-based risk management information system using existing client software and systems.

WWW is a small but full-service injury care management consulting organization specializing primarily in workers comp and other property/casualty exposures. In a somewhat similar fashion to OCI, WWW seeks to use, not replace, a client's existing vendors and systems. It does so by installing Internet-based products called WebDimensions/RMIS and RapidReports, developed in partnership with AXIM Systems of Medford, Mass.

RapidReports performs the critical generation of early first reports of accidents via the Internet/intranet, and WebDimensions/RMIS does analysis and report generation by extracting critical case and injury management information from RMIS systems—as well as adjuster notes/logs—through the Internet/intranet.

This is just a sample. Many new firms or product-services such as these come to my attention each year. The list grows all the time.

The large, comprehensive systems cannot do it all. They either lack the funds, market incentive, or expertise to develop all of the niche players' functionality. Yet, with the integration of systems becoming more commonplace, infusion of these types of software programs is much easier. I therefore see a lot of synergistic and partnership arrangements taking place over the next few years.

What does this mean to the vendor? Plenty. Niche players improve the state of the RMIS industry. Through technology, increased scrutiny is brought to bear on a particular issue. In some cases, the additional cost of the software can be more than justified by the savings the program generates through improved efficiency.

Obviously these niche systems are beneficial to the ultimate end user—the risk manager. You should evaluate your RMIS provider to see whether it provides these or other types of niche software capabilities, especially if they are critical to your own needs.

Talk with your provider to see how it can adapt some of these capabilities, or whether it can establish a strategic relationship to do so.

BI



David A. Tweedy is principal of Tweedy Risk Consulting in Barrington, R.I. Mr. Tweedy's column on risk management information systems appears quarterly.

Guidebook on liability issues a good tool

"Executive Liability Insurance Guide"

By Robert A. Bregman

Published by the International Risk

Management Institute, 12222 Merit Drive, Suite 1450,
Dallas, Texas 75251-2276; 800-827-4242
\$65

By Kevin M. Quinley

MANY HIGH-PROFILE lawsuits and several Supreme Court decisions have caused employment practices, directors and officers liability and fiduciary litigation to lead the pack of legal concerns today. A new book by the Dallas-based International Risk Management Institute—the "Executive Liability Insurance Guide"—provides business executives and risk managers a practical guidebook to use when picking their way through this minefield.

Author Robert Bregman has platinum-plated credentials to bring to the task. A senior research analyst at IRMI for a decade, he also is a former Fortune 500 risk manager, a former risk management consultant with a Big Six accounting firm and holds a graduate business-related degree from Northwestern University. Collaborating in this effort are about a half-dozen contributing authors, all luminaries in the field and briefly profiled in the introduction. Most insurance and risk management professionals are familiar with IRMI, or should be. This book further underscores IRMI's

Books & Ideas

emerging role as a leading publisher of texts for risk and insurance managers.

Packed with useful information, IRMI's "Executive Liability Insurance Guide" is organized for speed and ease of use. Although the book is 220 pages, an executive summary at the beginning of the book highlights the 10 to 15 key points. Further, it indexes these key points to the specific chapters in which they are discussed. This time-saving feature lets busy risk managers zoom in on key areas of concern or interest.

Among the topics that Mr. Bregman and his contributing authors address are:

- The factors that make companies most vulnerable to D&O claims.
 - Why EPL coverage endorsements to D&O policies often fail to protect against claims.
 - How Y2K exposures can best be handled under D&O policies.
 - The six leading kinds of claims against fiduciaries.
 - What is the best way of synchronizing fiduciary liability insurance with an employee benefits liability endorsement to a commercial general liability policy?
- Many of these topics—particularly Y2K and EPL—are among the hottest in risk management at the moment. Criticisms of the Guide are few but must be noted. First, its emphasis on insurance fails to provide a broader risk management perspective on executive liability.

Second, more loss prevention checklists would have added substantive value to the text.

Finally, the inclusion of a section on kidnap and ransom insurance seems out of place with the theme of executive liability, as K&R coverage is a first-party—not third-party liability—line of insurance.

Despite these modest flaws, the book is a compact and quick reference for on-the-go risk professionals who find themselves traveling quite often. The "Executive Liability Insurance Guide" will help corporate officers and the insurance professionals who serve them reduce, manage and insure executive risks. The book also explains the typical policies and addresses emerging executive liabilities, such as employment practices, fiduciary liability and liability associated with the purchase of managed care services.

Business executives, especially those in publicly-held companies, run a perilous mine field these days. Reading a book won't eliminate the dangers, but it will help executives know where to avoid stepping.



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

Focus on judges makes book too narrow

"Out of Order: Arrogance, Corruption, and Incompetence on the Bench"

By Max Boot

Published Basic Books, a member of Perseus Books L.L.C., 10 E. 53rd St. New York, N.Y. 10022-5299; 212-207-7057
\$25

By Michael Prince

WHAT'S BEST ABOUT "Out of Order: Arrogance, Corruption, and Incompetence on the Bench" also represents its greatest weakness. The book takes an in-depth look at problems with the country's judicial system by focusing on the role of judges. But by focusing so tightly on one aspect of the system, it ignores problems that might lie elsewhere.

One chapter of the book by Max Boot is devoted to what he calls "The Civil Injustice System." It's a greatest-hits album of outrageous court verdicts generally familiar to readers of business publications such as The Wall Street Journal, where Mr. Boot serves as editorial features editor.

Mr. Boot unearths little new information but has compiled an impressive collection of jury verdicts from the past 25 years that still make people shake their heads. For example, there is the \$2.14 million verdict against a

Books & Ideas

landlord for not getting rid of a tenant's pit bulls, the \$1.5 million awarded to a woman whose husband died from electrocution after urinating on subway tracks while drunk, or the \$4.3 million awarded to a convicted mugger shot by the police while fleeing a crime scene.

What sets Mr. Boot's book apart from others on the state of the judiciary is who he blames: judges. "Who's responsible for opening the courthouse doors? Hint: They wear black robes. Judges have nobody to blame but themselves if they now find their dockets so swamped that they can't sort out good cases from bad," he writes.

His solution to the problem of too many suits, too much class-action certification and excessively large verdicts is to have activist judges throw out frivolous cases and reduce large jury awards.

Although he raises some good points about the problems with judges in general—and some judges in particular—Mr. Boot's approach overall is too simplistic. By emphasizing judges as the reason behind large awards, while downplaying the role that state legislatures and Congress can play in correcting any problem, he distorts the issue. And he doesn't address what reforms within the legal profession could help reduce the number of frivolous suits

and cut down on unnecessary delays.

But perhaps most importantly, Mr. Boot ignores the role of juries. The outrageous awards he outlines were handed out not by judges but by juries. The judge's role, he writes, lies in "reducing or throwing out sky-high punitive damage awards."

Perhaps it's beyond the scope of his book, but Mr. Boot fails to address the big question of why juries slam companies with large verdicts, a question that risk managers may want to look at more carefully than Mr. Boot does in his book. Perhaps figuring out why people sue a company and why others feel the need to take money from companies and give it to individuals, whether deserving or not, would make risk managers sleep more soundly. **BI**



Michael Prince, who practiced law for five years, is an associate editor of Business Insurance and works in New York.

Court: Disabled man's home modifications compensable

An employee who became quadriplegic in an employment-related injury could be reimbursed for home remodeling services to accommodate a wheelchair, according to the Court of Appeals of Oregon.

Due to a 1982 on-the-job injury, Jack H. Glubrecht is quadriplegic. In December 1989, he bought a house in a more level area of Corvallis, Ore., that was near shopping facilities and other services that he could access on his own. The house was not wheelchair-accessible when he purchased it.

In March 1990, Mr. Glubrecht asked his workers compensation insurer if it would pay to remodel his residence and make it wheelchair-accessible. The cost of remodeling was estimated at about \$14,000. While discussions for reimbursement were ongoing, a

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contractor began remodeling the house. After completion, Mr. Glubrecht increased his request for payment to \$24,000 to account for the additional cost of adding a master bedroom spacious enough to accommodate a wheelchair and special bed. The insurer did not respond to his request. Thereafter, an administrative law judge ordered the insurer to reimburse Mr. Glubrecht \$24,038 for the remodeling costs incurred.

On appeal, the insurer argued, in part, that the remodeling services were not compensable as medical services under Oregon law. The court said that a

wheelchair is a prosthetic appliance. Structural modifications made to a home to accommodate the wheelchair have the function of facilitating the use of the wheelchair, the court said. Thus, the court concluded the remodeling services were compensable medical services. The award was affirmed.

SAIF vs. Glubrecht, Court of Appeals of Oregon, Sept. 30, 1998 (BI/01/My.-\$10) **BI**

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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CAPTIVES/ RISK MANAGER OF THE YEAR

Issue Date: April 12 • Ad Close: March 31

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RIMS REPORT: EMPLOYEE BENEFITS & WORKERS COMP

Issue Date: April 19 • Ad Close: April 7

RIMS REPORT: RISK MANAGEMENT

Issue Date: April 26 • Ad Close: April 14

Railroad

Continued from page 3
arrangements similar to the RMCC. But what makes the RMCC unique is the centralization of this function, he said. "There are pieces similar to other railroads, but no other railroad manages critical incidents like we do." In the past, UPRR handled these

incidents through train dispatch center employees, who had received emergency training secondary to instruction for their regular jobs, Mr. Bray said. But the RMCC staff is trained primarily to mitigate critical incidents.

"This center is very much team-oriented. When an incident occurs, several people may be involved in that incident's management," said Mr. Bray.

Job candidates are interviewed for stress management, analytical thinking, technological savvy and communication skills, said Ben Pedersen, manager for risk communication for UPRR, who trains the new hires.

Instruction depends on the strengths and weaknesses of each employee, but a minimum of two to three weeks of on-the-job training is required, Mr. Pedersen said.

Additionally, he said the response training includes measures "to protect and reduce the liability of UP."

An RMCC employee answers about 100 to 120 calls per shift, Mr. Pedersen said. On bad days, the types of calls could include derailments, individuals stuck on train tracks, hazardous materials releases and suicide threats.

"It really does take a different type of person to shoulder all of that," he said, noting the benefit of teamwork. "There's no way one person could sit in an office and manage all of that."

David Bartlett, an independent transportation and logistics consultant based in Toronto, said the RMCC is "a very worthwhile effort," considering that "when UP merged with Southern Pacific, they became an operational disaster."

Indeed, one year ago, the federal National Transportation Safety Board launched an investigation into a string of 15 accidents that occurred on UPRR lines. A spokesman for UPRR said that the RMCC was not directly tied to the improvements the railroad was making to satisfy the NTSB.

In the past, many railroads had large police forces independent of community enforcement, Mr. Bartlett said. Now, there are fewer of these "special agents," as the industry calls them, making the railroads more reliant on the public to alert them to potential railroad dangers, such as leaky rail cars.

UPRR still has about 150 special agents to educate local officials about the program, in addition to investigating any incidents.

The RMCC has "a lot of similarities with campus police (programs), but our campus is 23 states," said Mr. Pedersen. "It's hard to be an expert" in every one of these states, he said.

Historically, Mr. Bray said, railroads have always had emergency telephone numbers. In addition to giving these emergency numbers to local officials, they are stenciled on railroad crossings. The number for the RMCC is also available on UPRR's Web site.

A risk management consultant is skeptical about the effectiveness of the public's role in loss control. Most of the time, the general public doesn't have close-

enough access to train yards or to tracks to see suspicious activity to report, said Mike Zachary, director of port and intermodal projects for the transportation division of risk management consultant Dames & Moore Group's Portland, Ore. office.

Alan Cantor, president of Cantor & Co., a risk management consultant based in Beverly Hills, Calif., said the RMCC is a good idea.

'Any time you can have more eyes and more ears out there, I think that's a positive,' says Alan Cantor.

"Any time you can have more eyes and ears out there, I think that's a positive," he said. Additionally, "it shows people (the railroad) is making a serious effort to communicate with them."

Because the public plays a supporting role in the effectiveness of the RMCC, the public relations angle of the center shouldn't be ignored, said Mr. Cantor. The center's name, he added, is "dry," and "it almost stresses the negative."

Instead, Mr. Cantor suggested promoting performance improvement.

"You want to minimize risk, but the way you do that is by improving performance," Mr. Cantor said. "The public is not going to get as excited for risk management and Union Pacific as it will for performance improvement."

UPRR is self-insured, so losses directly affect the railroad's financial health. Mr. Bray said it is impossible to quantify the loss control benefit from the implementation of the RMCC, due to inconsistent measures prior to the merger. However, he said, "it's pretty clear to see the benefits and the possible savings we're producing each day."

"I feel that the RMCC prevents many incidents from occurring," said Mr. Bray. "When you're talking about property loss, loss of life and revenues, it's definitely a major impact on the railroad to be able to handle calls efficiently and effectively." **BI**

Conrail, Union Pacific collide

MOMENCE, Ill.—An eastbound Conrail Inc. train and a Union Pacific Railroad train heading south, collided at about 7 a.m. last Tuesday in Momence, Ill.

The crash occurred just 11 miles from the site of a fatal Amtrak derailment about a week before near

Bourbonnais, Ill., about 50 miles south of Chicago (BI, March 22).

Each train was carrying two crew members. All four were treated for minor injuries and released from an area hospital.

Both railroad companies are self-insured for losses arising out of the accident.

The Conrail train, which left Kankakee, Ill., was pulling 60 cars and had three locomotives, a Conrail spokesman said. Forty-six of the cars were loaded with general freight bound for Elkhart, Ind. The crash turned one locomotive on its side, and another was leaning on the track.

The 43-car Union Pacific train had two locomotives and was carrying auto parts from Chicago to Laredo, Texas, when it was struck on the back of the first locomotive by the Conrail train, said a UPRR spokesman.

"There were indications that the Conrail train ran the red signal," he said.

A Conrail spokesman would neither confirm nor deny that its train ran a signal.

On Thursday, a spokesman for the National Transportation Safety Board said the agency had interviewed the train crews.

Conrail crew members said they received a caution signal and slowed down, but they could not stop in time to keep from striking the UPRR train that was traveling at 49 mph. UPRR crew told the NTSB they saw the Conrail train approaching and also tried to slow down. The speed of the Conrail train at the time of impact had not been determined last week.

The NTSB spokesman said Union Pacific was apparently not at fault, "but we don't (yet) know for sure." Event recorders will be examined before a ruling is issued.

—By Amanda Milligan



PHOTO: KRT

Two trains operated by Conrail and Union Pacific collided Tuesday in Momence, Ill., near the site of a fatal Amtrak derailment that occurred the week before.

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Sears ordered to pay damages

AURORA, Ill.—Sears, Roebuck & Co. was ordered to pay \$15.7 million in damages to a 76-year-old woman who was struck by a van exiting a service bay at a St. Charles, Ill., store.

On June 1, 1996, Rosa Kresin was exiting through a Diehard Express door near an automobile service bay when a vehicle driven by a Sears employee backing out of the bay struck her from behind. Ms. Kresin was trapped under the vehicle, said her attorney, Charles F. Thompson of Thompson, Lamont, Flaherty & Masur in Aurora, Ill.

Ms. Kresin was blinded, and she sustained multiple facial injuries. Additionally, the left side of her body was permanently disabled as a result of

extensive head trauma.

Earlier this month, a Cook County, Ill., jury found Sears had neglected to train employees on proper safety techniques, Mr. Thompson said.

But he added that Sears has made some procedural changes since Ms. Kresin's accident.

"This occurrence has made a difference in how Sears has approached this issue," Mr. Thompson said. "Out of tragedy, I hope better procedures have been evolved."

A spokeswoman for the Hoffman Estates, Ill.-based retailer said Sears was disappointed by the size of the award and is considering an appeal. She would not comment on whether Sears was insured for the damages.

—By Amanda Milligan



INTERNATIONAL

Global Briefs

Azmin Daya has resigned as managing director of troubled reinsurer **New Cap Reinsurance Corp. Holdings Ltd.**, which has asked the Australian stock exchange to suspend trading in its shares for a further week while it completes its 1998 results. Mr. Daya also has stepped down from board positions in the group companies in Australia and Bermuda, and Paul Williams has taken over as acting managing director. . . . Lloyd's of London's **Wellington Underwriting P.L.C.** has completed its acquisition of San Francisco-based J. Linneman & Co. for \$3.8 million. Managing agent Linneman underwrites and binds property and casualty facultative reinsurance on behalf of Lloyd's syndicates, including Wellington syndicates 51 and 672, through its network of offices in Hartford, Conn., Chicago and Atlanta. Linneman will be renamed Wellington Underwriting Inc. . . . At the same time, Wellington has developed a new terrorism coverage to protect against **Serbian retaliatory bombing** in London, New York and the capitals of other NATO members following the beginning last week of NATO's air campaign. Wellington also offers coverage for missile and airstrike damage to foreign companies with assets in the Federal Republic of Yugoslavia. . . . Sun Xiyue has been appointed general manager of the **People's Insurance Co. of China**. He was previously deputy general manager of the PICC before it was privatized last year. The current PICC was formed out of the property side of the former organization. . . . U.K. multiline insurer **Norwich Union P.L.C.** has reorganized its London underwriting staff. Jim Noakes has been appointed London underwriting manager, Adrian Thone has been named schemes underwriting manager, David Cooper has been appointed manager of the property owners' section for London and southeast England, and Geoff Merrimar has been appointed London market underwriting manager. . . . Philippa Dickson has been appointed managing director of **CIGNA Healthcare & Group Life**, part of CIGNA International. Ms. Dickson was previously a director at Bupa International, responsible for developing its worldwide corporate, individual and group health care business for expatriates. . . . Kenya soon will relaunch its plan to privatize **Kenya Reinsurance Corp.**, a Kenya Re spokesman said. . . . London-based Benfield Reinsurance Co. Ltd. is relaunching as **BRIT Insurance Ltd.** Benfield & Rea Investment Trust P.L.C. bought almost 30% of Benfield Re, a specialty catastrophe excess-of-loss reinsurer, late last year, with an option to buy the outstanding shares. The name change reflects the new ownership. BRIT Insurance also has been approved by the Financial Services Authority to write most classes of non-proportional catastrophe reinsurance and financial risk insurance, either directly or as reinsurance. . . . Henry Lawford has been appointed chairman of mutual insurance club manager **Thomas Miller (Asia Pacific) Ltd.** Mr. Lawford, currently a senior executive at the Thomas Miller group, succeeds David Martin-Clark, who is retiring. . . . The U.K. **Health & Safety Executive** is funding a one-year study into health risks from portable and hand-held computers. The study will be conducted by ergonomics consultant System Concepts Ltd. . . . U.K. employer-sponsored health care plans could cost 20% more as a result of medical insurance inflation and changes announced in the U.K. budget, benefit consultant **William M. Mercer Ltd.** says. Increases in premiums, National Insurance contributions and premium taxes could result in employers curtailing health benefits or implementing cost-sharing arrangements, Mercer says. . . . A former telephone engineer is suing **British Telecommunications P.L.C.**, claiming that his extensive use of **mobile phones** during work caused short-term memory loss. . . . The U.K. Department of Health and the Health and Safety Commission launched a program this month to emphasize **workplace health and safety**.

Employers seek to test tax laws

By CAROLYN ALDRED

BRUSSELS, Belgium—A group of multinational companies plans to file a European Court of Justice test case to stop tax discrimination that they say is preventing the creation of pan-European pension funds.

Differing tax laws within European Union states make cross-border pension funds difficult to manage, employee benefit managers and consultants agree.

Although the European Commission is looking at tax issues in its efforts to harmonize the pension market in Europe, any decision involving uniform tax treatment requires all member states to reach agreement. A ruling from the European Court of Justice in Brussels, however, may be speedier to obtain and would immediately be

binding in all E.U. countries.

So far, at least 10 multinationals based in Europe have offered to fund the litigation, according to Geoffrey Furlonger, a pension consultant in the Brussels office of William M. Mercer.

Mr. Furlonger, who is helping organize the action, estimates that it will cost up to 200,000 euros (\$218,300) to fund the litigation. He is looking for about 20 employers, which each would contribute about 10,000 euros (\$10,915) to sponsor the suit.

Potential sponsors are likely to be multinational corporations based in the United States, the United Kingdom and Europe that wish to create company pension plans across Europe, he said. Sponsors also may include fund managers and insurance companies, Mr. Furlonger said.

Before a test case can be taken to the European Court of Justice, it must go through the national courts of an E.U. member state, said Mr. Furlonger. A test case could involve one individual who wishes to obtain a pension from an E.U. country other than his or her home nation, which would enable all the sponsoring employers to remain anonymous, he explained.

In a separate development, representatives from the European Union's 15 member states have agreed that the European Commission should remove the tax discrimination on occupational pensions faced by employees working in E.U. countries other than their home state.

The European Union's Taxation Policy Group recommended this month that the
See Pensions on page 21

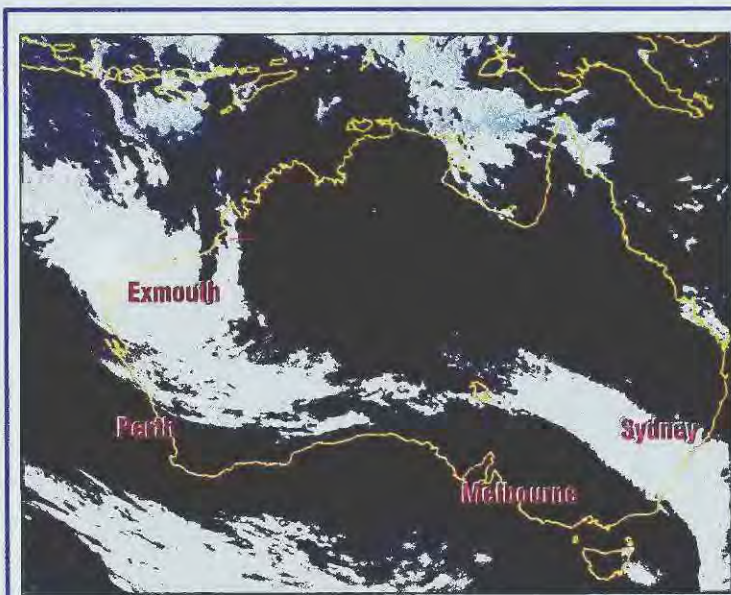


PHOTO: AFP

Towns have been devastated, roads flooded and gold mines temporarily closed in the aftermath of Cyclone Vance, the most powerful storm ever to hit Australia. Winds gusting more than 260 kilometers per hour (161 mph) last week brought down power lines and cut water supplies in western Australia. After sweeping across Australia, Cyclone Vance then hit Melbourne, blacking out more than 50,000 homes and businesses in the area. The Insurance Council of Australia estimates Vance-related losses will run into tens of millions of dollars. "There will be a fairly large insurance bill at the end of the day," said Daryl Cameron, ICA's western division manager.

Y2K on minds of reinsurers in Australia

By KATE TILLEY

GOLD COAST, Australia—Will the Year 2000 exclusion clauses being inserted into many Australian-written insurance and reinsurance contracts protect underwriters?

Are personal, face-to-face transactions still important in the reinsurance industry?

Will the capital markets take over the role of traditional reinsurers?

Opinions varied when these questions were raised in a debate earlier this month at the Australian Reinsurance Forum on the Gold Coast of Queensland, Australia.

Senior industry executives discussed key issues in the industry's future and fielded questions from the floor.

Richard Wareham, general manager-London market with Reinsurance Australia Corp., launched the debate by asking the panel whether reinsurers should rely on Y2K exclusion clauses or should work with buyers to limit exposure. Michael

Kelly, managing director for ReAC in Sydney, said reinsurers couldn't drive the awareness about Y2K, as their market was too diverse, but that insurers should be making their clients aware of the potential for problems.

The industry needs to distinguish between clients that have done nothing and those making an effort to be Y2K-compliant in time, said Geoff Bromley, president and international chief executive officer of Guy Carpenter & Co. Inc. of New York.

Tim Fox, executive director of GIO Reinsurance, agreed that some regions of the world "still have their head in the sand." GIO is a unit of Sydney-based GIO Holdings Ltd.

Exclusion clauses "won't turn bad risks into good ones," said John Connolly, a director at Aon Group Ltd. in London. And Phillip Purcell, a partner in the law firm Dunhill Madden Butler in Sydney, warned there would be major litigation after
See Panel on next page

Top-performing Lloyd's syndicates

Based on preliminary unaudited 1996 profits

Syndicate	Managing agency	Market sector	Profits as % of capacity
1176	LG Cox & Co. Ltd.	Non-marine	32.6%
1028	Wellington Underwriting Agencies Ltd.	Marine	26.1%
780	BF Caudle Agencies Ltd.	Non-marine	24.6%
535	Cotesworth & Co. Ltd.	Marine	24.5%
779	Cassidy Davis Syndicate Management Ltd.	Life	22.0%

Source: Moody's Investors Service

Reserving keeps Lloyd's '96 profits under expectations

By SARAH GODDARD

LONDON—Prudent reserving is the reason for Lloyd's of London's lower-than-expected 1996 profits, Moody's Investors Service Ltd. says.

After Lloyd's issued preliminary results last week showing a profit of more than £600 million (\$1 billion), Moody's noted the "respectable" performance was marginally lower than expectations because underwriters were reserving at a higher level than the rating agency had expected.

Lloyd's last week said it expected an overall market profit of £606 million (\$1.02 billion), before tax and members' expenses, based on an initial review of audited syndicate returns. Pure underwriting profit will total £359 million (\$604.2 million), with the balance coming from releases of previous year reserves, Lloyd's said.

But results in subsequent years are not expected to be as impressive. Lloyd's anticipates a £70 million (\$117.5 million) profit on 1997 underwriting and a £60 million (\$101 million) loss for the 1998 year. Moody's predicts a break-even result for 1997 and a loss of more than £200 million (\$336.6 million) for 1998.

In a statement, Lloyd's Chief Executive Officer Ron Sandler said the combination of falling premiums and higher claims industrywide "are reflected in the revised projections for 1997 and may continue to affect the projection for 1998 as the account continues to develop."

By market sector, marine business was the most profitable area in 1996, with an average 12.8% return on capacity, Moody's said. Six of 1996's 10 top-performing syndicates wrote marine business.

Non-marine business on average provided a profit equal to 4.7% of capacity, according to Moody's, with aviation providing a 4.0% profit. Term life, a small specialty class at Lloyd's, returned a 6.6% profit, while motor business showed losses of 7.1% of capacity. Moody's expects the motor sector to remain unprofitable until at least 2000.

Underwriting agents remain circumspect with regard to the market as syndicate results continue to be released.

Hardy Underwriting Group P.L.C. last week announced a 16.6% profit on capacity for syndicate 382 for the 1996 year. In 1997 and 1998, the syndicate wrote much less capacity, walking away from potentially unprofitable business.

Losses have forced Chartwell Managing Agents Ltd. to leave open the 1996 year for syndicates 923/2923 and 947/2947.

See Lloyd's on next page

Panel

Continued from previous page
Jan. 1, 2000.

"Insurers have sought to limit their exposure, but are there gaps in the insuring clause, as distinct from exclusions themselves?" asked Mr. Purcell. "What exposure do your clients have to third parties?"

He said many North American courts have adopted a principle of making those with the deepest pockets—insurers—pay, and that some courts were "very creative."

Mr. Bromley said brokers have "tried to get the market to underwrite the risk and stay away from exclusion clauses. As soon as you have an exclusion clause, that means that, in the absence of an exclusion clause, you have coverage," he explained.

Mr. Bromley warned that there have been cases in which U.S. courts had "overcome situations in which the intent of both parties was that an exclusion existed," meaning that even if parties think when they draft a policy that an exclusion exists, a court might determine otherwise.

Given the state of the Australian market, Y2K claims would come at a bad time for the industry, which has reported poor results, he noted.

ReAC's Mr. Kelly said the industry needs to be wary of labeling disclaimers as exclusion clauses. "We must just point out that Y2K is not a fortuitous event; everyone knows it's coming. Insurance policies don't cover that sort of thing."

Mr. Fox of GIO said an exclusion clause is merely "rubber-stamping" what insurers said during the policy-writing process and what insurers "willingly accepted" based on underwriting information.

But Mr. Kelly said reinsurers were relying on the clause and therefore were not asking "everyone we reinsure if they (and their policyholders) are compliant."

The Australian market has lost business because it has taken a firm position that it will not cover any Y2K claims, said Roger Burn, a non-executive director at ReAC.

Brendan Roche, chairman and CEO of MBR Reinsurance Pty. Ltd. in Sydney, defended that decision, saying it will not hurt Australian reinsurers, despite the soft market conditions. "It will increase the chances of longevity, long-term."

The panel agreed there would be a lot of litigation, but Mr. Purcell said not all losses would be fortuitous, and, therefore, not all would be insurers' responsibilities. "Everyone will look

for someone to pay. For substantial computer companies, do their insurance policies respond?" he questioned.

The panel's views were divided on the value of automated, computerized transactions. Mr. Burn said that, with "bigger deals and fewer of them at the treaty end," perhaps computer trans-

actions could trim costs. But ReAC's Mr. Kelly said it was possible to do things in "one day across the table that take seven days by fax."

'Traditional products in isolation are not satisfying clients' needs. We need tailor-made solutions,' says Geoff Bromley.

actions could trim costs. But ReAC's Mr. Kelly said it was possible to do things in "one day across the table that take seven days by fax."

Mr. Bromley criticized the insurance industry's failure to create a single electronic commerce platform, saying "vested interests" who want to retain their own proprietary platforms had seen the industry suffer as a whole. "Our business is overpriced, inefficient, and we leave ourselves open to the capital markets unless we change the way business is done," he said. "It's incumbent on all of us to accept that we have not used technology efficiently in the past. . . . Unless we join the 21st century, there will be far fewer of us in this industry in a few years' time."

He predicted a major increase in

electronic reinsurance contracting, but other panelists said that face-to-face negotiations would never disappear altogether.

Mr. Roche warned against allowing technology to remove the underwriters' "power of the pen," saying he did not want to see situations in which there was no chance to negotiate.

In a comment from the audience, Steve Warwick, executive director of Sydney-based Aon Group Australia Pty. Ltd., said the industry is "still hopelessly inefficient," but if efforts were made to use technology better in the back-room, "front-end" negotiations still could be done face to face.

The panel discussed the growth of alternative risk financing. Mr. Fox said reinsurers should harness the alternatives to ensure the industry is able to provide "sophisticated products for sophisticated buyers." Reinsurers need to provide "value-added service, not just capacity," he noted.

Mr. Bromley agreed, saying securitization products were developing against "a background of the cheapest reinsurance for some time. Traditional products in isolation are not satisfying clients' needs. We need tailor-made solutions."

He said no one "understands risk better than the traditional insurance market; we should look at the capital markets as providers of capacity."

As an example, Mr. Bromley said his company had negotiated a \$4 billion multiyear financial risk insurance program addressing leasing revenues for British Aerospace (BI, Dec. 14,

1998), and it could not have achieved the deal without using capital market techniques.

In a question from the audience, Paul Allison, managing director of Sydney-based broker MBR Reinsurance Pty. Ltd., asked whether the capital market products were based on a "buyer beware" philosophy, as opposed to the traditional insurance philosophy of utmost good faith.

Mr. Purcell pointed out that if there were a dispute over the coverage provided by a capital market product, it would be dealt with under contract law, not under insurance law, meaning the "utmost good faith" doctrine would not apply. Panelists agreed.

Mr. Roche said there was no doubt "there will be a (legal) test, and I expect it will be in the next five years."

Y2K, relationships and capital markets certainly were not the only issues under the spotlight at the forum. Reinsurers' results, which continue to turn for the worse, were discussed.

GIO Reinsurance contributed a \$19.6 million Australian (\$12.5 million) loss to Sydney-based GIO Holdings Ltd.'s 81% profit slump for the six months to Dec. 31, 1998, reported the day before the forum began. Other Australian reinsurers also have fared poorly. Sydney-based Reinsurance Australia Corp. Ltd. reported a \$48.2 million Australian (\$30.8 million) loss, and New Cap Reinsurance Corp. was forced to suspend underwriting via its Bermuda company after its capital level dropped below Bermuda's requirements. **BI**

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Down Under could be left behind

Struggling market must adopt capital market products: Speaker

By KATE TILLEY

GOLD COAST, Australia—As Australian reinsurers post poor results amid ongoing competition, the industry also is threatened by another sector—the capital markets.

At the third annual Australian Forum, reinsurers were warned that unless they get involved in the new alternative products offered by the capital markets, they risk being left behind when the market hardens and buyers begin looking for other options.

Richard L. Sandor, chairman of Hedge Financial Products Inc. of Chicago, a subsidiary of CNA Financial Corp. that specializes in risk securitization, told the forum's 200 attendees that commodity traders will continue to offer capital securitization products as alternatives to reinsurance. And the market will grow, despite an "absurdly" soft insurance market, he said.

The insurance industry, he said, is not equipped for major catastrophes. With \$235 billion in global reinsurance capital, "one big storm or earthquake could knock out 50% of the business."

Mr. Sandor said some reinsurers already are overexposed in some geographic areas. He noted that 70% of U.S. assets are in high-risk areas, vulnerable to earthquakes, hurricanes or

tornadoes. Occurrences that had been considered one-in-100-years events happen much more frequently, he said at the forum. Insurers and reinsurers "have very little capital relative to the amount of risk out there."

He said the primary insurance market needs alternative products, such as catastrophe bonds, because there is not enough capital in the reinsurance market to handle a major event.

He said investors see benefits in putting money in cat bonds and similar tools because they avoid the corresponding volatility associated with bond and stock markets and put greater diversity into their portfolios.

Unlike financial events that may have "ripple effects" on stock markets in many countries, he noted, a windstorm or earthquake tends to be isolated and not to shake up multiple markets.

Mr. Sandor said the volatility in insurance prices is "beyond belief" and that buyers and investors need greater stability, which he says the capital markets provide. Investors also want to develop alternative markets as a recourse for when the market hardens.

Mr. Sandor called Australia a "great place for securitization" because of the enormous capital in superannuation funds, which are like pension funds. The funds, to which employers must contribute, are heavi-

ly regulated, though employees can decide how they want their portions invested. There are industry-based funds—for coal miners or construction, for example. Life insurers also offer private funds. Mr. Sandor sees value in writing securitized products against that capital.

Responding to a question from the audience, Mr. Sandor denied that the alternative markets were simply softening the insurance market, saying that good speculation was stabilizing and would even out the insurance cycle.

The alternative markets "will make things worse only if they are no good at speculating. A good speculator will buy low and sell high. Good speculation is stabilizing," he said.

Mr. Sandor warned Australian-based reinsurers to become involved in the new markets gradually—"Don't bet the ranch." But, he said it was essential that reinsurers participate or they'd be left behind when rates hardened.

In addition, reinsurers have skills to offer to the capital markets, he said. "Remember, you have the underwriting expertise. The men and women of Wall Street don't understand any of that."

The forum was held March 5-8 at the Sheraton Mirage on the Gold Coast. **BI**

Lloyd's

Continued from previous page

The syndicates led a U.S. extended-warranty auto line slip, brokered by Byas Mosley & Co. Ltd., and the slip has proved painful to a number of syndicates. Among the syndicates affected by the business is syndicate 529, managed by Sterling Underwriting Agencies Ltd. That syndicate also is a participant on another extended-warranty program causing some problems at Lloyd's, the Houston General Insurance Co. Brown &

White Goods Warranty Reinsurance account. Syndicate 529 has reported a 5.5% loss on £16 million (\$26.9 million) capacity for the year. Syndicate 314, managed by Ashley Palmer Ltd., also is on the Houston General line slip and has posted a marginal profit of 0.25% on £56.2 million (\$94.6 million) capacity.

Several clients of actuary Bacon & Woodrow London Market Services Ltd. are involved in the Byas Mosley line slip. A spokesman for the actuary said unofficial market estimates of losses near \$200 million are "probably not totally in the wrong ball-

park." Although the business is shared by the North American and London market, "the worst of it is probably in London," he said.

The Byas Mosley line slip started in 1993, and though it officially finished in 1997, some of the business still is being written in Lloyd's, said the Bacon & Woodrow spokesman. Each year, about 20 participants were signed up to the line slip from both Lloyd's and the London company market, though participants differed from year to year. He said it is too early to assess the impact on the 1997 year of account. **BI**

Witnesses

Continued from page 1

taking into account whether the technique or theory could be scientifically tested; whether it had been subject to peer review; whether the technique was subject to a high known or potential rate of error; and whether the theory or technique enjoyed "general acceptance" within the relevant scientific community. The *Daubert* decision also clarified that the trial judge should act as "gatekeeper" to determine whether evidence meets the standards of admissibility.

By an 8-1 vote—with the sole dissenter, Associate Justice John Paul Stevens, concurring in part with the majority—the Supreme Court last week ruled that trial judges should act as gatekeepers regardless of the nature of the expert testimony.

Writing for the majority, Associate Justice Stephen Breyer wrote that there is no "convincing need to make such distinctions" between scientific and other forms of expert testimony.

In fact, he wrote, it would be "difficult if not impossible" for trial judges "to administer evidentiary rules under which a gatekeeping obligation depended upon a distinction between 'scientific' knowledge and 'technical' or 'other specialized' knowledge. There is no clear line that divides one from the other." Associate Justice Breyer went on to give trial judges even more discretion, writing that the *Daubert* factors were "meant to be helpful, not definitive. Indeed, those factors do not all necessarily apply even in every instance in which the reliability of scientific testimony is challenged."

For example, the opinion said, not all claims made by scientific witnesses will have been subject to peer review.

Furthermore, the general acceptance of a theory does not necessarily

make it reliable, wrote Associate Justice Breyer, pointing to the "so-called generally accepted principles of astrology or necromancy."

Corporate risk managers, insurers and other business representatives welcomed the decision.

"I think the criteria that were set are outstanding. For the most part, it now puts the 'expert' back in 'expert witness,'" said Lance Ewing, chairman of the Risk & Insurance Management Society Inc.'s External Affairs Team and director-insurance and loss prevention for GES Exposition Services Inc. in Las Vegas.

"We argued very strongly that the role of gatekeeper is paramount and I'm very pleased to see that the court saw that as paramount," said Victor E. Schwartz, a longtime product liability reform advocate who prepared a brief on behalf of the American Tort Reform Assn. in support of *Kumho*. "The era of the phony expert is over" in federal court, Mr. Schwartz said.

"Those interested in curbing lawsuit abuse can only applaud the Supreme Court decision in the *Kumho* tire case. It maximizes the power of trial courts to exclude 'junk science' that poses as expertise. Together with the court's recent action in *Gore vs. BMW* to curb excessive punitive damages, the *Kumho Tire* decision moves our civil justice system closer to a more common-sense approach to civil litigation," said Richard Thornburgh, a former U.S. attorney general and Pennsylvania governor who is now of counsel to the law firm Kirkpatrick & Lockhart L.L.P. in Washington.

In the landmark 1996 ruling *Gore vs. BMW*, the Supreme Court held that there are situations where punitive damages can be so excessive as to violate the Constitution.

"The decision is of extreme importance because the number of cases involving pure science is not great, but the number of cases involving ex-

perts" in federal courts is enormous, observed Mr. Schwartz.

As a result, he said that the decision could have an adverse effect.

"It will increase the plaintiffs bar's drive to get their cases in state court no matter what," Mr. Schwartz predicted. To avoid federal limits, plaintiffs attorneys will name "defendants against whom they never expect to enforce a judgment"—such as the local distributor of a national company's product—as a means to avoid federal jurisdiction, he said.

Mr. Schwartz is not alone in his concern.

There is "always the risk" that "ingenuous plaintiffs lawyers will shift their attention to the state courts. It's always a nagging concern whenever you have this kind of development," said Mr. Thornburgh.

Lloyd Milliken, a partner in the Indianapolis law firm Locke Reynolds Boyd & Weisell and president-elect of the Defense Research Institute, agreed.

"I think there is empirical evidence that that has already occurred in circuits that have taken the approach that the Supreme Court has now endorsed," he said, citing in particular the 7th U.S. Circuit Court of Appeals.

Mr. Milliken said he believes that state courts that have not "addressed the *Daubert* logic will do so, and it's pretty compelling logic."

Craig Berrington, general counsel for the American Insurance Assn. in Washington, downplayed the possibility of product liability suits migrating en masse to state courts because of the decision.

"Most state rules of civil procedures have provisions that are susceptible to the same analysis as the Supreme Court used in this case," he said.

More likely is that *Kumho* will be used by defendants in state court trials to argue against the admissibility of certain expert testimony, he said.

David Vladeck, director of the Washington-based Public Citizen Litigation Group, a consumer group founded by Ralph Nader, saw little shocking in the decision and said he

didn't expect any rush to the state courts.

"I don't think there's anything particularly revolutionary in this opinion. The kind of expert testimony that was admitted yesterday or last week or last year will continue to be admitted," he said.

"The real winners are the trial judges, who get an awful lot of discretion under this opinion," Mr. Vladeck said.

Some pro-business observers agree with that point.

"I tend to think it's more good news than otherwise. The bad news is that one of the highlights of the opinion is the additional discretion given to the trial judge," said Jim Young, a partner in Christie Pabarue Mortensen & Young in Philadelphia, who specializes in insurance-related litigation and professional malpractice.

"The downside is that this is going to be very much judge-dependent. As a defense lawyer, you better have a pretty good understanding about who you're in front of," said Mr. Young.

RIMS' Mr. Ewing agreed.

"The concern that I think risk managers have is that the judge may not be as impartial of a gatekeeper as the high court thinks they might. The judge may not understand every aspect of the criteria that were set forth," said Mr. Ewing.

"We're going to have to see how the lower courts turn around and use this decision," said Ken Schloman, Washington counsel for the Alliance of American Insurers.

Justice Breyer's opinion could be seen as backing down from having to meet the four standards set out in the *Daubert* decision, he said.

"He's basically saying these four factors are basically illustrative of factors a court can consider and there are other factors a court can consider. While I think the decision is absolutely proper on the facts, I think it could cut both ways," Mr. Schloman said.

The *Kumho* case began in 1993, after a fatal accident followed a tire blow-out. The plaintiffs sued the tire manufacturer and distributor, relying

heavily on testimony offered by an expert in tire failure analysis. Despite the tire's age and wear, the expert concluded that a product defect caused it to blow.

The defendant manufacturer asked the district court judge to exclude the expert's testimony because it did not meet necessary standards of methodology.

The district court judge, relying on the *Daubert* decision, agreed the *Daubert* standards should apply even though the testimony was "technical" rather than "scientific."

The plaintiffs appealed to the 11th U.S. Circuit Court of Appeals, which overturned the trial opinion and held the *Daubert* standards applied only to scientific—and not technical—testimony.

The defendants sought Supreme Court review, resulting in last week's ruling that judges' gatekeeping responsibilities apply to expert testimony of all kinds.

In a concurrence in which he was joined by Associate Justices Sandra O'Connor and Clarence Thomas, Associate Justice Antonin Scalia was even more blunt than Associate Justice Breyer.

"I join the opinion of the Court, which makes clear that the discretion it endorses—trial-court discretion in choosing the manner of testing expert reliability—is not discretion to abandon the gatekeeping function. I think it is worth adding that it is not discretion to perform the function inadequately. Rather, it is discretion to choose among reasonable means of excluding expertise that is *fausse* and science that is junky."

"Though, as the Court makes clear today, the *Daubert* factors are not holy writ, in a particular case the failure to apply one or another of them may be unreasonable, and hence an abuse of discretion," the concurring opinion stated.

Kumho Tire Co. Ltd. et al. vs. Patrick Carmichael et al., U.S. Supreme Court, No. 97-1709. Decided March 23, 1999.

INTERNATIONAL

Pensions

Continued from page 19

European Commission introduce legislation that would prevent tax discrimination on occupational pensions for migrant workers.

Moves to simplify and harmonize tax treatment of occupational pensions for overseas employees will be welcomed by employers, said David Formosa, an employee benefit consultant in the international department of William M. Mercer's London office.

However, legislation is unlikely to be introduced before the end of the summer, one E.U. official noted.

Meanwhile, an E.C. paper outlining proposals for a single pension market is due to be published in the next few weeks, said the official.

Inconsistent taxation of cross-border pension contributions remains a barrier to a single market in Europe, according to a report on supplementary pensions published last year by the European Commission.

European Union-wide responses to that consultative document agreed that the "diversity and the complexity of supplementary pension schemes are seriously hindering the proper functioning of the single market."

"There is a very broad consensus that current tax rules act as a barrier to the free movement of workers," stated the report.

"These tax distortions are regarded by the industry and by the financial sector as the main obstacles to the establishment of a genuine market for supplementary pensions," the report concludes.

Removal of the tax differences likely will decrease pension costs as well, contributors to the report noted.

"As long as such discriminatory tax barriers exist, providers of supplementary pension plans are not able to benefit from economies of scale. They must create unique products and establish specific investment policies for what may be relatively small markets. The need to establish often duplicative country-specific infrastructure to manage pension products further drives up costs," said one respondent.

Employers and pension plan providers "would like to see some way that tax contributions can be treated uniformly," said Mr. Formosa. **BI**

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HELP WANTED

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF NEW YORK

In re:
FIRST CENTRAL FINANCIAL CORPORATION,
Debtor.

Hearing Date:
April 15, 1999, at 3:30 p.m.

Chapter 7
Case No. 198-12848-352

NOTICE OF HEARING

FOR AN ORDER AUTHORIZING MARTIN P. OCHS, AS CHAPTER 7 TRUSTEE, TO SELL ALL OF THE ESTATE'S RIGHT, TITLE AND INTEREST IN AND TO THE CAPITAL STOCK OF MERCURY ADJUSTMENT BUREAU, INC., FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND ESTABLISHING CERTAIN BIDDING PROCEDURES WITH RESPECT THERETO

PLEASE TAKE NOTICE, that upon the application (the "Application") of Martin P. Ochs, as Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of First Central Financial Corporation, the debtor (the "Debtor") herein, by his attorneys Ochs & Goldberg, LLP, and by his special counsel, Whitman Breed Abbott & Morgan LLP, the undersigned will move the Honorable Marvin A. Holland, United States Bankruptcy Judge, at the United States Bankruptcy Court, 75 Clinton Street, Brooklyn, New York 11201, on the 15th day of April, 1999, at 3:30 p.m. (the "Sale Hearing"), or as soon thereafter as counsel can hear for an order: (i) authorizing the Trustee to sell, pursuant to Section 363(b) and (f) of the United States Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004, all of the Debtor's estate's right, title and interest in all of the capital stock (the "Mercury Stock") of Mercury Adjustment Bureau, Inc. ("Mercury"), free and clear of all liens, claims and encumbrances (the "Encumbrances"); if any, with such Encumbrances to attach to the proceeds of such sale, on the terms and conditions set forth in a certain sale agreement (the "Sale Agreement") dated February 17, 1999, between the Trustee and Mercury Partners, LLC ("Mercury Partners"); and (ii) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that at 3:30 p.m. on April 15, 1999, at the Sale Hearing to be conducted at the United States Bankruptcy Court, in Judge Holland's Courtroom, the Trustee will accept and the Bankruptcy Court will consider bids in connection with the sale of the Mercury Stock. The sale shall be to the highest and best offeror.

PLEASE TAKE FURTHER NOTICE, that the Sale Agreement provides, in pertinent part, that: (i) the Trustee shall transfer all of the Mercury Stock to Mercury Partners, free and clear of the Encumbrances; (ii) the closing (the "Closing") on the sale of the Mercury Stock shall occur after the Bankruptcy Court enters a final nonappealable Order approving the Sale Agreement; (iii) the aggregate purchase price (the "Purchase Price") shall be \$275,000.00; (iv) the Purchase Price shall be paid in cash; (v) an amount not to exceed \$150,000.00 in the aggregate from Mercury existing money market accounts and the earnest money deposit in the amount of \$1,000.00 previously paid by Mercury Partners and transferred to the Trustee shall be applied towards the Purchase Price and any excess cash in Mercury bank accounts shall be paid over (not in reduction of the Purchase Price) to the Trustee at the Closing; and (vi) the Closing on the Sale Agreement will occur no later than May 4, 1999.

PLEASE TAKE FURTHER NOTICE, that at the Sale Hearing, in accordance with the terms of the Sale Agreement, any party wishing to make an offer for the Mercury Stock or the assets of Mercury must: (i) make an offer which is at least \$25,000.00 in excess of Mercury Partners' offer (i.e. such offer must be not less than \$300,000.00); (ii) each successive offer must be in increments of \$2,500.00; (iii) the proponents of any such offer must provide an earnest money deposit of not less than \$25,000.00, which down payment will be held in escrow by the Trustee pending the closing on such proponent's offer; and (iv) the proponent of any such offer must show evidence of assets, financing commitments or other ability to close the proposed transaction.

PLEASE TAKE FURTHER NOTICE, that responsive papers, if any, must be in writing and filed with the Clerk of the United States Bankruptcy Court, 75 Clinton Street, Brooklyn, New York 11201, with a copy delivered to Bankruptcy Judge Holland's Chambers, and served so that they are received by: (a) the attorneys for the Trustee: (i) Ochs & Goldberg, LLP, 60 East 42nd Street, Suite 1545, New York, New York 10165, Attn: Martin P. Ochs, Esq.; and (ii) Whitman Breed Abbott & Morgan LLP, 200 Park Avenue, New York, New York 10166, Attn: Peter Scott Gold, Esq., and (b) the Office of the United States Trustee, 825 East Gate Boulevard, Garden City, New York 11530, in accordance with Bankruptcy Judge Holland's Chambers Rules.

PROSPECTIVE PURCHASERS ARE URGED TO PERFORM THEIR OWN DUE DILIGENCE WITH RESPECT TO THE MERCURY STOCK PRIOR TO THE SALE HEARING. If any party desires a copy of the Application or Sale Agreement or needs additional information, please contact the Trustee's counsel, Ochs & Goldberg, LLP, 60 East 42nd Street, Suite 1545, New York, New York 10165, telephone number (212) 983-1221, facsimile number: (212) 983-1330, Attn: Martin P. Ochs, Esq.

Dated: New York, New York
March 22, 1999

OCHS & GOLDBERG, LLP,
Attorneys for Martin P. Ochs,
the Chapter 7 Trustee of the bankruptcy estate of FIRST CENTRAL FINANCIAL CORP.,
By: Martin P. Ochs
MARTIN P. OCHS (MO-1203)
A Member of the Firm
60 East 42nd Street • New York, New York 10165
(212) 983-1221

Dated: New York, New York
March 22, 1999

WHITMAN BREED ABBOTT & MORGAN LLP
Special Counsel for
Martin P. Ochs,
the Chapter 7 Trustee of the bankruptcy estate of
FIRST CENTRAL FINANCIAL CORP.,
By: Peter Scott Gold
PETER SCOTT GOLD (PG-7350)
200 Park Avenue • New York, New York 10166
(212) 351-3000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF LIQUIDATION)
OF AAI SYNDICATE #1 LTD.) NO. 99 CH 1639

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on February 9, 1999, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency against AAI Syndicate #1 Ltd. ("AAI Syndicate"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of AAI Syndicate ("Liquidator").

TAKE FURTHER NOTICE, that on March 17, 1999, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and the Setting of Claim Filing Deadlines ("Fixing Order"). Pursuant to the Fixing Order, all rights and liabilities of AAI Syndicate and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of February 9, 1999, unless otherwise provided in prior or subsequent orders of the Court.

TAKE FURTHER NOTICE, that all persons, companies or entities who have, or may have claims, against AAI Syndicate, its property or assets, or against an AAI Syndicate insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before February 9, 2000 at 4:30 p.m. (C.S.T.)

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by AAI Syndicate shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before February 9, 2000 at 4:30 p.m. (C.S.T.) No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level [215 ILCS 5/205 (1) (d)] unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before February 9, 2001 at 4:30 p.m. (C.S.T.). Any contingent claim for which a proper proof of claims is filed on or before February 9, 2000 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before February 9, 2001 at 4:30 p.m. (C.S.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level [215 ILCS 5/205(1)(e)] unless otherwise directed by the court.

TAKE FURTHER NOTICE, that the form and required content of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of AAI Syndicate, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to AAI Syndicate upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST AAI SYNDICATE, ITS PROPERTY OR ASSETS, OR AGAINST AN AAI SYNDICATE POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE FEBRUARY 9, 2000 AT 4:30 P.M. (C.S.T.)

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Gerling buys TIG Re facultative book

NEW YORK—Gerling Global Reinsurance Corp. of America has agreed to acquire the new and renewal rights to Stamford, Conn.-based TIG Reinsurance Co.'s casualty facultative operations for an undisclosed sum, effective March 1.

This will be Gerling's first entry into the facultative reinsurance business, said Alison Hein, Gerling's director of corporate planning. The deal does not include TIG Re's in-force business, according to Ms. Hein, who said she cannot estimate the amount of premium volume involved.

The business has 47 employees in eight offices: San Francisco; Hartford, Conn.; Atlanta; Chicago; New York; Columbus, Ohio; Philadelphia and Dallas.

Daniel L. Avery, who led TIG Re's casualty facultative division, recently joined Gerling as senior vp and director of casualty facultative operations; he will head the operation.

More deals are possible, said Ms. Hein. "We are open to growth strategy. That's part of our business plan, and whatever makes sense for the business, we will look at."

Six Flags park investigates drowning

ARLINGTON, Texas—The Six Flags Over Texas amusement park is investigating a recent accident on a ride in which a boat capsized and a woman drowned.

Valleria Cartwright, 28, of Helena, Ark., apparently was unable to unbuckle her seat belt and drowned in waist-high water earlier this month after a large, round boat carrying 12 passengers on a water ride overturned about 200 feet from the end of the ride, according to a spokesman for the Arlington, Texas, Police Department. The 11 other people in the boat were able to extricate themselves; 10 received treatment for minor injuries.

The fatality is the first ever at the Arlington park, according to the park's public relations spokeswoman. The Roaring Rapids ride was built in 1983, and an estimated 20 million visitors have ridden it since then, she said.

Independent ride experts, company engineers and safety personnel have joined law enforcement personnel in investigating the accident, according to the park spokeswoman.

"Everything is under review at this stage," including park policies about appropriate emergency response, the spokeswoman said. Park paramedics arrived within two minutes, she added.

Disneyland fined for 1998 accident

SAN FRANCISCO—The California Division of Occupational Safety and Health last week issued two citations with fines total-



API/WIDE WORLD PHOTOS

A 1998 accident aboard the sailing ship Columbia at Disneyland resulted in the death of a park guest and serious injuries to a second guest and a park employee.

ing \$12,500 against Disneyland in connection with a Dec. 24, 1998, accident on the sailing ship Columbia attraction.

The accident, which occurred when a metal securing cleat broke loose and flew into the crowd, resulted in the death of a park guest and serious injuries to a second guest and a park employee.

Cal-OSHA cited Disneyland last week for not adequately training the employee who was docking the ship when the accident occurred. The training violation was cited as serious and carries a \$6,250 penalty. A second violation, also cited as serious, was issued for overloading the bow cleat and also carries a penalty of \$6,250. Cal-OSHA standards require that equipment used by employees not be operated or loaded beyond their intended working levels.

In response to the accident, Assemblyman Tom Torlakson, D-Martinez, earlier this month introduced legislation that would require California's permanent amusement parks to undergo annual inspections of rides, set training standards for employees who operate the rides and ensure that all accidents are reported to the state.

Disneyland officials met with Cal-OSHA last week to review the report and acknowledged that it is "a comprehensive and thorough report that gives a much better idea of what may have contributed to and caused the accident," a company statement said. "We are reviewing the report and will be discussing appropriate next steps with Cal-OSHA."

Meanwhile, Disney officials said that all areas noted by

Cal-OSHA have already been addressed on the Columbia through mechanical modifications, new safety and operational procedures and related training implemented over the past two months.

Unisys wins appellate ruling

PHILADELPHIA—Blue Bell, Pa.-based Unisys Corp. did not violate its fiduciary duties under federal pension law when it bought more than \$200 million in guaranteed investment contracts from Executive Life Insurance Co., a federal appeals court has ruled.

The 2-1 decision by the three-judge panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia upheld a lower federal court ruling.

The case is the first of several lawsuits the U.S. Labor Department has filed against employers that bought GICs and annuities from the now-defunct ELIC. ELIC was put into rehabilitation in California in 1991.

Information in brief

Philip L. Engel will retire later this year as president of Chicago-based CNA Insurance Cos. as well as from his position as a director of parent company CNA Financial Corp. Mr. Engel, 58, has been with CNA for 38 years and has been president since 1992. . . Indianapolis-based **Acordia Inc.** has completed a regional consolidation effort with the merger of its two Eastern regional operations into one East Region operation based in Morristown, N.J. Kevin Conboy has been named president and regional chief executive officer. The operations of the world's seventh-largest broker are now segmented into four regions across the United States. . . Chicago-based **Aon Corp.** announced a three-for-two stock split payable May 17 in the form of a stock dividend of one common share for every two shares held. Aon's stock closed Friday at \$65. . . **CNA Risk Management**, a unit of CNA Financial Corp., is now offering \$50 million in primary and excess property coverage, including catastrophe coverage, for service industry policyholders. A new primary facility, Preferred Property, offers \$25 million in capacity, and CNA's existing excess facilities offer another \$25 million. **BI**



Mr. Engel

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Mr. Larkin M. Bertram-Cox
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Glendale, CA 91203-2308
(818)956-6700
All proposals must be completed and received no later than April 23, 1999 at 5:00 p.m.

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REQUEST FOR PROPOSALS

NOTICE OF SOLICITATION FOR PROPOSALS RELATING TO REHABILITATION
RE: MID-CONTINENT LIFE INSURANCE COMPANY IN RECEIVERSHIP
Written proposals relating to rehabilitation of Mid-Continent Life Insurance Company, a licensed domestic insurer in the State of Oklahoma ("Mid-Continent") are being solicited by the Receiver, Carroll Fisher, Insurance Commissioner, State of Oklahoma (the "Receiver"). Such written proposals must be submitted with one (1) original and six (6) copies in a sealed envelope to the Assistant Receiver of Mid-Continent at 1400 Classen Drive, Oklahoma City, Oklahoma 73106 and must be received no later than 5:00 p.m. (CST) on June 4, 1999. Telefaxed proposals will not be accepted.
Proposals from any person or company having an interest in acquiring Mid-Continent ("Qualifying Proposals") will be considered. Proposals for the acquisition of less than 100% of the stock of Mid-Continent will not be considered.
NO REPRESENTATIONS WILL BE MADE BY THE RECEIVER OR BY MID-CONTINENT AS TO THE BUSINESS OR FINANCIAL STATUS OF MID-CONTINENT OR THE ENFORCEABILITY OR VALUE OF POLICIES. Persons and companies making proposals shall be responsible for conducting their own due diligence at their expense. In that regard, commencing April 5, 1999, the same information shall be made available for examination at Mid-Continent to all persons or companies interested in submitting proposals. Interested persons and companies may examine such information, after obtaining a bid package and completing required biographical information and related materials, by contacting the Assistant Receiver of Mid-Continent at (405)523-3810 to make an appointment.
There shall be a public opening of all proposals at the offices of Mid-Continent (1400 Classen Drive, Oklahoma City, Oklahoma) at 10:00 a.m. (CST) on June 8, 1999. Any and all proposals may be rejected or recommended for approval by the Receiver. Any proposal(s) recommended for approval by the Receiver shall be submitted to the District Court of Oklahoma County, State of Oklahoma for approval pursuant to notice and hearing.
This notice is being mailed to all companies licensed to do life insurance business in the State of Oklahoma, to the Oklahoma Life and Health Insurance Guaranty Association, to the National Organization of Life and Health Guaranty Associations and the American Council of Life Insurance, is being published in the National Underwriter, Business Insurance, The Journal Record and The Wall Street Journal, and shall be mailed immediately by the Receiver to any person or company upon request.

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Results

Continued from page 3

1999 can expect deteriorating underwriting results, slow premium growth, almost no investment income growth, and lower pretax operating results, predicted Mr. Lewis.

This year will be a continuing function of what was seen last year, which is "years of inadequate—and in some cases irrational—pricing finally finding its way into the reported numbers," said Ronald Frank, an analyst with Salomon Smith Barney in New York.

'Until the overcapacity issue is addressed, it's going to be very difficult,' says Matthew Coyle of Standard & Poor's.

John L. Ward, CEO of the Cincinnati-based Ward Financial Group, pointed to pledges made last year by executives of American International Group Inc., Chubb Corp., The Hartford Financial Services Group Inc. and The St. Paul Cos. Inc. that they would walk away from underpriced business in 1999 (BI, Nov. 30, 1998).

"I think, for the long term, that will be a positive influence on the results of the companies that are taking that posture, but I think that what it will do, in the short term, is widen the gap between the good performer and the average performer," Mr. Ward said.

"Until the overcapacity issue is

addressed, it's going to be very difficult for individual companies to reverse the pricing trends of the market," said Matthew Coyle, a director at rating agency Standard & Poor's Corp. in New York. "There are plenty of carriers out there willing to write the business."

However, Robert M. Steinberg, chairman and chief executive officer of Reliance Insurance Group in New York, said that, since late fall, there has "definitely been a different tone to the market."

"We've come to a leveling-off period, and I see that continuing throughout most of '99," Mr. Steinberg said.

Ken Zuckerberg, an analyst with Keefe, Bruyette, Woods in New York, agrees the market may be stabilizing.

"It appears that the market is at the point where the rate of decline is really decreasing, and that there may be some price stabilization over the next six to 12 months," he said.

Business Insurance's survey results no longer include those of TIG Holdings, whose acquisition by Fairfax Financial Holdings Inc. was announced last year (BI, Dec. 7, 1998). In contrast, while General Re Corp. has been acquired by Berkshire Hathaway Group, the two companies released separate 1998 results to BI.

Other findings of BI's survey of 21 major property/casualty insurers' 1998 results were:

- Net premiums written increased a modest 2.4% to \$96.47 billion. This compares with a 3.7% increase for the nine-month period and a 3.9% increase in the first half (BI, Nov. 30, 1998; Aug. 31, 1998). There was a 5.5% increase in net premiums for all of 1997 (BI, March 23, 1997).

- Underwriting losses increased by 132.2% to \$5.1 billion in 1998. This compares with a 87.5% increase in underwriting losses for the nine-month period.

'It was a quarter when very few companies hit their earnings mark,' says Michael Lewis of Warburg Dillon Read.

- The combined ratio continued to deteriorate, growing to 105.1% compared with 102% in 1997. This compares with a 104.4% ratio for the nine-month period.

- Investment income fell 3.2%, to \$15.88 billion. It had dropped 4.7% in the nine-month period and 8.6% in the first half.

- Policyholder surplus for the 20 insurers reporting it increased 7% to \$112.52 billion. This compares with the 10.6% increase reported in the nine-month period by a comparable group of insurers.

"I think, in a nutshell, the quarter gave you more of the same," said Mr. Frank of Salomon Smith Barney. "The fundamental problem is books of business that, in hindsight, are proving to be significantly underpriced, and that's finally showing up in the numbers," he said.

"I think it was kind of a cleanup quarter," said Mr. Lewis of Warburg Dillon Read. "It was a quarter when very few companies hit their earnings mark and continued to be influenced by the negative factors that have been influencing the property/casualty industry for some time," he said.

These included inadequate

rates, especially in standard commercial lines, weather-related losses, and reduced investable cash flow and low interest rates, which together hurt investment income, Mr. Lewis said.

In addition to \$480 million in insured catastrophe losses in 1998, which compares with \$250 million in 1997, "the continued theme of soft pricing and competition in the commercial segment continued to eat away" at commercial insurers' results, said Mr. Ward.

Developing market situations are not expected to reverse that trend.

Most analysts, for example, do not expect the workers comp losses generated by reinsurance pools managed by Unicover Managers Inc. to influence pricing in the overall property/casualty market (BI, March 15).

"My guess would be that it will have a minimal impact," said Mr. Coyle of S&P.

"I think Unicover is simply too small to cause any sweeping change in behavior," said Mr. Frank, who added that it could affect workers comp pricing, especially in the competitive California market.

The traditional property/casualty reinsurers "will enter with their excess capacity before things get too tight," he added.

Difficult market conditions are likely to spark more mergers and acquisitions, analysts say.

Several pointed to recent acquisition activity that includes XL Capital Ltd.'s planned buyout of NAC Re Corp. (BI, Feb. 22), ACE Ltd.'s bid to purchase CIGNA Corp.'s property/casualty operations (BI, Feb. 1), and Chubb Corp.'s acquisition of Executive Risk Inc. (BI, Dec. 15, 1998).

"You have seen, and are likely to continue seeing, an increasing number of deals just because the gap between buyer and seller will narrow" as a result of pressure on earnings, which in turn causes pressure on stock prices, said Mr. Frank.

"That being said," he added, "I would not expect to see the kind of sweeping consolidation among insurance carriers that you have seen among the brokers. I think we're all going to celebrate many birthdays before you see that kind of concentration" among multi-line insurers, said Mr. Frank.

The recent deals "are signals that it's difficult to grow organically and that scale and enhanced

'The economies of scale and synergies are still elusive,' says Barbara Stewart of Stewart Economics.

distribution are necessary to compete in today's property/casualty marketplace," said Mr. Zuckerberg of Keefe, Bruyette, Woods.

However, Ms. Stewart said merger and acquisition activity often has failed to deliver on its promises.

"The economies of scale and synergies are still elusive," she said. "But the inability to grow organically is forcing companies to continue to consider acquisitions."

They don't know how else to grow," Ms. Stewart said, "and perhaps at some point that will reduce the competition. But we haven't gotten there yet." BI

Major property/casualty insurers' year-end 1998 results

Ranked by change in net income. All amounts in thousands of dollars.

Rank 1998	Corporate					Property/casualty operations								
	Net income 1998	Percent increase (decline) 1997-1998	Consolidated revenues 1998	Combined ratio 1998	Combined ratio 1997	Net premiums written 1998	Percent increase (decrease) 1997-1998	Pretax underwriting income (loss) 1998	Percent increase (decline) 1997-1998	Pretax investment income 1998	Percent increase (decrease) 1997-1998	Policyholders surplus 1998	Percent increase (decrease) 1997-1998	
1	\$2,316,600	139.4	\$7,771,800	102.6	100.6	\$4,778,600	(10.3)	\$(127,200)	(300.0)	\$1,183,100	-	\$5,626,600	(10.8)	
2	134,400	102.7	579,200	89.4	91.7	346,600	(30.5)	41,200	3.5	64,200	74.5	612,600	11.2	
3	82,866	44.4	219,378	118.3	117.6	113,237	(8.3)	(22,447)	4.3	70,393	(12.3)	657,445	16.4	
4	326,449	42.3	3,369,120	102.1	100.9	2,438,310	18.0	(52,108)	(64.3)	294,743	11.6	1,747,425	34.2	
5	1,292,000	19.0	21,437,000	107.1	100.0	2,994,000	(2.5)	(210,000)	(2,200.0)	333,000	(6.7)	1,690,000	(6.6)	
6	113,897	16.5	722,955	96.2	93.0	571,676	(8.0)	21,195	(49.6)	171,490	32.9	646,828	18.0	
7	3,765,591	13.0	33,296,351	96.4	96.2	14,586,110	8.8	530,738	8.3	2,191,817	18.3	N/A	N/A	
8	1,342,800	8.6	10,451,100	102.2	102.3	81,036,00	3.5	(260,700)	24.1	2,097,700	2.4	7,079,100	14.4	
9	323,744	8.6	2,171,771	99.6 ²	98.5 ²	8,920,64 ²	(1.7)	(16,623) ²	(245.0)	191,873	(3.0)	1,462,938	3.1	
10	117,000	2.6	1,380,463	105.5	106.4	934,046 ²	(12.2)	(51,633) ²	(23.9)	205,425 ²	0.8	1,634,185	8.1	
11	249,667	(2.9)	1,944,111	106.0	104.0	1,524,197	6.2	(95,197)	(111.8)	348,125	0.7	2,959,182	7.4	
12	707,000	(8.1)	6,207,900	99.8	96.9	5,503,500	1.0	(24,000)	(120.5)	808,700	4.6	3,769,800	9.4	
13	854,000	(10.4)	6,267,000	95.0	90.3	5,476,000	12.9	265,000	(42.5)	967,000	10.8	39,600,000	6.5	
14	351,900	(18.2)	6,602,300	102.6	98.7	4,256,600	50.5	(109,400)	(402.2)	480,200	46.9	3,002,400	(5.0)	
15	1,015,000	(23.8)	15,022,000	103.7	103.6	7,454,000	4.1	(259,000)	(10.2)	955,000	2.5	8,516,000	11.2	
16	84,927	(38.9)	145,259	107.2 ²	105.3 ²	1,437,279	19.0	(74,051)	(49.2)	164,812	(4.4)	1,024,658	(4.7)	
17	282,000	(70.8)	17,070,000	115.2	109.0	10,680,000	3.9	(1,740,000)	(67.3)	1,670,000	(3.5)	7,620,000	7.0	
18	89,348	(91.0)	9,108,401	116.5 ²	104.2 ²	6,693,168	(3.4)	(1,041,128)	(347.3)	1,306,828	(1.3)	4,713,724	(1.7)	
--	N/A	N/A	3,523,313	106.6 ²	103.9 ²	2,765,383 ²	(9.7)	(165,277) ²	(5.8)	348,302 ²	(3.9)	2,574,544	8.4	
--	N/A	N/A	N/A	108.8	104.8	8,404,781	2.5	(840,603)	(95.4)	893,590	(58.3)	10,555,678	13.3	
--	N/A	N/A	N/A	114.0	111.1	6,516,902	10.1	(871,376)	(25.7)	1,131,997	6.2	7,023,295	1.2	
Cumulative	13,449,189	0.9	148,596,422	105.1	102.0	96,470,053	2.4	(5,102,610)	(132.2)	15,878,295	(3.2)	112,516,402	7.0	

¹ After dividends ² Statutory

Source: BI survey

Disadvantages of flying coach

Is it just me, or is airline customer service losing altitude as quickly as a rudderless 737?

Nearly every element of the air travel experience has become increasingly unpleasant or a joke: airport services, ticket prices, overbookings, airline meals, baggage handling, seat sizes, storage space, labor strikes, and so on. Airline quality is not just bad, I think it's growing worse.

Whenever I enter Chicago's O'Hare International Airport, I briefly consider checking my bag—for about as long as it takes my eyelid to blink once—and decide against it.

First off, lines at the ticket counter are too long. By this, I mean the ratio of passengers to ticket agents on most days is about 500-to-1, and those ticket agents don't look too happy about it. Besides, navigating a maze for three hours would more than defeat the purpose of arriving an hour before my flight.

The next hurdle is the security checkpoint. I can always count on spending at least 15 minutes walking back and forth, listening to the machine beep, while being quizzed by security personnel. Keys in your pocket? Change? Wallet? Cell phone? Pager? Gum? Thermonuclear device? No. No. No and no. I have none of those things in my pockets because I always stuff everything but the clothes I am wearing into my bag to avoid triggering the scanner. It never works, so next I assume the position and am scanned with a handheld device. I noted with interest last week that the device chirped in the vicinity of my shins. Apparently I have metallic sock lint. Invisible metallic sock lint.

By the time I reach the gate, the airline usually is announcing that the flight is overbooked and they want volunteers to give up seats in exchange for a \$200 travel voucher. These days, that'll pay for half of a roundtrip from Chicago to Gary, Ind. Besides, why should I suffer because their computers are unable to perform simple math?

I ignore the offer and join the line. Or should I say throng? If there are any small children or people requiring assistance, they are now being trampled by a mob of travelers with premium frequent-flyer cards who also are invited to board early.

Once on board, I cram my belongings under my feet and settle in for the show: watching the people who seem determined to bring things on board that would barely fit in the hold of a C-130 transport plane. Just because something has a handle and wheels, I want to shout, doesn't mean you can drag it anywhere!

The flight attendants blithely watch this freight go past them at the door to the plane, but do nothing to stop it until gridlock threatens to delay their "on time" departure.

Then things get ugly. On a recent trip, cranky flight attendants began snatching passengers' coats out of the overhead bins to make room for luggage that should have been checked and threatened to leave these garments behind if people didn't stow them on their laps.

A guy seated behind the bulkhead dividing first class and coach reclaimed his coat, inviting further scrutiny from the flight attendant who noticed that beneath the coat now on his lap was a small briefcase. This is an aviation no-no rivaled only by opening one of the plane's doors at 35,000 feet.

With all overhead compartments overflowing and no seat in front of him to store it under, he complained there was nowhere else for him to put it.

"Well that's just one of the many disadvantages of flying coach!" the flight attendant snapped.

Even among jaded air travelers, this cruelty, bordering on evil, was a new low and drew gasps at least five rows deep.

Eventually all luggage was stowed or hidden to the satisfaction of the air wardens and we could begin the process of getting in line for takeoff. If a plane is airborne within an hour of its scheduled departure, I consider that early.

The next insult comes as the beverage carts move down the aisles, bumping knees and elbows as they go. I request what amounts to four giant ice cubes and two teaspoons of cola ("A Coke, please.") and am lucky enough to also receive four miniature pretzels.

The rest of a flight is typically uneventful. Oh, sure, sometimes we circle our destination a hundred times before landing, but at least I have arrived at point B.

If I'm lucky, I'll have at least a few days before I have to repeat the dreaded process to return to point A.



Paul D. Winston

Editor Paul D. Winston's commentary appears fortnightly.

Valdez

Continued from page 1

utive officer of Weehawken, N.J.-based Marine Transport Corp., which owns or operates 35 oil-carrying vessels, most of which are tankers.

Over the past several years, the industry's focus on safer operating procedures has proved to be a lasting legacy of the Valdez accident, Mr. duMoulin said.

"Safety, all of a sudden, is alive. It's instantaneous, and it's an ingrained practice," he said, referring to the new, widespread use of more-modern communications and ship tracking technologies. "You could compare it to what's happened in the chemical industry since what happened to Bhopal."

Shipping practices generally evolve slowly over time, but "the Valdez was dramatic and accelerated the rate of change very quickly," he said.

The unanimous passage of the Oil Pollution Act of 1990 in Congress was a direct result of the Exxon disaster and spurred many reforms. On the operational side, the law mandated better training, minimum periods of rest for watch personnel, better vessel surveys and minimum under-keel clearance requirements.

One provision of OPA '90 was that vessel owners or operators had to carry insurance to cover liability for cleaning up oil spills before operating in U.S. waters, with specific dollar limits depending on the size of the vessel.

This requirement was "a very important aspect, as far as changing the behavior and mind-set of the industry," said Robert L. Greco, general manager of marine transportation for the American Petroleum Institute in Washington. To pay the cost of a big spill that exceeds insurance coverage, OPA '90 created a \$1 billion Oil Spill Liability Trust Fund, funded by an industry tax.

OPA '90 created about 40 new rules related to oil tanker safety. It established stiffer criminal and civil penalties for polluters, and it required tankers to develop response plans in case of spills.

OPA '90 also gave the U.S. Coast Guard the authority to check national driver's license records and criminal records before granting or renewing a merchant marine license.

According to the American Petroleum Institute, the oil industry has spent almost \$17 billion to comply with the requirements of OPA '90 since the law's enactment.

In the time since the Valdez grounding, some ports have introduced requirements that include tugboat escorts for supertankers, better markings for shipping lanes, dredging of channels, state-of-the-art traffic control systems and safer docks, Mr. duMoulin said.

"The tanker industry has dramatically cleaned itself up," he said, noting that regulatory pressures now focus more on smaller oil-carrying ships, because supertankers have caused so few problems in recent years.

Tests for drug use aboard ships, which were done before the Valdez accident, now are even more common.

"The days of the drunken sailor are no longer the modus operandi of the industry," said Capt. Mark Van Haverbeke, chief of the Coast Guard office of design and engineering standards in Washington. He pointed to "part of a cultural change that's going on in the industry" that no longer tolerates alcohol on board tankers.

The captain of the Valdez, Joseph Hazelwood, admitted to having several drinks before the accident and leaving the bridge to a less-experienced seaman, who was in charge when the tanker ran aground.

The oil transport industry also points to the gradual introduction of double-hull tankers as a significant

safety development. Any new tanker built after the enactment of OPA '90 was required to have double-hulled construction, which lessens the chances of a spill due to a hull breach.

Older vessels with single hulls, most of which were built during the 1970s, are being retired. Under OPA '90, vessels 36 years or older with single hulls must be retired or retrofitted, or, if double-hulled, must be retired upon reaching 41 years of age, Capt. Van Haverbeke said.

OPA '90 also provided for minimum standards of hull plate thickness and required the periodic gauging of plate thickness for older single-hull vessels. All single-hulled ships will be retired by the year 2015.

The change appears to be paying off. In the past few years, there have been about 15 tanker accidents involving double-hulled vessels, nine of which involved tankers that had OPA '90-mandated double hulls, Capt. Van Haverbeke said. None of the accidents led to an oil spill.

"The bottom line is, we're well into the retirement phase for these (single-hulled) vessels," the captain said.

'The days of the drunken sailor are no longer the modus operandi of the industry,' says Capt. Mark Van Haverbeke.

Capt. Van Haverbeke said there is "some validity, absolutely," to the industry's assertion that oil transport is much safer now than in the days of the Valdez, and he described the present industry attitude as a "general safety culture."

Largely as a result of pressure from the United States, double hulls also were made mandatory internationally through a 1992 amendment to the International Convention for the Prevention of Pollution from Ships, commonly known as MARPOL. The convention was introduced by the International Maritime Organization, the London-based shipping unit of the United Nations.

The 1992 amendment required newly built tankers of 5,000 deadweight tons or more to be fitted with double hulls or with an alternative design approved by the IMO. All other tankers have to be converted to double bottoms, or scrapped, by the time they are 25 years old.

Gerhard Kurz, president of Mobil Shipping & Transportation of Fairfax, Va., said he thinks "tremendous progress" has been made in the safety of oil shipping in recent years, and that safety today is a prominent concern "from the top down" in shipping companies.

"I think safety has sunk into the psyche of people in our industry. It's really a state of mind," he said. Mobil's 29 tankers include three with double hulls, and five more double-hulled ships are slated to be built in the next few years for Mobil, he said.

Navigational equipment that includes anti-collision systems, radar, and satellite-aided global positioning systems have helped provide tankers with technological tools "as sophisticated as airplanes," Mr. Kurz said.

"We can pinpoint the position of our vessels within a couple hundred feet anywhere on any ocean in the world," he said.

Various other improvements in technology and operations have led to safer transit of tankers, according to Ray Botto, external affairs specialist for Houston-based SeaRiver Maritime Inc., a wholly owned affiliate of Exxon Corp. SeaRiver operates nine tankers and 80 other marine vessels.

Mr. Botto said innovations include:

- Electronic chart displays that integrate navigational data from sever-

al different electronic sources.

- Weather computing software for seven-day forecasting.

- "Bridge team management," an improved approach to communication among the captain, helmsman, watch officer and, once in port, the local pilot. The strategy, which emphasizes teamwork and avoidance of dangerous misunderstandings, is commonly taught in seminars.

- Structured and systematic risk assessments of the hazards involved in new projects.

New technology specifically in use in Prince William Sound also includes the Automated Dependent Surveillance System, which relies upon on-board radio transponders to provide the Coast Guard with ships' positions. The system gives Coast Guard personnel a chart 14 times the size of previous radar screens, said Capt. Van Haverbeke, who said he expects other ports to adopt the technology.

Although published reports this month referred to a possible problem of tankers exceeding speed limits in Prince William Sound, a Coast Guard officer in charge of traffic there denied that a problem exists.

"We're confident there's not a tanker speeding problem in Prince William Sound," said Lt. Cmdr. Steve Hudson, executive officer of the Marine Safety Office at Valdez. "We continually monitor the tanker transit from its beginning—from the moment they leave the berth—to about 60 miles outside... We have three guys on watch 24 hours a day."

In a statement marking the 10-year anniversary of the Valdez spill, Exxon outlined six broad measures it has taken to reduce the risk of future disasters: modified tanker routes; drug and alcohol testing for safety-sensitive positions; restriction of safety-sensitive positions to employees with no history of substance abuse; more extensive checks of Exxon vehicles and facilities; better training programs for vessel captains and pilots; and new technology for vessel navigation and oil containment.

Coast Guard statistics indicate that both the number and severity of oil spills in U.S. waters have declined substantially in the years since Valdez. According to the Coast Guard, since enactment of OPA '90, the average annual number of spills over 10,000 gallons has dropped by about half from previous levels. The gallons spilled per million gallons of oil shipped also has been reduced by half, from an annual average of 10 gallons spilled per million shipped for the years 1987 to 1990 to 5 gallons spilled per million shipped from 1991 to 1997. Moreover, there have been no spills of more than 1 million gallons in the past nine years.

In addition, the International Convention for the Safety of Life at Sea (SOLAS) added new requirements in 1994 that took effect July 1, 1998. The rules set standards for the implementation of oil transportation companies' safety and pollution avoidance programs. The convention, to which the United States is a signatory, requires each company to develop a complete safety management system and a contingency program to reduce the risk of oil spills, and to prepare for cleanups should spills occur.

The risk of spills in Prince William Sound also has been reduced because OPA '90 set up a regional advisory council that keeps close tabs on potential sources of pollution, said John Harrauld, a professor at George Washington University in Washington and an expert on disaster management. But, he said, a major spill could recur.

"The fact that rare events have not happened doesn't mean they can't happen," he said. "The problem is still not zero; the problem is to get (the risk) as small as possible."

Edwin Unsworth contributed to this report.

Despite Valdez, marine rates drop

Responses to disaster may have reduced risks

By EDWIN UNSWORTH

LONDON—Even though the marine insurance industry was hard hit by losses from the 1989 Exxon Valdez accident, the effects were temporary, and intense competitive pressures have kept insurance rates down in recent years.

The oil disaster and subsequent passage in the United States of the Oil Protection Act of 1990 sent some rates and deductibles upward for many oil shippers in the mid-1990s (*BI*, Sept. 29, 1997). But insurance industry experts said the implications of the Valdez disaster for insurers and reinsurers lie more in changes in oil transportation loss prevention practices than in pricing.

The insurance industry paid Exxon approximately \$1.2 billion toward cleanup costs. In all, Exxon figures it spent \$2.2 billion on the cleanup. It paid more than \$577 million to individuals, com-

munities and native corporations in the region surrounding the spill.

Exxon currently is appealing a \$5 billion punitive judgment that would be divided evenly among 14,000 fishermen, natives, landowners, business owners and native corporations.

The Valdez experience may have created better risks among tanker owners, said Tim Mathieson, chief underwriting officer at Zurich Global Energy in London.

"From an insurer's point of view, it probably has improved the risk," he said. "The careful client—the client nervous of losses—is an even-better client."

Introduction of more double-hulled ships under the OPA 90 (see story, page 1) was a positive risk-reduction move, Mr. Mathieson said. In addition, the OPA 90's requirement that ships in U.S. waters carry certificates of financial responsibility created new organizations, backed by the insurance

and reinsurance industries, that provided coverage for potential pollution from oil spills, he said.

But Steven Redmond, underwriting director for Eagle Star Reinsurance Co. Ltd. of London and a former chairman of the Institute of London Underwriters, said he wonders if any lessons truly have been learned by oil carriers in the past 10 years. The Valdez incident was "not significant as far as hull underwriters are concerned," he said, because expenses were more related to the massive cleanup, covered by protection and indemnity underwriters and pools, than to a tremendous failure of the ship's hull.

Mr. Redmond also said there are questions about the effectiveness of double-hulled tankers in reducing oil pollution. Some believe double hulls may not help, or even may worsen, incidents of oil spillage if they are poorly maintained and rust develops unseen between the skins, weakening them in a grounding or collision, he said.

"The spaces are not enormous between the skins, and they definitely take more maintenance than a single skin," he said.

One lasting effect of the Valdez incident was that oil companies saw how a badly handled oil spill could have a negative impact on their reputations. It made them much more aware of the need for having in place a good disaster recovery plan, Mr. Mathieson said.

"It stressed to the oil industry that, yes, they could get insurance for hull, cargo and third-party liability, but even with good insurance, they still ran a significant reputation risk that could be damaging and cause substantial financial impact," he said.

Robert Kazel contributed to this report.

Updates

Pension reform bill introduced

Continued from page 2

The bill also would set a lower Pension Benefit Guaranty Corp. premium rate for small employers setting up new pension plans and eliminate the user fee the Internal Revenue Service charges an employer with a new plan to determine if the plan meets government rules.

A wide range of employer groups last week immediately endorsed the measure.

Lloyd's takes over two brokers

LONDON—Regulators at Lloyd's of London have taken charge of the accounts of two small brokers to "protect the interests of insurance transaction creditors," according to Lloyd's regulators.

Accountant Kidsons Impey is acting as liquidator of the assets of Paul Group International (Insurance Brokers) Ltd., previously known as T.L. Dallas (London) Ltd. Lloyd's regulators also appointed Paul Evans and Philip Singer of PricewaterhouseCoopers as joint provisional liquidators of Cullis Raggett Ltd.

Messrs. Evans and Singer, who originally were to liquidate both brokers, last week resigned as the receivers for Paul Group, citing a conflict of interest. Jamie Smith of Deloitte & Touche is acting as the receiver for Paul Group.

Earlier this year, Lloyd's regulators revealed they were demanding monthly financial reports from 50 Lloyd's brokers and quarterly reports from another 10 because of concerns over the solvency of those brokers.

Two judgments favor Lloyd's

LONDON—Lloyd's of London estimates it will receive about £21 million (\$34.1 million) from recalcitrant members following two judgments from the House of Lords late last week.

In *Napier vs. RF Kershaw & Ors*, the House of Lords—the highest court in England and Wales—upheld a Court of Appeal verdict that damages awarded to members in cases against negligent underwriters are payable to members' premium trust funds. Napier, the Lloyd's name in the case, wanted the awards paid to names or third parties rather than directly to the premium trust funds. All names have premium trust funds, which are part of the system backing their underwriting.

At the same time, a House of Lords decision in *The Society of Lloyd's vs. Woodard & Another* last week ruled that changes Lloyd's made to members' premium trust deeds, which cover the premium trust funds, are valid. Lloyd's amended the deeds in 1995 so that members' litigation recoveries would be channeled into the funds and used to offset members' market losses.

This means that any outstanding debts owed to Lloyd's by the members now can be seized from the premium trust funds. Only members who did not sign on to the reconstruction and renewal plan, implemented in 1996, are affected by the ruling. Lloyd's will now have access to what it estimates is £21 million, which it will put toward paying off the syndicated loan used to finance the R&R plan.

P&I club in liquidation

LONDON—Protection and indemnity club Ocean Marine Mutual Insurance Assn. Ltd. has been put into provisional liquidation.

Midland Bank P.L.C., the mutual's largest creditor, has applied to a court in the Turks and Caicos Islands, where Ocean Marine is based, for the liquidation order. A spokeswoman for the bank said the application is supported by the club's directors, who had signed an affidavit favoring the liquidation. She declined to give any details of the amount owed to the bank.

Ernst & Young in London has been appointed the provisional liquidator.

Ocean Marine suspended underwriting last December after acknowledging that it had failed to find a partner willing to help it get back on its feet financially. Apart from being affected by the weak marine insurance market, the club claims it is owed money by FAI General Insurance Ltd. of Australia. Ocean Marine is suing FAI for unpaid claims over a three-and-a-half year period to Feb. 20, 1996. Originally Ocean Marine had been seeking \$60 million from FAI, but it has since amended this to around \$22 million for claims paid plus an undisclosed sum towards outstanding claims.

Ray Bell, a partner in the law firm of Clyde & Co., which is defending FAI in the action, said the reinsurer is disputing the claims on the basis that "it was not given a full and fair presentation of all the information" when the reinsurance was placed. "It will be up to Ernst & Young to decide whether to continue the case against FAI," he added.

Representatives of the club did not return calls from *Business Insurance*.

At the February renewal round of P&I clubs, members of Ocean Marine were offered renewal with Liverpool & London Steamship P&I Club Assn. Ltd.

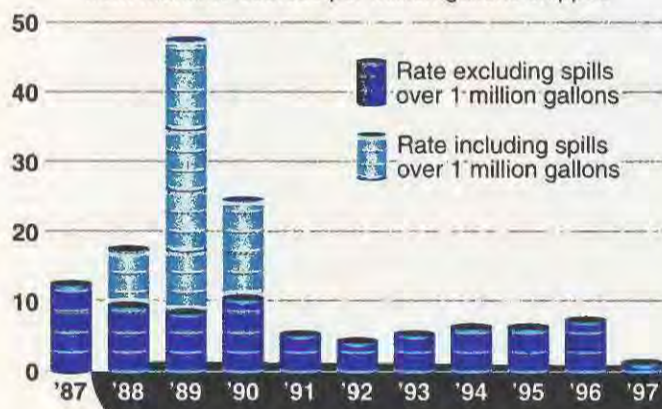
Ocean Marine was incorporated in 1984 and had built up a membership consisting mainly of small to medium-sized shipping companies owning bulk carriers and general cargo ships.

Briefly noted

The Senate Judiciary Committee last week passed the **Year 2000 Fairness and Responsibility Act**, which is sponsored by Sens. Orrin Hatch, R-Utah, and Dianne Feinstein, D-Calif. . . The **Occupational Safety and Health Administration** is expected to announce a proposed rule this week clarifying requirements that employers pay for personal protection equipment for workers.

Spill severity declines

Gallons of oil discharged into U.S. waters from maritime sources per million gallons shipped



Source: U.S. Coast Guard

GRAPHIC BY ADAM DOI

PBGC

Continued from page 1

Still, with the agency on a sound financial footing, PBGC officials have had more time to develop and build support for long-term proposals to revitalize the nation's defined benefit plans (see story, next page).

The swelling PBGC surplus contrasts sharply with the perilous financial condition the agency was in only a few years ago. During the early 1990s, the PBGC's deficit neared the \$3 billion mark when it was hit with a string of multi-hundred-million-dollar losses; employers such as Pan American Airways and Eastern Airlines Inc. collapsed, and the PBGC took over those companies' massively underfunded pension plans.

But after hitting its low point in 1993, the agency's financial position has improved steadily. A surging economy has led to increased investment income—earned on PBGC insurance premiums paid by employers and on assets in pension plans the PBGC has taken over—while losses from terminated plans have dwindled. From 1995 through 1998, the PBGC racked up \$7.68 billion in investment income, including \$2.12 billion in investment income last year and \$2.69 billion in 1997. By contrast, from 1991 through 1994, investment income was just \$2.63 billion, or barely a third of the most recent four-year period.

At the same time, losses the agen-

cy has absorbed through taking over failed pension plans have sharply declined. From 1995 through 1998, the PBGC incurred termination losses of \$1.36 billion, down sharply from termination losses of \$2.44 billion from 1991 through 1994.

As termination losses in general have declined, so have individual "blockbuster" losses—those exceeding \$100 million, which account for more than half of the PBGC's losses. Between 1985 and 1994, the PBGC incurred 10 blockbuster claims, the largest of which was the failure of Pan Am's three pension plans. The PBGC took over two of the Pan Am plans in 1991 and a third in 1992, resulting in a total loss of \$760 million.

By contrast, the largest loss in 1998 was \$14 million, which resulted from the termination of a pension plan sponsored by Petrie Retail Inc., a financially troubled retailer in Secaucus, N.J.

While acknowledging the agency's turnaround, Mr. Strauss wants to dampen suggestions—expected to swell when the agency's annual report is released this week—that it is time for Congress to roll back PBGC premium rates. The base rate now is \$19 per year per participant for fully funded plans, while employers with the most severely underfunded plans can pay an additional surcharge amounting to several hundred dollars per participant.

Mr. Strauss noted that the agency's surplus has been achieved under the agency's almost-ideal economic condi-

tions.

"Everything has been just right. The economy now is in its ninth year of expansion and is setting all kinds of records. Interest rates are low, and the federal government has a budget surplus," Mr. Strauss said.

But it is not reasonable to expect that the economy's smooth sailing will continue indefinitely. "We have to be prepared for a downturn," Mr. Strauss said.

When the economy worsens, the impact on the PBGC's financial health could be substantial. More companies could fail, while, with declining investment returns, corporate pension plan funding levels could fall, exposing the PBGC to greater losses if those plans are terminated.

With an increased likelihood of more terminations of underfunded plans, an economic downturn also could erode the PBGC's asset base as its investment returns decline.

"A downturn in the economy can have really a double-whammy effect" on the PBGC, Mr. Strauss said.

Given the agency's exposure to losses, the most prudent course of action now is to maintain a cushion so that the PBGC is prepared for a financial downturn and the increased likelihood of more terminations of underfunded plans, he said.

"We are not building a cushion for the sake of having a big cushion. My focus is to be sure we are taking advantage of this unprecedented prosperity to build a cushion to protect the insurance program in the bad times," he said. **BI**

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